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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This rule amends regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended ("Pub. L. 480").

The amendment simplifies the purchasing procedures and shortens the regulations. The purpose of these changes is to keep the costs of the Pub. L. 480, title I program as low as possible, to reflect the provisions of the Federal Agricultural Improvement and Reform Act of 1996, and to reduce the public reporting burden.

Executive Order 12752 of February 25, 1991, establishes a program under title I of Pub. L. 480 to be implemented by the Secretary of Agriculture. In accordance with section 406(c) of Pub. L. 480, the funds, facilities, and authorities of the Commodity Credit Corporation are used to carry out this program.

EFFECTIVE DATE: This rule is effective November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549, South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, D.C. 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The Vice President, Commodity Credit Corporation ("CCC"), who is the General Sales Manager, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The final rule eliminates some existing program requirements which should make it easier for firms to participate, including small businesses. A copy of this final rule has been submitted to the General Counsel, Small Business Administration.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department submitted an updated information collection package to the Office of Management and Budget (OMB) under OMB control number 0551–0005, in conjunction with the publication of the proposed rule in the **Federal Register** (see "Background.") OMB has approved the estimated total burden of 455 hours through February 28, 2000. Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The final rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) authorizes CCC to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.* On January 27, 1997, the Commodity Credit Corporation ("CCC") published a Proposed Rule (62 FR 3810) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under title I, Pub. L. 480. The proposed rule was drafted after considering comments received in response to an Advance Notice of Proposed Rulemaking (60 FR 47495) published September 13, 1995. Most of the comments received supported the changes made by the proposed rule. The comments which raised questions are discussed below, except those comments that were outside the scope of the proposed rule. A copy of the "Benefit-Cost Assessment" prepared in connection with this final rule can be obtained from Connie B. Delaplane. See **For Further Information Contact.**

Discussion of Comments

Purchase Authorizations

After CCC and the participant have signed a title I agreement, CCC issues a purchase authorization ("PA") in response to a request from the participant. One comment asked that the importer or the shipping agent be permitted to request the PA. However, having the participant prepare the brief written request helps to insure that the participant also signs the PA when it is issued a few days later. By this signature the participant accepts the specific contracting and documentary requirements in the PA which govern CCC financing under the program. Because the participant must bear any costs which are not eligible for CCC financing, it is important that the participant be fully involved in both requesting and signing the PA. Since the requirement for requesting PA's appears in the title I agreement, there is no need also to include it in the regulations and this portion of the proposed rule will be adopted without change.

Shipping Agents

The proposed rule would require an agent of the participant or importer (shipping agent) to provide complete information on the firm and its activities only once per fiscal year, instead of each time the firm is nominated by a participant. One commenter requested that we further change the procedure to adopt an "initial registration" of interested firms at the beginning of each fiscal year, similar to the determination of eligibility for commodity suppliers. The firm would not have to be nominated by a participant to be registered.

We do not believe that adopting this suggestion would further reduce the reporting burden on a shipping agent, or expedite the FAS review process. In fact, it would place a greater burden on firms which would submit information for such "initial registration," yet never be nominated as a shipping agent. Also, if FAS were to "register" any interested firm, regardless of whether a participant wished to employ the firm, FAS' workload would be increased. Finally, such "registration" could imply endorsement or approval by FAS, which could be misleading to participants. FAS does not investigate firms which wish to act as shipping agents; it simply accepts the nomination of an agent by the participant if the requirements of the regulations are met. The regulations implement the provisions of section 407(b)(4) of the Federal Agriculture Improvement and Reform Act of 1996 regarding conflicts of interest. Based on this evaluation, CCC will adopt the rule as proposed.

Eligibility of Commodity Suppliers

The proposed rule would have permitted any supplier eligible under the GSM–102 or GSM–103 programs to participate in sales under title I. FAS would not have evaluated the firm's responsibility or its experience as an exporter of U.S. agricultural commodities. After reviewing the potential impact of this change on food aid recipients under the program, we have reinstated the requirement for a separate, but simplified, eligibility determination for title I suppliers. It is crucial for most food aid recipients that suppliers fulfill their contracts without problems or significant delay. Title I shipments are often a key part of the supply pipeline for recipients, which generally are not able to make a prompt commercial purchase should a supplier fail to perform. In addition, if a commodity supplier did not deliver the commodity, the recipient might also be required to pay the full shipping costs to the contracted vessel ("deadfreight"). By retaining the requirement that FAS evaluate the export experience and financial responsibility of a prospective supplier, we will help protect participants against non-performance.

One comment noted that the IFB requirements for bid and performance bonds have "adequately guaranteed performance by suppliers in the past." It is true that recipients normally require commodity suppliers to submit a bid bond (generally 2% of the value of the offer) and to open a performance bond when they receive a contract. The performance bond is usually 5% of the value of the contract. These bonds provide some protection against an unreliable supplier, but would be insufficient to cover the full cost of "deadfreight," for example. Buyers, of course, have not relied solely on these bonds in the past; FAS has screened out firms which did not demonstrate export experience and financial responsibility. It is not practical for recipients to increase the amount of the bid and performance bonds to cover the maximum costs of a default by the supplier; such bonds would be more expensive for the suppliers, and would increase all commodity costs under the program.

Under Title I, recipients must buy either on the "lowest landed cost" basis (the lowest combination of commodity and freight offered) or on the basis of the lowest priced commodity offered. This helps insure that CCC funds provide as much tonnage as possible, and to give qualified commodity suppliers an equal opportunity to compete. Because of this program requirement, recipients may not simply select the supplier(s) with which they are familiar. It would be inefficient to require each recipient to evaluate the ability of potential U.S. suppliers to perform; some recipients would not be able to conduct such an analysis. Submitting information to each recipient would also increase the workload for suppliers wishing to participate in the program.

In order to reduce the reporting burden for suppliers, we have eliminated the requirement that prospective suppliers provide the name, address and chief executive officers for all branches, affiliates and subsidiaries, and that eligible suppliers keep this information current.

Although the final rule is not as beneficial to suppliers as the proposed rule, it does reduce the reporting burden for suppliers while maintaining an acceptable level of protection for the recipient. As a result, CCC has determined to adopt the provisions in the final rule regarding eligibility of suppliers.

Invitations for Bids

One comment asked that the Invitation for Bids ("IFB") specify how the buyer will pay the supplier whenever the buyer requests a supplier to bear a cost not eligible for CCC financing. Although § 17.5(e) provides that the contracts between commodity suppliers and buyers "* * * should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC" we agree that this information should also be included in the IFB. Sections 17.5(c)(2) and 17.8(b)(1)(iv) have been amended to add this requirement for IFB's for commodity and for ocean transportation.

In this regard, it is important to note that some payments which had been permitted under the existing regulations, but which cannot now be financed by CCC, will be prohibited when this final rule becomes effective. This includes consular fees for legalization of documents, for example, and total brokerage commissions which exceed 2½ percent of the freight. We have added a new paragraph, § 17.6(c)(3), for improved clarity regarding total brokerage commissions. This paragraph is consistent with the regulations governing brokerage commissions for commodities shipped under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985 (7 CFR 1499.8(d)). The preamble to the proposed rule discussed the ceiling on brokerage commissions and requested suggestions for other ways to address the general issue of costs which are ineligible for CCC financing. Since no comments were submitted offering alternative procedures, the final rule retains the provisions in the proposed rule.

Ocean Transportation

A comment asked that we delete the requirement that the vessel owner may claim detention when a required letter of credit is not available at loading (§ 17.8(k)(6)). The comment questioned the appropriateness of a claim for detention in this case since the freight could not be collected until after the vessel arrived at the first discharge port. However, it is very important to the program that the vessel owner have the letter of credit available before loading. This provides assurance of payment when the voyage is completed, reducing the owner's risk and thereby keeping freight costs as low as possible. The comment also noted that the requirement for detention

disadvantaged foreign flag vessels. The regulations apply to freight contracts for voyages for which CCC finances all or part of the costs, whether on U.S.-flag or non-U.S. flag vessels.

Another comment agreed with the proposed change (§ 17.8(b)(2)) which no longer prohibits clarification or submission of certain technical information after opening of ocean transportation offers; the author requested confirmation that this would not be a vehicle through which an offer could be made responsive after it had been submitted. As described in the preamble to the proposed rule, only freight offers which are responsive to the terms of the IFB as of the date and time for receipt of offers could be considered. No information or clarification submitted after that date and time could be used to make the offer responsive. The prohibition against negotiation also remains in the regulations. The change simply acknowledges that it is occasionally necessary to seek factual information after an offer has been submitted, such as the maximum tonnage which can be loaded at a certain port, given existing draft conditions and stowage factors for the commodity in question. Another comment requested that ocean freight be earned (and paid) when the vessel loads, stating that this is the commercial standard. The program operated in this manner before 1960, at which time CCC found it necessary to change freight procedures to protect its interest, so that freight was payable on the vessel's arrival at the first discharge port. An importing country had fixed a vessel which was abandoned by the owner before the vessel departed the load port, but after receipt of freight payment on loading. CCC incurred additional costs and freight charges to ship the cargo on another vessel.

More recent program experience still supports this position. Within the last ten years, several vessels carrying title I cargo sank en route to the discharge port. Under the final rule, the risk of non-performance of the voyage remains on the ocean carrier, subject to a determination of force majeure. The final rule does continue the policy of allowing a supplier to receive freight prior to arrival if the supplier posts acceptable security.

In general, requiring freight to be payable on discharge maximizes the incentive to the supplier of ocean transportation to complete the voyage as contracted. In order to maintain this protection for CCC, and for program recipients, the proposed rule has been adopted as proposed. The requirement applies, of course, only when CCC finances any part of the ocean freight.

The same comment also requested that we change the method for settlement of demurrage and despatch at the load port. The current procedure was instituted in a final rule published December 7, 1995 (60 FR 62702). This rule provided that demurrage and despatch at load would be settled between the parties which controlled the loading (the supplier of ocean transportation and the commodity supplier.) This change was made to make the program operate closer to commercial practice than in the past, when CCC shared in despatch earnings. It also made title I more consistent with other food aid programs in this regard. Although it is true that no contract exists between the two suppliers, FAS has not heard of serious problems in arranging payment of demurrage and despatch on this basis. We have retained this provision in the final rule, but will review the issue if it appears appropriate based on further experience.

Payment to Suppliers

Most comments supported the proposal that CCC pay suppliers directly for all amounts which CCC finances, instead of requiring participants to open letters of credit covering these amounts. Two comments asked whether CCC would be able to pay as promptly as a bank does (generally, examining documents within two business days from presentation, with payment no later than one business day following the date documents are found in order.) Another comment asked whether the Uniform Customs and Practices for Documentary Credits ("UCP 500") would be the standard by which CCC would examine documents. CCC's examination of documents will be more extensive than that conducted by banks; it will not be based on UCP 500 but on the "post audit" process now performed by CCC on documents submitted to CCC by banks after they have made payment to suppliers. CCC staff will compare the documents to the documentary requirements in the PA and the IFB, and will check all calculations on the documents to ensure that no mathematical errors have been made. CCC will also review the documents received to ensure there are no discrepancies among the documents. As part of the direct payment process, CCC must also prepare and process the payment document, SF–1166, "Voucher and Schedule of Payments." The CCC review will replace CCC's existing "post audit" of documents and the banks" own review of documents. CCC expects to be able to pay suppliers within a maximum of seven business days after receipt of all the required documents, if there are no discrepancies. CCC will not disburse any funds to the supplier until all documents are received, audited, and found to be in order.

Therefore, suppliers should take note that they are solely responsible for ensuring that all the proper documents are included in the package submitted to CCC for payment, and that they are completed correctly. This will help CCC pay the suppliers sooner. Section 17.9(a)(3) has been revised to contain a more detailed description of the examination of documents by CCC. In addition, a new § 17.9(a)(4) has been added to reflect the provisions of the Debt Collection Improvement Act of 1996, Pub. L. 104–134, which requires that CCC must issue all payments by electronic transfer. Suppliers must provide CCC with the necessary information to facilitate this procedure.

One comment said that the seller had no assurance of receiving payment without a letter of credit since CCC can alter or revoke the PA. However, § 17.3(d) states that, if the GSM were to "supplement, modify or revoke" a PA, CCC would "* * * reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action * * * in connection with firm sales or shipping contracts * * *." This long-standing provision remains in the regulations.

The comment added that the proposal overstated the benefits to recipients of the change to direct payment by CCC, in part because the banking fees were actually lower than estimated in the proposed rule. The fees charged by banks related to letters of credit are not public information, but the estimate in the proposed rule was based on comments from program participants, which have paid such fees. The issue is greater than the bank fees, however; participants face the very real potential for significant freight and commodity costs (detention and carrying charges) which are not financed by CCC. These costs must be paid by the participant when loading is delayed because operable letters of credit were not available. If a dispute arises, participants may also be responsible for legal costs.

Finally, this comment stated that banks may be reluctant to issue letters of credit for small amounts of freight not covered by CCC, or may increase their fees to cover costs for these low-revenue transactions. It is possible that some banks may forego this business, or increase their fees slightly, but we do

not anticipate that all banks will decline to participate.

We have evaluated these comments carefully. It is true that suppliers may not be paid by CCC quite as quickly as they were by banks under letters of credit, because of the more detailed document review conducted by CCC, and that this may lead some firms to increase commodity prices slightly under the program, to cover a few days of lost interest. To the extent this occurs, it would mean a very small reduction in the commodity tonnage which could be shipped within the fixed funding provided under a Pub. L. 480, title I agreement. However, we anticipate that the significant cost savings to recipients will clearly outweigh this disadvantage, and the other concerns discussed in this preamble. Recipients must pay bank charges for letters of credit and must pay suppliers if loading is delayed because the letter of credit is not available. (Commodity suppliers receive "carrying charges" in such cases, and suppliers of ocean transportation can collect "detention." One day of "detention" for a U.S.-flag vessel can cost the recipient as much as $25,000.) As a result, the final rule retains the change to direct payment by CCC. However, we will carefully monitor the impact of this change and will review the decision based on a year's experience.

Documentation

A comment requested that weight certificates be issued only by the Federal Grain Inspection Service, USDA ("FGIS") or its cooperators. By law, FGIS must weigh certain commodities which are exported, such as wheat or corn. For other commodities, the program has, for many years, permitted private firms to provide weight certificates. Since including this option is consistent with commercial practice and it gives both buyer and seller more flexibility in contracting under title I, we have determined that the proposed rule will be adopted as published.

Another comment asked whether the "federal appeal inspection certificate" (§ 17.9(c)(5)) were still valid. We have revised this paragraph to reflect the current procedure when a certificate is issued representing an appeal inspection. The same comment noted that a phytosanitary certificate issued by USDA cannot show a number on its face, including the PA number. (§ 17.9(b) requires that the supplier arrange for the PA number to be put on required documents.) The comment explained that the PA number could be placed on a separate sheet of paper which is stapled to the phytosanitary certificate. CCC will accept this procedure for the phytosanitary certificate, and the provision will be adopted as proposed.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, part 17 of 7 CFR is revised to read as follows:

PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED

Sec.

17.1 General.
17.2 Definition of terms.
17.3 Purchase authorizations.
17.4 Agents of the participant or importer.
17.5 Contracts between commodity suppliers and importers.
17.6 Discounts, fees, commissions and payments.
17.7 Notice of sale procedures.
17.8 Ocean transportation.
17.9 CCC payment to suppliers.
17.10 Refunds and insurance.
17.11 Recordkeeping and access to records.

Authority: 7 U.S.C. 1701–1704, 1731–1736b, 1736f, 5676; E.O. 12220, 45 FR 44245.

§ 17.1 General.

(a) *What this part covers.* This part contains the regulations governing the financing of the sale and exportation of agricultural commodities by the Commodity Credit Corporation (CCC), through private trade channels to the maximum extent practicable, under the authority of title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter called "the Act").

(b) *Agricultural commodities agreements.* (1) Under the Act, the Government of the United States enters into Agricultural Commodities Agreements with governments of foreign countries or with private entities. These agreements cover financing of the sale and exportation of agricultural commodities, including certain ocean transportation costs.

(2) Agricultural Commodities Agreements may provide that a participant will repay CCC for the financing extended by CCC either in dollars or in local currencies.

(3) A private entity must maintain a bona fide business office in the United States and have a person, principal, or agent on whom service of judicial process may be had in the United States.

(c) *Purchase authorizations.* This part covers, among other things, the issuance by the General Sales Manager of purchase authorizations which authorize the participant to:

(1) Purchase agricultural commodities; and

(2) Procure ocean transportation therefor.

(d) *Financing.* For amounts to be financed by CCC, CCC will pay the supplier of commodity or of ocean transportation in accordance with § 17.9(a)(3). The cost of ocean freight or ocean freight differential will be financed by CCC only when specifically provided for in the purchase authorization.

(e) *Where information is available.* General information about operations under this part is available from the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, D.C. 20250–1033. Information about financing operations under this part, including forms prescribed for use thereunder, is available from the Controller, Commodity Credit Corporation, USDA, 1400 Independence Avenue, SW, Washington, D.C. 20250–0581.

§ 17.2 Definition of terms.

Terms used in the regulations in this part are defined or identified as follows, subject to amplification in subsequent sections:

Affiliate and *associated company*—any legal entity which owns or controls, or is owned or controlled by, another legal entity. For a corporation, ownership of the voting stock is the controlling criterion. A legal entity is considered to own or control a second legal entity if—

(1) The legal entity owns an interest of 50 percent or more in the second legal entity; or

(2) The legal entity and one or more other legal entities, in which it owns an interest of 50 percent or more, together own an interest of 50 percent or more in the second legal entity; or

(3) The legal entity owns an interest of 50 percent or more in another legal entity which in turn owns an interest of 50 percent or more in the second legal entity.

CCC—the Commodity Credit Corporation, USDA.

Commodity—an agricultural commodity produced in the United States, or product thereof produced in the United States, as specified in the applicable purchase authorization.

Controller—the Controller, Commodity Credit Corporation, or the Controller's designee.

Copy—a photocopy or other type of copy of an original document showing all data shown on the original, including signature or the name of the person signing the original or, if the signature or name is not shown on the copy, a statement that the original was signed.

Delivery—the transfer to or for the account of an importer of custody and right of possession of the commodity at U.S. ports or Canadian transshipment points in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery is deemed to occur as of the on-board date shown on the ocean bill of lading.

Destination country—the foreign country to which the commodity is exported.

Director—the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service.

Expediting services—services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

FAS—the Foreign Agricultural Service, USDA.

FSA—the Farm Service Agency, USDA.

FSA Office—the office designated in the purchase authorization to administer this financing operation on behalf of CCC.

Finance—To expend CCC funds, whether or not the participant is required to repay the funds to CCC. For example, this part refers to CCC "financing" both the ocean freight differential, which the participant does not repay, and the commodity cost, which the participant does repay.

Form CCC–106—the form entitled "Advice of Vessel Approval."

Form CCC–329—the signed original of the form entitled "Supplier's Certificate."

General Sales Manager and *GSM*—the General Sales Manager, FAS, or the General Sales Manager's designee.

Importer—the person that contracts with the supplier for the importation of the commodity. The importer may be the participant or any person to which a participant has issued a subauthorization.

Importing country—any nation with which an agreement has been signed under the Act.

Invitation for bids and *IFB*—a publicly advertised request for offers.

Legal entity includes, but is not limited to, an individual (except that an individual and his or her spouse and their minor children are considered as one legal entity), partnership, association, company, corporation and trust.

Letter of credit—an irrevocable commercial letter of credit issued, confirmed, or advised by a banking institution in the United States and payable in U.S. dollars.

Local currency—the currency of the importing or destination country.

Notice of arrival—a written notice in accordance with § 17.8(g) stating that the vessel has arrived at the first port of discharge.

Ocean bill of lading—(1) *In the case of cargo carried on a vessel other than LASH barges:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier; or

(2) *In the case of cargo carried in a LASH barge:* (i) For the purpose of financing commodity price, an "on-board" bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential, a bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight running days after the last LASH barge loading date (contract layday) specified in the Form CCC–106. This may be either an "on board" bill of lading or a bill of lading or a LASH barge bill of lading with an "on-board ocean vessel" endorsement.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean freight contract—a charter party or liner booking note.

Ocean transportation—interchangeable with the term "ocean freight".

Ocean transportation brokerage—services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services—furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

Participant—the collective term used to denote the importing country or the private entity with which an agreement has been negotiated under the Act.

Person—an individual or other legal entity.

Private entity—the nongovernmental legal entity with which an agreement has been signed under the Act.

Purchase authorization—Form FAS–480, "Authorization to Purchase Agricultural Commodities," issued to a participant under this part.

Purchasing agent—any person engaged by a participant to procure agricultural commodities.

Secretary—the Secretary of Agriculture of the United States, or the Secretary's designee.

Selling agent—a representative for the supplier of the commodity, who is not employed by or otherwise connected with the importer or the participant.

Shipping agent—any person engaged by a participant to arrange ocean transportation.

Ships broker—any person engaged by a supplier of ocean transportation to arrange employment of vessels.

Supplier—any person who sells a commodity to an importer under the terms of a purchase authorization, or who sells ocean transportation to an importer or supplier of the commodity under the terms of a purchase authorization.

USDA—the U.S. Department of Agriculture.

United States—the 50 States, the District of Columbia, and Puerto Rico.

§ 17.3 Purchase authorizations.

(a) *Issuance.* After an agreement is signed, the GSM will issue a purchase authorization to the participant for each commodity included in the agreement.

(b) *Contents.* Each purchase authorization includes the following information:

(1) The commodity to be purchased and specifications, approximate quantity and maximum dollar amount authorized;

(2) Contracting requirements;

(3) The contracting period, during which suppliers and importers must enter into contracts; and the delivery period, during which the commodity must be delivered;

(4) The terms of delivery to the importer;

(5) Documentation required for CCC financing in addition to or in lieu of the documentation specified in § 17.9;

(6) Provisions relating to payment to CCC, if applicable;

(7) The address of the FSA office administering the financing operation on behalf of CCC;

(8) The method of financing provided under the Agricultural Commodities Agreement;

(9) Any provisions relating to financing by CCC in addition to or in lieu of those specified in this part;

(10) Authorization to procure ocean transportation, and provisions relating to the financing of ocean freight or ocean freight differential, as applicable;

(11) Any other provisions considered necessary by the General Sales Manager.

(c) *Applicability of this part.* In addition to the provisions of a particular purchase authorization, each purchase authorization, unless otherwise provided, is subject to the provisions of this part to the same extent as if the provisions were fully set forth in the purchase authorization.

(d) *Modification or revocation.* The General Sales Manager reserves the right at any time for any reason or cause whatsoever to supplement, modify or revoke any purchase authorization, including the termination of deliveries, if it is determined to be in the interest of the U.S. Government. CCC shall reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action by the GSM in connection with firm sales or shipping contracts, and which were not otherwise recovered by the supplier after a reasonable effort to minimize such costs: *Provided, however,* That such reimbursement shall not be made to a supplier if the GSM determines that the GSM's action was taken because the supplier failed to comply with the requirements of the regulations in this part or the applicable purchase authorization; *Provided further,* That reimbursement to suppliers of ocean transportation shall not exceed the ocean freight differential when the purchase authorization provides only for financing the differential.

(e) *Subauthorizations.* The participant may issue subauthorizations to importers consistent with the terms of the applicable purchase authorization. The participant, in subauthorizing, shall specify to importers all the provisions of the applicable purchase authorization which apply to the subauthorization.

(f) *Cotton textiles.* (1) Except as provided in paragraph (f)(2) of this section, financing of textiles under this part is limited to cotton yarns and fabrics processed up to and including the dyed and printed state, and preshrinking. Any processing of such yarns and fabrics beyond this stage will be at the expense of the participant.

(2) Purchase authorizations may permit cotton textiles processed beyond the stage described in paragraph (f)(1) of this section to be purchased, but the maximum financing by CCC is limited to the equivalent value of the cotton yarns and fabrics described in paragraph (f)(1) of this section, contained in the textiles, plus eligible ocean transportation costs.

(3) Financing is available only for textiles manufactured entirely of U.S. cotton in the United States.

§ 17.4 Agents of the participant or importer.

(a) *General.* (1) A participant or importer is not required to use a purchasing agent or shipping agent, or employ the services of any other agent, broker, consultant, or other representative (hereafter "agent") in connection with arranging the purchase of agricultural commodities under title I of the Act and arranging ocean transportation for such commodities. However, if an agent is used, the participant shall submit a written nomination of the agent to the Deputy Administrator, Export Credits, FAS, along with a copy of the proposed agreement between the participant or importer and such agent. The written nomination shall also specify the period of time to be covered by the nomination. A person may not act as agent for a participant or importer unless the Deputy Administrator, Export Credits, FAS, has provided a written statement that the nomination is accepted in accordance with the provisions of this section.

(2) See § 17.6(c) regarding commissions, fees, or other compensation of any kind to agents of a participant or importer.

(3) A freight agent employed by the Agency for International Development under titles II and III is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(b) *Affiliate defined.* For purposes of this section, the term affiliate has the meaning provided in § 17.2 and, in addition, persons will also be considered to be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by eligible commodity suppliers, selling agents, or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or by agents of such persons, or their officers or directors, in the agent of the participant or importer.

(3) There is any investment by the agent of the participant or importer, or its officers or directors, in approved commodity suppliers; selling agents; or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or in agents of such persons. These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, FAS, the following information or documentation as may be applicable:

(1) The names of all incorporators;

(2) The names and titles of all officers and directors;

(3) The names of all affiliates, including the names and titles of all officers and directors of each affiliate, and a description of the type of business in which the affiliate is engaged;

(4) The names and proportionate share interest of all stockholders;

(5) If beneficial interest in stock is held by other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;

(6) The amount of the subscribed capital;

(7) For USDA acceptance of a nomination covering services provided during each U.S. fiscal year (October 11–September 30), a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer; and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.* (1) USDA will consider accepting the nomination of a person to act as an agent of the participant or importer when the documents required to be submitted by this section are received by the Deputy Administrator, Export Credits, FAS.

(2) USDA's acceptance of such nomination shall remain in effect for the period of time requested by the participant or such shorter period as the Deputy Administrator, Export Credits, FAS, may determine. USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraphs (c) (7) and (8) of this section.

(3) A person is required to submit the information and documentation required by § 17.4(c) to support the person's first nomination to act as an agent of any participant or importer for each fiscal year. For subsequent nominations covering the same fiscal year, the person must provide a written certification that the information and documentation provided earlier are still accurate and complete, or must provide the details of any changes to previously submitted information.

(e) *Notification.* The Deputy Administrator, Export Credits, FAS, shall promptly notify persons nominated as agents of the participant or importer, of the determination or of the need for further inquiry, and shall provide a written response within 30 calendar days of receipt of all the required documents. If USDA will not accept the nomination, the notification shall state the reasons therefor. The determination of the Deputy Administrator, Export Credits, FAS, is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(f) *Non-acceptance or withdrawal.* (1) If USDA does not accept the nomination of a person, or if acceptance has been withdrawn pursuant to the provisions of this section, the person may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing in this paragraph shall be construed as to prohibit a person whose nomination has not been accepted or whose acceptance has been withdrawn by USDA from being nominated at a later time.

(2) If, in the procurement of commodities made available under title I, Pub. L. 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, FAS, USDA may withhold sales approval.

(3) If, in the shipping of commodities made available under title I, Pub. L. 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, FAS, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of any commission to the agent in connection with the shipment.

(g) *No competitive advantage.* A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

§ 17.5 Contracts between commodity suppliers and importers.

(a) *Commodity suppliers and selling agents.* (1) Commodity suppliers must be determined to be eligible under the Pub. L. 480, title I program in order for their contracts to be eligible for CCC financing. A prospective commodity supplier must be engaged in the business of selling agricultural commodities for export from the United States. The commodity supplier must maintain a bona fide business office in the United States, and must have a person, principal or agent on whom service of judicial process may be had in the United States.

(2) Persons who wish to participate as commodity suppliers shall submit the following information to the Foreign Agricultural Service, Stop 1033, USDA, 1400 Independence Ave., SW, Washington, D.C. 20250–1033:

(i) A current financial statement of the prospective supplier, preferably an audited statement, as evidence of financial responsibility. Submission of a letter of reference from a bank is also encouraged.

(ii) A statement containing general background information about the firm, including the names and titles of the chief executive officers and a description of the firm's experience as an exporter of U.S. agricultural commodities. Copies of bills of lading supporting this statement are also requested.

(iii) Any other information requested relating to whether the prospective supplier is responsible and is able to perform its obligations under this part and the purchase authorization.

(3) If, at the time the commodity supplier reports the sale it is determined that an agent employed or engaged by a commodity supplier to obtain a contract is not a selling agent as defined in § 17.2, the sale will not be eligible for financing.

(b) *Eligibility for financing.* To be eligible for financing, commodity contracts must comply with the following requirements unless otherwise specified in the purchase authorization.

(1) Commodity contracts between suppliers and importers are considered to be conditioned on the approval by USDA of the contract price; conformance of the sale to the provisions of the purchase authorization; responsiveness of the offer to IFB terms; and compliance by the supplier and the selling agent, if any, with paragraph (a) of this section.

(2) Importers and suppliers must enter into contracts within the contracting period specified in the purchase authorization. The contracts must provide for deliveries to the importer in accordance with the delivery terms and during the delivery period specified in the purchase authorization, or any amendment or modification thereto.

(3) Contracts for a commodity, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for ocean transportation of the commodity.

(4) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA. The "time of sale" is the date and time specified in the IFB for receipt of offers; or the date of the contract amendment if the amendment affects the sale price, as determined by USDA. The contract price may not be on a cost plus a percentage-of-cost basis.

(c) *Contracting procedures.* (1) *Purchasing—general*—(i) Importers must purchase commodities on the basis of IFB's.

(ii) The participant shall maintain a record of all offers received from suppliers until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

(2) *Invitations for bids.* The following conditions shall apply on all purchases of commodities on the basis of IFB's:

(i) The General Sales Manager must approve the terms of the IFB before it is issued by the importer.

(ii) The importer shall issue the IFB in the United States and shall open all offers in public in the United States at the time and place specified in the IFB.

(iii) The IFB must permit submission of offers from all suppliers who meet the requirements of this subpart.

(iv) The IFB may not preclude offers for shipment from any United States port(s) unless the purchase authorization provides for exportation only from certain ports.

(v) The IFB may not establish minimum quantities to be offered or which will be considered.

(vi) The IFB must stipulate the responsibility for each party for payment of any costs not eligible for financing by CCC.

(vii) The IFB must be in compliance with this part, the purchase authorization, and sound commercial standards.

(3) *Contract awards.* (i) The importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost. However, when vessels offered under the flag of the participant, the importing country or the destination country; or vessels controlled by the participant, the importing country or the destination country are to be used, the participant must purchase commodities for shipment on such vessels only on the basis of the lowest commodity price(s) offered. This limitation may, however, be waived by the GSM:

(A) When the lowest commodity price(s) offered are in locations where vessels cannot reasonably be made available without a substantial increase in freight costs to the participant;

(B) For small quantities offered at additional loading points (in aggregate not more than 15 percent of the total tonnage offered by a vessel); or

(C) Where this limitation would conflict with the purposes of the program.

(ii) For purposes of this section, "lowest commodity price(s)" means the lowest commodity price(s) offered for loading onto the type of vessel (dry bulk carrier, tanker, etc.) to be utilized to carry the commodity purchased.

(iii) For purposes of this section, "lowest landed cost" means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country, considering the quantity which must be shipped on privately owned U.S.-flag commercial vessels, as determined by the Director. Lowest landed cost may be defined on either a foreign flag or U.S. flag basis. Awards may not be made on the lowest landed cost basis unless IFB's are issued for commodity and ocean freight so that all commodity and ocean freight offers are reviewed simultaneously.

(iv) Participants are encouraged to purchase commodities on the basis of lowest landed cost when U.S. flag vessels are to be used. If such commodity purchases are not made on the basis of lowest landed cost (U.S. flag), ocean freight differential payments will nonetheless be calculated on the rates of U.S. flag vessels which would represent the lowest landed cost.

(v) Announcement of awards shall be made in the United States. The importer shall promptly submit to the Director copies of all offers received with a copy of the IFB which was issued. No sale can be approved for financing until this information has been received by FAS. The decision of the GSM shall be final regarding the responsiveness of offers to IFB terms in the awarding of contracts.

(d) *Contract quantity eligible for financing.* The quantity eligible for financing in the contract between the supplier and the importer may not exceed that quantity approved by the Pub. L. 480 Operations Division, FAS, including any approved contract tolerance.

(e) *Contract disputes.* Contracts between suppliers and importers should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC. Questions as to payment of ineligible costs should be resolved between the contracting parties.

(f) *Contract provisions.* Each contract entered into for financing under this part is deemed to include all terms and conditions required by the regulations in this part.

(g) *Export Trade Act (Webb-Pomerene Law).* A supplier who is a member of a Webb-Pomerene association and who enters into contracts with importers as a member of such an association shall so indicate in a statement on, or attached to, the copy of the supplier's detailed invoice referred to in § 17.9(c)(2).

§ 17.6 Discounts, fees, commissions and payments.

For purposes of this section, the term "payment" means a commission, fee or other compensation of any kind. The term "other compensation of any kind" includes anything given in return for any consideration, services, or benefits received or to be received.

(a) *Discounts.* If a contract provides for one or more discounts (including but not limited to trade or quantity discounts and discounts for prompt payment) whether expressed as such or as "commissions" to the importer, CCC will only pay the invoice amount after the discount (supplier's contracted price less all discounts).

(b) *Selling agents.* (1) A supplier may not make a payment to a selling agent employed or engaged by the supplier to obtain a contract. This prohibition applies to any payment to a person who has acted as a selling agent to obtain a contract even though the payment may be for services performed that are not themselves services to obtain a contract.

(2) A person is deemed to act "to obtain a contract" if the person acts on behalf of a commodity supplier to:

(i) Influence a buyer to award a contract to the supplier;

(ii) Give the supplier a competitive advantage in relation to other potential suppliers; or

(iii) Influence CCC to approve a contract for financing under this part.

(3) CCC will not consider acts which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion (such as attending bid openings or presenting offers at bid openings), or services to implement a contract after it has been entered into by the parties (such as handling documentation problems or contract disputes), as acts to obtain a contract.

(c) *Other prohibitions.* (1) Suppliers of commodities or ocean transportation may not:

(i) Pay a commission to the participant or importer; to any agency, including an agency of the government of the importing country or the destination country; or to a corporation owned or controlled by the participant or the government of the importing country or the destination country.

(ii) Pay a commission to any affiliate of the participant, if the participant is a private entity;

(iii) Make any payment to an agent of the participant or importer, in the person's capacity as such agent, other than ocean transportation brokerage commissions.

(iv) Pay an address commission or payment.

(2) For ocean transportation, in addition to this paragraph, see also § 17.8(j).

(3) When any portion of the ocean freight is financed by CCC, total ocean transportation brokerage commissions earned on U.S. and non-U.S.-flag bookings by all parties arranging vessel fixtures shall not exceed 2½ percent of the total freight costs.

(4) If a payment is made in violation of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

§ 17.7 Notice of sale procedures.

(a) *Telephonic notice of sale.* The supplier shall, immediately upon making a firm sale, telephone a notice of sale to Pub L. 480 Operations Division, FAS. A sale is considered firm when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS (see § 17.5(b)(1).) If the supplier fails to furnish a notice of sale within 3 working days after the date of sale, CCC has the right to refuse to finance the sale.

(b) *Sale approval.* (1) Pub. L. 480 Operations Division will notify the supplier by telephone of approval of the notice of sale.

(2) The supplier will prepare Form FAS–359, "Declaration of Sale," and submit it to Pub. L. 480 Operations Division promptly as soon as FAS has provided the CCC Registration Number to the supplier. The supplier or the supplier's authorized representative must sign the form.

(3) Each Form FAS–359 shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, the supplier will prepare separate forms for each purchase authorization.

(4) If any correction is needed to the Form FAS–359, the supplier must immediately notify FAS. If a contract is amended, the supplier should present the original Form FAS–359 for payment along with a copy of the written USDA approval of the contract amendment.

(c) *Sale disapproval.* (1) Pub. L. 480 Operations Division, FAS, will notify the supplier by telephone when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any contract amendment approved by the Pub. L. 480 Operations Division, FAS. If the supplier cannot complete delivery by the terminal delivery date of the contract delivery period, the supplier and the participant or importer shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, § 17.10(d) shall apply.

(e) *Contract amendments.* (1) The supplier and the participant or importer shall each submit a written notice of each contract amendment to the Director immediately after the amendment to the contract is made. This includes not only any change in the contract delivery period or any other terms and conditions of the contract as provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between (the participant or importer) and (the commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(3) Pub. Law 480 Operations Division, FAS, will notify the supplier as to whether the amendment is approved or disapproved.

(4) The supplier shall furnish a copy of the USDA approval of the amendment with other documentation submitted to obtain payment.

(5) If the supplier fails to furnish a notice of a contract amendment to Pub. L. 480 Operations Division, FAS, within 3 working days after the date of such amendment, CCC has the right to refuse to finance the sale or any portion of the sale.

(6) Any amendment must be consistent with the provisions of the purchase authorization and this part and must otherwise be acceptable to Pub. L. 480 Operations Division, FAS.

§ 17.8 Ocean transportation.

(a) *General.* (1) This section applies to the financing of ocean freight or ocean freight differential. Ocean freight will be financed by CCC only to the extent specifically provided for in the purchase authorization. The purchase authorization may provide requirements in addition to or in lieu of those specified in this section.

(2) The supplier of ocean transportation must be engaged in the business of furnishing ocean transportation from the United States and must have a person, principal or agent, on whom service of judicial process may be had in the United States.

(3) The quantity of the commodity which must be shipped on privately owned U.S.-flag commercial vessels will be determined by the Director.

(4) The supplier of ocean transportation shall release copies of the ocean bills of lading to the supplier of the commodity promptly upon completion of loading of the vessel.

(5) When CCC finances any part of the ocean freight or the ocean freight differential, the participant must open an operable irrevocable letter of credit for the portion of the ocean freight not financed by CCC. All banking institution charges, such as commissions, expenses, etc., are for the account of the participant. The amount of the letter of credit shall be computed using the information provided in the Form CCC–106. The letter of credit shall provide for sight payment or acceptance of a draft, payable in U.S. dollars, on the basis of the quantities specified in the applicable ocean freight contract. If the supplier of ocean transportation accepts the commodity before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk. This action in itself does not affect eligibility for CCC financing.

(b) *Contracting procedures*—(1) *Invitations for Bids (IFB's)*—(i) Public freight "Invitations for Bids" are required in the solicitation of freight offers from all U.S. and non-U.S. flag vessels when CCC is financing any portion of the ocean freight.

(ii) For non-U.S. flag vessels when CCC is not financing any portion of the ocean freight, public freight IFB's are also required unless otherwise authorized by the Director, or unless the participant requires the use of vessels

under its flag, the flag of the destination country, or other non-U.S. flag vessels under its control. Vessels considered to be under the control of the participant or the destination country include vessels under time charters, bare boat charters, consecutive voyage charters, or other contractual arrangements for the carriage of commodities which provide guaranteed access to vessels.

(iii) Prior to release to the trade, all freight IFB's must be submitted to the Director for approval. Freight IFB's must be issued by means of Bridge News, New York, plus at least one other means of communication.

(iv) All freight IFB's must:

(A) Specify a closing time for the receipt of offers and state that late offers will not be considered;

(B) Provide that offers are required to have a canceling date no later than the last contract layday specified in the IFB;

(C) Provide the same deadline for receipt of offers from both U.S. flag vessels and non-U.S. flag vessels;

(D) Stipulate the responsibility for each party for payment of any costs not eligible for financing by CCC (in the IFB or the pro forma charter party).

(2) *Competitive bidding.* When CCC is financing any portion of the freight, all offers shall be opened in public in the United States at the time and place specified in the IFB. Offers shall be opened prior to receipt of offers for the sale of commodities as the Director determines appropriate. Only offers which are responsive to the IFB may be considered, and no negotiation shall be permitted.

(3) *Records of offers.* Copies of all offers received must be promptly furnished to the Director, who may require the participant, or its shipping agent, to submit a written certification to the GSM that all offers received (with the times of receipt designated thereon) were transmitted to the Department. For purposes of this paragraph "time of receipt" shall be the time a hand-carried offer or a mailed offer was received at the designated location for presentation or, if transmitted electronically, the time the offer was received, as supported by evidence satisfactory to the Director.

(4) *Re-tenders.* The Director may permit or require a participant to refuse any and all bids, and in such case a participant may conduct a re-tender with the approval of the Director. The Director shall not approve or require freight re-tenders unless they will increase the likelihood of meeting U.S. flag cargo preference requirements, will permit the desired quantity to be shipped, will likely result in reduced CCC expenditures, or are otherwise determined to be in the best interest of the program.

(c) *Request for vessel approval.* The pertinent terms of all proposed charters and all proposed liner bookings, regardless of whether any portion of ocean freight is financed by CCC, must be submitted to the Director for review and approval before fixture of the vessel. Tentative advance vessel approvals may be obtained by telephone provided Form CCC–105, "Ocean Shipment Data—Pub. L. 480 (Request for Vessel Approval)", is furnished promptly confirming the information supplied by telephone. The Form CCC–105 shall be submitted in duplicate to the Director.

(d) *Advice of vessel approval.* (1) USDA will give written approval of charters and liner bookings on Form CCC–106, "Advice of Vessel Approval." The Form CCC–106 will state whether CCC will finance any part of the ocean freight. For f.a.s. or f.o.b. shipments, CCC will issue a signed original of Form CCC–106 to the ocean carrier when CCC finances any part of the ocean freight. For c.& f. or c.i.f. shipments, CCC will issue Form CCC–106 to the supplier of commodity.

(2) If CCC agrees to finance any portion of the ocean freight, the participant or its agent shall forward a copy of the ocean freight contract immediately after execution to the Director for review and approval prior to issuance of Form CCC–106.

(3) CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging contracts for any voyage for which CCC finances ocean freight or ocean freight differential.

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.* This paragraph applies when CCC finances any part of the ocean freight for commodities booked on charter terms. In the event of any conflict between the provisions of the regulations in this part and the charter party or ocean bills of lading issued pursuant thereto, the provisions of the regulations in this part shall prevail. The charter party shall contain or, for the purpose of financing pursuant to the regulations in this part, be deemed to contain the following provisions:

(1) That if there is any failure on the part of the supplier of ocean transportation to perform the charter party after the vessel has tendered at the loading port, the charterer shall be entitled to incur all expenses which in the judgment of the General Sales Manager are required to enable the vessel to carry out her obligations under the charter party including, but not limited to, expenses for lifting any liens asserted against the vessel.

(2) That, notwithstanding any prior assignments of freight made by the owner or operator, the expenses authorized in paragraph (e)(1) of this section may be deducted from the freight earned under the charter party.

(3) That ocean freight is earned and that 100% thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(1) of this section results in the loss of part of the vessel's cargo, 100% of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

(4) That if a force majeure as described in paragraph (l)(1) of this section prevents the vessel's arrival at the first port of discharge, the freight shall be payable by the charterer at the time the General Sales Manager determines that such force majeure was the cause of nonarrival.

(5) That laydays are non-reversible.

(6) That in a dispute involving any rights and obligations of CCC, including rights and obligations as successor or assignee, which cannot be settled by agreement, the dispute shall not be subject to arbitration.

(f) *Special charter party information required when any part of ocean freight is financed by CCC.* When CCC finances any part of the ocean freight for commodities booked on charter terms, the charter party shall contain the following information:

(1) The name of each party participating in the ocean freight brokerage commission, if any, and the percentage thereof payable to each party;

(2) The name of the vessel and the name of the substitute vessel, if any.

(g) *Notice of arrival.* Each Form CCC–106 will indicate whether a notice of arrival is required. A notice of arrival, when required, must be furnished promptly by the participant or its designated agent or other source acceptable to CCC (excluding the carrier or its agent) and must include the name of the vessel, the purchase authorization number, the first port of discharge, and the date of arrival. The notice of arrival of the vessel also constitutes prima facie evidence of arrival of the cargo.

(h) *Foreign flag vessels.* The cost of ocean transportation will be financed by CCC on non-U.S. flag vessels only when, and to the extent, specifically provided in the applicable purchase authorization.

(i) *U.S.-flag vessels.* When a commodity is required to be shipped on a privately owned U.S.-flag commercial vessel, Form CCC–106 will set forth:

(1) The rate of the ocean freight differential, if any, which the Director determines to exist between the prevailing foreign-flag vessel rate and the U.S.-flag vessel rate; and

(2) The approximate tonnage for which CCC will authorize reimbursement of ocean freight or ocean freight differential, as appropriate.

(j) *Items not eligible for financing by CCC.* The following costs will not be financed by CCC, either separately or as part of the commodity contract price:

(1) Loading, trimming, and other related shipping expenses unless included in the ocean freight rate;

(2) Discharge costs unless included in the ocean freight rate;

(3) The cost of "dead freight";

(4) Cargo dues and taxes assessed by the importing or recipient country;

(5) Surcharges assessed by steamship conferences or carriers, unless specifically authorized by the Director;

(6) General average contributions;

(7) Stevedoring overtime and vessel crew overtime;

(8) Ship's disbursements;

(9) Any payments prohibited in § 17.6 (b) and (c); and

(10) Detention.

(k) *General financing provisions.* When any part of ocean freight will be financed either separately or as part of the commodity contract price, the following shall apply:

(1) Ocean freight contracts must show the ocean freight rate from one loading port to one discharge port, and may provide for an increase in rate for an additional port of loading or discharge, or other option. CCC, however, will finance initially the lowest such rate or OFD, as appropriate. Increased amounts due because of the exercise of such option will be financed only after receipt of an ocean bill of lading or other evidence showing that the option was exercised.

(2) In the case of transshipment to a foreign flag vessel, CCC will finance the ocean freight or OFD, as appropriate, only to the point of transshipment, at a rate determined by the GSM, and CCC will not finance any part of the ocean freight beyond the point of transshipment unless specifically approved by the GSM. If the commodity was transported from a U.S. port and was transshipped at another U.S. port, CCC will not finance, without prior approval of the GSM, any part of the ocean freight incurred before transshipment.

(3) The ocean freight rate eligible for CCC financing and the rate used for the U.S.-flag vessel in calculating ocean freight differential shall not exceed the following rates for the category of the vessel concerned:

(i) For commodities covered by published tariff rates—the published conference contract rate;

(ii) For other commodities—the market rate prevailing at the time of request for approval as determined by the Director, but in any event not in excess of rates charged other shippers (irrespective of booking dates) for like commodities on the voyage concerned.

(4) Payment will be made for ocean freight or OFD, as appropriate, from loading points to discharge points at rates approved by the Director on Form CCC–106 in conformity with paragraph (k)(3) of this section.

(5) Freight for a vessel designated on Form CCC–106 as a U.S. flag vessel shall not be eligible for financing unless such vessel complies with the provisions of Pub. L. 87–266.

(6) Ocean freight contracts must specify that the participant shall be liable for detention of the vessel for loading delays attributable solely to the decision of the supplier of ocean transportation not to commence loading because of the failure of the participant to establish an ocean freight letter of credit in accordance with paragraph (a)(5) of this section. However, ocean freight contracts may not contain a specified detention rate. The ocean transportation supplier shall be entitled to reimbursement for detention costs for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the ocean freight contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable ocean freight contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for the applicable ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(l) *Force majeure.* (1) The GSM will waive the requirement for the notice of arrival required by Form CCC–106 by a written notice to the supplier of ocean transportation on the receipt of evidence satisfactory to the General Sales Manager that the vessel is lost or unable to proceed to destination after completion of loading as a result of one or more of the following causes: Damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, rulers or peoples without the fault of the supplier of ocean transportation; wars; public disorders; captures; or detention by public authority in the interest of public safety. The supplier may substitute such waiver for the notice of arrival.

(2) The determination of a force majeure by the GSM shall not relieve the participant from its obligation under the Agricultural Commodities Agreement to pay CCC, when due, the dollar amount of ocean freight, plus interest (exclusive of ocean freight differential), financed by CCC.

(m) *Demurrage/despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) *Ocean freight included in the commodity contract price.* For cost and freight or c.i.f. contracts the ocean freight, or the ocean freight differential, as appropriate, will be financed only to the extent specifically provided in the applicable purchase authorization.

(o) *Separate freight contracts.* Contracts for ocean transportation, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for the commodity.

§ 17.9 CCC payment to suppliers.

(a) *General.* (1) The supplier shall request payment from CCC for the amount of the commodity price or the ocean freight or ocean freight differential to be financed by CCC.

(2) The supplier shall support such a request for payment by presenting to CCC the documents required by this section, the purchase authorization, and the IFB, unless such documents were previously submitted to CCC. Such documents, however, need not be submitted when and to the extent that the Controller determines that the intended purpose of a document is served by documents otherwise available to or under the control of CCC or by alternate documents specified in such determination.

(3) CCC will examine each document to ascertain that it is in accordance with this part, the purchase authorization, and the IFB. CCC will audit all the required documents to ensure accuracy, completeness, and consistency. When CCC has determined that all required documents have been submitted and that the documents are acceptable for payment, CCC will pay the supplier for the commodity price or the ocean freight or ocean freight differential to be financed by CCC which is supported by the documents.

(4) CCC is required to issue all payments by electronic transfer. Each supplier submitting documents to CCC for payment must provide the name of the company, the bank ABA number to which payment is to be made, the account number for the company at the bank, the company's Taxpayer Identification Number, and the type of account being used.

(b) *General documentation requirements.* The supplier must put the appropriate purchase authorization number on all required documents which are prepared under the supplier's control, and should arrange for the appropriate purchase authorization number to be put on all other required documents at the time of their preparation.

(c) *Documents required for payment—commodity.* The general provisions relating to such documents are as follows. Additional requirements for payment to commodity suppliers for c.& f. or c.i.f. sales are contained in paragraph (c)(8) of this section.

(1) *Supplier's certificate.* A signed original of Form CCC–329 "Supplier's Certificate" from the commodity supplier covering the net invoice price for the commodity.

(2) *Supplier's detailed invoice.* Two copies of the supplier's detailed invoice showing quantity, description, contracted price, net total invoice price expressed in dollars, the amount for which financing is requested from CCC, the amount not eligible for financing by CCC, and basis of delivery of the commodity (e.g., f.o.b. vessel). In arriving at the net invoice price there shall be deducted:

(i) All discounts from the supplier's contracted price through payments, credits, or other allowances made or to be made to the importer, the importer's agent or consignee;

(ii) All purchasing agents' commissions;

(iii) All other amounts not eligible for financing.

(3) *Additional payment.* A request for an additional payment submitted for a transaction for which all or part of the required documents have been previously submitted to CCC shall be supported by a Form CCC–329 "Supplier's Certificate" and the supplier's detailed invoice, covering the additional amount requested. The supplier's invoice must show the date, serial number and the amount of the original invoice and the basis for the additional amount claimed.

(4) *Weight certificate.* The weight certificate shall be issued by or on authority of a State or other governmental weighing department, Chamber of Commerce, Board of Trade, Grain Exchange, or other independent organization or firm providing public weighing services. Such organization or firm must have:

(i) Qualified, impartial, paid employees who are stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights customarily are determined, one of whom performed the weighing covered by the certificate; or

(ii) Qualified, independent, impartial, supervised, weighmasters stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights are customarily determined, one of whom supervised the employee of such a facility in the performance of the weighing covered by the certificate.

(5) *Federal appeal inspection.* The official certificate representing the results of an appeal inspection, when included in the documents presented for payment, shall supersede any other inspection certificate required by this part, the applicable purchase authorization, the IFB or the contract.

(6) *Form CCC–359.* (i) Form FAS–359, "Declaration of Sale," signed for the GSM, is the written document by which USDA notified the supplier that the sale was approved for financing. The supplier shall submit Form FAS–359 to CCC with the documents covering the first transaction under the contract. The unit price shown on the supplier's invoice must not exceed the approved unit price shown on the Form FAS–359.

(ii) For subsequent transactions under the same contract, the supplier shall certify on the CCC copy of the detailed invoice as follows:

I hereby certify that the applicable Form FAS–359 was submitted to CCC with documents covering Invoice No. _____ dated _____ for $_____.

(7) *Bill of lading.* Four copies of the ocean bill of lading.

(8) *C.&f. or c.i.f. sales.* In addition to the requirements of paragraph (c)(1) through (7) of this section, the following requirements apply for c.& f. or c.i.f. sales:

(i) Signed original of Form CCC–106.

(ii) The supplier's detailed invoice shall show a computation of the dollar amount of ocean freight differential, whenever the Form CCC–106 provides for an ocean freight differential on a cost and freight or c.i.f. sale and authorizes financing of any portion of ocean freight by CCC. In arriving at the net invoice price the supplier shall deduct the ocean freight, or portion thereof which is not being financed by CCC.

(iii) One nonnegotiable copy of the insurance certificate or policy where the cost of insurance is included in the price of the commodity to be financed by CCC.

(iv) A request for an additional payment shall also include a statement signed by the ship's master or owner (or agent of either of them) showing exercise of the higher-rated option, if the payment is stated to be due because of the exercise of a higher-rated option provided in an ocean freight contract.

(d) *Documents required for payment—ocean freight financed separately from commodity price.*

(1) *Supplier's certificate.* A signed original of Form CCC–329, "Supplier's Certificate", executed by the carrier or its agent, covering the dollar cost of ocean freight or ocean freight differential.

(2) *Ocean bill of lading.* One copy of the ocean bill of lading and, if required by the related Form CCC–106, a notice of arrival at the first port of discharge of the vessel named in the Form CCC–106. In lieu of a notice of arrival the carrier may present a waiver of the notice of arrival signed by the GSM or Controller.

(3) *Invoice.* One copy of the carrier's invoice which shows the total freight costs, the amount not eligible for financing by CCC, and the amount for which payment is requested from CCC. If the invoice relates to a U.S.-flag vessel, such invoice shall contain the following typed or stamped certification, executed by the supplier:

The undersigned hereby certifies that the vessel named herein and for which ocean freight is claimed, qualifies as a privately owned U.S.-flag commercial vessel within the requirements of Pub. L. 87–266 and is an eligible U.S.-flag vessel for the purposes of Pub. L. 664, 83rd Congress.

(4) *Form CCC–106.* Signed original of Form CCC–106.

(5) *Ocean freight contract.* One copy of the ocean freight contract.

(6) *Higher rated option.* A request for payment of any amounts claimed because of the exercise of a higher rated option following payment of a lower rated option pursuant to § 17.8(k)(1) shall be supported by the following documents:

(i) One copy of the carrier's invoice as described in paragraph (d)(3) of this section except for the certification required therein.

(ii) The Form CCC–329, "Supplier's Certificate", for the balance claimed.

(iii) A statement signed by the ship's master, owner, or owner's agent, and signed laytime statements or other written concurrence of charterer or the charterer's agent showing the exercise of the higher rated option.

(e) *Payment of freight by CCC prior to the vessel's arrival at the discharge port.* (1) Upon request by the supplier, CCC may pay the ocean freight or ocean freight differential to be financed by CCC before the vessel arrives at the first port of discharge if the supplier furnishes CCC financial coverage in the form of an acceptable letter of credit from a U.S. bank.

(2) The amount of security required by CCC under paragraph (e)(1) of this section may be computed by multiplying the ocean freight rate or ocean freight differential rate financed by CCC as shown on the related Form CCC–106 times either:

(i) The tonnage shown on the related bill of lading, if the bill of lading is furnished to CCC; or

(ii) The tonnage stated in the ocean freight contract (without tolerance).

(3) On receipt of an acceptable letter of credit, the Controller will issue a waiver of the notice of arrival which is required under paragraph (d)(2) of this section.

(f) *Advice of amount financed.* CCC will forward advice of payment to the participant.

§ 17.10 Refunds and Insurance.

(a) *Participant—failure to comply.* The participant shall pay in U.S. dollars promptly to CCC on demand by the General Sales Manager the entire amount financed by CCC (or such lesser amount as the GSM may demand) whenever the GSM determines that the participant has failed to comply with any agreement or commitment made by the participant in connection with the transaction financed or with the applicable Agricultural Commodities Agreement between the U.S. and the participant.

(b) *Adjustment refunds.* All claims by importers for adjustment refunds arising out of terms of the contract or out of the normal customs of the trade, including arbitration and appeal awards, allowances, and claims for overpayment of ocean transportation, if such refunds relate to amounts financed by CCC, shall be settled by payment in U.S. dollars and such payment shall be remitted by the supplier to CCC. The remittance shall be identified with the date and amount of the original payment and the applicable purchase authorization number.

(c) *Insurance on c.i.f. sales.* The provisions of this paragraph apply only to transactions under purchase authorizations that specifically authorize c.i.f. sales in which the cost of insurance is included in the net c.i.f. invoice price of the commodity financed. When the supplier furnishes insurance in favor of or for the account of the importer, the policies or certificates of insurance shall include a loss payable clause which provides that all claims shall be paid in U.S. dollars to the Controller. Such payments shall be accompanied by advice of the purchase authorization number, the names and addresses of the supplier and importer, the nature of the claim, the quantity of the commodity involved in the claim, the date of shipment, the bill of lading number, and the name of the vessel. CCC will credit the account of the participant or will refund local currency in accordance with paragraph (e) of this section.

(d) *Refund of ineligible amounts.* If a sale has been financed and CCC determines that the sales price exceeds the price permissible under § 17.5(b)(4), or that the sale is otherwise ineligible for financing, in whole or in part, the supplier shall refund in dollars such excess price or ineligible amount to CCC promptly on demand. If not promptly refunded, such amount may be set off by CCC against monies it owes to the supplier. The making of any such refund to CCC, or any such setoff by CCC shall not prejudice the right of the supplier to challenge such determination in a court action brought against CCC for recovery of the amount refunded or set off.

(e) *Refund of local currency or reduction of amount due.* Immediately after receipt by CCC of U.S. dollar payment from suppliers, or from or for the account of the participant under this section, CCC will provide for payment to the participant of the local currency equivalent of dollars received, if such local currency has been deposited for the particular transaction, or will credit the participant's account as follows:

(1) For payments under this section, except paragraph (a), the local currency refunded will be at the exchange rate agreed to by the Government of the United States and the participant in effect at the time the local currency is paid to or for the account of the importer, except that if there has been a change in the exchange system or structure of the importing country or the destination country, such payment shall be made at the agreed exchange rate which was in effect on the date of dollar disbursement for the transaction financed, and except further that local currency shall not be paid when the dollars are to be reauthorized for replacement of the commodity.

(2) For payment under paragraph (a) of this section, the local currency refunded will be at the agreed exchange rate in effect on the date of the dollar disbursement for the transaction financed: *Provided*, that local currency will not be refunded to the extent that deposits of such currency have been made available to the participant on a grant basis.

(3) For refunds received by CCC under long-term credit agreements the participant's account shall be credited with the dollar amount refunded or otherwise recovered, and the participant notified accordingly.

§ 17.11 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

Signed at Washington, D.C. on July 14, 1997.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice-President, Commodity Credit Corporation.

[FR Doc. 97–26578 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–39–AD; Amendment 39–10155, AD 97–21–02]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors E–165, E–185, E–225, O–470 and IO–470 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors E–165, E–185, E–225, O–470 and IO–470 series reciprocating engines. This action supersedes priority letter AD 97–15–01 that currently requires removal from service of affected cylinders, and reassembly with serviceable parts. This action adds the latest revision to applicable Critical Service Bulletin (CSB), corrects references to Parts of that CSB, and lists a new contact telephone number to obtain the CSB from the manufacturer. This amendment is prompted by the availability of the new CSB revision and the need to correct the CSB references. The actions specified by this AD are intended to prevent extreme side loading of the piston, and consequent failure of the piston and engine.

DATES: Effective October 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 9, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 826–5874. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2–160, College Park, GA 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On July 17, 1997, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 97–15–01, applicable to Teledyne Continental Motors (TCM) new and rebuilt Model O–470 and IO–470 series engines with serial numbers (S/Ns) listed in Table 1 of TCM Critical Service Bulletin (CSB) No. CSB97–10, dated June 19, 1997; and TCM Model E–165, E–185, E–225, O–470 and IO–470 series engines, regardless of S/N, which have cylinder(s) with part number and purchase date as shown in Table 2 of TCM CSB No. CSB97–10, dated June 19, 1997. The priority letter AD requires removal from service of affected cylinders, and reassembly with serviceable parts.

That action was prompted by a report from TCM of an engine equipped with factory new cylinders with approximately 28 hours time in service (TIS) that was discovered to have high aluminum particulates during an oil analysis. Further investigation revealed the piston pin plug was experiencing increased wear, which was, in turn, traced to the roughness of the cylinder bore. A stock sweep at the factory revealed 10 additional cylinders with this condition. The cylinder bore surface finish on some cylinders is rougher than specified. This condition was caused during a manganese phosphate coating process on the cylinder barrel bore. The cylinders are exposed to the phosphate process in batches of 10 cylinders. The manganese phosphate coating provides resistance to corrosion during the first hours of operation. The problem occurred because of extended exposure of the cylinder bore to the manganese phosphate treatment which results in the surface finish being rougher than specified, although the piston pin plug will wear first; it will, in turn, wear a groove in the cylinder wall which will cause massive oil consumption in the near future. This will result in accelerated piston pin plug wear, as the piston pin plug is made of aluminum while the cylinder barrel is made of nitrided steel. The FAA has determined that one side of the piston pin could disconnect from the piston if the wear of the pin plug becomes excessive. This condition, if not corrected, can result in extreme side loading of the piston, and consequent failure of the piston and engine.

Since issuance of the priority letter AD, the FAA has determined that the references to Parts 2A and 2B, and Appendix A of the CSB are in error, and should reference Parts 2–1(a) and 2–2. In addition, this superseding AD lists a new, toll-free contact telephone number to obtain the CSB from the manufacturer.

Also, the FAA has reviewed and approved the technical contents of the latest revision, TCM CSB No. CSB97–10A, dated July 15, 1997, that provides a list of S/Ns of new and rebuilt model O–470 and IO–470 engines with affected cylinders installed, and a list of cylinders with part number and purchase date that may be installed on E–165, E–185, E–225, O–470 and IO–470 series engines, regardless of serial number. This CSB describes procedures for removal and shipment to the factory of affected cylinders, and procedures for reassembly with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 97–15–01 to add reference to the latest revision of the applicable CSB, correct incorrect references to parts of the applicable CSB, and list a new contact telephone number to obtain the CSB from the manufacturer. Operators that have removed affected cylinders in accordance with priority letter AD 97–15–01 or the original version of the CSB are in compliance with this AD and no further action is required. The actions are required to be accomplished in accordance with the CSB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received.

Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–39–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 97–21–02 Teledyne Continental Motors: Amendment 39–10155. Docket No. 97–ANE–39–AD. Supersedes AD 97–15–01.

Applicability: Teledyne Continental Motors (TCM) new and rebuilt Model O–470 and IO–470 series reciprocating engines with serial numbers (S/Ns) listed in Table 1 of TCM Critical Service Bulletin (CSB) No. CSB97–10A, dated July 15, 1997; and TCM Model E–165, E–185, E–225, O–470 and IO–470 series reciprocating engines, regardless of S/N, which have cylinder(s) with part number and purchase date as shown in Table 2 of TCM CSB No. CSB97–10A, dated July 15, 1997. These engines are installed on but not limited to the following aircraft: Bellanca Models 14–19–2 and 14–19–3; Cessna Models 180, 180A through K, 182, 182A through R, 185, 185A through E, 188, 188A, 188B, 210, 210A through C, 210–5 (205), 210–5A (205A), 305A, 305C, 305D, 305F, 310, 310A through Q, E310H, E310J, 310J–1; Frontier-Aerospace, Inc. (Fletcher) Models FU–24 and FU–24A; Luscombe Aircraft Corporation Model 11A; Navion models Navion, Navion A, and Navion D through G; Prop-Jets, Inc. Models 200, 200A through C; Raytheon (formerly Beech) Models 35, A35 through P35, 35R, 35–33, 35–A355, 35–B33, 35–C33, E33, F33, 45 (YT–34), A45 (T–34A, B–45), D45 (T–34B), 95–55, 95–55A, 95–B55, 95–B55A and 95–B55B; Reims models F182P and F182Q; and Twin Commander Aircraft, Inc. Model 500–A.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent extreme side loading of the piston, and consequent failure of the piston and engine, accomplish the following:

(a) Operators that have removed affected cylinders in accordance with priority letter AD 97–15–01 and TCM CSB No. CSB97–10, dated June 19, 1997, are in compliance with this AD and no further action is required

(b) For the TCM O–470 and IO–470 series engines listed by S/N in Table 1 of TCM CSB No. CSB97–10A, dated July 15, 1997, within 10 hours time in service (TIS) after the effective date of this AD, accomplish the following:

(1) Remove from service the cylinders, six each, and the piston pins, six each, in accordance with the Inspection Instructions, Part 2–1(a), of TCM CSB No. CSB97–10A, dated July 15, 1997.

(2) Obtain serviceable replacement parts and reassemble the engine in accordance with the Inspection Instructions, Part 2–2, of TCM CSB No. CSB97–10A, dated July 15, 1997.

(c) For the E–165, E–185, E–225, series engines and those O–470 and IO–470 series engines not listed by S/N in Table 1 of TCM CSB No. CSB97–10A dated July 15, 1997, within 10 hours TIS after the effective date of this AD, accomplish the following:

(1) Determine from engine log books or maintenance records if a cylinder has been replaced with a cylinder purchased in the time frames shown in Table 2 of TCM CSB No. CSB97–10A, dated July 15, 1997.

(2) If a cylinder was not replaced with a cylinder purchased during those time frames listed in the CSB, or if a cylinder is identified with the letter "M" or "P" steel stamped after the cylinder position number, as cylinders marked with "M" or "P" have a surface finish that has been found to be within specification, no further action is required. The cylinder position number is located at the 12 o'clock position on the cylinder mounting flange.

(3) If a cylinder has been replaced with a cylinder purchased during those time frames listed in the CSB, remove from service the affected cylinders and piston pins in accordance with the Inspection Instructions, Part 2–1(a) of TCM CSB No. CSB97–10A, dated July 15, 1997.

(4) Obtain serviceable replacement parts and reassemble the engine in accordance with the Inspection Instructions, Part 2–2, of TCM CSB No. CSB97–10A, dated July 15, 1997.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive,

if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following TCM CSB:

Document No.	Pages	Date
CSB97–10A ..... Total pages: 11.	1–11	July 15, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 826–5874. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment supersedes priority letter AD 97–15–01, issued July 17, 1997.

(h) This amendment becomes effective on October 27, 1997.

Issued in Burlington, Massachusetts, on September 30, 1997.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–26797 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 22 which met in Pago Pago, American Samoa, during the week of June 22, 1997.

DATES: This rule shall become effective on October 27, 1997.

Applicability date: The new minimum wage rates are effective on October 27, 1997 unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, D.C. 20210: telephone (202) 219–7640. This is not a toll free number. Copies of the Final Rule in alternative formats may be obtained by calling (202) 219–7605, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

II. Background

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 663 (62 F.R. 14446), the Secretary of Labor appointed and convened Industry Committee No. 22 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of the FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted in Pago Pago pursuant to the notice, the Committee filed with the Administrator of the Wage and Hour Division a report containing its findings of fact and recommendations with respect to minimum wage rates for various industry classifications. The FLSA requires that the Secretary publish this report in the **Federal Register** and further requires that the recommendations in the report be effective 15 days after publication.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, this rule hereby revises § 697.1 and 697.3 of 29 CFR part 697 to implement the recommendations of Industry Committee No. 22.

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995 and Executive Order 12875/Small Business Regulatory Enforcement Fairness Act

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 22 which met in Pago Pago, American Samoa during the week of June 22, 1997. The Committee recommended increases over two years in various industry categories, ranging from 6 cents per hour for the shipping and transportation industry, classification B—unloading of fish from marine vessels; to 25 cents per hour for the publishing industry.

When these increases are fully implemented, wage rates will range from $2.45 an hour (miscellaneous activities) to $3.87 an hour (shipping and transportation, classification A, stevedoring, lighterage, and maritime shipping activities).

There are approximately 16,000 employees in the various industry classifications. Based on the number of workers whose wages must be increased to the new minimum wage levels in 1997 and/or 1998, and assuming that employees currently paid at or in excess of the new minimum wages will also receive commensurate wage increases to maintain relative pay comparability, increases in the overall annual wage bill are expected to be modest—approximately $208,000 in 1997 and $2.8 million in 1998. Thus this rule is not expected to result in a rule that may [1] have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; [2] create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; [3] materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or [4] raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

For reasons similar to those noted above, the rule does not require a § 202 statement under the Unfunded Mandates Reform Act of 1995. Because the Secretary has no authority to change a recommendation of the Industry Committee, compliance with Executive Order 12875 is neither feasible nor permitted by law, and in any event, the rule is not a significant rule. Furthermore, a resident of American Samoa is nominated by the Governor of American Samoa as a public member of the industry committee. Its representatives also provided testimony and made recommendations at the hearing.

Finally, the rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. Although the rule will impact solely on American Samoa, its impact is not expected to be significant, for the reasons discussed above.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

Good cause exists for issuance of this rule without publication 30 days in advance of its effective date, as normally required by the § 553(d) of the Administrative Procedure Act. As discussed above, § 8 of the FLSA requires that the rule be effective 15 days after publication.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 697

American Samoa Minimum wages.

Accordingly, part 697 of chapter V of title 29, Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. this 3rd day of Oct., 1997.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 697—INDUSTRIES IN AMERICAN SAMOA

1. The authority citation for part 697 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 is amended by revising paragraphs(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1) and (2), (k)(1), (l)(1), (m)(1), and (n)(1); and adding new paragraphs (o) and (p) to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $3.10 an hour effective July 1, 1996, and $3.17 an hour effective October 27, 1998.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is $3.75 an hour effective July 1, 1996, and $3.87 an hour effective October 27, 1998. The minimum wage for classification B, unloading of fish, is $3.70 an hour effective July 1, 1996, and $3.76 an hour effective October 27, 1998. The minimum wage for classification C, all other activities, is $3.62 an hour effective July 1, 1996, and $3.72 an hour effective October 27, 1998.

* * * * *

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $3.16 an hour effective on October 27, 1997, and $3.22 an hour effective October 27, 1998.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $3.60 an hour effective on October 27, 1997, and $3.73 an hour effective October 27, 1998.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $3.30 an hour effective on October 27, 1997, and $3.40 an hour effective October 27, 1998.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $2.70 an hour effective on October 27, 1997, and $2.78 an hour effective October 27, 1998.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $2.87 an hour effective on October 27, 1997, and $2.94 an hour effective October 27, 1998.

* * * * *

(h) *Ship maintenance industry.* (1) The minimum wage for this industry is $3.15 an hour effective on October 27, 1997, and $3.20 an hour effective October 27, 1998.

* * * * *

(i) *Bottling, brewing and dairy products industry.*

(1) The minimum wage for this industry is $3.01 an hour effective on October 27, 1997, and $3.07 an hour effective October 27, 1998.

* * * * *

(j) *Printing industry.* (1) The minimum wage for the printing industry is $3.25 an hour effective on October 27, 1997, and $3.35 an hour effective October 27, 1998.

(2) The printing industry is that industry which is engaged in printing, job printing, and duplicating. This industry shall not include printing performed by an employer which publishes a newspaper, magazine, or similar publications.

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $3.69 an hour effective on October 27, 1997, and $3.78 an hour effective October 27, 1998.

* * * * *

(l) *Private hospitals and educational institutions.* (1) The minimum wage for this industry is $3.17 an hour effective on October 27, 1997, and $3.24 an hour effective October 27, 1998.

* * * * *

(m) *Government employees industry.* (1) The minimum wage for this industry is $2.45 effective October 1, 1996, and $2.57 an hour effective October 1, 1998.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is $2.45 an hour effective July 1, 1996.

* * * * *

(o) *Garment manufacturing industry.* (1) The minimum wage for this industry is $2.45 an hour effective on October 27, 1997, and $2.55 an hour effective October 27, 1998.

(2) The garment manufacturing industry is defined as the manufacture from any material of articles of apparel and clothing made by knitting, spinning, crocheting, cutting, sewing, embroidering, dyeing, or any other processes and includes but is not limited to all clothing; men's, women's and children's suits, clothing and other products; hosiery; gloves and mittens; sweaters and other outerwear; swimwear; leather, leather goods, and related products; handkerchief, scarf, and art linen products; shirts, blouses, and underwear; uniforms and work clothing; and includes assembling, tagging, ironing, and packing apparel for shipping. This term does not include manufacturing, processing or mending of apparel in retail or service establishments, including clothing stores, laundries, and other stores.

(p) *Publishing industry.* (1) The minimum wage for the publishing industry is $3.30 an hour effective on

October 27, 1997, and $3.45 an hour effective October 27, 1998.

(2) The publishing industry is that industry which is engaged in the publishing of newspapers, magazines, or similar publications other than the publishing of a weekly, semiweekly or daily newspaper with a circulation of less than 4,000, the major part of which circulation is within the county or counties contiguous thereto.

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective on October 27, 1997 except as otherwise specified.

[FR Doc. 97–26830 Filed 10–9–97; 8:45 am]
BILLING CODE 4510–27–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–97–040]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Algiers Alternate Route, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Belle Chasse vertical lift span drawbridge on State Route 23 across the Gulf Intracoastal Waterway, Algiers Alternate Route at mile 3.8 at Belle Chasse, Louisiana. This deviation allows the bridge to remain closed to navigation between the hours of 4 p.m. and 6:45 p.m. on Saturday, October 25, 1997 and between the hours of 4 p.m. and 7 p.m. on Sunday, October 26, 1997. This closure is necessary to facilitate movement of vehicular traffic for the New Orleans Open House 1997 Air Show, to be held at the U.S. Naval Air Station at Belle Chasse, Louisiana.

DATES: The deviation is effective from 4 p.m. on October 25, 1997 until 7 p.m. on October 26, 1997.

SUPPLEMENTARY INFORMATION: The Belle Chasse bridge has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet in the open-to-navigation position.

Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, sailboats and other recreational craft. Between 150,000 and 200,000 members of the public are expected to attend the New Orleans Open House Air Show on each day. The Louisiana Department of Transportation and Development has requested a temporary deviation from the normal operation of the bridge so that the extremely heavy volume of vehicular traffic that will be departing the Naval Air Station following the event can be expeditiously dispersed.

This deviation requires that the draw of the Belle Chasse bridge remain closed to navigation between the hours of 4 p.m. and 6:45 p.m. on Saturday, October 25, 1997 and between the hours of 4 p.m. and 7 p.m. on Sunday, October 26, 1997. Presently, the draw is required to open on signal during weekends.

Dated: September 18, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–26917 Filed 10–9–97; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0056; FRL–5907–2]

California State Implementation Plan Revision; Interim Final Determination That State Has Corrected Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a notice of proposed rulemaking fully approving revisions to the California State Implementation Plan (SIP). The revisions concern a rule from the San Diego County Air Pollution Control District (SDCAPCD): Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks began on April 15, 1996. This action will defer the imposition of the offsets sanction and defer the imposition of the highway sanction. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiencies that started the sanctions clocks by publishing a notice of final rulemaking in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final rule taking into consideration any comments received.

DATES: Effective: October 10, 1997. Comments must be received by November 10, 1997.

ADDRESSES: Comments should be sent to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, 94105–3901.

The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Background

On July 13, 1994, the State submitted SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. EPA published a limited approval/limited disapproval for this rule in the **Federal Register** on February 14, 1996. 61 FR 5701. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted a revised rule on August 1, 1997. The revised rule was adopted by SDCAPCD on June 25, 1997. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of SDCAPCD's Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an

opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clocks that started for this area on April 15, 1996. However, this action will defer the imposition of the offsets sanction and will defer the imposition of the highway sanction. See 59 FR 39832 (August 4, 1994). If EPA publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed, or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA susequently determines that the State, in fact, did not correct the disapproval deficiencies, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clocks. Based on this action, imposition of the offsets sanction will be deferred and imposition of the highway sanction will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA proposes or takes final action disapproving in whole or part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(3). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this document is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

C. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. This rule may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 1, 1997.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 97–26855 Filed 10–9–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–14–1–7239; FRL–5905–7]

Approval and Promulgation of Air Quality Implementation Plans of New Source Review (NSR) Implementation Plan Addressing NSR in Nonattainment Areas; Louisiana; Louisiana Administrative Code (LAC), Title 33, Environmental Quality, Part III. Air, Chapter 5. Permit Procedures, Section 504, Nonattainment NSR Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision, submitted by the State of Louisiana for the purpose of meeting requirements of the Clean Air Act (the Act), as amended in 1990, with regard to NSR in areas that have not attained the National Ambient Air Quality Standards (NAAQS). This approval action was proposed in the **Federal Register** (FR) on October 6, 1995, and no comments were received on the proposal.

EFFECTIVE DATE: This action is effective on November 10, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Barrett, Air Permits Section (6PD–R), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7227.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment new source review are set out in part D of Title I of the Act, as amended in 1990. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D; including those State submittals containing nonattainment area NSR SIP requirements (*see* 57 FR 13498 (April 16, 1992)) and (57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this action and the supporting rationale.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991, "New Source Review (NSR) Program Transitional Guidance," and September 3, 1992, "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements."

II. Rulemaking Action

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act, 42 U.S.C. 7410(a)(2), provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

After adequate public notice, the State of Louisiana held a public hearing on December 30, 1992, to entertain public comment on the NSR implementation plan, which replaced the emergency rules submitted to EPA on November 10, 1992. Following the public hearing, the plan was adopted by the State on February 20, 1993, and submitted to EPA on March 3, 1993, as a proposed revision to the SIP. The State submitted to EPA revisions for the Louisiana SIP to implement the NSR requirements of the Act in nonattainment areas in Louisiana. Louisiana made the SIP revision to LAC Title 33, Part III, Chapter 5. Permit Procedures, by the addition of section 504. Nonattainment New Source Review Procedures. The SIP revision was reviewed by EPA to determine administrative completeness shortly after its submittal. The completeness review was based upon the criteria as set out at 40 CFR part 51, Appendix V. The submittal was found to be complete on July 10, 1993, and a letter dated August 3, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. Prior to EPA acting on these revisions, the State submitted a notice of adoption and final rule on Regulation LAC 33:III. Chapter 5, on November 15, 1993. That submittal included an amended Section 504 in order to meet the requirements mandated by sections 173 and 182 of the Act. This action applies to Section 504 of the LAC.

In this action, EPA approves the Louisiana nonattainment NSR SIP rules identified in this notice. Those sections submitted to EPA not included in the revisions specifically addressed in this action will be the subject of a future rulemaking. In this rulemaking action on the Louisiana nonattainment NSR SIP, EPA has applied its interpretations, taking into consideration the specific factual issues presented.

B. General Nonattainment NSR Requirements

The statutory requirements for nonattainment NSR SIPs and permitting are found at sections 172 and 173.

The Act requires all States to have submitted, at a minimum, the following nonattainment NSR provisions by November 15, 1992:

1. Provisions to assure that calculation of emissions offsets, as required by section 173(a)(1)(A), are based on the same emissions baseline used in the demonstration of reasonable further progress. Louisiana has established provisions to satisfy this requirement in LAC sections 504.F.4 and 504.F.5.

2. Provisions to allow, according to section 173(c)(1), offsets to be obtained in another nonattainment area if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area, in which the offsets are obtained, contribute to an NAAQS violation, in the area in which the source would construct. Louisiana has established provisions to satisfy this requirement in LAC Section 504.F.9.

3. Provisions to assure, according to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source is to commence operation. Louisiana has established provisions to satisfy this section in LAC Section 504.F.3.

4. Provisions to assure that emissions increases, from new or modified major stationary sources, are offset by real reductions in actual emissions, as required by section 173(c)(1). Louisiana has established provisions to satisfy this requirement in LAC Sections 504.D.3 and 504.F.7.

5. Provisions, according to section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. Louisiana has established provisions to satisfy this section in LAC Sections 504.F.5. and 504.F.10.

6. Provisions, according to section 173(a)(5) that, as a prerequisite to issuing any part D permit, the State will require an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Louisiana has established provisions to satisfy this requirement in LAC Section 504.D.6.

7. Provisions, according to section 173(e), that allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are met: (a) the proposed modification is for expansion of a facility already permitted for such purposes; (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available; (c) the source has obtained a written finding by the appropriate, sponsoring Federal agency that the testing is essential to national security; and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source.

In lieu of imposing any alternative offset measures, the permitting authority may impose an emission offset amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years. Louisiana has established provisions to satisfy this requirement at LAC Section 504.D.7.

8. Provisions, according to section 173(a)(3), to assure that owners or operators, of each proposed new or modified major stationary source, demonstrate that all other major stationary sources, under the same ownership in the State, are in compliance with the Act. Louisiana has established provisions to satisfy this section at LAC Section 504.D.1. This provision is recodified and rewritten from LAC 33:III, Chapter 5, Section 505.H.8., which was previously approved in the **Federal Register** (47 FR 6015, February 10, 1982).

9. Provisions, according to section 173(a)(2), to assure that permits for new and modified major stationary sources to construct and operate may be issued if the proposed source is required to comply with the lowest achievable emission rate. Louisiana has established provisions to satisfy this requirement in LAC Section 504.D.2. This provision is recodified and rewritten from LAC 33:III, Chapter 5, Section 505.H.8., which was previously approved in the **Federal Register** (47 FR 6015, February 10, 1982).

10. Additionally, the State must assure that no interpollutant trading is allowed as defined in 40 CFR part 51, Appendix S, section IV, condition 3. Louisiana has established provisions to satisfy this requirement in LAC Section 504.F.1.

11. The public notice and participation requirements, previously located in Section 504, have now been placed in LAC 33:III. Chapter 5. Section 531, which will be acted on by EPA in a future rulemaking action. These requirements were located in the March 3, 1993, submittal and were subsequently moved in the November 15, 1993, submittal to Section 531. Public participation requirements have previously been approved in the SIP.

C. Ozone

The general nonattainment NSR requirements are found in sections 172 and 173 of the Act and must be met by all nonattainment areas. Requirements for ozone that supplement or supersede these requirements are found in subpart 2 of part D. In addition, subpart 2 includes section 182(f) which states that requirements for major stationary sources of volatile organic compounds (VOC) shall apply to major stationary sources of oxides of nitrogen (NO_x) unless the Administrator makes certain determinations related to the benefits or contribution of NO_x control to air quality, ozone attainment, or ozone air quality. States were required under section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

Louisiana has established major source thresholds and offset ratios for VOC and included provisions for NO_x major stationary sources as follows:

Area classification	Major source threshold	Offset ratio minimum	NO_x provisions
Marginal	100 tpy	1.10 to 1	See paragraph below.
Moderate	100 tpy	1.15 to 1	Identical to VOC.
Serious	50 tpy	1.20 to 1	See paragraph below.
Severe	25 tpy	1.30 to 1	Identical to VOC.
Extreme	Not applicable	Not applicable	Not applicable.

The EPA approved a petition for exemption from NO_x requirements pursuant to section 182(f), for the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish), on May 22, 1997, and which was published on May 29, 1997 (*see* 62 FR 29062); therefore, NO_x nonattainment NSR will not be required in that area. Further, EPA approved the redesignation of the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish), to attainment for ozone on April 10, 1997, and which was published on May 2, 1997 (*see* 62 FR 24036).

The EPA approved a petition for exemption from NO_x requirements pursuant to section 182(f), for the serious ozone nonattainment area of Baton Rouge, on January 18, 1996, and which was published on January 26, 1996 (*see* 61 FR 2438); therefore, NO_x nonattainment NSR will not be required in that area.

Louisiana has established all of the above requirements for all other ozone nonattainment areas.

Additionally, for nonclassifiable (transitional or incomplete data) ozone nonattainment areas, State rules for the marginal area classification apply. For further information on nonclassifiable areas see, "General Preamble" 57 FR 55624 (April 16, 1992), and the "NO_x supplement to the General Preamble" 57 FR 13523 (November 25, 1993).

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

In addition, Louisiana's plan submittal reflects appropriate modification provisions, including a *de minimis* level of 25 tons.

D. Carbon Monoxide (CO)

The general part D NSR permit requirements apply in CO nonattainment areas, and are supplemented by the CO requirements in subpart 3 of part D.

Louisiana has established a major source threshold of 100 tons per year, and a minimum offset ratio of greater than 1.00 to 1 for moderate CO nonattainment areas. Louisiana has established a major source threshold of 50 tpy, and a minimum offset ratio of greater than 1.00 to 1 for serious nonattainment areas.

Louisiana has no areas designated as nonattainment for CO at this time.

E. Particulate Matter Less Than 10 Micrometers In Diameter (PM–10)

Pursuant to section 189(a)(2) 42 U.S.C. 7513a(a)(2), all States, with a PM–10 nonattainment area classified as moderate, were required to submit an NSR permit program SIP revision by June 30, 1992, or 18 months after the designation of such an area.

Louisiana has established major source thresholds, offset ratios, modification significance levels, and PM–10 precursor provisions as follows:

Area classification	Major source threshold	Offset ratio minimum	Significance level	Precursor provisions
Moderate	100 tpy	Greater than 1 to 1	15 tpy	See paragraph below.
Serious	50 tpy	Greater than 1 to 1	15 tpy	See paragraph below.

Since Louisiana has no areas designated as nonattainment for PM–10 at this time, EPA is approving the PM–10 NSR provisions for the limited purpose of strengthening the SIP and not for satisfying the part D NSR requirements for PM–10. If an area is designated nonattainment for PM–10, then the State would be required to submit provisions for PM–10 precursors unless it has sought and obtained a determination by the EPA under section 189(e).

F. Sulfur Dioxide (SO_2)

States with SO_2 nonattainment areas were required to submit NSR implementation plans by May 15, 1992. States with areas that are designated or redesignated as nonattainment after the Amendments have 18 months to submit such plans.

Louisiana has established a major source threshold of 100 tpy, a minimum offset ratio of greater than 1 to 1, and a modification significance level of 40 tpy.

Louisiana has no areas designated as nonattainment for SO_2 at this time.

G. Lead

Generally, the date by which a plan must be submitted for an area is triggered by the area's nonattainment designation. For areas designated nonattainment for the primary lead NAAQS in effect at enactment of the 1990 Amendments; under section 171(b), States must submit SIPs which meet the applicable requirements of part D within 18 months of the date of enactment of the 1990 Amendments.

Louisiana has established a major source threshold of 100 tpy, a minimum offset ratio of greater than 1 to 1, and a modification significance level of 0.6 tpy.

Louisiana has no areas designated as nonattainment for Lead at this time.

III. Final Action

The EPA is approving the plan revisions submitted on March 3, 1993, as amended on November 15, 1993, regarding NSR. The State of Louisiana has submitted a complete plan to implement the NSR provisions of part D. Each of the program elements mentioned above were properly addressed, with the exception of PM–10 precursor requirements. Since Louisiana has no areas designated as nonattainment for PM–10 at this time, EPA is approving the PM–10 NSR provisions for the limited purpose of strengthening the SIP and not for satisfying the part D NSR requirements for PM–10. If an area is designated nonattainment for PM–10, then the State would be required to submit provisions for PM–10 precursors unless it has sought and obtained a determination by EPA under section 189(e).

Those sections submitted to EPA, not included in the revisions specifically addressed in this action, will be the subject of a future rulemaking.

Louisiana LAC 33:III.Chapter 5.Section 504 is approvable under the requirements for nonattainment area permitting regulations as outlined in 40 CFR part 51 and in part D. These revisions incorporate requirements of the Act for the construction and operation of new and modified major stationary sources of air pollutants.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

VI. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VIII. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Rreporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 30, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(68) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(68) A revision to the Louisiana SIP addressing the nonattainment NSR program for Louisiana was submitted by the Governor of Louisiana on March 3, 1993, and November 15, 1993.

(i) Incorporation by reference.

(A) Revision to LAC, Title 33, Part III. Air, Chapter 5. Permit Procedures, by the addition of Section 504. Nonattainment New Source Review Procedures, as promulgated in the Louisiana Register, Volume 19, Number 2, 176–183, February 20, 1993; effective February 20, 1993, and submitted by the Governor on March 3, 1993.

(B) Revisions to LAC, Title 33, Part III. Air, Chapter 5. Permit Procedures, Section 504. Nonattainment New Source Review Procedures, Subsections: A., Applicability, Paragraphs A(1), A(2), A(3), A(4); D., Nonattainment New Source Requirements, Paragraph D(4); Delete G., Permit Procedures, Public Participation and Notification; Reletter H., Definitions, to G., and revise definitions for Major Modification (paragraphs: a., c.iii, c.iv, c.v.(a)(b), c.vi, c.vii), Major Stationary Source (paragraphs: a., d.i); Delete Table 1; Renumber Table 2, Major Stationary Source/Major Modification Emission Thresholds, to Table 1, and revise Footnote 1., as promulgated in the Louisiana Register, Volume 19, Number 11, 1420–1421, November 20, 1993; effective November 20, 1993, and submitted by the Governor on November 4, 1993.

(ii) Additional material.

(A) Letter dated January 7, 1994, signed by the Governor of Louisiana, which clarifies that section 504 is to be reviewed under the SIP program.

* * * * *

[FR Doc. 97–27017 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5906–2]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of November 14, 1994 (59 FR 56397) the authorization of New Hampshire's Hazardous Waste Management Program Revision under the Resource Conservation and Recovery Act (RCRA). The document stated that the effective date was January 13, 1994. This was a typographical error. The correct effective date is January 13, 1995. This document corrects that error.

This document is also correcting typographical errors that were in the crosswalk listings of the federal requirements in the same immediate final rule.

EFFECTIVE DATE: The effective date for the immediate final rule published at 59 FR 56397 is January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Geri Mannion, U.S. EPA Region I (CHW), J.F.K. Federal Building, Boston, Massachusetts, 02203–21, Phone (617) 565–3607.

Dated: September 24, 1997.

John P. DeVillars,

Regional Administrator, Region I.

In the table beginning on page 56399, the following items are corrected to read as follows:

Section II: Non-HSWA Requirements Prior to Non-HSWA Cluster 1. Checklist (2) Permit Rules: Settlement Agreement, FR 39611–39623, 09/01/83.

Section III. Non-HSWA Cluster I. Checklist (13) Definition of Solid Waste, 50 *FR* 614–668, 01/04/85, as amended on 04/11/85 at 50 *FR* 14216–14220, and 50 *FR* 33541–33543 on 08/20/85.

Section V: Non-HSWA Cluster III. Checklist (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 *FR* 25422–25486, 07/14/86, as amended at 51 *FR* 29430–39431 on 08/15/86. (Non–HSWA Cluster III and HSWA Cluster I)

Section VI: Non-HSWA Cluster IV. Checklist (46) Technical Correction; Identification and Listing of Hazardous Waste, 53 *FR* 13382, 04/22/88.

Section VII: Non-HSWA Cluster V. Checklist (54) Permit Modifications for

Hazardous Waste Management Facilities, 53 *FR* 37912–37924, 09/28/88; as amended 10/24/88 at 53 FR 41649.

Section VII: Non-HSWA Cluster V. Checklist (58) Standards for Generators of Hazardous Waste; 53 *FR* 45089–45093, 11/08/88.

Section VIII: HSWA Cluster I. SI Sharing of Information With the Agency for Toxic Substances and Disease Registry, HSWA § 3019(b), 07/15/85.

[FR Doc. 97–27013 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

Disaster Assistance; Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of waiver.

SUMMARY: This notice states FEMA's intent to streamline the Hazard Mitigation Grant Program (HMGP) process by allowing States to use a one-time effort to apply statewide eligibility criteria to the HMGP for all disasters declared before April 7, 1997.

DATES: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104.

SUPPLEMENTARY INFORMATION: In the past, Hazard Mitigation Grant Program (HMGP) funds were only available in counties designated as eligible by FEMA for Individual Assistance (IA) or Public Assistance (PA). Under the Stafford Act both IA and PA funds address damage or hardship resulting from the major disaster, but HMGP funds are intended to reduce the risk of future damage or hardship. As a result, FEMA has determined that the use of HMGP funds should not be limited only to counties designated as eligible for IA or PA funds. In an effort to streamline the HMGP, FEMA will automatically designate all counties within the declared State as eligible to receive HMGP funds for all disasters declared on or after April 7, 1997.

In addition, FEMA has determined that States declared before this time should be permitted to take advantage of this policy. In order to ensure consistency in the availability of HMGP funds among all States with open disasters, FEMA is temporarily waiving its regulatory requirement at 44 CFR 206.40(d) that requires a State to request additional areas for designation within 30 days of the incident or declaration. Therefore, this notice makes public that States have until November 10, 1997, to submit to their FEMA Regional Office the open disasters for which they are requesting the designation of additional counties. For every disaster for which a State is amending the designated areas, States will have until February 9, 1998, or 18 months after the date of the disaster declaration, whichever is later, to submit HMGP project applications to the Regional Office.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: October 2, 1997.

James L. Witt,

Director.

[FR Doc. 97–27000 Filed 10–9–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–174; FCC 96–86]

Uniform Cable Price-Setting Methodology

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.922, which contain information collection requirements, became effective on September 4, 1997. These amendments, which were published in the **Federal Register** on March 31, 1997, relate to implementation of the rate regulation provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR 76.922 published at 62 FR 15127 became effective on September 4, 1997.

FOR FURTHER INFORMATION CONTACT: Rob Fream, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On March 14, 1997, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. See 62 FR 15121, March 31, 1997. The Report and Order establishes rules for an optional rate-setting methodology that would enable a cable operator to establish uniform rates for uniform cable service tiers offered in multiple franchise areas. Because the rules imposed new information collection requirements, the amendments to 47 CFR 76.922 could not become effective until approved by the Office of Management and Budget ("OMB"), and no sooner than April 30, 1997. OMB approved these rule changes on September 4, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 76.922 became effective on September 4, 1997. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26786 Filed 10–9–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 62, No. 197

Friday, October 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251985–96]

RIN 1545–AU79

Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 863 governing the source of income from sales of inventory produced in the United States and sold in a possession of the United States or produced in a possession of the United States and sold in the United States. It also contains proposed regulations under section 863 governing the source of income from sales of inventory purchased in a possession of the United States and sold in the United States. This document affects persons who produce (in whole or in part) inventory in the United States and sell in a possession, or produce (in whole or in part) inventory in a possession and sell in the United States, as well as persons who purchase inventory in a possession and sell in the United States. This document also contains proposed regulations under section 936 governing the source of income of a taxpayer from the sale in the United States of property purchased from a corporation that has an election under section 936 in effect. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of oral comments to be presented at the public hearing scheduled for January 29, 1998, at 10 a.m. must be received by January 8, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL–0003–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–251985–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or electronically, via the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Anne Shelburne, (202) 622–3880; concerning submissions and the hearing, Ms. Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by December 9, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information requirements are in proposed § 1.863–3(f)(6). This information is required by the IRS to monitor compliance with the federal tax rules for determining the source of income from the sale of inventory produced in the United States and sold in a possession of the United States or produced in a possession of the United States and sold in the United States, or from the sale of inventory purchased in a possession of the United States and sold in the United States. The likely respondents are taxpayers who produce inventory in the United States and sell in a possession, or who produce inventory in a possession and sell in the United States, or who purchase inventory in a possession and sell in the United States. Responses to this collection of information are required to properly determine the source of a taxpayer's income from such sales.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 500 hours. The estimated annual burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 2.5 hours.

Estimated number of respondents: 200.

Estimated annual frequency of responses: One time per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Background

These proposed regulations contain rules under section 863 relating to the source of income from cross-border sales of certain property. These regulations also contain rules under

section 936 relating to the source of income of a taxpayer from the sale in the United States of property purchased from a corporation that has an election under section 936 in effect. These regulations are proposed to be effective for taxable years beginning 30 days after publication of final regulations.

Explanation of Provisions

I. Income Partly From Sources Within a Possession

A. Current Regulations

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning to sources within or without the United States all items of gross income, expenses, losses, and deductions other than those items specified in sections 861(a) and 862(a).

Guidance to determine the source of possession income is divided into two types of transactions: transactions described in section 863(b)(2) for property produced in the United States and sold in a possession (or vice versa), and transactions described in section 863(b)(3) for property purchased in a possession and sold in the United States (collectively, Section 863 Possession Sales).

Section 1.863–3 of the income tax regulations contains rules for determining the source of income derived from sales of certain property. These regulations were published in the **Federal Register** on November 29, 1996 (61 FR 60540), and the prior regulations were renumbered §§ 1.863–3A and 1.863–3AT. The new regulations retain the prior rules for Section 863 Possession Sales by providing in paragraph § 1.863–3(f) that taxpayers must apply the rules of § 1.863–3A(c) in allocating and apportioning income derived from sources partly within the United States and partly within a possession of the United States. These proposed regulations would modify the existing rules for allocating and apportioning income between the United States and a possession.

1. Property Produced and Sold

Currently, income derived from sales of inventory produced in the United States and sold in a possession of the United States or produced in a possession of the United States and sold in the United States (Possession Production Sales), is allocated or apportioned between the United States and a possession according to one of three methods. Such income is allocated under the independent factory price method, apportioned under an apportionment method, or, with permission of the District Director, allocated or apportioned on the basis of the taxpayer's books and records.

Under the current regulations, if an independent factory or production price (IFP) exists for Possession Production Sales, taxpayers must use the IFP method to determine the income attributable to production activities in both the sale establishing the IFP and in sales of similar products.

If an IFP does not exist, the current possessions regulations provide that the taxable income from Possession Production Sales is first computed and then apportioned between the United States and the possession. One-half of the taxable income is apportioned on the basis of the taxpayer's property within the United States and within the possession. In applying the property fraction, the taxpayer's property includes property held or used to produce income derived from Possession Production Sales. The other half of the taxpayer's taxable income is apportioned between U.S. and possession sources on the basis of the business of the taxpayer within the United States and within the possession. Currently, business of the taxpayer is measured by the sum of certain expenses, including amounts paid for labor, and the purchase of certain supplies, plus receipts from Possession Production Sales. Finally, as a third method, the existing regulations allow a taxpayer to request permission from the District Director to use the taxpayer's books and records to allocate or apportion income to sources within or without the United States if those books reflect more clearly than the other methods the taxable income derived from sources within the United States.

2. Property Purchased and Sold

The second type of possession transaction governed by the existing regulations is the sale of inventory purchased in a possession and sold in the United States (Possession Purchase Sales) as described in section 863(b)(3). Under the current regulations, the income from such sales is divided between the United States and possession sources under one of two methods. The income can be apportioned, or, with permission of the District Director, allocated or apportioned on the basis of the taxpayer's books and records.

Under the apportionment method, taxable income is first determined, and then apportioned by a fraction, the numerator being the business of the taxpayer in the United States, the denominator being the total business of the taxpayer in the United States and in the possession. The fraction is computed in the same manner as the business fraction discussed previously, except that such expenses, purchases, and sales are limited to those attributable to Possession Purchase Sales.

B. Issues Under Current Regulations

The IRS and Treasury believe the rules for allocating and apportioning income between the United States and the possessions of the United States should be amended to reflect certain changes made to the regulations under § 1.863–3 governing cross-border sales of inventory involving the United States and a foreign country (other than those involving possessions). Thus, for example, under the apportionment method provided in the proposed regulations, the property and business activity fractions apportioning income between the United States and a possession are modified to apportion gross income attributable to an activity, rather than to apportion net income.

The IRS and Treasury also believe certain ambiguities exist in the current regulations. The possessions rules were originally promulgated in 1926, and may not reflect current business practices. The current regulations use examples to illustrate methods for allocating or apportioning income between the United States and a possession, and should be modified to state rules.

Further, although the apportionment method for allocating Possession Production Sales income under the existing possessions regulations treats half of the income as production income, the production formula is not necessarily limited to production assets. The current inclusion of sales assets in the formula apportioning production income results in excessive income being allocated to sales activities. The production income formula should only take into account assets directly involved in production of inventory. In addition, the IRS and Treasury have reexamined the business activity fraction, and have concluded it should be revised to more clearly reflect the taxpayer's business other than production. The current fraction, for example, omits certain investments or expenses, such as marketing and advertising expenses, although income attributable in part to such expenses or investments is then included in the income apportioned by the fraction. The current regulations also take into account production expenses in the business activity fraction apportioning income from Possession Production Sales. The Service and Treasury believe that this is inappropriate in the context of Possession Production Sales because the business activity fraction is not intended to determine the source of income attributable to production activity. In the proposed regulations, the fraction apportioning Possession Production Sales is renamed the business sales activity fraction and excludes factors reflecting production activity.

The current regulations also do not address issues in attributing to the United States or to the possession, the activities reflected in the business activity fraction. For example, the current regulations provide no guidance on whether a particular expense should be represented in the fraction as attributable to the United States or to a possession.

Accordingly, the IRS and Treasury are issuing proposed regulations under section 863 to make the possessions rules more consistent with the other regulations governing the source of income from cross-border sales of inventory, and to address certain ambiguities and problems in the existing regulations.

C. Proposed Regulations

Section 1.863–3(f) generally retains the methods of the current regulations for dividing income between the United States and a possession of the United States, with several modifications.

1. Methods to Allocate Gross Income to Activities of the Taxpayer

a. Property Produced and Sold

i. The Possession 50/50 Method

Consistent with the final regulations under § 1.863–3, paragraph (f)(2)(i)(A) of the proposed regulations makes the 50/50 method the general rule to allocate gross income from Possession Production Sales between production and business sales activity, so that the income from each type of activity can then be apportioned between U. S. and foreign sources. The taxpayer, however, may elect to apply the IFP method (described in paragraph (f)(2)(i)(B)), or, with the consent of the District Director, the books and records method (described in paragraph (f)(2)(i)(C)).

Under the possession 50/50 method, the proposed regulations allocate half of the taxpayer's gross income from Possession Production Sales to production activity and half to business sales activity. The income is then apportioned between U.S. and possession sources based on a property fraction and a business sales activity fraction. As described below, the proposed regulations make certain changes to the existing property fraction and to the existing business activity fraction.

The proposed regulations apply the property fraction in § 1.863–3(c) to apportion the half of a taxpayer's income allocated to production activity. Thus, income is apportioned to the United States or to a possession based on the location of the taxpayer's production assets. In a change from the current regulations, and consistent with the changes made to the regulations under § 1.863–3(c), production assets are defined as tangible and intangible assets owned directly by the taxpayer that are directly used by the taxpayer to produce inventory sold in Possession Production Sales, instead of all its assets that produce income from Possession Production Sales. Production assets are included in the fraction at their adjusted tax basis.

The other half of the taxpayer's gross income is apportioned according to a business sales activity fraction. The portion of this income that is possession source income is determined by multiplying the income by a fraction, the numerator being the business sales activity of the taxpayer in the possession, and the denominator being the business sales activity of the taxpayer within the possession and outside the possession. The remaining income is sourced in the United States. Although some of the business sales activity factors not incurred in a possession may be incurred in a foreign country, Treasury and the Internal Revenue Service believe that the business sales activity fraction is only intended to source the business sales activity portion of Possession Production Sales outside the United States to the extent of business sales activity located in a possession.

The proposed regulations make some modifications to the factors in the fraction representing the business sales activity of the taxpayer. Business sales activity is measured by the sum of certain expenses, including amounts paid for labor, materials, advertising, and marketing (but excluding any expenses or other amounts that are nondeductible under section 263A, interest, and research and development), plus receipts for the sale of goods. This formula is intended to reflect better the business sales activity producing the income by including more of the factors responsible for producing that income. Cost of goods sold is also excluded from the business sales activity fraction apportioning income from Possession Production Sales, because such costs generally reflect production activity. Production activity is already represented in the formula by the one-half of the taxpayer's income apportioned according to the location of production assets.

Finally, the proposed regulations provide more explicit guidance for attributing business sales activity between the United States and a possession. Expenses are allocated and apportioned between the United States and a possession based on the rules in §§ 1.861–8 through 1.861–14T. Gross sales are allocated to the United States or a possession based on the place of sale.

ii. The IFP Method

The proposed regulations make the IFP method elective, and thus eliminate any bias against taxpayers choosing to export through independent distributors. The regulations rely upon the revised regulations under § 1.863–3 for rules in applying the IFP method.

iii. Books and Records Method

The proposed regulations retain the books and records method of the existing regulations, permitting taxpayers to request permission from the District Director to use their books and records to determine the source of their income. The proposed regulations refer to revised § 1.863–3(b)(3) in applying the method to Possession Production Sales.

b. Property Purchased and Sold

i. The Business Activity Method

Paragraph (f)(3)(i)(A) makes the business activity method the general rule to apportion income from Possession Purchase Sales between the United States and a possession. The taxpayer may, however, elect to apply, with consent of the District Director, the books and records method.

The proposed regulations retain the structure of the existing regulations by apportioning the taxpayer's income from Possession Purchase Sales on the basis of a business activity fraction. The portion of this income that is possession source income is determined by multiplying the income by a fraction, the numerator being the business of the taxpayer in the possession, and the denominator being the business of the taxpayer within the possession and outside the possession. The remaining income is sourced in the United States.

The business activity fraction is similar to that discussed previously, used to apportion the taxpayer's income in Possession Production Sales, except that the fraction applies only to expenses, cost of goods sold, and sales attributable to Possession Purchase Sales. In addition, the business activity

fraction apportioning Possession Purchase Sales includes amounts paid for cost of goods sold. Such costs are attributed to the possession, however, only to the extent the property purchased is manufactured, produced, grown, or extracted in the possession. Treasury and the Internal Revenue Service anticipate that if a taxpayer acts in the reasonable belief that the products were manufactured in the possession, the taxpayer could act on that basis in preparing its tax return. As modified, the business activity fraction reflects the view of Treasury and the Internal Revenue Service that section 863(b)(3)'s purchase rule was intended to apply only to purchase and resale transactions, where the goods purchased are created or derived from the possession.

ii. Books and Records Method

The proposed regulations retain the books and records method of the existing regulations, permitting taxpayers to request permission from the District Director to use their books and records to determine the source of their income. The proposed regulations refer to revised § 1.863–3(b)(3) in applying the method to Possession Purchase Sales.

2. Determination of Source of Gross Income

Unlike the current regulations which provide specific rules for determining the source of income attributable to production activity and business activity only for purposes of the 50/50 method, the proposed regulations adopt rules applicable to each of the methods. Under the proposed regulations, once gross income attributable to production activity, business activity, or sales activity has been determined under one of the prescribed methods, the source of the gross income is determined separately for each type of income. The source of gross income attributable to production activity (when applying the possession 50/50 method) is determined under paragraph (c)(1), based on the location of production assets. The source of gross income attributable to sales activity (when applying the IFP method or the books and records method) is determined under paragraph (c)(2), based generally on the location of the sale. The source of gross income attributable to business sales activity (when applying the possession 50/50 method) is determined under paragraph (f)(2)(ii)(B), based on expenses, and gross sales attributable to Possession Production Sales. The source of gross income attributable to business activity (when applying the business activity method) is determined under paragraph (f)(3)(ii), based on expenses, cost of goods sold, and gross sales attributable to Possession Purchase Sales.

3. Determination of Source of Taxable Income

Once the source of gross income is determined under paragraph (f)(2) or (3), taxpayers then determine the source of taxable income. Under proposed paragraph (f)(4), taxpayers must allocate or apportion under §§ 1.861–8 through 1.861–14T the amounts of expenses, losses and other deductions to gross income determined under each of the prescribed methods. In the case of amounts of expenses, losses and other deductions allocated or apportioned to gross income determined under the IFP method or the books and records method, the taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to allocate or apportion these amounts between gross income from sources within the United States and within a possession. For expenses, losses and other deductions allocated or apportioned to gross income determined under the possessions 50/50 method, taxpayers must apportion expenses and other deductions pro rata based on the relative amounts of U.S. and possession source gross income. The research and experimental (R&E) expense allocation rules in § 1.861–17 apply to taxpayers using the 50/50 method, so that the R&E set aside (described in § 1.861–17) remains available to such taxpayers.

4. Treatment of Gross Income Derived From Certain Purchases From a Corporation That Has an Election in Effect Under Section 936

The proposed regulations clarify that section 863 does not apply to determine the source of a taxpayer's gross income derived from a purchase of inventory from a corporation that has an election in effect under section 936, if the taxpayer's income from sales of that inventory is taken into account to determine benefits under section 936(h)(5)(C) for the section 936 corporation.

5. Treatment of Partners and Partnerships

The proposed regulations rely on the rules in § 1.863–3(g) for determining the appropriate treatment in transactions involving partnerships. Under those rules, the aggregate approach applies to a partnership's production and sales activity for two purposes only. First, the aggregate approach applies in determining the character of a partner's distributive share of partnership income. Second, the aggregate approach applies in sourcing income from sales of inventory property that is transferred in-kind from or to a partnership.

6. Election and Reporting Rules

Under paragraph (f)(6)(i) of the proposed regulations, a taxpayer must use the 50/50 method to determine the source of income from Possession Production Sales unless the taxpayer elects to use the IFP method, or elects the books and records method. For Possession Purchase Sales, a taxpayer must use the business activity method, unless the taxpayer elects the books and records method. The taxpayer makes an election by using the method on its timely filed original tax return. That method must be used in later taxable years unless the Commissioner or his delegate consents to a change. Permission to change methods in later years will not be withheld unless the change would result in a substantial distortion of the source of income.

A taxpayer must fully explain the methodology used in applying either paragraph (f)(2) or (3), and the amount of income allocated or apportioned to U.S. and foreign sources, in a statement attached to its tax return.

II. Income Derived From Certain Purchases From a Corporation That Has an Election in Effect Under Section 936

These proposed regulations clarify that where a taxpayer purchases a product from a corporation that has an election in effect under section 936, the source of the taxpayer's gross income derived from sales of that product (in whatever form sold) in the United States is U.S. source, if the taxpayer's income from sales of that product is taken into account to determine benefits under section 936(h)(5)(C)(i) for the section 936 corporation. The taxpayer's income is U.S. source without regard to whether a possession product is a component, end-product form, or integrated product. No inference should be drawn from the proposed effective date concerning the treatment of transactions involving sales of property purchased from a section 936 corporation entered into before the regulations are applicable.

Proposed Effective Dates

These regulations are proposed to be effective for taxable years beginning on or after the date that is 30 days after the date of publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules of this section principally impact large multinationals who pay foreign taxes on substantial foreign operations and therefore the rules will impact very few small entities. Moreover, in those few instances where the rules of this section impact small entities, the economic impact on such entities is not likely to be significant. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described under the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 29, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of topics to be discussed and the time to be devoted to each topic (in the manner described under the ADDRESSES caption of this preamble) by January 8, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Anne Shelburne, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for "Section 1.863–3", removing the entry for "Sections 1.936–4 through 1.936–7", and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.863–3 also issued under 26 U.S.C. 863(a) and (b), and 26 U.S.C. 936(h).* * *

Section 1.936–4 also issued under 26 U.S.C. 936(h).

Section 1.936–5 also issued under 26 U.S.C. 936(h).

Section 1.936–6 also issued under 26 U.S.C. 863(a) and (b), and 26 U.S.C. 936(h).

Section 1.936–7 also issued under 26 U.S.C. 936(h).* * *

Par. 2. Section 1.863–3 is amended as follows:

1. Paragraph (f) is revised.

2. Paragraph (h) is amended by adding a sentence at the end of the paragraph.

The revision and addition read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

* * * * *

(f) *Income partly from sources within a possession of the United States*—(1) *In general.* This paragraph (f) relates to gains, profits, and income, which are treated as derived partly from sources within the United States and partly from sources within a possession of the United States (Section 863 Possession Sales). This paragraph (f) applies to determine the source of income derived from the sale of inventory produced (in whole or in part) by the taxpayer within the United States and sold within a possession, or produced (in whole or in part) by a taxpayer in a possession and sold within the United States (Possession Production Sales). It also applies to determine the source of income derived from the purchase of personal property within a possession of the United States and its sale within the United States (Possession Purchase Sales). A taxpayer subject to this paragraph (f) must divide gross income from Section 863 Possession Sales using one of the methods described in either paragraph (f)(2)(i) of this section (in the case of Possession Production Sales) or paragraph (f)(3)(i) of this section (in the case of Possession Purchase Sales). Once a taxpayer has elected a method, the taxpayer must separately apply that method to the applicable category of Section 863 Possession Sales in the United States and to those in a possession. The source of gross income from each type of activity must then be determined under either paragraph (f)(2)(ii) or (3)(ii) of this section, as appropriate. The source of taxable income from Section 863 Possession Sales is determined under paragraph (f)(4) of this section. The taxpayer must apply the rules for computing gross and taxable income by aggregating all Section 863 Possession Sales to which a method in this section applies after separately applying that method to Section 863 Possession Sales in the United States and to Section 863 Possession Sales in a possession. This section does not apply to determine the source of a taxpayer's gross income derived from a sale of inventory purchased from a corporation that has an election in effect under section 936, if the taxpayer's income from sales of that inventory is taken into account to determine benefits under section 936 for the section 936 corporation. For rules to be applied to determine the source of such income, see § 1.936–6(a)(5) Q&A 7a and (b)(1) Q&A 13.

(2) *Allocation or apportionment for Possession Production Sales*—(i) *Methods for determining the source of gross income for Possession Production Sales*—(A) *Possession 50/50 method.* Under the possession 50/50 method, gross income from Possession Production Sales is allocated between production activity and business sales activity as described in this paragraph (f)(2)(i)(A). Under the possession 50/50 method, one-half of the taxpayer's gross income will be considered income attributable to production activity and the source of that income will be determined under the rules of paragraph (f)(2)(ii)(A) of this section. The remaining one-half of such gross income will be considered income attributable to business sales activity and the source of that income will be determined under the rules of paragraph (f)(2)(ii)(B) of this section.

(B) *IFP method.* In lieu of the possession 50/50 method, a taxpayer may elect the independent factory price (IFP) method. Under the IFP method, gross income from Possession Production Sales is allocated to production activity or sales activity using the IFP method, as described in paragraph (b)(2) of this section, if an IFP is fairly established under the rules of paragraph (b)(2) of this section. See paragraphs (f)(2)(ii) (A) and (C) of this section for rules for determining the source of gross income attributable to production activity and sales activity.

(C) *Books and Records method.* A taxpayer may elect to allocate gross income using the books and records method described in paragraph (b)(3) of this section, if it has received in advance the permission of the District Director having audit responsibility over its return. See paragraph (f)(2)(ii) of this section for rules for determining the source of gross income.

(ii) *Determination of source of gross income from production, business sales, and sales activity*—(A) *Gross income attributable to production activity.* The source of gross income from production activity is determined under the rules of paragraph (c)(1) of this section, except that the term possession is substituted for foreign country wherever it appears.

(B) *Gross income attributable to business sales activity*—(1) *Source of gross income.* Gross income from the taxpayer's business sales activity is sourced in the possession in the same proportion that the amount of the taxpayer's business sales activity for the taxable year within the possession bears to the amount of the taxpayer's business sales activity for the taxable year both within the possession and outside the possession, with respect to Possession Production Sales. The remaining income is sourced in the United States.

(*2*) *Business sales activity.* For purposes of this paragraph (f)(2)(ii)(B), the taxpayer's business sales activity is equal to the sum of—

(*i*) The amounts for the taxable period paid for wages, salaries, and other compensation of employees, and other expenses attributable to Possession Production Sales (other than amounts that are nondeductible under section 263A, interest, and research and development); and

(*ii*) Possession Production Sales for the taxable period.

(*3*) *Location of business sales activity.* For purposes of determining the location of the taxpayer's business activity within a possession, the following rules apply:

(*i*) *Sales.* Receipts from gross sales will be attributed to a possession under the provisions of paragraph (c)(2) of this section.

(*ii*) *Expenses.* Expenses will be attributed to a possession under the rules of §§ 1.861–8 through 1.861–14T.

(C) *Gross income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity, as determined under the IFP method or the books and records method, will be determined under the provisions of paragraph (c)(2) of this section.

(3) *Allocation or apportionment for Possession Purchase Sales*—(1) *Methods for determining the source of gross income for Possession Purchase Sales*—(A) *Business activity method.* Gross income from Possession Purchase Sales is allocated in its entirety to the taxpayer's business activity, and is then apportioned between U.S. and possession sources under paragraph (f)(3)(ii) of this section.

(B) *Books and records method.* A taxpayer may elect to allocate gross income using the books and records method described in paragraph (b)(3) of this section, subject to the conditions set forth in paragraph (b)(3) of this section. See paragraph (f)(2)(ii) of this section for rules for determining the source of gross income.

(ii) *Determination of source of gross income from business activity*—(A) *Source of gross income.* Gross income from the taxpayer's business activity is sourced in the possession in the same proportion that the amount of the taxpayer's business activity for the taxable year within the possession bears to the amount of the taxpayer's business activity for the taxable year both within the possession and outside the possession, with respect to Possession Purchase Sales. The remaining income is sourced in the United States.

(B) *Business activity.* For purposes of this paragraph (f)(3)(ii), the taxpayer's business activity is equal to the sum of—

(*1*) The amounts for the taxable period paid for wages, salaries, and other compensation of employees, and other expenses attributable to Possession Purchase Sales (other than amounts that are nondeductible under section 263A, interest, and research and development);

(*2*) Cost of goods sold attributable to Possession Purchase Sales during the taxable period; and

(*3*) Possession Purchase Sales for the taxable period.

(C) *Location of business activity.* For purposes of determining the location of the taxpayer's business activity within a possession, the following rules apply:

(*1*) *Sales.* Receipts from gross sales will be attributed to a possession under the provisions of paragraph (c)(2) of this section.

(*2*) *Cost of goods sold.* Payments for cost of goods sold will be properly attributable to gross receipts from sources within the possession only to the extent that the property purchased was manufactured, produced, grown, or extracted in the possession (within the meaning of section 954(d)(1)(A)).

(*3*) *Expenses.* Expenses will be attributed to a possession under the rules of §§ 1.861–8 through 1.861–14T.

(iii) *Examples.* The following examples illustrate the rules of paragraph (f)(3)(ii) relating to the determination of source of gross income from business activity:

Example 1: (i) U.S. Co. purchases in a possession product X for $80 from A. A manufactures X in the possession. Without further production, U.S. Co. sells X in the United States for $100. Assume U.S. Co. has sales and administrative expenses in the possession of $10.

(ii) To determine the source of U.S. Co.'s gross income, the $100 gross income from sales of X is allocated entirely to U.S. Co.'s business activity. Forty-seven dollars of U.S. Co.'s gross income is sourced in the possession. [Possession expenses ($10) plus possession purchases ($80) plus possessions sales ($0), divided by total expenses ($10) plus total purchases ($80) plus total sales ($100).] The remaining $53 is sourced in the United States.

Example 2. (i) Assume the same facts as in *Example 1*, except that A manufactures X outside the possession.

(ii) To determine the source of U.S. Co.'s gross income, the $100 gross income is allocated entirely to U.S. Co.'s business activity. Five dollars of U.S. Co.'s gross income is sourced in the possession. [Possession expenses ($10) plus possession purchases ($0) plus possession sales ($0), divided by total expenses ($10) plus total purchases ($80) plus total sales ($100).] The $80 purchase is not included in the numerator used to determine U.S. Co.'s business activity in the possession, since product X was not manufactured in the possession. The remaining $95 is sourced in the United States.

(*4*) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (f)(2) or (3) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861–8 through 1.861–14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Possession Sales determined separately under each method described in paragraph (f)(2) or (3) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Possession Sales under § 1.861–8(e)(3), the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861–8(e)(3)(i)(A). In the case of gross income from Section 863 Possession Sales determined under the IFP method or books and records method, a taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to properly allocate or apportion amounts of expenses, losses and other deductions, allocated and apportioned to such gross income, between gross income from sources within and without the United States. In the case of gross income from Possession Production Sales determined under the possessions 50/50 method or gross income from Possession Purchase Sales computed under the business activity method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States pro rata based on the relative amounts of gross income from sources within and without the United States determined under those methods.

(5) *Special rules for partnerships.* In applying the rules of this paragraph (f) to transactions involving partners and partnerships, the rules of paragraph (g) of this section apply.

(6) *Election and reporting rules*—(i) *Elections under paragraph (f)(2) or (3) of this section.* If a taxpayer does not elect one of the methods specified in paragraph (f)(2) or (3) of this section, the taxpayer must apply the possession 50/50 method in the case of Possession Production Sales or the business activity method in the case of Possession Purchase Sales. The taxpayer may elect to apply a method specified in either paragraph (f)(2) or (3) of this section by using the method on a timely filed original return (including extensions). Once a method has been used, that method must be used in later taxable years unless the Commissioner consents to a change. Permission to change methods from one year to another year will be granted unless the change would result in a substantial distortion of the source of the taxpayer's income.

(ii) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (f)(2) or (3) of this section must fully explain in a statement attached to the tax return the methodology used, the circumstances justifying use of that methodology, the extent that sales are aggregated, and the amount of income so allocated.

* * * * *

(h) *Effective dates.* * * * However, the rules of paragraph (f) of this section apply to taxable years beginning on or after the date that is 30 days after the date of publication of final regulations.

Par. 3. In § 1.936–6, paragraph (a)(5) Q&A 7a is added to read as follows:

§ 1.936–6 Intangible property income when an election out is made: Cost sharing and profit split options; covered intangibles.

* * * * *

(a) * * *

(5) * * *

Q.7a: What is the source of the taxpayer's gross income derived from a sale in the United States of a possession product purchased by the taxpayer (or an affiliate) from a corporation that has an election in effect under section 936, if the income from such sale is taken into account to determine benefits under cost sharing for the section 936 corporation? Is the result different if the taxpayer (or an affiliate) derives gross income from a sale in the United States of an integrated product incorporating a possession product purchased by the taxpayer (or an affiliate) from the section 936 corporation, if the taxpayer (or an affiliate) processes the possession product or an excluded component in the United States?

A.7a: Under either scenario, the income is U.S. source, without regard to whether the possession product is a component, end-product, or integrated product. Section 863 does not apply in determining the source of the taxpayer's income. This Q&A 7a is applicable for taxable years beginning on or after the date that is 30 days after the date of publication of final regulations.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26857 Filed 10–9–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0056; FRL–5907–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from kelp processing and bio-polymer manufacturing operations.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate this rule into the federally approved SIP. In addition, final action on this rule will serve as a final determination that deficiencies in the rule (identified by EPA in a limited approval/limited disapproval action on February 14, 1996) have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. An Interim Final Determination published in today's **Federal Register** will defer the imposition of sanctions until EPA takes final action. EPA has evaluated the rule and is proposing to approve the rule under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before November 10, 1997.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is San Diego County Air Pollution Control District (SDCAPCD) Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on August 1, 1997.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Diego Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended

Act, that the SDCAPCD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. San Diego Area is classified as Serious [2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on August 1, 1997, including the rule being acted on in this document. This document addresses EPA's proposed action for SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. SDCAPCD adopted Rule 67.10 on June 25, 1997. This submitted rule was found to be complete on September 30, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [3] and is being proposed for approval into the SIP.

Rule 67.10 controls the emissions of VOCs from kelp processing and bio-polymer manufacturing operations. VOCs contribute to the production of ground-level ozone and smog. The rule was adopted as part of SDCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for the rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For source categories that do not have an applicable CTG (such as kelp processing and bio-polymer manufacturing operations), state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Within the SDCAPCD there is only one facility that performs kelp processing and bio-polymer manufacturing operations. For this source category, the RACT determination required an evaluation of the manufacturing process and the emissions specific to this facility. The evaluation also considered the technological and economic feasibility of proposed controls at individual emission points.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On February 14, 1996, EPA published a limited approval and a limited disapproval of a version of Rule 67.10 that had been adopted by SDCAPCD on June 15, 1994. The limited approval action incorporated this version of Rule 67.10 into the SIP. SDCAPCD's submitted Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, includes the following significant changes from the current SIP:

- Deletes the exemption for any VOC with a normal boiling point of 185°C or greater.
- Deletes provision allowing fugitive liquid leaks from incorporators to contain up to 50% VOC by weight.
- Increases records retention period from two to five years.
- Deletes restriction that test periods shorter than 16 hours cannot be used to determine non-compliance.
- Requires 90% reduction VOC emissions from dryers in kelp processing lines where PG is being emitted.
- Requires 80% reduction of VOC emissions from incorporators.
- Adds EPA-approved capture efficiency test method protocol.
- Requires monthly visual inspection of system components to ensure absence of fugitive liquid leaks.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 1, 1997.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 97–26856 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–60–P

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The San Diego Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The San Diego Area was reclassified from Severe-15 to Serious on January 19, 1995, 60 FR 3771.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5906–7]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete North Hollywood Dump Superfund Site, Shelby County, Tennessee, from the National Priorities List.

SUMMARY: The Environmental Protection Agency, Region 4 (EPA) announces its intent to delete the North Hollywood Dump (the Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which USEPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Tennessee Department of Environment and Conservation (TDEC) have determined that the Site poses no significant threat to public health or the environment and, therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before November 10, 1997.

ADDRESSES: Comments may be mailed to: Robert P. Morris, North Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

Comprehensive information on this Site is available through the public docket which is available for viewing at the North Hollywood Dump information repositories at the following locations:

Memphis-Shelby County Public Library, 1850 Peabody Avenue, Memphis, Tennessee 38104.

U.S. EPA Record Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Robert P. Morris, North Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8794 or 1–800–435–9233, ext. 28794.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA), Region 4 announces its intent to delete the North Hollywood Dump (the Site) in Memphis, Shelby County, Tennessee, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on its deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant action.

The EPA will accept comments on the proposal to delete this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III states the procedures that EPA is using for this action. Section IV discusses the North Hollywood Dump Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites or releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site or release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective public health and the environment.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 4 has recommended deletion and has prepared the relevant documents; (2) The Tennessee Department of Environment and Conservation has concurred with the deletion decision; (3) Concurrent with this Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate Federal, state, and local officials and other interested parties. This document announces a 30-day public comment period, provides an address and telephone number for submission of comments, and identifies the location of the local site repository; and (4) Region 4 has made all relevant documents available in the Regional Office and local site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Background

The 70-acre North Hollywood Dump was used as a municipal dump from the 1930s until the City closed it in 1967. However, some dumping of non-chemical refuse probably continued until 1980.

B. History

In the late 1940s, the Hayden Chemical Company used the Site to dispose of wastes generated in the production of sodium hydrochloride. Hayden later was bought out by Velsicol Chemical Corporation, which continued the practice of dumping at the Site. At one time, pesticide-contaminated sludge from a closed sewer line leading to the Velsicol plant was removed and buried in a small area known as the "Endrin Pit." The Site was also used for the disposal of other industrial wastes from plants in the Memphis area. In the 1960s, Buckeye Cellulose in Memphis sent copper-contaminated material to the Site for disposal. In 1980, the EPA found pesticides and heavy metals in surface soil, groundwater and pond sediments on the Site. The Site contained pesticides in soils at levels of concern, for example, chlordane at 160 mg/kg (the action level used for chlordane was 100 mg/kg (ppm). Due to high community concern in the early 1980s, the State of Tennessee recommended this Site as the State's highest priority hazardous waste site. Approximately 10,000 people live within three miles of the dump site. An elementary school is situated close to the dump.

The groundwater and surface water ponds were contaminated with pesticides including chlordane and endrin. The soil was contaminated with pesticides and heavy metals including lead, copper, and arsenic. Ingestion or direct contact with contaminated groundwater or soil posed a potential public health threat. Ingestion of contaminated fish caught from surface water on the Site also posed a potential public health risk.

The Site was addressed in two stages: removal actions and a long-term remedial phase focused on the cleanup of the entire Site.

In 1980, the EPA took an emergency action to slow the movement of contaminants from the Site. Also, the EPA installed a chain-link fence around the Site and began a program to monitor on-site wastes. In 1981, a technical assistance group made up of representatives from the State, the City of Memphis, Shelby County, local industry, and the EPA, removed some of the chemical wastes from the surface of the Site.

On October 23, 1981, the Site was proposed for the National Priorities List (NPL). The EPA then assumed the lead role from TDEC to complete investigations into the extent and nature of contamination. The Site was placed on the NPL on September 8, 1983. The Potentially Responsible Parties (PRPs) took over the study April 1, 1984. After the completion of the Supplemental Remedial Investigation and Feasibility Study (RI/FS) on September 13, 1990, the Record of Decision (ROD) was finalized.

C. Characterization of Risk

At that time, the Site contained high levels of contaminants in soils (e.g., 52,400 ppb chlordane, 67,800 ppb heptachlor, 62.7 ppb DDT, et. al.) and sediments (e.g., 87 ppm chlordene, 56 ppm chlordane, 21 ppm heptachlor, 140 ppm lead, et. al.). The ROD required retrofitting the landfill to meet legal sanitation standards. This included: placement of a 2-foot clay cap, grading, and revegetation; drainage of an adjacent 40-acre pond known to have held contaminated sediments; installation of an approximate 3-foot cover over the contaminated sediments; and the removal of fish found to be contaminated, followed by restocking of the pond. Groundwater was to be monitored to ensure contamination levels remain within acceptable State alternative concentration levels (ACLs) which were set to be protective of surface water (e.g., 0.45 micrograms/liter (µg/L) endrin, 0.51 µg/L chlordane, 0.23 µg/L heptachlor, et. al.). Additionally, the fenced Site was to be expanded and maintained and, restrictions on future use of the Site were put into place. TDEC concurred with the selected remedy. On August 3, 1992, the PRP, the Hollywood Dump Steering Committee (HDSC), entered into a Consent Decree with the EPA to perform remedy design and cleanup activities at the Site. The Remedy Design (RD) was completed September 27, 1993, by the PRP's primary consultant, the Memphis Environmental Center (MEC). The PRP's Remedial Action Construction Contract was awarded to MEC on January 17, 1994. MEC began cleanup activities in early 1994. The capping and grading of the landfill and the drum removal was completed by MEC in 1995. Drainage and covering of sediments began in 1995 and were completed by MEC in December 1996.

D. Operation and Maintenance

Operation and Maintenance (O&M), including the monitoring program, is in place. The monitoring program is specific to the groundwater medium. As stipulated in the ROD and the Consent Decree, contaminant levels in groundwater are not to exceed ACLs. The contingency alternative for groundwater exceeding ACLs is that it will be pumped from the shallow aquifer and discharged into the municipal sewer system. To date, contaminant levels in groundwater have not exceeded ACLs. Cleanup activities at the site are now complete.

Confirmational monitoring of groundwater demonstrate that no significant risk to public health or the environment is posed by materials remaining at the Site. The EPA and TDEC concur that conditions at the Site pose no unacceptable risks to human health or the environment.

E. Five-Year Review

No hazardous substances remain uncontained or exposed at the Site above health-based levels. However, the Site is not available for unlimited use or unrestricted exposure. The first policy five-year review for this site shall be completed by January 17, 1999.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if the responsible parties or other parties have implemented all appropriate response actions required. The EPA, with the concurrence of TDEC, contends this criterion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the public docket.

Dated: September 30, 1997.

A. Stanley Meiburg,

Deputy Regional Administrator, USEPA, Region 4.

[FR Doc. 97–26644 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 197
Friday, October 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a meeting on November 5–6, 1997, in Washington, D.C. The meeting agenda will focus on two key areas: (1) food and agriculture priorities for Research, Education, and Economics (REE) and its FY 2000 budget, and (2) the Fund for Rural America relevance review of Standard Project Grants and future activities of the Fund. Other agenda items include: Board recommendations on improving public understanding and appreciation of agriculture; an update on the REE Strategic Planning Task Force on agricultural facilities; and an update on the activities of the USDA Civil Rights Action Team. The Advisory Board will also discuss legislative activities related to agricultural research, extension, education, and economics and hear progress reports from Working Groups. A short orientation session will be held for newly appointed Board members on Tuesday, November 4, 1997.

DATES: Orientation of New Members: November 4, 1997, 5:00 to 7:00 p.m.; General Meeting: November 5–6, 1997, 9:00 a.m. to 5:00 p.m.

PLACE: Holiday Inn-National Airport (Crystal City), 1489 Jefferson Davis Highway, Arlington, VA 22202, Grand Ball Room.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 29 day of September 1997.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 97–27004 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–MP–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nicholson Land Exchange, Boise National Forest, Boise and Elmore Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Boise National Forest will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of a proposed land exchange with Thomas T. and Diana R. Nicholson.

In this exchange, the Boise National Forest would trade parcels totaling approximately 5,890 acres to the Nicholsons in exchange for parcels totaling approximately 573 acres. In order for the exchange to take place, the appraised values of the lands exchanged must be equal. Because of the different character, location, and potential uses of the different parcels, it is possible for appraised values to be equal even when acreage figures are not. Any or all of the acres proposed for exchange may be exchanged provided the values are equal. In the event the values are not equal, either party may equalize the value by payment in cash, provided the cash equalization does not exceed 25 percent of the appraised value of the Federal lands to be conveyed in the exchange.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received by November 14, 1997, to ensure timely consideration. No scoping meetings are planned at this time.

ADDRESSES: Send written comments to Sharon Paris, Project Coordinator, Boise National Forest, 1249 South Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Sharon Paris at (208) 373–4157.

SUPPLEMENTARY INFORMATION: In September 1995, the Boise National Forest completed an Environmental Assessment (EA) titled "Nicholson #3 Land Exchange Project." This EA was distributed to the public as a predecisional EA.

Based on the information in the EA, the Boise National Forest concluded the proposal may have a significant effect on the roadless resource and decided to prepare an EIS. The proposal may result in the reduction of approximately 1,745 acres of the Mount Hienen Inventoried Roadless Area (IRA) from the National Forest System. The IRA is currently 12,390 acres. Proposals that may substantially alter the undeveloped character of an IRA require the preparation of an EIS.

The previous scoping and analysis identified that the proposed exchange would result in the reduction of approximately 1,745 acres of the Mount Heinen IRA from the National Forest System. Other potential issues may be identified during the current scoping period.

The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the draft EIS and final EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

The Responsible Official is Robert W. Ross, Jr., Director of Recreation and Lands, Intermountain Region, Ogden, Utah. The decision to be made is whether to exchange National Forest System lands for private lands that would be of equal appraised value and of benefit to the public. The draft EIS is expected to be available for public review in February 1998, with a final EIS estimated to be completed in May 1998. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986),* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: October 3, 1997.

Jack A. Blackwell,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 97–26790 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Big Bend Road Access, Wenatchee National Forest, Kittitas County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 19, 1994, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Big Bend Road Access on the Cle Elum Ranger District of the Wenatchee National Forest was published in the **Federal Register** (59 FR 26205). Forest Service has combined this access with another environmental analysis process. There will be no EIS for this specific road access project. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Susan Carter, Environmental Coordinator, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801 or telephone 509–662–4335.

Dated: October 3, 1997.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 97–26981 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plum Creek Checkerboard Access Project, Wenatchee National Forest, Kittitas County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to issue easements and authorize construction of roads across National Forest System (NFS) lands located in the Yakima River Basin. The action is proposed in response to an application from Plum Creek Timber Company (PCTC) who seeks legal access to approximately 45 parcels of PCTC land within the Wenatchee National Forest boundary, on the Cle Elum and Naches Ranger Districts. The proposed access locations range from approximately 5 to 20 miles south and southeast, and 5 to 25 miles north and northeast of the town of Cle Elum, Washington, and both north and south of Interstate 90, east of Snoqualmie Pass.

The purpose of the EIS will be to develop and evaluate a range of alternatives including a No Action Alternative, to respond to issues identified during the scoping process. The proposed project will be in compliance with direction in the Wenatchee National Forest Land and Resource Management Plan (March 1990) as amended by the Northwest Forest Plan (April 1994), which provides the overall guidance for management of the area. The non-Federal lands involved are covered by PCTC's Cascade Habitat Conservation Plan (1996).

The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this proposal must be received by November 5, 1997.

ADDRESSES: Submit written comments and suggestions to Sonny J. O'Neal, Forest Supervisor, Wenatchee National

Forest, 215 Melody Lane, Wenatchee, Washington 98801.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Floyd Rogalski, Project Planner, Cle Elum Ranger District, 803 West Second Street, Cle Elum, Washington 98922; phone 509–674–4411, ext. 315.

SUPPLEMENTARY INFORMATION: The Forest Service is initiating this action in response to an application filed by PCTC. The applicant requests permanent easements across NFS lands for the purpose of constructing and maintaining access roads to approximately 45 separate parcels of land owned by the PCTC. Because these lands form a "checkerboard" ownership patter, the parcels to be accessed are surrounded by NFS lands; no legal road access to the sections currently exists.

The applicant seeks legal access pursuant to Section 1323 of the Alaska National Interest Lands Conservation Act (ANILCA). The ANILCA directs the Forest Service to grant access to inholdings of non-Federal land within the National Forest boundary for the reasonable use and enjoyment of those lands by the landowner. The applicant has stated that it intends to manage the lands to be accessed for long term timber management under its approved Habitat Conservation Plan. The applicant intends to build roads on the authorized rights-of-way sufficient to support the intended use of the land. The proposed access involves a total of approximately 24 miles of road across 194 acres of NFS land in 45 different locations. These include the Gold Creek, Rock Creek, Little Naches, Big Creek, Little Creek, and North and South Forks and Taneum Creek drainages, all south of I–90 and Cle Elum, Washington; and lands to the east and west of Lakes Keechelus, Kachess and Cle Elum; Little Salmon La Sac Creek, Salmon La Sac Creek, Paris Creek, Boulder Creek and Fortune Creek in the Cle Elum River drainage; and the West Fork Teanway River drainage; all north of I–90 and Cle Elum, Washington. Management allocations of the NFS lands under the Northwest Forest Plan are predominately Adaptive Management Area (Snoqualmie Pass AMA) and Late Successional Reserves, with some Matrix.

A range of alternative will be considered, including a no action alternative. Other alternatives will be developed in response to issues received during scoping.

The major issues that have been identified to date include: the impact to heritage resources; the potential reduction in the spectrum of recreational opportunities currently available; the impact on the economy of the county; the impact to the roadless areas; the impact to late-successional habitat; and the impact to water quality.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Tribes, and other organizations or individuals who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring and identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public meetings are not scheduled prior to the release of the draft EIS. Meetings will be held during the comment period between the draft and final EIS. The location of these meetings will be determined by the addresses on the project mailing list. Notice of meeting dates and locations will be published in the newspaper of record for the Wenatchee National Forest, *The Wenatchee World*, and the following localized newspapers: *Northern Kittitas County Tribune; Ellensburg Record*; and *Yakima Herald Republic*.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1997. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**.

Copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsisn Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in October 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest, is the responsible official. The responsible official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: October 3, 1997.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 97–26982 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee will meet on October 22 and 23, 1997 at the conference room in the United Way Building, 2280 Benton Drive, Redding, CA. On October 22, the meeting will begin at 10:00 a.m. and adjourn at 5:00 p.m. The meeting on October 23 will resume at 8:00 a.m. and adjourn at 3:00 p.m. Agenda items to be covered include: (1) Northwest Forest Plan Implementation; (2) Evaluation of the Watershed Analysis Process; (3) Upper Clear Creek Watershed Analysis Status; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Kathy Hammond, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, CA 96097; telephone 916–842–6131, (FTS) 700–467–1360.

Dated: October 6, 1997.

Kathy L. Hammond,

PAC Coordinator.

[FR Doc. 97–26986 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Beans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the voluntary United States Standards for Beans by changing the name of the class Black Turtle Soup beans to Black beans and establishing a separate grade chart for Cranberry beans. These changes were requested by the industry in order to improve the usability of the United States Standards for Beans.

Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." The Grain Inspection, Packers and Stockyards Administration (GIPSA) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) published a notice in the **Federal Register** on August 1, 1997 (62 FR 41335), that it was proposing to change the name of the class Black Turtle Soup beans to Black beans and to establish a separate grade chart for Cranberry beans.

GIPSA received only one comment in response to that notice. The Michigan Bean Shippers Association asked that GIPSA proceed with implementing the changes and stated "The changes * * * will definitely be beneficial to U.S. world bean commerce." GIPSA has determined that establishing a separate grade chart for Cranberry beans and renaming the class Black Turtle Soup beans as Black beans will improve the usability of U.S. Standards for Beans.

Since these changes to the standards were recommended and reviewed by the affected trade and are consistent with current practices in the trade, they will become effective on November 10, 1997.

The United States Standards for Beans do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture. The revised United States Standards for Beans are available either by accessing GIPSA's Home Page on the Internet at: www.usda.gov/gipsa/strulreg/standard/beans or by contacting the Audiovisual, Regulatory and Training Staff, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, S.W., Washington, D.C. 20250–3649; telephone (202) 720–1734; FAX (202) 720–4628.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: October 3, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–26897 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration Pilot Program for Barge Inspection Services on Selected Rivers

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice with comment period.

SUMMARY: GIPSA is announcing its intent to conduct a pilot program allowing more than one official agency to provide barge inspection services within a single geographic area on the Mississippi River and/or other selected rivers. GIPSA is requesting comments on the specific pilot programs described below, and GIPSA also is announcing that it will consider suggestions for other possible pilot programs in lieu of those listed below.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by November 15, 1997.

ADDRESSES: Comments must be sent to Neil E. Porter, Director, Compliance Division, STOP 3604 (Room 1647–S), 1400 Independence Avenue, S.W., Washington, D.C. 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Neil E. Porter.

All comments received will be made available for public inspection during regular business hours at the above address located at Room 1647–S, 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION: Sections 7(f) and 7A of the United States Grain Standards Act, as amended (Act), were amended by the U.S. Grain Standards Act Amendments of 1993 (Pub. L. 103–156) on November 24, 1993, to authorize GIPSA's Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of pilot programs is to evaluate the impact of allowing more than one official agency to provide official services within a single geographic area.

GIPSA considered several possible pilot programs as announced in the March 14, 1994, **Federal Register** (59 FR 11759) and the March 10, 1995, **Federal Register** (60 FR 13113). In the September 27, 1995, **Federal Register** (60 FR 49828) GIPSA announced two pilot programs, Timely Service and Open Season, starting on November 1, 1995, and ending on October 31, 1996. These two pilot programs were extended to October 31, 1999, as announced in the October 3, 1996, **Federal Register** (61 FR 51674).

The March 14, 1994, **Federal Register** Notice requested comments on a possible pilot program for barges on selected rivers or portions of rivers as defined by GIPSA. This was one of five potential pilots being considered. GIPSA received 41 comments. Seven

specifically talked about the pilot programs for barges. Of those seven, five supported the program for barges, and two did not. Subsequently, GIPSA determined that this proposed pilot program was too narrow in scope for the initial round of pilot programs.

Subsequently, some official agencies expressed their belief that a pilot program on the Mississippi River would be beneficial because there is some uncertainty over the boundary lines between official agencies along the Mississippi River. At one point GIPSA considered the boundary to be the middle of a river. Official agencies found this very difficult to work with, and GIPSA subsequently changed the boundary definition to the edge of a river. The middle of a river was viewed as an open area to be served by either contiguous official agency.

In 1993, because of flooding along the Mississippi River, GIPSA granted a temporary exception for certain types of barge inspections along portions of the Illinois, Mississippi, and Missouri Rivers. This exception made the covered river areas open to any official agency for probe sampling and inspections to expedite barge traffic. GIPSA noted no problems as a result of this exception.

In addition, some facilities located along the Mississippi River (Birds Point Terminal, Bertrand, Missouri; Peavey, St. Louis, Missouri; ADM, Winona, Minnesota; and Consolidated Grain, Caruthersville, Missouri) have received services from alternative official agencies under the existing pilot programs. There have been no significant problems resulting from the barge inspections on the Mississippi River under the existing pilot programs.

GIPSA is requesting comments on the four barge pilot program options described below.

1. Barges on the Mississippi River may be sampled by probe by any official agency; or

2. Barges on the Mississippi River may be sampled by probe at any location by the official agency designated to serve the geographic area within which the barge was loaded; or

3. Barges on all rivers may be sampled by probe by any official agency; or

4. Barges on all rivers may be sampled by probe at any location by the official agency designated to serve the geographic area within which the barge was loaded.

GIPSA will consider comments on other possible pilot programs.

Official agencies desiring to participate in this pilot program would be asked to submit their plans to provide official services under such a pilot program to Compliance Division. This pilot program will start approximately January 1, 1998, and run concurrently with the two existing pilot programs ending October 31, 1999. During this time, GIPSA will monitor these pilot programs. If, at any time, GIPSA determines that a pilot program is having a negative impact on the official system or is not working as intended, the pilot program may be modified or discontinued.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 6, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–26899 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration; Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on the Federal Grain Inspection Service Advisory Committee.

SUPPLEMENTARY INFORMATION: Under authority of section 20 of the United States Grain Standards Act (Act) Pub. L. 97–35, the Secretary of Agriculture established the Federal Grain Inspection Service (FGIS) Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 14(c) of the United States Grain Standards Act Amendments of 1993, Pub. L. 103–156, extended the authority for the Advisory Committee through September 30, 2000.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and four alternate members whose terms expire in December 1997.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: James R. Baker, Administrator, GIPSA, 1400 Independence Avenue, S.W., Stop 3601, Washington, D.C. 20250–3601, in writing and request Form AD–755, which must be completed and submitted to the Administrator at the above address not later than December 9, 1997.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status. To ensure that recommendations of the committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: October 3, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–26898 Filed 10–9–97; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial
Keene USARC, 682 Main Street, Keene, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Janitorial/Custodial
Craft Bros. USARC, 11 St. Anselm's Drive, Manchester, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Janitorial/Custodial
Grenier Field USARC, Manchester, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Janitorial/Custodial
Paul A. Doble USARC, 125 Cottage Street, Portsmouth, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Janitorial/Custodial
Raymond Bisson USARC, 70 Rochester Hill Road, Rochester, New Hampshire
NPA: Easter Seal Society of New Hampshire, Manchester, New Hampshire

Janitorial/Custodial
Rainbow Bridge U.S. Plaza, Niagara Falls, New York
NPA: Niagara County Chapter, NYSARC, Niagara Falls, New York

Switchboard Operation
Veterans Affairs Medical Center, 423 East 23rd Street, New York, New York
NPA: The Corporate Source, Inc., New York, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–26996 Filed 10–9–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 20, July 11, 18, August 22, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 33585, 37191, 38518 and 44637) of proposed additions to the Procurement List.

The following comments pertain to Drain Plug Assembly (2590–00–299–0739)

Comments were received from the current contractor for the drain plug assembly, both through its counsel and through the office of a Member of Congress. The contractor indicated that addition of this item to the Procurement List would severely affect the company in that it would lose sales and have to close a production line, with the layoff of several workers. The contractor also stated that its subcontractors for plating, heat treating, and painting of components would be affected.

The contractor claimed that the addition would eliminate at least one proven supplier of the drain plug assemblies, as the company could not afford to maintain an idle production line and would not be able to retool fast enough to meet emergency requirements. The contractor questioned the nonprofit agency's capability to meet emergency requirements and its ability to produce the assembly at a price comparable to that currently offered by the contractor, claiming that the addition will greatly increase the Government's cost to obtain the item. The contractor also indicated that addition of the item to the Procurement List was inconsistent with Government policies to increase contracting with small businesses.

The contractor indicated that the drain plug assembly represented a very small percentage of its Government sales, and thus an even smaller percentage of its total sales. These percentages are well below the level the Committee normally considers to constitute severe adverse impact on a contractor. In addition, we have been informed that demand for the assembly has been sharply reduced, so sales of the item will represent an even smaller amount in the future.

The nonprofit agency will be assembling the components of the drain plug assembly, so the contractor will have the opportunity to provide these components as a subcontractor and may not have to shut its production line, lay off workers, and remove itself from the ranks of potential suppliers of the drain plug assembly. Committee regulations encourage nonprofit agencies to subcontract with small businesses such as the commenting contractor.

Although the contractor indicated that its subcontractors would be providing information to the Committee on how the addition would affect them, we have received no such information. It would thus appear that any impact on these subcontractors is not severe.

Assessments of Government contractor capability normally include capability to meet emergency requirements that are in excess of normal demands. Nonprofit agencies participating in the Committee's Javits-Wagner-O'Day (JWOD) Program are held to the same capability standards as other Government contractors. In this case, the Government contracting activity which buys the drain plug assembly declined an opportunity to conduct a

capability inspection of the nonprofit agency, stating that it considered the nonprofit agency capable of producing the item. The Committee found the nonprofit agency capable based on the contracting activity's conclusion and an assessment by industrial engineers for the central nonprofit agency representing this nonprofit agency.

The Committee is required to set a fair market price for commodities, such as the drain plug assembly, which it adds to the Procurement List. The price, which is set through application of the Committee's Fair Market Pricing Policy, reflects the market for the item in question. This pricing mechanism ensures that the Government does not pay an unreasonable price for an item added to the Procurement List. In this case, the price was negotiated with the contracting activity, which believes the price is a fair one. Moreover, the negotiated price is only slightly above the contractor's current price, and below the recent contract price the contractor quoted in its comments. It is well below the high bid price the contractor also quoted.

The Committee does not believe that its addition of the drain plug assembly to the Procurement List is inconsistent with Government policy on increasing small business contracting. Like the Government's small business contracting programs, the JWOD Program is intended to increase Government contracting for its constituency. However, the JWOD Program is only a tiny fraction of the size of the Government's small business contracting programs. Consequently, the addition of the drain plug assembly to the Procurement List, though regrettable from the contractor's viewpoint, does not impair the Government's larger policy objectives for small business contracting as a whole.

The following comments pertain to File, Folder (7530–00–990–8884)

Comments were received in response to sales data requests sent to two companies, the current contractor for the file folder at the Ft. Worth depot and a company which supplies the folder to another Government depot. Both contractors claimed that this Procurement List addition would have a severe adverse impact on them. The current contractor for the Ft. Worth depot also indicated that it was continuing to be affected by earlier additions to the Procurement List, which had taken away business faster than the company could adapt to the losses, and submitted financial data to support contentions about its current profitability.

The Committee decided to reduce the supply requirement being added to the Procurement List to 50 percent of the needs of the Ft. Worth depot to reduce the impact on contractors. At this level, the impact of the addition on the current contractor is below the level which the Committee normally considers to be severe adverse impact, even when any effects of previous additions and the contractor's current profitability are taken into account. The earlier impacts occurred in 1979 and 1995. The Committee notes that the current contractor's sales have risen significantly since those impacts occurred, so the Committee does not agree with the current contractor's contention that it has been unable to adapt to the losses it suffered.

The other contractor is not currently providing the folder to the Ft. Worth depot, so its objection is only to losing the opportunity to supply the folder in the future. The Committee does not consider this loss of a mere expectancy of a Government contract, by itself, to constitute severe adverse impact. In this case, because the Committee is leaving 50 percent of the Ft. Worth depot's supply requirement on the competitive market, the contractor will continue to have a chance to supply the requirement.

The following comments pertain to Bag, T-Shirt & Bag, Produce, Star Bottom (8105)

Comments were received from a current contractor for the bags. The contractor indicated that patents for the bags are controlled by two large oil companies which readily take action against any infringement of the patents. The contractor suggested that the patent requirements for the bags be researched before the nonprofit agency makes the bags.

Patent counsel for the nonprofit agency has researched the patents, and has advised the nonprofit agency and the Committee that the nonprofit agency's method of making the bags will not infringe the patents in question. Consequently, the Committee has concluded that the patents are not an obstacle to addition of the bags to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Plug Assembly, Drain
2590–00–299–0739

Folder, File, Pressboard
7530–00–990–8884
(50% of the requirements for the GSA Fort Worth, TX depot)

Bag, T-Shirt Style
8105–00–NIB–1023
(Requirements for DeCA Regions Midwest, Northwest, Southwest, Alaska & Hawaii)

Bag, Produce, Star Bottom
8105–00–NIB–1046
(Requirements for DeCA Regions Midwest, Northwest, Southwest, Alaska & Hawaii)

Service

Janitorial/Custodial
West Los Angeles USARC, Los Angeles, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–26997 Filed 10–9–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 51827, FR Doc. 97–26327, in the issue of October 3, 1997, in the first column, the NSN shown as 7340–00–197–1274 should read 7340–00–488–7939.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–26998 Filed 10–9–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held October 21 & 22, 1997, room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

October 21

General Session 9:00 a.m.–12:00 p.m.

1. Opening remarks by the Chairmen.
2. Comments or presentations by the public.
3. Presentation by Trusted Information Systems, Inc. on Key Recovery Methodology.
4. Discussion on Department of Commerce-Technical Advisory Committee communications.
5. Election of Committee Chairpersons.

October 21 & 22

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings for portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information of copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: October 6, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–26990 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 6, 1997, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (62 FR 31070). The review covers one manufacturer/exporter, Yieh Hsing, of the subject merchandise to the United States and the period May 1, 1995 through April 30, 1996.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/3833.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR Part 353 (1997).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan on May 7, 1984 (49 FR 19369). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1995/1996 review period on May 8, 1996 (61 FR 20791). On May 24, 1996, the petitioners, Allied Tube & Conduit Corp., Wheatland Tube Company, Sawhill Tubular Corp., Division of Armco Inc., and Laclede Steel Co., filed a request for review of Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing). We initiated the review of Yieh Hsing on June 25, 1996 (61 FR 32771).

On June 6, 1997, the Department published the preliminary results of the administrative review. We received comments from Yieh Hsing, and rebuttal comments from the petitioners. The Department has now completed this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing

Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. As noted above, we received timely comments from Yieh Hsing, and rebuttal comments from the petitioner.

Comment 1: Yieh Hsing asserts that other discounts are understated by a factor of 1000 in its home market sales listing. Yieh Hsing contends that the Department should correct this error in the final results of review. This error was not disputed by the petitioners.

Department's Position: We agree. During our verification of Yieh Hsing, we verified that other discounts were understated by a factor of 1000. (See January 29, 1997 verification report of Yieh Hsing, at page 10.) We have amended our calculations to reflect the correct amount for this expense.

Comment 2: Yieh Hsing contends that in calculating its dumping margin, the Department improperly compared U.S. prices to a 'six-month window period' surrounding each U.S. sale. Yieh Hsing asserts that the Department should follow its normal practice, and compare individual U.S. sales to normal values corresponding to the month of the U.S. sale.

Petitioners contend that normal values have not been averaged across a six month period, and that the Department correctly matched U.S. prices to normal values for the corresponding month.

Department's Position: We have reviewed our preliminary calculations and determined that we improperly compared U.S. sales to a weighted-average six-month period in our preliminary results. In these final results, we have amended our calculations, and based our calculations of normal value to the month corresponding to the U.S. sale.

Final Results of Review

As a result of this review, we preliminarily determine that a margin of 0.37 percent exists for Yieh Hsing for the period of June 1, 1995 through May 31, 1996.

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered or withdrawn from the warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) No cash deposit shall be required for Yieh Hsing because its weighted average margin is less than 0.5 percent and therefore *de minimis*, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original fair value investigation, the cash deposit rate will be 9.7%, the "all others" rate established in the LTFV investigation.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27033 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Councils

AGENCY: Commercial Service, Commerce.

ACTION: Notice of opportunity to serve as a member of one of the fifty-one district export councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-one District Export Councils (DECs) nationwide. The DECs are closely affiliated with the Export Assistance Centers (EACs) of the Commercial Service. DECs combine the energies of over 1,500 exporters and private and public export service providers who volunteer their time to supply specialized expertise to small and medium-sized businesses in their local communities who are interested in exporting. DEC members volunteer at their own expense.

Providing their expertise and mentoring services, DEC members help local firms move from their first international business plan to their first export sale. The DECs create seminars that simplify trade finance, host international buyer delegations, design breakthrough exporting guides, put exporters on the Internet, and help build local partnerships that strengthen export assistance programs. Because DEC members represent both the users and providers of local export assistance services, they can identify gaps in the export services that EACs provide to U.S. businesses and thus shape EAC international trade programs to better meet local business needs.

Selection Process

About half of the approximately 30 positions on each of the 51 DECs will be open for nominations for the term that begins January 1, 1998, and ends December 31, 2001. Nominees are recommended by the local DEC Executive Secretary in consultation with the DEC and with other local export promotion partners. After undergoing a review process, DEC nominees are then selected and appointed to DEC membership by the Secretary of Commerce.

Membership Criteria

Each DEC is interested in nominating highly-motivated people active in the local exporting community.

Membership composition on the DECs include: exporters (such as representatives from manufacturing, the services industry, and export trading companies); bankers; U.S. Small Business Administration representatives; state and local officials; and other "partners" including international lawyers and accountants as well as representatives from world trade centers, chambers of commerce, export management companies, labor and freight forwarders.

Deadline

Applications for nomination to a DEC must be received by the designated local DEC representative by November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nathanael Herman, International Trade Specialist, the Commercial Service, tel. 202–482–5956. Additional information about the DECs is also found on the National DEC Internet Home Page at http://www.ita.doc.gov/usfcs/usf/dec.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: September 29, 1997.

Daniel J. McLaughlin,

Deputy Assistant Secretary of Commerce for Domestic Operations.

[FR Doc. 97–26985 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–406]

Certain Agricultural Tillage Tool From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 9, 1997, the Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil for the period January 1, 1995 through December 31, 1995 (62 FR 36771). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for the reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Gayle Longest, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers the producer/exporter of the subject merchandise Marchesan Implementos Agrícolas, S.A. (Marchesan). This review covers the period January 1, 1995 through December 31, 1995, and five programs.

We published the preliminary results of review on July 9, 1997 (62 FR 36771) and invited interested parties to comment. We received no comments on our preliminary results.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 ("the Act"), as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995. In addition, all references to the Department's regulations are to the provisions codified at 19 CFR Part 355 (April 1997). The Department is conducting this administrative review in accordance with § 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Accelerated Depreciation for Brazilian-Made Capital Goods
2. Preferential Financing for Industrial Enterprises by Banco do Brasil (FST and EGF loans)
3. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brazil
4. Preferential Financing under PROEX (formerly under Resolution 68 and 509 through FINEX)
5. Preferential Financing under FINEP

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Final Results of Review

In accordance with 19 C.F.R. 355.22(c)(4)(ii), we calculated an individual subsidy rate for the only producer/exporter subject to this administrative review. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy for Marchesan to be zero percent *ad valorem*.

The Department will instruct the U.S. Customs Service (Customs) to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Marchesan exported on or after January 1, 1995, and on or before December 31, 1995. The Department will also instruct Customs to collect a cash deposit of estimated countervailing duties of zero percent on all shipments of this merchandise from Marchesan, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered.

As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: October 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27031 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–005]

Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 17, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1991 administrative review of the countervailing duty order on cold-rolled carbon steel flat-rolled products (cold-rolled steel) from Argentina. We have now completed this review and determine the total net subsidy to be 0.00 percent *ad valorem* for Propulsora and 1.84 percent *ad valorem* for all other companies. For further information on assessment of countervailing duties, see the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4149.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1997, the Department published in the **Federal Register** (62 FR 38257) the preliminary results of its 1991 administrative review of the countervailing duty order on cold-rolled steel from Argentina (49 FR 18006; April 26, 1984). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

This review involves two producer/exporters, Sociedad Mixta Siderurgica (SOMISA) and Propulsora Siderurgica S.A.I.C. (Propulsora), which accounted for all exports of the subject merchandise from Argentina during the review period, and 20 programs. We invited interested parties to comment on the preliminary results; however, no comments were filed by any interested party.

On August 1, 1997, the Department published in the **Federal Register** the final results of changed circumstances countervailing duty reviews covering the orders on leather, wool, oil country tubular goods, and cold-rolled steel from Argentina (*see Leather From Argentina, Wool From Argentina, Oil Country Tubular Goods From Argentina, and Carbon Steel Cold-Rolled Flat Products From Argentina; Final Results of Changed Circumstances Countervailing Duty Reviews* (62 FR 41361)). In these changed circumstances reviews, the Department determined that, based upon the ruling of the U.S. Court of Appeals for the Federal Circuit in *Ceramica Regiomontana* v. *United States*, 64 F.3d 1579, 1582 (Fed. Cir. 1995), it does not have the authority to assess countervailing duties on entries of merchandise covered by this order occurring on or after September 20, 1991. As a result, the effective date of the revocation of this CVD order on cold-rolled flat products from Argentina is now September 20, 1991. (This order had already been revoked, effective January 1, 1995, pursuant to Section 753 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (*see Revocation of Countervailing Duty Orders* 60 FR 40568, August 9, 1995)). Therefore, the results of this administrative review will only apply to entries of the subject merchandise made between January 1, 1991 and September 19, 1991. (*See Final Results of Review* section of this notice).

Applicable Statute

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review include shipments of Argentine cold-rolled carbon steel flat products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and under 0.1875 inches in thickness whether or not in coils; as currently provided for under the following item numbers of the HTS: 7209.11.00, 7209.12.00, 7209.13.00, 7209.14.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.00, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.42.00, 7209.43.00, 7209.44.00, 7209.90.00, 7210.70.00, 7211.30.50, 7211.41.70, 7211.49.50, 7211.90.00, 7212.40.50. The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Pursuant to Ceramica Regiomontana, S.A. v. United States, 853 F. Supp. 431 (CIT 1994), Commerce is required to calculate a country-wide CVD rate, i.e., the all-other rate, by "weight-averaging

the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms." Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Argentine exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR § 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3). Propulsora had a significantly different net subsidy rate during the review period pursuant to 19 CFR § 355.22(d)(3). Therefore this company is treated separately for assessment purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Government Equity Infusions

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. On this basis, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Propulsora	0.00
All Other Companies	1.54

2. Rebate of Indirect Taxes (Reembolso/ Reintegro)

In the preliminary results, we found that there was no benefit from this program during the review period. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

B. New Program Found To Confer Subsidies

Regional Tariff Zones for Natural Gas

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. On this basis, the net subsidies for this program are as follows:

Manufacturer/exporter	Rate (percent)
Propulsora	0.00
All Other Companies	0.30

II. Program Found Not To Confer Subsidies

Preferential Natural Gas Tariffs Under Resolution 192/91

In the preliminary results, we found that this program did not confer a subsidy on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Preferential Electricity Tariff Rates
2. Privatization Assistance Under Law 23697 and Decree 1144/92
3. Medium- and Long-Term Loans
4. Capital Grants
5. Income and Capital Tax Exemptions
6. Government Trade Promotion Programs
7. Exemption from Stamp Taxes Under Decree 186/74
8. Incentives for Trade (Stamp Tax Exemption Under Decree 716)
9. Incentive for Export
10. Export Financing Under OPRAC 1, Circular RF–21
11. Pre-Financing of Exports Under Circular RF–153
12. Loan Guarantees
13. Post-Export Financing Under OPRAC 1–9
14. Debt Forgiveness
15. Tax Deduction Under Decree 173/85

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

IV. Program Found Not to Exist

Tax Concessions for the Steel Industry

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Final Results of the Review

As discussed above in the *Background* section, the Department has determined that the effective date of the revocation of the countervailing duty order on cold-rolled steel is September 20, 1991. Therefore, the results of this administrative review will only apply to entries of the subject merchandise made between January 1, 1991 and September 19, 1991.

For the period of review, we determine the net subsidy to be 0.00 percent *ad valorem* for Propulsora and 1.84 percent ad valorem for all other companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimus*. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all entries of subject merchandise from Propulsora made between January 1, 1991 and September 19, 1991. The Department will also instruct the U.S. Customs Service to assess a countervailing duty of 1.84 percent *ad valorem* for entries of subject merchandise from all other companies made between January 1, 1991 and September 19, 1991. Separate instructions regarding entries made on or after September 20, 1991 have already been sent to Customs. Because this countervailing duty order has been revoked, no further instructions will be sent to Customs regarding cash deposits.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: October 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27032 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970326070–7204–02]

Notice of Delayed Termination of Validation Services for Federal Information Processing Standards (FIPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Delayed termination of validation services.

SUMMARY: The NIST Information Technology Laboratory (NIST) is terminating validation services for FIPS 21–4, COBOL; FIPS 69–1 FORTRAN; FIPS 128–2, Computer Graphics Metafile, Air Transport Association Profile (CGM (ATA)); FIPS 160, C, and FIPS 151–2, POSIX.

NIST announced by Department Organization Order 30–2B the formation of the Information Technology Laboratory (ITL). Under the new ITL organization, NIST is refocusing its program for information technology, concentrating on the development of conformance tests for emerging information technologies rather than the operation of software testing services. NIST will assist private industry and government agencies in establishing testing programs for these standards by providing NIST conformance testing materials to interested parties.

EFFECTIVE DATE: Validation services for FIPS 151–2. POSIX, will terminate on December 31, 1997. Validation services for FIPS 21–4, COBOL; FIPS 69–1, FORTRAN; FIPS 128–2, CGM (ATA); and FIPS 160, C, will terminate on or before September 30, 1998. These validation services will terminate before September 30, 1998, if other private industry and/or government agency testing programs have been established.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3283, email lsr@nist.gov.

SUPPLEMENTARY INFORMATION: The NIST announced on April 8, 1997, (62 FR 16788–89) that it was considering the termination of the validation services for FIPS 21–4, COBOL; FIPS 69–1, FORTRAN; FIPS 128–2 CGM (ATA); FIPS 151–2, POSIX; and FIPS 160, C. In response to comments on the April 8, 1997, announcement, NIST is delaying termination of these services to give private industry and/or government agencies more time to establish their own validation services. If private industry and/or government agency testing programs are established before September 30, 1998, NIST may announce an earlier date for terminating services.

A Director of Conformance Testing Programs, Products, and Services is available on the World Wide Web (WWW) at the Universal Resource Locator (URL) http://www.nist.gov/ctdirectory.html. NIST test suites and testing procedures are distributed freely and are accessible from the Directory. Additional conformance testing information is available on the URL http://www.itl.nist.gov/div897/ctg.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Pub. L. 104–106.

Dated: October 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–26878 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

October 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import limits.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58044, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on October 14, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Level not in a group	
239	6,383,885 kilograms.
Levels in Group I	
200	1,173,838 kilograms.
218	19,718,381 square meters.
219	5,047,742 square meters.
300	4,853,176 kilograms.
301–P [2]	4,853,176 kilograms.
301–O [3]	970,636 kilograms.
313	22,648,154 square meters.
314	51,767,208 square meters.
315	32,354,504 square meters.
317/326	13,582,734 square meters.
363	22,259,429 numbers.
369–D [4]	231,335 kilograms.
369–S [5]	261,134 kilograms.
604	770,625 kilograms of which not more than 437,223 kilograms shall be in Category 604–A [6].
607	3,179,632 kilograms.
611	14,206,752 square meters.
613/614/615	48,897,839 square meters of which not more than 28,471,965 square meters shall be in Category 614 and not more than 28,471,965 square meters shall be in Categories 613/615.
617	17,657,553 square meters.
619	7,172,947 square meters.
625/626/627/628/629	14,261,869 square meters of which not more than 11,324,076 square meters shall be in Category 625.
669–P [7]	6,823,828 kilograms.
Group II	
237, 330–359, 431–459, 630–659 and 831–859, as a group.	299,340,179 square meters equivalent.
331/631	1,765,931 dozen pairs.
334/634	646,569 dozen.
335/635/835	533,121 dozen.
336/636	342,208 dozen.
338/339	2,001,511 dozen.
340	309,554 dozen.
341/641	687,533 dozen.
342/642	617,245 dozen.
345	326,752 dozen.
347/348/847	857,173 dozen.
351/651	247,031 dozen.
359–H/659–H [8]	1,419,417 kilograms.
433	10,549 dozen.
434	13,023 dozen.
435	58,107 dozen.
438	20,414 dozen.
442	21,472 dozen.
638/639	2,293,845 dozen.
640	533,849 dozen.
645/646	323,545 dozen.
647/648	1,128,278 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27011 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection #3038–0016: Compliance with Requirements for Designation as a Contract Market.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0016, Compliance with Requirements for Designation as a Contract Market, which is due to expire on February 28, 1998. The information collected pursuant to this rule provides a basis for determining that the terms and conditions of a futures contract reflect current commercial practices and that the contract serves an economic purpose. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before December 9, 1997.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Compliance with Requirements for Designation as a Contract Market.

Control Number: 3038–0016.

Action: Extension.

Respondents: Contract Markets.

Estimated Annual Burden: 500 hours.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours. per response
Contract Markets	1.50	1	1	250
	5.2	1	1	250

Issued in Washington, D.C. on October 3, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–26895 Filed 10–9–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection #3038–0035—Rules Relating to the Offer and Sale of Foreign Futures and Foreign Options.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0035, Rules Relating to the Offer and Sale of Foreign Futures and Foreign Options which is due to expire on February 28, 1998. The information collected pursuant to this rule is intended to detect fraud in the offer and sale of foreign futures and foreign options to people located in the United States. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the equality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before December 9, 1997.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Relating to the Offer and Sale of Foreign Futures and Foreign Options.

Control Number: 3038–0035.

Action: Extension.

Respondents: FCMs, IBs, CPOs, CTAs and APs.

Estimated Annual Burden: 3186 hours.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours per response
FCMs, IBs, CPOs, CTAs, and APs	30.4	560	560	1.00
	30.5	136	136	1.00
	30.6	440	440	.50
	30.7	120	120	.50
	30.8	120	1,440	1.00
	30.10	120	120	4.00

Issued in Washington, D.C. on October 3, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–26896 Filed 10–9–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Task Force on Defense Reform

ACTION: Notice.

SUMMARY: Notice is hereby given of a meeting of the Task Force on Defense Reform (the Task Force). The meeting will be open to the public. One purpose of the meeting is to meet with the labor unions representing federal employees in DoD. In addition, time will be set aside for anyone who wishes to address the Task Force with ideas about streamlining, restructuring, and reengineering OSD and other components or elements of the Department of Defense.

The Task Force on Defense Reform was established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in the Department of Defense, with emphasis on the Office of the Secretary of Defense, the Defense Agencies and the DoD Field Activities, and the Military Departments.

DATES: Tuesday, October 21, 1997, at 3:30 P.M.

ADDRESSES: Room 3E869, the Pentagon, Washington, DC. Seating is limited. Must call Ms. Lynn Cline at the number listed in **FOR FURTHER INFORMATION** section below to arrange for access to Pentagon.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Lynn Cline, Task Force on Defense Reform, Room 3C965, Pentagon, Washington, DC 20301. Telephone: (703) 614–7522. Interested parties should call Ms. Cline before 1:00 p.m., Tuesday, October 21, 1997.

Dated: October 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26891 Filed 10–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–500]

Information Collection Submitted for Review and Request for Comments

October 3, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 28, 1997 (62 FR 28842) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–500, "Application for License for Water Projects With More Than 5MW Capacity".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0058. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of applicants filing with the Commission. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–500 is filed in accordance with Sections 4(e), 9, 14, 15 of the FPA. The FPA as amended by the Electric Consumers Protection Act (ECPA) (Pub. L. 99–495, 100 Stat. 1243, Oct. 16, 1986) authorizes the Commission to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction and for non-federal hydroelectric power plants as amended by the Act. ECPA also revised the language of the FPA concerning environmental issues and requires the Commission in its licensing activities to give equal consideration to preserving environmental quality. The information is collected in the form of a written application for a license and is used by the Commission staff to determine the broad impact of the license application.

5. *Respondent Description:* The respondent universe currently comprises on average, 6 applicants for a hydro electric license.

6. *Estimated Burden:* 4,992 total burden hours, 6 respondents, 1 response annually, 832 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 4,992 hours÷2,087 hours per year × $110,000 per year=$263,115.

Statutory Authority: Sections 4(e), 9, 14, and 15 of the Federal Power Act (FPA), 16, U.S.C. 791a *et seq.*

Lois D. Cashell,

Secretary.

[FR Doc. 97–26971 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (FERC–505)

October 3, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 28, 1997 (62 FR 28843) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before November 10, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFOBMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–505 "Application for License for Water Projects 5MW capacity or Less".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0115. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of applicants filing with the Commission. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–505 is filed in accordance with Sections 4(e), 9, 14, 15 (FPA). Authority for the application and license process is made in accordance with the Commission's defined role as mandated under provisions of the Federal Power Act and the Energy Security Act of 1980. Submission of the data is necessary to fulfill the requirements of Sections 9 and 10(a) of the FPA in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Further Congress has authorized the Commission to exempt certain small hydroelectric projects from the licensing requirements imposed by this provision. Under Section 405(d) of the Public Utilities Regulatory Policies Act of 1978, the Commission in its discretion (by rule or order) grant an exemption in whole or in part from the requirement (including the licensing requirements) of Part I of the Federal Power Act to small hydroelectric power

projects having a proposed installed capacity of 5,000 kilowatts or less. The information is collected in the form of a written application for a license and is used by the Commission staff to determine the broad impact of the license application.

5. Respondent Description: The respondent universe currently comprises on average, 10 applicants for a hydro electric license.

6. Estimated Burden: 1,690 total burden hours, 10 respondents, 1 response annually, 169 hours per response (average).

7. Estimated Cost Burden to Respondents: 1,690 hours ÷ 2,087 hours per year × $110,000 per year = $89,075.

Statutory Authority: Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* and Section 408 Energy Security Act of 1980 (42 U.S.C. 8701).

Lois D. Cashell,

Secretary.

[FR Doc. 97–26972 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–5–006]

Algonquin Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff Volume No. 1 the following tariff sheets to be effective November 1, 1997:

Seventh Revised Sheet No. 40
Second Revised Sheet No. 658
Third Revised Sheet No. 659
Second Revised Sheet No. 660
Third Revised Sheet No. 686
Fifth Revised Sheet No. 688
Third Revised Sheet No. 714
Original Sheet No. 715
Sheet Nos. 716–798

Algonquin states that the purpose of this filing is to comply with the Commission's Letter Order issued on June 16, 1997, in Docket No. RP97–5–006, which approved Algonquin's pro forma tariff sheets implementing the Order No. 587–C Standards for Business Practices of Interstate Natural Gas Pipelines issued March 4, 1997 and directed Algonquin to file actual tariff sheets at least 30 days prior to the designated November 1, 1997, effective date.

Algonquin states that copies of this filing were served on firm customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26919 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–90–003 and RP97–99–004]

Algonquin LNG, Inc.; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Algonquin LNG, Inc. (ALNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 83 to be effective November 1, 1997.

ALNG states that the purpose of this filing is to comply with the Commission's Letter Order issued on July 3, 1997, in Docket Nos. RP97–90–001 and RP97–99–002, which required ALNG to incorporate by reference the GISB standards as approved in the Commission's Order No. 587–C Standards for Business Practices of Interstate Natural Gas pipelines issued March 4, 1997.

ALNG states that copies of this filing were served on firm customers of ALNG and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26942 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–110–005]

Black Marlin Pipeline Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Black Marlin Pipeline Company (Black Marlin), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

First Revised Sheet No. 107A
First Revised Sheet No. 107B
First Revised Sheet No. 109
First Revised Sheet No. 111
Third Revised Sheet No. 112
First Revised Sheet No. 112A
Second Revised Sheet No. 132
First Revised Sheet No. 134
First Revised Sheet No. 135
Third Revised Sheet No. 136
First Revised Sheet No. 136A
Second Revised Sheet No. 201A

Black Marlin states that on April 29, 1997, in Docket No. RP97–110–002, it submitted pro forma changes to the General Terms and Conditions of its Tariff (April 29, filing) in compliance with the requirements of Order No. 587–C issued March 4, 1997 in Docket No. RM96–1–004. The April 29 Filing included pro forma tariff changes to implement Gas Industry Standards Board standards to become effective August 1, 1997, relating to Black Marlin's Internet web page, as well as tariff changes relating to revised and new business standards to become effective November 1, 1997. The April 29, filing also included an alternate version of Sheet No. 201A which did not incorporate specific data dictionaries into Black Marlin's Tariff. The pro forma tariff changes, with the exception of the changes reflected on the alternate tariff sheet, were approved by Letter Order dated June 13, 1997 (June 13, order).

Balck Marlin states that the instant filing is submitted in compliance with the June 13, order to implement the approved tariff changes to become effective November 1, 1997. In addition, Black Marlin proposes to incorporate by reference the data dictionaries published in the July 31, 1997, Version 1.2 implementation guides, insofar as such data dictionaries are necessary to implement the new business standards accepted by the Commission in Order No. 587–C. Because the Version 1.1 implementation guides do not include the data dictionaries necessary to implement the standards, Black Marlin is proposing to reference the data dictionaries set forth in the Version 1.2 implementation guides. These guides contain the only published source of the data dictionaries necessary to implement the standards adopted in Order No. 587–C, such as package ID. Black Marlin is not asking for authority to pre-implement any other standards which may be included in the Version 1.2 implementation guides, but which the Commission has not yet adopted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26945 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–13–000]

Boundary Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 2, 1997, Boundary Gas, Inc. (Boundary), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective November 1, 1997:

First Revised Sheet No. 17

Boundary states that the primary purpose of this filing is to revise Boundary's tariff to reflect recent changes to the Boundary Phase 2 Gas Sales Agreement (Sales Agreement), which is incorporated into Boundary's tariff. This filing is designed to provide for a one-year time limitation on claiming billing errors and the implementation of a pipeline rate refund mechanism. Boundary also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26964 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–139–007]

Caprock Pipeline Company; Notice of Tariff Filing

October 6, 1997.

Take notice that on October 1, 1997, Caprock Pipeline Company (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 29A, to be effective November 1, 1997.

Caprock states that this tariff sheet is being filed to comply with the OPR's Letter Orders issued June 6, July 2, and July 29, 1997, requiring the filing of actual tariff sheets, the correction of pagination errors, the inclusion of GISB Standard 4.3.6 pertaining to the publication of information on the Internet and the adoption of the GISB Model Trading Partner Agreement.

Caprock states that copies of the filing were served upon Caprock's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26948 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–63–006]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 1, 1997.

CIG states that the purpose of this compliance filing is to conform CIG's tariff to requirements of the order issued June 6, 1997 in Docket No. RP97–63–003 and Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26940 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–11–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Columbia Gas Trapsmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1997:

Twenty-second Revised Sheet No. 25
Twenty-second Revised Sheet No. 26
Twenty-second Revised Sheet No. 27
Twenty-third Revised Sheet No. 28

Columbia states that this periodic filing is being submitted in accordance with Section 36.2 of the General Terms and Conditions (GTC) of its Tariff. GTC Section 36, Transportation Costs Rate Adjustment (TCRA), enables Columbia to adjust its current TCRA rate prospectively on a periodic and annual basis to take into account prospective change in Account No. 858 costs. As explained below, in this filing Columbia proposes to adjust its Current Operational TCRA Rate, as defined in GTC Section 36.4 to include the payments associated with the lease agreement between Columbia and Texas Eastern Transmission Corporation (TETCO). Article I, Section G, of the approved Stipulation II in Docket No. RP95–408 gives Columbia the authority to include and collect the subject lease payments in and through its TCRA mechanism contingent upon the approval of the lease agreement in Columbia's Docket No. CP96–213 (Market Expansion Application).

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–26963 Filed 10–9–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–162–004]

Cove Point LNG Limited Partnership; Notice of Tariff Compliance Filing

October 6, 1997.

Take notice on October 1, 1997, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Second Revised Sheet No. 99
Second Revised Sheet No. 127
Second Revised Sheet No. 136

Cove Point states that these tariff sheets are being filed to comply with the Commission's Office of Pipeline Regulation's letter order of June 25, 1997, requiring incorporation of GISB definitions approved by Order No. 587–C and requiring certain other GISB standards to be incorporated through tariff language or by reference, but not by both means.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 97–26956 Filed 10–9–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–58–008]

East Tennessee Natural Gas Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Third Revised Sheet No. 169
Third Revised Sheet No. 176
First Revised Sheet No. 282

East Tennessee states that these sheets are filed in compliance with the Commission's June 19, 1997, Letter of the Office of Pipeline Regulation in the above-referenced dockets (June 19, Letter Order). In accordance with the June 19, Letter Order, East Tennessee requests an effective date of November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–26934 Filed 10–9–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–010]

El Paso Natural Gas Company; Notice of Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, effective November 1, 1997.

Second Revised Sheet No. 202A
Second Revised Sheet No. 202B

El Paso states that the tariff sheets are being filed to implement the scheduling and invoicing standards from the second phase (Round 2) of the Gas Industry Standards Board (GISB) standards Order No. 587–C.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–26931 Filed 10–9–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–21–006]

Florida Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC GAS Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 102B
Fifth Revised Sheet No. 116
Fifth Revised Sheet No. 117
Fifth Revised Sheet No. 117A
Third Revised Sheet No. 123
Fifth Revised Sheet No. 133A
Third Revised Sheet No. 160
Original Sheet No. 160A

FGT states that on April 29, 1997, in Docket No. RP97–21–004, it submitted pro forma changes to the General Terms and Conditions of its Tariff (April 29 Filing) in compliance with the requirements of Order No. 587–C issued March 4, 1997 in Docket No. RM96–1–004. The April 29, filing included pro forma tariff changes to implement Gas Industry Standards Board standards to become effective August 1, 1997, relating to FGT's Internet web page, as well as tariff changes relating to revised and new business standards to become effective November 1, 1997. The April 29, filing also included an alternate version of Sheet No. 102B which did not incorporate specific data dictionaries into FGT's Tariff. The pro forma tariff changes, with the exception of the changes reflected on the alternate tariff sheet, were approved by Letter Order dated June 16, 1997 (June 16 Order).

FGT states that the instant filing is submitted in compliance with the June 16, order to implement the approved tariff changes to become effective November 1, 1997. In addition, FGT proposes to incorporate by reference the data dictionaries published in the July 31, 1997, Version 1.2 implementation guides, insofar as such data dictionaries are necessary to implement the new business standards accepted by the Commission in Order No. 587–C. Because the Version 1.1 implementation guides do not include the data dictionaries necessary to implement the standards, FGT is proposing to reference the data dictionaries set forth in Version 1.2 implementation guides. These guides contain the only published source of the data dictionaries necessary to implement the standards adopted in Order No. 587–C, such as package ID, FGT is not asking for authority to pre-implement any other standards which may be included in the Version 1.2 implementation guides, but which the Commission has not yet adopted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–26932 Filed 10–9–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–1–130–002]

Gas Transport, Inc., Notice of Report of Refunds

October 6, 1997.

Take notice that on June 18, 1997, Gas Transport, Inc. (Gas Transport), tendered for filing with the Commission its Refund Report made in compliance with the Commission's Order issued May 28, 1997, in the above referenced docket. The Commission directed Gas Transport to refund to its customers any Annual Charge Adjustment (ACA) surcharge amounts collected in excess of the Commission approved $0.0020

per Dth rate for the period from October 1, 1996, through March 31, 1997.

Gas Transport states that it charged all of its customers during that period an IT rate of 9.0 cents per Dth, which is discounted from the maximum IT rate of 13.5 per Dth. Gas Transport applied its discount first to the ACA surcharge and then to Gas Transport's IT base rate. Accordingly, Gas Transport did not collect any ACA amounts from any of its customers during the relevant period and thus refunds are not appropriate.

Gas Transport states that copies of the report are being served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any period desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26965 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–007]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Granite State Gas Transmission, Inc. (Granite State), tendered for filing a part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below in for effectiveness on November 1, 1997:

Second Substitute First Revised Sheet No. 202
Substitute First Revised Sheet No. 205
Substitute First Revised Sheet No. 210
Substitute First Revised Sheet No. 211
Substitute First Revised Sheet No. 273
Substitute First Revised Sheet No. 274
Substitute First Revised Sheet No. 305

According to Granite State, the purpose of its filing is to make effective as of November 1, 1997, the revised tariff sheets listed above which were submitted to the Commission *pro forma* on July 28, 1997, pursuant to an order issued June 26, 1997 in Docket No. RP97–153–002 which required Granite State to refile the above tariff sheets for review for their compliance with Order No. 587–C and particularly GISB Standards Version 1.1.

Granite State states that copies of its filing were served on its firm and interruptible customers, the regulatory agencies of the States of Maine, Massachusetts and New Hampshire, and the intervenor in Docket No. RP97–137–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26954 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–178–006]

Kern River Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Kern River Gas Transmission Company (Kern River) tendered as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets for filing, to be effective on November 1, 1997:

Second Revised Sheet No. 73
Third Revised Sheet No. 94
First Revised Sheet No. 94–A
Second Revised Sheet No. 95
Second Revised Sheet No. 98
Second Revised Sheet Nos. 128–139, Sheet Nos. 140–199
First Revised Sheet No. 504–A

Kern River states that the purpose of this filing is to comply with the Commission's order issued on June 27, 1997 in the above-listed docket (Order). The Order accepted Kern River's pro forma tariff sheets that were submitted May 1, 1997 to comply with the Commission's directives in Order No. 587–C, subject to some minor modifications.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26957 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–006]

K N Interstate Gas Transmission Company; Notice of Tariff Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, K N Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC the following revised tariff sheet(s), to be effective November 1, 1997:

Third Revised Volume No. 1–B
Second Revised Sheet No. 89A
First Revised Volume No. 1–D
Second Revised Sheet No. 71A

KNI states that the above referenced tariff sheets are being filed to comply with the OPR's letter order issued July 3, 1997, requiring the filing of actual tariff sheet(s). In addition, reference is also being included to KNI's adoption of the GISB Model Trading Partner Agreement.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26949 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–541–000]

K N Interstate Gas Transmission Co.; Notice of Request for Partial Waiver

October 6, 1997.

Take notice that on September 30, 1997, K N Interstate Gas Transmission Co. (K N Interstate), pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Commission, 18 CFR 385.207(a)(5), tendered for filing a request for authorization to waive certain requirements of Section 29, Second Revised Volume No. 1–B, of K N Interstate's tariff.

K N Interstate states that the purpose of the request is to provide a one-time reduction of an Operational Flow Order (OFO) penalty that was imposed on UtiliCorp Inc. (UtiliCorp), in December of 1996 and January of 1997.

K N Interstate states that copies of the filing have been served upon mainline transportation and storage shippers and affected state regulatory bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26962 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–144–007]

K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, K N Wattenberg Transmission Limited Liability Company (Wattenberg), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective November 1, 1997:

Third Revised Sheet No. 66A

Wattenberg states that this tariff sheet is being filed to comply with the OPR's Letter Orders issued June 2, June 26, and July 28, 1997, requiring the filing of actual tariff sheets, the correction of pagination errors, the inclusion of GISB Stand 4.3.6 pertaining to the publication of information on the Internet and the adoption of the GISB Model Trading Partner Agreement.

Wattenberg states that copies of the filing were served upon Wattenberg's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26951 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–5–000]

Louisiana Intrastate Gas Company, L.L.C.; Notice of Informal Settlement Conference

October 6, 1997.

Taken notice that an informal settlement conference in the above-captioned proceeding will be held on Wednesday, October 15, 1997, at 1:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Fred Ni at (202) 208–2218.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26911 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT96–30–001]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Mid Louisiana Gas Company (Mid Louisiana) filed to be included in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Fifth Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Substitute Revised Tariff Sheet is to correct insignificant textual errors discovered in FIFTH REVISED SHEET No. 131, the redlined version of which was textually correct when filed.

Purusant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of Section 154.207 of the Regulations in order to permit the tendered tariff sheet to become retroactively effective October 20, 1996, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's

Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26907 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–1–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997:

Sixth Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheet is to update its tariff to reflect recent changes in shared personnel and facilities.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheet to become effective November 1, 1997, as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26908 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–151–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing to be included in its FERC Gas Tariff, Third Revised Volume No. 1, the following Tariff Sheets, with an effective date of November 1, 1997:

Substitute Second Revised Sheet No. 77
Substitute Third Revised Sheet No. 78
Substitute Third Revised Sheet No. 79
Substitute Second Revised Sheet No. 87
Second Revised Sheet No. 166

Mid Louisiana asserts that the purpose of this filing is to comply with the Commission's Letter Order, dated July 15, 1997 in Docket No. RP97–151–002 wherein the Commission directed Mid Louisiana to revise previously submitted PRO FORMA sheets to reflect version numbers for certain GISB standards incorporated by Mid Louisiana into its tariff provisions by reference and to include GISB Standard 2.3.31 by reference.

The modifications evidenced on the enclosed tariff sheets reflect Mid Louisiana's compliance with such directives. The sheet(s) are submitted as directed in FERC Order No. 587–C (78 FERC ¶ 61,231) with an effective date of November 1, 1997.

Any person desiring to protest said compliance filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26903 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–99–000]

Midwestern Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Second Revised Sheet No. 85
Third Revised Sheet No. 110A
Second Revised Sheet No. 188

Midwestern states that these sheets are filed in compliance with the Commission's June 16, 1997, Order on Compliance Filing in the above-referenced dockets (June 16 Order). Midwestern Gas Transmission Company, 79 FERC ¶ 61,350 (1997). In accordance with the June 16, Order, Midwestern requests an effective date of November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26935 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–73–008

Mississippi River Transmission; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Mississippi River Transmission Corporation (MRT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective November 1, 1997.

Second Revised Sheet No. 71
Second Revised Sheet No. 72
Third Revised Sheet No. 73
Second Revised Sheet No. 74
Substitute Fourth Revised Sheet No. 80
Second Revised Sheet No. 83
Third Revised Sheet No. 118
Fourth Revised Sheet No. 120
Third Revised Sheet No. 149
Fifth Revised Sheet No. 224
Third Revised Sheet No. 225

MRT states that the purpose of this filing is to comply with the letter order issued in this docket on June 13, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary,

[FR Doc. 97–26941 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–53–000, et al.]

NE Hub Partners, L.P.; Notice of Availability of Engineering and Geotechnical Report Prepared by AGM, Inc., for the Proposed TIOGA Gas Storage Project

October 6, 1997.

The staff of the Federal Energy Regulatory Commission (Commission) contracted with AGM, Inc. (AGM), an engineering and geotechnical firm, to analyze issues associated with NE Hub Partners, L.P.'s (NE Hub) proposal in the above referenced docket. As a contract deliverable, AGM prepared an Engineering and Geotechnical Report (EG Report) dated April 23, 1997.

The EG Report has been placed in the public files of the FERC. A limited number of copies of the EG Report are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

Copies of the EG Report have been mailed to all parties to this proceeding.

Any person wishing to comment on the EG Report may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Reference Docket No. *CP96–53–000;* and
- Mail your comments so that they will be received in Washington, DC on or before *November 3, 1997.*

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Lois D. Cashell,

Secretary.

[FR Doc. 97–26906 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–22–008]

Northern Border Pipeline Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets to become effective November 1, 1997:

Northern Border states that this filing is made to comply with the letter order of the Commission dated June 2, 1997, in which the Commission directed Northern Border to file tariff sheets to implement the revised and new business practices standards. Because the Version 1.1 implementation guides do not include the data dictionaries necessary to implement the standards, Northern Border is proposing to utilize the data dictionaries set forth in the Version 1.2 implementation guides. These guides contain the only published source of the data dictionaries necessary to implement the standards adopted in Order No. 587–C, such as Package ID.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26933 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–17–007]

Northern Natural Gas Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Northern Natural Gas Company

(Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on November 1, 1997.

Third Revised Sheet No. 204
Fourth Revised Sheet No. 258
Third Revised Sheet No. 260
First Revised Sheet No. 263D
First Revised Sheet No. 263E
Second Revised Sheet No. 264
Second Revised Sheet No. 268
First Revised Sheet No. 301

Northern states that the instant filing is made in compliance with the Commission's Order Accepting Tariff Sheets, Subject To Conditions, issued on June 16, 1997 in Docket No. RP97–17–005 and to comply with the Gas Industry Standards Board (GISB) standards reflected in Order No. 587–C.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26929 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–134–007]

Pacific Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on September 30, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Fifth Revised Sheet No. 52; First Revised Sheet Nos. 81A.03 and 81A.06, Third Revised Sheet No. 132, Second Revised Sheet Nos. 133 through 135, Third Revised Sheet No. 137 and Second Revised Sheet No. 144, to be effective November 1, 1997.

PGT asserts the purpose of this filing is to comply with the Office of Pipeline Regulation's June 10, 1997, Letter Order in Docket No. RP97–134–004, pursuant to Section 375.307(e)(5) of the Commission's Regulations, conforming PGT's tariff to Gas Industry Standards Board business practices as set forth in Order No. 587–C in Docket Nos. RM96–1–000, *et al.*

PGT further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, as well as the official service list compiled by the Secretary in the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practices and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26946 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–136–007]

Paiute Pipeline Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 1997:

Second Revised Sheet No. 54
Second Revised Sheet No. 56B
Original Sheet No. 56C
First Revised Sheet No. 58A
Second Revised Sheet No. 58B
Second Revised Sheet No. 61
Original Sheet No. 61A
Fourth Revised Sheet No. 62
First Revised Sheet No. 63B
Second Revised Sheet No. 63C
First Revised Sheet No. 89
Second Revised Sheet No. 104
First Revised Sheet No. 104A

Paiute indicates that the purpose of the instant filing is (1) to formally effectuate changes to the General Terms and Conditions of Paiute's tariff that are necessary to comply with Order No. 587–C, which changes were proposed by Paiute in a pro forma tariff sheet filing submitted on May 1, 1997 in Docket No. RP97–136–002 and approved in a letter order issued June 10, 1997, and (2) to comply with the June 10, letter order which required certain revisions to Paiute's pro forma tariff sheets filed on May 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26947 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–4–009]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Third Revised Sheet No. 239
First Revised Sheet No. 239A
Third Revised Sheet No. 339

Panhandle asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on June 18, 1997 in Docket No. RP97–4–007, which accepted the pro forma tariff sheets filed by Panhandle on May 1, 1997. That filing implemented the standards promulgated by the Gas Industry Standards Board, which were adopted by the Commission in Order No. 587–C in Docket No. RM96–1–004, Standards for Business Practices of Interstate Natural Gas Pipelines. The tariff sheets submitted reflect the pro forma tariff language accepted by the Commission and also incorporate by reference Standard 1.3.23 in compliance with the June 18, 1997, order and Standard 4.3.6, which was proposed for inclusion in Panhandle's tariff subsequent to the submission of the pro forma tariff sheets and accepted by the Commission's letter order dated July 21, 1997 in Docket No. RP97–4–008 effective August 1, 1997.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26915 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–141–004]

Rochester Gas & Electric Corporation; Notice of Filing

October 6, 1997.

Take notice that on August 11, 1997, Rochester Gas & Electric Corporation tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26909 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–009]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order No. 587–C and the Commission's June 27, 1997, Order in this docket, to become effective November 1, 1997:

Third Revised Sheet No. 14
Third Revised Sheet No. 17
Third Revised Sheet No. 25
First Revised Sheet No. 30a
Second Revised Sheet No. 32
Third Revised Sheet No. 34
Fourth Revised Sheet No. 35
Second Revised Sheet No. 42
Third Revised Sheet No. 95

On July 17, 1996, the Commission issue Order No. 587 in Docket No. RM96–1–000 which revised the Commission's Regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order (18 GFR 284.10(b)). On March 4, 1997, the Commission Order No. 587–C to implement additional GISB Standards. On June 27, 1997, the Commission issued an order accepting Sea Robin's filing subject to certain conditions. The June order required Sea Robin to submit a compliance filing to incorporate into its tariff specific language from GISB standards and definitions addressing OBAs, package Ids, operational flow orders, intra-day nominations, rankings, imbalance penalties and the standard international unit of gas measurement. In addition, Sea Robin has changed the reference to the version number of Standard 4.3.6 from 1.1 to 1.0. Sea Robin requests an effective date of November 1, 1997.

Sea Robin states that such effective date is appropriate because it is consistent with Sea Robin's April 30, tariff filing, and the timeline established in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures.

All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26959 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–143–007]

T C P Gathering Co.; Notice of Tariff Filing

October 6, 1997.

Take notice that on October 1, 1997, T C P Gathering Co. (TCP), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective November 1, 1997:

Fourth Revised Sheet No. 103
First Revised Sheet No. 103A

TCP states that the above referenced tariff sheets are being filed to comply with the OPR's letter orders issued June 10, July 2, and July 28, 1997, requiring the filing of actual tariff sheet(s), the correction of certain pagination errors, the inclusion of GISB Standard 4.3.6 pertaining to the publication of information on the Internet and the adoption of the GISB Model Trading Partner Agreement.

TCP states that copies of the filing were served upon TCP's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the

Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26950 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–006]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to become effective on November 1, 1997:

Eighteenth Revised Sheet No. 30

Tennessee states that the above tariff sheet is being filed to implement a negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26913 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–3–006]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Texas Eastern Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Fifth Revised Sheet No. 434
Second Revised Sheet No. 435
Third Revised Sheet No. 436
Third Revised Sheet No. 487A
Third Revised Sheet No. 488
Third Revised Sheet No. 489
Third Revised Sheet No. 681

Texas Eastern states that the purpose of this filing is to comply with the Commission's letter order issued on June 2, 1997, in Docket No. RP97–3–006, which approved Texas Eastern's pro forma tariff sheets implementing the Order No. 587–C Standards for Business Practices of Interstate Natural Gas pipelines issued March 4, 1997 and directed Texas Eastern to file actual tariff sheets at least 30 days prior to the designated November 1, 1997, effective date.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern's and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26914 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–183–006]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

October 6, 1997.

Take notice that on October 1, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 147
Second Revised Sheet No. 148
Second Revised Sheet No. 149
First Revised Sheet No. 206C
First Revised Sheet No. 206D
Seventh Revised Sheet No. 207
First Revised Sheet No. 207A

Original Sheet No. 207B

Texas Gas states that the instant filing is being made to comply with the Commission's Order dated June 30, 1997, in response to Texas Gas's April 28, 1997, filing regarding GISB Standards in accordance with Order Nos. 587–C and 587–D.

Texas Gas copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP97–183.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26958 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–237–006]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Third Revised Sheet No. 203
Original Sheet No. 203.01

TransColorado states that the above tariff sheets are being filed to implement the scheduling and invoicing standards from the second phase (Round 2) of the Gas Industry Standards Board (GISB) standards Order No. 587–C.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26960 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective October 1, 1997:

Eighth Revised Sheet No. 30

TransColorado states that the above tariff sheet is being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26961 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–18–009]

Transwestern Pipeline Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 1997:

22 Revised Sheet No. 5B
Fifth Revised Sheet No. 49
Fifth Revised Sheet No. 70
Seventh Revised Sheet No. 80A
Original Sheet No. 80A.01
Fifth Revised Sheet No. 80B
First Revised Sheet No. 81C
Second Revised Sheet No. 81E
Third Revised Sheet No. 149

Transwestern states that the instant filing reflects changes to Transwestern's Tariff in compliance with the requirements of Order No. 587–C and the June 27 Order.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26930 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–6–009]

Trunkline Gas Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Sixth Revised Sheet No. 155
Seventh Revised Sheet No. 167
First Revised Sheet No. 167A
Original Sheet No. 167B
Second Revised Sheet No. 242A

Trunkline asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on June 11, 1997 in Docket No. RP97–6–006, which accepted the pro forma tariff sheets filed by Trunkline on May 1, 1997. That filing implemented the standards promulgated by the Gas Industry Standards Board, which were adopted by the Commission in Order No. 587–C in Docket No. RM96–1–004, Standards for Business Practices of Interstate Natural Gas Pipelines. The tariff sheets submitted reflect the pro forma tariff language accepted by the Commission and also incorporate by reference Standard 4.3.6, which was proposed for inclusion in Trunkline's tariff subsequent to the submission of the pro forma tariff sheets and accepted by the Commission's letter order dated July 23, 1997 in Docket No. RP97–6–007 effective August 1, 1997.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26920 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–156–004]

Viking Gas Transmission Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on September 30, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following actual tariff sheets:

Third Revised Sheet No. 40
First Revised Sheet No. 41A
Third Revised Sheet No. 49
Second Revised Sheet No. 51
Third Revised Sheet No. 87 (incorporating Standard 4.3.6)
Fourth Revised Sheet No. 87 (incorporating Standards 1.2.5, 1.2.7, 1.3.7, 1.3.24–1.3.31, 1.3.33, 1.3.34, 5.3.22)

For Sheet No. 87 that incorporates Standard 4.3.6, Viking proposes an effective date of August 1, 1997. For the remaining sheets including Sheet No. 87 that incorporates Standards 1.2.5, 1.2.7, 1.3.7, 1.3.24–1.3.31, 1.3.33, 1.3.24, and 5.3.22, Viking proposes an effective date of November 1, 1997.

Viking states that the purpose of this filing is to comply with the Letter Order issued by the Office of Pipeline Regulation, Rate Review Branch II, on June 11, 1997. The June 11, 1997 Letter Order directed Viking to file actual tariff sheets when it filed to comply with Order No. 587–C, Standards for Business Practices of Interstate Natural Gas Pipelines, Docket No. RM96–1–004, FERC Regulations Preambles ¶31,050 (1997), issued on March 4, 1997.

Order No. 587–C required pipelines to make pro forma tariff filings to implement the GISB practices and standards by May 1, 1997. Viking filed prop forma tariff sheets when it made its May 1, 1997, filing to comply with Order No. 587–C.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26955 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89–183–075 and RP96–12–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1997.

Take notice that on October 1, 1997, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of November 1, 1997:

Twenty Third Revised Sheet No. 6A
Second Revised Sheet Nos. 8E and 8F

WNG states that this filing is being made pursuant to Article 14, of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its fourth quarter, 1997, report to take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26912 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–62–007]

Wyoming Interstate Company; Notice of Compliance Filing

October 6, 1997.

Take notice that on October 1, 1997, Wyoming Interstate Company LTD. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective November 1, 1997.

WIC states that the purpose of this compliance filing is to confirm WIC's tariff to requirements of the order issued June 13, 1997 in Docket No. RP97–62–003 and Order No. 387–C.

Any person desiring to protest this filing should filed a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26939 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–93–006]

Young Gas Storage Company Ltd.; Notice of Tariff Compliance Filing

October 6, 1997.

Take notice that on September 30, 1997, Young Gas Storage Company LTD. (Young), tendered for filing to become part of its FERC gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 1, 1997.

Young states that the purpose of this compliance filing is to conform Young's tariff to requirements of the order issued July 1, 1997 in Docket No. RP97–93–004 and Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26943 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1712–000, et al.]

Florida Power Corp., et al.; Electric Rate and Corporate Regulation Filings

October 6, 1997.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER96–1712–000]

Take notice that on September 12, 1997, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER97–4621–000]

Take notice that on September 15, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and the parties listed below:

Market Responsive Energy, Inc.
New Energy Ventures, Inc.
Equitable Power Services Company
Williams Energy Services Company

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of September 15, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Fitchburg Gas and Electric Light Company

[Docket No. ER97–4622–000]

Take notice that on September 12, 1997, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement whereby it takes service under its own open access transmission tariff presently on file with the Commission in Docket No. OA97–635–000.

Fitchburg requested a waiver of the Commission's 30-day notice period, proposing the service agreement to be effective July 9, 1996. A copy of the service agreement has also been filed with the Massachusetts Department of Public Utilities.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER97–4624–000]

Take notice that on September 16, 1997, Wisconsin Public Service Corporation tendered for filing executed service agreement with Western Power Services, Inc., under its CS–1 Coordination Sales Tariff.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER97–4625–000]

Take notice that on September 16, 1997, Florida Power & Light Company filed an unexecuted Service Agreement with Oglethorpe Power for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on August 18, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER97–4626–000]

Take notice that on September 16, 1997, Wisconsin Public Service Corporation tendered for filing executed service agreement with National Gas &

Electric L.P., under its CS–1 Coordination Sales Tariff.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER97–4627–000]

Take notice that on September 16, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER97–4628–000]

Take notice that on September 16, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Golden Spread Electric Cooperative, Inc.

[Docket No. ER97–4629–000]

Take notice that on September 16, 1997, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered its Special Facilities Agreement with Tri-County Electric Cooperative, Inc. (Tri-County) pursuant to § 35.13 of the Commission's Regulations. The Special Facilities Agreement between Golden Spread and Tri-County provides for the construction and ownership of a 115/12.47 kV substation to be located outside of Guymon, Oklahoma. The charges associated with the construction and ownership of this facility will be recovered by Golden Spread from Tri-County pursuant to Rider A of Rate Schedule FERC No. 22. The filing will not effect a rate increase or decrease to Golden Spread's Members.

Copies of this filing were served upon Golden Spread's jurisdictional customers, the Public Utility Commission of Texas, and the Oklahoma Corporation Commission.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power

[Docket No. ER97–4630–000]

Take notice that on September 16, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff Revised Volume No. 9 with Tillamook People's Utility District. WWP requests waiver of the prior notice requirement and requests an effective date of June 11, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER97–4631–000]

Take notice that on September 16, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with New Energy Ventures, Inc. (NEV), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NEV.

NUSCO requests that the Service Agreement become effective August 18, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER97–4632–000]

Take notice that on September 16, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Williams Energy Ventures, Inc. (Williams), under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates. NUSCO requests an effective date of August 31, 1997.

NUSCO states that a copy of its submission has been mailed or delivered to Williams.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER97–4633–000]

Take notice that on September 16, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Williams Energy Services Company (Williams) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Williams.

NUSCO requests that the Service Agreement become effective August 31, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER97–4634–000]

Take notice that on September 16, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with New Energy Ventures, Inc. (NEV), under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates. NUSCO requests an effective date of August 18, 1997.

NUSCO states that a copy of its submission has been mailed or delivered to NEV.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. NEV, L.L.C.; NEV East, L.L.C.; NEV California, L.L.C.; NEV Midwest, L.L.C.

[Docket No. ER97–4638–000; Docket No. ER97–4652–000; Docket No. ER97–4653–000; Docket No. ER97–4654–000]

Take notice that on September 16, 1997, NEV, L.L.C.; NEV East, L.L.C.; NEV California, L.L.C.; and NEV Midwest, L.L.C., filed an Application Requesting Acceptance of Proposed Market-Based Rate Schedules, Waiver of Certain Regulations and Blanket Approvals. The proposed rate schedules would allow each applicant to sell capacity and energy to eligible customers at market-based rates.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER97–4637–000]

Take notice that on September 17, 1997, Florida Power & Light Company (FPL), tendered for filing an Amendment Number Two to the Network Service Agreement between FPL and the Florida Municipal Power Agency. This Amendment Number Two adds the City of Vero Beach, Florida as a Network Member. FPL proposes to make the Amendment Number Two effective August 26, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Company

[Docket No. ER97–4638–000]

Take notice that on September 15, 1997, Union Electric Company (UE), tendered for filing the Ninth Amendment to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. UE asserts that the Amendment primarily provides for the addition and termination of delivery points and amends an interconnection point.

UE requests that the filing be permitted to be effective October 1, 1997.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER97–4639–000]

Take notice that on September 17, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS FERC Electric Tariff, Original Volume No. 3 with Tucson Electric Power Company and Coral Power, L.L.C.

A copy of this filing has been served on the Arizona Corporation Commission, Tucson Electric Power Company and Coral Power, L.L.C.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company)

[Docket No. ER97–4640–000]

Take notice that on September 17, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Constellation Power Source, Inc.

NSP requests that the Commission accept both the agreements effective August 20, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26966 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License

October 6, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 7664–023.

c. *Date Filed:* August 29, 1997.

d. *Applicant:* Island Power Company, Inc.

e. *Name of Project:* Clark Canyon Dam.

f. *Location:* On Beaverhead River, in Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).

h. *Applicant Contact:* Jay R. Bingham, President, Island Power Company, Inc., 5160 Wiley Post Way, Suite 200, Salt Lake City, UT 84116, (801) 532–2520.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* November 20, 1997.

k. *Description of Application:* The licensee seeks to surrender its license because it is not financially feasible to construct the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the letter "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to filed comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26910 Filed 10–9–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5960–4]

Agency Information Collection Activities Under OMB Review; New Source Performance Standards for Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards for Nitric Acid Plants, Subpart G OMB Control Number 2060–0019, expiration date: 12/31/97. The ICR describes the nature of the information collection and its expected burden and

cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 10, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1056.06.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Nitric Acid Plants, Subpart G; OMB Control No. 2060–0019; EPA ICR No. 1056.06. This is a request for an extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 60.70, subpart G, Standards of Performance for Nitric Acid Plants. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/18/97 62 FR 33068); no comments were received

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 42 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nitric and Plants.

Estimated Number of Respondents: 32.

Frequency of Response: semi-annual and on occasion.

Estimated Total Annual Hour Burden: 1,516 hours.

Estimated Total Annualized Cost Burden: $3,268,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1056.06 and OMB Control No. 2060–0019 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20530.

Dated: October 6, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27014 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5908–3]

Agency Information Collection Activities Under OMB Review; National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 40 CFR part 61 Subpart EE—Magnetic Tape Manufacturing Operations, OMB Control Number 2060–0326, expiration date: 12/31/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 10, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1678.03.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Magnetic Tape Manufacturing Operations (OMB Control No. 2060–0326; EPA ICR No. 1678.03, expiring 12/31/97). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that Hazardous Air Pollutant (HAP) emissions from magnetic tape manufacturing operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of affected magnetic tape manufacturing operations must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and provide semiannual reports of excess emissions. They must also develop startup, shutdown, malfunction plans and develop a quality control plan for their continuous monitoring system. Affected facilities also must provide notification of compliance status and report quarterly monitoring exceedances.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1997 and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7042 person hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Magnetic Tape Manufacturing Operations.

Estimated Number of Respondents: 13.

Frequency of Response: 2.

Estimated Number of Responses: 26.

Estimated Total Annual Hour Burden: 7042 person hours.

Estimated Total Annualized Cost Burden: $89,400.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1678.03 and OMB Control No. 2060–0326 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: October 6, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27016 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 08, 1997 Through September 12, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–71653.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–BLM–K67044–CA Rating EC2, Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA.

Summary: EPA expressed environmental concerns with the lack of full disclosure of environmental impacts from proposed or possible future sale of aggregate, underground mining, and impacts to local water and air quality from mining and processing operations.

ERP No. D–FAA–G12002–NM Rating EC2, Southwest Regional Spaceport (SRS) Development and Operation Project, Commercial Space Vehicles Launching Facility, Licensing, Sierra and Dona Ana Counties, NM.

Summary: EPA expressed environmental concerns and requested additional information on land use change, policy, and management conflict.

ERP No. D–NPS–K61144–HI Rating LO, Ala Kahakai "Trail By the Sea" National Trail Study, Implementation, Hawaii Island, Hawaii County, HI.

Summary: EPA expressed lack of objection on the proposed project.

ERP No. D–SFW–L64045–00 Rating LO, Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone.

Summary: Based on an abbreviated review EPA does not foresee having any environmental objections to the proposed project.

ERP No. DA–DOE–K03007–CA Rating EC2, Petroleum Production at Maximum Efficient Rate, Updated Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called "Elk Hills") Amendment of Kern County General Plan, Elk Hills, Kern County, CA.

Summary: EPA expressed environmental concerns regarding projected air quality impacts with the disposition of EPA-regulated polychlorinated biphenyls in storage or in use at the facility, and projected impacts to biological resources. EPA asked to be notified of the final disposition of regulated PCB materials at the facility and encouraged the Department of Energy to work with the US Fish and Wildlife Service on mitigation recommendations in the EIS to reduce projected impacts to biological resources, particularly Federally-listed species.

Final EISs

ERP No. F–AFS–L65287–OR, Little River (DEMO) Demonstration of Ecosystem Management Options Timber Sale, Implementation Umpqua National Forest, North Umpqua Ranger District, Douglas County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NAS–E12005–00, Engine Technology Support, Implementation, With Emphases on Liquid Oxygen and Kerosene, Advanced Space Transportation Program, Test Sites: Marshall Space Flight Center (MSFC) in Huntsville, AL; Stennis Space Center (SSC) near Bay St. Louis, MS and Phillips Laboratory, Edward Air Force Base, CA.

Summary: EPA continues to prefer the SSC for rocket motor testing based on the lesser noise impacts affecting private property.

ERP No. FS–AFS–L65202–ID, Katka Peak Timber Sale and Road Construction, Implementation, New Information from Interior Columbia Basin Ecosystem Management Project, to implement Ecosystem Restoration Treatment, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Boundary County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: October 7, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–27024 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed September 29, 1997 Through October 03, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970378, FINAL EIS, AFS, MT, Beaverhead Forest Plan Riparian Amendment, Implementation, Beaverhead—Deerlodge National Forest, Beaverhead, Madison, Silver

Bow, Deer Lodge and Gallatin Counties, MT, Due: November 10, 1997, Contact: Peri Surenram (406) 683–3900.

EIS No. 970379, FINAL EIS, AFS, OR, Summit Fire Recovery Forest Restoration Project, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR, Due: November 10, 1997, Contact: Robert Hammond (541) 575–3000.

EIS No. 970380, DRAFT EIS, AFS, UT, Spruce Ecosystem Recovery Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: November 24, 1997, Contact: Phil Eisenhauer (801) 865–3200.

EIS No. 970381, DRAFT EIS, IBR, CA, Hamilton City Pumping Plant, Fish Screen Improvement Project, COE Section 10 and 404 Permits, Central Valley, Butte, Colusa, Glenn and Tehama Counties, CA, Due: November 24, 1997, Contact: Lauren Carly (916) 934–7066.

EIS No. 970382, DRAFT EIS, FHW, VA, Outer Connector Study Transportation Improvement, from I–95, US 17 and VA–3, Funding, COE Section 10 and 404 Permits, Stafford and Spotsylvania Counties, VA, Due: November 28, 1997, Contact: Roberto Fonseca-Martinez (804) 281–5100.

EIS No. 970383, DRAFT EIS, MMS, TX, LA, Western Planning Area, Proposed Western Gulf of Mexico 1997–2002 (5-Year Program) Outer Continental Shelf (OSC) Oil and Gas Sales 171, 174, 177 and 180, Lease Offering, Offshore Marine Environmental and Coastal Counties/Parishes of Texas and Louisiana, Due: November 24, 1997, Contact: Archie P. Melancon (703) 787–5471.

EIS No. 970384, DRAFT EIS, FHW, NY, Judd Road Connector Transportation Improvements, Funding and COE Section 404 Permit, Village of New York Mills, Towns of New Hartford and Whitestown, Oneida County, NY, Due: November 24, 1997, Contact: Harold J. Brown (518) 431–4127.

EIS No. 970385, DRAFT SUPPLEMENT, NOA, AK, Juneau Consolidated Facility, Additional Information, Space for the University of Alaska Fairbanks School of Fisheries and Ocean Science (UAF), Possible Site Lena Point, Fisheries Management Operation, 'Vision for 2005', Juneau, AK, Due: November 25, 1997, Contact: John Gorman (907) 586–7641.

EIS No. 970386, FINAL EIS, USN, DC, Naval Sea Systems Command Headquarters (NAVSEA), Base Realignment and Closure Action, Relocation from Arlington, VA to Washington Navy Yard (WNY) in southeast Washington, DC, Due: November 10, 1997, Contact: Hank Riek (202) 685–3064.

EIS No. 970387, FINAL EIS, FRC, ME, Lower Penobscot River Basin Hydroelectric Project, Application for Licensing for three hydroelectric projects: Basin Mills (FERC. No. 10981), Stillwater (FERC. No. 2712) and Milford (FERC. No. 2534), Penobscot County, ME, Due: November 10, 1997, Contact: Ronald McKitrick (202) 219–2783.

EIS No. 970388, SECOND FINAL SUPPLE, DOE, NM, Waste Isolation Pilot Plant Disposal Phase, Updated Information, Disposal of Transuranic Waste, Carlsbad, NM, Due: November 10, 1997, Contact: Harold Johnson (505) 234–7349.

EIS No. 970389, FINAL EIS, BLM, NV, Florida Canyon Mine Expansion Project and Comprehensive Reclamation Plan, Construction and Operation of New Facilities and Expansion of Existing Gold Mining Operations in Imlay Mining District, Plan-of-Operation Approval and Right-of-Way Permit Issuance, Pershing County, NV, Due: November 10, 1997, Contact: Ken Loda (702) 623–1500.

Dated: October 7, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–27025 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–768; FRL–5748–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition proposing a regulation establishing an exemption from the requirement for a tolerance for residues of *Bacillus thuringiensis* Cry1, Cry2 and Cry3 classes of proteins and the genetic material necessary for the production of these proteins in or on all raw agricultural commodities. This notice includes a summary of the petition that was prepared by the petitioner, Monsanto Company.

DATES: Comments, identified by the docket control number PF–768, must be received on or before November 10, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–768] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–768] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Monsanto Company

PP 7F4888

EPA has received a pesticide petition (PP 7F4888) from the Monsanto Company, 700 Chesterfield Parkway, North, St. Louis, MO 63198. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement for a tolerance for residues of the plant pesticides consisting of *Bacillus thuringiensis* Cry1, Cry2, and Cry3 classes of proteins and the genetic material necessary for the production of these proteins in or on all raw agricultural commodities.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

Monsanto has stated that analytical methods of detection and measurement of the Cry1, Cry2, and Cry3 classes of proteins are not needed since they are petitioning for exemptions from the requirement for a tolerance on the basis of mammalian safety.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Monsanto included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Monsanto; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408 (d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

This unit summarizes information cited by Monsanto Company to support the proposed tolerance exemption for *Bacillus thuringiensis* Cry1, Cry2, and Cry3 classes of proteins and the genetic material necessary for the production of these proteins when used as plant-pesticide active ingredients.

A. Bacillus thuringiensis Cry1, Cry2, and Cry3 Protein Uses

The Environmental Protection Agency (EPA) has approved the commercial use of the *Bacillus thuringiensis* Cry1Ab, Cry1Ac, and Cry3A proteins as expressed in genetically engineered corn, cotton, and potato, respectively. The Agency has concluded that these Cry protein plant pesticides pose no foreseeable risks to human health and has granted exemptions from the requirement of a tolerance for these substances. A Cry2Aa plant pesticide is currently under review at EPA.

The first *Bacillus thuringiensis* Cry protein exemptions from tolerance were limited to a specific Cry protein as expressed in a single crop, such as Cry3A in potato and Cry1Ac in cotton. More recently, in approving Monsanto's Cry1Ab expressed in corn (61 FR 40340, August 2, 1996) and Dekalb's Cry1Ac expressed in corn (62 FR 17720, April 11, 1997), EPA established a broad tolerance exemption for Cry1Ab and Cry1Ac proteins, respectively, in or on all plant raw agricultural commodities.

In the future, many *Bacillus thuringiensis* Cry proteins are expected to be expressed in a wide variety of plants for insect protection. This petition provides the scientific bases for the generic human health safety determination that Cry1, Cry2, and Cry3 classes of proteins as expressed in plants pose no foreseeable human health risks. Accordingly, all *Bacillus thuringiensis* Cry1, Cry2, and Cry3 proteins as expressed in plants are proposed to be exempt from the requirement for a tolerance.

B. Product Identity and Chemistry

Bacillus thuringiensis Cry proteins are named according to their similarity to established holotype proteins. Cry proteins with similar amino acid sequences are grouped together. Cry proteins with the same Arabic numeral (e.g., Cry1) share at least a 45 percent amino acid sequence identity. Those with the same Arabic numeral and upper case letter (e.g., Cry1A) share at least a 75 percent sequence identity. The same Arabic numeral and upper and lower case letter (e.g., Cry1Ab) designates a greater than 95 percent sequence identity. Therefore, one of the principal scientific rationales for this petition is that it applies safety conclusions from testing one or a few representative Cry proteins to a broader, but closely related, group of proteins proteins that by definition share significant amino acid sequence identity.

To qualify for an exemption from tolerance, amino acid sequence analysis data must be provided to verify that the protein has been correctly classified as belonging to one of the "exempt" classes of Cry proteins (i.e., Cry1, Cry2, or Cry3). It should also be confirmed that the Cry protein exhibits no significant amino acid sequence homology with known food allergens based on a comparison with sequences contained in public domain databases. Information concerning the *Bacillus thuringiensis* holotype protein nomenclature and a continuously updated database of *Bacillus thuringiensis* holotype proteins can be found on the world wide web at http://epunix.biols.susx.ac.uk/Home/Neil_Crickmore/Bt/holo.html.

To ensure that this petition has broad applicability, it covers *Bacillus*

thuringiensis Cry proteins that are naturally occurring or that have been genetically modified by deletion, substitution, and/or insertion of amino acid sequences, provided that the protein exhibits at least 45 percent amino acid sequence identity with a Cry protein from an "exempt" class of Cry protein. If the protein has been modified by the insertion of amino acids from a non-exempt source (e.g., a source other than a Cry1, Cry2 or Cry3 protein), those inserted amino acid sequences may comprise no greater than five percent of the total amino acid sequence of the Cry protein.

C. Mammalian Toxicological Profile

There currently exists an extensive body of scientific data demonstrating the safety of Cry proteins. A review of the literature establishes that many different Cry proteins have been evaluated in a variety of mammalian toxicology tests over the past 35 years. No adverse effects have been observed in mammals upon oral exposure to any of these Cry proteins.

Oral dietary exposure is the only significant route by which humans can be exposed to Cry protein plant pesticides. Dermal and inhalation exposures are anticipated to be negligible because Cry proteins are produced within the plant, are not exuded, and are not volatile. To assess the implications of human dietary exposure to *Bacillus thuringiensis* Cry proteins, EPA has asked registrants to submit results of an acute oral mammalian toxicology study (oral LD_{50}) and an *in vitro* digestibility study. These tests have been conducted using a microbially produced *Bacillus thuringiensis* protein that has been shown to be equivalent to the plant-expressed protein.

No treatment-related adverse effects have been observed in any of the acute oral mammalian toxicity studies conducted with microbially produced Cry1Ab, Cry1Ac, Cry2A, and Cry3A proteins. Six oral gavage studies in mice established the LD_{50} to be >3,280 mg/kg to >5,200 mg/kg for these proteins. Based on these results there is a safety factor of greater than 50,000 for human dietary exposure to Cry1Ab and Cry1Ac proteins in corn or cottonseed, greater than one million for Cry3A protein in potato, and greater than two million for Cry1Ac protein in tomato. Because all of the testing of *Bacillus thuringiensis* plant pesticides has yielded negative results, no further mammalian toxicology testing (beyond acute and digestibility studies) has been required to support registration and exemptions from tolerance.

The no observed effect level (NOEL) for Cry1Ab was > 0.45 mg/kg/day in a 28-day repeated dose oral toxicity study in mice and > 0.06 mg/kg/day in a 31-day repeated dose study in rabbits. Treatment doses in the 28-day and 31-day studies were estimated to be 1,000 to 4,000 times the maximum anticipated human exposure from consuming tomatoes genetically engineered to produce Cry1Ab (Noteborn et al. Food Safety of Transgenic Tomatoes Expressing the Insecticidal Crystal Protein Cry1Ab from *Bacillus thuringiensis* and the Marker Enzyme APH(3') II. Med. Fac. Landbouww. Univ. Gent, 58/4b, 1993). Based on the lack of toxic effects and the large margins of safety for both acute and 30-day exposures, these Cry proteins pose no foreseeable risks to human health. Moreover, these proteins are unlikely to cause endocrine effects because they exhibit no structural or functional similarity to estrogen or estrogen-mimic compounds.

EPA has stated that when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology*, 15:3-9, 1992). The Cry proteins tested so far are judged to be nontoxic to mammals. Monsanto believes that the acute toxicity data on these representative Cry proteins and the extensive data base on microbial *Bacillus thuringiensis* products supports a broader conclusion: All Cry proteins classified by their amino acid sequence to be Cry1, Cry2, or Cry3 are highly unlikely to be toxic to humans.

In the future, crops may be modified to express significantly higher levels of Cry proteins than are expressed in the currently commercialized varieties. This does not alter the favorable safety conclusions for Cry proteins. The existing toxicology studies, showing no effects at the limit dose, would still support the exemption from the requirement for a tolerance and the conclusion that a tolerance is not necessary to protect human health.

Further scientific evidence for the safety of Cry proteins is that they have been shown to be rapidly degraded under conditions simulating the human gastrointestinal tract. Results of seven in vitro assays conducted with representative Cry1, Cry2, and Cry3 proteins indicate that the proteins are rapidly degraded, usually within 30 seconds. These results support the broader conclusion that members of these groups of Cry proteins (that share significant amino acid sequence identity) are likely to be rapidly degraded following ingestion by humans.

The demonstrated rapid degradation of Cry protein following ingestion minimizes the potential for an allergenic reaction. By comparison, food allergens generally persisted in the gastrointestinal model, whereas common food proteins with no allergenic history degraded rapidly in simulated gastric fluid (Metcalfe et al. "Assessment of the Allergenic Potential of Foods Derived from Genetically Engineered Crop Plants," *Critical Rev. in Food Science and Nutrition*, 36(s):S165-S186, 1996). Searches of allergen sequence databases have shown no significant matches with the Cry proteins. Cry proteins do not share characteristics often exhibited by known food allergens. Unlike many known food allergens, the Cry proteins as expressed in plants are present in relatively low concentrations, and are heat labile. In addition, in the greater than 30 year history of commercial use, there have been no reported cases of allergenic reactions to the microbial *Bacillus thuringiensis* products (61 FR 40430, August 2, 1996).

Results of testing microbial *Bacillus thuringiensis* preparations for oral mammalian toxicity over the past 35 years demonstrate the total lack of acute, subchronic, and chronic oral toxicity associated with *Bacillus thuringiensis* microbial pesticides. These findings are directly relevant to this petition because these microbial preparations contain genes encoded for the production of at least four different classes of Cry proteins, including seven Cry1 proteins and two each of the Cry2, and Cry3 proteins.

Bacillus thuringiensis microbial products were first registered in 1961 and have been applied continuously since then for an expanding number of uses in agriculture, disease vector control, and forestry. No reports of adverse effects have involved or implicated Cry proteins as the causative agent, nor have any of these effects been considered significant in view of the quality assurance safeguards that are in place for microbial products. Moreover, in establishing the existing tolerance exemptions for Cry protein plant pesticides, EPA has stated that FIFRA section 6(a)2 reports claiming allergic reactions "were not due to *Bacillus thuringiensis* itself or any of the Cry toxins."

The genetic material necessary for the production of *Bacillus thuringiensis* Cry proteins are nucleic acids (DNA) which comprise the genetic material encoding the proteins and the regulatory regions

associated with the genes. Regulatory regions are the genetic material that control the expression of the genetic material encoding the Cry proteins, such as promoters, terminators, introns, and enhancers. DNA is common to all forms of plant and animal life, and there are no known instances of where nucleic acids have been associated with toxic effects related to their consumption. No mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of any *Bacillus thuringiensis* proteins, including the Cry1, Cry2, and Cry3 classes of proteins. EPA has also proposed an exemption from the requirement for a tolerance for residues of nucleic acids produced in plants as part of a plant pesticide active ingredient (59 FR 60542, November 23, 1994).

D. Aggregate Exposure

Exposure to Cry1, Cry2, and Cry3 proteins via dermal exposure or inhalation is unlikely given that these plant pesticides are contained in the plant, are not exuded and are not volatile. Therefore, worker and bystander exposure resulting from plant pesticides will be negligible, and would be unlikely to add measurably to any worker or bystander exposure resulting from microbial or other *Bacillus thuringiensis* formulations. Movement of the plant pesticides to drinking water is highly unlikely given that Cry proteins are known to rapidly degrade in the soil.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate given that there is no indication of mammalian toxicity of Cry proteins in microbial or other formulations and no information that indicates that toxic effects would be cumulative with any other compounds. Mammals are not susceptible to Cry proteins. This may be explained, in part, by the fact that conditions required for the complex steps in the mode of action do not exist in mammals. As anticipated, immunocytochemical analyses of Cry1A have revealed no comparable binding sites in mammals. Monsanto is not aware of any other substances that may be related, via a common mechanism of toxicity, to the proteins that are the subject of the proposed exemption.

F. Safety Determination

1. *U.S. population in general.* The lack of toxicity and the rapid digestibility of Cry proteins provides evidence for the lack of toxicity and allergenicty and supports an exemption from the requirement of a tolerance for the *Bacillus thuringiensis* Cry1, Cry2, and Cry3 classes of proteins. These proteins have been used in microbial insecticide formulations that have been registered by the EPA and commercially available since the early 1960s. Accordingly, the available information supports a finding that there is a reasonable certainty that no harm will result to the U.S. population in general form aggregate dietary exposure to the Cry1, Cry2, and Cry3 classes of proteins.

2. *Infants and Children. Bacillus thuringiensis* Cry proteins are expressed in plants to protect the plant from insect damage. Therefore, nondietary exposure to infants and children is not expected. The lack of toxicity of Cry proteins and history of safe use of *Bacillus thuringiensis* microbial pesticides provides reasonable certainty that no harm will result to infants and children from aggregate dietary exposure to Cry1, Cry2, and Cry3 classes of proteins. Accordingly, there is no need to apply an additional safety factor for infants and children.

G. Existing Tolerances

Exemptions from the requirement for a tolerance have been granted by EPA for Cry1Ab and Cry1Ac and the genetic material necessary for their production in all plant raw agricultural commodities (61 FR 40340, August 2, 1996 and 62 FR 17720, April 11, 1997, respectively) and for Cry3A and the genetic material necessary for its production in potatoes (60 FR 21725, May 3, 1995).

[FR Doc. 97-27012 Filed 10-9-97; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5908-7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et, seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260-2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1495.04; FIFRA Reregistration Fees; was approved 09/19/97; OMB No. 2070-0101; expires 09/30/2000.

EPA ICR No. 0940.15; Ambient Air Quality Surveillance Revision; was approved 09/30/97; OMB No. 2060-0084; expires 03/31/99.

EPA ICR No. 0184.05; Vehicle Emission Control Defect Survey Questionnaire; was approved 08/27/97; OMB No. 2060-0047; expires 08/31/2000.

EPA ICR No. 1680.02; Combined Sewer Overflow Policy; was approved 09/19/97; OMB No. 2040-0170; expires 09/30/2000.

EPA ICR No. 0783.36; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling, SFTP Amendment; was approved 08/27/97; OMB No. 2060-0104; expires 08/31/98.

EPA ICR No. 1810.01; Obtaining Unbilled Grant Expenses from Grant Recipients; was approved 09/15/97; OMB No. 2030-0037; expires 09/30/2000.

EPA ICR No. 1797.01; NSPS for Petroleum Storage Liquid Vessels—40 CFR 60, Subpart K; was approved 09/22/97; OMB No. 2020-0009; expires 09/30/2000.

EPA ICR No. 1204.07; Submission of Unreasonable Adverse Effects Information under FIFRA Section 6(a)(2); was approved 09/24/97; OMB No. 2070-0039; expires 09/30/2000.

EPA ICR No. 0278.06; Supplemental Distribution of a Registered Pesticide Product; was approved 09/19/97; OMB No. 2070-0044; expires 09/30/2000.

EPA ICR No. 1214.04; Pesticide Product Registration Maintenance Fee; was approved 09/19/97; OMB No. 2070-0100; expires 09/30/2000.

EPA ICR No. 0155.06; Certification of Pesticide Applicators—40 CFR Part 171; was approved 09/30/97; OMB No. 2070-0029; expires 09/30/2000.

EPA ICR No. 1230.09; Prevention of Significant Deterioration Non-Attainment Area New Source Review; was approved 09/30/97; expires 09/30/2000.

EPA ICR No. 1038.09; Invitation for Bids and Request for Proposals; was approved 09/30/97; OMB No. 2030-0006; expires 09/30/2000.

Notice of Short Term Extensions

EPA ICR No. 1718.01; Regulations for Fuels and Fuels Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years (Interim Final Rule); OMB No. 2060–0308; expiration date was extended from 10/31/97 to 03/31/98.

EPA ICR No. 1425.03; Application for Reimbursement of Local Governments; OMB No. 2050–0077; expiration date was extended from 9/30/97 to 03/31/98.

Dated: October 6, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–27015 Filed 10–9–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5908–1]

State Program Requirements; Revision of the Approved National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Notice of revision of the Oklahoma Pollutant Discharge Elimination System under the Clean Water Act.

SUMMARY: The Environmental Protection Agency (EPA), Region 6, provides notice that the approved program for the State of Oklahoma under the National Pollutant Discharge Elimination System (NPDES) program has been revised. The requirements for revising authorized state programs are found in Volume 40 Code of Federal Regulations (CFR) section 123.62. The revised program provides Oklahoma Department of Environmental Quality (ODEQ) the authority to issue general permits under the OPDES permitting program; and changes the enforcement program to include authority for the Oklahoma Ordinance Works Authority (OOWA).

DATES: This revision was approved by the EPA Region 6 Administrator on September 11, 1997.

ADDRESSES: The revised Oklahoma program documents are available to the public during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7513

ODEQ Headquarters, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner at the EPA address listed above or by calling (214) 665–7516; or Norma Aldridge at the ODEQ address listed above or by calling (405) 271–5205.

Part or all of the State's revised program (which comprises approximately 2260 pages) may be copied at the ODEQ office in Oklahoma City, or EPA office in Dallas, at a minimal cost per page. A paper copy of the entire submission may be obtained from the ODEQ office in Oklahoma City for a $339 fee (the cost of the changed pages only is $121.55). An electronic copy of the documents stored on computer disk will be provided at no cost to interested parties who supply three disks to ODEQ for that purpose, with a self-addressed, stamped mailing container. The disks must be new, 3.5" high density/double-sided microdisks. The documents will be copied to the disks in WordPerfect 6.0.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (Act) created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may authorize a State to administer an equivalent state program upon a showing the State has authority and a program sufficient to meet the Act's requirements.

The approved state program, i.e., the Oklahoma Pollutant Discharge Elimination System (OPDES) program, is a partial program which operates *in lieu* of the EPA administered NPDES program pursuant to section 402 of the CWA. The OPDES program is administered by the Oklahoma Department of Environmental Quality (ODEQ). The basic requirements for revising approved state programs are listed in 40 CFR section 123.62. EPA Region 6 considers the documents submitted by the State of Oklahoma complete at the time of this notice and believes they comply with the regulations found at 40 CFR part 123. These changes to the Oklahoma program were explained in the **Federal Register** Notice (61 FR 65047) approving the OPDES program, and are not considered to be significant. Therefore, EPA has approved the OPDES program revision as described by the Oklahoma Department of Environmental Quality. As of this Notice EPA will transfer administration of its general permits to ODEQ (except for those discharges which are not under the jurisdiction of ODEQ, *see Scope and Summary of the OPDES Permitting Program* in 61 FR 65047].

Changes to the Approved OPDES Documents

The **Federal Register** Notice of EPA's approval of the OPDES program (61 FR 65047) restricted approval of the OPDES program with respect to enforcement authority for the Oklahoma Ordinance Works Authority (OOWA) facility, and ODEQ's general permitting authority:

"5. Oklahoma Ordinance Works Authority (OOWA). EPA will retain enforcement authority for OOWA (NPDES permit No. OK0034568), located in Pryor, Oklahoma, and all industries served by this facility. ODEQ is legally responsible for implementing the pretreatment program at OOWA.

6. Authority over EPA issued general permits: EPA will retain authority to administer general permits in accordance with 40 CFR 123.1. As explained in the **Federal Register** Notice proposing approval of the OPDES program, Oklahoma is revising its statutes and regulations to provide the Executive Director of the Oklahoma Department of Environmental Quality with the full authority to issue general permits under the OPDES program. This revision of Oklahoma Law is to ensure that the Oklahoma general permitting program is consistent with the requirements of 40 CFR 123.25(c)."

ODEQ has now restructured its oversight of the OOWA facility's pretreatment program to ensure separation of responsibility from its NPDES enforcement activities. The Memorandum of Agreement, the Program Description and the Enforcement Management System have been changed to reflect these separations of responsibilities from each other. These changes in responsibility and procedures are reflected in those documents and are available to the public.

With regard to general permitting authority, the State of Oklahoma has revised its statutes to provide the Director of ODEQ with the authority to issue general permits in a manner consistent with the requirements of 40 CFR part 123. The revision of Oklahoma's statutes was done through that State's public legislative process. The program documents (i.e., the Memorandum of Agreement, the Program Description and the Attorney General's Statement) have been revised to reflect this new authority and procedures. These changes, along with the new statutory authority are available to the public.

In the interim EPA has continued to administer the general permits which it had issued or proposed prior to 1996 program authorization in Oklahoma. Permittees under those general permits will be notified that administration of those general permits is being transferred to the State agency. The address for Notices of intent and Termination and compliance data under those general permits which are to be transfered to the state will be: ODEQ Water Quality Division, 10th floor, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

Questions on those general permits should be directed to Dave Farrington of the ODEQ. Mr. Farrington may be contacted at the address above or by telephoning (405) 271–5205 ext. 118.

An additional change has been made to the MOA that clarifies ODEQ's authority over Standard Industrial Classification (SIC) Code 13. This change to the MOA clarifies that ODEQ is the permitting authority over SIC groups 1321 and 1389 where the discharges are not associated with an exploration or production site. This is a specific clarification of the scope of the program as listed below in part 2.

Scope of the OPDES Program and Clarifications on EPA Authority and Oversight

EPA continues to be the NPDES authority for the following discharges:

1. Agricultural industries regulated by the Oklahoma Department of Agriculture including concentrated animal feeding operations and silviculture. EPA will remain the NPDES permitting authority for all point source discharges associated with agricultural production, services, silviculture, feed yards, livestock markets and animal wastes.

2. Oil and Gas exploration and production related industries and pipeline operations regulated by the Oklahoma Corporation Commission. EPA will retain NPDES authority over these industries and their discharges to surface waters of the state.

3. Discharges in Indian Country. The State of Oklahoma does not seek jurisdiction over Indian Country. EPA will retain NPDES authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). The State of Oklahoma has undertaken steps to revise regulation 252:605–1–3(c) clarifying ODEQ does not seek to issue authorized OPDES permits to discharges in Indian Country. EPA and ODEQ will work together with tribal authorities to resolve questions of permitting authority for individual discharges.

4. Discharges of radioactive materials regulated by the federal government [i.e. those radioactive materials covered by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.)]. EPA does not have the authority to approve the OPDES program to regulate radioactive wastes governed by the Atomic Energy Act. The regulatory authority for radioactive materials will remain under the jurisdiction of the U.S. Department of Energy and the Nuclear Regulatory Commission. [Some industrial discharges which contain very low level radioactive wastes (e.g., manufacturers of watches may discharge trace amounts of radium, and hospital wastes sometimes contain iodine isotopes) are not regulated under the Atomic Energy Act and may be regulated by EPA; upon authorization of the OPDES program, the authority to regulate those discharges may become the responsibility of ODEQ.]

5. Status of applications, proposed permits, contested permit actions, and unresolved EPA enforcement actions: Except for the files listed below, all pending NPDES permit applications and issued NPDES permits under jurisdiction of ODEQ were transferred to Oklahoma. In accordance with the signed MOA, EPA retains temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; and compliance files and authority for all open enforcement orders until such time as ODEQ has issued parallel orders or EPA has resolved the enforcement action.

Other Federal Statutes

A. National Historic Preservation Act

EPA, ODEQ and the State Historic Preservation Officer consulted under the requirements of section 106 of the National Historic Preservation Act (NHPA) on the original approval of the OPDES program. [Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800.] In the consultation, EPA, the SHPO and ODEQ outlined procedures by which the SHPO will confer on permit actions likely to affect historic properties. These processes are reflected in a memorandum of understanding signed by EPA and the SHPO on EPA's oversight role and objection procedures on permits when the two state agencies can not agree on the protection of historic properties. The EPA/ODEQ MOA includes conditions for EPA and ODEQ to follow to ensure that the requirements of the consultation with the SHPO are met. Based on the previous consultation, EPA believes that this program revision will not have any effect on historic properties or sites listed or eligible for listing in the National Register of Historic Places. EPA has provided notice of this program revision to the SHPO.

B. Endangered Species Act

EPA, ODEQ and the U.S. Fish and Wildlife Service consulted under section 7 of the Endangered Species Act (ESA) on the original approval of the OPDES program. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. In the consultation, EPA, the Service, and ODEQ outlined procedures by which ODEQ and FWS, will confer on permits which are likely to affect federally listed species. These processes are reflected in a Memorandum of Understanding between the State and FWS. In addition, a consultation agreement was reached between EPA and FWS on EPA's oversight role and objection procedures when ODEQ and FWS cannot agree on the protection of species in an individual State permit action. These conditions are reflected in the EPA/ODEQ MOA. Based on the previous consultation, EPA believes this proposed revision of the OPDES program will have no effect on federally listed species. Notice of this program revision has been sent to the Service.

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

D. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this action will not have a significant impact on a substantial number of small entities. This revision of the Oklahoma NPDES permit program will merely allow the ODEQ to issue general permits under the previously approved program; and to perform NPDES enforcement oversight over the OOWA facility.

I hereby authorize this revision of the OPDES program in accordance with 40 CFR 123.

Dated: September 11, 1997.
Jerry Clifford,
Acting Regional Administrator.
[FR Doc. 97-27021 Filed 10-9-97; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

October 2, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimfze the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 9, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

OMB Approval No.: 3060-0795.
Title: ULS TIN Registration and FCC Form 606.
Form No.: FCC Form 606.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; state, local or tribal government.
Number of Respondents: 411,000.
Estimated Hour Per Response: 1 hour.
Frequency of Response: One time filing requirement.
Estimated Total Annual Burden: 411,000 hours.
Needs and Uses: The Wireless Telecommunications Bureau (WTB) is currently developing a Universal Licensing System (ULS) expected to be implemented in mid November 1997. This ULS will eventually replace 10 separate licensing databases and provide for universal licensing forms and data collection for the many services that the Wireless Bureau provides.

The ULS will be driven by applicants Taxpayer Identification Number (TIN), which could be a Social Security Number or an Employer Identification Number. We are requesting an extension of the emergency approval to require existing licensees to provide WTB with their TIN and list of call signs in order to populate ULS and establish a unique sequential number for each licensee. A licensee may have multiple licenses under different names and addresses all covered under the same TIN number. Only one unique sequential number will be assigned to cover all of the licensees licenses which could be in various names, radio services and addresses. The actual TIN will not be displayed to the public, but instead, the unique sequential number will be used to service inquiries.

The WTB strongly encourages submission of this information electronically and has developed an interactive electronic application for this purpose which is the FCC Form 606. A series of public notices will be issued and this information will be collected gradually, by radio service.

The information collected in the application will be used to populate the ULS and to assign a unique identifier to each licensee for interaction with the ULS. Assignment of the unique identifier will be automatically generated by the system. This information will also be used to match records in the licensing database to the Collection System records to validate payment for applications and for Debt Collection purposes.

OMB Approval No.: 3060-0793.
Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; state, local or tribal government.
Number of Respondents: 890.
Estimated Hour Per Response: 1.25 hours.
Frequency of Response: On occasion filing requirement; annually.
Estimated Total Annual Burden: 1,120 total annual burden hours for all collections.
Needs and Uses: On May 8, 1997, the Commission released Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157 (Order). In that Order, the Commission adopted rules providing funding for discounts to eligible schools and libraries. The Commission also adopted rules mandating that state commissions designate common carriers as eligible telecommunications carriers for service areas selected by state commissions in accordance with section 214(e). In a Public Notice, the Common Carrier Bureau announced procedures states must follow in order to receive universal service support.

OMB Approval No.: 3060-0756.
Title: Procedural Requirements and Policies for Commission Processing of InterLATA Services Under Section 271 of the Communications Act.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 75.
Estimated Hour Per Response: 250 hours (avg).
Frequency of Response: On occasion filing requirement.
Estimated Total Annual Burden: 18,820 total annual burden hours for all collections.
Needs and Uses: In a Public Notice released 9/19/97, the Commission revised various procedural requirements and policies relating to the Commission's processing of Bell operating company applications to provide in-region, interLATA services pursuant to section 271 of the Communications Act of 1934, as amended. Section 271 provides for applications on a state-by-state basis. The Public Notice requires that applicants file an original and 11 copies of each application, together with one copy on a computer diskette. The applications each will consist of a stand-alone, principal document (Brief in Support of Application) with supporting documentation such as records of state proceedings, interconnection agreements, affidavits, etc. Each application will also include written consultations from state regulatory commissions and the U.S. Department of Justice.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97-26876 Filed 10-9-97; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90-571; DA 97-2146]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: October 3, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601-605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments with respect to the first group of applications on or before November 21, 1997; the second group on or before, December 5, 1997; and the third group, on or before December 12, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances behind the late-filing and requesting acceptance of the late-filed application.

First Group of Applicants (Comments due November 21, 1997)

File No: TRS-97-07
Applicant: Virginia Department for the Deaf and Hard of Hearing
State of Virginia

File No. TRS-97-08
Applicant: Tennessee Regulatory Authority
State of Tennessee

File No. TRS-97-09
Applicant: Illinois Commerce Commission
State of Illinois

File No. TRS-97-10
Applicant: Nevada Rehabilitation Division
State of Nevada

File No. TRS-97-11
Applicant: Kentucky Public Service Commission
State of Kentucky

File No. TRS-97-12
Applicant: Washington Department of Social and Health Services
State of Washington

File No. TRS-97-13
Applicant: Arizona Council for the Hearing Impaired
State of Arizona

File No. TRS-97-14
Applicant: Delaware Public Service Commission
State of Delaware

File No. TRS-97-15
Applicant: Mississippi Public Service Commission
State of Mississippi

Second Group of Applicants (Comments due December 5, 1997)

File No. TRS-97-16
Applicant: Pennsylvania Public Utilities Commission
State of Pennsylvania

File No. TRS-97-17
Applicant: Division of Public Utilities
State of Utah

File No. TRS-97-18
Applicant: Office of Information Resources South Carolina Budget and Control Board
State of South Carolina

File No. TRS-97-19
Applicant: Public Utilities Commission
State of Maine

File No. TRS-97-20
Applicant: Board of Public Utilities
State of New Jersey

File No. TRS-97-21
Applicant: Department of Budget and Management
State of Maryland

File No. TRS-97-22
Applicant: Department of Employment Division of Vocational Rehabilitation
State of Wyoming

File No. TRS-97-23
Applicant: Department of Public Utilities
State of Massachusetts

File No. TRS-97-24
Applicant: Missouri Public Service Commission
State of Missouri

File No. TRS-97-25
Applicant: Telecommunications Regulatory Board of Puerto Rico
Territory of Puerto Rico

Third Group of Applicants (Comments due December 12, 1997)

File No. TRS-97-26
Applicant: Indiana Telephone Relay Access Corporation
State of Indiana

File No. TRS-97-27
Applicant: Kansas Relay Service, Inc.
State of Kansas

File No. TRS-97-28
Applicant: Oklahoma Telephone Association, Inc.
State of Oklahoma

File No. TRS-97-29
Applicant: Governor's Committee on Telecommunications Access Service
State of Montana

File No. TRS-97-30
Applicant: Department of Public Service
State of Vermont

File No. TRS-97-31
Applicant: Idaho Public Utilities Commission
State of Idaho

File No. TRS-97-32
Applicant: Public Utilities Commission
State of Colorado

File No. TRS-97-33
Applicant: Department of Human Services
State of South Dakota

File No. TRS-97-34
Applicant: Iowa Utilities Board
State of Iowa

File No. TRS-97-35
Applicant: Public Service Commission
State of West Virginia

File No. TRS-97-44
Applicant: Wisconsin Department of Administration
State of Wisconsin

File No. TRS–97–45
Applicant: Minnesota Department of Public Service
State of Minnesota

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–26877 Filed 10–9–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 3, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0783.
Expiration Date: 9/30/2000.
Title: Coordination Notification Requirements on Frequencies Below 512 MHz—Section 90.176.
Form No.: N/A.
Estimated Annual Burden: 975 annual hour; average .25 hours per response. 15 respondents reply daily for 3,900 annual responses.
Description: Section 90.176 requires each Private Land Mobile frequency coordinator to provide within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering anaylsis. They must provide the applicant name, frequency or frequencies recommended; antenna locations and heights; the effective radiated power; the emission types; service area description and the date and time of the recommendation. The requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

OMB Control No.: 3060–0795.
Expiration Date: 12/31/1997.
Title: Universal Licensing System (ULS) Taxypayer Identification Number (TIN) Registration.
Form No.: FCC 606.
Estimated Annual Burden: 411,000 annual hours; 1 hour per respondent; 411,000 respondents.
Description: FCC Form 606 will be used by each licensee to provide WTB with their TIN and a list of their call signs to populate the ULS and establish a unique sequential number for each licensee. WTB will issue a services of public notices stating our intentions and request that each licensee provide their TIN. This will be done gradually by radio service, until all existing licensees have been notified.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–26875 Filed 10–9–97; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 97–17]

Portman Square Limited—Possible Violations of Section 10(a)(1) of the Shipping Act of 1984; Order of Investigation and Hearing

Portman Square Limited ("Portman Square") is a tariffed and bonded non-vessel-operating common carrier ("NVOCC"), located at Sixth Floor, Silver Tech Tower, 26 Cheung Lee Street, Chiwan, Hong Kong. Portman Square holds itself out as a NVOCC pursuant to its ATFI tariff FMC–001, filed January 29, 1996. Emerson Li, a resident of Hong Kong, is reported to be Managing Director of Portman Square.

Portman Square currently maintains a NVOCC bond, No. 102229, in the amount of $50,000 with the Intercargo Insurance Company, 1450 East American Lane, 20th Floor, Schaumburg, Illinois 60173. Pursuant to Rule 24 of Portman Square's tariff, Distribution Publications, Inc., 7996 Capwell Drive, Oakland, California, serves as the U.S. resident agent for service of process.

It appears that in at least forty-one (41) instances occurring between January 10, 1997 and March 11, 1997, Portman Square obtained transportation on Hyundai Merchant Marine Co. Ltd. ("Hyundai") vessels by accessing a service contract allegedly entered into by Take Ace Co. Ltd. ("Take Ace"). Take Ace executed Hyundai SC No. 96–5343 on April 24, 1996, and certified to Hyundai that it was the cargo owner.[1] There is no indication, however, that the service contract has been utilized at any time for the transportation of goods in which Take Act retains any beneficial interest.[2]

From documents obtained from U.S. consignees, it appears Portman Square is in fact the real shipper and party for whose account the ocean transportation was provided. During the period May 1996 through April 1997, over 230 shipments were transported by Hyundai pursuant to service contract No. 96–5343. All of these shipments are believed to have originated with Portman Square, and were handled in the United States by the NVOCC's regular destination agents. In each of the above shipments, Portman Square issued its own NVOCC or "house" bill of lading, and thus had a direct role in a scheme of misdescribing the commodity to the transporting ocean common carrier. These shipments originated in Hong Kong and the People's Republic of China, and were destined primarily for Los Angeles and New York for delivery through Portman Square's U.S. agents.

In each of the 41 instances cited herein, the commodity was described to the ocean common carrier as "kitchenware", "lighting fixture", "patio furniture", or "KD furniture". Other contemporaneous documentation, such as house bills of lading, arrival notices, and U.S. Customs entry documentation prepared by the customhouse broker, reflect that Portman Square was fully cognizant that the shipments actually consisted of footwear, computer parts, sunglasses, plastic flatware, polystone figurines, clocks, and used household goods. Portman Square or its agents nonetheless made payment to the ocean common carrier on the basis of the inaccurate commodity shown and declared on the bill of lading when issued.

[1] The Commission's service contract records reflect that Emerson Li executed the Hyundai service contract on behalf of Take Ace.

[2] In fact, the Journal of Commerce PIERS database reports that no shipments were recorded on behalf of shipper Take Ace prior to May 1996 nor subsequent to the expiration of Hyundai's service contract on April 30, 1997.

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[3] Section 23 of the 1984 Act, 46 U.S.C. app. § 1721 further provides that a common carrier's tariff may be suspended for a period not to exceed one year for violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13, and 23 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712, and 1721, an investment is instituted to determine:

(1) Whether Portman Square Limited violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped;

(2) Whether, in the event violations of section 10(a)(1) of the 1984 Act are found, civil penalties should be assessed against Portman Square Limited and, if so, the amount of penalties to be assessed;

(3) Whether, in the event violations of section 10(a)(1) of the 1984 Act are found, the tariff of Portman Square Limited should be suspended; and

(4) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Portman Square Limited is designated a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by October 5, 1998 and the final decision of the Commission shall be issued by February 2, 1999.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 97–26978 Filed 10–9–97; 8:45 am]
BILLING CODE 6730–01–M

[3] These penalties are increased 10 percent for any violations occurring after November 7, 1996. *See, Inflation Adjustment of Civil Penalties,* 61 Fed. Reg. 52704 (October 8, 1996).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 28, 1997.

A. **Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Smith Mustang Ltd., Rio Vista, Texas; Lowell Smith, Jr., General Partner; to acquire voting shares of Mustang Financial Corporation, Rio Vista, Texas, and thereby indirectly acquire First State Bank of Rio Vista, Rio Vista, Texas.

Board of Governors of the Federal Reserve System, October 7, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–27029 Filed 10–9–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First National Security Company, DeQueen, Arkansas; to acquire 100 percent of the voting shares of First Financial Corporation of Idabel, Idabel, Oklahoma, and thereby indirectly acquire First State Bank of Idabel, Idabel, Oklahoma.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. City National Corporation, Beverly Hills, California; to acquire 100 percent of the voting shares of Harbor Bancorp, Long Beach, California, and thereby indirectly acquire Harbor Bank, Long Beach, California.

Board of Governors of the Federal Reserve System, October 7, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27028 Filed 10-9-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO-98-01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The National Home and Hospice Care Survey (NHHCS)—(0920-0298)—Revision—The National Home and Hospice Care survey (NHHCS) was conducted in 1992, 1993, 1994, 1996, and 1997. It is part of the Long-Term Care component of the National Health Care Survey. Section 306 of the Public Health Service Act states that the National Center for Health Statistics "shall collect statistics on health resources * * * (and) utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions." NHHCS data are used to examine this most rapidly expanding sector of the health care industry. Data from the NHHCS are used widely by the health care industry and policy makers for such diverse analyses as the need for various medical supplies; minority access to health care; and planning for the health care needs of the elderly. The NHHCS also reveals detailed information on utilization patterns, as needed to make accurate assessments of the need for and costs associated with such care. Data from earlier NHHCS collections have been used by the Congressional Budget Office, the Bureau of Health Professionals, the Maryland Health Resources Planning Commission, the National Association for Home Care, and by several newspapers and journals. Additional uses are expected to be similar to the uses of the National Nursing Home Survey. NHHCS data cover: baseline data on the characteristics of hospices and home health agencies in relation to their patients and staff, Medicare and Medicaid certification, costs to patients, sources of payment, patients' functional status and diagnoses. Data collection is planned for the period July-November, 1998. Survey design is in process now. Sample selection and preparation of layout forms will precede the data collection by several months. The total costs to respondents is estimated at $194,000.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response (in hrs.)	Total burden (in hrs.)
Agency Questionnaire	1350	1	0.333	450
Current Patient Sampling List	1350	1	0.333	450
Current Patient Questionnaire	1350	6	0.25	2025
Discharged Patient Sampling List	1350	1	0.50	675
Discharged Patient Questionnaire	1350	6	0.25	2025
Total				5625

2. Provider Survey of Partner Notification and Partner Management Practices following Diagnosis of a Sexually-Transmitted Disease—New—The National Center for HIV, STD, and TB prevention, Division of STD Prevention, CDC is proposing to conduct a national survey of physician's partner management practices following the diagnosis of a sexually-transmitted disease. Partner notification, a technique for controlling the spread of sexually-transmitted diseases is one of the five key elements of a long standing public health strategy to control sexually-transmitted infections in the U.S. At present, there is very little knowledge about partner notification practices outside public health settings despite the fact that most STD cases are seen in private health care settings. No descriptive data currently exist that allow the Centers for Disease Control and Prevention to characterize partner notification practices among the broad range of clinical practice settings where STDs are diagnosed, including acute or urgent care, emergency room, or primary and ambulatory care clinics. The existing literature contains descriptive studies of partner notification in public health clinics, but no baseline data exist as to the practices of different physician specialties across different practice settings.

The CDC proposes to fill that gap through a national sample survey of 7300 office managers and physicians who treat patients with STDs in a wide variety of clinical settings; a 70% completion rate is anticipated (n=5110 surveys). This survey will provide the baseline data necessary to characterize infection control practices, especially partner notification practices, for syphilis, gonorrhea, HIV, and chlamydia and the contextual factors that influence those practices. Findings from the proposed national survey of office managers and physicians will assist CDC to better focus STD control and partner notification program efforts and to allocate program resources appropriately. Without this information, CDC will have little information about STD treatment, reporting, and partner management services provided by physicians practicing in the U.S. With changes underway in the manner in which medical care is delivered and the move toward managed care, clinical functions typically provided in the public health sector will now be required of private medical providers. At present, CDC does not have sufficient information to guide future STD control efforts in the private medical sector.

Data collection will involve a mail survey of practicing physicians. The questionnaire mailing will be followed by a reminder postcard after one week, a second mailing to non-respondents at three weeks, telephone follow-up with non-respondents at five weeks, and a final certified mailing of the survey to non-respondents at eight weeks. A study specific computerized tracking and reporting system will monitor all phases of the study. Receipt of the completed questionnaire or a refusal will be logged into this computerized control system to ensure that respondents who return the survey are not contacted with reminders.

Estimated cost to respondents and government based on an average pay rate of $25/hour, the estimated total cost burden for office managers to answer Section 1 is $10,650. Based on an average pay rate of $70/hour, the estimated cost burden for physicians is $94,640. Thus the total cost burden for the data collection effort is estimated to be $105,290.

Respondents	Sections	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Office Managers	Section 1	7300	1	.08	584
Physicians	Sections 2-4	5110	3	.03	460
Physicians	Section 5-10	5110	6	.20	6132
Total					7176

Dated: October 6, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-26983 Filed 10-9-97; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-01-98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Prenatal HIV Prevention Survey: Knowledge, Attitudes And Practices of Health Care Providers Serving Pregnant Women Regarding HIV Counseling and Testing and the Use Of Zidovudine (ZDV) During Pregnancy—New—This is a new data collection. The purpose of this survey is to assess the knowledge, attitudes, and practices of health care providers serving pregnant women regarding HIV counseling and testing and use of ZDV during pregnancy. Data will be collected and reported to CDC to describe:

(1) providers' current practices in providing prenatal care to HIV-infected women, offering HIV counseling and testing to pregnant women, and offering ZDV to HIV-infected pregnant women; (2) providers' knowledge of the ACTG 076 results and PHS perinatal transmission guidelines; (3) providers' attitudes regarding HIV counseling and testing of pregnant women; and, (4) providers' knowledge and experience in the use of ZDV in treating HIV-infected pregnant women.

The intended population to be studied is physicians and nurse-midwives providing prenatal care in four areas (State of Connecticut, potential population approximately 685; State of North Carolina, potential population approximately 1,500; Dade County, FL, potential population approximately 500; Brooklyn, NY, potential population approximately 260) where institutions are currently conducting a CDC-funded study related to implementation of the PHS guidelines to prevent perinatal transmission of HIV. The total annual burden hours are 685.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)
Census	2,659	1	0.05
Questionnaire (Pilot Study)	462	1	0.233
Questionnaire (Survey)	1,902	1	0.2333

2. Workshop Evaluation Component of the CDC's Prevention Marketing Initiative Local Demonstration Site Project—New—The Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Behavioral Intervention Research Branch is planning to conduct a series of studies as part of the evaluation of a five-city HIV prevention demonstration program. The program involves the integration of social marketing strategies and community participation in an effort to develop and implement HIV prevention activities.

Charged with developing programs for those 25 years of age and younger, community groups in the local demonstration sites chose to segment the target audience even further, and to mount a variety of types of interventions. Decisions about segmentation and the nature of local interventions were based on formative research conducted in each community. It is hoped that this demonstration project will result in reductions in HIV risk behavior among members of the target audiences, as well as in enhanced collaboration among individuals and organizations in the participating communities.

To evaluate the effectiveness of two components of the intervention, questionnaire data will be collected from people under 25 years old and from some parents in the demonstration communities. These data will be collected immediately before and after the Skills-Building Workshops, one month later, and six months later. In addition, questionnaire data will be collected once from individuals contacted through Outreach programs. These data will supplement a survey (announced in the **Federal Register** on 8/27/96) designed to assess the full program's coverage of the target population. Total annual burden hours are 2,798.

Respondents	Number of respondents	Number of responses/ respondents	Avg. burden/ response (in hrs.)
Parental consent	[1]845	1	0.083
Teen consent/assent	[2]3,168	1	0.0833
Pre/post questionnaire (intervention group)	[3]1,584	2	0.3333
Post questionnaire (control group)	[3]1,584	1	0.3333
Follow-up questionnaire	[4]2,640	1	0.3333

[1] 528 (ultimately needed per site) × 2 sites (whose target audiences are underage) plus 317 (⅗ × 528 for the one site that has not received IRB permission to waive parental consent and will train underage youth and some 18 and 19 year olds).
[2] 528 × 5 sites × 1.2 (to allow for 20% loss to follow-up).
[3] ½ × 3,168.
[4] 529 × 5.

3. Preventive Health and Health Services Block, Annual applications and reports—(0920–0106)—Extension—In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services Block Grant (0920–0106). This approval expires on September 30, 1997. CDC is requesting extension of OMB clearance for this legislatively mandated information collection.

The information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. This is no change in the proposed information collection from previous years. The information collected from the annual reports is required by section 1906, specifically the requirement for uniform data sets matching the uses of funds. Minor modifications to some individual uniform data sets for chronic diseases, as well as some other program areas, have been made to maintain consistency with performance measures developed as a result of the Government Performance and Results Act. Overall, this request reflects a 25% reduction in the collection burden to the grantees (States). The total burden hours are 5490.

Respondents	Number of respondents	Number of responses/ respondents	Avg. burden/ response (in hrs.)
Annual Applications	61	1	30
Annual Reports	61	1	60

Dated: October 3, 1997.
Wilma G. Johnson,
Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).
[FR Doc. 97–26984 Filed 10–9–97; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0115]

SEF, P.A.; Revocation of U.S. License No. 1166

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1166) and the product licenses issued to SEF, P.A., doing business as National Health Guard, Inc., for the manufacture of Whole Blood and Red Blood Cells (RBC's). SEF, P.A., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

DATES: The revocation of the establishment license (U.S. License No. 1166) and the product licenses is effective October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 1166) and product licenses issued to SEF, P.A., doing business as National Health Guard, Inc., 1885 West Commercial Blvd., suite 140, Fort Lauderdale, FL 33309, for the manufacture of Whole Blood (CPDA–1) and RBC's including frozen, deglycerolized, frozen rejuvenated, and rejuvenated deglycerolized RBC's.

On February 13, 1996, FDA attempted to inspect the SEF, P.A., facility located at 1820 North University Dr., Plantation, FL. The facility was found to be vacant. A visit that same day to the firm's previous business address, 1885 West Commercial Blvd., suite 140, Fort Lauderdale, FL, found that location to be vacant as well. On February 28, 1996, the owner of SEF, P.A., stated that all the firm's equipment was stored in a warehouse in Miami, FL. The owner also indicated that he would voluntarily surrender the firm's license because SEF, P.A. was no longer in operation and there were no plans to resume operations. On June 17, 1996, FDA successfully contacted the owner by telephone and he indicated that he no longer desired to relinquish the license. Further attempts to contact the owner on July 2 and 29, 1996, were unsuccessful. On both occasions, messages were left with the answering party that were never replied to by the owner.

FDA sent a certified, return-receipt letter dated November 1, 1996, to the firm's owner. The letter stated that under 21 CFR 601.5(b) a license may be revoked when the Commissioner of Food and Drugs finds that: (1) Authorized FDA employees after reasonable efforts have been unable to gain access to an establishment or a location for the purposes of carrying out an inspection, or (2) manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection or evaluation cannot be made. The letter provided the firm's owner notice of FDA's intent to revoke U.S. License No. 1166 and announced FDA's intent to offer an opportunity for a hearing.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of April 9, 1997 (62 FR 17193), a notice of opportunity for a hearing on a proposal to revoke the licenses of SEF, P.A. In the notice, FDA explained that the proposed license revocation was based on the inability of FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation and noted that documentation in support of the license revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. The 30-day time period, prescribed in the notice of opportunity for a hearing and in the regulation, may not be extended. No comments were received from any other parties.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1166) and the product licenses issued to SEF, P.A. are revoked, effective October 10, 1997.

Dated: September 25, 1997.
Kathryn C. Zoon,
Director, Center for Biologics Evaluation and Research.
[FR Doc. 97–26987 Filed 10–9–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meetings:

Name of SEP: Biomedical Research Technology (Telephone Conference Call).
Date: November 3, 1997.
Time: 12:00 p.m.
Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6016, Bethesda, MD 20892–7965.
Contact Person: Dr. D.G. Patel, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda 20892–7965, (301) 435–0820.
Purpose/Agenda: To evaluate and review grant applications.

Name of SEP: Biomedical Research Technology (Telephone Conference Call).
Date: November 4, 1997.
Time: 12:00 p.m.
Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.
Contact Person: Dr. D.G. Patel, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda 20892–7965, (301) 435–0820.
Purpose/Agenda: To evaluate and review grant applications.

Name of SEP: Biomedical Research Technology (Telephone Conference Call).
Date: November 5, 1997.
Time: 12:00 p.m.
Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.
Contact Person: Dr. D.G. Patel, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda 20892–7965, (301) 435–0820.
Purpose/Agenda: To evaluate and review grant applications.

Name of SEP: Biomedical Research Technology (Telephone Conference Call).
Date: November 7, 1997.
Time: 12:00 p.m.
Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. D.G. Patel, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda 20892–7965, (301) 435–0820.

Purpose/Agenda: To evaluate and review grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26888 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National heart, Lung, and Blood Institute, November 14, 1997. The meeting will be held at the National Institutes of Health, Rockledge II, Conference Room 9104, 6701 Rockledge Drive, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clairce D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resource, NHLBI, Two Rockledge Center, Suite 10160, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0080, will furnish substantive program information, a summary of the meeting, and a roster of the committee members.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26888 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: NICHD Training Grant Review.

Date: October 22–23, 1997.

Time: October 22–8:00 a.m.–5:00 p.m.; October 23–8:00 a.m.–adjournment.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892. Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26881 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases, Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: NIAMS SEP SCOR Review.

Date: November 17–18, 1997.

Time: November 17—8:00 a.m.–5:00 p.m.; November 18—8:00 a.m.—adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26882 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke *Special Emphasis Panel.*

Date: December 4, 1997.

Time: 10:00 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact: Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26885 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 8, 1997.

Tiem: 6 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 8, 1997.

Time: 7 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 8, 1997.

Time: 7:30 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 8, 1997.

Time: 8 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Number 93.242, 93.281, 93.282)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26887 filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applicants.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 3, 1997.

Time: 11:30 a.m.

Place: NIH, Rockledge 2, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Chemistry and Related Sciences.

Date: November 18, 1997.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

Name of SEP: Biological and Physiological Sciences.

Date: November 19, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5124, Telephone Conference.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Name of SEP: Chemistry and Related Sciences.

Date: December 10–12, 1997.

Time: 8:00 p.m.

Place: Radisson Hotel, Lansing, MI.

Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26884 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Research on Women's Health; Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Advisory Committee on Research on Women's Health (ACRWH) to be held November 17, 1997 at the Bethesda Marriott (formerly Pooks Hill Marriott), Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to adjournment at 12:00 p.m. The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on its research agenda and to provide recommendations regarding ORWH activities. Attendance by the public will be limited to space available.

The agenda will include an update on ORWH activities and programs to meet

the mandates of the office, and a report from the Special Ad Hoc Working Group on the Women's Health Initiative. The Committee will also discuss ongoing activities to update the NIH research agenda on women's health, including the national meeting, "Beyond Hunt Valley: Research on Women's Health for the 21st Century." The national meeting is the culmination of a series of public hearings and scientific workshops held in Philadelphia, Pennsylvania, New Orleans, Louisiana, and Santa Fe, New Mexico, and will be conducted November 17–19, 1997 at the Bethesda Marriott.

Joyce Rudick, Acting Executive Secretary, ACRWH, and Acting Deputy Director, ORWH, Office of the Director, NIH, Building 1, Room 201, Bethesda, Maryland 20892, 301/402–1770, 301/402–1798 (Fax), will furnish the meeting agenda, roster of Committee members, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Rudick in advance of the meeting.

Dated: October 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26883 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 47509, September 9, 1997, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended to reflect the reorganization of the intramural research support services within the NIH. The reorganization transfers the intramural research support services function from the National Center for Research Resources (NCRR)(HNR) to the Office of Research Services (ORS)(HNAM5). (1) In ORS, the Division of Intramural Research Services (DIRS) is established; (2) the following organizations are transferred in their entirety from NCRR to DIRS/ORS and their functional statements are revised: (a) Biomedical Engineering and Instrumentation Program, (b) Veterinary Resources Program, (c) Medical Arts and Photography Branch, and (d) Library Branch; (3) the functional statement for NCRR is revised; and (4) in the NCRR's Office of the Director: (a) the Office of Human Resources and Information Technologies (OHRIT) is established, (b) two offices from the Office of Administration (OA) are transferred to OHRIT, (c) the OA is retitled as the Office of Finance and Administration and its functional statement is revised, and (d) in the Office of Science Policy, the Office of Science and Health Reports is abolished.

Section HN–B, Organization and Functions, is amended as follows:

(1) Under the heading Office of the Director (NA, formerly HNA), Office of Management (NAM, formerly HNAM), insert the following:

Division of Intramural Research Services (NAM57, formerly HNAM57). Plans and conducts a centralized program of intramural research services for the NIH throughout the planning, performance, and reporting of research projects as follows: (1) collaborates with intramural scientists on applications of engineering, mathematics, and the physical sciences in biomedical research; works with intramural scientists to predict technological needs and to develop appropriate solutions, including theoretical and experimental models and novel instrumentation; and provides comprehensive services for fabrication, maintenance, modification, repair, sale, and lease of scientific equipment; (2) provides a centralized laboratory animal care and use program offering comprehensive veterinary, technical, and diagnostic support services; (3) provides comprehensive research library support to NIH scientific, clinical and management programs through an extensive collection of books and journals, access to electronic information resources, and staff assistance and consultation in information handling and retrieval; and (4) provides a complete visual communications program utilizing design, graphics, medical illustration, photography, and video recording for documentation of medical research programs and data for all NIH information dissemination needs.

Biomedical Engineering and Instrumentation Program (NAM572, formerly HNAM572). Contributes to the advancement of NIH research in applications of engineering, mathematics and the physical sciences through (1) collaborations with NIH scientists in areas such as measurement, imaging, mathematical modeling, and design of specialized equipment; (2) proposing and developing theoretical and experimental methods, including instrumentation, to meet long-term needs of the NIH IRP; and (3) providing prompt, convenient, cost-efficient, high-quality technical support services, such as construction, maintenance, modification, repair, sale, and lease of scientific equipment.

Veterinary Resources Program (NAM 573, formerly HNAM573). Contributes to the advancement of NIH research through the application of laboratory animal sciences by (1) consultive and collaborative interaction with NIH intramural researchers; (2) provision of fully characterized laboratory animal models; and (3) provision of a full range of professional and technical support and diagnostic services, facilities, and other resources required for laboratory animal care.

Medical Arts and Photography Branch (NAM574, formerly HNAM574). Contributes to the advancement of NIH research by (1) creating products that visually communicate scientific data, research accomplishments, and NIH programs to the scientific community and the general public; (2) producing publications, exhibits, and audiovisual presentations through a variety of services including design, graphics, video production, medical illustration, micro- and macro-photography, public affairs and patient photography; and (3) providing staff assistance in planning and coordination of visual communication needs.

Library Branch (NAM575, Formerly HNAM575). (1) Serves as the primary literature, referral, and information resource for the administrative, scientific, and clinical staff of NIH; (2) interprets information needs to support the NIH research program; (3) acquires, organizes, manages, maintains, and services a collection of materials to meet these information needs; (4) provides access to needed information not directly acquired by the Library; (5) provides professional assistance to NIH personnel in identifying, retrieving, and critically appraising information resources available locally or in electronic form; (6) provides translation, instruction, reference, and mediated search services; and (7) provides leadership and consultative services to NIH personnel in organization and management of print and electronic information.

(2) Under the heading National Center for Research Resources (NR, formerly HNR) is revised as follows:

National Center for Research Resources (NR, formerly HNR). Administers, fosters, and supports research for the development and support of multi-categorical research resources needed on an institutional, regional, national, or international basis for health-related research. Programs are carried out through: (1) research grants, research and development contracts, and individual and institutional research training awards; (2) cooperation and collaboration with organizations and institutions engaged in multi-categorical research resources activities; and (3) collection and dissemination of information on research and findings in these areas.

Office of Human Resources and Information Technologies (NR18, formerly HNR18). (1) Plans, evaluates and implements the Center's human resources management and information technology services; (2) maintains liaison with the NIH Office of Human Resource Management and the Office of the NIH Chief Information Officer; (3) develops long-range plans for information technology within the Center, including the development and execution of an information technology budget, policies and procedures; (4) provides management support, training and advice on personal computer matters and participates with NIH planning groups to develop new technologies for common program improvements; (5) provides a full range of human resources planning and support services, including staffing, classification, employee development, benefits administration, awards, and management of the employee performance system; and (6) consults with Center managers on methods and techniques for developing human resources to their maximum capabilities and productivity.

Office of Finance and Administration (NR14, formerly HNR14). (1) Plans, evaluates and executes all aspects of the Center's financial management and administrative services ;(2) formulates, presents and executes budget; (3) advises the Director and staff on financial management matters; (4) maintains liaison with the NIH Office of Financial Management and Office of Administration, and ensures compliance with all instructions and policies related to financial management and administration; (5) provides management analysis and advice; and (6) interprets and implements new or revised administrative policies and regulations affecting the overall mission of the Center and NIH/HSS policies and procedures.

The following organizations are abolished and their respective functional statements are removed in their entirety: Biomedical Engineering and Instrumentation Program (NR4, formerly HNR4), Veterinary Resources Program (NR5, formerly HNR5), Medical Arts and Photography Branch (NR6, formerly HNR6), Library Branch (NR7, formerly HNR7), and Office of Science and Health Reports (NR152, formerly HNR152).

Dated: September 25, 1997.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 97–26880 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 47509, September 9, 1997, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Cancer Institute as follows: (1) the Division of Cancer Control and Population Science (DCCPS) and DCCPS's Office of the Director are established; (2) the Division of Cancer Prevention and Control is retitled to the Division of Cancer Prevention (DCP), its functional statement is revised, and the DCP's Office of the Director functional statement is revised; (3) the Division of Cancer Treatment, Diagnosis and Centers is retitled to the Division of Cancer Treatment and Diagnosis and its functional statement is revised; (5) in the Office of the Director, the Office of Centers, Training and Resources is established; and (6) in the Office of the Director, the Office of Special Populations Research is established.

Section N–B, Organization and Functions, under the heading National Cancer Institute (NC, formerly HNC) is amended as follows:

(1) The following is inserted:

Division of Cancer Control and Population Science (NCD, formerly HNCD). (1) Plans and directs an extramural program of cancer and population science research for the Institute; (2) serves as the Institute focal point for extramural research in the following areas: epidemiology and cancer genetics, behavioral sciences and cancer surveillance; (3) develops and supports multidisciplinary research training and career development in cancer control; (4) provides leadership in setting national priorities for research in the areas central to cancer control and in conducting regulatory program reviews to assess the impact of funded initiatives; and (5) coordinates program activities with other Divisions, Institutes, or Federal and state agencies, and establishes liaison with professional and voluntary health agencies, cancer centers, labor organizations, cancer organizations and trade associations.

Office of the Director (NCD1, formerly HNCD1). (1) Plans, develops, directs, and coordinates the Institute's research activities related to cancer control and population science conducted through independent and cooperative studies and programs with cancer centers, universities, state and other health agencies, private industry and other Federal agencies; (2) develops and maintains liaison with public health groups and agencies, cancer centers, public and professional educational organizations, labor organizations, trade and professional associations, voluntary health organizations, healthcare delivery and managed-care organizations, and regulatory agencies in order to facilitate communication, information exchange, and cooperation; (3) collaborates with other divisions, offices, institutes, and/or national and international research organizations in projects and activities related to cancer control; (4) plans, develops, directs and coordinates the Institute's research activities related to cancer survivors; and (5) disseminates relevant research information to the lay and professional communities.

(2) The title and functional statement for the Division of Cancer Prevention and Control (NC4, formerly NHC4) and its Office of the Director (NC41, formerly HNC41) are replaced with the following:

Division of Cancer Prevention (NC4, formerly HNC4). (1) Plans and directs an extramural program of cancer prevention research for the Institute; (2) develops and supports research training and career development in cancer prevention; (3) coordinates program activities with other Divisions, Institutes, or Federal and state agencies, and establishes liaison with professional and voluntary health agencies, cancer centers, labor organizations, cancer organizations, healthcare delivery and managed-care organizations, and trade associations; and (4) coordinates community-based clinical research in cancer prevention and dissemination of cancer treatment practice through a consortium of community clinical centers.

Office of the Director (NC41, formerly HNC41). (1) Plans, develops, directs, and coordinates the Institute's research activities related to prevention in community clinical oncology centers, conducted through independent and cooperative studies and programs with cancer centers, universities, state and other health agencies private industry and other Federal agencies; (2) develops and maintains liaison with public health groups and agencies, cancer centers, public and professional educational organizations, labor organizations, trade and professional associations,. voluntary health organizations, and regulatory agencies in order to facilitate communication, information exchange, and cooperation; (3) collaborates with other Divisions, Offices, Institutes, and/or national and international research organizations in projects and activities related to cancer prevention; and (4) disseminates relevant prevention, early detection, psychosocial, and rehabilitation information to the lay and professional communities.

(3) The title and functional statement for the Division of Cancer Treatment, Diagnosis and Centers (NCB, formerly HNCB) are replaced with the following:

Division of Cancer Treatment and Diagnosis (HNCB). (1) Plans, directs and coordinates a program of extramural preclinical and clinical cancer treatment research as well as research conducted in cooperation with other Federal agencies with the objective of curing or controlling cancer in man by utilizing treatment modalities singly or in combination; (2) administers targeted research and development programs in the areas of drug development, diagnosis, biological response modifiers and radiotherapy development; and (3) serves as the national focal point for information and data on experimental and clinical studies related to cancer treatment and for the distribution of such information to appropriate scientists and physicians.

(4) In the Office of the Director (NC1, formerly HNC1) the following are inserted:

Office of Centers, Training and Resources (NC18, formerly HNC18). (1) Plans, directs, coordinates, evaluates and supports extramural grant programs that relate to the broad scientific objectives of each extramural Division and that are designed to develop and enhance cancer research in academic and research institutions; (2) through the extramural funding of specialized and/or broad multidisciplinary centers devoted to the basic, clinical and populations sciences, advances the knowledge and understanding of the causes, mechanisms, diagnosis and treatment of cancer and promotes transitional research or the movement of discoveries in the laboratory into patient and population research settings; (3) assists extramural research efforts through support of the improvement, renovation, and construction of research facilities; (4) provides training opportunities for health professionals in order to create a national cadre of highly skilled individuals capable of transferring research discoveries to applications in cancer diagnosis, treatment, and prevention; and (5) establishes program priorities, allocates resources, integrates the projects of various branches, evaluates program effectiveness relative to the goals and objectives of the Institute, and represents the program area in management and scientific decision-making meetings within the Institute.

Office of Special Populations Research (NC19, formerly HNC19). (1) Provides leadership, coordination, and advice to the Director, NCI, on research related to minorities and special populations; (2) serves as the Institute's focal point for programs addressing scientific questions pertinent to minority and ethnic populations as well as the elderly and medically underserved; (3) provides advice and assistance to the Institute Director, Division Directors, and other senior staff concerning the development, conduct and research focus of programs pertaining to or affecting special populations; (4) collaborates and consults, as necessary, with appropriate Institute, NIH, and other Federal and non-federal agencies and organizations interested or engaged in research on special populations; and (5) develops concepts for new programs that would be implemented by the scientific divisions of the Institute.

Dated: September 30, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–26889 Filed 10–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 2, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–26762 Filed 10–9–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Golden Studio Animals, Inc, Sarasota, FL, PRT–834534.

The applicant requests a permit to export and re-import a captive-born Bengal tiger (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities by the applicant over a three year period.

Applicant: John Ariel Bradshaw, Ogden, UT, PRT–835151.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: St. Louis Zoological Park, St. Louis, MO, PRT–834539.

The applicant requests a permit to import biological samples from wild and captive born Black and white lemur (*Varecia variegata variegata*) from Reserve Naturelle Integrale No. 1, Parc Zoologique de Ivoloina, and Parc Botanique et Zoologique de Tsimbazaza in Madagascar for the purpose of enhancement through scientific research.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH, PRT–834809.

The applicant requests a permit to import one female Clouded leopard (*Neofelis nebulosa*) from Belfast Zoo, Northern Ireland for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Omaha's Henry Doorly Zoo, Omaha, Nebraska, PRT–835175.

The applicant requests a permit to import one female Siberian tiger (*Panthera tigris altaica*) from Emmen Zoo, The Netherlands for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Arrowhead Bluffs Museum, Wabash, MN, PRT–826912.

Permit Type: Public Display.

Name and Number of Animals: polar bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import a polar bear hide and skull sport-hunted in Canada and donated to the facility for the purpose of public display at the Arrowhead Bluffs Museum.

Source of Marine Mammals: sport-hunted in Canada by an affiliate of the Arrowhead Bluffs Museum.

Period of Activity: Up to five years from issuance date of the permit, if issued.

Applicant: University of Alaska Museum, Fairbanks, AK, PRT–832903.

Type of Permit: Import for Scientific Research.

Name and Number of Animals: Walrus (*Odobenus rosmarus*), polar bear (*Ursus maritimus*), and sea otter (*Enhydra lutris*); up to a total of 200 samples per year.

Summary of Activity to be Authorized: The applicant has requested a permit for the import of legally collected samples of walrus, polar bear and sea otter from Canada and Russia for scientific research purposes including exchange of material with other researchers. Specimens are to be acquired by salvage from subsistence hunting and beach-cast carcasses as well as acquired from agents of the foreign governments who are conducting authorized research on these species. The applicant is also seeking authorization for re-import of specimens of these species legally collected in the United States, accessioned in the Muesum, and exported to foreign researchers for scientific purposes.

Source of Marine Mammals: salvage and authorized research as described above.

Period of Activity: Up to five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of the applications listed above to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Federick Studler, Jr., Conestoga, PA, PRT–834952.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Gregory Wambold, Poway, CA, PRT–834978.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Randy Deeter, Anchorage, AK, PRT–834963.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Lawrence Carlson, Ham Lake, MN, PRT–832105.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: October 6, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–26979 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period on the proposed policy for issuance of permits for import of giant panda will be reopened for 30 days to obtain further comments.

DATES: Public comments received on or before November 10, 1997 will be considered by the Service.

ADDRESSES: Comments may be submitted to the Chief of the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Room 430, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell, Chief, Office of Management Authority, at the above address, or call (703) 358–2093; fax (703) 358–2280.

SUPPLEMENTARY INFORMATION: The Service published a notice reopening the comment period on the proposed policy for issuance of permits for import of giant panda on July 1, 1997 (62 FR 35518–19). The comment period ended September 29, 1997. The Service received a request from the World Wildlife Fund, Washington, D.C., to extend the comment period to allow submission of information from two events; the International Symposium on Environmental Protection and City Development of the 21st Century (September 23–28) in Chengdu and the Ministry of Forestry/WWF Workshop on Giant Panda Reintroduction (September 24–28). The results of these meetings were not available before the close of the previous comment period but may be important to the policy development. Interested organizations and the public are invited to comment on the results from these meetings or on any other issues related to panda conservation.

Authority: This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 3, 1997.

Jamie Rappaport Clark,

Director.

[FR Doc. 97–26848 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On July 31, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 147, Page 41072, that an application had been filed with the Fish and Wildlife Service by Robert Keeler, Douglas, WY for a permit (PRT–832324) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Gulf of Boothia population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 26, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 31, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 147, Page 41072, that an application had been filed with the Fish and Wildlife Service by Harry Donald Nicholson, Corsicana, TX (PRT–832095) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Lancaster Sound population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 26, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 152, Page 42590, that an application had been filed with the Fish and Wildlife Service by Joseph Cafmeyer, Taylor, MI (PRT–832734) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Baffin Bay population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 26, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 137, Page 38320, that an application had been filed with the Fish and Wildlife Service by Christopher Harvey, Ormond Beach, FL (PRT–829688) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 23, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 152, Page 42590, that an application had been filed with the Fish and Wildlife Service by William Shields, Reno, NV (PRT–830610) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Northern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 24, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: October 6, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management.

[FR Doc. 97–26978 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO220–1020–01–241A]

OMB Approval Number 1004–0019; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) On April 8, 1997, BLM published a notice in the **Federal Register** (61 FR 16864) requesting comment on this proposed collection. The comment period ended on June 9, 1997. BLM received no (0) comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. The Office of Management and Budget is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0119), Office of information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St. N.W., Mail Stop 401 LS, Washington D.C. 20420.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting information, including the validation of the methodology and assumption used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical and other forms of information technology.

Title: 43 CFR 45120.3–3, Range Improvement Permit.

OMB approval number: 1004–0019.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 4120.3–3. The rule provides for public rangeland grazing permittees or lessees to apply for BLM approval to construct or maintain removable or temporary range improvements on the public rangeland allotments that are necessary for livestock management or to facilitate handling livestock. The form is used to apply for approval to install the improvement and documents the records for the service life of the improvement.

Bureau Form Number: Form 4120–7.

Frequency: On occasion.

Description of Respondents: Respondents are applicants requesting permission to construct range improvements on public lands.

Estimated completion time: 20 minutes.

Annual responses: 60.

Annual burden hours: 20.

Collection clearance officer: Carole Smith, (202) 452–0367.

Dated: October 7, 1997.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 97–26994 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24 1A]

OMB Approval Number 1004–0135; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*) On March 28, 1996, the BLM published a notice in the **Federal Register** (61 FR 13869) requesting comments on the collection. The comment period ended May 28, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0135), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Sundry Notices and Reports on Wells.

OMB Approval Number: 1004–0135.

Abstract: Data submitted by oil and gas operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work.

Bureau Form Number: 3160–5.

Frequency: On occasion.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimated completion time: 25 minutes.

Annual Responses: 34,000.

Annual Burden Hours: 14, 166.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: October 7, 1997.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 97–26995 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–08–3110–00–H040 GP7–0315]

Notice of Direct Sale of Public Lands in Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of direct sale of public lands in Klamath County, Oregon.

SUMMARY: The following described lands have been determined to be suitable for disposal by direct sale under Section 203 of the Federal Land Policy Land Management Act of 1976, 43 U.S.C. 1713, at not less the appraised fair market value of $645,000.

Willamette Meridian

T. 37 S., R. 9 E.	
Sec. 4–SW¼SW¼	40.00
Sec. 9–NW¼NW¼, NE¼SW¼	80.00
Sec. 35–SE¼NE¼	40.00
T. 37 S., R. 10 E.	
Sec. 12–S½SE¼	80.00
Sec. 13–NE¼NW¼	40.00
T. 37 S., R. 11½–E.	
Sec. 13–E½NW¼	80.00
Sec. 14–SE¼NE¼	40.00
Sec. 17–SE¼SW¼	40.00
Sec. 20–NE¼SE¼	40.00
Sec. 21–W½NE¼, SE¼NE¼, N½NW¼, SW¼SW¼, N½SE¼, SE¼SE¼	360.00
Sec. 22–W½SW¼	80.00
Sec. 26–NE¼NW¼	40.00
Sec. 27–NW¼SW¼	40.00
Sec. 28–SW¼NE¼, W½NW¼, SE¼NW¼, NW¼SW¼	200.00
Sec. 29–SE¼NE¼, E½SW¼, E½SE¼	200.00

T. 37 S., R. 11 E.	
Sec. 29–N½SW¼, SE¼SW¼	120.00
Sec. 30–N½SE¼	80.00
Total	1,600.00

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until the title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

These lands are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with the Bureau of Land Management's planning for the lands involved and the public interest will be served by the sale. Sale of these lands will contribute to reducing the land sale commitment the Klamath Falls Resource Area incurred with the acquisition of the Wood River Ranch.

Purchaser must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered by direct sale to the American Land Conservancy, a California public benefit corporation using the Direct sale procedures authorized under 43 CFR 2711.3–3. direct sale is appropriate because the American Land Conservancy assisted the Bureau of Land Management in acquiring the north half of the Wood River Ranch.

The terms, conditions, and reservations, applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have not known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate, with the exception of the Oil, Gas and Geothermal interests which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976. Direct purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request of the Bureau of Land Management.

3. Patents will be issued subject to all valid existing rights and reservations of record.

If the lands identified in this notice are not sold, they will be offered competitively on a continuing basis until sold. Sealed bids will be accepted at the Klamath Falls Resource Area Office during regular business hours. All bids will be opened the first Wednesday of the month beginning on March 4, 1998. To be considered, bids must be received by 10:00 AM on the day of the bid opening.

Detailed informational concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Klamath Falls Resource Area Office 2795 Anderson Ave. Building 25, Klamath Falls, Oregon 97603 (541/883–6916).

This notice is for information purposes only and is not appealable to the Interior Board of Land Appeals. The environmental assessment prepared for the disposal of these public lands evaluated disposal by sale or exchange. The decision of the Klamath Falls Area Manager, issued on May 13, 1994, was to dispose of the above, and other, public lands by exchange to the American Land Conservancy, with subsequent sale to the Thomas Lumber Company or direct sale to the American Land Conservancy. That decisions was protested and subsequently appealed to the Department of the Interior Board of Land Appeals. The appeal was resolved by the appellants and the Bureau of Land Management agreeing to a settlement which removed 560 acres of public land from the proposed disposal.

A. Barron Bail,

Area Manager, Klamath Falls Resource Area.

[FR Doc. 97–26969 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–07–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on July 31, 1997:

The plat, in six (6) sheets, representing the dependent resurvey of a portion of the south, east, west and north boundaries, a portion of the subdivisional lines, and a portion of the subdivision-of-section lines of sections 1 and 24, and the subdivision and further subdivision of certain sections, and the metes-and-bounds survey of portions of U.S. Highway 50 right-of-way, in sections 5 and 6, Township 14 North, Range 19 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 743, was accepted July 29, 1997.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. The Plat of Survey at of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on August 14, 1997:

The plat, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines of Township 17 South, Range 63 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 733, was accepted August 12, 1997.

This survey was executed to meet certain administrative needs of Clark County.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on August 14, 1997:

The plat, in eleven (11) sheets, representing the dependent resurvey of a portion of the east boundary of Township 18 South, Range 62 East, a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of certain sections, Township 18 South, Range 63 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 733, was accepted August 12, 1997.

This survey was executed to meet certain administrative needs of Clark County.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on August 14, 1997:

The plat, in three (3) sheets, representing the dependent resurvey of a portion of the east boundary of Township 19 South, Range 62 East, and a portion of the subdivisional lines of Township 19 South, Range 63 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 733, was accepted August 12, 1997.

This survey was executed to meet certain needs of Clark County.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 11, 1997:

The plat, representing the entire survey record of the corrective resurvey of a portion of the subdivision-of-section lines of section 18, Township 14 North, Range 25 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 762, was accepted September 9, 1997.

This survey was executed to meet certain needs of the Bureau of Land Management.

6. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: September 30, 1997.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 97–26968 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Review Committee will be held on January 29, 30, and 31, 1998, in Washington, DC.

The Committee will meet in the Ambassador Room of the Embassy Row Hilton Hotel; telephone: (202) 265–1600, fax: (202) 328–7526. Meetings will begin each day at 8:30 am and conclude not later than 5:00 pm.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

The agenda for this meeting will include: development of a list of persons from which the Secretary will appoint the seventh member of the committee; Federal compliance with the statute; disposition of culturally unidentifiable human remains; and the status of national implementation.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Some lodging will be available at the Embassy Row Hilton Hotel. Please mention that you will be attending the NAGPRA Review Committee Meeting. Any member of the public may file a written statement concerning matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, National Park Service (2275), 1849 C St. NW, Washington, DC 20240; telephone: (202) 343–8161. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Departmental Consulting Archeologist, 800 North Capitol St., NW, Suite 340, Washington, DC.

Dated: September 29, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26870 Filed 10–9–97 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items From the Island of Hawaii in the Possession of the Bernice Puahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Bernice Puahi Bishop Museum, Honolulu, HI which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The 53 cultural items include pieces or fragments of burial kapa cloth, a stick, an amulet, cordage, gourd water bottles, coconut cups, wooden bowls, a burial mat, a float net, a canoe part, fishhooks, pieces of matting, and netting samples.

In 1889, 30 items including pieces or fragments of burial kapa cloth, a stick, an amulet, cordage, gourd water bottles, coconut cups, and wooden bowls were purchased by the Bishop Museum from Joseph S. Emerson as part of the original collections of the Bishop Museum. In 1904, additional kapa fragments were received by the Bishop Museum from Mr. Emerson. Catalog information lists their locality as Hawaii.

In 1929, eleven items including pieces of burial kapa, cordage, and a burial mat were received in an exchange with Mr. Theodore T. Dranga. Catalog information lists their locality as Hawaii.

In 1931, four items including a pillow, a container, a float net, and a canoe part were donated to the Bishop Museum by Ms. Marcia Brown Richards. Catalog information lists their locality as Hawaii.

In 1939, one item consisting of burial kapa fragments was donated to the Bishop Museum by Mr. Julius S. Rodman. Catalog information lists their locality as Hawaii.

In 1940, three items including two fishhooks and kapa samples were donated to the Bishop Museum by Mr. Keith K. Jones. Catalog information lists their locality as Hawaii.

In 1960, one item consisting of kapa samples were donated to the Bishop Museum by Mrs. Cy Gillette. Catalog information lists their locality as Hawaii.

In 1985, three items including samples of mat, cordage, and netting were collected by Bishop Museum staff from burial sites in Kalala, Kohala, HI.

Based on known Native Hawaiian tradition and practices, these items are consistent with Native Hawaiian funerary objects. Consultation evidence presented by Hui Malama I Na Kupuna O Hawai'i Nei supports the conclusion that these items were placed with human remains.

Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), these 53 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Bishop Museum have also determined

that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (805) 848–4105 before November 10, 1997. Repatriation of these objects to Hui Malama I Na Kupuna O Hawai'i Nei on behalf of Hawai'i Island Burial Council may begin after that date if no additional claimants come forward.

Dated: October 2, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26874 Filed 10–9–97 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From O'ahu County, HI in the Control of the United States Fish and Wildlife Service, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from O'ahu County, HI in the control of the United States Fish and Wildlife Service, Honolulu, HI.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife and Bishop Museum professional staff, in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei

In 1923 and 1924, human remains representing a minimum of seven individuals were recovered from the Hawaiian Islands known as Nihoa and Necker by members of the Tanager Expeditions who were collecting a wide variety of scientific specimens for the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

Based on material culture and radiocarbon dates, the islands of Nihoa and Necker were occupied by Native Hawaiian people between 1000–1500 A.D. Oral tradition and archeological research indicates Native Hawaiian people occupied the islands of Nihoa and Necker during this period. Consultation evidence presented by representatives of Hui Malama I Na Kupuna O Hawai'i Nei identifies the islands of Nihoa and Necker as within the precontact territory of Native Hawaiian people.

Based on the above mentioned information, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of seven individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, Office of Hawaiian Affairs, and the Kauai/Nihau Island Burial Council. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jerry Leinecke, Project Leader, Hawaiian and Pacific Islands National Wildlife Refuge Complex, P.O. Box 50167, Honolulu, HI 96850; telephone: (808) 541–1201, fax (808) 541–1216, before November 10, 1997. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: October 2, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26873 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Essex Museum, Salem, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Peabody Essex Museum which meets the definition of "unassociated funerary objects" under Section 2 of the Act.

The three cultural items are a tapa shroud, and two tapa samples. The tapa shroud is comprised of two sheets of black tapa and three sheets of undyed tapa secured along one edge with tapa stitches. The first tapa sample consists of a square sheet with watermarks and brown dye on one side. The second tapa sample consists of a rectangular fragment with watermarks and black dye on one side.

Between 1823 and 1855, the tapa shroud was collected by Stephen Reynolds. In 1917, SW. Phillips purchased the Reynolds collection from a Mr. Wilmarth and donated it to the Peabody Essex Museum.

In 1921, Bishop Museum records indicate that a piece of tapa may have been donated by Robert VanDeusen of Kinderhook, NY. The first tapa sample was cut from this piece of tapa and was acquired by Marcia Brown Bishop prior to 1938. The Peabody Essex Museum purchased this tapa sample as part of the Marcia Brown Bishop collection in 1966.

In 1929, tapa from a burial cave at Kohala, HI was received by the Bishop Museum as part of an exchange with Ted T. Dranga. The second tapa sample was cut from the burial cave tapa in the collections of the Bishop Museum and obtained by Marcia Brown Bishop prior to 1938. In 1966, the Peabody Essex Museum purchased this tapa sample from Ms. Bishop.

Consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs indicates these items were very likely used as burial tapa and made specifically for that purpose.

Officials of the Peabody Essex Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), these three cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Essex Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these objects should contact Dan L. Monroe, Executive Director, Peabody Essex Museum, East India Square, Salem, MA 01970; telephone (508) 745–1876, fax (508) 744–6776 before *[thirty days following publication in the* **Federal Register**]. Repatriation of these objects to Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: October 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26871 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Iowa in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Iowa in the possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA.

A detailed assessment of the human remains was made by the Office of the State Archaeologist of Iowa professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma.

During the 1920s to the 1950s, human remains representing eight individuals were removed from an unknown site south of Dorchester, IA by Mr. Paul Cota and donated to Luther College, Decorah, IA. In 1990, these human remains were transferred to the Office of the State Archaeologist of Iowa. No known individuals were identified. No associated funerary objects are present. Although the exact site is unknown, the area south of Dorchester has numerous Oneota sites. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

In 1943, human remains representing one individual were removed from site 13AM108, Allamakee County, IA possibly by H.P. Field. At an unknown date these remains were donated to Luther College, Decorah, IA and in 1987 were transferred to the Office of the State Archaeologist of Iowa Burials Program. No known individuals were identified. The fourteen associated funerary objects include a piece of flaking debris, ten Oneota pot sherds, a bison scapula, a beaver femur, and an incomplete sacrum from a medium-sized mammal.

In 1953, human remains representing two individuals were removed from an unknown site near New Albin, IA by H.P. Field and donated in 1960 to Marshall McKusick, Professor of Anthropology at the University of Iowa. At an unknown date, these remains were transferred from the Department of Anthropology to the Office of the State Archaeologist of Iowa. No known individuals were identified. No assoicated funerary objects are present. Although the exact site is unknown, the area around New Albin has numerous Oneota sites. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

In the mid-1950s, human remains representing three individuals were removed from an unknown site in Allamakee County, IA by a game warden with the Iowa Department of Natural Resources. These remains were given to Robert Bray, Effigy Mounds National Mounument. In the 1960s, Mr. Bray took these remains to the University of Missouri's Lyman Archaeological Research Center, Miami, MO. In 1993, these remains were transferred to the Office of the State Archaeologist of Iowa. No known individuals were identified. No associated funerary objects are present. Although the exact site is unknown, Allamakee County has numerous Oneota sites. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

In 1957, human remains representing eight individuals were removed from site 13WD6, Woodbury County, IA during salvage excavations conducted by the Northwest Chapter of the Iowa Archeological Society and placed in the Sanford Museum, Cherokee, IA. In 1979, these remains were transferred to the Office of the State Archaeologist of Iowa. No known individuals were identified. No associated funerary objects are present.

In the 1950s or 1960s, human remains representing two individuals were removed from the surface of an eroding river bank on site 13WD8, Woodbury County, IA by Ruth Thornton. In 1989, these remains were transferred to the Office of the State Archaeologist of Iowa Burials Program. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing a minimum of 29 individuals were removed from site 13AM43, Allamakee County, IA during a road construction project by Marshall McKusick, University of Iowa and Robert Bray, Effigy Mounds National Monument. Sixteen of these individuals were transferred at an unknown date from the Department of Anthropology, University of Iowa to the Office of the State Archaeologist of Iowa. Thirteen of these individuals went to Effigy Mounds and later in the 1960s Robert Bray took them to the University of Missouri's Lyman Archaeological Research Center, Miami, MO. In 1994, these thirteen indivdiuals were transferred to the Office of the State Archaeologist of Iowa. In 1987, additional fragments from this excavation were found in the collections of Luther College and transferred to the Office of the State Archaeologist of Iowa. No known individuals were identified. No associated funerary objects are present.

In 1964, human remains representing thirteen individuals were removed from site 13AM103, Allamakee County, IA by Marshall McKusick, University of Iowa. At an unknown date, these remains were transferred from the University of Iowa Department of Anthropology to the Office of the State Archaeologist of Iowa. No known individuals were identified. The five associated funerary objects include a bipoint chert knife, three mortuary pots, and a bison scapula hoe.

Around 1965, human remains representing one individual from an unknown site were donated to the University of Iowa Geology Department by an unknown individual. In 1992, the human remains were transferred to the

Office of the State Archaeologist of Iowa Burials Program. A note accompanying the remains suggest an Oneota affiliation "?Oneota skull from pot hunter Alamakee (sic)Co., Ia." No known individual was identified. No associated funerary objects are present. The degree of bone preservation and overall appearance, such as cranial morphology and metric features, are consistent with known Oneota remains.

Around 1967, human remains representing three individuals were removed from an eroding bank at site 13AM269, Allamakee County, IA by Ramon and Darlene Gengler. In 1987, these human remains were transferred to the Office of the State Archaeologist of Iowa Burials Program. No known individuals were identified. The two associated funerary objects include a pot sherd and a copper tube.

In 1972, human remains representing one individual was removed from site 13DM101, Des Moines County, IA during an archeological excavation conducted by Dean Straffin, Parsons College, Fairfield, IA. In 1994, these remains were transferred to the Office of the State Archaeologist of Iowa Burials Program. No known individual was identified. No associated funerary objects are present.

In 1987, human remains representing seven individuals from northeast Iowa were transferred from Luther College to the Office of the State Archaeologist of Iowa Burials Program. No further collection information is available. No known individuals were identified. No associated funerary objects are present. Although the exact site is unknown, northeast Iowa has numerous Oneota sites. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

In 1987 and 1995, human remains representing five individuals from site 13AM1, Allamakee County were transferred from Luther College to the Office of the State Archaeologist of Iowa Burials Program. No further collection information is available. No known individuals were identified. No associated funerary objects are present.

In 1988, human remains representing one individual from an unknown site were transferred from Luther College to the Office of the State Archaeologist of Iowa Burials Program. No further collection information is available. No known individual was identified. No associated funerary objects are present. The degree of bone preservation and overall appearance are consistent with known Oneota remains.

In 1988, human remains representing one individual were removed from a cache pit at site 13WD55, Woodbury County by the Office of the State Archaeologist of Iowa. No known individual was identified. No associated funerary objects are present.

In 1993 and 1994, human remains representing six individuals were removed from site 13WD8 during initial examination and salvage excavation of a flood-damaged portion of the site by the Office of the State Archaeologist personnel. No known individuals were identified. No associated funerary objects are present.

In 1994, human remains representing one individual were removed from site 13AM200, Allamakee County during excavation of a cache pit by the Office of the State Archaeologist of Iowa. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing one indivdiual from the surface of site 13AM16, Allamakee County were transferred from Luther College to the Office of the State Archaeologist of Iowa. At an unknown date, these remains were donated to Luther College by Gavin Sampson. No known individual was identified. No associated funerary objects are present.

In 1995, human remains representing two individuals were removed from site 13LA1, Louisa County, IA from midden and cache pit features during a University of Illinois field school and transferred to the Office of the State Archaeologist of Iowa Burials Program. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing six individuals were removed from site 13AM60, Allamakee County by an unknown person. In 1988, these remains were transferred from Luther College to the Office of the State Archaeologist of Iowa Burials Program. No known individuals were identified. No associated funerary objects are present. Site 13AM60 has been identified as an Oneota village and cemetery site based on material culture and site organization. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

At an unknown date, human remains representing three individuals were removed from an unknown site in Lyon County by an unnamed person. In 1995, these remains were transferred to the Office of the State Archaeologist of Iowa Burials Program by Doug Pfeil who had been given the remains by a person wishing to remain anonymous. No known individuals were identified. The eleven likely associated funerary objects are shell-tempered pot sherds. The degree of bone preservation and overall appearance, such as cranial morphology, dental health, and expression of gender-based dimorphic characteristics is consistent with known Oneota remains.

The above listed human remains and associated funerary objects have been identified as having been removed from Oneota sites within the State of Iowa based on archeological surveys of the areas and the types of associated funerary objects present. These areas have been further identified as Oneota sites based on ethnohistorical evidence, material culture similarities, and historical maps. The Ioway and the Otoe-Missouria peoples have been culturally affiliated with the Oneota based on continuities of material culture, and historical documents. Oral history evidence presented by representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma further indicate Oneota affiliation with these present day tribes.

Based on the above mentioned information, officials of the Office of the State Archaeologist have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 104 individuals of Native American ancestry. Officials of the Office of the State Archaeologist have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 32 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Office of the State Archaeologist have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, 303 Eastlawn, University of Iowa, Iowa City, IA 52242; telephone: (319) 335–2400, before November 10, 1997. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: October 3, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26872 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Ecosystem Roundtable (a subcommittee of the Bay-Delta Advisory Council) (BDAC) will meet to discuss the following issues: a summary of the proposed funding package for the 1997 Category III funds; and the process and schedule for the Restoration Coordination Program and Category III funds in the future. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Ecosystem Roundtable will meet from 9:30 am to 12:30 pm on Tuesday, October 28, 1997.

ADDRESSES: The Ecosystem Roundtable will meet in Room 1131, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: For the Ecosystem Roundtable meeting contact Kate Hansel, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing and other interests who have a sake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 6, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–26980 Filed 10–9–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation, Criminal Justice Information Services

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of information collection under review: Analysis of law enforcement officers killed and assaulted.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 9, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be direct to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg WV 26302–9921. Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Analysis of Law Enforcement Officers Killed and Assaulted.

(3) The agency form number, if any, and applicable component of the

Department sponsoring the collection. Form: I–728. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: State and Local Law Enforcement Agencies. Collection will be printed in English and Spanish. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is analyzed, tabulated, and published in the comprehensive annual "Law Enforcement Officers Killed and Assaulted".

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,145 agencies; 500 estimated annual responses [zero reports are not required]; and with an average completion time of 1 hour per report per responding agency.

(6) An estimate of the total public burden (in hours) associated with this collection: 500 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G. Street, NW., Washington, DC 20530.

Dated: October 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26944 Filed 10–9–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; 1996 national youth gang survey.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention has submitted the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The regular 60 day notice for this information collection was published in the **Federal Register** on June 10, 1997. Neither the Department of Justice or the Office of Juvenile Justice and Delinquency Prevention received any comments from the public.

The purpose of this notice is to allow an additional 30 days for public comment until November 10, 1997. During this same time period, emergency review and approval of this information collection has been requested from OMB by October 8, 1997. If granted, the emergency approval is only valid for 45 days. All comments should be directed to OMB, Office of Information and Regulatory Affairs: Attention: Mr. Patrick Boyd, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20530.

The Department of Justice request written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including though the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of information collection:* New Collection.

2. *Title of information collection:* 1996 National Youth Gang Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—State or Local law enforcement agencies (mainly, police and sheriff's departments, and in rare cases, state law enforcement agencies). Other—None. This collection of information will gather information related to youth and their activities for research and assessment purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Survey—Version A: 4,000 respondents; 5 minutes to respond

Survey—Version B: 4,000 respondents; 10 minutes to respond

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,000 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 850, Washington Center Building, 1001 G Street, NW, Washington, DC 20530.

Dated: October 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26977 Filed 10–9–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting by Teleconference

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting by teleconference, October 31, 1997.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on October 31, 1997 from 1:00 p.m. to 3:00 p.m. The meeting will be by teleconference.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue NW., Room C–5515 (Seminar Room 1A), Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC, on October 6, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–27005 Filed 10–9–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two information collections: (1) Notice of Issuance of Insurance Policy, Form CM–921; and (2) Request for Employment Information, Form CA–1027. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES; Written comments must be submitted to the office listed in the addressee section below on or before December 10, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEES: Contact Ms. Margaret Sherrill at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Sections 423 of the Federal Mine Safety and Health Act of 1977, as amended specifies that a responsible coal mine operator (RMO) must be insured and outlines the requirements for each contract of insurance, including civil penalties to which a RMO is subject provided prescribed procedures are not followed. In addition, 20 CFR Part V, Subpart C, 726.208–213 requires that each insurance carrier shall report each policy and endorsement issued, canceled, or reviewed with respect to RMOs to the OWCP, Division of Coal Mine Workers' Compensation, and that separate reports shall be submitted for multiple operators so covered. The CM–921 is completed by the insurance carrier and forwarded to the Department for review.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements to identify those RMOs who have secured insurance for payment of Black Lung benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Issuance of Insurance Policy.

OMB Number: 1215–0059.

Agency Numbers: CM–921.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Total Respondents: 60.

Frequency: Annually.

Total Responses: 4,000.

Average Time Per Response for Reporting: 10 minutes.

Estimated Total Burden Hours: 667.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $1,800.000.

I. Background

Payment of Compensation for partial disability to injured Federal employees is required under 5 U.S.C. 8106. This section also requires the Office of Workers' Compensation to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027 is used to obtain earnings information for an individual employed by a private employer and is used as criteria for determining the claimants entitlement to compensation benefits.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act to determine the appropriate level of benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Employment Information.

OMB Number: 1215–0105.

Agency Numbers: CA–1027.

Affected Public: Business or for profit.

Total Respondents: 1,000.

Frequency: On occasion.

Total Responses: 1,000.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 250.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $320.00.

Dated: October 6, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–27006 Filed 10–9–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the States(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3rd Day Of October 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–26664 Filed 10–9–97; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

In the Matter of Consumers Energy Company (Palisades Plant); Exemption

I

Consumers Energy Company (the licensee) is the holder of Facility Operating License No. DPR–20 which authorizes operation of the Palisades Plant. The Palisades facility is a pressurized-water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), "Specific exemptions," the Commission may grant exemptions from the requirements of the regulations of this part (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section II.G. of 10 CFR Part 50, Appendix J, Option A, defines Type B tests as "tests intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary * * *." which includes air lock door seals.

Section III.D.2.(b)(ii) of 10 CFR Part 50, Appendix J, Option A, requires air locks opened during periods where containment integrity is not required to undergo a full air lock pressure test at the end of such periods.

Section III.D.2.(b)(iii) of 10 CFR Part 50, Appendix J, Option A, requires air locks opened during periods where containment integrity is required to undergo a full air lock pressure test within 3 days after being opened.

III

By letters dated January 10, 1996, and February 20, 1997, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Option A, Sections III.D.2.(b)(ii) and III.D.2.(b)(iii), for Type B testing of the emergency escape air lock. Specifically, this exemption would permit the licensee to perform a door seal contact verification check in lieu of the final pressure test required by Appendix J following opening the air lock doors for post-test restoration or seal adjustment.

The exemption request is necessary due to the original design of the emergency escape air lock. During special testing in 1992, the licensee showed that the annulus between the door seals could not be successfully tested without the door strongback installed even at pressures as low as 2 psig. This testing, along with information from the vendor, confirms that between-the-seal pressure testing on the emergency escape air lock doors cannot be properly measured or evaluated if the door strongbacks are not installed. Similarly, the inner door does not fully seal with the reverse-direction pressure of a full air lock pressure test unless the strongback is installed.

Since the removal of the inner door strongback after pressure testing requires the outer door to be opened, a between-the-seals test of the outer door would be required by the regulation. This test would require the installation of a strongback on the outer door. Further, full pressure testing or the pressure induced by the strongback may

cause the seals to take a set. It is therefore necessary to open both doors (one at a time) after any pressure testing to ensure full seal contact, and there is a potential need to readjust the seals to restore seal contact.

As an alternative to a final pressure test required by Appendix J for verification of door seal functionality, the licensee has proposed a final door seal contact verification. This seal performance verification is completed following the full pressure air lock test, after the removal of the inner door strongback, and just prior to final closure of the air lock doors. The requested exemption would not affect compliance with the present requirement to perform a full pressure emergency escape air lock test at 6-month intervals. It would also not affect the requirement to perform a full pressure emergency escape air lock test within 72 hours of opening either door during periods when containment integrity is required. The seal contact check replaces the pressure test required by Appendix J for the door opening(s) and/or seal adjustments associated with restoration from the required full pressure tests.

The licensee has performed additional low pressure between-the-seals testing on the escape lock door seals to measure seal leak rates at low initial pressures and without the door strongbacks installed, to see if such tests would yield useful results. The tests indicated that meaningful between-the-seals testing is not possible with the present design of the escape air lock, without strongbacks installed.

The licensee has also considered possible modifications to the existing emergency escape air lock doors in an attempt to identify other methods of complying with the Appendix J requirements. The modifications that were considered were:

1. Modify the Seal Design or Change the Seal Material

A proposal was received from the air lock vendor to perform testing of different seal shapes and materials. This was later withdrawn. The vendor believes, and the licensee concurs, that the seal material and shape currently in use are reliable and adequate to maintain containment integrity. Simply changing the seal material or shape would be unlikely to allow meaningful between-the-seals tests with strongbacks removed.

2. Perform Door Modifications by Removing the Doors and Altering the Sealing Surfaces

Minor modifications were considered for the door mechanisms in conjunction with reconfigured sealing surfaces. This modification has never been performed by the air lock vendor and would be experimental. There is no guarantee that these efforts would be successful in allowing Palisades to perform between-the-seals testing. The cost of this modification is estimated by the licensee to be roughly equal to performing an air lock retrofit, as described below.

3. Perform an Air Lock Retrofit Which Would Include Removing and Replacing the Doors, the Ends of the Bulkhead, and the Door Mechanisms

The doors would be replaced with doors of a design whose seals can be tested per Appendix J without additional restraint or subsequent seal restoration. The mechanisms would be updated for smoother operation but their function would not be altered.

The only viable alternative found was the replacement of the air lock doors, which the licensee has estimated would cost a minimum of $700,000. The licensee states that the cost of performing the modification is not warranted because no increase in plant or public safety would be realized. The other modifications to the present doors or seals would not ensure adequate performance improvement for unrestrained between-the-seals testing.

During its review, the staff questioned whether post-test seal adjustment or "fluffing" was necessary because the door seals were too old or worn out to rebound properly to their original shape after leakage rate testing or whether past fluffing had damaged the seals, such that replacement of the seals could result in acceptable between-the-seals testing. The licensee's response, dated February 20, 1997, stated that the seals are replaced approximately every 3 years and that the seals have not exceeded their service lives. Also, the licensee stated that fluffing has not damaged the seals, as indicated by continued successful Type B tests on both the emergency escape air lock and on the personnel air lock, on whose seals fluffing is also performed.

The licensee's proposed test methods deviate from the requirements of Appendix J in two ways:

(1) The seals are not leakage rate tested after opening the doors for post-test restoration, such as removing the strongbacks; and

(2) The seals are not leakage rate tested after being adjusted (e.g., fluffed).

The following quotation from American National Standard ANSI/ANS–56.8–1994, "Containment System Leakage Testing Requirements," is pertinent. Section 3.3.4.2 states, in part:

> An airlock test shall be performed whenever repairs or adjustments have been performed that affect the leakage rate characteristics of the airlock. Opening of the airlock for the purpose of removing airlock testing equipment following an airlock test does not require further testing of the airlock.

The quoted provisions have been endorsed by the staff through Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," dated September 1995, for plants following Option B of Appendix J. Although Palisades follows Option A of Appendix J for Type B and C leakage tests, in this case the quoted provisions represent a valid technical position that may be used to help establish a basis for granting an exemption from the requirements of Option A of Appendix J.

Therefore, concerning deviation (1) described above, the staff's technical position is that leakage rate testing is not necessary after opening the doors for post-test restoration. Option A of Appendix J requires a leakage rate test after opening a door, with the idea that the door opening is a relatively isolated event. Requiring another test immediately after a valid test simply because the door was opened again to remove test equipment is not necessary to meet the intent of the regulation, especially if it leads to an infinite series of tests, as in this case. Thus, deviation (1) is acceptable as part of an exemption from Option A of Appendix J.

Concerning deviation (2) above, there is considerable evidence that post-test seal adjustment should not necessitate a follow-up leakage rate test in this case. The present practice ensures proper door seal contact prior to final door closure. The performance of this door seal contact check has led to the successful completion of subsequent emergency escape air lock full pressure tests since the procedural practice began in 1987. Also, no ILRT in that period has failed because of emergency escape air lock door seal leakage. Based on these results, the air lock doors have been proven to function as designed using current methods of testing and maintenance, including seal contact checks. Alternatives would only provide approximately the same level of protection for public health and safety as currently exists. Continuing with the current methods of testing will not result in undue risk to public health and safety and is consistent with the common defense and security. Further, the underlying purpose of between-the-seals testing is to verify the seal integrity after an air lock door is opened or its seals adjusted. The seal contact check performed on the emergency escape air lock door seals serves this purpose and ensures the doors are sealing properly. Therefore, application of the regulation to perform between-the-seals leakage rate tests after seal adjustment is not necessary in this case to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission concludes that the licensee's proposal to perform seal contact testing instead of Type B leakage rate between-the-seals testing on the emergency escape air lock door seals is acceptable. There is reasonable assurance that the containment leakage limiting function will be maintained.

The licensee's request cites the special circumstances of 10 CFR 50.12, Sections (a)(2)(ii) and (a)(2)(iii), as the basis for the exemption. Appendix J to 10 CFR Part 50 requires full pressure tests following air lock door openings. The licensee stated that the proposed alternate seal contact verification check will ensure that the air lock doors are sealing properly. The licensee also stated that the only viable alternative to the proposed exemption would be to perform an air lock retrofit that would involve a significant cost to the licensee. The Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption from 10 CFR Part 50 Appendix J, Option A, Sections III.D.2.(b)(ii) and III.D.2.(b)(iii), to the extent that leakage rate testing is not necessary after opening the emergency escape air lock doors for post-test restoration or post-test adjustment of the airlock door seals.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 34720).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26991 Filed 10–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01788]

National Institutes of Health; Issuance of Director's, Decision Under 10 CFR § 2.206, Correction

This document corrects a notice appearing in the **Federal Register** of September 24, 1997 (62 FR 50018) concerning the issuance of a Director's Decision on a petition requesting that the Director, Office of Nuclear Material Safety and Safeguards take action with respect to the National Institutes of Health.

1. On page 50025, third column, second full paragraph, fifth line, the date reading "July 14, 1997" is corrected to read "July 14, 1995."

2. On page 50027, second column, first full paragraph, line 13 is corrected to read "1300μCi of P–32. The person with the".

Dated at Rockville, Maryland, this 6th day of October, 1997.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 97–26892 Filed 10–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306, and 72–10]

Northern States Power Company, Prairie Island Nuclear Plant, Units 1 and 2 Prairie Island Independent Spent Fuel Storage Installation; Receipt of Petition For Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a Petition filed pursuant to 10 CFR 2.206 on August 26, 1997, Prairie Island Coalition (Petitioner) requested that the NRC (1) suspend Northern States Power Company's (the licensee) Materials License No. SNM–2506 for cause under Section 50.100 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.100) until all material issues regarding the maintenance, unloading, and decommissioning processes and procedures, as described in the Petition and a similar Petition filed on May 28, 1997, by the Prairie Island Indian Community, have been adequately addressed and resolved, and until the maintenance and unloading processes and procedures in question are safely demonstrated under the scrutiny of independent third-party review of the TN–40 cask seal maintenance and unloading procedure; (2) determine that the licensee violated 10 CFR 72.122(f) by using a cask design that requires periodic seal maintenance and emergency seal replacement that must be performed in the plant storage pool; (3) determine that the licensee violated 10 CFR 72.122(h) by using a cask that must be placed into the pool for necessary maintenance and/or unloading procedures; (4) determine that the licensee violated 10 CFR 72.122(l) by loading casks and storing them before the licensee had procedures adequate to safely unload and decommission the TN–40 casks; (5) determine that the licensee violated 10 CFR 72.130 by using the TN–40 cask and failing to make provisions capable of accomplishing the removal of radioactive waste and contaminated materials at the time the independent spent fuel storage installation (ISFSI) is permanently decommissioned; (6) determine that the licensee violated 10 CFR 72.11 by failing to provide and include complete and accurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submissions regarding cask maintenance and unloading issues; (7) determine that the licensee violated 10 CFR 72.12 by deliberately and knowingly submitting incomplete and inaccurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submissions regarding cask maintenance and unloading issues; (8) require that the licensee pay a substantial penalty for each cask loaded in violation of NRC regulations; (9) administer such other sanctions for the alleged violations of NRC regulations as the NRC deems necessary and appropriate; (10) provide Petitioner the opportunity to participate in a public review of maintenance, unloading, and decommissioning processes and procedures in question and an opportunity to comment on draft

findings after investigation by the NRC; (11) order modification of the licensee's Technical Specifications for the Prairie Island ISFSI to ensure a demonstrated ability to in fact safely maintain, unload, and decommission TN–40 casks; (12) review the licensee's processes and procedures for maintenance, unloading, and decommissioning, and if the licensee does not possess capability to unload casks, order the licensee to build a "Hot Shop" for air unloading of casks and transfer of the fuel; (13) initiate a formal rulemaking proceeding to solicit information and review current information regarding thermal shock and corrosion inherent in dry cask storage and usage and to define the parameters of degradation acceptable under 10 CFR 72.122(h); (14) initiate a formal rulemaking proceeding to define the parameters of retrievability required under 10 CFR 72.122(l); and (15) initiate a formal rulemaking proceeding for amendment of current licenses and rules for prospective licensing proceedings to require demonstration of a safe cask unloading ability before a cask may be used at an ISFSI.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, further action will be taken within a reasonable time. Regarding the requests for formal rulemaking proceedings as detailed in Items 13, 14, and 15 in the Petition, the NRC staff is reviewing these requests in accordance with 10 CFR 2.802, "Petition for Rulemaking."

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN.

Dated at Rockville, Maryland, this 2nd day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26992 Filed 10–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued six new guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The new regulatory guides provide guidance on methods acceptable to the NRC staff on complying with the NRC's regulations for promoting high functional reliability and design quality in software used in safety systems of nuclear power plants. The guides endorse industry consensus standards of the Institute of Electrical and Electronics Engineers. The guides and the standards they endorse are Regulatory Guide 1.168, "Verification, Validation, Reviews, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 1012–1986, "IEEE Standard for Software Verification and Validation Plans," and IEEE Std 1028–1988, "IEEE Standard for Software Reviews and Audits'; Regulatory Guide 1.169, "Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," endorses IEEE Std 828–1990, "IEEE Standard for Software Configuration Management Plans," and ANSI/IEEE Std 1042–1987, "IEEE Guide to Software Configuration Management'; Regulatory Guide 1.170, "Software Test Documentation for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 829–1983, "IEEE Standard for Software Test Documentation'; Regulatory Guide 1.171, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 1008–1987, "IEEE Standard for Software Unit Testing'; Regulatory Guide 1.172, "Software Requirements Specifications for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 830–1993, "IEEE Recommended Practice for Software Requirements Specifications'; and Regulatory Guide 1.173, "Developing Software Life Cycle Processes for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 1074–1995, "IEEE Standard for Developing Software Life Cycle Processes."

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft guides, may be obtained free of charge by writing the Office of Administration, Attn: Printing, Graphics and Distribution Branch, USNRC, Washington, DC 20555–0001, or by fax at (301) 415–5272. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–26993 Filed 10–9–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22841; 812–10796]

Blanchard Funds, et al.; Notice of Application

October 6, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: Signet Banking Corporation ("Signet"), parent of Virtus Capital Management, Inc. ("Adviser"), has entered into an agreement and plan of merger with First Union Corporation ("First Union"). The indirect change in control of the Adviser will result in the assignment, and thus the termination, of the existing advisory contracts between Blanchard Funds ("Blanchard"), The Virtus Funds ("Virtus"), Blanchard Precious Metals Fund, Inc. ("Precious Metals") (collectively, the "Funds") and the Adviser. The order would permit the implementation, without shareholder approval, of new investment advisory agreements for a period of up to 120 days following the date of the change in control of the Adviser (but in no event later than April 30, 1998). The order also would permit the Adviser to receive all fees earned under the new advisory agreements following shareholder approval.

APPLICANTS: Blanchard, Virtus, Precious Metals, and the Adviser.

FILING DATES: The application was filed on September 23, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SAC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 31, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Evergreen Keystone Investment Services Inc., 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Blanchard and Virtus are Massachusetts business trusts registered under the Act as open-end management investment companies. Precious Metals is a Maryland corporation also registered under the Act as an open-end management investment company. Blanchard and Virtus currently offer six and eight series (the "Portfolios"), respectively, to the public. The Adviser, a wholly-owned subsidiary of Signet, is an investment adviser registered under the Investment Advisers Act of 1940. The Funds and the Adviser have entered into sub-advisory agreements for certain Portfolios.[1]

2. On July 18, 1997, First Union entered into an agreement and plan of merger with Signet, under which Signet would be merged with and into First Union in exchange for shares of common stock of First Union (the "Transaction"). As a result of the Transaction, Signet will become a wholly-owned subsidiary of First Union and the Adviser will remain a wholly-owned subsidiary of Signet. Applicants expect consummation of the Transaction on November 1, 1997.

3. Applicants request an exemption to permit implementation, prior to obtaining shareholder approval, of new investment advisory agreements between each Fund and the Adviser, on behalf of each of the Funds, and new sub-advisory agreements between the Adviser and each appropriate subadviser (collectively, "New Agreements"). The requested exemption will cover an interim period of not more than 120 days beginning on the date the Transaction is consummated and continuing through the date on which each New Agreement is approved or disapproved by the shareholders of each Portfolio or Precious Metals, but in no event later than April 30, 1998 (the "Interim Period"). Applicants state that the New Agreements will be identical in substance to the existing investment advisory agreements ("Existing Agreements"). The aggregate contractual rate chargeable for the advisory services under each New Agreement will remain the same as under the relevant Existing Agreement.

4. On September 16, 1997, the boards of trustees of Blanchard and Virtus, and the board of directors of Precious Metals (collectively, the "Boards") held in-person meetings to evaluate whether the terms of the New Agreements are in the best interests of the Funds and their shareholders. At the meetings, a majority of the members of the Boards, including a majority of members who are not "interested persons" of the Funds, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees"), voted in accordance with section 15(c) of the Act to approve the New Agreements and to submit the New Agreements to the shareholders of each of the Funds at meeting expected to be held on or about February 2, 1998 (the "Meetings").

5. Applicants expect that proxy materials for the Meetings will be mailed on or about December 12, 1997. Applicants believe that the requested relief is necessary to permit continuity of investment management for the Funds during the Interim Period and to prevent disruption of the services for the Funds.

6. Applicants also request an exemption to permit the Adviser to receive from each Fund, upon approval by their respective shareholders, all fees earned under the New Agreements during the Interim Period. Applicants state that the fees paid during the Interim Period will be unchanged from the fees paid under the Existing Agreements.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Adviser during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) To the Adviser only upon approval of the relevant New Agreement by the shareholders of the Funds; or (b) to the relevant Fund if the Interim period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Funds will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, Signet will become a wholly-owned subsidiary of First Union. Applicants believe, therefore, that the Transaction will result in an "assignment" of the Existing Agreements and that the Existing Agreements will terminate by their

[1] The following firms serve as subadvisers to the respective Funds under sub-advisory agreements with the Funds and the Adviser: Mellon Capital Management Corporation (for the Blanchard Asset Allocation and Global Growth Funds); United States Trust Company of New York (for the Blanchard Flexible Tax-Free Bond Fund); Cavelti Capital Management Ltd (for Precious Metals); Trend Capital Management, Inc. (for The Style Manager Fund and The Style Manager; Large Cap Fund).

terms upon consummation of the Transaction.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by an assignment in which the adviser does not directly or indirectly receive a benefit, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to Signet, the Adviser's parent, arising from the Transaction, applicants may not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Transaction were determined by First Union and Signet and arose primarily out of business considerations beyond the scope of the Act and unrelated to the Funds and the Adviser, including the time needed to obtain federal and state banking approvals for the Transaction. Applicants submit that it is in the best interests of shareholders to avoid any interruption in services to the Funds and to allow sufficient time for the consideration and return of proxies and to hold a shareholder meeting.

6. Applicants submit that the scope and quality of services provided to the Funds during the Interim Period will not be diminished. During the Interim Period, the Adviser would operate under the New Agreements, which would be substantively the same as the Existing Agreements, except for their effective dates. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as they received before the Transaction.

7. Applicants contend that the best interests of shareholders of the Funds would be served if the Adviser receives fees for its services during the Interim Period. Applicants state that the fees are a substantial part of the Adviser's total revenues and, thus, are essential to maintaining its ability to provide services to the Funds. In addition, the fees to be paid during the Interim Period will be unchanged from the fees paid under the Existing Agreements, which have been approved by the shareholders of each respective Fund.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreements will have substantially the same terms and conditions as the Existing Agreements, except for their effective dates.

2. Fees earned by the Adviser in respect of the New Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Adviser in accordance with the new Agreements, after the requisite approvals are obtained, or (b) to the respective Fund, in the absence of such approval with respect to such Fund.

3. The Fund will hold meetings of shareholders to vote on approval of the new Agreements on or before the 120th day following the termination of the Existing Agreements (but in no event later than April 30, 1998).

4. Either First Union or the Adviser will bear the costs of preparing and filing the application, and costs relating to the solicitation of the shareholder approval of the Funds necessitated by the Transaction.

5. The Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the Boards to assure that the Boards, including a majority of the Independent Trustees of the Funds, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26900 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26763]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 3, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 27, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc. (70–8925)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, its service company subsidiary, Columbia Gas System Service Corporation, its liquified natural gas subsidiary, Columbia LNG Corporation, its trading subsidiary, Columbia Atlantic Trading Corporation, all located at 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191–3458; Columbia's five distribution subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Commonwealth Gas Services, Inc., all located at 200 Civic Center Drive, Columbus, Ohio 43215; Columbia's two transmission subsidiaries, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, located at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia's exploration and production subsidiary, Columbia Natural Resources, Inc., 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia's propane distribution subsidiaries, Commonwealth Propane, Inc. and Columbia Propane Corporation, both located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236; Columbia's energy services and marketing subsidiaries, Columbia Energy Services Corporation ("Columbia Energy"), Columbia Service Partners, Inc. and Columbia Energy Marketing Corporation, all located at 121 Hill Pointe Drive, Suite 100, Canonsburg, Pennsylvania 15317; Columbia's network services subsidiary, Columbia Network Services Corporation ("CNS") and CNS' subsidiary, CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; and Columbia's other subsidiaries, Tristar Ventures Corporation, Tristar Capital Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton Limited Corporation, Tristar Binghamton General Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown Limited Corporation, Tristar Georgetown General Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation and Tristar System, Inc., all located at 205 Van Buren, Herndon, Virginia 22070, have filed a post-effective amendment to their joint application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 53.

By order dated December 23, 1996 (HCAR No. 26634) ("Order"), the Commission authorized the Applicants to establish their internal and external financing program, through December 31, 2001. In particular, the Order authorized Columbia, its existing nonutility subsidiaries and any nonutility subsidiaries established before December 31, 2001, to enter into guarantee arrangements, obtain letters of credit, and otherwise provide credit support for their respective subsidiaries in amounts of up to $500 million ("Guaranties"). Columbia and its existing and future nonutility subsidiaries now propose to increase the amount of Guaranties to $2 billion.

Columbia wants to increase its investments in non-rate regulated businesses, particularly gas marketing operations, and will use the Guaranties to support these activities. Columbia notes that, in May 1997, Columbia Energy entered into an agreement to purchase and market the offshore natural gas production for the Kerr-McGee Corporation ("Kerr-McGee") of approximately 250 Mmcf per day. Columbia Energy will mange all of Kerr-McGee's United States natural gas marketing activities including scheduling, nominating, balancing pipeline transportation and providing financial risk management services. Also, Columbia Energy purchased Pennunion Energy Services L.L.C. ("Pennunion"), an energy marketing subsidiary of the Pennzoil Company. The Pennunion acquisition will add sales of 2. Bcf per day.

Conectiv, Inc. (70–9069)

Conectiv, Inc. ("Conectiv"), 800 King Street, Wilmington, Delaware 19899, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 6(a), 7, 8, 9(a), 10, 11, and rules 80 through 91, 93 and 94 under the Act.

Conectiv proposes to acquire, by means of the Mergers described below ("Mergers"), all of the issued and outstanding common stock of Delmarva Power & Light Company ("Delmarva") and Atlantic Energy, Inc. ("Atlantic"). Conectiv makes four other requests. Following the Mergers, Conectiv will register under section 5 of the Act.

First, Conectiv requests that Support Conectiv ("Support Conectiv") be designated as a subsidiary service company under rule 88 of the Act.[1] Second, Conectiv requests approval of the terms of the service agreement among companies in the Conectiv system and Support Conectiv. Third, Conectiv seeks Commission approval for it to acquire the gas properties of Delmarva and to continue to operate Delmarva as a combination utility. Fourth, Conectiv seeks Commission approval for it to acquire the nonutility activities, businesses and investments of Delmarva and Atlantic.

Delmarva is a public utility company which provides electric service in Delaware, Maryland and Virginia and gas service in Delaware. As of December 31, 1996, Delmarva provided electric utility service to approximately 442,000 customers in an area encompassing about 6,000 square miles in Delaware (253,000 customers), Maryland (169,000 customers) and Virginia (20,000 customers), and gas utility service to approximately 100,000 customers in an area consisting of about 275 square miles in northern Delaware.

For the year ended December 31, 1996, Delmarva's operating revenues on a consolidated basis were approximately $1,160 million, of which approximately $981 million were derived from electric operations, $114 million from gas operations and $65 million from other operations. Consolidated assets of Delmarva and its subsidiaries at December 31, 1996 were approximately $2,979 million, consisting of approximately $2,536 million in identifiable electric utility property, plant and equipment; approximately $219 million in identifiable gas utility property, plant and equipment; and approximately $224 million in other corporate assets.

As of December 31, 1996 Delmarva owned gas property consisting of a liquefied natural gas plant located in Wilmington, Delaware with a storagecapacity of 3.045 million gallons and a maximum daily sendout capacity of 49,898 Mcf per day. This facility is used primarily as a peak-shaving facility for Delmarva's gas customers. Delmarva also owns four natural gas city gate stations at various locations in its gas service territory. These stations have a total contract sendout capacity of 125,000 Mcf per day. Delmarva has 111 miles of transmission mains (including 11 miles of joint-use gas pipelines that are used 10% for gas distribution and 90% for electricity production), 1,539 miles of distribution mains and 1,091 miles of service lines. The Delmarva gas facilities are located exclusively in New Castle County, Delaware.

Delmarva has seven direct nonutility subsidiaries: Delmarva Industries, Inc., Delmarva Energy Company, Delmarva Services Company, Conectiv Services, Inc., Conectiv Communications, Inc., Delmarva Capital Investments,Inc. and East Coast Natural Gas Cooperative, L.L.C. ("ECNG").[2]

[1] Support Conectiv will be incorporated before the consummation of the Mergers to serve as the service company for the Conectiv system.

[2] Delmarva Industries, Inc. and Delmarva Energy Company participate in oil and gas exploration and development opportunities.

Delmarva Services Company owns and finances an office building that it leases to Delmarva and/or its affiliates. Delmarva Services Company also owns approximately 2.9% of the common stock of Chesapeake Utilities Corporation, a publicly-traded gas utility company with gas utility operations in Delaware, Maryland and Florida.

Continued

On December 31, 1996, Delmarva's nonutility subsidiaries and investments constituted approximately 4 percent of the consolidated assets of Delmarva and its subsidiaries.

Delmarva also has a nonutility subsidiary trust, Delmarva Power Financing I ("DPF I"), which was formed in 1996 in connection with the issuance by Delmarva of Cumulative Quarterly Income Preferred Securities.

Atlantic is a public utility holding company that claims an exemption from regulation by the Commission under section 3(a)(1) from all provisions of the Act except section 9(a)(2).

The principal subsidiary of Atlantic is Atlantic City Electric Company ("ACE"). ACE is itself a holding company which claims exemption from regulation by the Commission under section 3(a)(1) from all provisions of the Act except section 9(a)(2). ACE is engaged in the generation, transmission, distribution and sale of electric energy. ACE serves a population of approximately 476,000 customers in a 2,700 square-mile area of Southern New Jersey.

ACE currently has one utility subsidiary, Deepwater Operating Company ("Deepwater"). Deepwater operates generating facilities in New Jersey for ACE. Deepwater owns no physical assets. Prior to the closing of the Mergers, the employees of Deepwater will become employees of ACE. ACE also has a nonutility subsidiary trust, Atlantic Capital I ("ACI"), which was formed in 1996 in connection with the issuance by ACE of Cumulative Quarterly Income Preferred Securities.

On a consolidated basis, Atlantic's operating revenues for the calendar year ended December 31, 1996 were approximately $980 million, and its total assets as of December 31, 1996 were approximately $2,671 million.

Atlantic has two direct nonutility subsidiaries, Atlantic Energy International, Inc. ("AEII") and AEE.[3]

At December 31, 1996, Atlantic's nonutility subsidiaries and investments constituted approximately 8.2 percent of the consolidated book value of the assets of Atlantic and its subsidiaries.

Conectiv has no operations other than those contemplated by the Merger Agreement to accomplish the Mergers. At present, Conectiv's common stock, consisting of 1,000 issued and outstanding shares, is owned by Delmarva and Atlantic, each of which owns 500 shares.

The merger agreement, dated as of August 9, 1996, as amended and restated as of December 26, 1996 ("Merger Agreement"), provides for Atlantic to be merged with and into Conectiv. Also under the Merger Agreement, DS Sub, Inc., a direct subsidiary of Conectiv ("DS Sub"), will be merged with and into Delmarva.[4]

Conectiv will be a public utility holding company and will have two direct utility subsidiaries, Delmarva and ACE, whose only nonutility subsidiaries will be the two trusts: DPF I and ACI. Delmarva's and Atlantic's other direct subsidiaries will also become direct subsidiaries of Conectiv. Support Conectiv will be incorporated as a service company for the Conectiv system.

Conectiv proposes to convert each issued and outstanding share of Delmarva common stock into the right to receive one share of Conectiv common stock ("Conectiv Common Stock"). Each issued and outstanding share of Atlantic common stock shall be converted into the right to receive 0.75 shares of Conectiv Common Stock and 0.125 shares of Class A common stock of Conectiv ("Conectiv Class A Common Stock").[5]

The Mergers will have no effect on the shares of preferred stock of Delmarva issued and outstanding at the time of the consummation of the Mergers, each series of which and each share of which will remain unchanged. Atlantic has no shares of preferred stock outstanding.

Conectiv proposes that the Commission authorize Support Conectiv as the system service company. Support Conectiv will provide the Conectiv system companies with a variety of administrative, management, engineering, construction, environmental and support services, either directly or through agreements with associate or nonassociate companies, as needed.

Support Conectiv will enter into a service agreement with most, if not all, companies in the Conectiv system. Support Conectiv's authorized capital stock will consist of up to 3,000 shares of common stock, $1 par value per share. Conectiv will hold all issued and outstanding shares of Support Conectiv common stock.

Support Conectiv and its associate companies' cost and allocation methods will conform with the "at costs" requirements of section 13 and rules under the Act.

Conectiv also requests authority to provide, directly, or through one or more of its subsidiaries, retail services to residential, commercial and industrial customers. Retail services include energy analysis, project management, design and construction, energy efficient equipment installation and maintenance, facilities management services, environmental services and compliance, fuel procurement, and other similar kinds of managerial and technical services.[6]

Conectiv further requests authority, after consummation of the Mergers for a period of 24 months from the effective date of the Mergers, to transfer certain assets such as real property used for administrative purposes and information technology equipment and software from Delmarva or ACE at cost to Support Conectiv.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26905 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

Conectiv Services, Inc. acquires and operates service businesses primarily involving heating, ventilation and air conditioning sales, installation and servicing, and other energy-related activities.

Conectiv Communications, Inc. provides a full-range of retail and wholesale telecommunications services.

Delmarva Capital Investments, Inc. is a holding company for a variety of unregulated investments.

BCNG is a limited liability company in which Delmarva holds a 1/7th interest, is engaged in gas related activities.

[3] AEII brokers used utility equipment to developing countries, and provides utility consulting services related to the design of substations and other utility infrastructure. AEE is a holding company for Atlantic's non-regulated subsidiaries.

[4] DS Sub has been incorporated as a direct transitory subsidiary of Conectiv established to effectuate the Delmarva Merger. The authorized capital stock of DS Sub consists of 1000 shares of common stock, $0.01 par value, all of which is held by Conectiv. DS Sub has not had, and prior to the closing of the Mergers will not have, any operations other than the activities contemplated by the Merger Agreement necessary to accomplish the combination of DS Sub and Delmarva.

[5] The proposed use of two classes of common stock addresses the difference in Delmarva's and Atlantic's evaluations of the growth prospects of, and uncertainties associated with deregulation of, the regulated electric utility business of Atlantic. The Conectiv Class A Common Stock has been created to track the performance of the currently regulated electric utility businesses of ACE. This stock will be issued only to the holders of the Atlantic Common Stock, thereby giving the current holders of Atlantic Common Stock a proportionately greater opportunity to share in the growth prospects of, and a proportionately greater exposure to the uncertainties associated with deregulation of, the regulated electric utility business of Atlantic. The proposed Conectiv Class A Common Stock will have full voting rights with the Conectiv Common Stock.

[6] Conectiv states that the retail services may specifically include: (1) service lines repair/extended warranties; (2) surge protection; (3) appliance merchandising/repair/extended warranties; (4) utility bill insurance; and (5) incidental and reasonably necessary products and services related to the choice, purchase or consumption of any of these products and services.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22840; 812–10550]

Reich & Tang Distributors L.P., et al., Notice of Application

October 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 2(a)(35), 22(d), and 26(a)(2) of the Act and rule 22c–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases.

APPLICANTS: Reich & Tang Distributors L.P. (the "Sponsor"), Equity Securities Trust, Mortgage Securities Trust, Municipal Securities Trust, New York Municipal Trust, A Corporate Trust, Schwab Trusts, any future unit investment trust sponsored or co-sponsored by the Sponsor or an entity controlled by or under common control with the Sponsor (collectively, the "Trusts"), and any future series of the Trusts.

FILING DATE: The application was filed on March 7, 1997, and amended on April 26, 1997, and September 30, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 28, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, c/o Reich & Tang Distributors L.P., 600 Fifth Avenue, New York, New York 10022, Attention: Peter J. DeMarco.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Attorney, at (202) 942–0527 or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street N.W., Washington, D.C. 20549, tel. 202–942–8090.

Applicants' Representations

1. Each of the Trusts is a unit investment trust consisting of one or more series ("Series") registered under the Act and sponsored, co-sponsored or to be sponsored by the Sponsor. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as a trustee, and, as the case may be, an evaluator. The Sponsor acquires a portfolio of securities which it deposits with the trustee in exchange for certificates representing units of fractional undivided interest in the portfolio ("Units"). The Units are offered to the public by the Sponsor, underwriters, and dealers at a public offering price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The sales charge currently ranges from 2.95% to 5.5% of the public offering price, generally depending on the terms of the underlying securities. The maximum charge is usually subject to reduction in compliance with rule 22d–1 under the Act under certain stated circumstances disclosed in the prospectus, such as for volume purchases.

2. Applicants request an order to the extent necessary to permit them to impose a deferred sales charge ("DSC") instead of a front-end sales charge, and waive the DSC under certain circumstances. Under applicants' proposal, a portion of the DSC will be collected "up-front," *i.e.*, immediately upon purchase of Units, and the balance will be collected subsequently in equal installments ("Installment Payments").[1] In order to ensure that sufficient cash is available to make Installment Payments, the Trust may hold securities the proceeds from the maturity or sale of which may be used to make the Payments. Installment Payments will be collected from unitholders by withholding the Payment amount from unitholders' distributions on the Units, from proceeds of Unit redemptions or sales by the unitholder, or by reducing the number of Units held by the unitholder. The Installment Payments will be passed by the trustee to the Sponsor at the time they are collected. The trustee may advance an Installment Payment if, for example, it is due immediately before a dividend or interest payment is due on portfolio securities. The trustee will be reimbursed when the Installment Payment is collected from the unitholder.

3. When a unitholder redeems or sells Units, the balance of the unitholder's Installment Payments on the redeemed Units will be deducted from the proceeds of the redemption or sale. When calculating the amount due, it will be assumed that Units on which the DSC has been paid in full are redeemed first. With respect to Units on which the DSC has not been fully paid, the DSC will be applied on the assumption that Units held for the longest time are redeemed or sold first. Under certain circumstances, the sponsor may waive the DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1, under the Act.

4. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between unit investment trusts and open-end investment companies. The prospectus also will disclose any security that may be included in the portfolio for purposes of paying the DSC from the maturity or sale proceeds, and that the securities will be sold *pro rata* or that a specific security will be designated for sale.

Applicants' Legal Analysis

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company which "issues only redeemable securities." Section 2(a)(32) defines a *redeemable security* as a security that, upon its presentation to the issuer, entitles the unitholder to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Rule 22c–1, promulgated under section 22(c) of the Act, requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value. To the extent that an Installment Payment may be deemed to cause unitholders to receive less than net asset value upon

[1] For example, assuming a one-year Trust with a $1,000 price for 100 Units and a 2.95% DSC, the Sponsor would collect $10.00 (1.00%) up-front, and the remaining balance of $19.50 (1.95%) in 10 equal monthly payments of $1.95.

redemption, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) and rule 22d-1 require an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices which reflect scheduled variations in the "sales load." Section 2(a)(35) defines the term *sales load* as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from sections 2(a)(35) and 22(d) to the extent that the DSC may be paid in installements rather than upon purchase.

3. Applicants believe that the provisions of section 22(d), rule 22d-1 and section 2(a)(35), taken together, are intended to prevent (1) riskless trading in investment company securities due to backward pricing, (2) disruption of orderly distribution by dealers selling shares at a discount, and (3) discrimination among investors resulting from different prices charged to different investors. Applicants believe the proposed DSC program will present none of these abuses. Applicants contend that the deduction of the Installment Payments is consistent with the policy of forward pricing. Applicants also contend that the amount, computation and timing of the DSC will promote fair treatment of all unithholders, while permitting the Trusts to offer unitholders the advantage of having a larger portion of their purchase amount invested immediately. Applicants further note that the DSC program will be disclosed in the prospectus of each Series and available on the same terms to all investors. Finally, applicants state that any waiver of the DSC will be disclosed in the prospectus of each Series and implemented in accordance with rule 22d–1.

4. Section 26(a)(2), in relevant part, prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the trustee's payment of the DSC to the Sponsor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief from that section to the extent necessary to permit the trustee to collect DSC payments and disburse them to the Sponsor. Applicants believe that the relief is appropriate because the DSC is more properly characterized as a sales load than as an "expense."

5. Section 6(c) authorizes the SEC to exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their proposal meets this standard.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Any DSC imposed on Units issued by a Series will comply with the requirements of rule 6c–10(a) (1) through (3) under the Act.

2. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between unit investment trusts and open-end investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26904 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22839; 812–10672]

TCW International Equity Limited Partnership, et al.; Notice of Application

October 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain limited partnerships to transfer all of their assets to corresponding series of a registered investment company in exchange for the series' shares, which then will be distributed *pro rata* to partners of the partnerships.

APPLICANTS: TCW International Equity Limited Partnership, TCW Japan Limited Partnership, TCW Value Opportunities Fund (collectively, the "Partnerships"), TCW Galileo Funds, Inc. (the "Company"), TCW Asset Management Company ("TAMCO"), and TCW Funds Management, Inc. (the "Adviser").

FILING DATES: The application was filed on May 16, 1997, and amendments to the application were filed on August 15, 1997, and October 2, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 28, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. TCW International Equity Limited Partnership was organized as a California limited partnership on August 19, 1993: TCW Japan Limited Partnership was organized as a Delaware limited partnership on May 2, 1995; and TCW Value Opportunities Fund was organized as a California limited partnership on May 16, 1996. The Partnerships permit investors to purchase and redeem Partnership interests ("Units") at net asset value on a monthly basis. The Partnerships are not registered under the Act in reliance on section 3(c)(1) of the Act. The offerings of the Units were structured as private placements under section 4(2) of the Securities Act of 1933 (the "Securities Act"), and Regulation D promulgated under the Securities Act. Units are sold to institutional investors and high net worth individuals.

2. TAMCO, a wholly owned subsidiary of the TCW Group, Inc., serves as the sole general partner of the Partnerships and has exclusive responsibility for their overall management, control, and administration. TAMCO, an investment adviser registered under the Investment Advisers Act of 1940, also serves as investment manager with respect to the Partnerships' assets.

3. The Company, a Maryland corporation, is an open-end investment company registered under the Act. Currently, the Company offers thirteen series (the "Existing Funds"). The Company proposes to offer three additional series (the "New Funds"), each of which will correspond to a Partnership in terms of investment objective and policies.

4. The Company has entered into an advisory agreement with the Adviser, a wholly-owned subsidiary of the TCW Group, Inc., pursuant to which the Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will render advisory services to the New Funds. The Adviser will provide services that are substantially the same as those TAMCO currently renders to the corresponding Partnership. The officers of TAMCO serving as portfolio managers of the Partnerships also serve as officers of the Adviser and will serve as portfolio managers of the corresponding New Funds.

5. Applicants propose that, pursuant to an Agreement and Plan of Exchange (the "Plan"), each of the New Funds will acquire assets from its corresponding Partnership in exchange for New Fund shares (the "Exchanges"). New Fund shares delivered to the Partnerships in the Exchanges will have an aggregate net asset value equivalent to the net asset value of the assets transferred by the Partnerships to the Company (except for the effect of certain organizational expenses paid by each New Fund, as discussed below). Upon consummation of the Exchanges, each Partnership will distribute the New Fund shares to its respective partners, with each partner receiving shares having an aggregate net asset value equivalent to the net asset value of the Units held by the partner prior to the Exchange (except for the effect of certain organizational expenses paid by the New Funds and the effect of any assets retained by a Partnership to pay accrued expenses). Each Plan permits the Partnership to retain sufficient assets to pay any Partnership-accrued expenses and retain any assets that a New Fund is not permitted to purchase or that are reasonably determined to be unsuitable for it. No liabilities of a Partnership will be transferred to its corresponding New Fund; all known liabilities, other than accrued expenses discussed above, will be paid by each Partnership prior to the transfer of its assets to the corresponding New Fund. The general partner, TAMCO, will be responsible for any unknown liabilities of each Partnership. Assets retained by each Partnership that are not needed to pay expenses will be distributed *pro rata* to the partners. After payment of any accrued expenses from retained assets, each Partnership will be liquidated and dissolved.

6. The expenses of the Exchanges will be borne by TAMCO. Organizational expenses, up to a maximum of $50,000 per New Fund, will be paid by the New Funds and amortized over five years. Organizational expenses in excess of $50,000 per New Fund will be paid by the Adviser. Any unamortized organizational expenses associated with the organization of the New Funds at the time the Adviser withdraws its initial investment in the Company will be borne by the Adviser, not the New Funds. Through October 31, 1998, the Adviser will place a limit on the annual expenses of each New fund. This limit is generally intended to cap New Fund expense ratios at levels projected to be incurred during 1997 and 1998 by the Partnerships.

7. The board of directors of the Company (the "Board") and TAMCO have considered the desirability of the Exchanges from the respective points of view of the Company and the Partnerships, and all members of the Board (including all of the independent directors) and TAMCO have approved the Exchanges and concluded that: (i) the terms of the Exchanges have been designed to meet the criteria contained in section 17(b) of the Act; (ii) the Exchanges are desirable as a business matter from the respective points of view of the Company and the Partnerships; (iii) the Exchanges are in the best interests of the Company and the Partnerships; (iv) the Exchanges are reasonable and fair, do not involve overreaching, and are consistent with the policies of the Act: (v) the Exchanges are consistent with the policies of the Company and the Partnerships; and (vi) the interests of existing shareholders in the Company and existing partners in the Partnerships will not be diluted as a result of the exchanges. These findings, and the basis upon which the findings were made, have been fully recorded in the minute books of the Company and TAMCO.

8. The Exchanges will not be effected until(i) the Company's registration statement has been filed; (ii) the Company and the Partnerships have received a favorable opinion of counsel with respect to the tax consequences of the Exchanges; and (iii) the SEC has issued the requested order.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines *an affiliated person* as, among other things, any person directly or indirectly controlling, controlled by, or under common control with, such other person; any officer, director, partner, copartner or employee of such other person; or, if such other person is an investment company, any investment adviser of the investment company. Each Partnership is an affiliated person of an affiliated person of the Company because TAMCO, the general partner of the Partnerships, and the Adviser are under common control. Thus, the proposed Exchanges may be deemed to be prohibited under section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the SEC to exempt any person from one or more of the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

3. Applicants believe that the proposed Exchanges satisfy the requirements of section 17(b). Applicants state that Shares issued by each New Fund will have an aggregate net asset value equal to the value of the assets acquired from its corresponding Partnership. Applicants also state that because Shares will be issued at their net asset value and only nominal Shares will be outstanding when the Exchanges are effected, the Company shareholders will not be diluted. In addition, applicants state that the investment objective and policies of each New Fund are substantially similar to its corresponding Partnership and that after the Exchanges, the limited partners will hold substantially the same assets as Company shareholders as they held as limited partners. In this sense, applicants submit that the Exchanges can be viewed as a change in the form in which assets are held, rather than a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26903 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 13, 1997.

A closed meeting will be held on Tuesday, October 14, 1997, at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 14, 1997, at 10:30 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 7, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27097 Filed 10–8–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

United States Properties, Inc.; Order of Suspension of Trading

October 7, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of United States Properties, Inc. ("USPI"). Questions have been raised regarding the accuracy of assertions by USPI, and by others, in documents sent to and statements made to market-makers of the stock of USPI, other broker-dealers, and to investors concerning, among other things: (1) the identity of the persons in control of the operations and management of the company; (2) the purported members of USPI's advisory board; and (3) the trading and true value of the common stock of USPI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, October 8, 1997 through 11:59 p.m. EDT, on October 21, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27096 Filed 10–8–97; 11:30 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39192; File No. SR–CBOE–97–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Reduction in the Value of the Standard & Poor's 100 Stock Index

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is filing this rule change to inform the Commission that Standard & Poor's ("S&P") intends to reduce the value of its S&P 100 Stock Index ("Index") option ("OEX") to one-half of its present value by doubling the divisor used in calculating the Index. In connection with this change, the Exchange proposes doubling the current OEX position and exercise limits. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The CBOE began trading OEX options in March 1983.[3] OEX options are American-style, cash-settled options on the S&P 100 Stock Index. The Exchange notes that, on the strength of a sustained bull market, the value of the OEX has doubled in value since mid-1995, such that the value of the index stood at 928.20 as of August 7, 1997. As a result of the significant increase in the value of the underlying index, the premium for OEX options has also increased. This has caused OEX options to trade at a level that may be uncomfortably high for retail investors, a large and important part of the market for OEX.

As a result, at the request of the CBOE, S&P, the reporting authority for the Index, has agreed to a "two-for-one split" of the Index. The change will be instituted after Commission approval of this proposed rule change. This change will result in a doubling of the OEX contracts outstanding, such that for each OEX contract held, the holder will receive two contracts at the reduced value, with a strike price of one-half of the original strike price. For instance, the holder of an OEX 930 call will receive two OEX 465 calls. The trading symbol will remain as OEX (plus any necessary wrap symbols).

In addition to the strike price being reduced by one-half, the CBOE proposes to double the position and exercise limits applicable to the OEX from 25,000 to 50,000.[4] The Exchange believes this increase in the position and exercise limits is justified because the reduction in the divisor would result in each contract overlying only one-half of the value of a current OEX contract. Consequently, the revised position and exercise limits would be equivalent to the current levels in terms of the value of the Index.

The CBOE will announce the effective date of the change by way of an Exchange circular to the membership, which will also describe the change to the strike prices and the position and exercise limits.

The Exchange expects the proposed changes to attract additional customer business in OEX in those series in which retail customers are most interested in trading. For example, a September 930 (at the money) call option series currently trades at approximately $2600 per contract. With the Index split, the same option series (once adjusted), with all else remaining equal, would trade at approximately $1300 per contract. The Exchange believes the proposed change will permit some investors to trade these options who have otherwise been priced out of the market due to the recent market surge. The Exchange believes that OEX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the stocks comprising this broad-based widely followed Index. By reducing the value of the Index, investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The Exchange believes this should attract additional investors, and, in turn, create a more active and liquid trading environment.

The Exchange believes that reducing the value of the Index does not raise manipulation concerns and will not cause adverse market impact because the Exchange will continue to employ the same surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[5] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 25049. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–48 and should be submitted by October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26901 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53981 (November 30, 1982).

[4] The Exchange has separately filed for an increase in the position and exercise limits for OEX in SR–CBOE–97–11 (noticed in Securities Exchange Act Release No. 38525 (April 18, 1997), 62 FR 20046 (April 24, 1997). In the event that SR–CBOE–97–11 is approved by the Commission prior to this filing, the Exchange would seek a doubling of those higher limits.

[5] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39201; File No. SR–OCC–97–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Seeking To Amend the Valuation Rate Applied to Equity Securities and Corporate Debt Deposited as Margin Collateral

October 3, 1997.

On May 21, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 18, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

OCC currently operates a program to accept deposits of equity securities and corporate debt as margin collateral ("valued securities program") under its rule 604(d).[3] The proposed rule change

[6] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38923 (August 11, 1997), 62 FR 44025.

[3] For a detailed description of the valued securities program, refer to Securities Exchange Act

Continued

amends OCC Rule 604(d)(1) to increase the valuation rate that OCC applies to equity and corporate debt securities deposited with OCC under the valued securities program from 60 percent to 70 percent.

OCC Rule 604(d) permits OCC's clearing members to deposit as margin collateral common and preferred stock and corporate bonds which meet certain standards. Common and preferred stock must have a market value of greater than $10 per share and must either be (i) traded on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or (ii) traded in the over-the-counter market and designated as National Market System Securities pursuant to Commission Rule 11Aa2–1.[4] Corporate bonds must (i) be listed on a national securities exchange and not be in default, (ii) have a current market value that is readily determinable on a daily basis, and (iii) be rated in one of the four highest rating categories by a nationally recognized statistical rating organization.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the effective functioning of the valued securities program since its inception in 1985 and OCC's various financial safeguards and risk monitoring systems, taken as a whole,[7] suggest that an increase from 60 percent to 70 percent in the valuation rate for debt and equity securities deposited as margin collateral should not detract from OCC's ability to safeguard funds and securities in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26902 Filed 10–9–97; 8:45 am]

BILLING CODE 8010–01–M

Release Nos. 33893 (April 14, 1994), 59 FR 18427 [File No. SR–OCC–92–13] (order granting accelerated approval to proposed rule change) and 31169 (September 10, 1992), 57 FR 43041 [File No. SR–OCC–92–13] (notice of filing of proposed rule change).

[4] 17 CFR 240.11Aa2–1.

[5] An issue that is suspended from trading in its primary market, or subject to special margin requirements under the rules of its primary market because of volatility, lack of liquidity or similar characteristics may not be deposited with OCC. OCC Rule 604(d)(1).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] OCC financial safeguards include, for example, the valued securities program's eligibility standards for equity and corporate debt securities and OCC's authority to collect intraday margin calls as needed.

DEPARTMENT OF STATE

[Public Notice No. 2611]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on October 21, 1997 from 1:30 pm to 3:30 pm to obtain public comment on the issues to be addressed at the October 27–31, 1997 Nineteenth Consultative Meeting of the Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twentieth Scientific Group Meeting of the London Convention held in May 1997.

The meeting will be held at Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 709. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. John Lishman, Chief, Marine Pollution Control Branch, telephone (202) 260–1952.

Dated: September 25, 1997.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–26970 Filed 10–9–97; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; System of Records

AGENCY: Tennessee Valley Authority.

ACTION: Amendment of systems of records to include new categories of individuals and new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), the Tennessee Valley Authority (TVA) is issuing notice of our intent to amend the systems of records entitled TVA–2 "Personnel Files—TVA" and TVA–11 "Payroll Records—TVA" to include new categories of individuals for TVA–2 and new routine uses for TVA–2 and TVA–11. We invite public comment on this publication.

EFFECTIVE DATE: The changes will become effective as proposed, on November 10, 1997, unless comments which would warrant our preventing the changes from taking effect are received on or before 30 days from the date of this notice.

ADDRESSES: Interested individuals may comment on this publication by writing to Wilma H. McCauley, Privacy Act Officer, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley, (423) 751–2523.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Additions to Routine Use

Pursuant to the Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, TVA will disclose data from its Personnel Files and Payroll Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support.

Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by TVA to the FPLS include: New Hire information and Quarterly Wage information.

In addition, names and social security numbers submitted by TVA to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by TVA to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

The data from TVA–2 disclosed by TVA to TVA contractors will enable TVA contractors to make suitability determinations regarding prospective employees.

The full text of TVA–2 appears at 55 FR 34817–18, August 24, 1990, and 56 FR 19137, April 25, 1991. The full text of TVA–11 appears at 55 FR 34824–26, August 24, 1990.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees, some contractors, applicants for employment, and applicants for employment by TVA contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972. Pub. L. 92–261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to TVA contractors engaged in making suitability determinations for their prospective employees under TVA contracts.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

TVA–11

SYSTEM NAME:

Payroll Records—TVA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8, 5 U.S.C. Chapter 63.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 97–27003 Filed 10–9–97; 8:45 am]

BILLING CODE 8120–08–P

[8] 7 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by December 9, 1997.

ADDRESSES: Comments should be sent to the Special Authorities Division (X–57), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Ms. Ronale Taylor or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, at the address above. Telephone: (202) 366–1037/9539.

SUPPLEMENTARY INFORMATION:

Title: Canadian Charter Air Taxi Operators.

OMB Control Number: 2106–0013.

Expiration Date: October 31, 1997.

Type of Request: Extension for and revision to a currently approved information collection.

Abstract: The 1974 U.S.-Canada Nonscheduled Air Services Agreement provides that Canadian air taxi operators that meet the criteria imposed by the Canadian and U.S. governments will be authorized to fly into the U.S. The Agreement further provides that such authorization will be considered with a minimum of procedural delay. Prior to the adoption of Part 294 Canadian air taxi operators were required to formally seek this authorization by a somewhat lengthy process. The Airline Deregulation Act of 1978 expanded the Department of Transportation's exemption powers to include foreign air carriers. Part 294 was adopted to provide a simpler method of obtaining Department approval and Form 4505 was developed to request only the information necessary to ensure that applicant Canadian operators meet the U.S. requirements for operating authority. Approval of this authority also exempts Canadian charter air taxi operators from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation).

Collection of this information is necessary to determine whether or not a Canadian air taxi meets the U.S. criteria for an operating authorization.

Respondents: Small Canadian air carriers operating aircraft with 60 seats or less or 18,000 pounds payload or less.

Estimated Number of Respondents: 27.

Average Annual Burden per Respondent: 30 minutes.

Estimated Total Burden on Respondents: 14 hours.

This information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 294 can be obtained from Ms. Ronale Taylor at the address and telephone number shown above.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on October 6, 1997.

John V. Coleman,

Office of Aviation Analysis.

[FR Doc. 97–26924 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request a reinstatement without change of a previously approved collection for which approval has expired.

DATES: Comments on this notice must be received by November 9, 1997.

ADDRESSES: Comments should be sent to the Special Authorities Division (X–57), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Ms. Ronale Taylor or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, at the address above. Telephone: (202) 366–1037/9539.

SUPPLEMENTARY INFORMATION:

Title: Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations.

OMB Control Number: 2106–0036.

Expiration Date: May 1997.

Type of Request: Reinstatement without change of a previously approved collection for which approval has expired.

Abstract: Title 14 CFR Part 297 (sec. 297.10) grants foreign indirect air carriers an exemption from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation) in order that they may consolidate air freight shipments in the U.S. for further transportation on direct air carrier flights. One of the requirements of Part 297 is that the carriers apply for and receive an approved registration from the Department before operating (sec. 297.20). The registration information required makes it possible for the Department to consider the grant or denial of access to U.S. markets by foreign-owned companies based on the availability of reciprocal privileges for U.S. carriers abroad. Without this requirement, the Department could not protect the competitive and financial interests of U.S. carriers. The form used for these collections is simplified and requests only basic information about the carriers ownership and management.

Respondents: Foreign indirect air carriers.

Estimated Number of Respondents: 15.

Average Annual Burden per Respondent: 30 minutes.

Estimated Total Burden on Respondents: 8 hours.

This information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 297 can be obtained from Ms. Ronale Taylor at the address and telephone number shown above.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on October 6, 1997.

John V. Coleman,

Office of Aviation Analysis.

[FR Doc. 97–26925 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 31, 1997 [62 41127].

DATES: Comments must be submitted on or before November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Erhard W. Koehler, 202/366–2631 or FAX 202/366–3954, Division of Ship Maintenance and Repair, Maritime Administration, MAR–611, Room 2119, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Maintenance and Repair Cumulative Summary.

OMB Number: 2133–0007.

Type of Request: Extension of a currently approved collection.

Affected Public: Subsidized ship operators.

Abstract: The collection consists of form MA–140 to which are attached invoices and other supporting documents for expenses claimed for subsidy. Subsidized operators submit form MA–140 to the appropriate MARAD region office for review within 60 days of the termination of a subsidized voyage.

Estimated Annual Burden Hours: 1,200.

Number of Respondents: 4.

Needs and Users: The collected information is necessary to perform the reviews required in order to permit payment of Maintenance and Repair subsidy.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 3, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–26921 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1997 [62 FR 19160].

DATES: Comments must be submitted on or before November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Claretta Duren, (202) 366–4636, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Statement of Materials and Labor used by Contractor on Highway Construction Involving Federal Funds.

OMB Number: 2125–0033.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Contractors.

Abstract: The form "FHWA–47 "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds" is needed in order to obtain information on the usage of materials and labor in highway construction. Title 29 U.S.C. 2 authorizes the Department of Labor to collect the labor-related information using its own forces or by getting the information from other Federal agencies. An informal agreement has been reached for FHWA to collect the desired data for the Department of Labor. This information is used by FHWA for estimating current material usage and cost distribution on Federal-aid highway construction contracts to aid in planning for future requirements based on anticipated program levels. There is also considerable interest by industry, particularly suppliers of highway construction materials, for the usage information derived from the FHWA–47 forms. This data is collected from contracts of $1,000,000 or more on the National Highway System and is not considered confidential. The respondent must submit the FHWA–47 form after the project has been completed.

Estimated Annual Burden Hours: 7,475.

Number of Respondents: 650.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 3, 1997.

Vanester M. Williams.

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–26922 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending October 3, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST—97—2964

Date Filed: October 2, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC23 EUR-SEA 0040 dated September 30, 1997 r1–6

PTC23 EUR-SEA 0041 dated September 30, 1997 r7

Europe-Southeast Asia Expedited Resos

Intended effective date: as early as November 15, 1997.
Docket Number: OST—97—2969
Date Filed: October 3, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0100 dated September 23, 1997 r1–33
PTC2 EUR 0101 dated September 23, 1997 r34–58
PTC2 EUR 0102 dated September 23, 1997 r59–68
Within Europe Resolutions
(A summary is attached.)
Intended effective date: March 1, 1998

Paulette V. Twine,
Documentary Services.
[FR Doc. 97–27010 Filed 10–9–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 3, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2946.
Date Filed: September 29, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 27, 1997.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108 and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 616, segment 12, issued by Order 91–10–33 (October 25, 1991) in the Delta-Pan Am Route Transfer Proceeding, last renewed by Order 93–4–3, permitting Delta to engage in scheduled foreign air transportation of persons, property, and mail between New York, New York and Boston, Massachusetts, on the one hand, and Nairobi, Kenya on the other hand. Delta's certificate authority to serve Nairobi, Kenya on Route 616, segment 12, expires on April 1, 1998. Delta hereby requests renewal of its certificate authority for Route 616, segment 12, for an additional five year duration.

Paulette V. Twine,
Documentary Services.
[FR Doc. 97–27009 Filed 10–9–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bibb County, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Macon and Bibb County, Georgia.

FOR FURTHER INFORMATION CONTACT: Clyde B. Johnson, Project Development Manager, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, Georgia 30303, Telephone: (404) 562–3657 or David E. Studstill, State Environment/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone: (404) 699–4401.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT), will prepare an environmental impact statement (EIS) on a proposal to complete the Eisenhower Parkway which is a section of the Fall Line Freeway through the City of Macon and Bibb County, Georgia near the Ocmulgee National Monument. The proposed multiple-lane roadway with a median is intended to provide a connection between the Eisenhower Parkway at Interstate 75 and Emery Highway/U.S. 80.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand, complete the multi-laned economic developmental highway, and provide additional connections between east and west Macon. Alternatives under consideration include: (1) Taking no action; (2) widening the exiting roadway facilities to accommodate increase traffic volumes; and (3) constructing a four-lane, limited access highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest with this proposal. A series of public meetings will be held in Macon-Bibb County and in Oklahoma, the home of the Muscogee Creek Nation, in November 1997. In addition, a public hearing will be held. Public notice will be given of the time and place of these meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. No formal scoping meeting has been scheduled at this time.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions regarding this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.250, *Highway Research Planning and Construction*. Georgia's approved clearinghouse review procedures apply to this program)

Issued on: September 30, 1997.

Clyde B. Johnson,
Project Development Engineer, Atlanta, Georgia.
[FR Doc. 97–26967 Filed 10–9–97; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards and Research and Development Programs Meetings

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of NHTSA industry meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on December 17, 1997, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the vehicle regulatory program must be submitted in writing by November 20, 1997, to the address shown below. If sufficient time is available, questions received after November 20 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by November 20, 1997, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by December 15, 1997, and will be available at the meeting. Also, the agency will hold a second public meeting the same day December 17, at 1:30 p.m. devoted exclusively to a presentation of research and development programs. That meeting is described more fully in a separate announcement. The next NHTSA vehicle regulatory program meeting will take place on Tuesday, March 17, 1998 at the Clarion Inn Hotel, 9191 Wickham Road, in Romulus, MI.

ADDRESSES: Questions for the December 17, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Gage, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329. The meeting will be held at the Clarion Inn Hotel, 9191 Wickham Road, in Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Gage, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m. We would appreciate the questions you send us to be organized by categories to help us to process the questions into agenda form more efficiently. Sample format as follows:

I. Rulemaking
A. Crash avoidance
B. Crashworthiness
C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Gage on (202) 366–1810, by COB November 20, 1997.

Issued: October 6, 1997.

L. Robert Shelton,
Associate Administrator for Safety Performance Standards.
[FR Doc. 97–27008 Filed 10–9–97; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–068; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1991 Mercedes Benz 420 SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1991 Mercedes Benz 420 SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1991 Mercedes Benz 420 SE passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 10, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1990–1991 Mercedes Benz 420 SE passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990–1991 Mercedes Benz 420 SEL. Champagne has submitted information indicating that Daimler Benz, A.G., the company that manufactured the 1990–1991 Mercedes Benz 420 SEL, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1990–1991 Mercedes Benz 420 SE to the 1990–1991 Mercedes Benz 420 SEL, and found the two models to be substantially similar with respect to compliance with most

applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1990–1991 Mercedes Benz 420 SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990–1991 Mercedes Benz 420 SEL that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1990–1991 Mercedes Benz 420 SE is identical to the certified 1990–1991 Mercedes Benz 420 SEL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rear view mirror.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at each front designated seating position, with combination lap and shoulder restraints that release by means of a single push button at each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1990–1991 Mercedes Benz 420 SE must be reinforced, or U.S.-model bumper components must be installed, to comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to comply with the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–26923 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–069; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1987–1995 BMW K75S Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1995 BMW K75S motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1995 BMW K75S motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 10, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1987–1995 BMW K75S motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1995 BMW K75S motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motorenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1995 BMW K75S motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1995 BMW K75S motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1995 BMW K75S motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1987–1995 BMW K75S motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 7, 1997.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 97–27007 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2968 (PDA–17(R))]

Application by William E. Comley, Inc. and TWC Transportation Corporation for a Preemption Determination as to Public Utilities Commission of Ohio Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by William E. Comley, Inc. and TWC Transportation Corporation for an administrative determination whether Federal hazardous materials transportation law preempts requirements enforced by the Public Utilities Commission of Ohio concerning the transportation of hypochlorite solutions in non-DOT specification cargo tank motor vehicles.

DATES: Comments received on or before November 24, 1997, and rebuttal comments received on or before December 9, 1997, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments may be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. Comments may also be submitted by E-mail to "rspa.counsel@rspa.dot.gov." Each comment should refer to the Docket Number set forth above.

A copy of each comment must also be sent to (1) Mr. William E. Comley, Sr., Chairman, WECCO/TWC, 28 Kenton Lands Road, P.O. Box 18580, Erlanger, KY 41018, and (2) Mr. William L. Wright, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, OH 43215–3793. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Comley and Wright at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

William E. Comley, Inc. (WECCO) and TWC Transportation Corporation (TWC) have applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain requirements of the State of Ohio, enforced by the Public Utilities Commission of Ohio (PUCO),

with respect to cargo tank motor vehicles used to transport hypochlorite solutions. This application arises out of enforcement proceedings brought by PUCO against WECCO and TWC for transporting hypochlorite solutions in non-DOT specification cargo tank motor vehicles. These companies have provided documents, including opinions and orders of PUCO, that indicate the following:

1. WECCO's truck No. 88 was inspected by PUCO on June 3 and September 26, 1991, and WECCO was cited both times for several violations including transporting hypochlorite solution in an unauthorized package.

2. At the time of PUCO's 1991 inspections, truck No. 88 did not have any specification plate. Sometime thereafter, WECCO attached specification plates to its three cargo tanks, including truck No. 88.

3. In its December 17, 1992 Opinion and Order relating to the 1991 citations, PUCO found that, "in order to be an authorized package for the transportation of sodium hypochlorite under HMR 49 CFR 173.277(a)(9), respondent's tank must be classified as an MC 310, MC 311, MC 312 or DOT 412 cargo tank." PUCO also found that truck No. 88 "has several design flaws which prevent it from qualifying under the HMR as a specification MC 312 cargo tank." PUCO assessed a fine of $11,470 against WECCO, which included $10,750 for violations of 49 CFR 173.277, transporting hazardous material in an unauthorized package and willful misrepresentation of cargo tank certification. Of the total fine, $5,000 was suspended for six months.

4. Truck No. 88, which had been transferred by WECCO to TWC, was inspected by PUCO on June 22, 1993, and TWC was cited for eight violations including leaking closures, transporting hypochlorite solution in an unauthorized package, and misrepresenting that the package met the MC 312 specification. On PUCO's hazardous materials report form, the contents of the cargo tank is indicated as "Hypochlorite Solution, PG III."

5. TWC's truck No. 66 was inspected by PUCO on July 3, 1993, and TWC was cited for seven violations including leaking closures, transporting hypochlorite solution in an unauthorized package, and misrepresenting that the package met the MC 312 specification. On WECCO's shipping paper attached to PUCO's hazardous materials report form, the hypochlorite solution is classed within "PG III."

6. In its October 25, 1995 Opinion and Order relating to the 1993 citations, PUCO found that "numerous defects for both cargo tanks (Nos. 88 and 66) * * * preclude either from meeting the specifications of an MC 312 cargo tank." PUCO also stated that whether or not TWC "need[ed] an MC 312 certified cargo tank to haul sodium hypochlorite solution of the concentration involved in these cases * * * is not an issue before us and respondent has not been charged with any such violation." PUCO assessed a total civil forfeiture of $14,290.50 against TWC for violations which included transporting hypochlorite solution in unauthorized packages and in tanks misrepresented as meeting MC 312 specifications, in violation of 49 CFR 173.33(a) and 49 CFR 171.2(c), respectively.

Based on telephone conversations with WECCO and PUCO, RSPA understands that no part of the fines or civil forfeitures assessed against WECCO and TWC has been paid, and PUCO is currently seeking to collect these penalties.

The State of Ohio has adopted (as State law) the requirements in the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) applicable to highway transportation of hazardous materials, including hypochlorite solutions. Under the HMR, since January 1, 1991, hypochlorite solutions containing more than 5% but less than 16% available chlorine may be transported in "non-DOT specification cargo tank motor vehicles suitable for transportation of liquids" and which also meet the general requirements for bulk packagings set forth in 49 CFR 173.24 and 173.24b. 49 CFR 173.241(b); *see also* 172.101 (Hazardous Materials Table). (At present, hypochlorite solutions up to 5% available chlorine are not subject to the HMR. During a transition period that continued until October 1, 1996, the HMR also authorized the transportation of hypochlorite solutions containing up to 7% available chlorine by weight transported in nonspecification cargo tanks that were "free from leaks and [with] all discharge openings * * * securely closed during transportation." 49 CFR 173.510 (1990 ed.))

According to WECCO and TWC, in the course of these enforcement proceedings, PUCO has required the use of a DOT specification cargo tank motor vehicle, bearing a specification plate, for transportation of hypochlorite solutions containing more than 5% but less than 16% available chlorine. These companies also assert that PUCO has required cargo tank motor vehicles built under the MC 312 specification, that are unloaded at a pressure less than 15 psig, to be designed and constructed in accordance with the ASME code and also required the certification of MC 312 cargo tank motor vehicles in some manner other than as specified in the HMR.

In comments addressed to this application, PUCO has stated that its policy is to enforce the requirements in the HMR "aggressively yet fairly." It stated that the focus of its enforcement proceedings against WECCO and TWC was the misrepresentation of these two cargo tank motor vehicles as meeting the MC 312 specification, when PUCO "specifically found that the cargo tanks in question did not meet MC 312 specifications." PUCO also stated that it allows the use of non-specification cargo tank motor vehicles for the transportation of hypochlorite solutions with less than 16% available chlorine, but that WECCO and TWC have never provided any evidence on the concentration of the sodium hypochlorite solution being transported in their trucks.

Although WECCO and TWC assert that their cargo tanks were constructed to ASME requirements, and had wall, head, and lining thicknesses that exceeded requirements for specification MC 312 cargo tank motor vehicles, their application does not contain an assertion that these trucks actually meet DOT's MC 312 specification. Rather, the applicants state that specification plates are not required for these vehicles to transport sodium hypochlorite with less than 16% available chlorine, but that specification plates were applied to their trucks only to satisfy PUCO's insistence that a specification cargo tank motor vehicle was required for the transportation of this material. RSPA notes that the misrepresentation of any packaging as qualified for the transportation of a hazardous material is a serious violation of both 49 U.S.C. 5104(a) and the HMR, whether or not that packaging is actually used for the transportation of hazardous materials. However, because there is no evidence that PUCO has enforced design, construction, and operational requirements for MC 312 specification cargo tanks against these companies in any manner different from that specified in the HMR, issues relating to PUCO's assessment of penalties for misrepresenting cargo tank motor vehicles as meeting the MC 312 specification are not part of this proceeding.

The application submitted by WECCO and TWC is being considered solely with respect to issues that concern whether PUCO has required the use of a specification cargo tank motor vehicle for the transportation of sodium hypochlorite with less than 16% available chlorine, after January 1, 1991. Neither the applicants nor PUCO has provided RSPA with copies of shipping papers or other documents to indicate the concentration of the sodium hypochlorite in the 1991 shipments. However, as stated above, the PUCO hazardous materials report forms for the June and July 1993 inspections (as provided by WECCO and TWC) indicate that the hypochlorite solutions were classed as Packing Group III materials. Packing Group III applies to hypochlorite solutions with more than 5% but less than 16% available chlorine. 49 CFR 172.101.

The following materials have been placed in the public docket of this proceeding:

Mr. Comley's April 24, 1997 application for a preemption determination and attachments.

RSPA's May 7, 1997 letter dismissing Mr. Comley's application.

Mr. Comley's May 12, 1997 reapplication for a preemption determination, with attachments.

RSPA's May 23, 1997 letter requesting additional information.

Mr. Comley's May 29, 1997 letter and attachments.

PUCO's July 8, 1997 letter and attachments.

Copies of these materials will be provided at no cost upon request to RSPA's Dockets Unit, located in Room 8421, 400 Seventh Street, SW, Washington, DC 20590–0001; telephone 202–366–4453.

II. Federal Preemption

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Pub. L. 93–633 § 102, 88 Stat. 2156, amended by Pub. L. 103–272 and codified as revised in 49 U.S.C. 5101. The HMTA "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1980). On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified and enacted "without substantive change" by Pub. L. 103–272, 108 Stat. 745. The Federal hazardous material transportation law is now found in 49 U.S.C. Chapter 51.

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, a Federal Court of Appeals found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). In 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244.

Following the 1990 amendments and the subsequent 1994 codification of the Federal hazardous material transportation law, in the absence of a waiver of preemption by DOT under 49 U.S.C. 5125(e), "a requirement of a State, political subdivision of a State, or Indian tribe" is explicitly preempted (unless it is authorized by another Federal law) if

(1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

49 U.S.C. 5125(a). These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings before 1990. While advisory in nature, these inconsistency rulings were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application * * * [for] a waiver of preemption." Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc. 44 FR 75566; 76657 (Dec. 20, 1979). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In the 1990 amendments, Congress also confirmed that there is no room for differences from Federal requirements in certain key matters involving the transportation of hazardous material. As now codified, a non-Federal requirement "about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter," is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125(b)(1). RSPA has defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. *Id.* Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

RSPA's authority to issue preemption determinations does not provide a means for review or appeal of State enforcement proceedings, nor does RSPA consider any of the State's procedural requirements applied in an enforcement proceedings. The filing of an application for a preemption determination does not operate to stay a State enforcement proceeding.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comment

Comments should be limited to whether Federal hazardous material transportation law preempts a requirement allegedly applied and enforced by PUCO, after January 1, 1991, for the use of a DOT specification cargo tank motor vehicle for the transportation of hypochlorite solutions containing more than 5% and less than 16% available chlorine. WECCO and TWC have not provided any evidence to indicate that PUCO enforces different requirements for the design, construction, and certification of MC 312 specification cargo tank motor vehicles. In addition, allegations in the application relating to PUCO's procedures for holding hearings and assessing penalties are not subject to this proceeding.

Persons submitting comments should:

(1) Set forth in detail the manner in which PUCO applies and enforces requirements for transportation of hypochlorite solution with more than 5% but less than 16% available chlorine; and

(2) Specifically address whether PUCO has enforced a requirement concerning the packing of a hazardous material that is "not substantively the same as" the requirements in the HMR.

Comments may also address the "dual compliance" and "obstacle" criteria described in Part II, above.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on October 3, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–26918 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 9]

Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has completed screening of twelve candidate companies for the Pipeline Risk Management Demonstration Program. OPS named and described the first three companies screened (Northwest Pipeline Corporation, Shell Pipe Line Corporation, Tennessee Gas Pipeline/East Tennessee Natural Gas) in a previous notice. The nine additional companies screened subsequent to that notice are: Chevron Pipe Line Company; CNG Transmission Corporation; Columbia Gas Transmission Corporation/Columbia Gulf Transmission Company; Duke Energy; Florida Gas Transmission Company; Lakehead Pipeline Company; Mobil Pipe Line Company; Natural Gas Pipeline Company of America; and Phillips Pipe Line Company. OPS believes these companies' demonstration project proposals satisfy all eligibility criteria, based on a Letter of Intent (LOI) submitted by each company to OPS, a subsequent OPS screening, and an examination of each company's safety and environmental compliance record. Although this notice does not contain specific details of all project proposals, OPS believes the information provided in these companies' LOIs was sufficient to justify proceeding to the consultation process. Additional information, including further details of specific project proposals, will be provided in future **Federal Register** notices and other means of communication. This notice is based on information obtained very early in the process. It informs the public of which companies are interested in participating, the technologies to be explored, and the geographic areas demonstration projects may traverse. OPS invites public comment on any aspect of these companies' proposals.

Comments: OPS requests that comments to this notice be submitted on or before December 9, 1997 so that OPS can give the comments full consideration before deciding whether to approve a company's proposal. However, comments on any aspect of the Demonstration Program, including the individual projects, will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number (PS–142). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eben Wyman, (202) 366–0918 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION: Appendix A of the Requests for Applications for the Pipeline Risk Management Demonstration Program (62 FR 14719; March 27, 1997) describes how OPS will receive, review, approve, monitor, modify, and terminate company risk management demonstration projects. This process established a July 25, 1997 deadline for companies considering participating in a demonstration project to have submitted a Letter of Intent to OPS. Based on Letters of Intent and additional screening considerations, OPS has chosen twelve candidate companies whose project proposals merit further consideration. OPS is entering into consultations with candidate companies to clarify and refine demonstration project provisions. OPS may approve up to ten demonstration projects. If OPS approves a project, OPS will issue an order and begin auditing project performance. OPS is limited to approving no more than ten projects for participation in the program.

OPS expects the projects, and the Demonstration Program itself, to evolve from lessons learned during the four-year demonstration period. OPS hopes to learn whether and in what form risk management should be incorporated into the Federal pipeline safety program on a permanent basis.

This document is consistent with the OPS Communications Plan (62 FR 43028), published in the **Federal Register** on August 11, 1997. OPS is requesting public input through all stages of the demonstration projects, beginning with receipt of the Letters of Intent. Specific benefits of public involvement in the Demonstration Program for OPS, industry, State and community representatives include:

- Exchange of information about specific and relevant local factors during the decision-making process that may not be known at the Federal or State level; and
- Feedback regarding the success of the Demonstration Program in accomplishing the goals for which it was designed.

OPS requests comments on safety, environmental, socioeconomic, land use, geographic and any other issues that relate to these demonstration project proposals. OPS is considering public input, as well as input from local, State, and other federal agencies, during its consultations with candidate companies to discuss demonstration project provisions. OPS will publish the final provisions for each project and allow for additional public comment before issuing a project approval order. OPS will continue to seek broadbased input on individual demonstration projects throughout the four-year demonstration period. OPS is engaging in consultations with companies to achieve consensus on demonstration project provisions. If OPS and a company reach agreement, OPS will evaluate the company's formal proposal and approve those that offer the most benefits in testing risk management practices on pipelines.

There were many distinguishing features contained in the LOI's that attracted OPS to these proposals. Besides many geographic areas involved, the type of terrain that these proposals would was also very diverse. Proposals included marshlands, river crossings, mountains, diverse climates, diverse soil types, etc. Further, demonstration sites varied in population densities, and fall under all Class locations ranging from Class 1 to Class 4. Class locations are areas characterized by different population densities, and are how OPS regulates pipelines according to populations in areas where pipelines exist.

The following descriptions provide a brief, introductory summary of each company's demonstration project proposal. The information is derived from each company's LOI and from subsequent discussions between OPS and the company. More detailed information regarding the individual projects will be collected during the consultation process and carefully considered before a project is approved. The company descriptions are listed in alphabetical order.

1. Chevron Pipe Line Company (CPL): Chevron Pipe Line Company (CPL) is proposing to use all or a portion of its Northwest Products Pipeline System (NPPS) in the demonstration program. The NPPS consists of two, eight-inch products pipelines, one transporting all grades of gasoline, the other transporting distillates such as diesel and jet fuel. The 40-year old pipeline system transports a total of 72,000 barrels per day over 705 miles, traversing the states of Utah, Idaho, Oregon, and Washington. These states fall under the oversight of the OPS Western Region. The pipeline system begins at Chevron's Salt Lake City, Utah, refinery and terminates in Spokane, Washington. The pipeline crosses various terrains, including desert, farmland, mountains and several major river crossings. Most of the route is through low density population areas, with the exception of Salt Lake City and Boise, Idaho, where the population densities are moderate.

CPL conducted a risk assessment of the NPPS in April, 1997. The assessment identified areas requiring mitigation that CPL believed it would not have otherwise identified through existing regulatory requirements. CPL found most of the existing regulations to be effective in reducing pipeline incidents, but also looked for opportunities to diverge from existing regulations and offer risk reduction alternatives that will add value. CPL is proposing a set of risk management procedures that consider the scope of the risks and would involve several employees throughout the company. CPL looks forward to a closer working relationship with pipeline regulatory agencies to allow for cost-effective alternatives that provide superior safety.

CPL's risk management coordinator and point-of-contact is Dave Feiglstok. He can be reached at Chevron Pipe Line Company, P.O. Box 6059, 4000 Executive Parkway, San Ramon, California, 94583–0959, or by calling (510) 842–6893.

2. CNG Transmission Corporation: CNG Transmission Corporation (CNGT) operates an interstate natural gas pipeline system consisting of 8,274 miles of transmission, storage, and gathering pipelines located in Maryland, New York, Ohio, West Virginia, Pennsylvania and Virginia. CNGT has identified 23 pipeline sections in all six states for its risk management demonstration project. These states fall under the OPS Central and Eastern Region.

CNGT proposes to apply risk control activities as an alternative to current pipeline safety requirements regarding maximum allowable operating pressure (MAOP) in various Class locations. These risk control activities include use of smart pigging, special aerial patrols, and remediation of anomalies, or defects that could affect the pipeline's integrity. CNGT also proposes to incorporate additional prevention and mitigation measures in its comprehensive demonstration project to reduce the risk of third party damage.

CNG's risk management coordinator and point-of-contact is Robert Fulton. He can be reached at CNG Transmission Corporation, 445 West Main Street, P.O. Box 2450, Clarksburg, West Virginia 26392–2450, or by calling (304) 623–8200.

3. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia): The Columbia system includes 12,705 miles of pipeline operated by Columbia Gas Transmission and 3,856 miles of pipeline operated by Columbia Gulf Transmission. The Columbia Gas Transmission portion originates in the Appalachian production areas and transports gas to the Midwest and mid-Atlantic states. The Columbia Gulf portion originates in the Gulf Coast

production areas and transports gas to the Columbia Gas system. Both pipeline systems traverse a wide variety of terrain, including coastal plain, offshore, marsh, major river crossings, mountainous regions, and agricultural regions as well as some major population areas. The scope of the proposed project includes New York, Ohio, Pennsylvania, and Tennessee, and falls under OPS Central, Eastern, and Southern Region's responsibility.

Columbia will include most, if not all, of its pipeline system and phase in the implementation of risk control activities over the four-year demonstration period. For the initial phase of the project, Columbia proposes the following for its entire system:

- Modified inspection frequency for relief and regulator valves including capacity calculations;
- Modified inspection frequency for rectifier and test point inspection and detail survey;
- Modified class location change resulting in different inspection frequencies and time frame for action under certain circumstances;
- Use of hardness testing correlation to confirm pipe properties in lieu of lab analysis under certain conditions;
- Expanded use of alternative pipeline repair techniques including welding activities and composite sleeves; and
- Modified inspection frequency for valves and vaults.

Columbia also intends to include certain geographic or site-specific risk management activities including:

- Elimination of pipe replacement due only to class location changes under certain conditions in Tennessee, New York, Ohio, and Pennsylvania;
- Modification of MAOP under certain conditions in Ohio, Pennsylvania, and New York; and
- New design and construction techniques for their proposed Millennium Pipeline System.

OPS is interested in how Columbia approaches the maintenance program for older pipelines, and uses a management approach that integrates data collected across the organization.

Columbia's risk management coordinator and point-of-contact is John S. Zurcher. He can be reached at Columbia at 1700 MacCorkle Avenue, S.E., P.O. Box 1273, Charleston, West Virginia, 25325–1273, or by calling (304) 357–2669.

4. *Duke Energy:* Duke Energy (formerly PanEnergy Corporation) operates approximately 21,000 miles of interstate natural gas transmission pipelines within the United States. This pipeline system is composed of four interstate pipeline operating companies: Panhandle Eastern Pipeline Company (6,600 miles), Texas Eastern Transmission Corporation (9,000 miles), Trunkline Gas Company (4,200 miles), and Algonquin Gas Transmission Company (1,100 miles). The system is composed of pipelines with diverse physical attributes, such as age, strength, and size, and operates in diverse geographic and demographic environments. The project would be conducted in Pennsylvania, and is under OPS Eastern Region's oversight.

Duke's proposal would be deployed in four phases. Each phase would be initiated contingent on a detailed explanation of the risk assessment and risk management programs that Duke uses on its pipelines and OPS's acceptance of the implementation of each phase. The first phase would involve the use of welding to repair external corrosion damage. Recent research work by the pipeline industry evaluated and tested this technique under simulated pipeline operating conditions, and developed criteria for safe operation. Duke proposes to use these criteria for repairs on the Texas Eastern system for anomalies detected during planned remediation work of the pipeline in Pennsylvania. The work would be restricted to specific, rural sections of pipeline on Line A. Line A is a 36-inch pipeline installed from the late 1970 through the early 1980's, which traverses the state of Pennsylvania west to east in parallel with two and sometimes three other Texas Eastern pipelines of varying ages.

Duke Energy's proposal is being considered because this company offers extensive experience with data collection and modeling for risk assessment, applied in a prioritized structure.

Duke Energy's risk management coordinator and point-of-contact is Andy Drake. He can be reached at Duke Energy Corporation, P.O. Box 1642, 5444 Westheimer Court, Houston, Texas 77056–1642, or by calling (713) 989–2311.

5. *Florida Gas Transmission Company (FGTC):* Florida Gas Transmission Company (FGTC), a wholly owned subsidiary of Citrus Corporation, operates a pipeline of approximately 5,051 miles with a capacity of 1.5 BCF/day. It transports natural gas from Texas to Florida. Citrus Corporation is jointly owned by an Enron Corp. subsidiary and Sonat Inc.

FGTC proposes a demonstration project involving a pipeline system operated by its Orlando Florida Team. The proposed test area includes a 379-mile network of pipelines ranging in size from four-inch through 30-inch and in-age timeframes from one to 38 years, with numerous measurement and regulation stations, a range of population densities (from rural to highly metropolitan), and various geographic and soil conditions.

For the demonstration program, FGTC proposes to submit an application covering a wide range of alternative risk controls for:

- Modifying MAOP;
- Alternatives for class location changes; and
- Changes in inspection frequencies and methods.

This project is being considered for use of diverse elements in construction and operation practices.

FGTC's risk management coordinator and point-of-contact is Max Brown. He can be reached at Florida Gas Transmission Company, P.O. Box 1188, Houston, Texas 77251–1188, or by calling (713) 853–6161.

6. *Lakehead Pipe Line Company:* Lakehead Pipe Line Company (Lakehead) operates approximately 2,700 miles of liquid petroleum pipelines through seven Midwestern states. Lakehead intends to use a risk management approach for the control of potential longitudinal seam cracks and internal and external corrosion on the 34-inch segments of its Line 3 crude petroleum pipeline in North Dakota, Minnesota, and Wisconsin. Items to be considered in this project include:

- The use of advanced elastic wave in-line inspection methodology (in lieu of hydrostatic testing) to evaluate and mitigate the potential risk of a pipeline rupture resulting from long-seam crack propagation on certain submerged pipeline segments.
- The use of in-line inspection and advanced internal corrosion mitigation and monitoring techniques to reduce the potential risk of a pipeline rupture resulting from corrosion damage.
- Application of comprehensive risk management techniques to evaluate and mitigate problems associated with the integrity of tape coating on a large diameter pipeline.
- Identification of prescribed activities that may become redundant or unnecessary in view of the potentially more effective and significant measures employed above.

OPS sees benefit in Lakehead's exploration of techniques that may offer greater safety benefits than current requirements. Lakehead has also expressed an interest in developing new communications protocols with OPS.

Lakehead's risk management coordinator and point-of-contact is Richard Sandahl. He can be reached at Lakehead Pipe Line Company, Lake Superior Place, 21 West Superior Street, Duluth, Minnesota 55802–2067, or by calling (218) 725–0102.

7. *Mobil Pipe Line Company:* Mobil Pipe Line Company (Mobil) currently owns approximately 5,409 miles of hazardous liquid pipeline in nine states. The proposed demonstration project will be conducted at Mobil's Patoka, Illinois, breakout tank facility in the OPS Central Region, and is intended to demonstrate Mobil's release prevention program. The prevention program uses an integrated system that includes proper equipment design, construction, operator training, operating procedures, periodic maintenance, periodic inspection, management controls, and management practices. Mobil proposes to use the Mobil Engineering Practices, elements of American Petroleum Institute standards, sound engineering judgment, management controls, sophisticated techniques called "multi-attribute" risk assessment scenarios, and risk management principles to validate and verify the integrity of its storage tanks. The project would also help demonstrate how these release prevention measures would work in conjunction with OPS's proposal to adopt multiple API Above Ground Storage Tank standards. Mobil's proposal offers a focus on challenges to tank integrity to provide special protection. Mobil's risk management coordinator and point-of-contact is Steve Streeter. He can be reached at Mobil Pipe Line Company, P.O. Box 900, Dallas, Texas 75221–0900, or by calling (703) 842–6189.

8. *Natural Gas Pipeline Company of America:* Natural Gas Pipeline Company of America (NGPL), a subsidiary of the MidCon Corporation, moves natural gas through 13,000 miles of pipeline and pipeline facilities in 14 different states. Approximately seventy percent of NGPL's cross country transmission pipelines were constructed in the last 50 years and are between 24 and 36 inches in diameter. The terrain in which these pipelines are located is relatively flat with predominantly lower stress clay, loam, and sandy soil. Population distribution within 220 yards of the pipeline is 92 percent Class 1, three percent Class 2, and five percent Class 3. This means that NGPL's pipeline exists predominantly in low-density population areas.

NGPL currently practices risk management in its normal operations and proposes to build on risk management programs by developing a more formal set of procedures in compliance with the requirements of the Risk Management Program Framework (62 FR 14719) and Risk Management Program Standard. It proposes to apply risk management to the entire pipeline system traversing Iowa, Illinois, and Indiana, all of which operate under the oversight of OPS's Central Region office.

Company-wide issues that NGPL anticipates addressing include:

- Testing existing research by the Pipeline Research Committee for in-service surface weld repair of pipe body defects and cold field bending of pipe;
- Current drug testing frequency requirements;
- Third party damage prevention programs, including annual public awareness activities;
- Review record retention requirements;
- Evaluating shorted casing corrosion, over pressure protection and proof testing of new or existing pipelines using inert gas along with new technologies in corrosion minimization/identification; and
- Proof testing pipeline facilities using water or gas, design factor requirements for fabricated assemblies, meter facilities, and compressor facilities.

Site-specific issues in NGPL's proposal include:

- Pipe replacement or maximum allowable operating pressure (MAOP) reduction due to Class Location change;
- The design yield strength or wall thickness of pipe with an unknown strength;
- The design factor at different population areas in Class 1, 2 and 3 locations;
- Distance interval requirements for pipeline sectioning with block valves;
- Inspection intervals for rectifiers and other corrosion inspection test intervals;
- Surface rust on aboveground pipe and pipeline facilities; and
- Odorization in Class 3 areas and line patrol for different "Class" locations.

NGPL offers a very extensive range of alternatives in its proposal, and has shown considerable interest in working with OPS to choose these alternatives to address the most problematic areas.

NGPL's risk management coordinator and point-of-contact is Craig Howard. He can be reached at Natural Gas Pipeline of America, 701 East 22nd Street, Lombard, Illinois 60148–5072, or by calling (630) 691–3617.

9. *Phillips Pipe Line Company:* Phillip's risk management proposal encompasses its Sweeny-Pasadena system, which consists of a 12-inch and 18-inch refined products pipeline in Texas. These lines cross 60 miles of varied population densities in the Houston, Texas area.

Phillips is proposing a risk-based approach to all company and third-party excavation activities that occur on these pipelines to demonstrate that risk management practices can be effectively applied to improve safety through reduction of third party damage. Because third-party damage is the leading cause in pipeline failures, OPS looks forward to investigating these damage prevention practices to provide superior safety on the pipeline.

Currently, Phillips deploys planning and oversight resources based on regulatory requirements on an equal basis regardless of related risks. In its risk management application, the company would consider risk factors such as depth of cover, operating status, population, and environmental exposure, and equipment used. Phillips would demonstrate that applying risk management principles to these factors, as well as developing specific of performance measures, can be more effective in assuring the pipeline's safety than what is achieved by current regulations.

Phillip's risk management coordinator and point-of-contact is L.J. Schmitz. He can be reached at Phillips Pipe Line Company, 370 AB, Bartlesville, OK 74004, or by calling (918) 661–4814.

This concludes the nine demonstration summaries. For your convenience, we are providing the summaries of the three companies that were screened earlier in the process.

Appendix—Excerpt from the **Federal Register** Notice, "Candidates for the Pipeline Risk Management Demonstration Program" (62 FR 40135; July 25, 1997), which described the three projects screened earlier. The only change in this section is that the Point-of-Contact for Northwest Pipeline's proposed demonstration project has changed since this notice was published. This updates the previous language.

SUPPLEMENTARY INFORMATION: OPS has previously screened the following three candidates, and has determined that they meet the criteria for participating with OPS in consultations about their proposals: Northwest Pipeline Corporation, Shell Pipe Line Corporation, and Tennessee Gas Pipeline Corporation/East Tennessee Natural Gas Company.

1. *Northwest Pipeline Corporation (Northwest):* Northwest operates approximately 3,900 miles of interstate natural gas transmission line running through six western states, with endpoints at Ingacio, Colorado and the Canadian border at Sumas, Washington.

The pipeline traverses the densely populated regions of western

Washington and Oregon through the agricultural areas of eastern Oregon, Washington and Idaho into the isolated areas of southwest Wyoming, Utah and Colorado. The route covers a variety of terrains from mountains to deserts, crossing numerous rivers and lakes, encountering very moderate to very extreme climates, and crossing national parks, Indian nations, wilderness areas, and habitats of numerous threatened and some endangered species.

While Northwest proposes to apply a risk management approach to its entire system, the company plans to limit regulatory exemptions to specified locations on the pipeline.

OPS is interested in entering into consultations with Northwest because its risk management program has the potential to:

• Explore means of assessing and addressing risks presented by a pipeline in rugged terrain susceptible to land movement;

• Investigate the risk-reduction benefits of certain new technologies; and

• Investigate new means of industry/government partnering to conduct cooperative pipeline research.

The proposed Northwest demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

• A location with diverse geographic features (the demonstration site traverses six western states: Washington, Oregon, Idaho, Wyoming, Utah, and Colorado);

• The identification of land movement as a significant risk issue for Northwest; and

• The opportunity to explore various regulatory approaches, from item-by-item approvals to approvals of risk-based decision processes.

Northwest's risk management program coordinator and point-of-contact is Deonne Hootman. She can be reached at Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, UT, 84158–8800, or by calling (801) 584–6874.

2. *Shell Pipe Line Corporation (SPLC):* SPLC operates nearly 8,000 miles of pipelines, transporting over 4.0 million barrels of oil, oil products, and carbon dioxide daily and employing over 700 people in 16 states.

SPLC is proposing portions of two separate interstate pipeline systems with different yet very distinct risk characteristics as its demonstration project: one transporting ethylene, a flammable, highly volatile liquid (HVL) that becomes a slightly lighter-than-air gas when released to the atmosphere, and which, under certain conditions, could form an explosive vapor cloud until diluted/dispersed; the second transporting carbon dioxide, a non-flammable, inert, non-toxic liquid that becomes a heavier-than-air gas when released to the atmosphere, and which, under certain conditions, could become an asphyxiation hazard until diluted/dispersed. Both ethylene, a hazardous liquid, and carbon dioxide must comply with Part 195 of the Code of Federal Regulations.

The first part of SPLC's proposed demonstration project consists of nearly its entire Texas-Louisiana 12" Ethylene Pipeline System (approximately 205 miles of 250 miles), which transports chemical-grade ethylene between Shell Oil Products Company's Deer Park (Texas) Manufacturing Complex and its Napoleonville (Louisiana) transfer facility. Ethylene is a chemical feed stock which is used in the manufacture of plastics, antifreeze, detergents and other consumer products. This proposed test area addresses risks concerning the operation of a 12 inch, HVL pipeline (and related facilities) at pressures between 1000 and 1400 psig, in the proximity to, and sometimes traversing, five areas with large and growing industrial/residential populations. SPLC has been the operator of the pipeline since its construction in 1979.

The second part of SPLC's proposed demonstration project consists of the northwestern half (approximately 260 miles) of its Cortez 30" Carbon Dioxide Pipeline System which transports merchantable-grade carbon dioxide from Cortez, Colorado across New Mexico to Denver City, Texas (the demonstration segment terminates near Albuquerque, New Mexico). This carbon dioxide, in turn, is then used for tertiary oil recovery in the Denver City area. This proposed test area will assess the risks surrounding the operation of a 30-inch, carbon dioxide pipeline (and related facilities) at pressures between 1300 and 2200 psig, where it operates in proximity to five areas with small and growing residential populations. SPLC has been the operator of the pipeline since its construction in 1983.

For the test area included in the demonstration program, SPLC proposes a comprehensive risk management program that will assess all hazards and risks associated with operation of these pipelines.

OPS is interested in entering into consultations with SPLC because its risk management program has the potential to:

• Explore resource reallocation from lower-risk carbon dioxide pipeline to higher-risk ethylene;

• Evaluate the effect on public safety and environmental protection caused by resource reallocation within an individual pipeline system, based on the constantly changing set of internal (i.e. pressure) and external (i.e. population) conditions; and

• Employ the risk management communications initiative to improve third-party damage prevention and emergency response coordination.

The proposed SPLC demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

• The commodities (ethylene and carbon dioxide);

• The location (the demonstration sites cross several southwestern states, including Colorado, New Mexico, Texas, and Louisiana);

• Technical/regulatory issues (SPLC is considering operating a section of the carbon dioxide pipeline at a higher pressure than is currently allowed by the regulations); and

• Policy issues (the allocation of resources between high and low risk pipelines, and between high and low risk sections on the same pipeline).

Fred Fischer, Manager, Technical Operations Support, leads SPLC's designated Risk Management team and serves as the central information contact for the program. He can be reached at Shell Pipe Line Corporation, Two Shell Plaza, P.O. Box 2648, Houston, Texas, 77252, or by calling 713–241–0461.

3. *Tennessee Gas Pipeline Corporation/East Tennessee Natural Gas Company (Tennessee/East Tennessee):* Tennessee/East Tennessee are subsidiaries of El Paso Natural Gas Company of Houston, Texas. Tennessee Gas operates a total of 14,574 miles of both onshore and offshore pipeline, while East Tennessee Natural Gas operates 1,149 miles of onshore pipeline.

Tennessee/East Tennessee proposes to apply a risk management approach to its entire system. The company proposes modifying or eliminating compressor station relief valve testing and inspection under certain conditions, extending from 18 months to 24 months the time it is allowed to confirm or revise maximum allowable operating pressure due to class location changes, reducing the inspection frequency under certain conditions of certain emergency valves and regulators, and using new design criteria for increased system efficiency.

Tennessee/East Tennessee has also specified locations in western Pennsylvania, central Tennessee, and offshore Louisiana where it proposes altering maximum allowable operating pressure to suit local conditions.

The company believes superior safety can be achieved by enhanced damage prevention, increased patrolling, the use of internal inspection tools, and the reallocation of funds to re-habilitation projects on its higher risk pipeline segments.

OPS is interested in entering into consultations with Tennessee/East Tennessee because its risk management program has the potential to:

• Provide examples of data collection and analysis tools for supporting risk management; and

• Provide examples of how companies can use risk management to re-allocate resources to re-habilitation projects and other high value safety activities.

The proposed Tennessee/East Tennessee demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

• Consideration of worker safety as well as public safety in risk assessment;

• Examination of the risk control potential of a number of existing regulations;

• The use of risk-based arguments for establishing MAOP; and

• The breadth of the demonstration site (which includes four OPS regions: Southern, Eastern, Central, and Southwest; and 17 states).

Tennessee/East Tennessee's risk management program coordinator and point-of-contact is Daron Moore. He can be reached at Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX, 77252–2511, or by calling (713) 757–4023.

Issued in Washington, DC, on October 6, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–26916 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–77 (Sub-No. 10X)]

Bangor & Aroostook Railroad Company—Abandonment Exemption—in Aroostook County, ME

Bangor & Aroostook Railroad Company (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5.66-mile line of railroad on the Fort Fairfield Branch from milepost F–13.00 to the end of the branch at milepost F–18.66, in the Town of Fort Fairfield, in Aroostook County, ME. The line traverses United States Postal Service Zip Code 04742.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R.Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 9, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 20, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sebastian Ferrer, Esquire, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 15, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Applicant shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Applicant's filing of a notice of consummation by October 10, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 6, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27026 Filed 10–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 191X)]

Interstate Railroad Company—Abandonment Exemption—in Wise County, VA

Interstate Railroad Company (Interstate) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.6-mile line of its railroad between milepost D–0.0 at Dorchester Junction and milepost D–2.6 at Dorchester, in Wise County, VA. The line traverses

United States Postal Service Zip Code 24293.

Interstate has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 9, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 20, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Interstate has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 15, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Interstate shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Interstate's filing of a notice of consummation by October 10, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 6, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27027 Filed 10–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Former Prisoners of War has been renewed for a 2-year period beginning September 30, 1997, through September 30, 1999.

Dated: October 2, 1997.

By Direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–26975 Filed 10–9–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Advisory Committee on the Readjustment of Veterans has been renewed for a 2-year period beginning August 29, 1997, through August 29, 1999. Congress enacted Public Law 104–262, Section 333, in October 1996, making this committee statutory.

Dated: October 1, 1997.

By Direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–26973 Filed 10–9–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Women Veterans has been renewed for a 2-year period beginning September 26, 1997, through September 26, 1999.

Dated: September 30, 1997.

By Direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–26974 Filed 10–9–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 197
Friday, October 10, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 97–25158 beginning on page 49672, in the issue of Tuesday, September 23, 1997, make the following correction:

On page 49672, in the second column, in the **DATES** section, in the last two lines of that section, "[insert the 60th day after publication of this notice]" should read "November 24, 1997".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–156P]

RIN 1117–aa43

Listed Chemicals; Proposed Establishment of Thresholds for Iodine and Hydrochloric Gas (Hydrogen Chloride Gas)

Correction

In proposed rule document 97–25362 beginning on page 51072, in the issue of Tuesday, September 30, 1997, make the following correction:

On page 51073, in the third column, in the eighth line from the bottom, "of" should read "or".

BILLING CODE 1505–01–D

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Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. ("NASD") to Proposed Changes in the By-Laws and Restated Certificates of Incorporation of NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., and the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39175; File No. SR–NASD–97–71]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. ("NASD") to Proposed Changes in the By-Laws and Restated Certificates of Incorporation of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., and the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries

September 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 19, 1997, the National Association of Securities Dealers, Inc. ("Association" or "NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing a proposed rule change to amend: (1) The By-Laws of the NASD; (2) the By-Laws of NASD Regulation, Inc. ("NASD Regulation"); (3) the By-Laws of The Nasdaq Stock Market, Inc. ("Nasdaq"); (4) the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries ("Delegation Plan"); and (5) the Restated Certificates of Incorporation for the three corporations. Attachment A is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Introduction:* The purpose of the proposed rule change is to provide for a more efficient and effective corporate structure for the Association, to conform the Association's corporate documents to the recently amended Code of Procedure (Rule 9000 Series) and membership procedures (Rule 1010 Series), and to make the Association's corporate documents more consistent with one another.[3] In particular, the proposed corporate structure is designed to streamline the decision making process to be more responsive to investor interests, improve communication among Board members and the staff, enable the Association to act quickly and decisively when necessary, and preserve the principles set forth in the September 15, 1995 *Report of the NASD Select Committee on Structure and Governance To The NASD Board of Governors* ("Select Committee Report").

Portions of the proposed rule change set forth in this rule filing were previously submitted and noticed in the **Federal Register** in SR–NASD–96–20,[4] SR–NASD–96–29,[5] and SR–NASD–97–28.[6] No comments were received on those parts of these rule filings concerning the Association's corporate documents and the Delegation Plan.[7] The Association believes that the changes to its corporate structure would be better understood if all changes to these documents were included in one rule filing. Therefore, the Association withdrew its request for approval of the portion of the proposed rule change relating to the Association's corporate documents and the Delegation Plan set forth in SR–NASD–97–28 and included all proposed changes to its corporate documents and the Delegation Plan in this rule filing.[8] In the description of the proposed rule change for each document below, the Association has identified the rule changes that are proposed for the first time in this rule filing.

To achieve the corporate objectives set forth above, the Association proposes to retain the current three corporation structure, but reduce the overall number of board members for the three corporations and create a new board structure, with both the Nasdaq and NASD Regulation Boards of Directors shrinking in size and becoming part of an expanded NASD Board of Governors.[9] As a result, the Association would reduce the overall number of board members from 49 to 27, reduce the number of board meetings from 17 to seven, reduce the number of board committees from nine to five, and replace two subsidiary board executive committees with one parent board executive committee.[10]

The NASD Board would consist of 21 to 27 Governors and include a nucleus of Governors who would not serve as directors on either subsidiary board. The subsidiary boards each would have five to eight Directors, each of whom would be NASD Governors. The number of directors on each subsidiary board would be equal, thereby enabling the nucleus of individuals who served only as NASD Governors to perform a tie-breaking function on the parent board.

The NASD Board, while remaining ultimately responsible for the actions of its subsidiaries, would also retain its current authority to review and ratify or reject certain actions of the subsidiaries, although the process of exercising this authority would be expedited by transferring certain functions to new

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[1] 15 U.S.C. § 78s(b)(1).

[2] On September 29, 1997, the NASD filed a technical amendment to the proposed rule change, the substance of which is included in this notice. *See* letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission. On September 30, 1997, the filing was further amended by the NASD to correct non-substantive typographical errors. Meeting between Mary Dunbar, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Division of Market Regulation, Commission.

[3] All references to "Rule" followed by a four-digit number in this rule filing are references to one or more Rules of the Association, as defined in NASD By-Laws, Article I, Definitions.

[4] Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996), as amended.

[5] Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996), as amended.

[6] Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997), as amended.

[7] SR–NASD–96–20 and SR–NASD–96–29 include temporary approvals of the corporate governance documents and the Delegation Plan, respectively. Upon approval of this rule filing, temporary approval of 96–20 and 96–29 will be rescinded.

[8] *See* letter from Alden S. Adkins, General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 1997 (Amendment No. 3 to SR–NASD–97–28).

[9] Currently, the NASD Board has 11 Governors, the NASD Regulation Board has 24 Directors, and the Nasdaq Board has 14 Directors. The Board of Governors of the NASD is referred to herein as the NASD Board, and the Boards of Directors of NASD Regulation and Nasdaq are referred to herein as the NASD Regulation Board and the Nasdaq Board, respectively.

[10] As explained below, the by-laws of each subsidiary would continue to authorize its board to appoint executive and finance committees, but the Association does not anticipate that the subsidiary boards will find it necessary to continue to appoint such committees.

entities under each subsidiary board and changing several meeting schedules. First, the Association proposes to transfer the functions of the National Business Conduct Committee, a committee of the NASD Regulation Board composed entirely of Directors, to a new entity, the National Adjudicatory Council.[11] The National Adjudicatory Council would be appointed by the NASD Regulation Board, after nomination by the National Nominating Committee. Similarly, the Association proposes to transfer the functions of the Nasdaq Listing and Hearing Review Committee to a new Nasdaq Listing and Hearing Review Council ("Listing Council").[12] Listing Council members would be appointed by the Nasdaq Board. Except for the Chair of National Adjudicatory Council, members of the councils would not serve on any of the Association's boards.

These new councils would meet at least 15 days before the subsidiary boards and generally would provide written reports of their decisions to their respective boards not later than 15 days before the subsidiary board meetings. The subsidiary board meetings then would be scheduled to occur one day before the meetings of the NASD Board.[13] Although matters delegated to each subsidiary would, as a matter of general practice, be considered by the subsidiary boards before proceeding to the NASD Board, the time required for final disposition would be significantly reduced by these structural and scheduling changes. Under the current structure and meeting schedule, the subsidiaries may have to delay issuing disciplinary, listing, and other decisions and filing rule proposals with the Commission until a parent board meeting is held; which may occur several weeks after the subsidiary board takes action. Such delay would be eliminated by the new corporate structure and meeting schedule.

In addition to compressing the time between subsidiary and parent board meetings, the proposed structural refinements would facilitate other efficiencies because members of the revamped subsidiary boards would constitute a subset of NASD Board members. For example, an NASD Regulation rule amendment that warrants consideration by the NASD Board could be taken directly to the NASD Board for action, thereby avoiding the need for duplicative discussions of the same matter. The same would be true of rule amendments as to which NASD Board review is mandatory under the Delegation Plan. Thus, action on significant or controversial matters could be accomplished in one step, rather than the two steps that are currently required. Furthermore, because the Directors of both subsidiary boards would be Governors of the NASD Board, the consideration of matters at the NASD Board level always would have the benefit of subsidiary board participation.

To further expedite decision-making, the NASD Board would be specifically authorized by the Delegation Plan to take action on its own initiative. Thus, subsidiary board action on a matter within its sphere of delegated authority would not be a prerequisite to action by the NASD Board. Rather, the NASD Board would be authorized to take action *ab initio*.[14]

The Association believes that these changes are consistent with the core principles of corporate governance outlined in the Select Committee Report and the November 1995 *Select Committee on Structure and Governance—Staff Implementation Plan* ("Staff Implementation Plan"). The principles of the Select Committee Report and the Staff Implementation Plan include maintaining a balanced governance structure, an independent corporate structure, an independent and autonomous operating structure, and a clear and distinct role for each corporation. The proposed rule change maintains a balanced governance structure by providing for diversity among Industry Governors and Directors; providing for a majority of Non-Industry Governors on the parent board, including at least five Public Governors; and providing for at least 50 percent Non-Industry and Public Directors on the board of directors of each subsidiary. Maintaining two separate, wholly owned subsidiaries with their own Presidents ensures that independent corporate structures continue to exist. Preserving separate and independent professional staffs and substantial deference to the subsidiaries in their areas of jurisdiction reinforces an independent and autonomous operating structure. Finally, each corporation retains its clear and distinct role under the proposed rule change: The NASD continues to resolve conflicts between the subsidiaries and retain ultimate responsibility for statutory obligations, including its responsibilities as a self-regulatory organization; NASD Regulation continues to perform the day-to-day regulation of brokers and dealers and to supervise surveillance of Nasdaq and other OTC markets; and Nasdaq continues to own and operate The Nasdaq Stock Market and develop and implement rules governing that market.

The proposed corporate structure also is consistent with the Undertakings set forth in the Association's August 8, 1996, settlement with the Commission.[15] Specifically, the proposed rule changes comport with the requirements for balancing the Association's boards and committees,[16] placing primary day-to-day responsibility for regulatory matters with NASD Regulation,[17] providing for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries,[18] and ensuring the existence of a substantial, independent internal audit staff that reports directly to an audit committee of the NASD Board.[19]

b. Proposed Changes to NASD By-Laws: The expanded NASD Board would function much as it does today, with ultimate responsibility for the regulatory and market operation functions delegated to the subsidiary boards. Substantive changes to the NASD By-Laws are set forth below. Key changes related to the corporate restructuring are found in proposed Article VII, Sections 4, 5, 9, 10, and 13; Article IX, Sections 4 through 6; Article XV, Section 4(b); Article XVI, Section 1; and Articles XX and XXI. Stylistic changes and other minor, non-substantive changes are not described.[20]

Proposed Article I. Definitions

The Association proposes several substantive amendments to Article I, which sets forth definitions for the NASD By-Laws. First, the Association proposes to move the following

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[11] *See* proposed Article V of the NASD Regulation By-Laws.

[12] *See* proposed Article V of the Nasdaq By-Laws.

[13] Amendments to the Association's Code of Procedure and other rules that contain NASD Board call-out authority will be proposed in a separate rule filing.

[14] *See* Proposed Delegation Plan I.B.11.

[15] Securities Exchange Act Release No. 37538 (August 8, 1996), 62 SEC Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056 (the "Order").

[16] *See* Proposed NASD By-Laws Article VII, Section 4 and Article IX; Proposed NASD Regulation By-Laws Article IV; Proposed Nasdaq By-Laws Article IV; Delegation Plan I.C., II.C.

[17] *See* Proposed Delegation Plan II.A.1.

[18] *Id.*

[19] *See* proposed NASD By-Laws Article IX, Section 5.

[20] All references to Articles or Sections in this section "b" refer to the NASD By-Laws, unless otherwise noted.

definitions from the Delegation Plan[21] to the appropriate corporate by-laws: "Industry Director"; "Industry Governor" or "Industry committee member"; "National Nominating Committee"; "Non-Industry Director"; "Non-Industry Governor" or "Non-Industry committee member"; "Public Director"; "Public Governor" or "Public committee member".[22] Related, substantive provisions of the Delegation Plan also would be moved to the By-Laws of the appropriate corporate entity.

The Association also is proposing certain refinements to the NASD By-Laws' definitions of "Industry Governor", "Industry committee member", "Non-Industry Governor", and "Non-Industry committee member". Specifically, the Association proposes to exclude from the definition of Industry Governor or committee member a person who is or was an outside director of a broker or a dealer or a director not engaged in the day-to-day management of a broker or dealer. The Association proposes to include in the definition of Industry Governor, Director and Committee member a Governor, Director, or committee member who (1) is an employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (2) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (3) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (4) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership.

The Association proposes to delete from the definition of Non-Industry Governor or committee member specific references to (1) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates, such as a broker or dealer established to distribute an affiliate's securities which are issued on a continuous or regular basis, or process the limited buy and sell orders of the shares of employee owners of the affiliate; and (2) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity. The Association believes that any person engaged in the day-to-day management of any broker or dealer, including a limited purpose broker or dealer, should be considered an Industry Governor or committee member.

Parallel amendments are proposed for the definitions of "Non-Industry Director" or "Non-Industry member" at the subsidiary level.

Second, the Association proposes to amend the term "person associated with a member" by adding a clause to clarify that the term includes any natural person registered under the Rules of the Association. The impetus for the proposed change is *Slade* versus *Metropolitan Life Ins. Co.*[23] *Slade* involved a former registered representative who sued his former employer, an NASD member, for wrongful termination. The member filed a motion to compel arbitration of the dispute. The member argued that because the former employee had signed a Form U–4, Uniform Application for Securities Industry Registration or Transfer, and had become registered with the firm, he was subject to the provision of the Form U–4 that requires arbitration of employment-related disputes. The former employee argued that although he signed the Form U–4, he never conducted any securities activities and never acted as an associated person of the member. The lower court ruled that the former employee was not required to arbitrate this dispute. The court held that the NASD's definition of associated person in Article 1(q) of its By-Laws used the words "engaged" in the member's investment banking and securities business, and because the former employee was not "engaged" in such business, he was not covered by the definition of associated person. The court also noted that the former employee's job responsibilities were not among those listed by the associated person definition in the By-Laws. The member appealed this ruling and in September 1996, the Supreme Court, Appellate Division, affirmed the lower court ruling.[24] The New York Court of Appeals denied the member's request to review the September 1996 ruling.[25]

Slade suggests that any person whose job title or position is not specifically identified in the By-Laws' definition of associated person would not be considered an associated person if he or she were not deemed to be "engaged" in the member's securities business. The same result might hold even for persons who are registered with a member firm pursuant to NASD Rules. To avoid this result, the NASD proposes to amend the definition of associated person to clarify that all registered persons are associated persons, regardless of whether they would be deemed to be engaged in the securities business.[26]

Third, the Association proposes to delete the definition "rules of the Corporation" to avoid confusion with the more commonly used, but differently defined term, "Rules of the Association".[27] The term "rules of the Corporation" currently is used to refer collectively to the NASD Certificate of Incorporation, the NASD By-Laws, and the Rules of the Association. Given the restructuring of the NASD into three legal entities, such a collective term for all of the corporate documents of the Association would not be useful. Thus, under the proposed rule change, where a particular provision must be consistent with a particular corporate document, that document is specified. Similarly, the Association also proposes to delete the definitions of "Boards" and "Corporations" and instead refer to each corporate entity specifically where intended.[28] The term "Rules of the Association" or "Rules" is defined to mean the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as amended or supplemented. A cross-reference from the Rules of the Association deferring to the NASD By-Laws is included in Rule 0121.

Finally, the following definitions are added or amended to reflect drafting conventions adopted to reflect the three corporation structure or other drafting conventions. Those definitions are: "Board"; "branch office"; "day"; "dealer"; "Delegation Plan"; "district"; "member"; "municipal securities dealer"; "NASD"; "Nasdaq"; "Nasdaq Board"; "Nasdaq Listing and Hearing Review Council"; "NASD Regulation"; "NASD Regulation Board"; and "National Adjudicatory Council".[29]

Proposed Article II. Offices

The Association proposes to add a new Article II "Offices" that states the location of the registered corporate office of the NASD. This change makes the NASD By-Laws consistent with the NASD Regulation and Nasdaq By-Laws, which both include such a provision.

Proposed Article III. Qualifications of Members and Associated Persons

Current Article II, "Qualifications of Members and Associated Persons", is renumbered as proposed Article III. The Association proposes to conform Section 3, which addresses ineligibility of certain persons for membership or association, to the Rule 9520 Series, which sets forth rules for the Association's eligibility proceedings. Specifically, the Association proposes to amend Section 3(d) to clarify that *members* may use eligibility proceedings to obtain relief from the Association's eligibility requirements, *e.g.*, to resolve a statutory disqualification problem. As written, current Section 3(d) could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from eligibility requirements as a means of gaining admission to the Association. That is not the Association's practice or the intent of the provision, and Section 3(d) is amended to remove this potential ambiguity.

The Association proposes to delete Section 3(d)(2), which addresses the status of members or persons engaged in eligibility proceedings, because that subject is addressed in the Rule 9520 Series. This change does not result in a substantive change in the Association's practice. Specifically, if a person is already associated with a member at the time a statutory disqualification is discovered, the person may remain associated with the member until final action is taken under the Rules of the Association. If the person is a prospective employee, the person may not become associated with the member until the Association takes final action under the Rule 9520 Series.

The Association proposes to add a new Section 3(g) to clarify that the Board may delegate its authority under Section 3 in a manner not inconsistent with the Delegation Plan.

Finally, the Association proposes to amend Section 4(h) to conform it to the Act.

Proposed Article IV. Membership

Current Article III, Membership, is renumbered as proposed Article IV. The Association proposes to delete Section 1(a)(3), which requires members to release the Association from liability except for willful malfeasance.[30] The Association also proposes to conform Section 7 to changes in the Rule 1010 Series, which sets forth procedures for membership applications and changes in a member's ownership or operations.

Proposed Article V. Registered Representatives and Associated Persons

Current Article IV, "Registered Representatives and Associated Persons", is renumbered as proposed Article V. The Association proposes to delete current Section 2(a)(2), which requires registered representatives to release the Association from liability except for willful malfeasance.[31]

Proposed Article VI. Dues, Assessments, and Other Charges

Current Article V, "Dues, Assessments, and Other Charges", is renumbered as proposed Article VI. The Association proposes to add a new Section 5 that states that the NASD may delegate its authority regarding dues, assessments, and other charges in a manner not inconsistent with the Delegation Plan.

Proposed Article VII. Board of Governors

Current Article VI, "Board of Governors", is renumbered as proposed Article VII. The Association proposes to amend Section 1(c) to clarify the Board's authority to delegate its powers. Specifically, the Association proposes to amend Section 1(c) to provide that to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and the By-Laws, the NASD may delegate any power of the NASD or its Board of Governors to a committee appointed pursuant to proposed Article IX, Section 1, the NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan. The Association proposes to add parallel provisions to the NASD Regulation By-Laws and the Nasdaq By-Laws.[32]

The Association proposes to amend Section 2. Proposed Section 2 authorizes the Board to cancel or suspend the membership of a member or suspend the association of a person associated with a member for failure to provide requested information. The proposed amendment provides for reinstatement pursuant to the Rules of the Association.[33] The Association also proposes to delete the delegation to the Chief Executive Officer and replace it with a delegation provision consistent with other provisions set forth in the proposed NASD By-Laws. Specifically, the Association proposes that the Board be permitted to delegate its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.

The Association proposes to amend Section 4, which addresses the composition and qualifications of the Board, to conform to the new corporate structure. Under the proposed rule change, the NASD Board would consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council,[34] and at least 16 and not more than 22 Governors elected by the members of the NASD. Thus, the By-Laws would authorize a Board of 21 to 27 Governors in total. Proposed Section 4(a) further provides that the Governors elected by the members would include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, and a Nasdaq issuer. A majority of the Governors would be Non-Industry Governors, and the Non-Industry Governors would include five or six Public Governors, depending on the size of the Board. Section 4(b) is amended to prohibit the Chair of the National

[21] *See* Delegation Plan, I.A. and I.C.

[22] *See* proposed NASD By-Laws Article I(a), (o),(bb), (cc), (dd), (ff), and (gg).

[23] Index No. 117688/94, Decision and Order of April 9, 1996 (Sup. Ct., N.Y. Co.), *aff'd*, 231 A.D.2d 467 (N.Y. 1996), *appeal denied*, 676 N.E.2d 500 (N.Y. 1996).

[24] 231 A.D.2d at 467.

[25] 676 N.E.2d at 500.

[26] *See* proposed NASD By-Laws Article I, "Definitions"; proposed NASD Regulation By-Laws Article I, "Definitions"; and proposed Nasdaq By-Laws Article I, "Definitions".

[27] *See* Current NASD By-Laws Article I(v).

[28] *See* Current NASD By-Laws Article I (d) and (i)).

[29] *See* proposed NASD By-Laws Article I (c), (d), (g), (h), (i), (j), (q), (t), (u), (v), (w), (x), (y), (z), and (aa).

[30] This proposed deletion was not included in SR–NASD–97–28.

[31] This proposed deletion was not included in SR–NASD–97–28.

[32] *See* proposed NASD Regulation By-Laws Article IV, Section 4.1 and proposed Nasdaq Article IV, Section 4.1, respectively.

[33] *See, e.g.*, Rules 8225 and 9516.

[34] The National Adjudicatory Council is a new entity that would be appointed by the NASD Regulation Board and assume the responsibilities of the National Business Conduct Committee. A more detailed discussion of the National Adjudicatory Council's role and responsibilities is included below in the description of proposed Article V of the NASD Regulation By-Laws.

Adjudicatory Council from serving as Chair of the Board. The Association believes that the responsibilities of each chairmanship require the attention of one individual.

Section 5, "Term of Office of Governors", is amended to reflect the Board structure. Under proposed Section 5, the Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq would serve as Governors until a successor was selected, or until death, resignation, or removal. The Chair of the National Adjudicatory Council would serve as a Governor for a term of one year, and generally could not serve more than two consecutive terms.[35] However, proposed Section 5 provides that a former Chair of the National Adjudicatory Council could serve as a Governor elected by the members of the NASD. The Governors elected by the members of the NASD would be divided into three classes and serve three-year terms. Such Governors generally could not serve more than two consecutive terms.

The Association proposes to add a new Section 6, "Disqualification", which addresses the disqualification of a Board member. Proposed Section 6 states that a Governor's term of office immediately terminates if the Board determines that: (a) The Governor no longer satisfies the classification (Industry, Non-Industry or Public Governor) for which the Governor was elected; and (b) failure to remove the Governor would violate the compositional requirements of the Board set forth in proposed Section 4. If a Governor's term of office terminates under this Section, and the remaining term of office of such Governor was not more than six months, during the period of vacancy the Board would not be deemed to be in violation of its compositional requirements by virtue of such vacancy. Proposed Section 6 replaces a provision currently in the Delegation Plan that provides for "automatic removal" if a Governor no longer satisfies the classification for which he or she was elected without describing any process for such removal.[36] The Association proposes this rule change to avoid any potential for the Board to take an *ultra vires* action in the event that a Governor failed to notify the Board promptly of a change in his or her classification and continued to sit on the Board and cast votes before such removal took place.[37]

Current Section 6, which addresses the filling of vacancies on the Board, is renumbered as proposed Section 7, "Filling of Vacancies". The Association proposes to move the current provisions of the Delegation Plan that address the filling of vacancies to this Section and to provide further that if the remaining term of office of the governorship to be filled is more than one year, then the replacement Governor must stand for election in the next annual election.[38]

Current Section 7, "The National Nominating Committee", which describes nomination and election procedures, is expanded and renumbered as proposed Sections 9 through 14. Proposed Section 9, "The National Nominating Committee", sets forth the powers of the National Nominating Committee. The National Nominating Committee nominates Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board; Industry, Non-Industry, and Public Directors for the NASD Regulation Board and the Nasdaq Board; and Industry, Non-Industry, and Public members for the National Adjudicatory Council; and Industry and Non-Industry members for the Nasdaq Listing and Hearing Review Council.

Proposed Section 9 also includes and clarifies the compositional requirements for the National Nominating Committee, which are currently set forth in the Delegation Plan.[39] The Delegation Plan currently provides that a National Nominating Committee member may be removed for cause by a majority vote of the NASD Board. Proposed Section 9 refines this provision by specifying the causes for which a National Nominating Committee member may be removed—refusal, failure, neglect, or inability to discharge such member's duties. This same specific standard for removal is used throughout the Association's corporate documents for committee and council members.

Proposed Section 9 also includes a new provision that requires the Secretary of the NASD to collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor. The Association proposes that the Secretary certify to the National Nominating Committee each nominee's classification to ensure that the compositional requirements of each Board are met.

Proposed Section 10, "Procedures for Nomination of Governors", largely parallels current Section 7(c) and adds provisions regarding contested elections currently located in the Delegation Plan. Conforming references also are made to proposed Article XXI, "Meetings of Members", a new article that provides for meetings of the membership. Proposed Section 10 clarifies the procedures for contested elections and changes the number of members that must sign a petition to support adding a candidate to the ballot for NASD Board elections. Currently, a person seeking to be added to a ballot must obtain the support of two percent of the members of the NASD. The Association proposes to increase the level to three percent of the members.[40] As is currently the case, a petition may be signed only by a member's Executive Representative. Proposed Section 10 also transfers the authority to certify the additional candidate from the National Nominating Committee to the Secretary. Because the Secretary maintains the records of Executive Representatives, and under the proposed rule change would be charged with reviewing information regarding the classification (Industry, Non-Industry, or Public) for each governorship, the Association believes that it would be more efficient for the Secretary to exercise this authority.

Proposed Sections 11, "Communication of Views", 12, "Administrative Support", and 15, "Resignation", are new provisions that parallel new provisions added to the NASD Regulation and Nasdaq By-Laws. Proposed Section 11 prohibits the NASD, the Board, the National Nominating Committees, other committees, and NASD staff from taking any official position regarding a contested nomination or election under the proposed NASD or NASD Regulation By-Laws. Proposed Section 11 permits Board and committee members to communicate their views with respect to a candidate in a contested election only if the Board or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity. Under proposed Section 12, administrative support to the candidates in a contested NASD election is limited to two mailings; any other administrative support in any NASD or NASD Regulation contested election or nomination is prohibited. Proposed Section 15 adds resignation provisions that parallel Article 4, Section 4.5 in the NASD Regulation and Nasdaq By-Laws.

Proposed Section 13, "Election of Governors", is largely parallel to current Section 7(a), with conforming amendments to proposed Sections 9 through 12 and a new cross-reference to proposed Article XXI, which sets forth procedures for membership meetings.

Proposed Section 14, "Maintenance of Compositional Requirements of the Board", is a new procedure that requires each Governor to update the information submitted to the NASD Secretary under proposed Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary and to report immediately to the Secretary any change in such classification. Parallel provisions are proposed for the NASD Regulation and Nasdaq By-Laws. These submissions and reports will help the Association ensure that the compositional requirements of the Board and its committees are maintained.

The Association proposes to amend current Section 8, "Meetings of Board; Quorum; Required Vote", which addresses meetings, quorums, and voting of the Board, to provide that a quorum consists of a majority of the Board then in office, including not less than 50 percent of the Non-Industry Governors.[41] This proposed change would ensure that Industry Governors alone could not constitute or dominate a quorum of the Board, and thereby thwart the balanced compositional requirements of the Board under proposed Section 4. Current Section 8 is not renumbered.

Proposed Article VIII. Officers, Agents, And Employees

Current Article VII, "Officers, Agents, and Employees", is renumbered as proposed Article VIII. The Association proposes to amend Section 1, "Officers", to require that the NASD Board elect a Secretary and a Chief Operating Officer. Under current Section 1, the NASD Board is authorized, but not required, to elect a Secretary. Given the number of responsibilities assigned to the Secretary under the proposed By-Laws and the NASD Board's practice of always electing a person to such position, the Association proposes to require that a Secretary be elected. The Board also must elect a Chief Operating Officer because such officer serves on the Board under proposed Article VII, Section 4.

The Association proposes to amend Section 3, "Agents and Employees", to provide that agents and employees shall be under the supervision and control of the officers, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.[42] Generally, agents and employees are under the supervision and control of the officers, but the NASD Board may wish in certain circumstances to retain control over an employee or agent, *e.g.*, as in Section 4, when the Board determines that it wishes to retain counsel.

The Association proposes to move current Section 5, which provides for compensation of Board and committee members, to its own Article, proposed Article X, "Compensation of Board and Committee Members".

The Association proposes to add new Sections 5, 6, and 7 to this Article to conform it to proposed Article 7 of the NASD Regulation By-Laws and proposed Article 6 of the Nasdaq By-Laws. Proposed Section 5 permits the Board to delegate the duties and powers of any officer to any other officer. Proposed Section 6 provides for the resignation and removal of officers. Proposed Section 7 permits the NASD to secure the fidelity of its officers, agents, and employees by bond or otherwise.

Proposed Article IX. Committees

Current Article VIII, "Committees", which addresses the formation and powers of committees, is renumbered as proposed Article IX. The Association proposes to amend Section 1 to cross-reference proposed Article VII, Section 1(c), which limits the Board's authority to delegate its powers and authority.

The Association proposes to add a new Section 2, "Maintenance of Compositional Requirements of Committees", which is designed to help the Association maintain the compositional requirements of certain committees. Undertakings 1 and 6 under the Order require certain committees[43] to have a particular balance of Industry, Non-Industry, and Public committee members.[44] To help ensure that compositional requirements are maintained for committees appointed by the NASD Board, proposed Section 2 authorizes the Secretary to collect from each prospective member of a committee that must be balanced such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary must certify to the Board each prospective committee member's classification. Each committee member must update the information submitted at least annually and upon request of the Secretary of the NASD, and must report immediately to the Secretary any change in such classification. Parallel provisions are set forth in proposed Article 4, Section 4.13(h) of the NASD Regulation By-Laws and proposed Article 4, Section 4.13(h) of the Nasdaq By-Laws.

Current Section 2, "Removal of Committee Member", which addresses removal of a committee member, is renumbered as proposed Section 3 and amended to clarify that a committee member can only be removed for refusal, failure, neglect, or inability to discharge his or her duties by majority vote of the whole Board.

The Association proposes to add new sections to authorize the appointment of an Executive Committee and a Finance Committee and to require, consistent with Undertaking 6, the appointment of an Audit Committee. Proposed Section 4, "Executive Committee", authorizes the NASD Board to appoint an

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[35] Under the proposed rule change, the Chair of the National Adjudicatory Council, who serves a term of one year, simultaneously would serve as a Governor of the NASD Board and a Director of the NASD Regulation Board. *See* proposed Articles IV and V of the NASD Regulation By-Laws. Thus, this proposed change is intended to ensure that the terms for each of these positions run concurrently.

[36] *See* Delegation Plan, I.C.5.b.

[37] If a disqualified governor's term is greater than 6 months, a qualifying replacement would be provided pursuant to proposed Section 7.

[38] *See* current Delegation Plan, I.C.5.

[39] *See* current Delegation Plan, I.C.2.b.(1).

[40] In SR–NASD–97–28, the Association proposed to change this provision to require supporting petitions from three percent of the members, one-half of which would have to be obtained from members outside of the district in which the challenger was employed. The Association has determined that it will not propose a requirement for out-of-district support.

[41] Other provisions in this filing that state that a quorum consists of a majority of a board, committee, or council also mean a majority of the board, committee, or council then in office.

[42] *But see* proposed NASD By-Laws Article IX, Section 5(d). The Office of Internal Review and the Director of Internal Review are under the supervision and control of the Audit Committee.

[43] Undertaking 1 sets forth compositional requirements for "the National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee, the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto." Undertaking 6 sets forth compositional requirements for an audit committee. The current names of such committees are the National Nominating Committee, the Quality of Markets Committee, the National Arbitration and Mediation Committee, the Market Regulation Committee, the National Adjudicatory Council, the Management Compensation Committee, and the Audit Committee.

[44] The compositional requirements for the National Nominating Committee and the Audit Committee are set forth in the NASD By-Laws. The compositional requirements for the National Adjudicatory Council are set forth in the NASD Regulation By-Laws. The compositional requirements for the Quality of Markets Committee, the National Arbitration and Mediation Committee, the Market Regulation Committee, and the Management Compensation Committee are set forth in the Delegation Plan and the Order.

Executive Committee composed of five to nine Governors of the NASD Board, with percentages of Non-Industry and Public committee members as least as great as the percentages of Non-Industry and Public Governors on the Board. The Executive Committee would include the NASD Chief Executive Officer/Chairman, at least one member each of the NASD Regulation and Nasdaq Boards, and at least two Governors who are not Directors of NASD Regulation of Nasdaq. The Executive Committee would be authorized (consistent with Delaware law) to act on behalf of the NASD Board. A quorum for the transaction of business at Executive Committee meetings would consist of a majority of the Executive Committee, including at least 50 percent of the Non-Industry committee members.[45]

Proposed Section 5, "Audit Committee", contains the provisions relating to the Audit Committee currently found in the Delegation Plan,[46] except that the compositional provisions are amended to require that two (rather than one) Public Governors serve on the Committee. A quorum for the transaction of business at Audit Committee meetings would consist of a majority of the Audit Committee, including at least 50 percent of the Non-Industry committee members. The current Delegation Plan provides that subsidiary directors serve as liaisons to the Audit Committee rather than as full members of the Committee.

Proposed Section 6, "Finance Committee", authorizes the Board to appoint a Finance Committee composed of at least four Governors, including the Chief Executive Officer of the NASD. The Finance Committee would be balanced, with the number of Non-Industry Governors equaling or exceeding the number of Industry Governors plus the Chief Executive Officer. A quorum for the transaction of business at Finance Committee meetings would consist of a majority of the Finance Committee, including at least 50 percent of the Non-Industry committee members.

If any officer of the NASD, NASD Regulation or Nasdaq serves as a member (other than an ex-officio member) of a committee appointed under the by-laws of any of the three corporations, such officer will be counted with the Industry committee members for purposes of any compositional or quorum requirements.

Finally, the resolution concerning interpretations and explanations is deleted because the NASD Board rescinded it on June 26, 1997. The resolution no longer conforms to Association practice and is contrary to Undertaking 4.

Proposed Article X. Compensation of Board and Committee Members

As noted previously, current Article VII, Section 5, which addresses compensation of Board and committee members, is renumbered as proposed Article X, "Compensation of Board and Committee Members".

Proposed Article XI. Rules

Current Article IX, "Rules", which authorizes the NASD to adopt rules, is renumbered as proposed Article XI. No substantive changes are proposed.

Proposed Article XII. Disciplinary Proceedings

Current Article X, "Disciplinary Proceedings", which authorizes disciplinary proceedings, is renumbered as proposed Article XII. No substantive changes are proposed.

Proposed Article XIII. Powers of Board to Impose Sanctions

Current Article XI, "Powers of Board to Prescribe Sanctions", which authorizes the NASD Board to impose sanctions, is renumbered as proposed Article XIII. The Association proposes to amend Section 1(e) and add a new Section (2) to clarify that any delegation under the proposed Article must be in conformity with the Delegation Plan.

Proposed Article XIV. Uniform Practice Code

Current Article XII, "Uniform Practice Code", is renumbered as proposed Article XIV. The Association proposes to amend Section 2, "Administration Code", to provide that the Board may delegate its authority with respect to administering the Uniform Practice Code to the NASD Regulation Board and Nasdaq Board in accordance with the Delegation Plan.

Proposed Article XV. Limitation of Powers

Current Article XIII, "Limitation of Powers", is renumbered as proposed Article XV. On June 26, 1997, the NASD Board rescinded the resolution that follows current Article XIII, Section 2, which provides for the use of the NASD's name by members. The provisions of the resolution have been moved to IM–2210–4 of the Rules of the Association.

The Association proposes to amend Section 4, "Conflicts of Interest", which addresses conflicts of interest. The Association proposes to amend Section 4 by redesignating it as Section 4(a) and therein prohibiting any Governor or committee member from directly or indirectly participating in any adjudication of the interests of any party if the Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. Proposed Section 4(a) further requires the Governor or committee member to recuse himself or herself or be disqualified in accordance with the Rules of the Association.[47] Current Section 4 simply references the Rules of the Association. The standard set forth in proposed Section 4(a) is consistent with the conflict of interest standard in Rule 9160.

In addition, the Association proposes to add a new Section 4(b) to address conflicts of interests in non-adjudicatory matters in a manner consistent with the By-Laws for the NASD Regulation Board and the Nasdaq Board. Proposed Section 4(b) provides that a contract or transaction between the NASD and a Governor or officer, or between the NASD and any entity in which a Governor or officer is a director or officer, or has a financial interest, is not void or voidable solely for this reason, or solely because the Governor or officer is present at the meeting of the Board or committee that authorizes the contract or transaction, or solely because the Governor's or officer's vote is counted for such purposes if: (1) The material facts pertaining to such relationship or interest are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (2) the contract or transaction is fair to the NASD as of the time it is authorized, approved, or ratified by the Board or committee. Proposed Section 4(b) provides that only disinterested Governors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction. A contract or transaction between the NASD and one of its subsidiaries would not be subject to proposed Section 4(b).

Finally, Section 6, "Government Securities", which limits the Association rulemaking authority over government securities activities, is deleted to conform the By-Laws to changes previously made to the Association's authority over the government securities activities of its members.

Proposed Article XVI. Procedure for Adopting Amendments to By-Laws

Current Article XIV, "Procedure for Adopting Amendments To By-Laws", is renumbered as proposed Article XVI and amended. Currently, a Governor, a district committee, or 25 members may propose amendments to the By-Laws. Proposed Article XVI permits committees appointed by the Board, rather than district committees, to propose By-Law amendments. Under the new corporate structure, proposals by the district committees normally would be presented to the NASD Regulation Board first, or if presented directly to the NASD Board, would be presented by the NASD Regulation President.

Proposed Article XVII. Corporate Seal

Current Article XV, "Corporate Seal", is renumbered as proposed Article XVII. There are no substantive changes to proposed Article XVII.

Proposed Article XVIII. Checks

Current Article XVI, "Checks", is renumbered as proposed Article XVIII. There are no substantive changes to proposed Article XVIII.

Proposed Article XIX. Annual Financial Statement

Current Article XVII, "Annual Financial Statement", is renumbered as proposed Article XIX. There are no substantive changes to proposed Article XIX.

Proposed Article XX

The Association proposes to add a new Article XX, "Record Dates". Consistent with Delaware law, proposed Section 1, "Fixing of Date by Board", permits the Board to fix a record date to determine the members that are entitled to notice of or to vote at member meetings. Proposed Section 2, "Default Date", provides for a default record date if the Board does not fix such a date. Proposed Section 3, "Adjournment", provides that a determination of members of record also applies to an adjournment of a member meeting.

Proposed Article XXI

The Association proposes to add a new Article XXI, "Meetings of Members". Proposed Section 1, "Annual Meeting", authorizes the NASD Board to designate a time and place and set an agenda for an annual meetings of members. Proposed Section 2, "General Meeting", sets forth procedures for setting the agenda of special meetings. Proposed Section 3, "Notice of Meeting; Member Business", sets forth notice requirements for meetings. Proposed Section 4, "Inspector", describes voting procedures. Proposed Section 5, "Conduct of Meeting", states that the Chief Executive Officer of the NASD acts as Chair of the meeting and authorizes the Board to adopt rules and regulations for the conduct of meetings.

c. Proposed Changes to NASD Regulation By-Laws: NASD Regulation adopted its current By-Laws on July 19, 1996. The Association proposes to amend the NASD Regulation By-Laws to conform them to the changes described in the introduction to Section II of this rule filing. In addition, the Association proposes to explicitly recognize the NASD as the sole stockholder of NASD Regulation capital stock and add new articles describing the composition and powers of a new National Adjudicatory Council, procedures for nominations to the National Adjudicatory Council, and procedures for district elections. Significant changes to the NASD Regulation By-Laws are described below, including changes relating to the corporate restructuring in proposed Article IV, Sections 4.2, 4.3, 4.4(b), 4.13, 4.14(b); Article V; Article VI. Minor, non-substantive changes and changes to reflect drafting conventions are not described.[48]

Proposed Article I. Definitions

First, a new Article I, entitled "Definitions", is proposed. Current Article I, "Offices" is renumbered as proposed Article II.

The Association proposes that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add definitions for the following terms, which conform to the definitions in proposed Article I of the NASD By-Laws: "Delegation Plan"; "Executive Representative"; "Industry Director" or "Industry member"; "NASD Regulation"; "National Adjudicatory Council"; "National Nominating Committee"; "Non-Industry Director" or "Non-Industry member"; "person associated with a member"; and "Public Director" or "Public member".[49]

The Association proposes to include the following definitions only in the NASD Regulation By-Laws: "District Committee"; "District Director"; "District Nominating Committee"; "district office"; "Independent Agent"; and "Regional Nominating Committee". These terms relate to the nomination and election procedures set forth in proposed Article VI, "National Adjudicatory Council Regional Nominations for Industry Members", and Article VIII, "District Committee and District Nominating Committee" and therefore are not used in the proposed NASD and Nasdaq By-Laws.

In addition, the Association proposes to add the following definitions for clarity and to conform to the drafting conventions adopted generally, but which do not result in any substantive change: "Board"; "day"; "Delaware law"; " Director"; "NASD"; "NASD member"; and "Rules of the Association" or "Rules".[50]

Proposed Article II. Offices

Current Article I, "Offices", is renumbered as proposed Article II. Sections 1.1 and 1.2 are renumbered as Sections 2.1 and 2.2. There are no substantive changes in proposed Article II.

Proposed Article III. Meetings of Stockholders

Current Article II, "Meetings of Stockholders", is renumbered as proposed Article III. Current Article II sets forth general provisions for meetings of stockholders consistent with Delaware law. In proposed Article III, in recognition of the fact that NASD Regulation has only one stockholder, the Association proposes to delete all of the general provisions regarding meetings of stockholders and retain only the provision on which NASD Regulation generally relies, namely obtaining the stockholder's written consent for any action that is required or permitted to be taken at a stockholder meeting. Thus, Sections 2.1 through 2.6 are deleted, and Section 2.7 is renumbered as Section 3.1.

Proposed Article IV. Board of Directors

Current Article III, "Board of Directors", is renumbered as proposed Article IV. Sections 3.1 through 3.4 are renumbered as Section 4.1 through 4.4. Proposed Section 4.1, "General Powers", sets forth the general powers of the Board. The Association proposes to conform the Board's authority to delegate its powers to the delegation authority set forth in proposed Article VII, Section 1(c) of the NASD By-Laws,

[45] Similar quorum requirements would be imposed on the Executive Committees of the subsidiaries, the NASD Finance Committee, the National Nominating Committee, the Audit Committee, the Management Compensation Committee, and the National Adjudicatory Council.

[46] See current Delegation Plan, I.D.

[47] *See, e.g.*, Rule 9160.

[48] All references to Articles or Sections in this section "c" refer to the NASD Regulation By-Laws, unless otherwise noted.

[49] *See* proposed Section 1.1(h), (o), (q), (u), (v) (w), (x), (y), and (z).

[50] *See* proposed Section 1.1(b), (e), (g), (i), (r), (t), and (bb).

i.e., to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed under proposed Section 4.14 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.

The Association proposes to amend Sections 4.2, "Numbers of Directors", and Section 4.3, "Qualifications". The Association proposes that the NASD Board appoint the NASD Regulation Directors from among the NASD Board of Governors. The NASD Regulation Board would be composed of between five and eight Directors, including the NASD Regulation President, a representative of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member, and at least one or two Public Directors, depending on the size of the Board. The number of Non-Industry Directors would be equal to or greater than the number of Industry Directors plus the President. As noted above, the Chair of National Adjudicatory Council would serve simultaneous one-year terms on the NASD and NASD Regulation Boards. Finally, the total number of NASD Regulation Directors would equal the total number of Nasdaq Directors.

Proposed Section 4.3(b) is a new provision requiring the Board to elect a Chair and Vice Chair from among its members.

Proposed Section 4.4(a), "Election", which provides for the election of Directors, is amended to reflect the NASD's role as sole stockholder. As described in proposed Article VII, Section 9 of the NASD By-Laws, the National Nominating Committee, an NASD Board committee, nominates Directors for the NASD Regulation Board.

Current Section 3.5, "Term", is deleted. Under the proposed rule change, the NASD Board would elect Directors annually; thus the Board would not be divided into classes.[51] As a general matter, NASD Regulation Directors would be appointed for three one-year terms that coincide with their terms on the NASD Board. However, the NASD Board would retain flexibility in this regard and could appoint individuals to serve where they are best qualified or best able to serve. Thus, for example, an individual who has served one year on the NASD Regulation Board could be appointed to Nasdaq Board, or could serve on the NASD Board alone.

Current Section 3.7, "Removal", is renumbered as proposed Section 4.6. Proposed Section 4.6 clarifies that a Director may be removed from office only by a majority vote of the NASD Board.

Proposed Section 4.7, "Disqualification", and proposed Section 4.8, "Filling of Vacancies", are new. Current Sections 3.8 through 3.11 ("Quorum and Voting", "Regulation", "Meetings", and "Notice of Meetings", respectively) are renumbered as proposed Sections 4.9 through 4.12. Current Section 3.12, "Conflicts of Interest", is renumbered as proposed Section 4.14. Current Section 3.13, "Committees of the Board of Directors", is renumbered as proposed Section 4.13 and retitled "Committees". Current Section 3.14, "Action Without Meeting", is renumbered as proposed Section 4.15.

Proposed Sections 4.7, "Disqualification", 4.8, "Filling of Vacancies", 4.9, "Quorum and Voting", and 4.14, "Contracts and Transactions Involving Directors", which set forth provisions for disqualification, filling of vacancies, quorums, and conflicts of interest, are designed to parallel proposed Article VII, Sections 8 through 8, and proposed Article XV, Section 4 of the NASD By-Laws.[52]

There are no substantive changes in proposed Section 4.10, "Regulation", proposed Section 4.11, "Meetings", or proposed Section 4.15, "Action Without Meeting".

In proposed Section 4.12, "Notice of Meeting; Waiver of Notice", the Association proposes to increase the amount of time required for mail notice of a meeting from two to seven days, to clarify that any of the permissible forms of notice described may be used for any meeting of the Board, and to add a subsection that provides that any meeting of the Board is a legal meeting without any prior notice if all Directors are present.[53]

Proposed Section 4.13 "Committees", (current Section 3.13 as renumbered) sets forth new provisions regarding committees. Proposed Section 4.13(a) authorizes the Board to appoint committees. Proposed Section 4.13(b) describes how the Board may delegate authority to such committees. In accordance with the functions and responsibilities set forth in the Delegation Plan, the Board may delegate its authority to any duly appointed committee. Any action by such committee is subject to review, ratification, or rejection by the Board. In addition, such delegations must be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. These limitations previously were set forth in the Delegation Plan. Proposed Section 4.13(b) further clarifies that, with respect to other matters, the Board may delegate its powers and authority to act on behalf of the Board in managing the business and affairs of NASD Regulation only to committees consisting solely of one or more Directors, and that any such delegation must be not inconsistent with the Delegation Plan.

Proposed Sections 4.13(f) and (g) authorize the NASD Regulation Board to appoint an Executive Committee and a Finance Committee.[54] Proposed Section 4.13(h) mirrors Article IX, Section 2 of the NASD By-Laws.

Proposed Section 4.16, "Communication of Views Regarding Contested Election or Nomination", which concerns communication of views during a contested election or nomination, parallels Article VII, Section 11 of the NASD By-Laws.

Proposed Article V. National Adjudicatory Council

Proposed Article V is a new article that requires the NASD Regulation Board to appoint a National Adjudicatory Council. The adjudicatory functions of the National Business Conduct Committee would be transferred to the National Adjudicatory Council, and the authority to appoint a National Business Conduct Committee would be deleted from the Delegation Plan. The National Adjudicatory Council would operate much as the National Business Conduct Committee currently operates under the Delegation Plan. However, in order to ensure that there is adequate time for the NASD Regulation and NASD Boards to consider adjudicatory decisions of the National Adjudicatory Council, written reports of National Adjudicatory Council actions would be provided to the Secretary of the NASD no later than 15 calendar days before regularly scheduled meetings of the revamped NASD Board.[55] Thus, the National Adjudicatory Council would have greater flexibility than currently exists in scheduling the National Business Conduct Committee's work, and could meet telephonically if needed in order to reduce the time demands of National Adjudicatory Council service. Absent exigent circumstances, however, the National Adjudicatory Council would schedule its adjudicatory work to provide a 15 calendar day review period. In addition, the National Adjudicatory Council would have the option of holding telephonic meetings on an as-needed basis to expedite NASD Regulation Board consideration of disciplinary-related policy matters.

The National Adjudicatory Council's areas of responsibility are set forth in proposed Section 5.1 "Appointment and Authority". These areas include disciplinary and statutory disqualification decisions and other miscellaneous and policy matters. The National Adjudicatory Council also would assume certain other review functions, including reviews of denials of access, denials of exemptions, limitations on operations, and membership proceedings. As is the case with the current National Business Conduct Committee, the National Adjudicatory Council would consider and make recommendations to the NASD Regulation Board on policy and rule changes relating to: (1) The business and sales practices of NASD members and associated persons; and (2) enforcement policies, including policies with respect to fines and other sanctions.

Proposed Section 5.2, "Number of Members and Qualifications", describes the compositional requirements of the National Adjudicatory Council. It would be composed of 12 to 14 members, including at least three Public members. The number of Non-Industry members would equal or exceed the number of Industry members.

Proposed Section 5.3, "Nominations Process", sets forth the nomination process for membership on the National Adjudicatory Council. All members of the National Adjudicatory Council would be proposed by the National Nominating Committee and appointed by the NASD Regulation Board. Beginning in 1998, the Industry members of the National Adjudicatory Council would be nominated pursuant to procedures that are similar to current procedures for the nomination of regional Industry Directors to the NASD Regulation Board. The regional nominating process for the National Adjudicatory Council is set forth in proposed Article VI.

Under proposed Section 5.4, "Term of Office", all National Adjudicatory Council members would be appointed for a one-year term in 1988. Regional nominations would be held at the end of 1998, and each National Adjudicatory Council member would serve a term of one or two years beginning in 1999, with staggered two-year terms thereafter. Proposed Sections 5.5 through 5.10, which set forth procedures for resignation, removal, disqualification, filling of vacancies, quorum and voting, and meetings, are derived from similar provisions in the NASD and NASD Regulation By-Laws.

Proposed Article VI. National Adjudicatory Council Regional Nominations for Industry Members

The Association proposes to add a new Article VI, National Adjudicatory Council Regional Nominations for Industry Members, to the NASD Regulation By-Laws. The procedures are based on the procedures for regional nominations to the NASD Regulation Board, which are currently set forth in the Delegation Plan[56] and in NASD Regulation Board resolutions. The regional nomination process would begin in 1998 for the 1999 National Adjudicatory Council.

The Industry members of the National Adjudicatory Council would represent a geographical region of the United States. Each Industry member initially would be nominated by a Regional Nominating Committee. Each Regional Nominating Committee then would present a nominee to the National Nominating Committee to represent such region on the National Adjudicatory Council. The Regional Nominating Committee would act essentially in an advisory capacity because only the National Nominating Committee could formally nominate to the NASD Regulation Board an Industry member for the National Adjudicatory Council. The NASD Regulation Board, in turn, could appoint or reject the candidates nominated by the National Nominating Committee.

Proposed Article VI sets forth the following procedures for the regional nominating process. As previously noted, the Board would designate regions. Each region would have a Regional Nominating Committee, which would be composed of two to four members from each District Committee in the region. These members would be selected by their District Nominating Committee.[57] When the term of office of a National Adjudicatory Council member representing a region was due to expire, the Secretary of NASD Regulation would notify the appropriate Regional Nominating Committee, which would initiate the regional nominating process.

The Regional Nominating Committee would receive from the Secretary of NASD Regulation a description of the firms eligible to vote in the region. Firms eligible to vote are those that either are headquartered in the region or have a branch office in the region. In making nominations, the Regional Nominating Committee would seek to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the region. The Regional Nominating Committee could nominate more than one candidate so that the NASD membership in the region could vote on a nominee to present to the National Nominating Committee. (This process would work in the same manner as a contested nomination, which is described below.)

Once the Regional Nominating Committee selected a nominee (or nominees), it would send notice of its nomination to the Executive Representative of each NASD member eligible to vote. The Executive Representative is the officer or employee of the member who casts votes for the member in all nominations and elections. If any person not nominated wished to contest a nomination, he or she would send notice of intent to contest to the Regional Nominating Committee or the Secretary of NASD Regulation within a specified period. Such person then would be required to submit within a specified period a written petition signed by at least ten percent of the members eligible to vote in the region supporting such person's candidacy. If support of ten percent of the membership was not obtained within the requisite time, and if the Nominating Committee nominated only one candidate, then the nominee of the Regional Nominating Committee would be presented to the National Nominating Committee.

If the Regional Nominating Committee nominated more than one candidate, or

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[51] *See* Section 211(b) of the General Corporation Law of the State of Delaware.

[52] There is one difference between the conflicts of interest provision for the NASD and the conflicts of interest provisions for the subsidiaries. The proposed By-Laws for NASD Regulation and Nasdaq provide that a transaction also is not void or voidable if the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder, *i.e.*, the NASD, and the contract or transaction is approved in good faith by vote of the stockholder. *See* proposed Article IV, Section 4.14 in both the NASD Regulation and Nasdaq By-Laws.

[53] A Director is still permitted, pursuant to Section 12.3(b), to attend a meeting for the express purpose of objecting, at the beginning of a meeting, to the transaction of any business because the meeting is not lawfully called or convened.

[54] The by-laws of each subsidiary would continue to authorize its board to appoint executive and finance committees, but the Association does not anticipate that the subsidiary boards will find it necessary to continue to appoint such committees.

[55] As stated above, revised review procedures will be set forth in a separate rule filing.

[56] *See* current Delegation Plan II.B.

[57] *See* discussion of proposed Article VIII, "District Committees and District Nominating Committees," for a description of how District Committee and District Nominating Committee members would be elected.

if a person who was not nominated obtained the necessary support, then contested nomination procedures would apply. Under these procedures, the Association would pay for two mailings of literature for each candidate, and the members of all NASD, Nasdaq, and NASD Regulation Boards, councils, and committees, and NASD, Nasdaq, and NASD Regulation staff, would be prohibited from expressing views on the nomination. However, members of the Boards, councils, and committees could express views if they made it clear they are acting in their individual capacities and disclaimed any intention to communicate in an official capacity. A ballot would be sent to Executive Representatives of the firms eligible to vote, and specified procedures, including the use of an independent agent to qualify returned ballots and count votes, then would be followed to determine the outcome of the nomination. If the National Nominating Committee or the NASD Board rejected a nominee of a Regional Nominating Committee, the Regional Nominating Committee would repeat the regional nomination procedures and submit another nominee to the National Nominating Committee.

Proposed Article VII. Officers, Agents, and Employees

Former Article IV, "Officers, Agents and Employees", is set forth as proposed Article VII. Former Sections 4.1, 4.3, 4.4, and 4.5 are renumbered, respectively, as 7.1, 7.4, 7.5, and 7.6. Changes to these sections are made only as necessary to conform to the definitions in proposed Article I and other drafting conventions. The Association proposes to add a new Section 7.2, "Absence of the President", to provide a standard operational mechanism in the event of the President's inability to act, absence, or a vacancy in the position, in conformity with proposed Article VIII, Section 2 of the NASD By-Laws. In proposed Section 7.3, "Agents and Employees", the Association proposes a conforming change to clarify supervision and control of agents and employees.[58]

Proposed Article VIII. District Committees and District Nominating Committees

Proposed Article VIII, "District Committees and District Nominating Committees", is a new Article. Proposed Article VIII authorizes the Board to designate districts and sets forth procedures for the members within each district to elect a District Committee and a District Nominating Committee. The language of proposed Article VIII is drawn from former Article VIII of the NASD By-Laws, which authorized the NASD Board to form such committees. Proposed Article VIII is drafted to conform to the Undertakings. Specifically, under Proposed Article VIII, Section 8.2, "Composition of District Committees", the role of the District Committee members is limited to serving as panelists in disciplinary proceedings in accordance with the Rule 9200 Series, recommending policy and rule changes to the NASD Regulation Board, and selecting members of the Regional Nominating Committees in a manner consistent with proposed Article VI of the NASD Regulation By-Laws.

Election procedures for District Committees and District Nominating Committees currently are set forth in corporate resolutions. The Association proposes to add these procedures, with further clarifications and detail, to the By-Laws in proposed Article VIII. The procedures conform to the nomination procedures in proposed Article VI.

Proposed Article VIII sets forth the following procedures for district elections. In May of each year, each District Nominating Committee would solicit candidates to fill the vacancies anticipated to occur on its District Committees as well as candidates to serve on the following year's District Nominating Committee. District Nominating Committee members would serve a one-year term, while District Committee members would serve a three-year term. The District Nominating Committee would receive from the Secretary of NASD Regulation a description of the firms eligible to vote in the district. Firms eligible to vote are those that either are headquartered in the district or have a branch office in the district. In making nominations, the District Nominating Committee would seek to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the district. Any candidate would have to be employed by a member eligible to vote in the district.

Current corporate resolutions authorize the District Nominating Committee to nominate one candidate for each vacancy. The Association proposes to authorize the District Nominating Committee to nominate more than one candidate per vacancy. (This process would trigger contested election procedures, which would work like the contested nomination procedures described above.)

Once the District Nominating Committee selected its nominees, it would send notice of its slate to the District Committee and the Executive Representative of each firm eligible to vote. If a person employed by a member in the district was not nominated but wished to contest an election, he or she would send notice of intent to contest to the District Director or the Secretary of NASD Regulation within a specified period. Such person then would be required to submit within a specified period a written petition evidencing support for such contest by at least ten percent of the members eligible to vote in the district. If the person did not obtain ten percent support for a contest within the requisite period, or if the District Nominating Committee nominated only one candidate per vacancy, then nominees of the District Nominating Committee would be deemed elected, and the election process would be complete.

If the District Nominating Committee nominated more than one candidate per vacancy, or if a person obtained the necessary support for a contest, then contested election procedures would apply. These procedures conform to the procedures for contested regional nominations in proposed Article VI. The candidates for District Committee membership receiving the largest number of votes cast in the district for that office would be declared elected such that the number of candidates declared elected equaled the number of vacancies on the District Committee. The candidates for District Nominating Committee membership receiving the largest number of votes cast in the district for that office would be declared elected such that the number of candidates declared elected equaled the number of vacancies on the District Nominating Committee.

Proposed Article IX. Compensation

Proposed Article IX, "Compensation", is a new Article that parallels proposed Article X of the NASD By-Laws and also authorizes compensation for National Adjudicatory Council members.

Proposed Article X. Indemnification

Current Article V, Indemnification, is renumbered as proposed Article X. Sections 5.1 through 5.5 are combined, amended, and renumbered as proposed Section 10.1, and current Section 5.6 is renumbered as proposed Section 10.2. The Association proposes to make the indemnification policies for all three corporate entities essentially identical. Therefore, proposed Sections 10.1 and 10.2 conform to proposed Article VII, Sections 7.1 and 7.2 of Nasdaq By-Laws and the provisions for indemnification in the NASD's Restated Certificate of Incorporation.

NASD Regulation By-Laws provide for the indemnification of, and advancement of expenses to, persons named or threatened to be named as a party to any civil, administrative, or investigative proceeding because such person is or was a Director, officer, employee, or agent of the corporation. The By-Laws also provide that: (1) The right of indemnification is not exclusive of any other right the person may have; (2) the amount of indemnification is reduced by the amount the indemnified person collects from another source; and (3) NASD Regulation has the power to purchase and maintain indemnification insurance.

The Association proposes to extend the indemnification provisions to cover National Adjudicatory Council and committee members.

The Association also proposes to modify NASD Regulation's By-Laws to make indemnification and advancement of expenses to agents discretionary with the Board, rather than mandatory, to permit the Board to determine whether indemnification is appropriate under the particular circumstances. Indemnification of non-officer employees remains the presumption. However, the Association proposes to authorize the Board to refuse to advance expenses to an employee if: (1) The employee (i) acted in bad faith, or (ii) did not act in a manner that the employee believed to be in, or not opposed to, the best interests of NASD Regulation; (2) with respect to a criminal matter, the employee believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) the employee breached his or her duty to NASD Regulation. Finally, the Association proposes to add a provision requiring NASD Regulation, in response to a written claim for indemnification or advancement, to make such payment within 60 days of the claim.

While it is a common corporate practice to provide for discretionary indemnification of employees (as well as agents), NASD Regulation believes that it is essential that employees have confidence that they will be indemnified if they are named in any proceeding resulting from actions taken in good faith. At the same time, NASD Regulation believes it is essential that the Board have the opportunity to evaluate and deny advancement of expenses if it determines the action was not taken in good faith or if the person had reason to believe the action was illegal or breached a duty to the corporation.

Proposed Article XI. Capital Stock

Current Article VI, "Capital Stock", is renumbered as proposed Article XI. The Association proposes to add a new Section 11.1, "Sole Stockholder", recognizing the NASD's status as sole stockholder. Current Sections 6.1 through 6.7 are renumbered as proposed Section 11.2 through 11.8. The Association proposes certain changes only to conform the proposed Article to the drafting conventions and stylistic changes incorporated generally in the NASD By-Laws, the NASD Regulation By-Laws, and the Nasdaq By-Laws. There are no substantive changes to proposed Article XI. In proposed Section 11.8, the Association proposes to delete detailed provisions of Delaware law for the fixing of record dates, which are more useful to corporations with more than one stockholder, and instead provide that a record date may be fixed in accordance with Delaware law.

Proposed Article XII. Miscellaneous Provisions

Current Article VII, "Miscellaneous Provisions", is renumbered as proposed Article XII. There are no substantive changes in proposed Article XII. Current Sections 7.1, 7.2, 7.3, 7.4, and 7.5 are proposed to be renumbered, respectively, as Sections 12.1, 12.2, 12.3., 12.4, and 12.5.

Proposed Article XIII. Amendments; Emergency By-Laws

Current Article VIII, "Amendments; Emergency By-Laws", is renumbered as proposed Article XIII. There are no substantive changes in proposed Article XIII. Current Sections 8.1, 8.2, and 8.3 are proposed to be renumbered, respectively, as Sections 13.1, 13.2, and 13.3.

d. Proposed Changes to NASDAQ By-Laws: Nasdaq adopted its current By-Laws on October 27, 1993. The Association proposes to amend the Nasdaq By-Laws to conform them to changes described in the introduction to Section 3(a)(i) of this rule filing, to the proposed NASD and NASD Regulation By-Laws, where appropriate. Significant changes to Nasdaq's By-Laws are described below, including changes relating to the corporate restructuring in proposed Article IV, Sections 4.2, 4.3, 4.13, 4.14(b); and Article V. Minor, non-substantive changes and changes to reflect drafting conventions are not described.

Proposed Article I. Definitions

The Association proposes to add a new Article I, "Definitions". As noted previously, the Association proposes that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add the following definitions, which conform to definitions proposed for inclusion in the NASD and NASD Regulation By-Laws: "Act"; "Board"; "broker"; "Commission"; "day"; "dealer"; "Delaware law"; "Delegation Plan"; "Director"; "Industry Director" or "Industry committee member"; "NASD"; "NASD Board"; "NASD Regulation"; "Nasdaq"; "Nasdaq Listing and Hearing Review Council"; "National Nominating Committee"; "Non-Industry Director" or "Non-Industry committee member"; "person associated with a member"; "Public Director" or "Public committee member"; and "Rules of the Association" or "Rules".

Proposed Article II. Offices

Current Article I, "Offices", is renumbered as proposed, and the Sections are renumbered accordingly.

Proposed Article III. Meetings of Stockholders

Current Article II, "Meetings of Stockholders", is renumbered as proposed Article III and conformed to the changes in proposed Article III of the NASD Regulation By-Laws.

Proposed Article IV. Board of Directors

Current Article III, "Board of Directors", is renumbered as proposed Article IV. The changes in proposed Article IV are designed to conform it, as appropriate, to proposed Article IV of the NASD Regulation By-Laws. Sections 3.1 through 3.4 are renumbered as Section 4.1 through 4.4. In proposed Sections 4.2 and 4.3, provisions regarding the number and qualifications of Directors are amended. Under the proposed rule change, the Nasdaq Board would be appointed by the NASD Board from among its members. The Nasdaq Board would be composed of between five and eight individuals, including the President of Nasdaq, at least one Public member, and at least one issuer representative. The number of Non-Industry Directors would be equal to or greater than the combined total of Industry Directors and the President of Nasdaq.

Like the NASD Regulation Board, members of the Nasdaq Board generally would be appointed for three one-year terms that coincided with their terms on the NASD Board. However, the NASD Board would retain flexibility in this regard and could appoint individuals to serve where they are best qualified to serve. Thus, as described above in the

[58] *See* proposed NASD By-Laws Article VIII, Section 3, and proposed Nasdaq By-Laws Article VII, Section 7.3.

corresponding section of the NASD Regulation By-Laws, current Section 3.5, "Term", is deleted and the remaining sections are renumbered accordingly.

Proposed Section 4.14(a), "Conflicts of Interest; Contracts and Transactions Involving Directors", is identical to the corresponding provision in the NASD Regulation By-Laws, except that there is no cross-reference to the Rules of the Association because the Association does not have a specific disqualification standard for Nasdaq proceedings as it has in the Rule 9160 Series for NASD Regulation disciplinary proceedings. Finally, proposed Section 4.16, "Communication of Views Regarding NASD or NASD Regulation Elections or Nomination", is a new section that holds Nasdaq, Nasdaq's Board and its committees, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff to the same standards proposed for NASD and NASD Regulation with respect to contested elections or nominations.[59]

Proposed Article V. Nasdaq Listing and Hearing Review Council

Proposed Article V, "Nasdaq Listing and Hearing Review Council", is a new article that requires the Nasdaq Board to appoint a Listing Council. The responsibilities of the Nasdaq Listing and Hearing Review Committee are transferred to the Listing Council, and the provision of the Delegation Plan authorizing the appointment of the Committee is deleted. Proposed Section 5.1, "Appointment and Authority", sets forth the responsibilities of the Listing Council. The Listing Council generally would operate much as the Nasdaq Listing and Hearing Review Committee currently operates under the Delegation Plan.[60] As is the case with the current Nasdaq Listing and Hearing Review Committee, the Listing Council would be authorized to make recommendations to the Nasdaq Board on listing-related rule amendments.

Under proposed Section 5.2, "Number of Members and Qualifications", the Listing Council would be composed of at least eight and not more than 11 members, of which no more than 50 percent could be directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenue. The Listing Council also would include at least three Non-Industry members, and a quorum for the transaction of business at Listing Council meetings would include at least one of the Non-Industry members. Under proposed Sections 5.3, "Nomination Process", and 5.4, "Term of Office", the members of the Listing Council would be nominated by the National Nominating Committee and appointed by the Nasdaq Board and serve for a term of two years. Sections 5.5 through 5.10 mirror the administrative provisions for the National Adjudicatory Council in proposed Article VI, Sections 5.5 through 5.10 of the NASD Regulation By-Laws.

Proposed Article VI. Compensation

Proposed Article VI, "Compensation", is a new Article that conforms with proposed Article X of the NASD By-Laws and proposed Article IX of the NASD Regulation By-Laws. Proposed Article VI also authorizes compensation of Listing Council members.

Proposed Article VII. Officers, Agents and Employees

Current Article IV, "Officers, Agents and Employees", is renumbered as proposed Article VII, and the Sections are renumbered accordingly. Only one substantive change is proposed to Article VII. Proposed Section 7.3 (current Section 4.3), "Subordinate Officers, Agents, or Employees", includes a provision that clarifies that agents and employees of Nasdaq are under the supervision and control of the officers of Nasdaq, unless the Nasdaq Board, by resolution, provides that an agent or employee shall be under its supervision and control.[61]

Proposed Article VIII. Indemnification

Current Article V, "Indemnification", is renumbered as proposed Article VIII, and the Sections are renumbered accordingly. Proposed Article VIII conforms to the provisions for indemnification in the NASD's Restated Certificate of Incorporation and proposed Article X of the NASD Regulation By-Laws. As noted above, the Association proposes to make the indemnification policies for all three corporate entities identical. Proposed Section 8.1, "Nasdaq Listing and Hearing Review Council and Committee Members", also provides for indemnification of Listing Council and committee members.

Proposed Article IX. Capital Stock

Current Article VI, "Capital Stock", is renumbered as proposed Article IX. The Association proposes changes to conform to those set forth for proposed Article XI of the NASD Regulation By-Laws.

Proposed Article X. Miscellaneous Provisions

Current Article VII, "Miscellaneous Provisions", is renumbered as proposed Article X, and the sections are renumbered accordingly. There are no substantive changes.

Proposed Article XI. Amendments; Emergency By-Laws

Current Article VIII, "Amendments; Emergency By-Laws", is renumbered as proposed Article XI, and the sections are renumbered accordingly. There are no substantive changes.

e. Proposed Changes to the Delegation Plan and Restated Certificates of Incorporation. The Association proposes to amend the Delegation Plan to delete provisions added to the By-Laws of the NASD, NASD Regulation, and Nasdaq.[62] Specifically, in Section I.A., the definitions of "Industry", "Non-Industry", and "Public" Governors, Directors, and committee members are deleted and instead the Section cross-references the By-Laws of the NASD, NASD Regulation, and Nasdaq, where the Association proposes to define such terms.[63]

The Association proposes to add a new Section I.B.11. to the Delegation Plan, authorizing the NASD Board to take action *ab initio;* either the full NASD Board or the NASD Executive Committee could exercise this authority.[64] This authority typically would be exercised in two circumstances. First, when an issue was ripe for consideration at a regularly scheduled meeting of a subsidiary board but clearly warranted consideration by the NASD Board, separate consideration by the subsidiary board could be avoided without any loss of subsidiary board input because the subsidiary board members constitute a subset of the NASD Board. This option is not available under the current corporate structure, which invariably requires that matters within a subsidiary's sphere of delegated authority be considered by

[59] *See* proposed Article VII, Sections 11 and 12 of the NASD By-Laws and proposed Article IV, Section 4.16 of the NASD Regulation By-Laws.

[60] Procedures for NASD Board review of Listing Council decisions will be proposed in a separate rule filing.

[61] *See* proposed Article VIII, Section 3 of the NASD By-Laws and proposed Article VII, Section 7.3 of the NASD Regulation By-Laws.

[62] All references to Sections in this section "d" refer to the Delegation Plan, unless otherwise noted.

[63] *See* proposed Article I of the NASD By-Laws; proposed Article I of the NASD Regulation By-Laws; proposed Article I of the Nasdaq By-Laws.

[64] This proposed rule change is a result of the corporate restructuring and was not proposed in SR–NASD–97–28.

that subsidiary's board before consideration by the NASD Board.

Second, should a time-sensitive issue arise between regularly scheduled board meetings, the issue could be resolved by the NASD Executive Committee in a single step. At present, the subsidiaries' executive committees are authorized to take initial action on such matters, but such action cannot be implemented without the unanimous written consent of the NASD Board. Obtaining such unanimous written consent can impede the Association's ability to respond to urgent matters. This time-consuming step is avoided through the creation of an NASD Executive Committee that could convene telephonically on an as-needed basis to address time-sensitive matters.

The Association further proposes to delete Sections I.C., I.D., II.B., II.D., III.B., and part of III.D., which address the composition of the Boards, elections, terms of office, vacancies, disqualification due to change in classification, and the composition and authority of certain committees because the Association proposes to include revised provisions in the appropriate By-Laws.[65] With respect to committees, the Association proposes to include in the appropriate By-Laws or in the Delegation Plan the compositional requirements for specified committees as provided in the Undertakings. If the committee consists solely of Directors or Governors, the Association proposes to include provisions describing the committee's powers and compositional requirements in the appropriate corporate By-Laws. If the committee consists of Directors or Governors as well as other members, the Association proposes to include provisions describing the committee's powers and compositional requirements in the Delegation Plan. Thus, the Association proposes to add provisions regarding the powers and composition of the Market Regulation Committee and the National Arbitration and Mediation Committee as proposed Section II.C. of the Delegation Plan.

The Association proposes to amend Section II.A.1.f. to specify that NASD Regulation will establish procedures to consider requests by members, associated persons, and members of the public that NASD Regulation initiate formal disciplinary action. This provision was discussed in SR-NASD–97–28 in connection with the discussion of the deletion of former Rule 8120.

The Association proposes to amend Section II.C., which sets forth certain NASD Regulation Board review procedures, by deleting specific procedures that are now set forth in the Rule 9000 Series.

The Association also proposes to clarify that both NASD Regulation and Nasdaq are responsible for operating Stockwatch. Therefore, new Sections II.A.1.s. and III.A.1.o. are added, and the section pertaining to Stockwatch is renumbered as Section IV of the Delegation Plan.

With respect to committee procedures, the Association proposes to require that a quorum for the transaction of business by the Quality of Markets Committee, the National Arbitration and Mediation Committee, and the Market Regulation Committee consist of a majority of such committee, including not less than 50 percent of its Non-Industry committee members. However, if at least 50 percent of the Non-Industry committee members are present at or have filed a waiver of attendance for a meeting *after receiving an agenda prior to such meeting,* the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum would be waived. The Association believes a waiver is appropriate because these committees generally act only in an advisory capacity.

Finally, the Association proposes to add a new petition for reconsideration procedure to the Delegation Plan.[66] Under the proposed rule change, if the NASD Regulation or NASD Board took action on a rule change relating to the business and sales practices that was materially inconsistent with the recommendation of the National Adjudicatory Council, the NASD Regulation or NASD Board would be required to notify the National Adjudicatory Council within one calendar day. After receipt of such notice, the National Adjudicatory Council would be allowed two calendar days in which to determine, by majority vote, whether to petition the NASD Board for reconsideration. The petition would have to be submitted in writing and accompanied by a written statement explaining in detail why the National Adjudicatory Council believed that the NASD Regulation or NASD Board's action should be set aside. Upon receipt of a timely petition for reconsideration and accompanying statement, the NASD Executive Committee would have three calendar days in which to convene and take action on the petition. If the NASD Executive Committee granted reconsideration, the matter would be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the Executive Committee denied reconsideration, the NASD Regulation or NASD Board's previous action on the rule would be final, and the necessary rule filings would be made with the SEC. The same procedures would apply if the Nasdaq or NASD Board took action on a listing-related rule change that was materially inconsistent with the recommendation of the Listing Council.

With respect to the certificates of incorporation, the Association proposes to amend Article Eighth of the NASD Restated Certificate of Incorporation to conform it to the structural changes to the NASD Board previously described. Only conforming changes are proposed to the NASD Regulation and Nasdaq Certificates of Incorporation.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(4) of the Act in that it assures a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representatives of issuers and investors and not be associated with a member of the association, a broker, or a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[65] *See* proposed Article VII, Sections 4, 5, 6, 7, 9, and 10 of the NASD By-Laws; proposed Article IV, Sections 4.2, 4.3, 4.4, 4.7, 4.8 and 4.13 of the NASD Regulation By-Laws; proposed Article IV, Sections 4.2., 4.3, 4.4, 4.7, 4.8 and 4.13 of the Nasdaq By-Laws.

[66] *See* proposed II.B.2. and III.B.3. This proposed rule change is a result of the corporate restructuring and was not proposed in SR–NASD–97–28.

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In addition to the general comments concerning the Association's proposal, the Commission requests particular comments addressing whether the proposal would result in any burdens on competition and whether the proposal would promote efficiency, competition and capital formation. The Commission also seeks comment on whether the proposal, given the unique nature of the Association as a self-regulatory organization, adequately promotes the goals of the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. File Number SR–NASD–97–71 should be included on the subject line if E-mail is used to submit a comment letter. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

All submissions should refer to File No. SR–NASD–97–71 and should be submitted by October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[67]

Margaret H. McFarland,

Deputy Secretary.

Attachment A

Additions are *italicized;*
Deletions are [bracketed].

[67] 17 CFR 200.30–3(a)(12).

The By-Laws of the NASD, NASD Regulation and Nasdaq are compared to the versions temporarily approved in SR–NASD–96–20, Amendment No. 5; Securities Exchange Act Release No. 34–38644 (May 15, 1997), 62 FR 43571, (May 22, 1997).

The Delegation Plan is compared to the version temporarily approved in SR–NASD–96–29, Amendment No. 5; Securities Exchange Act Release No. 38909 (August 7, 1997), 62 FR 43571 (August 14, 1997).

The Revised Certificates of Incorporation of the NASD, NASD Regulation and Nasdaq are compared to those filed with the Secretary of State for the State of Delaware on September 11, 1996, January 25, 1996 and December 21, 1993, respectively.

* * * * * *

By-Laws *of the National Association of Securities Dealers, Inc.*

Article I

Definitions

When used in these By-Laws, [and any rules of the Corporation,] unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "bank" means (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. § 92a), and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act, and (4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (1), (2), or (3) of this subsection;

(c) "Board" means the Board of Governors of the [Corporation.] *NASD;*

[(d) "Boards" means the Board of Governors of the Corporation and the Boards of Directors of The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.;]

[(e)]*(d)* "branch office" means an office defined as a branch office in [NASD Rule 3010] *the Rules of the Association;*

[(f)]*(e)* "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

[(g)]*(f)* "Commission" means the Securities and Exchange Commission;

[(h) "Corporation" means the National Association of Securities Dealers, Inc.;]

[(i) "Corporations" means the National Association of Securities Dealers, Inc. ("NASD"), and its subsidiaries, The Nasdaq Stock Market, Inc. ("Nasdaq") and NASD Regulation, Inc. ("NASD Regulation");]

(g) "day" means calendar day;

[(j)]*(h)* "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for [his] *such individual's or entity's* own account, through a broker or otherwise, but does not include a bank, or any person insofar as [he] *such person* buys or sells securities for [his] *such person's* own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(k) "delegation] *(i) "Delegation Plan"* means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(j) "district" means a district established by the NASD Regulation Board pursuant to the NASD Regulation By-Laws;

[(l)]*(k)* "government securities broker" shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(m)]*(l)* "government securities dealer" shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(n)]*(m)* "Governor" means a member of the Board[.];

(n) "Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents) who: (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

[(o)]*(p)* "investment banking or securities business" means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others;

[(p)]*(q)* "member" means any broker or dealer admitted to membership in the [Corporation] *NASD;*

[(q)]*(r)* "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

[(r)]*(s)* "municipal securities broker" means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

[(s)]*(t)* "municipal securities dealer" means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for [his] *such person's* own account, through a broker or otherwise, but does not include any person insofar as [he] *such person* buys or sells securities for [his] *such person's* own account either individually or in some fiduciary capacity, but not as a part of a regular business;

(u) "NASD" means the National Association of Securities Dealers, Inc.;

(v) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(w) "Nasdaq Board" means the Board of Directors of Nasdaq;

(x) "Nasdaq Listing and Hearing Review Council" means a body appointed pursuant to Article V of the Nasdaq By-Laws;

(y) "NASD Regulation" means NASD Regulation, Inc.;

(z) "NASD Regulation Board" means the Board of Directors of NASD Regulation;

(aa) "National Adjudicatory Council" means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

(bb) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

(cc) "Non-Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents of NASD Regulation and Nasdaq) who is: (1) A Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

(dd) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq) or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

[(t)]*(ee)* "person associated with a member" or "associated person of a member" means: *(1)* [Every] *a natural person registered under the Rules of the Association; or (2) a* sole proprietor, partner, officer, director, or branch manager of [any] *a* member, or [any] *a* natural person occupying a similar status or performing similar functions, or [any] *a* natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by [such] *a* member, whether or not any such person is registered or exempt from registration with the [Corporation] *NASD* [pursuant to] *under these By-Laws or the Rules of the Association;*

(ff) "Public Director" means a Director of the NASD Regulation Board or Nasdaq Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(gg) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

[(u)](*hh*) "registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer" means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act; and

[(v) "rules of the Corporation" means all rules of the Corporation (which rules may be referred to as "NASD Rules"), Certificate of Incorporation, By-Laws, Rules of the Association, any other rules, and any interpretations thereunder.]

(ii) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented.

Article II

Offices

Location

Sec. 1. The address of the registered office of the NASD in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The NASD also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the NASD may require.

Change of Location

Sec. 2. In the manner permitted by law, the Board or the registered agent may change the address of the NASD's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

Article [II] *III*

Qualifications of Members and Associated Persons

Persons Eligible to [become] *Become* Members and Associated Persons of Members

Sec. 1. (a) Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the [Corporation] *NASD*, except such registered brokers, dealers, or municipal securities brokers or dealers, or government securities brokers or dealers which are excluded under the provisions of [Sections 3 (a) or (b) of this Article] *Section 3*.

(b) Any person shall be eligible to become an associated person of a member, except such persons who are excluded under the provisions of Section 3[(b) of this Article].

Authority of Board to Adopt Qualification Requirements

Sec. 2. (a) The Board [of Governors] shall have authority to adopt rules and regulations applicable to applicants for membership, members, and persons associated with applicants or members establishing specified and appropriate standards with respect to the training, experience, competence, and such other qualifications as the Board [of Governors] finds necessary or desirable, and in the case of an applicant for membership or a member, standards of financial responsibility and operational capability.

(b) In establishing and applying such standards, the Board [of Governors] may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent, and type of business being conducted and of securities sold, dealt in, or otherwise handled. The Board [of Governors] may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the [Corporation] *NASD*.

(c) The Board [of Governors] may from time to time make changes in such rules, regulations, and standards as it deems necessary or appropriate.

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements *established* under Section 2 [of this Article], if applicable, or if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member is or becomes subject to a disqualification under Section 4 [of this Article], or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process as the [Corporation] *NASD* may prescribe.

(b) No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, if such person fails or ceases to satisfy the qualification requirements *established* under Section 2 [of this Article], if applicable, or if such person is or becomes subject to a disqualification under Section 4 [of this Article]; and no broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) If it deems appropriate, the Board [of Governors], upon notice and opportunity for a hearing, may cancel the membership of a member if it becomes ineligible for continuance in membership under subsection (a) [hereof], may suspend or bar a person [for] *from* continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) [hereof], and may cancel the membership of any member who continues to be associated with any such ineligible person.

(d) Any [broker, dealer, municipal securities dealer, or government securities broker or dealer which is ineligible for admission into membership, or any member which] *member that* is ineligible for continuance in membership[,] may file with the Board [of Governors] an application requesting relief from the ineligibility pursuant to [procedures adopted by the Board of Governors and contained in the Corporation's Procedural Rules. The Board of Governors] *the Rules of the Association. A member may file such application on its own behalf and on behalf of a current or prospective associated person. The Board* may, in its discretion, approve the [admission] *continuance in membership, and may also approve the association* or continuance of [an applicant or member, or the] association of any person, if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board [of Governors] may[: (1)] Conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of [an applicant for membership or of] a member and the conditions of association of any *current or prospective associated person* [prospective or presently associated person, among other matters; (2) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers, municipal securities brokers and dealers and government securities brokers and dealers as applicants or existing members and of persons as prospective or presently associated persons of members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and (3) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members].

(e) An application filed under subsection (d) [hereof] shall not foreclose any action which the Board [of Governors] is authorized to take under subsection (c) [hereof] until approval has been granted.

(f) Approval by the Board [of Governors] of an application made under subsection (d) shall be subject to whatever further action the Commission may take pursuant to authority granted to the Commission under the Act.

(g) The Board may delegate its authority under this Section in a manner not inconsistent with the Delegation Plan.

Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

(a) Has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(b) Is subject to—

(1) An order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

(i) Denying, suspending for a period not exceeding 12 months, or revoking [his] *such person's* registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or limiting [his] *such person's* activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) Barring or suspending for a period not exceeding 12 months [his] *such person from* being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) An order of the Commodity Futures Trading Commission denying, suspending, or revoking [his] *such person's* registration under the Commodity Exchange Act (7 U.S.C. § 1 et seq.); or

(3) An order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) By [his] *such person's* conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in [subsections] *subsection* (a) or (b) of this Section;

(d) By [his] *such person's* conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;

(e) Has associated with him *or her* any person who is known, or in the exercise of reasonable care should be known, to him *or her* to be a person described in [subsections] *subsection* (a), (b), (c), or (d) of this Section;

(f) Has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

(g)(1) Has been convicted within ten years preceding the filing of any application for membership in the [Corporation] *NASD*, or to become associated with a member of the [Corporation] *NASD*, or at any time thereafter, of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which:

(i) Involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) Arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation; or

(iii) Involves the larceny, theft, robbery, extortion, forgery,

counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) Involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code, or a violation of a substantially equivalent foreign statute;

(2) Has been convicted within ten years preceding the filing of any application for membership in the [Corporation] *NASD*, or to become associated with a member of the [Corporation] *NASD*, or at any time thereafter of any other felony;

(h) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, *or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation*, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(i) Has been found by a foreign financial regulatory authority to have—

(1) Made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(2) Violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(3) Aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to [his] *such person's* supervision.

Article [III] *IV*

Membership

Application for Membership

Sec. 1. (a) Application for membership in the [Corporation] *NASD*, properly signed by the applicant, shall be made to the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe, on the form to be prescribed by the [Corporation] *NASD*, and shall contain:

(1) An [acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Restated Certificate of Incorporation, the By-Laws] *agreement to comply with the federal securities laws*, the rules and regulations [of the Corporation as they are or may from time to time be adopted, changed or amended,] *thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and* all rulings, orders, directions, and decisions [of,] *issued* and sanctions imposed [by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act] *under the Rules of the Association*;

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as [shall from time to time be fixed by the Board of Governors pursuant to these By-Laws] *from time to time shall be fixed pursuant to the NASD By-Laws, Schedules to the NASD By-Laws, and the Rules of the Association; and*

[(3) An agreement that none of the Corporations, or any officer, employee, or member of the Board or committees of the Corporations, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member of the Boards or of any committee, in his official capacity, or by any employee of the Corporations while acting within the scope of his employment or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, any ruling, order, directive, decision of, or penalty imposed by, the Boards or any duly authorized committee thereof, or the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and]

[(4)] *(3)* Such other reasonable information with respect to the applicant as the [Corporation] *NASD* may require.

(b) Any application for membership received by the [Corporation] *NASD* shall be processed in the manner set forth in the [Procedural] Rules of the [Corporation] *Association.*

(c) Each *applicant and* member shall ensure that its membership application with the [Corporation] *NASD* is kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] *NASD* may prescribe to the original application. Such amendments to the application shall be filed with the [Corporation] *NASD* not later than [thirty (30) calendar] *30* days after learning of the facts or circumstances giving rise to the amendment.

Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the [Corporation] *NASD* having a name [which] *that* is identical to the name of another member appearing on the membership roll of the [Corporation] *NASD* or a name so similar to any such name as to tend to confuse or mislead.

(b) No member may change its name without prior approval of the [Corporation] *NASD.*

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the [Corporation] *NASD* one "executive representative" who shall represent, vote, and act for the member in all the affairs of the [Corporation] *NASD*, except that other executives of a member may also hold office in the [Corporation] *NASD*, serve on the Board [of Governors] or committees [of the Corporation] *appointed under Article IX, Section 1* or otherwise take part in the affairs of the [Corporation] *NASD.* A member may change its executive representative upon giving notice thereof via electronic process or such other process as the [Corporation] *NASD* may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member.

Membership Roll

Sec. 4. The Secretary of the [Corporation] *NASD* shall keep a currently accurate and complete membership roll, containing the name and address of each member, and the name and address of the executive representative of each member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of the [Corporation] *NASD* shall at all times be available to all members of the [Corporation] *NASD*, to all governmental authorities, and to the general public.

Resignation of Members

Sec. 5. Membership in the [Association] *NASD* may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process as the [Corporation] *NASD* may prescribe and addressed to the [Corporation] *NASD.* Any member may resign from the [Corporation] *NASD* at any time. Such resignation shall not take effect until [thirty (30) calendar] *30* days after receipt thereof by the [Corporation] *NASD* and until all indebtedness due the [Corporation] *NASD* from such member shall have been paid in full and so long as any complaint or action is pending against the member under the [Procedural] Rules *of the Association.* The [Corporation] *NASD*, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the [Procedural] Rules *of the Association* based upon conduct which commenced prior to the effective date of the member's resignation from the [Corporation] *NASD* or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two [(2)] years after the effective date of resignation, cancellation, or revocation.

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the [Corporation] *NASD* may transfer its membership or any right arising therefrom and the membership of a corporation, partnership, or any other business organization which is a member of the [Corporation] *NASD* shall terminate upon its liquidation, dissolution, or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of membership under the By-Laws and the [other rules] *Rules* of the [Corporation] *Association* have been fulfilled.

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the qualifications for membership in the [Corporation] *NASD.* The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the [Corporation] *NASD.* If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the [Corporation] *NASD*, the membership of such predecessor member shall be extended to the successor organization *subject to the notice and application requirements of the Rules of the Association and the right of the NASD to place restrictions on the successor organization pursuant to the Rules of the Association*; otherwise, any surviving organization shall be required to satisfy all of the *membership application* requirements of [the] *these* By-Laws *and the Rules of the Association.*

Registration of Branch Offices

Sec. 8. (a) Each branch office of a member of the [Corporation] *NASD* shall be registered with and listed upon the membership roll of the [Corporation] *NASD*, and shall pay such dues, assessments, and other charges as shall be fixed from time to time by the Board [of Governors] pursuant to Article [V of the By-Laws] *VI.*

(b) Each member of the [Corporation] *NASD* shall promptly advise the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than [thirty (30) calendar] *30* days after the effective date of such change.

Article [IV] *V*

Registered Representatives and Associated Persons

Qualification Requirements

Sec. 1. No member shall permit any person associated with [such] *the* member to engage in the investment banking or securities business unless the member determines that such person [has complied with the applicable provisions under Article II of the By-Laws] *satisfies the qualification requirements established under Article III, Section 2 and is not subject to a disqualification under Article III, Section 4.*

Application for Registration

Sec. 2. (a) Application by any person for registration with the [Corporation] *NASD*, properly signed by the applicant, shall be made to the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe, on the form to be prescribed by the [Corporation] *NASD* and shall contain:

(1) [An acceptance of and] An agreement to comply with the [all the provisions of the rules of the Corporation as they are or may from

time to time be adopted or amended,] *federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and* all rulings, orders, directions, and decisions [of, and penalties imposed by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;] *issued and sanctions imposed under the Rules of the Association; and*

[(2) An agreement that none of the Corporations, or any officer, employee, or member of the Boards or committees of the Corporation, shall be liable except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer, member of the Boards or of any committee in his official capacity, or by any employee of the Corporation while acting within the scope of his employment, or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the By-Laws, any rules of the Corporation as they are or may from time to time be adopted or amended, any ruling, order, direction, decision of, or penalty imposed by the Boards or any duly authorized committee thereof, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder including the rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department; and]

[(3)] *(2)* Such other reasonable information with respect to the applicant as the [Corporation] *NASD* may require.

(b) The [Corporation] *NASD* shall not approve an application for registration of any person who is not eligible to be an associated person of a member under the provisions of *Article III,* Section 3[(b) of Article II of these By-Laws].

(c) Every application for registration filed with the [Corporation] *NASD* shall be kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] *NASD* may prescribe to the original application. Such amendment to the application shall be filed with the [Corporation] *NASD* not later than [thirty (30) calendar] *30* days [of] *after* learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten [(10) calendar] days after such disqualification occurs.

Notification by Member to [Corporation] *the NASD* and Associated Person of Termination; Amendments to Notification

Sec. 3. (a) Following the termination of the association with a member of a person who is registered with it, such member shall, not later than [thirty (30) calendar] *30* days after such termination, give notice of the termination of such association to the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe on a form designated by the [Corporation] *NASD*, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the [Corporation] *NASD*. A member [which] *that* does not submit such notification[,] and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by the [Corporation] *NASD*. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action under the [rules] *Rules* of the [Corporation] *Association* is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually under the [rules] *Rules* of the [Corporation. The Corporation] *Association. The NASD*, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe by means of an amendment to the notice filed pursuant to *subsection* [paragraph] (a) [above] in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the [Corporation] *NASD* via electronic process or such other process as the [Corporation] *NASD* may prescribe and a copy provided to the person whose association with the member has been terminated not later than [thirty (30) calendar] *30* days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the [Corporation] *NASD* or a person whose registration has been revoked or *canceled* shall continue to be subject to the filing of a complaint under the [rules] *Rules* of the [Corporation] *Association* based upon conduct which commenced prior to the termination [or], revocation, or cancellation or upon such person's failure, while subject to the [Corporation's] *NASD's* jurisdiction as provided herein, to provide information requested by the [Corporation] *NASD* pursuant to [NASD Rule 8210] *the Rules of the Association*, but any such complaint shall be filed within:

(a) Two [(2)] years after the effective date of termination of registration pursuant to Section 3 [above], provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this [paragraph] *subsection*;

(b) Two [(2)] years after the effective date of revocation *or cancellation* of registration pursuant to [NASD Rule 8320] *the Rules of the Association*; or

(c) in the case of an unregistered person, within two [(2)] years after the date upon which such person ceased to be associated with the member.

Article [V] *VI*

Dues, Assessments, and Other Charges

Power of [Corporation] *the NASD* to Fix and Levy Assessments

Sec. 1. The [Corporation] *NASD* shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the [Corporation] *NASD* each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the [Corporation] *NASD* and issuers and any other persons using any facility or system which the [Corporation] *NASD, NASD Regulation, or Nasdaq* operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the [Corporation] *NASD* from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the [Corporation] *NASD* operates or controls. The [Corporation] *NASD* may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [Corporation] *NASD* may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Reports of Members

Sec. 2. Each member, issuer, or other person shall promptly furnish all information or reports requested by the [Corporation] *NASD* in connection with the determination of the amount of admission fees, dues, assessments, or other charges.

Suspension or Cancellation of Membership or Registration

Sec. 3. The [Corporation] *NASD* after [fifteen (15)] *15* days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2 [of this Article], or for failure to comply with an award of arbitrators properly rendered pursuant to [Section 41] *the Rules* of the [Code of Arbitration Procedure] *Association*, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [procedures specified by the Corporation] *Rules of the Association*.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the [Corporation] *NASD* upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the [Corporation] *NASD*.

Delegation

Sec. 5. The NASD may delegate its authority under this Article in a manner not inconsistent with the Delegation Plan.

Article [VI] *VII*

Board of Governors

Powers and Authority of Board

Sec. 1. (a) The Board [of Governors] shall be the governing body of the [Corporation] *NASD* and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the [Corporation] *NASD* and the promotion of the [Corporation's] *NASD's* welfare, objects, and purposes. In the exercise of such powers, the Board [of Governors] shall have the authority to:

[(1)]*(i)* Adopt for submission to the membership, as hereinafter provided, such By-Laws and changes or additions thereto as it deems necessary or appropriate;

[(2)]*(ii)* Adopt such other [rules] *Rules* of the [Corporation] *Association* and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such [rules] *Rules;*

[(3)] *(iii)* make such regulations, issue such orders, resolutions, *exemptions,* interpretations, including interpretations of *these By-Laws and* the [rules] *Rules* of the [Corporation] *Association*, and directions, and make such decisions as it deems necessary or appropriate;

[(4)] *(iv)* Prescribe [a code of arbitration procedure providing] *rules* for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate;

[(5)] *(v)* Establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof;

[(6)] *(vi)* Require all over-the-counter transactions in securities between members, other than transactions in exempted securities as defined in Section 3(a)(12) of the Act, to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

[(7)] *(vii)* Organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the [Corporation] *NASD* or by one or more independent firms under contract with the [Corporation] *NASD* as the Board [of Governors] may deem necessary or appropriate. The Board [of Governors] may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

[(8)] *(viii)* Require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the [Corporation] *NASD*, a division or subsidiary thereof, or a clearing agency registered under the Act; and

[(9)] *(ix)* Engage in any activities or conduct necessary or appropriate to carry out the [Corporation's] *NASD's* purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any [member of the Board of Governors] *Governor* to discharge [his] *such Governor's* duties, or for any cause affecting the best interests of the [Corporation] *NASD* the sufficiency of which the Board [of Governors] shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such [member] *Governor* and declare [his] *such Governor's* position vacant and that such position shall be filled in accordance with the provisions of Section [6] *7* [of this Article].

(c) To the fullest extent permitted by *applicable law*, the Restated Certificate of Incorporation [and applicable law, the Corporation], *and these By-Laws, the NASD* may delegate any power of the [Corporation or the Board of Governors to any person or entity, including a subsidiary of the Corporation; provided that such delegation is] *NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the*

NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

Authority to *Cancel or* Suspend for Failure to Submit Required Information

Sec. 2. (a) The Board [of Governors] shall have authority, upon notice and opportunity for a hearing, to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document, or other information required to be filed with or requested by the [Corporation] *NASD pursuant to these By-Laws or the Rules of the Association.*

(b) Any membership or association suspended or canceled pursuant to this Section may be reinstated by the NASD pursuant to the Rules of the Association.

[(b)] *(c)* The Board [of Governors] is authorized to delegate [the authority hereinabove granted to the Chief Executive Officer of the Corporation; provided, however, that the Executive Committee of the Board of Governors shall be notified in writing of any such contemplated action by the Chief Executive Officer] *its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.*

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board [of Governors], or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding[:]:

[(1)] *(a)* The trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the [Corporations] *NASD, NASD Regulation, or Nasdaq,* and the participation in any such system of any or all persons or the trading therein of any or all securities; and

[(2)] *(b)* The operation of any or all member firms' offices or systems, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Composition and Qualifications of the Board

Sec. 4. (a) [The Board of Governors shall be composed of five or more members, the number thereof to be determined from time to time by the Board of Governors, and shall include at all times the Chief Executive Officer and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Governors, both of which determinations shall be consistent with the Delegation Plan and Section 15A(b)(4) of the Act. The criteria for the categories of industry, Non-Industry and Public Governors, as used herein, shall be established by the Board of Governors from time to time, which criteria shall be consistent with the Delegation Plan.] *The Board shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council, and no fewer than 16 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, and a Nasdaq issuer. A majority of the Governors shall be Non-Industry Governors. If the Board consists of 21 to 23 Governors, at least five shall be Public Governors. If the Board consists of 24 to 27 Governors, at least six shall be Public Governors.*

(b) As soon as practicable[,] following the annual election [of members to the Board] of Governors, the Board [of Governors] shall elect from [the] *among its* members [of the Board of Governors a Chairman,] *a Chair* and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. *The Chair of the National Adjudicatory Council may not serve as Chair of the Board.* The *Chair and other* persons [so] elected *under this subsection* shall have such powers and duties as may be determined from time to time by the Board [of Governors]. The Board [of Governors, by affirmative vote of], *by resolution adopted by* a majority of [its members] *the Governors then in office,* may remove *the Chair and* any [such] *person elected under this subsection* from such position at any time.

Term of Office of Governors

Sec. 5. [Each Governor, except as otherwise provided by the Restated Certificate of Incorporation or these By-Laws, shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until his successor is elected and qualified, or until his death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's current term. The Chief Executive Officer of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, disqualification, or removal.]

(a) The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq shall serve as Governors until a successor is elected, or until death, resignation, or removal.

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

(c) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

Disqualification

Sec. 6. Notwithstanding Section 5, the term of office of a Governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Governors, that: (a) The Governor no longer satisfies the classification (Industry, Non-Industry, or Public Governor) for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4. If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Filling of Vacancies

Sec. [6.] *7.* [(a) Any vacancy in the office of] *If* a Governor *position becomes vacant,* whether [occurring by reason] *because* of death, disability, disqualification, removal, or resignation, [other than a vacancy by reason of an increase in the size of the Board, shall be filled] *the National Nominating Committee shall nominate, and the Board shall elect* by majority vote of the remaining Governors then in office [and any person elected to fill such vacancy shall satisfy the qualifications and criteria], *a person satisfying the classification (Industry, Non-Industry, or Public Governor)* for the governorship [being filled] as provided in Section 4 [of this Article.] *to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article. [(b) Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filling of any such vacancy shall not be inconsistent with any other provisions of these By-Laws or the Delegation Plan.]*

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board [of Governors] in its discretion may determine. [A] *At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a* quorum [of the Board of Governors] *for the transaction of business* shall consist of a majority of the [total number of Governors of the Corporation and any] *Board, including not less than 50 percent of the Non-Industry Governors. Any* action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board [of Governors]. [Members of the Board of] Governors[,] or *members of* any committee appointed by the Board [of Governors or any other committee of the Corporation,] *under Article IX, Section 1* may participate in a meeting [thereof] *of the Board or a committee* by means of communications facilities that ensure all persons participating in the meeting can hear and speak to [each other] *one another,* and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No [member of the Board of Governors] *Governor* shall vote by proxy at any meeting of the Board.

The National Nominating Committee

Sec. [7. (b)] *9. (a)* The National Nominating Committee shall [have such powers and shall perform such functions as shall be determined by resolution of the Board of Governors from time to time, consistent with the Delegation Plan] *nominate: Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the Nasdaq Board for election by the Board; Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board; and Industry and Non-Industry members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Nasdaq Board.*

(b) The National Nominating Committee shall consist of [six or more persons who shall have such qualifications, and who shall be selected in such manner, as shall be determined by resolution of the Board of Governors from time to time, which qualifications and manner of selection shall be consistent with the Delegation Plan] *no fewer than six and no more than nine members. The number of Industry committee members shall equal or exceed the number of Non-Industry committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.*

(c) A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the National Nominating Committee.

(d) Members of the National Nominating Committee shall be appointed annually by the Board and may be removed only by majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties. The NASD Regulation Board and the Nasdaq Board each shall propose two candidates to the NASD Board for appointment to the National Nominating Committee.

(e) The Secretary of the NASD shall collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor, and the Secretary shall certify to the National Nominating Committee each nominee's classification.

(f) At all meetings of the National Nominating Committee, a quorum for the transaction of business shall consist of a majority of the National Nominating Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Procedure for Nomination of Governors

Sec. [7.(c)] *10.* [At least 90 days prior] *Prior* to a meeting of members *pursuant to Article XXI* for the election of Governors, the [Corporation] *NASD* shall notify the members of the [date, place, and time of such meeting and shall set forth in such notice the] names of each nominee [(a "Nominee"), as] selected by the National Nominating Committee[,] for each governorship up for election, [and shall further provide in such notice the qualifications] *the classification of governorship (Industry, Non-Industry, or Public Governor) for which the nominee is nominated, the qualifications of each nominee,* and such other information regarding each [such Nominee] *nominee* as the National Nominating Committee deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if: [(1)]*(a)* [at least 60] *within 30* days [prior to the scheduled date for the meeting of members] *after the date of such notice in 1997, or within 45 days after the date of such notice in 1998 and thereafter,* such person [complies with the requirements and procedures for nomination set forth in the Delegation Plan and (2) the person is certified] *presents to the Secretary of the NASD petitions in support of his or her nomination duly executed by three percent of the members; and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members; and (ii) the person satisfies the classification (Industry, Non-Industry, or Public Governor) of the governorship to be filled, based on such information provided by the person as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election. After the certification of a contested election or the expiration of time for contesting an election under this Section, the Secretary shall deliver notice of a meeting of members pursuant to Article XXI, Section 3(a).*

Communication of Views

Sec. 11. The NASD, the Board, the National Nominating Committee, a committee appointed pursuant to Article IX, Section 1, and NASD staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of the National Nominating Committee or any other committee may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the NASD, the NASD Board, the National Nominating Committee, or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

Administrative Support

Sec. 12. The Secretary of the NASD shall provide administrative support to the candidates in a contested election under this Article by sending to NASD members eligible to vote up to two mailings of materials prepared by the candidates. The NASD shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinions of the candidate. The candidate shall provide a copy of such material for each member of the NASD. A candidate nominated by the National Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional materials to NASD members at the candidate's own expense. Except as provided in this Article, the NASD, the Board, any committee, and NASD staff shall not provide any other administrative support to a candidate in a contested election conducted under this Article or a contested election or nomination conducted under the NASD Regulation By-Laws.

Election of [Board Members] *Governors*

Sec. [7.(a)] *13.* [The members of the Board of] Governors shall be elected by a plurality of the votes of the members of the [Corporation] *NASD* present in person or represented by proxy at the annual meeting of the [Corporation] *NASD* and entitled to vote thereat. The annual meeting of the [Corporation] *NASD* shall be on such date and at such place as the Board [of Governors] shall designate *pursuant to Article XXI.* Any Governor so elected must be nominated by the National Nominating Committee *or certified by the Secretary* [described in subsection (b) below or certified] pursuant to [subsection (c) below and must satisfy the other qualifications for Governors set forth in Section 4 of this Article or as established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the Delegation Plan] *Section 10.*

Maintenance of Compositional Requirements of the Board

Sec. 14. Each Governor shall update the information submitted under Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Resignation

Sec. 15. Any Governor may resign at any time either upon written notice of resignation to the Chair of the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Article [VII] *VIII*

Officers, *Agents, and Employees*

Officers

Sec. 1. The Board [of Governors] shall [select] *elect* a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the [Corporation] *NASD* in all public matters and who shall have such powers and duties in the management of the [Corporation] *NASD* as may be prescribed in a resolution by the Board [of Governors], and which powers and duties shall not be inconsistent with the Delegation Plan. *The Board shall elect a Chief Operating Officer and Secretary, who shall have such powers and duties conferred by these By-Laws and such other powers and duties as may be prescribed in a resolution by the Board.* The Board may provide for such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice [-]President, Senior Vice[-] President, Vice [-]President, [Secretary,] and Treasurer of the [Corporation] *NASD.* All such officers shall have such titles, [such] powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Governors]. Each such officer shall hold office until [his] *a* successor is elected and qualified or until [his] *such officer's* earlier resignation or removal. Any officer may resign at any time upon written notice to the [Corporation] *NASD.* [The Board of Governors may remove any officer, with or without cause, at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal, or otherwise may be filled for the unexpired portion of the term by the Board of Governors at any meeting.]

Absence of Chief Executive Officer

Sec. 2. In the case of the absence or inability to act of the [President] *Chief Executive Officer* of the [Corporation] *NASD,* or in the case of a vacancy in such office, the Board [of Governors] may appoint its [Chairman] *Chair* or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the [President] *Chief Executive Officer.*

Agents and Employees

Sec. 3. The Board may employ or authorize the employment and prescribe the powers and duties of such agents and employees as it deems necessary or advisable. The employment and compensation of such agents and employees shall be at the pleasure of the Board, provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Except as provided in Article IX, Section 5(d), agents and employees of the NASD shall be under the supervision and control of the officers of the NASD, unless the Board provides by resolution that an agent or employee shall be under the supervision and control of the Board.

Employment of Counsel

Sec. [3.] 4. The Board [of Governors] may retain or authorize the employment of counsel, with such powers, titles, duties, and authority as it shall deem necessary or advisable.

[Administrative Staff

Sec. 4. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors, provided that such determinations are not inconsistent with the requirements of the Delegation Plan.]

Delegation of Duties of Officers

Sec. 5. The Board may delegate the duties and powers of any officer of the NASD to any other officer or to any Governor for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 6. (a) Any officer may resign at any time upon written notice of resignation to the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the NASD may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Governors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the NASD.

Bond

Sec. 7. The NASD may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Article [VIII] *IX*

Committees

Appointment

Sec. 1. [The] *Subject to Article VII, Section 1(c),* the Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties, and terms of office[; provided that such determinations are not inconsistent with requirements of the Delegation Plan]. Any such committee or subcommittee consisting *solely* of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the [Corporation] NASD.

Maintenance of Compositional Requirements of Committees

Sec. 2. Upon request of the Secretary of the NASD, each prospective committee member who is not a Governor shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary shall certify to the Board each prospective committee member's classification. Each committee member shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Removal of Committee Member

Sec. [2] *3.* [Any] *A* member of [any] *a* committee or subcommittee appointed pursuant to this Article [VIII] may be removed from such committee or subcommittee *only by a majority vote of the whole Board,* after appropriate notice, for refusal, failure, neglect, or inability to discharge [his] *such member's* duties [or for any cause the sufficiency of which shall be decided by the Board].

[Resolution of the Board of Governors

Interpretations and Explanations

The Executive Committee be and hereby is authorized and directed to consider and make recommendations to the Board of Governors with respect to such interpretative questions, having to do with the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Code of Procedure of the Association, as may from time to time be submitted to the Committee by the Board of Governors or the President.

Where a decision is required as to which reasonable men, equally well informed, might well not differ, the ruling shall be deemed to be an explanation. Where a decision is required where reasonable men, equally well informed, might well differ, the ruling shall be deemed to be an interpretation.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer clearly in the nature of an explanation, such question may be answered in the office of the President.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer in the nature of an interpretation, the President shall present such question to the Executive Committee.

The President may, after consultation with and upon advice of Counsel, give an office opinion. Such office opinion shall state that it reflects only the opinion of the office of the President and it is provisional and subject to the approval of the Board of Governors.

District Committees, District Business Conduct Committees, Counsel or staff thereof, are hereby directed not to issue any interpretations of the Certificate of Incorporation, By-Laws, Rules of Fair

Practice or Code of Procedure, either in oral or written form without presentation of the question to the President and in such case, if the questions presented appear to be an interpretation with the meaning of this resolution the matter shall be presented in writing to the Executive Committee.]

Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the NASD between meetings of the Board, and which may authorize the seal of the NASD to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than five and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, at least one Director of Nasdaq, and at least two Governors who are not Directors of NASD Regulation or Nasdaq. The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

(c) An Executive Committee member shall hold office for a term of one year.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Audit Committee

Sec. 5. (a) The Board shall appoint an Audit Committee. The Audit Committee shall consist of four or five Governors, none of whom shall be officers or employees of the Association. A majority of the Audit Committee members shall be Non-Industry Governors. The Audit Committee shall include two Public Governors. A Public Governor shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(b) The Audit Committee shall perform the following functions: (i) ensure the existence of adequate controls and the integrity of the financial reporting process of the NASD; (ii) recommend to the NASD Board, and monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD; and (iii) direct and oversee all the activities of the NASD's internal review function, including but not limited to management's responses to the internal review function.

(c) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company, or individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of the NASD to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(d) The Audit Committee shall have exclusive authority to: (i) hire or terminate the Director of Internal Review; (ii) determine the compensation of the Director of Internal Review; and (iii) determine the budget for the Office of Internal Review. The Office of Internal Review and the Director of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters the Audit Committee deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

(e) At all meetings of the Audit Committee, a quorum for the transaction of business shall consist of a majority of the Audit Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Finance Committee

Sec. 6(a) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the NASD, including recommendations for the NASD's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD.

(b) The Finance Committee shall consist of four or more Governors. The Chief Executive Officer of the NASD shall be a member of the Finance Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the Chief Executive Officer of the NASD. A Finance Committee member shall hold office for a term of one year.

(c) At all meetings of the Finance Committee, a quorum for the transaction of business shall consist of a majority of the Finance Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Article X

Compensation of Board and Committee Members

[Article VII, Sec. 5.] *Sec. 1.* The Board may provide for reasonable compensation of the [Chairman] *Chair* of the Board, *the* Governors, and the members of any committee [of the Board from the Corporation]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the [Corporation] *NASD.*

Article [IX] *XI*

Rules

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the [Corporation] *NASD*, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the [Corporation] *NASD* and of the Act, the Board [of Governors] is hereby authorized to adopt such [Rules of Fair Practice] *rules* for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such [Rules] *rules* or amendments thereto are approved by the Commission as provided in the Act, they shall become effective Rules of the Association as of such date as the Board [of Governors] may prescribe. The Board [of Governors] is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of [Fair Practice] *the Association* adopted hereunder.

Article [X] *XII*

Disciplinary Proceedings

Sec. 1. The Board [of Governors] shall have authority to establish procedures relating to disciplinary proceedings involving members and their associated persons.

Sec. 2. Except as otherwise permitted under these By-Laws or the Act, in any disciplinary proceeding [before the Corporation] *under the Rules of the Association*, any member or person associated with a member shall be given the opportunity to have a hearing at which [he] *such member or person associated with a member* shall be entitled to be heard in person [and/or by counsel] *or by counsel or by a representative as provided in the Rules of the Association.* Such persons may present any relevant material *in accordance with the Rules of the Association.* In any such proceeding against a member or against a person associated with a member to determine whether the member [and/or] *or* the person associated with a member shall be disciplined:

(a) Specific charges shall be brought;

(b) Such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;

(c) A record shall be kept; and

(d) Any determination shall include a statement setting forth:

[(1)] *(i)* Any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;

[(2)] *(ii)* The rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

[(3)] *(iii)* The basis upon which any findings are made; and

[(4)] *(iv)* The [penalty] *sanction* imposed.

Article [XI] *XIII*

Powers of Board to [Prescribe] *Impose* Sanctions

Sec. 1. The Board is hereby authorized to [prescribe] *impose* appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to [prescribe] *impose* appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) Breach by a member or a person associated with a member of any covenant with the [Corporation] *NASD* or its members;

(b) Violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the [rules of the Corporation] *By-Laws of the NASD, NASD Regulation, or Nasdaq, the Rules of the Association,* or the federal securities laws, including the rules and regulations adopted thereunder, [and including] *the* rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) Failure by a member or person associated with a member to: *(i)* Submit a dispute for arbitration [under the Code of Arbitration Procedure ("Arbitration Code")] as required by the [Arbitration Code] *Rules of the Association*[,]; [or to fail to] *(ii)* appear or [to] produce any document in [their] *the member's or person's* possession or control as directed pursuant to [provisions of] the [Arbitration Code] *Rules of the Association*[,]; [or to fail to honor] *(iii) comply with* an award of arbitrators properly rendered pursuant to the [Arbitration Code] *Rules of the Association*, where a timely motion [has not been made] to vacate or modify such award *has not been made* pursuant to applicable law *or where such a motion has been denied; or (iv) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Association;*

(d) Refusal by a member or person associated with a member to abide by an official ruling of the Board or any committee exercising powers assigned by the Board with respect to any transaction which is subject to the Uniform Practice Code; or

(e) Failure by a member or person associated with a member to adhere to any ruling, order, direction, or decision of[,] or to pay any [penalty,] *sanction*, fine, or costs[,] imposed by the Board[, or any committee exercising powers assigned by the Board] *or any entity to which the Board has delegated its powers in accordance with the Delegation Plan.*

Sec. 2. The Board may delegate its authority under this Article in accordance with the Delegation Plan.

Article [XII] *XIV*

Uniform Practice Code

Authority to Adopt Code

Sec. 1. The Board [of Governors] is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto, designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and basis prices, due-bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, marking to the market, and close-out procedure, all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board [of Governors] pursuant to Section 1 [of this Article], shall be vested in the Board [of Governors], and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. [The] *In accordance with the Delegation Plan, the* Board may delegate to [appropriate committees such of its

powers,] *the NASD Regulation Board and the Nasdaq Board such of the Board's powers* hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. All over-the-counter transactions in securities by members, except transactions in securities which are exempted under Section 3(a)(12) of the Act, or are municipal securities as defined in Section 3(a)(29) of the Act, are subject to the provisions of the Uniform Practice Code and to the provisions of Section 2 [of this Article] unless exempted therefrom by the terms of the Uniform Practice Code.

Article [XIII] *XV* Limitation of Powers Prohibitions

Sec. 1. Under no circumstances shall the Board [of Governors] or any officer, employee, or member of the [Corporation] *NASD* have the power to:

(a) Make any donation or contribution from the funds of the [Corporation] *NASD* or to commit the [Corporation] *NASD* for the payment of any donations or contributions for political or charitable purposes; or

(b) Use the name of the facilities of the [Corporation] *NASD* in aid of any political party or candidate for any public office.

Use of Name of [Corporation] *the NASD* by Members

Sec. 2. No member shall use the name of the [Corporation] *NASD* except to the extent that may be [authorized by the Board of Governors] *permitted by the Rules of the Association.*

[Resolution of the Board of Governors

Limitations Upon Use of the Association Name

Members are permitted, in conformity with Article XVI, Section 2 of the Association's By-Laws, and within the limitations prescribed by this Resolution, to indicate membership in the Association in the following manner:

1. Solely as a matter of record in recognized trade directories or other similar types of business listings.

2. Solely in conjunction with the identifying use of the firm name on letterheads, booklet covers, sales literature headings, in the masthead of market letters and on other similar types of circular material, so long as this use is exclusively for identification purposes, is separate and apart from the regular text of the literature and is always in a smaller size type and with lesser emphasis than that used for the firm name.

3. The Association's name may be used in institutional or any other type of general print and/or electronic advertising media so long as such use is solely and exclusively for identifying the firm as a member, used only in proximity to and in conjunction with the firm name, carries no implied or specific indication of Association approval of the securities or services discussed in the advertisement, is separate and apart from the primary text material in the advertisement, and is always in a smaller size type and of lesser emphasis than that used for the firm name.

4. The following language may be used on confirmation forms, "this transaction (if over-the-counter) has been executed in conformity with the rules and regulations of the Uniform Practice Code of the National Association of Securities Dealers, Inc."

5. The name of the Association may be used on the door or entrance way of a member's principal office or any registered branch office in the following manner: "Member, (of the) National Association of Securities Dealers, Inc."

6. Each member shall be entitled to receive upon request to the Association an appropriate certification of membership which may be displayed in the principal office or any registered branch office of the member. Such certification shall be and remain the property of the Association and shall be returned by a member upon request of the Board of Governors or the President of the Association.

No member or person associated with a member shall use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any specific security or in connection with any other aspect of the member's business; or imply orally, visually or in writing that the Association endorses, indemnifies or guarantees any member's business practices, selling methods or class or type of securities offered.

Any improper, fraudulent or misleading use of the Association's name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Association's Rules of Fair Practice.]

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board [of Governors] or of any committee[,] shall have any power to incur or contract any liability on behalf of the [Corporation] *NASD* not authorized by the Board [of Governors]. The Board may delegate to the Chief Executive Officer of the [Corporation or his delegate] *NASD or the Chief Executive Officer's delegate*[,] such authority as it deems necessary to contract on behalf of the [Corporation] *NASD* or to satisfy unanticipated liabilities during the period between Board meetings.

Conflicts of Interest

Sec. 4. *(a)* A *Governor or a* member of [the Board of Governors or of any] *a* committee [of the Corporation] shall not directly or indirectly participate in any adjudication of the interests of any party if such [participation would violate the] *Governor or committee member has a* conflict of interest [provisions of the Procedural Rules of the Corporation] *or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.*

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation or Nasdaq.

Municipal Securities

Sec. 5. The provisions of the By-Laws conferring rulemaking authority upon the Board [of Governors] shall not be applicable to the municipal securities activities of members or persons associated with members to the extent that the application of such authority would be inconsistent with Section 15B of the Act.

[Government Securities

Sec. 6. The provisions of the By-Laws governing qualifications of members and persons associated with members and conferring rulemaking authority upon the Board of Governors shall not be applicable to the Government securities activities of members or persons associated with members to the extent that the application of such provisions or authority would be inconsistent with Section 15A(f) of the Act.]

Article [XIV] *XVI*

Procedure for Adopting Amendments to By-Laws

Sec. 1. [Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members,] *A Governor or a committee appointed by the Board* may propose amendments to these By-Laws. *Any 25 members of the NASD by petition signed by such members may propose amendments to these By-Laws.* Every proposed amendment shall be presented in writing to the Board [of Governors], and a record shall be kept thereof. The [Board of Governors] *Board* may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the [members of the Board of] Governors then in office. The Board [of Governors], upon adoption of any such amendment to these By-Laws, except as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the [Corporation] *NASD*. If such amendment to these By-Laws is approved by a majority of the members voting within [thirty (30)] *30* days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board [of Governors] may prescribe.

Article [XV] *XVII*

Corporate Seal

Sec. 1. The corporate seal shall have inscribed thereon the name of the [Corporation] *NASD*, the year of its organization and the words "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

Article [XVI] *XVIII*

Checks

Sec. 1. All checks or demands for money and notes of the [Corporation] *NASD* shall be signed by such officer or officers or such other person or persons as the Board [of Governors] may from time to time designate.

Article [XVII] *XIX*

Annual Financial Statement

Sec. 1. As soon as practicable after the end of each fiscal year, the Board [of Governors] shall send to each member of the [Corporation] *NASD* a reasonably itemized statement of receipts and expenditures of the [Corporation] *NASD* for such preceding fiscal year.

Article XX

Record Dates

Fixing of Date by Board

Sec. 1. In order that the NASD may determine the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, pursuant to Section 213 of the General Corporation Law of the State of Delaware. Only such members as shall be members of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent.

Default Date

Sec. 2. If no record date is fixed by the Board, the record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

Adjournment

Sec. 3. A determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Article XXI

Meetings of Members

Annual Meeting

Sec. 1. The annual meeting shall be on such date and at such place as the Board shall designate. The business of the meeting shall include: (a) election of the members of the Board pursuant to Article VII, Section 13; and (b) the proposal of business (i) by or at the direction of the Chairman of the Board or the Board, or (ii) by any member entitled to vote at the meeting who complied with the notice procedures set forth in Section 3 and was a member at the time such notice was delivered to the Secretary of the NASD.

Special Meetings

Sec. 2. A special meeting shall be on such date and at such place as the Board shall designate. Only such business shall be conducted at a special meeting as shall have been brought before the meeting pursuant to Section 3(a); provided, however, that in no event shall the announcement to the members of an adjournment of a special meeting commence a new time period for the giving of notice.

Notice of Meeting; Member Business

Sec. 3. (a) Notice of each meeting shall be written or printed; shall state the date, time, and place of the meeting; shall state the purpose or purposes for which the meeting is called; and unless it is the annual meeting, indicate that the notice is being issued at the direction of the person or persons calling the meeting. The Secretary of the NASD shall deliver the notice to the Executive Representative of each member entitled to vote not less than 30 days nor more than 60 days before the date of an annual meeting and not less than ten days nor more than 60 days before the date of a special meeting. If mailed, the notice shall be deemed to be delivered when deposited with postage in the United States mail and addressed to the Executive Representative of the member as it appears on the records of the NASD. Such further notice shall be given as may be required by law. Meetings may be held without notice if all members entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present. Any previously scheduled meeting of the members may be postponed and any special meeting of the members may be canceled by resolution of the Board upon notice given to the members prior to the time previously scheduled for the meeting.

(b) For business other than the election of Governors to be brought properly before an annual meeting by a member pursuant to Section 1, the member must have given timely notice thereof in writing to the Secretary of the NASD and such other business must otherwise be a proper matter for member action. To be timely, a member's notice shall be delivered to the Secretary at the NASD's principal

executive offices within 30 days after the date of the notice of the meeting. Such member's notice shall set forth a brief description of the business desired to be brought before the meeting, any material interest of the member in such business, and the reasons for conducting such business at the meeting. In no event shall the announcement to the members of an adjournment of an annual meeting commence a new time period for the giving of a member's notice as described above.

(c) Except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether any nomination or other business proposed to be brought before the meeting pursuant to subsection (b) or Article VII, Section 10 was made in accordance with the procedures set forth herein and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination or proposal shall be disregarded.

Inspector

Sec. 4. At each meeting of the members, the polls shall be opened and closed, the proxies and ballots received and taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided by an inspector appointed by the Secretary of the NASD before the meeting, or in default thereof by the chairman of the meeting. If the inspector previously appointed fails to attend or refuses or is unable to serve, a substitute shall be appointed by the chairman of the meeting. The inspector shall not be a Governor, officer, or employee of the NASD or a director, officer, partner, or employee of an NASD subsidiary or member.

Conduct of Meetings

Sec. 5. The chairman of the meeting shall be the Chief Executive Officer of the NASD or his or her designee. The date and time of the opening and closing of the polls for each matter upon which the members will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of members as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of the chairman of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) The establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to members, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of members shall not be required to be held in accordance with the rules of parliamentary procedure.

* * * * *

By-Laws of NASD Regulation, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "Board" means the Board of Directors of NASD Regulation;

(c) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) "Commission" means the Securities and Exchange Commission;

(e) "day" means calendar day;

(f) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) "Delaware law" means the General Corporation Law of the State of Delaware;

(h) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(i) "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) "district" means a district established by the Board pursuant to Article VIII, Section 8.1 of these By-Laws;

(k) "District Committee" means a District Committee elected pursuant to Article VIII of these By-Laws;

(l) "District Director" means an NASD Regulation staff member who heads a district office;

(m) "District Nominating Committee" means a District Nominating Committee elected pursuant to Article VIII of these By-Laws;

(n) "district office" means an office of NASD Regulation located in a district;

(o) "Executive Representative" means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(p) "Independent Agent" means a corporation or entity selected by the Secretary of NASD Regulation to assist NASD Regulation with nomination and election procedures under Articles VI and VIII of these By-Laws and the representatives of such corporation or entity;

(q) "Industry Director" or "Industry member" means a Director (excluding the President) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(r) "NASD" means the National Association of Securities Dealers, Inc.;

(s) "NASD Board" means the NASD Board of Governors;

(t) "NASD member" means any broker or dealer admitted to membership in the NASD;

(u) "NASD Regulation" means NASD Regulation, Inc.;

(v) "National Adjudicatory Council" means a body appointed pursuant to Article V of these By-Laws.

(w) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(x) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(y) "person associated with a member" or "associated person of a member" means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(z) "Public Director" or "Public member" means a Director or National Adjudicatory Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(aa) "Regional Nominating Committee" means a Regional Nominating Committee that nominates to the National Nominating Committee a candidate for the National Adjudicatory Council to represent a geographical region as provided in Article VI of these By-Laws; and

(bb) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] II

Offices

Location

Sec. [1.1] *2.1* The address of the registered office of [the Corporation] *NASD Regulation* in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] *Street,* Wilmington, [DE] *Delaware* 19801. [The Corporation may] *NASD Regulation* also *may* have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] *NASD Regulation* may require.

Change of Location

Sec. [1.2] *2.2* In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] *NASD Regulation's* registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article [II] III

Meetings of the [Stockholders] Stockholder

[Annual Meeting

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings

Sec. 2.3(a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.]

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum, the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting

Sec. 2.5(a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question, except as otherwise provided in the Certificate of Incorporation. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

[(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of [Stockholders] Stockholder

Sec. [2.7]*3.1* Any action required[,] or permitted by law to be taken at any meeting of *the* [stockholders] *stockholder* of [the Corporation] *NASD Regulation* may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the [holders] *holder* of the outstanding stock [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing].

Article [III] IV

Board of Directors

General Powers

Sec. [3.1]*4.1* The property, business, and affairs of [the Corporation] *NASD Regulation* shall be managed by or under the direction of the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] *NASD Regulation* and have the authority to perform all such lawful acts as are permitted by law, the *Restated* Certificate of Incorporation [or], these By-Laws, *or the Delegation Plan* to assist the [National Association of Securities Dealers, Inc.] *NASD* in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Securities Exchange Act of 1934, and] *Act, and to* support such other initiatives as the Board [of Directors] may deem appropriate. *To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.*

Number of Directors

Sec. [3.2]*4.2* [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors that shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors; provided that such determination shall be consistent with the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries [the "Delegation Plan").] *The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of NASD Regulation from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of directors on the Nasdaq Board. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.*

Qualifications

Sec. [3.3]*4.3* *(a)* Directors need not be stockholders of [the Corporation. The Board of Directors shall include at all times the President of the Corporation and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Directors, which determination shall be consistent with the Delegation Plan. The criteria for the categories of Industry, Non-Industry, and Public Directors, as used herein, shall be established by the Board of Directors from time to time, which criteria shall be consistent with the Delegation Plan.] *NASD Regulation. Only Governors of the NASD Board shall be eligible for election to the Board. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors plus the President. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member. The Board shall include at least one Public Director, unless the Board consists of eight Directors. In such case, at least two Directors shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.*

(b) As soon as practicable, following the annual election of Directors, the Board shall elect from its members a Chair and a Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Election

Sec. [3.4]*4.4* Except as otherwise provided by law [or], these By-Laws, or *the Delegation Plan*, after the first meeting of [the Corporation] *NASD Regulation* at which [directors] *Directors* are elected, [directors of the Corporation] *Directors of NASD Regulation* shall be elected each year at the annual meeting of [stockholders] *the stockholder*, or at a special meeting called for such purpose in lieu of the annual meeting [, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor*, the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

[Term

Sec. 3.5 (a) Each Director shall hold office for a term of three years or until his successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal with or without cause, or other reason.]

[(b) The Board of Directors shall be divided into three classes.]

[(c) The President of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, or removal.]

[(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's current term.]

[(e) Each director chosen to fill a newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6] 4.5 Any [director] Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7] 4.6 Any or all of the [directors] Directors may be removed from office at any time, with or without cause, [by the stockholders] only by a majority vote of the NASD Board.

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification (Industry, Non-Industry, or Public Director) for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. [3.8]*4.9*(a) At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute], unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors. In the absence of a quorum, a majority of the [directors] Directors present may adjourn the meeting until a quorum [be] is present.

(b) [A director interested in a matter to be acted upon by the Board of Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors that determines the Corporation's action.]

[(c) Subject to the restrictions of Section 3.12] Except as provided in Section 4.14(b), the vote of a majority of the [directors] Directors present at a meeting at which a quorum is present shall be the act of the Board [of Directors].

Regulation

Sec. [3.9]4.10 The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation,] NASD Regulation not inconsistent with the law, the Restated Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director shall, in the performance of [his or her] such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] NASD Regulation by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] NASD Regulation, or in relying in good faith upon other records of [the Corporation] NASD Regulation.

Meetings

Sec. [3.10]4.11(a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] the stockholder, no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] 4.12.

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] 4.12.

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] Directors then in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] Director in accordance with Section [3.11 of these By-Laws] 4.12.

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] A Director or member of any committee appointed by the Board may participate in a meeting of the Board [of Directors] or of such committee through the use of a conference telephone or similar communications [facilities that ensure] equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11]4.12(a) Notice of any meeting of the Board [of Directors] shall

be deemed to be duly given to a [director] Director if: (i) [if] mailed to the address last made known in writing to [the Corporation] NASD Regulation by such [director] Director as the address to which such notices are to be sent, at least [two] seven days before the day on which such [special] meeting is to be held[, or]; (ii) [if] sent to the [director] Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held[,]; or (iii) [if] delivered to the [director] Director personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] Director if waived by that [director] Director in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] Director is present at such meeting, subject to [Section 7.3(b) hereof] Article XII, Section 12.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13]4.13(a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], appoint one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] such member or [they] members constitute a quorum, may unanimously appoint another [member of the Board of Directors] Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors, subject, however, to removal, with or without cause, at any time by the vote of a majority of the whole Board of Directors]. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) [Any committee, to the extent permitted by law and to the extent provided in the] The Board may, by resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to NASD Regulation by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [the Corporation, and] NASD Regulation to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [the Corporation] NASD Regulation to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no [such] committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [the Corporation,] NASD Regulation; adopting an agreement of merger or consolidation; recommending to the [stockholders] stockholder the sale, lease, or exchange of all or substantially all [the Corporation's] NASD Regulation's property and assets; or recommending to the [stockholders] stockholder a dissolution of [the Corporation] NASD Regulation or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.

[(c)] (d) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

[(d)] (e) Unless otherwise provided by [the Board of Directors] these By-Laws, a majority of [any such] a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Regulation between meetings of the Board, and which may authorize the seal of NASD Regulation to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of NASD Regulation, including recommendations for NASD Regulation's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD Regulation. The Finance Committee shall consist of three or four Directors. The President of NASD Regulation shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(h) Upon request of the Secretary of NASD Regulation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of NASD Regulation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of NASD Regulation, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. [3.12] 4.14 (a) [No member of the Board of Directors or of any committee of the Corporation shall] A Director or a National Adjudicatory Council or committee member shall not directly or indirectly participate in any adjudication of the interests of any party [that would at the same time substantially affect his interest or the interests of any person in whom he is directly or indirectly interested] if that Director or National Adjudicatory Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the [member shall disqualify himself or shall be disqualified by the Chairman of the Board or Committee] Director or National Adjudicatory Council or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between [the Corporation] NASD Regulation and one or more of its [directors] Directors or officers, or between [the Corporation] NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its [directors] Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] if: (i) The material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) The material facts pertaining to such director's or officer's relationship or interest and] by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] is entered into, and the Board or committee in good faith [authorizes] ratifies the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] Directors; or (iii) the material facts pertaining to the [director's] Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board [of Directors,] or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and the NASD or Nasdaq.

Action Without Meeting

Sec. [3.14]4.15 Any action required or permitted to be taken at [any] a meeting of the Board [of Directors or any] or of a committee [thereof] may be taken without a meeting if all Directors or all members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such] or the committee.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 *NASD* Regulation, the Board, any committee, the National Adjudicatory Council, and NASD Regulation staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD By-Laws. A Director, committee member, or National Adjudicatory Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of NASD Regulation, the Board, the National Adjudicatory Council, or any committee. NASD Regulation, the Board, the National Adjudicatory Council, any committee, and the NASD Regulation staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to these By-Laws or the NASD By-Laws.

[Article V Indemnification

Indemnification of Directors, Officers, Employees and Agents Right to Indemnification

Sec. 5.1 The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (an "indemnitee"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such indemnitee, notwithstanding the foregoing, but subject to Section 5.3 hereof, the corporation shall be required to indemnify an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if the initiation of such proceeding (or part thereof) by the indemnitee was authorized by the Board of Directors.]

[Payment of Expenses

Sec. 5.2 The corporation shall pay the expenses (including attorneys' fees) incurred by the persons set forth in Section 5.1 in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article or otherwise.]

[Nonexclusivity of Rights

Sec. 5.3 The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the

Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.]

[Other Indemnification

Sec. 5.4 The corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.]

[Amendment or Repeal

Sec. 5.5 Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.]

[Indemnification Insurance

Sec. 5.6 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.]

Article V National Adjudicatory Council

Appointment and Authority

Sec. 5.1 The Board shall appoint a National Adjudicatory Council. The National Adjudicatory Council may be authorized to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions authorized by the Rules of the Association. The National Adjudicatory Council also shall consider and make recommendations to the Board on policy and rule changes relating to the business and sales practices of NASD members and associated persons and enforcement policies, including policies with respect to fines and other sanctions. The Board may delegate such other powers and duties to the National Adjudicatory Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.

Number of Members and Qualifications

Sec. 5.2 (a) The National Adjudicatory Council shall consist of no fewer than 12 and no more than 14 members. The number of Non-Industry members, including at least three Public members, shall equal or exceed the number of Industry members. In 1999 and thereafter, the Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1.

(b) As soon as practicable following the appointment of members, the National Adjudicatory Council shall elect a Chair and a Vice Chair from among its members. The Chair and Vice Chair shall have such powers and duties as may be determined from time to time by the National Adjudicatory Council. The Chair also shall serve as a Director of the NASD Regulation Board and a Governor of the NASD Board for a one-year term as provided in the By-Laws and Restated Certificate of Incorporation of the NASD and these By-Laws. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair or Vice Chair from such position at any time for refusal, failure, neglect, or inability to discharge his or her duties.

Nomination Process

Sec. 5.3 (a) Each Regional Nominating Committee shall nominate an Industry member for consideration by the National Nominating Committee as provided in Article VI and subsection (b) of this Section.

(b) The Secretary of NASD Regulation shall collect from each nominee for the office of member of the National Adjudicatory Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public member, and the Secretary shall certify to the National Nominating Committee each nominee's classification. After appointment to the National Adjudicatory Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such classification.

Term of Office

Sec. 5.4 (a) Except as otherwise provided in this Article, each National Adjudicatory Council member shall hold office for a term of two years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) In 1998, each National Adjudicatory Council member shall hold office for a term of one year or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(c) Beginning in January 1999 and thereafter, the National Adjudicatory Council shall be divided into two classes. The term of office of those of the first class shall expire in January 2000, and the term of office of those of the second class shall expire one year thereafter. Beginning in January 2000, members shall be appointed for term of two years to replace those whose terms expire.

(d) Beginning in 2000, no member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Resignation

Sec. 5.5 A member of the National Adjudicatory Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 5.6 Any or all of the members of the National Adjudicatory Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Disqualification

Sec. 5.7 Notwithstanding Section 5.4, the term of office of a National Adjudicatory Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) the member no longer satisfies the classification (Industry, Non-Industry, or Public member) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the National Adjudicatory Council set forth in Section 5.2. If the term of office of a National Adjudicatory Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the National Adjudicatory Council shall not be deemed to be in violation of Section 5.2 by virtue of such vacancy.

Filling of Vacancies

Sec. 5.8 If a position on the National Adjudicatory Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall appoint a person satisfying the classification (Industry, Non-Industry, or Public member) for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 5.9 At all meetings of the National Adjudicatory Council, a quorum for the transaction of business shall consist of a majority of the National Adjudicatory Council, including not less than 50 percent of the Non-Industry members. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Meetings

Sec. 5.10 The members of the National Adjudicatory Council may participate in a meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Article VI

National Adjudicatory Council Regional Nominations for Industry Members

Establishment of Regions

Sec. 6.1 The Board shall establish boundaries for geographical regions within the United States for the purpose of nominating candidates for membership on the National Adjudicatory Council to the National Nominating Committee. The Board may make changes from time to time in the number or boundaries of the regions as the Board deems necessary or appropriate in accordance with Article V, Section 5.2(a). The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new region configuration in the event of a change in the number or boundaries of the regions.

Composition

Sec. 6.2 (a) A Regional Nominating Committee shall be elected for each region designated by the Board under Section 6.1. Each District Nominating Committee for a district located in the region shall elect two District Committee members from the district to serve on the Regional Nominating Committee. If a region shall consist of one district, the District Nominating Committee for the district shall elect four District Committee members from the district to serve on the Regional Nominating Committee.

(b) In the event of the refusal, failure, neglect, or inability of a member of a Regional Nominating Committee to discharge his or her duties, the Regional Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the Regional Nominating Committee then in office and declare the member's position vacant. The Regional Nominating Committee shall notify the Regional Nominating Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 6.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the Regional Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the Regional Nominating Committee.

Term of Office

Sec. 6.3 Each regularly elected member of a Regional Nominating Committee shall hold office for a term of two years, or until a successor is elected and qualified, or until death, resignation, or removal. A member of a Regional Nominating Committee may not serve more than three consecutive terms.

Filling of Vacancies

Sec. 6.4 In the event of a vacancy on a Regional Nominating Committee caused by the departure of a member prior to the expiration of the member's term of office, the District Nominating Committee that elected the member shall appoint by majority vote another member of the District Committee to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.

Meetings

Sec. 6.5 Meetings of a Regional Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each Regional Nominating Committee in its discretion may determine. A quorum of a Regional Nominating Committee shall consist of a majority of its members, and any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a Regional Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Regional Nominating Committee.

Election of Officers

Sec. 6.6 Following the annual election of members of the Regional Nominating Committees pursuant to this Article, each Regional Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

Expenses

Sec. 6.7 Funds to meet the regular expenses of each Regional Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 6.8 On or before August 1, 1998, the Secretary of NASD Regulation shall send a written notice to the Chair of each Regional Nominating Committee to initiate the process for nominating an individual to represent the region on the National Adjudicatory Council for a term of office of one or two years, as determined by the Board, beginning in 1999. On or before August 1, 1999, and annually thereafter, the Secretary of NASD Regulation shall send a written notice to the chair of a Regional Nominating Committee if the term of office of the National Adjudicatory council member representing the region shall expire in the next calendar year. The notice shall describe the

nomination procedures for filling the office.

Solicitation of Candidates

Sec. 6.9 NASD Regulation staff shall provide the Regional Nominating Committee with a description of the NASD membership in the region. The Regional Nominating Committee shall identify and solicit candidates to nominate to the National Nominating Committee for the office of National Adjudicatory Council member. The Regional Nominating Committee Chair shall send a written notice of the upcoming nomination to the Executive Representative and each branch office of the NASD members in the region and request that such NASD members submit names of candidates to the Regional Nominating Committee or the Secretary of NASD Regulation for consideration.

Secretary's Notice to NASD Members

Sec. 6.10 The Secretary of NASD Regulation shall send a written notice to NASD members in the region describing the nomination procedures.

Regional Nominating Committee Candidate

Sec. 6.11 The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD Regulation staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.

Notice of Regional Nominating Committee Candidate

Sec. 6.12 The Regional Nominating Committee shall send to the Executive Representatives and branch offices of the NASD members in the region a written notice of the name of the candidate or candidates the Regional Nominating Committee proposes for nomination to the National Nominating Committee.

Designation of Additional Candidates

Sec. 6.13 If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD Regulation within 14 calendar days after the mailing date of the Regional Nominating Committee's notice under Section 6.12. The Regional Nominating Committee Chair or the Secretary of NASD Regulation shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 6.14 (a) The Secretary of NASD Regulation shall mail a list of all NASD members eligible to vote in the region and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the Regional Nominating Committee Chair or the Secretary of NASD Regulation.

(b) An NASD member that has its principal office, one or more registered branch offices, or a principal office and one or more registered branch offices in the region shall be eligible to cast one vote on the nomination through the NASD member's Executive Representative.

Requirement for Petition Supporting Additional Candidate

Sec. 6.15 An additional candidate shall be proposed for nomination if a petition signed by at least ten percent of the NASD members eligible to vote in the region is filed with the Regional Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 6.14. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Nomination

Sec. 6.16 If the Regional Nominating Committee proposes one candidate for nomination and no additional candidate is proposed for nomination pursuant to Section 6.15, the Regional Nominating Committee shall nominate its candidate to the National Nominating Committee.

Notice of Contested Nomination

Sec. 6.17 If the Regional Nominating Committee proposes more than one candidate for nomination, or if an additional candidate is proposed for nomination pursuant to Section 6.15, the Regional Nominating Committee shall send a written notice to the Executive Representatives of the NASD members eligible to vote in the region announcing the names of the candidates and describing contested nomination procedures.

Administrative Support

Sec. 6.18 The Secretary of NASD Regulation shall designate a district office in the region to provide administrative support to all candidates by sending to NASD members eligible to vote in the region up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinion of the candidate. The candidate shall provide a copy of such material for each member of the NASD in the region. A candidate proposed for nomination by the Regional Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional mailings to NASD members at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, the National Adjudicatory Council, and NASD Regulation staff shall not provide any other administrative support to a candidate for the nomination under this Article or any candidate in a contested election conducted under Article VII of the NASD By-Laws.

Ballots

Sec. 6.19 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the Regional Nominating Committee shall prepare a ballot with the name or names of its candidate and any additional candidates proposed for nomination pursuant to Section 6.15. The ballot shall list the candidates in alphabetical order and shall identify the candidate or candidates proposed for nomination by the Regional Nominating Committee. The Regional Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the region. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 30 and no more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 6.20 Eligibility to vote on a regional nomination shall be based on the NASD's membership records as of a date designated by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the region and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 6.21 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the NASD member's address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 6.22 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 6.19. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a specified district office in the region all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the region and their Executive Representatives as prepared by the Secretary of NASD Regulation under Section 6.20. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 6.23 The Independent Agent shall set aside a ballot if: (a) The ballot is received from an NASD member eligible to vote in the region and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 6.20, and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) two or more properly executed ballots are received from an NASD member eligible to vote in the region. If the Independent Agent determines that the ballots set aside are material to the outcome of the nomination, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send proper written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 6.24 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exists:

(a) The ballot is not signed by the Executive Representative (unless Section 6.23 applies);

(b) A vote is not indicated on the ballot; or

(c) A vote for more than one candidate is indicated on the ballot.

Certification of Nomination

Sec. 6.25 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate. The candidate receiving the largest number of votes cast in the region shall be declared the nominee from the region and the Regional Nominating Committee shall nominate such candidate to the National Nominating Committee. In the event of a tie, there shall be a run-off vote for the nomination. The Regional Nominating Committee shall send a written certification of the nomination results to the National Nominating Committee. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Rejection of Regional Nominating Committee Nominee

Sec. 6.26 If the National Nominating Committee rejects the nominee of the Regional Nominating Committee, the Regional Nominating Committee shall repeat the nomination procedures in Section 6.9 through Section 6.25.

Extension of Time and Additional Procedures

Sec. 6.27 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for nominations under this Article.

Article [IV] VII

Officers, Agents, and Employees

Officers

Sec. [4.1]7.1 The Board [of Directors] shall elect the officers of [the Corporation] NASD Regulation, which shall include a President, a Secretary, and such [for] other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice[-] President, Senior Vice [-]President, Vice [-]President, General Counsel, [Secretary] and Treasurer of [the Corporation] NASD Regulation. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Directors]. The terms of office of such officers shall be at the pleasure of the Board [of Directors], which by affirmative vote of a majority of the [members] Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers, except the President, need be [directors of the Corporation] Directors of NASD Regulation.

Absence of the President

Sec. 7.2 In the case of the absence or inability to act of the President of NASD Regulation, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. [4.2]7.3 In addition to the officers, [the Corporation] NASD Regulation may employ such agents and employees as the Board [of Directors] may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors,] may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any agent or employee of the Corporation.] Agents and employees of NASD Regulation shall be under the supervision and control of the officers of the NASD Regulation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. [4.3]7.4 The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] NASD Regulation to any other officer or to any [director] Director for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.4]7.5 (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] of NASD Regulation may be removed, with or without cause, by resolution adopted by a majority of the [directors] Directors then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] NASD Regulation.

Bond

Sec. [4.5]7.6 [The Corporation] NASD Regulation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

[Compensation of Board and Committee Members

Sec. 4.6 The Board of Directors may provide for reasonable compensation of the Chairman of the Board, the Directors, and the members of any committee of the Board or any District Committee from the Corporation. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Corporation.]

Article VIII

District Committees and District Nominating Committees

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist NASD Regulation in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and the Rules of the Association. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Each District Committee member shall be employed in the office of an NASD member eligible to vote in the district. A District Committee shall determine the number of its members to be elected each year. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the Association. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor, in such manner as they deem appropriate, to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of the NASD, NASD Regulation, and Nasdaq in order to foster NASD members' interest and cooperation.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 8.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a term of three years, or until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Committee may not serve more than two consecutive terms.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs. Following the election, the newly elected Committee member shall serve only the duration of the departed Committee member's term.

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Committee in its discretion may determine. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.

Election of District Officers

Sec. 8.6 Following the annual election of members of the District Committees pursuant to this Article, each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each member of a District Nominating Committee shall be employed in the office of an NASD member eligible to vote in the district, but shall not be a member of the District Committee. A District Nominating Committee shall include a majority of persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board, and shall include at least one current or former Director or Governor.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. The member's position shall be filled pursuant to Section 8.11. The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a term of one year, and until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Nominating Committee may not serve more than two consecutive terms.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Nominating Committee in its discretion may determine. A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority of the entire Committee at any meeting, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Nominating Committee.

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 8.15 On or before May 1 of each year, the Secretary of NASD Regulation shall send a written notice to the Chair of each District Nominating Committee and each District Committee identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The notice shall describe election procedures for filling the offices.

Solicitation of Candidates

Sec. 8.16 NASD Regulation staff shall provide the District Nominating Committee with a description of the NASD membership in the district. The District Nominating Committee shall identify and solicit candidates to nominate for the vacancies on the District Committee and the District Nominating Committee. The District Nominating Committee Chair shall send a written notice of the upcoming election to the Executive Representative and each branch office of the NASD members in the district and request that such NASD members submit names of candidates to the District Nominating Committee or the District Director for consideration.

Secretary's Notice to NASD Members

Sec. 8.17 The Secretary of NASD Regulation shall send a written notice to NASD members in the district describing the election procedures.

District Nominating Committee Slate

Sec. 8.18 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one or more candidates for each vacancy. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and all classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself unless the District Nominating Committee first takes appropriate action by a written ballot of the entire NASD membership within the district to ascertain that such nomination is acceptable to a majority of the NASD members in the district, unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4. A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

Certification of Nomination

Sec. 8.19 The District Nominating Committee shall certify to the District Committee each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. Within five calendar days after the certification, the District Committee shall send to the Executive Representatives of NASD members in the district a copy of the certification.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member who meets the qualifications of Section 8.2 is not nominated by the District Nominating Committee and wants to be considered for a vacancy on the District Committee or the District Nominating Committee, he or she shall send a written notice to the District Director within 14 calendar days after the mailing date of the certification to the Executive Representatives pursuant to Section 8.19. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 8.21 (a) The Secretary of NASD Regulation shall provide a list of all NASD members eligible to vote in the district and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the District Director.

(b) An NASD member that has its principal office, one or more registered branch offices, or its principal office and one or more registered branch offices in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each vacancy to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Election

Sec. 8.23 If the District Nominating Committee nominates one candidate for each vacancy and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board.

Notice of Contested Election

Sec. 8.24 If the District Nominating Committee nominates more than one candidate for a vacancy, or if an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The District Committee shall send a notice to the Executive Representatives of the NASD members eligible to vote in the district announcing the names of the candidates and the office to which each candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.25 The District Office shall provide administrative support to all candidates by sending to NASD members eligible to vote in the district up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinion of the candidate. The candidate shall provide a copy of the material for each member of the NASD in the district. Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate may send additional mailings at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.26 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list the candidates in alphabetical order and shall identify the candidates nominated by the District Nominating Committee. The District Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 30 and no more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.27 Eligibility to vote in a district election shall be based on the NASD's membership records as of a date selected by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the district and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 8.28 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.29 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.26. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to the district office all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD Regulation pursuant to Section 8.27. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.30 The Independent Agent shall set aside a ballot if: (a) The ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.27, and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.31 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

(a) the ballot is not signed by the Executive Representative (unless Section 8.30 applies);

(b) a vote is not indicated on the ballot; or

(c) the ballot indicates votes for more candidates than there are vacancies for an office.

Certification of Election

Sec. 8.32 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Committee. The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee. In the event of a tie, there shall be a run-off election. Each District Committee shall send a written certification of the election results to the Board. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.33 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Article IX

Compensation

Compensation of Board, Council, and Committee Members

Sec. 9.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, National Adjudicatory Council members, and the members of any committee of the Board or any District Committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of NASD Regulation.

Article X

Indemnification

Indemnification of Directors, Officers, Employees, Agents, National Adjudicatory Council and Committee Members

Sec. 10.1 (a) NASD Regulation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of NASD Regulation or a National Adjudicatory Council or committee member, or is or was a Director, officer, or employee of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) Any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of NASD Regulation)

against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) Any threatened, pending, or completed action or suit by or in the right of NASD Regulation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) NASD Regulation shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) NASD Regulation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of NASD Regulation or is or was an agent of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) NASD Regulation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by NASD Regulation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) Acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of NASD Regulation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to NASD Regulation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, National Adjudicatory Council or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), NASD Regulation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) NASD Regulation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by NASD Regulation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, NASD Regulation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 10.2 NASD Regulation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, National Adjudicatory Council or committee member, employee, or agent of NASD Regulation, or is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not NASD Regulation would have the power to indemnify such person against such liability hereunder.

Article [VI] XI

Capital Stock

Sole Stockholder

Sec. 11.1 The NASD shall be the sole stockholder of the capital stock of NASD Regulation.

Certificates

Sec. [6.1]11.2 [Each] The stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [the Corporation] NASD Regulation owned by [such] the stockholder.

Signatures

Sec. [6.2]11.3 (a) Certificates for shares of capital stock of [the Corporation] NASD Regulation shall be signed in the name of [the Corporation] NASD Regulation by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] seal of [the Corporation] NASD Regulation or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] NASD Regulation or its employee, or by a registrar other than [the Corporation] NASD Regulation or its employee, any other signature on the certificate may be a facsimile. In [case] the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] NASD Regulation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]11.4 (a) A record of all certificates for capital stock issued by [the Corporation] NASD Regulation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) [The Corporation] NASD Regulation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, [the Corporation] NASD Regulation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] NASD Regulation shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]11.5 (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] shares of capital stock of [the Corporation] NASD Regulation. The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] NASD Regulation only upon delivery to [the Corporation] NASD Regulation or its transfer agent of: (i) A written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[,]; (ii) the certificate for the shares of capital stock being transferred[,]; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]11.6 Each certificate for capital stock surrendered to [the Corporation] NASD Regulation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6] Section 11.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]11.7 In the event that any certificate for shares of capital stock of [the Corporation] NASD Regulation shall be mutilated, [the Corporation] NASD Regulation shall issue a new certificate in place of such mutilated certificate. In [case] the event that any such certificate shall be lost, stolen, or destroyed [the Corporation] NASD Regulation may, in the discretion of the Board [of Directors] or a committee [designated] appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] such owner's representatives, to furnish to [the Corporation] NASD Regulation a bond with an acceptable surety or sureties and in such sum as [will] shall be sufficient to indemnify [the Corporation] NASD Regulation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record Date

Sec. [6.7]11.8 The Board may fix a record date in accordance with Delaware law. [(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, pursuant to and in accordance with Section 213 of the General Corporation Law of the State of Delaware. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.]

Article [VII] XII

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]12.1 The seal of [the Corporation] NASD Regulation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] NASD Regulation, the year of its incorporation, and the words "Corporate Seal" and "Delaware["]." The seal may be used by causing it to be affixed or impressed, or

a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]12.2 The fiscal year of [the Corporation] NASD Regulation shall begin on the [1st] first day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]12.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] stockholder, Directors, or members of a committee of [directors] Directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4]12.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] NASD Regulation by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] NASD Regulation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [the Corporation] NASD Regulation by any principal officer or subordinate officer of [the Corporation] NASD Regulation, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] NASD Regulation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]12.5 Any records maintained by [the Corporation] NASD Regulation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] XIII

Amendments; Emergency By-Laws

By [Stockholders] Stockholder

Sec. [8.1]13.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders] the stockholder, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]13.2 To the extent permitted by the Restated Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors].

Emergency By-Laws

Sec. [8.3]13.3 The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] stockholder that shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] NASD Regulation conducts its business or customarily holds meetings of the Board [of Directors or stockholders] or stockholder, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] under the circumstances of the emergency.

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By-Laws of the NASDAQ Stock Market, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "Board" means the Board of Directors of Nasdaq;

(c) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) "Commission" means the Securities and Exchange Commission;

(e) "day" means calendar day;

(f) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) "Delaware law" means the General Corporation Law of the State of Delaware;

(h) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(i) "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) "Industry Director" or "Industry member" means a Director (excluding the President) or National Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(k) "NASD" means the National Association of Securities Dealers, Inc.;

(l) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(m) "Nasdaq Listing and Hearing Review Council" means a body appointed by the Board pursuant to Article V of these By-Laws;

(n) "NASD Board" means the NASD Board of Governors;

(o) "NASD Regulation" means NASD Regulation, Inc.;

(p) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(q) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or National Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(r) "person associated with a member" or "associated person of a member" means: (1) A natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(s) "Public Director" or "Public member" means a Director or National Listing and Hearing Review Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq; and

(t) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] *II*

Offices

Location

Sec. [1.1]*2.1* The address of the registered office of [the Corporation] *Nasdaq* in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] *Street*, Wilmington, [DE] *Delaware* 19801. [The Corporation] *Nasdaq also* may [also] have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] *Nasdaq* may require.

Change of Location

Sec. [1.2]*2.2* In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] *Nasdaq's* registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article [II] *III*

Meetings of the [Stockholders]

Stockholder

[Annual Meeting

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings

Sec. 2.3 (a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.]

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum,

the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting

Sec. 2.5 (a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest, whether in the stock itself or in the Corporation, sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of Stockholder[s]

Sec. [2.7]*3.1* Any action required[,] or permitted by law to be taken at any meeting of *the stockholder* [stockholders] of [the Corporation] *Nasdaq* may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the [holders] *holder* of the outstanding stock [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who would be entitled to vote thereon at a meeting].

Article [III] *IV*

Board of Directors

General Powers

Sec. [3.1]*4.1* The property, business, and affairs of [the Corporation] *Nasdaq* shall be managed by *or under the direction of* the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] *Nasdaq* and have the authority to perform all such lawful acts as are permitted by law, the *Restated* Certificate of Incorporation [or], these By-Laws, *or the Delegation Plan* for the organization, development, and operation of electronic data processing and communications facilities, including computer hardware and software, for the purposes of: [(i)]*(a)* Supporting the operation, regulation, and surveillance of The Nasdaq Stock Market and other organized securities markets established for trading equity securities, debt securities, derivative instruments, or other financial products that may be developed; [(ii)]*(b)* supporting the efficient clearance and settlement of securities transactions; [(iii)]*(c)* supporting various elements of the national market system pursuant to Section 11A of the [Securities Exchange Act of 1934 ("Exchange Act")] *Act* and the rules thereunder; [(iv)]*(d)* assisting the [National Association of Securities Dealers, Inc.] *NASD* in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Exchange] Act[,]; and [(v)]*(e)* supporting such other initiatives as the Board [of Directors] may deem appropriate. *To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to Nasdaq staff in a manner not inconsistent with the Delegation Plan.*

Number of Directors

Sec. [3.2]*4.2* [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by a majority of the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by a majority of the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors.] *The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of Nasdaq from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the NASD Regulation Board. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.*

Qualifications

Sec. [3.3]*4.3* Directors need not be stockholders of [the Corporation] *Nasdaq. Only Governors of the NASD Board shall be eligible for election to the Board. The President of Nasdaq shall be a Director. The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors plus the President. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.*

Election

Sec. [3.4]*4.4* Except as otherwise provided by law [or], these By-Laws, *or the Delegation Plan*, after the first meeting of [the Corporation] *Nasdaq* at which [directors] *Directors* are elected, [directors of the Corporation] *Directors of Nasdaq* shall be elected each year at the annual meeting of [stockholders] *the stockholder*, or at a special meeting called for such purpose in lieu of the annual meeting[, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor*, the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

[Term

Sec. 3.5 (a) Each director shall hold office for a term of three years or until his successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, with or without cause, or other reason.]

[(b) The Board of Directors shall be divided into three classes.]

[(c) The President of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, or removal.]

[(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's current term.]

[(e) Each Director chosen to fill newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6]*4.5* Any [director] *Director* may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] *is* not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7]*4.6* Any or all of the [directors] *Directors* may be removed from office at any time, with or without cause, *only* by a majority vote of the [stockholders] *NASD Board.*

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) The Director no longer satisfies the classification (Industry, Non-Industry, or Public Director) for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. [3.8]*4.9 (a) At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute], unless otherwise set forth in these By-Laws or required by law,* a quorum for the transaction of business *shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors.* In the absence of a quorum, a majority of the [directors] Directors present may adjourn the meeting until a quorum be present.

(b) [A director interested in a contract or transaction may be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes the contract or transaction.] *Except as provided in Section 4.14(b), the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.*

[(c) The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.]

Regulation

Sec. [3.9]*4.10* The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation] *Nasdaq*, not inconsistent with law, the *Restated* Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] *the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director* shall, in the performance of [his or her] *such Director's* duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] *Nasdaq* by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] *Nasdaq*, or in relying in good faith upon other records of [the Corporation] *Nasdaq*.

Meetings

Sec. [3.10]*4.11* (a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] *the stockholder*, no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] *4.13*.

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] *4.12*.

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] *Directors then* in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] *Director* in accordance with Section [3.11 of these By-Laws.] *4.12*.

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] *Directors or members of any committee appointed by the Board* may participate in a meeting of the Board [of Directors] or of such committee through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11]*4.12* (a) Notice of any meeting of the Board [of Directors] shall be deemed to be duly given to a [director (i) if]*Director if: (i)* Mailed to the address last made known in writing to [the Corporation] *Nasdaq* by such [director] *Director* as the address to which such notices are to be sent, at least [two] *seven* days before the day on which such [special] meeting is to be held[, or]; [ii) [if] sent to the [director] *Director* at such address by telegraph, telefax, cable, radio, or wireless, not

later than the day before the day on which such meeting is to be held[,]; or (iii) [if] delivered to the [director] *Director* personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] *Director* if waived by that [director] *Director* in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] *Director* is present at such meeting, *subject to Article IX, Section 9.3(b).*

(c) Any meeting of the Board [of Directors] shall be a legal meeting without any prior notice if all [directors] *Directors* then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13]*4.13* (a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], *appoint* one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] *Directors* as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] *such member* or [they] *members* constitute a quorum, may unanimously appoint another [member of the Board of Directors] *Director* to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors, subject, however, to removal, with or without cause, at any time by the vote of a majority of the whole Board of Directors]. *Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such committee member's duties.*

(b) [Any committee, to the extent permitted by law and to the extent provided in the] *The Board may, by* resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] *adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to Nasdaq by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board* in the management of the business and affairs of [the Corporation,] *and Nasdaq to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee,* may authorize the seal of [the Corporation] Nasdaq to be affixed to all papers [which] *that* may require it.

(c) Except as otherwise provided by applicable law, no [No such] committee shall have the power or authority *of the Board* with regard to: amending the *Restated* Certificate of Incorporation or the By-Laws of [the Corporation,] *Nasdaq;* adopting an agreement of merger or consolidation; recommending to the [stockholders] *stockholder* the sale, lease, or exchange of all or substantially all [the Corporation's] *Nasdaq's* property and assets; or recommending to the [stockholders] *stockholder* a dissolution of [the Corporation] *Nasdaq* or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of Nasdaq between meetings of the Board, and which may authorize the seal of Nasdaq to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of Nasdaq shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of Nasdaq, including recommendations for Nasdaq's annual operating and capital budgets and proposed changes to the rates and fees charged by Nasdaq. The Finance Committee shall consist of three or four Directors. The President of Nasdaq shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

[(c)]*(f)* Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

[(d)]*(g)* Unless otherwise provided by [the Board of Directors] *these By-Laws*, a majority of [any such] *a* committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(h) Upon request of the Secretary of Nasdaq, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of Nasdaq shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of Nasdaq, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. [3.12]*4.14 (a) A Director or a member of the National Listing and Hearing Review Council or a committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or National Listing and Hearing Review Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or National Listing and Hearing Review Council or committee member shall recuse himself or herself or shall be disqualified.*

(b) No contract or transaction between [the Corporation] *Nasdaq* and one or more of its [directors] *Directors* or officers, or between [the Corporation] *Nasdaq* and any other corporation, partnership, association, or other organization in which one or more of its [directors] *Directors* or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] *if: (i) The material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith* authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) The material facts pertaining to such director's or officer's relationship or interest and] *by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after* the contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] *is entered into, and the Board* or committee in good faith [authorizes] *ratifies* the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] *Directors; or (iii)* the material facts pertaining to the [director's] *Director's* or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] *stockholder* entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] *stockholder. Only disinterested Directors* may be counted in determining the presence of a quorum at *the portion of* a meeting of the Board [of Directors,] or of a committee *that* [which] authorizes the contract or transaction. *This subsection shall not apply to a contract or transaction between Nasdaq and the NASD or NASD Regulation.*

Communication of Views Regarding NASD or NASD Regulation Election or Nomination

Sec. *4.15 Nasdaq, the Board, any committee, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director, committee member, or Nasdaq Listing and Hearing Review Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, or any committee. Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, any committee, and the Nasdaq staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.*

Action Without Meeting

Sec. [3.14]*4.16* Any action required or permitted to be taken at [any] *a* meeting of the Board [of Directors or any] *or of a* committee [thereof] may be taken without a meeting if all *Directors or all* members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such committee] *or the committee.*

Article V

Nasdaq Listing and Hearing Review Council Appointment and Authority

Sec. 5.1 The Board shall appoint a Nasdaq Listing and Hearing Review Council. The Nasdaq Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to listing decisions. The Nasdaq Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Nasdaq Listing and Hearing Review Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.

Number of Members and Qualifications

Sec. 5.2 (a) The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than 11 members, of which not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing Review Council shall include at least three Non-Industry members.

(b) As soon as practicable following the appointment of members, the Nasdaq Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

Nomination Process

Sec. 5.3 The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the National Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such qualifications or classification.

Term of Office

Sec. 5.4 (a) Except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of two years or until a successor is duly

appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Nasdaq Listing and Hearing Review Council shall be divided into two classes. The term of office of those of the first class shall expire in January 1999, and the term of office of those of the second class shall expire one year thereafter. Beginning in January 1999, members shall be appointed for a term of two years to replace those whose terms expire.

(c) Beginning in 1999, no member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Resignation

Sec. 5.5 A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 5.6 Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Disqualification

Sec. 5.7 Notwithstanding Section 5.4, the term of office of a Nasdaq Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) The member no longer satisfies the classification (Industry or Non-Industry) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the Nasdaq Listing and Hearing Review Council set forth in Section 5.2. If the term of office of a Nasdaq Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing Review Council shall not be deemed to be in violation of Section 5.2 by virtue of such vacancy.

Filling of Vacancies

Sec. 5.8 If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 5.9 At all meetings of the Nasdaq Listing and Hearing Review Council, unless otherwise set forth in these By-Laws, a quorum for the transaction of business shall consist of a majority of the Nasdaq Listing and Hearing Review Council, including one Non-Industry member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Meetings

Sec. 5.10 The members of the Nasdaq Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or similar communications equipment by means of which all person participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Article VI

Compensation

Compensation of Board, Council, and Committee Members

Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Nasdaq Listing and Hearing Review Council members, and the members of any committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of Nasdaq.

Article [IV] *VII*

Officers, Agents, and Employees

Principal Officers

Sec. [4.1]*7.1* The principal officers of [the Corporation] *Nasdaq* shall be elected by the Board [of Directors] and shall include a Chair, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board [of Directors]. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board and the President, need be [directors of the Corporation] *Directors of Nasdaq.*

Election of Principal Officers; Term of Office

Sec. [4.2]*7.2* (a) The principal officers of [the Corporation] *Nasdaq* shall be elected annually by the Board [of Directors] at the annual meeting of the Board [of Directors] convened pursuant to Section [3.10(a) of these By-Laws] *4.11(a).* Failure to elect any principal officer annually shall not dissolve [the Corporation] *Nasdaq.*

(b) If the Board [of Directors] shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board [of Directors].

(c) Each principal officer shall hold office until [his or her] *a* successor is duly elected and qualified, or until [his or her earlier] death, resignation, or removal.

Subordinate Officers, Agents, or Employees

Sec. [4.3]*7.3* In addition to the principal officers, [the Corporation] *Nasdaq* may have one or more subordinate officers, agents, and employees as the Board [of Directors] may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors], may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent, or employee of the Corporation.] *Agents and employees of Nasdaq shall be under the supervision and control of the officers of Nasdaq, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.*

Delegation of Duties of Officers

Sec. [4.4]*7.4* The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] *Nasdaq* to any other officer or to any [director] *Director* for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.5]*7.5* (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] *of Nasdaq* may be removed, with or without cause, by resolution adopted by a majority of the [directors] *Directors* then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] *Directors* then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] *Nasdaq.*

Bond

Sec. [4.6]*7.6* [The Corporation] *Nasdaq* may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Chair of the Board

Sec. [4.7]*7.7* The Chair of the Board shall preside at all meetings of the Board [of Directors] at which [he or she] *the Chair* is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Chair* from time to time by the Board [of Directors].

President

Sec. [4.8] *7.8* The President shall, in the absence of the Chair of the Board, preside at all meetings of the Board [of Directors] at which [he or she] *the President* is present. The President shall be the [chief executive officer of the Corporation] *Chief Executive Officer of Nasdaq* and shall have general supervision over the business and affairs of [the Corporation] *Nasdaq.* The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board [of Directors]. The President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the President* from time to time by the Board [of Directors].

Vice President

Sec. [4.9] *7.9 The Board shall elect one or more Vice Presidents.* In the absence or disability of the President or if the office of President [be] *becomes* vacant, the Vice Presidents in the order determined by the Board [of Directors], or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board [of Directors] at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in [his or her] *such Vice President's* title as the Board [of Directors] may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *such Vice President* from time to time by the Board [of Directors] or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Secretary

Sec. [4.10] *7.10* The Secretary shall act as Secretary of all meetings of [stockholders] *the stockholder* and of the Board [of Directors] at which [he or she] *the Secretary* is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of [the Corporation] *Nasdaq*, and shall have supervision over the care and custody of the corporate records and the corporate seal of [the Corporation] *Nasdaq.* The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of [the Corporation] *Nasdaq* under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically [listed] *limited* by a resolution of the Board [of Directors]. The Secretary shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Secretary* from time to time by the Board [of Directors] or the President.

Assistant Secretary

Sec. [4.11] *7.11* In the absence of the Secretary or in the event of [his or her] *the Secretary's* inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Secretary* from time to time by the Board [of Directors] or the Secretary.

Treasurer

Sec. [4.12] *7.12* The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of [the Corporation] *Nasdaq* and shall cause the funds of [the Corporation] *Nasdaq* to be deposited in the name of [the Corporation] *Nasdaq* in such banks or other depositories as the Board [of Directors] may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of [the Corporation] *Nasdaq.* The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board [of Directors]. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to [him] *the Treasurer* from time to time by the Board [of Directors] or the President.

Assistant Treasurer

Sec. [4.13] *7.13* In the absence of the Treasurer or in the event of [his or her] *the Treasurer's* inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Treasurer* from time to time by the Board [of Directors] or the Treasurer.

Article [V] *VIII*

Indemnification of Directors, Officers, Employees, [and] Agents, *Nasdaq Listing and Hearing Review Council and Committee Members*

Sec. [5.1] *8.1* (a) [The Corporation] *Nasdaq* shall indemnify, and hold harmless, to the fullest extent permitted by *Delaware* law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a [director or] *Director*, officer [of the Corporation], *or employee of Nasdaq or a Nasdaq Listing and Hearing Review Council or committee member*, or is or was a [director or] *Director*, officer, *or employee of Nasdaq* who is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other enterprise,], *enterprise, or non-profit entity, including service with respect to employee benefit plans*, is or was a party, or is threatened to be made a party to:

(i) Any threatened, pending, or completed action, suit, or proceeding,

whether civil, criminal, administrative, or investigative (other than an action by or in the right of [the Corporation)] *Nasdaq*) against expenses (including attorneys' fees *and disbursements*), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) Any threatened, pending, or completed action or suit by or in the right of [the Corporation] *Nasdaq* to procure a judgment in its favor against expenses (including attorneys' fees *and disbursements*) actually and reasonably incurred by such [persons] *person* in connection with the defense or settlement of such action or suit.

(b) Nasdaq shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

[(b)](c) [The Corporation] *Nasdaq* may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by *Delaware* law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an [employee or agent of the Corporation, or] *agent of Nasdaq or is or was an agent of Nasdaq who* is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, trust [or other enterprise,], *enterprise, or non-profit entity, including service with respect to employee benefit plans,* was or is a party, or is threatened to be made a party to any action or proceeding described [above] in subsection (a).

[(c)]*(d)* [The Corporation] *Nasdaq* may, in its discretion, pay the expenses (including attorneys' fees *and disbursements*) reasonably and actually incurred *by an agent* in defending any action, suit, or proceeding in advance of its final disposition[,]; provided, however, that the payment of expenses incurred by [a director, officer, or employee] *such person* in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by [the officer, director, or employee] *that person* to repay all amounts advanced if it should be ultimately determined that [such] *the* person is not entitled to be indemnified under this Section [5.1 or otherwise] *or otherwise.*

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by Nasdaq to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of Nasdaq; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to Nasdaq.

[(d)] *(f)* The indemnification provided by this [section] *Section* in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled [under any by-law, agreement, vote of stockholders or disinterested directors or otherwise], both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a [director] *Director,* officer, *National Listing and Hearing Review Council or committee member,* employee, or agent and shall inure to the benefit of [his or her] *such person's* heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), Nasdaq shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

[(e)] *(h)* [The Corporation's] *Nasdaq's* obligation, if any, to indemnify *or advance expenses to* any person who is or was serving at its request as a director, officer, employee, or agent of another corporation; partnership, joint venture, trust [or other], enterprise, *or non-profit entity* shall be reduced by any amount such person may collect as indemnification *or advancement* from such other corporation, partnership, joint venture, trust, [or other] enterprise, *or non-profit entity.*

[(f)]*(i)* Any repeal or modification of the foregoing provisions of this Section [5.1] shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by Nasdaq, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, Nasdaq shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. [5.2]*6.2* [The Corporation] *Nasdaq* shall have power to purchase and maintain insurance on behalf of any person who is or was a [director] *Director,* officer, *National Listing and Hearing Review Council or committee member,* employee, or agent of [the Corporation] *Nasdaq,* or is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other], enterprise, *or non-profit entity* against any liability asserted against [him or her] *such person* and incurred by [him or her] *such person* in any such capacity, or arising out of [his or her] *such person's* status as such, whether or not [the Corporation] *Nasdaq* would have the power to indemnify [him or her] *such person* against such liability [under the provisions of this section] *hereunder.*

Article [VI] *IX*

Capital Stock

Sole Stockholder

Sec. *9.1 The NASD shall be the sole stockholder of the capital stock of Nasdaq.*

Certificates

Sec. [6.1]*9.2* [Each] *The* stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board [of Directors], certifying the number of shares of capital stock in [the Corporation] *Nasdaq* owned by [such] *the* stockholder.

Signatures

Sec. [6.2]*9.3* (a) Certificates for shares of capital stock of [the Corporation] *Nasdaq* shall be signed in the name of [the Corporation] *Nasdaq* by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] *seal* of [the Corporation] *Nasdaq* or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] *Nasdaq* or its employee, or by a registrar other than [the Corporation] *Nasdaq* or its employee, any other signature on the certificate may be a facsimile. In [case] *the event that* any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] *cease* to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] *Nasdaq* with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]*9.4* (a) A record of all certificates for capital stock issued by [the Corporation] *Nasdaq* shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) [The Corporation] *Nasdaq* shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. [The Corporation] *Nasdaq* shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] *Nasdaq* shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]*9.5* (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the *Restated Certificate of Incorporation,* or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] *shares* of capital stock of [the Corporation] *Nasdaq.* The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] *Nasdaq* only upon delivery to [the Corporation] *Nasdaq* or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[,]; (ii) the certificate for the shares of capital stock being transferred[,]; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]*9.6* Each certificate for capital stock surrendered to [the Corporation] *Nasdaq* for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6. of these By-Laws] *Section 9.7* until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]*9.7* In the event that any certificate for shares of capital stock of [the Corporation] *Nasdaq* shall be mutilated, [the Corporation] *Nasdaq* shall issue a new certificate in place of such mutilated certificate. In [case] *the event that* any such certificate shall be lost, stolen, or destroyed [the Corporation], *Nasdaq* may, in the discretion of the Board [of Directors] or a committee [designated] *appointed* thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] *the owner's* representatives, to furnish to [the Corporation] *Nasdaq* a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify [the Corporation] *Nasdaq* against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record [Dates] *Date*

Sec. [6.7]*9.8 The Board may fix a record date in accordance with Delaware law.* [(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to any other action. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of

Directors may fix a new record date for the adjourned meeting.]

Article [VII] *X*

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]*10.1* The seal of [the Corporation] *Nasdaq* shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] *Nasdaq*, the year of its incorporation, and the words "Corporate Seal" and "Delaware[")]." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]*10.2* The fiscal year of [the Corporation] *Nasdaq* shall begin the 1st day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]*10.3* (a) Whenever notice is required to be given by law, the *Restated* Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] *stockholder, Directors*, or members of a committee of [directors] *Directors* need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4.]*10.4* (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] *Nasdaq* by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] *Nasdaq*, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [the Corporation] *Nasdaq* by any principal officer or subordinate officer of [the Corporation] *Nasdaq*, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] *Nasdaq*. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]*10.5* Any records maintained by [the Corporation] *Nasdaq* in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] *XI*

Amendments; Emergency By-Laws

By [Stockholders] *Stockholder*

Sec. [8.1]*11.1* These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders by the vote of the holders of not less than a majority of the outstanding shares of stock entitled to vote thereat] *the stockholder*, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]*11.2* To the extent permitted by the *Restated* Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors] by a resolution adopted by a vote of a majority of the whole Board [of Directors].

Emergency By-Laws

Sec. [8.3]*11.3* The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] *stockholder* which shall, notwithstanding any different provision of law, the *Restated* Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] *Nasdaq* conducts its business or customarily holds meetings of the Board [of Directors or stockholders] *or the stockholder*, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] *under* the circumstances of the emergency.

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "[NASDR] *NASD Regulation*") and The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members *The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable.*

[The following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.]

[1. "Industry" Governors, Directors or Committee Members shall include (a) officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and (b) persons who have consulting or employment relationships with or provided professional services

to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.]

[2. "Non-industry" Governors, Directors or Committee Members shall be (a) Public Governors; (b) officers and employees of issuers of securities listed on The Nasdaq Stock Market or traded in the over-the-counter market; (c) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to:

(i) Distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members.]

[3. "Public" Governors, Directors or Committee Members shall be non-industry persons who have no material business relationship with a broker, dealer or the Association.]

B. Functions and Authority of the NASD—The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III.A., the NASD has delegated certain authority and functions to its [subsidiaries] *Subsidiaries*. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the *Securities* Exchange Act *of 1934 ("Act")*, or as set forth in the [articles of incorporation] *Restated Certificate of Incorporation* or the by-laws is hereby reserved, except as expressly delegated to the [subsidiaries] *Subsidiaries*. In addition, the NASD expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to the Subsidiaries to take actions on behalf of the NASD.

3. To elect the Subsidiary Boards of Directors.

4. To review the rulemaking and disciplinary decisions of the Subsidiaries (See Sections [II.C.] *II.B.* and [III.C] *III.B.* below).

5. To coordinate actions of the Subsidiary Boards as necessary.

6. To resolve any disputes between the Subsidiaries.

7. To administer common overhead and technology of the Subsidiaries.

8. To administer the Office of Internal Review as provided in [Section I.D.4 below] *the NASD By-Laws*.

9. To manage external Association relations on major policy issues.

10. To direct the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

11. To take action ab initio in an area of responsibility delegated to NASD Regulation in Section II or to Nasdaq in Section III.

[C. Board of Governors

1. Composition: The NASD Board of Governors ("NASD Board") shall be composed of at least Nine (9) and no more than Thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer ("CEO") of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more Governors, at least Three (3) shall be Public Governors.]

[2. Election Procedures

a. Commencing with the selection of Governors to take office in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the "Association Boards"). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.]

[3. Contested Elections

a. A candidate for the NASD Board who has not been nominated pursuant to Section 2.b(3) above may be nominated by petition, for the term of office specified by the Board for the vacant governorship, if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board may be included on the ballot only if the Committee certifies that the candidate's petitions are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in Section I.A. above.]

[4. Term of Office

a. Each Governor shall hold office for a term of not more than three years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraphs (b) and (c), Governors may not serve more than two consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than one year, such Governor shall not be precluded from serving two additional terms of office.]

[5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall

elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or Public), vacated as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than six months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than six months, such Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.]

[D. Audit Committee

1. The Audit Committee shall be a committee of the NASD Board and shall include the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.]

[2. Composition: The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least one Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than two Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.]

[3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.]

[4. Office of Internal Review: The Audit Committee shall have exclusive authority: (a) To hire or terminate the Director of Internal Review, (b) to determine the compensation of the Director of Internal Review, and (c) to determine the budget for the Office of Internal Review. The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters it deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.]

[E.]*C.* Management Compensation Committee

1. The Management Compensation Committee shall be a Committee of the NASD Board and shall have the following functions: To consider and recommend compensation policies, programs, and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall [be composed] *consist* of no fewer than [Four (4)] *four and no more than seven* [or more Members of the NASD Board, equally balanced between Industry and Non-industry]Governors. [If at any time there shall be an odd number of members of the Management Compensation Committee, Non-industry Committee Members shall be in the majority.] *The number of Non-Industry committee members shall equal or exceed the number of Industry committee members. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. Each member shall serve a term of office of one year.*

3. Quorum: At all meetings of the Management Compensation Committee, a quorum for the transaction of business shall consist of a majority of the Management Compensation Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

[F.] *D.* Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, es set forth in Sections II.A. and III.A. below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the [Securities Exchange Act of 1934 ("Act")] Act, and all officers, directors, employees, and agents of the Subsidiaries are officers [and], directors, employees, and agents of the NASD for purposes of the Act.

II. NASD Regulation, Inc. ("[NASDR] *NASD Regulation*")

A. Delegation of Functions and Authority:

1. *Subject to Section I.B.11,* [The] *the* NASD hereby delegates to [the NASDR and the NASDR] *NASD Regulation and NASD Regulation* assumes the following responsibilities and functions as a registered securities association:

a. To establish *and interpret* rules and regulations *and provide exemptions* for NASD members including, but not limited to fees [and], membership requirements [and the Code of Arbitration and Mediation Procedure], *and arbitration procedures.*

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) arbitration of disputes among and between NASD members, associated persons and customers, (ii) public and private sale or distribution of securities including underwriting arrangements and compensation, (iii) financial responsibility, (iv) qualifications for NASD membership and association with NASD members, (v) clearance and settlement of securities transactions *and other financial responsibility and operational matters affecting members in general and securities listed on The Nasdaq Stock Market and on other markets operated by The Nasdaq Stock Market,* (vi) NASD member advertising practices, (vii) administration, interpretation, and enforcement of Association rules, (viii) administration and enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and (ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy, Association and MSRB rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated Association or MSRB rules, the federal securities laws, and other laws, rules, and regulations that the Association has the authority to administer, interpret, or enforce.

f. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

g. To administer the Association's office of professional hearing officers.

h. To conduct arbitrations, mediations, and other dispute resolution programs.

i. To conduct qualification examinations and continuing education programs.

j. To operate the Central Registration Depository [("CRD")].

k. To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

l. To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors, and the federal securities laws.

m. To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association, including whether statutorily disqualified persons will be permitted to associate with particular NASD members and the conditions of such association.

n. To oversee all District Office activities.

o. To establish the annual budget and business plan for [NASDR] *NASD Regulation.*

p. To determine allocation of [NASDR] *NASD Regulation* resources.

q. To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of [NASDR] *NASD Regulation.*

r. To manage external relations on enforcement, regulatory, and other policy issues with Congress, the Securities and Exchange Commission [("SEC")] *("Commission")*, state regulators, other self-regulatory organizations, business groups, and the public.

s. To establish internal procedures for considering complaints by members, associated persons, and members of the public who request an investigation or disciplinary action by the Association.

t. To operate Stockwatch in conjunction with Nasdaq pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Subsequent to January of 1997, the NASDR Board of Directors ("NASDR Board") shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22) Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.]

[2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of an NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Section I.C.4. and 5. above.]

[C]B. [NASDR] *NASD Regulation* Board Procedures

[1. Disciplinary Actions—Any disciplinary decision of the Association, including dismissals, may be appealed or called for review pursuant to the Rules of the Association.]

[2. Statutory Disqualification Decisions—Any decision of the NBCC with respect to statutory disqualification may be called for review pursuant to the Rules of the Association.]

[3]*1.* Rule Filings—[Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association.] *The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board*

before the rule change becomes the final action of the Association if the rule change: (a) Imposes fees or other charges on persons or entities other than NASD members; (b) raises significant policy issues in the view of the NASD Regulation Board, and the NASD Regulation Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the National Adjudicatory Council. If the [NASDR] *NASD Regulation* Board does not refer a rule change to the NASD Board for review, the [NASDR] *NASD Regulation* Board action [will] *shall* become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board [its] meeting next following the [NASDR] *NASD Regulation* Board's action [but which is 15 calendar days or more following the action of the [NASDR Board]. During the process of developing rule proposals, [NASDR] *NASD Regulation* staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the [NASDR] *NASD Regulation* Board.

[4. Notwithstanding the requirements set forth in paragraph 3 of this Section, the NASD Board may determine it is advisable to call or not call for review any rule change within the 15 calendar day period following the decision of the NASDR Board.]

2. Petitions for Reconsideration

a. If the NASD Regulation Board or NASD Board takes action on a rule change relating to the business and sales practices of NASD members or associated persons or enforcement policies, including policies with respect to fines and other sanctions, and such action is materially inconsistent with the recommendation of the National Adjudicatory Council, the NASD Regulation Board or the NASD Board, as applicable, shall provide written notice of its action to the National Adjudicatory Council within one calendar day.

b. Within two calendar days after receipt of such notice, the National Adjudicatory Council, by majority vote, may petition the NASD Board for reconsideration. Such petition shall be in writing and include a statement explaining in detail why the National Adjudicatory Council believes that the NASD Regulation Board's or NASD Board's action should be set aside.

c. The NASD Executive Committee shall act on a timely and complete petition for reconsideration within three calendar days after its receipt. If the NASD Executive Committee grants reconsideration, the matter shall be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the NASD Executive Committee denies reconsideration, the NASD Regulation Board's or NASD Board's previous action on the rule shall be final, and staff shall submit the necessary rule filing to the SEC.

[D.] *C.* Supplemental Delegation Regarding [the Formation of Committees] *Committees*

[1. The NASDR board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.]

[(a) National Business Conduct Committee—A National Business Conduct Committee may be created for the purpose of:

(i) Hearing and deciding appeals of initial disciplinary decisions of the Association.

(ii) Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.

(iii) Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.]

[(b) The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally balanced between Industry and Non-industry Committee Members (including at least one Public Member). If at any time there shall be an odd number of Committee Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a one-year term.]

1. Market Regulation Committee

a. The Market Regulation Committee shall advise the NASD Regulation Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; advise the NASD Regulation Board in its administration of programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market; provide a pool of panelists for those hearing panels that the Chief Hearing Officer or his or her designee determines should include a member of the Market Regulation Committee pursuant to the Rules of the Association; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review and recommend to the National Adjudicatory Council changes to the Association's Sanction Guidelines.

b. The NASD Regulation Board shall appoint the Market Regulation Committee by resolution. The members of the Market Regulation Committee shall be balanced between Industry and Non-Industry committee members.

c. At all meetings of the Market Regulation Committee, a quorum for the transaction of business shall consist of a majority of the Market Regulation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

[2. Other Committees—With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.]

2. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise the NASD Regulation Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Regulation Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The members of the National Arbitration and Mediation Committee shall be equally balanced between Industry and Non-Industry committee members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

3. Operations Committee

a. The Operations Committee shall have the following functions:

i. to issue interpretations or rulings with respect to the Uniform Practice Code ("UPC");

ii. to advise the NASD Regulation Board and, where applicable, the Nasdaq Listing and Hearing Review Council, with respect to the clearance and settlement of securities transactions and other financial responsibility and operational matters that may require modifications to the UPC or other Rules of the Association; and

iii. to maintain a Nasdaq Liaison Subcommittee to provide advice to Nasdaq staff on policy making related to the UPC and financial responsibility issues related to The Nasdaq Stock Market or other markets operated by The Nasdaq Stock Market and to issue interpretations or rulings with respect to the application of the UPC to cancellations of new issues, due bills, and similar situations that arise with respect to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

b. The NASD Regulation Board shall appoint the Operations Committee by resolution. The Operations Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Delegation to Nasdaq

A. Delegation of Functions and Authority

1. *Subject to Section I.B.11.,* [The] *the* NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.

c. To collect, process, consolidate, and provide to [NASDR] *NASD Regulation* the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies, and procedures *and provide exemptions* to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.

i. To develop, adopt, and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market[,] *and* other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the [SEC] *Commission*, state regulators, other self-regulatory organizations, business groups, and the public.

o. To operate Stockwatch in conjunction with NASD Regulation pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Composition—As of January of 1997 the Nasdaq Board of Directors ("Nasdaq Board") shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.]

[2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.]

[C.] *B.* Nasdaq Board Procedures

1. Listing/Delisting Decisions—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing

and Hearing Review [Committee] *Council* ("Listing [Committee] *Council*") within 15 calendar days, or called for review by any member of the Listing [Committee] *Council* within 45 days, as set forth in the [Code of Procedure] *Rules of the Association*. [A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision.] A decision of the [Nasdaq Board] *Listing Council* may be called for review by any member of the NASD Board not later than *the NASD Board* [its] meeting next following the [Nasdaq Board's] *Listing Council's* decision but which is 15 calendar days or more following the decision of the Listing [Committee] *Council* [or the Nasdaq Board]. *Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any listing/delisting decision with the 15 calendar day period following the decision of the Listing Council.* Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing [Committee] *Council*[, Nasdaq Board] or NASD to the [SEC] *Commission*.

2. Rule Filings—[Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association.] *The NASD Board shall review and ratify a rule change adopted by the Nasdaq Board before the rule change becomes the final action of the Association if the rule change: (a) Imposes fees or other charges on persons or entities other than NASD members or issuers; (b) raises significant policy issues in the view of the Nasdaq Board, and the Nasdaq Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the Nasdaq Listing and Hearing Review Council.* If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action [will] *shall* become the final action of the Association unless called for review by any member of the NASD Board not later than *the NASD Board* [its] meeting next following the Nasdaq Board's action [but which is 15 calendar days or more following the action of the Nasdaq Board]. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of [NASDR] *NASD Regulation* staff before presenting any rule proposal to the Nasdaq Board.

[3. Waiver of 15-day Period—Notwithstanding the requirements set forth in paragraphs 1 and 2 of this Section, the NASD Board may determine it is advisable to call for review any listing/delisting decision or rule change within the 15 calendar day period following the decision of the Listing Committee or the Nasdaq Board, as applicable.]

3. Petitions for Reconsideration

a. If the Nasdaq Board or NASD Board takes action on a listing-related rule change, and such action is materially inconsistent with the recommendation of the Nasdaq Listing and Hearing Review Council, the Nasdaq Board or the NASD Board, as applicable, shall provide written notice of its action to the Nasdaq Listing and Hearing Review Council within one calendar day.

b. Within two calendar days after receipt of such notice, the Nasdaq Listing and Hearing Review Council, by majority vote, may petition the NASD Board for reconsideration. Such petition shall be in writing and include a statement explaining in detail why the Nasdaq Listing and Hearing Review Council believes that the Nasdaq Board's or NASD Board's action should be set aside.

c. The NASD Executive Committee shall act on a timely and complete petition for reconsideration within three calendar days after its receipt. If the NASD Executive Committee grants reconsideration, the matter shall be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the NASD Executive Committee denies reconsideration, the Nasdaq Board's or NASD Board's previous action on the rule shall be final, and staff shall submit the necessary rule filing to the SEC.

[D] *C.* Supplemental Delegation Regarding [the Formation of Committees] *Committees*

[The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.]

[1. Specific Committees]

[a.] *1.* Quality of Markets Committee ("QOMC")

[(1)]*(a)* The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i)*)* To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other participants in The Nasdaq Stock Market.

(ii)*)* To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

[(2)]*(b)* The QOMC will have broad representation that is equally balanced between [industry] *Industry* and [non-industry] *Non-Industry* committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market, including investors, market makers, integrated retail firms, and order entry firms.

(c) At all meetings of the QOMC, a quorum for the transaction of business shall consist of a majority of the QOMC, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

[b] *2.* Market Operations Review Committee ("MORC")

[(1)]*(a)* The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in [Section 70] *Rule 11890* of the [Uniform Practice Code ("UPC"),] *Rules of the Association* in accordance with the procedures specified therein. [NASDR] *NASD Regulation* shall receive weekly reports of all determinations made by the staff or MORC under [Section 70 of the UPC] *Rule 11890* for regulatory review.

[(2)]*(b)* The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than [Fifty (50)] *50* percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed [10 %] *ten percent* of its total revenues.

[c. Firm Operations and Clearance Committee ("FOCC")

(1) The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To issue interpretations or rulings with respect to Sections 4–10, 12, 46, 67–68 and 71 of the UPC as well as any other provision of the UPC pertaining to transactions and post execution processing.

(ii) To advise the Nasdaq Board with respect to modifications to the UPC dealing with the transactions and post execution processing.]

[d. Nasdaq Listing and Hearing Review Committee ("Listing Committee")

(1) The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

(ii) To exercise the functions set forth in Article IX of the Code of Procedure, in accordance with the procedures specified therein.

(2) The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.]

[2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the By-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.]

[E.] *IV.* Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by [NASDR] *NASD Regulation*, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that [the NASDR] *NASD Regulation* may deem necessary. [NASDR] *NASD Regulation* staff at all times will have access to all records and files of the Stockwatch function.

* * * * *

Restated Certificate of Incorporation of National Association of Securities Dealers, Inc.

The present name of the corporation is National Association of Securities Dealers, Inc. [(the "Corporation"). The Corporation] *("NASD"). The NASD* was originally incorporated as a nonstock corporation under the name of Investment Bankers Conference, Inc., and its original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 3, 1936. This Restated Certificate of Incorporation of the [Corporation] *NASD*, which both restates and further amends the provisions of the [Corporation's] *NASD's* Certificate of Incorporation as heretofore amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Name

First: The name of the [Corporation] *corporation* is National Association of Securities Dealers, Inc.

Delaware Office and Agent

Second: The registered office of the [Corporation] *NASD* in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name and address of its registered agent is the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware.

Objects or Purposes

Third: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing, the business or purposes to be conducted or promoted shall include the following:

(1) To promote through cooperative effort the investment banking and securities business, to standardize its principles and practices, to promote therein high standards of commercial honor, and to encourage and promote among members observance of Federal and [State] State securities laws;

(2) To provide a medium through which its membership may be enabled to confer, consult, and cooperate with governmental and other agencies in the solution of problems affecting investors, the public, and the investment banking and securities business;

(3) To adopt, administer, and enforce rules of fair practice and rules to prevent fraudulent and manipulative acts and practices, and in general to promote just and equitable principles of trade for the protection of investors;

(4) To promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members;

(5) To establish, and to register with the Securities and Exchange Commission as, a national securities association pursuant to Section 15A of the Securities Exchange Act of 1934, as amended, and thereby to provide a medium for effectuating the purposes of said [section;] *Section; and*

(6) To transact business and to purchase, hold, own, lease, mortgage, sell, and convey any and all property, real and personal, necessary, convenient, or useful for the purposes of the [Corporation;] *NASD.*

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, not be limited or restricted by reference to, or inference from, the terms of any other clause in this [certificate of incorporation] *Restated Certificate of Incorporation*, but the objects and purposes specified in each of the foregoing clauses of this [article] *Article* shall be regarded as independent objects and purposes.

Form of Organization

Fourth: [This Corporation] *The NASD* shall be a membership corporation and shall have no capital stock. The [Corporation] *NASD* is not organized and shall not be conducted for profit, and no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member.

Except as may be otherwise provided by [applicable law] *the General Corporation Law of the State of Delaware* or this Restated Certificate of Incorporation, the members of the [Corporation] *NASD* shall have no voting rights. Notwithstanding the foregoing, the members shall be entitled to vote for the election of Governors and on any amendment to the By-Laws of the [Corporation] *NASD* in accordance

with the procedures for such a vote as provided in the By-Laws.

Except as may be otherwise provided by *the General Corporation Law of the State of Delaware, other* applicable law or this Restated Certificate of Incorporation, the conditions, method of admission, qualifications and classifications of membership, the limitations, rights, powers and duties of members, the dues, assessments, and contributions of members, the method of expulsion from and termination of membership, and all other matters pertaining to the membership and the conduct, management, and control of the business, property, and affairs of the [Corporation] *NASD* shall be as provided from time to time in the By-Laws of the [Corporation] *NASD and the Rules of the Association.*

Indemnification; Governor Liability

Fifth: (a) [To] *The NASD shall indemnify, and hold harmless, to* the fullest extent permitted by [applicable law] *the General Corporation Law of the State of Delaware* as it presently exists or may [hereafter be amended, the Corporation shall indemnify any person who was or is made] *thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Governor, officer, employee or committee member of the NASD, or is or was a Governor, officer, or employee of the NASD who is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party,* or is threatened to be made a party [or is otherwise involved in any] *to:*

(i) Any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative [or investigative,], *or investigative (other than an action by or in the right of the NASD) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or*

(ii) Any threatened, pending, or completed action or suit by or in the right of the NASD to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

[(b) A Governor of the Corporation shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter by amended.]

(b) The NASD shall advance expenses (including attorneys' fees and disbursements) to persons described in Article Fifth (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(c) The NASD may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he[, or a person for whom he is the legal representative, is or was a Governor or officer of the Corporation] *or she is or was an agent of the NASD or is or was an agent of the NASD who* is or was serving at the request of the [Corporation] *NASD* as a director, officer, employee, or agent of another corporation [or of a], partnership, [joint venture,] trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, [against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person] *was or is a party, or is threatened to be made a party to any action or proceeding described in Article Fifth (a).*

(d) The NASD may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(e) Notwithstanding the foregoing [, the Corporation shall be required to indemnify a person and advance expenses to such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the Board of Governors. The Board of Governors may indemnify and/or advance expenses to any employee or agent of the Corporation to the extent it deems appropriate and to the extent permitted by applicable law. The rights conferred on any person by this Article Fifth(a) shall not be] *or any other provision of these By-Laws, no advance shall be made by the NASD to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Governors who have not been named parties to the action, even though less than a quorum, or, if there are no such Governors or if such Governors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the NASD; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the NASD.*

(f) The indemnification provided by this Article Fifth in a specific case shall not be deemed exclusive of any other rights [which such person may have or hereafter acquire under any statute, provision of this Restated Certificate of Incorporation, By-Law, agreement, vote of members or disinterested Governors or otherwise] *to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Governor, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.*

(g) Notwithstanding the foregoing, but subject to Article Fifth (j), the NASD shall be required to indemnify any person identified in Article Fifth (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) The NASD's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the [first sentence] *foregoing provisions* of this Article Fifth[(b)] shall not adversely affect any right or protection [of a Governor of the Corporation existing hereunder with respect to] *hereunder of any person respecting* any act or omission occurring prior to *the time of* such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article Fifth is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the NASD, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the NASD shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under the General Corporation Law of the State of Delaware.

(k) The NASD shall have power to purchase and maintain insurance on behalf of any person who is or was a Governor, officer, employee, or agent of the NASD, or is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the NASD would have the power to indemnify such person against such liability hereunder.

(l) A Governor shall not be liable to the NASD or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as it presently exists or may hereafter be amended.

Perpetual Existence

Sixth: The [Corporation] *NASD* shall have perpetual existence.

Members' Liability

Seventh: The private property of the members shall not be subject to the payment of corporate debts to any extent whatever.

Governors

Eighth: To the fullest extent permitted by Sections 141(a), 141(j), and 215 of the General Corporation Law of the State of Delaware and other applicable law, the business and affairs of the [Corporation] *NASD* shall be managed and the election of Governors shall be conducted in the manner provided in this Restated Certificate of Incorporation and the By-Laws of the [Corporation] *NASD.* To the extent there is any inconsistency between the provisions of this Restated Certificate of Incorporation and the By-Laws relating to such matters and the General Corporation Law, the provisions of this Restated Certificate of Incorporation and the By-Laws shall govern to the fullest extent permitted by the General Corporation Law and other applicable law. To the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, the Board of Governors may delegate such powers, authority, and functions as it shall determine *from time to time, in a manner not inconsistent with the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," approved by the Securities and Exchange Commission, as amended* from time to time.

The [Corporation] *NASD* shall be managed under the direction of a Board of Governors having such powers and duties as shall be provided from time to time in this Restated Certificate of Incorporation or the By-Laws of the [Corporation] *NASD.* The Board of Governors shall be the governing body of the [Corporation] *NASD.* The members of the Board of Governors shall be elected by a plurality of the votes of the members of the [Corporation] *NASD* present in person or represented by proxy at the annual meeting of the members of the [Corporation] *NASD* and entitled to vote thereat. Elections shall be by written ballot. Any Governor so elected must be nominated by the National Nominating Committee *or certified by the Secretary of the NASD* (as provided in the By-[laws] *Laws*) and must satisfy the other qualifications for Governors set forth in the By-Laws or established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries[" as approved by the Securities and Exchange Commission, as amended from time to time.]." The By-Laws may also provide for such assistants to the Board of Governors, and such officers, agents, and employees, as may be deemed necessary to administer affairs of the [Corporation] *NASD.*

[The Board of Governors shall be divided into three classes. Each Governor shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination of such Governor, or until his successor is duly elected and qualified, or until his death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's current term. The Chief Executive Officer of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, disqualification, or removal.]

The Board of Governors shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market ("Nasdaq"), the Chair of the National Adjudicatory Council of NASD Regulation, and Governors elected by the members of the NASD.

The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq shall serve as Governors until a successor is elected, or until death, resignation, or removal.

The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair may serve an initial term as Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the NASD members.

The Governors elected by the members of the NASD shall be divided into three classes and shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor

elected by the members of NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term.

In furtherance and not in limitation of the powers granted by [applicable law] *the General Corporation Law of the State of Delaware*, the Board of Governors is expressly authorized unless the By-Laws otherwise provide, to make, alter, or repeal the By-Laws of the [Corporation] *NASD*.

In the event of the refusal, failure, neglect, or inability of any member of the Board of Governors to discharge [his] *such member's* duties, or for any cause affecting the best interest of the [Corporation] *NASD* the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare [his] *such member's* position vacant and that it shall be filled in accordance with the provisions of the By-Laws.

The [Corporation] *NASD* may, in its By-Laws, confer powers upon its Board of Governors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by [applicable law] *the General Corporation Law of the State of Delaware.*

Meetings and Offices

Ninth: Both members and the Board of Governors shall have power, if the By-Laws so provide, to hold their meetings and to have one or more offices within or without the State of Delaware and to keep the books of the [Corporation] *NASD* (subject to the provision of the statutes), outside the State of Delaware at such places as may be from time to time designated by the Board of Governors.

Right to Amend Certificate of Incorporation

Tenth: The [Corporation] *NASD* reserves the right to amend, alter, change, or repeal any provisions contained in this [certificate of incorporation] *Restated Certificate of Incorporation*, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of the [Corporation] *NASD* this _____ day of _____, [1996] *1997*.

* * * * *

Restated Certificate of Incorporation of NASD Regulation, Inc.

The undersigned, Mary Schapiro, President of NASD Regulation, Inc. ("NASD Regulation"), a Delaware corporation, does hereby certify:

First: *That* [The] the name of the corporation is NASD Regulation, Inc. *The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 25, 1996. The name under which NASD Regulation was originally incorporated was NASD Regulation, Inc.*

Second: [The address of the Corporation's] *That the Certificate of Incorporation of NASD Regulation has been amended and restated in its entirety as follows:*

Article First

The name of the corporation is NASD Regulation, Inc.

Article Second

The address of NASD Regulation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of [the Corporation's] *NASD Regulation's* registered agent at such address is The Corporation Trust Company.

Article Third

[Third:] The purpose of [the Corporation] *NASD Regulation* is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware[.]*, and, without limiting the generality of the forgoing business or purposes to be conducted or promoted, shall include the responsibilities and functions set forth in the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," as approved by the Securities and Exchange Commission, as amended from time to time. NASD Regulation* [The Corporation] is not organized for profit and no part of the net earnings of [the Corporation] *NASD Regulation* shall inure to the benefit of any private stockholder or individual.

Article Fourth

[Fourth:] The total number of shares of stock which [the Corporation] *NASD Regulation* shall have authority to issue is 2,000, par value $0.01 per share, all of which shall be shares of common stock.

Article Fifth

[Fifth:] (a) The business and affairs of [the Corporation] *NASD Regulation* shall be managed by or under the direction of the Board of Directors. The qualifications, number, tenure, powers, and duties of the members of the Board of Directors shall be provided in the By-Laws. Except as otherwise provided in this *Restated* Certificate of Incorporation, the By-Laws shall specify the manner by which directors of [the Corporation] *NASD Regulation* shall be nominated and elected.

(b) Unless and except to the extent that the By-Laws of *NASD Regulation* [the Corporation] shall so require, the election of directors of [the Corporation] *NASD Regulation* need not be by written ballot.

[Sixth: To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall indemnify any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person. Notwithstanding the foregoing, the Corporation shall be required to indemnify a person and advance expenses to such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the Board of Directors. The rights conferred on any person by this Article Sixth shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, By-Law, agreement, vote of stockholders or disinterested directors or otherwise.]

Article Sixth

[Seventh:] A director of [the Corporation] *NASD Regulation* shall not be liable to [the Corporation] *NASD Regulation* or its [stockholders] *stockholder* for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended. Any repeal or modification of the first sentence of this Article [Seventh] *Sixth* shall not adversely affect any right or protection of a director of [the Corporation] *NASD Regulation* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Seventh

[Eighth:] In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, and repeal the By-Laws of [the Corporation] *NASD Regulation*, subject to the power of the [stockholders of the Corporation] *stockholder of NASD Regulation* to alter or repeal any By-Law made by the Board of Directors.

Article Eighth

[Ninth: The Corporation] *NASD Regulation* reserves the right [at any time, and from time to time,] to amend, alter, change, or repeal any provision contained in this *Restated* Certificate of Incorporation, [and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted,] in the manner now or hereafter prescribed by [law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended] *statute, and all rights conferred herein* are granted subject to [the rights reserved in this Article Ninth] *this reservation.*

Article Ninth

[Tenth: The Corporation] *NASD Regulation* shall have perpetual existence.

[Eleventh: The name and mailing address of the incorporator is Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.]

[Twelfth: The powers of the Incorporator shall terminate upon the filing of this Certificate of Incorporation. The names and mailing addresses of the persons who are to serve as the directors of the Corporation until the first annual meeting of the stockholders of the Corporation, or until their successors are elected and qualified are Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, Richard G. Ketchum, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006 and Mary Schapiro, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.]

Third: That such Restated Certificate of Incorporation has been duly adopted by the stockholder of NASD Regulation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

In witness whereof, [I, the undersigned, being the sole incorporator hereinabove named, hereby acknowledge that the foregoing Certificate of Incorporation is my act and deed and further certify that the facts hereinabove stated are truly set forth, and accordingly I have hereunto set my hand this _____ day of January, 1996] *the undersigned have executed this certificate this day of , 1997.*

* * * * *

Restated Certificate of Incorporation of the NASDAQ Stock Market, Inc.

[Adopted in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law of the State of Delaware]

[The undersigned, Joseph R. Hardiman] *The undersigned, Alfred Berkeley*, President of The Nasdaq Stock Market, Inc. *("Nasdaq")*, a Delaware corporation [(the "Corporation")], does hereby certify:

First: That the name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which [the Corporation] *Nasdaq* was originally incorporated was "NASD Market Services, Inc."

Second: That the Certificate of Incorporation of [the Corporation] *Nasdaq* has been amended and restated in its entirety as follows:

Article First

The name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc.

Article Second

The address of [the Corporation's] *Nasdaq's* registered office in the State of Delaware is 1209 Orange Street, *City of* Wilmington, [Delaware 19801,] County of New Castle, *Delaware 19801*. The name of [its] *Nasdaq's* registered agent at such address is The Corporation Trust Company.

Article Third

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, *shall include the responsibilities and functions set forth in the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," as approved by the Securities and Exchange Commission, as amended from time to time.* [shall include the following:

(a) To investigate, study, organize, develop, maintain and operate, and to assist and contract with others for the investigation, study, organization, development, maintenance and operation of systems for collecting, processing, and preparing for distribution and publication, and otherwise assisting, participating in, and coordinating the distribution and publication of information with respect to transactions in and quotations for securities by means of an electronic data processing system or systems, as such may be required or permitted by federal statute and regulation (in particular the Securities Exchange Act of 1934 ("Exchange Act") and the regulations thereunder, as either may be amended from time to time) on a current and continuing basis, consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets in securities, and the removal if impediments to and perfection of the mechanism of a national market system;

(b) To organize, develop, operate and maintain securities markets and related systems that assure: (i) Economically efficient execution, clearance and settlement of securities transactions; (ii) fair competition among brokers and dealers, and among exchange markets and markets other than exchange markets; (iii) the practicability of broker/dealers executing inventors' orders in the best market; (iv) the linking of all markets for qualified securities through communications and data processing facilities; and (v) appropriate regulatory oversight;

(c) To develop, organize, operate and maintain securities markets and related systems that will assist the National Association of Securities Dealers, Inc. in carrying out its regulatory responsibilities under the Exchange Act, particularly Sections 11A and 15A and all applicable rules promulgated under the Exchange Act;

(d) To establish terms, conditions, rules, regulations, orders, and schedules for the operation, maintenance, and regulation of methods, means and

systems established by the Corporation; and

(e) To offer consulting services respecting the organization, development, operation, and maintenance of securities market systems and facilities, including systems and procedures for regulatory oversight of trading in securities markets.]

Article Fourth

[The Corporation] *Nasdaq* shall be authorized to issue a total of 2,000 shares of common stock with no par value.

Article Fifth

[The Corporation] *Nasdaq* shall be governed by the Board of Directors of such number and having such qualifications, powers, and duties[,] as shall be provided in the By-Laws. The Board shall be selected in such manner, and shall serve for such term, as shall be stated in the By-Laws. The Board of Directors shall have the power to adopt, alter, or repeal the By-Laws of [the Corporation] *Nasdaq* at any meeting at which a quorum is present by the affirmative vote of the majority of the whole Board of Directors.

A [Director of this Corporation] *director of Nasdaq* shall not be liable to [the Corporation] *Nasdaq* or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of [the Corporation] *Nasdaq* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Sixth

Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.

Article Seventh

[The Corporation] *Nasdaq* shall have perpetual existence.

Third: That such Restated Certificate of Incorporation has been duly adopted by the [stockholders of the Corporation] *stockholder of Nasdaq* in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

In witness whereof, the undersigned have executed this certificate this [20th] ____ day of [December] _____, [1993] *1997*.

[FR Doc. 97–26522 Filed 10–9–97; 8:45 am]
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federal register

Friday
October 10, 1997

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 1, et al.
Changes to Patent Practice and Procedure; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 3, 5, 7, and 10

[Docket No. : 960606163–7130–02]

RIN 0651–AA80

Changes to Patent Practice and Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice to simplify the requirements of the rules, rearrange portions of the rules for better context, and eliminate unnecessary rules or portions thereof as part of a government-wide effort to reduce the regulatory burden on the American public. Exemplary changes include: simplification of the procedure for filing continuation and divisional applications; amendment of a number of rules to permit the filing of a statement that errors were made without deceptive intent, without a requirement for a further showing of facts and circumstances; and elimination of the requirement that the invenforship be named in an application on the day of its filing, which eliminates the need for certain petitions to correct inventorship.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein or Robert W. Bahr, Senior Legal Advisors, by telephone at (703) 305–9285, or by mail addressed to: Box Comments— Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to the attention of Mr. Bernstein or by facsimile to (703) 308–6916.

SUPPLEMENTARY INFORMATION: This rule change implements the Administration's program of reducing the regulatory burden on the American public in accordance with the changes proposed in the Notice of Proposed Rulemaking entitled "1996 Changes to Patent Practice and Procedure" (Notice of Proposed Rulemaking), published in the **Federal Register** at 61 FR 49819 (September 23, 1996), and in the *Official Gazette* at 1191 *Off. Gaz. Pat. Office* 105 (October 22, 1996). The changes involve: (1) simplification of procedures for filing continuation and divisional applications, establishing lack of deceptive intent in reissues, petition practice, and in the filing of papers correcting improperly requested small entity status; (2) elimination of unnecessary requirements, such as certain types of petitions to correct inventorship under § 1.48; (3) removal of rules and portions thereof that merely represent instructions as to the internal management of the Office more appropriate for inclusion in the Manual of Patent Examining Procedure (MPEP); (4) rearrangement of portions of rules to improve their context; and (5) clarification of rules to aid in understanding of the requirements that they set forth.

Changes to Proposed Rules: This Final Rule contains a number of changes to the text of the rules as proposed for comment. The significant changes (as opposed to additional grammatical corrections) are discussed below. Familiarity with the Notice of Proposed Rulemaking is assumed.

Discussion of Specific Rules and Response to Comments: Forty-three written comments were received in response to the Notice of Proposed Rulemaking. The written comments have been analyzed. For contextual purposes, the comment on a specific rule and response to the comment are provided with the discussion of the specific rule. Comments in support of proposed rule changes generally have not been reported in the responses to comments sections.

Title 37 of the Code of Federal Regulations, Parts 1, 3, 5, 7, and 10 are amended as follows:

Part 1

Section 1.4

Section 1.4, paragraphs (d)(1) and (2), are amended to be combined into § 1.4 paragraphs (d)(1)(i) and (d)(1)(ii). Section 1.4(d)(1)(ii) is also amended to include the phrase "direct or indirect copy" to clarify that the copy of the document(s) constituting the correspondence submitted to the Office may be a copy of a copy (of any generation) of the original document(s), or a direct copy of the original document(s).

Section 1.4(d)(2) is amended to provide that the presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b), and that violations of § 10.18(b)(2) may subject the party to sanctions under § 10.18(c). That is, by presenting a paper to the Office, the party is making the certifications set forth in § 10.18(b), and is subject to sanctions under § 10.18(c) for violations of § 10.18(b)(2), regardless of whether the party is a practitioner or non-practitioner. The sentence "[a]ny practitioner violating § 10.18(b) may also be subject to disciplinary action" clarifies that a practitioner may be subject to disciplinary action in lieu of or in addition to sanctions under § 10.18(c) for violations of § 10.18(b).

Section 1.4(d)(2) is amended so that the certifications set forth in § 10.18(b) are automatically made upon presenting any paper to the Office by the party presenting the paper. The amendments to §§ 1.4(d) and 10.18 support the amendments to §§ 1.6, 1.8, 1.10, 1.27, 1.28, 1.48, 1.52, 1.55, 1.69, 1.102, 1.125, 1.137, 1.377, 1.378, 1.804, 1.805, (§§ 1.821 and 1.825 will be reviewed at a later date in connection with other matters), 3.26, and 5.4 that delete the requirement for verification (MPEP 602) of statements of facts by applicants and other parties who are not registered to practice before the Office. The absence of a required verification has been a source of delay in the prosecution of applications, particularly where such absence is the only defect noted. The change to §§ 1.4(d) and 10.18 automatically incorporates required averments thereby eliminating the necessity for a separate verification for each statement of facts that is to be presented, except for those instances where the verification requirement is retained. Similarly, the amendments to §§ 1.4(d) and 10.18 support an amendment to § 1.97 (§§ 1.637 and 1.673 will be reviewed at a later date in connection with other matters) that changes the requirements for certifications to requirements for statements. This change in practice does *not* affect the separate verification requirement for an oath or declaration under § 1.63, affidavits or declarations under §§ 1.130, 1.131, and 1.132, or statements submitted in support of a petition under § 5.25 for a retroactive license. The statements in §§ 1.494(e) and 1.495(f) that verification of translations of documents filed in a language other than English may be required is also maintained, as such requirements are made rarely and only when deemed necessary (*e.g.*, when persons persist in translations which appear on their face to be inaccurate). The requirements for certification of service on parties in §§ 1.248, 1.510, 1.637 and 10.142 are also maintained.

Section 1.4 is also amended to add a new paragraph (g) related to an applicant who has not made of record a registered attorney or agent being required to state whether assistance was received in the preparation or prosecution of a patent application. This is transferred from § 1.33(b) for consistent contextual purposes.

Section 1.6

Section 1.6(d)(3) is amended to provide that continued prosecution applications under § 1.53(d) may be transmitted to the Office by facsimile. However, the procedures described in § 1.8 do not apply to, and no benefit under § 1.8 will be given to, a continued prosecution application under § 1.53(d). That is, an applicant may file a continued prosecution application by facsimile transmission, but the filing date accorded such continued prosecution application will be the date the complete transmission of the continued prosecution application is received in the Office. For example, a continued prosecution application transmitted by facsimile from California at 10:30 p.m. (Pacific time) on November 18, 1997, and received in the Office at 1:30 a.m. (Eastern time) on November 19, 1997, will be accorded a filing date of November 19, 1997. An applicant filing a continued prosecution application by facsimile transmission bears the responsibility of transmitting such application in a manner and at a time that will ensure its complete and timely (§ 1.53(d)(1)(ii)) receipt in the Office.

An applicant filing an application under § 1.53(d) (a continued prosecution application) by facsimile must include an authorization to charge (at least) the basic filing fee to a deposit account, or the application must be treated under § 1.53(f) as having been filed without the basic filing fee (as fees cannot otherwise be transmitted by facsimile). To avoid paying the late filing surcharge under § 1.16(e), an application (including an application under § 1.53(d)) must include the basic filing fee (§ 1.16(e)). As such, payment of the basic filing fee for an application under § 1.53(d) on any date later than the filing date of the application under § 1.53(d) (even if paid within the period for reply to the last action in the prior application) is ineffective to avoid the late filing surcharge under § 1.16(e). Therefore, unless an application under § 1.53(d) filed by facsimile includes an authorization to charge the basic filing fee to a deposit account, the applicant will be given a notification requiring payment of the appropriate filing fee (§ 1.53(d)(3)) and the late filing surcharge under § 1.16(e) to avoid abandonment of the § 1.53(d) application.

Section 1.6(d)(3) is also amended to delete the reference to § 1.8(a)(2)(ii)(D) as this paragraph was deleted in the Final Rule entitled "Communications with the Patent and Trademark Office" ("Communications with the Office"), published in the **Federal Register** at 61 FR 56439, 56443 (November 1, 1996), and in the *Official Gazette* at 1192 *Off. Gaz. Pat. Office* 95 (November 26, 1996).

Section 1.6(d)(6) is amended to reflect the transfer of material from §§ 5.6, 5.7, and 5.8 to §§ 5.1 through 5.5.

Section 1.6(e)(2) is amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

Section 1.6(f) is added to provide for the situation in which the Office has no evidence of receipt of an application under § 1.53(d) (a continued prosecution application) transmitted to the Office by facsimile transmission. Section 1.6(f) requires that a showing thereunder include, *inter alia*, a copy of the sending unit's report confirming transmission of the application under § 1.53(d) or evidence that came into being after the complete transmission of the application under § 1.53(d) and within one business day of the complete transmission of the application under § 1.53(d). Therefore, applicants are advised to retain copies of the sending unit's reports in situations in which such unit is used to transmit applications under § 1.53(d) to the Office or otherwise maintain a log book of the transmission of any application under § 1.53(d) to the Office. *See also* "Communications with the Patent and Trademark Office" Final Rule.

No comments were received regarding the proposed change to § 1.6.

Section 1.8

Section 1.8(a)(2)(i)(A) is amended to specifically refer to a request for a continued prosecution application under § 1.53(d) as a correspondence filed for the purposes of obtaining an application filing date, which is excluded by § 1.8(a)(2)(i)(A) from the procedure set forth in § 1.8. The purpose of this amendment is to render it clear that, notwithstanding that a continued prosecution application under § 1.53(d) may be filed by facsimile transmission, the procedure set forth in § 1.8 does not apply to a request for a continued prosecution application under § 1.53(d) (or any correspondence filed for the purpose of obtaining an application filing date). That is, the date on the certificate of transmission (§ 1.8(a)) of an application under § 1.53(d) is not controlling (or even relevant), in that an application under § 1.53(d) (a continued prosecution application) filed by facsimile transmission will not be accorded a filing date as of the date on the certificate of transmission (§ 1.8(a)), unless Office records indicate, or applicant otherwise establishes pursuant to § 1.6(f), receipt in the Office of the complete application under § 1.53(d) on the date on the certificate of transmission, and that date is not a Saturday, Sunday, or Federal holiday.

Section 1.8(b)(3) is amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

Section 1.9

Section 1.9(d) is amended to define a small business concern as used in 37 CFR Chapter I as any business concern meeting the size standards set forth in 13 CFR Part 121 to be eligible for reduced patent fees. The regulations of the Small Business Administration (SBA) set forth the size standards of a business concern to be eligible for reduced patent fees. *See* 13 CFR 121.802. Thus, the language in § 1.9(d) duplicating such size standards is deleted as redundant, and to avoid confusion in the event that such size standards are subsequently changed by the SBA. The MPEP will include SBA's regulations concerning size standards for a business concern to be eligible for reduced patent fees.

Section 1.9(f) is amended to add the phrase "eligible for reduced patent fees" to clarify that a small entity as used in 37 CFR Chapter I is limited to an independent inventor, a small business concern or a non-profit organization that is eligible for reduced patent fees under 35 U.S.C. 41(h)(1).

Section 1.10

Sections 1.10 (d) and (e) are amended to remove the requirement for a statement that is verified.

Comment 1: One comment suggested that § 1.10 be amended to clearly set forth the controlling date for correspondence filed by "Express Mail" under § 1.10.

Response: Section 1.10 was substantially amended in the "Communications with the Office" Rule Final (discussed *supra*). Section 1.10(a) as amended in the aforementioned Final Rule provides that: (1) correspondence received by the Office that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) under § 1.10 will be considered filed in the Office on the date of deposit with the USPS; (2) the date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation; and (3) if the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date.

Section 1.11

Section 1.11(b) is amended to provide that the filing of a continued prosecution application under § 1.53(d) of a reissue application will not be announced in the *Official Gazette*. Although the filing of a continued prosecution application of a reissue application constitutes the filing of a reissue application, the announcement of the filing of such continued prosecution application would be redundant in view of the announcement of the filing of the prior reissue application in the *Official Gazette*.

Section 1.14

Section 1.14(a) is amended to: (1) clarify the provisions of § 1.14(a); (2) provide that copies of an application-as-filed may be provided to any person on written request accompanied by the fee set forth in § 1.19(b), without notice to the applicant, if the application is incorporated by reference in a U.S. patent; and (3) treat applications in the file jacket of a pending application under § 1.53(d) as pending rather than abandoned in determining whether copies of, and access to, such applications will be granted.

Under current practice, the public is entitled to access to the original disclosure (or application-as-filed) of an application, when the application is incorporated by reference into a U.S. patent. *See In re Gallo*, 231 USPQ 496 (Comm'r Pat. 1986). Section 1.14(a)(2) is added to avoid the need for a petition under § 1.14(e) to obtain a copy of the original disclosure (or application-as-filed) of an application that is incorporated by reference into a U.S. patent.

Section 1.14 is also amended to add a paragraph (f) to recognize the change to § 1.47 (a) and (b) which add exceptions to maintaining pending applications in confidence by providing public notice to nonsigning inventors of the filing of a patent application.

Comment 2: One comment stated that the change from "applications preserved in secrecy" to "applications preserved in confidence" suggests a lower level of security for the applications permitting greater discovery by third parties.

Response: The term "secrecy" in § 1.14 was changed to "confidence" in the Final Rule entitled "Miscellaneous Changes in Patent Practice" ("Miscellaneous Changes in Patent Practice"), published in the **Federal Register** at 61 FR 42790 (August 19, 1996), and in the *Official Gazette* at 1190 *Off. Gaz. Pat. Office* 67 (September 17, 1996). This change did not represent a change in practice, but merely conformed the language of § 1.14 to that of 35 U.S.C. 122 (the term "secrecy" is a term of art in regard to matters of national security, and its former use in § 1.14 was inappropriate).

Section 1.16

Section 1.16 is amended to add new paragraphs (m) and (n) including the unassociated text following paragraphs (d) and (l).

No comments were received concerning § 1.16.

Section 1.17

Section 1.17 (and § 1.136(a)) adds a recitation to an extension of time fee payment for a reply filed within a fifth month after a nonstatutory or shortened statutory period for reply was set.

Section 1.17(a) is subdivided into paragraphs (a)(1) through (a)(5), with paragraphs (a)(1) through (a)(4) setting forth the amounts for one-month through four-month extension fees. Section 1.17(a)(5) provides the small entity and other than small entity amounts for the new fifth-month extension fee.

Section 1.17(a) is being amended to permit a petition for a fifth-month extension of time. As the Office may set a shortened statutory period for reply of one-month or thirty days, whichever is longer, this authority for a petition under § 1.136(a) will permit an applicant to extend the period for reply until the six-month statutory maximum (35 U.S.C. 133) without resorting to a petition under § 1.136(b), or to extend by five months, pursuant to § 1.136(a), a non-statutory period for taking action (*e.g.*, the time period in § 1.192(a) for filing an appeal brief).

Section 1.17 paragraphs (e), (f), and (g) are rewritten as § 1.17 paragraphs (b), (c), and (d).

Section 1.17(h) is amended to delete references to petitions under §§ 1.47, 1.48, and 1.84. Sections 1.47, 1.48, and 1.84 (a) and (b) are amended to contain a reference to the petition fee set forth in § 1.17(i), rather than the petition fee set forth in § 1.17(h).

Section 1.17(i) is amended to: (1) add a petition under § 1.41 to supply the name(s) of the inventor(s) after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications; (2) add a petition under § 1.47 for filing by other than all the inventors or a person not the inventor; (3) add a petition under § 1.48 for correction of inventorship, except in provisional applications; (4) add a petition under § 1.59 for expungement and return of information; (5) delete the references to petitions under §§ 1.60 and 1.62 in view of the deletion of §§ 1.60 and 1.62; (6) add a petition under § 1.84 for accepting color drawings or photographs; and (7) add a petition under § 1.91 for entry of a model or exhibit.

Section 1.17(q) is amended to add a petition under § 1.41 to supply the name(s) of the inventor(s) after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

Section 1.17, as well as §§ 1.103, 1.112, 1.113, 1.133, 1.134, 1.135, 1.136, 1.142, 1.144, 1.146, 1.191, 1.192, 1.291, 1.294, 1.484, 1.485, 1.488, 1.494, 1.495, (§§ 1.530, 1.550, 1.560, 1.605, 1.617, 1.640, and 1.652 will be reviewed at a later date in connection with other matters), 1.770, 1.785, (§ 1.821 will be reviewed at a later date in connection with other matters), and 5.3 are also amended to replace the phrases "response" and "respond" with the phrase "reply" for consistency with § 1.111.•

Comment 3: One comment questioned why the terms "respond" and "response" in the rules of practice were being replaced with the term "reply."

Response: It is appropriate to use a single term ("reply") throughout the rules of practice, to the extent possible, to refer to that "reply" by an applicant to an Office action required to avoid abandonment and continue prosecution.

Comment 4: At least one comment noted that there is no statutory authority under 35 U.S.C. 41(a)(8)(C) for the $2,010 amount set for the fifth month extension of time.

Response: While the Notice of Proposed Rulemaking proposed a fifth month extension fee of $2010, a Notice of Proposed Rulemaking entitled "Revision of Patent and Trademark Fees for Fiscal Year 1998" ("1998 Fee Revision"), published in the **Federal Register** at 62 FR 24865 (May 7, 1997), and in the *Official Gazette* at 1198 *Off. Gaz. Pat. Office* 97 (May 27, 1997), proposed that this fee be set at $2060. The Office is now adopting the $2060 fifth month extension fee as proposed in the "1998 Fee Revision" Notice of Proposed Rulemaking.

Under 35 U.S.C. 41(a)(8)(C) (1991), the Commissioner is authorized to charge $340 for any third or subsequent petition for a one-month extension of time. However, under 35 U.S.C. 41(f), the additional fee established pursuant to 35 U.S.C. 41(a)(8)(C) for a subsequent petition for a one-month extension of time has been increased to $560 (*i.e.*, $560 is the current difference (established under 35 U.S.C. 41(a)(8)(C)) between the $1510 fee for a four-month extension of time and the $950 three-month extension of time). The $1510 fee for a four-month extension of time plus the $560 fee for an additional month is $2070 (this differs from the $2060 fee proposed in the "1998 Fee Revision" Notice of Proposed Rulemaking due to rounding). Therefore, the Office is authorized under 35 U.S.C. 41(a)(8) to establish a fee of $2060 for a five-month extension of time.

Section 1.21

Section 1.21(l) is amended for consistency with § 1.53, and § 1.21(n) is amended to change the reference to an improper application under §§ 1.60 or 1.62 to a reference to an application in which proceedings are terminated pursuant to § 1.53(e).

No comments were received regarding the proposed change to § 1.21.

Section 1.26

Section 1.26(a) is amended to better track the statutory language of 35 U.S.C. 42(d) and to add back language relating to refunds of fees paid that were not "required" that was inadvertently dropped in the July 1, 1993, publication of title 37 CFR, and from subsequent publications.

No comments were received regarding the proposed change to § 1.26.

Section 1.27

Section 1.27 paragraphs (a) through (d) are amended to remove the requirement that a statement filed thereunder be "verified," and to replace "aver" and "averring" with "state" and "stating." See comments relating to § 1.4(d). Section 1.27(b) is also amended for clarification with the movement of a clause relating to "any verified statement" within a sentence.

No comments were received regarding the proposed change to § 1.27.

Section 1.28

Section 1.28(a) is amended to remove the requirement for a statement that is "verified." See comments relating to § 1.4(d).

Section 1.28(a) is also amended to provide that a new small entity statement is not required for a continuing or reissue application where small entity status is still proper and reliance is placed on a reference to a small entity statement filed in a prior application or patent or a copy thereof is supplied. Section 1.28(a) is further amended to state that the payment of a small entity basic statutory filing fee in a nonprovisional application, which claims benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application (including a continued prosecution application) or in a reissue application, where the prior application or the patent has small entity status, will constitute a reference in the continuing or reissue application to the small entity statement in the prior application or in the patent, thereby establishing small entity status in such a nonprovisional application.

Section 1.28(a) is also amended to require a new determination of continued entitlement to small entity status for continued prosecution applications filed under § 1.53(d) and to clarify that the refiling of applications as continuations, divisions and continuation-in-part applications and the filing of reissue applications also require a new determination of continued entitlement to small entity status prior to reliance on small entity status in a prior application or patent.

Comment 5: One comment asked whether the change to § 1.28 regarding small entity requires that a small entity statement be filed with each continuing application.

Response: While the filing of a continuing application requires a new determination of entitlement to small entity status, § 1.28(a) continues to permit reliance on a small entity statement filed in a prior application for nonprovisional continuing applications.

Section 1.28(c) is amended to remove the requirement for a statement of facts explaining how an error in payment of a small entity fee(s) occurred in good faith and how and when the error was discovered. A fee deficiency payment under § 1.28(c) must include the difference between fee(s) originally paid as a small entity and the other than small entity fee(s) in effect at the time of payment of the complete fee deficiency. A fee deficiency payment under § 1.28(c) will be treated as a representation by the party submitting the payment that small entity status was established in good faith and that the original payment of small entity fees was made in good faith. Any paper submitted under § 1.28(c) will be placed in the appropriate file without review after the processing of any check or the charging of any fee deficiency payment specifically authorized.

Comment 6: One comment suggested that § 1.28(c) be amended to clarify current Office practice regarding the acceptance of papers under § 1.28(c)(2) in light of two recent District Court decisions: (1) *Haden Schweitzer Corp.* v. *Arthur B. Myr Industries, Inc.*, 901 F. Supp. 1235, 36 USPQ2d 1020 (E.D. Mich. 1995); and (2) *DH Technology, Inc.* v. *Synergstex International, Inc.*, 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1996).

Response: The Office is also aware of a recent District Court decision in *Jewish Hospital of St. Louis* v. *Idexx Laboratories*, 951 F. Supp 1, 42 USPQ2d 1720 (D. Me. 1996), that relies on § 1.28(c)(2) exclusively. The changes to § 1.28(c) are not directed to the issue of whether § 1.28(c)(2) must be viewed as the exclusive remedy. Nevertheless, an applicant or patentee can avoid undesirable results by not claiming small entity status unless it is absolutely certain that the applicant or patentee is entitled to small entity status (*i.e.*, resolving any doubt, uncertainty, or lack of information in favor of payment of the full fee). See MPEP 509.03 ("Small entity status must not be established unless the person or persons signing the * * * statement can *unequivocally* make the required self-certification" (emphasis added)).

Section 1.33

Section 1.33 is amended to no longer provide that the required residence and post office address of the applicant can appear elsewhere than in the oath or declaration under § 1.63. Section 1.63(a)(3) is amended to require that the post office address as well as the residence be identified therein and not elsewhere. Permitting the residence to be elsewhere in the application other than the oath or declaration, as was in § 1.33(a), would be inconsistent with unamended § 1.63(c) that states that the residence must appear in the oath or declaration. The requirement for placement of the post office address is equivalent to the requirement for the residence to eliminate confusion between the two, which often are the same destination and are usually provided in the oath or declaration. The reference in § 1.33(a) to the assignee providing a correspondence address has been moved within § 1.33(a) for clarification. Other clarifying language includes a reference to § 1.34(b), use of the terms "provided," "furnished" rather than "notified," and "application" rather than "case," and deletion of the expression "of which the Office."

The former language of § 1.33(b) is transferred to new § 1.4(g). Section 1.33(b) is amended to set forth the signature requirement for papers filed in an application (formerly in § 1.33(a)). Section 1.33(b) is specifically amended to provide that amendments and other papers filed in an application must be signed by: (1) an attorney or agent of record appointed in compliance with § 1.34(b); (2) a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a); (3) the assignee of record of the entire interest (if there is such); (4) an assignee of record of an

undivided part interest (if there is such), so long as the amendment or other paper is also signed by any assignee(s) of the remaining interest and any applicant retaining an interest; or (5) all of the applicants, including applicants under §§ 1.42, 1.43 and 1.47, unless there is an assignee of record of the entire interest and such assignee has chosen to prosecute the application to the exclusion of the applicant(s), and, as such, has taken action in the application in accordance with §§ 3.71 and 3.73. This is not a change in practice, but simply a clarification of current signature requirements.

No comments were received regarding the proposed change to § 1.33.

Section 1.41

Section 1.41(a) (and § 1.53) is amended to no longer require that a patent be applied for in the name of the actual inventors for an application for patent to be accorded a filing date. The requirement for use of full names is moved to § 1.63(a) for better context. Section 1.41(a) is specifically amended: (1) To provide that a patent is applied for in the name(s) of the actual inventor(s); (2) to add paragraphs (a)(1) and (a)(2) indicating how the inventorship is set forth in a nonprovisional and provisional application; and (3) to add paragraph (a)(3) indicating the need for an identifier consisting of alphanumeric characters if no name of an actual inventor is provided.

Section 1.41(a)(1) provides that the inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in §§ 1.53(d)(4) and 1.63(d). Section 1.41(a)(1) also provides that if an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(i) is filed supplying the name(s) of the inventor(s).

Section 1.41(a)(2) provides that the inventorship of a provisional application is that inventorship set forth in the cover sheet as prescribed by § 1.51(c)(1). Section 1.41(a)(2) also provides that if a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(c), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(q) is filed supplying the name(s) of the inventor(s).

35 U.S.C. 120 and § 1.78(a) require, *inter alia*, that an application have at least one inventor in common with a prior application to obtain the benefit of the filing date of such application. Considering the executed oath or declaration (or cover sheet in a provisional application) the sole mechanism for naming the inventor(s) would operate as a trap in the event that an application were abandoned prior to the filing of an oath or declaration in favor of a continuing application (or in the event that a cover sheet was not filed in a provisional application). To avoid this result, § 1.41 as adopted provides that the inventorship is that inventorship named in an executed oath or declaration under § 1.63 (or in the cover sheet under § 1.51(c)(1) in a provisional application), but that if no executed oath or declaration under § 1.63 (or cover sheet under § 1.51(c)(1) in a provisional application) is filed during the pendency of the application, the inventorship will be considered to be the inventor(s) named in the original application papers.

In the peculiar situation in which no inventor is named in the original application papers (or the correct inventor(s) are not named in the original application papers), and no executed oath or declaration under § 1.63 (or cover sheet under § 1.51(c)(1) in a provisional application) is filed during the pendency of the application, it will be necessary for the applicant to file a petition under § 1.41(a) (and appropriate fee) to name the inventor(s). No explanation (other than that the paper is supplying or changing the name(s) of the inventor(s)) or showing of facts concerning the inventorship or any delay in naming the inventorship is required or desired in a petition under § 1.41(a). The petition fee is required to cover (or defray in a provisional application) the costs of updating the Office's records for the application.

Where no inventor(s) is named on filing, the Office requests that an identifying name be submitted for the application. The use of very short identifiers should be avoided to prevent confusion. Without supplying at least a unique identifying name the Office may have no ability or only a delayed ability to match any papers submitted after filing of the application and before issuance of an identifying application number with the application file. Any identifier used that is not an inventor's name should be specific, alphanumeric characters of reasonable length, and should be presented in such a manner that it is clear to application processing personnel what the identifier is and where it is to be found. It is strongly suggested that applications filed without an executed oath or declaration under § 1.63 or 1.175 include the name of the person(s) believed to be the inventor for identification purposes. Failure to apprise the Office of the application identifier being used may result in applicants having to resubmit papers that could not be matched with the application and proof of the earlier receipt of such papers where submission was time dependent.

As any inventor(s) named in the original application papers is considered to be the inventor(s) only when no oath or declaration under § 1.63 is filed in a nonprovisional application or cover sheet under § 1.51(c)(1) filed in a provisional application, the recitation of the inventorship in an application submitted under § 1.53 (b) or (d) without an executed oath or declaration or cover sheet, respectively, for purposes of identification may be changed merely by the later submission of an oath or declaration executed by a different inventive entity without recourse to a petition under § 1.41 or 1.48.

Comment 7: One comment noted that when an application is filed only an alphanumeric identifier may be used, which would of necessity require a correction of inventorship, and questioned how a verified statement under § 1.48(a) could be filed as there would be no person to sign such statement, whether the Office will require that the name(s) of the inventor(s) be submitted within a specified period, and whether the filing date will be lost if the name(s) of the inventor(s) is not submitted within such period.

Response: The name(s) of the inventor(s) in a nonprovisional application are provided in the oath or declaration under § 1.63 (§ 1.41(a)(2)) and the name(s) of the inventor(s) in a provisional application are provided in the cover sheet (§ 1.41(a)(3)). Thus, an application filed without the name(s) of the inventor(s) must also have been filed without an oath or declaration under § 1.63 (nonprovisional) or cover sheet (provisional).

The Office will set a time period in a nonprovisional application filed without an oath or declaration under § 1.63 for the filing of such an oath or declaration (§ 1.53(f)). The Office will set a time period in a provisional application filed without a cover sheet for the filing of such cover sheet (§ 1.53(g)). The subsequently filed oath or declaration or cover sheet will

provide the name(s) of the inventor(s). No petition under § 1.48(a) would be required where there was an alphanumeric identifier (and not a name of a person) or where the person(s) set forth as the inventor(s) was incorrect.

In the event that an oath or declaration or cover sheet is not timely filed, the application will become abandoned and the inventorship will be considered to be the inventor(s) named in the original application papers. The failure to timely file an oath or declaration, cover sheet, or the name(s) of the inventor(s) is not a filing date issue.

Comment 8: One comment thought that the proposed change eliminating the need to identify any inventor would lead to sloppy filing procedures and that it should in almost all cases be possible for practitioners to correctly identify the inventors at the time of filing.

Response: Experience has demonstrated that a significant number of applications filed under § 1.53(b) without an executed oath or declaration have been filed with incorrect inventorships with explanations running from "there was no time to investigate the inventorship" to "the inventors contacted either did not understand the inventorship requirements under U.S. patent law or did not appreciate that the claims as filed included or did not include the contribution of the omitted or erroneously added inventor." Additionally, Office experience is that while almost all § 1.48(a) petitions concerning such matters are eventually granted, only a small percentage are granted on the initial petition thereby causing a prolonged prosecution period, which is undesirable in view of the amendment to 35 U.S.C. 154 contained in the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994).

Section 1.47

Section 1.47 paragraphs (a) and (b) are amended, pursuant to 35 U.S.C. 116 and 35 U.S.C 118, to provide for publication in the *Official Gazette* of a notice of filing for all applications, except for continued prosecution applications under § 1.53(d), submitted under this section rather than only when notice to the nonsigning inventor(s) is returned to the Office undelivered or when the address of the nonsigning inventor(s) is unknown. The information to be published, after grant of the § 1.47 petition, will include: The application number, filing date, invention title and name(s) of the nonsigning inventor(s). Letters returned as undeliverable are difficult to match with the related application file, and when matched with the file, the applications are burdensome to flag as requiring further action by the Office. Accordingly, the return of letters is not a desirable means of triggering publication of a notice to a nonsigning inventor as to the filing of the application. Furthermore, when a returned letter is used as such a trigger, another review of the application must be made for returned correspondence. As the best time for review of returned letters is after allowance, but before issuance, of an application, processing of the application would be delayed and done at a time that could be best used for printing related processing requirements. Printing of notice of the filing of all applications wherein § 1.47 status is granted does not require any such review to be made. In order to best balance the obligation of providing notice to inventors and efficient processing of applications, notice in the *Official Gazette* of the filing of § 1.47 applications will be prepared essentially at the same time that the letter notice is directly sent to the nonsigning inventor.

Paragraphs (a) and (b) of this section are also amended to exclude the filing of continued prosecution applications under § 1.53(d) from the notice requirement.

Section 1.47 is also amended for clarification purposes. A reference to an "omitted inventor" in § 1.47(a) is replaced with "nonsigning inventor." The statements in § 1.47 paragraphs (a) and (b) that a patent will be granted upon a satisfactory showing to the Commissioner are deleted as unnecessary. Section 1.47(b) is amended to clarify that it applies only where none of the inventors are willing or can be found to sign the oath or declaration by substitution of "an inventor" by "all the inventors." The use of "must state" in regard to the last known address is deleted as redundant in view of the explicit requirement for such address in the rule. The sentence in § 1.47(b) referring to the filing of the assignment, written agreement to assign or other evidence of proprietary interest is deleted as redundant in view of the requirement appearing earlier in § 1.47(b) calling for "proof of pertinent facts."

Comment 9: One comment believed that the amendment to § 1.47(b) results in a change in practice permitting an assignee to proceed thereunder only where all the inventors refuse to sign, and that the assignee should not be precluded from making the required declaration where only one inventor refuses to cooperate as the other inventors may not have personal knowledge of the facts.

Response: While the specific language of § 1.47(b) is amended to recite the condition that "all the inventors refuse to execute an application" the prior use of the term "inventor" was intended to mean and was interpreted as meaning all inventors. *See* MPEP 409.03(b). Accordingly, the language clarification is not a change in practice.

Although it is unclear as to what particular "facts" the comment is addressed to that the other inventors would not have personal knowledge of, facts as to the inventorship of the noncooperating inventor would better lie with the other inventors who are after all required to be joint inventors, 35 U.S.C. 116, and therefore the other inventors should have the best knowledge of the facts required for a declaration under § 1.63. Any declaration of facts, in support of the petition, to show, *e.g.*, that an inventor has refused to sign a declaration after having been given an opportunity to do so, should be made by someone with first-hand knowledge of the events, such as the attorney who presented the inventor with the application papers.

Section 1.48

Section 1.48 provides for correction of inventorship in an application (other than a reissue application). Section 1.324 provides for correction of inventorship in a patent. Sections 1.171 and 1.175 provide for correction of inventorship in a patent *via* a reissue application.

Section 1.48 is amended in its title to clarify that the section concerns patent applications, other than reissue applications, and not patents. Where a patent names an incorrect inventive entity, the inventorship error may be corrected by reissue. *See* MPEP 1402. Where a reissue application names an incorrect inventive entity in the executed reissue oath or declaration (whether the reissue application is filed for the sole purpose or in-part to correct the inventorship, or is filed for purposes other than correction of the inventorship), a new reissue oath or declaration in compliance with § 1.175 may be submitted with the correct inventorship without a petition under § 1.48. This is because it is the inventorship of the patent being reissued that is being corrected (*via* a reissue application).

35 U.S.C. 251, ¶ 3, provides that the provisions of title 35, U.S.C., relating to applications apply to reissue applications. 35 U.S.C. 116, ¶ 3, authorizes the Commissioner to permit correction of inventorship in an application under such terms as the Commissioner prescribes. The

Commissioner has determined that correction of inventorship in a reissue application may be accomplished under 35 U.S.C. 251 *via* the reissue oath or declaration, without resort to a petition under § 1.48. Therefore, § 1.48 has been amended to specifically exclude its applicability to correction of inventorship in a reissue application.

Section 1.48(a) will not require correction of the inventorship if the inventorship or other identification under § 1.41 was set forth in error on filing of the application. Section 1.48(a) is amended to apply only to correction of inventor or inventors, in applications, other than reissue applications, from that named in an originally filed executed oath or declaration and not to the naming of inventors or others for identification purposes under § 1.41. The statement to be submitted will be required only from the person named in error as an inventor or from the person who through error was not named as an inventor rather than from all the original named inventors so as to comply with 35 U.S.C. 116. The requirement that any amendment of the inventorship under § 1.48(a) be "diligently" made has been removed. The applicability of a rejection under 35 U.S.C. 102(f) or (g) against an application with the wrong inventorship set forth therein and any patent that would issue thereon is a sufficient motivation for prompt correction of the inventorship without the need for a separate requirement for diligence.

Comment 10: Two comments expressed opposition to deletion of the diligence requirement in § 1.48 paragraphs (a) through (c) in that removal thereof would seem to promote delay in correction of the inventorship and decrease the importance of having the correct inventorship.

Response: In addition to the motivation noted in the explanation of the rules for not allowing a patent to issue with improper inventorship, the criteria for correction of the inventorship becomes more restrictive subsequent to issuance under § 1.324 (having a statutory basis under 35 U.S.C. 256) than under § 1.48(a) (having a statutory basis under 35 U.S.C. 116). 35 U.S.C. 256 requires participation by all the parties including each original named inventor, which participation may be harder to obtain after the patent has issued. Petitions under § 1.48(a) filed earlier while the application is pending may seek waiver under § 1.183 of participation of some of the parties needed to participate. Additionally, petitions under § 1.48 in pending applications are not entered as a matter of right in rejected (the criteria of § 1.116 applies) or allowed (the criteria of § 1.312 applies) applications. *See* § 1.48(a) and MPEP 201.03.

A clarifying reference to § 1.634 is added in § 1.48(a) for instances when inventorship correction is necessary during an interference and has been moved from § 1.48(a)(4) for improved contextual purposes.

The § 1.48(a)(1) statement requires a statement only as to the lack of deceptive intent rather than a statement of facts to establish how the inventorship error was discovered and how it occurred, since the latter requirement is deleted. Additionally, the persons from whom a statement is required now includes any person who through error was not named as an inventor but limits statements from the original named inventors to only those persons named in error as inventors rather than all persons originally named as inventors including those correctly named. The paragraph is amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

Comment 11: One comment opposed the removal of the Office from examining the issue of inventorship as substantive law invalidates patents that have issued in the names of incorrect inventors and the Office is charged with the duty of examining applications for the purpose of denying issue to those applications that do not meet the standards of patentability. Where an oath has originally been filed asserting the proper inventor is one entity and a subsequent paper asserts that the proper inventor is another, under such circumstances "the facts are inherently suspect" and an investigation by the Office is warranted and required by statute.

Response: The amendments to § 1.48 have otherwise received overwhelming support.

The Office has pursued the existence of improper inventorship in applications by rejection under 35 U.S.C. 102(f) or (g) and will continue to do so independent of the change in the verified statement requirements under § 1.48 paragraphs (a) or (c). A request to change inventorship, however, often requested by the current inventors or assignee on their own initiative is not seen to be inherently fraught with deceptive intent as to warrant a close and detailed examination absent more. A statement that the error was made without deceptive intent is seen to be a sufficient investigation complying with the statutory requirement under 35 U.S.C. 116, particularly as most petitions are eventually granted or an application can be refiled naming the new desired inventive entity. Refiling of the application to change the inventorship will not cause the Office, absent more, to initiate an investigation as to the correct inventorship or cause a rejection under 35 U.S.C. 102(f) or (g) to be made. Additionally, it should be noted that the Office views a petition under § 1.48 to be a procedural matter and not to represent a substantive determination as to the actual inventorship. *See* MPEP 201.03, Verified Statement of Facts.

For those situations where there was deceptive intent, the Office is lacking certain necessary tools for a thorough inquiry (*e.g.*, subpoena authority) to ascertain the truth thereof (as in other situations under §§ 1.28 and 1.56). However, the inquiry cannot be waived by the Office due to the statutory requirement under 35 U.S.C. 116. There is no other reasonable course of action than to accept as an explanation for the execution of a § 1.63 oath or declaration setting forth an erroneous inventive entity that the inventor did not remember the contribution of the omitted inventor at the time the oath or declaration was executed (absent subpoena power and *inter parties* hearings), and therefore further inquiries into the matter other than a statement of lack of deceptive intent are a waste of Office resources.

Comment 12: One comment suggested that in limiting the submission of a verified statement of facts to only the parties being added or deleted as inventors, agreement of the original named inventors should also be obtained as is currently done when verified statements of facts from all the original named inventors are required.

Response: Agreement or acquiescence of the original named inventors, to the extent that they remain as inventors, to the new inventorship will be obtained through the retained requirement that the actual inventive entity complete a new oath or declaration under § 1.63, which must set forth the new inventive entity. Additionally, through the rule changes to this section and §§ 1.28 and 1.175 the Office is decreasing its investigation of claims relating to a lack of deceptive intent. The remaining purpose of these rules is to force the applicant(s) to merely make an assertion as to a lack of deceptive intent thereby permitting subsequent reviewers (tribunals or otherwise) to determine, in light of all the available facts, whether the applicant(s) complied with the statute.

Section 1.48(a)(2) is amended for clarification purposes to indicate the availability of §§ 1.42, 1.43 or 1.47 in meeting the requirement for an executed oath or declaration under § 1.63 from each actual inventor. Section 1.47 is only applicable to the person to be added as an inventor (inventors named in an application transmittal letter can be deleted without petition). For those persons already having submitted an executed oath or declaration under § 1.63, a petition under § 1.183, requesting waiver of reexecution of an oath or declaration, may be an appropriate remedy. The requirement for an oath or declaration is maintained in § 1.48(a) notwithstanding its replacement in § 1.324 for issued patents by a statement of agreement or lack of disagreement with the requested change in view of the need to satisfy the duty of disclosure requirement in a pending application that is set forth in a § 1.63 oath or declaration.

Section 1.48(a)(4) is amended to include a citation to § 3.73(b) to clarify the requirements for submitting a written consent of assignee, which is subject to the requirement under § 3.73(b), and to delete the reference to an application involved in an interference, which is being moved to § 1.48(a). Section 1.48(a)(4) is also amended to clarify that the assignee required to submit its written consent is only the existing assignee of the original named inventors at the time the petition is filed and not any party that would become an assignee based on the grant of the inventorship correction.

Section 1.48(b) is also amended to remove the requirement that a petition thereunder be diligently filed. The applicability of a rejection under 35 U.S.C. 102 (f) or (g) against an application with the wrong inventorship set forth therein and any patent that would issue thereon is sufficient motivation for prompt correction of the inventorship without the need for a separate requirement for diligence.

Section 1.48(b) is amended to have a clarifying reference to § 1.634 added for instances when inventorship correction is necessary during an interference.

Comment 13: A comment noted that the literal wording of § 1.48(b) permits correction thereunder only where the correct inventors were named on filing thereby excluding correction under § 1.48(b) where an incorrect inventorship was named on filing that was subsequently corrected under § 1.48(a) and, subsequent to the correction prosecution of the application, required additional correction under § 1.48(b).

Response: The comment is accepted and § 1.48(b) has been modified to delete "when filed" after "nonprovisional application" for clarification purposes. Additionally, the term "originally" in the first sentence of paragraph (b) has been replaced with "currently."

Section 1.48(c) is amended so that a petition thereunder no longer needs to meet the current requirements of § 1.48(a), which are also changed. A statement from each inventor being added that the inventorship amendment is necessitated by amendment of the claims and that the error occurred without deceptive intent is required under § 1.48(c)(1) rather than the previous requirement of a statement from each original named inventor. The previous requirements under § 1.48(a) for an oath or declaration, the written consent of an assignee and the written consent of any assignee are retained, but are now separately set forth in §§ 1.48 paragraphs (c)(2) through (c)(4). The particular circumstances of a petition under this paragraph, adding an inventor due to an amendment of the claims that incorporates material attributable to the inventor to be added, is seen to be indicative of a lack of deceptive intent in the original naming of inventors. Accordingly, all that must be averred to is that an amendment of the claims has necessitated correction of the inventorship and that the inventorship error existing in view of the claim amendment occurred without deceptive intent. The previous requirement for diligence in filing the petition based on an amendment to the claims is not retained as applicants have the right, prior to final rejection or allowance, to determine when particular subject matter is to be claimed. Applicants should note that any petition under § 1.48 submitted after allowance is subject to the requirements of § 1.312, and a petition submitted after final rejection is not entered as a matter of right.

Section 1.48(c)(2) is amended to clarify the availability of §§ 1.42, 1.43 and 1.47 in meeting the requirement for an executed oath or declaration under § 1.63. Section 1.47 is only applicable to the person to be added as an inventor. For those persons already having an executed oath or declaration under § 1.63, a petition under § 1.183, requesting waiver of reexecution of an oath or declaration, may be an appropriate remedy.

Section 1.48(c)(4) is amended to clarify that the assignee required to submit its written consent is only the existing assignee of the original named inventors at the time the petition is filed and not any party that would become an assignee based on the grant of the inventorship correction. A citation to § 3.73(b) is presented.

Section 1.48(d) is amended by addition of "their part" to replace "the part of the actual inventor or inventors" and of "omitted" to replace "actual" to require statements from the inventors to be added rather than from all the actual inventors so as to comply with 35 U.S.C. 116.

Section 1.48(d)(1) is also clarified to specify that the error to be addressed is the inventorship error. It is not expected that the party filing a provisional application will normally need to correct an error in inventorship under this paragraph by adding an inventor therein except when necessary under § 1.78 to establish an overlap of inventorship with a continuing application.

Section 1.48(d)(1) is also amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

Section 1.48(e)(1) is amended to replace a requirement in provisional applications that the required statement be one "of facts" directed towards "establishing that the error" being corrected "occurred without deceptive intention," requiring only a statement that the inventorship error occurred without deceptive intent. Paragraph (e)(1) is also amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18. It is not expected that the party filing a provisional application would need to file a petition under this paragraph since the application will go abandoned by operation of law (35 U.S.C. 111(b)(5)), and the need to delete an inventor will not affect the overlap of inventorship needed to claim priority under § 1.78(a)(3) for any subsequently filed nonprovisional application.

Section 1.48(e)(3) is amended to clarify that the assignee required to submit its written consent is only the prior existing assignee before correction of the inventorship is granted and not any party that would become an assignee based on the grant of the inventorship correction. A reference to § 3.73(b) is added.

Section 1.48(f) is added to provide that the later filing of an executed oath or declaration (or cover sheet (§ 1.51(c)(1)) in a provisional application) during the pendency of the application would act to correct the inventorship without a specific petition for such correction and will be used to further process the application notwithstanding any inventorship or other identification name earlier presented.

Section 1.48(g) is added to specifically recognize that the Office may require such other information as may be deemed appropriate under the

particular circumstances surrounding a correction of the inventorship.

Section 1.51

Section 1.51, paragraphs (a)(1) and (a)(2), are re-written as § 1.51, paragraphs (b) and (c), respectively, and § 1.51(b) is re-written as § 1.51(d). Section 1.51(c) covering the use of an authorization to charge a deposit account is removed as unnecessary in view of § 1.25(b).

No comments were received regarding the proposed change to § 1.51.

Section 1.52

Section 1.52, paragraphs (a) and (d), are amended to remove the requirement that the translation be verified in accordance with the change to §§ 1.4(d)(2) and 10.18. Section 1.52, paragraph (c), is amended to remove the reference to §§ 1.123 through 1.125 to: (1) reflect a transfer of material from §§ 1.123 and 1.124 to § 1.121; (2) further clarify that § 1.125 is not a vehicle amendment of an application; and (3) to clarify that alterations to application papers may be made on, as well as before, the signing of the oath or declaration. Section 1.52, paragraphs (a) and (d), are also amended to clarify the need for a statement that the translation being offered is an accurate translation, as in § 1.69(b).

Comment 14: Two comments were received asking whether the attorney can sign the statement that the translation is accurate, and how much firsthand knowledge does a practitioner need to know that the translation is accurate.

Response: The Office will accept a statement that the translation is accurate from any party. However, any party signing such statement must keep in mind the averments that are made under §§ 1.4(d) and 10.18. The actual firsthand knowledge needed by a practitioner is that amount of knowledge to comply with the averments in §§ 1.4(d) and 10.18.

Comment 15: A comment questioned whether there is any difference between the previous language of "verified translation" and the present language of "accurate translation."

Response: The previous language was directed at a verification that the translation is accurate. A verification requirement is now unnecessary due to the amendments to §§ 1.4(d) and 10.18. Thus, § 1.52(d) is amended to include the more direct term "accurate."

Section 1.53

Section 1.53 is amended to include headings for each paragraph for purposes of clarity.

Section 1.53(a) is amended to state that "(a)ny papers received in the Patent and Trademark Office which purport to be an application for a patent will be assigned an application number for identification purposes." That is, the Office will refer to papers purporting to be an application for a patent as an "application" and assign such "application" an application number for identification purposes. This reference, however, does not imply that such papers meet the requirements in § 1.53(b) to be accorded a filing date or constitute an "application" within the meaning of 35 U.S.C. 111.

Section 1.53(b) is amended to provide that: (1) the filing date of an application for patent filed under § 1.53(b) is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Office; (2) no new matter may be introduced into an application after its filing date; (3) a continuation or divisional application filed by all or by fewer than all of the inventors named in a prior nonprovisional application may be filed under § 1.53(b) or (d); and (4) a continuation or divisional application naming an inventor not named in the prior nonprovisional application or a continuation-in-part application must be filed under § 1.53(b).

Section 1.53(c) is amended to provide for provisional applications (formerly provided for in § 1.53(b)(2)). Section 1.53(c) includes the language of former § 1.53(b)(2), with certain changes for purposes of clarity. Section 1.53(c)(i), for example, includes language requiring either the provisional application cover sheet required by § 1.51(c)(1) or a cover letter identifying the application as a provisional application. The cover letter may be an application transmittal letter or some other paper identifying the accompanying papers as a provisional application.

Section 1.53(d) is amended to provide for continued prosecution applications. Section 1.53(d)(1) provides that a continuation or divisional application, but not a continuation-in-part, of a prior nonprovisional application may be filed as a continued prosecution application under § 1.53(d), subject to the conditions specified in paragraph (d)(1)(i) and (d)(1)(ii). That is, an application under § 1.53(d) cannot be a continuation-in-part application, and the prior application cannot be a provisional application.

Section 1.53(d)(1)(i) specifies that the prior application be either: (1) Complete as defined by § 1.51(b) and filed on or after June 8, 1995; or (2) the national stage of an international application in compliance with 35 U.S.C. 371 and filed on or after June 8, 1995. The phrase "prior" application in § 1.53(d)(1) means the application immediately prior to the continued prosecution application under § 1.53(d), in that a continued prosecution application under § 1.53(d) may claim the benefit under 35 U.S.C. 120, 121, or 365(c) of applications filed prior to June 8, 1995 so long as the application that is immediately prior to the continued prosecution application under § 1.53(d) was filed on or after June 8, 1995.

Section 1.53(d)(1)(ii) specifies that the application under § 1.53(d) be filed before the earliest of: (1) Payment of the issue fee on the prior application, unless a petition under § 1.313(b)(5) is granted in the prior application; (2) abandonment of the prior application; or (3) termination of proceedings on the prior application.

Section 1.53(d)(2) provides that the filing date of a continued prosecution application is the date on which a request on a separate paper for an application under § 1.53(d) is filed. That is, a request for an application under § 1.53(d) cannot be submitted within papers filed for another purpose (*e.g.*, the filing of a "conditional" request for a continued prosecution application within an amendment after final for the prior application is an improper request for a continued prosecution application under § 1.53(d)).

In addition, a "conditional" request for a continued prosecution application will not be permitted. Any "conditional" request for a continued prosecution application submitted (as a separate paper) with an amendment after final in an application will be treated as an unconditional request for a continued prosecution application of such application. This will result (by operation of § 1.53(d)(2)(v)) in the abandonment of such (prior) application, and (if so instructed in the request for a continued prosecution application) the amendment after final in the prior application will be treated as a preliminary amendment in the continued prosecution application.

Section 1.53(d)(2) further provides that an application filed under § 1.53(d): (1) Must identify the prior application (§ 1.53(d)(i)); (2) discloses and claims only subject matter disclosed in the prior application (*i.e.*, is a continuation or divisional, but not a continuation-in-part) (§ 1.53(d)(1)(ii)); (3) names as inventors the same inventors named in the prior application on the date the application under § 1.53(d) was filed, except as provided in § 1.53(d)(4) (§ 1.53(d)(2)(iii)); (4) includes the request for an application under § 1.53(d), will utilize the file jacket and contents of the prior application, including the specification, drawings and oath or declaration, from the prior application to constitute the new application, and will be assigned the application number of the prior application for identification purposes (§ 1.53(d)(2)(iv)); and (5) is a request to expressly abandon the prior application as of the filing date of the request for an application under § 1.53(d) (§ 1.53(d)(2)(v)).

Section 1.53(d)(3) provides that the filing fee for a continued prosecution application filed under § 1.53(d) is: (1) The basic filing fee as set forth in § 1.16; and (2) any additional § 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under § 1.53(d) and entry of any amendments under § 1.116 not entered in the prior application which applicant has requested to be entered in the continued prosecution application. *See* 35 U.S.C. 41(a) (1)–(4).

Section 1.53(d)(4) provides that an application filed under § 1.53(d) may be filed by fewer than all the inventors named in the prior application, provided that the request for an application under § 1.53(d) when filed is accompanied by a statement requesting deletion of the name or names of the person or persons who are not inventors of the invention being claimed in the new application, and that no person may be named as an inventor in an application filed under § 1.53(d) who was not named as an inventor in the prior application on the date the application under § 1.53(d) was filed, except by way of a petition under § 1.48. Thus, an application under § 1.53(d) must name as inventors either the same as (§ 1.53(d)(2)(iii)) or fewer than all of (§ 1.53(d)(4)) the inventors named in the prior application. A request for an application under § 1.53(d) purporting to name as an inventor a person not named as an inventor in the prior application (even if accompanied by a new oath or declaration under § 1.63 listing that person as an inventor) will be treated as naming the same inventors named in the prior application (§ 1.53(d)(2)(iii)).

Section 1.53(d)(5) provides that: (1) Any new change must be made in the form of an amendment to the prior application; (2) no amendment in an application under § 1.53(d) (a continued prosecution application) may introduce new matter or matter that would have been new matter in the prior application; and (3) any new specification filed with the request for an application under § 1.53(d) will not be considered part of the original application papers, but will be treated as a substitute specification in accordance with § 1.125. Pursuant to the provisions of § 1.53(d)(5), where applicant desires entry of an amendment in the application under § 1.53(d) that was previously denied entry under § 1.116 in the prior application, the applicant must request its entry (and pay any additional claims fee required by § 1.53(d)(3)(ii)) in the application under § 1.53(d) prior to action by the Office in the application under § 1.53(d). Any amendment submitted with the request for an application under § 1.53(d) that seeks to add matter that would have been new matter in the prior application will be objected to under § 1.53(d), and the applicant will be required to cancel the subject matter that would have been new matter in the prior application.

Section 1.53(d)(6) provides that the filing of a continued prosecution application under § 1.53(d) will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of § 1.14 to access to, copies of, or information concerning either the prior application or any continuing application filed under the provisions of this paragraph may be given similar access to, copies of, or similar information concerning, the other application(s) in the application file.

Section 1.53(d)(7) provides that a request for an application under § 1.53(d) is a specific reference under 35 U.S.C. 120 to every application assigned the application number identified in such request, and that no amendment in a continued prosecution application under § 1.53(d) shall delete this specific reference to any prior application. That is, other than the identification of the prior application in the request required by § 1.53(d) for a continued prosecution application, a continued prosecution application needs no further identification of or reference to the prior application (or any prior application assigned the application number of such application under § 1.53(d)) under 35 U.S.C. 120 and § 1.78(a)(2).

Section 1.53(d)(8) provides that in addition to identifying the application number of the prior application, applicant is urged to furnish in the request for an application under § 1.53(d) the following information relating to the prior application to the best of his or her ability: (1) Title of invention; (2) name of applicant(s); and (3) correspondence address.

Section 1.53(d)(9) provides that: (1) Envelopes containing only requests and fees for filing an application under § 1.53(d) should be marked "Box CPA" and (2) requests for an application under § 1.53(d) filed by facsimile transmission should be clearly marked "Box CPA."

Section 1.53(e)(1) provides that if an application deposited under § 1.53 paragraphs (b), (c), or (d) does not meet the respective requirements in § 1.53 paragraphs (b), (c), or (d) to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

Section 1.53(e)(2) provides that: (1) Any request for review of a notification pursuant to § 1.53(e)(1), or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to § 1.53(e); (2) any petition under § 1.53(e) must be accompanied by the fee set forth in § 1.17(i) in an application filed under § 1.53 paragraphs (b) or (d), and the fee set forth in § 1.17(q) in an application filed under § 1.53(c); and (3) in the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

Section 1.53(e)(3) provides that if an applicant is notified of a filing error pursuant to § 1.53(e)(1), but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to § 1.53(e)(2), proceedings in the application will be considered terminated, and that where proceedings in an application are terminated pursuant to § 1.53(e)(3), the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.

Section 1.53(f) is amended to include the language of former § 1.53(d)(1) and to provide that the oath or declaration required for a continuation or divisional application under § 1.53(b) may be a copy of the executed oath or declaration filed in the prior application (under § 1.63(d)).

Section 1.53 paragraphs (g), (h), (i), and (j) are added and include the language of former § 1.53 paragraphs (d)(2), (e)(1), (e)(2), and (f), respectively.

Comment 16: The majority of the comments supported the deletion of §§ 1.60 and 1.62 in favor of the proposed amendment to § 1.53.

Response: The Office is deleting §§ 1.60 and 1.62 in favor of an amended § 1.53.

Comment 17: Several comments suggested that the Office adopt a continued prosecution procedure for applications filed on or after June 8, 1995 similar to the practice set forth in § 1.129(a), rather than the continued prosecution application practice set forth in § 1.53(d).

Response: Section 532(a)(2)(A) of Pub. L. 103–465 provides specific authorization for the practice set forth in § 1.129(a). There is currently no statutory authority for the Office to simply charge the patent fees set forth in 35 U.S.C. 41(a) for further examination of an application. 35 U.S.C. 41(d) would authorize the Office to further examine an application for a fee that recovers the estimated average cost to the Office of such further examination; however, as 35 U.S.C. 41(h) is applicable only to fees under 35 U.S.C. 41 (a) and (b), the Office would not be authorized to provide a small entity reduction in regard to such fee. Thus, the only mechanism by which the Office may provide further examination for a fee to which the small entity reduction is applicable is *via* a continuing application.

Section 209 of H.R. 3460, 104th Cong., 2d Sess. (1996), would have provided statutory authority for the further reexamination of an application for a fee to which the small entity reduction was applicable. Section 209 of H.R. 400, 105th Cong., 1st Sess. (1997), if enacted, will provide statutory authority for the further reexamination of an application for a fee to which the small entity reduction will be applicable.

Comment 18: One comment stated that the combination of §§ 1.53, 1.60, and 1.62 into a single § 1.53 was complex and confusing. Another comment suggested that § 1.53 be split into a number of sections, or that headings be used in § 1.53 in the manner that headings are used in §§ 1.84 and 1.96.

Response: Placing the provisions of § 1.53 into multiple sections, rather than multiple paragraphs of a single section, would not result in a simplification of its provisions. The Office considers it appropriate to place the filing provisions concerning all applications (nonprovisional, provisional, and continued prosecution) into a single section to reduce the confusion as to the filing requirements for any application for patent. Section 1.53 as adopted includes headings in each paragraph of § 1.53 to indicate the subject to which each of these paragraphs pertains.

Comment 19: One comment suggested amending § 1.53 to require applicants to indicate changes to the disclosure in a continuation or divisional application.

Response: The suggestion is not adopted. The Office did not propose to amend § 1.53 to require applicants to indicate changes to the disclosure in any continuing application. Thus, adopting a change to impose this additional burden on an applicant is not considered appropriate in this Final Rule.

Comment 20: One comment suggested that the Office permit applicants to file a statement requesting deletion of an inventor in a continuation or divisional application any time prior to or coincident with the mailing of an issue fee payment. The comment questioned whether the time period in § 1.53(e)(1) addresses this issue.

Response: Unless a statement requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application accompanies the copy of the executed oath or declaration submitted in accordance with § 1.63(d) in an application filed pursuant to § 1.53(b), or accompanies the request for an application under § 1.53(d) in an application filed pursuant to § 1.53(d), the inventorship of the continuation or divisional application filed under § 1.53(b) using a copy of the oath or declaration of the prior application pursuant to § 1.63(d) or filed under § 1.53(d) will be considered identical to that in the prior application, and correction of the inventorship (if appropriate) must be by way of § 1.48. Identification of the inventorship is necessary to the examination of an application (*e.g.*, 35 U.S.C. 102(f) and (g)). As such, the Office must require identification of the inventorship prior to examination of an application.

Section 1.53(e)(1) applies in those instances in which papers filed as an application under § 1.53 (b), (c), or (d) do not meet the respective requirements of § 1.53 (b), (c), or (d) to be entitled to a filing date. Submitting an oath or declaration is not a filing date issue, and naming the inventors is no longer a filing date issue. Thus, the provisions of § 1.53(e) do not apply to the filing of a statement requesting deletion of an inventor in a continuation or divisional application.

Comment 21: One comment questioned whether § 1.53(d) applies only to applications filed on or after June 8, 1995, and questioned whether § 1.53(d) should be made applicable to pending applications filed prior to June 8, 1995. The comment also questioned the relationship between § 1.129(a) and § 1.53(d).

Response: Section § 1.53(d), by its terms, permits the filing of a continuation or divisional thereunder of only a nonprovisional application that, *inter alia*, is either: (1) Complete as defined by § 1.51(b) and filed on or after June 8, 1995 or; (2) resulted from entry into the national stage of an international application in compliance with 35 U.S.C. 371 filed on or after June 8, 1995. While § 1.53(d) and § 1.129(a) both provide for the continued prosecution of an application, these sections are distinct in that they apply to a virtually mutually exclusive class of applications and have separate requirements (*e.g.*, a request for a § 1.53(d) application may be filed subsequent to the filing of an appeal brief, so long as the request is filed before the earliest of: (1) Payment of the issue fee on the prior application, unless a petition under § 1.313(b)(5) is granted in the prior application; (2) abandonment of the prior application; or (3) termination of proceedings on the prior application).

Comment 22: One comment suggested that the rules of practice permit the execution of copies of an oath or declaration by fewer than all of the inventors, without cross-reference to the other copies to facilitate contemporaneous executions by geographically separated inventors.

Response: The suggestion is not adopted. Section 1.63(a)(3) requires that an oath (or declaration), *inter alia*, identify each inventor. The rules of practice permit inventors to execute separate oaths (or declarations), so long as each oath (or declaration) sets forth all of the inventors (the necessary cross-reference). That is, § 1.63(a)(3) prohibits the execution of separate oaths (or declarations) in which each oath (or declaration) sets forth only the name of the executing inventor. An amendment to the rules of practice to permit an inventor to execute an oath or declaration that does not set forth each inventor would not only lead to confusion as to the inventorship of an application, but would be inconsistent with the requirement in 35 U.S.C. 115 that the applicant make an oath (or declaration) that the applicant believes himself (or herself) to be the original and first inventor of the subject matter for which a patent is sought, as the oaths or declarations would conflict as to the inventorship of the application.

Comment 23: Several comments suggested that the statement required under 35 U.S.C. 120 in a continued prosecution application will be confusing as the continued prosecution application will have the same application number as the prior application. One comment indicated that this will cause confusion: (1) As to which application is being referenced in a 35 U.S.C. 120 statement in the divisional application when a divisional application under § 1.53(b) and a continued prosecution application filed under § 1.53(d) are filed from the same prior application; and (2) in docketing applications as most commercially available software identify applications by application number. Another comment questioned what sentence was required pursuant to § 1.78(a)(2) in a continued prosecution application.

Response: 35 U.S.C. 120 provides that an application may obtain the benefit of the filing date of an earlier filed application if, *inter alia*, the application "contains or is amended to contain a specific reference to the earlier filed application." Section 1.78(a) requires that this specific reference be in the first sentence of the specification and identify each earlier filed application by application number or international application number and international filing date and relationship of the applications. Thus, while a "specific reference to the earlier filed application" is a requirement of statute (35 U.S.C. 120), the particulars of this specific reference (by application number, filing date, and relationship) is a requirement of regulation (§ 1.78(a)), not the patent statute.

The purpose of the "specific reference" requirement of 35 U.S.C. 120 is to provide notice to the public of the filing date upon which a patentee may rely to support the validity of the patent:

> [35 U.S.C. 120] embodies an important public policy. The information required to be disclosed is information that would enable a person searching the records of the Patent Office to determine with a minimum of effort the exact filing date upon which a patent applicant is relying to support the validity of his application or the validity of a patent issued on the basis of one of a series of applications. In cases such as this, in which two or more applications have been filed and the validity of a patent rests upon the filing date of an application other than that upon which the patent was issued, a person, even if he had conducted a search of the Patent Office records, could unwittingly subject himself to exactly this type of infringement suit unless the later application adequately put him on notice that the applicant was relying upon a filing date different from that stated in the later application.

Sampson v. *Ampex Corp.*, 463 F.2d 1042, 1045, 174 USPQ 417, 419 (2d Cir. 1972); *see also Sticker Indus. Supply Corp.* v. *Blaw-Knox Co.*, 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968)("Congress may well have thought that [35 U.S.C.] 120 was necessary to eliminate the burden on the public to engage in long and expensive search of previous applications in order to determine the filing date of a later patent * * *. The inventor is the person best suited to understand the relation of his applications, and it is no hardship to require him to disclose this information").

To reduce the delay in processing a continued prosecution application, the Office will maintain in its records (*e.g.*, in the Patent Application Locating and Monitoring (PALM) records for an application) for identification purposes the application number and filing date of the prior application. Thus, in a continued prosecution application, the application number of the continued prosecution application will be the application number of the prior application, and the filing date indicated on any patent issuing from a continued prosecution application will be the filing date of the prior application (or, in a chain of continued prosecution applications, the filing date of the application immediately preceding the first continued prosecution application in the chain). In addition, as a continued prosecution application will use the file wrapper of the prior application, the prior application will be available upon inspection of the continued prosecution application.

Unless excepted from § 1.78(a)(2), the first sentence of a continued prosecution application would consist of a reference to that application as a continuation or divisional of an application having the identical application number and the effective filing date of (the filing date to be printed on any patent issuing from) the continued prosecution application. Such a sentence would provide no useful information to the public.

Therefore, § 1.53(d)(7) as adopted provides that a request for an application under § 1.53(d) is a specific reference under 35 U.S.C. 120 to every application assigned the application number identified in such request, and § 1.78(a)(2) as adopted provides that the request for a continued prosecution application under § 1.53(d) is the specific reference under 35 U.S.C. 120 to the prior application. That is, the continued prosecution application includes the request for an application under § 1.53(d) (§ 1.53(d)(2)(iv)), and the recitation of the application number of the prior application in such request (as required by § 1.53(d)) is the "specific reference to the earlier filed application" required by 35 U.S.C. 120. No further amendment to the specification is required by 35 U.S.C. 120 or § 1.78(a) for a continued prosecution application for such continued prosecution application to contain the required specific reference to the prior application, as well as any other application assigned the application number of the prior application (*e.g.*, in instances in which a continued prosecution application is the last in a chain of continued prosecution applications).

Where an application claims a benefit under 35 U.S.C. 120 of a chain of applications, the application must make a reference to the first (earliest) application and every intermediate application. *See Sampson*, 463 F.2d at 1044–45, 174 USPQ at 418–19; *Sticker Indus. Supply Corp.*, 405 F.2d at 93, 160 USPQ at 179; *Hovlid* v. *Asari*, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962); *see also* MPEP 201.11. In addition, every intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application.

In the situation in which there is a chain of continued prosecution applications, each continued prosecution application in the chain will, by operation of § 1.53(d)(7), contain the required specific reference to its immediate prior application, as well as every other application assigned the application number identified in such request. Put simply, a specific reference to a continued prosecution application by application number and filing date will constitute a specific reference to: (1) The non-continued prosecution application originally assigned such application number (the prior application as to the first continued prosecution application in the chain); and (2) every continued prosecution application assigned the application number of such non-continued prosecution application.

Where the non-continued prosecution application originally assigned such application number itself claims the benefit of a prior application or applications under 35 U.S.C. 120, 121, or 365(c), § 1.78(a)(2) continues to require that such application contain in its first sentence a reference to any such prior application(s). As a continued prosecution application uses the specification of the prior application, such a specific reference in the prior application (as to the continued prosecution application) will constitute such a specific reference in the continued prosecution application, as well as every continued prosecution application in the event that there is a

chain of continued prosecution applications.

Where an applicant in an application filed under § 1.53(b) seeks to claim the benefit of an application filed under § 1.53(d) under 35 U.S.C. 120 or 121 (as a continuation, divisional, or continuation-in-part), § 1.78(a)(2) requires a reference to the continued prosecution application by application number in the first sentence of such application. Section 1.78(a)(2) has been amended to also provide that "[t]he identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number." Thus, where a referenced continued prosecution application is in a chain of continued prosecution applications, this reference will constitute a reference under 35 U.S.C. 120 and § 1.78(a)(2) to every continued prosecution application in the chain as well as the non-continued prosecution application originally assigned such application number.

Therefore, regardless of whether an application is filed under § 1.53(b) or (d), a claim under 35 U.S.C. 120 to the benefit of a continued prosecution application is, by operation of § 1.53(d)(7) and § 1.78(a)(2), a claim to every application assigned the application number of such continued prosecution application. In addition, applicants will not be permitted to choose to delete such a claim as to certain applications assigned that application number (*e.g.*, for patent term purposes).

Finally, while it is recognized that using a common application number (and file wrapper) for a continued prosecution application and its prior application (which may also be a continued prosecution application) will necessitate docketing modifications (as well as the Office's PALM system), the burden of such modifications is outweighed by the benefits that will result from the elimination of the initial processing of such applications.

Comment 24: One comment suggested that the phrase "now refiled" be used in lieu of "now abandoned" to reflect the status of the prior application.

Response: Under 35 U.S.C. 120, the status of an application is one of three conditions: (1) pending; (2) patented; or (3) abandoned. *See In re Morganroth*, 6 USPQ2d 1802, 1803 (Comm'r Pat. 1988). As the filing of a continued prosecution application under § 1.53(d) operates to expressly abandon the prior application under § 1.53(d)(2)(v), the status of the prior application is appropriately designated as "abandoned."

Comment 25: Several comments suggested that the proposed continued prosecution application practice be made applicable in instances in which the prior application was filed prior to June 8, 1995, to expedite the prosecution of such applications.

Response: Permitting the continued prosecution application practice to be applicable in instances in which the prior application was filed prior to June 8, 1995, would result in confusion as to whether the patent issuing from the continued prosecution application is entitled to the provisions of 35 U.S.C. 154(c). As the continued prosecution application practice was not in effect prior to June 8, 1995, no patent issuing from a continued prosecution application is entitled to the provisions of 35 U.S.C. 154(c).

As discussed *supra*, the application number of a continued prosecution application will be the application number of the prior application, and the filing date indicated on any patent issuing from a continued prosecution application will be the filing date of the prior application (or, in a chain of continued prosecution applications, the filing date of the application immediately preceding the first continued prosecution application in the chain). Thus, any patent issuing from a continued prosecution application, where the prior application was filed prior to June 8, 1995, will indicate that the filing date of the application for that patent was prior to June 8, 1995, which will confuse the public (and possible the patentee) into believing that such patent is entitled to the provisions of 35 U.S.C. 154(c).

The Office has implemented § 532(a)(2)(A) of Pub. L. 103–465 in § 1.129(a) to conclude the examination of applications pending at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121, and 365(c). Further examination of any application may be obtained *via* the filing of a continuing application under § 1.53(b). Requiring applications filed prior to June 8, 1995, that are not eligible for the transitional procedure set forth in § 1.129(a) to obtain further examination *via* the filing of a continuing application under § 1.53(b) is a reasonable requirement to avoid confusion as to whether a patent issuing from a continued prosecution (§ 1.53(d)) application is entitled to the provisions of 35 U.S.C. 154(c).

Comment 26: One comment suggested that the phrase "most immediate prior national application" rather than "prior application" was confusing. The comment further stated that if the prior application was one filed under § 1.62, there is no copy in that complete application of the (oath or) declaration filed in the application under § 1.62.

Response: The phrase "most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c)" is changed to "prior application." An application under §§ 1.53(d), 1.60, or 1.62 must ultimately be a continuing application of an application filed under § 1.53(b). Where the prior application is an application under § 1.60, the oath or declaration is the copy of the oath or declaration from the prior application *vis-à-vis* the application under § 1.60 submitted in accordance with § 1.60(b)(2). Where the prior application is an application under §§ 1.62 or 1.53(d), the oath or declaration is the oath or declaration from the prior application *vis-à-vis* the application under §§ 1.62 or 1.53(d). Where there is a chain of applications under §§ 1.62 or 1.53(d) preceding the prior application to an application under § 1.53(d), the oath or declaration of the prior application will be the oath or declaration of the application under §§ 1.53 or 1.60 immediately preceding the chain of applications under §§ 1.62 or 1.53(d), as each application in the chain of applications under §§ 1.62 or 1.53(d) utilizes the oath or declaration of the prior application.

Comment 27: One comment suggested that applications filed under § 1.53(d) should be taken up as amended applications, rather than as newly filed applications.

Response: The comment implies that taking up a continued prosecution application as an amended application may result in the examiner acting on the application in a more timely manner than if the application were accounted for as a new application. The matter is under consideration along with other administrative issues, and a decision shall be made in due course.

Comment 28: One comment suggested that § 1.129(a) be amended so as not to be limited to applications under final rejection, such that an applicant in an application in which a notice of allowance under § 1.311 has been mailed may obtain entry of an information disclosure statement without regard to the requirements of § 1.97(d).

Response: The Notice of Proposed Rulemaking did not propose to amend § 1.129(a). While the language of § 532(a)(2)(A) of Pub. L. 103–465 does not expressly exclude the further examination of an application that has been allowed (as opposed to an application under a final rejection), § 102(d) of Pub. L. 103–465 provides that "[t]he statement of administrative action approved by the Congress under section 101(a) shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." The statement of administrative action specifies that such further examination is to facilitate the completion of prosecution of applications pending before the Office, and to permit applicants to present a submission after the Office has issued a final rejection on an application. *See* H.R. Rep. 826(i), 103rd Cong., 2nd Sess. 1005–06, *reprinted* in 1984 U.S.C.C.A.N. 3773, 4298.

Upon mailing of a notice of allowance under § 1.311, prosecution of an application before the Office is concluded. The proposed amendment to obtain further examination pursuant to § 1.129(a) after allowance would nullify (rather than facilitate) the completion of prosecution of the above-identified application, and, as such, would be inconsistent with the purpose for the provisions of § 532(a)(2)(A) of Pub. L. 103–465.

Comment 29: One comment questioned how the filing of a continued prosecution application would result in less delay than the filing of a continuing application under § 1.53(b), as a continued prosecution application would be subject to pre-examination processing delays.

Response: The Office will not issue a new filing receipt for a continued prosecution application under § 1.53(d). *See* § 1.54(b). By not issuing a filing receipt for a continued prosecution application, the Office will be able to perform the pre-examination of any continued prosecution application in the examining group to which the prior application was assigned. Likewise, § 1.6(d) has been amended to permit an applicant to file a continued prosecution application under § 1.53(d) by facsimile, and the use of this means of filing a continued prosecution application will avoid the delay inherent in routing an application (or any paper) from the mailroom to the appropriate examining group. These provisions will enable the Office to process a continued prosecution application in the manner that a submission under § 1.129(a) is processed.

Comment 30: One comment questioned whether the filing date of a continued prosecution application is the filing date for determining patent term, or is significant only in establishing copendency. Another comment questioned what filing date was relevant for determining patent term.

Response: Notwithstanding that a continued prosecution application is assigned the application number of the prior application, the filing date of the continued prosecution application is the date on which the request for such continued prosecution application was filed (§ 1.53(d)). While the filing date of the continued prosecution application is relevant to establishing the copendency required by 35 U.S.C. 120 and § 1.78(a) between the continued prosecution application and the prior application, the filing date of a continued prosecution application will never be relevant to the term under 35 U.S.C. 154(b) of any patent issuing from the continued prosecution application.

Any continued prosecution application under § 1.53(d) will be filed on or after June 8, 1995, and will claim the benefit of an earlier application as a continuation or divisional application. Section 1.53(d)(7) specifically provides that:

> A request for an application under this paragraph is the specific reference required by 35 U.S.C. 120 to every application assigned the application number identified in such request. No amendment in an application under this paragraph shall delete this specific reference to any prior application.

Thus, an application under § 1.53(d) cannot be amended to delete the specific reference to the prior application, as well as the specific reference to any application to which the prior application contains a specific reference under 35 U.S.C. 120, 121, and 365(c). As an application under § 1.53(d) will also contain a specific reference to at least one other application under 35 U.S.C. 120, 121, and 365(c), the expiration date under 35 U.S.C. 154(b)(2) of any patent issuing from the application under § 1.53(d) will be based upon the filing date of the prior application (or the earliest application to which the prior application contains a specific reference under 35 U.S.C. 120, 121, and 365(c)).

Comment 31: One comment argued that the Office should address not only the filing requirements for continuing applications, but also the cause of the filing of continuing applications. The comment specifically argued that the current second action final practice should be reevaluated as an applicant no longer has an incentive to delay the prosecution of an application due to Pub. L. 103–465.

Response: The suggestion is being taken under advisement as part of a comprehensive effort by the Office to reengineer the entire patent process. However, it should be noted that any changes to the current second action final practice to provide additional examination of an application prior to a final Office action would necessitate a corresponding increase in patent fees.

Comment 32: One comment suggested that the Office simply eliminate the "true copy" requirement of § 1.60, rather than add new provisions permitting the use of a copy of the oath or declaration of a prior application. The comment also suggested that the Office simply amend § 1.62 to eliminate the requirement that the Office assign a new application number to the application, rather than add a new § 1.53(d).

Response: The amendments to § 1.53 do not simply make minor changes to §§ 1.60 and 1.62. Sections 1.60 and 1.62 are anachronisms that have outlived their usefulness. A significant number of applications filed under § 1.60 do not meet the requirements of § 1.60 (and, as such are improper), but would be proper under § 1.53 (in the absence of a reference to § 1.60). The elimination of § 1.60 will result in a reduction in the Office's burden in treating and the applicant's burden in correcting these improper applications under § 1.60, as such applications would generally have been proper applications if filed under § 1.53 (without a reference to § 1.60). Section 1.63(d) retains most of the benefits of § 1.60, but eliminates the filing "traps" of § 1.60.

Section 1.62 practice also causes problems concerning its prohibition against including a new or substitute specification, and its permitting the filing of a continuation-in-part. To avoid continued prosecution application practice under § 1.53(d) being confused with the former file-wrapper-continuation practice under § 1.62, the Office has deemed it advisable to use a new § 1.53(d) rather than § 1.62 in regard to continued prosecution application practice.

Comment 33: One comment stated that the Office should anticipate the filing of applications containing a reference to § 1.60 or § 1.62 for some period.

Response: That applications containing a reference to §§ 1.60 or 1.62 will continue to be filed has been anticipated. The treatment of such applications is discussed *infra* with respect to the elimination of §§ 1.60 and 1.62.

Comment 34: One comment stated that the safeguard in § 1.60 concerning

the filing of an application lacking all of the pages of specification or sheets of drawings of the prior application has not been retained in § 1.53(b). The comment suggested that § 1.53 contain a presumption that a continuation or divisional be presumed, absent evidence to the contrary, to be the filing of an application identical to the prior application.

Response: The Court of Customs and Patent Appeals (CCPA) has held that a mere reference to another application, patent, or publication is not an incorporation of anything therein into the application containing such reference. *See In re de Seversky*, 474 F.2d 671, 177 USPQ 144 (CCPA 1973); *see also Dart Industries* v. *Banner*, 636 F.2d 684, 207 USPQ 273 (CCPA 1980)(related decision). These decisions relied upon *In re Lund*, 376 F.2d 982, 153 USPQ 625 (CCPA 1967), which considered the incorporation by reference issue in the context of whether a prior art patent adequately incorporated by reference a prior application. The court, in Lund, specifically stated:

> There is little in the term "continuation-in-part" which would suggest to the reader of the patent that a disclosure of the nature of Example 2 is present in the earlier application and should be considered a part of the patent specification. Thus, we cannot agree that the subject matter of claim 3 is tacitly "described" in the Margerison patent within the meaning of § 102(e).

Id. at 989, 153 USPQ 631–32 (footnote discussing the definition of "continuation-in-part" as set forth in MPEP 201.08 omitted). While the holdings in *Dart Industries, de Seversky* and *Lund* appear to be based upon the definitions of the various categories of continuing applications set forth in the MPEP (and thus could be changed by a revision to the MPEP), the Office is not at this time inclined to disturb settled law in this area.

Nevertheless, an applicant may incorporate by reference the prior application by including, in the continuing application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition.

Section 1.54

Section 1.54(b) is amended to add the phrase "unless the application is an application filed under § 1.53(d)." To minimize application processing delays in applications filed under § 1.53(d), such applications will not be processed by the Office of Initial Patent Examination as new applications.

No comments were received regarding the proposed change to § 1.54.

Section 1.55

Section 1.55(a) is amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

No comments were received regarding the proposed change to § 1.55.

Section 1.59

Section 1.59 is amended: (1) By revising the title to indicate that expungement of information from an application file would come under this section; (2) by revising the existing paragraph and designating it as paragraph (a)(1); and (3) by adding paragraphs (a)(2), (b) and (c). Section 1.59(a)(1) retains the general prohibition on the return of information submitted in an application, but no longer limits that prohibition to an application that has been accorded a filing date under § 1.53. The portion of the paragraph relating to the Office furnishing copies of application papers has been shifted to new paragraph (c). Section 1.59(a)(2) makes explicit that information, forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

Section 1.59(b) provides an exception to the general prohibition of paragraph (a) on the expungement and return of information and would allow for such when it is established to the satisfaction of the Commissioner that the requested expungement and return is appropriate. Section 1.59(b) covers the current practice set forth in MPEP 724.05 where information is submitted as part of an information disclosure statement and the submitted information has initially been identified as trade secret, proprietary, and/or subject to a protective order and where applicant may file a petition for its expungement and return that will be granted upon a determination by the examiner that the information is not material to patentability. Any such petition should be submitted in reply to an Office action closing prosecution so that the examiner can make a determination of materiality based on a closed record. Any petition submitted earlier than close of prosecution may be dismissed as premature or returned unacted upon. In the event pending legislation for pre-grant publication of applications, which provides public access to the application file, is enacted, then the timing of petition submissions under this section will be reconsidered.

Petitions to expunge were formerly considered under § 1.182, with the Office of Petitions consulting with the examiner on the materiality of the information at issue prior to rendering a decision. A possible result of the amendment to § 1.59 would be to have petitions under § 1.59 to expunge simply decided by the examiner who determines the materiality of the information.

Comment 35: One comment suggested that petitions to expunge under § 1.59 should be decided by Group Directors or officials in the Office of Petitions, rather than by examiners. The comment argued that any individual examiner would decide such a petition so rarely that it would be difficult to produce uniform and consistent decisions.

Response: The preamble has been amended to reflect that a possible result of the rule change is to have petitions under § 1.59 decided by the examiners. The heart of most petitions to expunge is a determination as to whether the material sought to be expunged is material to examination, a matter that is now referred to examiners prior to a decision on the petition. Given the major role examiners now play in expungement matters, it is not clear why examiners would be rendering inconsistent decisions, particularly as so many other matters are routinely assigned to examiners including petitions under § 1.48. Nevertheless, the comment is not germane to § 1.59 as proposed (or adopted), but concerns the internal Office delegation of such petitions for consideration. Moreover, a petition to expunge a part of the original disclosure would have to be filed under § 1.183 and would continue to be decided in the Office of Petitions.

Comment 36: A comment in requesting some examples of things that may be expunged asked whether a design code listing as an appendix in an application may be expunged.

Response: The standard set forth in paragraph (b) of § 1.59 permits information other than what is enumerated in paragraph (a) of the section to be expunged if it is established to the satisfaction of the Commissioner that the return of the information is appropriate. The types of information and rationales why the information may be returned are varied and will be evaluated on a case-by-case basis with the basic inquiry being whether the information is material to

examination of the application. However, to the extent that an appendix to a specification of an application is considered part of the original disclosure it cannot be expunged from the file under § 1.59(a)(2).

Section 1.59(b) also covers information that was unintentionally submitted in an application, provided that: (1) The Office can effect such return prior to the issuance of any patent on the application in issue; (2) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted; (3) the information has not otherwise been made public; (4) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted; and (5) it is established to the satisfaction of the Commissioner that the information to be returned is not material information under § 1.56. A request to return information that has not been clearly identified as information that may be later subject to such a request by marking and placement in a separate sealed envelope or container shall be treated on a case-by-case basis. It should be noted that the Office intends to start electronic scanning of all papers filed in an application, and the practicality of expungement from the electronic file created by a scanning procedure is not as yet determinable. Applicants should also note that unidentified information that is a trade secret, proprietary, or subject to a protective order that is submitted in an Information Disclosure Statement may inadvertently be placed in an Office prior art search file by the examiner due to the lack of such identification and may not be retrievable.

Section 1.59(b) also covers the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. In such a situation, a petition should request return of the papers rather than transfer of the papers to the correct application file. The grant of such a petition will be governed by the factors enumerated above in regard to the unintentional submission of information. Where the Office can determine the correct application file that the papers were actually intended for, based on identifying information in the heading of the papers (*e.g.*, Application number, filing date, title of invention and inventor(s) name(s)), the Office will transfer the papers to the correct application file for which they were intended without the need of a petition.

Section 1.59(c) retains the practice that copies of application papers will be furnished by the Office upon request and payment of the cost for supplying such copies.

Section 1.60

Section 1.60 is removed and reserved.

Section 1.60 is now unnecessary due to the amendment to § 1.63(d) to expressly permit the filing in a continuation or divisional application using a copy of the oath or declaration filed in the prior application, and to provide (§ 1.63(d)(2)) for the filing of a continuation or divisional application by all or by fewer than all the inventors named in a prior application.

See comments relating to § 1.53.

Section 1.62

Section 1.62 is removed and reserved.

Section 1.62 is unnecessary due to the addition of § 1.53(d) to permit the filing of a continued prosecution application.

It is anticipated that applications purporting to be applications filed under §§ 1.60 or 1.62 will be filed until the deletion of §§ 1.60 and 1.62 become well known among patent practitioners. An application purporting to be an application filed under § 1.60 will simply be treated as a new application filed under § 1.53 (*i.e.*, the reference to § 1.60 will simply be ignored).

Applications purporting to be an application filed under § 1.62 will be treated as continued prosecution applications under § 1.53(d), and those applications that do not meet the requirements of § 1.53(d) (*e.g.*, continuation-in-part applications or continuations or divisional of applications filed before June 8, 1995) will be treated as improper continued prosecution applications under § 1.53(d). Such an improper application under § 1.53(d) may be accepted and treated as a proper application under § 1.53(b) by way of petition under § 1.53(e) (and submission of the $130 fee pursuant to § 1.17(i)).

A petition under § 1.53(e) to accept and treat an improper application under § 1.53(d) as a proper application under § 1.53(b) must include: (1) The $130 petition fee; (2) a true copy of the complete application designated as the prior application in the purported § 1.62 application papers; (3) any amendments entered in the prior application; and (4) any amendments submitted but not entered in the prior application and directed to be entered in the purported § 1.62 application papers. In an application purporting to be a continuation or divisional application under § 1.62, the true copy of the prior application will constitute the original disclosure of the application under § 1.53(b), and any amendments entered in the prior application or not entered in the prior application but directed to be entered in the purported § 1.62 application papers and submitted with the § 1.53(e) petition will be entered in the application under § 1.53(b) and considered by the examiner for new matter under 35 U.S.C. 112, ¶ 1, and 132. In an application purporting to be a continuation-in-part application under § 1.62, the true copy of the prior application, any amendments entered in the prior application or not entered in the prior application but directed to be entered in the purported § 1.62 application papers and submitted with the § 1.53(e) petition, and any preliminary amendment submitted with the purported § 1.62 application will constitute the original disclosure of the application under § 1.53(b).

See comments relating to § 1.53.

Section 1.63

Section 1.63(a)(3) is amended to require the post office address to appear in the oath or declaration and to have the requirement from § 1.41(a) for the full names of the inventors placed therein.

Comment 37: Two comments raised the issue regarding the continued requirement that both a post office address and a residence be supplied and indicated that the residence is not required by statute, the post office address is sufficient for communication purposes, and that the burden of submitting both far outweighs the infrequent need to contact any particular inventor bypassing counsel so that the residence alone should be sufficient.

Response: Under the proposed comment the applicants would still be required to submit either the residence or post office address. To request that they also supply the other or state that both are the same is not seen to be a significant burden as the information is to be supplied on the oath or declaration form that they must sign anyway and spaces can be provided to ensure that the information is supplied. While neither the residence nor the post office address are statutory requirements, the Office requires this information for the applicant's benefit. As more than one person may have the same name, a person's name is often not sufficient to provide a unique identification of the inventor. Thus, the Office also requires an inventor's residence (which is not required to be sufficiently detailed to

suffice as a post office address) to specifically identify the person(s) named in the oath or declaration as the inventor(s), which is a common practice for legal documents. The post office address is also required in the event that the Office finds it necessary to directly contact the inventor(s). It is not uncommon for an inventor to revoke a power of attorney or authorization of agent in a paper providing no address for future correspondence from the Office. Also, the Office will need to directly contact the inventor if the Office is notified of the death of a sole attorney or agent of record (MPEP 406).

Section 1.63(d) is amended to: (1) relocate its current language in a new § 1.63(e); and (2) provide that a newly executed oath or declaration is not required under § 1.51(b)(2) and 1.53(f) in a continuation or divisional application filed by all or by fewer than all of the inventors named in a prior nonprovisional application containing an oath or declaration as prescribed by § 1.63, provided that a copy of the executed oath or declaration filed in the prior application is submitted for the continuation or divisional application and the specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application. The copy of the oath or declaration must show the signature of the inventor(s) or contain an indication thereon that the oath or declaration was signed (*e.g.*, the notation "/s/" on the line provided for the signature).

A continuation or divisional application may be filed under 35 U.S.C. 111(a) using the procedures set forth in § 1.53(b), by providing either: (1) A copy of the prior application, including a copy of the oath or declaration in such prior application, as filed; or (2) a new specification and drawings and a copy of the oath or declaration as filed in the prior application so long as no matter is included in the new specification and drawings that would have been new matter in the prior application. The specification and drawings of a continuation or divisional application is not limited to a reproduction or "true copy" of the prior application, but may be revised for clarity or contextual purposes *vis-à-vis* the prior application in the manner that an applicant may file a substitute specification (§ 1.125) or amend the drawings of an application so long as it does not result in the introduction of new matter. Of course, 35 U.S.C. 115 requires that a supplemental oath or declaration meeting the requirements of § 1.63 be filed in the continuation or divisional application, if a claim is allowed in the continuation or divisional application which is drawn to subject matter originally shown or described in the prior application but not substantially embraced in the statement of the invention or claims originally presented in the prior application as filed. *See* § 1.67(b).

The patent statute and rules of practice do not require that an oath or declaration include a date of execution, and the Examining Corps has been directed not to object to an oath or declaration as lacking either a recent date of execution or any date of execution. The applicant's duty of candor and good faith including compliance with the duty of disclosure requirements of § 1.56 is continuous and applies to the continuing application.

A new application containing a copy of an oath or declaration under § 1.63 referring to an attached specification is indistinguishable from a continuation or divisional application containing a copy of an oath or declaration from a prior application submitted pursuant to § 1.63(d). Unless an application is submitted with a statement that the application is a continuation or divisional application (§ 1.78(a)(2)), the Office will process such application as a new non-continuing application. Applicants are advised to clearly designate any continuation or divisional application as such to avoid the issuance of a filing receipt that does not indicate that the application is a continuation or divisional.

To continue the practice in § 1.60(b)(4) of permitting the filing of a continuation or divisional application by all or by fewer than all of the inventors named in a prior application without a newly executed oath or declaration, new § 1.63(d)(2) provides that the copy of the oath or declaration submitted for a continuation or divisional application under § 1.63(d) must be accompanied by a statement from applicant, counsel for applicant or other authorized party requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application. Where the continuation or divisional application and copy of the oath or declaration from the prior application is filed without a statement from an authorized party requesting deletion of the names of any person or persons named in the prior application, the continuation or divisional application will be treated as naming as inventors the person or persons named in the copy of the executed oath or declaration from the prior application. Accordingly, if a petition under § 1.48 (a) or (c) was granted in the prior application, an oath or declaration filed in a continuation or divisional application pursuant to § 1.63(d) should be the oath or declaration also executed by the added inventor(s). For situations where an inventor or inventors are to be added in a continuation or divisional application, see § 1.63(d)(5).

The statement requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application must be signed by person(s) authorized pursuant to § 1.33(b) to sign an amendment in the continuation or divisional application.

Section 1.63(d)(3) provides for the situation in which the executed oath or declaration of which a copy is submitted for a continuation or divisional application was originally filed in a prior application accorded status under § 1.47. Section 1.63(d)(3)(i) requires a copy of any decision granting a petition to accord § 1.47 status to such application, unless each nonsigning inventor(s) or legal representative (pursuant to § 1.42 or 1.43) has filed an oath or declaration to join in an application of which the continuation or divisional application claims a benefit under 35 U.S.C. 120, 121 or 365(c). Where a nonsigning inventor or legal representative (pursuant to § 1.42 or 1.43) subsequently joins in any application of which the continuation or divisional application claims a benefit under 35 U.S.C. 120, 121 or 365(c), § 1.63(d)(3)(ii) also requires a copy of any oath or declaration filed by an inventor or legal representative to subsequently join in such application.

Section 1.63(d)(4) provides that where the power of attorney (or authorization of agent) or correspondence address was changed during the prosecution of the prior application, the change in power of attorney (or authorization of agent) or correspondence address must be identified in the continuation or divisional application, or the Office may not recognize in the continuation or divisional application the change of power of attorney (or authorization of agent) or correspondence address during the prosecution of the prior application.

A newly executed oath or declaration will continue to be required in a continuation or divisional application naming an inventor not named in the prior application, or a continuation-in-part application, and § 1.63(d)(5) expressly states that a newly executed oath or declaration must be filed in a continuation or divisional application naming an inventor not named in the prior application.

New § 1.63(e) provides that a newly executed oath or declaration must be filed in a continuation-in-part application, which application may name all, more, or fewer than all of the inventors named in the prior application, and includes the language relocated from former § 1.63(d) concerning an oath or declaration in a continuation-in-part application.

Comment 38: One comment suggested that the practice of permitting the use of an executed oath or declaration of a prior application creates a trap for the unwary in the situation in which an applicant believes in error that no new matter has been added in the "continuation" application and does not file a new declaration.

Response: The situation outlined in the comment is less of a trap for the unwary than the situation in which an applicant files a substitute specification and believes in error that no new matter has been added, in that the error in the "continuation" may be corrected by redesignation of the application as a continuation-in-part and the filing of a new oath or declaration. Nevertheless, it remains the applicant's responsibility to review any substitute specification or new specification submitted for a continuation application to determine that it contains no new matter. *See* MPEP 608.01(q). An applicant is advised to simply file a continuing application with a newly executed oath or declaration when it is questionable as to whether the continuing application adds material that would have been new matter if presented in the prior application.

Comment 39: One comment suggested that the option of submitting "a copy of an unexecuted oath or declaration, and a statement that the copy is a true copy of the oath or declaration that was subsequently executed and filed to complete * * * the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c)" was strange at best as the applicant or representative should have a copy of the oath or declaration that was filed to complete the prior application or could obtain one from Office records.

Response: The suggestion is adopted. Section 1.63(d) as adopted provides that: "[a] newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application filed by all or by fewer than all of the inventors named in a prior nonprovisional application containing an oath or declaration as prescribed by paragraphs (a) through (c) of this section, provided that a copy of the executed oath or declaration filed in the prior application is submitted for the continuation or divisional application."

Comment 40: One comment questioned whether § 1.53 (or § 1.63) is consistent with § 1.48 as to whether the oath or declaration filed in a continuing application adding an inventor must be executed by all of the inventors, or just the added inventor.

Response: The oath or declaration filed in a continuing application adding an inventor or a continuation-in-part application must name and be executed by all of the inventors. Sections 1.48 and 1.63(e) are consistent in this regard.

Comment 41: One comment questioned whether, in a continuation or divisional application following a chain of continuation or divisional applications, the copy of the executed oath or declaration may be a copy of the oath or declaration filed in the immediate prior application (which may itself be a copy of an oath or declaration from a prior application), or must be a direct copy of the originally executed oath or declaration.

Response: Section 1.63(d) requires a copy of the oath or declaration from the prior application. In instances in which the oath or declaration filed in the prior application is itself a copy of an oath or declaration from a prior application, either a copy of the copy of the oath or declaration in the prior application or a direct copy of the original oath or declaration is acceptable, as both are a copy of the oath or declaration in the prior application. *See* § 1.4(d)(1)(ii).

Section 1.67

Section 1.67 paragraph (b) is amended to change "§ 1.53(d)(1)" to "§ 1.53(f)" for consistency with § 1.53.

No comments were received regarding § 1.67.

Section 1.69

Section 1.69(b) is amended to remove the requirement that the translation be verified in accordance with the change to §§ 1.4(d)(2) and 10.18. Section 1.69(b) is also amended to clarify the need for a statement that the translation being offered is an accurate translation, as in § 1.52 paragraphs (a) and (d).

Two comments were received in regard to § 1.69 that also raised similar issues in regard to § 1.52, which comments are treated with § 1.52.

Section 1.78

Section 1.78(a)(1) is amended to remove the references to §§ 1.60 and 1.62 in view of the deletion of §§ 1.60 and 1.62, and to include a reference to an "international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America." Section 1.78(a)(2) is amended for consistency with the changes to § 1.53, and to provide that "[t]he identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number."

No comments were received regarding the proposed change to § 1.78.

Section 1.84

Section 1.84(b) is amended by removing references to the filing of black and white photographs in design applications as unnecessary in view of the reference in § 1.152 to § 1.84(b). Section 1.84 paragraphs (c) and (g) are amended for consistency in regard to the English equivalents (5/8 inch.) for 1.5 cm.

No adverse comments were received regarding the proposed change to § 1.84.

Section 1.91

The title of § 1.91 is amended to clarify that a certain type of material is not generally admitted in the file record by substitution of "admitted" for "required."

Section 1.91 is also amended to clarify the type of material that is not generally admitted into the file record of an application. Section 1.91(a) specifically requires a petition (with the fee set forth in § 1.17(i)) including an appropriate showing why entry of the model or exhibit into the file record is necessary to demonstrate patentability, unless the model or exhibit: (1) substantially conforms with § 1.52 or § 1.84; or (2) was required by the Office.

Section 1.91 is also amended to state that a model, working model or other physical exhibit, whose submission by applicants is generally not permitted, may be required by the Office if deemed necessary for any purpose in the examination of the application. This language is moved from § 1.92.

Comment 42: Several adverse comments were received expressing concern that the addition of the term "exhibits" to the bar against admission of models, unless specifically required by the Office, would prevent applicants from making their best possible case for patentability, and that exhibits would be interpreted by the Office as barring two-dimensional as well as three-dimensional exhibits.

Response: The preamble of the proposed rule indicated that the change to the rule is in the nature of a clarification and not a change in practice. Further clarification has been added to the rule by reference to § 1.52

or § 1.84 and to the instant discussion of the rule to indicate that the use of the term "exhibits" is in the nature of other three-dimensional models, such as videos, and will not bar two-dimensional exhibits currently being accepted. Additionally, a petition route has been added to the rule that would permit entry of three-dimensional models or exhibits where they are necessary to establish patentability. Section 1.91 is also amended to expressly provide for the filing of a petition thereunder (rather than to require the filing of a petition under § 1.183) such that an applicant may gain entry of a model or exhibit, without a showing of an extraordinary situation where justice requires grant of the relief sought.

The fact that a three-dimensional model or exhibit will not generally be entered in the record absent an appropriate showing does not prevent an applicant from showing the exhibit to the examiner for purposes of clarifying the examiner's understanding of the invention and reducing the model or exhibit to two-dimensional conformance with § 1.52 or § 1.84 for entry of that reduction to the record (which issues are separate and distinct from the questions as to whether the later presented material was originally required for an understanding of the invention and its subsequent addition being subject to a new matter objection under 35 U.S.C. 132).

Due to the unusual difficulties of storage for three-dimensional materials and little demonstrated need for their presence in the file record over what would be provided for *via* petition under § 1.91, it is not seen to be appropriate to permit unrestricted entry of three-dimensional exhibits in the file record.

Section 1.92

Section 1.92 is removed and reserved and the language transferred to § 1.91(b) for improved contextual purposes.

No comments were received regarding the proposed change to § 1.92.

Section 1.97

Sections 1.97 (c) through (e) are amended by replacement of "certification" by "statement" (see comments relating to § 1.4(d)), and by clarifying the current use of "statement" by the terms "information disclosure."

Section 1.97(e)(2) is further amended to replace "or" by "and" to require that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the statement, after making reasonable inquiry, no item of information contained in the information disclosure was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement. The use of "and" rather than "or" is in keeping with the intent of the rule as expressed in the MPEP 609(B)(2)(ii), that the conjunction be conjunctive rather than disjunctive. The mere absence of an item of information from a foreign patent office communication was clearly not intended to represent an opportunity to delay the submission of the item when known more than three months prior to the filing of an information disclosure statement to an individual having a duty of disclosure under § 1.56.

No comments were received regarding the proposed change to § 1.97.

Section 1.101

Section 1.101 is removed and reserved as relating to internal Office instructions.

Comment 43: A number of comments opposed the deletion of the rules that solely govern Office procedure. The reasons given for this opposition are: (1) The Office should subject its procedures to the notice and comment provisions of the Administrative Procedure Act (APA); (2) the inclusion of such procedures in the rules of practice imparts the force and effect of law to such procedures; (3) the greater deference given to procedures set forth in the rules of practice, rather than the MPEP, during court action.

Response: The CCPA has held that applicants before the Office are entitled to rely not only on the patent statute and rules of practice, but on the provisions of the MPEP, during the prosecution of an application for patent. *See In re Kaghan*, 387 F.2d 398, 401, 156 USPQ 130, 132 (CCPA 1967). Thus, there is in practice little, if any, benefit to applicants before the Office in having the Office procedure set forth in the rules of practice, rather than the MPEP. In any event, no comment pointed to any specific decision, and the Office is not aware of any decision, in which the result turned on the inclusion of Office procedure in the rules of practice (rather than simply in the MPEP).

Nevertheless, in view of the concern expressed in the comments as to the rules of practice setting forth the fundamentals of the examination of an application, the Office will retain the substance of §§ 1.104 and 1.105 in the rules of practice. *See In re Phillips*, 608 F.2d 879, 883 n.6, 203 USPQ 971, 974 n.6 (CCPA 1979) (although irrelevant to the result, the Office was criticized for piecemeal examination contrary to §§ 1.104 and 1.105). The substance of §§ 1.104, 1.105, 1.106, 1.107, and 1.109, however, will be combined into § 1.104 paragraphs (a)–(e).

The Office will also retain § 1.351 in the rules of practice, as it has been relied upon as the notice that the Office will provide concerning changes to the rules of practice in 37 CFR Part 1. *See In re Nielson*, 816 F.2d 1567, 1571, 2 USPQ2d 1525, 1527 (Fed. Cir. 1987). Finally, the Office will retain § 1.181 paragraphs (d), (e), and (g) to avoid confusing petition practice, and § 1.325 to avoid confusion as to the requirements for correction of a patent.

The Office, however, will delete §§ 1.101, 1.108, 1.122, 1.184, 1.318, and 1.352 from 37 CFR Part 1. The procedures set forth in §§ 1.101, 1.122, 1.184, and 1.318 do not provide meaningful safeguards to applicants (*e.g.*, § 1.101 does not ensure or give an applicant the right to examination of an application within any reasonably specific time frame). The proscription in § 1.108 is simply an administrative instruction based upon the fact that, unless otherwise publicly available, abandoned applications do not constitute prior art under 35 U.S.C. 102 (and thus 103). Finally, as former § 1.352 included a "whenever required by law" prerequisite, it provided no independent requirement that the Office publish proposed rule changes for comment.

Section 1.102

Section 1.102(a) is amended to remove the requirement that the showing be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

No comments were received regarding the proposed change to § 1.102.

Section 1.103

Section 1.103(a) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.103.

Section 1.104

Section 1.104 is amended to include paragraphs (a) through (e) including the substance of former §§ 1.104, 1.105, 1.106, 1.107, and 1.109. The re-writing of §§ 1.104, 1.105, 1.106, 1.107, and 1.109 as § 1.104 (a) through (e) involves no change in substance.

See comment relating to § 1.101.

Section 1.105

Section 1.105 is removed and reserved as the subject matter was transferred to § 1.104(b).

See comment relating to § 1.101.

Section 1.106

Section 1.106 is removed and reserved as the subject matter was transferred to § 1.104(c).

See comment relating to § 1.101.

Section 1.107

Section 1.107 is removed and reserved as the subject matter was transferred to § 1.104(d).

See comment relating to § 1.101.

Section 1.108

Section 1.108 is removed and reserved as relating to internal Office instructions.

See comment relating to § 1.101.

Section 1.109

Section 1.109 is removed and reserved as the subject matter was transferred to § 1.104(e).

See comment relating to § 1.101.

Section 1.111

Section 1.111 is amended to consistently refer to a "reply" to an Office action. The prior section used the term "response" and "reply" in an inconsistent manner and created some confusion. Paragraph (b) of § 1.111 is also amended to explicitly recognize that a reply must be reduced to a writing which must point out the specific distinctions believed to render the claims, including any newly presented claims, patentable. It is noted that an examiner's amendment reducing a telephone interview to writing would comply with § 1.2.

Comment 44: One comment asked whether pointing out one distinction is sufficient or must applicant provide an exhaustive list of all distinctions. Additionally, inquiry is made as to whether it is sufficient to point out the impropriety of a rejection under 35 U.S.C. 102 that should have been a rejection under 35 U.S.C. 103, or must a rejection under 35 U.S.C. 103 be anticipated and answered.

Response: A distinction should be kept in mind between what is necessary for a reply to be considered sufficient to continue prosecution of the application and what will advance the application to issuance in the most efficient manner. While pointing out only one distinction, such as why a rejection under 35 U.S.C. 102 is inappropriate, would comply with the requirements of § 1.111, advancement of the prosecution of the application would best be served by pointing out all possible distinctions, so that if the argument for one distinction is not persuasive, another may be. Similarly, anticipation of and argument against a rejection under 35 U.S.C. 103 where a rejection under 35 U.S.C. 102 should have been made under 35 U.S.C. 103 could possibly prevent making of the rejection under 35 U.S.C. 103 by the examiner and an earlier issuance of the application thereby preserving patent term under 35 U.S.C. 154 as amended by Pub. L. 103–465.

Comment 45: Three comments pointed to instances where a reply would not necessarily require that distinctions be pointed out, such as: (1) where context and arguments presented make the distinctions clear beyond doubt; (2) where a *prima facie* case has not been established or motivation for modification of a reference is lacking; (3) a secondary reference is from a nonanalogous art improperly combined; or (4) no reference has been applied.

Response: The comment has been adopted to the extent that the paragraph (b) of the rule has been amended to refer to "any" rather than "the" applied references. Any argument that would make the distinctions clear beyond doubt would seem to require identification of the distinctions therein. Where a reply contains an argument that motivation for a modification of a reference made by an examiner does not exist, or that a nonanalogous secondary reference has been improperly combined, the identification of the claim element involved and the particular factual basis that makes the modification or combination relating to that claim element inappropriate are necessary elements of a reply. That an applicant considers a rejection, objection, or other requirement in an Office action to be inappropriate does not relieve the applicant of the burden under 35 U.S.C. 133 of prosecuting the application to avoid abandonment.

Comment 46: A comment suggested that the requirement for supplying claim distinctions for a newly presented claim is at odds with the Office's burden in the first instance of explaining any objection or rejection of an applicant's claim, and that the existing requirement that an applicant distinctly and specifically point out the errors in the examiner's action and reply to every ground of objection and rejection are sufficient without the added language. Another comment noted that it is believed that the rule already requires that specific distinctions be supplied and questions what new requirements are being added by that additional language.

Response: To the extent that the already existing language would require that claim distinctions be presented, the added language is seen to clarify what is required of an applicant in replying to an Office action and is not seen to be at odds with the Office's burden in first going forward with a rejection of the claims. Once a claim is rejected, there is a duty on applicants under § 1.111 to provide an appropriate reply as defined therein for applicant to be entitled to reconsideration or further examination.

Section 1.112

Section 1.112 is amended to remove as unnecessary the statement that "any amendments after a second Office action must ordinarily be restricted to the rejection, objections or requirements made in the office action" to reflect actual practice, in which amendments after the second action need not be restricted to the rejection or the objections or requirements set forth in an Office action. The heading of § 1.112 is also amended to add "before final action" to clarify that such reconsideration does not apply after a final Office action.

No comments were received regarding the proposed change to § 1.112.

Section 1.113

Section 1.113(a) is amended to add "by the examiner" after "examination or consideration," change "objections to form" to "objections as to form" for clarity, and replace "response" with "reply" in accordance with the change to § 1.111.

Section 1.113(b) is amended to change "clearly stating the reasons therefor" to "clearly stating the reasons in support thereof" for clarity.

Comment 47: A number of comments argued that first action final practice should be eliminated without regard to an amendment to § 1.116 as: (1) 35 U.S.C. 132 does not authorize first action final practice; and (2) the filing fee paid in a continuing application should entitle an applicant to an examination and reexamination in the continuing application.

Response: The argument that 35 U.S.C. 132 does not authorize first action final practice has been considered by the Office and rejected in *In re Bogese*, 22 USPQ2d 1821 (Comm'r Pat. 1992). Specifically, continuing applications have historically been considered part of a continuous proceeding in regard to the prior application. *Id.* at 1827. First action final practice denies an applicant the delay inherent in an additional Office action in a continuation application, thus compelling the applicant to draft

claims in a continuation application in view of the prosecution history of the parent application (*i.e.*, the rejections and prior art of record in the parent application), and thus make a *bona fide* effort to define the issues for appeal or allowance. *Id.* at 1824–25.

In addition, under the current patent fee structure, a significant portion of the Office's costs of examining patent applications is recovered through issue and maintenance fees. That is, the filing fees required by 35 U.S.C. 41(a) (1)–(4) and § 1.16 for an application do not cover the Office's full costs of examining that application pursuant to 35 U.S.C. 131 and 132. Therefore, the argument that first action final practice is inherently unfair in view of the filing fees paid by the applicant fails to appreciate the current patent fee structure.

Due to the overwhelming opposition to the proposed changes to § 1.116 to simplify after final practice, the proposed change to § 1.113 to eliminate first action final practice and the proposed changes to § 1.116 to simplify after final practice are not adopted in this Final Rule. The Office will give further consideration to the elimination of first action final practice.

Comment 48: One comment suggested that § 1.113 should be clarified to reflect the intent of the rule change that a first action final rejection not issue in a continuation application.

Response: The proposed change to § 1.113 to prohibit a first action final rejection is not being adopted.

Section 1.115

Section 1.115 has been removed and reserved, rather than amended to contain the material of former §§ 1.117 through 1.118, 1.123 and 1.124. The subject matter proposed to be included in § 1.115 has been transferred to § 1.121. The change does not constitute a change in substance; the material of the deleted sections has simply been rearranged and edited for clarity and contextual purposes in § 1.121. The reference in § 1.115(b)(2) relating to the rejection of claims containing new matter has not been retained in § 1.121 as unnecessary.

Comment 49: One comment recognizing that the subject matter of § 1.118 is transferred to § 1.115 (now § 1.121) noted that the particular material of the second and third sentences of paragraph (a) of § 1.118(a) was not so transferred and should be.

Response: While the exact language of the second and third sentences of paragraph (a) of § 1.118 was not transferred to 1.121 (§ 1.115 as originally proposed), the concept is retained in § 1.121, paragraphs (a)(6), (b)(5), and (c)(1), in condensed form.

Comment 50: One comment objected to the requirement of paragraph (d) of § 1.115 (now § 1.121) where a disclosure must be amended to secure correspondence between the claims, the specification and the drawings. Forcing the specification to parrot the language of new claims, where only new claims originally use a term not found in the original disclosure and in the original claims, is said to impose an undue burden on applicant and jeopardize the validity of all the claims if the new term is found to be new matter.

Response: The comment does not explain why a specification containing a later added expression subsequently found to contain new matter will adversely affect claims that do not contain that expression, particularly if a portion of the specification is retained that provides support for claims not containing that expression. Additionally, the requirement being criticized is not a new requirement but was material transferred from § 1.117. However, the comment was adopted in part in that § 1.121, paragraphs (a)(5) and (b)(4), require only "substantial correspondence" between the claims, the remainder of the specification, and the drawings.

Comment 51: One comment suggested that the term "sketch" in paragraph (e) of § 1.115 (now § 1.121) be broadened to "drawing."

Response: Sections 1.121(a)(3)(ii) and 1.121(b)(3)(ii) recite sketch, which has been interpreted by the Office to include a copy. The use of sketch is seen to be the broader term in allowing a handwritten alteration of a copy of the previously submitted drawing to be done without the need for a color copy being obtained.

Comment 52: One comment suggested that paragraph (f) of § 1.115 (now § 1.121), requiring no interlineations to appear in a clause as finally presented, is inconsistent with the requirements of § 1.121 requiring brackets and underlining of the subject matter deleted and added.

Response: The comment was adopted by clarifying § 1.121(a)(iii) as adopted by reciting that the interlineation prohibition relates to previous amendments being depicted in a subsequent amendment, and to limit its applicability to applications other than reissue applications (thereby also excluding reexamination proceedings) in that all changes from the patent are required to be shown in reissue applications and reexamination proceedings.

Section 1.116

Section 1.116 is amended by adding the phrase "or appeal" to its heading. This change clarifies the current practice that paragraphs (b) and (c) apply to amendments filed after an appeal, regardless of whether the application was subject to a final rejection prior to the appeal.

Section 1.116(a) is also amended for clarity to limit amendments after a final rejection or other final action (§ 1.113) to those amendments cancelling claims or complying with any requirement of form set forth in a previous Office action, and replaces the phrase "any proceedings relative thereto" with "any related proceedings" for clarity. The amendment does not represent a change in practice under § 1.116(a) as was originally proposed, but merely a clarification of when an applicant is entitled to entry of an amendment under § 1.116(a).

Comment 53: Almost every comment relating to the proposed change to § 1.116 to limit entry of amendments after a final Office action based on simplification of issues for appeal opposed the change. The various rationales included: (1) A liberal practice by examiners in entering amendments after final rejection based on a willingness to engage in significant negotiations after final rejection; (2) an increased burden on the Board of Patent Appeals and Interferences (Board); (3) a loss of potential patent term under 35 U.S.C. 154 if refiling an application was routinely required; (4) a loss of clarity by applicant and the examiner of the issues involved, in that it is frequently only after the second action that the issues become clarified, particularly as counsel are not aware of the art that may actually be applied against the claims and therefore do not submit claims that can read over such art; (5) to the extent the need to enter amendments causes refiling of an application, greater resources from the Office are required as opposed to simply entering the amendment in the prior application; (6) there will be an increase in the requests for interviews after first action; (7) the change represents encouragement for examiners to cut down on papers entered particularly in view of the crediting system; and (8) the proposal is not helpful to applicant and is only a revenue generator.

Several alternative suggestions were made including: (1) A fee to have amendments after final entered as a matter of right; (2) discretion for examiners to enter any amendment should be explicitly stated in the rule; (3) consider substantive amendments if submitted at least one month in advance of the end of the reply period; (4) eliminate applicant's concern for expedited handling of § 1.116 amendments by having a new period for appealing or refiling; (5) entry of amendment to solely correct rejections under 35 U.S.C. 112, ¶ 2, should be permitted; (6) first after final submission permitted entry under simplification of issues standard and any subsequent submission would only be permitted under standard as proposed without simplification of issues available; (7) merging of a dependent claim into an independent claim ought to be explicitly permitted as a matter of right; (8) provide a standard of entry dependent upon good and sufficient reason as to why the amendment after final was not made earlier; (9) permit consideration of the amendment for allowable subject matter to save applicant cost of refiling for such determination; and (10) change should be linked with a prohibition on applying a new reference in a final rejection.

Response: In view of the issues raised and the alternative suggestions presented, it has been determined that further study is required. The comments have been adopted *solely* to the extent that the proposed change to delete simplification of issues for purpose of appeal, as a basis for entry of an amendment after final rejection, will not be implemented at this time.

Section 1.117

Section 1.117 is removed and reserved as the subject matter was transferred to § 1.121.

No comments were received regarding the proposed change to § 1.117.

Section 1.118

Section 1.118 is removed and reserved and its subject matter transferred to § 1.121.

See first comment related to § 1.115.

Section 1.119

Section 1.119 is removed and reserved as duplicative of the provisions of §§ 1.111 and 1.121.

No comments were received regarding the proposed change to § 1.119.

Section 1.121

Section 1.121, paragraphs (a) through (f), are replaced with paragraphs (a) through (c), which separately treat amendments in non-reissue nonprovisional applications (paragraph (a)), amendments in reissue applications (paragraph (b)), and amendments in reexamination proceedings (paragraph (c)). The intent of the changes is to retain amendment practice in regard to non-reissue applications prior to the changes proposed in the Notice of Proposed Rulemaking and to make final the changes in amendment practice in regard to reissue applications proposed in the Notice of Proposed Rulemaking, except for requiring copies of all claims as of the date of submission of an amendment and a constructive cancellation in their absence. Additionally, while retaining the previous amendment practice in non-reissue applications, the regulations have been clarified by deletion of §§ 1.115, 1.117 through 1.118, 1.123, and 1.124 and placement of subject matter thereof in § 1.121.

Comment 54: Most comments received on the proposed change in amendment practice as it relates to non-reissue applications to bring it into line with reissue and reexamination amendment practices were very negative. In particular, the proposed changes to present a complete copy of the claims when any amendment to the claims is made, and to hold a constructive cancellation for any claim copy not presented were alarming. However, similar comments were not received in regard to the proposed changes to bring reissue and reexamination practice closer together.

Response: The comments were adopted in that the proposed changes, other than clarifications of current practice, will not be implemented now and further study will be undertaken to include suggestions presented in regard to this rule.

Comment 55: Several comments offered suggestions and requested clarifications: (1) Whether this was an attempt to push the practice closer to PCT where substitute pages are used; (2) use of different markings such as strikeouts of word processors; (3) only require complete copy of claims at issue; (4) only have a status listing of all claims not complete copy with each response; (5) continuations or divisions should be filed showing markups; (6) require only that new claims pages be substituted; (7) objection to the submission of a separate complete set of claims in addition to the amendments being made; (8) some instances separate set may be appropriate and not too much of a burden; and (9) there should be exception, liberal reinstatement, or rebuttable presumption for constructive cancellation if clerical omission.

Response: Paragraphs (a) and (b) of § 1.121 each separately treat amendment of the specification (paragraphs (a)(1) and (b)(1)), and of the claims (paragraphs (a)(2) and (b)(2)). In comparing amendment practice to the specification for non-reissue and reissue applications, all amendments in the reissue application are to be made relative to (*i.e., vis-à-vis*) the specification (including the claims) and drawings of the original patent as of the date of the filing of the reissue application. Changes are shown using underlining and bracketing relative to the patent specification. In addition, the entire paragraph of disclosure with the changes and the entire claim with the changes must be presented, in making the amendment. On the other hand, amendments in a non-reissue application are to be made relative to prior amendments (with underlining and bracketing in a reproduced claim reflecting changes made relative to the prior amendment), and insertions and deletions can be made without reproducing the entire paragraph of disclosure or the entire claim. Further (for a non-reissue application), in amending the text of the disclosure other than the claims, changes are not shown by underlining and bracketing, even where a paragraph of disclosure is reproduced.

Paragraph (a) of § 1.121 relates to amendments in non-provisional applications, other than reissue applications, and retains a reference to § 1.52. Paragraph (a)(1) relates to the manner of making amendments in the specification, other than in the claims. Paragraph (a)(1)(i) requires the precise point in the specification to be indicated where an addition is to be inserted. Paragraph (a)(1)(ii) requires the precise point in the specification to be indicated where a deletion is to be made. This should be compared to addition or cancellation of material from the patent specification in a reissue application (paragraph (b)(1)(ii)) or in a reexamination proceeding (§ 1.530(d)(1)(ii), *e.g.*, by way of a copy of the rewritten material). An amendment containing deletions mixed with additions will be treated according to both paragraphs (a)(1)(i) and (a)(1)(ii). Amendments to the specification, additions or deletions, do not require markings, only identification of an insertion point. However, where the changes made are not readily apparent the applicant may be requested by the examiner to provide an explanation of the changes or a marked up copy showing the changes made. Paragraph (a)(1)(iii) provides that to reinstate matter previously deleted it must be reinstated by a new amendment inserting the matter.

Paragraph (a)(2) of § 1.121 relates to the manner of making amendments in the claims of a non-reissue application.

Paragraph (a)(2)(i) permits amendment by instructions to the Office for a deletion, paragraph (a)(2)(i)(A), or for an addition limited to five words in any one claim, paragraph (a)(2)(i)(B). The ability to provide directions to the Office for the handwritten deletion of five words or less for each claim does not encompass deletion of equations, charts or other non-word material. Paragraph (a)(2)(ii) sets forth that a claim may be amended by a direction to cancel the claim, or by rewriting the claim with markings showing material to be added and deleted. Additionally, previously rewritten claims are required to be so marked and not to have interlineations showing amendment(s) previous to the one currently being submitted.

Paragraph (a)(3) of § 1.121 clarifies that amendments to the original application drawings for non-reissue applications are not permitted and are to be made by way of a substitute sheet for each original drawing sheet that is to be amended. The paragraph contains material from cancelled § 1.115.

Paragraph (a)(4) of § 1.121 requires that any amendment presented in a substitute specification must be presented under the provision of this section either prior to or concurrent with the submission of the substitute specification. The paragraph contains material from cancelled § 1.115.

Paragraph (a)(5) of § 1.121 requires amendment of the disclosure in certain situations (*i.e.*, to correct inaccuracies of description and definition) and to secure substantial correspondence. The paragraph contains material from cancelled § 1.117. The previous requirement for "correspondence" has been modified by use of "substantial correspondence." See comments to § 1.115.

Paragraph (a)(6) prohibits the introduction of new matter into the disclosure of a non-reissue, non-provisional application.

Paragraph (b) of § 1.121 applies to amendments in reissue applications. Paragraph (b)(1) of § 1.121 relates to the manner of making amendments to the specification, other than in the claims, in reissue applications. Paragraph (b)(1)(i) requires that amendments including deletions be made by submission of a copy of one or more newly added or rewritten paragraphs with markings, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph. Paragraph (b)(1)(ii) requires indication of the precise point in the specification where the paragraph which is being amended is located. When a change in one sentence, paragraph or page results in only format changes to other pages (*e.g.*, shifting of non-amended text to subsequent pages) not otherwise being amended, such format changes are not to be submitted. Compare to amendments to the specification, other than in the claims, of non-reissue applications wherein deletions are permitted, paragraph (a)(1)(ii) of this section. Paragraph (b)(1)(iii) defines the marking set forth in paragraph (b)(1)(ii) of this section. Proposed paragraph (b)(1)(iii), relating to a requirement for submission of all amendments be presented when any amendment to the specification is made, was not implemented.

Paragraph (b)(2) of § 1.121 relates to the manner of making amendments to the claims in reissue applications. Paragraph (b)(2)(i)(A) of § 1.121 requires the entire text of each patent claim that is being amended by the current amendment and of each claim being added by the current amendment. Requests that the Office hand-enter changes of five or less words, former § 1.121(c)(2), will no longer be permitted. Pending claims, whether previously amended or not, that are not being amended by the current amendment are not to be resubmitted. This procedure is different from § 1.121(a)(2)(i)(B), which permits requests that the Office hand-enter changes of five or less words in a non-reissue application. Additionally, provision is made for the cancellation of a patent claim by a direction to cancel without the need for marking by brackets. Paragraph (b)(2)(i)(B) requires that patent claims not be renumbered. Paragraph (b)(2)(i)(C) identifies the type of marking required by paragraph (b)(2)(i)(A), single underlining for added material and single brackets for material deleted.

Paragraph (b)(2)(ii) of § 1.121 requires that each amendment submission set forth the status (*i.e.*, pending or cancelled) of all patent claims and all added claims as of the date of the submission, as not all claims (non-amended claims) are to be presented with each submission, paragraph (b)(2)(iv). The absence of submission of the claim status would result in an incomplete reply (§ 1.135(c)).

Paragraph (b)(2)(iii) of § 1.121 requires that each claim amendment be accompanied by an explanation of the support in the disclosure of the patent for the amendment. The absence of an explanation would result in an incomplete reply (§ 1.135(c)).

Comment 56: One comment requested that the Office clarify how an applicant would satisfy this requirement when the amendment involves a simple editorial change, or when the amendment uses terms that find no explicit support in the patent.

Response: When it is clear that the amendment simply involves an editorial change and does not add material for which support in the disclosure is required, the reply may simply explain that the amendment is merely making an editorial change. When the amendment uses terms that find no explicit support in the specification, the reply must set forth where the specification provides, at least implicitly, support for the amendment as required by 35 U.S.C. 112, ¶ 1. In addition, an amendment to the specification to secure correspondence between the specification and the claims will also be required. *See* § 1.75(d)(1) and MPEP 608.01(o). Obviously, an amendment that does not find either explicit or at least implicit support in the specification as required by 35 U.S.C. 112, ¶ 1, is not permitted. *See* 35 U.S.C. 251, ¶ 1, (last sentence).

Proposed paragraphs (b)(2) (iv) and (v) of this section, relating to a requirement for presentation of all amendments as of the date any amendment to the claims is made, and to the treatment of the failure to submit a copy of any added claim as a direction to cancel that claim, were not implemented.

Paragraph (b)(3) of § 1.121 clarifies that amendments to the patent drawings are not permitted and that any change must be by way of a new sheet of drawings with the amended figures being identified as "amended" and with added figures identified as "new" for each sheet that has changed. The paragraph contains material from cancelled § 1.115.

Paragraph (b)(4) of § 1.121, added in view of the deletion of § 1.115 paragraph (d), requires amendment of the disclosure in certain situations (*i.e.*, to correct inaccuracies of description and definition) and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings. The previous requirement for "correspondence" has been modified by use of "substantial correspondence." See comments to § 1.115.

Paragraph (b)(5) of § 1.121, containing material transferred from proposed paragraph (b)(2)(vi) (now deleted), clarifies that: (1) No reissue patent will be granted enlarging the scope of the claims unless applied for within two years from the grant of the original patent (additional broadening outside the two-year limit is appropriate as long as some broadening occurred within the two-year period, *In re Doll*, 419 F.2d 925, 164 USPQ 218 (CCPA 1970)); and (2) no amendment may introduce new matter or be made in an expired patent.

Paragraph (b)(6) of § 1.121 has been added to clarify that all amendments must be made relative to (*i.e., vis-á-vis*) the specification (including the claims) and drawings of the original patent as of the date of the filing of the reissue application. If there was a prior change to the patent (made *via* a prior reexamination certificate, reissue of the patent, certificate of correction, *etc.*), the first amendment must be made relative to the patent specification as changed by the prior proceeding or other mechanism for changing the patent. In addition, all amendments subsequent to the first amendment must be made relative to the patent specification in effect as of the date of the filing of the reissue application, and not relative to the prior amendment.

Paragraph (c) of § 1.121 clarifies that amendments in reexamination proceedings are to be made in accordance with § 1.530(d).

Section 1.121 as applied to reissue applications does not provide for replacement pages whereby a new page would be physically substituted for a currently existing page.

However, an applicant can direct that a page or pages ("Page(s) _____") be cancelled and that updated materials be inserted in its place.

The wide availability of word processing should enable applicants to more easily submit updated material providing greater accuracy and thereby eliminating the need for the Office to hand-enter amendments. To that end, § 1.125 is amended to reflect current practice that a substitute specification may be submitted in an application, other than a reissue application, at any point up to payment of the issue fee as a matter of right, provided that such substitute specification is submitted in compliance with the requirements set forth in § 1.125.

Section 1.122

Section 1.122 is removed and reserved as representing internal Office instruction.

See comments related to § 1.101.

Section 1.123

Section 1.123 is removed and reserved and its subject matter transferred to § 1.121 for better context.

No comments were received regarding the proposed change to § 1.123.

Section 1.124

Section 1.124 is removed and reserved and its subject matter transferred to § 1.121 for better context.

No comments were received regarding the proposed change to § 1.124.

Section 1.125

Section 1.125 is amended by addition of paragraphs (a) through (d). Section 1.125(a) retains the current practice that a substitute specification may be required by the examiner and has been clarified to note that if the legibility of the application papers shall render it difficult to consider the application, the Office may require a substitute specification.

Section 1.125 is amended in view of the continued prosecution application under § 1.53(d), to reflect the current liberalized practice as set forth in MPEP 608.01(q), and to delete the verification requirement for the no new matter statement. See comments to § 1.4(d).

Section 1.125(b) specifically provides for the filing of a substitute specification, excluding the claims, at any point up to payment of the issue fee, if it is accompanied by: (1) A statement that the substitute specification includes no new matter; and (2) a marked-up copy of the substitute specification showing the matter being added to and the matter being deleted from the specification of record (*i.e.*, the specification to be replaced by the substitute specification). While § 1.125(b)(2) requires the marked-up copy show the additions and deletions, it does not require that such additions and deletions be shown by underlining and bracketing. Rather, it permits the use of other indicia (*e.g.*, redlining and strikeouts) to show additions and deletions so that the document-compare feature of conventional word-processing programs can be used to produce the marked-up substitute specification.

Section 1.125(b), as proposed, would have required that a substitute specification contain only changes that were previously or concurrently submitted by an amendment under § 1.121. The Office, however, is not adopting this proposal. Creating a copy of the substitute specification showing the additions and deletions is relatively easy using the document-compare feature of a conventional word-processing program, when compared to the burden of preparing an amendment under § 1.121(a)(1) showing numerous changes to a specification. Thus, the Office is adopting the requirement currently set forth in MPEP 608.01(q) for a marked-up copy of the substitute specification showing the additions and deletions.

Comment 57: One comment stated that it is not clear exactly what is to be submitted with the substitute specification under paragraph (b)(2) of this section even though paragraph (c) requires it to be in clean form without markings.

Response: Section 1.125 requires an applicant filing a substitute specification to submit: (1) the substitute specification in clean form without markings (§ 1.125(c)); (2) a marked-up copy showing the additions and deletions relative to the specification it is replacing (§ 1.125(b)(2)); and (3) a statement that the substitute specification includes no new matter (§ 1.125(b)(1)).

Section 1.125(c) is amended to clarify that a substitute specification is to be submitted without markings as to amended material.

Section 1.125(d) does not permit a substitute specification in reissue or reexamination proceedings as markings for changes from the patent are required therein.

Section 1.126

Section 1.126 is amended to delete the phrase ", except when presented in accordance with § 1.121(b)" for consistency with the change to § 1.121.

No comments were received regarding § 1.126.

Section 1.133

Section 1.133(b) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.133.

Section 1.134

Section 1.134 is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.134.

Section 1.135

Section 1.135 paragraphs (a) and (c) are amended by replacement of "response" with "reply" in accordance with the change to § 1.111. Section 1.135(b) is amended to clarify that the admission of or refusal to admit any amendment after final rejection, and not just an amendment not responsive to the last Office action, shall not operate to save the application from abandonment.

Section 1.135(c) is amended to provide that a new "time period" under § 1.134 may be given if a reply to a non-final Office action is substantially complete but consideration of some matter or compliance with some requirement has been inadvertently omitted. This replaces the practice in which an applicant may be given an

opportunity to supply the omission through the setting of a "time limit" of one month that is not extendable. Under § 1.135(c) as adopted, a one-month shortened statutory time period will generally be set enabling an applicant to petition for extensions of time under § 1.136(a). Where 35 U.S.C. 133 requires a period longer than one month (i.e., actions mailed in the month of February), a shortened statutory period of 30 days will be set.

The setting of a time period for reply under § 1.134 (rather than a time limit) results in the date of abandonment (when no further reply is filed) being the expiration of the new time period rather than the date of expiration of the period of reply set in the original Office action for which an incomplete reply was filed. Thus, the amendment to § 1.135(c) permits the filing of a continuing application as an alternative to completing the reply, whereas the previous practice required an applicant to complete the reply that was held to be incomplete or else the application was held to be abandoned (retroactively) as of the expiration of the original period for reply. Thus, applicants had to file an unnecessary reply to preserve pendency where their only intent was to file a continuing application. Section 1.135(c), as amended, sets forth a new period within which a continuing application can be filed, without the applicant having to supply the omission in the prior application to preserve pendency. In addition, applicant may file any other reply as may be appropriate under § 1.111, regardless of whether a continuing application is filed.

Comment 58: Two comments objected to the change on the basis that it is subject to intentional misuse. It is argued that it encourages an applicant to send in piecemeal replies and permits use of the time period as a subterfuge for extending prosecution as § 1.135(c) does not specify how many times an incomplete reply can be given.

Response: 35 U.S.C. 154 as amended by Pub. L. 103–465 should provide the necessary incentive for applicants to prosecute an application without undue delay. Additionally, the examiner can determine that the failure to provide a complete reply was not "inadvertent" (especially where an applicant was previously notified of the deficiencies in the reply), and not set a period under § 1.135(c).

Comment 59: One comment suggested amending § 1.135(c) from "may" to "shall" so that an examiner must provide an opportunity to an applicant to complete a reply, and that § 1.135(c) should not be limited to replies to non-final Office actions so that if an application is in condition for allowance except for an inadvertent omission it would be beneficial for all parties to provide the same benefit as for non-final actions.

Response: The term "may" is used rather than "shall" to encourage applicants to provide a complete reply, in that an applicant providing an incomplete reply cannot be certain of being provided with an additional time period to prosecute the application.

Section 1.113(a) provides that the only reply to a final Office action effective to avoid abandonment of an application is: (1) an amendment under § 1.116 that *prima facie* places the application in condition for allowance; or (2) a notice of appeal (and appeal fee) under § 1.191. Thus, the only reply under § 1.113(a) that will ensure that abandonment of the application will be avoided is: (1) an amendment under § 1.116 that cancels all of the rejected claims; or (2) a notice of appeal (and appeal fee) under § 1.191 (§ 1.113(a)). That is, an applicant filing a proposed amendment under § 1.116 or arguments in reply to a final Office action has no assurance that such reply will necessarily result in allowance of the application. Given the limited nature of the replies under § 1.113 to a final Office action, it is not appropriate to provide a time period under § 1.135(c) to complete a reply to a final Office action.

Section 1.135(c) is also amended to remove an unnecessary reference to consideration of the question of abandonment and to clarify that the reply for which applicant may be given a new time period to reply to must be a "non-final" Office action.

Section 1.136

Section 1.136(a)(1) is amended to recite the availability of a maximum of five rather than four months as an extension of time, subject to any maximum period for reply set by statute. For example, when a one-month or 30-day period is set for reply to a restriction requirement or for completing a reply under § 1.135(c), that period may be extended up to the six-month statutory (35 U.S.C. 133) maximum. In addition, as the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. 133, the period for filing an appeal brief may be extended up to seven months.

Comment 60: At least one comment noted that there is no statutory authority under 35 U.S.C. 41(a)(8)(C) for the $2,010 amount set for the fifth month extension of time.

Response: See the response to comment 5.

Section 1.136(a)(1) is also amended by replacement of "respond" with "reply" in accordance with the change to § 1.111 and for clarification.

Section 1.136(a)(2) is amended by replacement of "respond" with "reply" in accordance with the change to § 1.111 and other clarification changes.

Comment 61: One comment questioned whether the addition in paragraph (a)(2) of § 1.136 that requires a reply to be filed prior to the expiration of the period of extension to avoid abandonment of the application will affect the timely filing of a reply under §§ 1.8 or 1.10 where the mail date rather than the receipt date is the end of the period for reply.

Response: The referred to addition has been noted to be a clarification and not a change in practice. The added language does not change current practice under §§ 1.8 and 1.10.

Section 1.136 is amended by addition of paragraph (a)(3) that provides for the filing in an application a general authorization to treat any reply requiring a petition for an extension of time for its timely submission as containing a request therefor for the appropriate length of time. The authorization may be filed at any time prior to or with the submission of a reply that would require an extension of time for its timely submission, including submission with the application papers. Previously, the mere presence of a general authorization, submitted prior to or with a reply requiring an extension of time, to charge all required fees does not amount to a petition for an extension of time for that reply (MPEP 201.06 and 714.17) and under the proposed amended rule the submission of a reply requiring an extension of time for its timely submission would not be treated as an inherent petition for an extension of time absent an authorization for all necessary extensions of time. The Office will continue to treat all petitions for an extension of time as requesting the appropriate extension period notwithstanding an inadvertent reference to a shorter period for extension and will liberally interpret comparable papers as petitions for an extension of time. Applicants are advised to file general authorizations for payment of fees and petitions for extensions of time as separate papers rather than as sentences buried in papers directed to other matters (such as an application transmittal letter). The use of individual papers directed only to an extension of time or to a general authorization for payment of fees would permit the Office to more readily identify the presence of such items and list them individually on the application file jacket, thus facilitating future identification of these authorizations.

Comment 62: Two comments requested that it be clarified whether the reference to submission of a paper with an authorization is to be construed as allowing for submission of a standard sentence in a general reply to an Office action that includes a check box on an application transmittal form.

Response: The comments have been adopted and the proposed language of paragraph (a)(3) of § 1.136 modified to replace the reference to "paper" with "written request."

Section 1.136(a)(3) is additionally amended to provide that general authorizations to charge fees are effective to meet not only the requirement for the extension of time fee for replies filed concurrent or subsequent to the authorization but also represent a constructive petition for an extension of time, which is a change from current practice wherein a general authorization to charge additional fees does not represent a petition for an extension of time, which petition must be separately requested.

Section 1.136(a)(3) also includes the sentence "(s)ubmission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." This provides for those instances in which an applicant files a reply with a check (or other means of payment under § 1.23) for the requisite fee under § 1.17(a) (1) through (5) for the petition under § 1.136(a) required to render such reply timely, but omits a request (*i.e.*, a petition) for an extension of time under § 1.136(a). In such instances, the mere submission of the appropriate fee will be treated as a constructive petition for the extension of time to render the reply timely.

Section 1.136(b) is amended for clarity and to replace the phrase "response" with the phrase "reply" for consistency with § 1.111.

Section 1.137

Section 1.137 is amended to, *inter alia*, incorporate revival of abandoned applications and lapsed patents for the failure: (1) to timely reply to an Office requirement in a provisional application (§ 1.139); (2) to timely pay the issue fee for a design application (§ 1.155); (3) to timely pay the issue fee for a utility or plant application (§ 1.316); or (4) to timely pay any outstanding balance of the issue fee (§ 1.317) (lapsed patents).

Section 1.137(a) is amended to provide: (1) that it is the paragraph that applies to petitions under the "unavoidable" standard; (2) that "where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to [§ 1.137(a)]"; and (3) the requirements for a grantable petition pursuant to § 1.137(a) in paragraphs (a)(1) through (a)(4).

Section 1.137(a)(1) (and § 1.137(b)(1)) are amended to provide that a grantable petition pursuant to § 1.137(a) must be accompanied by "(t)he required reply, unless previously filed." Section 1.137(a)(1) (and § 1.137(b)(1)) is amended to further provide that "(i)n a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application" and that "(i)n an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof."

Under § 1.137(a)(1) (and § 1.137(b)(1)), a continuing application is a permissive (*i.e.*, "may be met") reply in a nonprovisional application abandoned for failure to prosecute, in that an applicant in a nonprovisional application abandoned for failure to prosecute may file a reply under § 1.111 to a non-final Office action or a reply under § 1.113 (*e.g.*, notice of appeal) to a final Office action, or may simply file a continuing application as the required reply. The Office, however, may require a continuing application (or request for further examination pursuant to § 1.129(a)) to meet the reply requirement of § 1.137(a)(1) (or § 1.137(b)(1)) where, under the circumstances of the application, treating a reply under §§ 1.111 or 1.113 would place an inordinate burden on the Office. Exemplary circumstances of when treating a reply under §§ 1.111 or 1.113 may place an inordinate burden on the Office are: (1) an application abandoned for an inordinate period of time; (2) the application file containing multiple or conflicting replies to the last Office action; and (3) the submission of a reply or replies under § 1.137(a)(1) (or § 1.137(b)(1)) that are questionable as to compliance with §§ 1.111 or 1.113.

While the revival of applications abandoned for failure to timely prosecute and for failure to timely pay the issue fee are incorporated together in § 1.137, the statutory provisions for the revival of an application abandoned for failure to timely prosecute and for failure to timely submit the issue fee are mutually exclusive. *See Brenner* versus *Ebbert*, 398 F.2d 762, 157 USPQ 609 (D.C. Cir.), *cert. denied* 393 U.S. 926, 159 USPQ 799 (1968). 35 U.S.C. 151 authorizes the acceptance of a delayed payment of the issue fee, if the issue fee "is submitted * * * and the delay in payment is shown to have been unavoidable." 35 U.S.C. 41(a)(7) likewise authorizes the acceptance of an "unintentionally delayed payment of the fee for issuing each patent." Thus, 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee. Therefore, the filing of a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable proposed reply in an application abandoned or patent lapsed for failure to pay the issue fee or any portion thereof.

The Notice of Allowance requires the timely payment of the issue fee in effect on the date of its mailing to avoid abandonment of the application. In instances in which there is an increase in the issue fee by the time of payment of the issue fee required in the Notice of Allowance, the Office will mail a notice requiring payment of the balance of the issue fee then in effect. *See In re Mills*, 12 USPQ2d 1847 (Comm'r Pat. 1989). The phrase "for failure to pay the issue fee or any portion thereof" applies to those instances in which the applicant fails to pay either the issue fee required in the Notice of Allowance or the balance of the issue fee required in a subsequent notice. In such instances, the proposed reply must be the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted.

These changes to § 1.137(a)(1) (and § 1.137(b)(1)) are necessary to incorporate into § 1.137 the revival of abandoned applications and lapsed patents for the failure to: (1) Timely reply to an Office requirement in a provisional application (§ 1.139), (2) timely pay the issue fee (§§ 1.155 and 1.316), or (3) timely pay any outstanding balance of the issue fee (§ 1.317).

Section 1.137(a)(3) is amended to provide that a grantable petition pursuant to § 1.137(a) must be accompanied by "[a] showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable."

Section 1.137(a) deletes the requirement that a petition thereunder be "promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment." The genesis of the "promptly filed" requirement in § 1.137(a) is the legislative history of Pub. L. 97–247, § 3, 96 Stat. 317 (1982) (which provides for the revival of an "unintentionally" abandoned application), which provides, *inter alia*, that:

> In order to prevent abuse and injury to the public the Commissioner could require a terminal disclaimer equivalent to the period of abandonment and could require applicants to act *promptly* after becoming aware of the abandonment.

See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 771 (emphasis added).

Nevertheless, 35 U.S.C. 133 and 151 each require a showing that the "delay" was "unavoidable," which requires not only a showing that the delay which resulted in the abandonment of the application was unavoidable, but also a showing of unavoidable delay until the filing of a petition to revive. *See In re Application of Takao*, 17 USPQ2d 1155 (Comm'r Pat. 1990). The burden of continuing the process of presenting a grantable petition in a timely manner likewise remains with the applicant until the applicant is informed that the petition is granted. *Id.* Thus, an applicant seeking to revive an "unavoidably" abandoned application must cause a petition under § 1.137(a) to be filed without delay (*i.e.*, promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application).

An applicant who fails to file a petition under § 1.137(a) "promptly" upon becoming notified, or otherwise becoming aware, of the abandonment of the application will not be able to show that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(a)] was unavoidable." The removal of the language in § 1.137(a) requiring that any petition thereunder be "promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment" should *not* be viewed as: (1) Permitting an applicant, upon becoming notified, or otherwise becoming aware, of the abandonment of the application, to delay the filing of a petition under § 1.137(a); or (2) changing (or modifying) the result in *In re Application of S*, 8 USPQ2d 1630 (Comm'r Pat. 1988), in which a petition under § 1.137(a) was denied due to the applicant's deliberate deferral in filing a petition under § 1.137. An applicant who deliberately chooses to delay the filing of a petition under § 1.137 (as in *Application of S*) will not be able to show that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(a)] was unavoidable" or even make an appropriate statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(b)] was unintentional."

Therefore, the requirement in § 1.137(a) that a petition thereunder be "promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment" is deleted solely because it is considered redundant in light of the requirement for a showing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to § 1.137(a) was unavoidable.

Section 1.137(a)(3) (and § 1.137(b)(3)) is further amended to delete the requirement that the showing (statement) must be a verified showing or statement if made by a person not registered to practice before the Patent and Trademark Office. Section 1.56 currently provides that each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith. Sections 1.4(d) and 10.18 are amended to provide that a signature on a paper submitted to the Office constitutes an acknowledgment that willful false statements are punishable under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon. Therefore, requiring additional verification of a showing or statement under § 1.137 would be redundant. In addition, this requirement results in delays in the treatment of the merits of petitions that include unverified statements.

Section 1.137(a)(4) (and § 1.137(b)(4)) are added to provide that a grantable petition under § 1.137 must be accompanied by "[a]ny terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to [§ 1.137(c)]."

Section 1.137(b) is amended to provide: (1) That it is the paragraph that applies to petitions under the "unintentional" standard; (2) that "where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to [§ 1.137(b)]"; and (3) the requirements for a grantable petition pursuant to § 1.137(b) in paragraphs (b)(1) through (b)(4).

Section 1.137(b)(1) is amended (as discussed *supra*) to provide that a grantable petition under § 1.137(b) must be accompanied by "[t]he required reply, unless previously filed." Section 1.137(b)(1) is amended to further provide that "[i]n a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application" and that "[i]n an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof."

Section 1.137(b)(3) is amended to provide that a grantable petition under § 1.137(b) must be accompanied by "[a] statement that the entire delay in providing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." While the Office will generally require only the statement that the entire delay in providing the required reply from the due date for the reply until the filing of a grantable petition pursuant to § 1.137(b) was unintentional, the Office may require an applicant to carry the burden of proof to establish that the delay from the due date for the reply until the filing of a grantable petition was unintentional within the meaning of 35 U.S.C. 41(a)(7) and § 1.137(b) where there is a question whether the entire delay was unintentional. *See In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989).

Section 1.137(b)(4) is amended to delete the one-year filing period requirement. Section 1.137(b)(4) is amended to provide that a grantable petition under § 1.137 must be accompanied by "[a]ny terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to [§ 1.137(c)]."

Requirement That the Entire Delay Until the Filing of a Grantable Petition Was Unavoidable (§ 1.137(a)) or Unintentional (§ 1.137(b))

There are three periods to be considered during the evaluation of a petition under § 1.137: (1) The delay in reply that originally resulted in the abandonment; (2) the delay in filing an initial petition pursuant to § 1.137 to revive the application; and (3) the delay in filing a *grantable* petition pursuant to § 1.137 to revive the application.

Where the applicant deliberately permits an application to become abandoned (*e.g.*, due to a conclusion that the claims are unpatentable, that a rejection in an Office action cannot be overcome, or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of § 1.137(b). *See Application of G*, 11 USPQ2d at 1380. Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of § 1.137(b). An intentional delay resulting from a deliberate course of action chosen by the applicant is not affected by: (1) The correctness of the applicant's (or applicant's representative's) decision to abandon the application or not to seek or persist in seeking revival of the application; (2) the correctness or propriety of a rejection, or other objection, requirement, or decision by the Office; or (3) the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision not to seek or persist in seeking revival. Obviously, delaying the revival of an abandoned application, by a deliberately chosen course of action, until the industry or a competitor shows an interest in the invention (a submarine application) is the antithesis of an "unavoidable" or "unintentional" delay. An intentional abandonment of an application, or an intentional delay in seeking either the withdrawal of a holding of abandonment in or the revival of an abandoned application, precludes a finding of unavoidable or unintentional delay pursuant to § 1.137. *See In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

The Office does not generally question whether there has been an intentional or otherwise impermissible delay in filing an initial petition pursuant to § 1.137 (a) or (b), when such petition is filed: (1) Within three months of the date the applicant is first notified that the application is abandoned; *and* (2) within one year of the date of abandonment of the application. Thus, an applicant seeking revival of an abandoned application is advised to file a petition pursuant to § 1.137 within three months of the first notification that the application is abandoned to avoid the question of intentional delay being raised by the Office (or by third parties seeking to challenge any patent issuing from the application).

Where a petition pursuant to § 1.137 (a) or (b) is not filed within three months of the date the applicant is first notified that the application is abandoned, the Office may consider there to be a question as to whether the delay was unavoidable or even unintentional. In such instances, the Office may require: (1) A showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date a § 1.137(a) petition was filed was "unavoidable"; or (2) further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a § 1.137(b) petition was filed, and how such delay was "unintentional." To avoid delay in the consideration of a petition under § 1.137 (a) or (b) in instances in which such petition was not filed within three months of the date the applicant was first notified that the application was abandoned, applicants should include a showing as to how the delay between the date the applicant is first notified by the Office that the application is abandoned and filing of a petition under § 1.137 was: (1) "Unavoidable" in a petition under § 1.137(a); or (2) "unintentional" in a petition under § 1.137(b).

Where a petition pursuant to § 1.137 (a) or (b) is not filed within one year of the date of abandonment of the application (note that abandonment takes place by operation of law, rather than the mailing of a Notice of Abandonment), the Office may require: (1) Further information as to when the applicant (or the applicant's representative) first became aware of the abandonment of the application; and (2) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or the applicant's representative) (*see Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31 (1887)). To avoid delay in the consideration of a petition under § 1.137 (a) or (b) in instances in which such petition was not filed within one year of the date of abandonment of the application, applicants should include: (1) The date that the applicant first became aware of the abandonment of the application; and (2) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under § 1.137(a) or § 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application.

Section 1.137(d) specifies a time period within which a renewed petition pursuant to § 1.137 must be filed to be considered timely. So long as a renewed petition is timely filed under § 1.137(d) (including any properly obtained extensions of time), the Office will consider the delay in filing a renewed petition under § 1.137(a) "unavoidable" under § 1.137(a)(3), and will consider the delay in filing a renewed petition under § 1.137(b) "unintentional" under § 1.137(b)(3). Where an applicant files a renewed petition, request for reconsideration, or other petition seeking review of a prior decision on a petition pursuant to § 1.137 outside the time period specified in § 1.137(d), the Office may require, *inter alia*, a specific showing as to how the entire delay was "unavoidable" (§ 1.137(a)) or "unintentional" (§ 1.137(b)). As discussed *supra*, a delay resulting from the applicant deliberately choosing not to persist in seeking the revival of an abandoned application cannot be considered "unavoidable" or "unintentional" within the meaning of § 1.137, and the correctness or propriety of the decision on the prior petition pursuant to § 1.137, the correctness of the applicant's (or the applicant's representative's) decision not to persist in seeking revival, the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision to not persist in seeking revival are immaterial to such intentional delay caused by the deliberate course of action chosen by the applicant.

Retroactive Application of § 1.137(b)

There was no prohibition in former § 1.137(b) against requests for waiver of its one-year filing period requirement; however, waiver of the one-year filing period requirement of former § 1.137(b) was subject to strictly limited conditions (§ 1.183). *See* Final Rule entitled "Changes in Procedures for Revival of Patent Applications and Reinstatement of Patents," published in the **Federal Register** at 58 FR 44277 (August 20, 1993), and in the *Official Gazette* at 1154 *Off. Gaz. Pat. Office* 35 (September 14, 1993). Thus, under the terms of former § 1.137, an applicant in an application abandoned for more than

one year could file either a petition under § 1.137(a) to revive the application on the basis of "unavoidable" delay, or a petition under §§ 1.183 and 1.137(b) to revive the application on the basis of "unintentional" delay. That is, where an application was abandoned for more than one year, and the delay was "unintentional" but not "unavoidable," it was incumbent upon an applicant desiring revival of the application to promptly file a petition under §§ 1.183 and 1.137(b) to revive the application.

While § 1.137(b), as amended, is, by its terms, applicable to applications abandoned prior to its effective date, § 1.137(b) requires, by its terms, "[a] statement that the entire delay in providing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Thus, where an applicant (or the applicant's representative) previously chose not to seek revival of an application (*e.g.*, due to the opinion that the former provisions of § 1.137 (a) or (b) did not permit revival thereunder), the resulting delay in seeking revival of the application cannot be considered "unintentional" within the meaning of § 1.137(b). Likewise, where an applicant (or the applicant's representative) previously requested revival of an application, received an adverse decision (*e.g.*, a dismissal or denial), and chose not to persist in seeking revival of the application (*e.g.*, by request for reconsideration or review), the resulting delay in seeking revival of the application likewise cannot be considered "unintentional" within the meaning of § 1.137(b). The elimination of the one-year filing period requirement in § 1.137(b) does not create a new right to overcome any prior intentional delay caused by a deliberate course of action (or inaction) chosen by the applicant. Thus, any applicant filing a petition under § 1.137 after the effective date of this Final Rule, but outside the period set in § 1.137(d) for seeking reconsideration of a prior adverse decision on a request to revive an application will be considered to have acquiesced in the abandonment of the application or lapse of the patent.

Section 1.137(c) is amended to change the introductory phrase "[i]n all applications filed before June 8, 1995, and in all design applications filed on or after June 8, 1995" to "[i]n a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995" for clarity. Section 1.137(c) is further amended to change the phrase "any petition to revive pursuant to paragraph (a) of this section" to "any petition to revive pursuant to this section," and the phrase "not filed within six months of the date of abandonment of the applications" is deleted. Section 1.137(c) is further amended to change the phrase "must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought" to "must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought," since it is the claim for, and not the entitlement to, the benefit of the filing date of the application for which revival is sought that triggers the requirement for the filing of a terminal disclaimer in the continuing application.

Section 1.137(d) is amended to change "application" to "abandoned application or lapsed patent" to incorporate into § 1.137 the revival of lapsed patents. In view of the elimination of a time period from § 1.137(b), the provisions of former § 1.137(e) are incorporated into § 1.137(d) as "[u]nless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136."

Section 1.137(e) is amended to expressly provide that a provisional application, abandoned for failure to timely reply to an Office requirement, may be revived pursuant to § 1.137(a) or (b) so as to be pending for a period of no longer than twelve months from its filing date. In accordance with 35 U.S.C. 111(b)(5), § 1.137(e) clearly indicates that "[u]nder no circumstances will a provisional application be regarded as pending after twelve months from its filing date." Prior § 1.139 (a) and (b) each provided that a provisional application may be revived so as to be pending for a period of no longer than twelve months from its filing date, and that under no circumstances will a provisional application be regarded as pending after twelve months from its filing date.

Comment 63: The majority of comments opposed amending § 1.137(a) and (b) to include time limits based upon the mail date of a notification of abandonment, as well as the retroactive application of such a change to the rules of practice. While these comments recognized that any filing period requirement § 1.137 is better based upon the date of notification, rather than the date of abandonment, they argued that there will inevitably be instances in which a blameless applicant will not be able to meet the filing period requirement due to extenuating circumstances. The majority of comments supported amending § 1.137 (a) and (b) to remove the filing period requirement, as well as the retroactive application of such a change to the rules of practice.

Response: The Office will adopt a § 1.137 that does not include filing period requirements, and will not limit the retroactive application of § 1.137(b) as adopted, other than by the terms of the rule (as discussed supra).

Comment 64: One comment generally supported the change to § 1.137(b) to remove the filing period requirement, but expressed concerns as to the routine revival of abandoned applications. The comment specifically suggested that the Office continue to require a high showing to justify the revival of an abandoned application, especially where the petition was filed substantially after abandonment or applicant's receipt of the notice of abandonment.

Response: The Office does not consider the revival of an abandoned application to be a "routine" matter. The Office will require, *inter alia*, a "showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(a)] was unavoidable" as a prerequisite to the grant of any petition based upon unavoidable delay (§ 1.137(a)). The Office will require, *inter alia*, a "statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(b)] was unintentional" by a registered practitioner or other party in interest having firsthand knowledge of the circumstances surrounding the delay as a prerequisite to the grant of any petition based upon unintentional delay (§ 1.137(b)). The Office expects that such statement made by a registered practitioner not having firsthand knowledge of the circumstances surrounding the delay be based upon a reasonable investigation of the circumstances surrounding the abandonment of the application (§ 10.18), and that such statement by any person be consistent with the duty of candor and good faith and the duty to disclose material information to the Office (§ 1.56).

Regardless of the length of the delay, § 1.137(a) requires that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to § 1.137(a) was unavoidable. Likewise, regardless of the length of the delay, § 1.137(b) requires that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to § 1.137(b) was unintentional. As "unintentional" delay does not require that the delay have occurred despite the exercise of due care and diligence (as does "unavoidable" delay), the Office does not routinely require a "showing" of unintentional delay for a petition under § 1.137(b). However, where there may be a question whether the delay was unintentional, the Office may require a showing of unintentional delay for a petition under § 1.137(b). Such question may arise from papers submitted to the Office prior to the petition under § 1.137(b) (*e.g.*, a letter of express abandonment, or other communication evidencing a desire to discontinue prosecution) or from facts set forth in the petition itself. Such question may also arise simply from the length of the delay between the date the applicant was notified of the abandoned status of the application and the date action was taken to revive the abandoned application, or the length of the period of abandonment. Specifically, where there is a delay of three months between the date the applicant was notified of the abandoned status of the application (*i.e.*, the mail date of the notice of abandonment) and the date a petition under § 1.137(b) was filed, or where the application was abandoned for more than one year prior to the date a petition under § 1.137(b) was filed, the Office may require further information and a showing that the delay was unintentional.

Finally, it should be stressed that the mere fact that a petition under § 1.137(b) was filed within three months of the date the applicant was notified of the abandoned status of the application (*i.e.*, the mail date of the notice of abandonment) or within one year of the date of abandonment does not imply that the delay was "unintentional." That is, an applicant who deliberately delays the filing of a petition under § 1.137 until three months from the mail date of the notice of abandonment (or based upon the one-year anniversary of the date of abandonment) cannot appropriately make the statement that "the delay was unintentional." This time frame is provided simply as an indication as to when an applicant should expect the Office to inquire further into the circumstances of the abandonment of an application for which a petition under § 1.137(b) is filed, and in which case the applicant may expedite consideration of such petition by providing information as to when applicant was notified of the abandoned status of the application, and the cause of the delay between the date of notification and the date a petition under § 1.137 was filed.

Comment 65: One comment suggested that the Office include in § 1.137 all of the basic interpretations and guidelines by which the Office applies § 1.137. The comment specifically suggested that § 1.137 include the time periods (*e.g.*, three months) by which the Office measures the applicant's diligence in taking action to revive the application and the differences between post-abandonment delay in taking action to revive the application and any pre-abandonment delay which may have resulted in the abandonment.

Response: The Office will adopt a § 1.137 that does not include filing period requirements, but requires that the "entire" delay was "unavoidable" (§ 1.137(a)) or "unintentional" (§ 1.137(b)). The requirements for a petition to revive an abandoned application or lapsed patent are set forth in § 1.137; additionally, the Office will set forth its basic interpretations and guidelines for application of § 1.137 (instructional information) in the MPEP.

Section 1.181 provides the basis for generic requests for relief by petition, and sets forth a two-month time period therein for the timely filing of a petition (§ 1.181(f)). While the three-month time frame employed by the Office during the consideration petitions under § 1.137 exceeds the two-month period in § 1.181(f) for the timely filing of a petition, this three-month period is the most frequently set period for reply by an applicant (*see* MPEP 710.02(b)). While the Office considers the two-month period in § 1.181(f) to be the appropriate period by which the timeliness of a petition should be determined, it is certainly reasonable to expect that any applicant desiring to restore an abandoned application to pending status will file a petition under § 1.137 to revive such abandoned application no later than three months after notification of abandonment of the application. *See In re Kokaji*, 1 USPQ2d 2005, 2006 (Comm'r Pat. 1986).

The "three-month" time frame set forth in this Final Rule is a guideline as to when an applicant can expect further inquiry by the Office (and, as such, should attempt to provide the relevant information in the initial petition to avoid delay), in that: (1) it is possible that an applicant is incapable of filing a petition under § 1.137 within three months of the date of notification of abandonment (*e.g.*, *pro se* applicant incapacitated from date of notification of abandonment until action taken to revive the application) rendering the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition unavoidable; and (2) it is also possible that an applicant, by a deliberately chosen course of action, delays the filing of a petition under § 1.137 until exactly three months after the date of notification of abandonment to use this period as an extension of time, in which case a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" is not appropriate. To avoid substitution of the three-month time frame for review by the Office for the requirement for unavoidable or unintentional delay, the Office will not amend § 1.137 to include this time frame.

Comment 66: One comment indicated that the phrase "the delay was unintentional" is unclear. The comment recited a specific example in which an applicant, under final rejection, submits an amendment or other correspondence which is believed by the applicant to place the application in condition for allowance (and thus constitute a reply within the meaning of § 1.113), and, as such, the applicant, in a deliberate course of action/inaction, takes no further steps to ensure the filing a reply within the meaning of § 1.113 (*e.g.*, a notice of appeal) to the final rejection. The comment suggested that § 1.137 is unclear as to whether the delay in this situation, which may be deliberate or intentional in the literal sense, would constitute an "unintentional" delay within the meaning of § 1.137(b).

Response: The Office has amended § 1.137 to require that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition" was "unavoidable" (§ 1.137(a)) or "unintentional" (§ 1.137(b)). Thus, intentional delays occurring prior to the due date for reply to avoid abandonment do not preclude relief pursuant to § 1.137. Should the delay in the example given extend past the extendable due date for reply (under § 1.113) to the final rejection, an appropriate statement of unintentional delay could be made as the applicant did not intend to have the deadline for reply under § 1.113 to the final rejection expire.

In addition, there is a distinction between: (1) a delay resulting from an error in judgment as to whether to permit an application to become abandoned (whether to prosecute the application) or whether to seek or persist in seeking the revival of the abandoned application; and (2) a delay

resulting from an error in judgment as to the steps necessary to continue the prosecution delay in seeking revival of the application. Where the abandonment and ensuing delay results from an error in judgment as to whether to permit an application to become abandoned (whether to prosecute the application) or whether to seek or persist in seeking the revival of the abandoned application, the abandonment of such application is considered a deliberately chosen course of action, and the resulting delay cannot be considered "unintentional" within the meaning of § 1.137(b). Where, however, an error in judgment as to the steps necessary to continue prosecution results in abandonment of the application, the abandonment of such application is not necessarily considered a deliberately chosen course of action, and the resulting delay may be considered "unintentional" within the meaning of § 1.137(b).

However, §§ 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal. Unless the applicant is informed in writing that the application is allowed prior to the expiration of the period for reply to the final Office action, it is the applicant's responsibility to timely file a notice of appeal (and fee) to avoid the abandonment of the application. The abandonment of an application subject to a final Office action is not "unavoidable" within the meaning of 35 U.S.C. 133 and § 1.137(a) in the situation in which the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action.

Comment 67: One comment opposed the changes to § 1.137 on the bases that: (1) it permits submarine patents, in that an applicant may permit an application to become abandoned and wait to see whether the invention was developed by other entities; and (2) the revival of a long-abandoned application will have an adverse impact on the examiner, in that the examiner who originally examined that application may no longer be at the Office, or will have to reacquaint himself or herself with the application.

Response: The change to § 1.137(b) does not permit an applicant to obtain revival where either: (1) the applicant deliberately permitted the application to become abandoned; or (2) the applicant deliberately delayed seeking revival to see whether the invention was developed by other entities. It is well established that where applicant deliberately permits an application to become abandoned, the abandonment of such application is considered a deliberately chosen course of action, and the resulting delay cannot be considered "unintentional" within the meaning of § 1.137(b). *See Application of G*, 11 USPQ2d at 1380. Likewise, where the applicant deliberately chooses not to either seek or persist in seeking the revival of an abandoned application, the resulting delay in seeking revival of the application cannot be considered "unintentional" within the meaning of § 1.137(b). The intentional abandonment of an application, or an intentional delay in seeking either the withdrawal of a holding of abandonment in or the revival of an abandoned application, precludes a finding of unavoidable or unintentional delay pursuant to § 1.137. *See Maldague*, 10 USPQ2d at 1478.

While it is possible for an applicant to make a misleading statement that the delay was unintentional to obtain revival of an abandoned application, the Office simply must rely upon the candor and good faith of those prosecuting patent applications (*e.g.*, it is equally possible for a party to fabricate evidence and obtain the revival of a long-abandoned application on the basis of unavoidable delay). Any applicant obtaining revival based upon a misleading statement that the delay was unintentional may find the achievement short-lived as a result of the question of intentional delay being raised by third parties challenging any patent issuing from the application.

The revival of any long-abandoned application will have an adverse impact on the examiner; however, long-abandoned applications have been previously revived pursuant to § 1.137(a) on the basis of unavoidable delay. *See In re Lonardo*, 17 USPQ2d 1455 (Comm'r Pat. 1990)(application revived after being abandoned for more than sixteen years). Thus, this change to § 1.137(b) will not create a burden on examiners that did not exist before, and could in fact reduce the burden as a result of the requirement that in applications abandoned for excessive periods of time would have to show that the entire delay was "unavoidable" or "unintentional."

Comment 68: One comment suggested that the two-year limitation in 35 U.S.C. 41(c) is a "good compromise" in regard to a filing period for filing petitions to revive based upon unintentional delay.

Response: The suggestion is not adopted. Changing the one-year filing period requirement in § 1.137(b) to a two-year filing period requirement would not substantially change the problem caused by a filing period requirement, namely, that it causes inequitable results in certain instances. In addition, the inclusion of any filing period requirement in § 1.137(a) or (b) will likely induce applicants, or their representatives, to delay the filing of a petition under § 1.137 until the end of such filing period. *See Application of S*, 8 USPQ2d at 1632. The Office has no discretion in regard to the twenty-four month filing period requirement in 35 U.S.C. 41(c), but the presence of a twenty-four month filing period requirement in 35 U.S.C. 41(c) does not imply that the Office must place a twenty-four month filing period requirement into the rules implementing 35 U.S.C. 41(a)(7), which contains no filing period requirement.

Comment 69: One comment opposed the changes to § 1.137 on the basis that the right to revive an abandoned application should be limited due to the public's right to practice a technology "that an applicant has abandoned."

Response: 35 U.S.C. 41(a)(7) authorizes the Office to revive an abandoned application where the abandonment was unintentional (or unavoidable, the epitome of unintentional), but not where the abandonment was intentional. Section 1.137 does not authorize the revival of an abandoned application where the applicant, by deliberate course of action, has abandoned an application or delayed seeking its revival. Additionally, in many instances the disclosure in a patent maturing from a revived application would not have been disclosed and the technology therein would not be public knowledge, but for the revival of the application.

Comment 70: One comment suggested the need for an intervening rights provision to protect innocent infringers.

Response: The issue of intervening rights relates to the enforcement of patent rights, which does not directly concern the conduct of proceedings in the Office. Thus, it is unclear whether the Office is authorized under 35 U.S.C. 6 to promulgate regulations including an intervening rights provision.

Comment 71: Several comments suggested that § 1.137(b) be amended to include the "promptly filed" requirement of § 1.137(a).

Response: The suggestion is effectively adopted, although *via* a different mechanism as explained below. While there is considerable merit to the suggestion for the inclusion of a "promptly filed" requirement in both § 1.137(a) and (b), the Office has eliminated the "promptly filed" requirement from § 1.137(a) to avoid confusion between "promptly filed" and "unavoidable delay." The phrase "promptly filed" has been associated with § 1.137(a) and its requirement for "unavoidable" delay, and, as such, the inclusion of a "promptly filed" requirement in § 1.137(b) might cause confusion in regard to the distinction between the circumstances that constitute unavoidable delay and the circumstances that constitute unintentional delay.

Section 1.137(a)(3) and (b)(3) as adopted requires that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition" has been "unavoidable" (§ 1.137(a)) or "unintentional" (§ 1.137(b)) to clarify the requirements for a petition under § 1.137(a) and (b). As discussed *supra*, an applicant who fails to file a petition under § 1.137(a) or (b) "promptly" upon becoming notified, or otherwise becoming aware, of the abandonment of the application will not be able to show that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(a)] was unavoidable," and will probably not even be able to make an appropriate statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to [§ 1.137(b)] was unintentional." Obviously, any petition under § 1.137(a) or (b) should be "promptly filed" upon discovery of abandonment to avoid a question as to whether the filing of such a petition was intentionally delayed.

Comment 72: One comment questioned how a patent could lapse for failure to pay the issue fee, as a patent does not issue unless the issue fee is paid.

Response: 35 U.S.C. 151 provides that where an applicant timely submits the sum specified in the Notice of Allowance as the issue fee, but a balance of the issue fee remains outstanding (due to a fee increase), the patent will lapse unless the balance of the issue fee is timely paid. See *Mills*, 12 USPQ2d at 1848; *see also Ex parte Crissy*, 201 USPQ 689 (Bd. Pat. App. 1976).

Comment 73: One comment suggested that § 1.137(a)(1) and (b)(1) not require a continuing application if the application became abandoned for failure to reply to a non-final Office action.

Response: Section 1.137(a)(1) and (b)(1) each provide that a petition thereunder include:

The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

As discussed *supra*, there may be circumstances under which the Office may require a continuing application to meet this reply requirement. Nevertheless, in a nonprovisional application abandoned for failure to prosecute, a continuing application is generally a permissive (*i.e.*, "may be met") reply, in that an applicant in a nonprovisional application abandoned for failure to prosecute may file a reply under § 1.111 to a non-final Office action or a reply under § 1.113 (*e.g.*, notice of appeal) to a final Office action, or may simply file a continuing application as the required reply. In an application or patent, abandoned or lapsed for failure to pay any portion of the required issue fee, the issue fee or any outstanding balance thereof is the mandatory (*i.e.*, "must be") reply. As the "continuing application" option is limited to an abandoned nonprovisional application, the reply in an abandoned provisional application must be any outstanding reply to an Office requirement.

Comment 74: One comment suggested that § 1.137(c) be amended to take into account the provision in 35 U.S.C. 154(c) that an application (other than a design application) is entitled to a patent term of not less than twenty years from its filing date, or if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), the date twenty years from the filing date of the earliest such application(s).

Response: The suggestion is not adopted. The Office considers this situation to be applicable to a relatively small class of applications, and, as such, does not deem it prudent to introduce into § 1.137(c) the complexity necessary to account for this situation. Applicants in this situation (*e.g.*, instances in which an application filed prior to June 8, 1995, is to be revived solely for purposes of copendency with an application filed on or after June 8, 1995) may file a petition pursuant to § 1.183 requesting that the Office waive the provisions of § 1.137(c) to the extent that § 1.137(c) requires a disclaimer of the period in excess of the date twenty years from the filing date of the application, or if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), the date twenty years from the filing date of the earliest such application(s). The Office will refund the § 1.17(h) petition fee if the § 1.183 petition is granted.

Comment 75: One comment suggested that the last paragraph of § 1.137 read:

Under no circumstance may a petition to revive a provisional application be filed more than twelve months after the filing date of the provisional application. No application filed more than twelve months after the filing date of a provisional application is entitled to a claim of priority from the provisional [application], notwithstanding the copendency of any petition to revive the provisional application.

Response: The suggestion is not adopted. 35 U.S.C. 111(b)(3)(C) authorizes the revival of an abandoned application on the basis of unavoidable or unintentional delay. 35 U.S.C. 111(b)(5) provides that a "provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter." 35 U.S.C. 111(b) does not contain any limitation on the filing date of a petition to revive an abandoned provisional application (or the date by which such a petition must be granted), but only a limitation as to the period of pendency of the provisional application. Thus, § 1.137(e) as adopted provides that "[a] provisional application * * * may be revived * * * so as to be pending for a period of no longer than twelve months from its filing date. Under no circumstances will a provisional application be regarded as pending after twelve months from its filing date."

Section 1.139

Section 1.139 is removed and reserved and its subject matter added to § 1.137.

No comments were received regarding the proposed change to § 1.139.

Section 1.142

Section 1.142 is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.142.

Section 1.144

Section 1.144 is amended for clarification purposes.

No comments were received regarding the proposed change to § 1.144.

Section 1.146

Section 1.146 is amended for clarification purposes.

No comments were received regarding the proposed change to § 1.146.

Section 1.152

Section 1.152 is amended to place its former provisions into paragraphs (a), (a)(1), and (a)(2) for clarification.

Section 1.152 is also amended to remove the prohibition against color drawings and color photographs in design applications. Section 1.152 is amended to permit the use of color photographs and color drawings in design applications subject to the petition requirements of § 1.84(a)(2) inasmuch as color may be an integral element of the ornamental design. While pen and ink drawings may be lined for color, a clear showing of the configuration of the design may be obscured by this drafting method. New technologies, such as holographic designs, fireworks and laser light displays may not be accurately disclosed without the use of color.

The term "article" of § 1.152(a) is replaced by the term "design" as 35 U.S.C. 171 requires that the claim be directed to the "design for an article" not the article, *per se*. Therefore, to comply with the requirements of 35 U.S.C. 112, ¶ 1, it is only necessary that the design as embodied in the article be fully disclosed and not the article itself. The term "must" has been replaced by the term "should" to allow for latitude in the illustration of articles whose configuration may be understood without surface shading. Clarification language has been added to note that the use of solid black surfaces is permitted for representation of the color black as well as color contrast and that photographs and ink drawings must not be combined as formal drawings in one application.

A new § 1.152(b) is added to clarify Office practice concerning details disclosed in the ink drawings, color drawings, or photographs deposited with the original application papers. Specifically, § 1.152(b) provides that any details disclosed in the ink or color drawings, or photographs deposited with the original application papers constitutes an integral part of the disclosed and claimed design, except as otherwise provided in § 1.152(b). Section 1.152(b) further specifies that this detail may include color or contrast, graphic or written indicia, including identifying indicia of a proprietary nature (*e.g.*, a company logo), surface ornamentation on an article, or any combination thereof. The "but not limited to" phrase in § 1.152(b) clarifies that this list is exemplary, not exhaustive.

Section 1.152(b)(1) provides that when any detail shown in informal drawings or photographs does not constitute an integral part of the disclosed and claimed design, a specific disclaimer must appear in the original application papers either in the specification or directly on the drawings or photographs. This specific disclaimer in the original application papers will provide antecedent basis for the omission of the disclaimed detail(s) in later-filed drawings or photographs. That is, in the absence of such a disclaimer, later-filed formal or informal drawings not including any detail disclosed in the original drawings will be considered to contain new matter, and will be treated accordingly. *See* 35 U.S.C. 112, ¶ 1; § 1.121(a)(6).

Comment 76: One comment stated that applicant may misunderstand the implications of submitting a design drawing in color and suggested that § 1.152 should explain and give notice of the consequences of submitting an initial color drawing in design applications.

Response: The comment has been adopted.

Section 1.152(b)(2) provides that when informal color drawings or photographs are deposited with the original application papers without a disclaimer pursuant to § 1.152(b)(1), formal color drawings or photographs, or a black and white drawing lined to represent color, will be required.

Section 1.154

The heading of § 1.154 is amended to read "[a]rrangement of application elements" for consistency with §§ 1.77 and 1.163. Section 1.154 paragraph (a) is amended to clarify that a voluntary submission (see comments under § 1.152 relating to substitution of "design" for "article") may and should be made of "a brief description of the nature and intended use of the article in which the design is embodied." It is current practice for design examiners, in appropriate cases, to inquire as to the nature and intended use of the article in which a claimed design is embodied. The submission of such description will allow for a more accurate initial classification, and aid in providing a proper and complete search at the time of the first action on the merits. In those instances where this feature description is necessary to establish a clear understanding of the article in which the design is embodied, provision of the feature description would help in reducing pendency by eliminating the necessity for time-consuming correspondence. Specifically, requests for information prior to first action would be avoided. Absent an amendment requesting deletion of the description it would be printed on any patent that would issue.

No comments were received regarding the proposed change to § 1.154.

Section 1.155

Section 1.155 is amended to include only the language of former § 1.155(a). The subject matter of former paragraphs (b) through (f) of § 1.155 were added to § 1.137.

No comments were received regarding the proposed change to § 1.155.

Section 1.163

The heading of § 1.163 is amended to read "[s]pecification and arrangement of application elements" for consistency with §§ 1.77 and 1.154. Section 1.163(b) is amended to remove an unnecessary and outmoded reference to a "legible carbon copy of the original" specification for plant applications.

No comments were received regarding the proposed change to § 1.163.

Section 1.165

The proposed amendment to § 1.165 to remove the reference to the artistic and competent execution of plant patent drawings is withdrawn.

Comment 77: One comment argued that the language proposed to be deleted was actually relied upon by examiners to obtain new and better illustrations.

Response: The comment was adopted to the extent that the proposed change is withdrawn to allow for further study of what language related to the type of plant drawings should appear in § 1.165.

Section 1.167

Section 1.167 is amended to include only the language of former § 1.167(a), in that paragraph (b) is removed as unnecessary in view of § 1.132.

Comment 78: One comment questioned whether § 1.132 covers paragraph (b) of § 1.167, which paragraph has been deleted.

Response: Paragraph (b) of § 1.167 provided for the submission of affidavits by qualified agricultural or horticultural experts regarding the novelty and distinctiveness of the variety of plant. Section 1.132 relates to affidavits traversing grounds of rejection, and is recognized as the appropriate rule under which an affidavit may be submitted which does not fall within or under other specific rules. *See* MPEP 716.

Section 1.171

Section 1.171 is amended to no longer require an order for a title report in reissue applications as the requirement for a certification on behalf of all the assignees under concomitantly amended

§ 1.172(a) obviates the need for a title report and fee therefor. Section 1.171 is also amended by deletion of the requirement for an offer to surrender the patent, which offer is seen to be redundant in view of § 1.178.

No adverse comments were received regarding the proposed change to § 1.171.

Section 1.172

Section 1.172 is amended to require that all assignees establish their ownership interest in compliance with § 3.73(b). The amendment as originally proposed repeated requirements found in § 3.73(b) rather than incorporating § 3.73(b), as assignees of a part interest are frequently involved in reissue applications.

Comment 79: One comment noted that the proposed amendment repeated requirements already found in § 3.73(b) and was unnecessary.

Response: The comment was adopted, in that § 1.172 is amended to simply reference § 3.73(b). Section 3.73(b) is amended to replace a reference to an assignee of the entire right, title and interest with a reference to an assignee, so as to include assignees of a part interest.

Section 1.175

Section 1.175 relating to the content of the reissue oath or declaration (MPEP 1414), as well as §§ 1.48 and 1.324 relating to correction of inventorship in an application and in a patent, respectively, are amended to remove the requirement for a factual showing relating to a matter in which a lack of deceptive intent must be established. A statement as to a lack of deceptive intent is sufficient to meet the statutory requirement under 35 U.S.C. 251 of a lack of deceptive intent relating to the error(s) to be corrected by reissue, and a factual showing of how the error(s) to be corrected by reissue arose or occurred is not required. As the Office no longer investigates fraud and inequitable conduct issues and a reissue applicant's statement of a lack of deceptive intent is normally accepted on its face (See MPEP 1448), the requirement in former § 1.175(a)(5) that it be shown how the error(s) being relied upon arose or occurred without deceptive intent on the part of the applicant appears to be unduly burdensome upon applicants and the Office, and is deleted. This applies to the initially identified error(s), under paragraph (a), and any subsequently identified error(s) under paragraph (b).

Comment 80: Although the elimination of the requirement for a factual showing relating to how the errors arose or occurred enjoyed overwhelming support, three comments cited the need for continued investigation by the Office. One comment, while agreeing that some relaxation of reissue oath or declaration requirements are in order, stated that the Office should not decline to investigate entirely or adopt a *pro forma* requirement that can merely be incanted. Two comments stated that it is hard to get the courts to review this issue and that the courts and the public are at a disadvantage absent an explanation of how the error occurred.

Response: Current Office practice is to reject reissue applications only where there is "smoking gun" evidence of deceptive intent, which will not be demonstrated by the type of inquiry limited to a showing of how the error arose or occurred without the ability to subpoena witnesses or evidence. Accordingly, the burden presented on all reissue applicants based on the mere collection of such information for every error is not seen to be warranted.

Comment 81: One comment suggested that a final declaration is not needed, and that, as an alternative, counsel should be allowed to submit a statement based on information and belief counsel is not aware of deceptive intent.

Response: 35 U.S.C. 251 requires that an error have been made without deceptive intention to be corrected *via* reissue. Accordingly, all errors being corrected by reissue must have been made without deceptive intention, in that an error made with deceptive intention cannot be bootstrapped onto an error made without deceptive intention and corrected *via* reissue. The parties with the best knowledge of the lack of deceptive intention are the patentees and owners of the patent, not counsel for the reissue application.

An initial reissue oath or declaration filed pursuant to § 1.175(a) is limited to identification of the cause(s) of the reissue, and stating generally that all errors being corrected in the reissue application at the time of filing of the oath or declaration arose without deceptive intent. Paragraph (a)(1) requires the identification of at least one error and only one error may be identified as the basis for reissue. The current practice under § 1.175 (a)(3) and (a)(5) of specifically identifying all errors being corrected at the time of filing the initial oath or declaration is not retained. Although only one error need be identified to provide a basis for reissue, where only one error among more than one is so identified, applicant should carefully monitor that the error is retained or submit a supplemental oath or declaration identifying another error or errors.

Comment 82: One comment suggested that since a reissued patent and a reexamined patent may also be reissued, paragraph (a)(1) of § 1.175 may be clarified to substitute for "original patent," "reissued," or "existing patent" as what is wholly or partly inoperative or invalid.

Response: The effect of a reissue or reexamination proceedings is to cause a substitution for the original patent so that the reissued or reexamined patent becomes the original patent.

Paragraph (b)(1) of § 1.175 requires a supplemental reissue oath or declaration for errors corrected that were not covered by an earlier presented reissue oath or declaration, such as the initial oath or declaration pursuant to paragraph (a) of this section or one submitted subsequent thereto (a supplemental oath or declaration under this paragraph), stating generally that all errors being corrected, which are not covered by an earlier presented oath or declaration pursuant to § 1.175 (a) and (b), arose without any deceptive intention on the part of the applicant. A supplemental oath or declaration that refers to all errors that are being corrected, including errors covered by a reissue oath or declaration submitted pursuant to paragraph (a) of this section, would be acceptable. The specific requirement for a supplemental reissue oath or declaration to cover errors sought to be corrected subsequent to the filing of an initial reissue oath or declaration is not a new practice, but merely recognition of a current requirement for a supplemental reissue oath or declaration when additional errors are to be corrected. However, the current practice of specifically identifying all supplemental errors being corrected in a supplemental reissue oath or declaration is not retained.

A supplemental oath or declaration under paragraph (b)(1) must be submitted prior to allowance. The supplemental oath or declaration may be submitted with any amendment prior to allowance, paragraph (b)(1)(i), or in order to overcome a rejection under 35 U.S.C. 251 made by the examiner where there are errors sought to be corrected that are not covered by a previously filed reissue oath or declaration, paragraph (b)(1)(ii). Any such rejection by the examiner will include a statement that the rejection may be overcome by submission of a supplemental oath or declaration, which oath or declaration states that the errors in issue arose without any deceptive intent on the part of the applicant. An

examiner ordinarily will be introducing a rejection under 35 U.S.C. 251 based on the lack of a supplemental declaration for the first time in the prosecution once the claims are determined to be otherwise allowable. The introduction of a new ground of rejection under 35 U.S.C. 251 will not prevent an action from being made final, except first actions pursuant to § 1.113(c), because of the combination of the following factors: (1) The finding of the case in condition for allowance is the first opportunity that the examiner has to make the rejection; (2) the rejection is being made in response to an amendment of the application (to deal with the errors in the patent); (3) all applicants are on notice that this rejection will be made upon finding of the case otherwise in condition for allowance where errors have been corrected subsequent to the last oath or declaration filed in the case, therefore, the rejection should have been expected by applicant; and (4) the rejection will not prevent applicant from exercising any rights as to curing the rejection, since applicant need only submit the supplemental oath or declaration with the above-described language, and it will be entered to cure the rejection provided it raises no additional issue, such as an informality or substantive reissue question (*e.g.*, a previously omitted claim for priority under 35 U.S.C. 119).

A supplemental oath or declaration under paragraph (b) of this section would only be required for errors sought to be corrected during prosecution of the reissue application. Where an Office action contains only a rejection under 35 U.S.C. 251 and indicates that a supplemental oath or declaration under this paragraph would overcome the rejection, applicants are encouraged to authorize the payment of the issue fee at the time the supplemental reissue oath or declaration is submitted in view of the clear likelihood that the reissue application will be allowed on the next Office action. Such authorization will reduce the delays in the Office awaiting receipt of the issue fee. Where there are no errors to be corrected over those already covered by an oath or declaration submitted under paragraphs (a) and (b)(1) of this section (*e.g.*, the application is allowed on first action), or where a supplemental oath or declaration has been submitted prior to allowance and no further errors have been corrected, a supplemental oath or declaration under this paragraph, or additional supplemental oath or declaration under paragraph (b)(1), would not be required.

Paragraph (b)(2) provides that for any error sought to be corrected after allowance (*e.g.*, under § 1.312), a supplemental oath or declaration must accompany the requested correction stating that the error(s) to be corrected arose without any deceptive intent on the part of the applicant.

The quotes around lack of deceptive intent, currently found in § 1.175(a)(6), are removed as the exact language is not required. The reference to § 1.56, currently found in § 1.175(a)(7), is removed as unnecessary in view of the reference to § 1.56 in § 1.63 that is also referred to by § 1.175(a). The stated ability of applicant to file affidavits or declarations of others and the ability of the examiner to require additional information, currently found in § 1.175(b), is deleted as unnecessary in view of 35 U.S.C. 131 and 35 U.S.C 132.

New paragraph (c) of § 1.175 has been rewritten to clarify its intent that a subsequently submitted oath or declaration under this section need not identify any errors other than what was identified in the original oath or declaration provided at least one of the originally identified errors to be corrected is retained to provide a basis for the reissue.

In new paragraph (d) of § 1.175 a reference to § 1.53(f) is inserted to clarify that the initial oath or declaration under § 1.175(a) including those requirements under § 1.63 need not be submitted (with the specification, drawing and claims) in order to obtain a filing date.

Section 1.176

The adoption of a final change to § 1.176 is held in abeyance pending further consideration by the Office of the decision by the Federal Circuit in *In re Graff*, 111 F.3d 874, 42 USPQ2d 1471 (Fed. Cir. 1997). *Graff* involved two issues: (1) whether it is permissible to have a continuation of a reissue application when the reissue application has issued as a reissue patent; and (2) whether broadened claims can be presented more than two years after the original patent date in a reissue application which was filed within two years but did not include any broadened claims. While *Graff* is more directly related to § 1.177 than § 1.176, §§ 1.176 and 1.177 are sufficiently interrelated that the Office considers it appropriate to hold the final changes to both § 1.176 and § 1.177 in abeyance pending further consideration by the Office of the decision in *Graff*.

Comment 83: A comment requested clarification regarding how restriction, between claims added in a reissue application and the original patent claims, by the examiner would be permitted in § 1.176 while § 1.177 would prohibit multiple reissue patents except among the distinct and separate parts of the thing patented.

Response: The comment will receive further consideration when a final change to § 1.176 is adopted.

Section 1.177

Section 1.177 was proposed to be amended to discontinue the current practice that copending reissue applications must be issued simultaneously unless ordered otherwise by the Commissioner pursuant to petition. As discussed *supra*, the adoption of a final change to § 1.177 is held in abeyance pending further consideration by the Office of the decision in *Graff*.

Comment 84: One comment would limit the granting of multiple reissue patents on different dates to where a petition for the grant of multiple reissue patents has been approved prior to the issuance of any reissue patent. Another comment thought that only one petition fee should be charged notwithstanding whether a petition in more than one reissue application is required.

Response: The comments will receive further consideration when a final change to § 1.177 is adopted.

Section 1.181

The proposed change to § 1.181 will not be made, see comments relating to § 1.101.

Comment 85: One comment requested that the material to be deleted from § 1.181, paragraphs (d), (e), and (g) should be retained as they give fair warning to all and the consequences of failure to pay a petition fee.

Response: The comment has been adopted.

Section 1.182

Section 1.182 is amended by providing that a petition under the section may be granted "subject to such other requirements as may be imposed" by the Commissioner, language similar to that appearing for petitions under § 1.183. The proposal to remove the statement that a decision on a petition thereunder will be communicated to interested parties in writing is withdrawn.

Comment 86: One comment opposed the proposal to remove the statement that a decision on a petition under § 1.182 will be communicated to interested parties in writing, arguing that it would not be appropriate for the Office to decide a petition under § 1.182 without communicating the decision to the interested parties in writing.

Response: The suggestion is adopted. The Office did not propose to remove the statement that a decision on a petition under § 1.182 will be communicated to interested parties in writing because the Office intended to discontinue providing written decisions on petitions under § 1.182 (or any other petition), but because it was considered unnecessary to state as much in the rule itself. While the Office will communicate the decision on any petition under § 1.182 to the interested parties in writing, such decision may not always take the form of a traditional decision on petition. For example, the grant of a petition under § 1.182 to accept the omitted page(s) or drawing(s) in a nonprovisional application and accord the date of such submission as the application filing date will be indicated by the issuance of a new filing receipt stating the filing date accorded the application. *See* Notice entitled "Change in Procedure Relating to an Application Filing Date" published in the **Federal Register** at 61 FR 30041, 30043 (June 13, 1996), and in the *Official Gazette* at 1188 *Off. Gaz. Pat. Office* 48, 50–51 (July 9, 1996).

Section 1.184

Section 1.184 is removed and reserved as representing internal instructions.

Comment 87: Comments suggested that § 1.184 not be deleted notwithstanding its internal directions. See response to comment relating to § 1.101.

Section 1.184 relates to the refusal of a subsequent Commissioner to reconsider a case once decided by a previous Commissioner, except in accordance with principles which govern the granting of new trials. As the Commissioner is free to waive any requirement of the rules not required by statute, the prohibition against reconsideration is ineffective. Additionally, the deletion of the material does not necessarily represent an intent to engage in reconsideration of matters previously decided.

Section 1.191

Section 1.191(a) is amended to permit every applicant, and every owner of a patent under reexamination, any of whose claims have been twice or finally (§ 1.113) rejected (rather than "any of the claims of which have been twice rejected or given a final rejection (§ 1.113)"), to file an appeal to the Board of Patent Appeals and Interferences (Board) to better track the language of 35 U.S.C. 134. Section 1.191(a) is also amended to: (1) explicitly refer to a "notice of appeal" to provide antecedent for such term in § 1.192; (2) replace "response" with "reply" in accordance with the change to § 1.111; and (3) refer to § 1.17(b) for consistency with the change to § 1.17.

Comment 88: One comment argued that the proposed change to § 1.191, limiting the "twice rejected" requirement for appeal to a particular application, was inconsistent with 35 U.S.C. 134, as indicated by the Board in the unpublished decision *Ex parte Lemoine*, Appeal No. 94–0216 (Bd. Pat. App. & Inter., December 27, 1994). A second comment argued that § 1.191 should permit an appeal based on one rejection in a prior application and one rejection in a continuing application to avoid requiring an applicant to file a *pro forma* reply to meet the requirement that the particular application be twice rejected.

Response: The comments have been adopted by elimination of the limitation to twice rejected being related to a particular application. To avoid inconsistency between § 1.191 and 35 U.S.C. 134, § 1.191 as adopted tracks the language of 35 U.S.C. 134, except that § 1.191 states "twice or finally (§ 1.113) rejected" rather than "twice rejected." The patent statute and rules of practice do not permit an application to be finally rejected (even under first action final practice) under 35 U.S.C. 132, unless the applicant is one "whose claims have been twice rejected" within the meaning of 35 U.S.C. 134. Thus, the phrase "or finally (§ 1.113)" may be viewed as redundant. Nevertheless, as applicants generally delay appeal until final action (although Pub. L. 103–465 may change this practice), and there has been some confusion as to when 35 U.S.C. 134 and § 1.191 permit an applicant to appeal a rejection, § 1.191(a) as adopted states "twice or finally (§ 1.113) rejected."

Section 1.191(b) is amended to eliminate the requirement for a notice of appeal to: (1) be signed; or (2) identify the appealed claims. These two requirements have been deleted as being redundant of the requirements of § 1.192 for an appeal brief, which is necessary to avoid dismissal of the appeal. Section 1.33 requires that an appeal brief filed in either an application (§ 1.33(b)) or a reexamination proceeding (§ 1.33(c)) be signed. Thus, a signed appeal brief under § 1.192 (which must be filed to avoid dismissal of the appeal) will serve to, in effect, ratify any unsigned notice of appeal under § 1.191. Likewise, the former requirement of § 1.191(b) for an identification of the appealed claims is unnecessary as § 1.192(c)(3) requires that the appeal brief, *inter alia*, identify the "claims appealed." While it is no longer specifically required by § 1.191(b), an applicant or patent owner should continue to sign notice of appeals under § 1.191(b) (like other papers) and to also identify the claims appealed. The change to § 1.191(b), in effect, permits an appeal brief to constitute an automatic "correction" of a notice of appeal that is not signed or does not identify the appealed claims.

The failure to timely file an appeal brief will result in dismissal of an appeal (§ 1.192(b)). Thus, the failure to timely file an appeal brief (signed in compliance with § 1.33(b) or (c)) after the filing of an unsigned notice of appeal will result in dismissal of the appeal as of the expiration date (including any extensions of time actually obtained) for filing such appeal brief. It will not result in treatment of the application or patent under reexamination as if the notice of appeal had never been filed. This distinction is significant in an application containing allowed claims, in that dismissal of an appeal results in cancellation of the rejected claims and allowance of the application, not abandonment of the application (which would have occurred if the notice of appeal had never been filed).

The Office has eliminated the requirements for a notice of appeal to be signed and to identify the appealed claims to avoid the delay and expense to the applicant and the Office that is involved in treating a defective notice of appeal. These changes were not made to encourage the filing of unsigned notices of appeal or notices of appeal that do not identify the claims being appealed; rather, a notice of appeal should be signed and identify the claims appealed. As the change to § 1.191(b) does not affect other papers submitted with a notice of appeal (*e.g.*, an amendment under § 1.116) or other actions contained within the notice of appeal (*e.g.*, an authorization to charge fees to a deposit account), the failure to sign a notice of appeal (or accompanying papers) may have adverse effects notwithstanding the change to § 1.191(b). For example, an unsigned notice of appeal filed with an authorization (unsigned) to charge the appeal fee to a deposit account as payment of the notice of appeal fee (§ 1.17(b)) will be unacceptable as lacking the appeal fee, as § 1.191(b) applies to the notice of appeal, but not to an authorization to charge a deposit account that happens to be included in the notice of appeal.

Section 1.192

Section 1.192(a) is amended by replacement of "response" with "reply"

in accordance with the change to § 1.111, and to refer to § 1.17(c) for consistency with the change to § 1.17.

Comment 89: One comment suggested that the appeal process could be improved by the imposition of a reasonable page limit on briefs.

Response: The suggestion will be reviewed for further consideration.

Section 1.193

Section 1.193, as well as §§ 1.194, 1.196, and 1.197, are amended to change "the appellant" to "appellant" for consistency. Section 1.193 is also amended by revision of paragraph (a) into paragraphs (a)(1) and (a)(2) and revision of paragraph (b) into paragraphs (b)(1) and (b)(2). Paragraph (a)(1) retains the subject matter of current paragraph (a), except that the phrase "and a petition from such decision may be taken to the Commissioner as provided in § 1.181" is deleted as superfluous. Section 1.181(a), by its terms, authorizes a petition from any action or requirement of an examiner in the *ex parte* prosecution of an application which is not subject to appeal.

Section 1.193(a)(2) specifically prohibits the inclusion of a new ground of rejection in an examiner's answer, but also expressly provides that when (1) an amendment under § 1.116 proposes to add or amend one or more claims, (2) appellant was advised (in an advisory action) that the amendment under § 1.116 would be entered for purposes of appeal, and (3) the advisory action indicates which individual rejection(s) set forth in the action from which the appeal was taken (*e.g.*, the final rejection) would be used to reject the added or amended claim(s), then (1) the appeal brief must address the rejection(s) of the claim(s) added or amended by the amendment under § 1.116 as indicated in the advisory action, and (2) the examiner's answer may include the rejection(s) of the claim(s) added or amended by the amendment under § 1.116 as indicated in the advisory action. This provision of § 1.193(a)(2) is intended for those situations in which a rejection is stated (*i.e.*, applied to some claim) in the final Office action, but due to an amendment under § 1.116 (after final) such rejection is now applicable to a claim that was added or amended under § 1.116. For example, when an amendment under § 1.116 cancels a claim (the "canceled claim") and incorporates its limitations into the claim upon which it depends or rewrites the claim as a new independent claim (the "appealed claim"), the appealed claim has become the canceled claim since it now contains the limitations of the canceled claim (*i.e.*, the only difference between the appealed claim and the canceled claim is the claim number). In such situations, the appellant has been given a fair opportunity to react to the ground of rejection (albeit to a claim having a different claim number). Thus, the Office does not consider such a rejection to constitute a "new ground of rejection" within the meaning of § 1.193(b). Nevertheless, § 1.193(b)(2) expressly permits such a rejection on appeal and further provides that "[t]he filing of an amendment under § 1.116 which is entered for purposes of appeal represents appellant's consent that when so advised any appeal proceed on those claim(s) added or amended by the amendment under § 1.116 subject to any rejection set forth in the action from which the appeal was taken" to eliminate controversy as to the rejection(s) to which claim(s) added or amended under § 1.116 may be subject on appeal.

The phrase "individual rejections" in § 1.193(a)(2) addresses the situation in which claim 2 (which depends upon claim 1) was rejected under 35 U.S.C. 103 on the basis of A in view of B and claim 3 (which depends upon claim 1) was rejected under 35 U.S.C. 103 on the basis of A in view of C, but no claim was rejected under 35 U.S.C. 103 on the basis of A in view of B and C, and an amendment under § 1.116 proposes to combine the limitations of claims 2 and 3 together into new claim 4. In this situation, the action from which the appeal is taken sets forth no rejection on the basis of A in view of B and C, and, as such, § 1.193(a)(2) does not authorize the inclusion of rejection of newly proposed claim 4 under 35 U.S.C. 103 on the basis of A in view of B and C in the examiner's answer. Of course, as a claim including the limitations of both claim 2 and claim 3 is a newly proposed claim in the application, such an amendment under § 1.116 may properly be refused entry as raising new issues. Conversely, that § 1.193(a)(2) would authorize the rejection in an examiner's answer of a claim sought to be added or amended in an amendment under § 1.116 has no effect on whether the amendment under § 1.116 is entitled to entry. The provisions of § 1.116 control whether an amendment under § 1.116 is entitled to entry; the provisions of § 1.193(a)(2) control the rejections to which a claim added or amended in an amendment under § 1.116 may be subject in an examiner's answer.

While § 1.193(a) generally prohibits a new ground of rejection in an examiner's answer, it does not prohibit the examiner from expanding upon or varying the rationale for a ground of rejection set forth in the action being appealed. That is, the parenthetical definition of "new ground of rejection" in MPEP 1208.01 as including an "other reason for rejection" of the appealed claims means another basis for rejection of the appealed claims, and not simply another argument, rationale, or reason submitted in support of a rejection previously of record.

There is no new ground of rejection when the basic thrust of the rejection remains the same such that an appellant has been given a fair opportunity to react to the rejection. *See In re Kronig*, 539 F.2d 1300, 1302–03, 190 USPQ 425, 426–27 (CCPA 1976). Where the statutory basis for the rejection remains the same, and the evidence relied upon in support of the rejection remains the same, a change in the discussion of or rationale for supporting the rejection does not constitute a new ground of rejection. *Id.* at 1303, 190 USPQ at 427 (reliance upon fewer references in affirming a rejection under 35 U.S.C. 103 does not constitute a new ground of rejection). Where the examiner simply changes (or adds) a rationale for supporting a rejection, but relies upon the same statutory basis and evidence in support of the rejection, there is no new ground of rejection.

In any event, an allegation that an examiner's answer contains an impermissible new ground of rejection is waived if not timely (§ 1.181(f)) raised by way of a petition under § 1.181(a).

Section 1.193(b)(1) provides appellant with a right to file a reply brief in reply to an examiner's answer which is not dependent upon a new point of argument being present in the examiner's answer. The former practice of permitting reply briefs based solely on a finding of a new point of argument, as set forth in former paragraph (b), is eliminated thereby preventing present controversies as to whether a new point of argument has been made by the primary examiner. Appellant would be assured of having the last submission prior to review by the Board. Upon receipt of a reply brief, the examiner would either acknowledge its receipt and entry or reopen prosecution to respond to any new issues raised in the reply brief. Should the Board desire to remand the appeal to the primary examiner for comment on the latest submission by appellant or to clarify an examiner's answer (MPEP 1211, 1211.01, and 1212), appellant would be entitled to submit a reply brief in reply to the answer by the examiner to the Board's inquiry, which answer would be by way of a supplemental examiner's answer.

Thus, § 1.193(a)(2) does not permit a new ground of rejection in an examiner's answer, and § 1.193(b)(1) does not, in the absence of a remand by the Board, permit an answer (other than a mere acknowledgment) to a timely filed reply brief. Section 1.193 requires the examiner to reopen prosecution to either: (1) enter a new ground of rejection; or (2) provide a substantive answer to a reply brief.

Section 1.193(b)(2) provides that if appellant desires that the appeal process be reinstated in reply to the examiner's reopening of prosecution under § 1.193(b)(1), appellant would be able to file a request to reinstate the appeal and a supplemental appeal brief as an alternative to filing a reply (under §§ 1.111 or 1.113, as appropriate) to the Office action. Amendments, affidavits or other new evidence, however, would not be entered if submitted with a request to reinstate the appeal. Like a reply brief, a supplemental appeal brief submitted pursuant to § 1.193(b)(2)(ii) need not reiterate the contentions set forth in a previously filed appeal brief (or reply brief), but need only set forth appellant's contention with regard to the new ground of rejection(s) raised in the Office action that reopened prosecution. The supplemental appeal brief will automatically incorporate all issues and arguments raised in the previously filed appeal brief (or reply brief), unless appellant indicates otherwise.

The intent of the change to § 1.193(b) is to give appellant (rather than the examiner) the option to continue the appeal if desired (particularly under Pub. L. 103–465), or to continue prosecution before the examiner in the face of a new ground of rejection. Should a supplemental appeal brief be elected as the reply to the examiner reopening prosecution based on a new ground of rejection under § 1.193(b)(1), the examiner may under § 1.193(a)(1) issue an examiner's answer. Where an appeal is reinstated pursuant to § 1.193(b)(2)(ii), no additional appeal fee is currently required.

Comment 90: A number of comments favored permitting appellants to file a reply brief as a matter of right. One comment argued that the Board, rather than the examiner, should determine whether the appellant should be permitted to file a reply brief.

Response: Section 1.193 as adopted permits an appellant to file a reply brief as a matter of right. This change eliminates the authority of an examiner to refuse entry of a timely filed reply brief.

Comment 91: One comment suggested that a reasonable page limit could be placed on reply briefs.

Response: The comment will be studied.

Comment 92: A number of comments opposed the proposed change to require a substitute appeal brief, rather than a reply brief. These comments argued that requiring an entirely new brief reiterating previously submitted arguments, rather than a mere reply to the examiner's answer, would result in a less readable and coherent record.

Response: Section 1.193 as adopted permits a reply brief (rather than a substitute appeal brief) where the appellant desires to reply to an examiner's answer or and a supplemental appeal brief where the appellant requests reinstatement of an appeal. Contentions (or information) set forth in a previously filed appeal (or reply brief) need not be reiterated in a reply brief or supplemental appeal brief.

Comment 93: A number of comments favored prohibiting a new ground of rejection in an examiner's answer.

Response: Section 1.193 as adopted prohibits a new ground of rejection in an examiner's answer, except under the limited circumstance specifically provided for in § 1.193(a)(2).

Comment 94: Two comments suggested that if the examiner reopens prosecution after an appeal brief has been filed, §§ 1.193 or 1.113 should be amended to state that the action issued by the examiner cannot be made final.

Response: The finality of an Office action is determined under MPEP 706.07(a), which states that "any second or subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant." Whether the action subsequent to the reopening of prosecution may be made final will be determined solely by whether such action includes a new ground of rejection not necessitated by amendment of the application by the applicant. Thus, where an amendment under § 1.116 entered as a result of reopening of prosecution necessitates a new ground of rejection, the action immediately subsequent to the reopening of prosecution may be made final. *See* MPEP 706.07(a) and 1208.01.

Comment 95: One comment would go further in permitting applicant to reinstate an appeal as a reply to the examiner reopening prosecution by permitting amendments, affidavits and other evidence to address the new ground of rejection. Another comment desired the ability to reply directly to the Board for any new ground of rejection raised by the Board.

Response: The comments amount to having the Board conduct the prosecution of the application and not act as an appellate review. Amended claims, affidavits and other evidence should be seen by the examiner first for a determination as to whether a new search is required, to conduct any newly required search, and also to evaluate the newly submitted and any newly discovered material at the examination level. See comments to § 1.196(d).

Comment 96: One comment would further amend § 1.193 to waive any subsequent appeal notice fee and appeal brief fee, and start the time period for extension of patent from the time of first appeal in that if the examiner did his or her duty properly there would be no need to reopen prosecution.

Response: Under current practice, a new fee is due for each notice of appeal, each brief, and each request for an oral hearing, *so long as a decision on the merits by the Board resulted from the prior notice of appeal, brief, and request for an oral hearing.* Thus, when an examiner reopens prosecution after appeal but prior to a decision by the Board on the appeal, the fee for the notice of appeal, brief, and request for an oral hearing will apply to a later appeal. The change to § 1.193 in this Final Rule is not germane to patent term extension under 35 U.S.C. 154(b) and § 1.701.

In any event, that prosecution is reopened subsequent to the filing of an appeal brief is not necessarily a concession that the rejection of the appealed claims was in error. It is often the case that prosecution is reopened subsequent to the filing of an appeal brief in the situation in which the examiner considers the rejection of the appealed claims to be appropriate (and thus the appeal to be without merit), but discovers a better basis for rejecting the claims at issue (*e.g.*, even better prior art references). To characterize an examiner, who decides to reopen prosecution to avoid wasting the Board's resources (and the appellant's time) with a rejection that is not the best possible rejection of the appealed claims, as an examiner who is not properly performing his or her duties, would be non-sensical.

Comment 97: One comment opposed prohibiting a new ground of rejection in an examiner's answer. The comment argued that this change will result in unnecessary delays in prosecution.

Response: The proposal to prohibit a new ground of rejection in an examiner's answer otherwise received overwhelming support. Under Pub. L.

103–465, any delay in prosecution resulting from the reopening of prosecution is to the detriment of the applicant. Thus, it is considered appropriate to give the applicant the choice of whether to prosecute the application before the examiner or reinstate the appeal.

Section 1.194

Section 1.194(b) is amended to provide that a request for an oral hearing must be filed in a separate paper, and to refer to § 1.17(d) for consistency with the change to § 1.17.

Section 1.194(c) is amended to provide that appellant will be notified when a requested oral hearing is unnecessary (*e.g.*, a remand is required).

Comment 98: One comment argued that § 1.194 leaves an open statement as to when the Board may decide that an oral hearing is not necessary, in that this section does not limit considering an oral hearing not necessary to when the application has been remanded to the examiner.

Response: The situation in which an application has been remanded to the examiner was simply an exemplary situation of special circumstances in which the Board may determine that an oral hearing is not necessary. Section 1.194 was not meant to limit the discretion of the Board to determine that an oral hearing is not necessary to those situations when the application has been remanded to the examiner.

Section 1.196

Section 1.196 paragraphs (b) and (d) are combined by amending paragraph § 1.196(b) to specifically provide therein for a new ground of rejection for both appealed claims and for allowed claims present in an application containing claims that have been appealed rather than the current practice under § 1.196(d) of recommending a rejection of allowed claims that is binding on the examiner. The effect of an explicit rejection of an allowed claim by the Board is not seen to differ from a recommendation of a rejection and would serve to advance the prosecution of the application by having the rejection made at an earlier date by the Board rather than waiting for the application to be forwarded and acted upon by the examiner. The former practice that the examiner is not bound by the rejection should appellant elect to proceed under § 1.196(b)(1) and an amendment or showing of facts not previously of record in the opinion of the examiner overcomes the new ground of rejection, is not changed. A period of two months is now explicitly set forth for a reply to a decision by the Board containing a new ground of rejection pursuant to § 1.196(b), which would alter the one month previously set forth for replies to recommended rejections of previously allowed claims. *See* MPEP 1214.01. Extensions of time continue to be governed by § 1.196(f) and § 1.136(b) (and not by § 1.136(a)).

The last sentence of § 1.196(b)(2) is amended to clarify that appellants do not have to both appeal and file a request for rehearing where only a rehearing of a portion of the decision is sought. A decision on a request for rehearing will incorporate the earlier decision for purposes of appeal of the earlier decision in situations in which only a partial request for rehearing has been filed. Additionally, it is clarified that decisions on rehearing are final unless noted otherwise in the decision in that under some circumstances it may not be appropriate to make a decision on rehearing final as is currently automatically provided for. Section 1.196(b) is also amended to clarify that the appellant must exercise one of the two options with respect to the new ground of rejection under § 1.196(b) to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims.

Section 1.196(b)(2) (and §§ 1.197(b) and 1.304(a)(1)) are amended to change the phrase "request for reconsideration" to "request for rehearing" for consistency with 35 U.S.C. 7(b). *See In re Alappat*, 33 F.3d 1526, 1533, 31 USPQ2d 1545, 1548 (Fed. Cir. 1994)(en banc)(noting "imprecise regulation drafting" in regard to the phrase "request for reconsideration" in § 1.197).

Section 1.196(d) is amended to provide the Board with explicit authority to have an appellant clarify the record in addition to what is already provided by way of remand to the examiner (MPEP 1211), and appellant's compliance with the requirements of an appeal brief (§ 1.192(d)). Section 1.196(d) specifically provides that an appellant may be required to address any matter that is deemed appropriate for a reasoned decision on the pending appeal, which may include: (1) The applicability of particular case law that has not been previously identified as relevant to an issue in the appeal; (2) the applicability of prior art that has not been made of record; or (3) the availability of particular test data that would be persuasive in rebutting a ground of rejection. Section 1.196(d) also provides that appellant would be given a non-extendable time period (not a time limit) within which to reply to any requirement under § 1.196(d).

Comment 99: One comment suggested that § 1.196(b) would appear to authorize the Board to reverse a restriction requirement, as § 1.196(b) authorizes the Board to reject any pending claim. The comment suggested that § 1.196(b) authorize the Board to reject any examined (rather than pending) claim.

Response: Section 1.196(b) authorizes, but does not require, the Board to reject claims not involved in the appeal. The Board has held that a restriction requirement is not an adverse decision within the meaning of 35 U.S.C. 7 and 134 subject to appeal, and the CCPA and Federal Circuit have supported this position. *See In re Hengehold*, 440 F.2d 1395, 169 USPQ 473 (CCPA 1971); *see also In re Watkinson*, 900 F.2d 230, 14 USPQ2d 1407 (Fed. Cir. 1990). Thus, concerns that the Board will use the provisions of § 1.196(b) to review restriction requirements are misguided.

Comment 100: Several comments opposed the change to § 1.196(d) on the basis that it places the Board in the position of acting as an examiner in the first instance.

Response: Section 1.196(d) authorizes, but does not require, the Board to require an appellant to clarify the record without remanding the application to the examiner. This change will authorize the Board to obtain clarification directly from the appellant in those situations in which the Board considers a remand to or further action by the examiner unnecessary. Where the Board considers action by an examiner in the first instance to be necessary or desirable, the Board retains the authority to remand the application to the examiner for such action. Additionally, after reply to an inquiry under § 1.196(d) (*e.g.*, does there exist test data that would be persuasive in rebutting a particular ground of rejection), a remand to the examiner may be deemed to be appropriate (*e.g.*, to evaluate test data received in reply to an inquiry).

Section 1.197

Section 1.197(b) is amended to eliminate its use of the passive voice. Section 1.197(b) is also amended to change "reconsideration or modification" to "rehearing" for consistency with 35 U.S.C. 7(b). For consistency with the two-month period set forth in § 1.196(b), § 1.197(b) is also amended to provide a two-month period (rather than a one-month period) within which an appellant may file the single request for rehearing permitted by § 1.197(b).

No comments were received regarding the proposed change to § 1.197.

Section 1.291

Section 1.291(c) is amended by removing the blanket limitation of one protest per protestor and would provide for a second or subsequent submission in the form of additional prior art. Mere argument that is later submitted by an initial protestor would continue not to be entered and would be returned unless it is shown that the argument relates to a new issue that could not have been earlier raised. *See* MPEP 1901.07(b). Although later submitted prior art would be made of record by a previous protestor without a showing that it relates to a new issue, it should be noted that entry of later submitted prior art in the file record does not assure its consideration by the examiner if submitted late in the examination process. Accordingly, initial protests should be as complete as possible when first filed.

In view of the amendment to § 1.291(a) in the "Miscellaneous Changes in Patent Practice" Final Rule (discussed *supra*) to require that a protest be filed prior to the mailing of a notice of allowance under § 1.311 to be considered timely (§ 1.291(a)(1)), the restriction of protests by number is deemed unnecessary and is recognized as ineffective, in that a party may effectively file multiple protests by submitting each protest through a third party agent acting on behalf of such party.

Comment 101: One comment suggested that permitting more than one submission by a particular party relating to prior art poses a risk that a third party may sequentially submit individual pieces of prior art as a delaying factor.

Response: Any delay in submission of a piece of prior art by a third party poses the risk that the later submitted prior art will not be considered, particularly if it is seen as part of a pattern. The review of any piece of prior art, assuming it is not part of a large package, to determine its value is not seen to result in any delay in issuing an Office action. It is recognized that some delay may result where a piece of prior art in a second submission by a third party is utilized in a rejection that could have been made sooner if that art had been submitted earlier; however, on balance the Office would prefer to delay prosecution of an application and consider and apply a newly submitted reference not found by the examiner rather than issue an invalid claim.

Section 1.291(c) is also amended to (1) delete the sentence "[t]he Office may communicate with the applicant regarding any protest and may require the applicant to reply to specific questions raised by the protest" as superfluous as the Office may communicate with an applicant regarding any matter, and require the applicant to reply to specific questions, concerning the application; (2) replace "respond" with "reply" in accordance with the change to § 1.111.

Section 1.293

Section 1.293 paragraph (c) is amended to replace the reference to § 1.106(e) with a reference to § 1.104(c)(5), to reflect a transfer of material.

Section 1.294

Section 1.294 paragraph (b) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.294.

Section 1.304

Section 1.304(a)(1) is amended to replace "consideration" by "reconsideration" to correct a typographical error.

No comments were received regarding the proposed change to § 1.304.

Section 1.312

Section 1.312(b) is amended to have a reference to § 1.175(b) added in view of the change in § 1.175(b) referencing § 1.312(b).

No comments were received regarding the proposed change to § 1.312.

Section 1.313

Section 1.313 will not be amended with the addition of paragraph (c) informing applicants that unless written notification is received that the application has been withdrawn from issue at least two weeks prior to the projected date of issue, applicants should expect that the application will issue as a patent. The matter will be further studied. It should be noted, however, that once an application has issued, the Office is without authority to grant a request under § 1.313 notwithstanding submission of the request prior to issuance of the patent.

Section 1.316

Section 1.316 is amended to include only the language of former § 1.316(a). The subject matter of former paragraphs (b) through (f) of § 1.316 were added to § 1.137.

No comments were received regarding the proposed change to § 1.316.

Section 1.317

Section 1.317 is amended to include only the language of former § 1.317(a). The subject matter of former paragraphs (b), (c), (e) and (f) of § 1.317 were added to § 1.137.

No comments were received regarding the proposed change to § 1.317.

Section 1.318

Section 1.318 is removed and reserved as being an internal Office instruction.

See comments relating to § 1.101.

Section 1.324

Section 1.324 is amended by creating paragraphs (a) and (b). The requirement for factual showings to establish a lack of deceptive intent is deleted, with a statement to that effect being sufficient, paragraph (a).

Office practice is to require the same type and character of proof of facts as in petitions under § 1.48(a). *See* MPEP 1481. Unlike former § 1.48, former § 1.324 contained no diligence requirement. *See Stark* v. *Advanced Magnetics, Inc.*, 29 F.3d 1570, 1574, 31 USPQ2d 1290, 1293 (Fed. Cir. 1994). Section 1.324 (and § 1.48) as adopted contain no diligence requirement, for the reasons set forth in the discussion of § 1.48.

Section 1.324(b)(1) is amended to explicitly require a statement relating to the lack of deceptive intent only from each person who is being added or deleted as an inventor, as opposed to the current practice of requiring a statement from each original named inventor and any inventor to be added.

The current requirements for an oath or declaration under § 1.63 by each actual inventor is replaced, paragraph (b)(2) of § 1.324, by a statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of § 1.324 either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change. Not every original named inventor would necessarily have knowledge of each of the contributions of the other inventors and/or how the inventorship error occurred, in which case their lack of disagreement to the requested change would be sufficient.

Paragraph (b)(3) of § 1.324 requires the written consent of the assignees of all parties who submitted a statement under paragraph (b)(1) and (b)(2) of this section similar to the current practice of consents by the assignees of all the existing patentees. A clarification reference to § 3.73(b) is added.

Paragraph (b)(4) of § 1.324 states the requirement for a petition fee as set forth in § 1.20(b).

No adverse comments were received regarding the proposed change to § 1.324.

Section 1.325

The proposed removal of § 1.325 is withdrawn. See comments relating to § 1.101.

Section 1.351

The proposed removal of § 1.351 is withdrawn. See comments relating to § 1.101.

Section 1.352

Section 1.352 is removed and reserved as unnecessary as an internal instruction.

See comments relating to § 1.101.

Section 1.366

Section 1.366(b) is amended to remove the term "certificate" as unnecessary. Section 1.366(c) is amended for clarity by changing "serial number" to "application number," which consists of the serial number and the series code (*e.g.*, "08/").

Paragraph (d) removes the request for the information concerning the issue date of the original patent and filing date of the application for the original patent as unnecessary. The term "serial" is also removed from paragraph (d).

No comments were received regarding the proposed change to § 1.366.

Section 1.377

Section 1.377(c) is amended to remove the requirement that the petition be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

No comments were received regarding the proposed change to § 1.377.

Section 1.378

Section 1.378(d) is amended to remove the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

No comments were received regarding the proposed change to § 1.378.

Section 1.425

Section 1.425 is amended by removing paragraph (a) and its requirement for proof of the pertinent facts relating to the lack of cooperation or unavailability of the inventor for which status is sought. In addition, § 1.425 is further amended by deleting paragraph (b) and its requirements for proof of the pertinent facts, presence of a sufficient proprietary interest, and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. Additionally, the requirement that the last known address of the non-signing inventor be stated has been removed. The current requirements are thought to be unnecessary in view of the need for submission of the same information in a petition under § 1.47 during the national stage. The paragraph added parallels the requirement in PCT Rule 4.15 for a statement explaining to the satisfaction of the Commissioner the lack of the signature concerned for submission of the international application.

No comments were received regarding the proposed change to § 1.425.

Section 1.484

Section 1.484 paragraphs (d) through (f) are amended by replacement of "response" and "respond" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.484.

Section 1.485

Section 1.485(a) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.485.

Section 1.488

Section 1.488(b)(3) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.488.

Section 1.492

Section 1.492 is amended to add new paragraph (g). See the amendment to § 1.16 adding a new paragraph (m).

No comments were received regarding the proposed change to § 1.492.

Section 1.494

Section 1.494(c) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.494.

Section 1.495

Section 1.495(c) is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.495.

Section 1.510

Section 1.510(e) is amended to replace a reference to § 1.121(f) with a reference to § 1.530(d), which sets forth the requirements for an amendment in a reexamination proceeding.

No comments were received regarding the proposed change to § 1.510.

Section 1.530

The title has been changed by the addition of a semicolon to clarify that the section is intended to cover not only amendments submitted with the statement, but also amendments submitted at any other stage of the reexamination proceedings.

Section 1.530(d) is replaced by paragraphs (d)(1) through (d)(7) removing the reference to § 1.121(f) in accordance with the deletion of § 1.121(f). The manner of proposing amendments in reexamination proceedings is governed by § 1.530 (d)(1) through (d)(6). Paragraph (d)(1) is directed to the manner of proposing amendments in the specification, other than in the claims. Paragraph (d)(1)(i) requires that amendments including deletions be made by submission of a copy of one or more newly added or rewritten paragraphs with markings, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph. Paragraph (d)(1)(ii) requires indication of the precise point in the specification where the paragraph which is being amended is located. When a change in one sentence, paragraph, or page results in only format changes to other pages (*e.g.*, shifting of non-amended text to subsequent pages) not otherwise being amended, such format changes are not to be submitted. Paragraph (d)(1)(iii) defines the markings set forth in paragraph (d)(1)(ii). Proposed paragraph (d)(1)(iii), relating to a requirement for submission of all amendments be presented when any amendment to the specification is made, was not implemented.

Paragraph (d)(2) of § 1.530 relates to the manner of proposing amendments to the claims in reexamination proceedings. Paragraph (d)(2)(i)(A) of § 1.530 requires that a proposed amendment include the entire text of each patent claim which is proposed to be amended by the current amendment and each proposed new claim being added by the current amendment. Additionally, provision has been made for the cancellation of a patent claim or of a previously proposed new claim by a direction to cancel without the need for marking by brackets. Paragraph (d)(2)(i)(B) prohibits the renumbering of the patent claims and requires that any proposed new claims follow the number of the highest numbered patent claim. Paragraph (d)(2)(i)(C) identifies the type of markings required by paragraph (d)(2)(i)(A), single underlining for added material and single brackets for material deleted.

Paragraph (d)(2)(ii) requires the patent owner to set forth the status (*i.e.*, pending or cancelled) of all patent claims, and of all currently proposed new claims, as of the date of the submission of each proposed amendment. The absence of claim status would result in a notice of informal response.

Paragraph (d)(2)(iii) of § 1.530 requires an explanation of the support in the disclosure for any amendments to the claims presented for the first time on pages separate from the amendments along with any additional comments. The absence of an explanation would result in a notice of informal response.

Proposed paragraphs (d)(2) (iv) and (v), relating to a requirement for presentation of all amendments as of the date any amendment to the claims is made, and to the treatment of the failure to submit a copy of any added claim as a direction to cancel that claim, were not implemented.

Paragraph (d)(3) of § 1.530 provides that: (1) an amendment may not enlarge the scope of the claims of the patent, (2) no amendment may be proposed for entry in an expired patent, and (3) no amendment will be incorporated into the patent by certificate issued after the expiration of the patent.

Paragraph (d)(4) of § 1.530 provides that amendments proposed to a patent during reexamination proceedings will not be effective until a reexamination certificate is issued. This replaces paragraph (e) of § 1.530, which has been removed and reserved.

Paragraph (d)(5) of § 1.530 provides the criteria for the form of amendments in reexamination proceedings (*i.e.*, paper size must be either letter size or A4 size, and not legal size).

Paragraph (d)(6) of § 1.530 clarifies that proposed amendments to the patent drawing sheets are not permitted and that any change must be by way of a new sheet of drawings with the proposed amended figures being identified as "amended" and with proposed added figures identified as "new" for each sheet that has changed. Material in paragraph (d)(6) has been transferred from cancelled § 1.115.

Paragraph (d)(7) of § 1.530, has been added in view of the deletion of § 1.115 paragraph (d), requires amendment of the disclosure in certain situations (*i.e.*, to correct inaccuracies of description and definition) and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings. The previous requirement for "correspondence" has been modified by use of "substantial correspondence." See comments to § 1.115.

Paragraph (d)(8) of § 1.530 has been added to clarify that all amendments to the patent being reexamined must be made relative to (*i.e.*, *vis-à-vis*) the patent specification in effect as of the date of the filing of the request for reexamination (the patent specification includes the claims). If there was a prior change to the patent (made *via* a prior reexamination certificate, reissue of the patent, certificate of correction, *etc.*), the first amendment must be made relative to the patent specification as changed by the prior proceeding or other mechanism for changing the patent. In addition, all amendments subsequent to the first amendment must be made relative to the patent specification in effect as of the date of the filing of the request for reexamination, and not relative to the prior amendment.

Paragraph (e) of § 1.530 has been removed with the material formerly contained therein transferred to new paragraph (d)(4) of § 1.530.

The proposed change in §§ 1.530, 1.550, and 1.560 to replace "response," "responses" and "respond" with "reply" in accordance with the change to § 1.111 is not being adopted at this time. As the term "reply" in a reexamination proceeding refers to the "reply" of a third party requester (§ 1.535), the Office is withdrawing for further consideration what term should consistently be used for the "reply" or "response" by the patent owner and what term should consistently be used for the "reply" by a third party requester.

Section 1.550

Paragraph (a) of § 1.550 is amended to conform the citation to §§ 1.104 through 1.119 to the changes to §§ 1.104 through 1.119. Paragraphs (b) and (e) of § 1.550 are amended for clarification purposes. Paragraph (e) of § 1.550 clarifies present Office practice of requiring, after filing of a request for reexamination by a third party requester, the service of any document filed by either the patent owner or the third party on the other party in the reexamination proceeding in the manner provided in § 1.248.

No comments were received regarding the proposed change to § 1.550.

Section 1.770

Section 1.770 is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.770.

Section 1.785

Section 1.785 is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

No comments were received regarding the proposed change to § 1.785.

Section 1.804

Section 1.804(b) is clarified grammatically by changing "shall state" to "stating" and is amended to delete the requirement that the statement be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

No comments were received regarding the proposed change to § 1.804.

Section 1.805

Section 1.805(c) is amended by deleting "verified" in accordance with the change to §§ 1.4(d) and 10.18 and removing unnecessary language noting that an attorney or agent registered to practice need not verify their statements.

No comments were received regarding the proposed change to § 1.805.

Part 3

Portions of Part 3 are amended to incorporate Part 7, which part is removed and reserved.

No comments were received regarding the proposed change to Part 3.

Section 3.11

Section 3.11(a) is created for the current subject matter and a new paragraph (b) is added citing Executive Order 9424 of February 18, 1944 (9 FR 1959, 3 CFR 1943–1949 Comp., p. 303) and its requirements that several departments and other executive agencies of the Government forward items for recording.

Section 3.21

Section 3.21 is amended to replace the reference to "§ 1.53(b)(1)" with a reference to "§ 1.53(b)" and to delete the reference to "§ 1.62" for consistency with the amendment to § 1.53 and the deletion of § 1.62.

Section 3.26

Section 3.26 is amended to remove the requirement that an English language translation be verified in accordance with the change to §§ 1.4(d)(2) and 10.18.

Section 3.27

The current subject matter of § 3.27 is designated as paragraph (a), and a paragraph (b) is added to cite Executive Order 9424 and a mailing address therefor.

Section 3.31

Section 3.31(c) is added to require that: (1) The cover sheet must indicate

that the document is to be recorded on the Governmental Register; (2) the document is to be recorded on the Secret Register (if applicable); and (3) the document does not affect title (if applicable).

Section 3.41

The current subject matter of § 3.41 is designated as paragraph (a), and a paragraph (b) is added to specify when no recording fee is required for documents required to be filed pursuant to Executive Order 9424.

Section 3.51

Section 3.51 is amended by removing the term "certification" as unnecessary in accordance with the change to §§ 1.4(d)(2) and 10.18.

Section 3.58

Section 3.58 is added to provide for the maintaining of a Department Register to record Government interests required by Executive Order 9424 in § 3.58(a). New § 3.58(b) provides that the Office maintain a Secret Register to record Government interests also required by the Executive Order.

Section 3.73

Section 3.73(b) is amended to remove the sentence requiring an assignee to specifically state that the evidentiary documents have been reviewed and to certify that title is in the assignee seeking to take action. The sentence is deemed to be unnecessary in view of the amendment to §§ 1.4(d) and 10.18.

Section 3.73 paragraph (b) has also been amended to replace the language "assignee of the entire right, title and interest" with "assignee." This change provides for the applicability of the paragraph to assignees with a partial interest, such as is often encountered in reissue applications.

Section 3.73(b) is clarified by addition of a reference to an example of documentary evidence that can be submitted.

Part 5

No comments were received regarding the proposed change to Part 5.

Section 5.1

Section 5.1 is amended by removing the current subject matter as being duplicative of material in the other sections of this part and is replaced by subject matter deleted from § 5.33.

Section 5.2

Section 5.2(b) is amended by removing the subject matter as being duplicative of material in the other sections of this part and is replaced with subject matter of the first sentence from § 5.7. Section 5.2 paragraphs (c) and (d) are removed as repetitive of material in the other sections of this part.

Section 5.3

Section 5.3 is amended by replacement of "response" with "reply" in accordance with the change to § 1.111.

Section 5.4

Section 5.4 is amended by removing unnecessary subject matter from paragraph (a), eliminating, in paragraph (d), the requirement that the petition be verified in accordance with the amendment to §§ 1.4(d)(2) and 10.18, and by adding the first and second sentences of § 5.8 to § 5.4(d).

Section 5.5

Section 5.5 is amended by removing unnecessary subject matter from paragraph (b) and by replacing current § 5.5(e) with subject matter removed from § 5.6(a).

Section 5.6

Section 5.6 is removed and reserved with the subject matter of § 5.6(a) being placed in § 5.5(e).

Section 5.7

Section 5.7 is removed and reserved with the first sentence thereof being placed in § 5.2(b).

Section 5.8

Section 5.8 is removed and reserved with the subject matter from the first and second sentences thereof being placed in § 5.4(d).

Sections 5.11

Section 5.11, paragraphs (b), (c) and (e), are amended to update the references to other parts of the Code of Federal Regulations.

Section 5.12

Section 5.12(b) is amended to clarify that the petition fee (§ 1.17(h)) is required only when expedited handling is sought for the petition.

Section 5.13

Section 5.13 is amended by removing the last two sentences which are considered to be unnecessary. Section 5.13 is also amended to remove the language concerning the requirement for the petition fee (§ 1.17(h)) for expedited handling of a petition under § 5.12(b), which is duplicative of the provisions of § 5.12(b). This amendment does not change current practice.

Section 5.14

Section 5.14(a) is amended by removing unnecessary subject matter and replacing "serial number" with the more appropriate designation "application number." Section 5.14(a) is also amended to remove the language concerning the requirement for the petition fee (§ 1.17(h)) for expedited handling of a petition under § 5.12(b), which is duplicative of the provisions of § 5.12(b). This amendment does not change current practice.

Section 5.15

Section 5.15, paragraphs (a), (b), (c), and (e), are amended by removing unnecessary subject matter and to update the references to other parts of the Code of Federal Regulations.

Section 5.16

Section 5.16 is removed and reserved as unnecessary.

Section 5.17

Section 5.17 is removed and reserved as unnecessary.

Section 5.18

Section 5.18 is amended to update the references to other parts of the Code of Federal Regulations.

Sections 5.19

Sections 5.19 (a) and (b) are amended to update the references to other parts of the Code of Federal Regulations. Section 5.19(c) is removed as unnecessary.

Section 5.20

Section 5.20 is amended to include only the language of former § 5.20(a).

Section 5.25

Section 5.25(c) is removed as unnecessary.

Section 5.31

Section 5.31 is removed and reserved as unnecessary.

Section 5.32

Section 5.32 is removed and reserved as unnecessary.

Section 5.33

Section 5.33 is removed and reserved and its subject matter added to § 5.1.

Part 7

Part 7 is removed and reserved as the substance thereof is incorporated into part 3.

No comments were received regarding the proposed change to Part 7.

Part 10

Section 10.18

The heading of § 10.18 is amended to read "[s]ignature and certificate for correspondence filed in the Patent and Trademark Office" to reflect that it, as amended, applies to correspondence filed by non-practitioners as well as practitioners.

Section 10.18(a) is amended to provide that for all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1). This amendment is simply a clarification of the requirements of former § 10.18(a).

Section 10.18 is further amended (in § 10.18 paragraphs (b) and (c)) to include the changes proposed to § 1.4 paragraphs (d)(2) and (d)(3). These changes to 37 CFR Part 10 are to avoid a dual standard between 37 CFR Parts 1 and 10 as to practitioners. In addition, by operation of § 1.4(d)(2), the provisions of § 10.18 paragraphs (b) and (c) are applicable to any party (whether a practitioner or non-practitioner) presenting any paper to the Office. As any party (whether a practitioner or non-practitioner) presenting any paper to the Office is subject to the provisions of § 10.18 paragraphs (b) and (c), this change also avoids a dual standard between practitioners and non-practitioners as to the certification provisions of § 10.18(b) and the sanctions provisions of § 10.18(c). The only difference between a practitioner and a non-practitioner as to § 10.18 paragraphs (b) and (c) is that a practitioner may also be subject to disciplinary action for violations of § 10.18(b) in addition to or in lieu of sanctions under § 10.18(c).

Section 10.18(b)(1) is specifically amended to provide that, by presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper (whether a practitioner or non-practitioner) is certifying that all statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom.

Section 10.18(b)(2) is specifically amended to provide that, by presenting to the Office any paper, the party presenting such paper (whether a practitioner or non-practitioner) is certifying that to the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that: (1) the paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office; (2) the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

As discussed *supra*, the amendments to § 10.18, in combination with the amendment to § 1.4(d), will permit the Office to eliminate the verification requirement for a number of the rules of practice.

Section 10.18(c) specifically provides that violations of § 10.18(b)(1) may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom, and that violations of any of § 10.18 paragraphs (b)(2)(i) through (iv) are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of: (1) holding certain facts to have been established; (2) returning papers; (3) precluding a party from filing a paper, or presenting or contesting an issue; (4) imposing a monetary sanction; (5) requiring a terminal disclaimer for the period of the delay; or (6) terminating the proceedings in the Patent and Trademark Office.

With regard to the sanctions enumerated in § 10.18(c), 35 U.S.C. 6(a) provides that "[t]he Commissioner * * * may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office." The issue of whether the Office is authorized to impose monetary sanctions was addressed in the rulemaking entitled "Patent Appeal and Interference Practice," published in the **Federal Register** at 60 FR 14488 (March 17, 1995), and in the *Official Gazette* at 1173 *Off. Gaz. Pat. Office* 36 (April 11, 1995).

The Commissioner's authority under 35 U.S.C. 6(a) to impose monetary sanctions is limited to sanctions which are remedial, and does not extend to sanctions that are punitive. *Id.* at 14494–96, 1173 *Off. Gaz. Pat. Office* at 41–43. An enabling statute (35 U.S.C. 6(a)) alone is not the express statutory authorization required for an agency to impose penal monetary sanctions. *See, e.g., Commissioner* v. *Acker*, 361 U.S. 87, 91 (1959); *Gold Kist, Inc.* v. *Department of Agriculture*, 741 F.2d 344, 348 (11th Cir. 1984). Thus, the line of demarcation between permissible and impermissible monetary sanctions under 35 U.S.C. 6(a) is that: (1) the imposition of a monetary sanction to cover the costs incurred by the Office due to the violation of § 10.18(b)(2) is a remedial (and thus permissible) sanction; and (2) the imposition of a monetary sanction that has no relationship to the costs incurred by the Office due to the violation of § 10.18(b)(2) (*e.g.*, a pre-established or arbitrary fine or penalty) is a punitive (and thus impermissible) sanction. *See United States* v. *Frame*, 885 F.2d 1119, 1142–43 (3rd Cir. 1989)(late payment charge no higher than reasonable to cover lost interest and administrative costs incurred in the collection effort is a remedial sanction, and not a penalty, and, as such, is authorized by rulemaking enabling statute), *cert. denied*, 493 U.S. 1094 (1990); *see also Griffin & Dickson* v. *United States*, 16 Cl. Ct. 347, 356–57 (1989)(agency has the inherent authority to manage its caseload by imposing sanctions including precluding party from presenting further evidence, disciplining of representative, or imposing costs against the representative or the party in interest). As the Office is an entirely fee-funded entity, it is reasonable to impose a monetary sanction on a party causing an unnecessary and inordinate expenditure

of Office resources to cover the costs incurred by the Office due to such action, rather than impose these costs on the Office's customers in general.

Nevertheless, the Office has amended §§ 1.4(d)(2) and 10.18 with the objective of discouraging the filing of frivolous or patently unwarranted correspondence in the Office, not to routinely review correspondence for compliance with § 10.18(b)(2) and impose sanctions under § 10.18(c). Thus, the amendment to §§ 1.4(d)(2) and 10.18 should cause no concern to practitioners and *pro se* applicants engaging in the ordinary course of business before the Office. The Office anticipates that sanctions under § 10.18(c) will be imposed only in rare situations in which such action is necessary for the Office to halt a clear abuse that is resulting in a needless and inordinate expenditure of Office resources.

Where the circumstances of an application or other proceeding warrant a determination of whether there has been a violation of § 10.18(b), the file or the application or other proceeding will be forwarded to the Office of Enrollment and Discipline (OED) for a determination of whether there has been a violation of § 10.18(b). In the event that OED determines that a provision of § 10.18(b) has been violated, the Commissioner, or the Commissioner's designee, will determine what (if any) sanction(s) under § 10.18(c) is to be imposed in the application or other proceeding. In addition, if OED determines that a provision of § 10.18(b) has been violated by a practitioner, OED will determine whether such practitioner is to be subject to disciplinary action (see §§ 1.4(d)(2) and 10.18(d)). That is, OED will provide a determination of whether there has been a violation of § 10.18(b), and if such violation is by a practitioner, whether such practitioner is to be subject to disciplinary action; however, OED will not be responsible for imposing sanctions under § 10.18(c) in an application or other proceeding.

Section 10.18(d) provides that any practitioner violating the provisions of this section may also be subject to disciplinary action. This paragraph (and the corresponding provision of § 1.4(d)(2)) clarifies that a practitioner may be subject to disciplinary action in lieu of, or in addition to, the sanctions set forth in § 10.18(c) for violations of § 10.18.

Comment 102: A number of comments supported the changes to § 1.4(d) to make its certification applicable to all papers signed and submitted to the Office.

Response: The Office will adopt the changes to make such a certification applicable to all papers filed in the Office, but will do so by placing the certification requirement in § 10.18, and providing in § 1.4(d) that the presentation of any paper to the Office, whether by a practitioner or non-practitioner, constitutes a certification under § 10.18. Thus, the presentation of a paper to the Office by any person (even a non-practitioner) constitutes a certification under § 10.18.

Comment 103: A number of comments opposed the change to § 1.4(d) as increasing the burden on persons presenting papers to the Office, and, as such, inconsistent with the stated goal of reducing the burden on the public. One comment indicated that new burdens in § 1.4(d) on signers of papers submitted to the Office include: (1) conducting a reasonable inquiry concerning the document to be submitted to the Office; (2) not submitting the document to harass or seek a needless increase in the cost of prosecution; and (3) submitting only documents likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Response: The change to §§ 1.4(d) and 10.18 should discourage the filing of frivolous papers in the Office, and thus reduce the cost to the Office of treating such papers, which cost is ultimately borne by the Office's customers. Thus, this change to §§ 1.4(d) and 10.18 will reduce the burden on the public and to the Office's customers in general. There is no reasonable argument as to why a person filing a document in the Office should be permitted to avoid the "burden" of conducting a reasonable inquiry concerning the document to be submitted to the Office, not submitting the document to harass or seek a needless increase in the cost of prosecution, or submitting only documents likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Comment 104: Several comments opposed the addition of § 1.4(d)(2) (now § 10.18(b)(2)) on the basis that the phrase "formed after an inquiry reasonable under the circumstances" was too vague or was unclear as to how much of an inquiry must be made to meet the "reasonable inquiry" requirement.

Response: The phrase "formed after an inquiry reasonable under the circumstances" is taken from Rule 11(b) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 11(b)), which provides that:

> Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

See Fed. R. Civ. P. 11(b)(1993).

Section 10.18(b)(2) tracks the language of Fed. R. Civ. P. 11(b)(1993) to avoid confusion as to what certifications a signature entails. The advisory committee notes to Fed. R. Civ. P. 11(b) provide further information on the "inquiry reasonable under the circumstances" requirement. *See Amendments to the Federal Rules of Civil Procedure* at 50–53 (1993), *reprinted in* 146 F.R.D. 401, 584–87. The "inquiry reasonable under the circumstances" requirement of § 10.18(b)(2) is identical to that in Fed. R. Civ. P. 11(b). The Federal courts have stated in regard to the "reasonable inquiry" requirement of Fed. R. Civ. P. 11:

> In requiring reasonable inquiry before the filing of any pleading in a civil case in federal district court, Rule 11 demands "an objective determination of whether a sanctioned party's conduct was reasonable under the circumstances." In effect it imposes a negligence standard, for negligence is a failure to use reasonable care. The equation between negligence and the failure to conduct a reasonable precomplaint inquiry is . . . that "the amount of investigation required by Rule 11 depends on both the time available to investigate and on the probability that more investigation will turn up important evidence; the Rule does not require steps that are not cost-justified."

Hays v. *Sony Electronics*, 847 F.2d 412, 418, 7 USPQ2d 1043, 1048 (7th. Cir. 1988)(citations omitted)(decided prior to the 1993 amendment to Fed. R. Civ. P. 11, but discussing a "reasonable under the circumstances" standard).

Comment 105: One comment opposed the change in § 1.4(d) to import the verification requirement into any papers signed and submitted to the Office, on the basis that the presence of a verification actually on the paper signed and submitted to the Office would cause the signer to carefully consider what is being signed and submitted to the Office.

Response: A separate verification requirement for certain papers results in delays during the examination of an application when such verification is omitted. The Office is convinced that people are inclined to either not make false, misleading or inaccurate statements in documents they sign, or are not deterred from making such statements by the presence of a verification clause in the document. The benefit obtained in the rare instance in which a person otherwise inclined to make a false, misleading or inaccurate statement is persuaded not to do so by a verification clause simply does not outweigh the benefit obtained by the elimination of the delay that results from the requirement for such a verification clause.

Comment 106: One comment opposed the change to § 1.4(d) (now § 10.18(b)(2)) on the basis that "reasonable inquiry" requirement therein will expose a practitioner to malpractice liability.

Response: Legal malpractice is not an issue of Federal patent (or trademark) law, but of common law sounding in tort. *See Voight* v. *Kraft*, 342 F. Supp 821, 822, 174 USPQ 294, 295 (D. Idaho 1972). Section 10.18(b)(2) does not affect the duty (or create a new duty) on the part of a practitioner to his or her client *vis-à-vis* the submission of papers to the Office.

The party's duties under § 10.18 are not to one's own clients; it is to the public in general, other parties before the Office (the examination of whose applications are delayed while the Office is, and whose fees must be applied to the cost of, responding to frivolous papers), and to the Office. *Cf. Mars Steel Corp.* v. *Continental Bank*, 880 F.2d 928, 932 (7th. Cir. 1989)(just as tort law creates duties to one's client, Fed. R. Civ. P. 11 creates a duty to one's adversary, other litigants in the courts's queue, and the court itself); *Hays*, 847 F.2d at 418, 7 USPQ2d at 1049 (same).

Comment 107: One comment indicated that the requirements in § 1.4(d)(2) (now § 10.18(b)(2)) may be onerous as to persons not registered to practice before the Office. Another comment opposed this change on the basis that it would create new issues during litigation, in that few non-lawyers have enough legal knowledge to accurately verify that the documents they sign are consistent with the law. The comment suggested that § 1.4(d)(2) simply be amended to include the verification statement from § 1.68.

Response: There is no reasonable argument as to why the certification for papers submitted to the Office should be any less than the certification required under Fed. R. Civ. P. 11(b) for papers filed in the Federal courts. The Federal Rules of Civil Procedure do not permit a *pro se* litigant to avoid the requirements of Fed. R. Civ. P. 11(b) ("By presenting * * * an attorney or unrepresented party is certifying * * * ." (emphasis added)). It is, however, appropriate to take account of the special circumstances of *pro se* applicants in determining whether sanctions under § 10.18(c) are appropriate. *See* advisory committee notes to Fed. R. Civ. P. 11 (1983), *reprinted in* 97 F.R.D. 165, 198–99 (1983) ("Although the standard is the same for unrepresented parties, who are obligated themselves to sign the [papers], the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations").

The Office expects that *pro se* applicants will often submit arguments that evidence little, if any, appreciation of the applicable law or procedure. The Office is not adopting §§ 1.4(d)(2) and 10.18 (b) and (c) for the purpose of imposing, and does not intend to impose, sanctions on *pro se* applicants in situations in which they simply submit arguments lacking an appreciation of the applicable law or procedure. *See Finch* v. *Hughes Aircraft Co.*, 926 F.2d 1574, 1582, 17 USPQ2d 1914, 1921 (Fed. Cir. 1991) ("courts are particularly cautious about imposing sanctions on a *pro se* litigant, whose improper conduct may be attributed to ignorance of the law and proper procedures"); *see also Hornback* v. *U.S.*, 40 USPQ2d 1694, 1697 (Cl. Ct. 1996) (*pro se* without legal training is not held to the same standard as trained counsel).

Where, however, a *pro se* applicant engages in a course of conduct that any reasonable person should have known was improper, and which causes a needless and inordinate expenditure of Office resources, such conduct may result in the imposition of sanctions on the *pro se* applicant. The Federal courts have subjected *pro se* litigants to sanctions for: (1) Taking or persisting in actions that even a non-lawyer should have known were frivolous; (2) taking or persisting in actions that, after engaging in a sufficient course of litigation, the *pro se* litigant should have known were frivolous; or (3) taking or persisting in actions after having been warned by the court that such actions were frivolous. *See Constant* v. *U.S.*, 929 F.2d 654, 658, 18 USPQ2d 1298, 1301 (Fed. Cir.), *cert. denied*, 501 U.S. 1206 (1991); *Finch*, 926 F.2d at 1582–83, 17 USPQ2d at 1921; *U.S. ex rel. Taylor* v. *Times Herald Record*, 22 USPQ2d 1716, 1718 (S.D.N.Y. 1992), *aff'd*, 990 F.3d 623 (2d Cir. 1993)(table).

Comment 108: One comment argued that the change to § 1.4(d) would be particularly difficult to apply in the context of provisional applications.

Response: The patent statute and rules of practice do not require any papers other than a disclosure (with or without claims) and a cover sheet for a provisional application (*e.g.*, an applicant need and should not submit legal arguments or other contentions with a provisional application). Thus, it is highly unlikely that the filing of a provisional application will result in a violation of § 10.18(b).

Comment 109: One comment opposed the change to § 1.4(d) on the basis that it was not clear whether a practitioner has an obligation in the case of a submission of a statement of facts to inform the party making the statement (or the client) of this certification effect, and the sanctions applicable to noncompliance. Another comment indicated that practitioners will now be placed under the obligation of questioning their clients each time they are given information or instructions.

Response: The submission by an applicant of misleading or inaccurate statements of facts during the prosecution of applications for patent has resulted in the patents issuing on such applications being held unenforceable. *See, e.g., Refac International Ltd.* v. *Lotus Development Corp.*, 81 F.3d 1576, 38 USPQ2d 1665 (Fed. Cir. 1996); *Paragon Podiatry Laboratory, Inc.* v. *KLM Laboratories, Inc.*, 984 F.2d 1182, 25 USPQ2d 1561 (Fed. Cir 1993); *Rohm and Haas Corp.* v. *Crystal Chemical Co.*, 722 F.2d 1556, 200 USPQ 289 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *Ott* v. *Goodpasture*, 40 USPQ2d 1831 (D.N. Tex. 1996); *Herman* v. *William Brooks Shoe Co.*, 39 USPQ2d 1773 (S.D.N.Y. 1996); *Golden Valley Microwave Food Inc.* v. *Weaver Popcorn Co.*, 837 F. Supp. 1444, 24 USPQ2d 1801 (N.D. Ind. 1992), *aff'd*, 11 F.3d 1072 (Fed. Cir. 1993)(table), *cert. denied*, 511 U.S. 1128 (1994). Likewise, false statements by a practitioner in a paper submitted to the Office during the prosecution of an application for patent has resulted in the patent issuing on such application also being held unenforceable. *See General Electro Music Corp.* v. *Samick Music Corp.*, 19 F.3d 1405, 30 USPQ2d 1149 (Fed. Cir. 1994)(false statement in

a petition to make an application special constitutes inequitable conduct, and renders the patent issuing on such application unenforceable). In addition, the failure to exercise due care in ascertaining the accuracy of the statements in a certification submitted to the Office has also resulted in a patent being held invalid. *See DH Technology*, 937 F. Supp. at 910; 40 USPQ2d at 1761.

For the above-stated reasons, it is highly advisable for a practitioner to advise a client or third party that any information so provided must be reliable and not misleading, regardless of this amendment to §§ 1.4(d)(2) and 10.18. Nevertheless, §§ 1.4(d)(2) and 10.18 as adopted do not require a practitioner to advise the client (or third party) providing information of this certification effect (or the sanctions applicable to noncompliance), or question the client (or third party) when such information or instructions are provided. When a practitioner is submitting information (*e.g.*, a statement of fact) from the applicant or a third party, or relying in arguments upon information from the applicant or a third party, the Office will consider a practitioner's "inquiry reasonable under the circumstances" duty under § 10.18 met so long as the practitioner has no knowledge of information that is contrary to the information provided by the applicant or third party or would otherwise indicate that the information provided by the applicant or third party was so provided for the purpose of a violation of § 10.18 (*e.g.*, was submitted to cause unnecessary delay).

An applicant has no duty to conduct a prior art search as a prerequisite to filing an application for patent. *See Nordberg, Inc.* v. *Telsmith, Inc.*, 82 F.3d 394, 397, 38 USPQ2d 1593, 1595–96 (Fed. Cir. 1996); *FMC Corp.* v. *Hennessy Indus., Inc.*, 836 F.2d 521, 526 n.6, 5 USPQ2d 1272, 1275–76 n.6 (Fed. Cir. 1987); *FMC Corp.* v. *Manitowoc Co., Inc.*, 835 F.2d 1411, 1415, 5 USPQ2d 1112, 1115 (Fed. Cir. 1987); *American Hoist & Derrick Co.* v. *Sowa & Sons, Inc.*, 725 F.2d 1350, 1362, 220 USPQ 763, 772 (Fed. Cir.), *cert. denied*, 469 U.S. 821, 224 USPQ 520 (1984). The "inquiry reasonable under the circumstances" requirement of § 10.18 does not create any new duty on the part of an applicant for patent to conduct a prior art search. *See* MPEP 609; *cf. Judin* v. *United States*, 110 F.3d 780, 42 USPQ2d 1300 (Fed. Cir 1997)(the failure to obtain and examine the accused infringing device prior to bringing a civil action for infringement violates the 1983 version of Fed. R. Civ. P. 11). The "inquiry reasonable under the circumstances" requirement of § 10.18, however, will require an inquiry into the underlying facts and circumstances when a practitioner provides conclusive statements to the Office (*e.g.*, a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to § 1.137(b) was unintentional).

Section 10.23

Section 10.23 is amended to change the phrase "knowingly signing" to "signing." This amendment to § 10.23 is for consistency with § 10.18, which contains no "knowingly" provision or requirement.

Review Under the Paperwork Reduction Act of 1995

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The principal impact of this Final Rule is: (1) elimination of unnecessary rules of practice; (2) simplification or elimination of certain requirements of the rules of practice; (3) rearrangement of certain rules to improve their context; and (4) clarification of the requirements of the rules of practice.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. The collections of information in this Final Rule have been reviewed and approved by OMB under the following control numbers: 0651–0016, 0651–0021, 0651–0022, 0651–0027, 0651–0031, 0651–0032, 0651–0033, 0651–0034, 0651–0035, and 0651–0037. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

OMB Number: 0651–0016.
Title: Rules for Patent Maintenance Fees.
Form Numbers: PTO/SB/45/46/47/65/66.
Type of Review: Approved through July of 1999.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 273,800.
Estimated Time Per Response: 0.08 hour.
Estimated Total Annual Burden Hours: 22,640 hours.
Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0021.
Title: Patent Cooperation Treaty.
Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.
Type of Review: Approved through May of 2000.
Affected Public: Individuals or Households, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.
Estimated Number of Respondents: 102,950.
Estimated Time Per Response: 0.9538 hour.
Estimated Total Annual Burden Hours: 98,195 hours.
Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0022.
Title: Deposit of Biological Materials for Patent Purposes.
Form Numbers: None.
Type of Review: Approved through December of 1997.
Affected Public: Individuals or Households, State or Local Governments, Farms, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.
Estimated Number of Respondents: 3,325.
Estimated Time Per Response: 1.0 hour.
Estimated Total Annual Burden Hours: 3,325 hours.
Needs and Uses: Information on depositing of biological materials in depositories is required for (1) Office determination of compliance with the patent statute where the invention sought to be patented relies on biological material subject to deposit requirement, which includes notifying interested members of the public where to obtain samples of deposits, and (2) depositories desiring to be recognized as suitable by the Office.

OMB Number: 0651–0027.
Title: Changes in Patent and Trademark Assignment Practices.
Form Numbers: PTO–1618 and PTO–1619, PTO/SB/15/41.
Type of Review: Approved through September of 1998.
Affected Public: Individuals or Households and Businesses or Other For-Profit.
Estimated Number of Respondents: 170,000.
Estimated Time Per Response: 0.57 hour.
Estimated Total Annual Burden Hours: 97,000 hours.
Needs and Uses: The Office records about 170,000 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

OMB Number: 0651–0031.
Title: Patent Processing (Updating).
Form Numbers: PTO/SB/08–12/21–26/31/32/42/43/61–64/67–69/91–93/96/97.
Type of Review: Approved through October of 1999.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 1,690,690.
Estimated Time Per Response: 0.361 hours.
Estimated Total Annual Burden Hours: 644,844 hours.
Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Small Entity; Petitions for Access; Powers to Inspect; Certificates of Mailing; Certificates under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.
Title: Initial Patent Application.
Form Number: PTO/SB/01–07/17–20/101–109.
Type of Review: Approved through September of 1998.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 243,100.
Estimated Time Per Response: 7.88 hours.
Estimated Total Annual Burden Hours: 1,915,500 hours.
Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Plant Color Coding Sheet, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.
Title: Post Allowance and Refiling.
Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.
Type of Review: Approved through June of 1999.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 135,190.
Estimated Time Per Response: 0.325 hour.
Estimated Total Annual Burden Hours: 43,893 hours.
Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.
Title: Secrecy/License to Export.
Form Numbers: None.
Type of Review: Approved through January of 1998.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,156.
Estimated Time Per Response: 0.5 hour.
Estimated Total Annual Burden Hours: 1,129 hours.
Needs and Uses: In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patent in foreign countries.

OMB Number: 0651–0035.
Title: Address-Affecting Provisions.
Form Numbers: PTO/SB/82/83:
Type of Review: Approved through June of 1999.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 44,850.
Estimated Time Per Response: 0.2 hour.
Estimated Total Annual Burden Hours: 8,970 hours.
Needs and Uses: Under existing law, a patent applicant or assignee may appoint, revoke or change a representative to act in a representative capacity. Also, an appointed representative may withdraw from acting in a representative capacity. This collection includes the information needed to ensure that Office correspondence reaches the appropriate individual.

OMB Number: 0651–0037.
Title: Provisional Applications.
Form Numbers: PTO/SB/16.
Type of Review: Approved through January of 1998.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 6,000.
Estimated Time Per Response: 0.2 hour.
Estimated Total Annual Burden Hours: 1,200 hours.
Needs and Uses: The information included on the provisional application cover sheet is needed by the Office to identify the submission as a provisional application and not some other kind of submission, to promptly and properly process the provisional application, to prepare the provisional application filing receipt which is sent to the applicant, and to identify those provisional applications which must be reviewed by the Office for foreign filing licenses.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office has submitted a copy of this Final Rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20503, Attn: Desk Officer for the Patent and Trademark Office.

Other Considerations

This Final Rule is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866 (September 30, 1993).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that this Final Rule would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of this Final Rule is: (1) elimination of unnecessary rules of practice; (2) simplification or elimination of certain requirements of the rules of practice; (3) rearrangement of certain rules to improve their context; and (4) clarification of the requirements of the rules of practice.

The Office has determined that this Final Rule has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 7

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1, 3, 5, 7 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.4 is amended by revising paragraph (d) and by adding paragraph (g) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent or trademark interference proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must either:

(i) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Patent and Trademark Office may require submission of the original.

(2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15).

* * * * *

(g) An applicant who has not made of record a registered attorney or agent may be required to state whether assistance was received in the preparation or prosecution of the patent application, for which any compensation or consideration was given or charged, and if so, to disclose the name or names of the person or persons providing such assistance. Assistance includes the preparation for the applicant of the specification and amendments or other papers to be filed in the Patent and Trademark Office, as well as other assistance in such matters, but does not include merely making drawings by draftsmen or stenographic services in typing papers.

3. Section 1.6 is amended by revising paragraphs (d)(3), (d)(6), and (e) and adding paragraph (f) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i) (A) through (D) and (F), § 1.8(a)(2)(ii)(A), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

* * * * *

(6) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1 through 5.5 of this chapter and directly related to the secrecy order content of the application;

* * * * *

(e) *Interruptions in U.S. Postal Service.* If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

(f) *Facsimile transmission of a patent application under § 1.53(d).* In the event that the Office has no evidence of receipt of an application under § 1.53(d) (a continued prosecution application) transmitted to the Office by facsimile transmission, the party who transmitted the application under § 1.53(d) may petition the Commissioner to accord the application under § 1.53(d) a filing date as of the date the application under

§ 1.53(d) is shown to have been transmitted to and received in the Office,

(1) Provided that the party who transmitted such application under § 1.53(d):

(i) Informs the Office of the previous transmission of the application under § 1.53(d) promptly after becoming aware that the Office has no evidence of receipt of the application under § 1.53(d);

(ii) Supplies an additional copy of the previously transmitted application under § 1.53(d); and

(iii) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous transmission of the application under § 1.53(d) and is accompanied by a copy of the sending unit's report confirming transmission of the application under § 1.53(d) or evidence that came into being after the complete transmission and within one business day of the complete transmission of the application under § 1.53(d).

(2) The Office may require additional evidence to determine if the application under § 1.53(d) was transmitted to and received in the Office on the date in question.

4. Section 1.8 is amended by revising paragraphs (a)(2)(i)(A) and (b) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(2) * * *

(i) * * *

(A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application under § 1.53(d);

* * * * *

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

* * * * *

5. Section 1.9 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1.9 Definitions.

* * * * *

(d) A small business concern as used in this chapter means any business concern meeting the size standards set forth in 13 CFR Part 121 to be eligible for reduced patent fees. Questions related to size standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, SW, Washington, DC 20416.

* * * * *

(f) A small entity as used in this chapter means an independent inventor, a small business concern, or a non-profit organization eligible for reduced patent fees.

* * * * *

6. Section 1.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.10 Filing of correspondence by "Express Mail."

* * * * *

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

* * * * *

7. Section 1.11 is amended by revising paragraph (b) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(b) All reissue applications, all applications in which the Office has accepted a request to open the complete

application to inspection by the public, and related papers in the application file, are open to inspection by the public, and copies may be furnished upon paying the fee therefor. The filing of reissue applications, other than continued prosecution applications under § 1.53(d) of reissue applications, will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

* * * * *

8. Section 1.14 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) Patent applications are generally preserved in confidence pursuant to 35 U.S.C. 122. No information will be given concerning the filing, pendency, or subject matter of any application for patent, and no access will be given to, or copies furnished of, any application or papers relating thereto, except as set forth in this section.

(1) Status information includes information such as whether the application is pending, abandoned, or patented, as well as the application number and filing date (or international filing date or date of entry into the national stage).

(i) Status information concerning an application may be supplied:

(A) When copies of, or access to, the application may be provided pursuant to paragraph (a)(3) of this section;

(B) When the application is identified by application number or serial number and filing date in a published patent document or in a U.S. application open to public inspection; or

(C) When the application is the national stage of an international application in which the United States of America has been indicated as a Designated State.

(ii) Status information concerning an application may also be supplied when the application claims the benefit of the filing date of an application for which status information may be provided pursuant to paragraph (a)(1)(i) of this section.

(2) Copies of an application-as-filed may be provided to any person, upon written request accompanied by the fee set forth in § 1.19(b)(1), without notice to the applicant, if the application is incorporated by reference in a U.S. patent.

(3) Copies of (upon payment of the fee set forth in § 1.19(b)(2)), and access to, an application file wrapper and contents may be provided to any person, upon written request, without notice to the applicant, when the application file is available and:

(i) It has been determined by the Commissioner to be necessary for the proper conduct of business before the Office or warranted by other special circumstances;

(ii) The application is open to the public as provided in § 1.11(b);

(iii) Written authority in that application from the applicant, the assignee of the application, or the attorney or agent of record has been granted; or

(iv) The application is abandoned, but not if the application is in the file jacket of a pending application under § 1.53(d), and is:

(A) Referred to in a U.S. patent;

(B) Referred to in a U.S. application open to public inspection;

(C) An application which claims the benefit of the filing date of a U.S. application open to public inspection; or

(D) An application in which the applicant has filed an authorization to lay open the complete application to the public.

* * * * *

(f) Information as to the filing of an application will be published in the *Official Gazette* in accordance with § 1.47(a) and (b).

9. Section 1.16 is amended by revising paragraphs (d) and (l) to read as follows:

§ 1.16 National application filing fees.

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....135.00
By other than a small entity 270.00

* * * * *

(l) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a small entity (§ 1.9(f)).....25.00
By other than a small entity 50.00

* * * * *

10. Section 1.17 is amended by removing and reserving paragraphs (e) through (g) and revising paragraphs (a) through (d), (h), (i) and (q) to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a small entity (§ 1.9(f)).....$55.00
By other than a small entity.....110.00

(2) For reply within second month:

By a small entity (§ 1.9(f)).....200.00
By other than a small entity 400.00

(3) For reply within third month:

By a small entity (§ 1.9(f)).....475.00
By other than a small entity 950.00

(4) For reply within fourth month:

By a small entity (§ 1.9(f)).....755.00
By other than a small entity 1,510.00

(5) For reply within fifth month:

By a small entity (§ 1.9(f)).....1,030.00
By other than a small entity 2,060.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f)).....155.00
By other than a small entity 310.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f)).....155.00
By other than a small entity 310.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f)).....135.00
By other than a small entity 270.00

(e) [Reserved]

(f) [Reserved]

(g) [Reserved]

(h) For filing a petition to the Commissioner under a section listed below which refers to this paragraph 130.00

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.644(e)—for petition in an interference.

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.

§ 1.666(c)—for late filing of interference settlement agreement.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

(i) For filing a petition to the Commissioner under a section listed below which refers to this paragraph 130.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.48—for correction of inventorship, except in provisional applications.

§ 1.53—to accord a filing date, except in provisional applications.

§ 1.55—for entry of late priority papers.

§ 1.59—for expungement and return of information.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.97(d)—to consider an information disclosure statement.

§ 1.102—to make an application special.

§ 1.103—to suspend action in application.

§ 1.177—for divisional reissues to issue separately.

§ 1.312—for amendment after payment of issue fee.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.666(b)—for access to an interference settlement agreement.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

(q) For filing a petition to the Commissioner under a section listed below which refers to this paragraph.....50.00

§ 1.41—to supply the names or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

§ 1.48—for correction of inventorship in a provisional application.

§ 1.53—to accord a provisional application a filing date or to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

* * * * *

11. Section 1.21 is amended by revising paragraphs (l) and (n) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(l) For processing and retaining any application abandoned pursuant to § 1.53(f), unless the required basic filing fee (§ 1.16) has been paid 130.00

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e) 130.00

* * * * *

12. Section 1.26 is amended by revising paragraph (a) to read as follows:

§ 1.26 Refunds.

(a) Any fee paid by actual mistake or in excess of that required will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account.

* * * * *

13. Section 1.27 is revised to read as follows:

§ 1.27 Statement of status as small entity.

(a) Any person seeking to establish status as a small entity (§ 1.9(f) of this part) for purposes of paying fees in an application or a patent must file a statement in the application or patent prior to or with the first fee paid as a small entity. Such a statement need only be filed once in an application or patent and remains in effect until changed.

(b) When establishing status as a small entity pursuant to paragraph (a) of this section, any statement filed on behalf of an independent inventor must be signed by the independent inventor except as provided in § 1.42, § 1.43, or § 1.47 of this part and must state that the inventor qualifies as an independent inventor in accordance with § 1.9(c) of this part. Where there are joint inventors in an application, each inventor must file a statement establishing status as an independent inventor in order to qualify as a small entity. Where any rights have been assigned, granted, conveyed, or licensed, or there is an obligation to assign, grant, convey, or license, any rights to a small business concern, a nonprofit organization, or any other individual, a statement must be filed by the individual, the owner of the small business concern, or an official of the small business concern or nonprofit organization empowered to act on behalf of the small business concern or nonprofit organization identifying their status. For purposes of a statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(c)(1) Any statement filed pursuant to paragraph (a) of this section on behalf of a small business concern must:

(i) Be signed by the owner or an official of the small business concern empowered to act on behalf of the concern;

(ii) State that the concern qualifies as a small business concern as defined in § 1.9(d); and

(iii) State that the exclusive rights to the invention have been conveyed to and remain with the small business concern or, if the rights are not exclusive, that all other rights belong to small entities as defined in § 1.9.

(2) Where the rights of the small business concern as a small entity are not exclusive, a statement must also be filed by the other small entities having rights stating their status as such. For purposes of a statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(d)(1) Any statement filed pursuant to paragraph (a) of this section on behalf of a nonprofit organization must:

(i) Be signed by an official of the nonprofit organization empowered to act on behalf of the organization;

(ii) State that the organization qualifies as a nonprofit organization as defined in § 1.9(e) of this part specifying under which one of § 1.9(e) (1), (2), (3), or (4) of this part the organization qualifies; and

(iii) State that exclusive rights to the invention have been conveyed to and remain with the organization or if the rights are not exclusive that all other rights belong to small entities as defined in § 1.9 of this part.

(2) Where the rights of the nonprofit organization as a small entity are not exclusive, a statement must also be filed by the other small entities having rights stating their status as such. For purposes of a statement under this paragraph, a license to a Federal agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a conveyance of rights as set forth in this paragraph.

14. Section 1.28 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a)(1) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying, any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee.

(2) Status as a small entity must be specifically established in each application or patent in which the status is available and desired. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been

established. The refiling of an application under § 1.53 as a continuation, division, or continuation-in-part (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application requires a new determination as to continued entitlement to small entity status for the continuing or reissue application. A nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application, or a reissue application may rely on a statement filed in the prior application or in the patent if the nonprovisional application or the reissue application includes a reference to the statement in the prior application or in the patent or includes a copy of the statement in the prior application or in the patent and status as a small entity is still proper and desired. The payment of the small entity basic statutory filing fee will be treated as such a reference for purposes of this section.

(3) Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further statement pursuant to § 1.27 of this part unless the Office is notified of a change in status.

* * * * *

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused upon payment of the deficiency between the amount paid and the amount due. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

* * * * *

15. Section 1.33 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) The applicant, the assignee(s) of the entire interest (see §§ 3.71 and 3.73) or an attorney or agent of record (see § 1.34(b)) may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the application will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant, so long as a post office address has been furnished in the application. Double correspondence with an applicant and an attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent is made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

(b) Amendments and other papers filed in the application must be signed by:

(1) An attorney or agent of record appointed in compliance with § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or

(5) All of the applicants (§§ 1.42, 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

* * * * *

16. Section 1.41 is amended by revising paragraph (a) to read as follows:

§ 1.41 Applicant for patent.

(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in § 1.53(d)(4) and § 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(i) is filed supplying or changing the name or names of the inventor or inventors.

(2) The inventorship of a provisional application is that inventorship set forth in the cover sheet as prescribed by § 1.51(c)(1). If a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(c), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(q) is filed supplying or changing the name or names of the inventor or inventors.

(3) In a nonprovisional application filed without an oath or declaration as prescribed by § 1.63 or a provisional application filed without a cover sheet as prescribed by § 1.51(c)(1), the name or names of person or persons believed to be the actual inventor or inventors should be provided for identification purposes when the application papers pursuant to § 1.53(b) or (c) are filed. If no name of a person believed to be an actual inventor is so provided, the application should include an applicant identifier consisting of alphanumeric characters.

* * * * *

17. Section 1.47 is revised to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(i) and the last known address of the nonsigning inventor. The Patent and Trademark Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to the nonsigning inventor at said address and publish notice of the filing of the application in the *Official Gazette*. The nonsigning inventor may subsequently join in the application on filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(i), and the last known address of all of the inventors. The Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to all of the inventors at the addresses stated in the application and publish notice of the filing of the application in the *Official Gazette*. An inventor may subsequently join in the application on filing an oath or declaration complying with § 1.63.

18. Section 1.48 is revised to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application.

(a) If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in an application, other than a reissue application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the application may be amended to name only the actual inventor or inventors. When the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Such amendment must be accompanied by:

(1) A petition including a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(2) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or 1.47;

(3) The fee set forth in § 1.17(i); and

(4) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b)).

(b) If the correct inventors are named in a nonprovisional application, other than a reissue application, and the prosecution of the application results in the amendment or cancellation of claims so that fewer than all of the currently named inventors are the actual inventors of the invention being claimed in the application, an amendment must be filed deleting the name or names of the person or persons who are not inventors of the invention being claimed. When the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Such amendment must be accompanied by:

(1) A petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application; and

(2) The fee set forth in § 1.17(i).

(c) If a nonprovisional application, other than a reissue application, discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended to add claims to the subject matter and name the correct inventors for the application. When the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Such amendment must be accompanied by:

(1) A petition including a statement from each person being added as an inventor that the amendment is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part;

(2) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or 1.47;

(3) The fee set forth in § 1.17(i); and

(4) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b)).

(d) If the name or names of an inventor or inventors were omitted in a provisional application through error without any deceptive intention on the part of the omitted inventor or inventors, the provisional application may be amended to add the name or names of the omitted inventor or inventors. Such amendment must be accompanied by:

(1) A petition including a statement that the inventorship error occurred without deceptive intention on the part of the omitted inventor or inventors; and

(2) The fee set forth in § 1.17(q).

(e) If a person or persons were named as an inventor or inventors in a provisional application through error without any deceptive intention on the part of such person or persons, an amendment may be filed in the provisional application deleting the name or names of the person or persons who were erroneously named. Such amendment must be accompanied by:

(1) A petition including a statement by the person or persons whose name or names are being deleted that the inventorship error occurred without deceptive intention on the part of such person or persons;

(2) The fee set forth in § 1.17(q); and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b)).

(f)(1) If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63, the later submission of an executed oath or declaration under § 1.63 during the pendency of the application will act to correct the earlier identification of inventorship.

(2) If the correct inventor or inventors are not named on filing a provisional application without a cover sheet under § 1.51(c)(1), the later submission of a cover sheet under § 1.51(c)(1) during the pendency of the application will act to correct the earlier identification of inventorship.

(g) The Office may require such other information as may be deemed appropriate under the particular circumstances surrounding the correction of inventorship.

19. Section 1.51 is revised to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks.

(b) A complete application filed under § 1.53(b) comprises:

(1) A specification as prescribed by 35 U.S.C. 112, including a claim or claims, see §§ 1.71 to 1.77;

(2) An oath or declaration, see § 1.63 and § 1.68;

(3) Drawings, when necessary, see §§ 1.81 to 1.85; and

(4) The prescribed filing fee, see § 1.16.

(c) A complete provisional application filed under § 1.53(c) comprises:

(1) A cover sheet identifying:

(i) The application as a provisional application,

(ii) The name or names of the inventor or inventors, (see § 1.41(a)(2)),

(iii) The residence of each named inventor,

(iv) The title of the invention,

(v) The name and registration number of the attorney or agent (if applicable),

(vi) The docket number used by the person filing the application to identify the application (if applicable),

(vii) The correspondence address, and

(viii) The name of the U.S. Government agency and Government contract number (if the invention was made by an agency of the U.S. Government or under a contract with an agency of the U.S. Government);

(2) A specification as prescribed by the first paragraph of 35 U.S.C. 112, see § 1.71;

(3) Drawings, when necessary, see §§ 1.81 to 1.85; and

(4) The prescribed filing fee, see § 1.16.

(d) Applicants are encouraged to file an information disclosure statement in nonprovisional applications. See § 1.97 and § 1.98. No information disclosure statement may be filed in a provisional application.

20. Section 1.52 is amended by revising paragraphs (a), (c) and (d) to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69 and paragraph (d) of this section, or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written either by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, and white paper. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic reproduction by use of digital imaging and optical character recognition. If the papers are not of the required quality, substitute typewritten or mechanically printed papers of suitable quality will be required. See § 1.125 for filing substitute typewritten or mechanically printed papers constituting a substitute specification when required by the Office.

* * * * *

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed should be made on or before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67(c). After the signing of the oath or declaration referring to the application papers, amendments may only be made in the manner provided by § 1.121.

(d) An application may be filed in a language other than English. An English translation of the non-English-language application, a statement that the translation is accurate, and the fee set forth in § 1.17(k) are required to be filed with the application or within such time as may be set by the Office.

21. Section 1.53 is revised to read as follows:

§ 1.53 Application number, filing date, and completion of application.

(a) *Application number.* Any papers received in the Patent and Trademark Office which purport to be an application for a patent will be assigned an application number for identification purposes.

(b) *Application filing requirements—Nonprovisional application.* The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a).

(1) A continuation or divisional application that names as inventors the same or fewer than all of the inventors named in the prior application may be filed under this paragraph or paragraph (d) of this section.

(2) A continuation-in-part application (which may disclose and claim subject matter not disclosed in the prior application) or a continuation or divisional application naming an inventor not named in the prior application must be filed under this paragraph.

(c) *Application filing requirements—Provisional application.* The filing date of a provisional application is the date on which a specification as prescribed by the first paragraph of 35 U.S.C. 112, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No amendment, other than to make the provisional application comply with the patent statute and all applicable regulations, may be made to the provisional application after the filing date of the provisional application.

(1) A provisional application must also include the cover sheet required by § 1.51(c)(1) or a cover letter identifying the application as a provisional application. Otherwise, the application will be treated as an application filed under paragraph (b) of this section.

(2) An application for patent filed under paragraph (b) of this section may be converted to a provisional application and be accorded the original filing date of the application filed under paragraph (b) of this section,

(i) Provided that a petition requesting the conversion, with the fee set forth in § 1.17(q), is filed prior to the earliest of:

(A) Abandonment of the application filed under paragraph (b) of this section;

(B) Payment of the issue fee on the application filed under paragraph (b) of this section;

(C) Expiration of twelve months after the filing date of the application filed under paragraph (b) of this section; or

(D) The filing of a request for a statutory invention registration under § 1.293 in the application filed under paragraph (b) of this section.

(ii) The grant of any such petition will not entitle applicant to a refund of the fees which were properly paid in the application filed under paragraph (b) of this section.

(3) A provisional application is not entitled to the right of priority under 35 U.S.C. 119 or 365(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121 or 365(c) or § 1.78 of any other application. No claim for priority under § 1.78(a)(3) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

(d) *Application filing requirements—Continued prosecution (nonprovisional) application.* (1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The prior nonprovisional application is either:

(A) Complete as defined by § 1.51(b) and filed on or after June 8, 1995; or

(B) The national stage of an international application in compliance with 35 U.S.C. 371 and filed on or after June 8, 1995; and

(ii) The application under this paragraph is filed before the earliest of:

(A) Payment of the issue fee on the prior application, unless a petition under § 1.313(b)(5) is granted in the prior application;

(B) Abandonment of the prior application; or

(C) Termination of proceedings on the prior application.

(2) The filing date of a continued prosecution application is the date on which a request on a separate paper for an application under this paragraph is filed. An application filed under this paragraph:

(i) Must identify the prior application;

(ii) Discloses and claims only subject matter disclosed in the prior application;

(iii) Names as inventors the same inventors named in the prior application on the date the application under this paragraph was filed, except as provided in paragraph (d)(4) of this section;

(iv) Includes the request for an application under this paragraph, will utilize the file jacket and contents of the prior application, including the specification, drawings and oath or declaration from the prior application, to constitute the new application, and will be assigned the application number of the prior application for identification purposes; and

(v) Is a request to expressly abandon the prior application as of the filing date of the request for an application under this paragraph.

(3) The filing fee for a continued prosecution application filed under this paragraph is:

(i) The basic filing fee as set forth in § 1.16; and

(ii) Any additional § 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this paragraph and entry of any amendments under § 1.116 unentered in the prior application which applicant has requested to be entered in the continued prosecution application.

(4) An application filed under this paragraph may be filed by fewer than all the inventors named in the prior application, provided that the request for an application under this paragraph when filed is accompanied by a statement requesting deletion of the name or names of the person or persons who are not inventors of the invention being claimed in the new application. No person may be named as an inventor in an application filed under this paragraph who was not named as an inventor in the prior application on the date the application under this paragraph was filed, except by way of a petition under § 1.48.

(5) Any new change must be made in the form of an amendment to the prior application as it existed prior to the filing of an application under this paragraph. No amendment in an application under this paragraph (a continued prosecution application) may introduce new matter or matter that would have been new matter in the prior application. Any new specification filed with the request for an application under this paragraph will not be considered part of the original application papers, but will be treated as a substitute specification in accordance with § 1.125.

(6) The filing of a continued prosecution application under this paragraph will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public, who is entitled under the provisions of § 1.14 to access to, copies of, or information concerning either the prior application or any continuing application filed under the provisions of this paragraph, may be given similar access to, copies of, or similar information concerning the other application or applications in the file jacket.

(7) A request for an application under this paragraph is the specific reference required by 35 U.S.C. 120 to every application assigned the application number identified in such request. No amendment in an application under this paragraph may delete this specific reference to any prior application.

(8) In addition to identifying the application number of the prior application, applicant should furnish in the request for an application under this paragraph the following information relating to the prior application to the best of his or her ability:

(i) Title of invention;

(ii) Name of applicant(s); and

(iii) Correspondence address.

(9) Envelopes containing only requests and fees for filing an application under this paragraph should be marked "Box CPA." Requests for an application under this paragraph filed by facsimile transmission should be clearly marked "Box CPA."

(e) *Failure to meet filing date requirements.* (1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph. Any petition under this paragraph must be accompanied by the fee set forth in § 1.17(i) in an application filed under paragraphs (b) or (d) of this section, and the fee set forth in § 1.17(q) in an application filed under paragraph (c) of this section. In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

(3) If an applicant is notified of a filing error pursuant to paragraph (e)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to this paragraph, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.

(f) *Completion of application subsequent to filing—Nonprovisional (including continued prosecution) application.* If an application which has been accorded a filing date pursuant to paragraph (b) of this section, including a continuation, divisional, or continuation-in-part application, does not include the appropriate filing fee or an oath or declaration by the applicant pursuant to § 1.63 or § 1.175, or, if an application which has been accorded a filing date pursuant to paragraph (d) of this section does not include the appropriate filing fee, applicant will be so notified, if a correspondence address has been provided, and given a period of time within which to file the fee, oath or declaration, and the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. See § 1.63(d) concerning the submission of a copy of the oath or declaration from the prior application for a continuation or divisional application. If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application may be disposed of. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (e) of

this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, the oath or declaration in an application under paragraph (b) of this section, and the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application; or, if no basic filing fee has been paid, one year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

(g) *Completion of application subsequent to filing—Provisional application.* If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the appropriate filing fee or the cover sheet required by § 1.51(c)(1), applicant will be so notified, if a correspondence address has been provided, and given a period of time within which to file the fee, cover sheet, and the surcharge as set forth in § 1.16(l) in order to prevent abandonment of the application. If the required filing fee is not timely paid, the application may be disposed of. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (e) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, cover sheet, and the surcharge as set forth in § 1.16(l) in order to prevent abandonment of the application.

(h) *Subsequent treatment of application—Nonprovisional (including continued prosecution) application.* An application for a patent filed under paragraphs (b) or (d) of this section will not be placed on the files for examination until all its required parts, complying with the rules relating thereto, are received, except that certain minor informalities may be waived subject to subsequent correction whenever required.

(i) *Subsequent treatment of application—Provisional application.* A provisional application for a patent filed under paragraph (c) of this section will not be placed on the files for examination and will become abandoned no later than twelve months after its filing date pursuant to 35 U.S.C. 111(b)(1).

(j) *Filing date of international application.* The filing date of an international application designating the United States of America is treated as the filing date in the United States of America under PCT Article 11(3), except as provided in 35 U.S.C. 102(e).

22. Section 1.54 is revised to read as follows:

§ 1.54 Parts of application to be filed together; filing receipt.

(a) It is desirable that all parts of the complete application be deposited in the Office together; otherwise, a letter must accompany each part, accurately and clearly connecting it with the other parts of the application. See § 1.53 (f) and (g) with regard to completion of an application.

(b) Applicant will be informed of the application number and filing date by a filing receipt, unless the application is an application filed under § 1.53(d).

23. Section 1.55 is amended by revising paragraph (a) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119 (a) through (d) and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) must be filed in the case of an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, when specifically required by the examiner, and in all other situations, before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by a petition requesting entry and by the fee set forth in § 1.17(i). If the certified copy is not in the English language, a translation need not be filed except in the case of interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate.

* * * * *

24. Section 1.59 is revised to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

(a) (1) Information in an application will not be expunged and returned, except as provided in paragraph (b) of this section. See § 1.618 for return of unauthorized and improper papers in interferences.

(2) Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

(b) Information, other than what is excluded by paragraph (a)(2) of this section, may be requested to be expunged and returned to applicant upon petition under this paragraph and payment of the petition fee set forth in § 1.17(i). Any petition to expunge and return information from an application must establish to the satisfaction of the Commissioner that the return of the information is appropriate.

(c) Upon request by an applicant and payment of the fee specified in § 1.19(b), the Office will furnish copies of an application, unless the application has been disposed of (see § 1.53 (e), (f) and (g)). The Office cannot provide or certify copies of an application that has been disposed of.

§ 1.60 [Removed and reserved]

25. Section 1.60 is removed and reserved.

§ 1.62 [Removed and reserved]

26. Section 1.62 is removed and reserved.

27. Section 1.63 is amended by revising paragraphs (a) and (d) and adding a paragraph (e) to read as follows:

§ 1.63 Oath or declaration.

(a) An oath or declaration filed under § 1.51(b)(2) as a part of an application must:

(1) Be executed in accordance with either § 1.66 or § 1.68;

(2) Identify the specification to which it is directed;

(3) Identify each inventor by: full name, including the family name, and at least one given name without abbreviation together with any other given name or initial, and the residence, post office address and country of citizenship of each inventor; and

(4) State whether the inventor is a sole or joint inventor of the invention claimed.

* * * * *

(d)(1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.63(f) in a continuation or divisional application, provided that:

(i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section;

(ii) The continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application;

(iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and

(iv) A copy of the executed oath or declaration filed in the prior application, showing the signature or an indication thereon that it was signed, is submitted for the continuation or divisional application.

(2) The copy of the executed oath or declaration submitted under this paragraph for a continuation or divisional application must be accompanied by a statement requesting the deletion of the name or names of the person or persons who are not inventors in the continuation or divisional application.

(3) Where the executed oath or declaration of which a copy is submitted for a continuation or divisional application was originally filed in a prior application accorded status under § 1.47, the copy of the executed oath or declaration for such prior application must be accompanied by:

(i) A copy of the decision granting a petition to accord § 1.47 status to the prior application, unless all inventors or legal representatives have filed an oath or declaration to join in an application accorded status under § 1.47 of which the continuation or divisional application claims a benefit under 35 U.S.C. 120, 121, or 365(c); and

(ii) If one or more inventor(s) or legal representative(s) who refused to join in the prior application or could not be found or reached has subsequently joined in the prior application or another application of which the continuation or divisional application claims a benefit under 35 U.S.C. 120, 121, or 365(c), a copy of the subsequently executed oath(s) or declaration(s) filed by the inventor or legal representative to join in the application.

(4) Where the power of attorney (or authorization of agent) or correspondence address was changed during the prosecution of the prior application, the change in power of attorney (or authorization of agent) or correspondence address must be identified in the continuation or divisional application. Otherwise, the Office may not recognize in the continuation or divisional application the change of power of attorney (or authorization of agent) or correspondence address during the prosecution of the prior application.

(5) A newly executed oath or declaration must be filed in a continuation or divisional application naming an inventor not named in the prior application.

(e) A newly executed oath or declaration must be filed in any continuation-in-part application, which application may name all, more, or fewer than all of the inventors named in the prior application. The oath or declaration in any continuation-in-part application must also state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

28. Section 1.67 is amended by revising paragraph (b) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(b) A supplemental oath or declaration meeting the requirements of § 1.63 must be filed when a claim is presented for matter originally shown or described but not substantially embraced in the statement of invention or claims originally presented or when an oath or declaration submitted in accordance with § 1.53(f) after the filing of the specification and any required drawings specifically and improperly refers to an amendment which includes new matter. No new matter may be introduced into a nonprovisional application after its filing date even if a supplemental oath or declaration is filed. In proper situations, the oath or declaration here required may be made on information and belief by an applicant other than the inventor.

* * * * *

29. Section 1.69 is amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

30. Section 1.78 is amended by revising paragraph (a) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or copending international applications designating the United States of America. In order for a nonprovisional application to claim the benefit of a prior filed copending nonprovisional application or copending international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Complete as set forth in § 1.51(b); or

(iii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iv) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross-references to other related applications may be made when appropriate (see § 1.14(a)).

(3) A nonprovisional application other than for a design patent may claim an invention disclosed in one or more prior filed copending provisional applications. Since a provisional application can be pending for no more than twelve months, the last day of pendency may occur on a Saturday,

Sunday, or Federal holiday within the District of Columbia which for copendency would require the nonprovisional application to be filed on or prior to the Saturday, Sunday, or Federal holiday. In order for a nonprovisional application to claim the benefit of one or more prior filed copending provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be:

(i) Complete as set forth in § 1.51(c); or

(ii) Entitled to a filing date as set forth in § 1.53(c) and include the basic filing fee set forth in § 1.16(k).

(4) Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number).

* * * * *

31. Section 1.84 is amended by revising paragraphs (a)(2)(i), (b), (c) and (g) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) * * *

(i) The fee set forth in § 1.17(i);

* * * * *

(b) *Photographs*—(1) *Black and white.* Photographs are not ordinarily permitted in utility patent applications. However, the Office will accept photographs in utility patent applications only after the granting of a petition filed under this paragraph which requests that photographs be accepted. Any such petition must include the following:

(i) The fee set forth in § 1.17(i); and

(ii) Three (3) sets of photographs. Photographs must either be developed on double weight photographic paper or be permanently mounted on bristol board. The photographs must be of sufficient quality so that all details in the drawings are reproducible in the printed patent.

(2) Color. Color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied. See paragraph (a)(2) of this section.

(c) *Identification of drawings.* Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application. This information should be placed on the back of each sheet of drawings a minimum distance of 1.5 cm. (⅝ inch) down from the top of the page. In addition, a reference to the application number, or, if an application number has not been assigned, the inventor's name, may be included in the left-hand corner, provided that the reference appears within 1.5 cm. (⅝ inch) from the top of the sheet.

* * * * *

(g) *Margins.* The sheets must not contain frames around the sight (*i.e.*, the usable surface), but should have scan target points (*i.e.*, cross-hairs) printed on two catercorner margin corners. Each sheet must include a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (⅝ inch), and a bottom margin of at least 1.0 cm. (⅜ inch), thereby leaving a sight no greater than 17.0 cm. by 26.2 cm. on 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, and a sight no greater than 17.6 cm. by 24.4 cm. (6¹⁵⁄₁₆ by 9⅝ inches) on 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets.

* * * * *

32. Section 1.91 is revised to read as follows:

§ 1.91 Models or exhibits not generally admitted as part of application or patent.

(a) A model or exhibit will not be admitted as part of the record of an application unless it:

(1) Substantially conforms to the requirements of § 1.52 or § 1.84;

(2) Is specifically required by the Office; or

(3) Is filed with a petition under this section including:

(i) The petition fee as set forth in § 1.17(i); and

(ii) An explanation of why entry of the model or exhibit in the file record is necessary to demonstrate patentability.

(b) Notwithstanding the provisions of paragraph (a) of this section, a model, working model, or other physical exhibit may be required by the Office if deemed necessary for any purpose in examination of the application.

§ 1.92 [Removed and reserved]

33. Section 1.92 is removed and reserved.

34. Section 1.97 is amended by revising paragraphs (c) through (e) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(c) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of either a final action under § 1.113, or a notice of allowance under § 1.311, whichever occurs first, and is accompanied by either:

(1) A statement as specified in paragraph (e) of this section; or

(2) The fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:

(1) A statement as specified in paragraph (e) of this section;

(2) A petition requesting consideration of the information disclosure statement; and

(3) The petition fee set forth in § 1.17(i).

(e) A statement under this section must state either:

(1) That each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the statement after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

* * * * *

§ 1.101 [Removed and reserved]

35. Section 1.101 is removed and reserved.

36. Section 1.102 is amended by revising paragraph (a) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a showing which, in the opinion of the Commissioner, will justify so advancing it.

* * * * *

37. Section 1.103 is amended by revising paragraph (a) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i). Action will not be suspended when a reply by the applicant to an Office action is required.

* * * * *

38. Section 1.104 is revised to read as follows:

§ 1.104 Nature of examination.

(a) *Examiner's action.* (1) On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(2) The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution.

(3) An international-type search will be made in all national applications filed on and after June 1, 1978.

(4) Any national application may also have an international-type search report prepared thereon at the time of the national examination on the merits, upon specific written request therefor and payment of the international-type search report fee set forth in § 1.21(e). The Patent and Trademark Office does not require that a formal report of an international-type search be prepared in order to obtain a search fee refund in a later filed international application.

(5) Copending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if:

(i) The application files refer to assignments recorded in the Patent and Trademark Office in accordance with part 3 of this chapter which convey the entire rights in the applications to the same person or organization; or

(ii) Copies of unrecorded assignments which convey the entire rights in the applications to the same person or organization are filed in each of the applications; or

(iii) An affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership, which affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization when the common owner is a corporation or other organization; or

(iv) Other evidence is submitted which establishes common ownership of the applications.

(b) *Completeness of examiner's action.* The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

(c) *Rejection of claims.* (1) If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.

(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

(3) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to paragraph (d)(2) of this section.

(4) Subject matter which is developed by another person which qualifies as prior art only under 35 U.S.C. 102(f) or (g) may be used as prior art under 35 U.S.C. 103 against a claimed invention unless the entire rights to the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made.

(5) The claims in any original application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the same subject matter is claimed in the application and the statutory invention registration. The claims in any reissue application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the reissue application seeks to claim subject matter:

(i) Which was not covered by claims issued in the patent prior to the date of publication of the statutory invention registration; and

(ii) Which was the same subject matter waived in the statutory invention registration.

(d) *Citation of references.* (1) If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees must be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees must be stated, and such other data must be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon must be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, shall be given.

(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the

affidavits of the applicant and other persons.

(e) *Reasons for allowance.* If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall be incorporated into an Office action rejecting other claims of the application or patent under reexamination or be the subject of a separate communication to the applicant or patent owner. The applicant or patent owner may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement does not give rise to any implication that the applicant or patent owner agrees with or acquiesces in the reasoning of the examiner.

§ 1.105 [Removed and reserved]

39. Section 1.105 is removed and reserved.

§ 1.106 [Removed and reserved]

40. Section 1.106 is removed and reserved.

§ 1.107 [Removed and reserved]

41. Section 1.107 is removed and reserved.

§ 1.108 [Removed and reserved]

42. Section 1.108 is removed and reserved.

§ 1.109 [Removed and reserved]

43. Section 1.109 is removed and reserved.

44. Section 1.111 is amended by revising paragraph (b) to read as follows:

§ 1.111 Reply by applicant or patent owner.

* * * * *

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a *bona fide* attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

* * * * *

45. Section 1.112 is revised to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111) to a non-final action, the application or patent under reexamination will be reconsidered and again examined. The applicant or patent owner will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111, with or without amendment, unless such Office action indicates that it is made final (§ 1.113).

46. Section 1.113 is revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's or patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

§ 1.115 [Removed and Reserved]

47. Section 1.115 is removed and reserved.

48. Section 1.116 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.116 Amendments after final action or appeal.

(a) After a final rejection or other final action (§ 1.113), amendments may be made cancelling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any related proceedings, will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

* * * * *

§ 1.117 [Removed and reserved]

49. Section 1.117 is removed and reserved.

§ 1.118 [Removed and reserved]

50. Section 1.118 is removed and reserved.

§ 1.119 [Removed and reserved]

51. Section 1.119 is removed and reserved.

52. Section 1.121 is revised to read as follows:

§ 1.121 Manner of making amendments.

(a) *Amendments in nonprovisional applications, other than reissue applications*: Amendments in nonprovisional applications, excluding reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(1) *Specification other than the claims.* Except as provided in § 1.125, amendments to add matter to, or delete matter from, the specification, other than to the claims, may only be made as follows:

(i) Instructions for insertions: The precise point in the specification must be indicated where an insertion is to be made, and the matter to be inserted must be set forth.

(ii) Instructions for deletions: The precise point in the specification must be indicated where a deletion is to be made, and the matter to be deleted must be set forth or otherwise indicated.

(iii) Matter deleted by amendment can be reinstated only by a subsequent amendment presenting the previously deleted matter as a new insertion.

(2) *Claims.* Amendments to the claims may only be made as follows:

(i) Instructions for insertions and deletions: A claim may be amended by specifying only the exact matter to be deleted or inserted by an amendment and the precise point where the deletion or insertion is to be made, where the changes are limited to:

(A) Deletions and/or

(B) The addition of no more than five (5) words in any one claim; or

(ii) Claim cancellation or rewriting: A claim may be amended by directions to cancel the claim or by rewriting such claim with underlining below the matter added and brackets around the matter deleted. The rewriting of a claim in this form will be construed as directing the deletion of the previous version of that claim. If a previously rewritten claim is again rewritten, underlining and bracketing will be applied relative to the previous version of the claim, with the parenthetical expression "twice amended," "three times amended," *etc.*, following the original claim number. The original claim number followed by that parenthetical expression must be used for the rewritten claim. No interlineations or deletions of any prior amendment may appear in the currently submitted version of the claim. A claim canceled by amendment (not deleted and rewritten) can be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) *Drawings.* (i) Amendments to the original application drawings are not permitted. Any change to the application drawings must be by way of a substitute sheet of drawings for each sheet changed submitted in compliance with § 1.84.

(ii) Where a change to the drawings is desired, a sketch in permanent ink showing proposed changes in red, to become part of the record, must be filed for approval by the examiner and should be in a separate paper.

(4) Any amendment to an application that is present in a substitute specification submitted pursuant to § 1.125 must be presented under the provisions of this paragraph either prior to or concurrent with submission of the substitute specification.

(5) The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(6) No amendment may introduce new matter into the disclosure of an application.

(b) *Amendments in reissue applications*: Amendments in reissue applications are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(1) *Specification other than the claims.* Amendments to the specification, other than to the claims, may only be made as follows:

(i) Amendments must be made by submission of the entire text of a newly added or rewritten paragraph(s) with markings pursuant to paragraph (b)(1)(iii) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph.

(ii) The precise point in the specification must be indicated where the paragraph to be amended is located.

(iii) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made.

(2) *Claims.* Amendments to the claims may only be made as follows:

(i)(A) The amendment must be made relative to the patent claims in accordance with paragraph (b)(6) of this section and must include the entire text of each claim which is being amended by the current amendment and of each claim being added by the current amendment with markings pursuant to paragraph (b)(2)(i)(C) of this section, except that a patent claim or added claim should be cancelled by a statement cancelling the patent claim or added claim without presentation of the text of the patent claim or added claim.

(B) Patent claims must not be renumbered and the numbering of any claims added to the patent must follow the number of the highest numbered patent claim.

(C) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made. If a claim is amended pursuant to paragraph (b)(2)(i)(A) of this section, a parenthetical expression "amended," "twice amended," *etc.*, should follow the original claim number.

(ii) Each amendment submission must set forth the status (*i.e.*, pending or cancelled) as of the date of the amendment, of all patent claims and of all added claims.

(iii) Each amendment when originally submitted must be accompanied by an explanation of the support in the disclosure of the patent for the amendment along with any additional comments on page(s) separate from the page(s) containing the amendment.

(3) *Drawings.* (i) Amendments to the original patent drawings are not permitted. Any change to the patent drawings must be by way of a new sheet of drawings with the amended figures identified as "amended" and with added figures identified as "new" for each sheet changed submitted in compliance with § 1.84.

(ii) Where a change to the drawings is desired, a sketch in permanent ink showing proposed changes in red, to become part of the record, must be filed for approval by the examiner and should be in a separate paper.

(4) The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(5) No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251. No amendment to the patent may introduce new matter or be made in an expired patent.

(6) All amendments must be made relative to the patent specification, including the claims, and drawings, which is in effect as of the date of filing of the reissue application.

(c) *Amendments in reexamination proceedings:* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530(d).

§ 1.122 [Removed and reserved]

53. Section 1.122 is removed and reserved.

§ 1.123 [Removed and reserved]

54. Section 1.123 is removed and reserved.

§ 1.124 [Removed and reserved]

55. Section 1.124 is removed and reserved.

56. Section 1.125 is revised to read as follows:

§ 1.125 Substitute specification.

(a) If the number or nature of the amendments or the legibility of the application papers renders it difficult to consider the application, or to arrange the papers for printing or copying, the Office may require the entire specification, including the claims, or any part thereof, be rewritten.

(b) A substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by:

(1) A statement that the substitute specification includes no new matter; and

(2) A marked-up copy of the substitute specification showing the matter being added to and the matter being deleted from the specification of record.

(c) A substitute specification submitted under this section must be submitted in clean form without markings as to amended material.

(d) A substitute specification under this section is not permitted in a reissue application or in a reexamination proceeding.

57. Section 1.126 is revised to read as follows:

§ 1.126 Numbering of claims.

The original numbering of the claims must be preserved throughout the prosecution. When claims are canceled the remaining claims must not be renumbered. When claims are added, they must be numbered by the applicant consecutively beginning with the number next following the highest numbered claim previously presented (whether entered or not). When the application is ready for allowance, the examiner, if necessary, will renumber the claims consecutively in the order in which they appear or in such order as may have been requested by applicant.

58. Section 1.133 is amended by revising paragraph (b) to read as follows:

§ 1.133 Interviews.

* * * * *

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135.

Subpart B—[Amended]

59. The undesignated center heading in Subpart B—National Processing Provisions, following § 1.133 is revised to read as follows:

Time for Reply by Applicant; Abandonment of Application

60. Section 1.134 is revised to read as follows:

§ 1.134 Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

61. Section 1.135 is revised to read as follows:

§ 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

62. Section 1.136 is revised to read as follows:

§ 1.136 Extensions of time

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 1.193(b);

(iii) The reply is a request for an oral hearing submitted pursuant to § 1.194(b);

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304; or

(v) The application is involved in an interference declared pursuant to § 1.611.

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197; § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extension of time in reexamination proceedings; and § 1.645 for extension of time in interference proceedings.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not effect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extension of time in interference proceedings; and § 1.550(c) for extension of time in reexamination proceedings.

63. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application or lapsed patent.

(a) *Unavoidable.* Where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

(b) *Unintentional.* Where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

(c) In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents.

(d) Any request for reconsideration or review of a decision refusing to revive an abandoned application or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136.

(e) A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section so as to be pending for a period of no longer than twelve months from its filing date. Under no circumstances will a provisional application be regarded as pending after twelve months from its filing date.

§ 1.139 [Removed and reserved]

64. Section 1.139 is removed and reserved.

65. Section 1.142 is amended by revising paragraph (a) to read as follows:

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

* * * * *

66. Section 1.144 is revised to read as follows:

§ 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

67. Section 1.146 is revised to read as follows:

§ 1.146 Election of species.

In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

68. Section 1.152 is revised to read as follows:

§ 1.152 Design drawings.

(a) The design must be represented by a drawing that complies with the requirements of § 1.84, and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the design.

(1) Appropriate and adequate surface shading should be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing.

(2) Color photographs and color drawings are not permitted in design applications in the absence of a grantable petition pursuant to § 1.84(a)(2). Photographs and ink drawings are not permitted to be combined as formal drawings in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design for the article claimed.

(b) Any detail shown in the ink or color drawings or photographs (formal or informal) deposited with the original application papers constitutes an integral part of the disclosed and claimed design, except as otherwise provided in this paragraph. This detail may include, but is not limited to, color or contrast, graphic or written indicia, including identifying indicia of a proprietary nature, surface ornamentation on an article, or any combination thereof.

(1) When any detail shown in informal drawings or photographs does not constitute an integral part of the disclosed and claimed design, a specific disclaimer must appear in the original application papers either in the specification or directly on the drawings or photographs. This specific disclaimer

in the original application papers will provide antecedent basis for the omission of the disclaimed detail(s) in later-filed drawings or photographs.

(2) When informal color drawings or photographs are deposited with the original application papers without a disclaimer pursuant to paragraph (b)(1) of this section, formal color drawings or photographs, or a black and white drawing lined to represent color, will be required.

69. Section 1.154 is amended by revising its heading and paragraph (a)(3) as to read follows:

§ 1.154 Arrangement of application elements.

(a) * * *

(3) Preamble, stating name of the applicant, title of the design, and a brief description of the nature and intended use of the article in which the design is embodied.

* * * * *

70. Section 1.155 is revised to read as follows:

§ 1.155 Issue of design patents.

If, on examination, it appears that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within three months of the date of the notice of allowance, the application shall be regarded as abandoned.

71. Section 1.163 is amended by revising its heading and paragraph (b) to read as follows:

§ 1.163 Specification and arrangement of application elements.

* * * * *

(b) Two copies of the specification (including the claim) must be submitted, but only one signed oath or declaration is required.

* * * * *

72. Section 1.167 is revised to read as follows:

§ 1.167 Examination.

Applications may be submitted by the Patent and Trademark Office to the Department of Agriculture for study and report.

73. Section 1.171 is revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications.

74. Section 1.172 is amended by revising paragraph (a) to read as follows:

§ 1.172 Applicants, assignees.

(a) A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b) of this chapter.

* * * * *

75. Section 1.175 is revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) The reissue oath or declaration in addition to complying with the requirements of § 1.63, must also state that:

(1) The applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim in the patent, stating at least one error being relied upon as the basis for reissue; and

(2) All errors being corrected in the reissue application up to the time of filing of the oath or declaration under this paragraph arose without any deceptive intention on the part of the applicant.

(b)(1) For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant. Any supplemental oath or declaration required by this paragraph must be submitted before allowance and may be submitted:

(i) With any amendment prior to allowance; or

(ii) In order to overcome a rejection under 35 U.S.C. 251 made by the examiner where it is indicated that the submission of a supplemental oath or declaration as required by this paragraph will overcome the rejection.

(2) For any error sought to be corrected after allowance, a supplemental oath or declaration must accompany the requested correction stating that the error(s) to be corrected arose without any deceptive intention on the part of the applicant.

(c) Having once stated an error upon which the reissue is based, as set forth in paragraph (a)(1), unless all errors previously stated in the oath or declaration are no longer being corrected, a subsequent oath or declaration under paragraph (b) of this section need not specifically identify any other error or errors being corrected.

(d) The oath or declaration required by paragraph (a) of this section may be submitted under the provisions of § 1.53(f).

76. Section 1.182 is revised to read as follows:

§ 1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

77. Section 1.184 is removed and reserved.

§ 1.184 [Removed and reserved]

78. Section 1.191 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, and every owner of a patent under reexamination, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period provided under §§ 1.134 and 1.136 for reply.

(b) The signature requirement of § 1.33 does not apply to a notice of appeal filed under this section.

* * * * *

79. Section 1.192 is amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17(c) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

* * * * *

80. Section 1.193 is revised to read as follows:

§ 1.193 Examiner's answer and reply brief.

(a) (1) The primary examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to appellant's brief including such explanation of the invention claimed and of the references and grounds of rejection as may be necessary, supplying a copy to appellant. If the primary examiner finds that the appeal is not regular in form or does not relate to an appealable action, the primary examiner shall so state.

(2) An examiner's answer must not include a new ground of rejection, but if an amendment under § 1.116 proposes to add or amend one or more claims and appellant was advised that the amendment under § 1.116 would be entered for purposes of appeal and which individual rejection(s) set forth in the action from which the appeal was taken would be used to reject the added or amended claim(s), then the appeal brief must address the rejection(s) of the claim(s) added or amended by the amendment under § 1.116 as appellant was so advised and the examiner's answer may include the rejection(s) of the claim(s) added or amended by the amendment under § 1.116 as appellant was so advised. The filing of an amendment under § 1.116 which is entered for purposes of appeal represents appellant's consent that when so advised any appeal proceed on those claim(s) added or amended by the amendment under § 1.116 subject to any rejection set forth in the action from which the appeal was taken.

(b) (1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

81. Section 1.194 is revised to read as follows:

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as appeals decided after oral hearing.

(b) If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(d), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time for requesting an oral hearing in a reexamination proceeding.

(c) If no request and fee for oral hearing have been timely filed by appellant, the appeal will be assigned for consideration and decision. If appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a day of hearing will be set, and due notice thereof given to appellant and to the primary examiner. A hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins. If the Board decides that a hearing is not necessary, the Board will so notify appellant.

82. Section 1.196 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection shall not be considered final for purposes of judicial review. When the Board of Patent Appeals and Interferences makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject the claims, appellant may again appeal pursuant to §§ 1.191 through 1.195 to the Board of Patent Appeals and Interferences.

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. The request for rehearing must address the new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought. Where request for such rehearing is made, the Board of Patent Appeals and Interferences shall rehear the new ground of rejection and, if necessary, render a new decision which shall include all grounds of rejection upon which a patent is refused. The decision on rehearing is deemed to incorporate the earlier decision for purposes of appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision.

* * * * *

(d) The Board of Patent Appeals and Interferences may require appellant to address any matter that is deemed appropriate for a reasoned decision on the pending appeal. Appellant will be given a non-extendable time period within which to respond to such a requirement.

* * * * *

83. Section 1.197 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.197 Action following decision.

(a) After decision by the Board of Patent Appeals and Interferences, the application will be returned to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application may require, to carry into effect the decision.

(b) Appellant may file a single request for rehearing within two months from the date of the original decision, unless the original decision is so modified by the decision on rehearing as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought. See § 1.136(b) for extensions of time for seeking rehearing in a patent application and § 1.550(c) for extensions of time for seeking rehearing in a reexamination proceeding.

* * * * *

84. Section 1.291 is amended by revising paragraph (c) to read as follows:

§ 1.291 Protests by the public against pending applications.

* * * * *

(c) A member of the public filing a protest in an application under paragraph (a) of this section will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered, except for additional prior art, or unless such submission raises new issues which could not have been earlier presented.

85. Section 1.293 is amended by revising paragraph (c) to read as follows:

§ 1.293 Statutory invention registration.

* * * * *

(c) A waiver filed with a request for a statutory invention registration will be effective, upon publication of the statutory invention registration, to waive the inventor's right to receive a patent on the invention claimed in the statutory invention registration, in any application for an original patent which is pending on, or filed after, the date of publication of the statutory invention registration. A waiver filed with a request for a statutory invention registration will not affect the rights of any other inventor even if the subject matter of the statutory invention registration and an application of another inventor are commonly owned. A waiver filed with a request for a statutory invention registration will not affect any rights in a patent to the inventor which issued prior to the date of publication of the statutory invention registration unless a reissue application is filed seeking to enlarge the scope of the claims of the patent. See also § 1.104(c)(5).

86. Section 1.294 is amended by revising paragraph (b) to read as follows:

§ 1.294 Examination of request for publication of a statutory invention registration and patent application to which the request is directed.

* * * * *

(b) Applicant will be notified of the results of the examination set forth in paragraph (a) of this section. If the requirements of § 1.293 and this section are not met by the request filed, the notification to applicant will set a period of time within which to comply with the requirements in order to avoid abandonment of the application. If the application does not meet the requirements of 35 U.S.C. 112, the notification to applicant will include a rejection under the appropriate provisions of 35 U.S.C. 112. The periods for reply established pursuant to this section are subject to the extension of time provisions of § 1.136. After reply by the applicant, the application will again be considered for publication of a statutory invention registration. If the requirements of § 1.293 and this section are not timely met, the refusal to publish will be made final. If the requirements of 35 U.S.C. 112 are not met, the rejection pursuant to 35 U.S.C. 112 will be made final.

* * * * *

87. Section 1.304 is amended by revising paragraph (a)(1) to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires:

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

* * * * *

88. Section 1.312 is amended by revising paragraph (b) to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented. For reissue applications, see § 1.175(b), which requires a supplemental oath or declaration to accompany the amendment.

89. Section 1.316 is revised to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

If the issue fee is not paid within three months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

90. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

If the issue fee paid is the amount specified in the notice of allowance, but a higher amount is required at the time the issue fee is paid, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three-month period.

§ 1.318 [Removed and reserved]

91. Section 1.318 is removed and reserved.

92. Section 1.324 is revised to read as follows:

§ 1.324 Correction of inventorship in patent.

(a) Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his or her part, the Commissioner may, on petition, or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A petition to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 1.634.

(b) Any petition pursuant to paragraph (a) of this section must be accompanied by:

(1) A statement from each person who is being added as an inventor and from each person who is being deleted as an inventor that the inventorship error occurred without any deceptive intention on his or her part;

(2) A statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of this section either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change;

(3) A statement from all assignees of the parties submitting a statement under paragraphs (b)(1) and (b)(2) of this section agreeing to the change of inventorship in the patent, which statement must comply with the requirements of § 3.73(b) of this chapter; and

(4) The fee set forth in § 1.20(b).

§ 1.352 [Removed and reserved]

93. Section 1.352 is removed and reserved.

94. Section 1.366 is amended by revising paragraphs (b) through (d) to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid. A maintenance fee or surcharge may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362 (d), (e), or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth § 1.23, or in the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The procedures set forth in § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the following:

(1) The patent number; and

(2) The application number of the United States application for the patent on which the maintenance fee is being paid.

(d) Payment of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½-, 7½-, or 11½-year fee, whether small entity status is being changed or claimed, the amount of the maintenance fee and any surcharge being paid, and any assigned customer number. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application number as required by paragraph (c) of this section and should also include the original patent number.

* * * * *

95. Section 1.377 is amended by revising paragraph (c) to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

* * * * *

(c) Any petition filed under this section must comply with the requirements of § 1.181(b) and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

96. Section 1.378 is amended by revising paragraph (d) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

* * * * *

97. Section 1.425 is revised to read as follows:

§ 1.425 Filing by other than inventor.

Where an international application which designates the United States of America is filed and where one or more inventors refuse to sign the Request for the international application or cannot be found or reached after diligent effort, the Request need not be signed by such inventor if it is signed by another applicant. Such international application must be accompanied by a statement explaining to the satisfaction of the Commissioner the lack of the signature concerned.

98. Section 1.484 is amended by revising paragraphs (d) through (f) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(d) The International Preliminary Examining Authority will establish a written opinion if any defect exists or if the claimed invention lacks novelty, inventive step or industrial applicability and will set a non-extendable time limit in the written opinion for the applicant to reply.

(e) If no written opinion under paragraph (d) of this section is necessary, or after any written opinion and the reply thereto or the expiration of the time limit for reply to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(f) An applicant will be permitted a personal or telephone interview with the examiner, which must be conducted during the non-extendable time limit for reply by the applicant to a written opinion. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant as a part of the reply to the written

opinion or, if applicant files no reply, be made of record in the file by the examiner.

99. Section 1.485 is amended by revising paragraph (a) to read as follows:

§ 1.485 Amendments by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for reply to any notification under § 1.484(b) or to any written opinion. Any such amendments must:

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled; and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

* * * * *

100. Section 1.488 is amended by revising paragraph (b)(3) to read as follows:

§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.

* * * * *

(b) * * *

(3) If applicant fails to restrict the claims or pay additional fees within the time limit set for reply, the International Preliminary Examining Authority will issue a written opinion and/or establish an international preliminary examination report on the main invention and shall indicate the relevant facts in the said report. In case of any doubt as to which invention is the main invention, the invention first mentioned in the claims and previously searched by an International Searching Authority shall be considered the main invention.

* * * * *

101. Section 1.492 is amended by adding a new paragraph (g) to read as follows:

§ 1.492 National stage fees.

* * * * *

(g) If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.

102. Section 1.494 is amended by revising paragraph (c) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)); and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A copy of the notification mailed to applicant should accompany any reply thereto submitted to the Office.

* * * * *

103. Section 1.495 is amended by revising paragraph (c) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)); and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date. A copy of the notification mailed to applicant should accompany any reply thereto submitted to the Office.

* * * * *

104. Section 1.510 is amended by revising paragraph (e) to read as follows:

§ 1.510 Request for reexamination.

* * * * *

(e) A request filed by the patent owner may include a proposed amendment in accordance with § 1.530(d).

* * * * *

105. Section 1.530 is amended by removing paragraph (e) and revising the section heading and paragraph (d) to read as follows:

§ 1.530 Statement; amendment by patent owner.

* * * * *

(d) *Amendments in reexamination proceedings.* Amendments in reexamination proceedings are made by filing a paper, in compliance with paragraph (d)(5) of this section, directing that specified amendments be made.

(1) *Specification other than the claims.* Amendments to the specification, other than to the claims, may only be made as follows:

(i) Amendments must be made by submission of the entire text of a newly added or rewritten paragraph(s) with markings pursuant to paragraph (d)(1)(iii) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph.

(ii) The precise point in the specification must be indicated where the paragraph to be amended is located.

(iii) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made.

(2) *Claims.* Amendments to the claims may only be made as follows:

(i)(A) The amendment must be made relative to the patent claims in accordance with paragraph (d)(8) of this section and must include the entire text of each claim which is being proposed to be amended by the current amendment and each proposed new claim being added by the current amendment with markings pursuant to paragraph (d)(2)(i)(C) of this section, except that a patent claim or previously proposed new claim should be cancelled by a statement cancelling the patent claim or proposed new claim without presentation of the text of the patent claim or proposed new claim.

(B) Patent claims must not be renumbered and the numbering of any new claims proposed to be added to the patent must follow the number of the highest numbered patent claim.

(C) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made. If a claim is amended pursuant to paragraph (d)(2)(i)(A) of this section, a parenthetical expression "amended," "twice amended," *etc.*, should follow the original claim number.

(ii) Each amendment submission must set forth the status (*i.e.*, pending or cancelled) as of the date of the amendment, of all patent claims and of all new claims currently or previously proposed.

(iii) Each amendment, when submitted for the first time, must be accompanied by an explanation of the support in the disclosure of the patent for the amendment along with any additional comments on page(s) separate from the page(s) containing the amendment.

(3) No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amendment may be proposed for entry in an expired patent. Moreover, no amendment will be incorporated into the patent by certificate issued after the expiration of the patent.

(4) Although the Office actions will treat proposed amendments as though they have been entered, the proposed amendments will not be effective until the reexamination certificate is issued.

(5) The form of amendments other than to the patent drawings must be in accordance with the following requirements. All amendments must be in the English language and must be legibly written either by a typewriter or mechanical printer in at least 11 point type in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, white paper. All amendments must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic reproduction by use of digital imaging or optical character recognition. If the amendments are not of the required quality, substitute typewritten or mechanically printed papers of suitable quality will be required. The papers, including the drawings, must have each page plainly written on only one side of a sheet of paper. The sheets of paper must be the same size and either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches). Each sheet must include a top margin of at least 2.0 cm. (¾ inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 2.0 cm. (¾ inch), and a bottom margin of at least 2.0 cm. (¾ inch), and no holes should be made in the sheets as submitted. The lines must be double spaced, or one and one-half spaced. The pages must be numbered consecutively, starting with 1, the numbers being centrally located, preferably below the text, or above the text.

(6) *Drawings.* (i) The original patent drawing sheets may not be altered. Any proposed change to the patent drawings must be by way of a new sheet of drawings with the amended figures identified as "amended" and with added figures identified as "new" for each sheet change submitted in compliance with § 1.84.

(ii) Where a change to the drawings is desired, a sketch in permanent ink showing proposed changes in red, to become part of the record, must be filed for approval by the examiner and should be in a separate paper.

(7) The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(8) All amendments to the patent must be made relative to the patent specification, including the claims, and drawings, which is in effect as of the date of filing of the request for reexamination.

106. Section 1.550 is amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

(a) All reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. After issuance of the reexamination order and expiration of the time for submitting any responses thereto, the examination will be conducted in accordance with §§ 1.104, 1.110 through 1.113 and 1.116, and will result in the issuance of a reexamination certificate under § 1.570.

(b) The patent owner will be given at least thirty days to respond to any Office action. Such response may include further statements in response to any rejections or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

* * * * *

(e) The reexamination requester will be sent copies of Office actions issued during the reexamination proceeding. After filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party in the reexamination proceeding in the manner provided by § 1.248. The document must reflect service or the document may be refused consideration by the Office.

(1) The active participation of the reexamination requester ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requester will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are:

(i) In accordance with § 1.510; or

(ii) Entered in the patent file prior to the date of the order to reexamine pursuant to § 1.525.

(2) Submissions by third parties, filed after the date of the order to reexamine pursuant to § 1.525, must meet the requirements of and will be treated in accordance with § 1.501(a).

107. Section 1.770 is revised to read as follows:

§ 1.770 Express withdrawal of application for extension of patent term.

An application for extension of patent term may be expressly withdrawn before a determination is made pursuant to § 1.750 by filing in the Office, in duplicate, a written declaration of withdrawal signed by the owner of record of the patent or its agent. An application may not be expressly withdrawn after the date permitted for reply to the final determination on the application. An express withdrawal pursuant to this section is effective when acknowledged in writing by the Office. The filing of an express withdrawal pursuant to this section and its acceptance by the Office does not entitle applicant to a refund of the filing fee (§ 1.20(j)) or any portion thereof.

108. Section 1.785 is amended by revising paragraph (d) to read as follows:

§ 1.785 Multiple applications for extension of term of the same patent or of different patents for the same regulatory review period for a product.

* * * * *

(d) An application for extension shall be considered complete and formal regardless of whether it contains the identification of the holder of the regulatory approval granted with respect to the regulatory review period. When an application contains such information, or is amended to contain such information, it will be considered in determining whether an application is eligible for an extension under this section. A request may be made of any applicant to supply such information

within a non-extendable period of not less than one month whenever multiple applications for extension of more than one patent are received and rely upon the same regulatory review period. Failure to provide such information within the period for reply set shall be regarded as conclusively establishing that the applicant is not the holder of the regulatory approval.

* * * * *

109. Section 1.804 is amended by revising paragraph (b) to read as follows:

§ 1.804 Time of making an original deposit.

* * * * *

(b) When the original deposit is made after the effective filing date of an application for patent, the applicant must promptly submit a statement from a person in a position to corroborate the fact, stating that the biological material which is deposited is a biological material specifically identified in the application as filed.

110. Section 1.805 is amended by revising paragraph (c) to read as follows:

§ 1.805 Replacement or supplement of deposit.

* * * * *

(c) A request for a certificate of correction under this section shall not be granted unless the request is made promptly after the replacement or supplemental deposit has been made and the request:

(1) Includes a statement of the reason for making the replacement or supplemental deposit;

(2) Includes a statement from a person in a position to corroborate the fact, and stating that the replacement or supplemental deposit is of a biological material which is identical to that originally deposited;

(3) Includes a showing that the patent owner acted diligently—

(i) In the case of a replacement deposit, in making the deposit after receiving notice that samples could no longer be furnished from an earlier deposit; or

(ii) In the case of a supplemental deposit, in making the deposit after receiving notice that the earlier deposit had become contaminated or had lost its capability to function as described in the specification;

(4) Includes a statement that the term of the replacement or supplemental deposit expires no earlier than the term of the deposit being replaced or supplemented; and

(5) Otherwise establishes compliance with these regulations.

* * * * *

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

111. The authority citation for 37 CFR part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

112. Section 3.11 is revised to read as follows:

§ 3.11 Documents which will be recorded.

(a) Assignments of applications, patents, and registrations, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Commissioner.

(b) Executive Order 9424 of February 18, 1944 (9 FR 1959, 3 CFR 1943–1948 Comp., p. 303) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents and Trademarks for recording all licenses, assignments, or other interests of the Government in or under patents or patent applications. Assignments and other documents affecting title to patents or patent applications and documents not affecting title to patents or patent applications required by Executive Order 9424 to be filed will be recorded as provided in this part.

113. Section 3.21 is revised to read as follows:

§ 3.21 Identification of patents and patent applications.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, *e.g.*, 07/123,456). An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number (*e.g.*, PCT/US90/01234). If an assignment of a patent application filed under § 1.53(b) is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended. If an assignment of a provisional application under § 1.53(c) is executed before the provisional application is filed, it must identify the provisional application by name of each inventor and title of the invention so that there can be no mistake as to the provisional application intended.

114. Section 3.26 is revised to read as follows:

§ 3.26 English language requirement.

The Office will accept and record non-English language documents only if accompanied by an English translation signed by the individual making the translation.

115. Section 3.27 is revised to read as follows:

§ 3.27 Mailing address for submitting documents to be recorded.

(a) Except as provided in paragraph (b) of this section, documents and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231, unless they are filed together with new applications or with a petition under § 3.81(b).

(b) A document required by Executive Order 9424 to be filed which does not affect title and is so identified in the cover sheet (see § 3.31(c)(2)) must be addressed and mailed to the Commissioner of Patents and Trademarks, Box Government Interest, Washington, D.C. 20231.

116. Section 3.31 is amended by adding paragraph (c) to read as follows:

§ 3.31 Cover sheet content.

* * * * *

(c) Each patent cover sheet required by § 3.28 seeking to record a governmental interest as provided by § 3.11(b) must:

(1) Indicate that the document is to be recorded on the Governmental Register, and, if applicable, that the document is to be recorded on the Secret Register (see § 3.58); and

(2) Indicate, if applicable, that the document to be recorded is not a document affecting title (see § 3.41(b)).

117. Section 3.41 is revised to read as follows:

§ 3.41 Recording fees.

(a) All requests to record documents must be accompanied by the appropriate fee. Except as provided in paragraph (b) of this section, a fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in § 2.6(q) of this chapter for trademarks.

(b) No fee is required for each patent application and patent against which a document required by Executive Order 9424 is to be filed if:

(1) The document does not affect title and is so identified in the cover sheet (see § 3.31(c)(2)); and

(2) The document and cover sheet are mailed to the Office in compliance with § 3.27(b).

118. Section 3.51 is revised to read as follows:

§ 3.51 Recording date.

The date of recording of a document is the date the document meeting the requirements for recording set forth in this part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Documents not meeting the other requirements for recording, for example, a document submitted without a completed cover sheet or without the required fee, will be returned for correction to the sender where a correspondence address is available. The returned papers, stamped with the original date of receipt by the Office, will be accompanied by a letter which will indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the document. The procedure set forth in § 1.8 or § 1.10 of this chapter may be used for resubmissions of returned papers to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the document. The specified period to resubmit the returned papers will not be extended.

119. Section 3.58 is added to read as follows:

§ 3.58 Governmental registers.

(a) The Office will maintain a Departmental Register to record governmental interests required to be recorded by Executive Order 9424. This Departmental Register will not be open to public inspection but will be available for examination and inspection by duly authorized representatives of the Government. Governmental interests recorded on the Departmental Register will be available for public inspection as provided in § 1.12.

(b) The Office will maintain a Secret Register to record governmental interests required to be recorded by Executive Order 9424. Any instrument to be recorded will be placed on this Secret Register at the request of the department or agency submitting the same. No information will be given concerning any instrument in such record or register, and no examination or inspection thereof or of the index thereto will be permitted, except on the written authority of the head of the department or agency which submitted the instrument and requested secrecy, and the approval of such authority by the Commissioner of Patents and Trademarks. No instrument or record other than the one specified may be examined, and the examination must take place in the presence of a designated official of the Patent and Trademark Office. When the department or agency which submitted an instrument no longer requires secrecy with respect to that instrument, it must be recorded anew in the Departmental Register.

§ 3.61 [Amended]

120. The undesignated center heading in Part 3—Assignment, Recording and Rights of Assignee, following § 3.61 is revised to read as follows:

Action Taken by Assignee

121. Section 3.73 is amended by revising its heading and paragraph (b) to read as follows:

§ 3.73 Establishing right of assignee to take action.

* * * * *

(b) When an assignee seeks to take action in a matter before the Office with respect to a patent application, trademark application, patent, registration, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Commissioner. Ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office. The submission establishing ownership must be signed by a party authorized to act on behalf of the assignee. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

122. The authority citation for 37 CFR Part 5 continues to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

123. Section 5.1 is revised to read as follows:

§ 5.1 Correspondence.

All correspondence in connection with this part, including petitions, must be addressed to "Assistant Commissioner for Patents (Attention Licensing and Review), Washington, DC 20231."

124. Section 5.2 is amended by removing paragraphs (c) and (d) and revising paragraph (b) to read as follows:

§ 5.2 Secrecy order.

* * * * *

(b) Any request for compensation as provided in 35 U.S.C. 183 must not be made to the Patent and Trademark Office, but directly to the department or agency which caused the secrecy order to be issued.

125. Section 5.3 is amended by revising paragraph (c) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(c) When the national application is found to be in condition for allowance except for the secrecy order the applicant and the agency which caused the secrecy order to be issued will be notified. This notice (which is not a notice of allowance under § 1.311 of this chapter) does not require reply by the applicant and places the national application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent and Trademark Office will issue a notice of allowance under § 1.311 of this chapter, or take such other action as may then be warranted.

* * * * *

126. Section 5.4 is amended by revising paragraphs (a) and (d) to read as follows:

§ 5.4 Petition for rescission of secrecy order.

(a) A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate.

* * * * *

(d) Appeal to the Secretary of Commerce, as provided by 35 U.S.C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied. Appeal must be taken within sixty days from the date of the denial, and the party appealing, as well as the department or agency which caused the order to be issued, will be notified of the time and place of hearing.

127. Section 5.5 is amended by revising paragraphs (b) and (e) to read as follows:

§ 5.5 Permit to disclose or modification of secrecy order.

* * * * *

(b) Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed disclosee is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate.

* * * * *

(e) Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosees as sufficient for the highest classification of material that may be involved.

§ 5.6 [Removed and reserved]

128. Section 5.6 is removed and reserved.

§ 5.7 [Removed and reserved]

129. Section 5.7 is removed and reserved.

§ 5.8 [Removed and reserved]

130. Section 5.8 is removed and reserved.

131. Section 5.11 is amended by revising paragraphs (b), (c) and (e)(3) to read as follows:

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting international application.

* * * * *

(b) The license from the Commissioner of Patents and Trademarks referred to in paragraph (a) would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign patent application without separately complying with the regulations contained in 22 CFR parts 121 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR part 779 (Regulations of the Office of Export Administration, International Trade Administration, Department of Commerce) and 10 CFR part 810 (Foreign Atomic Energy Programs of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, is being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, without the license from the Commissioner of Patents and Trademarks referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 768–799 (Export Administration Regulations of the Department of Commerce) and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term "exported" means export as it is defined in 22 CFR part 120, 15 CFR part 779 and activities covered by 10 CFR part 810.

* * * * *

(e) * * *

(3) For subsequent modifications, amendments and supplements containing additional subject matter to, or divisions of, a foreign patent application if:

(i) A license is not, or was not, required under paragraph (e)(2) of this section for the foreign patent application;

(ii) The corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181; and

(iii) Such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require any corresponding United States application to be or have been available for inspection under 35 U.S.C. 181.

* * * * *

132. Section 5.12 is amended by revising paragraph (b) to read as follows:

§ 5.12 Petition for license.

* * * * *

(b) Petitions for license should be presented in letter form, and must include the petitioner's address and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner. If expedited handling of the petition under this paragraph is sought, the petition must also include the fee set forth in § 1.17(h).

133. Section 5.13 is revised to read as follows:

§ 5.13 Petition for license; no corresponding application.

If no corresponding national or international application has been filed in the United States, the petition for license under § 5.12(b) must also be accompanied by a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted.

134. Section 5.14 is amended by revising paragraph (a) to read as follows:

§ 5.14 Petition for license; corresponding U.S. application.

(a) When there is a corresponding United States application on file, a petition for license under § 5.12(b) must also identify this application by application number, filing date, inventor, and title, but a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application.

* * * * *

135. Section 5.15 is amended by revising paragraphs (a), (b), (c) and (e) to read as follows:

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181. Grant of this license authorizing the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority:

(1) To export and file all duplicate and formal application papers in foreign countries or with international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; and

(3) To take any action in the prosecution of the foreign or international application provided that the adding of subject matter or taking of any action under paragraphs (a)(1) or (2) of this section does not change the general nature of the invention disclosed in the application in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR parts 121 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR part 810, in effect at the time of foreign filing.

* * * * *

(b) Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 will be eligible for a license of the scope provided in this paragraph. Grant of this license authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency. Further, this license includes authority to export and file all duplicate and formal papers in foreign countries or with foreign and international patent agencies and to make amendments, modifications, and supplements to, file divisions of, and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(h)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181. The change in the scope of a license will be effective as of the date of the grant of the petition.

* * * * *

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign or international application which changes the general nature of the subject matter disclosed at the time of filing in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 or which involves the disclosure of subject matter listed in paragraphs (a)(3)(i) or (ii) of this section must be separately licensed in the same manner as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application.

* * * * *

§ 5.16 [Removed and reserved]

136. Section 5.16 is removed and reserved.

§ 5.17 [Removed and reserved]

137. Section 5.17 is removed and reserved.

138. Section 5.18 is revised to read as follows:

§ 5.18 Arms, ammunition, and implements of war.

(a) The exportation of technical data relating to arms, ammunition, and implements of war generally is subject to the International Traffic in Arms Regulations of the Department of State (22 CFR parts 120 through 130); the articles designated as arms, ammunitions, and implements of war are enumerated in the U.S. Munitions List (22 CFR part 121). However, if a patent applicant complies with regulations issued by the Commissioner of Patents and Trademarks under 35 U.S.C. 184, no separate approval from the Department of State is required unless the applicant seeks to export technical data exceeding that used to support a patent application in a foreign country. This exemption from Department of State regulations is applicable regardless of whether a license from the Commissioner is required by the provisions of §§ 5.11 and 5.12 (22 CFR part 125).

(b) When a patent application containing subject matter on the Munitions List (22 CFR part 121) is subject to a secrecy order under § 5.2 and a petition is made under § 5.5 for a modification of the secrecy order to permit filing abroad, a separate request to the Department of State for authority to export classified information is not required (22 CFR part 125).

139. Section 5.19 is revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the Department of Commerce, a license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office.

(b) An export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 779A.3(e)).

140. Section 5.20 is revised to read as follows:

§ 5.20 Export of technical data relating to sensitive nuclear technology.

Under regulations (10 CFR 810.7) established by the United States Department of Energy, an application filed in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office and eligible for foreign filing under 35 U.S.C. 184, is considered to be information available to the public in published form and a generally authorized activity for the purposes of the Department of Energy regulations.

§ 5.25 [Amended]

141. Section 5.25 is amended by removing paragraph (c).

§ 5.31 [Removed and reserved]

142. Section 5.31 is removed and reserved.

§ 5.32 [Removed and reserved]

143. Section 5.32 is removed and reserved.

§ 5.33 [Removed and reserved]

144. Section 5.33 is removed and reserved.

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS [REMOVED AND RESERVED]

145. Part 7 is removed and reserved.

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

146. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

147. Section 10.18 is revised to read as follows:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this chapter.

(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that—

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2) (i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of—

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

148. Section 10.23 is amended by revising paragraph (c)(15) to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(15) Signing a paper filed in the Office in violation of the provisions of § 10.18 or making a scandalous or indecent statement in a paper filed in the Office.

* * * * *

Dated: September 26, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–26339 Filed 10–9–97; 8:45 am]

BILLING CODE 3510–16–P

federal register

Friday
October 10, 1997

Part IV

Department of Education

Visiting Scholars Fellowship Program at the U.S. Department of Education, Office of Educational Research and Improvement (OERI); Combined Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305V, 84.306V, 84.307V, 84.308V, and 84.309V]

Visiting Scholars Fellowship Program at the U.S. Department of Education, Office of Educational Research and Improvement (OERI); Combined Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: The OERI Visiting Scholars Fellowship Program allows individuals engaged in educational research to work at one of the following OERI national research institutes in Washington, DC for up to 18 months:

1. National Institute on Student Achievement, Curriculum, and Assessment (CFDA No. 84.305V).

2. National Institute on the Education of At-Risk Students (CFDA No. 84.306V).

3. National Institute on Early Childhood Development and Education (CFDA No. 84. 307V)

4. National Institute on Educational Governance, Finance, Policy-Making, and Management (CFDA No. 84.308V).

5. National Institute on Postsecondary Education, Libraries and Lifelong Learning (CFDA No. 84.309V).

Administration of Program: This fellowship competition will be administered by the National Research Council (the Council). The Council was organized by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the Federal Government. Functioning in accordance with general policies determined by the Academy, the Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public, and the scientific and engineering communities. The Council is administered jointly by both Academies and the Institute of Medicine.

Fiscal and Programmatic Information: Except for the individual descriptions of the National Research Institutes, the fiscal and programmatic information in this notice applies separately for each of the competitions under the five institutes.

Eligible Applicants: Scholars, researchers, policymakers, education practitioners, librarians, or statisticians who are engaged in the use, collection, and dissemination of information about education and educational research.

Deadline for Transmittal of Applications: January 5, 1998.

Note: Decisions on awards will be made by the Council by April 1998, and fellows will be able to commence their appointments as early as June 1998 or as late as January 1999.

Applications Available: October 14, 1997.

FISCAL INFORMATION

CFDA No. and name of institute	Available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.305V, National Institute on Student Achievement, Curriculum, and Assessment	$200,000	$50,000–$100,000	$75,000	1–2
84.306V, National Institute on the Education of At-Risk Students	200,000	50,000–100,000	75,000	1–2
84.307V, National Institute on Early Childhood Development and Education	200,000	50,000–100,000	75,000	1–2
84.308V, National Institute on Educational Governance, Finance, Policy-Making, and Management	200,000	50,000–100,000	75,000	1–2
84.309V, National Institute on Postsecondary Education, Libraries and Lifelong Learning	200,000	50,000–100,000	75,000	1–2

Note: Neither the U.S. Department of Education, nor the Council, is bound by the estimates in this notice.

Fellowship Period: From 9 to 18 months.

Applicable Regulations: General procedures governing the application process and the evaluation and selection of fellows can be found in the 1998 Program Announcement for the OERI Visiting Scholars Fellowship Program. This Program Announcement, prepared by the Council, is available on the web site http://fellowships.nas.edu, and is also available from the address and telephone number listed at the end of this notice. More specific procedures governing the panel review process will be available from the Council after all applications have been received.

The regulations in 34 CFR Part 700 and in the Education Department General Administrative Regulations (EDGAR) govern the grant relationship between OERI and the Council and apply to the Council's administration of Federal funds under the grant.

SUPPLEMENTARY INFORMATION: OERI is authorized to make fellowship awards to visiting scholars under section 931(c)(1)(E) of the Educational Research, Development, Dissemination, and Improvement Act of 1994, 20 U.S.C. 6001 *et seq.* This statute states, in relevant part, that the fellowships "shall be awarded competitively following the publication of a notice in the **Federal Register** inviting the submission of applications." OERI made a grant to the National Research Council to carry out this activity pursuant to the regulations in 34 CFR Part 700 and the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75. OERI is publishing this application notice on behalf of the Council.

The Council will fund applications for fellowships under the following OERI national research institutes:

National Institute on Student Achievement, Curriculum, and Assessment (CFDA No. 84.305V). The purpose of the National Institute on Student Achievement, Curriculum, and Assessment is to support research, development, and evaluation activities to provide research-based leadership for improving student achievement in the core content areas. The institute supports work to identify, develop, and evaluate innovative and exemplary methods to improve student knowledge at all levels in the core academic subjects. The institute also supports basic and applied research in the areas of cognition, learning, and performance, including research on the educational contexts that promote excellence in teaching and learning, and research and development in the area of assessment.

National Institute on the Education of At-Risk Students (CFDA No. 84.306V). The purpose of the National Institute for the Education of At-Risk Students is to expand research-based knowledge and strategies that will promote excellence and equity in the education of children and youth placed at risk of educational failure because of limited-English proficiency, poverty, race or ethnicity, or geographic location. The institute will carry out a program of research and development to identify and assist others to replicate and adapt programs and models which promote greater achievement and educational success by at-risk students, including innovative methods of instruction, student assessment, professional development, and curricula.

National Institute on Early Childhood Development and Education (CFDA No. 84.307V). The purpose of the National Institute on Early Childhood Development and Education is to carry out a comprehensive program of research and development to provide research-based leadership to the United States as it seeks to improve early childhood development and education. The priority is to improve learning and development in early childhood so that all children can enter kindergarten prepared to learn and succeed in elementary and secondary schools. The institute is interested in developmentally appropriate assessment of preschool children and programs, early literacy, early math and science learning, how the arts relate to early learning, development of the early childhood workforce, translating brain development research into policy and practice, how communities and schools support early learning, supporting diverse populations, and supporting adolescent parents and their children.

National Institute on Educational Governance, Finance, Policy-Making, and Management (CFDA No. 84.308V). The purpose of the National Institute on Educational Governance, Finance, Policy-Making, and Management is to develop and disseminate research-based information that helps guide the design and implementation of governance arrangements, finance systems, policy approaches, and management strategies that will support high levels of learning by all students. By law, the institute supports work which promises to improve education equity and excellence at the State, local, tribal, school building and classroom levels of elementary and secondary education in the United States.

National Institute on Postsecondary Education, Libraries and Lifelong Learning (CFDA No. 84.309V). The purpose of the National Institute on Postsecondary Education, Libraries and Lifelong Learning is to support research and development activities designed to meet the following goals: improve successful participation and degree completion by students in postsecondary education; affordability, quality, and positive learning outcomes of postsecondary education; adult learning and literacy; and connections/transitions between education and work. Of central concern is the investigation of how adults learn—in formal educational institutions and work settings as well as in informal settings such as libraries, museums, and communities. Our vision is that all adults will be provided with opportunities for affordable, high quality education tailored to their individual, citizenship, and workplace needs.

Invitational Priorities

The Council is particularly interested in applications that meet one or both of the following two invitational priorities. However, an application that addresses one or both of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Research Priorities Plan—Making Connections

The subjects under this invitational priority are taken from the OERI's Research Priorities Plan published on June 6, 1996 in the **Federal Register** (61 FR 28858), which defines national priorities for education research and development under section 912(f) of OERI's authorizing statute. An applicant that responds to this invitational priority is encouraged to address one or more of the following subjects:

Improving curriculum, instruction, assessment, and student learning at all levels of education to promote high academic achievement, problem-solving abilities, creativity, and the motivation for further learning.

Ensuring effective teaching by expanding the supply of potential teachers, improving teacher preparation, and promoting career-long professional development at all levels of education.

Strengthening schools, particularly middle and high schools, as institutions capable of engaging young people as active and responsible learners.

Supporting schools to effectively prepare diverse populations to meet high standards for knowledge, skills, and productivity, and to participate fully in American economic, cultural, social, and civic life.

Promoting learning in informal and formal settings, and building the connections that cause out-of-school experiences to contribute to in-school achievement.

Improving learning and development in early childhood so that all children can enter kindergarten prepared to learn and succeed in elementary and secondary schools.

Understanding the changing requirements for adult competence in civic, work, and social contexts, and how these requirements affect learning and the futures of individuals and the nation.

Note: The Department's Research Priorities Plan is available on-line at www.ed.gov. Copies may also be requested by calling OERI at (202) 219–2000.

Invitational Priority 2—Traditionally Underrepresented Groups and Institutions

Based on section 931(c)(5) of OERI's authorizing statute, the Council also invites applications from groups of researchers or institutions that have been historically underutilized in Federal educational research activities. Such groups and institutions include: Women, African-Americans, Hispanics, American Indians, and Alaskan Natives or other ethnic minorities; promising young or new researchers in the field, such as postdoctoral students and recently appointed assistant or associate professors, Historically Black Colleges and Universities, Tribally Controlled Colleges, and other institutions of higher education with large numbers of minority students; institutions of higher education located in rural areas; and institutions and researchers located in States and regions of the United States which have historically received the least Federal support for educational research and development. Applicants are invited to propose projects that are designed to increase the participation in the activities of the institutes of the above groups and institutions.

Selection Criteria: According to the Council's 1998 Program Announcement for the OERI Visiting Scholars Fellowship Program, qualifications of applicants will be evaluated by panels of distinguished scholars selected by the Council. The evaluation of applications will be based on achievement, experience, and training as evidenced by the application materials submitted, and by the importance of the proposed work to the field of education and the goals of the OERI. Panelists will carefully consider the application, proposed project plan, letters of recommendation, and other supporting documentation. The quality of the proposed project and the appropriateness of the proposed study at the OERI will also be carefully reviewed. The final selection of fellows, based on the panelists' recommendations, will be made by the National Research Council. The Council will set forth the specific procedures

governing the panel review process in a 1988 "Guide for Panelists" after the number and composition of the applications have been determined.

For Applications and Information Contact: Delores Banks, The Fellowship Program, National Research Council, 2101 Constitution Avenue, Washington, D.C. 20418, (202) 334–2872. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 A.M. and 8 P.M., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document and the applications in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 6001 *et seq.* (OERI) and 36 U.S.C. 253 (National Academy of Sciences, National Research Council).

Dated: October 6, 1997.

Ricky Takai,

Acting Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 97–26936 Filed 10–9–97; 8:45 am]

BILLING CODE 4000–01–U

federal register

Friday
October 10, 1997

Part V

Environmental Protection Agency

40 CFR Part 131
Withdrawal From Federal Regulations of Nineteen Acute Aquatic Life Water Quality Criteria Applicable to Alaska; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5903–7]

Withdrawal From Federal Regulations of Nineteen Acute Aquatic Life Water Quality Criteria Applicable to Alaska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1992, EPA promulgated federal regulations establishing water quality criteria for toxic pollutants for several states, including Alaska (40 CFR 131.36). Among the criteria promulgated for Alaska were acute aquatic life criteria for 24 pollutants. Recently, Alaska has clarified that certain criteria they have previously adopted are no less stringent than the acute aquatic life water quality criteria in the federal regulations. Based on the state's clarification, EPA is amending the federal regulations to withdraw acute aquatic life criteria for 19 pollutants applicable to waters of Alaska. EPA is withdrawing these criteria without a notice and comment rulemaking because the State's acute aquatic life criteria are no less stringent than the federal criteria. Federal aquatic life criteria for 5 pollutants continue to apply to Alaska as well as federal human health criteria for carcinogens.

DATES: This amendment is effective October 10, 1997.

ADDRESSES: The administrative record for consideration of Alaska's acute aquatic life criteria is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, during normal business hours of 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Fred Leutner at EPA Headquarters, Office of Water, 401 M Street, SW, Washington, D.C., 20460 (202–260–1542) or Sally Brough in EPA's Region 10 at 206–553–1295.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities
B. Background
C. Basis for Partial Withdrawal of Criteria
D. Related Issues
1. Metals Expressed as Total Recoverable
2. Specified Criteria
E. Executive Order 12866
F. Unfunded Mandates Reform Act
G. Regulatory Flexibility Act
H. Paperwork Reduction Act
I. Submission to Congress and the General Accounting Office

A. Potentially Affected Entities

Citizens concerned with water quality in Alaska may be interested in this rulemaking. Entities discharging toxic pollutants to waters of the United States in Alaska could be affected by this rulemaking since acute aquatic life criteria are used in determining national pollutant discharge elimination system (NPDES) permit limits. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Alaska.
Municipalities.	Publicly-owned treatment works discharging pollutants to surface waters in Alaska.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also potentially be affected by this action. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 131.36 of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in **FOR FURTHER INFORMATION CONTACT** section.

B. Background

In 1992, EPA promulgated a final rule known as the National Toxics Rule or NTR. The NTR established numeric water quality criteria for 12 States and 2 Territories (hereafter "States") that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848). The criteria, codified at 40 CFR 131.36, became applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts criteria that meet the requirements of the CWA, EPA's policy is to withdraw the federal criteria. If the State's criteria are no less stringent than the federal regulations, EPA has determined that additional comment on the criteria is unnecessary and constitutes good cause for issuing a final rule without notice and comment. For the same reason, EPA has determined that good cause exists to waive the requirement for a 30-day period before the amendment becomes effective and therefore, the amendment will be immediately effective. EPA has determined that both of these circumstances apply in this case.

C. Basis for Partial Withdrawal of Criteria

Water quality criteria applicable in Alaska were included in the NTR due to ambiguity about whether the State had adopted by reference acute aquatic life criteria cited in EPA's Quality Criteria for Water July 1976, 45 FR 79318 (Nov. 28, 1980), 49 FR 5831 (Feb. 15, 1984), and 50 FR 30784 (July 29, 1985). EPA included Alaska in the NTR for acute aquatic life criteria based on statements in two state documents (the State's Water Quality Standards Workbook published in July 1991 and an August 30, 1991 letter from the Alaska Department of Environmental Conservation (ADEC) to EPA Region 10), indicating that Alaska had adopted only chronic criteria. In a December 19, 1996 letter, ADEC clarified for EPA that Alaska had adopted both acute and chronic aquatic life criteria for toxic pollutants by reference in 1987. ADEC indicated that the statements in the two 1991 non-regulatory documents indicating the state had adopted only chronic aquatic life criteria were misstatements. Alaska explained that the adoption by reference of EPA criteria, in Note 5 to Alaska's water quality standards table at 18 AAC 70.020(b), implicitly includes both acute and chronic aquatic life criteria. EPA Region 10 had approved the 1987 changes to the Alaska water quality standards, including the adoption of toxic criteria by reference found in Note 5, by letter dated April 6, 1987. Today's action is based on Alaska's explanation of what aquatic life water quality criteria are included in its water quality standards.

D. Related Issues

1. Metals Expressed as Total Recoverable

The December 19, 1996 letter from ADEC to EPA also clarified that Alaska's metals criteria are to be measured as total recoverable metal. This approach is available to states implementing their own criteria. The NTR as amended (60 FR 22229, May 4, 1995) expresses aquatic life metals criteria for metals as dissolved metal with the exception of Fresh Water acute and chronic criteria for selenium.

As noted above, Alaska adopted metals criteria by referencing EPA's criteria at 45 FR 79318 (Nov. 28, 1980) and 50 FR 30784 (July 29, 1985). In the 1980 FR notice, EPA established water quality criteria for metals as measured with the total recoverable method. In the 1985 FR notice, EPA published water quality criteria for metals as measured with the acid soluble method, but acknowledged that a final approved acid soluble method was unavailable and recommended the continued use of the total recoverable method. This statement apparently caused confusion over what sample preparation method Alaska should use to implement EPA's 1985 metals criteria it had adopted by reference.

The December 19, 1996 ADEC letter acknowledges that Alaska's aquatic life criteria for metals are indeed expressed as total recoverable criteria. ADEC has indicated it will consistently apply aquatic life criteria for metals as total recoverable to water quality actions and decisions in Alaska, including NPDES permits, section 303(d) lists, and TMDL development.

2. Specified Criteria

Alaska has identified in the table below, the acute aquatic life criteria that were adopted by reference that are no less stringent than the Federal criteria in the NTR. A comparison of the criteria found in the NTR and in the EPA documents which Alaska adopted by reference raised questions regarding the stringency comparison for lead, lindane/gamma BHC, endosulfan, and heptachlor. In the case of lead, the freshwater (FW) hardness equation in the NTR is different from the hardness equation adopted by Alaska. The NTR lists FW and saltwater (SW) acute aquatic life criteria for gamma BHC while Alaska adopted criteria for lindane. Alaska adopted FW and SW aquatic life criteria for endosulfan by citing EPA's 1980 **Federal Register** notice. However, the NTR acknowledges the separate toxicity of the alpha and beta isomers of endosulfan. Similarly, Alaska adopted FW and SW criteria for heptachlor while the NTR contains separate criteria for heptachlor and heptachlor epoxide (a breakdown product of heptachlor). The following table shows the acute aquatic life criteria, adopted by Alaska, for which EPA is withdrawing Alaska from the NTR. Footnotes 1 and 2 explain EPA Region 10's determinations for lead and lindane. Footnotes 3 and 4 explain how Alaska interprets their criteria for endosulfan and heptachlor.

ALASKA ACUTE AQUATIC LIFE CRITERIA (IN µg/l), ADOPTED IN NOTE 5 OF THE ALASKA WATER QUALITY STANDARDS 18 AAC 70.020(b)

[December, 1996]

Compound	Fresh water acute (µg/l)	Salt water acute (µg/l)
1. Arsenic (TR)	360	69
2. Cadmium (TR)	* $e^{(1.128[ln(H)]-3.828)}$	43
3. Chromium III (TR)	* $e^{(0.819[ln(H)]+3.688)}$	
4. Chromium VI (TR)	16	1100
5. Copper (TR)	* $e^{(0.9422[ln(H)]-1.464)}$	2.9
6. Lead (TR)[1]	* $e^{(1.366[ln(H)]-1.416)}$	140
7. Mercury (TR)	2.4	2.1
8. Silver (TR)	* $e^{(1.72[ln(H)]-6.52)}$	2.3
9. Cyanide	22	1.0
10. Aldrin	3.0	1.3
11. Lindane/Gamma-BHC[2]	2.0	0.16
12. Chlordane	2.4	0.09
13. DDT, 4,4'-	1.1	0.13
14. Dieldrin	2.5	0.71
15. Endosulfan[3]	0.22	0.034
16. Endrin	0.18	0.037
17. Heptachlor[4]	0.52	0.053
18. Toxaphene		0.070

TR Total Recoverable method for measuring metal concentrations.

* Hardness dependent metals—numeric criteria are calculated using the equations in the above table where H = ambient hardness. For example, the numeric criteria using 100 mg/l of hardness are: cadmium = 3.9 µg/l, chromium III = 1700 µg/l, copper = 18 µg/l, lead = 83 µg/l, and silver = 4.1 µg/l.

[1] Alaska adopted the 1985 federal criteria document for lead which contains a hardness based equation to calculate the numeric criterion using ambient hardness. The NTR hardness equation for FW acute aquatic life for lead is different than the 1985 equation. However, the calculated numeric values for any specific ambient hardness, using the two different equations, are within a few µg/l of each other. Since the calculated values from the two equations are so close, EPA has determined by letter written on Sept. 18, 1996, to the ADEC that the 1985 equation is functionally equivalent to the NTR equation for purposes of NTR removal.

[2] Alaska adopted acute aquatic life criteria for hexachlorocyclohexane (Lindane and a mixture of BHC isomers) from the 1980 FEDERAL REGISTER (45 FR 79335). The NTR only includes gamma BHC. Lindane and gamma-BHC have the same Chemical Abstract Service (CAS) numbers and are the same compounds. Therefore, Alaska's Lindane criteria apply to gamma BHC. EPA has determined that Alaska can be removed from the NTR for gamma BHC (EPA letter dated September 18, 1996).

[3] Alaska adopted the endosulfan criteria by reference from the 1980 FR (45 FR 79334). The NTR has criteria for the two endosulfan isomers, alpha and beta endosulfan. Alaska interprets its endosulfan criteria in this table to apply to the summation of both alpha and beta isomers of endosulfan.

[4] Alaska adopted heptachlor criteria from the 1980 FR (45 FR 79335). The NTR includes criteria for heptachlor and heptachlor epoxide (a breakdown product of heptachlor). Alaska interprets its heptachlor criteria in this table to apply as a summation of both heptachlor and heptachlor epoxide.

Alaska has not requested removal from the NTR for the following acute aquatic life criteria: freshwater (FW) and saltwater (SW) nickel, FW and SW selenium, FW and SW zinc, FW and SW pentachlorophenol, and FW toxaphene. The acute aquatic life criteria adopted by reference by Alaska for these five pollutants are less stringent than the Federal criteria. The NTR criteria for these five pollutants continue to apply in Alaska.

E. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to

Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The withdrawal of certain federal acute aquatic life criteria applicable to Alaska imposes no additional regulatory requirements. Therefore, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is not subject to OMB review.

F. Unfunded Mandates Reform Act

Today's action will not result in the annual expenditure of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), nor does it uniquely affect small governments in any way. As such, the requirements of sections 202, 203, and 205 of Title II of the UMRA do not apply to this action.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 USC 601 et seq.), whenever a federal agency promulgates a final rule after being required to publish a general notice of proposed rulemaking under section 553 of the Administrative Procedures Act (APA), the agency generally must prepare a final regulatory flexibility analysis describing the economic impact of the regulatory action on small entities. EPA has not prepared a final regulatory flexibility analysis for this action because the Agency was not required to publish a general notice of proposed rulemaking for this rule.

As explained above, section 553 of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary and contrary to the public interest, an agency may first issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without notice and opportunity for comment for the reasons spelled out above. In these circumstances, the RFA does not require preparation of a final regulatory flexibility analysis. Today's final rule establishes no requirements applicable to small entities.

H. Paperwork Reduction Act

This final rule does not impose any requirement subject to the Paperwork Reduction Act.

I. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: October 6, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36(d)(12)(ii) is amended in use classifications, (1)(A)i, (1)(A)iii, (1)(B)i, (1)(B)ii, and (1)(C) under the listing of applicable criteria, by replacing "all" with "#9, 10, 13, 53, and 126" for Column B1.

3. Section 131.36(d)(12)(ii) is amended in use classifications, (2)(A)i, (2)(B)i, (2)(B)ii, (2)(C), and (2)(D) under the listing of applicable criteria, by replacing "all" with "# 9, 10, 13, and 53" for column C1.

[FR Doc. 97–27019 Filed 10–9–97; 8:45 am]
BILLING CODE 6560–60–P

Friday
October 10, 1997

Part VI

The President

Presidential Determination No. 97–33—U.S. Contributions to the International Fund for Ireland With Fiscal Year 1996 and 1997 Funds

Presidential Determination No. 97–37—FY 1998 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status

Presidential Determination No. 97–38—Counternarcotics Assistance to Colombia, Venezuela, Peru, and Countries of the Eastern Caribbean

Federal Register
Vol. 62, No. 197
Friday, October 10, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–33 of September 22, 1997

Presidential Determination To Permit U.S. Contributions to the International Fund for Ireland With Fiscal Year 1996 and 1997 Funds

Memorandum for the Secretary of State

Pursuant to section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415), I hereby certify that I am satisfied that: (1) the Board of the International Fund for Ireland as established pursuant to the Anglo-Irish Agreement of November 15, 1985, is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund for Ireland (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination, together with the attached statement setting forth a detailed explanation of the basis for this certification, to the Congress.

This determination shall be effective immediately and shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 22, 1997.

[FR Doc. 97–26567
Filed 10–9–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 97–37 of September 30, 1997

Presidential Determination on FY 1998 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), as amended, and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 83,000 refugees to the United States during FY 1998 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1998 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 83,000 admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 1998 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	7,000
East Asia	14,000
Europe	51,000
Latin America/Caribbean	4,000
Near East/South Asia	4,000
Unallocated	3,000

Within the Europe ceiling are 5,000 unfunded reserve numbers allocated to the former Soviet Union for use as needed provided that resources within existing appropriations are available to fund the cost of their admission. The 3,000 unfunded unallocated numbers shall be allocated as needed if resources within existing appropriations are available to fund the cost of their admission. Unused admissions numbers allocated to a particular region within the 75,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance

to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 1998 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with section 101(a)(42)(B) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 1998, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1997.

[FR Doc. 97–27172
Filed 10–9–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 97–38 of September 30, 1997

Drawdown Under Section 506(a)(2) of the Foreign Assistance Act To Provide Counternarcotics Assistance to Colombia, Venezuela, Peru, and the Countries of the Eastern Caribbean

Memorandum for the Secretary of State, the Secretary of Defense [and] the Secretary of Transportation

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) ("the Act"), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, military education and training from the Department of Defense, and articles and services from the inventory and resources of the Department of Transportation for the purpose of providing international narcotics assistance to Colombia, Venezuela, Peru, and the countries of the Eastern Caribbean Regional Security System (RSS), including: Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

Therefore, I direct the drawdown of up to $20 million of articles and services from the inventory and resources of the Departments of Defense and Transportation, and military education and training from the Department of Defense, for the Governments of Colombia, Venezuela, Peru, and the countries of the RSS, for the purposes and under the authorities of chapter 8 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1997.

[FR Doc. 97–27173
Filed 10–9–97; 8:45 am]
Billing code 4710–10–M

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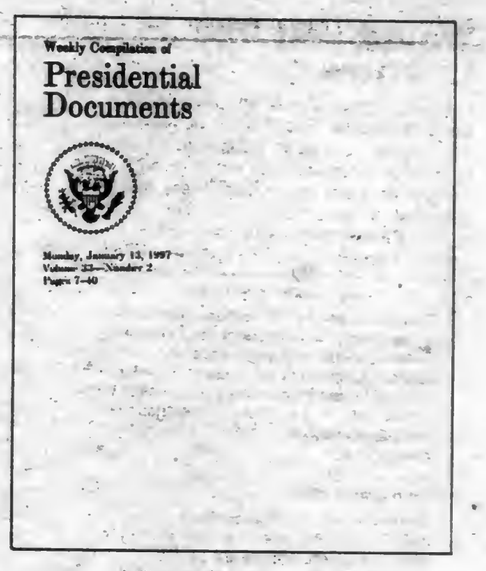
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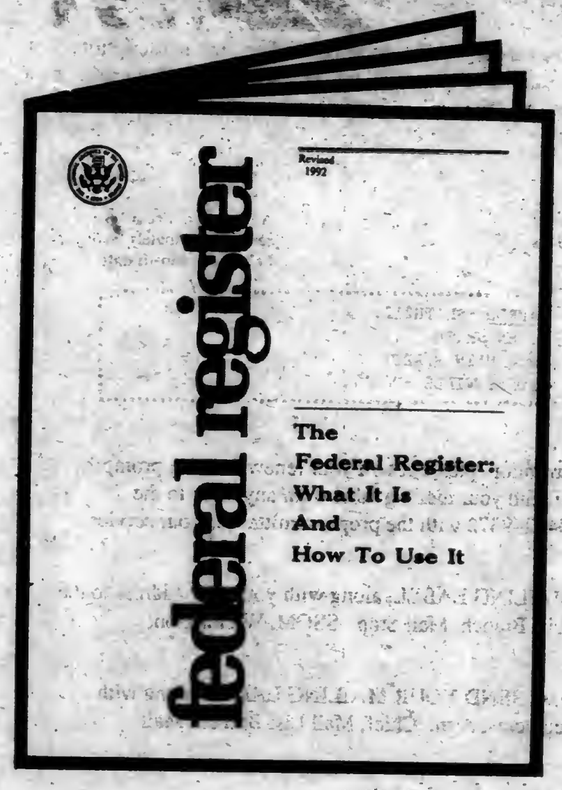
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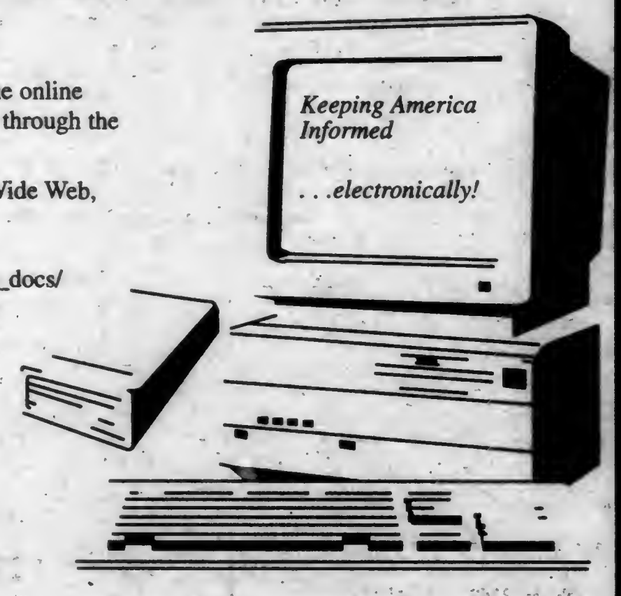
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Federal Register
Vol. 62, No. 198
Tuesday, October 14, 1997

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR part 890

RIN 3206–AH46

Federal Employees Health Benefits Program: Opportunities to Enroll and Change Enrollment

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management is issuing this document to correct an incorrect reference cited in § 890.807(c) (62 FR 38433, July 18, 1997).

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 606–0004.

SUPPLEMENTARY INFORMATION: Accordingly, page 38441, third column, § 890.807(c)(1) of the final rule published on July 18, 1997, is corrected to read as follows:

(c) *Failure to make an election under § 890.806(m).* (1) If the annuity is insufficient to pay the full subscription charge due for the plan in which the former spouse is enrolled, the former spouse may elect one of the two opportunities offered under § 890.806(m) (electing a plan with a full subscription charge that is less than the annuity; or paying premiums directly to the retirement system in accordance with § 890.808(d)). Except as provided in paragraph (c)(3) of this section the enrollment of a former spouse who fails to make an election within the specified time frame will be terminated.

* * * * *

Jacquline D. Carter,

Federal Regulations Liaison Officer.

[FR Doc. 97–27110 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

RIN 3206–AH90

Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management, in publishing regulations at § 900.604, (62 FR 33971, June 24, 1997) added a paragraph to the regulation but referenced the addition as a revision. This document corrects that error.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Gary L. Smith, 202–606–2980, EMAIL glsmith@opm.gov, or FAX 202–606–2663.

SUPPLEMENTARY INFORMATION: Accordingly, the final rule published on June 24, 1997, on page 33971, third column, sentence following reference to Authority is corrected to read as follows:

2. In Subpart F § 900.604 paragraph (b)(3) is revised and paragraph (b)(4) is added to read as follows:

Jacquline D. Carter,

Federal Regulations Liaison Officer.

[FR Doc. 97–27109 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–073–3]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by expanding the quarantined area in Los Angeles County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 7, 1997. Consideration will be given only to comments received on or before December 15, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–073–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–073–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks and can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine

enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations also impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

In an interim rule effective August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141–45142, Docket No. 97–073–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area. In a second interim rule effective September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47551–47553, Docket No. 97–073–2), we quarantined an additional area in Los Angeles County, CA.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that an additional portion of Los Angeles County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, California has taken action to restrict the intrastate movement of certain articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93–3 by expanding the quarantined area in Los Angeles County, CA. The revised quarantined areas of Los Angeles County, CA, are described in the rule portion of this document. The area expanded by this interim rule is the second area described.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received withing 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by expanding the quarantined area in Los Angeles County, CA. The regulations restrict the interstate movement of regulated articles from the quarantined areas.

Within the quarantined portion of Los Angeles County, there are approximately 176 entities that will be affected by this rule. All would be considered small entities. These include 2 farmers' markets, 1 grower, 1 community garden, 1 distributor, 119 fruit sellers, 47 nurseries, 1 packer, and 4 swap meets. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Oriental fruit fly regulatory program. The site specific environmental assessment provides a basis for the conclusion that implementation of integrated pest management to achieve eradication of the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS" NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantining, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c), the entry for California is amended by revising the entry for Los Angeles County to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of Los Angeles County beginning at the intersection of Arrow Highway and Interstate Highway 605; then west along Arrow Highway to Buena Vista Street; then north along Buena Vista Street to Huntington Drive; then east along Huntington Drive to Foothill Boulevard; then east along Foothill Boulevard to the shoreline of the San Gabriel River; then northeast along the shoreline of the San Gabriel River to State Highway 39 (San Gabriel Canyon Road); then southeast along an imaginary line to the intersection of Sierra Madre Avenue and Glendora Avenue; then south along Glendora Avenue to Alosta Avenue; then east along Alosta Avenue to Lone Hill Avenue; then south along Lone Hill Avenue to Cypress Street; then west along Cypress Street to Badillo Street; then southwest along Badillo Street to Reeder Avenue; then south along Reeder Avenue to Puente Street; then southeast along Puente Street to Via Verde; then southwest along Via Verde to The Mall; then south along The Mall to Interstate Highway 10; then west along Interstate Highway 10 to Grand Avenue; then southeast along Grand Avenue to Amar Road; then west and northwest along Amar Road to Baldwin Park Boulevard; then northeast along Baldwin Park Boulevard to Francisquito Avenue; then northwest along Francisquito Avenue to Ramona Boulevard; then west along Ramona Boulevard to Interstate Highway 605; then northeast along Interstate Highway 605 to the point of beginning.

Also, that portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King, Jr. Boulevard; then southeast along Martin Luther King, Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Vermont Avenue; then south along Vermont Avenue to Florence Avenue; then east along Florence Avenue to Interstate Highway 110; then south along Interstate Highway 110 to Manchester Avenue; then east along Manchester Avenue to Avalon Boulevard; then south along Avalon Boulevard to Rosecrans Avenue; then west along Rosecrans Avenue to Interstate Highway 110; then south along Interstate Highway 110 to State Highway 91 (Artesia Boulevard); then west along State Highway 91 (Artesia Boulevard) to Western Avenue; then south along Western Avenue to 190th Street; then west along 190th Street to Anita Street; then southwest along Anita Street to Herondo Street; then southwest along Herondo Street to Hermosa Avenue; then west along an imaginary line to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then northeast along Gateway Boulevard to the point of beginning.

Done in Washington, DC, this 7th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27099 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV97–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Reduced Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1997–98 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The 1997–98 marketing year covers the period July 1 through June 30. The assessment rate will continue until amended, suspended, or terminated.

DATES: Effective October 15, 1997. Comments received by December 15, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, or Jadean L. Williams, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or

policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 1997–98 and subsequent marketing years from $0.007 to $0.004 per pound.

The hazelnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on August 28, 1997, and unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. In comparison, last year's budgeted expenditures were $558,974. The assessment rate of $0.004 is $0.003 less than the rate currently in effect. At the current rate of $0.007 per pound and an estimated 1997 hazelnut production of 70,000,000 pounds, the projected reserve on June 30, 1998, would exceed the level the Board believed to be adequate to administer the program. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed lower assessment rates, but decided that an assessment rate of less than $0.004 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing year include $46,864 for personal service (salaries and benefits), $5,640 for rent, $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts is reached. It will not be able to make this determination until December 1997, the month in which the hazelnut harvest and deliveries to handlers usually are completed. Thus, any decision on whether or not to undertake any additional activities will not be made until December 1997, at the earliest.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of hazelnuts. With hazelnut shipments for the year estimated at 70,000,000 pounds, the $0.004 per pound assessment rate should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of hazelnut producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 1997–98 and subsequent marketing years. The Board unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. The assessment rate of $0.004 is $0.003 less than the rate currently in effect. At the current assessment rate of $0.007 per pound, the Board's reserve was projected to exceed the level the Board believed to be adequate to administer the program. Therefore, the Board voted to lower its assessment rate and use more of the reserve to cover its expenses. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing years include $46,864 for personal services (salaries and benefits), $5,640 for rent, and $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively. As mentioned earlier, the Board will not make any decision on using emergency funds until December 1997, at the earliest.

Hazelnut shipments for the year are estimated at 70,000,000 pounds, which should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $0.32 and $0.43 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 1997–98 marketing years as a percentage of total grower revenue will range between .93 and 1.25 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the August 28, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for hazelnuts; (2) the 1997–98 marketing year began on July 1, 1997, and the marketing order requires that the rate of assessment apply to all assessable hazelnuts handled during such marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 982

Marketing agreements, Hazelnuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 982.340 [Amended]

2. Section 982.340 is amended by removing the words "July 1, 1996," and adding in their place the words "July 1, 1997," and by removing "$0.007" and adding in its place "$0.004."

Dated: October 7, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–27101 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB73

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Book-Entry Procedures for Farm Credit Securities

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), adopts as final with minor technical changes a previously adopted interim rule that revises procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the book-entry system of the Federal Reserve Banks (Book-entry System). This action completes rulemaking necessary to conform FCA book-entry procedures to the recently revised book-entry procedures of the Department of the Treasury (Treasury), which regulates the Book-entry System for Treasury securities. The action simultaneously finalizes conforming amendments in the book-entry regulations governing securities of the Farm Credit System Financial Assistance Corporation (FAC) and the Federal Agricultural Mortgage Corporation (Farmer Mac).

EFFECTIVE DATE: January 1, 1997, except that the technical amendments adopted herein are effective 30 days after publication during which either or both Houses of Congress are in session. A notice of effective date for the technical amendments will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 1996, the FCA published interim regulations completely revising the procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the Book-entry System (61 FR 67188). The FCA's interim rulemaking followed the action of Treasury, which revised its book-entry regulations to eliminate outdated legal concepts and incorporate significant changes in commercial and property law affecting the holding of securities through financial intermediaries. At the request of Treasury, and in coordination with other regulators of Government-Sponsored Enterprises (GSEs), the FCA made the interim rule effective on January 1, 1997, the same date on which Treasury's new book-entry regulations became effective. This coordinated action was designed to avoid market uncertainty and help ensure a consistent regulatory approach for all users of the Book-entry System, including Farm Credit System (System) institutions. The interim rulemaking provided for a post-effective date comment period.

More extensive background on FCA book-entry regulations can be found in the interim rulemaking document and is not repeated in this notice of final adoption. A detailed explanation of the rationale and effect of the Treasury's new book-entry regulations, known by the acronym "TRADES" (Treasury/Reserve Automated Debt Entry System) is set forth in Treasury's proposed and final rulemaking documents. See 61 FR 8420 (March 4, 1996) and 61 FR 43626 (August 23, 1996). Members of the public should refer to Treasury's TRADES rulemaking documentation for background on the history and mechanics of the Book-entry System and guidance on the general provisions of the book-entry regulations. As is its current policy regarding interpretation of book-entry regulations, the FCA expects to continue to follow Treasury TRADES interpretations and guidance with respect to FCA book-entry regulations and will coordinate with Treasury regarding future guidance and any necessary changes.

II. Comments and Technical Changes

The FCA received one written comment on the interim regulations. The Federal Farm Credit Banks Funding Corporation (Funding Corporation), responding on behalf of the System banks, fully supported the interim regulations but suggested several technical clarifications. In addition, the FCA has continued to consult with Treasury, the Federal Reserve Board, and the Federal Reserve Bank of New York regarding final implementation of the interim regulations. Treasury suggested that references to the United States in several sections of the interim regulations be omitted to avoid any implication that the United States guarantees Farm Credit securities. Treasury made the same suggestion to other GSE regulators in connection with their revised book-entry regulations. The FCA now adopts the interim book-entry regulations as final, but in response to these comments and suggestions, makes several minor technical changes in the regulations as discussed below.

Section 615.5450(h)

The Funding Corporation suggested that the FCA add "respectively" after the words "sections 4.2(c) and 4.2(d)" to clarify that consolidated securities are issued under section 4.2(c) and Systemwide securities are issued under section 4.2(d) of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2155(c)). The final rule incorporates this suggestion.

Providing for Issuance of Registered Definitive Securities in §§ 615.5451(c) and 615.5457(c)

The Funding Corporation noted that there are registered definitive Farm Credit securities outstanding and that registered definitive securities may be issued in the future. Thus, the Funding Corporation suggested that the reference to "bearer-definitive form" in § 615.5451(c) be replaced with a more generic reference to "definitive form," which would encompass both bearer and registered definitive form. Similarly, the Funding Corporation suggested deletion of the term "bearer" in § 615.5457(c). The FCA agrees that regulatory references to definitive securities should not be limited to bearer securities and is adding the phrase "either registered or" preceding the term "bearer" in both sections. In § 615.5451(c), this broader language authorizes Farm Credit securities to be issued in either registered or bearer form, and in § 615.5457(c), it permits Farm Credit securities being withdrawn from the Book-entry System to be converted into definitive securities and issued in either registered or bearer form to the extent permitted by the applicable securities documentation. As amended, this language is consistent with Treasury's in 31 CFR 306.117(d).

Section 615.5457(a)

The Funding Corporation requested clarification regarding the process for withdrawing eligible securities from the Book-entry System. Specifically, the Funding Corporation asked who requests that the securities be withdrawn and to whom the request is submitted.

The FCA's regulations on withdrawal of eligible book-entry securities for conversion to definitive form are modeled after Treasury's regulations at 31 CFR 306.117. Consistent with the TRADES regulations, requests for withdrawal and conversion of eligible book-entry securities could only be made to a Federal Reserve Bank through a participant as defined in the regulations. Thus an investor's request for withdrawal and conversion of eligible book-entry securities would proceed through the chain of the investor's financial intermediaries to a participant. In turn, the participant would transmit the withdrawal and conversion request to the Federal Reserve Bank, which would convert the book-entry securities into definitive securities and deliver them in accordance with the participant's instructions.

Section 615.5457(d)

The terms of certain issuances of Farm Credit securities provide for the redemption of such securities, either in whole or in part, at specified times prior to maturity. Since there may thus be more than one call date that applies to a particular issue of Farm Credit securities, the Funding Corporation requested clarification of which call date applies when requests to withdraw eligible book-entry securities are made. In response to this comment, the FCA inserts the term "the applicable" preceding the term "call date" to clarify that eligible book-entry securities may be converted to definitive securities only before the call date applicable to such securities. The amount of advance notice required for conversion requests to be honored is controlled by the securities documentation and Federal Reserve Bank Operating Circulars.

New § 615.5460(c)

In response to the Funding Corporation's comment suggesting that there should be more explicit authority in the regulations for conversion of definitive securities into book-entry securities, the FCA has added new § 615.5460(c). New § 615.5460(c) states that definitive Farm Credit securities may be converted to book-entry form in accordance with the terms of the applicable securities documentation and Federal Reserve Bank Operating Circular. This new provision complements the existing references in §§ 615.5456 and 615.5462 to conversion of definitive securities to book-entry form.

Regulations Applicable to Securities Converted From Book-Entry to Definitive Form

The Funding Corporation requested clarification as to which of the regulations in subpart O of part 615 apply to securities converted from book-entry to definitive form. In general, unless limited by their terms, the definitions in § 615.5450 apply to definitive securities, whether original issue or converted from book-entry. The conversion authority in §§ 615.5456 and 615.5457 covers the conversion process and related matters. Because §§ 615.5461 and 615.5462 apply specifically to lost and stolen definitive securities and the restrictive endorsement of bearer definitive securities, their requirements would apply to definitive securities converted from book-entry form. Converted securities also are subject to applicable securities documentation and any other provisions of law that may be applicable to the issuance, maintenance, and transfer of definitive securities.

The Funding Corporation also inquired whether converted securities are subject to 31 CFR part 306 of Treasury regulations, which sets forth general regulations governing treatment of definitive U.S. securities. Farm Credit securities are not U.S. securities and therefore are not subject to 31 CFR part 306. However, where appropriate and not inconsistent with FCA regulations, the Farm Credit banks may specify in their securities documentation that maintenance, transfer, and other procedures relating to definitive Farm Credit securities will be the same as those applicable to Treasury securities.

References to the United States

Treasury suggested to the FCA and other GSE regulators that their book-entry regulations omit references to the United States wherever possible to avoid any potential confusion regarding the liability of the United States for GSE securities. For this reason, the FCA is removing certain references to the United States in §§ 615.5452(a), 615.5454(c), and 615.5455(a). As the preamble to the interim regulations noted, any reference in FCA book-entry regulations to the United States, the Treasury, or the Federal Reserve Banks is not meant to imply any liability of the United States for Farm Credit securities. *See* section 4.4(c) of the Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, and Rural areas.

For the reasons stated in the interim rule release, supplemented by the above analysis and discussion, the FCA Board adopts as final with technical changes the interim rule amending Part 615 published at 61 FR 67188, Dec. 20, 1996, governing book-entry procedures for Farm Credit, FAC, and Farmer Mac securities. The effective date of this rule remains January 1, 1997, except that the technical amendments adopted herein are effective 30 days after publication during which either or both Houses of Congress are in session. A notice of effective date for the technical amendments will be published in the **Federal Register**.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.8, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2078, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart O—Book-entry Procedures for Farm Credit Securities

2. Section 615.5450 is amended by revising paragraph (h) to read as follows:

§ 615.5450 Definitions.

* * * * *

(h) *Farm Credit securities* means consolidated notes, bonds, debentures, or other similar obligations of the Farm Credit banks and Systemwide notes, bonds, debentures, or similar obligations of the Farm Credit banks issued under sections 4.2(c) and 4.2(d), respectively, of the Act, or laws repealed thereby.

* * * * *

3. Section 615.5451 is amended by revising paragraph (c) to read as follows:

§ 615.5451 Book-entry and definitive securities.

* * * * *

(c) Consolidated and Systemwide securities also may be issued in either registered or bearer definitive form.

4. Section 615.5452 is amended by revising the section heading and the introductory text of paragraphs (a)(1) and (a)(2) to read as follows:

§ 615.5452 Law governing rights and obligations of Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against Federal Reserve Banks, Farm Credit banks, and Funding Corporation.

(a) * * *

(1) The rights and obligations of the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

* * * * *

(2) The rights of any person, including a participant, against the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

* * * * *

5. Section 615.5454 is amended by revising paragraph (c)(1) to read as follows:

§ 615.5454 Creation of participant's security entitlement; security interests.

* * * * *

(c)(1) The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks have no obligation to agree to act on behalf of any person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a security entitlement that is in favor of a Federal Reserve Bank, a Farm Credit bank, the Funding Corporation, or a person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a security entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

* * * * *

6. Section 615.5455 is amended by revising paragraph (a) to read as follows:

§ 615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 615.5454(c)(1), for the

purposes of this subpart O, the Farm Credit banks, the Funding Corporation and the Federal Reserve Banks shall treat the participant to whose securities account an interest in a book-entry security has been credited as the person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks, the Farm Credit banks, and the Funding Corporation are not liable to a person asserting or having an adverse claim to a security entitlement or to a book-entry security in a participant's securities account, including any such claim arising as a result of the transfer or disposition of a book-entry security by a Federal Reserve Bank pursuant to a transfer message that the Federal Reserve Bank reasonably believes to be genuine.

* * * * *

7. Section 615.5457 is amended by revising paragraphs (c) and (d) to read as follows:

§ 615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.

* * * * *

(c) Farm Credit securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable securities documentation.

(d) All requests for withdrawal of eligible book-entry securities must be made prior to the maturity or the applicable date of call of the Farm Credit securities.

8. Section 615.5460 is amended by adding a new paragraph (c) to read as follows:

§ 615.5460 Additional provisions.

* * * * *

(c) *Conversion of definitive securities into book-entry securities.* Definitive Farm Credit securities may be converted to book-entry form in accordance with the terms of the applicable securities documentation and Federal Reserve Operating Circular.

Dated: October 3, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–26999 Filed 10–10–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8737]

RIN 1545–AU88

Rewards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and affect persons that are eligible to receive an informant's reward.

The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective October 14, 1997.

For dates of applicability, see § 301.7623–1T(g).

FOR FURTHER INFORMATION CONTACT: Judith A. Lintz (202)622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1534. Responses to the collection of information are voluntary with respect to the provision of information relating to violations of the internal revenue laws, but are required to obtain a benefit with respect to filing a claim for reward.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7623 relating to rewards for information that relates to violations of the internal revenue laws. This section was amended by section 1209 of the Taxpayer Bill of Rights 2 (TBOR 2) (Pub. L. 104–168, 110 Stat. 1452 (1996)).

Explanation of Provisions

Section 7623 provides the Secretary with the authority, by regulation, to pay rewards for information that relates to violations of the internal revenue laws. Section 1209 of TBOR 2 amended section 7623 to clarify that rewards may be paid for information relating to civil, as well as criminal, violations. TBOR 2 also provided that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information. These temporary regulations reflect those amendments.

In addition, these temporary regulations incorporate and update § 301.7623–1. For example, the regulations increase the limit on awards from 10% to 15% and provide new titles and addresses to which persons should submit information relating to violations of the internal revenue laws.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this Treasury Decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Drafting Information: The principal author of these regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 301.7623–1 is amended by adding paragraph (g) to read as follows:

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

* * * * *

(g) *Effective date.* This section is applicable with respect to rewards paid on or before January 29, 1997. See § 301.7623–1T for rewards paid after January 29, 1997.

Par. 3. Section 301.7623–1T is added to read as follows:

§ 301.7623–1T Rewards for information relating to violations of internal revenue laws (temporary).

(a) *In general.* In cases where rewards are not otherwise provided for by law, a district or service center director may approve a reward, in a suitable amount, for information that leads to the detection of underpayments of tax, or the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same. The rewards provided for by section 7623 and this section will be paid from the proceeds of amounts (other than interest) collected by reason of the information provided.

(b) *Eligibility to file claim for reward—*(1) *In general.* Any person, other than certain present or former federal employees described in paragraph (b)(2) of this section, that submits, in the manner described in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623 and this section.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time the individual came into possession of information relating to violations of the internal revenue laws, or at the time the individual divulged such information, is eligible for a reward under section 7623 and this section. Any other current or former federal employee is eligible to file a claim for reward if the information provided came to the individual's knowledge other than in the course of the individual's official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to the informant's death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be attached to the claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, will be taken into account by a district or service center director in determining whether a reward will be paid, and, if so, the amount of the reward. The amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case, generally not to exceed fifteen percent of the amounts (other than interest) collected by reason of the information. Payment of a reward will be made as promptly as the circumstances of the case permit, but not until the taxes, penalties, or fines involved have been collected.

However, if the informant waives any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, the claim may be immediately processed. Partial reward payments, without waiver of the uncollected portion of the taxes, penalties, or fines involved, may be made when a criminal fine has been collected prior to completion of the civil aspects of a case, and also when there are multiple tax years involved and the deficiency for one or more of the years has been paid in full. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district or service center director with respect to the payment of any reward or the amount of the reward.

(d) *Submission of information.* A person that desires to claim a reward under section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the office of a district director, preferably to a representative of the Criminal Investigation Division. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Criminal Investigation), 1111 Constitution Avenue, N.W., Washington, DC 20224, to any district director, Attention: Chief, Criminal Investigation Division, or to any service center director. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Identification of informant.* No unauthorized person will be advised of the identity of an informant.

(f) *Filing claim for reward.* An informant that intends to claim a reward under section 7623 and this section should notify the person to whom the information is submitted of such intention, and must file a formal claim on Form 211, Application for Reward for Original Information, signed by the informant in the informant's true name, as soon as practicable after the submission of the information. If other than the informant's true name was used in furnishing the information, satisfactory proof of identity as that of the informant must be included with the claim for reward.

(g) *Effective date.* This section is applicable with respect to rewards paid after January 29, 1997. See § 301.7623–1 for rewards paid on or before January 29, 1997.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
301.7623–1T	1545–1534
. . . . .	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–26858 Filed 10–10–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–241; Amendment Number 74]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments and removal of condition of program approval.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to section 1501:13–6–03 of the Ohio Administrative Code (OAC) dealing with the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated October 3, 1996, (Administrative Record No. OH–2170–00) Ohio submitted a proposed amendment to its program regarding its SOAP pursuant to SMCRA. Ohio submitted the proposed amendment at its own initiative. OSM announced receipt of the proposed amendment in the October 18, 1996, **Federal Register** (61 FR 54373) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 18, 1996. At the time of announcement, the proposed amendment was identified as [OH–240; Amendment Number 74]. Please note that the amendment is now identified as [OH–241; Amendment Number 74]. However, certain cross-references contained in the proposed amendments were inadvertently omitted or incorrect in that notice. These were conveyed to Ohio in a document dated April 14, 1997, Administrative Record No. OH–2170–07. Also, Ohio submitted corrections to its proposed amendments in documents dated April 1, 1997 and May 27, 1997 (Administrative Record Nos. OH–2170–06, and OH–2170–08, respectively). On June 24, 1997, Ohio submitted its revisions in response to the April 14, 1997 document (Administrative Record No. OH–2170–09). Therefore, OSM reopened the public comment period on the proposed amendments until August 4, 1997 as published in the July 18, 1997 **Federal Register** (62 FR 38509).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. The amendment proposes numerous changes regarding both the title of the division and references to gender. Throughout the amendment, due to a name change of the division of reclamation, references to the "division of reclamation" are changed to the "division of mines and reclamation" and references to "he" or "his" are changed to "he or she" or "his or hers", respectively. These changes are non-substantive and are not specifically enumerated below. The changes proposed by Ohio in the revised amendment are discussed briefly below:

OAC 1501:13–6–03 Small Operator Assistance Program

(a) Paragraph (A)(1) is amended by adding items for which qualified operators may request assistance. These include engineering analysis and designs necessary for the determination of probable hydrologic consequences added to subparagraph (A)(1)(a), and amending subparagraph (A)(1)(b) to include geologic drilling and statement of the results of physical and chemical analyses of test borings or core samples.

(b) New subparagraphs (c)(d) (e) and (f) are added under paragraph (A)(1) to identify the development of cross-section maps and plans; the collection of archaeological information and other historical information and the preparation of plans necessitated thereby; pre-blast surveys; and the collection of site specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief, respectively, as items for which a qualified operator may request assistance.

There is no direct federal counterpart. However the proposed changes at (A)(1) are consistent with the corresponding Federal Regulations at 30 CFR 795.9(b)(1)–(b)(6), which describes the SOAP services and data requirements.

(c) Paragraph (B) is amended by deleting subparagraphs (1) and (2) dealing with probable hydrologic consequences and results of test borings and core samplings which are added to Paragraph (A) of this amendment, and adding a statement that the services eligible are now under paragraph (A).

The proposed change in paragraph (B) is non-substantive and the deletion of paragraphs (1) and (2) are not inconsistent with SMCRA or its corresponding Federal regulations, and do not render the State program any less effective than the federal regulations.

(d) Paragraph (C)(2) is amended by substituting the Department of Natural Resources as an additional reference for production figure verification instead of the division of mines and the division of reclamation. The change in names is made due to the transfer of Division of Mines staff and responsibilities to the Department of Natural Resources. The Department of Natural Resources was assigned to the Division of Reclamation which was retitled the Division of Mines and Reclamation. Subparagraphs (C)(2)(a) and (C)(2)(b) are amended by changing the applicant ownership limit from "more than a five percent limit" to "ten percent or more" limit.

The proposed changes at (C)(2), (C)(2)(a), & (C)(2)(b) are not less effective than the federal regulations at 30 CFR 795.6(a)(2) (i) & (ii), which require applicant ownership limits of more than ten percent.

(e) Subparagraph (D)(9) is amended by deleting the specific map scale references required for a topographic map and adding a reference to OAC 1501:13–4–09. New subparagraph (D)(9)(e) is added to require that such topographic maps also include any additional information required by the chief.

The proposed changes in (D)(9) and (D)(9)(e) are no less effective than 30 CFR 795.7(e) because the map scale references and details required that were included in the deleted section are now included in the cross-referenced citation.

(f) Paragraph (F)(2) is amended by deleting the heading "specific provisions" and adding the following: "The data, analyses, and statements provided to the chief shall be sufficient to satisfy the requirements for:". Subparagraphs (F)(2) (a) and (b) are amended to include engineering analyses and designs necessary for the probable hydrologic consequences determination, and the drilling and statement by a qualified laboratory of the result of test borings or core samplings, respectively. Subparagraph (F)(2)(b) is further amended by adding provisions for obtaining a waiver from the requirement. Previously existing subparagraph (F)(2)(c) pertaining to this waiver is deleted.

Existing subparagraph (F)(2)(d) is re-numbered as (F)(3), and existing subparagraphs (F)(2) (e) and (f) are deleted.

New subparagraphs (F)(2) (c), (d), (e) and (f) are added to identify the specific requirements that must be met for the development of cross-section maps and plans; the collection of archeological information and other historical information; pre-blast surveys; and the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values, respectively.

The proposed rules in (F) are found to be substantively identical to the corresponding Federal regulations at 30 CFR 795.9 (b)(1)–(b)(6). The deletion of subparagraphs (F)(2) (e) and (f) are found to be acceptable because the requirements for the submission of a hydrology map and a geologic cross-section required by these subparagraphs are now included in the newly added sections and/or cross-references now included in (F)(2)(c). The revision to paragraph (F)(2)(a) of OAC 1501:13–6–03 also satisfies a required program amendment found at 30 CFR 935.16(a)(3). In the January 13, 1997, **Federal Register** (62 FR 1668), the Director required that Ohio amend ORC 1513.07(B)(4)(a)(i) or otherwise clarify that under the Small Operator's Assistance Program (SOAP), probably hydrologic consequences determinations include the engineering analyses and designs necessary for those determinations. The revision to paragraph (F)(2)(a) specifically adds this required language. Therefore, the Director is removing the required amendment at 30 CFR 935.16(a)(3).

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One comment was received from the Ohio Historic Preservation Office in a letter dated February 24, 1997. The commenter stated that several times the new language refers to the collection of archaeological information, but does not refer to the National Historic Preservation Act review process which includes more than just archaeological sites. The Ohio Historical Preservation Office suggests that the rule language parallel the Section 106 review process at 36 CFR part 800. One of the changes made by Ohio to the proposed rules in one of its subsequent submissions is to add the words "and historical" after the word archaeological in sections OAC 1501:13–6–03(A)(1)(D) and OAC 1501:13–6–03(F)(2)(d). Additionally, the Director notes that OAC 1501:13–4–01(B) requires coordination of review and issuance of permits with other federal or state laws which includes the National Historic Preservation Act of 1966 and that OAC 1501:13–5–01(A)(3) requires that a written notification of a permit application, renewal or revision be sent to all federal, state and local governmental agencies that have an interest in the area of the proposed operations. There are no SOAP operations that are not included in the permit application process. The program amendment does not propose to change any coordination that currently exists between OHPO and DMR concerning review of cultural and historical resources. No one requested an opportunity to speak at a public hearing, therefore no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Army Corps of Engineers responded that the changes were satisfactory. The U.S. Department of Labor's Mine Safety and Health Administration acknowledged receipt of the proposed amendment and responded that no further action was anticipated. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Comments were requested from EPA, however they did not reply.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Ohio on October 3, 1996 and modified in documents dated April 1, 1997, May 27, 1997, and June 24, 1997. (Administrative Record Nos. OH–2170–06, OH–2170–08, and OH–2170–09, respectively). The Director is also removing the condition of program approval at 30 CFR 935.16(a)(3) because this amendment now includes those requirements at paragraph (F)(2)(a) of OAC 1501:13–6–03. The requirement amendment was initially included in OH–204 published as a final rule in the January 13, 1997, **Federal Register** (62 FR 1668). The condition required an amendment that probable hydrologic consequences determinations include engineering analyses and designs necessary for those determinations.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment

process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 3, 1996	October 14, 1997	OAC 1501:13–6–03, (A)(1) (a) through (f), (B), (1), (2), (F)(2), (a) through (f), (C)(2), (a), (b), (D)(9), (10), (11).

§ 935.16 Required regulatory program amendments.

Section 935.16 is amended by deleting paragraph (a)(3).

[FR Doc. 97–27065 Filed 10–10–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5026a; FRL–5904–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions establish and require volatile organic compound (VOC) reasonably available control technology (RACT) on six major sources of VOCs located in Virginia. The intended effect of this action is to approve, as SIP revisions, source-specific plan approvals and Consent Agreements that establish RACT in accordance with the Clean Air Act (the Act).

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Air, Radiation, and Toxics Division, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092, at the EPA Region III office or via e-mail at Gaffney.Kristeen@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On August 12, 21, 26, 30, 1996, September 3, 1996, and March 27, 1997, the Commonwealth of Virginia submitted revisions to its State Implementation Plan (SIP). These revisions establish source specific VOC RACT requirements on major sources of VOCs. Today's rulemaking approves those source specific VOC RACT requirements for six sources because they meet the requirements of section 182 of the Act. All of the sources are located in the Richmond moderate ozone nonattainment area. Plan approvals and Consent Agreements for other sources that were also submitted on the dates listed above that are not a part of today's action will be addressed by separate rulemaking.

I. Background

Under the pre-amended Clean Air Act (i.e., the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for VOC sources. EPA issued three sets of control technique guideline documents (CTGs), establishing a "presumptive norm" for RACT for various categories of VOC sources. The Richmond, Virginia area was designated nonattainment under the pre-amended Act and was required to adopt RACT for all CTG categories as well as non-CTG VOC sources with a potential to emit 100 tons per year (TPY) or more. Under the 1990 amendments to the Act, amended sections 172(c)(1) and 182(a)(2), required the Richmond, Virginia nonattainment area to correct its RACT requirements in effect prior to enactment of the 1990 amendments. Virginia submitted those RACT corrections as SIP revisions on May 10, 1991 and June 20, 1991. Among the regulations in that SIP revision, was a provision (Rule 120–04–0407) establishing the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Northern Virginia and Richmond nonattainment areas not covered by an existing state adopted VOC control regulation. Virginia's RACT correction SIP was approved by EPA on March 31, 1994 (See 59 FR 15117). To implement Rule 120–04–0407, the Commonwealth must submit to EPA a RACT determination and enforceable document for all major VOC sources not otherwise controlled under existing State VOC RACT regulations.

Sections 182(b) (2)(A),(B) and (C) of the Act require moderate and above areas to adopt standards for all sources covered by any CTG document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 CAA amendments; and all major sources of VOC not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. This provision of the Act makes nonattainment areas that were previously exempt from RACT requirements "catch up" to requirements during the earlier period, and therefore, is known as the RACT catch-up requirement.

Because Rule 120–04–0407 imposed RACT on all major VOC sources in the Northern Virginia and Richmond nonattainment areas on an individual basis, this rule partially satisfied the RACT catch-up requirement. On November 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emission control areas to coincide with the revised boundaries of the Richmond and Northern Virginia ozone nonattainment areas resulting from the 1990 amendments. This SIP was approved by EPA on March 12, 1997 (59 FR 52701). To satisfy the RACT correction and catch-up requirements under sections 182(a)(2) and 182(b)(2) (A), (B) and (C), and implement Rule 120–04–0407, Virginia has submitted source-specific VOC RACT determinations for the following six sources in the Richmond, Virginia ozone nonattainment area:

1. AlliedSignal Inc.—Hopewell Plant
2. AlliedSignal Inc.—Chesterfield Plant
3. Stone Container Corporation
4. E.I. DuPont de Nemours & Company—Spruance Plant
5. ICI Americas, Inc.
6. Bear Island Paper Company

II. Summary of SIP Revisions

Detailed decriptions of the RACT requirements for the source-specific plan approvals and Consent Agreements can be found in the docket and accompanying technical support document (TSD). Below is a summary of the facility type and the applicable RACT requirements for each company. Each SIP revision consists of a Consent Agreement signed by the company and the Virginia Department of Environmental Quality. The Consent Agreements are enforceable documents which include a description of the RACT technologies, control efficiencies, operating parameters, monitoring and reporting requirements. For further details on the sources' processes and how RACT was determined, refer to the TSD associated with this rulemaking. EPA is approving revisions to the Virginia SIP pertaining to the determination of RACT for six major sources of VOCs. This action is being taken under section 110 of the Act.

1. AlliedSignal Inc., Hopewell: AlliedSignal Inc. is a synthetic organic chemical manufacturing facility in Hopewell, Virginia that produces caprolactam. Other chemicals produced at the site include raw materials for caprolactam production and other co-products with commercial value that include ammonium sulfate, adipic acid, cyclohexanol, cyclohexanone and oxime performance chemicals. This facility includes emission sources subject to EPA's CTG entitled "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)" (EPA–450/4–91–031, August 1993), as well as non-CTG sources. The specific process areas with VOC emissions are:

Area 6—Phenol Hydrogenation
Area 7—Caprolactam Purification
Area 8/16—Crude Caprolactam Production
Area 9—Hydroxylamine Production
Area 11—Ammonium Sulfate Production
Area 13—Adipic Acid Production
Area 14—Performance Chemicals Plant/Area
Kellogg/Girdler—Ammonia Plant

RACT as prescribed in the Consent Agreement for AlliedSignal—Hopewell, Registration Number 50232, dated March 26, 1997, is as follows:

(1) VOC emissions from the Hydrogenation Reaction Catalyst Centrifuges, designated as CT–48, 53,

55, all of which are located in the Cyclohexane Production Area (Area 6) shall be controlled by a nonassisted combustion flare at 98 percent reduction efficiency. Annual emissions will be reduced from 131.1 tons/year to 2.6 tons/year.

(2) VOC emissions from the overheads product recovery condensers in Areas 8 and 16, the Toluene/Sulfate Stripping Column (CL–15) and the Toluene/Caprolatam Stripping Column (CL–62) shall be controlled by a thermal oxidizer having a VOC reduction efficiency of at least 98 percent by weight or shall reduce the VOC emissions to a concentration of 20 ppmv, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent. Annual emissions will be reduced from 134.4 tons/year to 2.7 tons/year.

(3) VOC emissions from the Methyl Ethyl Ketoxime distillation column in Area 14 shall be controlled by a scrubber operating with a Total Resource Effectiveness Value of greater than 1.0, as described in EPA's SOCMI CTG. Annual emissions will be reduced from 107 tons/year to 25 tons/year.

(4) VOC emissions resulting from desorbtion of the Natural Gas Desulfurization Carbon Drums in the Girdler Area, shall be reduced by use of an alternative, non-regenerative adsorbent or an alternative technology which must first be submitted to EPA for review and approval. Annual emissions will be reduced from 206 tons/year to 6 tons/year.

(5) The vacuum jet ejectors in Area 6 (CL–26 and CL–65) which control the pressure on the Cyclohexanone Distillation Columns will be controlled with product recovery condensers. Combined annual emissions will be reduced from 81.5 tons/year to 24.4 tons/year.

(6) Fugitive VOC emissions resulting from equipment leaks in Areas 6, 8, 14 and 16 shall be controlled by instituting a Leak Detection and Repair (LDAR) program which is equivalent to the requirements set forth in 40 CFR part 60, subpart VV, "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry". Implementation of this control program will reduce annual emissions from 665 tons/year to 392 tons/year.

(7) RACT for volatile organic liquid (VOL) storage tanks in Areas 6 and 14 shall be continued use of existing control technologies. VOL storage tanks are subject to Virginia SIP approved rule 120–04–25, "Volatile Organic Compound Storage and Transfer Operations'.

2. AlliedSignal—Chesterfield: AlliedSignal, Inc. operates a nylon fibers and plastics manufacturing facility in Chesterfield County, Virginia. Total pre-RACT emissions from the facility were calculated to be 580.23 tons/year from eleven (I–XI) different emission source processes and including fugitive emissions. After RACT emissions are estimated to be 295.02 tons/year, or a 49% reduction in VOC emissions. EPA has not published a CTG document for this source category.

Pursuant to the Consent Agreement for AlliedSignal—Chesterfield, Registration Number 50233, dated May 20, 1996, RACT is the installation of absorption (scrubbing) systems for emissions from Groups I and II (spinning lines 5–12) by November 15, 1996, that have a control efficiency of 80% on a mass basis. The one-hour pressure losses of the gas stream through each absorption system may not be less than 6 inches and the one-hour average liquid flow rates to each absorption system shall not be less than 40 gallons/minute. Pressure losses and liquid flow rates must be monitored continuously and recorded.

RACT for the Group IX emissions (distillate systems exhaust) is installation of a condenser by July 1, 1997, that has a control efficiency of 99% on a mass basis. The one-hour average temperature of each condenser exhaust vent is not to exceed 100°F. Exhaust vent stream temperatures must be continuously measured and recorded.

The facility is required to conduct performance tests within 180 days of installation of control technology to demonstrate compliance with the control efficiency requirements. Records of all data necessary to demonstrate compliance and maintain operating parameters must be kept on site.

RACT was determined to be no control for the following sources that have exhaust streams with low concentrations of VOCs or negligible VOC emissions contribution: Group V, Group VIII, Buildings 5 and 25 Vent Fans, VOL Storage Tanks and the Industrial Wastewater Stream. Analysis has determined that it is not reasonably cost effective to control VOC emissions from source processes for Group III, Group IV, Group VI, Group VII, Group X and Group XI and fugitive emissions from the Process Operations/Open Buildings.

The Consent Agreement allows the facility to use alternate controls or control strategies, upon approval by the Commonwealth and EPA, in place of controlling emissions from Group I, II or IX if the new VOC control efficiencies exceed those in the Consent Agreement and the overall VOC emission reductions are equivalent to those resulting from implementation of RACT as defined in the Consent Agreement.

3. Stone Container Corporation: Stone Container is a kraft pulp and paper mill located in the city of Hopewell. Process operations include wood storage and handling, kraft pulp mill, paper mill, chemical recovery, co-product production and power and steam production. Pre-RACT emissions based upon the maximum annual throughput of the mill, after considering existing enforceable controls, were calculated by Virginia to be 1393 tons/year, including fugitives. Post-RACT maximum emissions calculate to 1065 tons/year, a 24% additional reduction in total VOC emissions. EPA has not published a CTG document for this source category.

Total VOC emission sources in the mill are grouped into process areas: the Kraft Pulp Mill area, the Paper Mill area, the Co-product Recovery area, the Chemical Recovery area, the Power Generation Area, the Non-condensible Gas (NCG) System, and non-quantifiable point and fugitive emissions of the Wood Handling and Storage area.

Pursuant to the Consent Agreement for Stone Container Corporation, Registration Number 50370, dated May 30, 1996, RACT is determined as follows:

1. Wood storage and handling operations, the paper mill and power and steam generation areas—no additional controls.

2. Chemical recovery area—existing level of control, use of city/river water as the sole source of make-up water.

3. Pulp mill area—no additional controls with the exception of the noncondensible gases sent to the NCG collection system and the requirement to replace the existing weak black liquor filter with a new, no-emissions filter by December 1997.

4. RACT for VOC sources within the NCG collection system is existing control technology—thermal oxidation accomplished by venting the gases to the lime kiln while the kiln is operating.

5. RACT for the co-product recovery area is installation of a packed tower scrubber for the tall oil batch reactor vent, which must be installed by August 1996. The VOC removal efficiency of 15 percent will be verified and related operating parameters will be determined through performance tests after start-up.

The Consent Agreement also provides that all processes not subject to additional controls are to be operated in a manner consistent with minimizing

VOC emissions and good air pollution control practices.

4. E.I. DuPont de Nemours & Company—Spruance Plant: DuPont operates a synthetic fiber production and coating facility located in Chesterfield, Virginia. There are eight air-emission producing units at the facility: the Kevlar plant, the Nomex plant, the Nylon plant, Dowtherm operations, the Teflon plant, the Mylar plant, the Tyvek plant and the wastewater treatment plant. There is no CTG document for this source category. According to Virginia's RACT submittal, plant-wide pre-RACT emissions of VOCs, including fugitives, based on 1991 emissions data and including existing enforceable control technologies, were 846.4 tpy. This source had already installed controls on several emissions units prior to 1991. Implementation of additional RACT controls do not result in any emission reductions at the facility. However, VOC emissions were reduced by 73.3 tpy from 1991 RACT baseline levels because the Nylon Plant was destroyed by fire in 1992, and its operations were replaced with the Zylar plant. The Zylar plant was subject to lowest achievable emission rate (LAER) review under the New Source Review provisions of the Act. Post-RACT emissions are 773.1 tpy. VOC emissions from the DuPont facility were previously controlled using technologies described in the following table. In addition to the existing controls on the table, RACT requirements for the DuPont facility pursuant to the Consent Agreement, Registration Number 50397, dated May 30, 1996, require implementation of a LDAR program:

Plant operations	Control efficiency	RACT technology	Emissions (tons/year)
Kevlar	98.3% 6 month rolling average.	Existing Control (Solvent Recovery System and chloroform quench stack scrubber) and Implementation of LDAR program.	Uncontrolled emissions*: 6,627.99. Pre-RACT 33.2. RACT 33.2.
Nomex	98.3% 6 month rolling average.	Existing Control (Solvent Recovery, ventilation scrubber, chloroform scrubber stack and scrubber for the wash/draw lines) and Implementation of LDAR program.	Uncontrolled emissions*: 19,410.7: Pre-RACT 594.7. RACT 594.7
Dowtherm	N/A	Implementation of LDAR program	Pre-RACT 10:5.
Nylon	N/A	Plant shutdown—replaced by Zytel operations	Pre-RACT 82.8 RACT 0.
Zytel	N/A	RACT is no control	Pre-RACT 20 RACT 20.
Teflon	N/A	RACT is no control	Pre-RACT 6.5 RACT 6.5.
Mylar	98.3% 6 month rolling average.	Existing control (Carbon bed adsorbers, solvent recovery and LDAR program).	Uncontrolled emissions*: 7,791. Pre-RACT 117.3 RACT 117.3.
Tyvek	N/A	New plant subject to NSR/LAER controls; plus implementation of LDAR program.	Pre-RACT N/A. RACT 110.
Wastewater Treatment Plant.	N/A	RACT is no control	Pre-RACT 1.4. RACT 1.4.

*Uncontrolled emissions are the total estimated amount of VOC emissions that would be emitted if the pre-RACT existing control equipment had not been installed.

*Uncontrolled emissions are the total estimated amount of VOC emissions that would be emitted if the pre-RACT existing control equipment had not been installed.

Compliance for the fugitive LDAR programs being implemented at the Kelvar, Zytel, Tyvek and Nomex plants requires procedures to correspond with the standards set in 40 CFR Part 60, Subpart VV, including record keeping requirements, except for the reporting requirements of 60.487. The second exception is that equipment shall be considered to be leaking when a reading is above 500 ppm using an approved measurement technique. The amount of emission reductions achieved through implementation of LDAR has not been determined for any of the plants. The RACT determination assumes the same amount of VOCs will continue to be emitted at each plant even though the LDAR program is being instituted.

The Nylon plant was closed in November 1992 due to a fire and is not anticipated to reopen. Emissions from the Nylon Plant were part of the RACT analysis document because the RACT analysis was performed prior to destruction of the plant. However, since the fire, RACT for the Nylon plant is permanent shutdown. The Nylon Plant was replaced by the Zytel Plant, which underwent NSR, including LAER, prior to construction.

No RACT determination was completed for the Tyvek Plant because 1991 was used as the baseline for determining RACT controls and the former Tyvek operations at that time did not emit any regulated VOCs. Freon11, an exempt VOC, but a chlorofluorocarbon (CFC) which contributes to stratospheric ozone depletion, was used in the plant operations. To comply with the national phase-out of ozone depleting CFCs, DuPont replaced Freon11 with a regulated VOC, which required major plant modifications. The plant was issued a NSR modification permit in October 9, 1992, which imposed LAER requirements on the plant. The NSR permit for the new plant imposes LAER controls which are described in the RACT Determination document and include, catalytic incineration and condenser absorption. In addition to LAER controls, Virginia has imposed as RACT the Tyvek Plant a LDAR program to reduce fugitive emissions.

5. ICI Americas, Inc. Films Divisions—Hopewell Site: ICI films, a division of ICI Americas, Incorporated, currently operates a polymer film and manufacturing plant in Hopewell, Virginia. Polyester film is produced as a final product to be used in a variety of applications including packaging, window sun screens, and audio/video cassette tapes. Production operations results in the emissions of volatile organic compounds (VOCs).

According to the RACT determination, plant-wide pre-RACT maximum calculated emissions, including fugitives, of VOCs were 290.29 tons/year. Maximum facility-wide post-RACT emissions are 223.3 tons/year, a 25% reduction.

EPA has not published a CTG document for this source category. RACT analysis was completed for the following VOC emission source processes: VOL storage tanks, chip driers, heat setting ovens, methanol loading of rail cars, batch reactors, process cooling tower, fuel burning equipment, industrial wastewater

streams, biotreatment plant, and fugitive emissions.

The Consent Agreement for ICI, Registration Number 50418, dated May 30, 1996, limits the production rate for the ICI films facility as follows:

Polymer Plant: 13,600 DMT batches of polymer per year; 1,000 TA batches of polymer per year.

Film Plant: 150,000 tons of polymer chip throughput per year

RACT for the volatile organic liquid storage tanks was determined to be in compliance with SIP approved Rule 4–25 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution for the VOL storage tanks.

RACT for VOC emissions from the cooling tower is replacement of the ethylene glycol (EG) Still Vacuum System direct contact spray condensers with non-contact shell and tube condensers and diverting 100 percent of the condensate to the Biotreatment aeration basin for remediation instead of sending it to the cooling tower hotwell. A 99 percent reduction of VOCs attributed to the EG stills (50 percent of total cooling tower emissions) is anticipated through the replacement of the direct contact condensers serving the EG still vacuum system with non-contact condensers.

The fugitive emissions from the polymer and film manufacturing processes leaks and heat transfer fluid systems will follow the procedures from the LDAR program as specified in 40 CFR Part 60, Subpart VV, including record-keeping and test procedures. This will account for an approximately 86 percent overall reduction in fugitive emissions. The LDAR program will be implemented within 180 days of the effective date of the Consent Agreement.

6. Bear Island Paper Company, L.P.: Bear Island Paper Company, L.P. (BIPCO) operates a pulp and paper mill in Ashland, Virginia. The pulp is used for the manufacture of newsprint. According to the Consent Agreement, the maximum potential to emit before RACT was 1134.8 tons per year. With the application of RACT, the maximum annual emissions are 623.7 tons per year of VOCs, a 45% reduction.

VOC emissions result from the following source processes: Nebraska Package Boiler, the Babcock & Wilcox (B&W) Boiler, the Sludge Dryer Burner, Wastewater Treatment Plant (WWTP), and four Thermomechanical Pulp (TMP) process lines. The bulk of the VOC emissions are terpenes that are emitted from the TMP process lines. The Nebraska Package Boiler was closed in May of 1994 and replaced by a new Package Boiler which began operations in January 1996. The Package Boiler has a permitted maximum emissions cap of 3.7 tpy of VOCs.

The Consent Agreement for Bear Island, Registration Number 50840, dated July 12, 1996, determines RACT for VOCs from the B&W and package fossil fuel boilers and the sludge burner dryer to be good combustion practices and periodic maintenance. Proper combustion practices include periodic maintenance of the burner system and maintaining combustion temperature and air/fuel ratio according to the manufacturer's specifications.

RACT for the four TMP lines has been determined to be the installation of 2 heat exchangers/condensers and 1 scrubber/heat exchanger, with a combined control efficiency of 40.5 percent. Specifically, emissions from the steam tubes, primary refiners, and secondary refiners, from all four TMP lines will be controlled by a double pass, plate and frame water heat exchanger/condenser. The two stage heat exchanger/condenser will use water as the heat transfer medium, except for the latency transfer chest and the rejects latency chest, which will use water as a heat transfer medium for the first stage of the heat exchanger/condenser and glycol as the heat transfer medium for the second stage of the condenser. The condensate will be discharged to the wastewater treatment plant.

For the wastewater treatment plant (WWTP), test results confirm negligible amounts of EPA Method 624 VOCs in the effluent wastewater stream, and system modeling showed that wood organic species not analyzed by Method 624 are emitted at a rate of 5.6 tons/year. Because the WWTP does not emit a significant quantity of VOCs, the Consent Agreement establishes RACT for the WWTP as maintaining the standard operating procedures.

III. Final Action

The provisions in these plan approvals and Consent Agreements, submitted by the Commonwealth of Virginia as revisions to the SIP, are being approved by EPA. The Consent Agreements were effective on the date of signature by both signatory parties. The Consent Agreements do not contain expiration dates.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC RACT determinations for a number of individual sources in Virginia as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(121) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(121) Revisions to the State Implementation Plan submitted on August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997 by the Virginia Department of Environmental Quality regarding non-CTG VOC RACT requirements for six sources:

(i) Incorporation by reference.

(A) Letters submitted by the Virginia Department of Environmental Quality transmitting source-specific VOC RACT determinations in the form of Consent Agreements on the following dates: August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997.

(B) Consent Agreements:

(*1*) AlliedSignal Inc.—Hopewell Plant, City of Hopewell, VA, Consent Agreement Registration Number 50232, effective March 26, 1997;

(*2*) AlliedSignal Inc.—Chesterfield Plant, Chesterfield County, VA, Consent Agreement Registration Number 50233, effective May 20, 1996;

(*3*) Bear Island Paper Company, L.P., Hanover County, VA, Consent Agreement Registration Number 50840, effective July 12, 1996;

(*4*) Stone Container Corporation Hopewell Mill, City of Hopewell, Virginia, Consent Agreement Registration Number 50370, effective May 30, 1996;

(*5*) E.I. DuPont de Nemours and Company, Spruance Plant, Chesterfield County, Virginia, Consent Agreement Registration Number 50397, effective May 30, 1996;

(*6*) ICI Americas, Inc. Film Division—Hopewell Site, Chesterfield County, Virginia, Consent Agreement Registration Number 50418, effective May 30, 1996.

(ii) Additional material.

(A) Technical Support Documents submitted as part of the RACT determinations in paragraph (c)(121)(i) of this section by the Commonwealth of Virginia on August 12, 21, 23, 26, 30, 1996, September 3, 1996 and March 27, 1997.

[FR Doc. 97–27122 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN40–03–6988; FRL–5906–3]

Approval and Promulgation of State Implementation Plan; Minnesota; Evidentiary Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the State of Minnesota. The State's revision clarifies the types of testing and monitoring data, including stack and process monitoring data, that can be used directly for compliance certifications and enforcement.

EFFECTIVE DATE: This final rule is effective November 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available forpublic inspection during normal business hours at the following location:U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Regulation Development Section 2, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, section 114 of the Clean Air Act (Act) was amended to require the Administrator of EPA to promulgate rules implementing an enhanced monitoring and compliance program for major stationary sources of air pollution. EPA determined that certain SIPs may preclude EPA and the States from implementing such a program because these SIPs may be interpreted to limit the types of testing and monitoring data

that may be used for determining compliance and establishing violations. Therefore, EPA issued a SIP call to those States whose SIPs may have limited the types of testing and monitoring data that may be used for determining compliance and establishing violations.

On March 24, 1994, EPA issued a SIP call to the State of Minnesota to revise its SIP. As part of the SIP call, EPA provided draft SIP language to the State. The SIP call clarified that any monitoring approved for the source (and included in a federally enforceable operating permit) may form the basis of the compliance certification, and that any credible evidence may be used for purposes of enforcement in Federal court.

On April 9, 1997, EPA published a direct final rulemaking approving the Minnesota Pollution Control Agency's (MPCA's) SIP revision that was made in response to EPA's SIP call. During the 30 day public comment period, adverse comments were received from the Minnesota Chamber of Commerce, the American Petroleum Institute and the National Environmental Development Association.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment.

Minnesota Chamber of Commerce Comments

Following is a summary of comments received from the Minnesota Chamber of Commerce in a letter dated May 9, 1997 signed by Sherry Munyon. After each comment is EPA's response.

Comment 1: EPA's final "credible evidence" rule clearly removes any reference to "presumptively credible" forms of evidence and properly leaves questions of legal admissibility and credibility to judicial and administrative tribunals (62 FR 8316 February 24, 1997). Therefore, it appears that EPA is set to approve a SIP revision containing a rule based on an interpretation to which it no longer subscribes.

Response 1: In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial "presumptions." Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

Comment 2: If MPCA's rule is incorporated into the SIP, sources would then face two different standards regarding the admissibility and credibility of evidence.

Response 2: The EPA believes, contrary to the commentor, that approving this SIP revision actually enhances consistency rather than creating inconsistency. Since the rule submitted for Federal approvability is already adopted at the State level, approving it into the SIP would mean that both State and Federal authorities would be enforcing the same provisions.

American Petroleum Institute Comments

Following is a summary of comments received from the American Petroleum Institute in a letter dated May 8, 1997 signed by John E. Reese. After each comment is EPA's response.

Comment 1: Because sections 7007.0800 Subpart 6.C.(5) and 7017.0100 Subparts 1 and 2 of the Minnesota regulations were based on EPA's premature March 24, 1994 SIP call, the Minnesota regulations are not consistent with the current status of EPA's Enhanced Monitoring rulemaking. For example, section 7007.0800 Subpart 6.C.(5) makes reference to "an enhanced monitoring protocol" even though in 1995 EPA abandoned the Enhanced Monitoring approach in favor of the Compliance Assurance Monitoring (CAM) approach. Thus, the reference to "Enhanced Monitoring" in the Minnesota regulations is likely to cause confusion, and should be revised.

Response 1: By stating that the Minnesota rule, made in response to EPA's March 24, 1994 SIP call, is inconsistent with the current status of EPA's Enhanced Monitoring Rule, the commentor makes the argument that EPA's SIP call is inconsistent with the current status of EPA's Enhanced Monitoring Rule. This is not the case. In the EPA's final Credible Evidence Revisions rule, EPA has stated that:

> EPA's decision to forego the enhanced monitoring approach in favor of the CAM proposal has no effect on the basic goals of the SIP call, which are to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications (62 FR 8314, p. 8327).

While the commentor is correct in pointing out that MPCA's SIP revision does include language in section 7007.0800 Subpart 6.C.5 that makes reference to "an enhanced monitoring protocol," EPA does not believe that any confusion will arise from the language found in Minnesota's rule. The section that contains the reference to the enhanced monitoring protocol does not limit the additional methods that can be used to demonstrate compliance with, or violation of, a standard to only an enhanced monitoring protocol. Also included are, "any other monitoring method incorporated into a permit issued under this chapter." If only the language pertaining to "an enhanced monitoring protocol" were included as a revision to the language found in MPCA's, a SIP revision might be warranted. However, because there is additional language that does not limit using other methods as well, no conflict or confusion will arise from mentioning an enhanced monitoring protocol.

Comment 2: EPA's SIP call is invalid. Neither section 110 or any other provision of the Clean Air Act requires States to include credible evidence provisions in their SIPs. Even if one accepts EPA's assertion in the recently promulgated Credible Evidence Rule, 62 FR 8314 (February 24, 1997), that sections 113(a), 113(e), and 114 of the Clean Air Act authorize EPA to use any Credible Evidence to establish violations of emissions standards and limitations, those provisions speak only to the Administrator, and the courts, not to the States.

Response 2: EPA's SIP call is valid. The purpose of the SIP call is to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications. In responding to the SIP call the MPCA submitted to EPA rule revisions that ensured that the Minnesota SIP does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedures had been performed. This is all that is required to be consistent with EPA's final Credible Evidence rule.

Comment 3: The reference to "Minnesota Statutes" is incorrect, the correct reference is to "Minnesota Rules."

Response 3: EPA recognizes that the codification from the direct final **Federal Register** rule published on April 9, 1997 did incorrectly reference "Minnesota Statutes." The new codification correctly references "Minnesota Rules."

National Environmental Development Association Comments

Following is a summary of comments received from the National Environmental Development Association in a letter dated May 9, 1997 signed by Leslie Sue Ritts. After each comment is EPA's response.

Comment 1: EPA cannot and should not approve State SIP revisions during the pendency of judicial review of EPA's credible evidence rule.

Response 1: The commentor assumes that if EPA's Credible Evidence rule is found to be illegal, it follows that Minnesota's rule is also illegal and cannot be approved. This is not necessarily the case. If EPA's rule is found to be illegal, EPA may not be able to require Minnesota to follow the requirements of the SIP call but EPA can still approve Minnesota's SIP revision. States can submit, and EPA can approve, SIP revisions that exceed Federal requirements at any point in time. If it is found that EPA's Credible Evidence rule is found to be illegal, this does not prevent EPA from approving MPCA's SIP revision.

Comment 2: The National Environmental Development Association believes that the current rule should be withdrawn because Minnesota's rule is clearly based on a version of the enhanced monitoring proposal and an EPA "model rule" that were withdrawn by EPA in April 1995. References to "presumptive" credible evidence in the **Federal Register** notice, while also not clear on the face of the Minnesota regulations, are also plainly inconsistent with the notion in the final Federal credible evidence rule that all monitoring evidence, whatever its origin, would be weighed by a trier of fact and to provisions in the EPA credible rule that condition the use of credible evidence as "relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed." In addition, references in the **Federal Register** notice to Federal "enhanced monitoring protocols" and "model rules" are obsolete. These will eventually be replaced by Federal requirements for "compliance assurance monitoring" plans under the pending CAM rule which the Federal agency is about to finalize.

Response 2: The MPCA did not base its rule on EPA's model rule. In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial "presumptions." Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on the approval of Minnesota's Evidentiary Rule. Therefore, EPA is approving the Evidentiary Rule submitted by the MPCA for inclusion in the State's SIP. The approval of this submittal into the SIP clarifies the types of testing and monitoring data that can be used for compliance demonstrations and enforcement.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements, but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning state plans on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 1997.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(44) This revision provides for data which have been collected under the enhanced monitoring and operating permit programs to be used for compliance certifications and enforcement actions.

(i) Incorporation by reference.

(A) Minnesota Rules, sections 7007.0800 Subpart 6.C.(5), 7017.0100 Subparts 1 and 2, both effective February 28, 1995.

* * * * *

[FR Doc. 97–27129 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5029a, FRL–5904–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC RACT for Phillip Morris, Hercules, Virginia Power Station, and the Hopewell Regional Wastewater Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions establish and require volatile organic compound (VOC) reasonably available control technology (RACT) on six major sources located in Virginia. The intended effect of this action is to approve source-specific plan approvals and Consent Agreements that establish the above-mentioned RACT requirements in accordance with the Clean Air Act (the Act).

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to David L. Arnold, Air, Radiation, and Toxics Division, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997, the Commonwealth of Virginia submitted formal revisions to its SIP. These revisions consist of plan approvals and Consent Agreements, signed by the companies and the Virginia Department of Environmental Quality, to establish and impose source-specific VOC RACT requirements for major sources of VOC. Today's rulemaking proposes to approve the source-specific VOC RACT requirements for six companies. All of the sources are located in the Richmond moderate ozone nonattainment area.

I. Background

Under the pre-amended Clean Air Act (i.e., the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for VOC sources. EPA issued three sets of control technique guideline documents (CTGs), establishing a "presumptive norm" for RACT for various categories of VOC sources. The Richmond, Virginia area was designated nonattainment under the pre-amended Act and was required to adopt RACT for all CTG categories as well as non-CTG VOC sources with a potential to emit 100 tons per year (TPY) or more. Under the 1990 amendments to the Act, amended sections 172(c)(1) and 182(a)(2), required the Richmond, Virginia nonattainment area to correct its RACT requirements in effect prior to enactment of the 1990 amendments. Virginia submitted those RACT corrections as SIP revisions on May 10, 1991 and June 20, 1991. Among the regulations in that SIP revision, was a provision (Rule 120–04–0407) establishing the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Northern Virginia and Richmond nonattainment areas not covered by an existing state adopted VOC control regulation. The RACT correction SIP was approved by EPA on March 31, 1994 (See 59 FR 15117). To implement Rule 120–04–0407, the Commonwealth must submit an enforceable RACT determination for all major VOC sources not otherwise controlled under existing VOC RACT regulations of the SIP.

Sections 182(b)(2) (A), (B) and (C) of the Act require moderate and above areas to adopt standards for all sources covered by any CTG document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 CAA amendments; and all major sources of VOC not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. This provision of the Act makes nonattainment areas that were previously exempt from RACT requirements "catch up" to requirements during the earlier period, and therefore, is known as the RACT catch-up requirement. Because Rule 120–04–0407 imposed RACT on all major VOC sources in the Northern Virginia and Richmond nonattainment areas on an individual basis, this rule partially satisfied the RACT catch-up requirement. On November 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emission control areas to coincide with the revised boundaries of the Richmond and Northern Virginia ozone nonattainment areas resulting from the 1990 amendments. This SIP was approved by EPA on March 12, 1997 (59 FR 52701). To satisfy the RACT correction and catch-up requirements under sections 182(a)(2) and 182(b)(2)

(A), (B) and (C), and implement Rule 120–04–0407, Virginia has submitted source specific VOC RACT determinations for the following six companies in the Richmond, Virginia ozone nonattainment area:

(1) Philip Morris-Blended Leaf—2301 Everett Street, Richmond;

(2) Philip Morris-Park 500 Facility—Chesterfield County;

(3) Philip Morris-Tobacco Manufacturing Center—3601 Commerce Road, Richmond;

(4) Virginia Electric and Power Station—Chesterfield County;

(5) Hercules Incorporated, Aqualon Division—Hopewell; and

(6) Hopewell Regional Wastewater Treatment Facility.

II. Summary of SIP Revision

The details of the RACT requirements for the sources can be found in the docket and accompanying technical support document (TSD). Below is a summary of the facility type and the applicable RACT requirements for each source. Each SIP revision consists of a Consent Agreement signed by the source and the Virginia Department of Environmental Quality. The Consent Agreements are enforceable documents which include a description of the RACT technologies, control efficiencies, operating parameters, monitoring and reporting requirements. For further details on the sources' processes and how RACT was determined, refer to the TSD associated with this rulemaking. EPA is approving revisions to the Virginia SIP pertaining to the determination of RACT for six major sources of VOC. This action is being taken under section 110 of the Act.

1. Philip Morris—Blended Leaf, Richmond

Philip Morris—Blended Leaf is a tobacco processing facility that has potential VOC emissions greater than 100 TPY. Tobacco by-products from other Philip Morris facilities are combined to form a continuous tobacco sheet at the Blended Leaf Plant. These by-products are combined with dry and liquid low-VOC flavorings, and mixed into a slurry. The slurry is dried in a natural gas-fired dryer, cut, and packed into hogsheads for shipment. There are three drying lines each consisting of two natural gas-fired dryers. The Plant operates 24 hours each day, seven days each week, and 50 weeks per year. Based on 1991 throughput data, the total uncontrolled stack VOC emissions from the facility were estimated to be 238.4 tons per year.

RACT as prescribed in the Consent Agreement, Registration Number 50080, dated February 27, 1996 is determined to be no controls as Virginia determined that add-on controls were not economically feasible or cost effective. The Consent Agreement does require the continued use of low-VOC flavorings as well as record keeping and reporting requirements.

2. Philip Morris—Park 500, Chesterfield

Philip Morris—Park 500 is a tobacco processing facility that has potential VOC emissions greater than 100 TPY. The tobacco processing facility consists of two separate, distinct facilities which are located on adjoining property: the Reconstituted Leaf (R/L) Plant and the Bermuda Hundred Facility. At the R/L Plant, all VOC emissions are generated primarily from the tobacco drying processes and from the raw materials blending area. The uncontrolled stack VOC emissions from the R/L Plant are estimated to be 143 tons per year. At the Bermuda Hundred Facility, all VOC emissions are generated primarily from the tobacco drying processes and from the application of final flavoring to the tobacco. The uncontrolled stack VOC emissions from the Bermuda Hundred Facility are estimated to be 236.4 tons per year.

RACT as prescribed in the Consent Agreement, Registration Number 50722, dated March 26, 1997 is determined to be no controls as Virginia determined that add-on controls were not economically infeasible or cost-effective.

3. Philip Morris, Tobacco Manufacturing Center, Richmond

Philip Morris, Incorporated is a cigarette manufacturing center that has potential VOC emissions greater than 100 TPY. RACT as prescribed in the Consent Agreement, Registration Number 50076, dated July 12, 1996 requires, among other provisions, that the VOC emissions from the flavor cylinders where high-VOC-emitting flavorings are applied and the aftercut dryers in Process Lines #1 and #2 shall be controlled by a thermal oxidation unit(s) having a destruction efficiency of at least 95% on a mass basis. Each thermal oxidization unit shall be equipped with a continuous temperature monitor, automatic control dampers which prevent the flow of VOC laden process exhaust air to each unit until the minimum temperature is attained, and a pressure gauge in the duct prior to the oxidation units) to continuously monitor and insure that a negative pressure is being maintained in the exhaust system. Data from the continuous monitoring devices shall be recorded as one-minute readings and reduced to 3-hour averages on a rolling basis. A minimum temperature requirement will be established using EPA Reference Method 25 within 180 days of initial startup of the thermal oxidation units.

If Philip Morris desires to reformulate any flavorings associated with the flavor cylinders and the aftercut dryers in Process Lines #1 and #2, the respective equipment in which the reformulated flavorings are implemented will be exempt from the thermal oxidation unit(s) provided the following conditions are met:

(1) Emissions resulting from any such change in formulation must be verified by stack sampling using appropriate EPA test methods and material balance.

(2) On a daily basis, Philip Morris shall track production and flavoring throughputs. Philip Morris must calculate the emissions, in pounds per day, emanating through the stack and the emissions that would have occurred on January 1, 1993 prior to the reformulation with the affected equipment being exhausted to the thermal oxidation unit(s). Philip Morris must compare the results of these two equations. Emissions from the reformulated flavoring must always be less than the emissions which would have been emanating had the reformulation had not occurred and the affected equipment were exhausted to the thermal oxidation unit(s).

Philip Morris shall maintain records of all operating parameters necessary to demonstrate compliance. Pre-RACT facility-wide uncontrolled emissions were calculated at 1250 TPY. Post-RACT facility-wide emissions are 684 TPY.

4. Virginia Power—Chesterfield Station, Chesterfield

Virginia Power—Chesterfield Station is an electric utility that has potential VOC emissions greater than 100 TPY.

RACT as prescribed in the Consent Agreement, Registration Number 50396, dated May 30, 1996 requires, among other provisions, that the VOC emissions from boilers 3, 4, 5, and 6 be good combustion practices. Compliance shall be demonstrated by Implementation of a Work Planning and Tracking System (WATS). Virginia Power shall maintain records of operation, malfunctions, continuous monitoring and all completed scheduled and unscheduled maintenance, with the exception of minor repairs initiated and performed by individual employees in the conduct of their routine duties. No additional controls were determined to be economically feasible or cost-effective. Both pre-RACT and post-

RACT annual VOC emissions calculate to 183.6 TPY.

5. Hercules, Incorporated—Aqualon Division, Hopewell

Hercules, Incorporated—Aqualon Division is a synthetic organic chemical manufacturing facility that has potential VOC emissions greater than 100 TPY. RACT as prescribed in the Consent Agreement, Registration Number 50363, dated July 12, 1996 is as follows:

1. VOC emissions from the Cloacal Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 96% on a mass basis, respectively, calculated monthly as a six-month rolling average. VOC flow from the Cloacal Process area shall be measured and the totalized flow recorded for each batch.

2. VOC emissions from the Ethyl cellulose (E.C.) Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 90% on a mass basis, respectively, calculated monthly as a six-month rolling average.

3. VOC emissions from the Carboxymethyl cellulose (CBC) Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 98% on a mass basis, respectively, calculated monthly as a six-month rolling average. For the CBC area, VOC still output shall be continuously measured and the totalized flow recorded once per shift.

4. VOC emissions from the Nitrosyl Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 98% on a mass basis, respectively, calculated monthly as a six-month rolling average. For the Nitrosyl area, VOC still output shall be continuously measured and the totalized flow recorded once per shift.

5. VOC emissions from the Monochloroacetic Acid (MCA) Process area and the Technical Facility shall be controlled by solvent recovery and process scrubbers. Each area, the MCA Process area and the Technical Facility, shall not exceed 15 tons of VOCs per year.

Compliance from the Cloacal, E.C., CBC, and Nitrosyl process areas shall be demonstrated by specific equations designated in the Consent Agreement. Compliance for the MCA Process area and the Technical Facility require record keeping and reporting. Pre-RACT uncontrolled VOC emissions from this facility were calculated to be 246,743 TPY. Post-RACT controlled VOC emissions from this facility calculate to 5474 TPY.

6. Hopewell Regional Wastewater Treatment Facility, Hopewell

Hopewell Regional Wastewater Treatment Facility has potential VOC emissions greater than 100 TPY.

RACT as prescribed in the Consent Agreement, Registration Number 50735, dated May 30, 1996 requires, among other provisions, that the VOC emissions from the Grit Chambers/ Parshall Flume shall be controlled by a cover and vent. Total post-RACT emissions calculate to 225.6 TPY.

III. Final Action

EPA is approving all of the provisions in the plan approvals and Consent Agreements, for the six sources discussed above, submitted by the Commonwealth of Virginia as SIP revisions. All the Consent Agreements were effective on the date of signature by both signatory parties. The Consent Agreements do not contain expiration dates.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact settlement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC RACT determinations for six individual sources in Virginia as a revisions to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 26, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(120) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the State Implementation Plan submitted on April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997 by the Virginia Department of Environmental Quality regarding non-CTG VOC RACT requirements for six sources:

(i) Incorporation by reference.

(A) Letters submitted by the Virginia Department of Environmental Quality transmitting source-specific VOC RACT determinations in the form of consent agreements on the following dates: April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997.

(B) Consent agreements:

(*1*) Philip Morris—Blended Leaf, City of Richmond, VA, Consent Agreement Registration No. 50080, effective on February 27, 1996.

(*2*) Philip Morris—Park 500, Chesterfield County, VA, Consent Agreement Registration No. 50722, effective on March 26, 1997.

(*3*) Philip Morris Tobacco Manufacturing Center, City of Richmond, VA, Consent Agreement Registration No. 50076, effective on July 12, 1996.

(*4*) Virginia Power—Chesterfield Station, Chesterfield County, VA, Consent Agreement Registration No. 50396, effective on May 30, 1996.

(*5*) Hercules Incorporated—Aqualon Division, City of Hopewell, VA, Consent Agreement Registration No. 50363, effective on July 12, 1996.

(*6*) Hopewell Regional Wastewater Treatment Facility, City of Hopewell, VA, Consent Agreement Registration No. 50735, effective on May 30, 1996.

(ii) Additional material.

(A) Technical Support Documents submitted as part of the RACT determinations in paragraph (c)(120) (i) of this section by the Commonwealth of Virginia on April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997.

[FR Doc. 97–27124 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–5904–8]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants: Approval of Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA is approving the delegation of authority to the State of New Mexico to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The provisions of full authority apply to all of the NSPS and NESHAP promulgated by the EPA from February 1, 1995, through April 1, 1996. Partial authority covers all new and amended standards promulgated after these dates, except as follows. The delegation of authority, under this document, does not apply to: The sources located in Bernalillo County, New Mexico; the sources located on Indian lands as specified in the delegation agreement and in this document; the standards of performance for new residential wood heaters (subpart AAA) under 40 CFR part 60; and NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: October 14, 1997.

ADDRESSES: The New Mexico Environment Department's request and delegation agreement may be obtained by writing to one of the following addresses:

Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, telephone: (214) 665–7214.

Air Quality Bureau, New Mexico Environment Department (NMED), Harold Runnels Building, Room So. 2100, 1190 St. Francis Drive, Santa Fe, NM 87502, telephone: (505) 827–0042.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110, 111(c)(1) and 112 (l)(1) of the Clean Air Act (the Act) authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants. Authority for the NSPS and NESHAP programs was delegated to the State of New Mexico (except for sources located in Bernalillo County and on indian lands) on March 15, 1985.

The State requested the EPA to update the delegation of authority to the State for the NSPS and NESHAP programs from February 1, 1995, through April 1, 1996. The State's request includes a revision of Air Quality Control Regulations (AQCR) 20 NMAC 2.77 and 20 NMAC 2.78 as adopted by the New Mexico Environmental Improvement Board. These revisions incorporated the Federal NSPS and NESHAP by reference through April 1, 1996. The effective date

of the Federal delegation for NSPS under section 111 will continue to be, as has been the case in the past, the EPA's letter of approval of the State's request for the NSPS delegation update.

The Title V **Federal Register** notice (see 59 FR 59656–59660, (November 18, 1994)) outlined the State's plans to continue to incorporate by reference the Federal section 112 requirements regarding hazardous air pollutants into the New Mexico Air Quality Control Regulations, and stated that the NMED's request for approval of the part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards. Based on approval of NMED's procedural mechanism for adopting Federal section 112 standards through incorporation by reference into the State's Part 70 Operating Permit Program, the EPA can continue to update the State's delegation of section 112 standards along with the update of section 111 NSPS. The effective date of the delegation for unchanged Federal standards under section 112 is the effective date of the State's rule after its adoption. In this case, the effective date is June 19, 1996.

Since review of the pertinent New Mexico laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS and NESHAP, EPA is delegating full authority to the State for NSPS and NESHAP standards promulgated from February 1, 1995, through April 1, 1996, and authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA, subject to conditions and limitations of the original delegation agreement dated March 15, 1985. It is important to note that no delegation authority is granted to the NMED for Bernalillo County and Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters and for 40 CFR part 61 for the radionuclide NESHAP's. Specifically, the subparts for which delegation is excluded are subpart B (National Emission Standards for Radon—222 Emissions from Underground Uranium Mines), subpart H (National Emission Standards for Radionuclide Emissions from Department of Energy Facilities), subpart I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H), subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants), subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), and subpart W (National Emission Standards for Radon—222 Emissions from Licensed Uranium Mill Tailings).

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60 and 61) should be submitted by sources located outside the boundaries of Bernalillo County and in areas outside of Indian lands, directly to the NMED, Harold Runnels Building, Room So. 2100, St. Francis Drive, Santa Fe, New Mexico 87502. Albuquerque/Bernalillo County is excluded from this action because this area is granted delegation authority under AQCR 30 NSPS and 31 NESHAP to the City of Albuquerque's Environmental Health Department. Sources located on Indian lands in the State of New Mexico should submit required information to EPA Region 6 office at the address given in this notice. All of the inquiries and requests concerning implementation and enforcement of the excluded standards under 40 CFR part 60, subpart AAA and 40 CFR part 61, subparts B, H, I, R, and W, in the State of New Mexico should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from requirements of section 6 of Executive Order 12866.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: This notice is issued under the authority of sections 101, 111, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7412 and 7601).

Dated: September 24, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27126 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5908–2]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Frit Industries Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Frit Industries Superfund site located in Walnut Ridge, Arkansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The EPA, in consultation with the Arkansas Department of Pollution Control and Ecology, has determined that all appropiate RCRA response activities conducted at the site to date and scheduled in the future are enforceable and have been and will remain protective of the public health, welfare, and the environment. Moreover, this deferral to RCRA corrective action authorities is appropriate.

EFFECTIVE DATE: October 14, 1997.

ADDRESSES: The comprehensive information on the site is available at the local information repositories located at: Felix Goodson Library, Williams Baptist College, Walnut Ridge, Arkansas 72446. The telephone number for the hours of operation at Felix Goodson Library is (501) 886–6741. Requests for comprehensive copies of documents should be directed formally to the Arkansas Department of Pollution Control and Ecology, Attn: Mr. Clark McWilliams, RCRA State Project Manager, 8001 National Drive, Little Rock, Arkansas 72219. Mr. McWilliams' telephone number is (501) 682–0850 for additional information.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager, US EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Frit Industries Site, Walnut Ridge, Arkansas. A Notice of Intent to Delete for this site was published in the **Federal Register** on July 25, 1997 (62 FR 40029). The closing date for public comment was August 25, 1997. The EPA received no comments during the comment period. The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substance Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP, provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste, Intergovernmental relations, Superfund.

Dated: September 30, 1997.

Jerry Clifford,

Acting Regional Administrator, Region 6.

For the reasons set out in the preamble, 40 CFR part 300, is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O.12777, 56 FR 54757, 3 CFR, 1991 Comp., 351; E.O. 12580; 52 FR 2923, 3 CFR, 1987 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "Frit Industries, Walnut Ridge, Arkansas".

[FR Doc. 97–27022 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100697B]

Atlantic Tuna Fisheries; Recreational Fishery Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota adjustment; fishery reopening; catch limit adjustment.

SUMMARY: NMFS adjusts the Angling category subquota for large school/small medium Atlantic bluefin tuna (ABT) fishery by transferring 10 mt from the Angling category subquota for school ABT, for a revised Angling category subquota of 161 mt for the large school/small medium size classes. NMFS reopens the Angling category fishery for large school and small medium ABT in the northern area (New Jersey and states north). The daily catch limit for the reopening is two large school ABT and one small medium ABT per vessel. This action is being taken to ensure reasonable fishing opportunities in the northern area without risking overharvest of this category.

DATES: The quota and catch limit adjustments, and fishery reopening are effective October 10, 1997, until 11:30 pm, October 19, 1997, or any prior date of closure or adjustment as necessary, to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347, or Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between categories after considering certain factors. The AA is authorized to make adjustments to quotas involving transfers between categories if, during a single year quota period, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category, is not likely to take its entire quota as previously allocated for that year.

Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Angling Category Quota Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 108 mt of school ABT and 151 mt of large school/small medium ABT to be harvested from the regulatory area by vessels fishing under the Angling category quota during calendar year 1997 (62 FR 35107, June 30, 1997). The school ABT quota is further subdivided into 51 mt for the waters off Delaware and states south and 57 mt for the waters off New Jersey and states north. The large school/small medium ABT quota is further subdivided into 71 mt for the waters off Delaware and states south and 80 mt for the waters off New Jersey and states north.

Based on preliminary catch estimates, NMFS closed the large school/small medium ABT fishery for the southern area on July 20, 1997 (62 FR 35447, July 1, 1997) and for the northern area on October 1, 1997 (62 FR 50887, September 29, 1997). Information collected by NMFS from dockside and telephone surveys through September 28, 1997, indicates that about 11 mt of school ABT and 8 mt of large school/small medium ABT remain of the northern area subquotas. In order to provide for a reasonable opportunity to harvest the Angling category quota and collect scientific information needed to monitor the ABT stock, NMFS has determined that a reopening is warranted.

After considering the previously cited factors for making transfers between categories, the risk of overharvest of school bluefin which are subject to an

ICCAT-recommended limit, the current availability of fish in each size class, and the regional distribution of catch to date, the AA has determined that 10 mt of the remaining northern area school ABT quota should be transferred to the northern area large school/small medium Angling category fishery. Thus, the Angling category subquota for large school/small medium ABT is adjusted to 161 mt and the northern area Angling category subquota for large school/small medium ABT is adjusted to 90 mt.

Fishery Reopening

Given the revised quota, availability of fish, and recent information on catch and effort in the northern area Angling category fishery (waters off New Jersey and states north), NMFS projects that the remaining quota for large school and small medium ABT could be landed in less than 2 weeks. Therefore, NMFS reopens the Angling category for large school and small medium ABT in the northern area from October 10 until October 19, 1997. Fishing for, retaining, possessing, or landing any large school or small medium ABT, measuring 47 inches to less than 73 inches (69 cm to less than 185 cm), must cease at 11:30 p.m. local time on October 19, 1997. The northern area fishery for school ABT was previously closed for the 1997 season (62 FR 50887, September 29, 1997) and remains closed.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for improved scientific monitoring of the catch spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

For the duration of the reopening, the daily catch limit is adjusted to two large school ABT (measuring 47 inches to less than 59 inches; 120 cm to less than 150 cm)) and one small medium ABT (measuring 150 cm to less than 185 cm) per Angling category vessel. Anglers aboard Charter/Headboat and General category vessels, when authorized to engage in recreational fishing for large school and small medium ABT, are subject to the same rules as anglers aboard Angling category vessels.

Further Adjustments

Depending on the level of fishing effort and catch rates of ABT, NMFS may determine that a subsequent catch limit adjustment or revised closure date is necessary during this period. A revised closure date or adjustment to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Highly Migratory Species Information Line at 301–713–1279 or 508–281–9305 for updates on quota monitoring, closures, and catch limit adjustments.

Fishermen are reminded that all ABT taken under the Angling category quota must be reported within 24 hours of landing using the Catch Reporting System (1–888–USA-TUNA). Note that the fishery for school, large school, and small medium ABT in the southern area closed effective August 11, 1997 (62 FR 44423, August 21, 1997), and is therefore not affected by this reopening and catch limit adjustment. In addition, landing cards submitted to NMFS indicate that the full quota has not yet been attained in the Angling category fishery for trophy class ABT (73 inches (205 cm) and greater), and that fishery remains open in both the northern and southern areas until further notice.

Classification

This action is taken under 50 CFR 285.20, 285.22, and 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 7, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27071 Filed 10–8–97; 10:49 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 198
Tuesday, October 14, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Workshops

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of workshops.

SUMMARY: The Nuclear Regulatory Commission has initiated a rulemaking for a comprehensive revision of its regulations governing the medical use of byproduct material in 10 CFR part 35. As part of this rulemaking, the Commission intends to solicit the active input of the various interests that may be affected by the rulemaking early in the rulemaking process. One of the mechanisms that will be used to obtain the comments and recommendations from affected interests will be the convening of workshops to discuss the fundamental approaches and issues that must be addressed in the revision of part 35. The first NRC public workshop will be held in Philadelphia, Pennsylvania on October 28, 29, and 30, 1997. The second NRC public workshop will be held in Chicago, Illinois on November 12, 13, and 14, 1997. Both workshops will be open to the public. Francis X. Cameron, Special Counsel for Public Liaison, in the Commission's Office of the General Counsel, will be the convener and facilitator for the workshops.

DATES: The first workshop will be in Philadelphia on October 28, 1997, from 9 a.m. to 5 p.m.; October 29, 1997, from 8:30 a.m. to 5 p.m.; and October 30, 1997, from 8:30 a.m. to noon. The second workshop will be in Chicago on November 12, 1997, from 9 a.m. to 5 p.m.; November 13, 1997, from 8:30 a.m. to 5 p.m.; and November 14, 1997, from 8:30 a.m. to noon.

ADDRESSES: The Philadelphia workshop will be held at the Korman Suites Hotel, 2001 Hamilton Street, Philadelphia, PA 19130, 215–569–7000. The Chicago workshop will be held at the Ramada Congress Hotel, 520 South Michigan Avenue, Chicago, IL 60605, 312–427–3800.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, Nuclear Regulatory Commission, Washington D.C. 20555, Telephone: 301–415–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has examined the issues surrounding its medical use program in great detail during the last four years. This process started with NRC's 1993 internal senior management review report; continued with the 1996 independent external review report by the National Academy of Sciences, Institute of Medicine; and culminated in NRC's Strategic Assessment and Rebaselining Project (SA). In particular, medical oversight was addressed in the SA Direction-Setting Issue Paper Number 7 (DSI 7) (released September 16, 1996). In its "Staff Requirements Memorandum (SRM)—COMSECY–96–057, Materials/Medical Oversight (DSI 7)," dated March 20, 1997, the Commission directed the staff to revise part 35, associated guidance documents, and, if necessary, the Commission's 1979 "Medical Policy Statement." The Commission SRM specifically directed the restructuring of part 35 into a risk-informed, more performance-based regulation.

A June 30, 1997, SRM informed the staff of the Commission's approval, with comments, of the staff's proposed program in SECY–97–131, Supplemental Information on SECY–97–115, "Program for Revision of 10 CFR part 35, 'Medical Uses of Byproduct Material,' and Associated **Federal Register** Notice," dated June 20, 1997.

After Commission approval of the staff's program to revise part 35 and associated guidance documents, the staff initiated the rulemaking process, as announced in 62 FR 42219 (August 6, 1997). The rulemaking is being conducted using a group approach. A Working Group and Steering Group, consisting of representatives of NRC, the Organization of Agreement States, and the Conference of Radiation Control Program Directors, have been established to develop rule text alternatives, rule language, and associated guidance documents. State participation in the process is intended to enhance development of corresponding rules in State regulations, to provide an opportunity for early State input, and to allow State staff to assess potential impacts of NRC draft language on the regulation of non-Atomic Energy Act materials used in medical diagnosis, treatment, or research, in the States.

As directed by the Commission, the staff has developed alternatives, with draft regulatory text, for the more significant issues associated with the regulation of the medical use of byproduct material. These alternatives to regulation in specific areas are intended to help focus the discussion during workshops and meetings during the Fall of 1997 and to assist the staff in developing the text of the proposed rule. Alternative regulatory text has been developed for: (a) The quality management program; (b) training and experience for authorized users, radiation safety officers, and medical physicists; (c) radiation safety committee; (d) patient notification of reportable events; and (e) the threshold for reportable events. In addition, alternative recommendations for revision of NRC's 1979 Medical Policy Statement have been developed. The alternatives represent a broad range of possibilities and are being provided to stimulate input from members of the public in an effort to encourage all interested parties to contribute to the development of the revised regulation. The staff has not selected any alternatives at this time and is open to additional alternatives that might be proposed, which are consistent with the guidance provided by the Commission.

Workshops

The Commission believes that it is important for interests affected by the medical use rulemaking to not only have an early opportunity to comment on the rulemaking issues, but also to have an opportunity to discuss the rulemaking issues with one another and the Agency. Accordingly, the Commission is convening two public workshops where the representatives of the interests that may be affected by the rulemaking will have an opportunity to discuss the rulemaking issues. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as

well as to identify areas of agreement or disagreement, it is not the intent of the workshop process to develop a consensus agreement of the participants on the rulemaking issues.

To have a manageable discussion, the number of participants in each workshop will be limited. The Commission, through the facilitator for the workshop, will attempt to ensure participation by the broad spectrum of interests that may be affected by the rulemaking. These interests include: Nuclear medicine physicians; physician specialists, such as cardiologists and radiologists; medical physicists; medical technologists; nurses; medical education and certification organizations; radiopharmaceutical interests; hospital administrators; patients rights advocates; Agreement States; Federal agencies; and experts in risk analysis. Other members of the public are welcome to attend, and the public will have the opportunity to comment on the rulemaking issues and the workshop discussions at periodic intervals during the workshops. Questions about participation may be directed to the facilitator, Francis X. Cameron.

To ensure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused primarily on the alternatives, with draft regulatory text, developed by the Part 35 Working and Steering Groups. However, the workshop format will be sufficiently flexible to allow for the introduction of additional related issues that the participants may want to raise. The workshop commentary will be transcribed and made available to the participants and the public.

Copies of the issue papers developed by the staff will be provided to the workshop participants. Also, copies will be available for members of the public in attendance at the workshops, as well as available through NRC's Public Document Room (U.S. Nuclear Regulatory Commission, Attention: NRC Public Document Room, Washington, DC 20555–0001) and on the Internet via NRC's Technical Conference Forum (http://techconf.llnl.gov/noframe.html).

Public input is solicited during the development of the proposed rule but, to be most helpful, should be received by March 1, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission only is able to ensure consideration of comments received on or before this date. Written input and suggestions can be sent to Secretary, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand-deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Dated at Rockville, Md., this 6th day of October 1997.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–27084 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE38

Acceptability of Plant Performance for Severe Accidents; Scope of Consideration in Safety Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is withdrawing an advance notice of proposed rulemaking that outlined alternative approaches to generic regulation addressing the challenges from severe accidents for future light water reactors. The Commission has decided that a rule change to provide generic requirements for performance during postulated severe accidents is not warranted at this time. The basis for this decision is that a purpose for the rule was to provide guidance for future designs and to facilitate then ongoing design certification rulemaking. With all current design certification rulemaking either complete or nearing completion and future applicants not foreseen, expenditure of the resources to promulgate the rule is not warranted.

FOR FURTHER INFORMATION CONTACT: Charles E. Ader, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5622.

SUPPLEMENTARY INFORMATION: On September 28, 1992, (57 FR 44513), the Commission published an advance notice of proposed rulemaking (ANPRM) to consider amending its regulations to provide generic requirements to address the challenges from severe accidents for future light water reactors. The advance notice of proposed rulemaking outlined three alternative approaches to the specification of requirements addressing severe accident performance. The first alternative, described as a hardware oriented rule, would specify reasonable design features or design characteristics directed towards prevention or mitigation of explicitly identified risk significant phenomena. The risk significant phenomena identified were: hydrogen generation, transport and combustion, high pressure melt ejection, core concrete interactions and basemat ablation, long term containment overpressurization, steam explosions from fuel-coolant interactions, and containment bypass. These phenomena represent the potential contributors to containment failure or bypass and thus the mechanisms for large offsite radioactive release. Alternative 2, described as a phenomena oriented rule, was a modification of the first alternative wherein an overall containment performance goal would be specified along with the phenomena to be considered, as identified above. The designer would then be required to perform analyses of the impact of those phenomena and develop and propose the design features to meet the goal. Regulatory guides would address analytical methods, acceptance criteria and design criteria for hardware. This approach, similar to Alternative 1, would be an overlay on the existing design basis specified in 10 CFR part 50 and justified on an enhanced safety basis. The third alternative, described as a general design criteria (GDC) oriented rule, involved development of a set of new design requirements to address specific challenges and issued as changes to Appendix A, "General Design Criteria" to 10 CFR part 50. Each new design criterion would describe the nature of the challenges as well as the success criterion and involve the development of Regulatory Guides to provide additional guidance on analysis methods and assumption. This approach was similar to the other alternatives, especially Alternative 2, but differs in that the existing 10 CFR part 50 design basis would be modified to include severe accidents.

A primary purpose for the generic severe accident rulemaking was to add consistency and standardization to the resolution of severe accident issues for future designs based on current technical information. While, in general, consistency among many design reviews is best achieved through generic rules, as a practical matter, since the number of new applicants is likely to remain quite limited, it is more efficient to proceed with design-specific reviews. In fact, the Commission is not aware of any new applicants in the foreseeable future.

Another purpose of the generic severe accident rulemaking, i.e., facilitation of design certification rulemaking, has been rendered moot by the experience gained in design certification rulemakings. The design certification rulemakings are completed for the General Electric Advanced Boiling Water Reactor and ABB–CE System 80+ and the only design currently under review is the Westinghouse AP600. The resolution of severe accident design specific requirements would be set forth in the AP600 design control document and approved in the AP600 design certification rulemaking.

While certain arguments in favor of generic rulemaking (i.e., promoting consistency and standardization in the resolution of severe accident issues and providing guidance to future LWR designers and applicants) continue to apply in varying degrees, practical aspects limit the need for such an activity. At this point, given the lack of any new potential plant or design applicants, the Commission believes that the benefits of generic rulemaking do not justify the allocation of resources to proceed with the development of new regulations addressing severe accidents.

Upon consideration of the potential value of a generic rule, the status of the review and design certification of future reactors, and the potential resource requirements, the Commission believes that the value in pursuing generic severe accident rulemaking does not warrant the resource expenditure. While the Commission does not perceive the need for generic rulemaking in the foreseeable future, should conditions change regarding potential applicants, the Commission would reassess the merits of rulemaking at that time.

For the reasons discussed, the Commission is withdrawing the ANPRM.

Dated at Rockville, Md. this 7th day of October, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–27082 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 933 and 935

[No. 97–60]

RIN 3069–AA69

Eligibility for Membership and Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend certain of its regulations relating to combination business or farm properties on which a residence is located. The amendments would eliminate the requirement that at least 50 percent of the value of such properties be attributable to the residential portion of the property (50 percent test). The amendments are intended to assist smaller depository institutions, particularly those located in rural areas, to qualify for Federal Home Loan Bank (Bank) membership and, once admitted, to provide the collateral necessary to obtain advances.

DATES: The Finance Board will accept comments on this proposed rule in writing on or before November 13, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, Office of Policy, (202) 408–2842, or Neil R. Crowley, Associate General Counsel, Office of General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 4(a) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1424(a), establishes the eligibility criteria for depository institutions to become members of the Federal Home Loan Bank System (Bank System). Section 10(a) of the Bank Act, *id.* 1430(a), authorizes a Bank to make secured advances to its members and specifies the types of collateral that a Bank may accept when originating or renewing an advance. With respect to both membership criteria and eligible collateral, the regulations of the Finance Board permit the use of loans that are secured by business or farm properties on which there is a residence, but only if the value of the residential portion equals or exceeds 50 percent of the value of the entire parcel. The Finance Board is concerned that those regulations may be overly restrictive and therefore is proposing to amend them, as described below.

A. Membership

Section 4(a)(2) of the Bank Act requires, in part, that an insured depository institution have "at least 10 percent of its total assets in residential mortgage loans" in order to be eligible for membership. *Id.* 1424(a)(2). The Finance Board has defined "residential mortgage loan" to include, among other things, a "home mortgage loan." 12 CFR 933.1(bb). The Finance Board has defined "home mortgage loan" to include, in part, a loan secured by a first lien on "combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property." *Id.* § 933.1(n)(1)(iii). The term "combination business or farm property" means real property for which the value is attributable to residential, and business or farm uses. *Id.* § 933.1(i).

B. Collateral for Advances

Section 10(a)(1) of the Bank Act requires a Bank making or renewing an advance to its members to maintain a security interest in certain specified types of collateral, among which are "first mortgages on improved residential property." 12 U.S.C. 1430(a)(1). The Finance Board has defined "improved residential real property" to mean "residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units." 12 CFR 935.1. The Finance Board has defined "residential real property" to include, among other things, "combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property." *Id.* The term "combination business or farm property" means "real property for which the total appraised value is attributable to the combination of residential, and business or farm uses." *Id.*

II. Analysis of the Proposed Rule

The Finance Board believes that community depository institutions, particularly those located in rural areas, often are essential to the housing finance activities and the broader economic well-being of the communities they serve. Such institutions may have less demand for conventional single and multi-family mortgage credit and their service areas may be characterized by low population density and a low level of economic activity. In such circumstances, those institutions may not be able to originate a substantial number of residential first mortgage loans. Moreover, many loans originated by rural banks may be made on the security of family farms, which

are in part residential but which often cannot meet the 50 percent test.

The existing regulations preclude a Bank from recognizing or accepting a first mortgage loan on combination property unless the value of the residential portion equals or exceeds 50 percent of the total value of the property. That requirement may hinder the ability of community depository institutions, particularly those in rural areas, to become members of the Bank System or, for those that are able to join, to take full advantage of the opportunity to obtain advances. The Finance Board believes that the membership and advances regulations should recognize the unique aspects of the lending practices of such institutions, and has determined that it is appropriate to reconsider whether to retain the 50 percent test in either the membership or collateral regulation.

There is nothing in the Bank Act that mandates that the residential portion of such combination properties constitute a specified percentage of the property's total appraised value. With respect to eligibility for membership, the only statutory mandate is that the loan must be secured by real estate on which there is a residence. 12 U.S.C. 1422 (5), (6). With respect to the use of whole first mortgages as collateral for advances, the only statutory mandate is that they attach to real property that previously has been improved. Id. 1430(a)(1). Subject to those requirements, the Finance Board has the authority to determine what types of combination property may be considered to be "residential" for purposes of the "residential mortgage loan" aspect of the eligibility requirements and for the "residential real property" aspect of the collateral requirements. Because the 50 percent test is more restrictive than the Bank Act requires, and may well exclude from consideration a significant number of loans that are secured, at least in part, by a home, the Finance Board is proposing to eliminate the "50 percent" requirement in both regulations.

The proposed rule would amend the definition of "home mortgage loan" in the membership regulations to allow a loan secured by a combination property to be considered a "home mortgage loan" if a permanent structure is located on the property and it actually is used as a residence. See 12 CFR 933.1(n)(1)(iii). The proposed rule would make the same changes to the definition of "residential real property" in the collateral provisions of the advances regulation. See id. § 935.1. Eliminating the 50 percent requirement should allow a greater number of loans secured by combined use assets to be considered "residential mortgage loans" or "improved residential property," thus easing the membership eligibility and collateral requirements, respectively. The definitions would exclude any farm or business property that only occasionally is used for residential purposes, such as temporary, migrant, or seasonal housing, because such properties lack the characteristics of permanence and regular residential use generally associated with typical combination properties, such as a family farm or a family business.

The Finance Board believes that any additional risks that might arise if such mortgage loans are used as collateral for advances should be adequately managed in accordance with the current provisions of the advances regulation. Among other things, the advances regulation requires the Banks to establish written procedures for determining the value of collateral, and to follow those procedures in ascertaining the value of a particular asset offered as collateral. The regulation also permits the Banks to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the Bank deems necessary. Id. § 935.12. Rural lending often requires collateral valuation practices that may differ significantly from those typically employed in lending on the security of one-to-four family homes. The Finance Board expects that if the proposed amendments are adopted as a final rule each Bank will review its collateral valuation procedures, and will amend them as necessary to reflect the changes made by the amendments, before accepting as collateral any newly authorized combination properties. The Finance Board also expects that the Banks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral, taking into account the additional risks inherent in rural lending and each Bank's own capability to evaluate those risks.

With respect to the advances regulation, the Finance Board requests comments on whether elimination of the percentage requirement might expose the Banks to any undue risk of loss should a Bank need to liquidate the mortgage loans it holds as collateral. For example, the value of a mortgage on a farm property, even one on which there is a residence, may be more volatile than the value of a mortgage on a one-to-four family home, reflecting the greater volatility of the value of the underlying property. In addition, a mortgage on a combination property may be less liquid than a mortgage on a one-to-four family home. The Finance Board solicits comments on whether it should address these issues through regulation, such as by retaining a percentage of value requirement for collateral purposes, albeit at a level less than the 50 percent test. The Finance Board also solicits comments on whether there are apt to be any practical difficulties in implementing the proposed definitions. For example, will a member's loan files for a loan secured by farm property necessarily indicate whether the farm property also includes a residential structure and, if so, whether it actually is used as a residence?

The proposed rule also would amend § 933.1(bb) by adding a new paragraph (8) that would include as "residential mortgage loans" for membership purposes any loans that, if made by a member, would satisfy the statutory and regulatory requirements for loans made under the Community Investment Program (CIP) or under the community investment cash advance provisions of the Bank Act. The community investment cash advance program is a cash advance program that may be established by the Banks under section 10(j)(10) of the Bank Act, and includes the CIP, a program of "community-oriented mortgage lending" required by section 10(i) of the Bank Act. 12 U.S.C. 1430 (i), (j)(10). "Community-oriented mortgage lending" is defined as lending for homeownership, multifamily housing and commercial and economic development that benefits certain targeted populations or neighborhoods. *Id.* 1430(i). Under this provision, if the purpose of a loan were to meet the statutory standards, including any future regulatory standards, for these loan programs, the loan could be considered for purposes of the membership criteria. The amendment would not require that the transaction also result in a loan that is eligible for collateral under the advances regulation. The effect of this provision would be to allow such assets to be considered as residential mortgage loans for purposes of eligibility for membership, and would conform the membership regulation more closely to the advances regulation, which already includes loans financed by CIP advances within the definition of "residential housing finance assets." See 12 CFR 935.1.

III. Regulatory Flexibility Act

The proposed rule would not impose any additional reporting, recordkeeping, or compliance requirements on prospective or current Bank members. Although the Finance Board anticipates that the proposed rule will be of benefit primarily to small depository institutions, it will not have a disproportionate impact on small entities. Therefore, in accordance with the Regulatory Flexibility Act, the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information, as defined by the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 933

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, parts 933 and 935 of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

2. Amend § 933.1 by revising paragraph (n)(1)(iii), removing "or" at the end of paragraph (bb)(6)(iii), removing the period at the end of paragraph (bb)(7) and adding "; or" in its place, and adding paragraph (bb)(8) to read as follows:

§ 933.1 Definitions.

* * * * *

(n) *Home mortgage loan* * * *

(1) * * *

(iii) Combination business or farm property, on which is located a permanent structure actually used as a residence, other than for temporary or seasonal housing; or

* * * * *

(bb) *Residential mortgage loan* * * *

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Bank Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10) of the Bank Act.

* * * * *

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Amend § 935.1 by revising paragraph (1)(v) in the definition of "Residential real property" to read as follows:

§ 935.1 Definitions.

* * * * *

Residential real property * * *

(1) * * *

(v) Combination business or farm property, on which is located a permanent structure actually used as a residence, other than for temporary or seasonal housing.

* * * * *

Dated: September 10, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–26893 Filed 10–10–97; 8:45 am]

BILLING CODE 6725–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Title II of Public Law 104–208 (September 30, 1996), entitled the "Small Business Programs Improvement Act of 1996", made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Company program, these changes include provisions affecting capital requirements, Leverage eligibility and fees, and the status of Section 301(d) Licensees. This proposed rule would implement the statutory provisions; in addition, it would make various technical corrections and clarifications, as well as changes intended to improve the fairness and flexibility of the regulations.

DATES: Comments must be submitted on or before November 13, 1997.

ADDRESSES: Written comments should be addressed to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of Title II of Public Law 104–208 (September 30, 1996) which relate to small businesses investment companies (SBICs). This rule would also make certain other substantive changes, clarifications and technical corrections to the regulations governing SBICs, including those concerning portfolio diversification, Cost of Money, and the computation of distributions to be made by SBICs that have issued Participating Securities.

Section 301(d) Licensees

Prior to October 1, 1996, an SBIC program applicant could be licensed under either section 301(c) or section 301(d) of the Small Business Investment Act of 1958, as amended (Act). A Section 301(d) Licensee, also known as a "specialized SBIC" or "SSBIC", agreed to invest only in businesses owned and controlled by socially or economically disadvantaged individuals. In return, a Section 301(d) Licensee received certain benefits not available to other SBICs, such as eligibility for certain types of subsidized Leverage (as defined in § 107.50).

Effective October 1, 1996, section 208(b)(3) of Public Law 104–208 repealed section 301(d) of the Act. However, the repeal provision was accompanied by the following language: "The repeal * * * shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act."

This proposed rule would revise several sections in part 107 to implement this statutory change. The revisions would eliminate provisions relating to the licensing of new SSBICs while retaining rules governing the operations of existing SSBICs.

Thus, in § 107.50, a "Section 301(d) Licensee" would be defined as "a company licensed prior to October 1, 1996 under section 301(d) of the Act as in effect on the date of licensing, that may provide Assistance only to Disadvantaged Businesses." Current § 107.110, which deals with organization of a section 301(d) license applicant, would be removed. Similarly, § 107.120 would be revised by

eliminating references to the licensing of an SSBIC to operate as the subsidiary of another Licensee or group of Licensees. Any existing SSBIC which was licensed as a subsidiary would be permitted to continue its operations under the same conditions as before; however, the proposed rule would not allow an existing SSBIC that is not already a subsidiary of another Licensee to become one. SBA has noted no demand on the part of existing Licensees to reorganize in this fashion.

The proposed revision of § 107.230(d)(4) would eliminate future use of the provision which allowed Section 301(d) Licensees to include in their Private Capital, without limitation, funds indirectly obtained from State or local government sources. Under the proposed rule, such funds would be included in Private Capital only if they were invested in or committed in writing to the Licensee prior to October 1, 1996. Otherwise, Section 301(d) Licensees would be limited to State and local government funds equal to 33 percent of their Regulatory Capital under current § 107.230(d)(3), which applies to all Licensees. This change is necessary to bring the regulations into conformity with the Act as amended by Public Law 104–208.

Other proposed changes reflect amendments to the Act which eliminated subsidized SBA Leverage. Such Leverage was previously available to SSBICs in the form of Debentures with an interest rate subsidy or Preferred Securities with a 4 percent dividend. Although subsidized Leverage can no longer be issued, the Act does not require SSBICs to prepay or redeem such Leverage prior to its scheduled maturity. In addition, an SSBIC may apply for any type of non-subsidized Leverage (Debentures or Participating Securities) for which it is eligible.

To implement these changes, current §§ 107.1100 and 107.1110 would be condensed into proposed § 107.1100. The proposed section would eliminate the separate descriptions of the types of Leverage available to Section 301(c) and Section 301(d) Licensees and would eliminate all references to subsidized Leverage.

SBA is also proposing revisions to § 107.1160 in order to conform with the Act. The entire section, which sets forth conditions governing the issuance of Leverage by a Section 301(d) Licensee, would apply only to Leverage issued on or before September 30, 1996. After that date, a Section 301(d) Licensee would be eligible to apply for Leverage under § 107.1150, subject to the same terms and conditions as other Licensees.

Similarly, the proposed revisions to the definition of "Preferred Securities" in § 107.50 and to §§ 107.1400, 107.1420 and 107.1430 reflect the fact that SBA's authority under the Act to purchase Preferred Securities ceased as of October 1, 1996. The appropriation of funds for such securities actually ended as of October 1, 1995, but some Preferred Securities were issued in fiscal year 1996 by Licensees drawing against SBA's commitments of fiscal year 1995 funds.

Finally, the provisions of current § 107.1350 which allow a Section 301(d) Licensee to retire certain Debentures by issuing Preferred Securities would be eliminated. The remainder of the section, dealing with the retirement of Debentures through the issuance of Participating Securities, would be redesignated as § 107.1585 and would apply to both SBICs and SSBICs.

Common Control

"Common Control" as defined in § 107.50 currently means "a condition where two or more Licensees, either through ownership, management, contract, or otherwise, are under the Control of one group or Person." However, the defined term as used in paragraphs (4) and (5) of the definition of "Associate" is clearly intended to refer to Persons other than Licensees. To accommodate this usage, the proposed rule would revise the Common Control definition to refer to "two or more Persons" rather than "two or more Licensees". The portion of the definition under which certain circumstances establish a presumption of Common Control would continue to apply only to two or more Licensees.

Management and Ownership Diversity

Section 208(c)(3) of Public Law 104–208 amended the Act to require that new SBICs have diversity between management and ownership. For any SBIC licensed on or after September 30, 1996, SBA must ensure that the management "is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee." SBA has required diversity between management and ownership since 1994 for Participating Securities issuers and since 1996 for other new leveraged Licensees. Therefore, in response to the new statutory requirement, SBA is proposing only minor changes to improve the effectiveness of § 107.150.

Under current § 107.150(a), a Licensee or license applicant can demonstrate diversity if at least 30 percent of its Regulatory Capital is held by at least three shareholders or limited partners (or one acceptable Institutional Investor) unrelated to management. Specifically, these investors cannot be Associates of the Licensee or applicant, or Affiliates of any of its Associates. The proposed rule would retain these concepts, but would eliminate the phrase "Affiliate of an Associate". Instead, proposed § 107.150(a) would specify that to qualify for diversity purposes, an investor must not be an Associate of the Licensee or applicant and must not "Control, be Controlled by, or be under Common Control with" an Associate. SBA does not intend for this language to be substantively different from the current language, but believes that readers may find it easier to understand. In addition, the proposed rule would address certain other characteristics of "diversity investors" which are not covered in the current regulation, but which SBA considers important.

Proposed § 107.150(a) would specify that the investors relied upon to satisfy the diversity requirement cannot be Affiliates of one another. SBA believes that if such investors are related parties, the requirement that there be at least three of them is rendered essentially meaningless. The proposed rule also would give SBA discretion to reject for diversity purposes an investor whose ownership interest is not significant, either in terms of absolute dollars or percentage of ownership. This provision underscores the purpose of the diversity rules, which is to encourage the presence of investors who are likely to have a serious interest, similar to SBA's, in the fair and prudent management of the SBIC.

The proposed changes reflect policies which SBA has been developing in its review of license applications. In particular, SBA has used informal internal guidelines to evaluate whether a proposed investor's interest is substantial enough to qualify for diversity purposes. SBA is continuing to refine these guidelines and expects to incorporate them into its standard operating procedures.

Capital Requirements

Under the Act as amended by section 208(c) of Public Law 104–208, SBICs licensed on or after October 1, 1996 must meet increased minimum capital requirements. Previously, the statutory minimum capital requirement was $2.5 million. The new requirements would be implemented in proposed § 107.210, which combines and revises elements of current §§ 107.210 and 107.220. Proposed § 107.210(a)(1) would require a company that does not wish to be eligible to issue Participating Securities to have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA would be able to license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant meets certain conditions set forth in the proposed regulation. As mandated by the Act, this exception is limited to those instances where "special circumstances and good cause" can be shown.

Proposed § 107.210(a)(2) contains essentially the same language as the current § 107.220(a). It would require a company licensed on or after October 1, 1996, that wishes to be eligible to apply for Participating Securities to have Regulatory Capital of at least $10,000,000, with a permitted exception for an applicant which demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount (but under no circumstances less than $5,000,000). SBA regulations have required this level of Regulatory Capital for Participating Securities issuers since 1994.

The proposed rule would not permit prospective Participating Securities issuers to be licensed pursuant to the exception available to other applicants, under which a license may be granted with Regulatory Capital as low as $3,000,000. For applicants planning to issue Participating Securities, SBA believes that the ability to meet the standard minimum capital requirement is an important indicator of the credibility of management. SBA also doubts that any such applicant can demonstrate financial viability with Regulatory Capital of only $3,000,000, even on a temporary basis.

In addition to the Regulatory Capital requirements described above, proposed § 107.210(a) would also require any company licensed on or after October 1, 1996, to have Leverageable Capital of at least $2,500,000. Leverageable Capital is a subset of Regulatory Capital; while both include capital actually contributed to a Licensee by its private investors, the major difference between them is that Regulatory Capital also includes the Licensee's unfunded binding commitments from Institutional Investors. The proposed rule, which is consistent with SBA's current licensing policy, reflects the Agency's belief that the presence of a certain minimum level of Leverageable Capital demonstrates an applicant's seriousness and readiness to operate actively as an SBIC.

The proposed rule would not require SBICs licensed before October 1, 1996 to increase their capital. Under proposed § 107.210(b), such companies would have to meet the applicable minimum capital requirements under the regulations in effect on September 30, 1996 (see §§ 107.210 and 107.220 as in effect on that date). These requirements vary depending upon the date a company was licensed and the type of SBA Leverage it has issued or wants to issue.

See also the section of this preamble entitled "Eligibility for Leverage and Leverage Commitments".

Valuations

Section 208(f)(2) of Public Law 104–208 included one provision related to the valuation of portfolio securities held by Licensees which was not already reflected in the regulations. Under this provision, as part of the annual audit of a Licensee's financial statements, the independent auditor must provide to SBA a statement that the Licensee's valuations were performed in accordance with its SBA-approved valuation policy, as required by section 310(d)(2) of the Act. SBA has included this requirement in proposed § 107.503(e). SBA is also proposing various non-substantive wording changes in § 107.503 to improve the clarity of the section.

Reports To Be Filed With SBA

Current § 107.660 requires an SBIC to provide SBA with copies of reports given to its investors or filed with the Securities and Exchange Commission, and to notify SBA when it becomes a party to litigation or other proceedings. Proposed § 107.660(d) would add a requirement for a Licensee to notify SBA if an officer, director, general partner or other Control Person is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation. Key personnel associated with a license applicant currently must provide this type of information as part of the personal history statement included in the SBIC license application. The purpose of the proposed rule is to give SBA a mechanism for updating such information as needed to ensure the integrity of the SBIC program.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses which fall significantly below the maximum size permitted for a Small Business. These businesses were originally referred to as "Smaller Businesses", a term which was changed to "Smaller Enterprises" in a final rule published in the **Federal Register** on March 13, 1997 (62 FR 11759).

Under proposed § 107.710, the basic requirement for a Licensee to invest at least 20 percent of the total dollar amount of its Financings in Smaller Enterprises would remain unchanged. However, proposed § 107.710(c) would add a new requirement to implement section 208(c)(2) of Public Law 104–208. This provision applies to SBICs licensed on or before September 30, 1996, which issue Leverage after that date and which do not meet the current minimum capital requirement (Regulatory Capital of at least $5,000,000 for Debentures or at least $10,000,000 for Participating Securities). For such Licensees, at least 50 percent of the aggregate dollar amount of their Financings extended after September 30, 1996 must be invested in Smaller Enterprises. As a practical matter, SBA has found that Licensees to which this requirement applies typically invest almost exclusively in Smaller Enterprises.

Like the current regulation, the proposed rule would measure compliance with the requirements to finance Smaller Enterprises as of the end of a Licensee's fiscal year. Under current § 107.710(e), a Licensee which has not achieved the required percentage of investments in Smaller Enterprises is allowed one additional year to bring its portfolio into compliance. The proposed rule would retain this provision. However, such a Licensee would not be eligible for additional Leverage until it reaches the required percentage. See also the section of this preamble entitled "Eligibility for Leverage and Leverage Commitments".

Passive Businesses

SBICs are generally prohibited from investing in passive businesses. However, an exception is provided for holding companies which pass through the financing proceeds to an active subsidiary. The precise nature of this exception has changed over time. Prior to 1996, the general prohibition did not apply "to any Small Concern wholly owning another eligible Small Concern engaged in a regular and continuous business operation." Under current § 107.720(b)(2), which became effective January 31, 1996, an SBIC may finance a passive business "if, for all Financings extended, it passes substantially all the proceeds through to the same eligible Small Business that is not passive."

The goal of the 1996 revision was to eliminate the requirement for the passive business to be the 100 percent owner of the operating business, while still ensuring some substantial relationship between the two by

allowing funds to be passed through to only one active entity. SBA now believes that the latter provision may unnecessarily restrict some Small Businesses. For example, a holding company may be established with two operating subsidiaries, one engaged in manufacturing and the other in distribution of the manufactured product. Under the current regulation, if the holding company received financing from an SBIC, it could pass through the proceeds to only one subsidiary, even though both subsidiaries are essentially components of the same business.

At the same time, SBA continues to believe that there must be a significant relationship between a financed passive business and the active business which ultimately receives the proceeds. To satisfy this goal, proposed § 107.720(b)(2) would permit financing of a passive Small Business if it passes substantially all the proceeds through to one or more "subsidiary companies", defined as companies in which the financed passive business owns at least 50 percent of the voting securities. The current provision limiting the pass-through of proceeds to only one Small Business would be eliminated.

Co-Investment With Associates

Licensees may co-invest with Associates, subject to the conditions in § 107.730(d). This section sets forth certain circumstances under which the terms of a co-investment are presumed to be fair and equitable to the SBIC, so that no specific demonstration of equity is required. Under current § 107.730(d)(3)(iv), this presumption applies to co-investments by two non-leveraged SBICs. The proposed rule would apply the same presumption to co-investments by a non-leveraged SBIC and its non-SBIC Associate. The rationale behind the presumption is the same in both cases: SBA has no financial exposure, and is therefore unconcerned that a Licensee may be disadvantaged relative to its Associate.

Portfolio Diversification Requirements

Under current § 107.740, a leveraged SBIC may not have more than 20 percent of its Regulatory Capital invested in or committed to a single Small Business or group of related businesses, unless SBA gives its prior written approval (for SSBICs, the limit is 30 percent of Regulatory Capital). The purpose of this "overline" limit is to avoid excessive risk by ensuring a certain degree of portfolio diversification.

Since the beginning of the Participating Securities program, SBA has been aware that the current regulation may have an unintended effect. Participating Securities issuers operate under detailed rules governing distributions to SBA as well as to their private investors. These regulations permit a Licensee to return capital to its non-SBA partners under certain conditions, thereby reducing its Regulatory Capital and overline limit. SBA is concerned that a Licensee in these circumstances may suddenly have multiple violations of the overline regulation, even though its portfolio was sufficiently diversified based on its original Regulatory Capital.

To address this problem, proposed § 107.740(a) would base a Licensee's maximum permitted investment in or commitment to a Small Business on its Regulatory Capital at the time the investment or commitment is made. The limit would apply to the total amount of Financings and Commitments extended to the Small Business by the Licensee. For example, if a Licensee had invested $1,000,000 in a Small Business and wanted to provide follow-on financing at a time when its Regulatory Capital was $8,000,000, the amount of the follow-on financing could not exceed $600,000 (20 percent of $8,000,000, minus the $1,000,000 already invested).

It should be noted that the proposed rule would require a Licensee to be in compliance at the date of a Commitment and at the date of a Financing. Thus, a Licensee preparing to fund a Commitment it had made to a Small Business must ensure that it has sufficient Regulatory Capital as of the closing date to support the completed Financing.

Proposed § 107.740(a) would continue to permit overline investments with the prior written approval of SBA.

Cost of Money

Current § 107.855 sets forth limits on interest rates and other charges that SBICs may impose on Small Businesses. SBA is proposing three changes to these "Cost of Money" rules. The first change reflects section 208(d)(6) of Public Law 104–208, under which SBICs must pay to SBA an additional charge of 1 percent per year on any Leverage issued after September 30, 1996 (except for draws against commitments made by SBA in fiscal year 1996). The proposed rule would allow a Licensee to include this charge in its base rate when computing its Cost of Money ceiling. The base rate would be equal to either the current Debenture Rate plus the 1 percent charge (see § 107.855(c)), or the Licensee's own Cost of Capital with the 1 percent charge treated as additional interest expense in the computation (see § 107.855(d)). Although this change may increase the cost of borrowing for some Small Businesses, SBA believes that it is warranted because it reflects the increase in Licensees' cost of funds. There would be no change in the basic Cost of Money limitations of 19 percent for Loans and 14 percent for Debt Securities which Licensees may use regardless of the level of prevailing interest rates.

For Section 301(d) Licensees which elect to compute a Cost of Money ceiling based on their own Cost of Capital, proposed § 107.855(d)(4) would clarify that interest expense on a subsidized SBA-guaranteed debenture may be computed using the debenture's face (unsubsidized) interest rate. This provision was inadvertently deleted when the regulations were revised in January 1996, but has since remained in effect as a matter of SBA policy.

Finally, SBA is proposing to clarify the treatment of warrants with respect to Cost of Money. The regulations governing Cost of Money apply to Loans (which have no provision for obtaining equity in a Small Business) and Debt Securities (which involve some type of equity feature). SBA generally interprets these rules to exclude from Cost of Money any returns realized on the equity portion of a Debt Security because such returns normally are neither assured nor predictable. However, SBA has become aware of certain situations under which the current regulations may effectively require inclusion of the value of warrants in Cost of Money.

This may occur when a Licensee lends cash to a Small Business, and receives in return not only a note for the amount lent, but also detachable warrants to acquire equity in the Small Business. Generally accepted accounting principles require the Licensee to determine the fair value, if any, of the warrants received and to record the warrants at that value, while discounting the note by the same amount. The discount is then amortized to interest income over the life of the note. Under current § 107.855(f), the income created through amortization of the discount is included in Cost of Money.

SBA believes that this provision unduly disadvantages SBICs which allocate substantial value to the warrants acquired, relative to SBICs which assign zero or nominal value. Typically, SBICs invest in private companies which have no readily ascertainable market value. Thus, the value allocated to such companies' warrants is often determined through negotiation rather than the application of precise methods. Given the level of uncertainty associated with such valuations, SBA prefers to create a level playing field in which all returns realized on detachable warrants are excluded from Cost of Money.

Proposed § 107.855(g)(1) would address this concern by allowing a specific exclusion from Cost of Money for a discount on the loan portion of a Debt Security, if the discount results solely from the allocation of fair value to detachable stock purchase warrants as required by generally acceptable accounting principles. Discounts in general would still be included in Cost of Money. For example, if a Licensee provided $1,000,000 to a Small Business and received a note for $1,100,000, the amortization of the $100,000 discount over the life of the note would be treated as additional interest income for Cost of Money purposes.

Control

Proposed § 107.865 contains two clarifications to the existing regulation concerning Control of a Small Business by an SBIC. Under current § 107.865(c), a Licensee can rebut a presumption of Control if certain criteria concerning the ownership of the Small Business and the composition of its board of directors are satisfied. The proposed rule would eliminate references to the rounding of percentages in determining whether the board of directors meets the established criteria. The current language is confusing because it is unclear how the rounding is to be applied; SBA believes that removing it would permit a plain reading of the regulation.

The second proposed clarification involves current § 107.865(d), which sets forth the conditions under which a Licensee may take temporary Control of a portfolio company. The proposed rule would permit such Control where reasonably necessary for the protection of a Licensee's existing investment; the only revision is the addition of the word "existing". The proposed language is not a substantive change; it is intended simply to make explicit SBA's long-standing interpretation of this provision.

Eligibility for Leverage and Leverage Commitments

Section 208 of Public Law 104–208 established certain requirements which an SBIC must satisfy in order to obtain SBA Leverage. Proposed § 107.1120 (c) and (d) would implement these requirements. An SBIC licensed after September 30, 1996, with Regulatory Capital of less than $5,000,000 would be ineligible for Leverage until it reached the $5,000,000 level. An SBIC licensed on or before September 30, 1996, would not be required to increase its capital in order to obtain additional Leverage; however, if its Regulatory Capital was less than $5,000,000 ($10,000,000 for a company seeking to issue Participating Securities), it would have to certify in writing that at least 50 percent of the aggregate dollar amount of its Financings extended after September 30, 1996 would be provided to Smaller Enterprises (see also proposed § 107.710(c)). Finally, any Licensee seeking Leverage would be required to certify in writing that it is in compliance with the general requirement to provide 20 percent of its total Financings to Smaller Enterprises under § 107.710(b).

SBICs can obtain Leverage by applying directly for funding when it is needed or by obtaining a Leverage commitment from SBA which it can draw down over a period of time. SBA is proposing minor changes to the current rules governing the commitment process. The proposed rule would eliminate the minimum and maximum amounts for a Leverage commitment in current § 107.1200(c). SBA believes that these limits are unnecessary. Under the proposed rule, commitment amounts would have to be in multiples of $5,000 to accommodate requirements of the Leverage funding process; in all other respects, the amount of a commitment would be at SBA's discretion. Similarly, the current limitations in § 107.1230(b) on the amount that a Licensee can draw against its commitment would be eliminated. The proposed rule would require draws, like commitments, to be in multiples of $5,000; in addition, SBA would have discretion to determine a minimum draw amount, and would publish notice of any such determination in the **Federal Register** from time to time.

Leverage Fees

SBA is proposing changes in §§ 107.1130 and 107.1210 to implement provisions of section 208(d)(6) of Public Law 104–208 which affect the fees SBICs must pay in order to obtain SBA Leverage. These fee changes were effective October 1, 1996, and were implemented on an interim basis by SBA Policy Notice 1000–6.

Under proposed § 107.1130, a Licensee would pay a nonrefundable "leverage fee" to SBA when Debentures or Participating Securities are issued. The fee is 3 percent of the face amount of the Leverage issued, replacing the 2 percent user fee and the 1 percent commitment fee previously in effect. If a Licensee receives a Leverage commitment from SBA, it must prepay the 3 percent fee at the time it receives the commitment (see proposed § 107.1210(a)); otherwise, the fee is payable when the Leverage is issued.

Proposed § 107.1130(d) would require a Licensee to pay to SBA an additional "Charge" on Debentures and Participating Securities (see also § 107.50 for the definition of this proposed new term). For both types of Leverage, the Charge is 1 percent per annum. The Charge is payable under the same terms and conditions as the interest on Debentures or the Prioritized Payments on Participating Securities, as applicable. Thus, a Debenture issuer would pay the Charge in two semi-annual installments together with its interest payments. In contrast, a Participating Securities issuer would pay the Charge only when it had profits and was distributing Prioritized Payments under § 107.1540. The Charge would not apply to Leverage drawn down against a commitment obtained from SBA on or before September 30, 1996.

Participating Securities—General

SBICs began to issue Participating Securities in 1995. As Licensees and SBA have gained experience with the program, there have been a number of regulatory changes intended to correct errors and to eliminate inconsistencies and confusing language. The proposed rule continues this process of correction and clarification, and also includes certain substantive changes.

Current § 107.1500 sets forth general terms and conditions of the Participating Security. One of these conditions, set forth in § 107.1500(b)(4), is that a Licensee must make Equity Capital Investments equal to the amount of Participating Securities it issues, and must maintain such investments in an amount equal to its outstanding balance of Participating Securities. The proposed rule would implement a provision of Public Law 104–208 by eliminating the maintenance requirement. Thus, a Licensee would be responsible only for investing the appropriate dollar amount in Equity Capital Investments, and would not have to be concerned with the timing of the liquidation of those investments. The same change would also be reflected in proposed § 107.1820, which sets forth conditions that an SBIC must comply with in connection with its issuance of Participating Securities. In this section, under paragraph (e)(9), the failure to maintain a specified amount of Equity Capital Investments would be eliminated from the list of Restricted Operations Conditions.

Proposed § 107.1500(e), concerning amounts to be paid upon redemption of Participating Securities, includes the

new 1 percent annual Charge on Leverage issued on or after October 1, 1996 (see the section entitled "Leverage Fees" in this preamble). Proposed § 107.1500(f), concerning the priority of Participating Securities when a Licensee liquidates, reflects the same change. In addition, this paragraph would clarify that only Earned Prioritized Payments (that is, those Prioritized Payments which the Licensee has sufficient profits to pay) have priority in liquidation; the Licensee has no obligation to pay Accumulated Prioritized Payments (those not covered by available profits).

Liquidity Requirements for Participating Securities

The proposed rule includes two minor changes to the liquidity requirements in § 107.1505. Currently, a Licensee must perform the liquidity impairment computation at the end of its fiscal year, when it applies for Leverage, and when it intends to make a Distribution. Under proposed § 107.1505(a)(2), SBA would be able to exempt a Licensee applying for Leverage from the computation requirement. SBA has found that many SBICs in the early stages of their existence are extremely liquid; in these cases, the Agency believes that the formal liquidity computation provides no additional useful information and need not be performed.

The second proposed change involves the computation of the liquidity ratio in § 107.1505(b). Various components of the ratio are assigned weights which reflect the ease and/or probability of their conversion to cash. One of the components of "Total Current Funds Available" (the numerator of the liquidity ratio) is Publicly Traded and Marketable Securities, as reported on SBA Form 468. Under the current regulation, a Licensee is given credit for 65 percent of the reported value of these securities in the liquidity computation. In contrast, the proposed rule would allow the Licensee to count 100 percent of the reported value as a source of liquidity. SBA is proposing this change because Licensees are expected to take appropriate discounts (for restrictions, large holdings relative to trading volume, etc.) when valuing their securities, as required by SBA's valuation guidelines for SBICs. Since these discounts are already reflected in the portfolio valuations reported on Form 468, SBA considers it unnecessary to discount these values further in the liquidity computation.

Earmarked Profit (Loss)

Under § 107.1510, Participating Securities issuers are required to compute Earmarked Profit (Loss) as a preliminary step in determining the amounts of various Distributions. SBA is proposing two changes to this section. The first would affect only a Licensee holding assets not subject to SBA Profit Participation ("non-Earmarked Assets"). For a hypothetical SBIC in this situation (none are currently licensed), the proposed rule would simplify the computation of the "Earmarked Asset Ratio". This ratio is intended to measure the proportion of the total portfolio which consists of Earmarked Assets, but is currently complicated by the inclusion of a factor described as "weighted average uninvested proceeds of Participating Securities". SBA believes that this amount would be extremely difficult, if not impossible, to compute in practice; even if it could be determined, it would have little effect on the resulting ratio because it is included in both the numerator and denominator. Therefore, SBA is proposing to eliminate this factor entirely from the Earmarked Asset Ratio computation in § 107.1510(c). The proposed rule would also simplify the Earmarked Asset Ratio formula by replacing "weighted average" Earmarked Assets and "weighted average" Loans and Investments with simple averages. The intent of this change is that the "average" amounts specified would represent average monthly balances, as computed by the Participating Securities software developed by SBA. The Agency believes this method provides reasonable precision without requiring detailed tracking of the number of days outstanding for each portfolio investment, as the weighted average method requires.

The other proposed change affecting the Earmarked Profit (Loss) computation is in § 107.1510(d)(1)(ii), which deals with the amortization of leverage fees paid to SBA and partnership syndication costs incurred by an SBIC. Currently, for the purpose of computing Earmarked Profit (Loss), such costs must be amortized over five years. The proposed rule would require amortization over not less than five years. This change would accommodate companies which amortize the fees over a longer period for financial statement purposes and would prefer not to make an additional adjustment when performing the required profit computations.

Prioritized Payments

Section 107.1520 tells a Licensee how to compute Prioritized Payments and how to determine whether it has profits which will cause Prioritized Payments to become "earned" and therefore payable to SBA. Three changes to this section are proposed. First, the proposed rule would implement a provision of Public Law 104–208 by including "Charges" (the 1 percent annual fee discussed in this preamble under the heading "Leverage Fees") on outstanding Participating Securities in the required computations. Although Charges are not part of Prioritized Payments, they are payable under the same terms and conditions, as set forth in the proposed section.

Second, the computation of profit for the purposes of § 107.1520 would be revised under proposed § 107.1520(d). Under the current regulations, a Licensee's "profit" equals its cumulative Earmarked Profit minus its cumulative Earned Prioritized Payments from prior periods. This computation ignores the fact that some or all of the profit computed in this manner may have already been distributed under other sections of the regulations, either to SBA as Profit Participation or to the Licensee's private investors. SBA received no comments addressing this concern when the regulations governing Participating Securities were originally proposed in April 1994 or revised in January 1996; nevertheless, the Agency is concerned that the current regulation may, in effect, place duplicate claims on the same income. The proposed rule would take prior profit distributions into account in determining whether a Licensee has profits which can be used to pay Prioritized Payments.

Third, proposed § 107.1520(f) would provide additional detail concerning the computation of Adjustments, a type of compounding of unpaid Prioritized Payments. The current regulation is written in general terms which do not explain exactly how certain amounts should be calculated. The proposed rule follows the method which is currently used in the software developed by SBA to perform the allocation and distribution computations required for Participating Securities.

Profit Participation

An SBIC which has issued Participating Securities must allocate Profit Participation to SBA when it has earned profits over and above the amount necessary to pay its Prioritized Payments in full. Under current § 107.1530, Profit Participation is determined by computing a "Base" and a "Profit Participation Rate", and multiplying the Base by the Rate. The proposed rule would modify both the Base and the Rate under certain circumstances.

The Base for Profit Participation represents a cumulative measure of a Licensee's Earmarked Profit after Prioritized Payments, Adjustments and Charges. A Participating Securities issuer must compute its Base as of the end of each fiscal year, but may also compute the Base for a period of less than one year in order to make an interim distribution of profits. If an SBIC elects to make such a distribution, it faces the possibility that the Profit Participation it pays to SBA for the interim period will be greater than the Profit Participation it would have been obligated to pay had it waited until the end of the fiscal year. This can happen because the SBIC suffers losses during the remainder of the year, or simply because additional Prioritized Payments accumulate during that time; either or both of these factors would reduce the SBIC's year-end Base. Under current § 107.1530(c), an SBIC which has paid "excess" Profit Participation under these conditions can treat the excess as "Unused Loss" at year end, thereby reducing the Base which it will use the next time it computes Profit Participation. However, this approach captures only a part of the SBIC's loss; the actual loss incurred between the interim distribution date and the fiscal year end is equal to the difference between the interim and year-end Bases, not just the Profit Participation computed on that difference. For this reason, SBA is concerned that the current regulation may impose a significant penalty on a Licensee which chooses to make an interim distribution, and may unduly distort an SBIC's decisions concerning the timing of distributions. Proposed § 107.1530(c) would allow a Licensee in the circumstances described to treat the full amount of the difference between its interim and year-end Bases as Unused Loss.

Most SBICs operate for a period of time before issuing Participating Securities; in some cases, companies are already investing actively even before they are licensed. In the computation of the Base, the current regulations do not address the question of whether net income or loss from fiscal years prior to the issuance of Participating Securities may be included. Under proposed § 107.1530(c)(3), a Licensee would be permitted to include prior losses in its Base with SBA approval, which would be required only once when the Licensee computes the Base for the first time. SBA expects to approve inclusion of prior losses in most cases, but is proposing the approval requirement to cover unusual circumstances, such as a company with non-Earmarked Assets or one which has operated for an extended period of time before issuing Participating Securities. The proposed rule does not discuss net income realized in prior fiscal years because SBA has not seen this situation in practice; the Agency considers this an unlikely occurrence which would be handled on a case by case basis.

The Profit Participation Rate is computed using a formula in which the key variable is the ratio of Participating Securities to Leverageable Capital (the "PLC ratio"). Proposed § 107.1530(e) would retain the basic definition of the PLC ratio as the highest ratio of outstanding Participating Securities to Leverageable Capital that an SBIC has ever attained, as well as the exception which allows the ratio to be reduced if Leverageable Capital increases above its highest previous level, subject to certain conditions. Proposed § 107.1530(e)(2) (i) and (ii) would simplify the method for recomputing the PLC ratio following an increase in Leverageable Capital. The new PLC ratio would equal the highest dollar amount of Participating Securities the SBIC has ever had outstanding, divided by the SBIC's current Leverageable Capital. This computation would replace the present three-step method which is not only quite complex, but also can produce anomalous results when a Licensee's highest dollar amount of Participating Securities outstanding does not coincide with its highest ratio. SBA does not believe that any Licensee would be disadvantaged by this change.

After computing the Base and the Profit Participation Rate, an SBIC computes Profit Participation under § 107.1530(b). In the proposed rule, this paragraph has been reworded to improve its clarity. No substantive changes are proposed.

Tax Distributions

Limited partnership SBICs which have paid their Prioritized Payments in full and still have remaining Retained Earnings Available for Distribution are permitted to make an annual "tax distribution" to their investors, with SBA also receiving a share. Both the Act and § 107.1550 of the regulations use the term "tax distribution", based on the concept of allowing partnerships (or other flow-through entities) to distribute cash that investors can use to pay their taxes on the income allocated to them by the partnership. In practice, the permitted tax distribution may or may not correspond to a particular investor's actual tax liability, since the computation uses assumed rather than actual tax rates and does not distinguish between taxable and tax-exempt investors.

SBA is proposing one substantive change in § 107.1550(a)(1), which would be revised to include the 1 percent per annum Charge on Participating Securities issued on or after October 1, 1996 (except for those issued pursuant to a commitment obtained from SBA before that date). Under Public Law 104–208, Charges are payable as a preferred return to SBA under the same terms and conditions as Prioritized Payments; therefore, a Licensee must pay all its Prioritized Payments, Adjustments and Charges before it can make a distribution under § 107.1550.

The other proposed revisions in § 107.1550 are clarifications rather than substantive changes. In the formula used to compute a Licensee's Maximum Tax Liability, proposed § 107.1550(b)(1) would specify that Prioritized Payments allocated to SBA are to be excluded from the net ordinary income and capital gains allocated to partners. Proposed § 107.1550(b)(2) would clarify that while a Licensee may use either individual or corporate tax rates to compute Maximum Tax Liability, it must apply the same type of rate, either individual or corporate, to both ordinary income and capital gains. Finally, proposed § 107.1550(b)(3) would specify that in computing combined Federal and State tax rates to be used in the Maximum Tax Liability formula, a Licensee must assume that State income taxes are deductible for Federal income tax purposes. All of these changes are consistent with SBA's interpretation of the current regulations.

Distributions Based on "Retained Earnings Available for Distribution"

As of the end of each fiscal year, if a Participating Securities issuer has Retained Earnings Available for Distribution ("READ") remaining after paying all of its Prioritized Payments and making a tax distribution (if applicable), it must distribute the balance of READ in accordance with § 107.1560. SBA is proposing two clarifications to this section, as well as one minor substantive change.

Proposed § 107.1560 (a)(4) and (b)(1) would both be revised to clarify that the amount of READ to be distributed is determined after giving effect to any preceding distributions of Prioritized Payments under § 107.1540 and tax distributions under § 107.1550. The current regulation may not be clear on this point, although SBA has always interpreted it in a manner consistent with the proposed rule.

Current § 107.1560(e) contains a table which gives SBA's percentage share of

any distributions made under §§ 107.1560 or 107.1570(a). The heading of the first column refers to the Licensee's "ratio of Leverage to Leverageable Capital as of the fiscal year end". This heading is appropriate for distributions under § 107.1560, which are always computed as of the end of a fiscal year, but may be confusing for interim distributions under § 107.1570(a). If a Licensee makes an interim distribution, the intent of the regulations is to measure the ratio of Leverage to Leverageable Capital as of the end of the interim period for which the distribution is made. The proposed rule would clarify this point by replacing "fiscal year" with "fiscal period" in the column heading.

Proposed § 107.1560(a)(1) would be revised to include the 1 percent per annum Charge on Participating Securities issued on or after October 1, 1996. Under Public Law 104–208, Charges are payable as a preferred return to SBA under the same terms and conditions as Prioritized Payments; therefore, a Licensee must pay all its Prioritized Payments, Adjustments and Charges before it can make any other distribution under § 107.1560.

Optional Distributions Not Based on READ

A Licensee which has no READ may be able to make distributions to its private investors and SBA in accordance with § 107.1570(b). Distributions under this section are at the option of the SBIC and essentially constitute returns of capital. The current regulation sets forth conditions for making a distribution of this type. Under the proposed rule, two of these conditions would be revised. First, § 107.1570(b)(1)(i) would require an SBIC to pay any earned Charges, along with its Earned Prioritized Payments and earned Adjustments, before distributing under § 107.1570(b). This change is in accordance with section 208(d)(6) of Public Law 104–208; similar changes proposed in §§ 107.1550 and 107.1560 are discussed earlier in this preamble.

Second, under current § 107.1570(b)(1)(ii), a Licensee must have "distributed all Profit Participation computed under § 107.1530" before distributing under § 107.1570(b). This language may present a problem for an SBIC because of the following circumstances: Profit Participation is computed only on the basis of realized income or loss; however, the ability to distribute Profit Participation depends on the availability of READ, which also takes into account unrealized losses in a Licensee's portfolio. Thus, it is possible that a Licensee may compute Profit Participation to be allocated to SBA, but may be unable to pay it until some later date. Under these conditions, the Licensee would be blocked from distributing under § 107.1570(b). To remedy this situation, the proposed rule would require a Licensee to distribute Profit Participation only to the extent permitted based on its READ. SBA believes that the language in section 303(g)(10) of the Act, which requires payment of all Profit Participation "due" to SBA before a Licensee can return capital, provides sufficient flexibility to support this interpretation.

Notice of Participating Securities Distributions

The current regulations do not require SBICs with Participating Securities to notify SBA before making distributions. In practice, Licensees generally have sought SBA's assistance with the distribution calculations and have given SBA sufficient opportunity to review the results. Because of the complexity of some of the required computations, and the difficulty of correcting errors after a distribution takes place, SBA is proposing to formalize this practice. The proposed rule would require an SBIC to notify SBA 10 business days before a planned distribution under §§ 107.1540 through 107.1570, unless SBA permits otherwise. This language would give SBA the flexibility to allow distributions on shorter notice, if the circumstances warrant, without requiring Licensees to submit a formal request for a written exemption. SBA believes that this provision would not unreasonably constrain a Licensee's freedom of action and would provide important protection for Licensees as well as the Agency.

Timing of Participating Securities Distributions

The current regulations permit Participating Securities issuers to make distributions only on quarterly "Payment Dates" (February 1, May 1, August 1 and November 1 of each year). This structure was adopted to coincide with the terms of the public fundings of Participating Securities, under which investors receive interest payments and any returns of principal to which they are entitled on these dates. In the preamble to the final rule published on January 31, 1996 (61 FR 3177), SBA stated that it intended to seek a solution that would provide Licensees with greater flexibility in making distributions, particularly distributions in the form of securities.

Proposed § 107.1575 would allow an SBIC to make distributions (either in cash or in kind) on dates other than Payment Dates with SBA's prior written approval. SBA wishes to provide SBICs with as much flexibility as possible; however, for administrative and oversight purposes, the Agency feels strongly that it must have an opportunity to review planned distributions in advance.

Distributions based on fiscal year end results, such as required annual distributions of Prioritized Payments, would have to be made no later than the second Payment Date following the Licensee's fiscal year end. This requirement is consistent with the current regulation, which requires such distributions to be made on either the first or second Payment Date.

For any distribution made on other than a Payment Date, the distribution date would be used as the cutoff date for all the required computations (Earmarked Profits, Prioritized Payments, etc.). This approach may require a Licensee to perform a mid-month closing of its financial statements, which may not be as clean or convenient as a month-end closing. However, SBA believes it is the only approach which will accommodate all potential distributions, particularly distributions of securities on which realized gain cannot be recognized before the distribution date.

If a distribution to SBA includes a redemption of Participating Securities, the proposed rule specifies that the effective date of the redemption will be the next Payment Date following the distribution date. This provision is necessary because Participating Securities are funded through the purchase by investors of Trust Certificates, under which principal can be returned only on Payment Dates. Because of this structure, a Licensee will also be responsible for Prioritized Payments through the next Payment Date on the amount of Participating Securities to be redeemed.

In-Kind Distributions by Licensees

Participating Securities issuers are permitted to make distributions to SBA in the form of securities under the conditions set forth in § 107.1580. The current regulation limits in-kind distributions to those distributions required or permitted by §§ 107.1560 and 107.1570. Distributions of Prioritized Payments, which are governed by § 107.1540, must be made in cash. Because Prioritized Payments precede any other distributions, this limitation can have a potentially significant effect on the timing and value of distributions in general. To alleviate this concern, proposed § 107.1580(a) would allow distributions under §§ 107.1540, 107.1560 and 107.1570 to be made in the form of securities. Distributions under § 107.1550 would continue to be permitted on a cash-only basis, since the stated purpose of such distributions is to provide investors in flow-through entities with sufficient cash to pay their anticipated tax liabilities.

Characteristics of SBA's Leverage Guarantee

Section 303(b) of the Act authorizes SBA to guarantee the timely payment of all principal and interest as scheduled on Debentures or Participating Securities, pursuant to regulations issued by the Agency. In the final rule published January 31, 1996 (61 FR 3177), the section of the regulations which implemented this provision of the Act was dropped inadvertently. Proposed § 107.1720 would restore the previous language setting forth the unconditional nature and other characteristics of SBA's guarantee.

Capital Impairment

SBA is not proposing any substantive changes in the Capital Impairment computations set forth in §§ 107.1830 through 107.1850, but is proposing one clarification. Current § 107.1830(a) has caused some confusion by stating that the current Capital Impairment regulations apply to a Licensee if it has outstanding Leverage issued on or after April 25, 1994. While this statement is true, it is incomplete. This is because SBA Leverage is subject to the Capital Impairment regulations in effect on the date the Leverage is issued. Thus, a Licensee must comply with the current impairment rules if it has Leverage issued on or after April 25, 1994; however, if it has Leverage issued before that date as well, it must also comply with the impairment rules in effect when such Leverage was issued. Proposed § 107.1830(a) would clarify this point by specifically linking the applicability of the Capital Impairment regulations to the Leverage issued. In the same paragraph, the proposed rule would also state that a Licensee must comply with any specific conditions to which it has agreed by contract with SBA. This is not a substantive change, but simply makes explicit a Licensee's obligation to abide by the terms of any agreement it has made with the Agency.

Miscellaneous Corrections and Editorial Changes

The definition of "Commitment" in § 107.50 would be reworded in the third person (i.e., to refer to "a Licensee" instead of "you") to conform to the style in which the other definitions are written.

In current § 107.720(c), the SIC code for Operative Builders is incorrect. The proposed rule contains the correct 4-digit code (1531).

Proposed § 107.1590 sets forth special rules applicable to Participating Securities issuers licensed on or before March 31, 1993. The proposed rule would eliminate the current paragraph (c), which allows Licensees to repay outstanding Debentures with the proceeds of newly issued Participating Securities, subject to certain conditions. Since this paragraph properly applies to all Licensees, regardless of licensing date, its content would be transferred to the new proposed § 107.1585. The substance of § 107.1590 would remain unchanged.

In § 107.1600, references to section 321 of the Act would be changed to section 319, reflecting the amendment of the Act by Public Law 104–208.

In the definition of Trust Certificate Rate and in §§ 107.1240 and 107.1520(a)(1), certain technical changes have been proposed to facilitate the interim Leverage funding mechanism currently under consideration by SBA.

Limited Liability Companies

Section 208(b)(1) of Public Law 104–208 amended the Act to permit SBICs to organize as limited liability companies (LLCs). SBA is studying the legal and administrative issues which may arise in connection with LLCs, and will publish a proposed rule to implement this form of organization by SBICs at a later date.

Although SBA regulations do not yet provide for LLC Licensees, SBA has the statutory authority to license such companies. SBA's current policy is to accept a license application from an LLC only if the LLC is organized under Delaware's Limited Liability Company Act and does not intend to issue Participating Securities, which SBA has not yet developed in a form suitable for use by an LLC. SBA may reconsider these limitations as SBA acquires greater familiarity with the LLC form of organization and as a body of case law is created under the various state LLC laws. The adoption of a Uniform LLC Act by a significant number of states also would induce SBA to reexamine its current preference for Delaware law.

Until SBA regulations are revised to accommodate LLC Licensees, such Licensees should understand that SBA regards the members of the LLC to be equivalent to the general partners in a partnership Licensee unless the LLC's operating agreement clearly indicates otherwise. Thus, all members of an LLC Licensee will automatically be considered Control Persons and Associates of the Licensee unless the LLC's operating agreement vests management authority only in certain members of the company.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be a significant regulatory action for purposes of Executive Order 12866 because it would not have an annual effect on the economy of more than $100 million, and that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the proposed rule is to implement provisions of Public Law 104–208 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements that have not already been approved by the Office of Management and Budget.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA hereby proposes to amend Part 107 of Title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 et seq., 683, 687(c), 687b, 687d, 687g and 687m, Pub. L. 104–208.

2. Section 107.50 is proposed to be amended by revising the definitions for

Commitment, Common Control, Preferred Securities, Section 301(d) Licensee, and Trust Certificate Rate, and adding a definition of Charge, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Charge means an annual fee on Leverage issued on or after October 1, 1996 (except for Leverage issued pursuant to a commitment made by SBA before October 1, 1996), which is payable to SBA by Licensees, subject to the terms and conditions set forth in 107.1130(d).

* * * * *

Commitment means a written agreement between a Licensee and an eligible Small Business that obligates the Licensee to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the Licensee's obligation to fund the commitment, but these conditions must be outside the Licensee's control.

Common Control means a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more Licensees are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

* * * * *

Preferred Securities means nonvoting preferred stock or nonvoting limited partnership interests issued to SBA prior to October 1, 1996, by a Section 301(d) Licensee. Such securities were issued at par value in the case of preferred stock, or at face value in the case of preferred limited partnership interests.

* * * * *

Section 301(d) Licensee means a company licensed prior to October 1, 1996 under section 301(d) of the Act as in effect on the date of licensing, that may provide Assistance only to Disadvantaged Businesses. A Section 301(d) Licensee may be organized as a for-profit corporation, as a non-profit corporation, or as a limited partnership.

* * * * *

Trust Certificate Rate means a fixed rate determined by the Secretary of the Treasury at the time Participating Securities or Debentures are pooled, taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

* * * * *

§ 107.110 [Removed]

3. Section 107.110 is proposed to be removed.

4. Section 107.120 is proposed to be revised to read as follows:

§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

A Section 301(d) Licensee which was licensed to operate as the subsidiary of one or more Licensees (participant Licensees) may continue to do so, subject to the following:

(a) Each participant Licensee must continue to own at least 20 percent of the voting securities of the Section 301(d) Licensee.

(b) A participant Licensee must continue to treat its entire capital contribution to the subsidiary as a reduction of its Leverageable Capital. The participant Licensee's remaining Leverageable Capital must be sufficient to support its outstanding Leverage.

(c) A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

5. In § 107.150, the introductory text of paragraph (a)(1) is proposed to be revised to read as follows:

§ 107.150 Management and ownership diversity requirement.

* * * * *

(a) *Requirement one.* * * *

(1) At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned by Persons unrelated to management. To satisfy this requirement, such Persons must not be your Associates (except for their status as your shareholders or limited partners) and must not Control, be Controlled by, or be under Common Control with any of your Associates. You must have as investors at least three such Persons who are not Affiliates of one another and whose investments are significant in both dollar and percentage terms, as determined by SBA. As an alternative, you may substitute one investor who is an acceptable Institutional Investor for the three investors who are otherwise required. For purposes of this paragraph (a)(1), the following Institutional Investors are acceptable:

* * * * *

6. Section 107.210 is proposed to be revised to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on or after October 1, 1996 must have Leverageable Capital of at least $2,500,000 and must meet the applicable minimum Regulatory Capital requirement:

(1) *Licensees other than Participating Securities issuers.* A Licensee that does not wish to be eligible to apply for Participating Securities must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

(i) Has satisfied all licensing standards and requirements except the minimum capital requirement, as determined solely by SBA;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $5,000,000.

(2) *Participating Securities issuers.* A Licensee that wishes to be eligible to apply for Participating Securities must have Regulatory Capital of at least $10,000,000, unless it demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount. Under no circumstances can the Licensee have Regulatory Capital of less than $5,000,000.

(b) *Companies licensed before October 1, 1996.* A company licensed before October 1, 1996 must meet the minimum capital requirements applicable to such company, as required by the regulations in effect on September 30, 1996. See § 107.1120(c)(2) for Leverage eligibility requirements.

§ 107.220 [Removed]

7. Section 107.220 is proposed to be removed.

8. Section 107.230 is proposed to be amended by revising the introductory text of paragraph (d)(4) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(d) *Qualified Non-private Funds.*

* * *

(4) Funds invested in or committed in writing to any Section 301(d) Licensee prior to October 1, 1996, from the following sources: * * *

* * * * *

9. In § 107.503, paragraphs (a), (b) and (e), and the heading and first sentence of paragraph (c), are proposed to be revised to read as follows:

§ 107.503 Licensee's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA.

* * *

* * * * *

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy established in accordance with section 310(d)(2) of the Act.

10. Section 107.660 is proposed to be amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

§ 107.660 Other items required to be filed by Licensee with SBA.

* * * * *

(d) *Notification of criminal charges.* If any officer, director, general partner or other Control Person is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts which pertain to the incident.

* * * * *

11. Section 107.710 is proposed to be amended by adding a sentence at the end of paragraph (e) and by revising paragraphs (b) and (c) to read as follows:

§ 107.710 Requirement to finance Smaller Enterprises.

* * * * *

(b) *Smaller Enterprise Financings.* (1) *General rule.* At the close of each of your fiscal years, at least 20 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been invested in Smaller Enterprises. If you were licensed after April 25, 1994, the 20 percent requirement applies to the total dollar amount of the Financings you extended since you were licensed plus any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital.

(2) *Phase-in for new Licensees.* At the close of your first full fiscal year after licensing, at least 10 percent of the total dollar amount of the Financings you extended, including any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital, must have been invested in Smaller Enterprises. At the close of each fiscal year thereafter, you must meet the requirement in paragraph (b)(1) of this section.

(c) *Special requirement for certain leveraged Licensees.* (1) This paragraph (c) applies if you were licensed on or before September 30, 1996, and you issued Leverage after that date, and you have Regulatory Capital of:

(i) Less than $10,000,000 if such Leverage was Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures.

(2) At the close of each of your fiscal years, at least 50 percent of the total dollar amount of the Financings you extended after September 30, 1996 must have been invested in Smaller Enterprises.

* * * * *

(e) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120 (c) and (d)).

12. In § 107.720, paragraph (b)(2) and the introductory text of paragraph (c)(1) are proposed to be revised to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(b) *Passive businesses.* * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), "subsidiary company" means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(c) *Real estate businesses.* (1) You are not permitted to finance any business classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual, with the following exceptions: * * *

* * * * *

13. In § 107.730, paragraph (d)(3)(iv) is proposed to be revised to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

* * * * *

(d) *Financings with Associates.* * * *

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* * * *

(iv) Both you and your Associate are non-leveraged Licensees, or you are a non-leveraged Licensee and your Associate is not a Licensee.

* * * * *

14. In § 107.740, paragraph (a) is proposed to be revised to read as follows:

§ 107.740 Portfolio diversification ("overline" limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or want to be eligible for Leverage. Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) 20 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(c) Licensee; or

(2) 30 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(d) Licensee.

* * * * *

15. Section 107.855 is proposed to be amended by revising paragraphs (c)(1), (c)(4)(i) and (d)(4), redesignating paragraphs (g)(1) through (g)(10) as paragraphs (g)(2) through (g)(11), and adding a new paragraph (g)(1) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money")

* * * * *

(c) *How to determine the Cost of Money ceiling for a Financing.* * * *

(1) Choose a base rate for your Cost of Money computation. The base rate may be either the Debenture Rate currently in effect plus the applicable Charge determined under § 107.1130(d)(1), or your own "Cost of Capital" as determined under paragraph (d) of this section.

* * * * *

(4) * * *

(i) The current Debenture Rate plus the applicable Charge determined under § 107.1130(d)(1);

* * * * *

(d) *How to determine your Cost of Capital.* * * *

(4) For all qualified borrowings outstanding at your last fiscal year or fiscal quarter end, determine the aggregate interest expense for the past four fiscal quarters, excluding amortization of loan fees. For the purposes of this paragraph (d)(4):

(i) Interest expense on Debentures includes the 1 percent Charge paid by a Licensee under § 107.1130(d)(1); and

(ii) Section 301(d) Licensees with outstanding subsidized Debentures are presumed to have paid interest at the rate stated on the face of such Debentures, without regard to any subsidy paid by SBA.

* * * * *

(g) *Charges excluded from the Cost of Money.* * * *

(1) Discount on the loan portion of a Debt Security, if such discount exists solely as the result of the allocation of value to detachable stock purchase warrants in accordance with generally accepted accounting principles.

* * * * *

16. In § 107.865, the first sentence of paragraph (c)(2) and paragraph (d)(1) are proposed to be revised to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(c) *Rebuttals to presumption of Control.* * * *

(2) The management of the Small Business can elect at least 40 percent of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent. * * *

* * * * *

(d) *Temporary Control permitted.* * * *

(1) Where reasonably necessary for the protection of your existing investment;

* * * * *

17. Section 107.1100 is proposed to be revised to read as follows:

§ 107.1100 Types of Leverage and application forms.

(a) *Types of Leverageable available.* You may apply for Leverage from SBA in one or both of the following forms:

(1) The purchase or guarantee of your Debentures.

(2) The purchase or guarantee of your Participating Securities.

(b) *Application forms.* Use SBA Form 1022 to apply for Debentures and SBA Form 1022B to apply for Participating Securities.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division, 409 Third Street, S.W., Washington, DC 20416.

§ 107.1110 [Removed]

18. Section 107.1110 is proposed to be removed.

19. Section 107.1120 is proposed to be amended by revising paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and adding a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(c) Meet the minimum capital requirements of § 107.210, subject to the following additional conditions:

(1) If you were licensed after September 30, 1996 under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000.

(2) If you were licensed on or before September 30, 1996, and have Regulatory Capital of less than $5,000,000 (less than $10,000,000 if you wish to issue Participating Securities):

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in § 107.710(a)); and

(ii) You must demonstrate to SBA's satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in § 107.710(b).

* * * * *

20. Section 107.1130 is proposed to be amended by revising the heading and paragraphs (a) through (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 107.1130 Leverage fees and additional charges payable by Licensee.

(a) *Leverage fee.* You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) *Payment of leverage fee.* (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from the proceeds remitted to you, unless you prepaid the fee under § 107.1210.

(c) *Refundability.* The leverage fee is not refundable under any circumstances.

(d) *Additional charge for Leverage.*— (1) *Debentures.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. This Charge does not apply to Debentures issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(2) *Participating Securities.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. This Charge does not apply to Participating Securities issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

* * * * *

21. Section 107.1160 is proposed to be amended by adding introductory text to read as follows:

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

This section applies to Leverage issued by a Section 301(d) Licensee on or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under § 107.1150.

* * * * *

22. Section 107.1200 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 107.1200 SBA's Leverage commitment to a Licensee—application procedure, amount, and term.

* * * * *

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

23. Section 107.1210 is proposed to be revised to read as follows:

§ 107.1210 Payment of leverage fee upon receipt of commitment.

(a) *Prepayment of leverage fee.* As a condition of SBA's Leverage commitment, and before you draw any Leverage, you must prepay the leverage fee established under § 107.1130(a). The fee is equal to 3 percent of the face amount of the Debentures or Participating Securities reserved under the commitment.

(b) *Automatic cancellation of commitment.* Unless you pay the full amount of the leverage fee by 5 P.M. Eastern Time on the 30th calendar day following the issuance of SBA's Leverage commitment, the commitment will be automatically canceled.

24. In § 107.1230, paragraphs (a) and (b) are proposed to be revised to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

* * * * *

25. Section 107.1240 is proposed to be amended by revising paragraphs (a)(1), (b), (c) and (d) to read as follows:

§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* * * *

(1) The sale of your Debenture or Participating Security to a short-term investor at a rate that may be different from the Trust Certificate Rate which will be established at the time of the pooling of your security;

* * * * *

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale price will be the face amount.

(2) At the next scheduled date for the sale of Debenture Trust Certificates, whether or not the sale actually occurs, you must pay interest to the short-term investor for the short-term period. If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor interest from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date.

(3) Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see § 107.1810).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term investor, the sale price will be the face amount.

(d) *Licensee's right to repurchase its Debentures before pooling.* You may repurchase your Debentures from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your Debenture is to be included; and

(2) Pay the face amount of the Debenture, plus interest, to the short-term investor.

26. Subpart I of Part 107 is proposed to be amended by removing the undesignated center heading "Exchange of Outstanding Debentures for Participating or Preferred Securities—Section 301(d) Licensees", by redesignating § 107.1350 as § 107.1585, and by revising redesignated § 107.1585 to read as follows:

§ 107.1585 Exchange of Debentures for Participating Securities.

You may, in SBA's discretion, retire a Debenture through the issuance of Participating Securities. To do so, you must:

(a) Obtain SBA's approval to issue Participating Securities;

(b) Pay all unpaid accrued interest on the Debenture, plus any applicable prepayment penalties, fees, and other charges;

(c) Have outstanding Equity Capital Investments (at cost) equal to the amount of the Debenture being refinanced; and

(d) Classify all your existing Loans and Investments as Earmarked Assets.

27. In § 107.1400, the heading and introductory text are proposed to be revised to read as follows:

§ 107.1400 Dividends or partnership distributions on 4 percent Preferred Securities.

If you issued Preferred Securities to SBA on or after November 21, 1989, you must pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issued Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

* * * * *

28. Section 107.1420 is proposed to be revised to read as follows:

§ 107.1420 Articles requirements for 4 percent Preferred Securities.

If you have outstanding 4 percent Preferred Securities, your Articles must contain all the provisions in §§ 107.1400 and 107.1410.

§ 107.1430 [Amended]

29. Section 107.1430 is proposed to be revised by removing the last sentence.

30. In § 107.1500, paragraphs (b)(1) and (b)(4), the last sentence of paragraph (e), and paragraph (f)(2) are proposed to be revised to read as follows:

§ 107.1500 General description of Participating Securities.

* * * * *

(b) *Special eligibility requirements for Participating Securities.* * * *

(1) Minimum capital (see § 107.210).

* * * * *

(4) Equity investing, as set forth in this paragraph (b)(4). If you issue Participating Securities, you must invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments, as defined in § 107.50.

* * * * *

(e) *Mandatory redemption of Participating Securities.* * * * You must pay the Redemption Price plus any unpaid Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520).

(f) *Priority of Participating Securities in liquidation of Licensee.* * * *

(2) Any Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520); and

* * * * *

31. In § 107.1505, the last sentence of paragraph (a) and paragraph (b) are proposed to be revised to read as follows:

§ 107.1505 Liquidity requirements for licensees issuing Participating Securities.

(a) *Definition of Liquidity Impairment.* * * * You are responsible for calculating whether you have a condition of Liquidity Impairment:

(1) As of the close of your fiscal year;

(2) At the time you apply for Leverage, unless SBA permits otherwise; and

(3) At such time as you contemplate making any Distribution.

(b) *Computation of Liquidity Ratio.* Your Liquidity Ratio equals your Total Current Funds Available (A) divided by your Total Current Funds Required (B), as determined in the following table:

CALCULATION OF LIQUIDITY RATIO

Financial account	Amount reported on SBA Form 468	Weight	Weighted amount
(1) Cash and invested idle funds		× 100	
(2) Commitments from investors		× 1.00	
(3) Current maturities		× 0.50	
(4) Other current assets		× 1.00	
(5) Publicly Traded and Marketable Securities		× 1.00	
(6) Anticipated operating revenue for next 12 months (1)		× 1.00	
(7) Total Current Funds Available			A
(8) Current liabilities		× 1.00	
(9) Commitments to Small Businesses		× 0.75	
(10) Anticipated operating expense for next 12 months	(1)	× 1.00	
(11) Anticipated interest expense for next 12 months	(1)	× 1.00	
(12) Contingent liabilities (guarantees)		× 0.25	
(13) Total Current Funds Required			B

(1) As determined by Licensee's management under its business plan.

* * * * *

32. In § 107.1510, the introductory text, the last sentence of paragraph (c) and paragraph (d)(1)(ii) are proposed to be revised to read as follows:

§ 107.1510 How a Licensee computes Earmarked Profit (Loss).

Computing your Earmarked Profit (Loss) is the first step in determining your obligations to pay Prioritized Payments, Adjustments and Charges under § 107.1520 and Profit Participation under § 107.1530.

* * * * *

(c) *How to compute your Earmarked Asset Ratio.* * * * Otherwise, compute your Earmarked Asset Ratio using the following formula:

EAR = (EA)(LI) × 100

where:

EAR=Earmarked Asset Ratio

EA=Average Earmarked Assets (at cost) for the fiscal year or interim period

LI=Average Loans and Investments (at cost) for the fiscal year or interim period

(d) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is 100 percent.* * * *

(1) * * *

(ii) For the purpose of determining Net Income (Loss), leverage fees paid to SBA and partnership syndication costs that you incur must be capitalized and amortized on a straight-line basis over not less than five years.

* * * * *

33. Section 107.1520 is proposed to be revised to read as follows:

§ 107.1520 How a Licensee computes and allocates Prioritized Payments to SBA.

This section tells you how to compute Prioritized Payments, Adjustments and Charges on Participating Securities and determine the amounts you must pay. To distribute these amounts, see § 107.1540.

(a) *How to compute Prioritized Payments and Adjustments*—(1) *Prioritized Payments.* For a full fiscal year, the Prioritized Payment on an outstanding Participating Security equals the Redemption Price times the related Trust Certificate Rate. For an interim period, you must prorate the annual Prioritized Payment. If your Participating Security was sold to a short-term investor in accordance with § 107.1240, the Prioritized Payment for the short-term period equals the Redemption Price times the short-term rate.

(2) *Adjustments.* Compute Adjustments using paragraph (f) of this section.

(3) *Charges.* Compute Charges in accordance with § 107.1130(d)(2).

(b) *Licensee's obligation to pay Prioritized Payments, Adjustments and Charges.* You are obligated to pay Prioritized Payments, Adjustments and Charges only if you have profit as determined in paragraph (d) of this section.

(1) Prioritized Payments that you must pay (or have already paid) because you have sufficient profit are "Earned Prioritized Payments".

(2) Prioritized Payments that have not become payable because you lack sufficient profit are "Accumulated Prioritized Payments". Treat all Prioritized Payments as "Accumulated" until they become "Earned" under this section.

(3) Adjustments (computed under paragraph (f) of this section) and Charges (computed under § 107.1130(d)(2)) are "earned" according to the same criteria applied to Prioritized Payments.

(c) *How to keep track of Prioritized Payments.* You must establish three accounts to record your Accumulated and Earned Prioritized Payments:

(1) *Accumulation Account.* The Accumulation Account is a memorandum account. Its balance represents your Accumulated Prioritized Payments, unearned Adjustments and unearned Charges.

(2) *Distribution Account.* The Distribution Account is a liability account. Its balance represents your unpaid Earned Prioritized Payments, earned Adjustments and earned Charges.

(3) *Earned Payments Account.* The Earned Payments Account is a memorandum account. Each time you add to the Distribution Account balance, add the same amount to the Earned Payments Account. Its balance represents your total (paid and unpaid) Earned Prioritized Payments, earned Adjustments and earned Charges.

(d) *How to determine your profit for Prioritized Payment purposes.* As of the end of each fiscal year and any interim period for which you want to make a Distribution:

(1) Bring the Accumulation Account up to date by adding to it all Prioritized Payments and Charges through the end of the appropriate fiscal period.

(2) Determine whether you have profit for the purposes of this section by doing the following computation:

(i) Cumulative Earmarked Profit (Loss) under § 107.1510(f); minus

(ii) The Earned Payments Account balance; minus

(iii) All Distributions previously made under §§ 107.1550, 107.1560 and 107.1570(a); minus

(iv) Any Profit Participation previously allocated to SBA under § 107.1530, but not yet distributed.

(3) The amount computed in paragraph (d)(2) of this section, if greater than zero, is your profit. If the amount is zero or less, you have no profit.

(4) If you have a profit, continue with paragraph (e) of this section. Otherwise, continue with paragraph (f) of this section.

(e) *Allocating Prioritized Payments to the Distribution Account.* (1) If you have a profit under paragraph (d) of this section, determine the lesser of:

(i) Your profit; or

(ii) The balance in your Accumulation Account.

(2) Subtract the result in paragraph (e)(1) of this section from the Accumulation Account and add it to the Distribution Account and the Earned Payments Account.

(f) *How to compute Adjustments.* You must compute Adjustments as of the end of each fiscal year if you have a balance greater than zero in either your Accumulation Account or your Distribution Account, after giving effect to any Distribution that will be made no later than the second Payment Date following the fiscal year end.

(1) Determine the combined average Accumulation Account and Distribution Account balances for the fiscal year, assuming that Prioritized Payments accumulate on a daily basis without compounding.

(2) Multiply the average balance computed in paragraph (f)(1) of this section by the average of the Trust Certificate Rates for all the Participating Securities poolings during the fiscal year.

(3) Add the amounts computed in this paragraph (f) to your Accumulation Account.

(g) *Licensee's obligation to pay Prioritized Payments after redeeming Participating Securities.* This paragraph (g) applies if you have redeemed all your Participating Securities, but you still hold Earmarked Assets and still have a balance in your Accumulation Account.

(1) You must continue to perform all the procedures in this § 107.1520 as of the end of each fiscal quarter and prior to making any Distribution. You must distribute any Earned Prioritized Payments, earned Adjustments and earned Charges in accordance with § 107.1540.

(2) After you dispose of all your Earmarked Assets and make any required Distributions in accordance with § 107.1540, your obligation to pay any remaining Accumulated Prioritized Payments, unearned Adjustments and unearned Charges will be extinguished.

34. Section 107.1530 is proposed to be amended by removing paragraphs (e)(3) and (e)(4) and revising paragraphs (c), (e)(2) and (h) to read as follows:

§ 107.1530 How a Licensee computes SBA's Profit Participation.

* * * * *

(c) *How to compute the Base.* As of the end of each fiscal year and any year-to-date interim period for which you want to make a Distribution, compute your Base using the following formula:

B = EP − PPA − UL

where:

B=Base

EP=Earmarked Profit (Loss) for the period from § 107.1510

PPA=Prioritized Payments for the period from § 107.1520(a)(1), Adjustments (if applicable) from § 107.1520(f), and Charges (if applicable) from § 107.1130(d)(2)

UL="Unused Loss" from prior periods as determined in this paragraph (c).

(1) If the Base computed as of the end of your previous fiscal year (your "Previous Base") was less than zero, your Unused Loss equals your Previous Base.

(2) If your Previous Base was zero or greater, your Unused Loss equals zero, with the following exception: If you made an interim Distribution of Profit Participation during your previous fiscal year, and your Previous Base was lower than the interim Base on which your Distribution was computed, then your Unused Loss equals the difference between the interim Base and the Previous Base. For example, assume you are computing your Base as of December 31, 1997, your fiscal year end. Your Previous Base, computed as of December 31, 1996, was $3,000,000. During 1996, you made an interim Distribution which was computed on a Base of $3,500,000 as of June 30, 1996. The $500,000 difference between the 1996 interim and year-end Bases would be carried forward as Unused Loss in the computation of your Base as of December 31, 1997.

(3) If you had no Participating Securities outstanding as of the end of your last fiscal year, you may request SBA's approval to treat your Undistributed Net Realized Loss, as reported on SBA Form 468 for that year, as Unused Loss. If you did not file SBA Form 468 because you were not yet licensed as of the end of your last fiscal year, you may request SBA's approval to treat pre-licensing losses as Unused Loss.

* * * * *

(e) *Compute the "PLC ratio".* * * *

(2) *Exception.* You may reduce the ratio computed under paragraph (e)(1) of this section if you have increased your Leverageable Capital above its highest previous level. The increase must have taken place at least 120 days before the date as of which your Base is computed. In addition, the increase must have been expressly provided for in a plan of operations submitted to and approved by SBA in writing, or must be the result of the takedown of commitments or the conversion of non-cash assets that were included in your Private Capital. If these conditions are satisfied, compute your reduced PLC ratio as follows:

(i) Divide the highest dollar amount of Participating Securities you have ever had outstanding by your increased Leverageable Capital.

(ii) If the result in paragraph (e)(2)(i) is lower than your PLC ratio currently in effect, such result will become your new PLC ratio.

* * * * *

(h) *Computing SBA's Profit Participation.* If the Base from paragraph (c) of this section is greater than zero, you must compute SBA's Profit Participation as follows:

(1) Multiply the Base from paragraph (c) by the Profit Participation Rate from paragraph (g).

(2) If your last Profit Participation computation was for an interim period during the same fiscal year and used a higher Profit Participation Rate than the

Rate you just used in paragraph (h)(1) of this section, you must adjust the amount computed in paragraph (h)(1) as follows:

(i) Determine the difference between the Profit Participation Rate you just used in paragraph (h)(1) and the Rate used in your previous computation;

(ii) Multiply the difference by the Base from your last Profit Participation computation; and

(iii) Add the result to the amount you computed in paragraph (h)(1).

(3) Reduce the Profit Participation computed in paragraphs (h)(1) and (h)(2) by any amounts of Profit Participation that you distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any previous interim period(s) during the fiscal year. The result is SBA's Profit Participation (unless it is less than zero, in which case SBA's Profit Participation is zero).

* * * * *

35. Section 107.1540 is proposed to be amended by adding a sentence at the end of the introductory text to read as follows:

§ 107.1540 Distributions by Licensee—Prioritized Payment and Adjustments.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

36. Section 107.1550 is proposed to be amended by adding a sentence at the end of the introductory text and by revising paragraphs (a)(1) and (b) to read as follows:

§ 107.1550 Distributions by Licensee—permitted "tax Distributions" to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making a tax Distribution.* * * *

(1) You have paid all your Prioritized Payments, Adjustments, and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see § 107.1520).

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) Compute your Maximum Tax Liability for a full fiscal year only. Use the following formula:

M=(TOI × HRO) + (TCG x HRC)

where:

M=Maximum Tax Liability

TOI=Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA

HRO=The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section

TCG=Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA

HRC=The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

(2) You may compute the highest combined marginal Federal and State income tax rate on ordinary income and capital gains using either individual or corporate rates. However, you must apply the same type of rate, either individual or corporate, to both ordinary income and capital gains.

(3) In determining the combined Federal and State income tax rate, you must assume that State income taxes are deductible from Federal income taxes. For example, if the Federal tax rate was 35 percent and the State tax rate was 5 percent, the combined tax rate would be [35% × (1 − .05)]+5% = 38.25%.

(4) For purposes of this paragraph (b), the "State income tax" is that of the State where your principal place of business is located, and does not include any local income taxes.

* * * * *

37. In § 107.1560, in the first column of the table in paragraph (e), the column heading is proposed to be revised to read "If your ratio of Leverage to Leverageable Capital as of the fiscal period end is:", a sentence is proposed to be added at the end of the introductory text, and paragraphs (a)(1), (a)(4) and (b) are proposed to be revised to read as follows:

§ 107.1560 Distributions by Licensee—required Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making distributions.* * * *

(1) You must have paid all Prioritized Payments, Adjustments and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see §§ 107.1520 and 107.1540).

* * * * *

(4) The amount you distribute under this section must not exceed your remaining Retained Earnings Available for Distribution.

(b) *Total amount you must distribute.* Unless SBA permits otherwise, the total amount you must distribute equals the result (if greater than zero) of the following computation:

(1) Your Retained Earnings Available for Distribution as of the end of your fiscal year, after giving effect to any Distribution under §§ 107.1540 and 107.1550; minus

(2) All previous Distributions under this § 107.1560 and § 107.1570(a) that were applied as redemptions or repayments of Leverage; plus

(3) All previous Distributions under § 107.1570(b) that reduced your Retained Earnings Available for Distribution.

* * * * *

38. Section 107.1570 is proposed to be amended by adding a sentence at the end of the introductory text and by revising the heading and paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 107.1570 Distributions by Licensee—optional Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

(b) *Other optional Distributions.* * * *

(1) *Conditions for making a Distribution.* * * *

(i) You have distributed all Earned Prioritized Payments, earned Adjustments, and earned Charges, so that the balance in your Distribution Account is zero (see § 107.1520).

(ii) You have distributed all Profit Participation computed under § 107.1530 which you are required to distribute under § 107.1560 or permitted to distribute under § 107.1570(a), as appropriate, and you have made all required Distributions under § 107.1560.

* * * * *

39. Section 107.1575 is proposed to be added to subpart I to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) *Permitted distributions on other than payment dates.* Notwithstanding any provisions to the contrary in §§ 107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

(1) Required annual Distributions under §§ 107.1540(a)(1), and any Distributions under §§ 107.1550 and 107.1560, must be made no later than the second Payment Date following the end of your fiscal year;

(2) Required Distributions under § 107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter;

(3) Optional Distributions under § 107.1540(a)(2) and § 107.1570 may be made on any date.

(b) *Conditions for making distribution.* All Distributions under this § 107.1575 are subject to the following conditions:

(1) You must obtain SBA's written approval before the distribution date;

(2) You must use the distribution date as the ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distributions, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570;

(3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

40. In § 107.1580, the introductory text of paragraph (a) is proposed to be revised to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind distributions.* A Distribution under §§ 107.1540, 107.1560 or 107.1570 may consist of securities (an "In-Kind Distribution"). Such a Distribution must satisfy the conditions in this paragraph (a).

* * * * *

41. Section 107.1590 is proposed to be amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (a)(1) to read as follows:

§ 107.1590 Special rules for companies licensed on or before March 31, 1993.

* * * * *

(a) *Election to exclude pre-existing portfolio.* * * *

(1) The proceeds of your first issuance of Participating Securities are not used to refinance outstanding Debentures (see § 107.1585(a)). SBA will consider payment or prepayment of any outstanding Debenture to be a refinancing unless you demonstrate to SBA's satisfaction that you can pay the Debenture principal without relying on the proceeds of the Participating Securities.

* * * * *

42. In § 107.1600, the first sentence of paragraph (a) and paragraph (b) are proposed to be revised to read as follows:

§ 107.1600 SBA authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Sections 319 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. * * *

(b) *Periodic exercise of authority.* SBA will issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 319 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or TCs.

* * * * *

43. Section 107.1720 is proposed to be added to subpart I to read as follows:

§ 107.1720 Characteristics of SBA's guarantee.

If SBA agrees to guarantee a Licensee's Debentures or Participating Securities, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities.

44. In § 107.1820, paragraph (e)(9) is proposed to be revised to read as follows:

§ 107.1820 Conditions affecting Issuers of Preferred Securities and/or Participating Securities.

* * * * *

(e) *Restricted Operations Conditions.* * * *

(9) *Failure to meet investment requirements.* You fail to make the amount of Equity Capital Investments required for Participating Securities (§ 107.1500(b)(4)), if applicable to you; or you fail to maintain as of the end of each fiscal year the investment ratios or amounts required for Leverage in excess of 300 percent of Leverageable Capital (§ 107.1160 (c)) or Preferred Securities in excess of 100 percent of Leverageable Capital (§ 107.1160(d)), if applicable to you. In determining whether you have met the maintenance requirements in § 107.1160(c) or (d), SBA will disregard any prepayment, sale, or disposition of Venture Capital Financings, any increase in Leverageable Capital, and any receipt of additional Leverage, within 120 days prior to the end of your fiscal year.

* * * * *

45. In § 107.1830, paragraph (a) is revised to read as follows:

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

(a) *Applicability of this section.* This § 107.1830 applies to Leverage issued on or after April 25, 1994. For Leverage issued before April 25, 1994, you must comply with paragraphs (e) and (f) of this section and the Capital Impairment regulations in this part in effect when you issued your Leverage. For all Leverage issued, you must also comply with any contractual provisions to which you have agreed.

* * * * *

Dated: September 25, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–26720 Filed 10–10–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–77–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that currently requires measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. This action would add repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an emergency exit door or replacing the bearing of the door lifting mechanism, if necessary. This proposal is prompted by reports of seizure of a bearing and increased door handle forces that were outside the limits of the required hand forces due to

seizure of two teflon line bearings on the lifting shaft. The actions specified by the proposed AD are intended to prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

DATES: Comments must be received by November 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–77–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 5, 1995, the FAA issued AD 95–08–07, amendment 39–9196 (60 FR 19155, April 17, 1995), applicable to all Airbus Model A310 series airplanes, to require measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. That action was prompted by a report that, during routine maintenance, excessive force was required to lift the interior control handle of the emergency exit door. The requirements of that AD are intended to prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

Actions Since Issuance of Previous Rule

Since issuance of AD 95–08–07, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that, during the inspection required by that AD, the seizure of one bearing was found on an affected airplane. The DGAC also advises that, following accomplishment of the inspection required by that AD, increased door handle forces that were outside the limits of the required hand forces were required to lift the interior control handle of the emergency exit doors. The cause of the excessive force was attributed to the seizure of two teflon line bearings on the lifting shaft. This condition, if not corrected, could impede passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–52–2060, dated July 22, 1996, which describes procedures for performing repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an exit door or replacing the bearings of the door lifting mechanism, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–239–205(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–08–07 to continue to require measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. The proposed AD also would require repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an exit door or replacing the bearings of the door lifting mechanism, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except that any discrepancy of the mechanism inside the emergency exit door would be required to be repaired in accordance with a method approved by the FAA.

Differences Between the Proposal and the Relevant French AD

This proposed rule would differ from the parallel French airworthiness directive 96–239–205(B), in that it would exclude from the applicability those airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST0001NY. This STC, which was issued by the FAA, converted airplanes from a passenger to a cargo-carrying configuration. Thus, the emergency exit doors of these airplanes are no longer available for use. Therefore, the FAA has determined that Airbus Model A310 series airplanes that have been modified in accordance with the identified STC are not subject to the addressed unsafe condition.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 6 Airbus Model A310 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–08–07 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $360, or $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $360, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9196 (60 FR 19155, April 17, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 97–NM–77–AD. Supersedes AD 95–08–07, Amendment 39–9196.

Applicability: All Model A310 series airplanes, except those airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST0001NY; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door, accomplish the following:

Restatement of Requirements of AD 95–08–07, Amendment 39–9196

(a) Within 60 days after May 2, 1995 (the effective date of AD 95–08–07), measure the amount of force required to move the interior control handle of the emergency exit doors, in accordance with Airbus All Operators Telex (AOT) 52–08, Revision 1, dated December 1, 1994.

(b) If the force required to move the interior control handle of the door is equal to or does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(c) If the force required to move the interior control handle of the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a full functional test of the emergency exit doors to measure the amount of force required to open the doors, in accordance with the AOT.

(1) If the force required to open the door does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(2) If the force required to open the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a visual inspection to detect discrepancies of the mechanism inside the door, in accordance with the AOT.

(i) If no discrepancy is found, prior to further flight, replace seized bearings with new or serviceable bearings, in accordance with AOT.

(ii) If any discrepancy is found, prior to further flight, repair the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the findings of discrepancies to Airbus Industrie, Engineering Services, Attention: Mr. R. Filaquier, AI/SE E121, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

(e) Within 3 months after the effective date of this AD, perform a functional test to measure the force necessary to move the interior control handle of the emergency exit doors, in accordance with Airbus Service Bulletin A310–52–2060, dated July 22, 1996.

(1) If the emergency exit door opens and the force required to move the interior control hand is less than or equal to the limits specified in the service bulletin, repeat the test thereafter at intervals not to exceed 3 months.

(2) If the emergency exit door does not open or the force required to move the interior handle is greater than the limits specified in the service bulletin, prior to further flight, perform an inspection to detect discrepancies of the mechanisms inside the door, in accordance with the service bulletin.

(i) If no discrepancy is detected, prior to further flight, replace the bearings with new bearings, in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(ii) If any discrepancy is detected, prior to further flight, adjust the emergency exit doors in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 7, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27090 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that currently requires an inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment, and replacement, if necessary. That AD was prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The actions specified by that AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew. This action would revise the applicability of the existing AD by removing several airplanes.

DATES: Comments must be received by November 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 12, 1997, the FAA issued AD 97–11–02, amendment 39–10031 (62 FR 28795, May 28, 1997), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, to require a one-time inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment to determine the thickness of this part, and replacement with a new intercostal of the correct thickness, if necessary. That action was prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The requirements of that AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has issued Alert Service Bulletin J41–A53–030, Revision 1, dated August 8, 1996, and Revision 2, dated February 14, 1997. The inspection and replacement procedures described in these revisions are identical to those described in the original version of the service bulletin (which was referenced in AD 97–11–02). The only change effected by Revisions 1 and 2 is to remove airplanes having constructors numbers 41044, 41068, 41069, and 41070 from the effectivity listing of the alert service bulletin, since these airplanes are not subject to the addressed unsafe condition. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified these alert service bulletins as mandatory.

The FAA has been advised that Jetstream Aircraft Limited has revised its corporate name to British Aerospace Regional Aircraft.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 97–11–02 to continue to require a one-time inspection of the intercostal of the third crew member seat to the floor structure in the flight compartment to determine the thickness of this part, and replacement with a new intercostal of the correct thickness, if necessary. The proposed AD also would limit the applicability of the existing AD by removing several airplanes.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the existing AD, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this AD are reiterated in their entirety (as follows) for the convenience of affected operators:

The FAA estimates that 14 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $840, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10031 (62 FR 28795, May 28, 1997), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97-NM–127-AD. Revises AD 97–11–02, Amendment 39–10031.

Applicability: Jetstream Model 4101 airplanes, as listed in Jetstream Alert Service Bulletin J41-A53–030, Revision 2, dated February 14, 1997; certificated in any category.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure during emergency landing dynamic conditions of the intercostal that attaches the third crew member seat ("third crew seat") to the floor structure in the flight compartment, which could consequently result in injury to the flight crew, accomplish the following:

(a) Within 30 days after July 2, 1997 (the effective date of AD 97–11–02, amendment 39–10031), inspect the intercostal in the floor structure that supports the third crew seat in the flight compartment to determine the thickness of this part, in accordance with Part 1 of Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997.

(b) If the thickness of the intercostal is 0.064 inch, no further action is required by this AD.

(c) If the thickness of the intercostal is 0.048 inch, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997. After replacement, no further action is required by this AD. Or

(2) Prior to further flight, install a placard, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997, to prohibit use of the third crew seat when the total weight of carry-on items stored in the forward right stowage area is more than 100 pounds. Within 6 months after installation of the placard, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with any of the service bulletins. After installation of the new intercostal, the placard may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 7, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27091 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–252936–96]

RIN 1545–AU85

Rewards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 12, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (REG–252936–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (REG–252936–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Judith A. Lintz (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by December 15, 1997. Comments are specifically requested concerning: Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collections of information (see below); how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§ 301.7623–1T(b)(3), 301.7623–1T(d), and 301.7623–1T(f). The collections of information are required to provide information relating to violations of the internal revenue laws, and to identify the proper claimant of a reward. The collection of information is voluntary with respect to the provision of information relating to violations of the internal revenue laws. The collections of information are required to obtain a benefit with respect to filing a claim for reward. The likely respondents are individuals, although non-individual claimants are also allowed.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 7623. The temporary regulations contain rules relating to rewards for information that relates to violations of the internal revenue laws. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person who timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of the regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7623–1 is revised to read as follows:

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

[The text of this proposed revised section is the same as the text of § 301.7623–1T published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26859 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–111–FOR]

Virginia Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment makes changes to the Ranking and Selection section and to the AML Water Project Evaluation form. The proposed amendment is intended to revise the Virginia program to be consistent with SMCRA, and to improve the efficiency of the Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on November 13, 1997. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on November 10, 1997. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 29, 1997.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement:

Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Discussion of the Proposed Amendment

By letter dated September 19, 1997 (Administrative Record No. VA–926), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. This amendment is intended to revise the Virginia program to be consistent with SMCRA at section 402(g)(6), and to improve the efficiency of the Virginia program.

The proposed amendments are as follows.

Ranking and Selection 884.13(c)(2)

In this section, Virginia proposes to change the heading of the paragraph titled *"Acid Mine Drainage Abatement—Treatment"* to read *"Set Aside Funds,"* and to revise the language of that subsection to include the provisions of part A of section 402(g)(6) of SMCRA.

The revised language is as follows:

Set Aside Funds

In accordance with Section 402(g)(6) of SMCRA, Virginia may, without regard to the 3 year limitation referred to in Section 402(g)91)(D) of SMCRA, receive and retain up to 10 percent of the total grants made annually under Section 402(g) (1) and (5) of SMCRA by the Secretary for deposit into either:

A. A special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by Virginia solely to achieve the priorities stated in section 403(a) of SMCRA after September 30, 1995, or

B. An acid mine drainage abatement and treatment fund established under State law as provided for under 30 CFR Part 876. An interest bearing acid mine drainage abatement and treatment fund will be utilized by Virginia, in consultation with the Natural Resources Conservation Service, to implement acid mine drainage abatement-treatment plans approved by the Secretary of the Interior.

These plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit.

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

(c) An identification of the sources of acid mine drainage within the hydrologic unit.

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

(e) The cost of undertaking the proposed abatement and treatment measures.

(f) An identification of existing and proposed sources of funding for such measures.

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

Under this program, the term qualified hydrologic unit means a hydrologic unit:

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

(b) Which contains lands and water that are:

1. Eligible pursuant to Section 404 and include any of priorities stated in SMCRA paragraph (1), (2), or (3) of Section 403(a); and

2. Proposed to be the subject of the expenditures by the State from amounts available from the forfeiture of bonds required under Section 509 or from other State sources to mitigate acid mine drainage.

AML Water Project Evaluation Form

The AML Water Project Evaluation form is currently part of the approved Virginia program. Virginia is proposing to change four sections and has provided the following rationale for the changes.

Appropriate Project Costs (Cost Per Connection)

This was revised to more realistically reflect the cost/hook-ups being experienced. most cost/hook-ups now reflect a 10,000–20,000 range. This is because of the high cost for construction due to the distance between households, and he mountainous terrain.

Affordability

"Costs for 4,200 gal. of treated water" was changed to read "Costs for 3,500 gal. of treated water" to show the average use and to match usage rates used by other funding agencies as reflected in the review manual application.

Level of Commitment of Non-AML Funds

The points award were modified to encourage local funding and leverage AML funding to the maximum extent possible.

AML Bonus Award

This new review category is meant to promote and encourage awards to proposed projects which incorporate regionalization and consolidated management. Regionalization of water systems reduces costs and promotes efficiency in providing water to the greatest number of households. Points awarded for this will be between 1–5, and a total perfect score will now be 105. The average score on projects is 60–80.

In addition to the above changes to the form, Virginia requested that the AML Water Project Evaluation form—figure 2 be removed from the AML State Reclamation Plan and placed into the Administrative Record since additional changes to the form may be necessary in the future.

The full text of proposed program amendment submitted by Virginia is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Virginia program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on October 29, 1997. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–27066 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5026b; FRL–5904–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing volatile organic compound (VOC) reasonably available control technology (RACT) for six major sources of VOCs located in Virginia. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092, at the EPA Region III office or via e-mail at gaffney.kristeen@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: Refer to the information pertaining to this action, VOC RACT determinations for individual sources located in Virginia, provided in the Direct Final action of the same title located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–27128 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5029b; FRL–5904–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: VOC RACT for Phillip Morris, Hercules, Virginia Power Station and the Hopewell Regional Wastewater Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing volatile organic compound (VOC) reasonably available control technology (RACT) for six major sources located in Virginia. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165, at the EPA Region III office.

SUPPLEMENTARY INFORMATION: Refer to the information pertaining to this action, VOC RACT determinations for individual sources located in Virginia, provided in the Direct Final action of the same title located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–27127 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 090397A]

RIN 0648–AJ12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) for Atlantic group Spanish mackerel and for Gulf group king mackerel, revise the commercial trip limits off the Florida east and south coasts for the Gulf and Atlantic groups of king mackerel, and allow the operator and crew on for-hire vessels to take the bag limit of Gulf group king mackerel. The intended effects of this proposed rule would be to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Written comments must be received on or before October 29, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting aspects of this action relating to Atlantic migratory groups of king and Spanish mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, Phone: 803–571–4366, Fax: 803–769–4520.

Requests for copies of the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis supporting aspects of this action relating to Gulf group king and Spanish mackerel should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619, Phone: 813–228–2815, Fax: 813–225–7015.

Requests for copies of NMFS' supplementary analysis of economic impacts on small entities for purposes of the Regulatory Flexibility Act (RFA) should be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils made recommendations to the Regional Administrator, Southeast Region, NMFS (RA), for changes in TACs, trip limits, and bag limits in separate regulatory amendments. For Atlantic migratory groups, the Councils recommended increasing the commercial quota and recreational allocation for Spanish mackerel and modifying the commercial trip limits off Florida for king mackerel. For Gulf migratory group king mackerel, the Councils recommended increasing the commercial quota and recreational allocation, revising the commercial trip limit off the Florida east coast, and restoring the bag limit applicable to operator and crew of for-hire vessels. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

TACs, Allocations, and Quotas

The South Atlantic Fishery Management Council (SA Council) recommended increasing the annual TAC for the Atlantic migratory group of Spanish mackerel from 7.0 million lb (3.18 million kg) to 8.0 million lb (3.63 million kg), to be effective commencing with the fishing year that began April 1, 1997. The Gulf of Mexico Fishery Management Council (Gulf Council) recommended increasing the annual TAC for the Gulf migratory group of king mackerel from 7.8 million lb (3.54 million kg) to 10.6 million lb (4.81 million kg), to be effective commencing with the fishing year that began July 1, 1997.

Consistent with the FMP's framework procedure, the recommended TACs are within the range of the acceptable biological catch (ABC) established by the Councils and calculated by the Mackerel Stock Assessment Panel (MSAP). The TACs represent a biologically conservative approach supported by the Councils' Scientific and Statistical Committees and Mackerel Advisory Panels. The respective commercial quotas and recreational allocations would be increased under these proposed increased TACs. Because the increased quotas and allocations would be higher than recent harvest levels, no early or unexpected fishery closures or quota/allocation overruns are likely.

The Councils' recommended TACs are within ABCs that were calculated to increase or maintain stocks at a 30-percent spawning potential ratio (SPR) level. That SPR level represents the threshold under which stocks are considered overfished by terms of the FMP, the level selected by the MSAP at which stocks produce maximum sustainable yield, and the optimum yield (OY) target level approved for Gulf mackerel groups under Amendment 8. A 40-percent OY target level was approved for the Atlantic mackerel groups.

Currently, the Gulf group king mackerel is the only mackerel group considered overfished (SPR level estimated at 22 percent). The proposed TAC for this group is within an ABC range that would rebuild the stock in about 10 years to the 30-percent SPR level given the uncertainties of long-term stock-recruitment relationships and fishing mortality. Later this year, NMFS expects to advise the Councils, as required by section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), of fisheries that are overfished. The Councils then must reevaluate and, as necessary, revise or develop rebuilding programs to ensure consistency with the requirements of section 304(e) of the Magnuson-Stevens Act.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of TAC. Under the established percentages, the proposed revised TACs of 8.0 million lb (3.63 million kg) for Atlantic group Spanish mackerel and 10.6 million lb (4.81 million kg) for Gulf group king mackerel would be allocated as follows:

Migratory group/species	m. lb	m. kg
Atlantic Group Spanish Mackerel—TAC	8.0	3.63
Recreational allocation (50%)	4.0	1.81
Commercial quota (50%)	4.0	1.81
Gulf Group King Mackerel—TAC	10.6	4.81
Recreational allocation (68%)	7.21	3.27
Commercial quota (32%)	3.39	1.54

These allocations and quotas would be effective for Atlantic group Spanish mackerel commencing with the fishing year that began April 1, 1997, and for Gulf group king mackerel commencing with the fishing year that began July 1, 1997. Also for Gulf group king mackerel, the increased commercial quota would result in concomitant increases in that group's zone and subzone commercial quotas.

Atlantic Group Spanish Mackerel: Commercial Vessel Trip Limits

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone (i.e., south of a line extending directly east from the Georgia/Florida boundary), the trip limits vary depending on the percentage of the adjusted quota landed. The adjusted quota is the commercial quota reduced by an amount calculated to allow continued harvest of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Along with the increased commercial quota, the SA Council recommended that the adjusted quota be increased from 3.25 million lb (1.47 million kg) to 3.75 million lb (1.70 million kg).

Gulf Group King Mackerel: Commercial Vessel Trip Limits and Recreational Bag Limits

The Gulf Council recommended revising the vessel trip limits for the commercial sector of the Gulf group king mackerel fishery in the Florida east coast subzone. The Council recommended establishing a 50-fish daily trip limit to ensure full utilization of the quota while preventing early season closure. There would be no step-down in the trip limit when 75 percent of the quota is taken, as is currently the case. For the 1996/97 season, the quota was taken under a 50-fish daily trip limit that was reduced to 25 fish per day on March 1, 1997, when 75 percent of the quota was taken. However, for the 1997/98 season, newly effective regulations (62 FR 23671; May 1, 1997) specify a daily trip limit of 750 lb (340 kg) reducing to 500 lb (227 kg) if 75 percent of the quota is taken by February 15. The Councils have now concluded that a trip limit of 750 lb (340 kg) is too high and would lead to an early closure of the fishery. Lower daily landings under the proposed 50-fish trip limit would help prevent the quota from being reached before the season ends March 31 and should contribute to more stable markets. The Councils also recommended changing the trip limit from pounds of fish to number of fish to facilitate at-sea enforcement.

The Gulf Council also recommended that the operator and crew on for-hire vessels (i.e., charter vessels and headboats) be allowed to take the bag limit of Gulf group king mackerel. The Gulf Council determined that the zero bag limit for operators and crews, implemented on June 2, 1997, was no longer appropriate considering that, with the proposed increases, the recreational allocation and TAC would not likely be exceeded.

Atlantic Group King Mackerel: Commercial Vessel Trip Limits

The SA Council recommended revising the vessel trip limits for the commercial sector of the Atlantic group king mackerel fishery off the southeast coast of Florida and off Monroe County (including the Florida Keys). The Council recommended changing the trip limits from pounds to number of fish to facilitate at-sea enforcement and to provide a year-round 50-fish daily trip limit for king mackerel, both Atlantic and Gulf groups, off the east coast of Florida.

For the exclusive economic zone (EEZ) off southeast Florida between the Volusia/Brevard and Dade/Monroe County boundaries, the Council recommended changing the king mackerel trip limit from 500 lb (227 kg) to 50 fish from April 1 through October 31. Off Monroe County, the Council recommended changing the daily vessel trip limit from 1,250 lb (567 kg) to 125 fish per day from April 1 through October 31.

The RA initially concurs that implementation of the Councils' recommendations is necessary to protect the king and Spanish mackerel stocks and prevent overfishing and are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. Accordingly, the Councils' recommended changes are published for comment.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The initial regulatory flexibility analysis for the rule consists of the following three parts: An initial regulatory flexibility analysis prepared by the Gulf Council (Gulf Council's IRFA) for Gulf groups of king and Spanish mackerel; a regulatory impact review (RIR) prepared by the SA Council for Atlantic groups of king and Spanish mackerel; and NMFS' Supplementary Analysis under RFA.

The Gulf Council's IRFA describes the significant, positive, economic impacts this proposed rule, if adopted, would have on small entities effected by the proposed management changes for the Gulf groups of king and Spanish mackerel. The SA Council prepared a RIR evaluating the economic impacts on small entities affected by the proposed management changes for Atlantic groups of king and Spanish mackerel. Based on the Gulf Council's IRFA, the SA Council's RIR, and its own Supplementary Analysis, NMFS has determined that this regulatory action, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities for purposes of the RFA. A summary of the Gulf Council's IRFA, the SA Council's RIR, and NMFS' supplementary analysis follows.

All commercial fishing and charter/headboat businesses are considered

small entities and both the SA and Gulf Councils concluded that a substantial number of small entities (greater than 20 percent) operating in commercial and for-hire recreational fisheries for Atlantic and Gulf groups of king and Spanish mackerel would be affected by the proposed changes. Specifically, the proposed increases in Atlantic group Spanish mackerel and Gulf group king mackerel commercial quotas and recreational allocations, and the proposed changes in trip limits for Gulf and Atlantic groups of king mackerel would affect most of the small businesses engaged in the fisheries. Although the exact numbers of small businesses operating in these fisheries is unknown, as of October 18, 1996, Federal permits allow a total of 3,819 vessels from Atlantic (1,722 vessels) and Gulf states (2,097 vessels) to operate in mackerel fisheries in the EEZ. For Atlantic states, 1,093 vessels possess commercial permits, 393 possess charter/headboat permits, and 236 vessels possess both permits. For Gulf states, 1,266 vessels possess commercial permits, 613 possess charter/headboat permits, and 218 vessels possess both permits.

The SA Council concluded, based upon the RIR, that the proposed revisions would not have a significant economic impact on a substantial number of small entities participating in fisheries for the Atlantic groups of king and Spanish mackerel. The RIR analysis included examination of the proposals to: (1) Increase TAC for Atlantic group Spanish mackerel, and (2) change Atlantic group king mackerel trip limits for the Florida east coast and Monroe County from pounds to number of fish. Increases in the commercial quota and recreational allocation for Spanish mackerel are not expected to increase the revenues of commercial harvesters or charter vessel operators because the current quota and allocation, which are lower than the proposed quota and allocation, are not being caught. The change in the trip limit for king mackerel may reduce the overall catch of the fishermen in the Florida area because the change to trip limits based on 50 fish instead of 500 lb (227 kg) of fish is actually a reduction in pounds landed per trip since the average weight of a king mackerel in that area is less than 10 lb (5 kg). Nonetheless, the resulting decrease in revenues for those fishermen is expected to be well below 5 percent of total revenues. Therefore, the SA Council determined that: (1) Any impacted businesses would be small entities; (2) any change in annual gross revenues likely would be much less than 5 percent; (3) any increase in compliance costs would be much less than a 5-percent increase in total costs of production; (4) capital costs of compliance would represent a very small portion of capital; and (5) no entity would be expected to cease business operations. For these reasons, the SA Council's RIR analysis concluded that these proposed measures were not significant under the RFA and an IRFA was not prepared for the South Atlantic mackerels.

The Gulf Council examined the potential impacts of the recommendations for Gulf group king mackerel and found that the increase in the TAC of 36 percent would result in a comparable increase in commercial revenues. Further, the restoration of the bag limit to captain and crew on for-hire vessels would be expected to increase revenues to charter vessel operators and/or crews, and that compliance and other costs of the proposed TAC increase are not significant. Accordingly, the Gulf Council determined that: (1) The proposed changes would increase revenues of a large portion of the small businesses by more than 5 percent; (2) the proposed actions would not be expected to result in major increases in compliance costs to the industry; (3) there would be no differential impact between large and small entities because all firms expected to be impacted by the proposals are small entities; (4) the industry would not be expected to incur additional capital costs as a result of the proposed actions; and (5) the proposed actions would not be expected to force any entities out of business. Since it was determined that the proposed rule would have a significant impact on a substantial number of small business entities, the Gulf Council prepared an IRFA.

Considering all the management measures proposed by both Councils in aggregate, NMFS anticipates that the TAC increase for Gulf group king mackerel will more than offset the revenue decline expected for South Atlantic group king mackerel and will result in a significant and positive economic impact on a substantial number of small entities participating in the commercial and for-hire recreational fisheries for Atlantic group Spanish mackerel and Gulf group king mackerel. Specifically, more than 20 percent of the 3,819 permitted small entities affected will experience an increase in gross revenues of more than 5 percent because of the large increase in revenues expected to result from the proposal to increase the TAC for Gulf Group king mackerel by 36 percent. Copies of these analyses are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 6, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2.

* * * * *

3. In § 622.42, paragraphs (c)(1)(i) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 3.39 million lb (1.54 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—2.34 million lb (1.06 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—1.17 million lb (0.53 million kg).

(*2*) *Florida west coast subzone*—1.17 million lb (0.53 million kg), which is further divided into quotas by gear types as follows:

(*i*) 585,000 lb (265,352 kg) for vessels fishing with hook-and-line gear.

(*ii*) 585,000 lb (265,352 kg) for vessels fishing with run-around gillnets.

(*3*) The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat.

(B) *Western zone*—1.05 million lb (0.48 million kg).

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 4.00 million lb (1.81 million kg).

* * * * *

4. In § 622.44, paragraphs (a)(1) (iii) and (iv), paragraph (a)(2)(i), and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

(iv) In the area between 25°20.4' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 125 fish from April 1 through October 31.

(2) * * *

(i) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.75 million lb (1.70 million kg). * * *

* * * * *

[FR Doc. 97–27043 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 100197B]

Caribbean Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Caribbean Council) will convene public hearings on Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands (Coral FMP).

DATES: Written comments will be accepted until November 25, 1997. The public hearings will be on October 21, 22, and 23, 1997, from 7:00 p.m. to 10:00 p.m.

ADDRESSES: Written comments should be sent to Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918. Copies of Amendment 1 to the Coral FMP are available at the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918.

The hearings will be held as follows:

October 21, 1997, at the Boulon Center, 16–21 Inighed, Cruz Bay, St. John, U.S.V.I.

October 22, 1997, at the Legislature Chambers, 1 Baracc Yard, Veterans Drive, Charlotte Emily, St. Thomas, U.S.V.I.

October 23, 1997, at the Caravelle Hotel, 44A Queens Cross, Christiansted, St. Croix, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, (787) 766–5926; fax (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will be holding public hearings on the draft Amendment Number 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands for Establishing a Marine Conservation District. The Council will be considering the establishment of a proposed "no-take" marine conservation district (MCD) in the EEZ due south of St. John, U.S.V.I. Fishing and the anchoring of fishing vessels would be prohibited in the MCD. The proposed MCD would cover approximately 20 square nautical miles and would be delineated by connecting the following coordinate points in the order listed:

Point	Latitude	Longitude
A	18°15.3' N	64°46.9' W
B	18°15.0' N	64°42.2' W
C	18°12.1' N	64°42.2' W
D	18°11.0' N	64°46.9' W

Dated: October 7, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27072 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 198
Tuesday, October 14, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 3, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1955, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- National Agricultural Statistics Service

Title: Agricultural Surveys Program.
OMB Control Number: 0535–0213.
Summary of Collection: Information is collected on crop acreage and production, livestock inventory and stocks of grain.
Need and Use of the Information: The information is used throughout Government and agriculture for policy, production, and marketing decisions.
Description of Respondents: Farms.
Number of Respondents: 252,900.
Frequency of Responses: Reporting: Monthly; quarterly; semi-annually; annually.
Total Burden Hours: 139,260.

- Farm Service Agency

Title: Report of Acreage (7 CFR part 718).
OMB Control Number: 0560–0004.
Summary of Collection: The Farm Service Agency requires that producers report acreage for crops that need verification of compliance, loan eligibility, or crop loans.
Need and Use of the Information: The information is used to verify that the producer is eligible for agricultural programs.
Description Of Respondents: Farms; State, Local or Tribal Government.
Number of Respondents: 616,121.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 462,093.

- Human Resources Management

Title: USDA Applicant Supplemental Sheet.
OMB Control Number: 0505–0009.
Summary of Collection: Applicants are requested to provide employment, veteran, and disability status, and race/national origin.
Need and Use of the Information: The information will be used to evaluate USDA's recruitment and hiring activities.
Description of Respondents: Individuals or households.
Number of Respondents: 50,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 4,000.

- Rural Housing Service

Title: 7 CFR 1980–I, "Community Programs Guaranteed Loans".
OMB Control Number: 0575–0137.
Summary of Collection: This regulation promulgates the policies and procedures for community program loans guaranteed by the Rural Housing Service and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing or liquidating such loans.
Need and Use of the Information: The information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes.
Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 125.
Frequency of Responses: Reporting: Quarterly; annually.
Total Burden Hours: 17,877.

- Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.
OMB Control Number: 0581–0093.
Summary of Collection: Information is collected from producers, handlers and processors including production, disposition, qualification data, and assessment information.
Need and Use of the Information: The information is used to strengthen marketplace position and to maintain, develop, and expand markets for the various commodities.
Description of Respondents: Business or other for-profit; Individuals or households; Farms.
Number of Respondents: 319,342.
Frequency of Responses: Recordkeeping; reporting: On occasion; Weekly; monthly; annually.
Total Burden Hours: 366,674.

- Animal and Plant Health Inspection Service

Title: Importation of Animal and Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen and Zoological Animals.
OMB Control Number: 0579–0040.
Summary of Collection: Information is collected from importers concerning the type of product to be imported into the United States.
Need and Use of the Information: The information is used to evaluate the health status and risk factors associated with moving animals or animal products into the United States.
Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 178,335.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 64,113.
Expedited review has been requested for this submission.

- Rural Housing Service

Title: 7 CFR 1927–B, "Real Estate Title Clearance and Loan Closing".
OMB Control Number: 0575–0147.
Summary of Collection: Information is collected concerning real estate title, estate title clearance, closing of loans, assumptions, voluntary conveyances and credit sales in connection with insured loans.
Need and Use of the Information: The information is used to ensure that loans made with Federal funds are legally secured.
Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms.
Number of Respondents: 40,000
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 54,816.

Donald Hulcher,
Departmental Clearance Officer.
[FR Doc. 97–27102 Filed 10–10–97; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN–97–005]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classing, Testing, and Standards.

DATES: Comments on this notice must be received by December 14, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments may be mailed to USDA, AMS, Cotton Programs, 1400 Independence Avenue, S.W., Stop 0224, Room 2641–S, Washington D.C. 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classing, Testing, and Standards
OMB Number: 0581–0008.
Expiration Date of Approval: April 30, 1998
Type of Request: Extension and revision of a currently approved information collection.
Abstract: Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h).
Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.83 hours per response.
Respondents: Cotton merchants, warehouses, and gins.
Estimated Number of Respondents: 307
Estimated Number of Responses per Respondent: 3.932 (1207/307)
Estimated Total Annual Burden on Respondents: 100 Hours

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Amelia M. Eduardo, Assistant to the Associate Deputy Administrator, Cotton Programs, AMS, USDA 1400 Independence Avenue, SW., Stop 0224, Room 2641–S, Washington, D.C. 20250. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 6, 1997.
Mary E. Atienza,
Deputy Administrator, Cotton Programs.
[FR Doc. 97–27100 Filed 10–10–97; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–092–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Imported Fire Ant regulations.

DATES: Comments on this notice must be received by December 15, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–092–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–092–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Imported Fire Ant regulations, contact Mr. Michael Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Imported Fire Ant.

OMB Number: 0579–0102.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the interstate spread of injurious plant pests, such as the imported fire ant, from infested areas of the United States to noninfested areas. Implementing this mission often requires the use of domestic quarantines to restrict the interstate movement of articles that could carry the plant pest.

Restricting the interstate movement of regulated articles from an infested area to a noninfested area is crucial to our mission of preventing the interstate spread of the imported fire ant.

Nursery owners who elect to enter our Imported Fire Ant-Free Nursery Program visually inspect their premises for the presence of imported fire ants, record the results in a notebook or logsheet, and also record any treatments they perform if fire ants are discovered.

State plant protection officials collect this information by interviewing the nursery owner, reviewing the owner's inspection and treatment records, and inspecting the nursery site. The information obtained is used for issuing the various certificates, permits, and other documents that enable the nursery owner to move regulated items (such as potted nursery plants, sod, or other products) across State lines to markets outside the areas quarantined because of imported fire ant.

Without this information collection, we would be unable to collect the information we need to effectively implement our imported fire ant quarantine.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .3561 hours per response.

Respondents: U.S. nursery owners, shippers, and State and county plant health protection authorities.

Estimated number of respondents: 2,704.

Estimated number of responses per respondent: 3.4038.

Estimated annual number of responses: 9,204.

Estimated total annual burden on respondents: 3,278 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27098 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection.

AGENCY: Farm Service Agency and the Commodity Credit Corporation, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request reinstatement, with change, of a previously approved collection in support of the Peanut Warehouse Storage Loan and Handler Operations and the Peanut Poundage Quota and Marketing Regulations Governing the 1996–2002 crop of peanuts as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before December 15, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Carolyn Hunter, Marketing Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0514, (202) 690–0013, facsimile (202) 720–9015; or Internet e-mail, chunter@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peanut Poundage Quota and Marketing Regulations for the 1996 Through 2002 Crops.

OMB Control Number: 0560–0006.

Type of Request: Reinstatement, with change, of a previously approved information collection.

Abstract: The information relative to reports and recordkeeping as authorized by the Secretary are used by the FSA and CCC to monitor and control compliance with the peanut program as outlined in parts 729 and 1446. If the information is not monitored and data not required, the peanut program could not operate and the 1996 Act would not be implemented as required by Congress. The 1996 Act changed the peanut poundage quota program by reducing the national quota, providing temporary seed quota allocation, removing the carryover of undermarketed quota, allowing the transfer of peanut poundage quota to any other farm within the same State, providing for increasing marketing assessments under certain conditions to cover losses in area marketing pools and restricting transfer of peanuts from additional loan to quota loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Individual producers.

Estimated Number of Respondents: 255,116.

Estimated Total Annual Burden of Respondents: 301,690 hours.

Title: Peanut Warehouse Storage Loan and Handler Operations for the 1996 Through 2002 Crops.

OMB Control Number: 0560–0014.

Type of Request: Reinstatement, with change, of a previously approved information collection.

Abstract: The information relative to reports and recordkeeping as authorized by the Secretary are used by the FSA and CCC to monitor and control compliance with the peanut program as outlined in parts 729 and 1446. If the information is not monitored and data not required, the peanut program could not operate and the 1996 Act would not be implemented as required by Congress. The 1996 Act changed the peanut warehouse storage loan and handler operations program by adding restrictions on transfer of peanuts from additional loan to quota loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Individual producers and warehousemen.

Estimated Number of Respondents: 179,383.

Estimated Total Annual Burden of Respondents: 54,119.

Request for Comments: Comments on this information request are sought.

Proposed topics for comment include may include, but need not be limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; or (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automeated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Carolyn Hunter, at the address listed above. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, D.C., on October 1, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–27105 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is an extension of collection currently approved under Office of Management and Budget No. 0584–0010.

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Joseph H. Pinto, Chief, State Administration Branch, Food Stamp Program, Food and Consumer Service, U. S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Joseph H. Pinto, (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action.

OMB Number: 0584–0010.

Expiration Date: October 31, 1997.

Type of Request: Reinstatement without change, of this previously approved collection of information.

Abstract: The purpose of the Performance Reporting System (PRS) is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, (Act) and corresponding program regulations. Under Section 11 of the Act, State agencies must maintain necessary records to ascertain that the Food Stamp Program is operated in compliance with the Act and regulations and must make these records available to the Food and Consumer Service (FCS) for inspection and audit.

Management Evaluation (ME) Review Schedules—Unless the State receives approval for an alternative ME review schedule, each State agency is required, under 7 CFR Part 275 to submit one review schedule every one, two, or three years, depending on the project area make-up of the State.

Data Analysis—Under 7 CFR Part 275, each State must establish a system for analysis and evaluation of all data available to the State. Data analysis and evaluation is an ongoing process that facilitates the development of effective and prompt correction action.

Corrective Action Plans—Under 7 CFR Part 275, State agencies must prepare a Corrective Action Plan (CAP) addressing identified deficiencies. The State agencies must develop a system for monitoring and evaluating corrective action and submit CAP updates to FCS twice a year.

Affected Public: 53 State governments.

Estimated Number of Respondents: 2896 (includes project areas within the 53 State governments responsible for the administration and operation of the Food Stamp Program).

Number of responses per respondent: 2.0614.

Estimated Total annual responses: 5,970.

Hours per response: 99.3534.

Number of record keepers: 53.

Estimated Annual hours per record keepers: 1.451.

Total record keeping hours: 75.

Total annual reporting hours: 593,215 (total hours per response plus total recordkeeping hours).

Dated: October 1, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–27103 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–30–P

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 2:00 pm, Wednesday, October 29, 1997.

PLACE: SDG–59, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Review and approval of the minutes of the March 12, 1997 Board of Trustees meeting meeting.
2. Report on end of fiscal year financial status of the Foundation endowment fund.
   A. Review of investment policy and current portfolio.
3. Discussion of the proposed 1998/99 scholarship competition.
4. Other Business brought before the Board of Trustees.

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 97–27220 Filed 10–9–97; 10:24 am]

BILLING CODE 4730–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Report of Privately-Owned Building or Zoning Permits Issued (Building Permits Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Linda P. Hoyle, Bureau of the Census, Manufacturing and Construction Division, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are (a) Housing Units Authorized by Building Permits and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Bureau of the Census uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

We are making the following changes to the form:

a. No longer collect data on publicly-owned construction authorized by building permits because we no longer need these data.

b. Combined two separate items, single-family houses attached and single-family houses detached, into one item because we no longer needed to collect these data separately.

c. We deleted one question, "Are you aware of any new permit-issuing jurisdictions?" because we no longer need this information.

We will collect data for new residential nonhousekeeping buildings; new nonresidential buildings; additions, alterations, and conversions; and demolitions and razing of buildings only through a reimbursable agreement. If we do not get that agreement, we will collect data for only new privately-owned residential buildings authorized by building permits.

II. Method of Collection

We collect this information by mail and electronically through files we download or receive on diskettes.

Monthly, we collect this information by mail for 8,170 permit-issuing jurisdictions and electronically for 550 jurisdictions. Annually, we collect this information by mail for 10,180 jurisdictions.

III. Data

OMB Number: 0607–0094.
Form Number: C–404.
Type of Review: Regular submission.
Affected Public: State and local governments.
Estimated Number of Respondents: 18,900.
Estimated Time Per Response: 16 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 25 minutes for annual respondents who report by mail.
Estimated Total Annual Burden Hours: 30,716.
Estimated Total Annual Cost: We estimate that the cost to the respondents to provide the data will be $438,636 based on an average hourly salary of $14.65 [1] for state and local government employees.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

[1] Taken from the Census Bureau's Annual Survey of State and Local Government Employment.

Dated: October 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27135 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Building and Zoning Permit Systems

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 28, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Linda Hoyle, Manufacturing and Construction Division, Bureau of the Census, Room 2105-FOB 4, Washington, DC 20233–6900, phone number (301) 457–1321.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country.

The Bureau of the Census uses Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

The universe of permit-issuing places is the sampling frame for the Building Permits Survey (BPS) and the Survey of Construction. These two sample surveys provide widely used measures of construction activity, including the economic indicators, Housing Units Authorized by Building Permits and Housing Starts.

We made the following changes to the form:

a. We deleted two questions:

(1) "What kind of permits does your office issue?" and

(2) "When did your government first begin issuing permits?".

The first question asked for the same information as another question. We no longer need the information requested in the second question.

b. We added two questions:

(1) "If the jurisdiction listed in Section A.1 is a county, does your office issue permits for portions of jurisdictions located in other counties?" and

(2) "If the jurisdiction listed in Section A.1 is a city, town, village, borough or township, is it in more than one county?"

We need the above information to ensure that we update our universe of permit-issuing places correctly for these types of places.

We will request information about permits issued for new residential nonhousekeeping; new nonresidential building; additions, alterations, and conversions; and demolitions and razing of buildings only through a reimbursable agreement. If we do not get that agreement, we will only collect information about permits issued for new residential buildings.

II. Method of Collection

The form is sent to a jurisdiction when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed, based on information from a variety of sources including survey respondents, regional councils and Census' Geography Division which keeps abreast of changes in corporate status. Responses typically approach 100 percent.

III. Data

OMB Number: 0607–0350.
Form Number: C–411.
Type of Review: Regular submission.
Affected Public: State and Local Governments.
Estimated Number of Respondents: 2,000 per year.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 500 hours.
Estimated Total Annual Cost: The cost to the respondents is estimated to be $7,325 based on an average hourly salary of $14.65 [1] for state and local government employees.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27136 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review.

SUMMARY: On April 8, 1997, the Department of Commerce (the Department) published the preliminary results of the ninth administrative

[1] Taken from the Census Bureau's Annual Survey of State and Local Government Employment.

review of the antidumping (AD) duty order on certain fresh cut flowers from Colombia. This review covers a total of 351 producers and/or exporters of fresh cut flowers to the United States during the period March 1, 1995 through February 29, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Roy Malmrose, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105 and (202) 482–5414, respectively.

APPLICABLE STATUTE AND REGULATIONS: The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 C.F.R. Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1997, we published a notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review (Preliminary Results), wherein we invited interested parties to comment. See 62 FR 16772 (April 8, 1997). At the request of interested parties, we held a public hearing on June 6, 1997.

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Rescission

At the time of our Preliminary Results, we had received responses from 63 firms indicating that they did not ship during the period of review (POR). As a check on this information, we requested and received from the U.S. Customs service a listing of all companies which shipped subject merchandise to the United States during the POR. Customs' listing confirmed 40 of the companies' claims that they had no shipments during the POR and the Department verified that one company did not export subject merchandise. For the remaining 22 that claimed no shipments, but whose names appeared on Customs' list, we determined that those companies failed to cooperate to the best of their ability and assigned them an adverse facts available (AFA) rate.

Subsequent to the Preliminary Results, we received information about those 22 companies. We examined documentation for each firm and found that the entries reported by Customs for 21 of these firms resulted from either a mistaken listing of the respondent firm as the producer or an incorrect listing of the flower type and HTS number. Therefore, we have determined that these companies did not ship the subject merchandise during the POR. For a complete list of these companies, see section entitled "Non-Shippers" in this notice. (The remaining company is discussed below.)

Consistent with our administrative practice, we have rescinded our review of the 62 companies with no shipments during the POR. See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 1734 (January 13,1997) (rescinding review in part with respect to respondents which, the Department determined, had no shipments of the subject merchandise during the POR); see also, 19 CFR 351.213(d)(3) (62 FR 27296 (May 19, 1997)) (although this review is not governed by these new regulations, they do reflect current practice).

Regarding the remaining company, Flores Tiba, Customs' data indicated five entries of subject merchandise exported by Flores Tiba during the POR. On June 5 and July 21, 1997, Flores Tiba submitted information demonstrating that while portions of Customs data were incorrect, Flores Tiba did have one entry of subject merchandise during the POR. Flores Tiba explained that the company does not produce or export subject merchandise in its normal course of business; the sale in question was a special order of a negligible quantity. For this reason, the sale had been overlooked.

Flores Tiba's submissions notwithstanding, the Department lacks the necessary information to calculate a margin for Flores Tiba's entry during the POR. Therefore, in accordance with section 776(a) of the Act, the Department has resorted to the use of facts available (FA) for Flores Tiba. However, upon consideration of Flores Tiba's explanation for the oversight, we have determined that an adverse inference is not warranted. Given that Flores Tiba does not normally produce or export the subject merchandise, it is not unreasonable that a small sale such as this would be overlooked. Moreover, the error was discovered too late to allow respondent sufficient time to correct the deficiency (*i.e.*, to submit the information which would allow us to calculate a margin). Therefore, as FA, we have assigned Flores Tiba the non-selected respondent rate of 2.26 percent.

Duty Absorption

On March 29, 1996, petitioner, the Floral Trade Council (FTC), requested that the Department determine whether AD duties had been absorbed by respondents during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after publication of the order, whether AD duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer which is affiliated with such foreign producer or exporter. The statute requires the Department to notify the International Trade Commission of its findings regarding duty absorption for consideration in conducting a five-year "sunset" review (to determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping and of material injury). Section 751(a)(4) was added to the Act by the URAA. The regulations governing this review do not address this provision of the Act.

For "transition orders," as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's recently enacted regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27296 (May 19, 1997). The preamble issued when these regulations were proposed in 1996

explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. See 61 FR at 7308, 7317 (February 27, 1996). Although these recently enacted regulations are not binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach ensures that interested parties will have the opportunity to request a duty absorption determination prior to the time for sunset review of transition orders under section 751(c). Because the order on certain fresh cut flowers from Colombia has been in effect since 1986, this is a transition order. Consequently, based on the policy stated above, it is appropriate for the Department to examine duty absorption in this ninth review, which was initiated in 1996.

In accordance with the statute, at section 751(a)(4), the Department must determine whether duty absorption has occurred if the subject merchandise is sold in the United States through an importer affiliated with the foreign producer or exporter. Of the selected respondents, the following have affiliated importers: The Agrodex Group (Agrodex), the Caicedo Group (Caicedo), the Claveles Colombianos Group (Clavecol), the Cultivos Miramonte Group (Miramonte), the Floraterra Group (Floraterra), the Florex Group (Florex), the Guacatay Group (Guacatay), the HOSA Group (HOSA), the Maxima Farms Group (Maxima), the Queen's Flowers Group (Queen's) and the Tuchany Group (Tuchany). Furthermore, we have determined that there are dumping margins for the following companies with respect to the percentages of their U.S. sales (by quantity) indicated below:

Name of company	Percentage of U.S. affiliated importer sales with margins
Agrodex	1.11
Caicedo	100
Clavecol	9.13
Floraterra	33.40
Florex	8.85
Guacatay	15.20
HOSA	15.88
Maxima	34.98
Miramonte	17.53
Queens	9.90
Tuchany	22.33

In the case of Caicedo, we are unable to calculate a margin based on its response and have, therefore, determined its dumping margin entirely on the basis of AFA. We also have determined, based on AFA, that there are margins on all sales. Lacking other information, we find duty absorption on all sales. See, *e.g.*, Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 31566, 31568 (June 10, 1997). With respect to those companies whose margins are not determined based on FA, we presume that the duties will be absorbed for those sales which were dumped, unless there is evidence (*e.g.*, an agreement between the affiliated importer and the unaffiliated purchaser) that the unaffiliated purchasers in the United States will pay the full duty ultimately assessed on the subject merchandise. Although in this case certain companies have provided invoices which separately list an amount for estimated AD duties which they are charging their unaffiliated purchasers; this is not evidence of payment of antidumping duties by the customer, and none of these companies has presented evidence of agreements with unaffiliated purchasers to pay ultimately assessed AD duties. Therefore, we find that the AD duties have been absorbed by the above-listed firms on the percentage of U.S. sales indicated. *See* 62 FR 31568.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and partial rescission of the order. We received case and rebuttal briefs from the FTC, the Asociacion Colombiana de Exportadores de Flores (Asocolflores), an association of Colombian flower producers representing many of the respondents in this case, and HOSA and Caicedo.

General Issues

Comment 1: Asocolflores argues that the Department's decision to limit the review to the largest exporters and then apply to non-selected respondents the weighted-average margin of these selected respondents violates due process and the AD statute. Asocolflores contends that the 13 largest producers are not a statistically valid sample and thus their average rate is not representative for the non-selected respondents. It adds that the Department has no right to disregard questionnaire responses received from non-selected respondents.

The FTC disagrees contending that the statute gives the Department exclusive authority to assign margins based on a sample of the largest exporters. The FTC also notes that the Department disclosed to all parties the alternatives and considered comments before deciding on this methodology.

DOC Position: We agree with the FTC. According to the statute and SAA, the authority to select respondents, whether using samples or choosing the largest exporters, rests exclusively with the Department. *See* section 777A(a–c) of the Act and SAA at 202. Given the large number of respondents in this case and the new statutory deadlines, the Department concluded that limiting the number of exporters examined was administratively necessary. The Department requested comments on two proposed options for limiting the number of companies to be examined. After analyzing those comments from the interested parties, we chose to limit the number of companies examined by reviewing the largest exporters. *See* Memorandum for Barbara Stafford from Team dated November 21, 1996. With respect to not examining the responses received from non-selected respondents, the statute does not require that we look at every questionnaire response placed on the record. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19036 (April 30, 1996).

Finally, with regard to applying the weighted-average margin of selected respondents to the non-selected respondents, section 777A(c)(2) of the Act provides the Department with the authority to determine margins by limiting its examination to a statistically valid sample of exporters or the largest volume of the subject merchandise that can be reasonably examined. This subparagraph is formulated as an exception to the general rule that each company for which a review is requested will be individually examined and receive a calculated margin. The method for establishing the rate for the non-selected respondents is left to the agency's discretion. As discussed in comment 2, the weighted-average of the calculated rates is a reasonable method.

Comment 2: Asocolflores states that the Department properly excluded the one rate based entirely on AFA in calculating the rate applied to non-selected responding companies. However, citing *Serampore Indus. Pvt. Ltd.* v. *United States* (696 F. Supp. 665, 669 (CIT 1988)) and *Romer* v. *Evans*, 116 S. Ct. 1620, 1627 (1996), Asocolflores contends that there is no legal basis for the Department's exclusion of zero and *de minimis* margins from the margin applied to non-selected respondent companies.

Asocolflores claims that due process would be violated if only selected respondents benefitted from zero or *de minimis* margins. If some of the respondents selected by the Department show zero or *de minimis* margins, Asocolflores states, it is reasonable to assume that some of the non-selected respondents also would have received the same had they been individually reviewed. Asocolflores reminds the Department that the purpose in limiting the review to only 13 selected respondents was to use their rates to project the rates of the non-selected respondents. Acknowledging that the AD statute provides for the exclusion of zero and *de minimis* margins in calculating the cash deposit rate for non-examined producers in an investigation, Asocolflores differentiates this situation from the final results of an administrative review which give rise to actual duty payments (as opposed to cash deposit rates). Asocolflores emphasizes that, because the Department decided to limit the number of respondents, all exporters and importers do not have the ability to obtain their own assessment rates as they normally would in an administrative review.

The FTC objects to the position advanced by Asocolflores, stating that there is no valid basis for excluding margins based on AFA on one hand while including *de minimis* margins on the other. On the contrary, the FTC argues that the Department should include margins based on AFA in the rate applied to non-selected responding companies since it is likely that some non-selected respondents would have failed to qualify for their own calculated rate due to failed verifications, failure to submit responses, etc. The FTC cites the Court of International Trade (CIT) in *Floral Trade Council* v. *United States* (16 CIT 654, 657, 799 F. Supp. 116, 119 (1992)) where it said, "this court has approved 'all other' rates based on an average that includes BIA rates" and later where it says "[n]ot all BIA rates are inappropriate for use in calculating unified 'all other' rates" (*Id.* At 658, 799 F. Supp. at 120).

DOC Position: We have continued to calculate the cash deposit rate for non-selected respondents by excluding both AFA and zero/*de minimis* rates. While there may be situations when it would be appropriate to include AFA or zero/*de minimis* rates in the rate to be applied to companies whose entries are not individually examined, there is no over-arching rule as to their inclusion or exclusion. With respect to the precedents cited by the FTC and Asocolflores, the situation here differs in that we have, for the first time, restricted a review to the largest exporters.

Underlying the arguments of both the FTC and Asocolflores is the notion that the selected respondents are somehow representative of the whole group of potential producers/exporters. As in investigations, where only the largest producers/exporters are selected, those selected here cannot necessarily be said to be representative of the whole population. Therefore, we cannot treat the selected companies as a statistical sample and compute a margin that is based on the results for all of the selected companies. As for Asocolflores' concerns that due process would be denied to non-selected respondents should we not include zero/*de minimis* margins, we disagree. Once the Department decides to limit its review to certain producers/exporters, including zero/*de minimis* rates while excluding AFA rates would yield an unbalanced result because, as the FTC points out, some non-selected firms might also have received AFA.

As stated above, this is the first time in a review of this or any order that we have examined only the largest producers/exporters. In deciding how to calculate the rate to apply to non-selected companies that responded to our questionnaire, we reviewed our past practice and determined that the most analogous situation we have dealt with in the past is in non-market economy (NME) investigations where the number of companies that submit full responses is too large to be investigated. In those investigations, as in the present case, what we did paralleled the statutorily mandated formula for calculating the all-others rate, *i.e.*, the weighted-average rate of investigated companies not including AFA and zero/*de minimis* rates.

Comment 3: Asocolflores and other respondents allege that the Department erred in assigning an "all others" rate of 3.53 percent from the Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842 (March 5, 1987) (Flowers (LTFV)) to the companies that were unlocatable in this review rather than an "all others" cash deposit rate of 3.1 percent from the Amendment to Final Determination of Sales at Less Than Fair Value in Accordance with Court Decision, 56 FR 12508 (March 26, 1991).

DOC Position: We agree with Asocolflores that the correct "all others" cash deposit rate from Flowers (LTFV) is 3.1 percent and should be assigned to the unlocatable companies in this review.

Comment 4: Both Asocolflores and the FTC acknowledge that the Department should develop a mechanism which allows respondents to preserve their eligibility for revocation. However, the FTC argues that such eligibility should be limited to those companies that are selected for review and have two years of no dumping. According to the FTC, this option comports most closely with the AD law by providing for the revocation of orders only for companies that have been subjected to actual reviews. Asocolflores opposes this option because it limits revocation eligibility to the largest exporters (assuming the Department continues to review only the largest exporters). Asocolflores claims there is no basis for denying revocation eligibility to smaller producers.

Asocolflores favors the approach whereby companies would be allowed to make a retrospective claim that they have not dumped for the past three years in the form of a "changed circumstances" review in the eleventh period (*i.e.*, the first review period in which revocations could be possible under this order). Asocolflores argues that this approach conserves the administrative resources of the Department, reduces the verification burden, and is easier to administer. Moreover, Asocolflores suggests that, under the new regulations, a retrospective revocation review in the eleventh POR could be limited to an examination of data for only the ninth and eleventh periods, further reducing the administrative burden and simplifying verification.

The FTC concedes that the "changed circumstances" approach is the most efficient and states that if the Department chooses not to follow the FTC's preferred option (eligibility only for companies which have been reviewed), the "changed circumstances" approach should be adopted, provided the companies are subject to verification for the entire three-year period. The FTC also expressed its concerns that a company may be entitled to base revocation on a period for which no review was requested.

DOC Position: Having reviewed the comments we received on this issue, we have decided to adopt the following procedure for addressing requests for revocation by small companies in this proceeding. We believe this procedure addresses many of the concerns raised by the parties and, at the same time, meets the resource constraints faced by the Department.

Under this procedure, companies that were not selected for examination in

prior reviews (because of the large number of companies for which a review was requested) will have a mechanism for obtaining revocation on the basis of three consecutive years of sales at not less than normal value. The first opportunity for such a procedure will occur in the review of the period March 1, 1997 to February 28, 1998 (the eleventh review period). Companies that request a review for that period may also request revocation if they meet the following criteria: (1) a review was requested for the company in each of the two years immediately preceeding the period of review in which revocation is requested, but the company was not selected for examination in either of those two preceding reviews; and 2) with the request for revocation the company (a) certifies that it sold subject merchandise at not less than normal value during the period described in 19 C.F.R. 351.213(e)(1) and for two consecutive years immediately preceeding that period; (b) provides the certifications required under 19 C.F.R. 351.222(e)(ii) and (iii); and (c) submits a statement acknowledging that its entries are subject to assessment of AD duties at the non-selected respondent rate in one or both of the two preceding review periods. If a company meets these criteria, Commerce will examine the company's sales during the current period of review for purposes of determining a dumping margin in accordance with section 751(a) of the Act. In accordance with section 751(a)(2) of the Act, the results of that analysis will form the basis for any assessment of antidumping duties on entries during that period and for cash deposits. In addition, for the purposes of revocation only, Commerce will examine data for the two prior years to determine whether the company sold subject merchandise at not less than normal value. If Commerce determines that the company sold subject merchandise at not less than normal value in each of the three years examined and the other conditions of 19 CFR 351.222 are met, it will revoke the order with respect to that company.

The Use of Facts Available

Comment 5: While Caicedo acknowledges that there were a number of problems encountered at the Bogota verification, the company argues that the rate applied in the preliminary results (25.58 percent) is inappropriate for two reasons. First, Caicedo argues that the rate chosen as the highest rate ever applied to the Caicedo Group was in fact never applied to the Caicedo Group. In fact, asserts Caicedo, the rate was applied in the third review to one of the farms that is now part of the Caicedo Group, but which, in that review, was treated as an individual company. The companies which now comprise the Caicedo Group, asserts Caicedo, were not treated as a group until the fourth review (citing Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159 (March 31, 1994) (Flowers (90–91)). Second, Caicedo argues that a recent decision by the Court of Appeals for the Federal Circuit (CAFC) (*D&L Supply Co.* v. *United States*, 133 F. 3d 1220 Fed Cir. 1997) (D&L Supply) calls for the Department to select a FA rate that reasonably reflects conditions in the industry. When compared to the majority of the calculated rates in this and previous reviews, Caicedo asserts that the 25.58 percent rate has no relationship to commercial practice in this industry.

Caicedo suggests that it would be more appropriate to use either the highest rate received by the group during the reviews in which the companies were treated as a group or by constructing group rates for the earlier reviews by averaging the rates applied to the individual members of the group in those reviews. According to Caicedo, these methods would produce a rate which relates to the past practices of the Caicedo Group and which reflects conditions in the industry.

Furthermore, Caicedo argues that the Department has the discretion not to apply the highest available rate and asserts that the facts in this case do not warrant the highest available rate. Caicedo argues that one of the stated reasons for applying FA, *i.e.*, the fact that Caicedo had not adjusted its material and labor costs for inflation, is inappropriate. Caicedo claims that the Department did not ask for this information in either the original or supplemental questionnaires, despite the fact that Caicedo had clearly explained in its questionnaire response that the inflation adjustment had not been included. Therefore, claims Caicedo, it cannot be penalized for not providing this information.

Finally, Caicedo argues that the company's situation during this review should be taken into consideration. According to Caicedo, the affiliated Miami importer went through a period of downsizing during the review period, as a result of which Caicedo was forced to sell during the review period to approximately 60 unaffiliated U.S. importers. This disruption in the normal U.S. selling practice made the preparation of the sales response a particularly arduous task. Caicedo's task was further complicated by the fact that the Group was operating with a reduced staff. In light of this situation, Caicedo argues that mistakes discovered at verification, such as the misclassification of constructed export price (CEP) versus export price (EP) sales and the inappropriate use of the date of receipt of payment as the date of sale, were not that serious and do not warrant the use of a rate which Caicedo asserts will put the company out of business.

The FTC argues that the Department should apply an AFA rate of 76.60 percent (the highest rate for any company during this and any prior segment of this proceeding) because Caicedo failed to cooperate during the review and verification process. The FTC argues that such a failure to cooperate could have only been willful, given Caicedo's past experience in this order. The FTC asserts that in order to ensure cooperation in the future, the Department should apply a rate of 76.60 percent, since it is clear that the application of 25.58 percent to a member of the Caicedo group during a past review did not affect Caicedo's behavior during the current review.

Regarding Caicedo's arguments that the 25.58 percent rate should not apply to the Caicedo Group because that rate was never applied to the group as defined in any prior administrative review, the FTC argues that the relevant issue is not the composition of the Caicedo Group during prior review periods, but the composition during this review period, when Cauca was in fact one of the members of the Caicedo Group. Because Cauca is part of the Caicedo Group in this review, it may fairly be assumed that Caicedo's margin of dumping in this POR "bears some relationship" to the past practices of all of the companies within the group, including Cauca. Moreover, the Department cannot calculate an average of the rates applicable to group members in prior review periods. To accurately calculate a weighted-average, we would need verified 1995–1996 sales figures.

DOC Position: While we have concluded that the deficiencies in Caicedo's responses and the problems at verification reflected a failure on Caicedo's part to cooperate to the best of its ability, we disagree with the FTC's conclusion that the earlier rate of 25.58 percent is not sufficiently adverse. While we acknowledge that the problems with the responses and the verification rendered Caicedo's information unuseable for purposes of calculating a dumping margin, we found

that the company made significant efforts to respond to our requests for information and to undergo verification.

As detailed in the preliminary results, Caicedo misclassified CEP sales and misreported many dates of sale, using the date that payment was received rather than invoice date. (Caicedo's comments regarding inflation adjustments are addressed further below.) We recognize that the company faced difficult circumstances during the review period, but we find that a company that has successfully participated in numerous reviews, as Caicedo has, can reasonably be expected to have done a better job of responding to our inquires. Consequently, in accordance with section 776(b) of the Act, we have determined that adverse inferences are warranted in determining through FA the dumping margin for this company.

We have examined Caicedo's arguments with respect to applying Cauca's rate to the Caicedo Group as a whole and agree that we should only look back to rates that have been applied to the Caicedo Group in the past or the rates that would have been applied had current members of the Caicedo Group been analyzed as part of the group in the earlier reviews. The highest rate calculated in this manner is the average of the rates received by the individual companies currently comprising the Caicedo Group in the third administrative review (see Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order, 56 FR 50554, (October 7, 1991) (Flowers (89–90)), which is 6.46 percent.

However, we have further determined that it would not be appropriate to apply this rate to Caicedo in the circumstances presented by this review. Of the companies that were individually examined in this review, the highest rate is 8.36 percent for Floraterra. Since Floraterra cooperated fully in the review and its responses were verified, we have determined that Caicedo should not receive a lower rate than Floraterra. Therefore, we have assigned the Caicedo Group a dumping margin of 8.36 percent. Because it is higher than any historical rate for the Caicedo Group as a whole, it provides substantial incentive for Caicedo to do a better job of responding to our inquires in future reviews.

With respect to the FTC's argument that we cannot calculate a weighted-average rate from a prior review of the individual members of the Caicedo Group because we lack verified 1995–96 sales figures, we disagree. The weight-average rate that would have been applied to the Caicedo group in Flowers (89–90) would have been calculated using sales figures from that review period, not 1995–96. Therefore, although we have not used the historical rate, we computed it using the ranged sales figures in the public versions of the responses filed in Flowers (89–90).

Regarding Caicedo's argument that one of our bases for AFA was unsupported, we disagree. In the questionnaire, companies were allowed to include amortized amounts of preproduction expenses in material and labor costs but, for the companies that did so, they were directed to "identify which expenses contain pre-production expenses and fully describe your amortization methodology." (See page D19 and D24 of the Department's questionnaire.) Caicedo did not identify where it had included amortized expenses, nor did it provide a description of its amortization methodology. Without this information, the Department was unable to identify any problems to be addressed in its supplemental questionnaires because it was not aware that amortized amounts had even been included. Also, the questionnaire was clear that reported depreciation expenses should be adjusted for inflation, and Caicedo failed to make this type of adjustment. (See page D32 of the Department's questionnaire.)

Finally, with respect to the CAFC's decision in D&L Supply, we note that it concerned a segment of a proceeding under the Act prior to imposition of URAA-related amendments and the facts before the court in that case differed from the facts here. D&L Supply involved the Department's use, as best information available (BIA), of information which had conclusively been determined in the course of litigation to be inaccurate. In D&L Supply, the court decided that we could not use a judicially invalidated rate as a BIA rate in subsequent reviews. The 25.88 percent rate we used in our preliminary results has not been invalidated by subsequent court decisions. Nevertheless, the rate we have assigned Caicedo in these final results does not conflict with the CAFC's philosophy in D&L Supply, because it is clearly consistent with commercial practice in this industry as it was the calculated rate of another company.

Comment 6: Because all loan documentation was not available at verification, the FTC requests that the Department apply AFA in calculating Tuchany's U.S. credit costs. Specifically, the FTC suggests that the U.S. credit costs for Tuchany should be calculated using the highest rate for any loan for which documentation was available. Asocolflores argues that the Department should continue to use the FA rate of LIBOR plus six percent.

DOC Position: Because certain information concerning Tuchany's credit costs could not be verified, the Department used an FA rate of LIBOR plus six percent to calculate Tuchany's U.S. credit costs in the preliminary results of this review. This represents the average of the interest rates on the loans for which documentation was available at verification. We did not apply AFA in selecting this interest rate because we have not concluded that Tuchany failed to cooperate by not acting to the best of its ability. (See Section 776(b) of the Act.) Tuchany complied with all of our requests for information in this review and, with this one exception, we were able to verify the information provided. Therefore, for these final results, the Department has continued to use the non-adverse rate employed in the preliminary results to calculate U.S. credit costs for Tuchany.

Comment 7: Flores El Lobo requests that the Department reconsider its preliminary decision to apply AFA to the company and instead to apply the non-selected company rate to it. The company was not originally represented by counsel. When the company received the Department's questionnaire, reports Flores el Lobo, a company official signed for the questionnaire. However, according to the company, because the company was in liquidation and had ceased operations, it did not file a timely response. According to the company, in September 1996, Eden Floral Farms, one of Flores El Lobo's unaffiliated importers, decided to prepare a response. On behalf of Eden Floral Farms, Asocolflores contacted the Department and was advised that Eden should file a response for Flores El Lobo on October 9, 1996. Because the company was instructed by the Department to file a response and did so, Asocolflores asserts that Flores El Lobo should not be penalized with an AFA rate.

The FTC supports the Department's decision to treat Flores El Lobo as a non-respondent and assign an AFA margin to the company. If, as the company claims, it was in the process of liquidation at the time it received the questionnaire, asserts the FTC, it should have at least reported its status to the Department. Further, argues the FTC, the Department should not accept the company's untimely response provided by Flores El Lobo's importer as evidence that the company was cooperative or acting to the best of its ability. According to the petitioner, without the AFA provision of the law, there would be no incentives for timely, complete reporting in response to the Department's questionnaire.

DOC Position: We have reconsidered our treatment of Flores El Lobo. At the time of the preliminary results, we overlooked the fact that Eden Farms had been advised by the Department to file a late response on behalf of Flores El Lobo. Given the fact that its importer attempted to cooperate with the Department by requesting that it respond late on behalf of its exporter, for these final results, we have not found that Flores el Lobo failed to act to the best of its ability in responding to the Department's inquiries. *See* Section 776(b) of the Act. Accordingly, it is inappropriate to assign Flores El Lobo an AFA rate. Furthermore, like other companies in this review, because Flores El Lobo was not a selected company, its response had no impact on our analysis. For purposes of the final results of review, we have assigned Flores El Lobo the non-selected companies' rate, 2.26 percent.

Export Price or Constructed Export Price

Comment 8: Asocolflores maintains that the Department should compare the annual average CV with the annual average CEP or EP in light of the extreme seasonality of U.S. demand of the subject merchandise. The FTC argues that the use of an annual average U.S. price is unnecessary and will not produce a more representative U.S. price. Instead, FTC contends, such averaging on the U.S. side will mask dumping.

DOC Position: As we have stated in prior reviews and the investigations of Colombian flowers, (see, e.g., Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, (August 19, 1996) (Flowers (91–94))), we have exercised our authority under section 777A of the Act to use averaging techniques and have computed monthly average U.S. prices. Our use of monthly averages for the U.S. price has been upheld by the CIT. See, *e.g., Floral Trade Council* v. *United States,* 775 F. Supp. 1492, 1499–1501 (CIT 1991).

For the current review, we have continued to use monthly average U.S. prices. By relying on monthly averages, we are able to use the exporters' actual price information, which is often available only on a monthly basis. As in prior reviews, we have not adopted Asocolflores' suggestion that we move to annual averages. In our view, use of an annual average would allow respondents to dump during periods of low demand, a result that is not consistent with the statute.

Comment 9: Queen's argues that the Department's logic of treating the affiliated flowers producers as a single entity for AD duty calculation purposes should also apply to affiliated importers. Queen's asserts that the Department collapses companies that are affiliated when there is a significant potential for price manipulation. Queen's claims that to the extent there is any potential for price manipulation, it exists at the importer level rather than the producer level since the importers generally sell the flowers on a consignment basis.

The FTC responds that the effect of Queen's proposal would be the same as averaging sales over a longer period or greater number of companies, allowing low-priced sales by one importer to offset higher prices obtained by another. The FTC maintains that such a methodology would only serve to mask dumping.

DOC Position: In response to Queen's comment, we are combining the operations of the affiliated importers for purposes of our final results in this review. For Queen's sales through affiliated importers, we calculated a single CEP for each flower type based on the sales data from the affiliated importers. These affiliated resellers would be treated as a single entity if we were not using monthly average prices. Thus, notwithstanding the FTC's concerns about the effects of further averaging, we see no reason to disaggregate these companies' sales.

Comment 10: The Flores Colon Group (Flores Colon) contends that the Department incorrectly included both the costs incurred by Flores Colon's affiliated cargo agent and payment from the cargo agent to Flores Colon in direct selling expenses. In Flores Colon's view, this amounts to double-counting because certain "expenses" incurred by the cargo agent were payments to Flores Colon. Hence, Flores Colon argues, these payments are intra-company transfers and should not be deducted as costs.

DOC Position: We disagree with Flores Colon's claim that we included the cargo agent's expenses arising from intra-company transfers in the preliminary results calculations. The only amounts deducted were payments to outside, *i.e.*, non-affiliated, suppliers of the cargo agent and the costs incurred by Flores Colon in supporting the operations of the cargo agent, *e.g.*, wages paid to Flores Colon workers that staffed the cargo agent's operation.

Comment 11: Maxima argues that so-called "AD reserve surcharges" added by an unaffiliated consignment seller to the price charged to the first unrelated seller in the United States should be included in CEP. Furthermore, Maxima argues that there is no statutory basis under 19 U.S.C. 1677a(c)(2) and (d) for later deducting these "AD reserve surcharges" from CEP since these surcharges are neither movement expenses, export taxes, commissions or selling expenses.

DOC Position: We disagree with Maxima. In the situation discussed by Maxima, the unaffiliated consignment seller is receiving revenue from two sources—from Maxima in the form of a commission and from the purchaser in the form of an AD reserve surcharge. Since Maxima and the consignment seller in this situation are not affiliated, the payment to the consignment reseller for AD reserve surcharges does not accrue to Maxima. Therefore, we have taken as our starting price the price charged by the unaffiliated consignment seller net of the AD reserve surcharge. This differs from our treatment of AD surcharges paid to affiliated consignment sellers, where the AD surcharge can be said to accrue to the affiliated producer/exporter.

Comment 12: Asocolflores asserts that for CEP sales, the Department incorrectly deducted direct and indirect selling expenses incurred in Colombia from CEP. Asocolflores cites the Statement of Administrative Action (SAA) which states that, under section 772(d) of the Act, CEP should be reduced only by those expenses and profit associated with economic activity in the United States. Additionally, Asocolflores cites section 351.402(b) of the recently enacted regulations which directs the Department to "make adjustments {to CEP} for expenses associated with commercial activities that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Citing to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, 62 11825, 11833–34 (March 13, 1997), and Gray Portland Cement and Clinker from Mexico, 62 FR 17148, 17167 (April 9, 1997) (Cement from Mexico), Asocolflores contends that the Department has interpreted section 772(d) to preclude the deduction of selling expenses incurred in the exporting country from the U.S. price in other administrative reviews and should apply the same interpretation in these final results of review.

For companies that sell outright to their affiliated importers, Asocolflores contends that the expenses are incurred

in completing the sale to the importer and, therefore, are not associated with economic activity in the United States. For the companies that make consignment sales, all such expenses are incurred prior to U.S. economic activity and are not assumptions of the importer's selling costs. Furthermore, asserts Asocolflores, since, for EP sales, neither the producer nor affiliated importer engages in any U.S. economic activity and the expenses in question are incurred equally for both CEP and EP sales, they should not be deducted from CEP.

Asocolflores further contends that the Department should not apply its CEP profit ratio to selling expenses incurred in Colombia because the SAA provides for a deduction from CEP for profit allocable to selling activities in the United States and, for the reasons cited above, the export-related activities in Colombia are not selling activities in the United States.

The FTC states that Asocolflores' arguments overlook the fact that flowers are grown commercially in Colombia specifically for U.S. customers and, therefore, all such expenses are associated with economic activity in export markets, principally the United States. Citing the Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30352 (June 14, 1996), the FTC claims that the Department allows selling expenses incurred in the exporting country to be deducted from CEP when "virtually all" of the product is sold in the United States. The FTC asserts that "virtually all" of the subject flowers are sold in the United States and that the Colombian producers target the subject flowers to the U.S. market. In the alternative, the FTC states that, if such costs are not deducted from CEP, they should be included in selling, general and administrative (SG&A) expenses and added to CV.

DOC Position: We agree with Asocolflores that selling expenses incurred in the home market that are not associated with U.S. economic activity should neither be deducted from CEP nor included in the basis for calculating CEP profit. We closely analyzed the expenses reported by each respondent and have continued to deduct from and include in the basis for profit certain expenses (e.g., association dues and advertising expenses) that are associated with U.S. economic activity. We do not agree with the FTC that respondents sold "virtually all" of the subject flowers in the United States, as many of the respondents have substantial third country (TC) sales of such flowers.

In addition, we disagree with petitioner that the expenses not deducted from CEP should be included in CV. In accordance with section 773(e)(2)(B) of the Act, the amount to be included for CV should reflect SG&A incurred for sales in the exporting country.

Comment 13: Asocolflores states that the Department instructed respondents not to offset interest expenses with interest income when calculating indirect selling expenses in the United States. Asserting that it is the Department's standard practice to allow this offset, Asocolflores requests that the Department calculate selling expenses, inclusive of an offset for interest income. If the Department does not have sufficient data to do so, Asocolflores contends that it should provide an opportunity for respondents to submit such information

The FTC contends that the Department does not have a standard practice of allowing interest income to offset U.S. selling expenses and instructed respondents correctly not to report such income. The FTC states that any interest income earned with respect to U.S. sales is either due to intra-company payment terms or earned after the sale by the importer. The FTC argues that any interest income earned after the sale is not related to the production or sale of flowers but rather is income from monetary transactions. Furthermore, the FTC states that section 772 of the Act provides only for adjustments to CEP for "expenses," and does not allow an offset for interest income earned on the sale.

DOC Position: In the context of a sales calculation, it is the Department's standard practice to require respondents to demonstrate a direct relationship between the interest income and the sales under review to qualify for an adjustment. See Certain Cold-Rolled Carbon Steel Flat Products from Germany, 60 FR 65281, Comment 29 (December 19, 1995) (Carbon Steel from Germany). Further, in Carbon Steel from Germany, the Department denied a request for a similar adjustment because the respondent did not claim the adjustment until verification, thus limiting the ability of the Department to investigate the basis of the claim.

We acknowledge that the questionnaire did not clearly reflect the Department's practice of allowing interest income offsets in limited circumstances. However, with the exception of Queen's, none of the respondents raised this issue with the Department in a timely manner or provided the information necessary to evaluate and make the claimed adjustment. Because those respondents did not raise this issue until their case briefs, we had no opportunity to obtain information and evaluate their claims. Thus, we have made no adjustment. In contrast, Queen's did raise the issue in a timely manner, which enabled the Department to ask supplemental questions and verify the basis for the claim. Therefore, we have taken Queen's request into consideration, and have reduced interest expense for Queen's affiliated CEP resellers by the amount of interest income.

Comment 14: The FTC argues that the Department should not treat commissions paid to affiliated importers differently than it treats commissions to unaffiliated importers if it can be shown that the commissions to affiliated importers are at arm's length. The FTC claims that section 772(d)(1) of the Act explicitly requires the Department to first deduct commissions and then any indirect selling expenses in calculating CEP, without distinguishing between affiliated and unaffiliated parties. Furthermore, the FTC contends that the statute recognizes that a CEP reseller, whether or not affiliated, should be treated as a separate entity according to the FTC. Consequently, since both transactions are at the same level of trade, the FTC argues that commissions should be treated the same whether the CEP sale is made through an affiliated reseller or through an unaffiliated reseller.

Asocolflores claims that by deducting the commission paid by the exporter to an affiliated importer and then deducting the importer's selling expenses, the Department would be double-counting selling expenses. In addition, Asocolflores argues that the deduction of the commissions may result in a double deduction of profit in calculating CEP, because section 772(e) of the Act specifically requires a deduction of CEP profit. Asocolflores asserts that to the extent that profit is included in the commission, a double deduction would occur.

DOC Position: We agree with Asocolflores that deducting the commission paid to an affiliated importer and indirect selling expenses would lead to double-counting. To avoid this, we have deducted actual selling expenses rather than the commission paid to the affiliated exporter by the importer. See Flowers (91–94) at 42838. See also, the newly enacted regulations at 19 CFR 351.402 (a) and (e).

Comment 15: Tuchany and Miramonte allege that the Department erred when it subtracted CEP profit not only with respect to affiliated importers but also with respect to unaffiliated consignment importers. The FTC argues that profits should be deducted from all CEP transactions, whether or not the merchandise is sold on a consignment basis. Under the FTC's interpretation of affiliation, any consignment sale implies an affiliation. Therefore, there should be a deduction of CEP profit from all consignment sales.

DOC Position: We disagree with the FTC that any consignment sale implies affiliation between the exporter and the consignment importer. The consignment importer negotiates the price with the U.S. customer without the involvement of the exporter and the amount of the commission paid to the consignment importer is negotiated at arm's length between the exporter and the consignment importer. Therefore, for sales made through unaffiliated consignment importers we have deducted the commission paid to those importers. Further, because the deduction of these commissions results in a price corresponding as closely as possible to an export price between the unaffiliated exporter and importer, we have not made an additional deduction of CEP profit.

Comment 16: Asocolflores argues that the Department erred in its calculation of CEP profit for respondent companies by including EP and consignment sales in the calculation. Asocolflores contends that section 772(f)(2)(C) of the Act indicates that CEP sales to affiliated parties should be the only U.S. sales included in the calculation of CEP profit. In further support of this position, Asocolflores cites to the SAA at 155 which states that "[i]f there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States and foreign markets), [the Department] will make no adjustment under section 772(d)(3)." Asocolflores argues that if sales to unaffiliated importers were profitable, there could still be a profit to allocate, while the SAA expressly does not consider such a situation.

The FTC argues that section 772(f)(2)(C) of the Act does not limit the sales to be considered for purposes of computing CEP profit to sales through affiliated importers. The FTC argues that the limitations in sections 772(f)(2)(C)(i), (ii) and (iii) are primarily concerned with the merchandise included in the calculation, not the category of the customer. The FTC additionally argues that consignment agents are affiliated as there exists a control relationship between the consignment agent and the producer of the subject merchandise.

DOC Position: We disagree with Asocolflores. In Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18478 (April 15, 1997), the Department addressed the issue of whether EP sales should be included in calculating a CEP profit rate:

> The calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses resulting from the respondent's EP sales, as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C). The first alternative under this section states that for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise, as well as home market expenses. Where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions.

Further, section 772(f)(2)(B) of the Act defines "total United States expenses" as the total expenses described in subsections (d)(1) and (2). Section 772(d)(1) encompasses "the amount of * * * expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States * * *." Clearly this would include all consignment and EP sales to unaffiliated parties as well as sales through affiliated resellers. Accordingly, we have continued to include all U.S. sales transactions and associated expenses in our calculation of CEP profit.

Comment 17: Asocolflores argues that, due to the seasonal nature of the demand for fresh cut flowers in the United States, the Department should calculate CEP profit on a monthly rather than an annual basis. Asocolflores argues that the use of an annual profit rate in light of the highly variable monthly profit rates which result from the seasonality of demand for fresh cut flowers distorts the Department's AD calculations. Asocolflores points out that the Act does not specify the time period over which profits should be calculated, thereby affording the Department the discretion to use a monthly calculation. Asocolflores contends that profit rates on sales to EP customers also vary due to seasonality. In support of its argument, Asocolflores cites to the SAA at 153 which states, "The deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers."

The FTC responds that sections 772(f)(2)(B) and (C) refer to total expenses without indication that such expenses are to be compared over some period that is a subset of the POR.

Accordingly, the FTC argues, the term "total" should mean total for the POR. In support of its position, the FTC cites to Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2125 (January 15, 1997), where the Department indicated a preference for a single rate for CEP profit:

> Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to "the" profit, "total actual profit," and "total expenses" imply that we should prefer calculating a single profit figure.

The FTC argues that, while prices may vary, the rate of profit expected by the importer is best reflected by the use of an annual rate. The FTC notes that the use of an annual *rate* still results in a variation in the amount of profit when prices vary. Use of an annual rate, the FTC argues, ensures that some profit is assigned to all months, reflecting the expectations of arm's-length importers.

DOC Position: We have continued to use an annual CEP profit rate for purposes of these final results. As the FTC has noted, the Department's historical practice has been to apply a single rate for CEP profit. Although Asocolflores has argued that profit rates may vary due to changes in demand conditions, this is true, to some extent, for many products. Moreover, the CEP profit calculation is not intended to be based on the profit of particular U.S. sales. Rather, it is normally based on the overall profit of home market and U.S. sales. Although a respondent may have few or no home market sales, we nonetheless use an average profit rate for those U.S. and home market sales that were made. We have determined that the circumstances surrounding this case do not compel a departure from our usual practice of using a single rate for CEP profit.

Normal Value

Comment 18: The FTC disagrees with the Department's decision to base normal value (NV) on constructed value (CV), arguing instead that the prices of exports to the United Kingdom (UK) should be used. In support of its argument, the FTC asserts that data submitted to the Department show that

the UK was the largest TC market for Colombian flowers in 1995–96. However, rather than focusing on prices to the UK, the analysis relied upon by the Department in rejecting TC prices (the Botero Study) analyzes Aalsmeer (Holland) auction prices. The FTC further argues that the quantity variance in the UK was similar to the variance in the U.S. market, rising and falling in slightly different months. Moreover, the U.S. and UK markets have very similar holidays and holiday demand patterns and all flower-buying holidays except Mother's Day occur in both markets in the same months. Regarding volatility in the markets, the FTC contends that the Department should reconsider its finding that differences in volatility are largely attributable to differences in demand patterns. Volatility can also result anytime there is targeted or sporadic dumping in one of the two markets. Therefore, according to the FTC, the Department should look at whether there is a different demand pattern rather than at volatility.

The FTC comments that the Department has a longstanding preference for basing NV on prices rather than costs. Moreover, the FTC asserts, the statute provides a clear preference for using TC prices over CV, and the regulations state that the Department will normally use TC sales rather than CV if adequate information is available and can be verified. Based on this, the FTC contends that there must be substantial evidence on the record to support the rejection of TC prices.

In light of this preference, the FTC states that if the Department continues to find that U.S. and UK prices are not sufficiently correlated to permit a proper comparison, then the Department should use annual average prices in the two markets. By using an annual average, suggests the FTC, peak pricing that occurs periodically in holiday seasons will be accounted for. The FTC comments that a comparison of annual averages will capture the complete demand cycle in both markets.

Asocolflores disputes the FTC's claim that NV should be based on TC prices. In support of its argument, Asocolflores points out that many of the companies being reviewed had viable home markets. Although the Department would not have used these home market sales because it limited its analysis to export-quality flowers sold, Asocolflores argues that the statute requires the Department to use CV as the basis for NV when home market sales are not made above cost or are not in the ordinary course of trade. Therefore, Asocolflores concludes, for these companies with viable home markets, there is no basis for the Department to rely on TC prices.

Asocolflores also contends that, by allowing the Department to reject home market or TC prices if the "particular market situation" in the other country prevents a proper comparison with U.S. prices, the URAA codified the Department's approach to this case. Asocolflores points out that, as of the date of the SAA, this case was the only one in which the Department had rejected TC prices due to demand differences resulting from holidays. Asocolflores further argues that the Department has consistently relied on CV rather than TC prices since the second review of this order, and has been upheld by the CIT in doing so (*Floral Trade Council* v. *United States*, 775 F. Supp. 1492, 1496–98 (1991)) and the CAFC (*Floral Trade Council* v. *United States*, 74 F.3d 1200)(1995). Furthermore, Asocolflores asserts, the same market conditions exist in both the U.S. and UK markets and U.S. and European markets that existed in the second review. According to Asocolflores, the seasonal demand and pricing cycles in the U.S. and TC markets remain fundamentally different, *i.e.*, the U.S. market is much more volatile than TC markets and flower-giving holidays are still different. Asocolflores comments that, if the volatility in U.S. prices compared to TC prices was due to targeted or sporadic dumping, as the FTC asserts, one would expect low prices and high volumes. However, Asocolflores emphasizes, U.S. market prices and volumes are positively correlated.

Regarding the use of Aalsmeer prices, Asocolflores points out that in both prior reviews and the present one, the FTC has relied on the Aalsmeer auction data. According to Asocolflores, the only information the FTC has provided in this review regarding TC prices has been Aalsmeer data. Asocolflores explains that flowers sold through the Aalsmeer are sold throughout Europe and, therefore, serve as a surrogate for European prices generally.

Finally, Asocolflores rejects the FTC's argument that the Department should have compared annual average U.S. prices to annual average TC prices. Even in investigations, where the statute directs the Department to use annual average prices, claims Asocolflores, the statute still provides that home market and TC prices can be rejected due to particular market situations. Asocolflores asserts that when prices in individual months are not comparable because of market conditions, *i.e.*, demand, seasonality, and volatility, annual averaging does not eliminate or adjust for these differences. Rather, it states, averaging masks the differences through the use of a single price. In addition, Asocolflores asserts that if volumes of peak and off-peak sales differed in U.S. and TC markets, dumping margins could be found for reasons having nothing to do with price differences.

DOC Position: Consistent with the approach adopted in prior reviews, we have continued to base NV on CV rather than home market or TC prices. We have disregarded home market prices in accordance with section 773(a)(1)(C)(ii) of the Act because we determined that, although some companies in this review have viable home markets, the home market sales of export-quality flowers are not within the ordinary course of trade. For a further discussion, see Memorandum from Team to Barbara Stafford, Deputy Assistant Secretary, Import Administration, dated January 13, 1997. We have also disregarded TC prices in accordance with section 773(a)(1)(B)(ii) of the Act because we determined that the particular market situation prevents a proper comparison between TC and U.S. prices.

The particular market situation that exists here is: (1) prices in TC markets are not comparable to prices in the U.S. because of the volatility of prices in the United States and the differing peak price periods (holidays) in the U.S. and TC markets; and (2) demand patterns are different between the two markets. These are the types of conditions identified in the SAA that would lead the Department to reject TC prices. Specifically, the SAA states "[i]t also may be the case that a particular market situation could arise from differing patterns of demand in the United States and in the foreign market. For example, if significant price changes are closely correlated with holidays which occur at different times of the year in the two markets, the prices in the foreign market may not be suitable for comparison to prices to the United States." *See* SAA at 152.

We examined the possible use of TC prices in depth in Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491 (May 17, 1990) (Flowers (88–89)), and in Flowers (91–94). A significant factor in our analysis in *Flowers (91–94)* was the Botero Study. In this review, respondents have provided an updated Botero Study that with one exception shows that the conditions that existed during that review period continue to exist during the ninth review period. The one change is that the European Union eliminated

flower tariffs for Colombia in 1990, which has made it possible for more companies to sell in Europe. Despite this, we continue to believe that the volatility of prices, differing peak pricing periods and the differing demand patterns warrant rejection of TC prices.

We further disagree with the FTC's characterization of the demand patterns in the U.S. and UK markets. For instance, the FTC states that it provided information in Flowers (91–94)which proves that holidays in the United Kingdom and the United States are comparable. However, as we stated in Flowers (91–94), we are not convinced by this information, as it compares non-flower-giving holidays which happen to coincide, *e.g.*, All Souls' Day and Halloween. Also, as the Botero Study points out, there are flower-giving holidays such as All Saints Day (celebrated in Catholic countries) and Mother's Day (celebrated in the United Kingdom), but these holidays fall at different times of the year than the major U.S. holidays.

Furthermore, we disagree with the FTC's assertion that we incorrectly relied on Aalsmeer auction prices for our determination of the proper basis for NV. We have consistently based our determination of NV on both the Botero Study and other market-wide studies, which have shown that the Aalsmeer data is representative of European prices. We acknowledge that normally the decision to use TC prices or CV is based on company-specific information. However, in the course of this proceeding, we have consistently determined, and have been upheld by both the CIT and CAFC, that information regarding TC markets in general was adequate evidence for a determination of this issue. Further, with respect to the FTC's February 10, 1997 submission, we acknowledge that the submission indicates that the volume of UK imports of Colombian flowers in 1995–96 is approximately equal to the amount imported by the rest of the EU during this period. However, we note that the FTC did not file its data concerning UK prices until February 10, 1997, ten days after our preliminary results of review were completed and nearly four months after our determination was made to use CV rather than TC prices. Despite the assertions to the contrary made by the FTC, given the timing of the submission, it was not possible to determine whether a single TC market is a more appropriate basis for comparison than TC markets in general.

With regard to the Aalsmeer data submitted by the FTC, the usefulness of this data is unclear. The information provided by the FTC includes the weekly volume and prices for various flower types (including pompons, mini carnations, and chrysanthemums) for 1995 of the Aalsmeer and Bloemisterij. This data provides no reason for us to depart from our prior determinations that the Aalsmeer is representative of European prices.

With respect to the FTC's assertion that the volatility of U.S. prices may be due to targeted or sporadic dumping, we find that the FTC has not demonstrated this to be true. The pricing patterns in the U.S. can be ascribed to periods of peak and slack demand, whereas the relative flatness of prices in European markets is explained by the fact that Europeans purchase flowers year round.

Finally, we have not adopted the FTC's suggestion to use yearly averages in our comparisons for the same reasons we rejected Asocolflores' argument that we should use an average annual U.S. price. (See DOC Position to Comment 8.) Further, as Asocolflores has pointed out, if the volumes of peak and off-peak sales differed in U.S. and TC markets, the use of an annual average might not adjust for these differences.

Comment 19: Asocolflores and HOSA disagree with the methodology used by the Department in the Preliminary Results to calculate an annualized CV. In the Preliminary Results, the Department calculated an average per-stem CV in pesos, with the result that the CV expressed in pesos was constant throughout the POR. The Department then converted to a per-stem CV in dollars using each month's average exchange rate. This NV was compared to the monthly average CEP or EP. The Department's methodology, according to Asocolflores, is an unreasonable departure from the practice that it followed in every prior administrative review of the present case. In the Certain Fresh Cut Flowers from Colombia; Final Results of Administrative Review, 56 FR 32169 (July 15, 1991) (Flowers (87–88)), the first administrative review, the Department aggregated total costs in pesos over the POR and divided by the period average exchange rate and net units sold to calculate the per-stem CV in dollars. In later reviews, the Department totaled peso costs on a monthly basis, converted to dollars using the monthly exchange rate, added these dollar costs over the POR and divided by the net units sold to yield the per-stem CV in dollars.

Asocolflores claims that the methodology used in the Preliminary Results is inappropriate because it creates a mismatch between the exchange rate used and the costs at issue. Asocolflores argues that, due to factors such as the fluctuations in the exchange rates, the inclusion of monthly inflation adjustments and the devaluation of the Colombian peso against the U.S. dollar over the POR, the Department's methodology erroneously results in a declining CV in dollar terms throughout the POR. Asocolflores contends that no basis for the changed methodology has been disclosed and "[f]undamental principles of fairness require the Department to abide by its prior decisions in this case," given that the facts upon which the Department predicated the previous methodology have not changed in the present review.

The FTC counters that the Department's underlying rationale for the methodology used in the past reviews no longer applies in this review. First, according to the FTC, inflation is not at the same high rate encountered during Flowers (87–88). Second, the FTC points out that the Department's new exchange-rate methodology of using a lagged rate where a sustained change in rates exists over a period of at least eight weeks automatically accounts for any distortive effects due to fluctuations in exchange rates. The FTC further argues that the rates during the POR in any case should be considered "relatively stable." The FTC also notes that, because EP and CEP are averaged monthly, applying monthly exchange rates to the NV for purposes of comparison is also appropriate pursuant to section 773A of the Act.

DOC Position: We agree, in part, with respondents. In Flowers (87–88), we revised our methodology for converting respondents' CV from pesos to dollars. The revision was deemed appropriate in light of a combination of factors affecting this case including the high rate of inflation in Colombia, consequent devaluation of the Colombian currency, and the nature of calculating the costs to produce agricultural products. See Flowers (87–88). In *Flowers (87–88)*, we converted the POR average peso CV to dollars using the corresponding period-average exchange rate but expressed a preference for the alternative methodology of converting each month's peso costs into dollars using that month's exchange rate. *See Id.* at 32169 ("while we agree with the respondent that the monthly conversion to dollars of peso costs is the preferable methodology, in this review we have converted our period-average peso constructed value to dollars using the corresponding period average exchange rate"). In subsequent reviews, we adhered to

the revised methodology used in Flowers (87–88) until Flowers (91–94), where we used the preferred alternative methodology of monthly dollar conversions.

In the present review, we have examined Asocolflores' argument and have reassessed the methodology we used in the preliminary results. We determine that the underlying factors that formed the basis of our rationale for revising the conversion methodology in Flowers (87–88)(and subsequent reviews) remain largely unchanged. We also recognize that flower production, like other agricultural production, necessitates the use of a period-average CV in order to capture the complete costs, which vary month to month, due to the production cycle of the product. *See* Flowers (87–88) at 32169.

In light of the foregoing, for these final results, we have departed from the methodology we employed in the preliminary results for converting CV in the present review. Specifically, we converted each month's cumulated costs in pesos to dollars using the corresponding month's exchange rate. Next, the monthly costs in dollars were totaled over the POR and divided by the net units sold to calculate the per-stem CV in U.S. dollars which was then converted to pesos using the period-end exchange rate. Furthermore, to correct for the distortive effects of devaluation of the Colombian peso, we used a monthly deflator (which was calculated by dividing the period-end exchange rate over each month's exchange rate) to deflate the per-stem CV in pesos for each month. The corrected peso CV was then converted to dollars using each month's exchange rate pursuant to section 773A(a) of the Act, which requires that foreign currencies be converted into U.S. dollars using the exchange rate in effect on the date of sale of the subject merchandise. The effect of this methodology is to create a CV which, when denominated in pesos, increases over the POR. This result is consistent with an economy that is experiencing high levels of inflation.

With respect to the FTC's arguments, we disagree that inflation was low enough or the exchange rate stable enough that we should continue with the methodology we followed in the Preliminary Results. Regarding the use of lagged exchange rates when there is a sustained movement in the currency, the provision for sustained changes applies only to investigations and not to reviews.

Comment 20: HOSA and Asocolflores argue that the Department is statutorily required to allocate costs across all subject flowers, including "national quality" flowers, when calculating CV. Their argument is largely based on the 1992 opinion of the CAFC in *IPSCO, Inc.* v. *United States*, 965 F.2d 1056 (*IPSCO*), and on recent Department case history. First, HOSA and Asocolflores claim that *IPSCO* is definitive on how costs are to be allocated: costs must be allocated across all goods produced, regardless of their respective values. They interpret *IPSCO* to mean that no matter how the Department categorizes a "secondary" product (*i.e.*, as a co-product or a by-product), if the production of that product expended the same materials, capital, labor, and overhead as the production of the "primary" product, then both the primary and secondary products must share the costs equally. Furthermore, respondents argue that any value-based allocation violates the AD statute as interpreted by *IPSCO*. Even if the Department finds non-export quality flowers to have little, or no, commercial value, these culls must still carry costs. Second, although respondents argue that *IPSCO* has made by-product and co-product distinctions irrelevant, they say that if the Department insists upon using such classifications, then second-quality flowers should be co-products to which costs of production should be allocated. They state that non-export-quality flowers must be considered co-products because they are very similar to the primary product, their production expends the same material, capital, labor, and overhead, and they are produced in the same manufacturing lot as export-quality flowers.

The FTC states that respondents' arguments regarding national quality flowers have been raised before and rejected by the Department. Referring to Fresh Cut Roses from Colombia, 60 FR 6980 (February 6, 1995) (Roses from Colombia) and Flowers (91–94), the FTC says that the Department should adhere to its precedent of treating national quality flowers as by-products.

DOC Position: We have continued to treat culls and national quality flowers as by-products in this review. This practice, at least with respect to culls, has been followed since Flowers (LTFV) and was upheld by the CIT in *Asociacion Colombiana de Exportadores* v. *United States*, 704 F. Supp. 1114, 1125–26 (CIT 1989). In Flowers (91–94), we examined HOSA's claim that "national" or "second quality" flowers should not be treated as by products. We disagreed with HOSA and treated national quality flowers as culls.

As explained in Flowers (91–94) (at 42850), our general practice in cases involving agricultural goods has been to treat "reject" products as by-products and to offset the total cost of production with revenues earned from the sale of any such "reject" products. We continue to believe that this general practice does not conflict with CAFC's ruling in *IPSCO*. Clearly, culls are reject products. Moreover, as the Department stated in Flowers (LTFV), due to the perishability of agricultural products, the sellers of such merchandise "may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price." Similarly, when the product is not of a high enough quality to be exported, it is a cull that immediately faces whatever price can be obtained in the home market, or destruction. This situation does not resemble that in *IPSCO*.

Comment 21: Asocolflores asserts that, if the Department does not allocate costs across all export-quality flowers and culls, the Department should at least offset the cost of production by the revenue earned on the sale of culls. In particular, Asocolflores wants the Department to include off-book revenue when making this deduction, not just the revenue recorded in the books.

The FTC disagrees with Asocolflores because off book revenue is unproven and inherently suspect. Since off-book revenue can not be corroborated by an audited financial statement or tax return, the FTC contends that the Department should not accept this type of information.

DOC Position: We agree with the FTC. We do not take account of off-book revenue because it is not reflected in the company's audited financial statements, our primary tool for determining the accuracy and completeness of respondents' submitted data. (See Roses from Colombia.) Absent specific evidence to the contrary, the Department considers a company's financial statements to reflect the actual expenses/revenues of its operations. (See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan, 55 FR 34585 (August 23, 1990).)

Comment 22: Tuchany notes that the Department discovered at verification that the company had incorrectly reported depreciation expense by making the inflation adjustment to the accumulated depreciation balance instead of the depreciation expense during the POR. Tuchany argues that this error substantially overstated costs because the reported amount

encompasses all historical inflation adjustments to depreciation, not simply those associated with the POR. Tuchany asks the Department to rely upon worksheets submitted at verification which, it contends, can be used to derive the inflation adjustment to depreciation expense.

The FTC contends that the Department should not allow Tuchany to submit new factual information during verification.

DOC Position: At verification, we discovered that Tuchany had incorrectly calculated its depreciation expense in its response. Company officials prepared a worksheet in an effort to provide the Department with the information necessary to correct this error. This information had not been reviewed prior to verification and, while we were able to trace certain information to source documents, we were unable to thoroughly review the validity of the calculations during verification due to time constraints. We indicated to company officials that we would take the information but that we would need to review it and would not necessarily take it into consideration for purposes of our final calculations. Upon review of the data in the worksheets, we discovered that the information was not adequate to correct Tuchany's reported depreciation expense. See Tuchany Group Verification Report, May 6, 1997, p. 14. Thus, we were unable to determine the correct figure although we did conclude that the reported figure for depreciation expense was in error. Because we were unable to verify the data in the worksheets we have resorted to FA in accordance with section 776(a) of the Act. We have continued to use the reported figure in our final calculations as we consider it the best estimate available to us of the correct amount for depreciation expense.

Comment 23: Asocolflores and HOSA contend that the Department erred in not making an adjustment to financial expenses for net "monetary correction" while adjusting respondents' depreciation and amortization costs to account for the effects of inflation. Asocolflores states that the adjustment for "monetary correction," which represents the net gain or loss to the company caused by inflation on its net exposed monetary assets and liabilities, is required by Colombian law and generally accepted accounting principles (GAAP) as part of the inflation adjustment. Moreover, the Department's failure to consider the adjustment for net monetary correction leads to significant distortions in the calculation of CV, according to Asocolflores.

Asocolflores argues that financial costs must be adjusted from nominal pesos to current value pesos because the costs incurred by a company in the current period but not payable until later periods, such as accounts payable and peso loan balances, will be paid in the future when the pesos will be cheaper in current value terms. Asocolflores claims that the Department's methodology results in a distorted cost calculation that mixes nominal pesos for some costs with inflation adjusted, current value pesos for other costs.

According to Asocolflores, section 773(f)(1)(A) of the Act "requires the Department accept costs as recorded under Colombian GAAP unless it makes a specific finding that such costs are distortive." Asocolflores further refers to the CIT's holding in *Laclede Steel* v. *United States*, 18 CIT 965 (CIT, Oct. 12, 1994), where it was ruled that "a respondent could not report costs such that one item of costs (depreciation expenses in that case) was subjected to accounting principles different from those applied to other variables such as financing costs." Asocolflores contends that the Department's methodology violates the Act and the court's holding in that it subjects only *one* cost variable—depreciation and amortization expense—to adjustment for inflation. Asocolflores argues the Department must either disregard all inflation adjustments or include inflation adjustments for monetary correction.

Furthermore, Asocolflores argues that the exclusion of monetary correction is a departure from the Department's own precedents. Specifically, Asocolflores cites to *Cement from Mexico* and Porcelain-on-Steel Cookware from Mexico, 61 FR 54616 (1996), where, in accordance with Mexican GAAP principles, the Department allowed the monetary correction gain as an offset to financial expenses. Asocolflores also refers to two Brazilian cases, *Aimcor, Ala. Silicon, Inc.* v. *United States*, Slip Op. No. 95–130, 1995 WL 431186 (CIT, July 20, 1995) and Frozen Concentrated Orange Juice from Brazil, 52 FR 8324 (1987), where the monetary correction adjustments to financial expenses were made in accordance with the Department's own hyperinflationary-economy methodology.

The FTC counters that the Department's rejection of the monetary correction adjustments is in accordance with past precedents. The FTC refers to Roses from Colombia at 6993, where the Department specifically declined to include inflation adjustments resulting from the annual revaluation of non-monetary assets because the adjustment "merely reflects an increase to respondent's financial statement equity due to the restatement of non-monetary assets to account for inflation." The FTC also contends that Cement from Mexico is distinguishable in that the Mexican inflation adjustment "pertained solely to monetary assets and liabilities whereas the Colombian monetary correction is an adjustment to non-monetary assets." Furthermore, the FTC points out that the Mexican adjustment was the sum of all corrections to financial expenses made throughout the year. In contrast, the FTC argues, the Colombian monetary correction is simply a year-end adjustment, thus having no effect on the amounts borrowed or lending rates of the respondents.

DOC Position: We disagree with Asocolflores. Consistent with our practice in Flowers (91–94), we have included adjustments for the effects of inflation in respondents' depreciation and amortization expense figures in calculating CV. We have continued to exclude the amount of monetary correction income that respondents claimed as an offset to costs.

As discussed in the final results of Flowers (91–94), we adjusted respondents' depreciation expenses in order to permit a more appropriate matching of costs and prices based on equivalent currency units. The Department's practice in AD cases involving countries whose economies are marked by price level changes defined as "hyperinflationary" is to adjust *all* production costs for the effects of inflation. See, e.g., Flowers (91–94) at 42845. In some instances, however, the level of inflation during the POR does not reach the Department's normal hyperinflation threshold. Nonetheless, where an economy has experienced the compound effects of significant inflation levels in periods prior to the POR, the costs associated with respondent's fixed assets, as well as other assets recorded at their historical purchase, may be materially misstated relative to the currency levels at which prices and costs are measured during the POR. In these instances, the Department may adjust the historical basis of fixed assets such that respondent's depreciation and amortization costs reflect the currency levels of the POR. See Roses from Colombia.

Unlike in hyperinflationary cases, however, the Department's practice with respect to inflation and its effects on historical costs does not specifically adjust for all of the inflationary effects that occur within the POR. Rather, these effects result from the inflation experienced within the twelve months

of the POR and, thus, are considered to have a minimal influence on the Department's antidumping analysis. To attempt to quantify the effects of inflation on each measure of cost and price would impose an unreasonable level of complexity to the Department's antidumping analysis.

Consequently, we have left financial expenses unadjusted because these expenses were contained largely within the POR. In contrast, the expenses for depreciation and amortization are based on the historical costs of assets which extend beyond each POR. Compounded annually, the effect of inflation results in a distortion of historical depreciation and in an understatement of costs.

As to Asocolflores' argument that the inclusion of net monetary correction is required under the Colombian GAAP and the Act, we note that there is no statutory requirement that the Department adjust for all effects of inflation in its analysis nor a requirement to use *all* aspects of a country's GAAP. Rather, the statute merely requires that the Department include in its calculation of CV the cost of manufacturing "which would ordinarily permit the production of the merchandise in the ordinary course of business." See section 773(e)(1) of the Act. Moreover, the CIT has already held that full accounting for inflation is neither necessary nor possible. (See *Budd Co.* v. *United States*, 773 F. Supp. 1549, 1554 (CIT 1991) ("The glowing deficiency in Plaintiff's argument is the underlying premise that a full accounting for inflation is necessary or even possible.")

We also find that Asocolflores' reliance on the two Mexican cases is misplaced. There is no evidence on the record indicating that inflationary accounting under Mexican GAAP is the same as inflationary accounting in Colombia. Similarly, the two Brazilian cases cited by Asocolflores are distinguishable in that inflation rates in Brazil during those periods were at hyperinflationary levels, as defined by the Department, and therefore the Department relied on a replacement cost methodology to adjust all costs for the effects of inflation.

Comment 24: Asocolflores contends that the Department erroneously attributed all net interest expense to production. Asocolflores argues that, in addition to financing the assets used in production, interest expense reported by respondent companies also relates to financing receivables for TC and U.S. sales. Asocolflores contends that the Department departed from past practice and effectively presumed that the totality of the producer's borrowing costs were attributable to production. Asocolflores urges the Department to revert to its prior practice and include in its calculation of CV only that portion of the net interest expense allocable to assets other than accounts receivable.

Asocolflores recognizes that the Department has changed its practice of adding imputed credit expense to CV to avoid double-counting. However, Asocolflores argues that interest expenses associated with sales should not be included in CV at all because such interest expenses do not relate to production as required by section 773(e)(1). Moreover, Asocolflores asserts, for the Colombian flower growers in the case the actual interest expense for home market sales is zero.

The FTC rebuts that section 773(e)(2) requires that SG&A be added to production expenses when computing CV, so the exercise of identifying which costs are production-related and which are sales-related is academic. The FTC further argues that, in calculating CV, the Department allocates interest expense to all export-quality stems sold, so any interest expense related to TC sales has effectively been allocated to such sales. Finally, the FTC argues that respondents have provided no evidence that some portion of their interest costs relate to markets other than the U.S. market and no evidence that any portion of their financing expenses relate to sales rather than to production. The FTC argues that there is no basis for assuming that the ratio of accounts receivable to total assets has any relationship to the ratio of selling interest costs to total interest costs. The FTC contends that accounts receivable are commonly financed out of cash-flow and payables rather than through borrowing.

DOC Position: In calculating CV, the Department considers net interest expense to be a part of SG&A and, in accordance with section 773(e), the Department's practice is to include the actual amount of net interest expense as part of the cost of the product. The amount of net interest expense for CV is calculated as a ratio. The numerator in this ratio is the total actual amount of net interest expense incurred by respondent and the denominator is the respondent's cost of sales. The result of this ratio calculation is then applied to the per-unit cost of manufacture for the merchandise in order to derive the allocated amount of interest expense associated with the product.

Contrary to respondent's claims in this case, the interest expense calculation described above does not attribute all net interest expense to production. Rather, it is the Department's long-standing method of calculating net interest expense on a per-unit basis for CV. Under the new statute, however, because interest expense for CV is to be based on actual and not imputed amounts, it is no longer appropriate to do as Asocolflores suggests and reduce actual interest expense in order to replace it with imputed amounts for credit. Any differences in credit expense between the U.S. and foreign market are taken into account as a circumstance of sale adjustment, but not as part of the actual calculation of net interest incurred for the product. See e.g., Notice of Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 62 FR 18744, 18746 (April 17, 1997).

Comment 25: HOSA asserts that the Department used the wrong general and administrative expense (G&A) rate for flowers that a member of the HOSA Group purchased from other producers and used in its bouquet operation. HOSA argues that it did not incur any G&A expense associated with flowers it did not grow. HOSA further states that, if the Department insists upon calculating G&A for purchased flowers, it should use the G&A rate for the farm that purchased the flowers and used them in its bouquet operation. This G&A rate, asserts HOSA, should be taken from the farm's 1995 audited financial statements, as provided in the questionnaire response.

The FTC argues that HOSA must incur some G&A expenses in the areas of marketing and selling bouquets, not to mention the purchase of flowers and the assembly of bouquets. Moreover, in the FTC's view, there is no basis to limit the G&A expenses to one single farm. Thus, the FTC argues that the Department should continue to follow the approach used in the preliminary results.

DOC Position: We disagree with HOSA. As stated in the Suspension of Antidumping Duty Investigation: Sodium Azide from Japan, 62 FR 973, 977 (January 7, 1997), "G&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product." The Department's practice is to calculate G&A expenses by finding the ratio of the company's total G&A expenses relative to the total cost of goods sold by the company. This ratio is then applied to the cost of manufacture of each product. Furthermore, this approach is consistent with our approach with respect to other collapsed companies for which we have allocated G&A expenses. In this instance, the products in question are those flowers (subject merchandise) acquired and used in the production of bouquets. Although HOSA does not grow these flowers, it does use them in further processing. There is no evidence that HOSA would purchase and resell these flowers if they were not used in bouquet production. Because the production and selling of bouquets generates G&A expenses, the items making up the bouquets incur G&A expenses.

The HOSA Group's contention that the Department should use only the G&A expenses generated by the member of the group which purchased the subject merchandise is not reconcilable with the Department's practice concerning "collapsed" companies. Once the Department has determined to collapse affiliated producers (*i.e.*, to assign a single AD rate to the producers because of, *inter alia*, close interrelationships between them) the group is treated as one single company with respect to reporting obligations. We do not allow companies to pick and choose which G&A expenses and which divisions of the company will be used in accounting for this expense. The same holds true for the HOSA Group and, thus, every product produced by HOSA, regardless of which farm produced it, incurs allocated G&A expenses generated by the entire group.

Comment 26: The Tinzuque Group (Tinzuque) argues that the Department erred in disregarding all reported offsets to SG&A. Tinzuque concedes that certain reported offsets were derived from non-operating income accounts and are, therefore, not appropriate offsets to cost. Tinzuque contends, however, that among the reported offsets are commercial discounts obtained on material purchases, which are appropriate offsets to cost. Tinzuque points out that sample invoices and accounting slips submitted in its February 21, 1997 supplemental response demonstrate the nature of these discounts.

The FTC argues that there is no evidence on the record to demonstrate that the amount reported for commercial discounts is related exclusively to material purchases related to subject merchandise. The FTC further contends that discounts on material inputs would not normally be accounted for in SG&A accounts, thereby casting additional doubt on the nature of these discounts.

DOC Position: We agree with Tinzuque. The sample accounting slips submitted by Tinzuque demonstrate that the commercial discounts in question were obtained on material purchases. Moreover, there is no indication that the materials were used as inputs for other than subject merchandise. Therefore, we have accepted Tinzuque's claim and have offset its costs accordingly.

Comment 27: Asocolflores argues that the Department's use of the profit rate of Compania Nacional de Chocolates S.A. (CNC), a Colombian producer of chocolate and other processed agricultural products, as FA in the calculation of CV is inconsistent with the Act. Asocolflores argues that the "profit cap" described in section 773(e)(2)(B)(iii) of the Act contains no exceptions or conditions and its application is mandatory. Specifically, Asocolflores contends that the Department should use a profit rate of zero since none of the responding companies had profits on sales of flowers in the home market. Asocolflores argues that there is no requirement that only sales made in the ordinary course of trade or above cost are to be considered when calculating the profit cap.

Asocolflores contends that the Department misinterpreted language in the SAA that allows exceptions to the application of the profit cap "due to the absence of data." Here, Asocolflores argues, there is no absence of data; the data merely indicates that the profit rate is zero. Asocolflores argues that, in Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review, 61 FR 55957 (October 30, 1996) (Shop Towels), the Department included zero profit for the two textile companies that had shown losses in deriving an average of three profit rates to be used in calculating CV.

Asocolflores further argues that the use of CNC's profit rate is inconsistent with the purpose of the statute and due process. Asocolflores argues that the rate used by the Department in its preliminary results was arbitrary, unpredictable and random. Asocolflores argues that there is not even a pretense of foreseeability or predictability, and, accordingly, under such a system, respondents have no basis on which to price their product to avoid dumping.

The FTC responds that the Department properly concluded that there was insufficient basis for computing a profit cap in accordance with section 773(e)(2)(B)(iii). The FTC argues that sales in the home market of merchandise in the same general category as flowers would necessarily include sales of culls. Since culls are treated as byproducts in the Department's calculations and are assigned a cost basis of zero, the FTC argues that the profit rate on such sales would be infinite.

The FTC further argues that the Department correctly interpreted the statute and SAA in determining that profit must be a positive amount. The FTC agrees with the Department's interpretation of the wording in the SAA at 169 that CV "must include an amount * * * for profit" as meaning that there must be a positive number. The FTC cites to the passage in the SAA at 170 indicating that the administration does not believe the elimination of statutory minimums will diminish the ability of domestic industries to obtain relief under the AD law.

DOC Position: Contrary to Asocolflores' assertion, we are required to add a positive amount for profit when calculating CV. Although the URAA eliminated the use of a minimum profit rate, the presumption of a profit element in the calculation of CV was not eliminated. The SAA (at page 169) states: "Because constructed value serves as a proxy for a sales price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A expenses and for profit."

With respect to Asocolflores' argument that a zero rate of profit would be consistent with Shop Towels, we disagree. An average that includes some zeroes but still yields a positive number, as was the case in Shop Towels, is different from using a profit rate of zero.

By providing three alternative methodologies for calculating CV profit in section 773(e)(2)(b), the statute enables the Department to use an overall positive profit rate whenever the calculation of CV profit under 773(e)(2)(A) is not appropriate. In Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review 62 FR 37869, 37877 (July 15, 1997), the Department stated, "if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit."

Since there is no information on the record that would enable us to calculate a home market profit rate on the same general category of merchandise as flowers, we have continued to use CNC's profit rate, for reasons detailed in a memorandum from team to Richard Moreland, Acting Deputy Assistant Secretary, AD–CVD Enforcement 1, dated March 31, 1997 (on file in room B–099 in the Central Records Unit of the Department of Commerce). We disagree with Asocolflores' assertion that we

have information on the record to calculate a profit cap. As Asocolflores has stated, the only information on the record indicates that sales of flowers in Colombia are not profitable. As discussed above, a profit rate of zero is not appropriate for use in calculating CV; therefore, we do not have appropriate information to use as the basis for a profit cap. Accordingly, we have applied alternative (iii) on the basis of "the facts available," as instructed by the SAA at 171.

We further disagree with Asocolflores' contention that the application of a profit rate based on non-adverse FA is contrary to the intent of the statute and violates respondents' due process. As detailed above, the application of a zero profit rate would have been contrary to the intent of the statute. In carrying out the intent of the statute in a reasonable manner, respondents' due process is being served. Asocolflores has had the opportunity to comment on the Department's methodology.

Comment 28: The FTC argues that the Department's use of CNC's profit rate in the preliminary results was not the best choice among the alternatives available to the Department. The FTC argues that CNC is in the processed agricultural goods industry and, as such, does not face the same perishability risks as a flower producer. The FTC admits to the paucity of financial information available regarding Colombian companies but suggests that the Department use the rate of return on equity of Banco Ganadero, a Colombian bank that makes approximately one quarter of its loans to the agricultural sector. The FTC suggests that, while this financial information would be derivative since it is based on return on equity of a financial institution, it is a better gauge of Colombian agriculture than a chocolate producer.

Asocolflores responds that the rate of return on equity for a Colombian bank is not at all analogous to the profit rate of a Colombian flower exporter. Asocolflores contends that a rate of return on equity is not a profit margin and that the statute requires the use of profit, not return on equity. Additionally, Asocolflores argues that a bank's products are financial instruments, not agricultural products.

DOC Position: We agree with Asocolflores that the rate of return on equity of a financial institution is not appropriate for this case. While we were unable to locate a profit rate on home-market sales for a Colombian producer of merchandise in the general category as flowers, we determine that the use of the profit rate of CNC, a Colombian producer of processed agricultural goods is more appropriate than the rate of return on equity of a Colombian bank. Accordingly, we have continued to use CNC's profit rate as FA in calculating CV profit.

Comment 29: Asocolflores claims that, where appropriate, the adjustment from gross units sold to net units sold to account for returns should be made on an annual basis over all importers purchasing from the same exporter rather than on a monthly basis by importer.

DOC Position: We agree in part. Returns from a given month often are not reported and claimed by the importer until the following month. If a large number of returns from the prior month happened to be reported and claimed in the current month, the NV for the current month after adjustment for returns would be overstated. Therefore, for the final results, we took the total number of returns made during the POR by a particular importer and allocated this total to each month of the POR based on the gross number of stems sold in each month.

We disagree, however, with averaging returns over importers. In calculating net units sold, we have not averaged returns over all the importers purchasing from a particular exporter. Returns are dependent on a number of factors including the handling and warehousing practices of the importer and the distance from the grower to the importer. These factors are directly related to the particular importer under consideration and directly affect the returns from that importer. For this reason, the margin calculations should reflect the actual number of returns from that importer rather than the average number of returns over all importers. Thus, for the final results, we used the actual number of returns by each importer in calculating an adjustment to the NV for each importer because returns clearly and directly relate to the operating practices of individual importers.

Assessment

Comment 30: Asocolflores contends that the Department incorrectly calculated the amount of AD duties to be assessed on individually reviewed (or "selected") companies. In particular, Asocolflores objects to the Department's reliance on U.S. Customs' posted prices for the calculation of entered value for carnations. Ascolflores contends that use of the posted prices will result in a potential overassessment of AD duties. Asocolflores suggests that the Department recalculate entered value using the data provided by respondents and, where necessary, obtain further information from respondents. Alternatively, Asocolflores suggests calculating specific duties based on the quantity of flowers shipped during the POR.

The FTC states that the Department properly relied upon Customs' posted values to calculate AD duty assessments. The FTC argues that, because Customs will liquidate entries using posted values as the entered values, the use of entered values reported by respondents would be incorrect. The FTC further questions the reliability and correctness of the entered value data supplied by respondents.

DOC Position: For these final results, we have calculated the amount of duties to be assessed on a per-stem basis. We were unable to use entered values because respondents reported average monthly prices and, moreover, the entered values were not associated with particular importers. Since assessments are made on an importer specific basis, aggregate entered values could not be used. Although we have calculated a per-stem rate for assessment purposes, we will apply an *ad valorem* rate for duty deposit purposes.

Comment 31: Asocolflores states that the Department incorrectly used the average cash deposit rate for selected respondents as the assessment rate for those companies that responded but were not selected for review ("non-selected respondents"). Asocolflores contends that the Department should use the weighted-average assessment rate rather than the average cash deposit rate and that any difference in methodology between selected and non-selected respondents violates the equal protection clause of the United States Constitution.

The FTC argues that the Department properly based assessment rates for non-selected companies on the duty deposit rates. In the FTC's view, the Department's approach to assessment was reasonable and there is no reason to prefer the weighted-average assessment rate of selected respondents to their duty deposit rate.

DOC Position: For these final results, we have calculated an average per-stem rate to apply to non-selected respondents for assessment purposes. We have calculated this rate by summing the AD duties owed by the selected companies and dividing that amount by the number of stems entered by the selected companies. (As explained below, in connection with the assessment instructions, we have used stems entered during the POR rather than stems sold, because of the perishable nature of the subject merchandise.) Although we disagree with Asocolflores that the methodologies for the two groups of companies must be the same in all respects, for assessment purposes we believe that this approach yields the most accurate results.

Other

Comment 32: The FTC argues in its rebuttal brief that Tuchany should not be allowed to rewrite its response during verification.

DOC Position: In the course of verification, certain minor errors in Tuchany's questionnaire response were discovered. Generally, the company was able to correct these errors and the Department requested that these corrections be submitted for the record. The errors were also identified in our verification report. The errors made by Tuchany were not of such a magnitude as to warrant the conclusion that Tuchany had failed verification.

Comment 33: Flores el Talle argues that it is part of the Flores Colombianas Group, a group for which the AD order has already been revoked. Therefore, Flores el Talle claims, it should not be subject to either the assessment or cash deposit rate determined for non-selected respondents. Instead, asserts Flores el Talle, the Department should determine that it is part of the Flores Colombianas Group and is covered by the Flores Colombians Group's revocation.

DOC Position: We have determined that there were no entries of subject merchandise under the name Flores el Talle during the POR. Therefore, we have rescinded the review with respect this company (*see* the "Rescission" section of this notice). In addition, we will initiate a changed circumstances review in order to determine whether Flores el Talle is covered under the revocation granted to Flores Colombianas.

Final Results of Review

Selected Respondents

As a result of our review, we determine the following percentage weighted-average margins to exist for the March 1, 1995 through February 29, 1996:

	Percent
Agrodex Group	1.30
Agricola de las Mercedes	
Agricola el Retiro Ltda.	
Agrodex Ltda.	
Degaflores Ltda.	
Flores Camino Real Ltda.	
Flores Cuatro Esquinas Ltda.	
Flores de la Comuna Ltda.	
Flores de las Mercedes	
Flores de Los Amigos Ltda.	
Flores de los Arrayanes Ltda.	
Flores De Mayo Ltda.	
Flores del Gallinero Ltda.	
Flores del Potrero Ltda.	
Flores dos Hectareas Ltda.	
Flores de Pueblo Viejo Ltda.	
Flores el Trentino Ltda.	
Flores la Conejera Ltda.	
Flores Manare Ltda.	
Florlinda Ltda.	
Horticola el Triunfo	
Horticola Montecarlo Ltda.	
Caicedo Group	8.36
Agro Bosque S.A.	
Andalucia S.A.	
Aranjuez S.A.	
Columbiano S.A. "CAICO"	
Caico	
Exportaciones Bochica S.A.	
Floral Ltda.	
Flores del Cauca	
Inversiones Targa Ltda.	
Productos el Zorro	
Via el Rosal	
Claveles Colombianos Group	0.39
Claveles Colombianos Ltda.	
Elegant Flowers Ltda.	
Fantasia Flowers Ltda.	
Splendid Flowers Ltda.	
Sun Flowers Ltda.	
Cultivos Miramonte Group	1.05
Cultivos Miramonte S.A.	
Flores Mocari S.A.	
Floraterra Group	8.36
Exporosas	
Floraterra S.A.	
Flores Casablanca S.A.	
Flores San Mateo S.A.	
Siete Flores S.A.	
Flores Colon Ltda.	2.84
Florex Group	0.73
Agricola Guacari S.A.	
Agricola el Castillo	
Flores San Joaquin	
Flores Altamira S.A.	
Flores de Exportacion S.A.	
Guacatay Group	1.53
Agricola Cunday	
Agricola Guacatay S.A.	
Jardines Bacata Ltda.	
Hosa Group	2.07
Horticultura de la Sabana S.A.	
HOSA Ltda.	
Innovacion Andina S.A.	
Minispray S.A.	
Prohosa Ltda.	
Maxima Farms Group	3.25
Agricola los Arboles S.A.	
Colombian D.C. Flowers	
Polo Flowers	
Rainbow Flowers	
Maxima Farms Inc.	
Queens Flowers Group	1.13
Agroindustrial del Rio Frio	
Cultivos General Ltda.	
Flora Nova	
Flora Atlas Ltda.	
Flores Calima S.A.	
Flores Canelon Ltda.	
Flores de Bojaca	
Flores del Cacique	
Flores del Hato	
Flores el Aljibe Ltda	
Flores el Cipres	
Flores El Pino Ltda.	
Flores El Roble S.A.	
Flores el Tandil	
Flores la Mana	
Flores las Acacias Ltda	
Flores la Valvanera Ltda.	
Flores Jayvana	
Flores Ubate Ltda	
Jardines de Chia Ltda.	
Jardines Fredonia Ltda.	
Jardines Piracanta	
M.G. Consultores Ltda.	
Mountain Roses	
Queens Flowers de Colombia Ltda.	
Quality Flowers S.A.	
Florval S.A. (Floval)	
Jardines des Rosal	
Tinzuque Group	1.05
Tinzuque Ltda.	
Catu S.A.	
Tuchany Group	5.73
Tuchany S.A.	
Flores Sibate	
Flores Tikaya	
Flores Munya	

Non-Selected Respondents

The following 147 companies (including 23 groups of companies) were not selected as respondents and will receive a rate of 2.26 percent:

Aga Group
Agricola la Celestina
Agricola la Maria
Agricola Benilda Ltda.
Agricola Acevedo Ltda.
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola el Cactus S.A.
Agricola el Mortino Ltda.
Agricola el Redil Ltda.
Agricola la Corsaria Ltda.
Agricola Las Cuadras Group
Agricola las Cuadras Ltda.
Flores de Hacaritama
Agricola Megaflor Ltda.
Agroindustrial Don Eusebio Ltda. Group
Agroindustrial Don Eusebio Ltda.
Celia Flowers
Passion Flowers
Primo Flowers
Temptation Flowers
Andes Group
Cultivos Buenavista Ltda.
Flores de los Andes Ltda.
Flores Horizonte Ltda.
Inversiones Penas Blancas Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Cantarrana Group
Cantarrana Ltda.
Agricola los Venados Ltda.
Cigarral Group
Flores Cigarral
Flores Tayrona
Claveles de los Alpes Ltda.
Colibri Flowers Ltda.
Combiflor
Cultiflores Ltda.
Cultivos Medellin Ltda.

Cultivos Tahami Ltda.
Daflor Ltda.
El Antelio S.A.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Floralex Group
  Floralex Ltda
  Flores el Puente Ltda.
  Agricola Los Gaques Ltda
Floreales Group
  Floreales Ltda.
  Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Agromonte
Flores Ainsuca Ltda.
Flores Aurora Ltda.
Flores Carmel S.A.
Flores Comercial Bellavista Ltda.
Flores de Aposentos Ltda.
Flores de la Hacienda
Flores de la Montana
Flores de la Vega Ltda.
Flores de la Vereda
Flores de Serrezuela S.A.
Flores de Suba Ltda.
Flores del Lago Ltda.
Flores del Rio Group
  Agricola Cardenal S.A.
  Flores del Rio S.A.
  Indigo S.A.
Flores del Salitre Ltda.
Flores de Oriente
Flores el Lobo
Flores el Molino S.A.
Flores el Zorro Ltda.
Flores Fusu
Flores Gioconda
Flores Juanambu Ltda.
Flores la Fragrancia
Flores las Caicas
Flores los Sauces
Flores la Union/Gomez Arango & Cia.
Flores Monserrate Ltda.
Flores Sagaro
Flores San Andres
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Silvestres
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
  Flores Tropicales Ltda.
  Happy Candy Ltda.
  Mercedes Ltda.
  Rosas Colombianos Ltda.
Floricola la Gaitana S.A.
Fresh Flowers
Funza Group
  Flores Alborada
  Flores de Funza S.A.
  Flores del Bosque Ltda.
  Flexport de Colombia
Grupo el Jardin
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
Industrial Agricola
Ingro Ltda.
Inverpalmas
Inversiones Flores del Alto
Inversiones Morrosquillo
Inversiones Santa Rita Ltda.
Inversiones Santa Rosa ARW Ltda.
Inversiones Supala S.A.
La Plazoleta Ltda.
Las Amalias Group
  Las Amalias S.A.
  Pompones Ltda.
  La Fleurette de Colombia Ltda.
  Ramiflora Ltda.
Linda Colombiana Ltda.
Los Geranios Ltda.
Manjui Ltda.
Monteverde Ltda.
Natuflora Ltda./San Martin Bloque B
Papagayo Group
  Agricola Papagayo Ltda.
  Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pisochago Ltda.
Rosas Sabanilla Group
  Flores la Colmena Ltda.
  Rosas Sabanilla Ltda.
  Inversiones la Serena
  Agricola la Capilla
Sabana Group
  Flores de la Sabana S.A.
  Roselandia S.A.
Santana Flowers Group
  Santana Flowers Ltda.
  Hacienda Curibital Ltda.
  Inversiones Istra Ltda.
Santa Rosa Group
  Flores Santa Rosa Ltda.
  Floricola la Ramada Ltda.
  Agropecuaria Sierra Loma
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Soagro Group
  Flores Aguaclara Ltda.
  Flores del Monte Ltda.
  Flores la Estancia
  Jaramillo y Daza
Toto Flowers Group
  Flores de Suesca S.A.
  Toto Flowers
Uniflor Ltda.
Velez de Monchaux Group
  Velez De Monchaux e Hijos y Cia S. en C.
  Agroteusa
  Flores Suasuque
Victoria Flowers
Vuelven Ltda.

No Shipments

The following 62 companies did not ship subject merchandise during the POR. Therefore, as described in the "Rescission" section above, we are rescinding the review with respect to the following firms:

Abaco Tulipanex de Colombia
Agrex de Oriente
Agricola Guali S.A.
Agricola Yuldama
Agroindustrial Madonna S.A.
Agrorosas
Agropecuria Cuernavaca Ltda.
Bojaca Group
  Agricola Bojaca
  Universal Flowers
  Flores y Plantas Tropicales
  Flores del Neusa Nove Ltda.
Tropiflora
Cienfuegos Group
  Cienfuegos Ltda.
  Flores la Conchita
De La Pava Guevara E Hijos Ltda.
Disagro
Elite Flowers (The Elite Flower/Rosen Tantau)
Expoflora Ltda.
Flor y Color
Flora Intercontinental
Florandia Herrera Camacho & Cia.
Flores Acuarela S.A.
Flores Aguila
Flores Andinas Ltda.
Flores de Tenjo Ltda.
Flores del Campo Ltda.
Flores el Rosal Ltda.
Flores el Talle Ltda.
Flores Galia Ltda.
Flores Gloria
Flores Juncalito Ltda.
Flores la Lucerna
Flores la Macarena
Flores Ramo Ltda.
Flores Sairam Ltda.
Flores San Carlos
Flores Selectas
Flores Violette
Florexpo
Florimex Colombia Ltda.
Green Flowers
Horticultura el Molino
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Morcote
Inversiones y Producciones Tecnicas Iturrama S.A.
Las Flores
Luisa Flowers
Otono (Agroindustrial Otono)
Planatas S.A.
Plantaciones Delta Ltda.
Propagar Plantas S.A.
Rosaflor
Rosex Ltda.
Sansa Flowers
Santa Helena S.A.
S.B. Talee de Colombia
Siempreviva
Tag Ltda

Unlocatable

The following 115 companies (including 2 groups) were unlocatable. For those unlocatable companies that were examined in a previous review, we will assess duties based on their company-specific rate from the most recent review. If we have not previously conducted a review of an unlocatable company, duties equal to the "all others" rate of 3.1 percent from the LTFV investigation will be assessed.

Acbalay
Agricola Altiplano
Agricola del Monte
Agricola la Siberia
Agrocaribu Ltda.
Agro de Narino
Agroindustrias de Narino Ltda.
Agropecuaria la Marcela

Agropecuria Mauricio
Agrotabio Kent
Aguacarga
Alcala
Amoret
A.Q.
Carcol Ltda.
Classic
Coexflor
Color Explosion
Cota
Crest D'or
Crop S.A.
Cypress Valley
Degaflor
Del Monte
Del Tropico Ltda.
Diveragricola
El Milaro
El Timbul Ltda.
Exotic Flowers
Exotico
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flores Ainsus
Flores Alcala Ltda.
Flores Calichana
Flores Corola
Flores de Iztari
Flores de Memecon/Corinto
Flores del Cielo Ltda.
Flores del Cortijo
Flores Gicro Group
  Flores Gicro Ltda.
  Flores de Colombia
Flores Hacienda Bejucol
Flores la Cabanuela
Flores la Pampa
Flores las Mesitas
Flores Montecarlo
Flores Palimana
Flores S.A.
Flores Saint Valentine
Flores Santana
Flores Sausalito
Flores Sindamanoi
Flores Tenerife Ltda
Floricola
Florisol
Florpacifico
Four Seasons
Fracolsa
F. Salazar
Garden and Flowers Ltda.
German Ocampo
Granja
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Horticultura de la Sasan
Industrial Terwengel Ltda.
Inversiones Maya, Ltda.
Inversiones Silma
Inversiones Sima
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
L.H.
Loma Linda
Loreana Flowers
Luisiana Farms
M. Alejandra
Mauricio Uribe
Merastec
Morcoto
Nasino
Olga Rincon
Piracania
Prismaflor
Reme Salamanca
Rosa Bella
Rosas y Jardines
Rose
San Valentine
Sarena
Select Pro
Shila
Solor Flores Ltda.

Starlight

Susca
Sweet Farms
The Beall Company
The Rose
Tomino
Villa Diana
Zipa Flowers

Non-Respondents

The following 42 companies (including 2 groups of companies) did not respond to our questionnaire or responded after the deadline date without explanation. We will assess duties based on the highest rate for any company from this or any prior segment of this proceeding. This rate is 76.60 percent and was determined in Flowers (91–94).

Agricola de Occident
Alstroflores Ltda.
Ancas Ltda.
Arboles Azules Ltda.
Becerra Castellanos y Cia.
Clavelez
Consorcio Agroindustrial
Cultivos Guameru
Dianticola Colombiana Ltda.
Dynasty Roses Ltda.
El Tambo
Euroflora
Exoticas
Exportadora
Flores Abaco S.A.
Flores Bachue Ltda.
Flores Cerezangos
Flores Depina S.A.
Flores de Guasca
Flores de la Cuesta
Flores de la Maria
Flores del Tambo
Flores de la Parcelita
Flores Flamingo Ltda.
Flores Monteverde
Flores Urimaco
Flowers of the World/Rosa
Illusion Flowers
Industria Santa Clara
Inversiones Playa
Inversiones Valley Flowers Ltda.
Jardines de America
Jardines de Timana
Karla Flowers
Laura Flowers
Pinar Guameru
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
San Ernesto
Superflora Ltda.
Tropical Garden
Villa Cultivos Ltda.

Bankrupt Companies

The following group of companies is determined to be bankrupt and will be assessed at a rate of 8.36 percent.

Oro Verde Group
Inversiones Miraflores S.A.
Inversiones Oro Verde S.A.

Confirmed Shipper

The following company responded that it had no shipments of subject merchandise during the period of review, although U.S. Customs data later proved that this company did, in fact, ship subject merchandise during the POR. This confirmed shipper will be assessed at a rate of 2.26 percent.

Flores Tiba S.A.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total quantity of subject merchandise entered during the POR. We have used the number of stems entered during the POR, rather than the number of stems sold during the POR, because of the perishable nature of the merchandise. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these final results of review: (1) The cash deposit rate for the individually examined companies will be the most recent rates as listed above, except that for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require a zero deposit

of estimated antidumping duties; (2) the cash deposit rate for non-selected companies will be the weighted-average of the cash deposit rates for the individually examined companies; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate of 3.10 percent. This is the rate established during the LTFV investigation, as amended in litigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of AD duties occurred and the subsequent assessment of double AD duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97-27141 Filed 10-10-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Gray Portland Cement from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 14, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review for the antidumping order on Gray Portland Cement from Mexico, pursuant to the Tariff Act of 1930, as amended by the Urguay Round Agreements Act (hereinafter, "the Act").

FOR FURTHER INFORMATION CONTACT: Kristen Smith, Kristen Stevens, or Steven Presing, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-3793.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit.

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim publication date	Final due date*
Gray Portland Cement (A-201-802)	Mexico	8/1/95-7/31/96	9/17/96	9/10/97	3/09/98

*The Department shall issue the final determination 180 days after the publication of the preliminary determination.

Dated: October 6, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, for Enforcement III.

[FR Doc. 97-27140 Filed 10-10-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-412-811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products (lead bar) from the United Kingdom for the period January 1, 1995 through December 31, 1995 (62 FR 16555). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Suzanne King, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited (UES)), and British Steel plc (BS plc). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on April 7, 1997 (62 FR 16555), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1997, case briefs were submitted by BSES, which exported lead bar to the United States during the review period (respondent), and Inland Steel Bar Company (petitioner). On May 14, 1997, rebuttal briefs were submitted by petitioner and respondent. Pursuant to section 751(a)(3) of the Tariff Act of 1930, we extended the due date for the final results to no later than 180 days after the publication of the preliminary results. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review, 62 FR 39824 (July 24, 1997).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR 355.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the European Commission, the Government of the United Kingdom, British Steel plc, and British Steel Engineering Steels. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports (on file in the Central Records Unit, Room B-099 of the Department of Commerce).

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if "an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title." The facts on the record show that British Steel plc received assistance during the period of review (POR) under the European Union BRITE/EuRAM program. The facts also show that this assistance was unreported in the questionnaire response, notwithstanding a specific question on this program in the Department's questionnaire. See the March 31, 1997, Memorandum for Acting Assistant Secretary, Re: Facts Available for New Subsidies Discovered at Verification (1995) (public document on file in the Central Records Unit, Room B-099 of the Department of Commerce).

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because respondents were aware of the requested information but did not comply with the Department's request for such information, we find that respondents failed to cooperate by not acting to the best of their ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference is a finding that the BRITE/EuRAM program is specific under section 771(5A) of the Act, and that the amount of each grant received by BS plc constitutes a financial contribution which benefits the recipient. As such, these grants are countervailable. This finding conforms with the Department's facts available determination in the Final Affirmative Countervailing Duty Determination; Certain Pasta From Turkey, 61 FR 30366, 30367 (June 14, 1996).

Change in Ownership

1. Background and Analysis

On March 21, 1995, British Steel plc (BS plc) acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels (UES), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, during the POR, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels (BSES).

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation (BSC), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of untied subsidies prior to the 1986 transfer of the Special Steels Business to UES. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, 58 FR 6237, 6243 (January 27, 1993) (Lead Bar). Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. Lead Bar at 6240.

In this review, we determine that BS plc's acquisition of GKN's shares in UES does not affect the countervailability of previously bestowed subsidies which were assigned to UES. However, we also determine that a portion of the purchase price paid by BS plc for UES is attributable to its prior subsidies. Therefore, we are reducing the amount of the subsidies that "travel" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 16555, 16556 (April 7, 1997) (Preliminary Results).

To calculate the amount of UES's subsidies that travel to BS plc as a result of the March 21, 1995, acquisition, we are applying the methodology described in the "Restructuring" section of the *General Issues Appendix* (*GIA*) appended to Final Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37268–37269 (July 9, 1993) (*Austrian Steel*). This determination is in accordance with our change-in-ownership findings in Final Affirmative Countervailing Duty Determination; Certain Pasta From Italy, 61 FR 30288, 30289–30290 (June 14, 1996) (*Certain Pasta From Italy*), and with our finding in the 1994 administrative review of this case, in which we determined that "[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix methodology or its findings in the Lead Bar Remand Determination." Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377, 58379 (November 14, 1996) (1994 UK Bar Final).

We further determine in this review that it is appropriate to attribute the current benefit from BS plc's untied, nonrecurring subsidies to BS plc's consolidated sales of domestically produced merchandise, including the sales of BSES, for purposes of calculating the countervailing duty rate for the subject merchandise. As a consolidated, wholly-owned subsidiary of BS plc, BSES now benefits from the remaining benefit stream of BS plc's untied nonrecurring subsidies. See Preliminary Results, 62 FR at 16556.

II. Assignment of Countervailing Duty Rates

As noted above, the acquisition of UES did not take place until March 21, 1995. Thus, until March 21, 1995, the subject merchandise was produced and exported by the independent joint-venture company, UES. Therefore, as discussed in the *Department's Position* under *Comment 6*, below, we are assigning a separate countervailing duty assessment rate for exports by UES for the period prior to BS plc's acquisition of GKN's shares in UES. This period is January 1, 1995 through March 20, 1995. For the period March 21, 1995 through December 31, 1995, after UES became a wholly-owned subsidiary of BS plc, we are assigning a countervailing duty assessment rate for BS plc/BSES/UES that reflects the attribution of BS plc's untied subsidies to its consolidated sales, including sales by BSES (formerly UES). (See the *Calculation Methodology* and *Final Results of Review* sections below.)

III. Calculation Methodology

As fully explained in the *Preliminary Results*, we have found it appropriate to make two changes to the methodology used to calculate the benefit from the nonrecurring subsidies. These changes involve (1) the calculation of the net present value used in calculating the subsidies which remain in subsequent periods after a change in ownership and (2) the period of allocation for nonrecurring subsidies. See *Preliminary Results*, 62 FR at 16557.

To determine the countervailing duty rate for the subject merchandise for the period January 1, 1995 through March 20, 1995, we used the methodology followed in prior segments of this proceeding with the modifications identified above. Further, in calculating the countervailing duty rate for the subject merchandise after March 21, 1995, we first determined BS plc's benefits in 1995, taking into account all spin-offs of productive units (including the Special Steels Business) and BSC's privatization in 1988. See Final Affirmative Countervailing Duty Determination; Certain Steels Products from the United Kingdom, 58 FR 37393 (July 9, 1993) (UK Steel). We then calculated the amount of UES's subsidies that "rejoined" BS plc after the March 21, 1995 acquisition, taking into account the reallocation of subsidies to GKN. As indicated above, in determining both these amounts, we followed the methodology outlined in the GIA. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total consolidated sales of domestically produced merchandise in 1995.

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

The following programs were previously determined to bestow subsidies upon BSC/BS plc and UES:

1. Equity Infusions
2. Regional Development Grant Program
3. National Loan Fund (NLF) Loan Cancellation
4. European Loan and Steel Community (ECSC) Article 54 Loans and Interest Rebates

Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the total net subsidy for all of these programs for BS plc/BSES/UES is 7.35 percent *ad valorem* for the period March 21, 1995 to December 31, 1995. The total net subsidy for all of these programs for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995.

B. New Programs Determined To Confer Subsidies

In the preliminary results, we found that the following new program conferred countervailable benefits on the subject merchandise:

BRITE/EuRAM

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. UES did not benefit from this program. Accordingly, the net subsidies for this program for the period March 21, 1995 to December 31, 1995 are less than 0.005 percent *ad valorem*.

II. Programs Determined To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise subject to this review did not apply for or receive benefits under the following programs during the POR:

A. New Community Instrument Loans
B. ECSC Article 54 Loan Guarantees
C. NLF Loans
D. ECSC Conversion Loans
E. European Regional Development Fund Aid
F. Article 56 Rebates
G. Regional Selective Assistance
H. ECSC Article 56(b)(2) Redeployment Aid
I. Inner Urban Areas Act of 1978
J. LINK Initiative

K. Transportation Assistance

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Programs Determined To Be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

Transportation Assistance

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Petitioner maintains that the Department's subsidy repayment methodology is inconsistent with the countervailing duty statute, which requires that duties be imposed upon all subsidies paid with respect to the production, manufacture or export of subject merchandise. Petitioner asserts that the change in ownership of a company conducted at fair market value does not offset the distortion caused by the government's bestowal of the subsidy, and the production of the merchandise continues to benefit from the subsidies. Therefore, according to petitioner, there can be no repayment.

Petitioner further contends that the statute and the SAA require the Department to determine the effect of a change in ownership on previously conferred subsidies on a case-by-case basis after careful consideration of the facts of each case. Petitioner interprets the SAA as meaning that absent affirmative evidence of repayment, the change in ownership of a company should not affect the benefit from prior subsidies. Therefore, because the Department has not factually shown that there was any repayment of subsidies to GKN as a result of BS plc's acquisition of UES, petitioner argues that the repayment methodology should not be applied in this case.

Moreover, petitioner argues that BS plc's purchase of GKN's shares in UES was not a privatization, and therefore the repayment methodology does not apply. This transaction, petitioner states, does not materially differ from the sales of shares traded daily on the stock market. Because the Department has never argued that repayment should be calculated for such transactions, petitioner contends that repayment should likewise not apply to the transaction between BS plc and GKN.

Petitioner claims that BSES is now in the same position as its precursor, the Special Steels Business, although BSES is now an incorporated subsidiary of BS plc instead of an unincorporated division. Therefore, petitioner argues that the allocation of subsidies should be the same as it was before the spin-off in 1985 and that all of UES's subsidies should travel back to BS plc. According to petitioner, the Department's recent Certain Pasta from Italy determination does not affect this result, because the facts in that case were significantly different. The pasta case involved several producers that received subsidies prior to being purchased by other producers, while the initial transaction is this case involved the formation of a joint-venture company (UES) with a partner (GKN) which had received no prior subsidies. Thus, the Department's repayment methodology has not yet been applied in a situation where a spun-off company is reacquired by its former parent.

Finally, petitioner asserts that the *GIA* methodology is not appropriate in this situation. Although the *GIA* addresses corporate restructuring, such as mergers, spin-offs, and acquisitions, it does not address the reacquisition of a spun-off entity. Accordingly, all of UES's subsidies should travel back to BS plc.

Respondent states that the Department's allocation of a portion of UES's subsidies to GKN does not conflict with the countervailing duty statute. With respect to the pre-URAA statute, respondent notes that the U.S. Court of Appeals of the Federal Circuit found the Department's credit methodology to be reasonable in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl*). Respondent further argues that this methodology is also consistent with the "Changes in Ownership" provision of the URAA-amended statute, because this provision does not preclude the Department from finding that changes in ownership have particular effects, such as the repayment of subsidies. According to respondent, the SAA provides the Department with further authority to apply a general methodology to the specific facts of cases involving changes in ownership.

Respondent also asserts that petitioner's argument that the record must show evidence of repayment misses the point of the Department's methodology, namely that "the company's new owners are virtually certain to repay at least a portion of the subsidy as part of the purchase price." *GIA*, 58 FR at 37263.

With respect to petitioner's claim that the repayment methodology does not apply to transactions between private shareholders, respondent states that this is inconsistent with the Department's finding in Certain Pasta From Italy, where the methodology was applied to such transactions. According to respondent, the relevant fact here is not whether the government received any repayment, but, rather, whether the purchaser paid a price that reflected any past subsidies to the company being acquired. Respondent further notes that petitioner's argument that BSES is now in the same position as the Special Steels Business is inconsistent with the Department's determination in the investigation that UES and the Special Steels Business were separate entities. Finally, respondent states that it is immaterial whether GKN received any subsidies prior to the formation of UES, because the application of the reallocation/repayment methodology does not depend on whether the owner of a company has received any subsidies.

Department's Position: We disagree with petitioner. As we explained in 1994 UK Bar Final, the language of section 771(5)(F) of the Act gives the Department discretion to consider, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. Rather than mandating that a subsidy automatically transfer with a change-in-ownership transaction, as petitioner argues, the language in the statute gives the Department flexibility in this area. See 1994 UK Bar Final, 61 FR at 58380.

In this case, in accordance with the SAA, we have examined the facts of BS plc's acquisition of UES, and we determine that the March 21, 1995, change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable based on the methodology explained in the "Privatization" section of the *GIA*. See *GIA* 58 FR at 37262–37263. We also determine that a portion of the purchase price paid for UES may be reflective of its prior subsidies. Therefore, we have reduced the amount of the subsidies that "travel" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: BS plc's March 1995 Acquisition of UES (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce) (Acquisition Memo).

As for petitioner's argument that the repayment methodology should not be applied because the Department has not factually shown that subsidies have

been repaid to GKN, we agree with respondent that petitioner misses the point of the Department's methodology. The Department has never required factual proof of repayment. Rather, as we stated in the GIA, "to the extent that a portion of the price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished." GIA, 58 FR at 37262–37263. Furthermore, the Department has already examined the question of whether the Department's change-in-ownership methodology can be applied to a transaction between private parties. In the *GIA*, the Department stated that the privatization methodology applies also to transactions between private parties. The Department explained that "[u]nder these circumstances, the issue is not the repayment of subsidies, but rather their allocation." GIA, 58 FR at 37264. Thus, the Department properly applied the change-in-ownership methodology in this review.

Petitioner elevates form over substance by arguing that the GIA methodology does not apply to BS plc's acquisition of GKN's shares in UES because that acquisition somehow differs from the transactions discussed in the GIA. The mere fact that the Department did not elaborate on every type of potential change-in-ownership transaction in the "Privatization" and "Restructuring" sections of the GIA does not invalidate the application of these methodologies to transactions such as the reacquisition of formerly-owned companies or productive units. Furthermore, the fact that the unit producing the subject merchandise has now returned to its former owner also does not affect our determination that a portion of the purchase price paid by BS plc for GKN's shares of UES reflects past subsidies.

Petitioner claims that BSES is now in the same position as the Special Steels Business, and therefore, there is no reason to reallocate subsidies to GKN. We disagree. In the original investigation, we determined that the creation of UES was not simply a corporate restructuring; rather, UES was a joint-venture company that was a separate corporate entity independent from its parent companies. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Remand Determination (October 12, 1993) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). Contrary to petitioner's assertion, the Special Steels Business and BSES are distinguishable, because they are distinct entities with different ownership structures. Therefore, our finding in this review that a portion of the purchase price paid for GKN's shares in UES is reallocated to the seller because it reflects past subsidies is not in conflict with our change-in-ownership methodology explained in the GIA or with our determination in Certain Pasta from Italy.

Comment 2: According to petitioner, the Department correctly made the adverse inference that the BRITE/EuRAM program is specific and that the benefits received during the instant review are countervailable, because the Department discovered at verification that assistance under the BRITE/EuRAM program was provided to BS plc in 1995 and this assistance was not reported by BS plc or the European Commission in their questionnaire responses. However, petitioner contends that the Department should not have accepted information at verification that BS plc retained only a small portion of the BRITE/EuRAM assistance and disbursed most of it to third parties involved in the research project. Rather, the Department should have countervailed the full amount received by BS plc.

Respondent asserts that the Department has discretion to determine an appropriate adverse inference in response to an interested party's oversight. Respondent also points out that information regarding payments to third parties allowed BS plc to demonstrate the amount of assistance which BS plc actually received.

Department's Position: After discovering at verification that BS plc had received assistance under the BRITE/EuRAM program during the POR, we informed the company that they could provide information concerning the grant amounts and demonstrate whether the assistance was tied to production of non-subject merchandise. See the October 21, 1996 Memorandum To Barbara E. Tillman, Re: Verification of the British Steel plc Questionnaire Responses at 12 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce). We learned that BS plc received assistance under one BRITE/EuRAM contract during the POR; BS plc was not able to establish that the assistance under that program was tied to non-subject merchandise. We reviewed program documents indicating that as the project coordinator for the BRITE/EuRAM project in question, BS plc was required to provide most of the BRITE/EuRAM money to third parties also involved in the research project. Therefore, we appropriately countervailed only the amount of funding actually received by BS plc for its portion of the project.

Comment 3: According to respondent, the Department incorrectly determined in the *Preliminary Results* that BSES benefits from the subsidies given to BS plc. Respondent asserts that the Department's determination was based solely on the corporate relationship between the parent company (BS plc) and its subsidiary (BSES). Respondent claims to have reviewed the Department's practice and found no administrative case precedents in which the Department has imposed countervailing duties on a subsidiary solely on the basis of its relationship to the parent company and certainly not when a subsidiary was acquired after the subsidies were received. Respondent cites two court decisions and a number of cases in support of its argument that we have uniformly required other factors in addition to the corporate relationship to support the attribution of subsidies from parent to subsidiary, namely, that, (1) corporate machinations were used to evade countervailing duties, (2) the parent received subsidies in order to create the subsidiary, or (3) the parent served as a conduit for the subsidies. These cases are discussed in the *Department's Position* on the comment.

Respondent also argues that the GIA and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany, 58 FR 37315 (July 9, 1993) (*German Steel*), both cited in the *Preliminary Results*, do not permit the automatic attribution of subsidies from a parent company to its newly acquired subsidiary. Respondent asserts that the GIA does not state that the Department automatically treats the parent and its subsidiaries as one for the purpose of attributing subsidies. Rather, respondent points out that "the Department *often* treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy (emphasis added)." See GIA, 58 FR at 37262. According to respondent, this is sometimes true because additional facts in those cases have permitted the Department to attribute a parent company's subsidies to its subsidiary. Respondent contends that German Steel and the cases cited in the GIA, e.g., Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (Brass Sheet and Strip from France); Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987) (*SSHP from Sweden*); *Armco, Inc. v. U.S.*, 733 F. Supp. 1514 (CIT 1990) (*Armco*); do not support the attribution of subsidies from a parent to a subsidiary based only on the corporate relationship because each of these cases involved additional factors.

Furthermore, respondent argues that the automatic attribution of subsidies between a parent and a subsidiary would not be permitted under the Department's proposed regulations. See Notice of Proposed Rulemaking and Request for Public Comment, 62 FR 8817, 8845, 8855 (February 26, 1997) (*Proposed Regulations*). Respondent asserts that under the proposed regulations, subsidies given to a parent company will be allocated to the subsidiary's production only if they produce the same product or if subsidies have been transferred from parent to subsidiary. Therefore, because neither of these conditions exists, according to respondent, the *Preliminary Results* are not consistent with the *Proposed Regulations*.

Respondent concedes that the Department may attribute subsidies to the production of a subsidiary which was part of the corporation when subsidies were received because the parent's use of subsidy funds benefits all operations. However, respondent argues that this reasoning does not apply to BSES, because BSES was not a subsidiary of BS plc at the time when BSC received subsidies. Therefore, respondent argues that BS plc's acquisition of GKN's shares of UES should not cause the Department to alter the way in which it determines the portion of BSC's subsidies which benefit the production of leaded bar by BSES.

According to petitioner, Department practice and the facts of this review support the attribution of BS plc's subsidies to BSES. Petitioner argues that judicial decisions and administrative practice give the Department great latitude to allocate a parent company's subsidies to a subsidiary. Petitioner argues that over the past 15 years, the Department has always permitted the attribution of subsidies from parent to subsidiaries, and actually has done so more and more frequently, especially where a substantial degree of control is present and business lines are related. According to petitioner, the Department now presumes that in most cases "subsidies to one corporation may also benefit another corporation." *Proposed Regulations*, 62 FR at 8845. Therefore, petitioner contends, respondent's examples of the Department's refusal to allocate subsidies across corporate lines reflect the Department's previous but not its current practice. Petitioner cites *Brass Sheet and Strip from France* as an example of when the parent's ownership and control of its subsidiary were just as relevant to the Department's decision to attribute subsidies from parent to subsidiary as the fact that the parent served as a conduit for government funding. See Brass Sheet and Strip from France, 52 FR at 1218. Petitioner also cites SSHP from Sweden, where the parent's ownership and control of the subsidiary, in addition to the strong identity of interests between parent and subsidiary, led the Department to conclude that the subsidiary benefitted from the parent's subsidies and attribute those subsidies to the subsidiary. See SSHP from Sweden, 52 FR at 5798, 5800.

Petitioner further contends that three of the cases cited by respondent, Final Affirmative Countervailing Duty Determination: Operators for Jalousie and Awning Windows from El Salvador, 51 FR 41516 (November 17, 1986) (Operators for Jalousie and Awning Windows from El Salvador); Final Negative Countervailing Duty Determination: Low-Fuming Brazing Copper Rod and Wire from South Africa, 50 FR 31642 (August 5, 1985) (Copper Rod and Wire from South Africa); and Final Affirmative Countervailing Duty Determination: Carbon Steel Structural Shapes from Luxembourg, 47 FR 39364 (September 7, 1982) (Carbon Steel Structural Shapes from Luxembourg), do not support respondent's position. Petitioner points out that the Armco court noted that these cases did not involve situations where the parent had exercised substantial control over the operations of its wholly-owned subsidiary, and the court distinguished these three cases from situations involving parent companies and their wholly-owned subsidiaries. According to petitioner, since BSES is a wholly-owned subsidiary of BS plc, cases involving companies with different corporate relationships do not support respondent's position.

Petitioner also argues that the three conditions underlying Armco are relevant to the present case: the subsidiary is wholly-owned, the parent has total control of the subsidiary, and the threat of circumvention of countervailing duties exists. Therefore, Armco supports the Department's determination to attribute untied subsidies from BS plc to BSES.

Petitioner argues that subsequent decisions are consistent with Armco in that the Department has attributed the parent's subsidies to the subsidiary where there has been a strong identity of interests between parent and subsidiary. By contrast, the Department has been less likely to attribute parent company subsidies to the subsidiary where the subsidiary is not wholly owned by the parent or where the interests of parent and subsidiary diverge. Petitioner argues that in Ferrosilicon from Venezuela, the Department did not attribute the parent's subsidies to the subsidiary because the parent was a holding company and its interests were different from those of its subsidiary. See Final Affirmative Countervailing Duty Determination: Ferrosilicon from Venezuela, 58 FR 27539, 27541 (May 10, 1993) (Ferrosilicon from Venezuela). According to petitioners, in Certain Pasta from Italy, the Department attributed subsidies to affiliates in cases where both companies produced the subject merchandise, or where the affiliate played "an integral role" in the production process, but did not attribute subsidies when the affiliate did not produce the subject merchandise. See 61 FR at 30308. According to petitioner, because BSES is wholly owned and substantially controlled by BS plc and is engaged in a similar line of business, BSES benefits from the remaining benefit stream of BS plc's subsidies. Therefore, the Department has correctly attributed BS plc's subsidies to BSES.

Petitioner further argues that respondent elevates form over substance by arguing that BS plc's newly acquired subsidiary does not benefit from BS plc's subsidies. Even though BSES is now an incorporated subsidiary of BS plc, rather than the unincorporated division it was in 1985, the situation in 1995 is not materially different from the situation in 1985. Moreover, petitioner contends that if the Department did not allocate BS plc's subsidies to its newly acquired subsidiary even though it would have allocated them to the subsidiary's predecessor, the Special Steels Business, an unincorporated division, this would establish that corporate manipulations can determine countervailing duty rates, which is counter to the court's determination in Armco. According to petitioner, BC plc's subsidies should be attributed to BSES because BS plc and UES were closely associated prior to 1995 and are in the same line of business, and BS plc has substantial control over BSES today.

According to petitioner, respondent's argument regarding the Department's proposed countervailing duty regulations is based upon a highly selective reading of the proposed rules. Petitioner points out that the *Proposed Regulations* set forth general rules for the attribution of subsidies and do not illustrate every possible scenario.

Department's Position: In the *Preliminary Results*, the Department

appropriately attributed the benefits from nonrecurring untied subsidies received by BS plc that are allocable to the POR to that company's domestically produced, consolidated sales, including the sales of consolidated subsidiaries, such as BSES. This conforms with our past practice and judicial precedent. Where the Department finds that a company has received untied countervailable domestic subsidies, the Department follows a general attribution principle: if a benefit is not "tied" to specific merchandise produced by a company (or corporation), then the benefit is attributed to that company's total sales. The total sales that are reported on a company's financial statements normally include its own sales plus the sales of its consolidated subsidiaries. Thus, when a company is the parent of a consolidated group, untied domestic subsidies are normally attributed to the sales of the consolidated group of companies. This attribution is appropriate because a parent company exercises control over the capital structure and commercial activities of its consolidated subsidiaries. Moreover, when providing loans and equity, it is reasonable and prudent for lenders and investors to examine the financial condition of not only the parent company but also its significant subsidiaries because the subsidiaries are incorporated into the balance sheet and income statement of the consolidated group. We noted this general approach to attributing untied subsidies in the GIA, where we stated that we "generally allocate subsidies received by parents over sales of their entire group of companies." 58 FR at 37262.

Contrary to respondent's assertion, the presence of additional factors is not required for the Department to attribute untied parent-company subsidies according to this general principle. For example, in Belgian Steel, untied subsidies to Sidmar, the parent company, were attributed to the "total 1991 sales of the Sidmar Group." Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, 58 FR 37293, 37282 (July 9, 1993) (Belgian Steel). In Italian Steel, a subsidy determined to benefit all production activities was "allocated over Falck's total consolidated sales." GIA, 58 FR at 37235. See also, Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 6223 (January 27, 1993) (France Bismuth); Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304 (July 9, 1993) (French Steel); Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy, 58 FR 37327 (July 9, 1993) (Italian Steel); and UK Steel. As these cases illustrate, respondent's claim that the Department has never attributed untied parent-company subsidies to its consolidated subsidiaries solely on the basis of the corporate relationship is incorrect.

Respondent concedes that attributing parent-company subsidies to wholly-owned subsidiaries is appropriate in certain circumstances, stating that under "the Department's well-established practice of not tracing the use of subsidy funds, the Department may presume that a parent company uses subsidy funds to benefit its overall operations, including its subsidiary operations." Respondent's May 7, 1997, Case Brief at 18. However, respondent argues that this policy is apropos only when the subsidiary "is part of the corporation at the time the subsidies are received * * * and continues to be a subsidiary through the POI." *See* Respondent's May 7, 1997 Case Brief at 18. Therefore, respondent claims that the Department should not attribute the current benefit from BS plc's untied subsidies to BSES because BSES did not become an incorporated subsidiary of BS plc until 1995, subsequent to BS plc's receipt of the untied subsidies at issue. This argument contradicts the very principle of not tracing the use of subsidy funds beyond the point of bestowal with which respondent agrees.

The Department has never made a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, and respondent has not cited any administrative or court precedent in support of this contention. In cases where the Department found that untied domestic subsidies were bestowed upon parent companies, prior to or during the period under examination, the Department has attributed these untied subsidies to the group's consolidated sales, without analyzing whether any of the subsidiaries had been acquired after subsidization had occurred. See, e.g., Belgian Steel, French Steel, Italian Steel, and UK Steel. In UK Steel, BS plc did not argue that the Department should analyze whether BS plc had acquired subsidiaries subsequent to receiving subsidies to determine whether the sales of those newly acquired subsidiaries should have been excluded from the denominator in calculating the subsidy rate. On the contrary, BS plc claimed at the time that "untied equity infusions must be allocated to a company's total corporate output (including foreign operations) and not just to specific products or operations." GIA, 58 FR at 37236. BS plc further argued that this "*longstanding Departmental precedent* applies to national and multinational corporations alike." *Id.* (emphasis added).

If the Department were to make a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, the Department would be required to abandon its "well-established practice of not tracing the use of subsidy funds" and to determine whether and to what extent subsidies "passed through" to newly-acquired companies. Such an analysis would also require a detailed examination of all changes in the structure of the company or group of companies over the entire allocation period. Further, the analysis required by respondent's distinction would assume that "untied" subsidies become "tied" to only the assets of the corporate group as it existed when the subsidy was bestowed. The Department has never advocated nor pursued such a policy. As stated in the *GIA*, "nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * * nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect." 58 FR at 37260; see also *British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 9 CIT 85, 95–96, 605 F. Supp. 286, 294–95 (1985) ("[I]t is unnecessary to trace the use" of funds), citing *Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985).

The Department also does not agree that the cases cited in the Preliminary Results do not support the attribution of BS plc's subsidies to consolidated sales of domestically produced merchandise. As stated in the GIA, "[w]e also generally allocate subsidies received by parents over sales of their entire group of companies." GIA, 58 FR at 37262. The cases cited in the GIA as examples of the Department's past attribution practices do not represent an exhaustive list of all of the different scenarios under which the Department has dealt with the issue of attribution. Moreover, nothing in the GIA indicates that the Department is required to determine

that there are factors in addition to the corporate relationship, such as the pass-through of subsidies, in order for the Department to attribute a parent company's untied subsidies to the parent company's total consolidated domestically produced sales.

According to respondent, the CIT's determinations in Armco and *Aimcor, Alabama Silicon, Inc.* v. *United States* 871 F. Supp. 447 (CIT 1994) (*Aimcor*) make clear the court's view that the Department should not attribute subsidies from a parent company to the production of a newly acquired subsidiary based solely on the corporate relationship. Respondent's reliance on these cases is misplaced. Contrary to respondent's views, we find that these cases do not undermine the Department's general principle of attributing untied parent-company subsidies to the parent company's consolidated sales.

As respondent correctly notes, the Armco court overturned the Department's determination in Carbon Steel Wire Rod from Malaysia and held that the parent company benefitted from the subsidies provided to its wholly-owned subsidiary. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia, 53 FR 13303 (April 22, 1988) (Carbon Steel Wire Rod from Malaysia). The Armco decision was based on several factors including the court's concern that the parent and subsidiary could potentially evade countervailing duties through intra-corporate machinations, the relationship between the parent and subsidiary, and the parent's extensive control over the subsidiary. See Armco, 733 F. Supp. at 1526. We agree with the court and the respondent that the possibility of circumvention can be a factor in the Department's attribution decisions. We further note that according to BS plc's questionnaire response in this review, BS plc did produce and sell the subject merchandise during the period of review. See the June 11, 1996, BS plc questionnaire response (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Therefore, the possibility of circumvention would exist if the Department did not attribute BS plc's untied subsidies to BS plc's total sales.

Nevertheless, respondent's reliance on Armco for the proposition that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales is not supportable. Respondent emphasizes that the Armco court supported the proposition that the bestowal of the subsidy on one company does not automatically benefit another company merely because the two are releted. See *Armco*, 733 F. Supp. at 1521–1522. However, this general proposition merely recognized the possibility that different conclusions may be drawn from different scenarios involving various kinds of subsidies, tied and untied, and companies of varying degrees of relatedness. This proposition does not stand for respondent's argument that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales, and it does not undermine the Department's attribution of BS plc's untied subsidies in this review.

Respondent also claims that the *Armco* court rejected the notion that "a subsidy, by its mere bestowal, necessarily affects every corner of the corporate relationship." *See Armco*, 733 F. Supp. at 1525. However, in referring to this proposition, the Armco court clarified that the scope of its holding was limited to the facts of the case. We do not interpret Armco as stating that the Department is required in all cases to find factors in addition to the corporate relationship in order to attribute subsidies from one company to another.

Respondent's reliance on *Aimcor* for the proposition that the Department may not impose duties on a company solely because it has been acquired by a company that has received subsidies is also misplaced. The facts in *Aimcor* are substantially different from those in the instant review. In Aimcor, the plaintiff alleged that a government-owned financial institution sold shares in Fesilven, the producer of the subject merchandise, to Corporacion Venezolana Guayana (CVG), a government-owned holding company, at less than eight percent of their par value. According to the plaintiff, because of the relationship between CVG and Fesilven, this transaction was a de facto share redemption which resulted in a subsidy to Fesilven. However, the court upheld the Department's determination that CVG and Fesilven could not be considered one entity and therefore the transaction was not a share redemption by Fesilven. Thus, the relationship between CVG and Fesilven was the critical factor in determining whether CVG's purchase of Fesilven's shares from a third party was a *de facto* share redemption by Fesilven which could have resulted in the bestowal of a subsidy on Fesilven. It is clear, therefore, that the issue in *Aimcor* was whether a subsidy had been bestowed at all. The issue was not whether countervailable subsidies that had been bestowed on a parent company were attributable to a wholly-owned subsidiary.

Respondent mistakenly cites the *Aimcor* court for support without first considering the particular facts at issue. For example, respondent points out that in *Aimcor*, plaintiffs argued that Brass Sheet and Strip from France required an automatic attribution of subsidies, but the *Aimcor* court stated that "Commerce does more than simply look at the relationship between the parties. Instead, Brass Sheet and Strip from France demonstrates Commerce's consistent, statutorily mandated policy of tracing a bounty or grant to determine whether it reached the merchandise before Commerce imposes a duty." *Aimcor*, 871 F. Supp. at 452. However, the issue in Brass Sheet and Strip from France was whether a government-owned holding company had bestowed a subsidy on a subsidiary, and the *Aimcor* court's statement must therefore be interpreted in that context, because as indicated above, the statute does not require the Department to trace the uses or the effects of subsidies. Respondent also points to the court's statement that a benefit to the parent corporation "does not necessarily make one of its assets, such as its subsidiary, more valuable." *Aimcor*, 871 F. Supp. at 452. However, the court went on to say that "[a]bsent a showing that the subsidy reached the exported merchandise, this court will not disturb Commerce's determination." *Id.* Thus, as reflected by the court's opinion, our determination in Ferrosilicon from Venezuela dealt with the issue of whether a subsidy had been conferred on Fesilven through a transaction involving the government-owned holding company, which owned shares in Fesilven, and a government-owned financial institution. It did not deal with the attribution of previously bestowed untied parent company subsidies to a wholly-owned subsidiary.

In addition to *Armco* and *Aimcor*, respondent identified a number of other cases to support the proposition that the Department has uniformly required factors in addition to the corporate relationship in attributing a parent company's subsidies to a newly acquired subsidiary. According to respondent, the Department has only attributed a parent company's subsidies to a subsidiary when (1) corporate machinations could be used to evade countervailing duties, (2) the subsidies were provided to the parent to facilitate

the subsidiary's creation, or (3) the parent served as a conduit for subsidies to the subsidiary. We have examined the cases cited by respondent with respect to each factor, and we disagree with respondent's overall interpretation of the Department's past practice.

With respect to the first and second factors, we agree with respondent that in certain instances the Department's attribution decisions were influenced by (1) the possibility that intra-corporate machinations would be used to evade countervailing duties, or (2) the fact that subsidies were provided by the parent to facilitate the creation of a subsidiary. See *e.g.*, Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982) (*1982 UK Steel*), Carbon Steel Wire Rod from Malaysia, Armco, Belgian Steel, and SSHP from Sweden. See SSHP from Sweden, 52 FR at 5796. Nevertheless, the mere fact that we examined these factors does not negate the Department's general attribution principle discussed above, or require that these factors be present in all cases. We fail to see how these cases establish that "additional" factors *must* always be present for the Department to attribute untied parent-company subsidies to the parent company's total sales, including the sales of its consolidated subsidiaries.

The majority of the cases cited by respondent are concerned with the third factor, *i.e.*, that the parent company served as a conduit for subsidies to the subsidiary. However, this argument implies that in order to attribute untied nonrecurring domestic subsidies received by a parent company to the parent company's consolidated sales of domestically produced merchandise, the Department is required to analyze whether subsidies have "passed through" the parent to its subsidiary. This would amount to tracing the uses and effects of untied subsidies, which respondent acknowledges the Department is not required to do. Therefore, the Department is not required to conduct a "pass-through" analysis. Moreover, as explained above, the Department's general attribution practice supports the attribution of BS plc's untied subsidies to BS plc's domestically produced, consolidated sales. As such, we find that the cases cited by respondent in support of its "pass-through" proposition either can be distinguished from the fact pattern in the instant review, or actually can be found to support the Department's attribution approach in this case.

For example, respondent cites Grain-Oriented Electrical Steel from Italy, in which the Department countervailed only the subsidies "specifically provided to the producer of the subject merchandise." Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy, 59 FR 18357, 18365 (April 18, 1994) (Grain-Oriented Electrical Steel from Italy). Nevertheless, respondent fails to mention that the Department's approach was driven by the unique circumstances of the case, in which the parent company was a government-owned company which, prior to the period of investigation, underwent a series of intricate restructurings during which debt was forgiven by the Italian Government. In fact, the Department acknowledged that there were two alternative approaches to addressing the debt forgiveness associated with the restructurings: (1) "To analyze the restructuring of the entire Finsider group into ILVA and to examine all subsidies provided to Finsider by IRI and the government of Italy," or (2) "measure the subsidies provided to the producer of the subject merchandise." See Grain-Oriented Electrical Steel from Italy, 59 FR at 18366. The Department chose the second approach, given "the extremely complex restructuring which occurred at the Finsider group level" because it would allow the Department to "more accurately measure the benefits attributable to the producer of the subject merchandise". See *Id.*

Thus, Grain-Oriented Electrical Steel from Italy does not support respondent's proposition that the Department always examines facts in addition to the corporate relationship when attributing untied parent-company subsidies to the parent company's total consolidated sales, including sales of consolidated subsidiaries. Rather, in Grain-Oriented Electrical Steel from Italy, the Department acknowledged the validity of analyzing subsidies at the parent company level in order to attribute them to the sales of the consolidated subsidiaries (59 FR at 18366), which supports the approach taken in the instant review.

In further support of its argument that in prior cases involving subsidy attribution, parent companies have served as conduits for subsidies to their subsidiaries, respondent cites a number of cases that involve parent companies which were government-owned holding companies. See, *e.g.*, Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany, 47 FR 39345 (September 7, 1982) (1982 German Steel); Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations, 49 FR 17988 (April 26, 1984) (Certain Carbon Steel Products from Brazil); Brass Sheet and Strip from France, and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain, 58 FR 37374 (July 9, 1993) (Spanish Steel). In these cases, the Department considered whether the government-owned holding company acted as the government in bestowing subsidies to the affiliated companies, *i.e.*, the subsidiaries. For example, in Brass Sheet and Strip from France, the parent company was an unequityworthy government-owned holding company which received equity infusions from the government and, in turn, provided equity infusions and other financial assistance to its unequityworthy subsidiary, the producer of the subject merchandise. The Department noted that since the parent was merely a holding company, the funds which were provided to it by the government benefitted its subsidiaries. *See* Brass Sheet and Strip from France, 52 FR at 1220. Thus, the Department considered that the holding company acted essentially as the government in bestowing the equity infusions to the subsidiary. Therefore, in that case the Department countervailed the benefit on the basis of the subsidiary's total sales.

Brass Sheet and Strip from France does not support respondent's argument that the Department is required to analyze whether subsidies provided to private or government-owned parent companies have "passed through" to their subsidiaries. As demonstrated above, even in cases involving government-owned companies, *e.g.*, the 1993 steel investigations, the Department's practice has been to attribute the benefit from untied domestic subsidies provided to a parent company based on its consolidated sales of domestically produced merchandise. See, *e.g.*, Belgian Steel, French Steel, Italian Steel, and UK Steel.

Respondent also cited Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea, 49 FR 35836 (September 12, 1984); Bicycle Tires and Tubes from Korea; Final Results of Administrative Review of Countervailing Duty Order, 48 FR 32205 (July 14, 1983); and Copper Rod and Wire from South Africa as cases in which the Department analyzed subsidy "pass through." Nevertheless, these cases can be distinguished from the instant review because subsidy

bestowal, rather than subsidy attribution, was the key issue. Moreover, Bicycle Tires and Copper Rod from South Africa dealt with the issue of whether a privately-owned company had provided a subsidy to one of its related companies. In those cases, we stated that absent evidence of government involvement we would not examine whether a transaction between related private parties constituted a subsidy. In the instant case, we have already determined that the government of the United Kingdom bestowed untied nonrecurring subsidies on BSC/BS plc. The matter at issue here is whether the current benefit from those previously bestowed subsidies which have been allocated over time is attributable to only BS plc's operations or to its consolidated operations. As such, Bicycle Tires and Copper Rod from South Africa do not support respondent's contention.

In another example, respondent asserts that in Austrian Steel, the Department found that VAAG, a government-owned company, provided a subsidy to its new subsidiaries by not requiring them to assume a portion of its prior losses. However, Austrian Steel is distinguishable from the instant review. As part of a restructuring of a production company into a holding company, the newly-created holding company carried forward losses on its balance sheet, but did not assign a proportionate share of those losses to its newly-created subsidiaries. The Department determined that the holding company provided a subsidy to its subsidiaries by assuming losses that should have been assigned to the subsidiaries. See Austrian Steel, 58 FR at 37221. Thus, this aspect of Austrian Steel concerned the government-owned holding company's bestowal of a subsidy on its subsidiaries. This was not an issue of whether untied nonrecurring subsidies to a parent company benefit its consolidated sales.

Several of the cases cited by respondent in support of its pass-through argument can be distinguished from UK Lead Bar due to the nature of the corporate relationships and the fact that attribution of untied parent-company subsidies was not an issue. Operators for Jalousie and Awning Windows from El Salvador involved two private companies which had the same parent company. The subsidy in question was an income tax exemption from export earnings, and the law did not permit any transfer of these exemptions from the recipient to the other company, which had a different status under the Export Promotion Law. See Operators for Jalousie and Awning Windows from El Salvador, 51 FR at 41519 (1986). Thus, this was not a parent/subsidiary issue. The subsidies received by one company were not attributed to the other company, because the companies operated as distinct entities and had different status under the tax law. Respondent's example from Certain Pasta From Italy also involves two private companies with a common parent. Furthermore, the subsidies in that case were either subsidies to a privately-owned affiliated supplier or the subsidies were otherwise tied. Accordingly, the subsidies and the relationships in these cases are distinguishable from the instant review.

Respondent also cites Carbon Steel Structural Shapes from Luxembourg where the Department treated the parent company and its subsidiary separately because benefits were provided separately and "are not allowed to pass through." Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982). Nevertheless, a key distinguishing factor is that Carbon Steel Structural Shapes from Luxembourg involved a parent company and a 40 percent-owned subsidiary, and the two companies had separate financial structures, *i.e.*, the subsidiary was not consolidated with the parent company. *See* Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982).

Even, assuming arguendo, that the Department were required to make a finding that the allocated benefit from untied subsidies to a parent company "pass through" to a subsidiary, the information on the record of this review would be sufficient to warrant the inclusion of BSES's sales in calculating the subsidy benefit from BS plc's untied subsidies. The Department's verification established that BS plc exercises considerable control over its consolidated subsidiary BSES. As the sole owner of BSES, BS plc has the authority to make all major decisions for BSES, including any decision to invest in BSES, change its operations, or close it down. Furthermore, BS plc performs a number of services, and even acts as a banker, for BSES and its other consolidated subsidiaries. See the October 21, 1996, Memorandum to Barbara E. Tillman, Re: Verification of the BS plc Questionnaire Responses in the 1995 Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom at 3–5 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

With respect to respondent's and petitioner's comments on the proposed countervailing duty regulations, we note that these have not yet been finalized, and thus, are not controlling in this review.

Comment 4: Respondent states that the Department will over-countervail BS plc's subsidies in the 1995 and subsequent reviews as a result of changing the allocation period for nonrecurring subsidies from 15 to 18 years. Respondent points out that the Department has recognized that double-counting subsidy benefits is "inconsistent with both the statute and the subsidies code." See, *e.g.*, Certain Castor Oil Products from Brazil; Final Results of Review of Countervailing Duty Order, 49 FR 9921 (1984), Unprocessed Float Glass from Mexico; Suspension of Countervailing Duty Investigation, 49 FR 7264 (1984), and General Agreement on Tariffs and Trade 1994, Art. VI(3). In recognition of the problem of over-or-under-countervailing subsidy benefits when transitioning to company-specific allocation periods, the Department adopted a policy of using the allocation period first assigned to a subsidy countervailed in earlier proceedings. According to respondent, because the mandate against over-countervailing subsidies is a statutory matter and not one of administrative discretion, as the Department has recognized, the Department must adhere to the 15-year amortization methodology which it previously adopted in countervailing subsidies received by UES.

According to petitioner, the 18-year allocation period is consistent with BS plc's corporate practice and all determinations involving BS plc. Changing the allocation period from 15 to 18 years enables the Department to countervail at the proper rate. Petitioner points out that the Department does not have the option of acceding to respondent's request to continue with a 15-year allocation period for BSES, because the CIT decided that the statute requires company-specific allocation periods based on the average useful life of assets and approved an 18 year allocation period for British Steel. See *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*). Petitioner points out that British Steel's successful appeal of the Department's 15-year allocation period led to the establishment of an 18-year allocation period in the first place.

According to petitioner, respondent's allegation that the Department's methodology results in "double-counting" of subsidies is misleading because only a minor amount of double-counting occurs when the allocation period is lengthened after the subsidies

have already been calculated in previous reviews. Overall, BS plc is charged more over the longer allocation period mainly due to an increase in interest charges. Petitioner suggests that the minor amount of double-counting can be corrected if the Department requests a remand of its original determination and adopts an 18-year allocation period for the entire period of the investigation and all administrative reviews, *i.e.*, from 1992 forward.

Department's Position: The position adopted by the Department on the allocation period for BS plc's/BSES's subsidies is discussed in detail in the *Preliminary Results* and the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: Allocation Period for Nonrecurring Subsidies (Allocation Memorandum) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). In this review, we are determining that it is appropriate, due to the unique circumstances of this case, to change the allocation period for the subsidies which were previously bestowed on BSC/BS plc and which were attributable to UES/BSES, even though all of these subsidies were bestowed prior to the period of review and had established allocation periods in prior proceedings. See UK Steel, 58 FR 37396. The Department's acquiescence to the CIT's decision in *British Steel* resulted in different allocation periods between the *UK Steel* and *UK Lead Bar* proceedings (18 years versus 15 years). Significant inconsistencies would result from different allocation periods for the same subsidies in two proceedings involving the same company. Therefore, in this review, we have applied the company-specific 18-year allocation period to all nonrecurring subsidies in order to maintain a consistent allocation period across the *UK Steel* and *UK Lead Bar* proceedings, as well as the different segments of *UK Lead Bar*.

Since the countervailing duty rate in earlier segments of the proceeding was based on a certain allocation period and resulting benefit stream, redefining the allocation period in this segment of the proceeding entails the creation of a new benefit stream for the original grant amount. The Department recognizes that this practice may lead to an increase (or decrease) in the subsidy rate calculated. Thus, applying an 18-year allocation period in this review to nonrecurring subsidies which had been calculated based on 15-year periods in prior segments of the proceeding could possibly lead to a larger total countervailable benefit for the subsidies spun off with the creation of UES and rejoining BS plc's subsidies with BS plc's acquisition of GKN's shares of UES. However, because the *UK Lead Bar* investigation and subsequent reviews of the order up to the instant review are currently subject to judicial review, no actual countervailing duties have been collected from any of the review periods in which the 15-year allocation period was applied. Thus, the issue of whether there would be an over-countervailing or double-counting of the subsidy is moot because the change to 18-years can be dealt with in the pending litigation.

Comment 5: Respondent contends that the Department's "gamma methodology" understates the portion of subsidies which should have been considered repaid to the government in connection with the privatization of BS plc in 1988 because of the assumption that a subsidy given in one year is considered non-subsidy capital in the following year. Respondent claims that according to the Department's methodology, only a portion of the capital of unprofitable, heavily subsidized companies would be attributed to subsidies. As an example, respondent states that even though BSC allegedly received subsidies from 1977/1978 to 1985/1986 of more than six times its total capital at fiscal year end 1978, the Department attributed only 46 percent of BSC's capital to subsidies at the end of 1987/1988.

Respondent proposes an alternative methodology for calculating the gamma based on the idea that a firm's capital is comprised of subsidy funds and non-subsidy funds at the time of sale. In the alternative methodology, the proportion of the firm's capital which would be attributable to subsidies at the time of the firm's sale is represented by the ratio of all subsidy capital to all capital from all sources during the time period in which subsidies were examined.

According to petitioner, the only appropriate change to the gamma would be its elimination, but if the Department continues to assume that a portion of the purchase price of a subsidized state-owned company represents the repayment of subsidies, the Department's existing gamma methodology is the most reasonable valuation of repayment.

According to petitioner, respondent's argument that the Department's methodology distorts the percentage of capital attributable to subsidies is misplaced, because the administrative practice of disregarding the effects of subsidies on financial performance in creditworthiness and equityworthiness analysis requires the assumption that a subsidy given in one year becomes non-subsidy capital in the following year. Petitioner cites *Saarstahl AG* v. *United States* 78 F.3d 1539, 1543 (Fed. Cir. 1996), North American Free Trade Agreement Implementation Act, S. Rep. No. 189, 103d Cong. 1st Sess. 4 (1993), and the *Proposed Regulations* to demonstrate that Congress and the courts have long discouraged the practice of determining the actual impact of subsidies on the company's capital structure.

Petitioner argues that even if the Department's methodology resulted in the respondent's alleged distortions, respondent's alternative methodology would result in greater errors, because it provides an inaccurate measure of how subsidies affect capital formation by ignoring the company's ability to fund improvements from positive cash flow or profitability. Finally, petitioner asserts that respondent's methodology does not account for inflation, which would cause early capital investments to be worth more than later ones in constant currency terms. According to petitioner, the Department's existing gamma methodology avoids the problem of inflation by comparing subsidies to capital only in the year of receipt.

Department's Position: We disagree with respondent's proposal, which would require the Department to analyze the effects of subsidies on a company's financial structure. Such an exercise is not only highly speculative, it is also inconsistent with the Department's statutory mandate. See GIA, 58 FR at 37260; see also *British Steel*, 879 F. Supp. at 1298. Respondent's assumption that the opening balance of capital represents unsubsidized capital would not be realistic for companies which have received subsidies from the time they were established. In addition, it is not clear what "non-subsidy capital infusions" represent, particularly with respect to unequityworthy government-owned companies. We also agree with petitioner that respondent's methodology is inaccurate to the extent that it does not appear to include profits as a significant non-subsidy source of funds.

Comment 6: Respondent notes that BS plc acquired GKN's shares of UES on March 21, 1995 and that the Department based the *Preliminary Results* on that event. Nevertheless, it is not apparent how entries involving merchandise exported from the United Kingdom prior to the March 21, 1995 acquisition could have been affected by the transaction, according to respondent.

Department's Position: We agree. Pursuant to the change in ownership section of the Act (771(5)(F)), we have taken the unique circumstances of the change in ownership of United Engineering Steels into consideration for purposes of determining the net subsidies attributable to the merchandise subject to this review period. Accordingly, we are assigning two net subsidy rates for the POR: one for UES which will apply to exports prior to March 21, 1995, and one for BS plc/BSES/UES which will apply to exports on or after March 21, 1995.

Final Results of Review

In accordance with 19 CFR 355.22(c)(7)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As explained in the "Change in Ownership" section of the notice, above, we have calculated two net subsidy rates for the merchandise subject to this period of review: one for UES which will apply for that part of the review period prior to the change in ownership of UES, and one for BS plc/BSES/UES which will apply for that part of the review period on and after the change in ownership when UES became a consolidated subsidiary of BS plc. Thus, the net subsidy for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995, and the net subsidy for British Steel plc/British Steel Engineering Steels/United Engineering Steels (BS plc/BSES/UES) is 7.35 percent *ad valorem* for the period March 21, 1995 through December 31, 1995.

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above (for BS plc/BSES/UES) of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377 (November 14, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27148 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Advisory Panel and Standing and Special Mackerel Scientific and Statistical Committee (SSC).

DATES: The meetings are scheduled as follows: Mackerel Advisory Panel (AP) October 30, 1997, 8:00 a.m. - 12:00 noon; SSC October 29, 1997, 8:00 a.m. - 12:00 noon.

ADDRESSES: The meetings will be held at the at the Crowne Plaza Tampa Westshore, 700 North Westshore Boulevard, Tampa, Florida 33609; telephone 813–289–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815, extension 228.

SUPPLEMENTARY INFORMATION: The SSC and AP will be convened to review Draft Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Draft Amendment 9 includes:

1. Possible changes to the fishing year for Gulf group king mackerel - currently July 1.
2. Possible prohibitions of sale of mackerel caught under the recreational allocation.
3. Provisions for mandatory reporting requirements for commercial and for-hire vessels.
4. Reallocations of total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone (Florida east coast and Florida west coast) - currently 50/50 split.
5. Reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors - currently 68 percent and 32 percent, respectively.

6. Additional subdivisions of the commercial, hook-and-line allocation of TAC for Gulf group king mackerel by area and/or season for both the Florida west coast and the Western Zone (Alabama through Texas).

7. Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone.

8. Further restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast.

9. Possible changes to the minimum size limit for Gulf group king mackerel (currently 20–inches fork length) and establishment of a maximum size limit or both a minimum and maximum, i.e. a slot limit.

10. Consideration of re-establishing an annual allocation of Gulf group Spanish mackerel for the purse seine fishery.

A copy of the agenda can be obtained by calling 813–228–2815. Although other issues not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 1997.

Dated: October 6, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27044 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Red Snapper Advisory Panel (RSAP), Reef Fish Advisory Panel (RFAP), and Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meetings are scheduled as follows: RSAP October 27, 1997, 8:00 a.m. - 3:00 p.m.; SSC October 28, 1997, 9:00 a.m. - 5:00 p.m.; RFAP October 31, 1997, 8:00 a.m. - 4:00 p.m.

ADDRESSES: The meetings will be held at the at the Crowne Plaza Tampa Westshore, 700 North Westshore Boulevard, Tampa, Florida 33609; telephone 813–289–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815, extension 227.

SUPPLEMENTARY INFORMATION: The RSAP will review a 1997 NMFS stock assessment for red snapper and, optionally, a stock assessment for gag (grouper), and available biological information on gray triggerfish. The RFAP will also review reports on the above species from the Reef Fish Stock Assessment Panel (RFSAP), and the Socioeconomic Panel (SEP). Based on these reports, the RSAP will make recommendations for total allowable catch (TAC) of red snapper in 1998 and other management measures. The RSAP will also be asked to develop recommendations for controlling recreational harvest of red snapper in order to prevent a closure of the recreational fishery when the recreational quota is reached. The RSAP may also make recommendations for management measures for gag and gray triggerfish.

The RSAP may review Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This amendment contains proposed management measures for fish traps, minor amberjack species (lesser amberjack, banded rudderfish, and Almaco jack), species listed as not in the management unit, compatible size and bag limits with Florida for several reef fish species, management measures for speckled hind and warsaw grouper in response to those species having been added to the candidate list of species for possible listing as threatened or endangered, and changes to the method of allocating TAC among user groups.

The SSC will review the stock assessments for red snapper and gag, available biological information on gray triggerfish, and the reports from the RFSAP and the SEP. The SSC will provide recommendations to the Council on the scientific merits of these reports; and it may recommend levels for TAC, bag limits, size limits, commercial quotas, and other measures for red snapper and gag for the 1998 season. The SSC could also recommend future management measures or research/data needs for gray triggerfish.

In addition, the SSC will review Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The SSC may provide recommendations to the Council on the scientific merits of the alternatives contained in this amendment as noted above.

The Reef Fish (RFAP) will review a 1997 NMFS stock assessment for gag, available biological information on gray triggerfish, and optionally, a 1997 stock assessment for red snapper. The RFAP will also review reports on the above species from the RFSAP, and the SEP. Based on these reports, the RFAP may make recommendations to the Council for a TAC of gag in 1998 and possibly other management measures. The RFAP may also recommend future management measures for gray triggerfish. The RFAP may also make recommendations for 1998 gag TAC and other management measures. Optionally, the RFAP may make recommendations for TAC of red snapper in 1998 and other management measures for red snapper. In addition, the RFAP will review the previously mentioned alternatives in Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

Based on recommendations from the above meetings, the Council, at its November meeting in Longboat Key, Florida, will decide if changes are needed to the red snapper TAC and possibly other management measures for red snapper. The Council will also determine if a TAC or additional management measures are needed for gag, or if future management measures or additional research/data are needed for gray triggerfish. The Council will also review and modify Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 1997.

Dated: October 6, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27045 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for an enhancement permit (1094) and modification 3 to enhancement permit 895.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) has applied in due form for a permit and the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) has applied in due form for a modification to a permit that would provide authorization for takes of an endangered anadromous fish species and a take of a threatened anadromous fish species for the purpose of enhancement.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before November 13, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division in Portland, OR.

SUPPLEMENTARY INFORMATION: WDFW requests a permit and the Corps requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

WDFW (1094) requests a 5-year permit for an annual direct take of adult and juvenile, endangered, upper Columbia River steelhead trout (*Oncorhynchus mykiss*) associated with hatchery supplementation programs in the mid and upper Columbia River Basin. WDFW operates three major hatchery complexes that carry out ESA-listed steelhead trout hatchery supplementation efforts: Wells, Eastbank, and Priest Rapids. The activities proposed are: (1) The capture and release of migrating adult steelhead trout at Priest Rapids Dam for stock status evaluation purposes, (2) the trapping and removal of ESA-listed adult steelhead trout for hatchery broodstock, (3) the holding and artificial spawning of ESA-listed adults, (4) the incubation of fertilized eggs and the rearing of ESA-listed juvenile fish, and (5) the transportation and releases of ESA-listed juvenile fish from the hatchery programs. WDFW believes that the artificial propagation of ESA-listed steelhead trout as proposed will benefit the species by enhancing the population, which currently is not replacing itself naturally.

Permit 895 authorizes the Corps annual direct and incidental takes of adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the operation of the Juvenile Fish Transportation Program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest (Lower Granite, Little Goose, Lower Monumental, and McNary Dams). The Corps requests modification 3 to enhancement permit 895 for an increase in the annual incidental take of adult, threatened, Snake River spring/summer chinook salmon associated with adult fallbacks through the juvenile fish bypass systems at the four dams. Each year, a percentage of adult salmon inadvertently move downstream after entering the juvenile fish bypass systems at the dams. These adult salmon are then directed back to the river to continue their upstream migration. An increase in the annual incidental take of ESA-listed adult salmon is requested because of the large number of migrating adults in 1997. Also, it is possible that this year's extremely high runoff is resulting in a higher rate of adult salmon fallbacks. A corresponding increase in ESA-listed adult salmon incidental mortalities are also requested. Modification 3 is requested to be valid for the duration of permit 895. Permit 895 expires on December 31, 1998.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: October 3, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–27134 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 15, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	489,098 dozen.
334	102,307 dozen.
335	193,477 dozen.
336/636	452,367 dozen.
338/339	1,485,225 dozen.
340/640	3,039,238 dozen.
341	1,614,918 dozen.
342/642	410,857 dozen.
351/651	691,834 dozen.
352/652	10,494,286 dozen.
363	25,787,547 numbers.
369–S [2]	1,728,558 kilograms.
634	575,879 dozen.
635	373,101 dozen.
638/639	1,639,853 dozen.
641	687,297 dozen.
645/646	438,934 dozen.
647/648	1,624,079 dozen.
847	306,733 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27088 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 14, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	30,400,737 square meters.
351/651	531,420 dozen.
361	1,365,459 numbers.
445/446	61,952 dozen.
634/635	300,308 dozen.
638/639	1,494,968 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27087 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on purple guilloche pattern background paper.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 1998. The new license/invoice shall be printed on purple guilloche patterned background paper with the map of the People's Republic of China in the middle. The new form has perforated tractor feeds on both sides, and the pattern of the paper has smaller intersecting waves. The purple form replaces the light grey export license/commercial invoice currently in use. The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 1998 through February 28, 1998 may be accompanied by a visa printed on either the light grey background paper or the purple background paper as described above. Both the light grey and the purple forms have a map of the People's Republic of China in the middle.

See 60 FR 22567, published on May 8, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 3, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1998, you are directed to amend the May 3, 1995 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on purple guilloche patterned background paper with a map of the People's Republic of China in the middle. The new form has perforated tractor feeds on both sides, and the pattern of the paper has smaller intersecting waves. The purple form will replace the light grey form currently being used.

To facilitate implementation of this amendment to the export licensing system, I request that you permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 1998 through February 28, 1998, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the light grey background paper or the purple background paper as described above. Both the light grey and the purple forms have a map of the People's Republic of China in the middle.

Goods exported on and after March 1, 1998 must be accompanied by an export visa issued by the Government of the People's Republic of China only on the purple license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27086 Filed 10–10–97 ; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Meeting Notice; Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., November 3, 1997.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–47999.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—August 4, 1997
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: October 9, 1997.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27313 Filed 10–9–97; 3:27 pm]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill,

Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 7, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Case Studies of the Implementation of the Crossroads Cafe Project.

Frequency: Weekly.

Affected Public: Individuals or households; businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 316.

Burden Hours: 1,533.

Abstract: This study is designed to provide the U.S. Department of Education with information on the implementation of the Crossroads Cafe Project, a distance education model for delivering English-as-a-Second Language (ESL) services to adult ESL learners. The study will also provide a pilot test of a design for an impact evaluation of the Crossroads Cafe Project. Data will be gathered from approximately 200 adult ESL learners and teachers at three state sites, as well as state implementation team members and technical assistance providers.

[FR Doc. 97–27068 Filed 10–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Wetland Involvement for Installation of Air Monitoring Station No. 28 at the Fernald Environmental Management Project (FEMP)

AGENCY: Department of Energy (DOE), Fernald Environmental Management Project.

ACTION: Notice of wetland involvement.

SUMMARY: This is to give notice of DOE's proposal to install an air monitoring station along with construction of an access road, to comply with provisions of the Clean Air Act, at the Fernald Environmental Management Project (FEMP), located about 18 miles northwest of downtown Cincinnati, Ohio. This activity will involve a wetland in Butler County, Ohio. In accordance with 10 CFR 1022, DOE will prepare a Wetland Assessment and conduct the proposed action in such a manner to avoid or minimize potential harm to or within the affected wetland area.

DATES: Written comments must be received by the DOE at the following address on or before October 29, 1997.

ADDRESSES: For further information on this proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Mr. David R. Kozlowski, Associate Director, Office of Safety and Assessment, U.S. Department of Energy, Fernald Environmental Management Project Office, P.O. Box 538705, Cincinnati, Ohio 45253–8705; *Phone:* (513) 648–3187; *Facsimile:* (513) 648–3077.

FURTHER INFORMATION CONTACT: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed activity would be required to comply with the Clean Air Act provisions for ambient air monitoring. Included is the construction of an access road, installation of electrical power, and placement of a step unit to mount the air monitor. Approximately 0.3 acres of wetlands would be affected. Wetland impacts would occur from installation of the gravel access road over the existing wetland, resulting in physical disturbance and filling of wetland areas. Best management practices would be utilized to minimize the amount of wetland area impacted. For example, the access road would be routed to impose the least impact to the wetland, erosion controls such as silt fences would be utilized during construction of the access road in order to minimize sediment deposition into the wetland, and culverts would be placed beneath the access road to allow continued overland flow to the wetland.

Issued in Miamisburg, Ohio on September 26, 1997.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 97–27123 Filed 10–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4186–000]

Agway Energy Services, Inc.; Notice of Issuance of Order

October 8, 1997.

Agway Energy Services, Inc. (Agway) submitted for filing a rate schedule under which Agway will engage in wholesale electric power and energy transactions as a marketer. Agway also requested waiver of various Commission regulations. In particular, Agway requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Agway.

On September 26, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Agway should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Agway is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Agway's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27118 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4143–000]

American Electric Power Service Corporation; Notice of Filing

October 7, 1997.

Take notice that on September 4, 1997, American Electric Power Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27061 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4024–000 and EL95–62–000]

British Columbia Power Exchange Corporation; Notice of Issuance of Order

October 7, 1997.

British Columbia Power Exchange Corporation (Powerex) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Powerex requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Powerex. On September 24, 1997, the Commission issued an Order Accepting for Filing Market-Based Rates and Granting and Denying Waivers and Authorizations (Order), in the above-docketed processing.

The Commission's September 24, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Powerex should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Powerex is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Powerex, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Powerex's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 24, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27056 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3832–000, ER97–3834–000, and ER97–3835–000]

Detroit Edison Company, DTE Energy Trading, Inc., and DTE–CoEnergy L.L.C.; Notice of Issuance of Order

October 7, 1997.

DTE Energy Company, an exempt public utility holding company which owns Detroit Edison Company, has formed two new subsidiaries to engage in power marketing and related activities. DTE Energy Trading, Inc. (DTE Energy Trading) will engage in power marketing and brokering. DTE-CoEnergy L.L.C. (DTE-CoEnergy) will engage in power marketing. DTE Energy Trading and DTE-CoEnergy filed applications for authorization to engage in the wholesale sale of electric capacity and energy at market-based rates and for certain waivers and authorizations. In particular, DTE Energy Trading and DTE-CoEnergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future

issuances of securities and assumptions of liabilities by DTE Energy Trading and DTE-CoEnergy. On September 24, 1997, the Commission issued an Order Accepting Proposed Market-Based Rates and Conditionally Accepting Proposed Cost-Based Rates for Filing (Order), in the above-docketed proceedings.

The Commission's September 24, 1997 Order granted the request for blanket approved under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DTE Energy Trading or DTE-CoEnergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, DTE Energy Trading and DTE-CoEnergy are hereby authorized, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DTE Energy Trading or DTE-CoEnergy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of DTE Energy Trading's and DTE-CoEnergy's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 24, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27055 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4240–000]

Granger Energy, L.L.C.; Notice of Issuance of Order

October 8, 1997.

Granger Energy, L.L.C. (Granger) submitted for filing a rate schedule under which Granger will engage in wholesale electric power and energy transactions as a marketer. Granger also requested waiver of various Commission regulations. In particular, Granger requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Granger.

On September 29, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Granger should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Granger is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Granger's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 29, 1997. Copies of the text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27120 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4116–000]

Inventory Management and Distribution Company, Inc.; Notice of Issuance of Order

October 8, 1997.

Inventory Management and Distribution Company, Inc. (Inventory Management) filed an application for authorization to engaged in the wholesale sale and brokering of capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Inventory Management requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Inventory Management. On September 25, 1997, the Commission issued an Order Granting Late Intervention and Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanked approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Inventory Management should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Inventory Management is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Inventory Management, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Inventory Management's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27117 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–775–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 26, 1997, and supplemented on September 30, and October 2, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas, 77251, filed in Docket No. CP97–775–000, a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations, under the Natural gas Act (18 CFR 157.205, 157.211, and 157.216), for authorization to (1) plug and abandon 37 delivery taps on its Index 276 [1] and (2) establish new delivery points, both in Hancock, Harrison, and Jackson Counties, Mississippi, under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway says that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway says that these taps are used for delivery of natural gas to Entex, Inc. (Entex), a local distribution company in Hancock, Harrison, and Jackson Counties, Mississippi. Koch Gateway asserts that Entex concurs with the proposed abandonment and tie-over measures.

Koch Gateway also states that Entex's affected farm tap customers will either be converted to propane service or tied-over to another natural gas source. Koch Gateway relates that such decision will be at the discretion of the end-user. Koch Gateway explains that the other natural gas source will be either Koch Gateway's adjacent pipeline designated as Index 300 or to an Entex distribution system. Koch Gateway also seeks permission to install taps and minor piping to tie-over those end-users who elect to continue natural gas service. Koch Gateway states that the approximate cost of tying-over all taps is $337,000, and the approximate cost of converting all end-users to propane is $128,000. Koch Gateway explains that the purchaser of Index 276 will reimburse Koch Gateway for all such costs, which is consistent with the sale of the asset as approved in Docket No. CP94–75–000.

Koch Gateway indicates that the Mississippi Public Service Commission has been notified of this filing.

Koch Gateway asserts that the service to end-users who elect to continue natural gas service will be unaffected; that Entex will continue to receive natural gas service pursuant to Koch Gateway's No-Notice, Firm Transportation and Interruptible Rate Schedules; and the proposed abandonments and/or tie-overs will not have a significant impact on Koch Gateway's peak day or average day volumes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27057 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Koch Gateway was granted authorization to abandon by sale its transmission line designated Index 276 in Docket No. CP94–75–000. 67 FERC ¶61,362 (1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–777–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 26, 1997, and supplemented on September 30, and October 2, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas 77251, filed in Docket No. CP97–777–000, a request, pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216), for authorization to (1) plug and abandon 56 delivery taps on its Index 276 [1] and (2) establish new delivery points, both in Hancock, Harrison, and Jackson Counties, Mississippi, under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of these taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway says that these taps are used for delivery of natural gas to Entex, Inc. (Entex), a local distribution Company, in Hancock, Harrison, and Jackson Counties, Mississippi. Koch Gateway asserts that Entex concurs with the proposed abandonment and tie-over measures.

In addition to requesting authorization to abandon 56 farm taps, Koch Gateway is also requesting authorization to install taps and minor pipeline to tie-over certain taps to its adjacent pipeline facilities or to the facilities of a local distribution company, Entex. Koch Gateway states that the approximate cost of the proposed abandonment and construction activities is $326,550. Koch Gateway explains that the purchaser of Index 276 will reimburse Koch Gateway for all such costs, which is consistent with the sale of the asset as approved in Docket No. CP94–75–000.

[1] Koch Gateway was granted authorization to abandon by sale its transmission line designated Index 276 in Docket No. CP94–75–000. 67 FERC ¶61,362 (1994).

Koch Gateway indicates that it notified the Mississippi Public Service Commission of this filing.

Koch Gateway asserts that natural gas service will be continued to all but one end-user whose service will be converted to propane; that Entex will continue to receive natural gas service pursuant to Koch Gateway's No-Notice, Firm Transportation, and Interruptible Rate Schedules; and the proposed activities will not have a significant impact on Koch Gateway's peak day or average day volumes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27058 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–785–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 29, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP97–785–000, a request pursuant to Sections 157.205 and 157.216(b) and 157.211 of the Commission's Regulations, for approval to abandon three farm taps on its Index 276 in LaFourch Parish, Louisiana, and establish three new delivery taps, under its blanket certificate issued in Docket Nos. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of Louisiana Gas Service Company (LGS) a local distribution company in LaFourche Parish, Louisiana. Service will be continued to the affected end-users through new taps on an adjacent Koch Gateway pipeline. Koch Gateway asserts that LGS concurs with the proposed abandonment and tie-over measures.

Koch Gateway indicates that the approximate cost of the proposed abandonment and construction activities is $31,500. The purchaser of Index 276 will reimburse Koch Gateway for all such costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27059 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–4–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on October 1, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–4–000 a request pursuant to' §§ 157.205 and 157.211 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new residential sales tap under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a sales tap for delivery of approximately 150 Mcf of natural gas annually to National Fuel Gas Distribution Corporation (Distribution) at an estimated cost of $1,500 for which Distribution would reimburse to National. National further states that the proposed sales tap would be located on its Line Q–18 in Erie County, Pennsylvania.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27060 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184, California]

Pacific Gas and Electric Company; Notice Accepting Withdrawal of Existing Licensee's Notice of Intent To File a New License Application and Notice Soliciting Applications

October 7, 1997.

On July 10, 1997, Pacific Gas and Electric Company (PG&E), licensee for the El Dorado Hydroelectric Project No. 184, withdrew its February 24, 1997, notice of intent (NOI) to file an application for a new license.[1] The Commission accepts the withdrawal of the NOI.

The original license for Project No. 184 was issued effective December 1, 1980, and expired February 23, 2002. The project is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The principal project works consist of: (a) Lake Aloha and dam; (b) Echo Lake, dam, and conduit; (c) Caples Lake and the main and auxiliary dams; (d) Silver Lake and dam; (e) El Dorado Diversion dam and fish ladder; (f) El Dorado Canal; (g) El Dorado Forebay and dam; (h) El Dorado penstock and powerhouse with an installed capacity of 21 megawatts; and (i) appurtenant facilities.

Because PG&E has withdrawn the NOI, the Commission hereby solicits license applications for the El Dorado Project. Pursuant to section 16.9 of the Commission's regulations, applications for a license (except from the existing licensee which is prohibited from filing)[2] must be filed with the Commission at least 24 months before the existing license expires. Thus, applications for license for the El Dorado Project must be filed by February 23, 2000.

Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 245 Market Street, San Francisco, California 94105.

Questions concerning this notice should be directed to Surender Yepuri at (202) 219–2847.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27062 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

[1] On July 25, 1997, the El Dorado Irrigation District filed a motion in opposition to PG&E's withdrawal of the NOI. Because PG&E is not required to file a relicense application, we deny El Dorado's motion.

[2] Pursuant to section 16.24(a) of the Commission's regulations, an existing licensee for a water power project that informs the Commission that it does not intend to file an application for a new license, may not file an application for a new license.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4202–000]

Total Energy, Inc.; Notice of Issuance of Order

October 8, 1997.

Total Energy, Inc. (Total) submitted for filing a rate schedule under which Total will engage in wholesale electric power and energy transactions as a marketer. Total also requested Waiver of various Commission regulations. In particular, Total requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Total.

On September 26, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Total should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Total is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Total's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27119 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3663–000 and ER97–3664–000]

Union Electric Development Corporation and Union Electric Company; Notice of Issuance of Order

October 7, 1997.

Union Electric Development Corporation (Union Electric Development) is a subsidiary and power marketing affiliate of Union Electric Company. Union Electric Development filed an application for authorization to engage in the sale of capacity and energy for resale at market-based rates, and for certain waivers and authorizations. In particular, Union Electric Development requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Union Electric Development. On September 25, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's liabilities by Union Electric Development should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Union Electric Development is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purpose of Union Electric Development, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Union Electric Development's issuances

of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary,

[FR Doc. 97–27054 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2460–000, ER97–2462–000, and ER97–2463–000]

Unitil Power Corporation, Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company; Notice of Issuance of Order

October 7, 1997.

Unitil Resources, Inc. (URI) is a power marketing affiliate of Unitil Power Corporation, Fitchburg Gas & Electric Light Company, Concord Electric Company, and Exeter & Hampton Electric Company. URI is a wholly-owned subsidiary of Unitil Corporation, a registered public utility holding company. URI filed an application for authorization to engage in the sale of capacity and energy for resale at market-based rates, and for certain waivers and authorizations. In particular, URI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by URI. On September 25, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by URI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, URI is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of URI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of URI's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27053 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609]

International Paper Company and Curtis/Palmer Hydroelectric Company, L.P.; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

October 7, 1997.

International Paper Company and Curtis/Palmer Hydroelectric Company L.P. are currently engaged in the process of obtaining from the Federal Energy Regulatory Commission (the Commission) a new operating license for the Curtis/Palmer Falls Hydroelectric Project (FERC No. 2609. The project is located on the Hudson River in the Village of Corinth and the Towns of Corinth, Lake Luzerne and Hadley, in Saratoga and Warren Counties, New York. The current license for the project expires on April 30, 2000. Under the Commission's regulations, an application for license for the project must be filed by April 30, 1998. International Paper Company is managing relicensing activities on behalf of both applicants in cooperation with a team of state and federal resource agencies, conservation groups and local governments (the Cooperative Team).

Pursuant to the Commission's regulations and the Energy Policy Act of 1992, Curtis/Palmer Hydroelectric Company L.P. and International Paper Company have prepared a Draft Application for a new license, and a preliminary Draft Environmental Assessment (DEA) to be included as part of the license application to be filed with the Commission for the project. The Draft Application and preliminary DEA are available for public review in the Public Reference Room at the Commission's offices at 888 First Street NE, Washington, DC 20426 and at the Town Office, 600 Palmer Avenue, Corinth, NY. A copy may also be requested from the applicants.

In accordance with Section 16.8(c)(5) of the Commission's regulations and the February 6, 1997 letter from the Director of the Commission's Office of Hydropower Licensing, any resource agency, Indian tribe, or persons are requested to provide comments on the Draft Application and the preliminary DEA, and any preliminary recommendations, terms and conditions or prescriptions by January 2, 1998. Comments, preliminary recommendation, terms and conditions, or prescriptions must be filed with Mr. Robert McK. Hunziker, International Paper Company, Two Manhattanville Road, Purchase, NY 10577, with copies to Mr. Richard Takacs, Rm 6H–06, Mailstop HL–11, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, and Mr. Andrew Sims, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967.

Also available for public review at the same locations are three supplemental study reports prepared in 1997 in response to a request for additional information made by the United States Fish and Wildlife Service.

Any questions regarding this notice or the availability of documents should be directed to Mr. Takacs at (202) 219–2840, Mr. Hunziker at (914) 397–1540, or Mr. Sims at (207) 487–3328.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27063 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 8, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: OCTOBER 15, 1997. 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.

* **NOTE**—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

Consent Agenda—HYDRO, 683RD Meeting—October 15, 1997, Regular Meeting, (10:00 a.m.)

CAH–1.
PROJECT NO. 1986–006, DOUGLAS W. PEGAR

CAH–2.
PROJECT NO. 2113–076, WISCONSIN VALLEY IMPROVEMENT COMPANY

CAH–3.
OMITTED

CAH–4.
PROJECT NO. 2311–016, CROWN VANTAGE-NEW HAMPSHIRE ELECTRIC, INC.

CAH–5.
DOCKET NO. UL96–7–003 AND PROJECT NO. 2555–006, KENNEBEC WATER DISTRICT
DOCKET NO. UL96–8–003 AND PROJECT NO. 2556–011, CENTRAL MAINE POWER COMPANY
DOCKET NO. UL96–9–003 AND PROJECT NO. 2557–008, CENTRAL MAINE POWER COMPANY
DOCKET NO. UL96–10–003 AND PROJECT NO. 2559–009, CENTRAL MAINE POWER COMPANY

CAH–6.
PROJECT NO. 2613–011, CENTRAL MAINE POWER COMPANY, MADISON PAPER INDUSTRIES, UAH-HYDRO KENNEBEC L.P. AND KIMBERLY-CLARK TISSUE COMPANY, MERIMIL L.P. AND AUGUSTA DEVELOPMENT CORPORATION

CAH–7.
PROJECT NO. 3206–038, CITY OF NEW MARTINSVILLE, WEST VIRGINIA

Consent Agenda—Electric

CAE–1.
DOCKET NO. ER97–4345–000, OGE ENERGY RESOURCES, INC.

CAE–2.
DOCKET NO. ER97–3954–000, UNICOM POWER MARKETING, INC.

CAE–3.
DOCKET NO. ER97–4273–000, CARGILL-IEC, L.L.C.

CAE–4.
DOCKET NO. ER97–4335–000, GEN'SYS ENERGY

CAE–5.
DOCKET NO. ER97–4185–000, TEXAS-NEW MEXICO POWER COMPANY

CAE–6.
DOCKET NO. ER97–886–000, BROOKLYN NAVY YARD COGENERATION PARTNERS, L.P.

CAE–7.
DOCKET NO. ER97–3056–000, R. HADLER AND COMPANY, INC.

CAE–8.
DOCKET NO. ER96–1088–001, WISCONSIN PUBLIC SERVICE CORPORATION, WPS ENERGY SERVICES, INC. AND WPS POWER DEVELOPMENT, INC.

CAE–9.
DOCKET NO. ER97–2524–000, HOUSTON LIGHTING & POWER COMPANY
DOCKET NO. ER97–3113–000, TEXAS UTILITIES ELECTRIC COMPANY

CAE–10.
DOCKET NO, ER97–4314–000, OLD DOMINION ELECTRIC COOPERATIVE

CAE–11.
OMITTED

CAE–12.
DOCKET NO. EL94–34–001, WESTERN RESOURCES, INC.

CAE–13.
DOCKET NO. ER97–4222–000, IOWA POWER PARTNERS I, L.L.C.

CAE–14.
DOCKET NOS. ER96–447–000 AND OA96–188–000, NEVADA POWER COMPANY

CAE–15.
DOCKET NOS. OA96–197–000 AND ER97–1719–000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY

CAE–16.
DOCKET NO. ER96–2525–000, PLUM STREET ENERGY MARKETING, INC.
DOCKET NO. ER96–2585–000, NIAGARA MOHAWK POWER CORPORATION

CAE–17.
DOCKET NOS. ER95–1686–002, 003, ER96–496–004 AND 005, NORTHEAST UTILITIES SERVICE COMPANY

CAE–18.
DOCKET NO. ER97–3583–000, GS ELECTRIC GENERATING COOPERATIVE, INC.
DOCKET NO. ER97–4084–000, DENVER CITY ENERGY ASSOCIATES

CAE–19.
DOCKET NO. ER97–2499–001, FLORIDA POWER CORPORATION

CAE–20.
DOCKET NO. EL95–38–001, SITHE/INDEPENDENCE POWER PARTNERS, L.P. V. NIAGARA MOHAWK POWER CORPORATION

CAE–21.
DOCKET NO. EL95–3–001, MIDAMERICAN ENERGY COMPANY

CAE–22.
DOCKET NOS. TX93–4–004, 005 AND EL93–51–003, FLORIDA POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY

CAE–23.
DOCKET NO. EL97–39–000, SCHUYLKILL ENERGY RESOURCES, NC. V. PENNSYLVANIA POWER & LIGHT COMPANY

CAE–24.
DOCKET NO. ER95–181–003, FLORIDA POWER & LIGHT COMPANY

CAE–25.
DOCKET NO. NJ97–2–000, OMAHA PUBLIC POWER DISTRICT

Consent Agenda—GAS AND OIL

CAG–1.
DOCKET NOS. RP97–161–009, 010 AND RP97–329–005, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.

CAG–2.
DOCKET NOS. RP97–343–000 AND 001, SEA ROBIN PIPELINE COMPANY

CAG–3.

DOCKET NO. RP96–190–010, COLORADO INTERSTATE GAS COMPANY
CAG–4.
OMITTED
CAG–5.
DOCKET NOS. RP97–272–002 AND TM97–2–59–000, NORTHERN NATURAL GAS COMPANY
CAG–6.
OMITTED
CAG–7.
DOCKET NOS. PR96–9–000 AND 001, LOUISIANA STATE GAS CORPORATION
CAG–8.
DOCKET NO. PR96–11–000, LEE 8 STORAGE PARTNERSHIP
CAG–9.
DOCKET NOS. PR97–2–000 AND 001, TECO PIPELINE COMPANY
CAG–10.
DOCKET NO. PR97–13–000, TEJAS GAS PIPELINE COMPANY
CAG–11.
DOCKET NOS. RP97–1–008, RP97–201–006 AND 007, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–12.
DOCKET NO. RP97–8–005, GRANITE STATE GAS TRANSMISSION, INC.
CAG–13.
OMITTED
CAG–14.
DOCKET NO. RP95–136–007, WILLIAMS NATURAL GAS COMPANY
CAG–15.
DOCKET NO. RP96–190–009, COLORADO INTERSTATE GAS COMPANY
CAG–16.
DOCKET NO. RP96–199–006, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–17.
DOCKET NO. RP96–306–002, PAIUTE PIPELINE COMPANY
CAG–18.
DOCKET NO. RP96–347–006, NORTHERN NATURAL GAS COMPANY
CAG–19.
DOCKET NO. RP97–291–004, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–20.
OMITTED
CAG–21.
DOCKET NO. GT97–45–000, NORTHWEST PIPELINE CORPORATION
CAG–22.
DOCKET NOS. RP94–150–000, RP94–266–000, RP94–347–000 AND RP94–384–000, ANR PIPELINE COMPANY
CAG–23.
DOCKET NO. RP92–132–052, TENNESSEE GAS PIPELINE COMPANY
CAG–24.
DOCKET NOS. RP95–64–003 AND RP96–292–002, TENNESSEE GAS PIPELINE COMPANY
CAG–25.
DOCKET NO. RP96–387–002, WILLIAMS NATURAL GAS COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET NO. RP97–418–001, PACIFIC GAS TRANSMISSION COMPANY
CAG–28.
DOCKET NO. OR97–12–000, LAKEHEAD PIPE LINE COMPANY, LIMITED PARTNERSHIP
CAG–29.
DOCKET NOS. MG97–10–001 AND 002, PACIFIC INTERSTATE TRANSMISSION COMPANY
CAG–30.
DOCKET NO. MG97–15–001, KERN RIVER GAS TRANSMISSION COMPANY
CAG–31.
DOCKET NO. MG97–14–001, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–32.
DOCKET NO. CP97–3–001, NORTHERN STATES POWER COMPANY (WISCONSIN) AND WISCONSIN ELECTRIC POWER COMPANY
CAG–33.
DOCKET NO. CP97–4–001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN POWER WISCONSIN CORPORATION
CAG–34.
DOCKET NO. CP96–647–000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–35.
DOCKET NO. CP96–596–000, EL PASO NATURAL GAS COMPANY
CAG–36.
DOCKET NOS. CP96–128–000, 001, 003, RP97–32–000, 001, 004, RP97–231–000, 001, 002, TA98–1–23–000 AND TM98–3–23–000, EASTERN SHORE NATURAL GAS COMPANY
CAG–37.
DOCKET NO. CP97–126–000, SOUTHERN NATURAL GAS COMPANY
CAG–38.
DOCKET NO. CP97–8–000, WISCONSIN ELECTRIC POWER COMPANY
DOCKET NO. CP97–659–000, WISCONSIN PUBLIC SERVICE CORPORATION
CAG–39.
DOCKET NO. CP97–192–000, NEW YORK STATE ELECTRIC & GAS CORPORATION
CAG–40.
DOCKET NO. CP97–318–000, ALGONQUIN GAS TRANSMISSION cOMPANY
CAG–41.
DOCKET NO. CP97–596–000, ANR PIPELINE COMPANY
CAG–42.
DOCKET NOS. CP97–603–000 AND 001, EGAN HUB PARTNERS, L.P.
CAG–43.
DOCKET NOS. CP97–92–000 AND 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–44.
OMITTED
CAG–45.
DOCKET NOS. IS92–3–000, IS93–6–000, IS94–10–000, IS97–2–004 AND IS97–15–000, AMERADA HESS PIPELINE CORPORATION
DOCKET NOS. IS92–4–000, IS93–7–000, IS94–11–000, IS97–3–004, OR92–2–000, ARCO TRANSPORTATION ALASKA, INC.
DOCKET NOS. IS92–5–000, IS93–8–000, IS94–12–000 AND IS97–4–004, BP PIPELINES (ALASKA) INC.
DOCKET NOS. IS92–6–000, IS93–9–000, IS94–14–000 AND IS97–5–004, EXXON PIPELINE COMPANY
DOCKET NOS. IS92–7–000, IS93–10–000, IS93–38–000, IS94–3–000, IS94–13–000, IS94–15–000, IS97–6–004 AND IS97–16–000, MOBIL ALASKA PIPELINE COMPANY
DOCKET NOS. IS92–8–000, IS93–11–000, IS94–16–000, IS97–7–004 AND IS97–10–000, PHILLIPS ALASKA PIPELINE CORPORATION
DOCKET NOS. IS92–9–000, IS93–12–000, IS94–17–000, IS94–31–000 AND IS97–8–004, UNOCAL PIPELINE COMPANY
DOCKET NO. OR92–5–000, CONOCO, INC.

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
DOCKET NOS. EC96–7–000, 001, ER96–677–000, 001, ER96–679–000 AND 001, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.
DOCKET NO. EL98–1–000, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, CONSIDERATION OF INITIAL DECISION ON PROPOSED MERGER.
E–2.
OMITTED

Oil and Gas Agenda

I. PIPELINE RATE MATTERS
PR–1(A).
DOCKET NOS. RP93–5–027 AND RP93–96–007, NORTHWEST PIPELINE COMPANY, ORDER ON REHEARING
PR–1(B).
DOCKET NOS. RP92–163–008, RP92–170–008 AND RP92–236–008, WILLISTON BASIN INTERSTATE PIPELINE COMPANY, ORDER ON REHEARING
PR–1(C).
DOCKET NO. RP97–408–002, TRAILBLAZER PIPELINE COMPANY, ORDER ON REHEARING
PR–1(D).
DOCKET NOS. RP97–406–001 AND RP96–144–001, NG TRANSMISSION CORPORATION, ORDER ON REHEARING
PR–1(E).
DOCKET NOS. RP97–346–003 AND TM97–3–24–001, EQUITRANS, L.P., ORDER ON REHEARING
PR–1(F).
DOCKET NO. RP97–373–001, KOCH GATEWAY PIPELINE COMPANY, ORDER ON REHEARING
PR–1(G).
DOCKET NO. RP97–375–001, WYOMING INTERSTATE COMPANY, LTD., ORDER ON REHEARING
PR–2(A).
DOCKET NOS. RP97–331–001 AND 002, DECATUR UTILITIES, CITY OF DECATUR, ALABAMA, AND HUNTSVILLE UTILITIES, CITY OF HUNTSVILLE, ALABAMA V. MIDCOAST INTERSTATE TRANSMISSION, NC. (FORMERLY ALABAMA-TENNESSEE NATURAL GAS COMPANY)
DOCKET NO. RP97–514–000, HUNTSVILLE UTILITIES, CITY OF HUNTSVILLE, ALABAMA V. MIDCOAST INTERSTATE TRANSMISSION, INC., ORDER ON COMPLAINT AND REHEARING
PR–2(B).
DOCKET NOS. RP97–88–006 AND RP97–89–003, MIDCOAST INTERSTATE TRANSMISSION, INC., ORDER ON REHEARING
II. PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,
Secretary.
[FR Doc. 97–27246 Filed 10–9–97; 11:40 am]
BILLING CODE 6717–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5908–8]

McAdoo Associates Site-Blaine Street Location CERCLA Section 122(h) Administrative Settlement; Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the McAdoo Associates Site-Blaine Street Location in Schuylkill County, Pennsylvania, which was signed by the EPA Regional Administrator, Region III. The proposed settlement is intended to resolve an EPA claim under section 107(a) of CERCLA against Advanced Environmental Technology Corporation, Air Products & Chemicals, Inc., Crane Co., International Flavors & Fragrances, Inc., and TRW Inc. The settlement requires the settling parties to pay $220,833 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. The agreement has been approved by the Attorney General, United States Department of Justice, or her designee.

DATES: Comments must be submitted on or before November 13, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2476. Comments should reference the McAdoo Associates Site-Blaine Street Location and EPA Docket No. III–93–49–DC and should be forwarded to Ms. Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (3RC20), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2648.

Dated: September 30, 1997.

Thomas Voltaggio,
Acting Regional Administrator, Region III.
[FR Doc. 97–27125 Filed 10–10–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 91–281]

Calling Number Identification Service; Caller ID

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) issued two Public Notices concerning Petitions for Reconsideration filed by Siemens Business Communications, Inc. (Siemens) and US West Communications, Inc. (USW). The petitions address various aspects of a Commission order released on March 25, 1997.

DATES: Effective October 9, 1997. Interested parties may file comments regarding these petitions on or before October 29, 1997. Reply comments may be filed by November 10, 1997.

ADDRESSES: Comments should be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Copies of documents filed with the Commission may be obtained from the International Transcription Service (ITS), 1231 20th Street NW., Washington, DC 20036, (202) 857–3800. Documents are also available for review and copying at the Federal Communication Commission Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., Monday, from 9:45 a.m. to 4:30 p.m., and Tuesday through Thursday, from 9:00 a.m. to 4:30 p.m., (202) 418–0029.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Debra Harper, 202–418–1574.

Legal Information: Alan Thomas, 202–418–2338.

SUPPLEMENTARY INFORMATION: On July 23, 1997, Siemens Business Communication Systems, Inc. (Siemens) filed a petition requesting that the Commission reconsider certain of its rules issued in *Rules and Policies Regarding Calling Number Identification Service—Caller ID*, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, CC Docket No. 91–281, FCC 97–103 (62 FR 34015 June 24, 1997). Specifically, Siemens states that: the Commission's rules are unenforceable against private branch exchange (PBX) owners/operators because the language of the adopted regulations applies only to carriers; actual notice of the Commission's rules has not been provided to PBX owners/operators and will result in widespread non-compliance; manufacturers have only eight months, as opposed to the needed twenty-four months, to incorporate the required upgrades; the Commission failed to conduct a cost-benefit analysis before requiring upgrades of currently installed PBX systems; and that PBX systems should enjoy the same exemptions as granted to Centrex systems that currently use * 6 or * 8 for dialing functions other than calling party number (CPN) blocking or unblocking. Siemens recommends that the Commission take the following action: suspend the March 25, 1998 compliance deadline; grandfather all in-place PBX equipment; allow PBX manufacturers at least two years or until January 1, 2000 to incorporate CPN blocking and unblocking signaling in new PBX equipment; allow PBX systems the same dialing exemptions allowed Centrex systems; and clarify which PBX signaling methods are acceptable for passing CPN blocking and unblocking information.

On July 24, 1997, US West Communications, Inc. (USW) Ohio filed a petition requesting that the Commission reconsider certain of its rules established in *Rules and Policies Regarding Calling Number Identification Service—Caller ID*, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, CC Docket No. 91–281, FCC 97–103 (62 FR 34015 June 24, 1997). USW states that Nortel DMS–100 switches are not capable of providing * 82 blocking mechanisms and, thus, requests a reconsideration of blocking code requirements with respect to party lines. Alternatively, USW requests a waiver with respect to customers served by Nortel DMS–100 switches.

Comments for both petitions may be filed on or before October 29, 1997. Reply comments may be filed by November 10, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27070 Filed 10–10–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–201034

Title: Broward County/Discovery Cruise Terminal Agreement

Parties:

Broward County, Florida (Port Everglades)

Discovery Cruise Services, Inc. (Discovery)

Synopsis: The proposed Agreement authorizes Broward County to provide berthing and related terminal facilities, and passenger wharfage at a reduced rate, to Discovery in exchange for its agreement to provide daily passenger cruise service from Port Everglades.

Agreement No.: 224–201035

Title: Port of Galveston/Del Monte Fresh Produce N.S., Inc.

Parties:

Board of Trustees of the Galveston Wharves

Del Monte Fresh Produce N.A., Inc.

Synopsis: The proposed Agreement permits the Port of Galveston to lease to Del Monte property located at Pier 18 for the purpose of handling fresh fruit and other produce, and all general cargo transported by Del Monte's chartered, owned or affreighted vessels. The term of the Agreement is for five years.

Dated: October 7, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–27064 Filed 10–10–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Voluntary Industry "Partner" Survey to Implement Executive Order 12862—The Department of Health and Human Services plans to conduct mail surveys of its contractors in each agency to obtain feedback for improving acquisition products and services—Respondents: Contractors of the Department; Annual Responses: 2400; Average Burden per Response: 12 minutes; Total Annual Burden: 480 hours. OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 1, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–27104 Filed 10–10–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 3, 1997, 9 a.m. to 5:30 p.m.; November 4, 1997, 8:30 a.m. to 5:30 p.m.; and November 5, 1997, 8 a.m. to 12 m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12518. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 3, 1997, the committee will discuss the previously unclassified devices for use in the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain (e.g., muscle monitor devices, jaw tracking devices, TENS (transcutaneous electrical nerve stimulation) devices, EMG (electromyographic) devices, and ultrasound devices). The committee will provide comments on the types of devices to be included within this category under these indications, which will assist FDA in developing a comprehensive strategy for subsequent classification efforts. This discussion will not include previously classified devices such as temporomandibular joint implants. The proposed listing of devices to be included within this category will be placed on CDRH's Internet website at http://www.fda.gov/cdrh. The topical index may be consulted for its specific location. On November 4, 1997, the committee will discuss and make recommendations to FDA regarding the reclassification of subgroups of endosseous dental implant devices. The following subgroups of endosseous implants will be included: Coated and uncoated hollow cylinder and solid cylinder implants, coated and uncoated screw type implants (other than the commercially pure titanium screw type implant previously proposed for reclassification), coated and uncoated blade type implants, implants with special enhanced retention mechanisms and transitional implants. The coated implants may be further divided into porous coatings (e.g., titanium bead coatings), nonporous coatings (e.g., titanium plasma spray coatings), metallic coatings and ceramic coatings (e.g., hydroxylapatite coatings). The committee will also discuss and make recommendations regarding the classification of oral appliances for the treatment of obstructive sleep apnea and snoring. On November 5, 1997, the committee will continue discussion of the classification of oral appliances for the treatment of obstructive sleep apnea and snoring if time does not permit this issue to be completed on November 4, 1997.

Procedure: On November 3, 1997, from 9 a.m. to 5:30 p.m.; November 4, 1997, from 8:30 a.m. to 4:30 p.m.; and on November 5, 1997, from 8 a.m. to 12 m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1997. Oral presentations from the public regarding devices with indications for use involving the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain will be scheduled between approximately 9:30 a.m. and 10 a.m. on November 3, 1997. Oral presentations from the public regarding the reclassification of subgroups of endosseous dental implant devices will be scheduled between approximately 8:45 a.m. and 9:15 a.m. on November 4, 1997. Oral presentations from the public regarding the classification of oral appliances for the treatment of obstructive sleep apnea and snoring will be scheduled between approximately 3:15 p.m. and 3:45 p.m. on November 4, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 27, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the November 3, 4, and 5, 1997, Dental Products Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Dental Products Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Closed Committee Deliberations: On November 4, 1997, from 4:30 p.m. to 5:30 p.m., the meeting will be closed to permit discussion of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding dental device issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–27233 Filed 10–9–97; 10:26 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: October 15–17, 1997.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: November 17, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.

Date: November 17–18, 1997.

Time: 8:30 a.m.

Place: George Washington University Inn, Washington, DC.

Contact Person: Dr. Richard Marcus, Scientific Review Administrator, 6701 Rockledge Drive, Room 5194, Bethesda, Maryland 20892, (301) 435–1256.

Name of SEP: Biological and Physiological Sciences.

Date: November 19, 1997.

Time: 10:15 a.m.

Place: NIH, Rockledge 2, Room 5200, Telephone Conference.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892, (301) 435–1259.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: October 31, 1997.

Time: 9:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.

Date: November 18–19, 1997.

Time: 8:30 a.m.

Place: Wyndham Bristol Hotel, Washington, DC.

Contact Person: Dr. Camilla Day, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda, Maryland 20892, (301) 435–1037.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 19–20, 1997.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Timothy Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Behavioral and Neurosciences.

Date: November 21, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, Bethesda, Maryland.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1236.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27092 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Transfusion-Associated Immunomodulation (TRIM) Telephone Conference Call.

Date: November 5, 1997.

Time: 1:30 p.m.

Place: Two Rockledge Center, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Contact Person: Louise Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Lipoprotein Metabolism in Atherosclerosis.

Date: December 8–9, 1997.

Time: 7:30 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Ivan Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. Applications and/or contract proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27094 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 15, 1997.

Time: 11 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gavin T. Wilkom, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 30, 1997.

Time: 1 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Gavin T. Wilkom, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27095 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda for further information about the office.

SUPPLEMENTARY INFORMATION: Today's action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the **Federal Register** of February 14, 1997 (62 FR 7108), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 6, 1997.

I. Background Information and Decisions on Actions Under the NIH Guidelines

In a letter dated December 2, 1995, Dr. Kenneth I. Berns (President), Dr. Gail Cassel (Chair, Public and Scientific Affairs Board), and Dr. Diane O. Fleming (Chair, Subcommittee on Laboratory Safety) of the American Society for Microbiology (ASM) requested that Equine morbillivirus, Sabia, and Flexal be added to Appendix B of the NIH Guidelines. The Centers for Diseases Control and Prevention (CDC) has developed a list of select agents identified as potential weapons for biological terrorism. These select agents are subject to Federal regulation 42 CFR Part 72, published by CDC on October 24, 1996, in the **Federal Register** (61 FR 55190). This regulation promulgates the final rule of additional requirements for facilities transferring or receiving select agents. Most of the biological agents in the select agents list are already included in Appendix B except these three agents requested for inclusion by ASM. In a letter dated December 20, 1996, ORDA asked Dr. Flemming to clarify the proper Risk Group classification of these three viruses. In her letter dated February 3, 1997, Dr. Fleming stated that Flexal virus should be listed as a Risk Group 3 agent based on the classification recommended in the CDC/NIH publication entitled: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, 1993. Sabia virus and Equine morbillivirus have not been formally classified in this publication. Dr. Fleming stated that she has consulted with Dr. Michael P. Kiley, Chairman of the Subcommittee on Arboviral Laboratory Safety (SALS) of the American Society for Tropical Medicine and Hygine, with regard to the proper Risk Group classification of these two viruses. Dr. Kiley recommended that Sabia and Equine morbillivirus should be classified as Risk Group 4 agents. Risk Group 4 agents are handled under Biosafety Level 4 physical containment, because they are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not available.

The ASM request was reviewed by Brian R. Murphy, M.D., Head, Respiratory Viruses Section, NIH, and Stephen E. Straus, M.D., Chief, Laboratory of Clinical Investigation, NIH. Dr. Murphy presented his review and Dr. Straus' written review at the March 6–7, 1997, RAC meeting. Dr. Murphy and Dr. Straus concurred with the ASM request with regard to the classification of these three viruses.

The RAC deliberated the issue at the March 6–7, 1997, RAC meeting. A motion was made by the RAC to amend: (1) Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions, to include Flexal, an arenavirus, and (2) Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents, to include Sabia, an arenavirus, and Equine morbillivirus, a paramyxovirus. The motion passed by a vote of 8 in favor, 0 opposed, and no abstentions.

I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions, will be amended to include Flexal, an arenavirus.

B. Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents, will be amended to include Sabia, an arenavirus, and Equine morbillivirus, a paramyxovirus.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 30, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–27093 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Assessment Plan: Grant Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is given that the document titled "Assessment Plan for the Natural Resource Damage Assessment of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments" ("The Plan") will be available for public review and comment on the date of publication in the **Federal Register**. The U.S. Department of the Interior, and The State of Indiana ("trustees") are trustees for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan. 40 CFR

300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted by November 13, 1997.

ADDRESSES: Requests for copies of the Plan may be made to:

Supervisor, Ecological Services Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, Indiana 47403.

or:

Ms. Elizabeth Admire, Indiana Department of Environmental Management, 100 N. Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on the Plan should be sent to the the Indiana Department of Environmental Management at the address listed above. The trustees will coordinate comment review.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from the suspected injury to natural resources of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments which have been exposed to hazardous substances released by area steel mills, refineries and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended. The Plan addresses the trustees' overall assessment approach and utilizes existing data. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 97–26788 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Point Reyes National Seashore, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Point Reyes National Seashore and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

Background

The purpose of the GMP/EIS will be to state the management philosophy for the Seashore and provide strategies for addressing major issues. Two types of strategies will be presented in the GMP: (1) Those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Point Reyes National Seashore should address these to the Superintendent, Point Reyes National Seashore, Point Reyes, California 94956. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (415) 663–8522. Comments on the scoping of the proposed GMP/EIS should be received no later than January 31, 1998.

Public scoping sessions to receive comments and suggestions will be conducted during the scoping period at the park and in the vicinity. The times and locations of these sessions will be announced in the local media.

The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service. The draft GMP/EIS is expected to be available for public review in the spring of 1999, and the final GMP/EIS and Record of Decision completed early in 2000.

Dated: September 30, 1997.

John Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 97–27107 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management Plan/ Environmental Impact Statement for the Vancouver National Historic Reserve, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service, in cooperation with the City of Vancouver, Washington, U.S. Army, and the State of Washington, will prepare a comprehensive management plan and environmental impact statement (EIS) for the Vancouver National Historic Reserve in Vancouver, Washington.

The 366-acre Reserve, which includes Fort Vancouver National Historic Site, Vancouver Barracks, Officers Row, Pearson Field, the Water Resources Education Center, and portions of the Columbia River Waterfront, was established with the signing of Public Law 104–333 on November 12, 1996. The Reserve is to be administered in accordance with a comprehensive management plan to be developed by a partnership consisting of the U.S. Army, the National Park Service, the City of Vancouver, and the State of Washington Office of Historic Preservation.

The comprehensive management plan will take a long-range look at ways to protect the Reserve resources and opportunities for management and use, and will help determine management direction for the next 10 to 15 years. One of the primary components of the plan is interpretive planning. Interpretive planning identifies the primary interpretive themes, recommends appropriate interpretive services, facilities, and programs that will best communicate the Historic Reserve's purpose, significance, compelling stories, themes, and values. The plan will also define roles and responsibilities of the Reserve partners and provide estimates of management, development, and operating costs and staffing needs.

The legislation establishing the Reserve also directed that the Plan include an economic study for Pearson Field. The Partners will work to determine the scope of the study and to look at funding options in preparing the study as an attachment to the final plan.

DATES: A newsletter will be issued in October 1997, that will describe the planning process and schedule, and list the draft purpose, significance, and interpretive themes for the Reserve.

Public scoping meetings to discuss the planning process, solicit public input on the purpose, significance, and desired future conditions for the Reserve, and identify issues to be addressed in the EIS will be held on October 29, 1997, at 7:30 p.m. at the Doubletree Hotel at the Quay, 100 Columbia Street, Vancouver, Washington, and on October 30, 1997, at the Oregon Historical Society, Oregon History Center, 1200 S.W. Park Avenue, Portland, Oregon, at 12:00 noon.

ADDRESSES: As part of the scoping process, the public is encouraged to send written comments and suggestions concerning the preparation of the plan and EIS by November 14, 1997, to: Tony Sisto, Superintendent, Fort Vancouver National Historic Site, 612 E. Reserve Street, Vancouver, WA 98661.

FOR FURTHER INFORMATION: Contact Mr. Lawrence Beal, Planning Team Leader, at Vancouver National Historic Reserve Planning Team, Denver Service Center—Beal DSC/RP, 12795 West Alameda Parkway, PO Box 25287, Denver, CO 80225–9901, or call (505) 899-0205, ext. 224, or E-mail at: larry—__beal@nps.gov. The NPS Internet Homepage at http://www.nps.gov/planning will also have the newsletter and further information about this plan and EIS.

Dated: September 30, 1997.

Rory Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 97–27106 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 4, 1997. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 29, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Washington County

Evergreen Cemetery, Jct. of University and William Sts., Fayetteville, 97001279

COLORADO

Costilla County

Salazar, A.A., House (Ornamental Concrete Block Buidings in Colorado MPS), 603 Main St., San Luis, 97001281

Delta County

Stolte House (Ornamental Concrete Block Buildings in Colorado MPS), 1812 CO 65, Cedaredge vicinity, 97001280

FLORIDA

Broward County

Bryan Building, 220–230 Brickell Ave., Fort Lauderdale, 97001282

Putnam County

Tenney House and Groveland Hotel, 100 and 102 Commercial Ave., Federal Point, 97001284

Volusia County

Seybold Baking Company Factory (Daytona Beach MPS), 800 Orange Ave., Daytona Beach, 97001283

IOWA

Appanoose County

Appanoose County Sheriff's House and Jail (Centerville MPS), 527 N. Main St., Centerville, 97001292

Courthouse Square Historic District (Centerville MPS), Roughly bounded by Van Buren, Haynes, Maple, and 10th Sts., Centerville, 97001291

Drake Public Library (Centerville MPS), 115 Drake Ave., Centerville, 97001290

Cerro Gordo County

First Church of Christ Scientist, 23 Third St., NW, Mason City, 97001285

Fayette County

Maynard Town Hall and Jail, 330 Main St. W, Maynard, 97001286

Montgomery County

Osborne, Edmund B., House, 1020 Boundary St., Red Oak, 97001287

Poweshiek County

Manatt, William, House, 306 Jackson St., Brooklyn, 97001288

Woodbury County

Nancy Elizabeth Day Nursery, 814 Court St., Sioux City, 97001293

Schulein, Ben and Harriet, House, 2604 Jackson St., Sioux City, 97001289

MARYLAND

Frederick County

Carrollton Manor, 5809 Manor Woods Rd., Buckeystown vicinity, 97001294

Baltimore Independent City

SS JOHN W. BROWN (Liberty Ship), Pier 1, Clinton St., Baltimore, 97001295

MASSACHUSETTS

Worcester County

Bolton Center Historic District, Roughly along Main St., between Harvard Rd. and I–495, Bolton, 97001296

MISSISSIPPI

Attala County

Attala County Courthouse and Confederate Monument, 230 W. Washington St., Kosciusko, 97001299

Lincoln County

First Methodist Church, 215 W. Cherokee St., Brookhaven, 97001298

Lowndes County

Sims–Brown House, 324 9th St. N, Columbus vicinity, 97001297

Yalobusha County

Newberger, Leopold, House, 714 Depot St., Coffeeville, 97001300

NEVADA

White Pine County

McGill Drug Store, 11 4th St., McGill, 97001301

Carson City Independent City

Belknap House, 1206 N. Nevada St., Carson City, 97001302

NEW YORK

New York County

Sullivan, Ed, Theater, 1697–1699 Broadway, New York, 97001303

NORTH CAROLINA

Wake County

Carolina Power and Light Company Car Barn and Automobile Garage, 116 N. West St., Raleigh, 97001304

Raleigh Electric Company Power House, 513—515 W. Jones St., Raleigh, 97001305

PUERTO RICO

San Juan Municipality

Casa Klumb, #1 Ramon B. Lopez St., San Juan, 97001307

Maternity Building, Ave. Ponce de Leon, Pda. 37½, Rio Piedras, 97001306

UTAH

Cache County

Pond, Martin and Martha, Farmstead, 320 South 800 West, Lewiston, 97001308

Davis County

Barnard-Garn-Barber House (Centerville MPS), 1198 N. Main St., Centerville, 97001309

Brandon, Thomas and Margaret, House (Centerville MPS), 185 E. Center St., Centerville, 97001310

Deuel, Osmyn and Emily, House (Centerville MPS), 271 South 200 East, Centerville, 97001311

Duncan, John, Harriet, and Eliza Jennett, House (Centerville MPS), 445 North 400 East, Centerville, 97001312
Ford-Rigby House (Centerville MPS), 1592 N. Main St., Centerville, 97001313
Harris-Tingey House (Centerville MPS), 269 E. Center St., Centerville, 97001314
Holland-Smith-Brown House (Centerville MPS), 19 South 200 East, Centerville, 97001315
Kilbourn-Leak House (Centerville MPS), 170 North 200 East, Centerville, 97001316
Porter, Nathan and Rebecca Cherry and Eliza Ford, Farmstead (Centerville MPS), 370 West 400 South, Centerville, 97001317
Rich-Steeper House (Centerville MPS), 415 S. Main St., Centerville, 97001318
Roberts, B.H., Louisa Smith and Cecilia Dibble, House (Centerville MPS), 315 South 300 East, Centerville, 97001319
Smith-Larsen House (Centerville MPS), 280 E. Center St., Centerville, 97001320
Streeper, William Henry and Mary, House (Centerville MPS), 1020 N. Main St., Centerville, 97001321
Taylor, John W., Janet (Nettie), and May Rich, House, 49 East 500 North, Farmington, 97001325
Thurston-Chase Cabin (Centerville MPS), 975 N. Main St., Centerville, 97001322
Walton, Franklin and Amelia, House (Centerville MPS), 98 West 280 South, Centerville, 97001323
Young Men's Hall—Tingey House (Centerville MPS), 85 South 300 East, Centerville, 97001324

WYOMING

Sweetwater County

Our Lady Sorrows Catholic Church, A at Broadway, Rock Springs, 97001328

[FR Doc. 97–27130 Filed 10–10–97; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on August 6, 1997, in 62 FR 42262, at which time a 60-calendar day comment period was announced. This comment period ended October 6, 1997. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before November 13, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: Revised form.
Title: OPIC's Expedited Screening Questionnaire—Downstream Investments.
Form Number: OPIC–168.
Frequency of Use: Once per project submission.
Type of Respondents: OPIC's Fund Managers.
Standard Industrial Classification Codes: All.
Description of Affected Public: OPIC's Fund Managers.
Reporting Hours: 1 hour per form.
Number of Responses: 150 per year.
Federal Cost: $918.00 annually.
Authority for Information Collection: Section 231(K) (1–2) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC's Fund Managers. The Fund Managers will complete the information for companies in which the Fund proposes to invest. The information collected will be reviewed to determine the expected effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: October 8, 1997.
James R. Offutt,
Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–27132 Filed 10–10–97; 8:45 am]
BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 31, 1997, and published in the **Federal Register** on April 29, 1997, (62 FR 23268), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacture of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of Celgene Corporation to manufacturer methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 3, 1997.
John H. King,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 97–27142 Filed 10–10–97; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–47]

City Drug Company: Revocation of Registration

On August 29, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA), issued an Order to Show Cause to City Drug Company, (Respondent) of Opp, Alabama, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AC5430450, and deny any pending applications for registration under 21 U.S.C. 823(f), for reason that its continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

By letter dated September 19, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Mobile, Alabama on April 15, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On July 24, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications for renewal of such registration be denied. In addition, Judge Randall recommended that favorable consideration be given to a new application for registration should Respondent present any persuasive evidence of proposed procedural changes for the dispensing of controlled substances. On August 4, 1997, Respondent filed a general objection to the Administrative Law Judge's decision, and on August 26, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

By letter dated September 17, 1997, Judge Randall forwarded a letter from Respondent's counsel dated September 9, 1997, that set forth information concerning procedural changes implemented at Respondent and continuing education received by Respondent's owner. This letter was received by the Administrative Law Judge after the record had closed and been transmitted to the Acting Deputy Administrator. The Acting Deputy Administrator has not considered Respondent's September 9, 1997 letter in rendering his decision in this matter since it was submitted after the record had closed, and Respondent did not offer any explanation as to why this information was not submitted prior to the closing of the record.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with one noted exception, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is one of five pharmacies located in Opp, Alabama and has been in existence for approximately 25 years. Joseph Grimes is the owner and pharmacist in charge of Respondent.

On March 2, 1992, a search warrant was executed at Respondent pharmacy as a result of an undercover operation conducted by a local police department. During the search, DEA investigators conducted a physical count of controlled substances on the premises using Respondent's pill counting machine, and collected all relevant controlled substance records for the period January 15, 1990 to March 2, 1992, except purchase invoices and records of controlled substances, if any, returned to suppliers. A DEA investigator later contacted Respondent's suppliers and obtained records of controlled substance sales to Respondent for the period January 15, 1990 to March 2, 1992.

Alabama law requires a pharmacy to conduct an inventory of controlled substances on the 15th day of January of each year. Included in the records seized during execution of the search warrant were these inventories conducted by Respondent for 1990, 1991, and 1992. Mr. Grimes testified at the hearing in this matter that when performing an inventory, he counts all individual dosage units of Schedule II controlled substances, and as permitted by Federal and state law, he estimates the quantities of Schedule III through V controlled substances.

Using Respondent's records, records from Respondent's suppliers, and the closing inventory conducted on March 2, 1992, DEA conducted several accountability audits. One audit of Schedule III and IV controlled substances was conducted using Respondent's January 15, 1990 inventory as the initial inventory figure and DEA's March 2, 1992 count as the closing inventory. This accountability audit revealed that Respondent could not account for 80,223 dosage units, including 18,774 dosage units of Darvocet/propoxyphene 100 mg. and 10,428 dosage units of Darvocet/propoxyphene 65 mg. In addition, the audit revealed an overage of 402 dosage units of hydrocodone 5 mg. (brand and generic).

An audit of the Schedule II controlled substance oxycodone 5 mg. for the period January 15, 1990 to January 15, 1992, revealed an overage of 859 dosage units. This unit used Respondent's January 15, 1990 inventory as the initial inventory figure, and its January 15, 1992 inventory as the closing inventory figure.

Another audit was conducted of Schedule III and IV controlled substances using Respondent's January 15, 1990 inventory as the initial inventory figure and its January 15, 1992 inventory as the closing inventory figure. This audit revealed shortages totaling 13,706 dosage units and overages totaling 705 dosage units.

Following execution of the search warrant, DEA organized prescription records taken from Respondent according to the prescribing doctor. Eleven of these doctors were provided copies of prescriptions attributed to them and each doctor reviewed his patient records in the presence of a DEA investigation to determine whether or not he had authorized the prescriptions found at Respondent pharmacy.

Prescriptions taken from Respondent pharmacy indicated that Dr. Rex Butler had prescribed a total of 2,427 dosage units of controlled substances to five patients. By affidavit dated March 19, 1997, Dr. Butler indicated that he had not authorized any of these prescriptions. Respondent provided affidavits from two of these patients and one of their relatives which indicated that they had witnessed Mr. Grimes receiving authorization from Dr. Butler for controlled substance prescriptions for them. Another of the patients indicated by affidavit that Dr. Butler had prescribed Limbitrol DS for him on several occasions. However, like Judge Randall, the Acting Deputy Administrator finds these patient affidavits to be of limited value since they do not specifically address the prescriptions at issue nor do they reference any time period for their statements. In addition, the Acting Deputy Administrator finds Dr. Butler's affidavit to be more reliable than the patients' affidavits, since Dr. Butler's affidavit is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

Dr. Steven Davis declared in an affidavit dated March 3, 1997, that after reviewing the prescriptions taken from Respondent's files that were attributed to him and comparing them to his patient records, he determined that he had not authorized prescriptions for 20 specifically named patients, amounting to a total of approximately 2,650 dosage units of controlled substances. Respondent provided affidavits from patients or immediate family members of patients concerning Dr. Davis's

prescribing practices. The majority of these affidavits fail to address the specifically questioned prescriptions or to provide relevant time periods for their statements, and are therefore of limited value. However, two of the patients do indicate in their affidavits that they were prescribed the medication on the specific date at issue. Nonetheless, the Acting Deputy Administrator finds Dr. Davis' affidavit to be more reliable than the affidavits of these two patients since Dr. Davis' affidavit is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more then six years after the event. As Judge Randall noted, the affidavit of the wife of one of the patients verified that her husband was prescribed Vicodin in December 1991 by Dr. Davis. Since Dr. Davis does not address in his affidavit whether or not he authorized this prescription, the Acting Deputy Administrator agrees with Judge Randall that the wife's affidavit "warrant[s] a belief that this December 1991 prescription was authorized by Dr. Davis."

Prescriptions taken from Respondent pharmacy indicated that Dr. James Guest had prescribed a total of 1,205 dosage units of Halcion and Xanax for one patient between June 25, 1990 and February 29, 1992. By affidavit dated February 13, 1997, Dr. Guest stated that he had last seen this patient on May 17, 1989, and had not authorized any of the prescriptions taken from Respondent pharmacy that were attributed to him. Respondent provided affidavit from the patient and her daughter which indicated that Mr. Grimes had telephoned Dr. Guest's office for authorization to dispense Halcion and Xanax. However, like many of the previously discussed affidavits, these affidavits fail to address the specific prescriptions in question or to provide any specific time period for their statements.

Respondent's prescription records indicated that Dr. Joe Sanders authorized the dispensing of 2,600 dosage units of propoxyphene N–100 or Darvocet N–100 to one patient between August 31, 1990 and February 1, 1992. But, in a letter dated June 4, 1993, Dr. Sanders wrote that he had last seen the patient on May 17, 1990, and had no record or recollection of calling in any prescriptions for the patient since that time.

According to Respondent's records, between January 19, 1990 and November 21, 1991, Respondent dispensed 2,280 dosage units of lorazepam 2 mg. to one patient as allegedly authorized by Dr. Kirit Joshi. However, by affidavit dated February 18, 1997, Dr. Joshi declared that while he has issued that patient prescriptions for other controlled substances, he had not authorized the lorazepam prescriptions for the patient. In an affidavit, the patient's husband stated that, "[t]o my knowledge Joe Grimes has phoned Dr. Kiruit [sic] Joshi's office for lorazepam and other medication in 1990 and 1992 for my wife * * *." The Acting Deputy Administrator finds Dr. Joshi's affidavit to be more reliable than the husband's affidavit, since Dr. Joshi's affidavit is based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the husband's affidavit is based upon his recollection more than six years after the event.

Respondent's records indicate that Dr. D.A. Marsh telephoned two prescriptions to Respondent for an individual, one on November 25, 1991, for 18 dosage units of Fiorinal #3 with codeine, and the other on December 5, 1991, for 6 dosage units of Fiorinal #3 with codeine. In an affidavit dated February 19, 1997, Dr. Marsh declared that he did in fact see this patient on November 19 and 25, 1991, and that he did write her a prescription for 20 Fiorinal #3 with codeine on November 25, 1991. However, Dr. Marsh stated he did not orally authorize any prescriptions for this individual, and specifically denied authorizing the two prescriptions noted above. In an affidavit dated April 9, 1997, the patient stated that, "[p]rescriptions for Fiorinal #3 were authorized for me by D.A. Marsh MD in November and December of 1991 and were filled at [Respondent] * * *. Some of these prescriptions were phoned in." She indicated that she was allergic to a drug prescribed for her by Dr. Marsh and that once he was informed of this allergy, "Dr. Marsh authorized a prescription for 6 Fiorinal with codeine capsules for me." While the patient's affidavit might help explain the prescription in Respondent's files for the six Fiorinal #3 with codeine, it does not address the 18 dosage units allegedly dispensed pursuant to an oral prescription, on the same day Dr. Marsh admitted issuing the patient a written prescription for 20 dosage units. However, as with the other affidavits, the Acting Deputy Administrator finds Dr. Marsh's affidavit to be more reliable than that of the patient since it is based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the patient's affidavit is based upon her recollection more than six years after the event.

According to Respondent's records, between January 1, 1990 and March 2, 1992, Dr. Donald Newman orally authorized prescriptions for 2,600 dosage units of chlordiazepoxide 10 mg. for a specific patient. By affidavit dated February 18, 1997, Dr. Newman stated that while he did prescribe controlled substances on occasion to this patient, it was always in writing and he did not authorize any of the oral prescriptions for chlordiazepoxide found in Respondent's files. Respondent provided an affidavit from this patient dated April 9, 1997, who stated that, "I have witnessed Joe Grimes calling Dr. Donald Newman's office for permission to refill Librium (chlordiazepoxide HCL) on several occasions during the period of January 1990 to January 1991." However, this affidavit does not address the specific prescriptions at issue. Again, the Acting Deputy Administrator finds Dr. Newman's affidavit to be more reliable than that of the patient since it based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the patient's affidavit is based upon her recollection more than six years after the event.

According to Respondent's records, Dr. Steven Price authorized five prescriptions for a total of 150 dosage units of controlled substances to three patients. As to the first patient, Dr. Price stated in an affidavit dated February 20, 1997, that while he had prescribed the patient Xanax in January 1991, he did not authorize the prescription for Xanax found in Respondent's files dated February 22, 1991. Regarding the second patient, Dr. Price denied prescribing diazepam 5 mg. for the individual on the dates listed on the three prescriptions found in Respondent's files. Finally, Dr. Price stated that he has no record of the patient whose name appeared on the fifth prescription attributed to Dr. Price. The first patient, in an affidavit dated April 9, 1997, stated that Dr. Price had prescribed Xanax for her in January and February 1991. This affidavit confirms Dr. Price's conclusion, after reviewing his patient's chart, that he had prescribed Xanax in January of 1991, yet conflicts with his conclusion concerning the February 1991 prescription. Regarding the second patient, Respondent provided an affidavit dated April 9, 1997, from an individual who stated that she could "verify that [the patient] was prescribed Valium (diazepam) by Dr. Steven Price and sometimes the prescription was phoned into [Respondent]. I personally

picked up this medication on many occasions for [the patient)." The affidavit fails to give a time period for her statements. The Acting Deputy Administrator finds Dr. Price's affidavit to be more reliable than those submitted by Respondent, since it is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon the recollection of individuals more than six years after the event.

During execution of the search warrant, investigators obtained from Respondent five prescriptions allegedly authorized by Dr. B.A. Santa Rossa for an individual for a total of 180 dosage units of proproxyphene 65 mg. and 120 dosage units of Wygesic. In his affidavit dated March 17, 1997, Dr. Santa Rossa stated that while he had prescribed controlled substances for this individual in the past, he always issued a written prescription for the drugs. In addition, a review of his patient record revealed that he had not authorized any of the five prescriptions attributed to him that were found in Respondent's files. Further, in his affidavit, Dr. Santa Rossa denied issuing a prescription to a second individual on June 8, 1991, for 30 dosage units of diazepam 10 mg. However, Respondent provided an affidavit from this second patient who stated that, "according to my best judgment and recol[l]ection do attest to the fact that Joe Grimes has called for permission to fill diazepam 10 mg. in June 1991." As Judge Randall noted, "[e]ven if this affidavit is given more credibility than Dr. Santa Rossa's affidavit, a total of 300 dosage units of controlled substances were dispensed, without authority, by the Respondent's pharmacists * * *."

According to Respondent's records, Dr. Richard Spurlin authorized multiple prescriptions to six individuals which accounted for the dispensation of over 12,000 dosage units of controlled substances by Respondent. By affidavit, Dr. Spurlin stated that after reviewing his records for these patients, he determined that while he had at various times issued these individuals controlled substances prescriptions, he had not authorized any of the prescriptions found in Respondent's files. Respondent provided affidavits from four of these patients. Three of them indicated that they had observed Mr. Grimes telephoning Dr. Spurlin's office for authorization to fill or refill prescriptions. Yet, none of these affidavits address the specific prescriptions at issue nor do they provide a time period for the statements made. The other patient's affidavit indicated that "Dr. Spurlin has authorized prescriptions for Xanax .25 mg. (alprazolam) and Halcion for me from 1988 to 1997." The Acting Deputy Administrator finds that while this patient references a general time period, like the other patients, she fails to address the specific prescriptions at issue. Therefore,the Acting Deputy administrator finds Dr. Spurlin's affidavit to be more reliable than those submitted by Respondent, since it is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

In December 1992, DEA investigators asked Dr. Reddoch Williams to review prescriptions found in Respondent's files that indicated that they were authorized by him. By letter dated February 26, 1997, Dr. Williams certified that he had reviewed the original prescriptions and his patient filed. Dr. Williams also wrote that he had not authorized "[Respondent] or any other person or pharmacy to fill or refill the prescriptions which are marked as 'forgery' or otherwise marked as not authorized by me." Some of Dr. Williams handwritten comments are difficult to read and other comments are not definitive in nature, being qualified with statements such as "I believe" or "I think". Therefore, the Acting Deputy Administrator declines to find that any of these prescriptions were unauthorized. However, in those instances where the prescriptions are clearly marked as forgeries without any qualifying language, the Acting Deputy Administrator finds that these prescriptions were not authorized by Dr. Williams. These unauthorized prescriptions accounted for the dispensation of over 1,100 dosage units of controlled substances. Three of the patients, whose names appeared on the prescriptions which were clearly marked as forgeries by Dr. Williams, provided affidavits. However, these affidavits did not provide any time period for their statements and the other only provided a general reference to a time period, but did not specifically reference the date of the prescription at issue. Like with the previously discussed affidavits, the Acting Deputy Administrator finds Dr. Williams' comments to be more reliable than the patients' affidavits, since his comments are based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

In conducting the accountability audits which revealed significant shortages, DEA investigators included the unauthorized prescriptions as drugs for which Respondent could account. Mr. Grimes testified at the hearing before Judge Randall that he never filled a prescription without a doctor's authorization, and that while he disputes the results of the accountability audits, he does not have any explanation for the shortages and overages revealed by the audits.

The state of Alabama has not withdrawn its licensing commission from Respondent. In addition, while arrested and charged, Mr. Grimes was ultimately found not guilty by a jury of all charges stemming from the undercover operation conducted by the local police department which led to the execution of the search warrant. Further, it is undisputed that there have never been any complaints about Respondent or Mr. Grimes made by any drug supplier, and no doctor or pharmacist has ever contacted Mr. Grimes about illegal prescriptions. Finally, Respondent introduced into evidence a letter from the co-chairman of a drug company attesting to Mr. Grimes' honesty and integrity.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 F.R. 16,422 (1989).

Respondent contends that the Government has not met its burden of proof in establishing that Respondent's continued registration would be inconsistent with the public interest. Judge Randall concluded and the Acting Deputy Administrator concurs that all five factors are relevant in determining the public interest in this matter.

As to factor one, it is undisputed that the State of Alabama has not taken any action against Respondent pharmacy or its owner Mr. Grimes. Regarding Respondent's conviction record relating to controlled substances, it is also undisputed that neither Respondent pharmacy nor its owner Mr. Grimes has been convicted of any such offense.

Factors two and four, Respondent's experience in dispensing controlled substances and its compliance with state, Federal, or local laws relating to controlled substances, are clearly relevant in determining whether Respondent's continued registration would be inconsistent with the public interest. The Acting Deputy Administrator finds that Respondent pharmacy dispensed over 25,000 dosage units of controlled substances without authorization from a physician in violation of 21 U.S.C. 829. Respondent argues that the physicians whose names appeared on the prescriptions at issue could have forgotten to note in the patient chart that the telephone prescriptions had been authorized. Respondent further argues that a patient's recollection is more reliable, since a patient is more likely to remember what was actually prescribed to him or her. Respondent also contends that in instances where there was no patient affidavit, Mr. Grimes was able to recall the circumstances of the dispensing at issue.

The Acting Deputy Administrator concludes that it is highly unlikely that eleven different physicians forgot to note numerous prescriptions in patient charts which accounted for the dispensing of over 25,000 dosage units of controlled substances. Also as stated previously, most of the patients' affidavits are of little value since they do not address the specific prescriptions at issue nor do they provide a time period for the statements contained in the affidavits. In addition, the physicians' affidavits were based upon a review of patient records prepared contemporaneously with the events at issue, whereas the patients' affidavits and Mr. Grimes' testimony are based upon their recollection of events which occurred over six years ago.

Therefore, the Acting Deputy Administrator finds that Respondent pharmacy dispensed controlled substances in violation of 21 U.S.C. 829. In addition, Mr. Grimes violated his corresponding responsibility as set forth in 21 C.F.R. 1306.04, to ensure that controlled substances are only prescribed and dispensed for a legitimate medical purpose.

Additionally, pursuant to 21 U.S.C. 827, a registrant must maintain complete and accurate records of controlled substances received, sold, delivered or otherwise disposed of by him. The Acting Deputy Administrator finds that accountability audits of Respondent's controlled substances handling revealed that for the period January 15, 1990 to March 1992, Respondent could not account for over 80,000 dosage units of Schedule III and IV controlled substances. In addition, the audits revealed overages of some audited substances, including an overage of 859 dosage units of oxycodone 5 mg., a Schedule II controlled substance. In conducting these audits, the investigators included the unauthorized prescriptions in their calculation of the total amount of controlled substances dispensed by Respondent. Had Respondent not been given credit for these unauthorized dispensations, the shortages would have been significantly greater.

In its post-hearing filing, Respondent proposes a number of possible explanations for the audit discrepancies. First, Respondent argues that as allowed, it estimated the amount of Schedule III through V controlled substances on hand when conducting its yearly inventory, and consequently, it is possible that the overages and shortages could have resulted from these estimations. Respondent also argues that the audit results were possibly the result of a review by DEA of incorrect or incomplete receiving and/or return records. Next Respondent argues that it is possible that the audit discrepancies were the result of other prescription records not being examined at the time of the audit. In support of this argument, Respondent contends that in conducting the audit, DEA did not examine additional ledgers used by Respondent during the audit period. Finally, Respondent argues that another possible explanation for the audit results is that DEA's closing inventory conducted on March 2, 1992, was inaccurate since DEA used Respondent's pill counting machine without first verifying the accuracy of the machine.

The Acting Deputy Administrator concurs with Judge Randall's conclusion that these possibilities advanced by Respondent "are mere speculation, unsupported by the record in this case." Respondent did not provide any specific evidence that would account for the over 80,000 dosage unit shortage of controlled substances. While it is permissible to estimate Schedule III through V controlled substances when conducting an inventory, clearly such estimations would not account for over 80,000 dosage units. In addition, a registrant cannot estimate Schedule II controlled substances, however, the audit revealed a significant overage of the one Schedule II controlled substance audited. The investigators who conducted the audits were confident that they had obtained all of the necessary records. It is significant to note that if one were to accept Respondent's argument that the receiving records were incomplete, then the shortages revealed by the audit should actually have been greater, since Respondent would have had to account for more controlled substances. As to the prescription ledgers that Respondent argues would have effected the audit, the investigator testified that those ledgers were examined, however, since they did not contain any information necessary for conducting an audit, they were discounted. Finally, Respondent did not present any evidence that its pill counting machine was not operating properly.

Thus, the Acting Deputy Administrator concludes that the preponderance of the evidence supports a finding that Respondent did not maintain complete and accurate records of controlled substances as required by 21 U.S.C. 827, as evidenced by the results of the audits. The Acting Deputy Administrator finds it extremely significant that had DEA not included the unauthorized prescriptions in the audit and given Respondent credit for those dispensations, the shortages would have been far greater.

As to factor five, the Acting Deputy Administrator concurs with Judge Randall's finding that Mr. Grime's failure to accept responsibility for the significant unexplained shortages and unauthorized dispensations of controlled substances indicates a potential threat to the public health and safety. Previously, DEA's then-Administrator found that a pharmacist's "refusal to acknowledge the impropriety of his dispensing practices * * * give[s] rise to the inference that [he] is not likely to act more responsibly in the future." Medic-Aid Pharmacy, 55 FR 30,043 (1990); see also, Rocco's Pharmacy, 62 FR 3056 (1997).

The Administrative Law Judge concludes that "[t]he Government has proven by a preponderance of the evidence that the Respondent's past conduct would justify revocation of its DEA Certificate of Registration." Judge Randall further concluded that Respondent did not present any mitigating or rehabilitating evidence as it relates to its dispensing practices. Therefore, Judge Randall recommended that Respondent's DEA Certificate of Registration be revoked. Judge Randall further recommended however, that "[s]ubsequently, should the Respondent provide any evidence of proposed procedural changes for the dispensing of controlled substances in a new application for a Certificate of Registration, and should such evidence be persuasive, then I would concur with a favorable decision concerning that subsequent application."

The Acting Deputy Administrator agrees with the Administrative Law Judge that the Government has met its burden of proof and that Respondent's registration should be revoked. However, the Acting Deputy Administrator does not adopt Judge Randall's recommendation that favorable consideration will be given to a new application for registration should Respondent present persuasive evidence of procedural changes regarding the dispensing of controlled substances. A change in procedures, in and of itself, might not justify granting Respondent a new registration, since Mr. Grimes has failed to acknowledge that he and his pharmacy have done anything improper. An unexplained shortage of $80,000 dosage units and the unauthorized dispensation of over 25,000 dosage units of controlled substances are not merely minor technical violations. The egregious nature of the violations in this matter demonstrate that Respondent has failed miserably in its responsibility as a DEA registrant to protect against the diversion of controlled substances from the legitimate chain of distribution. Respondent is certainly free to apply for a new DEA Certificate of Registration. Any such application will be evaluated in light of all of the relevant circumstances in existence at that time to determine whether to grant the application.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate AC5430450, issued to City Drug Company, be, and it hereby is, revoked. The Acting Deputy Administrator further order that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective November 13, 1997.

Dated: October 7, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-27144 Filed 10-10-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 28, 1997, and published in the **Federal Register** on March 28, 1997, (62 FR 14944), Johnson & Johnson Pharmaceutical Partners, HC02 State Road 933, KM0.1 Makey Ward, HC-02 Box 19250, Gurabo, Puerto Rico 00778-9629, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson & Johnson Pharmaceutical to manufacturer sufentanil is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 1, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-27143 Filed 10-10-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of a New System of Records; Amendments To Existing Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of a new system of records; amendments to existing systems of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds a new system of records to this Department's current systems of records. With the addition of this new system of records, the Department will be maintaining 145 systems of records. This document also proposes to revise the Routine Uses Category for two of the Department's existing systems of records. The proposed routine uses provide additional protection to the privacy interests of the participants in the surveys which are being conducted by the managers of the relevant systems of records. Finally, various administrative (non-substantive) changes are being made to three of the existing systems of records. Two of the three systems being amended administratively, are the same systems which are the subject of the proposed revised Routine Uses Category.

DATES: Persons wishing to comment on this new system of records and on the proposed new Routine Uses may do so by November 24, 1997.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, the new system of records, and the proposed amendments to the two existing systems, DOL/BLS-13, and DOL/BLS-17, will become effective on December 8, 1997. The remaining amendments, which relate to DOL/OAW-1, DOL/BLS-13 and DOL/BLS-17, are administrative (non-substantive), and therefore, will become effective on October 14, 1997.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW, Room N-2428, Washington, DC 20210, telephone (202) 219-8188.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records currently maintained pursuant to the Act. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. The document also proposes to amend the Routine Uses Category for two of the Department's existing systems of records. On September 23, 1993, in Volume 58 at page 49548 of the **Federal Register**, we published a notice containing 138 systems of records which were maintained under the Act. Subsequent publications of new systems were made on April 15, 1994 (59 FR 18156) (two new systems); on May 10, 1995 (60 FR 24897) (one new system); and on June 15, 1995 (60 FR 31495) (one new system); and on April 7, 1997 (62 FR 16610) (one new system). The new system published herein will increase the total number of systems to 145.

1. The new system published herein is entitled DOL/OSBP–1, Office of Small Business Programs, Small Entity Inquiry and Complaint Tracking System. It is a non-exempt system of records. The new system is being established in order to comply with the statutory requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The system will enable the Department to report to the Small Business Administration (SBA), and to the Congress, on how it assists small entities in complying with Departmental regulations.

2. The Department also hereby proposes to amend two existing systems of records, DOL/BLS–13, and DOL/BLS–17, which are each research surveys of youth, so that a revised Routine Uses Category can be substituted into these two systems of records, The revised Routine Uses Category will provide additional protection to the privacy interests of the participants in the surveys which are being conducted by the managers of each of these systems of records. This additional privacy protection, for the participants in the survey, is achieved by making several of the Universal Routine Uses, contained within the General Prefatory Statement, inapplicable to these two systems of records. DOL/BLS–13 was last published on September 23, 1993 at 58 FR 49592, and DOL/BLS–17 was last published on April 7, 1997 at 62 FR 16612.

3. This document makes various administrative (non-substantive) changes to the above discussed systems, DOL/BLS–13 and DOL/BLS–17. Since these administrative amendments are non-substantive, public comment is not required. These changes merely refine each of the systems.

4. Finally, the Department is making an administrative (non-substantive) amendment to DOL/OAW–1 at this time by transferring this system of records into the Employment Standards Administration, and by renaming it as DOL/ESA–45. This amendment is necessary because the Office of the American Workplace no longer exists as a component of the Department of Labor. The Office of Labor-Management Standards which created and maintains this system has been transferred into the the Employment Standards Administration.

Universal Routine Use

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. These eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at pages 49554–49555 of Volume 58 of the **Federal Register**. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. In the May 10, 1995, June 15, 1995 and April 7, 1997 publications, the General Prefatory Statement was republished as a convenience to the reader of the document. We are again republishing the General Prefatory Statement as a convenience to the reader. At this time we are making a syntactical change to paragraph 10.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the proposed amendment in this document. A report on the new system, and on the proposed revisions to DOL/BLS–13 and DOL/BLS–17, has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r). The administrative (non-substantive) amendments do not have to be submitted for comment to OMB and to the Congress.

General Prefatory Statement

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses *do not* apply to DOL/OASAM–5, Rehabilitation and Counseling File, nor to DOL/OASAM–7, Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from any system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Public Law 93–647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation and the legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

I. Publication of a New System of Records

DOL/OSBP–1

SYSTEM NAME:

Office of Small Business Programs, Small Entity Inquiry and Complaint Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Labor, Office of Small Business Programs, Frances Perkins Building, 200 Constitution Ave., NW, Room C–2318, Washington, DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make oral or written complaints about, or requests or inquiries concerning, enforcement activities under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) of the U.S. Department of Labor (Department).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the name and address of the individuals making complaints, requests, or inquiries concerning enforcement activities of the Department of Labor, and any other information under SBREFA necessary to respond to the complaint or request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subtitles A and B of The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, sec. 213, 110 Stat. 858–859.

PURPOSES:

Section 213 of Title II of Pub. L. 104–121 requires each agency to establish a program for providing informal guidance to small entities regulated by that agency. Section 213(c) requires the agency to report to Congress on "the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations." The records in this system are maintained for the purpose of complying with the above statutory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those Universal Routine Uses included in the Department's General Prefatory Statement, last republished in the **Federal Register** on April 7, 1997, at 62 FR 16611–16612, relevant records may be disclosed to the Small Business Administration (SBA).

The records may be disclosed to the SBA in response to a referral from the SBA of a complaint filed against this Department by a small entity. The above described referrals are authorized by Subtitles A and B of The Small Business Regulatory Enforcement Fairness Act of 1996.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Accessed by authorized personnel only. Passwords are used for the data, which is electronically stored.

RETENTION AND DISPOSAL:

Five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Small Business Programs, U.S, Department of Labor, 200 Constitution Ave., NW, Room C–2318, Washington, DC 20210.

NOTIFICATION PROCEDURES:

Mail all inquiries or present in writing to System Manager at above address.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the system manager at the address listed above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of the creation of the file.

c. Individuals requesting access must also comply with the Privacy Act regulations regarding the verification of identity at 29 CFR 70a.70.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the system manager and must meet the requirements of 29 CFR 70a.7.

RECORD SOURCE CATEGORIES:

Individuals who make complaints, requests, other inquiries concerning enforcement activities of the Department of Labor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

II. Publication of a Proposed Amendment

DOL/BLS–13, National Longitudinal Survey of Youth (NLSY) Database, is amended by revising the category for Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. At this time, the various administrative (non-substantive) amendments are being published as set forth below.

DOL/BLS–13

SYSTEM NAME:

National Longitudinal Survey of Youth 1979 (NLSY79) Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Opinion Research Center (NORC), University of Chicago, 1155 E. 60th Street, Chicago, IL 60637.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A random sample of the general population who were ages 14–21 on January 1, 1979, with over representation of blacks, Hispanics, poor whites, and persons serving in the military.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, control number, marital history, education, military service, Armed Services Vocational Aptitude Battery scores, job history, unemployment history, training history, fertility/family planning, child health history, alcohol use, drug use, reported police contacts, assets and income, school records, Government assistance program participation, childhood residence, child development outcomes, history of mother/child relationship, time use, time spent on childcare and household chores, and immigration history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 2.

PURPOSE(S):

To serve a variety of policy-related research interests concerning the labor market problems of youth. Data are used for studies such as: Diffusion of useful information on labor, examination of employment and training programs, understanding labor markets, guiding military manpower and measuring the effect of military service, analysis of social indicators and measuring maternal and child inputs and outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Bureau of Labor Statistics may release records to the National Opinion Research Center (NORC) and/or Ohio State University to compile data which are not individually identifiable for use by the general public and other federal agencies who are conducting labor force research. Under written agreements to protect the confidentiality and security of identifying information, BLS provides potentially-identifying geographic information to researchers to conduct specific research projects which further the mission and functions of BLS. The records also may be disclosed where required by law. Items 3, 4, 7, 8, 9, 10, and 11 listed in the General Prefatory Statement to this document are not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and on paper.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, NLS Youth 1979 Cohort Study, Office of Employment and Unemployment Statistics, Room 4945, Postal Square Building, 2 Massachusetts Ave., NE, Washington, DC 20212.

NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

From individuals concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

III. Publication of a Second Proposed Amendment

DOL/BLS–17, National Longitudinal Survey of Youth 1996 (NLSY96) Database, is amended by revising the category for Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. At this time, the various administrative (non-substantive) amendments are being published as set forth below.

DOL/BLS–17

SYSTEM NAME:

National Longitudinal Survey of Youth 1997 (NLSY97) Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Opinion Research Center (NORC), University of Chicago, 1155 E. 60th Street, Chicago, IL 60637.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A random sample of the general population who were ages 12–16 on December 31, 1995 with over representation of disabled students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, control number, marital history, education, job history, unemployment history, military service, training history, fertility/family planning, child health history, alcohol use, drug use, reported police contacts, anti-social behavior, assets and income, school records, Government assistance program participation, childhood residence, child development outcomes, expectations, history of mother/child relationship, time use, time spent on child care, immigration history, and Armed Services Vocational Aptitude Battery scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 2.

PURPOSE(S):

To serve a variety of policy-related research interests concerning the school-to-work transition and the labor market problems of youth. Data are used for studies such as: Diffusion of useful information on labor, examination of employment and training programs, understanding labor markets, analysis of social indicators, measuring maternal and child inputs and outcomes, norming the Department of Defense Armed Services Vocational Aptitude Battery in its computerized adaptive form, and creation of norms for the Department of Defense Interest Measure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Bureau of Labor Statistics may release records to the National Research Center (NORC) and/or Ohio State University to compile data which are not individually identifiable for use by the general public and federal agencies who are conducting labor force research. Under written agreements to protect the confidentiality and security of identifying information, BLS provides potentially-identifying geographic information to researchers to conduct specific research projects which further the mission and functions of BLS. The records also may be disclosed where required by law. Items 3, 4, 7, 8, 9, 10, and 11 listed in the General Prefatory Statement to this document are not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and on paper.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data, and locked locations for paper files.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, NLS Youth 1996 Cohort Study, Office of Employment and Unemployment Statistics, Room 4945, Postal Square Building, 2 Massachusetts Ave., NE., Washington, DC 20212.

NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

From individuals concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

IV. Publication of an Administrative (Non-Substantive)

DOL/OAW–1, entitled Investigative Files, a system of records maintained by the Office of Labor-Management Standards, is amended by transferring it to the Employment Standards Administrative and by revising its name to read as follows:

DOL/ESA–45

SYSTEM NAME:

Investigative Files of the Office of Labor-Management Standards.

* * * * *

Signed at Washington, DC this 2nd day of October, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–27080 Filed 10–10–97; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,553; Brainard Rivet Co., Girard, OH
TA–W–33,735; Monarch Machine Tool Co., Sidney, OH
TA–W–33,680; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA
TA–W–33,703; Willamette Industries, Albany, OR
TA–W–33,719; Liberty Fabrics, North Bergen, NJ
TA–W–33,749; U.S. Can Co., Racine, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,778; Oneita Industries, Cullman, AL
TA–W–33,777; U.S. Ring Binder Corp., New Bedford, MA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,799; West Virginia Shoe Co., Marlinton, WV
TA–W–33,774; Noma Appliance and Electronics, Noma, AZ

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,493; Honeywell, Inc., Arlington Heights Operation, Arlington Heights, IL

All production at the subject plant was transferred to other U.S. located plants. Sales of these products as reported by the company, have not declined.

TA–W–33,757; International Titanium Corp., Cedartown, GA
TA–W–33,737; Klein Bicycle Corp., Chehalis, WA
TA–W–33,715; Brandon Apparel Group, Inc., Columbus, WI
TA–W–33,619; Trinity Industries Ladish Co., Russellville, AR
TA–W–33,753; Borg Warner Automotive, Inc., Blytheville, AR

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination

references the impact date for all workers for such determination.

TA-W-33,683; Lucas Varsity Kelsey-Hayes, Light Vehicle Braking System Div., Brighton, MI: July 15, 1996.
TA-W-33,526; The Somon Co., Leeds, AL: August 28, 1996.
TA-W-33,781; Mitsubishi Consumer Electronics, Inc., Santa Ana, NY: August 21, 1996.
TA-W-33,764; Kaiser Aluminum & Chemical Corp., Engineered Products Div., Erie, PA: August 14, 1996.
TA-W-33,793; Thomas & Betts, Augat Div., Sanford, ME: August 7, 1996.
TA-W-33,692; Wright's Knitwear Corp., Hamburg, PA: July 17, 1996.
TA-W-33,718 A & B; McCoy Manufacturing #3, Caledonia, MS, McCoy Manufacturing #2, Amory, MS and Glenn Slacks, Bruce, MS: July 25, 1996.
TA-W-33,755; Perfect Cirle/Sealed Power Div., Dana Corp., Rochester, IN: August 6, 1996.
TA-W-33,587; Angelica Image Apparel, Missouri Service Center, Mountain View, Mo: June 4, 1996.
TA-W-33,748; United Technologies Automotive, Inc., 2000 Walter Glaub Dr., Plymouth, IN: July 30, 1996.
TA-W-33,527; Cascade Woolen Mill, Inc., Oakland, ME: March 24, 1997.
TA-W-33,598; Littlestown Mfg. Co., Strouse-Baer Div., Littletown, PA: June 16, 1996.
TA-W-33,801; Louisville Mfg. Co., Louisville, GA: August 26, 1997.
TA-W-33,652; C.L. Fashions, Inc., Hialeah, FL: June 24, 1996.
TA-W-33,647; Weyerhauser Wood Products—Plywood Div., Plywood, NC: July 1, 1996.
TA-W-33,747; Stuffed Shirt, Inc., Slidell, LA: July 24, 1996.
TA-W-33,625; Alliant Techsystems, Inc., Radford Army Ammunition Plant, Radford, VA: June 23, 1996.
TA-W-33,754; Unique Finishing, Inc., Wrightsville, GA: August 8, 1996.
TA-W-33,636; West Apparel, LLC, Woodville, AL: June 12, 1996.
TA-W-33,791; Ergodyne Corp., Pence, WI: August 22, 1996.
TA-W-33,436; Desert Cleaners, Inc., El Paso, TX: March 20, 1996.
TA-W-33,788; Conaway-Winter, Inc., Compo Shoes Div., Birch Tree, MO: August 17, 1996.
TA-W-33,721; Power Cords & Cables Corp., College Point, NY: September 22, 1997.
TA-W-33,762; Eddie Mowad Mfg Co., Inc., El Paso, TX: August 11, 1996.
TA-W-33,613; Lear Corp., Hair Haven Plant, Fair Haven, MI: June 19, 1996.
TA-W-33,812; Cumberland Apparel Co., Div. of Lee's Manufacturing Co., Inc., Monticello, KY: August 27, 1996.
TA-W-33,769; Toy Biz, Inc. Colorforms, Ramsey, NJ: August 15, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the revelant period.

NAFTA-TAA-01867; International Titanium Corp., Cedortown, GA
NAFTA-TAA-01673; Florida Specialties, Inc., Homestead, FL
NAFTA-TAA-01763; Roth Farms, Inc., Belle Glade, FL
NAFTA-TAA-01715; B. Barb Farms, Inc., Belle Glade, FL
NAFTA-TAA-10764; E & R Harvesting/ Trucking, Belle Glade, FL
NAFTA-TAA-01818; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA
NAFTA-TAA-01767; A-1 Harvesting J & K Contracting, Inc., Belle Glade, FL
NAFTA-TAA-01738; Brainard Rivet Co., Girard, OH
NAFTA-TAA-01765; A. Duda & Sons, Inc., Belle Glade, FL
NAFTA-TAA-01720; Diamond "I" Farms, Inc., Florida City, FL
NAFTA-TAA-01844; Willamette Industries, Albany, OR
NAFTA-TAA-01724; Thomas Produce Boca Raton, FL
NAFTA-TAA-01919; Applied Molded Products Corp., Watertown, WI
NAFTA-TAA-01884; Versa Technologies, Inc., Moxness Products Div., Wausau, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-01821; Evergreen Trails, dba Gray Line of Seattle, Seattle, WA
NAFTA-TAA-01929; Trutom (US) Ltd, Albany, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA-TAA

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

NAFTA-TAA-01803; Weyerhaeuser, Wood Products—Plywood Div., Plymouth, NC: July 1, 1996.
NAFTA-TAA-01915; Whisper Soft Mills, Inc., Wallace, NC: September 4, 1996.
NAFTA-TAA-01790; West Apparel, LLC, Woodville, AL: June 12, 1996.
NAFTA-TAA-01901; Ergodyne Corp., Pence, WI: August 22, 1996.
NAFTA-TAA-01896; Electrohome, Inc., Display Technologies Div., Carthage, MO: August 21, 1996.
NAFTA-TAA-01838; Lucas Varity Kelsey-Hayes, Brighton, MI: July 14, 1996.
NAFTA-TAA-01900; Perfect Circle/ Sealed Power Div., Dana Corp., Rochester, IN: August 7, 1996.
NAFTA-TAA-01693; Angelica Image Apparel, Missouri Service Center, Mountain View, MO: June 12, 1996.
NAFYA-TAA-01868; Kaiser Aluminum & Chemical Corp., Engineered Products Div., Erie, PA: August 7, 1996.
NAFTA-TAA-01922; The Solomon Co., Leeds, AL: August 28, 1996.
NAFTA-TAA-01905; Thomas and Betts, Augat Div., Sanford, ME: August 8, 1996.
NAFTA-TAA-01876; Eddie Mowad Mfg, Co., Inc., Milwaukee, WI: August 11, 1996.
NAFTA-TAA-01813; MagneTek, Inc., Huntington, IN: July 2, 1996.
NAFTA-TAA-01782; Flexel, Inc., Covington, IN: June 23, 1996.

I hereby certify that the aforementioned determinations were issued during the month of September, 1997. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 30, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-27074 Filed 10-10-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination on the date of which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later October 24, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 24, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 09/22/97

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,826	Chevron USA (Wkrs)	Healdton, OK	09/09/97	Oil and Petroleum Products.
33,827	Jobs for St. Landry (Wkrs)	Opelousas, LA	09/11/97	High Pressure Pipe Fittings.
33,828	Dana Corp. (USWA)	Reading, PA	09/12/97	Heavy Truck Siderail.
33,829	Trans World Airlines (IAMAW)	Kansas City, MO	09/11/97	Service Aircraft and Aircraft Engines.
33,830	Calvin Klein (UNITE)	New York, NY	09/03/97	Ladies' Sportswear.
33,831	Comsat RSI Plexsys (Wkrs)	Corinth, MS	08/26/97	Cellular Switching Systems.
33,832	Medline Industries, Inc. (Comp)	Frisco City, AL	09/10/97	Medical Apparel for Doctors, Nurses.
33,833	Pacific Refining Co (Wkrs)	Hercules, CA	09/05/97	Crude Oil Refiner.
33,834	Jonbil, Inc (Comp)	Chase City, VA	09/02/97	Blue Jeans.
33,835	Hillsboro Glass Co (GMP)	Hillsboro, IL	09/02/97	Glass Bottles for Liquor Companies.
33,836	Arnold Palmer Golf Co (Comp)	Pocahontas, AR	09/05/97	Golf Bags.
33,837	Russell Corp. (Wkrs)	Cumming, GA	08/15/97	Basic T-Shirts.
33,838	Elaine Benedict, Inc (Wkrs)	Miami, FL	08/31/97	Sportswear.
33,839	Irwin Manufacturing Corp (Comp)	Alma, GA	08/01/97	Baby's Apparel.
33,840	Energizer Power Systems (Comp)	Gainesville, FL	08/27/97	Rechargeable Batteries.
33,841	M. Fine and Sons Mfg. (UFCW)	Bedford, IN	09/02/97	Boys' Blue Denim Jeans.
33,842	Applied Molded Products (LETC)	Watertown, WI	08/13/97	Fiberglass Reinforced Plastics.
33,843	Lummi Indian Gaming Comm. (Wkrs)	Bellingham, WA	08/29/97	Provides Gaming Services.
33,844	Bose Corp (Wkrs)	Westboro, MA	09/09/97	Advanced Speaker Systems.
33,845	Onan Corp (Comp)	Huntsville, AL	09/09/97	Single and Twin Cylinder Gasoline Engines.
33,846	Kimberly Clark (UPIU)	Oconto Falls, WI	08/28/97	Bales of Pulp.

[FR Doc. 97–27075 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,624]

Fruit of the Loom, Sherman Warehouse Distribution Center, Sherman, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 7, 1997, in response to a worker petition which was filed on behalf of workers at Fruit of the Loom, Sherman Warehouse Distribution Center, located in Sherman, Mississippi.

An active certification covering the petitioning group of workers is already in effect (TA–W–33,767E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27079 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,792]

Label Art/Short Run Labels, Inc. Linthicum Heights, MD; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1997 in response to a worker petition which was filed on behalf of workers and former workers at Label Art/Short Run Labels, Incorporated, located in Linthicum Heights, Maryland (TA–W–33,792).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 26th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27078 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,567]

Lee Sportswear, Inc., Plantersville (Tupelo), Mississippi; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1997 in response to a worker petition which was filed on June 16, 1997 on behalf of workers at Lee Sportswear, Incorporated, located in Plantersville (Tupelo), Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27077 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

The Lovable Company

TA–W–33,5845 Buford, Georgia
TA–W–33,584C, St. Augustine, Florida
TA–W–33,584D, Orlando, Florida
TA–W–33,584E, Branson, Missouri
TA–W–33,584F, Osage Beach, Missouri
TA–W–33,584G, Sikeston, Missouri
TA–W–33,584H, Commerce, Georgia
TA–W–33,584I, Locust Grove, Georgia
TA–W–33,584J, Eddyville, Kentucky
TA–W–33,584K, Horse Cave, Kentucky
TA–W–33,584L, Myrtle Beach, South Carolina
TA–W–33,584M, Normal, Illinois
TA–W–33,584N, Nashville, Tennessee
TA–W–33,584O, Woodbridge, Virginia

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 1997, applicable to all workers of The Lovable Company, Buford, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 46775).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that all workers will be separated at The Lovable Company's various outlet stores when they close in September, 1997. The workers provide retail selling of ladies' undergarments that are manufactured by The Lovable's production facilities.

The intent of the Department's certification is to include all workers of The Lovable Company adversely affected by increased imports of ladies' undergarments.

The amended notice applicable to TA–W–33,584 is hereby issued as follows:

"All workers of The Lovable Company, Buford, Georgia (TA–W–33,584); and at the various locations cited below, who became totally or partially separated from employment on or after June 9, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–33,584C	St. Augustine, Florida
TA–W–33,584D	Orlando, Florida
TA–W–33,584E	Branson, Missouri
TA–W–33,584F	Osage Beach, Missouri
TA–W–33,584G	Sikeston, Missouri
TA–W–33,584H	Commerce, Georgia
TA–W–33,584I	Locust Grove, Georgia
TA–W–33,584J	Eddyville, Kentucky
TA–W–33,584K	Horse Cave, Kentucky
TA–W–33,584L	Myrtle Beach, South Carolina
TA–W–33,584M	Normal, Illinois
TA–W–33,584N	Nashville, Tennessee
TA–W–33,584O	Woodbridge, Virginia."

Signed at Washington D.C. this 24 day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27076 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,529]

Norton McNaughton, Incorporated, New York, New York; Notice of Revised Determination on Reopening

On September 22, 1997, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 20, 1997, because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce women's career and casual clothing. The denial notice was published in the **Federal Register** on July 18, 1997 (62 FR 38584).

Sales at Norton McNaughton, Incorporated declined from 1995 to 1996 and in January through April 1997 compared to January through April 1996.

Employment at the subject firm declined in January through April 1997 compared to January through April 1996.

A review of United States imports of women's career and casual clothing including women's and girls' jackets, shirts, blouses, sweaters and skirts reveal that imports increased absolutely and relative to domestic shipments from 1995 to 1996 and in the twelve months through March 1997 compared to the twelve months through March 1996. The ratio of imports to domestic shipments (I./S.) was more than 100 percent from 1995 through the twelve months ending March 1997.

U.S. imports of women's and girls' slacks and shorts increased absolutely and relative to domestic shipments from 1995 to 1996; the I./S. ratio was more than 100 percent. Imports continued to increase in the twelve months through March 1997 compared to the same time period a year earlier; the I./S. is not available but is estimated to be more than 100 percent.

U.S. imports of women's suits steadily increased from 1995 to 1996, and in the twelve months ending March 1997 compared to the twelve months ending March 1996. The I./S. ratio is not available for these time periods.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with women's career and casual clothing produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Norton McNaughton, Incorporated, New York, New York, who became totally or partially separated from employment on or after May 16, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 26th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27073 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–149]

Conduct of Employees, Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: The Administrator of the National Aeronautics and Space Administration has determined, after consultation with the Director of the Office of Government Ethics, that it is in the national interest to waive the post-employment restrictions of Section 207, Title 18, United States Code, with respect to the former Director of the Kennedy Space Center, Jay Honeycutt.

FOR FURTHER INFORMATION CONTACT: R. Andrew Falcon, Office of the General Counsel, NASA Headquarters, Washington, DC 20546, 202–358–2028.

SUPPLEMENTARY INFORMATION: Section 207(j)(5) of Title 18 of the United States Code authorizes the Administrator of the National Aeronautics and Space Administration to waive the post-employment restrictions of sections 207(a)(1), 207(a)(2), and 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications, where it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Jay Honeycutt, the former Director of Kennedy Space Center, has outstanding technological qualifications in space flight hardware and software development, mission control, launch processing, and flight operations. I am further satisfied that, as the President of Lockheed Martin Space Mission Systems and Services, he will be required to utilize those qualifications in the performance of his duties with respect to the development, operation, and upgrade of the Space Shuttle and related systems, and that it will be in the national interest to permit him to appear before and communicate with Government officials on these matters.

Therefore, after consultation with the Office of Government Ethics, I have waived the post-employment prohibitions of section 207(a)(1), 207(a)(2), and 207(c) of Title 18 of the United States Code in order to permit direct communications between Mr. Honeycutt and employees of NASA and other Government agencies with respect to space flight activities.

Daniel S. Goldin,

NASA Administrator.

[FR Doc. 97–27037 Filed 10–10–97; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–147]

Notice of prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective patent license.

SUMMARY: NASA hereby gives notice that AI Gordon Software, Inc. 5600 Clustermill Road, Greensboro, North Carolina 27407, has applied for a partially exclusive license for the patent application entitled "System and Method for Creating Expert Systems," NASA Case No. GSC–13,672–1, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Stop 204, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27035 Filed 10–10–97; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–148]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CASI, of Signal Mountain, TN 37377, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent Numbers 5,214,388;

5,373,245; 5,515,001; and 5,539,292 entitled respectively, "Phase Discrimination Capacitive Array Sensor," "Capaciflector Camera;" "Current Measuring OP–AMP Circuits;" and "Capaciflector-Guided Mechanisms;" and the following NASA inventions disclosed in NASA Case No. GSC–13,377–2, "Driven Shield Capacitive Proximity Sensor," and NASA Case No. GSC–13710–1, "3–D Capaciflector." All of the aforementioned inventions are assigned to the United States of America as represented by the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Keith L. Dixon, Patent Attorney, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27036 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–145]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Computer Sciences Corporation, 4601 Powder Miller Road, Calverton, Maryland 20705, has applied for a partially exclusive license for the patent application entitled "System and Method for Creating Expert Sytems," NASA Case No. GSC–13,672–1, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Stop 204, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27034 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: The Industry Executive Subcommittee (IES) of the President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Tuesday, October 21, 1997, from 9:00 a.m. to 12:30 p.m. The meeting will be held at Booz-Allen & Hamilton, Inc., 8283 Greensboro Drive, McLean, Virginia. The agenda is as follows:

—Call to Order/Welcoming Remarks
—NSTAC XX Planning
—Operations Support Group Report
—Information Infrastructure Group Report
—Network Group Report
—Legislative and Regulatory Group Report
—Adjournment

Attendance at this meeting is limited, due to the capacity of the meeting facility. Anyone wishing to attend this meeting must confirm their attendance with Ms. Janet Jefferson, Customer Service and Information Assurance Division, (703) 607–6209.

FOR FURTHER INFORMATION CONTACT: Ms. Jefferson or write the Manager, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–27038 Filed 10–10–97; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Art and the Humanities will be held at 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, in Room 714, from 9:00 a.m. to 5:30 p.m., on Monday, November 24, 1997.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and Humanities for exhibitions beginning after January 1, 1998.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Nancy E. Weiss, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, or call (202) 606–8322.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–27131 Filed 10–10–97; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; (Point Beach Nuclear Plant, Unit Nos. 1 and 2); Exemption

I

Wisconsin Electric Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Manitowoc County, Wisconsin.

II

The Code of Federal Regulations at 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection a(2) of 10 CFR 70.24 specifies detection and sensitivity requirements that these monitors must meet. Subsection a(2) also specifies that all areas subject to criticality accident monitoring must be covered by monitoring devices.

Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of subsection (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at Point Beach Nuclear Plant is in the form of nuclear fuel; the quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Point Beach Nuclear Plant and has determined that such an accident cannot occur if the licensee meets the following seven criteria:

1. Only one new fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by Point Beach Nuclear Plant General Design Criterion 18 which is analogous to 10 CFR part 50, Appendix A, General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5 weight percent.

By letter dated June 7, 1997, Wisconsin Electric Power Company requested an exemption from 10 CFR 70.24. In this exemption request the licensee addressed the seven criteria given above. The Commission technical staff has reviewed the licensee's submittal and has determined that Point Beach Nuclear Plant, Units 1 and 2, meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in special nuclear materials handling or storage areas at Point Beach Nuclear Plant.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that, if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by Point Beach Nuclear Plant's General Design Criterion 18, in fuel storage and handling areas. Specifically, Point Beach Nuclear Plant's General Design Criterion 18 requires "Monitoring and alarm instrumentation shall be provided for fuel and waste storage and associated handling areas for conditions that might result in loss of capability to remove decay heat and to detect excessive radiation levels." These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to Point Beach Nuclear Plant's General Design Criterion 18 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Wisconsin Electric Power Company an exemption from the requirements of 10 CFR 70.24 for the Point Beach Nuclear Plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 45883).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27085 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 97–04 to all holders of operating licenses for nuclear power plants, except those who have permanently ceased operations and have certified that fuel has been permanently removed

from the reactor vessel, to request that addressees submit information necessary to confirm the adequacy of the net positive suction head available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps.

The generic letter is available in the NRC Public Document Room under accession number 9710060324.

DATES: The generic letter was issued on October 7, 1997.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: William O. Long at (301) 415–3026.

SUPPLEMENTARY INFORMATION: This generic letter only requests information from addressees under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The requested information will enable the staff to determine whether the NPSH analyses of addressees conform with the current licensing basis for their respective facilities, including the licensing safety analyses and the principal design criteria which require and/or commit that safety-related components and systems be provided to mitigate the consequences of design-basis accidents.

New NPSH analyses are neither requested nor required to be performed to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that changes in plant design or procedures have occurred which may have reduced the available NPSH. In such cases, each affected addressee must take appropriate corrective action to restore its facility to compliance, in accordance with the requirements stated in Appendix B to 10 CFR Part 50.

Dated at Rockville, Maryland, this 7th day of October 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27083 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on October 21 (Room T–2B3) and 22 (Room T–2B1), 1997, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 21, 1997—8:30 a.m. until the conclusion of business

Wednesday, October 22, 1997—8:30 a.m. until 12:00 Noon

The Subcommittee will continue its review of matters related to the Staff Requirements Memorandum dated May 27, 1997, regarding the use of uncertainty versus point values in the PRA-related regulatory decisionmaking process. The Subcommittee will also review the proposed final Standard Review Plan (SRP) sections and Regulatory Guides for risk-informed, performance-based regulation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 7, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–27081 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Information Collection: Standard Forms 2803 and 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. Form 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

There are approximately 520 respondents for SF 2803 and 260 respondents for SF 3108. It takes approximately 30 minutes to complete SF 2803 and 30 minutes to complete SF 3108. The hourly annual burden for SF 2803 is 260 and for SF 3108 is 130 for a total annual burden of 390 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 15, 1997.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–27111 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form SF 2802, SF 2802–B, RI 36–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised of the following information collections: SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System); SF 2802B, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions; and RI 36–7, Marital Information Required of Refund Applicants. The OPM must have the SF 2802 completed and signed before paying a refund of retirement contributions from the Civil Service Retirement and Disability Fund. SF 2802B must be completed if there are spouse(s) or former spouse(s) who must be notified of the employee's intent to take a refund from the Fund. RI 36–7 is needed when the SF 2802 received at the OPM is incomplete about the applicant's marital status.

Approximately 35,000 SF 2802 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 26,250 hours. Approximately 31,500 SF 2802B forms are completed annually. We estimate it takes approximately 15 minutes to complete. The estimated annual burden is 7,875. Approximately 21,050 RI 36–7 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 3,508 hours. The total combined annual burden is 37,663 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 15, 1997.

ADDRESSES: Send or deliver comments to Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–27112 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, October 23, 1997, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: October 6, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–27108 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Nu-Tech Bio-Med, Inc., Common Stock, $.01 Par Value) File No. 1–13900

October 7, 1997.

Nu-Tech Bio-Med, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

In making the decision to withdraw its Security from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security. The Company does not see any particular advantage in the dual trading of its securities.

The Company has complied with the Rules of the BSE by filing with such Exchange details of the reasons for such proposed withdrawal, and the facts in support thereof.

By letter dated September 22, 1997, the BSE informed the Company that the Exchange has no objection to the withdrawal of the Company's Security from listing on the BSE.

Any interested person may, on or before October 29, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27040 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39191; File No. SR–AMEX–97–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Revised Equity Fee Schedule

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] notice is hereby given that on September 24, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the fee change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the fee change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange has revised its schedule of fees imposed on trades in exchange-traded fund products ("EXTRA Funds") executed on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the fee change and discussed any comments it received on the fee change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently imposes a transaction charge and a regulatory fee on trades in equity securities executed on the Exchange. The Exchange's equity transaction charge is a two-part fee consisting of a share charge and a value charge, based on the total number of shares traded and the value of such shares, respectively. All equity trades executed through the Exchange's Post Execution Reporting ("PER") order routing system up to 1,099 shares are exempt from Exchange equity transaction charges (excluding only those for the account of nonmember competing dealers). The Exchange also imposes a separate regulatory fee on all equity trades calculated at $.00005 times the value of shares traded.

The Exchange currently lists a number of exchange-traded fund products, which are subject to the Exchange's equity fee schedule. Standard & Poor's Depositary Receipts ("SPDRs") is a fund product based on the S&P 500 Index that has traded on the Exchange since 1993. MidCap SPDRs and World Equity Benchmark Shares ("WEBS") are also currently traded, with additional fund products expected to be traded in the future.

The Exchange is revising its schedule of equity fees to exempt customer (i.e., non broker-dealer) PER trades in exchange-traded fund products up to 5,099 shares from both the equity transaction charge and the regulatory fee. We believe that these changes are necessary in order to make the cost of trading on the Exchange comparable to the economics of trading these products in other markets.

The revised equity fee schedule will be implemented starting with transactions effected on September 26, 1997 or as soon as practical thereafter. The Exchange will notify member firms as to the date of effectiveness and as to any necessary modifications to provide for proper identification of orders entitled to the fee exemption.

(2) Statutory Basis

The fee change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b)(4)[2] in particular in that is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

[2] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The fee change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[3] and subparagraph (e)(2) of Exchange Act Rule 19b–4.[4] At any time within 60 days of the filing of such fee change, the Commission may summarily abrogate such fee change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the fee change that are filed with the Commission, and all written communications relating to the fee change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–AMEX–97–34 and should be submitted by November 4, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(e).
[5] 17 CFR 240.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27041 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 39199; File No. SR–BSE–97–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Transaction Fee Schedule

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1997, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its transaction fee schedule to implement two additional transaction fee maximums.

The text of the proposed rule change is available at the Office of the Secretary, BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed fee revision is to respond to the needs of the Exchange's constituents with respect to overall competitive market conditions and customer satisfaction. As such, the Exchange intends to implement two additional transaction fee maximums.

A monthly transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) of $50,000 per member firm for all electronic order flow (both incoming and outgoing trades) is being implemented. The monthly electronic transaction fee maximum of $50,000 will precede the existing total volume maximum of $.45 per 100 average monthly shares. Member firms will continue to pay the current rate for Trade Recording and Comparison and Value Charge fees on all electronic trades up to the maximum charge of $50,000 for this type of order flow. Any electronic trading beyond the $50,000 electronic transaction fee cap will be assessed at $0.00 per 100 average monthly shares throughout the remainder of the month.[1] If at month's end, a member firm's fee for electronic order flow has reached the $50,000 maximum and its total volume rate per 100 average monthly shares exceeds $.45, the firm's transaction fees will then be capped at $.45 per 100 average monthly shares.[2]

A transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) for multiple automated cross trades is also being implemented. The transaction fee maximum of $.25 per 100 shares will apply once a firm has executed 100,000 average daily multiple automated cross trade shares. This maximum is in addition to the maximum rate per trade side of $25.00 for Trade Recording and Comparison fees and $50.00 for Value Charge fees. Member firms will pay the lesser of $.25 per 100 shares or the original rate per share at the time of execution.[3]

2. Statutory Basis

The basis for the proposed rule change is Section 6(b)(5) of the Act, in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other change imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4

[1] Telephone conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 17, 1997).

[2] For example, assume Member Firm ABC generated $100,000 in total transaction fees, $60,000 of which were associated with electronic order flow. Assume further that this $100,000 related to 200,000 total shares traded during the month. Under the new fee maximum, ABC's electronic order flow fees would be capped at $50,000 and any electronic order flow executed beyond this maximum would be assessed at $0.00 throughout the remainder of the month. At the end of the month, the Exchange would calculate the total fees generated by ABC's account, here $90,000 ($50,000 in electronic order flow plus $40,000 in non-electronic order flow), and divide it by the total number of shares traded during the month. Here, the Exchange would divide $90,000 by 200,000 shares, which would equate to a rate of $.45 per 100 average monthly shares. Thus ABC would pay a total of $90,000 in transaction fees for that month. If, however, the resulting rate were greater than $.45 per 100 average monthly shares, the total transaction fees would be further reduced to this maximum. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 24, 1997).

[3] For example, assume Member Firm ABC executed 2,500,000 multiple automated cross trade shares in a month comprised of 21 trading days. Under the new proposal, the cost structure of the first 2,100,000 multiple automated cross trade shares (21 trading days × 100,000 average daily shares) would not change. However, for every share of this type executed above and beyond 100,000 average daily shares (in this example, 2,100,000 shares), the cost per share would be the lesser of $.0025 per share or the original rate per share at the time of execution. If a 7,500 share cross trade generated a total fee of $30.00 ($.0040 per share), the total fee of this trade would be capped at $18.75 ($.0025 per share) for a reduction in the cost of the trade of $11.25. If the same trade generated a total fee of $15.00 ($.0020 per share), the total cost of the trade would remain at $15.00. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Oct. 1, 1997).

thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–05 and should be submitted by November 4, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27047 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39202; File No. SR–CBOE–97–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Certain Rules Governing Market-Maker Obligations With Respect to the Trading of Options on the DJIA

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 1997,[3] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain of its rules governing market-maker obligations with respect to the trading of options on the Dow Jones Industrial Average ("DJIA" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain Exchange rules governing market-maker obligations with respect to the trading of options on the DJIA (trading symbol "DJX"). Specifically, the Exchange is proposing to make the following changes with respect to trading in options on the DJIA: (i) Amending Rule 24.17 to apply the rules governing the Retail Automatic Execution System ("RAES") eligibility in options on the Standard & Poor's 100 Stock Index ("S&P 100") ("OEX") to options on the DJIA; (ii) amending Rule 24.17 to add an interpretation and policy that the provisions of paragraph (b)(v)(C) and (D) will not apply to DJX market makers until December 1, 1997; (iii) creating Rule 24.17A, RAES Operations in Options on the DJIA, which applies the RAES operations in OEX to DJX and states that the Exchange can determine the maximum order size for RAES orders for options on the DJIA up to 100 contracts, a higher level than for OEX; (iv) amending paragraph (a)(2) of Rule 8.51 (and related interpretations) governing the minimum firm quote requirement, for a market-maker trading crowd; (v) applying the terms of the previously approved OEX firm quote program to the DJX trading crowd, and amending the fine amount under the Minor Rule Plan for violations of the Firm Quote Rule; (vi) amending the fine schedule for violations of the Firm Quote Rule for OEX; and (vii) amending Rule 8.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options.[4]

The purpose for these proposed rule changes is to enhance market-maker obligations with respect to the trading of options on the DJIA. The Exchange expects these change to enhance the depth and liquidity of the market for options on the DJIA. The Exchange also notes that because option contracts on the DJIA will be based upon one-one hundredth of the value of the DJIA, these options contracts will overlie approximately one-tenth of the value that other broad-based index options overlie, such as options on the Standard & Poor's 500 Stock Index ("SPX") and on OEX. This is so because the values of the S&P 500 Index and the S&P 100 Index currently are approximately one-tenth of the value of the DJIA, yet OEX and SPX are based on the full value of their respective underlying indexes. Consequently, the Exchange believes an increase in these market-maker obligations is necessary to ensure an appropriate level of market-maker commitment.

Under the proposed rule change, the rules applicable to RAES in OEX will apply to RAES in DJX. The proposed rule change revises Rule 24.17, RAES Eligibility in OEX to refer to "Option Class" instead of OEX. "Option Class" will mean either OEX or DJX, as appropriate. Also, the Rule will be revised to refer to the "appropriate Committee" which will mean the OEX Market Performance Committee" the case of OEX and "the Exchange Committee to which the Exchange delegates the market performance function for options on the DJIA" in the case of DJX. The proposed rule change also adds Interpretation and Policy .02 to Rule 24.17 to state that the provisions of paragraphs (b)(v) (C) and (D) (formerly paragraphs (a)(v) (C) and (D)) shall not apply to DJX market makers until December 1, 1997.[5]

The proposed rule change also adds a new Rule 24.17A that sets forth the RAES Operations for Options on the DJIA, stating that RAES will operate the same for DJX as for OEX, including that the Exchange shall determine that series will be eligible for RAES in DJX. Over the years, the Commission has approved OEX RAES operational policies to Section 19(b) of the Act; however, these policies have not been codified in the Exchange rules. CBOE now proposes that these policies also extend to DJX.[6] For example, the proposed rule change will apply DJX RAES the OEX RAES that allows OEX RAES orders to trade ahead of orders on the customer limit order book in situations where the displayed bid or offer is equal in price to a customer order, reflected in the limit order book. This is an exception to the normal protection afforded customer orders on the book, where RAES orders entered when a booked order matches the price of the disseminated bid (for a RAES order to sell) or offer (for a RAES order to buy) are "kicked out" of RAES and generally executed manually on the floor.[7]

The Exchange believes that it is reasonable to apply this OEX RAES policy to DJX, based upon the way in which the Exchange expects the DJX trading crowd to function, the amount of protection it expects the "stranded" booked orders to receive on the floor, and the operational difficulties associated with "kicking out" RAES orders for manual execution on the floor.[8]

Specifically, CBOE has stated that it expects this portion of the proposed rule change to have only a nominal effect on the execution of booked orders because, based on information gathered from talking to firms and investors, it believes that DJX will attract a large order flow and that large market-making firms will have a presence in the trading crowd. The Exchange believes that this combination of active order flow and liquid, well-capitalized traders will result in the DJX trading floor operating much like the trading floors in OEX and IBM. The Exchange believes that in this type of trading environment where there is high liquidity, the likelihood that a booked order will not be executed after the execution of a RAES order at the same price is small. In addition, the CBOE notes that the likelihood of the "stranded" order not being executed is diminished by the Exchange's existing priority rule, Rule 6.45, which ensures that no transaction can take place on the floor at a price equal to or better than the price of the booked order until the booked order has been filed.[9] Finally, CBOE states that the adverse effects to customer orders that would result if RAES orders were "kicked out" to be executed on the trading floor, such as delayed and missed executions, outweigh the potential disadvantage that might result to customer limit orders on the book from the proposed limited exception to the normal priority rules.[10]

Proposed Rule 24.17A also states that the Exchange will have the discretion to set the eligible order size for RAES orders up to one hundred (100) contracts. The Exchange believes expanding the eligible contract limit size for RAES will provide the benefits of: more timely and cost-effective executions of customer options orders to a greater number of orders than would be the case if no changes were made; enhanced audit trail; enhanced fill reporting and price reporting; increased customer confidence; and reduction of transactions that have to be executed manually on the trading floor, thereby increasing the efficiency in the handling of non-RAES orders. The Exchange also notes that Rule 24.15(e) allows the Exchange to set an eligible order size of up to ninety-nine contracts for SPX options. As noted, an SPX option covers approximately ten times the value of an option on the DJIA.

CBOE believes that this proposed rule change will not impose any significant burdens on the operation, security, integrity, or capacity of RAES, but will increase the efficiency of the Exchange operations.

The Exchange also is proposing to amend Rule 8.51 to allow the firm quote requirement for options on the DJIA to be set at a level of up to one hundred (100) contracts. Under Rule 8.51, a trading crowd is obligated to fill non-broker-dealer customer orders for up to the specified number of contracts at the quotes that are displayed when the order reaches the trading station at which the option is traded. The reasons specified above justifying the change in the maximum RAES order size—the relatively smaller dollar value of options on one-one-hundredth of the DJIA as compared to other broad-based index options and the Exchange's desire to enhance the depth and liquidity of the market for options on the DJIA—apply equally to this proposed change in the firm quote requirement. The exchange is also proposing to amend Interpretations .01 and .03 to Rule 8.51 to make these interpretations consistent with the change to paragraph (a) of Rule 8.51.

Finally, the Exchange is proposing to apply the terms of the OEX firm quote program to trading in DJX. Among the significant terms of the firm quote program are that: Floor Officials may designate one or more market-makers to take the contra side of a transaction if market-makers do not voluntarily honor the trading crowd's obligation; market-makers have the obligation to state the size of their markets if those markets are for less than the DJX firm quote limit; market-maker and broker-dealer quotes for less than the firm quote limit will

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the proposed rule change, the substance of which is incorporated into this notice. See letter from Timothy H. Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Market Regulation, Commission, dated September 16, 1997 ("Amendment No. 1").

[4] The Exchange's OEX firm quote program was approved by the Commission under Section 19(b) of the Act in Securities Exchange Act Release No. 37388 (June 28, 1996), 61 FR 35821 (July 8, 1996).

[5] Rule 24.17(b)(v) (C) and (D) state that a market maker in RAES who wants to participate in OEX (and now DJX) must execute at lease seventy-five percent of his market-maker contracts for the preceding calendar month in OEX and execute at least seventy-five percent of his market maker trades for the preceding calendar month in OEX (and now DJX) in person.

[6] See letter from Timothy H. Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Market Regulation, Commission, dated September 24, 1997 ("September letter"). *See* Securities Exchange Act Release Nos. 23490 (August 1, 1996), 51 FR 28788 (August 11, 1986) (firms on the Order Routing System will automatically be on RAES for purposes of routing small public customer market or marketable limit orders into RAES; the system will automatically attach a price to an order when it receives the order, which price will be determined from this displayed quote at the time of the order's entry; RAES orders that match customer orders on the book will not be kicked out but will be executed on RAES against normal priority rules; participating market makers will be assigned to the system as contraparties on a rotating basis; Exchange rule shall not apply to the extent they are inconsistent with the terms of the program; RAES orders will count towards fulfillment of the in-person requirement of Rule 8.7); and 38702 (May 30, 1997), 62 FR 31184 (June 6, 1997) (all or none, immediate or cancel, fill or kill, and minimum quantity contingency orders that are otherwise RAES eligible may be executed on RAES).

[7] See *supra* note 6 and letter from Timothy H. Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated October 2, 1997 ("October letter"). OEX and IBM options are the only two classes where RAES orders are granted priority over booked orders.

[8] See October letter *supra* note 7. The primary purpose and benefit of this policy of "kicking out" RAES orders is to allow the "kicked out" RAES order to interact with the booked order.

[9] The Commission notes that this does not take into account the market moving through the booked order before it is executed.

[10] The Exchange expects the number of DJX RAES orders that would be "kicked out" under the normal priority rules would be significant because of the fact that DJX is designed to appeal to retail customers who are more likely to send in small RAES eligible orders, the larger RAES eligible order size for DJX, and the greater percentage of DJX series that will be eligible for RAES in DJX (all series) than in OEX (only those series where the offer is $10 or less are currently eligible).

not be displayed; [11] and Floor Brokers may choose one of two alternatives in obtaining a fill under the Firm Quote Rule, as described in the first circular attached as Exhibit B to the submitted filing.

The second Firm Quote Circular, attached as Exhibit C to the submitted filing, sets forth a schedule of fines that may be imposed pursuant to the Minor Rule Violation rule for violation of the Firm Quote Rule. The Exchange believes that both of these circulars are essentially identical to the OEX firm quote program circulars except that they apply to trading in DJX and they accordingly have a different firm quote requirement. In addition, the Exchange has decided to adopt a policy whereby the fine for a third and fourth violation of the firm quote policy in both DJX and OEX would be $2,500, and for subsequent violations there is a mandatory referral to the Business Conduct Committee ("BCC").[12] The Exchange will reissue the OEX circular with the revised fine schedule. The Exchange notes that although the upper fine limit is being reduced, the Exchange will exercise its authority to commence a disciplinary proceeding pursuant to Exchange Rule 17.2 in egregious situations and will refer the case to the BCC for violations past the fourth violation. Of course, in disciplinary proceeding the violating member could be subject to even greater fines and other sanctions including suspension.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that accelerated effectiveness of the proposed change is appropriate because the Commission has approved other proposals by options exchanges allowing similar increases in the number of option contracts eligible for automatic execution [13] and has approved an essentially identical firm quote program for OEX. in addition, for the same reasons, the Exchange believes an increase in the firm quote requirement is justified and that the increase in the firm quote requirement is a benefit to public customers without any disadvantages to public customers. Also, because options on the DJIA are based on one-one hundredth of the value of the Index, the value of the Index underlying an option on the DJIA is only approximately one-tenth or the value of the indexes underlying certain other broad based indexes which have a RAES eligible order size of ten or more and a firm quote requirement of ten. Therefore, the Exchange believes no unique or novel questions are raised by this change.

2. Statutory Basis

By establishing market-maker obligations with respect to trading options on the DJIA, including a firm quote requirement and a maximum size for DJX orders eligible for execution through RAES, the Exchange believes that the proposed rule change will better serve the needs of CBOE's public customers and the Exchange members who make a market for such customers, and is consistent with and furthers the objectives of Section 6(b)(5) of the Act [14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–45 and should be submitted by November 3, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [15] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[16]

The Commission believes it is reasonable for the Exchange to amend Rule 24.17 to apply the OEX RAES eligibility requirements to DJX, and to apply the terms of the previously approved firm quote program for OEX to DJX because they are similar products that are expected to trade in a similar manner and it is necessary to have a RAES rule and a firm quote program in order to ensure efficient trading in DJX. Also, the Commission believes it is reasonable under the Act to exempt DJX market makers from the requirements in amended Rule 24.17(b)(v)(C) and (D) [17] until December 1, 1997 because when options on the DJIA begin to trade on October 6, 1997 there will be no "preceding month" against which to measure a DJX market maker's performance.

The Commission also believes it is reasonable for the Exchange to establish Rule 24.17A, RAES Operations in DJX, which will be the same for OEX except for the maximum contract size eligible for RAES. The maximum size for RAES in DJX will be up to 100 contracts, whereas the maximum size for OEX is 10 contracts. Similar to OEX, the Exchange will have the authority to choose which DJX series will be eligible for RAES.[18]

As a general rule, the Commission believes that customer limit orders in the limit order book should receive priority protection over other orders when the quoted market touches the limit order. Specifically, RAES orders generally should not be executed by market makers when customer limit orders are also price eligible to interact with the RAES orders. The Commission believes that exceptions to this principle are only appropriate in limited circumstances where it is unlikely that affected limit orders will receive an inferior execution. The Commission has previously approved CBOE rule changes that afforded such an exception in two highly liquid options classes, OEX index options and IMB equity options. After careful review, the Commission has determined that it is appropriate to allow DJX RAES orders to be automatically executed notwithstanding the possibility that customer limit orders could be priced identically to the prevailing disseminated best bid or offer. The Commission notes that it is basing this approval upon the fact that the Exchange expects DJX to be a heavily traded index product. As a result, it is anticipated that most limit orders will receive fair executions, particularly since CBOE Rule 6.45 ensures that no transaction can take place on the floor at a price equal to or better than the price of the booked order until the booked order has been filled. The Commission expects the Exchange to monitor the actual depth and liquidity of the DJCX trading floor and the treatment of customer orders on the limit order book that are traded behind RAES orders at the market.

The Commission also believes that increasing the number of DJX contracts eligible for RAES and to increase the firm quote requirement for DJX is consistent with the Act because options on the DJIA are approximately one-tenth the value of options on indexes underlying other broad-based indexes.[19] Therefore, increasing the RAES eligibility and firm quote requirements for DJX should enhance market maker obligations and commitments in these options, as well as help add depth and liquidity to the market for DJX. In addition, increasing the size of the RAES eligibility for DJX will provide the benefits of RAES execution to a larger number of customer orders and reduce the number of transactions to be executed manually on the floor, which could increase the efficiency of executing non-RAES orders.

The Commission believes it is consistent with the Act to amend the Minor Rule Plan fine amount for violations of the firm quote rule for both OEX and DJX because the amended fine schedule should still ensure adequate and effective enforcement of the firm quote program. The amended fine amount for third and fourth violations of the firm quote policy, which will be $2500 [20] is a reasonable amount in order to help deter non-compliance with the firm quote program, and there will now be mandatory referral to the BCC for any violations after the fourth violation. In addition, the Commission notes that the Exchange always has the authority to commence a full disciplinary proceeding under Exchange Rule 17.2 under its Minor Rule Plan program for any violation of the firm quote program, and that the CBOE stated that it will exercise this authority in egregious situations.[21]

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it believes the proposed changes to the various trading rule should become effective prior to the day that the CBOE begins to trade options on the DJIA, in order to ensure that all rules applicable to trading DJIA options are in place prior to when such trading commences. In addition, the Commission has previously approved similar increases in the number of options contracts eligible for automatic execution on other options exchanges [22] and has previously approved the almost identical firm quote program for OEX.[23] Finally, the Commission believes that the proposed rule change does not raise any significant regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) [24] that the proposed rule change, as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

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[11] The largest possible firm quote limit will be 100 contracts, which is approximately equal in value to 10 contracts in OEX. In addition, broker-dealer orders for less than the applicable firm quote requirement will not be disseminated.

[12] The current fine schedule for violations of the firm quote policy for OEX states that the fine for third and subsequent violations is $3,000 to $5,000.

[13] See Securities Exchange Act Release Nos. 38169 (January 14, 1997), 62 FR 3547 (January 23, 1997) (order approving File No. SR–CBOE–96–72) (increasing the maximum order size eligibility for interest rate options); 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (order approving File No. SR–PHLX–95–39) (increasing the maximum execution order size eligibility for public customer orders for all equity and index options to 50 contracts); 33476 (January 13, 1994), 59 FR 3140 (January 20, 1994) (order approving File No. SR–Amex–93–33) (increasing the size of Japan Index options orders eligible for automatic execution to 99 contracts); and 25950 (July 28, 1988), 53 FR 29293 (August 3, 1988) (order approving File No. SR–Amex–87–20) (increasing the number of Institutional Index options eligible for automatic execution to 100 contracts).

[14] 15 U.S.C. 78f(b)(5).

[15] U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] See supra note 6.

[18] The Commission requests that the CBOE distribute a Notice to Members discussing all RAES operations and policies that will apply to DJX. In addition, the Commission expects CBOE, in the near future, to codify RAES operations for OEX and DJX in manner similar to that for SPX.

[19] The Commission notes that this reasoning applies to an option contract based upon one-one-hundredth of the DJIA and thet the same reasoning would not apply if the COE were to start trading an options contract based upon one-tenth of the DJIA. The Commission expects the CBOE to reset the RAES eligible size and the firm quote limit accordingly for an options contract based on one-tenth of the DJIA.

[20] The current fine schedule for violations of the firm quote program for OEX states that the fine for third and subsequent violations is $3000 to $5000.

[21] The Commission believes it is reasonable under the Act to amend Rule 6.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options because DJX will now be covered by the RAES eligibility rule for OEX.

[22] See *supra* note 4.

[23] See *supra* note 5.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39196; File No. SR–NASD–97–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trading Halts

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, with Items have been prepared by the Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 4120 and IM–4120–1 to expand Nasdaq's trading halt authority and to clarify procedures for initiating certain trading halts. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

4120. Trading Halts

(a) Authority to Initiate Trading Halts

In circumstances in which [the Association] *Nasdaq* deems it necessary to protect investors and the public

interest, [the Association] *Nasdaq* may, pursuant to the procedures set forth in paragraph (b):

(1) halt trading in the over-the-counter market of a security *listed on Nasdaq* [authorized for inclusion in Nasdaq pending] *to permit* the dissemination of material news;

(2) halt trading in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) halt trading by [ITS/CAES]: *(i) CQS* market markers [of a] *in a CQS* security [listed on a national securities exchange and authorized for inclusion in the ITS/CAES linkage during] *when a national securities exchange imposes* a trading halt [imposed by such exchange] *in that CQS security* because of an order imbalance or influx ("operational trading halt"); *or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security.* [ITS/CAES] *CQS and Nasdaq* market makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b)[.]*; or*

(4) halt trading in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the securities underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) material news;

(ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 and 4400 Series; or

(iii) any other information which is necessary to protect investors and the public interest.

(b) Procedure for Initiating a Trading Halt

(1) [The Board of Governors requires that] Nasdaq issuers *are required to* notify [the Association]*Nasdaq* of the release of any material news prior to the release of such information to the press as required by Rule 4310(c)(16) and 4320(d)(15).

(2) Notification shall be provided directly to [the Association's Market Regulation] *Nasdaq's MarketWatch* Department by telephone, *facsimile, or other compatible means of electronic communication.** Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

(3) Upon receipt of [the] information [the Association, after consultation with the issuer,] *from the issuer or other source, Nasdaq* will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

[(4) Should the Association determine that a trading halt pending the dissemination of material news is necessary and in the public interest, the trading halt will become effective simultaneously with appropriate notice in the Nasdaq "NEWS" frame.

(5) Should a national securities exchange notify the Association that it has halted or will halt trading in a security listed on that exchange pending the dissemination of material news, the Association may halt trading in such security in the over-the-counter market. The commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq "NEWS" frame.]

(4) Should Nasdaq determine that a basis exists under Rule 4120(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) for initiating a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq "NEWS" frame.

[(6)] *(5)* Trading in a halted security shall resume upon notice via the Nasdaq "NEWS" frame that a trading halt is no longer in effect.

IM–4120–1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(d)(15) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through the news media any material information which would reasonably be expected to effect the value of their securities or influence investors' decisions and that Nasdaq issuers notify [the Association] *Nasdaq* of the release of any such information prior to its release to the public through the news media. [The Board of Governors] *Nasdaq* recommends that Nasdaq issuers provide such notification at least ten minutes before such release.* Under unusual circumstances issuers [are] *may* not *be* required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its *legitimate* corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to [the Association] *Nasdaq* upon request pursuant to Rules 4310(c)(15) or 4320(d)(14).

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether [conditions requiring corrective action exist and, if so, should take whatever action is appropriate] *there is material information or news which should be disclosed.* If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, *or if information from a source other than the issuer becomes known to the investing public,* a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though *the issuer may not have previously been advised of such information* or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known to them but which is not known to others. [A trading halt normally lasts until one half hour after the appearance of the news on wire services but it may last longer if a determination is made that the news has not been adequately disseminated.] A trading halt provides the public with an opportunity to evaluate the information and consider it

* The current telephone number is 1–800–537–6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590–6413. The StockWatch fax number is (301) 590–6482.

* Notification may be provided to the [Market Regulation] MarketWatch Department by telephone 1–800–537–3929, (301) 590–6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590–6413. Information communication orally should be confirmed promptly in writing. The StockWatch fax number is (301) 590–6482.

in making investment decisions. It also alerts the marketplace to the fact that news has been released.

[The Association's Market Regulation] *Nasdaq's Market Watch* Department monitors real time trading in all Nasdaq series during the trading day for price and volume activity. In the event of certain price and volume movements, the [Market Regulation] *Market Watch* Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The [Market Regulation] *Market Watch* Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the [Market Regulation] *Market Watch* Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing pubic. *Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company.* Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the [Market Regulation] *Market Watch* Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated [a] effect of the information on the price of the issuer's securities, the [Market Regulation] *Market Watch* Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. *A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.*

The [Market Regulation] *Market Watch* Department is required to keep non-public information[, including denial of rumors,] confidential and to use such information only for regulatory purposes.

Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature. The following list of events, while not an exhaustive summary of all situations in which disclosure to [the Association] *Nasdaq* should be considered, may be helpful in determining whether information is material. It should also be noted that every development that might be reported to [the Association] Nasdaq in these areas would not necessarily be deemed to warrant a trading halt.

- A merger, acquisition or joint venture;
- A stock split or stock dividend;
- Earnings and dividends of an unusual nature;
- The acquisition or loss of a significant contract;
- A significant new product or discovery;
- A change in control or a significant change in management;
- A call of securities for redemption;
- The public or private sale of a significant amount of additional securities;
- The purchase or sale of a significant asset;
- A significant labor dispute.
- Establishment of a program to make purchases of the issuer's own shares;
- A tender offer for another issuer's securities; and
- An event requiring the filing of a current report under the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing amendments to Rule 4120 to expand its existing trading halt authority. Rule 4120 currently sets out the bases on which Nasdaq may initiate trading halts. In addition to the existing bases, the proposed amendments authorize Nasdaq to: halt trading in the third market of a CQS security when a national securities exchange halts trading in such security for operational reasons; halt trading in a Nasdaq-listed security that is a derivative or component of a CQS security, when a national securities exchange halts trading in the underlying CQS security for operational reasons; halt trading in an American Depository Receipt ("ADR") or other Nasdaq-listed security when a national or foreign securities exchange or regulatory entity imposes a regulatory trading halt in the security underlying the ADR or the Nasdaq-listed security; and halt trading when Nasdaq requests from an issuer information relating to material news or the issuer's compliance with Nasdaq listing qualification requirements. Additionally, the proposed amendments clarify that the procedures in the rule permit Nasdaq to initiate trading halts when material information emanates from a source other than the issuer.

First, the proposed amendments expand Nasdaq's existing authority to initiate a trading halt in the third market of an exchange-listed security when the primary market initiates an operational trading halt in such security.[1] Rule 4120(a)(3) currently authorizes Nasdaq to impose an operational trading halt in a security listed on a national securities exchange and traded through the ITS/CAES linkage.[2] Under the current rule, Nasdaq may initiate a trading halt when there is an order imbalance or influx in

[1] The "third market" is the market for exchange-listed securities away from exchange markets.

[2] ITS/CAES is the NASD's link to the Intermarket Trading System ("ITS"), which is a system that enables ITS/CAES market makers to trade certain exchange-listed securities—known as SEC Rule 19c–3 securities—by allowing such market makers to direct agency and principal orders to, and receive orders from, other ITS members. SEC Rule 19c–3 prohibits off-board trading restrictions from applying to securities that: (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. (The Computer Assisted Execution System ("CAES") is the NASD's automated system that allows members to direct principal and agency orders in exchange-listed securities to CAES for automated execution in the third market). Thus, pursuant to the ITS Plan, trading in ITS/CAES is limited to SEC Rule 19c–3 securities and excludes those securities not subject to SEC Rule 19c–3.

the security and the primary market halts trading to resolve operational issues. The proposed amendments expand Nasdaq's authority and permit Nasdaq to halt trading in all securities traded in the third market (*i.e.*, CQS securities)[3]—not just those securities traded through the ITS/CAES linkage—when a national securities exchange initiates an operational trading halt in the CQS security.[4]

In addition, the amendments authorize Nasdaq to halt trading in a security which is listed on Nasdaq and which also is a derivative or component of a CQS security (such as convertible bond, warrant, or unit), when a national securities exchange imposes an operational trading halt in the CQS security, *i.e.*, when a national securities exchange halts trading in a CQS security for an order imbalance. Currently, the Nasdaq-listed derivative security would not be halted in conjunction with the operational trading halt in the CQS security, thus making it difficult for market makers in the Nasdaq-listed security to price accurately the derivative security due to the lack of current pricing information in the underlying CQS security. That is, because the primary market is temporarily closed, price discovery is not occurring in that venue, and market makers must attempt to determine pricing independent of the primary market or may wait until the primary market reopens to price their issues. The proposed amendments, however, would allow Nasdaq to halt trading in the Nasdaq-listed security, such as a Nasdaq-traded convertible bond whose value is tied closely to an exchange-listed security, when a national exchange initiates an operational trading halt in a CQS security. Similar to the current provisions of Rule 4120(a)(3), the proposed amendments permit CQS and Nasdaq market makers to commence quotations and trading at any time following the initiation of the operational trading halt. Nasdaq believes that the proposed amendments foster orderly markets and investor protection because they allow Nasdaq to halt trading—based on a national securities exchange's operational trading halt—to allow market makers in related issues to assess the situation and determine the appropriate pricing of the security.

Second, Rule 4120 is being amended to authorize Nasdaq to halt trading in an ADR or other security listed on Nasdaq, when a national or foreign securities exchange or regulatory authority, for regulatory reasons, imposes a trading halt in the security underlying the ADR or the dually-listed (Nasdaq) security. There are times when another exchange, market, or regulatory entity—such as a Canadian commission or European market center with which a Nasdaq company's securities are registered or listed—implements a regulatory trading halt. These trading halts sometimes occur because the issuer is delinquent in making a required filing with the national or foreign securities exchange or regulatory entity, or the market or regulatory entity halts trading in the company's stock for a violation of that entity's rules or regulations. For example, an issuer, which is registered as a reporting company with a Canadian regulatory commission and which also is a Nasdaq-listed company or has its ADRs listed on Nasdaq, becomes delinquent in its filings with the Canadian commission. The Canadian commission subsequently initiates a trading half in the issuer's securities. Currently, trading would continue on Nasdaq even though regulatory concerns prompted another regulatory entity to halt trading in the issuer's securities, because the issuer is in compliance with Nasdaq filing requirements. Under the proposed amendments, however, Nasdaq could halt trading.

Specifically, the amendments authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when the Nasdaq-listed security underlying the ADR is listed on or registered with a national or foreign securities exchange or market and trading is halted in the security for regulatory reasons by such exchange or market, or regulatory authority overseeing such exchange or market. Thus, the amendments ensure investor protection because they allow Nasdaq to take coordinated action when another market or regulatory authority identifies a regulatory basis for halting trading in an issue.

Third, Rule 4120(a)(1) currently permits Nasdaq to halt trading in a Nasdaq-listed security to permit the dissemination of material news, and Rules 4120(b)(1)–(3) set out the procedures for doing so.[5] Specifically, Rule 4120(b)(1) requires Nasdaq issuers to inform Nasdaq of any material news prior to the release of such information, and Rule 4120(b)(3) authorizes Nasdaq to evaluate information provided by the issuer to determine if trading should be halted prior to the release of such information. Rule 4120(b)(3) does not specifically set out procedures for initiating a trading halt when Nasdaq is advised of material news about a particular Nasdaq issuer and such news emanates from a source other than that issuer. For instance, a Nasdaq issuer may be subject to an unsolicited take-over bid by another company, of which the Nasdaq-listed company is unaware. In such instance, the acquiring issuer might disseminate news about the unsolicited take-over bid to the public; thus, Nasdaq may learn of information warranting a trading halt from a source other than the Nasdaq issuer, such as a news headline.[6] The proposed amendments to Rule 4120(b)(3) and IM–4120–1 clarify that Nasdaq may halt trading when Nasdaq learns of material news about an issuer, regardless of whether the news emanates from the particular issuer or from another source. Furthermore, proposed amendments to Rule 4120(b)(3) reflect that Nasdaq may halt trading without first consulting the issuer about material news because it may not be practicable or possible for Nasdaq to do so, such as when material news is released (without consultation with Nasdaq) by a source other than the issuer.

Next, the proposed amendments permit Nasdaq to halt trading when Nasdaq requests information from an issuer relating material news or qualification matters. For example, Nasdaq may be advised of material news about an issuer which appears to be factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM–4120–1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exists for continuing the halt. Furthermore, the statement in IM–4120–1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.[7]

The proposed amendments also include minor conforming changes to both Rule 4120 and IM–4120–1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM–4120–1 to the "Association" and "Market Regulation Department" have been replaced with references to "Nasdaq" and "MarketWatch Department" respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. As noted above, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer), and thus will prevent fraudulent practices and protect investors. The proposed rule changes also will broaden Nasdaq's authority to impose operational trading halts in the over-the-counter markets when market conditions so warrant, and thus will remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–97–60 and should be submitted by November 3, 1997.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27049 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39198; File No. SR–NASD–97–73]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

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[3] The Consolidated Quotation System ("CQS") is a service that provides quotations of all participating exchange specialists and market makers on all securities listed on the New York Stock Exchange and the American Stock Exchange, and selected securities listed on the regional stock exchanges.

[4] Thus, the proposed amendments would give Nasdaq expanded authority to initiate operational trading halts in the third market of SEC Rule 19c–3 securities, as well as those securities not subject to SEC Rule 19c–3.

[5] The proposed change to Rule 4120(a)(1) specifies that trading in a Nasdaq-listed security may be halted "to permit" the dissemination of material news. (Rule 4120(a)(1) currently provides that trading in a Nasdaq-listed security may be halted "pending" the dissemination of material news.) The rule is being amended to specifically authorize Nasdaq to halt trading when material news technically is not "pending" but a trading halt is necessary to protect investors and maintain an orderly market. For example, there are instances where Nasdaq is not advised of pending material news, material news is disseminated partially, and Nasdaq learns of such news, and Nasdaq quickly determines that a halt is necessary to permit complete dissemination of the material news. Additionally, the amendments to Rule 4120(a)(1) will bring it into parity with the language in Rule 4120(a)(2).

[6] If the company initiating the unsolicited take-over bid is a Nasdaq issuer, that company—in certain circumstances—may not be required to report the take-over bid to Nasdaq if such information is not material to the company. Thus, even if the company initiating the bid is listed on Nasdaq, Nasdaq may not be apprized of such information by either the Nasdaq company which is initiating the unsolicited take-over or the Nasdaq company which is the target of the unsolicited take-over.

[7] Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

[8] 17 CFR 300.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

in Items I, II, and III below, which Items have been prepared by the Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, Nasdaq, a wholly owned subsidiary of the NASD, is herewith filing a proposed rule change to extend a suspension of the Primary Nasdaq Market Maker qualification criteria ("PMM Standards") found in Rule 4612 (a) and (b) of the NASD Rules for all Nasdaq National Market securities for six months or until such earlier time when new PMM Standards can be adopted and implemented.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend a suspension of the existing PMM Standards until April 1, 1998 or until such earlier time that new PMM Standards can be adopted and implemented. The standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year.[2] That suspension will expire after October 1, 1997.

The suspension was necessary because the previous numerical criteria used to establish Primary Nasdaq Market Maker status was rendered significantly less relevant due to implementation of the new SEC Order Execution Rules (*i.e.*, the Limit Order Display Rule and amendments to the Quote Rule). This is because the old PMM standards were based primarily on a market maker's quotes in relation to the inside quote and the quotes of other market makers, and the ratio of executions to quote changes.[3] Because the new SEC rules, implemented in January of this year, incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.

It was therefore determined that developing new PMM standards would be necessary. Nasdaq's Quality of Markets Committee and Nasdaq staff, in consultation with Commission staff, endeavored to develop new and meaningful PMM Standards as expeditiously as possible. The new PMM Standards are intended to more properly identify firms that are engaging in responsible market maker activity deserving of the benefits associated with being designated a Primary Nasdaq Market Maker, such as being exempt from the short sale rule. A detailed and comprehensive proposal was recently approved by the Board of Directors of The Nasdaq Stock market at its meeting in September 1997, and Nasdaq expects to submit new PMM Standards to the Commission in the form of a proposed rule change shortly.

Nasdaq believes this proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, this temporary extension should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. It should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. In addition, the Commission finds that accelerated approval of this proposal will continue to accommodate the new SEC Order Execution Rules while Nasdaq seeks to implement new standards applicable to market makers. The Commission notes, however, that while it is approving this proposed rule change, that it anticipates no delay in the filing of the proposed rule change by the NASD with respect to the newly developed PMM standards.

In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.[4]

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change, SR–NASD–97–73, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27050 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

[2] See Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of File No. SR–NASD–97–07).

[3] Specifically, a Nasdaq market maker was deemed to be a Nasdaq Primary Market Maker if it met two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock.

[4] 15 U.S.C. 78c(f).

[5] 17 U.S.C. 78s(B)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39197; File No. SR–NASD–97–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Syndicate Covering Transactions and Members' Obligations To Obtain an Underwriting Activity Report

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the prposed rule change and on September 17, 1997, the NASD filed Amendment No. 1. The proposed rule change and Amendment No. 1 are described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rules 2710, 4624, and 6540. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2700. Securities Distributions

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

No change.

(b) Filing Requirements

(1) through (10)

No Change.

(11) Request for Underwriting Activity Report

Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 *or an "actively-traded" security under SEC Rule 101 (except for a security listed on a national securities exchange)* shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency, or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under Sec Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriting of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumted responsibility for compliance with this subparagraph. For purposes of subparagraphs (b) (11) and (12), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: A distribution, A distribution participant, A reference security, A restricted period, and A subject security.

(12) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution [subject to subparagraph (b)(11)] of securities that are listed on a national securities exchange *and considered a subject security or reference security that is subject to SEC Rule 101 or a distribution of any other securities that* are considered "actively-traded" under SEC Rule 101 shall provide written notice to the Market Regulation Department of NASD Regulation, Inc., no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Actvity Report.

(13) Information on Syndicate Covering Transactions

A member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 shall, no later than thirty (30) days after the effective date of the offering, maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position in a manner consistent with SEC Rule 17a–2.[2]

(c) Underwriting Compensation and Arrangements

No change.

4000. The NASDAQ Stock Market

4624. Penalty Bids and Syndicate Covering Transactions

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A market maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) The identity of the security and its Nasdaq symbol;

(2) The date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions[; and

[1] 15 U.S.C. 78s(b)(1).

[2] The requirement in Rule 2710(b)(13) will expire no later than January 1, 2000.

(3) The amount of the syndicate short position, in the case of syndicate covering transactions]

(c) Notwithstanding paragraph (a), a market maker may request that its quotation *be* identified as a penalty bid on Nasdaq [display] by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identified should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identified is entered on Nasdaq.

(d) The written notice required by [paragraphs (a) and (c) of] this Rule may be submitted on the Underwriting Activity Report [by including the information required by subparagraphs (b)(1) and (b)(2) or paragraph (c)].

6500. OTC Bulletin Board Service

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries.

(A)–(C)—No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) No change.

(ii) No change.

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur [and the amount of the syndicate short position]; and

(iv) No change.

(E) The written notice required by subparagraphs (b)(1)(D) (i), (iii) and (iv) of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. [by including the information required by those subparagraphs.]

(F) No change.

(2) through (4) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 1, 1997, NASD Rules designed to facilitate compliance with the SEC's Regulation M became effective.[3] Rule 104 of Regulation M requires members acting as managing underwriters to notify the appropriate regulator of the market for the security in distribution of a member's intention to engage in syndicate short covering transactions. It is the understanding of NASD Regulation staff that the purpose of this requirement is to establish a database at the regulator of those offerings in which syndicate short covering transactions may have been conducted, thereby facilitating a study of syndicate short covering practices by the staff of the SEC. Because the Association has traditionally been responsible for regulating the permissible amount of over-allotment options that may be utilized to cover syndicate short positions in public offerings, NASD Regulation believes that the Association has a long-standing interest in developing information to assist it and the SEC in the regulation of the over-allotment process.

To allow NASD members to comply with their notification obligations under Rule 104, NASD Regulation developed a standardized form designated as the Regulation M Trading Notification. Both NASD Rule 4624 regarding The Nasdaq Stock Market and NASD Rule 6540 regarding the OTC Bulletin Board Service require that members include the amount of the syndicate short position on the Regulation M Trading Notification. This latter information is not required to be provided under SEC Rule 104 of Regulation M.

Members of the industry have expressed concern regarding their ability to provide accurate data on the amount of a syndicate short position at the time the Regulation M Trading Notification is required to be submitted *i.e.*, prior to the first syndicate covering transaction. At that time, the member cannot generally provide accurate information as to the total amount of the syndicate short position.

While NASD Regulation believes it important to be able to collect accurate information on the amount of the syndicate short position in order to assist the SEC in its study of syndicate short covering activities, such information need not be immediately provided to the Association. In order to address the concerns of the industry, NASD Regulation is proposing to amend NASD Rule 4624 and NASD Rule 6540 to delete the current requirement to provide immediate information on the amount of syndicate short positions. In its place, NASD Regulation is proposing to amend Rule 2710, the Corporate Financing Rule, to establish a new requirement in Subparagraph (b)(13) that, no later than 30 days after the effective date of the offering, the managing underwriter shall maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position and that such information be retained in the same manner as the managing underwriter's syndicate covering transaction records under SEC Rule 17a–2. Rule 17a–2 requires that a managing underwriter separately maintain information on stabilizing transactions and syndicate covering transactions. It is anticipated that the managing underwriter will maintain with its records of syndicate covering transactions, as required by Rule 17a–2, a record of the amount of the syndicate short position. NASD Regulation intends to require that the information to be retained by the managing underwriter consist of whether the syndicate short position was no greater than the over-allotment option, or whether a naked short position was less than 1%, between 1% and 5%, between 5% and 10%, or over 10% of the offering size. The proposed change to NASD Rule 2710 includes a sunset provision to eliminate the requirement to retain information on the amount of syndicate short positions at the conclusion of the study of syndicate short covering practices, but no later than January 1, 2000.

In addition, NASD Regulation is proposing to amend Subparagraph (b)(11) of Rule 2710 to conform its rule language to that of Subparagraph (b)(12) and to the Association's original intent regarding the scope of that provision. The proposed rule change would clarify that the managing underwriter is required to request an Underwriting Activity Report with respect to a distribution of a security that is considered an "actively-traded" security under SEC Rule 101.[4] Currently, the language of Subparagraph (b)(11) is misleading in that it only imposes this requirement with respect to subject or reference securities that are "subject to SEC Rule 101." Because "actively-traded" securities are exempt from SEC Rule 101, they are not considered "subject to" SEC Rule 101. In Notice to Members 97–10 (March 1997), announcing adoption of the amendments of the NASD to implement Regulation M, the NASD stated that the Underwriting Activity Report" will indicate whether the security qualifies under SEC Rule 101 as an actively-traded security or for the one-day or five-day restricted periods." Thus, the proposed change to Subparagraph (b)(11) will make the rule language consistent with the Association's requirement that the managing underwriter request an Underwriting Activity Report for securities that are considered "actively-traded" under SEC Rule 101.

Moreover, NASD Regulation is proposing to amend Subparagraph (b)(11) to exclude exchange-listed securities from the requirement that the managing underwriter obtain an Underwriting Activity Report. Originally, it had been anticipated that the managing underwriter would be provided information on the value of average daily trading volume and market value of public float with respect to exchange-listed securities, in addition to securities included in The Nasdaq Stock Market, Inc. or quoted on the OTC Bulletin Board Service. However, since this information has not been available, the proposed rule change would eliminate the obligation of managing underwriters to request the Underwriting Activity Report with respect to exchange-listed securities. The managing underwriter of an offering of exchange-listed securities would, nonetheless, continue to be responsible under Subparagraph (b)(12) to advise the Market Regulation Department of information regarding the pricing and termination of the offering. Conforming amendments are made to Subparagraph (b)(12) in light of this proposed change to Subparagraph (b)(11). Finally, Subparagraph (b)(12) is also proposed to be revised to clarify that the managing underwriter of any offering of securities considered "actively-traded" under SEC Rule 101 must also advise the Market Regulation Department of information on pricing and termination.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2)[5] of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the requirements of SEC Regulation M.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.[6]

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change, SR–NASD–97–68, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27051 Filed 10–10–97; 8:45 am]

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[3] Securities Exchange Act Release No. 38360 (March 4, 1997), and amended Securities Exchange Act Release No. 38399 (March 14, 1997).

[4] An "actively-traded" security is a subject or reference security with a value of average daily trading volume of at least $1 million, which is issued by an issuer whose common equity securities have a public float of at least $150 million.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78c(f).

[7] 17 U.S.C. 78s(B)(2).

[8] 17 CFR 200.30–3(a)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39200; File No. SR–NYSE–97–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend Its Rule 382 Relating to Carrying Agreements

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

"Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 382, Carrying Agreements to better monitor the activities of introducing firms that are parties to carrying agreements. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Exchange Rule 382 to enhance the ability of the Exchange and other securities self-regulatory organizations ("SROs") to monitor the activities of introducing firms that are parties to carrying agreements. Exchange Rule 382 governs the contractual agreements, known as "carrying agreements," between a "carrying" and an "introducing" firm, that allocate certain functions and responsibilities associated with the carrying of, and transactions in, customer accounts. In "carrying" the accounts of others, carrying firms provide an introducing firm with a variety of services for the accounts that are "introduced" to them on behalf of customers, pursuant to the carrying agreement.

Under Rule 382, all carrying agreements must be filed with and approved by the Exchange if either party to the agreement is a member of the Exchange. Rule 382 also requires, with respect to all "fully disclosed" arrangements, that the carrying agreement specifically identify and allocate between the carrying and introducing organization certain key enumerated functions and responsibilities. To address recent concerns regarding the ability of self-regulatory organizations to monitor the activities of introducing firms, the Exchange believes the proposed amendments will increase SROs' ability to monitor the activities of introducing firms that are party to carrying arrangements. Generally, the proposed amendments will provide for increased monitoring of customer complaints regarding introducing organizations, require specific procedures for introducing organizations requesting reports offered by carrying organizations, and address procedures and responsibility for introducing organizations that are permitted to issue negotiable instruments of the carrying organizations.

Specifically, the rule amendments will require carrying organizations to furnish promptly any written customer complaint it receives regarding the introducing firm to the introducing organization and such firm's Designated Examining Authority ("DEA"). In addition, the proposal would require that the customer who submitted the written complaint be notified in writing by the carrying organization that the complaint was received, that it was furnished to the introducing firm and the DEA, and that the customer has the right, at the customer's discretion, to transfer the account to another broker-dealer.

The proposed amendment also requires the carrying organization to furnish, at the commencement of the agreement and annually thereafter, to each of its introducing organizations, a list of all reports (*e.g.*, exception type reports) that it offers to the introducing firm in order to assist the introducer in supervising and monitoring customer accounts. The proposal requires introducing firms to notify the carrying firm of those specific reports on the list that should be furnished to it to supervise and monitor customer accounts.

In addition, the carrying organization will be required to retain and preserve copies of the specific reports requested by and/or supplied to the introducing firm pursuant to Exchange Rule 440 or have the capability to: (1) Recreate copies of reports furnished, or (2) provide the report format and data elements provided in the original reports. The proposal further requires the carrying firm to provide written notice, on an annual basis within 30 days of July 1 of each year, to the Chief Executive Officer and Compliance Officer of the introducing firm, of the list of reports offered to the introducer and specify those reports actually requested or supplied as of the report date. A copy of this written notice must also be provided to the introducer's DEA.

The amended rule also addresses those agreements that allow introducing organizations to issue negotiable instruments (*e.g.*, checks) to their customers, for which the carrying organization is the maker or drawer. The proposed rule provides that the introducing organization must represent to the carrying organization that it has supervisory procedures in place, which it enforces and which are satisfactory to the carrying organization, with respect to the issuance of such instruments.

The Exchange believes that the proposed amendments to Rule 382 will clarify the relationship and responsibilities between organizations involved in carrying arrangements while also recognizing the nature of the contractual relationship between carrying firms and introducing firms. The Exchange further believes that provisions requiring furnishing of customer complaints and lists of reports submitted by and furnished to introducing organizations will enhance the ability of the Exchange and other SROs to monitor the activities of such entities. In addition, the Exchange believes that the requirement that carrying organizations maintain and be prepared to furnish copies of exception reports or to recreate the report or provide report format/data fields will ensure that appropriate records are available that detail the information actually provided to the introducing organization to monitor its customer accounts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act which[3] requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it establishes standards to which members and member organizations that are parties to carrying agreements must adhere while providing customer protection through appropriate

[3] 15 U.S.C. 78f(b)(5).

disclosures and implementation of specific procedures and controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commissions' Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR–NYSE–97–25 and should be submitted by November 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27046 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39203; File No. SR–OCC–97–14]

Self-Regulatory Organizations; The Option Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Cross-Margining Agreement With the Board of Trade Clearing Corporation

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 18, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments form interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow OCC to amend the cross-margining agreement between OCC and the Board of Trade Clearing Corporation ("BOTCC") and to amend the agreements that are required to be executed by participating clearing members and market professionals participating in the cross-margining programs established by the cross-margining agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise the amended and restated cross-margining agreement between OCC and BOTCC ("Agreement").[3] OCC and BOTCC have executed an amendment to the Agreement to revise the Agreement.[4] Specifically, OCC proposed to amend Exhibit A to the Agreement to update the list of contracts eligible of OCC/BOTCC cross-margining. OCC also proposes to amend the agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/BOTCC cross-margining. The changes to those agreements essentially will conform them to the comparable form of the agreements used in the cross-margining program among OCC, the Chicago Mercantile Exchange ("CME") and the Commodity Clearing Corporation ("CCC").[5]

The following forms of agreements are required to be executed by clearing members and market professionals participating in the cross-margining program established by the Agreement: (1) Proprietary cross-margin account agreement and security agreement for a joint clearing member; (2) proprietary cross-margin account agreement and security agreement for affiliated clearing members; (3) non-proprietary cross-margin account agreement and security agreement for a joint clearing member; (4) non-proprietary cross-margin account agreement and security agreement for affiliated clearing members; (5) subordination agreement for cross-margining for a joint clearing member; and (6) subordination agreement for cross-margining for

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a description of the existing agreement, refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 [File No. SR–OCC–91–07] (order approving establishment of cross-margining program between OCC and BOTCC) and Securities Exchange Act Release No. 32681 (July 27, 1993), 58 FR 41302 [File No. SR–OCC–92–24] (order approving expansion of cross-margining program between OCC and BOTCC to include non-proprietary positions).

[4] A copy of the amendment has been submitted with the proposed rule change and is available for inspection and copying at the Commission 's Public Reference Room or at the principal office of OCC.

[5] For a description of the cross-margining agreement among OCC, CME, and CCC, refer to Securities Exchange Act Release No. 38584 (May 8, 1997), 62 FR 26602 [File No. SR–OCC–97–04] (order granting accelerated approval to proposed rule change).

affiliated clearing members.[6] Each of these agreements is based on the comparable existing agreement used in the current OCC/BOTCC cross-margining program, and each of the agreements has been modified as necessary to reflect changes that have been made to the cross-margining program among OCC, CME, and CCC.

With respect to the proprietary cross-margin account agreement and security agreement for a joint clearing member, section 2 will be revised to make clear that margin deposited with respect to the cross-margined proprietary accounts ("proprietary X–M accounts") is security for all of the obligations of the joint clearing member whether or not such obligations arise from the proprietary X–M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X–M accounts. Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X–M accounts. Section 5 will be amended to reflect that the prohibition against the joint clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the joint clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be amended to make the affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the proprietary X–M accounts. Section 2 also will be revised to make clear that neither of the affiliated clearing members is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or BOTCC) of with such clearing member is not itself a member. Section 3 will be revised to make clear that margin deposited with respect to the proprietary X–M accounts is security for all of the obligations of the affiliated clearing members whether or not such obligations arise from the proprietary X–M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X–M accounts by adding a specific reference to the accounts. Section 6 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X–M accounts. Section 6 also will be amended to reflect that the prohibition against a clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member, section 3 will be amended to provide for the selection of a designated clearing organization ("DCO") (*i.e.*, either OCC or BOTCC) by a joint clearing member that does not maintain any proprietary X–M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the cross-margined non-proprietary accounts ("non-proprietary X–M accounts"). Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X–M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be changed to make affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the non-proprietary X–M accounts, Section 2 also will be changed to provide that neither of the affiliated clearing member is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or BOTCC) of which such clearing member is not itself a member. Section 4 will be amended to provide for the selection of a DCO by affiliated clearing members that do not maintain proprietary X–M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X–M accounts. Section 6 also will be amended to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X–M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to each of the subordination agreement for cross-margining for a joint clearing member and the subordination agreement for cross-margining for affiliated clearing members ("market professionals agreements"), section 1 will be changed to include a representation that the member executing the agreement is a member or a firm owning a membership on the Chicago Board of Trade. Section 4 of each of the market professionals agreements will be amended to include the liquidation provisions found in Appendix B of Part 190 of the regulations of the Commodity Futures Trading Commission ("CFTC")[7] and to provide that claims against a clearing member will be subordinated to all other customers as provided in subchapter III of Chapter 7 of the U.S. Bankruptcy Code.[8] The current market professionals agreements used for OCC/BOTCC cross-margining do not follow the liquidation distribution scheme of Appendix B of Part 190 of the CFTC's regulations. Section 5 of the market professionals agreements will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X–M accounts. Section 5 also will be amended to make explicit that the member has granted to OCC and BOTCC a right of setoff against collateral held with respect to the non-proprietary X–M accounts of the clearing member. A new section 7 will be added to each of the market professional agreements to provide that an executed copy of each such agreement is to be filed with OCC and BOTCC and that an executed market professionals agreement cannot be modified without the approval of the clearing organization. These changes are intended for the protection of OCC and BOTCC. OCC has informed the Commission that all other changes to the market professionals agreements are either stylistic or nonsubstantive in nature.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden of Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii) of the Act[10] directs the Commission to use its authority under the Act to facilitate the establishment of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. The Commission believes that the proposed rule change is consistent with these requirements under the Act.

Similar to other cross-margining arrangements to which OCC is a party, the current proposal links and coordinates the clearance and settlement facilities of OCC and BOTCC with respect to shared management of risks associated with the clearing members' intermarket portfolios and with respect to information sharing regarding the financial condition of participating joint and affiliated members. The Commission views cross-margining arrangements as a significant risk reduction method because they provide a means whereby individual clearing organizations do not have to manage independently the risk associated with some components (*i.e.*, the futures or options component) of a clearing member's total portfolio. Therefore, cross-margining programs serve to help OCC assure the safeguarding of securities and funds and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of futures and options, transactions in securities.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because the proposed changes to the OCC/BOTCC cross-margining program are based on the OCC/CME/CCC cross-margining program, which the Commission has previously approved. In addition, the Commission does not expect to receive any adverse comments on the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–14 and should be submitted by November 4, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–OCC–97–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–27052 Filed 10–10–97; 8:45 am]
BILLING CODE 8010–10–M

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[6] Copies of the agreements have been submitted with the proposed rule change and are available for inspection and copying at the Commission's Public Reference Room or at the principal office of OCC.

[7] 17 CFR 190, App. B.

[8] 11 U.S.C. 741, *et seq.*

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(a)(2)(A)(ii).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39188; File No. SR–PCX–97–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Listing and Trading of Portfolio Depositary Receipts

October 2, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt new rules relating to the listing and trading of Portfolio Depositary Receipts ("PDRs").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 8.300 to accommodate the trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of PDRs, i.e., securities that are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities, (2) trades like a share of common stock, and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges, PDRs based on one or more stock indexes or securities portfolios.[3] PDRs based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based will be selected by the Exchange, or by another person having a proprietary interest in and authorize use of such index or portfolio, and may be revised as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) if the index on which the Trust is based is no longer calculated; or

(c) if such other event occurs or condition exists, which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.

A Trust will terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (the "Sponsor"), following notice to PDR holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs. Dealing in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures would also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.

With respect to trading halts, the trading of PDRs would be halted, along with the trading of all other listed or traded stocks, in the event the "circuit breaker" thresholds are reached.[4] PCX does not propose to automatically halt trading or delay opening of index-based PDRs upon the triggering of futures price limits for the S&P 500 Composite Price Index, S&P" 100 Composite Price Stock Index ("S&P" "100 Index") or Major Market Index ("MMI") futures contracts. Such an event, however, could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or Major Market Index Options ("XMI"), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to its Members and Member Organizations informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 7.11, the Exchange's rule governing trading halts for index options, in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure. Proposed Rule 8.300(c) requires that Members and Member Organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a Member or Member Organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member than execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to Member or Member Organizations. The written description must be included with any sales material on that series of PDRs that a Member provides to customers or the public. Moreover, other written materials provided by a Member or Member Organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that Members and Member Organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

[3] The Commission notes that PCX has not identified a particular trading product that it seeks to list pursuant to the proposed listing standards. Prior to trading a particular product, PCX may have to submit an additional Section 19(b) filing that more specifically addresses potential issues associated with items such as the composition, calculation and dissemination of the applicable index.

[4] See Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) & note 7 therein.

Two existing PDRs, SPDRs, and MidCap SPDRs, are traded on the American Stock Exchange ("Amex").[5] The Exchange is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather with trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved.

Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and the Exchange's proposed rule change is designed to create similar standards for PDR listing and/or trading on the PCX. As stated above, the Exchange proposes to trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges upon arrival of this rule filing.

Because the Exchange is not itself listing SPDRs and MidCap SPDRs, but will merely be trading these securities pursuant to unlisted trading privileges, the Exchange will not independently ensure conformity of SPDRs and MidCap SPDRs to PCX listing standards. Instead, the Exchange will rely on the primary market to determine whether SPDRs and MidCap SPDRs meet the relevant listing standards. If at a later time the Exchange desires to list SPDRs and MidCap SPDRs, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act, the Exchange will independently ensure that SPDRs and MidCap SPDRs conform to the Exchange's own listing standards.

The remainder of this section of the filing merely provides background information on SPDRs and MidCap SPDRs. The information, taken mostly from SR–AMEX–94–52 and SR–AMEX–92–18, describes the structure and mechanics of SPDRs and MidCap SPDRs.

SPDRs and MidCap SPDRs Generally. On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*[6] to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index ("S&P" Index), known as Standard & Poor's Depositary Receipts ("SPDRs"). SPDRs have been trading on Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[7] known as Standard & Poors MidCap 400 Depositary Receipts ("MidCap SPDRs").[8] The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDRs. It is anticipated that the term of the SPDR Trust will be 25 years.[9] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[10] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities weighted according to their representation in the Index.[11] An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 50,000 SPDRs.[12] The price of SPDRs will be based on a current bid/offer market.[13] SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (i.e., 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an-in-kind distribution of securities identical to a Portfolio Deposit.[14] PDR Distribution Services, Inc., a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit Size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depositary Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by: (1) The "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain adjustments. The securities and cash accepted by the

[5] SPDRs and MidCap SPDRs are defined and discussed more fully below.

[6] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[7] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[8] See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995).

[9] The SPDR Trust may terminate at an earlier time under certain circumstances, as provided in the prospectus.

[10] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

[11] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[12] The Trust is structured so that the net asset value of an individual SDPR should equal one-tenth of the value of the S&P 500 Index.

[13] The Amex has designated 1/64's as the minimum fraction for trading in SPDRs. The Exchange has proposed this same minimum variation for the trading of SPDRs on the PCX.

[14] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemption.

Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

It is anticipated that the term of the MidCap SPDR Trust will be 25 years.

Issuance of MidCap SPDRs. Upon receipt of a Portfolio in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Amex anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.[15] Individual Mid Cap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitragers, and the Exchange specialist.

The Trustee or Sponsor will make available: (1) On a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such date; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding Mid Cap SPDR.

The Amex has set the minimum fractional trading variation for MidCap SPDRs at 1/64 of $1.00. The Exchange is proposing this same minimum variation for MidCap SPDRs.

Redemption of MidCap SPDRs. Mid Cap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-divident date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[16] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

2. Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[17] in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

A. By order approve such rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-97-35 and should be submitted by October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[15] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service ("DRS").

[16] The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 200.30(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Application for Retirement Insurance Benefits—0960-0007. The Social Security Administration uses the information on Form SSA-1 to determine an individual's entitlement to retirement insurance benefits. The respondents are applicants for retirement benefits.

Number of Respondents: 1,600,000.
Frequency of Response: 1.
Average Burden Per Response: 10.5 minutes.
Estimated Annual Burden: 280,000 hours.

2. Physician's/Medical Officer's Statement, Patient's Capability to Manage Benefits—0960-0024. The Social Security Administration uses the information on Form SSA-787 to determine whether an individual is capable of handling his/her benefits. The information is also used for leads in selecting a representative payee. The respondents are physicians of the beneficiaries or medical officers of institutions where beneficiaries reside.

Number of Respondents: 120,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 20,000 hours.

3. Claimant's Statement When Request for Hearing Is Filed and The Issue Is Disability—0960-0316. The Social Security Administration requires that applicants for disability benefits provide the updated medical information requested on Form HA-4486, to facilitate processing their Old Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) claims. This information also enables the Administrative Law Judge hearing the case to fully inquire into the claimant's medical condition. The respondents are applicants for OASDI and SSI Benefits.

Number of Respondents: 283,460.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 70,865 hours.

4. Representative Payee Report of Benefits and Dedicated Account—0960-0576. The Social Security Administration uses Form SSA-6233 to ensure that payment of SSI benefits is made to a relative, another person, or an organization when the best interests of the beneficiary would be served. The form is also used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individual and organizational representative payees required by law to establish a separate ("dedicated") account in a financial institution for certain past-due SSI monthly benefits.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 10,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, *Attn:* Nicholas E. Tagliareni, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Date: October 6, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer Social Security Administration.

[FR Doc. 97-27121 Filed 10-10-97; 8:45 am]

BILLING CODE 4190-29-P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1498).

TIME AND DATE: 9 a.m. (CDT), October 15, 1997.

PLACE: TVA Allen Fossil Plant Assembly Room, 2574 Plant Road, Memphis, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 8, 1997.

New Business

B—Purchase Awards

B1. Increase in the amount of an existing Blanket Purchase Order with ABB Power T&D Company, Inc., from $7.99 million to $26 million.

B2. Approval to enter into a contract with Allied Welding & Safety, LLC, for welding supplies and equipment for all TVA locations.

C—Energy

C1. Approval to supplement engineering services contracts with Midpoint International Corporation (TV-95252V) and Martin-Williams International, Inc. (TV-95264V), to provide engineering services in a staff augmentation role for TVA Nuclear. The supplements will add a cumulative amount not to exceed $8.5 million and extend the term of the contracts to September 30, 2000.

C2. Public auction sale of Cawood Branch Coal Lease, Red Bird Coal Reserves, Harlan and Leslie Counties, Kentucky (Tract No. XEKCR-39L) and delegation of authority to the Vice President, Fuel Supply and Engineering, or a designated representative, to administer, amend, or modify the terms of the lease.

E—Real Property Transactions

E1. Grant of permanent easement to the State of Alabama for a bridge project, affecting approximately 1.15 acres of land on Bear Creek in Marion County, Alabama (Tract No. XTBCSF-1H).

E2. Grant of permanent easement to the State of Tennessee for State Highway No. 306 improvement project,

affecting 1.09 acres of land on Chickamauga Lake in Meigs County, Tennessee (Tract No. XTCR–192H).

E3. Sale of noncommercial, nonexclusive permanent easements to Robert K. Tallent (Tract No. XTELR–197RE) and John T. Smolik (Tract No. XTELR–198RE) for construction and maintenance of recreational water-use facilities affecting 0.42 acre of land on Tellico Lake in Loudon County, Tennessee.

E4. Grant of permanent easement to LaFollette Utilities for a powerline affecting approximately 5.02 acres of TVA land and former TVA land on Norris Lake in Campbell County, Tennessee (Tract No. XTNR–110PR).

E5. Sale of 40-year easement to Lighthouse Fuels, Inc., for industrial development, affecting approximately 37.5 acres of land on Pickwick Lake in Tishomingo County, Mississippi (Track No. XYECR–111E).

Unclassified

F1. Approval to file condemnation cases in connection with the following power transmission lines: Alpha-Loughridge, Murray County, Georgia; Batesville-West Batesville, Panola County, Mississippi; Savannah-North Adamsville, Hardin County, Tennessee; and Widows Creek-Fort Payne, Jackson County, Alabama.

Information Items

1. Approval for calculation adjustments to distributor retail rate schedules related to the price increase which became effective October 1, 1997.

2. Approval of completion of final contract negotiations with Southern Company Services, Inc., and execution of reciprocal network transmission service agreements to serve each company's isolated native loads located within the other company's control area.

3. Approval to abandon a portion of TVA's Chickamauga-Friendship transmission line right-of-way easement affecting 0.1 acre in Hamilton County, Tennessee (Tract No. 2CF–10).

4. Amended and restated agreement among TVA, Southeastern Power Administration, and Tennessee Valley Public Power Association regarding power supply from the Corps of Engineers' Cumberland River projects.

5. Approval to submit two proposals to the Department of Energy under which TVA would offer to provide DOE with irradiation services for the production of tritium.

6. Reformation of a contract between TVA and the TVA Retirement System.

7. Approval to amend the program for TVA contributions to the cost of medical coverage in TVA-sponsored medical plans for current and future retirees and to count all Federal civilian service prior to coming to TVA as creditable service for persons who retire from TVA after January 1, 1997.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: October 8, 1997.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 97–27217 Filed 10–9–97; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–20]

WTO Dispute Settlement Proceeding Regarding Japanese Varietal Testing and Quarantine Requirements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States has requested establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO), to examine Japan's prohibition on imports of certain agricultural products. Specifically, for each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety even though the treatment has proven effective with respect to other varieties of the same product. This redundant testing requirement has no apparent scientific basis but serves as a significant barrier to market access. In this dispute the United States alleges that these Japanese measures are inconsistent with the obligations of Japan under the Agreement on the Application of Sanitary and Phytosanitary Measures, the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and the Agreement on Agriculture. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 10, 1997 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted by Ileana Falticeni, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: Japan Fruit Quarantine Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395–7305, Audrae Erickson, Office of Agricultural Affairs, (202) 395–6127, or Elizabeth Hyman, Office of the General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on October 3, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether the import prohibition on agricultural products, in particular the varietal testing requirements, maintained by Japan are inconsistent with Japan's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures, the GATT 1994, and the Agreement on Agriculture. The WTO Dispute Settlement Body is likely to establish the panel no later than mid-November, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

For each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product. The relevant provisions of Japanese laws include the Plant Protection Law (Law No. 151) enacted May 4, 1950, as amended, and the Plant Protection Law Enforcement Regulation (Ministry of Agriculture, Forestry and Fisheries Ordinance No. 73) of June 30, 1950, as amended.

For example, after years of effort by the United States, in January 1995 Japan agreed to permit imports of U.S. Red Delicious and Golden Delicious apples based on Japan's determination that treatment of fruit from inspected orchards both with methyl bromide fumigation and a cold storage treatment would be effective against codling moth, a plant pest. However, Japan has refused to allow other varieties of apples, such as Gala, Fuji, Braeburn, Jonagold and Granny Smith, to be imported into Japan unless lengthy and expensive tests are performed on each variety to prove the efficacy of the same methyl bromide/cold storage treatment at killing codling moths. There is no scientific basis for distinguishing between different varieties of fruit in this respect.

The USTR believes that these measures are inconsistent with the obligations of Japan under several provisions of the WTO Agreements, including Articles 2, 3, 4, 5, 7 and 8 of the Agreement on the Application of Sanitary and Phytosanitary Measures; Article XI of the General Agreement on Tariffs and Trade 1994; and Article 4 of the Agreement on Agriculture.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–20, "U.S.-Japan Fruit Quarantine Dispute") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–27067 Filed 10–10–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–52]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 3, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 29009, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on October 8, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29009.

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR part 93, subparts K and S.

Description of Relief Sought: To prevent the withdrawal of domestic slots from UAL at O'Hare International Airport for reallocation to foreign carriers.

[FR Doc. 97–27147 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1549.

Form Number: None.

Type of Review: Extension.

Title: Tip Reporting Alternative Commitment for the food and beverage industry.

Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 237,881 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–27113 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 7, 1997 .

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/International Trade Data Systems Project Office

OMB Number: 1505–0162.

Form Number: CF 3461, CF 3461 ALT, CF 7501, CF 7512, and CF 7533.

Type of Review: Extension.

Title: North American Trade Automation Prototype Data.

Description: The requested data is from volunteer trading community participants in the prototype test with the United States, Canada, and Mexico to improve the electronic exchange of data in the execution of North American land border commercial trade transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,758 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–27114 Filed 10–10–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form 8853.

Type of Review: New collection.

Title: Medical Savings Accounts and Long-Term Care Services and Contracts.

Description: This form is used by individuals to report general information about their medical savings accounts (MSAs), to figure their MSA deductions, and to figure their taxable distributions from MSAs. The form is also used to report taxable payments from long-term care (LTC) contracts.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,250,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 6 min.
Learning about the law or the form.	32 min.
Preparing the form	1 hr., 14 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,877,500 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–27115 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 2, 1997

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the focus group interviews described below in the late-October to November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by October 15, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–021–G.

Type of Review: Revision.

Title: Refund Inquiry Focus Groups.

Description: The objective of these focus group interviews is to gather feedback from taxpayers on why taxpayers call the IRS multiple times to check on the status of their refunds. The groups will be held in the in the following cities: Jacksonville, Florida, Buffalo, New York, and Seattle, Washington.

Respondents: Individuals or households.

Estimated Number of Respondents: 78 (6 groups, 13 participants in each).

Estimated Burden Hours Per Response: 3 hours.

Contact call—5 minutes.

Focus group sessions—2 hours.

Travel time—1 hour.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 195 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–27116 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Written comments should be received on or before December 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545–0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 12 hr., 46 min.

Estimated Total Annual Burden Hours: 7,662.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27137 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of determination of necessity for renewal of the Advisory Group to the Commissioner of Internal Revenue.

SUMMARY: It is in the public interest to continue the existence of the Advisory Group to the Commissioner of Internal Revenue.

FOR FURTHER INFORMATION CONTACT: Merci del Toro, Office of Public Liaison, C:I, Room 3308, 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone: 202–622–5081 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Acting Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. Advisory Group to the Commissioner of Internal Revenue (will subsequently be referred to as the Commissioner's Advisory Group or CAG).

Purpose. The CAG assists the Internal Revenue Service by providing valuable advice and information on general management issues that determine how taxpayers view the fairness and integrity of the Federal tax system. The CAG also provides invaluable advice and recommendations on the administration of new and existing servicewide tax administration programs. The CAG's advice and recommendations also provide the IRS with a gauge to measure problems encountered by taxpayers when dealing with the IRS or in meeting their tax obligations. The CAG provides an efficient and organized method of obtaining timely comments from a diverse section of the taxpaying public. This organized forum is the least costly method to obtain invaluable advice and experiences from a balanced cross-

section of professionals and private citizens.

Statement of Public Interest. It is in the public interest to continue the existence of the CAG. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the group. CAG members represent a wide spectrum of the public, allowing the IRS to easily obtain timely and pertinent feedback.

Authority for the CAG will expire two years from the date the Charter is approved by the Assistant Secretary for Management and CFO and is filed with the appropriate congressional committees, unless the CAG is renewed prior to the expiration of the charter.

The Acting Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C., Chapter 6).

Dated: October 2, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–27139 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "The Nature of Diamonds" (See listed) [1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the American Museum of Natural History, New York City, New York, from on or about November 1, 1997, to on or about April 26, 1998; the Cranbrook Institute of Science, Bloomfield Hills, Michigan, on or about the Summer 1998; the Denver Museum of Natural History, Denver, Colorado, on or about Spring 1999; The National History Museum of Los Angeles County, Los Angeles, California, on or about Spring 1999; the Milwaukee Public Museum, Inc., Milwaukee Wisconsin, on or about Fall 1999; the Field Museum of Natural History, Chicago, Illinois; California Academy of Sciences, San Francisco, California; Houston Museum of Natural Science, Houston, Texas, from on or about January 2000 to on or about December 31, 2002; and other sites in the United States as scheduled, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: October 9, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–27253 Filed 10–10–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982, and the address is room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

federal register

Tuesday
October 14, 1997

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1, et al.

Treaty-Based Return Positions; General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Certain Payments Made Pursuant to a Securities Lending Transaction; Final Rules

Withholding on Interest in the Case of Sales of Obligations Between Interest Payment Dates; Electronic Transmission of Form W–8; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8733]

RIN 1545–AP35

Treaty-Based Return Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6114 of the Internal Revenue Code of 1986 providing that reporting is specifically required if the residency of an individual is determined under a treaty and apart from the Code.

The IRS concluded, in the process of completing the regulations under section 7701(b), that the rules of section 6114 should apply to individuals determining their residency under a treaty.

These final regulations are necessary to implement the section 6114 rules to individuals determining their residency under a treaty. Also contained in this document are final regulations relating to section 7701(b) and conforming changes to regulations under sections 6038 and 6046.

EFFECTIVE DATE: These regulations are effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: David A. Juster, telephone (202–622–3850) (not a toll-free number), regarding sections 6114 and 7701(b) and Carl M. Cooper, telephone (202–622–3840) (not a toll-free number) regarding sections 6038 and 6046, both of the Office of Associate Chief Counsel (international), within the Office of Chief Counsel, IRS.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1126. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The estimated annual burden per respondent varies from 1/2 hour to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 27, 1992, a notice of proposed rulemaking was published in the **Federal Register** (57 FR 15272) proposing amendments to the final Regulations on Procedure and Administration (26 CFR 301.6114–1), published in the **Federal Register** on March 14, 1990 (55 FR 9438) and on July 12, 1990 (55 FR 28608). The proposed amendments related to § 301.6114–1 (b) and (c) and § 301.7701(b)–7(c)(2). No written comments responding to the notice were received. No public hearing was requested or held. The proposed amendments are adopted without change by this Treasury decision. This Treasury decision also includes modifications to §§ 1.6038–2(j), 1.6046–1(g), 301.6114–1(d), 301.7701(b)–3(b) (3) and (4), 301.7701(b)–7(c)(1) and 301.7701(b)–8(b) (1) and (2).

Explanation of Provisions

Section 301.6114–1(b) is amended by adding paragraph (b)(8) to provide that reporting is required under section 6114 where residency of an individual is determined under a treaty and apart from the Internal Revenue Code (Code). The regulations provide, however, that reporting is waived for an individual if payments or income items reportable by reason of paragraph (b)(8) do not exceed $100,000 in the aggregate. Section 301.6114–1(d) currently provides that when reporting is required under section 6114, a taxpayer must furnish as an attachment to his or her return a written statement with the information as set forth in paragraph (d). Section 301.7701(b)–7(b) currently provides that a dual resident taxpayer who claims a treaty benefit as a nonresident of the United States must file a statement in the form required by paragraph (c) of that section. Section 301.6114–1(d) is now amended to provide that, when reporting is required under section 6114, a taxpayer must furnish, as an attachment to his or her return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Section 301.7701(b)–7(c)(1) is amended to provide that the written statement required to be furnished under paragraph (b) of that section, as an attachment to a dual resident taxpayer's return, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Form 8833 was developed to provide standardized reporting of the information currently required by §§ 301.6114–1(d) and 301.7701(b)–7(c).

In an effort to provide standardized reporting of the information currently required to be reported, under § 301.7701(b)–8(b), by taxpayers claiming the closer connection exception and exempt individuals and individuals with a medical condition, the Service has developed Form 8840 (Closer Connection Exception Statement) and Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition). Accordingly, § 301.7701(b)–8(b)(1) is amended to provide that the statement filed by alien individuals claiming the closer connection exception, described in § 301.7701(b)–2, must be in the form of a fully completed Form 8840 or appropriate successor form. Section 301.7701(b)–8(b)(2) is amended to provide that the statement filed by exempt individuals and individuals with a medical condition, described in § 301.7701(b)–3, must be in the form of a fully completed Form 8843 or appropriate successor form.

Sections 3121(b)(19), 3306(c)(19) and 3231(e)(1) of the Code provide that "J" class visa holders (teachers and trainees) are exempt from FICA, FUTA and Railroad Retirement Act taxes, respectively. Section 320 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296 (108 Stat. 1464), extends the FICA, FUTA and Railroad Retirement Act tax exemptions and certain other tax rules to "Q" class visa holders (participants in international cultural exchange programs). Accordingly, conforming changes have been made to § 301.7701(b)–3(b) (3) and (4) to reflect the revisions in the Code to the definitions of a *teacher* or *trainee* and *student* contained in section 7701(b)(5).

Section 301.7701(b)–7(c)(2), adopted as proposed, provides that, for purposes of stating the approximate amount of subpart F income to be included in the

statement required to be furnished under paragraph (b) of that section by a dual resident taxpayer who is a shareholder in a *controlled foreign corporation* (as defined in section 957 or section 953(c)), the approximate amount of income may be based on the audited foreign financial statements of the CFC if there are no other United States shareholders in that CFC. Parallel rules with respect to information reporting under sections 6038 and 6046 are added in §§ 1.6038–2(j)(2)(ii) and 1.6046–1(g). Under these rules, a taxpayer who claims a treaty benefit as a nonresident of the United States, but who is a United States person for purposes of the information reporting requirements of sections 6038 or 6046, may satisfy certain information reporting requirements by filing the audited foreign financial statements of the foreign corporation with respect to which the information reporting is required. However, these rules apply only if the taxpayer is the sole United States person for purposes of the information reporting requirements with respect to the foreign corporation. If there are other United States persons for those purposes, then the taxpayer must report the information required by the regulations in the form and manner generally prescribed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: Various personnel from the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6038–2 is amended by:

1. Redesignating paragraph (j)(2)(ii) as paragraph (j)(2)(iii).

2. Adding new paragraph (j)(2)(ii) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(2) * * *

(ii) If an individual who is a United States person required to furnish information with respect to a foreign corporation under section 6038 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6038 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (f)(10), (f)(11), (g), and (h) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6038.

* * * * *

Par. 3. In § 1.6046–1, paragraph (g) is amended by adding a sentence at the end to read as follows:

§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

* * * * *

(g) * * * If an individual who is a United States person required to make a return with respect to a foreign corporation under section 6046 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6046 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (b)(10), (11) and (12), (c)(3)(ii)(*d*), and (g) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6046.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 301.6114–1 also issued under 26 U.S.C. 6114; * * *.

Par. 5. Section 301.6114–1 is amended by:

1. Removing the language "(c)(1)" in paragraph (b)(4) introductory text and adding "(c)(1)(i)" in its place.

2. Removing the language "(c)(1)" in paragraph (b)(5) introductory text and adding "(c)(1)(i)" in its place.

3. Removing the language"(c)(4)" in paragraph (b)(6) and adding "(c)(1)(iv)" in its place.

4. Removing the language "or" at the end of paragraph (b)(6).

5. Removing the period at the end of paragraph (b)(7) and adding "; or" in its place.

6. Adding a paragraph (b)(8).

7. Paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (c)(1)(i) through (c)(1)(vi), respectively.

8. Paragraphs (c)(7) introductory text, (c)(7)(i), (c)(7)(ii), and (c)(7)(iii) are redesignated as paragraphs (c)(1)(vii) introductory text, (c)(1)(vii)(A), (c)(1)(vii)(B) and (c)(1)(vii)(C), respectively.

9. The introductory text of paragraph (c) is redesignated as the introductory text of paragraph (c)(1).

10. Revising newly designated paragraph (c)(1)(ii).

11. Removing the concluding text immediately following newly designated paragraph (c)(1)(vii)(C).

12. Adding paragraphs (c)(2), (c)(3), (c)(4) and (c)(5).

13. Revising paragraph (d).

The additions and revisions read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

(b) * * *

(8) For returns relating to taxable years for which the due date for filing

returns (without extensions) is after December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

(c) *Reporting requirement waived.* (1) * * *

(ii) For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

* * * * *

(2) Reporting is waived for an individual if payments or income items otherwise reportable under this section (other than by reason of paragraph (b)(8) of this section), received by the individual during the course of the taxable year do not exceed $10,000 in the aggregate or, in the case of payments or income items reportable only by reason of paragraph (b)(8) of this section, do not exceed $100,000 in the aggregate.

(3) Reporting with respect to payments or income items the treatment of which is mandated by the terms of a closing agreement with the Internal Revenue Service, and that would otherwise be subject to the reporting requirements of this section, is also waived.

(4) If a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return.

(5) This section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported*—(1) *Returns due after* December 15, 1997. When reporting is required under this section for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, the taxpayer must furnish, in accordance with paragraph (a) of this section, as an attachment to the return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form.

(2) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the taxpayer must furnish information in accordance with paragraph (d) of this section in effect prior to December 15, 1997 (see § 301.6114–1(d) as contained in 26 CFR part 301, revised April 1, 1997).

(3) *In general*—(i) *Permanent establishment.* For purposes of determining the nature and amount (or reasonable estimate thereof) of gross receipts, if a taxpayer takes a position that it does not have a permanent establishment or a fixed base in the United States and properly discloses that position, it need not separately report its payment of actual or deemed dividends or interest exempt from tax by reason of a treaty (or any liability for tax imposed by reason of section 884).

(ii) *Single income item.* For purposes of the statement of facts relied upon to support each separate Treaty-Based Return Position taken, a taxpayer may treat payments or income items of the same type (e.g., interest items) received from the same ultimate payor (e.g., the obligor on a note) as a single separate payment or income item.

(iii) *Foreign source effectively connected income.* If a taxpayer takes the return position that, under the treaty, income that would be income effectively connected with a U.S. trade or business is not subject to U.S. taxation because it is income treated as derived from sources outside the United States, the taxpayer may treat payments or income items of the same type (e.g., interest items) as a single separate payment or income item.

(iv) *Sales or services income.* Income from separate sales or services, whether or not made or preformed by an agent (independent or dependent), to different U.S. customers on behalf of a foreign corporation not having a permanent establishment in the United States may be treated as a single payment or income item.

(v) *Foreign insurers or reinsurers.* For purposes of reporting by foreign insurers or reinsurers, as described in paragraph (c)(1)(vii)(B) of this section, such reporting must separately set forth premiums paid with respect to casualty insurance and indemnity bonds (subject to section 4371(1)); life insurance, sickness and accident policies, and annuity contracts (subject to section 4371(2)); and reinsurance (subject to section 4371(3)). All premiums paid with respect to each of these three categories may be treated as a single payment or income item within that category. For reports first due before May 1, 1991, the report may disclose, for each of the three categories, the total amount of premiums derived by the foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). Reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements.

* * * * *

Par. 6. Section 301.7701(b)–0 is amended in the contents listing by:

1. Adding entries for § 301.7701(b)–7, paragraphs (c)(1)(i) and (c)(1)(ii).

2. Removing the language "[Reserved]" in the entry for § 301.7701(b)–7, paragraph (c)(2).

3. Adding entries for § 301.7701(b)–8, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i) and (b)(2)(ii).

The additions read as follows:

§ 301.7701(b)–0 Outline of regulation provision for section 7701(b)–1 through (b)–9.

* * * * *

§ 301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

§ 301.7701(b)–8 Procedural rules.

* * * * *

(b) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

(2) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

Par. 7. Section 301.7701(b)–3 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 301.7701(b)–3 Days of presence in the United States that are excluded for purposes of section 7701(b).

* * * * *

(b) * * *

(3) *Teacher or trainee.* A teacher or trainee includes any individual (and that individual's immediate family), other than a student, who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J), (Q)) and who substantially complies with the requirements of being admitted.

(4) *Student.* A student is any individual (and that individual's immediate family) who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(F) or (M) (relating to the admission of students into the United States) or as a student under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F), (J), (M), (Q)) who substantially complies with the requirements of being admitted. For rules concerning taxation of certain nonresident students or trainees, see section 871(c) and § 1.871–9(a) of this chapter.

* * * * *

Par. 8. Section 301.7701(b)–7 is amended by:

1. Revising paragraph (c)(1).

2. Adding text for paragraph (c)(2).

The revision and addition read as follows:

§ 301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * * (1) *In general*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. See section 6114 and § 301.6114–1 for rules relating to other treaty-based return positions taken by the same taxpayer.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (c)(1) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–7(c)(1) as contained in 26 CFR part 301, revised April 1, 1997).

(2) *Controlled foreign corporation shareholders.* If the taxpayer who claims a treaty benefit as a nonresident of the United States is a United States shareholder in a controlled foreign corporation (CFC), as defined in section 957 or section 953(c), and there are no other United States shareholders in that CFC, then for purposes of paragraph (c)(1) of this section, the approximate amount of subpart F income (as defined in section 952) that would have been included in the taxpayer's income may be determined based on the audited foreign financial statements of the CFC.

* * * * *

Par. 9. Section 301.7701(b)–8 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 301.7701(b)–8 Procedural rules.

* * * * *

(b) * * * (1) *Closer connection exception*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8840 (Closer Connection Exception Statement) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (b)(1) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–8(b)(1) as contained in 26 CFR Part 301, revised April 1, 1997).

(2) *Exempt individuals and individuals with a medical condition*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(2) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(2) of this section must contain the information in accordance with paragraph (b)(2) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–8(b)(2) as contained in 26 CFR Part 301, revised April 1, 1997).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table and revising the entry for 301.7701(b)–7 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6114–1	1545–1126
* * * * *	
301.7701(b)–7	1545–0089 1545–1126
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25997 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602

[TD 8734]

RIN 1545–AU43; 1545–AT77

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the withholding of income tax under sections 1441, 1442, and 1443 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related requirements governing collection, refunds, and credits of withheld amounts under sections 1461 through 1463 and sections 6402 and 6413. Additionally, this document contains final regulations relating to the statutory exemption under sections 871(h) and 881(c) for portfolio interest.

This document removes temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and amends existing regulations under sections 6041A and 6050N. This document finalizes changes to the proposed regulations contained in project number INTL–52–86, published on February 29, 1988, under sections 6041, 6042, 6044, 6045, and 6049. This document also finalizes proposed regulations contained in project number IA–33–95, published on December 21, 1995 , relating to the effective date of certain temporary employment tax regulations. This document finalizes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6109, 6114, 6413, and 6724. This document removes certain regulations under income tax treaties.

EFFECTIVE DATES: These regulations are effective January 1, 1999, except the addition of § 31.9999–0, the removal of § 35a.9999–0T and the addition of § 35a.9999–0, which are effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Lilo Hester or Teresa Burridge Hughes, telephone (202) 622–3840 (not a toll-free number), for questions on the regulations generally; Carl Cooper, telephone (202) 622–3840 (not a toll-free number), for questions on portfolio interest and qualified intermediary agreements; Renay France, telephone (202) 622–4940 (not a toll-free number), for questions on the regulations relating to chapter 61 of the Internal Revenue Code or section 3406.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1484. Responses to these collections of information are required to obtain a benefit (to claim an exemption to, or a reduction in, the withholding tax), and to facilitate tax compliance (to verify entitlement to an exemption or a reduced rate).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The estimate of the reporting burden in these final regulations will be reflected in the burdens of Forms W–8, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations (CFR parts 1, 31, 35a and 301) under sections 163(f), 165(j), 871, 881, 1441, 1442, 1443, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Internal Revenue Code (Code) . This document also removes certain regulations under income tax treaties.

On April 15, 1996, (61 FR 17614) the IRS and Treasury published a notice of proposed rulemaking under a number of sections of the Code, dealing with the withholding of tax under section 1441, 1442, or 1443 on amounts paid to foreign persons, procedures for claiming foreign status to avoid backup withholding under section 3406 on certain payments, and the reporting to the IRS of payments to foreign persons. Reporting to the IRS may be required under sections 6011 and 1461 or under the reporting provisions of chapter 61 of the Code, such as sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, or 6050N, (the Form 1099 reporting provisions). Comments responding to the notice were received and a public hearing was held on July 24, 1996. After considering the comments submitted in writing and at the hearings, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Payments to domestic and foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under various provisions of the Code. These procedures are important to the operation of IRS matching systems. Those systems are part of a compliance program that allows the IRS to match information provided by payors with income reported on a payee's income tax return and help detect U.S. taxpayers that fail to file returns or underreport income. The withholding of tax at source and the reporting of payments to foreign persons are also important to insure that foreign persons comply with their U.S. tax obligations. The final regulations contained in this document deal mostly with payments to foreign persons, and the U.S. income tax liability resulting from such payments.

Under sections 871(a) and 881(a) of the Code, nonresident alien individuals and foreign corporations are subject to a 30-percent tax on most items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Income taxable under these provisions includes interest, dividends, royalties, compensation, other fixed or determinable annual or periodical (FDAP) income and certain gains. The tax liability imposed under sections 871(a) and 881(a) is generally collected by way of withholding at source under chapter 3 of the Code pursuant to section 1441(a) (for payments to nonresident alien individuals and foreign partnerships), section 1442(a) (for payments to foreign corporations), or section 1443(a) (for payments of certain income to foreign tax-exempt entities). Other special withholding provisions apply under section 1443(b) (dealing with the withholding of the 4-percent tax imposed under section 4948), section 1445 (dealing with gains from the disposition of U.S. real property) and section 1446 (dealing with effectively connected income of foreign partners in a partnership). The tax liability imposed under sections 871, 881, 1441, 1442, and 1443 also extends to payments to other foreign persons, including foreign trusts and estates.

The 30-percent rate is often reduced under the Code or an income tax treaty. Under current regulations, a withholding agent may generally rely on a statement furnished by, or for, the beneficial owner certifying eligibility for a reduced rate. The procedural requirements for claiming a reduced rate of withholding may vary depending upon the type of income, the status of the taxpayer, or whether an income tax treaty applies. For example, the portfolio interest exception under sections 871(h) and 881(c) for U.S. interest on an obligation in registered form is conditioned upon the beneficial owner of the interest providing a statement of foreign status to the U.S. withholding agent, which can be provided on a Form W–8. See § 35a.9999–5(b), A–9. If a reduction is claimed under an income tax treaty, the withholding agent may generally rely on a Form 1001 provided by, or for, the beneficial owner claiming residence in a treaty country. For dividends, however, the current rules do not require certification of foreign status in order to obtain a reduced rate of withholding at source under an income tax treaty. Instead, the withholding agent may generally rely on the address of the payee and grant a reduced rate of withholding at source if the recipient's address is in a treaty country.

A withholding agent is generally required to file an annual income tax return on Form 1042 to report amounts upon which an amount was actually withheld under chapter 3 of the Code or would have been required to be withheld but for an exemption under the regulations, or an income tax treaty. An information return on a Form 1042–S must be attached to the Form 1042 and must report each recipient's name and address, amounts paid, and amounts withheld, if any. See § 1.1461–2 (b) and (c).

A payor making payments to foreign persons must also be aware of the information reporting provisions under chapter 61 of the Code and of other withholding regimes, such as section 3406 (backup withholding), section 3402 (wage withholding), and section 3405 (withholding on pensions, annuities, etc.). Payors subject to these reporting and withholding rules include both U.S. persons and foreign persons, subject to certain exceptions. Under chapter 61 of the Code, many types of payments, such as interest, dividends, royalties, broker proceeds, etc. (reportable payments) must be reported on a Form 1099 if paid to certain U.S. persons. The form is filed with the IRS and a copy is furnished to the recipient of the payment. In addition, section 3406 requires those same U.S. payees to furnish a taxpayer identifying number (TIN) to the payor, generally on a Form W–9, and, for reportable interest and dividends, a certification that the payee is not subject to notified payee underreporting. Failure to provide a TIN would generally require the payor to backup withhold on the payment at the rate of 31-percent. A payor that fails to obtain a TIN or other required information in the manner required or to backup withhold when required under section 3406 may also be liable, under section 3403, for interest and penalties, in addition to any amount that should have been withheld under section 3406.

Payments to foreign persons are exempt from Form 1099 information reporting and backup withholding. However, the exemption is generally conditioned upon the recipient furnishing a certificate supporting its foreign status. The existing regulations under the information reporting provisions of chapter 61 contain guidance to help payors determine when payments are made to a foreign person. Generally, depending upon the type of payment involved, a payor may rely on a certification of foreign status made on Form W–8, Form 1001, Form 4224, or, in the case of certain payments outside the United States, on alternative evidence of foreign status. See, for example, § 35a.9999–3, A–34. Therefore, even if an amount paid to a foreign person is exempt from withholding under chapter 3 of the Code (e.g., gain from the sale of securities), a payor must nevertheless comply with specified certification procedures in order to avoid being subject to penalties for failure to comply with the information reporting and the backup withholding procedures (only amounts subject to reporting under the Form 1099 reporting provisions are subject to backup withholding under section 3406; see section 3406(b) and § 31.3406(a)–1(a) and, for example, § 31.3406(b)(2)–1(a)).

As explained in the preamble to the proposed regulations, the IRS and Treasury have reviewed the current withholding and reporting procedures applicable to cross-border payment flows and have concluded that changes are necessary to accommodate the size and growth of international financial markets. The IRS and Treasury have concluded that allowing the benefit of the reduced rate at source, rather than through a refund procedure, continues to be desirable. A regime based on reduction of withholding at source avoids the administrative costs and delays that can occur when applying for a refund of overwithheld amounts. This regime, however, depends on withholding agents performing important compliance functions. They must obtain documentation substantiating claims of foreign status and of reduced rates of withholding and must provide information to the IRS.

One of the important objectives of the revisions is to eliminate unnecessary burdens that the lack of standardization and coordination of current procedures may impose on withholding agents. While it is unavoidable that different information be required for different types of income or recipients, the forms currently in use apply different standards of proof and are not uniform in the manner in which the information is furnished to withholding agents. The final regulations unify the documentation requirements and seek to facilitate compliance by clarifying uncertainties that may exist under current rules (e.g., the scope of due diligence standards imposed on withholding agents).

These regulations also address important issues relating to payments to intermediaries (e.g., nominees, agents, etc.), including whether intermediaries should certify status on behalf of beneficial owners and, if so, how. Intermediary procedures under current rules have proved difficult to implement in a number of cases. In particular, U.S. source interest on obligations in registered form do not qualify as portfolio interest under sections 871(h) and 881(c) unless the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person (see section 871(h)(2)(B)(ii)). When the payment is made to a foreign person acting as an intermediary on behalf of the beneficial owner or of other intermediaries, the current regulations require that the beneficial owner certification be passed up through the chain of intermediaries to the U.S. withholding agent. See § 35a.9999–5(b), A–9. The final regulations offer alternative procedures and respond to the concerns expressed by various representatives of the financial community regarding compliance costs.

The final regulations are also responsive to the Congressional mandate in section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) that Treasury consider a range of options for replacing the address/self-certification method of administering income tax treaty benefits. The IRS and Treasury have studied several options for improving the withholding procedures to respond to this mandate, including a system of certification of residence in a treaty country and refund systems. At hearings held in February of 1985 on proposed regulations issued in 1984 under section 1441, comments from the public and several U.S. treaty partners made it apparent that certification requirements, as proposed, would create too many administrative problems for payments made through nominees. The final regulations reflect these comments. The procedures adopted for documenting eligibility for benefits under tax treaties are similar to those applicable to portfolio interest on obligations in registered form.

Streamlining the current procedures and implementing workable intermediary certification procedures

represent a substantial simplification and reduction of burden. The IRS and Treasury expect that this, in turn, should result in greater compliance and improve the ability of withholding agents and the IRS to detect abusive claims of foreign status or of benefits under U.S. income tax treaties or under the Code.

On December 21, 1995, at 60 FR 66243, a notice of proposed rulemaking (IA–33–95) was published proposing to add § 31.9999–0. This document finalizes the proposed regulations. The effective date of this addition is October 14, 1997.

Explanation of Provisions and Revisions

A. Comments and Changes to § 1.871–14 and Related Reporting Requirements Under Section 6049

Consistent with the proposed regulations, the final regulations incorporate without substantive changes the relevant provisions from the existing temporary regulations implementing the repeal of the 30-percent tax on portfolio interest (Questions and Answers Relating to the Repeal of 30-percent Withholding by Section 127 of the Tax Reform Act of 1984 and to the Application of Information Reporting and Backup Withholding in Light of such Repeal). These provisions deal with bearer obligations, convertible obligations, and pass-through certificates. Section 1.871–14(b)(1) incorporates the provisions in § 35a.9999–5(a), A–1 and the rules in § 5f.103–1(c) defining a bearer obligation. It also reflects the rules in § 5f.103–1(c) regarding obligations in registered form that are convertible into bearer form. At the request of commentators, the definition of an *obligation in registered form* contained in § 5f.103–1(c) is restated in § 1.871–14(c)(1)(i). The definition restates the rules in § 35a.9999–5(c), A–18, regarding the effect of convertibility features on the status of an obligation as an obligation in bearer or registered form. Further, at the request of commentators, the provisions in § 35a.9999–5(b), A–12 through 15 regarding obligations issued in registered form and targeted to foreign markets are retained without substantive changes. Comments received from U.S. agencies and instrumentalities indicate that they have relied on these procedures in the past and that they plan to do so again.

One commentator requested additional clarifications under § 1.165–12(c). In response to these comments, the $1 million minimum denomination requirement under § 1.165–12(c)(1)(ii) is eliminated in order to conform that provision to § 1.165–12(c)(3)(iii). In addition, in § 1.165–12(c), the term *United States* is replaced with the term *United States and its possessions* to coordinate the provisions with § 1.163–5(c)(2)(i) (C) and (D). In § 1.165–12(c)(1)(iii), a provision was added to explain that a holder delivering a bearer obligation to a financial institution or exempt organization may rely on a written statement furnished by the institution or organization. Further, although the commentator suggested adding a sentence to § 1.165–12(c)(1) to clarify that each of paragraphs (i) through (iii) must be satisfied in order to avoid holder sanctions, this change is unnecessary because the need to meet all of the requirements in each of these clauses is sufficiently clear. The commentator proposed various changes to the rules governing the foreign targeting of bearer obligations on original issuance. However, the final regulations do not address these changes which are outside the scope of this project.

The proposed regulations regarding the certification requirements for obligations in registered form are finalized without substantive changes. As in the proposed regulations, a TIN is not required to be stated on a Form W–8 used to claim the benefit of the portfolio interest exemption, regardless of whether the debt obligation is publicly traded.

Several commentators have asked that, in the case of portfolio interest on obligations in registered form, the provisions dealing with late-received documentation be conformed to similar provisions under proposed § 1.1441–1(f)(5). Under proposed §§ 1.871–14(c)(3) and 1.1441–1(f)(5), the failure to timely receive appropriate documentation (i.e., in most cases, a Form W–8) may be cured by obtaining the documentation later. Under the proposed regulations, the cure procedures apply for purposes of withholding under section 1441 and for purposes of meeting the requirement under sections 871(h) and 881(d) that the U.S. withholding agent receive a statement. However, proposed § 1.871–14(c)(3) requires that the documentation be received before the expiration of the limitations period of the *beneficial owner*. In contrast, proposed § 1.1441–1(f)(5) requires that the documentation be received before the expiration of the limitations period of the *withholding agent*. Commentators have asked that the relevant limitations period for qualifying interest as portfolio interest under sections 871(h) and 881(d) be that of the withholding agent and not of the beneficial owner. This comment is not adopted because of the special conditions for interest to qualify as portfolio interest. Under section 871(h)(2)(B)(ii), interest on an obligation in registered form is portfolio interest only if the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person. The legislative history to the amended provisions (see section 1810(d)(3)(B) of the Tax Reform Act of 1986 (Public Law 99–514)) specifies that the statement may be received late, but no later than the expiration of the beneficial owner's statute of limitation. This indicates that, if the required statement is received after the beneficial owner's statute of limitation has expired, the interest can no longer qualify as portfolio interest. Although the withholding agent is permitted to receive documentation at any time within its own limitations period and establish an applicable reduction in the withholding rate after the fact (e.g., under an income tax treaty), such cure procedure is not effective to confer portfolio interest status to the interest if it occurs after the beneficial owner's statute of limitations has expired. A cross-reference to § 1.1441–1(b)(7) (i.e., proposed § 1.1441–1(f)(5) as renumbered under the final regulations) is included in § 1.871–14(c)(3) to clarify the difference between the two cure procedures.

B. Comments and Changes to § 1.1441–1

1. Coordination With Other Withholding and Information Reporting Provisions

Commentators noted that withholding and information reporting requirements applicable to payments to foreign persons are governed by a complex web of statutory provisions and that the relationship of these provisions among themselves may be difficult to understand. In response to these comments, a number of changes have been made to help payors and their advisers locate relevant guidance.

As suggested, the table of contents in § 1.1441–0 has been expanded. Section 1.1441–1(b) (4) and (5) has been added to provide an overview of how the withholding and reporting procedures under chapter 3 of the Code relate to the information reporting provisions under chapter 61 of the Code and other withholding regimes under sections 3402 (wage withholding), 3405 (withholding on pensions, annuities, etc.), and 3406 (backup withholding). Provisions explaining the interaction of

applicable withholding and reporting provisions in the case of payments to foreign intermediaries or foreign partnerships have been added also. See explanation of those rules, under the heading "Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries" of this preamble. Where appropriate, additional cross references to chapter 61 and to sections 3402, 3405, and 3406 have been added in § 1.1441–1 and cross-references in regulations under sections 3402, 3405 and 3406 have also been added.

As a general matter, a withholding agent (whether U.S. or foreign) must ascertain whether the payee is a U.S. or a foreign person. If the payee is a U.S. person, the withholding provisions under chapter 3 of the Code do not apply; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the Code apply instead. To the extent withholding is required under chapter 3 of the Code, or is excused based on documentation that must be provided, none of the information reporting provisions under chapter 61 of the Code apply, nor do the provisions under section 3406. If, however, withholding under chapter 3 of the Code does not apply irrespective of documentation (e.g., in the case of foreign source income or gross proceeds dealt with under section 6045), documentation may nevertheless have to be furnished to the withholding agent under the provisions of chapter 61 of the Code in order to be excused from Form 1099 information reporting and, possibly, from backup withholding under section 3406. Determinations of payee's status are generally made at each level of the chain of payment, until, ultimately, the payment is made to the beneficial owner. The following example illustrates how these rules interact under the final regulations.

For example, assume that a U.S. bank acting as a paying agent of a U.S. issuer of an obligation pays interest to a U.S. brokerage firm. Chapter 3 withholding does not apply to that payment because the payee is a U.S. person. Form 1099 information reporting under section 6049 is not required because the brokerage firm is an exempt recipient (i.e., a securities dealer), meaning that it is exempt from having the payment reported on a Form 1099. See § 1.6049–4(c)(1)(i). The U.S. brokerage firm may or may not have to provide a Form W–9 to the U.S. bank to establish its exempt recipient status depending on whether it meets one of the "eyeball" tests under § 1.6049–4(c)(1)(ii). Assume further that the U.S. brokerage firm credits the interest to the account of a customer. If the brokerage firm does not hold a Form W–9 (or a Form W–8) and cannot otherwise ascertain the exempt recipient status of the customer under § 1.6049–4(c)(1)(ii), it is required to backup withhold 31-percent under section 3406. See § 31.3406(a)–1(b). If it determines that the customer is a U.S. person (e.g., the firm holds a Form W–9 for the customer), then chapter 3 does not govern the payment. Instead, the payment is governed by sections 3406 and 6049. If, however, the U.S. brokerage firm determines that the customer is a foreign person (e.g., it holds a valid Form W–8), then chapter 3 governs the payment and the payment is not reportable for purposes of section 6049, meaning that it is also not subject to backup withholding under section 3406. Thus, Form 1042 reporting and withholding at a 30-percent rate are required unless the income is exempt under the Code or an income tax treaty. For example, if the interest is of a kind that may qualify as portfolio interest, then withholding is excused if the brokerage firm holds a valid Form W–8 from the customer (but would still be reportable on Form 1042–S).

If the payment to the customer is an amount exempt from withholding under chapter 3 of the Code without the need to furnish documentation (e.g., foreign source interest income), documentation may nevertheless be required for purposes of chapter 61 of the Code. In this example, the U.S. brokerage firm must report the payment of foreign source interest on a Form 1099 unless the customer is an exempt recipient or is a foreign person. If the customer's status as an exempt recipient cannot be ascertained on an "eyeball" basis under § 1.6049–4(c)(1)(ii), the brokerage firm must obtain a Form W–9 or a Form W–8 from the customer. If the documentation that the brokerage firm receives reliably indicates an exempt recipient or foreign status, no information reporting or withholding is required. If documentation is not obtained or is not reliable, Form 1099 information reporting is required under section 6049 and backup withholding is required under section 3406.

Assume, however, that the customer is not the beneficial owner of the payment of U.S. and foreign source interest income. Instead, it is a foreign bank acting on behalf of the beneficial owner. With respect to the payment that is U.S. source interest, the brokerage firm would be permitted to pay the interest free of withholding (assuming it would qualify as portfolio interest if appropriate documentation were received) if it held a Form W–8 (or alternative documentary evidence) from the ultimate beneficial owner that is transmitted by the foreign bank or if it held a Form W–8 from the foreign bank as a qualified intermediary who, under the final regulations, is permitted to certify on behalf of its own customer. See § 1.1441–1(e)(5). In either case, the brokerage firm must report the payment on a Form 1042 and must also make an information return on Form 1042–S. The Form 1042–S must state the name of the beneficial owner as shown on the Form W–8 (or alternative documentary evidence) or the name of the foreign bank if the bank is a qualified intermediary.

Continuing with the same example, the foreign bank also has obligations under sections 1441, 6049, and 3406 when it, in turn, makes a payment to its own customer. However, to the extent it received a valid Form W–8 (or alternative documentary evidence) from the beneficial owner and furnished a copy to the U.S. brokerage firm (or complied with the documentation requirements as a qualified intermediary), it would meet its obligation under applicable withholding and reporting provisions and, accordingly, would be exempt from withholding any amount from the payment and from reporting the payment. See §§ 1.1441–1(b)(6) and 1.6049–5(b)(14).

With respect to the foreign source interest paid to the foreign bank acting as an intermediary, the only requirement imposed on the U.S. brokerage firm is to obtain the Form W–8 of the foreign bank (and not of the beneficial owner). Because the exemption sought by the foreign bank is an exemption from Form 1099 information reporting and backup withholding, the foreign bank may do so by establishing its foreign status with a Form W–8 or by establishing its status as an exempt recipient. Under the final regulations, a foreign bank's status as an exempt recipient can be established on an "eyeball" test basis if the bank's name reasonably indicates that it is a bank. However, as is the case for U.S. income subject to chapter 3 withholding, the foreign bank, acting as an agent for its own customer, may be required to report the foreign source payment under section 6049 and to backup withhold under 3406 when it, in turn, pays the amount to its customer if the foreign bank is a U.S. payor (e.g., it is a controlled foreign corporation). If it is not a U.S. payor or a U.S. middleman,

it has no withholding or reporting obligations under chapter 3 of the Code due to the nature of the payment (i.e., foreign source income), unless it makes the payment in the United States. If the foreign bank makes a payment to its customer in the United States, then the payment is reportable under section 6049 and the bank must obtain a Form W–8 or a Form W–9 from its customer, unless the exempt status of the customer can be established on an "eyeball" basis. If the customer is a U.S. person who is not an exempt recipient, the bank must report the payment on a Form 1099 and, if the customer has not provided a Form W–9 as required under section 3406, backup withholding is required. The provisions of § 1.6049–5(b)(14) do not apply to exempt the foreign bank from its reporting and withholding obligations because it has not provided the required documentation to the U.S. withholding agent or certified on behalf of the beneficial owner.

These examples are illustrative only. Different rules may apply depending upon a number of factors, the most significant being the nature of the payment (FDAP or not FDAP, U.S. source or foreign source), the status of the payor (U.S. or foreign), the status of the payee (U.S. or foreign, beneficial owner or intermediary), where the payment is made (in the U.S. or outside the U.S.), and where the account is held (on-shore or offshore).

2. U.S. Agent of Foreign Person

Under the proposed regulations, a payment to a U.S. person gives rise to withholding liability if the payor has actual knowledge that the U.S. person is acting as an agent for a foreign person. Commentators suggested that the withholding liability should be imposed on the last U.S. person who makes the payment to a foreign person. At a minimum, commentators asked that the final regulations limit the obligation to withhold to situations where the withholding would seem jeopardized. This comment is accepted. Under the final regulations, a U.S. person making a payment to a U.S. financial institution is not required to withhold even if it knows that the payee is collecting the payment for a foreign person, if the U.S. person has no reason to believe that the financial institution will not comply with its obligation to withhold when it makes the payment to the foreign person. See § 1.1441–1(b)(2)(ii).

3. Payments to Wholly-Owned Entities

The final regulations under § 1.1441–1(b)(2)(iii) provide guidance on applicable withholding procedures for payments to a domestic or foreign wholly-owned entity that is disregarded for federal tax purposes (i.e., treated as a branch of its single owner) under § 301.7701–1(c)(2). As a general rule, a payment to a disregarded wholly-owned entity is treated as a payment to its owner. Thus, for example, if a foreign person owns a domestic disregarded entity, a person making a payment to the disregarded entity is treated as the withholding agent because the owner is a foreign person. However, because the fact that the entity is disregarded for tax purposes generally may not be apparent to a person making a payment to the entity, the person making the payment can rely on documentation received from the recipient to determine its withholding and reporting obligations. Thus, if the person receives a Form W–9 from the entity representing that the recipient is a domestic corporation, the person may rely on the form to treat the entity as a U.S. person unless it has actual knowledge or reason to know that the representation is incorrect. If the entity is a wholly-owned entity disregarded for federal tax purposes, then it must furnish documentation representing the status of its owner. For example, if the disregarded domestic entity is owned by a foreign person, it must furnish a Form W–8 from its single owner. In that case, a person making a payment to the entity may rely on the Form W–8 that the entity provides for its foreign owner and comply with withholding and reporting requirements accordingly. A domestic disregarded entity that does not furnish a certificate is subject to Form 1099 information reporting on payments that are reportable and subject to backup withholding under section 3406 because, lacking the words "inc.", "incorporated", "corp." or "corporation" in its name, it could not be treated as an exempt recipient on an "eyeball" basis. If the entity had one of these words in its name, it would be a per se corporation for U.S. tax purposes because any of these words would indicate that the entity is organized under a corporate statute; thus, it could not be a disregarded entity. The TIN to be stated on the Form W–9 or the Form W–8, if required, is that of the single owner and not that of the disregarded entity.

Different documentation procedures apply if the benefit of a reduced rate is claimed under an income tax treaty and the entity is not treated as fiscally transparent in the applicable treaty jurisdiction. See §§ 1.1441–6(b)(4) and 1.894–1T(d).

4. Payments to U.S. Branches of Foreign Institutions

Commentators also suggested that a payment to a U.S. branch of a foreign bank or other financial institution should not be subject to withholding. Instead, the U.S. branch should be responsible for withholding when it makes the payment to the foreign person. In addition, commentators have asked that the regulations eliminate the requirement for a U.S. branch to furnish a certificate representing that the payment it receives is effectively connected with the conduct of a U.S. trade or business. In response to these comments, the rules governing payments to the U.S. branch of certain foreign financial institutions have been modified to alleviate the certification burden for those U.S. branches that operate in a manner equivalent to U.S. companies.

Therefore, § 1.1441–4(a)(2)(ii) of the final regulations provides that a payment to a U.S. branch of either a foreign financial institution that is registered with the Federal Reserve Board or of a foreign insurance company that is required to file an annual "NAIC" statement with a State Insurance Commissioner is presumed to be a payment of effectively connected income for withholding purposes. Section 1.1441–1(b)(2)(iv) has been added to provide that a U.S. branch may rebut this presumption by furnishing a Form W–8 to the withholding agent certifying that the payment that it receives is not effectively connected with its conduct of a U.S. trade or business. For a description of the form that a U.S. branch must furnish, see § 1.1441–1(e)(3)(v). Under the final regulations, the U.S. branch that furnishes a Form W–8 may agree with the withholding agent to assume responsibility for all withholding and reporting obligations for the payments it receives from the withholding agent. In the absence of such an agreement, the withholding agent remains responsible for the withholding and reporting obligations associated with the payment. This means, for example, that, if the U.S. branch receives the payment on behalf of its home office and the home office is covered by a qualified intermediary agreement that the IRS has concluded with the foreign financial institution, the U.S. branch must give to the withholding agent the home office's Form W–8. If the branch receives the payment for its own customers, it must give to the withholding agent all of the required certificates for its customers.

Similar withholding procedures are available to other U.S. branches to the extent permitted by the district director or the Assistant Commissioner (International). Procedures for obtaining such permission existed under prior regulations under § 1.1441–4(f). These provisions are restated in § 1.1441–1(b)(2)(iv)(E) of the final regulations.

The final regulations do not eliminate the requirement to report on a Form 1042 or 1042–S payments to these branches, including payments for which the branch has assumed withholding and reporting responsibility. In such a case, however, the reporting is made to the branch as recipient of the amount for which it has assumed withholding responsibility rather than to the beneficial owner. See § 1.1461–1(b)(2)(vi) and (c)(4)(v). Although commentators asked that these reporting requirements be eliminated for payments of effectively connected income, the IRS and Treasury believe that the reporting serves an important compliance function.

5. Beneficial Owner

The definition of the term *beneficial owner* is clarified to indicate that ownership is determined on the basis of existing principles governing the determination of tax ownership, including substance-over-form principles, such as those reflected in section 7701(l) dealing with conduit transactions. The special definition of beneficial owner in proposed § 1.1441–1(c)(6)(ii)(B) for purposes of tax treaties has been eliminated. See the explanation below under § 1.1441–6 for claims of tax treaty-reduced rates for payments to entities that are treated as fiscally transparent in the U.S. or in the applicable treaty jurisdiction, or both.

6. Forms

a. Format and Design. Many comments were received regarding the format and design of the revised Form W–8. In particular, several commentators suggested that the IRS retain separate forms for effectively connected income and payments to foreign governments. The IRS is considering these comments and agrees that it may be more convenient to keep certain forms separate from the basic beneficial owner Form W–8. The revised forms will be released for public comments before they are finalized.

b. Content of Forms. The final regulations are modified in several respects regarding the Form W–8. A Form W–8 furnished by the beneficial owner is generally payee-specific and applies to all income received from the withholding agent to whom furnished, except to the extent provided in forms and instructions (e.g., effectively connected income). See § 1.1441–1(e)(2)(i). Entitlement to different types of reduced rates may require different types of information or representations on a Form W–8. For example, entitlement to exemption from withholding on portfolio interest requires only proof of foreign status. Claims of treaty benefits may require a certified TIN (that is, a TIN that the IRS has certified as belonging to a person who is a resident of a country with which the U.S. has an income tax treaty in effect; see § 1.1441–6(c) for procedures to have a TIN certified by the IRS). A withholding agent is responsible for making sure that the information or representations relevant to a particular type of income or applicable rate appear on the form and for requesting a new form where an existing form fails to support a claim of reduced rate for a different type of income. For example, a beneficial owner who furnishes a Form W–8 for portfolio interest (and therefore, does not complete the information on the form relating to claims of treaty benefits) would be required to furnish a new form to the withholding agent if it receives from the same withholding agent other income for which it claims a reduced rate of withholding under a tax treaty. The new form could serve both for portfolio interest and the other income for which treaty benefits are claimed.

In response to comments, the final regulations clarify that, where a person, other than an individual, does not have a tax residence in any country, the required permanent residence address is the address of the person's principal office, even though the principal office is not in its country of incorporation (as was required in the proposed regulations). Because of this change, the final regulations require that the entity's country of organization or incorporation be stated on the form. See § 1.1441–1(e)(2)(ii).

c. Signature of Forms under Power of Attorney. Some commentators have asked that custodians be permitted to execute the Form W–8 on behalf of their customers, based upon a power of attorney. This suggestion is not adopted. Like a tax return, a Form W–8 must be signed under penalties of perjury. As such, the IRS and Treasury view the signature of a Form W–8 as governed by the same rules that govern the signature of a tax return. Therefore, the final regulations clarify in § 1.1441–1(e)(4)(i) that a withholding certificate may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person issuing the certificate as provided under section 6061 (for individuals), 6062 (for corporations), or 6063 (for partnerships).

d. Facsimile and Electronic Transmission. Commentators have asked that withholding agents be allowed to rely on a faxed copy or electronically transmitted Form W–8 as if they were original forms. The proposed regulations permit a faxed Form W–8 to indicate foreign status for purposes of the grace period under proposed § 1.1441–1(f)(2)(i)(B), but do not allow it to be used for other purposes. The question of whether and to what extent a faxed certificate ought to be allowed instead of an original certificate arises because, under current law, a faxed document (like a photocopy) has weaker evidentiary value than an original document. This question is not unique to the Form W–8 and is currently under study by the IRS. Pending completion of the study, the final regulations allow a withholding agent to rely on a faxed form only for purposes of presuming foreign status in order to reduce the rate of withholding during a 90-day grace period. However, an original form must be provided before the grace period expires.

On the other hand, the proposed regulations provide general authority for the electronic transmission of Forms W–8, subject to procedures issued by the IRS. The final regulations retain this rule and, regulations issued together with these final regulation propose to amend § 1.1441–1(e)(4)(iv) of the final regulations by prescribing the standards that electronic systems must meet in order to effect an acceptable transmission of Forms W–8. The IRS believes that the evidentiary value of documents transmitted with electronic systems meeting these standards would equate with that of an original document. See project REG–107872–97, published elsewhere in this issue of the **Federal Register**. The option to use electronic transmission systems should help alleviate the burden of having to mail original Forms W–8 in paper form.

e. Single Form for Related Withholding Agents. Commentators have asked that several withholding agents be allowed to rely on a single Form W–8. In response to this comment, a number of changes were made to the final regulations. First, under § 1.1441–1(e)(4)(ix)(A), a withholding agent may rely on the Form W–8 furnished for another account at the same branch location, at a different branch location of the same entity, or at a different branch location of a related person if the entity or group of entities uses a universal account system or uses another type of coordinated account

information system that allows the withholding agent to easily access information regarding the nature of the certificate furnished, the information on the certificate, and its validity status.

In addition, the system must allow the withholding agent to keep a record of how and when it accesses the information and, if applicable, of how and when it communicates relevant facts affecting the reliability of the certificate to the location where the certificate is kept. Second, the rule in proposed § 1.1441–1(e)(2)(i) allowing the beneficial owner to provide a single Form W–8 with respect to a family of mutual funds is extended to investors in affiliated partnerships and corporations under § 1.1441–1(e)(4)(ix)(B) of the final regulations. Further, the final regulations also adopt a suggestion that a withholding agent be able to rely on representations from a broker that it holds a valid withholding certificate from a beneficial owner. See § 1.1441–1(e)(4)(ix)(C). The final regulations clarify that a withholding agent has knowledge of all information in the system. See § 1.1441–7(b)(3).

f. Forms from Foreign Partnerships. In response to comments, the provisions under proposed § 1.1441–1(e)(3)(iii) dealing with withholding certificates furnished by a foreign partnership have been moved to § 1.1441–5(c), which contains most of the withholding provisions governing payments to foreign partnerships (see explanation of the changes under § 1.1441–5).

g. Forms from Non-Qualified Intermediaries. In response to comments, provisions have been added to clarify the manner in which a non-QI must transmit documentation to the withholding agent and the information that it must contain. Proposed § 1.1441–1(e)(3)(iv) (renumbered as § 1.1441–1(e)(3)(iii) in the final regulations) is expanded to explain the manner in which withholding certificates or other appropriate documentation is passed up a chain of non-QIs. The final regulations allow the intermediary to furnish copies of an original Form W–8 so as to avoid requesting multiple originals for different accounts that the intermediary may hold on behalf of the same beneficial owner. See § 1.1441–1(e)(3)(iii).

Also, proposed § 1.1441–1(e)(3)(iv) (C) and (D) (renumbered as § 1.1441–1(e)(3)(iii) (C) and (D) in the final regulations) has been modified and paragraph (e)(3)(iv) has been added in response to comments that the regulations should explain the information required from a non-qualified intermediary to insure proper withholding by a withholding agent making a payment to a non-qualified intermediary. In particular, if different withholding rates apply to different owners of the payment flowing through an intermediary, the withholding agent must know which rate applies to each portion of the payment. Where such information is necessary, the final regulations provide that the intermediary must, in a statement attached to the withholding certificate from the non-qualified intermediary, provide (and update as often as is necessary) sufficient information for the withholding agent or payor to determine the proportion of each payment subject to withholding that is attributable to each person to whom the intermediary certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. Such statement is not necessary, however, if the allocation information is known to the withholding agent due to the account structure that it uses (for example, the withholding agent uses separate accounts for different categories of income and applicable withholding rates).

h. Validity Period. Comments were received under § 1.1441–1(e)(4)(ii) regarding the period of validity of a properly executed Form W–8. Commentators requested that, irrespective of whether a Form W–8 includes a TIN, all forms should be valid indefinitely, or at least those furnished for a claim of effectively connected income. Some commentators suggested that a Form W–8 should not expire where a payor continues to send all correspondence to a mailing address that is also the permanent address on a Form W–8. These suggestions are not adopted because the IRS and Treasury believe that it is important for taxpayers to re-certify status periodically. Similar re-certification is also important for effectively connected income, since income may cease to be effectively connected due to a change in the taxpayer's business structure, without the withholding agent becoming aware of such changes. However, the final regulations provide relief by presuming that payments made to certain U.S. branches are effectively connected income, thereby avoiding the need to provide a certificate in such a case. See § 1.1441–4(a)(2)(ii).

Also, § 1.1441–1(e)(4)(ii)(B) is modified to make all intermediary certificates and certificates for non-withholding foreign partnerships valid indefinitely. (The indefinite validity period does not apply to the withholding certificates or documentary evidence required to be attached to a certificate from a non-qualified intermediary, a U.S. branch of a foreign institution, or a foreign non-withholding partnership.) In addition, Forms W–8 furnished by an integral part of a foreign government, a foreign central bank of issue, or the Bank for International Settlements are valid indefinitely. For these certificates, the information required is likely to change only infrequently. What may change more frequently is the withholding rate information that an intermediary or foreign partnership may have to furnish to a withholding agent on a separate statement, which the intermediary or partnership must update as often as is necessary to insure that the withholding agent withholds at the proper rates. See § 1.1441–1(e) (3)(iv) and (5)(v) for a description of the statement and § 1.1441–1(e)(4)(ii)(D) for related validity rules.

i. Effect of Changes in Circumstances. Proposed § 1.1441–1(e)(4)(ii)(D), dealing with changes in circumstances affecting the validity of a Form W–8, is revised to clarify the due diligence imposed on a non-qualified intermediary who becomes aware of a change in the circumstances affecting the validity of a withholding certificate that it has received and transmitted to the U.S. withholding agent or another intermediary. The final regulations provide that, in such a case, the non-qualified intermediary must inform the person to whom it provided the affected withholding certificate (i.e., the U.S. withholding agent or the other intermediary). It must also obtain a new withholding certificate or other documentation to replace the certificate or documentation that is no longer valid due to changes in circumstances. The same rules apply to foreign partnerships that are not withholding foreign partnerships and to a U.S. branch that passes through documentation to a U.S. withholding agent.

The final regulations also clarify that a withholding agent does not have a duty to inquire into possible changes of circumstances. In other words, a withholding agent may assume that circumstances have not changed unless it knows of facts suggesting that changes in circumstances have occurred that may affect the validity of documentation. Changes in circumstances relevant to the information and certification provided on a withholding certificate, a statement, or in documentary evidence affect the validity of the certificate, statement, or documentary evidence as of the date that the withholding agent has actual knowledge or reason to know of the changes. The final regulations are revised to clarify that point and give withholding agents the same 90-day period as is given for a new account for perfecting documentation (i.e., inquire into the change of circumstances and obtain a new certificate, if necessary). See §§ 1.1441–1(b)(3)(iv) and 1.6049–5(d)(2)(ii).

j. Acceptable Substitute Form. In addition, proposed § 1.1441–1(e)(4)(vi) is modified in response to comments that asked that the meaning of the cross-reference to § 31.3406(h)–3(c)(1) defining an *acceptable substitute* form be clarified. The revised provisions enumerate the type of information and certifications that must appear on any substitute form for purposes of the regulations under chapter 3 of the Code. The rules are similar to the rules contained in § 31.3406(h)–3(c)(1). Under the final regulations, a withholding agent must provide a copy of the instructions to the recipient only to the extent specified in the form and in the instructions to the official form. As is the case for the Form W–9, the IRS expects that the form instructions will waive the obligation to furnish the official Form W–8 instructions to customers. Further, withholding agents are also authorized to develop customized substitute Forms W–8 and incorporate them as part of account opening documents.

k. Guidance Regarding Reliance on Withholding Certificates. Several commentators asked for clearer guidance on the extent to which withholding agents may rely on forms and the extent of their duty to inquire into the truthfulness of information stated on forms. In response to these comments, the final regulations contain a number of clarifications. Section 1.1441–1(e)(4)(viii) has been added to provide that a withholding agent may rely on a foreign entity's certification of corporate (or other) status on a Form W–8. In the case of a withholding certificate by or for a foreign entity whose name is on the list of per se foreign corporations described in § 301.7701–2(b)(8)(i) that claims to be a partnership, the certificate must represent that the entity's partnership status was grandfathered under the regulations and has not been terminated. Further, a withholding agent that receives a beneficial owner certificate from a foreign financial institution may rely on such certificate to treat the institution as the beneficial owner unless it has information in its records that would indicate otherwise, or unless the certificate contains information that would contradict such claim (e.g., sub-account numbers or names). If a foreign intermediary receives payments both in its capacity as an intermediary and for its own account, it must furnish two certificates in order to allow the withholding agent to apply the proper withholding rate and report the amounts accordingly. Additional reliance guidance has been added regarding claims of benefits under a tax treaty (see explanation under § 1.1441–6, below). Further, the provisions dealing with a withholding agent's due diligence are also expanded and clarified (see explanation under § 1.1441–7, below).

7. Non-Qualified Intermediaries

Some commentators requested that the regulations eliminate the requirement that non-qualified intermediaries (non-QIs) pass through Forms W–8 to the U.S. withholding agent because investors and intermediaries will not disclose customer information to third parties. In particular, some commentators recommended that the regulations eliminate any reference to the intermediary procedures currently applicable under § 35a.9999–5(b), A–9, dealing with certification required in order for interest to qualify as portfolio interest. These suggestions are not adopted. The qualified intermediary regime is designed to provide these benefits, but only where the intermediary follows procedures to insure adequate withholding compliance. In addition, as explained in the preamble to the proposed regulations, the intermediary procedures provided in § 35a.9999–5(b), A–9 are retained because, if the qualified intermediary regime does not apply to the intermediary, these procedures may be useful.

The final regulations also do not adopt a suggestion that, for income for which no TIN needs to be provided, the intermediary only reports the aggregate amount on Form 1042 without having to report individual amounts for each beneficial owner on a Form 1042–S. Commentators have suggested that a financial institution acting as an intermediary should be required to indicate only the proportion of a payment subject to withholding and the applicable rate. Should the proportion change, the certificate furnished by the intermediary would have to be modified to reflect the change in circumstances. This suggestion is not adopted because permission to report aggregate amounts is limited to payments made to qualified intermediaries. In the case of a qualified intermediary, the IRS may rely on audit procedures in the qualified intermediary agreement described in § 1.1441–1(e)(5)(iii) to determine whether the intermediary has properly advised the U.S. withholding agent regarding each portion of a payment to which different withholding rates should apply. The IRS' ability to check the representations made by a non-QI is limited, particularly if the non-QI is not owned by U.S. persons. In that case, it must rely on reconciling the amounts paid as reported on Forms 1042–S, disclosure of the identity of beneficial owners (or further intermediaries), and exchanges of information under tax treaties. In that context, disclosure of the exact amounts allocated to each beneficial owner (or further intermediary) is important to the compliance regime applicable to non-QIs.

8. Qualified Intermediaries

a. Scope of Qualified Intermediary Provisions. Under the proposed regulations, a withholding agent may rely on the certification of a foreign person made on behalf of others to reduce the rate of withholding. If the foreign person has a qualified intermediary agreement with the IRS, the intermediary may certify without having to furnish the certificates or other documentation of the persons for whom it acts. Many comments were received regarding the proposal, which are discussed below.

In response to comments, the final regulations are modified to allow a foreign branch of a U.S. financial institution to be a qualified intermediary (QI) in the same manner as a foreign financial institution. However, U.S. branches of U.S. or foreign financial institutions are not permitted to obtain QI status. Such difference in treatment conforms to the distinction in the final regulations between accounts maintained outside the United States and accounts maintained on-shore. See § 1.1441–1(e)(5)(ii) (A) and (B). This distinction is appropriate because it reflects the policy that the Form W–8 (signed under penalties of perjury) is the preferred means of establishing foreign status for transactions in the United States. On the other hand, documentary evidence provides appropriate evidence of foreign status for transactions outside the United States, especially in those countries where financial institutions must document the identity of customers opening new accounts or for whom they process certain transactions.

At the request of commentators, the definition of a clearing organization for purposes of § 1.1441–1(e)(5)(ii)(A) is revised so that clearing organizations that, as members of other clearing organizations, do not hold physical securities, are nevertheless considered to hold obligations for members and,

therefore, qualify for QI status. Further, the final regulations allow QI status for foreign corporations that receive U.S. income for which the benefit of a reduced rate is claimed under an income tax treaty by their shareholders (because the shareholders derive the income as residents of an applicable treaty jurisdiction within the meaning of § 1.894–1T(d)(1)). By allowing these corporate entities to be QIs, the regulations intend to facilitate the processing of treaty benefits claims by reverse hybrid entities with large shareholdings. See discussion under § 1.1441–6, below. Also at the request of commentators, a transition rule is added to § 1.1441–1(e)(5)(i) whereby institutions that are otherwise eligible for QI status and that satisfy certain criteria (as will be published by the IRS) are permitted to act as QIs while awaiting confirmation of their QI status.

Commentators were divided on whether the regulations should allow a QI to assume primary withholding responsibility as proposed in § 1.1441–1(e)(5)(iv). In view of these comments, the final regulations retain the provisions that permit the shifting of primary responsibility for withholding and reporting under chapter 3 of the Code. However, because of IRS concerns regarding compliance and comments received from foreign institutions, the final regulations provide that the responsibility for Form 1099 information reporting and related backup withholding under section 3406 may not be assigned to a QI, unless the QI is a foreign branch of a U.S. bank or another U.S. person or establishes that the obligations related to information reporting and backup withholding can adequately be carried out by a U.S. branch of the QI (even though the branch itself cannot be a QI). Some commentators suggested that, if a QI is allowed to assume primary withholding responsibility, it should be allowed to do so only for all the payments that it receives from a payor with respect to a particular account. Permitting a QI to assume withholding responsibility with respect to some but not all payments to an account would make it difficult for payors to determine the correct amount of withholding on payments to a single account. This comment has been adopted and the final regulations are modified accordingly to provide that if a QI assumes primary withholding responsibility for an account, it must do so for all payments to the account. The decision to assume or not assume withholding responsibility may be made on an account-by-account basis. See § 1.1441–1(e)(5)(iv).

As is the case for non-QIs, the regulations describe in greater detail the information that must be provided by a QI in order for the withholding agent or payor to comply with applicable reporting and withholding obligations. Section 1.1441–1(e)(3)(ii)(C) requires an allocation statement to be attached to the intermediary withholding certificate, if necessary to provide sufficient information to allow the withholding agent to determine the applicable withholding rate or rates on payments to the QI. Such a statement may not be necessary if the withholding agent allocates the assets among separate accounts for each type of income and applicable withholding rates, as directed by the intermediary at the time that the assets are acquired. The assets with respect to which payments of reportable amounts are received must be allocated to one of the three categories described below. If the withholding agent maintains a system of separate accounts to keep track of different withholding rates for different classes of income or payees, it would maintain at least three separate accounts corresponding to the three categories of assets. For this purpose, a reportable amount is defined in § 1.1441–1(e)(3)(vi) as income subject to withholding under chapter 3 of the Code. For reasons explained under the heading "U.S. Source Bank Deposit Interest and Short-term OID" of this preamble, U.S. bank deposit interest and U.S. short-term OID amounts are also included in the definition of reportable amount. However, reportable amounts do not otherwise include amounts that are not subject to chapter 3 withholding (e.g., foreign source income, broker proceeds).

The three categories of assets are described in § 1.1441–1(e)(5)(v). They are (1) assets related to documented non-U.S. payees; (2) assets related to documented U.S. payees (whether or not exempt recipients); and (3) assets related to undocumented payees (i.e., payees for whom the QI holds no documentation or holds documentation that is unreliable). Reportable amounts paid with respect to assets in category 1 (documented non-U.S. payees) may benefit from a reduced rate of withholding under the Code (e.g., portfolio interest) or under a treaty (i.e., to the extent the QI further indicates subcategories of assets associated with different withholding rates under an applicable treaty).

Reportable amounts paid with respect to category 2 (documented U.S. payees) are not subject to withholding or reporting under chapter 3 of the Code. However, the payor must report the payment on a Form 1099 by treating the payment of a reportable amount as made directly to any U.S. person for whom it receives a Form W–9 to the extent the U.S. person is not an exempt recipient. The final regulations clarify that a QI must agree to disclose the identity of these U.S. persons, regardless of local secrecy laws. The identity of U.S. payees that are exempt recipients under an applicable provision of the regulations under chapter 61 of the Code need not be disclosed to the withholding agent. If a Form W–9 furnished by the QI to the payor on behalf of a U.S. payee that is not an exempt recipient is not reliable (e.g., missing information or obviously incorrect TIN), the U.S. payor must backup withhold under section 3406.

Reportable amounts paid with respect to assets in category 3 (undocumented owners) are treated as amounts paid to a foreign person if the payment is an amount subject to chapter 3 withholding. See § 1.1441–1(b) (2)(v) and (3)(v)(B). Therefore, withholding applies at the unreduced 30-percent rate. Reportable amounts that are U.S. bank deposit interest or U.S. short-term original issue discount paid with respect to asserts in category 3 are treated as paid to a U.S. person who is not an exempt recipient. Therefore, 31-percent backup withholding applies to those amounts and reporting on Form 1099 is required. See § 1.6049–5(d)(3)(iii) and explanation below under paragraph 10 (U.S. source bank deposit interest and short-term OID).

If a QI assumes primary withholding responsibility, it must also attach a statement to its withholding certificate if necessary for the U.S. withholding agent to determine how much of each payment is allocable to U.S. payees. All assets are presumed allocable to foreign persons unless the QI indicates that it is acting for U.S. persons. The QI must provide the same information about U.S. payees that are not exempt recipients as is required in the case of a QI that has not assumed primary withholding responsibility.

b. Agreements with Qualified Intermediaries. The IRS intends to finalize the revenue procedure published in Announcement 96–23 (1996–18 I.R.B. 7) dealing with agreements between the IRS and certain institutions that wish to be a qualified intermediary for purposes of the U.S. tax withholding and reporting provisions (including the provisions of the Announcement regarding the documentation of beneficial ownership or foreign payee status (section 4.03)). A preliminary review of applicable know-your-customer procedures in several countries indicates that these procedures will generally provide adequate information regarding the nationality and residence status of account holders and their status as owners or intermediaries. The IRS intends that the documentation requirements imposed on QIs under their agreements with the IRS will not be more burdensome than those imposed on withholding agents, payors, or middlemen under applicable withholding and reporting regulations.

The Announcement provides that a QI would generally be subject to the same Form 1042 and 1042–S reporting requirements as apply to withholding agents under § 1.1461–1 (b) and (c). After further review, the IRS intends to finalize the rules so that a QI will be required to file an annual Form 1042 return with the IRS. Generally, a Form 1042–S will not be required if a schedule in the form described below is attached to the Form 1042.

Reporting on a Form 1042 would consist of providing the following information to the IRS: the amount of reportable U.S. source income received by the QI during the calendar year, identified by pool, listing each payor's name, address, EIN, income type and rate of withholding; information regarding overpayments or balance due; a statement regarding the audit conducted by the QI's internal auditor, providing a description of the audit conducted and including the auditor's opinion and summary of findings. The audit statement should define the scope and objective of the audit and report on the QI's compliance with the terms of the QI agreement.

In addition, the Form 1042 must attach a schedule providing information on payments of reportable U.S. source income made by the QI and allocated to specified pools. Under a pool reporting system, separate pools would generally be required for each type of income (e.g., interest, dividends, etc.). These pools may have to be further subdivided into pools consisting of income allocable to one of the three assets categories identified in the regulations under § 1.1441–1(e)(5)(v)(B). Additional pools may be required for other purposes, including differentiating among applicable withholding rates. For example, assume that a QI pays portfolio interest and U.S. source dividends in a calendar year. The rates applicable to portfolio interest are zero (interest allocable to pool of documented foreign owners), zero (interest allocable to pool of U.S. owners who are exempt recipients), and 30% (interest allocable to pool of undocumented owners), and the rates applicable to dividends are 30% (dividends allocable to pool of residents in non-treaty countries), 15% (dividends allocable to pool of residents in treaty country eligible for this rate), zero (dividends allocable to pool of U.S. owners that are exempt recipients), and zero (dividends allocable to pool of foreign pension fund owners claiming an exemption under a tax treaty). In such a case, the QI may have to report the interest and dividend income in seven different pools.

The IRS will not require a QI to report beneficial ownership information if this information is otherwise reasonably available in appropriate cases, either under exchange of information provisions, under income tax treaties or under other procedures stated in the agreement to verify compliance with conditions for benefits claimed under income tax treaties. Appropriate cases for which the IRS may require beneficial ownership information include cases in which the IRS needs to verify compliance with conditions under an applicable tax treaty for reduced rates. This includes, for example, whether an entity claiming benefits under a tax treaty is a resident of the applicable treaty country, derives the income (within the meaning of the regulations under § 1.894–1T(d)), and meets any applicable conditions imposed under limitation on benefits provisions in the treaty. The IRS intends to limit requests for beneficial owner s identity to cases where compliance concerns are significant due to the size of investments involved or the extent of bank secrecy laws in effect in the local jurisdiction.

The QI will not be required to provide a Form 1042–S to its account holders. In fact, providing such a form would not be consistent with the collective-type refund procedures which the IRS intends to develop. These procedures will allow QIs to request refunds of overwithheld amounts on behalf of their customers. In such a system, a Form 1042–S, which can also serve as proof of tax withheld at source, would have to be monitored by the IRS in order to insure that refunds are not claimed twice for the same amount. Collective-type refund procedures are intended to be the exclusive means by which taxpayers can obtain refund of overwithheld amounts that they have received through a QI. Special procedures will have to be developed in order to reconcile this regime with regular refund procedures applicable to U.S. taxpayers that receive U.S. source investment income in an account with a QI.

With respect to audits, the proposed regulations provide that the IRS may, in appropriate cases, agree to rely on an audit of a QI performed by an approved auditor where, for example, under an income tax treaty or local laws, the IRS would be given access to appropriate auditors records to verify compliance. Records may include workpapers of, reports prepared by, and methodology employed by, the approved external auditors. An auditor is approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the QI s activities are expected to occur, its internal procedures must require it to verify that the financial institution complies with the terms of the QI agreement and to report non-compliance findings under the QI agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., workpapers and reports) must be available to the IRS.

Several comments were received asking that audits be performed solely by internal auditors. The IRS, however, does not believe that it is appropriate to rely solely on internal auditors to perform compliance checks. The IRS intends to permit internal auditors to certify that appropriate procedures, internal controls, and systems are in effect and are sufficient to insure the QI's compliance with the agreement, such as procedures to obtain documentation upon opening of accounts, to monitor that the address on an account does not change to a U.S. address or to an address outside the treaty country (if treaty benefits are claimed), to organize and process such information in a way relevant to U.S. tax withholding and reporting, to communicate the information to withholding agents timely and updating the pool information when necessary; procedures by which underwithholding and overwithholding are identified and addressed; and the existence of adequate manuals and programs for training and advising appropriate personnel in standard operating procedures. However, it is important that compliance with these procedures be verified periodically by persons who are not also employed by the QI. The IRS does not believe that internal auditors provide sufficient assurances that audits will be performed with required impartiality, even if internal auditors are required to operate independently and to report exclusively to the QI's board of directors. However, the IRS intends to use external audits only periodically, either when it becomes aware (e.g., based on a Form

1042 or an internal audit report) that there may be compliance problems or as part of its regular audit program.

In addition, with respect to collection of taxes due, the IRS intends to waive the requirement of a bond in appropriate cases, particularly where the QI has assets in the United States from which tax can be collected or where occurrences of underwithholding are expected to be minimal due to the nature of the QI's established procedures.

In QI agreements, the IRS intends to address the manner in which a QI may pay to, or receive a payment from, another intermediary. A QI making a payment to another intermediary must normally obtain the underlying beneficial owner information from the intermediary, unless the intermediary is itself a QI. In the alternative, the QI may agree to a private arrangement with the intermediary that would be identical to a QI agreement, except that it would not be concluded with the IRS and the intermediary would have no reporting obligations to the IRS. Under this regime, similar to that described for authorized foreign agents in § 1.1441–7(c)(2), the QI assumes responsibility for failures by the intermediary to comply with the documentation and withholding procedures. The intermediary would agree, under its private arrangement with the QI, to be audited in the same manner as if it were a QI. Auditors reports would be furnished to the QI and be available for inspection by the IRS. A QI would normally obtain an indemnification from the intermediary as a protection against its own U.S. tax liability arising from failures by the intermediary.

Further, the IRS will permit QIs that assume primary withholding responsibility to be combined in a chain of payment with QIs that do not assume primary withholding responsibility. For example, a U.S. withholding agent may pay to a QI that assumes primary withholding responsibility (QI1) and withhold no amount. QI1 may, in turn, pay a customer that is a QI that does not assume primary withholding responsibility (QI2). In such a case, QI1 must withhold on payments to QI2 in the same manner that a U.S. withholding agent would have had to withhold if it were paying the amount to QI2. QI2 may also be dealing with a third tier, QI3, that assumes primary withholding responsibility. In such a case, QI2 would inform QI1 that the portion of the payment allocable to QI3 (without having to disclose QI3's identity to QI1) is allocable to a QI that has assumed primary withholding responsibility. Accordingly, neither QI1 nor QI2 would withhold on the portion of the payment allocable to QI3.

9. Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries

Commentators have asked for clarification of how the procedures applicable to payments to foreign intermediaries relate to the exempt recipient rules under chapter 61 and to a foreign intermediary's reporting and withholding obligations under chapter 61 of the Code and section 3406.

Under chapter 61 of the Code and section 3406, the reporting and backup withholding requirements depend, in part, upon the status of the payee as an exempt recipient. Generally, exempt recipients include corporations and financial institutions. See § 1.6049–4(c)(1)(ii). The category of persons treated as exempt recipients may vary depending upon the type of income being paid. For this purpose, the payee is generally identified as the person to whom the payment is actually made. This person is not necessarily the beneficial owner of the income. For example, a custodian receiving a payment may be a payee for purposes of chapter 61 of the Code, even though it is not the beneficial owner of the amounts that it receives on behalf of a customer. Under the final regulations, a payment to a nominee or agent is treated as a payment to an exempt recipient, which, as a result, is exempt from information reporting and backup withholding. See § 1.6049–4(c)(1)(ii)(O). Treating a U.S. intermediary as an exempt recipient avoids multiple information reporting and insures that the liability for information reporting and, if applicable, backup withholding, falls upon the last person in a chain of intermediaries, that is the intermediary that has the direct relationship with the customer.

When a payment is made to a foreign intermediary, however, the IRS may not be able to obtain information and, thus, collect the tax that may be due from the ultimate owner if the payment to the foreign intermediary is exempt from information reporting (assuming that the intermediary is an exempt recipient). If the payment to the foreign intermediary involves amounts subject to withholding under chapter 3 of the Code (e.g., U.S. source dividends, U.S. source interest on obligations in registered form, or U.S. source royalties), a U.S. tax is collected at source at a 30-percent rate (assuming that the intermediary has furnished no reliable information concerning the beneficial owners of those payments; see applicable presumptions rules, as revised). If, however, the payment is not subject to chapter 3 withholding (e.g., broker proceeds or foreign source income) and the beneficial owner is a U.S. person, the lack of information regarding the beneficial owner is of greater concern to the IRS.

The regulations proposed in 1988 and in 1996 set forth procedures for payments to intermediaries that are, in part, designed to address some of these concerns (see, for example, the 1996 proposal to apply 30-percent withholding to U.S. source bank deposit interest unless beneficial owner documentation is obtained). The final regulations clarify how withholding and reporting under chapter 3 of the Code interacts with Form 1099 reporting and backup withholding.

Under § 1.1441–1(b)(2)(v)(A), a payment to a foreign intermediary (if reliably identified as such by the payor) that has not assumed primary withholding responsibility, is treated as a payment made directly to the person or persons for whom the intermediary (whether or not a QI) collects the payment. If that person is undocumented (i.e., has not furnished a reliable withholding certificate or other appropriate documentation), the person is presumed to be foreign under § 1.144–1(b)(3)(v)(B) to the extent the payment consists of an amount subject to chapter 3 withholding. Therefore, for example, if a U.S. source dividend is paid to a foreign intermediary that furnishes a Form W–9 for another person and such U.S. person is not an exempt recipient, the payor must treat the U.S. person as the payee for purposes of the Form 1099 reporting provisions under section 6042 and backup withholding under section 3406. If the U.S. person is not an exempt recipient, the payment is reportable even though the person who actually receives the payment is the foreign intermediary. The foreign intermediary is an exempt person by virtue of being a foreign person and a nominee. However, as clarified under the final regulations, the fact that the intermediary may be an exempt person is not relevant because, under the final rules, it is not a payee with respect to a payment associated with underlying documentation attached to the certificate. See §§ 1.6049–5(d)(3)(i) and 1.1441–1(b)(3)(v)(B).

If, however, the amount paid to the person identified as a foreign intermediary is not of a type that is subject to chapter 3 withholding (e.g., foreign source income, broker proceeds), then § 1.6049–5(d)(3)(ii) provides that the amount is treated as paid to an exempt recipient and, as such, exempt from reporting and backup withholding

under section 3406. This rule is subject to two exceptions. First, a U.S. payor with actual knowledge that the person for whom the intermediary collects the payment (including broker proceeds and foreign source income) is a U.S. person is required to report the payment (and backup withhold in the absence of a TIN) if the U.S. person is not an exempt recipient. See § 1.6049–5(d)(3)(iv), *Example 7.* A second exception is made for U.S. source bank deposit interest and short-term OID. Because these amounts are not subject to withholding, this exception appears under § 1.6049–5(d)(3)(iii) and not under section 1441. As explained under the heading "U.S. Source Bank Deposit Interest and Short-term OID" of this preamble, a payment of such amounts to a foreign intermediary (or certain foreign partnerships) is reportable unless the intermediary establishes that the payee (other than an intermediary or a flow-through entity) is a foreign person or an exempt recipient.

Further, provisions have been added to explain how the U.S. withholding and reporting requirements apply to payments made *by* a foreign intermediary, certain U.S. branches, or certain foreign partnerships. A foreign intermediary that furnishes a valid intermediary withholding certificate to the withholding agent is considered to have complied with its own reporting and withholding obligations under chapters 3 and 61 of the Code and sections 3402, 3405, or 3406. See, for example, § 1.1441–1(b)(6) applicable to payments of amounts subject to chapter 3 withholding by a foreign intermediary or a U.S. branch and corresponding provisions in § 1.6049–5(b)(14) for interest and § 1.6042–3(b)(1)(vi) for dividends. Similar provisions are made under § 1.1441–5(c)(3)(v) for payments by foreign partnerships that are not withholding foreign partnerships. For example, a foreign custodian bank that is not a qualified intermediary and acts as an agent for a nonresident alien individual who holds U.S. publicly traded obligations in registered form is not required to withhold under section 1441 when it credits the customer's account if it has furnished the individual's Form W–8 (or alternative documentary evidence) to the U.S. withholding agent in compliance with § 1.1441–1(e)(3)(iii). If, however, the foreign custodian bank knows that the Form W–8 (or alternative documentary evidence) is not reliable and has not so informed the U.S. withholding agent who, as a result, has not withheld, then the bank is not relieved from its obligation to withhold under section 3406 because it has not acted in compliance with the regulations under section 1441.

These rules apply when the withholding agent/payor holds a valid intermediary withholding certificate. The final regulations add provisions to clarify applicable presumptions when the status of the intermediary is not reliably established or parts of the intermediary withholding certificate are not reliable. See a description of these provisions under the heading "Presumptions—Payments to Foreign Intermediaries" of this preamble.

10. U.S. Source Bank Deposit Interest and Short-Term OID

Some commentators objected to the requirement that eligibility for the exemption from U.S. tax on U.S. source bank deposit interest be subject to the same beneficial ownership documentation requirements that apply to portfolio interest, suggesting lack of statutory authority and an increase in burden in the context of interbank financing transactions.

In view of these comments, the final regulations do not require a withholding agent to withhold 30-percent on bank deposit interest under section 1441 in the absence of beneficial owner documentation. Instead, documentation regarding the beneficial owner is required under sections 6049 and 3406 for purposes of avoiding information reporting and backup withholding. This documentation requirement also applies to short-term OID. See § 1.6049–5(d)(3)(iii). Therefore, the final regulations provide that a payment to a foreign intermediary of U.S. source short-term OID or of U.S. source interest on deposits with U.S. banks and other financial institutions described in sections 871(i)(2)(A) and 881(d) is treated as made to a foreign payee or an exempt recipient only to the extent that the payor can treat the payment as made to a foreign beneficial owner under § 1.1441–1 (d)(4) or (e)(1)(ii) or if the payment is made to a qualified intermediary that has assumed primary withholding responsibility or to a withholding foreign partnership. In all other cases, the foreign intermediary is not treated as an exempt recipient and its certification that it is a foreign person is not sufficient to make the payment non-reportable under § 1.6049–5(b)(12). Under § 1.6049–5(d)(3)(iii), the payment is treated as made directly to the unidentified owners for whom the intermediary receives the payment and, as such, is treated as made to a U.S. payee who is not an exempt recipient.

The regulations provide special rules to help a payor determine whether the person to whom it makes the payment is a foreign or a U.S. person, and, if presumed to be a foreign person under these rules, whether it is an intermediary or is acting for its own account. These presumptions are helpful if the payment is to a foreign person that qualifies as an exempt recipient on an "eyeball" basis (e.g., a foreign bank with the word "bank" in its name). In such a case, no documentation is required to be provided by such person and the payor may have no ability to determine whether the person is U.S. or foreign and whether it is acting as an intermediary or for its own account. A person receiving a payment is presumed to be a foreign person for the purpose of these rules if the payor has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," if the payor's communications with the payee are mailed to an address in a foreign country, or if the name indicates that the payee is a per se corporation under § 301–7701–2(b)(8)(i), or the payment is made outside the United States. The final regulations under § 1.6049–5(d)(4)(iii) presume that a person receiving a payment of U.S. bank deposit interest or U.S. short-term OID is *not* acting for its own account (note that this presumption is different from the general presumption under § 1.1441–1(b)(3)(v)(A) that presumes a foreign person to be acting for its own account unless it furnishes certain documentation establishing its status as an intermediary). Thus, in the absence of documentation and any evidence that the foreign person is acting for its own account, a payor would presume that the payment is made to unidentified owners for whom the person receives the payment, required to be reported under section 6049 and subject to 31-percent backup withholding under section 3406.

A payee may rebut this presumption by furnishing an indication of beneficial ownership to the payor. Such indication may be provided in any manner as the parties may choose, but must be reflected in the payor's records. An indication by a foreign person that it is not an intermediary does not have to be made under penalties of perjury.

In order to minimize disruptions to high-volume wholesale banking transactions and to the sale and repurchase (repo) market, the final regulations exempt from these documentation requirements deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, and amounts of original issue discount

arising from any repo transaction that is completed within a period of two weeks or less. Further, amounts paid with respect to certain bearer obligations are also exempt.

11. Presumptions—In General

Proposed § 1.1441–1(f), dealing with presumptions of U.S. or foreign status in the absence of reliable documentation, is restated with a number of clarifications, in §§ 1.1441–1(b)(3) and 1.6049–5(d) (2) through (5). The presumptions in § 1.1441–1(b)(3) apply to amounts that are subject to chapter 3 withholding. The same presumptions apply under § 1.6049–5(d)(2) to payments that are not subject to chapter 3 withholding (e.g., foreign source income, sales proceeds), with a few differences. As under the proposed regulations, payments that a payor or withholding agent cannot reliably associate with documentation are presumed to be made to a U.S. payee who is not an exempt recipient, in which case 31-percent backup withholding applies if the payment is otherwise a reportable payment (within the meaning of the applicable information reporting provisions under chapter 61 of the Code). As an exception to this rule, a payee is presumed to be foreign if it is an exempt recipient for whom indicia of foreign status exist. Special rules are also provided for scholarships and pensions, for which no backup withholding applies under section 3406, and for certain payments to offshore accounts. See § 1.1441–1(b)(3)(iii).

In determining the extent to which the withholding agent can consider that it can rely on documentation to determine the extent of its withholding obligations, the final regulations rely on a concept of "reliable association" of a payment with withholding certificates or other documentation. This concept replaces the requirement under § 1.1441–1(f)(1)(ii) of the proposed regulations that the withholding agent hold required documentation. The definition of "reliable association" is set forth in § 1.1441–1(b)(2)(vii). As in the proposed regulations, a withholding agent cannot reliably associate a payment with documentation if the documentation is lacking or is unreliable. These provisions apply regardless of whether documentation is otherwise required. For example, a payment of U.S. source royalties to a corporation with the word "Inc." in its name requires no documentation from the payee under section 6050N because the payee's status as an exempt recipient is inferred from its name (i.e., on an "eyeball" basis) under § 1.6049–4(c)(1)(ii)(A)(*1*). In such a case, the payor must consider that there is a per se lack of documentation. Therefore, under § 1.1441–1(b)(3)(iii)(A), a payment to such an exempt recipient is presumed made to a foreign person if certain indicia of foreign status are present. If these indicia are present, the payor, if also a withholding agent, must withhold 30-percent from the payment under section 1441.

The final regulations modify the presumptions for certain payments to offshore accounts. Under the proposed regulations, a payment to a foreign account is presumed to be made to a U.S. person. Thus, the payor must file a Form 1099 for the payee, but the payment is not subject to backup withholding. See proposed §§ 1.1441–1(f)(2)(ii) and 31.3406(g)–1(e). The final regulations provide that, in the case of a payment to a foreign account of an amount subject to chapter 3 withholding, the payment is presumed to be made to a foreign person and not to a U.S. person. Thus, the withholding agent must withhold on the payment at a 30-percent rate. In that case, the foreign status presumption insures that a tax is paid on such amounts since, under § 31.3406(g)–1(e), no backup withholding would apply to an undocumented account if the account holder were presumed to be a U.S. person. See § 1.1441–1(b)(3)(iii)(D). The final regulations adopt the rule in the proposed regulations for payments involving amounts that are not subject to chapter 3 withholding (i.e., payee is presumed to be a U.S. person who is not an exempt recipient, subject to Form 1099 reporting but not to backup withholding). See §§ 1.1441–1(b)(3)(iii) and 1.6049–5(d)(2)(i).

The final regulations include presumptions regarding the characteristics of a payee so that a payor or withholding agent may determine whether to treat the payee as an owner of an account or as an intermediary (see § 1.1441–1(b)(3)(v)(A)), and as an individual, a trust, an estate, a corporation or a partnership. See § 1.1441–1(b)(3)(ii). The final regulations also make a number of clarifications to the presumption provisions in response to comments. First, the revised rules clarify that the presumptions are mandatory. A payor that withholds a lesser amount or does not report a payment contrary to what the presumptions would require may be liable for the amount of the tax in addition to interest and penalties, even if the withholding agent acted on the basis of actual knowledge. Although the liability for the tax may be eliminated if the withholding agent establishes that it withheld the proper amount (based on its actual knowledge or otherwise), liability for interest and penalties may be assessed. This rule is consistent with the requirement under the regulations to provide documentation before a payment is made so that a withholding agent may not rely on actual knowledge to reduce a withholding or reporting obligation. Treating the presumptions as mandatory rather as mere safe harbors is necessary to avoid undermining the requirement that withholding agents obtain documentation prior to the time of a payment.

On the other hand, a withholding agent or payor may not rely on the presumptions if it has actual knowledge (or, in the case of amounts subject to chapter 3 withholding, reason to know) of facts that would require it to withhold an amount greater than would otherwise be required based upon an applicable presumption or to report a payment that would be exempt from reporting under an applicable presumption. See § 1.1441–1(b)(3)(ix) and (b)(7).

The final regulations clarify that if, under the rules, a payment is presumed to be made to a U.S. payee, the determination of whether to report on a Form 1099 or backup withhold is governed by the provisions under chapter 61 of the Code and section 3406 and not by chapter 3 of the Code. See § 1.1441–1(b)(3)(i). Also, the final regulations clarify that a withholding agent that withholds in accordance with an applicable presumption is not liable under another withholding provision for that payment, even if the payee is subsequently determined to have a status different from its presumed status. See § 1.1441–1(b)(3)(ix)(A).

12. Presumptions—Grace Period

Several comments were received regarding the grace period provisions under proposed § 1.1441–1(f)(2)(ii). Under the proposed rules, a withholding agent or payor may presume that an account holder for whom specified indicia of foreign status exist at the time that a payment is first credited to the account may be treated as a foreign person, even if no documentation has been received before the account is first credited. This presumption has two consequences: first, backup withholding is deferred until the end of the grace period (and may never be required if foreign status documentation is provided when or before the grace period terminates); second, an amount must be withheld under chapter 3 of the Code without the benefit of a reduced rate under the Code or an income tax treaty if the amount is

income subject to chapter 3 withholding. At the expiration of the grace period, the account holder is treated as a U.S. or foreign person, depending upon whether documentation is furnished, and, if so, what type of documentation is furnished.

Commentators argued that a withholding agent should be allowed to rely on the apparent status of the beneficial owner to grant a reduced rate of withholding for payments made during the grace period. They point to the prohibition against depleting the account below 31-percent of the amounts paid and argue that this prohibition protects the government's interest that the proper amount of tax be collected upon expiration of the grace period if entitlement to a reduced rate is not confirmed. This comment is accepted but only if the withholding agent has received a faxed Form W–8. Thus, for example, a reduced rate of withholding for portfolio interest or under a tax treaty can apply to amounts credited during the grace period based on a faxed Form W–8.

Commentators also argued that any backup withholding should not be retroactively imposed after the expiration of the 90-day grace period when documentation is still lacking at that time, because of the difficulty to deduct and deposit a tax after the fact. In response to these comments, the final regulations are revised to impose backup withholding only to payments credited to the account after the expiration of the grace period if, at that time, documentation is still lacking or unreliable. The presumption that the account holder was a foreign person during the grace period is not reversed. Thus, if amounts credited during the grace period were subject to withholding at less than the full 30-percent rate, and, at the end of the grace period, the documentation is still lacking or unreliable, then the payor must make an adjustment in order to correct the underwithholding, so that all amounts credited during the grace period are withheld upon at the full 30-percent rate (to the extent they are amounts subject to chapter 3 withholding). Under the final regulations, amounts credited to the account during the grace period could be subject to no or reduced withholding if the withholding agent receives a faxed Form W–8. Consistent with the 30-day grace period under § 31.3406(d)–3(c), the provisions are revised to treat reinvestment as withdrawals. The grace period is terminated if withdrawals or other events leave a balance in the account that is insufficient to cover potential backup withholding liability. See § 1.6049–5(d)(2)(ii) and § 1.1441–1(b)(3)(iv) of the final regulations, as renumbered.

For purposes of withholding under chapter 3 of the Code, the 90-day grace period applies to all payments that are exempted from the TIN requirement under § 1.1441–6(b)(2)(ii). For purposes of information reporting on amounts not subject to withholding, the 90-day grace period applies to all payments reportable as dividends, interest, royalties, and broker proceeds. Although comments were received asking that the grace period be extended to existing accounts, the final regulations do not do so. A grace period should not be necessary for existing accounts where the expiration of withholding certificates is a predictable event for which withholding agents and payors can plan accordingly. On the other hand, the grace period is extended to situations where the validity of documentation expires because of a change of circumstances. In such a case, it is reasonable to allow time to obtain new or corrected documentation to account for changes affecting the validity of documentation in an unexpected manner. The final regulations also extend the availability of a grace period for purposes of payments for which a Form 8233 is required (i.e., claim of treaty benefits for compensation to nonresident alien for personal services). This benefit is intended to facilitate withholding on these payments to beneficial owners who are awaiting their social security number or ITIN. The final regulations clarify that the grace period provisions apply at the option of the payor or withholding agent. Therefore, a payor or withholding agent is not required to implement procedures offering a grace period to its customers.

13. Presumptions—Payments to Foreign Intermediaries

At the request of commentators, the final regulations clarify how the presumptions apply to payments to foreign intermediaries in the absence of reliable documentation both for purposes of chapter 3 and chapter 61 information, and sections 3402, 3405, and 3406. Under § 1.1441–1(b)(3)(v)(A), a payee who has not provided a valid intermediary withholding certificate or whose intermediary withholding certificate is defective because, for example, the information on the certificate regarding the intermediary is lacking or unreliable, must generally be treated as an undocumented owner of the payment. Under § 1.1441–1(b)(3)(ii), an undocumented owner is presumed to be an individual, a trust, or an estate, if the payee appears to be such a person. In the absence of reliable indication that the payee is an individual, a trust, or an estate, the payee is presumed to be a corporation if it can be treated as a corporation under the "eyeball" test described in § 1.6049–4(c)(1)(ii)(A)(*1*) or is presumed to be one of the persons enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under an "eyeball" test basis. If it cannot be so treated, then it is presumed to be a partnership.

If the payee is presumed to be an individual, a trust, an estate, or a partnership, it is presumed under § 1.1441–1(b)(3)(iii) to be a U.S. person who is not an exempt recipient and the information reporting provisions under chapter 61 of the Code and section 3406 would govern the payor's reporting and withholding obligations with respect to the payment. If the payee is presumed to be a corporation or another exempt recipient under § 1.6049–4(c)(1)(ii)(B) through (Q), then it is also presumed to be a U.S. person. However, if the amount paid consists of an amount that is subject to withholding under chapter 3 of the Code (e.g., U.S. source interest or dividends), the payee is presumed to be a foreign person if there are indicia of foreign status, in which case withholding at the 30-percent rate is required under chapter 3 of the Code. See § 1.1441–1(b)(3)(iii)(A).

If the payment can be treated as made to a foreign intermediary but the intermediary's withholding certificate is unreliable either because the withholding agent or payor has not been given sufficient information to determine the proper amount of withholding or because some or all of the underlying certificates that are required to be attached are lacking or are unreliable, the payment is presumed made to a foreign nominee acting for an undocumented owner. Therefore, the payment is subject to withholding under chapter 3 of the Code at the unreduced 30-percent rate to the extent it consists of income subject to such withholding under chapter 3 of the Code. See § 1.1441–1(b)(3)(v)(B). Additional presumptions are provided under § 1.1441–1(b)(3)(v) (C) and (D) to deal with lacking or unreliable information regarding the allocation of a payment among beneficial owners or other payees and lacking or unreliable information regarding whether the intermediary's certificate identifies all of the persons to whom the payment relates. Section 1.6049–5(d)(3)(ii) clarifies, however, that if the payment is not an amount subject to chapter 3 withholding, then the payment is

presumed to be made to an exempt recipient not reportable under section 6042, 6045, or 6049 (except for certain payments of U.S. bank deposit interest or U.S. short-term OID under § 1.6049–5(d)(3)(iii)).

The lack of reliable information regarding beneficial owners or the allocation of the payments among them raise an issue as to how the amounts should be reported on a Form 1099 (if, for example, the withholding agent has a Form W–9 from a beneficial owner but has no or unreliable information regarding how much the payment is allocable to such person) or on a Form 1042–S. The final regulations under § 1.1461–1(c)(4)(iv) provide that payments to an intermediary or foreign partnership for the account of undocumented owners or partners are reportable on a single Form 1042–S made out to the intermediary, and bearing the mention "unknown owners." The final regulations, however, do not contain guidance for situations where the withholding agent or payor is lacking reliable allocation information. This matter is under consideration by the IRS and comments are solicited regarding appropriate procedures before guidance is issued.

The final regulations contain similar provisions for payments to foreign partnerships under § 1.1441–5(d). See the explanation under § 1.1441–5, below.

15. Late-Received Form W–8—Cure Procedures

Generally, a Form W–8 or other applicable documentation must be furnished to the withholding agent or payor prior to the time of payment. The proposed regulations in § 1.1441–1(f)(5) prescribe procedures allowing a Form W–8 or other documentation to be furnished late (i.e., after the 90-day grace period), subject to interest and penalties. They also contemplate the possibility that, upon examination, the IRS might require the withholding agent or payor to furnish additional proof in support of the claim of foreign status or eligibility for a reduced rate of withholding under the Code or a tax treaty. Commentators asked for an exemption from interest and penalties when it is determined that there is no underlying tax liability once the documentation has been provided or, at least, that the liability be abated where the withholding agent has acted in good faith.

The final regulations do not eliminate the possibility that interest and penalties may apply because the liability for those items is clearly contemplated under section 1463. However, several revisions are made to relieve liability in certain cases. See § 1.1441–1(b)(7), restating the provisions of proposed § 1.1441–1(f)(5). First, in order to eliminate the possibility of a double interest charge when the respective unsatisfied tax liabilities of the withholding agent and of the beneficial owner run concurrently, the regulations are modified to limit collection to one amount of interest only. In that regard, interest will not be assessed against the withholding agent if it otherwise is assessed or collected against the beneficial owner. Next, in order to clarify that the cure rules apply to all cases for which documentation must be provided to the withholding agent, cross references have been added under §§ 1.1441–4(f), 1.1441–5(f), 1.1441–6(f), 1.1441–8(e), 1.1441–9(c), and 1.1443–1(b)(3). In addition, the final regulations make this relief available on a retroactive basis for all open years. This action is intended to eliminate any ongoing controversy with the IRS regarding an issue that is unclear under current law. The final regulations clarify that the period for calculating penalties and interest is limited to the time that the liability remains outstanding, i.e., starting with the due date for filing the return under section 6601 (i.e., March 15 of the year following the year in which the payment was made) and ending with the date that the tax is considered paid (i.e., the time that the documentation is furnished establishing the proper amount of tax due or that the tax is actually paid, whichever is earlier). Also, commentators asked for a clarification of how late deposit penalties would apply when the withholding agent fails to withhold. This issue remains under consideration.

16. Due Diligence With Respect to Information Returns Required Under Chapter 61 of the Code

The Interest and Dividend Tax Compliance Act of 1983 provided that the penalty for the failure to file an information return, furnish a copy of it to a payee, or supply a TIN can be waived if it is shown that the filer exercised due diligence in filing the return, furnishing it to a payee, or supplying the payee's TIN. The due diligence standard applied to failures on information returns reporting dividends under section 6042, patronage dividends under section 6044, and interest or OID under section 6049. The IRS issued regulations in question and answer form providing the prerequisites to establish due diligence. See §§ 35a.9999–1 through 35a.9999–5.

The Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2393, repealed sections 6676 and 6678 with the enactment of uniform information reporting penalties under sections 6721 through 6724 and replaced due diligence with a reasonable cause standard under newly enacted section 6724. However, Congress provided that the separate and higher due diligence waiver standard for returns filed under sections 6042, 6044, and 6049 be considered to meet reasonable cause. H. Rep. No. 247, 101st. Cong., 1st. Sess., at 1385 (1989).

These final regulations remove the Q/As under Part 35a, effective January 1, 1999. Because due diligence will remain in effect, the IRS will retain the relevant Q/As set forth in Part 35a. These final regulations redesignate the relevant Q/As under § 301.6724–1(g).

17. Effective Dates

Many comments were received regarding the effective dates of the final regulations. Commentators argued that the January 1, 1998 effective date in the proposed regulations should be extended because of the anticipated time required to complete QI agreements and for withholding agents to make the administrative and operating systems changes that will be necessary to comply with the regulations. However, commentators have argued that provision should also be made for a financial institution to elect earlier adoption of the new requirements where possible.

The final regulations accommodate these concerns. The effective date is changed to January 1, 1999. In view of the later effective date and comments that staggered effective dates make system adjustments more difficult and costly, all special delayed effective dates rules are eliminated. Also, transition rules are modified for existing certificates. Valid withholding certificates that are held on December 31, 1998, remain valid until the earlier of December 31, 1999 or the due date of expiration of the certificate under rules currently in effect (unless otherwise invalidated due to changes in the circumstances of the person whose name is on the certificate). Further, certificates dated prior to January 1, 1998 that are valid as of January 1, 1998, remain valid until the end of 1998, irrespective of the fact that their validity expires during 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate).

The final regulations do not accelerate the effective date of certain provisions as had been requested by several commentators. Although doing so would provide relief to a number of taxpayers, it would also complicate the many system adjustments that withholding agents, particularly financial institutions with large volume of cross-border payments, must implement before the effective date of these regulations. The IRS and Treasury feel that the benefits of accelerating certain provisions would not sufficiently outweigh the added costs and burdens to many withholding agents.

C. Comments and Changes to § 1.1441–2

1. Amounts Subject to Withholding

Under § 1.1441–1 of current regulations, an amount is subject to withholding only if it is from sources within the United States. The final regulations under § 1.1441–2(a) clarify that an amount can be sourced within the United States irrespective of the fact that the source is undetermined at the time of payment. This clarification addresses the Tax Court's ruling in *Albert J. Miller* v. *Commissioner*, T.C. Memo 1997–134, 73 T.C.M. (CCH) 2319, that an amount whose source cannot be determined at the time paid is sourced outside the United States for purposes of sections 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code.

2. Fixed or Determinable Annual or Periodical Income

The definition of the term *fixed or determinable annual or periodical* (FDAP) income under existing regulations under section 1441 is retained in the final regulations and clarified. In particular, § 1.1441–2(b)(1)(iii) addresses three types of uncertainties that a withholding agent may encounter: (1) The proportion of the payment that constitutes income cannot be determined when a payment is made (e.g., a payment made on an obligation that may include interest, but the exact amount of interest cannot be determined because the determination is contingent upon future events); (2) the proportion of the payment that constitutes U.S. source income cannot be determined at the time of payment; or (3) the fact that the payment may be income in the future cannot be anticipated at the time of payment. Only in the third case would the payment not constitute FDAP income. In the first two cases, income is actually being paid. The only uncertainty is the amount that the recipient should include in income and this uncertainty does not prevent the payment from constituting fixed or determinable annual or periodical income for purposes of section 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code. See also the additional provisions under §§ 1.1441–2(b)(1)(iii) and 1.1441–3(d)(1) dealing with determinability and rules of withholding for items whose source cannot be determined at the time of payment.

3. Original Issue Discount

In response to comments, the final regulations regarding withholding on original issue discount (OID) are simplified. As a general principle, withholding is required on a payment that is treated as taxable OID under section 871(a)(1)(C) or 881(a)(3)(A) to the extent the withholding agent knows the amount that is OID. That amount is known to the withholding agent if it knows how long the beneficial owner has held the obligation on which a payment is made, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent has knowledge if the information is obtainable upon exercising reasonable efforts. The information is not considered obtainable in the case of payments with respect to publicly traded securities where the withholding agent, consistent with normal industry practices, does not have a direct customer relationship with the person who has actual knowledge of the relevant information or has no access to this information in the normal course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct customer relationship with the beneficial owner, knowledge regarding the owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. Because of the complexities that may be involved in calculating the amount taxable to the owner and, thus, subject to withholding, withholding agents may rely on the most recently published "List of OID Instruments" or similar list published by the IRS (currently contained in IRS Publication 1212 (available from the IRS Forms Distribution Centers)).

Notwithstanding the rules described in the preceding paragraph, withholding is required with respect to OID that would qualify as portfolio interest except for the fact that documentation required under section 871(h)(5) is not furnished to the withholding agent. In the absence of information regarding the amount of OID, the withholding agent may rely on IRS Publication 1212. The final regulations clarify that no withholding applies to amounts that are not otherwise subject to chapter 3 withholding (e.g., OID on obligations in bearer form that qualifies as portfolio interest).

3. Securities Lending Transactions

The final regulations add paragraph (b)(4) to cross-reference the regulations under sections 871 and 881 dealing with securities lending transactions and equivalent transactions. Thus, the character of the income arising from these transactions applies for purposes of determining the amount of withholding under chapter 3 of the Code. Similar rules apply for purposes of information reporting and backup withholding on interest and dividends. See §§ 1.6042–3(a)(2) and 1.6049–5(a)(5). See § 1.1441–1(b)(4)(i) for documenting interest equivalent amounts for which the beneficial owner claims a portfolio interest exemption.

4. Relief for Deemed Payments of Income

Several comments were received regarding the difficulty for a withholding agent to withhold on an amount of income that is not represented by cash or property (i.e., deemed payments of income). The final regulations in § 1.1441–2(d) provide relief in cases in which the withholding agent does not have custody of, or control over, property of the taxpayer who is deemed to receive income under section 871(a) or 881(a) or does not have knowledge of the events that give rise to the deemed payment. Relief, however, does not apply for deemed payments arising between related parties or as part of a pre-arranged plan to avoid withholding. Therefore, a withholding obligation arising out of a deemed payment resulting from an allocation of income under section 482 is not eliminated because the parties are related. Examples are provided for cancellation of debt and constructive income arising from correcting prior underwithholding by paying the amount of tax due to the IRS. Withholding on deemed distributions with respect to stock is not excused under these rules. For these amounts, the IRS and Treasury believe that an exemption from withholding would be inappropriate in view of the ongoing investment or business relationship between the parties. Under the final regulations, withholding is required at the time of the deemed distribution even if the income from the distribution is prorated over time (such as a redemption premium under section 305(c)). The IRS and Treasury considered comments asking that withholding be deferred until income is includable in the

shareholder's income but concluded that the withholding procedures necessary to implement such an exception and insure proper withholding would be too complex.

D. Comments and Changes to § 1.1441–3

1. Withholding on Interest Payments

No obligation to withhold is imposed under current law on the payment of stated interest on an obligation that was purchased between interest payment dates. Under § 1.61–7(c), interest received on the interest payment date is treated as a return of basis to the extent it represents accrued unpaid interest as of the date of purchase as reflected in the new holder's basis for the obligation. Therefore, when the new holder receives a payment of the stated interest, the holder s tax liability is limited to the amount of interest accrued after the date of purchase (subject to additional adjustments reflecting possible acquisition premiums or market discounts). Because of the difficulty for a withholding agent to determine the amount accrued to the holder and other adjustments affecting the actual amount taxable to the holder, withholding on the entire amount of stated interest is permitted under the regulations. Although commentators have asked that the withholding agent be permitted to withhold on the amount that it knows is taxable, the final regulations do not modify the proposed regulations on this point because the IRS and Treasury consider that withholding on the entire amount is justified to the extent that, under existing rules, withholding on sales of obligations between interest payment dates is not required.

This comment is taken into account, however, in regulations that are proposed together with these final regulations to require withholding on sales of obligations between interest payment dates. These proposed regulations are intended to conform the withholding regime for sale of bonds between interest payment dates to that implemented for OID obligations under the final regulations. See project REG–114000–97 published elsewhere in this issue of the **Federal Register**.

2. Withholding on Distributions

The proposed regulations regarding withholding on corporate distributions are expanded and clarified in view of comments. Section 1.1441–3(c)(1) and (2)(i) are revised to clarify that the withholding procedures are elective. In other words, a distributing corporation or the custodian or nominee may choose to withhold on the entire amount distributed and, thus, to not take advantage of the election to limit withholding to the estimated earnings and profits amount. An election by the distributing corporation to determine withholding based on the estimated earnings and profits amount for distributions it makes directly to a foreign person does not mean that a custodian or nominee who receives payments of distributions for the account of foreign investors must do the same when it makes a payment of these distributions to the foreign investors. Instead, the custodian may choose to disregard the estimate of earnings and profits and to withhold on the entire distribution. The revisions reflect the fact that each withholding agent must be able to make this decision independently because of its own potential tax liability under section 1461 in the event of underwithholding. The final regulations clarify that the amounts of tax that the withholding agent pays to satisfy the tax liability under section 1461 if underwithholding has occurred is not subject to withholding even if it constitutes a constructive dividend. This rule applies irrespective of the fact that the satisfaction of the tax liability may be additional income to the shareholder unless the additional payment results from a contractual arrangement between the parties regarding the shareholder's satisfaction of its tax liability by the distributing corporation. With this rule, the final regulations eliminate, for this situation, the question as to whether a taxpayer realizes income when the withholding agent satisfies a tax liability under section 1461.

Further, proposed § 1.1441–3(c)(2)(iii) (renumbered as § 1.1441–3(c)(2)(ii)(C) in the final regulations) is revised so that an erroneous estimate by the distributing corporation is imputed to an intermediary not only in situations in which the IRS challenges the estimate but also in situations in which the distributing corporation unilaterally determines that its estimate is in error. Some commentators questioned whether a reference to interest in § 1.1441–3(c)(3)(ii)(B) regarding consequences in the event of underwithholding had been omitted in error. Interest is not mentioned in the provision because, to the extent underwithholding is corrected by the due date of filing the annual return under § 1.1461–1(b), no interest charge applies. On the other hand, if the withholding agent corrects the underwithholding as part of an amended return filed after the due date for filing the annual return, then an interest charge would apply, as reflected in § 1.1441–3(c)(3)(ii)(B)(*2*)(*ii*).

In response to another comment, § 1.1441–3(c)(3)(ii) is added to allow custodians and nominees to rely on estimates made by mutual funds regarding their capital gain dividends and exempt interest dividends. Some commentators also asked that § 1.1441–3(c)(3)(ii) be revised to provide that an adjustment to the amount of withholding is not a distribution for all purposes and not just for purposes of section 562(c). This comment is not accepted because there are circumstances in which the adjustment may constitute a distribution—such would be the case, if, for example, the adjustment cannot be made by adjusting the withholding on a subsequent distribution because the affected shareholder is no longer a shareholder or the adjustment occurs after the end of the taxable year.

Finally, § 1.1441–3(c)(4) has been added to coordinate the general distribution provisions with the regulations under section 1445. Under § 1.1445–5(b)(1), no withholding is required under section 1445 on a distribution from a U. S. real property holding corporation (USRPHC) if the distribution is subject to withholding under section 1441 or 1442. Given the change in the withholding procedures applicable to corporate distributions, the exemption from withholding under section 1445 may now lead to underwithholding on distributions from a USRPHC. In order to correct this situation, the final regulations give taxpayers a choice between two withholding regimes. A USRPHC may choose to withhold under section 1441, provided it withholds on the entire amount of the distribution, regardless of estimated earnings or profits. However, the rate of withholding may be reduced under income tax treaty provisions, although not below the 10-percent rate applicable under section 1445 (unless the treaty provides otherwise for distributions from USRPHCs). For purposes of applying the treaty, the entire amount of the distribution is treated as a dividend. Alternatively, the USRPHC may withhold under a mixed regime. Under this regime, withholding applies under section 1441 on the portion of the distribution that represents estimated earnings and profits and under section 1445 on the remainder of the distribution. The mixed withholding regime is mandatory for distributions from publicly-traded real estate investment trusts (REITs). In other words, a REIT may not, with respect to its distributions, choose to apply the withholding regime of section 1441 to the entire distribution. Instead, the REIT must withhold under section 1441 on the portion of the distribution that is not designated as a capital gain dividend or a return of basis. Withholding under section 1445 is also required on the portion of the distribution that the REIT designates as a capital gain dividend in accordance with § 1.1445–8.

3. Withholding on Undetermined Amounts

The final regulations also address the practical difficulties of withholding on an amount when, at the time of payment, there is not sufficient information to calculate which portion, if any, is taxable or to determine the source of the income. For these purposes, provisions have been added under § 1.1441–3(d)(1) that require a withholding agent to withhold on the entire amount when such uncertainties exist. This requirement in part reflects the policy that withholding generally should apply to payments that leave the U.S. taxing jurisdiction. The requirement to withhold in the event of uncertainty is similar to the provisions under existing regulations under § 1.1441–3(d)(1) (restated as § 1.1441–3(d)(2) of the final regulations) requiring withholding of an amount sufficient to assure that the tax withheld is no less than 30 percent of the recognized gain. In order to minimize overwithholding, the final regulations provide an alternative to withholding on the entire amount when uncertainties exist. Instead, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion in escrow until the amount subject to withholding can be determined. Under this alternative, setting aside an amount is not an event of withholding for purposes of § 1.1461–1(a) that would give rise to the requirement to pay the tax. Instead, the payment of the tax can be postponed until a determination can be made of the amount of withholding liability under this section. The provisions under § 1.1441–1(d)(1) do not apply to uncertainties that are specifically addressed under other provisions of the regulations, such as lack of information regarding the identity or status of the beneficial owner or payee (see § 1.1441–1(b)(3) for applicable presumptions in those cases and the grace period provisions set forth in § 1.1441–1(b)(3)(iv)) or withholding on original issue discount amounts (see § 1.1441–2(b)(3)).

E. Comments and Changes to § 1.1441–4

1. Notional Principal Contracts

Commentators have questioned whether it is appropriate to treat income from notional principal contracts as FDAP income, particularly since it is unclear at the outset whether the arrangement will generate any income. The IRS and Treasury believe that the statute contemplates very few exceptions to the concept of FDAP, and the only clear exception is for gain from the disposition of property. Income from notional principal contracts is not gain from the disposition of property, nor is it the equivalent of gain. However, the final regulations minimize the burden associated with characterizing the income as FDAP because the liability for withholding under chapter 3 of the Code is eliminated for such income. See § 1.1441–4(a)(3). Reporting under section 1461 or 6041, however, continues to be required under the final regulations. However, in response to comments, the reporting burden has been reduced and clarified (see §§ 1.1441–4(a)(3), 1.1461–1(c)(2)(i)(C) and (ii)(D), 1.6041–1(d)(5) and 1.6041–4(a)(4) of the final regulations).

Under the final regulations, notional principal contract payments are exempt from withholding. However, if paid to a foreign person, they are presumed effectively connected income and, as such, are required to be reported on a Form 1042–S. The effectively connected income presumption under § 1.1441–4(a)(3) can be rebutted by providing to the withholding agent a valid withholding certificate representing that the payments are not effectively connected with the conduct of a U.S. trade or business. In such a case, no reporting is required on a Form 1042–S for these amounts. A financial institution (as defined in § 1.165–12(c)(1)(iv)) may, instead of a withholding certificate, represent in a master agreement that governs the transactions in notional principal contracts between the parties (such as an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction, that the counterparty is a U.S. person or is a non-U.S. office of a foreign person. These representations are not required to be made under penalties of perjury.

In the final regulations, swap payments include payments on notional principal contracts described in § 1.988–2(e), dealing with foreign currency swaps. Also, income on notional principal contracts does not, for purposes of these rules, include amounts characterized as embedded interest under §1.446–3(g)(4). Such amounts, if not effectively connected with the conduct of a U.S. trade or business and from U.S. sources, are subject to chapter 3 withholding and are reportable on a Form 1042 and 1042–S.

Under § 1.6041–1(d)(5), a payment on a notional principal contract, including embedded interest, is a reportable payment, unless paid to an exempt recipient (i.e., a person described in § 1.6049–4(c)(1)(ii)), paid outside the United States (unless the payor has actual knowledge that the payee is a U.S. person), treated as effectively connected with a U.S. trade or business under § 1.1441–4(a)(3), or paid by a non-U.S. payor or a non-U.S. middleman. If none of these exceptions applies, and the payor does not hold a Form W–9, then a payment is presumed under § 1.6049–5(d)(2)(i) to be made to a U.S. person that is not an exempt recipient, in which case backup withholding would be required under section 3406.

The final regulations under §§ 1.6041–1(d)(5) and 1.1461–1(c)(2)(i)(C) adopt the suggestion that nonperiodic payments are reportable only at the time that an actual payment is made. The final regulations require reporting of net income rather than gross amounts from notional principal contracts. Further, in response to comments, the final regulations in §§ 1.1441–4(a)(3) and 1.6041–1(d)(5) specify that the reporting requirements apply only prospectively, i.e., to payments made after December 31, 1998.

2. Form 8233 Procedures

The current regulations prescribe a procedure by which a withholding agent may grant a reduced rate under an income tax treaty on payments to nonresident aliens for services rendered in the U.S., generally in connection with a sporting, cultural, scientific, or artistic event. The procedure involves submitting a Form 8233 to the IRS for review and approval as instructed under § 1.1441–4(b)(2). The regulations provide, in effect, that the withholding agent may not grant an exemption from withholding until after a 10-day period beginning with the date that the Form 8233, as reviewed and approved by the withholding agent, is mailed by the withholding agent to the IRS. The proposed regulations extend the 10-day period to 20 days.

Commentators objected to the 20-day period and asked for the retention of the 10-day period. In addition, they suggested that, instead of making the treaty exemption effective only after the

submission of Form 8233, the exemption should be retroactive to the date of first payment covered by the certificate if the completed Form 8233 contains the nonresident alien's TIN, and if the withholding agent is not subsequently notified by the IRS within the 20-day period that the exemption is not valid. After further consideration, the comments are adopted. The 10-day waiting period is continued and the approval of the Form 8233 is made retroactive to the date of first payment covered by the certificate. However, the final regulations clarify that the IRS review process does not exonerate the withholding agent from liability for underwithholding. In its review, the IRS simply insures that the form contains all of the requested information, that the country of residence stated on the form is a country with which the U.S. has an income tax treaty, that the reduced rate that the withholding agent plans to apply is the proper rate under the applicable treaty, and that, based solely on information contained on the form, the reduced rate appears applicable. The IRS approval of the form makes no determination regarding whether the withholding agent's reliance on the form is reasonable, based on facts that the withholding agent knows or has reason to know at the time of the payment and that are not disclosed to the IRS as part of the review process. In addition, the final regulations allow the 90-day grace period to apply to payments covered by a Form 8233, in order to allow time for foreign persons who come to the United States for the first time and must complete a Form 8233 shortly after arrival to apply for and obtain an individual taxpayer identifying number. See § 1.1441–1(b)(3)(iv).

The final regulations modify the proposed rule under § 1.1441–1(b)(6) reducing the amount of certain compensation income by the personal exemption under section 151. The proposed regulations allowed a reduction for the full amount of the exemption. Commentators noted that allowing a reduction for the full amount of the allowable personal exemption may lead to inappropriate claims of multiple exemptions for nonresident aliens who come to the U.S. frequently for short-term events or assignments with different organizations. Commentators were concerned that they would have no ability to keep track of prior claims of the personal exemption. For this reason, the proration rule now currently in effect, is continued in the final regulations.

3. Reimbursed Expenses

Commentators asked that the regulations provide an exemption from withholding for reimbursed expenses paid to a nonresident alien individual in relation to performance of services in the U.S. as an independent contractor. A change to the regulations is not necessary, however. If the payments are exempt from tax under the Code, they are exempt from withholding under § 1.1441–4(b)(1)(iv). If, on the other hand, those payments are not exempt under the Code, then it would be inappropriate to provide for an exemption from withholding under section 1441.

F. Comments and Changes to § 1.1441–5

In response to comments, many partnership provisions have been consolidated in this section. A new paragraph (a) has been added to describe the steps necessary to determine the status of the payee for withholding purposes. The withholding procedures applicable to domestic partnerships are stated in paragraph (b). The withholding procedures applicable to foreign partnerships are stated in paragraph (c). Paragraph (d) describes applicable presumptions in the absence of documentation. Paragraph (e) is reserved for rules applicable to estates and trusts. Paragraph (f) contains the effective date provisions. Corresponding provisions have been added in § 1.6049–5(d)(4), dealing with payments of reportable amounts under chapter 61 of the Code to address reporting of payments of amounts that are not subject to chapter 3 withholding.

Paragraph (c)(1) provides guidance for identifying the payee in the case of a payment to a foreign partnership. As a general rule, a payment to a foreign partnership is treated as a payment directly to the partners, whether or not documentation has been provided for the partners, with two exceptions: a payment to a "withholding foreign partnership" and a payment to a foreign partnership that has furnished a certificate upon which the withholding agent can rely to treat the payment as effectively connected with the conduct of a U.S. trade or business are treated as a payment to the foreign partnership and not to the partners.

Paragraph (c)(2) restates the rule proposed under § 1.1441–1(e)(5), dealing with qualified intermediaries, for foreign partnerships that are withholding foreign partnerships. In order to avoid confusion, a withholding foreign partnership is no longer named a qualified intermediary.

Paragraph (c)(3) deals with foreign partnerships that are not withholding partnerships. Paragraph (c)(3)(iii) incorporates the withholding certificate provisions that were in proposed § 1.1441–1(e)(3)(iii). Those rules parallel the rules applicable to non-QIs under § 1.1441–1(e)(3)(iii) of the final regulations. In particular, the regulations require that a statement be attached to the withholding certificate if necessary to provide information sufficient for the withholding agent to determine each partner's distributive share of income subject to withholding. The rules governing the statement are stated in paragraph (c)(3)(iv) and parallel similar rules in § 1.1441–1(e)(3)(iv) of the final regulations applicable to non-QIs. At the request of commentators, paragraph (c)(3)(iii) clarifies that a foreign partnership receiving income that is effectively connected with the conduct of a U.S. trade or business is not required to furnish separate certificates for each of its partners. Instead, it may furnish one single withholding certificate, even though the partnership is not a withholding foreign partnership. See also paragraph (c)(1)(ii)(C). This procedure is reasonable because, in such a case, the partnership is subject to withholding procedures under section 1446.

Paragraph (d) describes the presumptions upon which a withholding agent can rely when making payments to a partnership for which certain documentation is lacking or unreliable. First, under paragraph (d)(2), a recipient that is presumed to be a partnership (based on presumptions set forth in § 1.1441–1(b)(3)(ii)) is presumed to be a foreign partnership if certain indicia of foreign status are present. If, based on such a presumption, the withholding agent has determined that the payment is made to a foreign partnership (presumably acting for the account of its partners since intermediary status generally cannot be presumed in the absence of valid documentation), uncertainties may remain regarding the status of the partners, the allocation of a payment among them, or whether all the partners have been accounted for. Under the final regulations, a payment that cannot be reliably associated with a withholding certificate from a partner is presumed made to a foreign payee. As a result, the withholding agent is required to withhold 30-percent from the payment, without a reduction. Also, any part of a payment that it is not reliably allocated to a partner is presumed allocable to the partner with

the highest withholding rate or the highest U.S. tax liability (as the withholding agent can best estimate) if the withholding rates are equal. Third, if the withholding agent does not have a reliable certification that all the partners are accounted for, and, as a result, the withholding agent cannot reliably determine the distributive share of any one or more partners, then none of the payment can be reliably associated with any one partner and the entire payment is presumed made to a foreign payee.

These procedures parallel those applicable to foreign intermediaries under § 1.1441–1(b)(3)(v). They differ from the presumptions stated in the proposed regulations under § 1.1441–1(f)(4)(ii) which provided that the amounts were paid to a U.S. payee that is not an exempt recipient. Thus, the final regulations, by presuming that the amounts are paid to a foreign payee, require that a 30-percent amount be withheld on amounts subject to withholding under chapter 3 of the Code rather than a 31-percent amount under the backup withholding provisions of section 3406. However, for amounts that are not subject to chapter 3 withholding, § 1.16049–5(d)(4) retains the provisions in the proposed regulations that the payments are presumed made to a non-exempt recipient U.S. payee. In such a case, 31-percent backup withholding applies instead of 30-percent withholding.

The final regulations under § 1.1441–5(d)(3)(iv) clarify that a foreign partnership that is a withholding foreign partnership determines who the payee is and the status of the payee, based on the provisions of § 1.1441–1(b)(2) and § 1.1441–5 (c) and (d) in the same manner as if it were making payments directly to the partners other than in their capacity as partners. In the absence of documentation regarding the partners, the partners are presumed to be foreign persons rather than U.S. persons, including for amounts that are not subject to chapter 3 withholding. A presumption of U.S. status for amounts not subject to chapter 3 withholding would not be meaningful because a foreign partnership is not a payor for purposes of chapter 61 of the Code and backup withholding under section 3406 when making payments to its partners. Therefore, payments made by a foreign partnership to its partners are not reportable under chapter 61 and are not subject to backup withholding. Instead, a foreign partnership must file an annual return on Form 1065 and report each partner's distributive share on Forms K–1, which forms are filed with the IRS with a copy to each partner. Such filing requirements apply in all cases in which the foreign partnership derives U.S. income, irrespective of whether the tax liability has been satisfied by withholding at source or whether all the partners are foreign. See section 6031 and §§ 1.6031–1(c) and 1.6031(b)–1T. However, in order to reduce the burden on foreign partnerships that are not withholding foreign partnerships, the IRS and Treasury are planning to issue regulations under section 6031 that would eliminate the filing requirement under section 6031 for foreign partnerships that are not engaged in a U.S. trade or business, that furnish appropriate documentation for each of their partners, and whose partners' U.S. tax liability has been fully satisfied at source.

Commentators asked that foreign partnerships be allowed to certify under penalties of perjury that all the partners are foreign and to use the same sub-accounting procedures that qualified intermediaries may use. In particular, where a partner is entitled to reduced withholding under the regulations without providing a TIN, commentators argue that there should not be a requirement that the partnership's intermediary withholding certificate specify that partner's distributive share of the item of income paid to the partnership. Also, they argue that there should not be a requirement that a separate Form 1042–S be filed under the partner's name. Instead, the partnership's intermediary withholding certificate should indicate the aggregate distributive shares of all members entitled to a single rate, and reporting should be done on the aggregate amount under the partnership's account. These comments are similar to those received for non-QIs and are not adopted for the same reasons that they are rejected for non-QIs. It is important to retain the distinction between foreign partnerships that qualify as withholding agents (i.e., those that are withholding foreign partnerships or are subject to section 1446) and those that are not qualified to act as withholding agents. If a foreign partnership is not a withholding foreign partnership, it should not be permitted to certify the status of its partners on their behalf.

Commentators asked that a foreign entity holding a passive investment for its own account be allowed to use the withholding procedures applicable to foreign corporate entities, irrespective of its actual classification for tax purposes. It is argued that, in many cases, investments are structured using organizations that, under the default classification rules of the check-the-box regulations would be classified as partnerships. In order to avoid more onerous withholding procedures, these entities would normally prefer a corporate classification. It is argued that the need to make an election for this purpose is an unnecessary step that should be eliminated. This comment is not accepted because the election procedure to insure corporate classification is simple and serves an important compliance role.

At the request of commentators, the final regulations in § 1.1441–7(a) clarify that, if a nominee holds an interest in a domestic or foreign partnership on behalf of a partner and provides the partnership with the information required under § 1.6031(c)–1T(a) with respect to the partner, the nominee is deemed to have satisfied its obligations as a withholding agent under chapter 3 of the Code and has no liability for underwithholding on the partner's distributive share of the amounts to which the furnished information pertains. This rule reflects the fact that a custodian holding a partnership interest for an investor often lacks the information needed to determine which withholding regime applies to income from the partnership. The necessary information to correctly withhold on partnership income is often only known to the partnership and is not easily accessible to the custodian. On the other hand, the partnership, which is also a withholding agent, or has withholding responsibilities, has the information necessary to determine how withholding should apply. It is also responsible for filing the partnership return and furnishing the Forms K–1 to the partners.

Some commentators requested that a withholding agent should be permitted to rely on a withholding certificate provided directly by a partner, without a withholding certificate from the partnership. The commentators argue that this reliance rule would permit partners to claim a reduced rate of withholding even though the partnership refuses to cooperate and to submit the proper documentation. This suggestion is not accepted because it would, in effect, read the partnership withholding certification rules out of the regulations. It may also become a source of confusion for withholding agents who would not always know how reliable the partner's information is. The IRS and Treasury believe that the partnership withholding certificate provides important information to the withholding agent, such as each partner's distributive share of the payment. In addition, in the absence of a partnership withholding certificate,

the withholding agent would lack information required to be stated on the Form 1042–S (e.g., the partnership's EIN) and compliance may be weakened as a result.

G. Comments and Changes to § 1.1441–6

1. Address Rule

Comments were received asking reconsideration of the proposal to eliminate the address rule for dividends. The IRS and Treasury believe, however, that there is no longer a justification for the address rule as in effect under current law. When the payment is made directly to a foreign beneficial owner, there is no justification for not requiring a Form W–8 from the owner in the same manner that is required for payments on debt obligations. In the case of payments of dividends to foreign intermediaries, the proposed and final regulations provide for new intermediary procedures that are more adapted to the monitoring of abusive claims of treaty benefits than is the address rule. For these reasons, the address rule is not reinstated.

2. Reliance on Withholding Certificate

In response to comments, § 1.1441–6(b)(1) clarifies, by cross-reference to § 1.1441–1(e)(4)(viii) dealing with reliance on withholding certificates, that a withholding agent may rely on information and certifications in a certificate without having to inquire into the truthfulness thereof, absent actual knowledge or reason to know otherwise. Therefore, absent actual knowledge or reason to know that such claims are false, a withholding agent may rely on claims on a Form W–8 of beneficial ownership and residence by a person claiming benefits under a tax treaty. Under these principles, a withholding agent may rely on representations from a foreign person regarding the application of foreign tax laws or certifications regarding the circumstances of the recipient or of the transaction. In particular, a withholding agent may rely on the recipient's representation made by furnishing a beneficial owner withholding certificate that it is a beneficial owner of the income. If the address on a withholding certificate comports with a claim of residence in a particular country, a withholding agent may also rely on such address as indicative of residence, even though the determination of residence for tax treaty purposes may be far more complex than establishing an address in the treaty country and is likely to involve the application of foreign tax laws, particularly in the case of a person other than an individual. However, if the withholding agent knows that the representations on a Form W–8 are inconsistent with foreign laws or with the recipient's or the transaction's circumstances, then the withholding agent must question the basis for the representations.

3. Requirement of a TIN

Commentators have suggested that the final regulations require a TIN only for related party transactions subject to treaty rate withholding. This would eliminate the need to provide a specific list of payments exempt from a TIN requirement. This suggestion is not adopted because the IRS and Treasury believe that the TIN requirement is useful in monitoring claims of reduced rates under tax treaties for all transactions. Because the procedures for obtaining a TIN are simple, the TIN requirement for non-market based transactions is not viewed as overly burdensome relative to the compliance benefits.

Section 1.1441–1(e)(4)(vii) enumerates the instances in which a TIN must be furnished on a withholding certificate. Under the proposed rules, a TIN is required to obtain the benefit of reduced withholding under an income tax treaty, unless the payment consists of dividends paid on publicly traded stocks. Commentators have requested that the exemption from having to furnish a TIN be extended to other securities, including pre-1984 bonds and other debt obligations, payments on any mutual fund investment (e.g., an open-end mutual fund), interests in publicly-traded grantor trusts generating royalty income, interest- and dividend-equivalent payments on the loan of exempted publicly traded stocks or securities, income from repurchase agreements involving exempted publicly traded stocks or securities, dividends on non-publicly traded stocks, interest on syndicated or bank loans, income from publicly-traded grantor trusts, contingent interest, and amounts paid on private placements of stocks or securities.

In response to these comments, the final regulation are amended to expand the categories of income for which a TIN is not required to be furnished. Under the final regulations, the categories are dividends and interest on publicly traded securities, dividends on redeemable securities issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), income related to loans of publicly traded securities, and dividends, interest, or royalties from units of beneficial interest in a publicly offered and registered unit investment trusts. See § 1.1441–6(b)(2)(ii). The covered securities extend to foreign securities as well as U.S. securities. Also, in response to comments that the regulations should provide a reliable source to determine whether or not a stock (or other security) is publicly traded, the regulations clarify that section 1092(d) and § 1.1092(d)–1 apply to determine whether a stock or security is publicly traded for this purpose. An exception is not made for other securities because the IRS and Treasury believe that the TIN exemptions should be limited to income arising from securities that are publicly traded and should not extend to securities held and transacted as part of a private business relationship. Also, an exception is not made for sale-repurchase transactions (repos) because repos completed within a 6-month period give rise to income that is treated as short-term OID for tax purposes. Such income, if earned by a foreign person, is exempt from chapter 3 withholding. Because the type of repo transaction that would be equivalent to the type of TIN-exempted market transactions would generally be of substantially shorter duration, the IRS and Treasury believe that it is not appropriate to provide an exemption for more than 6-month repo transactions.

Comments suggested that requiring TINs on intermediary certificates is an undue compliance burden when reporting is not done to the intermediary's account, especially if the Form W–8 of any underlying beneficial owner is not required to bear a TIN. Commentators argue that any IRS compliance concerns can be met without the requirement for a TIN from a non-qualified intermediary since U.S. withholding agents would, in any event, supply the identification and address of the beneficial owners to the IRS on Form 1042–S. The final regulations eliminate the need for a TIN on a non-qualified intermediary certificate and on a certificate from a foreign partnership that is not a withholding foreign partnership. However, a TIN continues to be required in the case of a qualified intermediary certificate or in the case of a certificate from a foreign partnership.

Some commentators asked that the TIN requirement be made optional. They argue that this would provide a reasonable accommodation to foreign investors who only occasionally or rarely enter into financial transactions involving U.S. securities. This comment is not adopted; instead, the final regulations broaden the types of transactions exempt from the requirement to provide a TIN. This change should alleviate the concern

expressed by these commentators. Also, commentators asked that the final regulations provide an exemption for intermediaries with a small number of foreign accounts (500 or less). This suggestion is also not adopted in light of the fact that the burden of manually processing account information for complying with these regulations should be outweighed by the substantial compliance benefits.

With regard to documentary evidence required to validate a TIN used to support a claim of treaty benefits, commentators asked that the documentary evidence remain valid indefinitely rather than expire after three years as provided in the proposed regulations. See § 1.1441–6(c). This comment is not adopted. The withholding certificates, and the TIN showing on that certificate, are used to represent many facts, including the foreign status of the owner and his residence for tax treaty benefit purposes. These facts may change frequently, particularly for individuals, and it is important that beneficial owners recertify their status periodically to the IRS. This recertification is also important because withholding agents cannot monitor the continued validity of the original residence claim, since the TIN on the certificate does not indicate which country of residence has been represented to the IRS as part of the certification process.

The final regulations do not adopt a comment that some organizations claiming tax-exempt status under section 501(c) should be exempt from the requirement to obtain and furnish a TIN if the organization is a universally recognized charitable organization, such as a church or religious order. As previously stated, TINs are used by the IRS to electronically process and match tax information. Any exception to the TIN requirement precludes such electronic processing. In light of the ease with which such organizations can obtain an EIN, the IRS and Treasury believe that no change to the proposed regulations is justified. However, the regulations clarify that a TIN is required from a foreign exempt organization or foreign private foundation only to the extent it claims a reduced rate of withholding solely based upon its exempt status or if a TIN is otherwise required from non-tax exempt taxpayers in order to claim a reduced rate of withholding (e.g., under an income tax treaty). Also, a foreign private foundation is not required to furnish a TIN for income subject to the 4-percent tax under section 4948(a) if such income would otherwise be exempt from tax under the Code if paid to a foreign person that is not a private foundation.

4. Certification and Electronic Matching of TINs

The final regulations are revised to specify that a taxpayer must provide the IRS with a certificate of residence to enable it to certify a TIN if that procedure is available in the country of residence. Documentary evidence is permitted as an alternative means of establishing residence in a treaty country only if a certificate of residence is not reasonably available from the tax administration in the country of residence. This change reflects the view that a certificate of residence is more reliable evidence of tax residence in a treaty country than is documentary evidence. The obligation to furnish a certificate of residence if one is available does not apply to corporate bodies who may, instead, furnish incorporation documents establishing their status as a corporate body in the applicable treaty jurisdiction.

The final regulations retain the provision in the proposed regulations regarding the electronic confirmation by a withholding agent of a TIN under procedures to be prescribed by the IRS. The IRS has undertaken a TIN-matching prototype in the past. See 60 FR 66243 (December 21, 1995). More recently, the IRS and Treasury issued a regulation under § 31.3406(j)–1 (1997–26 I.R.B. 4) and Rev. Proc. 97–31 (1997–26 I.R.B. 6) making a TIN-matching program available to Federal agency payors of reportable payments under section 3406. TIN-matching, however, will not apply for chapter 3 withholding purposes until specifically implemented by the IRS.

5. Treaty Benefits for Payments to Hybrids

The proposed regulations provide guidance on procedures for claiming reduced withholding rates under an income tax treaty. For this purpose, the proposed regulations define the term *beneficial owner* under foreign law principles. See proposed §§ 1.1441–1(c)(6)(i)(B) and 1.1441–6(b)(4). Commentators were divided on whether the proposed rule is a correct interpretation of the treaty. In particular, several commentators noted that the term *beneficial owner* is meant to be defined under the source country's domestic law. Also, commentators asked whether the proposed rules were solely for withholding purposes or were meant to define a foreign beneficial owner's eligibility for treaty benefits for purposes of section 894.

In part in response to these comments, temporary regulations have been issued under section 894 (62 FR 35673, published July 2, 1997) that are largely consistent with the principles contained in the proposed withholding regulations. Under these temporary regulations, a reduced withholding rate applies under an income tax treaty only to the extent that the income is treated as derived by a resident of the applicable treaty jurisdiction. Income is treated as being so derived only to the extent it is taxed in the hands of the resident as income of a resident of the applicable treaty jurisdiction. The final withholding regulations have been modified to reflect these temporary regulations.

The regulations under § 1.1441–6(b)(4)(ii) finalize the rules regarding the type of withholding certificates that must be furnished in situations involving hybrid entities where the payment is made to the entity but the benefit is determined by the status of the interest holder. Generally, a partnership Form W–8 would have to be provided by the interest holder, which form must be presented by the entity on behalf of the interest holder. In order to reduce the burden in the case of reverse foreign hybrid entities (e.g., foreign mutual funds treated as corporations for U.S. tax purposes but as fiscally transparent entities for foreign countries' law purposes), the final regulations allow those entities to become qualified intermediary, so that, like foreign partnerships and entities acting as intermediaries for others, they may present a global Form W–8 to a U.S. withholding agent instead of furnishing individual forms for each of their shareholders who claim a benefit under an income tax treaty. See § 1.1441–1(e)(5)(ii)(C).

The preamble to the temporary regulations under section 894 indicates that withholding agents should consider the effect of the regulations on their withholding obligations, including the need to obtain new withholding certificates to confirm claims of treaty benefits for payments made on or after the effective date of § 1.894–1T(d). Until the final regulations under section 1441 are effective (i.e., until 1999), withholding agents may continue to rely on Forms 1001 regarding claims of reduced rates under income tax treaties. In addition, with respect to dividends, no Form 1001 is generally required due to the alternative "address" rule. However, withholding agents that are making payments in 1998 should require new Forms 1001 for payments that they believe are affected by the provisions of § 1.894–1T(d) in order to

insure that representations regarding entitlement to a reduced rate under an income tax treaty are given in light of the provisions of § 1.894–1T(d). For this purpose, withholding agents may rely on Forms 1001 that are prepared and furnished in accordance with the procedures described in § 1.1441–6(b)(4)(ii), even though these procedures are not effective until 1999. Thus, for example, if the withholding agent pays to a foreign reverse hybrid entity, it may rely on a Form 1001 furnished by the entity even though the name of the beneficial owner is that of the entity's interest holder. Implicit in the entity's presentation of a Form 1001 from its interest holder is a representation that the interest holder is a resident of an applicable treaty country and derives the income paid to the entity within the meaning of § 1.894–1T(d)(1). A Form 1001 obtained in 1998 is valid until December 31, 1999 (except to the extent that circumstances change affecting its validity). Payments made after 1998 to persons for whom the withholding agent does not hold a certificate will require a new Form W–8.

In view of the temporary regulations under § 1.894–1T(d), several commentators have asked for guidance on how to apply the "reason-to-know" standard to self-certifications of entitlement to treaty benefits in situations involving hybrid entities. The regulations do not include special guidance on this point, because the IRS and Treasury believe that the due diligence issues in this context are not different from those arising in other contexts. Therefore, withholding agents may rely on the general principles in § 1.1441–1(e)(4)(viii) (that, absent actual knowledge or reason to know otherwise, a withholding agent may rely on information and certifications without having to inquire into the truthfulness thereof) and in § 1.1441–6(b)(4)(ii) (that a withholding agent may rely on representations that the beneficial owner derives the income within the meaning of § 1.894–T(d) and is a resident of the treaty country without inquiring into the truthfulness thereof or researching foreign law). For example, if a withholding agent knows that a person whose name is on a Form 1001 or a Form W–8 is an interest holder in an entity and that the treaty country where the person claims residence generally treats the entity as a non-fiscally transparent entity, the withholding agent would have reason to know that a claim of reduced rate by such person may not be reliable and should make further inquiries. Generally, any claim of treaty benefits by interest holders in a U.S. LLC should be scrutinized based on many published indications that foreign countries generally regard U.S. LLC's as corporate entities.

6. Certification of Entitlement to Benefits Under an Income Tax Treaty

The proposed regulations do not contain special procedures regarding the manner in which a foreign person can establish that it satisfies the conditions under applicable limitation on benefits provisions of an income tax treaty. This matter is indirectly addressed in § 1.1441–6(b)(1) for foreign persons claiming benefits under an income tax treaty that are required to file a disclosure statement under section 6114 if they are related to the withholding agent and the amounts received during the calendar year that exceed $500,000.

After further consideration, the IRS and Treasury have determined that certification procedures, as had been suggested in Notice 94–85 (1994–2 CB 511), issued under the U.S.-Dutch tax treaty, are not procedures that could realistically be extended to all tax treaties within a reasonable time frame, if at all. Instead, the IRS and Treasury believe that an approach relying on self-certification and proper disclosure to the IRS is more practical. Therefore, the final regulations provide in § 1.1441–6(c)(5)(i) that those persons who are required to furnish an IRS-certified TIN must, as part of the TIN certification process, certify that they satisfy the conditions of an applicable limitation on benefits provision. For this purpose, the person must attach an affidavit to the request for certification, describing sufficient facts for the IRS to determine the basis upon which such conditions are satisfied. The IRS review of a foreign person's affidavit does not constitute an audit of the taxpayer on this issue. In view of these new procedures, Notice 94–85 is withdrawn.

The final regulations also provide under § 1.1441–6(c)(5)(ii) that a taxpayer (other than an individual) applying for IRS certification of its TIN must certify to the IRS that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself within the meaning of § 1.894–1T(d)(1).

7. Reporting Under Section 6114

Under proposed § 1.1441–6(b)(1), a taxpayer receiving income benefitting from a reduced rate under an income tax treaty is required to file an information return under section 6114 if it is related to the withholding agent and the amounts "paid" during the taxable year exceed $500,000. The final regulations modify the $500,000 condition by providing that the requirement to file an information return applies only to amounts "received" during the calendar year that, in the aggregate, exceed $500,000. The revision clarifies that the test is not intended to be applied on a per-withholding agent basis. Rather, the $500,000 threshold is intended to measure the total amount received by the taxpayer, whether from one or several related withholding agents.

The final regulations under section 6114 are also revised to allow the IRS to eliminate duplicate reporting requirements for payments received by a foreign taxpayer that must be reported both on a Form 5472 under section 6038A and under section 6114. See § 301.6114–1(c)(6). Such change is to be reflected in the applicable forms and instructions.

8. Joint Owners

One commentator suggested that since a joint owner can get a separate Form 1042–S, the final regulations under § 1.1441–6 should let each joint owner claim its own treaty rate (if different) on its pro-rata share of the income. This suggestion is not adopted because of the difficulties, generally, for each joint owner to present reliable representation of its pro-rata share of the income being paid.

9. Claim of Treaty Benefits by U.S. Taxpayer

A commentator noted that the existing regulations under § 1.1441–4(b)(2) fail to address the situation of a foreign national who is a resident alien of the United States under section 7701(b) and under a treaty tie-breaker rule, but who is entitled to treaty benefits under a treaty saving clause exception. The commentator indicated that procedures are needed to allow such persons to submit proper forms and documentation. According to the commentator, such persons entitled to treaty benefits often are not currently residents of a treaty country, do not have a permanent residence address in the foreign country of which they are claiming benefits, and are not able to obtain certification or documentation to satisfy the three-year rule under § 1.1441–6(c)(4). Further, the commentator argued that the regulations should specify which form such persons can file to claim treaty benefits (under the proposed regulations neither Form W–8 nor W–9 would accommodate this claim). In response to this suggestion, paragraph (b)(5) is added to allow a U.S. taxpayer to claim benefits under an income tax treaty on a Form W–9 or such other form as the IRS may prescribe.

H. Comments and Changes to § 1.1441–7

1. Withholding Agent's Due Diligence Standards

Section 1.1441–7(b)(1) is restated to clarify that a withholding agent is under a general due diligence standard to determine its withholding obligations based on its actual knowledge or reason to know, if based on such knowledge or reason to know, it appears that the obligation to withhold or report the payment is greater than would otherwise be the case. This due diligence standard applies generally, not just in the context of determining the extent to which a withholding agent can rely on a withholding certificate. Therefore, for example, if a withholding agent has reasons to believe that a foreign beneficial owner of interest income is related to the debtor, so that the portfolio interest exemption may not be available, the withholding agent should make an inquiry in order to ascertain whether the portfolio interest, in fact, applies. The fact that the Form W–8 is not required to certify lack of relationship does not mean that the withholding agent can ignore what it knows or otherwise suspects if such knowledge or reason to know affects the tax liability of the beneficial owner which withholding under chapter 3 of the Code is intended to satisfy.

2. Due Diligence Safe Harbors

Some commentators asked that the standard of care governing the withholding agent's liability should be actual knowledge rather than reason to know, especially in the context of high-volume commercial transactions where there is not necessarily a pre-existing client relationship. In response to this comment, the final regulations define *reason to know* so that certain circumstances described in paragraphs (b)(2)(ii) (A) through (F) are the only circumstances that require the withholding agent to exercise due diligence (other than actual knowledge). Further, examples are added regarding the documentation that a withholding agent may rely on in order to correct a defective Form W–8. This limitation only applies to payments made by a financial institution with which a customer may open an account that consists of portfolio interest, payments on publicly traded securities described in § 1.1441–6(b)(2)(ii), deposit interest with banks or other financial institutions as described in sections 871(i)(2)(a) and 881(d), or original issue discount (or interest) on obligations with a maturity of 183 days or less from the date of original issue.

The final regulations eliminate the need to inquire further when the customer directs the financial institution to make a payment to another U.S. financial institution. While such direction may indicate that the account holder is, in fact, residing in the U.S., the burden of this due diligence requirement outweighs the compliance benefits.

However, the final regulations impose a duty to inquire when a payment is directed to a P.O. box or an in-care-of address where the withholding agent has a permanent address on file for the payee that is neither a P.O. box or an in-care-of address. Contrary to the comments, the IRS and Treasury believe that how a payment is directed may indicate that the beneficial owner wishes not to disclose his or her place of residence. As stated above, the beneficial owner may be treated as a foreign person despite a P.O. box address; however, such treatment would require that the withholding agent obtain evidence of foreign status in addition to the Form W–8.

The final regulations add a due diligence item. A withholding agent may not rely on a claim of partnership status on a Form W–8 if the name of the person on the form indicates that the entity may be the type of entity that is on the per se list of foreign corporations included in § 301.7701–2(b)(8)(i), unless the form explains that the entity is a grandfathered partnership.

2. Authorized Foreign Agents

The proposed regulations would modify the current rules governing foreign agents of U.S. withholding agents by allowing a foreign agent to file Forms 1042 and 1042–S returns on behalf of the U.S. withholding agent. Some commentators have pointed out that the inability to tier authorized foreign agents limits the usefulness of the procedure. However, after further consideration, the IRS and Treasury have decided to leave the proposed rules unchanged. The authorized foreign agent procedure relies on the IRS' ability to audit the agent. Any compliance failure of the agent is imputed to the U.S. withholding agent. If the U.S. withholding agent acts through several layers of agents, the IRS would have to audit all of the agents in the chain of payment to determine the compliance of the U.S. withholding agent. Such audits are impractical. The procedure is retained, however, because it may still be useful in its proposed form in cases not involving tiers of intermediaries.

I. Comments and Changes to § 1.1441–8

The final regulations are revised to take into account comments that the proposed documentation requirements for payments to foreign governments and international organizations are unnecessarily cumbersome. The documentation requirement is eliminated entirely for payments to international organizations and for interest on bankers' acceptances paid to central banks of issue. This exception is appropriate because the withholding exemption is not conditioned on any representation of the beneficial owner, other than its status as such (see § 1.6049–4(c)(1)(ii) (G) and (H) for an "eyeball" test for ascertaining the status of the payee as an international organization or a foreign central bank of issue). Payments to foreign governments and to the Bank for International Settlements must be documented, however, because a withholding exemption applies only if the government's or the Bank's income is not associated with a commercial activity. However, if a person represents that it is an integral part of a foreign government, the documentation remains valid permanently. If, on the other hand, the person claiming to be a foreign government represents that it is a controlled entity, then the certificate must be renewed every three years. A certificate furnished by the Bank for International Settlements is also valid permanently. In view of these simplified documentation requirements, the final regulations require that all payments to foreign governments, international organizations, and the Bank for International Settlements be reported on a Form 1042 and 1042–S, to the extent reportable if paid to a foreign person.

J. Comments and Changes to §§ 1.1441–9 and 1.1443–1

1. Foreign Tax-exempt Organization and Foreign Private Foundations

Several comments were received regarding withholding on the income of foreign tax-exempt organizations and applicable procedures for documenting the foreign organization's exempt status. The commentators questioned whether section 1443(a) should apply to items of passive income that would not be unrelated business income but for section 514 (relating to debt-financed property), and whether section 4948 should apply to impose a 4-percent tax on U.S. source portfolio interest and bank deposit interest so that a 4-percent withholding applies under section

1443(b) to payments of such income to foreign foundations.

Commentators argued that a foreign organization meeting the description of section 501(c)(3) should be permitted to claim tax-exempt status even if it has not first obtained an IRS determination. They argued that the IRS determination letter is required for domestic organizations because contributions to a domestic section 501(c)(3) organization are deductible. No such deduction is permitted for a contributions to a foreign organization and, therefore, a foreign organization described in section 501(c)(3) should be treated like any other organization described under section 501(c). Also, commentators argued that the regulations should not require an opinion of counsel to be attached to the withholding certificate. The final regulations, however, do not accept most of these comments. As in the proposed regulations, foreign organizations that are required to obtain an IRS determination letter in order to qualify as a tax-exempt organization under section 501(c)(3) (i.e., those organizations that obtain a substantial portion of their support from U.S. sources) must obtain such a determination letter and attach it to the Form W–8. Other foreign organizations that may qualify for tax-exempt status under section 501(c)(3) without an IRS determination letter (i.e., organizations that receive substantially all of their support from sources outside the United States; see section 4948(b)) may establish their exempt status on the basis of an opinion of counsel. Also, they clarify that the opinion must be from U.S. counsel, meaning an attorney admitted to, and in good standing with, the bar in one of the fifty States or the District of Columbia. In addition, the final regulations under § 1.1441–9(b)(2) provide that tax-exempt organizations that claim that they are tax-exempt under section 501(c)(3) and not private foundations and do not have an IRS determination letter must attach an affidavit to their Form W–8 in addition to the opinion of counsel. Thus, the final regulations relieve those organizations from the obligation under the proposed regulations to provide an opinion of counsel regarding their non-private foundation status. The IRS and Treasury view the IRS certification procedure for section 501(c)(3) organizations as an important compliance measure. They do not believe that self-certification procedures should be substituted where the Code clearly requires an IRS determination letter.

The final regulations under § 1.1441–9(a) also clarify that a foreign organization that does not rely on its tax-exempt qualification to claim reduced withholding on a payment need not comply with the special procedures in § 1.1441–9. Instead, it may follow the same procedures that apply to taxable entities. In particular, the final regulations clarify that a foreign tax-exempt organization or foreign private foundation that claims a benefit under an income tax treaty must follow the procedures described under § 1.1441–6 rather than rely on the procedures described under §§ 1.1441–9 or 1443–1.

The final regulations do not make a special exception for debt-financed income that, under section 512, is treated as unrelated business income. In addition, the final regulations do not eliminate the 4-percent tax imposed under section 4948(a) on any items of investment income of a private foreign foundation and required to be withheld under section 1443(b). The IRS and Treasury believe that they have no authority to eliminate a tax that is clearly imposed by statute. Therefore, it would be inappropriate to eliminate the requirement to withhold such tax. A foreign private foundation claiming a reduced rate of 4-percent is subject to the same documentation requirements as apply to tax-exempt foreign organizations, meaning that a Form W–8 must be furnished, to which the appropriate determination letter or opinion of U.S. counsel must be attached. The final regulations restate the existing regulations under section 1443 in an effort to eliminate unnecessary provisions. The elimination of several provisions does not indicate that the procedures do not apply (e.g., requirement to file Forms 1042 and 1042–S), but, simply that these provisions are not necessary.

K. Comments and Changes to §§ 1.1461–1 and 1.1461–2

1. Form 1042–S Reporting

In response to comments, the deadline for filing Forms 1042 and 1042–S has been moved from February 28 to March 15. Regarding joint accounts, the final regulations do not adopt the suggestion that only one Form 1042–S be required for a joint account even where the other joint owner requests another statement. Commentators argued that subdividing payments made to a single account and providing multiple Forms 1042–S would significantly increase administrative burden. However, joint owners should be able to obtain a proof of tax payment in case one of them wishes to apply for a refund of tax or needs to substantiate the payment of tax for any reason and it does not have access to the form issued to one of the joint owners. The fact that the obligation to issue more than one Form 1042–S is only on request by one of the joint owners should minimize the burden on withholding agents.

The proposed regulations require that a financial institution with actual knowledge of the payee's TIN report the TIN on Form 1042–S even though a TIN did not have to be provided in connection with the payment. In response to comments, the final regulations clarify in § 1.1461–1(c)(3)(v) that, in the case of a financial institution dealing with customers through a system of accounts, actual knowledge exists only if such TIN was reported on a Form W–8 provided with respect to another payment made through the same account or through another account, the information with respect to which can be retrieved through a centralized account information system (including a universal account system) containing both accounts.

Commentators requested a clarification that Form 1042–S reporting is not required with respect to interest on deposits paid by any U.S. bank (including its foreign branches or subsidiaries), except in the limited situation where the interest is paid to a Canadian resident. This point is clarified under § 1.1461–1(c)(2)(i), which limits reporting to amounts subject to withholding, as defined in § 1.1441–2(a). However, § 1.1461–1(c)(2)(i)(D) contains an exception for interest paid to Canadian residents. In addition, § 1.1461–1(c)(2)(ii)(F) is added to clarify that interest or OID accrued on an obligation is not required to be reported on a Form 1042–S to the extent the interest or OID is not required to be withheld upon under § 1.1441–2(b)(3) due to the lack of knowledge by the withholding agent. On the other hand, § 1.1461–1(c)(2)(i)(E) clarifies that, as is the case under existing regulations, amounts representing interest on an obligation sold between interest payment dates is reportable on a Form 1042 and 1042–S, even though it is not subject to withholding.

2. Adjustments for Overwithholding or Underwithholding of Tax

Commentators asked that withholding agents be permitted to process refund claims for nonresident alien payees. Since refund claims will now require TINs, duplication of claims can be avoided. Commentators point to the fact that this procedure should be more efficient as it may require the IRS to process only a single refund claim from a withholding agent for all of its foreign clients rather than dealing with claims filed by each individual foreign client. This comment is accepted in the context of qualified intermediary arrangements. However, in other situations, a procedure allowing refunds on behalf of customers is impractical because of the risk that customers would independently file for refunds based on their form 1042–S.

Withholding agents also made a number of points regarding authority to rectify any underwithholding situation discovered after the due date for filing Form 1042 but before actual filing, streamlining current refund procedures by, for example, providing for a "quickie" refund form, and the reporting of adjustments to withholding during the calendar year. Those points, however, should be addressed in the context of forms and administrative procedures, rather than in the regulations. The IRS will continue to work with the industry to find ways to improve and streamline the information and return filing procedures.

L. Comments and Changes to Information Reporting Provisions Under Chapter 61 and Section 3406 of the Code

1. Information Reporting—Exempt Recipient

Commentators asked that the proposed changes to the exempt recipient rules for corporations be eliminated. Under § 1.6049–4(c)(1)(ii)(A) of the proposed regulations, the "eyeball" test for corporations with an account relationship with the payor would be required to be supplemented by an EIN or a corporate resolution. Commentators suggested that, instead, payors should be allowed to rely on the per se list provided in the check the box regulations under § 301.7701–3.

In response to these comments, the final regulations eliminate the proposed corporate resolution requirement and, therefore, reinstate the "eyeball" test for corporate payees. Foreign corporations are able to establish their corporate payee status based on the per se list in § 301.7701–2(b)(8)(i). In addition, a payee may establish corporate status with a copy of the Form 8832, if the entity has filed one with the IRS in order to elect corporate classification. See § 1.6049–4(c)(1)(ii)(A) (*1*) and (*2*).

Section 1.6049–4(c)(1)(ii) of the 1988 proposed regulations delete nominees, custodians, and brokers from the list of exempt recipients. Some commentators objected to this change. The final regulations re-instate nominees, custodians, and brokers as exempt recipients. Additionally, swap dealers are included in the list of exempt recipients, and the description of financial institutions that are exempt recipients has been clarified to include clearing organizations.

Comments were received requesting that the list of international organizations be re-instated in the regulations. The final regulations do not contain such a list because frequent changes in the status of such organizations would make it too burdensome for the IRS to keep current. Instead, the IRS intends to issue guidance indicating that withholding agents and payors may rely on the list published by the Department of State.

Commentators asked that the list of exempt recipients under sections 6041 and 6045 be conformed to that under section 6049 and, in the case of section 6041, be extended to banks and financial institutions. The final regulations apply the same exempt recipient rules to interest under section 6049, dividends under section 6042, and notional principal contracts under section 6041. The exempt recipient rules under section 6045 remain unchanged, except that a foreign central bank of issue is added to the list for substitute payments under § 1.6045–2(b)(2)(i)(G).

2. Information Reporting for Offshore Accounts—Documentary Evidence

The proposed regulations make a number of changes to the existing procedures applicable to deposits with foreign branches of U.S. banks. The proposed regulations modify the documentary evidence standard in § 35a.9999–3, A–34, as part of an effort to subject all off-shore accounts to a uniform documentary evidence standard, whether the account is with a foreign branch of a U.S. bank, with a foreign branch of a domestic institution other than a bank, or with a foreign branch of a foreign financial institution. As a result, foreign branches of U.S. banks would become subject to more stringent documentary evidence requirements to the extent they would no longer be able to rely on an indication of foreign status from a customer. Instead, the proposed regulations require a foreign banking branch to obtain actual documentary evidence from the customer and keep a record of it. Some commentators questioned whether the proposed regulations eliminate the possibility of relying on a statement of foreign status incorporated in the account opening form. In addition, the proposed regulations impose a three-year renewal of the documentary evidence, a requirement that does not currently apply to foreign banking branches. Further, the proposed regulations eliminate the $600 threshold under the current regulations (by making foreign branch bank deposit interest subject to reporting under section 6041 rather than section 6049). They impose new backup withholding requirements for accounts actually known to the branch as being owned by a U.S. person. In addition, the provisions under § 1.1441–1(f) create a presumption of U.S. status for undocumented accounts. Although a presumption of U.S. status is not sufficient for triggering an obligation to backup withhold (because the bank has no actual knowledge), it is sufficient to require the interest to be reported on a Form 1099.

After further consideration, and based on comments received, the final regulations are revised. Consistent with the regulations proposed in 1988 and in 1996, the requirement to document owners of accounts maintained at offshore branches of U.S. banks is imposed under section 6049 rather than section 6041. Therefore, the $600 limit will no longer apply to those accounts. On the other hand, the documentation requirements are substantially simplified. If the customer's address is in the country where the branch is located and it is not customary in that location that banks request documentary evidence from customers when opening an account, then the bank or other financial institution may rely on a declaration of foreign status, contained in an account opening form, that does not have to be signed under penalties of perjury. The declaration does not expire unless circumstances change that would indicate that the account holder has become a U.S. person or the payor is so notified. The payor must send a year-end reminder to the account holder to notify the payor of change of status, if applicable.

These alternative documentary evidence procedures are extended to all offshore accounts for payments that are not subject to withholding under chapter 3 of the Code and are not U.S. source bank deposit interest. These amounts include foreign source income and gross proceeds.

The alternative documentary evidence rules apply to accounts opened on or after the effective date of the regulations (i.e., on or after January 1, 1999). However, existing accounts as of that date are required to comply with the due diligence requirements, including inserting a negative confirmation statement in the annual year-end statement provided to the customer.

In response to comments, the final regulations under § 1.6049–5(b)(10) are revised to incorporate a waiver from the certification requirement of regulations § 1.163–5(c)(2)(i)(D)(3) for debt instruments with a maturity of 183 days or less from the date of issue. In addition, § 1.6049–4(d)(3) is modified to clarify that the same conversion rules are applicable to all foreign currency-denominated obligations for purposes of section 6049.

3. Reporting Obligations of Non-U.S. Payors or Middlemen

Under the regulations under section 6045, dealing with broker proceeds, non-U.S. payors are exempt from reporting if the payment is made outside the United States. See § 1.6045–1(a)(1). In contrast, non-U.S. payors and middlemen making payments of U.S. source interest or dividends are required to report these payments on a Form 1099, unless they receive documentation supporting the payee's foreign status (or the payee is an exempt recipient). Commentators requested that non-U.S. payors of U.S. interest and dividends be similarly exempt from information reporting if the payments are made outside the United States. This change is not appropriate, at least for amounts that are subject to withholding under chapter 3 of the Code. To the extent the U.S. interest or dividends are subject to U.S. 30-percent withholding, and documentation is received for reducing the withholding rate, the foreign payee exemption would apply under sections 6042 and 6049 and the payment would not be reportable. Under the final regulations, however, a payor making a payment of U.S. source dividends or interest (whether inside or outside the U.S.) to a payee who has provided no documentation is not exempt from Form 1099 information reporting, even if another payor "upstream" has withheld an amount under chapter 3 of the Code. However, a payor is exempt from backup withholding on the payment if an "upstream" withholding agent has withheld a full 30-percent amount from the payment. The payor, however, is not relieved from making a return on Form 1099 under section 6042 or 6049 if it has actual knowledge that the payee is a U.S. person who is not an exempt recipient. See § 31.3406(g)–1(e). These rules also apply to U.S. source royalties reportable under section 6050N.

Further, the regulations under section 3406 are amended to authorize the IRS to establish procedures by which an amount backup withheld under section 3406 from a payee that subsequently establish that it is a foreign person exempt from information reporting and backup withholding can be credited toward amounts required to be withheld under chapter 3 of the Code. Such "cross-crediting" procedures are not available at present and would require the IRS to modify its systems.

4. Information Reporting for Capital Gain Dividends

Under the proposed regulations, capital gain dividends as defined under section 852(b)(3)(C) would no longer be reportable on Form 1099–DIV. Commentators objected that, absent such reporting, shareholders could not easily ascertain the amount of capital gain dividends paid for the calendar year for purposes of calculating their income tax liability. Accordingly, the final regulations eliminate the proposed exclusion of capital gain dividends under § 1.6042–3(b)(3).

Effect on Other Documents

The following publications are obsolete as of October 14, 1997:

Rev. Rul. 55–106, 1955–1 CB 102.
Rev. Rul. 57–391, 1957–2 CB 606.
Rev. Rul. 60–288, 1960–2 CB 265.
Rev. Rul. 65–86, 1965–1 CB 538.
Rev. Rul 68–173, 1968–1 CB 626.
Rev. Rul. 68–237, 1968–1 CB 391.
Rev. Rul. 68–333, 1968–1 CB 390.
Rev. Rul. 69–41, 1969–1 CB 214.
Rev. Rul. 69–244, 1969–1 CB 215.
Rev. Rul. 70–175, 1970–1 CB 184.
Rev. Rul. 70–250, 1970–1 CB 182.
Rev. Rul. 70–251, 1970–1 CB 183.
Rev. Rul. 70–616, 1970–2 CB 174.
Rev. Rul. 72–87, 1972–1 CB 274.
Rev. Rul. 80–222, 1980–2 CB 211.
Rev. Rul. 83–175, 1983–2 CB 109.
Rev. Rul. 84–158, 1984–2 CB 262.
Rev. Rul. 85–61, 1985–1 CB 355.
Rev. Rul. 89–17, 1989–1 CB 268.
Rev. Rul. 89–33, 1989–1 CB 269.
Rev. Rul. 89–91, 1989–2 CB 129.
Rev. Proc. 65–2, 1965–1 CB 715.
Rev. Proc. 67–24, 1967–1 CB 625.
Notice 94–85, 1994–2 CB 511.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

This Treasury decision finalizes notices of proposed rulemaking published February 29, 1988 (53 FR 5991), December 21, 1995 (60 FR 66243), and April 15, 1996 (61 FR 17614), respectively. It has been determined that a final regulatory flexibility analysis is required under 5 U.S.C. § 604 for the collections of information contained in this Treasury decision with respect to the notice of proposed rulemaking published on April 15, 1996. An initial regulatory flexibility analysis was not required because the notice of proposed rulemaking was issued prior to the effective date (June 27, 1996) of the amendments to the Regulatory Flexibility Act (5 U.S.C. chapter 6) made by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (Public Law 104–121). It also has been determined that a regulatory flexibility analysis is not required for the notice of proposed rulemaking published on (1) December 21, 1995 because the notice does not impose any collection of information on a small entity, and was published prior to the March 29, 1996 enactment date of SBREFA, and (2) on February 29, 1988 because the notice was published prior to the enactment of SBREFA.

Final Regulatory Flexibility Act Analysis

The major objective of the final regulations is to prescribe new procedures to eliminate unnecessary burdens created by the lack of standardization and coordination of the current withholding and information reporting procedures with respect to amounts paid to foreign persons. To this effect, the regulations facilitate compliance and reduce taxpayer burden by simplifying the documentation requirements, unifying the certification procedures and clarifying reliance standards in an effort to streamline the processing of U.S. source payments to foreign persons.

The economic impact of collection of information contained in these regulations on any small entity would result primarily from the entity being required either (1) to provide a Form W–8 as the beneficial owner or payee of U.S. source income, or (2) to receive a Form W–8 as the withholding agent or payor (and eventually, file a Form 1042 and Forms 1042–S). In both situations, these regulations generally impose minimal additional reporting or recordkeeping requirements beyond those already imposed under current law. In fact, the regulations significantly reduce the withholding and reporting burdens associated with Form W–8 by, for example, consolidating the current withholding certificates (Forms 1001, 1078, 4224, 8709 and W–8) into a Form W–8 format, permitting certain foreign intermediaries to certify on behalf of their customers, permitting the electronic transmission of the form (subject to IRS prescribed procedures), clarifying the standards for an acceptable substitute form, permitting a 90-day grace period for actual receipt of the form, and providing cure procedures for a late-received form.

For a small entity in the role of the beneficial owner, the new collection of information contained in these regulations is the extension of the Form W–8 requirement to claims for a treaty-based reduction in the withholding rate with respect to dividend income; thereby, subjecting dividends to the same documentation requirements as other income types. This change imposes no recordkeeping requirements beyond those necessary (and currently required for all other income types) to ensure proper entitlement to treaty benefits, and is illustrative of IRS efforts to eliminate unnecessary procedural differences in order to reduce the burden on withholding agents. Although there is no estimate of the number of beneficial owners or payees of U.S. source income payments, the number of cross border payments have steadily increased over the years (over 80 billion dollars paid in 1995). The IRS and Treasury believe that most of these payments are made to individuals, large financial institutions and large corporations.

For a small entity in the role of the withholding agent, the most significant change of the regulations that impacts the collection of information is the establishment of the wholly-elective qualified intermediary regime which will impose, but only pursuant to an agreement with the IRS, additional reporting and recordkeeping requirements in exchange for the benefit of furnishing a single Form W–8 for multiple beneficiary owners or payees. The IRS and Treasury believe that this alternative will be adopted primarily by large foreign financial institutions that maintain numerous accounts for large numbers of customers, and it is unlikely that a substantial number of small entities would find it necessary or useful to agree to act as a qualified intermediary. Of the approximately 25,000 tax returns (Form 1042) filed by withholding agents per year, the IRS estimates that 95 percent of such returns are filed by large financial institutions.

A summary of the significant issues raised by the public comments in response to the proposed regulations and IRS' views on such issues, and changes made as a result of the comments is set forth above in the section of the preamble to the regulations entitled "Explanation of Provisions and Revisions."

The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap, or conflict with the regulations.

These regulations will affect small entities such as small banks, small businesses paying interest and dividends, small private foundations, and small tax-exempt organizations (including colleges and charities). The IRS and Treasury believe that most of these small entities will have a direct relationship with the foreign person and therefore, will not act as, or have transactions through, an intermediary (i.e., nominee, custodian, or agent). The professional competence necessary to comply with these regulations is no greater than that already necessary to handle the day-to-day business operations of a small entity because much of the recordkeeping and reporting requirements under the regulations can be easily (if not already done under the existing regulations) incorporated into the existing or customary recordkeeping and reporting obligations of the small entity (e.g., an account opening form of a bank, the registration form of a college, etc.).

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of these regulations on small entities. A detailed description of the measures taken to minimize the economic impact of the collections of information on small entities, consistent with the stated objectives of applicable statutes is set forth above in the section of the preamble to the regulations entitled "Explanation of Provisions and Revisions." In considering alternatives, the IRS and Treasury have concluded that a withholding system (based on reduction of withholding at source) rather than a refund system avoids the administrative burdens (including costs and delays) that can occur when applying for a refund of overwithheld amounts. Ensuring compliance under a withholding system, however, requires documentation substantiating claims of foreign status and of exemptions from, or reduced rates of, withholding, and submission of proper information to the IRS.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 502

Greece, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 503

Germany, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 509

Switzerland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 513

Ireland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 514

France, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 516

Austria, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 517

Pakistan, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 520

Sweden, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 521

Denmark, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.1441–4T, revising the entries for Sections 1.1441–3, 1.1441–4, 1.1441–5, 1.1441–7, 1.6049–4 and 1.6049–5 adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1441–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–3 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1441–4 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–5 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(b)(11).

Section 1.1441–6 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–7 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1443–1 also issued under 26 U.S.C. 1443(a). * * *

Section 1.1461–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1461–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1462–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Section 1.6042–3 also issued under 26 U.S.C. 6045. * * *

Section 1.6049–4 also issued under 26 U.S.C. 6049 (a), (b), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049 (a), (b), and (d). * * *

§ 1.163–5 [Amended]

Par. 2. In § 1.163–5, paragraph (c)(2)(i)(B)(5) is amended by removing the language "subdivision (iii) of A–5 of § 35a.9999–4T" in the last sentence and adding "§ 1.6049–5(c)(1)" in its place.

Par. 3. Section 1.165–12 is amended by:

1. Adding a sentence at the end of paragraph (a).
2. Removing the language "(c)(1)(v)" and adding "(c)(1)(iv)" in its place in paragraph (c)(1)(i).
3. Removing paragraph (c)(1)(iii) and redesignating paragraphs (c)(1)(iv) and (c)(1)(v) as paragraphs (c)(1) (iii) and (iv).
4. Revising paragraphs (c)(1)(ii) and newly redesignated paragraph (c)(1) (iii).
5. Removing the language (c)(1) (ii) and (iv) and adding (c)(1) (ii) and (iii) in its place in paragraphs (c)(2)(iv) and (c)(3)(iv).

The addition and revisions read as follows:

§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) * * * For purposes of this section, the term *United States* means the United States and its possessions within the meaning of § 1.163–5(c)(2)(iv).

* * * * *

(c) * * *

(1) * * *

(ii) The holder must offer to sell, sell and deliver the obligation in bearer form only outside of the United States except that a holder that is a registered broker-dealer as described in paragraph (c)(1)(i) of this section may offer to sell and sell the obligation in bearer form inside the United States to a financial institution as defined in paragraph (c)(1)(iv) of this section for its own account or for the account of another financial institution or of an exempt organization as defined in section 501(c)(3)..

(iii) The holder may deliver an obligation in bearer form that is offered or sold inside the United States only if the holder delivers it to a financial institution that is purchasing for its own account, or for the account of another financial institution or of an exempt organization, and the financial institution or organization that purchases the obligation for its own account or for whose account the obligation is purchased represents that it will comply with the requirements of section 165(j)(3) (A), (B), or (C). Absent actual knowledge that the representation is false, the holder may rely on a written statement provided by the financial institution or exempt organization, including a statement that is delivered in electronic form. The holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has evidence in its records that such person is not a U.S. citizen or resident and does not have actual knowledge that such evidence is false. Such evidence may include a written statement by that person, including a statement that is delivered electronically. For purposes of this paragraph (c), the term *deliver* includes a transfer of an obligation evidenced by a book entry including a book entry notation by a clearing organization evidencing transfer of the obligation from one member of the organization to another member. For purposes of this paragraph (c), the term *deliver* does not include a transfer of an obligation to the issuer or its agent for cancellation or extinguishment. The record-retention provisions in § 1.1441–1(e)(4)(iii) shall apply to any statement that a holder receives pursuant to this paragraph (c)(1)(iii).

* * * * *

Par. 4. Section 1.871–6 is revised to read as follows:

§ 1.871–6 Duty of withholding agent to determine status of alien payees.

For the obligation of a withholding agent to withhold the tax imposed by this section, see chapter 3 of the Internal Revenue Code and the regulations thereunder.

§ 1.871–7 [Amended]

Par. 5. In § 1.871–7, paragraph (b), the third sentence is amended by removing the words "see paragraph (a) of § 1.1441–2" and adding "see § 1.1441–2(b)" in its place.

Par. 6. Section 1.871–14 is added to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

(a) *General rule.* No tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. But see section 871(b) or 882(a) if such interest is effectively connected with the conduct of a trade or business within the United States.

(b) *Rules concerning obligations in bearer form*—(1) *In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, that is described in section 163(f)(2)(B) and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441–1(b)(4)(i). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c) *Rules concerning obligations in registered form*—(1) *In general*—(i) *Obligation in registered form.* For purposes of this section, an obligation is in registered form only as provided in this paragraph (c)(1)(i). The conditions for an obligation to be considered in registered form are identical to the conditions described in § 5f.103–1 of this chapter. Therefore, an obligation

that would be an obligation in registered form except for the fact that it can be converted at any time in the future into an obligation that is not in registered form shall not be an obligation in registered form. An obligation that is not in registered form by reason of the preceding sentence may nevertheless be in registered form, but only after the possibility of conversion is terminated. An obligation that is not in registered form and can be converted into an obligation that would meet the requirements of this paragraph (c)(1)(i) for being in registered form shall be considered in registered form only after the conversion is effected. For purposes of this section, an obligation is convertible if the obligation can be transferred by any means not described in § 5f.103–1(c) of this chapter. An obligation is treated as an obligation in registered form if—

(A) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument, and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder;

(B) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) described in this paragraph (c)(1)(i)(B). An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation, is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an in interest in the obligation; or

(C) It is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred by way of either of the methods described in paragraph (c)(1)(i) (A) or (B) of this section.

(ii) *Requirements for portfolio interest qualification in the case of an obligation in registered form.* Interest (including original issue discount) received on an obligation that is in registered form qualifies as portfolio interest only if—

(A) The interest is paid on an obligation issued after July 18, 1984;

(B) The interest would be subject to tax under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) but for section 871(h) or 881(c);

(C) A United States (U.S.) person otherwise required to deduct and withhold tax under chapter 3 of the Internal Revenue Code (Code) receives a statement that meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a U.S. person; and

(D) An exception under section 871(h) or 881(c) does not apply.

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section.

(i) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). See § 1.1441–1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person claiming to be withholding foreign partnership and the foreign partnership can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii).

(iii) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(c)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with § 1.1441–1(e)(5)(iv) and the qualified intermediary can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with its agreement with the Internal Revenue Service (IRS).

(iv) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441–1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441–1(b)(2)(iv)(E) and the U.S. branch can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii).

(v) The U.S. person receives a statement from a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business. In such case the statement must be signed under penalties of perjury by an authorized representative of the financial institution and must state that the institution has received from the beneficial owner a withholding certificate described in § 1.1441–1(e)(2)(i) (a Form W–8 or an acceptable substitute form as defined § 1.1441–1(e)(4)(vi)) or that it has received from another financial institution a similar statement that it, or another financial institution acting on behalf of the beneficial owner, has received the Form W–8 from the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this statement must be given by each financial institution to the one above it in the chain. No particular form is required for the statement provided by the financial institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–8 provided by the beneficial owner must be attached. The statement is subject to the same rules described in § 1.1441–1(e)(4) that apply to intermediary Forms W–8 described in § 1.1441–1(e)(3)(iii). If the information on the Form W–8 changes, the beneficial owner must so notify the financial institution acting on its behalf within 30 days of such changes, and the financial institution must promptly so inform the U.S. person. This notice also must be given if the financial institution has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this notice must be given by each financial institution to the institution above it in the chain.

(vi) The U.S. person complies with procedures that the U.S. competent authority may agree to with the competent authority of a country with which the United States has an income tax treaty in effect.

(3) *Time for providing certificate or documentary evidence*—(i) *General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect

to such interest. See, however, § 1.1441–1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§ 1.1464–1 and 301.6402–3(e) of this chapter. For this purpose, the taxpayer must attach a withholding certificate described in § 1.1441–1(e)(2)(i) to the income tax filed for claiming a refund of tax. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461–2(a) (for example, if the beneficial owner furnishes documentation to the withholding agent before the due date for filing the return required under § 1.1461–1(b) with respect to that payment).

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(3) and their coordination with § 1.1441–1(b)(7):

Example. A is a withholding agent who, on October 12, 1999, pays interest on a registered obligation to B, a foreign corporation. B is a calendar year taxpayer, engaged in the conduct of a trade or business in the United States, and is, therefore, required to file an annual income tax return on Form 1120F. The interest, however, is not effectively connected with B's U.S. trade or business. On the date of payment, B has not furnished, and A cannot associate the payment with documentation for B. However, A does not withhold under section 1442, even though, under § 1.1441–1(b)(3)(iii)(A), A should presume that B is a foreign person, because A's communications with B are mailed to an address in a foreign country. Assuming that B files a return for its taxable year ending December 31, 1999, and that its statute of limitations period with regard to that year expires on June 15, 2003, the interest paid on October 12, 1999, may qualify as portfolio interest only if B provides appropriate documentation to A on or before June 15, 2003. If B does not provide the documentation on or before June 15, 2003, and does not pay the tax, A is liable for the tax under section 1463, even if B provides the documentation to A after June 15, 2003. Therefore, the provisions in § 1.1441–1(b)(7), regarding late-received documentation would not help A avoid liability for tax under section 1463 even if the documentation is furnished within the statute of limitations period of A. This is because, in a case involving interest, the documentation received within the limitations period of the beneficial owner serves as a condition for the interest to qualify as portfolio interest. When documentation is received after the expiration of the beneficial owner's limitations period, the interest can no longer qualify as portfolio interest. On the other hand, A could rely on documentation that it receives after the expiration of B's limitations period to establish B's right to a reduced rate of withholding under an applicable income tax treaty (since, in such a case, a claim of treaty benefits is not conditioned upon providing documentation prior to the expiration of the beneficial owner's limitations period).

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c), see § 1.1441–1(b)(4)(i). For rules applicable to withholding certificates, see § 1.1441–1(e)(4). For rules regarding documentary evidence, see § 1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1 (b) and (c).

(d) *Application of repeal of 30-percent withholding to pass-through certificates*—(1) *In general.* Interest received on a pass-through certificate qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1), or (e) of this section without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. This paragraph (d)(1) applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in paragraph (b)(1) of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in paragraph (b)(1), (c)(1)(ii), or (e) of this section. However, for purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a residual interest in a REMIC is considered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered as issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

(3) *Date of issuance.* In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on which the mortgage pass-through certificate is issued; and

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

(e) *Foreign-targeted registered obligations*—(1) *General rule.* The statement described in paragraph (c)(1)(ii)(C) of this section is not required with respect to interest paid on a registered obligation that is targeted to foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

(2) *Definition of a foreign-targeted registered obligation.* An obligation is considered to be targeted to foreign markets for purposes of paragraph (e)(1) of this section if it is sold (or resold in connection with its original issuance) only to foreign persons (or to foreign branches of United States financial institutions described in section 871(h)(5)(B)) in accordance with procedures similar to those prescribed in § 1.163–5(c)(2)(i) (A), (B), or (D). However, the provisions of that section that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of that section that require delivery to be made outside the United States do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold (or resold in connection with its original issuance) in accordance with those procedures.

(3) *Documentation.* A certificate described in paragraph (e)(3)(i) of this section is required if the United States person otherwise required to deduct and withhold tax (the withholding agent) pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentation described in paragraph (e)(3)(ii) of this section is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization.

(i) *Interest paid to a financial institution or a member of a clearing organization*—(A) *Requirement of a certificate*—(*1*) If the withholding agent pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this paragraph (e)(3)(i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each foreign-targeted registered obligation which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*i*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*ii*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of paragraph (e)(4) of this section.

(*2*) The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this paragraph (e)(3)(i).

(B) *Additional representations.* Whether or not a previous certificate has been required to be provided with respect to the obligation, each certificate furnished pursuant to the provisions in this paragraph (e)(3)(i) must further state that, for each foreign-targeted registered obligation held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this paragraph (e)(3) to furnish the clearing organization with a statement) in accordance with paragraph (e)(4) of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) *Obligation must be identified.* The certificate described in paragraph (e)(3)(ii)(A) of this section must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (e.g., $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify

and provide the address of the person furnishing the certificate.

(D) *Payment to a depository of a clearing organization.* If the withholding agent pays interest to a depository of a clearing organization, then the clearing organization must provide the certificate described in this paragraph (e)(3)(i) to the withholding agent. Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with the provisions of this paragraph (e)(3)(i) and of paragraph (e)(4) of this section (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(5)(B)).

(E) *Statement in lieu of Form W–8.* Subject to the requirements set out in paragraph (e)(4) of this section, a certificate or statement in the form described in this paragraph (e)(3)(i), in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(F) *Electronic transmission.* The certificate described in this paragraph (e)(3)(i) may be provided electronically under the terms and conditions of § 1.163–5(c)(2)(i)(D)(*3*)(*ii*).

(ii) *Payment to a person other than a financial institution or member of a clearing organization.* If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a statement described in paragraph (c)(1)(ii)(C) of this section.

(4) *Applicable procedures regarding documentation*—(i) *Procedures applicable to certificates required under paragraph (e)(3)(i) of this section*—(A) *Time for providing certificate.* Where no previous certificate for foreign-targeted registered obligations has been provided to the withholding agent by the person providing the certificate under paragraph (e)(3)(i) of this section, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the certificate is not received by the date 30 days prior to the interest payment. Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this paragraph (e)(4)(i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) *Change of status notification on Form W–9.* If, on any interest payment date after the obligation was acquired by the person making the certification, the beneficial owner of the obligation is a U.S. person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a U.S. beneficial ownership notification within 30 days after such interest payment date. A U.S. beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a U.S. person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) *Alternative notification statement.* Where the person providing the notification described in paragraph (e)(4)(i)(B) of this section is neither a controlled foreign corporation within the meaning of section 957(a), nor a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the U.S. beneficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the IRS, at such address as the IRS shall indicate, within 30 days after receiving it and must attach a statement that the Form W–9 or substitute form was provided pursuant to this paragraph (e)(4) with respect to a U.S. person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) *Failure to provide notification.* If either a Form W–9 (or a substitute form that is substantially similar to a Form W–9 and completed under penalties of perjury) or the statement described in paragraph (e)(4)(i)(C) of this section is not attached to the U.S. beneficial ownership notification provided pursuant to paragraph (e)(4)(i)(B) of this section, the withholding agent is required to withhold under section 1441, 1442, or 1443 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a U.S. person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in paragraph (e)(3)(i) of this section (subject to paragraph (e)(3)(i)(A)(*2*) of this section) then the withholding agent is not required to withhold during the year following such certification (unless such person again provides a U.S. beneficial ownership notification without attaching a Form W–9 or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury or the statement described in paragraph (e)(4)(i)(C) of this section).

(E) *Procedures for clearing organizations.* Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in paragraph (e)(3)(i) of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a U.S. beneficial ownership notification in the circumstances described in paragraph (e)(4)(i)(B) of this section.

(F) *Retention of certificates.* The certificate described in paragraph (e)(3)(i) of this section must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in paragraph (e)(3)(i) of this section that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received.

(G) *No reporting requirement.* The withholding agent who receives the certificate described in paragraph (e)(3)(i) of this section is not required to file Form 1042S to report payments under § 1.1461–1 (b) or (c) of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii) *Procedures regarding certificates required under paragraph (e)(3)(ii) of this section*—(A) *Time for providing certificate.* The statement described in paragraph (e)(3)(ii) of this section must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the statement is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the statement described in paragraph (e)(3)(ii) of this section is not required to report payments of interest under § 1.1461–1(b) or (c) if the payments are made with respect to foreign-targeted registered obligations held by the person who provides the statement and are made within the period beginning with the date on which the statement is provided and ending on the last date for confirming the validity of the statement. The statement received for purposes of paragraph (e)(3)(ii) of this section is subject to the applicable procedures set forth in § 1.1441–1(e)(4).

(B) *Change of status notification on Form W–9.* If on any interest payment date after the obligation was acquired by the person providing the statement described in paragraph (e)(3)(ii) of this section, the beneficial owner of the obligation is a U.S. person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W–9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W–9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) *Disqualification of documentation.* In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to 30-percent withholding under section 1441(a), 1442(a), or 1443.

(iv) *Special effective date.* Notwithstanding the foregoing requirements of this section—

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986, is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of this paragraph (e), as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in paragraph (e)(4)(iv)(A) of this section, except that the provisions of paragraph (e)(3) of this section relating to which persons are required to receive certificates or statements and paragraph (e)(3)(ii) or (4)(ii) of this section shall become effective with respect to each interest payment after September 20, 1985.

(5) *Information reporting.* See § 1.6049–5(b)(7) for special information reporting rules applicable to interest on foreign-targeted registered obligations. See § 1.6045–1(g)(1)(ii) for information reporting rules applicable to the redemption, retirement, or sale of foreign-targeted registered obligations.

(f) *Securities lending transactions.* For applicable rules regarding substitute interest payments received pursuant to a securities lending transaction or a sale-repurchase transaction, see §§ 1.871–7(b)(2) and 1.881–2(b)(2).

(g) *Definitions.* For purposes of this section, the terms *U.S. person* and *foreign person* have the meaning set forth in § 1.1441–1(c)(2), the term *beneficial owner* has the meaning set forth in § 1.1441–1(c)(6), the term *withholding agent* has the meaning set forth in § 1.1441–7(a); the term *payee* has the meaning set forth in § 1.1441–1(b)(2); and the term *payment* has the meaning set forth in § 1.1441–2(e).

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1998.

(2) *Transition rule.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under these regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 6. Section 1.1441–0 is added to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

This section lists captions contained in §§ 1.1441–1 through 1.1441–9.

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) Purpose and scope.
(b) General rules of withholding.

(1) Requirement to withhold on payments to foreign persons.
(2) Determination of payee and payee's status.
(i) In general.
(ii) Payments to a U.S. agent of a foreign person.
(iii) Payments to wholly-owned entities.
(A) Foreign-owned domestic entity.
(B) Foreign entity.
(iv) Payments to a U.S. branch of certain foreign banks or foreign insurance companies.
(A) U.S. branch treated as a U.S. person in certain cases.
(B) Consequences to the withholding agent.
(C) Consequences to the U.S. branch.
(D) Definition of payment to a U.S. branch.
(E) Payments to other U.S. branches.
(v) Payments to a foreign intermediary.
(A) Payments treated as made to persons for whom the intermediary collects the payment.
(B) Payments treated as made to foreign intermediary.
(vi) Other payees.
(vii) Rules for reliably associating a payment with documentation.
(3) Presumptions regarding payee's status in the absence of documentation.
(i) General rules.
(ii) Presumptions of status as individual, corporation, partnership, etc.
(iii) Presumption of U.S. or foreign status.
(A) Payments to exempt recipients.
(B) Scholarships and grants.
(C) Pensions, annuities, etc.
(D) Certain payments to offshore accounts.
(iv) Grace period in the case of indicia of a foreign payee.
(v) Special rules applicable to payments to foreign intermediaries.
(A) Reliance on claim of status as foreign intermediary.
(B) Beneficial owner documentation is lacking or unreliable.
(C) Information regarding allocation of payment is lacking or unreliable.
(D) Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
(vi) U.S. branches and foreign flow-through entities.
(vii) Joint payees.
(viii) Rebuttal of presumptions.
(ix) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
(A) General rule.
(B) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
(x) Examples.
(4) List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.
(5) Establishing foreign status under applicable provisions of chapter 61 of the Code.
(6) Rules of withholding for payments by a foreign intermediary or certain U.S. branches.
(7) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.
(i) General rule.
(ii) Proof that tax liability has been satisfied.
(iii) Liability for interest and penalties.
(iv) Special effective date.
(v) Examples.
(8) Adjustments, refunds, or credits of overwithheld amounts.
(9) Payments to joint owners.
(c) Definitions.
(1) Withholding.
(2) Foreign and U.S. person.
(3) Individual.
(i) Alien individual.
(ii) Nonresident alien individual.
(4) Certain foreign corporations.
(5) Financial institution and foreign financial institution.
(6) Beneficial owner.
(i) General rule.
(ii) Special rules for flow-through entities and arrangements.
(A) General rule.
(B) Trusts and estates.
(C) Definition of a flow-through entity or arrangement.
(7) Withholding agent.
(8) Person.
(9) Source of income.
(10) Chapter 3 of the Code.
(11) Reduced rate.
(d) Beneficial owner's or payee's claim of U.S. status.
(1) In general.
(2) Payments for which a Form W–9 is otherwise required.
(3) Payments for which a Form W–9 is not otherwise required.
(4) Other payments.
(e) Beneficial owner's claim of foreign status.
(1) Withholding agent's reliance.
(i) In general.
(ii) Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner.
(A) General rule.
(B) Additional requirements.
(2) Beneficial owner withholding certificate.
(i) In general.
(ii) Requirements for validity of certificate.
(3) Intermediary, flow-through, or U.S. branch withholding certificate.
(i) In general.
(ii) Intermediary withholding certificate from a qualified intermediary.
(iii) Intermediary withholding certificate from an intermediary that is not a qualified intermediary.
(iv) Information to the withholding agent regarding assets owned by beneficial owners, etc.
(A) General rule.
(B) Updating the information.
(C) Examples.
(v) Withholding certificate from certain U.S. branches.
(vi) Reportable amounts.
(4) Applicable rules.
(i) Who may sign the certificate.
(ii) Period of validity.
(A) Three-year period.
(B) Indefinite validity period.
(C) Withholding certificate for effectively connected income.
(D) Change in circumstances.
(iii) Retention of withholding certificate.
(iv) Electronic transmission of information.
(v) Electronic confirmation of taxpayer identifying number on withholding certificate.
(vi) Acceptable substitute form.
(vii) Requirement of taxpayer identifying number.
(viii) Reliance rules.
(A) Classification.
(B) Status of payee as an intermediary or as a person acting for its own account.
(ix) Certificates to be furnished for each account unless exception applies.
(A) Coordinated account information system in effect.
(B) Family of mutual funds.
(C) Special rule for brokers.
(5) Qualified intermediaries.
(i) General rule.
(ii) Definition of qualified intermediary.
(iii) Withholding agreement.
(A) In general.
(B) Terms of the withholding agreement.
(iv) Assignment of primary withholding responsibility.
(v) Information to withholding agent regarding applicable withholding rates.
(A) General rule.
(B) Categories of assets.
(C) Updating the information.
(f) Effective date.
(1) In general.
(2) Transition rules.
(i) Special rules for existing documentation.
(ii) Lack of documentation for past years.

§ 1.1441–2 Amounts subject to withholding.

(a) In general.
(b) Fixed or determinable annual or periodical income.
(1) In general.
(i) Definition.
(ii) Manner of payment.
(iii) Determinability of amount.
(2) Exceptions.
(3) Original issue discount.
(i) General rule.
(ii) Amounts actually known to the withholding agent.
(iii) Amounts for which certain documentation is not furnished.
(iv) Exceptions to withholding.
(4) Securities lending transactions and equivalent transactions.
(c) Other income subject to withholding.
(d) Exceptions to withholding where no money or property is paid or lack of knowledge.
(1) General rule.
(2) Cancellation of debt.
(3) Satisfaction of liability following underwithholding by withholding agent.
(e) Payment.
(1) General rule.
(2) Income allocated under section 482.
(3) Blocked income.
(4) Special rules for dividends.
(5) Certain interest accrued by a foreign corporation.
(6) Payments other than in U.S. dollars.
(f) Effective date.

§ 1.1441–3 Determination of amounts to be withheld.

(a) Withholding on gross amount.
(b) Withholding on payments on certain obligations.
(1) Withholding at time of payment of interest.
(2) No withholding between interest payment dates.
(i) In general.
(ii) Anti-abuse rule.
(c) Corporate distributions.
(1) General rule.
(2) Exception to withholding on distributions.
(i) In general.
(ii) Reasonable estimate of accumulated and current earnings and profits on the date of payment.
(A) General rule.
(B) Procedures in case of underwithholding.
(C) Reliance by intermediary on reasonable estimate.
(D) Example.
(3) Special rules in the case of distributions from a regulated investment company.
(i) General rule
(ii) Reliance by intermediary on reasonable estimate.
(4) Coordination with withholding under section 1445.
(i) In general.
(A) Withholding under section 1441.
(B) Withholding under both sections 1441 and 1445.
(C) Coordination with REIT withholding.
(ii) Intermediary reliance rule.
(d) Withholding on payments that include an undetermined amount of income.
(1) In general.
(2) Withholding on certain gains.
(e) Payments other than in U.S. dollars.
(1) In general.
(2) Payments in foreign currency.
(f) Tax liability of beneficial owner satisfied by withholding agent.
(1) General rule.
(2) Example.
(g) Conduit financing arrangements
(h) Effective date.

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) Certain income connected with a U.S. trade or business.
(1) In general.
(2) Withholding agent's reliance on a claim of effectively connected income.
(i) In general.
(ii) Special rules for U.S. branches of foreign persons.
(A) U.S. branches of certain foreign banks or foreign insurance companies.
(B) Other U.S. branches.
(3) Income on notional principal contracts.
(i) General rule.
(ii) Exception for certain payments.
(b) Compensation for personal services of an individual.
(1) Exemption from withholding.
(2) Manner of obtaining withholding exemption under tax treaty.
(i) In general.
(ii) Withholding certificate claiming withholding exemption.
(iii) Review by withholding agent.
(iv) Acceptance by withholding agent.
(v) Copies of Form 8233.
(3) Withholding agreements.
(4) Final payments exemption.
(i) General rule.
(ii) Final payment of compensation for personal services.
(iii) Manner of applying for final payment exemption.
(iv) Letter to withholding agent.
(5) Requirement of return.
(6) Personal exemption.
(i) In general.
(ii) Multiple exemptions.
(iii) Special rule where both certain scholarship and compensation income are received.
(c) Special rules for scholarship and fellowship income.
(1) In general.
(2) Alternate withholding election.
(d) Annuities received under qualified plans.
(e) Per diem of certain alien trainees.
(f) Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

(a) Rules of withholding applicable to payments to partnerships.
(b) Domestic partnerships.
(1) Exemption from withholding on payment to domestic partnerships.
(2) Withholding by a domestic partnership.
(i) In general.
(ii) Determination by the domestic partnership of partners' status.
(iii) Reliance on a partner's claim for reduced withholding.
(iv) Rules for reliably associating a payment with documentation.
(v) Coordination with chapter 61 of the Internal Revenue Code and section 3406.
(c) Foreign partnerships.
(1) Determination of payee.
(i) Payments treated as made to partners.
(ii) Payments treated as made to the partnership.
(iii) Rules for reliably associating a payment with documentation.
(iv) Example.
(2) Withholding foreign partnerships.
(i) Reliance on claim of withholding foreign partnership status.
(ii) Withholding agreement.
(A) In general.
(B) Terms of withholding agreement.
(iii) Withholding responsibility.
(iv) Withholding certificate from a withholding foreign partnership.
(3) Other foreign partnerships.
(i) Reliance on claim of foreign partnership status.
(ii) Reliance on claim of reduced withholding by a partnership for its partners.
(iii) Withholding certificate from a foreign partnership that is not a withholding foreign partnership.
(iv) Information to withholding agent regarding each partner's distributive share.
(v) Withholding by a foreign partnership.
(d) Presumptions regarding payee's status in the absence of documentation.
(1) In general.
(2) Determination of partnership's status as domestic or foreign in the absence of documentation.
(3) Determination of partners' status in the absence of certain documentation.
(i) Documentation regarding the status of a partner is lacking or unreliable.
(ii) Information regarding the allocation of payment is lacking or unreliable.
(iii) Certification that the foreign partnership has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
(iv) Determination by a withholding foreign partnership of the status of its partners.
(4) Examples.
(e) Trusts and estates. [Reserved]
(f) Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) In general.
(b) Reliance on claim of reduced withholding under an income tax treaty.
(1) In general.
(2) Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income.
(i) General rule.
(ii) Income to which special rules apply.
(3) Competent authority agreements.
(4) Eligibility for reduced withholding under an income tax treaty in the case of a payment to a person other than an individual.
(i) General rule.
(ii) Withholding certificates.
(A) In general.
(B) Certification by qualified intermediary.
(iii) Multiple claims of treaty benefits.
(iv) Examples.
(5) Claim of benefits under an income tax treaty by a U.S. person.
(c) Proof of tax residence in a treaty country and certification of entitlement to treaty benefits. (1) In general.
(2) Certification of taxpayer identifying number.
(i) In general.
(ii) IRS-certified TIN.
(iii) Special rules for qualified intermediaries.
(3) Certificate of residence.
(4) Documentary evidence establishing residence in the treaty country.
(i) Individuals.
(ii) Persons other than individuals.
(5) Certifications regarding entitlement to treaty benefits.
(i) Certification regarding conditions under a Limitation on Benefits Article.
(ii) Certification regarding whether the taxpayer is deriving the income.
(d) Joint owners.
(e) Related party dividends under U.S.-Denmark income tax treaty.

(f) Failure to receive withholding certificate timely.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–7 General provisions relating to withholding agents.

(a) Withholding agent defined.
(b) Standards of knowledge.
(1) In general.
(2) Reason to know.
(i) In general.
(ii) Limits on reason to know in certain cases.
(3) Coordinated account information systems.
(c) Authorized agent.
(1) In general.
(2) Authorized foreign agent.
(3) Notification.
(4) Liability of U.S. withholding agent.
(5) Filing of returns.
(d) United States obligations.
(e) Assumed obligations.
(f) Conduit financing arrangements.
(g) Effective date.

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

(a) Foreign governments.
(b) Reliance on claim of exemption by foreign government.
(c) Income of a foreign central bank of issue or the Bank for International Settlements.
(1) Certain interest income.
(2) Bankers' acceptances.
(d) Exemption for payments to international organizations.
(e) Failure to receive withholding certificate timely and other applicable procedures.
(f) Effective date.
(1) In general.
(2) Transition rules.

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

(a) Exemption from withholding for exempt income.
(b) Reliance on foreign organization's claim of exemption from withholding.
(1) General rule.
(2) Withholding certificate.
(3) Presumptions in the absence of documentation.
(4) Reason to know.
(c) Failure to receive withholding certificate timely and other applicable procedures.
(d) Effective date.
(1) In general.
(2) Transition rules.

Par. 7. Sections 1.1441–1 and 1.1441–2 are revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) *Purpose and scope.* This section, §§ 1.1441–2 through 1.1441–9, and 1.1443–1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441–3 provides rules regarding the amount subject to withholding. Section 1.1441–4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441–6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term *withholding agent* and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441–8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441–9 and 1.1443–1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding*—(1) *Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441–5(c)(2)(i)), or as an authorized foreign agent (see § 1.1441–7(c)(1)). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§ 1.1441–4, 1.1441–5, 1.1441–6, 1.1441–8, 1.1441–9, and 1.1443–1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for determining who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (i.e., as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405 or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (e.g., in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee

when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441–7(a) for a definition of withholding agent. See § 1.1441–2(a) for the determination of an amount subject to withholding. See § 1.1441–2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (e.g., as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W–8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W–9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441–5 (c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation, apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441–2(a)). Similar payee and presumption provisions are set forth under § 1.6049–5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441–5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

(ii) *Payments to a U.S. agent of a foreign person.* A withholding agent making a payment to a U.S. person (other than to a U.S. branch that is treated as a U.S. person pursuant to paragraph (b)(2)(iv) of this section) and who has actual knowledge that the U.S. person receives the payment as an agent of a foreign person must treat the payment as made to the foreign person. However, the withholding agent may treat the payment as made to the U.S. person if the U.S. person is a financial institution and the withholding agent has no reason to believe that the financial institution will not comply with its obligation to withhold. See paragraph (c)(5) of this section for the definition of a financial institution.

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W–9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701–3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049–4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W–9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3 and 61 of the Code, and section 3406. Therefore, A must furnish a Form W–8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894–1T(d) and 1.1441–6(b)(4) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

(B) *Foreign entity.* A payment to a wholly-owned foreign entity that is disregarded under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner shall be treated as a payment to the single owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section if the foreign entity has a U.S. branch in the United States. For purposes of this paragraph (b)(2)(iii)(B), a foreign entity means a person that would be treated as a foreign person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. See §§ 1.894–1T(d) and 1.1441–6(b)(4) for special rules where the foreign entity or its owner is claiming a reduced rate of withholding under an income tax treaty. Thus, for example, if the foreign entity's single owner is a U.S. person, the payment shall be treated as a payment to a U.S. person. Therefore, based on the savings clause in U.S. income tax treaties, such an entity may not claim benefits under an income tax treaty even if the entity is organized in a country with which the United States has an income tax treaty in effect and treats the entity as a non-fiscally transparent entity. See § 1.894–1T(d)(6), *Example 10.* Unless it has actual knowledge or reason to know that the foreign entity to whom the payment is made is disregarded under § 301.7701–2(c)(2) of this chapter, a withholding agent may treat a foreign entity as an entity separate from its owner unless it can reliably associate the payment with a withholding certificate from the entity's owner.

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to the U.S. branch of a foreign person is a payment to the foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Such agreement must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioner with the Insurance Department of a State, a Territory, or the District of Columbia. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may

qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter).

(B) *Consequences to the withholding agent.* Any person that is otherwise a withholding agent regarding a payment to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section shall treat the payment in one of the following ways—

(*1*) As a payment to a U.S. person, in which case the withholding agent is not responsible for withholding on such payment to the extent it can reliably associate the payment with a withholding certificate described in paragraph (e)(3)(v) of this section that has been furnished by the U.S. branch under its agreement with the withholding agent to be treated as a U.S. person;

(*2*) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation; or

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct by that foreign person of a trade or business in the United States if the withholding agent cannot reliably associate the payment with a certificate from the U.S. branch or any other certificate or other appropriate documentation from another person.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a person for purposes of section 1441(a) and all other provisions of chapter 3 of the Code and the regulations thereunder for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapter 3 of the Code and the regulations thereunder and other applicable withholding provisions of the Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section.

(D) *Definition of payment to a U.S. branch.* A payment is treated as a payment to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (e.g., the check mailed or a letter addressed to the branch).

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the district director or the Assistant Commissioner (International). Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section regarding its registration with, and regulation by, a U.S. governmental institution, the type and amounts of assets it is required to, or actually maintain in the United States, and the personnel who carry out the activities of the branch in the United States. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the district director or the Assistant Commissioner (International) and unless the district director or the Assistant Commissioner (International) is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

(v) *Payments to a foreign intermediary*—(A) *Payments treated as made to persons for whom the intermediary collects the payment.* Except as otherwise provided in paragraph (b)(2)(v)(B) of this section, a payment to a person that the withholding agent may treat as a foreign intermediary in accordance with the provisions of paragraph (b)(3)(v)(A) of this section is treated as a payment made directly to the person or persons for whom the intermediary collects the payment. Thus, for example, a payment that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary (defined in paragraph (e)(5)(ii) of this section) and that is allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the foreign qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment to the persons holding assets in that category. See paragraph (b)(3)(v)(B) of this section for applicable presumptions in such a case. For similar rules for payments to flow-through entities, see § 1.1441–5 (c)(1)(i) and (e).

(B) *Payments treated as made to foreign intermediary.* A payment to a person that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) of this section from a qualified intermediary that has elected to assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section is treated as a payment to the qualified intermediary, except to the extent of the portion of the payment that the withholding agent can reliably associate with Forms W–9. See paragraphs (b)(1) and (e)(5)(iv) of this section for consequences to the withholding agent.

(vi) *Other payees.* A payment to a person described in § 1.6049–4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A) (*6*) or (*7*) of this section). Further, payments that the withholding agent can reliably associate with documentary evidence described in § 1.6049–5(c)(4) relating to the payee is treated as a payment to a foreign payee. A payment that the withholding agent may treat as a payment to an authorized foreign agent (as defined in § 1.1441–7(c)(2)) is treated as a payment to the agent and not to the persons for whom the agent collects the payment. See § 1.1441–5 (b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) *Rules for reliably associating a payment with documentation.* Generally, a withholding agent can reliably associate a payment with documentation if, for that payment, it holds valid documentation to which the payment relates, it can reliably determine how much of the payment relates to the valid documentation (e.g., based on information furnished in accordance with paragraph (e)(3)(iv) or (5)(v) of this section in the case of a payment to a foreign intermediary or in accordance with § 1.1441–5(c)(3)(iv) in the case of a payment to a foreign partnership), and it has no actual knowledge or reason to know that any of the information or certifications stated in the documentation are incorrect. The documentation referred to in this paragraph (b)(2)(vii) is documentation described in paragraph (d) or (e) of this section upon which a withholding agent may rely in order to treat the payment as a payment made to a payee or beneficial owner that is a U.S. or a foreign person, and to ascertain the characteristics of the payee or beneficial owner, as may be relevant to withholding or reporting under chapter 3 of the Code and the regulations thereunder (e.g., beneficial owner or intermediary, corporation or partnership). For purposes of this paragraph (b)(2)(vii), documentation also includes a withholding certificate described in paragraph (e)(3)(ii) of this section from a person representing to be a qualified intermediary that has assumed primary withholding responsibility, a withholding certificate described in paragraph (e)(3)(v) of this section from a person representing to be a U.S. branch described in paragraph (b)(2)(iv)(A) of this section, a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person representing to be a withholding foreign partnership, and the agreement that the withholding agent has in effect with an authorized foreign agent in accordance with § 1.1441–7(c)(2)(i). A withholding agent that is not required to obtain documentation with respect to a payment is considered to lack documentation for purposes of this paragraph (b)(2)(vii). For example, a withholding agent paying U.S. source interest to a person that is an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), is not required to obtain documentation from that person in order to determine whether an amount paid to that person is reportable under an applicable information reporting provision under chapter 61 of the Code. Therefore, the withholding agent may rely on the provisions of paragraph (b)(3)(iii)(A) of this section to determine whether the person is presumed to be a U.S. person (in which case, no withholding is required under this section), or whether the person is presumed to be a foreign person (in which case 30-percent withholding is required under this section). See paragraph (b)(3)(v)(A) of this section for special reliance rules in the case of a payment to a foreign intermediary and § 1.1441–5(d)(3) for special reliance rules in the case of a payment to a foreign partnership.

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot reliably associate a payment with documentation may rely on the presumptions of this paragraph (b)(3) in order to determine the status of the payee as a U.S. or a foreign person and the payee's other relevant characteristics (e.g., as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapter 3 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and the regulations under these provisions. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of status as individual, corporation, partnership, etc.* A withholding agent that cannot reliably associate a payment with documentation must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (i.e., based on the payee's name or other indications). In the absence of reliable indications that the payee is an individual, estate, or trust, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049–4(c)(1)(ii) (B) through (Q) if it can be so treated under § 1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under § 1.6049–4(c)(1)(ii) (B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii) (A)(*1*) through (Q), then the payee shall be presumed to be a partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation, if documentation is otherwise required in order to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8 described in § 1.1441–9(b)(2) be furnished to the withholding agent.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3) (iv) and (v) of this section, or in § 1.1441–5 (d) or (e).

(A) *Payments to exempt recipients.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the

payee is an exempt recipient (as determined under the provisions of § 1.6049–4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(*1*) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98";

(*2*) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(*3*) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i) of this chapter; or

(*4*) If the payment is made outside the United States (as defined in § 1.6049–5(e)).

(B) *Scholarships and grants.* A payment representing taxable scholarship or fellowship grant income that does not represent compensation for services (but is not excluded from tax under section 117) and that a withholding agent that cannot reliably associate with documentation is presumed to be made to a foreign person if the withholding agent has a record that the payee has a U.S. visa that is not an immigrant visa. See section 871(c) and § 1.1441–4(c) for applicable tax rate and withholding rules.

(C) *Pensions, annuities, etc.* A payment from a trust described in section 401(a), an annuity plan described in section 401(a), an annuity plan described in section 403(a), or a payment with respect to any annuity, custodial account, or retirement income account described in section 403(b) that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person only if the withholding agent has a record of a Social Security number for the payee and relies on a mailing address described in the following sentence. A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in a foreign country with which the United States has an income tax treaty in effect that provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (b)(3)(iii)(C). Any payment described in this paragraph (b)(3)(iii)(C) that is not presumed made to a U.S. person is presumed to be made to a foreign person. A withholding agent making a payment to a person presumed to be a foreign person may not reduce the 30-percent amount of withholding required on such payment unless it receives a withholding certificate described in paragraph (e)(2)(i) of this section furnished by the beneficial owner. For basis of reduction in the 30-percent rate, see § 1.1441–4(e) or § 1.1441–6(b).

(D) *Certain payments to offshore accounts.* A payment that would be subject to withholding under section 1441, 1442, or 1443 if made to a foreign person and is exempt from backup withholding under section 3406 by reason of § 31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 for certain payments to offshore accounts) is presumed to be made to a foreign payee.

(iv) *Grace period in the case of indicia of a foreign payee.* A withholding agent may choose, in its discretion, to apply the provisions of § 1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by substituting the term *withholding agent* for the term *payor*) to amounts described in § 1.1441–6(b)(2)(ii) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may, in its discretion, choose to treat an account holder as a foreign person and withhold under chapter 3 of the Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to the account. However, a withholding agent who can reliably associate the payment with a withholding certificate that is otherwise valid within the meaning of the applicable provisions except for the fact that it is transmitted by facsimile may rely on that facsimile form for purposes of withholding at the claimed reduced rate. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(7). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. person who is not an exempt recipient, then backup withholding applies to amounts credited to the account after the expiration of the grace period only. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

(B) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a foreign person, or if documentation is furnished that does not support the claimed rate reduction, then adjustments must be made to correct the underwithholding on amounts credited to the account during the grace period, based on adjustment procedures described in § 1.1461–2.

(v) *Special rules applicable to payments to foreign intermediaries*—(A) *Reliance on claim of status as foreign intermediary.* A withholding agent that can reliably associate a payment with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section may treat the payment as made to a foreign intermediary, as represented in the certificate. For this purpose, a U.S. person's foreign branch that is a qualified intermediary defined in paragraph (e)(5)(ii) of this section shall be treated as a foreign intermediary. For purposes of this section, a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable or that information for allocating the payment among the various persons for whom the intermediary is acting is lacking or is unreliable shall nevertheless be treated as a payment to a foreign intermediary and the rules of this paragraph (b)(3)(v) shall apply accordingly. A payee that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (b)(3)(v)(A) is presumed to be an owner whose status as an individual, trust, estate, etc., must be determined in accordance with paragraph (b)(3)(ii) of this section, to the extent relevant. In addition, such payee is presumed to be a U.S. or a foreign payee based upon the presumptions described in paragraph (b)(3)(iii) of this section. The provisions of paragraphs (b)(3)(v) (B), (C), and (D) of this section are not relevant to a withholding agent that can reliably associate a payment with a withholding certificate from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section.

(B) *Beneficial owner documentation is lacking or unreliable.* Any portion of a payment that the withholding agent may treat as made to a foreign intermediary in accordance with paragraph (b)(3)(v)(A) of this section but cannot reliably associate with a beneficial owner due to the lack of a withholding certificate or other appropriate documentation for that beneficial owner is presumed to be made to a foreign payee for whom the foreign intermediary collects the payment (see paragraph (b)(2)(v) of this section). For purposes of this paragraph (b)(2)(v)(B), any payment that a foreign qualified intermediary represents to be allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment that the withholding agent cannot reliably associate with beneficial owners. As a result, any payment allocable to such category of assets is presumed to be made to an unidentified foreign payee. Under paragraph (b)(1) of this section, a payment to a foreign payee is subject to withholding at a 30-percent rate.

(C) *Information regarding allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of beneficial owners or payees but lacks reliable information to determine how much of the payment is allocable to one or more of the beneficial owners or payees in the group (because, for example, the statement described in paragraph (e)(3)(iv) of this section has not been furnished), the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the beneficial owner or payee in the group with the highest applicable withholding rate or, if the rates are equal, to the beneficial owner or payee in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to an intermediary certificate is another intermediary certificate or a certificate from a foreign partnership described in § 1.1441–5(c)(3)(iii), the rules of this paragraph (b)(3)(v)(C) apply by treating the share of the payment allocable to the other intermediary or to the foreign partnership as if the payment were made directly to the other intermediary or to the foreign partnership.

(D) *Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (e)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the persons or group of persons for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one person and the entire payment is presumed to be made to an unidentified foreign payee for whom the intermediary collects the payment and from which a 30-percent amount must be withheld in accordance with paragraph (b)(1) of this section.

(vi) *U.S. branches and foreign flow-through entities.* The rules of paragraphs (b)(3)(v) (B), (C), and (D) of this section shall apply to payments to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that has agreed to assume withholding responsibility in the same manner that they apply to payments to a foreign intermediary. See § 1.1441–5(d) for similar rules in the case of payments to foreign partnerships. See § 1.1441–5(e) for similar rules in the case of payments to foreign trusts or foreign estates.

(vii) *Joint payees.* A payment made to joint payees for whom the withholding agent cannot reliably associate documentation for all joint payees or can reliably associate the payment with a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter from one of the joint payees is presumed to be made to U.S. persons. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee qualifies for the conditions described in paragraph (b)(3)(iv) of this section. However, as provided in paragraph (b)(3)(iii)(D) of this section, a payment of an amount that would be subject to withholding under section 1441, 1442, or 1443 if paid to a foreign person and is exempt from the application of the provisions of section 3406 by reason of § 31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 of the Code for certain payments made with respect to offshore accounts), is presumed to be made to foreign persons.

(viii) *Rebuttal of presumptions.* A payee or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(A) *General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405 or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3) shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

(B) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (b)(3)(ix)(A) of this section, a withholding agent may not rely on the presumptions described in this paragraph (b)(3) to the extent it has actual knowledge or reason to know that the status or characteristics of the payee or of the beneficial owner are other than what is presumed under this paragraph (b)(3) and, if based on such knowledge or reason to know, it should withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (b)(3) or it should report (under this section or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the presumptions described in this

paragraph (b)(3). In such a case, the withholding agent must rely on its actual knowledge or reason to know rather than on the presumptions set forth in this paragraph (b)(3). Failure to do so and, as a result, failure to withhold the higher amount or to report the payment, shall result in liability for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections.

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. A withholding agent, W, makes a payment of U.S. source dividends to person X, Inc. at an address outside the United States. W cannot reliably associate the payment to X with documentation. Under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii)(A)(*1*), W may treat X as a corporation. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that X is a foreign person (because the payment is made outside the United States). However, W knows that X is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W s knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W s actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

Example 2. A withholding agent, W, makes a payment of U.S. source dividends to Y who does not qualify as an exempt recipient under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6042. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W s knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W s actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

Example 3. A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. W cannot reliably associate the payment to X, Inc. with documentation. X, nc. presents none of the indicia of foreign status described in paragraph (b)(3)(iii)(A) of this section, but W has actual knowledge that X, Inc. is a foreign corporation. W may treat X, Inc. as an exempt recipient under § 1.6042–3(b)(1)(vii). Because there are no indicia of foreign status, W would, absent actual knowledge or reason to know otherwise, be permitted to treat X, Inc. as a domestic corporation in accordance with the presumptions of paragraph (b)(3)(iii) of this section. However, under paragraph (b)(3)(ix)(B) of this section, W may not rely on the presumption of U.S. status since reliance on its actual knowledge requires that it withhold an amount greater than would be the case under the presumptions.

Example 4. A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441–4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441–6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871–7(b)(2)(i) or 1.881–2(b)(2) are exempt from withholding under section 1441(a). See § 1.871–14 for regulations regarding portfolio interest and section 1441(c)(9) for exemption from withholding. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871–14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in § 1.871–14(e)(2), see § 1.871–14(e) (3) and (4) and, in particular, § 1.871–14(e)(4)(i)(A) and (ii)(A) regarding the time when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and for purposes of establishing foreign status for purposes of section 6049. See § 1.6049–5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871–14(b)(1) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7).

(ii) Bank deposit interest and similar types of deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) that are from sources within the United States are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also § 1.6049–5(b)(11) for applicable documentation exemptions for certain bank deposit interest paid on obligations in bearer form.

(iii) Bank deposit interest (including original issue discount) described in section 861(a)(1)(B) is exempt from withholding under sections 1441(a) as income that is not from U.S. sources. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. Reporting requirements for payments of such interest are governed by section 6049 and the regulations under that section. See § 1.6049–5(b)(12) and alternative documentation rules under § 1.6049–5(c)(4).

(iv) Interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3) is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(12) for applicable documentation for establishing foreign status and § 1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also § 1.6049–5(b)(10) for applicable documentation exemptions for certain obligations in bearer form.

(v) Income from sources without the United States is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 or other applicable provisions of chapter 61 of the Code and backup withholding under section 3406. See, for example, § 1.6049–5(b) (6) and (12) and alternative documentation rules under § 1.6049–5(c)(4). See also paragraph (b)(5) of this section for cross references to other applicable provisions of the regulations under chapter 61 of the Code.

(vi) Distributions from certain domestic corporations described in section 871(i)(2)(B) or 881(d) are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See § 1.6042–3(b)(1)(iii) through (vi).

(vii) Dividends paid by certain foreign corporations that are treated as income from sources within the United States by reason of section 861(a)(2)(B) are exempt from withholding under section 884(e)(3) to the extent that the distributions are paid out of earnings and profits in any taxable year that the corporation was subject to branch profits tax for that year. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See § 1.6042–3(b)(1)(iii) through (vii).

(viii) Certain income that is effectively connected with the conduct of a U.S. trade or business is exempt from withholding under section 1441(a). See section 1441(c)(1). Documentation establishing foreign status and status of the income as effectively connected must be furnished for purposes of this withholding exemption to the extent required under the provisions of § 1.1441–4(a). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, § 1.6041–4(a)(1).

(ix) Certain income with respect to compensation for personal services of an individual that are performed in the United States is exempt from withholding under section 1441(a). See section 1441(c)(4) and § 1.1441–4(b). However, such income may be subject to withholding as wages under section 3402. Documentation establishing foreign status must be furnished for purposes of any withholding exemption or reduction to the extent required under § 1.1441–4(b) or 31.3401(a)(6)–1(e) and (f) of this chapter. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See § 1.6041–4(a)(1).

(x) Amounts described in section 871(f) that are received as annuities from certain qualified plans are exempt from withholding under section 1441(a). See section 1441(c)(7). Documentation establishing foreign status must be furnished for purposes of the withholding exemption as required under § 1.1441–4(d). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See § 1.6041–4(a)(1).

(xi) Payments to a foreign government (including a foreign central bank of issue) that are excludable from gross income under section 892(a) are exempt from withholding under section 1442. See § 1.1441–8(b). Documentation establishing status as a foreign government is required for purposes of this withholding exemption. Payments to a foreign government are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii)(F)).

(xii) Payments of certain interest income to a foreign central bank of issue or the Bank for International Settlements that are exempt from tax under section 895 are exempt from withholding under section 1442. Documentation establishing eligibility for such exemption is required to the extent provided in § 1.1441–8(c)(1). Payments to a foreign central bank of issue or to the Bank for International Settlements are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii) (H) and (M)).

(xiii) Amounts derived by a foreign central bank of issue from bankers' acceptances described in section 871(i)(2)(C) or 881(d) are exempt from tax and, therefore, from withholding. See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue as defined in § 1.861–2(b)(4). See § 1.1441–8(c)(2) for withholding procedures. See also §§ 1.6049–4(c)(1)(ii)(H) and 1.6041–3(q)(8) for a similar exemption from information reporting.

(xiv) Payments to an international organization from investments in the United States of stocks, bonds, or other domestic securities or from interest on deposits in banks in the United States of funds belonging to such international organization are exempt from tax under section 892(b) and, thus, from withholding. Documentation establishing status as an international organization is not required if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization within the meaning of section 7701(a)(18). See § 1.1441–8(d). Payments to an international organization are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii)(G)).

(xv) Amounts may be exempt from, or subject to a reduced rate of, withholding under an income tax treaty. Documentation establishing eligibility for benefits under an income tax treaty is required for this purpose as provided under §§ 1.1441–6. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, § 1.6041–4(a)(1).

(xvi) Amounts of scholarships and grants paid to certain exchange or training program participants that do not represent compensation for services but are not excluded from tax under section 117 are subject to a reduced rate of withholding of 14-percent under section 1441(b). Documentation establishing foreign status is required for purposes of this reduction in rate as provided under § 1.1441–4(c). This income is not subject to information reporting under chapter 61 of the Code nor to backup withholding under section 3406. The compensatory portion of a scholarship or grant is reportable as wage income. See § 1.6041–3(o).

(xvii) Amounts paid to a foreign organization described in section 501(c) are exempt from withholding under section 1441 to the extent that the amounts are not income includible under section 512 in computing the organization's unrelated business taxable income and are not subject to the tax imposed by section 4948(a). Documentation establishing status as a tax-exempt organization is required for purposes of this exemption to the extent provided in § 1.1441–9. Amounts includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding to the extent provided in section 1443(a) and § 1.1443–1(a). Gross investment income (as defined in section 4940(c)(2)) of a private foundation is subject to withholding at a 4-percent rate to the extent provided in section 1443(b) and § 1.1443–1(b). Payments to a tax-exempt organization are exempt from information reporting under chapter 61 of the Code and the regulations thereunder (see § 1.6049–4(c)(1)(ii)(B)(1)).

(xviii) Per diem amounts for subsistence paid by the U.S. government to a nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954 are exempt from withholding under section 1441(a). See section 1441(c)(6). Documentation of foreign status is required under § 1.1441–4(e) for purposes of establishing eligibility for this exemption. See § 1.6041–3(p).

(xix) Interest with respect to tax-free covenant bonds issued prior to 1934 is subject to special withholding procedures set forth in § 1.1461–1 in effect prior to January 1, 1999 (see § 1.1461–1 as contained in 26 CFR part 1, revised April 1, 1997).

(xx) Income from certain gambling winnings of a nonresident alien individual is exempt from tax under section 871(j) and from withholding under section 1441(a). See section 1441(c)(11). Documentation establishing foreign status is not required for purposes of this exemption but may have to be furnished for purposes of the information reporting provisions of section 6041 and backup withholding under section 3406. See §§ 1.6041–1 and 1.6041–4(a)(1).

(xxi) Any payments not otherwise mentioned in this paragraph (b)(4) shall be subject to withholding at the rate of 30-percent if it is an amount subject to withholding (as defined in § 1.1441–2(a)) unless and to the extent the IRS may otherwise prescribe in published guidance (see § 601.601(d)(2) of this chapter) or unless otherwise provided in regulations under chapter 3 of the Code.

(5) *Establishing foreign status under applicable provisions of chapter 61 of the Code.* This paragraph (b)(5) identifies relevant provisions of the regulations under chapter 61 of the Code that exempt payments from information reporting, and therefore, from backup withholding under section 3406, based on the payee's status as a foreign person. Many of these exemptions require that the payee's foreign status be established in order for the exemption to apply. The regulations under applicable provisions of chapter 61 of the Code generally provide that the documentation described in this section may be relied upon for purposes of determining foreign status.

(i) Payments to a foreign person that are governed by section 6041 (dealing with certain trade or business income) are exempt from information reporting under § 1.6041–4(a).

(ii) Payments to a foreign person that are governed by section 6041A (dealing with remuneration for services and certain sales) are exempt from information reporting under § 1.6041A–1(d)(3).

(iii) Payments to a foreign person that are governed by section 6042 (dealing with dividends) are exempt from information reporting under § 1.6042–3(b)(1) (iii) through (vi).

(iv) Payments to a foreign person that are governed by section 6044 (dealing with patronage dividends) are exempt from information reporting under § 1.6044–3(c)(1).

(v) Payments to a foreign person that are governed by section 6045 (dealing with broker proceeds) are exempt from information reporting under § 1.6045–1(g).

(vi) Payments to a foreign person that are governed by section 6049 (dealing with interest) to a foreign person are exempt from information reporting under § 1.6049–5(b) (6) through (15).

(vii) Payments to a foreign person that are governed by section 6050N (dealing with royalties) are exempt from information reporting under § 1.6050N–1(c).

(viii) Payments to a foreign person that are governed by section 6050P (dealing with income from cancellation of debt) are exempt from information reporting under section 6050P or the regulations under that section except to the extent provided in Notice 96–61 (I.R.B. 1996–49); see also § 601.601(b)(2) of this chapter.

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be deemed to have satisfied any obligation it has under chapter 3 of the Code and the regulations thereunder to withhold and report the amount when it, in turn, pays such amount to another person (whether or not the beneficial owner) to the extent that the payment is associated with a valid withholding certificate described in paragraph (e)(3) (ii), (iii), or (v) of this section that it has furnished to another withholding agent and the intermediary does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations thereunder. See § 1.1441–5(c)(3)(v) for a similar rule for payments by certain foreign partnerships.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *General rule.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441–4(a) (2)(i) or (3) to treat the payment as effectively connected income; or

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS; or

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply.

(ii) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)), establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation furnished after that date. However, in the case of a withholding certificate or other appropriate documentation received after the date of payment (or after the grace period specified in paragraph (b)(3)(iv) of this section), the district director or the Assistant Commissioner (International) may require additional proof if it is determined that the delays in obtaining the withholding certificate affect its reliability.

(iii) *Liability for interest and penalties.* A withholding agent that has failed to withhold other than based on appropriate reliance on the presumptions described in paragraph (b)(3) of this section or in § 1.1441–4(a)(2)(i) or (3) is not relieved from liability for interest under section 6601. Such liability exists even if there is no underlying tax liability due. The interest on the amount that should have been withheld shall be imposed as prescribed under section 6601 beginning on the last date for paying the tax due under section 1461 (which, under section 6601, is the due date for filing the withholding agent's return of tax). The interest shall stop accruing on the earlier of the date that the required withholding certificate or other documentation is provided to the withholding agent and to the extent of the amount of tax that is determined not to be due based on documentation provided, or the date, and to the extent, that the unpaid tax liability under section 871, 881 or under section 1461 is satisfied. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge. However, the withholding agent is not relieved of any applicable penalties. See section 1464.

(iv) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

(v) *Examples.* The provisions of paragraph (b)(7) of this section are illustrated by the following examples:

Example 1. On June 15, 1999, a withholding agent pays U.S. source interest on an obligation in registered form (issued after July 18, 1984) to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section. Thus, the interest qualifies as portfolio interest retroactively to June 15, 1999 (the date of payment). See § 1.871–14(c)(3). The foreign corporation does not file a U.S. federal income tax return and does not pay the tax owed. The withholding agent is not liable under section 1461 for the 30-percent tax on the interest income because the receipt of the Form W–8 exempts the interest from tax for purposes of sections 881(a) and 1461. The withholding agent, however, is liable for interest on the amount of withholding that should have been deducted from the payment on June 15, 1999 and deposited. Under paragraph (b)(7)(iii) of this section, the period during which interest may be assessed against the withholding agent runs from March 15, 2000 (the due date for the Form 1042 relating to the payment) until September 30, 2001 (i.e., the date that appropriate documentation is furnished to the withholding agent).

Example 2. On June 15, 1999, a withholding agent pays U.S. source dividends to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section claiming a reduced 15-percent rate of withholding under a U.S. income tax treaty. The dividend qualifies for the reduced treaty rate retroactively to June 15, 1999 (the date of payment). The foreign corporation does not file a U.S. federal income tax return and does not pay the tax owed. Under section 1461, the withholding agent is liable only for a 15-percent tax on the dividend income because the receipt of the Form W–8 allows the tax rate to be reduced for purposes of sections 881(a) and 1461 from 30 percent to 15 percent. The withholding agent, however, is liable for interest on the full 30-percent amount that should have been deducted and withheld from the payment on June 15, 1999, and deposited, over a period running from March 15, 2000 (the due date for the Form 1042 relating to the payment) until September 30, 2001 (the date that the appropriate documentation is furnished to the withholding agent supporting a reduction in rate under a tax treaty). Additional interest may be assessed relating to the outstanding 15-percent tax liability (i.e., the portion of the 30-percent total tax liability that is not reduced under the treaty). Such additional interest runs from March 15, 2000, until such date as that 15-percent tax liability is satisfied by the withholding agent or the taxpayer (subject to abatement in order to avoid a double interest charge).

(8) *Adjustments, refunds, or credits of overwithheld amounts.* If the amount withheld under section 1441, 1442, or 1443 is greater than the tax due by the withholding agent or the taxpayer, adjustments may be made in accordance with the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with the procedures described in § 1.1464–1, relating to refunds or credits claimed by the beneficial owner, or § 1.6414–1, relating to refunds or credits claimed by the withholding agent. If an amount was withheld under section 3406 or is subsequently determined to have been paid to a foreign person, see paragraph (b)(3)(vii) of this section and § 31.6413(a)–3(a)(1) of this chapter.

(9) *Payments to joint owners.* A payment to joint owners that requires documentation in order to reduce the rate of withholding under chapter 3 of the Code and the regulations thereunder does not qualify for such reduced rate unless the withholding agent can reliably associate the payment with documentation from each owner. Notwithstanding the preceding sentence, a payment to joint owners qualifies as a payment exempt from withholding under this section if any one of the owners provides a certificate of U.S. status on a Form W–9 in accordance with paragraph (d) (2) or (3) of this section or the withholding agent can associate the payment with a withholding certificate upon which it can rely to treat the payment as made

to a U.S. beneficial owner under paragraph (d)(4) of this section. See § 31.3406(h)–2(a)(3)(i)(B) of this chapter.

(c) *Definitions*—(1) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from the payment.

(2) *Foreign and U.S. person.* The term *foreign person* means a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person described in the next sentence. For purposes of the regulations under chapter 3 of the Code, the term *foreign person* also means, with respect to a payment by a withholding agent, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate described in paragraph (e)(3)(ii) of this section. A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

(3) *Individual*—(i) *Alien individual.* The term *alien individual* means an individual who is not a citizen or a national of the United States. See § 1.1–1(c).

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means a person described in section 7701(b)(1)(B), an alien individual who is a resident of a foreign country under the residence article of an income tax treaty and § 301.7701(b)–7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013 (g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(4) *Certain foreign corporations.* For purposes of this section, a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is not treated as a foreign corporation if the requirements of sections 881(b)(1) (A), (B), and (C) are met for such corporation. Further, a payment made to a foreign government or an international organization shall be treated as a payment made to a foreign corporation for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(5) *Financial institution and foreign financial institution.* For purposes of the regulations under chapter 3 of the Code, the term *financial institution* means a person described in § 1.165–12(c)(1)(iv) (not including a person providing pension or other similar benefits or a regulated investment company or other mutual fund, unless otherwise indicated) and the term *foreign financial institution* means a financial institution that is a foreign person, as defined in paragraph (c)(2) of this section.

(6) *Beneficial owner*—(i) *General rule.* In the case of a payment of income, the term *beneficial owner* means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nominee, agent, custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount was income.

(ii) *Special rules for flow-through entities and arrangements*—(A) *General rule.* The beneficial owners of income paid to a partnership or other flow-through arrangements described in paragraph (c)(6)(ii)(C) of this section are those persons who, under U.S. tax principles, are the owners of the income for tax purposes in their separate or individual capacities and who beneficially own that income. For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not the owner of the income under U.S. tax principles. Rather, the partners of the first tier partnership are the beneficial owners (to the extent they are not themselves partnerships and are not conduits within the meaning of section 7701(l) and the regulations under that section). See § 1.1441–5(b) for applicable withholding procedures for payments to a domestic partnership. See also § 1.1441–5(c)(3)(ii) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership. See § 1.1441–6(b)(4) for rules governing the eligibility of a payment to an entity or other arrangement for a reduced rate of withholding under an income tax treaty.

(B) *Trusts and estates.* The provisions of paragraphs (c)(6)(i) and (ii)(A) of this section shall not apply to a trust or an estate, whether domestic or foreign. The beneficial owner of income paid to a trust or to an estate shall be determined under the provisions of § 1.1441–3(f) and (g) in effect prior to January 1, 1999 (see § 1.1441–3(f) and (g) as contained in 26 CFR part 1, revised April 1, 1997).

(C) *Definition of a flow-through entity or arrangement.* For purposes of this paragraph (c)(6)(ii), a flow-through entity means a partnership, estate, or trust. A flow-though arrangement is a contractual arrangement that does not involve an entity and is treated as a partnership for U.S. tax purposes or is a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner. The term *partnership* means any entity or arrangement (as defined in § 301.7701–2(c)(1) of this chapter) whose tax regime is governed by subchapter K of chapter 1 of the Code.

(7) *Withholding agent.* For a definition of the term *withholding agent* and applicable rules, see § 1.1441–7.

(8) *Person.* For purposes of the regulations under chapter 3 of the Code, the term *person* shall mean a person described in section 7701(a)(1) and the regulations under that section and a U.S. branch to the extent treated as a U.S. person under paragraph (b)(2)(iv) of this section. For purposes of the regulations under chapter 3 of the Code, the term *person* does not include a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner. See paragraph (b)(2)(iii) of this section for procedures applicable to payments to such entities.

(9) *Source of income.* The source of income is determined under the provisions of part I (section 861 and following) , subchapter N, chapter 1 of the Code and the regulations under those provisions.

(10) *Chapter 3 of the Code.* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

(11) *Reduced rate.* For purposes of regulations under chapter 3 of the Code, and other withholding provisions of the Code, the term *reduced rate*, when used in regulations under chapter 3 of the Code, shall include an exemption from tax.

(d) *Beneficial owner's or payee's claim of U.S. status*—(1) *In general.* Under paragraph (b)(1) of this section, a withholding agent is not required to withhold under chapter 3 of the Code on payments to a U.S. payee, to a person presumed to be a U.S. payee in accordance with the provisions of paragraph (b)(3) of this section, or to a person that the withholding agent may treat as a U.S. beneficial owner of the payment. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) in order to determine whether to treat a payee or beneficial owner as a U.S. person.

(2) *Payments for which a Form W–9 is otherwise required.* A withholding agent may treat as a U.S. person a payee who is required to furnish a Form W–9 and who furnishes it in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter (including the requirement that the payee furnish its taxpayer identifying number (TIN)) if the withholding agent meets all the requirements described in § 31.3406(h)–3(e) of this chapter regarding reliance by a payor on a Form W–9.

(3) *Payments for which a Form W–9 is not otherwise required.* In the case of a payee who is not required to furnish a Form W–9 under section 3406, the withholding agent may rely on a certificate of U.S. status described in this paragraph (d)(3). A certificate of U.S. status is a certificate described in § 31.3406(h)–3(c)(2) of this chapter (relating to forms for exempt recipients) or a Form W–9 (or a substitute form or such other form as the IRS may prescribe) that is signed under penalties of perjury by the payee and contains the name, permanent residence address, and TIN of the payee. The procedures described in § 31.3406(h)–2(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W–9 in order to satisfy this paragraph (d)(3) must retain the form in accordance with the provisions of § 31.3406(h)–3(g) of this chapter, if applicable, or of paragraph (e)(4)(iii) of this section (relating to the retention of withholding certificates) if § 31.3406(h)–3(g) of this chapter does not apply. The rules of this paragraph (d)(3) are only intended to provide a method by which a withholding agent may determine that a payee is not a foreign person and do not otherwise impose a requirement that documentation be furnished by a person who is otherwise treated as an exempt recipient for purposes of the applicable information reporting provisions under chapter 61 of the Code (e.g., § 1.6049–4(c)(1)(ii) for payments of interest).

(4) *Other payments.* This paragraph (d)(4) describes the documentation upon which a withholding agent may rely in order to treat a payment as made to a U.S. person that is a beneficial owner for purposes of paragraph (b)(1) of this section. The withholding agent may treat the payment as made to a U.S. beneficial owner only if it can reliably associate the payment with documentation prior to the payment, if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and if it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the payor may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under that section and the regulations under that section for payors who have been notified with regard to such a Form W–9. Payors who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter). A withholding agent may treat a payment as made to a U.S. beneficial owner—

(i) To the extent the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d) (2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section;

(ii) To the extent the withholding agent can reliably associate a payment to a qualified intermediary with the category of assets described in paragraph (e)(5)(v)(B)(*2*) of this section that the qualified intermediary has represented, in accordance with paragraphs (e) (3)(ii)(E) and (5)(v) of this section as being allocable to U.S. persons based on the Forms W–9 that they have furnished; or

(iii) To the extent the withholding agent can reliably associate the payment with a Form W–8 from a U.S. branch described in paragraph (e)(3)(v) of this section that evidences an agreement between the U.S. branch and the withholding agent to treat the U.S. branch as U.S. person.

(e) *Beneficial owner's claim of foreign status*—(1) *Withholding agent's reliance*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may treat a payment as made to a foreign beneficial owner in accordance with the provisions of paragraph (e)(1)(ii) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules. See paragraph (b)(4) of this section for a description of payments for which a claim of foreign status is relevant for purposes of claiming a reduced rate of withholding for purposes of section 1441, 1442, or 1443. See paragraph (b)(5) of this section for a list of payments for which a claim of foreign status is relevant for other purposes, such as claiming an exemption from information reporting under chapter 61 of the Code.

(ii) *Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner*—(A) *General rule.* The withholding agent may treat a payment as made to a foreign person that is a beneficial owner if it complies with the requirements described in paragraph (e)(1)(ii)(B) of this section and, then, only to the extent—

(*1*) That the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in paragraph (e)(2) of this section furnished by the person whose name is on the certificate or attached to a valid foreign intermediary, flow-through entity, or U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section;

(*2*) That the payment is made outside the United States (within the meaning of § 1.6049–5(e)) with respect to an offshore account (within the meaning of § 1.6049–5(c)(1)) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441–6(c)(3) or (4), or 1.6049–5(c)(1) relating to the beneficial owner;

(*3*) That the withholding agent can reliably associate the payment with the category of assets described in paragraph (e)(5)(v)(B)(*1*) of this section that the qualified intermediary has represented, in accordance with paragraphs (e) (3)(ii)(E) and (5)(v) of this section as being allocable to foreign persons for whom the qualified intermediary is holding valid documentation;

(4) That the withholding agent can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(3)(iii) from a foreign partnership claiming that the payment is effectively connected income;

(5) That the withholding agent identifies the payee as a U.S. branch described in paragraph (b)(2)(iv) of this section, the payment to which it treats as effectively connected income in accordance with § 1.1441–4(a) (2)(ii) or (3);

(6) That the withholding agent identifies the payee as an international organization (or any wholly-owned agency or instrumentality thereof) as defined in section 7701(a)(18) that has been designated as such by executive order (pursuant to 22 U.S.C. 288 through 288(f)); or

(7) That the withholding agent pays interest from bankers' acceptances and identifies the payee as a foreign central bank of issue (as defined in § 1.861–2(b)(4)).

(B) *Additional requirements.* In order for a payment described in paragraph (e)(1)(ii)(A) of this section to be treated as made to a foreign beneficial owner, the withholding agent must hold the documentation (if required) prior to the payment, comply with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section (if required), and must not have been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. If the withholding agent has been so notified, it may rely on the withholding certificate or other documentation only to the extent provided under procedures prescribed by the IRS (see § 601.601(d)(2) of this chapter). See paragraph (b)(2)(vii) of this section for rules regarding reliable association of a payment with a withholding certificate or other appropriate documentation.

(2) *Beneficial owner withholding certificate*—(i) *In general.* A beneficial owner withholding certificate is a statement by which the beneficial owner of the payment represents that it is a foreign person and, if applicable, claims a reduced rate of withholding under section 1441. A separate withholding certificate must be submitted to each withholding agent. If the beneficial owner receives more than one type of payment from a single withholding agent, the beneficial owner may have to submit more than one withholding certificate to the single withholding agent for the different types of payments as may be required by the applicable forms and instructions, or as the withholding agent may require (such as to facilitate the withholding agent's compliance with its obligations to determine withholding under this section or the reporting of the amounts under § 1.1461–1 (b) and (c)). For example, if a beneficial owner claims that some but not all of the income it receives is effectively connected with the conduct of a trade or business in the United States, it may be required to submit two separate withholding certificates, one for income that is not effectively connected and one for income that is so connected. See § 1.1441–6(b)(4)(ii) for special rules for determining who must furnish a beneficial owner withholding certificate when a benefit is claimed under an income tax treaty. See paragraph (e)(4)(ix) of this section for reliance rules in the case of certificates held by another person or at a different branch location of the same person.

(ii) *Requirements for validity of certificate.* A beneficial owner withholding certificate is valid only if it is provided on a Form W–8, or a Form 8233 in the case of personal services income described in § 1.1441–4(b) or certain scholarship or grant amounts described in § 1.1441–4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section, or such other form as the IRS may prescribe). A Form W–8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address, and TIN (if required), the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii). A person's permanent residence address is an address in the country where the person claims to be a resident for purposes of that country's income tax. In the case of a certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, the residence must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b)(4)(i). The address of a financial institution with which the beneficial owner maintains an account, a post office box, or an address used solely for mailing purposes is not a residence address for this purpose. If the beneficial owner is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the beneficial owner normally resides. If the beneficial owner is not an individual and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate. See paragraph (f)(2)(i) of this section for continued validity of certificates during a transition period.

(3) *Intermediary, flow-through, or U.S. branch withholding certificate*—(i) *In general.* An intermediary withholding certificate is a Form W–8 by which a payee represents that it is a foreign person and that it is an intermediary with respect to a payment and not the beneficial owner. A flow-through withholding certificate is a Form W–8 furnished by a flow-through entity under § 1.1441–5(c)(2) or (3) for a partnership or under § 1.1441–5(e) for a foreign estate or trust. See paragraph (c)(6)(ii)(C) of this section for a definition of a flow-through entity. A U.S. branch certificate is a Form W–8 by which the payee represents that it is a U.S. branch described in paragraph (b)(2)(iv) (A) or (E) of this section and that the payment is not effectively connected with the conduct of its trade or business in the United States. An intermediary withholding certificate is used by an intermediary either to make representations regarding the status of beneficial owners of the amount paid or to transmit appropriate documentation to the withholding agent. A flow-through certificate is used by a flow-through entity to establish its status as a foreign person or the status of its partners or beneficiaries, if required, and, if applicable, to claim a reduced rate of withholding. An intermediary means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary. See paragraph (e)(4)(viii) of this section for applicable reliance rules.

(ii) *Intermediary withholding certificate from a qualified intermediary.* An intermediary withholding certificate from a person representing to be a qualified intermediary (described in paragraph (e)(5)(ii) of this section) is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by an officer of the qualified intermediary with authority to sign for the intermediary, its validity has not expired, and it contains the following information, statement, and certifications:

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), and the employer identification number of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section.

(C) A certification that the intermediary has obtained the appropriate certificates (such as Forms W–8 or W–9) or other appropriate documentation in the manner required in its withholding agreement with the IRS for those account holders that are covered by the certificate and whose assets are identified as being allocable to the categories described in paragraph (e)(5)(v)(B) (*1*) or (*2*) (in accordance with paragraph (e)(5)(v) of this section or otherwise).

(D) A certification whether the qualified intermediary is assuming primary withholding responsibility for the amounts to which the certificate relates.

(E) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary and reported to the IRS. See paragraph (e)(5)(v) of this section for requirement of a statement and rules applicable thereto.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii).

(iii) *Intermediary withholding certificate from an intermediary that is not a qualified intermediary.* An intermediary withholding certificate from a person that does not represent to be a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the intermediary, it contains the information, statement, and certifications described in this paragraph (e)(3)(iii), its validity has not expired, and the withholding certificates and other appropriate documentation for all the persons to whom the certificate relates are attached to the certificate. Appropriate documentation consists of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary withholding certificates described in paragraph (e)(3)(i) of this section, flow-through certificates described in § 1.1441–5(c)(2)(iv), (3)(iii), and (e), documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) related to the beneficial owner (or documentary evidence described in § 1.6049–5(c)(4) for purposes of information reporting under chapter 61 of the Code), and other documentation or certificate applicable under other provisions of the Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If the intermediary is acting on behalf of another intermediary that is not a qualified intermediary or on behalf of a partnership that is not a withholding foreign partnership described in § 1.1441–5(c)(2)(i), then the intermediary must attach to its own withholding certificate the intermediary withholding certificate or the partnership withholding certificate to which all the withholding certificates and other appropriate documentation required to be attached under this paragraph (e)(3)(iii) or in § 1.1441–5(c)(3)(iii) or (e) are also attached. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be passed up to the U.S. withholding agent, in which case the intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871–14(c)(2)(v) furnished in order for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c) or in order for amounts described in § 1.1441–6(b)(2)(ii) to qualify as amounts paid to a foreign person. The information and certification required on a Form W–8 described in this paragraph (e)(3)(iii) (or on an acceptable substitute form or such other form as the IRS may prescribe) are as follows:

(A) The name and permanent resident address (as described in paragraph (e)(2)(ii) of this section) of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is using the certificate as a form to transmit withholding certificates and other appropriate documentation for the payment to which the form relates.

(C) If furnishing an intermediary certificate to transmit withholding certificates or other appropriate documentation for more than one person, a statement attached to the Form W–8 that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary. See paragraph (e)(3)(iv) of this section for rules applicable to such a statement.

(D) A certification either that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates or that the amounts allocable to persons covered by the intermediary withholding certificate and for whom withholding certificates or other appropriate documentation are lacking or unreliable are separately identified.

(E) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(iii).

(iv) *Information to the withholding agent regarding assets owned by beneficial owners, etc.*—(A) *General rule.* An intermediary that has not represented that it is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section must provide information sufficient for the withholding agent to determine the proportion of each payment of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that is allocable to each person to whom the intermediary withholding certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. The withholding agent may rely on such information in order to determine the amount of withholding on the payment

and how to report this payment under chapter 3 or 61 of the Code and the regulations thereunder. The sum of all the proportions indicated by the intermediary, expressed as a percentage, must equal, but not exceed, one hundred percent of the payment. The information for persons for whom a withholding certificate or other appropriate documentation is lacking or unreliable may be provided in the aggregate and need not be provided separately for each such person. The foreign intermediary is not required to disclose the names of the persons for whom it collects the payment, unless it has actual knowledge that any such person is a U.S. person that is not an exempt recipient. In such a case, the intermediary must state separately the information for such U.S. person even though such person has not provided a Form W–9 to the intermediary in the manner described in paragraph (d)(2) of this section. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for different types of income or withholding rates, the intermediary must provide sufficient information so that the withholding agent may allocate assets appropriately among the relevant accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraphs (e)(3)(iii)(C) and (D) of this section providing the information described in this paragraph (e)(3)(iv).

(B) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with paragraph (e)(3)(iv)(A) of this section as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). Any update of the information as required under this paragraph (e)(3)(iv)(B) shall be treated as an integral part of the intermediary withholding certificate with which it is associated. See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information described in this paragraph (e)(3)(iv) may affect the validity of withholding certificates. See paragraph (b)(3)(v)(C) of this section for consequences if the information is not updated as required.

(C) *Examples.* The rules of paragraph (e)(3)(iii) of this section and of this paragraph (e)(3)(iv) are illustrated by the following examples:

Example 1. A U.S. withholding agent, W, pays U.S. source dividends to foreign intermediary X who, in turn, pays to foreign intermediary Y, who collects on behalf of foreign beneficial owners, A and B. A and B have each furnished a beneficial owner Form W–8 to Y. Y must furnish to X an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of A's and B's Forms W–8. X, in turn, must furnish to W its own intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of the intermediary Form W–8 received from Y and A's and B's Forms W–8.

Example 2. A foreign bank, X, acts as an intermediary for five different persons, A, B, C, D, and E, who each own securities from which they receive U.S. source dividends. The distributions are paid by a U.S. financial institution, W, as custodian of the securities for X. A's, B's, C's, D's, and E's respective claimed ownership interest in the securities is 20-percent each. X has furnished to W an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it has attached a statement described in this paragraph (e)(3)(iv) stating each of A', B's, and C's interest in the securities with respect to which distributions are made periodically. The respective ownership interests of D and E are not stated separately because X has not received a valid withholding certificate or other appropriate documentation from D or E. Therefore, on the statement, D's and E's interest in the securities is stated in the aggregate (i.e., 40-percent attributable to undocumented owners). X has attached a Form W–8 for A and documentary evidence for B (who each claim a reduced rate of withholding under an income tax treaty), and a Form W–9 for C. In determining the amount to be withheld from the amount paid to X, W may rely on X's intermediary Form W–8, the allocation statement attached to the Form W–8, and the attached Form W–8, documentary evidence, and Form W–9 for each of A, B, and C. Based on paragraphs (b)(1), (b)(2)(v), (b)(2)(vii), (d)(4)(i), and (e)(1)(ii)(A)(*1*) of this section, W may withhold as follows on the payment to X: no withholding on 20-percent of the payment on the basis of C's Form W–9, withholding at the reduced treaty rate on 40-percent of the payment on the basis of A's Form W–8 and B's documentary evidence, and 30-percent on 40-percent of the payment to the undocumented owners group formed by D and E in accordance with the presumptions described in paragraph (b)(3)(v)(B) of this section (i.e., due to the lack of documentation for D and E). Under paragraph (e)(3)(iii) of this section, X is not required to identify D or E to W. For purposes of making a return under § 1.1461–1(c), W would prepare a single Form 1042–S for the group of undocumented owners, D and E (if the names are undisclosed, the Form 1042–S should be made in the name of X and state that the return is made for unknown owners (see § 1.1461–1(c)(4)(iv)). Because X has not furnished required documentation for D and E, X does not qualify under paragraph (b)(6) of this section for relief from an obligation to make a report on a Form 1042–S (to the extent D and E are presumed to be foreign persons under paragraph (b)(3)(iii) of this section) when X makes the payment to D and E (however, because a full 30-percent amount was withheld under this section, X does not have to withhold an additional amount under the facts of this example). In contrast, under paragraph (b)(6) of this section, X is not required to make a report on Form 1042–S for its payments to A or B. Under § 1.6042–3(b)(1)(vi), X is not required to report C's share of the payment on Form 1099 (unless X has actual knowledge that W has not reported the portion of payment allocable to C in accordance with § 1.6042–2).

Example 3. The facts are the same as in *Example 2*, except that D's name is D Insurance Company whom X knows is a U.S. person. Because of D's name, X may treat D as an exempt recipient on an eyeball test basis under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii)(A)(*1*). However, even if those facts are disclosed to W, W must withhold 30-percent of the portion of the payment allocable to D because W is making a payment to a foreign person (X). Under paragraph (b)(1) of this section, W may reduce the rate of withholding only if it can associate the payment with documentation upon which it can rely to treat the beneficial owner as a U.S. person or as a foreign person entitled to a reduced rate of withholding. Because X has not furnished documentation for D, W does not have the proper documentation with which it can associate the payment allocable to D. Thus, insofar as W is concerned, the portion of the payment allocable to D is treated as a payment to an undocumented owner that W must presume to be a foreign person under paragraph (b)(3)(v)(B) of this section. Accordingly, under this paragraph (e)(3)(iv), W need not identify the information for D separately and can aggregate the portion of the payment allocable to D and E. W's reporting requirements for the portion of the payment allocable to D and E are the same as under *Example 2*. When X makes the payment to D, X does not benefit from the relief from reporting under § 1.6042–3(b)(1)(vi). However, X is not required to report the payment to D on Form 1099 under section 6042 because, under § 1.6042–3(b)(1)(vii), X can treat D as an exempt recipient.

(v) *Withholding certificate from certain U.S. branches.* A U.S. branch certificate is a representation by the U.S. branch whose name is on the certificate that the payment it receives is not effectively connected with the conduct of a trade or business in the United States and that it is using the certificate either to transmit the appropriate documentation for the persons for whom the branch receives the payment (i.e., as an intermediary) or as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information and certifications described in paragraphs (e)(3)(v) (A) through (C) of this section and in paragraphs (e)(3)(iii) (C) and (D) of this section. If the certificate is furnished pursuant to an agreement to treat the U.S. branch as a U.S. person, the information and certification required on the Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe) are limited to the following—

(A) The name of the person of which the branch is a part and the address of the branch in the United States;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) *Reportable amounts.* For purposes of this section, the term reportable amount means an amount subject to withholding within the meaning of § 1.1441–2(a), bank deposit interest (including original issue discount) and similar types of deposit interest described in section 871(i)(2)(A) or 881(d) that are from sources within the United States, and any amount of interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3). For purposes of this paragraph (e)(3)(vi), however, reportable amounts do not include payments with respect to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in § 1.6049–5(b) (7), (10) or (11) (relating to certain obligations issued in bearer form). While short-term OID and bank deposit interest are not subject to withholding under chapter 3 of the Code, such amounts may be subject to information reporting under section 6049 if paid to a U.S. person who is not an exempt recipient described in § 1.6049–4(c)(1)(ii) and to backup withholding under section 3406 in the absence of documentation. See § 1.6049–5(d)(3)(iii) for applicable procedures when such amounts are paid to a foreign intermediary.

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W–8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regrading Form W–9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate.* A withholding certificate (or other acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns).

(ii) *Period of validity*—(A) *Three-year period.* A withholding certificate described in paragraph (e)(2)(i) of this section, a certificate described in § 1.871–14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c) or to qualify amounts paid on certain securities described in § 1.1441–6(b)(2)(ii) as paid to a foreign person), or documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) shall remain valid until the earlier of the last day of the third calendar year following the year in which the certificate is signed or the documentary evidence is created or the day that a change of circumstances occurs that makes any information on the certificate or documentary evidence incorrect. For example, a certificate signed on September 30, 1999, remains valid through December 31, 2002, unless circumstances change that make the information on the form no longer correct.

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following certificates or parts of certificates shall remain valid until the status of the person whose name is on the certificate is changed in a way relevant to the certificate or circumstances change that make the information on the certificate no longer correct:

(*1*) A beneficial owner withholding certificate described in paragraph (e)(2)(ii) of this section that is furnished with a TIN if the income for which such certificate is furnished is required to be reported under § 1.1461–1(c)(2)(i) or the TIN furnished on the certificate is reported to the IRS under the procedures described in § 1.1461–1(d).

(*2*) A certificate described in paragraph (e)(3)(ii) of this section (dealing with a certificate from a person representing to be a qualified intermediary).

(*3*) A certificate described in paragraph (e)(3)(iii) of this section (dealing with a certificate from a person representing to be a non-qualified intermediary), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*4*) A certificate described in paragraph (e)(3)(v) of this section (dealing with a certificate from a person representing to be a U.S. branch), but not the withholding certificates or documentary evidence required to be attached to the certificate.

(*5*) A certificate described in § 1.1441–5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(*6*) A certificate described in § 1.1441–5(c)(3)(iii) (dealing with a certificate from a person representing to be a foreign partnership that is not a withholding foreign partnership), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*7*) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of § 1.892–2T(a)(2)) in accordance with § 1.1441–8(b), or by a person representing to be a foreign central bank of issue (within the meaning of § 1.861–2(b)(4)) or the Bank for International Settlements in accordance with § 1.1441–8(c)(1).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B)(*1*) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances.* If a change in circumstances makes any

information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentation. A certificate or documentation becomes invalid from the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. If an intermediary (including a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that passes through certificates to a withholding agent) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects the payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation whose validity has expired due to the change in circumstances. If a beneficial owner withholding certificate is used to claim foreign status only (and not, also, residence in a particular foreign country for purposes of an income tax treaty), a change of address is a change in circumstances for purposes of this paragraph (e)(4)(ii)(D) only if it changes to an address in the United States. Further, a change of address within the same foreign country is not a change in circumstances for purposes of this paragraph (e)(4)(ii)(D). A change in the circumstances affecting the withholding information provided to the withholding agent in accordance with the provisions in paragraph (e) (3)(iv) or (5)(v) of this section or in § 1.1441–5(c)(3)(iv) shall terminate the validity of the withholding certificate with respect to the information that is no longer reliable unless the information is updated. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of withholding certificate.* A withholding agent must retain each withholding certificate and other documentation for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1.

(iv) *Electronic transmission of information.* Under procedures issued by the IRS (see § 601.601(d)(2) of this chapter), a withholding agent may be permitted to receive in electronic form the information required to be included on a withholding certificate.

(v) *Electronic confirmation of taxpayer identifying number on withholding certificate.* The Commissioner may prescribe procedures in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W–8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claim of benefits under an income tax treaty. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W–8 or 8233) if the certificate is not provided the acceptable substitute form provided by the withholding agent. However, a withholding agent may refuse to accept a certificate provided by a payee or beneficial owner only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A TIN is required to be stated on a beneficial owner certificate if the beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441–6(b)(2)(ii)), an exemption from withholding because income is effectively connected with a U.S. trade or business, an exemption under section 871(f) for certain annuities received under qualified plans, or an exemption solely based on a foreign organization's claim of tax exempt status under section 501(c) or private foundation status. Thus, a TIN is not required from a foreign private foundation that is subject to the 4-percent tax under section 4948(a) on income if that income is otherwise exempt under the Code. In addition, a TIN is required to be stated on the withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section, on the withholding certificate from a person representing to be a withholding foreign partnership described in § 1.1441–5(c)(2)(i)), on the withholding certificate from a person representing to be a foreign trust or foreign estate, or from a fiduciary thereof, and on the withholding certificate from a person representing to be a U.S. branch described in paragraph (e)(3)(v) of this section. A TIN is an IRS individual taxpayer identification number, an employer identification number, or a social security number as described in section 6109 and § 301.6109–1 of this chapter, or any other identifier that the Commissioner may designate.

(viii) *Reliance rules.* A withholding agent may rely on the information and certifications stated on withholding certificates or other documentation without having to inquire into the truthfulness of this information or certification, unless it has actual knowledge or reason to know that the same is untrue. In the case of amounts described in § 1.1441–6(b)(2)(ii), a withholding agent described in § 1.1441–7(b)(2)(ii) has reason to know that the information or certifications on a certificate are untrue only to the extent provided in § 1.1441–7(b)(2)(ii). See § 1.1441–6(b)(4)(ii) for reliance on representations regarding eligibility for a reduced rate under an income tax treaty. Paragraphs (e)(4)(viii) (A) and (B) of this section provide examples of such reliance.

(A) *Classification.* A withholding agent may rely on the claim of entity classification indicated on the withholding certificate that it receives from or for the beneficial owner, unless it has actual knowledge or reason to know that the classification claimed is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the name of the corporation indicates that the person is a per se corporation described in § 301.7701–2(b)(8)(i) of this chapter unless the certificate contains a statement that the person is a grandfathered per se corporation described in § 301.7701–2(b)(8) of this chapter and that its grandfathered status has not been terminated. In the absence of reliable representation or information regarding the classification of the payee or beneficial owner, see § 1.1441–1(b)(3)(ii) for applicable presumptions.

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (e.g., sub-account numbers or names). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, i.e., a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(ix) *Certificates to be furnished for each account unless exception applies.* Unless otherwise provided in this paragraph (e)(4)(ix), a withholding agent that is a financial institution with which a customer may open an account shall obtain withholding certificates or other appropriate documentation on an account-by-account basis.

(A) *Coordinated account information system in effect.* A withholding agent may rely on the withholding certificate or other appropriate documentation furnished by a customer for a pre-existing account under any one or more of the circumstances described in this paragraph (e)(4)(ix)(A).

(*1*) A withholding agent may rely on documentation furnished by a customer for another account if all such accounts are held at the same branch location.

(*2*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. See § 31.3406(c)1(c)(3)(ii) and (iii)(C) of this chapter for an identical procedure for purposes of backup withholding. For purposes of this paragraph (e)(4)(ix)(A), a withholding agent is related to another person if it is related within the meaning of section 267(b) or 707(b).

(*3*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of an information system other than a universal account system and the information system is described in this paragraph (e)(4)(ix)(A)(*3*). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation, and its validity status, and must allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish how and when it has accessed the data regarding the documentation and, if applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation. In addition, the withholding agent or the related party must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation.

(B) *Family of mutual funds.* An interest in a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may, in the discretion of the mutual fund, be represented by one single withholding certificate where shares are acquired or owned in any of the funds. See § 31.3406(h)–3(a)(2) of this chapter for an identical procedures for purposes of backup withholding.

(C) *Special rule for brokers.* A withholding agent may rely on the certification of a broker acting as the agent of a beneficial owner that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other documentation for that beneficial owner. The certification must contain the date of expiration of the certificate or documentation and be in writing or in electronic form. For purposes of this paragraph (e)(4)(ix)(C), the term *broker* shall have the same meaning as in § 31.3406(h)–3(d) of this chapter.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish an intermediary withholding certificate to a withholding agent. Such a certificate certifies on behalf of other persons (such as beneficial owners, intermediaries, flow-through entities described in § 1.1441–5, or U.S. payees) for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Code, such as the provisions under chapter 61 of the Code and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment or for its shareholders (in the case of claims of

benefits under an income tax treaty by a reverse hybrid entity). Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or shareholders pursuant to its agreement with the IRS, it is not required to attach such documentation to the intermediary withholding certificate. However, the qualified intermediary must disclose the names of those U.S. persons for whom the qualified intermediary receives reportable payments (within the meaning of paragraph (e)(3)(vi) of this section) and who are not exempt recipients (as defined in § 1.6049–4(c)(1)(ii) or an applicable provision under section 6041, 6042, 6045, or 6050N), irrespective of local secrecy laws. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term *qualified intermediary* means a person that is a party to a withholding agreement with the IRS and such person is—

(A) A foreign financial institution or a foreign clearing organization (as defined in § 1.163–5(c)(2)(i)(D)(*6*), without regard to the requirement that the organization hold obligations for members), other than a U.S. branch or U.S. office of such institution or organization;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization (as defined in § 1.163–5(c)(2)(i)(D)(*6*), without regard to the requirement that the organization hold obligations for members);

(C) A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders; or

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under such withholding agreement, a qualified intermediary shall be generally subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. A withholding agreement may apply to the entity as a whole or to certain specified branches of the institution. The determination of the scope of the agreement shall be made on a branch-by-branch basis.

(B) *Terms of the withholding agreement.* Generally, the agreement shall specify the type of certification and documentation upon which the qualified intermediary may rely to ascertain the nationality and residence of beneficial owners and U.S. payees who receive payments collected by the qualified intermediary and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. It shall specify if the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of individual customers. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable Limitation on Benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts on behalf of its customers. If relevant, the agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries. In addition, the agreement must specify the manner in which the IRS will verify compliance with the agreement. In appropriate cases, the IRS may agree to rely on audits performed by an intermediary's approved auditor. In such a case, the IRS' audit may be limited to the audit of the auditor's records (including work papers of the auditor and reports prepared by the auditor indicating the methodology employed to verify the entity's compliance with the agreement). For this purpose, the agreement shall specify which auditor or class of auditors is approved. Generally, an auditor will be approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the intermediary activities under the agreement are expected to occur, its internal procedures require it to verify that the intermediary complies with the terms of the withholding agreement and to report non-compliance findings under the agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., work papers and reports) are available to the IRS. The agreement must include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement shall specify the procedures by which deposits of amounts withheld are to be deposited, if different from normally applicable deposit procedures under the Code and applicable regulations. The agreement shall also specify the assets that the qualified intermediary has in the United States or alternative means of collection, if necessary. To determine the terms of any particular withholding agreement, the IRS will consider appropriate factors including whether or not the foreign person agrees to assume primary responsibility as a withholding agent, the type of local know-your-customer laws and practices to which it is subject, the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign person, the volume of investments in U.S. securities (determined in dollar amounts and number of account holders), and financial condition of the foreign person.

(iv) *Assignment of primary withholding responsibility.* A withholding agent making a payment to a qualified intermediary must presume that the withholding agent has full withholding responsibility for that payment, except as otherwise specified in this paragraph (e)(5)(iv). For this purpose, withholding responsibility means the obligation to withhold as required under the provisions of section 1441, 1442, or 1443, and the regulations under those sections, and the related reporting obligations under § 1.1461–1(b)(2)(ii) and (c)(4)(ii) for payments identified or treated as made to foreign persons. Withholding responsibility also means obligations imposed on payors under chapter 61 of the Code (and the regulations under those provisions) and, if applicable, under section 3405 or 3406 (and the regulations under those sections). A qualified intermediary that assumes primary withholding responsibility vis-a-vis a withholding agent must assume such responsibility for all payments made to any one account. Any qualified intermediary may agree with the withholding agent to assume primary withholding responsibility, but only if expressly permitted to do so under its agreement with the IRS. Generally, reporting or withholding liability arising from a payment to a U.S. person (or treated as or presumed to be made to a U.S. person) under any provision of the Code or applicable regulations thereunder may not be assigned to a qualified intermediary except where the qualified intermediary is a foreign branch of a U.S. financial institution or except to the extent that the qualified intermediary has a branch in the United States and establishes to the satisfaction of the IRS that its U.S. branch can adequately fulfill the qualified intermediary's obligations on behalf of the qualified intermediary regarding information reporting under chapter 61 of the Code and the regulations under the applicable provisions of that chapter and, if necessary, backup withholding under section 3406 and the regulations under that section (even though the U.S. branch is not a qualified intermediary).

(v) *Information to withholding agent regarding applicable withholding rates*—(A) *General rule.* The qualified intermediary must separate the assets that generate payments of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that are associated with its withholding certificate furnished to the withholding agent into the categories described in paragraph (e)(5)(v)(B) of this section, and provide that information to the withholding agent so that the withholding agent may determine the applicable withholding rate applicable to each category. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for each category of assets described in paragraph (e)(5)(v)(B) of this section, the intermediary must provide information sufficient for the withholding agent to allocate assets appropriately among the various accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraph (e)(3)(ii)(E) of this section providing the information described in this paragraph (e)(5)(v).

(B) *Categories of assets.* A payment of a reportable amount (as defined in paragraph (e)(3)(vi) of this section) must be associated with one of the three categories of assets set forth in paragraphs (e)(5)(v)(B) (*1*) through (*3*) of this section and may be associated with only one of these three categories. Additional or different categories of assets may be specified, however, under procedures prescribed by the IRS (see § 602.602–1(d) of this chapter) or in the qualified intermediary agreement. No information is required regarding assets that do not generate a reportable amount described in paragraph (b)(3)(vi) of this section. The information provided to the withholding agent, and any update thereof, shall be considered an integral part of the intermediary withholding certificate. The three categories of assets required to be identified to the withholding agent are as follows:

(*1*) The first category of assets consists of assets that are associated with non-U.S. payees to which the intermediary certificate relates, and the applicable withholding rate. If different withholding rates apply, the withholding agent must indicate the applicable rate for each class of non-U.S. payees to which different withholding rates apply and the assets associated with each class. In the case of a qualified intermediary that has assumed primary withholding responsibility, the intermediary must simply certify the amount of assets for which it assumes primary withholding responsibility because they are assets for which it holds the appropriate documentation and are not described in the other two categories.

(*2*) The second category of assets consists of assets that are associated with all U.S. payees to which the certificate relates. The qualified intermediary must furnish a Form W–9 (or an acceptable substitute form) for each U.S. payee described in paragraph (d)(2) of this section or, in the absence of a Form W–9, the name and address of the U.S. payee or such information it has available regarding the payee. The identity of U.S. payees described in paragraph (d)(3) of this section need not be disclosed to the withholding agent.

(*3*) The third category of assets consists of assets that are associated with payees for whom the qualified intermediary holds no documentation, or holds documentation that it knows or has reason to know is unreliable and for which it has no actual knowledge that the payees are U.S. persons. A qualified intermediary that has assumed primary withholding responsibility need not furnish information regarding this category of assets.

(C) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with this paragraph (e)(5)(v) as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information affect the validity of a withholding certificate. See § 1.1441–1(b)(3)(v)(C) for consequences if the information is not updated as required.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 8233, 1001, 4224, 1078, or a statement described in § 1.1441–5 in effect prior to January 1, 1999 (see § 1.1441–5 as contained in 26 CFR part 1, revised April 1, 1997) under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), that is a valid certificate or statement as determined under those regulations may treat the certificate or statement as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the

transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 1998.

§ 1.1441–2 Amounts subject to withholding.

(a) *In general.* For purposes of the regulations under chapter 3 of the Internal Revenue Code (Code), the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other amounts subject to withholding described in paragraph (c) of this section. For purposes of this paragraph (a), an amount shall not be treated as not being from sources within the United States merely because the source of the amount cannot be determined at the time of payment. See § 1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount. Amounts subject to withholding include amounts that are not fixed or determinable annual or periodical income and upon which withholding is specifically required under a provision of this section or another section of the regulations under chapter 3 of the Code (such as corporate distributions that do not constitute dividend income upon which withholding is required under § 1.1441–3(c)(1)). Amounts subject to withholding do not include amounts described in § 1.1441–1(b)(4)(i) to the extent they involve interest on obligations in bearer form or on foreign-targeted registered obligations (but, in the case of a foreign-targeted registered obligation, only to the extent of those amounts paid to a registered owner that is a financial institution within the meaning of section 871(h)(5)(B)), amounts described in § 1.1441–1(b)(4)(ii) (dealing with bank deposit interest and similar types of interest (including original issue discount) described in section 871(i)(2)(A) or 881(d)), amounts described in § 1.1441–1(b)(4)(iv) (dealing with interest or original issue discount on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3)), and amounts described in § 1.1441–1(b)(4)(xx) (dealing with income from certain gambling winnings exempt from tax under section 871(j)).

(b) *Fixed or determinable annual or periodical income*—(1) *In general*—(i) *Definition.* For purposes of chapter 3 of the Code and the regulations thereunder, fixed or determinable annual or periodical income is all income included in gross income under section 61 (including original issue discount), except for the items specified in paragraph (b)(2) of this section. Therefore, items of U.S. source income that are excluded from gross income under any provision of law without regard to the identity of the holder, such as interest excluded from gross income under section 103(a), are not fixed or determinable annual or periodical income. See § 1.306–3(h) for treating income from the disposition of section 306 stock as fixed or determinable annual or periodical income.

(ii) *Manner of payment.* The term *fixed or determinable annual or periodical* is merely descriptive of the character of a class of income. If an item of income falls within the class of income contemplated in the statute and described in paragraph (a) of this section, it is immaterial whether payment of that item is made in a series of payments or in a single lump sum. Further, the income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, prevent it from being fixed or determinable annual or periodical income (e.g., a lump sum payment). In addition, the fact that the length of time during which the payments are to be made may be increased or diminished in accordance with someone s will or with the happening of an event does not disqualify the payment as determinable or periodical. For this purpose, the share of the fixed or determinable annual or periodical income of an estate or trust from sources within the United States which is required to be distributed currently, or which has been paid or credited during the taxable year, to a nonresident alien beneficiary of such estate or trust constitutes fixed or determinable annual or periodical income.

(iii) *Determinability of amount.* An item of income is fixed when it is to be paid in amounts definitely predetermined. An item of income is determinable if the amount to be paid is not known but there is a basis of calculation by which the amount may be ascertained at a later time. For example, interest is determinable even if it is contingent in that its amount cannot be determined at the time of payment of an amount with respect to a loan because the calculation of the interest portion of the payment is contingent upon factors that are not fixed at the time of the payment. For purposes of this section, an amount of income does not have to be determined at the time that the payment is made in order to be determinable. An amount of income described in paragraph (a) of this section which the withholding agent knows is part of a payment it makes but which it cannot calculate exactly at the time of payment, is nevertheless determinable if the determination of the exact amount depends upon events expected to occur at a future date. In contrast, a payment which may be income in the future based upon events that are not anticipated at the time the payment is made is not determinable. For example, loan proceeds may become income to the borrower when and to the extent the loan is canceled without repayment. While the cancellation of the debt is income to the borrower when it occurs, it is not determinable at the time the loan proceeds are disbursed to the borrower if the lack of repayment leading to the cancellation of part or all of the debt was not anticipated at the time of disbursement. The fact that the source of an item of income cannot be determined at the time that the payment is made does not render a payment not determinable. See § 1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount.

(2) *Exceptions.* For purposes of chapter 3 of the Code and the regulations thereunder, the items of income described in this paragraph (b)(2) are not fixed or determinable annual or periodical income—

(i) Gains derived from the sale of property (including market discount and option premiums), except for gains described in paragraph (b)(3) or (c) of this section;

(ii) Insurance premiums within the meaning of section 4372 paid to a foreign insurer or reinsurer; and

(iii) Any other income that the Internal Revenue Service (IRS) may determine, in published guidance (see § 601.601(d)(2) of this chapter), is not fixed or determinable annual or periodical income.

(3) *Original issue discount*—(i) *General rule.* An amount representing original issue discount is fixed or determinable annual or periodical income that is subject to withholding to the extent provided in this paragraph (b)(3) if not otherwise excluded under paragraph (a) of this section. Under sections 871(a)(1)(C) and 881(a)(3), an amount of original issue discount is subject to tax to a foreign beneficial owner of an obligation carrying original issue discount upon a taxable sale or exchange of the obligation or when a payment is made on such obligation. The amount taxable is the amount of original issue discount that accrued while the foreign person held the obligation up to the time that the obligation is sold or exchanged or that a payment is made on the obligation, reduced by any amount of original issue discount that was taken into account prior to that time (due to a payment made on the obligation). In the case of a taxable event due to a payment made on the obligation, the tax due on the amount of taxable original issue discount may not exceed the payment less the tax imposed thereon. A person who is a withholding agent with respect to a payment that, under section 871(a)(1)(C) or 881(a)(3), is taxable to a foreign person holding or disposing of an original issue discount obligation must withhold to the extent provided in this paragraph (b)(3).

(ii) *Amounts actually known to the withholding agent.* A withholding agent must withhold on the taxable amount of original issue discount to the extent that it has actual knowledge of the proportion of the payment that is taxable to the beneficial owner under section 871(a)(1)(C) or 881(a)(3)(A). A withholding agent has actual knowledge if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if the information is reasonably available. The information is not considered reasonably available if the withholding agent does not have a direct customer relationship with the foreign beneficial owner or such other person who has actual knowledge of the facts relevant to the determination of the amount taxable to the foreign beneficial owner, and has no access to such information in the ordinary course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct account relationship with the beneficial owner, knowledge regarding the beneficial owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. A withholding agent may rely on the most recently published List of Original Issue Discount Instruments (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction.

(iii) *Amounts for which certain documentation is not furnished.* Notwithstanding lack of knowledge (within the meaning of paragraph (b)(3)(ii) of this section), withholding is required on the entire amount of stated interest, if any, and original issue discount on the obligation as determined as of the date of original issue if the withholding agent, pursuant to the provisions in § 1.1441–1(b)(3), treats the payment as made to a foreign payee because it cannot reliably associate the payment with documentation and the amount would qualify as portfolio interest if the withholding agent held documentation described in § 1.871–14(c)(2). A withholding agent may rely on the most recently published List of Original Issue Discount Instruments (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction. See § 1.1441–1(b)(8) for adjustments to any amount that has been overwithheld.

(iv) *Exceptions to withholding.* The obligation to withhold under this paragraph (b)(3) shall apply only to obligations issued after December 31, 1998, and payable more than 183 days from the date of original issue. Any exemption from withholding pursuant to this paragraph (b)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7) through (15).

(4) *Securities lending transactions and equivalent transactions.* See §§ 1.871–7(b)(2) and 1.881–2(b)(2) regarding the character of substitute payments as fixed and determinable annual or periodical income. Such amounts constitute income subject to withholding to the extent they are from sources within the United States, as determined under section §§ 1.861–2(a)(7) and 1.861–3(a)(6). See §§ 1.6042–3(a)(2) and 1.6049–5(a)(5) for reporting requirements applicable to substitute dividend and interest payments, respectively.

(c) *Other income subject to withholding.* Withholding is also required on the following items of income—

(1) Gains described in sections 631 (b) or (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; and

(2) Gains subject to the 30-percent tax under section 871(a)(1)(D) or 881(a)(4), relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.

(d) *Exceptions to withholding where no money or property is paid or lack of knowledge*—(1) *General rule.* A withholding agent who is not related to the recipient or beneficial owner has an obligation to withhold under section 1441 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (d)) and the due date for the filing of return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over, or custody of money or property owned by the recipient or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (d) shall not apply, however, to distributions with respect to stock or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1441, 1442, or 1443. For purposes of this paragraph (d), a withholding agent is related to the recipient or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (d) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding under this paragraph (d) is not a determination that the amounts are not fixed or determinable annual or periodical income, nor does it constitute an exemption from reporting the amount under § 1.1461–1 (b) and (c).

(2) *Cancellation of debt.* A lender of funds who forgives any portion of the loan is deemed to have made a payment

of income to the borrower under § 1.61–12 at the time the event of forgiveness occurs. However, based on the rules of paragraph (d)(1) of this section, the lender shall have no obligation to withhold on such amount to the extent that it does not have custody or control over money or property of the borrower at any time between the time that the loan is forgiven and the due date (including extensions) of the Form 1042 for the year in which the payment is deemed to occur. A payment received by the lender from the borrower in partial settlement of the debt obligation does not, for this purpose, constitute an amount of money or property belonging to the borrower from which the withholding tax liability can be satisfied.

(3) *Satisfaction of liability following underwithholding by withholding agent.* A withholding agent who, after failing to withhold the proper amount from a payment, satisfies the underwithheld amount out of its own funds may cause the beneficial owner to realize income to the extent of such satisfaction or may be considered to have advanced funds to the beneficial owner. Such determination depends upon the contractual arrangements governing the satisfaction of such tax liability (e.g., arrangements in which the withholding agent agrees to pay the amount due under section 1441 for the beneficial owner) or applicable laws governing the transaction. If the satisfaction of the tax liability is considered to constitute an advance of funds by the withholding agent to the beneficial owner and the withholding agent fails to collect the amount from the beneficial owner, a cancellation of indebtedness may result, giving rise to income to the beneficial owner under § 1.61–12. While such income is annual or periodical fixed or determinable, the withholding agent shall have no liability to withhold on such income to the extent the conditions set forth in paragraphs (d) (1) and (2) of this section are satisfied with respect to this income. Contrast the rules of this paragraph (d)(3) with the rules in § 1.1441–3(f)(1) dealing with a situation in which the satisfaction of the beneficial owner's tax liability itself constitutes additional income to the beneficial owner. See, also, § 1.1441–3(c)(2)(ii)(B) for a special rule regarding underwithholding on corporate distributions due to underestimating an amount of earnings and profits.

(e) *Payment*—(1) *General rule.* A payment is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. For example, realization of income from cancellation of debt results in a deemed payment. A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. A payment is considered made whether it is made directly to the beneficial owner or to another person for the benefit of the beneficial owner (e.g., to the agent of the beneficial owner). Thus, a payment of income is considered made to a beneficial owner if it is paid in complete or partial satisfaction of the beneficial owner's debt to a creditor. In the event of a conflict between the rules of this paragraph (e)(1) governing whether a payment has occurred and its timing and the rules of § 31.3406(a)–4 of this chapter, the rules in § 31.3406(a)–4 of this chapter shall apply to the extent that the application of section 3406 is relevant to the transaction at issue.

(2) *Income allocated under section 482.* A payment is considered made to the extent income subject to withholding is allocated under section 482. Further, income arising as a result of a secondary adjustment made in conjunction with a reallocation of income under section 482 from a foreign person to a related U.S. person is considered paid to a foreign person unless the taxpayer to whom the income is reallocated has entered into a repatriation agreement with the IRS and the agreement eliminates the liability for withholding under this section. For purposes of determining the liability for withholding, the payment of income is deemed to have occurred on the last day of the taxable year in which the transactions that give rise to the allocation of income and the secondary adjustments, if any, took place.

(3) *Blocked income.* Income is not considered paid if it is blocked under executive authority, such as the President's exercise of emergency power under the Trading with the Enemy Act (50 U.S.C. App. 5), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq). However, on the date that the blocking restrictions are removed, the income that was blocked is considered constructively received by the beneficial owner (and therefore paid for purposes of this section) and subject to withholding under § 1.1441–1. Any exemption from withholding pursuant to this paragraph (e)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e)(3) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(4) *Special rules for dividends.* For purposes of sections 1441 and 6042, in the case of stock for which the record date is earlier than the payment date, dividends are considered paid on the payment date. In the case of a corporate reorganization, if a beneficial owner is required to exchange stock held in a former corporation for stock in a new corporation before dividends that are to be paid with respect to the stock in the new corporation will be paid on such stock, the dividend is considered paid on the date that the payee or beneficial owner actually exchanges the stock and receives the dividend. See § 31.3406(a)–4(a)(2) of this chapter.

(5) *Certain interest accrued by a foreign corporation.* For purposes of sections 1441 and 6049, a foreign corporation shall be treated as having made a payment of interest as of the last day of the taxable year if it has made an election under § 1.884–4(c)(1) to treat accrued interest as if it were paid in that taxable year.

(6) *Payments other than in U.S. dollars.* For purposes of section 1441, a payment includes amounts paid in a medium other than U.S. dollars. See § 1.1441–3(e) for rules regarding the amount subject to withholding in the case of such payments.

(f) *Effective date.* This section applies to payments made after December 31, 1998.

Par. 8. Section 1.1441–3 is amended by:

1. Revising the section heading, and paragraphs (a) through (f) and (h).
2. Removing paragraphs (g) and (i).
3. Redesignating paragraph (j) as paragraph (g).
4. Removing the language "(j)" and adding "(g)" in its place in the fourth sentence of newly designated paragraph (g)(1) and in the first sentence of newly designated paragraph (g)(2).
5. Removing the language "§ 1.1441–7(d)" in the last sentence of newly designated paragraph (g)(1) and adding "§ 1.1441–7(f)" in its place.
6. Removing the authority citation at the end of the section.

The revisions read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

(a) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441–1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441–4(b)(6).

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under § 1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61. To the extent an amount was withheld on an amount of capital rather than interest, see the rules for adjustments, refunds, or credits under § 1.1441–1(b)(8).

(2) *No withholding between interest payment dates*—(i) *In general.* A withholding agent is not required to withhold under § 1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates (even though the amount is treated as interest under § 1.61–7 (c) or (d) and is subject to tax under section 871 or 881). See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. See § 1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition). Any exemption from withholding pursuant to this paragraph (b)(2)(i) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6045 or 6049 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (b)(2) is not a determination that the accrued interest is not fixed or determinable annual or periodical income under section 871(a) or 881(a) nor does it constitute an exemption from reporting under § 1.1481–1 (b) and (c) the amount of accrued interest paid.

(ii) *Anti-abuse rule.* The exemption in paragraph (b)(2)(i) of this section does not apply if the sale of securities is part of a plan the principal purpose of which is to avoid tax by selling and repurchasing securities and the withholding agent has actual knowledge or reason to know of such plan.

(c) *Corporate distributions*—(1) *General rule.* A corporation making a distribution with respect to its stock or any intermediary (described in § 1.1441–1(e)(3)(i)) making a payment of such a distribution is required to withhold under section 1441, 1442, or 1443 on the entire amount of the distribution, unless it elects to reduce the amount of withholding under the provisions of paragraph (c)(2) of this section. The exemption from withholding provided by this paragraph (c) applies without any requirement to furnish documentation to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6042 or 6045 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (c) does not constitute a determination that the exempted amounts are not fixed or determinable annual or periodical income under sections 871(a) or 881(a) nor does it constitute an exemption from reporting under § 1.1461–1 (b) and (c) the amount of the distribution.

(2) *Exception to withholding on distributions*—(i) *In general.* An election described in paragraph (c)(1) of this section is made by actually reducing the amount of withholding at the time that the payment is made. An intermediary that makes a payment of a distribution is not required to reduce the withholding based on the distributing corporation's estimate of earnings and profits, even if the distributing corporation itself elects to reduce the withholding on payments of distributions that it itself makes to foreign persons. Conversely, an intermediary may elect to reduce the amount of withholding with respect to the payment of a distribution even if the distributing corporation does not so elect for the payments of distributions that it itself makes of distributions to foreign persons. The amounts with respect to which a distributing corporation or intermediary may elect to reduce the withholding are as follows:

(A) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a nontaxable distribution payable in stock or stock rights.

(B) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a distribution in part or full payment in exchange for stock.

(C) A distributing corporation or intermediary may elect to not withhold on a distribution (actual or deemed) to the extent it is not paid out of accumulated earnings and profits or current earnings and profits, based on a reasonable estimate determined under paragraph (c)(2)(ii) of this section.

(D) A regulated investment company or intermediary may elect to not withhold on a distribution representing a capital gain dividend (as defined in section 852(b)(3)(C)) or an exempt interest dividend (as defined in section 852(b)(5)(A)) based on the applicable procedures described under paragraph (c)(3) of this section.

(E) A U.S. Real Property Holding Corporation (defined in section 897(c)(2)) or a real estate investment trust (defined in section 856) or intermediary may elect to not withhold on a distribution to the extent it is subject to withholding under section 1445 and the regulations under that section. See paragraph (c)(4) of this section for applicable procedures.

(ii) *Reasonable estimate of accumulated and current earnings and profits on the date of payment*—(A) *General rule.* A reasonable estimate for purposes of paragraph (c)(2)(i)(C) of this section is a determination made by the distributing corporation at a time reasonably close to the date of payment of the extent to which the distribution will constitute a dividend, as defined in section 316. The determination is based upon the anticipated amount of accumulated earnings and profits and current earnings and profits for the taxable year in which the distribution is made, the distributions made prior to the distribution for which the estimate is made and all other relevant facts and circumstances. A reasonable estimate may be made based on the procedures described in § 31.3406(b)(2)–4(c)(2) of this chapter.

(B) *Procedures in case of underwithholding.* A distributing corporation or intermediary that is a withholding agent with respect to a distribution and that determines at the end of the taxable year in which the distribution is made that it underwithheld under section 1441 on the distribution shall be liable for the amount underwithheld as a withholding agent under section 1461. However, for purposes of this section and § 1.1461–1, any amount underwithheld paid by a distributing corporation, its paying agent, or an intermediary shall not be treated as income subject to additional withholding even if that amount is treated as additional income to the shareholders unless the additional amount is income to the shareholder as a result of a contractual arrangement between the parties regarding the satisfaction of the shareholder's tax liabilities. In addition, no penalties shall be imposed for failure to withhold and deposit the tax if—

(*1*) The distributing corporation made a reasonable estimate as provided in paragraph (c)(2)(ii)(A) of this section; and

(*2*) Either—

(*i*) The corporation or intermediary pays over the underwithheld amount on or before the due date for filing a Form 1042 for the calendar year in which the distribution is made, pursuant to § 1.1461–2(b); or

(*ii*) The corporation or intermediary is not a calendar year taxpayer and it files an amended return on Form 1042X (or such other form as the Commissioner may prescribe) for the calendar year in which the distribution is made and pays the underwithheld amount and interest within 60 days after the close of the taxable year in which the distribution is made.

(C) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether the payment of a corporate distribution is a dividend, a withholding agent that is not the distributing corporation may, absent actual knowledge or reason to know otherwise, rely on representations made by the distributing corporation regarding the reasonable estimate of the anticipated accumulated and current earnings and profits made in accordance with paragraph (c)(2)(ii)(A) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing corporation to reasonably estimate the portion of the distribution treated as a dividend or to properly communicate the information to the withholding agent shall be imputed to the distributing corporation. In such a case, the Internal Revenue Service (IRS) may collect from the distributing corporation any underwithheld amount and subject the distributing corporation to applicable interest and penalties as a withholding agent.

(D) *Example.* The rules of this paragraph (c)(2) are illustrated by the following example:

Example. (i) *Facts.* Corporation X, a publicly traded corporation with both U.S. and foreign shareholders and a calendar year taxpayer, has an accumulated deficit in earnings and profits at the close of 2000. In 2001, Corporation X generates $1 million of current earnings and profits each month and makes an $18 million distribution, resulting in a $12 million dividend. Corporation X plans to make an additional $18 million distribution on October 1, 2002. Approximately one month before that date, Corporation X's management receives an internal report from its legal and accounting department concerning Corporation X's estimated current earnings and profits. The report states that Corporation X should generate only $5.1 million of current earnings and profits by the close of the third quarter due to costs relating to substantial organizational and product changes, but these changes will enable Corporation X to generate $1.3 million of earnings and profits monthly for the last quarter of the 2002 fiscal year. Thus, the total amount of current and earnings and profits for 2002 is estimated to be $9 million.

(ii) *Analysis.* Based on the facts in paragraph (i) of this *Example*, including the fact that earnings and profits estimate was made within a reasonable time before the distribution, Corporation X can rely on the estimate under paragraph (c)(2)(ii)(A) of this section. Therefore, Corporation X may treat $9 million of the $18 million of the October 1, 2002, distribution to foreign shareholders as a non-dividend distribution.

(3) *Special rules in the case of distributions from a regulated investment company*—(i) *General rule.* If the amount of any distributions designated as being subject to section 852(b)(3)(C) or (5)(A) exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate (made pursuant to the same procedures as are described in paragraph (c)(2)(ii)(A) of this section) and the adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the IRS by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under § 1.1464–1.

(ii) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether a payment is a distribution designated as subject to section 852(b) (3)(C) or (5)(A), a withholding agent that is not the distributing regulated investment company may, absent actual knowledge or reason to know otherwise, rely on the designations that the distributing company represents have been made in accordance with paragraph (c)(3)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the regulated investment company to reasonably estimate the required amounts or to properly communicate the relevant information to the withholding agent shall be imputed to the distributing company. In such a case, the IRS may collect from the distributing company any underwithheld amount and subject the company to applicable interest and penalties as a withholding agent.

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i) (A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs, see paragraph (c)(4)(i)(C) of this section.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 10-percent, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(*1*) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(*2*) Withhold under section 1445(e)(3) and § 1.1445–5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445–5(e)(2)(iv).

(C) *Coordination with REIT withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT that is not designated as a capital gain dividend or return of basis. Withholding is required under section 1445 on the portion of the distribution designated by a REIT as a capital gain dividend. See § 1.1445–8.

(ii) *Intermediary reliance rule.* A withholding agent that is not the distributing USRPHC must withhold under paragraph (c)(4)(i) of this section, but may, absent actual knowledge or reason to know otherwise, rely on representations made by the USRPHC regarding the determinations required under paragraph (c)(4)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing USRPHC to make these determinations in a reasonable manner or to properly communicate the determinations to the withholding agent shall be imputed to the distributing USRPHC. In such a case, the IRS may collect from the distributing USRPHC any underwithheld amount and subject the distributing USRPHC to applicable interest and penalties as a withholding agent.

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under § 1.1441–1 based on the entire amount paid that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that will subsequently be determined to be from sources within the United States or to be income subject to tax. The amount so withheld shall not exceed 30 percent of the amount paid. In the alternative, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion of the amount due under the transaction and hold such portion in escrow until the amount from U.S. sources or the taxable amount can be determined, at which point withholding becomes due under § 1.1441–1. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding. The provisions of this paragraph (d)(1) shall not apply to the extent that other provisions of the regulations under chapter 3 of the Internal Revenue Code (Code) specify the amount to be withheld, if any, when the withholding agent lacks knowledge at the time of payment (e.g., lack of reliable knowledge regarding the status of the payee or beneficial owner, addressed in § 1.1441–1(b)(3), or lack of knowledge regarding the amount of original issue discount under § 1.1441–2(b)(3)).

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding.

(e) *Payments other than in U.S. dollars*—(1) *In general.* The amount of a payment made in a medium other than U.S. dollars is measured by the fair market value of the property or services provided in lieu of U.S. dollars. The withholding agent may liquidate the property prior to payment in order to withhold the required amount of tax under section 1441 or obtain payment of the tax from an alternative source. However, the obligation to withhold under section 1441 is not deferred even if no alternative source can be located. Thus, for purposes of withholding under chapter 3 of the Code, the provisions of § 31.3406(h)–2(b)(2)(ii) of this chapter (relating to backup withholding from another source) shall not apply. If the withholding agent satisfies the tax liability related to such payments, the rules of paragraph (f) of this section apply.

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) in effect on that date. A withholding agent making regular or frequent payments in foreign currency may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

(f) *Tax liability of beneficial owner satisfied by withholding agent*—(1) *General rule.* In the event that the satisfaction of a tax liability of a beneficial owner by a withholding agent constitutes income to the beneficial owner and such income is of a type that is subject to withholding, the amount of the payment deemed made by the withholding agent for purposes of this paragraph (f) shall be determined under the gross-up formula provided in this paragraph (f)(1). Whether the payment of the tax by the withholding agent constitutes a satisfaction of the beneficial owner's tax liability and whether, as such, it constitutes additional income to the beneficial owner, must be determined under all the facts and circumstances surrounding the transaction, including any agreements between the parties and applicable law. The formula described in this paragraph (f)(1) is as follows:

$$\text{Payment} = \frac{\text{Gross payment without withholding}}{1\text{-(tax rate)}}$$

(2) *Example.* The following example illustrates the provisions of this paragraph (f):

Example. College X awards a qualified scholarship within the meaning of section 117(b) to foreign student, FS, who is in the United States on an F visa. FS is a resident of a country that does not have an income tax treaty with the United States. The scholarship is $20,000 to be applied to tuition, mandatory fees and books, plus benefits in kind consisting of room and board and roundtrip air transportation. College X agrees to pay any U.S. income tax owed by FS with respect to the scholarship. The fair market value of the room and board measured by the amount College X charges non-scholarship students is $6,000. The cost

of the roundtrip air transportation is $2,600. Therefore, the total fair market value of the scholarship received by FS is $28,600. However, the amount taxable is limited to the fair market value of the benefits in kind ($8,600) because the portion of the scholarship amount for tuition, fees, and books is not included in gross income under section 117. The applicable rate of withholding is 14 percent under section 1441(b). Therefore, under the gross-up formula, College X is deemed to make a payment of $10,000 ($8,600 divided by (1–.14). The U.S. tax that must be deducted and withheld from the payment under section 1441(b) is $1,400 (.14×$10,000). College X reports scholarship income of $30,000 and $1,400 of U.S. tax withheld on Forms 1042 and 1042–S.

* * * * *

(h) *Effective date.* Except as otherwise provided in paragraph (g) of this section, this section applies to payments made after December 31, 1998.

Par. 9. Section 1.1441–4 is amended by:

1. Revising the section heading, and paragraph (a).

2. Paragraph (b)(1) is amended by:

a. Revising of paragraphs (b)(1)(i) and (b)(1)(ii).

b. Removing the period at the end of paragraph (b)(1)(iii) and adding a semicolon in its place.

c. Removing the language "or" at the end of paragraph (b)(1)(iv) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(1)(v) and adding " ; or" in its place.

e. Adding paragraph (b)(1)(vi).

3. Adding four sentences at the end of paragraph (b)(2)(i).

4. Paragraph (b)(2)(ii) is amended by:

a. Revising paragraph (b)(2)(ii) heading and introductory text, and paragraph (b)(2)(ii)(A).

b. Redesignating paragraph (b)(2)(ii)(H) as paragraph (b)(2)(ii)(J) and amending newly designated paragraph (b)(2)(ii)(J) by removing the period and adding "; and" in its place.

c. Redesignating paragraphs (b)(2)(ii)(B), (C), (D), (E), (F) and (G) as paragraphs (b)(2)(ii)(D), (E), (F), (G), (H) and (I), respectively.

d. Adding new paragraphs (b)(2)(ii)(B), (C), and (K).

e. Removing the period at the end of newly designated paragraph (b)(2)(ii)(D) and the comma at the end of newly designated paragraphs (b)(2)(ii)(E), (F), (G), and (H) and adding a semicolon in each place.

f. Removing the language ", and" and adding a semicolon in its place in newly designated paragraph (b)(2)(ii)(I).

5. Removing the concluding text immediately following paragraph (b)(2)(iv)(C).

6. Revising paragraph (b)(2)(v).

7. Removing the language "statement" and adding the language "withholding certificate" in each place in paragraph (b)(2)(i).

8. Removing the language "Director of the Foreign Operations District" in paragraphs (b)(2)(i) fourth sentence, (b)(2)(iii) fourth and fifth sentences, and (b)(3) first sentence, and adding the language "Assistant Commissioner (International)" in each place.

9. Adding paragraph (b)(6).

10. Revising paragraphs (c), (d), (e), (f), and (g) .

11. Removing paragraphs (h) and (i).

12. Removing the OMB parenthetical and the authority citation at the end of the section.

The revisions and additions read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) *Certain income connected with a U.S. trade or business*—(1) *In general.* No withholding is required under section 1441 on income otherwise subject to withholding if the income is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year. For purposes of this paragraph (a), an amount is not deemed to be includible in gross income if the amount is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and the beneficial owner claims an exemption from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States. To claim a reduced rate of withholding because the income is not attributable to a permanent establishment, see § 1.1441–6(b)(1). This paragraph (a) does not apply to income of a foreign corporation to which section 543(a)(7) applies for the taxable year or to compensation for personal services performed by an individual. See paragraph (b) of this section for compensation for personal services performed by an individual.

(2) *Withholding agent's reliance on a claim of effectively connected income*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon paragraph (a)(1) of this section if, prior to the payment to the foreign person, the withholding agent can reliably associate the payment with a Form W–8 upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). For purposes of this paragraph (a), a withholding certificate is valid only if, in addition to other applicable requirements, it includes the taxpayer identifying number of the person whose name is on the Form W–8 and represents, under penalties of perjury, that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States. In the absence of a reliable claim that the income is effectively connected with the conduct of a trade or business in the United States, the income is presumed not to be effectively connected, except as otherwise provided in paragraph (a)(2)(ii) or (3) of this section. See § 1.1441–1(e)(4)(ii)(C) for the period of validity applicable to a certificate provided under this section and § 1.1441–1(e)(4)(ii)(D) for changes in circumstances arising during the taxable year indicating that the income to which the certificate relates is not, or is no longer expected to be, effectively connected with the conduct of a trade or business within the United States. A withholding certificate shall be effective only for the item or items of income specified therein. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(ii) *Special rules for U.S. branches of foreign persons and U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441–1(b) (2)(iv) and (6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441–1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the district director or the Assistant Commissioner (International).

(3) *Income on notional principal contracts*—(i) *General rule.* A withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7(a) or 1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under § 1.1461–1(b) and (c) reporting the income that it must treat as paid to a foreign person and as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must so treat the income unless it can reliably associate the payment with a withholding certificate upon which it can rely to treat the payment as an amount that is not effectively connected. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446–3(g)(4).

(ii) *Exception for certain payments.* A payment to a foreign financial institution (within the meaning of § 1.165–12(c)(1)(iv)) shall not be treated as effectively connected with the conduct of a trade or business within the United States for purposes of paragraph (a)(3)(i) of this section even if no withholding certificate is furnished if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a U.S. person or a non-U.S. branch of a foreign person.

(b) * * * (1) * * *

(i) Such compensation is subject to withholding under section 3402 (relating to withholding on wages) and the regulations under that section;

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (not including paragraph (a)(6) of that section) and the regulations under that section. This paragraph (b)(1)(ii) does not apply to payments to a nonresident alien individual from any trust described in section 401(a), any annuity plan described in section 403(a), or any annuity, custodial account, or retirement income account described in section 403(b). Thus, for example, payments to a nonresident alien individual from a trust described in section 401(a) are subject to withholding under section 1441 and not under section 3405 or 3406;

* * * * *

(vi) Compensation that is exempt from withholding under section 3402 by reason of section 3402(e), provided that the employee and his employer enter into an agreement under section 3402(p) to provide for the withholding of income tax upon payments of amounts described in § 31.3401(a)–3(b)(1) of this chapter. An employee who desires to enter into such an agreement should furnish his employer with Form W–4 (withholding exemption certificate) (or such other form as the Internal Revenue Service (IRS) may prescribe). See section 3402(f) and the regulations thereunder and § 31.3402(p)-1 of this chapter.

(2) * * * (i) * * * The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date in light of facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

(ii) *Withholding certificate claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233 (or an acceptable substitute or such other form as the IRS may prescribe). Form 8233 shall be dated, signed by the beneficial owner under penalties of perjury, and contain the following information—

(A) The individual's name, permanent residence address, taxpayer identifying number (or a copy of a completed Form W–7 or SS–5 showing that a number has been applied for), and the U.S. visa number, if any;

(B) The individual's current immigration status and visa type;

(C) The individual's original date of entry into the United States;

* * * * *

(K) Any other information as may be required by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (b)(2)(ii).

* * * * *

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the Assistant Commissioner (International), within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

* * * * *

(6) *Personal exemption*—(i) *In general.* To determine the tax to be withheld at source under § 1.1441–1 from remuneration paid for personal services performed within the United States by a nonresident alien individual and from scholarship and fellowship income described in paragraph (c) of this section, a withholding agent may take into account one personal exemption pursuant to sections 873(b)(3) and 151 regardless of whether the income is effectively connected. For purposes of withholding under section 1441 on remuneration for personal services, the exemption must be prorated upon a daily basis for the period during which the personal services are performed within the United States by the nonresident alien individual by dividing by 365 the number of days in the period during which the individual is present in the United States for the purpose of performing the services and multiplying the result by the amount of the personal exemption in effect for the taxable year. See § 31.3402(f)(6)–1 of this chapter.

(ii) *Multiple exemptions.* More than one personal exemption may be claimed in the case of a resident of a contiguous country or a national of the United States under section 873(b)(3). In addition, residents of a country with which the United States has an income tax treaty in effect may be eligible to claim more than one personal exemption if the treaty so provides. Claims for more than one personal exemption shall be made on the withholding certificate furnished to the withholding agent. The exemption must be prorated on a daily basis in the same manner as described in paragraph (b)(6)(i) of this section.

(iii) *Special rule where both certain scholarship and compensation income are received.* The fact that both non-compensatory scholarship income and compensation income (including

compensatory scholarship income) are received during the taxable year does not entitle the taxpayer to claim more than one personal exemption amount (or more than the additional amounts permitted under paragraph (b)(6)(ii) of this section). Thus, if a nonresident alien student receives non-compensatory taxable scholarship income from one withholding agent and compensation income from another withholding agent, no more than the total personal exemption amount permitted under the Internal Revenue Code or under an income tax treaty may be taken into account by both withholding agents. For this purpose, the withholding agent may rely on a representation from the beneficial owner that the exemption amount claimed does not exceed the amount permissible under this section.

(c) *Special rules for scholarship and fellowship income*—(1) *In general.* Under section 871(c), certain amounts paid as a scholarship or fellowship for study, training, or research in the United States to a nonresident alien individual temporarily present in the United States as a nonimmigrant under section 101(a)(15) (F), (J), (M), or (Q) of the Immigration and Nationality Act are treated as income effectively connected with the conduct of a trade or business within the United States. The amounts described in the preceding sentence are those amounts that do not represent compensation for services. Such amounts (as described in the second sentence of section 1441(b)) are subject to withholding under section 1441, but at the lower rate of 14 percent. That rate may be reduced under the provisions of an income tax treaty. Claims of a reduced rate under an income tax treaty shall be made under the procedures described in § 1.1441–6(b)(1). Therefore, claims for reduction in withholding under an income tax treaty on amounts described in this paragraph (c)(1) may not be made on a Form 8233. However, if the payee is receiving both compensation for personal services (including compensatory scholarship income) and non-compensatory scholarship income described in this paragraph (c)(1) from the same withholding agent, claims for reduction of withholding on both types of income may be made on Form 8233.

(2) *Alternate withholding election.* A withholding agent may elect to withhold on the amounts described in paragraph (c)(1) of this section at the rates applicable under section 3402, as if the income were wages. Such election shall be made by obtaining a Form W–4 (or an acceptable substitute or such other form as the IRS may prescribe) from the beneficial owner. The fact that the withholding agent asks the beneficial owner to furnish a Form W–4 for such fellowship or scholarship income or to take such income into account in preparing such Form W–4 shall serve as notice to the beneficial owner that the income is being treated as wages for purposes of withholding tax under section 1441.

(d) *Annuities received under qualified plans.* Withholding is not required under section § 1.1441–1 in the case of any amount received as an annuity if the amount is exempt from tax under section 871(f) and the regulations under that section. The withholding agent may exempt the payment from withholding if, prior to payment, it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with § 1.1441–1(e)(1)(ii). A beneficial owner withholding certificate furnished for purposes of claiming the benefits of the exemption under this paragraph (d) is valid only if, in addition to other applicable requirements, it contains a taxpayer identifying number.

(e) *Per diem of certain alien trainees.* Withholding is not required under section 1441(a) and § 1.1441–1 on per diem amounts paid for subsistence by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended (22 U.S.C. chapter 24). This rule shall apply even though such amounts are subject to tax under section 871. Any exemption from withholding pursuant to this paragraph (e) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6041 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(f) *Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or does not act in accordance with applicable presumptions described in paragraph (a) (2)(i), (2)(ii), or (3) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a Form 4224 or 8233 that is a valid certificate as determined under the regulations in effect prior to January 1, 1999 (see CFR part 1 revised, April 1, 1997), may treat the certificate as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§ 1.1441–4T [Removed]

Par. 10. Section 1.1441–4T is removed.

Par. 11. Sections 1.1441–5 and 1.1441–6 are revised to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

(a) *Rules of withholding applicable to payments to partnerships.* This paragraph (a) describes the determinations that a withholding agent must make when making a payment to a person that may be a partnership (as defined in § 1.1441–1(c)(6)(ii)(C)). Such determinations are made in order to determine a withholding agent's obligations under chapters 3 and 61 of the Internal Revenue Code (Code) and sections 3402, 3405, and 3406 (and applicable regulations under those provisions) to withhold and report payments of amounts subject to withholding under chapter 3 of the Code and the regulations thereunder. The reliance provisions stated in this paragraph (a) are subject to the presumptions described in § 1.1441–1(b)(3) and paragraph (d) of this section, including § 1.1441–1(b)(3)(ix) regarding

the withholding agent's actual knowledge or reason to know that the presumptions are not correct. For similar presumptions for reporting and withholding on amounts not subject to withholding under chapter 3 of the Code (e.g., foreign source income, broker proceeds) that may be paid to a foreign partnership, see § 1.6049–5(d) (2) through (5).

(1) The withholding agent must determine whether the payee is a U.S. or a foreign person. For this purpose, the withholding agent may treat the payee as U.S. or foreign if it can reliably associate the payment with a Form W–9 described in § 1.1441–1(d) or a Form W–8 described in § 1.1441–1(e)(2)(i) or (3)(i). In the absence of documentation, see § 1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions of foreign or U.S. status and other relevant characteristics.

(2) If the payee is determined to be a foreign person, the withholding agent must determine whether the foreign payee is acting for its own account or for the account of others (i.e., as an intermediary, as defined in § 1.1441–1(e)(3)(i)). The withholding agent may treat the payee as a foreign intermediary if it can reliably associate the payment with a Form W–8 described in § 1.1441–1(e)(3) (ii), (iii), or (v), within the meaning of § 1.1441-1(b)(3)(v)(A).

(3) If the foreign payee is determined to act as an intermediary described in § 1.1441–1(e)(3)(i), the withholding agent must determine whether or not the payee is a qualified intermediary. The withholding agent may treat the payee as a qualified intermediary only if it can reliably associate the payment with a Form W–8 described in § 1.1441–1(e)(3)(ii). A foreign payee that is treated as an intermediary with respect to a payment is subject to the provisions applicable to intermediaries in § 1.1441–1(e) (3) or (5). In such a case, the provisions of paragraph (c) of this section do not apply to the payment.

(4) If the foreign payee is determined to act for its own account (or is so presumed), the withholding agent must determine the status of the payee as a partnership. The withholding agent may treat the payee as a domestic or as a foreign partnership if it can reliably associate the payment with a Form W–9 furnished in accordance with § 1.1441–1(d) (2) or (4) (for a domestic partnership) or a Form W–8 described in paragraph (c) (2)(iv) or (3)(iii) of this section (for a foreign partnership). See § 1.1441–1(e)(4)(viii) for reliance on the payee's representations on a Form W–8. In the absence of documentation, see § 1.1441–1(b)(3)(ii) and paragraph (d)(2) of this section for applicable presumptions of status.

(5) If the foreign payee is determined to be a foreign partnership and the withholding agent has determined (or presumes) that the partnership is acting for the account of its partners, then the withholding agent must determine whether the payment represents income effectively connected with the partnership's conduct of a U.S. trade or business. The withholding agent may treat the payment as effectively connected if it can reliably associate the payment with a Form W–8 described in paragraph (c)(3)(iii) of this section representing that the income is effectively connected or if it so presumes in accordance with the provisions in § 1.1441–4(a) (2)(ii) or (3). In the absence of documentation, the payment is generally presumed to be non-effectively connected. See § 1.1441–4(a)(2)(i). See §§ 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(6) If the withholding agent cannot reliably treat the payment as effectively connected income nor presume that it is so connected, then the withholding agent must determine whether the partnership is a withholding foreign partnership described in paragraph (c)(2)(i) of this section. The withholding agent may treat the foreign partnership as a withholding partnership if it can reliably associate the payment with a Form W–8 described in paragraph (c)(2)(iv) of this section. In the absence of a reliable Form W–8, the foreign partnership is presumed to be a non-withholding foreign partnership described in paragraph (c)(3)(i) of this section. In such a case, under paragraph (c)(1)(i) of this section, the withholding agent must treat the partners, rather than the partnership, as payees. See paragraph (d) of this section for determining the status of the partners as U.S. or foreign persons in the absence of documentation. See § 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(7) If the withholding agent determines that the payee is a U.S. partnership, or so presumes in accordance with paragraph (d)(2) of this section in the absence of documentation, the withholding agent is not required to withhold under paragraph (b)(1) of this section because the partnership is treated as a U.S. payee. See paragraph (b)(2) of this section for withholding requirements applicable to a domestic partnership with foreign partners. See §§ 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(8) In order to determine whether to rely on a claim for a reduced rate under a tax treaty by a person that the withholding agent treats as a partnership or as a partner in a partnership, the withholding agent must apply the provisions of § 1.894–1T(d). For applicable procedures regarding reliance by a withholding agent on a claim for benefits under a tax treaty in such a situation, see § 1.1441–6(b)(4).

(b) *Domestic partnerships*—(1) *Exemption from withholding on payment to domestic partnerships.* A payment to a person that the withholding agent may treat as a domestic partnership is treated as a payment to a U.S. payee. Therefore, a payment to a domestic partnership is not subject to withholding under section 1441 even though it may have partners that are foreign persons. A withholding agent may treat the person to whom the payment is made as a domestic partnership if it can reliably associate the payment with a Form W–9 furnished by the partnership in accordance with the procedures under § 1.1441–1(d) (2) or (4) or based upon the presumptions described in paragraph (d)(2) of this section.

(2) *Withholding by a domestic partnership*—(i) *In general.* A domestic partnership is required to withhold under § 1.1441–1 as a withholding agent on the gross amount of items of income subject to withholding that are includible in the distributive share of income of a partner that is a foreign person. Pursuant to the authority provided under section 702(a), each partner shall take into account separately its distributive share of amounts subject to withholding, and thus the partnership, pursuant to section 703(a)(1), shall separately state these amounts when computing its taxable income. A partnership shall withhold when any distributions that include amounts subject to withholding are made or when guaranteed payments are made. To the extent a foreign partner's distributive share of an amount subject to withholding has not been actually distributed, the partnership is required to withhold on the partner's distributive share of that amount on the earlier of the date that the statement required under section 6031(b) and § 1.6031(b)–1T to be provided to that partner is mailed or otherwise furnished to the partner or the due date for furnishing that statement as provided under § 1.6031(b)–1T. If a

partnership withholds on a distributive share before the amount is actually distributed to the partner, then withholding is not required when the amount is subsequently distributed. Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In such a case, partners in a domestic partnership are not required to furnish a withholding certificate in order to claim an exemption from withholding under section 1441(c)(1) and § 1.1441–4.

(ii) *Determination by the domestic partnership of the partners' status.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to the partnership and the status of the partners, the partnership shall apply the rules of § 1.1441–1(b) (2) and (3), and of paragraphs (c)(1) and (d) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) of this section (in the case of a partner that is a foreign estate or a foreign trust) in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners.

(iii) *Reliance on a partner's claim for reduced withholding.* Absent actual knowledge or reason to know otherwise, a domestic partnership may rely on a claim for reduced withholding under chapter 3 of the Code by a partner, if prior to the time the partnership is required to withhold, the partnership can reliably associate the partner's distributive share of the partnership items with documentation upon which it may rely to treat the partner or another person as a U.S. person under § 1.1441–1(d) (2) or (3), as a U.S. beneficial owner under § 1.1441–1(d)(4), or as a foreign beneficial owner under § 1.1441–1(e)(1)(ii).

(iv) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441–1(b)(2)(vii).

(v) *Coordination with chapter 61 of the Internal Revenue Code and section 3406.* A domestic partnership is not a payor for purposes of chapter 61 of the Code or section 3406 with respect to payments to its partners in their capacity as partners. Thus, it is not required to make an information return on Form 1099 nor to backup withhold with respect to its partners' distributive share of partnership items. However, it must file returns under section 6031. Such returns are in lieu of making returns under § 1.1461–1 (b) and (c). See § 1.1461–1(c)(2)(ii)(A).

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, a payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the partners (looking through partners that are foreign flow-through entities) as follows—

(A) If the withholding agent can reliably associate the partner's distributive share of the payment with a Form W–9, a Form W–8, or other appropriate documentation upon which it can rely to treat the payment as made to a U.S. or foreign beneficial owner under § 1.1441–1 (d)(4) or (e)(1)(ii), then the beneficial owner so identified is treated as the payee;

(B) If the withholding agent can reliably associate the partner's distributive share with an intermediary certificate described in § 1.1441–1(e)(3)(ii), (iii), or (v), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary;

(C) If the withholding agent can reliably associate the partner's distributive share with a partnership certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section, then the rules of paragraph (c)(1) (i) or (ii) of this section shall apply to determine whether the payment is treated as made to the partners of the higher-tier partnership under this paragraph (c)(1)(i) or to the higher tier partnership (under the rules of paragraph (c)(1)(ii) of this section), in the same manner as if the partner's distributive share of the payment had been paid directly to such foreign partnership;

(D) If the withholding agent can reliably associate the partner's distributive share with a withholding certificate described in § 1.1441–1(e)(3)(i) regarding a foreign trust or estate, then the rules of paragraph (e) of this section shall apply to determine who the payees are; and

(E) If the withholding agent cannot reliably associate the partner's distributive share with a withholding certificate or other appropriate documentation, the partners are considered to be the payees and the presumptions described in paragraph (d)(3) of this section shall apply to determine the status of the partners.

(ii) *Payments treated as made to the partnership.* A payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c) (2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the foreign partnership and not to its partners only if—

(A) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(2)(iv) of this section (dealing with a certificate from a person representing to be a withholding foreign partnership); or

(B) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section certifying that the payment is income that is effectively connected with the conduct of a trade or business in the United States.

(iii) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441–1(b)(2)(vii). In the absence of documentation, see § 1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions.

(iv) *Example.* The rules of paragraphs (c)(1) (i) and (ii) of this section are illustrated by the following example:

Example. (i) *Facts.* A foreign partnership, P, has two partners, a corporation, C, and a partnership, P1, both organized in country X. P1 has three partners, a foreign pension fund, a domestic partnership, P2, and a foreign partnership, P3, organized in country Y. P2's partners are foreign pension funds. P holds U.S. Treasury obligations in registered form, on which it receives interest from U.S. custodian, Z. P1 is not a withholding foreign partnership and it does not certify that the interest is effectively connected with the conduct of a U.S. trade or business. P3 is a withholding foreign partnership. P has furnished a valid withholding certificate described in paragraph (c)(3)(iii) of this section to which it has attached valid withholding certificates for C (beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i)), P1, and P1's three partners (a Form W–9 for P2, a withholding certificate described in paragraph (c)(2)(iv) of this section for P3 and a beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i) for the foreign pension fund). P has furnished appropriate information in accordance with paragraph (c)(3)(iv) of this section upon which the withholding agent can rely to determine which portion of the payment is associated with each withholding certificate.

(ii) *Analysis.* The payment to P is treated as a payment to its partners because none of the conditions described in paragraph (c)(1)(ii) exist under the facts to treat P as the payee (i.e., it is not a withholding foreign partnership and, although it has furnished a withholding certificate described under paragraph (c)(3)(iii) of this section, it is not claiming that the interest is effectively connected with the conduct of a U.S. trade or business). Under paragraph (c)(1)(i)(A) of this section, C, as a partner of P, is treated as a payee because it is not a flow-through entity or an intermediary (based on the documentation furnished for C). Under paragraph (c)(1)(i)(C) of this section, P1 is not treated as a payee because it is a foreign partnership and none of the conditions described under paragraph (c)(1)(ii) of this section exist under the facts to treat P as the payee. Instead, P2 (under paragraph (c)(1)(i)(A) of this section), P3 (under paragraph (c)(1)(ii)(A) of this section), and the foreign pension fund that is a partner of P1 (under paragraph (c)(1)(i)(A) of this section), are treated as the payees of P1's distributive share of the payment to P. P2 is a payee because, although a flow-through entity, it is a domestic partnership (see paragraph (b)(1) of this section). P3 is treated as a payee under paragraph (c)(1)(ii)(A) of this section, irrespective of who its partners are, because it has furnished a valid withholding certificate as a withholding foreign partnership. The foreign pension fund is treated as a payee under paragraph (c)(1)(i)(A) of this section because it has furnished a beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i).

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it is not required to attach such documentation to the partnership withholding certificate.

(ii) *Withholding agreement*—(A) *In general.* A foreign partnership may claim withholding foreign partnership status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may issue. A withholding foreign partnership must file a partnership return under section 6031(a) to the extent required under the regulations under that section and furnish statements on Form K–1 to its partners under section 6031(b) to the extent required under the regulations under that section. See §§ 1.6031–1 and 1.6031(b)–1T. See § 1.1461–1(c)(2)(ii)(A) for an exemption from filing Forms 1042 and 1042–S. A foreign withholding partnership that wishes to also be a qualified intermediary under § 1.1441–1(e)(5) for payments it receives for persons other than its partners may combine both agreements into one single agreement.

(B) *Terms of withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under such withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. In particular, the agreement must include provisions for reporting of information on Form 1065 and furnishing K–1 statements to the partners in the manner required under section 6031 and the regulations under that section. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply to the foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will audit the foreign partnership's books and records in order to verify the accuracy of the Forms 1065 filed by the partnership and K–1 statements furnished to the partners as required under section 6031 and the regulations under that section. The agreement shall also specify the assets that the foreign partnership has in the United States or alternative means of collection, if necessary.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility for all payments that are made to it and, therefore, is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (see paragraph (c)(3)(iv) of this section for the requirement to provide distributive share information to the withholding agent in the case of other foreign partnerships). The partnership shall be a withholding agent with respect to each of its partner's distributive share of income subject to withholding that is paid to the partnership. Therefore, the withholding agent is not required to withhold any amount under chapter 3 of the Code on a payment to a foreign partnership that has furnished a withholding certificate representing that it is a withholding foreign partnership, unless it has actual knowledge or reason to know that the certificate is incorrect. The foreign partnership shall withhold the payments under the same procedures and at the same time as is prescribed for withholding by a domestic partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4)(iv) of this section shall apply and paragraph (b)(2)(ii) of this section shall not apply.

(iv) *Withholding certificate from a withholding foreign partnership.* The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(2)(iv). A withholding certificate furnished by a withholding foreign partnership is valid with regard to any partner on whose behalf the certificate is furnished only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (c)(2)(iv) as follows—

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed;

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(2)(iv).

(3) *Other foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(3)(iii) of this section may treat the person to whom it makes the payment as a foreign partnership that is not a withholding foreign partnership. Such reliance is permitted for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. For purposes of this paragraph (c)(3)(i), a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (c)(3)(iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable, or that information for allocating the payment among the partners is lacking or is unreliable, shall nevertheless be treated as a payment to a foreign partnership.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign partnership that is not a withholding foreign partnership. To the extent that a withholding agent treats a payment to a foreign partnership as a payment to its partners in accordance with paragraph (c)(1) of this section, it may rely on a claim for reduced withholding by a partner if, prior to the payment, the withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner unless the withholding agent has actual knowledge or reason to know that the withholding certificate is unreliable. The certificate will be considered to pertain to the partner if the appropriate withholding certificate for the partner is attached to the partnership's withholding certificate. An appropriate withholding certificate for a partner includes a beneficial owner withholding certificate describ. d in § 1.1441–1(e)(2)(i) or, if applicable, documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), the applicable certificates described in § 1.1441–1(d)(2) or (3) (for a partner claiming to be a U.S. payee), an intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v), or a partnership withholding certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section. Except where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of the partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single partnership withholding certificate to which the partners' certificates are attached. Where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, the claim may be presented without having to identify the partner's distributive share of the payment if the certificate contains the certification described in paragraph (c)(3)(iii)(E) of this section.

(iii) *Withholding certificate from a foreign partnership that is not a withholding foreign partnership.* A withholding certificate furnished by a foreign partnership that is not a withholding foreign partnership is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, it contains the information, statement, and certifications described in this paragraph (c)(3)(iii), and the withholding certificates or other appropriate documentation for all of the partners are attached (except that certificates for partners are not required to be attached for a certificate furnished solely for income claimed to be effectively connected with the conduct of a trade or business in the United States, regardless of any partner's status as a U.S. person). The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(3)(iii). The information, statement, and certifications required on the withholding certificate are as follows:

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed.

(B) A representation that the person whose name is on the certificate is a foreign partnership.

(C) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information to the withholding agent to determine the amount required to be withheld from amounts paid to the partnership, such as each partner's distributive share of amounts to which the certificate relates, prepared in the manner described in paragraph (c)(3)(iv) of this section. No statement is required for a certificate furnished for income claimed to be effectively connected with the conduct of a trade or business in the United States.

(D) If the withholding certificates are required to be attached to the partnership's withholding certificate, a statement either that the attached withholding certificates represent all of the partners or that the partners for whom withholding certificates are lacking are separately identified in the statement required under paragraph (c)(3)(iv) of this section.

(E) A certification that the income is effectively connected with the conduct of a trade or business in the United States, if applicable.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(3)(iii).

(iv) *Information to the withholding agent regarding each partner's distributive share.* The partnership must furnish information sufficient for the withholding agent to determine each partner's distributive share of reportable amounts (described in § 1.1441–1(e)(3)(vi)). The sum of all partners' distributive shares, expressed as a percentage, must equal, but not exceed one hundred percent. For purposes of this paragraph (c)(3)(iv), the rules of § 1.1441–1(e)(3)(iv) regarding the information to furnish to the withholding agent shall apply.

(v) *Withholding by a foreign partnership.* A foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding under chapter 3 of the Code shall be deemed to have satisfied any obligation under such chapter to withhold on the amount with respect to any partner to the extent that the partner's distributive share of the payment can be reliably associated with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner that the partnership has furnished to a withholding agent and the partnership does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations under such chapter.

(d) *Presumptions regarding payee's status in the absence of documentation*—(1) *In general.* This paragraph (d) contains the applicable presumptions for determining the status of the partnership and its partners in the absence of documentation. The provisions of § 1.1441–1(b)(3)(iv) (regarding the 90-day grace period) and § 1.1441–1(b)(3) (vii) through (ix) shall apply for purposes of this paragraph (d).

(2) *Determination of partnership status as domestic or foreign in the absence of documentation.* In the absence of a valid representation of domestic partnership status in accordance with paragraph (b)(1) of this section and of foreign partnership status in accordance with paragraph (c)(2)(i) or (3)(i) of this section, the withholding agent shall determine the status of the payee as a corporation, a partnership or otherwise, based upon the presumptions set forth in § 1.1441–1(b)(3)(ii). If, based upon these presumptions, the withholding agent treats the payee as a partnership, the partnership shall be presumed to be a foreign partnership if the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," if the withholding agent's communications with the payee are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in § 1.6049–5(e)). For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If the withholding agent treats the payee as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section, the presumptions described in this paragraph (d)(3) shall apply when the withholding agent cannot reliably associate a payment with partner documentation. The provisions of paragraphs (d) (3)(i), (ii), and (iii) of this section are not relevant to a payment that a withholding agent can reliably associate with a withholding certificate described in paragraph (c)(2)(iv) of this section.

(i) *Documentation regarding the status of a partner is lacking or unreliable.* Any portion of a payment that the withholding agent cannot reliably associate with a partner because a withholding certificate or other appropriate documentation for that partner is lacking or unreliable is presumed to be made to foreign payee. Therefore, under § 1.1441–1(b)(1), the withholding agent must withhold 30 percent from payments to the partnership of amounts subject to withholding that are allocable to such partner or group of partners.

(ii) *Information regarding the allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of partners but lacks reliable information to determine how much of the payment is allocable to each partner in the group, the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the partner in the group with the highest applicable withholding rate or, if the rates are equal, to the partner in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to the partnership certificate is another partnership certificate or an intermediary certificate described in § 1.1441–1(e)(3)(iii), the rules of this paragraph (d)(3)(ii) apply by treating the share of the payment allocable to the other partnership or the intermediary certificate as if the payment were made directly to the foreign partnership or intermediary.

(iii) *Certification that the foreign partnership has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (c)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the partners in the partnership) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the partners or group of partners for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one partner and the entire payment is presumed to be made to a foreign payee.

(iv) *Determination by a withholding foreign partnership of the status of its partners.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to a withholding foreign partnership, the partnership shall apply the rules of § 1.1441–1(b)(2), and of paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) (in the case of a partner that is a foreign estate or a foreign trust), in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners. Further, the provisions of paragraphs (d)(3) (i), (ii), and (iii) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on the amount, it cannot reliably associate the amount with documentation for any one or more of its partners. See §§ 1.6031–1 and 1.6031–1T for reporting and filing requirements applicable to a withholding foreign partnership.

(4) Examples. The rules of this paragraph (d) may be illustrated by the following examples:

Example 1. (i) *Facts.* FP is a foreign partnership receiving U.S. source interest that would qualify as portfolio interest described in section 871(h)(2)(B) if the statement described in section 871(h)(5) were furnished. FP has three partners, A, B, and C. FP furnishes to the withholding agent a partnership withholding certificate described in paragraph (c)(3)(iii) of this section to which it attaches a Form W–9 for A and a beneficial owner Form W–8 for B. Nothing on A's Form W–9 indicates that A is an exempt recipient within the meaning of § 1.6049–4(c)(1)(i). No documentation is attached for C. The partnership has one single account with the withholding agent. It furnishes a statement to the withholding agent under paragraph (c)(3)(iv) of this section indicating that A's, B's, and C's respective distributive shares of the payments are 40%, 40%, and 20% and represents, in accordance with paragraph (c)(3)(iii)(D) of this section, that there are only three partners.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely on FP's withholding certificate and A's Form W–9 to treat A as a U.S. beneficial owner under § 1.1441–1(d)(4)(i) and as a U.S. payee under paragraph (c)(1)(i)(A) of this section to the extent of 40 percent of the payment. Under § 1.1441–1(b)(1), the withholding agent is not required to withhold on A's share of the payment. Under § 1.6049–4(e), the withholding agent must comply with information reporting obligations (i.e., file a Form 1099) with respect to A who is treated as a U.S. payee under paragraph (c)(1)(i)(A) of this section and § 1.6049–5(d)(1) for purposes of the information reporting provisions of chapter 61 of the Code and the regulations thereunder. Absent actual knowledge or reason to know otherwise, the withholding agent may also rely on FP's withholding certificate and B's Form W–8 to treat B as a foreign beneficial owner under § 1.1441–1(e)(1)(ii)(A)(1) and paragraph (c)(1)(i)(A) of this section. Thus, under § 1.1441–1(b)(1), the withholding agent may rely on B's claim for portfolio interest

treatment for B's share of the payment. Under § 1.1461–1(b)(1) and (c)(1), the withholding agent must report the payment to B on Forms 1042 and 1042–S unless, under section 6031 and the regulations under that section, the partnership is required to file a return. Because the withholding agent cannot associate the documentation (as defined in § 1.1441–1(b)(3)(vii)) for C's share of the interest income, the withholding agent must, under paragraph (d)(3)(i) of this section, treat that amount as a payment made to an unidentified foreign partner and withhold 30 percent under section 1441 in accordance with § 1.1441–1(b)(1).

Example 2. The facts are the same as in *Example 1*, but the partnership has furnished no information under paragraph (c)(3)(iv) of this section regarding how much of the payment to the foreign partnership is attributable to A and C. Under paragraph (d)(3)(ii) of this section, the payment allocable to group A–C is presumed made entirely to A or to C, depending of who of A or C is subject to the highest withholding rate. A is not subject to withholding because it has furnished a valid Form W–9. C is subject to a 30-percent withholding rate under § 1.1441–1(b)(1) because it is presumed to be an unidentified foreign partner under paragraph (d)(3)(i) of this section. Therefore, under paragraph (d)(3)(ii) of this section, the portion of the payment that the withholding agent can associate with A and C is subject to withholding at a 30-percent rate. The withholding agent may ignore the fact that A has furnished a valid Form W–9 supporting his claim of exemption from withholding as a U.S. person because it has no reliable information on how much of the payment is allocable to A. Because the withholding agent has a Form W–9 for the U.S. individual partner, it must also report A's distributive share on a Form 1099. To the extent that A's exact share is not known, the entire amount should be reported on the Form 1099.

(e) *Trusts and estates.* [Reserved]

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in § 1.1441–1(b)(3) or in paragraph (d) or (e) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a withholding certificate that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country.

See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also § 1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) (not including 1.1441–1(e)(1)(ii)(B) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer has complied with the advance ruling requirements described in paragraph (e) of this section (if applicable), and, if the beneficial owner is a person related to the withholding agent within the meaning of section 482, that the beneficial owner will file the statement required under § 301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the calendar year that, in the aggregate, exceed $500,000. See § 301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. A beneficial owner's taxpayer identifying number on a withholding certificate is valid for purposes of establishing proof of residence in a treaty country only if the taxpayer identifying number is certified by the IRS in accordance with the procedures set forth in paragraph (c) of this section. However, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a taxpayer identifying number without having to inquire as to whether the taxpayer identifying number is certified, if the number appears correct on its face and the permanent residence address on the certificate is in the country whose tax treaty with the United States is invoked. See 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(i) *General rule.* In the case of income described in paragraph (b)(2)(ii) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section even if the person whose name is on the certificate has not provided a taxpayer identifying number. In the case of payments made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore account (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the certifications described in paragraphs (c)(5) (i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (b)(2)(i) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(ii) *Income to which special rules apply.* The income to which paragraph (b)(2)(i) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) and amounts paid with respect to loans of securities described in this paragraph (b)(2)(ii). For purposes of this paragraph (b)(2)(ii), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and § 1.1092(d)–1 when documentation is provided.

(3) *Competent authority agreements.* The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

(4) *Eligibility for reduced withholding under an income tax treaty in the case of a payment to a person other than an individual*—(i) *General rule.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the payment, and all other applicable requirements for benefits under the treaty are satisfied. A payment received by an entity is treated as derived by a resident of an applicable treaty jurisdiction to the extent that the payment is subject to tax in the hands of a resident of that jurisdiction. For this purpose, a payment received directly by an entity that is treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of the jurisdiction to the extent that the interest holders in the entity are residents of the jurisdiction. For purposes of the preceding sentence, interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities by the applicable treaty jurisdiction. A payment received by an entity that is not treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of such jurisdiction only if the entity is itself a resident of that jurisdiction. If the entity is a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single member is a foreign person, amounts paid to such entity may nevertheless be treated as derived by a resident of a treaty country if the entity is treated by the applicable treaty country as deriving the income as a resident of that country. The provisions of § 1.894–1T(d) (1) through (4) shall apply for purposes of determinations made under this paragraph (b)(4).

(ii) *Withholding certificates*—(A) *In general.* The type of withholding certificate or other appropriate documentation that must be furnished by a person claiming a reduced rate of withholding under an income tax treaty depends upon the status of the entity under the laws of the applicable treaty jurisdiction. For example, if the person receiving the payment is a foreign entity but the persons eligible for benefits under the applicable income tax treaty are the entity's interest holders in the foreign entity receiving the payment, rather than the entity itself, then the entity shall be treated as a foreign partnership for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a corporation for U.S. tax purposes. If, conversely, the person eligible for benefits under an income tax treaty is the entity rather than the interest holders, then the entity shall be treated as a corporation for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a partnership for U.S. tax purposes. In the event of a claim for dual treatment described in paragraph (b)(4)(iii) of this section, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (e.g., portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the representations on the certificate that the beneficial owner derives the income and is a resident of the applicable treaty country, within the meaning of § 1.894–1T(d) and the applicable income tax treaty, without having to inquire into the truthfulness of these representations or to research foreign law.

(B) *Certification by qualified intermediary.* A foreign corporation that is a qualified intermediary described in § 1.1441–1(e)(5)(ii)(C) for purposes of claiming reduced rates of withholding under an income tax treaty for its shareholders (who are treated as deriving the income paid to the corporation as resident of an applicable treaty jurisdiction) may furnish a single Form W–8 for its shareholders for amounts for which it claims the benefit of a reduced rate of withholding under an applicable income tax treaty. The Form W–8 shall be one described under § 1.1441–1(e)(3)(ii).

(iii) *Multiple claims of treaty benefits.* A withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity for the same or for another portion of the payment. In the case of concurrent and inconsistent claims of treaty benefits for the same amount, the withholding agent may choose to reject the claim and request that a consistent claim be submitted or it may choose which reduction to apply. In the case of concurrent and consistent claims (e.g., the entity that is paid the amount claims a reduced rate for a portion of the payment and an interest holder claims a different reduced rate for the balance of the payment), the withholding agent may, at its option, accept such dual claim based, as appropriate, on withholding certificates furnished by such persons with respect to their respective shares of such payment, even

though the withholding agent holds different withholding certificates that requires it to treat the entity inconsistently with respect to different payments or with respect to different portions of the same payment. See paragraph (b)(4)(iv) *Example 2* of this section. If the withholding agent does not accept claims of reduced rate presented by any one or more of the interest holders, or by the entity, any interest holder or the entity may subsequently claim a refund or credit of any amount so withheld to the extent the holder's or entity's share of such withholding exceeds the amount of tax due under section 894 (in the case of a foreign person) or under section 1 or 11 (in the case of a U.S. person).

(iv) *Examples.* This paragraph (b)(4) is illustrated by the following examples:

Example 1. (i) *Facts.* Entity A is a business organization formed under the laws of country Y that has an income tax treaty with the United States. A receives U.S. source royalties from withholding agent R and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). A furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that A is a resident of country Y (within the meaning of the U.S.-Y tax treaty) and the beneficial owner of the royalties (within the meaning of the U.S.-Y tax treaty).

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the representation that A is a resident of country Y and a beneficial owner of the royalty income within the meaning of the U.S.-Y tax treaty.

Example 2. (i) *Facts.* The facts are the same as under *Example 1*, except that one of A's interest holders, T, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty is only reduced to 5 percent. T furnishes a beneficial owner withholding certificate to A that represents that T is deriving its distributive share of the royalty income paid to A as a resident of country Z (within the meaning of § 1.894–1T(d)(1) and the U.S.-Z tax treaty) and is the beneficial owner of the royalty income (within the meaning of the U.S.-Z tax treaty). A furnishes to R an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches T's beneficial owner withholding certificate for the portion of the payment that T claims as its distributive share of the royalty income. A also furnishes to R a beneficial owner withholding certificate for itself for the portion of the payment that T does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the documentation furnished by A in order to treat the royalty payment to a single foreign entity (A) as derived by different residents of tax treaty countries as a result of concurrent and consistent claims presented under different treaties. R may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that T claims to derive as a resident of country Z and a reduced rate of 5 percent under the U.S.-Y treaty for the balance. However, under paragraph (b)(4)(iii) of this section, R may, at its option, treat A as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

Example 3. (i) *Facts.* Entity A is a business organization formed under the laws of the United States and is classified as a partnership for U.S. tax purposes. A's partners are S and T. S is an entity organized in country Z. T is an entity organized in country X. Under the laws of country Z, A is treated as an entity taxable at the entity level. Therefore, S is treated as a shareholder for purposes of the laws of country Z and is not required to take A's income into account for purposes of determining its tax liability under those laws. Distributions from A are treated as distributions from a corporate entity for purposes of the tax laws of Country Z. Under the laws of country X, A is treated as a fiscally transparent entity and T is required to take into account its distributive share of A's income for purposes of determining its tax liability under those laws. A receives U.S. source royalties that are not connected with a trade or business. The United States has a tax treaty with countries Z and X under which the rate on royalties is reduced to zero. Both S and T furnish a beneficial owner certificate to A representing that they are resident of their respective countries and a beneficial owner of their respective distributive share of royalty income. A has actual knowledge of the tax treatment of S and T in their respective countries.

(ii) *Analysis.* Because A is a partnership for U.S. tax purposes, S and T are each taxable on their respective distributive share of the royalty income under section 881(a). However, under § 1.1441–5(b)(1), the payment of royalty to A is not a payment subject to withholding. Instead, under § 1.1441–5(b)(2), A must withhold on each partner's distributive share of U.S. source royalty income and may apply the rules of this section to determine the extent to which the 30-percent withholding rate under section 1442 should be reduced under the income tax treaties with countries Z and X. Because A has actual knowledge of the tax treatment of S in country Z as a shareholder of A and not as a partner (or owner of a fiscally transparent entity), A may not rely on the certificate furnished by S in order to reduce the rate of withholding under the U.S.-Z tax treaty. Therefore, it withholds 30 percent of S's distributive share of royalty income. A may rely on T's certificate to treat T as deriving its distributive share of A's royalty income as a resident of country X and as a beneficial owner. Therefore, A withholds on T's distributive share of royalty income at the reduced rate under the U.S.-X tax treaty.

Example 4. (i) *Facts.* Entity A is a business organization formed under the laws of country Y. A receives from withholding agent R U.S. source royalties and U.S. source interest income that is potentially eligible for the portfolio interest exemption under section 871(h) and 881(c). A's interest holders are S, an individual who resides in country Y, T, an individual who resides in country Z, and U, an individual resident in the United States. The United States has a tax treaty with both country Y and country Z. The U.S.-Y tax treaty reduces the rate on royalties to 5 percent, and the U.S.-Z tax treaty reduces the rate to zero. A is classified as a partnership under U.S. tax principles. Under the tax laws of country Y, A is treated as a fiscally transparent entity and S is required to include in income his distributive share of A's income. A furnishes to R an intermediary withholding certificate described in § 1.1441–5(c)(3)(iii) to which it attaches—

(A) A Form W–9 for U; and

(B) Beneficial owner withholding certificates for S and T that represent that S and T are foreign persons. For purposes of claiming the reduced rate under each applicable tax treaty, each of S's and T's certificates represents that S and T are deriving their distributive share of the royalty income as a resident of their respective countries (within the meaning of § 1.894–1T(d)(1) and of the applicable tax treaty) and as a beneficial owner (within the meaning of the applicable tax treaty).

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the representations that S and T derive a distributive share of the royalty income as resident of their respective countries and are the beneficial owners of the income. Therefore, R may withhold on S's distributive share of the royalty income paid to A at the 5-percent rate under the U.S.–Y tax treaty. R may withhold on T's distributive share of the royalty income paid to A at the zero rate under the U.S.-Z tax treaty, even though A is not organized in, or a resident of, country Z. R may rely on U's Form W–9 to treat U as a U.S. person. Therefore, R does not withhold on U's share of the royalty payment. R also does not withhold on any portion of the interest paid to A because S and T have furnished beneficial owner certificates and U has furnished a Form W–9.

Example 5. (i) *Facts.* The facts are the same as in *Example 4*, except that A represents that it derives the royalty income it receives from R as a resident of country Y (within the meaning of § 1.894–1T(d)(1) and the U.S.-Y tax treaty) and as a beneficial owner of the income (within the meaning of the U.S.-Y tax treaty). Neither T nor S represent to derive the royalty income as resident of their respective country. A furnishes an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches a Form W–9 for U and beneficial owner withholding certificates for S and T. No claims of reduced rate under a tax treaty are made on S's or T's certificates. A also furnishes to R its own beneficial withholding certificate in order to claim the reduced rate under the U.S.-Y tax treaty for the royalty income.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on A's intermediary certificate and the certificates attached thereto in order to treat S and T as foreign beneficial owners for purposes of treating the interest as portfolio interest and to treat U as a U.S. payee. Therefore, R does not withhold on the payment of interest to A. in addition, absent actual knowledge or reason to know otherwise, R may rely on A's beneficial owner certificate in order to reduce the rate of withholding on the royalty income under the U.S.-Y tax treaty.

(5) *Claim of benefits under an income tax treaty by a U.S. person.* In certain cases, a U.S. person may claim the benefit of an income tax treaty. For example, under certain treaties, a U.S. citizen residing in the treaty country may claim a reduced rate of U.S. tax on certain amounts representing a pension or an annuity from U.S. sources. Claims of treaty benefits by a U.S. person may be made by furnishing a Form W–9 to the withholding agent or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Proof of tax residence in a treaty country and certification of entitlement to treaty benefits*—(1) *In general.* A beneficial owner establishes proof of its tax residence in a treaty country for purposes of its claim to the withholding agent that a reduced rate of tax applies under an income tax treaty by complying with the procedures described in this paragraph (c) or with such other procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). For purposes of this section, the residence of a beneficial owner must be determined in accordance with the provisions of the applicable U.S. income tax treaty as may be clarified by any applicable regulations thereunder, or technical explanations thereof, or other published guidance.

(2) *Certification of taxpayer identifying number*—(i) *In general.* A taxpayer may certify its taxpayer identifying number as required under paragraph (b)(1) of this section by having the number certified by the IRS either directly as provided under paragraph (c)(2)(ii) of this section or through a qualified intermediary as provided in paragraph (c)(2)(iii) of this section.

(ii) *IRS-certified TIN.* The IRS shall certify a taxpayer identifying number (TIN) upon a certificate of residence described in paragraph (c)(3) of this section to which it shall attach the certifications described in paragraphs (c)(5) (i) and (ii) of this section, if applicable. The taxpayer may provide documentary evidence described in paragraph (c)(4) of this section instead of a certificate of residence. However, a taxpayer (other than a person organized as a corporate body in the applicable treaty jurisdiction) may furnish documentary evidence instead of a certificate of residence only if a certificate of residence is not available to the taxpayer.

A certificate of residence is not available for purposes of this paragraph (c)(2)(ii) if the tax administration of the country where the taxpayer claims to be a resident does not have a procedure in effect by which such certificates are routinely issued or the taxpayer establishes that obtaining such certificate would require an unreasonable amount of time or costs relative to the taxpayer's circumstances (e.g., amount of investments in the United States). A person organized as a corporate body in the applicable treaty jurisdiction may, instead of a certificate of residence, furnish a certificate of incorporation, articles of incorporation, or other official document reflecting the taxpayer's status as a corporate body in that jurisdiction, regardless of whether a certificate of residence described in paragraph (c)(3) of this section is otherwise available. The certificate or documentary evidence must be furnished to the IRS by, or on behalf of, the beneficial owner upon application for the taxpayer identifying number or at any other time, as permitted under such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). If the tax residence of the beneficial owner changes, the beneficial owner shall notify the IRS of that change within 30 days thereof. This requirement is in addition to the notification requirements described in § 1.1441–1(e)(4)(ii)(D) regarding notification to a withholding agent in the event of changes in the beneficial owner s circumstances. The IRS may, under the exchange of information provisions of an applicable income tax treaty, exchange information with the relevant foreign competent authority for the purpose of confirming with appropriate tax officials of the other country that the beneficial owner continues to be a tax resident of that country. The IRS may from time to time, in its discretion, request that the beneficial owner reconfirm its residence in the treaty country.

(iii) *Special rules for qualified intermediaries.* The IRS may certify a taxpayer identifying number based upon the certification of a qualified intermediary described in § 1.1441–1(e)(5)(ii) regarding the tax residence of any of its account holders, under procedures agreed upon with the IRS. If a new account holder has a TIN at the time it opens an account, the qualified intermediary may rely on a statement by the account or interest holder that appropriate proof of tax residence in the treaty jurisdiction was previously provided to the IRS. In such case, the qualified intermediary must notify the IRS each time that the account or interest holder's address changes to another country or when the account or interest holder terminates its relationship with the qualified intermediary within 30 days of that change.

(3) *Certificate of residence.* A certificate of residence referred to in paragraph (b)(2)(i) or (c)(2)(ii) of this section is a certification issued by the competent authority (or another appropriate tax official) of the treaty country of which the taxpayer claims to be a resident that the taxpayer has filed its most recent income tax return as a resident of that country (within the meaning of the applicable tax treaty). A certificate of residence is valid for a period of three years or such longer period as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) *Documentary evidence establishing residence in the treaty country*—(i) *Individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence of an individual in a treaty country if it includes the name, address, and photograph of the person seeking to prove residence, is an official document issued by an authorized governmental body (i.e., a government or agency thereof, or a municipality), and has been issued no more than three years prior to presentation to the IRS or the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (e.g., a bank statement, utility bills, or medical bills). Documentary evidence must be in the form of original documents or certified copies thereof. Documentary evidence must be accompanied by an affidavit of the taxpayer signed under penalties of perjury that the documentary evidence submitted is true and complete.

(ii) *Persons other than individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence in a treaty country of a person other than an individual if it includes the name of the entity and the address of its principal office in the treaty

country, and is an official document issued by an authorized governmental body (e.g., a government or agency thereof, or a municipality).

(5) *Certifications regarding entitlement to treaty benefits*—(i) *Certification regarding conditions under a Limitation on Benefits Article.* A taxpayer that is not an individual must certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that it meets one or more of the conditions set forth in the Limitation on Benefits Article (if any, or in a similar provision) contained in the applicable tax treaty. The affidavit must describe sufficient facts for the IRS to determine which condition the taxpayer claims to satisfy. The affidavit must be signed by the taxpayer under penalties of perjury.

(ii) *Certification regarding whether the taxpayer derives the income.* A taxpayer that is not an individual shall certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself as a resident of the applicable treaty jurisdiction within the meaning of § 1.894–1T(d)(1). The affidavit must be signed under penalties of perjury. This requirement does not apply if the taxpayer furnishes a certificate of residence that certifies that fact.

(d) *Joint owners.* In the case of a payment to joint owners, each owner must furnish a withholding certificate or, if applicable, documentary evidence or a certificate of residence. The applicable rate of tax on a payment of income to joint owners shall be the highest applicable rate.

(e) *Related party dividends under U.S.-Denmark income tax treaty.* Article VI(3) of the income tax treaty between the United States and Denmark (see 1950–1 C.B. 77; see also § 601.601(d)(2) of this chapter) reduces the rate of tax on dividends between related corporations to 5 percent subject to the condition that the relationship between the domestic and foreign corporations was not arranged or maintained for the purpose of securing the reduced rate. A domestic corporation that makes a distribution derived by a resident of Denmark may treat this condition as satisfied if, prior to the payment, a request has been made to the IRS for a private letter ruling determining that the relationship between the corporation and the Danish resident was not arranged or maintained for such purpose and the IRS has either issued a favorable ruling (and the ruling has not been revoked) or is considering the ruling request.

(f) *Failure to receive withholding certificate timely.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 1001 or 8233 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under § 1.894–1T(d). Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section. Certificates issued prior to April 1, 1998, that expire at any time after March 31, 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate) shall remain valid until December 31, 1998.

Par. 12. Section 1.1441–7 is amended by

1. Revising paragraphs (a) through (c).
2. Redesignating paragraph (d) as paragraph (f).
3. Adding new paragraph (d), and paragraphs (e) and (g).
4. Removing the language "(j)" and adding "(g)" in its place in the first sentence of newly designated paragraph (f)(1).
5. Removing the language "(d)" and adding "(f)" in its place in the first sentence of newly designated paragraph (f)(1), in the first sentence of newly designated paragraph (f)(2)(i), and in the first sentence of newly designated paragraph (f)(3).
6. Removing the authority citation at the end of the section.

The revisions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) *Withholding agent defined.* For purposes of chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter, the term *withholding agent* means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in § 1.1441–1(e)(3)(i), a foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (A) or (E). See § 1.1441–1(b) (1) and (2) for determining whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461–1(a) and to make the returns prescribed by § 1.1461–1 (b) and (c), as modified by the terms of an agreement with a qualified intermediary (in the case of a qualified intermediary) or, in the case of a foreign partnership, to make the returns prescribed under section 6031 and the regulations thereunder. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and, generally, only one return (on Form 1042, as required under § 1.1461–1(b)), is required to be made. See § 1.1461–1(b)(2) and (c)(4) for filing procedures when multiple withholding agents are involved. In the case of a withholding agent paying to partners of a withholding foreign partnership described in § 1.1441–5(c)(2)(i), the withholding agent may arrange with the partnership to withhold if it is provided the information by the partnership, in which case the partnership does not have to withhold. However, the partnership must still file a partnership return under section 6031(a) and the regulations under that section. The withholding agent does not have to file Forms 1042–S (but does have to file a Form 1042) since the withholding foreign partnership furnishes FormsK–1 to its partners pursuant to section 6031(b) and § 1.6031(b)–1T. For purposes of this section and any requirement to withhold under chapter 3 of the Code and the regulations thereunder, a person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or attached to, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are not correct and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441–1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§ 1.1441–1(b)(3), 1.1441–4(a), 1.1441–5 (d) and (e), or 1.1441–9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441–1(b)(3)(ix) and (7).

(2) *Reason to know*—(i) *In general.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made.

(ii) *Limits on reason to know in certain cases.* Except as otherwise provided in paragraph (b)(3) of this section, a withholding agent that is a financial institution (including a regulated investment company) with which a customer may open an account has a reason to know with respect to payments of amounts described in § 1.1441–6(b)(2)(ii) that a beneficial owner withholding certificate or documentary evidence for a beneficial owner is not reliable only if any one or more of the circumstances described in this paragraph (b)(2)(ii) exist for a withholding certificate. In such a case, the withholding agent may require a new withholding certificate. In the absence of a new certificate, a withholding agent may rely on the withholding certificate only after documentation is provided in support of the claim of foreign status, classification, or reduced rate of tax under a tax treaty.

(A) The permanent residence address on the withholding certificate is an address in the United States. In the case of an individual, trust, or estate, the withholding agent may rely on information in its files that is less than three years old and that supports the beneficial owner's claim of foreign status, despite a U.S. address (for example, a bank has evidence of the diplomatic status of a customer). In the absence of evidence in the withholding agent's files, the agent meets its due diligence obligation for purposes of this paragraph (b)(2)(ii)(A) if it contacts the beneficial owner or its agent in the United States and obtains an explanation in writing supporting the foreign status of the beneficial owner (for example, the beneficial owner is a nonresident alien individual temporarily present in the United States as a teacher; see § 301.7701(b)–3(b)(3) of this chapter) and documentation supporting the claim of foreign status is attached to the beneficial owner's statement (for example, in the case of a nonresident alien individual teacher, a copy of the relevant pages of the beneficial owner's passport showing the individual's U.S. visa status or a copy of relevant INS documents). In the case of a beneficial owner other than an individual, trust, or estate, the withholding agent must inquire as to whether the person whose name is on the certificate is actually organized or created under the laws of a foreign country.

(B) The payment is directed to a P.O. Box, an in-care-of address, or a U.S. address. In the case of an individual, the withholding agent may rely, for example, on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in a foreign country to ascertain that the individual is a nonresident alien individual. In the case of a person other than an individual, the withholding agent may rely on other evidence to ascertain that the person whose name is on the certificate is not a U.S. person.

(C) In the case of income for which benefits are claimed under an income tax treaty, the permanent residence address or mailing address is not in the corresponding treaty country. In such a case, the withholding agent may rely, for example, on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in the country whose benefits under an income tax treaty with the United States are invoked.

(D) The mailing address on the withholding certificate is in the United States or the beneficial owner notifies the withholding agent of a new address for mailing or residential purposes that is in the United States, a P.O. box, or an in-care-address, or, in the case of income for which benefits are claimed under an income tax treaty, the mailing address on the certificate or the new mailing or residential address notified to the withholding agent is not in the treaty country. The withholding agent may, however, rely on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in a foreign country.

(E) The name of the person on the withholding certificate or documentary evidence indicates that the person's status is a corporation, partnership, trust, estate, or an individual, and the person's claim of status is not consistent with such indication. For example, a person whose name indicates that it is a per se corporation described in § 301.7701–2(b)(8)(i) of this chapter represents on a Form W–8 that it is a partnership.

(F) Such other circumstances as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter).

(3) *Coordinated account information systems.* See § 1.1441–1(e)(4)(ix) for application of these rules other than on an account-by-account basis so that a withholding agent that relies on a coordinated account information system for documentation is considered to know or have reason to know the facts recorded in the system.

(c) *Authorized agent*—(1) *In general.* The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of

amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting. However, if the agent is a foreign person, a withholding agent that is a U.S. person may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of this section, but only if the agent is an authorized foreign agent, as defined in paragraph (c)(2) of this section. An authorized foreign agent cannot apply the provisions of this paragraph (c) to appoint another person its authorized foreign agent with respect to the payments it receives from the withholding agent.

(2) *Authorized foreign agent.* An agent is an authorized foreign agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent;

(ii) The notification procedures described in paragraph (c)(3) of this section have been complied with;

(iii) Books and records and relevant personnel of the foreign agent are available (on a continuous basis, including after termination of the relationship) for examination by the IRS in order to evaluate the withholding agent's compliance with the provisions of chapters 3 and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Internal Revenue Code.

(3) *Notification.* A withholding agent that appoints an authorized agent to act on its behalf for purposes of § 1.871–14(c)(2), the withholding provisions of chapter 3 of the Code, section 3406 or other withholding provisions of the Internal Revenue Code, or the reporting provisions of chapter 61 of the Code, is required to file notice of such appointment with the Office of the Assistant Commissioner (International). Such notice shall be filed before the first payment for which the authorized agent acts as such. Such notice shall acknowledge the withholding agent liability as provided in paragraph (c)(2)(iv) of this section.

(4) *Liability of U.S. withholding agent.* An authorized foreign agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. In particular, an authorized foreign agent does not benefit from the special procedures or exceptions that may apply to a qualified intermediary. A withholding agent acting through an authorized foreign agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the U.S. withholding agent. For this purpose, the foreign agent's actual knowledge or reason to know shall be imputed to the U.S. withholding agent. The U.S. withholding agent's liability shall exist irrespective of the fact that the authorized foreign agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

(5) *Filing of returns.* See § 1.1461–1(b)(2)(iii) and (c)(4)(iii) regarding returns required to be made where a U.S. withholding agent acts through an authorized foreign agent.

(d) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States is assumed and discharged by—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise;

(3) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise; or

(4) Such other person as may be designated by the IRS.

(e) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment on the bonds or other obligations of the corporation is assumed by a person, then that person shall be a withholding agent to the extent amounts subject to withholding are paid to a foreign person. Thus, the person shall withhold such amounts under § 1.1441–1 as would be required to be withheld by the seller or corporation had no such sale or assumption been made.

* * * * *

(g) *Effective date.* Except as otherwise provided in paragraph (f)(3) of this section, this section applies to payments made after December 31, 1998.

Par. 13. Section 1.1441–8T is redesignated as § 1.1441–8 and amended as follows:

1. The section heading and paragraph (b) are revised.

2. Paragraphs (c), (d), (e) and (f) are added.

The revisions and additions read as follows:

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(b) *Reliance on claim of exemption by foreign government.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely upon a claim of exemption made by the foreign government if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with § 1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign government for purposes of claiming an exemption under this paragraph (b) is valid only if, in addition to other applicable requirements, it certifies that the income is, or will be, exempt from taxation under section 892 and the regulations under that section and whether the person whose name is on the certificate is an integral part of a foreign government (as defined in § 1.892–2T(a)(2)) or a controlled entity (as defined in § 1.892–2T(a)(3)).

(c) *Income of a foreign central bank of issue or the Bank for International Settlements*—(1) *Certain interest income.* Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from interest on deposits with persons carrying on the banking business if the bank is the owner of the obligations or deposits and does not hold the obligations or deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity by such bank. See § 1.895–1. Absent actual knowledge or reason to know that a foreign central bank of issue, or the Bank for International Settlements, is operating outside the scope of the exclusion granted by section 895 and the regulations under that section, the withholding agent may rely on a claim of exemption if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the foreign central bank of issue or the Bank for International Settlements as the beneficial owner of the payment in accordance with § 1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign central bank of issue or the Bank for International Settlements for purposes of claiming an exemption under this paragraph (c)(1) is valid only if, in addition to other applicable requirements, it certifies that the person whose name is on the certificate is a foreign central bank of issue, or the Bank for International Settlements, and that the bank does not, and will not, hold the obligations or the bank deposits covered by the Form W–8 for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) *Bankers acceptances.* Interest derived by a foreign central bank of issue from bankers acceptances is exempt from tax under sections 871(i)(2)(C) and 881(d) and § 1.861–2(b)(4). With respect to bankers' acceptances, a withholding agent may treat a payee as a foreign central bank of issue without requiring a withholding certificate if the name of the payee and other facts surrounding the payment reasonably indicate that the payee or beneficial owner is a foreign central bank of issue, as defined in § 1.861–2(b)(4).

(d) *Exemption for payments to international organizations.* A payment to an international organization (within the meaning of section 7701(a)(18)) is exempt from withholding on any payment. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the transaction reasonably indicate that the international organization is the beneficial owner of the payment.

(e) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate described in paragraph (b) or (c)(1) of this section or other appropriate documentation at the time of payment. Further, the provisions of § 1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 8709 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR part 1, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 14. Section 1.1441–9 is added to read as follows.

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

(a) *Exemption from withholding for exempt income.* No withholding is required under section 1441(a) or 1442, and the regulations under those sections, on amounts paid to a foreign organization that is described in section 501(c) to the extent that the amounts are not income includable under section 512 in computing the organization's unrelated business taxable income. See, however, § 1.1443–1 for withholding on payments of unrelated business income to foreign tax-exempt organizations and on payments subject to tax under section 4948. For a foreign organization to claim an exemption from withholding under section 1441(a) or 1442 based on its status as an organization described in section 501(c), it must furnish the withholding agent with a withholding certificate described in paragraph (b)(2) of this section. A foreign organization described in section 501(c) may choose to claim a reduced rate of withholding under the procedures described in other sections of the regulations under section 1441 and not under this section. In particular, if an organization chooses to claim benefits under an income tax treaty, the withholding procedures applicable to claims of such a reduced rate are governed solely by the provisions of § 1.1441–6 and not of this section.

(b) *Reliance on foreign organization's claim of exemption from withholding*—(1) *General rule.* A withholding agent may rely on a claim of exemption under this section only if, prior to the payment, the withholding agent can reliably associate the payment with a valid withholding certificate described in paragraph (b)(2) of this section.

(2) *Withholding certificate.* A withholding certificate under this paragraph (b)(2) is valid only if it is a Form W–8 and if, in addition to other applicable requirements, the Form W–8 includes the taxpayer identifying number of the organization whose name is on the certificate, and it certifies that the Internal Revenue Service (IRS) has issued a favorable determination letter (and the date thereof) that is currently in effect, what portion, if any, of the amounts paid constitute income includable under section 512 in computing the organization's unrelated business taxable income, and, if the organization is described in section 501(c)(3), whether it is a private foundation described in section 509. Notwithstanding the preceding sentence, if the organization cannot certify that it has been issued a favorable determination letter that is still in effect, its withholding certificate is nevertheless valid under this paragraph (b)(2) if the organization attaches to the withholding certificate an opinion that is acceptable to the withholding agent from a U.S. counsel concluding that the organization is described in section 501(c). If the determination letter or opinion of counsel to which the withholding certificate refers concludes that the organization is described in section 501(c)(3), and the certificate further certifies that the organization is not a private foundation described in section 509, an affidavit of the organization setting forth sufficient facts concerning the operations and support of the organization for the Internal Revenue Service (IRS) to determine that such organization would be likely to qualify as an organization described in section 509(a) (1), (2), (3), or (4) must be attached to the withholding certificate. An organization that provides an opinion of U.S. counsel or an affidavit may provide the same opinion or affidavit to more than one withholding agent provided that the opinion is acceptable to each withholding agent who receives it in conjunction with a withholding certificate. Any such opinion of counsel or affidavit must be renewed whenever the certificate to

which it is attached is required to be renewed.

(3) *Presumptions in the absence of documentation.* Notwithstanding paragraph (b)(1) of this section, if the organization's certification with respect to whether amounts paid constitute income includable under section 512 in computing the organization's unrelated business taxable income is not reliable or is lacking but all other certifications are reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be income includable under section 512 in computing the organization's unrelated business taxable income. If the certification regarding private foundation status is not reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be paid to a foreign beneficial owner that is a private foundation.

(4) *Reason to know.* Reliance by a withholding agent on the information and certifications stated on a withholding certificate is subject to the agent's actual knowledge or reason to know that such information or certification is incorrect as provided in § 1.1441–7(b). For example, a withholding agent must cease to treat a foreign organization's claim for exemption from withholding based on the organization's tax-exempt status as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not an organization described in section 501(c) or the date on which the IRS gives notice to the public that such foreign organization is not an organization described in section 501(c). Similarly, a withholding agent may no longer rely on a certification that an amount is not subject to tax under section 4948 beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is subject to tax under section 4948 or the date on which the IRS gives notice that such foreign organization is a private foundation within the meaning of section 509(a).

(c) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate or other appropriate documentation at the time of payment. Further, the provisions of § 1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 1001 or 4224 or a statement that is valid under the regulations in effect prior to January 1, 1999,(see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998, by reason of the immediately preceding sentence). The rule in this paragraph(d)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 15. Sections 1.1442–1 and 1.1442–2 are revised to read as follows:

§ 1.1442–1 Withholding of tax on foreign corporations.

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, foreign governments, international organizations, foreign tax-exempt corporations, or foreign private foundations, see §§ 1.1441–1 through 1.1441–9.

§ 1.1442–2 Exemption under a tax treaty.

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441–6.

Par. 16. Section 1.1442–3 is added to read as follows:

§ 1.1442–3 Tax exempt income of a foreign tax-exempt corporations

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-exempt corporation, see § 1.1441–9. See § 1.1443–1 for withholding rules applicable to foreign private foundations and to the unrelated business income of foreign tax-exempt organizations.

Par. 17. Section 1.1443–1 is revised to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

(a) *Income includible under section 512 in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid to the organization includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441–1, 1.1441–4, and 1.1441–6 in the same manner as payments of the same amounts to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible under section 512 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441–9(b)(3) for presumption that amounts are includible under section 512 in computing the organization's unrelated business taxable income in the absence of a reliable certification.

(b) *Income subject to tax under section 4948*—(1) *In general.* The gross investment income (as defined in section 4940(c)(2)) of a foreign private foundation is subject to withholding under section 1443(b) at the rate of 4 percent to the extent that the income is from sources within the United States and is subject to the tax imposed by section 4948(a) and the regulations under that section. Withholding under this paragraph (b) is required irrespective of the fact that the income may be effectively connected with the conduct of a trade or business in the United States by the foreign organization. See § 1.1441–9(b)(3) for applicable presumptions that amounts are subject to tax under section 4948. The withholding imposed under this paragraph (b)(1) does not obviate a private foundation's obligation to file any return required by law with respect to such organization, such as the form that the foundation is required to file under section 6033 for the taxable year.

(2) *Reliance on a foreign organization's claim of foreign private foundation status.* For reliance by a withholding agent on a foreign organization's claim of foreign private foundation status, see § 1.1441–9 (b) and (c).

(3) *Applicable procedures.* A withholding agent withholding the 4-percent amount pursuant to paragraph (b)(1) of this section shall treat such withholding as withholding under section 1441(a) or 1442(a) for all purposes, including reporting of the payment on a Form 1042 and a Form 1042–S pursuant to § 1.1461–1 (b) and (c). Similarly, the foreign private foundation shall treat the 4-percent withholding as withholding under section 1441(a) or 1442(a), including for purposes of claims for refunds and credits.

(4) *Claim of benefits under an income tax treaty.* The withholding procedures applicable to claims of a reduced rate under an income tax treaty are governed solely by the provisions of § 1.1441–6 and not by this section.

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 1999 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1997) that is valid under these provisions may treat it as a valid withholding certificate until December 31, 1999. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 18. Section 1.1445–5 is amended by revising the second sentence of paragraph (b)(1) to read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * * (1) * * * For rules coordinating the withholding under section 1441 (or section 1442 or 1443) and under section 1445 on distributions from a corporation, see § 1.1441–3(b)(4). * * *

* * * * *

Par. 19. Sections 1.1461–1 and 1.1461–2 are revised to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax with a Federal reserve bank or authorized financial institution as provided in § 1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to paragraph (b) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of tax due for such year at such place as the Internal Revenue Service (IRS) shall specify. The tax shall be paid when filing the return required under paragraph (b)(1) of this section for such year, unless the IRS specifies otherwise. See paragraph (b)(2) of this section when there are multiple withholding agents.

(2) *Penalties for failure to pay tax.* For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 3 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011–1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) *Multiple withholding agents*—(i) *General rule.* Except as otherwise provided in paragraph (b)(2)(ii), (iii), (iv), or (v) of this section, no Form 1042 is required to be filed under paragraph (b)(1) of this section if a return is filed by another withholding agent reporting the same income in compliance with the provisions of this paragraph (b) and any remaining tax due is paid by such other withholding agent with the return in accordance with the provisions of paragraph (a) of this section.

(ii) *Payment to a qualified intermediary.* A U.S. withholding agent making a payment to a qualified intermediary (as defined in § 1.1441–1(e)(5)(ii)) must file a return under paragraph (b)(1) of this section, regardless of whether the qualified intermediary assumes primary withholding responsibility for the payment, as described in § 1.1441–1(e)(5)(iv) and regardless of whether the qualified intermediary is also required to file a return under the terms of its agreement with the IRS. A qualified intermediary's agreement with the IRS shall specify the extent, if any, to which the intermediary is subject to filing requirements under this section.

(iii) *Payment to a non-qualified intermediary.* A withholding agent making a payment to a foreign intermediary that is not a qualified intermediary described in § 1.1441–1(e)(5)(ii) must file a return under paragraph (b)(1) of this section to report such payments. The foreign intermediary is not required to make a return to report the payments that it itself makes to the persons for whom it collects the payments to the extent that the withholding agent represents to the intermediary that it will file such a return or that it has done so.

(iv) *Payment to or through an authorized foreign agent.* Both the U.S. withholding agent making a payment to or through an authorized foreign agent (defined in § 1.1441–7(c)) and the authorized foreign agent are required to file a return under paragraph (b)(1) of this section.

(v) *Payments to foreign partnerships.* A withholding agent making a payment to a foreign partnership shall file a return under paragraph (b)(1) of this section in the same manner as is required for a withholding agent making a payment to a qualified intermediary.

(vi) *Payments to a U.S. branch of certain foreign banks, securities dealers, or insurance companies.* A withholding agent making a payment to a U.S. branch described in § 1.1441–1(b)(2)(iv) must file a return under paragraph (b)(1) of this section, irrespective of the fact that the branch is treated as a U.S. person or is presumed to receive income that is effectively connected with its conduct of a trade or business in the United States.

(3) *Payments to wholly-owned entities.* A withholding agent making a payment to a wholly-owned entity that

is disregarded for Federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall file a return under paragraph (b)(1) of this section.

(4) *Amended returns.* An amended return may be filed on a Form 1042X or such other form as the IRS may prescribe. An amended return must include such information as the form or accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to the payment) must make an information return on Form 1042–S (or such other form as the IRS may prescribe) to report the amounts specified in paragraph (c)(2) of this section that were paid during the preceding calendar year. One Form 1042–S shall be prepared for each beneficial owner (except as otherwise provided in paragraph (c)(4) of this section regarding multiple withholding agents). The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the item of income was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates or other statements or documentation provided to a withholding agent are not required to be attached to the information return. Another copy of the Form 1042–S shall be furnished to the payee on or before March 15 of the calendar year following the year in which the item of income was paid.

The withholding agent shall retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Joint owners.* In the case of joint owners, a single Form 1042–S may be prepared. However, upon request of any one of the owners, the withholding agent shall furnish to such owner its own Form 1042–S. Where more than one Form 1042–S is issued with respect to a single payment to joint owners, the aggregate amount of items paid and tax withheld reported on the Forms 1042–S cannot exceed the amounts paid to the joint owners and tax withheld thereon. If a single Form 1042–S is prepared, the form shall state the name of only one owner and that name shall be that of any person whose status the withholding agent relied upon to determine the applicable rate of withholding tax.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, the amounts required to be reported on a Form 1042–S are amounts paid to foreign persons (including persons who are presumed to be foreign) that consist of amounts subject to withholding (as defined in § 1.1441–2(a)) under section 1441, 1442, or 1443. This includes (but is not limited to)—

(A) The entire amount of corporate distributions (whether deemed or actual) paid to a foreign person, irrespective of any estimate of the portion of the distribution that represents a taxable dividend;

(B) Amounts deemed paid to a foreign person as described in § 1.1441–2(d) (dealing with exceptions to withholding where no money or property is paid), except where the amount is exempt from withholding due to lack of knowledge;

(C) Amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States, irrespective of the fact that no withholding certificate is required to be furnished by the payee or beneficial owner. In the case of amounts paid on a notional principal contract described in § 1.1441–4(a)(3) that are presumed to be effectively connected with the conduct of a trade or business in the United States, the amount required to be reported is limited to the net income from the notional principal contract as described in § 1.446–3(d). Effectively connected non-periodic payments are reportable for the year in which an actual payment is made;

(D) Interest (including original issue discount) that is not exempt from reporting as provided under § 1.6049–8, dealing with certain interest on deposits with banks paid to Canadian residents;

(E) Amounts representing interest paid on an obligation that is sold between interest payment dates;

(F) Amounts paid to foreign governments, international organizations, or the Bank for International Settlements, whether or not documentation must be provided;

(G) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations described in § 1.871–14(e)(2) to the extent the documentation requirements described in § 1.871–14(e)(3) and (4) are satisfied (taking into account the provisions of § 1.871–14(e)(4)(ii), if applicable).

(ii) *Exceptions to reporting.* The amounts listed in paragraphs (c)(2)(ii)(A) through (G) of this section are not required to be reported on a Form 1042–S—

(A) Any item paid by a partnership, trust or estate to the extent the item is required to be reported by the partnership under section 6031 or by the trust or estate under sections 6012(a) and 6034A, and the regulations under those sections;

(B) Any item required to be reported on a Form W–2, including an item required to be shown on Form W–2 solely by reason of § 1.6041–2 (relating to return of information as to payments to employees) or § 1.6052–1 (relating to information regarding payment of wages in the form of group-term life insurance);

(C) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050P and the regulations under these sections;

(D) Amounts paid on a notional principal contract described in § 1.1441–4(a)(3)(i) that are not effectively connected with the conduct of a trade or business in the United States (or treated as not effectively connected pursuant to § 1.1441–4(a)(3)(ii));

(E) Amounts required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (Section 1446)). A withholding agent that must report a distribution partly on a Form 8288 or 8804 and partly on a Form 1042–S may elect to report the entire amount on a Form 8288 or 8804;

(F) Original issue discount for which no withholding is required under § 1.1441–2(b)(3); and

(G) Amounts described in § 1.1441–1(b)(4)(xviii) (dealing with certain amounts paid by the U.S. government).

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the beneficial owner (e.g., a beneficial owner withholding certificate or documentary evidence), as corrected and supplemented based on the withholding agent's actual knowledge. The Form 1042-S must include the following information, if applicable—

(i) The name, address, and taxpayer identifying number of the withholding agent;

(ii) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate of withholding applied;

(iv) The name and permanent residence address of the beneficial owner (or of the payee if the beneficial owner is unknown, or of the person receiving the amount if the payee is also unknown);

(v) The taxpayer identifying number of the beneficial owner if required under § 1.1441–1(e)(4)(vii) to be stated on a beneficial owner withholding certificate (or if actually known to the withholding agent making the return). In the case of a financial institution, actual knowledge exists with respect to accounts maintained for customers only if such taxpayer identifying number was stated on a Form W–8 furnished for another payment made through the same account or through another account, the information for which can be retrieved through a centralized account information system (as described in § 1.1441–1(e)(4)(ix)) containing both accounts; and

(vi) Such information as the form or the instructions may require in addition to, or in lieu of, information required under this paragraph (c)(3).

(4) *Multiple withholding agents*—(i) *In general.* Except as otherwise provided in this paragraph (c)(4), no information return is required to be made under paragraph (c)(1)(i) of this section if a return is filed by another withholding agent reporting the same amount pursuant to the provisions of this paragraph (c).

(ii) *Payments to a qualified intermediary or a withholding foreign partnership.* A withholding agent making a payment to a qualified intermediary (described in § 1.1441–1(e)(5)(ii)) or to a withholding foreign partnership (described in § 1.1441–5(c)(2)(i)) must report the payment on a single Form 1042–S or as otherwise directed by the form or the accompanying instructions to the form and must provide a copy of the Form 1042–S to the intermediary or partnership (but is not required to provide the Form 1042–S to the beneficial owners or partners). The Form 1042-S must report the different categories of payments based on different types of income and applicable withholding rates.

(iii) *Payments to an authorized foreign agent*—(A) *Filing obligation of foreign authorized agent.* An authorized foreign agent (as described in § 1.1441–7(c)(2)) is subject to the filing requirements described in paragraph (c)(1)(i) of this section because it is a withholding agent. Therefore, to the extent the U.S. withholding agent for which it is acting is not reporting the information required under this paragraph (c), it must report the information required to be reported under paragraph (c)(3) or (4)(vi) of this section.

(B) *Filing obligations of the U.S. withholding agent.* A U.S. withholding agent making a payment to an authorized foreign agent is exempted from the requirement under paragraph (c)(4)(iv) of this section to make a return on Form 1042–S for each beneficial owner and may, instead, make a return on a single Form 1042–S to report the payment made to the authorized foreign agent. The exemption in this paragraph (c)(4)(iii)(B) shall apply only to the extent the authorized foreign agent complies with the filing requirements under paragraph (c)(4)(iii)(A) of this section.

(iv) *Payments to other intermediaries or foreign partnerships.* Payment of an amount to a foreign intermediary described in § 1.1441–1(e)(3)(i) that is not a qualified intermediary or to a foreign partnership that is not a withholding foreign partnership described in § 1.1441–5(c)(2)(i) may not be shown on a single Form 1042–S but must be reported on separate Forms 1042–S for each beneficial owner or payee whose name appears on a withholding certificate attached to the intermediary's or partnership withholding certificate that is from a qualified intermediary or a withholding foreign partnership. Payments to an intermediary for the account of undocumented owners or to a foreign partnership for the account of undocumented partners should be reported on a single Form 1042–S made out to the intermediary and bearing the mention "unknown owners".

(v) *Payments to a U.S. branch of certain foreign entities.* Payment of an amount to the U.S. branch of a foreign entity described in § 1.1441–1(b)(2)(iv) shall be reported—

(A) On a single Form 1042–S as effectively connected income if the withholding agent cannot reliably associate documentation with the payment to the U.S. branch;

(B) On a single Form 1042–S as an amount paid to an intermediary if the withholding agent can reliably associate the payment with a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) furnished as evidence of an agreement between the branch and the withholding agent to treat the branch as a U.S. person; or

(C) On separate Forms 1042–S for each beneficial owner or payee whose name appears on a withholding certificate or other appropriate documentation attached to the U.S. branch withholding certificate.

(vi) *Required information.* An information return on a Form 1042–S by a withholding agent reporting payments to an intermediary, to a foreign partnership, or to a U.S. branch must contain the information contained in this paragraph (c)(4)(vi). The information on the Form 1042–S must be based upon the withholding certificates furnished by the payee, as corrected and supplemented by the withholding agent based on its actual knowledge or reason to know other facts:

(A) The name, address, and taxpayer identifying number of the withholding agent.

(B) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.

(C) The rate of withholding applied.

(D) The basis for not withholding or withholding at a reduced rate.

(E) The name, address, and taxpayer identifying number of the payee.

(F) In the case of payments described in paragraph (c)(4)(iv) of this section, the information described in paragraphs (c)(3)(iv) and (v) of this section regarding the person for whom a Form 1042–S is required to be prepared under paragraph (c)(4)(iv).

(G) Such information as the form or instructions may require in addition to, or in lieu of, the information required under this paragraph (c)(4)(vi).

(5) *Payments to single-member entity.* A withholding agent that, upon reliance on a valid withholding certificate, treats a payment as made to a wholly-owned entity that is disregarded to federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall make an information return on Form 1042–S in the name of the foreign single owner, using the owner's taxpayer identifying number if such a number is required to be stated on the form.

(6) *Special rules in the case of claims of treaty benefits by hybrid entities or their interest holders.* A withholding agent must make an information return on a Form 1042–S for each beneficial owner (within the meaning of the applicable tax treaty) upon whose withholding certificate or other appropriate documentation the

withholding agent relies to reduce the rate of withholding under a tax treaty. Therefore, in the case of concurrent and consistent claims of reduced rates under several tax treaties by the entity and by one or more interest holders, the withholding agent must make an information return for the entity and for each of the interest holders claiming to derive an allocable share of amounts paid to the entity as a resident of an applicable treaty country.

(7) *Effect of grace period on filing requirements.* A withholding agent who relies on the provisions of § 1.1441–1(b)(3)(iv) to treat the payee as a foreign person during a 90-day grace period while awaiting the documentation must make an information return on a Form 1042–S to report all payments to such person during the grace period even if such person is (or is presumed to be) a U.S. person based upon documentation furnished to the withholding agent when the grace period expired or subsequently, or based upon applicable presumptions in § 1.1441–1(b)(3).

(8) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

(d) *Report of taxpayer identifying numbers.* When so required under procedures that the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter), a withholding agent must attach to the Form 1042 a list of all the taxpayer identifying numbers (and corresponding names) that have been furnished to the withholding agent and upon which the withholding agent has relied to grant a reduced rate of withholding and that are not otherwise required to be reported on a Form 1042–S under the provisions of this section.

(e) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 3 of the Code and the regulations under that chapter is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in § 1.1441–1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Code or the regulations under that chapter.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with § 1.1441–3 shall be reported and paid in accordance with this section, even though the amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section and § 1.1461–2 to an amount shall, where appropriate, be deemed to refer to the amount subject to withholding under § 1.1441–3.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time in which to file a Form 1042 or a Form 1042–S. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns (or such other form as the IRS may prescribe), must be used to request an extension of time for a Form 1042. Form 8809, Request for Extension of Time to File Information Returns (or such other form as the IRS may prescribe) must be used to request an extension of time for a Form 1042–S. The request must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require. It must be mailed or delivered not later than March 15 of the year following the end of the calendar year for which the return will be filed.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns or furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) *Effective date.* This section shall apply to returns required for payments made after December 31, 1998.

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* A withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code (Code) and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(2) or (3) of this section. After such time, an adjustment to the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service (IRS) pursuant to the procedures described in chapter 65 of the Code. For purposes of this section, the term overwithholding means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Code or the regulations thereunder in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042–S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy of such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code and the regulations thereunder.

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 1999, a domestic corporation C pays a dividend of $100 to N, at which time C withholds $30 and remits the balance of $70 to N. On February 10, 2000, prior to the time that C files its Form 1042, N furnishes a valid Form W–8 described in § 1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15 percent under the provisions of the U.S.–U.K. tax treaty. Consequently, N advises C that its tax liability is only $15 and not $30 and requests reimbursement of $15. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C repays N in the amount of $15.

(ii) During 1999, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2000, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 1999. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 2000. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to N in 1999 is required to show tax withheld of $30 and tax released of $15.

Example 2. The facts are the same as in *Example 1.* In addition, during 2000, C makes payments to N upon which it is required to withhold $200 under chapter 3 of the Code, all of which is withheld in June 2000. Pursuant to § 1.6302–2(a)(1)(iii), C deposits the amount of $185 on July 15, 2000 ($200 less the $15 for which credit is claimed on the Form 1042 for 1999). On March 15, 2001, C Corporation files its return on Form 1042 for calendar year 2000, which shows total tax withheld of $200, $185 previously deposited by C, and $15 allowable credit.

Example 3. The facts are the same as in *Example 1.* Under § 1.6032–2(a)(1)(ii)], C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of $100 between February 8 and February 15, 2000, and deposits $75 [($100 x 90 percent) less $15] of the withheld tax within 3 banking days after February 15, 2000, and by depositing $10 [($100 – $15) less $75] within 3 banking days after March 15, 2000.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments made to a beneficial owner the tax that should have been withheld from previous payments to such beneficial owner. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance due for a calendar year.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302–2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* This section applies to payments made after December 31, 1998.

§§ 1.1461–3 and 1.1461–4 [Removed]

Par. 20. Sections 1.1461–3 and 1.1461–4 are removed.

Par. 21. Sections 1.1462–1 and 1.1463–1 are revised to read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441–3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code (Code) on payments to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. Further, if a partnership withholds an amount under chapter 3 of the Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper tier partnership, such amount is deemed to have been withheld by the upper tier partnership.

(c) *Effective date.* This section applies to payments made after December 31, 1998.

§ 1.1463–1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be re-collected from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable. See § 1.1441–7(b)(7) for additional applicable rules.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 1989.

Par. 23. Section 1.6041–1 is amended by:

1. Revising paragraph (a)(1).
2. Adding a sentence at the end of paragraph (a)(2) .
3. Revising paragraphs (d)(1) introductory text and (d)(3).
4. Adding a heading for paragraphs (d)(2) and (d)(4).
5. Adding paragraph (d)(5).

The additions and revisions read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more

(a) *General rule*—(1) *Information returns required*—(i) *Payments required to be reported.* Except as otherwise provided in §§ 1.6041–3 and 1.6041–4, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i) (A) or (B) of this section. For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

(A) Salaries, wages, commissions, fees, and other forms of compensation

for services rendered aggregating $600 or more.

(B) Interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more.

(ii) *Information returns required under other provisions of the Internal Revenue Code.* The payments described in paragraphs (a)(1)(i) (A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation), section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers), sections 6049(a) (1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P (a) or (b) (relating to cancellation of indebtedness). In addition, the payments described in paragraphs (a)(1)(i) (A) and (B) of this section shall not include amounts excepted from the definition of dividends under section 6042(b)(2) and § 1.6042–3(b)(1), amounts described in section 6044(b), amounts excepted from reporting under § 1.6045–1(g), amounts excepted from the definition of interest under section 6049(b)(2) (C) or (D), § 1.6049–4(c), or 1.6049–5(b)(6) through (15). Notwithstanding the preceding sentence, interest with respect to a notional principal contract excluded from the definition of interest under § 1.6049–5(b)(15) is reportable under this section. The term *interest* as used in this paragraph (a)(1)(ii) otherwise includes all interest, other than interest coming within the definition of interest provided in § 1.6049–5(a). For example, a closely held corporation borrows money from one of its officers on a promissory note not in registered form bearing annual stated interest of $300. The corporation also pays royalties to the officer amounting to $400 a year. An information return is required under this paragraph (a)(1) to report the payments to the officer because the interest does not come within the definition of interest in § 1.6049–5(a) and the aggregate of interest and royalties exceeds $600.

(2) * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

* * * * *

(d) * * * (1) *In general.* Amounts paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information under this section—

* * * * *

(2) *Professional fees.* * * *

(3) *Prizes and awards.* Amounts paid as prizes and awards that are required to be included in gross income under section 74 and § 1.74–1 when paid in the course of a trade or business are required to be reported in returns of information under this section.

(4) *Disability payments.* * * *

(5) *Notional principal contracts.* Amounts paid after December 31, 1998, with respect to notional principal contracts referred to in §§ 1.863–7 or 1.988–2(e) to persons who are not described in § 1.6049–4(c)(1)(ii) are required to be reported in returns of information under this section. However, a payment made outside the United States (as defined in § 1.6049–5(e)) by a non-U.S. payor or a non-U.S. middleman, or by a U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business) or is a foreign branch of a U.S. bank is not reportable under this section if, in the case of a person that is a U.S. payor, a U.S. middleman, or a foreign branch of a U.S. institution, the payor has no actual knowledge that the payee is a U.S. person. The amount required to be reported under this paragraph (d)(5) is limited to the net income from the notional principal contract as described in § 1.446–3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of § 1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see § 1.6049–5(b)(15)). See § 1.6041–4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, § 1.1461–1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of § 1.6049–5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See § 1.6049–4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in § 1.6049–4(f)(4). See § 1.6049–5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

* * * * *

Par. 24. Section 1.6041–2 is amended by revising paragraph (c) to read as follows:

§ 1.6041–2 Return of information as to payments to employees.

* * * * *

(c) *Payments to foreign persons.* See § 1.6041–4 for reporting exemptions regarding payments to foreign persons. See § 1.6049–5(d) for determining whether a payment is made to a foreign person.

Par. 25. Section 1.6041–3 is amended by:

1. Revising the introductory text of the section.
2. Revising paragraphs (a) and (b).
3. Removing the semicolon at the end of paragraphs (d) through (f), and (h) through (j), and adding a period in its place; and removing the language "; and" at the end of paragraph (o), and adding a period in its place.
4. Removing paragraphs (c) and (l).
5. Redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (m), (n), (o), and (p) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively.
6. Revising newly designated paragraphs (f) and (j).
7. Adding new paragraphs (o) and (p), and paragraph (q).

The addition and revisions read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041–1 and 1.6041–2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041–4 for reporting exemptions regarding payments to foreign persons. See § 1.6041–4 for reporting exemptions regarding foreign persons.

(a) Payments of income required to be reported on Forms 1120–S, 941, W–2, and W–3 (however, see § 1.6041–2(a) with respect to Forms W–2 and W–3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

* * * * *

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see § 1.6031–1).

* * * * *

(j) Payments of interest on corporate bonds (but for reporting requirements as to payments of interest on certain corporate bonds, see § 1.6049–5).

* * * * *

(o) Payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1), whether or not "qualified scholarships" as described in section 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c). Instead, these amounts are required to be reported as wages on Form W–2. See § 1.1461–1(c) for applicable reporting requirements for amounts paid to foreign persons.

(p) Per diem of certain alien trainees described under section 1441(c)(6).

(q) Payments made to the following persons:

(1) A corporation described in § 1.6049–4(c)(1)(ii)(A), except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. However, no reporting is required where payment is made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of the foregoing. For reporting requirements as to payments by cooperatives, and to certain other payments, see sections 6042, 6044, and 6049 and the regulations thereunder in this part.

(2) An organization exempt from taxation under section 501(a), as described in § 1.6049–4(c)(1)(ii)(B)(*1*), or an individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(3) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(4) A State, the District of Columbia, a possession of the United States, or any political subdivision of any of the foregoing, as described in § 1.6049–4(c)(1)(ii)(E).

(5) A foreign government or political subdivision of a foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(6) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(7) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H) and the Bank for International Settlements.

(8) Any wholly owned agency or instrumentality of any person described in paragraph (q) (2), (3), (4), (5), (6), or (7) of this section.

Par. 26. Section 1.6041–4 is revised to read as follows:

§ 1.6041–4 Foreign-related items and other exceptions

(a) *Exempted foreign-related items*—(1) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (a)(1), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) made by a non-U.S. payor or non-U.S. middleman outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(3) Returns of information are not required for amounts paid by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6041–1 and were not so reported.

(4) Returns of information are not required for amounts paid with respect to notional principal contracts referred to in § 1.863–7 or 1.988–2(e) which the payor may treat as effectively connected income of a foreign payee under the provisions of § 1.1441–4(a)(3) or if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swap and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a foreign person. See, however, § 1.1461–1(c)(2)(i) for applicable reporting requirements.

(5) Returns of information are not required for the period that the amounts paid represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (a)(5) shall terminate when payment is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(c) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 1998.

Par. 27. Section 1.6041–7 is amended by revising the section heading and adding a sentence to the end of paragraph (a) to read as follows:

§ 1.6041–7 Magnetic media requirement.

(a) * * * High-volume filers of information returns must file their returns on magnetic media. See section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration

Regulations) for the requirements for filing on magnetic media.

* * * * *

Par. 28. Section 1.6041–8 is added to read as follows:

§ 1.6041–8 Cross-reference to penalties.

For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041(a) or (b), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041(d), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 29. Section 1.6041A–1 is added to read as follows:

§ 1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.

(a) through (c) [Reserved].

(d) *Exceptions to return requirement.* [Reserved].

(1) and (2) [Reserved].

(3) *Foreign transactions*—(i) *In general.* No return shall be required under section 6041A with respect to payments described in this paragraph (d)(3).

(A) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (d)(3)(i)(A), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent.*

(B) Returns of information are not required for payments of remuneration for services and certain direct sales from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) if payments made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(ii) *Payor.* The term *payor* has the same meaning as described in § 1.6049–4(a)(2).

(iii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (d)(3)(i) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (d)(3)(i)(A) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(iv) *Conversion into United States dollars of amount paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(v) *Effective date.* The provisions of this paragraph (d)(3) apply to payments made after December 31, 1998.

(e) [Reserved].

(f) *Statements to be furnished to persons with respect to whom information is required to be furnished*—(1) [Reserved].

(2) *Time for furnishing statement.* [Reserved].

(3) *Contents of statement.* [Reserved].

(g) [Reserved].

(h) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041A(a) or (b), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041A(e), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 30. Section 1.6042–2 is amended by:

1. Revising the section heading, adding introductory text to paragraph (a)(1), and revising paragraphs (a)(1)(i) and (a)(1)(ii).

2. Removing the language "1099M" in the first sentence of paragraph (a)(1)(iii) and adding "1099A" in its place.

3. Removing the language "1087" each time it appears in the second sentence of paragraph (a)(4) and adding "1099" in each place, and removing the last sentence.

4. Revising paragraph (d).

5. Revising the heading of paragraph (e) and adding a sentence to the end of paragraph (e).

The revisions and addition read as follows:

§ 1.6042–2 Returns of information as to dividends paid.

(a) *Requirement of reporting*—(1) *In general.* An information return on Form 1099 shall be made under section 6042(a) by—

(i) Every person who makes a payment of dividends (as defined in § 1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter.

(ii) Every person, except to the extent that he acts as a nominee described in paragraph (a)(1)(iii) of this section, who receives payments of dividends as a nominee on behalf of another person shall make a return of information under this section for the calendar year of the payment . The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person on whose behalf the dividends are received, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends received on behalf of the other person during the calendar year aggregates less than $10. However, a return of information is not required under this section if—

(A) The record owner is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(B) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and the actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(C) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return but only if the name, address, and identifying number of the record owner are included on or with the annual return filed for the tax exempt organization).

* * * * *

(d) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6042(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

Par. 31. Section 1.6042–3 is amended by:

1. Revising paragraphs (a) introductory text and (a)(2).

2. Removing the concluding text immediately following paragraph (a)(2).

3. Adding paragraph (a)(3).

4. Revising paragraph (b).

5. Removing the authority citation at the end of the section.

The addition and revision read as follows:

§ 1.6042–3 Dividends subject to reporting.

(a) *In general.* Except as provided in paragraph (b) of this section, the term *dividend* for purposes of this section and §§ 1.6042–2 and 1.6042–4 means the amounts described in the following paragraphs (a) (1) through (3) of this section—

* * * * *

(2) Any payment made by a stockbroker to any person as a substitute for a dividend. Such a payment includes any payment made in lieu of a dividend to a person whose stock has been borrowed. See § 1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to such payments; and

(3) A distribution from a regulated investment company (irrespective of the fact that any part of the distribution may not represent ordinary income (i.e., may, for example, represent a capital gain dividend as defined in section 852(b)(3)(C)).

(b) *Exceptions*—(1) *In general.* For purposes of §§ 1.6042–2 and 1.6042–4, the amounts described in paragraphs (b)(1)(i) through (vii) of this section are not dividends.

(i) Amounts paid by an insurance company to a policyholder, other than a dividend upon its capital stock.

(ii) Payments (however denominated) by a mutual savings bank, savings and loan association, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. See, however, section 6049 and the regulations under that section for provisions requiring reporting of these payments.

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d) (2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (b)(1)(iii), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code).

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(v) Distributions or payments for the period that the amounts represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (b)(1)(v) shall terminate when payment is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

(vi) Payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6042–2 and were not so reported.

(vii) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii), unless a tax is withheld under section 3406 and is not refunded by the payor in accordance with § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(2) *Payor.* The term *payor* has the same meaning as described in § 1.6049–4(a)(2).

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (b)(3), the grace period described in

§ 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

Par. 32. Section 1.6042–4 is amended by revising paragraphs (d)(2)(i)(F) and (f) to read as follows:

§ 1.6042–4 Statement to recipients of dividend payments.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(F) Any document concerning the solicitation of the Form W–9, as described in § 31.3406(h)–3(a) of this chapter, or of the Form W–8 as described in § 1.1441–1(e)(1).

* * * * *

(f) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6042(c), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

§ 1.6043–2 [Amended]

Par. 33. In § 1.6043–2, paragraph (a), the first, second, and last sentences are amended by removing the reference to "1099L" and adding "966" in each place.

Par. 34. Section 1.6044–2 is amended by:

1. Revising the section heading
2. Adding two sentences at the end of paragraph (a)(1).
3. Revising paragraph (e).
4. Revising the heading for paragraph (f) and adding a sentence at the beginning of paragraph (f).

The revisions and additions read as follows:

§ 1.6044–2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting*—(1) *In general.* * * * The organization is required to make an information return regardless of the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in § 1.6049–4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than $10.

* * * * *

(e) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6044(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(f) *Magnetic media requirement.* For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations). * * *

Par. 35. In § 1.6044–3, paragraph (c) is revised to read as follows:

§ 1.6044–3 Amounts subject to reporting.

* * * * *

(c) *Exceptions.* An amount described in paragraph (a) of this section does not include—

(1) Any amount described in § 1.6042–3(b); or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii).

* * * * *

Par. 36. In § 1.6044–5, paragraph (c) is revised to read as follows:

§ 1.6044–5 Statements to recipients of patronage dividends.

* * * * *

(c) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 37. Section 1.6045–1 is amended by:

1. Revising the heading of paragraph (a), paragraph (a) introductory text, and paragraph (a)(1).
2. Removing paragraph (a)(12) and redesignating paragraph (a)(13) as paragraph (a)(12).
3. Adding new paragraph (a)(13).
4. Paragraph (b) is amended by redesignating *Example (1)* through *Example (8)* as *Example 1* through *Example 8*, respectively; removing newly designated *Example* 1(ii); and redesignating *Example 1*(iii) through (vi) as *Example 1*(ii) through (v), respectively.
5. Paragraph (c) is amended by:
   a. Redesignating paragraphs (c)(5)(i)(*a*) through (c)(5)(i)(*f*) as paragraphs (c)(5)(i)(A) through (c)(5)(i)(F), respectively.
   b. Redesignating paragraph (c)(5)(ii) and *Example (1)* through *Example (4)* as paragraph (c)(5)(iii) and *Example 1* through *Example 4*, respectively.
   c. Adding new paragraph (c)(5)(ii).
6. Paragraph (c)(6) is amended by:
   a. Redesignating paragraphs (c)(6)(i)(*a*) and (c)(6)(i)(*b*) as paragraphs (c)(6)(i)(A) and (c)(6)(i)(B), respectively.
   b. Redesignating paragraphs (c)(6)(ii)(*a*) and (c)(6)(ii)(*b*) as paragraphs (c)(6)(ii)(A) and (c)(6)(ii)(B), respectively.
7. Revising paragraphs (d)(4), (d)(6), (f)(2)(iii) last sentence of introductory text, and (g).
8. In paragraph (h)(2), redesignating *Example (1)* and *Example (2)* as paragraph (h)(2) *Example 1* and *Example 2*, respectively.

9. Revising paragraphs (j), (k), and (l).
10. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section, § 1.6045–2, and § 5f.6045–1 of this chapter:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). In addition, a broker does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

* * * * *

(13) The term *person* includes any governmental unit and any agency or instrumentality thereof.

* * * * *

(c) * * *

(5) * * *

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting a closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contracts in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for purposes of paragraphs (c)(5)(i) (C) and (D) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

* * * * *

(d) * * *

(4) *Sale date.* With respect to sales of property that are reportable under this section, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

* * * * *

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—(i) *Conversion rules.* When a payment is made in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988–5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section, the amount subject to reporting shall be the integrated amount computed under § 1.988–5(a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988–1(c)) and hedges all or a part of such sale as provided in § 1.988–5(a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of § 1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(f) * * *

(2) * * *

(iii) *Definition.* * * * A barter exchange may treat a member or client as a corporation (and therefore as a corporate member or client) if such member or client provides an exemption certificate as described in § 31.3406(h)–3(a) of this chapter or provided that—

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers.* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1). A broker may treat a customer as an exempt foreign person under the circumstances described in paragraphs (g)(1)(i) through (iii) of this section.

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d) (2), (3), (4), or (5). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman) shall apply. The provisions of § 1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of § 1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*. For purposes of this paragraph (g)(1)(i), the broker may rely on a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) only to the extent that the certificate includes a certification that the beneficial owner has not been and, at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains.

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in § 1.6049–5(b) (6), (7), (10), or (11) or the dividends on, which are described in § 1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked, as described in § 1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur

in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(2) *Barter exchange.* No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules*—(i) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g) (1)(i) or (2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is.* For purposes of this paragraph (g), the determination of who the customer is shall be made on the basis of the provisions in § 1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer.*

(iii) *Place of effecting sale*—(A) *Sale outside the United States.* For purposes of this paragraph (g), a sale is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(*1*) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(*2*) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(*1*) The customer has opened an account with a United States office of that broker;

(*2*) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(*3*) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in § 1.6049–5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(*4*) The confirmation of the sale is mailed to a customer at an address in the United States; or

(*5*) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(Iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(e)(3)(i), is an exempt foreign person, except when the broker has actual knowledge or reason to know (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person. For an example of this exception, see § 1.6049–5(d)(3)(iv) *Example 7.* In addition, if a foreign intermediary (acting as an intermediary) or a U.S. branch receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii), (iii), or (v), or in § 1.1441–5(c)(3)(iii) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For purposes of the preceding sentence, a foreign intermediary is one that is described in § 1.1441–1(e)(3)(i) and a U.S. branch is one that is described in § 1.1441–1(b)(2)(iv).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2.* Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049–5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049–5(c)(5). DC is not required to report under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under § 5f.6045–1(c)(3)(ii), because X is the person responsible for paying the proceeds from the sale to A. However, the portion of the payment that represents interest accrued on the obligation since the last payment date and that is received as part of the total sales proceeds from the transection is reportable under § 1.1461–1 (b) and (c)(2)(i)(E), as an amount paid to a foreign person that is subject to withholding under chapter 3 of the Code within the meaning of § 1.1441–2(a) (even though no withholding is required under chapter 3 of the Code based on § 1.1441–3(b)(2)(i), unless § 1.1441–3(b)(2)(ii) applies). The multiple broker exception under the regulations under section 6045 does not affect a withholding agent's obligation to report an amount otherwise required to be reported under § 1.1461–1 (b) and (c). Under § 1.1461–1(c)(3), Y must file Form 1042–S in the name of X who, under § 1.1441–1(b)(3)(v)(A), is presumed to be acting for its own account because Y cannot associate the payment of interest with a valid intermediary Form W–8 described in § 1.1441–1(e)(3) (ii) or (iii) from X.

(ii) *X's obligations to withhold and report.* X may also have reporting and withholding obligations when it credits A's account with the sales proceeds. Although the sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section, X is a broker with respect to the sale because, as a wholly-owned subsidiary of a U.S. company, it meets the definition of a broker under paragraph (a)(1) of this section. Under the presumptions described in § 1.6049–5(d)(2), X, as a U.S. payor, must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore, the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment, based on the exemption under § 31.3406(g)–1(e), unless X has actual knowledge that A is a U.S. person who is not an exempt recipient. X is also a withholding agent with respect to the portion of the sales proceeds that represents accrued interest on the bonds. Based on the presumptions under §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii)(D), X must presume that A is a foreign person with respect to the interest portion of the payment, because the interest amount is an amount subject to withholding, within the meaning of § 1.1441–2(a) (even though a withholding agent is not required to withhold on such amounts). Thus, X is required to file a Form 1042 and 1042–S with respect to the interest portion of the payment. Y s filing of a Form 1042–S with respect to that portion of the payment to X does not meet the conditions for the multiple withholding agent exception under § 1.1461–1(c)(4)(i) because Y did not report the payment to X as a payment to an intermediary.

(5) *Effective dote*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (g)(b)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

(j) *Time and place for filing; cross-reference to penalty.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before the end of the second calender month following the close of the calender year of such reporting period with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see § 301.6721–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(k) *Requirement and time for furnishing statement; cross-reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5), (d), (f), or (p) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 with respect to such person filed with the Internal Revenue Service Center. A statement

shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required by this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before January 31 of the following calendar year.

(3) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see § 301.6724–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Magnetic media requirement.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter (Procedure and Administration Regulations) for rules relating to filing information returns on magnetic media. A broker or barter exchange that fails to file a Form 1099 under this section on magnetic media, when required, may be subject to a penalty for each such failure. See paragraph (j) of this section.

* * * * *

§ 1.6045–1T [Removed]

Par. 38. Section 1.6045–1T is removed.

Par. 39. Section 1.6045–2 is amended as follows:

1. Paragraph (b)(2) is amended by:

a. Removing the period at the end of paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C), and adding semicolons in each place.

b. Removing the period and the end of paragraph (b)(2)(i)(D) and adding a semicolon in its place.

c. Removing the language ", or" in paragraph (b)(2)(i)(E) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(2)(i)(F) and adding ", or" in its place.

e. Adding paragraph (b)(2)(i)(G).

2. Revising paragraph (g)(2).

3. Adding paragraph (g)(4).

The revision and additions read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(b) * * *

(2) * * * (i) * * *

(G) A foreign central bank of issue, as defined in § 1.6049–4(c)(1)(ii)(H), or the Bank for International Settlements.

* * * * *

(g) * * *

(2) *Magnetic media requirement.* For the requirement to submit the information required by paragraph (a) of this section and by Form 1099 on magnetic media for information returns filed after December 31, 1996, see § 301.6011–2 of this chapter (Procedure and Administration Regulations). A broker or barter exchange that fails to file on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

(4) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6045(d) and § 1.6045–2(g)(1), including a failure to file on magnetic media, see § 301.6721–1 of this chapter. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6045(d) and § 1.6045–2(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

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§ 1.6045–2T [Removed]

Par. 40. Section 1.6045–2T is removed.

Par. 41. Section 1.6049–4 is amended by:

1. Removing the reference "section 3451" and adding "section 3406" each place it appears in the following locations in § 1.6049–4:

a. Paragraph (b)(2) introductory text, third sentence.

b. Paragraph (b)(2)(iv).

c. Paragraph (b)(4), last sentence.

d. Paragraph (c)(2)(i).

e. Paragraph (c)(2)(ii) concluding text.

f. Paragraph (e)(4), second and last sentences.

g. Paragraph (e)(5)(iv).

h. Paragraph (f)(4)(i), fourth sentence.

2. Revising paragraphs (a), (b)(1), (b)(3), and (c)(1).

3. Removing the reference "§ 1.6049–5(c)" in paragraphs (b)(5)(i) last sentence, and (d)(2) and adding "§ 1.6049–5(f)" in its place.

4. Revising paragraph (d)(3).

5. Revising the heading for paragraph (d)(7) and adding a sentence to the end of the paragraph.

6. Removing the reference "§ 1.6049–5(b)(1)(ii)" in the first sentence of paragraph (d)(8) and adding "1.6049–5(b)(2)" in its place.

7. Removing the reference "paragraph (d)(10)(i)" in paragraph (d)(9)(ii) introductory text, and adding "paragraph (d)(9)(i)" in its place.

8. Removing the reference "paragraph (c)(1)(K)" in the first sentence of paragraph (f)(4)(i) and adding "paragraph (c)(1)(ii)(M)" in its place; and revising the last two sentences of paragraph (f)(4)(i).

9. Revising the last sentence of the *Example* in paragraph (f)(4)(ii).

10. Adding paragraph (g)(3).

The additions and revisions read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, an information return shall be made by a payor, as defined in paragraph (a)(2) of this section, of amounts of interest and original issue discount paid after December 31, 1982. Such return shall contain the information described in paragraph (b) of this section.

(2) *Payor.* A payor is a person described in paragraph (a)(2) (i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year; however, persons not treated as payors for purposes of § 31.3406(a)–2 of this chapter shall not be treated as payors for purposes of this paragraph (a)(2).

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), including middlemen treated as payors under § 31.3406(a)–2 of this chapter, or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b) (3) and (5) of this section, in the case of interest other than original issue discount treated as interest under § 1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (i.e., exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter (Employment Tax Regulations). For reporting interest paid to a Canadian nonresident alien individual, see § 1.6049–8.

* * * * *

(3) *Returns made by middleman*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return for the calendar year. In the case of interest payments (other than original issue discount and other than interest described in § 1.6049–8), the information return shall be made on Form 1099 and shall show the aggregate amount of the interest, the name, address, and taxpayer identification number of the person on whose behalf received, the amount of tax withheld under section 3406, if any, and such other information as required by the forms. In the case of original issue discount, the information return shall show the information required to be shown for the person on whose behalf received, as described in paragraph (b)(2) of this section. See § 1.6049–5(f) to determine whether a middleman is required to make an information return with respect to original issue discount. A middleman shall make an information return regardless of whether the middleman receives a Form 1099. A middleman shall not be required to make an information return if the payment of interest aggregates less than $10 or if the payment is made to an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Forwarding of interest coupons and original issue discount obligations.* In the case of a middleman who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States, the middleman shall make an information return on Form 1099 for the calendar year showing, in the case of an interest coupon, the information required under paragraph (b)(3)(i) of this section and, in the case of a discount obligation, information required under paragraph (b)(2) of this section. For purposes of this paragraph (b)(3)(ii), a middleman is considered to forward an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States if the middleman forwards the coupon or obligations outside the United States on or after the date when the payee is entitled to be paid or at an earlier date that is within 90 days of such date or if the middleman has actual knowledge that the coupon or obligation is being forwarded outside the United States for presentation, collection, or payment outside the United States. However, the transfer, although subject to information reporting under this section, is not subject to backup withholding under section 3406.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(ii) of this section:

Example. Individual F, who is entitled to payment on an interest coupon, instructs an office of Bank M in the United States to forward the coupon to Bank N for collection by Bank N outside the United States. Bank M in the United States forwards the interest coupon to Bank N outside the United States. Bank M is required to make an information return for the calendar year under paragraph (b)(3)(ii) of this section showing the aggregate amount of the interest coupon forwarded, the name, address of the permanent residence, and the taxpayer identification number, if any, of individual F and such other information as the form requires.

* * * * *

(c) *Information returns not required*—(1) *Payment to exempt recipient*—(i) *In general.* No information return is required with respect to any payment made to an exempt recipient described in paragraph (c)(1)(ii) of this section, except to the extent otherwise provided in § 1.6049–5(d)(3) (ii) and (iii). However, if the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), then the payor is required to make a return under this section, unless the payor refunds the amount withheld in accordance with § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Exempt recipient defined.* The term *exempt recipient* means any person described in paragraphs (c)(1)(ii) (A) through (Q) of this section. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate. A payor may in any case require a payee not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate in order to qualify as an exempt recipient. See § 31.3406(h)–3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a payee must provide when a payor requires it in order to treat the payee as an exempt recipient under this paragraph (c)(1)(ii). A payor may treat a payee as an exempt recipient based upon a properly completed form as described in § 31.3406(h)–3(e)(2) of this chapter, its actual knowledge that the payee is a person described in this paragraph (c)(1)(ii), or the indicators described in this paragraph (c)(1)(ii).

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (c)(1), the term *corporation* includes a partnership all of whose members are corporations described in this paragraph (c)(1), but only if the partnership files with the payor a certificate meeting the certification requirements of paragraphs (c)(2)(ii)(A) (*1*) through (*5*) of this section. Absent actual knowledge otherwise, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A) (*1*), (*2*), (*3*), or (*4*), of this section are met before a payment is made.

(*1*) The name of the payee contains an unambiguous expression of corporate status that is Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.) or contains the term *insurance company, indemnity company, reinsurance company,* or *assurance company,* or its name indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(*2*) The payor has on file a corporate resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the entity to elect classification as an association under § 301.7701–3(b) of this chapter.

(*3*) The payor receives a Form W–9 which includes an EIN and a statement from the payee that it is a domestic corporation.

(4) The payor receives a withholding certificate described in § 1.1441–1(e)(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization*—(1) *In general.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A payor may treat an organization as an exempt recipient under this paragraph (c)(1)(ii)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the payor to be a tax-exempt organization.

(2) *Examples.* The application of the provisions of this paragraph (c)(1)(ii)(B) may be illustrated by the following examples:

Example 1. The following persons maintain accounts at M Bank: N College, O University, and P Church. M may treat N, O, and P as exempt recipients even though such persons have not filed an exemption certificate with M because the names of the organizations contain an unambiguous indication that they are tax exempt organizations.

Example 2. Q is listed in the current edition of Internal Revenue Service Publication 78 as an organization for which deductions are permitted for charitable contributions under section 170(c). Such listing has not been revoked by an announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). A payor may treat Q as an exempt recipient even though Q has not filed an exemption certificate with the payor.

Example 3. Employer R maintains a section 403(b)(7) custodial account with Regulated Investment Company S on behalf of R's employees. S may treat the account as an exempt recipient even though R or its employees have not filed an exemption certificate with S.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A payor may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (c)(1) without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1).

(E) *State.* A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing (for example, an account held in the name of "Town of S" or "County of T" may be treated as held by an exempt recipient under this paragraph (c)(1)(ii)(E)).

(F) *Foreign government.* A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A payor may treat a foreign government or a political subdivision thereof as an exempt recipient under this paragraph (c)(1) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof (for example, an account held in the name of the "Government of V" may be treated as held by a foreign government).

(G) *International organization.* An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A payor may treat a payee as an international organization without requiring a certificate if the payee is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)).

(H) *Foreign central bank of issue.* A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See § 1.895–1(b)(1). A payor may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities or commodities dealer.* A dealer in securities, commodities, or notional principal contracts, that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A payor may treat a dealer as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (c)(1) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real estate investment trust.* A real estate investment trust, as defined in section 856 and § 1.856–1, is an exempt recipient. A payor may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940.* An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1), (or during such portion of the taxable year that it is in existence), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence. A payor may treat such an entity as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund.* A common trust fund, as defined in section 584(a), is an exempt recipient. A payor may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the payor to be a common trust fund.

(M) *Financial institution.* A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in § 1.163–5(c)(2)(i)(D)(*8*) and the Bank for International Settlements. A payor may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as "Banco" or "Banque") reasonably indicates the payee is a financial institution described in the preceding sentence. In the case of a foreign person, a payor may also treat a person on such list as the Internal Revenue Service may publish or approve (such as in the Thomson Bank Directory or a list approved by the Federal Reserve Board).

(N) *Trust.* A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A payor which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Nominees or custodians.* A nominee or custodian.

(P) *Brokers.* A broker as defined in section 6045(c) and § 1.6045–1(a)(1).

(Q) *Swap dealers.* A dealer in notional principal contracts as defined in § 1.446–3(c)(4)(iii).

(iii) *Exempt recipient no longer exempt.* Any person who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the payor in writing when it ceases to be an exempt recipient unless it reasonably appears that the person formerly qualifying as an exempt recipient will not thereafter receive a reportable payment from the payor. If a payor treats a person as an exempt recipient by requiring the exempt recipient to file a certificate claiming exempt status, that person shall revoke the certificate as provided in the preceding sentence. If the exempt recipient terminates its relationship with the payor prior to the time that the notice of change in status is otherwise required, the exempt recipient is not required to notify the payor. If, however, the person who formerly qualified as an exempt recipient later reinstates the relationship with the payor, the person must, prior to receiving a reportable payment from such relationship, notify the payor that it no longer qualifies as an exempt recipient in case the payor relies upon the previous treatment.

* * * * *

(d) * * *

(3) *Conversion into United States dollars of amounts paid in foreign currency*—(i) *Conversion rules.* When a payment is made in foreign currency, the U.S. dollar amount of the payment shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or the Commissioner's delegate.

(ii) *Special rule for § 1.988–5(a) transactions where the payor on both components of a qualified hedging transaction is the same person*—(A) *In general.* Interest or original issue discount on a qualified debt instrument that is part of a qualified hedging transaction under § 1.988–5(a) shall be computed for section 6049 reporting purposes under the rules described in § 1.988–5(a)(9)(ii) if—

(*1*) The payor on the qualified debt instrument and the counterparty to the § 1.988–5(a) hedge are the same person; and

(*2*) The payee complies with the requirements of § 1.988–5(a) and so notifies its payor prior to the date required for filing Form 1099 as required by this section.

(B) *Effective date.* The provisions of this paragraph (d)(3)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(7) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Regulations on Procedure and Administration).

* * * * *

(f) * * *

(4) * * * (i) * * * A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the other person's name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) * * *

Example. * * * Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049–5(f).

(g) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6049(a) and § 1.6049–4(a)(1), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 42. Section 1.6049–5 is amended by:

1. Removing the reference "section 3451" in the third sentence of paragraph (a)(6) and adding "section 3406" in its place.

2. Removing the last sentence of paragraph (a)(6).

3. Revising paragraph (b).

4. Redesignating paragraph (c) as paragraph (f).

5. Adding new paragraphs (c), (d), (e) and (g).

The revisions and additions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) *Interest excluded from reporting requirement.* The term *interest* or *original issue discount* (OID) does not include—

(1) Interest on any obligation issued by a natural person as defined in § 1.6049–4(f)(2), irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation that is not in registered form must provide

written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or shell commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See § 1.6049–4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company. However, interest on deposits posted for security with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section). See paragraph (e) of this section for circumstances in which a payment is considered to be made outside the United States.

(7) Portfolio interest, as defined in § 1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign-targeted registered obligation described in § 1.871–14(e)(2) for which the documentation requirements described in § 1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871–14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) that is not described in paragraph (b)(7) of this section.

(9) Any amount paid by an international organization described in § 1.6049–4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer.

(10)(i) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (ii)(I) and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10).

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(b) (i) and (ii) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(b) of this section.

(B) The obligation must have on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) and regulations under that section) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) and the regulations under that section).

(C) If the obligation is in registered form, it must be registered in the name

of an exempt recipient described in § 1.6049–4(c)(1)(ii).

(12) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d) (2), (3), (4), or (5) of this section. However, such payments may be reportable under § 1.1461–1 (b) and (c). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid to a Canadian nonresident alien individual as provided in § 1.6049–8.

(13) Amounts for the period that the debt obligation with respect to which the interest arises represents an asset blocked as described in § 1.1441–2(e)(3). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

(14) Payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6049–4 and were not so reported.

(15) Amounts of interest as determined under the provisions of § 1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment with respect to a notional principal contract). Such amounts are governed by the provisions of section 6041. See § 1.6041–1(d)(5).

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account or, in the case of broker proceeds described in § 1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (i.e., other than in any of the fifty States or the District of Columbia) and outside of U.S. possessions. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in § 1.1441–6(c) (3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Code must contain all of the information that is necessary to complete a Form 1042–S for that payment.

(2) *Other applicable rules.* The provisions of § 1.1441–1(e)(4)(i) through (ix) (regarding who may sign a certificate, validity period of certificates, retention of certificates, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under § 1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441–1(b)(2)(vii) for provisions dealing reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441–7(b)(2)(ii) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)–3(e) of this chapter (see the information and certification described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W–9). The provisions of § 1.1441–7(b)(2)(ii) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441–7(b)(2)(ii) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of this paragraph (c) for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Alternative documentary evidence.* In the case of payments to which this paragraph (c)(4) applies, the payor may, instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, rely on a customer's declaration of foreign status made on an account opening form that contains the statement described in this paragraph (c)(4)(i) (or such substitute statement as

the Internal Revenue Service may prescribe) if the mailing and permanent residence address of the customer is in the country in which the branch or office is located and, under the local laws, regulations, or practices applicable to the type of account or transaction described in this paragraph (c)(4), it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section or, it is customary to obtain such documentary evidence, but it is not customary to request that it be renewed periodically. Reliance on the documentary evidence described in this paragraph (c)(4)(i) is permitted only if there are no indications that the person opening the account is a U.S. person (e.g., permanent residence address is in a foreign country, the person does not have a mailing address in the United States, the person is not employed by a U.S.-based multinational organization). If reliance is not permitted because there are indications of U.S. status (e.g., the person's permanent residence address is in the United States, the person changes his mailing address to the United States, the person is employed by a U.S.-based multinational organization) then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W–8 described in § 1.1441–1(e)(2)(i) in order to treat the customer as a foreign payee. The form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in § 1.1441–1(e)(4)(ii)(A) for as long as indicia of U.S. status continue to be present. The statemept referred to in this paragraph (c)(4)(i) must appear near the signature line and must read as follows:

> By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. federal income tax and that he/she/it is not acting for or on behalf of a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(ii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(i) of this section does not expire if the financial institution complies with the mailing requirement described in paragraph (c)(4)(iii) of this section, unless the financial institution becomes aware of circumstances indicating that the customer may be a U.S. person (including indications described in § 1.1441–7(b)(2)(ii), dealing with due diligence standards applicable to financial institutions). If circumstances indicate that the customer may be a U.S. person, then the financial institution may rely on the foreign status of the customer only if it obtains documentary evidence from the customer that is described in paragraph (c)(1) of this section or a beneficial withholding certificate described in § 1.1441–1(e)(2)(i). Such documentary evidence or certificate does not expire after the three-year validity period otherwise prescribed for such documentation but must be renewed each time new circumstances occur indicating that the customer may be a U.S. person.

(iii) *Negative confirmation of change of status.* In order for a declaration of foreign status to remain valid, the financial institution must include the following statement on a year-end statement mailed to the customer:

> You have declared to us that you are not a U.S. person and, unless you notify us to the contrary, we will continue to rely on that declaration to treat the account as owned by a non-U.S. person. You have an obligation to notify us if your status changes and you become a U.S. citizen or a U.S. resident. A U.S. person who fails to report earnings on the account could be subject to penalties under U.S. law.

(iv) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which the branch or office is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor must request such documentary evidence in lieu of the statement described in paragraph (c)(4)(i) of this section. All other requirements described in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall apply.

(v) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iv) of this section shall apply only to accounts opened on or after January 1, 1999.

(5) *U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.* The terms *payor* and *middleman* have the meanings ascribed to them under § 1.6049–4(a). A *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than a U.S. payor or U.S. middleman. The term *U.S. payor* or *U.S. middleman* means—

(i) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(ii) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(iii) A controlled foreign corporation within the meaning of section 957(a);

(iv) A foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in § 1.1441–1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(v) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(vi) A U.S. branch of a foreign bank or a foreign insurance company described in § 1.1441–1(b)(2)(iv).

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 because it is paid in the United States.

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W–8 in accordance with the provisions of § 1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that D has not furnished a Form W–8 and DC pays interest on the obligation at its branch outside the United States. The payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049 because DC, although a U.S. person is not a middleman or a payor within the meaning of § 1.6049–4(a) and (f)(4). Thus, the amount is described in paragraph (b)(6) of this section. Therefore, DC is not required to make an information return under section 6049.

Example 4. The facts are the same as in *Example 3* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441–1(e)(1)(ii).

Example 5. The facts are the same as in *Example 4* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. Under paragraph (b)(6) of this section, the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of § 1.1441–1(b)(2) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of payments of amounts that are not subject to withholding under chapter 3 of the Code. Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code are as follows:

(i) The provisions of § 1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent of a foreign person, shall not apply. Thus, a payment to a U.S. agent of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches of certain banks or insurance companies described in § 1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch may have arranged with the payor to be treated as a U.S. person for payments of amounts subject to withholding and irrespective of the fact that the branch is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general.* For purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of § 1.1441–1(b)(3)(i), (ii), (iii), (vii), (viii), and (ix) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of a payee as a U.S. or a foreign person and its relevant characteristics (e.g., as an owner or intermediary, or as an individual, corporation, or flow-through entity), irrespective of whether the payments are subject to withholding under chapter 3 of the Code. In addition, the rules of § 1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by substituting the term *payor* for the term *withholding agent*. For this purpose, the documentary evidence described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with amounts reportable under section 6042, 6045, or 6049 with respect to publicly traded securities, or under section 6050N in the case of royalties from a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, choose, in its discretion, to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account information system described in § 1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins, the date that the documentation is provided, or the last day of the calendar year in which the grace period begins. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441–1(e)(4)(iv). See § 1.1092(d)–1 for a definition of the term *publicly*

traded for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of § 1.1441–1(b) (2)(v) and (3)(v) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee and determine the applicable presumptions for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Amounts that are not subject to withholding under chapter 3 of the Code that the payor may treat as paid to a foreign intermediary in accordance with § 1.1441–1(b)(3)(v)(A) shall be treated as made to an exempt recipient described in § 1.6049–4(c)(1)(ii) (M), (O), (P), or (Q) except to the extent that the payor has actual knowledge that any person for whom the intermediary is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient. If the payor does not have sufficient reliable information regarding the portion of the payment to the foreign intermediary that is allocable to such presumed U.S. payee, then the payor shall treat the maximum portion of the payment that could be allocable to such presumed U.S. payee as so allocable.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source original issue discount on an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in sections 871(g)(1)(B) or 881(a)(3) or of U.S. source interest (including original issue discount) on deposits with banks and other financial institutions described in sections 871(i)(2)(A) or 881(d) that the payor may treat as paid to a foreign intermediary in accordance with the provisions of § 1.1441–1(b)(3)(v)(A) shall be treated as paid to an exempt recipient only to the extent that the payor can treat the payment as made to a foreign person that is a beneficial owner in accordance with the provisions of § 1.1441–1(e)(1)(ii), or can treat as a payment to a U.S. beneficial owner in accordance with the provisions of § 1.1441–1(d)(4) (except to the extent that the payment is associated with a Form W–9 described in § 1.1441–1(d)(2) relating to a U.S. payee who is not an exempt recipient), or can rely on the payee's claim that the payee assumes withholding responsibility in accordance with § 1.1441–1(e)(5)(iv).

(B) *Payee has not furnished reliable documentation.* If the payment is made to a person described in § 1.6049–4(c)(1)(ii) that the payor may treat as an exempt recipient without requiring documentation and the payor may not treat the payee as a foreign intermediary in accordance with the provisions of § 1.1441–1(b)(3)(v)(A), then the payee shall be treated as an exempt recipient only if the payor can treat the person as a U.S. person, or if the person has furnished a certificate as a U.S. branch described in § 1.1441–1(b)(2)(iv), or the person has furnished a certificate such that the payor can treat the payment as a payment made to a foreign person that is a beneficial owner, or if the payor can treat the person as a foreign person that has furnished an indication to the payor that such person is receiving the payment for its own account. A payor must treat the payee as a foreign person for purposes of this paragraph (d)(3)(iii) if the payor has actual knowledge of the person's employer identification number and that number begins with the two digits "98," if the payor's communications with the person are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in paragraph (e) of this section). The payor may treat as a U.S. person any person not described in the preceding sentence for purposes of this paragraph (d)(3)(iii). If the payee is treated as a foreign person under this paragraph (d)(3)(iii)(B), it must be treated as not acting for its own account unless it furnishes an indication of beneficial ownership in any manner that the payor and the person may choose, provided the indication is documented in the payor's records. The indication is not required to be under penalties of perjury. The provisions of this paragraph (d)(3)(iii) shall not apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(iv) *Examples.* The rules of this paragraph (d)(3) are illustrated by the following example:

Example 1. A payor, X, makes a payment to Y of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under sections 871(h) or 881(d). Y is a non-qualified foreign intermediary that has furnished to X a valid intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. Y's withholding certificate does not contain reliable information regarding B and C's share of the payment. B's withholding certificate (attached to Y's withholding certificate) indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate (attached to Y's withholding certificate) indicates that C is a foreign corporation not entitled to a reduced rate of withholding. Under paragraph (b)(12) of this section, X may rely on the withholding certificates to determine the status of A, B, and C for purposes of deciding whether the amounts paid are interest within the meaning of this section. However, because X cannot reliably determine how much of the payment is allocable to B and C, it must presume under paragraph (d)(3)(i) of this section and § 1.1441–1(b)(3)(v)(C) that 80 percent of the payment (i.e., all of the payment less A's share) is allocable to C because the rate of withholding applicable to the payment to C is the highest of the withholding rates applicable to B and C. Thus, based on such presumption, X may treat C as a foreign payee under paragraph (b)(12) of this section and, therefore, may treat the payment as not being interest reportable under § 1.6049–4(a).

Example 2. The facts are the same as in *Example 1*, except that X can reliably determine C's allocable share, but cannot reliably determine A's and B's share. No withholding is required under chapter 3 of the Code or under section 3406 on the payment to A or B since A is a U.S. person who has furnished a valid Form W–9 and B is an exempt recipient (as defined in § 1.6049–4(c)(1)(ii)(B)) and a foreign tax-exempt organization exempt from chapter 3 withholding (see § 1.1441–9). However, X estimates that A, as a U.S. person, is subject to a higher U.S. tax liability with respect to the payment than B is, since B is a foreign tax-exempt organization. Therefore, X must presume under paragraph (d)(3)(i) of this section and § 1.1441–1(b)(3)(v)(C) that 70 percent of the payment (i.e., all of the payment less C's share) is allocable to A. Consequently, X must report all of the payment on the Form 1099 filed for A under § 1.6049–4(a).

Example 3. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a withholding certificate described in § 1.1441–1(e)(3)(iii) for Z, that is also a non-qualified foreign intermediary. Beneficial owner certificates are attached to Z's certificate. Under paragraph (d)(1) of this section, X must rely on the provisions of § 1.1441–1(b)(2)(v) to treat the payment as made to the persons whose withholding certificates are attached to Z's certificate to the extent both Y and Z have reliably certified in accordance with § 1.1441–1(e)(3)(iii)(D) that the certificates that each of them has attached to their respective intermediary withholding certificate represent all of the persons to whom the intermediary withholding certificate relates. X must rely on the provisions of § 1.1441–1(b)(2)(v) even though the payment is not an amount subject to withholding under chapter 3 of the Code.

Example 4. A payor, X, makes a payment to Y of foreign source interest and U.S. source dividends. Y has furnished to X a qualified intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) for itself. Y indicates that 10 percent of each type of payments is allocable to the category described in § 1.1441–1(e)(5)(v)(B)(3), relating to assets owned by persons for whom the qualified intermediary does not hold the documentation. X has no actual knowledge that the persons owning the assets are U.S. persons. With respect to the payment of foreign source interest (an amount that is not subject to withholding under chapter 3 of the Code), X must, under paragraph (d)(3)(ii) of this section, treat the payment as made to a foreign payee. Such treatment is effective for purposes of paragraph (b)(12) of this section, meaning that the 10-percent amount is not treated as interest for purposes of reporting under § 1.6049–4(a). With respect to the amount of U.S. source dividends, X must, under paragraph (d)(3)(i) of this section, treat the payment as made to a foreign payee (based upon paragraph (d)(3)(i)'s cross-reference to § 1.1441–1(b)(3)(v)(B)). Such treatment is effective for purposes of § 1.6042–3(b)(1)(iii), meaning that the 10-percent amount is not treated as a dividend for purposes of reporting under § 1.6042–2(a).

Example 5. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached beneficial owner Forms W–8. In its withholding certificate, Y represents to X that 30 percent of the payment is allocable to a U.S. person who has not furnished a Form W–9 and whom Y cannot treat as an exempt recipient. Under paragraph (d)(3)(ii) of this section, X must treat 70 percent of the payment as made to a foreign payee. X, however, may not rely on the rule of paragraph (d)(3)(ii) of this section to treat the remainder of the payment as made to a foreign payee because X has actual knowledge that the remainder of the payment is allocable to a U.S. person. Under paragraph (d)(3)(ii) of this section, X must treat 30 percent of the payment as made to a U.S. payee who is not an exempt recipient.

Example 6. A payor, X, holds a valid withholding certificate from Y, a qualified intermediary, with which it reliably associates payments made to A, a U.S. individual who maintains an account relationship with Y and who has furnished a valid Form W–9 to Y. Y has furnished A's Form W–9 to X who has set up a separate account for those assets held in Y's name, and which Y has indicated are allocable to A. The assets consist of 10,000 shares of stock of domestic corporation T, publicly traded on a U.S. stock exchange. When dividends are paid on the T stock held in the Y/A account, X credits the dividend amounts to the account and reports the dividend amounts credited to that account on a Form 1099–DIV under section 6042, treating A as the payee in accordance with paragraph (d)(1) of this section (cross-referencing § 1.1441–1(b)(2)(v)). When A later instructs Y to sell the shares, X effects the sale and credits the Y/A account with the gross proceeds from the sale of 10,000 shares of the T stock. Under § 1.6045–1(c)(2) and paragraph (d)(3)(ii) of this section, X must report the gross proceeds credited to the Y/A account on a Form 1099—B made in the name of A since it has actual knowledge that the gross proceeds are paid to a U.S. person who is not an exempt recipient. See section 1.6045–1(g)(3)(iv).

Example 7. A payor, X, holds a valid withholding certificate from Y, a non-qualified intermediary, and can reliably associate a payment of U.S. short-term OID and proceeds from the sale of shares with the certificate. Y has not attached any certificates or documentary evidence to its certificate and informs X that the payment is allocable to persons for whom it holds no documentation. Under paragraph (d)(3)(iii) of this section, X must, for purposes of this section and section 3406, treat the payment of short-term OID as made to a U.S. payee who is not an exempt recipient. However, under paragraph (d)(3)(ii) of this section, the payment of gross proceeds from the sale of shares is treated as made to a foreign payee. X must rely on this treatment for purposes of determining its reporting obligations under section 6045 and the regulations under that section (see § 1.6045–1(g)(1)(i)) and, consequently, its withholding obligations under section 3406 and the regulations under that section.

(4) *Determination of partnership and partners status in the absence of documentation*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of §§ 1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of the payee as a partnership, as a domestic or foreign partnership, and the status of its partners for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(4) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of amounts that are not subject to withholding under chapter 3 of the Code, the provisions of §§ 1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall also apply (by substituting the term *payor* for the term *withholding agent*), subject to the following exceptions—

(A) If, in the absence of documentation, the payor treats the payee as a partnership in accordance with the presumptions set forth in § 1.1441–1(b)(3)(ii), the presumptions of § 1.1441–5(d)(2) shall not apply to treat the partnership as a foreign partnership; instead, the person treated as a partnership shall be presumed to be a domestic partnership; and

(B) In the case of payments described in § 1.1441–5(d)(3)(i) (dealing with lacking or unreliable documentation regarding the status of partners) or in § 1.1441–5(d)(3)(iii), dealing with lacking or unreliable information regarding the number of partners represented by the withholding certificate), the partners are presumed to be U.S. payees who are not exempt recipients and not foreign payees.

(5) *Presumptions for payments to or by foreign trusts or estates.* [Reserved]

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2), (3), and (4) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location

of the account from which the amount is drawn, an amount that is described in paragraph (e)(1) (i) or (ii) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864–4(c)(5)(i). In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to the United States is considered paid in the United States if the payment is described in paragraphs (e)(3) (i) and (ii) of this section.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in a interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation, as described in § 1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identifies an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933 (15 U.S.C. 77a), and that are neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a U.S. corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. The facts are the same as in *Example 1* except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (e)(3) of this section because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section; because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 3. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871–14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (e)(1)(i)(B) of this section. The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (e)(1) of this section.

Example 4. The facts are the same as in Example 3 except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment by DC of the interest on the FC bonds is considered to be within the United States under paragraph (e)(1) of this section.

Example 5. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (e)(2) of is section, FB is considered to have paid the interest on C's deposit outside the United States.

Example 6. The facts are the same as in *Example 5* except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to A's account within the United States under paragraph (e)(2) of this section because the regular crediting of the account disqualifies the transmission from being isolated or infrequent.

Example 7. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 8. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (2) of this section.

Example 9. DC is a U.S. corporation. a holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to a and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to a's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to a by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 1998.

(2) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, may require new withholding certificates conforming to the requirements described in this section.

Par. 43. Section 1.6049–6 is amended by:

1. Removing the language, "a reasonable facsimile thereof" in the first sentence of paragraph (d) and adding "an acceptable substitute" in its place.

2. Revising paragraph (e)(3).

The revision reads as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6049(c) and § 1.6049–6(a), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 44. Section 1.6049–7 is amended by revising paragraph (c)(4) to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(c) * * *

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1)) or the Bank for International Settlements;

* * * * *

Par. 45. In § 1.6049–8, paragraph (a) is amended by removing the last two sentences and adding four sentences in their place to read as follows:

§ 1.6049–8 Interest and original issue discount paid to residents of Canada.

(a) *Interest subject to reporting requirement.* * * * The payor or middleman may rely upon the permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) as stated on the Form W–8 described in § 1.1441–1(e)(2)(i) in order to determine whether the payment is made to a Canadian nonresident alien individual. If the permanent residence address stated on the certificate is in Canada, or if the payor has actual knowledge of the individual's residence address in Canada, the payor must presume that the individual resides in Canada. Amounts described in this paragraph (a) are not subject to backup withholding

under section 3406. See § 31.3406(g)-1(d) of this chapter.

* * * * *

Par. 46. Section 1.6050A–1 is amended by

1. Removing the language "Form 1099F" each place it appears and adding "Form 1099-MISC" in its place in paragraphs (a) introductory text, (a) concluding text, (b) and (c)(1) first and second sentences.

2. Adding paragraph (d) to read as follows:

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050A(a) and § 1.6050A–1(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050A(b) and § 1.6050A–1(c), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

§ 1.6050H–1 [Amended]

Par. 47. Section 1.6050H–1 is amended by:

1. Removing the language § 35a.9999–4T, Q/A–5(iii) and adding § 1.6049–5(c) in its place in paragraph (d)(2)(ii)(A).

2. Removing the language "§ 1.6049–5(b)(2)(iv) and adding § 1.1441–1(e)(1) in its place in paragraph (d)(2)(ii)(B).

Par. 48. Section 1.6050N–1 is amended by:

1. Revising the section heading.

2. Revising paragraphs (c) and (d).

3. Adding paragraph (e).

The addition and revisions read as follows:

§ 1.6050N–1 Statement to recipients of royalties paid after December 31, 1986.

* * * * *

(c) *Exempted foreign-related items*—(1) *In general.* No return shall be required under paragraph (a) of this section for payments of the items described in paragraphs (c)(1)(i) through (iv) of this section.

(i) Returns of information are not required for payments of royalties that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c).

For purposes of this paragraph (c)(1)(i), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code.

(ii) Returns of information are not required for payments of royalties from sources outside the United States (determined under Part I of subchapter N and the regulations under these provisions) made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(iii) Returns of information are not required for payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported and were not so reported.

(2) *Definitions*—(i) *Payor.* For purposes of this section, the term *payor* shall have the meaning ascribed to it under § 1.6049–4(a).

(ii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (c) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (c)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (c)(2)(ii), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050N(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050N(b) and § 1.6050N–1(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Effective date*—This section, except paragraph (c) , is applies to payee statements due after December 31, 1995, without regard to extensions. For further guidance regarding the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996 (see Rev. Proc. 84–70 (1984–2 C.B. 716) and § 601.601(d)(2) of this chapter). The provisions of paragraph (c) of this section apply to payments made after December 31, 1998.

Par. 49. Section 1.6071–1, is amended by revising paragraphs (c)(7), (c)(8),(c)(11), (c)(13), and (c)(15) to read as follows:

§ 1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(7) For provisions relating to the time for filing information returns by persons making certain payments, see § 1.6041–2(a)(3) and § 1.6041–6.

(8) For provisions relating to the time for filing information returns regarding payments of dividends, see § 1.6042–2(c).

* * * * *

(11) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see § 1.6044–2(d).

* * * * *

(13) For provisions relating to the time for filing information returns regarding certain payments of interest, see § 1.6049–4(g).

* * * * *

(15) For provisions relating to the time for filing the annual information return on Form 1042–S of the tax withheld under chapter 3 of the Code (relating to withholding of tax nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c).

* * * * *

Par. 50. In § 1.6091–1, paragraph (b)(15) is revised to read as follows:

§ 1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(15) For the place for filing information returns on Forms 1042–S with respect to certain amounts paid to foreign persons, see instructions to the form.

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 51. The authority for part 31 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3401(a)(6)–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Par. 52. Section 31.3401(a)(6)–1 is amended by:

1. Revising the section heading.

2. Revising the paragraph heading and first sentence of paragraph (e).

3. Adding paragraph (f).

4. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals.

* * * * *

(e) *Exemption from income tax for remuneration paid for services performed before January 1, 1999.* Remuneration paid for services performed within the United States by a nonresident alien individual before January 1, 1999, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. * * *

(f) *Exemption from income tax for remuneration paid for services performed after December 31, 1998.* Remuneration paid for services performed within the United States by a nonresident alien individual after December 31, 1998, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of § 1.1441–1(e)(1)(ii) of this chapter (for a claim based on a provision of the Internal Revenue Code) or § 1.1441–4(b)(2) of this chapter (for a claim based on an income tax convention).

§ 31.3406–0 [Amended]

Par. 53. Section 31.3406–0 is amended by removing the entries in the table for § 31.3406(h)–2, paragraphs (e)(1) and (e)(2).

Par. 54. Section 31.3406(d)–3 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Removing the words "30-day" in the first sentence, revising the word "these" to "the 30-day", and adding the word "may" immediately before the words "apply only if" in the second sentence, and revising the word "those" to "the" in the third sentence in paragraph (b).

3. Revising paragraph (c).

The addition and revision read as follows:

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) * * * For payments made after December 31, 1998, see § 1.6049–5(d)(2)(ii) of this chapter for the application of a 90-day grace period in lieu of the 30-day grace period described in this paragraph (a) if, at the beginning of the 90-day grace period, certain conditions are satisfied. If the grace period provisions of § 1.6049–5(d)(2)(ii) or § 1.1441–1(b)(3)(iv) of this chapter are applied with respect to a new account, the grace period provisions of this paragraph (a) shall not apply to that account.

* * * * *

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 (or an acceptable substitute) or other evidence of foreign status (pursuant to relevant regulations under an applicable Internal Revenue Code section without regard to the requirement to furnish a taxpayer identifying number, and the certifications described in §§ 31.3406(d)–1(b)(3) and 31.3406(d)–2), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident. The 30-day rules described in paragraph (a) or (b) of this section may apply only if the payee does not qualify for, or the payor does not apply, the 90-day grace period described in § 1.6049–5(d)(2)(ii) or § 1.1441–1(b)(3)(iv) of this chapter.

Par. 55. In § 31.3406(g)–1, paragraph (e) is added to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 1998, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in § 1.6049–5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see § 1.6041–1(d)(5) of this chapter.

Par. 56. Section 31.3406(h)–2 is amended by:

1. Revising paragraph (a)(3)(i).

2. Revising the penultimate sentence in paragraph (d)

3. Removing the heading of paragraph (e)(1).

4. Removing the paragraph designation (e)(1).

5. Removing paragraph (e)(2).

The revisions read as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W–8 or documentary evidence described in § 1.1441–1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions) or any one of the joint owners who has not

established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5. See § 1.6049–5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

* * * * *

(d) * * * If its payee is not subject to withholding under section 3406, the payor must pay or credit the full amount of the payment to the payee, unless, with respect to payments made after December 31, 1998, the payor chooses to apply prior withholding under section 3406 to an amount required to be withheld under another section of the Internal Revenue Code (such as under section 1441) to the extent permitted under procedures prescribed by the Internal Revenue Service (see § 601.601(d)(2) of this chapter). * * *

* * * * *

Par. 57. Section 31.6413(a)–3 is amended as follows:

1. Paragraph (a)(1)(ii) is amended by removing the language "or" at the end of the paragraph.

2. In paragraph (a)(1)(iii), the parenthetical "(including the certification relating to foreign status described in § 1.6049–5(b)(2)(iv) of this chapter or § 1.6045–1(g)(1) of this chapter)" is removed and "(including the documentation described in § 1.1441–1(e)(1)(ii), 1.6045–1(g)(3), or 1.6049–5(c) of this chapter)" is added in its place.

3. Paragraph (a)(1)(iii) is further amended by removing the period at the end of the paragraph and adding "; or" in its place.

4. Paragraph (a)(1)(iv) is added.

5. Paragraphs (a)(2) and (b)(2) are revised.

The addition and revisions read as follows:

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) * * * (1) * * *

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the documentation described in § 1.1441–1(e)(1)(ii) of this chapter and the payee subsequently furnishes, completes, or corrects the documentation. The documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph (a)(1)(iv) of this section), if a payor or broker withholds because the payor or broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) * * *

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person, as described in paragraph (a)(1)(iv) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code and the regulations under that chapter. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code (and the regulations thereunder), returns must be made in accordance with the requirements of § 1.1461–1 (b) and (c) of this chapter.

Par. 58. Effective October 14, 1997, § 31.9999–0 is added to read as follows:

§ 31.9999–0 Effective dates.

In general, the provisions of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4, and 35a.9999–5 of this chapter apply before January 1, 1997. The provisions of those sections remain applicable after December 31, 1996, and before January 1, 1999, however, for purposes of § 301.6724–1 of this chapter, relating to due diligence safe harbor, and for international transactions, including transactions involving a foreign payee, a foreign payor, a foreign office of a U.S. bank or broker, or a payment from sources without the United States. See §§ 31.3406–0 through 31.3406(i)–1 of this chapter for rules that apply to other transactions after December 31, 1996.

§ 31.9999–0 [Removed]

Par. 59. Effective January 1, 1999, § 31.9999–0 is removed.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 60. The authority for part 35a is amended by removing the entries for §

§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 35a.9999–0T [Removed]

Par. 60a. Effective October 14, 1997 § 35a.9999–0T is removed.

Par. 61. Effective October 14, 1997 § 35a.9999–0 is added to read as follows:

§ 35a.9999–0 Effective date.

See § 31.9999–0 of this chapter for applicability dates for §§ 35a.9999–1 through 35a.9999–5.

Par. 62. Effective January 1, 1999, §§ 35a.9999–0, 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T and 35a.9999–5 are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 63. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 301.6402–3 also issued under 95 Stat. 357 amending 88 Stat. 2351.

* * *

Par. 64. Section 301.6109–1 is amended as follows:

1. Paragraphs (b)(2)(iv) and (b)(2)(v) are revised.

2. Paragraph (b)(2)(vi) is added.

3. Paragraph (c) is revised.

The revisions and addition read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended return, or a refund claim under this title but excluding information returns, statements, or documents;

(v) A foreign person that makes an election under § 301.7701–3(c); and

(vi) A foreign person that furnishes a withholding certificate described in § 1.1441–1(e)(2) or (3) of this chapter or § 1.1441–5(c)(2)(iv) or (3)(iii) of this chapter to the extent required under § 1.1441–1(e)(4)(vii) of this chapter.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

* * * * *

Par. 65. Section 301.6114–1 is amended by:

1. Revising paragraph (a)(1)(ii).

2. Revising paragraph (b)(4)(ii) introductory text

3. Removing the period at the end of paragraph (b)(4)(ii)(B)(*7*) and adding "; or" in its place

4. Adding paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).

5. Revising paragraph (c)(1)(i).

6. Adding paragraph (c)(6).

The revisions and addition read as follows:

§ 301.6114–1 Treaty-based return positions.

(a) * * * (1) * * *

(ii) If a return of tax would not otherwise be required to be filed, a return must nevertheless be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, taxpayer identifying number, and be signed under penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year). In the case of a disclosable return position relating solely to income subject to withholding (as defined in § 1.1441–2(a) of this chapter), however, the statement required to be filed in paragraph (d) of this section must instead be filed at times and in accordance with procedures published by the Internal Revenue Service.

* * * * *

(b) * * *

(4) * * *

(ii) A treaty exempts from tax, or reduces the rate of tax on, fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442 that a foreign person receives from a U.S. person, but only if described in paragraphs (b)(4)(ii)(A) and (B) of this section, or in paragraph (b)(4)(ii)(C) or (D) of this section as follows—

* * * * *

(C) For payments made after December 31, 1998, with respect to a treaty that contains a limitation on benefits article, that—

(*1*) The treaty exempts from tax, or reduces the rate of tax on income subject to withholding (as defined in § 1.1441–2(a) of this chapter) that is received by a foreign person (other than a State, including a political subdivision or local authority) that is the beneficial owner of the income and the beneficial owner is related to the person obligated to pay the income within the meaning of sections 267(b) and 707(b), and the income exceeds $500,000; and

(*2*) A foreign person (other than an individual or a State, including a political subdivision or local authority) meets the requirements of the limitation on benefits article of the treaty; or

(D) For payments made after December 31, 1998, with respect to a treaty that imposes any other conditions for the entitlement of treaty benefits, for example as a part of the interest, dividends, or royalty article, that such conditions are met;

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding paragraph (b)(4) or (5) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties to the extent such income is beneficially owned by an individual or a State (including a political subdivision or local authority);

* * * * *

(6) This section does not apply to amounts required to be reported under section 6036A on a Form 5472 (or successor form) to the extent permitted under the form or accompanying instructions.

* * * * *

Par. 66. Section 301.6402–3 is amended by:

1. Revising paragraph (e).

2. Removing the authority citation at the end of the section.

The revision reads as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Code, a copy of the Form 1042–S required to be provided to the beneficial owner pursuant to § 1.1461–1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to § 1.1461–2(a)(2) of this chapter, that was subject to a set-off pursuant to § 1.1461–2(a)(3) of this chapter, or in accordance with the provisions of an agreement that a qualified intermediary described in § 1.1441–1(e)(5)(ii) has in effect with the Internal Revenue Service. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International),

may require establishing that the taxpayer is the beneficial owner of the income for which a claim of refund or credit is being made.

Par. 67. In § 301.6721–0, the table is amended by adding entries for § 3012.6724–1, paragraphs (g)(1), (g)(2), and (g)(3) to read as follows:

§ 301.6721–0 Table of Contents.

* * * * *

§ 301.6724–1 Reasonable cause.

* * * * *

(g) * * *
(1) In general.
(2) Special rules relating to TINs.
(3) Effective dates.

* * * * *

Par. 68. In § 301.6724–1, paragraph (g) is revised to read as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723.

(2) *Special rules relating to TINs.* The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return (as defined in § 301.6721–1(g)), payee statement (as defined in § 301.6722–1(d)), document (as described in § 301.6723–1(a)(4)), or the failure merely to provide a TIN as described in § 301.6723–1(a)(4)(ii).

General Rule

Q–1. Is a payor subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the TIN furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A–1. A payor is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the payor was his correct number, and the payor included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

Due Diligence Defined for Accounts Opened and Instruments Acquired After December 31, 1983

Q–2. In order for a payor of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A–2. (1) In general, the payor of an account or instrument that is not a pre-1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a payor permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the payor will be liable for the $50 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the payor exercises due diligence in processing such number, i.e., the payor uses the same care in processing the TIN provided by the payee that a reasonably prudent payor would use in the course of the payor's business in handling account information such as account numbers and balances.

(2) Once notified by the IRS (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in § 31.3406(d)–5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A) (i) through (iv).

Q–3. Is a payor as described in A–2 liable for the penalty if the payor obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

A–3. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Special Rules

Q–4. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty for filing an information return with a missing or an incorrect TIN if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A–4. Generally, a payor as described in Q–4 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified TIN from the payee.

Q–5. Is the payor described in A–4 required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

A–5. There is no requirement on the payor to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A–4.

Q–6. Is a payor as described in Q–4 considered to have exercised due diligence if the payee provides a TIN to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

A–6. A payor as described in Q–4 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A–4 where the transfer is accompanied with a TIN provided that the payor uses the same care in processing the TIN provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A–4 after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the required additional actions described in the second paragraph of A–2.

Q–7. Is a payor liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A–7. A payor of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q–8. How does a payor obtain a determination from the IRS that the payor has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the payor is subject to the penalty?

A–8. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6721(a).

Q–9. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the accounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A–9. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

Q–10. May the acquiring taxpayer described in A–9 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A–10. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

Q–11. To what extent may a payor rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997).

A–11. A payor may rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997) solely for the definitions of terms or phrases used in this paragraph (g)(2).

(3) *Effective dates.* This paragraph (g) is effective for information returns (as defined in section 6724(d)(1)) required to be filed, payee statements (as defined in section 6724(d)(2)) required to be furnished, and specified information (as described in section 6724(d)(3)) required to be reported after December 31, 1998. See § 301.6724–1(g) in effect prior to January 1, 1999 (see § 301.6724–1(g) as contained in 26 CFR part 301, revised April 1, 1997) for substantially similar rules applicable prior to January 1, 1999.

* * * * *

PART 502—[REMOVED]

Par. 70. Part 502 is removed.

PART 503—[REMOVED]

Par. 71. Part 503 is removed.

PART 509—SWITZERLAND

Par. 72. The authority citation for "Subpart—General Income Tax" is removed and a general authority citation for part 509 is added to read as follows:

Authority: 26 U.S.C. 62, 3791 and 7805.

Par. 73. Part 509 is amended as follows:

§§ 509.1 through 509.10

[Removed]

1. Subpart—Withholding of Tax consisting of §§ 509.1 through 509.10 is removed.

§ 509.103 [Amended]

2. In § 509.103, paragraph (e) is removed and reserved.

§ 509.117 [Amended]

3. In § 509.117, paragraph (a) is removed and reserved.

§ 509.119 [Removed]

§ 509.122 [Removed]

4. Sections 509.119 and 509.122 are removed.

PART 513—IRELAND

Par. 74. The authority citation for part 513 is revised to read as follows:

Authority: 26 U.S.C. 62.

Par. 75. Part 513 is amended as follows:

§ 513.1 [Removed]

1. Section 513.1 is removed.
2. Sections 513.2, 513.3, 513.4 and 513.5 are revised to read as follows:

§ 513.2 Dividends.

The fact that the payee of the dividend is not required to pay Irish tax on such dividend because of the application of reliefs or exemptions under Irish revenue laws does prevent the application of the reduction in rate of United States tax with respect to such dividend. If the dividend would have been subject to Irish tax had the payee thereof derived an income large enough to require payment of tax then liability to Irish tax exists for the purpose of the reduction in rate of United State tax. As to what constitutes a permanent establishment, see Article II(1)(i) of the convention.

§ 513.3 Interest.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§ 513.4 Patent and copyright royalties and film rentals.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§ 513.5 Natural resource royalties and real property rentals.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

PART 514—FRANCE

Par. 76. The authority citation for part 514 is added to read as set forth below and the authority citation preceding § 514.1 is removed.

Authority: 26 U.S.C. 7805.

Par. 77. Part 514 is amended as follows:

1. The undesignated centerheading preceding § 514.1 is removed.

§§ 514.20 and 514.21 [Removed]

2. Sections 514.20 and 514.21 are removed.

§ 514.22 [Amended]

3. In § 514.22, paragraph (c) is removed.

§§ 514.23 through 514.32 [Removed]

4. Sections 514.23 through 514.32 are removed.

§§ 514.101 through 514.117 [Removed]

5. Subpart—General Income Tax consisting of sections 514.101 through 514.117 is removed.

PART 516—[REMOVED]

Par. 78. Part 516 is removed.

PART 517—[REMOVED]

Par. 79. Part 517 is removed.

PART 520—[REMOVED]

Par. 80. Part 520 is removed.

PART 521—[AMENDED]

Par. 81. The authority citation for part 521 is revised to read as follows:

Authority: 26 U.S.C. 62, 143, 144, 211, and 231.

Par. 82. Part 521 is amended as follows:

§§ 521.1–521.8 [Removed]

1. Subpart—Withholding of Tax consisting of §§ 521.1 through 521.8 is removed.

§ 521.103 [Amended]

2. In § 521.103, paragraph (d) is removed and reserved.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 83. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 84. In § 602.101, paragraph (c) is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.1441–8T	1545–1053
. . . . .	.
1.1461–3	1545–0054 1545–0055 1545–0096 1545–0795
1.1461–4	1545–0054 1545–0055 1545–0096
. . . . .	.
35a.9999–3	545–0112
. . . . .	.
Part 502	1545–0844
Part 503	1545–0837
. . . . .	.
Part 516	1545–0841
Part 517	1545–0849
Part 520	1545–0833
. . . . .	.

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.1441–1	1545–1484
1.1441–4	1545–1484
. . . . .	.
11.1441–8	1545–1484 1545–1053
1.1441–9	1545–1484
. . . . .	.
31.3401(a)(6)	1545–1484
301.6114–1	1545–1484
. . . . .	.
1.1441–5	1545–0096 1545–0795 1545–1484
1.1441–6	1545–0055 1545–0795 1545–1484
. . . . .	.
1.1461–1	1545–0054 1545–0055 1545–0795 1545–1484
. . . . .	.
301.6402–3	1545–0055 1545–0073 1545–0091 1545–0132 1545–1484
. . . . .	.

3. Revising entries in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25998 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8735]

RIN 1545–AP71

Certain Payments Made Pursuant to a Securities Lending Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the taxation of certain payments made pursuant to a cross-border securities lending transaction. These regulations provide guidance concerning the source, character, and income tax treaty treatment of such payments and affect United States payors and recipients and foreign payors and recipients.

DATES: These regulations are effective October 14, 1997.

Applicability: These regulations are applicable to payments made after November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ramon Camacho or Paul Epstein at (202) 622–3870 (not a toll-free number) of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1992, the IRS published proposed amendments (INTL–106–89) to the Income Tax Regulations (26 CFR part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986 (Code) in the **Federal Register** (57 FR 860). A public hearing was scheduled but was subsequently cancelled because no one requested to testify. However, several written comments were received. After consideration of all of the comments, the regulations proposed by INTL–106–89 are adopted by this Treasury decision, as modified.

Explanation of Provisions

I. The 1992 Proposed Regulations

On January 9, 1992, the Internal Revenue Service (IRS) issued proposed regulations that provided guidance on the source and character of substitute payments made in cross-border securities lending transactions. In general, the regulations proposed to source substitute payments by reference to the source of the payments (dividend or interest) for which they substitute. In addition, the regulations proposed to characterize substitute payments under a transparency rule. Under the transparency rule, substitute payments are treated as having the same character as the dividend or interest income for which they substitute.

Under the proposed regulations, the source rule applies for all purposes of the Code in cross-border securities lending transactions. In contrast, the transparency rule addressing the character of substitute payments applies only for purposes of determining the tax liability under sections 871 and 881 and nonresident alien withholding under chapter 3 of the Code and for treaty purposes. Generally, public comments welcomed the transparency rule because it eliminated unjustifiable tax biases between similar economic investments. After considering all the public comments, the proposed regulations are adopted as final regulations by this Treasury decision, substantially as proposed.

II. The Final Regulations

1. General rule

The final regulations, like the proposed regulations, provide that a substitute payment made with respect to a securities lending or sale-repurchase transaction is sourced using the general rules governing the source of interest or dividend income contained in sections 861 and 862. The definitions of securities lending transactions and sale-repurchase transactions are provided in §§ 1.861–2(a)(7) and 1.861–3(a)(6) of the regulations. These provisions define a substitute payment as a payment made to the transferor of a security of an amount equal to any distributions of dividends or interest which the owner of the transferred security would normally receive. The regulations also provide that substitute interest or dividend payments have the same character as interest or dividend income, respectively, for purposes of applying sections 864(c)(4)(B), 871, 881, 894, 4948(a) and the withholding provisions under chapter 3 of the Internal Revenue Code.

2. Scope of regulation

Some commentators questioned whether a sale-repurchase transaction is considered a transaction that is substantially similar to a securities lending transaction for purposes of the proposed regulations. They noted that most sale-repurchase transactions contractually permit the purchaser to deal freely with the underlying securities, specifying only that substantially identical securities be returned on the repurchase date. In such cases the purchaser must also make substitute payments to the seller. The final regulations clarify that substitute payments made in a sale-repurchase transaction are sourced and characterized in the same manner that substitute payments are sourced and characterized in securities lending transactions.

The final regulations only address the tax treatment of substitute payments received by the transferor in securities lending or sale-repurchase transactions. The regulations do not address the treatment of fees or interest paid to the transferee in such transactions. For example, the transparency rule does not extend to characterize the interest component of the repurchase price of a sale-repurchase agreement, which is treated as interest and sourced under the general source rules for interest contained in sections 861 and 862. See Rev. Rul. 74–27 (1974–1 C.B. 24); Rev. Rul. 77–59 (1977–1 C.B. 196); *Nebraska Department of Revenue* v. *Loewenstein*, 115 S. Ct. 557 (1994).

In response to comments, the final regulations apply for purposes of determining the source of substitute payments, regardless of whether the recipient of the income is U.S. or foreign. When source is determined under these regulations, it applies for all purposes of the Code (e.g., foreign tax credit limitations under sections 904 and 906). However, with respect to the characterization of substitute payments, the IRS and Treasury believe that it is appropriate, and more consistent with existing guidance regarding the treatment of substitute payments, to apply the transparency rule only with respect to foreign taxpayers and only for limited purposes. Accordingly, the transparency rule applies to determine character only for certain purposes of sections 864, 871, 881, 894, 4948(a) and chapter 3 of the Code. For example, under this rule, substitute payments to a foreign person with respect to stocks and securities that, absent the securities lending transaction, would give rise to foreign source effectively connected income in the hands of such person, will retain their character as dividend or interest income for purposes of determining whether the income is effectively connected to the U.S. trade or business of such person.

The transparency rule does not apply, however, to characterize the U.S. source income of U.S. trades or businesses of foreign taxpayers. Accordingly, U.S. source effectively connected income of foreign taxpayers and U.S. source income of U.S. taxpayers will be treated the same. In this regard, the final regulations do not affect existing guidance applicable to both U.S. and foreign taxpayers concerning the characterization of substitute payments for purposes of other sections not specifically identified in these final regulations. See, e.g., rev. Rul. 60–177 (1960–1 C.B. 9), (substitute payments are ineligible for the dividends received deduction under section 243); Rev. Rul. 80–135 (1980–1 C.B. 18), (substitute payments are ineligible for the tax-exemption on state and local bonds under section 103).

Because the transparency rule does not apply for purposes of sections 901 and 903, nothing in the final regulations affects the determination required under § 1.901–2(f) concerning the identity of the person by whom a foreign tax is considered paid for purposes of sections 901 and 903.

3. Substitute payments on portfolio debt instruments

Under the final regulations, substitute interest payments made with respect to a debt instrument, the interest on which qualifies as portfolio interest under section 871(h) or section 881(c) in the hands of the lender, is characterized as portfolio interest if, in the case of an obligation in registered form, the lender provides the withholding agent with a beneficial owner withholding certificate or documentary evidence in accordance with § 1.871–14(c) and no exception from the portfolio interest exemption applies. For example, if a bank lends securities in a transaction that the facts and circumstances indicate in substance is an extension of credit pursuant to a loan agreement in the ordinary course of the bank's trade or business, the substitute payment may be characterized as interest which would not qualify as portfolio interest under section 881(c)(3)(A).

4. Tax treaties

Some commentators noted that the transparency rule adversely affects foreign taxpayers that might otherwise rely on a different characterization of substitute payments in order to claim benefits under certain income tax treaties. The transparency rule would eliminate these benefits in a number of cases. Those commentators questioned the government's authority to issue regulations that would characterize substitute payments as dividend or interest income in light of U.S. income tax treaty provisions.

The IRS and Treasury believe that the transparency rule in general is properly issued pursuant to the general grant of authority under section 7805 because it eliminates opportunities for abuse that arise from a rule that would characterize substitute payments in a manner different from the treatment of the underlying payment. A transparency approach provides uniform results for economically similar investments.

Moreover, the IRS and Treasury believe that, in the absence of a transparency rule, many taxpayers would use securities lending transactions in order to avoid tax under tax treaties or under the Code. For this reason, authority to characterize substitute payments for Code and treaty purposes in the manner proposed in 1992 also is amply provided in section 7701(l), which was enacted after these comments were received. Section 7701(l) provides a broad grant of authority to issue regulations recharacterizing multiple party financing arrangements to prevent the avoidance of any tax.

In this regard, the legislative history provides that "the committee seeks to bolster the Treasury's ability to prevent unwarranted avoidance of tax through multiple-party financial engineering as well as to provide a mechanism for issuing additional guidance to taxpayers entering into financial transactions." See H.R. Rep. No. 103–111, 103rd Cong., 1st Sess. 729 (1993). The committee also made clear that this authority was not limited to the types of back-to-back loan transactions addressed in prior rulings. See Rev. Rul. 84–152 (1984–2 C.B. 381); Rev. Rul. 84–153 (1984–2 C.B. 383); Rev. Rul. 87–89 (1987–2 C.B. 195). Section 7701(l) in fact has been applied to a broad range of financial transactions. See, e.g., Prop. Regs. § 1.7701(l)–2 (treatment of obligation-shifting transactions); and Notice 97–21 (IRB 1997–11, March 17, 1997), (tax avoidance using self-amortizing investments in conduit financing entities).

The 1992 proposed regulation under section 894 provided that where an income tax convention refers to United States law, the relevant law is the section or sections of the Internal Revenue Code and regulations thereunder governing the tax which is the subject of the provision. Some commentators have suggested that the proposed securities lending regulations would be invalid for purposes of characterizing dividends that are specifically defined by treaties. However, under conduit principles and additional authority to characterize payments pursuant to section 7701(l), the regulations adopted under § 1.894–1(c) address the identity of the owner of dividend and interest income for treaty purposes as opposed to the character of the payments received under varying treaty definitions. These regulations therefore are consistent with the government's authority under treaties to determine the identity of the beneficial owner of income.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect entities engaged in cross-border multiple-party financing arrangements. These regulations affect the tax treatment of substitute payments made with respect to stocks and debt securities. The primary participants who engage in cross-border multiple party financing arrangements of this type are large regulated commercial banks and brokerage firms. In addition, comments received in response to the notice of proposed rulemaking were from law associations, other associations that represent large regulated financial companies or from individuals. Accordingly, Treasury and IRS do not believe that a substantial number of small entities engages in cross-border multiple party financing arrangements of the type covered by these regulations. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Ramon Camacho of the Office of the Associate Chief Counsel (International).

However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.861–2 also issued under 26 U.S.C. 863(a).
Section 1.861–3 also issued under 26 U.S.C. 863(a). * * *
Section 1.864–5 also issued under 26 U.S.C. 7701(l). * * *
Section 1.871–7 also issued under 26 U.S.C. 7701(l). * * *
Section 1.881–2 also issued under 26 U.S.C. 7701(l). * * *
Section 1.894–1 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. Section 1.861–2 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(7); and revising paragraph (e) to read as follows:

§ 1.861–2 Interest.

(a) * * * (1) * * * See paragraph (a)(7) of this section for special rules concerning substitute interest paid or accrued pursuant to a securities lending transaction.

* * * * *

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute interest payment shall be sourced in the same manner as the interest accruing on the transferred security for purposes of this section and § 1.862–1. See also §§ 1.864–5(b)(2)(iii), 1.871–7(b)(2), 1.881–2(b)(2) and for the character of such payments and § 1.894–1(c) for the application tax treaties to these transactions.

* * * * *

(e) *Effective dates.* Except as otherwise provided, this section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (a)(7) of this section is applicable to payments made after November 13, 1997.

Par. 3. Section 1.861–3 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(6); and removing the first sentence of paragraph (d) and adding three sentences in its place to read as follows:

§ 1.861–3 Dividends.

(a) * * * (1) * * * See also paragraph (a)(6) of this section for special rules concerning substitute dividend payments received pursuant to a securities lending transaction.

* * * * *

(6) *Substitute dividend payments.* A substitute dividend payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute dividend payment shall be sourced in the same manner as the distributions with respect to the transferred security for purposes of this section and § 1.862–1. See also §§ 1.864–5(b)(2)(iii), 1.871–7(b)(2) and 1.881–2(b)(2) for the character of such payments and § 1.894–1(c) for the application of tax treaties to these transactions.

* * * * *

(d) * * * Except as otherwise provided in this paragraph this section applies with respect to dividends received or accrued after December 31, 1966. Paragraph (a)(5) of this section applies to certain dividends from a DISC or former DISC in taxable years ending after December 31, 1971. Paragraph (a)(6) of this section is applicable to payments made after November 13, 1997. * * *

Par. 4. Section 1.864–5 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii) and adding new paragraph (b)(2)(ii) to read as follows:

§ 1.864–5 Foreign source income effectively connected with U.S. business.

* * * * *

(b) * * *

(2) * * *

(ii) *Substitute payments.* For purposes of this paragraph (b)(2), a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person subject to tax under this paragraph (b) pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) with respect to a security (as defined in § 1.864–6(b)(2)(ii)(c)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this paragraph (b)(2), a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–3(a)(6)) with respect to a stock shall have the same character as a distribution received with respect to the transferred security. This paragraph (b)(2)(ii) is applicable to payments made after November 13, 1997.

* * * * *

Par. 5. Section 1.871–7 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding a paragraph (b)(2); and removing the first sentence of paragraph (f) and adding two sentences in its place to read as follows:

§ 1.871–7 Taxation of nonresident alien individuals not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income*—(1) General rule.

* * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–3(a)(6)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 871(h) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in § 1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in § 1.871–14(c)(1)(ii)(C) with respect to the payment of the substitute interest and none of the exceptions to the portfolio interest exemption in sections 871(h) (3) and (4) apply. See also § 1.861–2(b)(2) and 1.894–1(c).

* * * * *

(f) * * * Except as otherwise provided in this paragraph, this section shall apply for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 6. Section 1.881–2 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding a paragraph (b)(2); and removing the first sentence of paragraph (e) and adding two sentences in its place to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income*—(1) *General rule.*

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 881(c) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in § 1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in § 1.871–14(c)(1)(ii)(C) with respect to the payment of substitute interest and none of the exceptions to the portfolio interest exemption in sections 881(c) (3) and (4) apply. See also §§ 1.871–7(b)(2) and 1.894–1(c).

* * * * *

(e) * * * Except as otherwise provide in this paragraph, this section applies for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 7. Section 1.894–1 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(c) *Substitute interest and dividend payments.* The provisions of an income tax convention dealing with interest or dividends paid to or derived by a foreign person include substitute interest or dividend payments that have the same character as interest or dividends under § 1.864–5(b)(2)(ii), 1.871–7(b)(2) or 1.881–2(b)(2). The provisions of this paragraph (c) shall apply for purposes of securities lending transactions or sale-repurchase transactions as defined in § 1.861–2(a)(7) and § 1.861–3(a)(6).

(d) *Effective dates.* Paragraphs (a) and (b) of this section apply for taxable years beginning after December 31, 966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (c) of this section is applicable to payments made after November 13, 1997.

§ 1.7701(l)–1 [Amended]

Par. 10. Section 1.7701(l)–1 is amended as follows:

1. Paragraph (a) is amended by removing the paragraph designation (a) and the heading.

2. Paragraph (b) is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25999 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114000–97]

RIN–1545–AV41

Withholding on Interest in the Case of Sales of Obligations Between Interest Payment Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice of proposed rulemaking provides guidance regarding the obligation to withhold on interest paid with respect to obligations in the case of the sale of obligations between interest payment dates. These regulations would affect United States and foreign withholding agents and recipients. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of oral comments to be presented at the public hearing scheduled for January 26, 1998, at 10 a.m. must be received by January 5, 1998.

ADDRESSES: Send submission to: CC:DOM:CORP:R (REG–114000–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20224. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–114000–97), Courier desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The hearing scheduled for January 26, 1998, will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lilo Hester at (202) 622–3840 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In this issue of the **Federal Register**, the IRS and Treasury are publishing final withholding and reporting regulations under chapter 3 of the Internal Revenue Code (Code) and other sections of the Code. Section 1.1441–3(b)(2) of the final regulations provides that no withholding is required upon interest accrued on the date of a sale of debt obligations when the sale occurs between two interest payment dates, even though the amount is treated as interest under § 1.61–7 (c) or (d) and is subject to tax under section 871 or 881. In contrast, § 1.1441–2(b)(3) of the final regulations provides that withholding is required on amounts of original issue discount in the event of a sale of an original issue discount obligation or a payment on such an obligation, subject to certain exceptions. The IRS and Treasury believe that, in view of these provisions, the exemption from withholding on non-OID amounts is no longer justified. A withholding agent that pays amounts to a foreign person in connection with the sale of an obligation between interest payments dates is in the same position as a withholding agent that pays amounts to a foreign person in connection with the sale of an original issue discount obligation. The withholding exemption for sale of debt obligations between interest payment dates provides an easy avenue for the avoidance of the documentation requirements imposed under sections 871(h) and 881(c) for purposes of qualifying interest on registered debt obligations as portfolio interest. For this reason, and in order to create parity with the tax treatment of original issue discount obligations under chapter 3 of the Code, it is no longer appropriate to continue this exemption.

Under § 1.1441–2(b)(3), a withholding agent must withhold on an amount of original issue discount to the extent that it has actual knowledge of the proportion of the amount of the payment that is taxable to the beneficial owner under section 871(a)(1)(C) or 881(a)(3)(A). A withholding agent has actual knowledge if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if the information is reasonably available. Special rules are provided for withholding agents with which the beneficial owner does not maintain a direct account relationship. Further, the regulations under § 1.1441–2(b)(3) dealing with original issue discount provide that, in the case of an obligation that would qualify as portfolio interest if documentation were provided to the withholding agent, withholding is required on the entire amount of stated interest, if any, and original issue discounts, if no such documentation is provided, irrespective of whether the withholding agent has knowledge of the portion of the payment representing taxable original issue discount. For this purpose, the withholding agent may rely upon the IRS List of Original Issue Discount Instruments contained in IRS Publication 1212 (available from the IRS Distribution Centers).

In response to comments, the provisions in § 1.1441–3(b)(1) are proposed to be modified to reduce the amount upon which withholding is required. No obligation to withhold is imposed under current law on the payment of stated interest on an obligation that was purchased between interest payment dates. Under § 1.61–7(c), interest received on the interest payment date is treated as a return of basis to the extent it represents accrued unpaid interest as of the date of purchase as reflected in the new holder's basis for the obligation. Therefore, when the new holder receives a payment of the stated interest, the holder s tax liability is limited to the amount of interest accrued after the date of purchase (subject to additional adjustments reflecting possible acquisition premiums or market discounts). Because of the difficulty for a withholding agent to determine the amount accrued to the holder and other adjustments affecting the actual amount taxable to the holder, withholding on the entire amount of stated interest is required under the current withholding regulations under § 1.1441–3(b)(1).

Commentators have asked that the withholding agent be permitted to withhold on the amount that it knows is taxable. The final withholding regulations did not modify the proposed regulations on this point because the Treasury and IRS consider that withholding on the entire amount is justified if withholding on sales of obligations between interest payment dates is not required. However, because these proposed regulations require withholding, the regulations permit a withholding agent to adjust the amount of withholding at the time of payment of stated interest to account for earlier withholding.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5

U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 26, 1998, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Ave, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by January 5, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1441–3, paragraph (b) is revised to read as follows:

§ 1.1441–3 Determination of amount to be withheld.

* * * * *

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under § 1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61, unless the withholding agent has knowledge of the actual amount of interest paid. For this purpose, the withholding agent may rely on information provided by the issuer (or its paying agent), on a representation from the beneficial owner, or on information that the withholding agent has in its records. To the extent an amount was withheld on an amount of capital rather than interest, see rules for adjustments, refunds, or credits under § 1.1441–1(b)(8).

(2) *No withholding between interest payment dates*—(i) *General rule.* A withholding agent is not required to withhold under § 1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates (even though the amount is treated as interest under § 1.61–7(c) or (d) and is subject to tax under section 871(a) or 881(a)), unless the withholding agent has knowledge of the amount paid as interest. For purposes of this paragraph (b)(2)(i), a withholding agent is treated as having knowledge in the same manner as a withholding agent has knowledge for purposes of § 1.1441–2(b)(3)(ii), dealing with withholding on original issue discount. In addition, notwithstanding lack of knowledge (within the meaning of § 1.1441–2(b)(3)(ii)), withholding is required on the entire amount of stated interest paid with respect to the obligation as determined as of the date of original issue if the withholding agent, pursuant to the provisions in § 1.1441–1(b)(3), treats the payment as made to a foreign payee because it cannot associate the payment with required documentation and the amount would qualify as portfolio interest. See § 1.1441–1(b)(8) for adjustments to any amount that has been overwithheld as a result of this provision.

(ii) *Applicable rules.* Any exemption from withholding pursuant to paragraph (b)(2)(i) of this section applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6049 and backup withholding under section 3406. See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. Any exemption from withholding under paragraph (b)(2)(i) of this section is not a determination that the accrued interest is not fixed or determinable annual or periodical income. See § 1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26000 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107872–97]

RIN 1545–AV27

Electronic Transmission of Form W–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the submission of Form W–8, a withholding certificate, needed for purposes of chapters 3 and 61 of the Internal Revenue Code (Code) and other withholding or reporting provisions of the Code, such as section 3402, 3405, or 3406. The proposed regulations provide guidance to withholding agents and payors who wish to establish an electronic system for use by beneficial owners or payees in furnishing Form W–8. The proposed regulations state the general requirements that such an electronic system must satisfy so that a withholding agent or payor may rely on a Form W–8 transmitted through such a system. These regulations affect withholding agents and payors that establish electronic systems and beneficial owners and payees who use those systems.

DATES: Written comments and requests for a public hearing must be received by January 12, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–107872–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–107872–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lilo Hester, 202–622–3840; concerning submissions, Evangelista Lee, 202–622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1441 of the Internal Revenue Code (Code). These amendments are proposed to provide general procedures for withholding agents and payors to establish acceptable electronic systems.

Final regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 1.1441–1(e)(4)(iv) which authorizes the electronic transmission of a Form W–8 described in § 1.1441–1(e)(1)(i). In addition, by cross-reference contained in § 1.6049–5(c)(2) (published as a final rule in the Rules and Regulations section of this issue of the **Federal Register**), the regulation authorizes electronic transmission of a Form W–8 furnished for purposes of chapter 61 of the Code (i.e., information reporting) or for purposes of another income tax withholding provision of the Code, such as section 3406.

Pursuant to chapter 3 (or, in certain cases, chapter 61) of the Code, a beneficial owner or a payee (i.e., a person who receives a payment) must furnish a withholding certificate to a withholding agent or payor in order to establish its status as a foreign person and entitlement to a reduced rate of withholding. By establishing foreign status, and other relevant characteristics, a beneficial owner or payee may be entitled to a reduction or exemption in the amount of withholding under chapter 3 of the Code or an exemption from information reporting under chapter 61 of the Code or from backup withholding under section 3406. The receipt of a withholding certificate affects the amount of tax that the withholding agent or payor may be required to withhold from the payment, and the type and form of information that it must provide to the IRS. The regulations under sections 1441 and 1443 specifically identify Form W–8 (or an acceptable substitute form) as the required form of the withholding certificate.

These proposed regulations apply to electronic transmission of Forms W–8. The regulations do not apply to Form 8233 for use by individuals who claim a reduced rate of withholding under an income tax convention for services performed in the United States. See § 1.1441–4(b)(2). In addition, the regulations do not apply to documentary evidence (described in § 1.6049–5(c)(1)) that may be substituted for the Form W–8 with respect to certain payments made to accounts maintained outside of the United States. However, the IRS and Treasury invite comments on any computer technology (e.g., imaging) that could make electronic transmission of documentary evidence possible.

Explanation of Provisions

1. Type and Design of System Determined by Withholding Agent or Payor Subject to Specific Requirements

Under the proposed regulations, a withholding agent or payor may choose to establish an electronic system to receive or transmit Forms W–8 (or such other form as the IRS may prescribe), including a payor or withholding agent that is an intermediary. The withholding agent or payor may determine the type of system (such as telephone or computer) available for that purpose. The system must, however, (1) reliably identify the user, (2) ensure that the information received is the information sent, and (3) document occasions of user access that result in a submission, renewal, or modification of the withholding certificate. The proposed regulations envision that implementation of these specific requirements necessitates a direct relationship between the withholding agent or payor and the beneficial owner or payee. The proposed regulations reserve on applicable standards for systems used by intermediaries to transmit forms received from another payor or withholding agent. The IRS and Treasury recognize the importance of allowing the electronic transmission of Forms W–8 through one or more intermediaries (i.e., persons not acting for their own account). Therefore, comments are solicited regarding the logistical operation of an electronic transmission system for use by an intermediary satisfying the IRS requirements that the integrity, accuracy, and reliability of the original electronic transmission through an intermediary system is adequately protected.

2. Relationship Between Paper and Electronic Withholding Certificate

The electronic transmission must contain exactly the same information as the paper Form W–8 (or such other form as the IRS may prescribe). Any guidance, such as regulations or instructions, that applies to the paper Form W–8 also applies to electronically transmitted forms.

3. Electronic Filing Optional

Section 1.1441–1(e)(4)(iv) authorizing the use of electronic systems was promulgated to assist in reducing burdens (in terms of cost and time) on withholding agents, payors, payees, and beneficial owners. The use of an electronic system for the transmission of Form W–8 is merely an alternative to the use of a paper form. Electronic transmission of Form W–8 is not mandatory. A withholding agent or payor may not mandate the use of electronic systems to receive or transmit the forms. Thus, a payee or beneficial owner may furnish a Form W–8 to the withholding agent or payor on paper.

4. Signature Under Penalties of Perjury

Section 6061 generally provides that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Section 301.6061–1(b) provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. Section 6065 provides that, except as provided by the Secretary, any return, statement or other document shall contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to a Form W–8 (or such other form as the Internal Revenue Service may prescribe), including one that is filed electronically, as provided in § 1.1441–1(e)(2)(ii), (3)(ii), (3)(iii), and (3)(v), and § 1.1441–5(c)(2)(iv) and (3)(iii) of the final regulations. The proposed regulations, therefore, include guidance on the perjury statement and the signature requirements for Forms W–8 that are filed electronically.

5. IRS Requests for Electronic Data

Upon request by the IRS in the course of an examination, a withholding agent or payor must supply a hard copy of the information contained on the electronically transmitted Form W–8 and a statement that, to the best of the

withholding agent's knowledge, the electronic Form W–8 was furnished by the person whose name is on the form. The printout of the Form W–8 information must be provided to the IRS in English.

Proposed Effective Date

These regulations are proposed to become effective January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person that submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Lilo A. Hester, Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1441–1, paragraph (e)(4)(iv) is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(4) * * *

(iv) *Electronic transmission of information*—(A) *In general.* A withholding agent may establish a system for beneficial owners or payees to furnish electronically Forms W–8 (or such other form as the Internal Revenue Service may prescribe). The system also may enable the withholding agent to electronically transmit Forms W–8 to another person. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section.

(B) *Requirements—(1) In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission, renewal, or modification of a Form W–8. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and furnishing Form W–8 is the person named in the form.

(2) Same information as paper Form W–8. The electronic transmission must provide the withholding agent or payor with exactly the same information as the paper Form W–8.

(3) Perjury statement and signature requirements. The electronic transmission must be signed by way of an electronic signature by the person whose name is on the Form W–8 and the signature must be under penalties of perjury in the manner described in this paragraph (e)(4)(iv)(B)*(3)*.

(i) Perjury statement. The perjury statement must contain the language that appears on the paper Form W–8. The electronic system must inform the person whose name is on the Form W–8 that the person must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W–8. The instructions and the language of the perjury statement must immediately follow the person's certifying statements and immediately precede the person's electronic signature.

(ii) Electronic signature. The act of the electronic signature must be effected by the person whose name is on the electronic Form W–8. The signature must also authenticate and verify the submission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper Form W–8. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the person's Form W–8 submission.

(4) Requests for electronic Forms W–8 data. Upon request by the Internal Revenue Service during an examination, the withholding agent must supply a hard copy of the electronic Form W–8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W–8 was filed by the person whose name is on the form. The hard copy of the electronic Form W–8 must provide exactly the same information as, but need not be a facsimile of, the paper Form W–8.

(C) *Special requirements for transmission of Forms W–8 by an intermediary.* [Reserved].

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26001 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

federal register

Tuesday
October 14, 1997

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers; Interim Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

RIN 1904–AA45

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (the Department or DOE) is amending a provision of its recently promulgated final rule that prescribed revised test procedures to determine the energy efficiency of furnaces and boilers. Under today's amendment, the test procedures will provide that the flue collector box on a furnace or boiler with a power burner or draft inducer need not be insulated before the start of the cool-down test.

DATES: This rule is effective November 10, 1997. Written comments (ten copies) in response to this notice must be received by November 13, 1997.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Interim Final Rule for Test Procedures for Furnaces and Boilers, Docket No. EE–RM–93–501, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–7574.

Copies of the public comments received may be read at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see Section IV, "Public Comment," of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138. Or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Discussion
II. Procedural Requirements
A. Review Under the National Environmental Policy Act of 1969.
B. Review Under Executive Order 12866, "Regulatory Planning and Review."
C. Review Under Executive Order 12612, "Federalism."
D. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights."
E. Review Under the Paperwork Reduction Act.
F. Review Under Executive Order 12988, "Civil Justice Reform."
G. Review Under Unfunded Mandates Reform Act of 1995.
H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.
III. Interim Final Rule
IV. Public Comment

I. Discussion

On August 23, 1993, DOE published in the **Federal Register** a proposal (hereinafter referred to as the 1993 proposed rule) to amend the DOE test procedures for furnaces and boilers. 58 FR 44538. A public hearing was held in Washington, DC, on January 5, 1994, on the proposed rule. On May 12, 1997, after review and evaluation of the comments received, DOE published in the **Federal Register** a final rule (hereinafter referred to as the 1997 final rule) amending the furnace test procedure. 62 FR 26140. The 1997 final rule incorporated by reference many provisions of the American National Standards Institute, Inc./American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ANSI/ASHRAE) Standard 103–1993 (hereinafter referred to as Standard 103–1993). Standard 103–1993 includes most of the provisions in the 1993 proposed rule. However, as discussed in preamble to the 1997 final rule, the Department did not intend to adopt in the final rule any revision to the test procedure that would affect the measure of efficiency (Annual Fuel Utilization Efficiency (AFUE)) of existing furnaces and boilers. The 1997 final rule did not include, therefore, those provisions in the 1993 proposed rule (also contained in Standard 103–1993) that the Department believed would, if adopted, reduce the AFUE of certain existing furnaces and boilers.

Among the provisions of Standard 103–1993 that were included in the 1997 final rule was section 7.2.2.2. This section of Standard 103–1993 specifies that, for power burner units (including power vented units and oil burners), the flue gas collector box shall be covered with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests.

After the publication of the 1997 final rule, the Gas Appliance Manufacturers Association (GAMA) contacted the Department and asserted that the adoption of this insulation requirement in the DOE test procedures will reduce the AFUE of many furnaces and boilers. GAMA stated that for some units the reduced AFUE would be below the minimum standard, while for others it would be below the qualifying levels for many utility rebate programs.

As discussed in the preamble to the 1997 final rule, 62 FR at 26147, the requirement to insulate the flue collector box of power burner units can be traced to language in prior DOE test procedures and ANSI/ASHRAE Standard 103–1982. DOE has reviewed that language, and has found that it was ambiguous, and was susceptible to a reasonable interpretation that it did not apply to power vented units. Furthermore, since 1983 furnace manufacturers, GAMA and Intertek Testing Services (an independent testing laboratory contracted by GAMA to administer its furnace and boiler Efficiency Certification Program) have done efficiency tests on furnaces and boilers equipped with power burners without insuleting the flue gas collector box.

As discussed above, the Department did not intend to include any provisions in the 1997 final rule which would affect the measured efficiency for furnaces or boilers. Upon further consideration of the above, the Department concludes that the requirement to insulate the flue collector box could lower existing AFUE measurements. The inclusion of this requirement would affect manufacturers' product offerings and their participation in utility rebate programs. Furthermore, it would add a testing burden on manufacturers, by requiring them to re-test and re-certify existing units. Therefore in today's interim final rule, DOE is deleting from its recently adopted test procedure for furnaces and boilers the insulation requirement for power burner units.

II. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

The Department has concluded that this interim final rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from the National Environmental Policy Act of 1969 (NEPA) review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Appendix A to Subpart D) implementing the NEPA (42 U.S.C. 4321, 4331–35, 4341–47). Therefore this interim final rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, October 4, 1993. Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under Executive Order 12612, "Federalism"

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The interim final rule published today would not alter the distribution of authority and responsibility to regulate in this area. The interim final rule would only revise a currently applicable DOE test procedure to improve existing testing methods, and to add provisions that DOE might use in future standard setting. Accordingly, DOE has determined that preparation of a federation assessment is unnecessary.

D. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this final rule would not result in any Takings which might require compensation under the Fifth Amendment to the United States Constitution.

The Department believes that a test procedure implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a "taking" of private property. Thus, testing under the appliance standards program does not invoke the provisions of E.O. 12630.

E. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under Unfunded Mandates Reform Act of 1995

If any proposed or final rule includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, requires an agency (prior to promulgation) to prepare a budgetary impact statement and select the least costly, most cost effective and least burdensome alternative that achieve the objectives of the rule and is consistent with statutory requirements.

DOE has determined that the action promulgated today does not include such a Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

III. Interim Final Rule

This Interim Final Rule revises a provision, concerning insulation of the flue collector box, that is included in the 1997 final rule promulgating test procedures for furnaces. The effective date of the test procedures in 1997 the final rule is November 10, 1997. In order to avoid confusion and unwarranted testing and compliance costs, DOE concluded that this amendment to the 1997 final rule must be effective on November 10,1997, and must be issued as promptly as possible. Moreover based on the comments received in response to the 1993 proposed rule, the Department does not expect public comments objecting to the change made by this interim final rule.

Therefore, the Department finds that it would be impracticable, unnecessary and contrary to the public interest to have notice and public comment prior to issuing the amendment set forth in this interim final rule. However, the Department is providing for a post-publication public comment period, and will respond to comments as appropriate in a notice of final rulemaking.

IV. Public Comment

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Test Procedures for Furnaces/Boilers, Docket No. EE-RM–93–501." Ten (10) copies are requested to be

submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5" diskette. The Department is currently using WordPerfect™ 6.1. All submittals received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the interim final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and nine copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department of Energy when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on September 5, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

2. Section 6.0 in appendix N to subpart B of part 430 is revised to read as follows:

* * * * *

6.0 *Apparatus.* The apparatus used in conjunction with the furnace or boiler during the testing shall be as specified in section 7 of ANSI/ASHRAE Standard 103–1993 except for the second paragraph of section 7.2.2.2 and except for section 7.2.2.5, and as specified in section 6.1 of this appendix.

* * * * *

[FR Doc. 97–27018 Filed 10–10–97; 8:45 am]

BILLING CODE 6450–01–P

federal register

Tuesday
October 14, 1997

Part IV

Department of Transportation

Federal Transit Administration

Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This notice contains FTA's comprehensive compilation of the Federal Fiscal Year 1998 certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 1998. (See Appendix A.) These certifications and assurances include all annual certifications required by 49 U.S.C. 5307(d)(1) for FTA's Urbanized Area Formula Program as well as other certifications and assurances needed for compliance with various other Federal statutes and regulations affecting FTA's assistance programs.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470; the FTA Web Site at http://www.fta.dot.gov; or contact FTA staff in the appropriate Regional Office listed below. For copies of other related documents, contact Minnie Davis, Office of Public Affairs, Federal Transit Administration, (202) 366–1217.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts, Telephone 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands, Telephone 212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia, Telephone 215–656–7100

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico, Telephone 404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio, Telephone 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico, Telephone 817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska, Telephone 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Telephone 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands, Telephone 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska, Telephone 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project.

This notice provides the text of certifications and assurances that may be required by law for the various Federal assistance programs administered by FTA including the Capital Program; the Urbanized Area Formula Program; the Nonurbanized Area Formula Program; the Metropolitan Planning Program; the Rural Transit Assistance Program; the Elderly and Persons With Disabilities Program; the Human Resource Program; the National Training Institute Program; the State Planning and Research Program; and the National Planning and Research Program, all codified at 49 U.S.C. chapter 53. When administering Federal assistance programs authorized by other Federal statutes, such as Title 23, United States Code, FTA uses these same certifications and assurances during Federal Fiscal Year 1998.

This Notice provides the applicant with a single Signature Page on which the applicant and its attorney certifies compliance with all certifications and assurances applicable to each grant or cooperative agreement for which the applicant wishes to apply in Federal Fiscal Year 1998. (See Signature Page of Appendix A.)

Electronic Submission

FTA has expanded the use of the electronic programs for applicants introduced in 1995. The On-Line Program is offered to applicants through the Grant Management Information System (GMIS). This is a computerized system designed to assist the FTA grantee or recipient of a cooperative agreement in managing its FTA assisted projects and their budgets. All applicants are encouraged to participate in the On-Line Program, which includes the opportunity to certify compliance electronically for all certifications and assurances selected among those in Appendix A. The Electronic Grant Making and Management initiative (EGMM) pilot program also initiated in Federal Fiscal Year 1995 has proved so successful in reducing time and paper that EGMM will continue to be offered to more applicants. This program is presently undergoing graphical-user-interface refinement for enhanced accessibility. Applicants may contact their Regional Office shown above for more information.

1998 Changes

This 1998 Annual Certifications and Assurances document contains two major changes to the previous year's **Federal Register** publication. (1) Starting with this Fiscal Year 1998, all Applicants for FTA capital program or formula program assistance, and current Grantees with an active project financed with FTA capital program or formula program assistance will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 1998, whichever comes first.

(2) The attorney signature from previous years on the Single Signature Page will no longer be acceptable. FTA requires a current attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Additional changes include clarification and reference sources. It is important that each applicant be familiar with all fifteen categories contained in this document as it is a prerequisite for receiving FTA financial assistance.

FTA directs your attention to Appendix C in FTA Circular 9300.1, "Capital Program Grant Application Instructions," which was published on September 29, 1995; to Exhibit D in FTA Circular 9040.1D, dated May 3, 1997, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions; and Appendix G of FTA Circular 9030.1B, dated October 10, 1996, Urbanized Area Formula Program: Grant Application Instructions. These circulars contain a previous version of the Annual Certifications and Assurances which includes some but not all of the most current and valid changes. Do not use the document contained in these circulars. They are examples only and will not be considered acceptable or valid. Therefore the provisions of this Notice supersede conflicting statements in those circulars. Note especially that the Applicant must use the most current Signature Pages shown in this Federal Fiscal Year 1998 **Federal Register** document or provided concurrently through the EGMM initiative discussed above. A copy of an earlier fiscal year's Certification Signature page is not acceptable.

Background

With the publication of the Federal Fiscal Year 1995 version of this notice, certifications and assurances for Federal assistance programs administered by FTA were for the first time consolidated into one document. This marked the beginning of an effort to assist applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincided with the On-Line Program and the EGMM initiative described above, which also reduced the time and paper required to process an application.

FTA intends to continue publishing this document annually with any changes or additions specifically highlighted, in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds in accordance with the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Procedures

Following is a detailed compilation of Certifications and Assurances and the Signature Page (Appendix A). The Signature Page is to be signed by the applicant's authorized representative and its attorney, and sent or electronically transmitted through the FTA computerized on-line system, to the appropriate FTA Regional office within 90 days of this **Federal Register** publication date, or with the applicant's first Federal assistance application in Federal Fiscal Year 1998, whichever comes first.

All applicants are advised to read the entire 1998 Certifications and Assurances to be confident of their responsibilities and commitments. The applicant may signify compliance with all Categories by placing a single "X" in the appropriate space at the top of the Signature Selection Page in Appendix A. However, the applicant's Attorney Affirmation continues to be required as indicated on the Signature Page at the end of Appendix A, regardless of the applicant's selection of a single selection for all fifteen Categories, or individual options selection from the fifteen Categories.

The Signature Page, when properly signed and submitted, or electronically transmitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program/s involved, should they apply for a FTA grant during this fiscal year. All applicants must read the selection portion and the signature portion of this document and signify compliance by marking where appropriate with an "X" on the category selection side, and then signifying compliance as indicated. (See Appendix A.) An applicant participating in the On-Line Program or the EGMM Program described above, may submit its Signature Page (both the selection side and the signature side) electronically. The applicant should not hesitate to consult with the appropriate Regional Office or Headquarters Office before submitting its certifications and assurances.

References

49 U.S.C. chapter 53, Title 23 U.S.C., 42 U.S.C. 4151, Title VI and Title VII of the Civil Rights Act, FTA regulations under 49 CFR, and FTA Circulars.

Issued: October 6, 1997.

Gordon J. Linton,

Administrator.

Appendix A

Federal Fiscal Year 1998 Certifications and Assurances for Federal Transit Administration Assistance Programs

Each Applicant is requested to provide as many of the following certifications and assurances necessary to cover the various types of Federal assistance programs for which the Applicant intends to seek Federal assistance from FTA in Federal Fiscal Year 1998. A state making certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients as necessary for the state to make informed certifications and assurances. The fifteen categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page document. Categories II through XV will apply to some, but not all applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Federal assistance awarded by FTA *must* make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Certification

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant) in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;

(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, which is the employer of any convicted employee must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) By taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above. The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of the Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients"; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party contract or subagreement to impose the requirements of 49 CFR part 21 and 49 U.S.C. 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000: (1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and (2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Effects on Private Mass Transportation Companies

An Applicant that is a state or local government seeking Federal assistance under 49 U.S.C. chapter 53 to acquire property or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(a)(1)(B) or 5323(a)(1)(C), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Provided for the participation of private mass transportation companies to the maximum extent feasible; and

B. Paid or will pay just compensation under state or local law to a private mass transportation company for its franchises or property acquired.

IV. Public Hearing Certification for a Capital Project (Except Urbanized Area Formula Projects) That Will Substantially Affect a Community or Its Transit Service

An Applicant seeking Federal assistance for a capital project authorized by 49 U.S.C. chapter 53 (except Urbanized Area Formula Program assistance), that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined the project to be consistent with official plans for developing the urban area.

V. Certification of Pre-Award and Post-Delivery Rolling Stock Reviews Required for Each Applicant Seeking To Purchase Rolling Stock Financed With Federal Assistance Awarded by FTA

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by 49 U.S.C. 5323(l), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. Bus Testing Certification Required for New Buses

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category VI on the Signature Page.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VII. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting Category VII on the Signature Page.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VIII on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and (2) comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. Certification Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service

An Applicant seeking direct Federal assistance to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category IX on the Signature Page.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. Substance Abuse Certifications

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance until the Applicant has selected Category X on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

XI. Assurances Required for Projects Involving Real Property

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category XI on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B. Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

C. Seismic Assurance

As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

XII. Certifications for the Urbanized Area Formula Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XII on the Signature Page.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1) (A) through (J), the Applicant certifies that:

(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(3) It will adequately maintain the equipment and facilities;

(4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 not more than 50 percent of the peak hour fare;

(5) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) Make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;

(7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310 (a) through (d) (programs for the elderly and persons with disabilities);

(9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(10) As required by 49 U.S.C. 5307(d)(1)(J), it will expend at least one percent of the amount of Federal assistance it receives for this fiscal year apportioned by 49 U.S.C. 5336 for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system; unless it has decided that it is not necessary to expend one percent of that Federal assistance this fiscal year for transit security projects.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

XIII. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from any public body that is a prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I.F., "Certifications and Assurances Required of Each Applicant.")

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 C.F.R. section 37.77(c).

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VIII, "School Transportation Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I–XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program, and it has obtained from the prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, "Certifications and Assurances Required of Each Applicant.")

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR section 37.77(c).

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) Signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, "Charter Service Agreement," and Category VIII, "School Transportation Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue, a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; a lobbying certification for each application exceeding $100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

XV. Certifications and Assurances for the State Infrastructure Bank Program

A state Applicant for a grant of Federal assistance for deposit in the Transit Account of the State Infrastructure Bank (SIB) within that state must provide the following certifications and assurances. The Federal Transit Administration (FTA) may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances.

Based on its own knowledge and, as necessary, on requisite information submitted by the participating parties, the state Applicant for Federal assistance for the Transit Account of its state SIB program, authorized by section 350 of the National Highway System Designation Act of 1995 (NHS Act), as amended, 23 U.S.C. 101 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with: (1) The requirements of section 350 of the National Highway System Designation Act of 1995 (NHS Act), Pub. L. 104–59, Nov. 28, 1995, 23 U.S.C. 101 note, (2) the provisions of FTA's NHS Guidelines, and any amendments thereto, (3) the provisions of FHWA and FTA Cooperative Agreement with the state to establish the state's SIB program, and (4) the provisions of the FTA Grant Agreement with the state obligating Federal assistance for the Transit Account of the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that Grant Agreement that conflicts with any provision of FTA's NHS Guidelines, the provisions of the Cooperative Agreement establishing the SIB program within the state, or the text within the Grant Agreement will not apply.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the NHS Act, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a Grant Agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying Grant Agreement or the Approved Project Budget for that Grant Agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, "Certifications and Assurances Required of Each Applicant," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

L. The state assures that the subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (See Category I.G, "Certifications and Assurances Required of Each Applicant," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category IX, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, "Charter Service Agreement," and Category VIII, "School Transportation Agreement," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in Q. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the

required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I–XI of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FY 1998 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I. Certifications and Assurances Required of Each Applicant. ____

II. Lobbying Certification. ____

III. Effects on Private Mass Transportation Companies. ____

IV. Public Hearing Certification for Major Projects with Substantial Impacts. ____

V. Certification for the Purchase of Rolling Stock. ____

VI. Bus Testing Certification. ____

VII. Charter Service Agreement. ____

VIII. School Transportation Agreement. ____

IX. Certification for Demand Responsive Service. ____

X. Substance Abuse Certifications. ____

XI. Assurances Projects Involving Real Property. ____

XII. Certifications for the Urbanized Area Formula Program. ____

XIII. Certifications for the Elderly and Persons with Disabilities Program. ____

XIV. Certifications for the Nonurbanized Area Formula Program. ____

XV. Certifications for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FEDERAL FISCAL YEAR 1998 FTA CERTIFICATIONS AND ASSURANCES

Required of all Applicants for FTA financial assistance, and
all FTA Grantees with an active project receiving capital program or formula program assistance.

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 1998.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1998.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____ a. _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm that the Applicant has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA promptly.

Date: _____ b. _____
Applicant's Attorney

An attorney for the Applicant must provide an affirmation of the Applicant's legal capacity, unless the Applicant seeks only an FTA university and research training grant authorized by 49 U.S.C. 5312(b).

In addition, an attorney for a Capital Program Grantee or Formula Program Grantee with an active project must provide an affirmation of the Grantee's legal capacity.

[FR Doc. 97–26927 Filed 10–10–97; 8:45 am]
BILLING CODE 4910–57–C

federal register

Tuesday
October 14, 1997

Part V

The President

Proclamation 7035—Leif Erikson Day, 1997

Proclamation 7036—General Pulaski Memorial Day, 1997

Federal Register
Vol. 62, No. 198
Tuesday, October 14, 1997

Presidential Documents

Title 3—

The President

Proclamation 7035 of October 9, 1997

Leif Erikson Day, 1997

By the President of the United States of America

A Proclamation

Americans have always been a people marked by a spirit of discovery. Generations of American explorers and pioneers have pushed against the boundaries of the known world, eager to see what lies beyond the next horizon. We come by that spirit naturally, for millions of us are descended from men and women of courage, vision, and independence who left their native lands to seek new possibilities in a new world.

One of the earliest of these was Leif Erikson. Almost a thousand years ago, braving the cold and unforgiving North Atlantic, he set out on a voyage that would ultimately bring him to this continent and a lasting place in history. But Leif Erikson is more than a symbol of the pioneer spirit. He is also a powerful reminder of the long and proud history of the sons and daughters of Iceland, Norway, Sweden, Denmark, and Finland who endured the hardships of the American frontier to build a new life for themselves and their families. These immigrants from the Nordic countries, and their descendants, have contributed immeasurably to America's strength, character, prosperity, and independent spirit.

Today, the people of Iceland, Norway, Sweden, Denmark, and Finland are our partners in building a new Europe. Committed to democracy and self-determination, they have always reached out to those struggling for freedom and equality. We are proud to join them in fostering the integration of the Baltic countries of Estonia, Latvia, and Lithuania into the Western family of nations. We also look forward to joining our Nordic friends in celebrating in the year 2000 the millennial anniversary of Leif Erikson's momentous voyage to our shores. It is fitting that we should pay special tribute to Leif Erikson—son of Iceland, grandson of Norway—as we begin our own uncharted journey of discovery into the new millennium that stretches before us.

In honor of Leif Erikson and of our Nordic-American heritage, the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1997, as Leif Erikson Day. I encourage the people of the United States to observe this occasion with appropriate ceremonies and activities commemorating our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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Billing code 3195-01-P

Presidential Documents

Proclamation 7036 of October 9, 1997

General Pulaski Memorial Day, 1997

By the President of the United States of America

A Proclamation

In times of peace and at moments of great crisis, America has been blessed with the steadfast support of friends from other nations. Few have proved their friendship with more courage and generosity than Casimir Pulaski, who paid for America's independence with his own life.

As a son of Poland, Pulaski knew well the desire for freedom and self-determination. He fought bravely beside his father and brothers in his native land, defending Poland from the aggression of neighboring empires with such skill and valor that he was known throughout Europe for his military exploits. Ultimately outnumbered by opposing forces, he escaped to France, where he met Benjamin Franklin and offered his services in behalf of the American Revolution.

Upon his arrival in America, Pulaski told General Washington that he had come to defend liberty and "to live or die for her." True to his word, he fought valiantly as a brigadier general in our Continental Army and made the ultimate sacrifice for our Nation's freedom during the siege of Savannah.

More than two centuries later, Americans and Poles alike remember with pride and gratitude the outstanding service General Pulaski gave to both his native and adopted lands. Today the United States and Poland enjoy freedom, prosperity, and the prospect for a bright future as allies in NATO, thanks to the unwavering commitment of patriots and heroes like Casimir Pulaski.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, October 11, 1997, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and his contributions to the cause of American freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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Federal Register
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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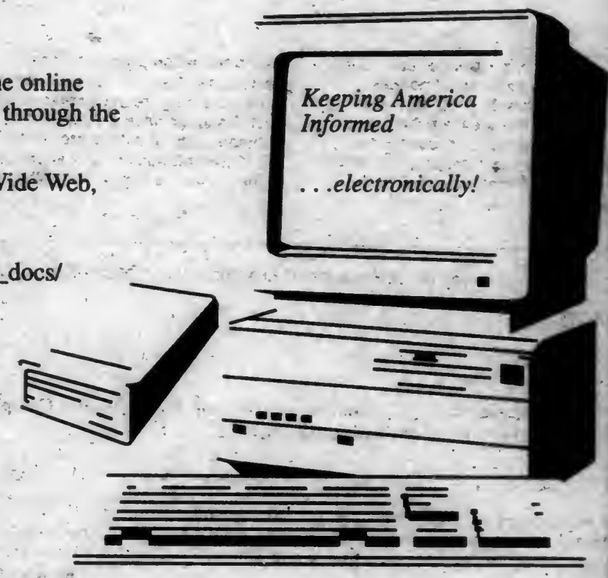
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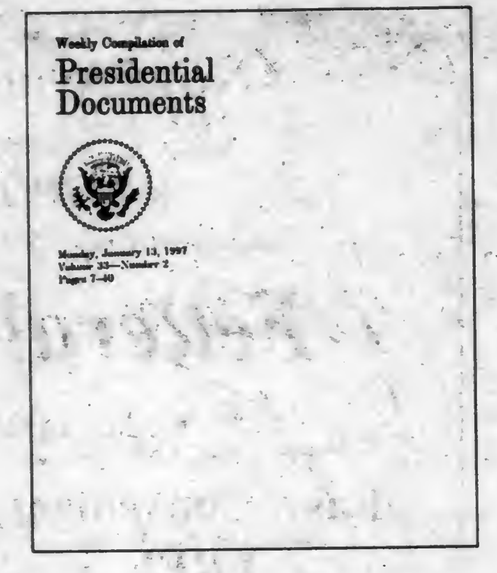
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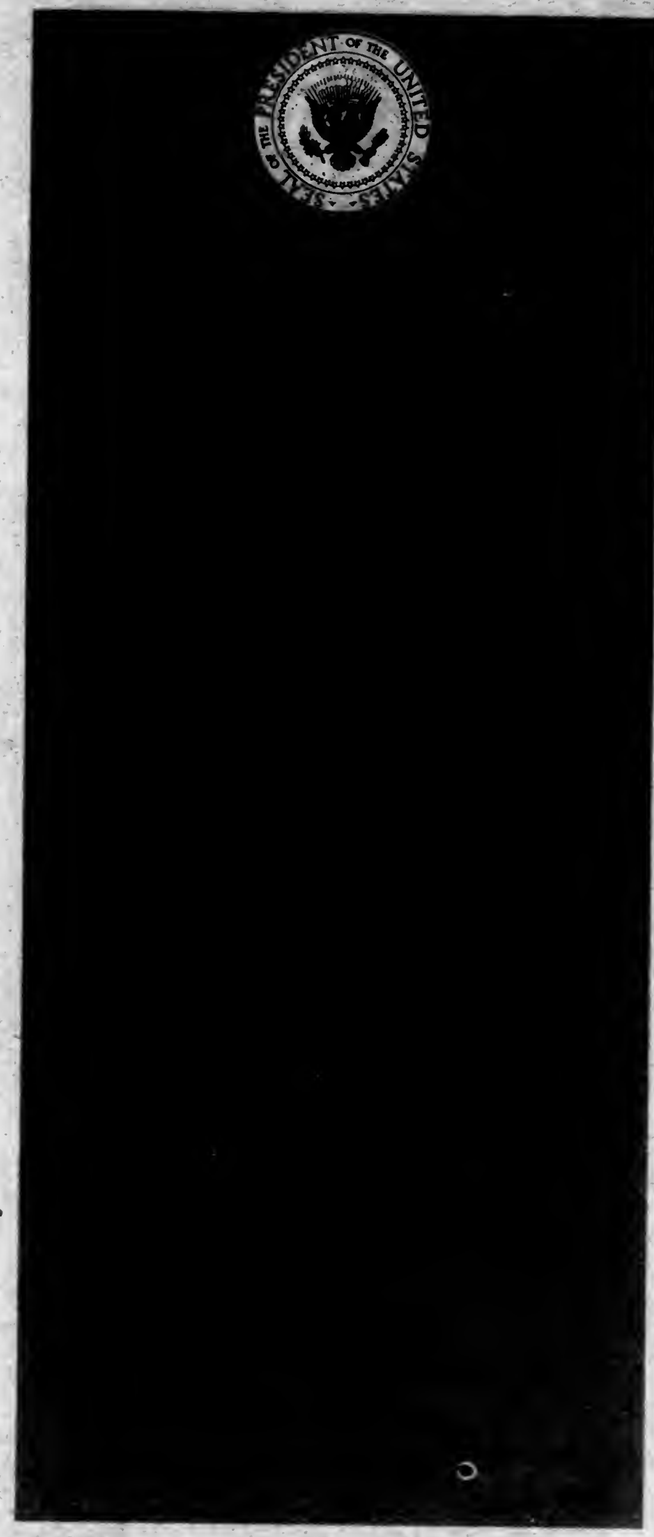
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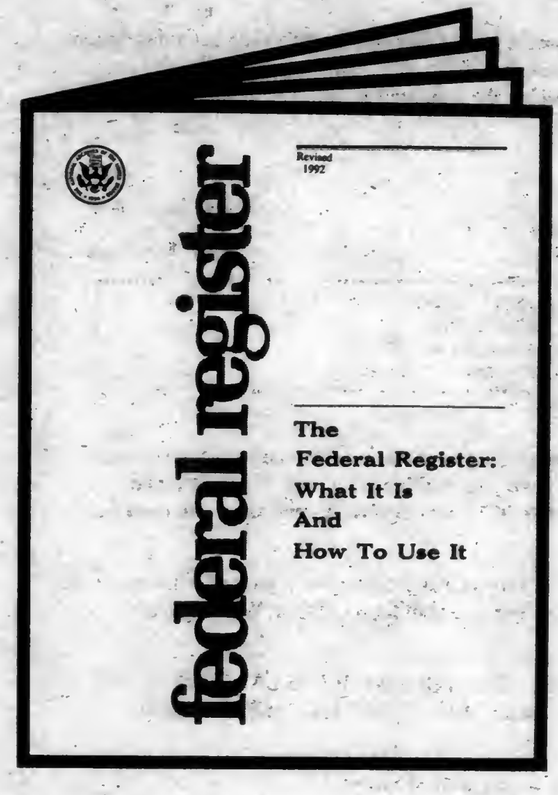
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Presidential Documents

Title 3—

The President

Proclamation 7037 of October 10, 1997

White Cane Safety Day, 1997

By the President of the United States of America

A Proclamation

As we stand at the dawn of the 21st century, new technologies are rapidly changing and improving the lives of Americans. For one group of Americans in particular—those who are blind or visually impaired—these technologies have opened doors to unparalleled opportunities. Blind Americans now can more readily access information of all kinds, and these advances have brought important improvements to the education, careers, and daily lives of blind and visually impaired people.

In this time of extraordinary progress, however, the simple yet profoundly useful white cane remains an indispensable tool and symbol of independence that has afforded countless blind and visually impaired citizens the opportunity to pursue the American Dream. And so, as we all share in a new era of expanded technological innovations that improve the lives of all of our Nation's citizens, we also celebrate the white cane for its ability to empower and recognize it as the embodiment of freedom.

As a Nation, let us also reassert our commitment to ensuring equal opportunity, equal access, and full participation of citizens with disabilities in our community life. This year, we celebrated the reauthorization of the Individuals with Disabilities Education Act, reaffirming our belief that all students can learn and must have the opportunities and resources necessary to do so. And we must continue to enforce vigorously the Americans with Disabilities Act, so that our blind and visually impaired fellow citizens enjoy equal opportunity, access to public and private services and accommodations, and a workplace free of discrimination.

To honor the numerous achievements of blind and visually impaired citizens and to recognize the significance of the white cane in advancing independence, the Congress, by joint resolution approved October 6, 1964, has designated October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15, 1997, as White Cane Safety Day. I call upon the people of the United States, government officials, educators, and business leaders to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–27492
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–082–1]

Brucellosis in Cattle; State and Area Classifications; California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of California from Class A to Class Free. We have determined that California meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from California.

DATES: Interim rule effective October 15, 1997. Consideration will be given only to comments received on or before December 15, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–082–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–082–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, California was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for California, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing California from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from California.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from California.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of California from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in California, as well as buyers and importers of cattle from this State.

There are an estimated 17,900 cattle herds in California that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of California will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "California,". immediately after "Arizona,".

3. In § 78.41, paragraph (b) is amended by removing "California,".

Done in Washington, DC, this 9th day of October 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27257 Filed 10–14–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–142–AD; Amendment 39–10156; AD 97–21–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–800A Series Airplanes and Hawker 800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes, that requires a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. This amendment also requires modification of the fuel feed hose of the APU. This amendment is prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the hose assembly and hot surfaces. The actions specified by this AD are intended to prevent heat damage of the fuel feed hose, which could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and consequent fuel mist or spray is emitted into the rear equipment bay.

DATES: Effective November 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 25, 1996 (61 FR 55233). That action proposed to require a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. That action also proposed to require modification of the fuel feed hose of the APU.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to the Proposal

The FAA has revised the final rule to reflect the corporate name change of Beech Aircraft Corporation to Raytheon Aircraft Company.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 70 Raytheon Model BAe 125–800A series airplanes and Hawker 800 series airplanes of U.S. registry will be affected by this AD. It will take approximately 2 work hours per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $218 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $32,060, or $458 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–03 Raytheon Aircraft Company (Formerly Raytheon Aircraft Corporation; Beech Aircraft Corporation; Raytheon Corporate Jets, Inc.; British Aerospace, PLC; DeHavilland; Hawker Siddeley): Amendment 39–10156. Docket 95–NM–142–AD.

Applicability: Model BAe 125–800A series airplanes (including military variants C–29A and U–125) and Hawker 800 series airplanes, constructor's numbers 8091 and subsequent; equipped with Turbomech auxiliary power unit (APU) (Modification 259404B); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent heat damage to the fuel feed hose assemblies of the auxiliary power unit (APU), which could lead to a possible fire/smoke hazard if failure of the hose assembly occurs and fuel mist or spar is consequently emitted into the rear equipment bay, accomplish the following:

(a) Within 75 days after the effective date of this AD, perform a one-time detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the APU; and to verify if adequate clearance (0.5 inch) exists between the hose assembly (outlet from the fuel pump box of the APU) and the left-hand mixer valve/main air valve assemblies and associated hot air ducting; in accordance with Hawker Service Bulletin SB. 49–45, dated May 15, 1995.

(1) If any overheating or degradation is detected, prior to further flight, replace the hose assembly with a new assembly and ensure that proper clearance and routing exists, in accordance with the service bulletin.

(2) If the clearance of the hose assembly is improperly routed, prior to further flight, re-route the assembly maintaining proper clearance, in accordance with the service bulletin.

(3) If the clearance of the hose assembly is inadequate and the hose assembly is properly routed, prior to further flight, adjust the hose assembly to achieve the 0.5-inch clearance, in accordance with the service bulletin.

(b) Prior to the accumulation of 200 flight hours after the effective date of this AD, modify the fuel feed hose of the APU, in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995.

(c) Accomplishment of the modification of the fuel feed hose of the APU in accordance with Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Hawker Service Bulletin SB.49–45, dated May 15, 1995, and Hawker Service Bulletin SB.49–47–25A825A, dated August 1, 1995. The incorporation by reference of that document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–05–95.

(g) This amendment becomes effective on November 19, 1997.

Issued in Renton, Washington, on October 7, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27089 Filed 10–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 97092934–7234–01]; Order No. 929

RIN 0625–AA49

Technical Amendments to Regulations of the Foreign-Trade Zones Board

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Foreign-Trade Zones (FTZ) Board adopts the following technical amendments to its regulations to reflect recent changes both to the Foreign-Trade Zones Act of 1934 ("FTZ Act") and in the organizational structure of the United States Customs Service.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW, Washington, DC 20230 (202/482–2862).

SUPPLEMENTARY INFORMATION:

Background

The regulations of the Foreign-Trade Zones Board are amended to conform with the following changes: (1) An amendment to the FTZ Act, pursuant to section 910 of the National Defense Authorization Act of 1996, Pub. L. 104–201, 110 Stat. 2422, 2620 (1996), which removed the Secretary of the Army from membership on the Foreign-Trade Zones Board; and 2) recent revisions by the U.S. Customs Service to its organizational structure, which eliminated Regional Commissioner and District Director positions, broadening the role of Port Directors.

Classification

This rulemaking action was determined to be not significant for purposes of Executive Order 12866. The Administrative Procedure Act requirements of notice and comment and delayed effective date are unnecessary for these technical amendments because the FTZ Board has no discretion in making these amendments which are required by Pub. L. 104–201 and reorganization within the U.S. Customs Service. Because notice and comment are not required by 5 U.S.C. 553(b)(B) or any other statute for these technical amendments and procedures, a regulatory flexibility analysis is not required and was not prepared for purposes of the Regulatory Flexibility Act. This rulemaking involves information collection requirements which are cleared under OMB Control No. 0625–0139 for purposes of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR part 400 is amended as set forth below:

PART 400—REGULATIONS OF THE FOREIGN–TRADE ZONES BOARD

1. The authority for 15 CFR part 400 continues to read as follows:

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd Congress, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

2. Section 400.2 is revised to read as follows:

§ 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended.

(b) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman) and the Secretary of the Treasury, or their designated alternates.

(c) *Customs Service* means the United States Customs Service of the Department of the Treasury.

(d) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(e) *Foreign-trade zone* is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under supervision of the Customs Service.

(f) *Grant of authority* is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(g) *Manufacturing*, as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use.

(h) *Port Director* is normally the director of Customs for the Customs jurisdictional area in which the zone is located.

(i) *Port of entry* means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).

(j) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.

(k) *Processing*, when referring to zone activity, means any activity involving a change in condition of merchandise, other than manufacturing, which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.

(l) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(m) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(n) *Subzone* means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(o) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(p) *Zone grantee* is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term "grantee" means "zone grantee" unless otherwise indicated.

(q) *Zone operator* is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the Port Director.

(r) *Zone project* means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.

(s) *Zone site* means the physical location of a zone or subzone.

(t) *Zone user* is a party using a zone under agreement with the zone grantee or operator.

3. Section 400.11 is amended by revising paragraph (d)(1) to read as follows.

§ 400.11 Authority of the Board.

* * * * *

(d) *Determinations of the Board.* (1) The determination of the Board will be based on the unanimous vote of the members (or alternate members) of the Board.

* * * * *

4. Section 400.24 is amended by revising paragraph (d)(5)(i)(B) to read as follows:

§ 400.24 Application for zone.

* * * * *

(d) Exhibits. * * *

(5) Exhibit Five (Maps) shall consist of:

(i) The following maps and drawings:

* * * * *

(B) A local community map showing in red the location of the proposed zone; and

* * * * *

5. Section 400.24 is further amended by revising paragraph (h) to read as follows:

§ 400.24 Application for zone.

* * * * *

(h) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 8 copies of the application on 8½" × 11" (216 × 279 mm) paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.

* * * * *

6. Section 400.26 is amended by revising paragraph (a)(2) to read as follows:

§ 400.26 Application for expansion or other modification to zone project.

(a) *In general.* * * *

(2) The Executive Secretary, in consultation with the Port Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; or

(ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

* * * * *

7. Section 400.27 is amended by revising paragraph (c)(3) to read as follows:

§ 400.27 Procedure for processing application.

* * * * *

(c) *Procedure—Executive Secretary responsibilities.* * * *

(3) Send copies of the filing and initiation notice and the application to the Commissioner of Customs and the Port Director, or a designee.

* * * * *

8. Section 400.27 is further amended by revising paragraph (d)(1) to read as follows:

§ 400.27 Procedure for processing application.

* * * * *

(d) *Case reviews—procedure and time schedule*—(1) *Customs review.* The Port Director, or a designee, in accordance with agency regulations and directives, will submit a technical report to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

* * * * *

9. Section 400.27 is further amended by revising paragraph (d)(2)(v)(C) to read as follows:

§ 400.27 Procedure for processing application.

* * * * *

(d) *Case reviews—procedure and time schedule*—* * *

(2) *Examiners reviews—non-manufacturing/processing.* * * *

(v) * * *

(C) The Customs adviser shall be notified when necessary for further comments, which shall be submitted within 45 days after notification.

* * * * *

§ 400.27 [Amended]

10. In § 400.27, paragraph (f)(1) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

11. In § 400.27, paragraph (f)(2) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.28 [Amended]

12. In § 400.28, paragraph (a)(1) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

13. In § 400.28, paragraph (a)(6) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.32 [Amended]

14. In § 400.32, paragraph (b)(1)(iv) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.41 [Amended]

15. In § 400.41, the third sentence is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.42 [Amended]

16. In § 400.42, paragraph (a)(1) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

17. In § 400.42, paragraph (b)(1) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

18. In § 400.42, paragraph (b)(3) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.44 [Amended]

19. In § 400.44, paragraph (b)(4) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

20. In § 400.44, paragraph (c)(3) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.45 [Amended]

21. In § 400.45, paragraph (a) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

22. In § 400.45, paragraph (b) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

23. In § 400.45, paragraph (c) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

§ 400.46 [Amended]

24. In § 400.46, paragraph (c) is amended by removing "District Director" where appearing therein, and adding in its place, "Port Director".

By order of the Foreign-Trade Zones Board, Washington, DC, this 6th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–27145 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 601, and 606

[Docket No. 96N–0395]

RIN 0910–AA93

Revision of the Requirements for a Responsible Head for Biological Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by deleting the requirements for a biologics establishment to name a "responsible head" or "designated qualified person" to exercise control of the establishment in all matters relating to compliance with regulatory requirements and to represent the establishment in its dealings with FDA. Because many manufacturers of biological products are firms that have more than one manufacturing location and complex corporate structures, it may no longer be practical for one individual to represent a manufacturer or possess expertise in all matters. This change will provide manufacturers with more flexibility in assigning control and oversight responsibility within a company. This final rule is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiative, and it is intended to reduce the burden of unnecessary regulations on industry without diminishing public health protection.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 29, 1997 (62 FR 4221), FDA published a proposed rule to amend the biologics regulations by deleting the requirements for a biologics establishment to name a responsible head or designated qualified person to represent the establishment in its dealings with FDA.

Under § 600.10(a) (21 CFR 600.10(a)), a manufacturer of biological products currently is required to name a responsible head who is to exercise control of the establishment in all matters relating to compliance with regulations in parts 600 through 680 (21 CFR parts 600 through 680) and who is to represent the manufacturer in all pertinent matters with the Center for Biologics Evaluation and Research (CBER). This individual must also have an understanding of the scientific principles and techniques involved in the manufacture of biological products. When FDA announced in the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822), the review by CBER of certain biologics regulations to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary, § 600.10(a) was included. FDA also held a public meeting on January 26, 1995, to discuss the retrospective review effort and to provide a forum for the public to voice its comments on the retrospective review.

Many of the comments submitted requested revision or elimination of the requirements for a responsible head in § 600.10(a). The comments stated that the requirement for a responsible head to be an expert in multiple functions and to be responsible for a number of facility locations is incompatible with current industry practice. The comments added that the list of activities in § 600.10(a) is extremely broad and this regulation could be interpreted to require the responsible head to have an intimate understanding of a wide variety of extremely complex activities. All of these activities require specific expertise, and it may not be practical to expect one person to be an expert in all of those areas. Some comments addressed the requirement that the responsible head be responsible for training and have the authority to enforce discipline, stating that direct line supervision and management personnel are better qualified and in a better position to enforce or direct the enforcement of discipline and the performance of assigned functions by employees engaged in the manufacture of products. Many comments requested the designation of an alternate responsible head, especially in the situation of multiple locations.

As part of the President's "Reinventing Government" initiative, a report entitled "Reinventing the Regulation of Drugs Made From Biotechnology" was issued in November 1995. The report announced several initiatives to reduce the burden of FDA regulations on the biologics industry without reducing public health protection, including a proposal to remove the requirements in § 600.10(a) for a responsible head. The commitment to remove requirements for a responsible head was based on FDA's determination that, with the many changes that have occurred in science, technology, and corporate structure, it no longer may be practical for most biologics manufacturers to rely on one individual to meet the requirements in § 600.10(a). In addition, the responsible corporate officer doctrine, e.g., *United States* v. *Park*, 421 U.S. 658 (1975); *United States* v. *Dotterweich*, 320 U.S. 277 (1943), places the burden of ensuring compliance with the statutes and regulations applicable to biological products on corporate officials "standing in responsible relation to a public danger." (*Dotterweich*, 320 U.S. at 281.) Thus, it is not necessary to require manufacturers to designate a responsible head in order to enforce the duty responsible corporate officials have to implement measures to ensure that violations do not occur. (*Park*, 421 U.S. at 672.)

In accordance with a revision to the definition of "manufacturer" in § 600.3 (see 61 FR 24227, May 14, 1996), an applicant may apply for and obtain a license for a biological product to be manufactured at more than one manufacturing site that may or may not be owned by the applicant. Therefore, applicants may want to designate more than one person with primary responsibility to maintain adequate oversight of multiple manufacturing sites and ensure that each is conforming to FDA's requirements for current good manufacturing practices and the applicable biologics standards. Many biologics manufacturers also manufacture drugs that are regulated by the Center for Drug Evaluation and Research (CDER) under the Federal Food, Drug, and Cosmetic Act. CDER's regulations do not contain an analogous requirement for a responsible head. FDA's proposal to revise the requirements with respect to a responsible head is an effort to harmonize CBER's and CDER's policies and requirements and to keep pace with changes in science, technology, and corporate structure.

II. Highlights of the Final Rule

Under the final rule, an authorized official may be chosen by the applicant to receive and send correspondence to CBER. The applicant may choose to have more than one authorized official. Accordingly, the agency is amending § 600.10 by removing and reserving paragraph (a) and revising the heading of paragraph (b) to read "*Personnel.*" The agency is also amending § 601.2 *Applications for establishment and product licenses; procedures for filing* by adding the statement "The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application" in paragraph (a) and new paragraph (c)(6). Finally, the agency is amending § 601.25(b)(3)(VIII) by replacing "signed by the responsible head (as defined in § 600.10 of this chapter) of the licensee" with "signed by an authorized official of the licensee."

FDA is also removing § 606.20(a), which contains language similar to that in § 600.10(a) and applies to all blood establishments, including registered, unlicensed blood establishments. Like other components of the biologics industry, the blood industry has experienced changes in science, technology, and corporate structure. Complex donor and transfusion recipient issues, the evolution of sophisticated computerized laboratory and donor equipment, complicated serology problems, and state-of-the-art laboratory techniques have all contributed to changes within the structure of blood establishments, regardless of size. To ensure the quality and safety of the blood supply, many blood establishments employ personnel who are experts in donor issues, infectious disease, computers, molecular biology, serology, transfusion issues, quality control, administration, and management. It is no longer practical to expect one individual to have expertise in all the subspecialties of transfusion medicine. Accordingly, to provide sufficient flexibility for a blood establishment to select a person with appropriate training and experience to be responsible for each facet of its operation, the agency is removing and reserving § 606.20(a).

III. Comments on the Proposed Rule and FDA Responses

FDA received 11 comments on the proposed rule, which included comments from biological product manufacturers, including blood establishments. Eight of the comments fully supported the proposed rule.

Three comments received from the blood industry expressed concern that they would no longer have a single responsible head through whom they would interact with FDA, and that the responsible persons in the organization will have diminished authority and responsibility in communication and decisionmaking because their responsibilities and authority will no longer be mandated by the regulations.

FDA does not agree. In the final rule, only the requirement to retain a single responsible head is being eliminated. Any applicant wishing to have a single authorized representative who would serve the function of the responsible head as previously set forth in § 600.10(a), may do so. In the past, FDA has often encountered circumstances where the responsible head of an establishment was unable to adequately carry out her or his responsibilities in assuring that the establishment complies with FDA requirements. This failure was often due, in part, to the responsible head having inadequate knowledge in an area to determine whether FDA's requirements were being met or the responsible head was too remote in location or corporate structure to adequately monitor activities to assure requirements were being met. Removal of this requirement will allow organizations to designate responsible individuals with appropriate training and experience to provide better communication to the agency as functional experts in their respective areas of responsibility. FDA believes that the industry should have the flexibility to assign responsibility in a way that best fits each applicant's organizational structure as long as the public health protection is not diminished.

Furthermore, the elimination of the requirement for a responsible head or designated qualified person does not decrease the duty that responsible corporate officers have to ensure compliance with the law. (*Park*, and *Dotterweich*, *supra*.)

IV. Effective Date

The final rule is effective October 15, 1997. As provided under 5 U.S.C. 553(d) and § 10.40(c)(4) (21 CFR 10.40(c)(4)), the effective date of a final rule may not be less than 30 days after the date of publication, except for, among other things, "a regulation that grants an exemption or relieves a restriction" (§ 10.40(c)(4)(i)). Because this rule will provide greater flexibility in assigning control and oversight responsibility within a biological product establishment by eliminating the responsible head requirement, FDA believes that an immediate effective date is appropriate.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule would have no compliance costs and would not result in any new requirements. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that the final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Lists of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 600, 601, and 606 are amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.10 [Amended]

2. Section 600.10 *Personnel* is amended by removing and reserving paragraph (a) and by revising the heading of paragraph (b) to read "*Personnel.*"

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360o–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1461.

4. Section 601.2 is amended by adding a sentence before the last sentence in the introductory text of paragraph (a) and by adding new paragraph (c)(6) to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application. * * *

* * * * *

(c) * * *

(6) The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application.

5. Section 601.25 is amended by revising the first sentence of paragraph (b)(3)(VIII) to read as follows:

§ 601.25 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

* * * * *

(b) * * *

(3) * * *

(VIII) If the submission is by a licensee, a statement signed by an authorized official of the licensee shall be included, stating that to the best of his or her knowledge and belief, it includes all information, favorable and unfavorable, pertinent to an evaluation of the safety, effectiveness, and labeling of the product, including information derived from investigation, commercial marketing, or published literature.

* * *

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PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

6. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

§ 606.20 [Amended]

7. Section 606.20 *Personnel* is amended by removing and reserving paragraph (a).

Dated: September 4, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–27298 Filed 10–14–97; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in November 1997.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during November 1997.

For annuity benefits, the interest assumptions will be 5.70 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for October 1997) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent a decrease (from those in effect for October 1997) of 0.25 percent for the period during which a benefit is in pay status; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during November 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 49 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_j) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_j are:					
	i_j	for t =	i_j	for t =	i_j	for t =
*	*	*	*	*	*	*
November 1997	.0570	1–25	.0500	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
49	11–1–97	12–1–97	4.50	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 9th day of October 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–27273 Filed 10–14–97; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

39 CFR Part 111

Bulk Parcel Return Service and Shipper Paid Forwarding

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC97–4, Bulk Parcel Return Service and Shipper Paid Forwarding.

EFFECTIVE DATES: The amendments to section S concerning Bulk Parcel Return Service are effective October 12, 1997, and the amendments to sections F and R concerning Shipper Paid Forwarding are effective January 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom DeVaughan, (202) 268–4491.

SUPPLEMENTARY INFORMATION: On June 6, 1997, the United States Postal Service filed a Request with the Postal Rate Commission pursuant to sections 3622 and 3623 of the Postal Reorganization Act, 39 U.S.C. 101 et seq., for a recommended decision on proposed changes to the Domestic Mail Classification Schedule (DMCS). The proposed revisions also included proposed new fees. The Postal Service requested the consideration of two changes affecting the forwarding and return of Standard Mail (A) parcels that were initially considered in Docket No. MC97–2. It requested that Bulk Parcel Return Service (BPRS) and Shipper Paid Forwarding (SPF) be established.

Pursuant to 39 U.S.C. 3624, on September 4, 1997, the PRC issued its Recommended Decision in Docket MC97–4, to the Governors of the United States Postal Service. That decision adopted the BPRS and SPF classifications and fees proposed in a Revised Stipulation and Agreement submitted by most of the parties in the proceeding. Pursuant to 39 U.S.C. 3625, the Governors acted on the PRC's Recommendation on October 6, 1997.

The Governors approved the PRC's recommendations, and set an implementation date of October 12, 1997, for BPRS. Due to software and other support modifications needed for Computer Forwarding Sites and the Address Change Service network to support SPF, the Governors set January 4, 1998, for the effective date of SPF.

Under current practice, forwarding and return of bulk Standard Mail (A) parcels are obtained by endorsing pieces "Forwarding Service Requested" (or until December 31, 1997, "Forwarding and Return Postage Guaranteed") or "Address Service Requested" (or until December 31, 1997, "Forwarding and Return Postage Guaranteed, Address Correction Requested"). The postage charged at the time that a parcel is returned is a weighted fee that is 2.472 times the applicable single-piece rate. This fee indirectly pays for forwarding service of other parcels: 1.472 is the average number of pieces forwarded for

every piece that is returned. Multiplying 1.472 by the single-piece rate is intended to cover the cost of the forwarding service.

BPRS and SPF will provide mailers other options. SPF allows mailers to pay forwarding postage (the applicable single-piece rate) directly through the use of the tracking capabilities of the existing electronic Address Change Service (ACS). Only mailers authorized to participate in ACS and who mail machinable parcels with the required endorsement will be eligible. An advance postage due deposit account is required. BPRS, through bulk handling of returned parcels, lowers the average cost of the return service. BPRS mailers must arrange for pickup of their returned parcels in bulk at a specified frequency at a designated postal facility(s), or arrange to have their returned parcels delivered to them in bulk by the Postal Service. Only machinable parcels weighing less than one pound, with the required endorsements, are eligible for BPRS. A minimum requirement of 10,000 returned parcels per year at each site (return address) is required. BPRS mailers must document their returned parcel volume and maintain an advance deposit account. A flat $1.75 per-piece fee for each returned parcel and an annual permit fee of $85.00 are required at each designated facility. BPRS and SPF can be combined, beginning with the January 4, 1998, effective date for SPF.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors decision. Appropriate clarifications are included.

Lists of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Revise the following sections of the Domestic Mail Manual as noted below:

* * * * *

F FORWARDING AND RELATED SERVICES

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

* * * * *

5.3 Standard Mail (A)

* * * * *

[Redesignate existing 5.3c through 5.3e as 5.3d through 5.3f, respectively; redesignate existing 5.3g as 5.3i. Amend 5.3 by adding a new 5.3c and new 5.3h to read as follows:].

* * * * *

c. Effective January 4, 1998, mail that qualifies for Shipper Paid Forwarding (F020) under the applicable standards is forwarded (and if necessary) returned at the Standard Mail (A) single-piece rate.

* * * * *

h. Mail that qualifies for Bulk Parcel Return Service (BPRS) under the applicable standards in S924 is returned at the BPRS per piece fee, if the mailer uses one of the endorsements that includes "— BPRS." Until January 4, 1998, when SPF becomes effective, mailers using BPRS will not be able to request forwarding services.

"Return Service Requested—BPRS"	Piece returned with new address or reason for nondelivery attached; only the Bulk Parcel Return Service fee charged (address correction fee not charged).
(Effective January 4, 1998)	
"Address Service Requested—BPRS"	Months 1 through 12: piece forwarded; no charge to addressee; separate ACS notice of new address provided; ACS address correction fee and postage at single-piece Standard Mail (A) rate charged via ACS participant code. Months 13 through 18: piece returned with new address attached; only the Bulk Parcel Return Service fee charged (address correction fee not charged). After month 18, or if undeliverable: piece returned with reason for nondelivery attached; only Bulk Parcel Return Service fee charged (address correction fee not charged).

* * * * *

F020 Forwarding

* * * * *

3.0 POSTAGE FOR FORWARDING

* * * * *

3.5 Standard Mail (A)

[Amend 3.5 to read as follows:]

Generally, Standard Mail (A) is subject to collection of additional postage from the mailer when forwarding service is provided by charging the Standard Mail (A) weighted fee on all returns. Shipper Paid Forwarding, used in conjunction with Address Change Service (F030), provides mailers of Standard Mail (A) machinable parcels an option of paying forwarding postage at the Standard Mail (A) single-piece rate. Mail that qualifies for Bulk Parcel Return Service (BPRS) is returned at the BPRS per piece charge if the mailer uses one of the ancillary service endorsements that specifies BPRS (e.g., "Return Service Requested—BPRS"). * * *

* * * * *

F030 Address Correction, Address Change, FASTforward,℠ and Return Services

* * * * *

2.0 ADDRESS CHANGE SERVICE (ACS)

2.1 Description

[Amend 2.1 to read as follows:]

Address Change Service (ACS) centralizes, automates, and improves the processing of address correction requests for mailers. ACS involves transmitting address correction information to a central point where the changes are consolidated electronically by unique publication or mailer identifier. These records are sequentially organized by USPS-assigned codes and distributed to each participating mailer. ACS can also be used to pay forwarding postage on most Standard Mail pieces using Shipper Paid Forwarding under 2.5.

* * * * *

[Add new 2.5 to read as follows:]

2.5 Shipper Paid Forwarding

Shipper Paid Forwarding (SPF) is an ACS fulfillment vehicle. It allows mailers of Standard Mail (A) machinable parcels (effective January 4, 1998), and most Standard Mail (B) to pay forwarding charges via approved ACS participant code(s). For information, write to the National Customer Support Center (see G043 for address).

* * * * *

R RATES AND FEES

* * * * *

R600 Standard Mail

* * * * *

10.0 FEES

10.1 Mailing

[Redesignate current 10.1b and 10.1c as 10.1c and 10.1d respectively; add new 10.1b to read as follows]

b. Bulk Parcel Return Service Permit Fee: $85.00

* * * * *

[Add new 10.4 to read as follows:]

10.4 Bulk Parcel Return Service Fee

Bulk Parcel Return Service fee per piece returned: $1.75

* * * * *

S900 Special Postal Services

* * * * *

S920 Convenience

* * * * *

[Add new S924 to read as follows:]

S924 Bulk Parcel Return Service

1.0 BASIC INFORMATION

1.1 Description

Bulk Parcel Return Service (BPRS) provides a method whereby high-volume parcel mailers may have undeliverable-as-addressed machinable parcels returned to designated postal facilities for bulk pickup by the mailer at a predetermined frequency prescribed by the Postal Service, or delivered by the Postal Service in bulk in a manner and frequency prescribed by the Postal Service. Mailers using this service pay only the BPRS per piece fee for each parcel returned.

1.2 Availability

BPRS is available only for the return of machinable parcels, as defined in C050, initially prepared and mailed as Regular or Nonprofit Standard Mail (A) machinable parcels. Mail for which BPRS is requested must bear one of the BPRS endorsements in F010 and a return address that is in the delivery area of the post office that issued the BPRS permit. Effective January 4, 1998, BPRS may also be combined with the Shipper Paid Forwarding service (F030). Any Standard Mail (A) parcel that qualifies for a single-piece Standard Mail (B) rate under the applicable standards, and that contains the name of the Standard Mail (B) rate in the mailer's ancillary service endorsement is not eligible for BPRS.

1.3 Payment Guarantee

The permit holder guarantees payment of fees on all returned parcels from a centralized advance deposit postage due account.

1.4 Where Service Established

BPRS may be established at any post office in the United States and its territories and possessions or at any U.S. military post office overseas (APO/FPO). It is not available in any foreign country.

2.0 PERMITS

2.1 Application Process and Participation

To participate in BPRS, the mailer must make a written request to the postmaster at each post office where parcels are to be returned. The request must:

a. Demonstrate receipt of 10,000 returned machinable Standard Mail (A) parcels at a given delivery point during the previous 12 months, or

b. Demonstrate a high likelihood of receiving a minimum of 10,000 returned machinable Standard Mail (A) parcels at a given delivery point in the coming 12 months.

The written request must be submitted with the annual permit fee, a description of the mail (e.g., size, packaging), a sample of the documentation to be used to substantiate individually, the number of parcels returned each day, and the requested frequency and location of the pickup or delivery of the parcels. If the mailer's request is approved, the USPS issues the mailer an authorization letter and agreement with the BPRS permit number (which will be used solely for account and annual fee tracking). The BPRS permit number is not to appear on the mail. The mailer must have a valid postage due advance deposit account and pay the annual BPRS permit fee to participate in BPRS.

2.2 Permit Renewal

An annual renewal notice is provided to each BPRS permit holder. The notice must be returned to the post office that issued the permit with the fee payment or authorization for the postmaster to deduct the fee from the advance deposit account by the expiration date of the permit. Written authorization is not needed for permit renewal if there is no change to the authorization on file at the post office where the parcels are to be returned. If, after notice, the permit holder does not renew a BPRS permit, the USPS endorses the mail "Bulk Parcel Return Service Canceled" and charges postage due at the single-piece Standard Mail (A) rate. If the single-piece Standard Mail (A) rate is not paid, the mail is then forwarded to the nearest mail recovery center for final disposition.

2.3 Procedure

An approved BPRS permit and fee payment must be on file at every post office to which parcels are returned.

2.4 Permit Cancellation

The USPS may cancel a permit if the permit holder fails to meet the minimum requirements, refuses to accept and pay the required fee for parcels returned, fails to keep sufficient funds in the advance deposit account to cover fees due for returned parcels, or fails to meet terms of the authorization (e.g., fails to pickup mail on agreed upon frequency).

2.5 Reapplying After Cancellation

To receive a new permit at the same post office after a BPRS permit is canceled, the applicant must resubmit a letter to that office; pay a new permit fee; provide evidence that the reasons for the permit cancellation are corrected; and provide and keep funds in an advance deposit account to cover normal returns for at least 2 weeks.

3.0 POSTAGE AND FEES

3.1 Permit Fee

A permit fee is charged once each 12-month period on the anniversary date of the permit. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

3.2 Payment

The permit holder must pay BPRS per piece fees by an advance deposit account. The post office delivers parcels under this service only when estimated sufficient funds are in the account to pay all applicable fees. The permit holder may establish a unique advance deposit account or use an existing one to pay postage under BPRS.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Neva R. Watson,

Alternate Liaison Officer.

[FR Doc. 97–27299 Filed 10–10–97; 11:50 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA157–0050a; FRL–5907–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve Santa Barbara County Air Pollution Control District's (Santa Barbara or District) Rule 370 "Potential to Emit—Limitations for Part 70 Sources" (prohibitory rule) under Clean Air Act (CAA) sections 110 and 112(l). This rule creates federally-enforceable limits on potential to emit for sources with actual emissions less than 50 percent of the major source thresholds. This approval action will incorporate Rule 370 into the federally-approved State Implementation Plan (SIP) for California. The rule was submitted by the State to satisfy certain Federal requirements for an approvable SIP. EPA is finalizing the approval of this rule into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is taking this action without prior proposal because the Agency views this action as a non-controversial amendment and anticipates no adverse comments.

DATES: This action is effective on December 15, 1997 unless adverse or critical comments are received by November 14, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to: John Walser, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the rule and EPA's Technical Support Document for the rule are available for public inspection at the following locations:

Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, 17th Floor, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John Walser (telephone 415/744–1257), Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1995, the Santa Barbara County Air Pollution Control District adopted Rule 370: Potential to Emit—Limitations for Part 70 Sources. The purpose of the rule is to exempt small sources from the requirements of the federal operating permit program (see 60 FR 55460 dated November 1, 1995).

EPA determines which sources are subject to the federal operating permit requirements based on their "potential to emit." Under Rule 370, Santa Barbara County sources that would otherwise be required to obtain a federal permit would be exempt if their "actual" 12-month (rolling average) emissions are less than 50 percent of their "potential to emit." Sources below specified emission levels would also be exempt. Federal recordkeeping and reporting requirements will vary for businesses with different operational levels.

On August 10, 1995, the California Air Resources Board (CARB) submitted to EPA, on behalf of the District, the District's prohibitory rule (Rule 370), adopted on June 15, 1995. On September 20, 1995, EPA reviewed this rule for completeness and found that the rule conformed to the completeness criteria in 40 CFR part 51, Appendix V.

II. EPA Evaluation and Action

The EPA has evaluated the submitted rule and has determined that it is consistent with 40 CFR part 70 and with section 112(l) of the Act. The following is a brief analysis of the key regulatory revisions being acted on in today's notice. (Please refer to the Technical Support Document for a complete analysis of the submission.)

A. Analysis of Submission

Rule 370 "Potential to Emit—Limitation for Part 70 Sources"

On August 10, 1995, CARB submitted for approval into Santa Barbara's portion of the California State Implementation Plan (SIP), Rule 370 "Potential to Emit—Limitations for Part 70 Sources." This Rule creates a streamlined process for limiting the potential to emit of sources that emit less than 50 percent of major source levels but whose potential to emit is above those levels. Sources complying with this Rule will have federally-enforceable limits on their potential to emit and will avoid being subject to Title V.

The basic requirement for approving into the SIP rules to limit potential to emit is that the limits in the rule are practically enforceable. For a discussion of general principle of practical enforceability, see Memorandum from John Seitz to Regional Air Directors, "Options for Limiting the Potential to Emit (PTE) of a Stationary source Under section 112 and Title V of the Clean Air Act (Act)," January 25, 1995, found in the docket for this rulemaking. Rule 370 meets the requirements for practical enforceability for limiting potential to emit through general prohibitory rules in SIPs. Please refer to the TSD for further analysis of the Rule.

CARB also submitted Rule 370 for approval under section 112(l) of the Act. The request for approval under section 112 (l) is necessary because the proposed SIP approval discussed above only provides a mechanism for controlling criteria pollutants. EPA has determined that the practical enforceability criterion for SIPs is also appropriate for evaluating and approving Rule 370 under section 112(l). In addition, Rule 370 must meet the statutory criteria under section 112(l)(5). For a discussion of EPA's authority to approve rules under section 112(l), see 59 FR 60944 (November 29, 1994).

EPA proposes approval of Rule 370 under section 112(l) because the Rule meets all of the approval criteria specified in section 112(l)(5) of the Act. EPA believes Rule 370 contains adequate authority to assure compliance with section 112 because it does not waive any section 112 requirements applicable to non-major sources. Regarding adequate resources, Rule 370 is a supporting element of the district's title V program which has demonstrated adequate funding. Furthermore, EPA believes that Rule 370 provides for an expeditious schedule for assuring compliance because it provides a streamlined approval that allows sources to establish limits on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Finally, Rule 370 is consistent with the objectives of the section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112.

Rule 370 is modeled on the California model prohibitory rule developed by the California Association of Air Pollution Control Officers, CARB and EPA. In its agreement on the model rule, EPA expressed certain understandings and caveats. See letter from Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA to Peter Venturini, Chief, Stationary Source Division, CARB, January 11, 1995. A copy of this letter is in the docket for this rulemaking.

Part 70 Requirements

The definition of "potential to emit" in Santa Barbara's Rule 370 is consistent with the definition of "potential to emit" as defined in 40 CFR 70.2 "Definitions—Potential to Emit." The requirements of Rule 370 do not conflict or overlap with those of Santa Barbara's interim-approved Part 70 operating permit program.

B. Final Action and Implications

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is also proposing approval of Santa Barbara's rule revision should adverse or critical comments be filed. The final action will be effective December 15, 1997, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, the final action would be withdrawn before the effective date by publishing a subsequent notice. This action would then serve as a proposed rule only. All public comments received after this action would then be addressed in a subsequent final rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 15, 1997.

Rule 370 "Potential to Emit—Limitations for Part 70 Sources"

EPA is promulgating approval of Rule 370 submitted to EPA by CARB on August 10, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of Santa Barbara's submittal and other information relied upon for the direct final actions are contained in docket number CA–SB–97–001 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Santa Barbara's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Because these approval actions do not impose any new requirements, they do not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, are anticipated to result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to Publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 26, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(224) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Amended Rule 370 adopted on June 15, 1995.

* * * * *

[FR Doc. 97–27265 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 040–3017a; FRL–5906–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Yeast Manufacturing, Screen Printing, Expandable Polystyrene Operations, and Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland on July 12, 1995. These revisions establish reasonable available control technology (RACT) volatile organic compound (VOC) emission reduction requirements for yeast manufacturing, screen printing, expandable polystyrene operations (EPOs), and bakeries throughout the State of Maryland. The intended effect of this action is to approve these amendments to the Maryland SIP, in accordance with the SIP submittal and revision provisions of the Clean Air Act (the Act). This action is being taken under section 110 of the Act.

DATES: This final rule is effective December 15, 1997, unless by November 14, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 566–2095, at the EPA Region III office address listed above, or via e-mail at donahue.carolyn@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the Maryland Department of the Environment (MDE) submitted new regulations to EPA as SIP revisions. These regulations control VOC emissions throughout the state. MDE submitted these SIP revision requests pursuant to the rate-of-progress (ROP) and RACT requirements of section 182 and 184 of the Act. Specifically, Maryland has adopted VOC control measures for yeast manufacturing, screen printing, EPOs and bakeries.

Background

Section 182(b)(1) of the Act requires states with ozone nonattainment areas classified as moderate or above to reduce VOC emissions 15% from 1990 baseline levels. States were required to achieve the 15% VOC emission reduction by 1996. This ROP requirement, known as the 15% plan, was due to EPA as a SIP revision by November 15, 1993.

In Maryland, 15% plans were required for the Baltimore severe ozone nonattainment area, the Maryland portion of the Philadelphia severe ozone nonattainment area, and the Maryland portion of the Washington, DC serious ozone nonattainment area. Maryland submitted the required 15% plans to EPA as SIP revisions on July 12, 1995. In these 15% plans, Maryland takes credit for the emission reductions achieved through the VOC regulations that Maryland submitted as SIP revisions on July 12, 1995, including Maryland's yeast manufacturing, screen printing, EPO, and bakery regulations. Furthermore, the VOC emission reductions achieved by these regulations are needed to achieve the 15% reduction in the Baltimore plan.

Section 184(b)(1)(B) of the Act requires areas in the Ozone Transport Region (OTR) to implement RACT regulations for all VOG sources that have the potential to emit 50 TPY or more. In addition, section 182(b)(2) requires states to implement RACT regulations on all "major" sources of VOC in moderate or above ozone nonattainment areas. Major VOC sources are those with the potential to emit at least 100 TPY in moderate areas, 50 TPY in serious areas, and 25 TPY in severe areas. Because Maryland is in the OTR, the State is required to implement RACT regulations for all sources with the potential to emit 50 TPY or more, throughout the state. Furthermore, in Maryland's severe ozone nonattainment areas, RACT is required for all VOC sources with the potential to emit 25 TPY or more. States were required to submit these RACT regulations to EPA as SIP revisions by November 15, 1992. Sources were required to comply with RACT by May 31, 1995.

Maryland submitted a generic VOC RACT regulation to EPA as a SIP revision on April 5, 1991. On June 8, 1993, Maryland submitted amendments to this regulation to EPA as a SIP revision. The generic RACT regulation does not contain any specific emission limitations or requirements for major sources, but instead allows the establishment of RACT through the SIP revision process for individual sources or source categories. Maryland's July 12, 1995 SIP revision submittals address the RACT requirement for the following four source categories: yeast manufacturing, screen printing, expandable polystyrene operations, and bakeries.

Summary of SIP Revisions

Control of VOC Emissions from Yeast Manufacturing (COMAR 26.11.19.17)

General Provisions

This new regulation establishes standards for controlling VOC emissions from yeast manufacturing. This regulation establishes definitions for the following terms: "fermentation batch," "first generation fermenter," "stock fermenter," "trade fermenter," and "yeast manufacturing installation." An owner or operator of a yeast manufacturing installation at a premises that has a potential to emit of 25 or more tons/year from all yeast manufacturing installations is subject to this regulation. Compliance with this regulation was required by May 15, 1995. This regulation does not apply to a fermentation batch of any variety which comprises less than 1% of the total annual yeast production by weight.

General Requirements

A person subject to this rule may not discharge VOC emissions from a yeast manufacturing installation in excess of the following concentrations: 100 parts per million (ppm) for trade fermenters, 150 ppm for first generation fermenters, and 300 ppm for stock fermenters. Compliance with these emission limits will be based on average undiluted VOC concentration during the time of a fermentation batch. Any yeast manufacturing installation not subject to these limits must monitor temperature, pH, and sugar content of the batch to minimize VOC emissions. This temperature must be controlled so that it is between 75 °F and 100 °F, and the pH must be between 3.5 and 7.5.

Compliance and Testing

Stack tests, used to calculate emissions concentrations from at least four different effluent samples per hour for the duration of the fermentation batch, and continuous process monitors, used to generate batch average concentrations for each installation, determine compliance with this regulation. Stack tests must be performed at least once every four years after an initial stack test, which was required to have been conducted before October 1, 1995. A test protocol must be submitted to MDE at least 30 days before the tests are conducted.

Reporting Requirements

Quarterly reports on process monitoring data must be submitted to MDE by the 20th of the month after the end of each calendar quarter. Stack test reports must be submitted to MDE within 60 days after each test.

EPA Evaluation: The controls on fermenters in Maryland's regulation reduce VOC emissions from yeast manufacturing installations. Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from yeast manufacturing operations in Maryland, is fully approvable.

Control of VOC Emissions From Screen Printing (COMAR 26.11.19.18)

General Provisions

This revision establishes VOC controls for screen printers. This regulation establishes definitions for the following terms: "Acid/etch resist ink," "anoprint ink," "back-up coating," "clear coating," "conductive ink," "electroluminescent ink," "exterior illuminated sign," "haze removal," "ink removal," "maximum VOC content," "plastic card manufacturing installation," "plywood sign coating," "screen printing," "screen printing installation," "screen reclamation," "specialty inks," and "untreated sign paper."

This regulation applies to an owner or operator of a screen printing installation or plastic card manufacturing installation, or who coats plywood used for signs, at a premises that has total actual VOC emissions from all screen printing, plastic card manufacturing, and plywood coating installations of 20 or more pounds/day. These standards apply to a person who prints or coats a substrate in conjunction with or in preparation for screen printing. However, this regulation does not apply to adhesives used for screen printing.

General Requirements

A person subject to this regulation may not cause or permit the discharge of VOC unless the following requirements are observed, where lb/gal is pounds per gallon and g/l is grams per liter.

For Screen Printing:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF THE INK (AS APPLIED)

Product or substrate	Up to 11/15/94	On or after 11/15/94 and up to 7/15/95	On or after 7/15/95
Paper	5.6 (672)	5.6 (672)	3.3 (396)
Untreated sign paper	5.6 (672)	5.6 (672)	5.6 (672)
Glass	3.3 (396)	3.3 (396)	3.3 (396)
Metal	5.8 (696)	3.3 (396)	3.3 (396)
Plastic or vinyl, other than plastic cards	6.7 (804)	6.7 (804)	3.3 (396)
Reflective sheeting	6.7 (804)	6.7 (804)	3.3 (396)
Textile/imprinted garments	3.3 (396)	3.3 (396)	3.3 (396)
Fine arts/serigraph	6.7 (804)	6.7 (804)	3.3 (396)
Pressure sensitive decals	6.7 (804)	6.7 (804)	3.3 (396)
Plywood/wood	5.0 (600)	5.0 (600)	3.3 (396)

A person subject to this regulation is in compliance if a control device that regulates VOC emissions from the screen printing dryer by no less than 90% overall is installed.

For Plywood Sign Coating:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF THE COATING (AS APPLIED)

Coating	Before 11/15/94	On or after 11/15/94
Back-up	1.0 (120)	1.0 (120)
Prime	4.5 (540)	1.5 (180)
Main	5.0 (600)	2.5 (300)
Clear	4.5 (540)	3.3 (396)

For Plastic Card Manufacturing:

a. The VOC content of any ink or coating as applied may not exceed 6.2 lb/gal (744 g/l) until November 15, 1994, and 4.0 lb/gal (479 g/l) after July 15, 1995.

b. The isopropyl alcohol content of the fountain solution used in any offset lithographic printing on a plastic card may not exceed 12% until December 31, 1994, and 8.5% after December 31, 1994. If used, this fountain solution

must be refrigerated to 55 °F and monitored by a temperature indicator mounted on the tray holding the fountain solution.

From Use of Specialty Inks, Clear Coating, and Ink and Haze Removal or Screen Reclamation:

MAXIMUM ALLOWABLE VOC CONTENT IN LB/GAL (G/L) OF INK (AS APPLIED), INK REMOVAL OR RECLAMATION PRODUCT

Specialty ink	Before 11/15/94	On or after 11/15/94
Acid/etch	4.7 (564)	3.3 (396)
Anoprint	6.2 (744)	3.1 (372)
Conductive	8.0 (960)	8.0 (960)
Electroluminescent	8.0 (960)	8.0 (960)
Clear coating product or substrate:		
Exterior illuminated signs	7.5 (900)	3.3 (396)
Other than exterior illuminated signs	6.7 (804)	3.3 (396)
Removal or reclamation product:		
Screen reclamation	N/A	1.0 (120)
Ink removal	N/A	3.3 (390)
Haze removal	N/A	4.0 (480)

Record Keeping Requirements

Records must be maintained for at least 3 years. These records must report the total amount of ink, coating, or other material containing VOC used each month, the VOC content of the ink, coating or other material used, and the total monthly amount of isopropyl alcohol used in plastic card manufacturing installations. The records must be available to MDE upon request.

A person who uses a control device to achieve compliance with this regulation must have performed a stack test by July 15, 1995 demonstrating compliance, and include the VOC concentrations at the inlet and outlet of the control device. A test report must be submitted to MDE within 60 days of the stack test.

EPA Evaluation: The controls on VOC content of inks in screen printing operations in Maryland's regulation reduce VOC emissions from these operations. In addition, testing requirements on the control device will further reduce emissions from this source category. Finally, Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from screen printing in Maryland, is fully approvable.

Control of VOC Emissions From Expandable Polystyrene Operations (COMAR 26.11.19.19)

General Provisions

This new regulation establishes standards for controlling VOC emissions from EPOs. This regulation establishes definitions for the following terms: "expandable polystyrene operation," "blowing agent," "preexpander," "recycled expanded polystyrene," and "reduced VOC content beads." This regulation is applicable to anyone operating an EPO where the total actual VOC emissions from all EPOs on the premises is 20 or more pounds/day and 10 or more tons/year.

General and Testing Requirements

An EPO operator subject to this regulation may not emit VOC unless one of the following control measures is used:

a. 10% or more recycled expanded polystyrene is used in the incoming feed at all times, and reduced VOC content beads are used;
b. A VOC collection and destruction system is installed to control emissions from the preexpander by 85% or more overall;
c. Duct emissions from the preexpander into the fire box of fuel-burning equipment.

Spills of polystyrene beads must be collected and any spilled material will be put in a closed container to prevent and suppress emissions.

If a control device is used, a stack test must be performed to measure the VOC concentration at the inlet and outlet of the device. The initial test must be performed no later than 90 days after start-up, and additional stack tests shall be performed at least once every 3 years beginning 3 years after the initial test. A report shall be submitted to MDE within 60 days of each stack test.

Record Keeping Requirements

Monthly records of the total weight of beads used and the VOC content of the beads must be maintained for at least 3 years. An EPO operator not subject to this regulation must maintain records of the daily and annual weight of the beads and the VOC content of these beads, and make these records available to MDE upon request.

EPA Evaluation: The controls on different components of EPOs in Maryland's regulation reduce VOC emissions from these operations. In addition, testing requirements on the control device will further reduce emissions from this source category. Finally, Maryland's recordkeeping and reporting provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from EPOs in Maryland, is fully approvable.

Control of VOC Emissions From Commercial Bakery Ovens (COMAR 26.11.19.21)

General Provisions

This revision establishes new standards for bakery operations. The new regulation applies to a person who owns or operates a bakery oven which was built after 1942 and has a total potential to emit of at least 25 tons of VOC per year. This regulation applies to the largest oven at such a facility. This regulation establishes definitions for the following terms: "commercial bakery oven," "fermentation time," "yeast percentage," and "Yt value."

General Requirements

After May 15, 1996, a person who owns or operates a bakery oven that exceeds the average production tonnage of finished bread, rolls or other yeast-raised products and Yt value listed below may not emit VOC unless the emissions from the oven are directly exhausted into a control device designed to reduce VOC emissions by 80% or more.

a. 10,000 tons with a Yt value greater than 11.0;
b. 15,000 tons with a Yt value between 8.1 and 11.0;
c. 22,500 tons with a Yt value less than 5.0 and 8.0;
d. 28,000 tons with a Yt value less than 5.0.

These control devices were required to have been installed by July 15, 1995.

Requirements for Innovative Control Methods

Innovative methods to control VOC emissions can be used on commercial bakery ovens by the owner or operator if the methods are to the satisfaction of MDE. Also, the owner or operator of the oven must submit to MDE a design of a conventional control system as well as an expeditious schedule to construct the system should the innovative control method fail to reach compliance.

Reporting and Testing Requirements

A person who is subject to this regulation and installs a control device must perform a stack test within 90 days after start-up of the control device, and submit reports to MDE within 60 days after completing the stack test.

EPA Evaluation: The requirement to use control devices as well as innovative control methods on commercial bakery ovens will result in significant VOC emission reductions. Furthermore, Maryland's recordkeeping, reporting, and testing provisions ensure that this regulation is enforceable. Therefore, this regulation is fully approvable.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective December 15, 1997 unless, by November 14, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 15, 1997.

Final Action

EPA is approving revisions to the Maryland SIP to establish VOC RACT requirements for bakeries, expandable polystyrene operations, yeast manufacturing, and screen printing operations. These regulations achieve fully enforceable VOC emission reductions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing VOC control requirements for yeast manufacturing, screen printing, expandable polystyrene operations, and bakeries, must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 26, 1997.

Marcia E. Mulkey,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(125) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(125) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Four letters dated July 12, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound (VOC) regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Regulations:

(*1*) Addition of new COMAR 26.11.19.17 Control of VOC Emissions from Yeast Manufacturing, adopted by the Secretary of the Environment on October 14, 1994 and effective on November 7, 1994, revisions adopted by the Secretary of the Environment on May 12, 1995, and effective on June 5, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.17.A Definitions, including definitions for the terms "fermentation batch," "first generation fermenter," "stock fermenter," "trade fermenter," and "yeast manufacturing installation."

(*ii*) Addition of new COMAR 26.11.19.17.B Applicability, Exemptions, and Compliance Date.

(*iii*) Addition of new COMAR 26.11.19.17.C Requirements for Yeast Manufacturing Installations.

(*iv*) Addition of new COMAR 26.11.19.17.D Determination of Compliance and Testing.

(*v*) Addition of new COMAR 26.11.19.17.E Reporting Requirements.

(*vi*) Amendment to COMAR 26.11.19.17.C(3), pertaining to limits for temperature and pH.

(*vii*) Amendment to COMAR 26.11.19.17.D(3), pertaining to stack test dates.

(*2*) Addition of new COMAR 26.11.19.18 Control of VOC Emissions from Screen Printing, adopted by the Secretary of the Environment on October 14, 1994 and effective on November 7, 1994, revisions adopted by the Secretary of the Environment on May 16, 1995 and effective on June 5, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.18.A, including definitions for the terms "acid/etch resist ink," "anoprint ink," "back-up coating," "clear coating," "conductive ink," "electroluminescent ink," "exterior illuminated sign," "haze removal," "ink removal," "maximum VOC content," "plastic card manufacturing installation," "plywood sign coating," "screen printing," "screen printing installation," "screen reclamation," "specialty inks."

(*ii*) Addition of new COMAR 26.11.19.18.B Applicability.

(*iii*) Addition of new COMAR 26.11.19.18.C General Requirements for Screen Printing.

(*iv*) Addition of new COMAR 26.11.19.18.D General Requirements for Plywood Sign Coating.

(*v*) Addition of new COMAR 26.11.19.18.E General Requirements for Plastic Card Manufacturing Installations.

(*vi*) Addition of new COMAR 26.11.19.18.F Control of VOC Emissions from the Use of Specialty Inks.

(*vii*) Addition of new COMAR 26.11.19.18.G Control of VOC Emissions from Clear Coating Operations.

(*viii*) Addition of new COMAR 26.11.19.18.H Control of VOC Emissions from Ink and Haze Removal and Screen Reclamation.

(*ix*) Addition of new COMAR 26.11.19.18.I.

(*x*) Addition of new COMAR 26.11.19.18.A(17), definition for the term "untreated sign paper."

(*xi*) Addition of new COMAR 26.11.19.18.C(2), replacing previous § C(2).

(*xii*) Addition of new COMAR 26.11.19.18.C(3) Use of Control Devices.

(*xiii*) Addition of new COMAR 26.11.19.18.E(2)(b), replacing previous § E(2)(b).

(*xiv*) Addition of new COMAR 26.11.19.18.I Record Keeping, replacing the previous § I.

(*3*) Addition of new COMAR 26.11.19.19 Control of VOC Emissions from Expandable Polystyrene Operations, adopted by the Secretary of the Environment on June 9, 1995, and effective on July 3, 1995, including the following:

(*i*) Addition of new COMAR 26.11.19.19.A Definitions.

(*ii*) Addition of new COMAR 26.11.19.19.B Terms Defined, including definitions for the terms "expandable polystyrene operation (EPO)," "blowing agent," "preexpander," "recycled expanded polystyrene," and "reduced VOC content beads."

(*iii*) Addition of new COMAR 26.11.19.19.C Applicability.

(*iv*) Addition of new COMAR 26.11.19.19.D General Requirements.

(*v*) Addition of new COMAR 26.11.19.19.E Testing Requirements.

(*vi*) Addition of new COMAR 26.11.19.19.F Record Keeping.

(*4*) Addition of new COMAR 26.11.19.21, Control of VOC Emissions from Commercial Bakery Ovens, adopted by the Secretary of the Environment on June 9, 1995, and effective on July 3, 1995.

(*i*) Addition of new COMAR 26.11.19.21.A Definitions.

(*ii*) Addition of new COMAR 26.11.19.21.B Terms Defined, including definitions for the terms "commercial bakery oven," "fermentation time," "yeast percentage," and "Yt value."

(*iii*) Addition of new COMAR 26.11.19.21.C Applicability and Exemptions.

(*iv*) Addition of new COMAR 26.11.19.21.D General Requirements.

(*v*) Addition of new COMAR 26.11.19.21.E Use of Innovative Control Methods.

(*vi*) Addition of new COMAR 26.11.19.21.F Reporting and Testing Requirements.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittals pertaining to COMAR 26.11.19.21, .17, .18, and .19.

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[FR Doc. 97–27260 Filed 10–14–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 51

RIN 0905–AD99

Substance Abuse and Mental Health Services Administration; Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness; Final Rule

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: On December 14, 1994, the Department of Health and Human Services (Department or HHS) published a Notice of Proposed Rulemaking to comply with the requirements of section 116 of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Act) (42 U.S.C. 10801 *et seq.*) which required that the Secretary promulgate regulations for the implementation of authorized activities of Protection and Advocacy (P&A) Systems to protect and advocate the rights of individuals with mental illness. The Department is issuing this final rule to implement Titles I and III of the Act.

These regulations will govern activities carried out by the P&A systems under the Act. The rule includes: definitions; basic requirements regarding determination of, eligibility for and use of allotments, grant administration, eligibility for protection and advocacy services, annual and financial status reports, and remedial actions; and requirements regarding program administration, priorities, the conduct of P&A activities, access of the P&As to residents, facilities and records and confidentiality.

DATES: Effective Date: This regulation is effective November 14, 1997 except for the information collection requirements in sections 51.8, 51.10, 51.23 and 51.25. These sections will become effective upon approval under the Paperwork Reduction Act. A notice of approval will appear in the **Federal Register**.

Comments: The Department is soliciting comments on one particular section as described under section 51.22(2) in the preamble relating to representation on the governing board. To ensure consideration, comments must be submitted on or before December 15, 1997 to: Director, Center for Mental Health Services, 5600 Fishers Lane, Room 15–105, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Schauer, Program Officer, Protection and Advocacy for Individuals with Mental Illness Program, Center for Mental Health Services, 5600 Fishers Lane, Room 15C–26, Rockville, Maryland 20857; telephone (301) 443–3667 (Voice), (301) 443–9006 (TTY). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print or computer disk) upon request at the Center for Mental Health Services (CMHS) Knowledge Exchange Network (KEN) at (800) 789–2647 or http://www.mentalhealth.org/.

SUPPLEMENTARY INFORMATION:

Program History

In 1975, HHS established a program pursuant to Part C of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) (42 U.S.C. 6041, *et seq.*), providing formula grant support to the Protection and Advocacy Systems designated by each State to protect and advocate the rights of persons with developmental disabilities. This program is presently administered by the Administration on Developmental Disabilities (ADD), in the Administration on Children and Families.

Since 1986 the Department has provided additional formula grant funds to the same State-designated P&A systems to protect and advocate the rights of individuals with mental illness pursuant to the Act, as amended. The 1988 Amendments changed all references to "mentally ill individuals" in the Act to read "individuals with mental illness," but did not change the name of the Act itself. For purposes of this regulation, the program is referred to as Protection and Advocacy for Individuals with Mental Illness (PAIMI). This program is administered by the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA).

These regulations will govern activities carried out by the P&A systems under the Act to protect and advocate the rights of individuals with mental illness. ADD has also amended its regulations governing P&A system operations under the DD Act to implement recent amendments. To the greatest extent possible the agencies have attempted to make both sets of regulations consistent.

Segments of the regulation published by ADD on September 30, 1996 (*See* 51 FR 51142 (September 30, 1996)) have been incorporated into the PAIMI regulation. The Department's goal is to ensure that all facets of the P&A system administered by the Department are subject to the same requirements. The Department hopes that in making the regulations as consistent as possible (given the minor differences between the statutes), the P&A will be able to carry out their responsibilities more effectively.

This approach is consistent with methods of legal analysis as well. A basic principle of statutory construction is that where statutes govern similar substantive areas, and affect similar classes of individuals, courts often attempt to construe such statutes *in pari materia* (meaning, on like subject matter) and might interpret certain provisions of the DD Act as applying to the Act as well. According to a leading treatise:

> "[The] guiding principle * * * [in determining whether statutes are *in pari materia*] is that if it is natural and reasonable to think that the understanding of members of the legislature or persons to be affected by a statute, be [sic] influenced by another statute, then a court called upon to construe the act in question should also allow its understanding to be similarly influenced." Sutherland Stat. Const. 51.03 (4th Ed.).

In the present case, Congress appears to have been more than "influenced" by the DD Act. The legislative history of the Act states:

> [T]he Committee chose to utilize the existing Protection and Advocacy Agencies established under the Developmental Disabilities Assistance and Bill of Rights Act as the eligible system. This will require them to extend their existing services in order to protect and advocate for mentally ill persons.

Sen. Rep. No. 99–109 at p. 7, *reprinted in* 1986 U.S. Code Cong. and Admin. News at 1361, 1367. In fact, the PAIMI Act explicitly cross-references the DD Act in defining the eligible system (42 U.S.C. 10802(2)). Accordingly, the Department has attempted to make both regulations as consistent as possible in places where the language of the Act supports the inclusion of a particular regulatory provision, and where it makes sense programmatically to have similar guidance issued to both parts of the system.

Description of the PAIMI Program

The Act authorizes formula grant allotments to be awarded to P&A systems designated by the Governor in each State to protect the rights of and advocate for individuals with mental illness. The allotments are to be used to pursue administrative, legal, and other appropriate remedies to redress complaints of abuse, neglect, and rights violations and to protect and advocate the rights of individuals with mental illness through activities to ensure the enforcement of the Constitution, and Federal and State statutes.

The P&As have the authority to: (1) protect and advocate the rights for persons with mental illness, and (2) investigate reports of abuse and neglect in facilities that care for or treat individuals with mental illness. P&As may also address issues which arise during transportation to or admission or 90 days after discharge from such facilities. Individuals eligible for services are those who have a significant mental illness or emotional impairment and who live in residential facilities. These facilities, which may be public or private, include hospitals, nursing homes, semi-independent or supervised community facilities, homeless shelters, jails and prisons. P&As have special legal authority to access public and private facilities, residents and clients, and records for the purpose of conducting independent investigations of incidents of abuse and neglect.

Each P&A has a governing authority or board of directors with members who broadly represent and are knowledgeable about the needs of its clients. Also, they each have an Advisory Council to advise the P&A system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness. Sixty percent of the council is comprised of recipients or former recipients of mental health services or families of such persons.

Notice of Proposed Rulemaking

The Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 14, 1994 (59 FR 64367–64378). Interested persons were given 60 days in which to send written comments regarding the proposed rules. Comments were received from 54 organizations and individuals. Most respondents were from P&A programs; others included individuals, State chapters of the Alliance for the Mentally Ill, and State/county mental health providers. Comments were received from the following national organizations: the National Alliance for the Mentally Ill, the National Association of State Mental Health Program Directors, the Federation of Families for Children's Mental Health, and the National Association of Protection and Advocacy Systems (NAPAS).

All written comments were analyzed and form the basis for changes which the Department has made in this final rule.

Summary of Public Comments and the Department Response

In general, most respondents felt that the proposed regulations provided valuable guidance and would be beneficial in eliminating needless controversy. The majority of respondents want one source of comprehensive guidance applicable to both the PAIMI and the Protection and Advocacy for Persons with Developmental Disabilities (PADD) programs. Most P&A respondents concurred with the comments submitted by NAPAS requesting greater specificity regarding the authority of the P&A systems to gain access to records, to facilities and the residents to conduct full investigations, e.g., to access records as the result of observations during monitoring activities; to conduct investigations and review records of clients routinely subjected to seclusion and restraint; to access jails and prisons; and to expand system access in Federal facilities. P&As and others also sought clarification and conformity regarding the relationship of the Act to other P&A authorizing legislation and relevant Federal statutes. Some respondents had comments only on certain sections or addressed more general concerns such as revisions in eligibility. To the extent possible, the Department has revised the regulations to meet these concerns.

The Department has also made a number of changes in language for clarity and to accommodate adopted recommendations. Where appropriate, the phrases "resident/patient" and "facility/hospital" have been reduced to "resident" and to "facility"; "patient" and "hospital" are included within the meaning of these terms.

All comments received were carefully considered. The discussion which follows includes a summary of all comments, the Department's responses to those comments, and a description of any changes that have been made in the final rule as a result of the comments. Substantive changes are identified under the appropriate sections, with the exception of some general comments discussed below.

Also, the Department worked with ADD to ensure that as permitted by the Act, the Department's requirements are identical or consistent with ADD requirements that implement the provisions of the DD Act.

Regulations Applicable to Protection and Advocacy for Individuals With Mental Illness

Several commenters suggested it would be useful to incorporate all of the statutory definitions into the regulations arguing that the regulations should provide more than just citations to relevant sections of the Act and that those sections should be restated or paraphrased in nontechnical language. The Department has incorporated much of the relevant statutory language into these regulations. The sections not incorporated were considered not relevant to providing clarification.

NAPAS and others recommended that the regulations be in accord with regulations promulgated under the DD Act to govern the PADD programs. The Department has coordinated development of these regulations with ADD to ensure conformity with their regulations and with the DD Act to the extent possible given the minor differences between the statutes and has appended language from relevant portions of the DD Act, specifically those that clarify the mandated activities of the system.

Two respondents asked that the definition of "individuals with mental illness" be expanded to parallel the broad protections offered by the Americans with Disabilities Act (ADA). The Department responds that the ADA definition is much broader and more complex than the definition provided within the Act; therefore, the Department believes it does not have the authority to expand the definition to this extent through regulation.

One commenter felt that the PAIMI program should expand eligibility for services to include children and youth receiving mental health services in nonresidential, community settings. The Department is not able, by regulation, to expand the legal mandate of the Act to include any populations, including children in nonresidential settings. However, the Department notes that children with serious emotional disorders are also eligible for services under the PADD program which has a much broader mandate and does include such settings.

Three commenters asked that the regulations contain a list of all P&As (name, address, phone) and spell out their authority. The Department responds that these regulations do spell out the authority of the P&As. A listing of all P&A systems is available from the CMHS Protection and Advocacy for Individuals with Mental Illness Program. The address and phone number of the program are given earlier in the preamble.

One commenter urged CMHS to review any annual evaluations performed on the P&As, particularly taking into account the views of primary consumers and families, and to implement appropriate corrective actions based on the findings. The Department responds that, in addition to reviewing the PAIMI program annual reports, CMHS conducts on-site monitoring and technical assistance reviews. At these visits, CMHS officials solicit commentary, both public and private. To further address concerns or criticisms, the regulations require that each P&A system establish a grievance procedure to assure that individuals with mental illness have full access to services of the system and, for individuals who have received or are receiving mental health services and family members of such individuals, to assure that the eligible system is operating in compliance with the provisions of the Act. (See § 51.25)

One commenter asked that the phrase "mental health" be deleted in all references to the system's advisory council. Inasmuch, as this phrase is not contained in the Act and the deletion of the phrase does not substantively change the regulation, the Department agrees to make this change throughout.

Section 51.1 Scope

One respondent felt that the purpose of the Act should be stated in 51.1. The Department responds that this has already been accomplished under the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections.

Several commenters recommended that this section apply to care or treatment facilities and other persons or authorities with whom the system may be interacting or impacting, and not just to the P&A systems. The Department responds that these regulations apply to the operation of P&A systems. Although the regulations may have an indirect impact on private and public care or treatment facilities, through State licensing and regulatory authorities, only the P&A systems are subject to the regulations.

Section 51.2 Definitions

Several commenters recommended that the definition of *abuse* be included in the regulation and that it be expanded to include "verbal, nonverbal, mental and emotional harassment and mental or psychological injury," The Department notes that in discussing abuse related to child abuse, the courts and Congress have included verbal, nonverbal, mental and emotional harassment and mental and psychological injury. (*See e.g.* 18 U.S.C. 3509.) This was done in recognition of the fact that such abuse has as much, and in many cases, even more lasting effect on individuals than physical abuse. The Department can do no less for individuals who are mentally ill, and therefore it is changing the regulation to add the definition of abuse as in the statute and to amend that definition to include "verbal, non-verbal, mental and emotional harassment and psychological harm."

Also, several commenters requested that the term "violation of rights" be added whenever the terms "abuse" and "neglect" are mentioned in the regulation. Some respondents contended that complaints regarding rights violations such as unlawful restraint, inappropriate medications, and denial of communication rights, freedom to practice religion, access to the electoral process, or freedom of association, should be included as specific examples. The Department believes it necessary to clarify the distinction between "abuse" and "neglect" and "violation of rights" because the statute draws a distinction between them granting to the systems the power to investigate "abuse" and "neglect" and to protect and advocate on behalf of the rights of individuals with mental illness. The Department believes that when an individual's rights as defined in the Bill of Rights for Persons with Mental Illness established by the President's Commission on Mental Health (Title II of the Act) are repeatedly and/or egregiously violated, this constitutes abuse. While the Bill of Rights provides useful guidance, it should not be considered full or limiting as to types of rights violations. It is not necessarily true, however, that every violation of a person's rights is in and of itself "abuse" as defined in the Act. The Department declines the opportunity, however, of defining the threshold at which a violation of an individual's rights constitutes abuse, leaving that decision to the systems which will have intimate knowledge of the situation based on its monitoring of facilities and its discussion with individuals with mental illness.

A large number of commenters felt that the definition of "Care and Treatment" should be broadened. They argued that the definition is too narrow to include all facilities providing 24-hour care, and that the current definition is more oriented to "treatment" than to care. Most asked to eliminate the term "overnight care" because it is too restrictive. The Department believes that the requirement that the facility provided overnight care meets the intent of the Act which is to restrict its eligibility to persons who are/were residents of facilities or who are/were within 90 days of discharge from such facilities. Overnight care serves only as a minimum requirement; covered facilities may provide up to 24-hour care.

Many others argued that the definition of *care* should include elements of traditional support services such as case management; accompanying patients to outpatient centers; medical appointments or day treatment centers; vocational training services; transportation; education programs; employment programs; and provision of food, water and clothing. The Department responds that, to the extent that any of the above-suggested inclusions are provided to individuals with mental illness in eligible care or treatment facilities, they should be considered as incorporated within the meaning of "services to prevent, identify, reduce or stabilize mental illness or emotional impairment," which is used by the National Institute of Mental Health and the CMHS based on the survey format *Mental Health Service System Reports*, "Data Standards For Mental Health Decision Support Systems," which was developed through consensus in the mental health field.

Several commenters suggested that the definition of "Complaint" should include both written and informal oral communications such as telephone calls (including anonymous calls) that, in the judgment of the system, state credible allegations of abuse, neglect or other violation of rights. Further, the *Alabama Disabilities Advocacy Program* v. *J.S. Tarwater Development Center, 894 F. Supp 424* (M.D. Ala. 1995) ruled that an anonymous telephone message alleging abuse at a facility constituted a valid "complaint" justifying access to records under the records access provisions of the Act. The court found that to require the complainants to divulge their names or reduce allegations to writing and sworn testimony or make charges of a particular nature would dilute the Act and too narrowly construe the complaint requirement. The Department has included written and oral communications in the definition. Also, the word "report" was added to have the same meaning as complaint. A complaint or report may be received from any source or individual.

The Act states that a P&A system has the authority to investigate incidents of abuse and neglect that are either reported to the system or where there is probable cause to believe that the incidents have taken place. The Department believes that media accounts and newspaper articles can be viewed as the equivalent of a complaint when they provide details about a specific incident of abuse or neglect. While such reports are not specifically directed at the P&A system, they are published with the expectation that public officials responsible for conditions will act to stop abuse. P&A systems have that role. This does not preclude a P&A system from acting on behalf of a unnamed client or on behalf of a class of people. (See § 51.6(f).)

A definition of *Designated Official* has been added for clarity, to conform with ADD regulatory definitions. This individual is accountable for the proper use of funds and conduct of the P&A system.

Many commenters asked that a definition of *Facility* be included and that it specifically include all types of community living arrangements. The Department agrees that a definition of "Facility" should be added, but does not agree that the definition include all types of community living arrangements. The intent of the Act was to focus only upon facilities that provide "care or treatment," i.e., those facilities that provide overnight care accompanied by services to prevent, identify, reduce or stabilize mental illness or emotional impairment, including supportive services, even if only "as needed" or, under a contractual arrangement, up to 24-hour care.

The Department has added a definition of "Full Investigation" to clarify what an investigation entails and to conform to the PADD regulation. We note that while an investigation involves access to facilities, PAIMI systems have authority in their monitoring role to access facilities

regardless of whether or not a complaint has been registered or probable cause exits.

Several commenters asked that the definition of "Individual with Mental Illness" be included. The Department agrees that the definition would add clarity to the regulations on a substantive issue. It has added the definition provided in the Act, clarified as addressed below regarding jails, prisons and detention facilities.

Commenters requested that the regulations clarify whether P&As may serve prisoners with mental illness who are maintained within the general prison or jail population (not just the mental health units of such facilities) and who may receive mental health services from time to time. The Department concurs that a system may assist prisoners or detainees with mental illness who are maintained within the general prison or jail population and who may receive mental health services from time to time as well as those who are maintained in special mental health units. This language has been incorporated into the definition of "Individual with Mental Illness."

The Department would like to clarify some confusion in the statute with regard to jails and prisons. In section 102(3) of the Act jails and prisons are clearly listed as facilities. Yet section 102(4) in the definition of "individual with mental illness," indicates that such a person includes an individual who has a mental illness and "who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from a conviction for a criminal offense." Is the statute suggesting that if a person with a mental illness is convicted of a criminal offense and sentenced to a State or Federal jail or prison that provides care or treatment, that person is covered by the Act, but one confined to a municipal detention center that provides care or treatment is not covered? To clarify this ambiguity, the Department is expanding the definition of "individuals with mental illness" to include persons in a detention facility, jail or prison which provides overnight care or treatment, whether they have been convicted of a criminal offense or not, and whether the facility is municipal, State or Federal.

Others requested guidance on which, if any, juvenile detention facilities are included and whether juveniles with a mental illness who are serving sentences for conviction for a crime, are excluded if they are housed in a juvenile "detention facility." The Department responds that juveniles with a mental illness who are in an overnight municipal detention facility, jail or prison which provides care or treatment are covered whether they have been convicted of a criminal offense or not.

Several respondents addressed the definition of "Legal Guardian, Conservator and Legal Representative." One suggested that the phrase "or agency empowered under State law to appoint and review such officers" was confusing and should be eliminated. Others asked that, to avoid conflicts of interest, a legal guardian should not include a family member with whom the mentally ill person resides who is also the payee and responsible for conducting the business of the person. The Department responds that it does not intend to supersede State laws regarding which agency may appoint and review guardianships nor will it mandate for States whom they shall name as guardian.

Some felt that the restriction on officials responsible for the provision of health and mental health services in the definition of *Legal Guardain* did not go far enough because those same officials often have authority to appoint others as conservators. The Department agrees in this instance, and will change the definition to include the phrase "or their designees." The Department reiterates that a legal guardian for the purposes of this regulation is an individual who is appointed by the appropriate State powers to be a legal guardian for the individual and who has the authority to consent to health/mental health care or treatment for the individual with mental illness.

Other comments were in support of not including: guardians *ad litem* appointed for limited and specific purposes other than health/mental health care and treatment; representative payees; persons appointed during probate proceedings as administrator or executor of the estate; and lawyers representing persons in divorce proceedings, tax hearings or in criminal matters unrelated to mental health status. The Department agrees that all of the above are restricted within the current definition.

One respondent asked whether the definition included parents of minor children. The Department responds that natural or adoptive parents are legal guardians unless the State has appointed another legal guardian under applicable State law.

Several commenters suggested that inappropriate confinement or placement in a facility should be included under "Neglect." The Department understands the comment to be about confinement, and it believes that treatment should be based on principles of accepted practices of quality mental health care. If a person with a mental illness is confined or placed in a facility with disregard to the principles of accepted practice, such confinement could be abuse or neglect.

One respondent called for certain rights of consumers to be included such as the provision of palatable food, adequate bathroom breaks, access to medication, allowance for arrangements to be made for ongoing care of pets, etc. The Department responds that the Act does not define "rights" but rather provides in Title II, a Bill of Rights ("Restatement of Bill of Rights for Mental Health Patients") and recommends that States, in establishing laws that protect and serve individuals with mental illness, take into account these recommendations.

A large number of commenters requested that a discussion of probable cause be moved to the definition section. The Department agrees and has done so. Others suggested that the phrase "or may be" should be inserted in the probable cause definition to amplify "has been subject to abuse or neglect" stating that this would be consistent with Congressional intent that the P&A systems ensure the protection of individuals with mental illness. The Department agrees and has included the phrase "or may be at significant risk of being subject to abuse or neglect" in the new definition.

In addition, a large number of commenters supported the proposal that *probable casue* be defined as a belief based solely on the independent judgment of the system (advocate, attorney, or other person authorized to act on behalf of the system). Commenters argued further that it be made clear that the system is not required to disclose the basis of its probable cause finding to a facility or to any other third party; their determination should not be subject to review by a facility, authority, or Court or some other third party. The Department agrees that the determination of whether sufficient probable cause exists shall be based on the independent judgment of the P&A system (that is, the judgment of the advocate, attorney, or other person authorized to act on behalf of the P&A system); however, it is outside of the Department's purview to give sole discretion to the P&A system in this matter. The Department does not have the authority, by regulation, to insulate a P&A system from having to articulate the basis of its probable cause determination when requested.

In several places, the statute balances the need to maintain the confidentiality of individual records with the need to protect an individual from abuse and neglect. In general, the statute requires consent before any records are released to the P&A. However, in certain circumstances where the individual does not have a guardian, or where the guardian is unavailable or refuses to act), the P&A may obtain records without consent of the responsible party, if there is probable cause to believe that the individual has been or may be subject to abuse and neglect. In these situations, the facilities may be required to violate State law in order to provide the P&A with the records to which the statute and these regulations give them access. In the Department's view this is a very serious matter that requires a careful balancing of all of the interests represented here. Certainly, therefore, it is reasonable to expect that the system may be required to demonstrate that there was an adequate basis to justify the release of confidential records without consent.

However, the Department understands the difficulty the P&A systems confront in these situations. The P&A systems often receive complaints from individuals who fear reprisal if they come forward. If the P&A systems are required to disclose the names or other identifying information of those individuals who contacted the P&A with complaints about abuse and neglect, it is likely that far fewer people will come forward. This will severely impair the ability of the P&A systems to carry out statutorily mandated functions. Accordingly, the Department has added language to the regulation in section 51.45(a)(1)(iii) which makes clear that the P&A system must keep confidential information regarding individuals who report incidents of abuse or neglect, or who furnish information that forms the basis for a determination of probable cause.

One commenter believed that "reasonable suspicion" should be used instead of "probable cause" arguing that it would provide a lower threshold for inquiry. The term "probable cause" is used in the Act.

A comment was made that the definition of "System" should be clarified so that when the regulations say "the system shall have the authority and access to * * * " it is readily understood as meaning all authorized employees of that system. This suggestion was countered by a number of State mental health facility operators who said that only attorneys should have access to patients and not other PAIMI program advocates. The Department responds that the Act grants access to the PAIMI program. Thus anyone acting on behalf of the system is to be granted access to all areas of the facility which are used by residents or accessible to residents.

Subart A—Basic Requirements

Section 51.3 Formula for Determining Allotments

One commenter recommended that the formula for determining the amount of allotments be revised. The Department responds that it cannot change the current language of the law by regulation.

Section 51.5 Eligibility for Allotments

A commenter under NPRM section 51.27 felt that the system should be obligated to budget for training. The Department agrees that the system should budget for training, but does not wish to regulate this matter. The Department does require an annual report that includes a PAIMI budget.

One respondent asked for clarification regarding who is required to submit the assurances. The commenter noted that the system is authorized to provide the assurances directly to CMHS but that the "supplement and not supplant" assurance be signed by the Governor before being submitted by the system. It was recommended that paragraph (d) be deleted, and that the nonsupplanting assurance be included with the assurances described in paragraph (c). Another commenter suggested that there be one set of assurances for an entire P&A system, rather than viewing PAIMI as an independent program which is simply housed with PADD programs. The Department wishes to clarify that the *system* shall submit and sign *all* assurances *but* the "supplement and not supplant" assurance must bear a gubernatorial signature. This assurance may be a copy of an earlier similar assurance submitted to ADD as long as it can reasonably be construed as covering the PAIMI program as well. Any future "supplement and not supplant" assurances shall explicitly refer to the PAIMI program.

Section 51.6 Use of allotments

Almost half of the commenters urged that the regulations clarify whether or not a P&A system has standing to take legal action in its own name. It was explained that mechanisms to protect individual confidentiality are not foolproof, and that facility residents too often fear retaliation from their care providers as a result of their participation in a lawsuit concerning institutional conditions or other matters. Another reason for enabling P&A systems to have independent standing is that, unfortunately, the credibility of an individual with a diagnosis of mental illness is all too often automatically questioned. In addition, it is reported that very often persons with mental illness who wish to play a direct role in a lawsuit are unable to do so because their legally authorized representative refuses to consent. These respondents claim that it is extremely time consuming and costly to have to litigate the question of standing before being able to proceed to the merits of a case. They maintain that potential defendants might settle matters more quickly, prior to the initiation of legal action, if they knew that the P&A system itself might bring the suit and not the resident.

The Department agrees in part and disagrees in part. The concept of "standing" derives from Article III of the Constitution. Article III limits the "judicial power" of the United States to the resolution of "cases" and "controversies." In various cases addressing the issue of standing, the Supreme Court has held that "at an irreducible minimum. Article III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision'." *See Valley Forge Christian College* v. *Americans United for Separation of Church and State*. 454 U.S. 464 (1982). Thus, the issue of standing is a basic jurisdictional issue that has been left to the judiciary to determine based on the facts and circumstances of a particular case.

In promulgating regulations, the Secretary must act within the bounds of her authority and develop rules that are consistent with the language of the statute. The Act doe not contain any provision that would provide the Secretary with sufficient authority to, by regulation, grant a right of standing that is not explicitly noted in the statute. The Department, however, points out that the legislative history of the 1994 DD Act Amendments (Sen. Rep. No. 103–120, 103rd Cong., 2d sess., 39–40, reprinted in 1994 U.S. Code Cong. and Admins. News at 164, 202–203), strongly supports the view that, without showing injury to itself, a P&A system does have standing to bring suit on behalf of persons with disabilities. Although Congress declined to amend the DD Act to insert a right of standing, the report stated that "the current statute is clear that P&A systems have

standing to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities within the state."

Further, the following courts have affirmed the P&A systems independent standing: *Alabama Disabilities Advocacy Program* v. *J.S. Tarwater Development Center*, No. 95–T–385–N (M.D. Ala. July 6, 1996); *Rubenstein* v. *Benedictine Hospital*, 790 F. Supp. 396 (N.D. N.Y. 1992); *Goldstien* v. *Coughlin*, 83 F.R.D 613 (W.D.N.Y. 1979); *Hershberger* v. *Missouri Protection and Advocacy Services, Inc.*, No. 48169 (MO Ct. of Appeals, August 2, 1994).

In light of the report language and the case law cited above, while the Department cannot offer standing in regulations, it can and does permit systems to use funds for the costs incurred in bringing lawsuits in its own right and has added this provision at 51.6(f).

Section 51.7 Eligibility for Protection and Advocacy Services

Several commenters requested that the definition of "Individual with Mental Illness" should be included in this section as well as in the definition section. The Department has incorporated the definition in the Definition section of this regulation (section 51.2) and feels that this is sufficient.

Section 51.7(a)(2)

Department staff recommended that all of the requirements for eligibility for P&A services be incorporated into the regulations. Paragraph (2) regarding the 90-day post discharge requirement as stated in section 105(a) of the Act has been added to address eligibility requirements.

It was requested that the regulations clarify whether PAIMI programs may address *any* rights violations that occur within 90-days of discharge from a facility, or whether such violations must be related to the care of treatment provided by the discharging facility. The Department responds that the Act itself does not restrict the nature of advocacy services which may be provided during the 90-day post-discharge period, but the legislative history shows that the general intent of Congress was that the 90-day post-discharge period was primarily to enable redress against facilities which discharge persons without providing appropriate community follow-up and housing services.

Several commenters supported the section of the regulation that allows P&A systems to address issues which occurred within the 90-day post-discharge period, even though they may be brought to their attention after expiration of the 90-day period. The Department agrees that neither the Act nor the final regulations place a time limitation on the authority of the P&A system to address complaints of abuse or neglect that occurred during the 90-day post-discharge period.

Section 51.7(a)(3)

One commenter recommended that this section be modified to enable requests for representation in Federal and other facilities by a family member, friend or other concerned party acting on behalf of an individual with mental illness who, by reason of incapacity or otherwise, is unable to request services him/herself. It was further recommended that P&As be obligated to initiate a preliminary investigation upon receipt of a complaint from a family member. While the Department agrees that family members and, in fact, anyone, should be able to initiate a complaint or report to the PAIMI program, the intent of this regulation is to meet the special limitations of P&A authority in Federal facilities and to distinguish between persons who may make a report and those who are legally authorized to actually request or consent to representation by the P&A. Only the individual with mental illness, or, for individuals lacking capacity to consent, a legally authorized representative—as defined in the regulation—can request or consent to representation by the P&A.

Section 51.7(b)

One commenter asked that the word "procedures" in this section be changed to read "acts or omissions" which have subjected the individual to abuse or neglect or otherwise violated his/her rights. It was argued that in one State there are literally hundreds of individuals who are under civil commitment orders and being held in State facilities solely by reason of the failure of the public mental health system to provide them with adequate discharge planning. The commenter found that the most effective strategy is to challenge the civil commitment order and/or to file a petition for discharge through the probate court. The regulation would suggest that the system only has authority to undertake these actions when there is a procedural, as opposed to a substantive, violation. The Department agrees and will change the wording of the regulation as suggested.

Section 51.8 Annual Reports

Subparagraphs (2), (3) and (4) of section 51.8 of the NPRM were removed to enable the Department more flexibility regarding report requirements. The Annual Reports will be implemented under the legislative authority pursuant to section 105(a)(7) of the Act (U.S.C. 10805(a)(7), not regulatory.

Section 51.9 Financial Reports

This section was deleted because the Financial Status Report requirement is included under section 51.4 Grants Administration Requirements, 45 CFR Part 74–Administration of Grants.

Section 51.10 Remedial Actions

In response to Department staff concerns about the lack of clear requirements about review and monitoring activities of grantees, additional language was added to strengthen requirements regarding Department requests for information and documentation, corrective action plans and ongoing implementation status reports.

Subpart B—Program Administration and Priorities

Section 51.21 Contracts for Program Operations

Section 51.21(b)

A few respondents recommended that organizations with which the PAIMI program contracts should be only those with proven knowledge about mental illness and the service system. The Department agrees that PAIMI program contractors, in their capacity to perform protection and advocacy activities, should demonstrate experience in working with individuals with mental illness and has added this language to the regulation.

Section 51.21(b)(3)(viii)

To conform with requirements which have been added at 51.27(c) that P&As provide training for staff to conduct "full investigations," a similar provision has been inserted here to ensure that PAIMI service provider contractors must also provide such training.

Section 51.22 Governing Authority

Section 51.22(a)

Department staff suggested that the requirement in the Act regarding the establishment of program priorities and policies jointly with the advisory council be inserted here to strengthen the provision. It has been added.

Sections 51.22(b) (1) and (2)

The Department notes that the Act currently requires only that the governing board be composed of members "who broadly represent or are knowledgeable about the needs of the individuals served by the system" whereas the DD Act states that the board "shall include individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or family members, guardians, advocates, or authorized representatives of such individuals." The Act requires that only *one* individual on the governing board, specifically the Chair of the PAIMI Advisory Council, be an individual who has received or is receiving mental health services or a family member of such an individual.

Several respondents suggested that this regulation should be revised to read: "an individual or family member who serves on a system's governing board in a representative capacity must have direct experience with the needs of clients served by the system." Another commenter recommended that at least 25 percent of the governing board's membership should be composed of persons nominated by consumer and family member organizations, who have demonstrated sustained leadership and commitment to achieving improvements in the system of care, that "no individual may serve more than four successive years as a member of the governing authority," and that terms should be staggered. A small number of commenters wanted to add a requirement for the governing board to annually evaluate the performance of the P&A system director and the PAIMI director adding that as part of their evaluation, comments on performance and leadership from consumer and family member organizations within the State shall be solicited and the results of such evaluation be used as a basis for the establishment of any subsequent year's performance standards. The Department responds that it considers each of these suggestions as reasonable and good practice but does not wish to enforce *all* such specific policies through regulation.

The Department has sufficient evidence concerning governing board memberships to support the need to enhance the composition of P&A governing boards to balance the current inequitable representation of PAIMI client constituencies. Therefore, the Department is *proposing* to add language to the regulations requiring that the membership of the governing board shall include at least a 25 percent representation of individuals with mental illness and of family members of individuals with mental illness. *The Department solicits further comment on this issue.* Depending on the comments received, the Department may revise the section. To ensure consideration, comments must be submitted to the address given earlier in the preamble within 60 days after publication of this final rule.

The Department agrees with the need for rotational and limited number of board member terms and for board evaluation of the P&A system director; therefore, it has added such language. The term of office of a board member shall be for 4 years and the member may not be reappointed to the board for a 2-year period. Rotational and a limited number of terms of board members encourage recruitment of persons bringing new skills and ideas to the board, prevent bias and burnout, and permit more consumers to participate in governing the system. Annual evaluation of the P&A director by the board fosters performance accountability.

Section 105(c) of the Act states that the governing authority shall "be responsible for the planning, design, implementation, and functioning of the system." The Department does encourage the P&A systems to develop operating policies that incorporate requirements that further encourage board membership policies to identify relevant criteria for member selection and qualifications, and for an annual review of the Executive Director's performance that takes into account the appraisals of relevant constituency groups.

Section 51.23 Advisory Council

Section 51.23(a)

The Department recommended that the authority and responsibility of the Advisory Councils be strengthened to ensure the ability to provide advice and recommendations to the P&A without being unduly influenced by the P&A. This independent critical eye from individuals served by the P&A can only improve its services. The Department inserted language requiring that the council provide "independent" advice on program policies and priorities.

Section 51.23(b)

One commenter suggested that individuals who have received or are receiving mental health services should appear first in the listing of the council's composition. The Department responds that for purposes of clarity the language should be consistent with the Act.

Several commenters wished to add a requirement in this section that advisory council members who are "individuals from the public who are knowledgeable about mental illness" must "have demonstrated a substantial commitment to improving mental health services" as a conditions of their membership. The Department agrees that such criteria is useful and inserted the language after "mental illness" in this section.

Section 51.23(b)(1)

A small number of commenters were concerned that, to ensure expertise about how the system is presently serving children and youth, at least one family member on the council should be the primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services. To ensure the inclusion of knowledge and experience regarding children with serious emotional disturbances and the mental health services they need, such language was added to this section.

Section 51.23(b)(3)

Department staff recommended that an annual minimum number of advisory council meetings be required in order to allow the council sufficient time to conduct its business and provide advice on program policies and priorities. The Department has added language requiring that councils meet, at a minimum, no less than three times a year. This in no way should be considered limiting.

In response to the recommendation that governing board members be limited in the number of terms they serve, the Department believes this would also be useful for the advisory council. Rotational and a limited number of terms of council members would encourage recruitment of persons bringing new skills and ideas to the council, prevent bias and burnout, and permit more consumers to participate in advising the P&A. The Department agrees with the need for rotational and limited number of board member terms and for board evaluation of the P&A system director; therefore, it has added such language. The term of office of a board member shall be for 4 years and the member may not be reappointed to the board for a 2-year period.

Section 51.23(c)

There was a recommendation to require that status information and analysis be provided to advisory council members to address each of the following:

(1) Individual advocacy services, including case selection criteria, the

availability of monetary resources, and special problems and cultural barriers faced by individuals with mental illness who are multiply handicapped or who are members of racial or ethnic minorities in obtaining protection of their rights;

(2) Systemic factors, including

(a) the adequacy and coordination of information sharing with like organizations within the State and nationally; and

(b) the adequacy of State psychiatric consumer services, rights laws and their enforcement with regard to:

(i) managed care, HMOs, and similar community organization protections, and

(ii) State institutions or State-operated facilities.

The Department does not wish to require numerous specific items to be provided which impose additional burdens and are not contained in the Act. However, the Department believes that the P&A system should provide as much information as necessary to enable the council to perform their responsibilities efficiently and responsibly. If information such as identified above is readily available, then it should be provided. Also, nothing should prohibit council members who desire such detailed information from seeking it from the system or from national technical assistance resources. In line with the Department's initiative to implement program performance outcome measures, language has been added under 51.23(c) to require that program performance outcome evaluation results be provided to the advisory council.

Section 51.23(d)

It was recommended that reimbursement for the cost of day care for dependents of individuals with mental illness be extended to include minor children and youth without disabilities. The Department disagrees; the costs of day care can be reimbursed only for persons with children who have a serious emotional disturbance, because this enables participation by family members of such individuals in keeping with the intent of the Act. The term "child care" was added and the description for equivalent expenses was expanded to further clarify the requirement.

Section 51.24 Program Priorities

Section 51.24(a)

A modification was recommended whereby the advisory council would approve the PAIMI priorities and policies before being submitted to the governing authority for approval. The Department believes that section 105(c)(2) of the Act is very clear in saying that the governing authority is solely responsible for planning, design, implementation, and functioning of the system. It is also very clear that annual priorities of the system are to be developed jointly with the advisory council.

The Department believes that to ensure consideration of systemic and legislative needs and issues, P&A systems should include priorities for systemic and legislative activities in developing annual priorities and has added this requirement.

Section 51.24(b)

Another commenter asked that the requirement be expanded so that public commentary on a system's annual priorities include comments regarding the general operations of a P&A system. The Department responds that the requirement to obtain public commentary already includes commentary on general operations, i.e., activities of the P&A system, as a part of establishing the system's annual priorities.

Section 51.25 Greivance procedure

The Department modified this section to address the confusion in the use of two terms—"grievances" and "complaints." To conform with the Act, only the term "grievance" has been used.

Section 51.25(a)(2)

One commenter noted that the second class of complaint, which is to "assure that the eligible P&A system is operating in compliance with the Act" is confusing and needs clarification. The Department responds that this section requires the P&A system to address grievances about how it is operating and to ensure that its activities and policies meet the intent of the Act. Failure to conduct activities in accordance with the requirements of the law is a serious breach of public trust and this is a different issue than ensuring that clients or prospective clients have access to the services provided by the system.

A second commenter expressed reservations about the license provided by this regulation to stimulate "generic" grievances against a P&A system based on unfounded assertions that the P&A is not in compliance. The Department responds that inasmuch as P&As are funded with public monies, they must adhere to the statutory mandate and provide access to their constituencies and respond to questions or complaints concerning their activities. The Department believes that a P&A which is operating in accordance with these regulations will have no difficulty responding to generic grievances with respect to compliance with the Act.

Section 51.25(b)(1)

One respondent did not support a "final review" of grievances by the governing board. The Department strongly believes that the governing board should have final responsibility for resolving contentious grievances. Department staff recommended that language be added to require that in cases where the governing authority is the director of the P&A, a final review be done by a separate entity. It was explained that in State P&A agencies where the governing authority is a single person and may be the person to whom a grievance is directed, it is not appropriate for that person to review and make a final determination on the grievance. The Department agrees and has added language requiring that P&As provide for final review on appeal of grievance decisions to an independent board or a superior in cases when the governing authority is a single person.

Section 51.25(b)(2)

One respondent argued that since advisory councils do not have authority concerning policy and personnel issues, complaints received should be made to the governing authority, which is involved in policy and personnel issues. The Department wants to clarify that advisory councils are not involved in the grievance process. This requirement merely states that the system should report annually to the council summarizing the general nature of the complaints or grievances against the PAIMI program. The Department believes that such information is extremely relevant in developing the following year's priorities and objectives. However, no identifying information concerning clients or staff and no personal identifiers concerning the grievants should be included in any such reports.

One commenter asked that this requirement include: "a trend analysis of the sources, issues, timeframes and other pertinent factors relating to grievances received." The Department does not wish to develop specific format and content requirements for these reports; the governing authority and Advisory Council should identify this for themselves.

Section 51.25(b)(4)

Responsive to concerns by Department staff that prospective clients, clients or persons denied representation receive prompt notification about the grievance policy and the progress being made on their grievance, the Department has added a requirement that the P&A system establish as part of its grievance procedures timetables to ensure prompt notification.

Section 51.26 Conflicts of Interest

A small number of commenters suggested rewording the section as follows: "further, conflicts of interest should consider the extent to which an individual's personal or political allegiances may inhibit, or appear to inhibit, the performance of a position or its attendant duties in the best interests of persons with a mental illness." While the Department appreciates the general concern being raised, it would not be useful for a Federal regulation to address such a consideration. The P&A systems may develop personnel policies which consider the extent to which an individual's experience contributes to the promotion and advocacy of individual rights.

Section 51.27 Training

One commenter suggested that training should be limited to topics consistent with carrying out activities under the Act. The Department agrees and believes that the language of the regulation as stated sufficiently communities this. However, responsive to demonstrated need and repeated requests from P&A system staffers, and in conformity with ADD, the Department has included under (c) a specific type of training thought to be essential to the effective implementation of P&A system activities, namely training to conduct full investigations.

Another respondent felt that the system should be obligated to budget and provide support for training as necessary to meet the established priorities. The Department responds that the system is required to have a staff "which is trained or being trained" and sets aside "not more than 10 percent of its allotment to spend on technical assistance and training." The Department believes that training for staff is obligatory but that, for the most part, the nature of such training should be determined by the system to meet individual staff needs and any special foci of its annual goals and objectives. Additionally, the Department has added language at 51.23(c) requiring that the advisory council be provided fiscal data on the amount expended and projected for training of each the advisory council, governing board and staff.

Several respondents asked that the regulations require that families and consumers be involved in training and that such individuals also be involved in the planning and implementation of training for PAIMI advocates. The Department responds that the use of individuals with mental illness or family members of such individuals can be extremely valuable resources for PAIMI training but does not wish to require this by regulation.

One commenter felt that training on working with families should be extended to all support personnel working in the system. The Department will not require this but urges P&A systems to provide all necessary training to individual staff based upon an ongoing assessment of their needs.

Counter opinions felt that mandating specific kinds of training creates an intolerable situation for P&A systems with minimal resources and suggested that the language in paragraphs (a) and (b) be eliminated. The Department responds that this specific training is mandated by the Act and believes that there is justifiable cause for requiring it. The Department believes that every system employee should be provided with such training and that it is appropriate to require specialized training or "refresher" training as necessary.

Sections 51.28–51.30 Reserved

Subpart C—Protection and Advocacy Services

Section 51.31 Conduct of Protection and Advocacy Activities

Section 51.31(a)

A few commenters recommended that language on use of appropriate techniques and remedies, which originally appeared in section 51.32(a), would be more appropriate as an introduction to this section. The Department agrees and, in conformity with ADD regulatory structure, has moved this language to 51.31(a). Also, in response to commenters' suggestions in the definition section that the term "violation of rights" be added whenever "abuse" and "neglect" are used, the Department added language in this section indicating that appropriate remedies may be used to address abuse, neglect, or violation of rights.

Section 51.31(b)

Several commenters believed that the regulations did not directly address the potential for redundance with other statewide advocacy programs and felt that the PAIMI program should be required to coordinate and collaborate with any established, State-funded agency providing patient rights advocacy services. P&A system efforts should augment current services and not duplicate them. The Department notes that in having an assurance that forbids the State from using Federal funds to supplant the level of non-Federal funds, it effectively requires augmentation. (See section 51.5(d).) Also, the Department notes that the requirement for annual priority setting necessitates coordination with other advocacy groups and is accomplished, in part, by requesting and responding to public commentary. The Secretary further requires that annual reports of the PAIMI program identify other groups with whom it worked cooperatively on activities. Ongoing coordination and collaboration is absolutely encouraged by the Department.

To conform with ADD regulations, the Department has added a requirement that no policy or practice shall be implemented by the P&A system that restricts the remedies which may be sought on behalf of individuals with mental illness. This is to ensure that a P&A system use all the remedies, e.g., administrative and legal, it has available to redress complaints brought by clients.

Section 51.31(c)

Many commenters strongly supported the requirement that the PAIMI program establish an "ongoing presence" in residential mental health care facilities, but one respondent wanted it made clear that facilities have no obligation to provide office space, telephones, or other financial support to the system. The Department responds that the regulatory language does not imply any such obligations. The Department encourages the regular appearance and presence in facilities by PAIMI advocates but does not necessarily intend that on-site offices be maintained. However it is expected that facilities will provide space for unaccompanied private conversations with residents and clients.

Section 51.31(d)(1)

One commenter suggested that this section establish consistent policies regarding access to day rooms, living quarters, and treatment areas. The Department responds that this section includes interactions with residents or staff in all areas of facilities used by or accessible to residents. To ensure this, the Department will insert the phrase "all areas of the facility which are used by residents or are accessible to residents" in sections 51.42(b) and (c).

Section 51.31(e)

Department staff recommended that section 51.27(b) regarding training for individuals who are not program staff, contractors, board or council members be moved to section 51.31 because its content is more appropriate under the conduct of P&A activities. This has been done. A respondent felt that training in self-and peer-advocacy skills should be provided by the P&A system. Self-advocacy training involves teaching the mental health consumer skills, and providing support and assistance to present his or her views either about personal treatment or about the wider service needs, and peer-advocacy training involves providing mental health consumers with skills to support and assist other mental health consumers about personal treatment or about wider service needs. The Department agrees that such training is immensely valuable and may be provided but does not wish to mandate it.

Section 51.31(f)

One respondent noted that this regulation appears to authorize systemic advocacy and argued that P&A system activities should be limited exclusively to matters of abuse, neglect and rights violations. The Department does not agree. P&A systems are clearly authorized by section 101(b)(2)(A) of the Act to engage in systemic, and other types of advocacy activities, including the pursuit of administrative, legal and other appropriate remedies to ensure that the rights of individuals with mental illness are protected. One commenter believed "that not enough attention is being paid by the P&A systems to Advocacy," that persons with mental illness need advocates who can plead for their just causes in public forums and before legislative executive bodies and government agencies, and that a separate section should be added to the regulation to address the advocacy role. The Department agrees that P&A systems shall carry out systemic advocacy—those efforts to implement changes in policies and practices of systems that impact persons with mental illness, and legislative activities—those involving monitoring, evaluating, and commenting upon the development and implementation of Federal, State, and local laws, regulations, plans, budgets, taxes and other actions which affect persons with mental illness. Legislative activities was addressed under section 51.6(b) of the NPRM, but has been moved here because the Department believes that system activities related to monitoring, evaluating and commenting on the development and implementation of Federal, State and local laws, etc., fit more appropriately under this section on conduct of P&A activities. The Department has also added language at paragraph (f) requiring P&A systems to address systemic activities.

Section 51.31(g)

A number of respondents asked that the regulations clarify that a probable cause determination of a PAIMI program may be based on information obtained from "monitoring or other activities" and that this be understood to apply to a wide range of similar activities. The Department agrees and has added language about "monitoring and other activities" and "general conditions affecting health or safety" under this paragraph.

Section 51.31(h)

This section was added to ensure equal applicability to PAIMI programs and to conform with identical provisions which appear in the DD Act and ADD regulations. This requirement assures that a State P&A system will not be hindered by State personnel or administrative policies in carrying out advocacy activities.

Section 51.31(i)

Two commenters asked that there be a provision stating that State laws which grant P&A systems greater access are not superseded by the Act. The Department agrees that where State laws give the system greater authority than these regulations, such laws shall prevail and has inserted subsection (i) to ensure equal applicability to PAIMI programs in conformity with provisions appearing in the DD and ADD regulations. Also, the Department has inserted language to make clear that State law must not diminish the authority of the Act.

Section 51.32 Resolving Disputes

Section 51.32(a)

For clarity, the first half of the NPRM language for this section has been moved to 51.31(a) The remainder of the original is in this section.

Section 51.32(b)

One commenter argued that the phrase "disputes regarding a particular course of treatment" should not be singled out from other disputes regarding a person's rights, particularly because, under both Federal and State law, there is an explicit right to refuse treatment under certain circumstances. The Department agrees that it does not appear useful to specify a particular type of dispute and will delete the phrase.

Another commenter noted that this provision might be used by hospitals and clinicians to require P&A systems to demonstrate that negotiation and mediation had been initiated and had proven unsuccessful before a legal action or even a formal administrative complaint could be initiated. The Department notes that under paragraph (d) the system has the authority to take action when it believes the administrative process is not resolving an issue within a reasonable period of time, and further that when the situation is an emergency, the system can bypass the administrative process. Further, paragraph (e) states that the Act "imposes no additional burden respecting exhaustion of remedies" and that the intent of this section is only that nonadversarial techniques be used for resolution "whenever possible."

Another respondent feared that the requirement to involve family members might discourage or prohibit eligible individuals from participating in a legal action. The Department responds that this section deals only with nonadversarial processes. The Department notes that under this subsection family members have the opportunity to participate in negotiations; however, individuals who are not under guardianship are legally competent to decline to have family members involved.

Section 51.32(c) (d) and (e)

A number of commenters disagreed with the provision that a PAIMI program should be required to "exhaust all administrative remedies" prior to initiating a legal action; only one respondent encouraged this interpretation. One commenter suggested that this requirement had been used by the Office of Attorney General as a tactic to delay action on cases: "It is the client who cannot get services and whose health continues to deteriorate who suffers from this process." A large number of commenters recommended that the word "all" be deleted, arguing that exhaustion should be required only in circumstances where a clear administrative scheme exists. Others felt that the section should adopt the general principles of administrative law which relieve a party of the need to "exhaust" when such action would be ineffective or futile. It was further argued that this regulation could be construed to impose a higher burden on P&A systems to use administrative remedies and that the last sentence under (a) adequately addresses this issue by encouraging P&A systems to use negotiation, conciliation, or mediation early in the protection and advocacy process.

The Department notes that the language which appeared in the NPRM is more restrictive than intended by the Act; the phrase "in a Federal or State court" was inadvertently left out of the phrase following "legal action." Without this phrase, it might appear as though any kind of legal action would be affected. Since it is not intended that this requirement unnecessarily inhibit a P&A system from pursuing legal actions, the phrase, in Federal or State courts, has been reinserted. In addition, the Department has added phrases under (d) to clarify the intent that no additional burden is imposed where no administrative remedies exist and that a system is permitted to seek legal action after exhausting administrative remedies. The Department feels that, as amended, the regulation is reasonable, particularly when read together with the sentence which addresses the issue of "reasonable time," and with paragraph (d) which states that the admonition does not apply to "any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness" and with paragraph (e) which states that "the Act imposes no additional burden respecting exhaustion of remedies." For purposes of clarity, the Department has added language to paragraph (e) requiring that a "system shall be held to the standard of exhaustion of remedies provided under State and Federal law."

Section 51.33–51.40 Reserved

P&A Subpart D—Access to Records, Facilities and Individuals

Many respondents urged that the regulations make clear that these requirements supersede all State statutory and common law prohibitions concerning P&A system access to records and that nothing in this part should be construed to limit the authority of a P&A to gain access to records. The Department responds that State law must not diminish the required authority of the Act and the P&A system may exercise its authority under State law where the authority exceeds the authority required by the Act. This requirement is set forth under 51.31 "Conduct of P&A Activities."

Section 51.41 Access to records

Section 51.41(a)

For purposes of clarity and consistency, the section ensuring access to records by all authorized agents of a system has been moved from 51.42(c) in the original NPRM and inserted here.

Section 51.41(b)

This paragraph was formerly section (a). All commentary submitted in response to items in former paragraph (a) are reproduced here as applicable to new paragraph (b). The definition of "Probable Cause" which formerly appeared as paragraph (b) in the NPRM has been moved to the Definitions section (51.2) for clarity and consistency and in response to many requests.

A large number of respondents believed that an incident of abuse or neglect should refer not only to a particular individual, but also to general conditions or problems that affect many or all individuals in a facility. They argued that neither the Act nor case law imposes an individual-specific probable cause requirement. The Department agrees and has provided for this under conduct of P&A activities in 51.31(g) by including general conditions affecting health or safety as well as in 51.41(b)(2)(iii) by including that a P&A system may determine that an individual with mental illness "may be" subject to abuse or neglect.

It was recommended by several commenters that the Department require a mandatory time frame of 3 days for the release of records, once authorization has been obtained, and that the P&A system be granted expedited access—24 hours—in certain emergency situations. They reported that uncooperative facilities have attempted to thwart an investigation by "sitting on" the records. The Department agrees that access must be provided promptly, and has inserted this in the regulation under paragraph (a). The Department does not wish to mandate a specific time frame for release of records but notes that Sections 51.32(c) and (d), which permit the system to seek legal action after exhausting administrative remedies, apply to circumstances regarding disputes concerning the delay or denial of access to records.

Section 51.41(b)(2)(ii)

A few respondents wanted clarification on whether permission from the guardian was necessary in order for a P&A system to access the records of a deceased person. They requested affirmation of their understanding that a P&A system may access records when, under State law, the relationship between a deceased person and a legal representative/guardian terminates at death. The Department responds that access to the records of a deceased person is governed by State law.

One respondent requested that the last phrase of this subparagraph be revised to clarify that neither State nor "one of its political subdivisions" may prohibit access to records. The Department agrees that the intent is to prohibit denial of access by the State or by any of its political subdivisions where there is probable cause and the State is the individual's guardian, and has added this language.

Sections 51.41(b)(3)(i) (ii) and (iii)

Many respondents noted that these subsections appear to require that the legal representative actually be contacted before a P&A system would be allowed to take independent action. They reported their experience that legal guardians often are unavailable for long periods of time, or refuse to communicate with the P&A system. The Department agrees that restricting the ability of the P&A system to act in circumstances when it has probable cause to believe that the health or safety of the individual with mental illness is in serious and immediate jeopardy and the legal representative is unavailable, would compromise the intent of this subsection, particularly in light of subparagraph (iii) which allows the P&A system to take action if the representative has filed or refused to act. The language will be changed to reflect the Department's intent that the system must have made a "good faith effort" but that contact is not required. P&A systems should be able to document efforts made to contact the representative of an individual and that these efforts are reasonably calculated to be effective in notifying the representative.

Section 1.41(c)

Many respondents noted that to conduct a full investigation, a P&A system should have access to all records whether written or retained in another medium, and whether draft or final document, including handwritten notes, video or audio tape recordings; electronic files or photographs; "daily happenings" sheets (changes in status, discharges, ward transfers); policy and procedures manuals maintained by a facility; court documents; emergency room records; quality assurance documents; personnel records; records of transporting entities; and physical and documentary evidence reviewed with related investigative findings. It is argued that without an opportunity to review information from various sources, there can be neither a full investigation nor a determination of whether the investigation of another agency or facility was sufficiently

thorough. The Department agrees that any or all of the above-named records may be considered relevant on a case-by-case basis, and that they all be considered under the current meaning of "records." The Department has incorporated a number of items which clarify the intention that all records are to be accessible, but it has not included every single example.

One commenter was concerned that the regulations appear to allow access to records which in a number of States are confidential by law. This individual argued that system access to records should be granted only when the request is in compliance with the requirements set by State statutes. Another felt that the regulations exceeded the authority provided in the statute and went well beyond certain State statutes by providing access to in-house incident reports, certification and licensing reports, facility self-assessment reports, and financial records. Another felt that the following records should be exempt: records protected by the attorney-client privilege; reports prepared by individuals and entities performing certification or licensure reviews; reports prepared by professional accreditation organizations; and related assessments prepared by the facility, its staff, contractors or related entities. The Department does not agree. It is clearly the intent of the Act that the system have full access to "all records of an individual" pertaining to a full investigation of a report or complaint. The only exception noted [Senate Report 102–114, 102nd Congress, 1st Sess. 5, 1991] is the Joint Commission on Accreditation of Hospitals Report—peer review/medical review records. In order for the P&A system to carry out its mandate to protect the rights of individuals with mental illness and to investigate allegations of abuse or neglect in public and private facilities, they must be empowered to access information contained in all records relevant to such activities. In all circumstances where there is a direct conflict these regulations will supersede State law unless State law gives greater access. However, the Department does not intent to preempt State statutes that protect from disclosure the records produced by medical care evaluation or peer review committees. In addition, where there is a State statute that requires certain procedures with respect to personnel records, the Department expects P&As to follow these procedures.

Several respondents supported the importance of including records which do not only relate to the individual who is the object of a full investigation and felt it particularly important that the decision regarding which records are relevant be at the sole discretion of the system.

The Department agrees that the P&A system shall have "reasonable access" to all "relevant" records.

In order to be consistent with the Act at section 105(a)(4) that provides that a P&A shall "have access to all records of—any individual," and the DD regulations, the Department has inserted the word "individual" before records in paragraphs (c) and (c)(1). Several commenters recommended that the system representatives be authorized to access records which are not in the actual possession of the facility but which are relevant to a full investigation. The Department agrees that the intent of the Act is to enable system access to all relevant records and will insert language under (c)(1) to ensure access to records maintained by or in the possession of the provider's agency or stored or maintained by any other entities (whether or not such entities actually produced the records). In obtaining such records, the system shall ensure that it has obtained appropriate, and specific, consent consistent with the requirements of section 105(a)(4) of the Act. Also, the P&A shall request of facilities that in requesting records from service providers or other facilities on residents that they indicate in the release form the records may be subject to review by a system. This language has been inserted in paragraph (c)(1).

Section 51.41(c)(2)(iv)

Several respondents requested that the following information and records also be identified as accessible to the P&A: supporting information relied upon in creating a record, including all information and records used or reviewed in preparing reports of abuse, neglect, injury or violations of rights such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings. The Department agrees and has included this language in (c)(2)(iv) except that violations of rights are covered only to the extent that they fall into the definition of abuse.

Section 51.41(d)

Two commenters believed that the authority to access the records of any persons who might have knowledge about alleged abuse or neglect should be included under Access to Records. The Department agrees but notes that P&A systems should have only "reasonable access" to such records and that access to records of facility service recipients be consistent with sections 105 and 106 of the Act. The Department has moved this section from 51.42(a)(3) to 51.41(d). What previously was (d) shall now be (e).

Section 51.41(e)

Two respondents mentioned that allowing a facility to charge fees for copying records imposes a financial strain on the P&A systems and asked that the regulations set limits to control these costs. In addition, they request that the regulations clarify that the system has the right to obtain and copy the actual records and not only to "inspect" records on site at the facility. The Department does not which to specify fee limitations, however, it notes that the P&A system may not be charged more than is "reasonable" according to prevailing local rates, and certainly not a rate higher than that charged any other service provider. Nothing shall prevent a system from negotiating a lower fee or no fee. The Department agrees that these regulations do authorize the P&A system to have access to the actual records and to make copies; simply allowing a system to "view" or "inspect" records is not sufficient. Because of the insertion of (c) noted above, the Department has moved this section to 51.41(e).

Section 51.42 Access to Facilities and residents

Section 51.42(a)

For clarity, this section has been moved from (c) to (a) where the Department felt it more appropriate.

Section 51.42(b)

All comments received responsive to section (a) as published in the NPRM are addressed here under (b).

One respondent mentioned that it would be helpful if the regulations clarified that children's facilities are also covered by the access and confidentiality of information provisions. Access is often held up by providers until the P&A system can convince them of the requirement that all records and information are confidential. The Department responds that children's care and treatment facilities are covered by these regulations and that the confidentiality requirements also apply.

On commenter argued that the regulation should require mandatory access for conducting full investigations of abuse or neglect. The Department responds that "reasonable access" is sufficient and means during all hours and shifts and not only on week days during facility "business hours." Access should be as prompt as necessary to conduct full investigations of abuse and neglect when an incident has been reported to the system or when the system has determined probable cause.

Two commenters believed that the authority to access the records of and interview any persons who might have knowledge about alleged abuse or neglect is too broad. The Department agrees in part that the authority is too broad pertaining to records, but not to interviews. The Department believes that the P&A has reasonable access and authority to interview and examine all relevant records of any facility service recipient (consistent with section 105 of the Act) or employee. The phrase "other person who might have knowledge of the alleged abuse or neglect" was deleted from this paragraph. Others urged that this authority also be included in the Access to Records provisions under section 51.41. The Department agrees and, with the caveats noted above, moved this authority to 51.41(d). Also, the Department added language to section 51.42(b) in conformity with the DD regulations indicating that as part of the access authority, the P&A has the opportunity to interview any facility service recipient, employee or other persons.

Several commenters suggested that P&A systems should not be required to provide notice to a facility that they are going to come to that facility to investigate an incident, and further, that P&A systems should be able to appear unannounced at a facility to investigate any report that is regarded as an emergency. The Department responds that the regulations do not require notice to be given a facility in advance of an investigation, but that in nonemergency instances such notice is reasonable. The Department agrees that in cases where a system believes that an individual with mental illness is, or may be, in imminent danger of serious harm, the system should investigate as quickly as possible and that, as written, the regulations do provide for prompt access.

Many commenters felt that P&A systems should have the right to access facilities "whenever necessary" to investigate alleged incidents of neglect and abuse. They maintained that reasonable access means access "at any and all times necessary" to conduct a full investigation of an incident, that the determination of "reasonableness" should reside with the P&A system, and the facility should be required to give access on request. If the facility wishes to contest the "reasonableness," they should be authorized to do so only after the access has been granted, not before. The Department does not agree that the P&A system should have access at ALL times, but does accept the argument that access be granted "all times necessary * * *" to conduct a full investigation, and particularly when the system has determined "probable cause" that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness. In addition, 51.42(c) provides for access to facility residents and to programs "at reasonable times, which at a minimum shall include normal working hours and visiting hours." Access should not be limited only to business hours during week-days, and should be to all areas used by residents or accessible to residents. Access is afforded the system under this section at (c)(2) in order to monitor compliance with respect to the rights and safety of residents. Finally, the Department has inserted the definition of "Full Investigation" to mean the "* * * access to facilities, clients and records authorized under these regulations that is necessary for a P&A system to make a determination about whether an allegation of abuse or neglect is taking place or has taken place."

Several respondents wished the regulations to include a requirement that facility residents be provided with the name, address, and telephone number of the P&A, uncensored access to writing materials, and private access to a telephone, for contacting the P&A. The Department agrees that such conditions are reasonable and it shall be considered applicable in this section under paragraph (c)(1), as revised.

Two commenters believed that the authority to monitor compliance with patient rights is too broad. The Department disagrees; monitoring compliance with patient rights is an opportunity to prevent incidents from occurring and to ensure that facility staff, as well as residents, understand what their rights are.

Several respondents recommended that P&A access not be hindered by facilities through requirements that monitoring, training, tours or other activities at the facility take place only with advance notice or in the presence or company of facility staff. Such practices deny the P&A system the ability to monitor for health, safety or environmental violations, or to observe the general living conditions of the residents.

One respondent suggested that, in the case of an actively aggressive resident, the P&A staff should be permitted to observe the client from a safe distance to verify the situational need. It was suggested that the P&A system be permitted to observe the client privately with the seclusion door open, to wait until the aggressive behavior has stopped, and to reschedule a visit at a time mutually agreeable to the parties, but not later than 48 hours and if the client is placed on one-to-one supervision, P&A staff should be permitted to observe or otherwise verify the behavior which calls for such supervision.

The Department responds that the intent of the regulations is to ensure that P&A systems have full unaccompanied access to residents and to all areas of the facility accessible to residents. In the interest of safety, access to certain nonpublic areas or to certain residents may be restricted by the facility but only in accordance with the procedures stipulated in section 51.43 (Denial or Delay of Access). The procedure for observation seems reasonable but the Department does not wish to provide detailed guidance in this instance for the conduct of P&A system activities. Policies and procedures should be developed by each P&A system itself to guide and coordinate advocacy activities.

One respondent suggested that the facility should make P&A literature, which explains P&A system services and the rights of the residents under the Act and other laws, available to residents and to legal guardians. Such materials should be made available upon admission to the facility and at regular intervals (at least quarterly) thereafter. The Department agrees that such literature should be available but cannot require facilities to do so. The Department notes that the P&A systems are to establish an ongoing presence in the facility and are authorized in this section under (c)(1) to provide information to residents.

Section 51.42(d)

Several commenters suggested that paragraph (d) be modified to specifically include persons who have legal guardians or conservators, arguing that the definition should be as expansive as possible in order to meet the clearly delineated purpose of the Act. One suggested that the regulations specify that, in response to a request for assistance from a minor or from an individual with a legal guardian, the P&A system may respond by visiting the requester, but may not institute formal negotiations. The Department agrees that such is the case and has added language to clarify that P&As have access to persons who have legal guardians, including both adults and minors, regardless of whether there is a State or local law or regulation which

restricts access to minors and adults with legal guardians. The Department has become award of several situations where a state or local requirement stood as an impediment to providing general information to individuals or monitoring general conditions of facilities. In these situations, the facilities argued that the P&A could not have any formal access to such individuals prior to obtaining consent from the individual's guardian or conservator. In the Department's view this prevents the P&As from carrying out their statutorily mandated duties, by preventing them from speaking with, and monitoring conditions affecting the safety of, individuals who have legal guardians—including minors. Accordingly, the Department intends that these regulations shall preempt any State or local laws and regulations which prohibit access to such individuals without obtaining consent from the guardians and has added such language at 51.42(e). The Department notes, however, that the P&A system may take no action on behalf of individuals with legal guardians or conservators without appropriate consent, except in emergency situations as discussed above. In all cases, the Department encourages facilities to provide general notice to guardians regarding the responsibilities of the P&A system, and inform them that it is possible that the P&As may speak informally with residents regarding their rights as well as conditions affecting their health or safety. Also, the Department has inserted into this paragraph the requirement that the P&A shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian.

Although the regulations address the issue of privacy, many respondents felt that they should be strengthened to ensure private communications and unaccompanied access to clients, without having to provide a justification to the facility. It is felt that only by frequent personal contact, without the presence of institutional staff, can the P&A system effectively carry out its mission of protecting the rights and safety of residents. The Department agrees that private and unaccompanied access to clients and other residents should be provided and that, if denied, justification should be required under 51.43. The regulations incorporate a provision which specifies that the system generally shall be permitted unaccompanied access to meet and communicate privately with individuals, informally or formally, without the presence of facility staff.

Section 51.42(f)

In response to Department comments section 51.44 Access to Federal facilities and records in the original NPRM has been moved here. This change is to consolidate access requirements regarding facilities and records.

Several commenters argued that there is no reason to differentiate Federal from State facilities and that this section be deleted. One commenter suggested that the section be reworded to read: "a system providing representation to individuals with mental illness in Federal facilities shall be accorded the same rights and authority accorded to that system in other public and private facilities." The Department disagrees. Principles of statutory interpretation require that Federal facilities be excluded if not specifically included. Congress clearly intended that there be a differentiation. The regulatory language is taken exactly from the 1991 amendments to the Act and the Department has no justifiable reason to change it through regulation.

Section 51.43 Denial or Delay of Access

The title of this section has been changed to accommodate recommendations received in the commentary regarding delay of access.

Several commenters argued that the section on denial of access serves no useful purpose, is addressed in the Resolving Disputes section, and should be deleted. The Department does not agree. Commenters expressed concern that this section would routinely invite denial or delay of access by facilities. The Department understands the concern, but responds that if and when access is denied to records, facilities and residents, it is critical that the P&A be protected from dealing with lengthy denial processes; therefore, this section requiring that a facility provide a *prompt* written justification when denying access will remain.

It was argued by several respondents that P&A systems should not have to provide any justification of their need to access the name, address and phone number of guardians, conservators or other legal representatives and that systems should have easy access to such information. If access is denied, the commenters recommend that the facility be required to provide written justification for the denial as promptly as possible, and no longer than three days. The Department agrees that the system has no requirement to provide justification concerning their need for access to information regarding guardians, conservators or legal representatives and that this information should be provided promptly. The regulation includes the word "prompt," but the Department feels that a time-specific definition of "promptness" is not a matter for regulation.

Some commenters alleged that facilities often deny unaccompanied access to a resident when the authorized mental health professional determines it "necessary for treatment purposes;" they argue that such denial of access should be allowed only for specified, limited, and reasonable periods of time, and that the reasons for it should be noted in the resident's treatment plan. Additionally, they wanted the P&A system to be provided documentation in writing, to include the reasons for the denial of access to the resident. Others believed that a mental health professional should never be able to deny an individual with mental illness access to their attorney. The Department notes these concerns and responds that all denials of access are subject to the conditions of this subsection.

Section 51.45 Confidentiality of Protection and Advocacy System Records

For purposes of clarity, this section will apply to all records maintained in the possession of the system, and not only to "client" records. The word "Client" has been dropped from the title.

Two commenters noted that the confidentiality requirements proposed in this section are inconsistent with parallel requirements applicable under the DD Act and the Protection and Advocacy for Individual Rights program. The argument which these respondents made was that Congress intended that the parallel requirements of the three programs be applied in a consistent manner. The Department agrees and has made changes to these regulations to conform with the ADD regulatory language to establish uniform requirements.

Others asked that these requirements be applicable both to persons whom the system views as its "client" and to persons who have merely been provided general information or technical assistance by the system. The Department agrees and has added language under subparagraph (a)(1)(ii) and (3) of this section.

One commenter believed that a person or entity receiving information from a P&A system should be advised of its confidential nature. This is particularly important when such information is being released to third parties. All clients should be told prior to consenting to release information that it may be disclosed to third parties in certain instances. The Department responds that these regulations require each P&A system to establish such policies with regard to release of information concerning clients and has addressed this under sections 51.45 (a)(2) and (a)(3).

One commenter stated that the principles of attorney-client privilege should generally govern P&A system confidentiality requirements. Such requirements should include a provision that the confidentiality requirements extend not just to clients, but to anyone who contacts a P&A system seeking advice or assistance. The Department agrees and has included regulatory language to address this under (a)(1)(ii) and (3).

One commenter believed that section 106(a) of the Act was intended to ensure that the system maintain the confidentiality of records in compliance with applicable State, Federal, and local laws and with the rules of any involved organization or institution which has legal responsibility for the records. The actual language of that sections states that "an eligible system which * * * has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services shall * * * maintain the confidentiality of such records to the same extent as it required of the provider of such service." The Department has inserted "under Federal or State laws" at (a)(1)(i) in this section to clarify the issue. The Department requires that the highest standards of confidentiality be maintained so that all parties are assured of and have confidence in the security of the confidentiality of any records released to the P&A system.

Several commenters stated that confidentiality is essential and that the P&A system must be able to assure clients and informants that they will not reveal information about their cases or identities of clients. The Department agrees that confidentiality is essential but notes that a system may not provide complete and absolute assurance that no confidential materials will ever be viewed by other parties—albeit under the same strictures of obligation to confidentiality. The Department has added language under (a)(1)(iii) and (a)(3) in conformity with ADD regulations, to keep confidential the identity of individuals who report incidents of abuse and neglect and of individuals who furnish information that forms the basis for a probable cause determination.

For purposes of clarity, the paragraph that starts after (b)(2) "For purposes of any periodic audit * * *" and the following paragraph have been labeled paragraph (c) and (d) and moved to the end of section 51.45. One respondent was concerned that the language may be interpreted as giving investigative and enforcement agencies access to client records if such agencies have been called in to investigate a complaint against the P&A system. The Department responds that these regulations allow excess to client records in very limited circumstances and only to the Department and other authorized Federal or State officials for purposes of audit or for monitoring system compliance with applicable Federal or State laws and regulations. The purpose of obtaining information from client files is to determine whether P&A systems are spending grant funds appropriately. Official that have access to such information must keep it confidential to the maximum extent permitted by law and regulations. In response to comments received and to conform with the ADD regulations, the Department has inserted under paragraph (c) respecting the disclosure, under certain circumstances, of confidential information to Federal and State officials. This language clarifies that the purpose of obtaining personally identifiable client information is solely to determine that P&A systems are spending Federal grant funds in conformity with the Act and these regulations. Language has been included to indicate that officials who have access to such information must keep it confidential to the maximum extent permitted by law and regulations.

One commenter had concerns about the relationship between the confidentiality provisions of these regulations and those which are applicable to alcohol and other drug treatment records. The Department notes that this is a significant issue that is beyond and outside of the scope of these regulations and will require resolution within the context of 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." The conflict arises when consent cannot be obtained for the release of confidential information either because the person is not competent and does not have a guardian or because the person cannot be located. Under such circumstances the P&A system would have to petition the courts for an order to obtain the records. The Department has no response at this time and welcomes further commentary on this issue for consideration. Some respondents argued that there should be an absolute and clear Federal standard of confidentiality, one which does not refer to rules applicable to mental health service providers in a particular State. The Department responds that there currently is no Federal standard regarding the confidentiality of general medical records. Because most States have statutory requirements governing confidentiality of patient records, the Department does not wish to impose different requirements in this area.

Section 51.46 Disclosing Information Obtained From a Provider of Mental Health Services

Two commenters noted the error in the last sentence of paragraph (a) which states that such determination shall be provided at the time that the system's access to the information is "denied." To correct this error, the word "granted" will be substituted for the word "denied."

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This final rule implements the 1991 reauthorization for the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Act) 42 U.S.C. 10801 *et seq.*). The regulations provide guidance on the implementation of authorized activities P&A systems to protect and advocate the rights of individuals with mental illness. These are final rules to implement Titles I and III of the Act, as amended. Authorized activities include investigation of incidents of abuse and neglect and the pursuit of legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with mental illness in facilities providing care or treatment. The regulations provide basic definitions and clarify the requirements of the Act.

The Department estimates that these regulations will not result in additional cost to the Federal Government, the

States, universities and any other organizations to which they may apply.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis describing the rule's impact on small entities is prepared. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. However, they will affect small private institutions providing services to individuals with mental illness. This impact will be minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Protection and Advocacy of Individuals with Mental Illness—42 CFR Subchapter 51—FINAL RULE.

Description: Data to be reported are required by 42 U.S.C. 10805 and 10821 and will be used by the Secretary to determine grantee eligibility for allotments and to evaluate compliance with the Act. Additionally, data will be collected to publish annual reports that are submitted to the President, the Congress, and the National Council on Disabilities as required by 42 U.S.C. 10824 of the Act and 42 U.S.C. 6006 of the DD Act.

Description of respondents: Private and public grantees.

Estimated Annual Reporting Burden:

	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
Section 51.8 Program	56	1		
Performance Report:				
Part I			33	
Part II			2	
(Subtotal)			(35)	1,960
Section 51.8 Advisory Council Report	56	1	10	560
Section 51.10 Remedial Actions:				
Corrective Action Plan	6	1	8	48
Implementation Status Report	6	3	2	36
Section 51.23(c) Reports, materials and fiscal data to Advisory Council	56	1	1	56
Section 51.25(b)(2) Grievance Procedure	56	1	.5	28
Total				2,688

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Substance Abuse and Mental Health Services Administration is providing the public with the opportunity to comment on the information collection requirements contained in this final rule. In order to fairly evaluate whether a collection of information should be approved by the Office of Management and Budget (OMB), the Paperwork Reduction Act requires that we solicit comments on:

- whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;
- the accuracy of the Agency's estimate of the burden of the proposed collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected; and
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the Paperwork requirement of this regulation should be sent to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503. Written comments should be received within 60 days of this notice.

List of Subjects in 42 CFR Part 51

Administrative practice and procedure, Grant programs—health programs. Grant programs—social programs, Health records, Mental health programs, Privacy, Reporting and recordkeeping requirements.

Dated: October 2, 1997.

Donna E. Shalala,

Secretary.

Accordingly, part 51 is added to title 42 of the Code of Federal Regulations to read as follows:

PART 51—REQUIREMENTS APPLICABLE TO THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS PROGRAM

Sec.

51.1 Scope.
51.2 Definitions.

Subpart A—Basic Requirements

51.3 Formula for determining allotments.
51.4 Grants administration requirements.
51.5 Eligibility for allotment.
51.6 Use of allotments.
51.7 Eligibility for protection and advocacy services.
51.8 Annual reports.
51.9 [Reserved]
51.10 Remedial actions.
51.11–51.20 [Reserved]

Subpart B—Program Administration and Priorities

51.21 Contracts for program operations.
51.22 Governing authority.
51.23 Advisory council.
51.24 Program priorities.
51.25 Grievance procedure.
51.26 Conflicts of interest.
51.27 Training.
51.28–51.30 [Reserved]

Subpart C—Protection and Advocacy Services

51.31 Conduct of protection and advocacy activities.
51.32 Resolving disputes.
51.33–51.40 [Reserved]

Subpart D—Access to Records, Facilities and Individuals

51.41 Access to records.
51.42 Access to facilities and residents.
51.43 Denial or delay of access.
51.44 [Reserved]
51.45 Confidentiality of protection and advocacy system records.
51.46 Disclosing information obtained from a provider of mental health services.

Authority: 42 U.S.C. 10801, *et seq.*

§ 51.1 Scope.

The provisions of this part apply to recipients of Federal assistance under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended.

§ 51.2 Definitions.

In addition to the definitions in section 102 of the Act, as amended, the following definitions apply:

Abuse means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restrains; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue.

Act means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, also referred to as Protection and Advocacy for Individuals with Mental Illness Act.

ADD means the Administration on Developmental Disabilities within the Administration for Children and Families, Department of Health and Human Services.

Care or Treatment means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only "as needed" or under a contractual arrangement.

Center or *CMHS* means the Center for Mental Health Services, a component of the Substance Abuse and Mental Health Services Administration.

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the P&A system, including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness.

Department or *HHS* means the U.S. Department of Health and Human Services.

Designated Official is the State official or public or private entity empowered by the Governor or State legislature to be accountable for the proper use of funds by the P&A system.

Director means the Director of the Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, or his or her designee.

Facility includes any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include, but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

Fiscal Year or *FY* means the Federal fiscal year (October 1–September 30) unless otherwise specified.

Full Investigation is based upon a complaint or a determination of probable cause and means the access to facilities, clients and records authorized under this part that is necessary for a P&A system to make a determination about whether an allegation of abuse or neglect is taking place or has taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Governor means the chief executive officer of the State, Territory or the District of Columbia, or his or her designee, who has been formally designated to act for the Governor in carrying out the requirements of the Act and this part.

Individual with Mental Illness means an individual who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State and

(1) Who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident is unknown;

(2) Who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility, or

(3) Who is involuntarily confined in a detention facility, jail or prison.

Legal Guardian, Conservator, and Legal Representative all mean an individual whose appointment is made and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to consent to health/mental health care or treatment of an individual with mental illness. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with mental illness only in individual legal matters, or officials responsible for the provision of health or mental health services to an individual with mental illness, or their designees.

Neglect means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff.

Private Entity means a nonprofit or for-profit corporation, partnership or other nongovernmental organization.

Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

Program means activities carried out by the P&A system and operating as part of a P&A system to meet the requirements of the Act.

Public Entity means an organizational unit of a State or local government or a quasi-governmental entity with one or more governmental powers.

System means the organization or agency designated in a State to administer and operate a protection and advocacy program under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, 6042) and thereby eligible to administer a program for individuals with mental illness.

Subpart A—Basic Requirements

§ 51.3 Formula for determining allotments.

The Secretary shall make allotments to eligible Systems from amounts apportioned each year under the Act on the basis of a formula prescribed by the Secretary in accordance with the requirements of sections 112 and 113 of the Act (42 U.S.C. 10822 and 10823).

§ 51.4 Grants administration requirements.

The following parts of titles 42 and 45 CFR apply to grants funded under this part.

42 CFR Part 50, Subpart D.
45 CFR Part 16—Procedures of the Departmental Grant Appeal Board.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 76—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of This Title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Education Programs and Activities Receiving Federal Financial Assistance from HHS.
45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
45 CFR Part 93—New Restrictions on Lobbying.
45 CFR Part 1386, subpart A.

§ 51.5 Eligibility for allotment.

(a) Federal financial assistance for protection and advocacy activities for individuals with mental illness will be given only to a System that has been established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, *et seq.*) and designated in accordance with 45 CFR part 1386, subpart B.

(b) The P&A system must meet the requirements of sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and that P&A system must be operational. Each system shall submit an application at the beginning of each PAIMI authorization period. This application shall contain at a minimum the program priorities and budget for the first year of the authorization period and the required assurances and certifications. Thereafter, the system shall submit yearly updates of the budget and program priorities for the upcoming fiscal year through its annual report.

(c) Written assurances of compliance with sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and other requirements of the Act and this part shall be submitted by the P&A system in the format designated by the Director. These assurances will remain in effect for the period specified in the application for funds unless changes occur within the State which affect the functioning of the P&A system, in which case an amendment will be required 30 days prior to the effective date of the change. The P&A system shall also provide the Department the name of the designated official.

(d) The Governor's written assurance that the allotments made available under the Act will be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness shall be submitted by the P&A system. The Governor may provide this assurance along with the assurances provided to ADD under 45 CFR part 1386, as long as it can reasonably be construed as applying to the PAIMI program. Any future "supplement and not supplant" assurance shall explicitly refer to the PAIMI program.

§ 51.6 use of allotments.

(a) Allotments must be used to supplement and not to supplant the level of non-Federal funds available in the State to protect and advocate the rights of individuals with mental illness.

(b) Allotments may not be used to support lobbying activities to influence proposed or pending Federal legislation or appropriations. This restriction does not affect the right of any P&A system, organization or individual to petition Congress or any other government body or official using other resources.

(c) Allotments may not be used to produce or distribute written, audio or visual materials or publicity intended or designed to support or defeat any candidate for public office.

(d) If an eligible P&A system is a public entity, that P&A system shall not be required by the State to obligate more than five percent of its annual allotment for State oversight administrative expenses under this grant such as costs of internal or external evaluations, monitoring or auditing. This restriction does not include:

(1) Salaries, wages and benefits of program staff;

(2) Costs associated with attending governing board or advisory council meetings; or

(3) Expenses associated with the provision of training or technical assistance for staff, contractors, members of the governing board or advisory council.

(e) No more than ten percent of each annual allotment may be used for providing technical assistance and training, including travel expenses for staff, contractors, or members of the governing board or advisory council as defined in § 51.27.

(f) Allotments may be used to pay the otherwise allowable costs incurred by a P&A system in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination, and other rights violations impacting on individuals with mental illness and when it appears on behalf of named plaintiffs or a class of plaintiffs for such purposes.

§ 51.7 Eligibility for protection and advocacy services.

In accordance with section 105(a)(1)(C) of the Act (42 U.S.C. 10805(a)(1)(C)) and the priorities established by the P&A system governing authority, together with the advisory council, pursuant to section 105(c)(2)(B) of the Act (42 U.S.C. 10805(c)(2)(B)), allotments may be used:

(a) To provide protection and advocacy services for:

(1) Individuals with mental illness as defined in 42 U.S.C. 10802(4) and 10805(a), including persons who report matters which occurred while they were individuals with mental illness;

(2) Persons who were individuals with mental illness who are residents of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individuals from a facility providing care or treatment; and

(3) Individuals with mental illness in Federal facilities rendering care or treatment who request representation by the eligible P&A system. Representation may be requested by an individual with mental illness, or by a legal guardian, conservator or legal representative.

(b) To provide representation of clients in civil commitment proceedings if the P&A system is acting on behalf of an eligible individual to obtain judicial review of his or her commitment in order to appeal or otherwise challenge acts or omissions which have subjected the individual to abuse or neglect or otherwise violated his or her rights. This restriction does not prevent a P&A system from representing clients in commitment or recommitment proceedings using other resources so long as this representation does not conflict with responsibilities under the Act.

§ 51.8 Annual reports.

By January 1 of each year, a report shall be submitted, pursuant to section 105(a)(7) of the Act (42 U.S.C. 10805(a)(7)), to the Secretary which is in the format designated by the Secretary.

§ 51.9 [Reserved]

§ 51.10 Remedial actions.

Failure to submit an annual report in the designated format on time or to submit requested information and documentation, corrective action plans and ongoing implementation status reports in response to Federal review and monitoring activities or to satisfy any other requirement of the Act, this part, or other requirements, may be considered a breach of the terms and conditions of the grant award and may required remedial action, such as the suspension or termination of an active grant, withholding of payments or converting to a reimbursement method of payment. Any remedial actions shall be taken consistent with 45 CFR Part 74 and 42 CFR Part 50, as appropriate.

§§ 51.11–51.20 [Reserved]

Subpart B—Program Administration and Priorities

§ 51.21 Contracts for program operations.

(a) An eligible P&A system should work cooperatively with existing advocacy agencies and groups and, where appropriate, consider entering into contracts for protection and advocacy services with organizations already working on behalf of individuals with metal illness. Special consideration should be given to contracting for the services of groups run by individuals who have received or are receiving mental health services or by family members of such individuals.

(b) An eligible P&A system may contract for the operation of all or part of its program with another public or private nonprofit organization with demonstrated experience in working with individuals with mental illness provided that:

(1) Any organization that will operate the full program meets the requirements of section 104(a)(1), 105 and 111 of the Act (42 U.S.C. 10804(a)(1), 10805 and 10821) and has the capacity to perform protection and advocacy activities throughout the State;

(2) The eligible P&A system institutes oversight and monitoring procedures which ensure that this system will be able to meet all applicable terms, conditions and obligations of the Federal grant;

(3) The eligible P&A system and the contractor organization enter into a written agreement that includes at least the following:

(i) A description of the protection and advocacy services to be provided;

(ii) The type of personnel, their qualifications and training;

(iii) The methods to be used;

(iv) A timetable for performance;

(v) A budget;

(vi) Assurances that the contractor will meet all applicable terms and conditions of the grant;

(vii) Assurances that the contractor has adequate management and fiscal systems in place, including insurance coverage, if appropriate:

(viii) Assurances that the contractor's staff is trained to provide advocacy services to and conduct full investigations on behalf of individuals with mental illness; and

(ix) Assurances that the contractor staff is trained to work with family members of clients served by the P&A system where the clients are:

(A) Minors;

(B) Legally competent and choose to involve the family member; or,

(C) Legally incompetent and the legal guardians, conservators or other legal representatives are family members.

§ 51.22 Governing authority.

(a) Each P&A system shall have a governing authority responsible for its planning, designing, implementing and functioning. It shall, jointly with the advisory council, annually establish program priorities and policies.

(b) If the P&A system is organized with a multi-member governing board:

(1) Each P&A system shall establish policies and procedures for the selection of its governing board members and for the board evaluation of the P&A system director. The terms of board members shall be staggered and for 4 years except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. A member who has been appointed for a term of 4 years may not be reappointed to the governing board during the 2-year period beginning on the date on which such 4-year term expired.

(2) The board shall be composed of members who broadly represent or are knowledgeable about the needs of the clients served by the P&A system and shall include a significant representation of individuals with mental illness who are, or have been eligible for services, or have received or are receiving mental health services, and family members, guardians, advocates, or authorized representatives of such individuals.

(3) If the governing authority is organized as a private nonprofit entity, the chairperson of the advisory council shall be a member of the governing board.

(c) Continuing efforts shall be made to include members of racial and ethnic minority groups as board members.

(d) Any member of the advisory council may also serve on the governing board.

§ 51.23 Advisory council.

(a) Each P&A system shall establish an advisory council to:

(1) Provide independent advice and recommendations to the system.

(2) Work jointly with the governing authority in the development of policies and priorities.

(3) Submit a section of the system's annual report as required under § 51.8.

(b) Members of the council shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, the advocacy needs of persons with mental illness and have demonstrated a substantial commitment to improving mental health services, a provider of mental health services, individuals who have received or are receiving mental health services and family members of such individuals. Continuing efforts shall be made to include members of racial and ethnic minority groups on the advisory council.

(1) At least 60 percent of the membership of the advisory council shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals. At least one family member shall be a primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services;

(2) The council shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(3) The advisory council shall meet no less than three times annually. The terms of council members shall be staggered and for 4 years except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. A member who has been appointed for a term of 4 years may not be reappointed to the council during the 2-year period beginning on the date on which such 4-year term expired.

(c) Each P&A system shall provide its advisory council with reports, materials and fiscal data to enable review of existing program policies, priorities and performance outcomes. Such submissions shall be made at least annually and shall report expenditures for the past two fiscal years, as well as projected expenses for the next fiscal year, identified by budget category (e.g., salary and wages, contract for services, administrative expenses) including the amount allotted for training of each the advisory council, governing board and staff.

(d) Reimbursement of expenses. (1) Allotments may be used to pay for all or a part of the expenses incurred by members of the advisory council in order to participate in its activities. Expenses may include transportation costs, parking, meals, hotel costs, per diem expenses, stipends or subsistence allowances, and the cost of day care or child care (or its equivalent for the child's travel and subsistence expenses) for their dependents with mental illness or developmental disabilities.

(2) Each P&A system shall establish its own policies and procedures for reimbursement of expenses of council members, taking into account the needs of individual council members, available resources, and applicable restrictions on use of grant funds, including the restrictions in §§ 51.31(e) and 51.6(e).

§ 51.24 Program priorities.

(a) Program priorities and policies shall be established annually by the governing authority, jointly with the advisory council. Priorities shall specify short-term program goals and objectives, with measurable outcomes, to implement the established priorities. In developing priorities, consideration shall be given to, at a minimum, case selection criteria, the availability of staff and monetary resources, and special problems and cultural barriers faced by individuals with mental illness who are multiply handicapped or who are members of racial or ethnic minorities in obtaining protection of their rights. Systemic and legislative activities shall also be addressed in the development and implementation of program priorities.

(b) Members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the P&A system. Procedures for public comment must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and representatives of such individuals and to other individuals with disabilities. Procedures for public comment must provide for receipt of comments in writing or in person.

§ 51.25 Grievance procedure.

(a) The P&A system shall establish procedures to address grievances from:

(1) Clients or prospective clients of the P&A system to assure that individuals with mental illness have full access to the services of the program; and

(2) Individuals who have received or are receiving mental health services in the State, family members of such individuals, or representatives of such individuals or family members to assure that the eligible P&A system is operating in compliance with the Act.

(b) At a minimum, the grievance procedures shall provide for:

(1) An appeal to the governing authority from any final staff review and/or determination; in cases where the governing authority is the director of the P&A system, the final review and/or determination shall be made by a superior of the governing authority, e.g., a supervisor, or by an independent entity, e.g., an appointed board or committee.

(2) Reports, at least annually, to the governing authority and the advisory council describing the grievances received and processed and their resolution;

(3) Identification of individuals responsible for review;

(4) A timetable to ensure prompt notification concerning the grievance procedure to clients, prospective clients or persons denied representation, and to ensure prompt resolution;

(5) A written response to the grievant; and

(6) Protection of client confidentiality.

§ 51.26 Conflicts of interest.

The P&A system must develop appropriate policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the governing authority and advisory council, particularly with respect to matters affecting client services, particular contracts and subcontracts, grievance review procedures, reimbursements and expenses, and the employment or termination of staff.

§ 51.27 Training.

A P&A system shall provide training for program staff, and may also provide training for contractors, governing board and advisory council members to enhance the development and implementation of effective protection and advocacy services for individuals with mental illness, including at a minimum:

(a)(1) Training of program staff to work with family members of clients served by the program where the individual with mental illness is:

(i) A minor,

(ii) Legally competent and chooses to involve the family member; or

(iii) Legally incompetent and the legal guardian, conservator or other legal representative is a family member.

(2) This training may be provided by individuals who have received or are receiving mental health services and family members of such individuals.

(b) Training to enhance sensitivity to and understanding of individuals with mental illness who are members of racial or ethnic minorities and to develop strategies for outreach to those populations.

(c) Training to conduct full investigations of abuse or neglect.

§§ 51.28–51.30 [Reserved]

Subpart C—Protection and Advocacy Services

§ 51.31 Conduct of protection and advocacy activities.

(a) Consistent with State and Federal law and the canons of professional ethics, a P&A system may use any appropriate technique and pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness to address abuse, neglect or other violations of rights.

(b) A P&A system shall establish policies and procedures to guide and coordinate advocacy activities. The P&A system shall not implement a policy or practice restricting the remedies which may be sought on behalf of individuals with mental illness or compromising the authority of the P&A system to pursue such remedies through litigation, legal action or other forms of advocacy. However, this requirement does not prevent the P&A system from placing limitations on case or client acceptance criteria developed as part of the annual priorities. Prospective clients must be informed of any such limitations at the time they request service.

(c) Wherever possible, the program should establish an ongoing presence in residential mental health care or treatment facilities, and relevant hospital units.

(d) Program activities should be carried out in a manner which allows program staff to:

(1) Interact regularly with those individuals who are current or potential recipients of protection and advocacy services;

(2) Interact regularly with staff providing care or treatment;

(3) Obtain information and review records; and

(4) Communicate with family members, social and community service workers and others involved in providing care or treatment.

(e) A P&A system may support or provide training, including related travel expenses, for individuals with mental illness, family members of such individuals, and other persons who are not program staff, contractors, or board or council members, to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, or to promote Federal-State and intra-State cooperation on matter related to mental health system improvement. Decisions concerning the selection of individuals to receive such training shall be made in accordance with established policies, procedures and priorities of the P&A system.

(f) A P&A system may monitor, evaluate and comment on the development and implementation of Federal, State and local laws, regulations, plans, budgets, levies, projects, policies and hearings affecting individuals with mental illness as a part of federally funded advocacy activities. A P&A system shall carry out systemic advocacy—those efforts to implement changes in policies and practices of systems that impact persons with mental illness.

(g) Determination of "probable cause" may result from P&A system monitoring or other activities, including observation by P&A system personnel, and reviews of monitoring and other reports prepared by others whether pertaining to individuals with mental illness or to general conditions affecting their health or safety.

(h) A P&A which is a public P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies imposed by the State to the extend that such policies would impact program staff or activities funded with Federal dollars and would prevent the P&A system from carrying out its mandates under the Act.

(i) A P&A system may exercise its authority under State law where the authority exceeds the authority required by the Act. However, State law must not diminish the required authority of the Act.

§ 51.32 Resolving disputes.

(a) Each P&A system is encouraged to develop and employ techniques such as those involving negotiation, conciliation and mediation to resolve disputes early in the protection and advocacy process.

(b) Disputes should be resolved whenever possible through nonadversarial process involving negotiation, mediation and conciliation. Consistent with State and Federal laws and canons of professional responsibility, family members should be involved in this process, as appropriate, where the individual with mental illness is:

(1) A minor,

(2) Legally competent and chooses to involve the family member, or

(3) Legally incompetent and the legal guardian, conservator or other legal representative is a family member or the legal guardian, conservator or other legal representative chose to involve the family member.

(c) A P&A system must exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action in a Federal or State court.

(d) Paragraph (c) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness nor does it apply in circumstances where administrative procedures do not exist. If in pursing administrative remedies, the P&A system determines that any matter with respect to an individual with mental illness with mental illness with not be resolved within a reasonable time, the P&A system may pursue alternative remedies, including initiating legal action.

(e) A P&A system shall be held to the standard of exhaustion of remedies provided under State and Federal law. The Act imposes no additional burden respecting exhaustion of remedies.

§§ 51.33–51.40 [Reserved]

Subpart D—Access to Records, Facilities and Individuals

§ 51.41 Access to records.

(a) Access to records shall be extended promptly to all authorized agents of a P&A system.

(b) A P&A system shall have access to the records of any of the following individuals with mental illness:

(1) An individual who is a client of the P&A system if authorized by that individual or the legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown to whom all o the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the P&A system to have access.

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State or one of its political subdivisions; and

(iii) A complaint or report has been received and the P&A system has determined that there is probable cause to believe that the individual has been or may be subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint or report has been received by the P&A system and with respect to whom the P&A system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exists:

(i) The P&A system has made a good faith effort to contact the representative upon prompt receipt of the representative's name and address;

(ii) The P&A system has made a good faith effort to offer assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(c) Information and individual records, whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records, which shal be available to the P&A system under the Act shall include, but not be limited to:

(1) Information and individual records, obtained in the course of providing intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility or program rendering care or treatment. This includes records stored or maintained in locations other than the facility or program as long as the system has obtained appropriate consent consistent with section

105(a)(4) of the Act. The system shall request of facilities that in requesting records from service providers or other facilities on residents that they indicate in the release form the records may be subject to review by a system.

(2) Reports prepared by an agency charged with investigating abuse neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following:

(i) Abuse, neglect, or injury occurring at the facility;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or

(iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

(3) Discharge planning records.

(4) Reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protecting records produced by medical care evaluation or peer review committees.

(5) Professional, performance, building or other safety standards, demographic and statistical information relating to the facility.

(d) A P&A system shall have reasonable access and authority to interview and examine all relevant records of any facility service recipient (consistent with the provisions of section 105(a)(4) of the Act) or employee.

(e) A P&A system shall be permitted to inspect and copy records, subject to a reasonable charge to offset duplicating costs.

§ 51.42 Access to Facilities and residents.

(a) Access to facilities and residents shall be extended to all authorized agents of a P&A system.

(b) A P&A system shall have reasonable unaccompanied access to public and private facilities and programs in the State which render care or treatment for individuals with mental illness, and to all areas of the facility which are used by residents or are accessible to residents. The P&A system shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect. This authority shall include the opportunity to interview any facility service recipient, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. Such access shall be afforded, upon request, by the P&A system when:

(1) An incident is reported or a complaint is made to the P&A system;

(2) The P&A system determines there is probable cause to believe that an incident has or may have occurred; or

(3) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness.

(c) In addition to access as prescribed in paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to facilities including all area which are used by residents, are accessible to residents, and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. Residents include adults or minors who have legal guardians or conservators. P&A activities shall be conducted so as to minimize interference with facility programs, respect residents' privacy interests, and honor a resident's request to terminate an interview. This access is for the purpose of:

(1) Providing information and training on, and referral to programs addressing the needs of individuals with mental illness, and information and training about individual rights and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system.

(2) Monitoring compliance with respect to the rights and safety of residents; and

(3) Inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.

(d) Unaccompanied access to residents shall include the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. Residents include minors or adults who have legal guardians or conservators.

(e) The right of access specified in paragraph (c) of this section shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make very effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian. The system shall take no formal action on behalf of individuals with legal guardians or conservators, or initiate a formal attorney/client or advocate/client relationship without appropriate consent, except in emergency situations as described in § 51.41(b)(3).

(f) A P&A system providing representation to individuals with mental illness in Federal facilities shall have all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

§ 51.43 Denial of delay or access.

If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name, address and telephone number of the legal guardian, conservator, or other legal representative of an individual with mental illness. Access to facilities, records or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial.

§ 51.44 [Reserved]

§ 51.45 Confidentiality of protection and advocacy system records.

(a) Records maintained by the P&A system are the property of the P&A system which must protect them from loss, damage, tampering or use by unauthorized individuals. The P&A system must:

(1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(i) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;

(ii) Individuals who have been provided general information or technical assistance on a particular matter;

(iii) Identity of individuals who report incidents of abuse or neglect or furnish information that forms the basis for a determination that probable cause exists; and

(iv) Names of individuals who are residents and provide information for the record.

(2) Have written policies governing access to, storage of, duplication and release of information from client records; and

(3) Obtain written consent from the client, if competent, or from his or her legal representative, from individuals who have been provided general information or technical assistance on a particular matter and from individuals who furnish reports or information that forms the basis for a determination of probable cause, before releasing information to individuals not otherwise authorized to receive it.

(b) Nothing in this subpart shall prevent the P&A system from. (1) Issuing a public report of the results of an investigation which maintains the confidentiality of the individuals listed in paragraph (a)(1) of this section or,

(2) Reporting the results of an investigation which maintains the confidentiality of individual service recipients to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. this information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

(c) For purposes of any periodic audit, report, or evaluation of the performance of the P&A system, the Secretary shall not require the P&A system to disclose the identity, or any other personally identifiable information, of any individual requesting assistance under a program. This requirement does not restrict access by the Department or other authorized Federal or State officials to client records or other records of the P&A system when deemed necessary for audit purposes and for monitoring P&A system compliance with applicable Federal or State laws and regulations. The purpose of obtaining such information is solely to determine that P&A systems are spending their grant funds awarded under the Act on serving individuals with mental illness. Officials that have access to such information must keep it confidential to the maximum extent permitted by law and regulations. If photostatic copies of materials are provided, then the destruction of such evidence is required once such reviews have been completed.

(d) Subject to the restrictions and procedures set out in this section, implementing section 106 (a) and (b) of the Act (42 U.S.C. 10806 (a) and (b)), this part does not limit access by a legal guardian, conservator, or other legal representative of an individual with mental illness, unless prohibited by State or Federal law, court order or the attorney-client privilege.

§ 51.46 Disclosing information obtained from a provider of mental health services.

(a) Except as provided in paragraph (b) of this section, if a P&A system has access to records pursuant to section 105(a)(4) of the Act (42 U.S.C. 10805(a)(4)) which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, it may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to that individual has given the P&A system a written determination that disclosure of such information to the individual would be detrimental to the individual's health. The provider shall be responsible for giving any such written determination to the P&A system at the same time as access to the records containing the information is granted.

(b)(1) If the disclosure of information has been denied under paragraph (a) of this section to an individual, the following individuals or the P&A system may select another mental health professional to review the information and to determine if disclosure of the information would be detrimental to the individual's health:

(i) Such individual;

(ii) The legal guardian, conservator or other legal representative of the individual; or

(iii) An eligible P&A system, acting on behalf of an individual:

(A) Whose legal guardian is the State; or

(B) Whose legal guardian, conservator, or other legal representative has not, within a reasonable time after the denial of access to information under paragraph (a), selected a mental health professional to review the information.

(2) If such mental health professional determines, based on professional judgment, that disclosure of the information would not be detrimental to the health of the individual, the P&A system may disclose such information to the individual.

(c) The restriction in paragraph (b) of this section does not affect the P&A system's access to the records.

[FR Doc. 97–26835 Filed 10–9–97; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB–113–F]

RIN: 0938–AI30

Medicaid Program; Limitation on Provider-Related Donations and Health Care-Related Taxes; Revision of Waiver Criteria for Tax Programs Based Exclusively on Regional Variations; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations that were published in the **Federal Register** on August 13, 1993 (58 FR 43156). These regulations revised the Medicaid regulations relating to limitations on federal financial participation (FFP) in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Frizzera, (410) 786–9535.

SUPPLEMENTARY INFORMATION: On August 13, 1993, we published final regulations that further implemented statutory provisions that limit the amount of Federal financial participation (FFP) available for medical assistance expenditures in a fiscal year when States receive funds donated from providers and revenues generated by certain health care related taxes. The August 13, 1993 final rule amended on interim final rule that was published in the **Federal Register** on November 24, 1992 that established in regulations the statutory limitations.

In general, the statute specified the types of health care related taxes that a State is permitted to receive without a reduction in FFP. Such taxes are broad-based taxes that apply in a uniform manner to all health care providers in a class, and that do not hold providers harmless for their tax costs. If, however, a State tax is not broad-based and uniform, a State may submit a waiver application to us requesting that we

treat its tax as a broad-based and uniform health care-related tax. A State application may be approved if the State established that, among other things, the tax is generally redistributive. We established in the regulation the waiver criteria under which we will determine whether a tax, that does not meet the statutory defined broad-based or uniform requirements, is generally redistributive.

As published, the regulation at 42 CFR 433.68(e)(2)(iv) contains an error in the percentage amount necessary to demonstrate that a State tax that varies, based exclusively on regional variations, and enacted and in effect prior to November 24, 1992, is generally redistributive and can be considered to meet the criteria for waiver of the uniform tax requirement.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 433 is corrected by making the following correcting amendment:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(A)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), (1903(r), 1903(w), 1912, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), and 1396k.)

§ 433.68 [Corrected]

2. In § 433.68, paragraph (e)(2)(iv), remove the percentage "0.85" and add in its place "0.70".

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 12, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–27194 Filed 10–9–97; 4:00 pm]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215; FCC 97–339]

Small Cable Television Systems; Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Fourteenth Order on Reconsideration denying two petitions seeking reconsideration of the rules adopted for small cable television systems governing rates charged for regulated cable services in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–195. The Commission also adopted minor clarifications to the rate rules.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's Fourteenth Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, adopted September 24, 1997 and released October 1, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Synopsis

I. Introduction

1. On May 5, 1995, the Commission adopted the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, 60 FR 35854 (July 12, 1995) ("Small System Order"), thereby modifying the rules governing rates charged for regulated cable services by certain smaller cable systems. In this order, we address petitions for reconsideration of the Small System Order.

II. Background

2. Section 623(i) of the Communications Act of 1934, as amended ("Communications Act"), requires that the Commission design rate regulations to reduce the administrative burdens and the cost of compliance for cable systems with 1,000 or fewer subscribers. In the Small System Order, the Commission extended small system rate relief to small cable systems owned by small cable companies. The Small System Order defines a small system as any system that serves 15,000 or fewer subscribers, and it defines a small cable company as a cable operator that serves a total of 400,000 or fewer subscribers over all of its systems.

3. In addition to adopting the new categories of small systems and small cable companies, the Small System Order introduced a form of rate regulation known as the small system cost of service methodology. This approach, which is available only to small systems owned by small cable companies, follows general principles of cost of service rate regulation. An eligible cable operator may establish a maximum permitted rate for regulated cable service equal to the amount necessary to cover its operating expenses plus a reasonable return on its prudent investment in the assets used to provide that service. The small system cost of service methodology differs both procedurally and substantively from the standard cost of service methodology available to cable operators generally.

4. To implement the small system cost of service rules, we designed FCC Form 1230, a simplified one-page form, for use exclusively by operators eligible for these rules. This form is more streamlined than Form 1220 used for cost of service showings by larger operators. To use Form 1230, the operator must calculate five items of data pertaining to the system in question: annual operating expenses, net rate base, rate of return, channel count and subscriber count. Once these variables are calculated, the form generates the maximum per channel rate the operator may charge for regulated service. Although subject to regulatory review, this rate is presumed reasonable if it is no more than $1.24 per channel.

5. When applicable, the presumption of reasonableness effectively exempts eligible cable operators from many of the proof burdens that apply under our standard cost of service rules. For example, eligible small cable companies have greater discretion than larger operators in determining how to allocate costs between regulated and unregulated services and between various levels of regulated services. Similarly, qualifying cable operators using Form 1230 are not subject to the presumption of unreasonableness that otherwise attaches when an operator seeks a rate of return higher than 11.25%. As noted, an eligible operator enjoys the presumption of reasonableness with respect to these and other factors only if the maximum permitted rate claimed on Form 1230 does not exceed $1.24 per channel. If the rate exceeds $1.24 per channel, the cable operator still may use Form 1230, but is subject to the same presumptions that apply in a standard cost of service showing. As with other rate-setting procedures, a cost of service showing involving Form 1230 is subject to review by the cable operator's local franchising authority and/or by the Commission.

6. With respect to the effective date of the small system rules, we directed franchising authorities to apply the small system cost of service approach to rate cases pending as of the release date of the Small System Order because the record demonstrated that the pre-existing rules were imposing a significant burden on small systems. The Small System Order was released on June 5, 1995.

III. Petitions for Reconsideration

7. Two parties seek reconsideration of the Small System Order and a number of other parties oppose the petitions. In one petition, the Georgia Municipal Association ("GMA") requests that we repeal the small system cost of service rules in their entirety. In the alternative, GMA urges the Commission to lower the maximum amount of $1.24 per channel at which an operator may set rates and still be entitled to a presumption of reasonableness. In support of its petition, GMA questions the accuracy of the underlying cost data that we used to set the $1.24 per channel rate. In addition, GMA claims that the new rules will increase burdens on franchising authorities and lead to unreasonable rates for regulated cable services. GMA also cites examples of what it claims are cable operators abusing the small system rules.

8. The New Jersey Board of Public Utilities ("New Jersey Board") seeks reconsideration of the Small System Order to the extent it permits application of the small system rules to rate cases that were pending as of the release date of the order. In support of its petition, the New Jersey Board describes the possible impact of the small system rules upon a rate case that was pending before it when the Commission released the Small System Order on June 5, 1995. According to the New Jersey Board, the cable operator in that case has given notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230. The New Jersey Board complains that the rules governing the information that a franchising authority may seek in conjunction with its review of a Form 1230 are overly restrictive. The New Jersey Board also objects to having to bear the burden of showing the unreasonableness of the rate sought by the operator if that rate does not exceed $1.24 per regulated channel. As a result of the above, the New Jersey Board contends it will be "precluded from establishing whether the cable operator's subscribers are being charged a reasonable rate," assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that the Board already has expended in the case. Along with its petition for reconsideration, the New Jersey Board also filed a motion for stay of the Small System Order to the extent it mandates application of the new rules to pending cases.

IV. Discussion

9. Neither petition challenges our determination that some measure of regulatory relief is appropriate for small systems owned by small cable companies. The petitioners do not dispute our conclusion that such systems face proportionately higher operating and capital costs than larger cable entities. Likewise, the petitioners do not contest that our standard cost of service rules may place "an inordinate hardship" on smaller systems "in terms of the labor and other resources that must be devoted to ensuring compliance." Therefore, the petitions give us no reason to reconsider our decision to establish for eligible small systems a form of rate regulation that lessens some of the substantive and procedural burdens that otherwise would apply. Because the petitions raise separate issues, we will resolve the merits of each petition individually.

A. The GMA Petition

10. GMA challenges the presumption of reasonableness that arises when an eligible small system uses Form 1230 to justify a regulated rate that does not exceed $1.24 per channel. As noted above, we established $1.24 per channel as the appropriate cut-off based on cost data previously submitted to the Commission by small cable companies seeking to establish regulated rates for their small systems by using Form 1220 in accordance with our standard cost of service rules. GMA asserts that a careful review of the Form 1220s that we relied on to set the $1.24 per channel rate "would probably * * * [show] that corrections should be made to the operators' calculations in a large percentage of cases." In support of this prediction, GMA states that "several" Georgia cable operators using FCC Form 1220 have overstated the value of the intangible assets in their ratebases. In addition, GMA states that the Commission found calculation or allocation errors in each of the nine cost of service cases that we had addressed as of the date GMA filed its petition. GMA cites three specific cost of service cases in which the Cable Services Bureau ("Bureau") made adjustments to correct such errors. On this basis, GMA argues that "there is a strong possibility that there are errors" in the Form 1220s from which we gleaned the cost data to establish the presumptively reasonable rate of $1.24 per channel.

11. We believe that the rate-setting mechanism we adopted in the Small System Order reflects a reasoned judgment as to the method for establishing the rates that an eligible small system may charge for regulated services. Neither GMA nor any other party challenges this mechanism. GMA objects only to the input data that produced the standard of $1.24 per regulated channel against which the rates of eligible small systems are measured. We determined in the Small System Order, however, that a more comprehensive review of small system cost data was not necessary to ensure that our small system rules were properly tailored to the conditions faced by such systems.

12. GMA does not challenge our finding that small systems owned by small cable companies were in need of immediate relief. GMA suggests that the Form 1220 filings on which we relied were so facially inaccurate that we should have conducted a further analysis of small system cost data. We disagree. This approach would have delayed implementation of measures for which there was an immediate need and would have imposed additional administrative responsibilities (i.e., having to respond to Commission inquiries concerning small system costs) on the very entities that we found were the most burdened by regulation.

13. GMA fails to persuade us that the benefits of further analysis of small system cost data would have outweighed the administrative costs and delay that such analysis would have entailed. While GMA does not dispute that such costs and delay would have been both inevitable and extremely burdensome, it fails to factor these considerations into its discussion. GMA bases its request for reconsideration on

the fact that the Bureau found allocation or calculation errors in the cost of service cases it cites. However, the impact of the Bureau's adjustments in the cited cases are overstated by GMA and do not undermine the formulation of the $1.24 standard.

14. The Bureau decisions cited by GMA were based on general cost of service principles and not under the interim rules the Commission adopted in February 1994. As of the time of those filings, we had directed cost of service operators to justify their rates in accordance with traditional cost of service principles generally applicable in the field of utility rate regulation. After seeking and reviewing further public comment, we subsequently adopted more refined cost of service rules better tailored for use in the cable service context. At the same time, we designed Form 1220 for use in accordance with the new rules. The cost data used in the Small System Order were gleaned from Form 1220s filed by small systems pursuant to cost of service rules adapted specifically for use by cable operators. The specificity of the new rules, combined with the uniformity of presentation required by Form 1220, makes the latter submissions inherently more reliable than the earlier submissions cited by GMA. Thus, the errors in the filings relied on by GMA do not suggest the likelihood of material inaccuracies in the subsequent Form 1220 filings. This is particularly true given the nature of the errors in the cases cited by GMA. In each case, the errors were so minor that the Bureau found that the rates actually being charged by the cable operator were nevertheless justified and denied the complaint.

15. We further note that in the Small System Order, we decided that standards applicable to cable systems generally were inappropriate for small systems owned by small cable companies. In particular, we decided that eligible small systems should be given more regulatory leeway than larger cable entities because small systems face disproportionately higher operating costs, capital costs, and regulatory compliance costs. In fact, with respect to eligible small systems, we relaxed the very standards that had caused the Bureau to make the adjustments described in the cost of service cases cited by GMA.

16. GMA does not dispute that we should be less restrictive in applying cost of service principles to small systems owned by small cable companies. Yet it invites us to question cost information submitted by such systems by applying the stricter standards that we have found inappropriate for those systems. Because GMA's argument relies on overly restrictive standards, we find that it has not raised a material issue with respect to the reliability of those filings.

17. In addition to its specific challenge to the per channel rate of $1.24, GMA recites several "experiences" of Georgia franchising authorities that purport to show that the small system rules "are unfair to those franchising authorities who have invested a substantial amount of time and money in the rate regulation process." GMA further complains that these examples prove that "the rules are unfair to subscribers, because some cable operators will increase rates well beyond the level which subscribers would pay if competition existed." These conclusory allegations do not refute the specific findings or analyses set forth in the Small System Order and do not state a basis for us to reconsider that order. Furthermore, franchising authorities had no reasonable reliance interest in our rules remaining unchanged. As for practices of the individual operators identified in the GMA petition, we do not believe it is appropriate for us to make specific findings in this context regarding the propriety of those practices. To the extent cable operators fail to abide by our rules, local franchising authorities may take appropriate action.

18. For the reasons stated above, we hereby deny GMA's petition for reconsideration.

B. The New Jersey Board Petition

19. The New Jersey Board objects to the Small System Order to the extent it requires local franchising authorities to permit eligible systems to use the small system cost of service methodology in cases pending as of the date the Small System Order was released. In support of its petition, the New Jersey Board describes the potential impact of the Small System Order upon a rate case pending before it. That case involves the rates charged by Service Electric Cable TV of Hunterdon ("Service Electric"). Service Electric filed a standard cost of service showing with the New Jersey Board on July 14, 1994. Pursuant to that showing, Service Electric sought to increase its monthly rates from $21.00 to $26.31 for its 60-channel basic service tier. That case was pending when the Commission released the Small System Order on June 5, 1995, although the staff of the New Jersey Board had negotiated a tentative settlement with Service Electric that was subject to the approval of the New Jersey Board. Before such approval occurred, Service Electric gave notice of its intent to attempt to justify its proposed rate increase by filing FCC Form 1230.

20. The New Jersey Board contends that under the small system cost of service rules, Service Electric might be able to justify the rate increase it sought in its initial showing to the Board or, potentially, an even greater increase. According to the New Jersey Board, the rules governing the information that a franchising authority may seek in conjunction with its review of Form 1230 are so restrictive that it will be "difficult if not impossible to challenge" the rate the operator seeks to justify. The New Jersey Board also notes that under the small system cost of service rules, the burden is on the franchising authority to show the unreasonableness of the rate sought by an eligible small system if that rate does not exceed $1.24 per regulated channel. The New Jersey Board asserts that this "unprecedented" shift in the burden of proof will "necessitate the use of Board and State resources not usually required" in order to establish the unreasonableness of the rate sought by the cable operator.

21. Based on the above, the New Jersey Board argues that it will be "precluded from establishing whether Service Electric's subscribers are being charged a reasonable rate," assuming the operator meets the small system and small cable company definitions. The New Jersey Board also asserts the alleged unfairness of applying the small system cost of service rules to the pending case in light of the resources that it already has expended in the case.

22. As an initial matter, we note that the petition seeks reconsideration of a Commission rule of general applicability based solely on the potential effect of that rule on a single rate case affecting approximately 3,000 cable subscribers. The Commission is charged with structuring a national framework of rate regulation. A broader and more representative showing of the rule's impact is necessary for us to review the merits of a particular rule or regulatory approach.

23. Further, the New Jersey Board fails to refute the underlying analysis supporting our decision to apply the new rules to pending cases. We adopted this approach based upon our balancing of various factors. With respect to rate regulation, Congress specifically directed us to reduce the administrative burdens and ease the costs of compliance for smaller systems. In the Small System Order, we concluded that our then existing rules "have significantly burdened small systems." We designed the small system cost of service rules to remedy this problem. Having determined small systems' need for immediate relief, we deemed it in the public interest to provide such relief accordingly. We believe that it is appropriate to apply a new rule to pending cases where the new rule serves to alleviate an existing restriction on regulated parties, as the small system cost of service rules did by creating an additional method for eligible systems to justify their rates. In addition, were pending cases not made subject to the new rules, subscribers in some areas might have received refunds when the pending cases were decided, followed immediately by rate hikes when the systems put new rates into effect prospectively in accordance with the small system cost of service methodology. Applying the new small system rules to pending cases avoids this confusing "roller-coaster" result.

24. We decided that the small system cost of service rules would not affect final decisions of local franchising authorities made before the release of the Small System Order. In these cases, the public interest, and in particular the interests of administrative finality, dictated that the final decision of a local franchising authority should not be subject to reconsideration or appeal under the small system rules.

25. By seeking reconsideration, the New Jersey Board suggests, implicitly, that we erred in finding a need for immediate relief. Yet it offers no arguments or evidence to refute this finding and thus presents no basis to reconsider it. The New Jersey Board's statement of a policy preference cannot overcome the evidence concerning the plight of smaller systems that was before us when we adopted the Small System Order. As James Cable Partners and Rifkin and Associates, Inc. argues, it makes no sense "to complete pending cases under pre-existing criteria that do not embody the policy and statutory concerns that led to the adoption of the Small System Order in the first place." Likewise, the New Jersey Board does not dispute the "roller-coaster" effect on rates that would result if the new rules were not applied to pending cases.

26. The New Jersey Board contends that application of the small system rules to the pending Service Electric case will result in a waste of the resources it already has expended in that case. It objects to our decision to place on the franchising authority the burden of proving the unreasonableness of a proposed rate that does not exceed $1.24 per regulated channel. The New Jersey Board suggests that the presumption of reasonableness that will attach to such a rate, coupled with the limitations on the information it can demand from the operator, effectively will preclude it from determining whether a particular rate is reasonable. We disagree.

27. We understand the frustration of the New Jersey Board with respect to its prior expenditure of resources in accordance with the standard cost of service rules. We note, however, that those expenditures were made with notice of the possibility that we would modify the rules governing small systems. Unfortunately, rule changes and rule modifications sometimes lead to inefficiencies and disruptions for both the regulator and the regulated. We are forced to balance these factors against the impact of delaying implementation of the new rule. Since the Service Electric case is the only matter in which a franchising authority has articulated this concern, we cannot conclude that the problem is so significant to require us to reconsider our prior decision. We do not believe that the Small System Order will result in squandered resources even in the Service Electric case. The efforts already expended by the New Jersey Board in amassing data and making factual determinations will not have been wasted since they are relevant when the New Jersey Board decides the rate case in accordance with the small system rules.

28. More generally, we disagree with the New Jersey Board's characterization of the permissible scope of information requests that a franchising authority may make when reviewing Form 1230. The Small System Order expressly recognizes the right of franchising authorities to obtain "the information necessary for judging the validity" of the filing. No information has been submitted to indicate that anything more than what this rule permits is necessary.

29. We further find that the New Jersey Board has failed to raise a valid argument against imposing the burden of proof on the franchising authority when the rate in question does not exceed $1.24 per channel. What it terms an "unprecedented shift in the burden of proof" is the logical extension of our determination that rates at or below $1.24 per regulated channel appear reasonable. The New Jersey Board does not challenge the analysis by which we arrived at the rate of $1.24 per channel. While not disputing that rates at or below $1.24 per channel can be presumed reasonable, the New Jersey Board would ignore this finding in individual rate proceedings and continue to place upon the cable operator the burden of establishing the reasonableness of its requested rate, regardless of the amount. We believe that having made the determination that rates at or below $1.24 per channel may by presumed reasonable, we should shift the burden of proof to the franchising authority when the operator seeks to justify rates that do not exceed that amount. The New Jersey Board does not contest this analysis and therefore we have no basis to reconsider our decision.

30. For these reasons, we hereby deny the New Jersey Board's Petition. The New Jersey Board presents the same arguments in its Motion for Stay as it does in its Petition. Therefore, for the same reasons that we deny its Petition, we also deny the New Jersey Board's Motion for Stay.

C. Other Matters

31. On our own motion, we clarify one aspect of our rule that allocates the burden of establishing whether the rate claimed by a cable operator under the small system cost of service methodology is reasonable. As discussed above, the current rule states: "If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable." Thus, the current wording of the rule suggests that the burden depends on the maximum rate permitted by Form 1230, not on the rate that the operator intends to charge. Such an interpretation would create an anomaly where an operator determines that its maximum permitted rate is above $1.24 per regulated channel, but does not actually intend to charge more than $1.24. We did not intend for the operator to have the burden of overcoming all of the presumptions we generally found to be inappropriate for eligible small systems, if the actual rate the operator seeks to charge is within the zone of what we presume to be reasonable. To eliminate this potential confusion, we hereby clarify that the presumption of reasonableness shall apply as long as the actual rate to be charged does not exceed $1.24 per regulated channel, regardless of whether the maximum permitted rate, as calculated on Form 1230, exceeds that amount. The burden shall shift back to the operator once it seeks to actually raise rates above the $1.24 per channel threshold.

32. We also take this opportunity to correct three editing errors that appeared in the rules appendix to the Small System Order. These corrections do not amend the substance of the rules in any way.

33. In the Small System Order, we provided for the treatment of a small system that properly sets its rates in

accordance with the small system cost of service methodology, but later experiences a change in its status, either because the system exceeds the 15,000-subscriber cap for a small system or because the operator exceeds the 400,000-subscriber threshold for a small cable company. While the text of the order explained the regulatory effect of such a transition, the accompanying rules did not. Here we amend the rules consistent with the text of the Small System Order.

34. As discussed above, the Small System Order provided for the application of the small system cost of service rules to cases pending as of the release date of the order if the cable operator in question met the subscriber threshold criteria as of the release date and as of the date the system became subject to rate regulation. The rules appendix inadvertently referred to the effective date, instead of the release date, of the Small System Order for purposes of this rule. We hereby revise the text of § 76.934(h)(9) of our rules to conform it with our intent as set forth in the Small System Order.

35. Due to an editing error, the rules appendix to the Small System Order did not accurately indicate that we were revising the eligibility criteria for streamlined rate reduction to incorporate the new small system and small cable company definitions established in the Small System Order. We hereby amend § 76.922(b)(5) of our rules to conform it with our intent as set forth in the Small System Order.

V. Final Regulatory Flexibility Certification

36. As permitted by Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), ("RFA"), we certify that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this order will not impose a significant economic impact on a substantial number of small entities as defined by statute, by our rules, or by the Small Business Administration. 5 U.S.C. 605(b). Three of the amendments merely correct the rules and have no substantive effect. In addition, we clarified that the operator's presumption of reasonableness is preserved when the operator's actual rate charged does not exceed $1.24 per regulated channel, regardless of the maximum permitted rate calculated on Form 1230. Because this clarification will benefit small systems owned by small cable companies, we believe a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

37. The Commission will send a copy of this certification, along with this order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b).

VI. Ordering Clauses

38. Accordingly, *It Is Ordered* that, pursuant to the authority granted in sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, the petitions for reconsideration filed by the Georgia Municipal Association and the New Jersey Board of Public Utilities, and the Motion for Stay filed by the New Jersey Board of Public Utilities, *are denied*.

39. *It Is Further Ordered* that, pursuant to the authority granted in sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 543, 76.922 and 76.934 of the Commission's rules, 47 CFR 76.922 and 76.934, *are amended* as set forth below.

40. *It Is Further Ordered* that the Commission *shall send* a copy of this Fourteenth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (b)(5)(i) introductory text to read as follows.

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) * * *

(5) *Streamlined rate reductions.* (i) Upon becoming subject to rate regulation, a small system owned by a small cable company may make a streamlined rate reduction, subject to the following conditions, in lieu of establishing initial rates pursuant to the other methods of rate regulation set forth in this subpart:

* * * * *

3. Section 76.934 is amended by revising paragraphs (h)(5)(i) and (h)(9) and by adding paragraph (h)(11) to read as follows:

§ 76.934 Small systems and small cable companies.

* * * * *

(h) * * *

(5) * * *

(i) If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the franchising authority shall bear such burden only if the rate that the cable operator actually seeks to charge does not exceed $1.24 per channel.

* * * * *

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of the proceeding, if the system and affiliated company were a small system and small company respectively as of the June 5, 1995 and as of the period during which the disputed rates were in effect. However, the validity of a final rate decision made by a franchising authority before June 5, 1995 is not affected.

* * * * *

(11) A system that is eligible to establish its rates in accordance with the small system cost-of-service approach shall remain eligible for so long as the system serves no more than 15,000 subscribers. When a system that has established rates in accordance with the small system cost-of-service approach exceeds 15,000 subscribers, the system may maintain its then existing rates. After exceeding the 15,000 subscriber limit, any further rate adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with some other method of rate regulation prescribed in this subpart.

[FR Doc. 97–27151 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100797B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Opening of the New York Bight fishery.

SUMMARY: NMFS opens the Atlantic bluefin tuna (ABT) General category New York Bight fishery. This action is being taken to extend the season for the General category, provide for fishing opportunities in the New York Bight area, and ensure additional collection of biological assessment and monitoring data.

DATES: Effective October 9, 1997, 1 a.m. local time until December 31, 1997, or until the date, published in the **Federal Register**, that the set-aside quota is determined to have been taken.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301-713-2347, or Pat Scida, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 72 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning October 1 and ending December 31. Due to an overharvest of 1 mt in the September period subquota, and the transfer of 70 mt from other categories (62 FR 51608, October 2, 1997), the October-December period subquota was adjusted to 141 mt. The October-December subquota is divided into a coastwide subquota of 131 mt and 10 mt for the traditional fall New York Bight set-aside area, defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay).

NMFS previously announced the closure of the General category fishery for the October-December time period effective October 5, 1997, which published in the **Federal Register** on October 9, 1997. After tallying the landings following the closure, NMFS has determined the remaining unharvested coastwide quota (approximately 10 mt) is insufficient to warrant a reopening of the coastwide General category because daily catch rates in September and October have averaged 30 mt.

The New York Bight set-aside of 10 mt will open effective Thursday, October 9, at 1 a.m. local time. Upon the effective date of the New York Bight set-aside, persons aboard vessels permitted in the General category may fish for, retain, possess, or land large medium and giant ABT only in the New York Bight set-aside area specified above, until the set-aside quota for that area has been harvested. ABT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. Vessels permitted in the Charter/Headboat category, when fishing for large medium and giant ABT, are subject to the same rules as General category vessels when the General category is open.

The announcement of the closure date will be filed with the Office of the Federal Register, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (508) 281-9305. Information regarding the Atlantic tuna fisheries is also available toll-free through NextLink Interactive, Inc., at (888) USA-TUNA.

Classification

This action is taken under 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 8, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27133 Filed 10–8–97; 3:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 092497C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery; Announcement of Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Nontrawl sablefish mop-up fishery and delay of the limited entry daily trip limit fishery; announcement of extension.

SUMMARY: NMFS announces the extension of and new ending date for the mop-up fishery for nontrawl limited entry sablefish. This action will delay the beginning of the October limited entry daily trip limit fishery. This action is taken in response to unusually bad coastwide weather during the first week of the mop-up fishery. This action is intended to increase safety while providing for harvest of the remainder of the 1997 limited entry nontrawl allocation for sablefish.

DATES: This action is effective on October 9, 1997. The nontrawl sablefish mop-up fishery began at 1201 hours local time (l.t.), October 1, 1997, and will end at 1200 hours l.t., October 22, 1997, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1998 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 22, 1997.

ADDRESSES: Comments on these actions should be sent to William Stelle, Jr.,

Administrator, Northwest Region, (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or to William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Administrator.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Svein Fougner at 562–980–4034.

SUPPLEMENTARY INFORMATION: On October 1, 1997, NMFS published an inseason action (62 FR 51381) to announce the start and end dates for the limited entry, fixed gear mop-up fishery for sablefish. When the notice was published, 612 mt (1,349,215 lb) of sablefish was available to the mop-up fishery. The Regional Administrator, in consultation with the Pacific Fishery Management Council (Council), set a mop-up season with a cumulative trip limit of 8,500 lb (3,851 kg) (round weight), to be taken in a 2-week period (October 1–15, 1997). NMFS expected that almost all of the limited entry permit holders with sablefish endorsements would participate in the mop-up fishery and would catch the full cumulative limit amount.

As the mop-up season has progressed, NMFS and the states of Washington, Oregon, and California have received numerous telephone calls from fishermen with sablefish endorsements who are concerned about fishing under unusually difficult wind and storm conditions, and who have asked if the mop-up season might be extended. In confirmation of these reports from fishermen, NMFS has noted that the National Weather Service (NWS) announced several severe weather warnings over the week of October 1–8, 1997, that would likely deter fishers from fishing in the mop-up fishery. In addition, as of October 8, 1997, NWS is forecasting continued high winds, gale warnings, and small craft advisories along the Pacific coast.

NMFS consulted with the three states, the Coast Guard, and the Council Chair on whether to extend the length of the mop-up season. The Coast Guard expressed particular concern about the safety of the small vessels that participate in this fishery, as a result of bad weather. All three states and the Council Chair endorsed extending the mop-up season for 1 week. This extension is designed to allow flexibility for fishermen who were not able to fish during the bad weather of the first week of the mop-up fishery. In addition, it should deter fishermen from fishing in the dangerous weather that is still forecast, because they will have an additional week to harvest their limit. The season is only being extended by 1 week in order to limit the impacts on the participants in the daily trip limit fishery, whose fishery is delayed until the end of the mop-up fishery. This extension still allows the daily trip limit fishermen to operate the last 9.5 days in October. Therefore, the Regional Administrator agreed to extend the length of the mop-up season, so that the season will end on Wednesday, October 22, at noon. This notice does not change the cumulative trip limit amount.

As announced in the October 1, 1997, notice on the mop-up fishery, daily trip limits will be reimposed after the mop-up fishery and until the end of the year. Following the mop-up season, the daily trip limits will be 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) taken in any one calendar month.

A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours l.t. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the beginning of the regular season, and went back into effect after the post-season closure ended on September 5, 1997. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. In addition, no more than one mop-up cumulative limit may be landed on each limited entry permit with a sablefish endorsement.

The sablefish daily trip limit for the limited entry fishery after the mop-up season is 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) to be taken in any one calendar month. Since the daily trip limits apply to a 24-hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 1201 hours and 2400 hours on October 22, 1997, following the mop-up season.

NMFS Actions

NMFS announces an extension to the end date of the nontrawl sablefish limited entry mop-up fishery and a delay in the reopening of the limited entry daily trip limit fishery. All other provisions remain in effect. In the January 6, 1997 (62 FR 700) annual management measures, as amended at 62 FR 51381, October 1, 1997, paragraphs IV.E.(2)(c) introductory text and IV.E.(2)(C)(iii) are revised to read as follows:

IV. * * *

E. * * *

(2) *Limited Entry Fishery.* * * *

(c) *Nontrawl trip and size limits.* (i) *Daily trip limits.* Effective 1201 hours October 22, 1997. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00′ N. lat. is 300 lb (136 kg), not to exceed 1,500 lb (680 kg) cumulative in a calendar month.

* * * * *

(iii) *Mop-up Fishery.* Effective 1201 hours October 1, 1997, until 1200 hours l.t. October 22, 1997, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 8,500 lb (3,851 kg) per vessel.

(Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 8,500 lb (3,851 kg) round weight corresponds to 5,313 lb (2,407 kg) for dressed sablefish.)

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. Because of the need for immediate action to extend the mop-up fishery for sablefish, as described above, NMFS has determined that providing an opportunity for public notice and prior comment would be contrary to the public interest. Participants in the mop-up season sablefish fishery are concerned about their safety in dangerous fishing conditions. Delay of this rule could prevent NMFS from allowing smooth extension of the mop-up season and would give fishermen strong incentives to fish in bad weather in order to catch their limit before October 15. Therefore, the agency has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 9, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27296 Filed 10–9–97; 4:24 pm]

BILLING CODE 3510–22–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 100797A]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" Species Group in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of the "other rockfish" species group in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" species group 1997 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 TAC of the "other rockfish" species group in the Bering Sea subarea was established as 317 metric tons by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1997 TAC for the "other rockfish" species group in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of "other rockfish" in the Bering Sea subarea be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for the "other rockfish" species group in the Bering Sea subarea of the BSAI. Providing prior notice and opportunity for public comment is impracticable and contrary to public interest. The fleet has taken the directed fishing allowance for the "other rockfish" species group in the Bering Sea subarea. Further delay would only result in overharvest and disrupt the FMP's objective of not exceeding the TAC throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 8, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27160 Filed 10–8–97; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 199
Wednesday, October 15, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advanced notice of proposed rulemaking on Dairy Tariff-Rate Import Quota Licensing.

SUMMARY: This document requests public comments on possible options for the implementation of the Dairy Tariff-Rate Import Quota Licensing regulation's requirement to permanently reduce certain historical licenses based on surrenders, including possible recision, suspension, or delay of this requirement.

DATES: Comments should be submitted on or before 5 p.m. on November 28, 1997 to be assured of consideration.

ADDRESSES: Interested parties may mail their comments to: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021. They may also fax their comments to 202–720–0876. All comments received will be available for public inspection in room 5541–S at the above address. Summaries of comments will be made available via our fax retrieval system by calling (202) 720–0876 after December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW, Stop 1021, Washington, DC 20250–1021 or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) under the authority of 7 CFR 2.43 is requesting comments concerning possible implementation of § 6.25(b) of the Department's Dairy Tariff-Rate Import Quota Licensing Regulation ("the Regulation"). Section 6.26(b)(2) provides that prior to 1999, a determination may be made, in light of market conditions, to eliminate the requirement in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to permanently reduce the quantity of a historical license based on consecutive years of license surrender. Specifically, § 6.25(b)(1)(i) states that beginning in 1999, if a licensee has surrendered to the Department more than 50 percent of a historical license in each of three prior years, that license will be permanently reduced to the average amount entered during those three years (the "three-year rule"). Section 6.25(b)(1)(ii) provides that beginning in 2001, if a licensee surrenders to the Department more than 50 percent of a historical license in three of the five prior years, that license will be permanently reduced by the average amount entered during those five years (the "five-year" rule).

Section 6.25(b)(2) is under review by the Department and we are seeking comments, views, and recommendations with respect to methods and timing of the implementation of this section. At this time, all options are under consideration, including but not limited to the following:

A. Issue an immediate determination that §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) shall not apply in light of market conditions, effectively rescinding the provision;

B. Revise the regulation to advance the effective date of § 6.25(b)(1)(i) from 1999 to 2003, the effective date of § 6.26(b)(ii) from 2001 to 2005, and the determination date from prior to 1999 to prior to 2003; and

C., D. Revise the regulation to eliminate either the three-year rule (section 6.25(b)(1)(i)) or the five-year rule (section 6.26(b)(1)(ii)) to provide that one but not both of these provisions remain in effect with existing or modified requirements.

FAS also invites comments as to whether current dairy import market conditions are such that FAS should implement § 6.25(b)(2) immediately.

Background

Rationale for Section 6.26(b)(2)

Revision 8 of the Regulation, issued on October 6, 1996, amended the previous rule so that a historical license that is being consistently underutilized will be permanently reduced. Under the previous rule, there was no consequence for surrendering license amounts. In light of the small amount of license available to new entrants or others who wish to increase imports of a certain dairy product, the Department determined that it was sound public policy to reallocate licenses amounts that are consistently not being used. Therefore, the amount by which a historical license is permanently reduced is to be converted to a nonhistorical license.

How Section 6.25(b) May Be Implemented

Section 6.25(b)(2) of the Regulation permits the Secretary of Agriculture to determine that § 6.25(b)(1) "does not apply in light of market conditions." Authority for administration of tariff-rate quotas (TRQs) for dairy products was delegated to the FAS Administrator under 7 CFR 2.43.

Requests for Public Comments on Section 6.25(b)

FAS requests comments on any of the following options and any other views, comments or recommendation for action that commentors wish to submit on this matter.

A. Using Section 6.25(b)(2) To Permanently Cancel Section 6.25(b)(1)

Under this option, FAS would use its determination authority to find that market conditions in 1997 are such that FAS would invoke § 6.25(b)(2) to permanently void § 6.25(b)(1). If FAS implemented this option, licensees would not be subsequently penalized for having surrendered more than 50 percent of their historical licensed amounts in 1996 or 1997 or in future years. However, the problems concerning repeated license surrenders and limited access to licenses to import inquota TRQ amounts would remain.

B. Postponing Implementation of Section 6.25(b)(1)

Under this option, FAS would amend the § 6.25(b)(1)(i) to delay its implementation from 1999 to a future date. This delay would give licensees time to adjust to changing market conditions which have resulted from the implementation of the Uruguay Round Trade Agreement with respect to market access and export subsidies. FAS invites comments on the concept of delaying implementation of §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii)96, and welcomes proposals as to future implementation dates.

C. Eliminate the Three-Year Rule, While Retaining the Five-Year Rule

Under this option, FAS would amend the Regulation to delete § 6.25(b)(1)(i). This action would eliminate the three-year rule, while retaining the five-year rule, which appears in § 6.25(b)(1)(ii). Per the five-year rule, a licensee could surrender more than 50 percent of its historical licensed amount for two of five consecutive years without penalty. The five-year rule may be viewed as giving licensees two years in which to adjust to changed market conditions.

D. Eliminate the Five-Year Rule, While Retaining the Three-Year Rule

Under this option, FAS could amend the Regulation to delete § 6.25(b)(1)(ii). This action would eliminate the five-year rule, while retaining the three-year rule, which appears in § 6.25(b)(1)(i). Per the three-year rule, a licensee could surrender more than 50 percent of a historical license amount for two years without penalty and not be subjected to license reduction if more than 50 percent of that license were surrendered in the next two years. This also may be viewed as giving licensees time to adjust to changed market conditions.

Signed at Washington, DC, on October 3, 1997.

Christopher E. Goldthwait,

Acting Administrator.

[FR Doc. 97–26928 Filed 10–14–97; 8:45 am]
BILLING CODE 3410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618, and 621

RIN 3052–AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) issues a proposed rule to amend its regulations that provide Farm Credit System (Farm Credit or System) institutions, including the Farm Credit Leasing Services Corporation (FCL), regulatory guidance concerning leasing activities. The proposed rule clarifies leasing authorities of System institutions and addresses issues regarding leasing raised by System institutions and FCA examiners. The proposed rule is also intended to provide clear and concise regulations pertaining to the System's leasing activities and clarify what existing regulations are applicable to leasing activities.

DATES: Comments should be received on or before December 15, 1997.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or sent by facsimile transmission to FAX number (703) 734–5784. Comments may also be provided by electronic mail addressed to "reg-comm@fca.gov" on the internet. Copies of all communications received will be available for examination by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert G. Magnuson, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: System leasing operations continue to evolve to meet the demands of agricultural and aquatic producers, cooperatives, and rural utilities. Several System institutions have inaugurated new leasing programs to meet the increased demands for leasing and provide customers with more options for financing the expansion of agricultural operations. In addition, the FCL has experienced substantial growth since 1990 because of increased demand for leases by agricultural and aquatic producers and their cooperatives.

The System's statutory leasing powers were granted to supplement its lending authorities. The leasing provisions of the Farm Credit Act of 1971, as amended (Act), remain separate authorities, however, and do not parallel the rules for lending in all respects. The proposed regulations are intended to clarify which lending regulations are applicable to leasing activities and how the rules applicable to leasing differ from those governing lending transactions. In addition, this proposal provides specific guidance for the FCL.

The FCL was chartered in 1983 as a service corporation under section 4.25 of the Act. The FCL was initially organized and owned by 14 of the 37 then existing System banks to acquire and lease assets and provide related services to eligible customers of the System. Today, it is owned by all eight of the System banks. As a service corporation, it derives its leasing authorities from the authorities of its stockholder banks that operate under titles I and III of the Act.

FCA's regulations currently address the leasing activities of System banks, associations, and the FCL by defining "loans" as including leases in some, but not all regulatory provisions and by generally providing that service corporations are subject to the regulations applicable to their organizing banks. This approach has conveyed the FCA's view that leasing activities should ordinarily follow the rules for lending and that the FCL should be governed by the same rules as other System lessors. This approach, while having the virtue of simplicity, has not always proved satisfactory. It does not account for the ways in which lease transactions differ from loan transactions, nor does it reflect differences between loans and leases in the Act. The proposed regulations would apply rules uniformly to all System institutions that conduct leasing activities under the same title(s) of the Act.

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the promulgation of final leasing regulations in part 616. Technical changes are made to §§ 614.4710 and 621.9 to conform with the below amendments. A discussion of the proposed amendments follows.

I. Leasing Authorities

1. Authority and Lessee Eligibility

Proposed § 616.6100 implements sections 1.11(c)(2), 2.4(b)(4), and 3.7(a) of the Act, which grant express leasing authorities to various System institutions. Proposed § 616.6100(a) addresses the authority of Farm Credit Banks (FCBs), agricultural credit banks (ACBs), Federal land credit associations (FLCAs), agricultural credit associations (ACAs), and the FCL to lease facilities under section 1.11(c)(2) of the Act. Similarly, proposed § 616.6100(b) reflects the equipment leasing authority of: (1) FCBs, ACBs, and the FCL under section 1.11(c)(2) of the Act; and (2) ACAs and production credit associations (PCAs) under section

2.4(b)(4) of the Act. Proposed § 616.6100(a) and (b) reflect the statutory authority of FCBs, ACAs, PCAs, FLCAs, ACBs, and the FCL to make leases to: (1) Bona fide farmers, ranchers, or aquatic producers and harvesters; (2) processing and/or marketing operations; and (3) farm-related service businesses.

Section 1.11(c)(2) of the Act specifies that System banks may only lease facilities or equipment to persons eligible for credit under titles I or II of the Act for use in their operations. Section 2.4(b)(4) of the Act, however, specifies that associations may only lease equipment to stockholders for use in their operations. In accordance with these provisions, the scope of leasing activity by System banks and associations to bona fide farmers, ranchers, and aquatic producers and harvesters under proposed § 616.6100 is restricted to those assets used in the eligible lessee's operations.

Proposed § 616.6100(c) provides that the banks for cooperatives (BCs, ACBs, and the FCL are authorized to lease equipment to cooperatives, rural electric, telecommunication, and cable television utilities, water and waste treatment facilities, and other entities that comply with the requirements of § 613.3100(b), (c), and (d). As discussed above, the Act grants PCAs the authority to lease only equipment, and FLCAs the authority to lease only facilities, but these terms are not defined in the Act and are not always clearly distinguishable from each other. Equipment is ordinarily considered to be movable personal property. Facilities include property that is attached, often permanently, to real estate. The FCA acknowledges that certain agricultural property may have attributes of both equipment and facilities. For example, center-pivot irrigation systems may be fairly viewed as either equipment or a facility. Recognizing that agricultural "equipment" and "facilities" may in some instances overlap, the proposed rule does not attempt to provide a specific regulatory definition of equipment and facility. Instead, proposed § 616.6100(d) requires each institution to document that the leased equipment or facility is authorized to be leased under its leasing authorities. While the FCA expects each System institution involved in lending and leasing to have the necessary expertise to make such a determination, it will review these determinations as part of FCA's routine examination process.

2. Purchase and Sale of Interests in Leases

The current regulatory requirements for transactions involving interests in loans are in §§ 614.4325 and 614.4330. These regulations have been in effect since 1992 and establish the necessary guidance and parameters for institutions to follow for loan participations. Although the FCA believes that analogous requirements should apply to the purchase and sale of lease interests, a definition of a participation in a lease is needed.

The FCA's current regulations on loan purchases and sales do not differentiate participations in leases from participations in loans. FCA regulations define "loan" for purposes of subpart H of part 614 as "any extension of credit or similar financial assistance of the type authorized under the Act, such as leases * * * and other similar transactions." A "loan participation" is defined as "a fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this subpart." Although the definition of a "loan" in § 614.4325(a)(3) specifically includes "leases," the definition of a "loan participation" in § 614.4325(a)(4) does not, by its terms, address the very different structure of a lease.

In leases, there is no separately identified "principal" and "interest." Instead, the lessor receives a stream of lease payments, and a purchase price (if a purchase option is exercised) or the return of the leased asset (if a purchase option is not exercised). Since leases are structured differently than loans, the FCA proposes a definition of a "lease participation" that addresses the different structure of a lease transaction and provides sufficient flexibility to cover lease situations that are analogous to a "fractional undivided interest in the principal amount" of a loan. Viewed from the lessor's perspective, a lease has two primary components, the stream of lease payments and the residual value. These two components of a lease, lease payments and residual value, do not correspond neatly to the concepts of interest, principal, and collateral in a loan transaction. Because each of these components of a lease has distinct characteristics and risks, the FCA believes that it is appropriate to consider interests in leases to be lease participations when they represent a fractional undivided interest in the whole of either or both of these two components. Accordingly, the FCA proposes to define a lease participation in § 616.6000(d) as a fractional undivided interest in: (1) All of the lease payments; (2) the residual value of all of the property leased; or (3) all of the lease payments and the residual value of all of the property leased.

Other than the new definition of participation in § 616.6000(d), the proposed lease participation regulations contained in § 616.6110 closely parallel most of the provisions of §§ 614.4325 and 614.4330 governing loan participations, except for the provisions concerning "collateral" or other loan specific concepts.

Amendments to the Act in 1992 and 1994 granted System institutions authority to participate in financing provided to similar entities. The regulations implementing this recent authority for loans are found in § 613.3300 of this chapter. The FCA believes that participations in leases made to similar entities are also authorized by the recent amendments to the Act. The proposed regulations address similar entity lease participations for the first time. New provisions concerning purchasing interests in leases made to similar entities are proposed at § 616.6110(g). The proposed provisions are generally parallel to the provisions of § 613.3300 that apply to loan participations. Proposed § 616.6110(g) identifies the terminology changes necessary to apply the regulation to similar entity lease participations.

The proposed lease participation regulations set forth in § 616.6115 apply the provisions of § 614.4330 with minor changes in terminology to lease participations.

3. Out-of-Territory Leases

Farm Credit institutions seeking to provide loan services to borrowers outside their respective chartered territories are required to coordinate such activities with other Farm Credit institutions offering similar lending services in those territories. Proposed § 616.6120 provides that a Farm Credit bank or association that conducts leasing activities outside its chartered territory is subject to the same requirements that § 614.4070 imposes on out-of-territory loans.

As a service corporation owned by the eight System banks, the FCL is chartered to do business nationwide. Therefore, it is not subject to out-of-territory requirements. The proposed regulations do not require other Farm Credit institutions to notify or obtain concurrence from the FCL with respect to out-of-territory leases. The FCA believes this is appropriate, because the FCL does not have exclusive leasing authority in a particular geographic territory but provides leasing services concurrently with other System institutions.

II. Lease Operations

1. Leasing Policies and Underwriting Standards

Proposed § 616.6200 would require System institutions engaged in leasing to adopt written policies and underwriting standards governing such activity to ensure that all risks associated with leasing are properly managed. There are many similarities between the credit risk of a loan and the payment risk of a lease. In each case, the borrower's or lessee's ability to make the contractual payments is a primary concern. Therefore, some aspects of the primary payment analysis required of a lessor are similar to the analysis appropriate for a lender making a loan. The most significant difference is that in leasing, not only is there the risk associated with the lessee's ability to service its contractual lease obligation, but there is the additional risk associated with establishing the appropriate residual values on the equipment or facility and the ultimate remarketing of the leased property. Therefore, from a safety and soundness perspective, System institutions engaged in leasing need to have adequate policies and procedures that address both loan and lease underwriting to ensure prudent management of both activities.

From a payment risk perspective, the proposed rule requires System institutions engaged in leasing to comply with the minimum loan underwriting standards in part 614 regarding the minimum amount of financial information required of the applicant since the risks are very similar for both loans and leases. The loan underwriting regulations [1] would require written policies and procedures to address underwriting standards such as the minimum supporting credit information required, credit analysis procedures, and repayment capacity of the applicant.

In addition to requiring institutions to exercise due diligence in reviewing the applicant's ability to make payments as required under part 614, the proposed rule also requires institutions engaged in leasing to adopt policies and underwriting standards that address the unique risks associated with lease transactions. These additional risks include things such as the establishment of residual values of the leased property, the types of equipment leased, remarketing of leased property, tax treatment of lease transactions, and liability associated with ownership. The proposed rule provides only a minimum framework. The complexity and depth of the policies and underwriting standards should be consistent with the current or planned leasing activity and the institution's risk-bearing ability.

2. Investment in Leased Assets

Proposed § 616.6210 authorizes an institution to purchase property to lease if the acquisition is consistent with the type of leasing being conducted or planned in the future. The purpose of this provision is to prohibit System institutions from speculating in the acquisition of property or facilities.

3. Lending and Leasing Limits

The FCA believes that a consistent approach should be applied to financial risks in all System institutions, including the FCL, to properly limit any concentration of risk. Limits on the amount of financing (whether in the form of loans or leases) a System institution can provide to any one customer protect against unnecessarily large risks to an institution's capital. The proposed regulatory changes would limit an institution's exposure to risk from a single lessee or borrower, and prescribe consistent standards for leases in all types of System institutions.

Section 616.6220 of the proposed regulations refers to the lending and leasing limit regulations in subpart J of part 614. The proposed regulations would amend subpart J in order to make it clear that the lending limits apply to all leases made by System banks and associations. The FCA proposes to modify the title of subpart J to be "Lending and Leasing Limits," and to make conforming changes throughout the subpart. The FCA believes all System institutions should have a single limit that applies to all types of financial obligations. Both loans and leases should be measured against this limit when calculating how much risk an institution can absorb from a single customer. Likewise, all loans and leases to a single borrower should be attributed to that customer when calculating the total risk against the institutions' lending and leasing limit.

In § 614.4350(a) the definition of "borrower" would be amended to clarify that, for the purposes of this subpart, the term "borrower" includes any customer to whom an institution has made a lease or a commitment to make a lease. In § 614.4350(c) the definition of "loan" is proposed to be amended to include all types of leases (operating, financing, and lease interests.)

In §§ 614.4352 through 614.4355, proposed changes to clarify that a System institution is prohibited from making a lease or a loan if the consolidated amount of all loans and leases to a single customer exceeds a specific percentage of the institution's lending and leasing limit base.

A new § 614.4356 is proposed that prescribes standard leasing limits for the FCL. The proposed regulation prohibits the FCL from making leases to a single customer that exceed 25 percent of the FCL's leasing limit base. This requirement is similar to the risk exposure allowed for other System institutions.

In proposed § 614.4358(a)(1), outstanding lease balances are added to the items included in the computation of obligations. In § 614.4358(b), the FCA proposes to add a new paragraph to address certain exclusions from the lending and leasing limits regarding participations or interests sold in leases. The proposed regulation at § 614.4358(b)(5) allow interests in leases sold, including participation interests, to be excluded from leases to a customer subject to the lending and leasing limit when the sale agreement meets specific requirements. This exclusion is based on the premise that the institution originating the lease retains some interest in the lease, whether it is in the lease payments or residual value. To the extent that such an interest is retained, the originating institution may exclude that portion of the lease payments or residual interests in which it no longer has a legitimate ownership interest. In § 614.4360, the FCA proposes to add a new paragraph (d) to clarify that all leases, except those that are permitted under § 614.4361, must be in compliance with the limits at all times.

4. Portfolio Limitations

Under proposed § 616.6230, the restrictions in sections 1.11(a)(2) and 2.4(a)(1) of the Act would apply to leases that FCBs, ACBs, direct lender associations, and the FCL make to agricultural or aquatic producers who supply less than 20 percent of the throughput to a processing and/or marketing operation. More specifically, leases by Farm Credit banks and direct lender associations to customers who supply less than 20 percent of the throughput used in a processing and/or marketing operation would be subject to the 15-percent portfolio ceiling in § 613.3010(b)(2). Furthermore, proposed § 616.6230(b) places this same 15-percent portfolio limitation on the FCL

[1] Final loan underwriting regulations are currently under consideration by the FCA. See the proposed rule published in the Federal Register on April 15, 1996 (61 FR 16403).

for its leases made to processing and/or marketing operations eligible under § 613.3010.

5. Stock Purchase Requirements

The Act authorizes FCBs to lease facilities and equipment to "persons eligible for credit." The Act authorizes PCAs and BCs, respectively, to lease equipment to "stockholders," but does not prescribe any minimum stock requirements for leases. Accordingly, the FCA concludes that lessees who lease equipment from PCAs, ACAs, BCs, or ACBs under titles II and III must be stockholders.

Because the minimum stock purchase requirement under section 4.3A(c)(1)(E) does not apply to leases, the FCA has determined that the purchase of a single share is sufficient to satisfy the stock requirement. Institutions may satisfy the minimum stock requirement by counting outstanding shares stockholders already own in the institution making the lease. The minimum stock requirement in proposed § 616.6240(a) does not apply to the FCL due to its stockholders being System banks, and not its lease customers. The FCA also proposes that the disclosure requirements for equities issued as a condition of obtaining a lease are the same as disclosure requirements for equities issued as a condition of obtaining a loan as required under § 615.5250 (a) and (b) of this chapter.

6. Disclosure Requirements

The FCA has concluded that the borrower rights provisions of the Act do not apply to leases, because the borrower rights provisions of the Act explicitly refer to "loans," but not leases. Significantly, lessees have no ownership rights in the leased equipment or facilities during the term of the lease, and thus, many of the borrower rights provisions such as those pertaining to restructuring or right of first refusal are not applicable to leasing.

However, proposed § 616.6250(a) does require that lease applicants be provided, at a minimum, a copy of all lease documents signed by the lessee, not later than the time of lease closing. In addition, proposed § 616.6250(b) requires a System institution to render its decision on the lease application in as expeditious a manner as is practical. The proposed rule also requires a System institution to provide prompt written notice of its decision to the applicant.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 616

Agriculture, Banks, banking, leasing.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, it is proposed that parts 614, 618 and 621 be amended and part 616 be added to chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. The heading of subpart J is revised to read as follows:

Subpart J—Lending and Leasing Limits

3. Section 614.4350 is amended by revising paragraphs (a) and (c) to read as follows:

§ 614. 4350 Definitions.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in § 614.4540) to which an institution has made a loan or a commitment to make a loan either directly or indirectly. For the purposes of this subpart, the term "borrower" includes any customer to which an institution has made a lease or a commitment to make a lease.

* * * * *

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term "loan" includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution "makes a loan or lease" when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person's liability is added to the outstanding loan, lease or commitment.

* * * * *

§ 614.4351 [Amended]

4. Section 614.4351 is amended by adding the words "and leasing" between the words "lending" and "limit base" each place they appear in the heading and the entire section.

§ 614.4352 [Amended]

5. Section 614.4352 is amended by adding the words "and leasing" between the words "lending" and "limit base" in paragraphs (a) and (b)(1), and by adding the words "and leasing" between the words "lending" and "limits" in paragraph (b)(2).

§ 614.4353 [Amended]

6. Section 614.4353 is amended by adding the words "and leasing" between the words "lending" and "limit base."

§ 614.4354 [Amended]

7. Section 614.4354 is amended by adding the words "and leasing" between the words "lending" and "limit base."

§ 614.4355 [Amended]

8. Section 614.4355 is amended by adding the words "and leasing" between the words "lending" and "limit base" in the introductory paragraph, and by removing the word "lending" in the headings of paragraphs (a) and (b).

§§ 614.4356–614.4360 [Redesignated]

9. Subpart J is amended by redesignating § 614.4356 through § 614.4360 as § 614.4357 through § 614.4361, and by adding a new § 614.4356 to read as follows:

§ 614.4356 Farm Credit Leasing Services Corporation.

The Farm Credit Leasing Services Corporation may enter into lease agreements if the consolidated amount of all leases and undisbursed commitments to a single lessee or any related entities does not exceed 25 percent of its leasing limit base.

10. Newly designated § 614.4358 is amended by adding the words "and leasing" between the words "lending" and "limit" in the introductory text of paragraphs (a) and (b); by adding the words "lease balances outstanding" after the word "loans" the first place it appears in paragraph (a)(1); by removing the reference "§ 614.4358" and adding in its place the reference "§ 614.4359" in paragraph (a)(3); by redesignating existing paragraph (b)(5) as (b)(6); and by adding new paragraph (b)(5) to read as follows:

§ 614.4358 Computation of obligations.

(b) * * *

(5) Interests in leases sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be a fractional undivided interest in all the lease payments, the residual value of all the leased property, or both;

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments on a pro rata basis according to the percentage interest in the lease.

* * * * *

§ 614.4359 [Amended]

11. Newly designated § 614.4359 is amended by adding the words "and leasing" between the words "lending" and "limit(s)" in paragraphs (a) introductory text, (b), and (c); by removing the reference "§ 614.4356" and adding in its place, the reference "§ 614.4357" in paragraph (a)(1)(iii), and by removing the reference "§ 614.4358" and adding in its place, the reference "§ 614.4359" in the heading for column two in Table 1.

12. Newly designated § 614.4360 is amended by adding the words "and leasing" between the words "lending" and "limit" in the heading and in paragraphs (a), (b), (c), and (d); by revising the reference "§ 614.4360" and adding in its place, the reference "§ 614.4361" in paragraph (a); by removing the reference "§ 614.4359(b)(3)" and adding in its place, the reference "§ 614.4360(b)(3)" in paragraph (c); and by redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 614.4360 Lending and leasing limit violations.

* * * * *

(d) All leases, except those that are permitted under the provisions of § 614.4361, reading "effective date of this subpart" in § 614.4361(a) and "effective date of these regulations" in § 614.4361(b) as "effective date of this amendment," shall be in compliance with the lending and leasing limit on the date the lease is made, and at all times thereafter.

* * * * *

§ 614.4361 [Amended]

13. Newly designated § 614.4361 is amended by adding the words "and leasing" between the words "lending" and "limit(s)" in each place they appear in paragraphs (a) and (b), and by removing the reference "§ 614.4359" and adding in its place, the reference "§ 614.4360" in paragraph (b).

Subpart O—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Amended]

14. Section 614.4710 is amended by adding the words "and leasing" between the words "lending" and "limits" in the last sentence of the introductory paragraph and in paragraphs (a)(2) and (a)(3).

15–16. A new part 616 is added to read as follows:

PART 616—LEASING

Subpart A—Leasing Authorities

Sec.
616.6000 Definitions.
616.6100 Authority and lessee eligibility.
616.6110 Purchase and sale of interests in leases.
616.6115 Lease participations.
616.6120 Out-of-territory leasing.

Subpart B—Leasing Operations

616.6200 Leasing policies and underwriting standards.
616.6210 Investment in leased assets.
616.6220 Leasing limits.
616.6230 Portfolio limitations.
616.6240 Stock purchase requirements.
616.6250 Disclosure requirements.

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279a-3, 2279b, 2279c-1, 2279f, 2279f-1).

Subpart A—Leasing Authorities

§ 616.6000 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including servicing rights.

(b) *Lead lessor* means an institution having a direct contractual relationship with a lessee to make a lease, which institution sells or assigns an interest or interests in such lease to one or more other lessors.

(c) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities.

(d) *Lease participation* means, with respect to a lease that is sold by a lead lessor to a participating institution in accordance with the requirements of § 616.6100, a fractional undivided interest in:

(1) All of the lease payments;

(2) The residual value of all of the property leased; or

(3) All of the lease payments and the residual value of all of the property leased.

(e) *Participating institution* means an institution that purchases a lease participation originated by another lessor.

(f) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except the retention of servicing rights alone shall not constitute recourse.

§ 616.6100 Authority and lessee eligibility.

(a) *Facility leases.* Farm Credit Banks, agricultural credit banks, Federal land credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, facilities needed in the operations of that person or entity.

(b) *Equipment leases.* Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to any person or entity that is eligible to borrow under §§ 613.3000, 613.3010, or 613.3020 of this chapter, equipment needed in the operations of that person or entity.

(c) *Equipment leases under title III of the Act.* Agricultural credit banks, banks for cooperatives, and the Farm Credit Leasing Services Corporation may own and lease, or lease with option to purchase, to cooperatives and other entities that comply with the requirements of § 613.3100 (b), (c), and (d) of this chapter, equipment needed in the operations of those cooperatives or other entities.

(d) *Documentation.* Each institution shall adequately document that the leased asset is within its statutory authority to lease equipment or facilities.

§ 616.6110 Purchase and sale of interests in leases.

(a) *Authority to purchase and sell interests in leases.* Leases and interests in leases may only be sold in accordance with each institution's leasing authorities, as set forth in § 616.6100. No Farm Credit System institution may purchase from an institution that is not a Farm Credit System institution any interest in a lease, unless the interest is a participation interest that qualifies under the institution's leasing authority, as set forth in § 616.6100, and meets the requirements of § 616.6115.

(b) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in leases under this subpart shall exercise that authority in accordance with a policy adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in leases;

(2) The types of leases in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in leases;

(4) Such limitations on the aggregate lease payments and/or residual amount of interests in leases that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amounts the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of leases in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate financial and other information needed to make an independent judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(c) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a lease shall, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or purchased;

(4) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(5) Contain any terms necessary for the appropriate administration of the lease and the protection of the interests of the Farm Credit System institution.

(d) *Independent judgment.* Each institution that purchases an interest in a lease shall make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a lease or any interest therein may use information, such as appraisals or inspections, furnished by the originating or lead lessor, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent judgment. The independent judgment shall be documented by a payment analysis that considers factors set forth in § 616.6200 and is independent of the originating institution and any intermediary seller or broker. The payment analysis shall consider such financial and other lessee information as would be required by a prudent lessor and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(e) *Limitations.* The aggregate interests in lease payments or residual values of leases purchased from a single lead lessor and the aggregate interests in lease payments or residual values in leases purchased from other institutions shall not exceed the limits set in the institution's policy.

(f) *Sales with recourse.* When a lease or interest in a lease is sold with recourse, it shall be accorded the following treatment:

(1) The lease shall be considered, to the extent of the recourse or guaranty, a lease by the purchaser to the seller, as well as a lease from the seller to the lessee, for the purpose of determining whether total leases to a lessee are within the lending or leasing limits established in subpart J of part 614.

(2) The amount of the lease subject to the recourse agreement shall be considered a lease sold with recourse for the purpose of computing permanent capital ratios.

(g) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities shall apply to interests in leases made to similar entities. In applying these provisions, the term "loan" shall be read to include the term "lease" and the term "principal amount" shall be read to include the term "lease amount."

§ 616.6115 Lease participations.

Agreements to purchase or sell a lease participation interest shall be subject to the provisions of § 616.6110, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a lease shall, in addition to meeting the requirements of § 616.6110(c), at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lessor, and/or the servicing institution, if different from the lead lessor.

(2) Provide for lease servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of lessee distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the lease participation and termination of the agreement;

(6) Provide for sharing of fees, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing an undivided interest in a lease.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the lease payments and/or residual amount equal to the lesser of 10 percent of the lease payments and/or residual amount or such lesser amount as represents the servicing institution's leasing limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Leases participated between or among Farm Credit System institutions shall meet the lessee eligibility, membership, lease term, lease amount, and stock purchase requirements of the originating lessor.

§ 616.6120 Out-of-territory leasing.

The out-of-territory consent and notification requirements of § 614.4070 of this chapter shall apply to leases. Institutions shall obtain consent from at least one institution that, at the time the lease is executed, offers similar leasing services in the territory. Institutions are not required to obtain concurrence from or provide notification to the Farm Credit Leasing Services Corporation when making out-of-territory leases.

Subpart B—Leasing Operations

§ 616.6200 Leasing policies and underwriting standards.

The board of each institution engaged in lease underwriting shall set forth written policies and procedures governing such activity that reflect prudent lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity shall comply with the requirements under the lending policies and loan underwriting standards in part 614 of this chapter. Institutions engaged in the making, purchasing, or syndicating of leases also must establish written policies and procedures that address the additional risks associated with leasing. Written underwriting policies and procedures shall address the following, if applicable:

(a) Financial condition, capacity and integrity of the applicant;

(b) Repayment capacity of the applicant;

(c) Appropriateness of the lease amount, purpose, and terms and conditions;

(d) Establishment of a prudent residual value at the inception of the lease and the related process of estimating the leased asset's market value during the lease term;

(e) Types of equipment and facilities the institution will lease;

(f) Remarketing of leased property and associated risks;

(g) Property tax and sales tax reporting;

(h) Title and ownership of leased assets;

(i) Title and licensing for motor vehicles;

(j) Liability associated with ownership, including any environmental hazards or risks;

(k) Insurance requirements for both the lessor and lessee;

(l) Classification of leases in accordance with generally accepted accounting principles; and

(m) Tax treatment of lease transactions and associated risks.

§ 616.6210 Investment in leased assets.

An institution may acquire property to be leased, if the acquisition of the property is consistent with the leasing then conducted by the institution or is consistent with a business plan for expansion of the institution's existing leasing business or for entry into the leasing business.

§ 616.6220 Leasing limits.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limits prescribed in subpart J of part 614 of this chapter.

§ 616.6230 Portfolio limitations.

(a) Leases that Farm Credit banks and direct lender associations make under § 616.6100 (a) or (b) to processing or marketing operations shall be subject to the requirements of § 613.3010(b) of this chapter, reading the term "loan" to include the term "lease" and the term "borrower" to include "lessee."

(b) Processing and/or marketing leases that the Farm Credit Leasing Services Corporation makes to eligible lessees who supply, on a regular basis, less than 20 percent of the throughput shall be subject to the requirements of § 613.3010 (b)(1) and (b)(3) of this chapter, reading the term "lease" in the place of the term "loan."

§ 616.6240 Stock purchase requirements.

(a) Each System institution making an equipment lease under titles II or III of the Act shall require the lessee to purchase at least one share of stock in accordance with its bylaws, unless the lessee already owns stock in the institution making the lease. This provision does not apply to the Farm Credit Leasing Services Corporation.

(b) The disclosure requirements of § 615.5250 (a) and (b) of this chapter shall apply to stock purchased as a condition for obtaining a lease.

§ 616.6250 Disclosure requirements.

(a) Each System institution shall furnish to each lessee a copy of all lease documents signed by the lessee in connection with the lease, not later than the time of lease closing.

(b) Each System institution shall render its decision on a lease application in as expeditious a manner as is practical. Upon reaching a decision on a lease application, the institution shall provide prompt written notice of its decision to the applicant. Where the lessor makes an adverse decision on a lease application, the notice shall include the specific reasons for the institution's action.

PART 618—GENERAL PROVISIONS

17. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart C—Leasing

§§ 618.8050 and 618.8060 Subpart C [Removed and Reserved]

16. Subpart C, consisting of §§ 618.8050 and 618.8060, is removed and reserved.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

19. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

Subpart C—Loan Performance and Valuation Assessment

§ 621.7 [Amended]

20. Section 621.7 is amended by removing the reference "§ 614.4358(a)(2)" and adding in its place, the reference "§ 614.4359(a)(2)" in paragraph (a)(2)(iii).

Dated: October 8, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–27146 Filed 10–14–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 25

[REG–209823–96]

RIN 1545–AU25

Guidance Regarding Charitable Remainder Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of time and locations of public hearing; teleconferencing

SUMMARY: This document changes the time and location of the public hearing on the proposed regulations regarding charitable remainder trusts under section 664 of the Internal Revenue Code and special valuation rules of interests in trusts under section 2702. In addition, this document announces that the Washington, DC location for the public hearing will have teleconferencing equipment and that there will be a remote teleconference site in Los Angeles, CA.

DATES: The public hearing will be held on November 18, 1997, beginning at 1 p.m. (ET), 10 a.m. (PT). Additional requests to speak and outlines of oral comments must be received by November 3, 1997.

ADDRESSES: The Washington, DC site for the public hearing is room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The Los Angeles, CA remote teleconference site is the Federal Building, 5th Floor, Room 5003, 300 N. Los Angeles Street, Los Angeles, CA.

Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [REG–209823–96], Room 5226, Washington, D.C., 20044.

FOR FURTHER INFORMATION CONTACT: Evangelista Lee of the Regulations unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Friday, April 18, 1997, (62 FR 19072), announced that a public hearing on the proposed regulations relating to charitable remainder trusts and special valuation rules of transfers of interests in trusts would be held on Tuesday, September 9, 1997, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building 1111 Constitution Avenue, NW, Washington, DC. Subsequent to receiving a request to teleconference the hearing to Los Angeles, CA, the IRS published a notice in the **Federal Register** on Tuesday, August 19, 1997, (62 FR 44103) announcing that the hearing was postponed to afford interested persons the opportunity to request that the IRS teleconference the hearing to other locations outside Washington, DC.

The date, time, and addresses of the teleconference public hearing are set forth above. Attendees will be admitted beyond the lobby of the Internal Revenue Building in Washington, DC after 12:30 p.m. (ET), and to the teleconference site in Los Angeles, CA after 9:30 a.m. (PT).

There is limited seating capacity at both the Washington, DC and Los Angeles sites. In particular, it should be noted that no more than 12 people may be accommodated at any one time in the teleconference room in Los Angeles. Seating at both sites will be made available based on the order of presentations, and IRS personnel will be present to assist speakers in using the teleconference equipment.

The IRS will distribute for no charge at the hearing an agenda showing the scheduling of speakers. Testimony will begin in Los Angeles and will conclude with presentations by speakers in Washington, DC.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–27138 Filed 10–14–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0050b; FRL–5907–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP). The revision concerns the Operating Permits Program rule revision submitted by the California Air Resources Board (CARB) on behalf of the Santa Barbara County Air Pollution Control District (Santa Barbara or District) pursuant to Clean Air Act (CAA) sections 110 and 112(l).

In the final rules section of this **Federal Register**, the EPA is approving the states's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this proposal. If EPA receives adverse comments, the direct final approval will be withdrawn and all public comments received will be addressed in a subsequent final action based on this proposal. EPA will not institute a second public comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 14, 1997.

ADDRESSES: Written comments on this action should be addressed to: John Walser, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approvals are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Permitting Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resource Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 94105;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: John Walser (telephone 415/744–1257), Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP: Rule 370—Potential to Emit—Limitations for Part 70 sources.

For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: September 26, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–27266 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 040–3017b; FRL–5905–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Yeast Manufacturing, Screen Printing, Expandable Polystyrene Operations and Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of establishing reasonably available control technology (RACT) volatile organic compound (VOC) emission control requirements for yeast manufacturing, screen printing, expandable polystyrene operations (EPO), and bakeries. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 14, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 566–2095, at the EPA Region III office address listed above, or via e-mail at donahue.carolyn@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, pertaining to Maryland's regulations for yeast manufacturing, screen printing, EPOs, and bakeries, which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 26, 1997.

Marcia E. Mulkey,

Acting Regional Administrator, Region III.

[FR Doc. 97–27259 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC73

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the proposed rule that was published Tuesday, October 7, 1997, (62 FR 52304). The proposed rule related to the increase of the deductible under the Standards Flood Insurance Policy from $750 to $1,000 for structures eligible for subsidized coverage.

DATES: All comments received on or before November 7, 1997 will be considered before final action is taken on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202)646–3422, (facsimile) (202)646–4327.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule would increase the deductible from $750 to $1,000 under the Standard Flood Insurance Policy for structures eligible for subsidized coverage. Section 1308(b) of the National Flood Insurance Act of 1968 as amended (42 U.S.C. 4015) limits subsidized premium rates to structures built on or before December 31, 1974, or the effective date of the Flood Insurance Rate Map, whichever is later.

Need for Correction

As published, the proposed rule contains errors with respect to the statutory date and is in need of correction.

Correction of Publication

Accordingly, the publication of proposed rule on October 7, 1997, which is the subject of FR Doc. 97–26527, is corrected as follows:

Paragraph C. of Article 7 of Appendix A (1) of 44 CFR Part 61 [Corrected]

On page 52305, Paragraph C. of Article 7 of Appendix A (1) to Part 61, in the tenth line "December 31, 1994" is corrected to read "December 31, 1974".

On page 52305, Paragraph C. of Article 7 of Appendix A (2) to Part 61, in the tenth line "December 31, 1994" is corrected to read "December 31, 1974".

On page 52305, Paragraph C. of Article 7 of Appendix A (3) to Part 61, in the seventh and eighth lines "December 31, 1994" is corrected to read "December 31, 1974."

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: October 8, 1997.

Edward T. Pasterick,

Acting Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–27254 Filed 10–14–97; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 100897A]

Atlantic Sea Scallop Fishery; Public hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold public hearings to receive comments on Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The amendment proposes to allow a one-time transfer of days-at-sea (DAS) among vessels holding limited access sea scallop permits, and the addition of closed area management under the framework adjustment program.

DATES: Written comments should be submitted on or before November 17, 1997, to the address below. Hearings are scheduled to be held from October 24 through November 3, 1997. See **SUPPLEMENTARY INFORMATION** for dates and times of the hearings.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Comments on Sea Scallop Amendment 7 Public Hearing Document."

The hearings will be held in Maine, North Carolina, Virginia, New Jersey, and Massachusetts. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, (781)-231-0422.

SUPPLEMENTARY INFORMATION: The purpose of DAS consolidation is to lessen the economic impact of expected DAS reductions and other measures developed to end the overfishing of scallops. The minimum number of days that full-time scallop dredge operations require to cover fixed as well as operating costs during a year is called the break-even DAS. Under present resource conditions and with no access to areas closed for groundfish conservation, the average break-even DAS level for a full-time (full-use) vessel greater than 150 gross registered tons is estimated to be 183 DAS. Therefore, many full-time vessels will not be able to break-even when their DAS allocations are reduced to 142 DAS or possibly lower.

The objective is to help scallop vessels remain economically viable. By allowing days to be sold, some boat owners could leave the scallop fishery without incurring a complete financial loss, while fishermen buying days could add to their allocation and enhance their economic opportunities. Reductions in fishing effort and the associated reductions in fishing mortality, however, must remain consistent with the conservation goals of the FMP and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Council is considering several alternative proposals for inclusion in Amendment 7 to the FMP.

Amendment 7 also would include closed area management in the list of the types of measures which may be implemented through the framework adjustment process. The proposed action would allow the Council to use closed areas to achieve scallop management objectives. As part of this proposal, vessel monitoring systems (VMS) would be required for all scallop vessels fishing in or adjacent to closed areas.

The Council may want to use closed area management for the following reasons:

Access to groundfish closed areas - Although scallop vessels have been prohibited from fishing in these closed areas because of their potential bycatch of groundfish and potential disruption to groundfish spawning, the Council also is considering the impacts of the closed areas on the currently overfished scallop resource. Additional groundfish management concerns such as habitat will have to be addressed before access is permitted.

Grow-out closed areas - To establish areas to protect small scallops for a specified period of time to enhance yield per recruit.

Seeding closed areas - To establish areas to enhance the scallop resource through the seeding of small scallops.

Spawning protection closed areas - To possibly protect grounds with concentrations of large, relatively productive spawners by leaving them undisturbed for a period of time.

In addition to management measures that may be implemented through framework adjustment, the Council may consider layover days and restrictions on landing in-shell scallops from closed areas.

Fishing Effort Consolidation Management Alternatives

The proposal identified by the Council as its preferred alternative would allow only active DAS to be sold. Active days are the percentage of the allocated DAS actually fished by a scallop vessel during the period March 1, 1994, through March 1, 1997. A second alternative would allow the sale of active DAS as well as latent DAS (those DAS allocated to a vessel but not used).

DAS consolidation include: (1) Transfers limited to active DAS (in blocks of 10 DAS), used from March 1994 to March 1997 and averaging the two best fishing years, which may be traded only once until February 28, 2001, with a framework adjustment for suspension/extension of this program. (2) Transfer may occur between different scallop limited access categories but there will be individual vessel usage limits for each category set at 240 DAS for full-time permits, 96 DAS for part-time permits, and 20 DAS for occasional permits (e.g., double the year-seven DAS allocation under the Amendment 4 schedule). (3) No conservation tax (an automatic percentage reduction in DAS transferred). (4)

Transferred DAS will be adjusted by the ratio of the average horsepower of each vessel's horsepower group. The total DAS would be adjusted, first by subtracting the DAS from the selling boat, then by adding the adjusted DAS of the buying boat. This new total DAS will be the baseline for all future percentage allocations of DAS. (5) DAS trades are allowed among dredge vessels. (6) DAS trades are allowed among net vessels. (7) Dredge vessels are allowed to buy DAS from net vessels. (8) Net vessels are not allowed to buy DAS from dredge vessels. (9) The number of DAS owned by an individual or an individual business entity may be restricted to, from 1 percent to 5 percent of the total fleet DAS. (10) Full-time vessels selling part of their DAS may sell down to the part-time level at that time and keep their limited access scallop permits. However, below the part-time level they will be required to relinquish their limited access scallop permits. These vessels may be used as replacement vessels, however, in the scallop and other regulated fisheries. (11) Part-time and occasional vessels may sell any and all of their DAS without relinquishing any scallop permits.

Closed Area Alternatives

The types of measures the Council can currently implement or modify as framework adjustments to manage scallops are: DAS changes, shell height restrictions, off-loading windows (time periods during which scallops may be landed), effort monitoring, data reporting, trip limits, gear restrictions, permitting restrictions, crew limits, small mesh line, onboard observers, and any other measure currently included in the FMP.

Public Hearings

The dates, times, and locations of the hearings are scheduled as follows:

1. October 24, 1997, 1 p.m.–Holiday Inn, U.S. Route 1 and 3, Ellsworth, ME, telephone: 207–667–9341;
2. October 27, 1997, 6:30 p.m.–Department of Environmental and Natural Resources, 943 Washington Square Mall, Washington, NC, telephone: 919–946–6481;
3. October 30, 1997, 1 p.m.–Holiday Inn, 3900 and Atlantic, 39th Street, Virginia Beach, VA, telephone: 757–428–1711;
4. October 31, 1997, 1 p.m.–Grand Hotel, 1045 Beach Drive, Cape May, NJ, telephone: 609–884–5611;
5. November 3, 1997, 1 p.m.–Seaport Inn, 110 Middle Street, Fairhaven, MA, telephone: 508–997–1281.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be addressed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 8, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27297 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 199
Wednesday, October 15, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, October 24, 1997. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 9:00 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the national Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Report of the Task Force on Regulations—Adoption of Proposed Regulation
IV. Annual Council Meeting Plan—Discussion and Adoption
V. Preservation Policy Issues
VI. Report on Expanding the Council's Resource Base—Discussion and Adoption of Principles
VII. Executive Director's Report
VIII. New Business
IX. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 9, 1997.

John M. Fowler,

Executive Director.

[FR Doc. 97–27234 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Wednesday, October 29, 1997, at the Equal Employment Opportunity Commission Regional Office, Conference Room, 7 World Trade Center, New York, New York 10048. The purpose of the meeting is to plan future events and discuss progress of the Committee report on section 8 housing programs. The Committee will also hold a 4-hour briefing, starting at 1:00 p.m., on police-community relations in New York City by representatives from law enforcement, city government, community groups, and civil rights organizations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson L. D. Taracido, 212–645–8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 3, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–27249 Filed 10–14–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Transportation Annual Survey.
Form Number(s): B–514, –515, –524, –525, –530, –531, –532, –533, –900–L1, –900–L2, –900–L3, –900–L4.
Agency Approval Number: 0607–0798.
Type of Request: Extension of a currently approved collection.
Burden: 10,908 hours.
Number of Respondents: 4,000.
Avg Hours Per Response: 2.73 hours.
Needs and Uses: The Census Bureau originally obtained approval for the Transportation Annual Survey (TAS) in 1994 which replaced and expanded upon the existing Motor Freight Transportation and Warehousing Survey (WATS) that covered the trucking and public warehousing industries. The new TAS also included transportation by waterway and segments of the busing industry, specifically intercity and rural bus transportation, bus charter service, and terminal and service facilities. In addition, it introduced new data items to the trucking forms which have enabled us to publish total miles traveled, percentage of miles traveled with loaded or empty vehicles, weight of shipments, and revenue from transborder shipments. Due to funding issues, we have not yet implemented the busing and waterway transportation portion of the TAS. This request for extension, again includes these two industries and collection of these data is, again contingent upon funding.
Affected Public: Businesses or other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 USC, Sections 131, 182, 224, and 225.
OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27229 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Extension of Time Limit of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results in the administrative review of the antidumping order on certain fresh cut flowers from Colombia, covering the period March 1, 1996, through February 28, 1997, since it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675 (a)(3)(A).

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Rosa Jeong, Import Administration, U.S. Department of Commerce, Room 3099, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6309 or 482–1278, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1997, the Department initiated an administrative review of the antidumping duty order on Fresh Cut Flowers from Colombia (Flowers), covering the period March 1, 1996, through February 28, 1997 (62 FR 18312). In our notice of initiation, we stated that we intended to issue the final results of this review no later than March 31, 1998.

Postponement of the Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because of the large number of respondents and the complexity of the legal and methodological issues in this review.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than January 26, 1998. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Act.

Dated: October 8, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary AD/CVD Enforcement.

[FR Doc. 97–27293 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Initiation of a Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is initiating a changed circumstance review to determine whether Flores El Talle Ltda. is covered under the revocation granted to the Flores Colombianas Group.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Beth Graham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–4105, respectively.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are those codified at 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department published in the **Federal Register** (52 FR 8492) an antidumping duty order on certain fresh cut flowers from Colombia. On March 31, 1994, the antidumping order was revoked in the fourth administrative review as it applied to the Flores Colombianas Group. In a letter dated August 23, 1996, Flores El Talle Ltda. (Flores El Talle) notified the Department that the company shares the same ownership and management with the other Flores Colombianas Group companies, and that Flores El Talle should receive the same antidumping duty treatment that is accorded the Flores Colombianas Group.

Initiation of Review

The Department is initiating this review to determine whether Flores El Talle is a member of the Flores Colombianas Group and, if so, whether the revocation applicable to the Flores Colombianas Group also applies to Flores El Talle. If we determine that the revocation is applicable to Flores El Talle, we will instruct U.S. Customs officials to liquidate all entries of Colombian fresh flowers from Flores El Talle without regard to antidumping duties.

We are hereby notifying the public that we are initiating a changed

circumstances antidumping duty administrative review on certain fresh cut flowers from Colombia. We are also inviting interested parties to comment on the above and on any other relevant issue(s) associated with the foregoing.

This notice is published in accordance with section 751(b) of the Act and section 353.22(f)(1)(i) of the Department regulations.

Dated: October 7, 1997.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 97–27294 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–086. *Applicant:* University of Texas at Austin, Bellmont 222, Austin, TX 78712. *Instrument:* 3–D Motion Analysis System, Model Vicon 140. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to record and quantify an individual's movement performance during a series of experiments on the stability of standing balance, control of standing balance during threats to balance and the stability and variability of kinematic and kinetic variables during walking. These kinds of experiments are done with infants and young children, young adults and older adults. In addition, the instrument will be used for educational purposes in the courses KIN 388 Motor Control Laboratory Techniques and KIN 382 Motor Development Assessment in which students will learn the technical skills necessary to collect their own data and perform subsequent processing and data interpretation. *Application accepted by Commissioner of Customs:* September 19, 1997.

Docket Number: 97–087. *Applicant:* Research Foundation of CUNY, 79 Fifth Avenue, New York, NY 10003. *Instrument:* Stopped-Flow Rapid Kinetics Accessory, Model SFA–20. *Manufacturer:* Hi-Tech Scientific, United Kingdom. Intended Use: The instrument is an accessory used as a complement to existing instrumentation, i.e. temperature-jump, spectrophotometers and fluorimeters. The phenomena to be investigated are rapid substitution reactions of trigonal boron acids. Studies will then be extended to complexation reactions of a variety of bidentate chelating ligands. *Application accepted by Commissioner of Customs:* September 22, 1997.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 97–27295 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Friday, November 7, 1997, from 8:30 a.m. to 3:30 p.m. The Board of Overseers consists of nine members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on November 7, 1997, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology with the chairman of the Judges Panel of the Malcolm Baldrige National Quality Award. These reports will cover the following topics: Overview of the 1997 award cycle; discussion of applicant related proposals and program status, issues and plans; develop recommendations and report same to the Director of the National Institute of Standards and Technology.

DATES: The meeting will convene November 7, 1997 at 8:30 a.m., and adjourn at 3:30 p.m. on November 7, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: October 7, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–27149 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–3–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Information & Education Committee, Comprehensive Management Committee, Surfclam & Ocean Quahog Committee, Habitat Committee, Large Pelagics Committee, and Executive Committee will hold a public meeting.

DATES: The meetings will be held on October 28–30, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn SunSpree, 39th Street & Atlantic Ocean, Virginia Beach, VA 23351; telephone: 757–428–1711.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Tuesday, October 28, 1997, the Information & Education Committee will meet from 8:00–10:00 a.m. The Comprehensive Management Committee will meet from 10:00 a.m. to noon. The Committee Chairmen will meet from noon to 1:30 p.m. The Surfclam & Ocean Quahog Committee will meet from 1:30–2:30 p.m. The Habitat Committee will meet from 2:30–4:30 p.m. The Executive Committee will meet from 4:30–6:30 p.m. On Wednesday, October 29, 1997, the Large Pelagics Committee will meet from 8:00–10:00 a.m. There will be a meeting on bluefish from 10:00 a.m. until noon which will consist of individuals involved in the development of Amendment 1 to the Bluefish Fishery Management Plan (FMP). The full Council will meet from 1:00–4:00 p.m. The Council will go into closed executive session from 4:00–5:00 p.m. to discuss employment and related matters. At 7:00 p.m., there will be a Dogfish FMP Scoping Meeting. On Thursday, October 30, 1997, the full Council will meet from 8:00 a.m. until approximately noon.

The purpose of these meetings is to discuss the formation of a newsletter, scup discards in the Loligo fishery and possible solutions, review and possible adoption of Amendment 10 to the Surfclam & Ocean Quahog FMP (Maine ocean quahog fishery), essential fish habitat, tuna allocations, and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 8, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27262 Filed 10–9–97; 4:24 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet during the week of November 3–7, 1997. See **SUPPLEMENTARY INFORMATION** for meeting dates and times.

ADDRESSES: The meetings will be held at the Airport Sheraton Hotel, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on Tuesday, November 4, at 8 a.m. with an open session. It will reconvene on Wednesday and Thursday at 8 a.m. in open session, and will reconvene on Friday at 8:30 a.m. in open session. On Friday, November 7, the Council will meet in closed session (closed to public) from 8 a.m. to 8:30 a.m. to discuss litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

Council Agenda Items

A. Call to Order
1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve Minutes of September 1997 Meeting
B. Groundfish Management
1. Status of Federal Regulations
2. Report on Voluntary Observer Program
3. Final Harvest Levels and Other Specifications for 1998
4. Fixed Gear Sablefish Management for 1998 (Limited Entry and Open Access)
5. Initial Review of Draft Plan Amendments
6. Status of Fisheries in 1997 and Inseason Adjustments
7. Management Measures for 1998
8. Capacity Reduction Program
9. Review of Stock Assessment Process
10. Exempted Fishing Permits for Whiting, Enhanced Data Collection Project, and New Research
11. Groundfish Management Team, Staff, and NMFS Work Load
C. Salmon Management
1. Sequence of Events and Status of Fisheries in 1997
2. Plan Amendment to Revise Oregon Coastal Natural (OCN) Coho Management Goals
3. Initial Review of 1999 Plan Amendments
4. Consideration of Revisions to Methodologies
5. Consideration of Revisions to California Recreational Gear Restrictions
6. Consideration of Revisions to Allocation of Snake River Fall Chinook Impacts
7. Oral Updates on Activities to Restore Natural Stocks
D. Habitat Issues - Report of the Habitat Steering Group
E. Pacific Halibut Management
1. Summary of 1997 Fisheries
2. Revisions to the Catch Sharing Plan and Recreational Fishery Regulations for 1998
F. Coastal Pelagic Species Management
1. Initial Review of Plan Amendments Including Limited Access Options and Control Date
G. Highly Migratory Species Management Issues - Report of the Policy Committee
H. Administrative and Other Matters
1. Report of the Budget Committee
2. Status of Legislation
3. Appointments to Advisory Entities
4. March 1998 Agenda

Schedule of Advisory Group/Committee Meetings

The Groundfish Management Team (GMT) convenes on Sunday, November 2, 1997, at 3 p.m. and continues meeting as necessary November 3–7 to address groundfish issues on the Council agenda. The GMT will meet jointly with the Groundfish Advisory Subpanel as necessary during the week.

The Buyback Committee meets Monday, November 3, 1997, from 8 a.m. to 10 a.m. to develop a proposal for a groundfish vessel capacity reduction program.

The Scientific and Statistical Committee (SSC) meets Monday, November 3, 1997, at 8 a.m. and reconvenes at 8 a.m. on Tuesday, November 4, 1997, to address scientific issues on the Council agenda.

The Groundfish Advisory Subpanel (GAP) begins meeting at 10 a.m. on Monday, November 3, 1997, and continues meeting as necessary through Thursday, November 6, 1997, to address groundfish issues on the Council agenda. The GAP will meet jointly with the GMT as necessary during the week.

The Habitat Steering Group meets at 10 a.m. on Monday, November 3, 1997, to address issues and actions affecting habitat of fish species managed by the Council.

The Salmon Advisory Subpanel (SAS) meets at 10 a.m. on Monday, November 3, 1997, and reconvenes at 8 a.m. on Tuesday, November 4, 1997, to consider salmon issues on the Council agenda.

The Salmon Technical Team (STT) meets at 11 a.m. on Monday, November 3, 1997, to address salmon issues on the Council agenda. The STT will meet jointly with the SAS as necessary.

The SSC, GMT, and GAP meet jointly at 7 p.m. on Monday, November 3, 1997, to critique the new groundfish stock assessment process implemented in 1997.

The Enforcement Consultants meet at 7 p.m. on Tuesday, November 4, 1997, to address enforcement issues relating to Council agenda items.

The Highly Migratory Species Policy Committee will meet on Wednesday, November 5, 1997, as soon as the Council adjourns for the day, to discuss the role of the Pacific Council in data collection and management of Pacific highly migratory species, the need for an industry advisory group and to recommend a delegate to represent the Council at international meetings.

The Budget Committee meets on Thursday, November 6, 1997, as soon as the Council adjourns for the day, to review the 1997 financial report, develop a budget request for 1998, and consider meeting schedule and sites for future Council meetings.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 8, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27263 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for modifications to incidental take permits 901 and 902.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) has applied in due form for modifications to permits that would provide authorization for incidental takes of an endangered anadromous fish species.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before November 14, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division in Portland, OR.

SUPPLEMENTARY INFORMATION: WDFW requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permits 901 and 902 authorize WDFW incidental takes of endangered Snake River sockeye salmon (*Oncorhynchus nerka*); threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and threatened Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with numerous non-listed fish hatchery complexes and educational projects throughout the state of WA. These artificial propagation projects may result in incidental takes of ESA-listed species from ecological and/or genetic interactions and from hatchery operations. Impacts on ESA-listed juvenile fish may include competition for food and habitat, disease transmission, predation by non-listed hatchery fish, and an increased vulnerability to predation by other predators. Non-listed, hatchery-produced fish may also impact the ESA-listed species through interbreeding, which could result in a loss of genetic variability in the ESA-listed fish populations.

The modifications of permits 901 and 902 are required to authorize the incidental takes of endangered upper Columbia River steelhead trout (*Oncorhynchus mykiss*) and threatened Snake River steelhead trout (*Oncorhynchus mykiss*) associated with: 1) the operation of non-listed fish hatchery facilities and educational programs in the Columbia River Basin, 2) the on-station releases or transfers of non-listed fish produced from those facilities, and 3) the operation of tributary smolt traps in the Columbia River Basin for non-listed fish hatchery program research and evaluation purposes. WDFW has submitted revised conservation plans in the permit modification applications that specify steps proposed to be taken to monitor, minimize, and mitigate impacts to ESA-listed fish. In the permit modification applications, WDFW included descriptions of incidental takes of lower Columbia River steelhead trout (*Oncorhynchus mykiss*) in anticipation of a possible listing determination of this Evolutionarily Significant Unit by NMFS in 1998. The modifications to permits 901 and 902 are requested to be valid for the duration of the permits. Permits 901 and 902 both expire on December 31, 1998.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 7, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–27162 Filed 10–14–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew Information Collection #3038–0047—Contract Market Transactions.

SUMMARY: The Commodity Futures Trading Commission is planning to renew Information Collection 3038–0047, Contract Market Transactions, which is due to expire on January 31, 1998. On October 2, 1995, pursuant to Section 4(c) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6(c) (1994), the Commission published final rules in the **Federal Register** which exempted certain contract market transactions from specified requirements of the Act and Commission regulations thereunder (60 FR 51323). The information collected purusant to this rule is required in order to assist the Commission in its determination that the exempted transaction will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and that the exemption would be consistent with the public interest and the purposes of the Act. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Contract Market Transactions.
Control Number: 3038–0047.
Action: Extension.
Respondents: Contract Markets.
Estimated Annual Burden: 5,033.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. avg. hours per response.
Contract Markets	36.5 36.7	100 200	100 2,000	0.33 2.50

Issued in Wasington, D.C. on October 9, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27243 Filed 10–14–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session from 9 am until 4 pm, October 29, 1997 and from 9 am until 4 pm, October 30, 1997 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: October 8, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–27157 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee on Gender-Integrated Training and Related Issues; Meeting

ACTION: Notice.

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Federal Advisory Committee on Gender-Integrated Training and Related Issues is scheduled to be held from 9 a.m. to 4:30 p.m. on October 23, 1997 and from 9:00 a.m. to 12:00 p.m. on October 24, 1997. The meeting will be held in the conference room at 801 Pennsylvania Avenue, NW., Suite 301, Washington, DC 20004. The purpose of the meeting is for the full committee to: (1) Discuss their findings and observations from their various visits to Service initial entry training sites and operational units; and (2) discuss preparation of the final report. Persons desiring to make oral presentations or submit written statements for consideration for the Committee must contact Lieutenant Colonel Brad Loo at Committee Headquarters, telephone (202) 761–4489, no later than October 21, 1997.

Dated: October 7, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27155 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Technology Base of the 21st Century; meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Technology Base

of the 21st Century will meet in closed session on October 29–30, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the issues involved in assuring that the U.S. has adequate/appropriate technology base from which to develop sustained military superiority for the 21st century; such a base includes technology developed by DoD, but also access to technology developed elsewhere as well as an assured stream of scientists and engineers that will develop technology and build military materiel. Many internal and external changes influence DoDs options.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: October 8, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27156 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend four systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 14, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: October 8, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM NAME:

Change system name to 'Prospective Instructor Files (Officer, Enlisted Special Duty)'.

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders, in computers data bases, and on computer output products.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.'

* * * * *

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files (Officer, Enlisted Special Duty).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel applying for instructor duty at the Air Force Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Used to determine qualification, availability and location of potential instructors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers data bases, and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, or no longer needed for reference. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, previous employers, educational institutions and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA D

SYSTEM NAME:

Class Committee Products *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'List of cadets academically deficient at progress reports; provides grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; reports committee decisions and includes worksheets with coded recommendations to the Academy Board at the end of the semester.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in visible file binders/ cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.'

* * * * *

F036 USAFA D

SYSTEM NAME:

Class Committee Products.

SYSTEM LOCATION:

U.S. Air Force Academy, CO 80840–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of cadets academically deficient at progress reports; grades, instructor comment cards, military order of merit and other military and entrance data on cadets meeting committees; reports committee decisions and includes worksheets with coded recommendations to the Academy Board at the end of the semester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets, electronically in the Cadet Administrative Management Information System (CAMIS) data base and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Destroyed one year after graduation or when purpose has been served, whichever is sooner. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Dean of Faculty, U.S. Air Force Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are compiled from cadet grading and rating cycles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA F

SYSTEM NAME:

Military Performance Average *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in paper form, in computer C-3 data base, and computer and computer output products.'

* * * * *

F036 USAFA F

SYSTEM NAME:

Military Performance Average.

SYSTEM LOCATION:

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rating forms used to compute Military Performance Average (MPA).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 903, U.S. Air Force Academy; and E.O. 9397 (SSN).

PURPOSE(S):

To determine the semester and cumulative MPA for U.S. Air Force Academy Cadets as an input to the overall performance average. Identifies cadets for the Commandant's List and deficient cadets to be placed on aptitude probation, and consideration for disenrollment from the U.S. Air Force Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5. U.S.C. 552a(b)(3) as follows:

Military performance information is released to the nominating official upon request in order to evaluate nominating procedures.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form, in computer C-3 data base, and computer and computer output products.

RETRIEVABILITY:

Retrieved by name, Cadet Number, and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms and on computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

All MPA forms prepared by coaches, Officers in Charge (OICs), academic instructors and Air Officers Commanding (AOCs) are destroyed one year after close of rating cycle. MPA forms prepared by cadets are transferred to the Cadet Personnel Record where they are destroyed 90 days after graduation.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from coaches, OICs of cadet intercollegiate and extracurricular clubs and teams, academic instructors, AOCs, and the cadet chain of command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA G

SYSTEM NAME:

Instructor Academic Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Dean of Faculty, Headquarters, U.S. Air Force Academy, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.'

* * * * *

F036 USAFA G

SYSTEM NAME:

Instructor Academic Records.

SYSTEM LOCATION:

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets and graduates.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Cadet information card.

(2) Listings of all cadet academic schedules including final examination schedules; rosters of cadets, by course, taking final examinations; extra instruction or hospital instruction schedules; rosters of cadets requesting permission to enroll in independent study, or authorized to drop or add course; listings of course rosters prepared for current semester showing individual's enrollment by course section; reports of reasons for cadet absences or lateness for academic causes; listings of cadets improperly registered in classes.

(3) Themes, research papers, graded recitations, grade reviews, other graded work, laboratory reports, case studies, final and midterm examinations, turnout examinations, validation examinations, and graded reviews of courses in which no final examination is given.

(4) Copies of academic schedules and grades, requests for academic waivers, documentation of academic difficulty, plans outlining courses that must be taken in order to graduate.

(5) Graduate record examination scores, orders of merit scores, cumulative GPA scores, and panel commentaries.

(6) Various cadet grade reports, cards and sheets used in auditing and distributing academic grades.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 903, U.S. Air Force Academy; and E.O. 9397 (SSN).

PURPOSE(S):

(1) Individual cards on cadets listing name, date of birth, Social Security Number, admission examination scores, course grades and instructor evaluations concerning aptitude, attitude, and performance are used by instructor to evaluate potential cadets for commissioned service and to evaluate potential cadets as future instructors.

(2) Provides both cadets and instructors the schedules of classes and classrooms and an explanation for any deviation from these schedules and is used by the cadets and instructors to provide locator and scheduling information and to provide course offering information, to change current and future semester course enrollments, to reschedule cadets and establish criteria for resectioning cadets in their courses during the academic year.

(3) Used in assigning grade scores to monitor progress of cadets throughout the academic year and to determine grades.

(4) Used for counseling cadets on academic performance by the counselors and advisors. Assists the cadet in planning an academic program that will satisfy graduation requirements.

(5) Used in the applications of graduates competing for the various fellowships and other post-graduate scholarships by Graduate Scholarship Committee.

(6) Used in auditing and distributing academic grades and are compiled to determine a letter grade for each student in each course.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in card files, on computer magnetic tapes and printouts, and in file folders/notebooks/binders/visible files.

RETRIEVABILITY:

By name or Social Security Number of cadet.

SAFEGUARDS:

Records are accessed by authorized person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked safes, file containers, cabinets or rooms and on computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

(1) Destroy after purpose has been served or 10 years after graduation, whichever is sooner.

(2) Destroy at end of academic year or upon completed action, whichever is sooner.

(3) Destroy 3 months after end of the semester in which administered or at the discretion of the course director, return to the cadet for retention as reference and study materials.

(4) Same as (2) above.

(5) Destroy when no longer needed.

(6) Destroy when superseded or when purpose has been served, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Educational Group, 2354 Fairchild Drive, Suite 6A6, U.S. Air Force Academy, CO 80840–6264;

Director of Athletics, 2169 Field House Drive, Suite 111, U.S. Air Force Academy, CO 80840–9500.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports prepared on behalf of the AF by boards, committees, panels, auditors, and educational institutions, individual, instructors, automated system interfaces from course requisites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–27153 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement (EIS) for Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainwright Maneuver Area

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Military Lands Withdrawal Act, Public Law 99–606, enacted by Congress on November 6,

1986, identified For Greely Maneuver Area, Fort Greely Air Drop Zone, and Fort Wainwright Maneuver Area (also known as the Yukon Maneuver Area) as lands withdrawn from public use until November 6, 2001. The Act requires the Army to publish a Draft EIS for continued or renewed withdrawal of these lands by November 6, 1998. The Department of the Army will be directing the preparation of the EIS for the renewed withdrawal of the Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainwright Maneuver Area. Both sites are located near Fairbanks in interior Alaska. In preparing the Draft EIS, the Army and the Bureau of Land Management (BLM) have mutually agreed to use the legislative environmental impact statement (LEIS) process pursuant to 40 C.F.R. 15061.8 to comply with the requirements of Public Law 99–606. This LEIS will be prepared in cooperation with BLM and will be completed by November 6, 1998, in accordance with Public Law 99–606. Therefore, pursuant to the LEIS process, a Final LEIS (FLEIS) will be prepared and a Notice of Availability of the FLEIS will be published in the **Federal Register**; however, there will not be a Record of Decision.

Scoping: Federal, state, local agencies and the public are invited to participate in the scoping process for the completion of the renewed withdrawal of Fort Greely Maneuver Area and Air Drop Zone, and Fort Wainright Maneuver Area. The scoping process will identify the significant issues of the proposed renewed withdrawals which will need to be addressed in the LEIS. Scoping meetings will be held in Anchorage, Fairbanks, and Delta Junction, Alaska, within 60 days of the publication of the Notice of Intent in the **Federal Register**. Notification of the times and locations for the public scoping meetings will be published in local newspapers.

Comments: Written comments identifying issues and concerns to be addressed in the LEIS will be accepted within 60 days of the public scoping meetings. Written comments may be forwarded to: Directorate of Pubic Works, *Attn:* APVR–RPW–EV (Mr. Steve Wilson), 730 Quartermaster Drive, Fort Richardson, AK 99505–6500.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Wilson, Public Works Division, Fort Richardson, at (907) 384–2710/Fax (907) 384–3047.

SUPPLEMENTARY INFORMATION: The Fort Greely Maneuver Area and Air Drop Zone comprise approximately 623,585 acres near Delta Junction, Alaska.

The Fort Wainwright Maneuver Area comprises approximately 247,952 acres near Fairbanks, Alaska. Both sites were withdrawn from public use from the BLM for military purposes with the enactment of Public Law 99–606 on November 6, 1986. The Act specifies these lands are reserved for use by the Secretary of the Army for military maneuvering, training, artillery firing, aerial gunnery, infantry tactics, equipment development and testing, as well as other defense related purposes. Both sites are used to train in an extremely cold environment and to test the effect of this environment on military equipment. The Fort Greely Maneuver Area and Air Drop Zone, and the Fort Wainwright Maneuver Area are used by the Army, Air Force, and other military units. The Army and BLM jointly manage the natural resources on both sites recognizing the primary military role of these withdrawal lands.

The Department of the Army has determined there is a continuing military requirement for the use of these withdrawal lands to train and maintain military units at the required state of readiness. With the completion of the LEIS, the Army proposes to renew its withdrawal from public use the Fort Greely Maneuver Area and Air Drop Zone, and the Fort Wainwright Maneuver Area. Reasonable and feasible alternatives will be developed as part of the EIS process.

Preliminary planning criteria which have been identified for the completion of the LEIS for both sites include: non-military activities on the withdrawal lands; valid existing rights on the withdrawal lands; consistency with existing plans of adjacent land owners and local governments; natural resource management of the withdrawal lands; public access to portions of the withdrawal lands; and subsistence use of the withdrawal lands. The LEIS will be completed utilizing existing data, information, plans, land use analyses and previously completed EIS's and Environmental Assessments for these withdrawal lands.

Dated: October 9, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 97–27284 Filed 10–14–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to delete and amend records systems.

SUMMARY: The Defense Logistics Agency proposes to delete two systems of records notices, and amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The records in the systems of records being deleted are being consolidated into an existing system of records. The Defense Logistics Agency is currently using a DoD recommended computer software package to track and monitor access to DLA computer databases and DLA managed installations and activities.

DATES: The amendment and deletions will be effective on November 14, 1997.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

The Defense Logistics Agency proposes to delete two systems of records notices, and amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The records in the systems of records being deleted are being consolidated into an existing system of records. The Defense Logistics Agency is currently using a DoD recommended computer software package to track and monitor access to DLA computer databases and DLA managed installations and activities.

Dated: October 8, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS
S161.30 DLA-I

SYSTEM NAME:

Motor Vehicle Registration Files *(February 22, 1993, 58 FR 10857).*

Reason: Records have been consolidated into the existing DLA system of records S500.50 CA, entitled Access and Badging Records.

S500.30 DLA-I

SYSTEM NAME:

Visitors and Temporary Passes File *(February 22, 1993, 58 FR 10898).*

Reason: Records have been consolidated into the existing DLA system of records S500.50 CA, entitled Access and Badging Records.

AMENDMENT
S500.50 DLA-I

SYSTEM NAME:

Individual Access Records *(February 22, 1993, 58 FR 10899).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.50 CA.'

SYSTEM NAME:

Delete entry and replace with 'Access and Badging Records.'

SYSTEM LOCATION:

Delete entry and replace with 'Staff Director, Office of Command Security, Headquarters Defense Logistics Agency, ATTN: CAAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'DLA civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, and/or computer systems.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; address; Social Security Number; date of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; computer logon addresses, passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with '5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6101, Time clocks; 5 U.S.C. 6125, Hours of work; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1030, Computer fraud; 18 U.S.C. 1029, Access device fraud; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 10540 (Security Requirements); and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Information is maintained by DLA security personnel to control access onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, Social Security Number, bar code number, or decal number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs.

Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.'

* * * * *

S500.50 CA

SYSTEM NAME:

Access and Badging Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, HQ Defense Logistics Agency, ATTN: CAAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, or computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; address; Social Security Number; date of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; computer logon addresses, passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator s permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6101, Time clocks; 5 U.S.C. 6125, Hours of work; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; 18 U.S.C. 1030, Computer fraud; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10540 (Security Requirements).

PURPOSE(S):

Information is maintained to by DLA security personnel to control access

onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by name, Social Security Number, bar code number, or decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs.

Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA s compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–27154 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on November 14, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: October 8, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01754–3

SYSTEM NAME:

Navy Child Development Services Program *(February 22, 1993, 58 FR 10724).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name; Social Security Number; case number; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Child Care program; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and automated records.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Computer files are protected by software programs that are password protected.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Bureau of Naval Personnel Detachment, Community Support Activities Branch (Pers-659), Naval Support Activity Memphis, 7800 Third Avenue, Building 457, Millington, TN 38054–5045.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.'

* * * * *

N01754–3

SYSTEM NAME:

Navy Child Development Services Program.

SYSTEM LOCATION:

Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps service members and their families or dependents. In certain locations, DOD civilian employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; case number; home address and telephone number; insurance coverage; names of parents and children; performance rating; complaints; background information, including medical, educational references, and prior work experience, information from the Naval Criminal Investigative Service (NCIS), the family advocacy program, base security, and state and local agencies; information related to screening, training, and implementation of the Family Child Care program; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).

PURPOSE(S):

To develop child care programs that meet the needs of children and families, provide child and family program eligibility and background information; verify health status of children and verify immunizations, note special program requirements; consent for access to emergency medical care; data required by USDA programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal officials involved in Child Care Services, including child abuse for the purpose of investigation and litigation.

To State and local officials involved with Child Care Services if required in the performance of their official duties relating to investigations.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

By last name of member and Social Security Number.

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours. Computer files are protected by software programs that are password protected.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Bureau of Naval Personnel Detachment, Community Support Activities Branch (Pers-659), Naval Support Activity Memphis, 7800 Third Avenue, Building 457, Millington, TN 38054–5045.

Record Holder: Navy Child Development or Family Service Centers located at various Navy and Marine Corps activities both in CONUS and overseas. Official mailing addresses of Navy and Marine Corps activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals should provide proof of identity and full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals should provide proof of identity and full name.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from individuals either applying as child care providers or participant of the Family Child Care program; background checks from State and local authorities; housing officers; information from the Family Advocacy program; base security officers and base fire, safety and health officers; and local family child care monitors and parents of children enrolled.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any

right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–27152 Filed 10–14–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No: 84.195C]

Bilingual Education: Graduate Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program

Provides fellowships, through institutions of higher education, to individuals who are engaged in masters and doctoral study related to instruction of limited English proficient children and youth.

Note: The Department will, because of the limited funds available, only consider applications that propose fellowships for masters and doctoral students. Fellowship applications for post-doctoral study will not be considered.

Eligible Applicants

Institutions of higher education (IHEs).

Note: Any individual wishing to obtain a fellowship must apply to an IHE approved for participation in this program, not to the U.S. Department of Education.

Deadline for Transmittal of Applications: December 5, 1997.

Deadline for Intergovernmental Review: February 5, 1998.

Applications Available: October 24, 1997.

Available Funds: $5,000,000.

Estimated Range of Awards: $2,000–$30,000 per individual fellow; $30,000–$300,000 per IHE.

Estimated Average Size of Awards: $13,000 per individual fellow; $150,000 per IHE.

Estimated Number of Awards: 384 individual fellowships; 35 participating IHEs.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for a master's program; up to 36 months for a doctoral program.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 34 CFR 75.51 and 75.60–75.62, 34 CFR parts 77, 79, 85, and (b). The regulations for this program in 34 CFR part 535.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority (34 CFR 75.101(c)(1)). However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications: Doctoral Programs of Study In Teacher Training.

Applications proposing programs of study that prepare teacher trainers and lead to a doctoral degree.

For Applications or Information Contact

Joyce M. Brown, U.S. Department of Education, 600 Independence Avenue, SW., room 5618, Switzer Building, Washington, D.C. 20202–6642. Telephone: (202) 205–9727. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7475.

Dated: October 8, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 97–27167 Filed 10–14–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, October 5, 1997; 6 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Ulrikson, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A presentation concerning the Y–12 Plant Bear Creek Valley watershed strategy for the Oak Ridge Reservation will be provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Ulrikson at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Ulrikson, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC, on October 9, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–27285 Filed 10–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, November 6, 1997: 9 a.m.–5:00 p.m.; Friday, November 7, 1997: 8:30 a.m.–4:30 p.m.

ADDRESSES: Monarch Hotel, 12566 SE 9th Avenue, Portland, Oregon, 1–800–492–8700.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Board will receive information on and discuss issues related to: Maintaining Cleanup.

Progress: Board Near Term and Long Term Strategies, Environmental Management's Accelerating Cleanup: Focus on 2006 Plan and Contractor Integration Report, 200 Area Strategy, FY 1998 Budget Allocations, Project Hanford Management Contract Performance Evaluation (1997) and Performance Measures (1998), Transition Plan for Committee Chairs, Spent Nuclear Fuel Program, Plutonium Reclamation Facility Corrective Actions, Tank Waste Remediation System Privatization Set Aside, December.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments during the meeting (11:45 a.m. and 4:45 p.m.).

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on October 9, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–27286 Filed 10–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB) Chairperson and Federal Coordinator Meeting.

DATES: Tuesday, October 28, 1997, 8:30 a.m.–5 p.m.; Wednesday, October 29, 1997, 8:30 a.m.–4 p.m.

ADDRESSES: Fairmont Hotel, 1717 North Akard Street, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Karol Hazard, Department of Energy, EM–22, Room 1H–087, 1000 Independence Avenue, SW, Washington, DC 20585, phone: (202) 586-7926, fax: (202) 586–0293.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: This is a special-called Board Chairperson and Federal Coordinator meeting. It will include information sharing between the Board's site-groups, and discussions on policy and administrative issues, and specific EM initiatives.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Karol Hazard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of each meeting day.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will

also be made available by writing or calling Karol Hazard at the Board's office address or telephone number listed above.

Issued at Washington, DC on October 9, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–27288 Filed 10–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, October 28, 1997: 1 p.m.–5 p.m.

ADDRESSES: Amarillo Public Library, Rooms A & B, 413 E. 4th Avenue, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

1:00 p.m.—Welcome—Agenda Review—Approval of Minutes
1:10 p.m.—Co-Chair Comments
1:20 p.m.—Task Force Reports
1:40 p.m.—Subcommittee Reports
2:15 p.m.—Nominations Report
3:00 p.m.—Ex-Officio Reports
3:30 p.m.—Water Discussions—Exceedences
4:30 p.m.—Updates—Occurrence Reports—DOE
5:00 p.m.—Closing Remarks/Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at any time throughout the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on October 9, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–27289 Filed 10–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–02; Experimental Program to Stimulate Competitive Research (EPSCoR); Building EPSCoR-State National Laboratory Partnerships

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR Program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE /EPSCoR program is to enhance the capability of designated states to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–02, should be received by DOE by 4:30 P.M., E.S.T., December 3, 1997. A response discussing the potential program relevance of a formal application generally will be communicated to the applicant within 30 days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., February 10, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1998.

ADDRESSES: All preapplications, referencing Program Notice 98–02, should be sent to Ms. Donna J. Prokop, Division of Materials Sciences, ER–13, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–02. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Ms. Donna J. Prokop, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, ER–132, U. S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–0511, or Internet e-mail address: donna.prokop@mailgw.er.doe.gov.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. Electronic access to the latest version of ER's Financial Assistance Guide is possible via the Internet at the following Web Site: http://www.er.doe.gov/production/grants/grants.html

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students should be active members of the research team, and it is highly desirable that a student spend a summer or academic-year at the National Laboratory, facility or center. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE continues to restrict EPSCoR eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

To minimize undue effort on the part of applicants and reviewers, interested parties are invited and encouraged to submit preapplications. The preapplications will be reviewed relative to the scope and research needs of the Department of Energy. The brief preapplication should consist of three to five pages of narrative describing the research objectives and methods of accomplishment.

Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the ER Grants and Contracts Web Site at: http://www.er.doe.gov/production/grants/preapp.html

In addition to the project description all preapplications and formal applications must include the following information:

1. Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions may be accessed via the web at http://www.doe.gov/.
2. Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a "Letter-of-Intent" from the participating DOE National Laboratory, facility, or center.
3. Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

It is anticipated that approximately $750,000 will be available in FY 1998 for research that encourages and facilitates collaborative efforts between researchers EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $50,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. All funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services and equipment.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project.
2. Appropriateness of the proposed method or approach.
3. Competency of applicant's personnel and adequacy of proposed resources.
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The principal investigator should publish the results of the supported research in the peer-reviewed, archival scientific literature.

Applications received by ER under its normal competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on October 3, 1997.

John Rodney Clark,

Associate Director, for Resource Management, Office of Energy Research.

[FR Doc. 97–27287 Filed 10–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4745–000]

Alpena Power Marketing, L.L.C.; Notice of Filing

October 8, 1997.

On September 25, 1997, Alpena Power Marketing, L.L.C. (APM) petitioned the Commission for acceptance of APM's Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27180 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–1–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 8, 1997.

Take notice that on October 1, 1997, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP98–1–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery, located in Knox County, Ohio, to Columbia Gas of Ohio (COH), under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate an additional point of delivery of COH, in Knox County, Ohio and to reassign a portion of the Maximum Daily Delivery Obligation (MMDO) from an existing point of delivery to COH and institute a corresponding reduction at an existing point of delivery. Columbia states that as part of the firm transportation service to be provided, COH has requested that its existing Storage Service Transportation Agreement be amended by increasing the MMDO by 350 Dth/day at the proposed new point of delivery and reducing the MMDOs at the existing point of delivery by 350 Dth/day. Columbia estimates annual quantities of natural gas to be delivered at the new point of delivery to be 30,600 Dth annually.

Columbia asserts the end use of the new point of delivery will be industrial and utilized to serve a grain dryer operation. Columbia states the interconnecting and appurtenant facilities required to establish the new delivery point are estimated to cost $14,000, with COH reimbursing Columbia 100% of the total cost of the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27175 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–542–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 1997:

[Substitute Twenty-First Revised Sheet No. 25]

On September 30, 1997, Columbia filed revised tariff sheets, in Docket No. RP97–542–000, to remove the SFC charge from its rates effective October 1, 1997. However, subsequent to that filing, Columbia has determined that it made an inadvertent error in Footnote 5 on Twenty-First Revised Sheet No. 25. The incremental surcharge applicable to the former X–70 Rate Schedule did not reflect the adjustment for the removal of the SFC rate component, but should have. Therefore, as shown on Substitute Twenty-First Revised Sheet No. 25, the instant filing incorporates a revision to Footnote 5 to reflect the removal of the SFC rate component.

Columbia states further that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties in Docket No. RP95–408, et al proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27202 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–2–000]

East Tennessee Natural Gas Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997 East Tennessee Natural Gas Company (East Tennessee) submitted Thirteenth Revised Sheet No. 4 for inclusion in East Tennessee's FERC Gas Tariff, Second Revised Volume No. 1. East Tennessee Tendered this revised tariff sheet as its Annual Transportation Cost Rate Adjustment (TCRA) filing to revise the TCRA commodity surcharge under Rate Schedules FT–A and FT–GS. East Tennessee requests an effective date of November 1, 1997.

East Tennessee states that Thirteenth Revised Sheet No. 4 reflects changes to its TCRA pursuant to Section 25 of the General Terms and Conditions of its tariff.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27182 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–007]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1997:

Eight Revised Sheet No. 30

El Paso states that the tariff sheets are being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipeline and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27198 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–147–004]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 3, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective September 1, 1997:

Substitute Third Revised Sheet No. 220
Substitute Second Revised Sheet No. 220A
Substitute Second Revised Sheet No. 220B

Equitrans states that the proposed tariff sheets are submitted in compliance with the Letter Order issued by the Commission on September 18, 1997 in Docket No. RP96–147–003. Equitrans states that the Commission required equitrans to refile the tariff sheets to reflect a more detailed explanation of the ratchet mechanism for all peaking storage Rate Schedules and a definition of the total ratchet quantity. Equitrans states that the proposed tariff sheets incorporate these revisions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20046, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27186 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–147–005]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Fifth Revised Sheet No. 57
First Revised Sheet No. 57A
Third Revised Sheet No. 58
Third Revised Sheet No. 99
Second Revised Sheet No. 99A
Fifth Revised Sheet No. 110
First Revised Sheet No. 110A
Second Revised Sheet No. 110B
Original Sheet No. 110C

HIOS states that the tariff sheets are filed to comply with the Commission's directives in its June 13, 1997 and July 24, 1997 letter orders issued in the captioned proceedings regarding Order No. 587–C.

HIOS further states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27192 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3923–000]

Infinite Energy, Inc.; Notice of Issuance of Order

October 9, 1997.

Infinite Energy, Inc. (Infinite) submitted for filing a rate schedule under which Infinite will engage in wholesale electric power and energy transactions as a marketer. Infinite also requested waiver of various Commission regulations. In particular, Infinite requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Infinite.

In October 2, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted

requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Infinite should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Infinite is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Infinite's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 3, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27248 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–154–007]

Koch Gateway Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in the filing, to become effective November 1, 1997.

Koch states that this filing is in compliance with the Office of Pipeline Regulation's Letter Order, in Docket No. RP97–154–003, issued June 4, 1997. Koch has revised the above listed tariff sheets pursuant to the letter order. The revised tariff sheets reflect GISB standards to become effective November 1, 1997.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27193 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4257–000]

Mid-Power Service Corporation; Notice of Issuance of Order

October 9, 1997.

Mid-Power Service Corporation (Mid-Power) submitted for filing a rate schedule under which Mid-Power will engage in wholesale electric power and energy transactions as a marketer. Mid-Power also requested waiver of various Commission regulations. In particular, Mid-Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mid-Power.

On September 30, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mid-Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Mid-Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mid-Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27247 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–155–007]

Mobile Bay Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Third Revised Sheet No. 81
Third Revised Sheet No. 82
Fourth Revised Sheet No. 83
Third Revised Sheet No. 84
Third Revised Sheet No. 129
Third Revised Sheet No. 130
Second Revised Sheet No. 131
Third Revised Sheet No. 132
Second Revised Sheet No. 133
Second Revised Sheet No. 184
Second Revised Sheet No. 185
Third Revised Sheet No. 186
First Revised Sheet No. 186A
First Revised Sheet No. 187
First Revised Sheet No. 188
Original Sheet No. 189
Original Sheet No. 190
Second Revised Sheet No. 208

Mobile Bay states that this filing is in compliance with the Office of Pipeline Regulation's Letter Order, in Docket No, RP97–155–002, issued June 4, 1997. Mobile Bay has revised the above listed tariff sheets pursuant to the letter order. The revised tariff sheets reflect GISB standards to become effective November 1, 1997.

Mobile Bay also states that it has served copies of this filing upon each person on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27195 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4623–000]

Montaup Electric Company; Notice of Filing

October 8, 1997.

Take notice that on September 16, 1997, Montaup Electric Company (Montaup) filed (1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and (2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and following companies (Buyers):

1. CPS Capital, Ltd. (CPS)
2. Edison Source (ESRC)
3. New Energy Ventures, Inc. (NEV)
4. Northeast Energy Services, Inc. (NORESCO)
5. Sonat Power Marketing L.P. (SPLMP)
6. Tractebel Energy Marketing, Inc. (Tractebel)
7. Williams Energy Services Company (WESCO) (System Only)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of September 16, 1997. No transactions have occurred under any of the agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE.; Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27179 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–1–010]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

National Fuel states that the purpose of this filing is to submit actual tariff sheets revised to conform to the Commission letter order issued on June 19, 1997, 1997 in Docket No. RP97–1–007 and to conform with the GISB Standards incorporated by Order No. 587–C, Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27187 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–443–002]

Northern Border Pipeline Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 3, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective October 3, 1997:

Substitute First Revised Sheet Number 123

Northern Border asserts that the purpose of this filing is to comply with Order No. 636–C, issued February 27, 1997, in Docket Nos. RM91–11–006 and RM87–34–072 and the Commission's letter order issued September 24, 1997. In Order No. 636–C, the Commission required that any pipeline with a right-of-first refusal tariff provision containing a contract term longer than five years revise its tariff to reflect the new five year cap. Northern Border has now included a provision which allows a shipper to retain its capacity for a term of five years at the rate contained in the Best Bid.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27200 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–131–005]

Overthrust Pipeline Company; Notice of Tariff Filing

October 8, 1997.

Take notice that on October 2, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the below-listed tariff sheets, to be effective November 1, 1997:

Original Sheet No. 61A and 78D
First Revised Sheet Nos. 34A, 67C, 78A, 78B and 78C
Second Revised Sheet Nos. 33, 35A, 60, 61, 67A, 67B and 78
Third Revised Sheet Nos. 1, 34 and 67
Fifth Revised Sheet No. 30

Overthrust states that the filing is being made in compliance with the September 26, 1997, OPR Director Letter Order in Docket No. RP97–131–002.

Overthrust states that the proposed tariff sheets implement the requirements of Order No. 587–C and comply with the Commission's September 26 directive to (1) correct a typographical error in Standard 2.3.31 and (2) revise the tariff language that incorporates GISB Standard 2.3.9.

Overthrust states further that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27190 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–455–001]

Overthrust Pipeline Company; Notice of Tariff Compliance Filing

October 8, 1997.

Take notice that on October 3, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 67A to become effective September 22, 1997.

Overthrust states that the filing is being made in compliance with the Commission's September 19, 1997, Order Accepting Tariff Sheets Subject to Conditions. Overthrust states that this tariff filing complies with the September 19 order by deleting from Section 15.2(b) of the General Terms and Conditions of its tariff the sentence "Intra-day nominations received during this batch period may not bump gas that is already flowing."

Overthrust states that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27201 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1847–001]

Pacific Gas & Electric Company; Notice of Filing

October 8, 1997.

Take notice that on August 28, 1997, Pacific Gas & Electric Company tendered for filing revised tariff pages for Rate Schedule FERC Nos. 88, 91, 136, 138 and 176 in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27176 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4829–000]

PP&L, Inc., Notice of Filing

October 8, 1997.

Take notice that on September 30, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) filed, pursuant to Federal Power Act Section 205, a request for a change in the PP&L Group Zone revenue requirement contained within the open access transmission tariff of the Pennsylvania—New Jersey—Maryland Interconnection (PJM). PP&L requests and effective date of November 1, 1997, for its requested change.

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, all PJM Regional Transmission Owners, and the public utility commissions of all states in the PJM control area.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before October 21, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27181 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4830–000

PP&L, Inc.; Notice of Filing

October 8, 1997.

Take notice that on September 30, 1997, PP&L Inc. (formerly known as Pennsylvania Power & Light Company) filed, pursuant to Federal Power Act Section 205, a request for a change in the PP&L revenue requirements and transmission service rates contained in PP&L's Open Access Transmission Tariff (Tariff). PP&L requests an effective date of November 1, 1997, for its requested changes.

PP&L states that copies of this filing have been served on all persons that have signed service agreements under PP&L's Tariff, and all persons on the official service list in FERC Docket No. OA96–142–000 (the docket in which PP&L filed its Order No. 888 Tariff on July 9, 1996, an in which PP&L's transmission and ancillary service rates currently are being litigated before a FERC administrative law judge).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before October 21, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27183 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–109–008]

Sabine Pipe Line Company; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 6, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective November 1, 1997:

Substitute Sixth Revised Sheet No. 20
Substitute Second Revised Sheet No. 225
Substitute Third Revised Sheet No. 297

Sabine states that the filing is being made to comply with the provisions of Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004, and the Commission's order issued June 18, 1997 in Docket No. RP97–109–004.

Sabine respectfully requests that the Commission grant a waiver of § 154.207 of its regulations, and any other waivers that may be necessary, in order that the tariff sheets listed above may be made effective November 1, 1997.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance wit Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27188 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3281–001]

South Carolina Electric and Gas Company; Notice of Filing

October 8, 1997.

Take notice that on August 28, 1997, South Carolina Electric and Gas Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27177 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–164–004]

Texas-Ohio Pipeline, Inc.; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, Texas-Ohio Pipeline, Inc. (TOP), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposed effective date November 1, 1997:

Second Revised Sheet No. 41
First Revised Sheet No. 54A
First Revised Sheet No. 57A
First Revised Sheet No. 78

TOP states that these tariff sheets are being filed to comply with the Letter Order issued June 30, 1997, by the Commission, in Docket No. RP97–164–002. In that Letter Order, the Commission had preliminarily approved pro forma sheets filed by TOP

in compliance the Commission's Order No. 587–C, subject to the filing of certain revised tariff sheets to become effective November 1, 1997.

TOP further states that copies of this filing have been served on TOP's jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27197 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–021 and RP93–162–006]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Report

October 8, 1997.

Take notice that on September 25, 1997, Transcontinental Gas Pipe Line Company (Transco) filed its annual report of cash-out purchases for the period August 1, 1996, through July 31, 1997. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993, in Docket No. RP93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement during the aforementioned period.

Transco states that the report shows that for the annual period ending July 31, 1997, Transco had a net underrecovery of $6,128,461. Transco has carried forward a net underrecovery of $1,268,589 from the previous twelve-month period. This results in a net underrecovery cash-out balance of $7,397,050 as of July 31, 1997. Transco states that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27174 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 2, 1997, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Third Revised Sheet No. 46
First Revised Sheet No. 46A
Second Revised Sheet No. 67A
Seventh Revised Sheet No. 73
Second Revised Sheet No. 73A
First Revised Sheet No. 73B

U–TOS states that the tariff sheets are filed to comply with the Commission's directives in its June 13, 1997 and July 24, 1997 letter orders issued letter order in the captioned proceedings regarding Order No. 587–C.

U–TOS further states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27191 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–163–005]

Westgas Interstate, Inc.; Notice of Compliance Filing

October 8, 1997.

Take notice that on October 2, 1997, WestGas InterState, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date November 1, 1997:

Third Revised Sheet No. 29
First Revised Sheet No. 45A
First Revised Sheet No. 49A
First Revised Sheet No. 92

WGI states that these tariff sheets are being filed to comply with the Letter Order issued September 22, 1997, Office of Pipeline Regulation, in Docket No. RP97–163–002. In that Letter Order, the Director had preliminarily approved pro forma sheets filed by WGI in compliance with the Commission's Order No. 587–C, subject to the filing of certain revised tariff sheets, to become effective November 1, 1997.

WGI further states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27196 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–407–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1997.

Take notice that on October 3, 1997, William Natural Gas Company (WNG), tendered for filing to become part of the FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1997:

Substitute First Revised Sheet Nos. 8E and 8F

WNG states that it made a filing in Docket Nos. RP97–407, et al., on July 1, 1997 to submit its third quarter 1997 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. In preparation of the fourth quarter report, WNG discovered two new firm contracts had gone into effect on July 1, 1997, but had not been finalized when the third quarter report was made.

WNG states that the instant filing is being made to revise Schedule 4 of the original failing to reflect the new contracts. All other aspects of WNG's July 1 filing are unchanged.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27199 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–1–000, et al.]

KLT Power Inc., et al.; Electric Rate and Corporate Regulation Filings

October 8, 1997.

Take notice that the following filings have been made with the Commission:

1. KLT Power Inc.

[Docket No. EG98–1–000]

On October 3, 1997, KLT Power Inc. (Applicant), whose business address is 1201 Walnut, Kansas City, MO 64106 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation eligible facilities located in China, Argentina, India and the United States.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF97–5011–000]

Take notice that on September 23, 1997, the Deputy Secretary of the Department of Energy submitted a request for final confirmation and approval of certain rate schedules for the Western Area Power Administration that she had previously confirmed and approved on an interim basis, to be effective on October 1, 1997. The rate schedules are Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 for the Central Valley Project and for the California-Oregon Transmission Project.

The Deputy Secretary states that the rates in the Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of substitute rates on a final basis, for the period from October 1, 1997 to September 30, 2002.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. ProMark Energy, Inc.

[Docket Nos. ER97–705–000 and ER97–4374–000]

Take notice that on September 24, 1997, ProMark Energy, Inc. moved to withdraw service agreements with PECO Energy Company and Long Island Lighting Company filed in the referenced dockets on August 13 and August 26, 1997, respectively.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER97–2984–000]

Take notice that on September 26, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing an amendment to its initial filing in this proceeding consisting of additional work papers intended to support the computation of charges for direct assignment facilities.

MidAmerican proposes an effective date of July 1, 1997, for both the Agreement and the First Amendment which have been filed in this proceeding and has previously requested a waiver of the Commission's 60-day notice requirement.

Copies of the filing were served on the City of Sergeant Bluff, Iowa.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Columbus Southern Power Company

[Docket No. ER97–3213–000]

Take notice that Columbus Southern Power Company (CSP), on October 3, 1997, tendered for filing with the Commission an amendment to its original filing dated June 3, 1997, as requested by the Federal Energy Regulatory Commission staff. The initial filing included a Facilities and Operations Agreement and a Facilities Service Agreement between CSP, Buckeye Power, Inc. (Buckeye) and Guernsey-Muskingum Electric Cooperative, Inc. (GME). GME is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

GME has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. CSP

requests an effective date of June 15, 1997, for the tendered agreements.

CSP states that copies of its filing were served upon the Guernsey-Muskingum Electric Cooperative, Inc., Buckeye Power, Inc.; R&F Coal Company and the Public Utilities Commission of Ohio.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER97–3791–001 and ER97–3796–001]

Take notice that on September 26, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing with the Commission, its Refund Report made in compliance with the Commission's Order issued August 29, 1997 in the above referenced dockets.

Con Edison states that on September 25, 1997, refunds were sent to Long Island Lighting Company and PanEnergy Trading and Market Services, L.L.C. The refunds included interest through September 20, 1997 in accordance with Section 35.19A of the Commission's Regulations.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket No. ER97–4110–000]

Take notice that on September 24, 1997, The Detroit Edison Company filed an amendment to its filing in the above-referenced docket.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–4151–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf), tendered for filing an amendment to its August 11, 1997, filing in this docket.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4158–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for the Cleveland Electric Illuminating Company and The Toledo Edison Company filed amended Service Agreements, in the above referenced docket, to provide Non-Firm Point-to-Point Transmission Service for American Electric Power, AES Power, Incorporated, Cinergy Services, Incorporated, Engage Energy Incorporated, Noram Energy Services, and Pacificorp Power Marketing, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreements is August 12, 1997.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. The Detroit Edison Company

[Docket No. ER97–4406–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment in the above-referenced docket.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Detroit Edison Company

[Docket No. ER97–4409–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment in the above-referenced docket.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Detroit Edison Company

[Docket No. ER97–4411–000]

Take notice that on September 29, 1997, The Detroit Edison Company filed an amendment to its filing in the above-referenced docket.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. American Electric Power Company

[Docket No. ER97–4537–000]

Take notice that on October 3, 1997, American Electric Power Company tendered for filing an amended Notice of Termination in the above-referenced docket.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services

[Docket No. ER97–4635–000]

Take notice that on September 16, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies) filed four (4) service agreements for short-term firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies. Two (2) of those agreements are between SCS, as agent for Southern Companies, and Electric Clearinghouse, Inc. The other two (2) agreements are between SCS, as agent for the Operating Companies, and (i) Entergy Services, Inc., and (ii) Sonat Power Marketing, L.P. In addition, SCS, as agent for the Operating Companies, also filed Notice of Cancellation for those service agreements, which agreements were for daily transmission service.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. MidAmerican Energy Company

[Docket No. ER97–4677–000]

Take notice that on September 19, 1997, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to § 35.15 of the Commission's Regulations. MidAmerican states that the rate schedules to be canceled effective as of 11:59 p.m. on July 31, 1997 are as follows:

1. Full Requirements Power Agreement dated September 9, 1987, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Rockford, Iowa. This Full Requirements Power Agreement has been designated as MidAmerican Rate Schedule Electric Tariff No. 7, Service Agreement No. 8.

MidAmerican requests a waiver of § 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican states that this Notice of Cancellation was not filed earlier because the termination of the agreement identified in the Notice of Cancellation was subject to the City's execution of a contract with another supplier to serve the City's capacity and energy needs. The City began receiving service from another supplier on August 1, 1997.

MidAmerican has mailed a copy of this filing to City of Rockford, IA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER97–4678–000]

Take notice that on September 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which PPG Industries, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 15, 1997.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER97–4679–000]

Take notice that on September 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Virginia Electric and Power Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 15, 1997.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Starghill Energy Corp.

[Docket No. ER97–4680–000]

Take notice that on September 19, 1997, Starghill Energy Corp. (Starghill), petitioned the Commission for acceptance of Starghill's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Starghill, intends to engage in wholesale electric power and energy purchases and sales as a marketer. Starghill, is not in the business of generating or transmitting electric power. Starghill, is a Michigan, Corporation which markets natural gas, designs and constructs natural gas refuel stations and converts vehicles to operate on natural gas and propane.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER97–4681–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and LG&E Energy Marketing Inc., MidAmerican Energy Company and Western Resources. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in [Docket No. OA96–50.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER97–4682–000]

Take notice that on September 19, 1997, Southern California Edison Company (Edison), tendered for filing the Edison-Vernon 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Vernon, California (Vernon), and a Notice of Cancellation of various agreements and rate schedules applicable to Vernon. Included in the Restructuring Agreement as Appendices C, D, E, and F are: Amendment No. 1 to the Edison-Vernon FTS Agreement, Amendment No. 2 to the Edison-Vernon Mead FTS Agreement, Amendment No. 1 to the Edison-Vernon Victorville-Lugo FTS Agreement, and the Laguna Bell-Vernon Interconnection Service Agreement.

The Restructuring Agreement, including all of its Appendices, are the result of negotiations between Edison and Vernon to modify existing contracts to accommodate the emerging Independent System Operator/Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Vernon. In addition, the Restructuring Agreement provides for cancellation of all existing bundled service arrangements and obligations between Edison and Vernon.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–4683–000]

Take notice that on September 19, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with Morgan Stanley Capitol Group, Inc., Virginia Electric and Power Company, and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–4684–000]

Take notice that on September 19, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Northeast Utilities Service Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Columbus Southern Power Company

[Docket No. ER97–4685–000]

Take notice that on September 19, 1997, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Letter Agreement dated August 6, 1997, between CSP, Buckeye Power, Inc. (Buckeye), and South Central Power Cooperative (SCP). SCP is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

SCP has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP states that copies of its filing were served upon the South Central Power Cooperative, Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Atlantic City Electric Company

[Docket No. ER97–4686–000]

Take notice that on September 19, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to American Electric Power Company, Inc., (AEP) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to

become effective on September 16, 1997.

Atlantic Electric states that a copy of the filing has been served on AEP.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4687–000]

Take notice that on September 19, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to PacifiCorp Power Marketing, Inc. (PacifiCorp).

O&R requests waiver of the notice requirement so that the service agreement with Central Maine becomes effective as of September 18, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and PacifiCorp.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Arizona Public Service Company

[Docket No. ER97–4688–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with City of Burbank, Morgan Stanley Capital Group Inc., and Tractabel Energy Marketing, Inc.

A copy of this filing has been served on the Arizona Corporation Commission, City of Burbank, Morgan Stanley Capital Group Inc., and Tractabel Energy Marketing, Inc.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER97–4689–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Delhi Energy Services, Inc.

A copy of this filing has been served on Delhi Energy Services, Inc., and the Arizona Corporation Commission.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Arizona Public Service Company

[Docket No. ER97–4690–000]

Take notice that on September 22, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide umbrella short-term Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Delhi Energy Services, Inc.

A copy of this filing has been served on Delhi Energy Services, Inc., and the Arizona Corporation Commission.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. PSI Energy, Inc.

[Docket No. FA96–61–001]

Take notice that on September 17, 1997, PSI Energy, Inc., tendered for filing its refund report in the above-referenced docket.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary

[FR Doc. 97–27244 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–59–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 7, 1997.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. EC97–59–000]

Take notice that on September 29, 1997, Pacific Gas and Electric Company (PG&E) tendered for acceptance of this filing an Application by and between PG&E and the Modesto Irrigation District (MID) entitled "Pacific Gas and Electric Company's Application for Authorization for the Sale of Transmission Facilities to Modesto Irrigation District."

The Application was entered into for the purpose of PG&E's sale of certain FERC-jurisdictional transmission facilities to MID. These facilities have an original cost of $547,405.

Copies of this filing have been served upon the California Public Utilities Commission, MID and Destec Power Services.

Comment date: November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Lake Benton Power Partners LLC

[Docket No. EG97–86–000]

On September 30, 1997, Lake Benton Power Partners LLC, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Lake Benton Power Partners LLC is an indirect subsidiary company of Enron Corp. Lake Benton Power Partners LLC will build and own a wind turbine generation facility (the Lake Benton Facility) near Lake Benton, Minnesota. The Lake Benton Facility will consist of approximately 143 wind turbines, with an aggregate nameplate capacity of 107.25 megawatts. Electric energy produced by the Lake Benton Facility will be sold to Northern States Power Company.

Comment date: October 28, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy of the application.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER97–4641–000]

Take notice that on September 17, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Short-Term Firm Transmission Service Agreement between NSP and NSP-Wholesale.

NSP requests that the Commission accept the agreement effective August 26, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Tucson Electric Power Company

[Docket No. ER97–4643–000]

Take notice that on September 17, 1997, Tucson Electric Power Company (TEP), tendered for filing two (2) service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under these agreements. The service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated August 28, 1997. Service under this agreement commenced on August 19, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated September 4, 1997. Service under this agreement commenced on August 26, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Texas Utilities Electric Company

[Docket No. ER97–4644–000]

Take notice that on September 17, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA) with The AC Power Group for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on The AC Power Group, as well as the Public Utility Commission of Texas.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Electric Power Company

[Docket No. ER97–4645–000]

Take notice that on September 17, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with Tractebel Energy Marketing, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER97–4647–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with NCEMC under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customer as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Alabama Power Company

[Docket No. ER97–4648–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Central Alabama Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Power Company

[Docket No. ER97–4649–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Dixie Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER97–4650–000]

Take notice that on September 18, 1997, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised delivery point voltage levels of service to Pioneer Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of October 1, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER97–4651–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and Minnesota Power and Light Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to Minnesota Power and Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Minnesota Public Utilities Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER97–4655–000]

Take notice that on September 18, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with NorAm Energy Services, Inc., Entergy Power Marketing Corp., Delhi Energy Services, Inc., Florida Power Corporation, Minnesota Power & Light Company and NCEMC under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Florida Public Service Commission, the Minnesota Public Utilities Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER97–4656–000]

Take notice that on September 18, 1997, Commonwealth Edison Company (ComEd) submitted for filing a Short-Term Firm Service Agreement with Illinois Municipal Electric Agency (IMEA), a Non-Firm Service Agreement with QST Energy Trading (QST), a Non-Firm Service Agreement with Northeast Utilities (Northeast), a Non-Firm Service Agreement with IMEA, and a Non-Firm Service Agreement with ProLiance Energy, LLC (ProLiance), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also submitted for filing a revised Index of Customers reflecting the addition of the five new customers and a name change for current customer, Koch Power Services, Inc. Koch Power Services, Inc., has been renamed Koch Energy Trading, Inc.

ComEd requests various effective dates for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA, QST, Northeast, ProLiance, Koch Energy Trading, Inc., and the Illinois Commerce Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Co.

[Docket No. ER97–4657–000]

Take notice that on September 18, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date September 1, 1997. Wisconsin Electric is authorized to state that Wheeled Electric Power Company joins in the requested effective date.

Copies of the filing have been served on Wheeled Electric Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Electric Power Company Inc.

[Docket No. ER97–4658–000]

Take notice that on September 18, 1997, Maine Electric Power Company, Inc. (MEPCO), tendered for filing a service agreement for Long-Term Firm Point-to-Point Transmission service entered into with Northeast Utilities Service Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER97–4659–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Morgan Stanley Capital Group Inc. (Morgan Stanley).

Cinergy and Morgan Stanley are requesting an effective date of August 19, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER97–4660–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ProLiance Energy, LLC (ProLiance).

Cinergy and ProLiance are requesting an effective date of September 15, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER97–4661–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ProLiance Energy, LLC (ProLiance).

Cinergy and ProLiance are requesting an effective date of September 15, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER97–4662–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1997 between Cinergy, CG&E, PSI and Constellation Power Source, Inc. (Constellation).

The Interchange Agreement provides for the following service between Cinergy and Constellation:

11. Exhibit A—Power Sales by Constellation
12. Exhibit B—Power Sales by Cinergy

Cinergy and Constellation have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Constellation Power Source, Inc., the Public Service Commission of Maryland, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4664–000]

Take notice that on September 18, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership application of Eastern Power Distribution, Inc., and South Carolina Electric & Gas Company. PJM requests an effective date of September 18, 1997.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER97–4665–000]

Take notice that on September 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1997, between Cinergy, CG&E, PSI and Eastern Power Distribution, Inc. (EPDI).

The Interchange Agreement provides for the following service between Cinergy and EPDI:

1. Exhibit A—Power Sales by EPDI
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPDI have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Eastern Power Distribution, Inc., the Virginia State Corporation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Carolina Power & Light Company

[Docket No. ER97–4666–000]

Take notice that on September 18, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Florida Power Corporation. Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER97–4667–000]

Take notice that on September 22, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Public Utility District No. 1 of Cowlitz County (Cowlitz) under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to Cowlitz, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Boston Edison Company

[Docket No. ER97–4668–000]

Take notice that on September 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for NP Energy Inc., (NP Energy). Boston Edison requests that the Service Agreement become effective as of August 1, 1997.

Edison states that it has served a copy of this filing on NP Energy and the Massachusetts Department of Public Utilities.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Houston Lighting & Power Company

[Docket No. ER97–4670–000]

Take notice that on September 17, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with NP Energy, Inc., (NP Energy) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of September 17, 1997.

Copies of the filing were served on NP Energy and the Public Utility Commission of Texas.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Central Illinois Light Company

[Docket No. ER97–4671–000]

Take notice that on September 19, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreement for one new customer, Southern Energy Trading and Marketing, Inc.

CILCO requested an effective date of September 15, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Indiana Public Service Company

[Docket No. ER97–4672–000]

Take notice that on September 19, 1997, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Argos, Indiana.

Copies of this filing have been sent to the Town of Argos, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Union Electric Company

[Docket No. ER97–4673–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Commonwealth Edison Company and LG&E Energy Marketing Inc. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Union Electric Company

[Docket No. ER97–4674–000]

Take notice that on September 19, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and LG&E Energy Marketing Inc. (LG&E). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to LG&E pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Niagara Mohawk Power Corporation

[Docket No. ER97–4675–000]

Take notice that on September 19, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Strategic Energy Limited. This Transmission Service Agreement specifies that Strategic Energy Limited

has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Strategic Energy Limited to enter into separately scheduled transactions under which NMPC will provide transmission service for Strategic Energy Limited as the parties may mutually agree.

NMPC requests an effective date of September 12, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Strategic Energy Limited.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Interstate Power Company

[Docket No. ER97–4676–000]

Take notice that on September 19, 1997, interstate Power Company (IPW), tendered for filing a Network Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Service Agreement, IPW will provide Network Integration Transmission Service to WPL for Hiawatha Heights.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Company; The Narragansett Electric Company; Allenergy Marketing Company, L.L.C.; USGen New England, Inc.

[Docket Nos. ER98–6–000 and EC98–1–000]

Take notice that on October 1, 1997, New England Power Company (NEP), The Narragansett Electric Company (Narragansett), AllEnergy Marketing Company, L.L.C. (AllEnergy) and USGen New England, Inc. (USGenNE), submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's Regulations, applications, initial rate schedules and amendments to filed rate schedules in connection with the divestiture by NEP and Narragansett of substantially all of their non-nuclear generation assets to USGenNE. Copies of the filing have been served on regulatory agencies in the States of Massachusetts, Rhode Island, and New Hampshire.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Montenay Montgomery Limited Partnership

[Docket No. QF88–142–006]

On September 25, 1997, Montenay Montgomery Limited Partnership (Applicant), tendered for filing a supplement to its filing of June 5, 1997, in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership of the small power production facility.

Comment date: October 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27245 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10228–007]

Cannelton Hydroelectric Project LP; Notice of Availability of Final Environmental Assessment

October 8, 1997.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Cannelton Hydroelectric Project. The licensee proposes to eliminate the powerhouse by adding 240 small generating units that would be located upstream of the tainter gates within the dam's tainter gate bays and to change the approved transmission line. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Cannelton Hydroelectric Project is located on the Ohio River in Hancock County, Kentucky.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27184 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11243–002 Alaska]

Whitewater Engineering Corporation; Notice of Availability of Draft Environmental Assessment

October 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Power Creek Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located near Cordova, Alaska. The DEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For further information, contact Michael Henry,

Environmental Coordinator, at (503) 326–5858 extension 224.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27185 Filed 10–14–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5909–1]

Toxic Chemicals; Preliminary Assessment Information Rule (PAIR); Submission of ICR No. 586 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) [EPA ICR No. 0586.08; OMB Control No. 2070–0054] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on November 30, 1997. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 23, 1997 (62 FR 33860). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before November 14, 1997.

ADDRESSES: Send comments, referencing EPA ICR No. 0586.08 and OMB Control No. 2070–0054, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, S.W., Washington, DC 20460.

And to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740 or by e-mail: "farmer.sandy@epamail.epa.gov," and refer to EPA ICR No. 0586.08 and OMB Control No. 2070–0054.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0586.08; OMB Control No. 2070–0054.

Current Expiration Date: Current OMB approval expires on November 30, 1997.

Title: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR).

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. One of the rules EPA has promulgated under TSCA section 8(a) is the Preliminary Assessment Information Rule (PAIR). EPA uses PAIR to collect information to identify, assess and manage human health and environmental risks from chemical substances, mixtures and categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures or categories. Chemicals identified by EPA or any other federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (see 40 CFR part 712). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be approximately 30 hours per response for an estimated 48 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are those persons who manufacture or import chemical substances, mixtures or categories.

Estimated No. of Respondents: 48.

Estimated Total Annual Burden on Respondents: 3,489 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase of 1,543 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 1,946 hours currently to an estimated 3,489 hours. This increase is due to both an increase in the number of respondents and an increase in the number of forms submitted to EPA in recent years.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: October 8, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27269 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5909–2]

OMB Review of Pesticide Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled Data Acquisition for Pesticide

Registration (OMB Control No. 2070–0122, EPA No. 1503.03) which is abstracted below, has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12. The ICR describes the nature of the information collection and expected cost and burden; where appropriate, it includes the actual data collection instrument. A **Federal Register** notice requesting public comment on the renewal of this ICR published on June 27, 1997 (62 FR 34744). EPA did not receive any comments.

DATES: Comments must be submitted on or before November 14, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer by phone on EPA, (202) 260–2740. Please refer to OMB No. 2070–0122 or EPA ICR No. 1503.03.

SUPPLEMENTARY INFORMATION:

Title: Data Acquisition for Pesticide Registration.

ICR No.: OMB Control No. 2070–0122; EPA ICR No. 1503.03.

Expiration Date: November 30, 1997.

Request: This is a request for an extension of a currently approved information collection activity.

Affected Entities: Registrants of Pesticide Products

Abstract: The Environmental Protection Agency (EPA or the Agency) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Applicants for pesticide registration must provide EPA with the data needed to assess whether the registration of a pesticide would cause unreasonable adverse effects on human health or the environment, and EPA has authority under FIFRA to require registrants to provide additional data to maintain an existing registration.

When the need for additional data arises, OPP issues a Data Call-In Notice (DCI) under the authority of FIFRA section 3(c)(2)(B) to affected registrants. Data supporting pesticide inert ingredients may also be called in, based on OPP's policy statement on inert ingredients in pesticide products (52 FR 13305, April 22, 1987, and revised on November 22, 1989 (54 FR 48314). A need for additional data may arise from changes in the Agency's general data requirements, from the discovery of deficiencies in previously submitted data, or from the discovery of specific attributes of the pesticide or its ingredients.

Two types of DCIs are conducted under this information collection activity. The first type of DCI consists of data requirements for pesticide products containing selected inert ingredients. The second type of DCI addresses specific data requirements for pesticide active ingredients.

Burden Statement: The annual respondent burden for this collection of information is estimated to average 6,938 hours per response. This estimate includes the time needed for: planning activities, creating information, gathering information, processing, compiling, and reviewing information for accuracy, recording, disclosing or displaying the information, and storing, filing, and maintaining the data. The DCI program contains exemptions for small businesses, and does not impose any third party notification activities.

Respondents/Affected Entities: Parties affected by this information collection are registrants of pesticide products.

Estimated No. of Respondents: 30.

Estimated Total Annual Burden on Respondents: 208,132 hours.

Frequency of Collection: On occasion as needed by the Agency.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, in addition to their initial display in the **Federal Register** appear at 40 CFR part 9.

You may provide additional comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA No. 1503.03 and OMB Control No. 2070–0122 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2137), 401 M Street, SW, Washington, D.C. 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, D.C. 20503.

Dated: October 8, 1997.

Joseph Retzer,

Director, Regulatory Information Division

[FR Doc. 97–27270 Filed 10–14–97; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–5909–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (Act), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (EPA) on September 30, 1997, to address a lawsuit filed by the Sierra Club. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses, among other things, EPA's alleged failure to meet a mandatory deadline under section 112(n)(1)(B) of the Act, 42 U.S.C. 7412(n)(1)(B), which concerns a study of mercury emissions. The proposed partial consent decree provides, in part, that "[n]o later than December 19, 1997, the Administrator shall sign a letter transmitting to Congress the study described by CAA section 112(n)(1)(B), 42 U.S.C. 7412(n)(1)(B). With five business days thereafter, EPA shall deliver to Congress such letter and study."

For a period of thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed partial consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final partial consent decree will establish a deadline for specific actions under section 112(n)(1)(B) of the Act.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on September 30, 1997. Copies are also available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Patrick S. Chang at the address above and must be submitted on or before November 14, 1997.

Dated: October 3, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–27258 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5909–4]

A Public Meeting on the Effluent Limitations Guidelines and Standards for the Metal Products and Machinery (MP&M) Industrial Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Office of Water (OW) is conducting a public meeting in order to inform all interested parties of the current status of the Metal Products and Machinery (MP&M) Effluent Guideline. The EPA intends to propose effluent limitations guidelines and standards for the MP&M industrial category in October of 2000. The meeting is intended to be a forum in which EPA can report on the status of the rulemaking and interested parties can provide information and ideas to the Agency on key technical, economic, and implementation issues.

DATES: The public meeting will be held on Wednesday, November 5, 1997, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held in the EPA auditorium at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Geil, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–9817, fax (202) 260–7185 or by e-mail at geil.steve@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the Metal Products and Machinery Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The MP&M Category includes facilities that manufacture, rebuild, and maintain finished metal parts, products, or machines.

The public meeting will include a discussion of the current status of the regulation including the combination of the two phases, the on-going data gathering efforts including sampling activities and questionnaire responses, and other general issues. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the MP&M rulemaking.

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Steven Geil at the previously mentioned address.

Jim Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 97–27267 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5906–9]

Amendment to Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; add names to the list of settling parties.

SUMMARY: The September 22, 1997, notice concerning the proposed settlement at the Marco of Iota Superfund Site in Iota, Louisiana (62 FR 49514) included a list of settling parties. Three federal *de micromis* parties who settled pursuant to the "Superfund Administrative Reforms" (at no cost to the parties) were inadvertently excluded from the list.

The excluded settlers are:

United States Department of Defense/ Department of the Air Force

United States Department of Interior/ Golden Spike National Historic Site

United States Department of Justice/ Federal Bureau of Prisons, Federal Prison Ind., Inc.

Any comments regarding the additional parties must be submitted on or before October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713.

October 3, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27268 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5909–3]

South Bay Asbestos Superfund Site; Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that on September 30, 1997, the United States Environmental Protection Agency (EPA) and the United States Department of Justice (DOJ) executed two proposed Prospective Purchaser Agreements pertaining to property transactions within the South Bay Asbestos Superfund Site. The Purchasers plan to acquire parcels, totaling 24.5 acres, within the South Bay Asbestos Superfund Site, located in San Jose, California. The Parcels will be developed for office, research, light industrial, commercial service, and restaurant uses.

There are two Prospective Purchaser Agreements because the property is divided into an East and West Parcel and each parcel has different lenders. The proposed Agreements will resolve certain potential claims of the United States under section 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C 6973, against Lincoln Property Company No. 2233 (East Parcel Agreement) and Lincoln 237 Associates (West Parcel Agreement). Lincoln Property Company No. 2233 and Lincoln 237 Associates are jointly referenced as (the Purchasers). The proposed settlement will require the Purchasers to make a one-time payment of $125,000 for the East Parcel Agreement and $75,000 for the West Parcel Agreement. Payments will be made to the EPA Hazardous Substance Superfund. In addition, any disturbance of soils on the East Parcel must comply with the Soil Management Plan (SMP), attached as exhibit 3 to the East Parcel Agreement.

For thirty (30) calendar days following the date of publication of this document, EPA will receOive written comments relating to this proposed settlement. EPA's response to any comments received will be available for public inspection at the U.S.

Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before November 14, 1997.

Availability

The proposed Prospective Purchaser Agreements are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may also be obtained from Jeannie Cervera, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Lincoln Property Company No. 2233 (East Parcel) and Lincoln 237 Associates (West Parcel)—"South Bay Asbestos Superfund Site" and "Docket Numbers 97–14 and 97–15" and should be addressed to Jeannie Cervera at the above address.

FOR FURTHER INFORMATION CONTACT: Jeannie Cervera, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: cervera.jeannie@epamail.epa.gov; Phone (415) 744–1395.

Dated: October 6, 1997.

Frederick Schauffler

Director, Superfund Division, Region IX.

[FR Doc. 97–27271 Filed 10–14–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 97–199; FCC 97–322]

Broadband Block C Personal Communications Systems Facilities

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: An application of Westel Samoa, Inc. for a broadband Block C Personal Communications System authorization and six (6) applications of Westel, L.P. for broadband F Block Personal Communications System authorizations were designated for hearing. The Commission has determined that material questions of fact exist as to whether Westel Samoa, Inc., and Westel, L.P., through its principal, possess the requisite qualifications to be a Commission licensee. In addition, the Commission has ordered Anthony T. Easton to show cause why he should not be barred from holding any Commission license or participating in any future Commission auctions. The Commission has determined that because of misrepresentations made by Mr. Easton he should be so barred.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau (202) 418–1317.

SUPPLEMENTARY INFORMATION: This is a summary of Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause in WT Docket 97–199, adopted September 8, 1997, and released September 9, 1997.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC. 20036 (202) 857–3800.

Summary of Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order To Show Cause

1. The Commission designated the application of Westel Samoa, Inc. and the six applications of Westel, L.P. (collectively referred to as "Westel") for hearing. Additionally, the Commission ordered Anthony T. Easton to show cause why he should not be barred from holding any Commission license or participating in any future Commission auction. On January 23, 1996, Mr. Easton, while acting as a bidding agent of PCS 2000, L.P. (PCS 2000), an applicant in the Commission's C Block Personal Communications Systems (PCS) auction, submitted a bid of $180,060,000 ($180 million bid) for Basic Trading Area (BTA) market B324. After the time for withdrawing bids had expired, PCS 2000 realized that it intended to bid $18,006,000 for market B324. Upon this realization, Mr. Easton telephoned the Commission and stated that the Commission's computer had caused the bidding error and that he possessed documentation to verify that fact. Subsequent to the telephone conversation, Mr. Easton caused documents to be sent to the Commission by facsimile which purported to demonstrate that the bid for market B324 was only $18 million and not $180 million.

2. The Commission learned from one of Mr. Easton's employees that the materials sent by Mr. Easton were not the original bidding documents. The employee sent copies of the original bidding information to the Commission the following day by facsimile. The original bidding documents sent by the employee bore Mr. Easton's hand-signed initials along with the date and time the document was created.

3. The same employee conveyed information to a senior employee in Mr. Easton's office that Mr. Easton was misrepresenting facts to the Commission. That employee relayed the information regarding Mr. Easton to Mr. Quentin Breen, a PCS 2000 director and principal of Westel. The first employee who witnessed Mr. Easton's actions also conveyed the information concerning Mr. Easton's deception before the Commission to Mr. Breen. At the time the information was communicated, Mr. Breen was taking part of a PCS 2000 Board of Directors meeting. However, Mr. Breen failed to reveal any of the information regarding Mr. Easton's deception to either the Board of Directors or to the Commission.

4. Pursuant to sections 309(e), 312(a), and 312(c) of the Communications Act of 1934, as amended, Westel Samoa, Inc.'s application, Westel, L.P.'s six applications, have been designated for hearing, and Anthony T. Easton has been ordered to show cause why he should not be barred from holding any attributable interest in a Commission authorization or participate in future auctions in a consolidated proceeding upon the following issues listed below:

(I) To determine, based on Anthony T. Easton's misrepresentations before and lack of candor exhibited towards the Commission, whether Mr. Easton should be barred from holding Commission authorizations and participating in future Commission auctions.

(II) (a) To determine the facts and circumstances surrounding the conduct of Quentin L. Breen in connection with PCS 2000's bids placed on January 23, 1996, in the Commission's Broadband PCS C Block auction;

(b) To determine, based on the evidence adduced above, whether Quentin L. Breen engaged in misrepresentations before and/or exhibited a lack of candor towards the Commission.

(III) To determine, based on the evidence adduced in Issue 2, whether Westel Samoa, Inc., and Westel, L.P., possess the requisite character qualifications to be granted the captioned C Block and F Block Broadband Personal Communications System applications, and accordingly, whether grant of their applications would serve the public interest, convenience, and necessity.

5. The Commission has further pleced Mr. Breen on notice that the presiding administrative law judge may find that Mr. Breen has misrepresented facts to the Commission or lacked candor before the Commission and therefore, may impose upon him a forfeiture up to the statutory maximum.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27150 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Auction of Local Multipoint Distribution Service; Auction Notice and Filing Requirements for 986 Basic Trading Area ("BTA") Licenses in the 28 GHz and 31 GHz Bands, Scheduled for December 10, 1997

[DA 97–2081]

Released September 25, 1997

I. Introduction

Local Multipoint Distribution Service ("LMDS") Licenses to Be Auctioned: The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 986 licenses to provide LMDS in the 28 GHz and 31 GHz bands. Two licenses will be offered in each of 493 BTAs and BTA-like areas in the United States. One license, in frequency block A, will authorize service on 1,150 megahertz of spectrum in both the 28 GHz and 31 GHz bands. The second license, frequency block B, will authorize service on 150 megahertz of spectrum in the 31 GHz band. Each frequency block encompasses the following spectrum:

Block A (1,150 megahertz): 28 GHz band: 27,500–28,350 MHz and 29,100–29,250 MHz and 31 GHz band: 31,075–31,225 MHz

Block B (150 megahertz): 31 GHz band: 31,000–31,075 MHz and 31,225–31,300 MHz

Note: Operations to take place in the 29,100—29,250 MHz band are governed by 47 CFR 101.103(g) and (h), 101.113(c), 101.133(d), and 101.147(t), which are new provisions designed to facilitate the sharing of this spectrum by LMDS, GSO/FSS gateways, and MSS feeder link licensees. These provisions allow only hub-to-subscribers transmissions by LMDS licensees in this band.

Auction Date: The auction will commence on December 10, 1997. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: LMDS—Auction No. 17.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

- Auction Seminar—October 30, 1997
- Short-Form Application (FCC Form 175) November 17, 1997, 5:30 p.m. ET (Applications are not due on November 10 as previously announced on July 30, 1997)
- Upfront Payments (via wire transfer)—December 1, 1997, 6:00 p.m. ET (Payments are not due on November 24 as previously announced on July 30, 1997)
- Orders for Remote Bidding Software—December 1, 1997, 5:30 p.m. ET
- Mock Auction—December 8, 1997

Telephone Contacts:

- FCC National Call Center—888-CALL-FCC (888–225–5322) (For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt)

FCC Technical Support Hotline—202–414–1250

Participation: Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) by the above-listed deadline.
- Submit an upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the above-listed deadline.
- Comply with all provisions outlined in this Public Notice.

Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same BTA from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends when winning bidders submit their first down payments. The only exception is where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in their short-form applications. *See* 47 CFR 1.2105(c).

Bidder Information Package: More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to "Federal Communications Commission" or "FCC." To place an order, contact the FCC National Call Center at 888–CALL–FCC (888–225–5322, press option #2 at the prompt). Prospective bidders who have already contacted the FCC expressing an interest in this auction will receive a Bidder Information Package in two to three weeks, and need not call again unless they wish to order additional copies.

Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to LMDS, contained in title 47, part 101 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (May 4, 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 44272 (August 26, 1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93–253 (released October 19, 1994); the First Report and Order, 61 FR 44177 (August 28, 1996), and *Fourth Notice of Proposed Rule Making* in CC Docket No. 97–297, 61 FR 39425 (July 29, 1996); the *Second Report and Order*, 62 FR 23148 (April 29, 1997), *Order on Reconsideration*, 62 FR 28373 (May 23, 1997), and *Fifth Notice of Proposed Rule Making* in CC Docket No. 96–297, 62 FR 16514 (April 7, 1997) ("*LMDS Second R&O*"); and the *Second Order on Reconsideration* in CC Docket No. 97–297, 62 FR 48787 (September 17, 1997) (collectively referred to as the "Relevant Orders").

The Terms contained in the Commission's rules, Relevant Orders, Public Notices and Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before participating in the auction.

Potential bidders should also be aware that petitions for reconsideration of the Commission's actions in the *LMDS Second R&O* have been filed; that several, but not all, matters raised in petitions for reconsideration have been

addressed in the *Second Order on Reconsideration*; and that the Terms adopted therein are therefore subject to change upon reconsideration or appeal. There are also petitions for reconsideration filed against the Commission's actions in the *First Report and Order*, these petitions are pending an order on reconsideration.

The Commission may amend or supplement the information contained in our Public Notices or the Bidder Information Package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at 202–857–3800.

Incumbent Licensees: Although LMDS operations are permitted in the 31,000—31,075 MHz and 31,225—31,300 MHz bands, incumbent city licensees and private business users operating in these two segments are entitled to protection against harmful interference from any LMDS operation in these blocks. LMDS service providers will be entitled to interference protection from any other presently-authorized primary users in the 31,075—31,225 MHz bands.

Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Primary Metropolitan Statistical Area. The incumbent licensee, CellularVision of New York, is entitled to interference protection.

Reminder to potential Non-geostationary Mobile Satellite Service applicants/licensees: Section 101.103(h) of the Commission's rules requires that no more than 15 days after the release of this Public Notice, NGSO-MSS feeder link earth station complex applicants/licensees planning to operate in the 29,100—29,250 MHz band pursuant to § 25.257 of the Commission's rules, file with the Commission a set of geographical coordinates consistent with section 101.103(h)(2) of the Commission's rules. This information should be directed to the attention of: Robert James, Federal Communications Commission, Wireless Telecommunications Bureau 1919 M Street, NW, Room 8102, Washington, D.C. 20554.

Other Proceedings: Currently pending in the U.S. Court of Appeals for the D.C. Circuit is a consolidated petition for review of the *LMDS Second R&O* and *Order on Reconsideration. See James L. Melcher v. Federal Communications Commission and United States of America*, Case No. 93–110 (and consolidated cases) dealing with two issues: eligibility restrictions for incumbent local exchange carriers ("ILECs") to own LMDS licenses "in-region," and the denial of petitions for reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed. Also pending before the Commission are several petitions for reconsideration of the *LMDS Second R&O* and *Order on Reconsideration* dealing with the issues of: the eligibility restriction on ILECs; the allocation of the 31 GHz band to LMDS; the reinstatement of dismissed applications in the 31 GHz band; the application of a new frequency tolerance to the 31 GHz band; and further reconsideration of the 971 waiver applications for service in the 28 GHz band which were previously dismissed; as well as petitions for clarification of certain technical and service rules. A memorandum opinion and order on reconsideration responding to these petitions will be released in the near future.

Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the LMDS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at 202–326–2222 and from the SEC at 202–942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at 800–876–7060. Consumers who have concerns about specific LMDS proposals may also call the FCC National Call Center at 888–CALL–FCC (888–225–5322).

II. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

As described above, this auction offers two licenses: one license for 1,150 megahertz of spectrum in the 28 GHz and 31 GHz bands; and one license for 150 megahertz of spectrum in the 31 GHz band; in each of 493 BTA and BTA-like areas, for a total of 986 licenses. General eligibility to provide LMDS service, subject to certain restrictions outlined below, is afforded to entities which are not precluded under 47 CFR 101.7, 101.1001, and 101.1003.

(1) Eligibility Restrictions

(a) 1,150 megahertz licenses.

ILECs and cable television companies are subject to certain restrictions on their eligibility to own an attributable interest in the 1,150 megahertz LMDS license in their authorized or franchised service areas ("in-region"). An incumbent is defined as "in-region" if its authorized service area represents 10 percent or more of the population of the BTA. A 20 percent or greater ownership level constitutes an attributable interest in a license. ILECs and cable companies are permitted to participate fully in the auction of the 1,150 megahertz LMDS licenses, but are required to divest any overlapping interests within 90 days if they win a license at the auction. The eligibility restrictions terminate on the third anniversary of the effective date of the LMDS rules. These restrictions may be extended beyond the three-year period, if, upon a review at the end of this period, the Commission determines that sufficient competition has not developed. The Commission may waive the restriction in individual cases upon a showing of good cause.

(b) 150 megahertz licenses.

All entities that meet the Commission's general eligibility criteria, including ILECs and cable television companies, are eligible to own attributable interests in the 150 megahertz license in any BTA.

(2) Determination of Revenues

For purposes of determining which entities qualify as very small businesses, small businesses, and entrepreneurs, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purpose of this auction, the Commission will not impose specific equity requirements on controlling principals. However, in order to qualify as a very small business, small business, or entrepreneur an applicant's qualifying principals must maintain control of the applicant. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

(3) Application Showing

Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements for this auction. *See* 47 CFR 1.2105 and 101.1109.

B. Bidding Credits

Qualifying LMDS applicants are eligible for bidding credits. The size of an LMDS bidding credit depends on the annual gross revenues of the bidder and its controlling principles and affiliates, as averaged over the preceding three years:

- A bidder with gross annual revenues of not more than $15 million receives a 45 percent discount on its winning bids for LMDS licenses;
- A bidder with gross annual revenues of more than $15 million but not more than $40 million receives a 35 percent discount on its winning bids for LMDS licenses; and
- A bidder with gross annual revenues of more than $40 million but not more than $75 million receives a 25 percent discount on its winning bids for LMDS licenses.

Bidding credits are not cumulative: applicants that qualify receive either the 25 percent, the 35 percent, or the 45 percent bidding credit, but not all. The definitions of very small business, small business, and entrepreneur (including calculation of gross annual revenue) are set forth in 47 CFR 101.1112.

LMDS bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their BTA licenses to an entity not qualifying for the same levels of bidding credits. *See* 47 CFR 101.1107(e).

III. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due November 17, 1997

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on November 17, 1997. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part 3.C, *infra*.

(1) Filing Options

Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. In addition, only those applicants who file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and *must bid telephonically*, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. Applicants who file electronically may make amendments to their applications until the filing deadline. The following is a brief description of each filing method.

(a) Electronic Filing.

Applicants wishing to file electronically may generally do so on a 24-hour basis beginning October 27, 1997. All the information required to file the FCC Form 175 electronically (*i.e.*, software and help files) will be available over both the Internet and the FCC's Bulletin Board System ("BBS").

(b) Manual Filing.

Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175–S exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the September 1997 version of FCC Form 175 and the October 1995 edition of the 175–S (if applicable). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of FCC Forms 175 and 175–S can be obtained by calling 202–418–FORM.

Manual applications may be submitted by hand delivery (including private "overnight" courier), or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 17, Federal Communications Commission, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

Note: Manual applications delivered to any other locations will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105 and 101.1104, and must complete all items on the FCC Form 175 (and 175–S, if applicable).

Failure to sign a manually filed FCC Form 175 or failure to submit the required ownership information (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures

will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants who file electronically may review their own completed FCC Forms 175. Applicants also have access to view other applicants' completed FCC Forms 175, after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. There is a fee of $2.30 per minute for accessing this system.

B. Application Processing and Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the November 17, 1997, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105.

C. Upfront Payments—Due December 1, 1997

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, by 6:00 p.m. ET on December 1, 1997.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer. No other form of payment will be accepted.
- Upfront payments for Auction No. 17 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the December 1, 1997 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Wire Transfers

For this auction, the FCC requires applicants to make their upfront payments by wire transfer, which experience has shown provides the greatest reliability and efficiency. Wire transfer payments must be received by 6:00 p.m. ET on December 1, 1997. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC—9100180
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 175, block 7)
PAYMENT TYPE CODE (enter "AWLU")
FCC CODE (same as FCC Form 159, Block 23A: "17")
PAYER NAME (same as FCC Form 175, Block 1)
LOCKBOX NO. 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 to Mellon Bank at 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 17."

(2) FCC Form 159

Each upfront payment must be accompanied by a completed FCC Remittance Advice (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 will be included in the Bidder Information Package.

(3) Amount of Upfront Payment

The amount of the upfront payment required to bid on a particular license(s) in Auction No. 17 has been calculated in three tiers, based on the population ("pop") figures for the BTA(s), and adjusted to take into account the spectrum bandwidth that is being licensed in frequency block A and in frequency block B.

The formula utilized to calculate upfront payments is as follows:

FREQUENCY BLOCK A

BTA population	×	Per pop multiple*	×	Frequency block B*
Over 1,000,000	×	$0.90	×	10%
100,000–1,000,000	×	$0.60	×	10%
Under 100,000	×	$0.30	×	10%

*All upfront payments are rounded up to the nearest dollar. A minimum upfront payment amount has been set at $2,500 per license.

Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied. Rather, the total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. In order to be able to place a bid on a license, in addition to having specified that license on FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction.

In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment. As explained in Parts 4.A(2) and 4.A(4), *infra*, bidders will be required to remain active in each round of the auction on a specified percentage of the bidding units reflected in their upfront payments in order to retain their current eligibility.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission plans to use wire transfers for all Auction No. 17 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Regina Dorsey or Linwood Jenkins, at 202–418–2843. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part 5.D, *infra*.

D. Auction Registration

Approximately five business days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and who have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

Applicants who do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant who has not received both mailings by noon on Monday, December 8, 1997 should contact the FCC National Call Center at 888–CALL–FCC (888–225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

Qualified bidders who file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for $175.00, including shipping and handling, by December 1, 1997. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 17.) Bidders who order remote bidding software by the ordering deadline will receive it with the registration mailings. A software order form will appear in a subsequent public notice.

F. Auction Seminar

On October 30, 1997 the FCC will sponsor a seminar for the LMDS auction. This seminar will be held at the Renaissance Hotel, 999 9th Street, N.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the LMDS service and auction rules. Additionally, there will be an opportunity for interested parties to display equipment at this event. If interested, please contact the FCC at 888–CALL–FCC (888–225–5322, press option #2 at the prompt).

Please note that a maximum of two representatives from each company may attend, first-come first-served, on a reservation basis until room capacity is filled. To register, complete the registration form included in the Bidder Information Package.

G. Mock Auction

All applicants whose FCC Forms 175 have been accepted for filing will be eligible to participate in a mock auction beginning December 8, 1997. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Due to different bidding procedures in the LMDS auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

The first round of the auction will begin on December 10, 1997.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

The 986 LMDS BTAs will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

(2) Maximum Eligibility and Activity Rules

As explained in Part 3.C(3), *supra*, the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a percentage of their maximum eligibility during each round of the auction. Details of the specific percentages for each stage are set forth under *Auction Stages* in Part 4.A(4), *infra*. A bidder that does not satisfy the activity rule will either lose bidding eligibility or use an activity rule waiver, as explained by *Activity Rule Waivers and Reducing Eligibility* in Part 4.A(3), *infra*.

A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding period and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see Minimum Acceptable Bids* in Part 4.B(2), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses, as set forth under *Auction Stages* in Parts 4.A(4) and 4.A(5), *infra*.

(3) Activity Rule Waivers and Reducing Eligibility

Each bidder will be provided five activity rule waivers that may be used

in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity who wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in *Auction Stages*, Part 4.A(4), *infra*. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

(4) Auction Stages

The auction is composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and during the auction.

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 60 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-thirds (5/3).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 80 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders who have standing high bids and do not plan to submit new bids. In past auctions, some bidders inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

(5) Stage Transitions

The auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the FCC retains the discretion to accelerate the auction by announcement. This determination will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

The FCC retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

Further, in its discretion, the FCC reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension, or Cancellation

By public notice or by announcement during the auction, the FCC may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the FCC, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the FCC to delay or suspend the auction.

B. Bidding Procedures

(1) Round Structure

The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and

will be included in the registration mailings. The round structure for each bidding round contains a single bidding period followed by the release of the round results.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the performance and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Minimum Opening Bid/Reserve Prices

When FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price is required or minimum opening bid established, unless it determines that such an assessment is not in the public interest. Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. § 309(j)(4)(F). In light of the Balanced Budget Act, the Commission will release a subsequent Public Notice which will seek comment on a proposal that a reserve price and/or minimum opening bid be established for the LMDS auction.

(3) Minimum Acceptable Bids

Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. The Commission will use its exponential smoothing methodology to calculate minimum bid increments. The exponential smoothing formula calculates the bid increment based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. A detailed description of the exponential smoothing bid increment will be included in the forthcoming Bidder Information Package.

(4) High Bids

Each bid will be date-and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. Each bid is date-and time-stamped according to when it was submitted. Thus, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

(5) Bidding

During a bidding period, a bidder may submit bids for as many licenses as it is eligible, as well as withdraw high bids from previous bidding periods, remove bids placed in the same bidding period, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding period, and will not have a separate period to withdraw bids. If a bidder enters multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date and time stamp of that bid reflect the latest time the bid was entered.

A bidder's maximum eligibility in the first round of the auction is determined by: (a) the licenses applied for on FCC Form 175; and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

The bidding software requires each bidder to login to the FCC Auction System during the bidding period using the FCC Account Number, Bidder Identification Number, and confidential security codes provided in the registration materials. Bidders are encouraged to download and print bid confirmations after they submit their bids.

In Auction No. 17, the screen will display a "Click on Check Box to Bid" column that provides a check box for each Minimum Bid Accepted amount in place of the bid entry field. To place a bid at the minimum acceptable bid amount for a license, a bidder must click the appropriate box to put a check mark in it and then press submit to enter the bid into the auction system. Bidders may not type in a bid for any license.

Once the click box is checked, the Bid Submission screen updates the Group Total (total dollars bid), Bid-Units, and Activity amounts, as if a bid amount had been typed. However, by using the check boxes, there is no risk of mistyping bids. Other auction screens are unchanged, as are the reports.

(6) Bid Withdrawal and Bid Removal

(a) Procedures.

Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively 'unsubmit' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Note that removing a bid will affect a bidder's activity for the round in which it is removed.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 101.1103(f), 1.2104(g), and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in *Bidding*, Part 4.B(4), *supra*.

The FCC will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 101.1103(f), 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

(b) Calculation.

Generally, a bidder who withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 CFR 101.1103(f), 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results.

The bids placed during a bidding period are not published until the conclusion of that bidding period. After a bidding period closes, the FCC will

compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

Reports reflecting bidders' identities and bidder identification numbers for Auction No. 17 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

As noted in Part 3.B, *supra*, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Matthew Moses, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to the FCC Auctions and Industry Analysis Division at 202–418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

Within five business days after release of this auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 101.1102(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in Part 4.B(5), *supra*. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each LMDS license won through the auction. Winning very small businesses, small businesses, and entrepreneurs must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 101.1109(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license to existing or new applicants or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

All applicants who submitted upfront payments but were not winning bidders for any LMDS license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Bidders who drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders who reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders who have exhausted all their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, N.W., Room 452, Washington, D.C. 20554.

Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Regina Dorsey or Linwood Jenkins at 202–418–1995.

Media Contact: Audrey Spivack at (202) 418–0654.

Public Safety and Private Wireless Division: Susan Magnotti or Bob James at (202) 418–0680; Auctions and Industry Analysis Division: Mark Bollinger, Matthew Moses, or Louis Sigalos at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27232 Filed 10–14–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From October 9th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the October 9, 1997, Open Meeting and previously listed in the Commission's Notice of October 2, 1997.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Service Rules for the 746–806 MHz Band, and Revisions to Part 27 of the Commission's Rules and The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010 — Establishment of Rules and Requirements for Priority Access Service (WT Docket No. 96–86). Summary: The Commission will consider action concerning service rules for the 746-806 MHz band and

on rules to permit the provision of priority access service.

2—Common Carrier—Title: Administration of the North American Numbering Plan (CC Docket No. 92–237) and Toll Free Service Access Codes (CC Docket No. 95–155). Summary: The Commission will consider action concerning the administrator of the North American Numbering Plan, the Billing and Collection Agent for telecommunications numbering administration, and administration of the database containing toll free numbers.

Dated October 9, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27413 Filed 10–10–97; 12:06 pm]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1997.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $13,400 for all disasters declared on or after October 1, 1997.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $47,100 for all disasters declared on or after October 1, 1997.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.2 percent for the prior 12-month period. The information was published by the Department of Labor during September 1997. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–27255 Filed 10–14–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Discontinuance

Background

Notice is hereby given of the discontinuance of an information collection by the Board of Governors of the Federal Reserve System (Board).

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Discontinuation of the following report:

1. Report title: Monthly Survey of Selected Deposits and Annual Supplement to the Monthly Survey of Selected Deposits

Agency form number: FR 2042 and FR 2042a

OMB Control number: 7100-0066

Effective Date: immediately; data as-of September 30, 1997 will be the last collected

Frequency: monthly (FR 2042) and annual (FR 2042a)

Reporters: commercial banks and savings banks insured by the Bank Insurance Fund (BIF)

Annual reporting hours: 6,300 (FR 2042) and 525 (FR 2042a)

Estimated average hours per response: 1.0

Number of respondents: 525

Small businesses are affected.

General description of report: This information collection has been voluntary (12 U.S.C. § 248(a)(2)). For the FR 2042, the individual respondent data on amounts outstanding and on interest expense have been given confidential treatment (5 U.S.C. § 552(b)(4)). Individual respondent information on interest rates paid on deposits has been made available to the public on request. Data from the FR 2042a have not been accorded confidential status.

Abstract: These reports have collected information on the structure and pricing of deposit accounts from a stratified sample of 525 commercial and BIF-insured savings banks. Results of the monthly survey have been published once a month in a supplementary table included in the Board's H.6 statistical release, *Money Stock, Liquid Assets, and Debt Measures*.

The Federal Reserve has used FR 2042 and FR 2042a data in a number of ways, including construction and interpretation of the monetary aggregates, measuring elasticities in money demand equations, and assessing the changing behavior of banks in pricing deposit accounts. However, innovations in retail products and pricing have reduced the accuracy and usefulness of the data collected in the underlying survey. Discontinuing the survey will produce cost savings for the Federal Reserve and reduce the reporting burden on depository institutions. Data on retail deposit rates can be obtained from private sector vendors.

The public's use of FR 2042 data appears to be minimal.

Board of Governors of the Federal Reserve System, October 8, 1997

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–27277 Filed 10–14–97; 8:45 am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Roscoe Community Bankshares, Inc., Roscoe, South Dakota; to become a bank holding company by directly and indirectly acquiring 100 percent of of the voting shares of Roscoe Financial Services, Inc., Roscoe, South Dakota, and thereby indirectly acquire First State Bank of Roscoe, Roscoe, South Dakota.

Board of Governors of the Federal Reserve System, October 8, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27178 Filed 10-14-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, October 20, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Status Report of the Committee on the Federal Reserve in the Payments Mechanism (Alternative Roles for the Federal Reserve in the Retail Payments System).

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27506 Filed 10-10-97; 3:09 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 952 3200; et al.]

Suntrup Ford, Inc.; Analysis to Aid Public Comment, et al.

In the matter of:

File No. 952 3201
Suntrup Buick-Pontiac-GMC Truck, Inc.; Thomas Suntrup; Analysis to Aid Public Comment

File No. 952 3204
Lou Fusz Automotive Network, Inc.; Louis J. Fusz, Jr.; Analysis to Aid Public Comment

File No. 952 3207
Beuckman Ford, Inc.; Fred J. Beuckman, III; Analysis to Aid Public Comment

File No. 952 3202
Frank Bommarito Oldsmobile, Inc.; Frank J. Bommarito; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S-4429, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580 (202) 326-3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for October 7, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." Paper copies can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from respondents Lou Fusz Automotive Network, Inc. and Louis J. Fusz, Jr. ("respondents Lou Fusz"); Frank Bommarito Oldsmobile, Inc. and Frank J. Bommarito ("respondents Frank Bommarito"); Suntrup Ford, Inc., Suntrup Buick-Pontiac-GMC Truck, Inc., and Thomas Suntrup ("respondents Suntrup"); and Beuckman Ford, Inc. and Fred J. Beuckman, III ("respondents Beuckman").[1] The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

[1] These entities and persons are collectively referred to as "respondents."

The complaints allege that each of the respondents' automobile lease advertisements have violated the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act ("TILA") and Regulation Z, and, in the case of respondents Frank Bommarito, the FTC Act. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes—Regulations M and Z respectively. *See* 15 U.S.C. §§ 1601-1667e; 12 C.F.R Part 213; 12 C.F.R Part 226.[2]

The complaints against respondents Lou Fusz, Bommarito, and Suntrup allege that their lease advertisements have misrepresented the true amounts consumers owe at lease inception. The complaints allege that these companies' ads represented, based on prominent statements of "0 Down," "No Money Down," and "No Payment til April/March" respectively, that consumers can lease the advertised vehicles without incurring monetary obligations at lease inception. This representation is false, according to the complaints, because consumers must pay substantial fees, such as a significant downpayment, a security deposit, first month's payment, and/or other fees to lease the advertised vehicles. The complaints also allege that *all* respondents (including respondents Beuckman), based on their prominent statements about inception fees and/or prominent statements about a low monthly payment, have failed to disclose adequately significant inception fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) and the FTC Act.

The complaints further allege that all respondents' lease advertisement have violated the CLA and Regulation M. The complaints allege that respondents' ads state that amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease ("triggering" terms under these laws), but fail to properly state all of the "triggered" terms, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or period of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

These aforementioned violations cite the version of both the CLA and Regulation M in effect at the time the ads ran. Respondents' alleged practices of failing to properly disclose inception fees would also violate the revised CLA, the 1996 revisions to Regulation M, and the 1997 revisions to Regulation M, all of which are currently permissibly effective and will be mandatorily effective on October 1, 1997. As described below, the relief in the proposed consent orders enjoin respondents from violating the existing CLA and Regulation M but also provide respondents the option of complying with the revised laws to satisfy this requirement.

The complaint against respondents Lou Fusz also alleges that their lease advertisements have represented that consumers can lease the advertised vehicles at advertised terms, including but not limited to the monthly payment amount and the amount stated as "down." This representation is false, according to the complaint, because respondents have not offered the advertised vehicles at such terms. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act. These practices also violate Section 213.5(a) of Regulation M, 12 C.F.R. § 213.5(a), according to the complaint, which requires that advertisers make advertised terms "usually and customarily" available to consumers.

The complaint against respondents Lou Fusz also alleges that their lease advertisements promoting a "one payment plan have represented that consumers can lease the advertised vehicles by making equal monthly payments for a specified term. This representation is false, according to the complaint, because the "one payment" plan requires consumers to make all payments owed under the lease agreement at lease signing. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaint against respondents Beuckman also alleges that their lease advertisements have represented that consumers can purchase the advertised vehicles by financing the vehicles through credit at the advertised monthly payment and term. According to the complaint, respondents Beuckman failed to disclose adequately that the transaction advertised is a lease. Specifically, the complaint alleges that respondents Beuckman failed to disclose that the term "RCL" is an abbreviation for "Red Carpet Lease" or to otherwise disclose that the advertised monthly payment and term are components of a lease offer. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints against all of the respondents allege that their credit advertisements have violated the TILA and Regulation Z. The complaints allege that respondents' ads state the amount of percentage of any downpayment, the number of payments or period of repayment, and/or the amount of any payment, but fail to properly state the following required terms: the amount or percentage of the downpayment, the terms of repayment, and/or the annual percentage rate, using that term or the abbreviation "APR," in violation of the advertising requirements the TILA and Regulation Z. The complaint against respondents Suntrup also alleges that their credit advertisements have violated the TILA and Regulation Z by stating a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," in violation of the TILA and Regulation Z.

[2] On September 18, 1996, the Board issued revisions to Regulation M. 61 FR 52,246 (Oct. 7, 1996) ("1996 revisions to Regulation M"). The advertising requirements of the October 1996 revisions are to be codified at Section 213.7 of Regulation M, 12 C.F.R 213.7. Subsequently, on September 30, 1996, Congress passed revisions to the CLA Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"). On April 1, 1997, the Board implemented these statutory changes in another rulemaking. 62 FR 15,346 (Apr. 1, 1997) ("1997 revisions to Regulation M"). These changes are also to be codified at Section 213.7 of Regulation M, 12 C.F.R 213.7. On April 4, 1997, the Board adopted a final revised Official Staff Commentary to Regulation M. 62 FR 16,053 (Apr. 4, 1997) ("Commentary"). The amendments to the CLA and the revisions to Regulation M and the Commentary are optionally effective immediately and become mandatorily effective on October 1, 1997.

The complaint against respondents Frank Bommarito also alleges that their credit advertisements have represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as the monthly payment, annual percentage rate ("APR"), and amount stated as "down." This representation is false, according to the compliant, because consumers must also pay a final balloon payment of several thousand dollars to purchase the advertised vehicles. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, the proposed orders prohibit respondents, in any lease advertisement, from misrepresenting the costs of leasing a vehicle, including but not limited to the total amount due at lease inception. The proposed orders also prohibit respondents, in any lease advertisement, from stating any amount due at lease inception or that no such amount is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease inception. This "prominence" requirement for lease inception fees also is found in the Board's 1996 and 1997 revisions to Regulation M.

The proposed orders also require respondents, in any advertisement that states the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, to also state clearly and conspicuously all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessees has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. For all lease advertisements, the proposed orders permit respondents to comply with this provision by utilizing applicable provisions of the revised CLA and the 1996 and 1997 revisions to Regulation M. The orders set out for each media which provisions of such revised laws are applicable.

The proposed order for respondents Lou Fusz also prohibits these respondents from stating specific lease terms unless respondents usually and customarily lease or will lease a vehicle at those terms. This proposed order also prohibits respondents Lou Fusz from misrepresenting the type of transaction advertised, including but not limited to the fact that the offer is for a one payment lease.

The proposed order for respondents Beuckman also prohibits these respondents from stating the term "RCL" without disclosing clearly and conspicuously that such term refers to a lease transaction.

With regard to respondents' credit advertisements, the proposed orders require that any advertisement that states the amount or percentage of any downpayment, the number of payments, the amount of any payment, or the amount of any finance charge must also state clearly and conspicuously all of the terms required by the TILA and Regulation Z, as applicable and as follows: the amount or percentage of the downpayment; the terms of repayment; and the annual percentage rate, using that term or the abbreviation "APR." If the APR may be increased after consummation of the credit transaction, that fact must also be disclosed. The proposed order for respondents Suntrup also prohibits these respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR."

The proposed order for respondents Frank Bommarito prohibits these respondents, in any credit advertisement, from misrepresenting the terms of financing a vehicle, including but not limited to the amount of any balloon payment. This proposed order also prohibits respondents Frank Bommarito from stating the amount of any payment or the amount or percentage of any downpayment or amount "down" if any advertisement unless these respondents also state the amount of any final balloon payment prominently and in close proximity to the most prominent of the above statements.

The proposed orders also prohibit all respondents from failing to comply in any other respect with the CLA and Regulation M and the TILA and Regulation Z. The proposed order permits respondents to comply with other requirements of existing Regulation M, 12 C.F.R. § 213 by utilizing the 1996 and 1997 revisions to Regulation M, as amended.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–27228 Filed 10–14–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File Nos. 9723141 and 9523096]

Volkswagen of America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comment should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for October 7, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." Paper copies can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from Toyota Motor Sales, U.S.A., Inc. ("Toyota") and Volkswagen of America, Inc. ("Volkswagen") (collectively referred to as "respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints allege that the respondents' automobile lease advertisements violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease advertising under the CLA and directed the Federal Reserve Board ("Board") to promulgate regulations implementing this statutue—Regulation M. *See* 15 U.S.C. 1667–1667e; 12 CFR part 213. On September 30, 1996, Congress passed revisions to the CLA that became optionally effective immediately and that have been implemented through the Board's recent revisions to Regulation M. *See* Title II, section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. 104–208, 110 Stat. 3009, 3009–473 (Sept. 30, 1996) ("revised CLA"); 61 FR 52,246 (October 7, 1996), 62 FR 15,364 (April 1, 1997), and 62 FR 16,053 (April 4, 1997) (together "revised Regulation M") (to be codified at 12 CFR 213), as amended.

The complaints against Toyota and Volkswagen allege that respondents' automobile lease advertisements represent that a particular amount stated as "down" or "due at lease signing" is the total amount consumers must pay at the initiation of a lease agreement to lease the advertised vehicles. This representation is false, according to the complaints, because consumers must pay additional fees beyond the amount stated as "down" or "due at lease signing," such as a capitalized cost reduction, security deposit, first month's payment and/or an acquisition fee, to lease the advertised vehicles. The complaints also allege that respondents fail to disclose adequately lease inception fees, often highlighting only a low monthly payment, in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of section 5(a) of the FTC Act.

The complaints further allege that respondents' lease advertisements fail to disclose the terms of the offered lease in a clear and conspicuous manner, as required by the CLA and Regulation M. According to the complaints, respondents' television lease disclosures are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The Toyota complaint also alleges that Toyota's fine print disclosures of lease terms in direct mail advertisements are not clear and conspicuous. The complaints, therefore, allege that respondents' failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M. These alleged practices would also violate the advertising disclosure requirements of the revised CLA and the revised Regulation M.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the proposed orders prohibits respondents, in any lease advertisement, from misrepresenting the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Subparagraph I.B. of the proposed orders also prohibits respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such amount is due, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception. The "prominence" requirement prohibits the companies from running deceptive advertisements that highlight low amounts "down," with inadequate disclosures of actual total inception fees. This "prominence" requirement for lease inception fees also is found in the revised Regulation M recently adopted by the Board.

Moreover, subparagraph I.C. of the proposed orders prohibits respondents, in any lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) That the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA and the revised Regulation M.

Paragraph II of the proposed orders provides that lease advertisements that comply with the disclosure requirements of subparagraph I.C. of the orders shall be deemed to comply with section 184(a) of the CLA, as amended, or § 213.7(d)(2) of the revised Regulation M, as amended.

Paragraph III of the proposed orders provides that certain future changes to the CLA or Regulation M will be incorporated into the orders. Specifically, subparagraphs I.B. and I.C. will be amended to incorporate future CLA or Regulation M required advertising disclosures that differ from those required by the above order paragraphs. In addition, the definition of "total amount due at lease signing or delivery," as it applies to subparagraphs I.B. and I.C. only, will be amended in the same manner. The orders provide that all other order requirements, including the definition of "clearly and conspicuously," will survive any such revisions.

The information required by subparagraph I.C. must be disclosed "clearly and conspicuously" as defined in the proposed orders. The "clear and

conspicuous" definition requires that respondents present such lease information within the advertisement in a manner that is readable [or audible] and understandable to a reasonable consumer. This definition is consistent with the "clear and conspicuous" requirement for advertising disclosures in the revised Regulation M that requires disclosures that consumers can see and read (or hear) and comprehend and in prior Commission orders and statements, interpreting Section 5's prohibition of deceptive acts and practices, that require advertising disclosures that are readable (or audible) and understandable to reasonable consumers.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–27227 Filed 10–14–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given on the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be limited only by the space available.

Place of Meeting: The Watergate Hotel; 2650 Virginia Avenue, N.W., Washington, D.C. 20037, ((4) Subcommittee meetings: on Tuesday, October 21, 8:00 a.m.—12:30 p.m.; and the General Plenary Session II: on Wednesday, October 22, 8:00 a.m.—4:30 p.m.). The Embassy Row Hilton Hotel; 2015 Massachusetts Avenue, N.W., Washington, D.C. 20036, (General Plenary Session I, on Tuesday, October 21, 1:00 p.m.—6:30 p.m.). Exact meeting room locations will be available on the Commission's web site at "http://www.hcqalitycommission.gov".

Times and Dates: On Tuesday, October 21, (4) subcommittee(s) will meet from 8:00 a.m. until 12:30 p.m. and General Plenary Session I will be from 1:00 p.m. to 6:30 p.m. on Wednesday, October 22, General Plenary Session II will be from 8:00 a.m. to 4:30 p.m.

Purpose/Agenda: To hear testimony and continue formal proceedings of the full Advisory Commission and the four (4) subcommittees. Agenda items are subject to change.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, S.W., Washington, DC 20201; [202/205–3038].

Dated: October 8, 1997.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97–27225 Filed 10–14–97; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: September 1997

AGENCY: Office of Inspector General, HHS

ACTION: Notice of program exclusions.

During the month of September 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM–RELATED CONVICTIONS	
BOWMAN, JIMMY ALLEN, TITUSVILLE, FL	10/07/97
BOYD, KENNETH GEORGE, WINCHESTER, OR	10/01/97
BRENNAN, MANUEL FELIPE, MIAMI, FL	10/02/97
BUI, MAI QUYNH, SAN JOSE, CA	10/01/97
BUSH, JANE T, MONTGOMERY, AL	10/02/97
CAMPBELL, DENNIS, W PALM BEACH, FL	10/07/97
CAMPBELL, MARY A, PRINCETON, WV	10/06/97
CARR, CHARLES THOMAS, BIG SPRING, TX	10/05/97
CLARINGBOLD, THOMAS VERNON, TRENTON, MI	10/07/97
COHEN, STEVEN S, CAMP HILL, PA	10/06/97
COLLIER, SAMUEL J, NORTON, VA	10/06/97
COOPER, CONNIE RUTH, ALEXANDRIA, LA	10/07/97
DEL PENA, VIRGINIA, SAN JOSE, CA	10/07/97
FANECA, TERRY S, BRADENTON, FL	10/02/97
FERNANDEZ HERNANDEZ, TERESITA, MIAMI, FL	10/07/97
FISH, MARY CATHERINE, LEBANON, OR	10/01/97
FLOWERS, ROSE MARIE, LITTLE ROCK, AR	10/05/97
FOSTER, DONIETA, FLOWOOD, MS	10/07/97
GARLING, JESSIE RENEE, TUCKER, AR	10/05/97
GILL, ROSE S, YORKTOWN, VA	10/06/97
GONZALES, AMELIA, SACRAMENTO, CA	10/01/97
HAMMONDS, MICHAEL G, DELTONA, FL	10/02/97
HAMPTON, JOSEPH, N RICHLAND HILLS, IL	10/07/97
HASAN, IQBAL, STATEN ISLAND, NY	10/06/97
HEBRARD, TINA L, BEAVERTON, OR	10/07/97

Subject city, state	Effective date
HENRY, ANTHONY LEON, RIVIERA BEACH, FL	10/07/97
HERBER, TIMOTHY L, DAYTON, NV	09/30/97
HERNANDEZ, RAMON, MIAMI, FL	10/02/97
HERNANDEZ, YAMELIKA, MIAMI, FL	10/07/97
ILIESCU, CONSTANTIN, SCARSDALE, NY	10/06/97
JACQUELINE INC, BROOKLYN, NY	10/06/97
JOMADRIENNE INC, BROOKLYN, NY	10/05/97
KACZOR, DANIEL C, BLASDELL, NY	10/06/97
KELTZ, SUSAN KAY, LA GRANDE, OR	10/01/97
KOFA, BAILEY, LITHIA SPRINGS, GA	10/02/97
LESHNOWER, ALAN, NEW YORK, NY	10/06/97
LEWTER, PIA, PHOENIX, AZ	09/30/97
LUKENS, SHIELA K, PORTLAND, OR	10/07/97
MAJMUNDAR, GAURAVI K, ALDERSON, WV	10/06/97
MANTE, SUSAN MANTE, SAN JOSE, CA	10/07/97
MARTIN, PENNY, EXTON, PA	10/06/97
MICKEY, LORETTA K, KEIZER, OR	10/07/97
MILANES, EIDA, MIAMI, FL	10/07/97
MINOR, BRIAN MAURICE, DECATUR, GA	10/02/97
MIRAMAR CORPORATION, LAS VEGAS, NV	09/30/97
MOLDOVER, STANLEY, JENKINTOWN, PA	04/10/97
MURPHY, GEORGE B, ASHLAND, OR	09/30/97
MURPHY, PAMELA DENISE, N LITTLE ROCK, AR	10/05/97
NEWBY, DOUGLAS ALAN, SACRAMENTO, CA	10/01/97
NGHIEM, CHANG XUAN, SAN JOSE, CA	10/01/97
PEOPLE MOVER INC, ENGLEWOOD, CO	10/07/97
PETERSON, PATRICIA ANN, PHOENIX, AZ	10/08/97
RAHMAN, MOHAMMED SHAFIQUE, KEARNY, NJ	10/06/97
RAPUES, VIOLETA MANZANO, S SAN FRANCISO, CA	10/01/97
REEDER, RENA JOANN, PERRY, OK	10/05/97
REN CEN DEVELOPMENT SERVICES, OAK PARK, MI	10/07/97
REYES, WANDA, BRONX, NY	10/05/97
ROBERTS, LINDA KAY, SACRAMENTO, CA	10/01/97
ROTHSTEIN, STANLEY, PHILADELPHIA, PA	03/25/97
ROWE, JOHN A, EGLIN AFB, FL	10/02/97
RUECA, ROSALINDA PINEDA, LAS VEGAS, NV	09/30/97
SATOW, DEANE G, SAN DIEGO, CA	10/07/97
SCHOENLEBER, ERIKA K, MESA, AZ	09/30/97
SCOTT, YVONNE MARGARET, KINGMAN, AZ	10/08/97
SCOTTI, LOUIS, NESCONSET, NY	10/06/97
SILVA, JOHN WILLIAM, SACRAMENTO, CA	10/07/97
SMITH, MARY ANN, CONWAY, AR	10/05/97
SMITH, CYNTHIA LYNN, CONROE, TX	10/05/97
SMITH, THEODORE, DECATUR, GA	10/07/97
SOTOMAYOR, PEDRO A, CAGUAS, PR	03/20/97
SPANOS, MARY DARLENE, AMARILLO, TX	10/05/97
STALEY, STEVEN, W PALM BEACH, FL	10/02/97
STRASSMAN, WAYNE, WEST ORANGE, NJ	10/06/97
TERRY, DONN, PORTLAND, OR	09/30/97
THOMPSON, MARCEE MEGAN, SALT LAKE CITY, UT	10/07/97
THORNTON, ANNIE LAURIE FLEMING, MADISON, MS	10/07/97
TINSLEY, RODERICK WAYMOND, ENGLEWOOD, CO	10/07/97
TRAIGER, JACK, NEW CITY, NY	10/06/97
WALLACE, ANTHONY LAWRENCE, TUCSON, AZ	09/30/97
WATSON, CHARLOTTE S, QUINCY, FL	10/02/97
WATSON, GEORGE B, PERRY, FL	10/02/97
WEBB, RICHARD TOOMBS, ATLANTA, GA	10/02/97
WHISENANT, DOROTHY SEALE, HOLLY SPRINGS, MS	10/02/97
WILLIAMS, VERNEST E, BIRMINGHAM, AL	10/02/97
WIMPEE, BLAKE ALAN, THREE RIVERS, TX	10/05/97
WRIGHT, SUSAN MAE, LAKE STEVENS, WA	10/01/97
ZIVE, THEODORE RONALD, WORCESTER, MA	10/06/97
PATIENT ABUSE/NEGLECT CONVICTIONS	
BELMONT, CHERYL ANN, PORTLAND, OR	10/01/97
BORST, PATRICIA ANN, SALAMANCA, NY	10/06/97
BOVA, KELLY M, LARGO, FL	10/06/97
COBBINS, EARLINE, GRENADA, MS	10/02/97
COLLINS, MARY DEAN, LEWISVILLE, AR	10/05/97
DARBY, VIRGINIA SUE, STONEWALL, MS	10/07/97
DEWAR, WILLIAM R, PAUPACK, PA	10/06/97
DIEGO, DOLORES L, LIHUE, HI	10/07/97

Subject city, state	Effective date
DUPONT, DOREEN, LOWELL, MA	10/06/97
DUPREE, MARY MELISSA, DERRY, LA	10/05/97
FANARA, JOHN P JR, CONCORD, MA	10/06/97
FERRELL, TRESA, HAMILTON, MS	10/02/97
FIELDS, VERLYN MARIE, DENVER, CO	10/07/97
FIFIELD, LOIS LOUISE, WOODWARD, OK	10/05/97
FINOCHIO, PAUL R, EAST SYRACUSE, NY	10/05/97
FOXX HEALTH CARE, LTD, PORTLAND, OR	10/01/97
FREEMAN, JOHN A, MAYFLOWER, AR	10/05/97
GIBBS, SANDRA JEAN, JACKSONVILLE, FL	10/02/97
GOODWILL, ROSE MARIE, ARANSAS PASS, TX	10/05/97
GRIFFIN, PHAMETTA A, SAINT JOSEPH, LA	10/05/97
GRISSOM, ROBERT DOUGLAS, NOWATA, OK	10/05/97
HARRISON, ADELAIDE, SHELBURNE, MA	10/06/97
HARTE, SUSAN LESLEY, PENSACOLA, FL	10/06/97
HARTE, KALA R, PENSACOLA, FL	10/06/97
HESTER, GARY, ATHENS, TN	10/07/97
JACKSON, SHAWANA N, WARREN, AR	10/05/97
KANIES, MICHAEL P, SANDY, UT	10/07/97
KELLY, JOHN K, PINE BLUFF, AR	10/05/97
KIRBY, GARY WAYNE, SANTA ANA, CA	09/30/97
MALLETT, FRANK FITZGERALD JR, N LITTLE ROCK, AR	10/05/97
MARTINI, ALICE E, RAYMOND, ME	10/06/97
MOEUY, POLO S, PROVIDENCE, RI	10/06/97
MOORE, LALLIE JEANETTE, BAILEY, MS	10/07/97
MOYE, SARA, STARKVILLE, MS	10/07/97
PASCUA, JOHN, PAWTUCKET, RI	10/06/97
PHILLIPS, PATRICIA ANN, VINITA, OK	10/05/97
PRATT, CHARLES RAY, ALEXANDRIA, LA	10/05/97
RUTHERFORD, MARCI A, OGDENSBURG, NY	10/06/97
SCARLETT, SHERIL, MOUNT VERNON, NY	10/06/97
SCHADE, HUGH I, SAN JOSE, CA	10/01/97
STARK, MICHELLE ELIZABETH, BETHANY, OK	10/05/97
SUMMERVILLE, MINNIE, GRENADA, MS	10/02/97
TIGER, SAM DEAN, KONAWA, OK	10/05/97
UTTERBACK, CAREY JAY, TRIPP, SD	10/07/97
VANPELT, PAUL, MARGARETVILLE, NY	10/06/97
VINSON, CLARETTA, OKLAHOMA CITY, OK	10/05/97
VIOLETTE, EDWARD J, MIDDLETOWN, RI	10/06/97
WALLING, ALVIN WESLEY, BOLEY, OK	10/05/97
WILBURN, GLORIA JEAN, TROUP, TX	10/07/97
WINKOWITSCH, MILDRED YVONNE, CUT BANK, MT	10/07/97
YOUNG, BRANDON KIRK, DEL VALLE, TX	10/05/97
CONVICTION FOR HEALTH CARE FRAUD	
BELL, LATRICIA LATOYA, LITTLE ROCK, AR	10/05/97
BORGES, ALFREDO SR, CORAL GABLES, FL	07/29/97
BURGOS, HERNAN ENRIQUE, BASTROP, TX	10/05/97
CASSIANO, SYLVIA, NORTH HOLLYWOOD, CA	09/30/97
CAZEAU, ANTOINE, BROCKTON, MA	10/06/97
GONZALEZ, AIDA C., HIALEAH, FL	11/04/96
GONZALEZ, OLGA QUIRANTES, MIRMARA, FL	07/30/96
GONZALEZ, NELSON, MIAMI, FL	07/30/97
HYMEL, BERNARD H, BORON, CA	08/06/97
LINARES, GEORGE A, MIAMI, FL	07/30/97
LUNDEN, LISA E, WINTHROP, ME	10/06/97
MATUTO, IRENE, WORCESTER, MA	10/06/97
MCKNIGHT, REGINALD, BROOKLYN, NY	10/06/97
MILIAN, GABRIEL, MIAMI, FL	07/30/96
MUNGAI, LINDA, QUINCY, MA	10/06/97
PRAT, ANGELO, MIAMI, FL	07/30/96
PRAT, ESTHER, MIAMI, FL	07/30/96
RAITMAN, JOYCE, SOUTHAMPTON, PA	10/06/97
SADY–KENNEDY, SILVIA, MISSION VIEGO, CA	09/30/97
SSEREBE, WILLIAM, WALTHAM, MA	10/06/97
STATON, ZELBY, GREENVILLE, NC	10/07/97
SUMMERLIN, DARLENE, MIAMI, FL	07/30/96
YENTIS, RICHARD DAVID, EL RENO, TX	10/05/97
CONTROLLED SUBSTANCE CONVICTIONS	
JACOBSON, ALAN, PLAINVIEW, NY	10/06/97

Subject city, state	Effective date
KLASSEN, HAROLD J, ABERDEEN, ID	10/01/97
LICENSE REVOCATION/SUSPENSION/SURRENDER	
AMUNDSEN, S WILLIAM, HERMITAGE, PA	10/06/97
ARAGON, PERRY R, ISSAQUAH, WA	10/01/97
BICKEL, DEBORAH ANN, BERKELEY, CA	10/07/97
BITAR, SAMUEL, SOUTHINGTON, CT	10/06/97
BIXLER, ANDREW, DOVER–FOXCROFT, ME	10/06/97
BLANCHARD, DAVID SCOTT, DANBURY, CT	10/06/97
BLOCK ISLAND PHARMACY LTD, BLOCK ISLAND, RI	10/06/97
BOURNE, ANDREW R, CUMBERLAND, ME	10/06/97
BRALICH, DAVID J, CLEVELAND, OH	10/07/97
BRINK, DEBORAH ANNE, STOCKTON, CA	10/07/97
BROWN–AMBROSE, NANCY, S GLASTONBURY, CT	10/06/97
BURKE, SARAH, EAST NORWALK, CT	10/06/97
BYRAM, SARAH M, GORDONSVILLE, VA	10/06/97
CAREY, SHARON LEE, GLEN ELLEN, CA	10/07/97
CERVANTES, RICHARD CHARLES, LOS ANGELES, CA	10/06/97
CHMURA, LANCE KENNETH, STATE COLLEGE, PA	10/06/97
CLAVER, LIANNE E L, OAKLAND, CA	10/01/97
COLBERT, PATRICIA HEIDER, MINERAL POINT, PA	10/06/97
DE PASQUALE, BEVERLY JOANN, HESPERIA, CA	09/30/97
DENOYER, RICHARD ALLEN, AZUSA, CA	09/30/97
DORSEY, RAMONA JUANITA, GRAND TERRACE, CA	09/30/97
DUNBAR, KENNETH, LODI, CA	10/01/97
EDGERTON, RONALD GLEN, TROUTDALE, OR	10/01/97
EFFNER, MARY ANN, INDIO, CA	10/07/97
EVERHART, JAMES MACLEAN, ORANGEVALE, CA	10/07/97
FIORE, EDITH, SARATOGA, CA	10/07/97
FORD, WILLIAM HAROLD, CALIPATRIA, CA	10/06/97
FRAKER, JOSEPH TODD, LANCASTER, OH	10/07/97
GANTI, SHASHI DHAR, PASADENA, CA	10/06/97
GARLAND, LESLIE C, TORRANCE, CA	10/06/97
GRIFFIN, ARTHUR, NORFOLK, VA	10/06/97
GRIFFIN, JAMES E, SPRINGFIELD, MA	10/06/97
GRODEN, DAVID L, ROCHESTER, MN	10/09/97
HAIRSTON, ROSETTA ELIZABETH, TRACY, CA	10/01/97
HAMBRIC, DOROTHY E, NORFOLK, VA	10/06/97
HANNA, MAGED F, HILLIARD, OH	10/06/97
HANSEN, CATHERINE, NEW HAVEN, CT	10/06/97
HANSON, LAURIE LEE, COSTA MESA, CA	10/01/97
HARPER, THERESE KATHLEEN, PORTERVILLE, CA	10/01/97
HERBETS, STEVEN SCOTT, LA HABRA, CA	09/30/97
HIGGINS, THOMAS P, FRAMINGHAM, MA	10/06/97
HO, RICHARD KAY–YIN, SAN JOSE, CA	10/07/97
HOFFMAN, ELIZABETH JANE, PEACEDALE, RI	10/06/97
HOLLIS, ROBERT L, VALDOSTAN, GA	10/02/97
HORVATH, CHARLES N, LA VERNE, CA	09/30/97
HUTCHINSON, JOANNE BURTLE, SCHUYLER, VA	10/06/97
IPPISCH DIESING, JILL KAREN K, CHICO, CA	10/07/97
JAVAHERI, AHMAD, CORONA, CA	10/08/97
JAVIDI, KOUCHEK, STOCKTON, CA	10/07/97
JOHNSON, JACQUELINE, CHARLES CITY, VA	10/06/97
KELLEY, WILLIAM T, SAN GABRIEL, CA	10/08/97
KENNEDY, JULIE ANNE, SANTA MONICA, CA	09/30/97
KIM, JOONG TAI, LA CANADA, CA	10/08/97
KIMBERLEY, STEPHEN LANGTON, EUGENE, OR	10/07/97
KNIGHT, JAMES W, SALINAS, CA	10/07/97
KNIGHT, ROBERT WILLIAM JR, REDWOOD CITY, CA	10/01/97
KRSUL, CARLA, MIDDLETOWN, VA	10/06/97
LAND, BRENDA C SIRON, WATSONVILLE, CA	10/07/97
LARSEN, CATHERINE A, MENASHA, WI	10/09/97
LIND, MARK E, RICHMOND, CA	10/01/97
LOWE, CYNTHIA, WARWICK, RI	10/06/97
MANDELL, ANDREW M, MT PLEASANT, SC	10/02/97
MANTZ, MARTIN C, JACKSON, OH	10/07/97
MARRAZZO, DEAN, BLAKELY, PA	10/06/97
MAURER, NELSON H, PACIFIC GROVE, CA	10/07/97
MCCARTHY, PAULA J, GILMANTON IRON WORKS, NH	10/06/97
MCGRANAGHAN, CHRISTY L, WEST LEBANON, NH	10/06/97
MEYERS, JEFFREY C, CLEAR LAKE, IA	10/07/97
MIRACLE, COLETTE T, SANTA ROSA, CA	10/01/97

Subject city, state	Effective date
MONTI, INEZ DIANA, BRONX, NY	10/06/97
NEAL, AMY S, NAPA, CA	10/01/97
NOEL, PHILLIP J, WOODSTOCK, VA	10/06/97
NOWICKI, SUSAN SCHNUPP, UPPER ST CLAIR, PA	10/06/97
OGREN, DEBRA A, OTTUMWA, IA	10/07/97
OLMSTEAD, LUKE R, SAN DIEGO, CA	09/30/97
PANNACCI, DONNA L, MECHANICSVILLE, VA	10/06/97
PARRISH, CHERLYN J, ATLANTA, GA	10/02/97
PEPE, RICHARD, MERIDEN, CT	10/06/97
PERKERSON, RALPH B JR, KINGSLAND, GA	10/02/97
PETERSMAN, MARGARET M, CINCINNATI, OH	10/07/97
POLLOCK, LAWRENCE, PICO RIVERA, CA	09/30/97
RANDOLPH, ELIZABETH MARIE, EVERGREEN, CO	10/07/97
RASCHE, DOROTHY E, SACRAMENTO, CA	10/07/97
RENSON, JEAN FELIX, STOCKTON, CA	10/01/97
SAMBS, JAMES M, SAN DIEGO, CA	10/08/97
SAUTER, SUSAN K, DES MOINES, IA	10/07/97
SCHNEIDER, EDUARDO H, LA PUENTE, CA	10/08/97
SCHROEDER, VERNON R, LAQUINTA, CA	10/08/97
SENGAL, TOUMSKI G, LOS ANGELES, CA	10/08/97
SHEA, PATRICK JOSEPH, ASHLAND, OH	10/07/97
SHEPERIS, JOSEPH, N KINGSTOWN, RI	10/06/97
SMETANA, JAMES W, VANDALIA, OH	10/07/97
SOMOGYI, EMIL L, LAFAYETTE, CA	10/07/97
ST CROIX, WILLIAM, EAST HARTFORD, CT	10/06/97
STARR, ROBERT, NEW CASTLE, PA	10/06/97
STEIR, BRUCE S, SAN FRANCISCO, CA	10/07/97
TALARICO, SAMUEL F, POLAND, OH	10/07/97
TOKOPH, CYNTHIA LOUISE, PASO ROBLES, CA	10/08/97
TORRES, LINDA RENEE, FRESNO, CA	10/01/97
TWEED, JONATHAN N, CHARLESTOWN, RI	10/06/97
UDALL, JOHN A, ARTESIA, CA	10/08/97
WILLIAMS, DAVID MICHAEL, BUFORD, GA	10/02/97
WINNARD, ELIZABETH M, WEST WARWICK, RI	10/06/97
WOHL, KENNETH E, BLOCK ISLAND, RI	10/06/97
FEDERAL/STATE EXCLUSION/SUSPENSION	
BECKER, MARLENE, AUBURN, ME	10/06/97
CARR, DALE A, MONMOUTH, ME	10/06/97
CESTARI, ROBERT, ROCKVILLE CTR, NY	10/06/97
HANIF, MUHAMMAD, BROOKLYN, NY	10/06/97
KLEIN, STEPHEN HOWARD, GREAT NECK, NY	10/06/97
KOMAL PHARMACY, INC, BROOKLYN, NY	10/06/97
KREPLIAK, EDWARD, PHILADELPHIA, PA	10/06/97
METRO–MED AMBULETTE, INC, ROCKVILLE CENTRE, NY	10/06/97
REID, JENETTE, BROOKLYN, NY	10/06/97
SEE, VINCENT ENG KHIM, TENAFLY, NJ	10/06/97
SHERMAN, HENRY MILES, EAST ORANGE, NJ	10/06/97
SIDDIQUE, NURULHASAN, W NEW YORK, NJ	10/06/97
SINGLETON, JEAN, SAN AUGUSTINE, TX	10/05/97
SPECIALTY CLINICAL LABORATORIE, NEW BRUNSWICK, NJ	10/05/97
SWISS, ROBERT E, NEW YORK, NY	10/05/97
SWISS MEDICAL SUPPLY, INC, NEW YORK, NY	10/05/97
THOMAS–MCNAIR, GLORIA, TRENTON, NJ	10/05/97
VALUE–RITE PHARMACY, INC, NEWARK, NJ	10/06/97
WASHINGTON, JOHN, MONTCLAIR, NJ	10/06/97
FRAUD/KICKBACKS	
A–1 ARTISTIC LANDSCAPING, INC, MIAMI, FL	07/30/96
ADVANCED MEDICAL DIAGNOSTICS, INDIANOLA, MS	12/19/96
CENTURY CELLULAR RENTAL, INC., MIAMI, FL	07/30/96
CHAN, CYNTHIA, LUTHERVILLE, MD	08/01/97
CHAN, BRIAN, LUTHERVILLE, MD	08/01/97
EICKEMEYER, JAY, CLARINDA, IA	12/04/96
FINE AUTO BROKER I, INC, CORAL GABLES, FL	07/29/97
FINE AUTO BROKER II. INC., MIRAMAR, FL	07/30/97
GARCIA, LUZ M, HOMESTEAD, FL	11/22/96
GARCIA, FELIZ R, HOMESTEAD, FL	11/22/96
GIL, GINA M, MIAMI, FL	06/12/97
HELPING TO LIVE, INC, HOMESTEAD, FL	11/22/96
LIVING IN PEACE, INC, HOMESTEAD, FL	11/22/96

Subject city, state	Effective date
LUCY'S OKYMETRY, INC, HOMESTEAD, FL	11/22/96
METZINGER, HARRY J, VOORHEES, NJ	04/21/97
NODAWAY VALLEY HOME HEALTH, CLARINDA, IA	12/04/96
QUALITY PAINTERS & INTERIOR, MIAMI, FL	07/30/96
QUALITY PLUS DIAGNOSTIC, INC., MIAMI, FL	06/12/97
RITTER, WILLIAM J, ELMIRA, NY	04/21/97
ROBERT & BROTHERS IMPORT–EXP, HOMESTEAD, FL	11/22/96
ROBERT & BROTHERS MED REPAIRS, HOMESTEAD, FL	11/22/96
SAS HEALTHCARE SERVICES INC, PA	09/27/96
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
A GIFT FROM CHINA, INC, MIAMI, FL	07/30/96
A&E MEDICAL EQUIP OF S FLORIDA, FL	08/05/97
DYNAMIC DIAGNOSTIC INSTITUTE, HIALEAH, FL	07/29/97
FAMILY DENTAL CARE, EGLIN AFB, FL	10/02/97
MEDI–VAN TRANSPORT SERVICE INC, BRADENTON, FL	10/02/97
PLATINUM HEALTH CARE, GREENVILLE, NC	10/07/97
PRAIRIE HILLS FOR THE ELDERLY, BELLE FOURCHE, SD	10/07/97
PRECISE MEDICAL LABORATORIES, NEW BRUNSWICK, NJ	10/06/97
RICHARD WEBBS FAMILY PHARMACY, TOCCOA, GA	10/02/97
SEALE DRUG COMPANY, HOLLY SPRINGS, MS	10/02/97
SIGNATURE OF MIAMI, MIAMI, FL	10/07/97
SUPREME TAXICAB SERVICE, PERRY, FL	10/02/97
TERRY'S MEDICAL TRANSPORT, BRADENTON, FL	10/02/97
DEFAULT ON HEAL LOAN	
ALLIO, CHARLES MICHAEL, BURBANK, CA	10/01/97
BARTLETT, GARY EARL, HIGHLAND, CA	10/07/97
CARNETT, JEFFREY L, HILO, HI	10/07/97
CHERACHANKO, DEBORAH A, COTTONWOOD, CA	10/07/97
CONRAD, MARVIN, BALTIMORE, MD	10/06/97
DAO, LELAND H, HALEIWA, HI	10/01/97
HALL, JEROME W, NEWLAND, NC	10/02/97
JACKSON, FRANCESCA A, OAKLAND, CA	10/07/97
KING, WAYNE E, APACHE JUNCTION, AZ	10/07/97
MORGENSEN, KELLY A, PORTLAND, OR	10/07/97
RASKIN, BECKY R, PORTLAND, OR	10/07/97
RUSSELL, MICHAEL D, WEST HILLS, CA	10/07/97
STURTZ, RENATE E (LORINCZ), DEL MAR, CA	10/01/97
THOMAS, RANDY L, FAIRBANKS, AK	10/07/97
WILLIAMS, ROBERT L (WEAVER), LOS ANGELES, CA	09/30/97
WOODHAM, MARK A, TUMWATER, WA	10/07/97

Dated: October 3, 1997.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–27212 Filed 10–14–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 5, 1997.

Time: 11 a.m.

Place: The George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–28, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 10, 1997.

Time: 10 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 14, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 14, 1997.

Time: 8:30 a.m.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 18, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane,

Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 21, 1997.

Time: 1 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–27158 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Clinical AIDS and Immunology Review Committee.

Date: November 5–November 6, 1997.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Mental Health Small Business Research Review Committee.

Date: November 6–November 7, 1997.

Time: 9 a.m.

Place: River Inn, 924 25th Street, N.W., Washington, DC 20037.

Contact Person: Yolanda M. White, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Neuro-Immunology, Virology, and AIDS Review Committee.

Date: November 10, 1997.

Time: 8.30 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.

Contact Person: Rehana A. Chowdury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27159 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Nursing Research Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Institutional National Research Service Award Applications (T32s), Postdoctoral Individual National Research Service Award Applications (F32s), and National Research Award Senior Fellowship Applications (F33s).

Date: October 29, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Carole Hudgings, Ph.D., R.N., Building 45, Room 3AN–12, 45 Center Drive, Bethesda, MD 20892, (301) 594–5976.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27161 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Conference on Toward the Genetic Manipulation of Insects (Telephone Conference Call).

Date: October 16, 1997.

Time: 11:00 a.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C01, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate grant application.

Name of SEP: AIDS Vaccine Evaluation Group Mucosal Immunology Laboratory (Telephone Conference Call).

Date: October 22, 1997.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A2, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate contract proposal.

Name of SEP: Pneumococcal Reference Laboratory and Clinical Trail Laboratory Support (Telephone Conference Call).

Date: October 27, 1997.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A2, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate contract proposals.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27163 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Cancer and Toxin Equivalency Factors (TEFs) for Dioxin and Dioxin-like Chemicals.

Date: November 18, 1997.

Time: 9:00 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Conference Room D450, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Review of T32 Grant Applications on Studies of Environmental Mutagens and Carcinogens and Conference Grant Applications (R13).

Date: November 21, 1997.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Sciences, South Campus, 101 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda Bass, Ph.D., National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1307 and Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27164 Filed 10–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 46751, dated September 4, 1997) is amended to reflect the establishment of the Division of Oral Health within the National Center for Chronic Disease Prevention and Health Promotion.

Section C–B, *Organization and Functions,* is hereby amended as follows:

After the functional statement for the *Program Services Branch (HCL84),* insert the following:

Division of Oral Health (HCL9). (1) Provides a national and international focus for the prevention and control of oral diseases and conditions, and for the prevention and control of infectious diseases in dentistry; (2) provides assistance to state and local governments, professional, educational, voluntary, and community-based organizations through consultation, training, promotion, education, surveillance, and other technical services; (3) assists state and local governments and other organizations in evaluating dental, oral, and infectious disease prevention activities; (4) develops and implements oral health activities for underserved racial and ethnic minority populations; (5) collects, analyzes, summarizes, and distributes information on the status of dental public health programs; (6) conducts and evaluates operational research to develop improved methodology for oral disease prevention; (7) develops and conducts surveillance of dental and oral disease problems; (8) maintains liaison with other federal agencies, state and local health agencies, and national organizations and groups on oral health activities; (9) collaborates with other components of CDC and DHHS in carrying out programs.

Office of the Director (HCL91). (1) Manages, directs, and coordinates the activities of the Division of Oral Health (DOH); (2) provides leadership and guidance in policy formulation, program planning and development, program management and operations; (3) provides administrative, fiscal, procurement, and technical support for the division; (4) coordinates responses to all congressional, public, and Freedom of Information inquiries; (5) coordinates all clearance functions; (6) manages all personnel activities, including staff recruitment, assignment, and career development; (7) coordinates activities of the division with other components of CDC.

Program Services Branch (HCL92). (1) Develops and recommends criteria and standards to be used in program planning and evaluation of public oral health programs; (2) provides consultation to and maintains liaison with state and local health agencies, national and international dental associations, health professional groups, and voluntary and community-based organizations in the areas of information exchange, education, and health promotion to support oral disease prevention and control efforts; (3) provides consultation and assistance to federal agencies for the prevention and control of oral diseases and for oral health promotion; (4) develops and implements oral health activities for underserved racial and ethnic minority populations; (5) assists state and local health departments in evaluating their programs and makes recommendations to facilitate improvement of programs; (6) designs, develops, coordinates, and disseminates guidelines related to dental disease prevention and oral health promotion; (7) develops and conducts national water fluoridation training for state engineering and dental personnel; (8) collects, compiles, and distribution data on the quality of water fluoridation; (9) develops or assists with the development of home study and classroom training materials related to oral disease prevention and oral health

promotion, for use by state and local departments of health; (10) evaluates information, educational activities, and oral health promotion projects proposed or completed by other agencies or private organizations; (11) develops procurement and assistance documents and monitors their progress; (12) collaborates with other components of CDC in developing and carrying out programs.

Surveillance, Investigations, and Research Branch (HCL93). (1) Compiles and analyzes data on oral health information and dental health care workers from various national, regional, state, and community sources; 92) develops and supports, in collaboration with State and local health departments and other components of CDC, prototype surveillance systems, including protocols for measurement of oral health status, services, and systems; (3) monitors progress toward the achievement of the national oral health objectives; (4) conducts epidemiologic investigations of infectious diseases that occur within the dental setting and makes recommendations to prevent disease transmission during the provision of oral health services (5) maintains current scientific literature and CDC policy issuances that relate to oral health and infectious diseases; (6) serves as consultants to dental professional organizations and other federal agencies on subjects related to community-based prevention or oral diseases and assurance of the safety of the dental care environment; (7) develops research guidelines, designs protocols, and implements and evaluates oral health and infectious disease studies related to dentistry; (8) develops procurement and assistance documents and monitors their progress to support studies that examine important research questions related to community-based measures to prevent oral diseases or promote oral health.

Dated: October 2, 1997.

Claire V. Broome,

Acting Director.

[FR Doc. 97–27290 Filed 10–14–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact taking effect.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing the Tribal-State Compact between the Pueblo of San Juan and the State of New Mexico executed on July 11, 1997. By the terms of IGRA this Compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

SUPPLEMENTARY INFORMATION: The Department believes that the decision to let the 45-day statutory deadline for approval or disapproval of the Compact expire without taking action is the most appropriate course of action given the unique history of state and federal court cases and legislative actions that have shaped the course of Indian gaming in New Mexico. A letter further explaining the Department's decision is available from the Bureau of Indian Affairs, Indian Gaming Management Staff at the address below.

DATES: This action is effective October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240, (202) 219–4068.

Dated: September 8, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–27292 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–82–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–97–1330–00]

Notice of Closure of Public Lands

ACTION: Notice of closure of public lands to discharge of firearms, Carson City, Nevada.

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Pine Nut Road #2 are closed to the discharge of firearms. This closure is necessary for public safety and to prevent impacts to soil and vegetative resources at a BLM community sand and gravel pit that recently had an extensive cleanup conducted at the site.

EFFECTIVE DATES: This closure will take effect on or before November 14, 1997. Interested parties may submit comments to the Carson City District Manager, John O. Singlaub.

SUPPLEMENTARY INFORMATION: This closure applies to the discharge of firearms except for emergency and law enforcement personnel during the conduct of their official duties. The public lands affected by this closure are discribed as follows:

Mt. Diablo Meridian.

T. 12 N., R. 21 E., Sec. 7: S½SE¼,
Sec. 18: N½NE¼, N½SE¼NE¼,
N½NE¼NW¼, N½S½NE¼NW¼.

Authority: 43 CFR 8364–Closure and Restriction Orders; 43 CFR 8365.1–6–Supplementary Rules of Conduct.

Penalty

Any person who fails to comply with this closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

FOR FURTHER INFORMATION CONTACT: Ronald J. Tauchen, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (702) 885–6000.

A map of the closed area is available at the Carson City District Office.

Dated: September 24, 1997.

John O. Singlaub,

District Manager, Carson City District.

[FR Doc. 97–27213 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–08–0777–52]

Call for Nominations on the Utah Resource Advisory Council (RAC)

SUMMARY: The purpose of this notice is to solicit nominations for a vacancy on the Utah Bureau of Land Management Resource Advisory Council. Utah residents with an interest and background in energy and mining development are being sought to fill this vacancy on the 15-person Council which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 2-year term of the Council that will run through August 1999.

Nominees will be evaluated based on their experience or knowledge of the geographic area; education, training and/experience; and, their experience in working with disparate groups to achieve collaborative solutions. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The Bureau of Land Management, along with the Governor's Office, will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council.

Resource Advisory Councils were established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on management of public lands.

FOR FURTHER INFORMATION CONTACT: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah, 84111; telephone (801) 539–4195 or by contacting John Harja, State of Utah, at (801) 538–1559. All nominations must be received no later than close of business November 21, 1997.

Dated: October 8, 1997.

G. William Lamb,

State Director.

[FR Doc. 97–27216 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1210–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands near Holtville, California on Thursday, November 13, 1997, from 7:30 a.m. to 5 p.m., and meet in formal session on Friday, November 14 from 8 a.m. to 5 p.m., and Saturday, November 15 from 8 a.m. to 12 noon. The Friday and Saturday public meetings will be held in the conference room at the Barbara Worth Country Club, located at 2050 Country Club Drive, Holtville, California.

Council members will assemble for the Thursday field tour at the Barbara Worth Country Club parking lot at 7:15 a.m. and depart at 7:30 a.m. The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM public affairs at (909) 697–5215 for more information.

The Friday meeting will begin at 8 a.m. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comment may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky or Doran Sanchez, BLM California Desert District Public Affairs at (909) 697–5215.

Dated: October 6, 1997.

Tim Salt,

Acting District Manager.

[FR Doc. 97–27218 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–51]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Iditarod Advisory Council Meeting.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Wednesday, November 12, 1997, and Thursday, November 13, 1997, from 9 a.m. to 5 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Iditarod Trail Committee Headquarters in Wasilla, AK.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1–2 p.m. on Wednesday, November 12. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson at (907) 271–5555.

Dated: October 7, 1997.

Tom Allen,

State Director.

[FR Doc. 97–27219 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1120–00; GP8–0004]

Notice of Change of Public Comment Time at October 27 and 28, 1997 Meeting of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of change of public comment time at October 27 and 28, 1997 meeting.

SUMMARY: Notice is given that there will be a meeting of the Southeast Oregon Resource Advisory Council.

DATES: The Southeast Oregon Resource Advisory Council meetings will begin at 8:00 a.m. and run to 5:00 p.m. October 27, 1997. Public comment time is changed and is now scheduled from 8:00 a.m. to 8:15 a.m. October 28, 1997. On October 28, 1997 the meeting will run from 8:00 a.m. to 12:00 noon.

At an appropriate time, the council will recess for approximately one hour for lunch. Topics to be discussed during the meeting are administrative activities of the Council, the workload for fiscal year 1998, noxious weeds, fuels and prescribed fire, water quality issues, and such other issues as to properly come before the Council.

ADDRESSES: The Southeast Oregon Resource Advisory Council meetings will take place at the Malheur National Forest Headquarters, Federal Building, 431 Patterson Bridge Road, John day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon

Street, Vale, OR 97918, (Telephone 541 473–3144).

Edwin J. Singleton,

District Manager.

[FR Doc. 97–27214 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Control of the National Park Service, Haleakala National Park, Makawao, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the control of the National Park Service, Haleakala National Park, Makawao, HI.

A detailed assessment of the human remains was made by National Park Service professional staff in association with professional staff from the Bishop Museum and in consultation with representatives of the Hawai'i Island Burial Council, Hui Malama i na Kapuna o Hawai'i Nei, Kona Hawaiian Civic Club, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, and Office of Hawaiian Affairs. All of the human remains have been curated by the Anthropology Department of the Bernice P. Bishop Museum in Honolulu, Hawai'i since their initial recovery.

Between 1920 and 1962, human remains representing at least 16 individuals were recovered from three sites, located within park boundaries in and around Haleakala crater, during legally authorized fieldwork and excavations. No known individuals were identified. No associated funerary objects were present. The dates for the remains have not been established but they probably date from both before and after contact was established between Native Hawaiians and Europeans in A.D. 1778.

In 1920, human remains representing two individuals were recovered from Na Piko Haua, located within the boundaries of Haleakala crater, during legally authorized fieldwork by Kenneth Emory of the Bishop Museum. The human remains are two individual bundles, wrapped in blue cotton fabric, dark brown hair and paper and tied with white thread. No known individual was identified. No associated funerary objects are present. On the basis of information provided by a local guide in 1920, the bundles' state of preservation, and the presence of imported cotton cloth, these navel string bundles probably date from the late 19th to early 20th century. These bundles were donated to the Bishop Museum in 1924 by the collector, who identified them as "portions of two navel strings [umbilical cords] wrapped in hair and cloth."

Aside from facilities clearly of 20th century origin, virtually all evidence of human use and occupation of the Haleakala crater area is of Native Hawaiian origin. Available evidence indicates that Native Hawaiians are the only group to bury their dead in the crater region. In addition, the manner of burial of the human remains (in or near Native Hawaiian structures, in a lava tube, etc.) is consistent with Native Hawaiian practices during both pre- and post-contact periods. Further, the Native Hawaiian practice of burying the dead in or near their home community suggests that all burials found in or near Haleakala crater on the island of Maui are of people from Maui communities.

With regard to the navel string bundles, one of the Native Hawaiian men who accompanied Emory in 1920 stated that his own umbilical cord had been hidden at Na Piko Haua. The practice of depositing umbilical cords in at least this one location in the Haleakala crater was a Native Hawaiian practice in effect until ca. 1920. As in the case of burials, it was customary for Native Hawaiians to deposit umbilical cords in the general vicinity of the community where the birth had taken place. This practice was confirmed by the Native Hawaiian guide. Based on this information, the navel string bundles in the collection are considered to be from infants born in communities on the slopes of Haleakala.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 18 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3003 (2), there is a relationship of shared group identity which can reasonably be traced between these Native American human remains and the Maui/Lana'i Island Burial Council.

This notice has been sent to officials of the Hawai'i Island Burial Council, Hui Malama i na Kapuna o Hawai'i Nei, Kona Hawaiian Civic Club, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, and Office of Hawaiian Affairs. Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Don Reeser, Superintendent, Haleakala National Park, PO Box 369, Makawao, Maui, HI, 96768; telephone: (808) 572–9306, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains to the Maui/Lana'i Island Burial Council will begin after that date if no additional claimants come forward.

Dated: October 6, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–27215 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Western Colorado Area Office, Grand Junction, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare a supplemental environmental impact statement on the AB Lateral Hydropower Project. The project would be located in Montrose County, Colorado. The purpose of the hydropower project is to economically develop the energy potential of water flows from the Gunnison River through the existing Gunnison Tunnel to the Uncompahgre River.

DATES: The Supplemental EIS is expected to be available for public comment in 1998.

ADDRESSES: For information concerning the supplemental NEPA work, or information or suggestions concerning the work, contact Mr. Steve McCall, Environmental Specialist, Western Colorado Area Office, Bureau of Reclamation, P.O. Box 60340, Grand Junction CO 81506.

FOR FURTHER INFORMATION CONTACT: Mr. Steve McCall at (970) 248–0600.

SUPPLEMENTARY INFORMATION:

Background

A final environmental impact statement (FEIS 90–25) was filed on August 28, 1990. The FEIS described four alternatives for the proposed construction and operation of a hydropower project using features of Reclamation's Uncompahgre Valley Reclamation Project (UVRP). Reclamation is considering executing a lease of power privilege (a type of contract) with a private company to use facilities for this project. A Section 404 Permit under the Clean Water (Act) is also required for the project.

The alternatives described in the FEIS provided for additional water diversions from the Gunnison River through the existing Gunnison Tunnel to a penstock and powerplant near Montrose, Colorado. The significant issues addressed in the FEIS included the impacts of reduced flows in the Gunnison River, increased flows in the Uncompahgre River, economic impacts in local counties, and impacts on wetlands. Since publication of the FEIS, additional information has become available concerning proposed bank stabilization plans along the Uncompahgre River, endangered species, resources along the Gunnison River, and power sales.

Hydropower development in association with the UVRP was authorized by the Act of June 22, 1938 (Pub. L. 75–698, Stat. 941). Under the Act, the hydropower facility would be constructed and operated under a lease of power privilege with Reclamation. This lease would provide for cost reimbursement fees, Reclamation's role as overseer, and the Sponsor's obligations, including environmental commitments. Funding for the hydropower studies is provided by the project proponents. Reclamation serves as the lead Federal agency responsible for ensuring compliance with NEPA.

Potential Federal Action

Two major Federal actions are pending on the project: execution of a lease of power privilege by Reclamation and issuance of a Section 404 Permit under the Clean Water Act by the Corps of Engineers.

Dated: October 7, 1997.

Charles Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 97–27231 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Garrison Diversion Unit

AGENCY: Bureau of Reclamation, in conjunction with U.S. Fish and Wildlife Service, and the North Dakota Game and Fish Department.

ACTION: Notice of availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(G) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation, acting as lead Federal agency, in conjunction with the Fish and Wildlife Service and North Dakota Game and Fish Department, has prepared a Final Environmental Impact Statement (FEIS) on the Arrowwood National Wildlife Refuge (NWR) mitigation project. The FEIS evaluates the impact to the environment of seven alternatives, including no action, for mitigating adverse impacts of Jamestown Reservoir on Arrowwood NWR. The project would improve refuge water management capability through construction of various bypass channels, water control structures, and fish barriers. In addition, the normal operating level of Jamestown would be lowered approximately 1.8 feet. This mitigation is required by the Garrison Diversion Unit Reformulation Act of 1986 (P.L. 99–294) and the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668jj).

DATES: A 30-day public comment period commences with the publication of this notice.

ADDRESSES: Obtain information relative to the study or a copy of the FEIS from: Greg Hiemenz, Project Coordinator, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

FOR FURTHER INFORMATION CONTACT: Greg Hiemenz, Project Coordinator, at (701) 250–4242 extension 3611 or Dennis E. Breitzman, Area Manager, at (701) 250–4242.

SUPPLEMENTARY INFORMATION:

Arrowwood NWR is located on the James River in Stutsman and Foster Counties, North Dakota. The refuge lies within the flood pool of Jamestown Reservoir, a component of the Garrison Diversion Unit, and has, on numerous occasions, been adversely affected by reservoir operations.

Seven alternatives for mitigating impacts to the refuge, including no action, were evaluated in the FEIS. The action alternatives comprise an incremental series of physical features, including bypass channels, water control structures, waterfowl sub-impoundments, and fish barriers, that could be constructed at Arrowwood NWR and Jamestown Reservoir to improve refuge water management. In addition, five of the six action alternatives would lower the normal operating level of Jamestown Reservoir and include measures to enhance the reservoir's sport fishery. Three of the alternatives would require off-site mitigation, including acquisition of private lands for development as wildlife habitat, to fully mitigate impacts to the refuge. The preferred alternative is the Mud and Jim Lakes Bypass—Lower Joint-use Pool Alternative. This is the least costly alternative that mitigates for all adverse impacts without requiring any acquisition of private land.

As part of the NEPA process, public scoping meetings were held during January 1994. The draft EIS was completed and sent out for agency and public review and comment in April 1996. Comments were received and replies are incorporated into the FEIS.

Dated: October 7, 1997.

Neil Steesman,

Regional Director.

[FR Doc. 97–27230 Filed 10–14–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 29, 1997, a proposed De Minimis Consent Decree ("proposed Decree") in *United States and State of Indiana* v. *A. H. Choitz, et al.*, Civil Action No. 1:97–CV–362, was lodged with the United States District Court for the Northern District of Indiana (Fort Wayne Division).

In this action the United States seeks relief under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 & 9607, for cost recovery and abatement of hazardous substances relating to the Wayne Reclamation and Recycling Site (Site), located near Columbia City, Indiana.

The proposed Decree would resolve the liability of over 800 *de minimis* parties. These parties were customers of a now-defunct company known as Wayne Reclamation, which operated the Site in the 1970's and 1980's and which transported and disposed of a wide variety of substances, including waste oil. Each of the proposed *de minimis* settlers allegedly arranged with Wayne Reclamation for the disposal of minimal amounts of hazardous substances which ultimately were disposed of at the Site.

Under the proposed Decree, each of these 800-plus *de minimis* settlers

receives contribution protection for response costs incurred and to be incurred in cleaning up the Site, as well as covenants not to sue from the United States under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"). The State of Indiana, co-plaintiff in this case, gives similar covenants to the *de minimis* settlers. Also joining the proposed Decree are private parties ("the Large Volume PRPs") who are obligated under a prior consent decree with the United States and State of Indiana to design, construct, and maintain the remedial action that EPA selected for the Site. Under the proposed Decree, the Large Volume PRSs relinquish their contribution claims against all the *de minimis* settlers and against any other person not already sued in contribution for costs incurred in connection with this Site.

In return for these covenants, the *de minimis* settlers shall pay, in total, approximately $5.4 million to the large Volume PRPs. In addition, the United States and State of Indiana shall receive from the Large Volume PRPs approximately $203,000, in reimbursement of past costs and in resolution of a natural resource damages claim.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposing Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, and should refer to *United States and State of Indiana* v. *A.H. Choitz, et al.*, Civil Action No. 1:97–CV–362, D.J. Ref. 90–11–3–603A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed Decree may be examined at the Office of the United States Attorney, 3128 Federal Building, 1300 S. Harrison Street, Fort Wayne, Indiana 46802, at the Office of Regional Counsel, U.S. EPA Region 5, 200 West Adams, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892.

A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the entire Decree, including all signature pages and attachments, please enclose a check in the amount of $126.25 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of only the text of the proposed Decree, a stipulation related to the proposed Decree, and the signature page of the United States, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27205 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a second proposed Consent Decree in *United States* v. *H. Brown Co., et al.*, Civil Action No. 1:96 CV–949 (W.D. Mich.), entered into by the United States and seven (7) parties, was lodged on September 30, 1997, with the United States District Court for the Western District of Michigan. The proposed Second Consent Decree resolves certain claims of the United States for past and future costs under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, with respect to the H. Brown Superfund Site ("Site") in Walker, Michigan. Under the terms of the proposed Consent Decree, the seven Settling Defendants will pay a total of $100,000 to the United States.

The Department of Justice will receive comments relating to the proposed Second Consent Decree During my tenure at the Board of Immigration Appeals, the attorney-advisor drafted legal opinions for the adjudicating body which addressed issues of law and fact appealed to the Board by the Immigration Service and should refer to *United States* v. *H. Brown Co., et al.*, D.J. Ref. No. 90–11–2–835A. The proposed Second Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, Grand Rapids, Michigan; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $9.25 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27211 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *MacGillis & Gibbs Co., and Soo Line Railroad Co.*, Civil Action No. 4:94–CV–848 (D. Minn.) entered into by the United States and the Soo Line Railroad Co. ("Soo Line"), was lodged on September 23, 1997, with the United States District Court for the District of Minnesota. The proposed Consent Decree resolves certain claims of the United States under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, with respect to the MacGillis & Gibbs Co./ Bell Lumber & Pole Co. Superfund Site ("Site") in New Brighton, Ramsey County, Minnesota.

Under the terms of the proposed Consent Decree, Soo Line agrees, *inter alia*, to pay the United States $75,000 in past response costs incurred in connection with the MacGillis & Gibbs portion of the Site, and $10,000 for federal Natural Resource Damages. In addition, Soo Line agrees to provide access to U.S. EPA to its property at the Site for purposes of implementing response actions, and agrees to record land use restrictions to ensure the protectiveness of the remedial measures at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *MacGillis & Gibbs Co. and Soo Line Railroad Co.*, D.J. Ref. No. 90–11–2–904. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Minnesota, 234 United States Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree with two appendices may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to DJ#90–11–2–904, and enclose a check in the amount of $8.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27208 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *United States of America* v. *Pettinaro Construction Co., Inc., and Linder & Co., Inc.*, No. 97–123 LON (D. Del.), was lodged with the United States District Court for the District of Delaware on September 25, 1997.

The proposed consent decree would resolve the United States allegations in this enforcement action that the Defendants have violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), by clearing, grading, filing and/or excavating approximately 18 acres of wetlands in Bethany Bay Subdivision, Sussex County, Delaware, without a permit under Section 404 of the CWA.

The proposed consent decree would require the Defendants to: (1) Restore or create mitigation wetlands for all wetland areas impacted by the illegal discharges; (2) pay a $60, 000 civil penalty; and (3) record the consent decree in the local land records to assure that certain wetland areas remain undisturbed.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Patricia Ross McCubbin, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986; and should refer to *United States* v. *Pettinaro Construction Co., Inc.*, DJ Reference No. 90–5–1–1–4302.

The proposed consent decree may be examined at either the Clerk's Office, United States District Court, District of Delaware, 844 King Street, Wilmington, Delaware 19801 (telephone number: 302–573–6170), or at the Consent Decree Library, 1120 G Street, NW., 4th Floor Washington, DC 20005 (telephone number: 202–624–0892). Requests for a copy of the consent decree may be mailed to the Consent Decree Library at the above address, and must include a check in the amount of $12.75.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–27250 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on September 29, 1997, a proposed consent decree in *United States* v. *John Reardon and Paul Reardon*, Civil Action No. 97–12197–T, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants John Reardon and Paul Reardon relating to the Norwood PCB Superfund Site ("Site") in Norwood, Massachusetts. The Complaint alleges that the Reardons are liable under Sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

Pursuant to the Consent Decree, the Reardons will provide access to the portion of the Site under their ownership and control, and will impose institutional controls as their property to ensure the effectiveness of the remedial action at the Site. The United States will also recover response costs in the amount of $25,000 pursuant to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *John Reardon and Paul Reardon*, Civil Action No. 97–12197–T, D.J. Ref. 90–11–2–372B.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109, at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $18.25 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27209 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended, and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *RohmTech, Inc.*, Civil Action No. 97CV12200 EFH, was lodged on September 30, 1997, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the United State's claims against RohmTech at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* and the Resources Conservation and Recovery Act, 42 U.S.C. § 6973.

RohmTech is the successor to a former owner and operator of the Site. The consent decree will also resolve the claims of the Commonwealth of Massachusetts ("Commonwealth") in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E.

Under the proposed consent decree, RohmTech will make an immediate payment to the United States and the Commonwealth in the amount of $4,000,000, plus interest. In addition, the United States and the Commonwealth will receive a percentage of gross proceeds from related insurance litigation and litigation against another potentially responsible party. Of the total payments, $2,100,000 will be paid to the United States and the Commonwealth in connection with claims for natural resource damages at the Site. The remaining money will be paid to the United States and the Commonwealth as reimbursement for response costs incurred and to be incurred at the Site. The amount of the payments to be made by RohmTech reflect the company's financial condition.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *RohmTech, Inc.*, DOJ Ref. Number 90–11–2–340. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973.

The proposed consent decree may be examined at the Environmental Protection Agency, One Congress Street, Boston, Massachusetts (contact Joanna Jerison at 617–565–3350) and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $12.50 (50 pages at 25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27206 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To The Comprehensive Environmental Response Compensation and Liability Act of 1980, As Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Taylor, et al.*, Civil Action No. 97CV12201EFH, was lodged on September 30, 1997, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the United States's claims against several potentially responsible parties ("Settling Defendants") at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* The consent decree will also resolve the claims of the Commonwealth of Massachusetts ("Commonwealth") in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Scott D. Taylor, individually; the Estate of Roland E. Derby, Jr.; Scott D. Taylor in his capacity as Administrator of the Estate of Roland E. Derby, Jr.; the Estate of Roland E. Derby, Sr., and Edward M. Lynch, Jr. in his capacity as Executor of the Estate of Roland E. Derby, Sr. The consent decree includes a covenant not to sue by the United States under, *inter alia*, Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 (including claims for natural resource damages), and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

Under the proposed consent decree, Scott D. Taylor will make a payment to the United States and the Commonwealth in the amount of $565,000 over a three-year period, plus interest. Of the $565,000 total, $424,000 will be paid the United States (EPA) as reimbursement for response costs incurred in connection with the Site, $106,000 will be paid to the Commonwealth as reimbursement for response costs incurred in connection with the Site, and $35,000 will be paid to the United States and the Commonwealth in connection with claims for natural resource damages. In addition, if the gross insurance proceeds recovered by the Settling Defendants in connection with the Site exceed $425,000, Settling Defendants shall pay to the United States and the Commonwealth 80% of the amount in excess of $425,000.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Taylor, et al.*, DOJ Ref. Number 90–11–2–340B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973.

The proposed consent decree may be examined at the Environmental Protection Agency, One Congress Street, Boston, Massachusetts (contact Joanna Jerison at 617–565–3350) and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27207 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Washington Central Railroad Company, Inc., et al.*, No. CV97–1400–ST (D. Oregon), was lodged on September 30, 1997, with the United States District Court for the District of Oregon. With regard to the Defendants, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended*, 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Environmental Pacific Corporation Site located in Amity, Yamill County, Oregon, approximately 42 miles southwest of Portland. The Consent Decree provides that the Settling Defendants will reimburse the United States a total of $83,953.68 for past costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Washington Central Railroad Company, Inc., et al.*, DOJ Refs. # 90–11–2–1080 and # 90–11–3–1418.

The proposed Consent Decree may be examined at the office of the United States Attorney, 888 SW 5th Avenue, Portland, Oregon 97204; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 97–27210 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

International Competitiveness Advisory Committee

Notice of Establishment of the International Competitiveness Advisory Committee

AGENCY: The Department of Justice.

ACTION: Notice of establishment of the International Competitiveness Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. II (1972), 41 CFR 101–6.1001–1.1035, and Executive Order 12838, the Antitrust Division of the Department of Justice, with the concurrence of the Attorney General, is establishing the International Competitiveness Advisory Committee. The Committee will examine and provide advice to the Department of Justice regarding issues relating to international trade and competitiveness.

Specifically, the Committee will provide advice regarding how best to forge a consensus on the need for aggressive action to eliminate multinational anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to coordinate United States' trade and competition policy to achieve their common objectives.

MEMBERSHIP: The Committee shall be composed of 12 representatives from both the public and private sectors with recognized expertise in the areas of international antitrust and/or trade policy. Criteria to be used in selecting members shall include: (1) a demonstrated background and interest in the antitrust issues to be addressed, (2) a balance in point of view or professional perspective, (3) geographical balance, and (4) nondiscrimination on the basis of race, color, national origin, religion, age, or sexual orientation.

The International Competitiveness Advisory Committee will function solely as an advisory board in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

CONTACT PERSON: Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Room 10024 Patrick Henry Building, 601 D Street NW., Washington, DC 20530; (202) 514–2464.

Joel I. Klein,

Assistant Attorney General, Antitrust Division.

[FR Doc. 97–27204 Filed 10–14–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 9, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to O'Malley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, POWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 80–83.

OMB Number: 1210–0064 (reinstatement).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 25.

Estimated Time Per Respondent: 2 minutes.

Total Burden Hours: 1.

Total Annualized capital/startup costs. 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This class exemption exempts from the prohibited transaction provisions of ERISA, certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 75–1.

OMB Number: 1210–0092 (reinstatement).

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 750.

Estimated Time Per Respondent: .08 seconds.

Total Burden Hours: 1.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This class exemption from the prohibited transaction of ERISA permits banks, registered broker-dealers and reporting dealers in Government Securities who are parties in interest to engage in certain kinds of securities transaction with plans.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 88–59.

OMB Number: 1210–0095 (reinstatement).

Frequency: On occasion.

Affected Public: Indivuduals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 185.

Estimated Time Per Respondent: .32 seconds.

Total Burden Hours: 1.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This class exemption exempts from the prohibited transaction provisions of ERISA, certain transactions involving residential financing arrangements.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–27251 Filed 10–14–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

Time and Date: Friday, October 31, 1997, 9:30 a.m. to 3:00 p.m.

Place: The meeting site will be: The Grand Ballroom, Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, VA 20171.

Status: The meeting will be open to the public from 9:30 a.m. to 3:00 p.m., except that the meeting will be closed to the public from 11:00 a.m. to 12:00 p.m. for the purposes of considering internal personnel rules and practices and to allow for discussion of information of a personal nature during the consideration of hiring staff. Accordingly, it has been determined that this portion of the meeting will concern matters within sections 552b(c)(2) and (6) of Title 5, United States Code, and will be duly closed to public participation.

Notice: At its third public meeting, the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will hear presentations from the National Research Council and the Advisory Commission on Intergovernmental Relations; receive an update from the Research Subcommittee; discuss the workplan; consider any nominee(s) for executive director; discuss the rules of operation; and review rules for upcoming public comment.

Contact Persons: For further information, contact Amy Ricketts at (202) 523–8217 or write to 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20002.

Kay C. James,

Chair.

[FR Doc. 97–27226 Filed 10–14–97; 8:45 am]

BILLING CODE 6820–ET–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Public Hearing and Call for Public Comment

ACTION: Notice of public hearing and call for comment.

SUMMARY: The National Indian Gaming Commission (NIGC) announces a public hearing on the effect of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations on Internet gambling conducted by Indian Tribes.

DATE: The public hearing will be held on Friday, November 14, from 9:00 a.m. to 4:00 p.m. in Washington, D.C. An open forum for public participation will be held from 2:00 p.m. until 4:00 p.m.

ADDRESS: The public hearing will be held at the Department of Interior, Main Auditorium, 1849 C Street, Washington, DC.

WRITTEN SUBMISSIONS: Interested parties are invited to submit comments and materials to the NIGC. Such submissions should be sent to Tina Bloomquist, NIGC, 1441 L Street, NW, Suite 9100, Washington, DC 20005. The comment period closes December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Tina Bloomquist, NIGC (see **ADDRESS** section) at (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Public Hearing

The NIGC will hear presentations from invited panelists representing Federal, State, Tribal and Corporate interests. There will be an open forum session of approximately two hours for the public to address the NIGC on issues relevant to the topic. Anyone wishing to make an oral presentation at the hearing should submit a request, in writing, to Tina Bloomquist at the NIGC address listed above, no later than October 30, 1997. Open forum participants should provide their name, organization (if any), address and phone number. Oral presentations will be limited to five minutes per speaker. Witnesses and panelists should prepare their remarks in writing and submit those remarks to the NIGC prior to the hearing. Written remarks should be limited to 5 pages, single spaced. Witnesses and panelists should bring 10 copies of their written remarks to the hearing. Such remarks will become part of the public comment materials avaialble for inspection.

II. Written Submissions

Comments may be submitted by facsimile transmission to Tina Bloomquist at (202) 632–7066. Comments may be filed before, during or after the hearing, but no later than December 5, 1997.

Written comments should include the following information:

1. Name and affiliation of the individual responding;
2. If applicable, information on the submitter's organization, including the type of organization (e.g., business, trade group, university, or non-profit organization) and the respondent's position.

III. Background

The NIGC was created by the Indian Gaming Regulatory Act of 1988. 25 U.S.C. § 2701 *et seq.* The NIGC is responsible for the regulation of most forms of gaming on Indian lands. Several Indian tribes currently offer gambling opportunities over the Internet, and others have expressed interest in doing so. A significant amount of controversy exists over the legality of the use of the Internet by Indian Tribes as a means of offering gaming. Of particular note is the requirement of the IGRA that gaming by Indian Tribes be conducted "on Indian lands." 25 U.S.C. § 2710(b)(1), § 2710(d)(1) and 25 U.S.C. § 2703(4).

Particpants in the hearing, and those submitting written comments are asked to consider the following questions:

1. How does the requirement under IGRA that tribal gaming be conducted "on Indian lands" affect the ability of the tribes to engage legally in Internet gambling?
2. What is the effect of other federal gambling statutes on tribal Internet gambling?
3. What is the scope of available Internet gambling offered by Indian tribes today?
4. What, if any, legislative or regulatory changes are required to clarify the effect of the IGRA on tribal Internet gambling?
5. What are the challenges implicit in regulating Internet gaming on Indian lands?

Philip N. Hogen,

Commissioner, National Indian Gaming Commission.

[FR Doc. 97–27274 Filed 10–14–97; 8:45 am]

BILLING CODE 7567–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Submission for OMB Review; Title of Collection: NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities

AGENCY: National Science Foundation.

ACTION: Notice.

1. SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment, the first was published on July 31, 1997, in the **Federal Register** at 62 FR 147, 41093–41094. We received comments from two sources and after due consideration sent replies to the commenters. NSF is forwarding the proposed renewal submission, the comments with our responses, to OMB for clearance simultaneously with the publication of this second notice

2. DATES: The Office of Management and Budget (OMB) should receive written comments on or before November 14, 1997.

3. ADDRESSES: Submit comments to Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, N.W, Room 10235, Washington, D.C. 20503. Please include the current OMB Control Number 3145–0101 with your comments.

4. SUPPLEMENTARY INFORMATION:

(a) *Abstract.* In 1995 OMB approved both the 1996 and 1998 survey cycles of the NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities (OMB No. 3145–0101). The survey collects information on the science and engineering (S&E) research facilities at the nation's higher education institutions. The minor modifications to the approved 1998 questionnaire make the data of more use to Federal agencies and policy makers.

(b) Proposed Modifications to the OMB-Approved 1998 Survey

◆ *Sample size.* As requested by NIH, NSF, and OMB, we are requesting that the 1998 survey sample be increased from 315 to 365 to allow analyses by Carnegie classification, by minority serving institutions and institutions within the EPSCoR States for policy makers.

◆ *Items to be modified in the 1998 survey.*

√ *GSF* (gross square feet) in addition to the currently collected NASF (net assignable square feet). Institutions already have the GSF of a project to calculate the NASF of that project.

√ *Proportion of repair/renovation or new construction project cost,* in addition to the currently collected repair/renovation or new construction cost as a total, including non-fixed equipment over $1 million. This data are readily available to the institutions and should add very little burden.

√ *Percentage of institutional funds,* in addition to the currently collected proportion of construction and repair/renovation cost attributable to institutional funds. The question will be posed in two parts: one asking if the institution has ready access to these data; and second, if data are available, asking the institution to supply that data. This way of posing the question assures minimal burden to the respondent.

√ *Percentage of total animal research* NASF assigned to levels of restricted-use laboratories, in addition to the total NASF or animal laboratories. This is information readily available to the institutions and would be of minimal burden.

(c) *Item to be dropped from the 1998 survey.* We plan to omit the status of institutions relative to the cap on tax-exempt bonds (modification request by NIH and NSF).

5. Use of the Information

The information from this survey will be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the S&E establishment, and State agencies that funds universities and colleges. The survey will provide updated data on the status of and trends in scientific and engineering research facilities to help policy makers with decisions about the health of academic S&E research, funding, regulations, and reporting guidelines.

Specifically, data will be used in:

◆ A separate report of the findings for Congress;

◆ A special report for NIH on the Status of Biomedical Research Facilities;

◆ Other NSF compilations such as National Patterns of R&D Resources and Science and Engineering Indicators;

◆ Special reports for other Federal agencies on an as-needed basis; and

◆ A public release file of collected data in aggregate form made available to researchers on the World Wide Web

6. Expected Respondents

The sample size for the 1998 survey is planned to be increased from 315 to 365 of the nation's higher education institutions, selected to provide nationally representative data for both undergraduate and graduate degree-granting schools. The respondents will have the option to complete the survey on disk. With the improvements in the computer-aid survey 60% of the institutions are expected to respond through this method in 1998.

7. Burden on the Public

The average completion time for the survey by academic institutions was reduced (from 43 to 24 hours) between 1988 and 1994. In 1996, with the continued improvements in institutional databases and the introduction of the option to complete the survey on disk, completion time was further reduced by one hour, bringing the 1996 average completion time for the survey by academic institutions to 23 hours.

Much of the data noted in the proposed modification are readily available to the respondents. It is expected that the proposed modifications to the questionnaire will cause little or no change in burden

hours. With an estimated 60% of the institutions expected to respond through this method in 1998, which will make possible a substantial reduction in response burden over 1996 (when 40% responded electronically). However, with the addition of 50 institutions the overall response time is expected to remain 24 hours.

Throughout the years as the survey instrument and data collection techniques have improved the response rate has improved and the average burden on the institutions declined.

The Burden estimates are as follows:

Fiscal year	Number of institutions	Hours to respond
1992	303	30.
1994	309	24.
1996	307	23.
1998	357	24 est.

Dated: October 7, 1997.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 97–27203 Filed 10–10–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket NO. 50–382]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy Operations Inc., (the licensee) for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would change Waterford 3 Technical Specifications 3.3.3.7.3 (TSs) and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system. A change to the TS Basis 3/4.3.3.7 has been included to support this change. This change to the TSs is necessary due to a potential unreviewed safety question identified during final review prior to installation of a new broad range gas detection system approved by the Nuclear Regulatory Commission Staff on August 19, 1997 (Amendment 133). In effect, Entergy Operations is requesting that the TSs and associated Basis for the broad range gas detection system that were in effect prior to Amendment 133 be retained instead of implementing the approved Amendment 133.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The broad range gas detection system has no effect on the accidents analyzed in Chapter 15 of the Final Safety Analysis Report. The habitability of the control room will be unchanged by use of the currently installed monitoring system and this change to the Technical Specifications. Since this proposed change will make operation of the facility the same as before Amendment 133, the probability and consequences of an accident associated with this change have been previously evaluated.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change in itself does not change the design or configuration of the plant. Since this proposed change will make operation of the facility the same as it was before Amendment 133, no new or different type of accident from any accident previously evaluated will be created.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The broad range gas detection system has no effect on a margin of safety as defined by Section 2 of the Technical Specifications. The habitability of the control room will be unchanged from the configuration of the currently installed detection system and this change to the Technical Specifications. The margin of safety remains unchanged from the original licensing basis of the plant.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted.

In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W. Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)–(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 7, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27237 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Office of Nuclear Reactor Regulation; Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Notice of Public Meeting to Receive Comment on Post-Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission has scheduled a public meeting to receive comments on the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Maine Yankee Atomic Power Station (Maine Yankee) located in Lincoln County, Maine. The meeting will be held on November 6, 1997, beginning at 7:00 p.m. at the Wiscasset Senior High School in Wiscasset, Maine. The purpose of this informational meeting is

to (1) describe the licensee's planned activities, (2) describe the regulatory process for decommissioning, (3) hear public comments regarding health and safety, and protection of the environment during decommissioning, and (4) provide an opportunity for State and local representatives to participate. The licensee will discuss their plans to decommission the Maine Yankee facility. The NRC will discuss the PSDAR and the license termination process, and describe the program for future plant oversight. The public will have an opportunity to comment on the PSDAR and the meeting will be transcribed by a court reporter. Notice of receipt of and availability for public comment of the Maine Yankee PSDAR was published in the **Federal Register** on September 19, 1997 (62 FR 49261). Prior to the public meeting, comments regarding the Maine Yankee PSDAR may be submitted in writing to Mr. Michael Webb, Mail Stop 11–B–20, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of October 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27236 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 91–18, Revision 1 to notify all holders of operating licenses for nuclear power reactors and non-power reactors, including those power reactor licensees who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and non-power reactor licensees whose licenses no longer authorize operation, of the issuance of a revised section of Part 9900, "Technical Guidance," of the NRC inspection manual. This generic letter is for information only; no specific action or written response is required. Conformance with the guidance provided in the generic letter is voluntary.

This generic letter is a "rule" for purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff has received confirmation from the Office of Management and Budget that the generic letter is not a "major rule".

The generic letter is available in the NRC Public Document Room under accession number 9710060322.

DATES: The generic letter was issued on October 8, 1997.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Eileen M. McKenna at (301) 415–2189.

SUPPLEMENTARY INFORMATION: The revised section of Part 9900 of the NRC inspection manual is entitled "Resolution of Degraded and Nonconforming Conditions." The revisions to this section more explicitly discuss the role of the 10 CFR 50.59 evaluation process in the resolution of degraded and nonconforming conditions. In particular, a change in NRC staff guidance is addressed which states that the need to obtain NRC approval for the final resolution of a degraded or nonconforming condition does not affect the licensee's authority to continue facility operation (or effect a restart from a shutdown condition), provided that necessary equipment is operable and the degraded equipment is not in conflict with any technical specification. Nevertheless, it is noted that the NRC will take enforcement action if it determines that licensee corrective action (which may include the submittal of a license amendment request) is not prompt, or that operability determinations are not sound. Enforcement action may also be taken for the circumstances that led to the existence of the degraded or nonconforming condition.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27238 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 5, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, November 5, 1996—12:00 noon until 1:30 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS and the status of appointment of new members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 8, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–27239 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on November 4–5, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 4, 1997—8:30 a.m. until the conclusion of business.

Wednesday, November 5, 1997—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the NRC Safety Research Program, industry research activities, and related matters, and gather information for preparing a draft annual report to Congress. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, Electric Power Research Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 8, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–27240 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 13, 20, 27, and November 3, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 13

Tuesday, October 14

10:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)

1:00 p.m.
Briefing on Severe Accident Master Integration Plan (Public Meeting) (Contact: Charles Ader, 301–415–5622)

Wednesday, October 15

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of October 20—Tentative

There are no meetings the week of October 20.

Week of October 27—Tentative

Wednesday, October 29

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

2:00 p.m.
Briefing on Site Decommissioning Plan (SDMP) (Public Meeting)

Week of November 3

Tuesday, November 4

2:00 p.m.
Meeting with Commonwealth Edison (Public Meeting)

Wednesday, November 5

9:30 a.m.
Briefing on Staff's Plans for 50.59 Regulatory Process Improvements (Public Meeting)

11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call: (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: October 10, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–27474 Filed 10–10–97; 3:05 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide and Standard Review Plan Section; Issuance, Availability, and Notice of Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and workshop.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment drafts of a regulatory guide and a Standard Review Plan Section. These issuances follow the Commission's August 16, 1995 (60 FR 42622) policy statement on the "Use of PRA Methods in Nuclear Regulatory

Activities." In June 1997, the NRC published for public comment (62 FR 34321) four draft guides, 3 standard review plans and a NUREG series document on the use of PRA in nuclear power reactor licensing. The NRC is developing guidance for power reactor licensees on acceptable methods for using probabilistic risk assessment (PRA) information and insights in support of plant-specific applications to change the current licensing basis (CLB) for inservice inspection of piping, known as risk-informed inservice inspection (RI–ISI) programs. The use of such PRA information and guidance will be voluntary. To facilitate comment, the Commission will conduct a workshop to explain the draft documents and answer questions. Section VI of this notice provides additional information on the scope, purpose and topics for discussion at the workshop.

DATES: The workshop will be held on November 19–20, 1997, Registration begins on November 18 at 3:00 p.m. The comment period expires January 13, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Mail written comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please (1) attach a diskette containing your comments, in either ASC11 text or Wordperfect format (Version 5.1 or 6.1), (2) or submit your comments electronically via the NRC Electronic Bulletin Board on FedWorld or the NRC's interactive rulemaking Website.

Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Requests for free single copies of draft regulatory guide and standard review plan, to the extent of supply, may be made in writing to the Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, or by fax to (301) 415–5272. Copies of draft regulatory guide and the standard review plan section are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L street N.W. (Lower Level), Washington, D.C. 20555–0001. Electronic copies of the draft document are also accessible on the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site includes a facility to upload comments as files (any format), if your web browser supports the function.

For more information on the NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, D.C. 20555–0001, telephone (301) 415–5780; e-mail axd3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail cag@nrc.gov.

ADDRESSES: The public workshop will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland; telephone (301) 897–9400.

FOR FURTHER INFORMATION CONTACT: Jack Guttmann, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–7732, E-mail jxg@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1995, the Commission published in the **Federal Register** (60 FR 42622) a final policy statement on the use of probabilistic risk assessment methods in nuclear regulatory activities. The policy statement included the following regarding NRC's expanded use of PRA.

1. The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

2. PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, regulatory guides, license commitments, and staff practices. Where appropriate, PRA should be used to support proposals for additional regulatory requirements in accordance with 10 CFR 50.109 (backfit rule). Appropriate procedures for including PRA in the process for changing regulatory requirements should be developed and followed. It is, of course, understood that the intent of this policy is that existing rules and regulations shall be complied with unless these rules and regulations are revised.

3. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

4. The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgments on the need for proposing and backfitting new generic requirements on nuclear power plant licensees.

It was the Commission's intent that implementation of this policy statement would improve the regulatory process in three areas:

1. Enhancement of safety decisionmaking by the use of PRA insights,
2. More efficient use of agency resources, and
3. Reduction in unnecessary burdens on licensees.

To help implement the Commission's PRA Policy Statement, draft regulatory guides and Standard Review Plans (SRP) were developed in the areas of:

—General guidance,
—Inservice inspection (ISI),
—Inservice testing (IST),
—Technical specification (TS), and
—Graded quality assurance (GQA).

The draft regulatory guides provide a proposed acceptable approach for power reactor licensees to prepare and submit applications for plant-specific changes to the current licensing basis that utilize risk information. The draft standard review plans provide guidance to the NRC staff on the review of such applications. On June 25, 1997, all but the ISI draft regulatory guide and SRP were published for public comment (62 FR 34321).

This notice specifically seeks public comment on Draft Regulatory Guide DG–1063, "An Approach for Plant-Specific Decisionmaking: Inservice Inspection of Piping," and the accompanying draft Standard Review Plan Section 3.9.8, "Standard Review Plan for the Review of Risk-Informed Inservice Inspection of Piping." These documents are discussed in more detail below.

The draft guide and SRP are being developed to provide guidance to power reactor licensees and NRC staff reviewers on integrating risk information to support requests for changes in a plant's CLB for inservice inspection of piping. The regulatory guide describes a means by which licensees can propose plant-specific CLB changes under 10 CFR 50.55a(a)(3)(I). Adopting the approach in this regulatory guide would be voluntary. Licensees submitting applications for changes to their CLB may use this approach or an equivalent approach. To encourage the use of risk

information in inservice inspection programs of piping, the staff intends to give priority to applications for burden reduction that use risk information as a supplement to traditional engineering analyses, consistent with the intent of the Commission's policy. All applications that improve safety will continue to receive high priority.

DG–1061, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis," and the draft SRP of Chapter 19 were developed to provide an overall framework and guidance that is applicable to any proposed CLB change when risk insights are used to support the change (62 FR 34321). The application-specific regulatory guide (RG) and SRP for ISI would build upon and supplement the general guidance contained in DG–1061 and provide additional guidance specific to inservice inspection programs of piping.

The guidance provided in these documents is designed to encourage licensees to use risk information by defining an acceptable framework for the use and integration of risk information on a plant-specific basis, while promoting consistency in PRA applications. It is expected that the long-term use of risk information in plant-specific licensing actions will result in improved safety by focusing attention on the more risk-significant aspects of plant design and operation. The draft guidance highlights to licensees acceptable methods and scope of analysis required to support the proposed changes to the plant's CLB.

II. Policy Issues

On May 15, 1996, the Commission requested the staff to recommend resolution of the following four policy issues associated with risk-informed changes to a plant's CLB:

- The role of performance-based regulation,
- Plant-specific application of safety goals,
- Risk neutral vs. increases in risk,
- Implementation of changes to risk-informed IST and ISI requirements.

These issues are applicable to RI–ISI programs. Public comments on these issues were requested in the June 25, 1997 FRN (62 FR 34321) under the heading, "Use of PRA in Plant Specific Reactor Regulatory Activities: Proposed Regulatory Guides, Standard Review Plan Sections, and Supporting NUREG." Comments provided on these issues in response to the June 25 FRN on related guides will be used by the staff in finalizing this guide as well. Comments on these issues as they specifically apply to this guide are also requested.

III. Structure, Guidelines and Rationale for RG/SRP

The approach described in the DG–1063 and the draft SRP has four basic steps. These are:

—Define the proposed change;
—Perform an integrated engineering analysis (which includes both traditional engineering and risk analysis) and use an integrated decision process;
—Perform monitoring and feedback to verify assumptions and analysis; and
—Document and submit proposed change.

Five fundamental safety principles are described that should be met in each application for a change in the CLB. These principles are.

—The proposed change meets the current regulation. This principle applies unless the proposed change is explicitly related to a requested exemption or rule change (i.e., a 10 CFR 50.12 "specific exemption" or a 10 CFR 2.802 "petition for rulemaking");
—Defense-in-depth is maintained;
—Sufficient safety margins are maintained;
—Proposed increases in risk, and their cumulative effect, are small and do not cause the NRC safety goals to be exceeded;
—Performance-based implementation and monitoring strategies are proposed that address uncertainties in analysis models and data and provide for timely feedback and corrective action.

These principles represent fundamental safety practices that the staff believes must be retained in any change to a plant's CLB to maintain reasonable assurance that there is no undue risk to public health and safety. Each of these principles is to be considered in the analysis and integrated decisionmaking process.

The guidelines for assessing risk proposed in the draft guide and draft SRP are derived from the Commission's safety goal quantitative health objectives (QHOs). Specifically, the subsidiary objectives of core damage frequency (CDF) and large early release frequency (LERF) are used as the measures of risk against which changes in the CLB will be assessed, in lieu of the QHOs themselves, which require level 3 PRA information (offsite health effects). These measures were chosen to simplify the scope of PRA analysis needed, to avoid the large uncertainties associated with level 3 PRA analysis, and to be consistent with previous Commission direction to decouple siting from plant design. These values are described in the June 25, 1997 **Federal Register** Notice (62 FR 34321) on "Use of PRA in Plant Specific Reactor Regulatory Activities: Proposed Regulatory Guides, Standard Review Plan Sections, and Supporting NUREG."

IV. Comments

The staff is soliciting comments related to the guidance described in the draft regulatory guide DG–1063 and SRP Section 3.9.8. Comments submitted by the readers of this FRN will help ensure that these draft documents have appropriate scope, depth, quality, and effectiveness. Alternative views, concerns, clarifications, and corrections expressed in public comments will be considered in developing the final documents.

V. Workshop

The Commission will conduct a workshop on November 19 and 20, 1997, to discuss and explain the material contained in the draft guide and SRP, and to answer questions and receive comments and feedback on the proposed documents. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will describe each document, its basis, and solicit comment and feedback on its completeness, correctness and usefulness. Since these documents cover a wide range of technical areas, many topics will be discussed. Listed below are topics on which discussion and feedback are sought at the workshop:

(A) Is the level of detail in the guidance contained in the proposed regulatory guide and SRP clear and sufficient, or is more detailed guidance necessary? What level of detail is needed.

(B) Is it acceptable to use qualitative information (e.g., not quantifying the change in risk—ΔCDF and ΔLERF) to propose changes in ISI programs? If so, does DG–1063 provide adequate guidance in this regard? Can qualitative assessments be used to identify and categorize piping segments as high, medium and low safety significant? How? What are the limitations of such an approach?

(C) Under the risk-informed approach, what is the appropriate size of the sample of welds or piping segment areas that should be inspected? What should the criteria be for selecting the sample size?

(D) How should welds or piping segment areas in the inspection sample be selected for inspection: randomly,

those most likely to experience degradation, or some combination of random and possible degradation? What would be the basis for the recommended selection process?

(E) Once selected, should the same welds or piping segment areas be inspected at each inspection interval or should different welds or piping segment areas be included in the sample? What would be the basis?

(F) DG–1063 proposes a method for meeting the criteria for acceptable safety and quality, as addressed in 10 CFR 50.55a(a)(3)(I). That method applies leak frequency target goals to maintain piping performance levels at or improved over the existing performance observed when implementing ASME Section XI requirements. Are there other acceptable risk-informed means by which to meet the criteria in 10 CFR 50.55a(a)(3)(I)?

(G) Should the scope of DG–1063 permit licensees to propose ISI changes to selected systems, in lieu of assessing the entire piping in the plant? For example, would it be acceptable for a licensee to limit its analysis to Class 1 piping (reactor coolant system piping) and not consider other piping in the plant? Such an analysis would not provide information required for categorizing piping in the plant and thereby grading the inspection based on plant risk. It would also discourage the use of risk-insights (e.g., PRA) to identify risk-significant piping within the plant. How can the concept of assessing risk in an integrated fashion be maintained if the scope were limited to one or a limited number of systems, such as Class 1 piping. What is gained by analyzing all the systems versus only selected systems? What is lost by minimizing the scope?

(H) The decision metrics described in Attachment 2 to DG–1063 identify a 2-by-2 matrix for identifying a graded approach to inspection based on risk and failure potential. Piping segments categorized as high-safety-significant and high-failure-potential receive more inspections than segments categorized as high-safety-significant and low-failure-potential. The number of inspections for the high-safety-significant and low-failure-potential segments is based on meeting target leak frequency goals and incorporates uncertainties in the probability of detection. What other methods are available to provide a comparable level of quality and safety? What are the technical bases for those other methods?

(I) How should the time dependence of degradation mechanisms be accounted for in selecting inspection intervals and categorizing the safety significance of pipe segments?

(J) On what basis could the requirement for ISI be eliminated? For example, if a detailed engineering analysis identifies a Class 1 or 2 piping segment as low-safety-significant and low-failure-potential, is it acceptable to eliminate the requirement for ISI or should a Class 1 or a 2 pipe segment be considered part of the defense-in-depth consideration and be required to have some level of inspection regardless of its categorization as low-safety-significant and low-failure potential? If yes, why? If not, why not?

(K) Are data bases available on degradation mechanisms and consequences of piping failures? Is data available to identify the secondary effects that can result from a pipe break, such as high-energy pipe whip damaging other piping and components in the vicinity of the break? What are the industry's plans for developing and maintaining an up-to-date data base on plant piping performance? Should a commitment to develop and maintain such a data base be required for a RI–ISI program? How could it be ensured that the data base is maintained?

(L) Does the application of the Perdue-Abramson model (DG–1063, Attachment 4), with the use of the decision metrics and leak frequency goals (DG–1063, Attachment 2) provide an alternative acceptable level of quality and safety as required by 10 CFR 50.55a(a)(3)(I)? Alternatively, should there be a leak frequency goal independent of core damage frequency goal, as a measure of defense in depth?

(M) Is the guidance proposed by the staff for finding a fracture mechanics computer model acceptable for use in RI–ISI programs clear and adequate? If not, what is missing?

(N) Is the guidance on risk categorization clear and sufficient, or is additional guidance needed? What additional guidance is needed?

(O) Table A5.1, in DG–1063, identifies a proposed checklist that could assist in identifying potential locations for various degradation mechanisms in a pipe. Is this checklist complete? What additional information could enhance the usefulness of such a check list?

Workshop Meeting Information

A 2-day workshop will be held to obtain public comment on the subject draft Regulatory Guide (DG–1063) and the accompanying draft standard review plan (Section 3.9.8), and to respond to questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, U.S. Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov. Comments on the regulatory guidance and standard review plan documents for discussion at the workshop should be submitted in writing and in electronic mail (JXC@nrc.gov) in WordPerfect 5 or 6.1 compatible format.

Date: November 19–20, 1997.

Agenda: Preliminary agenda is as follows: (A final agenda will be available at the workshop.).

Tuesday, November 18, 1997

Time—3:00 pm to 7:00 pm.
Registration.

Wednesday, November 19, 1997

Time—7:00 am to 4:00 pm.
Registration.

Session 1: (Morning 11/19/97—8:00 am–11:30 am)

Overview by NRC management of the draft regulatory guide and standard review plan, followed by NRC staff presentation on the draft documents (DG–1063 and SRP Section 3.9.8).

Lunch: 11:30 am—1:00 pm.

Session 2: (Afternoon 11/19/97—1:00 pm–5:00 pm)

Public/Industry presentations on issues and recommendations for the general guidance documents, followed by open discussions.

Friday, November 20, 1997

Session 3: (Morning 11/20/97—8:00 am–11:30 pm)

Open discussion of issues.

Session 4: (Afternoon 11/20/97—1:00 pm–3:00 pm)

Overview of comments, issues and resolution options identified in the sessions. Concluding remarks and near-term plans will be covered by the staff.

Location: Bethesda, Maryland.

Hotel: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland, (301) 897–9400.

Registration: There is no registration fee for this workshop. However, we request that interested parties register in writing to Kesselman-Jones, 8912 James Ave., NE., Albuquerque, New Mexico 87111 their intent on participating in the workshop. Please include name, organization, address and phone number with your registration request. Notification of attendance (e.g., pre-registration) is requested so that adequate space, etc. for the workshop can be arranged. Questions regarding meeting registration or fees should be directed to Kesselman-Jones, Phone (505) 271–0003, fax (505) 271–0482, e-mail kessjones@aol.com.

VI. Regulatory Analysis

1. Statement of the Problem

During the past several years, both the Commission and the nuclear industry have recognized that probabilistic risk assessment (PRA) has evolved to the point that it can be used increasingly as a tool in regulatory decisionmaking. In August 1995 the Commission published a policy statement that articulated the view that increased use of PRA technology would (1) enhance regulatory decisionmaking, (2) allow for a more efficient use of agency resources, and (3) allow a reduction in unnecessary burdens on licensees. In order for this change in regulatory approach to occur, guidance must be developed describing acceptable means for increasing the use of PRA information in the regulation of nuclear power reactors.

2. Objective

To provide guidance to power reactor licensees and NRC staff reviewers on acceptable approaches for utilizing risk information (PRA) to support requests for changes in a plant's current licensing basis (CLB). It is intended that the changes in regulatory approach addressed by this guidance should allow a focussing of both industry and NRC staff resources on the most important regulatory areas while providing for a reduction in burden on the resources of licensees. Specifically, guidance is to be provided in several areas that have been identified as having potential for this application. This application includes risk-informed inservice inspection programs of piping.

3. Alternatives

The increased use of PRA information as described in the draft regulatory guide being developed for this purpose is voluntary. Licensees can continue to operate their plants under the existing procedures defined in their CLB. It is expected that licensees will choose to make changes in their current licensing bases to use the new approaches described in the draft regulatory guide only if it is perceived to be to their benefit to do so.

4. Consequences

Acceptance guidelines included in the draft regulatory guide state that only small increases in overall risk are to be allowed under the risk-informed program. Reducing the inspection frequency of piping identified to represent low risk and low failure potential as provided for under this program is an example of a potential contributor to a small increase in plant risk. However, the program also requires increased emphasis on piping categorized as high-safety-significant and high-failure-potential that may not be inspected under current programs. This is an example of a potential contributor to decreases in plant risk. An improved prioritization of industry and NRC staff resources, such that the most important areas associated with plant safety receive increased attention, should result in a corresponding contributor to a reduction in risk. Some of the possible impacts on plant risk cannot be readily quantified using present PRA techniques and must be evaluated qualitatively. The staff believes that the net effect of the risk changes associated with the risk-informed programs, as allowed using the guidelines in the draft regulatory guide, should result in a very small increase in risk, maintain a risk-neutral condition, or result in a net risk reduction in some cases.

5. Decision Rationale

It is believed that the changes in regulatory approach provided for in the draft regulatory guide being developed will result in a significant improvement in the allocation of resources both for the NRC and for the industry. At the same time, it is believed that this program can be implemented while maintaining an adequate level of safety at the plants that choose to implement risk-informed programs.

6. Implementation

It is intended that the risk-informed regulatory guide on inservice inspection of piping (DG–1063) be published by early to mid CY 1998.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Chief, Probabilistic Risk Analysis Branch.

[FR Doc. 97–27235 Filed 10–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting: November 19–20, 1997—Arlington, Virginia: Spent Nuclear Fuel Transportation Safety

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Waste Management System will hold a meeting November 19–20, 1997, beginning at 8:30 a.m. The meeting, which is open to the public, will focus on transportation safety issues for spent nuclear fuel.

The first day will include presentations on the federal regulatory framework under which transportation will take place, transportation planning and practices (using a specific example), and risk analysis (with emphasis on methodologies). Representatives from the Department of Transportation, the Nuclear Regulatory Commission, Sandia National Laboratories, and Lawrence Livermore National Laboratory have been invited to make the presentations, along with several private consultants. On the second day, the presenters will participate in a round-table discussion of their topics. Representatives of the state of Nevada, the environmental community, the Department of Energy, and other stakeholder groups also will participate. The meeting will end around noon. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or on the Board's web site at www.nwtrb.gov.

The meeting will be held at the Sheraton national Hotel, Columbia Pike & Washington Boulevard, Arlington, Virginia 22204; (Tel) 703–521–1900; (Fax) 703–521–0332. Reservations for accommodations must be made by October 17, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board's panel meeting to receive the preferred rate.

Time has been set aside on the agenda for comments and questions from the public. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

Transcripts of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning December 18, 1997. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as

a potential location for a permanent repository for the disposal of that waste.

Dated: October 8, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97-27256 Filed 10-14-97; 8:45 am]

BILLING CODE 6820-AM-M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4024).

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for "partial" RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 1997 is 5.53 percent (*i.e.*, 85 percent of the 6.50% percent yield figure for September 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 1996 and October 1997. The rates for July through October 1997 in the table reflect an applicable percentage of 85 percent and thus apply only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is—
November 1996	5.45
December 1996	5.18
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53

For premium payment years beginning in October 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 5.20 percent. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9
4/1/97	6/30/97	9
7/1/97	9/30/97	9
10/1/97	12/31/97	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 1997 (*i.e.*, the rate reported for September 15, 1997) is 8.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Rate (percent)
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	8.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25
4/1/97	6/30/97	8.25
7/1/97	9/30/97	8.50
10/1/97	12/31/97	8.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of October 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97-27272 Filed 10-14-97; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22842; 812-10582]

Sierra Asset Management Portfolios, et al.; Notice of Application

October 7, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1) (A) and (C) and 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would amend a prior order[1] (the "Prior Order") to permit a "fund of funds" that is an open-end investment company to invest in shares of an affiliated closed-end investment company.

APPLICANTS: Sierra Asset Management Portfolios (the "Trust"), Sierra Prime Income Fund ("SPIF"), Sierra Investment Advisors Corporation ("Sierra Advisors"), and Sierra Investment Services Corporation ("Sierra Services"), including each applicant's successor in interest.[2]

FILING DATES: The application was filed on March 19, 1997 and amended on July 21, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 29, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 9301 Corbin Avenue, Suite 333, Northridge, California 91324.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Christine Y. Greenlees, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and consists of five portfolios (the "SAM Portfolios").[3] Each SAM Portfolio operates as a "fund of funds" under the Prior Order and invests substantially all of its assets in shares of various portfolios of Sierra Trust Funds. Sierra Trust Funds is a registered open-end management investment company comprised of sixteen portfolios (the "Underlying Funds") that is part of the "same group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the SAM Portfolios. Each SAM Portfolio also invests in other securities. Each SAM Portfolio seeks to provide diversification among major asset categories and stock and bond sub-categories. Certain of the SAM Portfolios are designed to provide exposure in varying degrees to the growth potential of the stock market and/or the income potential of the bond market.

2. Applicants seek to amend the Prior Order to permit the SAM Portfolios to acquire up to 100% of SPIF's shares. Applicants request that relief be extended to any registered open-end management investment company, or

[1] *Sierra Asset Management Trust, et al.*, Investment Company Act Release Nos. 22001 (June 3, 1996) (notice) and 22047 (June 28, 1996) (order).

[2] "Successor in interest" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] The Trust was initially organized as the "Sierra Asset Management Trust," but changed its name on July 19, 1996, prior to the Trust's registration statement becoming effective.

series thereof, for which Sierra Services or any entity controlling, controlled by, or under common control with Sierra Services, now or in the future acts as investment adviser or principal underwriter (the "Funds").[4]

3. SPIF is registered under the Act as a non-diversified closed-end fund. SPIF seeks to provide a high level of current income, consistent with preservation of capital, through investments primarily in senior collateralized loans made by banks or other financial institutions to U.S. corporations, partnerships, and other entities. The loans generally are expected to pay interest at rates that float or reset at a margin above a generally recognized base lending rate and, in addition, have a dollar-weighted average maturity of ninety days or less. As a result, the net asset value ("NAV") of SPIF's shares has remained, and is expected to remain, relatively stable. Sierra Services has determined that SPIF's investment objective and policies make it an appropriate investment for four of the five SAM Portfolios. (It is not presently intended that the other portfolio will invest in shares of SPIF.)

4. Sierra Services is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and a broker-dealer registered under the Securities Exchange Act of 1934. Sierra Services serves as the principal underwriter/distributor of the SAM Portfolios and SPIF. Sierra Services also serves as the SAM Portfolios' investment adviser, for which it receives payment equal to 0.15% of each SAM Portfolio's average net assets. Sierra Advisors is an investment adviser registered under the Advisers Act and provides overall investment management services to SPIF, for which it receives payment equal to .95% of SPIF's assets. Sierra Advisors and Sierra Services are wholly-owned subsidiaries of Sierra Capital Management Corporation, which in turn is a wholly-owned subsidiary of Washington Mutual, Inc. Van Kampen American Capital Management, Inc. ("VKM") is an investment adviser registered under the Advisers Act and manages SPIF's investment portfolio on a day-to-day basis.

5. The SAM Portfolios currently offer two classes of shares, class A shares and class B shares. Class A shares are subject to a maximum front-end sales charge that ranges from 4.50% to 5.75%. Purchases of $1 million or more and certain other purchases are not subject to a front-end sales charge but may be subject to a contingent deferred sales charge ("CDSC") of up to 1.00%. Class A shares also are subject to a 0.25% asset-based sales charge. Class B shares are subject to a maximum CDSC of 5%, a 0.75% asset-based sales charge, and a 0.25% shareholder servicing fee.

6. SPIF currently offers a single class of shares that carry a maximum 4.5% front-end sales charge.[5] SPIF has received an order of the Commission permitting it to offer additional classes of shares subject to differing sales charge structures (the "Multi-Class Order").[6] The sales charges would include front-end sales charges, early withdrawal charges that are analogous to CDSCs and that comply in substance with the terms of rule 6c–10 under the Act, and asset-based distribution fees that comply with the terms of rule 12b–1 under the Act. In addition, under the Multi-Class Order, SPIF has agreed to comply with the terms of rule 18f–3 under the Act. SPIF also has agreed to treat all sales-related compensation as sales charges subject to the terms of rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD").

7. SPIF's shares are offered to the public on a continuous basis pursuant to rule 415 under the Securities Act of 1933. Unlike most closed-end funds, SPIF's shares are not listed on an exchange or traded over-the-counter. No secondary market exists for SPIF's shares, and none is expected to develop in the future. SPIF has made, and intends to continue to make, pursuant to section 23(c)(2) of the Act, quarterly tender offers to repurchase a specified percentage of its outstanding shares for cash at NAV, subject to approval by SPIF's board of trustees (the "Tender Privilege").

8. Under the Tender Privilege, absent an early withdrawal charge, SPIF shareholders receive cash in an amount equal to the NAV of their shares as determined by State Street Bank & Trust Company at the close of business on the date that the Tender Privilege terminates. SPIF shareholders who do not wish to receive cash under the Tender Privilege may instead elect to exchange their shares (the "Exchange Privilege") for shares of the Sierra Trust Funds or the SAM Portfolios. SPIF has informed investors in its promotional materials that there can be no assurance that the Tender and Exchange Privileges will be offered every quarter, or if completed, that they will provide sufficient liquidity for all shareholders who wish to dispose of their SPIF shares.

9. Sierra Services acknowledges that SPIF shares will be deemed illiquid securities unless determined otherwise by the Trust's board of trustees, and that any purchase of SPIF shares by a SAM Portfolio will comply with the SEC rules, regulations, and staff positions concerning the liquidity of an open-end fund's portfolio. The Trust acknowledges that the periodic tender offers do not by themselves provide a basis for determining that the SPIF shares are liquid.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. The purpose of section 12(d)(1)(A) was to address the perceived adverse consequences of "pyramiding" of investment companies in a fund of funds arrangement, including duplicative costs, the exercise of undue influence or control over the underlying fund, and the potential adverse impact of large-scale redemptions.

2. Section 12(d)(1)(C) provides that no registered investment company may acquire securities of a registered closed-end company if the acquiring company, together with any other investment companies advised by the investment adviser, own more than 10% of the closed-end fund's outstanding voting securities. Applicants state that there were no additional concerns underlying section 12(d)(1)(C); rather, section 12(d)(1)(C) was intended to relax the section 12(d)(1)(A) prohibitions to accommodate fund industry difficulties associated with monitoring the acquisition of closed-end fund shares.

3. Applicants request relief from the limitations of sections 12(d)(1) (A) and (C) to the extent necessary to permit each individual SAM Portfolio to invest more than 5% of its assets in SPIF and acquire more than 3% of SPIF's shares.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. For the reasons below, applicants assert that the proposal meets the requirements of section 12(d)(1)(J).

5. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to the securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G).

6. Applicants may not rely on section 12(d)(1)(G) because the SAM Portfolios will, in addition to investing directly in portfolio securities as permitted by the Prior Order, be investing in shares of SPIF, a closed-end fund. However, applicants believe that exemptive relief to permit investments by the SAM Portfolios in shares of SPIF is appropriate because SPIF will operate in a manner substantially similar to an open-end fund. Applicants state that operational similarities between SPIF and an open-end fund include the following: (a) Share offerings on a continuous basis at a price equal to their NAV, plus any applicable sales charges; (b) daily pricing of shares that substantially complies with rule 22c–1 under the Act; and (c) procedures that permit investors to tender their shares for cash in an amount equal to their NAV.

7. Applicants assert that permitting the SAM Portfolios to invest in SPIF would not raise the concerns underlying sections 12(d)(1)(A) and (C). Applicants believe that the proposal will not raise the concern that investors will be subject to two layers of advisory fees. Applicants state that, before approving any advisory contract under section 15 of the Act, the trustees of the Trust, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that any advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any advisory contract with an Underlying Fund or SPIF. Applicants also note that the advisory fees charged to the Trust are, in essence, for asset allocation, while the Underlying Funds' and SPIF's advisory fees relate to the selection and disposition of specific securities.

8. Applicants assert that the proposal will not involve layering of sales charges. Applicants state that, as a condition to the requested relief, any sales charges or distribution or service fees relating to the shares of a SAM Portfolio will not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD when aggregated with any sales charges or distribution or service fees that the SAM Portfolio may pay relating to the acquisition, holding, or disposition of shares of the Underlying Funds or SPIF.

9. Applicants state that administrative and similar fees may be charged at the Trust and Underlying Fund and SPIF levels. However, applicants believe that overall administrative and other expenses may be reduced at each individual level under the proposed arrangement.

10. Applicants contend that the threat of large scale redemptions is minimized in the proposed structure. Applicants assert that the SAM Portfolios are designed for long-term investors, which reduces the possibility that the SAM Portfolios will be used as short-term trading vehicles and further protects the SAM Portfolios, the Underlying Funds, and SPIF from unexpected large redemptions.

11. Applicants state that an additional concern underlying section 12(d)(1) is the creation of overly complex investment vehicles. Applicants state that these concerns are addresses by the fact that no Underlying Fund or SPIF will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

12. Section 17(a) generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. The Trust and SPIF may be considered affiliated persons by virtue of being under common control of Sierra Capital Management Corporation. They also many be deemed to be affiliated persons to the extent that a SAM Portfolio may own 5% or more of SPIF's shares. Accordingly, applicants request relief to permit SPIF to sell its shares to and repurchase its shares from the SAM Portfolios.

13. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

14. Section 17(b) provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6 (c) and 17 (b) and state that relief is appropriate for the reasons discussed below.

15. Applicants believe that the terms of the proposed arrangement are reasonable and fair and do not involve overreaching because the consideration paid for the sale and repurchase of shares of SPIF will be based on the NAV of SPIF. Applicants represent that VKM, an entity that is not an affiliated person of Sierra Services, will provide pricing recommendations to Sierra Advisors concerning SPIF's portfolio securities. Sierra Advisors will then provide pricing information, based on the recommendations received from VKM, to State Street Bank & Trust Company to determine the NAV of SPIF's shares, subject to procedures that SPIF's board of trustees have established and monitor on a periodic basis. Sales and repurchases from all investors will be based on the NAV so determined.

16. Applicants state that the proposed arrangement will be consistent with the policies of each Fund and SPIF. The investment of assets of the Funds in shares of SPIF and the issuance of shares of SPIF to the Funds will be effected in accordance with the investment restrictions of each Fund and SPIF and will be consistent with the policies as set forth in the registration statement of each Fund and SPIF. Applicants also believe that the proposed arrangement is consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions, which supersede the conditions to the Prior Order:

1. A Fund may purchase shares of SPIF so long as shares of SPIF are continuously offered to the Funds at NAV, and SPIF continues to offer the Tender Privilege.

2. Neither the Underlying Funds nor SPIF (collectively, the "New Underlying Funds") will acquire securities of any other investment company in excess of

[4] All investment companies that presently intend to rely on the requested order are named as applicants.

[5] Shares of SPIF would be sold to the SAM Portfolios without imposition of a sales charge.

[6] *Sierra Prime Income Fund, et al.* Investment Company Act Release Nos. 22512 (Feb. 14, 1997) (notice) and 22556 (March 12, 1997) (order).

the limits contained in section 12(d)(1)(A) of the Act.

3. Before approving any advisory contract under section 15 of the Act, the board of trustees of a Fund, including a majority of the trustees who are not "interested persons" of the Fund as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any New Underlying Fund advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

4. Any sales charges or distribution or service-related fees charged with respect to shares of a Fund, when aggregated with any sales charges or distribution or service-related fees paid by the Fund with respect to the shares of any New Underlying Fund, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

5. Each Fund and each New Underlying Fund will be part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27171 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: To be Published.

CHANGE IN THE MEETING: Time Change.

The time for the closed meeting scheduled for Tuesday, October 14, 1997, at 10:30 a.m., has been changed to 11:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: October 9, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27436 Filed 10–10–97; 12:17 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39219; File No. SR–CBOE–97–51]

October 8, 1997.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Gratuities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 4.4 ("Rule") governing gratuities. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change to Rule 4.4 is to increase the dollar value, from $50.00 to $100.00, of gratuities or compensation that may be given in any one year by an Exchange member to an Exchange employee without the prior consent of the Exchange. Gratuities are gifts of any kind, including, but not limited to, cash. Gratuities or compensation in an amount less than those specified in the Rule do not require any prior consent.

Currently, pursuant to Rule 4.4, the amount permitted under the Rule to be given by a CBOE member to an employee of any other member or of any non-member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange is $100, and the amount permitted to be given by a CBOE member to an Exchange employee without prior Exchange permission is $50. The CBOE proposes to increase the amount permitted to be given by a CBOE member to an Exchange employee from $50 to $100. The purpose of this change is to account for inflation that has occurred since the $50 amount was established in 1980.

Also, the rule language is being revised to clarify that Exchange consent is required if a member wants to give a gratuity of over $100 to an Exchange employee. The Exchange proposes to change the current construction of the Rule in order to clarify that the final phrase requiring consent refers to both Exchange employees, as well as employees of any other member or of any non-member broker, dealer, bank or institution.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it promotes just and equitable principles of trade, fosters cooperation among persons engaged in facilitating securities transactions, and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] 15 U.S.C. § 78f(b).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In addition, the Commission encourages commenters to consider whether: (1) The acceptance of cash or its equivalent should be permitted in any circumstance; (2) there are presently adequate safeguards against the solicitation of gratuities; and (3) all offers of gratuities, whether accepted or not, should be recorded in a timely manner by the employee, and such records should be maintained by his employer. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–51 and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.20–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27282 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39216; File No. SR-NASD–97–72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Extension of the Nasdaq International Service Pilot Program

October 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extent for one year, until October 9, 1998: (1) The pilot term of the Nasdaq International Service ("Service"); and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. The proposal does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1997.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1)(1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to extend for one year, until October 9, 1998, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991[2] and the Service was launched on January 20, 1992. The pilot has since been extended[3] and is set to expire on October 11, 1997.[4]

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time ("ET") on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.[5] At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to evaluate the Service's operation and consider possible enhancements to the Service to broaden

[2] *See* Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991) (order approving File No. SR–NASD–90–33) ("Pilot Approval Order").

[3] *See* Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (order approving File No. SR–NASD–93–50) (extending the pilot operation of the Service for two years through October 11, 1995).

[4] *See* Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995) (order approving File No. SR–NASD–95–46) (extending the pilot operation of the Service for two years through October 11, 1997).

[5] Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all of the obligations of a Service market maker from that time (*i.e.*, 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET) until the European Session closes at 9:00 a.m. ET. *See* Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR (June 22, 1993) (order approving File No. SR–NASD–92–54).

market marker participation. The NASD views the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by the Nasdaq Stock Market, Inc. ("Nasdaq"). Accordingly, The NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community.[6] The NASD believes it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service serves an invaluable role as a critical early warning mechanism in the context of significant changes involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems changes.

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NASD has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that the operation of the pilot program for the Service may continue on an uninterrupted basis. In addition, as noted above, the NASD's proposal entails no modification to the International Rules or the Service, which previously were subject to the full notice comment period required by Section 19(b) of the Act when they were approved originally by the Commission. Accordingly, the NASD believes good cause exists to extend the effectiveness of the pilot program for the Service on an accelerated basis.

The Commission finds that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Sections 11A(a)(1) (B) and (C) of the act set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Although there are no market makers participating currently in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. In addition, the NASD has stated that the Service has played a valuable role by providing for the early detection of systems or communications problems when Nasdaq implements significant changes in its hardware and software systems. Accordingly, the Commission believes that the pilot program warrants an extension to permit possible enhancements that will increase the Service's utility to the investment community.[7] The NASD must file any changes to the operation of the Service with the Commission pursuant to Section 19(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in order to ensure the continuous operation of the Service through October 9, 1998. The current authorization for the Service expires on October 11, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–72 and should be submitted by November 5, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–72) is approved through October 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27280 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

[6] Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical report prescribed in the initial Pilot Approval Order for the Service at six-month intervals.

[7] The NASD continues to be responsible for supplying the Commission with the statistical reports prescribed in the initial Pilot Approval Order at six-month intervals. However, the supporting documentation is no longer required, unless otherwise requested by the Commission.

[8] 15 U.S.C. § 78f(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39218; File No. SR–NASD–97–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Its Rules Governing Excused Market Maker Withdrawals and Market Maker Reinstatements

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on January 24, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On September 30, 1997, the NASD submitted an amendment ("Amendment No. 1") to the proposed rule change to make technical amendments to the text of the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its rules governing excused market maker withdrawals and the voluntary termination of market maker registrations. The proposed rule changes also would amend the NASD's rules governing the reinstatement of market makers that have been "SOESed out of the Box" or have accidentally withdrawn from a security. The text of the proposed rule changes are as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq *Market* Operations to obtain excused withdrawal status prior to withdrawing its quotations *or identification as a passive market maker*. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on [physical] circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq *Market* Operations. Excused withdrawal status [or passive market maker status] based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if *written* notice is received by the Association [five] *one* business day[s] in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) the *written* request for withdrawal is received by the Association [twenty (20)] *one* business day[s] in advance, and is approved by the Association;

(2) the request includes a list of the securities for which withdrawal is requested; and

(3) the request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c)–(d) No changes.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if;

(1) the market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market makitg obligations; and

(3) the market maker's firm would not exceed the following reinstatement limitations:

(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;

(B) for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and

(C) for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not be limited to:

(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers

[1] 15 U.S.C. § 78s(b)(1).

[2] See Letter from Robert E. Aber, Vice President and General Counsel, NASDAQ, to Katherine England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (September 29, 1997).

making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) [market conditions at the time of the withdrawal;

(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and

(5) the timeliness with which the market maker notified Market Operations of the error.

(d) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their denial of a reinstatement pursuant to paragraph (b) above.

* * * * *

4730. Participant Obligations in SOES

* * * * *

(b)(6) In the case of an NNM security, a Market Maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A Market Maker that fails to re-enter a two-sided quotation in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker (*"SOESed out of the Box"*), except as provided *below in this subparagraph and* in subparagraph (7) [below], a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in that security for twenty (20) business days.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but within at least one hour of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was SOESed out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations;

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time of the SOES exposure limit exhaustion;

b. the frequency with which the firm has been SOESed out of the Box in the past;

c. Procedures the firm has adopted to avoid being inadvertently SOESed out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

* * * * *

(b)(8) [The Rule 9700 Series of the Code of Procedure] *The Market Operations Review Committee* shall [apply to] *have jurisdiction over* proceedings brought by Market Makers seeking review of [(A)] their removal from SOES pursuant to subparagraphs (6) *or (7)* above [, (B) the denial of an excused withdrawal pursuant to Rule 4619, or (C) the conditions imposed on their reentry].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to ensure that markt makers are complying with their obligation to make continuous, firm two-sided markets, NASD Rule 4620 provides that market makers who voluntarily withdraw from an issue cannot re-register in that issue for 20 business days. This rule is commonly referred to as the "20-day Rule." A corollary rule to the "20-day Rule" is NASD Rule 4730(b)(6), a Small Order Execution System ("SOES") rule that provides that a market maker in a Nasdaq National Market ("NNM") security will be deemed to have voluntarily withdrawn from a stock, and therefore be subject to the 20-Day Rule, if it has failed to restore a two-sided quotation within five minutes after its bid or offer has been completely decremented due to a SOES execution. When a market maker is deregistered from a stock because it failed to restore its quotation, it is referred to as being "SOESed out of the Box." To avoid being "SOESed out of the Box," members can do one of two things: (a) Elect to not have their quote size decremented upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size; or (b) utilize Nasdaq's autorefresh feature that automatically updates a market maker's quote after its quote size has been decremented.

Notwithstanding the 20-day Rule, NASD Rule 4619 affords market makers the ability to obtain an "excused" market maker withdrawal in certain limited circumstances. Market makers receiving "excused" withdrawals are not subject to the 20-Day Rule and can re-enter their quotes once the circumstances justifying the withdrawal no longer exist. For example the rule currently allows excused withdrawals for: (1) The duration of "cooling off" periods mandated by certain rules under Regulation M of the Exchange Act, (formerly Exchange Act Rule 10b–6); (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements, (*e.g.*, the market maker is in possession of material non-public information).

The handling of excused withdrawal requests and the reinstatement of market makers who have been "SOESed out of the Box" was criticized in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[3] In sum, the SEC found that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were "SOESed out of the Box" and that the NASD had not followed its own rules when granting excused withdrawals (*e.g.*, excused withdrawals for vacations were granted with less than 20-days advance notice). As a result, the SEC stated in its 21(a) Report that:

> [t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[4]

Accordingly, in order to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused market maker withdrawals or inappropriate market maker reinstatements, the NASD and Nasdaq are submitting this rule proposal. As detailed below, the proposed changes are in three general areas: (1) Market maker reinstatements upon being "SOESed out of the Box" or after accidental market maker withdrawals; (2) bases for excused withdrawals; and (3) the jurisdiction of the Market Operations Review Committee ("MORC") over excused market maker withdrawals and market maker reinstatements. In sum, by establishing more objective standards for the reinstatement of market makers who have been "SOESed out of the Box" or accidentally withdraw from a stock and modifying the rules to better reflect the operational realities of the marketplace, the NASD and Nasdaq believe the proposed modifications are responsive to the deficiencies noted in the SEC's 21(a) Report. Following are the specific rule changes proposed by the NASD and Nasdaq.

1. *Reinstatement of Market Makers Upon Being "SOESed Out of the Box" and for Accidental Withdrawals*

a. Reinstatements Upon Being "SOESed Out of the Box"

The proposed rule change is designed to ensure that market maker reinstatements will only be made when it is clear that a market maker was not attempting to avoid its market making obligations. Specifically, the proposed changes to Rule 4730 provides that a market maker can be reinstated only if: (1) The market maker notifies Market Operations to request reinstatement within one hour of being "SOESed out of the Box," and immediately thereafter provides written notification of the request; (2) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box, procedures adopted by the firm to avoid doing so inadvertently, and the length of time before the firm sought reinstatement; (3) it was a Primary Market Maker at the time it was SOESed out of the Box; and (4) the reinstatement would not result in the market maker's firm exceeding certain limitations on the number of reinstatements per year. In particular, under the proposal, firms that simultaneously made markets in less than 250 stocks during the previous calendar year could receive no more than four reinstatement per year; firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year could receive one more than six reinstatements per year; and firms that simultaneously made markets in more than 500 stocks during the previous calendar year could receive no more than twelve reinstatements per year. Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

Finally, notwithstanding the numerical limitations and requirements set forth above, in instances where a member firm experiences a documented technological constrain or failure involving either is own automated system or an automated system operated by Nasdaq, the market maker is a manager or co-manager of a secondary offering that is about to occur or has just occurred, or there has been a significant decline in the number of market makers in a particular issue, the NASFD and Nasdaq propose that Nasdaq should have the authority to reinstate a market maker that has been "SOESed out of the Box" if such reinstatement is necessary to protect investors or the integrity of the market. Specifically, before any such reinstatement could occur, Nasdaq staff would have to make a finding that the reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market.

b. Reinstatements for Accidental Withdrawals

There have been instances in the past where market makers have accidentally withdrawn from a stock because they inadvertently typed the wrong stock symbol. Because the rules currently do not provide that market makers can be reinstated in these instances, Nasdaq and the NASD propose that Rule 4620 be amended to permit such reinstatements provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidently withdraws as a market maker may be reinstated if: (1) The market maker notifies Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request; (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to

[3] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market ("21(a) Report"), SEC, August 8, 1996, at p. 91–95.

[4] *Id.* at p. 94.

avoid its market making obligations; and (3) the market maker's firm would not exceed specific reinstatement limitations per year. In particular, firms that simultaneously make markets in less than 250 stocks during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 stocks could receive no more than three reinstatements per year. Firms that simultaneously make markets in more than 500 stocks could receive no more than six reinstatements per year.

In addition, factors that would be considered in granting a reinstatement include: (1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks; (2) the similarity between the symbol of the stock intended to be withdrawn and the symbol of the stock actually withdrawn; (3) market conditions; (4) whether the withdrawal served to reduce the market maker's exposure to market risk; and (5) the timeliness with which the market maker notified Nasdaq Market Operations of the error. Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

2. Bases for Excused Withdrawals

Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions are satisfied. Specifically, as noted above, excused withdrawal status may be granted for: (1) The duration of "cooling off" periods mandated by Regulation M; (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements (*e.g.*, the market maker is in possession of material non-public information). While the NASD and Nasdaq continue to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the SEC's 21(a) Report, the NASD and Nasdaq nevertheless believe that the present excused withdrawal rule is not drafted broadly enough to encompass all of the legitimate reasons for an excused withdrawal. The NASD and Nasdaq also believe that the time parameters for advance notice of vacations and religious holidays are unnecessary.

Accordingly, the NASD and Nasdaq propose the following amendments to Rule 4619(b). First, excused withdrawals may be granted for "circumstances" beyond the market maker's control, not just "physical circumstances" beyond its control. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations and religious holidays may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq recognizes that counsel to market makers often do not want to disclose the specific legal basis for their withdrawal request, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.

3. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market Maker reinstatements are within the purview of the NASD's Qualifications Committee's jurisdiction pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated the MORC jurisdiction over such matters. Accordingly, the NASD proposes to amend Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC.

The NASD believes that the proposed rule changes are consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In particular, by ensuring that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the "20-day rule" will only be made when it is absolutely clear that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security, the NASD and Nasdaq believe the proposed rule change will help to ensure that market makers are abiding by their obligations to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers will, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–97–04, and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27281 Filed 10–14–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39206; File No. SR–NYSE–97–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot for Allocation Policy and Procedures

October 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the effectiveness of the pilot program relating to the Exchange's Allocation Policy and Procedures until November 28, 1997. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of a pilot program relating to the Exchange's Allocation Policy and Procedures. The Exchange's Allocation Policy and Procedures are intended: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security and (4) to contribute to the strength of the specialist system.

The Exchange recently implemented, on a pilot basis, a revised Allocation Policy and Procedures to amend the procedures by which the Exchange selects a specialist for newly listed companies.[3] The Exchange's pilot program, which expires October 7, 1997, provides listing companies with two options, either: (1) To have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a "generic letter" which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, with a generic letter from the company describing desired specialist unit characteristics permitted, as in (1) above. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets ("green sheets").

The Exchanges proposes to extend the Allocation Policy and Procedure pilot program until November 28, 1997 to continue to study its effects.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Allocation Policy and Procedures until November 28, 1997 is consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04).

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–27 and should be submitted by November 5, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission believes the Exchange's proposal to extend the effectiveness of the pilot program until November 28, 1997 is consistent with Section 6(b)(5) of the Act[6] because the extension will permit the NYSE to further study the impact of the revised Allocation Policy and Procedures. The Commission notes that the extension is limited in duration. The Commission believes that it is reasonable to extend the pilot program for a short period of time to allow the Exchange further time to determine whether the revised allocation procedures are fair to all market participations, including listing companies, specialist units and public investors. The Commission expects the NYSE to submit any supplemental information it has on the pilot program, along with any request to modify, extend, or permanently approve the pilot by October 17, 1997.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication of the proposed rule change in the **Federal Register**. The Commission notes that accelerated approval will enable the Exchange to continue the Allocation Policy and Procedures pilot program on an uninterrupted basis. The Commission further notes that it has previously solicited comments on the pilot program and no comments were received. Further, the extension of the existing pilot is of limited duration, only until November 28, 1997. For the foregoing reasons, the Commission believes that good cause exists pursuant to Section 19(b)(2) of the Act[7] to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–97–27) is hereby approved on an accelerated basis until November 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[5] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39221; File No. SR–Philadep–97–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Ceasing Activity as a Securities Depository

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, Philadep will cease to engage in securities depository services. Philadep, Stock Clearing Corporation of Philadelphia ("SCCP"), and their parent organization, Philadelphia Stock Exchange, Inc. ("PHLX") entered into an agreement dated as of June 18, 1997 with The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") ("Agreement"). Under the Agreement, DTC and NSCC will assist PHLX in winding down the operation of its full clearing agency services by offering SCCP participants and Philadep participants an opportunity to become members of NSCC or DTC, as the case may be. In consideration for DTC's and NSCC's assistance, PHLX, SCCP, and Philadep have agreed not to engage in the securities clearing and depository business for five years, except as otherwise specified in the Agreement.

The parties to the Agreement tentatively have scheduled the closing date for the Agreement to be November 14, 1997.[2] SCCP and Philadep have informed their participants of the Agreement and are taking measures to ensure the orderly transition of participants to alternative clearing and depository arrangements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX has decided to limit its clearance and settlement business and

[2] The closing date may be adjusted by the mutual consent of the parties to the Agreement.

[3] The Commission has modified the text of the summaries prepared by Philadep.

to close its securities depository business offered through its wholly owned subsidiaries, SCCP and Philadep, respectively, in order to focus its resources on the operations of the exchange itself.[4] The purpose of the proposed arrangement is to enable PHLX, SCCP, and Philadep to achieve this objective while affording participants of these clearing agencies the opportunity to become participants of NSCC or DTC, as the case may be, or to utilize the services of other clearing or depository service providers.

PHLX, SCCP, and Philadep will cooperate with NSCC and DTC to assure an orderly transition with respect to the wind down of Philadep's business. In this regard, PHLX and Philadep will assist DTC and sole Philadep participants in having the participants become DTC participants to the extent that they meet DTC qualifications and desire to become DTC participants. The parties will cooperate to carry out the orderly transfer of securities from the custody of Philadep to the custody of DTC for sole Philadep participants that qualify and authorize such transfers.

Philadep believes that the proposed rule change is consistent with Section 6(b)(5)[5] of the Act because it will enable PHLX to concentrate its efforts on its core business, the exchange itself. This strategic initiative will, in turn, remove impediments and perfect the mechanism of a free and open market and a national market system.

Philadelp also believes that the proposal is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it (i) will remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) will reduce the fragmented nature of the securities custody business to more closely integrate the industry which may thereby help in the safeguarding of funds which are in the custody and control of a clearing agency or for which it is responsible. Specifically, the proposed arrangements will help reduce the risk associated with having interfaces, will provide for more efficient and less expensive clearing and depository services, and thereby will facilitate the prompt and accurate clearance and settlement of such transactions.

[4] SCCP has submitted a rule filing [File No. SR–SCCP–97–04] describing the revisions and limitations of its clearing services.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadelp believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities depositories registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements. As such, several exchanges, including the Boston Stock Exchange, the Pacific Exchange, and the Chicago Stock Exchange have terminated the operation of their securities depositories.

After consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, Philadep's withdrawal from maintaining depository facilities should reduce costs to participants and thereby should remove impediments to competition. Finally, PHLX's ability to focus its resources on the operations of the Exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–Philadep–97–94 and should be submitted by November 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27279 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39223; File No. SR–SCCP–97–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to Revision and Limitation of Clearing Services

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 25, 1997, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Commission ("Commission") and on September 30, 1997, amended the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), SCCP, Philadelphia Depository Trust Company ("Philadep"), the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") have entered into an agreement dated as of June 18, 1997 ("Agreement") under which SCCP has agreed (i) to cease providing full securities clearing services, (ii) to make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services, and (iii) to transfer to the books of such other organizations the continuous net settlement ("CNS") system open positions of SCCP participants that are shown on SCCP's books. In addition, under the terms of the Agreement Philadep has agreed (i) to cease providing securities depository services, (ii) to make available to its participants access to the facilities of one or more other organizations providing securities depository services, and (iii) to transfer to the custody of such other organizations the securities that are held in the custody of Philadep for the accounts of such participants. Pursuant to the Agreement, SCCP and Philadep have agreed not to compete for a period of five years with DTC and NSCC in providing securities depository services or securities clearing services.

The Agreement contemplates that SCCP will continue to provide an interface between certain of its floor members and specialists and a registered clearing agency.[2] The Agreement further contemplates that SCCP will continue to provide margin services to (i) PHLX equity specialists for their specialists and alternate specialists transactions and for their proprietary transactions and for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) two PHLX members listed on a schedule that are not PHLX equity specialists for their proprietary transactions. The clearing services contemplated to be conducted by SCCP after the closing date of the Agreement[3] will be carried out through an omnibus account that SCCP will maintain at NSCC for such purpose and will not include the maintenance or offering of CNS accounts for its participants.

The proposed rule change incorporates the Agreement as it relates to SCCP into SCCP's rules and procedures. In addition, the proposed rule change will amend SCCP's rules in a manner consistent with undertakings agreed to by SCCP in settling a recent administrative proceeding with the Commission.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX has decided to limit the clearance and settlement business provided by SCCP and to close its securities depository business offered through Philadep.[6] The Agreement provides for an orderly process to enable PHLX, SCCP, and Philadep to achieve this objective, while affording participants of SCCP or Philadep the opportunity to become participants of NSCC or DTC, respectively, or to utilize the services of other providers of clearing services or depository services.

After the closing date, SCCP no longer will maintain its CNS system for conducting settlements between SCCP and its participants. As a result, SCCP is proposing to cease providing the cash settlement services attendant to Philadep's same-day funds settlement services attendant to Philadep's same-day funds settlement ("SDFS") system and the Philadep settlement process. However, pursuant to the Agreement SCCP may continue to offer limited clearing and settlement services to PHLX members. SCCP intends to provide trade confirmation and recording services for PHLX members that carry out transactions through regional interface operations ("RIO") accounts and ex-clearing accounts. Under the amended versions of SCCP Rules 10 and 11, SCCP will not provide clearing guarantees to such transactions.

SCCP will continue to offer margin accounts for certain participants in a special account established by SCCP at NSCC.

Pursuant to the Agreement, SCCP will establish an omnibus clearance and settlement account at NSCC and abide by NSCC rules and procedures as a participant of NSCC. Under the Agreement, SCCP may offer margin accounts only to: (i) PHLX equity specialists for their specialists and alternate specialists transactions, as well as for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) two PHLX members listed on a schedule who are not PHLX equity specialists for their proprietary transactions. Under the Agreement, SCCP may add other PHLX members to the schedule referred to in item (ii) above subject to NSCC's approval.

A new definition of "margin member" will be established in SCCP Rule 1 to reflect those PHLX floor firms entitled to clear through a SCCP margin account.[7] Pursuant to the amended version of SCCP Rule 9, SCCP may provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP will margin such accounts based on its Procedures and on Regulation T of the Board of Governors of the Federal Reserve System.[8]

SCCP may demand at any time that a margin member provide additional margin based upon SCCP's review of such margin member's security positions held by SCCP. SCCP will retain the margin thresholds currently specified in its procedures and may require adequate assurances or additional margin in addition to the minimum margin thresholds in order to protect SCCP in issues deemed by SCCP to warrant additional protection. SCCP may demand any such margin payments in federal funds in accordance with its procedures.

SCCP may issue margin calls to any margin member whose margin requirement exceeds the account equity of the margin member's margin account.[9] SCCP may waive any amount that would trigger a margin call not exceeding $500. A margin member that fails to meet a margin call will be subject to SCCP Rule 22 (formerly SCCP Rule 23) which governs disciplinary proceedings and penalties. SCCP may cease to act for delinquent margin members and will retain a lien on all delinquent margin members' accounts and securities therein.

SCCP will segregate and maintain records on each individual margin account and will maintain the omnibus clearance and settlement account so as to reflect all positions in SCCP's margin accounts. SCCP also will guarantee the settlement obligations of the omnibus clearance and settlement account to NSCC. In turn, pursuant to the Agreement, PHLX will guarantee SCCP's obligations to NSCC.

SCCP's books and records for the omnibus clearance and settlement account will reflect all activity that occurs in the account at NSCC and DTC. At any time prior to midnight (Philadelphia time) on the next business day after SCCP receives a margin member's trade, SCCP will be entitled to reverse such a trade from such member's account. SCCP will settle the omnibus clearance and settlement account with NSCC each business day in accordance with NSCC's rules and procedures. Accordingly, SCCP will be subject to NSCC's rules including but not limited to the following: (i) Daily mark-to-market requirements, (ii) allocations of long and short securities positions, (iii) dividend and reorganization settlement activities, and (iv) pledging of collateral and stock loans. Dividends, reorganizations, adjustments, and buy-ins, will be passed through to margin members in accordance with SCCP's procedures. SCCP will continue to provide margin members with purchase and sales reports, bookkeeping reports, dividend and reorganization reports, and preliminary equity reports in accordance with SCCP's procedures.

Through the omnibus clearance and settlement account, SCCP will have one composite settlement per day with NSCC. SCCP will maintain line of credit ("LOC") arrangements with one or more commercial banks sufficient to support anticipated funding needs of the underlying margin accounts. SCCP currently is negotiating with lending institutions to replace its existing LOCs. During the past four months, SCCP has not exceeded an aggregate $6 million debit with respect to the margin members targeted to remain in SCCP following the closing date. In order to cover all such margin debits, SCCP anticipetes obtaining an aggregate of $5 million in committed and $5 million in uncommitted LOCs from each of two separate lending institutions, totaling $20 million.

SCCP proposes to amend SCCP Rule 14 (formerly SCCP Rule 15) to provide that mark-to-market funds may not be used to finance margin members' account activity. SCCP also is amending Rule 14 to provide that any mark-to-market funds collected by SCCP will be segregated and invested in accordance with analogous procedures set forth in SCCP Rule 4. Under the amended version of SCCP Rule 13, SCCP will pass through any buy-ins submitted by NSCC to SCCP or by a SCCP participant to NSCC in accordance with NSCC's buy-in rules and procedures.

To ensure that margin members have an efficient way to obtain securities depository services after the closure of Philadep's depository service, NSCC will sponsor SCCP in opening a depository account at DTC to benefit margin members. In the event that margin members carry out trades in securities not eligible for custodial services in DTC's book-entry system, SCCP will utilize NSCC's direct clearing service to settle the transactions. SCCP will continue to perform bookkeeping and reconciliation services for the omnibus clearance and settlement account and its related DTC custody account pursuant to SCCP procedures.

In accordance with NSCC's participants fund formulae, SCCP, as a NSCC participant and a sponsored participant of DTC, will be required to provide NSCC and DTC with participants fund contributions for the omnibus clearance and settlement account. With respect to SCCP's own participants fund formulae, SCCP will delete its participants fund formulae applicable to inactive accounts, full service CNS accounts, and layoff accounts. SCCP proposes to establish a fixed $35,000 contribution for each of the following account categories: specialist margin and non-specialist margin. No changes will be made to the RIO account formula. Accordingly, RIO account participants will continue to be subject to a contribution of $10,000 to $75,000 depending upon monthly trading activity. SCCP will continue to use its current procedure under which participant engaging in more than one account type activity will be subject to only the formula that would generate the highest participants fund contribution.

SCCP may allocate any portion of its participants fund to satisfy NSCC's DTC's participants fund requirements with respect to the omnibus clearance and settlement account. Any excess SCCP participants fund cash not used to fund SCCP's NSCC and DTC participants fund requirements will be segregated and invested by SCCP in accordance with SCCP Rule 4. At the present time, SCCP estimates that its revised participants fund formulae will generate participants fund contributions in excess of the amount required to fund SCCP's participants fund contributions with NSCC and DTC. If SCCP's participants fund formulae do not provide for contributions that equal those which would be required pursuant to the NSCC and DTC participants fund formulae, SCCP reserves the right to collect from each participant an additional pro rata charge to meet any such deficit.

SCCP proposes to amend SCCP Rule 4 to specify that no participants fund contributions may be used in financing margin members' margin account activity.[10] In addition SCCP proposes to amend Rule 4 to provide for the establishment of SCCP and Philadep of a reserve fund that will be used to provide a liquid fund to draw on as necessary to meet certain specified expenses. The reserve fund will be funded with deposits of $1,000,000 by August 11, 1998; $1,000,000 by August 11, 1999; and $1,000,000 by August 11, 2000. The reserve fund will be held and invested in accordance with the same procedures set forth in SCCP Rule 4 for the holding and investment of the participants fund. Amounts drawn from the reserve fund must be replenished within sixth days following the date of each such withdrawal. SCCP Rule 4 also will be amended to provide that no portion of the reserve fund may be used in financing margin members' margin account activity.

SCCP is amending its schedule of fees to delete those fees associated with

[2] The term *clearing agency* is defined in section 3(a)(23) of the Act. 15 U.S.C. 78c(a)(23).

[3] The effective date of the proposed rule change described is proposed to be the "closing date" as defined in the Agreement. The parties to the Agreement tentatively have scheduled the closing date for November 14, 1997, but this date may be adjusted by mutual consent of the parties.

[4] The text of the proposed rule change was submitted with SCCP's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of SCCP.

[5] The Commission has modified the text of the summaries prepared by SCCP.

[6] Philadep has submitted a rule filing (File No. SR–Philadep–97–04) describing the way in which Philadep will exit the depository business.

[7] Under the proposed rule change, the term "margin member" will be defined to include participants that are PHLX specialists, alternate specialists, and other PHLX floor members specifically approved by NSCC to effect trading in a margin account.

[8] 12 CFR 220.

[9] Under the proposed rule change, SCCP Rule 1 will define the term "account equity" as the total net current market value of security positions held in the margin account plus or minus cash balances in such account.

[10] As previously stated, SCCP is establishing separate sources of funding, including bank LOCs, to serve the operation of its margin members' margin accounts.

services no longer to be offered. SCCP also will charge RIO Accounts the applicable value fees of $0.05 per $1,000 of contract value.

SCCP believes the proposed rule change is consistent with the requirements of Section 17A of the Act [11] and the rules and regulations thereunder because the restructuring of SCCP's business as contemplated by the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry and will assure the safeguarding of securities and funds in the custody or control of SCCP or for which SCCP is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Securities clearing agencies registered under Section 17A of the Act are not conventional businesses but utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities clearing agency requires a substantial and continuing investment in infrastructure including telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and respond to regulatory requirements. To date, other exchanges, including the Boston Stock Exchange, the Pacific Exchange, and the Chicago Stock Exchange have substantially terminated the operation of their securities clearing corporations.

After consummation of the proposed arrangements, securities industry members shall continue to have access to high quality, low cost clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available may be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a clearing corporation's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, SCCP's withdrawal from maintaining clearing facilities should reduce costs to participants and thereby should remove impediments to competition. Finally, PHLX's ability to focus its resources on the operations of the Exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof, with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–97–04 and should be submitted by November 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27278 Filed 10–14–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2983]

State of Florida

Hillsborough County and the contiguous Counties of Hardee, Manatee, Pasco, Pinellas, and Polk in the State of Florida constitute a disaster area as a result of damages caused by severe thunderstorms, excessive rains, and flooding which occurred September 26 through 28, 1997. Applications for loans for physical damage may be filed until the close of business on December 4, 1997 and for economic injury until the close of business on July 6, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.250
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 298306 and for economic injury the number is 961500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 5, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–27166 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9612]

State of Idaho; (And Contiguous Counties in Montana and Washington)

Bonner County and the contiguous Counties of Boundary, Kootenai, and Shoshone in the State of Idaho; Lincoln and Sanders Counties in the State of Montana; and Pend Oreille and Spokane Counties in the State of Washington constitute an economic injury disaster loan area as a result of flooding that occurred during the last week of May 1997 on the Pend Oreille Lake and River system. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on July 1, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury numbers are 961200 for Idaho; 961300 for Montana; and 961400 for Washington.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 1, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–27168 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Amendment to Declaration of Disaster #2976]

State of North Carolina; (And Contiguous Counties in South Carolina)

The above-numbered declaration is hereby amended to extend the filing deadline for physical damage to November 5, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is May 5, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 5, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–27165 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of Virginia, dated September 4, 1997, the United States Small Business Administration hereby revokes the license of Washington Finance and Investment Corporation a District of Columbia Corporation, to function as a Small Business Investment Company under the Small Business Investment Company License No. 03/03–5150 issued to Washington Finance and Investment Corporation on June 3, 1982, and said license is hereby declared null and void as of October 6, 1997.

Small Business Administration.

Dated: October 6, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–27169 Filed 10–14–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2619]

Shipping Coordinating Committee; Assembly, Council, and Conference on Bulk Carrier Safety; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:45 AM on Tuesday, October 28th, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 19th session of the Extraordinary Council, 79th session of Council and 20th session of the Assembly of the International Maritime Organization (IMO) which is scheduled for 14–28 November 1997, at the IMO Headquarters in London. The meeting will also finalize preparations for the Conference on Bulk Carrier Safety which is scheduled in conjunction with the second week of the Assembly from 24–28 November 1997. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

- Reports of Committees;
- Reports on Diplomatic Conferences;
- Work Program and Budget for 1998–1999;
- Election of Members of the Council.

The Conference on Bulk Carrier Safety discussions will begin after the completion of the discussion for the Assembly and will include the following:

- Consideration and adoption of amendments to SOLAS to improve bulk carrier safety
- Consideration and adoption of amendments to Resolution A.744(18)—Guidelines on the enhanced surveys of bulk carriers and oil tankers; and
- Consideration and adoption of resolutions and recommendations related to bulk carrier safety.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–6919. Interested persons of the conference of Bulk Carrier Safety may seek information by writing: Office of Human Element & Ship Design Division, U.S. Coast Guard Headquarters, Commandant (G–MSE–1), Room 1304, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: LCDR Dan Pippenger at (202) 267–0171.

Dated: October 8, 1997.

Russel A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–27241 Filed 10–14–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Partnership Council Meeting

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Thursday, October 30, 1997, at 10:00 a.m., at the Department of Transportation, Nassif Building, the Fletcher Room, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The conference room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Corporate Human Resources Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide an update of current issues within the Department of Transportation including smoking policy, career transition plan update, and labor-management climate survey status.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by October 27, 1997 in order to be considered at the October 30 meeting. Only comments submitted in advance will be considered.

Issued in Washington, DC, on October 8, 1997.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resources Leadership Division.

[FR Doc. 97–27242 Filed 10–14–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on October 30, 1997, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration Building, 800 Independence Avenue, SW, Washington, DC., in the McCracken Room (Round Room) on the 10th floor.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Williams, Office of Rulemaking (ARM–109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685, facsimile (202) 267–5075, or by electronic mail at Linda.L.Williams@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 30, 1997, at the Federal Aviation Administration Building, Round Room (10th floor), 800 Independence Avenue, NW., Washington, DC.

The agenda for this meeting will include:

(1) A presentation by the All Weather Operations Working Group of an advisory circular, "Criteria for Approval of Category III Weather Minima for Takeoff, Landing, and Rollout";

(2) A discussion on establishing a harmonization task and an airplane performance harmonization working group; and

(3) An update on the activity of the Fatigue Countermeasures and Alertness Management Techniques Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 8, 1997.

David L. Catey,

Acting Manager, Air Transportation Division, Flight Standards Service.

[FR Doc. 97–27401 Filed 10–14–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33302]

R.J. Corman Railroad Co./Allentown Lines, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corp.

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a total of approximately 2.76 miles of rail line owned by Consolidated Rail Corporation (Conrail), known as Cornwall Industrial Track, between milepost 0.9 and milepost 3.66 in Lebanon County, PA. RJCN will also acquire a 0.6-mile segment of Conrail's Lebanon Industrial Track between approximately milepost 18 and approximately milepost 18.6, which is parallel and adjacent to a portion of the Cornwall Industrial Track.[1] The transaction was expected to be consummated on or soon after September 30, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33302, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit,1925 K Street, NW., Washington, DC 20423–0001 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27291 Filed 10–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on October 1, 1996 (61 FR 51317).

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Angel I. Wolfrey, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–4940.

VA Performance Review Board (PRB)

Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration (Chairperson)
Stepehn L. Lemons, Ed.D, Deputy Under Secretary for Benefits
Shirley Carozza, Deputy Assistant Secretary for Budget
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity
Kathy E. Jurado, Assistant Secretary for Public and Intergovernmental Affairs
Robert E. Coy, Deputy General Counsel

William T. Merriman, Deputy Inspector General
Roger R. Rapp, Director, Field Operations, National Cemetery System
Patricia A. Grysavage, Director, Executive Management and Communications, Veterans Benefits Administration (Alternate)
Kenneth J. Clark, Chief Network Officer, Veterans Health Administration (Alternate)
Vincent L. Barile, Director, Operations Support, National Cemetery System (Alternate)

Veterans Benefits Administration PRB

Stephen L. Lemons, Ed.D., Deputy Under Secretary for Benefits (Chairperson)
David A. Brigham, Director, Eastern Area
Patrick Nappi, Director, Central Area
Celia P. Dollarhide, Director, Education Service
Newell E. Quinton, Chief Information Officer
Keith R. Pedigo, Director, Loan Guaranty Service
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary

Veterans Health Administration PRM

Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health (Chairperson)
Kenneth J. Clark, Chief Network Officer (Co-Chairperson)
R. David Albinson, Chief Information Officer
Terrence S. Batliner, D.D.S., Chief Network Director, VISN 19
Barry L. Bell, Newtwork Director, VISN 20
Linda W. Belton, Newtwork Director, VISN 11
John T. Carson, Network Director, VISN 14
Vernon Chong, M.D., Network Director, VISN 17
Patricia A. Crosetti, Network Director, VISN 15
Joan E. Cummings, M.D., Network Director, VISN 12
Larry R. Deal, Network Director, VISN 7
Jim W. Delgado, Director, Voluntary Service Office
Larry E. Deters, Network Director, VISN 9
James J. Farsetta, Network Director, VISN 3
Denis J. Fitzgerald, M.D., Network Director, VISN 1
Harold F. Gracey, VA Chief of Staff
W. Todd Grams, Chief Financial Officer
Leroy P. Gross, M.D., Network Director, VISN 6
John R. Higgins, M.D., Network Director, VISN 16
Thomas J. Hogan, Director, Management and Administrative Support Office (Ex Officio)
Thomas V. Holohan, M.D., Chief Patient Care Services Officer
Thomas B. Horvath, M.D., Director, Mental Health and Behavioral Sciences
Smith Jenkins, Jr., Network Director, VISN 22
Robert L. Jones, M.D., Network Director, VISN 4
Frederick L. Malphurs, Network Director, VISN 2
Laura J. Miller, Network Director, VISN 10
James J. Nocks, M.D., Network Director, VISN 5
Gregg Pane, M.D., M.P.A., Chief Policy, Planning, and Performance Officer
Robert A. Petzel, M.D., Network Director, VISN 13
Robert H. Roswell, M.D., Network Director, VISN 8
Thomas A. Trujillo, Network Director, VISN 18

Office of Inspector General PRB

David A. Brinkman, Director, Audit Followup Directorate, Department of Defense (Chairperson)
Wilbur L. Daniels, Deputy Assistant Inspector General for Maritime and Departmental Programs, Department of Transportation
William E. Whyte, Assistant Inspector General for Audit, General Services Administration

Dated: October 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–27170 Filed 10–14–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 199
Wednesday, October 15, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-6-000]

Trunkline Gas Company; Notice of Request for Extension of Waiver

Correction

In notice document 97–26593 appearing on page 52535, in the issue of Wednesday, October 8, 1997, make the following correction:

On page 52535, in the second column, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP-250121; FRL-5599-2]

RIN 2070-AC95

Pesticide Worker Protection Standard; Administrative Exception for Cut-Rose Hand Harvesting

Correction

Document 97–26321 was inadvertently published in the Proposed Rules section of the issue of Friday, October 3, 1997, beginning on page 51994. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[DEA Number 163P]

RIN 1117-AA44

Implementation of the Comprehensive Methamphetamine Control Act of 1996; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products and Reports of Certain Transactions to Nonregulated Persons

Correction

In proposed rule document 97–26150 beginning on page 52294, in the issue of Tuesday, October 7, 1997, make the following correction:

On page 52298, in the second column, in the fourth line from the bottom, "401," should read "402,".

BILLING CODE 1505-01-D

federal register

Wednesday
October 15, 1997

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 524 and 550
Drug Abuse Treatment and Intensive Confinement Center Programs; Early Release Consideration; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 524 and 550

[BOP–1070–I]

RIN 1120–AA66

Drug Abuse Treatment and Intensive Confinement Center Programs: Early Release Consideration

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: In this document, the Bureau of Prisons is revising its rule on Drug Abuse Treatment Programs which allows for consideration of early release of eligible inmates who complete a residential drug abuse treatment program. The Bureau of Prisons is revising the rules with respect to the criteria for receiving a sentence reduction and also with respect to the authority of the Community Corrections Regional Administrator to adjust the presumptive release date for an inmate in a community-based program. The amendment is intended to provide for adequate drug treatment transitional programs and to demonstrate more clearly the discretion granted to the Director of the Bureau of Prisons under 18 U.S.C. 3621(e) by listing the criteria that would preclude an inmate from receiving a sentence reduction as determined by the Director of the Bureau of Prisons. Criteria for possible sentence reduction under the intensive confinement center program are being modified in a similar manner as a conforming amendment.

DATES: Effective October 9, 1997. Comments are due December 15, 1997.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is further amending its regulations on Drug Abuse Treatment Programs (28 CFR part 550, subpart F). An interim rule on this subject, which implemented Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994 (codified at 18 U.S.C. 3621(e)), was published in the **Federal Register** on May 25, 1995 (60 FR 27692) and was amended on May 17, 1996 (61 FR 25122). Comments received on these previous interim rules will be addressed in a separate document when the rules are finalized.

The interim rule published on May 25, 1995, attempted to define the term "crime of violence" pursuant to 18 U.S.C. 924(c)(3). Because of differences in application of case law among the various Federal courts, a few crimes would not be clearly covered by the Bureau's definition. This interim rule avoids this complication by using the discretion allotted to the Director of the Bureau of Prisons in granting a sentence reduction to exclude inmates whose current offense is a felony (a) that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or (b) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or (c) that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or (d) that by its nature or conduct involves sexual abuse offenses committed upon children.

As a conforming amendment, the criteria for possible sentence reduction under the intensive confinement center program (28 CFR 524, subpart D) pertaining to crimes of violence (§ 524.31(a)(3)) are being modified in a similar manner.

Under § 550.58(c)(3), the Community Corrections Regional Administrator had the authority to retard or disallow any portion of the maximum 12 month reduction for an inmate in a community-based program based upon a disciplinary finding or based on program needs (for example, the inmate has not established an adequate release plan). This paragraph is being revised to specify that if an inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to fulfill treatment obligations. The Community Corrections Regional Administrator, as the Bureau official responsible for monitoring the quality of the treatment programs available in community-based programs, makes determinations as to the inmate's completion of applicable transitional services. Such determinations are responsive to the treatment needs of the inmate and are not intended to be punitive. Disciplinary findings which can result in an inmate's being precluded from receiving a sentence reduction (see redesignated § 550.58(a)(2)(iv) and (3)(ii)) remain as a determination of the Discipline Hearing Officer.

The Bureau is publishing this change as an interim rule in order to solicit public comment while continuing to provide consideration for early release to qualified inmates. Interested persons may participate in this interim rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. § 601, et seq.), does not have a significant impact on a substantial number of small entities within the meaning of the Act. Because this rule pertains to correctional management of persons committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects

28 CFR Part 524

Prisoners.

28 CFR Part 550

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V, and part 550 in subchapter C of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95–0.99.

2. In § 524.31, paragraph (a)(3) is revised to read as follows:

§ 524.31 Eligibility and placement.

(a) * * *

(3) Is not serving a term of imprisonment for a crime of violence or a felony offense:

(i) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(ii) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(iii) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(iv) That by its nature or conduct involves sexual abuse offenses committed upon children.

* * * * *

SUBCHARTER C—INSTITUTIONAL MANAGEMENT

PART 550—DRUG PROGRAMS

3. The authority citation for 28 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3822, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251–4255, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 550.58, the introductory text, paragraph (a) heading, and paragraph (c)(3) are revised, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3), and a new paragraph (a)(1) is added to read as follows:

§ 550.58 Consideration for early release.

An inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense, and who is determined to have a substance abuse problem, and successfully completes a residential drug abuse treatment program during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months.

(a) *Additional early release criteria.* (1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:

(i) INS detainees;

(ii) Pretrial inmates;

(iii) Contractual boarders (for example, D.C., State, or military inmates);

(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, or aggravated assault, or child sexual abuse offenses;

(v) Inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion;

(vi) Inmates whose current offense is a felony:

(A) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(B) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(C) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(D) That by its nature or conduct involves sexual abuse offenses committed upon children.

* * * * * *

(c) * * *

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to allow for fulfillment of the treatment obligations.

[FR Doc. 97–27252 Filed 10–9–97; 2:48 pm]

BILLING CODE 4410–05–P

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federal register

Wednesday
October 15, 1997

Part III

The President

Proclamation 7038—National School Lunch Week, 1997

Proclamation 7039—Columbus Day, 1997

Federal Register
Vol. 62, No. 199
Wednesday, October 15, 1997

Presidential Documents

Title 3—

The President

Proclamation 7038 of October 10, 1997

National School Lunch Week, 1997

By the President of the United States of America

A Proclamation

Each year during the month of October, we set aside a week to focus on the importance of the National School Lunch Program and its contributions to the health and well-being of America's schoolchildren. Through this program, established more than 50 years ago by President Truman, young people learn firsthand about healthful dietary habits and how to make wise choices regarding the foods they eat. And for millions of children, many of whom come from families in need, their school lunch is the most nutritious meal they will eat during the day.

When President Kennedy proclaimed the first National School Lunch Week in 1963, some 68,000 schools were serving lunches to 16 million children each day. Today, the program is available in more than 94,000 schools across the country, and 26 million students participate daily. This dramatic growth proves that the program continues to meet a significant need in local communities across the Nation, and its success admirably reflects the hard work and commitment of school food-service professionals, as well as the support and technical assistance provided by State administrators.

The National School Lunch Program also reflects our profound concern for the well-being of our young people. By providing them with wholesome, nutritious meals day in and day out, we are helping to improve our children's overall health, increase their learning capacity, lengthen their attention span, and promote healthful dietary habits that will serve them well for a lifetime.

All of these accomplishments are made possible by the many dedicated food-service professionals, administrators, educators, parents, business and community leaders, and other concerned individuals at the local, State, and Federal levels who work in partnership to ensure the effectiveness of the National School Lunch Program. We must strive to build on their achievements so that this vital program will continue to meet the needs of America's children into the next century.

In recognition of the contributions of the National School Lunch Program to the nutritional well-being of children, the Congress by joint resolution of October 9, 1962 (Public Law No. 87-780), has designated the week beginning the second Sunday in October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 12 through October 18, 1997, as National School Lunch Week. I call upon all Americans to recognize those individuals whose efforts contribute to the success of this program and to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–27540
Filed 10–14–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7039 of October 10, 1997

Columbus Day, 1997

By the President of the United States of America

A Proclamation

The life and achievements of Christopher Columbus demonstrate how powerful and lasting an influence one individual can have on the course of human history. Although great explorers reached the shores of this continent both before and after Columbus, few have captured the American imagination as he has. Perhaps because we have always been an adventurous people, eager for challenge and change, we feel a special affinity for this extraordinary man who left the safety of known waters to pursue his vision across the ocean to the threshold of a new world.

Although his momentous voyages across the Atlantic took place more than 500 years ago, their impact can still be felt today. Columbus' discoveries in the West Indies brought about substantive and continuing contact between the peoples of the Old World and the New, contact that gave rise to misunderstandings and conflicts that we still seek to reconcile today. He also made possible the exploration and settlement of North America and opened the door to our continent for generations to follow—people of every race and culture and ethnic origin, who have given our Nation its rich and unique diversity. Christopher Columbus, a son of Italy whose bold enterprise was made possible by the Spanish crown, holds a special place in the hearts of Americans of Italian and Spanish heritage. But, as we prepare for our own voyage of discovery into the next millennium, all Americans can draw inspiration from the character and accomplishments of Columbus. With vision, courage, imagination, and optimism, we can create a future bright with promise and a new world where all of us can pursue our dreams.

In recognition of the enduring achievements of Christopher Columbus, the Congress, by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 13, 1997, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–27541
Filed 10–14–97; 8:45 am]
Billing code 3195–01–P

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federal register

Wednesday
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Part IV

The President

Proclamation 7040—National Children's Day, 1997

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7040 of October 10, 1997

National Children's Day, 1997

By the President of the United States of America

A Proclamation

With the birth of every child, the world becomes new again. Within each new infant lies enormous potential—potential for loving, for learning, and for making life better for others. But this potential must be nurtured. Just as seeds need fertile soil, warm sunshine, and gentle rain to grow, so do our children need a caring environment, the security of knowing they are loved, and the encouragement and opportunity to make the most of their God-given talents. There is no more urgent task before us, as a people and as a Nation, than creating such an environment for America's children.

One of the surest ways to do so is to strengthen American families and help parents in their efforts to raise healthy, happy children. My Administration has worked hard to give parents the tools they need to fulfill their crucial responsibilities. We have sought to put tobacco and guns out of the reach of children. We are improving the quality of our children's schools by making a national commitment to high academic and teaching standards. Recognizing the importance of a child's early years to his or her development, we have expanded Head Start and established Early Head Start for low-income families with children 3 years old or younger. We have made it easier for millions of parents to take time off to be with a sick child without losing their jobs, and to keep their health insurance when they change jobs. We have protected Medicaid coverage for 36 million Americans, including about 20 million children, and the Balanced Budget Act I recently signed into law will provide meaningful health care coverage to millions more uninsured children.

But there is still much to be accomplished if we are to ensure that America's children grow up to meet their fullest potential. Our next important goal must be to build upon our efforts and improve the quality and affordability of child care in our Nation. With more people in the work force, with more single-parent homes, and with more families in which both parents have to work to make ends meet, millions of American children are already in some form of day care, and the demand for affordable, quality child care is growing. Later this month, the First Lady and I will host the White House Conference on Child Care to work with and learn from other parents, child care providers and experts, business leaders, and economists. Together we will focus on the best means to increase the quality, availability, and affordability of child care in our Nation.

As we observe National Children's Day this year, let us recommit ourselves to creating a society where parents can raise healthy, happy children; where every newborn is cherished, where every child is encouraged to succeed, and where all our young people are free to pursue their dreams.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 12, 1997, as National Children's Day. I urge all Americans to express their love and appreciation for children on this day and on every day throughout the year. I invite Federal officials, State and local governments, and particularly all American families to join together in observing this day with appropriate ceremonies and activities to honor our Nation's children.

IN WITNESS WHEREOE, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-27583
Filed 10-14-97; 11:16 am]
Billing code 3195-01-P

federal register

Wednesday
October 15, 1997

Part V

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Department of Defense Appropriation Act, 1998; Notices

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Department of Defense Appropriations Act, 1998

October 14, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 14, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

THE WHITE HOUSE,
Washington,
October 14, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Department of Defense Appropriations Act, 1998" (Public Law 105–56; H.R. 2266). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitute a special message under section 1022 of the Congressional Budget and Compoundment Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515.

THE WHITE HOUSE,
Washington,
October 14, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Department of Defense Appropriations Act, 1998" (Public Law 105–56; H.R. 2266). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitute a special message under section 1022 of the Congressional Budget and Compoundment Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, D.C. 20510.

Cancellation No. 97–42

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $30,000 thousand for Operation and Maintenance, Air Force project "SR–71" on page 75 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide manning, operations and support to sustain SR–71 training requirements during fiscal year 1998 and provide for a 30-day operational deployment capability. The SR–71 is a high-speed, high-altitude, long-range, multi-sensor, all-weather, wide-area surveillance aircraft. There is no military requirement to continue to operate the SR–71. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−21,870
1999	−6,480
2000	−900
2001	−270
2002	−120
Total	−30,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$30,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Operation and Maintenance.

2(A). Governmental Function/Project (Account): SR–71 (Operation and Maintenance, Air Force).

2(B). States and Congressional Districts Affected: California, 21st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: five; 21st District: one.

Cancellation No. 97–43

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266)

1(A). Dollar Amount of Discretionary Budget Authority: $9,000 thousand for Aircraft Procurement, Air Force, project "SR–71 Mods" on page 103 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would modify cameras, enhance radar processing, install a Global Positioning System navigation system, and improve electronic intelligence for the SR–71 reconnaissance aircraft. The SR–71 is a high-speed, high-altitude, long-range, multi-sensor, all-weather, wide-area surveillance aircraft. There is no military requirement to continue to operate the SR–71. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−711
1999	−2,169
2000	−2,961
2001	−1,782
2002	−765
Total	−9,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$9,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Aircraft Procurement.

2(A). Governmental Function/Project (Account): SR–71 Modifications (Aircraft Procurement, Air Force).

2(B). States and Congressional Districts Affected: California, 25th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: six; 25th District: one.

Cancellation No. 97–44

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266)

1(A). Dollar Amount of Discretionary Budget Authority: $4,000 thousand for the Research, Development, Test and Evaluation, Army project titled "Gallo Center" on page 112 of House Report 105–265 dated September 23, 1997, and page 166 of House Report 105–206 dated July 25, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The President's FY 1998 Budget supports ongoing work to demonstrate and export new environmentally acceptable technology to the industrial base and to train the industrial base on the use of new technology. The appropriated increase would support life-cycle environmental and manufacturing technologies research specifically related to weapons systems and munitions technology assessment and analysis. The Army does not believe this additional research merits funding at this time.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−2,320
1999	−1,320
2000	−212
2001	−72
2002	−32
Total	−4,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Test and Evaluation.

2(A). Governmental Function/Project (Account): Gallo Center (Research, Development, Test and Evaluation, Army).

2(B). States and Congressional Districts Affected: New Jersey, 11th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New Jersey: one; 11th District: one.

Cancellation No. 97–45

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $6,000 thousand for the Research, Development Test and Evaluation, Army project "Molten Carbonate Fuel Cells Technology" on page 113 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would research and develop alternative fuel cell technology that converts chemical energy to electricity. It has primary applications for the Department of Energy which has responsibility for alternative energy research. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−3,480
1999	−1,980
2000	−318
2001	−108
2002	−48
Total	−6,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$6,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense 2(A).

Bureau: Research, Development, Test and Evaluation.

2(A). Governmental Function/Project (Account): Molten Carbonate Fuel Cells Technology (Research, Development, Test and Evaluation, Army).

2(B). States and Congressional Districts Affected: Unknown.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Unknown.

Cancellation No. 97–46

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266)

1(A). Dollar Amount of Discretionary Budget Authority: $3,000 thousand for the Research, Development Test and Evaluation, Army project "Periscopic Minimally-Invasive Surgery" on page 113 and 116 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would research less-invasive surgery techniques that could potentially result in faster healing, less hospital time, and reduced costs. However, the Department already funds microsurgery programs with specific military applications. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−1,740
1999	−990
2000	−159
2001	−54
2002	−24
Total	−3,000

1(F). Adjustments o Defense Discretionary Spending Limits

Budget Authority: −$3,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). AGENCY: Department of Defense.

2(A). Bureau: Research, Development, Test and Evaluation.

2(A). Governmental Function/Project (Account): Periscopic Minimally-Invasive Surgery (Research, Development, Test and Evaluation, Army).

2(B). States and Congressional Districts Affected: Unknown.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Unknown.

Cancellation No. 97–47

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $4,000 thousand for the Research, Development Test and Evaluation, Army project "Proton Beam" on page 113 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would research a new machine that delivers radiation therapy for cancer treatment. The appropriated funds constitute a grant to a private organization for medical research that should be funded through a peer review process. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−2,320
1999	−1,320
2000	−212
2001	−72
2002	−32
Total	−4,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Test and Evaluation.

2(A). Governmental Function/Project (Account): Proton Beam (Research, Development, Test and Evaluation, Army).

2(B). States and Congressional Districts Affected: California, 40th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: seven; 40th District: three.

Cancellation No. 97–48

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266)

1(A). Dollar Amount of Discretionary Budget Authority: $3,000 thousand for a Research, Development, Test, and Evaluation, Navy project "Terfenol-D" on pages 119 and 122 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project is intended to enable the Navy to achieve further cost reductions in the application of a magnetorestrictive, iron/terbium/dysprosium alloy for new high performance sonar systems. This effort is to be undertaken through a partnership between any entity which has made a financial commitment and has experience in the production of the alloy and the National Center of Excellence in Metal Working Technology. The Navy has no military requirement for this technology. This project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−1,603
1999	−1,008
2000	−253
2001	−60
2002	−33
Total	−3,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$3,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Test, and Evaluation.

2(A). Governmental Function/Project (Account): Terfenol-D (Research, Development, Test, and Evaluation, Navy).

2(B). States and Congressional Districts Affected: Pennsylvania, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Pennsylvania: three; 12th District: two.

Cancellation No. 97–49

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $3,000 thousand for a Research, Development, Test, and Evaluation, Navy project for "COTS airgun as an acoustic source" on page 120 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would continue development, testing, and calibration of components for a mobile, high power broadband acoustic surveillance source that is based upon the adaptation of commercial air-gun technology. Technical review in the Department of Defense has concluded that this technology will not be effective, except in shallow water regions where there are no current requirements. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−1,603
1999	−1,008
2000	−253
2001	−60
2002	−33
Total	−3,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$3,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). AGENCY: Department of Defense.

2(A). Bureau: Research, Development, Test, and Evaluation.

2(A). Governmental Function/Project (Account): COTS airgun as an acoustic source (Research, Development, Test, and Evaluation, Navy).

2(B). States and Congressional Districts Affected: Unknown.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Unknown.

Cancellation No. 97–50

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $10,000 thousand for Research, Development, Test and Evaluation, Air Force project "Military Spaceplane" on page 125 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would fund research into hypersonic technologies and is intended to complement NASA's reusable launch vehicle program. However, NASA, not the Department of Defense, is responsible for the development of reusable launch vehicles. The project is being canceled because it was not requested in the President's FY 1998 Budget, and because the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−4,272
1999	−4,272
2000	−887
2001	−357
2002	−116
Total	−10,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$10,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): Military Spaceplane (Research, Development, Testing and Evaluation, Air Force).

2(B). States and Congressional Districts Affected: New Mexico, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New Mexico: three; 1st District: two.

Cancellation No. 97–51

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $30,000 thousand for Research, Development, Test and Evaluation, Air Force project "Clementine" on page 125 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would test and demonstrate microelectronics for acquisition tracking and intercept of an asteroid in space using a mothership integrated with three microsatellites. The scientific objective of the mission is to obtain data on the asteroid. The project's key military application would be for space-based missile defense. The project is being canceled because it was not requested in the President's FY 1998 Budget; it was not in the Department of Defense Future Years Defense Plan; and its key military application is not part of the Department's national missile defense readiness plan.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−12,817
1999	−12,820
2000	−2,662
2001	−1,071
2002	−347
Total	−30,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$30,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments Upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): Clementine (Research, Development, Testing and Evaluation, Air Force).

2(B). States and Congressional Districts Affected: New Mexico, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New Mexico: four; 1st District: three.

Cancellation No. 97–52

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266)

1(A). Dollar Amount of Discretionary Budget Authority: $1,500 thousand for Research, Development, Test and Evaluation, Air Force project "Optical Correlator Technology" on page 125 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would conduct research and development to attempt to improve optical correlator technology. The project is being canceled because it was not requested in the President's FY 1998 Budget, and because the Department of Defense has determined that it would not make a significant contribution to U.S. military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−641
1999	−641
2000	−133
2001	−54
2002	−17
Total	−1,500

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$1,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): Optical Correlator Technology (Research, Development, Testing and Evaluation, Air Force).

2(B). States and Congressional Districts Affected: Unknown.

2(C) Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Unknown.

Cancellation No. 97–53

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $37,500 thousand for Research, Development, Test and Evaluation, Defense-wide project "ASAT" on page 130 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would fund a technology demonstration experiment to prove the feasibility of launching a seeker that would smash into an enemy's satellite, thereby disabling it. However, alternative means exist for addressing a satellite threat, such as destroying ground stations or disrupting satellite communications links. This item is being canceled because it was not requested in the President's FY 1998 Budget; it was not in the Department of Defense Future Years Defense Plan; and there are alternative ways to disrupt enemy satellite capabilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−16,313
1999	−15,000
2000	−4,500
2001	−563
2002	−563
Total	−37,500

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$37,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above. 2(A).

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): ASAT (Research, Development, Testing and Evaluation, Defense-wide).

2(B). States and Congressional Districts Affected: California, 23rd and/or 24th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: eight; 23rd District: one; 24th District: one.

Cancellation No. 97–54

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $2,000 thousand for Research, Development, Test and Evaluation, Defense-wide project "Risk-based toxic chemicals research" on page 133 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would address questions relating to establishment of cleanup criteria for toxic chemicals associated with base operations and for remediation of waste sites. It would duplicate ongoing research being conducted by the Department of Defense. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−870
1999	−800
2000	−240
2001	−30
2002	−30
Total	−2,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$2,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): Risk-based toxic chemicals research (Research, Development, Testing and Evaluation, Defense-wide).

2(B). States and Congressional Districts Affected: Unknown.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Unkown.

Cancellation No. 97–55

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of Defense Appropriations Act, 1998" (H.R. 2266).

1(A). Dollar Amount of Discretionary Budget Authority: $1,000 thousand for Research, Development, Test and Evaluation, Defense-wide project "Defense Techlink rural technology transfer" on page 133 of House Report 105–265 dated September 23, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would develop a rural technology model

of a five state rural region of Montana, North Dakota, South Dakota, Wyoming and Idaho. The project is being canceled because it was not requested in the President's FY 1998 Budget and the Department of Defense has determined that it would not make a significant contribution to US military capability.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−435
1999	−400
2000	−120
2001	−15
2002	−15
Total	−1,000

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$1,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Research, Development, Testing and Evaluation.

2(A). Governmental Function/Project (Account): Defense Techlink rural technology transfer (Research, Development, Testing and Evaluation, Defense-wide).

2(B). States and Congressional Districts Affected: Idaho, Montana, North Dakota, South Dakota, Wyoming; Congressional Districts unknown.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Idaho: three; Montana: two; North Dakota: one; South Dakota: two; Wyoming: one.

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H.R. 394/P.L. 105–59

To provide for the release of the reversionary interest held by the United States in certain property located in the County of Iosco, Michigan. (Oct. 10, 1997; 111 Stat. 1268)

H.R. 1948/P.L. 105–60

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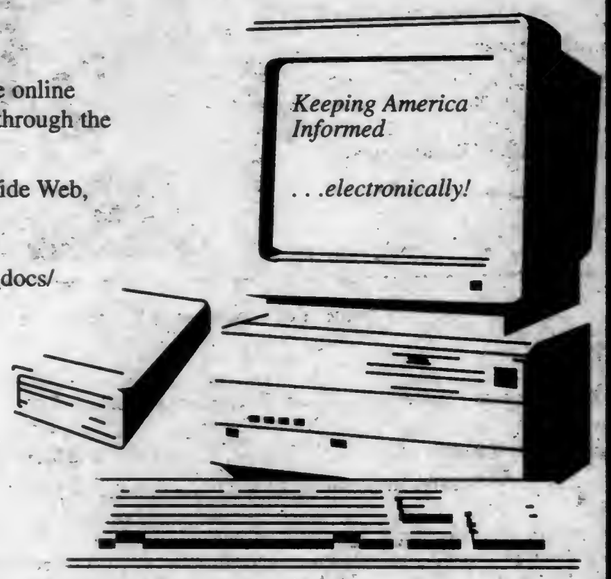
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The President

Executive Order 13064 of October 11, 1997

Further Amendment to Executive Order 13010, as Amended, Critical Infrastructure Protection

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the review of the report by the President's Commission on Critical Infrastructure Protection, it is hereby ordered that Executive Order 13010, as amended, is further amended as follows:

Section 1. Section 5(a), as amended, shall be further amended by deleting "15" and inserting "20" in lieu thereof and by deleting "sector" and inserting "and public sectors" in lieu thereof. Section 5(b) shall be amended by inserting "or Co-Chairs" after "Chair".

Sec. 2. Section 6(f), as amended, shall be further amended by deleting ", the Principals Committee, the Steering Committee, and the Advisory Committee" and by inserting a second sentence, which shall read: "The Principals Committee, the Steering Committee, and the Advisory Committee shall terminate no later than March 15, 1998, and, upon submission of the Commission's report, shall review the report and prepare appropriate recommendations to the President." Section 6, as amended, shall be further amended by inserting the following:

"(g) The person who served as Chair of the Commission may continue to be a member of the Steering Committee after termination of the Commission."

Sec. 3. A new section 7 shall be inserted, which reads:

"**Sec. 7.** *Review of Commission's Report.* (a) Upon the termination of the Commission as set out in section 6(f) of this order, certain of the Commission's staff may be retained no later than March 15, 1998, solely to assist the Principals, Steering, and Advisory Committees in reviewing the Commission's report and preparing recommendations to the President. They shall act under the direction of the Steering Committee or its designated agent. The Department of Defense shall continue to provide funding and administrative support for the retained Commission staff.

(b) Pursuant to Executive Order 12958, I hereby designate the Executive Secretary of the National Security Council to exercise the authority to classify information originally as "Top Secret" with respect to the work of the Commission staff, the Principals Committee, the Steering Committee, the Advisory Committee, and the Infrastructure Protection Task Force."

Sec. 4. Sections 7 and 8 of Executive Order 13010, as amended, shall be renumbered sections 8 and 9, respectively.

William J. Clinton

THE WHITE HOUSE,
October 11, 1997.

[FR Doc. 97–27644
Filed 10–15–97; 8:45 am]
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Rules and Regulations

Federal Register
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DEPARTMENT OF THE INTERIOR

5 CFR Chapter XXV

43 CFR Part 20

RINs 1090–AA38, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior

AGENCY: Department of the Interior (Department).

ACTION: Interim rule, with request for comments.

SUMMARY: The Department of the Interior, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for the employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. This interim rule is a necessary supplement to the Standards because it addresses ethical issues unique to the Department. The interim rule designates separate agency components for purposes of identifying prohibited sources of gifts and applying the restrictions on compensated outside teaching, speaking and writing that relate to an employee's official duties; provides cross-references to certain statutory prohibitions against the holding by some Department employees of certain financial and other interests, and regulations implementing those prohibitions; prohibits certain financial interests and outside employment; and requires employees to obtain prior approval for certain outside employment. The Department is also revising its employee responsibilities and conduct regulations by adding a cross-reference to ethics and other conduct-related regulations, removing superseded or redundant provisions, and redesignating the provisions remaining in the regulation.

DATES: This rule is effective on October 16, 1997. Comments on the interim rule must be received on or before December 15, 1997.

ADDRESSES: Send comments to the Department Ethics Office, Department of the Interior, 1849 C Street, NW., Room 5013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gabe Paone or Mason Tsai, Department Ethics Office, 202–208–5916; Internet E-mail address: mason_tsai@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733), 61 FR 50689–50691 (interim rule revisions adopted as final at 62 FR 12531), and 62 FR 48746–48748, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch personnel.

On June 10, 1993, the Department issued a final rule which removed certain provisions of its employee responsibilities and conduct regulations at 43 CFR part 20 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 58 FR 32446–32449. Along with portions of 43 CFR part 20 that the Department retained under authority separate from 5 CFR parts 2634 and 2635, the Department retained in 43 CFR part 20 provisions regarding prohibited financial interests and outside employment which were temporarily preserved, respectively, by the notes following 5 CFR 2635.403(a) and 2635.803, as extended at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952.

The Standards, at 5 CFR 2635.105, authorize executive branch agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XXV of 5 CFR, are necessary to the success of its ethics program. Also, upon issuance of the supplemental regulation, the Department is removing those remaining provisions in 43 CFR part 20 that now have been superseded, and other provisions as explained in part III of this supplementary information.

II. Analysis of the Regulations

Section 3501.101 General

Section 3501.101(a) provides that the regulations contained in the interim rule apply to employees of the Department of the Interior and supplement the executive branch-wide Standards in 5 CFR part 2635. This section also notes that employees of the Department are subject to the responsibilities and conduct regulations for executive branch employees, at 5 CFR part 735; the executive branch financial disclosure regulations, at 5 CFR 2634; and the Department's regulations regarding employee responsibilities and conduct, at 43 CFR part 20.

Section 3501.101(b) includes definitions for various terms used in the regulation, and provides information about ethics program responsibilities within the Department.

Section 3501.101(c) authorizes the Designated Agency Ethics Official (DAEO), or the Ethics Counselor for each major operating component of the Department, to issue explanatory guidance and implementing procedures to assist the employees in the Department to understand and comply with the executive branch-wide Standards and these supplemental regulations. In accordance with 5 CFR 2635.105(c), these issuances themselves will neither supplement nor amend the executive branch-wide Standards in 5 CFR part 2635 or this interim rule.

Section 3501.102 Designation of Separate Agency Components

The Standards, at 5 CFR 2635.202(a), prohibit an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as separate

agencies components of the department that exercise distinct and separate functions. Designations made pursuant to § 2635.203(a) are used also for purposes of applying the restrictions in 5 CFR 2635.807(a) on receipt of compensation for teaching, speaking or writing related to an employee's official duties. Since the Department is establishing in § 3501.105(c) a prior approval requirement for outside employment with a prohibited source, the designations in this section will also be used for purposes of applying the supplemental regulation's requirement for prior approval of outside employment.

Section 3501.102(a) of the interim rule designates ten of the Department's bureaus and offices as separate agencies. The Department has determined that each of bureaus and offices exercises separate and distinct functions. As further amplified in § 3501.102(c), employees of the Department not employed in one of the ten separate agency components are deemed to be employees of the entire Department, which for those employees includes any parts of the Department that are not included in the ten separate agency components as well as those parts that are so included.

Examples at the end of this section illustrate how the separate agency designations are applied.

Section 3501.103 Prohibited Interests in Federal Lands

Section 3501.103(a) contains cross-references to the statutory prohibitions at 43 U.S.C. 11 and 31(a), which provide respectively that "[t]he officers, clerks, and employees of the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land," and "[t]he Director and members of the United States Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey * * *." The Department's responsibilities and conduct rules, at 43 CFR 20.735–23(b)(1) (being partially retained and redesignated by this interim rule-making as 43 CFR 20.401), implement these long standing statutory prohibitions and also are cross-referenced in § 3501.103(a).

The prohibitions at 43 U.S.C. 11 and 31(a) has been extended by the Department's regulations in 43 CFR part 20 to employees of the Minerals Management Service (MMS) and certain other Department employees. The statutory prohibitions' regulatory extension to MMS employees followed the establishment of MMS in October 1982. The MMS was initially staffed with natural resource employees from the United States Geological Survey (USGS) and the Bureau of Land Management (BLM). At the time, many of the new MMS employees were to be performing duties regarding Federal lands similar to those for which they were responsible when they were USGS OR BLM employees. This created an ethics concern for MMS and the Department, since the MMS employees transferring from USGS and BLM would no longer be covered by the organic prohibitions of their former bureaus. To address this concern the Department decided to extend, in its employee responsibilities and conduct regulations at 43 CFR part 20, those organic prohibitions to MMS employees.

The other Department employees to whom the prohibitions at 43 U.S.C. 11 and 31(a) were extended in 43 CFR part 20 were the Secretary and employees "in pay grades equivalent to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)" in "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer." The Department determined that the prohibitions needed to be extended to those additional personnel because they were positions which could substantially influence the actions and decisions made by employees of USGS, BLM, or MMS.

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the acquisition or holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality or objectivity with which agency programs are administered. The Department has made this determination with respect to the statutory prohibition's regulatory extensions formerly found at 43 CFR 20.735–23, and is reinstituting those regulatory extensions, in modified form to conform with the requirements of 5 CFR part 2635, in § 3501.103(b).

In addition to all MMS employees, § 3501.103(b) describes the employees to whom the regulatory prohibition therein applies as those in "positions classified at GS–15 and above" in "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer," instead of in "pay grades equivalent to GS–16 and above" or in "merit pay positions" in those offices, as the superseded provision had done. Grades 16 and above of the General Schedule (GS) no longer exist, having been abolished by the Federal Employees Pay Comparability Act of 1990, Pub. L. 101–509. Likewise, the statutory basis for merit pay positions has expired. Although the coverage of the former provision reached some employees in merit pay positions at GS–13 and GS–14, the Department has determined that it is not necessary for the prohibition to reach employees at those grade levels in order to avoid the appearance of misuse of position or loss of impartiality and objectivity with which Department programs and administered.

As defined in former § 20.735–20(c) of 43 CFR, "the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer" included the Immediate Office of the Secretary (except for the Office of Historically Black College and University Programs and Job Corps); Office of the Solicitor; Office of the Inspector General; Office of Hearings and Appeals; Office of Congressional and Legislative Affairs; Office of Public Affairs; all Assistant Secretaries, their immediate Office staff and heads of bureaus which are subordinate to an Assistant Secretary, including the following offices under the Office of the Assistant Secretary—Policy, Management and Budget: Office of Acquisition & Property Management, Office of Budget, Office of Environmental Affairs, and Office of Program Analysis. This list, modified to reflect reorganizations and restructuring at the Department, has been carried forward as the definition of "Office of the Secretary and other Departmental offices reporting directly to a Secretary officer" in this section.

Paragraph (b)(2) of § 3501.103 contains exceptions to the regulatory restriction in § 3501.103(b)(1). These exceptions are being carried forward from the former regulatory restriction in 43 CFR part 20, and provide that the restriction does not apply to an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, or a special Government employee engaged in field work relating to land, range, forest, and mineral conservation and management activities.

Section 3501.103(c)91) provides for an additional restriction on employees' interests in Federal lands. Because the Department has authority to grant claims, permits, leases, small tract entries, and other rights in most of the country's nationally owned public lands and natural resources, the Department's employee responsibilities and conduct regulations long included a provision at 43 CFR 20.735–23(b)(3), generally restricting all employees of the Department from acquiring or retaining such rights for commercial or investment purposes. This prohibition has been reinstituted, in modified form to conform with the requirements of 5 CFR part 2635, as § 3501.103(b)(1). The Department has determined under 5 CFR 2635.403(a) that it is necessary to continue to restrict all employees from acquiring or retaining, for commercial or investment purposes, any claim, permit, lease, small tract entry, or other right in lands or resources administered or controlled by the Department, in order to maintain public confidence in the impartiality or objectivity with which the Department's programs are administered. The Department has made the additional determination under 5 CFR 2635.403(a) with respect to this prohibition that it is necessary for the efficiency of the service to extend the prohibition to employees' spouses and minor children.

Paragraph (c)(2) of § 3501.103 contains two exceptions to the regulatory restriction in § 3501.103(c)(1). Both exceptions had applied to the former restriction in 43 CFR part 20. The first exception is intended to make it clear that the prohibition does not apply to acquiring or holding a right in Federal lands, administered or controlled by the Department, for recreational purposes. The second exception allows employees working in the Office of the Assistant Secretary—Indian Affairs or in the Bureau of Indian Affairs to acquire or retain interests in Federal lands controlled by the Department for the benefit of Indians or Alaska Natives. Many of those employees are Native Americans or Alaska Natives who may have an involuntary interest in tribal lands simply because of their innate membership in their home tribes. Generally, under the exception at 18 U.S.C. 208(b)(4) to the prohibitions contained in 18 U.S.C. 208(a), such an interest would not bar an employee's participation in a particular matter affecting the interest.

Under § 3501.103(d), the DAEO may require divestiture of an interest in Federal lands that would otherwise be allowed to be retained under the exceptions listed in § 3501.103(b)(2), using the standard of "substantial conflict" set forth in 5 CFR 2635.403(b). Under § 3501.103(e), the DAEO may grant a waiver from the regulatory restrictions in paragraphs (b) and (c) of this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the restriction is not necessary to avoid the appearance of misuse of position or loss or impartiality and objectivity with which Department programs are administered. An employee may be required under the waiver to disqualify himself from a particular matter or take other appropriate action. Section 3501.103(f) provides that existing waivers, issued under the Department's regulations for employees to whom the regulatory prohibitions in paragraphs (b) and (c) of this section applied under the former provisions in 43 CFR part 20, remain in effect but may be withdrawn subject to the standard for waivers in paragraph (e).

Section 3501.104 Prohibited Interests in Mining

Section 3501.104(a) provides a cross-reference to the prohibition in the Surface Mining Control and Reclamation Act of 1977 (Surface Mining Act), at 30 U.S.C. 1211(f), on employees of the Office of Surface Mining Reclamation and Enforcement or any other employee who performs functions or duties under the Surface Mining Act having any financial interest in underground or surface coal mining operations, and the Department's regulation at 30 CFR part 706 which implement the prohibition. The Department has included this cross-reference in the supplemental regulation at the request of OGE, because some of the interests prohibited by the Surface Mining Act are financial interest within the meaning of 5 CFR 2635.403(c).

Section 3501.104(b)(1) prohibits employees of the U.S. Geological Survey and their spouses and minor children from having a direct or indirect financial interest in mining activities conducted on privately-owned lands within the United States. This provision is being issued under the authority of 5 CFR 2635.403(a), based on the Department's determinations that the acquisition or retention of such interests would cause a reasonable person to question the impartiality and objectivity with which USGS programs are administered, and that there is a direct and appropriate nexus between the prohibition as applied to employees' spouses and minor children and the ability of USGS to carry out efficiently its mission related to the mineral resources of the national domain. This provision is based upon the former provision at 43 CFR 20.735–25(b)(2) (now superseded), under which neither the Director nor any member of the USGS was allowed to hold "substantial" personal or private interests, direct or indirect, in any private mining activities in the United States. The Department found this provision useful in avoiding conflicts of interest for USGS employees.

As defined in paragraph (b)(2)(i) of § 3501.104, "financial interest" has the meaning given in the executive branch-wide Standards at 5 CFR 2635.403(c). Also, as defined in paragraph (b)(2)(ii) of § 3501.104, "private mining activities" include exploration, development and production of oil, gas and other minerals on privately-owned lands in the United States. Lands owned by the Federal government or by a State or local government are not privately-owned.

Paragraph (b)(3) of § 3501.104 contains exceptions to the regulatory restriction in § 3501.104(b)(1). These exceptions are intended to permit the acquisition or holding of financial interests that the Department has determined are unlikely to raise questions regarding the objective and impartial performance of USGS employees' official duties or the efficient accomplishment of the Department's mission. The exceptions permit interests of certain de minimis values. These threshold amounts vary for employees of different organizational elements of the USGS, depending on the extent of the elements' direct connection to private mining activities in the United States. There is also a de minimis amount set for mineral royalties and "overriding royalty interests" (ORRI), i.e., an exclusive payment that is generally given to a landowner by an oil exploration company in return for the right to explore and produce oil and/or gas from privately-owned lands. An ORRI is generally determined by the quantity of oil and/or gas produced at the surface of an active well and does not include production costs. The exceptions also permit interests in publicly traded or publicly available investment funds and qualified profit sharing, retirement, or similar plans, provided that, in the case of such a fund, its prospectus does not indicate the objective or practice of concentrating its investments in entities engaged in private mining activities in the United States, or, in the case of such a plan, the plan does not invest more than 25 percent of its funds in debt or equity instruments of entities engaged in private mining activities in the United States, and provided that the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund or plan. In addition, for the spouses and minor children of USGS employees, the exceptions permit the acquisition or retention of a financial interest in mining activities conducted on privately-owned lands within the United States when the interest was

obtained under certain circumstances unrelated to USGS employment.

Under § 3501.104(b)(4), the Director of the USGS may require divestiture of a financial interest that would otherwise be allowed to be retained under the exceptions listed in § 3501.104(b)(3), if he or she determines under 5 CFR 2635.403(b) that the financial interest will require the employee's disqualification to a debilitating extent or will adversely affect the efficient accomplishment of the Department's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest. Under § 3501.104(b)(5), the Director of the USGS may grant a waiver from the regulatory restrictions in paragraph (b)(1) of this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality and objectivity with which Department programs are administered. An employee may be required under the waiver to disqualify himself from a particular matter or take other appropriate action.

Section 3501.104(b)(6) provides that a spouse or minor child of an employee may retain a financial interest otherwise prohibited by paragraph (b)(1) of this section, if the interest was permitted under criteria and procedures in effect before November 2, 1996 (pursuant to provision at 43 CFR 20.735–25(b)(2) which expired at that time). The Director of the USGS may, however, review those retained financial interests for consistency with the standard for waivers in paragraph (b)(5) of this section, and may disallow an interest if he or she determines in writing that the waiver standard is not met.

Section 3501.105 Outside Employment and Activities

5 CFR 2635.802(a) provides that an employee shall not engage in outside employment or activities if the outside employment or activity is prohibited by, *inter alia*, an agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. The Department's employee responsibilities and conduct regulation at 43 CFR part 20 had included various prohibitions on the outside employment and activities of specific classes of Department employees.

To the extent that prohibitions on employees' outside employment and activities were issued by an agency under authority independent of 5 CFR part 2635, the prohibitions would not have to be included in the agency's supplemental regulation. Nevertheless, the Department is including in § 3501.105(a)(1) a cross-reference to the statutory prohibition at 43 U.S.C. 31(a), under which employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations. The purpose of including this cross-reference in the supplemental regulation is to provide further notice to employees of the prohibition.

Also with respect to prohibited outside employment and activities, the Department is reinstituting in § 3501.105(a)(2) the longstanding prohibitions, which had been included in its former regulations at 43 CFR 20.735–22(c), against Bureau of Land Management employees working as real estate agents and realty specialists. The Department has determined this prohibition is necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered, and to avoid any public perception that Department employees are using their official positions or Department connections to advance their outside real estate careers. In order to lessen the burden of this prohibition, such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis as they were allowed to do under the former regulations.

Finally with respect to prohibited outside employment and activities, the Department is reinstituting in § 3501.105(a)(4) the longstanding prohibition which had been included in its former regulations, at 43 CFR 20.735–27(c)(1), against employees in the Office of the Assistant Secretary—Indian Affairs, and in the Bureau of Indian Affairs (BIA), holding a position on a tribal election board or on a tribal school board which oversees BIA schools. The Department has determined that this prohibition is needed to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered.

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require its employees to obtain written approval before engaging in outside employment. The Department's former regulation at 43 CFR 20.735–22 provided that each major program operating component of the Department and other Departmental offices could require their employees to obtain approval to engage in outside work by issuing supplementary requirements. The prior approval requirements that were instituted pursuant to that authority remained in effect through November 1, 1996, under the note following 5 CFR 2635.803, as extended, and appendix D to part 2635. Those requirements served the Department well in ensuring that its employees avoided violations of the standards of conduct and conflict of interest statutes. In accordance with 5 CFR 2635.803, the Department has determined that it is necessary to the administration of its ethics program to require prior approval for certain types of outside employment that pose a potential for employees to engage in conduct that might violate applicable laws and regulations.

Therefore, § 3501.105(b)(1)(i) requires an employee (other than a U.S. Geological Survey employee—who would be subject to a broader provision—or a special Government employee) who wishes to engage in outside employment with a prohibited source to obtain prior written approval from his servicing ethics counselor before engaging in such outside employment. In identifying a "prohibited source" for purposes of this prior approval requirement, the Department will apply the definition of that term in the Standards at 5 CFR 2635.203(d), a supplemented by the separate agency component designations in § 3501.102(a). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), by that component; doing business or seeking to do business with the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), with that component; conducting activities regulated by the Department, or, in the case of an employee in one of the separate agency components designated in § 3501.102(a), by that component; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 3501.105(b)(1) provides further that this prior approval requirement applies without regard to whether the outside employment is to be undertaken for compensation.

In view of the organic restrictions on outside activities that apply to U.S. Geological Survey (USGS) employees, and USGS's success in avoiding violations of those restrictions by having had a broad prior approval requirement for its employees, § 3501.105(b)(1)(ii)(A) provides that notwithstanding the requirement for prior approval of outside employment with a prohibited source in § 3501.105(b)(1)(i), USGS employees must obtain prior written approval for any outside employment. Under § 3501.105(b)(1)(ii)(B), however, categories of outside employment could be exempted by USGS from the prior written approval requirement, provided the employment exempted is not prohibited by law, the Standards, or these supplemental regulations, and would normally be approved if subject to the case-by-case requirement for prior approval.

Section 3501.105(b)(2) lists the basic items that an employee must include in an approval request. Section 3501.105(b)(3) sets forth the standard to be used in evaluating approval requests. Section 3501.105(b)(4) provides definitions of terms used in this section. Under § 3501.105(b)(4)(i), "employment" is broadly defined to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice and are for compensation other than reimbursement of expenses. Paragraph (b)(4)(ii) of § 3501.105 sets forth for ease of reference the definition of "prohibited source" at 5 CFR 2635.203(d), as supplemented by the designation of separate agency components at § 3501.102.

III. Repeal of Portions of the Department's Employee Responsibilities and Conduct Regulations and Related Modifications

The interim rule removes those provisions in the regulations at 43 CFR part 20 governing Department employees' responsibilities and conduct that had remained in effect through November 1, 1996, pursuant to the notes following 5 CFR 2635.403(a) and 2635.803, as extended, and the appendixes to part 2635. In addition, the interim rule removes a provision dealing with use of official title, which was superseded when the executive branch-wide Standards went into effect on February 3, 1993, but which inadvertently was not removed from 43 CFR part 20 when the Department first amended that regulation in response to the issuance of the Standards.

The interim rule also removes provisions in 43 CFR part 20 which, based on the United States Bureau of Mines' organic legislation at 30 U.S.C. 6, prohibited certain interests in mining activities for certain Department employees. Pub. L. 104–134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, closed the United States Bureau of Mines on April 26, 1996. Likewise, the interim rule removes provisions in 43 CFR part 20 that were based on prohibitions in the Trading with Indians Act, at 18 U.S.C. 437. Pub. L. 104–178 repealed 18 U.S.C. 437 on August 6, 1996.

Additionally, the Department is removing from 43 CFR part 20 various sections that are redundant, in light of other regulations. Those sections, and the regulations which the Department has determined make them unnecessary for inclusion in 43 CFR part 20, are § 20.735–2(c) regarding equal employment opportunity policy, and § 20.735–10(a) regarding sexual harassment, both unnecessary in light of regulations at 29 CFR part 1614; § 20.735–6 regarding gifts and decoration from foreign governments, unnecessary in light of regulations at 41 CFR part 101–49; § 20.735–8 regarding nepotism, unnecessary in light of regulations at 5 CFR part 310; § 20.735–9 regarding political activity, unnecessary in light of regulations at 5 CFR part 734; and § 20.735–10(h) regarding patents, unnecessary in light of regulations at 43 CFR part 6.

These removals leave in 43 CFR part 20 only provisions which the Department has authority to issue independent of 5 CFR part 2635 or which for other reasons set forth in 5 CFR 2635.105 do not have to be included in an agency's supplemental standards of ethical conduct regulation. Among these provisions are rules regarding acceptance and payment of travel and related expenses. Revisions to those provisions are being made to inform employees of the Department's authority under 31 U.S.C. 1353 to accept payment from non-Federal sources for employees who are on official travel to a meeting or similar function. Non-substantive changes have been made to this and other preserved provisions, to reflect changes in related authorities or for greater clarity.

The provisions remaining in 43 CFR part 20 are being redesignated, and are having added to them a cross-reference to the executive branch-wide Standards at 5 CFR part 2635, the Department's supplemental standards of ethical conduct being codified at 5 CFR part 3501, the executive branch financial disclosure regulations at 5 CFR part 2634, and the employee responsibilities and conduct regulations at 5 CFR part 735.

IV. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this interim rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order as it deals with agency organization, management, and personnel matters and is not, in any event, deemed "significant" thereunder.

Administrative Procedure Act

The Department has found good cause, pursuant to 5 U.S.C. 553(a)(2), (b), and (d)(3), for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from the Department's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to the Department's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 60-day public comment period. The Department will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

The Department has determined that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605).

Paperwork Reduction Act

The Department has determined that these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 5 CFR Part 3501 and 43 CFR Part 20

Conflict of interests, Government employees.

Dated: September 30, 1997.

John R. Garamendi,

Deputy Secretary, Department of the Interior.

Approved: October 7, 1997.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of the Interior is amending title 5 of the Code of Federal Regulations with the concurrence of the Office of Government Ethics, and is also amending title 43 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XXV, consisting of part 3501, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXV—DEPARTMENT OF THE INTERIOR

PART 3501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR

Sec.

3501.101 General.
3501.102 Designation of separate agency components.
3501.103 Prohibited interests in Federal lands.
3501.104 Prohibited interests in mining.
3501.105 Outside employment and activities.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803.

§ 3501.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Interior and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of the Department are subject to the employee responsibilities and conduct regulations at 5 CFR part 735; the executive branch financial disclosure regulations at 5 CFR part 2634; and the Department's employee responsibilities and conduct regulations at 43 CFR part 20.

(b) *Definitions.* As used in this part:

(1) *Department* means the U.S. Department of the Interior and any of its components.

(2) *Bureau* means each major program operating component of the Department, the Office of the Secretary, the Office of the Solicitor, and the Office of the Inspector General.

(3) *Designated Agency Ethics Official* means the Assistant Secretary—Policy, Management and Budget.

(4) *Ethics Counselor* means the head of each bureau, except that the Deputy Assistant Secretary for Policy is the Ethics Counselor for employees within the Office of the Secretary.

(5) *Deputy Ethics Counselor* means the bureau personnel officer or other qualified headquarters employee who has been delegated responsibility for the operational duties of the Ethics Counselor for the bureau.

(c) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official, each Ethics Counselor is authorized, consistent with 6 CFR 2635.105(c), to issue explanatory guidance and establish procedures necessary to implement this part and part 2635 of this title for his or her bureau.

§ 3501.102 Designation of separate agency components.

(a) Each of the following ten components of the Department is designated as an agency separate from each of the other nine listed components and, for employees of that component, as an agency distinct from the remainder of the Department, for purposes of the regulations in subpart B of 5 CFR 2635 governing gifts from outside sources, 5 CFR 2635.807 governing teaching, speaking and writing, and § 3501.105 requiring prior approval of outside employment. However, the following ten components are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of the Department:

(1) Bureau of Indian Affairs, including the Office of Indian Education Programs;

(2) Bureau of Land Management;

(3) Bureau of Reclamation;

(4) Minerals Management Service;

(5) National Indian Gaming Commission;

(6) National Park Service;

(7) Office of Surface Mining Reclamation and Enforcement;

(8) Office of the Special Trustee for American Indians;

(9) U.S. Fish and Wildlife Service; and

(10) U.S. Geological Survey.

(b) Employees in components not listed in paragraph (a) of this section (including employees within the immediate office of each Assistant Secretary) are employees of the remainder of the Department, which for those employees shall include the components designated in this section as well as those parts of the Department not designated in this section.

Example 1: A company that conducts activities regulated by the Bureau of Land Management would not be a prohibited source of gifts for an employee of the National Park Service (NPS), unless that company seeks official action by the NPS; does business or seeks to do business with the NPS; conducts activities that are regulated by the NPS; or has interests that may be substantially affected by the performance or nonperformance of that employee's official duties.

Example 2: A paralegal who works part-time in the Office of the Solicitor wants to take an additional part-time job with a private company that does business with the U.S. Geological Survey. The company is a prohibited source for the paralegal, since the company does business with a component of the Department from which his component has not been listed as separate in § 3501.102(a). The paralegal must obtain prior approval for the outside employment, because § 3501.105 requires employees to obtain such approval before engaging in outside employment with a prohibited source.

§ 3501.103 Prohibited interests in Federal lands.

(a) *Cross-references to statutory prohibitions—(1) Prohibited purchases of public land by Bureau of Land Management employees.* As set forth in 43 CFR 20.401, the officers, clerks, and employees in the Bureau of Land Management are prohibited by 43 U.S.C. 11 from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands.

(2) *Prohibited interests in the lands or mineral wealth of the region under survey for U.S. Geological Survey employees.* As set forth in 43 CFR 20.401, the Director and members of the U.S. Geological Survey are prohibited by 43 U.S.C. 31(a) from having any personal or private interests in the lands or mineral wealth of the region under survey.

(b) *Prohibited financial interests in Federal lands for Minerals Management Service employees and for the Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS–15 and above.* (1) Except as provided in paragraph (b)(2) of this section, the following employees may not acquire or hold any direct or indirect financial interest in Federal lands or resources administered or controlled by the Department:

(i) All employees of the Minerals Management Service; and

(ii) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS–15 and above. As used in this section, "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial officer" means the Immediate Office of the Secretary; Office of the Solicitor; Office of the Inspector General; Office of Communications; Office of Congressional and Legislative Affairs; all Assistant Secretaries, their immediate Office staff and heads of bureaus which are subordinate to an Assistant Secretary. This includes the following offices under the Office of the Assistant Secretary—Policy, Management and Budget: Office of Budget, Office of Hearings and Appeals, Office of Acquisition & Property Management, Office of Environmental Policy and Compliance, Office of Policy Analysis, Office of Financial Management, and Office of Information Resources Management.

(2) *Exceptions.* The prohibition in paragraph (b)(1) of this section does not apply to:

(i) An individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year; or

(ii) A special Government employee engaged in field work relating to land, range, forest, and mineral conservation and management activities.

(c) *Prohibition as to Department-granted rights in Federal lands.* (1) Except as provided in paragraph (c)(2) of this section, employees and their spouses and their minor children are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights that are granted by the Department in Federal lands.

(2) *Exceptions.* (i) Nothing in paragraph (c)(1) of this section prohibits the recreational or other personal and noncommercial use of Federal lands by an employee, or the employee's spouse or minor child, on the same terms as use of Federal lands is available to the general public.

(ii) Unless otherwise prohibited by law, employees in the Office of the Assistant Secretary—Indian Affairs, or in the Bureau of Indian Affairs, and the spouses and minor children of such employees, are not prohibited by paragraph (c)(1) of this section from acquiring or retaining rights in Federal lands controlled by the Department for the benefit of Indians or Alaska Natives.

(d) *Divestiture.* The Designated Agency Ethics Official may require an employee to divest an interest the employee is otherwise authorized to retain under an exception listed in this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(e) *Waivers.* The Designated Agency Ethics Official may grant a written waiver from the prohibitions contained in paragraphs (b) and (c) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartially, or otherwise to ensure confidence in the impartiality and objectivity with which Department programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as acquiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(f) *Pre-existing interests.* An employee may retain a financial interest otherwise prohibited by paragraph (b) or (c) of this section which was approved in writing under criteria and procedures in effect before November 2, 1996, unless the approval is withdrawn by the Designated Agency Ethics Official, subject to the standards for waivers in paragraph (e) of this section.

§ 3502.104 Prohibited interests in mining.

(a) *Cross-referenced to statutory prohibition.* As set forth in 30 CFR part 706 and 43 CFR 20.402, employees of the Office of Surface Mining Reclamation and Enforcement and other employees who perform functions or duties under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., are prohibited by 30 U.S.C. 1211(f) from having a direct or indirect financial interest in underground or surface coal mining operations.

(b) *Prohibited interests in private mining activities in the United States for U.S. Geological Survey employees, their spouses, and minor children.* (1) Except as provided in this section, no employee of the U.S. Geological Survey (USGS), or spouse or minor child of a USGS employee, shall have a direct or indirect financial interest in private mining activities in the United States.

(2) *Definitions.* For purposes of applying the prohibition in paragraph (b)(1) of this section:

(i) *Financial interest* has the meaning set forth in 5 CFR 2635.403(c), and includes an employee's legal or beneficial interest in a trust.

(ii) *Private mining activities* means exploration, development, and production of oil, gas, and other minerals on land in the United States that is not owned by the Federal government or by a State or local government.

(3) *Exceptions.* The prohibition set forth in paragraph (b)(1) of this section does not apply to:

(i)(A) Financial interests worth $5000 or less, for employees (or their spouses and minor children) of the Office of the Director and the Geologic Division, or

(B) A single financial interest worth $5000 or less or an aggregate of financial interests worth $15,000 or less, for employees (or their spouses and minor children) of all other USGS organizational elements;

(ii) Mineral royalties and overriding royalty interests of $600 per year or less;

(iii) A publicly traded or publicly available investment fund (e.g., a mutual fund) which, in its prospectus, does not indicate the objective or practice of concentrating its investment in entities engaged in private mining activities in the United States, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(iv) A legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in debt or equity instruments of entities engaged in private mining activities in the United States, and the employee neither exercise control nor has the ability to exercise control over the financial interests held in the plan or

(v) The ownership of a financial interest by an employee's spouse or minor child where the spouse or minor child obtained the interest through:

(A) A gift from someone other than the employee or a member of the employee's household;

(B) Inheritance;

(C) Acquisition prior to the employee's becoming a USGS employee;

(D) Acquisition prior to marriage to a USGS employee; or

(E) A compensation package in connection with the employment of the spouse or minor child.

(4) *Divestiture.* The Director of the U.S. Geological Survey may require an employee to divest an interest the employee is otherwise authorized to retain under an exception listed in paragraph (b)(3) of this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(5) *Waivers.* The Director of the U.S. Geological Survey may grant a written waiver from the prohibition contained in paragraph (b)(1) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Department programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the granting of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(6) *Pre-existing interests.* A spouse or minor child of an employee may retain a financial interest otherwise prohibited by paragraph (b)(1) of this section which was permitted under criteria and procedures in effect before November 2, 1996, unless the Director of the U.S. Geological Survey determines in writing that such retention is inconsistent with the standards for waivers in paragraph (b)(5) of this section.

§ 3501.105 Outside employment and activities.

(a) *Prohibited outside employment and activities.* (1) Under 43 U.S.C. 31(a), employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations.

(2) Employees in the Bureau of Land Management may not engage in outside employment as real estate agents and realty specialists. Such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis.

(3) Employees in the Office of the Assistant Secretary—Indian Affairs, or in the Bureau of Indian Affairs (BIA), may not hold a position on a tribal election board or on a tribal school board which oversees BIA schools.

Note to paragraph (a)(3): Except for membership on a tribal election board and a tribal school board which oversees BIA schools, an eligible person employed in the Office of the Assistant Secretary—Indian Affairs or in the BIA may become a candidate for office in his local tribe or may be appointed as a representative of his local tribe if prior approval is obtained from the Deputy Assistant Secretary—Indian Affairs pursuant to paragraph (b) of this section.

(b) *Prior approval of outside employment*—(1) *Prior approval requirement.* (i) An employee of the Department, other than an employee of the U.S. Geological Survey or a special Government employee, shall obtain written approval from his ethics counselor or other agency designee before engaging in outside employment with a prohibited source.

(ii)(A) An employee of the U.S. Geological Survey (USGS), other than a special Government employee, shall obtain written approval from the USGS deputy ethics counselor before engaging in any outside employment.

(B) The USGS may issue instructions exempting categories of employment from the prior approval requirement in paragraph (b)(1)(ii)(A) of this section, based on a determination that the employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(2) *Form of request for approval.* (i) A request for prior approval of outside employment shall include, at a minimum, the following:

(A) The employee's name, occupational title, office address, and office telephone number;

(B) A brief description of the employee's official duties;

(C) The nature of the outside employment, including a full description of the specific duties or services to be performed;

(D) The name and address of the prospective outside employer; and

(E) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify himself from future participation in matters that could directly affect the outside employer.

(ii) Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(3) *Standard for approval.* Approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Definitions.* As used in this section:

(i) *Employment* means any form of non-Federal business relationship involving the provision of personal services by the employee, with or without compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

(ii) *Prohibited source* has the meaning in 5 CFR 2635.203(d), as supplemented by § 3501.102, and includes any person who:

(A) Is seeking official action by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(B) Does business or seeks to do business with the Department, or in the case of an employee of one of the separate agency components designated in § 3501.102(a), with that component;

(C) Conducts activities regulated by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(D) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(E) Is an organization a majority of whose members are described in paragraphs (c)(4)(ii) (A) through (D) of this section.

TITLE 43—[AMENDED]

SUBTITLE A—[AMENDED]

2. Part 20 of 43 CFR is revised to read as follows:

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

20.101 Cross-references to ethical conduct, financial disclosure and other applicable regulations.
20.102 Definitions.
20.103 Employee responsibilities.

Subpart B—Department Ethics Program

20.201 Ethics officials.
20.202 Ethics program responsibilities.
20.203 Exclusion from confidential financial disclosure requirement for certain special Government employees.

Subpart C—Acceptance and Payment of Travel and Related Expenses

20.301 General policy.
20.302 Exclusions.

Subpart D—Special Provisions Governing Financial and Other Outside Interests of Certain Employees of the Department

20.401 Interests in Federal lands.
20.402 Interests in underground or surface coal mining operations.
20.403 Certificates of disclaimer.

Subpart E—Other Employee Conduct Provisions

20.501 General policy.
20.502 Conformance with policy and subordination to authority.
20.503 Scope of authority.
20.504 Selling or soliciting.
20.505 Habitual use of intoxicants.
20.506 Appropriations, legislation and lobbying.
20.507 Unlawful organizations.
20.508 Notary.
20.509 Penalty mail and official stationery.
20.510 Fraud or false statements in a Government matter.
20.511 Carrying of firearms.
20.512 Labor practices.

Subpart F—Disciplinary and Remedial Actions

20.601 General.
20.602 Remedial action.
20.603 Appealing an order for remedial action.

Authority: 5 U.S.C. 301; 5 U.S.C. App. (Reorganization Plan No. 3 of 1950); 30 U.S.C. 1211; 43 U.S.C. 11, 31; 5 CFR 2634.903, 2634.905.

Subpart A—General Provisions

§ 20.101 Cross-references to ethical conduct, financial disclosure and other applicable regulations.

In addition to the rules in this part, employees of the Department of the Interior also should refer to the Standards of Ethical Conduct for Employees of the Executive Branch, at 5 CFR part 2635; the Department's regulations that supplement those executive branch-wide standards at 5 CFR part 3501; the employee responsibilities and conduct regulations at 5 CFR part 735; and the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 20.102 Definitions.

(a) The following terms are used throughout this part and have the following meanings:

(1) *Department* means the U.S. Department of the Interior and any of its components.

(2) *Secretary* means the Secretary of the Interior.

(3) *Bureau* means each major program operating component of the Department, the Office of the Secretary, the Office of the Solicitor, and the Office of the Inspector General.

(4) *Employee* means a regular employee, a special Government employee, and a contract education employee in the Office of the Assistant Secretary—Indian Affairs or the Bureau of Indian Affairs, unless the text of a particular subpart, section, or paragraph indicates that either regular employees or special Government employees are not intended to be covered by that subpart, section or paragraph. Volunteers in National Parks whose services are accepted pursuant to 16 U.S.C. 18g are not employees.

(b) *Specific definitions.* Additional definitions of terms specifically associated with a particular subpart, section, or paragraph are found in that subpart, section, or paragraph.

§ 20.103 Employee responsibilities.

It is the responsibility of each employee:

(a) To be familiar with and to comply with all Federal statues, Executive Orders, and regulations that govern his or her conduct. Employees are expected to consult with their supervisors and servicing ethics counselors on questions they may have regarding the applicability of any ethics or other conduct provision. Ethics advice may also be obtained from the Solicitor's Office and the Department Ethics Office.

(b) To report directly or through appropriate channels to the Office of Inspector General or other appropriate authority matters coming to their attention which do or may involve violations of law or regulation by employees, contractors, sub-contractors, grantees, subgrantees, lessees, licensees or other persons having official business with the Department.

Subpart B—Department Ethics Program

§ 20.201 Ethics officials.

(a) The Designated Agency Ethics Official is the Assistant Secretary—Policy, Management and Budget. In accordance with 5 CFR 2638.203, the Designated Agency Ethics Official is responsible for the coordination and management of the Department's ethics program.

(b) The head of each bureau is the "Ethics Counselor" for that bureau, except that the Deputy Assistant Secretary for Policy is the Ethics Counselor for employees in the Office of the Secretary and related offices. The Solicitor is the Ethics Counselor for the Office of the Solicitor and the Inspector General is the Ethics Counselor for the Office of Inspector General.

(c) The personnel officer for each bureau or other qualified employee who has been delegated responsibility for the operational duties of the Ethics Counselor for the bureau, it the "Deputy Ethics Counselor" for that bureau.

(d) A bureau, regional, or area personnel officer or other qualified employee may be assigned to serve as a "Associate Ethics Counselor" or "Assistant Ethics Counselor," with delegated responsibility to perform the operational duties of the Ethics Counselor at the field level. Associate Ethics Counselors or Assistant Ethics Counselors may also be designated within the bureau headquarters.

§ 20.202 Ethics program responsibilities.

(a) The Designated Agency Ethics Official (or the alternate agency ethics official in his or her absence) shall coordinate and manage the department ethics program in accordance with 5 CFR 2638.203.

(b) Each Ethics Counselor shall, for his or her bureau:

(1) Order disciplinary or remedial action in accordance with the provisions of subpart F of this part. Th authority may not be redelegated.

(2) Designate: (i) The Bureau Personnel Officer (or other qualified headquarters employee) as Deputy Ethics Counselor to carry out operational duties of the Ethics Counselor within their bureaus under the general direction of the Ethics Counselor; and

(ii) Headquarters bureau, regional, o area personnel officers (or other qualified employees) as Associate Eth Counselors or Assistant Ethics Counselors to perform ethics counseli and the collection and review of financial disclosure reports.

(3) Ensure that vacancy announcements for positions which require a public or confidential financ disclosure report alert applicants to th filing requirement.

(4) Establish and maintain internal procedures and guidelines to adequat and systematically inform employees the content, meaning, and importance ethical conduct and other conduct regulations.

(c) All supervisors may make decisions as to whether conduct by employees under their supervision would result in the appearance that t employee would violate or is violatin the ethical standards set forth in 5 CF 2635; all supervisors are expected, therefore, to be familiar with those standards. In addition, any supervisor who grants prior approval of an employee's outside employment und 5 CFR 3501.105(b) is expected, at a

minimum, to provide information to the employee about the prohibitions in 18 U.S.C. 203, 205 and 208 at the time such approval is granted.

§ 20.203 Exclusion from confidential financial disclosure requirement for certain special Government employees.

In an instance involving the proposed employment of a special Government employee for highly specialized and limited duties, the head of the bureau or office may propose to the Designated Agency Ethics Official (DAEO) a reporting of financial interests restricted to such interests as may be determined to be relevant to the duties the special Government employee is to perform. The DAEO may, under the provisions of 5 CFR 2634.905, exclude the special Government employee from all or a portion of the confidential reporting requirements of the OGE Form 450. Any confidential financial disclosure requirement must be satisfied by the special Government employee before he begins his employment.

Subpart C—Acceptance and Payment of Travel and Related Expenses

§ 20.301 General policy.

(a) Except as specifically authorized by law, when an employee is on official duty (no leave status), all travel and accommodations shall be at Government expense and his or her acceptance of outside reimbursement for travel expenses or services in kind from private sources, either in his or her behalf or in behalf of the Government, is not allowed.

(b) Under certain circumstances, the Department may charge a fee or accept reimbursement for providing a service or thing of value to a private source when the service or thing of value provided benefits to both the Government and the particular private source (31 U.S.C. 9701). In such instances only a portion of the costs can be accepted from the private source. The Department must pay expenses associated with its usual official business and for the benefits it receives from participating in the event. The private source can be charged or may reimburse the Department for that portion of the service provided that exceeds the Department's usual expenses and the benefits to the Government. Under this provision, payments from private sources must be deposited in the U.S. Treasury unless the bureau receiving the payment is authorized by statute to accept such payments.

(c) When a bureau is authorized by statute other than 31 U.S.C. 1353 to accept gifts, and 31 U.S.C. 1353 does not apply, the travel expenses incurred by an employee directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source may be reimbursed to the bureau and credited to its appropriation. The employee shall be paid by the bureau in accordance with the law relating to reimbursement for official travel and any accommodations and goods or services in kind furnished an employee shall be treated as a donation to the bureau and an appropriate reduction shall be made to the employee's reimbursement (46 CG 689 (1967)).

(d) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance is permitted by law and Federal regulations. Participation as a private citizen must occur on one's own time, such as while on leave. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are in positions for which the rate of pay is specified in 5 U.S.C. 5311–5318 (the Executive Schedule) are on 24-hour duty, and determinations of what constitutes official duty and what is private participation should be carefully made.

§ 20.302 Exclusions.

(a) Where employee travel is for attendance at a meeting or similar function (31 U.S.C. 1353(a)), the Department may accept payment for the employee and/or the employee's spouse's travel from a non-Federal source when proper consideration is given to the conditions in paragraph (a)(1) of this section and a written authorization to accept payment is issued in advance of the travel.

(1) *Conditions.* Such travel expenses paid for by a non-Federal source may be accepted by the Department only if all of the following conditions are met:

(i) The travel relates to the employee's official duties;

(ii) The travel, subsistence and related expenses are with respect to the attendance of an employee (and/or the accompanying spouse of such employee when applicable) at a meeting or similar function. This includes a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or cosponsored by a non-Federal source;

(iii) The non-Federal source is not disqualified because of a real or apparent conflict of interest as determined under paragraph (a)(2) of this section; and

(iv) The travel event is not required to carry out the Department's statutory or regulatory functions. Examples of statutory or regulatory functions that are essential to the Department's mission include investigations, inspections, audits, site visits, compliance reviews or program evaluations.

(2) *Conflict of interest analysis.* (i) The Department's acceptance of any payment from a non-Federal source under the authority of 31 U.S.C. 1353 shall not be approved when an Authorized Approving Official, identified in paragraph (a)(2)(iii) of this section, determines that under the circumstances, acceptance of the travel expenses would cause a reasonable person with knowledge of all relevant facts to:

(A) Question the integrity of the work to be performed by the employee receiving the benefit; or

(B) Question the integrity of the Department's other program operations.

(ii) When making these determinations, an Authorized Approving Official shall be guided by all relevant considerations including, but not limited to:

(A) The identity of the non-Federal source and the source's relationship to the Department;

(B) The purpose of the meeting or similar function and its relationship to the Department's programs or operations;

(C) The identity of other expected participants and their relationship to the Department;

(D) The nature and sensitivity of any pending Department matter which, when decided, may affect the interests of the non-Federal source;

(E) The significance of the employee's role in any such pending matter;

(F) The monetary value and character of the travel benefits offered by the non-Federal source; and

(G) The potential reaction from Department customers, including the public, if the acceptance of travel expenses was made known to them.

(iii) An "Authorized Approving Official" means that Department official who has been delegated authority to approve the usual travel authorizations of the employee who will benefit from the non-Federal travel payment.

(iv) The procedures stated below must be satisfied before the employee (and/or the accompanying spouse) begin his or her travel:

(A) Each employee (and/or the accompanying spouse) must have an approved Travel Authorization (Form DI–1020). Section 10 ("Purpose and Remarks") of this Form must contain a statement that the authority to accept payment from a non-Federal source for the specified travel event is 31 U.S.C. 1353, and the travel situation complies with the conditions for acceptance under 41 CFR 304–1.4.

(B) The supplementary form entitled, "Report of Payments Accepted From Non-Federal Sources Under 31 U.S.C. 1353" (Form DI–2000) must also be completed and signed by the employee and the Authorized Approving Official. A copy of Form DI–1020 and Form DI–2000 must be filed with the employee's Deputy Ethics Counselor.

(C) Payment from a non-Federal source to cover the travel related expenses of an employee may be made in the form of a check or similar instrument made payable to the Department. Employees should not accept cash or negotiate checks or similar instruments payable to them. Any negotiable instruments received by an employee shall be transmitted immediately to the appropriate accounting office.

(b) When on official duty, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings may be accepted by an employee when the payment is made by a non-profit, tax exempt organization as described in 26 U.S.C. 501(c)(3) and when no real or apparent conflict of interest will result. Prior advice should be obtained from the employee's ethics counselor in this circumstance (5 U.S.C. 4111).

(c) Employees may accept reimbursement by the Department for travel and related expenses when on detail under the Intergovernmental Personnel Act, in accordance with 5 U.S.C. 3375.

(d) Should the Director of the United States Information Agency, with the approval of the employing agency, assign an employee to a foreign government, reimbursement for the employee's pay and allowances shall be made to the United States in an amount equal to the compensation, travel expenses, and allowances payable to such person during the period of such assignment, in accordance with 22 U.S.C. 1451.

(e) Should an employee be detailed by the Secretary to an international organization which requests services, the employee is deemed to be (for the purpose of preserving his or her allowances, privileges, rights, seniority, and other benefits) an employee of the Department and the employee is entitled to pay, allowances, and benefits from funds available to the Department. The international organization may reimburse the Department for all or part of the pay, travel expenses, and allowances payable during the detail; or, the detailed employee may be paid or reimbursed directly by the international organization for allowances or expenses incurred in the performance of duties required by the detail without regard to 18 U.S.C. 209 (5 U.S.C. 3343).

Subpart D—Special Provisions Governing Financial and Other Outside Interests of Certain Employees of the Department

§ 20.401 Interests in Federal lands.

(a) *Statutory prohibition applicable to employees of the Bureau of Land Management.* (1) In accordance with 43 U.S.C. 11, employees of the Bureau of Land Management are prohibited from voluntarily acquiring a direct or indirect interest in Federal lands.

(2) *Definitions.* For purposes of applying the prohibition in 43 U.S.C. 11:

(i) *Federal lands.* means public lands or resources or an interest in lands or resources administered or controlled by the Department, including, but not limited to, all submerged lands lying seaward outside of the area of "lands beneath navigable water" as defined in 43 U.S.C. 1301(a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(ii) *Direct interest in Federal lands* means any employee ownership or part ownership in Federal lands or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits there from, based upon a contract, grant, lease, permit, easement, rental agreement, or application. Direct interest in Federal lands also includes:

(A) Membership or outside employment in a business which has interests in Federal lands; and.

(B) Ownership of stock or other securities in corporations determined by the Department to have an interest in Federal lands directly or through a subsidiary.

(iii) *Indirect interest in Federal lands* means any ownership or part ownership of an interest in Federal lands by an employee in the name of another where the employee still reaps the benefits. Indirect interest in Federal lands also includes:

(A) Holdings in land, mineral rights, grazing rights or livestock which in any manner are connected with or involve the substantial use of the resources or facilities of the Federal lands; or

(B) Substantial holdings of a spouse or minor child.

(b) *Statutory prohibition applicable to employees of the U.S. Geological Survey.* (1) In accordance with 43 U.S.C. 31(a), the Director and members of the U.S. Geological Survey are prohibited from having any personal or private interests in the lands or mineral wealth of the region under survey.

(2) *Definitions.* For purposes of applying the prohibition in 43 U.S.C. 31(a):

(i) *Personal or private interest* means ownership of an interest in, or employment with a person or enterprise which leases or uses, Federal lands for commercial purposes.

(ii) *Region under survey* means Federal lands which are administered or controlled by the Department.

(c) *Exclusions.* (1)(i) Except for U.S. mineral surveyors, an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, and a special Government employee (SGE) engaged in field work relating to land, range, forest, and mineral conservation and management activities, and the spouse of such an individual or SGE, shall not be precluded from retaining any interest, including renewal or continuation of existing rights, in Federal lands, provided that such individual or SGE or spouse shall not acquire any additional interest in Federal lands during employment.

(ii) A U.S. mineral surveyor is a person appointed under the authority of 30 U.S.C. 39, and as such is included within the term "officers, clerks, and employees" of the Bureau of Land Management as that term is used in 43 U.S.C. 11 and construed in *Waskey* v. *Hammer*, 223 U.S. 85 (1912). U.S. mineral surveyors are also considered to be special government employees.

(2) A Bureau of Land Management employee or any member of the employee's family may acquire wild free-roaming horses or burros from Federal lands for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR part 4700.

(3) A Bureau of Land Management employee may retain a direct or indirect interest in Federal lands when:

(i) There is little or no relationship between the employee's functions or duties and the particular interest in Federal lands, and

(ii) The employee, or the spouse or dependent child of the employee, acquired such an interest:

(A) By gift, devise, bequest, or court award or settlement, or

(B) Prior to the time the employee entered on duty in the Department.

(4) Pursuant to 43 U.S.C. 1621(d), 43 U.S.C. 11 does not apply to any land grants or other rights granted under 43 U.S.C. chapter 33.

(5) The recreational or other personal and noncommercial use of the Federal lands by an employee, the employee's spouse or dependent child, on the same terms as use of the Federal lands is available to the general public, is not prohibited.

(6) *Advisory councils.* Nothing in 43 U.S.C. 11 shall disqualify individuals appointed pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1739, as members of advisory boards or councils, from acquiring or retaining grazing licenses or permits issued pursuant to section 3 of the Taylor Grazing Act (43 U.S.C. 315b), or any other interest in land or resources administered by the Bureau of Land Management: Provided, that in no case shall the member of any such board or council participate in any advice or recommendation concerning such license or permit in which such member is directly or indirectly interested.

(d) *Request for advice.* When an employee is in doubt as to whether the acquisition or retention of any interest in lands or resources administered by the Department would violate the provisions of this section, a statement of the facts should be submitted promptly by the individual involved to his or her servicing ethics counselor for guidance.

§ 20.402 Interests in underground or surface coal mining operations.

(a) *Definitions.* As used in this section:

(1) *Direct financial interest in underground or surface coal mining operations* means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operation. Direct financial interests also include employment, pensions, creditor, real property and other financial relationships.

(2) *Indirect financial interest in underground or surface coal mining operations* means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, dependent child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, dependent child or other resident relative holds a financial interest.

(3) *Coal mining operation* means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

(4) *Performing any function or duty under the Surface Mining Control and Reclamation Act of 1977* means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

(b) *Prohibitions.* (1) Neither the Director nor any other employee of the Office of Surface Mining Reclamation and Enforcement or any other employee who performs functions or duties under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., shall have a direct or indirect financial interest in underground or surface coal mining operations.

(2) The Surface Mining Control and Reclamation Act of 1977, at 30 U.S.C. 1211(f), provides that anyone who knowingly violates the prohibitions in that Act shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both.

(c) Employees are encouraged to review regulations contained in 30 CFR part 706 which pertain to the prohibitions restated in this section.

§ 20.403 Certificates of disclaimer.

(a) Each employee of the U.S. Geological Survey, Bureau of Land Management, Minerals Management Service, and Office of Surface Mining Reclamation and Enforcement shall sign a certificate of disclaimer upon entrance to or upon transfer to a position within any of these bureaus. The employee's signature will indicate that he or she:

(1) Is aware of the specific restrictions pertinent to his or her employment; and

(2) Is in compliance with such restrictions.

(b) If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate ethics counselor for review and appropriate action.

(c) Signed certificates of disclaimer shall be filed and maintained by the employee's deputy ethics counselor.

Subpart E—Other Employee Conduct Provisions

§ 20.501 General policy.

Employees of the Department are expected to maintain especially high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government. Employees are expected to comply with all Federal statutes, Executive Orders, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations. The conduct of employees should reflect the qualities of courtesy, consideration, loyalty to the United States, a deep sense of responsibility for the public trust, promptness in dealing with and serving the public, and a standard of personal behavior which will be a credit to the individual and the Department. These principles apply to official conduct and to private conduct which affects in any way the ability of the employee or the Department to effectively accomplish the work of the Department.

§ 20.502 Conformance with policy and subordination to authority.

Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions or supervisors. While policies related to one's work are under consideration employees may, and are expected to, express their professional opinions and points of view. Once a decision has been rendered by those in authority, each employee is expected to comply with the decision and work to ensure the success of programs or issues affected by the decision. An employee is subject to appropriate disciplinary action, including removal, if he or she fails to:

(a) Comply with any lawful regulations, orders, or policies; or

(b) Obey the proper requests of supervisors having responsibility for his or her performance.

§ 20.503 Scope of authority.

Employes shall not engage in any conduct or activity which is in excess of his or her authority, or is otherwise contrary to any law or announced Departmental policy.

§ 20.504 Selling or soliciting.

Employees and other persons are prohibited from selling or soliciting for personal gain within any building or on any lands occupied or used by the Department. Exception is granted for Department-authorized operations, including, but not limited to, the Interior Department Recreation Association, the Indian Arts and Crafts store, and for cafeteria, newsstand, snack bar and vending machine operations which are authorized by the Department of the benefit of employees or the public.

§ 20.505 Habitual use of intoxicants.

An employee who habitually uses intoxicants to excess may be subject to removal (5 U.S.C. 7352).

§ 20.506 Appropriations, legislation and lobbying.

(a) Unless expressly authorized by Congress, employees are prohibited from using any part of the money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; this prohibition does not prevent any employee from communicating to Members of Congress on the request of any Member or through proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business (18 U.S.C. 1913).

(b) When acting in their official capacity, employees are required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanction of the property Departmental authority.

(c) The rights of employees, individually or collectively, to otherwise petition Congress, or to a Committee or Member thereof, shall not be interfered with or denied (5 U.S.C. 7211).

§ 20.507 Unlawful organizations.

An employee may not advocate the violent overthrow of our constitutional form of government nor may an employee be a member of an organization that he or she knows advocates the violent overthrow of our constitutional form of government (5 U.S.C. 7311).

§ 20.508 Notary.

An employee is prohibited from charging fees for performance of any notarial act for any employee of the Federal Government who is acting in his or her official capacity, or for any person during the hours of such notary's service to the Government (E.O. 977, Nov. 24, 1908).

§ 20.509 Penalty mail and official stationery.

(a) An employee is prohibited from using any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his or her private letter, packet, package, or other matter in the mail (18 U.S.C. 1719).

(b) Official Government envelopes and official letterhead stationery are Government property that may only be used for authorized purposes. Employees' use of Government envelopes to mail their own personal job applications is not authorized.

§ 20.510 Fraud or false statements in a Government matter.

An employees shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry (18 U.S.C. 1001). Special attention is required in the certification of time and attendance reports, applications for employment, request for travel reimbursement, and purchase orders and receiving forms.

§ 20.511 Carrying of firearms.

Employees, except those specifically designated to perform enforcement, police or other official duties requiring the use of firearms, are prohibited from carrying or having in their possession firearms on property under the control of the Secretary. Employees who are officially stationed in parks, refuges, Indian reservations, other Tribal lands or other wilderness areas which are known to be inhabited by wild animals, are permitted, when on those lands, to carry and use firearms for personal protection as permitted by existing policy or as authorized by the park, refuge or area supervisor. Notwithstanding this paragraph, employees who are not on official duty may carry firearms on Departmental lands under the same conditions and in accordance with procedures and authorizations established for members of the general public.

§ 20.512 Labor practices.

Employees are prohibited from striking against the Government of the United States (5 U.S.C. 7311). Additional information regarding affiliation with employee organizations is found in the Department Manual, Part 370, Chapter 711, Labor Management Relations.

Subpart F—Disciplinary and Remedial Actions

§ 20.601 General.

This subpart deals with disciplinary actions and remedial actions for violations, or potential violations, of conflict of interest laws or of the regulations in this part or in 5 CFR part 2635 or 5 CFR part 3501. Disciplinary action may include oral or written warning or admonishment, reprimand, suspension, reduction in grade or pay, removal from position or removal from office. Such action shall be taken in accordance with Departmental policies and procedures, applicable statutes, Executive Orders, regulations, and any applicable collective bargaining agreement provisions. Disciplinary action may be imposed independently from and without prior application of remedial actions, including those remedial actions listed in § 20.602.

§ 20.602 Remedial action.

(a)(1) Remedial action should normally be considered only after attempts to obtain voluntary resolution have failed. Voluntary resolution may include:

(i) Voluntary divestiture;

(ii) Voluntary conversion to securities which are not prohibited, or the holding of which would not violate law or regulation; or

(iii) Voluntary reassignment to another position.

(2) If the bureau Ethics Counselor decides that remedial action is required such action shall be initiated within a reasonable time, usually 90 days.

(b) Remedial action may include:

(1) *Reassignment or disqualification of the employee.* It may be possible for the employee to be reassigned to another job, or to be disqualified from performing particular duties. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of an interest is ordered.

(2) *Waiver.* (i) The Designated Agency Ethics Official (DAEO) is authorized to make a written advance determination pursuant to 18 U.S.C. 208(b)(1) waiving the prohibitions of 18 U.S.C. 208(a) for any Department employee except the Secretary and those employees in the same organization as the DEAO, i.e., the Department's Office of Policy, Management and Budget. The Secretar

or the Deputy Secretary shall issue individual waivers pursuant to 18 U.S.C. 208(b)(1) for employees in the Office of Policy, Management and Budget.

(ii) In the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. App. (including an individual being considered for an appointment to such a position), the DAEO, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, 5 U.S.C. App., is authorized to certify in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved.

(iii) The DAEO may grant a waiver under 5 CFR 3501.103(e) from the regulatory restrictions at 5 CFR 3501.103 (b) and (c).

(3) *Divestiture of the interest.* An employee may be required to divest an interest, including outside employment, that is prohibited by law or regulation. Divestiture of the interest shall be ordered in all situations where it is determined by the appropriate official that there is no other satisfactory remedy. Evidence of divestiture must be provided in the form of broker's sale receipt or other appropriate document.

Note to paragraph (b)(3): It may be possible in certain cases for the tax consequences of divestiture to be delayed, if the interest is sold pursuant to a certificate of divestiture issued before the sale by the Director, U.S. Office of Government Ethics. See 5 CFR part 2634, subpart J.

(c) *Authority to order remedial action.* (1) Each bureau Ethics Counselor is authorized to order remedial actions within his or her bureau. The advice of the appropriate Regional Solicitor, the Associate Solicitor—Division of General Law, or the Designated Agency Ethics Official or his or her designee may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

(2) The Deputy Assistant Secretary for Policy is authorized to order remedial actions for employees within the Office of the Secretary, except that the Secretary shall order remedial actions in situations involving the Deputy Secretary.

(d) An employee who fails to comply with an order for remedial action is considered to be in violation of this part and shall be subject to disciplinary action.

§ 20.603 Appealing an order for remedial action.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.602, and shall have 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated. For appeals of remedial orders issued under § 20.602, the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be in writing and shall contain:

(1) The basis for appeal;

(2) Fact(s) supporting the basis; and

(3) The telephone number where appellant can be reached to discuss facts pertinent to the appeal.

(b) *Where to appeal.* (1) Orders for remedial action issued by an Ethics Counselor may be appealed to the Deputy Secretary, whose decision shall be final.

(2) Orders for remedial action issued by the Deputy Secretary may be appealed to the Secretary, whose decision shall be final.

(c) *Review Board analysis and recommendations.* (1)(i) Each appeal shall be considered by a Review Board consisting of:

(A) A program Assistant Secretary selected by the Designated Agency Ethics Official;

(B) The Associate Solicitor or the Deputy Associate Solicitor, Division of General law; and

(C) The Director or Deputy Director of the Departmental Office of Personnel within the Department.

(ii) Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action.

(2) The Deputy Agency Ethics Official or his or her assistant shall serve as secretary to the Review Board, except for cases in which he or she has previously participated. In such cases, the Review Board shall designate an employee who has not previously been involved with the case to serve as secretary.

(3) The Review Board members shall: (i) Obtain from the appropriate ethics counselor a full statement of actions and considerations which led to the order for remedial action including any supporting documentation or files used by the Ethics Counselor.

(ii) Obtain from the employee all facts, information, exhibits for documents which he or she feels should be considered before a final decision is made.

(iii) The secretary to the Review Board shall prepare a summary of the facts pertinent to the appeal. When appropriate, the Review Board may provide for personal appearance by the appellant before the Review Board if necessary to ascertain the circumstances concerning the appeal or may designate the Review Board secretary or another employee to conduct further fact finding, or may do both. Fact finding procedures shall be carried out by a person(s) who:

(A) Has not been involved in the matter being appealed; and

(B) Does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being appealed.

(iv) Establish a file containing all documents related to the appeal, which shall be available to the appellant and his or her representative.

(v) Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the Review Board shall also be provided.

(d) *Assurances to the appellant.* Each appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting an appeal;

(2) A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status;

(3) The right to obtain counseling from an ethics counselor of the Department; and

(4) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that the Review Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position, would conflict with the priority needs of the Department, or which would give rise to unreasonable costs to the Government.

(e) *Assurances to the appellant's representative.* Each person chosen to represent an appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal; and

(2) A reasonable amount of official time to present the appeal if the representative is an employee of the Department and is otherwise in a duty status.

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 250, 251, and 253

RIN 0584–AB27

Food Distribution Programs—Reduction of the Paperwork Burden

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the Food Distribution Program, Emergency Food Assistance Program (TEFAP), and Food Distribution Program for Households on Indian Reservations (FDPIR) regulations to reduce the paperwork burden associated with the administration of food distribution programs at the State and local level. This action was initiated by the Child Nutrition and WIC Reauthorization Act of 1989, which amended the National School Lunch Act to require the Secretary to endeavor to reduce the paperwork burden for agencies participating in nutrition assistance programs. This final rule contains provisions which extend the maximum effective periods for agreements between Federal, distributing, and recipient agencies, contracts of distributing and subdistributing agencies with storage facilities, contracts between recipient agencies and food service management companies, and State plans of operation; remove the requirement that commodity acceptability information be submitted for the following program categories: charitable institutions, nonprofit summer camps, the Summer Food Service Program for Children, and the Emergency Food Assistance Program; relax monitoring requirements for distributing agencies with regard to charitable institutions and nonprofit summer camps, and the food service management companies under contract with them; and, amend regulatory language to reflect modified information collection requirements.

EFFECTIVE DATE: This final rule is effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking will primarily affect FCS Regional Offices, and the distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management will also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Further, any economic impact will not be significant.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568, and 10.569, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), changes in the information collection burden that would result from the adoption of the proposals contained in the proposed rule published in the **Federal Register** on March 14, 1997 (62 FR 12108) were submitted for public comment. As discussed below, no comments were received. Current reporting and recordkeeping requirements were approved by the Office of Management and Budget under Control Numbers 0584–0293 and 0584–0067.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

In response to the mandates of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), a notice was published in the **Federal Register** (55 FR 13156) on April 9, 1990, soliciting comments on ways to reduce the paperwork burden for food distribution programs. In response to comments received, the Department implemented several changes to reduce the paperwork burden and streamline operations, including simplifying the process of reporting and acting on commodity complaints, and eliminating or revising reports submitted by distributing agencies. To respond to comments touching upon procedures and reports established by Federal regulations, and to incorporate the input provided in subsequent discussions with State program administrators and representatives of commodity distribution associations, the Department published a proposed rule in the **Federal Register** (62 FR 12108) on March 14, 1997. The proposed rule provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of 10 comment letters, including four from distributing agencies, three from school food authorities, two from commercial distributors, and one from a national commodity distribution association. A total of 32 separate comments were contained in the letters. While all commenters supported the provisions contained in the proposed rule, a few suggested clarifications of regulatory language or meaning. A description of the comments received, and revisions made in response to the comments, are discussed in detail below.

Information Collection Burden

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Food and Consumer Service submitted for public comment the changes in the information collection burden that would result from the adoption of the provisions contained in the proposed rule published in the **Federal Register** on March 14, 1997 (62 FR 12108). Comments were solicited on: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No comments were received relative to the changes in the information collection burden resulting from the proposed regulatory revisions. Therefore, the revised burden hours will be submitted to the Office of Management and Budget for approval as proposed.

Distributing Agency Agreements With the Department

The proposed rule would amend sections 250.12(a) and 251.2(c) to make agreements between the Department and distributing agencies permanent, with amendments to be made at the request of FCS. Three of the ten respondents supported this proposal. However, one commenter suggested that the language on amendments to agreements between the Department and distributing agencies be modified to indicate that distributing agencies may also propose to amend the agreement, which would be subject to the Department's approval. The Department agrees that the regulatory language should be modified to allow for this contingency; hence, this final rule adopts the proposed changes to sections 250.12(a) and 251.2(c) with the following modification: "* * * with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department."

Distributing Agency Agreements With Recipient Agencies

The proposed rule would also amend sections 250.12(c)(1) and 251.2(c) to make agreements between distributing and recipient agencies permanent, with amendments to be made as necessary. The three respondents which commented on this provision supported the proposal. Therefore, this final rule adopts the permanent agreement amendments proposed for sections 250.12(c) and 251.2(c) without change.

The proposed rule did not propose to amend the duration of agreements between distributing agencies and (1) subdistributing agencies that are not also recipient agencies, (2) carriers, and (3) other entities to which distributing agencies deliver donated foods, which would remain one year, with an option for two additional one-year periods. While no comments suggested amending the duration of these agreements, one comment suggested adding a definition of "subdistributing agency" for the purpose of clarifying which agencies are subject to the stated agreement period. Since section 250.3 already contains a definition of subdistributing agency which accurately describes the types of functions an organization must perform in order to be considered a subdistributing agency, the final rule amends section 250.12(c)(2) to reference the definition set forth in section 250.3, as well as incorporating the other proposed changes.

Storage Facility Contracts

Section 250.14(d) would be amended by the proposed rule to extend the duration of contracts of distributing and subdistributing agencies with storage facilities to a maximum of five years, including option years. While the five respondents which commented on this provision supported the proposal, one commenter suggested that the extended contract period should also apply to facilities that both store and deliver commodities since they would benefit from longer contracts in the same manner as facilities engaged only in storage. The Department did not intend to exclude such facilities under the proposed rule. Therefore, in order to clarify the Department's intent, section 250.3 is revised under this final rule to add a definition of storage facilities which specifically includes facilities that both store and deliver commodities, as well as those that only store commodities. The final rule extends the duration of contracts of distributing and subdistributing agencies with storage facilities, as defined in section 250.3, to a maximum of five years, including option years, as proposed. However, it should be noted that "carriers"—those entities which perform only a delivery function—are still limited to one-year contracts, with options for two additional one-year periods, as stipulated in section 250.12(c)(2), as amended by this final rule.

Food Service Management Company Contracts

The proposed rule would amend section 250.12(d) to extend the duration of contracts between food service management companies and charitable institutions, nutrition programs for the elderly, and nonprofit summer camps for children to one year, with an option for four additional one-year periods. The three respondents which commented on this provision supported the proposal. Therefore, this provision is retained in this final rule as proposed.

Commodity Acceptability Report Requirements

The proposed rule would amend section 250.13(k)(2) to exclude the Summer Food Service Program (SFSP), summer camps, the Emergency Food Assistance Program, and charitable institutions from those recipient agencies for which distributing agencies are required to submit commodity acceptability information. The proposed rule would also amend section 250.13(k)(3) to delete reference to the annual submission by November 30th of commodity acceptability reports for summer camps and SFSP (for which reports would not be required), and clarify that distributing agencies must submit commodity acceptability reports (for those programs for which reports would be required, as stipulated in section 250.13(k)(2)) to FCS Regional Offices by April 30th each year. Additionally, the rule proposed to make a technical change to section 250.24(d)(1) by removing the word "semi-annual" to reflect the current requirement contained in section 3(f)(2) of Pub. L. 100–237, as amended by section 1773(d) of Pub. L. 101–624, which mandates the annual collection of commodity acceptability information. Since the comments received support these provisions, proposed revisions to sections 250.13(k)(2), 250.13(k)(3), and 250.24(d)(1) are retained in this final rule.

Inventory Report Requirements

The proposed rule would amend section 250.17(a) to require semiannual, instead of monthly, submissions of form FCS–155, the Inventory Management Register, and describes the function of this form, which is to report information on excessive commodity inventories. The proposed rule would also allow FCS to require more frequent reporting, if necessary to maintain program accountability, or less frequent reporting, if sufficient to meet program needs. The language of section 251.10(d) would be modified by the proposed rule to refer to the revised inventory reporting requirements in section 250.17(a), and to require submission of household participation data for TEFAP utilizing form FCS–155 at the same frequency that inventory information is reported. Under the proposed rule, this section would also be revised to delete reference to a list of individual food orders received for each food item delivered (the function of the FCS–155A, which has been determined to be unnecessary). The three respondents which commented on these provisions supported the proposed revisions. Thus, the proposed amendments to sections 250.17 and 251.10 relative to the submission of FCS Form FCS–155 are retained in this final rule.

Monitoring Review Requirements

The proposed rule would revise section 250.19(b) to require State agencies to conduct on-site reviews of charitable institutions, nonprofit summer camps for children, and the food service management companies under contract with them, at a minimum: (1) Whenever the State agency identifies actual or probable deficiencies in program administration through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency, which, at the discretion of the State agency, warrants an on-site review; or, (2) at the request of FCS. The comments received supported this proposal. Hence, the revisions to this section are retained in this final rule as proposed.

FDPIR State Plan

Section 253.5(a), as amended by the proposed rule, would make the FDPIR State plan permanent, with amendments added as changes in State agency administration or management of the program, as described in the plan, are made, or at the request of FCS. Commenters supported this proposal. Therefore, the proposed revision to section 253.5(a) remains unchanged in this final rule.

TEFAP State Plan

One comment was received proposing that the TEFAP State plan be made permanent. However, as stated in the preamble of the proposed rule, section 871(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, amended section 202A of the Emergency Food Assistance Act of 1983, Pub. L. 98–8, to require State agencies to submit a TEFAP State plan every four years, with amendments submitted as necessary. This requirement, which will be codified in a future rule, became effective with the enactment of Pub. L. 104–193 on August 22, 1996. Given the requirements contained in the legislation, the Department does not have the authority the make TEFAP State plans permanent.

Application for Federal Assistance

The proposed rule would amend section 253.9(c) to reflect the current form, i.e., SF–424, which Indian Tribal Organizations (ITOs) must submit to receive Federal administrative funds on an annual basis instead of form AD–623. This section would also be amended to delete the statement encouraging ITOs which act as State agencies to first submit applications for Federal administrative funds through the State clearinghouse since the Department does not believe that this statement is in the spirit of the "Government-to-Government Relations with Native American Tribal Governments" Presidential directive which was issued on April 29, 1994 and published in the **Federal Register** on May 4, 1994 (59 FR 22951). No comments were received concerning these provisions. Therefore, the proposed revisions to section 253.9(c) are retained in this final rule.

Technical Changes

A number of technical changes to regulatory provisions were proposed in the proposed rule. Since no comments were received on any of these changes, they are included in this final rule without modification.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250, 251, and 253 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. Section 250.3 is amended by adding a definition of *Storage facility*, in alphabetical order, to read as follows:

§ 250.3 Definitions.

* * * * *

Storage facility means an operation that provides warehousing services, or provides both warehousing and delivery services.

* * * * *

§§ 250.3, 250.40, 250.41, 250.42, 250.48, 250.49 [Amended]

3. In § 250.3, in the definition of *Food service management company*, and in §§250.40(a)(4), 250.41(a)(3), 250.42(a), 250.48(a)(1), and 250.49(a), the citation "250.12(c)" is removed wherever it appears, and the citation "250.12(d)" is added in its place.

4. In §250.12:

a. The third and fourth sentences of paragraph (a) are revised;

b. The undesignated text following paragraph (b)(4) is removed;

c. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), and a new paragraph (c) is added; and

d. Newly redesignated paragraphs (d) and (e) are revised.

The revisions and addition read as follows:

§ 250.12 Agreements and contracts.

(a) *Agreements with Department.* * * * The agreements shall be considered permanent, with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department. In addition, agreements between the Department and State Agencies on Aging that elect to receive cash in lieu of commodities shall also be considered permanent, with amendments initiated by these agencies or submitted by them at the Department's request, all of which amendments shall be subject to approval by the Department.

* * * * *

(c) *Duration of distributing agency agreements.*—(1) Recipient agencies.

Distributing agency agreements with recipient agencies shall be considered permanent, with amendments to be made as necessary. Distributing agencies shall ensure that recipient agencies provide, on a timely basis, by amendment to the agreement, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements and policy and changes in site locations, and number of meals or needy persons to be served.

(2) *Subdistributing agencies, carriers, and other entities.* Distributing agency agreements with subdistributing agencies (as defined in § 250.3) that are not recipient agencies, carriers, and other entities shall be in effect for not longer than one year, and shall provide that they may be extended at the option of both parties for two additional one-year periods. The party contracting with the distributing agency shall update all pertinent information and demonstrate that all donated food received during the period of the previous agreement has been accounted for, before an agreement is extended.

(3) *Termination of agreements.* Agreements may be terminated for cause by either party upon 30 days notice.

(d) *Food service management company contracts.* Food service management companies may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions, and service institutions. When a food service management company is employed to provide such services, the recipient agency shall enter into a written contract with the food service management company. The contract shall expressly provide that any donated foods received by the recipient agency and made available to the food service management company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation, and it shall be the responsibility of the recipient agency to demonstrate that the full value of all donated foods is used solely for the benefit of the recipient agency. All food service management companies shall be subject to review by the distributing agency for compliance with contractual requirements, in accordance with § 250.19(b)(1). In the case of nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly, the contract shall be in effect for no longer than one year, and may provide that it be extended at the option of both parties for not more than four additional one-year periods. Contracts shall provide that they may be terminated for cause by either party upon 30 days notice. Prior to extension of the contract, the nonprofit summer camp for children, charitable institution, or nutrition program for the elderly shall update all pertinent information and demonstrate that all donated food received during the previous contract period has been accounted for.

(e) *Storage facility contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into a written contract, in accordance with § 250.14(d).

* * * * *

5. In § 250.13:

a. Paragraph (k)(2) is amended by removing the words "the Summer Food Service Program", "charitable institutions, summer camps," and ", and the Emergency Food Assistance Program", and by adding the word "and" before the words "the Food Distribution Program on Indian Reservations"; and

b. Paragraph (k)(3) is revised to read as follows:

§ 250.13 Distribution and control of donated foods.

* * * * *

(k) * * *

(3) *Timeframes for submission.* Distributing agencies shall submit commodity acceptability reports to the appropriate FCSRO by April 30th of each year on form FCS–663.

6. In § 250.14:

a. The introductory text of paragraph (d) is amended by removing the first three sentences, and adding two new sentences in their place;

b. Paragraph (d)(1) is amended by removing the reference to "paragraph (a)" and adding in its place a reference to "paragraph (b)"; and

c. Paragraph (e) is amended by removing the citation "§ 250.14(b)" in the first sentence, and adding in its place a reference to "paragraph (c) of this section"; and by removing the reference to "paragraph (e)" in the fourth sentence, and adding in its place a reference to "paragraph (f)".

The additions read as follows:

§ 250.14 Warehousing, distribution and storage of donated foods.

* * * * *

(d) *Contracts.* When contracting for storage facilities, distributing agencies and subdistributing agencies shall enter into written contracts to be effective for no longer than five years, including option years extending a contract. Before the exercise of option years, the storage facility shall update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for. * * *

* * * * *

7. Section 250.17 is amended by revising paragraph (a) to read as follows:

§ 250.17 Reports.

(a) *Inventory reports and receipt of donated foods.* Distributing agencies shall complete and submit to the FCSRO semiannual reports regarding excessive inventories (as defined in § 250.14(f)) of donated foods, utilizing form FCS–155, the Inventory Management Register, except that distributing agencies shall submit monthly inventory information on form FCS–152, for the Food Distribution Program on Indian Reservations, and on form FCS–153, for the Commodity Supplemental Food Program. FCS may require the use of other reporting formats. FCS may also require that form FCS–155 be submitted more frequently than semiannually if necessary to maintain program accountability, and that any inventory report be submitted less frequently if sufficient to meet program needs. Reports shall be submitted not later than 30 calendar days after the last month in the reporting period as established by FCS.

* * * * *

8. In § 250.19:

a. Paragraph (b)(1)(i) is revised;

b. Paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) are redesignated as paragraphs (b)(1)(iii), (b)(1)(iv), and (b)(1)(v), respectively;

c. A new paragraph (b)(1)(ii) is added; and

d. Newly redesignated paragraph (b)(1)(v) is revised.

The revisions and addition read as follows:

§ 250.19 Reviews.

* * * * *

(b) *Responsibilities of distributing agencies.*

(1) * * *

(i) An on-site review of all nutrition programs for the elderly under agreement in accordance with § 250.12(b), at least once every four years, with not fewer than 25 percent of these programs being reviewed each year. These reviews shall also include on-site reviews of the storage facilities of sites receiving donated foods to ensure compliance with § 250.14(b);

(ii) An on-site review of all charitable institutions and nonprofit summer camps for children under agreement in accordance with § 250.12(b), and the food service management companies under contract with these recipient agencies in accordance with § 250.12(d), at a minimum, whenever the distributing agency identifies actual or probable deficiencies in program administration, including compliance with civil rights provisions, through audits, investigations of complaints, reports submitted by recipient agencies, or any other information available to the State agency which, at the discretion of the State agency, warrants an on-site review, or at the request of FCS;

* * * * *

(v) A biennial review of all food service management companies under contract with recipient agencies in accordance with § 250.12(d), except that:

(A) Food service management companies under contract with charitable institutions and nonprofit summer camps for children shall be reviewed in accordance with paragraph (b)(1)(ii) of this section; and,

(B) Food service management companies under contract with schools participating in the National School Lunch Program or commodity schools under part 210 of this chapter, or with schools participating in the School Breakfast Program under part 220 of this chapter, shall be reviewed in accordance with the provisions set forth in parts 210 and 220.

* * * * *

§ 250.24 [Amended]

9. In § 250.24, paragraph (d)(1) is amended by removing the word "semi-annual".

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 is revised to read as follows:

Authority: 7 U.S.C. 7501–7516.

2. Section 251.2 is amended by revising paragraph (c) to read as follows:

§ 251.2 Administration.

* * * * *

(c) Each State agency that distributes donated foods to emergency feeding organizations or receives payments for storage and distribution costs in accordance with § 251.8 shall perform those functions pursuant to an agreement entered into with the Department. This agreement shall be considered permanent, with amendments initiated by distributing agencies, or submitted by them at the Department's request, all of which shall be subject to approval by the Department. Such State agencies shall enter into a written agreement with eligible emergency feeding organizations. This agreement shall provide that emergency feeding organizations agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter. The agreement shall be considered permanent, with amendments to be made as necessary. State agencies shall ensure that emergency feeding organizations provide, on a timely basis, by amendment to the agreement, any information on changes in program administration, including, but not limited to, any changes resulting from amendments to Federal regulations or policy.

3. In § 251.10:

a. Paragraph (a)(1) is amended by removing the citation "§ 250.6(r)", and adding in its place the citation "§ 250.16";

b. Paragraph (d)(2) is revised to read as follows; and

c. Paragraph (d)(3) is removed.

§ 251.10 Miscellaneous provisions.

* * * * *

(d) *Reports.* * * *

(2) Each State agency shall complete and submit to the FCSRO reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter. Such reports shall also include the total number of households served in the State since the previous report submittal, based upon current information received from emergency feeding organizations.

* * * * *

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027), unless otherwise noted.

2. Section 253.5 is amended by removing the first two sentences of the introductory text of paragraph (a)(1) and adding, in their place, three new sentences to read as follows:

§ 253.5 State agency requirements.

(a) *Plan of operation.* (1) The State agency that assumes responsibility for the Food Distribution Program shall submit a plan of operation for approval by FCS. Approval of the plan shall be a prerequisite to the donation of commodities available for use by households under § 253.9. The approved plan shall be considered permanent, with amendments to be added as changes in State agency administration or management of the program, as described in the plan, are made, or at the request of FCS. * * *

* * * * *

3. Section 253.9 is amended by revising paragraph (c)(1) to read as follows:

§ 253.9 Administrative funds for State agencies.

* * * * *

(c) *Application for funds.* (1) Any State agency administering a Food Distribution Program that desires to receive administrative funds under this section shall submit form SF–424, "Application for Federal Assistance," to the appropriate FCS Regional Office at least three months prior to the beginning of a Federal fiscal year. The application shall include budget information, reflecting by category of expenditure the State agency's best estimate of the total amount to be expended in the administration of the program during the fiscal year. FCS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each budget cost category. As required by 7 CFR part 3015, Subpart V, agencies of State government shall submit the application for Federal assistance to the State clearinghouse before submitting it to the FCSRO. ITOs shall not be subject to this requirement.

* * * * *

Dated: October 2, 1997.

Yvette S. Jackson,

Acting Administrator.

[FR Doc. 97–27310 Filed 10–15–97; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

Soybean Promotion and Research; Rules and Regulations

CFR Correction

In title 7 of the Code of Federal Regulations, parts 1200 to 1499, revised as of January 1, 1997, on page 130, § 1220.315 should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 97-032-1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by changing the commuted traveltime allowance for travel between Champlain, NY, and Highgate, VT. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

EFFECTIVE DATE: October 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Rakestraw Lothery, Director, Resource Management Support, VS, APHIS, suite 3B08, 4700 River Road Unit 44, Riverdale, MD 20737-1231, (301) 734-7517; or e-mail: llothery@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, and other overtime duty.

We are amending § 97.2 of the regulations by changing the commuted traveltime allowances for travel between Champlain, NY, and Highgate, VT. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 97.2 is amended in the table, under New York, by revising the following entry to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Locations covered	Served from	Metropolitan area	
		Within	Outside
New York:			
Champlain	Highgate, VT	2	

Done in Washington, DC, this 9th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-27426 Filed 10-15-97; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket Nos. R-0892, R-0952, and R-0961]

Consumer Leasing; Delay of Compliance Date; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; delay of compliance date; correction.

SUMMARY: This document corrects the preamble to the document published in the **Federal Register** on September 30, 1997 (62 FR 51006), regarding the delay of the mandatory compliance date for Regulation M, which implements the Consumer Leasing Act. This correction clarifies that the delay of the mandatory compliance date for the revised regulation applies not only to the final rule published in the **Federal Register** in October 1996, but also to an amendment published on April 1, 1997 (62 FR 15364), and the official staff commentary published on April 4, 1997 (62 FR 16053).

DATES: The date for mandatory compliance with the final rule published on October 7, 1996 (61 FR 52246), an amendment published on April 1, 1997 (62 FR 15364), and the official staff commentary published on April 4, 1997 (62 FR 16053), is delayed until January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea O. Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or 452-3667. For users of Telecommunications Devices for the Deaf (TDDs), please contact Diane Jenkins at (202) 452-3544.

Correction

In the Board document for Docket R-0892 published on September 30, 1997, beginning on page 51006 in the **Federal Register**, the Dates section is corrected to read:

Dates: The date for mandatory compliance with the final rule published on October 7, 1996 (61 FR 52246), an amendment published on April 1, 1997 (62 FR 15364), and the official staff commentary published on April 4, 1997 (62 FR 16053), is delayed until January 1, 1998.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, October 8, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27276 Filed 10-15-97; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 136CE, Special Condition 23-ACE-88]

Special Conditions; Ballistic Recovery Systems Cirrus SR-20 Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Ballistic Recovery Systems, Inc., (BRS) parachute recovery system installed in the Cirrus SR-20 Model airplane. This system is referred to as the General Aviation Recovery Device (GARD). Airplanes modified to use this system will incorporate novel or unusual design features for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1996, Cirrus Design, 4515 Taylor Circle, Duluth, MN 55811, filed an application for a type certificate (TC). Included in this TC application was the provision to install the BRS GARD parachute recovery system as standard equipment on each Cirrus Model SR-20 airplane. The parachute recovery system is intended to recover an airplane in emergency situations such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation with a passenger on board. The GARD system, which is only used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

The parachute recovery system consists of a parachute packed in a canister mounted on the airframe. A solid propellant rocket motor deploys the canopy and is located on the side of the canister. A door positioned above the canister seals the canister, parachute canopy, and rocket motor from the elements and provides free exit when the canopy is deployed. The system is deployed by a mechanical pull handle mounted so that the pilot and passenger can reach it. At least two separate and

independent actions are required to deploy the system.

A multi-cable bridle attaches the canopy bridle to the airplane primary structure. The cable lengths are sized to provide the best airplane touchdown attitude. The cables are routed from the parachute canister thru the fuselage and run externally to the fuselage attach points. The external portion of these cables are covered with small frangible fairings.

Type Certification Basis

The type certification basis for the Cirrus Model SR–20 is as follows: 14 CFR part 23, effective February 1, 1965, including Amendments 23–1 through 23–47; 14 CFR part 36, effective December 1, 1969, including Amendments 36–1 through the amendment in effect at the time of U.S. certification; Equivalent Level of Safety Findings; Exemptions approved by the FAA (14 CFR part 11, § 11.27; Section 611(b) of the FAA Action of 1958 (49 U.S.C. 44715); and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with 14 CFR part 21, § 21.16 do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane modification. Special conditions, as appropriate, are issued after public notice in accordance with § 11.49 (as amended September 25, 1989), as required by §§ 11.28 and 11.29(b). The special conditions become part of the type certification basis, as provided by § 21.17(a)(2).

The installation of parachute recovery systems in 14 CFR part 23 airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that current regulations do not contain adequate or appropriate safety standards for a parachute recovery system; therefore, this system is considered a novel and unusual design feature. The flight test demonstration requirements will ensure that the parachute recovery system will perform its intended function without exceeding its strength capabilities. Demonstrations will be required to show that the parachute will deploy in specified flight conditions. These conditions are a minimum of maneuvering speed, V_O or higher, and deployment during a one-turn spin entry. If the airplane does not depart, the condition is the maneuver that results from pro-spin control inputs held for one turn, or three seconds, whichever comes first.

Occupant restraint requirements will ensure that the airplane is equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact. Each occupant seat must meet the requirements of 14 CFR part 23, § 23.562 as part of the original certification basis.

Requirements for parachute performance will ensure all of the following: (a) The parachute complies with the applicable section of TSO–C23c (SAE AS8015A) at the maximum airplane weights. (b) The parachute deployment loads do not exceed the structural strength of the airplane. (c) The system will provide a ground impact that does not result in serious injury of the passengers. (d) The system will operate in adverse weather conditions.

The requirements for the functions and operations of the parachute recovery system will ensure all of the following: (a) There is no fire hazard associated with the system. (b) The installation of this system allows relief from another part 23 requirement, spins. For this reason, it will need to be operational for all flights. (c) That the system will work in all weather conditions that the airplane is approved to operate in, including the IFR and icing environments. (d) The sequence of arming and activating the system will prevent inadvertent deployment. (e) The system can be activated from either the pilot's or the copilot's position by various sized people. (f) The system will be labeled to show its identification function and operating limitations. (g) A warning placard will be located on the fuselage near the rocket motor to warn rescue crews of the ballistic system. (h) The FAA-approved flight manual will include a thorough explanation of system's operation and limitations as well as the safe deployment envelope. (i) The occupants are protected from serious injury after touchdown in adverse weather.

Requirements for protection of the parachute recovery system will ensure the following: the system is protected from deterioration due to weathering, corrosion, and abrasion; provisions are made to provide adequate ventilation and drainage of the airplane structure that houses the parachute canister.

Requirements for a system inspection provision will ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Requirements for operating limitations of the parachute recovery system will ensure that the system operating limitations and deployment envelope are prescribed, including inspection, repacking, and replacing the system's parachute deployment mechanism at approved intervals.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. 23–ACE–88, Docket No. 136CE was published in the **Federal Register** on February 6, 1997, and the comment period closed March 10, 1997. Following is a summary of the comments received and a response to each comment.

Only one commenter responded to the notice and that was Cirrus Design. They offered five comments, all of which are addressed below.

1. *Comment.* Paragraph 1(a). Proposed Special Condition, Docket No. 136CE, 23–ACE–88 does not contain provisions for the flight test demonstration to be conducted on an aircraft having similar characteristics as was accepted for Docket No. 118CE, 23–ACE–76, Special Conditions: Ballistic Recovery Systems, Modified for Small General Aviation Aircraft. Cirrus proposes to modify the current language of 1(a) to include: "The system may be demonstrated on an aircraft having similar characteristics (such as configuration, weight, and speed) and similar installation." The crucial elements here are the mass distribution of the aircraft and center of gravity (moment of inertia), the location of the riser attachments relative to the c.g., and the riser configurations. The flight demonstration is conclusive if these elements are similar. An example of this situation would be that of demonstrating the operation of the recovery system in a development prototype aircraft similar to that of the type design aircraft. It is only a matter of necessary conformity and degree of similarity. The allowance for "similar" aircraft flight demonstration is a logical inclusion and will require a case by case review. This provision was found acceptable for 23–ACE–76 and, therefore, is acceptable for any STC installations. A TC application should not, by law, require more stringent conditions.

FAA Response. The special conditions for BRS installations referred to by Cirrus; 23–ACE–76, Docket No. 118CE, were originally intended for airplanes similar to the Quicksilver GT–500 and they were intended for general applicability for certificated small airplanes. The Cirrus special conditions do not include this provision because they are unique to the model SR–20. On a model specific special condition, general applicability items are not appropriate. This does not imply that minor design variations in the model would require additional testing.

The FAA agrees that the crucial elements are mass distribution, moment of inertia, riser attachments and configurations. If these crucial elements remain essentially constant with minor design variation, then credit for GARD testing should apply to both airplanes. This issue has been adequately addressed in this preamble and no change in the special conditions is necessary.

2. *Comment.* Paragraph 1(b)(2). It is recommended that item 1(b)(2) be changed to: "maximum allowable deployment speed with 1g normal load." The use of this type of safety equipment is in its infancy and analytical predictions of deployment dynamics are challenging. Based on this, the loads used in the design phase are estimations based on the best information available. The actual loads are determined during flight testing and fix the maximum allowable deployment speed that the designed structure can withstand. A requirement for a system to be deployed at V_{NE} not only offers extreme risk within a development and certification program, but also extends beyond that which is necessary to offer increased safety to the pilot and passengers for the portion of the flight envelope reflecting the largest numbers of accidents. This equipment is provided to give the pilot an additional option for recovery in a critical situation. The deployment envelope should be clearly placarded; beyond which point system operation is prohibited/not recommended. However, the mere presence of the equipment does offer a certain increase in safety. This option to the pilot should not be totally withdrawn because of the *potential* inability of the system to be deployed at V_{NE}. In order to use the GARD system for the spin ELOS, the system need only be safely deployed in a spin situation. Deployments at any other time are an increase in safety above that which is required by FARs.

This requirement also significantly affects customer value. Not all aircraft (especially high performance) can offer this equipment with $V5_{NE}$ envelope capability while maintaining an overall aircraft value/utility, due to the severe structural requirements (energy as the square of the velocity). Should pilots of these aircraft be denied the use of this equipment when in a critical low speed situation? As a final note, a maximum deployment speed other than V_{NE} was found to be acceptable for the GARD 150 program, which also began with a V_{NE} requirement, 23–ACE–33, Special Conditions: Ballistic Recovery System, Inc., Modified Cessna 150/A150 Series Airplanes and 152/A152 Model Airplanes to Incorporate the GARD–150 System.

FAA Response. The FAA developed the original special conditions for the Ballistic Recovery System GARD–150 System based on what was believed to be appropriate at that time. Ideally, it is desirable for any safety device to operate over the entire flight envelope of the airplane it is installed in. Based on this ideal, the original special conditions were intended to cover operation from stall to V_{NE}. Prior to the Cessna 150 STC installing the GARD–150, the typical airplanes that installed a ballistic parachute recovery system could use the system over the entire flight envelope because they were very light, low performance vehicles. The Cirrus SR–20 is a heavy, high performance airplane by comparison. There are challenging technical issues to address with this installation, one of them is the maximum demonstrated deployment speed.

Cirrus is installing the BRS GARD system not only for general safety improvements but also for relief from the spin recovery demonstrations required by part 23. The FAA agrees with Cirrus that a requirement for deployment at V_{NE} is not relative to a requirement for an equivalent safety finding for spin recovery. The FAA, however, disagrees with Cirrus's recommended change because it is open ended, allowing any speed above stall to meet the special condition.

The introduction of innovative safety devices, such as ballistic parachute recovery systems, is important to the FAA's goal of reducing fatal accidents. For this reason, the FAA met with representatives from Cirrus to discuss the maximum deployment demonstration issue. Cirrus' concern, as expressed in their comments, focuses on the risk of developing the system that will safely deploy throughout most of the airplane's speed range, falling just short of V_{NE} and, hence, not receiving approval to install the system in their airplane. Furthermore, Cirrus argues that the mere presence of the GARD system offers a certain increase in safety; therefore, specifying a maximum deployment speed that may not be achievable risks negating the GARD system installation. This action would not be in the best interest of safety.

It is important to understand that this issue does not concern operational deployment by pilots directly. It addresses the deployment tests required by this special condition for certification. The test airplane used for the GARD system deployments must be safely used for multiple deployments. This means that the airplane must remain airworthy after GARD system deployment so that the parachute can be cut away and the airplane safely landed. In operational use, the airplane does not need to remain airworthy after parachute deployment because it is committed to returning to the ground. Once the parachute is deployed in operation, the airplane is going to the ground and probably will not be in an airworthy condition after the landing. Moreover, the FAA should be clear that our concern is that of occupant safety. If the initial opening shock of the GARD system fails parts of the airframe, that is acceptable as long as the occupants meet the safety requirements of these special conditions. The point of this discussion is that an acceptable operational deployment of the GARD system may not be acceptable in the flight test deployment case because the airplane could sustain serious damage, preventing the completion of the flight test program.

After discussing all technical points and positions, the FAA agreed that the appropriate course was to require a maximum deployment speed based on the equivalent safety finding. The equivalent safety finding provides relief from the spin recovery demonstration requirements of § 23.221. The entry requirement for a spin is a stall; therefore, the FAA determined that an acceptable maximum demonstrated deployment speed for the GARD system must be at least V_O, the maximum speed at which, with a full deflection control input, the airplane will stall before reaching limit load on the airframe. This will provide adequate margin for the safe application of the equivalent safety finding and reduce Cirrus' concern that their GARD system installation would not be approved. The FAA also acknowledges that it is Cirrus' goal to push the GARD system deployment speed as high as possible within practical constraints.

3. *Comment.* Paragraph 3(b). It is suggested that this paragraph include "and the parachute assembly."

FAA Response. The FAA agrees and will incorporate the comment.

4. *Comment.* Paragraph 4(b). This paragraph states that a "system failure must be shown to be extremely improbable." Previous requirements for this type of system, reference 23–ACE–

76, cited that the system, "must be shown to function reliably and to perform its intended function."

The previous requirements were appropriate for equipment that increases the level of safety of the airplane. Reliability of "extremely improbable," as defined in AC 23–1309, cannot be reasonably shown quantitatively. The system, as designed, can deliver functional reliability. The testing required on incipient spin recovery will not quantify a demonstration of "extremely improbable."

The critical firing system is designed with similar methodology as redundant load path structure. There are two firing primers, where only one is necessary for ignition of the rocket. The remainder of the system is mechanical in nature with few parts. The following is offered as a possible change to the wording: "activation system must be shown to function reliably [such as redundant ignition sources] and to perform its intended function."

FAA Response. The FAA agrees in principle with Cirrus' comments concerning reliability. The following changes are included in these special conditions.

"Discussion" section:

The probability that the system will operate as designed is very high.

"Special Conditions" section:

The system must be shown to perform its intended function with a high probability that it will operate as designed.

5. *Comment.* Paragraph 7(b). Based on the comments of Paragraph 1(b)(2) above, it is also recommended that 7(b) be removed from this special condition. Again, the ELOS does not maintain applicability to the high speed portion of the flight envelope and, therefore, the equipment should not be required to operate in this speed range.

FAA Response. Addressed in the earlier discussion concerning deployment demonstration at V_{NE}.

Conclusion

The following special conditions are issued for the Cirrus SR–20 airplane. This action affects only novel and unusual design features on specified model/series airplanes. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, and Signs and Symbols.

Citation

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as part of the type certification basis for the Cirrus Model SR–20 airplanes:

1. Flight Test Demonstration

(a) The system must be demonstrated in flight to satisfactorily perform its intended function, without exceeding the system deployment design loads, for the critical flight conditions.

(b) Satisfactory deployment of the parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(1) One of the two maneuvers, (i) or (ii), must be performed for the low speed end of the flight envelope;

(i) Spin with deployment at one turn or 3 seconds, whichever is longer; or

(ii) Deployment immediately following the maneuver that results from a pro-spin control input held for one turn or 3 seconds, whichever is longer.

(2) A minimum of maneuvering speed, V_O or higher;

2. Occupant Restraint.

Each seat in the airplane must be equipped with a restraint system, consisting of a seat belt and shoulder harness, that will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. Parachute Performance

(a) The parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the maximum airplane weight at paragraph 1(b)(2).

(b) The loads during deployment must not exceed 80 percent of the ultimate design load for the attaching structure, the cabin structure surrounding the occupants, and any interconnecting structure of the airplane.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the parachute deployed, the airplane can impact the ground in various adverse weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

4. System Function and Operations

(a) It must be shown that there is no fire hazard associated with activation of the system.

(b) The system must be shown to perform its intended function with a high probability that it will operate as designed.

(c) It must be shown that reliable and functional deployment in the adverse weather conditions that the airplane is approved for have been considered. For example, if the aircraft is certified for flight into known icing, and flight test in actual icing reveals that ice may cover the deployment area, then the possible adverse effects of ice or an ice layer covering the parachute deployment area should be analyzed.

(d) It must be shown that arming and activating the system can only be accomplished in a sequence that makes inadvertent deployment extremely improbable.

(e) It must be demonstrated that the system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(f) The system must be labeled to show its identification, function, and operating limitations.

(g) A warning placard must be located on the fuselage near the rocket motor warning of the rocket.

(h) The FAA-approved flight manual must include a thorough explanation of operation and limitations as well as the safe deployment envelope.

(i) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. System Protection

(a) All components of the system must provide protection against deterioration due to weathering, corrosion, and abrasion.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. System Inspection Provisions

(a) Instructions for continued airworthiness must be prepared for the system that meet the requirements of § 23.1529.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during the required inspection of the system.

7. Operating Limitations

(a) Operating limitations must be prescribed to ensure proper operation of the system within its deployment envelope. A detailed discussion of the system, including operation, limitations and deployment envelope must be included in the Airplane Flight Manual.

(b) The deployment envelope of the GARD system must be possible at speeds up to V_O or higher.

(c) Operating limitations must be prescribed for inspecting, repacking, and replacing the parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri on September 30, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 97–27504 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–135; Special Conditions No. 25–ANM–133]

Special Conditions: Boeing, Model 767–27C Airplanes, Airborne Warning and Control System (AWACS) Modification; Liquid Oxygen System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 767–27C airplanes modified by installation of an Airborne Warning and Control System (AWACS). These airplanes will be equipped with an oxygen system utilizing liquid oxygen (LOX). The applicable regulations do not contain adequate or appropriate safety standards for the design and installation of oxygen systems utilizing LOX for storage. These standards are intended to ensure that the design and installation of the liquid oxygen system is such that a level of safety equivalent to that established by the airworthiness standards for transport category airplanes is provided.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Airplane Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2148.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1993, Boeing Commercial Airplane Group—Wichita Division, applied for a supplemental type certificate (STC) to modify Boeing Model 767–27C airplanes to an Airborne Warning and Control System (AWACS) configuration. The AWACS modification includes installation of equipment consoles, seats for console operators, a liquid oxygen (LOX) system (liquid oxygen converter, valves, evaporating coils, lines, regulators, indicators, fittings, etc.), and a radome on the top of the airplane. Boeing will modify the aft lower lobe with hydraulics for the AWACS antenna drive unit, high-powered radio frequency units for the AWACS radar, and other AWACS hardware. Boeing has designed the LOX installation to provide a supply of breathing oxygen sufficient to allow operation of the airplane in the unpressurized mode if this becomes necessary. The FAA will approve the performance of the oxygen system during certification testing.

There are no specific regulations that address the design and installation of oxygen systems that utilize liquid oxygen. Existing requirements, such as §§ 25.1309, 25.1441 (b) & (c), 25.1451, and 25.1453 in the Boeing Model 767–27C original type certification basis, applicable to this modification, provide some design standards for crew and medical oxygen system installations. However, the FAA must specify additional design standards for systems utilizing liquid oxygen to ensure that an acceptable level of safety is maintained.

Supplemental Type Certification Basis

Under the provisions of §§ 21.101 (a) and (b), Boeing Commercial Airplane Group must show that the modified Model 767–27C continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) No. A1NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC A1NM are basically as follows: Part 25 of the FAR, as amended by Amendments 25–1 through 25–37, plus certain later amended sections as specified in Type Certificate Data Sheet A1NM. In addition, the certification basis includes certain special conditions, exemptions and optional requirements that are not relevant to these special conditions. Also, the modified Model 767–27C must continue to comply with the fuel venting and exhaust emission requirements of part 34 (previously Special Federal Aviation Regulation 27), and the noise certification requirements of part 36 in effect on the date the STC is issued.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended and applicable) do not contain adequate or appropriate safety standards for the modified Model 767–27C because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There are no specific regulations that address the design and installation of oxygen systems that utilize liquid oxygen for storage. Existing requirements, such as §§ 25.1309, 25.1441 (b) and (c), 25.1451, and 25.1453 of the Boeing 767–200 series certification basis applicable to this STC project, provide some design standards appropriate for oxygen system installations. However, additional design standards for oxygen systems utilizing liquid oxygen are needed to supplement the existing applicable requirements. The quantity of liquid oxygen involved in this installation and the potential for unsafe conditions that may result when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, or damage from external sources, make it necessary to assure adequate safety standards are applied to the design and installation of the system in Boeing Model 767–27C airplanes.

To ensure that a level of safety is achieved for modified Boeing Model 767–27C airplanes, utilizing liquid oxygen as a storage medium for an oxygen system, equivalent to that intended by the regulations incorporated by reference, special

conditions are needed which require those oxygen systems to be designed and installed to preclude or minimize the existence of unsafe conditions that can result from system leaks, malfunction, installation, or damage from external sources.

Application by Boeing for approval of oxygen systems utilizing liquid oxygen as a storage medium installed in transport airplanes, and the unsafe conditions that can exist when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, installation or damage from external sources, make development and application of appropriate additional design and installation standards necessary.

Discussion of Comments

On November 21, 1996, the FAA published Notice of Proposed Special Conditions No. SC–96–8–NM for the Boeing Model 767–27C liquid oxygen system installation in the **Federal Register** (61 FR 59202). The Department of the Air Force, commenting to the docket by letter, recommended additional requirements for design and installation of the LOX system. Based on some of those recommendations, the FAA revised special conditions f. and m. and republished the special conditions as Supplemental Notice SC–96–8A–NM on July 21, 1997 (62 FR 38945).

Boeing Commercial Airplane Group, the applicant, provided the only comments in response to Supplemental Notice SC–96–8A.

Boeing suggests that paragraph "f" of the special conditions be revised to read:

"The system shall include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen. The resultant oxygen gas must be delivered to the first oxygen outlet for breathing such that the temperature is no more than 35 °F less than the cabin ambient temperature or 32 °F (whichever is greater) under the conditions of the maximum demand or flow of oxygen gas for normal use of the oxygen system. . . ."

The commenter proposes this change to address the case wherein the airplane may be operated unpressurized, and states that the purpose of the liquid oxygen system being a part of the AWACS modification is to provide a supply of breathing oxygen sufficient to allow operation of the airplane in the unpressurized mode, if this becomes necessary. The commenter's suggested revised wording would limit the lowest temperature of oxygen provided to the occupants to 32 °F during pressurized and unpressurized operations.

The FAA concurs with the commenter. In the original Notice SC–96–8–NM for the Boeing Model 767–27C liquid oxygen system, the FAA proposed that the liquid oxygen system should include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen. This provision was included to address possible hazards that would exist if oxygen reaching the user was too cold. The Department of the Air Force, commenting in response to that notice, suggested that the proposed special condition be revised to further require that oxygen gas delivered to the first oxygen outlet for breathing have a temperature that was not colder than 20 °F below the cabin ambient temperature under the conditions of the maximum demand or flow of oxygen gas for normal use of the oxygen system. The commenter did not provide a specific reason to support this change. However, the FAA determined that the proposal was acceptable because it would ensure that the oxygen is delivered to the user at a temperature that is not harmful. The FAA therefore revised paragraph "f" of the proposed special condition accordingly and issued Supplemental Notice No. SC–96–8A–NM for comment.

The suggested temperature limits proposed by Boeing in response to the Supplemental Notice were reviewed by the FAA, including specialists at the FAA Civil Aeromedical Institute (CAMI). From these reviews, the FAA concluded that the suggested further limiting of temperature limits to "no more than 35 °F less than the cabin ambient temperature or 32 °F (whichever is greater)" is commensurate with the basic intent of the proposed special condition to ensure that the oxygen is delivered at a safe temperature to those breathing it. The FAA considers that this change provides an even higher level of safety than the original proposal. As it affects only the applicant who requested the change, further noticing of the special conditions is not considered necessary.

The remainder of the special conditions for the 767–27C liquid oxygen system installation are adopted as proposed.

As discussed above, these special conditions are applicable initially to the Boeing Model 767–27C airplane. Should Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 767–27C airplanes modified to an AWACS configuration:

a. The liquid oxygen converter and other oxygen equipment shall not be installed where baggage, cargo, or loose equipment are stored (unless items are stored within an appropriate container which is secured or restrained by acceptable means).

b. The liquid oxygen converter shall be located in the airplane so that there is no risk of damage due to an uncontained rotor or fan blade failure.

c. The liquid oxygen system and associated gaseous oxygen distribution lines should be designed and located to minimize the hazard from uncontained rotor debris.

d. The flight deck oxygen system shall meet the supply requirements of Part 121 after the distribution line has been severed by a rotor fragment.

e. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain in the bottom of the airplane. Means must be provided to prevent hydrocarbon fluid migration from impinging upon the vent outlet of the liquid oxygen system.

f. The system shall include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen. The resultant oxygen gas must be delivered to the first oxygen outlet for breathing such that the temperature is no more than 35 °F less than the cabin ambient temperature or 32 °F (whichever is greater), under the conditions of the maximum demand or flow of oxygen gas for normal use of the oxygen system. A LOX shutoff valve shall be installed on the main oxygen distribution line prior to any secondary lines. The shutoff valve must be compatible with LOX temperatures and be readily accessible (either directly if manual, or by remote activation if automatic).

g. If multiple converters are used and manifolded together, check valves shall be installed so that a leak in one converter will not allow leakage of oxygen from any other converter.

h. Flexible hoses shall be used for the airplane systems connections to shock-mounted converters, where movement relative to the airplane may occur.

i. Condensation from system components or lines shall be collected by drip pans, shields, or other suitable collection means and drained overboard through a drain fitting separate from the liquid oxygen vent fitting, as specified in Special Condition e. above.

j. Oxygen system components shall be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times, the maximum normal operating pressure. Compliance with the requirement for burst testing may be shown by analysis, or a combination of analysis and test.

k. Oxygen system components shall be electrically bonded to the airplane structure.

l. All gaseous or liquid oxygen connections located in close proximity to an ignition source shall be shrouded and vented overboard using the system specified in Special Condition e. above.

m. A means will be provided to indicate the quantity of oxygen in the converter and oxygen availability to the flightcrew. A low LOX level amber caution annunciation will be furnished to the flightcrew prior to the LOX converter oxygen level reaching the quantity required to provide sufficient oxygen for emergency descent requirements.

Issued in Renton, Washington, on October 1, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–27503 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–9]

Revocation of Class D Airspace; Anchorage, Bryant AHP, AK, and Adak, AK; Revision of Class E Airspace; Adak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace at Bryant Army Heliport (AHP), Anchorage, AK, and at Adak Naval Air Station (NAS), AK. The Department of the Army closed the Bryant AHP tower on September 27, 1995, and transferred operational control of Bryant AHP to the Alaska National Guard. The Department of the Navy closed the Adak tower on March 31, 1997, following the approval of the 1995 Base Realignment and Closure Commission's recommendation to close Adak NAS, AK, by the Congress of the United States. Additionally, the Class E airspace description at Adak, AK, will be revised to reflect part-time (less than 24-hours a day) operations. The intended effect of this action is to revise the effective times for the Class E airspace at Adak, AK, and also to revoke the Class D airspace at Bryant AHP, and at Adak NAS, AK, since the purpose and requirements for these surface areas no longer exist.

EFFECTIVE DATE: 0901 Coordinated Universal Time (UTC), November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; email; Robert.van.Haastert@faa.dot.gov; Internet: http://www.alaska.faa.gov/at or at http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Army closed the Bryant AHP tower on September 27, 1995, and transferred operational control of Bryant AHP to the Alaska National Guard. The Department of the Navy closed the Adak NAS tower on March 31, 1997, following the approval of the 1995 Base Realignment and Closure Commission's recommendation to close Adak NAS, AK, by the Congress of the United States. The purpose and requirements for these Class D surface areas no longer exist. The Class E effective times at Adak, AK, currently reflect continuous, 24-hour a day operations. This situation no longer exists and the effective times will be changed to indicate a part-time operation.

The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace areas designated as surface areas are published in paragraph 5000 of FAA Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1(62 FR 52491; October 8, 1997). FAA Order 7400.9E, paragraph 6004, lists the Class E airspace areas designated as an extension to a Class D or Class E surface area. The Class D airspace descriptions listed in this document will be removed from the Order. The Class E airspace revision listed in this document will be published subsequently in the Order.

The Rule

The FAA is amending part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class D airspace at Bryant Army Heliport (AHP), Anchorage, AK and at Adak NAS, AK. Additionally, the Class E effective times at Adak NAS, AK, will change from continuous to part time. The Class D airspace designation listed in this document will be revoked and the Class E airspace revision listed in this document will be published with two additional sentences to reflect the part-time effective times.

Accordingly, since the purpose and requirements for the Class D surface areas at Bryant AHP and Adak NAS no longer exist, notice and public procedure under 5 U.S.C. 553(b) for revoking this airspace are unnecessary. Since the closure of the tower is merely causing a reduction of the effective hours of the Class E airspace at Adak NAS, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

The FAA has determined that these regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Anchorge, Bryant AHP, AK [Removed]

* * * * *

AAL AK D Adak, AK [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AAL AK E4 Adak, AK [Revised]

Adak NAS Airport, AK

(Lat. 51°52'53" N. long. 176°38'50" W)

Adak NDB

(Lat. 51°55'01" N, long. 176°34'01" W)

That airspace extending upward from the surface within 3.8 miles each side of the 053° bearing from the Adak NDB extending from the 4.5-mile radius of the Adak NAS to 6.4 miles northeast of the Adak NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Issued in Anchorage, AK, on September 10, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–27376 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–11]

Amendment to Class E Airspace, Lee's Summit, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lee's Summit Municipal Airport, Lee's Summit, MO. The FAA has developed Nondirectional Radio Beacon (NDB) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAP) to serve the Lee's Summit Municipal Airport. The intended effect of this action is to provide additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate these SIAPs, and to provide segregation of aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual weather conditions at the Lee's Summit Municipal Airport.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before November 15, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–11, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone; (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed NDB SIAPs to RWY 18 and RWY 36 to serve the Lee's Summit Municipal Airport, Lee's Summit, MO. The amendment to Class E airspace at Lee's Summit Municipal Airport, MO, is necessary to provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under instrument flight rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depiciting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Lee's Summit, MO [Revised]

Lee's Summit Municipal Airport, MO.
(Lat. 38°37'35" N., long. 94°22'18" W.)
Lesumit NDB, MO
(Lat. 38°57'39" N., long. 94°22'16" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lee's Summit Municipal Airport.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–27386 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–8]

Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace designated as the surface area for Ketchikan, AK. The Ketchikan International Airport's surface area is currently effective 24 hours a day and has a mandatory communication requirement. The wording in the last two sentences in the current description applies to surface areas with less than 24 hours operations. These last two sentences are deleted. The effect of this action is to modify the Ketchikan, AK, surface area description to indicate a continuous, 24 hour operation.

EFFECTIVE DATE: 0901 Coordinated Universal Time (UTC), November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov. Internet: http://www.alaska.faa.gov/at or at http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On June 11, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Ketchikan, AK, was published in the **Federal Register** (62 FR 31769). The Ketchikan International Airport's surface area is currently effective 24 hours a day and has a mandatory communication requirement. The wording in the last two sentences in the current description applies to surface areas with less than 24 hours operations. These last two sentences are deleted to indicate the continuous operation.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No negative comments to the proposal were received. However, part of the airspace description was inadvertently left out from the notice of proposed rulemaking. This missing part of the airspace description has been added to this rule: "excluding that airspace beyond 2.5-miles of the Ketchikan International Airport beginning 1 mile east of the Ketchikan localizer northwest course clockwise to the 350° bearing from the Ketchikan International Airport." The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive changes just discussed, the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491 October 8, 1997). The

Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace located at Ketchikan, AK, to indicate the continuous, 24 hour operation at the Ketchikan International Airport. These two sentences will be removed: "This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory)."

The Federal Aviation Administration has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(Lat. 55°21'20" N, long 131°42'49" W)
Ketchikan Localizer
(Lat. 55°20' 51" N, long. 131°42' 00" W)

Within a 3-mile radius of the Ketchikan International Airport and within 1 mile each side of the Ketchikan localizer northwest/southeast courses extending from the 3-mile radius to 4.6 miles northwest and 4.1 miles southeast of the airport excluding that airspace beyond 2.5-miles of the Ketchikan International Airport beginning 1 mile east of the Ketchikan localizer northwest course clockwise to the 350° bearing from the Ketchikan International Airport.

* * * * *

Issued in Anchorage, AK, on September 10, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–27378 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–7]

Establishment of Class E Airspace; Huslia, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Huslia, AK. The development of Very High Frequency (VHF) omni-directional radio range (VOR) and VOR/Distance Measuring Equipment (DME) instrument approaches to Runway (RWY) 3 and RWY 21 have made this action necessary. The airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. The intended effect of this action is to provide adequate controlled airspace for IFR operations, segregating aircraft operating in instrument conditions from other aircraft operating in visual weather conditions, at Huslia Airport, AK.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov. Internet: http://www.alaska.faa.gov/at or at http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On June 11, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Huslia, AK, was published in the **Federal Register** (62 FR 31770). The development of VOR/DME instrument approaches to RWY 3 and RWY 21 have made this action necessary. The airport status will be upgraded from VFR to IFR.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class E airspace located at Huslia, AK. The development of VOR/DME instrument approaches to RWY 3 and RWY 21 have made this action necessary. The airport status will change from VFR to IFR.

The Federal Aviation Administration has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Huslia, AK [New]

Huslia Airport, AK
(Lat. 65°41'50"N, long. 156°23'21"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Huslia Airport.

* * * * *

Issued in Anchorage, AK, on September 10, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–27379 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–12]

Amendment to Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Philip Billard Municipal Airport, KS. Global Positioning System (GPS) Runway (RWY) 13 and RWY 31. Instrument Landing System (ILS) RWY 13, Localizer Backcourse (LOC BC) RWY 31, and VHF Omnidirectional Range (VOR) or GPS RWY 22 Standard Instrument Approach Procedures (SIAPs) have been developed to serve the Philip Billard Municipal Airport. The intended effect of this action is to provide additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate these SIAPs, and to provide segregation of aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual weather conditions at the Philip Billard Municipal Airport. The enlarged area will contain the SIAPs in controlled airspace.

DATES: *Effective date:* 0901 UTC February 26, 1998.

Comment date: Comments must be received on or before November 15, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–12, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed SIAPs utilizing the GPS, ILS, LOC BC and VOR to serve the Philip Billard Municipal Airport, Topeka, KS. The amendment to Class E airspace at Topeka, KS, will provide additional controlled airspace at and above 700 feet AGL, to contain the new SIAPs within controlled airspace and thereby facilitate separation of aircraft operating under instrument flight rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related

aspects of the rule might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–12." The postcard will be date stamped and returned to the commenter.

Agency Finds

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Com., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Topeka, Philip Billard Municipal Airport, KS [Revised]

Philip Billard Municipal Airport, KS
(lat. 39°04'07"N., long. 95°37'21"W.)
Topeka VORTAC
(lat. 39°08'14"N., long. 95°32'57"W.)
BILOY LOM
(lat. 39°07'13"N., long. 95°41'14"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Philip Billard Municipal Airport and within 3.4 miles each side of the 025° radial of the Topeka VORTAC extending from the 6.5-mile radius to 5.6 miles northeast of the VORTAC and within 4 miles southwest and 7 miles northeast of the Philip Billard Municipal Airport ILS localizer course extending from 15 miles southeast of the airport to 12 miles northwest of BILOY LOM.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–27382 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29035; Amdt. No. 1826]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 3, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b) (2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 6, 1997*

Crescent City, CA, Jack McNamara Field, ILS/DME RWY 11, Amdt 7
Miami, FL, Miami Intl, GPS RWY 9R, Orig
Miami, FL, Miami Intl, GPS RWY 27R, Orig
Miami, FL, Miami Intl, VOR/DME RNAV OR GPS RWY 27R, ORIG–A, CANCELLED
St. Joseph, MO, Rosecrans Memorial, VOR OR TACAN RWY 17, Amdt 13
St. Joseph, MO, Rosecrans Memorial, LOC BC RWY 17, Amdt 8
St. Joseph, MO, Rosecrans Memorial, ILS RWY 35, Amdt 30
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 1
Salisbury, NC, Rowan County, NDB OR GPS–B, Amdt 10, CANCELLED
Southern Pines, NC, Moore County, LOC RWY 5, Amdt 5, CANCELLED
Southern Pines, NC, Moore County, ILS RWY 5, Orig
Conway, SC, Conway-Horry County, NDB RWY 4, Amdt 2
Conway, SC, Conway-Horry County, NDB OR GPS–A, Amdt 2
Clarendon, TX, Clarendon Muni, NDB OR GPS RWY 1, Amdt 2, CANCELLED
Fort Worth, TX, Fort Worth Meacham Intl, ILS RWY 34R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 10

* * * *Effective December 4, 1997*

Knox, Inc, Starke County, VOR OR GPS RWY 18, Amdt 1
Rockland, ME, Knox County Regional, ILS RWY 13, Amdt 1
Davison, MI, Athelone Williams Memorial, VOR OR GPS RWY 8, Amdt 3
Excelsior Springs, MO, Excelsior Springs Memorial, VOR OR GPS RWY 19, Amdt 1
Lexington, NE, Jim Kelly Field, VOR OR GPS RWY 14, Amdt 3
Lexington, NE, Jim Kelly Field, NDB RWY 14, Amdt 2
Lexington, NE, Jim Kelly Field, GPS RWY 32, Orig
Janesville, WI, Rock County, VOR OR GPS RWY 4, Amdt 26
Janesville, WI, Rock County, VOR/DME RWY 22, Orig
Janesville, WI, Rock County, ILS RWY 4, Amdt 11
Milwaukee, WI, Lawrence J. Timmerman, VOR OR GPS RWY 4L, Amdt 8
Milwaukee, WI, Lawrence J. Timmerman, VOR OR GPS RWY 15L, Amdt 13
Milwaukee, WI, Lawrence J. Timmerman, LOC RWY 15L, Amdt 5

* * * *Effective January 1, 1998*

Deadhorse, AK, Deadhorse, GPS RWY 4, Orig
Deadhorse, AK, Deadhorse, GPS RWY 22, Orig
Clinton, IA, Clinton Muni, VOR OR GPS RWY 3, Amdt 14
Clinton, IA, Clinton Muni, VOR/DME RWY 21, Amdt 9
Clinton, IA, Clinton Muni, NDB RWY 3, Amdt 6
Clinton, IA, Clinton Muni, NDB RWY 14, Amdt 4
Clinton, IA, Clinton Muni, ILS RWY 3, Amdt 4
Clinton, IA, Clinton Muni, GPS RWY 14, Amdt 1
Clinton, IA, Clinton Muni, GPS RWY 21, Amdt 1
Clinton, IA, Clinton Muni, GPS RWY 32, Amdt 1
Eagle Grove, IA, Eagle Grove Muni, GPS RWY 31, Orig
Rensselaer, IN, Jasper County, GPS RWY 18, Orig
Winchester, IN, Randolph County, GPS RWY 25, Orig
Brainerd, MN, Brainerd-Crow Wing Co Regional, GPS RWY 5, Orig
Chapel Hill, NC, Horace Williams, GPS RWY 9, Orig
Waxhaw, NC, Jaars-Townsend, GPS RWY 4, Orig
Waxhaw, NC, Jaars-Townsend, GPS RWY 22, Orig
Waxhaw, NC, Jaars-Townsend, RNAV RWY 4, Amdt 2, CANCELLED
Cincinnati, OH, Cincinnati-Blue Ash, GPS RWY 24, Orig
London, OH, Madison County, GPS RWY 8, Orig
Portsmouth, OH, Greater Portsmouth Regional, GPS RWY 36, Amdt 1

Portsmouth, OH, Greater Portsmouth Regional, VOR/DME RNAV OR GPS RWY 18, Amdt 6
Aurora, OR, Aurora State, GPS RWY 17, Amdt 1
Aurora, OR, Aurora State, GPS RWY 35, Amdt 1
Anderson, SC, Anderson County, GPS RWY 23, Orig
Anderson, SC, Anderson County, RNAV OR GPS RWY 23, Amdt 5A, CANCELLED
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, GPS RWY 25, Orig
Florence, SC, Florence Regional, GPS RWY 27, Orig
Florence, SC, Florence Regional, RNAV OR GPS RWY 27, Amdt 2, CANCELLED
Shelton, WA, Sanderson Field, GPS RWY 5, Orig
Shelton, WA, Sanderson Field, GPS RWY 23, Orig

[FR Doc. 97–27403 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29036; Amdt. No. 1827]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is one of such duration as to permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standards for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between the SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 3, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/18/97	ME	Houlton	Houlton Intl	FDC 7/6173	VOR RWY 5 AMDT 10...
09/18/97	NC	Greensboro	Greensboro/Piedmont Triad Intl	FDC 7/6177	RADAR–1, AMDT 9A...
09/18/97	NC	Greensboro	Greensboro/Piedmont Triad Intl	FDC 7/6178	NDB or GPS RWY 14 AMDT...
09/19/97	NE	Ogallala	Searle Field	FDC 7/6185	VOR or GPS RWY 8, AMDT 4...
09/19/97	NE	Ogallala	Searle Field	FDC 7/6187	VOR or GPS RWY 26, AMDT 4...
09/22/97	SD	Sioux Falls	Joe Foss Field	FDC 7/6232	ILS RWY 21 AMDT 8...
09/23/97	IL	Belleville	MidAmerica	FDC 7/6255	ILS RWY 14R, ORIG...
09/23/97	TN/VA	Bristol-Johnson-Kingsport.	Tri-Cities Regional	FDC 7/6279	ILS RWY 23, AMDT 24A, ILS RWY 23 (CAT II), AMDT 24A...
09/25/97	NC	Raleigh/Durham	Raleigh-Durham Intl	FDC 7/6330	RADAR 1 AMDT 7B...
09/26/97	FL	Melbourne	Melbourne Intl	FDC 7/6345	ILS RWY 9R, AMDT 10...

[FR Doc. 97–27404 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28969; Amdt. No. 1809]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need of a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendments also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Futher, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 11, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
06/25/97	IN	Anderson	Anderson Municipal-Darlington Field	7/3868	LOC Rwy 30 Amdt 5...
06/26/97	IL	Galesburg	Galesburg Muni	7/3912	VOR or GPS Rwy 20, Amdt 6...
06/26/97	IL	Galesburg	Galesburg Muni	7/3913	VOR or GPS Rwy 2, Amdt 6...
06/26/97	IL	Galesburg	Galesburg Muni	7/3914	ILS RWY 2, Amdt 9...
06/26/97	OH	Wapakoneta	Neil Armstrong	7/3928	VOR–A Amdt 7A...
06/26/97	OH	Wapakoneta	Neil Armstrong	7/3929	LOC Rwy 26 Amdt 3...
06/26/97	OR	Newport	Newport Muni	7/3953	ILS Rwy 16 Orig-A...
06/27/97	FM	Pohnpei Island	Pohnpei Intl	7/3998	PTPN). NDB/DME or GPS–A, Amdt 1...
06/27/97	MI	Detroit/Grosse Ile	Grossee Ile Muni	7/3979	NDB or GPS Rwy 4, Amdt 1...
06/27/97	MI	Detroit/Grosse Ile	Grosse Ile Muni	7/3980	VOR or GPS–A, Amdt 6...
06/27/97	MI	Monroe	Custer	7/3981	VOR or GPS Rwy 21, Amdt 1...
06/27/97	MI	Monroe	Custer	7/3982	VOR or GPS Rwy 3, Amdt 1...
06/27/97	OH	Cincinnati	Cincinnati-Blue Ash	7/3976	NDB Rwy 6, Amdt 1...
06/27/97	OH	Cincinnati	Cincinnati-Blue Ash	7/3977	VOR Rwy 24, Amdt 5...
06/27/97	OH	Cincinnati	Cincinnati-Blue Ash	7/3978	NDB or GPS Rwy 24, Amdt 1...
06/27/97	OH	Cincinnati	Cincinnati-Blue Ash	7/3996	GPS Rwy 6, Amdt 1...
06/30/97	NC	Raleigh/Durham	Raleigh-Durham Intl	7/4040	VOR Rwy 23L Amdt 14B...
06/30/97	NC	Raleigh/Durham	Raleigh-Durham Intl	7/4041	NDB or GPS Rwy 23L Amdt 4...
06/30/97	NC	Raleigh/Durham	Raleigh-Durham Intl	7/4043	ILS Rwy 23L Amdt 5D...
07/01/97	NY	Stormville	Stormville	7/4064	VOR or GPS–A Amdt 4...
07/01/97	WI	Milwaukee	General Mitchell Intl	7/4060	Radar-1, Amdt 23...
07/01/97	WI	Milwaukee	General Mitchell Intl	7/4061	NDB or GPS Rwy 7R, Amdt 10...
07/02/97	MN	Windom	Windom Muni	7/4088	NDB or GPS Rwy 17, Amdt 4A...
07/03/97	OH	Wapakoneta	Neil Armsrong	7/4162	VOR/DME RNAV Rwy 26 Amdt 5A...
07/07/97	OK	Tulsa	Tulsa Intl	7/4134	ILS Rwy 36R, Amdt 28A...
07/07/97	OK	Tulsa	Tulsa Intl	7/4136	HI–NDB or IIS Rwy 18L, Amdt 4...

FDC date	State	City	Airport	FDC No.	SIAP
07/07/97	OK	Tulsa	Tulsa Intl	7/4138	HI–VOR/DME or TACAN Rwy 26...
07/07/97	OK	Tulsa	Tulsa Intl	7/4143	ILS Rwy 18R, Amdt 6...
07/07/97	OK	Tulsa	Tulsa Intl	7/4145	NDB or GPS Rwy 18L, Amdt 10...
07/07/97	OK	Tulsa	Tulsa Intl	7/4151	NDB or GPS Rwy 36R, Amdt 19...
07/07/97	OK	Tulsa	Tulsa Intl	7/4153	ILS Rwy 18L, Amdt 13A...
07/07/97	OK	Tulsa	Tulsa Intl	7/4259	VOR or TACAN or GPS Rwy 26, Amdt 22...
07/07/97	OK	Tulsa	Tulsa Intl	7/4260	VOR/DME or TACAN or GPS Rwy 8, Amdt 3A...
07/07/97	OK	Tulsa	Tulsa Intl	7/4261	HI–NDB or ILS Rwy 36R...
07/08/97	IL	Peoria	Greater Peoria Regional	7/4271	ILS Rwy 13 Amdt 6A...
07/08/97	TX	Denton	Denton Muni	7/4269	NDB or GPS Rwy 17, Amdt 6...
07/08/97	TX	Denton	Denton Muni	7/4270	ILS Rwy 17, Amdt 6...

[FR Doc. 97–27500 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29007; Amdt. No. 1819]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's

currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 22, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

** * * Effective Oct 9, 1997*

Monte Vista, CO, Monte Vista Muni, NDB GPS RWY 20, Orig CANCELLED
Monte Vista, CO, Monte Vista Muni, NDB RWY 20, Orig Plant City, FL, Plant City Muni, NDB RWY 9, Orig CANCELLED
Plant City, FL, Plant City Muni, NDB RWY 9, Amdt 1 Carmi, IL, Carmi Muni, NDB RWY 36, Amdt 5 CANCELLED
Carmi, IL, Carmi Muni, NDB RWY 36, Orig Keene, NH, Dillant-Hopkins, VOR or GPS RWY 2, Amdt 11 CANCELLED
Keene, NH, Dillant-Hopkins, VOR RWY 2, Amdt 12 Ogden, UT, Ogden-Hinckley, VOR or GPS RWY 7, Amdt 5 CANCELLED
Ogden, UT, Ogden-Hinckley, VOR RWY 7, Amdt 5 Eagle River, WI, Eagle River Union, VOR/DME or GPS RWY 4, Amdt 1 CANCELLED
Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1

[FR Doc. 97–27499 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29037; Amdt. No. 1828]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAP's. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the

conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 3, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend §§ 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified, as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

** * * Effective Nov 6, 1997*

Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR or GPS RWY 28, Amdt. 9B, Cancelled
Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR RWY 28, Amdt. 9B
Forrest City, AR, Forrest City Muni, NDB or GPS RWY 35, Amdt. 3, Cancelled
Forrest City, AR, Forrest City Muni, NDB RWY 35
Helena/West Helena, AR, Thomspon-Robbins Field, NDB or GPS RWY 17, Amdt. 4, Cancelled
Helena/West Helena, AR, Thomspon-Robbins Field, NDB RWY 17, Amdt. 4
Orlando, FL, Executive, NDB or GPS RWY 7, Amdt. 15, Cancelled
Orlando, FL, Executive, NDB RWY 7, Amdt. 15
Elmira, NY, Elmira/Corning Regional, NDB or GPS RWY 24, Amdt. 13A, Cancelled
Elmira, NY, Elmira/Corning Regional, NDB RWY 24, Amdt. 13A

[FR Doc. 97–27405 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29005; Amdt. No. 1817]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for

examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on August 22, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, LSMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

* * * *Effective September 11, 1997*

Deadhorse, AK, Deadhorse, VOR/DME OR TACAN RWY 4L, Orig, CANCELLED
Deadhorse, AK, Deadhorse, VOR/DME OR TACAN RWY 4, Orig
Deadhorse, AK, Deadhorse, VOR/DME OR TACAN RWY 22, Amdt 2
Deadhorse, AK, Deadhorse, ILS/DME RWY 4, Amdt 8
Deadhorse, AK, Deadhorse, LOC/DME BC RWY 22, Amdt 8
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 11
Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt 7
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington Normal, ILS RWY 20, Orig
Decatur, TX, Decatur Muni, VOR/DME RWY 16, Amdt 1
Decatur, TX, Decatur Muni, RADAR–1, Amdt 16

* * * *Effective October 9, 1997*

Vacaville, CA, Nut Tree, RNAV RWY 20, Amdt 1, CANCELLED
Rochester, IN, Fulton County, GPS RWY 29, Orig
Scribner, NE, Scribner State, VOR RWY 35, Amdt 1
Fort Worth, TX, Fort Worth Alliance, ILS RWY 34R, Amdt 3
Summersville, WV, Summersville, SDF RWY 4, Amdt 1, CANCELLED
Summersville, WV, Summersville, NDB RWY 4, Amdt 2, CANCELLED

* * * *Effective November 6, 1997*

Fort Payne, AL, Isbell Field, GPS RWY 4, Orig
Fort Payne, AL, Isbell Field, GPS RWY 22, Orig
Fayetteville, AR, Drake Field, VOR/DME–B, Orig
Fayetteville, AR, Drake Field, VOR/DME RWY 34, Orig, CANCELLED
Fayetteville, AR, Drake Field, LOC RWY 16, Amdt 18
Fayetteville, AR, Drake Field, LDA/DME RWY 34, Amdt 1
Fayetteville, AR, Drake Field, MLS RWY 34 Amdt 1
Titusville, FL, Arthur Dunn Air Park, GPS RWY 15, Orig
Titusville, FL, Arthur Dunn Air Park, GPS RWY 33, Orig
Hampton, GA, Clayton County-Tara Fields, GPS RWY 24, Amdt 1
Waycross, GA, Waycross-Ware County, GPS RWY 18, Orig
Waycross, GA, Waycross-Ware County, GPS RWY 36, Orig
Waycross, GA, Waycross-Ware County, RNAV OR GPS RWY 18, Amdt 4B, CANCELLED
Charles City, IA, Charles City Muni, GPS RWY 30, Orig
Nampa, ID, Nampa Muni, GPS–B, Orig
Nampa, ID, Nampa Muni, GPS RWY 11, Orig
Bedford, IN, Virgil I. Grisson Muni, VOR/DME RWY 13, Amdt 10
Bedford, IN, Virgil I. Grisson Muni, VOR/DME RWY 31, Amdt 9
Bedford, IN, Virgil I. Grisson Muni, NDB RWY 13, Amdt 8
Bedford, IN, Virgil I. Grisson Muni, NDB RWY 31, Amdt 10
Bedford, IN, Virgil I. Grisson Muni, GPS RWY 13, Orig
Bedford, IN, Virgil I. Grisson Muni, GPS RWY 31, Orig
Kendallville, IN, Kendallville Muni, GPS RWY 27, Orig
Louisville, KY, Bowman Field, VOR OR GPS RWY 24, Amdt 7
Friendly, MD, Potomac Airfield, GPS RWY 6, Orig
Friendly, MD, Potomac Airfield, VOR/DME RWY 6, Orig
Crookston, MN, Crookston Muni Kirkwood Fld, GPS RWY 31, Orig
Lee's Summit, MO, Lee's Summit Muni, VOR/DME–A, Orig
Lee's Summit, MO, Lee's Summit Muni, VOR OR GPS–B, Amdt 3, CANCELLED
Harvey, ND, Harvey Muni, GPS RWY 11, Orig
Harvey, ND, Harvey Muni, GPS RWY 29 Orig
New Philadelphia, OH, Harry Clever Field, GPS RWY 14, Orig

[FR Doc. 97–27497 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29006; Amdt. No. 1818]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FEC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on August 22, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97/31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
06/27/97	FM	Pohnpei Island	Pohnpei Intl	FDC7/3998	PTPN). NDB/DME or GPS-A, AMDT 1 ...
08/06/97	DC	Washington	Washington Dulles Intl	FDC7/5199	ILS/DME RWY 1L AMDT 5 ...
08/08/97	FL	Miami	Miami Intl	FDC7/5269	ILS RWY 9L, AMDT 28 ...
08/11/97	MI	Escanaba	Delta County	FDC7/5362	VOR or GPS RWY 18, AMDT 7 ...
08/12/97	NE	Norfolk	Karl Stefan Memorial	FDC7/5380	ILS RWY 1, AMDT 4 ...
08/14/97	MT	Missoula	Missoula International	FDC7/5442	ILS RWY 11, AMDT 10 ...
08/15/97	MA	Hyannis	Barnstable Muni–Boardman/Polando Field.	FDC7/5451	ILS RWY 24, AMDT 16C ...
08/18/97	IN	Greensburg	Greensburg-Decatur County	FDC7/5523	VOR or GPS–A, AMDT 2 ...
08/18/97	KS	Olathe	Johnson County Executive	FDC7/5519	NDB or GPS RWY 18, AMDT 3A ...
08/18/97	VA	Richmond/Ashland	Hanover County Muni	FDC7/5524	VOR RWY 16 ORIG–A ...
08/18/97	VA	Richmond/Ashland	Hanover County Muni	FDC7/5525	VOR RWY 16 ORIG–A ...

[FR Doc. 97–27498 Filed 10–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone, Pacific Ocean, Naval Air Weapons Station, Point Mugu, Ventura County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On July 28, 1997, the Corps published an interim final rule in the **Federal Register**, which established a danger zone in the waters of the Pacific Ocean extending 5,000 meters offshore from the small arms range at the Naval Air Weapons Station, in Point Mugu, Ventura County, California. The danger zone would provide an appropriate and enforceable zone in which the Navy may conduct small arms test firing to qualify military and civilian security personnel. The comment period for the interim final rule ended on August 27, 1997. No comments were received.

DATES: Effective July 28, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Welch at (805) 641–2935 or Mr. Ralph Eppard at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR part 334 by adding a new danger zone regulation in § 334.1125. On July 28, 1997, the Corps published the new danger zone regulations in the **Federal Register** (62 FR 40278) as an interim final rule, effective on the date of publication, with public comments invited until August 27, 1997. Based on comments received, the Corps would take appropriate action which could include further revision or suspension of the rules. We received no comments.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

Accordingly, the interim final rule adding 33 CFR 334.1125 on July 28, 1997, (62 FR 40278) is adopted as a final rule, without change.

Dated: October 7, 1997.

Approved:

Russell L. Fuhrman,

Major General, USA, Director of Civil Works.

[FR Doc. 97–27318 Filed 10–15–97; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

48 CFR Parts 901, 903, 904, 912, 913, 915, 916, 932, 933, 939, 944 and 970

RIN 1991–AB35

Acquisition Regulation: Acquisition Streamlining

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to supplement the Federal Acquisition Regulation's (FAR) implementation of certain provisions of the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act of 1996. In addition, DOE is amending the DEAR to eliminate unnecessary and obsolete coverage and to make certain technical and conforming amendments, as appropriate.

DATES: This final rule is effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586–8192 (telephone); (202) 586–0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements.
A. Review Under Executive Order 12612.
B. Review Under Executive Order 12866.
C. Review Under Executive Order 12988.
D. Review Under the National Environmental Policy Act.
E. Review Under the Paperwork Reduction Act.
F. Review Under the Small Business Regulatory Enforcement Fairness Act.
G. Review Under the Unfunded Mandates Reform Act.

I. Background.

The Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, was enacted on October 13, 1994, and provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Among the many changes brought about by this legislation, FASA established new and innovative acquisition streamlining concepts and methods pertaining to the acquisition of commercial items; simplified acquisition procedures; multiple award, task and delivery order contracts; protests; and changes to the Truth in Negotiations Act. The Clinger-Cohen Act of 1996, Pub. L. 104–208, was enacted on September 30, 1996, to further streamline the Federal procurement system in such areas as competition requirements, debriefings, procurement integrity and the acquisition of commercial items and information technology products and services. The issuance of interim and final rules implementing these statutes in the FAR has been largely completed. Accordingly, this rulemaking will implement and supplement, as appropriate, the FAR's implementation of certain provisions of the FASA and Clinger-Cohen Act of 1996. This final rule will also eliminate obsolete coverage and make necessary technical and conforming amendments to the DEAR.

II. Section-by-Section Analysis

1. The authority for citations for parts 901, 903, 904, 913, 915, 916, 932, 933, 939 and 944 are restated.

2. Section 901.601, General, which addresses contracting authority and responsibilities, is amended by designating the current paragraph as paragraph (a), and by adding new paragraph (b) to identify that the authority set forth at 48 CFR 1.601(b) is delegated within DOE to the Procurement Executive.

3. Subsection 903.104–11, Processing violations or possible violations under procurement integrity, is redesignated as subsection 903.104–10, and the subsection heading and coverage are revised to conform to recent FAR changes.

4. Subsection 904.804–1, Close out by the office administering the contract, which addresses contract closeout procedures, is amended by deleting the reference to section 942.708 and substituting in lieu thereof a reference to 48 CFR 42.708.

5. Part 912, Acquisition of Commercial Items, is added and the authority for new Part 912 is stated as 42 U.S.C. 7254 and 40 U.S.C. 486(c).

6. Section 912.302, Tailoring of provisions and clauses for the acquisition of commercial items, is added to incorporate DOE's procedures for waiving the prohibition at 48 CFR 12.302(c) on tailoring or adding terms or conditions that are inconsistent with customary commercial practice for a solicitation or contract for commercial items.

7. Subsection 913.505–1, which addresses the use of certain forms for simplified acquisitions, is amended by redesignating subparagraph (a)(2) as paragraph (a); deleting the last sentence of redesignated paragraph (a) and substituting in lieu thereof a reference to 48 CFR 12.204 regarding the use of the Standard Form 1449, Solicitation/Contract/Order for Commercial Items; and removing subparagraph (b)(2) in its entirety as the coverage is obsolete.

8. Subsection 915.804–3, Exemptions from or waiver of submission of certified cost or pricing data, is redesignated as subsection 915.804–1, and the subsection heading and coverage are revised to conform with recent changes to the FAR.

9. Subsection 915.804–6, which addresses the authority to waive requirements for cost or pricing data under certain circumstances, is amended to conform with recent FAR changes by revising the subsection heading, and removing paragraph (i) which contains obsolete coverage.

10. Subsection 915.806–2, Prospective subcontractor cost or pricing data, is added to implement FAR coverage regarding the authority to excuse a prospective contractor from submitting subcontractor cost or pricing data.

11. Subpart 915.10, Preaward, Award, and Postaward Notifications, Protests and Mistakes, which addresses the debriefing of unsuccessful offerors, is removed as the coverage is obsolete and unnecessary pursuant to recent changes to 48 CFR 15.10.

12. Section 916.504, Indefinite-quantity contracts, is added to implement the Department's policy regarding the incorporation of minimum ordering guarantees in multiple award contracts.

13. Section 916.505, Ordering, is added to implement the Department's policies and procedures pertaining to Task Order Contract and Delivery Order Contract Ombudsman duties and responsibilities.

14. Subpart 932.4 is amended to revise the heading of the subpart to conform with recent changes to the FAR.

15. Subsection 933.102, General, is added to identify that the authority set forth at 48 CFR 33.102(b) to provide corrective relief in response to a protest is delegated within DOE to the Heads of Contracting Activities.

16. Part 939, Acquisition of Federal Information Processing Resources By Contracting, is revised to update the coverage pursuant to recent FAR changes resulting from the passage and implementation of Section E of the Clinger-Cohen Act of 1996.

17. Part 944, Subcontracting Policies and Procedures, which addresses obsolete internal DOE subcontracting policies and procedures pertaining to contractors' purchasing system reviews, is removed.

18. The authority citation for Part 970 is restated.

19. Subsection 970.1508–1, which addresses the applicability of cost or pricing data to DOE cost-reimbursement management and operating contracts, is amended to update and clarify the Department's coverage pursuant to recent changes to the FAR resulting from FASA and Clinger-Cohen Act amendments to the Truth in Negotiations Act and to prescribe the use of appropriate FAR clauses regarding requirements for subcontractor cost or pricing data.

20. Subsection 970.5204–22, Contractor purchasing system, is amended by revising paragraph (a) to incorporate requirements for the management of a Self-Assessment Program, and the Government's review of contractors' purchasing systems in accordance with FAR subpart 44.3 and other DOE implementing policy and guidance. The section is further amended by revising paragraph (b) to correct an obsolete reference.

21. Subsection 970.5204–24, Subcontractor cost or pricing data, is removed and the subsection reserved pursuant to the amendments made to subsections 970.1508–1 and 970.5204–44.

22. Subsection 970.5204–44, which prescribes subcontract flowdown requirements for DOE management and operating contractors, is amended to revise the coverage set forth therein regarding the flowdown of subcontractor cost or pricing data requirements.

23. Subsection 970.5204–60, Facilities management, is amended to update the clause pursuant to the cancellation and/or redesignation of several internal DOE Directives referenced therein.

III. Procedural Requirements.

A. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

B. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatofy Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 901, 903, 904, 912, 913, 915, 916, 932, 933, 939, 944 and 970

Government procurement.

Issued in Washington, D.C. on October 9, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citations for parts 901, 903, 904, 913, 915, 916, 932, 933, 939 and 944 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 901.601 is amended to designate the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

901.601 General.

(a) * * *

(b) The Procurement Executive has been authorized, without power of redelegation, to perform the functions set forth at 48 CFR 1.601(b) regarding the assignment of contracting functions and responsibilities to another agency, and the creation of joint or combined offices with another agency to exercise acquisition functions and responsibilties.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Subsection 903.104–11 is redesignated as subsection 903.104–10, and revised to read as follows:

903.104–10 Violations or possible violations (DOE coverage—paragraph (a)).

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of 48 CFR 3.104–10(a) (1) and (2) relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act shall be the legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award or selecting the source. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in 48 CFR 3.104–10(a) (1) and (2) regarding questions of disclosure of proprietary or source selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding 48 CFR 3.104–10(a) (1) and (2) for Headquarters activities is the Agency Ethics Official (Designated Agency Ethics Official).

PART 904—ADMINISTRATIVE MATTERS

4. Subsection 904.804–1 is amended by revising the section heading and paragraph (b) to read as follows:

904.804–1 Closeout by the office administering the contract (DOE Coverage—paragraphs (a) and (b)).

* * * * *

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 48 CFR 42.708.

5–6. Part 912 is added in Subchapter B to read as follows:

PART 912—ACQUISITION OF COMMERCIAL ITEMS

Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

912.302 Tailoring of provisions and clauses for the acquisition of commercial items. (DOE coverage—paragraph (c))

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the contracting officer.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

7. Subsection 913.505–1 is revised to read as follows:

913.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation or DOE F 4250.3, Order for Supplies or Services. (DOE coverage—paragraph (a))

(a) Optional Forms 347 and 348, or DOE F 4250.3, may be used for purchase orders using simplified acquisition procedures. These forms shall not be used as the contractor's invoice. See 48 CFR 12.204 regarding the use of SF–1449 for the acquisition of commercial items using simplified acquisition procedures.

PART 915—CONTRACTING BY NEGOTIATION

8. Subsection 915.804–3 is redesignated as subsection 915.804–1, and revised to read as follows:

915.804–1 Prohibition on obtaining cost or pricing data (DOE coverage—paragraph (b)).

(b) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by 48 CFR 15.804–1(b)(1)(i)(B), and the determination required by 48 CFR 15.804–1 (b)(1)(ii)(B).

9. Subsection 915.804–6 is revised to read as follows:

915.804–6 Instructions for the submission of cost or pricing data or information other than cost or pricing data (DOE coverage—paragraph (e)).

(e) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in 48 CFR 15.804–6(e). Such waivers shall be reported to the Procurement Executive.

10. Subsection 915.806–2 is added in Subchapter C to read as follows:

915.806–2 Prospective subcontractor cost or pricing data (DOE coverage—paragraph (e)).

(e) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, approve the contracting officer's determination to excuse a prospective contractor from submitting subcontractor cost or pricing data before completion of negotiations of the prime contract, subject to the requirements set forth in 48 CFR 15.806–2(e).

Subpart 915.10 [Removed]

11. Subpart 915.10 in Subchapter C is removed.

PART 916—TYPES OF CONTRACTS

12. Section 916.504 is added in Subchapter C to read as follows:

916.504 Indefinite-quantity contracts (DOE coverage-paragraph (c)).

(c) The contracting officer shall establish minimum ordering guarantees with each awardee for all indefinite-quantity, multiple award contracts to ensure that adequate consideration exists to contractually bind each awardee to participate in the ordering process throughout the term of the multiple award contract. Minimum ordering guarantees should be equal among all awardees, and shall be determined on a case-by-case basis for each acquisition commensurate with the size, scope and complexity of the contract requirements.

13. Section 916.505 is added in Subchapter C to read as follows:

916.505 Ordering (DOE coverage—paragraph (b)).

(b) (4) The Director, Office of Management Systems, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(4).

(5) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(6) The Contracting Activity Ombudsman shall:

(i) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(ii) Not assume any duties and responsibilities pertaining to the evaluation or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(iii) Review complaints from contractors awarded a task or delivery order contract;

(iv) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees' contract;

(v) Maintain a written log to track each complaint submitted from receipt through disposition;

(vi) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(vii) Resolve complaints at the contracting activity for which they have cognizance.

(7) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant

contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

PART 932—CONTRACT FINANCING

14. Subpart 932.4 is amended by revising the heading of the subpart to read as follows:

Subpart 932.4—Advance Payments for Non-Commercial Items

PART 933—PROTESTS, DISPUTES AND APPEALS

15. Section 933.102 is added in Subchapter E to read as follows:

933.102 General (DOE coverage—paragraph (b)).

(b) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

16. Part 939 is revised in its entirety to read as follows:

PART 939—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 939.70—Implementing DOE Policies and Procedures

Sec.
939.7000 Scope.
939.7001 Outdated information technology equipment.
939.7002 Contractor acquisition of information technology.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 939.70—Implementing DOE Policies and Procedures

939.7000 Scope.

This part sets forth the policies and procedures that apply to the acquisition of information technology by the Department of Energy (DOE).

939.7001 Outdated information technology equipment.

Solicitations and contracts for, or using, outdated information technology equipment shall be submitted to the Office of Management Systems, Office of Procurement and Assistance Management for review and approval. The Office of Information Management shall review these documents and make the decision whether to allow the acquisition or use of outdated information technology equipment.

939.7002 Contractor acquisition of information technology.

(a) *Management and operating (M&O) contracts.* Except as provided in paragraph (c) of this section, M&O contractors and their subcontractors shall not be used to acquire information technology unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts.* Where it has been determined that a contractor (other than an M&O contractor or its subcontractor) will acquire information technology either for sole use by DOE employees or for the furnishing of the information technology as government-furnished property under another contract, and after receiving written authorization from their cognizant DOE contracting office pursuant to 48 CFR part 51, DOE contractors working under cost-reimbursement-type contracts may place orders against authorized contracts. All authorizations to contractors shall expressly and specifically reference the restriction regarding contractor use of the items acquired, cited at 48 CFR 951.102(e)(4)(iii).

(c) *Consolidated contractor acquisitions.* When common information technology requirements in support of DOE programs have been identified and it is anticipated that the consolidation of such requirements will promote cost or other efficiencies, the Designated Senior Official for Information Management may authorize an M&O contractor to acquire information technology for use by the following:

(1) One or more other contractor(s) performing on-site at the same DOE-owned or -leased facility as the M&O contractor, or

(2) Other M&O contractors.

PART 944—[REMOVED]

17. Part 944 in Subchapter G is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

18. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

19. Subsection 970.1508–1 is revised to read as follows:

970.1508–1 Cost or pricing data.

(a) The certification requirements of FAR 15.804–2 are not applied to DOE cost-reimbursement management and operating contracts.

(b) The contracting officer shall ensure that management and operating contractors and their subcontractors obtain cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with 48 CFR 15.804–2, and incorporate appropriate contract provisions similar to those set forth at 48 CFR 52.215–22 and 48 CFR 52.215–23 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at 48 CFR 52.215–24 and 48 CFR 52.215–25 shall be included in management and operating contracts.

20. Subsection 970.5204–22 is amended by revising the clause date and paragraphs (a) and (b) to read as follows:

970.5204–22 Contractor purchasing system.

* * * * *

Contractor Purchasing System (NOV 1997)

(a) *General.* The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204–44, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. The contractor shall manage a Self-Assessment Program and shall submit to the contracting officer a copy of Self-Assessment reports in accordance with written direction and guidance provided by the contracting officer. DOE reserves the right to review and approve the contractor's purchasing system in accordance with 48 CFR subpart 44.3, and DOE implementing policy and guidance. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

* * * * *

970.5204–24 [Removed and Reserved]

21. Subsection 970.5204–24 in Subchapter I is removed and reserved.

22. Subsection 970.5204–44 is amended by revising paragraph (b)(5) to read as follows:

970.5204–44 Flowdown of contract requirements to subcontracts.

* * * * *

(b) * * *

(5) Cost or Pricing Data. Clauses prescribed at 48 CFR (DEAR) 970.1508–1, and appropriate contract provisions similar to those set forth at 48 CFR 52.215–22 and 48 CFR 52.215–23, that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

* * * * *

23. Subsection 970.5204–60 is amended by revising the clause date and paragraphs (a), (b) and (c) to read as follows:

970.5204–60 Facilities management.

* * * * *

FACILITIES MANAGEMENT (NOV 1997)

* * * * *

(a) *Site development planning.* The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) *General design criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responisible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) *Energy management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

* * * * *

[FR Doc. 97–27422 Filed 10–15–97; 8:45 am]
BILLING CODE 6450–01–P

Proposed Rules

Federal Register
Vol. 62, No. 200
Thursday, October 16, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–97–13]

RIN 0581–AB50

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increases would result in a fee of $51.00 per hour for continuous resident services and $56.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be $61.60 per hour. These proposed fees represent an increase of four dollars per hour. The fees are being increased to cover the costs of anticipated salary increases and locality adjustments, the costs necessary to maintain adequate levels of service during changing production and purchasing patterns within the dairy industry, the continued full funding for standardization activities, and other operating costs.

DATES: Comments should be mailed by November 17, 1997.

ADDRESSES: Comments should be mailed to: Richard McKee, Office of the Director, USDA/AMS/Dairy Division, Room 2968-S, P.O. Box 96456, Washington, DC 20090–6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750-South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9381.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are more than 600 users of Dairy Grading Branch's inspection and grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fee charged to businesses for voluntary inspection services and grading services for dairy and related products. Even though the fee will be raised, the increase is approximately 8.0 percent and will not significantly affect these entities. These businesses are under no obligation to use these services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The Agricultural Marketing Service (AMS) estimates that overall this rule will yield an additional $343,000 during 1998. The proposed rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover programs costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, revenue projections for FY 1998 would remain constant at $4.695 million. Costs are projected to increase to $5.628 million. The shortfall, if allowed to continue, would translate into an approximate 1.6 month operating reserve at the end of FY 1998, which is less than Agency policy requires.

The Agricultural Marketing Service (AMS) has determined that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601).

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

FY 1997 revenue was projected to be $4.733 million and costs to be $5.240 million. The shortfall during the year reduced the operating reserve from 5.6 months at the beginning of the year to 3.8 months at the end of August, and is projected to further reduce the operating reserve to approximately 1.6 months at the end of FY 1998. With this proposed increase, assuming a slightly increased workload, revenue for FY 1998 is projected to be $5.540 million with costs totaling $5.628 million. Of these costs, the general salary increase represents $110,000 per year and is scheduled to be effective in January, 1998. Employee salaries and benefits are major program costs and account for approximately 70 percent of the total operating budget. Program travel costs (of which approximately 80 percent are reimbursed by the industry), general contract obligations and Agency overhead account for another 24 percent of the budget. Changing workloads are analyzed on a regular basis in order to maximize grading assignment efficiency and to minimize grader and supervisory costs. Future increases would be proposed as necessary in following years to cover any annual increases in program costs and to maintain the capital reserve at 4 months.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on January 5, 1997. On the same effective date, Congress increased the salaries of Federal employees by 3.0 percent which included locality pay. Also, there have been normal increases in other nonpay operating costs that include utilities, office space, and reimbursable travel. In addition, recent congressional action will result in additional salary increases of appoximately 3.0 percent in 1998. Although the program's operating reserves were adequate to cover the January 5, 1997, salary increase, this will not be the case for 1998 salary increases, and a fee increase is needed.

The grading program fees need to be increased to cover the costs associated with maintaining adequate levels of service during shifting production patterns within the dairy industry. The industry changes include plant consolidations, geographical shifts of dairy production areas, and changes in the types of dairy products being manufactured and offered for inspection and grading services. To minimize the necessary fee increase, the Department has initiated cost-reduction efforts which include the reduction of staff and program overhead.

Proposed Changes

This rule proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $52.00 to $56.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increase the hourly fee for continuous resident services from $47.00 to $51.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

Timing of Fee Increase

It is contemplated that the proposed fee increases would be implemented on an expedited basis in order to minimize the period of revenue shortfall. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication, or very soon after publication, of the final rule in the **Federal Register**. An approximate effective date would be January 4, 1998.

Also, a thirty day comment period is deemed appropriate in view of the need to implement any fee increases as early as possible in FY 1998.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. In subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $56.00 for service performed 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $51.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: October 8, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–27324 Filed 10–15–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–016–1]

Importation of Tomatoes From France, Morocco and Western Sahara, Chile, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing fruits and vegetables to allow tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. The proposed action would provide importers and consumers in the United States with additional sources of tomatoes, while continuing to provide protection against the introduction and dissemination of injurious plant pests. We are also proposing to amend the regulations pertaining to importation of tomatoes from Spain by requiring containers of pink or red tomatoes to be sealed before shipment if the containers will transit any other fruit fly supporting areas while en route to the United States, and by requiring records to be kept by Spain's plant protection service regarding trapping practices and fruit fly captures. These actions appear necessary to prevent the introduction of exotic fruit flies into the United States.

DATES: Consideration will be given only to comments received on or before December 15, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to

inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald C. Campbell, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799; fax (301)734–5786; E-mail: rcampbell@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Tomatoes from France, Morocco and Western Sahara, and Chile

We are proposing to amend the regulations to allow tomatoes (*Lycopersicon esculentum*) from France, Morocco and Western Sahara, and Chile to be imported into the United States under certain conditions, which are discussed below. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the tomatoes can be imported under the proposed conditions without presenting any significant risk of introducing fruit flies or other injurious plant pests into the United States.

The imported tomatoes would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a United States Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other injurious plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

In this proposed rule, as well as in the current regulations for importing tomatoes from Spain, contained in §§ 319.56–2t and 319.56–2dd, we use the terms "pink or red" and "green" tomatoes. Green tomatoes are unripened tomatoes. Once tomatoes start to ripen, they show more and more pink coloring, which deepens to red as the tomatoes ripen.

Tomatoes From France

We are proposing to allow tomatoes to be imported from France under conditions very similar to current requirements for importing tomatoes from Spain. Section 319.56–2t includes green tomatoes from Spain in the list of fruits and vegetables that may be imported subject to inspection and disinfection at the port of arrival, in accordance with § 319.56–6 of the regulations. Section 319.56–2t allows green, or unripened, tomatoes to be imported into the United States from any area of Spain, including Almeria Province. Because green tomatoes are not a host to the Mediterranean fruit fly (Medfly), which is known to occur in Spain, or, in Spain, to any other pest of concern to the United States, they are not subject to the special conditions in § 319.56–2dd. Pink and red tomatoes from Spain are hosts, albeit poor ones, to the Medfly. Therefore, the regulations at § 319.56–2dd currently allow the importation of pink and red tomatoes only from the Almeria Province and only under certain conditions, which protect the tomatoes from Medfly infestation.

As in Spain, the pest of concern for tomatoes in France is Medfly. We are proposing to add green tomatoes from France to the list of fruits and vegetables in § 319.56–2t that may be imported into the United States subject to inspection and disinfection at the port of arrival in accordance with § 319.56–6 of the regulations. Green tomatoes are not a host to Medfly, or, in France, to any other pest of concern to the United States. We would require that, to be eligible for importation, the tomatoes must still be green upon arrival in the United States. This requirement would ensure that the tomatoes at no time, either in France or en route, become suitable Medfly host material. (As discussed later in this document, we are also proposing to add this requirement for the importation of green tomatoes from Spain.) We are also proposing to allow pink or red tomatoes to be imported into the United States from France if they are grown in the Region of Brittany and meet certain conditions.

Although Medfly is not known to exist in Brittany, incidental introductions are possible. Therefore, we propose to require that the tomatoes be grown in Brittany in greenhouses registered with, and inspected by, the Service de la Protection Vegetaux (SRPV). From June 1 through September 30, SRPV would be required to set and maintain Medfly traps baited with trimedlure at a rate of one inside and one outside each greenhouse. All traps would have to be checked every 7 days. Brittany, in the northeast of France, has a temperate climate. Temperatures from October through May are too cold for Medfly to survive. It is unlikely that Medfly would become even temporarily established in Brittany during the months of June through September, but trapping would help ensure detection of Medfly should it be introduced. Capture of a single Medfly inside or outside a registered greenhouse would immediately result in cancellation of exports to the United States from that greenhouse until the source of infestation is determined, the Medfly infestation is eradicated, and measures have been taken to preclude any future infestation. The Animal and Plant Health Inspection Service (APHIS) generally considers eradication to have occurred when there is no evidence of reproducing populations of Medfly (for example, no finding of Medfly larvae, mated females, or both male and female flies) for two life cycles of the Medfly. We propose to require SRPV to maintain records of trap placement, checking of traps, and any Medfly captures, and to make the records available to APHIS upon request.

Also from June 1 through September 30, we would require that the tomatoes be packed within 24 hours of harvest, safeguarded by fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. These requirements do not appear to be necessary during other times of the year when the climate would not support fruit flies. At all times of the year, however, we are proposing to require the fruit fly-proof containers of tomatoes to be sealed by SRPV before shipment, and the seal number recorded on a phytosanitary certificate that must accompany the tomatoes, if the containers will transit any other fruit fly supporting areas while en route to the United States. This would ensure that the containers are not opened and exposed to fruit flies, or contaminated with fruit fly infested fruit during shipment to the United States. Flight over a fruit fly supporting area without stopping does not constitute "transit" and thus does not trigger the SRPV seal and records requirements.

SRPV would be responsible for export certification inspection and issuance of phytosanitary certificates. We propose to require each shipment of pink or red tomatoes to be accompanied by a phytosanitary certificate issued by SRPV and bearing the declaration, "These tomatoes were grown in registered greenhouses in the Brittany Region of France."

The provisions for importing pink or red tomatoes from France would be added to § 319.56–2dd, and the heading for that section, which now refers only to pink or red tomatoes from Spain, would be changed.

Tomatoes From Morocco and Western Sahara

As in France and Spain, the pest of concern for tomatoes in Morocco and Western Sahara is Medfly. We are proposing to add green tomatoes from Morocco and Western Sahara to the list of fruits and vegetables in § 319.56–2t that may be imported, provided that the tomatoes are still green upon arrival in the United States, subject to inspection and disinfection at the port of arrival in accordance with § 319.56–6 of the regulations. Green tomatoes are not a host to Medfly, or, in Morocco and Western Sahara, to any other pest of concern to the United States.

We are also proposing to add provisions to § 319.56–2dd to allow pink tomatoes to be imported into the United States from El Jadida and Safi Provinces, Morocco, and from Dahkla Province, Western Sahara, under conditions similar to those discussed above for tomatoes from France. We are proposing to allow pink, but not fully ripe, red tomatoes, as an additional precaution because of the endemic presence of Medflies and Medfly host material in Morocco and Western Sahara, and the free movement of Medfly host materials throughout Morocco and Western Sahara. The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red. A red tomato is more than 60 percent pink and/or red. Tomatoes at any stage of ripeness are poor hosts for Medfly, and pink tomatoes are less suitable Medfly host material than red tomatoes.

The tomatoes would have to be grown in greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF). Because of the prevalence of Medfly in Morocco and Western Sahara, the greenhouses would have to be insect-proof.

The tomatoes would only be allowed to be shipped from Morocco and Western Sahara between December 1 and April 30, inclusive. Although Morocco and Western Sahara are capable of supporting year-round populations of Medfly, population levels are lower during these months than during late spring through early autumn.

Commercial greenhouses in Morocco and Western Sahara range in size from less than 1 hectare to more than 14 hectares. Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF would be required to set and maintain Medfly traps baited with trimedlure inside the registered greenhouses at a rate of four traps per hectare. In Morocco traps would also be required outside registered greenhouses within a 2 kilometer radius at a rate of four traps per square kilometer. In Western Sahara, a single trap outside each registered greenhouse would be required. Fewer traps would be required in Western Sahara because of the scarcity of endemic Medfly host material and arid conditions in the tomato production areas. All traps in Morocco and Western Sahara would have to be checked every 7 days. We propose to require DPVCTRF to maintain records of trap placement, checking of traps, and any Medfly captures, and to make the records available to APHIS upon request.

Capture of a single Medfly in a registered greenhouse would immediately result in cancellation of exports to the United States from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 200 meters of a registered greenhouse would necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps would have to be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered greenhouse and within a 1-month time period would require Malathion bait sprays within 200 meters of the trap or traps where Medflies were caught every 7 to 10 days for 60 days to ensure eradication.

As with pink and red tomatoes from France and Spain, we propose to require pink tomatoes from Morocco and Western Sahara to be packed within 24 hours of harvest, safeguarded by fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. The tomatoes must be pink at the time of packing. In addition, we are proposing to require that the fruit fly-proof containers of tomatoes be sealed by the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), before shipment, and the seal number recorded on a phytosanitary certificate that must accompany the tomatoes, if the containers will transit any other fruit fly supporting areas while en route to the United States. This action appears necessary to ensure that the containers are not opened and exposed to fruit flies, or contaminated with fruit fly infested fruit during shipment to the United States.

EACCE would be responsible for export certification inspection and issuance of phytosanitary certificates. We propose to require each shipment of pink tomatoes to be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, "These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco and were pink at the time of packing" or "These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing."

The provisions for importing pink tomatoes from Morocco and Western Sahara would be added to § 319.56–2dd.

Tomatoes From Chile

In Chile the primary pests of concern in tomatoes are the tomato fruit moth (*Scrobopalpula absoluta*) and the tomato fruit fly (*Rhagoletis tomatis*). These are temperate pests that infest tomatoes at all stages of ripeness, including when they are green. USDA has determined that a methyl bromide treatment, developed in Chile, is an effective treatment for these pests in tomatoes. The treatment schedule is as follows: Methyl bromide at the rate of 48 ounces per 1,000 cubic feet at 70 °F for 2 hours. We are proposing to allow tomatoes from Chile to be imported into the United States if the tomatoes are treated in Chile with methyl bromide as described above. The treatment would have to be conducted in facilities registered with the Secretario de Agricultura y Ganaderia (SAG) and with APHIS personnel monitoring the treatments. Requiring the treatment under these conditions would ensure that the treatments were effectively administered.

In addition, we would require that the tomatoes be treated and packed within

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

24 hours of harvest. They would have to be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers under APHIS monitoring for transit to the airport and subsequent shipping to the United States. We believe these requirements are necessary to protect the tomatoes against reinfestation by the tomato fruit moth and fruit flies between the time of treatment and the arrival of the tomatoes in the United States.

The proposed methyl bromide treatment of tomatoes in Chile under APHIS monitoring prior to export of the tomatoes to the United States would be required due to the nature of tomato production in Chile. Tomatoes in Chile would be produced in open fields under normal cultural practices that do not incorporate safeguards to mitigate the risk of introducing tomato fruit fly and tomato fruit moth into the United States. Furthermore, the tomato fruit fly and tomato fruit moth are temperate pests that could potentially impact domestic tomato production in the United States. Post harvest methyl bromide treatment in Chile would be the only mitigative measure to ensure that tomato fruit flies and tomato fruit moths are not inadvertently shipped to the United States. By contrast, tomatoes from France, Morocco and Western Sahara, and Spain would be produced in greenhouses under a systems approach that incorporates multiple safeguards that mitigate the risk of introducing Medflies into the United States.

We propose that SAG enter into a trust fund agreement with APHIS before tomatoes from Chile could be precleared for import into the United States. A trust fund agreement is required to recover APHIS costs associated with monitoring the preclearance program in Chile. The trust fund agreement would require SAG to pay in advance all estimated costs to be incurred by APHIS in providing preclearance services during a shipping season. These costs would include administrative expenses incurred in conducting preclearance, as well as all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. SAG would be required to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement would further require that, if the deposit does not meet the actual costs incurred by APHIS, SAG would deposit with APHIS a certified or cashier's check for the amount of the known remaining costs, as determined by APHIS, before completion of the inspections. The agreement would also specify that unanticipated end-of-season costs must be paid upon demand, and that further service will be withheld until payment is made. If the amount SAG pays during a shipping season exceeds the total costs incurred by APHIS in providing preclearance services, the difference would be refunded to SAG by APHIS at the end of the shipping season. Requiring payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in Chile.

The provisions for importing tomatoes from Chile would be added to § 319.56–2dd. The treatment schedule for methyl bromide would be added to the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is incorporated into the regulations by reference (see 7 CFR 300.1).

Tomatoes From Spain

The regulations at § 319.56–2dd for importing pink or red tomatoes from Almeria Province in Spain already require, among other things, that the greenhouse grown pink or red tomatoes be packed within 24 hours of harvest, be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. We are proposing to require the fruit fly-proof containers of tomatoes to be sealed by the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF) before shipment, and the seal number recorded on the phytosanitary certificate that must accompany the tomatoes to the United States, if the containers will transit any other fruit fly supporting areas while en route to the United States. We believe the additional requirements for containers that will transit fruit fly supporting areas are necessary to ensure that the shipments are not opened and exposed to fruit flies or contaminated with fruit-fly infested fruit during shipment to the United States.

The regulations at § 319.56–2dd for importing pink or red tomatoes from Spain also require MAFF to maintain Medfly traps inside and outside the registered greenhouses, but do not require MAFF to maintain records regarding the trapping. We propose to require MAFF to maintain records of trap placement, checking of traps, and any Medfly captures, and to make the records available to APHIS upon request. This would help ensure that trapping is done properly and that appropriate action is taken when fruit flies are found.

As discussed previously in this document, the regulations at § 319.56–2t for importing green tomatoes from Spain do not now require that the tomatoes still be green upon arrival in the United States. We propose to require that green tomatoes from Spain still be green upon arrival in the United States. This requirement would ensure that the tomatoes at no time, either in Spain or en route, become suitable host material for Medfly.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would allow tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. This proposed action would provide importers and consumers in the United States with additional sources of tomatoes, while continuing to provide protection against the introduction and dissemination of injurious plant pests. The proposal would also make some minor changes to the provisions for importing tomatoes from Spain, but these changes are not expected to have any effect on the volume of tomatoes imported from Spain, and, therefore, are not expected to have any economic impact. Under the Federal Plant Pest Act and the Plant Quarantine Act (7 U.S.C. 150dd, 150ee, 150ff, 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

During 1995 about 12.3 million metric tons of tomatoes were supplied to the United States market. Domestic production accounted for about 95.4 percent of total supply. Imports from Spain accounted for less than one-tenth of one percent of total tomatoes supplied to United States consumers during 1995. Prices and sources of tomatoes supplied to the United States market are summarized in the following table.

Source of U.S. tomato supply	Quantity (metric tons)	Total value ($1,000,000)	Average value per metric ton	Percentage (% of total supply)[2]
Domestic Production	11,719,214	$1,576.01	$134.48	95.44
Imported Tomatoes[1]	559,117	404.95	724.27	4.45
Spanish Imports	657	1.11	1,695.58	0.0001
Total Supply	12,278,988	1,982.07	161.42	100.0

[1] From countries other than Spain.
[2] Percentage column may not sum due to rounding.
Sources: Agricultural Statistics 1995–96; Table 233 (figures converted to metric tons); USDA-NASS; Washington, DC.
Foreign Agriculture Trade of the United States—FY 1995 Supplement; Table 25; USDA-ERS; Washington, DC.

It is estimated that annual tomato imports will increase by about 13,700 metric tons under this proposed rule. About 6,000 metric tons are expected from Chile; the remaining 7,700 metric tons would arrive from France and Morocco and Western Sahara. Currently, Spanish imports arrive during the off-season for tomato production in the United States (December 1 through April 30) and, therefore, do not directly compete with United States tomatoes produced during the spring and summer months. Proposed tomato imports from Morocco and Western Sahara will also be restricted to arrival during the off-season. Imports from Chile and France will be allowed entry throughout the year. However, Chilean tomatoes are expected to be primarily imported during the off-season due to seasonal growing differences between the northern and southern hemispheres, and shipments from France are likely to fill a special market niche (for higher quality fresh tomatoes).

Therefore, proposed imports would largely compete with existing imports rather than with domestic production. This is further supported by the price per ton that imports currently command in the United States market. The value of imported tomatoes (from countries other than Spain) averaged $724 per metric ton during 1995. Spanish imports averaged $1,695 per metric ton during the same year. This price discrepancy is likely due to the relatively high quality of off-season tomato imports from Spain. In contrast to imports, prices for U.S. produced tomatoes averaged about $161 per metric ton. Price discrepancies between the import and domestic markets indicate that imports cannot compete with domestic supplies unless they arrive during the off-season or for specialty markets. During the off-season there may be some U.S. producers who grow greenhouse tomatoes at higher than average prices. However, this price differential is not reflected in the data.

Even if all the proposed imports were directly substitutable for domestic supplies, the net impact on United States society is anticipated to be positive. Assuming a perfectly inelastic supply, a demand elasticity of −0.5584, an initial quantity supplied of 12.3 million metric tons, and an increase in imports of 13,700 metric tons, it is estimated that average U.S. tomato prices will decline from $161.42 to $161.10 per metric ton.[2] This represents a price decrease of $0.32 per metric ton. Consumer welfare would increase by $3,935,852. United States producers, however, would experience a revenue decrease of $3,933,660, or about 0.2 percent of the total value of domestic tomato supplies. This would result in a positive, albeit small, net impact to United States society totaling about $2,192. Foreign producers realize a gain of about $2,207,070. These results are summarized in the following table.

U.S. consumer gain	U.S. producer revenue loss	Net gain to U.S. society	Foreign producer gain
$3,935,852	$3,933,660	$2,192	$2,207,070

This proposed rule would provide U.S. consumers with additional sources of tomatoes during winter months and for specialty markets. Domestic producers who propagate greenhouse tomatoes during the off-season may be slightly impacted. However, it is estimated that this proposed rule will have a negligible economic impact on domestic tomato producers. Most imports from Chile and Morocco and Western Sahara will arrive during the off-season and not directly compete with U.S. produced tomatoes. Even if imports could be readily substituted for domestic production, U.S. producers would only be marginally impacted due to the low volume of expected imports. A relatively small annual quantity increase (13,700 metric tons valued at $2.2 million) of imported tomatoes would not likely erode the market share of domestic producers.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of this proposed rule on "small" entities. The SBA has set forth size criteria by Standard Industrial Classification (SIC) which was used as a guide in determining which economic entities meet the definition of a "small" business.

The SBA does not maintain specific size standards for domestic entities that either import or produce tomatoes. Therefore, this analysis uses the size standards established for Vegetable and Melon Producers (SIC code 0161) and Wholesale Traders of Fresh Fruits and Vegetables (SIC code 5148). The SBA's definition of a "small" entity included in the vegetable and melon producer classification is one that generates less than $500,000 in annual receipts.[3] Wholesale traders of fresh fruits and vegetables are classified as "small" if they employ fewer than 100 people.

Currently there are about 15,436 "small" tomato producers and 5,122 "small" wholesale traders of fresh fruits and vegetables according to the SBA criteria. The proposed rule change could negligibly impact some "small" domestic entities. However, because the supply of tomatoes in the United States market would only increase by about

[2] The demand elasticity is obtained from J.E. Epperson and L.F. Lei, "A Regional Analysis of Vegetable Production with Changing Demand for Row Crops Using quadratic Programming." Southern Journal of Agricultural Economics, Volume 21, Number 1, July 1989, pp. 87–96.

[3] Small Business Administration; Washington, DC. SBA data was modified by tomato specific information contained in the 1992 Census of Agriculture.

13,700 metric tons (less than one-tenth of one percent of total domestic supply) and domestic producers would continue to supply more than 95 percent of the tomatoes consumed in the United States each year, it does not appear that this proposed rule would have a significant economic impact on "small" entities. However, APHIS invites public comments concerning the potential economic effects of this proposed rule change on "small" United States entities. The Agency is particularly interested in identifying potential economic impacts on United States entities that produce tomatoes during the winter months. All comments will be considered prior to finalization of this Regulatory Flexibility Analysis.

Reporting and recordkeeping requirements of the proposed rule are described below under "The Paperwork Reduction Act" section of this document.

Executive Order 12778

This proposed rule would allow the importation of tomatoes from France, Morocco and Western Sahara, and Chile under certain conditions. If this proposed rule is adopted, State and local laws and regulations regarding tomatoes imported under this rule would be preempted while the fruit is in foreign commerce. Tomatoes are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect would be given to this rule, and this rule would not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–016–1. Please send a copy of your comments to: (1) Docket No. 97–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to allow tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. We are also proposing to amend the regulations pertaining to importation of tomatoes from Spain by requiring containers of pink or red tomatoes to be sealed before shipment if the containers will transit any other fruit fly supporting areas while en route to the United States, and by requiring records to be kept by Spain's plant protection service regarding trapping practices and fruit fly captures. These proposed regulatory revisions would facilitate the importation of tomatoes from France, Morocco and Western Sahara, Chile and Spain while ensuring that tomatoes imported into the United States do not harbor insect pests such as the Mediterranean fruit fly, tomato fruit moth, and tomato fruit fly.

The implementation of these proposed regulatory actions would require us to engage in certain information collection activities. We are seeking approval from the Office of Management and Budget (OMB) to engage in these information collection activities, which are described below.

Phytosanitary certificate: The proposed rule would require that pink or red tomatoes imported into the United States from registered greenhouses in the Brittany Region of France and pink tomatoes imported into the United States from registered greenhouses in El Jadida and Safi Provinces, Morocco, and Dahkla Province, Western Sahara, be accompanied by a phytosanitary certificate. The certificate would be issued by a representative of the plant protection agency in the respective country of origin after the representative examines the shipment and ensures that it has been prepared in compliance with our regulations.

Records of Medfly trap placement and Medfly captures: The proposed rule would require that Medfly traps be placed in and/or around registered greenhouses in Almeria Province, Spain; El Jadida and Safi Provinces, Morocco; Dahkla Province, Western Sahara; and the Brittany Region of France. Representatives from the respective national plant protection agencies would be responsible for recording trap placement, checking of traps, and Medfly captures. This information would be made available to APHIS upon request.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirements. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.670 hours per response.

Respondents: Foreign plant health protection authorities.

Estimated number of respondents: 6.

Estimated annual number of responses: 328.

Estimated average number of responses per respondent: 54.66.

Estimated total annual burden on respondents: 220 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW., Washington, DC 20250.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, and Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162 and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), introductory text, would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [insert date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

4. In § 319.56–2t, the table would be amended by revising the entry for tomato from Spain and by adding new entries for tomato from France and Morocco and Western Sahara, in alphabetical order, to read as follows:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
France	Tomato	(Lycopersicon esculentum)	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from the Region of Brittany and only in accordance with § 319.56–2dd of this subpart).
Morocco and Western Sahara	Tomato	(Lycopersicon esculentum)	Fruit, only if it is green upon arrival in the United States (pink fruit may only be imported from El Jadida or Safi Province, Morocco, or Dahkla Province, Western Sahara, and only in accordance with § 319.56–2dd of this subpart).
Spain	Tomato	(Lycopersicon esculentum)	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from Almeria Province and only in accordance with § 319.56–2dd of this subpart).

* * * * *

5. Section 319.56–2dd would be revised to read as follows:

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

(a) *Tomatoes (fruit) (Lycopersicon esculentum) from Spain.* Pink or red tomatoes may be imported into the United States from Spain only under the following conditions: [1]

(1) The tomatoes must be grown in the Almeria Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse and within a 1-month time period will result in cancellation of exports from all registered greenhouses within 2 kilometers of any of the finds until the source of infestation is determined and the Medfly infestation is eradicated;

(5) MAFF must maintain records of trap placement, checking of traps, and any Medfly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. Transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by MAFF before shipment and the official seal number is recorded on the phytosanitary certificate; and

(7) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by MAFF and bearing the declaration, "These tomatoes were grown in registered greenhouses in Almeria Province in Spain."

(b) *Tomatoes (fruit) (Lycopersicon esculentum) from France.* Pink or red tomatoes may be imported into the United States from France only under the following conditions: [1]

(1) The tomatoes must be grown in the Brittany Region of France in greenhouses registered with, and

[1] The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red. The surface area of a red tomato is more than 60 percent pink and/or red. Green tomatoes may be imported in accordance with § 319.56–2t of this subpart.

inspected by, the Service de la Protection Vegetaux (SRPV);

(2) From June 1 through September 30, SRPV must set and maintain one Medfly trap baited with trimedlure inside and one outside the greenhouse and must check the traps every 7 days;

(3) Capture of a single Medfly inside or outside a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation;

(4) SRPV must maintain records of trap placement, checking of traps, and any Medfly captures, and must make them available to APHIS upon request;

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. At all times of the year, transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by SRPV before shipment and the official seal number is recorded on the phytosanitary certificate; and

(6) SRPV is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by SRPV and bearing the declaration, "These tomatoes were grown in registered greenhouses in the Brittany Region of France."

(c) *Tomatoes (fruit) (Lycopersicon esculentum) from Morocco and Western Sahara.* Pink tomatoes may be imported into the United States from Morocco and Western Sahara only under the following conditions: [1]

(1) The tomatoes must be grown in the provinces of El Jadida or Safi in Morocco or in the province of Dahkla in Western Sahara in insect-proof greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF);

(2) The tomatoes may be shipped from Morocco and Western Sahara only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In Morocco, traps must also be placed outside registered greenhouses within a 2 kilometer radius at a rate of four traps per square kilometer. In Western Sahara, a single trap must be placed outside each registered greenhouse. All traps in Morocco and Western Sahara must be checked every 7 days;

(4) DPVCTRF must maintain records of trap placement, checking of traps, and any Medfly captures, and make the records available to APHIS upon request;

(5) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 200 meters of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered greenhouse and within a 1 month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. The tomatoes must be pink at the time of packing. Transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), before shipment and the official seal number is recorded on the phytosanitary certificate; and

(7) EACCE is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, "These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing" or "These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing."

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States only under the following conditions:

(1) The tomatoes must be treated in Chile with methyl bromide in accordance with the PPQ Treatment Manual. The treatment must be conducted in facilities registered with the Secretario de Agricultura y Ganaderia (SAG) and with APHIS personnel monitoring the treatments;

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers under APHIS monitoring for transit to the airport and subsequent shipping to the United States; and

(3) Tomatoes may be imported into the United States from Chile only if SAG has entered into a trust fund agreement with APHIS for that shipping season. This agreement requires SAG to pay in advance all costs that APHIS estimates it will incur in providing the preclearance services prescribed in this section for that shipping season. These costs will include administrative expenses incurred in conducting the preclearance services; and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement further requires that, if the initial deposit is not sufficient to meet all costs incurred by APHIS, SAG must deposit with APHIS another certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected end-of-season costs, SAG must deposit with APHIS a certified cashier's check sufficient to meet such costs as estimated by APHIS, before any further preclearance services will be provided. If the amount SAG deposits during a shipping season exceeds the total cost incurred by APHIS in providing preclearance services, the difference will be returned to SAG by APHIS at the end of the shipping season.

Done in Washington, DC, this 9th day of October 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27427 Filed 10–15–97; 8:45 am]

BILLING CODE 3410–34–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider whether to adopt a Final Rule extending the current over-order price regulation beyond its present December 31, 1997 deadline, and whether to amend the regulation, generally. The Commission will also review procedures relating to ongoing studies and consider matters of administration.

DATES: The meeting is scheduled for October 23, 1997, 9:00 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at the Grist Mill Restaurant, 520 South Street in Bow, NH.

FOR FUTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Compact Commission will hold its regular monthly meeting. The Commission will consider whether to adopt a Final Rule extending the current over-order price regulation beyond its present December 31, 1997 deadline, and whether to amend the regulation, generally. See Proposed Rule, 62 FR 47156 (September 8, 1997). The Commission will also review procedures for conducting a study of regional dairy farm cost of production and a study for assessing the regional impact of over-order price regulation. The Commission will also consider certain matters relating to administration.

Daniel Smith,

Executive Director.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress (codified at 7 U.S.C. 7256); Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

[FR Doc. 97–27572 Filed 10–15–97; 8:45 am]

BILLING CODE 1650–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AC13

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation entitled "Interest on Deposits." Section 18(g) of the Federal Deposit Insurance Act (FDI Act) requires that the FDIC by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. This regulation implements this prohibition. The proposed rule provides as an exception to the prohibition, the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System (FRB). This proposal is in accordance with the FDIC's review of its regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Written comments must be received by the FDIC on or before December 15, 1997.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [Fax number: (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Marc Goldstrom, Counsel, Regulation and Legislation Section, Legal Division, (202–898–8807); Louise Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202–942–3599).

SUPPLEMENTARY INFORMATION:

Background

Section 18(g) of the FDI Act provides that the Board of Directors of the FDIC shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. (12 U.S.C. 1828(g)). Accordingly, the FDIC promulgated regulations prohibiting the payment of interest or dividends on demand deposits at 12 CFR part 329. Section 11 of the Banking Act of 1933 (12 U.S.C. 371a) prohibits member banks from paying interest on demand deposits and is implemented by Regulation Q, (12 CFR part 217) of the FRB.

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB (12 U.S.C. 1828(g)). Generally, member banks, state nonmember banks and insured branches of foreign banks are subject to the same prohibition and exceptions to such prohibition, albeit under different statutes and regulations.

From time to time the FRB issues or authorizes a new exception to the prohibition applicable to member banks, and the FDIC later issues or authorizes a similar exception affecting state nonmember banks and insured branches of foreign banks. For example, the FRB recently amended its interpretation with respect to limitations on premiums given on demand deposits (62 FR 26736 (May 15, 1997)) and the FDIC later issued a similar interpretive rule affecting state nonmember banks and insured branches of foreign banks (62 FR 40731 (July 30, 1997)).

In the periods of time in which the FRB has issued or authorized an exception to the prohibition, but the FDIC has yet to act, state nonmember banks and insured branches of foreign banks faced a possible competitive disadvantage with respect to member banks. In order to eliminate the potential for any such competitive disadvantage in the future and in light of the FDIC's statutory mandate to make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks, the FDIC is proposing to create an omnibus exception to the prohibition on the payment of interest on demand

deposits. The proposed rule would allow for the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the FRB. The effect of this proposal is that state nonmember banks and insured branches of foreign banks would become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC had issued or authorized the specific exception.

The FDIC is also proposing this rule in response to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994). This statute requires that each federal banking agency, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, conduct a review of the regulations and written policies of that agency to, among other things, make uniform all regulations and guidelines implementing common statutory or supervisory policies. The FDIC believes that the proposal is in accordance with section 303 of the CDRIA in that it seeks to make uniform a regulation implementing a common statutory policy.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect of this proposal is that state nonmember banks and insured branches of foreign banks would become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC had issued or authorized the specific exception.

Paperwork Reduction Act

The proposed rule would not constitute a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Consequently, no material has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 329

Banks, banking, Interest rates.

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR part 329 as set forth below:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1819, 1828(g) and 1832(a).

2. Section 329.3 is added to read as follows:

§ 329.3 Exception to prohibition on payment of interest.

Section 329.2 shall not apply to the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C.371a and 461, or by regulation of the Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Dated at Washington, DC this 6th day of October, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–27300 Filed 10–15–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–072]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterways, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the regulations governing the operation of the Onslow Beach Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, North Carolina, at the request of the United States Marine Corps (USMC).

The proposal would continue to provide for openings on signal, except that from 7 a.m. to 7 p.m., the draw would only open on the hour and half hour, year-round. This change in the bridge opening schedule is intended to reduce vehicular traffic delays while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments may be mailed to Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, USCG Atlantic Area, (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses and should identify this rulemaking (CGD05–97–072). Commenters should identify the specific section of this proposed rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Onslow Beach Bridge and adjoining property are part of the Marine Corps Base at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. The current regulations require the Onslow Beach Bridge to open on signal at all times. This requirement is included in the general operating regulations in 33 CFR 117.5.

The USMC has requested changes in the regulation to require the bridge to open on signal, except from 7 a.m. to 7 p.m., when the bridge would open on the hour and half hour year-round. Bridge logs from October 1993 through July 1997 revealed on average of 38 bridge opening requests per day. During peak opening periods in the Fall and Spring, bridge tenders received an average of 45 bridge opening request per day. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the proposed changes will more fairly balance the competing needs of vehicular and vessel traffic.

Other drawbridges along the AICW in North Carolina are governed by specific regulations listed in 33 CFR 117.821 which require them to open on the hour or on the hour and half hour. The USMC's requested change to the regulations for the Onslow Beach Bridge would make its schedule consistently with those of the other AICW drawbridges.

Discussion of Proposed Amendments

The Coast Guard proposes to amend the regulations governing the Onslow Beach Bridge across the AICW, mile 240.7, at Camp Lejeune, North Carolina, to allow openings on the hour and half hour, between 7 a.m. to 7 p.m., year-round. The Coast Guard proposes to insert this new regulation at 33 CFR 117.821(a)(3).

The Coast Guard intends to remove the current text at 33 CFR 117.821(a) which states that drawbridges shall open on signal for public vessels of the United States, state and local government vessels, and any vessel in an emergency involving danger to life or property. This general requirement is currently published in 33 CFR 117.31 and is no longer required to be published in each specific bridge regulation. Commercial vessels would continue to pass on signal as provided in new paragraph (a). To ensure clarity and consistency of the operating regulation, the regulatory requirements for the current 33 CFR 117.821(b) would be reworded and redesignated paragraph (a). Although no substantive changes are proposed to current 117.821(b)(1)–(6), additional text changes would be made to clarify the existing regulations.

Finally, the Coast Guard proposes to revise 33 CFR 117.821 by redesignating the following paragraphs: Paragraph (b)(1) governing the S.R. 94 Bridge, at AICW mile 113.7, would be redesignated (a)(1); Paragraph (b)(2) governing the S.R. 304 Bridge, at AICW mile 157.2, would be redesignated (a)(2); Paragraph (b)(3) governing the S.R. 50 Bridge, at AICW mile 260.7, would be redesignated (a)(4); Paragraph (b)(4) governing the Figure Eight Swing Bridge, at AICW mile 278.1, would be redesignated (a)(5); Paragraph (b)(5) governing the S.R. 74 Bridge, at AICW mile 283.1, would be redesignated (a)(6); Paragraph (b)(6) governing the S.R. 1172 Bridge, at AICW mile 337.9, would be redesignated (a)(7); and paragraph (c) would be redesignated (b).

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard reached this conclusion based on the fact that the changes and actions proposed by this rule would not prevent mariners from transiting the bridge. The proposed rule would merely require pleasure vessels to plan to be in position to take advantage of scheduled bridge openings between 7 a.m. to 7 p.m. At all other times, the bridge would continue to open on signal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities "Small entities" include small independently owned and operated businesses which are not dominant in their fields and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal does not provide for the collection of information requirements under the Paper Reduction Act (44 U.S.C. 301 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach, North Carolina.

(a) The drawbridges across the Atlantic Intracoastal Waterway in North Carolina shall open on signal for commercial vessels at all times and on signal for pleasure vessels, except at the times and during the periods specified below.

(1) S.H. 94 Bridge, mile 113.7, at Fairfield, NC, from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour.

(2) S.R. 304 Bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(3) Onslow Beach Bridge, mile 240.7, at Camp Lejeune, NC between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(4) S.R. 50 Bridge, mile 260.7, at Surf City, NC, between 7 a.m. and 7 p.m. the draw need only open on the hour.

(5) Figure Eight Swing Bridge, mile 278.1, at Scotts Hill, NC, the draw need only open on the hour and half hour.

(6) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC ,between 7 a.m. and 7 p.m. the draw need only open on the hour.

(7) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the

hour on signal between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays and Federal holidays, form June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 7 p.m.

(b) If a pleasure vessel is approaching a drawbridge which is only required to open on the hour or on the hour and half hour, and cannot reach the drawbridge on the hour or on the half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: October 1, 1997.

Roger Rufe Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–27359 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 97–2151]

Compatibility of Wireless Services With Enhanced 911

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; further request for comment.

SUMMARY: In the wireless Enhanced 911 (E911) rulemaking proceeding, the Commission seeks additional comment on a September 25, 1997, *ex parte* letter (Joint Letter) filed by two wireless industry groups and three public safety community groups. In the Joint Letter, the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), the Association of Public-Safety Communications Officials-International, Inc. (APCO), the National Emergency Number Association (NENA), and the National Association of State Nine-One-One Administrators (NASNA) propose modifications to terms used in this proceeding and rules for processing 911 calls and permitting Public Safety Answering Points (PSAPs) to choose which 911 calls they will receive. The letter also supports an extension of the compliance date for implementation of 911 service over digital wireless services for TTY users. Additional comment on these responses is sought to assist the Commission in determining whether to revise the Commission's Rules. The effect of revising the Commission's Rules would be to clarify the implementation of basic 911 services to wireless customers, including people with hearing or speech disabilities.

DATES: Comments must be filed by October 17,1997, and reply comments must be filed by October 27, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Won Kim, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

Additional Comment Sought in Wireless Enhanced 911 Reconsideration Proceeding Regarding Rules and Schedules

1. In the wireless Enhanced 911 (E911) rulemaking proceeding, the Commission seeks additional comment on a September 25, 1997, *ex parte* letter (Joint Letter) filed by two wireless industry groups and three public safety community groups. In the Joint Letter, the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), the Association of Public-Safety Communications Officials-International, Inc. (APCO), the National Emergency Number Association (NENA), and the National Association of State Nine-One-One Administrators (NASNA) propose modifications to the 911 rules and support an extension of the compliance date for implementation of TTY compatibility requirements. The full text of the Joint Letter is available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, NW., Room 239, Washington, DC 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

2. Pursuant to § 1.415(d) of the Commission's Rules, 47 CFR 1.415(d), additional comment is hereby sought in the wireless E911 reconsideration proceeding[1] concerning issues raised in an *ex parte* presentation filed by several parties in the proceeding. In the *E911 Report and Order*, the Commission established rules requiring wireless carriers to implement basic 911 and E911 services.

3. In a September 25, 1997, *ex parte* letter (Joint Letter), two wireless industry groups (the Cellular Telecommunications Industry Association (CTIA) and the Personal Communications Industry Association (PCIA)) and three public safety community groups (the Association of Public-Safety Communications Officials-International, Inc., the National Emergency Number Association, and the National Association of State Nine-One-One Administrators) propose modifications to terms used in the *E911 Report and Order* and rules for processing 911 calls and permitting Public Safety Answering Points (PSAPs) to choose which 911 calls they will receive. The letter also supports an extension of the compliance date for implementation of 911 service over digital wireless services for TTY/TDD users from October 1, 1997, to April 1, 1999,[2] and requests that the Commission refrain from addressing certain additional issues until the industry has had the opportunity to fully consider such issues in meetings with the relevant parties.

4. We have also received other *ex parte* comments addressing issues raised in the Joint Letter. In a September 29, 1997, letter, Congresswoman Anna Eshoo provided the Commission with her initial assessment of the recommendations made in the Joint Letter and reiterated her view that "it is in the public's best interest that all wireless 911 calls should be passed through to the public safety authority." On September 30, 1997, the Ad Hoc Alliance for Public Access to 911 also filed an *ex parte* letter opposing the Joint Letter.[3]

5. The Wireless Telecommunications Bureau took note of the pending petitions for reconsideration and *ex parte* filings and on September 30, 1997,

[1] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Notice of Proposed Rulemaking, 59 FR 54878 (November 2, 1994); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Report and Order and Further Notice of Proposed Rulemaking, 61 FR 40348, 40374 (August 2, 1996) (*E911 Report and Order*), *recon. pending.*

[2] *See also* PCIA, Request for Extension of Time to Implement E911/TTY Compatibility Requirement for Wireless Operators (Aug. 27, 1997); CTIA *Ex Parte* Filing (Sept. 23, 1997).

[3] Following the Joint Letter, CTIA filed another *ex parte* letter dated September 26, 1997, concerning carrier liability with respect to E911 calls. We have also received certain *ex parte* filings prior to the Joint Letter which relate to the issues raised in that letter. For example, with respect to the proposed 18-month extension of the TTY compliance date, the National Association of the Deaf and the Consumer Action Network oppose it as too long and propose additional obligations. Opposition to Request for Extension of Eighteen Months to Implement E911/TTY Compatibility Requirement for Wireless Operators (Sept. 11, 1997). Nextel Communications, on the other hand, supports the requested extension. Motion in Support of Request for Extension of time to Implement E911/TTY Compatibility Requirement for Wireless Operators (Sept. 9, 1997).

adopted an *Order* staying the provisions and effective date of §§ 20.18(a)-(c) inclusive of the Commission's Rules, 47 CFR 20.18(a)-(c), which would require wireless carriers to forward certain 911 calls to PSAPs, including calls from TTY devices. The stay defers the effective date of those rules from October 1, 1997, to November 30, 1997, in order to permit the Commission to complete its review.

6. Pursuant to applicable procedures set forth in §§ 1.145(d) and 1.419 of the Commission's Rules, 47 CFR 1.415(d), 1.419, interested parties may file comments on the issues raised in the Joint Letter no later than October 17, 1997. Reply comments may be filed no later than October 27, 1997. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, referencing CC Docket No. 94–102.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 97–27582 Filed 10–15–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AE18

1997–98 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: This proposed rule adds additional national wildlife refuges to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amends certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing. The Fish and Wildlife Service (Service) provides notice of reopening of the comment period for only the specific proposal to hunt bison on the National Elk Refuge in Wyoming.

DATES: The public comment period closes November 17, 1997 to ensure consideration by the Service.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to Assistant Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, at the above address; Telephone (703) 358–2397.

SUPPLEMENTARY INFORMATION: The Service had received a second request from the Fund for Animals to extend the comment period on the proposal to permit bison hunting on the National Elk Refuge. The original comment period was open for 30 days and then extended to September 19, 1997 (62 FR 38959 published July 21, 1997 and 62 FR 47372, Sept. 9, 1997) to accommodate a public review of a pending interagency bison herd management plan. Due to the need by the Service for additional time to complete their portion of the herd management plan and review information and comments from interested parties on this proposed action, the comment period is reopened for an additional 30 days. The herd management plan was signed on September 30, 1997. In addition to this reopening of comments, several other documents, such as a compatibility determination and a National Elk Refuge Hunt Plan Amendment needed to be finalized before a bison hunt would take place. Both documents were signed on October 1, 1997. All parties are invited to submit comments on the proposed bison hunt. Copies of the Hunt Plan Amendment and the compatibility determination are available from the Refuge Manager, National Elk Refuge, Box C, Jackson, Wyoming 83001.

Refuge hunting programs are reviewed annually to determine whether additional refuges should be added or whether individual refuge regulations governing existing programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring continued compatibility of hunting with the purposes for which individual refuges, and the National Wildlife Refuge System (System) were established.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary) to permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Primary Author

Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, the Service amends Title 50, Chapter I, subchapter C of the *Code of Federal Regulations* as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Amend § 32.70 *Wyoming* by revising paragraph C. of National Elk Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

National Elk Refuge

* * * * *

C. Big Game Hunting. Hunters may hunt elk and bison on designated areas of the refuge subject to the following conditions:

* * * * *

Dated: October 3, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–27398 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 62, No. 200
Thursday, October 16, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FEDERAL HOUSING FINANCE BOARD

[No. 97–N–7]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice..

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (FHLBank) members it has selected for the 1996–97 seventh quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which FHLBank members selected for review must submit Community Support Statements to the Finance Board.

DATES: FHLBank members selected for the 1996–97 seventh quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before December 1, 1997.

ADDRESSES: FHLBank members selected for the 1996–97 seventh quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail: Office of Policy, Compliance Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006; or by electronic mail: COMSUP@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Office of Policy, Compliance Assistance Division, at 202/408–2574; at the following electronic mail address: COMSUP@FHFB.GOV; or at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1).The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board amended its community support requirement regulation effective June 30, 1997. *See* 62 FR 28983 (May 29, 1997), *codified at* 12 CFR part 936.

As amended, the community support requirement regulation establishes standards a FHLBank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR 936.3. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. *Id.* Only members subject to the CRA must meet the CRA standard. *Id.* § 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. *Id.* § 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each FHLBank district for community support review each calendar quarter. *Id.* § 936.2(a). The Finance Board will not review an institution's community support performance until it has been a FHLBank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each FHLBank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the December 1, 1997 deadline prescribed in this notice. *Id.* § 936.2(b)(1)(ii), (c). On or before October 31, 1997, each FHLBank will notify the members in its district that have been selected for the 1996–97 seventh quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. *Id.* § 936.2(b)(2)(i). The member's FHLBank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's FHLBank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 1996–97 seventh quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Bank of Boston, Connecticut	Hartford	CT
American Savings Bank	New Britain	CT
Putnam Savings Bank	Putnam	CT
Belmont Savings Bank	Belmont	MA
BayBank	Burlington	MA
Lenox National Bank	Lenox	MA
Butler Bank—A Cooperative Bank	Lowell	MA
Enterprise Bank and Trust Company	Lowell	MA
Northmark Bank	North Andover	MA
South Weymouth Savings Bank	South Weymouth	MA
RTN Federal Credit Union	Waltham	MA

Westborough Savings Bank	Westborough	MA
Commerce Bank and Trust Company	Worcester	MA
Merrill Merchants Bank	Bangor	ME
Union Trust Company	Ellsworth	ME
Fraser Employees Federal Credit Union	Medawaska	ME
Norway Savings Bank	Norway	ME
University Credit Union	Orono	ME
Oxford Federal Credit Union	Oxford	ME
Infinity Federal Credit Union	Portland	ME
Maine Bank and Trust Company	Portland	ME
Bank of New Hampshire	Manchester	NH
Seabord Federal Credit Union	Pawtucket	RI
New England IBM Employees C.U	Williston	VT

Federal Home Loan Bank of New York—District 2

Medical Inter-Insurance Exchange	Lawrenceville	NJ
First Savings Bank of Little Falls, FSB	Little Falls	NJ
Millville Savings and Loan Association	Millville	NJ
CloverBank	Pennsauken	NJ
Pulse Savings Bank	South River	NJ
Cenlar Federal Savings Bank	Trenton	NJ
Union City Savings Bank, S.L.A	Union City	NJ
Llewellyn-Edison Savings Bank, F.S.B	West Orange	NJ
State Employees Federal Credit Union	Albany	NY
Cortland Savings Bank	Cortland	NY
Flushing Savings Bank, F.S.B	Flushing	NY
Gouverneur Savings and Loan Association	Gouverneur	NY
Poughkeepsie Savings Bank, FSB	Poughkeepsie	NY
WCTA Federal Credit Union	Sodus	NY
Power Federal Credit Union	Syracuse	NY
Homestead Savings, F.A	Utica	NY
Wyoming County Bank	Warsaw	NY
Community Mutual Savings	White Plains	NY
Hudson Valley Bank	Yonkers	NY
Firstbank	Santurce	PR

Federal Home Loan Bank of Pittsburgh—District 3

Delaware Savings Bank, F.S.B	Wilmington	DE
Wilmington Trust Company	Wilmington	DE
First Columbia Bank & Trust Company	Bloomsburg	PA
Fidelity S&LA of Bucks County	Bristol	PA
Chambersburg Trust Company	Chambersburg	PA
Citizens Savings Association	Clarks Summit	PA
Advanta	Claymont	PA
CSB Bank	Curwensville	PA
Fidelity Deposit and Discount Bank	Dunmore	PA
Lafayette Bank	Easton	PA
First National Bank in Fleetwood	Fleetwood	PA
Glen Rock State Bank	Glen Rock	PA
S&T Bank	Indiana	PA
Jonestown Bank and Trust Company	Jonestown	PA
Commercial N.B. of Westmoreland	Latrobe	PA
Farmers First Bank	Lititz	PA
Three Rivers Bank and Trust Company	McKeesport	PA
Members First Federal Credit Union	Mechanicsburg	PA
First National Bank of Mercersburg	Mercersburg	PA
Swineford National Bank	Middleburg	PA
Juniata Valley Bank	Mifflintown	PA
Mid Penn Bank	Millersburg	PA
United Federal Credit Union	Nanty-Glo	PA
Royal Bank of Pennsylvania	Narberth	PA
Peoples Bank of Western Pennsylvania	New Castle	PA
Atlantic Employees Credit Union	Newtown Square	PA
Peoples Thrift Savings Bank	Norristown	PA
Peoples Bank of Oxford	Oxford	PA
Port Richmond Savings	Philadelphia	PA
Dwelling House S & LA	Pittsburgh	PA
First Pennsylvania Savings Association	Pittsburgh	PA
Stanton FS&LA	Pittsburgh	PA
Union Bank and Trust Company	Pottsville	PA
Citadel Federal Credit Union	Thorndale	PA
Turbotville National Bank	Turbotville	PA
Merck, Sharp & Dohme F.C.U	West Point	PA
Woodlands Bank	Williamsport	PA

First Community Bank, Inc.	Buckhannon	WV
Greenbrier Valley National Bank	Lewisburg	WV
Bank of Paden City	Paden City	WV
Commercial Banking and Trust Company	Parkersburg	WV
One Valley Bank, F.S.B	Point Pleasant	WV
Peoples Bank of Point Pleasant	Point Pleasant	WV
Jefferson Security Bank	Shepherdstown	WV
One Valley Bank of Summersville	Summersville	WV
Steel Works Community F.C.U	Weirton	WV
Fed One Bank	Wheeling	WV

Federal Home Loan Bank of Atlanta—District 4

Compass Bank	Birmingham	AL
First Alabama Bank	Birmingham	AL
National Bank of Commerce	Birmingham	AL
First National Bank of Shelby County	Columbiana	AL
Bank of Dadeville	Dadeville	AL
Peoples Bank of Coffee County	Elba	AL
First Southern Bank	Florence	AL
First National Bank of Greenville	Greenville	AL
Citizens Bank and Savings Company	Russellville	AL
Troy Bank and Trust	Troy	AL
Security Federal Bank	Tuscaloosa	AL
State Bank and Trust	Winfield	AL
Crestar Bank, N.A	Washington	DC
IDB—IIC Federal Credit Union	Washington	DC
Treasury Bank	Washington	DC
BankBoynton, FSB	Boynton Beach	FL
Cape Coral National Bank	Cape Coral	FL
First Federal Savings Bank of the Glades	Clewiston	FL
Merchants and Southern Bank	Gainesville	FL
Gibraltar Bank, FSB	Hialeah	FL
Compass Bank/Florida	Jacksonville	FL
Bank of Newberry	Newberry	FL
Community Savings, F.A	North Palm Beach	FL
Ocala National Bank	Ocala	FL
U.S. Trust Company of Florida S.B	Palm Beach	FL
J.P. Morgan Florida Federal Savings Bank	Palm Way	FL
Bankers Insurance	St. Petersburg	FL
First Bank of Tallahassee	Tallahassee	FL
Suncoast Schools Federal Credit Union	Tampa	FL
Citrus Bank, N.A	Vero Beach	FL
Great Southern Bank	West Palm Beach	FL
SunTrust Bank, Mid-Florida, N.A	Winter Haven	FL
SunTrust Bank, South Georgia, N.A	Albany	GA
CDC Federal Credit Union	Atlanta	GA
Bank of Camilla	Camilla	GA
Rabun County Bank	Clayton	GA
Columbus Bank and Trust Company	Columbus	GA
First State Bank of Donaldsonville	Donaldsonville	GA
Bank of Dodge County	Eastman	GA
Lanier National Bank	Gainesville	GA
Gordon Bank	Gordon	GA
Bank of Hartwell	Hartwell	GA
Planters Bank	Hawkinsville	GA
Georgia State Bank	Mableton	GA
First South Bank	Macon	GA
SunTrust Bank of Middle Georgia	Macon	GA
First Community Bank of Henry County	McDonough	GA
United Banking Company	Nashville	GA
Pelham Banking Company	Pelham	GA
Bank of Perry	Perry	GA
United Bank and Trust	Rockmart	GA
AmeriBank, N.A	Savannah	GA
Savannah Bank, N.A.	Savannah	GA
Southern Crescent Bank	Union City	GA
Citizens Community Bank	Valdosta	GA
Park Avenue Bank	Valdosta	GA
Citizens Bank	Vienna	GA
Oconee State Bank	Watkinsville	GA
Atlantic Coast Federal Credit Union	Waycross	GA
Pattersön Bank	Waycross	GA
Waycross Bank and Trust	Waycross	GA
First National Bank of Waynesboro	Waynesboro	GA
First National Bank	West Point	GA

Bradford Federal Savings Bank	Baltimore	MD
First Mariner Bank	Baltimore	MD
Fullerton Federal Savings Association	Baltimore	MD
Johns Hopkins Federal Credit Union	Baltimore	MD
Kosciuszko Federal Savings Bank	Baltimore	MD
Midstate FS&LA	Baltimore	MD
Centreville National Bank of Maryland	Centerville	MD
Columbia Bank	Columbia	MD
County Banking and Trust Company	Elkton	MD
Bank of Glen Burnie	Glen Burnie	MD
Farmers & Merchants Bank of Hagerstown	Hagerstown	MD
Sandy Spring National Bank	Olney	MD
BUCS Credit Union	Owings Mills	MD
Cedar Point Federal Credit Union	Patuxent River	MD
Peninsula Bank	Salisbury	MD
Sparks State Bank	Sparks	MD
Bank of Maryland	Towson	MD
Prince Georges Federal Savings Bank	Upper Marlboro	MD
Union National Bank	Westminister	MD
Carroll County Bank and Trust Company	Westminster	MD
Belmont FS&LA	Belmont	NC
Black Mountain Savings Bank, SSB	Black Mountain	NC
Morganton Federal Savings and Loan	Morganton	NC
Coastal Federal Credit Union	Raleigh	NC
Security Savings Bank, SSB	Southport	NC
Bank of North Carolina	Thomasville	NC
Chesnee State Bank	Chesnee	SC
Clemson Bank and Trust	Clemson	SC
M.S. Bailey & Son, Bankers	Clinton	SC
Clover Community Bank	Clover	SC
Peoples National Bank	Easley	SC
Carolina First Bank	Greenville	SC
Carolina Community Bank	Hilton Head Island	SC
Williamsburg First National Bank	Kingstree	SC
Anchor Bank	Myrtle Beach	SC
Arthur State Bank	Union	SC
Provident Community Bank	Union	SC
Woodruff State Bank	Woodruff	SC
United States Senate Federal Credit Union	Alexandria	VA
Union Bank & Trust Company	Bowling Green	VA
First National Bank of Christiansburg	Christiansburg	VA
National Bank of Fredericksburg	Fredericksburg	VA
F & M Bank—Massanutten	Harrisonburg	VA
Bank of Carroll	Hillsville	VA
Bank of McKenney	McKenney	VA
Central Virginia Bank	Powhaton	VA
First Savings Bank of Virginia	Springfield	VA
Greater Atlantic Savings Bank, F.S.B	Vienna	VA
Southern Financial Bank	Warrenton	VA

Federal Home Loan Bank of Cincinnati—District 5

Union National Bank and Trust Company	Barbourville	KY
Bank of Benton	Benton	KY
Trans Financial Bank, N.A	Bowling Green	KY
Trigg County Farmers Bank	Cadiz	KY
Taylor County Bank	Campbellsville	KY
Provident Bank of Kentucky	Cold Springs	KY
First Federal S. B. of Elizabethtown	Elizabethtown	KY
City National Bank	Fulton	KY
Commonwealth Community Bank	Hartford	KY
Citizens Bank	Hickman	KY
Pennyrile Citizens Bank & Trust Company	Hopkinsville	KY
First State Bank	Irvington	KY
Anderson National Bank	Lawrenceburg	KY
First Federal Savings & Loan of Lexington	Lexington	KY
Traditional Bank, FSB	Lexington	KY
Whitaker Bank, N.A	Lexington	KY
Cumberland Valley N.B. & Trust Co	London	KY
First National Bank	Louisa	KY
PNC Bank, Kentucky, Inc	Louisville	KY
First National Bank	Manchester	KY
Green River Bank	Morgantown	KY
Citizens National Bank	Paintsville	KY
West Point National Bank	Radcliff	KY
Sebree Deposit Bank	Sebree	KY

Shelby County Trust Bank	Shelbyville	KY
Peoples Bank	Taylorsville	KY
United Bank and Trust Company	Versailles	KY
Community First Bank of Kentucky	Warsaw	KY
Farmers & Merchants State Bank	Archbold	OH
Citizens Bank of Ashville	Ashville	OH
Caldwell Savings and Loan Company	Caldwell	OH
Cinco Federal Credit Union	Cincinnati	OH
Century Federal Credit Union	Cleveland	OH
Pioneer Savings Bank	Cleveland	OH
Cylde-Findley Area Credit Union	Clyde	OH
Citizens Bank of Delphos	Delphos	OH
First FS&LA of Delta	Delta	OH
Ohio Central Federal Credit Union, Inc	Dublin	OH
Croghan Colonial Bank	Fremont	OH
First Service Federal Credit Union	Groveport	OH
Killbuck Saving Bank Company	Killbuck	OH
Cardinal State Bank	Maineville	OH
Old Fort Banking Company	Old Fort	OH
Springfield Federal Savings Bank	Springfield	OH
Glass City Federal Credit Union	Toledo	OH
OC Federal Credit Union	Toledo	OH
Peoples Savings Bank of Troy	Troy	OH
First National Bank of Wellston	Wellston	OH
Peoples National Bank	Wooster	OH
Metropolitan Savings Bank of Ohio	Youngstown	OH
Brownsville Bank	Brownsville	TN
First Federal Savings Bank	Clarksville	TN
The Bank/First Citizens Bank	Cleveland	TN
Peoples Bank	Clifton	TN
Middle Tennessee Bank	Columbia	TN
Victory Bank and Trust Company	Cordova	TN
Union Savings Bank	Covington	TN
Bank of Dickson	Dickson	TN
Home Bank of Tennessee	Ducktown	TN
Security Bank	Dyersburg	TN
Greeneville Federal Bank, FSB	Greeneville	TN
SunTrust Bank, Northeast Tennessee, N.A	Johnson City	TN
Citizens Bank of Blount County	Maryville	TN
City Bank & Trust Company	McMinnville	TN
NBC Bank, FSB	Memphis	TN
NBC Knoxville Bank,	FSB Memphis	TN
First Bank and Trust	Mount Juliet	TN
First American National Bank	Nashville	TN
ORNL Federal Credit Union	Oak Ridge	TN
Oakland Deposit Bank	Oakland	TN
Bank of Sharon	Sharon	TN
Merchants and Planters Bank	Toone	TN
AEDC Federal Credit Union	Tullahoma	TN
First State Bank	Union City	TN

Federal Home Loan Bank of Indianapolis—District 6

Star Financial Bank	Anderson	IN
First Community Bank and Trust	Bargersville	IN
Hoosier Hills Credit Union	Bedford	IN
IU Employees Federal Credit Union	Bloomington	IN
Hendricks County Bank & Trust Company	Brownsburg	IN
First Farmers Bank and Trust	Converse	IN
Bank of Western Indiana	Covington	IN
Lincolnland Bank	Dale	IN
First National Bank of Dana	Dana	IN
Chiphone Federal Credit Union	Elkhart	IN
Permanent Federal Savings Bank	Evansville	IN
Firefighter's City-County FCU	Fort Wayne	IN
Midwest American Federal Credit Union	Fort Wayne	IN
Norwest Bank Indiana, NA	Fort Wayne	IN
Professional Federal Credit Union	Fort Wayne	IN
Garrett State Bank	Garrett	IN
Griffith Savings Bank	Griffith	IN
Eli Lilly Federal Credit Union	Indianapolis	IN
Finance Center Federal Credit Union	Indianapolis	IN
Indiana Members Credit Union	Indianapolis	IN
Dubois County Bank	Jasper	IN
First National Bank	Kokomo	IN
Dearborn Savings Association, F.A	Lawrenceburg	IN

Farmers State Bank	Mentone	IN
North Salem State Bank	North Salem	IN
Notre Dame Federal Credit Union	Notre Dame	IN
Ripley County Bank	Osgood	IN
Community Trust Bank	Otwell	IN
Tri-County Bank & Trust Company	Roachdale	IN
Central Bank	Russiaville	IN
Teachers Credit Union	South Bend	IN
Valley American Bank & Trust Company	South Bend	IN
First Bank and Trust	Sullivan	IN
Peoples Bank and Trust Company	Sunman	IN
Citizens National Bank of Tell City	Tell City	IN
Merchantes National Bank of Terre Haute	Terre Haute	IN
AmBank	Vincennes	IN
First National Bank	Warsaw	IN
Bank of Lenawee	Adrian	MI
Republic Bank	Ann Arbor	MI
Blissfield State Bank	Blissfield	MI
Byron Center State Bank	Byron Center	MI
Capac State Bank	Capac	MI
Independent Bank East Michigan	Caro	MI
Exchange State Bank	Carsonville	MI
First National Bank of Crystal Falls	Crystal Falls	MI
State Savings Bank	Frankfort	MI
First National Bank of Gaylord	Gaylord	MI
First of American Bank—Michigan, N.A	Grand Rapids	MI
Founders Trust Personal Bank	Grand Rapids	MI
First Community Bank	Harbor Springs	MI
MFC First National Bank	Ironwood	MI
G. W. Jones Exchange Bank	Marcellus	MI
Isabella Bank and Trust	Mount Pleasant	MI
University Bank	Sault Ste. Marie	MI
Shelby State Bank	Shelby	MI
Sparta State Bank	Sparta	MI
Midwest Guaranty Bank	Troy	MI
SOC Credit Union	Troy	MI
USA Federal Credit Union	Troy	MI

Federal Home Loan Bank of Chicago—District 7

State Bank of the Lakes	Antioch	IL
Aurora National Bank	Aurora	IL
First National Bank of Ava	Ava	IL
First of America Bank—Illinois, N.A	Bannockburn	IL
Farmers State Bank	Buffalo	IL
American Union S & LA	Chicago	IL
First Bank of the Americas, S.S.B	Chicago	IL
First East Side Savings Bank	Chicago	IL
International Bank of Chicago	Chicago	IL
LaSalle Bank FSB	Chicago	IL
LaSalle National Bank	Chicago	IL
Park Federal Savings Bank	Chicago	IL
Selfreliance Ukranian Federal Credit Union	Chicago	IL
TCF Bank Illinois, fsb	Chicago	IL
The Private Bank and Trust Company	Chicago	IL
First National Bank	Chicago Heights	IL
Cissna Park Bank	Cissna Park	IL
Evanston Bank	Evanston	IL
National Bank	Hillsboro	IL
Farmers State Bank of Hoffman	Hoffman	IL
Community Trust Bank	Irvington	IL
Advance Bank, s.b.	Lansing	IL
Peoples National Bank	McLeansboro	IL
Amcore Bank, N.A., Mendota	Mendota	IL
First Midwest Bank, N.A	Moline	IL
National Bank of Monmouth	Monmouth	IL
Bank of Illinois in Normal	Normal	IL
Hemlock Federal Bank for Savings	Oak Forest	IL
Community Bank & Trust, S.B	Olney	IL
Palos Bank and Trust Company	Palos Heights	IL
Citizens Equity Federal Credit Union	Peoria	IL
Pontiac National Bank	Pontiac	IL
First Bankers Trust Company, N.A	Quincy	IL
Banco Popular	River Grove	IL
Amcore Bank N.A., Rockford	Rockford	IL
First National Bank in Toledo	Toledo	IL

Busey Bank	Urbana	IL
Cole Taylor Bank	Wheeling	IL
Household Bank, FSB	Wood Dale	IL
Fox Communities Credit Union	Appleton	WI
Belleville State Bank	Belleville	WI
First National Bank and Trust Company	Beloit	WI
Citizens State Bank	Cadott	WI
Bank of Buffalo	Cochrane	WI
Denmark State Bank	Denmark	WI
Security National Bank of Durand	Durand	WI
Union Bank and Trust Company	Evansville	WI
First Security Credit Union	Green Bay	WI
Mitchell Savings Bank, S.A	Greenfield	WI
Heritage Bank of Hayward	Hayward	WI
State Bank of Howards Grove	Howards Grove	WI
State Bank of La Crosse	La Crosse	WI
Trane Federal Credit Union	La Crosse	WI
Capitol Bank	Madison	WI
Park Bank	Madison	WI
Marion State Bank	Marion	WI
Bay View FS& LA	Milwaukee	WI
TCF Bank Wisconsin, fsb	Milwaukee	WI
Farmers Savings Bank	Mineral Point	WI
Bank of Mondovi	Mondovi	WI
Necedah Bank	Necedah	WI
Farmers Exchange Bank of Neshkoro	Neshkoro	WI
Associate Bank Corp.	Portage	WI
State Bank of St. Cloud	St. Cloud	WI
Community State Bank	Union Grove	WI
American Community Bank	Wausau	WI
Associated Bank North	Wausau	WI

Federal Home Loan Bank of Des Moines—District 8

Union National Bank	Anita	IA
Quad City Bank and Trust Company	Bettendorf	IA
Exchange State Bank	Collins	IA
Mercantile Bank of Western Iowa	Des Moines	IA
Security Savings Bank	Eagle Grove	IA
Iowa State Bank and Trust Company	Fairfield	IA
The First National Bank	Farragut	IA
First Bank and Trust Company	Glidden	IA
American National Bank	Holstein	IA
First National Bank	Iowa City	IA
Home State Bank	Jefferson	IA
Security Savings Bank	Larchwood	IA
Farmers & Merchants Savings Bank	Manchester	IA
First Citizens National Bank	Mason City	IA
First Iowa Bank	Monticello	IA
Northwoods State Bank	Northwood	IA
Farmers Savings Bank	Oskaloosa	IA
Pilot Grove Savings Bank	Pilot Grove	IA
Liberty Bank and Trust, N.A.	Pocahontas	IA
Midwest FSB	Rock Rapids	IA
Alliance Bank	Rockwell City	IA
Cedar Valley State Bank	Saint Ansgar	IA
Citizens State Bank	Sheldon	IA
Morningside Bank & Trust	Sioux City	IA
Tama State Bank	Tama	IA
First American Bank	Webster City	IA
First Bank	West Des Moines	IA
National Chiropractic Insurance Company	West Des Moines	IA
Peoples State Bank	Winthrop	IA
Security Bank Minnesota	Albert Lea	MN
First Security Bank	Byron	MN
Miners National Bank of Eveleth	Eveleth	MN
Itasca State Bank of Grand Rapids	Grand Rapids	MN
Melrose State Bank	Melrose	MN
National City Bank	Minneapolis	MN
Peoples State Bank of Plainview	Plainview	MN
United Prairie Bank-Slayton	Slayton	MN
First Security State Bank	Sleepy Eye	MN
Cherokee State Bank of St. Paul	St. Paul	MN
First National Bank in Wadena	Wadena	MN
Wadena State Bank	Wadena	MN
State Bank of Young America, Norwood	Young America	MN

Polk County Bank	Bolivar	MO
First Security State Bank	Charleston	MO
Peoples Bank	Cuba	MO
Century Bank of the Ozarks	Gainesville	MO
The Hamilton Bank	Hamilton	MO
Farmers and Merchants Bank	Hannibal	MO
City National Savings Bank, FSB	Jefferson City	MO
Premier Bank	Jefferson City	MO
B&L Bank	Lexington	MO
First Bank, CBC	Maryville	MO
Bank of Minden	Mindenmines	MO
Bank of Cairo and Moberly	Moberly	MO
St. Clair County State Bank	Osceola	MO
Platte Valley Bank of Missouri	Platte City	MO
Farmers State Bank of Northern Missouri	Savannah	MO
Central Bank of Missouri	Sedalia	MO
Great Southern Bank, FSB	Springfield	MO
Equality Savings & Loan Association, F.A	St. Louis	MO
Ramsey Bank, F.S.B	Cando	ND
Gate City Federal Savings Bank	Fargo	ND
State Bank of Alcester	Alcester	SD
First Madison Bank	Madison	SD

Federal Home Loan Bank of Dallas—District 9

First National Bank of Izard County	Calico Rock	AR
Bank of Elkins	Elkins	AR
First Federal Bank of Arkansas, F.A	Harrison	AR
Simmons First Bank	Jonesboro	AR
Central Bank and Trust	Little Rock	AR
First Commercial Bank	Little Rock	AR
Citizens Bank	Marion	AR
Mercantile Bank of Arkansas	North Little Rock	AR
First Bank of Arkansas	Russellville	AR
Warren Bank and Trust Company	Warren	AR
Security First National Bank	Alexandria	LA
Mississippi River Bank	Belle Chasse	LA
Citizens Savings Bank	Bogalusa	LA
Homeland Federal Savings Bank	Columbia	LA
Vermilion Bank and Trust Company	Kaplan	LA
Peoples State Bank	Many	LA
First National Bank in St. Mary Parish	Morgan City	LA
City Bank and Trust Company	Natchitoches	LA
Bradford National Life Insurance Company	New Orleans	LA
First Bank and Trust	New Orleans	LA
First Federal Savings and Loan Association	Opelousas	LA
ANECA Federal Credit Union	Shreveport	LA
Springhill Bank & Trust	Springhill	LA
Federal Savings Bank of Evangeline Parish	Ville Platte	LA
Bank of Anguilla	Anguilla	MS
Guaranty Bank & Trust Company	Belzoni	MS
Carthage Bank	Carthage	MS
First National Bank of Clarksdale	Clarksdale	MS
Union Planters Bank	Clarksdale	MS
Bank of Forest	Forest	MS
Hancock Bank	Gulfport	MS
Union Planters Bank of Central Mississippi	Jackson	MS
Merchants and Farmers Bank	Kosciusko	MS
Citizens State Bank	Magee	MS
First National Bank of Picayune	Picayune	MS
Peoples Bank	Ripley	MS
Wilkinson County Savings Bank	Woodville	MS
First National Bank in Alamogordo	Alamogordo	NM
New Mexico Educators F.C.U	Albuquerque	NM
Ranchers Banks	Belen	NM
First Bank, F.S.B	Clovis	NM
White Sands Federal Credit Union	Las Cruces	NM
First State Bank of Taos	Taos	NM
University Federal Credit Union	Austin	TX
Norwest Bank Texas, Bandera	Bandera	TX
First International Bank	Bedford	TX
Citizens National Bank at Brownwood	Brownwood	TX
First Federal Savings Bank	Bryan	TX
Columbus State Bank	Columbus	TX
Reunion Bank	Dallas	TX
Share Plus Federal Credit Union	Dallas	TX

Texas Community Bank, N.A	Dallas	TX
First FSB of North Texas	Denton	TX
First National Bank of Ennis	Ennis	TX
Bank of Commerce	Fort Worth	TX
Millers Mutual Fire Insurance Company	Fort Worth	TX
Graham Savings and Loan, F.A	Graham	TX
Bank United	Houston	TX
PT&T Federal Credit Union	Houston	TX
Pinemont Bank	Houston	TX
West University Bank, N.A	Houston	TX
Jacksonville Savings and Loan Association	Jacksonville	TX
Keller State Bank	Keller	TX
American State Bank	Lubbock	TX
Marble Falls National Bank	Marble Falls	TX
First Bank and Trust of Memphis	Memphis	TX
Liberty National Bank	Paris	TX
Security State Bank	Pearsall	TX
Hale County State Bank	Plainview	TX
Plano Bank and Trust	Plano	TX
Farmers National Bank of Rule	Rule	TX
CaminoReal Bank, N.A	San Antonio	TX
Edgewood Federal Credit Union	San Antonio	TX
First National Bank of San Benito	San Benito	TX
Snyder Savings and Loan Association	Snyder	TX
Mainland Bank	Texas City	TX
First Bank of Texas	Tomball	TX
The First National Bank of Van Alstyne	Van Alstyne	TX
Herring National Bank	Vernon	TX
Community Bank	Wellington	TX

Federal Home Loan Bank of Topeka—District 10

First National Bank of Akron	Akron	CO
Tri State Bank	Denver	CO
MegaBank of Arapahoe	Englewood	CO
First Security Bank	Fort Lupton	CO
Alpine Bank and Trust	Glenwood Springs	CO
First State Bank	Idaho Springs	CO
Independent Bank	Kersey	CO
First Western National Bank	La Jara	CO
First National Bank of Las Animas	Las Animas	CO
FirstBank of Arapahoe County, N.A	Littleton	CO
Mancos Valley Bank	Mancos	CO
Pueblo Bank and Trust Company	Pueblo	CO
Salida Building and Loan Association	Salida	CO
BestBank	Thornton	CO
Citizens Bank	Westminster	CO
Bank of Colorado—Front Range	Windsor	CO
Community National Bank	Chanute	KS
Fidelity State Bank and Trust Company	Dodge City	KS
First State Bank	Edna	KS
Armed Forces Bank, N.A	Fort Leavenworth	KS
Citizens National Bank of Greenleaf	Greenleaf	KS
First National Bank of Holcomb	Holcomb	KS
Kansas State Bank	Holton	KS
Humboldt National Bank	Humboldt	KS
Heartland Bank, N.A	Jewell	KS
First National Bank and Trust Company	Junction City	KS
First State Bank of Kansas City	Kansas City	KS
Premier Bank	Lenexa	KS
Metcalf Bank	Overland Park	KS
Team Bank N.A	Paola	KS
City National Bank of Pittsburg	Pittsburg	KS
Citizens State Bank and Trust Company	Seneca	KS
Community National Bank	Seneca	KS
Mid America Credit Union	Wichita	KS
Five Points Bank	Grand Island	NE
Gretna State Bank	Gretna	NE
City National Bank and Trust Company	Hastings	NE
First State Bank	Hickman	NE
First National Bank & Trust Co. of Minden	Minden	NE
First United Bank	Neligh	NE
Western Nebraska National Bank	North Platte	NE
Douglas County Bank and Trust Company	Omaha	NE
FCE Credit Union	Omaha	NE
Packers Nebraska Bank and Trust Company	Omaha	NE

Plattsmouth State Bank	Plattsmouth	NE
Valley Bank and Trust Company	Scottsbluff	NE
Jones National Bank and Trust Company	Seward	NE
Security Bank	Sidney	NE
Stromsburg Bank	Stromsburg	NE
First National Bank of Wahoo	Wahoo	NE
First National Bank	Ada	OK
Alva State Bank & Trust Company	Alva	OK
Community National Bank	Alva	OK
American National Bank	Ardmore	OK
First National Bank of Bethany	Bethany	OK
SpiritBank, N.A	Bristow	OK
Federal Bankcentre	Broken Arrow	OK
Farmers and Merchants Bank	Crescent	OK
Great Plains National	Elk City	OK
Eastman National Bank of Newkirk	Newkirk	OK
Charter National Bank	Oklahoma City	OK
Metro Bank, N.A	Oklahoma City	OK
Oklahoma Employees Credit Union	Oklahoma City	OK
First National Bank of Okmulgee	Okmulgee	OK
First State Bank	Picher	OK
Farmers and Merchants Bank of Piedmont	Piedmont	OK
Poteau State Bank	Poteau	OK
McClain County National Bank	Purcell	OK
Exchange Bank	Skiatook	OK
Tinker Federal Credit Union	Tinker Air Force Base	OK
Oklahoma Central Credit Union	Tulsa	OK
Welch State Bank	Welch	OK

Federal Home Loan Bank of San Francisco—District 11

Norwest Bank Arizona, N.A	Phoenix	AZ
State Savings Bank, F.S.B	Scottsdale	AZ
North County Bank	Escondido	CA
Humboldt Bank	Eureka	CA
Six Rivers National Bank	Eureka	CA
High Desert National Bank	Hesperia	CA
Cathay Bank	Los Angeles	CA
General Bank	Los Angeles	CA
F&A Federal Credit Union	Monterey Park	CA
Stanford Federal Credit Union	Palo Alto	CA
CBC Federal Credit Union	Port Hueneme	CA
Peninsula Bank of San Diego	San Diego	CA
Gateway Bank, a F.S.B.	San Francisco	CA
First Bank of San Luis Obispo	San Luis Obispo	CA
Saratoga National Bank	Saratoga	CA
China Trust Bank of California	Torrance	CA
Visalia Community Bank	Visalia	CA

Federal Home Loan Bank of Seattle—District 12

Alaska USA Federal Credit Union	Anchorage	AK
West Oahu Community F.C.U	Barbers Point	HI
City Bank	Honolulu	HI
First Hawaiian Creditcorp, Inc	Honblulu	HI
Oahu Educational Employees Credit Union	Honolulu	HI
Citizens State Bank	Hamilton	MT
BankWest, N.A	Kalispell	MT
Valley Bank of Kalispell	Kalispell	MT
First National Bank in Libby	Libby	MT
First Technology Federal Credit Union	Beaverton	OR
Bank of the Cascades	Bend	OR
U-Lane-O Credit Union	Eugene	OR
Siuslaw Valley Bank	Florence	OR
Southern Oregon Federal Credit Union	Grants Pass	OR
Portland Area Employees Credit Union	Portland	OR
South Umpqua State Bank	Roseburg	OR
Clackamas County Bank	Sandy	OR
St. Helens Community F.C.U	St. Helens	OR
Bank of Utah	Ogden	UT
Goldenwest Credit Union	Ogden	UT
Guardian State Bank	Salt Lake City	UT
Bank of Bellingham	Bellingham	WA
Industrial Credit Union of Whatcom County	Bellingham	WA
Whatcom State Bank	Bellingham	WA
Cashmere Valley Bank	Cashmere	WA

Mt. Rainier National Bank	Enumclaw	WA
Grant National Bank	Ephrata	WA
Everett Mutual Bank	Everett	WA
NorthWest Telco Credit Union	Everett	WA
Rainier Pacific, a Community Credit Union	Fife	WA
Empire Life Insurance Company	Seattle	WA
NW Federal Credit Union	Seattle	WA
Seattle Telco Federal CU	Seattle	WA
First Heritage Bank	Snohomish	WA
Horizon Credit Union	Spokane	WA
Harborstone Credit Union	Tacoma	WA
Westside Community Bank	Tacoma	WA
Bank of Vancouver	Vancouver	WA
American National Bank	Cheyenne	WY
Bank of Laramie	Laramie	WY
First Federal Savings Bank	Sheridan	WY

II. Public Comments

To encourage the submission of public comments on the community support performance of FHLBank members, on or before October 31, 1997, each FHLBank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1996–97 seventh quarter review cycle. 12 CFR 936.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. *Id.* § 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1996–97 seventh quarter review cycle must be delivered to the Finance Board on or before the December 1, 1997 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.
William W. Ginsberg,
Managing Director.
[FR Doc. 97–26894 Filed 10–15–97; 8:45 am]
BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Ronald B. Douglass, Medina, Washington; to acquire voting shares of Washington Commercial Bancorp, Redmond, Washington, and thereby indirectly acquire Redmond National Bank, Redmond, Washington.

Board of Governors of the Federal Reserve System, October 9, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–27308 Filed 10–15–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Citizens Bancshares Company, Chillicothe, Missouri; to merge with Trenton Trust Bancshares, Inc., Trenton, Missouri, and thereby indirectly acquire Trenton Trust Company, Trenton, Missouri.

Board of Governors of the Federal Reserve System, October 9, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–27309 Filed 10–15–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. U.S. Bancorp, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, U.S. Bancorp Investments, Inc., Minneapolis, Minnesota, in underwriting and dealing in commercial paper, municipal revenue bonds, mortgage-backed securities, and consumer-receivable-related securities. *See, Citicorp, J.P. Morgan & Co., Inc., and Bankers Trust New York Corp.*, 73 Fed. Res. Bull. 473 (1987); extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; arranging commercial real estate equity financing, asset management servicing and collection activities, and acquiring debt in default, pursuant to §§ 225.28(b)(2)(ii), (vi), and (vii) of the Board's Regulation Y; leasing personal or real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y; management consulting and counseling activities, pursuant to §§ 225.28(b)(9)(i)(A)(1) and (2) of the Board's Regulation Y; and insurance agency activities, pursuant to § 225.28(b)(11)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–27307 Filed 10–15–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 30. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Terrace Room E of the Martin Building. The meeting will begin at 9:00 a.m. and is expected to continue until 4:00 p.m., with a lunch break from 12:30 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Special Rules Under Regulation E (Electronic Fund Transfers): The Depository and Delivery Systems Committee will lead a discussion about whether special rules are needed under Regulation E for basic banking accounts established by financial institutions to provide electronic delivery of federal benefits to individuals who currently do not maintain deposit accounts; and if there is a perceived need, what characteristics should qualify an account for special treatment.

Home Ownership Equity Protection Act (HOEPA): The Consumer Credit Committee will lead a discussion of potential recommendations for modifying the HOEPA provisions of the Truth in Lending Act. HOEPA is designed to protect borrowers entering into high-cost home-secured loans. The Council discussion will focus on changes to achieve the act's purpose more effectively, such as by imposing further restrictions to discourage abusive creditor or broker practices, providing more effective enforcement tools to ensure compliance and protect the consumer, and reducing the complexity of the fees test used to determine which loans are covered.

Streamlining Truth in Lending Act and the Real Estate Settlement Procedures Act (TILA/RESPA): To assist in the process now under way for reforming requirements under the TILA/RESPA laws, the Consumer Credit Committee will lead a discussion about the information that consumers need and should receive about costs when seeking a mortgage loan. The discussion will include an assessment of the usefulness of disclosing the cost of credit as an APR (annual percentage rate) and will consider alternative cost disclosures. It will also address timing: when should the information be provided to be of most benefit to consumers.

CRA Implementation—Small Business, Farm, and Community Development Lending: The Bank Regulations Committee will lead a discussion regarding the ongoing implementation of the revised Community Reinvestment Act regulations. In particular, attention will focus on the CRA data for 1996 (which were made public recently) regarding small business, farm, and community development lending by large commercial banks and thrift institutions. The Committee also will discuss examination data for small and large banks and interagency responses to questions of interpretation that have arisen under the revised CRA rules.

Open Session—Emerging Issues: Council members will report on emerging issues or trends that may have potential impact on the Board's role in providing consumer protection, or on other matters of interest.

Governor's Report: Reserve Board Member Laurence H. Meyer will report on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Committee Reports: Committees will report on their Committee work and discussions.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Aday-Keller, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202–452–3544.

Board of Governors of the Federal Reserve System, October 9, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–27341 Filed 10–15–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3072]

Ashland, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Federal Trade Commission, S–4302, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3042. Robert Frisby, Federal Trade Commission, S–4302, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2098.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for October 8, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580 either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Ashland, Inc. ("Ashland"). The agreement would settle a proposed complaint by the Federal Trade Commission that Ashland engaged in unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising practices related to the sale of Valvoline TM8 Engine Treatment ("TM8"). The proposed complaint charges that, through the use of statements contained in its advertisements and promotional materials, Ashland made the following unsubstantiated representations: (1) TM8 bonds Teflon to engine parts; (2) compared to motor oil alone, TM8: reduces engine wear; reduces camshaft bearing wear by up to 75%; reduces main bearing wear by up to 75%; under high temperature conditions experienced by engines, provides twice as much wear protection; extends the duration of engine life; and improves fuel economy; and (3) One treatment of TM8 lasts for 50,000 miles. Lastly, the proposed complaint alleges that Ashland falsely represented that tests prove that, compared to motor oil alone, TM8: reduces camshaft bearing wear by up to 75%; reduces main bearing wear by up to 75%; under high temperature conditions experienced by engines, provides twice as much wear protection; and improves fuel economy.

The proposed consent order contains provisions designed to prevent Ashland from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Ashland from making any representation about the performance or attributes of any engine treatment unless, at the time it makes the representation, Ashland possesses and relies upon competent and reliable evidence, which when appropriate must be scientific evidence, that substantiates the representation. Part I also prohibits Ashland from misrepresenting the results of tests or studies.

The proposed order also contains standards provisions regarding record-keeping, notification of changes in corporate status, distribution of the order, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 97–27358 Filed 10–15–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices; Product Development Protocol; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in cooperation with the Health Industry Manufacturers Association (HIMA), is announcing a public workshop to discuss use of the Product Development Protocol (PDP) as an alternate means for medical device approval. This public workshop is being held so that FDA may gather information to assist in developing an efficient, practical PDP process.

DATES: The public workshop will be held on Wednesday, October 22, 1997, 8:30 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Renaissance Hotel, 999 9th St. NW., Washington, DC 20001. Attendees requiring overnight accommodations may contact the hotel at 202–898–9000 and reference the FDA/HIMA meeting to ensure conference rates. To register for the public workshop, contact HIMA, Meetings Department, 1200 G St. NW., Washington, DC 20005, 202–434–7237.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Center for Devices and Radiological Health (HFZ–470), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–5072, FAX 301–480–4224.

SUPPLEMENTARY INFORMATION: FDA, in cooperation with HIMA, is holding a public workshop to discuss the implementation of a different process for the premarket approval of class III devices by means of a PDP. Section 515(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e (f)) (the act) provides for a product development protocol as an alternate means of premarket approval of class III medical devices. Although the PDP has existed as a means of approval of a medical device since the Medical Device Amendments of 1976 (Pub. L. 94–295) to the act, the PDP has never been completely implemented. As part of it's reengineering initiative, the Center for Devices and Radiological Health (CDRH) of FDA established the PDP Reengineering Team, comprised of FDA staff, in consultation with industry representatives, to develop an efficient, practical PDP process.

The intent of the PDP process is to substitute the conventional device approval model, the sequential process of clinical investigation followed by a premarket approval application, with an early interaction between the sponsor and FDA to produce a focused product development plan that merges the two steps. A PDP team has developed guidelines for creating this focused development protocol that will be described at the public workshop. Workshop participants will have ample opportunity to ask questions as the new PDP process is described and case studies on particular examples of class III devices are presented. Background information, a detailed flow chart, and a descriptive narrative regarding the proposed PDP process can be found at the FDA/CDRH Web site at the address below.

Additional information is available on the FDA Web page (www.fda.gov/cdrh/pdp/pdp.html) or the HIMA Web page (www.himanet.com).

Dated: September 30, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–27433 Filed 10–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects, (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Project To Assess Bi/Multilingual Services Offered at Selected Community and Migrant Health Centers—NEW

Recognizing the importance of language-appropriate services to full and effective health care provision, the Office of Minority and Women's Health in the Bureau of Primary Health Care [BPHC], Health Resources and Services Administration [HRSA], proposes to conduct a voluntary telephone survey to assess the composition and provision of bi/multilingual services at a sample of 40 Community and Migrant Health Centers [C/MHCs] selected from those C/MHCs indentified as likely to be serving high percentages of people who speak languages other than English. This effort was developed so that information could be gathered to assist the field; funding agency staff, and policymakers in better understanding what methods are being used to provide services to these populations, what works, what does not, and barriers and facilitators to effective health service provision for speakers of languages other than English.

The information gathered will provide HRSA with an information base upon which to build in making future program decisions regarding C/MHC resource and staffing needs in order to reduce or eliminate the barriers to health care often faced by non-or limited-English-speaking populations. The end result of the program will be to assist the funding agency to help C/MHCs and by extension, other providers of health care for non-or limited-English speaking populations to provide appropriate services. An estimate of the hour burden for the 40 C/MHC Directors selected for the survey is shown below.

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Bi/Multilingual Services Survey	40 C/MHC Directors	1	2	80

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 9, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–27429 Filed 10–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is

made of the following National Advisory body scheduled to meet during the month of November 1997:

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: November 20, 1997, 8:30 a.m. to 5:00 p.m.; November 21, 1997, 8:30 a.m. to 3:00 p.m.

Place: Chesapeake Room, Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

The meeting is open to the public.

Agenda: Updates on and discussion of Agency, Bureau and division activities, and the legislative and budget status of programs; overview and review of clinical nurse specialist workforce trends, implication and options for the future; review of diversity workgroup with recommendations for a national agenda.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Agenda items are subject to change as priorities dictate.

Dated: October 9, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–27430 Filed 10–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Technical Assistance Workshops for Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions

SUMMARY: The Health Resources and Services Administration (HRSA) announces that technical assistance workshops will be held for new and renewal applicants for the fiscal year (FY) 1998 competitive grant cycles for the Health Careers Opportunity Program.

FOR FURTHER INFORMATION CONTACT: Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4493 or (301) 443–2100.

SUPPLEMENTARY INFORMATION: The Division of Disadvantaged Assistance will be conducting application preparation technical assistance workshops for new and renewal applicants for the FY 1998 competitive grant cycles for the Health Careers Opportunity Program. The workshops are scheduled as follows:

DoubleTree Hotel, Rockville, MD, (301) 468–1100, October 9–10, 1997; Harvey Hotel, Atlanta, GA, (770) 955–1700, October 16–17, 1997; Embassy Suites, Houston, TX, (713) 995–0123, October 20–21, 1997; and Embassy Suites Airport, Los Angeles, CA, (310) 215–1000, October 23–24, 1997.

The program will commence at 8:30 a.m. each day. Attendees must make their own hotel reservations. Please reference the "Health Careers Opportunity Program Technical Assistance Workshops." Expenses incurred by the attendees will not be supported by the Federal Government. Participation in the technical assistance workshops does not assure approval and funding of applications submitted for competitive review.

Dated: October 9, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–27428 Filed 10–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of AIDS Research; Notice of Meeting of the Office of AIDS Research Advisory Council

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of the Fifth meeting of the Office of AIDS Research Advisory Council (OARAC) on Friday, October 17, 1997. The meeting will be held at the National Institutes of Health (NIH), 9000 Rockville Pike, Building 31, C–Wing, Sixth Floor, Conference Room 10.

The Office of AIDS Research (OAR) is responsible for planning, coordination, and evaluation of the NIH AIDS research program. The OARAC was established to advise the Director, OAR, regarding these activities.

The Council meeting will be open to the public on October 17 from 9:00 a.m. until 4:00 p.m. The agenda includes: FY 1998 budgets for NIH AIDS research; updates on various OAR sponsored workshops and conferences; reports on activities of Advisory Council Working Groups and the NIH Vaccine Research Committee; and a presentation by the Director, Center for Scientific Review (CSR), who will discuss recent changes and future plans at the CSR.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 United States Code and section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, the meeting will be closed to the public from 4:00 p.m. until adjournment for discussions of which the premature disclosure is likely to significantly frustrate implementation of NIH's research initiatives by impeding the timely announcement of those initiatives.

Copies of the meeting agenda and the roster of council members will be furnished upon request by Ms. Linda Jackson, Program Coordinator, Office of AIDS Research, National Institutes of Health, Building 31, Room 4B54, 9000 Rockville Pike, Bethesda, Maryland 20892, Telephone (301) 402–3357, FAX (301) 402–3360. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackson.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: October 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27451 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant of Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

Health Promotion and Disease Prevention Initial Review Group

Study Section/Contact Person	November 1997 Meeting	Time	Location
Epidemiology & Disease Control-2, Dr. Paul Strudler, 301–435–1716 ...	Nov. 17–19 ...	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27445 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: NIAMS SEP Training Review (Teleconference).

Date: December 12, 1997.

Time: 10:00 a.m.–11:30 a.m.

Place: Grants Review Branch, Natcher Building, Room 5AS25U, Bethesda, Maryland 20815.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, RM 5AS25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27439 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Prader-Willi Syndrome: Genetics and Behavior.

Date: October 20, 1997.

Time: 3:30 p.m.–adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27440 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 4, 1997.

Time: 6 p.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1997.

Time: 1 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1997.

Time: 12 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 25, 1997.

Time: 2:30 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 25, 1997.

Time: 1:30 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27441 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Closed Meetings

Notice is hereby given of a change in the National Institute of Nursing Research Initial Review Group meeting, which was published in the **Federal Register** on September 17, 1997 (62 FR 48880). The meeting will now start on October 30, 1997 at 8:30 a.m., instead of the previously advertised October 29.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27442 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Group.
Date of Meeting: October 14, 1997.
Time of Meeting: 8:00 a.m. to adjournment.
Place of Meeting: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Purpose/Agenda: To review grant applications.
Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Economics and Demography.
Date of Meeting: October 17, 1997.
Time of Meeting: 8:30 a.m. to adjournment.
Place of Meeting: Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC 20037.
Purpose/Agenda: To review small grants.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Wealth, Savings, & Financial Security Among Older Households (Teleconference).
Date of Meeting: October 29, 1997.
Time of Meeting: 8:30 a.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To evaluate and review a program project grant application.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Fundamental Aspects of Mobility in Old Adults (Teleconference).
Date of Meeting: October 31, 1997.
Time of Meeting: 9:30 a.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review a program project grant.
Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel, Institutional Training Grants for the Geriatric Program of NIA (Teleconference).
Date of Meeting: November 7, 1997.
Time of Meeting: 1:00 to 4:00 p.m.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review five grant applications on two institutional training grants, two K-type awards and a conference grant for the Geriatric Program of NIA.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Institutional Training Grants for the Neuroscience and Neuropsychology of Aging Program (Teleconference).
Date of Meeting: November 17, 1997.
Time of Meeting: 12:00 noon to 4:00 p.m.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review 10 grant applications on institutional training and small grants for Neuroscience and Neuropsychology of Aging Program.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Institutional Training Grants for the Biology of Aging, Program, (Teleconference).
Date of Meeting: November 21, 1997.
Time of Meeting: 1:00 to 4:00 p.m.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review five grant applications on institutional training and small grants for the Biology of Aging Program.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administration, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Immunobiology of Aging Program Project Application (Teleconference).
Date of Meeting: December 2, 1997.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review a revised program project grant application.
Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Genetic Modification of Striated Muscles During Aging.
Date of Meeting: December 3, 1997.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: University of Michigan, Ann Arbor, Michigan.
Purpose/Agenda: To review one program project grant.
Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applicants and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27443 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of Medical Sciences Special Emphasis Panel

Committee Name: MBRS Subcommittee.
Date: November 13–14, 1997.
Time: 8:30 a.m.–5:00 p.m.
Place: Natcher Conference Center, Conference Room C, 45 Cener Drive, Bethesda, MD 20892–6200.
Contact Person: Bruce K. Wetzel, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS–19, Bethesda, MD 20892–6200.
Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. The discusslons of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27444 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: NIAMS SEP Osteoarthritis Review.
Date: December 9–10, 1997.
Time: December 9–8:00 a.m.–5:00 p.m.; December 10—8:00 a.m.–adjournment.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.
Contact Person: Tommy L. Broadwater, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.
Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: October 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27447 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB5–J1 P.
Date: December 2–4, 1997.
Time: 7:30 PM.
Place: Empire Radisson Hotel, 44 West 63rd Street, New York, New York 10023.
Contact Person: Francisco O. Calvo, Ph.D., Chief Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion on personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27449 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel Meeting.

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: NIDA Special Emphasis Panel (Molecular, Cellular and Chemical Neurobiology).
Date: October 24, 1997.
Time: 11:00 a.m.
Place: Marriott Hotel of New Orleans, 555 Cannal Street, New Orleans, LA 70130.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of

which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: October 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27450 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Extramural Research; Notice of Meeting

Pursuant of section 10(d) of the Federal Advisory Committee Act, as amended by (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Peer Review Oversight Group (PROG) on November 3–4, 1997, in the Rockledge II Centre, 6701 Rockledge Drive, Bethesda, Maryland 20817. The meeting will be held from 9:00 a.m. to 5:00 p.m. on November 3 and from 1:00 to 4:30 p.m. on November 4, and is open to the public with the exception of from 3:00 to 5:00 p.m. on November 3. This portion of the meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The Group will be discussing applications or proposals that could reveal confidential material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Topics for discussion in the open meeting include the Report of the NIH Working Group on New Investigators, the review of clinical research applications, the integration of review, and the NIH rebuttal process.

The meeting agenda and roster of committee members are available on the World Wide Web via the NIH Home Page (http://www.nih.gov.grants/) or from Dr. Peggy McCardle, Executive Secretary, PROG, Office of Extramural Research, Office of the Bureau, National Institutes of Health, Building 1, Room 150, Bethesda, Maryland 20892, (301) 402–2246. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. McCardle by October 24, 1997.

Dated: October 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27446 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, November 17–18, 1997, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 on November 17 to adjournment on November 18. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Center for Scientific Review, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, Maryland 20892–7778, telephone (301) 435–1124, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite 3176, National Institutes of Health, Bethesda, Maryland 20892–7762, phone (301) 435–0691, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: October 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27448 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–41]

Notice of Proposed Information; Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 15, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Single Family Home Mortgage Insurance Division, telephone number (202) 708–2700 (this is not a toll free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Survey of Title I Borrowers.

OMB Control Number: 2502–.

Description of the need for the information and proposed use: The Department has received numerous customer complaints about misrepresentations by Title I lenders and substandard work by contractors. The survey is intended to identify significant program abuses, develop a comprehensive database of borrower concerns, and allow follow-up for complaint resolution.

Agency forms, if applicable: None.

Members of affected public: Borrowers approved for Title I Home Improvement loans.

Status of the proposed information collection: Not applicable.

Estimate of public burden: The Department estimates the number of responses at 10,000 annually. The aggregate reporting burden on respondents is calculated at 833 hours.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 9, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–27346 Filed 10–15–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–40]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 15, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ken Crandall, telephone number (202) 708–6396 (this is not a toll-free number) for copies for the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Subterranean Termite Soil Treatment Builder's Guarantee New Construction Subterranean Termite Soil Treatment Record.

OMB Control Number: 2502–xxxx.

Description of the need for the information and proposed use: This proposed information collection is authorizes the Secretary of the Department of Housing and Urban Development to insure qualified financial institutions against losses for mortgage defaults. Regulations at 24 CFR 200.145 discuss procedures and application processing for FHA mortgage insurance, including regulatory and compliance issues covering property eligibility. HUD adopted two forms from the National Pest Control Association, Forms NPCH–99a and NPCH–99b. The two forms provide new home purchasers with the builder's guarantee concerning termite control treatment and the work performed by a licensed pest control company.

Form numbers: Forms adapted from National Pest Control Association, Forms NPCH–99a and HPCH–99b.

Members of affected public: Individual builders and licensed inspectors nationwide.

An estimation of the total numbers of hours needed to prepare the information collection is 8,964, the number of respondents is 54,000, frequency of response is on occasion, and the hours of response is 166.

Status of the proposed information collection: new collection.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 9, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–27347 Filed 10–15–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4213–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB— for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total

number of hours needed to prepare the information submission including number of the respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 8, 1997.

David S. Christy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Historically Black Colleges and Universities Program.

Office: Community Planning and Development.

OMB Approval Number: 2506–0122.

Description of the Need for the Information and its Proposed Use: The purpose of this information collection is to provide grants to Historically Black Colleges and Universities to help them expand their role and effectiveness in addressing community development needs. This can include neighborhood revitalization and housing and economic development in their localities. This program is authorized under Section 107(b)(3) of the Housing and Community Development Act of 1974.

Form Number: HUD–441.1, HUD–661.1, HUD–40076HBCU, and SF–269A.

Respondents: Not-For-Profit Institutions.

Frequency of Submission: Recordkeeping, On Occasion and Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
Application	104		1		40		4,160
Quarterly Reports	107		4		10		4,280
Recordkeeping	107		4		5		2,140

Total Estimate Burden Hours: 10,580.

Status: Reinstatement, with changes.

Contact: Delores Pruden, HUD, (202) 708–1590 x2496; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–27345 Filed 10–15–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–42]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 8, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Collection and Analysis of Data on the Housing Conditions of Migrant and Seasonal Farmworkers.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed Use: The Housing Assistance Council will collect data on the housing conditions of migrant and seasonal farmworkers in the East Coast migrant stream in order to document the types of units occupied, the quality of the housing, the cost of the farmworker's housing, and to rate the overcrowding conditions. This data will help HUD to better target its resources to areas to support the improvement of the farmworkers housing and health conditions.

Form Number: None.

Respondents: Individuals or Housholds.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
Survey	3,000		1		.25		750

Total Estimated Burden Hours: 750.

Status: New.

Contact: Ndeye Jackson, HUD, (202) 708–5537 x105; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 8, 1997.

[FR Doc. 97–27348 Filed 10–15–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–07–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on November 20 and 21, 1997 at the Amberley Suites Hotel, 7620 Pan America Freeway, Albuquerque, NM 87109.

This is a transitional meeting for newly appointed RAC members. The agenda for the RAC meeting will include agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting of June 25–26, 1997 in Mescalero, NM., briefing on the status of the NEPA process for the RAC Standards for Rangeland Health and Guidelines for Livestock Grazing, review and discussion of the June 26, 1997 New Mexico RAC Off Highway Vehicle recommendations, a BLM Weeds Program presentation and discussions about topics for future RAC meetings.

The meeting will begin on November 20, 1997 at 9 a.m. The meeting is open to the public. The time for the public to address the RAC is on the Thursday, November 20, 1997, from 3 p.m. to 5 p.m. The RAC may reduce or extend the end time of 5 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on November 21, 1997, will be from 8 a.m. to 4 p.m. The end time of 4 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: October 9, 1997.

Gilbert J. Lucero,

Associate State Director.

[FR Doc. 97–27352 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Extend Existing Concession Contracts and Permits

SUMMARY: Pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 *et seq.*), notice is hereby given that the National Park Service intends to extend the following concession contracts and permits. These extensions are necessary to allow the continuation of public services during the completion of the planning for the parks. The current concessioners have performed their obligations to the satisfaction of the Secretary and retain their rights of preference under this administrative action of extending the existing contracts and permits.

The following concession contracts and permits will be extended for a period of one year through December 31, 1998: Jackson Hole Ski Corporation, LP–GRTE–024–90; Rendezvous Ski Tours, LP–GRTE025–90; Triangle X Ranch, CC–GRTE004—78; Triangle X Ranch, GRTE051–91; The National Outdoor Leadership School, LP–GRTE047–90; Spring Creek Ranch, LP–GRTE032–90; Greater Yellowstone Expeditions, LP–GRTE044–91; Samaritan Health System, CP–GLCA021–94; Silver Peaks Enterprises, Inc., CP–ROMO004–94.

The following concession contracts and permits will be extended for a period of two years through December 31, 1999: Wilderness River Adventures, Inc., CC–GLCA001–93; Edward Desrosier DBA Sun Tours, CP–GLAC010–94; Horseshoe Bend Marina, CP–BICA003–94; Rim House, CP–BLCA001–94; Lucon Corporation, CP–BICA007–94.

The following concession contracts and permits will be extended for a period of three years through December 31, 2000: Verkamps, Inc., CC–GRCA005–88; Grand Canyon Trail Rides, Inc., CC–GRCA004–88.

SUPPLEMENTARY INFORMATION: These concession contracts and permits will expire on or before December 31, 1997, unless extended. The National Park Service will not renew these contracts and permits for an extended period until planning can be conducted to determine the future direction for concession services at these parks. The necessary planning processes are expected to begin shortly and will affect the future of these concessions. The planning processes are expected to take one, two, or three years to complete. Until the planning processes are completed, it will not be in the best interest of the National Park Service to enter into long term concession contracts and permits. For these reasons, it is the intention of the National Park Service to extend the current contracts and permits for a period of one, two, or three years beginning on or before January 1, 1998.

Information about this notice can be sought from: Chief, Concessions Management, Intermountain Region, Attention: Judy Jennings, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, e-mail rmso^concessions@nps.gov, or call: (303) 969–2661.

Dated: October 2, 1997.

John E. Crowley,

Acting Director, Intermountain Region.

[FR Doc. 97–27407 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final General Management Plan/Environmental Impact Statement; Nez Perce National Historical Park, Idaho, Montana, Oregon, Washington, and Big Hole National Battlefield, Montana

ACTION: Notice of approval of Record of Decision.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Environmental Impact Statement for Nez Perce National Historical Park in Idaho, Montana, Oregon, and Washington, and Big Hole National Battlefield in Montana.

DATE: The Record of Decision was recommended by the Superintendent of Nez Perce National Historical Park, concurred by the Deputy Regional Director, Pacific West Region, and approved by the Regional Director, Pacific West Region, on September 23, 1997.

ADDRESS: Inquiries regarding the Record of Decision or the Environmental Impact Statement should be submitted to the Superintendent, Nez Perce National Historical Park, P.O. Box 93, Spaulding, ID 83551; telephone: (208) 843–2261.

SUPPLEMENTARY INFORMATION: The text of the Record of Decision follow.

The Department of the Interior, National Park Service, has prepared this Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for Nez Perce National Historical Park, Idaho, Montana, Oregon, and Washington and Big Hole National Battlefield, Montana. This Record of Decision is a statement of the decision made, the background of the project, other alternatives considered, public involvement in the decision making process, the basis for the decision, the environmentally preferable alternative, and measures to minimize environmental harm.

The Decision (Selected Action)

The National Park Service will implement the actions common to all sites and all alternatives along with the proposed actions and final boundaries for individual sites within the park. Some actions remain consistent with those presented in the Draft Environmental Impact. Others were modified in the Final Environmental Impact Statement to respond to public comments and concerns. Implementing actions are synonymous with Alternative 1 for 6 sites, Alternative 2 for 25 sites, and Alternative 3 for 7 sites.

Many overall actions would be designed to unify the various individual park sites. Nez Perce life ways would be respected. Plans would be developed to manage resources and vegetation, eliminate exotic and noxious plants, and reintroduce native species. The park would continue to work with local governments on issues that could affect park resources. Nez Perce people would be encouraged to participate in decisions about park planning, management, and operation. The current overall general park management approach would be retained with the appropriate additions and changes of selected, specific management techniques. Incremental steps would be taken to improve visitor services and operations. More cooperative agreements and other partnership mechanisms would be developed as needed to protect resources, and improve interpretation. Some facilities would be rehabilitated or expanded, modest developments would be added at some sites to meet requirements, and some historic structures would be adaptively used.

Background of the Project

The need to prepare the General Management Plan/Environmental Impact Statement resulted from the addition of 14 sites to the park in 1992 and because several important new issues needed resolution and revised direction and renewed focus was necessary.

Other Alternatives Considered

At each site, two other alternatives to the selected action were considered. The alternative that became the selected action varied from site to site. At each site, Alternative 1 was the No Action alternative. Under this alternative the accomplishment of many of the park's goals and objectives would continue to hinge on partnership through various types of formal and informal agreements, and viewsheds and cultural resources would continue to be protected through cooperative agreements, memorandums of understanding, scenic easements, or purchase on a willing-seller basis. While some individual sites are already adequately protected, under the No Action Alternative adverse impacts to cultural resources would potentially occur at other sites because this alternative provides the least additional protection of resources compared to the other alternatives. At most sites, few or no impacts to natural resources would occur. Interpretive information for visitors would be improved at most sites. The visitor experience would be enhanced because the interconnection of the various park sites would be made clear.

Under Alternative 2, the general management direction of the park would be retained unchanged. But, appropriate management techniques, based on individual circumstances would be applied. Incremental steps would be taken to fulfill requirements and standards for land and resource protection, visitor services, and operations. More cooperative agreements and other partnership mechanisms would be developed as needed to protect and interpret resources. Studies would be conducted to amplify and correct the interpretive story and to identify and protect natural and cultural resources. The existing facilities would be rehabilitated or expanded, and modest developments would be added at some sites to meet operational and visitor use requirements. Some new visitor facilities would be built and others rehabilitated, and several overlooks and pullouts would be constructed or relocated. Some historic structures would be adaptively used. These actions would be accomplished in partnership with other agencies and organizations.

Under Alternative 3, more facility development and a greater capital investment to develop new visitor facilities and the operational costs associated with added personnel for certain locations would occur. At a few sites visitation would increase more, and in a few cases interpretation would be improved through the addition of more park personnel or their presence for more months each year. There would be more capital improvement expenditures for the construction of new interpretive facilities, the enhancement of existing interpretive facilities, and the rehabilitation of several historic buildings.

Basis for Decision

After careful evaluation of public comments throughout the planning process, including comments on the Draft and Final GMP/EIS, the selected action best accomplishes the legislated purpose of the park and battlefield. This includes facilitating the protection and interpretation of sites in Idaho, Oregon, Washington, and Montana that have exceptional value in commemorating a portion of the history of the United States and that balances the statutory mission of the National Park Service to provide long-term protection of the units' resources and significance while allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. The selected action also best accomplishes identified management goals and desired future conditions, with the fewest environmental impacts.

Environmentally Preferable Alternative

The alternative which causes the least damage to the cultural and biological environment, and that best protects, preserves, and enhances resources is Alternative 2.

Measures To Minimize Environmental Harm

All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. Implementation of the selected action would avoid any adverse impacts on wetlands and any endangered or threatened species or that would result in the destruction or adverse modification of critical habitat of such species. Protection of viewsheds and cultural resources not currently owned by the National Park Service would be done through cooperative agreements, memorandums of understanding, scenic easements, or purchase on a willing-seller basis.

Public Involvement

Public comment has been requested, considered, and incorporated throughout this planning process in numerous ways. The National Park Service held 21 public scoping meetings in Idaho, Washington, Oregon, and Montana in January and February 1995. A newsletter was mailed to approximately 1,600 addresses announcing these meetings and that presented the purpose, significance, and interpretive themes for the park. A second newsletter presenting the desired future for the park was distributed. A 50-page Alternatives Newsbook was distributed in April 1996. Informal meetings on the alternatives were also held. In July 1996, postcards indicating which alternative was selected for the proposed action park-wide and for each individual site were distributed. Workshops were held in 16 communities near park sites, on the draft EIS. Consultation was also completed with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the U.S. Forest Service, the Advisory Council on Historic Preservation, the Oregon, Montana, Idaho and Washington State Historic Preservation Offices, Native American tribes, state and local governments and organizations.

Dated: October 2, 1997.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 97–27408 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, Maine; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, October 27, 1997.

The Commission was established pursuant to Pub. L. 99–420, sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene in the Chart Room, Youth Center Bldg., U.S. Navy Base, Winter Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held July 28, 1997.
2. Tour of Schoodic Peninsula.
3. Land Conservation Committee report.
4. U.S. Naval Security Group Activity current mission and future projections.
5. Old business.
6. Superintendent's report.
7. Public comments.
8. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: October 3, 1997.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 97–27406 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1 p.m. on Saturday, October 25, 1997, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Pub. L. 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site. Members of the Commission are as follows:

Ms. Sue Kunitomi Embrey, Chairperson
Mr. William Michael, Vice Chairperson
Mr. Keith Bright
Ms. Martha Davis
Mr. Ronald Izumita
Mr. Gann Matsuda
Mr. Vernon Miller
Mr. Mas Okui
Mr. Glenn Singley
Mr. Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the

public after approval of the full Commission. A transcript will be available after November 30, 1997. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: September 25, 1997.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 97–27409 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, November 5, 1997; 6:30 p.m. to 9:00 p.m.; Council Chambers, Metropolitan Council, 230 East Fifth Street, St. Paul, Minnesota.

An agenda for the meeting will be available by October 17, 1997. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be accepted at this time.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

Dated: October 2, 1997.

Alan M. Hutchings,

Acting Regional Director, Midwest Region.

[FR Doc. 97–27410 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of request for determination of valid existing rights and invitation for interested persons to participate.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has been ordered by the United States District Court for the Northern District of West Virginia to determine whether Walter D. Helmick has valid existing rights (VER) to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. Mr. Helmick is successor in interest to Ernest J. Van Gilder, who previously submitted a VER request in connection with the same property. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual material on the matter. OSM intends to develop a complete administrative record and will render a final agency decision on whether Mr. Helmick has VER.

DATES: OSM will accept written materials on this request for a VER determination until 5 p.m. local time on October 31, 1997.

ADDRESSES: Hand deliver or mail written materials to: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, room 218, Three Parkway Center, Pittsburgh, PA 15200.

Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867.

Office of Surface Mining Reclamation and Enforcement Charleston Field Office, 1027 Virginia Street E, Charleston, WV 25301, Telephone: (304) 347–7158.

FOR FURTHER INFORMATION CONTACT: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867.

SUPPLEMENTARY INFORMATION: Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977. Section 522(e)(2) applies the prohibition to Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act and 30 CFR 740.11, the approved State program (including the State definition of VER) applies to all Federal lands within States with approved regulatory programs. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on Federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954).

The term VER is defined in Subsection 2.130 of the West Virginia Surface Mining Reclamation Regulations. Subsection 2.130 provides that VER exists, except for haul roads, in each case in which a person demonstrates that the limitation provided for in Section 22–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act would result in the unconstitutional taking of that person's rights.

In 1994, Walter D. Helmick re-acquired from Ernest J. Van Gilder certain mineral rights beneath Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia. Mr. Van Gilder had purchased the mineral rights from Mr. Helmick in 1990 and later requested a VER determination from OSM for his planned surface mining operation on the property in question. Mr. Helmick's current VER request incorporates as part of the administrative record all supporting documents and public comments received by OSM in response to the request of Mr. Van Gilder and previous interested parties.

Mr. Helmick alleges that he owns mineral rights on two adjacent tracts of land, the surface of which is owned by the United States of America and managed by the United States Forest Service. Tract 574 contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia on the waters of Hills Creek and the waters of Robins Run, a tributary of Spring Creek. The second tract, known as the Killingsworth Tract, contains 179 acres and is situated on the headwaters of Spruce Run, a tributary of the Greenbrier River. Both properties are located on Briery Knob. They each were mined during the 1940's by surface mining methods. A face-up area for an underground coal mine under permit by the West Virginia Department of Energy is located on Tract 574.

In order to establish that the requester has VER for surface coal mining on the properties in question, OSM must first determine that the requester has demonstrated all necessary rights to surface mine the coal. On November 17, 1989, the U.S. Department of Agriculture (USDA) Forest Service advised OSM of the USDA Office of General Counsel's opinion that "* * * the owners did not reserve the right to remove the coal by surface mining when these lands were acquired by the United States." This opinion was reaffirmed on February 6, 1991, subsequent to Mr. Van Gilder's acquisition of the coal and his VER determination request. On April 23, 1991, OSM informed Mr. Van Gilder that the agency could not consider his request to be administratively complete in light of "* * * the unresolved difference of opinion concerning the nature of the property rights you possess."

In December, 1995, Mr. Helmick filed an action in the United States District Court for the Northern District of West Virginia, claiming that his mineral interests had been taken without just compensation when the Forest Service determined that Mr. Van Gilder's interest in the tract did not include the right to conduct surface mining. *Helmick* v. *United States*, No. 95–0115 (N.D. W.Va.) After the Government filed a motion to dismiss for failure to state a claim on February 15, 1996, Mr. Helmick amended his complaint by adding the Department of the Interior as a party, by eliminating his claim of a taking under the Tucker Act, and by substituting three new counts seeking to review "agency action" under the APA. On September 8, 1997, the court in *Helmick* ordered the Secretary of the Interior to render a final VER determination by December 6, 1997.

In order to comply with the Court's order, and because of the time that has passed since OSM's last administrative action in this matter, OSM believes it is appropriate to reopen the administrative record to allow all interested persons to provide any additional factual information as to whether the requester has the property right to mine by the proposed method, and as to whether the requester has VER under the applicable standards. If OSM determines that Walter D. Helmick has VER, he may apply to the West Virginia Department of Energy for a permit authorizing the surface and auger mining of coal on the two tracts in question. If it is determined that Mr. Helmick does not have VER, no surface or auger mining will be permitted.

Dated: October 9, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–27349 Filed 10–15–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–758 (Final)]

Collated Roofing Nails From Korea

AGENCY: United States International Trade Commission, Commerce.

ACTION: Termination of investigation.

SUMMARY: On October 1, 1997, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (62 FR 51420). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning collated roofing nails from Korea (investigation No. 731–TA–758 (Final)) is terminated.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

AUTHORITY: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR § 201.10).

By order of the Commission.

Issued: October 9, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27490 Filed 10–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–385]

General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Trading Partners of Eastern Europe, the European Free Trade Area, and Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: October 6, 1997.

SUMMARY: Following receipt on September 19, 1997, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–385, General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Trading Partners of Eastern Europe, the European Free Trade Area, and Turkey, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Information on service industries may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) and Mr. Scott Ki, Office of Industries (202–205–2160); economic aspects, from Mr. William Donnelly, Office of Economics (202–205–3223); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

BACKGROUND: As requested by the USTR in a letter dated September 19, 1997, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report that (1) examines the content of schedules of commitments under the General Agreement on Trade in Services (GATS) for the countries specified

below, explaining the commitments in non-technical language; and (2) seeks to identify the potential benefits and limitations of foreign commitments. The Commission will examine sector-specific commitments scheduled by Bulgaria, the Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, the Slovak Republic, Slovenia, Switzerland, and Turkey, with respect to the following industries:

- Distribution services (defined as wholesaling, retailing, and franchising services);
- Education services;
- Communication services (defined as enhanced telecommunication, courier, and audiovisual services);
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction (AEC) services;
- Land-based transport services (defined as rail and trucking services); and
- Travel and tourism services.

In addition, the Commission will examine horizontal commitments relevant to the specified industries, such as those regarding investment and temporary entry and stay of foreign workers. As requested by the USTR, the Commission plans to deliver its report to the USTR by September 18, 1998.

The investigation follows Commission investigation No. 332–374, General Agreement on Trade in Services: Examination of the Schedule of Commitments Submitted by Asia Pacific Trading Partners, requested by the USTR on November 13, 1996; investigation No. 332–367, General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments, requested by the USTR on April 9, 1996; and Commission investigation No. 332–358, General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments, requested by the USTR on December 28, 1994. In those reports, the Commission examined the commitments scheduled by selected trading partners with respect to the industries delineated above. The results of investigation No. 332–374 were published in August 1997 in USITC Publication 3053. The results of investigation No. 332–367 were published in December 1996 in USITC Publication 3007. The results of investigation No. 332–358 were published in December 1995 in USITC Publication 2940. These publications are available on the ITC Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 8, 1998. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 25, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 25, 1998. The deadline for filing post-hearing briefs or statements is 5:15 p.m., April 22, 1998. In the event that, as of the close of business on March 25, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after March 25, 1998, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on April 22, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: October 7, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27489 Filed 10–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–761 and 762 (Final)]

Static Random Access Memory Semiconductors From the Republic of Korea and Taiwan

AGENCY: United States International Trade Commission; Commerce.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations No. 731–TA–761 and 762 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from the Republic of Korea (Korea) and Taiwan of static random access memory semiconductors (SRAMs).[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 62 FR 39438, July 23, 1997.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of SRAMs from Korea and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on February 25, 1997, by Micron Technology, Inc., Boise, ID.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 3, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 18, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 10, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 12, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 10, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules.

The deadline for filing posthearing briefs is February 26, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before February 26, 1998. On March 19, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 23, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 9, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27493 Filed 10–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–750 (Final)]

Vector Supercomputers From Japan

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Japan of vector supercomputers,

[1] The products covered by these investigations are synchronous, asynchronous, and specialty SRAMs from Korea and Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die, and cut die. Processed wafers produced in Korea or Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Korea or Taiwan are not included in the scope.

The scope of these investigations includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

The SRAMs within the scope of these investigations are classified in statistical reporting numbers 8542.13.8037 through 8542.13.8049, 8473.30.1000 through 8473.30.9000, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford not participating.

provided for in heading 8471 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective July 29, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Cray Research, Inc., Eagan, MN. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of vector supercomputers from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 7, 1997 (62 FR 24973). The hearing was held in Washington, DC, on August 27, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 3, 1997. The views of the Commission are contained in USITC Publication 3062 (October 1997), entitled "Vector Supercomputers from Japan: Investigation No. 731–TA–750 (Final)."

By order of the Commission.

Issued: October 6, 1997

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27491 Filed 10–15–97; 8:45 am]

BILLING CODE 7020–02–P

[3] The Commission further determines, pursuant to 19 U.S.C. 673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., In United States v. Cleaveland Industrial Center, et al.

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 122(i), and Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Cleaveland Industrial Center, et al.* Civil Action No. 94–5500 (WGB), was lodged in the United States District Court for the District of New Jersey on October 1, 1997. The proposed consent decree, if entered, will resolve the liability of Cleaveland Industrial Center, a New Jersey partnership, and Eversden L. Clark, Jr. (collectively, "Defendants"), under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), in connection with alleged releases of hazardous substances at the Fabritex Mills Superfund Site, an 18-acre parcel located at 20 Park Road, Long Valley, Washington Township, Morris County, New Jersey. Under the settlement reflected in the proposed consent decree, Defendants will pay response costs of $285,000 to the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to Lois J. Schiffer, Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cleaveland Industrial Center, et al.*, Department of Justice No. 90–11–3–1386.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, Federal Building, Suite 700, Newark, New Jersey 07102; at Region I office of the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, at the above address. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27329 Filed 10–15–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Public Hearing on 401(k) Plan Fees

AGENCY: Pension and Welfare Benefits Administration, Department Of Labor.

ACTION: Notice of public hearing.

SUMMARY: The purpose of this Notice is to inform interested persons that the Department will be holding a public hearing on November 12, 1997 to obtain information relating to investment management, administration and other fees charged to 401(k) plans and participants. The Notice invites interested persons to testify at the hearing and/or make a written submission of their views and/or data relating to 401(k) plan fees. The information obtained from the hearing and written comments will assist the Department in assessing the availability of information regarding plan fees and expenses charged to individual 401(k) plan accounts to plan fiduciaries and participants, the extent to which plan fiduciaries and participants consider such information, and what action, if any, is necessary to address the identified problems.

DATES: The public hearing regarding fees charged to 401(k) plans is scheduled for Wednesday, November 12, 1997, and, if necessary, for Thursday, November 13, 1997. The hearing will begin at 10 a.m. on both days. Requests to testify at the hearing and written comments should be received by the Department no later than November 3, 1997. Oral presentations will be limited to 15 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Debra Golding by November 3, 1997, at the address indicated in this Notice.

ADDRESSES: Requests to testify at the hearing and written comments should be submitted to: Debra Golding, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will be held in Room S–4215 A–C, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Debra Golding, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5669, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In recent years there has been a tremendous growth in the number of defined contribution plans, especially section 401(k) plans. A number of questions have been raised in the media and elsewhere with respect to the fees and expenses currently being charged to 401(k) plans and their participants. In 1996, the Advisory Council on Employee Welfare and Pension Benefit Plans included a Working Group on Guidance in Selecting and Monitoring Service Providers which considered, among other areas, the selection and monitoring of investment service providers to small 401(k) plans. Recently, questions have been raised as to whether 401(k) plans are being overcharged for certain services; whether fees charged to plans are hidden; whether plan sponsors are doing enough to protect plan participants from excessive fees; and whether participants understand what fees and expenses are being charged to their accounts. In an effort to consider these questions, the Department is conducting a public hearing and inviting public comment on current practices relating to fees and expenses charged to 401(k) plans. Among other comments, the Department is interested in obtaining information in the following areas:

1. In selecting and monitoring service providers, are employers/plan sponsors being furnished with sufficient information to evaluate whether the fees and expenses associated with plan investments, investment options, and administrative services are reasonable? If not, what additional information should be provided to or requested by plan sponsors and is it readily available? What steps are plan sponsors taking to ensure that the fees and expenses charged to the individual accounts of the participants are reasonable?

2. Are plan participants being furnished with sufficient information about the fees and expenses associated with the investment options offered under their plan to make informed investment decisions? What additional information should be provided to or requested by participants and is it readily available?

3. Is the information regarding services, fees and expenses that is disclosed to participants regarding their accounts provided in a manner understandable to most participants? Is the disclosure automatic or upon request? If automatic, how often is the disclosure provided and to whom is it provided (plan sponsor and/or participants)?

4. How are the services and the respective fees included in a bundled fee arrangement disclosed? How are the fees and expenses with respect to each of the covered services in a bundled arrangement determined?

5. What actions, if any, should the Department take to improve consideration and disclosure of fees and expenses charged to 401(k) plans? If action is necessary, what information should be required to be disclosed? Would a uniform format for such disclosure be helpful to participants?

Notice of Public Hearing

Notice is hereby given that a public hearing regarding fees charged to 401(k) plans is scheduled for Wednesday, November 12, 1997 and, if necessary, Thursday, November 13, 1997. The hearing will begin at 10 a.m.

Signed at Washington, DC, this 9th day of October, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–27431 Filed 10–15–97; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Availability of Proposed Strategic Plan

AGENCY: Legal Services Corporation.

ACTION: Solicitation of public comment on proposed Strategic Plan for fiscal years 1998 through 2003.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has developed a proposed Strategic Plan to guide its programmatic activities for fiscal years 1998 through 2003. Public comment on the proposal is solicited prior to consideration of the proposed Strategic Plan by LSC's Board of Directors of LSC.

ADDRESS: Requests for a copy of the proposed Strategic Plan and comments thereon should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250. Comments may also be submitted in writing via E-mail at echolsr@smtp.lsc.gov. The proposed Strategic Plan is also posted on LSC's Home Page at http://www.lsc.gov.

DATES: Comments should be received on or before November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Echols at (202) 336–7269.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act ("GPRA," or "the Results Act," 5 U.S.C. 308) places uniform requirements on federal agencies for strategic planning. Although the LSC is not a federal agency, and thus not subject to GPRA, it has elected to follow a planning process based upon the one set forth in GPRA, to bring its budget processes into conformity with those of federal agencies and to promote sound management and effective realization of LSC's mission. The proposed Strategic Plan represents a first step in that process.

As provided by GPRA, LSC's proposed Strategic Plan for FY 1998 through FY 2003 sets forth: a statement of LSC's mission; LSC's general goals for the period; how LSC plans to achieve those goals; key external factors which could significantly affect LSC's achievement of its goals; how LSC's general goals and objectives will be translated into more specific, objectively expressed performance goals for each year in an Annual Performance Plan, and how LSC's performance will be evaluated. A separate section sets forth similar information for LSC's Office of Inspector General.

LSC's Board of Directors intends to adopt a final Strategic Plan for the Corporation prior to December 31, 1997.

Dated: October 10, 1997.

Victor M. Fortuno,

Secretary of the Corporation.

[FR Doc. 97–27454 Filed 10–15–97; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Correction; Sunshine Act Meeting

"Federal Register" Citation of Previous Announcement: FR, Vol. 62, No. 174–47520, Filed 9/9/97.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Closed meeting: October 28, 1997 9:00 a.m.–4:45 p.m.; Open meeting: October 29, 1997, 10:30 a.m.–3:30 p.m.

CHANGES IN MEETING:

Open meeting: October 28, 1997, 9:00 a.m–4:45 p.m.

Closed meeting to discuss staff support: October 29, 1997, 9:00–10–a.m.

Open meeting: October 29, 1997, 10:00 a.m.–3:30 p.m.

TOPICS TO BE DISCUSSED: (1) NCLIS studies and programs, (2) Library Services and Technology Act, (3) International arena, (4) NCLIS meeting reports; (5) millennial programs, and (6) other matters.

CONTACT PERSON FOR MORE INFORMATION: Barbara L. Whiteleather, NCLIS Special Assistant (202) 606–9200.

Dated: October 9, 1997.

Jane Williams,

Acting Executive Director.

[FR Doc. 97–27609 Filed 10–14–97; 2:24 pm]

BILLING CODE 7527–01–M

MEDICARE PAYMENT ADVISORY COMMISSION

Notice of Meetings

Notice is hereby given of the meetings of the Medicare Payment Advisory Commission on Wednesday and Thursday, October 23 and 24, 1997, at the Embassy Row Hilton, 2015 Massachusetts Avenue, NW, Washington, DC, 202/265–1600.

The Commission meeting will convene at 8:30 a.m. on October 23, 1997, and adjourn at approximately 5:00 p.m. On Friday, October 24, 1997, the meeting will convene at 9:00 a.m. and adjourn at approximately 3:00 p.m. The meetings will be held in the Ambassador Room each day.

All meetings are open to the public.

Donald A. Young,

Co-Executive Director.

[FR Doc. 97–27535 Filed 10–15–97; 8:45 am]

BILLING CODE 6820–BW–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 10, 1997.

TIME AND DATE: 11:00 a.m. Friday, October 10, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the motion for leave to participate in oral argument filed on behalf of David Gomo on October 9, 1997, in the following matter in closed session: 1. *Rock of Ages Corp.* v. *Secretary of Labor,* Docket Nos. YORK 94–76, etc.

No earlier announcement of the scheduling of this meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–27608 Filed 10–14–97; 12:42 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–152]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Information Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics and Space Transportation Technology Advisory Committee, Information Technology Subcommittee meeting.

DATES: November 24, 1997, 8 a.m. to 5 p.m.; and November 25, 1997, 8 a.m. to 12 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building N258, Room 221, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas A. Edwards, National Aeronautics and Space Administration, Ames Research Center, M/S 258–5, Moffett Field, CA 94035–1000, 650/604–4465.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Ames Research Center Overview
—NASA Center of Excellence—Information Technology Overview
—Information Technology Research Program Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: October 3, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–27303 Filed 10–15–97; 8:45 am]

BILLING CODE 6820–EP–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–151]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: November 6, 1997, 9:00 a.m. to 4:00 p.m., and November 7, 1997, 9:00 a.m. to 1:00 p.m.

ADDRESSES: NASA Headquarters, 300 E Street SW, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is a follows:

—Call to Order
—Reading of Minutes
—Small Disadvantaged Business Implementation Plan
—Report on NAC Meeting
—Public Comment
—Subpanel Reports
—New Business
—Adjourn

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

October 7, 1997.

Alan M. Ladwig,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–27302 Filed 10–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–150)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Wednesday, November 19, 1997, 8:30 a.m. to 5:00 p.m.; and Thursday, November 20, 1997, 8:30–5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Program Review Center, Room 9H44, 300 E Street, SW, Washington, DC 205446.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Revisit issues from April
—OSS update
—Breckenridge review and strategic plans status
—Process for outer planet mission sequence decisions
—Launch year sensitivities
—Mars program issues

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 7, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 97–27301 Filed 10–15–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–087–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval for additional hours associated with a currently approved information collection in support of the National Animal Health Monitoring System's Beef '97 and Equine '98 national studies.

DATES: Comments on this notice must be received by December 15, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–087–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–087–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the National Animal Health Monitoring System, contact Ms. Marj Swanson, Program Specialist, Centers for Epidemiology and Animal Health, VS, APHIS, 555 S. Howes, Suite 100, Fort Collins, CO 80521; (970) 490–7978. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, APHIS'' Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System (Beef 1997 and Equine 1998).

OMB Number: 0579–0079.

Expiration Date of Approval: September 30, 1999.

Type of Request: Addendum to increase hours of a currently approved information collection.

Abstract: The primary objective of the National Animal Health Monitoring System (NAHMS) program of the Animal and Plant Health Inspection Service (APHIS) is to deliver statistically-valid and scientifically-sound animal health information to consumers, animal health officials, private practitioners, animal industry groups, policy makers, public health officials, media, educational institutions, and others.

Information for the NAHMS Equine '98 study will be derived from data voluntarily collected on a national basis from people involved in the equine (horses, ponies, donkeys, and mules) industry. The information collected will be used to estimate risk factors for regional and national prevalence of specific pathogens; support the industry goal of providing optimal health care for equids by determining current practices in health management; provide baseline estimates of equine health conditions; provide information on mortality and morbidity as it relates to body system categories such as respiratory disease, colic, and lameness; and determine the cost of the disease.

Information for the NAHMS Beef '97 study will be derived from data voluntarily collected on a national basis from producers in the beef cow/calf industry. The information collected is used to identify baseline trends in health management practices and disease, determine risks for new and emerging animal health issues, and assess the economic importance of beef cow/calf health and disease.

After pretesting the Beef '97 forms, it was determined that the actual amount of time needed to complete one of the forms was greater than expected and that five new forms were needed to collect additional data on breeding, herd management, and biosecurity practices. Eleven new forms were identified through the needs assessment phase for Equine '98. These forms will be used to collect biological samples and data on management practices, biosecurity, general health, and cost of disease. The figures below represent the recalculated burden.

We are asking the Office of Management and Budget (OMB) to approve the use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our

information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5422 hours per response.

Respondents: Animal agricultural producers, veterinary practitioners, and animal related industries.

Estimated number of respondents: 10,843.

Estimated number of responses per respondent: 3.2295.

Estimated annual number of responses: 35,018.

Estimated total annual burden on respondents: 18,987 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27425 Filed 10–15–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Transactions of U.S. Parent Companies With Their Foreign Affiliates

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC. 20230 (Telephone 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–577, Direct Transactions of U.S. Reporter with Foreign Affiliate, obtains quarterly sample data on transactions and positions between U.S. business enterprises and their foreign affiliates. The data are needed for compiling the U.S. balance of payments accounts, the international investment position of the United States, and the national income and product accounts. The data are also needed to measure the amount of U.S. direct investment abroad, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based on this assessment, make informed policy decisions regarding U.S. direct investment abroad.

The form will incorporate a single minor revision. It will now request corrections, if any, that might be necessary in the foreign affiliate's three-digit industry classification that appears on the form. In the past, respondents were required to file Form BE–507, Industry Classification Questionnaire, to report changes in industry classification. As a result of this revision proposed to Form BE–577, Form BE–507 is being discontinued.

II. Method of Collection

Form BE–577 is a quarterly report that is sent to U.S. parent companies to file for their foreign affiliates. Reports must be filed within 30 days after the end of each quarter (45 days after final quarter of the foreign affiliate's fiscal year) for every foreign business enterprise that is owned 10 percent or more by a U.S. person and that has total assets, sales, or net income (or loss) of over $20 million. Potential respondents are the U.S. parent companies of foreign business enterprises that reported in the last benchmark survey of U.S. direct investment abroad, along with the U.S. parent companies of those affiliates that subsequently entered the direct investment universe. The data collected are sample data covering transactions and positions between U.S. business enterprises and their foreign affiliates. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0004.

Form Number: BE–577.

Type of Review: Renewal with revision.

Affected Public: Businesses or other for-profit.

Estimated Number of Responses: 12,800 per quarter; 51,200 annually.

Estimated Time Per Response: 1.25 hours.

Estimated Total Annual Burden: 64,000 hours.

Estimated Total Annual Cost: $1,920,000 (based on an estimated reporting burden of 64,000 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27477 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 74–97)

Proposed Foreign-Trade Zone; Dublin, Virginia Area; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the New River Valley Economic Development Alliance, Inc. (a Virginia not-for-profit corporation), to establish a general-purpose foreign-trade zone in the Dublin (Pulaski County), Virginia area. Designation of the New River Valley Airport as a Customs user fee airport has been requested under a separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 8, 1997. The applicant is authorized to make the proposal under Sections 62.1–159 to 62.1–162 of the Code of Virginia.

The proposed zone site (50 acres) is located at the New River Valley Airport on Virginia Route 100, north of Dublin, Virginia. Facilities (20,000 sq. ft.) are available for FTZ warehousing activity. The site also includes the airport's jet fuel systems. It is owned by the New River Valley Airport Commission.

The application contains evidence of the need for foreign-trade zone services in the New River Valley, Virginia area. Several firms have indicated an interest in using zone procedures within the proposed project for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on November 13, 1997, 9:00 a.m., New River Community College, Route 100 North, College Drive, Edwards Hall, Room 117, Section C, Dublin, Virginia 24084.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 15, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 30, 1997).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

New River Community College, Route 100 North, College Drive, Edwards Hall, Room 221, Dublin, VA 24084

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: October 9, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–27470 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802, A–835–802, A–844–802]

Agreement Suspending the Antidumping Investigation on Uranium From Kazakstan, Kyrgyzstan and Uzbekistan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of price determination on Uranium from Kazakstan, Kyrgyzstan and Uzbekistan.

SUMMARY: Pursuant to Section IV.C.1. of the antidumping suspension agreement on uranium from Kazakstan, Kyrgyzstan, and Uzbekistan, the Department of Commerce (the Department) calculated a price for uranium of $12.35/pound for the relevant period, as appropriate. On the basis of this price, the export quota for uranium pursuant to Section IV.B. of the Kazakstani agreement, as amended on March 27, 1995, is 500,000 pounds for the period October 1, 1997, through March 31, 1998. This price will also be used, as appropriate, according to Section 2.A. of the Uzbek agreement, as amended. The quota for the next relevant period for Uzbekistan, October 13, 1997–October 12, 1998, will be announced separately due to the fact that this quota will now be based on a production-tied quota, in accordance with Section 3.A. of that agreement.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or Cindy Sonmez, Office of Antidumping Countervailing Duty Enforcement—Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0961, respectively.

Price Calculation

Background

Section IV.C.1. of the antidumping suspension agreements on uranium from Kazakstan, Kyrgyzstan, and Uzbekistan specifies that the Department will issue its determined market price on October 1, 1997, and use it to determine the quota applicable to imports from Kazakstan during the period October 1, 1997, to March 31, 1998, and Uzbekistan during the period of October 13, 1997 to October 12, 1998. Consistent with the February 22, 1993, letter of interpretation, the Department provided interested parties with the preliminary price determination on September 17, 1997.

Calculation Summary

Section IV.C.1. of these agreements specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the weighted-average long-term price as determined by the Department on the basis of information provided by market participants and a simple average of the UPIS U.S. Base Price for the months in which there were new contracts reported.

The Department's letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 2.46 percent, which was derived from a rolling average of the annual GDP Implicit Price Deflator index from the past four years. The Department then calculated weight-averaged annual prices according to the specified nominal delivery volumes for each year to arrive at the long-term contract price. The Department then calculated a simple average of the UPIS U.S. Base Price and the long-term

contract price as determined by the Department.

Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA), to weight the spot and long-term components of the observed price. In this instance, we have used purchase data from the period 1993–1996. During this period, the spot market accounted for 79.31 percent of total purchases, and the long-term market for 20.69 percent.

As in previous determinations, the Department used the Energy Information Administration's (EIA) *Uranium Industry Annual* to determine the available average spot-and long-term volumes of U.S. utility purchases. We have updated the data to reflect the period 1993 through 1996. The EIA has withheld certain business proprietary contract data from the public versions of the *Uranium Industry Annual 1993*, *Uranium Industry Annual 1994*, *Uranium Industry Annual 1995* and the *Uranium Industry Annual 1996*. The EIA, however, provided all business proprietary data to the Department and the Department has used it to update its weighting calculation.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $12.35. This reflects an average spot market price of $11.51, weighted at 79.31 percent, and an average long-term contract price of $15.54, weighted at 20.69 percent. The increase in the observed market price from our preliminary determination reflects the addition of one contract, as discussed below, and revised calculation methodology. Since this price is between $12.00/pound and $13.99/pound as defined in Appendix A of the suspension agreement with Kazakstan, as amended, Kazakstan receives a quota of 1,000,000 pounds for the period October 1, 1997, to September 30, 1998. This price will also be used, as appropriate, according to Section 2.A. of the Uzbek agreement.

Comments

Consistent with the February 22, 1993, letter of interpretation, the Department provided interested parties the preliminary price determination for this period on September 17, 1997. One interested party submitted comments.

Comment 1: The Ad Hoc Committee of Domestic Uranium Producers (the Miners) requested that the Department include Uzbekistan in the price calculation.

Department's Position: The Department agrees with the Miners and on September 29, 1997, placed the price calculation on the Uzbek record and served counsel. (*See* Memo to the File from Cindy Sonmez, September 29, 1997.)

Comment 2: The Miners indicated that the Department failed to include an additional U.S. Base Price Indicator month in its calculations of long-term price.

Department's Position: The Department agrees with the Miners and has included the relevant month under the "UPIS Indicators" section. Further, in accordance with our practice, the Department simple-averaged the relevant months, and this change has been reflected on the "Simple Average of UPIS and Contract Price."

Comment 3: The Miners requested the Department to collect more information on the reported prices of certain contracts to ascertain that the contract prices do not reflect unusual sale circumstances.

Department's Position: The Department reviewed these contracts and removed one contract from its long-term price calculations as it was a duplicate. The Department also confirmed with the submitting party that the reported contract prices used in our price calculations are accurate.

Comment 4: Petitioners request that the Department weight-average the price on multi-year contracts according to yearly delivery volumes.

Department's Position: The Department agrees with petitioners and has adjusted our long-term contract price methodology accordingly. In order to arrive at the contract price, the Department derived weighted-average price factors for each year of the contract period and added each individual factor. The Department calculated the weighted-average price factor by multiplying the deflated price for each contract year by the nominal volume of the contract year over the total nominal volume of the contract.

Dated: October 6, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Antidumping Countervailing Duty—Group III.

[FR Doc. 97–27472 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: In response to requests by Thai Union Steel Co., Ltd. ("Thai Union"), Saha Thai Steel Pipe Company, Ltd. ("Saha Thai"), and its affiliated exporter S.A.F. Pipe Export Co., Ltd., ("SAF") (collectively "Saha Thai"), and two importers, Ferro Union Inc. ("Ferro Union"), and ASOMA Corp. ("ASOMA"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers the following manufacturers/exporters of the subject merchandise to the United States: Saha Thai and Thai Union. The period of review ("POR") is March 1, 1995 through February 29, 1996. We received comments on the preliminary results and rebuttal comments from the petitioners and respondents.

Based on our analysis of comments received, we have applied total adverse facts available to both Saha Thai and Thai Union. Therefore, with respect to both respondents, the final results do not differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: October 16, 1997.

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1398 or (202) 482–3362, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (hereinafter, "the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as codified at 19 CFR part 353 (April 1997). Although the Department's new regulations codified at 19 CFR part 351 (62 FR 27296, May 19, 1997) ("Final Regulations") do not govern this administrative review, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 4, 1996, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1995 through February 29, 1996 (61 FR 8238). Timely requests for an administrative review of the antidumping order with respect to sales by Saha Thai/SAF and Thai Union during the POR were filed by Thai Union, and jointly by Saha Thai, SAF, Ferro Union, and ASOMA. The Department published a notice of initiation of this antidumping duty administrative review on April 25, 1996 (61 FR 18378).

On May 14, 1996, Saha Thai, SAF, Ferro Union, and ASOMA sought to withdraw their request for review and requested that the Department terminate the review with respect to sales by Saha Thai/SAF during the POR. The domestic interested parties, Allied Tube & Conduit Corporation, Laclede Steel Company, Sawhill Tubular Division of Armco, Inc., and Wheatland Tube Company, ("petitioners"), objected to partial termination of the review on the grounds that, on March 29, 1996, they had submitted to the Department a timely request for review of sales by these companies and served Saha Thai with a copy of this request. Although there is no official record of petitioners' request, because the reason for the filing error is unclear and given the remedial nature of the antidumping law and the fact that Saha Thai received notice of petitioners' request, the Department elected to continue the ongoing review of these sales. *See Memorandum to Robert S. LaRussa from Stephen J. Powell*, July 11, 1996.

On May 24, 1996, the petitioners requested that the Department verify the responses of both Saha Thai and Thai Union.

The Department determined that it was not practicable to complete this review within statutory time limits, and, pursuant to section 751(a)(3)(A) of the Act, extended the time limit for the preliminary results of the review on November 1, 1996. On April 10, 1997, the Department published in the **Federal Register** (62 FR 17590) the preliminary results of its administrative review of this antidumping order covering the period March 1, 1995 through February 29, 1996. On August 8, 1997, pursuant to section 751(a)(3)(A) of the Act, the Department extended the time limit for the final results of the review.

On August 21, 1997, the Department requested Saha Thai to submit onto the record of this segment of the proceeding certain information concerning its ownership and management structure and the ownership interests of its directors that Saha Thai had placed on the record of the subsequent segment (the March 1, 1996–February 28, 1997 POR). Saha Thai complied with this request in a timely manner. Saha Thai submission August 25, 1997.[1] Both Saha Thai and petitioners filed comments on Saha Thai's submission.[2]

The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive. This review covers sales of these products by Saha Thai/SAF and Thai Union during the period March 1, 1995 through February 29, 1996.

[1] On two occasions, Saha Thai resubmitted portions of this filing as public documents after partially withdrawing its claims of business proprietary treatment. *See* Saha Thai submission September 8, 1997 and Saha Thai submission October 2, 1997.

[2] Both sets of comments were submitted on September 8, 1997. Saha Thai resubmitted the business proprietary version of its comments as a public document. *See* Saha Thai submission October 1, 1997.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondents, Saha Thai and Thai Union, by using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant purchase and financial records, and analysis of original documentation used by Saha Thai and Thai Union to prepare responses to requests for information from the Department. Our verification results are outlined in the verification reports. *See* Memoranda to the file from Theresa L. Caherty, John B. Totaro and Dorothy A. Woster, April 4, 1997 ("Cost Verification Reports").

Facts Available

Saha Thai

We preliminarily determined that the use of total adverse facts available was appropriate with respect to Saha Thai's submitted data in accordance with section 776(a)(2)(C) and section 776(b) of the Act because we found that Saha Thai had significantly impeded the review by failing to comply with our requests for complete information on affiliates. In response to the Department's requests that Saha Thai identify all affiliated companies involved in the production or sale of the subject merchandise, the record demonstrates that Saha Thai failed to disclose its affiliation with Thai Tube Co., Ltd. ("Thai Tube"), a producer of subject merchandise, and three customers, two of which are resellers of subject merchandise. Saha Thai also failed to provide complete information concerning ownership and management of the Siam Steel Group. *See Memorandum to Robert S. LaRussa from Joseph A. Spetrini*, March 31, 1997 on file in the Central Records Unit, Room B099 of the main Commerce Building.

Section 771(33) of the Act defines "affiliated persons" for purposes of our antidumping analysis. Section 771(33)(A) of the Act defines "affiliates" as "[m]embers of a family including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants." Under the Act, members of a family are viewed as a unit, e.g., an affiliated person. Further, the term "including" in this definition indicates that the list of family relations is illustrative, not finite.

Section 771(33)(F) defines affiliates as "[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person." The statutory definition of affiliated persons in section 771(33) of the Act states that "control" exists

where one person "is legally or operationally in a position to exercise restraint or direction" over another person. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. 316, Vol.1, 103d Cong. (1994), indicates that stock ownership is not the single evidentiary factor for determining whether a person is in a position of control, and that control may also be established through corporate or family groupings. SAA at 838. Thus, the statute and the SAA expressly envision affiliation based on family stockholdings, consistent with our prior practice. *See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (common stockholdings of particular families found to control one or more corporate entities). Moreover, as stated in the final regulations, the Department intends to scrutinize closely issues of affiliation by family groupings. Final Regulations, 62 FR at 27380. The Department has analyzed the information on affiliation on the record in this administrative review, and determined that Saha Thai and certain home market customers, service providers, and producers of the subject merchandise to be affiliated under section 771(33)(F) by virtue of common control by several families involved in the ownership and management of Saha Thai.

Members of six families hold varying percentages of Saha Thai's shares and hold all of the seats on Saha Thai's board of directors. Several of Saha Thai's directors also hold positions as officers and managers in the company: Limsiam Ampapankit, Chairman of the Board; Somchai Karuchit, Managing Director; Somchai Lamatipanont, Deputy Managing Director; and Kim Hua Sae Heng, Financial Director. Saha Thai September 8, 1997 submission. Saha Thai's affiliations are established through the common control and financial holdings of these families.

We find that Saha Thai is affiliated with Thai Tube and Thai Hong Steel Pipe Import Export Co., Ltd, ("Thai Hong"), producers of the subject merchandise, under section 771(33)(F) of the Act by virtue of common control by the Lamatipanont family. Somchai Lamatipanont is the Deputy Managing Director of Saha Thai; under the circumstances in this case, we find this places him in a position of legal and operational control of Saha Thai. The Lamatipanont family is in a position of legal and operational control in Thai Tube and Thai Hong by virtue of the Lamatipanont family's substantial ownership interests in both companies and the positions of family members as officers and directors. Therefore, the Lamatipanont family is legally and operationally in a position of control over Thai Tube, Thai Hong, and Saha Thai. Therefore, these companies are affiliated under section 771(33)(F) of the Act.

We also find that Saha Thai is affiliated with three of its home market customers by virtue of common control by three families in positions of control within Saha Thai. These customers are referred to in this notice as Company A, Company B, and Company C for business proprietary reasons. Two of these customers (Companies A and B) are resellers of Saha Thai pipe. In the circumstances of this case, we find that three Saha Thai officers, Kim Hua Sae Heng—Financial Director, Somchai Lamatipanont—Deputy Managing Director, and Limsiam Ampapankit—Chairman of the Board, are in positions of legal and operational control of Saha Thai due to their positions in the Saha Thai management hierarchy. Saha Thai September 8, 1997 QR. In addition, these officers' families each hold substantial ownership interests in Saha Thai. The officers' families are also in positions of legal and operational control in Company A, Company B, and Company C, respectively, by virtue of the family members' ownership interests in these companies. Saha Thai August 25, 1997 QR. Therefore, Saha Thai and Company A are under common control of the Sae Heng/Ratanasirivilai family, Saha Thai and Company B are under common control of the Lamatipanont family, and Saha Thai and Company C are under common control of the Ampapankit family. Thus, Saha Thai is affiliated with each of these customers within the meaning of section 771(33)(F) of the Act.

Finally, we find that the Karuchit/Kunanantakul family also is in a position of legal and operational control of the Siam Steel Group companies by virtue of the Karuchit/Kunanantakul family members' positions as directors and the family's ownership interests in these companies. For example, Somchai Karuchit is the Managing Director of Saha Thai, which places him in a position of legal and operational control of Saha Thai. Also, Mr. Karuchit is the Chairman of another Siam Steel Group company, Siam Steel International, Saha Thai's largest shareholder. The record evidence demonstrates that the Karuchit/Kunanantakul family controls the Siam Steel Group companies, therefore we consider the Siam Steel Group to be a corporate or family grouping as envisioned by the regulations and the SAA, which establishes an affiliation among all Siam Steel Group companies under section 771(33)(F) of the Act. On this basis, we find that Saha Thai is affiliated under section 771(33)(F) of the Act with the Siam Steel Group, which include Company D, a Saha Thai customer, and Company E, a pipe producer, by virtue of common control by the Karuchit/Kunanantakul family.

Despite our requests to do so, Saha Thai failed to identify these affiliated producers and customers in its questionnaire responses. Rather, the Department discovered information establishing these affiliations late in the administrative proceeding. In fact, as recently as weeks before these final results we received additional information from Saha Thai at the Department's request which further confirmed our preliminary findings of affiliation. Moreover, although Saha Thai identified members of the Siam Steel Group as potential affiliates, Saha Thai did not provide complete information concerning the management and ownership of the member companies when requested to do so. In light of these circumstances, our preliminary results in which we assigned a dumping margin to Saha Thai based on total adverse facts available remain unchanged.

Thai Union

We preliminarily determined that the use of total adverse facts available was appropriate with respect to Thai Union's submitted data in accordance with section 776(a)(2)(D) and section 776(b) of the Act because we found that Thai Union provided cost of production (COP) data that could not be verified and because Thai Union failed to reconcile its reported costs with its normal books and records. We have not changed the preliminary results based on comments received (see Comment 5 below); therefore, for these final results, we have assigned a dumping margin to Thai Union based upon total adverse facts available.

Analysis of Comments Received

The petitioners, Saha Thai, and Thai Union submitted case briefs on May 12, 1997, and rebuttal briefs on May 19, 1997. A public hearing was held on June 6, 1997. The comments submitted by petitioners and respondents that relate to the calculation of margins are not addressed in this notice because the final margins for this administrative review are based on total adverse facts available.

Comment 1

Saha Thai argues that the Department based its preliminary results upon a misapprehension of the pertinent facts with respect to parties deemed affiliated with Saha Thai. Saha Thai claims that the Department's statement in the preliminary results that Mr. Somchai Lamatipanont is Chairman of Saha Thai and that members of the Chairman's family manage Thai Tube, is factually incorrect. Saha Thai states that Mr. Somchai Karuchit, and not Mr. Somchai Lamatipanont, is Chairman of Saha Thai. Saha Thai also notes that Mr. Lamatipanont, and not Mr. Karuchit, has a brother who is the managing director of Thai Tube. Furthermore, Saha Thai argues that Mr. Lamatipanont is a director of Saha Thai. Saha Thai claims that it identified the family relations of Mr. Somchai Lamatipanont having a shareholding interest in Saha Thai and Thai Tube in its response to the Department's second post-verification questionnaire dated March 27, 1997. Saha Thai further states that neither Mr. Karuchit nor his cousins, Mr. Wanchai Kunanantakul and Mr. Anantachai Kunanantakul, have direct or indirect interest in Thai Tube, and no family members are involved in the management of Thai Tube. Finally, Saha Thai notes that ownership of Saha Thai is dispersed such that no family or director controls Saha Thai by virtue of controlling the board. Saha Thai contends that because of its fractionated interests represented by multiple directorships and shareholdings, Saha Thai's directors can only control Saha Thai when acting "together," not as individuals.

Saha Thai disagrees with the Department's finding that the familial relationship between Mr. Somchai Lamatipanont and his brother Mr. Surasak Lamatipanont, Thai Tube's managing director, creates an affiliation between Saha Thai and Thai Tube. Moreover, Saha Thai argues that Congress, when enacting the changes to section 771(33) under the Uruguay Round Amendments Act, did not include a provision which holds that an affiliate of an affiliate is an affiliate.

Saha Thai argues that, at the time it completed the Department's questionnaires, it had no direct knowledge of the operations of Thai Tube or Thai Tube's relationship to Thai Hong. Saha Thai also reiterates that it has no details regarding the terms of Thai Hong's bankruptcy in January 1992, and does not know why the 1991 *Iron and Steel Works of the World* lists Thai Hong as being located at the same address as Thai Tube, except to suggest that some of Thai Hong's personnel may have been transferred to Thai Tube. Saha Thai notes that in public filings made with the Thai Ministry of Commerce dated March 1997, Thai Hong was located at a different address than the alleged address of Thai Tube. Finally, Saha Thai holds that while there is some overlap in the directors of Thai Hong and Thai Tube, the ownership is quite different.

Saha Thai also argues that even if Saha Thai and Thai Tube are considered affiliated, there is substantial evidence on the record to demonstrate that collapsing them is inappropriate. Saha Thai argues that the Department considered only the extent to which the two companies have common family members in its decision to collapse Saha Thai with Thai Tube (see Memorandum from Joseph Spetrini to Assistant Secretary Robert LaRussa, March 31, 1997). Saha Thai notes that the Preamble to the Final Regulations states at 27345, "[C]ollapsing requires a finding of more than affiliation." Moreover, Saha Thai notes that the Court of International Trade (CIT) has required the Department to undertake a serious analysis of the potential for price manipulation before collapsing two parties. Saha Thai further recognizes that the Department's general practice, as approved by the CIT in *Nihon Cement Co.* v. *United States*, 17 CIT 400 (1993), is not to collapse related parties. Saha Thai argues that the preliminary results in this case contains no substantive analysis of the potential for price manipulation which the Department must undertake before deviating from its general practice of calculating individual rates.

Saha Thai concludes that the application of adverse facts available to Saha Thai is inappropriate. Saha Thai argues that the Department may resort to the facts available only when a respondent has not complied with a request for information. Saha Thai contends that when the Department neglects to request information that it later finds necessary for its determination, it should not resort to best information available, but should issue a supplemental request for information.

In its supplemental comments, Saha Thai argued that Saha Thai is managed by its Managing Director, Mr. Somchai Karuchit, and that other individuals involved in Saha Thai are given titles and positions to accommodate the legal corporate requirements that different individuals hold each of various corporate office positions. Saha Thai continues that both day-to-day operating decisions and major management decisions are generally made by Mr. Karuchit, and that while major management decisions are subject to approval by the board, neither the deputy managing director nor any other officer or director has any special role in obtaining or ensuring such approval.

Saha Thai also asserted in its supplemental comments that because Mr. Surasak Lamatipanont and Mr. Somchai Lamatipanont are not lineal descendants, Saha Thai and Thai Tube are not affiliated by virtue of their familial ties.

Petitioners counter that the Department correctly based the preliminary results on the facts available and should do so for the final results as well. Petitioners hold that the facts available decision was based on three omissions by Saha Thai in reporting its affiliated parties: first, Saha Thai failed to report as affiliated parties the customers that are owned or controlled by members of the Saha Thai board of directors who are also shareholders in Saha Thai (Companies A, B and C) (see Comment 2, below); second, Saha Thai failed to disclose that one of the members of the Siam Steel Group, to which Saha Thai is affiliated (Company E), is a producer of subject merchandise (see Comment 4, below); and third, family members of a Saha Thai director who is also the largest individual shareholder of Saha Thai manage and control Thai Tube, a Thai producer of subject merchandise. Petitioners argue that in addition to not reporting information about its relationship to Thai Tube, Saha Thai committed an error of omission by responding to the Department's questions about Thai Hong without mentioning Thai Hong's successor, Thai Tube. Petitioners also note that Saha Thai failed to disclose that it purchased pipe from other Thai resellers or producers for sale (see Comment 3, below). Petitioners argue that the Department provided Saha Thai with numerous opportunities to list all of its affiliated parties, which Saha Thai failed to do. Petitioners state that these omissions indicate Saha Thai's intent to obfuscate its relationships with affiliated companies.

Petitioners argue that the Department's incorrect identification of Somchai Lamatipanont as the Chairman of Saha Thai was not the "linchpin" of the preliminary results, and it does not oblige the Department to change its preliminary results. Because Somchai Lamatipanont is (1) an officer and director of Saha Thai, and (2) the "scion" of the Lamatipanont family ownership group, one of only six families participating in the control of

Saha Thai, petitioners argue that he is "one of the most important members of the small group of directors and shareholders who control Saha Thai" and "both 'legally and operationally in a position to exercise direction or restraint' over Saha Thai, whether directly or indirectly, in concert with other directors and shareholders from the small group of control families in this closely held company."

Petitioners argue that Saha Thai is affiliated with Thai Tube within the meaning of section 771(33) (F) and (G) of the Act. Petitioners argue that operation of Saha Thai requires the concerted action of at least several to all of the six families that control Saha Thai's stock. Petitioners then infer that each of the six families, separately and together, control Saha Thai. The families' representatives on the board are each legally or operationally in a position to exercise restraint or direction over Saha Thai, either directly or indirectly. Therefore, the Lamatipanont family, led by Mr. Somchai Lamatipanont, is part of the control group of Saha Thai. In addition, petitioners argue that Saha Thai clearly controls Thai Tube and its predecessor, Thai Hong. Petitioners note that information on the record indicates that two members of the Lamatipanont family are the only directors of Thai Tube, and that one member of the family is the managing director of Thai Tube. Thus, petitioners reason that Lamatipanont family members who are affiliated under section 771(33)(A) are legally and operationally in a position to exercise direction or restraint over both Saha Thai and Thai Tube, and that this establishes affiliation under section 771(33)(F)—affiliation by common control of the Lamatipanont family. In addition, petitioners argue that the Department does not have complete information about the extent of management or ownership of Thai Tube by other Lamatipanont family members or by the other families who control Saha Thai, if any.

Petitioners argue that Saha Thai errs in inferring that because the Lamatipanont family does not control 50% or more of the voting shares or the board of directors of Saha Thai, the family cannot exercise control over Saha Thai. This inference, petitioners argue, is not supported by the statute. Petitioners cite the SAA at 838, which states that control can exist "even in the absence of an equity relationship," and the statute which defines control as one person "legally or operationally in a position to exercise restraint or direction" over another person. Petitioners reason that this phrase in the statute does not mean that the person exercising control must be able to compel the actions of another person or entity in every instance, but that the "controlling" person or entity must be able to influence the actions of the entity controlled by virtue of the controlling entity's or person's position. Petitioners conclude that, in the case of Saha Thai, where no one director, shareholder or family of shareholders can dictate the course of Saha Thai, each of the directors, "control families" and shareholders, including Somchai Lamatipanont, can exercise control as defined in the statute.

Therefore, petitioners argue, Saha Thai should have placed information concerning its relationship with Thai Tube on the record in response to the Department's questionnaire requests for information on entities affiliated through stock ownership and by means other than stock ownership. Petitioners argue that evidence on the record shows that Saha Thai made a tactical decision not to report the full extent of its affiliations, including its affiliation with Thai Tube. Petitioners state that Saha Thai's failure to provide requested data on affiliation should lead to the application of facts available. If there was ambiguity as to the information requested by the Department, petitioners argue that Saha Thai should have resolved this ambiguity through consultation with the Department as directed by the questionnaire itself.

Petitioners then argue that the Department was unable to perform a collapsing analysis of Saha Thai and Thai Tube because Saha Thai failed to provide the requested information about affiliates. Because the Department could not determine whether sales from Thai Tube were necessary for its calculation of normal value or export price, there is no assurance that the Department has reviewed all of the U.S. and home market sales that should be attributed to Saha Thai. Petitioners state that because the Department was unable to collect, place on the record, and verify the information necessary to perform a collapsing analysis, Saha Thai's contention that evidence on the record indicates that collapsing is inappropriate is inaccurate.

In summary, petitioners argue that the Department cannot calculate normal value or export price because Saha Thai's reported information on affiliates is incomplete. In addition, petitioners argue that Saha Thai purposefully failed to discuss Thai Tube when the Department requested information after verification about Saha Thai's affiliation with Thai Hong. Petitioners argue that Saha Thai did not act in good faith by failing to identify Thai Tube as the successor to Thai Hong. Petitioners argue that Saha Thai failed to provide requested information on its affiliations by the deadlines set by the Department, thus impeding the proceeding, and that Saha Thai's incomplete responses meet all of the statutory factors for resorting to facts available. In addition, petitioners assert that an adverse inference is warranted because of Saha Thai's failure to act to the best of its ability to provide information on affiliates. Finally, petitioners argue that the Department should apply a single dumping margin to Saha Thai, Thai Tube, and Saha Thai's affiliated producer of PVC-coated water pipe (Company E) (see comment 4, below).

Department's Position

As discussed above in the *Facts Available* section, the definition of affiliated persons in the Act includes two (or more) companies under common control of a third entity (section 771(33)(F)). The Act states that "control" exists where one person "is legally or operationally in a position to exercise restraint or direction" over another person, section 771(33). The SAA indicates that stock ownership is not the single evidentiary factor for determining whether a person is in a position of control, and that control may also be established through corporate or family groupings. SAA at 838. We, therefore, disagree with Saha Thai's assertion that no family can be found to "control" Saha Thai under section 771(33), and that Saha Thai cannot be found to be affiliated with another company by virtue of common ownership interests of a single family. We find that based on the particular facts of this case, there is sufficient evidence on the record to find Saha Thai, Thai Hong, and Thai Tube to be affiliated under section 771(33)(F) by virtue of common control by the Lamatipanont family.

In the preliminary results, our determination that Saha Thai and Thai Tube are under common control of the Lamatipanont family was based in part on an erroneous identification of Mr. Somchai Lamatipanont as Saha Thai's Chairman. However, while Mr. Somchai Lamatipanont is not Saha Thai's Chairman, information submitted on the record by Saha Thai after the preliminary results demonstrates that Somchai Lamatipanont is the Deputy Managing Director of Saha Thai. Saha Thai Supp. QR, September 8, 1997. Saha Thai argued in its case brief that Somchai Karuchit is the Managing Director of Saha Thai, while Somchai Lamatipanont is a member of Saha Thai's board of directors. Saha Thai Case Brief, May 12, 1997, at 17. Saha Thai failed to note Mr. Lamatipanont's position as Deputy Managing Director, thereby mischaracterizing his role as merely a member of the board.

In its supplemental comments, Saha Thai asserted that Somchai Lamatipanont's title as Deputy Managing Director does not vest in him any managerial control over the day-to-day operations of the company. Saha Thai claims that this title was designated merely to fulfill legal requirements that different individuals hold each of the various corporate office positions. Saha Thai further claims that all day-to-day operating decisions and major management decisions (including those concerning financial issues) are made by Mr. Karuchit, the Managing Director, and therefore, Mr. Lamatipanont is not in a position of legal or operational control in Saha Thai. Saha Thai submission September 5, 1997 (revised public version submitted October 1, 1997).

While Saha Thai may be legally bound to assign a different individual to each of Saha Thai's corporate office positions, Saha Thai has offered no evidence to support its assertion that all such positions, with the exception of Managing Director, are devoid of any responsibility over either day-to-day operating decisions or major management decisions. As the officer second to the Managing Director, a Deputy Managing Director is normally in a position of control. Saha Thai's unsubstantiated, eleventh hour claims are insufficient to establish that a Deputy Managing Director has no legal or operational authority.

Moreover, based on the facts on the record, the Department maintains its finding in the preliminary results that the Lamatipanont family controls Thai Tube. Information submitted following the preliminary results confirms our preliminary finding: Surasak and Surangrat Lamatipanont are Thai Tube's only directors; Surasak Lamatipanont is Thai Tube's Managing Director; and the Lamatipanont family members have owned 48% of Thai Tube's common stock since 1992. August 25, 1997 QR, Exhibit 3; Saha Thai Case Brief, May 12, 1997, at 17. The Department therefore finds that Saha Thai and Thai Tube are affiliated by means of common control by the Lamatipanont family. (For a more detailed analysis of this issue, see the public version of the *Memorandum to the File*, October 7, 1997.)

We also disagree with Saha Thai's assertion in its supplemental comments that because Mr. Surasak Lamatipanont and Mr. Somchai Lamatipanont are not lineal descendants, Saha Thai and Thai Tube are not affiliated by virtue of their familial ties. Saha Thai submission September 5, 1997 at fn. 3 (revised public version submitted October 1, 1997). As discussed above, the plain language of section 771(33)(A) does not exclude uncles and nephews from the category of familial relations covered by this subsection. We therefore find Somchai Lamatipanont, Surasak Lamatipanont, and the other Lamatipanont family members involved in Saha Thai and Thai Tube to be members of a family group, affiliated under section 771(33)(A) of the Act.

We also conclude that the evidence on the record supports a finding of affiliation between Saha Thai and Thai Hong, another Thai pipe producer owned or controlled by members of the Lamatipanont family. After verification of Saha Thai, the Department obtained public information indicating Lamatipanont family management of Thai Hong, a respondent in an earlier segment of this proceeding (March 1, 1987—February 29, 1988 POR). We pursued the potential for affiliation between Saha Thai and Thai Hong raised by this public information by issuing a questionnaire inquiring about the nature of the relationship between Saha Thai and Thai Hong. Saha Thai's response explained that Surasak, Samarn, and Surang Lamatipanont controlled Thai Hong, but that the company had entered into bankruptcy. Saha Thai asserted that "[t]o the best of Saha Thai's knowledge, Thai Hong never resumed operations after going bankrupt." Saha Thai response, March 12, 1997. On March 21, 1997, petitioners submitted public information stating that Thai Tube is the successor to Thai Hong.

Petitioners argue that, because Thai Tube is the successor to Thai Hong, Saha Thai was obligated to supply information on Thai Tube in response to the Department's questionnaire on Thai Hong. As described above, the Department finds that, based on the information on the record, Saha Thai and Thai Tube are "affiliated persons" as defined by section 771(33)(F) of the Act. However, contrary to petitioners' argument, we find that the record does not contain conclusive evidence that Thai Tube is the successor organization to Thai Hong. Petitioners submitted public information indicating that Thai Tube operates from the same address as Thai Hong, that Thai Tube's brand device is "THS," and that Thai Tube "was formerly known as Thai Hong Steel Pipe Co., Ltd." (March 21, 1997 submission, exhibit 1 and 2). Saha Thai submitted a certified statement from the Thai Ministry of Commerce—indicating its final decision on Thai Hong's bankruptcy in 1992—which provides a different address for Thai Hong's head office than that listed in any of the petitioners' sources. (March 12, 1997 submission).

Moreover, the Department has obtained public information indicating that both Thai Hong and Thai Tube were operating producers of steel pipe and tube during the POR. *See Memorandum to the File*, September 29, 1997. The information includes the audited 1995 balance sheet and income statement for Thai Hong, indicating the fact that Thai Hong is a manufacturer, exporter, and importer of steel pipe, and that as of April 1996, 98.75% of its shares were owned by individuals with the surname Lamatipanont. Because the POR covers most of 1995 (March 1, 1995 through February 29, 1996), and because the public financial information indicates that Thai Hong maintained inventories, received export compensation, paid out employee social welfare, and by all indications conducted business during 1995, the Department concludes that Thai Hong was operating as a manufacturer, importer, and exporter of the subject merchandise during the POR.

The same source that contained information on Thai Hong also lists Thai Tube Co., Ltd. as a manufacturer of steel pipe, states that Surangrat Lamatipanont is a Director of the company, and identifies three individuals with the surname Lamatipanont as holding 48% of Thai Tube's shares. The reliability of this information is corroborated by information obtained from the Thai Ministry of Commerce and submitted to the Department by Saha Thai. Saha Thai submission, August 25, 1997. Because public information on the record of this review indicates that, during the POR, Thai Hong was an active producer of the subject merchandise with a substantial ownership interest held by members of the Lamatipanont family, the Department finds that Saha Thai and Thai Hong are affiliated under section 771(33)(F) of the Act by means of common control by the Lamatipanont family. The Department therefore concludes that Saha Thai failed in its obligation to report complete information on affiliated parties, in particular, Thai Hong, a producer of the subject merchandise.

These findings of affiliation support the Department's determination to resort to adverse facts available in this review. Information establishing Somchai Lamatipanont's position as the Deputy Managing Director of Saha Thai was submitted on the record at the

Department's request several weeks before the deadline for these final results. This information is yet another indication supporting the ability of the Lamatipanont family to control Saha Thai. This information, as well as facts confirming the Lamatipanont family's ownership and control of both Thai Tube and Thai Hong, confirms the appropriateness of our preliminary results determination that Saha Thai impeded this review by failing to fully disclose its affiliated parties in a timely manner. Saha Thai's failure to identify Thai Tube and Thai Hong as affiliated parties in response to the Department's questionnaires inhibited our inquiries into its relationships with these companies. Saha Thai should have identified these producers as affiliates or potential affiliates, as it did with the Siam Steel Group. If it was uncertain as to the Department's interpretation of the "affiliated persons" definition, Saha Thai should have contacted the Department and requested clarification. Saha Thai never made such a request. As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States*, 641 F.Supp. 31, 39–40 (CIT 1987). Saha Thai failed to do so. Like the best information available rule under the pre-URAA statute, section 776(a) of the Act serves the same purpose of encouraging respondents to provide timely, complete, and accurate responses to the Department's questionnaires. *See* SAA at 868–91. Therefore, in light of the circumstances surrounding the revelation of Saha Thai's affiliations, resorting to total adverse facts available is entirely consistent with the purposes of section 776 (a) and (b) of the Act. *See e.g., Olympic Adhesives, Inc.* v. *United States*, 899 F.2d. 1565 (Fed. Cir. 1990) (Commerce "cannot be left to merely the largesse of the parties at their discretion to supply [Commerce] with information").

Under Department practice, the affiliation between Saha Thai, Thai Tube, and Thai Hong, producers of subject merchandise, would invoke an inquiry to determine whether they should be treated as a single entity for purposes of calculating a dumping margin. *See* section 351.401(f) of the Final Regulations, 62 FR at 27410; *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996). Indeed, in the preliminary results, we made an adverse inference that Saha Thai and Thai Tube should be treated as a single entity for purposes of our antidumping analysis, and noted that we would continue to explore the affiliation issue for these final results. As a result of this examination, as described above, we obtained information both from Saha Thai and from public sources that establishes the affiliation between Saha Thai and Thai Tube and between Saha Thai and Thai Hong. However, because the information establishing the existence of these affiliations was placed on the record so late in the proceeding, we were unable to collect additional information or to analyze the propriety of collapsing these producers. We therefore disagree with Saha Thai's contention that substantial evidence on the record demonstrates that collapsing Saha Thai and Thai Tube is inappropriate. The record is incomplete and the Department is unable to perform the collapsing inquiry because Saha Thai impeded the investigation by failing to disclose relevant information concerning its affiliation with Thai Tube and Thai Hong in a timely manner. Therefore, for the final results the Department makes the adverse inference that it is appropriate to collapse Saha Thai, Thai Tube, and Thai Hong.

Comment 2

Saha Thai argues that neither the two resellers (Company A and Company B) nor the third home market customer (Company C) identified by the Department in the preliminary results as potential affiliates are affiliated with Saha Thai under section 771(33) of the Act. Saha Thai argues in its case brief that managerial and shareholding control of Saha Thai is divided among six, unrelated families, and that no individual family is in a position to control Saha Thai. Saha Thai also states in its rebuttal brief that no company or individual has the power to appoint a majority of directors in Saha Thai, and that the chairman of Saha Thai has no interest in the resellers Companies A and B or in Company C.

Saha Thai states that Company A is "owned or controlled" by one of these six families who own Saha Thai, the Ratanasirivilai family, which holds seats on Saha Thai's board and owns less than 50% of Saha Thai's shares. Saha Thai argues, however, that Company A is not affiliated with Saha Thai because the Ratanasirivilai family does not exercise control over Saha Thai. The other reseller, Company B, according to Saha Thai, is "owned or controlled" by Mr. Somchai Lamatipanont, a member of a different family with interests in Saha Thai who is a director and shareholder of Saha Thai. Saha Thai argues it is not affiliated with Company B because Mr. Lamatipanont is not in a position, individually or with other family members, to control Saha Thai. Finally, Saha Thai argues in its rebuttal brief that the home market customer identified in the Department's preliminary results as potentially affiliated, Company C, is not affiliated with Saha Thai for similar reasons.

According to Saha Thai, because no single Saha Thai director is legally or operationally in a position to exercise restraint or direction over Saha Thai, the fact that a Saha Thai director occupies that control position with respect to another corporation does not give rise to affiliation between Saha Thai and that other corporation. Saha Thai argues that common control as envisioned by section 771(33) (E) and (F) exists in circumstances "in which the controlling party or control group in its entirety jointly exercises control over *both* corporations (or where a subset of the control group is in a position to and in fact does exercise control over *both* corporations." Saha Thai Case Brief at 34 (May 12, 1997). Saha Thai argues that it and Companies A and B are not under the common control of any of Saha Thai's directors or their families, and that Saha Thai is not affiliated with these companies under any subsection of section 771(33).

Petitioners argue that the directors and shareholders who control Saha Thai appear to control Companies A and B, the two resellers identified by the Department at verification and found to be potentially affiliated with Saha Thai in the preliminary results. They argue that the information the Department obtained at verification supports a determination that these customers are affiliated to Saha Thai, but because it was received so late in the proceeding, the issue could not be completely explored. Given the available information, petitioners argue that the Department was correct in determining for the preliminary results that Companies A and B are affiliated with Saha Thai. Specifically, petitioners argue that two companies may be affiliated within the meaning of section 771(33) (F) or (G) through a family grouping that participates in the control of both companies. Petitioners state that Saha Thai admitted Company A is owned or controlled by the Ratanasirivilai family, and that Company B is owned or controlled by Somchai Lamatipanont, a director and officer of Saha Thai, and therefore the control exercised over these resellers constitutes control under the statute. Petitioners contend that both the Ratanasirivilai family and the Lamatipanont family are "legally or operationally in a position to exercise restraint or direction" over Saha Thai, and therefore also control Saha Thai under the statutory definition of control. Petitioners argue that these families participate in the small control group of persons who control Saha Thai, and possess the ability to influence the actions of the company through their directors and voting shares. Petitioners state that this degree of control is sufficient to satisfy the requirements of the statute.

Department's Position

With respect to Company A, Company B, and Company C, Saha Thai's home market customers (Companies A and B are also resellers) of subject merchandise, the Department finds that, based on the record evidence, there is a sufficient basis to conclude that Saha Thai and these companies are affiliated on the basis of common control under section 771(33)(F) of the Act. Saha Thai argued in its case and rebuttal briefs that common control can be found only where the "control group is in a position to and in fact does exercise control over both corporations." We disagree. Evidence of actual control is not a prerequisite to finding "control" within the meaning of section 771(33) of the Act, which defines control in terms of the *ability* to control. As we stated in the Preamble in the proposed regulations and reiterated in the Final Regulations, the Department need not find evidence of actual control to satisfy the statutory definition of "control." Proposed Rule, 61 FR at 7310; Final Regulations, 62 FR at 29297–98. Further, Saha Thai's argument is premised on the assumption that total or sole control is necessary for a finding of affiliation. Again, we disagree. Nothing in the statute or legislative history suggests that such a narrow interpretation is intended. To the contrary, the statutory definition of control encompasses both legal and operational control. Multiple persons or groups may be in control, individually and jointly, of a single entity, i.e., each has the ability to direct or restrain the company's activities. The facts in this case demonstrate that families that individually and jointly control Saha Thai also control Companies A, B and C.

First, Company B and Saha Thai are affiliated under section 771(33)(F) of the Act by virtue of common control by the Lamatipanont family. Saha Thai concedes that the record establishes that the Lamatipanont family has substantial ownership interest in Company B, sufficient to establish control. In addition, Mr. Somchai Lamatipanont is a member of the board of directors, is the Deputy Managing Director of Saha Thai, and the Lamatipanont family owns an equity interest in Saha Thai. Based on these facts, the Lamatipanont family is in a position to control Saha Thai. Therefore, we find that Saha Thai and Company B are under common control of the Lamatipanont family and Saha Thai was obligated to identify this customer as an affiliate in response to our questionnaires.

Similarly, the evidence on the record supports a finding that Company C and Saha Thai are affiliated under section 771(33)(F) of the Act by virtue of common control by the Ampapankit family. September 8, 1997 QR, Exh. 1. Saha Thai conceded that the record establishes that the Ampapankit family has substantial ownership interest in Company C, sufficient to establish control. The Ampapankit family also has an ownership interest in Saha Thai and Mr. Ampapankit is Chairman of the Board of Saha Thai, and is a director and shareholder of Saha Thai. *Id.* Mr. Ampapankit is, in fact, one of the three Saha Thai officers who, together with one of the other officials can bind Saha Thai with his signature. Saha Thai October 2, 1997 QR, Exh. 3 (Saha Thai Commercial Registration). Viewing the facts as a whole, the Ampapankit family is "legally or operationally in a position to exercise restraint or direction" over both Saha Thai and Company C. Therefore, we find that Saha Thai and Company C are affiliated and that Saha Thai was obligated to identify this customer as an affiliate in response to our questionnaires.

We also find that Saha Thai and Company A are under common control by the Sae Heng/Ratanasirivilai family. Saha Thai conceded that the record establishes that the Sae Heng/Ratanasirivilai family has substantial ownership interest in Company A, sufficient to establish control. The Ratanasirivilai family is also in a position to exercise restraint or direction over Saha Thai within the meaning of section 771(33) on the basis of the family's ownership interest, possession of two seats on Saha Thai's board of directors, and the fact that Mr. Sae Heng is Saha Thai's Financial Director. Saha Thai's September 8, 1997 QR at Exhibit 2. As is true of Mr. Ampapankit, Mr. Sae Heng is one of the three Saha Thai officers who, together with one of the other officials can bind Saha Thai with his signature. Saha Thai October 2, 1997, Exh. 3 (Saha Thai Commercial Registration).

Saha Thai also contends that the Ratanasirivilai family is not in a position of control over Saha Thai because the family as a whole holds less than a 50% ownership interest in Saha Thai. We disagree. The Sae Heng/Ratanasirivilai family owns substantial interests in both Saha Thai and Company A. These ownership interests, coupled with the additional facts described above, support a finding that the Sae Heng/Ratanasirivilai family controls Saha Thai as well as Company A. *See e.g. Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Administrative Review*, 62 FR 18486, 18490 (April 15, 1997). Therefore, we conclude that Saha Thai and Company A are affiliated under section 771(33)(F) by virtue of common control by the Ratanasirivilai family.

Because we find Saha Thai affiliated with Company A, Company B, and Company C under section 771(33)(F) of the Act, our preliminary determination that Saha Thai significantly impeded this review by failing to identify these customers as affiliated parties remains unchanged. As we stated in the preliminary results, sales to these customers represent a significant portion of Saha Thai's home market sales. However, because Saha Thai failed to provide the information that identified these potential affiliations until late in the proceeding, we were unable to fully explore the nature of the affiliation between Saha Thai and these customers.

Our initial analysis of Saha Thai's sales to Company A and Company B, resellers of the subject merchandise, indicates that these sales were not made at arm's length. (Saha Thai objected to the Department's standard arm's length test in this review. *See* Comment 4 below and the "Department's Position." As total sales to the affiliated resellers exceeded 5% of Saha Thai's total home market sales during the POR, under our standard practice, we would have requested downstream sales data for these sales. The Department would then have been able to calculate normal value for these sales based on downstream prices pursuant to section 773(a)(5) of the Act. Therefore, we continue to find that Saha Thai was obligated to report these customers as affiliated resellers, and that its failure to do so prevented the Department from requesting and analyzing necessary downstream sales data. Given Saha Thai's failure to identify Company A, Company B and Company C as affiliates, we continue to find that Saha Thai failed to act to the best of its ability to comply with our requests for information on affiliates. (For a more detailed analysis of this issue, see the public version of the

Memorandum to the File, October 7, 1997.)

Comment 3

Saha Thai disputes petitioners' assertion that Saha Thai is affiliated with a home market customer and steel pipe producer, referred to in this public notice as Company E. Saha Thai also disputes petitioners' claim that the pipe manufactured by Company E is included in the scope of this review. Specifically, Saha Thai notes that the record does not show that Company E manufactures pipe with a surface coating, but rather pipe lined with PVC. Moreover, Saha Thai argues, the HTS subcategory 7306.30.5028, which includes pipe that is internally coated or lined with a non-electrically insulating material, is not included in the scope of the review. Saha Thai states that there is no evidence on the record that demonstrates that Company E produces unlined black or galvanized pipe as suggested by petitioners.

Saha Thai also argues that it is not affiliated with a home market customer that is a member of the Siam Steel Group (referred to in this public notice as Company D). Saha Thai argues that Company D also is not subject to common control with Saha Thai. Further, Saha Thai disputes petitioners' suggestion that it inconsistently applied the affiliated party provision of section 771(33) when responding to the Department's questionnaires. Saha Thai acknowledges, however, that the Department may classify certain members of the Siam Steel Group as affiliated because Saha Thai's managing director is chairman of each of these companies.

Petitioners argue that Saha Thai is affiliated with a certain end-user customer which also produces PVC-coated water pipes (Company E). Petitioners argue that PVC-coated steel water pipes are within the scope in this proceeding since the scope places no restriction on the surface finish of the merchandise. Moreover, petitioners note that it is likely that Company E would make uncoated water pipes as well as its production lines and would certainly be capable of producing uncoated water pipes as a requisite step in the production of coated water pipes. Petitioners argue that Saha Thai should have reported information about Company E's production and sales.

Petitioners also argue that home market customer Company D is affiliated with Saha Thai. Petitioners contend that Saha Thai admitted that the Chairman of Saha Thai is the Honorary Chairman of Company D.

Department's Position

Saha Thai, Company D, a home market customer, and Company E, a steel pipe producer, and other home market service providers are all members of the Siam Steel Group. The Department's regulations state that when analyzing affiliations under section 771(33) of the Act, the existence of corporate or family groupings is one indicia of control that will be closely scrutinized in each case. Final Regulations, 62 FR at 27380. The evidence on the record of this case demonstrates that, because of the Karuchit/Kunanantakul family's control of its member companies, the Siam Steel Group is a corporate or family grouping as envisioned by the SAA and the regulations, and therefore, the member companies are affiliated under section 771(33) of the Act.

Saha Thai acknowledged the potential for affiliation in its response to the Department's second supplemental questionnaire when it stated that "[t]he Chairman of Saha Thai is in a position to exercise 'restraint or control' over Saha Thai due to his position as Chairman and the authority he exercises on a day-to-day basis over the company's affairs. For this reason, we have described other members of the Siam Steel Group as potentially affiliated * * *". November 26, 1996 response at 2. Even more on point, in its rebuttal brief, Saha Thai conceded that at least four members of the Siam Steel Group are affiliated with Saha Thai because Mr. Somchai Karuchit, Saha Thai's Managing Director, is also the Chairman of these four companies. Saha Thai Rebuttal Brief at 4. As we stated in the preliminary results, Saha Thai's managing director is also chairman of Siam Steel International, a member of the Siam Steel Group, which during the POR became Saha Thai's largest shareholder. Saha Thai noted at verification that Siam Steel International also has investments in 11 of the other members of the Siam Steel Group. Saha Thai Cost Verification Report at 5. Moreover, the record evidence demonstrates that the Karuchit/ Kunanantakul family has significant common ownership interests in the members of the Siam Steel Group.

We find that this evidence of common management of and common ownership interests in these companies by Saha Thai's Managing Director and his family is strong evidence of affiliation by common control and the existence of a corporate or family grouping. However, despite the Department's request for such information, Saha Thai failed to provide sufficient data on the Siam Steel Group to permit a full analysis of control within the group. We disagree that Saha Thai has "provided excruciating detail" concerning the Siam Steel Group and its affiliation with Mr. Karuchit, Saha Thai's Managing Director (Rebuttal Brief at 35). For example, in its second supplemental questionnaire response, Saha Thai offered what can only be described as minimal disclosure on the nature of the common stockholding interests held by the family in the Siam Steel Group companies. While Saha Thai listed all family members with stock interests in group companies, Saha Thai failed to provide the percentage of interest held by each family member and the specific member company in which the family member's interests were held. September 23, 1996 response at 1. Further, Saha Thai provided only a "summary of the ownership and control structure" of each member of the group with no documentation to support its later claim that the companies in the group are operated independently. November 26, 1996 QR at 1. Saha Thai's submission is devoid of any explanation of the operation of the member companies; Saha Thai simply listed each company's investors and provided no explanation of the meaning it intended to convey when it identified companies being "controlled" by the family or certain investors.

The "affiliated person" provision of the statute is critical to the Department's antidumping analysis. Transactions between affiliated persons are highly scrutinized because they provide a means of potentially masking dumping and undermining the remedial purpose of the statute. With enactment of the URAA, Congress intended the Department to expand its longstanding scrutiny of relationships among corporate entities to "permit a more sophisticated analysis which better reflects the realities of the marketplace," identifying corporate or family groupings as illustrative areas warranting heightened scrutiny. SAA at 838. Accordingly, based on the facts of this case, we find it reasonable to conclude that the Siam Steel Group companies, which include Saha Thai, Company D, and Company E are affiliated under section 771(33)(F) of the Act based on common control. As described above, Saha Thai identified members of the Siam Steel Group as potential affiliates but provided incomplete information concerning the ownership interests and management structure of these companies in response to supplemental questionnaires. Absent this information, the Department was unable to examine the extent of common management and ownership among the Siam Steel Group. Saha Thai's failure to report complete information on the Siam Steel Group Companies is an additional factor supporting our determination to resort to total adverse facts available for this review. However, because evidence on the record does not establish that the products manufactured by Company E are within the scope of the antidumping duty order, our finding of affiliation between Saha Thai and this producer will not further affect the final results. (For a more detailed analysis of this issue, see the public version of the *Memorandum to the File*, October 7, 1997.)

Comment 4

Saha Thai argues that application of the Department's standard arm's length test is unreasonable and that use of an alternative test supports a finding of no affiliation between Saha Thai and certain of its home market customers. Saha Thai argues that reviewing courts have indicated that where evidence on the record of an individual case demonstrates that the test "resulted in actual distortion of price comparability" or otherwise produced unreasonable results, the standard test would not be sustained. Saha Thai further argues that the standard test continues to undergo refinements, and notes that the Department did not codify the standard test in its just-released final regulations, and cites the preamble to the Final Regulations, at 27355. Saha Thai claims that the Department's standard arm's length test, which uses average prices over the entire POR, introduces distortions into the price comparisons made and therefore produces inaccurate results. Saha Thai claims that its prices fluctuate with the cost of coil, the major production input, which changes frequently. Saha Thai claims that if a customer had no purchases of the product or if it purchased smaller quantities in months of lower prices, a comparison of this price with a weighted average based on the entire POR virtually guarantees that the alleged affiliate's price will fail the arm's length test. Saha Thai submits that because its prices are subject to frequent change the arm's length test used to analyze those prices must also compare prices at frequent intervals.

Saha Thai proposes limiting the window from which comparison sales are obtained to the allegedly affiliated parties' sale date. Under this proposed alternative, Saha Thai notes that no company which was reported as affiliated by Saha Thai, nor any company determined by the Department to be affiliated, fails the test. Saha Thai asserts that the Department should modify the standard arm's length test as proposed by Saha Thai for the final results of this administrative review. Saha Thai argues that application of this test yields two conclusions, either of which supports the use of Saha Thai's data as submitted: first, that Saha Thai is not affiliated with these resellers because it is not dealing with the resellers any differently from its dealings with other unaffiliated customers, and second, Saha Thai's prices to these resellers are at arm's length, thus permitting the use of these prices in the calculation of normal value even if the resellers are considered affiliated.

Petitioners counter that Saha Thai has provided no compelling reason for the Department to change its arm's length test at this belated stage of this administrative review. Therefore, argue petitioners, the Department should continue to apply its traditional court-approved 99.5% arm's length test for the final results of this administrative review. Petitioners first note that while the Department did not incorporate its arm's length test into its new regulations, just as they were not part of the old regulations, it did not repudiate this test. Petitioners note that in the preamble to Final Regulations at 27355, the Department states that it "will continue to apply the current 99.5% test unless and until we develop a new method." Petitioners hold that if the Department was going to change the 99.5% rule in this proceeding it should have done so in the preliminary results and afforded all parties adequate opportunity for comment for the final results.

Second, petitioners dispute Saha Thai's allegation that the 99.5% test does not reflect its pricing practices and should be modified. Petitioners oppose Saha Thai's suggestion of limiting the arm's length test to sales within seven days. Petitioners claim that this methodology is far too restrictive to capture the effects of changes in coil cost, as most companies purchase coils on a quarterly or monthly basis and the price of the output pipe does not change on a daily basis because of changing coil cost.

Department's Position

Although the Department did not codify its standard arm's length test in the final regulations, the Department explicitly stated its intent to continue to apply the current test. Final Regulations, 62 FR at 27355. The Department's 99.5 percent arm's length test methodology is well established, and the CIT has repeatedly sustained the methodology. *See Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21 (CIT 1995), *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994), *NTN Bearing Corp. Of America* v. *United States*, 905 F. Supp. 1083 (CIT 1995), and *Torrington Co.* v. *United States*, Slip Op. 97–29 (March 7, 1997). As cited in *Micron*, the CIT will uphold the arm's length test, unless that test is shown to be unreasonable. 893 F. Supp at 45 (*citing Usinor*, 872 F. Supp at 1004). In this case, Saha Thai has not provided sufficient record evidence to warrant the Department's departure from its standard arm's length test. As coil costs change on a monthly or quarterly basis, prices do not change rapidly enough to compel the use of a restrictive seven-day window for comparison. Absent compelling evidence of price distortion, the Department finds no reason to depart from its standard methodology for purposes of this review. Thus, the Department finds it reasonable to apply the standard arm's length test in this instance and has done so for this review. Further, even if these sales had passed the arm's-length test, we would still be using total facts available for Saha Thai's margin because of its failure to identify affiliated producers. Thus, this issue is moot.

Comment 5

Saha Thai asserts in its case and rebuttal briefs that the Department should have terminated this review upon the timely withdrawal by Saha Thai and SAF of their request for a review. Saha Thai states that on May 14, 1996, in accordance with 19 CFR 353.22(a)(5), it timely submitted a letter to the Department withdrawing the request for the 1995–1996 administrative review. Saha Thai argues that since it was the only party to the proceeding to make a timely review request in accordance with the law and the Department's regulations, and since that request was timely and properly withdrawn, the Department should terminate this review immediately. Saha Thai notes that while the domestic interested parties claimed that they filed a review request on March 29, 1996, they conceded in their June 21, 1996, letter that the Department had no knowledge of their review request and that the request was neither entered in the Central Record Unit log nor placed in the proper file. Saha Thai holds that the only question, jurisdictional in nature, is whether the document was received by the Central Records Unit and that there is no reason for the

Department to depart from the unambiguous filing requirements for administrative review requests.

Petitioners argue that they made a timely request for an administrative review for the 1995–1996 period and that request was delivered to Saha Thai's counsel. They argue that this delivery constituted notice to Saha Thai, who had itself requested a review for this period, that petitioners had requested a review. Petitioners state that, several weeks after submitting its request, it was informed by the Department that its request was not entered into the log of the Department's Central Records Unit and was not placed in the proper file. Petitioners cite evidence showing that copies of their request were delivered in a timely manner to the Central Records Unit and to the Department official identified as the contact for requests for this review by messengers and that these copies of the request were received by the proper Department employees. Petitioners argue that the evidence it cites constitutes reliable evidence of actual delivery and receipt of a request for an administrative review that satisfies the requirements of both the Act and the Department's regulations.

Petitioners argue that the Department should not penalize the domestic interested parties because the Department inexplicably failed to perform the ministerial tasks of stamping, logging in and filing in their timely request for an administrative review. Further, petitioners cite *Kemira Fibres Oy* v. *United States*, Slip Op. 95–1077 at 10 (Federal Circuit, August 2, 1995) *citing Brock* v. *Pierce County*, 476 U.S. 253, 260 (1986) as support for the proposition that the Department may accept the petitioners' request as timely where a party fails to comply with regulatory or statutory timing requirements.

Petitioners state that the Act does not require a stamped copy for proof of filing. Moreover, argue petitioners, while the Department's regulations do require a stamp as proof of timely filing, the regulations do not preclude the Department from considering other proof of timely filing such as that presented by petitioners in their case brief. Petitioners argue that the Department could consider the evidence they presented as sufficient to initiate or continue a review and that doing so would be within the Department's discretion.

Petitioners' argument continues that the Department's regulations in force at the time permit termination of a review upon timely withdrawal but do not require such termination. Given the domestic industry's interest in continuing the review and the evidence of a timely request detailed above, petitioners argue that the Department acted correctly in exercising its discretion to continue the review. Petitioners conclude by arguing that while the respondents in this review would not be prejudiced by the Department continuing this review the domestic interested parties have a statutory right to an administrative review and that the denial of this right would have caused them severe prejudice.

Department's Position

On May 14, 1996, Saha Thai, SAF, Ferro Union and ASOMA withdrew their request for review and requested that the Department terminate the review with respect to sales by Saha Thai/SAF during the period of review. The petitioners objected to termination of the review on the grounds that, in accordance with 19 CFR 353.22, they had submitted a timely request for review of these companies to the Department on March 29, 1996. Petitioners also noted that respondents were served with a copy of their request for review.

The antidumping statute is silent with respect to the Department's authority to terminate administrative reviews. When the statute is silent, the Department has inherent authority to fill any "gaps" in the statute by promulgating regulations. Section 353.22(a)(5) of the Department's regulations provides the Secretary with discretion in accepting a timely request for withdrawal. As indicated above, the evidence on the record does not provide a definitive answer as to whether there is an official record of petitioners' request for review in the Central Records Unit due to faulty delivery by the petitioners or ministerial error by the Department. The evidence does demonstrate, however, that the respondents were served with a copy of petitioners' request, and, therefore, were put on notice of petitioners' intent that the Department conduct this review. Given these facts and the remedial nature of the antidumping law, the Department exercised its discretion to continue the review. *See Memorandum to Robert S. LaRussa from Stephen J. Powell*, July 11, 1996.

Comment 6

Thai Union argues in its case and rebuttal briefs that the Department's use of average estimated margins contained in the original petition as the basis for the adverse facts available is an unwarranted departure from prior practice, frustrates the remedial purpose of the antidumping duty statute, is punitive, and is not the most probative evidence of the current margin of dumping. Thai Union claims that by resorting to margins contained in the original petition, the Department has eliminated any distinction between its treatment of cooperative respondents participating fully in an investigation and verification and its treatment of uncooperative respondents that ignore or mislead the Department. Thai Union contends that it has been a fully cooperative respondent during the 1995–1996 administrative review as evidenced by its detailed and timely responses to the Department's original and supplemental questionnaires, as well as to Department inquiries made by telephone. Thai Union further asserts that it cooperated fully with the Department during the verification and that Thai Union's employees met with the Department officials and responded to all questions and requests for information to the best of their ability. Thai Union argues that it encountered several situations which led to its failure of verification, but that these situations are not related to its efforts to cooperate. Thai Union states that several key Thai Union employees left the company during this administrative review. In addition, Thai Union contends that new individuals replacing the departed personnel entered their positions without the benefit of proper training and instruction from their predecessors.

Thai Union states that adverse facts available is usually applied to respondents who disregard the Department's requests for information, who refuse to participate in an investigation and verification, or who attempt to mislead the Department with the information provided. Thai Union contends that it does not fall into this category of respondent. As such, Thai Union argues that resorting to the adverse inference in this case frustrates the purpose of the statute, which is to induce respondents to provide the Department with requested information in a timely, complete, and accurate manner so that the Department may determine current margins within statutory deadlines. Thai Union argues that because the record demonstrates that it did not refuse to cooperate with the Department assigning the higher rate for facts available is unreasonable. Thai Union avers that the Department's reasoning defeats the policy behind the two-tiered BIA structure because it completely overlooks substantial cooperation by the company and instead focuses on the results of the verification to measure responsiveness. However, Thai Union contends that at verification, for a number of reasons, none of which touch on Thai Union's level of cooperation or participation, the data provided simply did not measure up. Thai Union states that the Department erred in its reference to Thai Union's "substantial omissions and incomplete responses" to the Department's requests for cost data as a justification for applying an adverse inference to the selection of facts available. Thai Union argues that it was wrong for the Department to gauge Thai Union's responsiveness on the results of verification. Thai Union states that it did not refuse to cooperate, but provided as much information as possible each time the Department made requests and communicated regularly with the Department during the investigation.

Thai Union claims the Department's determination—that the highest calculated margin in a prior review is not adverse—is unfounded. Thai Union argues that the Department offered no support for its opinion that application of the highest calculated margin of 29.89 percent *ad valorem* was not adverse to Thai Union, and that the average of the estimated margins in the petition 37.55 percent *ad valorem*, was adverse.

Thai Union also contends that the Department acted punitively in its choice of facts available. Thai Union argues that in choosing the average of petition rates instead of the highest calculated margin to assign to Thai Union the Department in effect sought out the most punitive information rather than the best information. Thai Union argues that the Department has violated the ruling in *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990) where the court stated that the application of the BIA rule is punitive if the Department rejects "low margin information in favor of high margin information that was demonstrably less probative of current conditions." Thai Union argues that the Department should have found that the highest calculated margin from the 1987–1988 administrative review was the most probative evidence of current margins but that it instead relied on refuted allegations from the original petition. Thai Union adds that there is no information on the record indicating that 29.89 percent is not indicative of current conditions and that there is no information on the record indicating that conditions reflected in the original investigation are more probative than the Department's findings in a more contemporaneous review. It argues that the Department should choose the most contemporaneous information in making its choice of facts available.

Finally, Thai Union argues that the Department erred in rejecting Thai Union's sales data. Thai Union states that the Department rejected Thai Union's sales data because the cost data could not be verified and to avoid manipulation of the margin calculation. Thai Union argues that this was inappropriate because Thai Union provided sales data in a timely manner, which the Department elected not to verify; therefore, there is nothing on the record which supports the conclusion that Thai Union's sales data is inaccurate. Thai Union concludes that the Department's rejection of Thai Union's sales data was arbitrary and that the Department improperly selected unverified estimates of margins, refuted in the original investigation, rather than using previously verified margins to determine the facts available in this administrative review.

Petitioners hold that the Department should apply adverse facts available to Thai Union for the final results as it did in the preliminary results of this review. Petitioners note that Thai Union had not provided complete questionnaire responses at the time verification commenced. In addition, during verification, Thai Union was unable to produce necessary records or to reconcile its submitted data with its records. Petitioners argue that virtually no aspect of Thai Union's cost of production and constructed value data was able to be verified by the Department. Moreover, the Department discovered at verification that Thai Union did not use its normal accounting books and records to prepare its responses even though these books contained product specific data, which Thai Union claimed to have used in its responses. Petitioners emphasize that Thai Union's incomplete general ledger made it impossible for the Department to reconcile the responses to the ledger. Petitioners assert that the cost build-ups provided by Thai Union at verification were inaccurate concerning reported labor costs, and Thai Union could not explain the calculations contained in those worksheets.

Petitioners argue that, because the cost of production and constructed value data was unverifiable, this data is unreliable and unusable for the final results. Therefore, petitioners assert, the Department is unable to determine whether Thai Union's home market sales were made at less than cost of production. However, since the constructed value data is unreliable and unusable as well, petitioners argue, there is no information on the record on which to base normal value, and the Department should decline to consider any of Thai Union's submitted information for the final results. Petitioners argue that Thai Union did not cooperate with the Department or act to the best of its ability to provide the information requested by the Department. Therefore, according to petitioners, the Department should apply an adverse inference to the facts available for the final results as it did in the preliminary results.

Department's Position

For these final results, we have determined that the facts of this case support assigning 37.55 percent, the average estimated margins from the petition, as total adverse facts available for Thai Union. Assigning this rate is fully consistent with section 776(a) and 776(b) of the Act. Section 776(a)(1) of the Act mandates the Department to use the facts available if necessary information is not available on the record and section 776(a)(2)(D) of the Act mandates the use of facts available when an interested party or any other person provides information that cannot be verified. As detailed in the preliminary results, Thai Union's responses to the Department's initial and three supplemental COP questionnaires were incomplete and unresponsive and contained numerous errors, omissions, and discrepancies. The information that Thai Union failed to provide the Department in the supplemental questionnaire responses is, in many instances, data that the Department first requested in the initial questionnaire. Moreover, at verification, Thai Union was unable to reconcile its reported cost data with its normal books and records kept in the ordinary course of business, was unable to provide requested worksheets to demonstrate the methodology used to calculate COP and CV, and was generally unprepared to go over items identified on the verification agenda. *See* Thai Union Cost Verification Report. Accordingly, the record in this case fully supports our determination to use facts available because necessary information is not on the record and Thai Union provided information that could not be verified.

In light of unverifiable COP and CV responses, the Department had no option other than resort to total facts available. We disagree with Thai Union's contention that we arbitrarily rejected Thai Union's sales data because our decision to resort to total facts available is based on our determination that Thai Union's entire response does not meet the requirements of section 782(e) of the Act. Because of the

extensive defects as detailed in the preliminary results, Thai Union's submitted COP and CV data could not be verified, which renders this information unreliable for purposes of calculating costs associated with Thai Union's actual production experience as required under the statute. Further, Thai Union's sales data does not meet the requirements of section 782(e) and was, therefore, not considered. The Department can only make price-to-price comparisons (normal value to export price) using those home market sales that pass the cost test under section 773(b) of the Act. The systematically flawed nature of Thai Union's COP data prevents the Department from testing Thai Union's home market sales to distinguish between below cost sales, which must be disregarded, and above cost sales, which are included in the margin calculation. Also, the Department is unable to calculate reliable difference in merchandise figures (DIFMERs) using Thai Union's unverified COP data. In this review, DIFMERs would have been required for a majority of the United States and home market sales matches. However, because DIFMER data is based on COP information from Thai Union's questionnaire responses, which, as discussed above, could not be verified, the Department is unable to measure the effect of physical differences in making sales comparisons. Finally, as we explained in the preliminary results, we determine that the use of facts available for Thai Union's COP data precludes the use of the submitted CV data because this data is tainted with unreliable cost elements. In sum, the unreliability of the submitted cost data renders Thai Union's sales unreliable and unusable. Thus, our rejection of Thai Union's sales data is based on a full examination of the record and analysis of the factors set forth in section 782(e). In similar factual circumstances, the Department has rejected an entire response due to the unreliability of a respondent's submitted cost data. *See e.g., Notice of the Final Determination of Sales at Less than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, 30312 (June 14, 1996); *Notice of Final Results of Antidumping Duty Administrative Review: Cut to Length Carbon Steel Plate from Sweden,* 62 FR 18396, 18401 (April 15, 1997).

Our determination that the use of adverse inferences is warranted in this review is also supported by record evidence that demonstrates Thai Union's failure to act to the best of its ability to comply with our requests. In this review, we evaluated Thai Union's level of cooperation based on both the sufficiency of its questionnaire responses and the results of verification. Thai Union's failure to provide complete and accurate responses coupled with the evident lack of preparation for the verification demonstrates that Thai Union did not act to the best of its ability to cooperate in this review. Thai Union's responses contained numerous discrepancies that remained unexplained at verification. Moreover, Thai Union was unprepared to perform the primary test of verification, e.g., reconciling its reported cost data with its normal books and records. This lack of preparation undermined the entire verification. Thai Union's attempt to explain its lack of preparation by arguing that key personnel had departed the company does not excuse its failure to explain the calculation of substantial portions of the cost response, retain necessary worksheets, or provide a complete general ledger from which we could examine the rudimentary elements of its cost data. We also note that Thai Union had participated in a previous segment of this proceeding wherein we conducted a verification of its response. *See e.g., Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Administrative Review,* 56 FR 58355 (November 19, 1991). Therefore, the company was familiar with the requirements and procedures for verification.

We disagree with Thai Union's contention that because it has participated fully in this review we cannot find that it is uncooperative. The SAA explicitly states that the determination of whether a party is uncooperative rests on whether or not the party has "acted to the best of its ability to comply with requests for necessary information." SAA at 870. A respondent's submission of information is one consideration in evaluating the level of cooperation. Neither the SAA nor our regulations prohibit us from finding a respondent has not cooperated to the best of its ability despite timely responses to our questionnaires. Rather, our determination is based on a full examination of the record of a particular segment to determine the quality of those responses (i.e., accuracy and completeness) and whether the respondent has hindered the calculation of accurate dumping margins. If this were not the case, then a respondent easily could manipulate the investigative process by providing complete yet inaccurate responses that cannot be verified. This scenario would cede control to the respondent to dictate the course of the review and force the Department to devote its limited administrative resources to scrutinizing frivolous questionnaire responses. In this regard, resorting to facts available under the current statute effectuates the same purpose as the BIA rule under the old law, that is, to encourage respondents to provide timely, complete, and *accurate* responses. *See e.g.,* Proposed Regulations, 61 FR 7307, 7327 (February 27, 1996) (noting that the factual circumstances triggering use of facts available are "virtually identical" to those triggering BIA); *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (Fed. Cir. 1990).

Thai Union's contention that we have unlawfully eliminated the distinction between cooperative and uncooperative respondents adopted under our prior practice apparently presumes that under the two-tiered BIA structure a cooperative respondent was assigned a non-adverse rate. However, that is not the case. As we explained in the Proposed Regulations, under the BIA provision, we automatically applied an adverse inference regardless of the level of cooperation by the respondent. *See* Proposed Regulations, 61 FR at 7327. We assigned the most adverse rate to uncooperative respondents and a less adverse rate to cooperative respondents. Thus, under either tier, the BIA rate was adverse. The URAA has eliminated this automatic use of an adverse inference by limiting the use of adverse inferences to factual situations in which the Department has determined that the respondent has not acted to the best of its ability. *Id.* Use of adverse inferences is now determined on a case-by-case basis by examining the record evidence in a particular segment to evaluate the respondent's level of cooperation. *Id.* at 7328; Final Regulations, 62 FR at 27340. Accordingly, Thai Union's reference to the two-tiered BIA structure under our prior practice is misplaced. In this review, consistent with the SAA and current practice, we have determined that the record evidence demonstrates that Thai Union failed to act to the best of its ability and appropriately have applied adverse inferences consistent with section 776(b) of the Act.

With respect to our selection of an adverse facts available rate, we disagree with Thai Union's assertion that the rate most recently calculated for Thai Union is an appropriate adverse facts available rate for purposes of this review. The SAA directs us to consider "the extent to which a party may benefit from its own lack of cooperation" in employing adverse inferences. SAA at 870. The highest calculated rate from this proceeding (29.89%) is the cash deposit rate currently assigned to Thai Union, which has been carried forward from the 1987–1988 administrative review. Based on the facts of this case, we find that assignment of Thai Union's existing cash deposit rate would be insufficient to effectuate the purpose of the facts available rule. We therefore selected a higher rate, the average of the estimated margins in the petition (37.55%).

Nor do we agree with Thai Union's contention that assignment of 37.55% is inappropriately punitive because it is "demonstrably less probative of current conditions." Section 776(c) authorizes the use of secondary information, which includes information derived from the petition, as a source of facts available, and the SAA explicitly states that the Department may rely upon information contained in the petition when making adverse inferences under section 776(b) of the Act. SAA, at 870. Therefore, the statute and SAA clearly envision the use of petition margins as the source of adverse total facts available, and there is no requirement that the Department prove that a petition margin is "more probative" than any other rate calculated during the particular proceeding. In fact, the SAA emphasizes that the Department need not "prove that the facts available are the best alternative information." SAA at 869.

The corroboration requirement contained in section 776(c) serves the purpose of assessing the probative value of the selected secondary information. To this end, when the Department relies on petition margins or calculated rates as total facts available, our practice is to evaluate the reliability and relevance of the information used as a measure of probative value. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan and Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 11825 (March 13, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 30309 (June 14, 1996).

In this case, as explained in the preliminary results, we determined that the petition margins are reliable because they were derived from price quotes, U.S. Customs data, import and export statistics, and other public information contemporaneous with the period of investigation. *See Antidumping Duty Petition,* February 28, 1985; *Memorandum for Alan F. Holmer from Gilbert B. Kaplan,* March 20, 1985. We also determined that the petition margins are relevant because there is no information on the record that demonstrates that 37.55% is not an appropriate total adverse facts available rate for Thai Union. *See e.g., Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review,* 62 FR 37543, 37555 (July 14, 1997).

Final Results of the Review

As a result of this review, we have determined that the following weighted-average dumping margins exist for the period March 1, 1995, through February 29, 1996:

Manufacturer/exporter	Period	Margin (percent)
Saha Thai/SAF/Thai Tube/Thai Hong	3/1/95–2/29/96	29.89
Thai Union	3/1/95–2/29/96	37.55

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 15.67 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: October 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27471 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697C]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting and Notice of Availability of Statement of Operating Practices and Procedures (SOPP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and of availability of SOPP.

SUMMARY: The Advisory Committee to the U.S. Section of ICCAT will hold its annual fall meeting on November 2–4, 1997. In addition, the Advisory Committee has finalized its SOPP and is announcing the availability of this document to the public.

DATES: The open sessions will be held on November 2, 1997, from 1 p.m. to 6 p.m. and November 3, 1997, from 8 a.m. to 12:45 p.m. Closed sessions will be held on November 3 from 1:45 p.m. to 6 p.m. and on November 4 from 8 a.m.

to 1 p.m. Written comments should be received no later than October 31, 1997.

ADDRESSES: The meeting will be held at NOAA Headquarters, 1315 East-West Highway (Silver Spring Metro Center Building 3), Silver Spring, MD 20910 in conference room 4527. Written comments should be sent to Kim Blankenbeker, Executive Secretary to the Advisory Committee, NOAA - Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Advisory Committee's SOPP also can be requested by writing the Committee's Executive Secretary.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in two open sessions to consider information being presented on stock status of highly migratory species and 1997 management recommendations of ICCAT's Standing Committee on Research and Statistics (SCRS). Also in the open sessions, the Advisory Committee will review and consider 1996 ICCAT meeting accomplishments, reports of ICCAT's intersessional meetings, results of the Committee's regional meetings, and implementation of 1996 and prior ICCAT recommendations and resolutions. Furthermore, the Committee will review highly migratory species research and management activities, including an overview of the status of recommendations resulting from the Advisory Committee's 1997 Species Working Group Workshop. Both sessions will be open to the public; however, the November 2 session will be the only opportunity for public comment. Written comments are encouraged and, if mailed, should be received by October 31, 1997, (See **ADDRESSES**). They can also be submitted during the open sessions of the Advisory Committee meeting.

The Advisory Committee will meet in closed session to discuss sensitive information, the discussion of which relates to U.S. negotiating positions to be taken at the Fifteenth Regular Meeting of the Commission to be held in Madrid, Spain, November 14–21, 1997. The Advisory Committee will discuss various options for the U.S. negotiating position during the closed sessions. Accordingly, the determination has been made that the Committee shall go into executive session for the afternoon session of November 3 and for the entire November 4 session.

The Atlantic Tunas Convention Act requires that the Advisory Committee draft its SOPP and make the document available to the general public. The Advisory Committee has finalized this document. It specifies the processes governing the Committee as a whole, its sub-groups, and its meetings, and it spells out Committee member functions. Members of the public that are interested in receiving a copy of the SOPP should write to the Advisory Committee's Executive Secretary (see **ADDRESSES**).

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: October 10, 1997.

Bruce Morehead,

Deputy Director, Office of Sustainable Fisheries.

[FR Doc. 97–27357 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for October 16, 1997 has been cancelled. The next meeting is scheduled for November 20, 1997 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Dated in Washington, DC, October 8, 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–27326 Filed 10–15–97; 8:45 am].

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

October 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 16, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Categories 340/640, 341/641 and 347/348 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58390, published on November 14, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 7, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on October 16, 1997, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	441,905 dozen.
341/641	164,887 dozen.
347/348	534,819 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27411 Filed 10–15–97; 8:45 am]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on October 29, 1997 from 1:00 p.m. to 5: 30 p.m. in the first floor hearing room of the Commodity Futures Trading Commission (Room 1000), Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The agenda will consist of:

Agenda

I. Welcoming Remarks by Commissioner Joseph B. Dial;
II. Report on USDA's Risk Management Education Summit;
III. Status report on potential lifting of the ban on Agricultural Trade Options;
IV. Status of proposed changes to the CBT Corn and Soybean Futures Contract delivery terms;
V. Status of delivery terms issues for the CBT Wheat Futures Contract;
VI. Status of FutureCom proposal for a new electronic exchange;
VII. Producer Panel discussions on "How do agricultural producers feel about Risk Management?";
VIII. Farmer Organizations' Panel on "What will it take to motivate more producers to prudently manage their price and yield risks?"; and
IX. Presentations on the "flex options" being listed on the Coffee, Sugar, and Cocoa Exchange and the proposed listings on the Chicago Mercantile Exchange.
X. Other Committee Business;
XI. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objective of the Advisory Committee are more fully set forth in the seventh renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly Harter, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Harter in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on October 10, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27488 Filed 10–15–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Civil Aircraft Landing Permit System; DD Forms 2400, 2401, 2402; OMB Number 0701–0050.

Type of Request: Reinstatement.

Number of Respondents: 3,600.

Response Per Respondent: 1.

Annual Responses: 3,600.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,800.

Needs and Uses: The Federal Aviation Act of 1958 (Pub. L. 85–726, section 1107) authorizes government agencies to regulate public use of government-owned airfields. Military airfields are established and funded to support the level of operations necessary to support the national defense mission; therefore, civil aircraft access to military airfields is not comparable to civil airports. The Military Departments have made military airfields available to civil aircraft operators, primarily to conduct official business; however, use for other purposes is also occasionally accommodated. The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable, if the civil aircraft becomes involved in an accident while using military airfields, facilities, and services.

Affected Public: Individuals or households; Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 9, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27316 Filed 10–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DOD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include the Alternative Personnel System concept and other matters related to the enhancement of Labor-Management Partnerships throughout DOD.

DATES: The meeting is to be held November 19, 1997, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by November 12, 1997, in order to be considered at the November 19 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, 696–6301, ext. 704.

Dated: October 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27315 Filed 10–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on November 4, 1997; November 18, 1997; and November 25, 1997, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: October 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27314 Filed 10–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend three systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 17, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: October 9, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in computer/imaging system.'

* * * * *

SAFEGUARDS:

Delete last sentence and insert 'Records in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Current year plus 2 years of records will be retained in the records system, then deleted from the computer database.'

* * * * *

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, Washington, DC 20330–1160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel, present and former civilian employees, Air Force Reserve and Air National Guard personnel, Air Force Academy nominees/applicants and cadets, Senior and Junior Air Force Reserve Officers, dependents of military personnel, and anyone who has written to the President or a Member of Congress regarding an Air Force issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applicable Congressional/Executive correspondence and Air Force replies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Information is used as a reference base in the case of similar inquiries from other Members of Congress, in behalf of the same Air Force issue and/or follow-up by the same Member. Information may also be used by appropriate Air Force offices as a basis for corrective action and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer/imaging system.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Current year plus 2 years of records will be retained in the records system, then deleted from the computer database.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel Records. Congressional and Executive inquiries and information from Air Force offices and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AETC A

SYSTEM NAME:

Lead Management System (LMS) *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters, Air Force Recruiting Service, 550 D Street, Suite 01, Randolph Air Force Base, TX 78150–4527, and a contracted advertising agency provide recruitment advertising for the Air Force - location depends on the contractor.

Air Force Opportunity Center (AFOC); (duties at this center are performed by a civilian contractor who is engaged by the Air Force to provide lead fulfillment services. Contact the system manager for specific locations).

Air Force Recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 503, Enlistments; Air Education and Training Command Instruction 36–2002; and E.O. 9397 (SSN).'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved primarily by name or Social Security Number. May be retrieved by recruiting program or any category in the data base.'

SAFEGUARDS:

Change last two sentences to read 'Records are stored in locked rooms, cabinets, and computers. Those in computer storage devices are password protected and encrypted by computer system software prior to transmission.'

* * * * *

F036 AETC A

SYSTEM NAME:

Lead Management System (LMS).

SYSTEM LOCATION:

Headquarters, Air Force Recruiting Service, 550 D Street, Suite 01, Randolph Air Force Base, TX 78150–4527, and a contracted advertising agency provide recruitment advertising for the Air Force - location depends on the contractor.

Air Force Opportunity Center (AFOC); (duties at this center are performed by a civilian contractor who is engaged by the Air Force to provide lead fulfillment services. Contact the system manager for specific locations).

Air Force Recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Respondent's inquiry record containing name, address, date of birth, sex, telephone number, advertising medium, recruiting program in which interested, and source of referral, including name and Air Force base assigned. Recruiter contact records containing success of contact efforts, reason for not contacting, how contact was made, confirmation of educational level, qualification and status of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 503, Enlistments; Air Education and Training Command Instruction 36–2002; and E.O. 9397 (SSN).

PURPOSE(S):

The contractor fulfills requests from respondents for information about the Air Force and notifies appropriate recruiting activities of respondent's interest. Contractor develops statistical summaries which are used by U.S. Air Force Recruiting Service to evaluate the effectiveness of the advertising and referral programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form, in file folders and in computers and on computer products.

RETRIEVABILITY:

Retrieved primarily by name or Social Security Number. May be retrieved by recruiting program or any category in the data base.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and computers. Those in computer storage devices are password protected and encrypted by computer system software prior to transmission.

RETENTION AND DISPOSAL:

Retained by contractor at the AFOC for two years after end of fiscal year in which all actions are completed, then records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Advertising Branch, Headquarters, U.S. Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Advertising Branch, Headquarters, U.S. Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, Headquarters, U.S. Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual respondent and automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

STORAGE:

Add to end of entry 'and in computers and computer output products.'

* * * * *

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters, U.S. Air Force; major command headquarters; all Air Force installations and units, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Manual 30–3, Vol III, Mechanized Personnel Procedures, Air Force Manual 30–130, Vol I, Base Level Military Personnel System, and E.O. 9397 (SSN).

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files and in computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, Headquarters, U.S. Air Force, Washington, DC 20330–5060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–27317 Filed 10–15–97; 8:45 am]

BILLING CODE 5000–04–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 22, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 7 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

In addition to the subjects listed which are scheduled for public hearing at the business meeting, the Commission will also address the following: Minutes of the September 24, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; consideration of Jefferson Township Sewer Authority Docket No. D–97–6 CP; a resolution to establish a Monitoring Advisory Committee; a status report on proposed amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania and public dialogue.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1998, in the aggregate amount of $3,737,000 and a capital budget reflecting revenues of $2,302,500 and expenditures of $2,155,500. Copies of the current expense and capital budgets are available from the Commission on request by contacting Richard C. Gore at (609) 883–9500 ext. 201.

A Proposal to Adopt the 1998 Water Resources Program. A proposal that the 1996–1997 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be extended and adopted as the 1998 Water Resources Program and that a staff report of progress during 1997 in completing elements of the program and policies in the 1996–1997 Water Resources Program be made a part thereof, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Town of Milto D–83–22 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 10 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 2, 3, 4 and 5. Commission approval on August 12, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 10 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

2. *New Jersey-American Water Company D–90–89 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's Belvidere System from Well Nos. 1 and 2. Commission approval on August 12, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in White Township, Warren County, New Jersey.

3. *Borough of Glassboro D–96–54 CP.* An application for approval of a ground water withdrawal project to supply water to the applicant's distribution system from previously approved Well Nos. 2 through 7 and new Well Nos. 8 and 9, to increase the existing withdrawal limit of 25.92 mg/30 days from all Cohansey wells to 75.8 mg/30 days, and to increase the total allocation from all wells of 88.7 mg/30 days to 105 mg/30 days. The project is located in Glassboro Township, Gloucester County, New Jersey.

4. *London Grove Township Municipal Authority D–97–27 CP.* An application for approval of a new 0.243 million gallons per day (mgd) (average monthly design capacity) spray irrigation discharge project to serve the Inniscone residential development in London Grove Township as well as a portion of Avondale Borough, and to provide golf course irrigation in London Grove Township, Chester County, Pennsylvania. Secondary treatment will be provided by lined aerated lagoons prior to tertiary filtration and chlorine disinfection and discharge to either a 47-acre spray irrigation disposal area or for irrigation of a 72-acre golf course area. The project is located in the East Branch White Clay Creek watershed but no stream discharge is proposed.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Other Scheduled Hearing

By earlier notice, the Commission announced that it will hold a public hearing to receive comments on proposed amendments to its Administrative Manual—Rules of Practice and Procedure which are intended to delete obsolete provisions, to clarify certain provisions of the rules and better inform the signatory parties, applicants and the general public with regard to the Commission's practices and procedures. The proposed revisions conform the rules to existing Commission interpretations and practices.

The public hearing will be held on October 22, 1997 beginning at 3 p.m. and continuing until 5 p.m., as long as there are people present wishing to testify. The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The deadline for inclusion of written comments in the hearing record will be announced at the hearing. Copies of the full text of the proposed amendments to the Administrative Manual—Rules of Practice and Procedure may be obtained by contacting Susan M. Weisman at (609) 883–9500 ext. 203. Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should be submitted to the Secretary at the Delaware River Basin Commission, PO Box 7360, West Trenton, New Jersey 08628.

Dated: October 7, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–27328 Filed 10–15–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIMES: November 4–5, 1997, 9:00 a.m. to 4:00 p.m.

ADDRESSES: The National Indian Education Association Convention, Washington State Historical Society Museum-Auditorium, 1911 Pacific Avenue, Tacoma, Washington, 98402.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 1250 Maryland Avenue, Portals 4300, Washington, DC 20202. Telephone: (202)–260–2431; Fax: (202) 260–7779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a Presidentially appointed advisory council on Indian education established under Section 9151 of Title IX of the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 7871). The Council advises the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that includes Indian children and adults as participants or from which they benefit. The Council also makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs.

This meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above.

A summary of the proceedings and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting, and are available for public inspection at the Office of Elementary and Secondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW, Washington, DC 20202 from the hours of 8:30 a.m. to 5:00 p.m.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

National Advisory Council on Indian Education

November 4–5, 1997

Meeting Location; Washington State Historical Society Museum-Auditorium; 1911 Pacific Avenue, Tacoma, Washington

Meeting Agenda

Tuesday, November 4, 1997

8:30 a.m.—Meeting Location:
Washington State Historical Society Museum-Auditorium, 1911 Pacific Avenue, Tacoma, Washington.
9:00 a.m.—Call to Order by NACIE Chairman & Roll Call, Introductions, Invocation
9:30 a.m.—Reorganization of the National Advisory Council on Indian Education
11:45 a.m.—Lunch
1:00 p.m.—Public Hearing on Indian Education Issues
4:30 p.m.—Recess

Wednesday, November 5, 1997

8:30 a.m.—NACIE will attend General Session of NIEA—Dr. Tirozzi/ Keynote
10:00 a.m.—Meeting Location: Washington State Historical Society Museum-Auditorium
10:30 a.m.—NACIE Discussion on Congressional Reporting Requirements
12:00 Noon—Lunch
1:00 p.m.—Public Hearing on Indian Education Issues
3:30 p.m.—Recess to meet with Dr. Tirozzi, Council Deliberation and Recommendations

[FR Doc. 97–27420 Filed 10–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: October 30, 1997 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, U.S. Department of Education, 600 Independence Avenue, SW., Room 3100, ROB #3, Washington, DC 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1131a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is open to the public. The National Board will meet on Thursday, October 30, from 9:00 a.m. to 4:00 p.m. to provide an overview of the Fund's program status and special initiatives and orient new Board members.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8:00 a.m to 4:30 p.m.

Dated: October 10, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–27487 Filed 10–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–783–000]

ANR Pipeline Company; Notice of Application

October 9, 1997.

Take notice that on September 30, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit Michigan 48243, filed, in Docket No. CP97–783–000, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to utilize temporary work spaces and for any other authorization deemed necessary associated with a pipeline replacement project in La Porte County, Indiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to replace a 0.62 mile line segment of both its 22-inch O.D. main line and its 30-inch O.D. loop line beginning at Mile Post 891.69 to satisfy the safety requirements of Part 192 of the U.S. Department of Transportation's regulations. ANR states that in order to make the replacement it will have to utilize temporary work spaces which may not have been included in the scope of the original authorization to construct the facilities. Therefore, ANR requests the temporary use of work space and any other authorizations deemed necessary by the Commission in order to make the replacement. ANR states that the construction will be done within the existing right-of-way under the authority of section 2.55 of the Commission's regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be participate in the hearing process or to make any protest with reference to said application should on or before October 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party, in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–641–000]

ANR Pipeline Company; Notice of Site Visit

October 9, 1997.

On October 16, 1997, beginning at 12:00 p.m., the Office of Pipeline Regulation (OPR) staff will conduct a compliance inspection of ANR Pipeline Company's (ANR) Michigan Leg South Looping Project facilities in Porter County, Indiana, beginning at ANR's construction office located at 8619 Louisiana Place, Merrillville, Indiana.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–27330 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27331 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–2–000]

ANR Pipeline Company; Notice of Application

October 9, 1997.

Take notice that on October 1, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP98–2–000 pursuant to section 7(c) of the Natural Gas Act, for authorization to utilize temporary work spaces and any other authorization deemed necessary associated with a pipeline replacement project in Kent County, Michigan, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to replace a 0.96 mile line segment of its mainline system because of increased population density in order to satisfy U.S. Department of Transportation safety regulations. ANR states that in order to make the replacement, it will have to utilize temporary work spaces which may not have been included in the scope of the original authorization to construct the facilities. ANR states that the construction will be done within the existing right-of-way under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27332 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–3–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 9, 1997.

Take notice that on October 2, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP98–3–000 a request pursuant to sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new point of delivery to Bayer Corporation in Wetzel Country, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that the point of delivery has been requested by Bayer Corporation for industrial service. The estimated quantities of natural gas to be delivered will be up to 2,737,500 Dth/annually with a volume of 20,000 Dth/day. The estimated cost to construct is $250,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27333 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–10–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 9, 1997.

Take notice that on October 7, 1997, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–10–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to operate as a jurisdictional facility a four-inch tap and three-meter station placed into service under section 311(a) of the Natural Gas Policy Act (NGPA) and section 284.3(c) of the Commission's regulations, under Koch's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch asserts that the proposed certification of facilities will enable Koch to provide transportation services under its blanket transportation certificate through a tap serving Entex, Inc. (Entex), a local distribution company, in Harris County, Texas. Koch states that the estimated average day and peak day requirements for this delivery point are 600 MMBtu and 3,600 MMBtu, respectively. Koch further states that such volumes will be transported pursuant to either, or a combination of Koch's Firm Transportation (FTS) or No Notice Transportation Service (NNS) rate schedules. Koch further asserts that the tap and meter station cost approximately $40,000.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27334 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–37–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

October 9, 1997.

Take notice that on October 6, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet, to become effective October 1, 1997:

2nd Substitute Twenty-Second Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to comply with the Commission's September 29, 1997 order in Docket No. TM98–1–37–001. Accordingly, Northwest has reinstated the GRI Adjustment as an MMBtu rate.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27339 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–64–002]

Pacific Interstate Offshore Company; Notice of Compliance Filing

October 9, 1997.

Take notice that on October 7, 1997, Pacific Interstate Offshore Company (PIOC) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of October 1, 1997:

Substitute Fourth Revised Sheet No. 6

PIOC states that the purpose of this filing is to comply with a Commission order dated September 29, 1997 (80 FERC § 62,290) which approved PIOC's filing subject to PIOC revising its pagination on the tariff sheet as a substitute tariff sheet within 15 days of the Commission's order. PIOC states that no other changes have been made to the tariff sheet.

PIOC states that copies of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27340 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–14–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

Take notice that on October 6, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its third annual cashout report for the September 1995 through August 1996 period.

Tennessee states that the cashout report reflects a net cashout loss during this period of $9,143,633. Tennessee further states that the report also reflects Tennessee's loss to date from cashout operations since August 1993 totaling approximately $10,715,607.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27338 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–503–001]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

October 9, 1997.

Take notice that on October 6, 1997, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 62, in compliance with the Commission's Order dated September 25, 1997.

That order identified an error in the proposed tariff sheet mentioned above. The original WIC filing of August 28, 1997, changed the method WIC uses to bill flowing gas under firm transportation agreements from receipts to deliveries as well as making certain housekeeping-type revisions. The error noted by the Commission did not appear on the "redlined" version of the tendered tariff sheet, but, through an oversight, the Second Revised Tariff Sheet No. 62 in publication format and the electronic version were not updated. WIC's October 6 filing corrects these errors.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27337 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073–MA and 11607–000–MA]

Holyoke Water Power Company, Ashburnham Municipal Light Plant and Massachusetts Municipal Wholesale Electric Company; Notice Establishing Subsequent Licensing Procedural Schedule and a Deadline for Submission of Final Amendments

October 9, 1997.

The license for the Holyoke Hydroelectric Project, FERC Project No. 2004, located on the Connecticut River, in Hampden, Hampshire, and Franklin Counties, Massachusetts, expires on August 31, 1999. Competing applications for a new license have been filed as follows:

Project No.	Applicant	Contact
P–2204–073	Holyoke Water Power Company	Ronald G. Chevalier, Holyoke Water Power Co., P.O. Box 270, Hartford, CT 06141, (860) 665–5315. James J. Kearns, NE Utilities. Serv. Co., P.O. Box 270, Hartford, CT 06141, (860) 665–5936.
P–11607–000	Ashburnham Municipal Light Plant & Mass. Municipal Wholesale Electric Company.	Catherine E. Shively, Public Serv. Co. NH, 1000 Elm Street, Manchester, NH 03105, (603) 634–2326. Roger W. Bacon, Mass. Wholesale Elec. Co., Randall Rd., P.O. Box 426, Ludlow, MA 01056, (413) 589–1041. Thomas E. Lewis, Ashburnham Municipal Light Plant, 78 Central Street, P.O. Box 823, Ashburnham, MA 01430, (508) 827–4423.

The following is an approximate procedural schedule that will be followed in processing the applications:

Date	Action
November 27, 1997	Commission notifies applicant that its application is deficient, if applicable.
January 31, 1998	*Commission's deadline for applicant to file final amendment, if any, to its application.*
February 14, 1998	*Commission's deadline for applicants to serve a copy of its competing application on each of the other applicants per section 4.36 (d)(2)(ii) of the Commission's regulations.*
February 28, 1998	Commission notifies applicant that its application has been accepted, and issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
March 31, 1998	*Commission's deadline for applicants to file a detailed and complete statement of how its plans are as well or better adapted than the plans of each of the other license applications to develop, conserve, and utilize in the public interest, the water resources of the region, per section 4.36(d)(2)(iii) of the Commission's regulations.*
May 31, 1998	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the applications, the Commission will evaluate the applications in accordance with applicable statutory requirements and take appropriate action on each application.

Any questions concerning this notice should be directed to Allan Creamer at (202) 219–0365.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27335 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

October 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a Subsequent License.

b. *Project No.:* 3516.

c. *Date filed:* October 1, 1997.

d. *Submitted By:* City of Hart, Michigan, current licensee.

e. *Name of Project:* Hart Lake Project.

f. *Location:* On the Pentwater River, in Hart Township, Oceana County, Michigan.

g. *Filed Pursuant to:* 18 CFR 16.19 of the Commission's regulations.

h. *Effective date of current license:* April 1, 1962.

i. *Expiration date of current license:* September 30, 2002.

j. *The project consists of:* (1) a 31-foot-high, 890-foot-long dam; (2) a 240-acre reservoir; (3) a powerhouse containing two generating units with a combined total capacity of 320 kW; (4) an 80-foot-long tailrace; (5) transmission lines; and (6) appurtenant facilities.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* The City of Hart, Clerk's Office, 407 State Street, Hart, Michigan 49420, (616) 873–2488.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 and 16.20 each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2000.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27336 Filed 10–15–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00510; FRL–5751–2]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Wednesday, October 22, 1997 from 1:00 p.m. to 5:15 p.m. and Thursday, October 23, 1997 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: the Holiday Inn (Hotel & Suites, Historic District Alexandria); 625 First Street; Alexandria, VA 22314; Phone: 703–548–6300.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway; Arlington, VA; Phone: 703–305–7090; e-mail: fehrenbach.margie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC is composed of a balanced group of participants from the following sectors: pesticide industry and user groups; federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; the public health community; and, congressional staff. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP. The Committee also provides advice and guidance to OPP regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

Topics to be discussed at the October 22–23, 1997 meeting are:

1. Update on FQPA implementation and year-end status report for FY-97;
2. Communications/Right-to-know: consumer brochure, consumer labeling initiative and inerts;
3. Antimicrobials: "treated articles issue" (products impregnated with pesticides);
4. Discussion of FQPA issues covered at recent Science Advisory Panel (SAP) meeting (criteria for requiring in-utero cancer studies and exposure assessment methodologies for residential scenarios);
5. Discussion of ILSI workshop on organophosphate (OP) recommendations;
6. Other science and policy issues/ impact on FQPA (e.g., use of the 10-fold additional uncertainty factor, reassessment of carcinogens under a threshhold model); and,
7. Minor use pesticides -- how tolerances are evaluated and set for section 18s.

List of Subjects

Environmental protection.

Dated: October 10, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–27630 Filed 10–15–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 8, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 17, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0745.
Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 170.
Estimated Time Per Response: 37.18 hours (avg.).
Cost to Respondents: $45,000.
Total Annual Burden: 4,250 hours.
Needs and Uses: In the Report and Order issued in CC Docket 96–187, the Commission adopts measures to implement the specific streamlining tariff filing requirements for local exchange carriers (LECs) of the Telecommunications Act of 1996 (1996 Act). The Commission requires the following information be collected from LECs eligible for streamlined regulation: (a) electronic filing requirements; (b) requirement that carriers desiring tariffs proposing rate decreased to be effective in seven days must be filed in separate transmittals; (c) requirement that carriers identify transmittals filed pursuant to the streamlined provisions of the 1996 Act; (d) requirement that price cap LECs file their Tariff Review Plans (TRSs) prior to filing their annual access tariffs; (e) petitions and replies; and (f) standard protective orders. All of the requirements would be used to ensure that local exchange carriers comply with their obligations under the Communications Act and that the Commission be able to ensure compliance within the streamlined timeframes established by the 1996 Act.

OMB Approval Number: 3060–0438.
Title: Transmittal Sheet for Cellular Applications for Unserved Areas.
Form Number: FCC Form 464.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 49.
Estimated Time Per Response: .166 hours (10 minutes).
Cost to Respondents: N/A.
Total Annual Burden: 8 hours.
Needs and Uses: FCC rules require that applicants submit a transmittal sheet, FCC Form 464, in addition to other filing requirements pursuant to 47 CFR part 22. FCC Form 464 is designed to facilitate application intake and other processing functions by serving as a cover sheet to the application. FCC Form 464 is used in Phase I of the licensing scheme for Cellular Applications for Unserved Areas. The form is being revised to add a space for applicant's Internet or e-mail address and to add a space to collect Taxpayer Identification Number (TIN) as required by the Debt Collection Improvement Act of 1996.

OMB Approval Number: 3060–0318.
Title: Notification of Commencement of Service or of Additional or Modified Facilities.
Form Number: FCC Form 489.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 7,000.
Estimated Time Per Response: 3.62 hours.
Cost to Respondents: $525,000.
Total Annual Burden: 8,960 hours.
Needs and Uses: The FCC Form 489 is a multi-purpose form used by commercial mobile radio service providers subject to 47 CFR parts 22 and 24 to notify the Commission of commencement of service, satisfaction of construction requirements, additional transmitters, minor modifications to stations and for certain other miscellaneous purposes. In addition to the requirements specified on the form, applicants may be required to file exhibits and showings as specified by the applicable rule part. The requested information is used by Commission staff in carrying out its duties as set forth in section 308 and 309 of the Communications Act of 1934, as amended. The forms is being revised to add a space for the licensee to provide an Internet/e-mail address and to request the licensee's Taxpayer Identification Number (TIN). The TIN is required to comply with the Debt Collection Improvement Act of 1996. A type of licensee "government entity" is also being added to the choices prior to the signature on the application.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–27412 Filed 10–15–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2232]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 10, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed October 31, 1997. See Section 1.4(b)(1) of the commission's rule (4 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policy and Rules concerning the Interstate, Interexchange Marketplace Universal Service.

Implementation of Section 254(g) of the Communications Act of 1934, as amended (CC Docket No. 96–61).

Number of Petitions Filed: 7.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–27414 Filed 10–15–97; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2233]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 14, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchase from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed October 31, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Assessment and Collection of Regulatory Fees for Fiscal Year 1997 (MD Docket No. 96–186).

Number of Petitions Filed: 6.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–27505 Filed 10–15–97; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.
DATE & TIME: Tuesday, October 21, 1997 at 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
DATE & TIME: Thursday, October 23, 1997 at 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC (ninth floor).
STATUS: This meeting will be open to the public.
ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Regulations: Who Qualifies as a "Member" of a Membership Association: Notice of Proposed Rulemaking.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer Telephone (202) 219–4155.

Mary W. Dove,
Administrative Assistant.
[FR Doc. 97–27589 Filed 10–14–97; 11:38 am]
BILLING CODE 6715–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission, Subcommittee on Research.
TIME AND DATE: Saturday, October 18, 1997, 10:30 a.m. to 3 p.m.
PLACE: The meeting site will be: The Doubletree Hotel, Denver, 3203 Quebec Street, Denver, CO 80207.
STATUS: Open to the public. Seating is limited to 90 people on a first come, first served basis.
NOTICE: The Subcommittee on Research will be convened to gather information for the National Gambling Impact Study Commission, to analyze relevant issues and facts, and to draft a proposed research agenda for deliberation by the Commission at its next regular meeting. The Subcommittee meeting falls under 41 CFR § 101–6.1004(k), and is not subject to FACA. Nonetheless, all interested parties are welcome to attend.
CONTACT PERSONS: For further information, contact Amy Ricketts at (202) 523–8217 or write to 800 North Capitol Street, NW., Suite 450, Washington, DC 20002.

Timothy A. Kelly,
Research Director.
[FR Doc. 97–27356 Filed 10–15–97; 8:45 am]
BILLING CODE 6820–ET–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).
Date and Time: November 7, 1997, 8:30 am to 5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.
Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.
Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 97–27467 Filed 10–15–97; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Advanced Technologies and Instrumentation Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on November 5 and 6 (1) and on November 12 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 9:00 A.M. to 4:00 PM each day.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1828.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (8) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27461 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering & Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering & Environmental Systems (#1189).

Date & Time: November 6–7, 1997; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Person: Dr. Edward H. Bryan, Program Director, Environmental Engineering Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27469 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Pane for Biomolecular Processes—(5138) (Panel A).

Date and Time: Wednesday, and Friday, November 5, 6, & 7, 1997 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Susan Porter Ridley, Assistant Program Manager for Metabolic Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1441).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27459 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology (1136)—(Panel B).

Date and Time: Wednesday, Thursday, and Friday November 5, 6, and 7, 1997 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Eve Barak and Richard D. Rodewald, Program Directors, for the Cell Biology Program, National Science Foundation, Room 655 South, Arlington, VA 22230. Telephone: 703/306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda. To review and evaluate research proposals submitted to the Cell Biology Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

Rebecca M. Winkler,

Committee Management Officer.

[FR Doc. 97–27460 Filed 10–15–95; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: November 6 and November 7, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 530 & 580, Arlington, Virginia.

Contact Person: Drs. Jorn Larsen-Basse and Sunil Saigal, Program Directors, Surface Engineering & Tribology, Mechanics and Materials Programs, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x5073 and x5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27462 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer and Computation Research (1192).

Date: November 5 and 7, 1997.

Time: 8:00 a.m.–5 p.m.

Place: Rooms 1105.17, 1150, 920, and 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Kamal Abdali, Acting Director, CCR, room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1910.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Faculty Early Career Development (CAREER) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27463 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: November 3, 1997, 8:00 a.m.–5:30 p.m.

Place: Rooms 360, 365, 390, and 680, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing Program, Dr. George Hazelrigg, Program Director, Design and Integration Program, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, Dr. Lawrence Seiford, Program Director, Operations Research and Production Systems, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Faculty Early Career Development (CAEER) and Presidential Early Career Awards for Scientists and Engineers (PECASE) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27468 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) Panel B.

Date and Time: Monday, November 3, 1997 through Tuesday, November 4, 1997, 8:30 am to 5:00 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. DeLill Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Eukaryotic Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27465 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) (Panel A).

Date and Time: Thursday, November 6, 1997 through Friday, November 7, 1997, 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Philip Harriman, Program Director for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a preprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (8) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27466 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 6–7, 1997.

Time: 8:30 a.m.–5:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.
Contact Person: Dr. Thomas J. Baerwald, Deputy Assistant Director for Geosciences, Suite 705, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1502.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.
Agenda:
NSF strategic planning and budget development
Geosciences long-range planning
Committee of Visitor reports and responses
Human resource issues in the geosciences
Geoscience staffing issues

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27464 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).
Date & Time: Thursday, November 6; 8:30 a.m.–5:00 p.m.
Place: Room 105, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Michael R. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306–1582.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate OCE's Research Experiences for Undergraduate (REU) proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27458 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (66).
Date and Time: November 6–7, 1997, 8 a.m.–5 p.m.
Place: Rm. 1060, NSF, 4201 Wilson Boulevard, Arlington, VA.
Type of Meeting: Open.
Contact Person: Dr. G. Bruce Taggart, Program Director for Materials Theory, Materials Research Division, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1834.
Purpose of Meeting: To carry out Committee of Visitors (COV) review of the Materials Theory Program grant portfolio and identify emerging research areas.
Agenda: To review and evaluate existing Materials Theory grant portfolio and recommend areas for future emphasis.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27456 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).
Date and Time: November 3, 1997; 8:00 am to 5:00 pm.
Place: Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Fae Korsmo, Program Director for Arctic Social Science, Office of Polar Programs, Room 740, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Arctic Social Science proposals as part of the selection process for awards.
Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27457 Filed 10–15–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–2 ASLBP No. 98–733–01–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

International Uranium (USA) Corporation

White Mesa Uranium Mill

(Request for License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR Subpart L of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Native American Petitioners on an amendment to the Source Material License of International Uranium (USA) Corporation to allow receipt and processing of uranium-bearing material. The license amendment was granted by the Nuclear Regulatory Commission staff on August 15, 1997.

The Presiding Officer designated for this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR 2.722, Administrative Judge Charles N. Kelber has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Kelber in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 9th day of October 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–27423 Filed 10–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–0299]

Umetco Minerals Corporation; Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of application from Umetco Minerals Corporation to change six site-reclamation milestones in Condition 59 of Source Material License SUA–648 for the Gas Hills, Wyoming Uranium Mill.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 3, 1997, an application from Umetco Minerals Corporation (Umetco) to amend License Condition (LC) 59 of its Source Material License No. SUA–648 for the Gas Hills, Wyoming uranium mill. The license amendment application proposes to modify LC 59 to extend the completion dates for placement of the final radon barrier and the erosion protection cover for the Inactive, the A–9, and the Heap Leach impoundments.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 59 with the proposed changes would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m.²/s above background:
for the Inactive impoundment (enhanced barrier)—December 31, 1999;
for the A–9 impoundment—December 31, 2003;
for the Heap Leach impoundment—December 31, 1998.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40:
for the Inactive impoundment—December 31, 2002;
for the A–9 impoundment—December 31, 2004;
for the Heap Leach impoundment—December 31, 2001.

Umetco's application to amend LC 59 of Source Material License SUA–648, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Umetco Minerals Corporation, 2754 Compass Drive, Suite 280, Grand Junction, Colorado 81506–8741, Attention: John S. Hamrick; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 8th day of October 1997.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–27418 Filed 10–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Evaluation of Agreement State Radiation Control Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Implementation of the Integrated Materials Performance Evaluation Program and rescission of a final general statement of policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is implementing the Integrated Materials Performance Evaluation Program (IMPEP) for the evaluation of Agreement State programs. NRC is rescinding the May 28, 1992, General Statement of Policy "Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992," since it is now superseded.

The NRC has issued the final policy statements: "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs," (See 62 FR 46517; September 3, 1997). Conforming revisions to IMPEP in connection with these two policy statements have been completed and are reflected in the implementing procedure, Management Directive 5.6, Integrated Materials Performance Evaluation Program.

EFFECTIVE DATE: October 1, 1997.

ADDRESSES: Interested persons may obtain a single copy of Management Directive 5.6 by contacting Nancy Belmore, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1–37, Washington, DC 20555, telephone (301)–415–2326.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1–37, Washington, DC 20555, telephone (301)–415–2320.

SUPPLEMENTARY INFORMATION: In 1995, NRC implemented, on an interim basis, a process to evaluate NRC regional licensing and inspection programs and Agreement State radiation control programs that regulate the use of radioactive materials in an integrated manner using common performance indicators (see 60 FR 54734; October 25, 1995). The NRC staff conducted the interim program using Management Directive 5.6, "Integrated Materials Performance Evaluation Program" dated September 12, 1995. On June 30, 1997, the Commission approved SECY–97–054, Final Recommendations on Policy Statements and Implementing Procedures for: "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs." NRC is implementing IMPEP with the corresponding revisions as a result of the final policy statements. The revised Management Directive is currently being prepared in final form to incorporate the final policy statements and comments received during interim implementation of IMPEP from the Regions and the Agreement States.

NRC is rescinding the May 28, 1992, "NRC Review of Agreement State Radiation Control Programs: Final General Statement of Policy," on October 1, 1997. This policy is superseded by IMPEP, which is no longer considered an interim program.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT: In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that Management Directive 5.6 is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville Maryland this 7th day of October, 1997.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.

[FR Doc. 97–27424 Filed 10–15–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated December 6, 1996, submitted by Mr. Jonathan M. Block, on behalf of the Citizens Awareness Network, Inc. (CAN). The Petition requested evaluation of certain Memoranda enclosed with the Petition relating to the Vermont Yankee Nuclear Power Station operated by the Vermont Yankee Nuclear Power Corporation (Licensee) to see if enforcement action is warranted.

The first document enclosed with the Petition is a CAN Memorandum dated December 5, 1996, that reviews information presented by the Licensee at an enforcement conference held on July 23, 1996, involving the minimum flow valves in the Vermont Yankee residual heat removal system. CAN raises a concern that the corrective action taken by the Licensee in opening these valves may have introduced an unreviewed safety question with regard to containment isolation.

The second document enclosed with the Petition is a CAN Memorandum dated December 6, 1996, that contains a review of certain Licensee Event Reports (LERs) submitted by the Licensee in the latter part of 1996. Various issues are presented, such as fire protection, tornado protection, thermal protection for piping lines, equipment operability, and equipment testing. On the basis of its analysis of the LERs, CAN reaches certain conclusions regarding the performance of the Licensee and actions that should be taken.

On the basis of these documents, CAN requests that the NRC determine whether enforcement action is warranted pursuant to 10 CFR 2.206.

The Director of the Office of Nuclear Reactor Regulation has granted the Petition in that the NRC staff has evaluated the majority of issues and LERs raised in these Memoranda to see if enforcement action is warranted based upon the information contained therein. The conclusion of the evaluation is that no further enforcement action is warranted for those issues and LERs that are closed. LERs which remain open will be resolved through the normal inspection and enforcement process and will be addressed in a Final Director's Decision after the NRC staff has completed its evaluations. The reasons for the staff's conclusions are provided in the "Partial Director's Decision Pursuant to 10 CFR 2.206" (DD–97–25), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room located at Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301. A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will become the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.
Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.

Partial Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

On December 6, 1996, Mr. Jonathan M. Block, submitted a Petition to the Office of the Secretary of the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition was submitted on behalf of the Citizen's Awareness Network, Inc. (CAN or Petitioner), and contained two Memoranda from CAN. The first Memorandum enclosed with the Petition is dated December 5, 1996. It reviews information presented by the Vermont Yankee Nuclear Power Corporation (Licensee) at a predecisional enforcement conference held on July 23, 1996, involving the minimum flow valves in the residual heat removal (RHR) system at the Vermont Yankee Nuclear Power Station (Vermont Yankee facility). CAN raises a concern that the corrective action taken by the Licensee in opening these valves may have introduced an unreviewed safety question with regard to containment isolation.

The second Memorandum enclosed with the Petition is dated December 6, 1996, and contains a review of certain licensee event reports (LERs) submitted by the Licensee in the latter part of 1996. Various issues are presented, such as fire protection, tornado protection, thermal protection for piping lines, equipment operability, and equipment testing. On the basis of its analysis of the LERs, CAN reaches certain conclusions regarding Licensee performance and actions that should be taken. In the Petition, the Petitioner requested that the NRC evaluate these documents, pursuant to 10 CFR 2.206, to see if enforcement action is warranted based upon the information contained therein.

On February 12, 1997, the NRC informed the Petitioner in an acknowledgement letter that the Petition had been referred to the Office of Nuclear Reactor Regulation for the preparation of a Director's Decision and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition.

II. Discussion

The NRC staff evaluation of these documents follows:

A. The Residual Heat Removal System

The first document enclosed with the Petition is a CAN Memorandum dated December 5, 1996, that reviews information presented by the Licensee at a predecisional enforcement conference held on July 23, 1996, involving the minimum flow valves in the Vermont Yankee RHR system.[1] The Vermont Yankee RHR system consists of two loops. Each loop has two pumps that take suction from the suppression chamber. Each pump has a minimum flow line equipped with a minimum flow valve that returns flow to the suppression chamber. The RHR pumps start automatically to cool the reactor in case of a loss-of-coolant accident (LOCA). The minimum flow valves close to prevent flow from being diverted from the reactor core to the suppression pool when flow is being supplied from the RHR pumps to the reactor core, and open automatically on high pump discharge pressure to protect the RHR pumps if other valves between the RHR pumps discharge and the reactor core are not yet open.

The Licensee discovered a vulnerability to single failure which could prevent the minimum flow valves from opening to protect the RHR pumps during a LOCA. To resolve this concern, the Licensee changed the normal and failed positions of these valves from CLOSED to OPEN. The Petitioner is concerned that the corrective action taken by the Licensee in opening these valves may have introduced an unreviewed safety question with regard to containment isolation.[2] A pipe break outside containment would breach primary containment with an OPEN minimum flow valve.

This issue must be addressed in terms of the Vermont Yankee facility licensing basis. The basic design for early boiling-water reactors, including the Vermont Yankee facility which was reviewed and accepted by the NRC, considered the piping of the RHR and Core Spray (CS) Systems to be a closed extension of primary containment. Failure of the passive pressure boundary (piping) of these systems during either the short-term (injection phase) or long-term (recirculation phase) course of a design-basis accident (DBA) was not a design basis assumption. As a result, the RHR and CS suction and minimum flow lines were not provided with containment isolation valves, or if valves were provided in these lines, they were not provided for the purpose of meeting containment isolation requirements and thus were not classified as containment isolation valves. In most if not all cases, the penetrations of concern in the older plants were originally provided with at least one valve capable of performing the containment isolation function, and these valves are periodically tested under inservice testing (IST) program requirements. The Vermont Yankee minimum flow valves can be remotely closed and are periodically tested under the IST program.

For more recent facilities, emergency core cooling system (ECCS) closed systems outside containment are required to have at least one recognized isolation valve at each penetration. This is not the case for the Vermont Yankee facility.

In view of the licensing criteria applicable to the Vermont Yankee facility, maintaining the minimum flow valves of the RHR system in the OPEN position is permitted and acceptable. The Vermont Yankee final safety analysis report (FSAR) does not describe the minimum flow valves as being in the CLOSED position, and placing these valves in the OPEN position is not a change to the facility under the meaning of 10 CFR 50.59 and no unreviewed safety question is presented. For the above reasons, no enforcement action is warranted with regards to this issue.

B. Licensee Event Reports

The second document enclosed with the Petition is a CAN Memorandum dated December 6, 1996, that contains a review of several LERs submitted by the Licensee in the latter part of 1996. Various issues are presented, such as fire protection, tornado protection, thermal protection for piping lines, equipment operability, and equipment testing. On the basis of its analysis of the LERs, CAN reaches certain conclusions regarding Licensee performance and actions that it believes should be taken. First, CAN requests that the NRC and the Licensee review all safety analyses conducted since initial startup of the Vermont Yankee facility with particular attention to their role in providing a complete and up-to-date FSAR. Second, the Licensee needs to correct serious deficiencies in its design change control process and should undertake a historical review of its design control documentation to verify its accuracy. Third, the Licensee should perform a global evaluation to determine how many modifications have been inadequately tested since startup. Fourth, the Licensee needs to initiate a thorough retraining program to review and emphasize the underlying safety purposes of Technical Specifications, the FSAR, design bases and NRC regulations in relation to routine operation of the Vermont Yankee facility, emergency preparedness, and practical implementation of the NRC's "defense in depth" philosophy. Finally, CAN strongly recommends that the Licensee's Vermont Yankee staff receive training on the proper use of the "Single Failure" criterion.

The LERs identified in the CAN Memorandum are briefly discussed below.

(1) LER 96–13: "Two fire suppression systems do not meet design requirements due to personnel error on the part of [the] vendor who designed and installed the systems"

CAN asserts that the LER did not address the cause and consequences of

[1] Several statements in the December 5, 1996, Memorandum are either unclear or incorrect. A single power supply failure does not prevent RHR minimum flow valves in both loops from operating, contrary to the statement on page 2 of the Memorandum. Mihimum flow valves in both loops will not remain open if a single power supply failure occurs, contrary to the statement on page 3 of the Memorandum. Also, on page 4 of the December 5, 1996, Memorandum, CAN questions the remote manual closure capability of the minimum flow valves. The minimum flow valves have remote manual closure and opening capability, but the pump protection logic will override any remote manual closure or opening signal.

[2] The NRC staff assumes Petitioner's reference to an "unreviewed safety question" is in the context of the NRC's regulation 10 CFR 50.59, "Changes, Tests, and Experiments".

the foam suppression system deficiency, which is one of the two fire suppression systems addressed in this LER. CAN is correct in that the Licensee did not determine a precise root cause because such a long time had elapsed since the occurrence (1978). It is not unreasonable for a licensee to be unable to ascertain the exact root cause of a personnel error that took place many years before (18 years in this case). Key points that are considered in reviewing an LER are (1) whether the specific problem is being appropriately addressed, (2) whether the potential for a broader problem exists and, (3) if a broader problem exists, whether it is properly addressed. In this case, the Licensee reviewed its current design process and procedures and determined that a similar occurrence would not be expected to occur now, and the Licensee had two teams that were actively reviewing the fire protection design bases and searching for the types of problems reported in the LER. CAN is incorrect in stating that the consequences of the foam system deficiency were not discussed in the LER. The Licensee stated that any fire in the area would be contained and suppressed, preventing its spread to safety-related equipment.

Because the design deficiencies addressed in this LER were licensee-identified and corrected, they were treated as Non-Cited Violations in Inspection Report 50–271/96–05 in accordance with Section VII.B.1 of the NRC's Enforcement Policy,[3] and the LER was closed in Inspection Report 50–271/96–06. Further enforcement action is not warranted.

(2) LER 96–14: "Failure to provide tornado protection for diesel generator rooms as specified in the Final Safety Analysis Report due to unknown cause"

The FSAR states that large venting areas are provided to vent the diesel generator room in the event of a tornado to provide pressure equalization. The LER notes that the facility as constructed did not include venting. CAN asserts that "flaws in the FSAR cause serious, rippling effects throughout VY's [Vermont Yankee facility's] safety systems" and that the Licensee "must include assessments of the impact of the deficient conditions upon all affected programs."

The Licensee took immediate action to insure emergency diesel generator (EDG) operability in the absence of the pressure relief panels. The Licensee took immediate compensatory measures which included blocking open the EDG room doors and posting fire and security watches. The Licensee took additional compensatory actions for the restoration of operability of the diesel and day tank enclosures during cold weather months when the EDG doors had to be shut. An NRC inspector verified that the recommended compensatory measures were properly implemented.

The discrepancy between the actual plant design and the FSAR is a de facto change to the facility as described in the safety analysis report, and thus required an evaluation to meet the requirements of 10 CFR 50.59. The failure to perform such a 10 CFR 50.59 evaluation was categorized as a Severity Level IV violation, and was dispositioned in Inspection Report 96–11 as a Non-Cited Violation in accordance with Section VII.B.1 of the Enforcement Policy.

Other plants have been found to have FSARs which do not properly describe the facilities. Consequently, for this reason and as a result of lessons learned from events at Millstone Nuclear Power Station and Maine Yankee Atomic Power Station, on October 9, 1996, the NRC requested information from all power reactor licensees, to verify, among other things, that the plant FSARs properly describe the facilities, and that the systems, structures, and components are consistent with the design basis. In conjunction with this request for information, and in order to encourage licensees to identify discrepancies, the Commission approved a modification to the NRC Enforcement Policy that allows the NRC staff to exercise enforcement discretion for a period of 2 years for violations related to FSAR discrepancies identified by licensees. The policy revision was published in the **Federal Register** on October 18, 1996 (61 FR 54461).

In the Licensee's response to this request for information dated February 14, 1997, the Licensee committed to complete its FSAR verification program in 1998.

CAN raises a concern about a potential error in the Licensee's statement in this LER of no prior occurrences, based on a James A. Fitzpatrick Nuclear Power Plant report of a similar problem. Licensees are only required to report prior similar occurrences at their facility, and not at any other facility. Therefore, the Licensee was accurately reporting that a similar event had not previously occurred at Vermont Yankee Nuclear Power Station. This LER is closed. Further enforcement action is not warranted. The Licensee has issued a supplement to this LER to document the long term corrective actions to vent the EDG room in the event of a tornado to provide pressure equalization. This LER supplement remains open pending NRC inspection of the Licensee's modifications to the EDG room to provide the required pressure equalization.

(3) LER 96–15: "Original B31.1 ANSI Code Section that Required Overpressurization Relief for Isolated Piping Sections was not Considered during [the] Original Design"

Certain piping sections, which would be isolated after a LOCA, were found to lack overpressure protection contrary to code requirements. The water in this piping could expand because of the high temperatures accompanying a LOCA and exceed the design pressure rating of the piping. CAN asserts that the Licensee failed to take advantage of earlier opportunities to identify this design error when making modifications to the six systems discussed in the LER. CAN is correct in that the LER represented the first discovery of this problem, although modifications had been made to the affected systems earlier. This potential overpressurization problem has been identified at other plants, as evidenced by the issuance of NRC Information Notice (IN) 96–49 on August 20, 1996, and NRC Generic Letter (GL) 96–06 on September 30, 1996. The Licensee did maintain an awareness of events in this area and identified this issue at its site before the generic communications referred to above were issued. The NRC staff encourages licensee initiatives to identify and correct safety problems that may be generic to the industry in advance of generic NRC staff communications to the industry. The Licensee's corrective actions included a design change which provided the required overpressure protection for the affected lines. The change was completed in the 1996 refueling outage.

This LER remains open. Responses from power reactor licensees to GL 96–06 were received by the NRC staff in February 1997 and are undergoing review to assure that the overpressure protection issue is being adequately addressed and resolved. Following this generic review, a determination will be made of whether enforcement action is warranted for specific plants. Information regarding the completion of this activity and any enforcement action taken will be publicly available in the plant specific Inspection Reports. This LER will be further discussed in a Final Director's Decision when the LER is closed.

(4) LER 96–18: "Inadequate Installation and Inspection of Fire Protection Wrap Results in Plant Operation Outside of Its Design Basis, A Single Fire Would Impact Multiple Trains of Safety-Related Equipment"

CAN asserts that this deficiency had significant adverse safety implications. The reported deficiency consisted of a small gap in the fire barrier installed on a cable tray support. The cable tray contained wiring to support operation of the ECCS. The NRC staff does not consider CAN's claim, that a fire could have rendered both divisions of the ECCS inoperable, credible. The Licensee's evaluation found that existing fire protection analyses were very conservative, and that, with the combustible loading and fire detection and suppression equipment in the area, no credible fire threat could challenge the functionality of the "as found," wrapped cable. The Licensee has acted appropriately to correct the fire barrier deficiency and to prevent similar problems in the future. With the combustible loading, fire detection, and suppression equipment in the area, the NRC staff conceptually agrees with the Licensee's conclusion that no credible fire threat could challenge the functionality of the "as found" wrapped cable. Inspection activities were performed the week of August 18, 1997 to verify the Licensee's conclusion.

This LER remains open. Results of the inspection and any enforcement action as a result of this inspection activity will be made publicly available through plant specific Inspection Reports. This LER will be further discussed in a Final Director's Decision when the LER is closed.

(5) LER 96–19: "Half scram and group III containment isolation caused by loose Reactor Protection System breaker termination"

The NRC staff agrees with CAN that this event presented no significant risk to public health and safety. This LER is closed. No violation was involved, therefore the NRC staff concludes that enforcement action is not warranted.

(6) LER 96–20: "Inadequate vender [sic] design activity and Licensee design verification result in inability to demonstrate Fire Suppression System Operability"

This LER involved the inability of the carbon dioxide fire suppression system to fully extinguish a deep-seated fire, as required. The Licensee stated in the LER that this event had no safety significance. The NRC staff considered this LER to have little apparent actual or potential safety significance. This conclusion was based on the Licensee's analysis that although the carbon dioxide suppression systems might not fully extinguish a deep-seated fire, the suppression and detection systems would function. Fire detection would alert the fire brigade, and because the carbon dioxide fire suppression system had reduced the fire, the fire brigade could extinguish the fire more easily. The NRC staff closed this LER in Inspection Report 96–11. Pending inspector review of the Licensee's corrective actions, the unresolved item initiated for this issue in Inspection Report 96–08 (URI 96–08–01) was left open. As documented in Inspection Report 97–05, unresolved item 96–08–01 was closed and a Non-Cited Violation was issued, consistent with Section VII.B.1 of the NRC Enforcement Policy. Further enforcement action is not warranted.

CAN asserts that this LER reveals a serious deficiency in the Licensee's design change control process, and that the Licensee should determine how many other modifications have been inadequately tested since startup. The NRC staff agrees that this event demonstrated a weakness in the Licensee's modification and testing programs associated with fire protection. As noted under the discussion regarding LER 96–13, the Licensee has initiated reviews of the fire protection design bases to search for these types of problems, and believes that the current design process and procedures are adequate to prevent similar problems. As discussed earlier, by letter dated October 9, 1996, the NRC staff requested information from all licensees, to verify, among other things, the adequacy of the design change control process and to determine the rationale for concluding that design-basis requirements are properly translated into operating, maintenance, and testing procedures. The Licensee responded by letter dated February 14, 1997.

(7) LER 96–21: "Inadequate procedural controls of MOV Limit Switch Settings result in a potential common cause failure mode with the capacity to affect multiple safety significant components"

This LER involved two limit switches on shutdown cooling suction motor-operated valve (MOV) to the "D" RHR pump. The switches measure valve travel towards the open position. One open limit switch permits the pump motor to start after the valve position is sufficiently open, and the other limit switch stops valve travel so that the motor doesn't drive the valve too far and damage the valve. The Licensee identified that a modification to the valve's motor operator resulted in the improper setting of these two limit switches.

Inspector follow-up, as documented in Inspection Report 97–05, led to the conclusion that this error was of low safety significance. The failed start of the "D" RHR pump because of this limit switch error on the shutdown cooling suction valve affected only the shutdown cooling mode of operation of the RHR system. The failure did not impact the other modes of RHR system operation and the safety design bases functions of the RHR system. Further, prompt Licensee action was taken to check the other recently modified MOVs. Their limit switches were found to be properly set and therefore their safety functions were unaffected. This licensee-identified and corrected violation resulted in the issuance of a Non-Cited Violation, consistent with Section VII.B.1 of the NRC Enforcement Policy. This LER is closed. Further enforcement action is not warranted.

(8) LER 96–22: "Combination of poor man-machine interface, an inadequate procedure, inadequate Operating Experience Review results in a common cause failure mechanism, and an Emergency Diesel Generator to exceed Tech Spec [sic] outage time"

The output breaker for one emergency diesel generator (EDG) was found to be incapable of closing because of a missing cotter pin which was necessary for a mechanical linkage. As a result of the absence of this cotter pin, the breaker closing springs failed to recharge, rendering the breaker incapable of being closed from the control room. The only indication that the closing springs had failed to recharge was a mechanical flag indicator located behind the breaker cubicle door.

[3] The NRC's policy and procedures for determining the enforcement action that may be warranted for a violation are discussed in NUREG–1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy). Because regulatory requirements have varying degrees of safety, safeguards, or environmental significance, the first step in the enforcement process is to evaluate the significance of the violation and then assign a severity level to the violation. A violation is assigned one of four severity levels. As described in Section IV of the Enforcement Policy, Severity Level I is assigned to violations that are the most safety significant and Severity Level IV is assigned to violations that are the least safety significant. Consistent with the recognition that violations have different degrees of safety significance, the Enforcement Policy recognizes that there are other violations of minor safety or environmental concern that are below the level of significance of Severity Level IV violations. These minor violations are not normally the subject of formal enforcement action and are not usually described in inspection reports. To the extent that such violations are described, they are usually described as "Non-Cited Violations."

No licensee procedures required verification of the closing spring status. The closing springs were apparently in an uncharged condition for over three weeks without discovery. Because the periodic surveillance interval for the breaker is greater than the EDG limiting condition for operation (LCO), the Licensee unknowingly operated in violation of its Technical Specification (TS) governing diesel generator operability. After reviewing the Licensee's root cause analysis of this event, the NRC staff determined that the missing cotter pin would not reasonably have been expected to be detected by the Licensee's existing quality assurance program or through other related control measures. [4] The Licensee identified the EDG inoperability, investigated to determine when the problem arose, and reported that the LCO time was exceeded. The Licensee responded to the inoperable equipment when the inoperability was discovered. The Licensee did not intentionally exceed an LCO. Rather, the Licensee discovered an equipment problem caused by a malfunction beyond its control which meant that, in hindsight, an LCO had been exceeded. The Licensee is designing a modification for this and other circuit breakers of similar design to allow monitoring of the charging status of the closing springs without having to open the circuit breaker cubicle door.

Because the EDG inoperability was not avoidable by reasonable Licensee quality assurance measures or management controls, the NRC did not issue a Notice of Violation for this issue. This is consistent with Section VI.A of the Enforcement Policy. This LER is closed. The NRC staff concludes that further enforcement action is not warranted.

(9) LER 96–23: "Inadequate Surveillance Procedure results in failure to meet Technical Specification requirements for Radiation Monitor Functional Testing"

The reactor building and refueling floor radiation monitor test procedure did not verify the high alarm contact actuation as required by TS. The NRC staff agrees with CAN that this event presented no significant risk to public health and safety. Considering that the monitors were verified to be fully functional, and were in the condition required by Plant Technical Specifications, this specific event appears to have been limited to an inadequate testing methodology. The Licensee's corrective actions included revising the deficient surveillance test procedure to properly test the high alarm output contacts.

However, the LER remains open as the NRC staff has not completed its inspection activities related to this LER. The NRC staff will look historically to see if this is an isolated case as part of the enforcement consideration. On January 10, 1996 the NRC issued Generic Letter (GL) 96–01 , "Testing of Safety-Related Logic Circuits," that requested, among other things, that all power reactor licensees review their surveillance test procedures to ensure that all portions of the logic circuitry are being tested. The Licensee's response to GL 96–01, due to be sent to the NRC in September 1997, will be evaluated with respect to the Licensee's long-term corrective action for logic testing procedures, because any associated corrective action could be considered in determining whether enforcement action is warranted. Information regarding any enforcement action taken will be available publicly in plant-specific Inspection Reports. This LER will be further discussed in a Final Director's Decision when the LER is closed.

(10) LER 96–25: "Inadequate testing leads to misadjustment of isolation valve mechanical stop and failure to meet Technical Specification leak rate limits for containment purge isolation valve"

This LER involved a containment isolation valve which leaked in excess of TS requirements. The amount of valve leakage was influenced by the direction in which the valve was leak tested and the adjustment of a mechanical stop. CAN's concern appears to be that the Licensee failed to apply the single-failure criterion in assessing the significance of the failure in its LER. section 50.73(b)(3) requires that an LER contain an assessment of the safety consequences and implications of the event, including the availability of other systems or components that would have performed the safety function of the failed system or component. In this case, the requirement is that the assessment include the availability of a redundant component (valve) that would have performed the safety function (torus isolation). Petitioner's issue is thus whether the LER should have, in addition, assessed the potential radiological consequences had a design-basis accident (DBA) occurred with failure of the redundant isolation valve. Compliance with section 50.73(b)(3) does not require that the assessment consider an additional single failure beyond the failure which forms the basis for the assessment. On the basis of required reporting, LER 96–25 was not deficient in omitting discussion of the potential consequences of failure of the redundant valve. Inspection Report 50–271/96–11 dispositioned this Severity Level IV TS violation as a Non-Cited Violation in accordance with the criteria for enforcement discretion in Section VII.B.1 of the Enforcement Policy. Although the event was considered to be of more than minor safety significance, the outboard valves had successfully passed all previous tests, and thus the demonstrated containment integrity was always maintained for the two affected penetrations. This LER is closed. No further enforcement action is warranted.

C. Summary

In summary, with respect to CAN's concern that an unreviewed safety question with respect to containment isolation may have been introduced by Licensee actions in opening the RHR minimum flow lines, the NRC staff determined that no unreviewed safety question was introduced and, therefore, no enforcement action is warranted. With respect to CAN's concerns related to the LERs, the NRC staff finds that the Enforcement Policy has been applied consistently for the LERs that have been closed and further enforcement action is not warranted.

For those LERs which remain open the Inspection/Enforcement process will continue until the staff has completed its investigation and consideration of the issues involved. LER closure and enforcement action, as appropriate, will be documented publicly as is NRC staff practice, and will documented in a Final Director's Decision.

With regard to CAN's overall conclusions based on its analysis of the above LERs, the NRC staff has reached the following conclusions:

With respect to CAN's conclusion that the NRC and the Licensee should review all safety analyses conducted since startup of the Vermont Yankee facility with particular attention to their role in providing a complete and up-to-date FSAR, the NRC staff has taken actions as noted in the discussion above related to LER 96–14 with respect to identifying and correcting FSAR inaccuracies. This action was taken in a request on October 9, 1996, to all licensees, including Vermont Yankee, to provide the requested information. In addition, the NRC staff has implemented a series of engineering design inspections, including an inspection to verify portions of the Licensee's design control process and maintenance of the Licensees's FSAR commitments. The results of the NRC design inspection conducted at Vermont Yankee were reported in Inspection Report 97–201 dated August 27, 1997.

With respect to CAN's conclusion that the Licensee needs to correct serious deficiencies in its design change control process and should undertake a historical review of its design control documentation to verify its accuracy, the NRC staff has taken action as noted in the discussion related to LER 96–20 with respect to identifying and correcting design change control process deficiencies. In the October 9, 1996 letter to all licensees, including Vermont Yankee, the NRC staff requested information to verify, among other things, the adequacy of the design change control process and to determine the rationale for concluding that design-basis requirements are properly translated into operating, maintenance, and testing procedures. As also noted in the discussion related to LER 96–20, the Licensee has undertaken a review of the fire protection design bases to search for the type of problems involved in LER 96–20, and believes that the current modification programs are adequate to prevent similar problems.

With respect to CAN's conclusion that the Licensee should perform a global evaluation to determine how many modifications have been inadequately tested since startup, as noted in the discussion related to LER 96–20, the Licensee has been required to provide verification of the design change control process, including among other things the rationale for concluding that design basis requirements are translated into testing procedures.

With respect to CAN's conclusion that the Licensee needs to initiate a thorough retraining program to review and emphasize the underlying safety purposes of TSs, the FSAR, design bases and NRC regulations in relation to routine operation of the Vermont Yankee facility, emergency preparedness, and practical implementation of the NRC's "defense in depth" philosophy, the NRC staff disagrees. In the discussion related to LER 96–22, the NRC staff addresses CAN's assertion that the Licensee misconstrues the purposes of TS LCO as part of a "chronic pattern of misunderstanding" of TS, FSAR design bases and NRC regulations. The NRC staff finds no basis to require such a retraining program.

Finally, CAN strongly recommends that the Licensee's Vermont Yankee staff receive training on the proper use of the "Single Failure Criterion." In the discussion related to LER 96–25, the NRC staff addresses what seems to be the basis for CAN's recommendation: i.e. the perception that the Licensee failed to properly apply the Single Failure Criterion in assessing the significance of a leaking isolation valve in LER 96–25. Compliance with Section 50.73 does not require that the assessment consider an additional single failure. The enforcement conference related to the minimum flow valves concerned a problem in implementation of the Single Failure Criterion; not a misunderstanding of the requirements of the Single Failure Criterion. Because the Licensee did not err in the instance described in LER 96–25 and the Petition provides no other instances in which problems were caused by a misunderstanding of the Single Failure Criterion, the NRC staff finds no basis for requiring additional training.

III. Conclusion

The NRC staff has reviewed the information submitted by the Petitioner. The Petitioner's request is granted in that the NRC staff has evaluated the majority of issues and LERs raised in the Memoranda provided by the Petitioner to see if enforcement action is warranted based on the information contained therein. The NRC staff has discussed each Memorandum above and described any related enforcement action taken for those issues and LERs which are closed. The NRC will continue the same process and consideration for the LERs that remain open and documentation of any inspection and/or enforcement action will be consistent with agency practices and will also be the subject of a Final Director's Decision.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 8th day of October 1997.

For the Nuclear Regulatory Commission.

Original signed by

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27417 Filed 10–15–97; 8:45 am]

BILLING CODE 7590–01–P

[4] CAN asserts that the Licensee misconstrues the purposes of TS Limiting Conditions for Operation (LCOs) as part of a "chronic pattern of misunderstanding" of TS, FSAR design bases, and NRC regulations. For the reasons described herein, LER 96–22 does not provide a basis for this assertion.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Notice of Meeting Regarding Post-Shutdown Decommission Activities Report

The Nuclear Regulatory Commission (NRC) previously published a Notice of Receipt (62 FR 46783, dated September 4, 1997) of the Post-Shutdown Decommissioning Activities Report (PSDAR), dated August 22, 1997, for the Haddam Neck Plant (HNP) located in Middlesex County, Connecticut, Town of Haddam.

In that previous **Federal Register** Notice, the NRC stated that it would hold a public meeting in the vicinity of the Haddam Neck Plant within 60 days of that notice. The purpose of this informational meeting is to (1) describe the licensee's planned activities, (2) describe the regulatory process for decommissioning, (3) hear public comments regarding health and safety, and protection of the environment during decommissioning, and (4) provide an opportunity for State and local representatives to participate. The licensee, Connecticut Yankee Atomic Power Co., will discuss their plans to decommission the Haddam Neck Plant. The NRC will discuss the PSDAR and the license termination process, and describe the program for future plant oversight. The public will have an opportunity to comment on the PSDAR and the meeting will be transcribed by a court reporter.

The meeting is scheduled for Monday, October 27, 1997 from 6:30 pm to 10:00 pm in the auditorium of the Haddam Killingsworth High School on Little City Road in Higganum, Connecticut.

The PSDAR is available for public inspection at the local public document room located in the Russell Library, 123 Broad Street, Middletown, CT 06457, and at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 9th day of October 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27416 Filed 10–15–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 22, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Letter from General Services Administration Regarding the Board's Obligation for Rent Payments
(2) Coverage Determination—Little Kanawha River Rail, Inc.
(3) Field Service Personnel Practices
(4) Buyout Surveys
(5) Cost Associated with the Railroad Retirement Board's Data Center
(6) Fiscal Year 1998 Performance Appraisal Plans
(7) Year 2000 Issues
(8) Labor Member Truth in Budgeting Status Report

Portion Closed to the Public

(A) 1997 Performance Appraisals for Director of Administration, Director of Programs, and General Counsel

(B) Pending Board Appeals

1. John C. Patman
2. Milford Durwood Smith
3. Vincent B. Ruck
4. Ray L. White
5. Donna R. Kepner
6. Janelle V. Henson
7. Arlin R. Slack
8. Arthur Roche

The person to contact for more information is Beatrice Ezerski, Secretary of the Board, Phone No. 312–751–4920.

Dated October 10, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–27567 Filed 10–14–97; 10:23 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15c3–3, SEC File No. 270–87, OMB Control No. 3235–0078

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 15c3–3 Customer Protection—Reserves and Custody of Securities

Rule 15c3–3 ("Rule") requires registered broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession and control of the segregate customer funds and securities. Commission staff estimates that the average number of hours necessary for each broker-dealer to make the required computations pursuant to the Rule is 2.5 hours per response. In order to demonstrate compliance with the Rule, approximately 326 broker-dealers choose to make a weekly computation and 197 broker-dealers choose to make a monthly computation. Accordingly, the total is 48,290 hours annually for all broker-dealers, based upon past submissions. The average cost per hour is approximately $60. Consequently, Commission staff estimates that the annual total cost of compliance with the Rule for all broker-dealers is $2,897,400.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27319 Filed 10–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17Ad–11, SEC File No. 270–261, OMB Control No. 3235–0274
Rule 17Ad–13, SEC File No. 270–263, OMB Control No. 3235–0275

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17Ad–11 requires transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of securityowners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by Rule 17Ad–10. Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad–11 for a period of three years following the date of the report. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. The staff estimates 150 registered transfer agents take approximately one hour annually to comply with Rule 17Ad–11. Therefore, the total burden is 150 hours annually for transfer agents, based upon past submissions. The average cost per hour is approximately $30. Therefore, the total cost of compliance for transfer agents is $4,500.

Rule 17Ad–13 requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates 200 registered transfer agents take approximately 175 hours annually to comply with Rule 17Ad–13. Therefore, the total annual burden is 35,000 hours for transfer agents, based upon past submissions. The average cost per hour is approximately $60. Therefore, the total cost of compliance for transfer agents is $1,300,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB on or before November 17, 1997.

Dated: October 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27435 Filed 10–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39222; File No. SR–DTC–97–16]

Self-Regulatory Organization; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to a Decision by the Philadelphia Stock Exchange, Incorporated To Withdraw From the Clearance and Settlement and Securities Depository Businesses

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 5, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–97–16) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Philadelphia Stock Exchange, Incorporated ("PHLX") to withdraw from the clearance and settlement and securities depository businesses. Parties to the proposed arrangements are DTC, PHLX, Philadelphia Depository Trust Company ("PHILADEP"), Stock Clearing Corporation of Philadelphia ("SCCP"), and the National Securities Clearing Corporation ("NSCC").[2] The proposed arrangements as they relate to DTC will provide for the following:

(1) DTC will offer sole PHILADEP participants an opportunity to become DTC participants if they meet DTC's qualifications;

(2) DTC will make certain payments to PHLX, PHILADEP, and SCCP; and

(3) In general, for a period of five years PHLX, PHILADEP, and SCCP will not engage in the clearance and settlement and securities depository businesses. However, this prohibition will not apply to PHLX's equity ownership interest in The Options Clearing Corporation. In addition, SCCP may provide limited clearing and margin services to PHLX equity specialists for their specialist and alternate specialist transactions and for their propriety transactions in securities for which they are not appointed as specialists or alternate specialists and to certain PHLX members that are not PHLX equity specialists for their propriety transactions in securities.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX has announced that it is withdrawing form the clearance and settlement and securities depository businesses in order to focus its resources on the operations of the exchange. The proposed arrangements have been designed to permit PHLX to achieve this objective while affording qualified sole PHILADEP participants an opportunity to become DTC participants and to transfer their securities to DTC. DTC believes that the proposed arrangements will result in substantial risk reduction and in increased savings for DTC participants and the securities industry as a whole.

Where there are interfaces among the securities depositories, same-day funds settlements[5] exposes each depository to certain risks, such as the failure of another depository to settle its net payment obligation because of a failure by one of the participants of such other depository to settle with it or because such other depository is experiencing a major systems problem. These risks cannot be entirely avoided with existing and available risk management controls. PHLX's withdrawal from the securities depository business will eliminate the exposure of DTC and its participants to

[1] 15 U.S.C. 78s(b)(1).

[2] These parties have entered into an agreement dated as of June 18, 1997.

[3] A more detailed description of these proposed arrangements is contained in Exhibit 2 to the filing. A copy of the filing and all exhibits are available for copying and inspection in the Commission's Public Reference Room.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

the payment system risks associated with the DTC-PHILADEP interface.

In addition, the proposed arrangements should result in substantial savings for DTC participants and the securities industry. In connection with this proposal, former sole PHILADEP participants may become DTC participants if they qualify under DTC's participant standards. An increase in the number of DTC participants will result in higher DTC transaction volumes there by reducing the per unit service costs that must be recovered through DTC participant service fees.

Moreover, interdepository interfaces involve the maintenance of substantial facilities, communications networks and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both DTC and PHILADEP in operating an interface will be eliminated.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder because the rule proposal will help reduce the risk associated with having interfaces, provide for more efficient and less expensive clearing and depository services, and thereby facilitate the prompt and accurate clearance and settlement of such transactions. In addition, the proposal will provide qualified sole PHILADEP participants with access to DTC's facilities and will be implemented consistently with the safeguarding of securities and funds in DTC's custody and control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed arrangements will have an impact on or impose a burden on competition. Securities depositories registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure, including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and respond to regulatory requirements.

After consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, PHLX's withdrawal from maintaining depository facilities should reduce costs to DTC participants and thereby remove impediments to competition. Finally, PHLX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

Despite the dominant market position that DTC will acquire, DTC believes that the current regulatory scheme and the very nature of the clearing and depository industries provide appropriate checks on the operations of DTC. DTC is owned by its members that utilize its services and its board of directors is comprised of its members. DTC must assure a fair representation of its members in the selection of its directors and administrators. DTC's service fees are reviewed by its board and subject to public notice and comment. Lastly, the existence of independent depositories for special securities and the potential for new clearing agency registrants offer significant checks on DTC's power.

(C) Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposal from DTC participants or others have not been solicited or received. However, the proposed arrangements are consistent with recommendations made to the boards of DTC and NSCC by the Vision 2000 Committee ("Committee"), a committee on industry representatives of the two boards. The Committee's Report dated September 1994 states:

> The industry currently owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways. * * * We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–97–16 and should be submitted by November 6, 1997.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27321 Filed 10–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39220; File No. SR–NSCC–97–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a Decision by the Philadelphia Stock Exchange, Incorporated To Withdraw From the Clearance and Settlement and Securities Depository Businesses

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on August 6, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on August 28, 1997, amended the proposed rule change (File No. SR–NSCC–97–08) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Philadelphia Stock Exchange, Incorporated ("PHLX") to withdraw from the securities clearance and settlement and securities depository businesses. Parties to the proposed arrangements are The Depository Trust Company ("DTC") PHLX, Philadep Depository Trust Company ("PHILADEP"), NSCC, and Stock Clearing Corporation of Philadelphia ("SCCP").[2]

The proposed arrangements as they relate to NSCC will provide for the following:

(1) NSCC will offer sole SCCP participants an opportunity to become NSCC participants if they meet NSCC's qualifications;

(2) NSCC and SCCP will cooperate to assure the orderly transfer of continuous net settlement securities positions of sole SCCP participants and dual NSCC/SCCP participants which authorize such transfer;

(3) NSCC will make certain payments to PHLX and SCCP;

(4) In general, for a period of five years PHLX, SCCP, and PHILADEP will not engage in the securities clearance and securities depository businesses. However, this prohibition will not apply to PHLX's equity ownership interest in The Options Clearing Corporation; and

(5) SCCP will become a participant of NSCC and will provide limited clearing and margin services to PHLX equity specialists and certain other PHLX members.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX has announced that it is withdrawing from the clearance and settlement and securities depository businesses in order to focus its resources on the operations of the exchange. The proposed arrangements will assist in achieving these objectives while affording qualified sole SCCP participants an opportunity to become NSCC participants and to transfer their continuous net settlement positions to NSCC. NSCC believes that the proposed arrangements will result in substantial risk reduction and increased savings for NSCC participants and the securities industry as a whole.

Where there are interfaces among the securities clearing agencies, same-day funds settlement[5] exposes each clearing agency to certain risks, such as the failure of another clearing agency to settle its net payment obligation because of a failure by one of the participants of such other clearing agency to settle with it or because such other clearing agency is experiencing a major systems problem. These risks cannot be entirely avoided with existing and available risk management controls. PHLX's withdrawal from the securities clearing business will eliminate the exposure of NSCC and its participants to the payment system risks associated with the NSCC–SCCP interface.

In addition, the proposed arrangements should result in substantial savings for NSCC participants and the securities industry. In connection with this proposal, former sole SCCP participants may become NSCC participants if they qualify under NSCC's participant standards. An increase in the number of NSCC participants will result in higher NSCC transaction volumes thereby reducing the per unit service costs that must be recovered through participant service fees. Moreover, interclearing corporation interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both NSCC and SCCP in operating an interface will be eliminated.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder because the rule proposal will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. In addition, the proposal will provide qualified sole SCCP participants with access to NSCC's facilities and will be implemented consistently with the safeguarding of securities and funds in NSCC's custody and control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed arrangements will have an impact on or impose a burden on competition. Securities clearing agencies registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities clearing agency requires a substantial and continuing investment in infrastructure, including telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements.

After consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost clearance services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, PHLX's withdrawal from maintaining clearing services should reduce costs to NSCC participants and thereby remove impediments to

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] These parties have entered into an agreement dated as of June 18, 1997.

[3] A more detailed description of these proposed arrangements is contained in Exhibit 2 to the filing. A copy of the filing and all exhibits are available for copying and inspection in the Commission's Public Reference Room.

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

competition. Finally, PHLX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received. However, the proposed arrangements are consistent with recommendations made to the boards of DTC and NSCC by the Vision 2000 Committee ("Committee"), a committee on industry representatives of the two boards. The Committee's Report dated September 1994 states:

> The industry currently owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways * * *. We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which NSCC consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–97–08 and should be submitted by November 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27320 Filed 10–15–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Use of Proceeds, 504 Program".
Type of Request: Extension of a Currently Approved Collection.
Form No: 1429.
Description of Respondents: Certified Development Companies.
Annual Responses: 2,000.
Annual Burden: 1,000.

Title: "Application for Loan Pool".
Type of Request: Extension of a Currently Approved Collection.
Form No: 1454.
Description of Respondents: SBA Loan Poll Assemblers.
Annual Responses: 450.
Annual Burden: 1,350.
Comments: Send all comments regarding these information collections to Keith Lucas, Program Assistant, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416. Phone No: 202–205–6570. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Title: "Client's Report of 7(J) Task Order Assistance Received".
Type of Request: Extension of a Currently Approved Collection.
Form No: 1540.
Description of Respondents: Client's that require the completion of the 7(J) Task order.
Annual Responses: 1,000.
Annual Burden: 100.

Title: "8 (A) Capability Statement".
Type of Request: Extension of a Currently Approved Collection.
Form No: 1815.
Description of Respondents: 8 (A) Program Participants.
Annual Responses: 8,000.
Annual Burden: 4,000.
Comments: Send all comments regarding these information collection to Barbara Boone, Program Assistant, Minority Enterprise Development, Small Business Administration, 409 3rd Street, SW. Suite 8000, Washington, DC 20416. Phone 202–205–6412. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–27325 Filed 10–15–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0270]

CF Investment Company; Notice of Issuance of a Small Business Investment Company License

On March 15, 1995, an application was filed by CF Investment Company, at 102 South Main Street, Greenville, South Carolina 29601, with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0270 on September 17, 1997, to CF Investment Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 6, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–27383 Filed 10–15–97; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9596]

State of North Carolina

Buncombe and Haywood Counties and the contiguous Counties of Henderson, Jackson, Madison, McDowell, Rutherford, Swain, Transylvania, and Yancey in the State of North Carolina constitute an economic injury disaster loan area as a result of a rockslide that occurred on July 1, 1997 closing Interstate 40 to all east and west traffic. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on May 29, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The Tennessee counties contiguous to Haywood County have been previously declared for the same occurrence.

(Federal Domestic Assistance Program No. 59002)

Date: August 29, 1997

John T. Spotila,

Acting Administrator.

[FR Doc. 97–27455 Filed 10–15–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–113]

Initiation of Section 302 Investigation and Request for Public Comment: Canadian Export Subsidies and Market Access for Dairy Products

AGENCY: Ofice of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comment.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(a) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Canada with respect to export subsidies on dairy products, and with respect to the operation of Canada's tariff rate quota (TRQ) for fluid milk. USTR invites written comments from the public on the matters being investigated and the determinations to be made under section 304 of the Trade Act.

DATES: This investigation was initiated on October 8, 1997. Written comments from the public are due on or before noon on Tuesday, November 11, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Advisor, Office of Agricultural Affairs, (202) 395–6127, Elizabeth Hyman, Office of the General Counsel, (202) 395–3150, or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On September 5, 1997, the National Milk Producers Federation, the U.S. Dairy Export Council, and the International Dairy Foods Association filed a petition to section 302(a) of the Trade Act (19 U.S.C. 2412(a)) alleging that certain export subsidies of the Government of Canada and Canada's failure to implement a TRQ for fluid milk constitute acts, policies and practices that violate, or are inconsistent with and otherwise deny benefits to the United States under the Uruguay Round Agreement on Agriculture and the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

In particular, the petition alleges that the Government of Canada maintains a two-tier pricing scheme under which it maintains high domestic prices and exports manufactured dairy products to world markets at lower, subsidized prices. Under this system, the milk producer receives a pooled price controlled by government agencies. Milk is sold to processors at a high price for domestic consumption and, with a government permit, as Class 5 industrial milk at the world price when used as an input in the production of milk products for export. Subsidized dairy product exports by Canada thus systematically exceed the ceiling on subsidized exports of such products which Canada agreed to in the Uruguay Round. The petition alleges that subsidized Canadian exports are undercutting U.S. prices to major U.S. export markets, and have led at least one exporting dairy processor to move its manufacturing operations to Canada in order to benefit from Canadian dairy export subsidies.

The petition also alleges that the Government of Canada agreed in the Uruguay Round to provide a TRQ of 64,500 metric tons (product weight basis) for commercial shipments of fluid milk. Canada nevertheless does not open the quota on the first day of the quota year nor does it announce the closure of the quota when it is filled. Instead, Canada excludes commercial milk imports on the basis of the claim that tourists and returning Canadian citizens carry pints, quarts and half gallon containers of fluid milk in such quantity as to fill the TRQ. The petition alleges that if Canada implemented its TRQ for fluid milk, U.S. dairy exports to Canada would increase by at least twenty million dollars annually.

Investigation and Consultations

On October 11, 1997, the USTR determined that an investigation should be initiated to determine whether certain acts, policies or practices of the Government of Canada regarding export subsidies and the failure to open the tariff-rate quota for fluid milk are actionable under section 301.

As required in section 3903(a) of the Trade Act, the USTR has requested consultations with the Government of Canada regarding the issues under investigation. The request was made pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the GATT 1994, Article 19 of the Agreement on Agriculture to the extent it incorporates Article XXII of the GATT 1994, and Article 30 of the Agreement on Subsidies and Countervailing Measures to the extent it incorporates Article XXII of the GATT 1994. If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU. USTR will seek information and advice from the petitioner and appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30

days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirement for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Canada which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Tuesday, November 11, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 22, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

Comments will be placed in a file (Docket 301–113) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documented are available for public inspection in the USTR Reading Room. An appointment to review the docket (Docket No. 301–107) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–27306 Filed 10–15–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–114]

Initiation of Section 302 Investigation and Request for Public Comment: EU Circumvention of Export Subsidy Commitments on Dairy Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the European Union (EU) concerning export subsidies on processed cheese. The EU is bound by commitments it made in the Uruguay Round limiting the amount of cheese that may be exported with export subsidies. The EU is circumventing these commitments by exporting processed cheese under subsidy and counting these exports against other export subsidy commitments relating to powdered milk and butterfat. The USTR is investigating whether these acts, policies and practices are inconsistent with certain provisions of the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on October 8, 1997. Written comments from the public are due on or before noon on Tuesday, November 11, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Advisor, Office of Agricultural Affairs, (202) 395–6127, Elizabeth Hyman, Office of the General Counsel, (202) 395–3150, or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act, 19 U.S.C. 2412(b)(1), authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301") with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

Investigation and Consultations

On October 8, 1997, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to assess whether certain acts, policies and practices of the EU regarding export subsidies on processed cheese are actionable under section 301(a).

The EU is bound by a schedule of commitments it made in the Uruguay Round limiting the amount of cheese that may be exported with export subsidies, as well as separate commitments limiting subsidized exports of various other agricultural products. The EU appears to be circumventing its commitments on processed cheese by exporting processed cheese under subsidy and counting these exports against other export subsidy commitments relating to components of processed cheese such as powdered milk, butterfat and natural cheese. Beginning in February, 1997, new rules implemented by the EU (including Commission Regulations 300/97, 417/97 and 418/97) recast the EU's "inward processing" regime to count the export subsidies on processed cheese as subsidies on the components of the cheese, instead. These acts, policies and practices appear to be inconsistent with certain provisions of the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture.

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the EU regarding the issues under investigation. The request was made pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the GATT 1994, Article 19 of the Agreement on Agriculture to the extent it incorporates Article XXII of the GATT 1994, and Article 30 of the Agreement on Subsidies and Countervailing Measures to the extent it incorporates Article XXII of the GATT 1994. If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU. USTR will seek information and advice from the petitioner and appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of World Trade Organization dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the EU acts, policies and practices which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Wednesday, November 6, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–114) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–112) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–27305 Filed 10–15–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–112]

Initiation of Section 302 Investigation and Request for Public Comment: Japan Market Access Barriers to Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, (the Trade Act), with respect to certain acts, policies and practices of the Government of Japan concerning Japan's prohibition on imports of certain agricultural products. Specifically, for each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product. This redundant testing requirement has no apparent scientific basis but serves as a significant barrier to market access. The United States alleges that these acts, policies and practices are inconsistent with certain provisions of the Agreement on the Application of Sanitary and Phytosanitary measures, the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and the Agreement on Agriculture. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on October 7, 1997. Written comments from the public are due on or before noon on Tuesday, November 11, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Office of Agricultural Affairs (202) 395–6127, Elizabeth Hyman, Office of the General Counsel, (202) 395–3150, or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act, 19 U.S.C. 2412(b)(1), authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301") with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

Investigation and Consultations

On October 7, 1997, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to assess whether certain acts, policies and practices of Japan regarding a prohibition on imports of certain agricultural products are actionable under section 301(a) and has requested the consultations required under section 303(a) of the Trade Act. For each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product. The relevant provisions of Japanese laws include the Plant Protection Law (Law No. 151) enacted May 4, 1950, as amended, and the Plant Protection Law Enforcement Regulation (Ministry of Agriculture, Forestry and Fisheries Ordnance No. 73) of June 30, 1950, as amended.

For example, after years of effort by the United States, in January 1995 Japan agreed to permit imports of U.S. Red Delicious and Golden Delicious apples based on Japan's determination that treatment of fruit from inspected orchards both with methyl bromide fumigation and a cold storage treatment would be effective against codling moth, a plant pest. However, Japan has refused to allow other varieties of apples, such as Gala, Fuji, Braeburn, Jonagold and Granny Smith, to be imported into Japan unless lengthy and expensive tests are performed on each variety to prove the efficacy of the same methyl bromide/cold storage treatment at killing codling moths. There is no scientific basis for distinguishing between different varieties of fruit in this respect. This practice of Japan affects not just apple imports, but imports of other fruit as well.

The USTR believes that these measures are inconsistent with the obligations of Japan under several provisions of the WTO Agreements, including Articles 2, 3, 4, 5, 7 and 8 of the Agreement on the Application of Sanitary and Phytosanitary Measures; Article XI of the General Agreement on

Tariffs and Trade 1994; and Article 4 of the Agreement on Agriculture.

On April 7, 1997, the Government of the United States requested consultations with Japan regarding these measures pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures, Article XXIII of the General Agreement on Tariffs and Trade 1994, and Article 19 of the Agreement on Agriculture.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of World Trade Organization dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Japan which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Tuesday, November 11, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–112) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–112) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–27304 Filed 10–15–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–19]

WTO Dispute Settlement Proceeding Regarding Korean Taxes on Alcoholic Beverages

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization (WTO), to examine excise taxes imposed by Korea on distilled spirits. In this dispute the United States alleges that Korea's excise taxes are inconsistent with Article III:2 of the General Agreement on Tariffs and Trade 1994 (GATT 1994). USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 1, 1997 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: Korea Spirits Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rick Ruzicka, Office of Asia & the Pacific, (202) 395–4755; Francis James, Office of Monitoring and Enforcement, (202) 395–3582; or Rachel Shub, Associate General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On September 10, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether taxes on distilled spirits imposed by Korea are inconsistent with Korea's obligations under the GATT 1994. The WTO Dispute Settlement Body is likely to establish the panel no later than October 16, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

Korea assesses excise taxes at different rates on different types of distilled spirits. Under its general liquor tax law, Korea imposes a lower tax on soju, a traditional Korean distilled spirit, than the high taxes it applies to other distilled spirits such as whiskey, brandy, vodka, rum, gin and "admixtures." This tax differential is made even more dramatic by the application of an Education Tax, which is higher when the liquor tax rates are higher. Soju is very similar to the distilled products produced by the United States and also is in direct competition in the market with them. The result of this tax rate differential is a tax burden on some U.S. distilled spirits that is over four times greater than the burden on soju (assuming the actual prices where the same). The United States claims that these taxes contravene the obligations of Korea under Article III:2 of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter.

Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–19, "Korea Spirits Dispute") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–27481 Filed 10–15–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–21]

WTO Dispute Settlement Proceeding Regarding Indian Import Restrictions on Agricultural, Textile and Industrial Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Agreements Act (URAA) (19 U.S.C. 3527(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization (WTO), to examine quantitative restrictions maintained by India on over 2700 agricultural, textile and industrial product tariff lines. In this dispute the United States alleges that India's quantitative restrictions are inconsistent with Articles XI, XIII and XVIIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 4.2 of the WTO Agreement on Agriculture, and Article 3 of the WTO Agreement on Imports Licensing Procedures. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 10, 1997 to be assured if timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: India Import Restrictions Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rick Ruzicka, Office of Asian & the Pacific (202) 395–4755, Elena Bryan, Office of WTO and Multilateral Affairs, (202) 395–5079, Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305, or Gregory Gerdes, Office of Monitoring and Enforcement, (202) 395–3582).

SUPPLEMENTARY INFORMATION: On October 3, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether quantitative restrictions maintained by India are inconsistent with India's obligation under the GATT 1994, the Agreement on Agriculture and the Agreement on Import Licensing Procedures. The WTO Dispute Settlement Body is likely to establish the panel no later than November 18, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing findings and recommendations within nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

Since the 1940s, India has maintained quantitative restrictions on imports of many agricultural, textile and industrial products. These restrictions were formerly maintained under provisions of the GATT which permit import restrictions to protect against a serious decline in a GATT member's foreign exchange reserves, or in the case of a GATT member with inadequate reserves, to achieve a reasonable rate of increase in those reserves. However, India's foreign exchange situation no longer justifies import restrictions; this fact has been recognized by the International Monetary Fund.

There are currently 2,714 eight-digit Indian tariff line items (one third of India's tariff schedule) subject to import restrictions or prohibitions for which no claim of legal justification has been made other than the GATT balance-of-payments provisions. These items are also subject to a complex and non-transparent import licensing system. The United States believes that these measures are inconsistent with several provisions of the WTO agreements. It appears that India's maintenance of import quotas is inconsistent with Articles XI:1 and XVIII:11 of the GATT 1994, and is not justified as a balance-of-payments measure under Article XVIII of the GATT 1994; India's maintenance of import quotas is also inconsistent with Article 4.2 of the Agreement on Agriculture; and India's import licensing procedures and practices are inconsistent with Article XIII:3(b) of the GATT 1994 and Article 3 of the Agreement on Import Licensing Procedures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter.

Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute

settlement proceeding, accessing to the public in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–21 ("India Import Restrictions Dispute") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Amelia Porges,

Senior Counsel for Dispute Settlement.

[FR Doc. 97–27482 Filed 10–15–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 1997. This pubication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590: telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)92). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 15, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and order issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (i.e., January, April, July, and October.) This publication represents the quarter ending on September 30, 1997.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; Jan. 19, 1993.

The previous quarterly publications of the indexes of the Administrator's decisions and orders in civil penalty cases have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
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7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
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1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (The addresses of FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases is provided at the end of this notice.)

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172.204	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown.
172.301	94–31 Smalling; 95–16 Mulhall.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
173.3	94–28 Toyota; 94–31 Smalling.
173.6	94–28 Toyota.
173.22(a)	94–28 Toyota; 94–31 Smalling.
173.24	94–28 Toyota; 95–16 Mulhall.
173.25	94–28 Toyota.
173.27	92–77 TCI.
173.115	92–77 TCI.
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota.
173.266	94–28 Toyota; 94–31 Smalling.
175.25	94–31 Smalling.
191.5	97–13 Westair Commuter.
191.7	97–13 Westair Commuter.
821.30	97–73 Wyatt.
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5 U.S.C.:	
504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI; 96–27 Valley Air; 96–22 Woodhouse.
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556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
704	95–14 Charter Airlines.
5332	95–27 Valley Air.
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362	91–2 Continental Airlines.
28 U.S.C.:	
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2462	90–21 Carroll.
49 U.S.C.:	
5123	95–16 Mulhall; 96–26 & 97–1 Midtown Neon Sign.
40102	96–17 Fenner.
44701	96–6 Ignatov; 96–17 Fenner.
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46303	97–7 Stalling.
49 U.S.C. App.:	
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(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
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1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
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1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

CIVIL PENALTY ACTIONS—ORDERS ISSUED BY THE ADMINISTRATOR

DIGESTS

(Current as of September 30, 1997)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1997, to September 30, 1997. The FAA publishes noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Gordon Air Services Order No. 97–24 (7/1/97)

Counsel Granted Leave to Withdraw; Extension of Time. Counsel for Respondent is granted leave to withdraw as counsel, and Respondent is granted 30 days to file its appeal brief, either on its own or through new counsel. No further extension of time for the appeal brief will be granted.

In the Matter of Peter A. Martin & James C. Jaworski Order No. 97–25 (7/17/97)

Appeal Dismissed. Because Complaint has withdrawn its notice of appeal, its appeal is dismissed.

In the Matter of Delta Air Lines Order No. 97–26 (81/13/97)

Appeal Dismissed. Complainant has withdrawn its notice of appeal. As a result, its appeal is dismissed.

In the Matter of Lock Haven Airmotive Company, Inc. Order No. 97–27 (8/20/97)

Appeal Dismissed. Respondent has withdrawn its notice of appeal. As a result, its appeal is dismissed.

In the Matter of Continental Airlines, Inc. Order No. 97–28 (9/26/97)

Request to File Late Notice of Appeal and Appeal Brief Denied. After Complainant announced that it would not go forward with this case, the law judge issued a written order dismissing the case, finding that Complainant was in default. The order was sent to the former agency counsel mistakenly. Complaintant's motion to file a late notice of appeal and appeal brief is denied. Although the law judge's failure to send the order to the current agency counsel constituted good cause for filing a late notice of appeal, it does not justify waiting a year to request permission.

COMMERCIAL REPORTING SERVICES OF THE ADMINISTRATOR'S

CIVIL PENALTY DECISIONS AND ORDERS

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available though the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

FAA OFFICES

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue SW., Renton, WA 98055–4056; (206) 227–2007

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100

Issued in Washington, DC on October 7, 1997.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 97–27402 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–50]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and partiticpation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition of its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 21, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 23771, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11):

Issued in Washington, D.C., on October 6, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 23771.

Petitioner: Cessna Aircraft Company.

Sections of the FAR Affected: 14 CFR 91.9(a), and 91.531(a) (1) and (2).

Description of Relief Sought:

To amend exemption no. 4050, which permits single pilot operations in Cessna Citation Models 550, S550, 552, and 560, provided the pilot meets certain experience and training requirements and qualifications. Cessna requests an amendment to the requirement that an applicant seeking initial single pilot authorization must satisfactorily accomplish the final practical test within 10 days after training has been completed. Cessna requests the time period to complete the final practical test be extended from 10 days to 45 days.

[FR Doc. 97–27361 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 3, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____; 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNT@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e) and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 7, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28855.

Petitioner: Offshore Logistics, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought: To permit Offshore Logistics to operate certain multiengine turbine-powered rotorcraft with a seating configuration of 10 to 19 seats, excluding any required crewmember seat, that were brought onto the U.S. register after, or were registered outside the United States and added to Offshore's Operations Specifications after, October 11, 1991, without an approved digital flight data recorder.

Docket No.: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought: To permit Petroleum Helicopters (PHI) to place two Bell 214ST helicopters (Registration Nos. N59805 and N59806, and Serial Nos. 28141 and 28140, respectively), and one Bell 412SP helicopter (Registration No. N142PH, Serial No. 33150), on PHI's Operations Specifications and to operate those aircraft in nonscheduled part 135 operations until August 18, 2001, without a digital flight data recorder installed in those aircraft.

Dispositions of Petitions

Docket No.: 28291.

Petitioner: Airline Crew Training Corporation.

Sections of the FAR Affected: 14 CFR 121.411(a)(2) and (3), and (b)(2); 121.413(b), (c), and (d); and appendix H to part 121.

Description of Relief Sought/ Disposition: To continue to permit Airline Crew Training Corporation (ACT), without holding an air carrier operating certificate, to train part 121 certificate holders' pilots, flight engineers, and check airmen in initial,

transition, upgrade, differences, and recurrent training in Federal Aviation Administration (FAA)-approved simulators, without ACT's instructors and check airmen meeting all the applicable training requirements of part 121, subpart N. *Grant, September 30, 1997, Exemption No. 6165A.*

Docket No.: 27180.
Petitioner: EVA Airways Corporation.
Sections of the FAR Affected: 14 CFR 61.77(a) and (b), and 63.23(a) and (b).
Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot certificates and special purpose flight engineer certificates to airmen employed by EVA Airways without those airmen meeting the requirement to hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation (ICAO), provided the airmen hold appropriate certificates issued by the Civil Aeronautics Administration, Republic of China (CAARC). *Grant, September 30, 1997, Exemption No. 6689.*

Docket No.: 27402.
Petitioner: Atlantic Coast Airlines.
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F to part 121.
Description of Relief Sought/ Disposition: To continue to permit Atlantic Coast Airlines (ACA) to conduct an FAA-monitored training program under which ACA pilots in command and seconds in command meet ground and flight recurrent training and proficiency check requirements through a single visit training program (SVTP). *Grant, September 30, 1997, Exemption No. 5783B.*

Docket No.: 26490.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(m).
Description of Relief Sought/ Disposition: To amend Delta Air Lines' (DAL) current exemption that permits DAL to operate certain foreign registered Lockheed L–1011–385–3 aircraft without conforming to the 60-foot required distance between emergency exits. The amendments requested would permit DAL to operate those aircraft with a passenger seating capacity in excess of 241. *Denial, September, Exemption No. 5301C.*

Docket No.: 27547.
Petitioner: Hughs Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.319(c).
Description of Relief Sought/ Disposition: To permit Hughes to operate over densely populated areas or in congested airways with aircraft certificated in the experimental category. *Denial, September 26, 1997, Exemption No. 6687.*

Docket No.: 29004.
Petitioner: Captain Robert D. Marshall.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To allow Captain Marshall to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, September 25, 1997, Exemption No. 6688.*

[FR Doc. 97–27384 Filed 10–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Environment and Energy Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Office of Environment and Energy (AEE) to discuss aviation-related environmental issues.

DATES: The forum will be held on November 20, 1997 from 9:30 a.m. to 12:00 p.m.

ADDRESSES: The forum will be held in room 3246B at the Department of Transportation, 400 F Street SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. James Littleton, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Aviation Administration Office of Environment and Energy (AEE) to be held on November 20, 1997.

The FAA Office of Environment and Energy (AEE) is developing a research agenda, called "Environmental Research Beyond 2000," for identifying and addressing aviation-related environmental issues. These issues include but are not limited to aviation-related noise and emissions. As part of its effort to obtain input from all affected parties, AEE will hold a public forum to present its preliminary research agenda and to obtain information from the public for developing and refining this agenda. The public forum will be part of the first stage in the agenda building process; later activities will include a issue workshop, which will result in a findings report to guide AEE's research strategies.

The agenda for the meeting will include:

- Presentation of the Environmental Research Beyond 2000 program, outlining objectives and goals for research activities undertaken by the Office of Environment and Energy.
- Presentation of examples of recent and on-going environmental research by FAA and other Federal agencies and interagency groups.
- Public comment and discussion of aviation-related environmental issues and concerns.

Commercial aviation provides great economic benefits to the United States, and with the "Environmental Research Beyond 2000" project, AEE is seeking to identify Research and Development (R&D) strategies that can resolve or remediate environmental impediments to aviation activities and fulfill AEE's environmental obligations. These objectives can best be realized by obtaining participation and information from all interested parties.

In addition, AEE is seeking public comment and information regarding the following six questions. Input from the public and other aviation stakeholders on these questions will serve as guidance for AEE as it develops an aviation-related environmental research strategy that best addresses the concerns and needs of those affected by aviation activities.

1. What aviation environmental issues concern you most and how does each affect you?
2. How successful have existing aviation remediation and mitigation policies been in responding to the impact of aviation activities on the environment?
3. What is being done to address your concerns and how effective is it?
4. What should be done to address your concerns?
5. What role does research have in addressing your concerns?
6. Are important effects of aviation activities on environmental quality currently not addressed in government policy and scientific research?

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by November 6, 1997 to present oral statements at the forum. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments must be received on or before December 15, 1997.

James R. Littleton, Jr.,
Office of Environment and Energy Analysis & Evaluation Branch.

[FR Doc. 97–27385 Filed 10–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held November 3–4, 1997, starting at 9 a.m. on Monday, November 3. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Ballot Review and Approval of *Guidance for Initial Implementation of Cockpit Display of Traffic Information* (Only written comments will be considered); (4) Other Business; (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 9, 1997.

Terry R. Hannah,
Deputy Director, Office of System Architecture and Investment Analysis, Designated Official.

[FR Doc. 97–27498 Filed 10–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, MI

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sandra D. LaMothe, Airport Manager of the Houghton County Airport Committee at the following address: Route 1, Box 94, Calumet, MI 49913.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Houghton County Airport Committee under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111 (313–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158)

On September 24, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Houghton County Airport Committee was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 16, 1997.

The following is a brief overview of the application.

PFC Application No.: 97–05–C–00–CMX.
Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 1998.
Proposed charge expiration date: July 1, 1998.
Total estimated PFC revenue: $71,753.00.
Brief description of proposed projects: (1) Construct security fence (Phase I); (2) Rehabilitate HIRL (Runway 13/31); (3) Expand GA apron (200'×600'); (4) Reimbursement of charges for PFC application preparation (PFC No. 95–03–U–00–CMX and 96–04–X–00–CMX); (50 Sanitary Sewer Upgrade (Phase I); (6) Rehabilitate HVAC (Terminal Building); (7) Acquire SRE (Front End Loader); (8) Rehabilitate Runway 13/31 (Engineering Only).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: FAR Part 135 operators who file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Houghton County Airport Committee.

Issued in Des Plaines, Illinois, on October 2, 1997.

Benito De Leon,
Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–27360 Filed 10–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Los Angeles International Airport (LAX), Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Los Angeles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Comments on the application may be mailed or delivered in triplicate to: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerald K. Lee, Deputy Executive Director, Los Angeles World Airports, #1 World Way, Los Angeles, CA 90045–5803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Los Angeles World Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Milligan, Supervisor, Standards Section, AWP–621, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, Telephone (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at LAX under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 22, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Los Angeles World Airports was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 1997.

The following is a brief overview of the application.

PFC application number: PFC No. 97–04–C–00–LAX.

Level of proposed PFC: $3.00.

Proposed charge effective date: January 1, 1998.

Proposed charge expiration date: March 31, 2000.

Total estimated PFC revenue collected: $150,000,000.00.

Brief description of the proposed impose and use project: Noise mitigation program for sound insulation of residences.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Los Angeles World Airports Office.

Issued in Los Angeles, California, on September 26, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–27381 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–016, Notice 1]

Reports, Forms, and Record keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St., S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that one (1) original plus two (2) copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Fatality Analysis Reporting System (FARS)

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0006

Form Numbers—HS–214, HS–214A, HS–214B and HS–214C.

Requested Expiration Date of Approval—December 31, 2000

Summary of the Collection of Information—FARS is the major system that acquires a national census of information on fatal motor vehicle traffic crashes. This information is collected directly from existing State files and documents. Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966, NHTSA has the responsibility to collect crash data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and property damage associated with motor vehicle crashes.

Description of the Need for the Information and Proposed Use of the Information—FARS is the largest and most comprehensive data base of fatal crash data in the world. The total user population includes Federal and State agencies and the private sector. This information comprises a national data base that is NHTSA's and many States' principal means of tracking trends in fatalities and quantifying problems or potential problems in highway safety. FARS data is also used extensively by State legislators for determining highway safety problem areas requiring laws and programs (mandatory use of seat belts, 55- vs. 65-mile per hour speed limits); by the highway research community including the private sector (industry and associations) for trend analysis, problem identification, and program evaluation (e.g., air bag studies and drunk driving campaigns); and by the Congress for making decisions concerning safety programs. The FARS data are available upon request to anyone interested in highway safety. FARS data has been made available through the Internet and via fax-on-demand service. On the average, more than 10,000 requests for information from FARS are received every year.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—"Respondents" are employees of state agencies (FARS Analysts). Their salaries and other direct costs are 100% reimbursed through cooperative agreements duly executed through the NHTSA Office of Contracts and Procurement. Cooperative Agreements exist with all fifty states, the District of Columbia and Puerto Rico. The number of FARS Analysts varies by state from one to six. The entire corps of more than 70 FARS Analysts acquire and code the required information as fatal crashes occur. Approximately 2.15 hours per case are required to complete the FARS forms. The number of cases varies by state from a high of 3669 in California to a low of 54 in D.C. (in 1995).

Estimate of the Total Annual Reporting and Record keeping Burden Resulting from the Collection of Information—The 52 jurisdictions report on approximately 36,000 fatal cases per year. The estimated annual hour burden is 77,400 hours. This estimate is based on 20 years of FARS operation and includes the nominal time needed to access data from existing state files. These various sources reside in several places in each state. FARS does not involve the generation of new data. If the state analyst cannot get the information from existing records, it is reported to NHTSA as "unknown." The FARS Analysts retain the current year's completed FARS forms plus three prior years' forms.

Dated: October 10, 1997.

Raymond P. Owings,

Associate Administrator, Research and Development.

[FR Doc. 97–27475 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97–11]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating the unauthorized marking of high-pressure compressed gas cylinders. On August 14 and 15, 1997, RSPA inspectors conducted a compliance inspection at Columbia Fire Protection Company (CFP), 3811 Contractors Place, Memphis, Tennessee. During the inspection it was determined that CFP was not registered or approved by DOT as a cylinder retester and was incapable of performing hydrostatic tests in accordance with the requirements of the Hazardous Materials Regulations (HMR). Subsequent inspection of CFP's customers revealed numerous cylinders marked by CFP with unauthorized Retester Identification Numbers and certified by CFP as retested in accordance with the HMR.

Failure to properly conduct a hydrostatic retest can result in cylinders that should be condemned being returned to service. The HMR requires that properly tested cylinders exceeding the allowable 10 percent permanent expansion be condemned and removed from service (49 CFR 173.34(e)(6)(i)(D)). Serious personal injury, death, and property damage could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with a hazardous material.

FOR FURTHER INFORMATION CONTACT: Wayne Chaney, Hazardous Materials Enforcement Specialist, Southern Region, telephone (404) 305–6126, Fax (404) 305–6125, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, Department of Transportation, 1701 Columbia Ave, DHM–46, Suite 520, College Park, GA 30337.

SUPPLEMENTARY INFORMATION: On Thursday, August 14, and Friday, August 15, 1997, RSPA inspectors conducted a compliance inspection at Columbia Fire Protection Company (CFP) in Memphis, Tennessee. Through follow-up inspections of CFP's customers, the inspectors observed a large number of cylinders marked with the following two Retester Identification Numbers (RINs):

(1)

B 4

X Y

3 2

where
X = month of retest
Y = year of retest

(2)

O 9

X Y

7 8

where
X = month of retest
Y = year of retest

On October 10, 1982, RSPA issued RIN B423 for a 5-year period to Walker Fire Protection Service, Inc. (Walker). Walker has renewed this RIN and is the current holder. Therefore, Walker is the only authorized user. Any cylinders marked and serviced by Walker are not a part of this safety advisory.

The RIN 0987 has never been issued by RSPA and is not an authorized RIN.

RSPA believes that any cylinder marked with RIN B423 or RIN O987 and was last serviced by CFP is not in compliance with the Hazardous Materials Regulations (HMR) (49 CFR Parts 171–180). Under the HMR, hydrostatic retesting is required to verify a cylinder's structural integrity. Thus, any person who has a cylinder marked with RIN B423 or RIN O987 and was last serviced by CFP may not charge or fill the cylinder with a hazardous

material without first having it inspected/retested by a DOT-authorized retest facility. Filled cylinders (if filled with an atmospheric gas) described in this safety advisory should be vented or otherwise properly and safely evacuated and purged, and taken to a DOT-authorized cylinder retest facility for visual reinspection and retest to determine compliance with the HMR. Under no circumstances should a cylinder described in this safety advisory be filled, refilled or used for any purpose other than scrap, until it is reinspected and retested by DOT-authorized retest facility.

It is further recommended that persons finding or possessing cylinders described in this safety notice contact Mr. Chaney, for further information and instructions.

Issued in Washington, D.C. on October 9, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–27478 Filed 10–15–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33481]

Marksman Corporation; Lease and Operation Exemption; J.K. Line, Inc.

Marksman Corporation (Marksman), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from J.K. Line, Inc., and to operate 17 miles of rail line in the State of Indiana from milepost 183, near Monterey, to milepost 199, near North Judson.

This transaction is related to the notice of exemption filed in STB Finance Docket No. 33483, *The Toledo, Peoria and Western Railroad Corporation-Continuance in Control Exemption-Marksman Corporation*, for The Toledo, Peoria and Western Railroad Corporation to continue in control of Marksman (once it becomes a carrier through consummation of the transaction in STB Finance Docket No. 33481), in addition to its indirect control of Toledo, Peoria & Western Railway Corporation (TPW Railway).[1] Because the exemption in STB Finance Docket No. 33483 is not scheduled to become effective until October 14, 1997, the earliest the transaction in STB Finance Docket No. 33481 can be consummated is October 14, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33481, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27485 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33482]

Toledo, Peoria & Western Railway Corporation; Lease and Operation Exemption; A & R Line, Inc.

Toledo, Peoria & Western Railway Corporation, a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from A & R Line, Inc. and operate 27 miles of rail line in the State of Indiana from milepost 0.0, near Winimac, to milepost 74.5, near Logansport.

The earliest the transaction could be consummated was October 7, 1997, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33482, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27483 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33483]

The Toledo, Peoria and Western Railroad Corporation; Continuance in Control Exemption; Marksman Corporation

The Toledo, Peoria and Western Railroad Corporation (TPW Railroad) has filed a notice of exemption to continue in control of the Marksman Corporation (Marksman), upon Marksman's becoming a Class III railroad.

The earliest the transaction can be consummated is October 14, 1997, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33481, *Marksman Corporation—Lease and Operation Exemption—J.K. Line, Inc.*, wherein Marksman seeks to lease and operate a rail line from J.K. Line, Inc.

Applicant indirectly controls one existing Class III railroad subsidiary: Toledo, Peoria & Western Railway Corporation (TPW Railway),[1] operating in the States of Indiana, Illinois and Iowa.

Applicant states that: (i) The rail lines to be operated by Marksman do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect Marksman's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33483, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27486 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Marksman owns 100% of the stock of TPW Railway.

[1] Marksman owns 100% of the stock of TPW Railway.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–487 (Sub-No. 3X)]

Pittsburg & Shawmut Railroad, Inc.; Abandonment Exemption; in Jefferson and Clarion Counties, PA

On September 26, 1997, Pittsburg & Shawmut Railroad, Inc. (PSRR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Piney Branch, extending from milepost 0.00 (milepost 40.60 on the main line of the Laurel Subdivision), located at or near Coder to milepost 23.80 located at or near Piney, a distance of 23.80 miles, in Jefferson and Clarion Counties, PA. The line traverses U.S. Postal Service Zip Codes 15825, 15829, 15864, 16234 and 16258, and includes the stations of Sutton, milepost 9; and Piney Mine, milepost 21.

The line does not contain federally granted rights-of-way. Any documentation in PSRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 14, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 5, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–487 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27484 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub–No. 5X)][1]

Track Tech, Inc.—Abandonment Exemption—in Potter County, TX

On September 24, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between Amarillo, TX (milepost 761.80) and Bushland, TX (milepost 775.70), a distance of 13.90 miles in Potter County, TX. The line traverses U.S. Postal Service ZIP Code 79012.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 12, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 5, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 1X, 2X, 3X, 4X, and 6X).

Des Moines Building, 405 Sixth Avenue, Des Moines, IA, 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27478 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub-No. 2X)][1]

Track Tech, Inc.; Abandonment Exemption; in Franklin and Webster Counties, NE

On September 24, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between Bladen, NE (milepost 96.30) and Hildreth, NE (milepost 119.34), a distance of 23.04 miles in Franklin and Webster Counties, NE. The line traverses U.S. Postal Service ZIP Codes 68928 and 68947.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 12, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 5, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA, 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27479 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 1X, 3X, 4X, 5X, and 6X).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub–No. 1X)][1]

Track Tech, Inc.; Abandonment Exemption; in Whiteside County, IL

On September 24, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between Denrock, IL (milepost 25.15), and Lyndon, IL (milepost 28.35), a distance of 3.20 miles in Whiteside County, IL. The line traverses U.S. Postal Service ZIP Code 61261.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 12, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002,2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 5, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA, 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27480 Filed 10–15–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 2X, 3X, 4X, 5X, and 6X).

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Crowning Glory: Images of the Virgin in the Arts of Portugal" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The Newark Museum, 49 Washington Street, Newark, New Jersey from November 26, 1997, through February 22, 1998, and at the San Diego Museum of Art and the Los Angeles County Museum of Art following its exhibition in Newark, New Jersey, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.[1]

Dated: October 9, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–27434 Filed 10–15–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001

Corrections

Federal Register
Vol. 62, No. 200
Thursday, October 16, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

Correction

In notice document 97–25834 beginning on page 51111 in the issue of Tuesday, September 30, 1997 make the following correction:

On page 51111, in the third column, under the paragraph heading *Purpose*, in the third line from the bottom delete "Page 2".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Essex Museum, Salem, MA

Correction

In notice document 97–26871 beginning on page 53022, in the issue of Friday, October 10, 1997, make the following correction:

On page 53023, in the first column, in the first full paragraph, in the 11th and 12th lines, *"[thirty days following publication in the* **Federal Register***]"* should read "November 10, 1997".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94-ASO-18]

RIN 2120-AA66

Establishment of Restricted Areas; Camp Lejeune, NC

Correction

In final rule document 97–26671 beginning on page 52226 in the issue of Tuesday, October 7, 1997 make the following corrections:

§ 75.53 [Corrected]

(1) On page 52228, in the third column, under the heading **R-5304A Camp Lejeune, NC [New]**, in the sixth line "77°35'15"W.;" should read "77°33'15"W.;".

(2) On page 52229, in the first column, in the first line "77°35'15"W.;" should read "77°33'15"W.;".

(3) On the same page, in the same column, under the heading **R-5304C Camp Lejeune, NC [New]**, in the sixth line "77°35'15"W.;" should read "77°33'15"W.;".

BILLING CODE 1505-01-D

federal register

Thursday
October 16, 1997

Part II

Department of Education

Bilingual Education: Comprehensive School Grants Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants

Notice inviting applications for new awards for fiscal year (FY) 1998.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7424 and 7426)).

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: One or more local educational agencies (LEAs), or one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline For Transmittal Of Applications: January 26, 1998.

Deadline For Intergovernmental Review: March 27, 1998.

Available Funds: $12 million.

Note: The Congress has not yet enacted an FY 1998 appropriation for the Department of Education. The actual level of funding for this program is contingent upon final congressional action.

Estimated Range Of Awards: $150,000-$350,000.

Estimated Average Size Of Awards: $250,000.

Estimated Number Of Awards: 48.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) The regulations in 34 CFR part 299.

Description of Program

Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee shall plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priorities

Absolute Priority

The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55245), applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Competitive Priority

Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on reforming, restructuring, and upgrading reading instruction to assist limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on reforming, restructuring, and upgrading mathematics instruction to assist limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Invitational Priority 4—Professional Development

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Comprehensive School Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated

ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a) (1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7114 and 7116 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the proposed project will implement schoolwide bilingual education programs or schoolwide special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of those children and youth.

(Authority: 20 U.S.C. 7424(e))

(2) *Need for the project.* (10 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(3) *Quality of the project design.* (15 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(Authority: 34 CFR 75.210(c)(2) (i), (ii), and (xviii))

(4) *Project activities.* (15 points) The Secretary reviews each application to determine—

(i) How well the proposed project will improve the education of limited English proficient students and their families by carrying out some or all of the following authorized activities:

(A) Implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children.

(B) Improving the instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures, and, if appropriate, applying educational technology.

(C) Compensating personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to children and youth of limited English proficiency.

(D) Providing training for personnel participating in or preparing to participate in the program that will assist that personnel in meeting State and local certification requirements and, to the extent possible, obtaining college or university credit.

(E) Providing tutorials and academic or career counseling for children and youth of limited English proficiency.

(F) Providing intensified instruction.

(ii) The degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, and the appropriate local and State educational agency or businesses; and

(iii) How well the proposed project provides for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7424(b)(3); 7426(h)(6) and (i) (4)–(5))

(5) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(6) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210(g) (1) and (2) (i) and (iv))

(7) *Quality of project personnel.* (5 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e) (1)–(3) (i) and (ii))

(8) *Language skills of personnel.* (3 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The program will use qualified personnel, including personnel who are proficient in the language or languages used for instruction.

(ii) The applicant will employ teachers in the proposed program who, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(9) *Adequacy of resources.* (3 points) The Secretary considers the adequacy of

resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 75.210(f)(1) and (2)(iii)–(iv))

(10) *Integration of project funds.* (5 points) The Secretary reviews each application to determine how well funds received under this program will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(2)(A)(iii))

(11) *Evaluation plan.* (10 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3))

(12) *Commitment and capacity building.* (4 points) The Secretary reviews each application to determine how well the proposed project meets the following requirements:

(i) The proposed project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, that will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited English proficiency.

(ii) The applicant will have the resources and commitment to continue the program when assistance under this program is reduced or no longer available.

(Authority: 20 U.S.C. 7426(h)(5))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That The Above Address Is Not The Same Address As The One To Which The Applicant Submits Its Completed Application. *Do Not Send Applications To The Above Address. Instructions For Transmittal Of Applications*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Washington, DC 20202–4725 or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with

section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Diane DeMaio, Cecile Kreins, James Lockhart, Harry Logel, Ursula Lord, or Brenda Turner, U.S. Department of Education, 600 Independence Avenue, SW., room 5605, Switzer Building, Washington, DC 20202–6510. Telephone: Diane DeMaio (202) 205–5716, Cecile Kreins (202) 205–5568, James Lockhart (202) 205–5426, Harry Logel (202) 205–5530, Ursula Lord (202) 205–5709, Brenda Turner (202) 205–9839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7424.

Dated: October 9, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528 (Exp. 4/30/98). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative portion of the application must not exceed 45 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used.

The narrative section must be paginated and should include a one-page abstract. The 45 page limit applies to the abstract, proposal narrative, charts, graphs, tables, graphics, position descriptions (and resumes, if included), and any appendices. The page limit does not apply to application forms, attachments to those forms, assurances, certifications, and the table of contents. The page limit applies only to item 14 and not to the other items in the Checklist for Applicants. *APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.*

Abstract

The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Zone or

Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Zone or Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. *APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.*

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED Form No. 524).
4. Itemized budget for each year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;

Section B—Documentation of consultation with nonprofit private school officials;

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF–LLL).
12. Information that addresses section 427 of the General Education Provisions Act. (See the above section entitled "NOTICE TO ALL APPLICANTS" (OMB No. 1801–0004)).
13. Table of Contents.
14. Application narrative, including abstract (not to exceed 45 pages).
15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Empowerment Zones and Enterprise Communities

Empowerment Zones

(Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and Leflore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones

(Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities

(Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Bayview, Hunter's Point), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warren Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Ouachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clerke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Oregon: Josephine County, Portland
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis, Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Area (Braxton, Clay, Fayette, Nicholas, and Roane Counties)
Wisconsin: Milwaukee

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 0U
TITLE: Bilingual Education: Comprehensive School Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA

Name of Local Educational Agency

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- Comprehensive School Grants
- Systemwide Improvement Grants

	(1) Total number of students in the school district	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
1. Total number of limited English proficient (LEP) students			%
2. Total number of students in the school district			
3. Percentage of LEP students (line 1 divided by line 2)			%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- Comprehensive School Grants

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- Comprehensive School Grants
- Systemwide Improvement Grants

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. ____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

> Sec. 7116. Applications. '(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children.'
>
> (Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ☐
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ☐
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more..

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610--

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year ____ quarter ____ date of last report ____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):* Attach Continuation Sheet(s) SF-LLL-A, if necessary	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: Attach Continuation Sheet(s) SF-LLL-A, if necessary	
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 97-27342 Filed 10-15-97; 8:45 am]
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federal register

Thursday
October 16, 1997

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Recombinant DNA Research; Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on December 15–16, 1997. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on December 15, 1997, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on December 16, 1997, at approximately 9:00 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: October 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27311 Filed 10–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on December 15–16, 1997. After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

DATES: Interested parties are invited to submit comments concerning the proposed actions. Comments received by December 8, 1997, will be reproduced and distributed to the RAC for consideration at its December 15–16, 1997, meeting. After consideration of this proposal and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

ADDRESSES: Written comments and recommendations should be submitted to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at http://www.nih.gov/od/orda for further information about the office.

I. Supplementary Information

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

I–A. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines

During the June 12–13, 1997, RAC meeting, the following motions were approved by the Committee:

(1) A motion was made that Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, should be amended to require investigators to submit documentation verifying that a human gene transfer protocol has been submitted to an appropriate Institutional Biosafety Committee (IBC). Evidence of IBC notification shall be provided at the time the protocol is submitted to ORDA. The motion passed by a vote of 8 in favor, 1 opposed, and no abstentions.

(2) A motion was made to delete the requirement for submission of IBC and Institutional Review Board (IRB) approvals at the time of ORDA submission from Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines. The motion passed by a vote of 7 in favor, 0 opposed, and 1 abstention.

On September 10, 1997, a letter was received from the American Biological Safety Association requesting that the public comment period for the proposed actions under the NIH Guidelines published in the **Federal Register** on August 20, 1997 (62 FR 44387) be extended for an additional 60 days.

During the September 12, 1997, RAC meeting, the RAC was scheduled to vote on the proposed actions to delete prior IBC and IRB approvals from the submission requirements, and to require investigators or sponsors to provide evidence of protocol submission to IBC.

Considering the request by the American Biological Safety Association to extend the public comment period, the RAC decided to modify the language of the proposed actions and to publish the revised version in the **Federal Register** for an additional 60 days.

A motion was made by the RAC to amend the proposed actions published in the **Federal Register** on August 20, 1997, regarding the submission requirements as follows:

"The RAC recommends that final approvals from IBC and IRB should be withheld until after NIH/ORDA provides the IBC and IRB with RAC concerns (if any), and (1) NIH/ORDA notification that the protocol is exempt from full RAC review, or (2) NIH/ORDA notification that the protocol has triggered full RAC review. Human gene transfer protocols shall not be initiated prior to submission of final IBC and IRB approvals to NIH/ORDA."

The motion passed by a vote of 10 in favor, 0 opposed, and 2 abstentions.

I–B. Amendments to Institutional Biosafety Committee (IBC) Approvals of Experiments Involving Transgenic Rodents Under Section III of the NIH Guidelines

Section III–C–4, Experiments Involving Whole Animals, of the NIH Guidelines stipulates that all transgenic animal experiments are subject to IBC approval before initiation. In a correspondence dated April 22, 1997, Dr. George Gutman, an IBC representative of the University of California, Irvine, California, inquired whether experiments involving production or use of transgenic mice under Biosafty Level 1 containment could be initiated simultaneous with IBC notification. Current requirements under the NIH Guidelines require that IBC approval be obtained prior to initiation of such experiments.

The RAC discussed this issue during its June 1997 meeting, recommending that this requirement be changed to initiation simultaneous with IBC notification. The RAC agreed that the requirement for IBC approval prior to initiation is unnecessary and recommended that the NIH Guidelines should be amended such that: (1) The generation of transgenic rodents at the Biosafety Level 1 containment (not all animals) can be initiated simultaneous with IBC notification, and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines. A motion was made that these proposed changes to the NIH Guidelines should be published it the **Federal Register** for consideration at the September 12, 1997, RAC meeting. The proposed action would allow: (1) The generation of transgenic rodents that require Biosafety Level 1 containment to be included under Section III–D, Experiments that Require IBC Notice Simultaneous with Initiation; and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines. The motion passed by a vote of 9 in favor, 0 opposed, and no abstentions.

On September 10, 1997, a letter was received from the American Biological Safety Association requesting that the public comment period for the proposed actions under the NIH Guidelines published in the **Federal Register** on August 20, 1997 (62 FR 44387) be extended for an additional 60 days.

During the September 12, 1997, RAC meeting, the RAC was scheduled to vote on the issues surrounding the amendments to IBC approvals of experiments involving transgenic rodents. Considering the request by the American Biological Safety Association to extend the public comment period, the RAC decided to modify the language of the proposed actions and to publish the revised version in the **Federal Register** for additional public comment as requested by the American Biological Safety Association. The RAC accepted the proposed actions with the deletion of two words "and use" from the language, "the purchase and use of transgenic rodent * * *" A motion was made by the RAC to accept the amendments to the NIH Guidelines with regard to: (1) The generation of transgenic rodents at the Biosafety Level 1 containment (not all animals) can be initiated simultaneously with IBC notification, and (2) the purchase of transgenic rodents should be exempt from the NIH Guidelines. The motion passed by a vote of 11 in favor, 0 opposed, and no abstentions.

II. Proposed Actions Regarding Amendments to the NIH Guidelines

The NIH will consider the following proposed actions under the NIH Guidelines:

II–A. Proposed Amendments to Section III–C–4, Experiments Involving Whole Animals

[Section III–C are experiments that require Institutional Biosafety Committee approval before initiation.]

Section III–C–4–c is proposed to be amended to read:

"Section III–C–4–c. Exceptions under Section III–C–4.

"Section III–C–4–c–(1). Experiments involving the generation of transgenic rodents that require BL1 containment are described under Section III–D–3, Experiments Involving Transgenic Rodents.

"Section III–C–4–c–(2). The purchase of transgenic rodents is exempt from the NIH Guidelines under Section III–E, Exempt Experiments (see Appendix C–VI, The Purchase of Transgenic Rodents)."

II–B. Proposed Amendments to Section III–D, Experiments That Require Institutional Biosafety Committee Notice Simultaneous With Initiation

Section III–D–3 is proposed to be amended to read:

"Section III–D–3. Experiments Involving Transgenic Rodents

"This section covers experiments involving the generation of rodents in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (trangenic rodents). Only experiments that require BL1 containment are covered under this section; experiments that require BL2, BL3, or BL4 containment are covered under Section III–C–4, Experiments Involving Whole Animals."

II–C. Proposed Amendments to Appendix C, Exemptions Under Section III–E–6

A new section, Appendix C–VI, is proposed to read:

"Appendix C–VI. The Purchase of Transgenic Rodents

"The purchase of transgenic rodents for experiments that require BL1 containment are exempt from the NIH Guidelines."

[The old Appendix C–VI, Footnotes and References of Appendix C, will be renumbered to Appendix C–VII through Appendix C–VII–E.]

II–D. Proposed Amendments to Appendix M, The Points To Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into the Genome of One or More Human Subjects (Points To Consider)

Appendix M–I is proposed to be amended to read:

"Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, 301–496–9838 (see exemption in Appendix M–IX–A, Footnotes of Appendix M). Proposals will be submitted in the

following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through Appendix M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the clinical protocol or as an appendix to the clinical protocol); (4) clinical protocol (as submitted to the local IBC and IRB); (5) Informed Consent document prepared for IRB submission (see Appendix M–III, Informed Consent); (6) a letter stating that submission has been made to the IBC; (7) appendices (including tables, figures, and manuscripts); and (8) curricula vitae for each key professional person in biographical sketch format.

Note: The final approvals from IBC and IRB should be withheld until after NIH/ORDA provides IBC and IRB with RAC concerns (if any), and (1) NIH/ORDA notification that the protocol is exempt from full RAC review, or (2) NIH/ORDA notification that the protocol has triggered full RAC review. Human gene transfer protocols shall not be initiated prior to submission of final IBC and IRB approvals to NIH/ORDA.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Crystal

In a letter dated August 25, 1997, Dr. Ronald Crystal of New York Hospital-Cornell Medical Center, New York, New York, submitted a human gene transfer protocol entitled: Systemic and Respiratory Immune Response to Administration of an Adenovirus Type 5 Gene Transfer Vector ($Ad_{GV}CD.10$) (NIH Protocol 9708–209) to NIH/ORDA in accordance with Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines. Dr. Crystal requested permission to present a brief overview of relevant data during the September 12, 1997, RAC meeting, prior to the RAC's final recommendation on the necessity for full RAC review. The RAC agreed to allow Dr. Crystal to give a brief presentation on the relevant data. Following the September 12, 1997, RAC meeting, the RAC noted that there were a significant number of issues remaining; therefore, the protocol should be discussed by the full RAC at its next scheduled meeting.

IV. Discussion on Novel Gene Transfer Technologies

The RAC will have a discussion on novel gene transfer technologies. Presentations may include herpesvirus vectors and human artificial chromosomes.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: October 8, 1997.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

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Part IV

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA) Disclosure of Fees Paid to Mortgage Brokers; Proposed Rule and Notice of Proposed Information Collection Requirements

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR 3780–P–08]

RIN 2502–AG40

Real Estate Settlement Procedures Act (RESPA) Disclosure of Fees Paid to Mortgage Brokers; Proposed Rule and Notice of Proposed Information Collection Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide consumers with more meaningful disclosures concerning the functions and fees of mortgage brokers while protecting consumers from fees which are illegal under the Real Estate Settlement Procedures Act (RESPA). At the same time, the rule would provide mortgage brokers with greater clarity regarding the application of RESPA to their fees. Under this rule, mortgage brokers who seek clarity regarding RESPA's applicability to their fees would enter into binding contracts with borrowers prior to the borrowers' applications for mortgage loans. For each particular loan transaction the broker would explain in the contract the services the broker would provide and the broker's duties to the borrower, how the broker's compensation is derived, and the maximum amount of compensation the broker would earn (based on the loan's interest rate and points). Under the contract, the broker would also disclose the components of its compensation including the direct fees to be paid to the broker by the borrower and the potential maximum amount of indirect compensation to be received by the broker from a lender providing mortgage loan funds.

Because compensation to the broker may differ under various combinations of rates and points, the contract would also advise the borrower that the broker has information on other loans with different combinations of rates and points which the broker will display for the borrower. (HUD will facilitate the development of software to help brokers provide this information.) The broker will give the borrower a contract or a contract amendment covering each type of loan product for which the borrower may apply. The contract also requires that the broker provide its State license or other identification number in those States that require licenses.

For those transactions in which mortgage broker contracts are entered into and adhered to, and other requirements of the rule are satisfied, the direct fees received from the borrower, as well as the indirect fees paid to the broker from a lender for the transaction, will be covered by a "qualified safe harbor" and presumed to be legal and permissible under section 8 of RESPA. The presumption of permissibility and legality would not apply, however, if one or more of the requirements for the safe harbor is not met. Moreover, even if all of the requirements for the safe harbor are met, the presumption may be rebutted if the total compensation does not pass a test that will be established by HUD through this rulemaking and incorporated into the final rule. There are numerous possibilities for such a test that could result from this rulemaking, including defining the outer boundaries of permissible or legal total compensation in terms of ranges or amounts of dollars that could vary based on the size of a loan or other factors; a test comparing the total compensation for a loan to the total compensation for similar loans by mortgage brokers and lenders; a test establishing the parameters of permissible and impermissible compensation based upon plain and straightforward criteria; or such other test or tests that would provide a clear line between compensation presumed legal and compensation that would not enjoy such presumption. Any test established through this rulemaking will allow brokers, lenders, and consumers alike to determine with certainty whether the total compensation to a broker is or is not legal. HUD is requesting comments from the public on an appropriate test or tests. Mortgage brokers that fail to enter into and adhere to the contract, and fail to meet the other requirements in the rule, will be presumed to be in violation of section 8 of RESPA. This presumption can be overcome if the total compensation is reasonably related to the value of the goods or services provided.

DATES: Comment Due Date: Deadline for comments on this proposed rule, including comments on the proposed information collection requirements: December 15, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

HUD also invites interested persons to submit comments on the proposed information collection requirements of this proposed rule. Comments should refer to the above docket number and title, and should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9146, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–4560; or (for legal questions) Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Grant E. Mitchell, Senior Attorney for RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–1550. (These are not toll free numbers). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1974, when the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601–2617) was first enacted, the housing finance delivery system was very different than it is today. Much of today's technology and many of its lending sources and financing mechanisms did not exist. The secondary market for mortgage loans was still undeveloped, the present variety of loan products were rarely available (including the "no fee, no point" loan), and there were few types of providers of mortgage financing. Those few that were known as mortgage brokers generally operated differently than many mortgage brokers operate today. Today, mortgage brokers reportedly arrange financing for nearly half of all home mortgages. Some brokers serve as agents and fiduciaries of borrowers and others simply serve as conduits to provide borrowers mortgage funds as do other mortgage loan providers (such as mortgage bankers, thrift institutions, credit unions, and banks).

Late in 1992, HUD codified a previous legal opinion that mortgage brokers must disclose to borrowers direct and

indirect fees that brokers received at settlement (November 2, 1992; 57 FR 49600). In 1995, as a result of concerns that this requirement placed mortgage brokers on an unequal footing with other mortgage loan providers and that information on indirect fees was confusing to borrowers, HUD issued a proposed rule (September 13, 1995; 60 FR 47650) to obtain the public's views on the disclosures of broker fees and on the legality of certain indirect fees to brokers from lenders (which were referred to in that rule as "wholesale lenders" and are referred to simply as lenders in this proposed rule). Shortly afterwards, HUD embarked on a negotiated rulemaking on these subjects (see notices published on October 25, 1995 (60 FR 54794) and December 8, 1995 (60 FR 63008)).

The 1995–1996 rulemaking activities on mortgage broker fees did not result in a final rule. Nonetheless, these prior efforts informed HUD and helped shape today's proposal. The earlier activities resulted in a clear consensus that there is confusion in the minds of consumers on the functions of mortgage brokers and the sources of their fees. This confusion may translate into a borrower failing to compare services and fees and thereby paying higher settlement costs. The rulemaking activities also indicated that HUD should consider which mortgage broker fees are or are not permissible, and/or consider establishing a regulatory framework for disclosure and a safe harbor for fees. Recent judicial action has further underscored the need for guidance from HUD.

For their services, mortgage brokers may receive "indirect fees" from lenders and/or direct fees from borrowers. Indirect fees to mortgage brokers are called a variety of terms, including "volume based compensation," "servicing release premiums," "overages," or "yield spread premiums (or differentials)." This last term, "yield spread premiums (or differentials)," has been used to refer to that portion of the price that a lender would pay a mortgage broker for a loan at a particular rate and point combination; this type of compensation has been particularly controversial. In specific transactions, indirect fees may comprise a large part or even all of the compensation to mortgage brokers for services. Mortgage brokers indicate that various financing options and products available to borrowers, including "no fee, no point" loans, depend for their feasibility on the payment of indirect fees by lenders.

Several lawsuits have been brought recently seeking class action certification that are based in whole or in part on the theory that certain of the fees paid by lenders to mortgage brokers, particularly from lenders, are fees for the referral of business in violation of section 8 of RESPA. In early 1997, two Federal district courts considered cases involving mortgage broker fees and reached different conclusions. One held initially that indirect fees to mortgage brokers in the form of "yield spread premiums" violated section 8(a) of RESPA as referral fees.[1] The other court held that a payment for a loan above market was permissible under section 8(c) of RESPA as payment for a "good."[2] In June 1997, two other Federal district courts concluded that yield spread premiums (or differentials) were not per se violations of RESPA and therefore refused to certify class actions on this issue.[3]

HUD has never taken the position that yield spread premiums or any other named class of back-funded or indirect fees are per se legal. The Illustrations of the Requirements of RESPA, contained in the 1992 RESPA rule and codified as Appendix B to 24 CFR part 3500, specifically listed "servicing release premiums" and "yield spread premiums" as fees to be itemized on the HUD–1 Settlement Statement. More recently, on June 11, 1997 (62 FR 31982), HUD issued a revised Settlement Costs Booklet. In that booklet, HUD explained to the borrower: "Your mortgage broker may be paid by the lender, you as the borrower, or both." Both of these issuances recognized how settlement service business is commonly transacted, but neither provision was intended to create a presumption of per se legality of any such fees, because HUD does not view the name of the fee as the appropriate issue under RESPA. The RESPA issue is whether the total compensation to a broker in a particular covered transaction is or is not reasonably related to the value of the goods furnished or services performed. If the compensation, or a portion thereof, is not reasonably related to the goods furnished or the services performed, there is a compensated referral or an unearned fee in violation of section 8(a) or 8(b) of RESPA, whether it is a direct or indirect payment.

This proposed rule seeks to address these matters by providing a framework for furthering consumer understanding of mortgage broker functions and fees. This framework will allow brokers to continue to offer borrowers beneficial loan products, so long as the broker's compensation is consistent with RESPA's requirements. In carrying out this purpose, this proposed rule remains true to and preserves RESPA's enduring consumer protections against unearned fees. Such fees only serve to increase the costs of homeownership.

Under this proposed rule, the Secretary of HUD proposes to establish a new mortgage broker contract to provide essential information to consumers concerning the functions and compensation of mortgage brokers. This contract is to permit consumers to understand a broker's functions and fees before becoming obligated to use the broker's services. To maximize use of this contract in brokered transactions, the rule would provide that when a broker enters into the contract prescribed under the rule, and meets other criteria designed to protect the consumer, the direct fees paid by the borrower and the indirect fees paid to the broker in the transaction would be presumed to be legal and permissible under section 8 of RESPA. In such cases the fees will fall within a "qualified safe harbor." The presumption of permissibility and legality will not apply, however, if one or more of the requirements for the safe harbor is not met. Moreover, even if all of the requirements for the safe harbor are met, the presumption may be rebutted if the total compensation does not pass a test to be established by HUD. The purpose of the test is to distinguish between those fees that are acceptable under section 8 of RESPA and those that are not. A major purpose of soliciting public comments under this rulemaking is to assist HUD in developing this test, which will be established in the final rule. Any test to be incorporated into the final rule must allow brokers, lenders, and consumers to determine with certainty whether total compensation to a broker in a loan transaction is or is not legal. Compensation outside of the safe harbor is presumed to violate section 8, but this presumption can be overcome if the total compensation is reasonably related to the value of the goods or services provided.

This preamble begins with a background discussion of the various roles and functions of mortgage brokers today, how mortgage brokers originate

[1] *Mentecki* v. *Saxon Mortgage*, No. 96–1629–A, slip op. (E.D. Va. Jan. 10, 1997). However, subsequently, in an order and opinion dated July 11, 1997, the court refused to certify the class.

[2] *Culpepper* v. *Inland Mortgage Corp.*, 953 F.Supp. 367 (N.D. Ala. 1997).

[3] *Barbosa* v. *Target Mortgage*, No. 94–1938, U.S.D.C., Southern District of Florida, *Martinez* v. *Weyerhauser Mortgage*, No. 94–160, U.S.D.C., Southern District of Florida, *Monoz* v. *Crossland Mortgage Company*, Civil Action No. 96–12260, U.S.D.C. for the District of Massachusetts.

loans, how they are compensated, and how RESPA's prohibitions and disclosure requirements apply to their fees. Following this background discussion, this preamble discusses the comments and information learned through HUD's prior regulatory initiatives on this subject—the 1995 proposed rule and the 1995-1996 negotiated rulemaking—which helped shape today's proposal. Finally, this preamble describes and explains the provisions of this proposed rule.

The regulatory record, as well as recent differences in legal interpretation of these issues in the courts, exemplify that this subject involves difficult and contentious issues that are not easy to resolve. This proposed rule seeks to move beyond this controversy to a fair resolution consistent with applicable law. Any proposal on this subject will be controversial. This proposal, however, is an attempt to take a fair and balanced approach to competing interests. Public comment on this rule will be critically important to refining this approach and formulating a final rule that will be consistent with RESPA's purpose, that will be workable in the market place, and that will address the financing needs of Americans.

In crafting a final rule, the Secretary will be guided by the following principles:

1. Protect consumers while recognizing the settlement services industry is changing. Although the settlement services industry is changing, RESPA's purposes—protecting consumers against inflated, burdensome settlement costs through meaningful disclosure and its prohibition against unearned fees—are as important today as when the statute was first enacted.

2. Include meaningful and timely disclosures to consumers. Consumers must have full information on settlement services provided and fees received for these services at a time when they can make meaningful choices. Clear, concise disclosures ensure that consumers are not misled about the role settlement service providers play in mortgage transactions and encourage consumers to comparison shop.

3. Protect against illegal fees; disclosure does not make illegal fees legal. While there may be debate about RESPA's specific applicability to mortgage broker fees, HUD cannot and will not sanction fees that are illegal under RESPA. Illegal and exorbitant payments for settlement services make the dream of homeownership more difficult for families to achieve.

4. Encourage innovative products to aid homeownership. Requirements established under RESPA should not impede the availability of innovative financing products, such as "no fee, no point" loans. If properly understood, these products can expand choice and lessen the costs of homeownership.

5. Not impede lending to underserved areas and borrowers. Requirements established under RESPA should not impede the efforts of settlement service providers to offer beneficial, reasonably priced services to underserved areas and borrowers.

6. Involve consumer and mortgage industry groups. HUD must give utmost attention in the rulemaking process to the comments of those affected by RESPA's requirements—including representatives of consumers and regulated industries—in fashioning an effective, workable regulatory structure under the law.

7. Provide clear rules for affected industries and consumers. Rules developed to implement RESPA's requirements must provide clear and certain guidance to the settlement services industry and consumers alike. Predictability in HUD's regulation will encourage innovation and discourage violations.

II. Background

On November 2, 1992 (57 FR 49600), HUD issued a rule revising Regulation X (24 CFR part 3500), the regulations interpreting RESPA. While primarily addressing other issues, the November 2, 1992 rule also codified certain previous informal interpretations of HUD and attempted to deal with changes in the real estate settlement services business since the original RESPA rule was issued in 1976. In particular, the 1992 rule defined the term "mortgage broker" since, by 1992, mortgage brokers were initiating a large proportion of the mortgage loans made. The rule required the disclosure of all fees, direct and indirect, to mortgage brokers at settlement, thereby codifying a 1992 opinion of HUD's General Counsel. Under the rule, payments to other loan sources following settlement were exempt from disclosure as "secondary market" transactions. As indicated above, largely because of concerns expressed about this disparity, on September 13, 1995 HUD issued a proposed rule (60 FR 47650) (1995 proposed rule) offering alternative approaches to disclosure of mortgage broker fees and fees to other lenders. Subsequently, after public notice, (60 FR 54794 (October 25, 1995) and 60 FR 63008 (December 8, 1995)), HUD conducted a negotiated rulemaking on this subject from December 1995 to May 1996. Although the negotiation process did not lead to consensus on a final rule, it was particularly useful in informing HUD and other participants on the roles and functions of mortgage brokers, and clarifying compensation and disclosure issues.

A. The Varied Roles of Mortgage Brokers in Lending

Under the 1992 rule, HUD defined a mortgage broker as "a person (not an employee of a lender) who brings a borrower and a lender together to obtain a federally-related mortgage loan," and who renders settlement services.[4] In its 1995 proposed rule, HUD categorized mortgage brokers as a type of "retail lender," which was identified as the entity that serves as an intermediary between the consumer and the "wholesale lender." 60 FR 47650–47651. The proposed rule identified the "wholesale lender" as the entity purchasing or servicing the loan. 60 FR 47651.[5]

Today there are two main types of mortgage brokers—those that represent the borrower and those that do not. Mortgage brokers may fill one role in one transaction and a different role in another. The first type of mortgage broker represents the borrower and generally has an agency relationship with, and a fiduciary duty to, the borrower. This type of broker has two variants: a mortgage broker that does not receive fees from any source other than the consumer, and a mortgage broker that does receive fees from a source other than the consumer, namely, the lender. An agency relationship may arise under State law or may be created by agreement between the mortgage broker and borrower. Although State law is largely undeveloped in this area, in some States mortgage brokers may be found to have a fiduciary responsibility to the borrower even in the absence of a contract provision.

The second type of mortgage broker does not represent the borrower. This type of mortgage broker makes mortgage loans available to borrowers either from one or a number of sources of funds with which the mortgage broker has a business relationship. This type of mortgage broker is not the borrower's agent; rather, brokers of this type present themselves as entities that try to sell borrowers mortgage loans as would other mortgage loan providers in the market. If this type of mortgage broker only makes mortgage loans available from one source of funds, the mortgage broker may or may not be functioning as the lender's agent.

[4] HUD issued a February 10, 1994 rule (59 FR 6506) that clarified that an "exclusive agent of a lender" as well as an employee of a lender were not included in the definition of mortgage broker.

[5] This proposed rule has generally abandoned the use of the terms "retail lender" and "wholesale lender" inasmuch as HUD concluded that neither created clarity for the consumer. This proposed rule uses the term "lender" (rather than referring to "wholesale lender") and "retail lender," except when discussing provisions of earlier rulemakings that use the terms.

B. Differing Methods of Mortgage Brokers in Originating Mortgage Loans

Some mortgage brokers process loans and close loans in their own names. However, at or about the time of settlement, they transfer these loans to lenders that simultaneously advance funds for the loans. This transaction is known in the lending industry as "table funding." In table-funded transactions, the mortgage broker does not furnish the capital for the loans. Instead the lender provides the capital and, immediately after the loan is consummated, the mortgage broker delivers the loan package to that lender, including the promissory note, mortgage, evidence of insurance, and assignments of all rights the mortgage broker held.

In some transactions, mortgage brokers originate loans that are closed in the mortgage brokers' names, fund the loans temporarily using their own funds or a warehouse line of credit, and sell the loans after closing. These mortgage brokers function similarly to mortgage bankers, but they do not service loans.

Still other mortgage brokers function purely as intermediaries between borrowers and lending sources. They originate loans by providing loan processing and arranging for the provision of funds by lenders. The loans are closed in the names of the funding lenders.

C. Mortgage Broker Compensation

Compensation for the services of mortgage brokers frequently comes from fees paid by the borrower.

Compensation may or may not also come from "indirect" fees paid by the lender providing the mortgage loan funds. Frequently, mortgage brokers offer the following payment methods for the fees or points the borrower pays directly: (1) The borrower may pay from his or her own funds at closing, (2) the mortgage loan amount may be increased to finance the mortgage broker fees or points (which increases the amount the borrower borrows), or (3) some combination of (1) and (2).

Frequently, mortgage brokers offer payment options that enable the borrower to pay lower fees and points, or even no fees and/or points, in exchange for a higher interest rate, or higher points and fees for a lower interest rate. If the borrower pays lower fees and points and agrees to a higher interest rate, then the lender will pay the mortgage broker a fee that reflects the higher interest payments the lender will receive from the borrower. In other words, indirect fees paid by lenders to mortgage brokers are largely based on the interest rate of the loan entered into by the borrower and the amount of points and direct fees paid by the borrower. Typically, one or more times a day, lenders set prices that they are willing to pay to mortgage brokers for loans delivered to them. The price to be paid for a loan is generally expressed as a percentage of the loan amount. These prices are based on the interest rate of the loan arranged by the mortgage broker and the points and fees for the loan as compared to the price (a combination of an interest rate and points) that the lender would purchase the loan for that day.

The price that the lender will pay is, in turn, based on the value of the loan in the secondary mortgage market (i.e., the market price). Generally, the greater the difference between the rate a loan is entered into with the consumer and the market price for the loan, the greater the total compensation that will be paid to the broker. The price may also reflect factors such as the type of loan, the "lock-in" period, and the creditworthiness of the borrower. The price that the lender pays the mortgage broker, therefore, is based on the differential between the combination of rate and points that is the par or market rate for a loan at a given time, and the combination of rate and points at which the loan is entered into with the borrower. The lender may also make additional payments to the mortgage broker at or after settlement attributable to the number of loans provided over a given period. These additional payments constitute a "volume-based discount."

The following represents an example of the fee structure of a typical 30-year fixed rate loan involving a mortgage broker:

Rate available from lender to mortgage broker* (rate plus points)		Price charged by mortgage broker to borrower* (rate plus points)		Broker's total compensation*
Rate (percent)	Points	Rate (percent)	Points	
8.00	2.00, paid to broker	8.00	None	2.00 points.
7.75	1.00, paid to broker	7.75	1.00	2.00 points.
7.50	None	7.50	2.00	2.00 points.
7.25	1.00, paid by broker	7.25	3.00	2.00 points.

*These rates and fees are offered for illustrative purposes only, not as an indication of HUD's approval of the legality of any particular fee.

D. Views on Mortgage Broker Compensation

The legality of indirect fees to mortgage brokers from lenders has been the subject of much debate and recent litigation. Section 8(a) of RESPA prohibits compensation for the referral of settlement service business; section 8(b) prohibits unearned fees. Section 8(c)(2) of RESPA, however, provides that payment may be made for "goods or facilities actually furnished or for services actually performed."[6]

Some have argued that any indirect fees paid by lenders to mortgage brokers are simply referral fees in violation of section 8(a) and 8(b) of RESPA. Others have argued that indirect fees violate section 8(a) and 8(b) and are not permitted under section 8(c)(2) except when they reflect the actual cost for the provision of such services, allowing margins for reasonable profit. Still others have argued that to the extent fees are reasonably related to the value of the goods, facilities, and services provided by mortgage brokers to lenders or borrowers, they are permitted under section 8(c)(2) of RESPA.

Those taking the position that fees are permitted if they are reasonably related to the value of the goods, facilities, and

[6] With respect to a mortgage broker that is the agent of a lender, section 8(c)(1) may also apply to the analysis. Section 8(c)(1) provides that nothing in section 8 shall be construed as prohibiting the payment of a fee by a lender to its duly appointed agent for services actually performed in the making of a loan. See also 24 CFR 3500.14(g)(1)(iii).

services have in the past disagreed on how to apply this test. Some argue that the test should include consideration of the value of the good (i.e., the mortgage loan) to the lender, subsuming or in addition to the value of the services performed and facilities provided by the broker (e.g., providing a retail outlet for the loan). Others would only allow consideration of the value of the services performed and facilities provided, arguing that the loan is not a "good," or that the mortgage broker does not provide a loan, only a referral. Others would only allow consideration of the value of the services and facilities to the borrower, not their value to the lender; under this approach yield spread premiums may be permissible if they are solely for the benefit of, and are effectively regarded as owned by the borrower, e.g., when these amounts serve only to offset or decrease the borrower's closing costs. Finally, some argue that the bringing together of the borrower and the lender is a service, not a referral, and therefore may be compensated.

Among those who agree that fees are permitted under section 8(c)(2) of RESPA if they are reasonably related to the value of the goods, facilities, and services provided, there has been disagreement over how to value the goods, facilities, and services. Some suggest that the standard for determining the price of the good should be the price that the market would bear; others criticize this approach because it does not separate out any price that the market may pay for a referral from the price of goods, facilities, and services provided. Some suggest that the standard should be the actual cost for the provision of the goods, facilities, and/or services provided, allowing specific margins for reasonable profit; others criticize this approach as contrary to RESPA's legislative history, asserting that this was not intended to be a rate-setting statute. See S. Rep. No. 93–866, at 3–4 (1974), reprinted in 1974 U.S.C.C.A.N. 6546, 6548–49. Others maintain that HUD must at all times retain some degree of authority over the aggregate of payments to mortgage brokers to deter exorbitant total fees. HUD has been mindful of this debate in shaping this proposed rule.

E. Disclosure of Mortgage Broker Fees

The 1992 rule required the disclosure of all compensation paid to lenders and mortgage brokers as part of the settlement transaction. This was a codification of HUD's position under sections 4 and 5 of RESPA (12 U.S.C. 2603–2604) that all charges imposed on borrowers at settlement must be disclosed.

This meant that lenders and mortgage brokers both had to disclose direct compensation (i.e., fees and points paid by borrower). In addition, when mortgage brokers were acting as intermediaries or were using table funding, they had to disclose their indirect fees from lenders, which were shown as "P.O.C." (paid outside of closing) on the HUD–1 or HUD–1A settlement statement. In contrast bankers, mortgage bankers and thrifts, as well as mortgage brokers that funded loans with their own funds or a warehouse line of credit for which they were responsible, did not have to disclose the compensation they might receive for a subsequent sale of mortgage loans in the secondary market.

The 1992 rule therefore had the effect of treating mortgage brokers serving as intermediaries or using table funding differently from brokers who used a warehouse line of credit or their own funds. The reasoning has been that mortgage brokers who used a warehouse line of credit or their own funds were acting as lenders and transferring their loans in the secondary market. A bona fide transfer of a loan obligation by them after the initial funding is a secondary market transaction exempt from RESPA. 24 CFR 3500.5(b)(7). RESPA does not require disclosure of fees paid in secondary market transactions. In determining what constitutes a bona fide transfer, HUD considers the real source of funding and the real interest of the funding lender. Id. The 1992 rule's requirements for disclosing fees on the Good Faith Estimate (GFE), HUD–1, and HUD–1A also made no distinction between those mortgage brokers that represent themselves as agents of the consumer and those that function like other retail lenders providing loans from various lending sources available to them.

III. Re-Examination of Disclosure of Mortgage Broker Fees

As indicated above, complaints about the difference in disclosure requirements for mortgage brokers serving as intermediaries or using table funding, as compared to disclosure requirements applicable to other loan providers, led HUD to re-examine whether, and if so to what extent, the disclosure of indirect fees, also known as "back-funded fees," paid to mortgage brokers should continue to be required under section 4 of RESPA. For this purpose, HUD issued the 1995 proposed rule.

In the 1995 proposed rule, HUD sought comments on its requirements (reflected in the 1992 rule) that disclosure of "all charges imposed on the borrower" shall include fees paid to the mortgage broker by the "wholesale" lender, because all charges are ultimately borne by the borrower. HUD also indicated it would consider how all indirect fees should be treated under section 8 of RESPA. HUD sought comments regarding the related issue of whether "volume-based compensation" is legal under RESPA and whether it should be required to be disclosed.

The 1992 rule also reiterated HUD's position that "a bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part [24 CFR part 3500], except as set forth in section 6 of RESPA and § 3500.21 [mortgage servicing transfers]." The 1995 proposed rule offered various alternative approaches for determining what does or does not constitute a secondary market transaction.

A. Alternative Regulatory Structures

In the 1995 proposed rule, HUD offered six alternative approaches to regulating the disclosure of fees paid to mortgage brokers (60 FR 47650, 47653–54) as follows:

Alternative 1

(1) Retaining the current RESPA regulation's approach of requiring disclosure of both direct and indirect fees at settlement for transactions not in the secondary market; (2) classifying mortgage loan sales after settlement as "secondary market transactions" not requiring disclosure of direct or indirect fees and exempt from RESPA, including its prohibitions against kickbacks and referral fees; (3) continuing to require disclosure of direct and indirect fees for table-funded transactions and making such transactions subject to RESPA (the loan sale is not a secondary market transaction, it is contemporaneous with and not after settlement); and (4) requiring disclosure of direct and indirect fees for loans closed in the name of the wholesale lender (not involving a sale).

Alternative 2

(1) Continuing to require disclosure of direct and indirect fees at settlement for transactions not in the secondary market; (2) classifying any mortgage loan sale—before, contemporaneous with, or after settlement—as a "secondary market transaction"; (3) requiring disclosure of direct fees at settlement but exempting the sale at settlement of a table-funded mortgage loan from RESPA as a "secondary market transaction," and making unnecessary the disclosure of "indirect fees" associated with the table-funded loan sale; and (4) requiring disclosure of direct and indirect fees for loans closed in the name of the wholesale lender (not involving a sale).

Alternative 3

(1) Continuing to require disclosure of direct and indirect fees at settlement for transactions not in the secondary market; (2) classifying a sale of a mortgage loan following the date of first accrual (the date the first payment is due from the borrower) as a "secondary market transaction"; (3) requiring disclosure of direct and indirect fees and applying other RESPA restrictions to table-funded transactions (the loan is sold at settlement, before the first accrual date); and (4) requiring disclosure of direct and indirect fees and applying other RESPA requirements to loans closed in the name of a wholesale lender (not involving a loan sale). Under Alternative 3, RESPA disclosure and other restrictions would cover more loan sales transactions (before the first accrual date) between retail lenders and wholesale lenders in addition to sales in table-funded transactions.

Alternative 4

(1) Requiring disclosure only of direct (not indirect) fees at settlement for transactions not in the secondary market (since indirect fees need not be disclosed, the secondary market exemption determines whether other RESPA prohibitions apply); (2) continuing to classify mortgage loan sales as "secondary market transactions" not subject to RESPA only if they occur after settlement; (3) requiring disclosure only of direct (not indirect) fees for table-funded transactions, such transactions would not be "secondary market transactions" and would be subject to RESPA (the loan sale is contemporaneous with and not after settlement); and (4) requiring disclosure of only direct (not indirect) fees for loans closed in the name of a wholesale lender with such transactions subject to RESPA's other restrictions.

Alternative 5

(1) Requiring disclosure only of direct (not indirect) fees at settlement; (2) classifying a mortgage loan sale, at any time, even simultaneously with loan funding (as in a table-funded transaction) as a secondary market transaction; (3) requiring disclosure of direct fees at settlement but exempting the sale at settlement of a table-funded mortgage loan from RESPA as a "secondary market transaction"; and (4) requiring disclosure of only direct (not indirect) fees for loans closed in the name of the wholesale lender (not involving a sale) with such transactions subject to RESPA's other restrictions.

Alternative 6

(1) Requiring disclosure only of direct (not indirect) fees at settlement; and (2) classifying a loan sale as a secondary market transaction only if it occurred after the first accrual date. Under Alternative 6, RESPA disclosure and other requirements would cover more transactions than are currently covered, except that indirect fees would not have to be disclosed.

B. Overview of the Public Comments

HUD received 836 comments in response to the 1995 proposed rule. Most commenters were mortgage brokers or employees of brokerage organizations, although many were lenders. Consumer representatives also submitted comments. HUD also received comments from credit unions, banks, attorneys, or other persons and organizations in real-estate-related occupations.

Several national organizations submitted comments—including counsel for the National Association of Mortgage Brokers (NAMB), the Mortgage Bankers Association (MBA), the Real Estate Services Providers Council (RESPRO), the National Association of Realtors (NAR), the National Association of Federal Credit Unions (NAFCU), the American Bankers Association (ABA), the National Home Equity Mortgage Association, the Title I Home Improvement Lenders Association, and the Independent Bankers Association of America (IBAA). Additionally, several State associations representing mortgage brokers submitted comments. The Board of Governors of the Federal Reserve System, the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) also commented.

C. Summary of Public Comments on Alternative Regulatory Structures

The preponderance of commenters, primarily industry members and representatives, favored Alternative 5, requiring only disclosure of direct fees and classifying a transfer of a table-funded loan as a secondary market transaction. The NAMB characterized the fees in question as "fees in the nature of secondary market fees (e.g., service release premiums, excess yield differentials or volume discounts)." NAMB also argued strenuously that these fees were legitimate and earned, and that their disclosure should not be required because "they are not fees, points, or charges collected from the mortgagor or seller."

NAMB and individual mortgage brokers urged that fees of the kind at issue were essential to the continued competitiveness of mortgage brokerage firms, and that their elimination would stifle competition in the mortgage lending industry. While their disclosure to the affected consumer was thought by these commenters to be unnecessary, a determination of their legality was the commenters' paramount concern. Many industry commenters expressed their belief that HUD needed to declare the legitimacy of these fees under RESPA.

The Board of Governors of the Federal Reserve System expressed some concern regarding HUD's proposal to eliminate disclosure of indirect fees paid to mortgage brokers, as that might impact on its determination of coverage under section 32 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325; approved September 23, 1994). That section prescribes special rules for high cost mortgage loans, loans which have rates and fees above a certain level. The Board, however, subsequently adopted a regulation that based its calculation on direct (borrower-paid) fees only. Under this circumstance, the Board's originally expressed concern is no longer relevant.

Most, but not all, of the comments adverse to positions taken by mortgage brokers and brokers' organizations came from consumer groups. Five consumer or legal service organizations responded to the proposed rule. Commenting consumer organizations, taking a different view than mortgage brokers, favored Alternative 1, the status quo, among the offered options. Additionally, however, they asked for further strengthening of the existing regulation to require greater disclosure, to cover a larger array of transactions, and to outlaw certain lender payments. Some consumer organizations characterized certain lender payments to mortgage brokers as "kickbacks," impermissible under RESPA whether or not they are disclosed. These commenters urged HUD to issue a blanket prohibition against certain lender-paid fees.

A scattering of industry commenters also supported Alternative 1, the status quo. These included: Travelers Group, New Jersey Savings League, and First Commerce Corporation. These commenters took the view that the current RESPA regulation resulted in the most informative disclosure to consumers while still allowing bona

fide secondary market transactions to proceed outside the scrutiny of consumers or others involved in the settlement.

Some other industry commenters supported Alternative 2 (continuing to require disclosure of indirect fees, but expanding the definition of "secondary market transaction"). These included: McDonnell Douglas West Federal Credit Union, Comerica Inc., The Money Store of Sacramento, California, and the Michigan Bankers' Association.

Similarly, Alternative 4 (which required disclosure only of direct fees, but with no change in the current definition of secondary market transaction) attracted only a few commenters. Four commenters, including the MBA, opted for this structure. The MBA said it favored a "modified" Alternative 4. It disagreed that in a table-funded transaction a mortgage loan sale occurs at settlement. Because these sales "effectively occur after settlement," MBA said, it favored Alternative 4 with the recommendation that the final rule conform to MBA's understanding of the table-funding issue.

American Federal Bank of Greenville, SC, PNC Mortgage Corporation of Vernon Hills, IL, and a PNC-affiliated company, The Home Mortgage Network, also favored Alternative 4. PNC Mortgage Corporation went on to suggest that, despite favoring the elimination of a recitation of "indirect" fees as the current rule requires, it would be useful for the RESPA regulation both to clarify that other forms of compensation are permitted and to require actual notice to borrowers when the retail lender is being paid "servicing release premiums" or "yield spread premiums."

There were no industry commenters that favored Alternatives 3 or 6. One consumer organization, Illinois Consumer Justice Council, Inc., supported, in essence, Alternative 3, although the commenter advocated outright prohibitions on specific forms of lender compensation to mortgage brokers.

Both Fannie Mae and Freddie Mac (Government-Sponsored Enterprises or GSEs) cautioned against the adoption, without clarifications, of Alternatives 3 or 6. At the least, Freddie Mac said, "further elaboration of the concept" would be necessary were HUD to adopt a definition providing that only mortgage loan sales that occur relatively long after settlement would be regarded as exempt secondary market transactions.

Similarly, Fannie Mae pointed out that narrowing the secondary market exemption could hamper the speed of mortgage financing and adversely affect mortgage lenders' ability to take advantage of technological innovations. Neither GSE registered an outright objection to a narrowing of the secondary market exemption. Each made clear that Alternatives 3 and 6 were not preferred, and, if adopted, would disrupt current practices. Neither GSE expressed a positive preference for any of the alternatives outlined in the proposed rule.

On the issue of volume-based compensation, the commenters were divided. Commercial Credit advocated permitting the payment of volume-based fees. NAMB specifically objected to HUD's questioning the "propriety of paying volume discounts under RESPA." NAMB urged that such payments were a standard industry practice, that the issue should not be addressed "piecemeal," but that HUD should "articulate a simple standard of what *may* be paid."

American Federal Bank, PNC Mortgage Corporation, and The Home Mortgage Network indicated that volume-based compensation should be permitted, but that a "general" form of disclosure should be required—to the effect that the retail lender "may receive additional compensation in connection with the transaction." McDonnell Douglas West Federal Credit Union advocated disclosure of this form of compensation to borrowers.

Michigan Bankers Association and Comerica (in identical comments) stated that volume-based compensation could lead to loan steering. Arguing that disclosure of such compensation was too complex a matter, these commenters appeared to be suggesting that this form of compensation to brokers should be prohibited altogether. In addition, Travelers Group opposed it as being a form of kickback not tied to actual services rendered and also said that volume-based compensation almost always results in "loan steering."

IV. Negotiated Rulemaking

After issuing the 1995 proposed rule, HUD concluded that the issues in the rulemaking might be better understood and perhaps resolved by involving representatives of interested parties in a negotiated rulemaking process. In appropriate circumstances, this process brings together agency representatives with all parties substantially affected by the subject matter in order to negotiate the terms of a needed rule.

On October 25, 1995, HUD published a Notice of Intent to Establish a Negotiated Rulemaking Advisory Committee (60 FR 54794) to address mortgage broker fees and volume-based compensation. HUD received nine comments in response to the notice, most of which favored negotiated rulemaking.

On December 8, 1995 (60 FR 63008), HUD published a notice announcing the establishment of an Advisory Committee. HUD charged the Advisory Committee with: (1) Determining whether the amount and nature of indirect payments to mortgage brokers and certain other mortgage originators should be disclosed to the consumer; and (2) resolving whether volume-based compensation from wholesale lenders to mortgage brokers is permissible under RESPA (and implicitly, whether other payments from wholesale lenders to mortgage brokers are permissible, an issue mentioned explicitly in the October 25, 1995 notice), and whether and how the compensation should be disclosed. The notice set forth HUD's conclusion that, in view of the degree of controversy and in the interest of fashioning the best possible rule, the negotiated rulemaking process offered the best means of generating information and resolving the difficult issues involved.

The Advisory Committee was composed of parties possessing a definable interest in the outcome of a proposed rule—representatives of mortgage brokers, lenders, the Government-Sponsored Enterprises, State government, and consumer advocates. In addition to HUD, the following were members of the Advisory Committee: AARP/Legal Counsel for the Elderly, America's Community Bankers, American Association of Residential Mortgage Regulators, ABA, American Financial Services Association, Citizen Action, Freddie Mac, Fannie Mae, IBAA, the MBA, National Association of Consumer Advocates, National Association of Federal Credit Unions, NAMB, NAR, Office of the Attorney General of the State of Texas, RESPRO, and The Mortgage Capital Group.

A. Advisory Committee Activities and Approach

From December 1995 to May 1996, the Advisory Committee met for six 2-day negotiation sessions that were facilitated by HUD's Chief Administrative Law Judge, Alan W. Heifetz. The Advisory Committee began its deliberations with presentations by participants and industry experts regarding the functioning of the mortgage lending industry. The consumer representatives presented the group with their concerns and their perceptions of areas in which

consumers were in need of increased protection. The Advisory Committee then framed the points in question and engaged in substantive discussion of the issues presented.

The Advisory Committee spent a large portion of its time on the issue of the appropriate scrutiny of indirect fees under section 8. Committee members were adamant that the starting point should be resolution of the permissibility of indirect fees. In analyzing fees, the participants recognized that there were different types of fees from lenders to mortgage brokers: (1) fees reflecting payment for a loan delivered at or near the par price, and (2) payments to a mortgage broker for a loan delivered considerably above the par price.

While nearly all participants recognized that mortgage brokers perform valuable services in brokering loans for consumers, they disagreed considerably over the appropriate means of analyzing the legality of mortgage broker fees under RESPA. One representative initially argued that all indirect fees are illegal under section 8(a) and 8(b) of RESPA. Other members of the Committee agreed that the standard RESPA test would apply. As discussed above, that test provides that although fees cannot be paid for the referral of business as proscribed in section 8(a) and 8(b), if fees are reasonably related to the value of the goods, facilities, and services provided, they are permissible under section 8(c)(2) of RESPA.

The Committee attempted to find a workable formula for applying the standard RESPA test to lender payments to mortgage brokers, but it did not reach consensus on how to apply the test to those payments. Advisory Committee members conferred on the options and considered that, if the value of the services was deemed to be the appropriate point of scrutiny, then there would be a further need to define the proper method for determining the value of such services. Others focused on the facilities a mortgage broker provides (which allow lenders to function without "bricks and mortar"), and argued the value of these facilities should be analyzed in considering whether the broker's compensation was reasonable. Each of these approaches received criticism, however, as it would require establishing a level of appropriate payment for itemized services or facilities. That task would, however, be unworkable and inconsistent with RESPA's legislative history against price-setting.

Some believed that the loan provided by a broker to a lender could be regarded as a "good" under section 8(c)(2) with the compensation analyzed in terms of the loan's value to the lender. That approach was criticized, however, as undermining any meaning of RESPA's section 8, since it would allow the lender to pay for the value of the referral as part of the bundled value of the good.

Some suggested defining indirect fees to mortgage brokers as fees in the secondary market outside the scope of RESPA. The Committee addressed the possibility of altering the current definition of what constitutes a secondary market transaction. Although various alternatives were proposed and considered, the group could not agree on any particular approach. Likewise, on the permissibility of particular types of lender payments to mortgage brokers, including volume-based compensation, the participants suggested differing interpretations of the statute's meaning and intent, thus causing an impasse on this issue as well.

All agreed as a general principle that exorbitant rates and points should not be extracted from consumers and that mortgage brokers should not be paid total compensation that greatly exceeds the comparable compensation for comparable borrowers and loan programs. Most agreed that it is difficult to develop a workable test for the proper amount of this compensation. They also recognized the extent of public confusion over the role of mortgage brokers, particularly where the mortgage broker receives compensation from the lender. The participants struggled with the diversity of ways mortgage brokers operate for borrowers. For example, certain mortgage brokers act as the borrower's agent arranging the most favorable loan for the borrower. Certain mortgage brokers offer various loan products in a manner similar to retail lenders. Some offer the loan products of only one lender. Consumer advocates were particularly critical of mortgage brokers who asserted their role to be to place loans with one of several lenders with which they do business, yet took advantage of the consumer's perception that they were acting as the consumer's agent, although they were not, in fact, doing so.

The diverse views of the participants as to how mortgage brokers function and what types of fees they receive resulted in diverse views of the legality of the fees mortgage brokers receive and the extent to which they should be required to disclose their fees to borrowers. Some argued that limiting a mortgage broker acting as a retail lender to a fee for services (and ignoring the value of the good delivered) effectively forced the mortgage broker to act as the borrower's agent without an indication such a step was intended by Congress in enacting RESPA. Mortgage brokers, they argued, should be able to charge consumers whatever price they can obtain for a loan in the market, even if the price is above that at which the lender would have been willing to make the loan. In a competitive market where consumers shop, they claimed, such a broker would be limited by market competition.

On the other hand, when the broker is acting as the borrower's agent, most agreed that the mortgage broker is obligated to shop around for the consumer to obtain the best deal for the consumer. This kind of mortgage broker should not be compensated by a lender based simply on the value of the loan, most agreed, without disclosing such compensation to the borrower.

Few agreed on what circumstances would require mortgage brokers to serve as the borrower's agent. Most, however, concurred on the point that a great many consumers perceive the role of a mortgage broker to be their agent, which is different from how the mortgage brokers perceive themselves.

There was consensus on one point: that a rule should clear up this confusion and require that mortgage brokers inform borrowers of the role the mortgage broker is serving early enough in the transaction to allow the consumer to shop effectively for alternatives.

B. Advisory Committee Views on a Safe Harbor

As a result of the divisions among the negotiators concerning the appropriate analysis, most of the participants endorsed creating a "safe harbor" that would exempt from section 8 fees to mortgage brokers in circumstances in which the participants could be confident that the consumer is adequately protected. Most of the participants concluded that creating a safe harbor for mortgage broker fees was the only reasonable means of allowing fee payments while ensuring the consumer was protected. The participants, however, differed on the specific requirements for the safe harbor. Participants suggested differing types and levels of disclosures, depending upon the interests and views of the proponent.

One participant favored a safe harbor involving the execution of a binding mortgage broker contract between the mortgage broker and the borrower. First, this mortgage broker contract would provide terms of the relationship between the borrower and the broker. Second, the broker would disclose direct fees, and the disclosure would

notify borrowers that the mortgage broker may receive additional (indirect) fees from a lender pursuant to that transaction. Third, the disclosure would notify the borrower that the broker does not distribute the products of all lenders, and that the products distributed may not represent the lowest price or the best terms available. Fourth, the mortgage broker contract would incorporate additional items that were required as a matter of State law.

One group of the participants proposed a safe harbor involving a borrower-broker contract detailing all the elements of the aforementioned proposal and adding two significant elements. First, the contract would require the broker to disclose the maximum total compensation (including indirect fees) it would receive from all sources (in terms of dollars and/or percentage of total mortgage loan amount). Second, once disclosed, this maximum amount would serve to limit the compensation paid to the broker. A variant of this option, proposed by another participant, would also require that the borrower be explicitly granted the option of paying the broker directly, either through points or from mortgage loan proceeds.

Another participant offered a proposal under which the broker would disclose only the relationship of the broker to the borrower and the broker's direct fees. Yet another participant supported establishment of a safe harbor requiring: (1) Disclosure of the relationship between the borrower and the broker, (2) a statement that the broker does not offer the products of all lenders and that the products offered do not reflect the broker's having shopped for the consumer to ensure the best price available, and (3) disclosure of the fees from the lender and the borrower. In addition, use of this safe harbor approach would only be available in a competitive mortgage market in which multiple services were not being provided by a single entity or affiliated entities. Another participant supported a similar proposal and suggested that a competitive market might be shown by such means as collecting comparable advertised prices by competitors, disclosing average national rates to the borrower, and complying with standards for "high cost mortgages" under section 32 of the Riegle Community Development and Regulatory Improvement Act of 1994 (section 103(aa) of the Truth in Lending Act, 15 U.S.C. 1602(aa)).[7]

On May 21, 1996, the Committee concluded its negotiations without reaching consensus on a proposed rule. On July 19, 1996, the Committee Facilitator submitted his final report on the negotiated rulemaking to HUD. That final report summarized the negotiated rulemaking proceedings and detailed the approaches discussed by the participants during the negotiations. In the report, the Facilitator observed that the numerous interests represented in the Committee conflicted and aligned along various permutations. The report noted the Committee's inability to reach consensus and stated that no party would be bound by discussions or particular positions taken during the negotiations.

Although there was a failure to reach consensus, it is significant that the Advisory Committee's deliberations resulted in almost unanimous support for the creation of a safe harbor approach to resolve issues relating to mortgage broker fees. This safe harbor would include the disclosure of the mortgage broker's relationship with the borrower and information about the mortgage broker's fees in the loan transaction. Such a safe harbor was believed to secure a level of consumer protection that would fulfill section 8's purpose. Indirect fees to mortgage brokers that complied with these specific disclosure requirements would be exempt under section 8 of RESPA. In light of the absence of consensus on any one safe harbor approach, HUD was presented with the task of creating acceptable criteria for a safe harbor, if it decided to adopt that approach.

V. This Proposed Rule

Following review of all of the comments and the results of the negotiated rulemaking, HUD is proposing a rule to encourage the use of mortgage broker contracts that will clearly establish the role of the mortgage broker, the mortgage broker's duties, and the mortgage broker's compensation. This proposed rule strives to protect consumers better by providing them the information they need to be better shoppers and by making the information disclosed to them in the mortgage broker contracts binding. This proposal seeks to discourage practices that give financial incentives to mortgage brokers that offer higher priced loans than what are generally available in the marketplace for the particular mortgage applicant.

This proposed rule is premised on the following facts and policy considerations:

1. Under current rules, there are reported cases in which exorbitant payments have been made to mortgage brokers by lenders. In these examples, the cost of the loans is significantly more than what the consumers could have obtained from other loan providers in the marketplace, and these additional costs have undoubtedly contributed to foreclosures.

2. Under the current RESPA rule, consumers are not provided sufficient information about the mortgage broker's role in the transaction. On the other hand, consumers are sometimes overloaded with more information about the home financing process than the consumers can use and receive confusing information about the mortgage brokers' fees.

3. The borrower would benefit from a useful mortgage broker contract specifying the mortgage broker's functions and compensation so that the borrower is not misled as to the role the mortgage broker plays in the transaction and does not fail to comparison shop.

4. Borrowers use interest rates, points, and closing costs to shop for mortgages. With this information, the borrower can make informed choices about loan services, provided the borrower is also aware of the mortgage broker's function and the extent and sources of its compensation.

5. The disclosure of mortgage broker fees paid by the lender on the GFE, HUD–1, and HUD–1A without further explanation is frequently confusing to borrowers. In particular, the fact that these fees are listed as "P.O.C." (paid outside of closing) but are paid by the lender, rather than the borrower, is confusing.

6. Mortgage brokers should agree with borrowers by contract as to how they function, provide appropriate information about their fees, and be required to adhere to the terms of the contract.

7. The disclosure requirement in the 1992 rule may have caused mortgage brokers to establish warehouse lines of credit simply to avoid the disclosure requirement, thereby incurring unnecessary costs passed on to borrowers.

8. The industry requires certainty about the permissibility of payment practices.

9. Fees from lenders to brokers allow the borrower to have an array of choices in trading off interest rate and points, including "no fee, no point" loans. The borrower actually will pay these fees over time as reflected in the interest rate. However, if properly understood by the borrower, this pricing mechanism can expand choice and lessen the closing costs of loans to the homebuyer, making homeownership more affordable and facilitating refinancings to take advantage of lower rates.

10. Under appropriate circumstances it may be possible to recognize a class of compensation to mortgage brokers presumed to be legal. When establishing a class of compensation presumed legal, it is essential to identify any compensation that should not enjoy such a presumption.

11. Mortgage brokers reportedly originate approximately half of all mortgages. This volume of activity would not be possible if the majority of loans obtained through mortgage brokers did not have terms competitive with those of mortgages from other lending sources.

A. Department's Overall Approach to a Safe Harbor

This proposal offers a qualified safe harbor that affords limited protection for fees to mortgage brokers. The mortgage broker contracts required to qualify for the safe harbor proposed in this rule tackle two issues that are potentially controversial concerning mortgage broker fees: (1) How the role of the mortgage broker should be characterized for the consumer/borrower, and (2) how the consumer/borrower should be made aware of the total amount of compensation to the mortgage broker. The contracts proposed under this rule require the broker to specify whether or not the broker is acting as a representative of the borrower to shop for a mortgage loan, or whether the broker does not represent the borrower and serves only to arrange loans. If the broker indicates it acts as a representative, the broker must disclose whether or not it is receiving indirect fees from a lender. To qualify under the safe harbor, mortgage brokers must disclose whether the mortgage broker deals with one or more than one lender so that the consumer can understand the extent to which the broker will shop.[8]

The contract requires the broker to disclose the maximum amount of compensation the broker will receive in the loan transaction, distinguishing the fees coming from the borrower and the fees coming from the lender. Mortgage brokers also will continue to be required to disclose their direct fees as well as their indirect fees paid to them by lenders on the GFE, the HUD–1, or HUD–1A in transactions covered by the exemption.

For those transactions in which the proposed mortgage broker contracts are entered into and adhered to, and other requirements of the rule are satisfied, compensation to brokers will be regarded as having been paid within a "qualified safe harbor" within which fees paid to mortgage brokers from lenders will be presumed legal. This presumption of permissibility and legality would not apply, however, if one or more of the requirements for the safe harbor is not met. Moreover, even if all of the requirements for the safe harbor are met, the presumption may be rebutted if the total compensation does not pass a test to be established by HUD and incorporated in the final rule. When the fees do not pass this test, they are presumed to violate section 8 of RESPA. This presumption can be overcome if the total compensation is reasonably related to the value of the goods or services provided. By providing that the safe harbor is "qualified," HUD preserves the ability to protect consumers against illegal fees, as determined by the test to be established in the final rule following public comment. A qualified safe harbor will ease the difficulty and uncertainty involved in applying section 8(a), 8(b), and 8(c)(2) to total mortgage broker fees. HUD is specifically soliciting comments on the elements of this test.

In order to establish the "qualified safe harbor," HUD is proposing to exercise its exemption authority under section 19(a) of RESPA (12 U.S.C. 2617(a)) to add a new, limited exemption to RESPA's prohibition against kickbacks and unearned fees. In addition, under section 8(c)(5) of RESPA, the Secretary may create regulatory exemptions for "such other payments or classes of payments," after consulting with various Federal agencies (12 U.S.C. 2607(c)(5)). The exemption proposed is limited in that it creates a presumption of legality for compensation that meets the requirements of the exemption.

Regarding lender payments of indirect fees, mortgage brokers and lenders should be aware that, in addition to RESPA, they are also subject to the requirements of the Fair Housing Act and other fair lending laws. Discretionary pricing of loans is a major fair lending concern of HUD and the Department of Justice because of the possibility of disparate treatment of similarly qualified borrowers. Yield spread premiums or servicing release fees that are consistently higher for a minority population, for example, than they are for a similarly qualified nonminority population could be unlawful under the Fair Housing Act. While mathematical precision is not required between the premiums and fees associated with borrowers grouped by racial or other categories, the larger the differences, the closer enforcement agencies will look for possible disparate treatment.

Monitoring of such fees by mortgage brokers and lenders can help preclude unlawful conduct under the Fair Housing Act and other fair lending laws. HUD itself will monitor the number and type of fair lending complaints involving such fees and premiums upon implementation of the final RESPA rule regarding payments to mortgage brokers, and will, if necessary, revisit the issue if it appears that consumers are being subjected to discrimination in this area and would benefit from additional disclosures or additional contract terms.

For mortgage brokers meeting the requirements of the qualified safe harbor, volume-based compensation would be presumed legal (subject to application of the test developed for the final rule); outside of the safe harbor, volume-based compensation will be presumed to violate section 8(a) or 8(b) of RESPA. In making the representation regarding the maximum amount of fees from the lender in the mortgage broker contract, the mortgage broker is to state an amount that reflects expected volume-based compensation for the loan.

This rule does not propose to change the secondary market line. HUD concluded that there was little benefit to shifting the line.

B. Elements of the Safe Harbor Provision

In this proposed rule, HUD would amend 24 CFR 3500.14(g)(2) to provide that lender payments to mortgage brokers are presumed legal and permissible under section 8 if the following conditions are met:

1. Mortgage Broker Contracts

The mortgage broker and the prospective borrower(s) execute a mortgage broker contract for each loan transaction. The form of the mortgage broker contract that would be used would be set forth in Appendix F to part 3500 to facilitate mortgage broker compliance with the safe harbor requirements. The instructions for completing the form would be provided with the form.

[7] A "high cost mortgage loan" is an owner-occupied residential mortgage loan in which the annual percentage rate of interest (APR) will exceed by more than 10 percentage points the yield on Treasury securities of comparable maturity. A high cost mortgage loan is also a mortgage loan in which the total points and fees paid by the consumer will exceed the greater of 8 percent of the mortgage loan amount, or $400 (adjusted annually by the Federal Reserve Board—$412 in 1996), whichever is larger. 15 U.S.C. 1602(aa); Regulation Z, 12 CFR 226.32.

[8] A mortgage broker that does not represent the borrower and that deals with only one mortgage lender's products might operate, for example, in an affiliated business arrangement. A Federal Housing Administration (FHA) correspondent could also fall in this category.

HUD is proposing a binding mortgage broker contract rather than a simple disclosure, because a binding contract creates an enforceable remedy for the borrower and ensures that the terms indicated cannot be changed or superseded unilaterally by the mortgage broker. The mortgage broker contract would provide meaningful terms regarding the broker's functions in the transaction, its duty to the borrower (whether it does or does not represent the borrower), the potential maximum amount of compensation to be received in the transaction including the amounts paid by the borrower and by the lender, and the mortgage broker's State license number, if applicable.

The contract would clarify for the borrower the differing functions of mortgage brokers and the role of the mortgage broker in the particular transaction. The contract would describe two main types of mortgage brokers, those that represent the borrower (including the two different variants of mortgage brokers that represent the borrower—those that do and those that do not receive indirect fees), and those that do not represent the borrower. Borrowers would be told whether the mortgage broker represents them and will shop for the most favorable mortgage loan that meets the borrower's stated objectives from the lenders the broker does business with, or whether the broker does not represent the borrower and merely arranges loans. Under the contract, the broker must disclose how many sources the broker will shop from or may use for a borrower's loan.

The mortgage broker is to check the appropriate box regarding how it will function in the particular anticipated transaction. The first box is for use by a mortgage broker that represents the borrower and does not receive a fee from the source of mortgage funds. The second box is for use by a mortgage broker that represents the borrower but may receive a fee from the lender. Both the first and second box are for the type of mortgage broker that, by operation of State law, is a borrower's agent, or that represents itself as a borrower's agent in arranging a mortgage loan in the transaction. Mortgage brokers that are agents of the borrower would be allowed to represent themselves to the consumer as an entity that is required to obtain the most favorable mortgage loan for the borrower from the sources with which they do business. The disclosure of the mortgage broker's function and whether the mortgage broker is receiving fees from the lender will assist the borrower in assessing whether the mortgage broker works only for the borrower, has competing interests, or may be receiving indirect fees.

The third box is for use by a mortgage broker that does not represent the borrower and does not represent itself as a borrower's agent in arranging a mortgage loan in the transaction. This type of mortgage broker may deal with one or more than one source of funds and may receive a fee from the source of funds. This type of mortgage broker would be required under the contract clearly to inform the borrower that it is not the borrower's agent and that it arranges loans from lender(s), and to state the number of lenders with which it brokers loans. Borrowers would not be lulled into paying more than necessary to obtain the loan they want on the assumption that this type of mortgage broker is shopping for the borrower to obtain the best price available. Thus, mortgage brokers that are not the borrowers' agents would not be able to take advantage of borrower confusion over the role of the mortgage broker to obtain a price that exceeds what informed borrowers would pay. The rule is designed to help ensure that "what the market will bear" is not inflated by the borrower's misimpression as to the service actually being provided.

The contract then describes how brokers are compensated. It also indicates to borrowers that if a borrower would rather pay a lower interest rate, the borrower may pay higher upfront points and/or fees. The contract specifies the maximum points and other compensation and the maximum total compensation the broker will earn in the transaction for a loan up to a particular amount and at the rate offered by the broker. The contract discloses the source of the compensation—the amount of fees that are to be paid by the borrower and the fees paid by the lender.

Because the compensation may differ under various combinations of rates and points, the contract advises the borrower that the broker has alternative loan arrangements that the broker will display for the borrower. (HUD plans to develop or to facilitate the development of software for use by brokers for this purpose that will be distributed in conjunction with the final rule.)

The contract cautions that the broker's commitment to the amounts disclosed applies only if the borrower qualifies for the loan.

The back of the contract form would include a useful, preprinted summary for the borrower of his or her rights in shopping for a mortgage loan, including rights under RESPA and the mortgage broker contract.

Those mortgage brokers seeking to qualify for the safe harbor in § 3500.14(g)(2) would, at the time a consumer expresses serious interest in obtaining a loan from the broker and prior to application or before receipt of any payment (whichever is earlier), determine which of the categories fits its functions respecting the consumer in the particular transaction. The mortgage broker would, before application or before receipt of any payment, whichever is earlier, complete and execute the mortgage broker contract in Appendix F, deliver a copy to the prospective borrower(s), obtain the borrower's or borrowers' signature(s), and retain a copy of the contract. Of course, a mortgage broker could check one box on the form for one transaction and a different box in a different transaction, depending upon the mortgage broker's function in the transaction. However, a mortgage broker would only check one box and complete and execute one form per transaction. For all transactions in which the mortgage broker wishes to qualify for the safe harbor, the mortgage broker would be required to use the form provided and comply with the terms applicable to the box checked. This will ensure consistency in the mortgage broker contracts provided to consumers. If an applicant wants the mortgage broker to shop for more than one type of loan with different rates and fees, then a separate contract would be executed for each possible loan.

Mortgage brokers not wishing to qualify for the safe harbor would not be required to use the form.

2. Performance and Representations Consistent With Contract

During the course of dealings with the prospective borrower(s), the mortgage broker would have to perform in accordance with the terms of the mortgage broker contract and not make representations inconsistent with such contract. The terms of the mortgage broker contract could only be changed through mutual written agreement between the mortgage broker and the borrower. A mortgage broker who indicates on the mortgage broker contract that "I am your agent and I will get you the most favorable mortgage loan that meets your stated objectives," is required to get the borrower the most favorable mortgage loan that meets the borrower's stated objectives from among the sources of funds with which the mortgage broker discloses it will shop.

3. Disclosure of Fees

In addition to the disclosures of fees in the contract, the mortgage broker would have to disclose fees on the GFE and the HUD–1 or HUD–1A in a manner consistent with §§ 3500.7 and 3500.8 of the regulations, as do all mortgage brokers whether qualifying for the safe harbor or not.

4. Mortgage Broker Licenses

If the State in which the property for which the mortgage loan is sought has licensing or registration requirements, the mortgage broker must have a valid license or registration and identify the license or registration number on the mortgage broker contract. A large proportion of States require, or are in the process of requiring, that mortgage brokers be licensed by a State regulatory body. This provision would make the borrower aware of State regulations and might assist an aggrieved borrower in pursuing an action under State law against a mortgage broker. All of the members of the Advisory Committee supported including this information on the contract.

C. Effect on State Law

Section 18 of RESPA (12 U.S.C. 2616) preempts State law that is inconsistent with its provisions, unless such law provides greater protection to the consumer. However, the RESPA regulations in § 3500.13 provide, in part, that RESPA and the RESPA regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency. Therefore, in accordance with § 3500.13, mortgage brokers must comply with relevant State laws regarding disclosure of mortgage broker fees and related issues, except when inconsistent with RESPA or the implementing regulations. HUD, to the extent feasible, will work with interested State regulatory bodies to determine if applicable disclosure terms or requirements may be combined in a single form.

D. Definition of Mortgage Broker

HUD's current definition of "mortgage broker" specifically excludes an "exclusive agent of a lender" from the definition of "mortgage broker." This rule proposes to revise the definition to include an "exclusive agent of a lender" and thereby enable such an entity to qualify for the safe harbor. A mortgage broker that deals with only one lender may still perform the functions of a mortgage broker, regardless of whether he or she is the lender's exclusive agent. Such a mortgage broker could take advantage of the safe harbor if all applicable criteria are met. This rule proposes a similar conforming amendment to § 3500.17(b).

E. Questions for Commenters

HUD invites comment on all aspects of today's proposal. In particular, HUD is interested in the public's view regarding the following questions:

1. As proposed, the new safe harbor may be rebutted if the total compensation does not pass a test to be established by HUD. HUD is specifically requesting comments on an appropriate test or tests to determine with certainty what, if any, portion of compensation to a mortgage broker should be impermissible under RESPA. There are numerous possibilities for such a test that could result from this rulemaking. Any test established for the final rule must allow brokers, lenders, and borrowers alike to determine with certainty whether the total compensation to a broker is or is not legal. Accordingly, commenters are requested to suggest a quantifiable or otherwise objective test or tests for examining a broker's total compensation. Suggestions may include, without limitation, defining the outer boundaries of permissible or legal total payments in terms of ranges or amounts such as a specified dollar amount that could vary based on the size of the loan or as a fixed percentage of the loan amount; if compensation exceeds a specified range or amount, the excess could rebut the presumption of legality under section 8. A test also could be based on comparing the total compensation for a broker's loan to the total compensation for similar loans by mortgage brokers and lenders to borrowers of similar credit quality in the broker's area. This could be accomplished by establishing a baseline of the average market compensation for comparable loans for an immediately preceding time period. Any compensation for a loan that exceeds the baseline average by more than a specific amount could be used to rebut the presumption of legality.

Additionally, a test could establish the parameters of permissible compensation through plain and straightforward criteria. This could be accomplished, for example, by providing that a yield spread premium is impermissible unless it is considered owned by, under the control of, and for the benefit of the borrower, or such a premium is impermissible based upon other fixed criteria. Compensation that does not meet the established criteria would rebut the presumption of legality. In this proposed rule, if the mortgage broker does not enter into the specified contract, any mortgage broker compensation is presumed to violate section 8(a) or 8(b) of RESPA. This presumption can be overcome if the total compensation is reasonably related to the value of the goods or services provided. Commenters are urged to provide any other formulations that also would provide a clear line between compensation presumed legal and compensation that would not enjoy such presumption. HUD requests commenters to provide rule language to accompany any suggested test(s).

2. As proposed, the rule offers a qualified safe harbor under which there is a presumption of legality regarding fees to "mortgage brokers" that use the prescribed contract. Is the definition of "mortgage broker" under this proposal adequate to avoid the possibility that settlement service providers or others that do not provide any real services could take advantage of the exemption to charge fees? Specifically, should this definition be changed, or should the final rule also require that a mortgage broker perform certain core services to qualify for the exemption? In a letter dated February 14, 1995 from Assistant Secretary Retsinas to the Independent Bankers Association, HUD described certain core services in connection with mortgage lending. To what, if any, extent should the substance of that letter be included in this rule? Those favoring additional requirements should provide their views on what these requirements should be.

3. As proposed, mortgage brokers wishing to qualify for the safe harbor would check a box on a form, depending upon which of the alternatives fits the mortgage broker's function in the particular transaction. HUD seeks comments on alternative approaches or alternative language for the form explaining the broker's function. Does the language proposed adequately distinguish the various categories of mortgage brokers? Would the language proposed unduly influence the consumer to prefer one type of mortgage broker over another? What revisions, if any, should be made to the form?

4. As proposed, mortgage brokers wishing to qualify for the safe harbor must complete and execute the mortgage broker contract "before application or before receipt of any payment." HUD seeks comments on whether the final rule should maintain this general requirement respecting the timing of the disclosure, or whether the rule should specify a more precise time or occasion when the form should be provided. HUD also seeks comments on what, if any, requirements should be included in the rule to address a

situation in which a broker takes an application over the telephone or by other electronic means, including through the Internet. HUD believes the contract should be provided to the borrower as early in the process as possible, but recognizes that information that is provided too early can be so imprecise that it is not useful to the consumer.

5. As proposed, the safe harbor would only appear useful to mortgage brokers that are using table funding or that are acting as intermediaries; those brokers that lend their own funds or use a warehouse line of credit would still qualify for the secondary market exemption. HUD invites comments on whether it should require mortgage brokers that lend their own funds or use a warehouse line of credit to disclose their relationship with the borrower. If so, what would be the basis to impose such a requirement? Should HUD structure a safe harbor that would encourage mortgage brokers in these other circumstances and other loan providers to enter into mortgage broker contracts with borrowers? If so, how would it be structured and what would be its legal basis?

6. As proposed, mortgage brokers that make available the loan products of only one source of funds must disclose on the mortgage broker contract the name of the one lender with which it does business. Is this a fair burden to impose on such mortgage brokers as a part of qualifying for the safe harbor? Does it put such mortgage brokers at a competitive disadvantage?

7. HUD's intent is that the mortgage broker contract would be binding. HUD seeks views concerning the adequacy of consideration of each party under the contract.

8. As proposed, if the amounts of the compensation change, it is anticipated that the broker and the borrower will execute a new contract or amend the contract. HUD seeks public comments concerning the most practical methods to be incorporated into the final rule for affecting changes to the contract. HUD also seeks comments concerning what, if any, restrictions there should be on changes under the contract.

9. As proposed, the contract form provides that total compensation can be disclosed as a dollar amount or as a percentage of the loan. Would it be preferable to require for purposes of comparison that all compensation be disclosed in dollar amounts only? What if any problems would be presented by such a requirement?

10. Should either the contract or regulations address situations in which the borrower chooses not to "lock in" the interest rate and chooses instead to allow the rate to "float" until the borrower locks in? Should the contract provide that unless the particular loan is applied for by the borrower by a specified date that the broker's commitment to the fees set forth in the contract will expire? Those favoring such provisions should explain what rules, if any, should be added to address these situations. What, if any, rules would be needed to protect borrowers? For example, should the broker be required to provide a new contract detailing the terms of the loan at the lock-in rate? If the contract were to include an expiration date for the fees disclosed, can the borrower be protected from entering into an arrangement too hastily?

11. As proposed, the rule would allow mortgage brokers that represent the borrower and qualify for the safe harbor to collect fees from lenders if such compensation is disclosed and meets the other elements of the safe harbor. Should borrower's-representative mortgage brokers be permitted to receive such compensation, or should such compensation be prohibited? If such compensation were forbidden, how could such mortgage brokers offer "no fee, no point" loans? Does the benefit of allowing the flexibility to fund broker fees from interest rate offsets outweigh the disadvantage of creating a possible conflict of interest to the mortgage broker's fiduciary duty to the borrower?

12. As proposed, the rule obligates the mortgage broker—in those instances in which the broker checks the form to indicate that it represents the borrower—to obtain "the most favorable mortgage loan that meets [the borrower's] stated objectives." The form also provides that the broker will identify how many lenders from which it will shop. Are these statements of the borrower's-representative duty to the borrower appropriate? Should the term "most favorable" include factors other than price, including, for example, quality or processing time of the lender, and should the rule so provide? Should the rule and the form simply obligate the borrower to obtain the lowest priced loan for the borrower from among the sources it uses?

13. While the market for purchase money loans and most first mortgage refinances is well advertised and highly competitive, this is not necessarily the case for reverse mortgages, as well as home equity, home improvement, high LTV, Alt A, and other less common types of loans. What are the arguments for or against limiting the safe harbor to purchase money and first lien refinancing loans? Should there be any different requirements for so-called B, C, and D credit?

Findings and Certifications

Paperwork Reduction Act

The proposed information collection requirements contained at § 3500.14 and Appendix F of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

MORTGAGE BROKER CONTRACT

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Disclosure to the borrower	10,000	400	4mil.	.033	132,000	3500.14

(b) In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–3780) and must be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), at the address provided in the **ADDRESSES** section of this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321).

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order. Any changes made to this proposed rule as a result of that review are clearly identified in the docket file. The docket file and the Economic Analysis prepared for this proposed rule are available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Congressional Review of Major Rules

This proposed rule is a "major rule" as defined by 5 U.S.C. 804(2) of the Administrative Procedure Act, and will be reviewed by the Congress at the final rule stage.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would provide a "safe harbor" from scrutiny under section 8 of RESPA for certain fees paid to a mortgage broker, so long as the mortgage broker complies with the requirements of the proposed rule. HUD strives to provide flexible requirements in order to reduce any burden on small entities. Small entities are specifically invited, however, to comment on whether and how this proposed rule will significantly affect them, and to provide any alternatives for less burdensome compliance.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. The requirements of the proposed rule are directed toward the disclosure to borrowers of fees paid to mortgage brokers.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; approved March 22, 1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgage servicing, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation shall continue to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. In § 3500.2, paragraph (b) is amended by revising the definition of "*Mortgage broker*" to read as follows:

§ 3500.2 Definitions.

* * * * *

(b) * * *

Mortgage broker means a person (not an employee of a lender) who brings a borrower and lender together to obtain a federally related mortgage loan, and who renders services as described in paragraphs (1) or (2) of the definition of "*Settlement service*" in paragraph (b) of this section. A loan correspondent meeting the requirements of the Federal Housing Administration under § 202.2(b) or § 202.15(a) of this title is a mortgage broker for purposes of this part.

* * * * *

§ 3500.7 Amended

3. In § 3500.7, the first sentence of paragraph (b) is revised by removing the phrase "who is not an exclusive agent of the lender".

4. In § 3500.14, paragraphs (g)(2) and (g)(3) are redesignated as paragraphs (g)(3) and (g)(4), respectively; and a new paragraph (g)(2) is added, to read as follows:

§ 3500.14 Prohibition against kickbacks and unearned fees.

* * * * *

(g)(2)(i) A direct payment from a borrower to a mortgage broker or a payment from a lender to a mortgage broker in a particular mortgage loan transaction is presumed to be legal, provided that the following requirements are met:

(A) Prior to the time of mortgage loan application or receipt of any payment, whichever is first, the mortgage broker and the prospective borrower(s) complete and execute a mortgage broker contract, in the form of appendix F to this part, as appropriate for the particular transaction.

(B) The mortgage broker represents himself or herself to the prospective borrower(s) and acts with regard to such borrower(s) in a manner consistent with the applicable terms of the mortgage broker contract executed by the mortgage broker, and the mortgage broker makes no representations to the prospective borrower(s) that are inconsistent with, and does not act in a

manner that is inconsistent with, the terms of the mortgage broker contract. A mortgage broker that indicates on the mortgage broker contract that "I am your agent and I will get you the most favorable mortgage loan that meets your stated objectives" is required to get the borrower the most favorable mortgage loan that meets the borrower's stated objectives from among the sources of funds from which the broker states in the mortgage broker contract that it will shop.

(C) The mortgage broker discloses its maximum total compensation along with the amounts of fees from the borrower and the lender for the transaction in accordance with appendix A to this part 3500, §§ 3500.7 and 3500.8, and the mortgage broker contract in the form of appendix F to this part and the instructions thereto.

(D) If the State in which the property (for which the mortgage loan is to be obtained in the particular transaction) is located licenses or registers mortgage brokers, the mortgage broker has a valid license or registration.

(ii) The terms of the mortgage broker contract referred to in paragraph (g)(2)(i) of this section can only be changed through mutual agreement between the mortgage broker and the borrower(s) executed in writing.

(iii) The presumption established under paragraph (g)(2)(i) of this section may be rebutted if the total compensation does not pass the following test: [Test will be published with final rule].

(iv) If the requirements in paragraphs (g)(2)(i) and (g)(2)(ii) of this section are not satisfied, or if the presumption established under paragraph (g)(2)(i) of this section is rebutted in accordance with paragraph (g)(2)(iii) of this section, payments to a mortgage broker from a lender are presumed to violate section 8(a) or 8(b) of RESPA. This presumption can be overcome if the total compensation is reasonably related to the value of the goods or services provided.

* * * * *

5. A new Appendix F to part 3500 is added, to read as follows:

Appendix F to Part 3500—Mortgage Broker Contract

BILLING CODE 4210-27-P

U.S. Department of Housing and Urban Development

DRAFT

Mortgage Broker Contract

Notice to Borrower(s): Read this contract carefully so that you make an informed choice. You are entitled to a copy of this contract. Signing this contract does not obligate you to obtain a mortgage loan through this mortgage broker, nor does it constitute mortgage loan approval.

This contract is between:
Name(s) of borrower(s): _____, the "Borrower(s)" or "you"
and
Name of mortgage broker company: _____, located at
Address of mortgage broker company: _____, who has authorized
Name of mortgage broker: _____ to enter into this
contract on its behalf. In this contract, the mortgage broker company and the mortgage broker are called "I" and the entity which will provide your mortgage loan funds is called "lender."

Whom Do I Represent?

☐ **I represent you.** I am your agent and I will get you the most favorable mortgage loan that meets your stated objectives. I will shop for your loan from among _____ lender(s). For my services, I will charge you a fee, but I will not receive any fee for your mortgage loan from a lender.

☐ **I represent you, but I may receive a fee from a lender.** I am your agent and I will get you the most favorable mortgage loan that meets your stated objectives. I will shop for your loan from among _____ lender(s). For my services, I may charge you a fee and I may also receive an additional fee for your mortgage from a lender.

☐ **I do not represent you.** I am not your agent. I arrange loans from lenders and get paid by lenders and borrowers. I make mortgage loans available from
☐ one lender (name of lender): _____; or
☐ among (number) _____ lenders.

What Will I Be Paid?

For arranging your loan of [up to] $_____ at an interest rate of _____ (% rate or reference/attach ARM program), I will receive no greater than _____ points and other compensation of $ _____, so that my total compensation will be no greater than: _____ (total compensation in $ amount and/or % of loan).

My **Total Compensation** will be made up of: _____ (**Fees You Pay** me, $ amount and/or % of loan) plus _____ (**Fees a Lender Pays** me, $ amount and/or % of loan)

If you would rather pay a lower interest rate, you may pay higher upfront fees; if you pay less up front, you may pay a higher interest rate. Before you sign this contract, I can display alternatives for you.

The amounts disclosed here apply only if you qualify for this loan.

We agree to the terms of this contract. By signing below, the mortgage broker further certifies that the information in this contract is accurate and complies with all provisions of section 8 of the Real Estate Settlement Procedures Act and 24 CFR part 3500.

Borrower(s) Signature & Date:

X _____

Borrower(s) Signature & Date:

X _____

Mortgage Broker Signature & Date:

X _____

Mortgage Broker License No: (where applicable)

_____

Borrowers: Know Your Rights!

Attention Borrower:

This may be the largest and most important loan you get during your lifetime. You should be aware of certain rights before you enter into any loan agreement.

1. You have the RIGHT to shop for the best loan for you and compare the charges of different mortgage brokers and lenders.
2. You have the RIGHT to be informed about the total cost of your loan including the interest rate, points and other fees.
3. You have the RIGHT to ask for a Good Faith Estimate of all loan and settlement charges before you agree to the loan and pay any fees.
4. You have the RIGHT to know what fees are not refundable if you decide to cancel the loan agreement.
5. You have the RIGHT to ask your mortgage broker to explain exactly what the mortgage broker will do for you.
6. You have the RIGHT to know how much the mortgage broker is getting paid by you and the lender for your loan.
7. You have the RIGHT to ask questions about charges and loan terms that you do not understand.
8. You have the RIGHT to a credit decision that is not based on your race, color, religion, national origin, sex, marital status, age, or whether any income is from public assistance.
9. You have the RIGHT to know the reason if your loan was turned down.
10. You have the RIGHT to ask for the HUD settlement costs booklet "Buying Your Home."

Buying Your Home and other helpful information is available at HUD's WEB site:
http://www.hud.gov/fha/res/respa_hm.html

For other questions call 1-800-217-6970.

Instructions to Preparer:

This contract shall be used by a mortgage broker who wishes to claim the qualified safe harbor provided in 24 CFR 3500.14(g)(2). At the top of the contract, insert the name of the prospective borrower(s), the name and address of the mortgage broker's company, and the name of the mortgage broker.

Mark the applicable box from among "*I represent you*", "*I represent you, but I may receive a fee from a lender*," or "*I do not represent you*". If "*I do not represent you*" is selected, mark the applicable box corresponding to either: (1) "*one lender*" (and insert the name of the source of funds), or (2) "*among (number) _____ lenders*", fill in the blank.

Under "*What Will I Be Paid,*" fill in: (1) the loan amount (which may be stated in terms of an "up to" amount) and the interest rate for the loan (in the case of ARMs, attach or reference descriptive material for the particular ARM program); (2) the points and other compensation to be received by the broker for the loan; (3) the total compensation to be paid to the mortgage broker for the loan including all points and other compensation which may be paid by the borrower and/or the lender; (4) the applicable dollar amount or percentage of mortgage loan principal amount that represents the prospective borrower(s) direct fee (including points, application and any other origination fees)(if none, put "NONE"); and (5) the maximum indirect fees that may be received from the lender in connection with providing the borrower(s) a mortgage loan (if none, put "NONE").

The prospective borrower(s) and the mortgage broker are to sign and date the contract. The preparer is to fill in the mortgage broker license number where indicated or fill in "State does not license mortgage brokers" if applicable. One copy is to be provided to the prospective borrower(s); another is to be retained in the borrower's mortgage loan file. This contract is to be in clear and conspicuous type. The heading "Appendix F to Part 3500" and these *Instructions to Preparer* should not appear on the contract.

Dated: September 17, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Administrator.

[FR Doc. 97-27343 Filed 10-15-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AF23

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule includes provisions for providing assistance under the Noninsured Crop Disaster Assistance Program (NAP) for: aquacultural species; floriculture; forage; ornamental nursery; seed crops; reseeding or replanting of the same crop; and value loss crops. Amendments include redefining some existing terms and adding new terms and changes of applicability, eligibility, assistance, yield determinations, acreage and production reports, loss requirements, and payments for reduced yields and prevented planting.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0526, 1400 Independence Avenue, SW, Washington, D.C. 20250–0526; telephone (202) 720–9003.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be not significant and therefore has not been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA regulations.

Paperwork Reduction Act

Title: Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0175.

Expiration Date: May 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collected under OMB control number 0560–0175, as identified above, allows CCC to effectively administer noninsured crop disaster assistance authorized by the Federal Agriculture Improvement and Reform Act of 1996. The information collected allows CCC to provide assistance under the noninsured crop disaster assistance program for losses of commercial crops or other agricultural commodities that are produced for food or fiber. The information collected is necessary to provide those charged with determining eligibility for CCC a basis to determine whether the producer meets applicable conditions for assistance and to determine compliance with existing rules.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .2 hours per response.

Respondents: Commercial agricultural producers of food or fiber.

Estimated Number of Respondents: 1,575,000.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 1,711,250 hours.

Proposed topics for comment include: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0526, 1400 Independence Avenue, SW, Washington, D.C. 20250–0526. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60

days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

The regulation reflects changes in existing definitions, additional definitions, eligibility, assistance, yield determinations, acreage and production reporting requirements, loss requirements, and payments for reduced yields and prevented planting. Major changes include:

(1) Section 1437.4 is amended to specify that except for ornamental nursery and species or types and varieties of forage determined by CCC to be predominantly grazed, different species or types and varieties may be treated as separate crops.

(2) Section 1437.5 is amended to include a method for CCC to establish the value of an animal unit day.

(3) Section 1437.7 is amended to specify that CCC will establish expected area yields, or an equivalent measure in the event yield data are not available.

(4) Section 1437.8 is amended to include that, for forage, acreage reports must include the species or type and variety of forage reported, and the intended harvest method, i.e. grazing or mechanically harvested.

(5) Section 1437.9 is amended to require reseeding or replanting where it is practicable.

(6) Section 1437.11 is amended to include payments for losses of forage determined by CCC to be predominantly grazed.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 7 CFR Chapter XIV is amended as set forth below.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1997 AND SUCCEEDING CROP YEARS

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c and 7 U.S.C. 7333.

1a. Revise the heading for part 1437 to read as set forth above.

2. Revise § 1437.1 to read as follows:

§ 1437.1 Applicability.

(a) For the 1997 and subsequent crop years, NAP is intended to provide eligible producers of eligible crops with protection comparable to the catastrophic risk protection plan of crop insurance. NAP is also designed to help reduce production risks faced by producers of crops for which Federal crop insurance under the Federal Crop Insurance Act, as amended is not available. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and the producer's approved yield based on actual production history, or a transitional yield if sufficient production records are not available. In the case of forage determined by CCC to be predominantly grazed in accordance with § 1437.7(j), payment eligibility is based on an expected stocking level for the area and unit and the actual number of animals grazed and days grazing occurred. Production for both the applicable area expected yield and the individual producer approved yield for the unit or for forage determined by CCC to be predominantly grazed, area and unit expected stocking level must each fall below specified percentages in order to be eligible for payments under this part.

(b) The provisions contained in this part are applicable to each eligible producer and each eligible crop for which catastrophic coverage is not otherwise available.

3. Amend § 1437.3 to add new definitions for Animal unit, Animal unit day, Carrying Capacity, Floriculture, Grazing days, Ornamental Nursery, Stocking rate, Type and weight range, and Value loss crop, in alphabetical order, and revise existing definitions for Aquacultural species, Average market price, Eligible crop, Forage, Harvested, and Unit to read as follows:

§ 1437.3 Definitions.

* * * * *

Animal unit (AU) means an animal with daily energy requirement equating to 15.7 pounds of corn.

Animal unit day (AUD) means an expression of an expected or actual stocking rate.

* * * * *

Aquacultural species means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Eligible aquacultural species must be seeded in the aquacultural facility and not be growing naturally in the facility and must be planted or seeded in containers, wire baskets, net pens, or similar devices designed for the protection and containment of the seeded aquacultural species.

* * * * *

Average market price means the price, or dollar equivalent on an appropriate basis for an eligible crop established by CCC for determining payment amounts under NAP; for example, pound, bushel, ton, and AUD (for forage determined by CCC to be predominantly grazed). Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

Carrying Capacity means the stocking rate, as determined by CCC, expressed as acres per animal unit (AC/AU) or reciprocal, which is consistent with maintaining or improving vegetation or related resources.

* * * * *

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop will also include floriculture, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part as determined by CCC. In the case of a crop, except for forage determined by CCC to be predominantly grazed, that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types.

* * * * *

Floriculture means cut flowers or similar products of annual and perennial flowering plants grown under glass, fiberglass and other rigid plastics, film plastic, shade cloth, natural shade, other shade, and outdoor in a container or controlled environment for commercial sale.

Forage means land covered with grass or other similar herbaceous vegetation not of a woody plant species, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or similar vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on Federal or State owned lands are available only for seeded forage.

* * * * *

Grazing days means the number of days used in the calculation of the carrying capacity for each forage species or type or variety determined by CCC to be predominantly grazed.

Harvested means a single harvest crop is considered harvested when the producer has, by hand or mechanically, or by grazing of livestock, removed the crop from the field. Crops with multiple harvests in 1 year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically removed at least one mature crop from the field. The mechanically harvested crop is considered harvested once it is removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting for the purpose of determining an unharvested or prevented planting payment factor.

* * * * *

Ornamental Nursery means decorative plants grown in a container or controlled environment for commercial sale.

* * * * *

Stocking rate means the number of animal units grazing or utilizing specific crop acreage for a specific number of days, expressed as animal unit days.

Type and weight range means the identification of animals according to the daily energy requirement, as determined by CCC, necessary to provide the daily maintenance ration, as determined by CCC, of the specific animal.

* * * * *

Unit means, for NAP, all acreage of the eligible crop or for ornamental nursery, all eligible plant species and sizes except plant species or sizes for which catastrophic coverage is available, in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

Value loss crop means ornamental nursery, Christmas trees, aquaculture, or other crops as determined by CCC that, due to their unique nature do not lend themselves to yield calculations or expected yield loss situations. Eligibility for a crop categorized as value loss shall be determined based on a loss of value at time of disaster, as determined by CCC.

4. Amend § 1437.4 to revise the second sentence of paragraph (a) and paragraph (b)(10) to read as follows:

§ 1437.4 Eligibility.

(a) * * * Except for ornamental nursery and species or type or variety of a species of forage determined by CCC to be predominantly grazed, different types or varieties of a crop or commodity, may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield.

(b) * * *

(10) Seed crops, where the propagation stock is commercially produced for sale as seed stock for other eligible NAP crop production; and

* * * * *

5. In § 1437.5 add paragraph (f) to read as follows:

§ 1437.5 Assistance.

* * * * *

(f) Animal Unit Day value will be established by CCC on the basis of a 5 year national average corn price per pound, as determined by CCC, and the daily energy requirement of one beef cow, as determined by CCC.

6. Amend § 1437.7 to revise the first sentence of paragraph (a) and add paragraphs (k) and (l) to read as follows:

§ 1437.7 Yield determinations.

(a) CCC will establish expected area yields or an equivalent measure in the event yield data are not available, for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Corporation data, credible nongovernment studies, yields in similar areas, and reported approved yield data. * * *

* * * * *

(k) Prior to the beginning of the crop year, CCC in its own discretion will with respect to forage:

(1) Identify each species or type and variety of forage found in the county;

(2) Categorize each species or type and variety of forage identified as either:

(i) Predominantly mechanical harvested, or

(ii) Predominantly grazed;

(3) Establish a carrying capacity for each forage species or type and variety identified and determined by CCC to be predominantly grazed;

(4) Determine total acreage of forage determined by CCC to be predominantly grazed; and

(5) Calculate expected Animal Unit Day by dividing the total acres of forage in the county categorized by CCC as predominantly grazed by the approved carrying capacity and multiplying the result by the number of days of grazing used to determine the carrying capacity.

(l) In the event CCC receives a notice of loss of forage determined by CCC to be predominantly grazed, CCC will:

(1) Calculate utilized Animal Unit Day by dividing the total acres of forage reported to FSA determined by CCC to be predominantly grazed by the reported number of animal units grazed and multiplying the result by the number of days grazing occurred;

(2) Subtract the value of supplemental feed fed to the grazing livestock during the grazing period from the value of the utilized Animal Unit Day, as determined by CCC;

(3) Determine area utilization by dividing total area utilized Animal Unit Day by the expected Animal Unit Day; and

(4) Determine unit utilization by dividing the unit utilized Animal Unit Day by the expected unit Animal Unit Day.

7. Amend § 1437.8 to revise paragraph (b)(4) and add paragraphs (e) and (f) to read as follows:

§ 1437.8 Acreage and production reports.

* * * * *

(b) * * *

(4) The crop, practice, intended use, and for forage, the predominant species or type and variety and the intended harvest method, i.e. grazing or mechanical harvest.

* * * * *

(e) In lieu of a production report, producers of forage that is predominantly grazed shall, in the crop year in which the producer files a notice of loss, report grazing animals by type

and weight range and the number of days grazing occurred, and the amount and type of feed fed such grazing animals during any grazing period within the crop year.

(f) Animal Unit Day adjustments, as determined by CCC, may be calculated when a producer of forage predominantly grazed, provides adequate evidence, as determined by CCC, that unit forage management and maintenance practices provide different carrying capacity than practices generally provided forage acreage used to calculate the approved county expected carrying capacity.

8. Amend § 1437.9 to revise paragraph (b)(2) to read as follows:

§ 1437.9 Loss Requirements.

* * * * *

(b) * * *

(2) The failure of the producer to reseed or replant to the same crop in the county where it is practicable to reseed or replant;

* * * * *

9. Amend § 1437.11 to revise the introductory text and add paragraph (c) to read as follows:

§ 1437.11 Payments for reduced yields and prevented planting.

In the event that the area loss requirement has been satisfied for the crop and:

* * * * *

(c) The producer has sustained a loss of forage determined by CCC to be predominantly grazed in accordance with § 1437.7(l), in excess of 50 percent of the producer's expected Animal Unit Day established for the unit, the NAP payment will be determined by:

(1) Dividing the unit acreage for each species or type or variety identified on the unit by the approved carrying capacity and multiplying the result by the corresponding grazing days used as the basis for determination of the carrying capacity, totaling the result for each species or types and varieties.

(2) Multiplying the result of paragraph (c)(1) of this section by 50 percent.

(3) Multiplying the number of animals grazed by the daily allowance of corn according to type and weight range and divide the result by pounds of corn CCC determines is necessary to provide the daily energy requirement for one animal unit.

(4) Multiplying the result of paragraph (c)(3) of this section by the number of days grazing occurred to determine gross actual AUD.

(5) Adding AUD for ineligible causes of loss and incidental mechanically harvested Category 1 forage to the result of paragraph (c)(4) of this section.

(6) Subtracting AUD or equivalent value of supplemental feed fed to the grazing livestock during the crop year from the result of paragraph (c)(5) of this section.

(7) Subtracting the result of paragraph (c)(6) of this section from the result of paragraph (c)(2) of this section. If a zero or negative number results, payment cannot be calculated.

(8) Multiplying the positive result of paragraph (c)(7) of this section by:

(i) For the 1997 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC.

Signed at Washington, DC, on October 8, 1997.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–27432 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF73

Codes and Standards; IEEE National Consensus Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate by reference IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. This action is necessary to endorse the latest version of this national consensus standard in NRC's regulations, and replace an IEEE standard currently endorsed in the NRC's regulations which has been withdrawn by the IEEE.

EFFECTIVE DATE: The final rule is effective on January 1, 1998, unless significant adverse comments are received by December 1, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**. The incorporation by reference of IEEE Std. 603–1991 is approved by the Director of the Federal Register as of January 1, 1998.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Senior Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6005, Fax (301) 415–5074 (e-mail: SKA@NRC.GOV).

SUPPLEMENTARY INFORMATION: NRC considers this rulemaking, which endorses IEEE Std. 603–1991, to be noncontroversial because, as noted in the background discussion, there was no adverse public comment on the regulatory guide endorsing this standard. Accordingly, the Commission finds that public notice and opportunity for comment are unnecessary pursuant to 5 U.S.C. 553(b)(B). Thus, the Commission is publishing this rule in final form without seeking public comments on the amendment in a proposed rule. This action will become effective on January 1, 1998. However, if the NRC receives significant adverse comments by December 1, 1997, then the NRC will publish a document that withdraws this action, and will address the comments received in response to an identical proposed rule which is being concurrently published in the proposed rules section of this **Federal Register**. Any significant adverse comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

Background

In 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," § 50.55a requires that the protection systems in nuclear power plants meet the requirements set forth in IEEE Std. 279, "Criteria for Protection Systems for Nuclear Power Generating Stations," in effect on the formal docket date of the application. However, IEEE Std. 279 is obsolete, has been withdrawn by IEEE and has now been superseded by IEEE Std. 603–1991, "Criteria for Safety Systems for Nuclear Power Generating Stations."

In November 1995, the NRC staff issued for public comment a draft regulatory guide, DG–1042, which was proposed Revision 1 to Regulatory Guide 1.153, "Criteria for Safety Systems." This draft regulatory guide proposed to endorse IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). Because there were no adverse public comments to Revision 1 to Regulatory Guide 1.153, the Commission believes that there is general public consensus that IEEE Std. 603–1991 provides acceptable criteria for safety systems in nuclear power plants.

Discussion

The direct final rule incorporates a national consensus standard, IEEE Std. 603–1991, for establishing minimal functional and design requirements for power, instrumentation, and control portions of safety systems for nuclear power plants into NRC regulations. This action is consistent with the provisions of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, which encourages Federal regulatory agencies to consider adopting industry consensus standards as an alternative to de novo agency development of standards affecting an industry. This action is also consistent with the NRC policy of evaluating the latest versions of national consensus standards in terms of their suitability for endorsement by regulations or regulatory guides.

Currently, 10 CFR 50.55 a(h) specifies that "protection systems" for plants with construction permits issued after January 1, 1971, must meet the requirements in IEEE Std. 279 in effect on the formal docket date of the application for a construction permit. IEEE Std. 279 states that a "protection system" encompasses all electric and mechanical devices and circuitry (from sensors to actuation device input terminals) involved in generating those signals associated with the protective function. These signals include those that actuate reactor trip and that, in the event of a serious reactor accident, actuate engineered safeguards such as containment isolation, core spray, safety injection, pressure reduction, and air cleaning. "Protective Function" is defined by IEEE Std. 279, as "the sensing of one or more variables associated with a particular generating station condition, signal processing, and the initiation and completion of the protective action at values of the variables established in the design bases."

IEEE Std. 603–1991 uses the term "safety systems" rather than "protection systems." A "safety system" is defined by IEEE Std. 603–1991 as "a system that is relied upon to remain functional during and following design basis events to ensure: (i) The integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shut down condition, or (iii) the capability to prevent or mitigate the consequences of accidents that could result in potential off-site exposures comparable to the 10 CFR part 100 guidelines." A "safety function" is defined by IEEE Std. 603–1991 as "one of the processes or conditions (for example, emergency negative reactivity insertion, post-accident heat removal, emergency core cooling, post-accident radioactivity removal, and containment isolation) essential to maintain plant parameters within acceptable limits established for a design basis event."

The Commission considers that the systems covered by IEEE Std. 603–1991 and IEEE Std. 279–1971 are the same. Therefore, for purposes of paragraph (h) of 10 CFR 50.55a, "protection systems," and "safety systems" are synonymous. The Commission notes that these two terms are also synonymous with the term "safety-related systems," used elsewhere in the Commission's regulations. Therefore, licensees are expected to apply IEEE Std. 279–1971 and IEEE Std. 603–1991, as appropriate, to "safety-related systems."

This rule mandates the use of IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995) for future nuclear power plants, including final design approvals, design certifications and combined licenses under 10 CFR part 52. Current licensees may continue to meet the requirements set forth in the edition or revision of IEEE Std. 279 in effect on the formal date of their application for a construction permit or may, at their option, use IEEE Std. 603–1991, provided they comply with all applicable requirements for making changes to their licensing basis. However, changes to protection systems in operating nuclear power plants initiated on or after January 1, 1998 must meet the requirements in IEEE Std. 603–1991. For purposes of this rule, "changes" to protection systems include (i) modifications, augmentation or replacement of protection systems permitted by license amendments, (ii) changes made by the licensees pursuant to procedures in 10 CFR 50.59, and (iii) plant-specific departures from a design certification rule under 10 CFR part 52. In-kind (like-for-like) replacement of protection system components are not considered changes to the protection systems.

Section 3 of IEEE Std. 603–1991 references several industry codes and standards. If the referenced standard has been endorsed in a regulatory guide, the standard constitutes a method acceptable to the Commission of meeting a regulatory requirement as described in the regulatory guide. If a referenced standard has not been endorsed in a regulatory guide, the licensees and applicants may consider and use the information in the referenced standard consistent with current regulatory practices.

Electronic Access

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

Finding of No Environmental Impact: Availability of Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environment impact statement is not required. The Commission has prepared an Environmental Assessment supporting this finding of no significant environmental impact.

The NRC has sent a copy of the environmental assessment and a copy of the **Federal Register** Notice to every State liaison officer and requested their comments on the environmental assessment. The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Also, the NRC has committed itself to complying in all its actions with the Presidential Executive Order #12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. Therefore, the NRC also has determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. The NRC uses the following working definition of environmental justice: environmental justice means the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval No. 3150–0011.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, an information collection.

Regulatory Analysis

The Commission has prepared a regulatory analysis which shows that the proposed amendment does not impose any new requirements or costs on current licensees who do not make changes to safety systems. However, licensees planning or proposing changes to power and instrumentation & control systems will be impacted because they will be required to meet the requirements of IEEE Std. 603–1991 for the changes even though the remainder of the plant power and I&C systems are only required to meet their current licensing basis. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the small business size standards adopted by the NRC (10 CFR 2.810). Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Backfit Analysis

The rule requires applicants and holders of new construction permits, new operating licenses, new final design approvals, new design certifications and combined licenses to comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). Changes to protection systems in existing operating plants initiated on or after January 1, 1998 must meet the requirements of IEEE Std. 603–1991. IEEE Std. 279 will continue to apply to existing nuclear power plants that do not make any changes to their protection systems, but the rule permits the licensee the option of meeting IEEE Std. 603–1991.

The backfit rule was not intended to apply to regulatory actions which change expectations of prospective applicants, and therefore the backfit rule does not apply to the portion of the rule applicable to new construction permits, new operating licenses, new final design approvals, new design certifications and combined licenses. This rule does not change the licensing basis (i.e., IEEE Std. 279) for plants that do not intend to make any changes to their power and instrumentation and control systems. However, the rule would require future changes to existing power and instrumentation and control portions of protection systems to comply with the new standard. This would not be considered a backfit, since the changes are voluntarily initiated by the licensee, or separately imposed by the NRC after a separate backfit analysis. This is consistent with past NRC practice and the discussions on backfitting in "Value-Impact Statement" prepared for Revision 1 to Regulatory Guide 1.153. A copy of the Value-Impact Statement is available for inspection or copying for a fee in the Commission's Public Document Room at 2120 L Street NW., Washington, DC, under Task DG–1042.

In summary, the NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this direct final rule because it does not impose any backfits as defined in 10 CFR 50.109(a)(1) and, therefore, a backfit analysis has not been prepared for this direct final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganizations Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

12. In § 50.55a, paragraph (h) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(h) *Protection and Safety Systems.* (1) IEEE Std. 603–1991 and the correction sheet dated January 30, 1995, which are referenced in paragraph (h)(3) and (h)(4), are approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of IEEE Std. 603–1991 may be purchased from the Institute of Electrical and Electronics Engineers Service Center, 445 Hoes Lane, Piscataway, NJ 08855. It is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, MD 20852–2738, and at the Office of the Federal Register, 800 North Capital Street, NW, Suite 700, Washington, DC. IEEE Std. 279, which is referenced in paragraph (h)(2) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this standard are also available as indicated for IEEE Std. 603–1991.

(2) Definitions.

(I) For purposes of this paragraph the terms "protection systems," "safety systems," and "safety-related systems" are synonymous.

(ii) Changes to protection systems include modification, augmentation or replacement of protection systems permitted by license amendments, changes to protection systems made by licensees pursuant to 10 CFR 50.59, and plant specific departures from a design certification rule under 10 CFR part 52.

(3) Protection systems. For nuclear power plants with construction permits issued after January 1, 1971, but prior to January 1, 1998, protection systems must meet the requirements set forth either in the Institute of Electrical and Electronics Engineers (IEEE) Std. 279, "Criteria for Protection Systems for Nuclear Power Generating Stations," or in IEEE Std. 603–1991, "Criteria for Safety Systems for Nuclear Power Generating Stations," and the correction sheet dated January 30, 1995. However, changes to protection systems initiated on or after January 1, 1998 must meet the requirements set forth in IEEE Std. 603–1991, and the correction sheet dated January 30, 1995.

(4) Safety systems. For construction permits, operating licenses, final design approvals, design certifications and combined licenses issued on or after January 1, 1998, safety systems must meet the requirements set forth in IEEE Std. 603–1991, and the correction sheet, dated January 30, 1995.

Dated at Rockville, this 9th day of October, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–27421 Filed 10–16–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–38–AD; Amendment 39–10160; AD 97–21–07]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming) Model T5313B, T5317A, and T53 (Military) Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR). This action requires a one-time visual inspection of accessory drive carrier assemblies for affected serial numbers (S/Ns) designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. This amendment is prompted by a report of an N2 overspeed condition due to a defective accessory drive carrier assembly. The actions specified in this AD are intended to prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

DATES: Effective November 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ray Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has received a report of an N2 overspeed condition on an AlliedSignal Inc. (formerly Textron Lycoming) Model T5317A–1 turboshaft engine. The investigation revealed that the N2 overspeed condition was caused when the N2 overspeed governor bevel gear, which is part of the accessory drive carrier and cap assembly, shifted out of position. This gear shifting out of position was determined to be due to improper manufacturing of the accessory drive carrier and cap assembly, Part Number (P/N) 1–070–210–01, which is installed on the higher level assembly, accessory drive carrier assembly, P/N 1–070–220–03, 1–070–220–12, or 1–070–220–13. All accessory drive carrier assemblies, P/Ns 1–070–220–03, 1–070–220–12, and 1-070–220–13, installed after November 1, 1985, and have been identified by serial number (S/N) are subject to this inspection. This condition, if not corrected, could result in accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997. These ASBs describe procedures for performing a one-time visual inspection of accessory drive carrier assemblies for affected S/Ns designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent accessory drive carrier assembly failure. This AD requires a one-time visual inspection of accessory drive carrier assemblies for affected S/Ns designating a potentially defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. The actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity

for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–38–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–07 AlliedSignal Inc.: Amendment 39–10160. Docket 97–ANE–38–AD.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), with accessory drive carrier assemblies, Part Numbers (P/Ns) 1–070–220–03, 1–070–220–12, and 1–070–220–13, that were installed after November 1, 1985, and have serial numbers (S/Ns) listed in AlliedSignal Inc. Alert Service Bulletins (ASBs) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; or ASB No. T53–L–703–A0092, dated June 4, 1997. These engines are installed on but not limited to Bell Helicopter Textron Model 205A–1 and 205B series helicopters, Kaman Aircraft Corporation K–1200 series helicopters, and military helicopters certified in accordance with Section 21.25 of the FAR.

Note 1: A shipping records, engine logbooks, work orders, and parts invoices check may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure, accomplish the following:

(a) Within 100 hours time in service (TIS), or 6 months after the effective date of this AD, whichever occurs first, accomplish the following in accordance with AlliedSignal Inc. ASB No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997, as applicable:

(1) Visually inspect to determine if the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASBs.

(2) If the accessory drive carrier assembly is not marked with an affected S/N listed in the applicable ASB, no further action is required.

(3) If the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASB, or the serial number cannot be positively determined, remove the accessory drive carrier assembly from service and replace with a serviceable assembly.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. ASBs:

Document No.	Pages	Revision	Date
T5313B/17A–A0092 ..... Total pages: 7	1–7	1	July 1, 1997.
T53–L–13B–A0092 ..... Total pages: 7	1–7	Original	June 4, 1997.

Document No.	Pages	Revision	Date
T53–L–703–A0092 ..... Total pages: 7	1–7	Original	June 4, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 3, 1997.

Issued in Burlington, Massachusetts, on October 8, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–27350 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–220–AD; Amendment 39–10164; AD 97–21–11]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30 series airplanes. This action requires a one-time inspection to measure the depth of the skin flutes of the skin panels of the rudder and elevators, and repair, if necessary. This amendment is prompted by reports indicating that, due to a manufacturing process error, the depth of certain skin flutes of the rudder and elevators is less than the design specification. The actions specified in this AD are intended to prevent structural damage and/or loss of the rudder or elevators if the airplane is operated under ultimate load conditions, which could result in reduced controllability of the airplane.

DATES: Effective November 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary D. Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30 series airplanes. The CAA advises of findings that the depth of the skin flutes of the port and starboard skin panels of the rudder and elevators is less than the appropriate depth specified by the design specification. The problem was noticed during the production of skin flutes for the SD3–60 SHERPA series airplanes, and it was noted that the same manufacturing process was used for Model SD3–30 series airplanes. (The manufacturer advises that all SD3–60 SHERPA series airplanes have been inspected, and that no unsafe condition exists with regard to the skin flutes on these airplanes; therefore, Model SD3–60 SHERPA series airplanes are not included in the applicability of this AD.) Such inadequate depth of the skin flutes, if not corrected, could result in structural damage and/or loss of the rudder or elevators if the airplane is operated under ultimate load conditions, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin SD330–55–19, dated February 11, 1997, which describes procedures for performing a one-time inspection to measure the depth of the skin flutes of the skin panels of the rudder and elevators, and repair, if necessary. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 006–02–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent structural damage and/or loss of the rudder or elevators if the airplane is operated under ultimate load conditions, and consequent reduced controllability of the airplane. This AD requires a one-time inspection to measure the depth of the skin flutes of the skin panels of the rudder and elevators, and repair, if necessary. The inspection is required to be accomplished in accordance with the service bulletin described previously. The repair of any discrepant skin flute is required to be accomplished in accordance with a method approved by the FAA.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–220–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–11 Short Brothers, PLC: Amendment 39–10164. Docket 97–NM–220–AD.

Applicability: All Model SD3–30 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage and/or loss of the rudder or elevators if the airplane is operated under ultimate load conditions, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days of the effective date of this AD, accomplish a one-time inspection to measure the depth of the skin flutes of the port and starboard skin panels of the rudder and elevators, in accordance with Short Brothers Service Bulletin SD330–55–19, dated February 11, 1997.

(1) If the depth of the skin flutes is within the limits specified in the service bulletin, no further action is required by this AD.

(2) If the depth of the skin flutes is beyond the limits specified in the service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Short Brothers Service Bulletin SD330–55–19, dated February 11, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 3, 1997.

Issued in Renton, Washington, on October 9, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27355 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–265–AD; Amendment 39–10163; AD 97–21–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system (FMGS), and take appropriate corrective actions. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to ensure that the flightcrew detects and corrects an unintended flight path if certain software anomalies of the FMGS occur, which could result in an increased risk of collision with terrain or other airplanes.

DATES: Effective November 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that a software anomaly of the flight management guidance system (FMGS) may affect transition computations. This condition, if not detected and corrected, could result in an unintended flight path, and consequently, result in an increased risk of collision with terrain or other airplanes.

Explanation of Relevant Service Information

Airbus has issued Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, which describes procedures for monitoring the flight path of the airplane to detect certain software anomalies of the FMGS, and corrective actions. Accomplishment of the actions specified in the temporary revision is intended to adequately address the identified unsafe condition. The DGAC classified this temporary revision as mandatory and issued French airworthiness directive 97–153–100(B), dated July 16, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure the flightcrew detects and corrects an unintended flight path if certain software anomalies of the FMGS occur, which could result in an increased risk of collision with terrain or other airplanes. This AD requires revising the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the FMGS, and corrective actions. The actions are required to be accomplished in accordance with the temporary revision described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 97–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–10 Airbus Industrie: Amendment 39–10163. Docket 97–NM–265–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category; on which any of the following Airbus Modifications have been installed:

Affected model(s)	Airbus modification installed
A319 and A321.	25469 (reference Airbus Service Bulletin A320–22–1054).
A319, A320, and A321.	26093.
A320	24065 (reference Airbus Service Bulletin A320–22–1040) or 24067 (reference Airbus Service Bulletin A320–22–1039).
A320	25314 (reference Airbus Service Bulletin A320–22–1051) or 25315 (reference Airbus Service Bulletin A320–22–1050).
A320 and A321.	24064 (reference Airbus Service Bulletin A320–22–1034) or 24066 (reference Airbus Service Bulletin A320–22–1029).
A320 and A321.	25199 (reference Airbus Service Bulletin A320–22–1045) or 25200 (reference Airbus Service Bulletin A320–22–1046).
A320 and A321.	25240 (reference Airbus Service Bulletin A320–22–1033) or 25274 (reference Airbus Service Bulletin A320–22–1056).
A319, A320, and A321.	26243.
A319 and A320.	26717.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew detects and corrects an unintended flight path if certain software anomalies of the FMGS occur, which could result in an increased risk of collision with terrain or other airplanes, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision shall be done in accordance with Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–153–100(B), dated July 16, 1997.

(e) This amendment becomes effective on November 3, 1997.

Issued in Renton, Washington, on October 9, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27353 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–22]

Establishment of Class E Airspace; Sauk Centre, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Sauk Centre, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 32 has been developed for Sauk Centre Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Sauk Centre, MN (62 FR 39979). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transmitting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Sauk Centre, MN, to accommodate aircraft executing the GPS RWY 32 SIAP at Sauk Centre Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Sauk Centre, MN [New]

Sauk Centre Municipal Airport, MN
(Lat. 45°42'24" N, long. 94°56'00" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sauk Centre Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27387 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–25]

Amendment to Class E Airspace; Kutztown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Kutztown, PA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 17 at Kutztown Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS SIAP to RWY 17 at Kutztown, PA.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1997, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Class E airspace at Kutztown, PA, was published in the **Federal Register** (62 FR 34026). A GPS SIAP to RWY 17 developed for Kutztown Airport, Kutztown, PA, requires the revision of the Class E airspace at the airport. The proposal would revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending

upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace located at Kutztown, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing a GPS SIAP to RWY 17.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 Kutztown, PA [Revised]

Kutztown Airport, PA
(Lat. 40°30'13" N., long. 75°47'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kutztown Airport and within 3.5 miles northeast and 5.3 miles southwest of the 340° bearing from the airport extending from the 6.5-mile radius to 17 miles northwest of the airport, excluding the portions that coincide with the Allentown, PA, Reading, PA, and Lehighton, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on August 20, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27374 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–19]

Establishment of Class E Airspace; Zelienople, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Zelienople, PA. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to Runway (RWY) 17 and RWY 35 at Zelienople Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the GPS RWY 17 and GPS RWY 35 SIAPs at Zelienople, PA.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1997, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Zelienople, PA, was published in the **Federal Register** (62 FR 15864). A GPS RWY 17 SIAP and a GPS RWY 35 SIAP developed for Zelienople Airport, Zelienople, PA, requires the establishment of Class E airspace at the airport. The proposal would establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace located at Zelienople, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 17 SIAP and GPS RWY 35 SIAP to Zelienople Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA AEA E5 Zelienople, PA [New]

Zelienople Airport, PA
(Lat. 40°48'06" N., long. 80°09'38" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Zelienople Airport, excluding the portions that coincide with the Butler, PA, and Beaver Falls, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on September 5, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27365 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–7]

Amendment to Class E Airspace; Belleville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace are at Belleville Municipal Airport, Belleville, KS. A review of the airspace for Belleville Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The distance required for an aircraft to reach 1200 feet Mean Sea Level (MSL) is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing instrument approaches and to conform to the requirements of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, February 26, 1998. *Comment date:* Comments must be received on or before December 1, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–7, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Belleville Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as required in FAA Order 7400.2D. The distance required for an aircraft to reach 1200 feet MSL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment of Class E airspace at Belleville, KS, will provide additional controlled airspace to segregate aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited to this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard or which the following statement is made: "Comments to Docket No. 97–ACE–7." The postcard will be dated stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Belleville, KS [Revised]

Belleville Municipal Airport, KS.
(Lat. 39°49'04" N., long. 97°39'35" W.)
Republican NDB
(Lat. 39°548'48" N. long. 97°39'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Belleville Municipal Airport and within 2.6 miles each side of the 195° bearing from Republican NDB extending from the 6.4-mile radius to 7.4 miles south of the airport and within 2.6 miles each side of the 356° bearing from the Republican NDB extending from the 6.4-Mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–27363 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–10]

Amendment to Class E Airspace, Kansas City, Richards-Gebaur Airport, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Richards-Gebaur Airport, Kansas City, MO. The FAA has developed a Nondirectional Radio Beacon (NDB) Runway (RWY) 1 Standard Instrument Approach Procedure (SIAP) to serve the Richards-Gebaur Airport. The intended effect of this action is to provide additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate this SIAP, and to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions at this airport. The enlarged area will contain the new NDB RWY 1 SIAP in controlled airspace. A minor correction has been made to the Airport Reference Point (ARP) geographic coordinates of the Richard-Gebaur Airport and is reflected in this document.

DATES: *Effective date:* 0901 UTC, February 26, 1998. *Comment date:* Comments must be received on or before November 15, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–10, 601 East 12th St. Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a NDB RWY 1 SIAP at Richards-Gebaur Airport, Kansas City, MO. The amendment to Class E airspace at Richards-Gebaur Airport, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under instrument flight rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. A minor correction has been made to ARP geographic coordinates for the Richards-Gebaur Airport and is reflected in this docket. The ARP geographic coordinates and the Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–10." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Kansas City, Richards-Gebaur Airport, MO [Revised]

Richards-Gebaur Airport, MO.
(Lat. 38°50'39" N., long. 94°33'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Richards-Gebaur Airport and within 3 miles each side of the Richards-Gebaur ILS localizer course extending from the 6.8 mile radius to 7 miles north of the airport and within 3 miles each side of the Richards-Gebaur ILS localizer course extending from the 6.8-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–27362 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AMN–6]

Establishment of Class E Airspace; Driggs, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on June 17, 1997 (62 FR 32683), establishes Class E airspace at Teton Peaks/Driggs Municipal Airport, Driggs, ID. This action also amends the Idaho Falls, ID, 1,200-foot Class E airspace area. The effect of that rule is to provide adequate controlled airspace for a new Global Positioning System (GPS–A) approach procedure to Teton Peaks/Driggs Municipal Airport. This document confirms the effective date of that rule.

EFFECTIVE DATE: The direct final rule published at 62 FR 32683 is effective 0901 UTC, November 1, 1997.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–520.4, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2537.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on June 17, 1997 (62 FR 32683).

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 1, 1997. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington, on September 9, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–27395 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–26]

Modification of Class E Airspace; French Lick, IN

AGENCY: Federal Agency Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at French Lick, IN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 8 has been developed for French Lick Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds a southwest extension to the existing controlled airspace. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Agency Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at French Lick, IN (62 FR 39978). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rule proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. One comment supporting the proposal was received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at French Lick, IN, to accommodate aircraft executing the NDB RWY 8 SIAP at French Lick Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Agency Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 French Lick, IN [Revised]

French Lick Municipal Airport, IN
(Lat. 38°30'22" N, long. 86°38'13" W)
Oranj NDB
(Lat. 38°31'40" N, long. 86°31'40" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the French Lick Municipal Airport, and within 5.9 mile either side of the 255° bearing from the Oranj NDB extending from the 6.5-mile radius area to 6.9 miles southwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27393 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–13]

Amendment to Class E Airspace, Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Vinton Veterans Memorial Airpark, Vinton, IA. The FAA has developed Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 9 and RWY 27 based on the Global Positioning System (GPS) to serve the Vinton Veterans Memorial Airpark, Vinton, IA. The intended effect of this action is to provide additional controlled airspace extending upward from 700 feet Above Ground level (AGL) to accommodate these SIAPs and to provide segregation for aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual weather conditions at the Vinton Veterans Memorial Airpark.

DATES: *Effective date.* 0901 UTC, February 26, 1998. *Comment date.* Comments must be received on or before November 15, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–13, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed SIAPs utilizing the GPS to serve the Vinton Veterans Memorial Airpark, Vinton, IA. The amendment to Class E airspace at Vinton Veterans Memorial Airpark, IA, is necessary to provide additional controlled airspace at and above 700 feet AGL to contain the new SIAPs within controlled airspace and thereby facilitate separation of aircraft operating under instrument flight rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–13." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E oirspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Vinton, IA [Revised]

Vinton Veterans Memorial Airpark, IA
(Lat. 42°13'03" N., long 92°01'44" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Vinton Veterans Memorial Airpark.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97-27380 Filed 10-16-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AEA-18]

Establishment of Class E Airspace; Marion, VA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on May 23, 1997 (62 FR 28335), Airspace Docket No. 97-AEA-18. The final rule established Class E airspace at Marion, VA.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA-530, Federal Aviation Administration, Federal Building, #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553-4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 97-13581, Airspace Docket 97-AEA-18, published on May 23, 1997 (62 FR 28335), established the Class E airspace at Marion, VA. An error was discovered in the coordinates of the airspace description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Marion, VA, Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on May 23, 1997 (62 FR 28335), (**Federal Register** Document 97-13581) is corrected as follows:

§ 71.1 [Corrected]

On page 28336, column 1, the airspace description for Marion, VA, is corrected to read as follows:

* * * * *

AEA VA E5 Marion, VA [Corrected]

Mountain Empire Airport,
Marion/Wytheville, VA
(Lat. 36°53'41" N., long 81°21'00" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Mountain Empire Airport and within 8 miles north and 4 miles south of the 073° bearing from the airport extending from the 10-mile radius to 16 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97-27396 Filed 10-16-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AEA-002]

Establishment of Class E Airspace; East Butler, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on May 23, 1997, Airspace Docket No. 96-AEA-002. The final rule established Class E airspace at East Butler, PA.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA-530, Federal Aviation Administration, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553-4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 97-13585, Airspace Docket 97-AEA-002, published on May 23, 1997 (62 FR 28333), established the Class E airspace at East Butler, PA. An error was discovered in the airport name in the airspace description exclusion areas. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the East Butler Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on May 23, 1997 (62 FR 28333), (**Federal Register** Document 97-13585) is corrected as follows:

§ 71.1 [Corrected]

On page 28334, column 1, the airspace description for East Butler, PA, is corrected to read as follows:

* * * * *

AEA PA E5 East Butler, PA [Corrected]

Butler Memorial Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°51'19" N., long. 79°51'51" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Butler Memorial Hospital Heliport, excluding that portion that coincides with the Butler, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97-27502 Filed 10-16-97; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-7470 and 34-39227; S7-26-96]

[International Series Release No. 1103]

RIN 3235-AG85

Offshore Press Conferences, Meetings with Company Representatives Conducted Offshore and Press-Related Materials Released Offshore

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Commission is adopting two safe harbors designed to facilitate U.S. press access to offshore press activities. The two safe harbors will clarify the conditions under which journalists may be provided access to offshore press conferences, offshore meetings and press materials released offshore, in which a present or proposed offering of securities or tender offer is discussed, without violating the provisions of Section 5 of the Securities Act of 1933, or the procedural requirements of the tender offer rules promulgated under the Williams Act.

EFFECTIVE DATE: The rule and amendments will become effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

SUPPLEMENTARY INFORMATION: The Commission is adopting a safe harbor with respect to the registration requirements of the Securities Act of 1933 ("Securities Act")[1] to permit a foreign private issuer or foreign government issuer, selling security holder or their representatives to provide any journalist, whether foreign or domestic, with access to press conferences held outside the United States, to meetings with issuer or selling security holder representatives conducted outside the United States, or to press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed ("Securities Act safe harbor"). The safe harbor would clarify that providing press access under the safe harbor would not be deemed an "offer" for the purposes of Section 5[2] of the Securities Act;[3] "directed selling efforts" within the meaning of Regulation S[4] under the Securities Act; or a "general solicitation" within the meaning of Regulation D[5] under the Securities Act. The Commission also is adopting a safe harbor whereby a bidder for the securities of a foreign private issuer, as well as the subject company, their representatives, or any other person specified in Rule 14d-9(d)[6] under the Securities Exchange Act of 1934 ("Exchange Act"), will not be subject to the filing and procedural requirements of Regulations 14D[7] and 14E[8] under the Exchange Act by virtue of providing any journalist, whether foreign or domestic, with access to its press conferences held outside the United States, to meetings with its representatives conducted outside the United States, or to press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed ("Tender Offer safe harbor").

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 77e.

[3] 17 CFR 230.135e.

[4] 17 CFR 230.901 through 17 CFR 230.904 and Preliminary Notes.

[5] 17 CFR 230.501 through 17 CFR 230.508 and Preliminary Notes.

[6] 17 CFR 240.14d-9.

[7] 17 CFR 240.14d-1 through 17 CFR 240.14d-10.

[8] 17 CFR 240.14e-1 through 17 CFR 240.14e-2.

I. Background

U.S. journalists are being excluded on a regular basis from the offshore press activities of foreign issuers.[9] This practice may not foster the interests of U.S. investors, since the information is made available to U.S. press shortly following the release of the information offshore. Instead, the practice is both anti-competitive and potentially disadvantageous to U.S. investors by delaying their access to information made immediately available to investors offshore. The purpose of this rulemaking is to eliminate this unintended and undesirable consequence of the Commission's rules governing offering publicity.

The Commission published for comment in October 1996 proposed safe harbors to facilitate U.S. press access to offshore press activities conducted by issuers, selling security holders and their representatives ("Proposing Release").[10]

The Commission proposed these safe harbors in recognition of the difficulties faced by journalists for publications with significant U.S. circulation in gaining direct access to offshore press activities in which a present or proposed offering of securities or tender offer is discussed. Many issuers have denied these journalists access to offshore press conferences, offshore meetings with company representatives and press materials released offshore that pertain to a present or proposed securities offering or tender offer out of concern that this access would result in a violation of the U.S. federal regulatory requirements for these offerings. Past rulemaking and interpretive guidance by the Commission and its staff do not appear to have allayed the concerns of companies conducting offshore press activities, and U.S. press continue to be denied access to offshore press activities even when no U.S. offering is contemplated.

The U.S. Congress has also been aware of this exclusion. In the National Securities Markets Improvement Act of 1996,[11] Congress directed the Commission to conduct rulemaking to clarify the status of offshore press activities under the Securities Act.

After reviewing the thirteen comment letters received on the proposed safe harbors and further considering the proposals,[12] the Commission is adopting the safe harbors substantially as proposed with one significant modification. The Securities Act safe harbor as adopted will not be available to U.S. issuers.[13] Although the Commission initially had proposed making that safe harbor available to both foreign and domestic issuers, the Commission has determined that relief is unnecessary with respect to U.S. issuers and that it may be preferable to address publicity in connection with offerings by U.S. issuers in a more comprehensive fashion.

Some foreign jurisdictions, unlike the United States, permit companies that are offering securities to conduct press conferences, issue press releases, and meet with members of the press during the offering as a means of publicizing the offering. Foreign issuers adopting those practices are unlikely to be doing so for the purpose of circumventing U.S. restrictions on publicity. On the other hand, extending the safe harbor to U.S. issuers that have not traditionally employed such practices in the offering of securities unnecessarily invites that potential for abuse. In addition, the Commission understands that the difficulty experienced by the U.S. press in obtaining access to foreign press activities is most significant with respect to foreign issuers.[14] Accordingly, by excluding U.S. issuers from the Securities Act safe harbor, the Commission is crafting a narrow approach that addresses the concerns of the U.S. press by accommodating the anomalies that can result when offshore offering practices differ from what is permitted in the United States, yet allows the Commission to consider crafting a regulatory approach with respect to U.S. issuers in a comprehensive fashion both with respect to offshore and domestic press activities.

The Commission may reconsider the safe harbor adopted today at a later date in light of its ongoing reexamination of

[9] *See SEC Rules Not OK,* EUROMONEY, July 1997, at 64.

[10] Release No. 33-7356 (Oct. 10, 1996) [61 FR 54518].

[11] Pub. L. No. 104-290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[12] The comment letters are available for inspection and copying in the Commission's public reference room. Refer to file number S7-26-96. Comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.

[13] In contrast, the Tender Offer safe harbor will be available to both U.S. and foreign bidders as long as the target company qualifies as a foreign private issuer.

[14] *See supra* note 9. *See also* Roberta S. Karmel & Mary S. Head, *Barriers to Foreign Issuer Entry into U.S. Markets; Symposium on Managing Economic Interdependence,* 24 LAW & POL'Y INT'L BUS. 1207 (1993).

the Commission's regulation of securities offerings under the Securities Act and the rules thereunder. In July 1996, the Commission issued a Securities Act Concept Release ("Concept Release")[15] that reviewed the current regulatory framework for securities offerings, particularly with respect to regulating publicity in connection with a securities offering. The Concept Release suggested a number of alternative approaches and solicited comments from the public. Many commenters recognized that this wide-ranging examination of the permissible level of publicity in connection with securities offerings is fundamental to the Commission's administration of the Securities Act. On the other hand, they urged that the practice of excluding the U.S. press from foreign press activities itself presents ongoing significant policy concerns that should and can be addressed in a narrow and expeditious fashion.

II. Securities Act Safe Harbor

A. General

The Commission is adopting Rule 135e under the Securities Act to provide a safe harbor for offshore press activities conducted in connection with an offering by a foreign private issuer or foreign government issuer.[16] Under the Securities Act safe harbor, a foreign private issuer or foreign government issuer, selling security holder, or their representatives may provide foreign and U.S. journalists[17] with access to offshore press conferences, meetings with issuer or selling security holder representatives conducted offshore, or press-related materials released offshore without being viewed as making an "offer" for purposes of Section 5 of the Securities Act as long as certain conditions enumerated below are satisfied. Press activities that are covered by the Securities Act safe harbor also would not constitute a general solicitation or general advertising within the meaning of Regulation D, or "directed selling efforts" within the meaning of Regulation S. The Commission is adopting amendments to Rule 502[18] of Regulation D and Rule 902[19] of Regulation S[20] to reflect this.

As adopted, the safe harbor will apply to all foreign private issuers and foreign governments regardless of whether these issuers file periodic Exchange Act reports with the Commission. In addition, representatives of the issuer and the selling security holders, such as underwriters and public relations firms, may rely on the safe harbor, although persons with no relationship to the issuer are excluded from the safe harbor.

As in the proposal, the safe harbor does not cover paid advertisements. The Commission also noted in the Proposing Release that analysts' research reports would not be covered, since Securities Act Rules 138[21] and 139[22] cover those reports. Several commenters opposed the exclusion of analysts' reports from the Securities Act safe harbor because these reports are often distributed as part of the offshore offering process. However, the Commission did not intend that providing research reports in written press-related materials would cause any materials included in the press package, including analysts' research reports, to lose safe harbor protection. To clarify, analysts' research reports would be covered by the new safe harbor (even if Rules 138 and 139 are not available) to the same extent, and under the same conditions, as other written materials in the package.[23]

The safe harbor only applies to the Section 5 registration requirements of the Securities Act. The scope of the antifraud or other provisions of the federal securities laws, including Sections 12(a)(2)[24] and 17(a)[25] of the Securities Act, that relate to both oral and written material misstatements and omissions in the offer and sale of securities will not be affected by the safe harbor.

B. Conditions to the Safe Harbor

The Securities Act safe harbor is available only if the conditions described below are satisfied. These conditions are intended to minimize the possibility that issuers may use the safe harbor to circumvent important Securities Act protections.

The safe harbor as adopted is a purely objective test. All of the nine commenters who addressed the desirability of an objective test supported that approach. Many of them believed that a subjective test would result in the continued exclusion of U.S. press from offshore press activities. In addition, commenters noted that the antifraud and civil liability provisions of the federal securities laws should provide adequate protection to investors.

1. Press Activity Must Occur Offshore

The press activities that are covered by the safe harbor must occur outside of the United States.[26] To come under the safe harbor, a press conference or meeting with issuer or selling security holder representatives must be conducted outside the United States, and any press-related materials must be released outside of the United States. Under this approach, the journalist to whom access is provided must receive any written press-related materials at a physical location and address that is offshore. In addition, conference calls in which at least one of the participants is located in the United States would not be covered by the safe harbor.

Follow-up press contacts in which the journalist (whether foreign or U.S.) is located in the United States at the time of the follow-up are not included in the safe harbor. As one of the commenters pointed out, this should not be a problem in most cases, since journalists who attend offshore press conferences typically are based offshore. As this commenter stated in its letter:

> We do not believe follow-up conversations [citation omitted] present a major issue because in most cases we believe journalists based offshore will be attending the offshore press conferences rather than U.S. residents travelling to another country. Attempting to cover follow-up conversations or other communications where one party is in the United States would pose an unnecessary complication for operation of the safe harbor.[27]

This approach is consistent with the limited goal of accommodating different offering practices followed in the issuer's home jurisdiction to avoid exclusion of U.S. press from those activities. This also is consistent with the general territorial approach used in the application of the Securities Act registration requirements.[28]

2. Offshore Offering

As a condition to the safe harbor, the offering must not occur solely within the United States. This condition reflects the Commission's concern that an issuer not conduct press activities solely to "condition the market" in the United States for the issuer's securities. There is a far greater likelihood that offshore publicity with respect to offerings that are made exclusively in the United States is intended for that purpose.

Some commenters urged the Commission to include U.S.-only offerings in the Securities Act safe harbor. They noted that these offerings may be newsworthy events in the home jurisdictions of foreign issuers, and that certain foreign jurisdictions may even require disclosure of these offerings. Rules 134,[29] 135[30] and 135c[31] under the Securities Act should provide adequate protection for issuers giving notice of offerings. In addition, even if the new safe harbor and Rules 134, 135 and 135c do not cover the press activities for U.S.-only offerings of foreign issuers, this does not necessarily mean that allowing U.S. press access would cause a Section 5 violation. Instead, that question would depend on an analysis of all the facts and circumstances.[32]

The condition that at least part of the offering be made offshore does not impose any requirement that a specific amount be offered offshore. The commenters that addressed this issue strongly supported this approach. Commenters noted that requiring a specific minimum portion of the offering to take place offshore would undercut the benefit of the safe harbor. Because issuers may not know how much of an offering will be made offshore, this uncertainty could lead them to exclude journalists from offshore press activities unnecessarily. There must, however, be an intent to make a bona fide offering offshore; the mere offering of a token amount will not suffice to bring the transaction within the safe harbor. Should the Commission become aware of abuses involving offerings that do not appear to include a bona fide offshore component, it will revisit the rule to consider imposing a stricter, more objective standard.

3. Access Provided to Both U.S. and Foreign Journalists

Another condition of the safe harbor is that the offshore press activity must be available to foreign journalists, as well as to U.S. journalists. The safe harbor would not be available if *only* U.S. journalists were permitted to attend the offshore press activity or to receive the offshore press-related materials. This minimizes the possibility that the safe harbor would be used to channel publicity regarding the offering solely into the United States. Foreign journalists must have the same access to the offshore press activity or materials, although the safe harbor does not require the issuer to monitor whether foreign journalists actually attend the offshore press activity or actually receive the offshore press-related materials for the safe harbor to apply. The Commission has determined that the actual attendance or receipt of materials by foreign journalists is beyond the issuer's control, and that a monitoring requirement would be too burdensome.

In the Proposing Release, the Commission indicated that it would view "one-on-one" interviews with a U.S. journalist as covered by the safe harbor. However, if the "one-on-one" meeting was conducted on an "exclusive" basis with a purely "U.S. publication" and no other "one-on-one" interviews with other foreign publications were given, the Commission expressed its concern that the exclusive "one-on-one" presentation might signal a scheme to channel publicity regarding the offering into the United States. Nonetheless, the Commission indicated in the Proposing Release that if an issuer or its representatives conducts a press conference that complies with the requirements of the safe harbor (*e.g.*, where both U.S. and foreign journalists are allowed to attend) either before or after the exclusive "one-on-one" meeting with a purely domestic publication,[33] the Commission would view the exclusive interview as covered by the safe harbor. A few commenters objected to this interpretation as unduly restrictive and unnecessary.[34] However, the Commission continues to believe that there is a real basis for concern that the exclusive "one-on-one" would be used solely to channel publicity into the United States, absent an offshore press conference or other foreign press activity conducted in connection with an offering.

4. Written Materials Requirements

Written materials that are released to journalists under the safe harbor present special concerns, especially if the materials are released with respect to an offering that is likely to be of significant interest to U.S. investors. The Commission is concerned that materials may result in offers of securities in the United States without the protections of the federal securities laws, or in conditioning the market in the United States for the securities to be offered. To address these concerns, the Commission proposed additional procedural safeguards to be imposed on written materials released to journalists. These safeguards were intended to alert recipients that such materials should not be considered an offer of securities for sale in the United States, and that when and if an offer is made in the United States, the appropriate required disclosure would be disseminated at that time.

The Commission is adopting the "Written Materials Requirements" substantially as proposed.[35] These requirements must be met whenever written materials released under the safe harbor discuss an offering of securities by any foreign private issuer and foreign government where part of the offering is or will be conducted in the United States. The requirements apply irrespective of whether the U.S. portion of the offering is registered or exempt. However, consistent with the Proposing Release, the "Written Materials Requirements" will not be imposed on securities offerings of foreign private issuers and foreign governments that are offered and sold wholly offshore because those offerings would appear to be of less significant interest to U.S. investors.

The "Written Materials Requirements" are as follows:

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[15] Release No. 33–7314 (July 25, 1996) [61 FR 40044].

[16] "Foreign private issuer" is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4(c) [17 CFR 240.3b-4(c)].

[17] Consistent with the recommendation of commenters, the safe harbor does not provide a definition of "journalist." In response to questions by commenters, the Commission notes that it views on-line services and independent free-lance writers as bona fide "journalists" under both the Securities Act safe harbor and Tender Offer safe harbor.

[18] 17 CFR 230.502.

[19] 17 CFR 230.902.

[20] Preliminary Note 7 of Regulation S is being amended to clarify the relationship of that general statement to the Securities Act safe harbor and Tender Offer safe harbor.

[21] 17 CFR 230.138.

[22] 17 CFR 230.139.

[23] The application of Section 5 of the Securities Act to the publication of analysts' reports by analysts themselves, rather than by an issuer or selling security holder, will continue to be considered separately under Rules 138 and 139 under the Securities Act.

[24] 15 U.S.C. 77l(a)(2).

[25] 15 U.S.C. 77q(a).

[26] For clarification, a definition of "United States" has been included in Rule 135e that is the same as the definition used in Rule 902(p) of Regulation S [17 CFR 230.902(p)]. "United States" is defined to include the United States of America, its territories and possessions, as well as the individual states of the United States and the District of Columbia.

[27] Comment letter from Dow Jones & Company, Inc. of 12/17/96, at p. 5.

[28] *See* Rule 901 of Regulation S [17 CFR 230.901].

[29] 17 CFR 230.134.

[30] 17 CFR 230.135.

[31] 17 CFR 230.135c.

[32] Preliminary Note 7 to Regulation S should continue to provide guidance in that instance.

[33] The Commission does not believe that the press conference must be conducted within any particular time frame. In the Commission's view, a press conference held in connection with the offering would be sufficient evidence that the exclusive "one-on-one" was not an attempt to condition the U.S. markets.

[34] Some commenters opposed the press conference requirement for purely domestic publications as unnecessary for legitimate news coverage. *See* comment letter from Bloomberg L.P. of 12/17/96, at p. 8, and comment letter from Sullivan & Cromwell of 12/20/96, at p. 13.

[35] As originally proposed, the "Written Materials Requirements" were required to be satisfied whenever the written materials discussed an offering of securities by a U.S. issuer. Because U.S. issuers will not be covered by the safe harbor, as initially contemplated in the Proposing Release, the "Written Materials Requirements" have been modified to reflect this.

1. The materials must include a statement that the materials are not an offer of securities for sale in the United States; that the securities may not be offered or sold in the United States unless they are registered or exempt from registration; and that any public offering of securities to be made in the United States will be made by means of a prospectus that will contain detailed information about the company and management, as well as financial statements. In addition, if any portion of the offering will be registered in the United States, the materials must include a legend stating this intention.

2. The issuer or selling security holder cannot attach to, or otherwise make a part of, the written materials any form of purchase order or coupon that could be returned indicating interest in the offering.

Several commenters objected to certain aspects of the "Written Materials Requirements," most notably the legending requirements and the coupon prohibition. They contended that these requirements would make the safe harbor difficult to apply without improving investor protection. Nonetheless, the Commission believes that these requirements significantly reduce the possibility that written materials released to U.S. journalists, and that may come into the hands of U.S. investors, will be used to offer securities in the United States without the protections of the U.S. securities laws. Since the requirements are only imposed when the issuer is otherwise required to meet U.S. offering regulations because a portion of the offering is to be made in the United States, the requirements are not unduly burdensome and the possibility of inadvertent violations is minimal.

III. Tender Offer Safe Harbor

A. General

The Commission is adopting the Tender Offer safe harbor as proposed. The safe harbor is only available with respect to a target company that is a foreign private issuer,[36] and is narrowly crafted to permit both the bidder and foreign target to conduct their activities in a manner consistent with local offering practices. Pursuant to Rule 14d-1 under the Exchange Act,[37] as amended, a bidder for the securities of a foreign private issuer, as well as the foreign target company, the representatives of either and any other person who may have a filing obligation under the Williams Act would not be deemed to have triggered the filing and procedural requirements of the Williams Act[38] by virtue of providing U.S. or foreign journalists with access to offshore press conferences, offshore meetings with representatives, and press-related materials released offshore, at or in which a present or proposed tender offer of securities is discussed.[39] Although the safe harbor will be available to either a U.S. or a foreign bidder, the safe harbor will only be applicable if the target company is a foreign private issuer. The safe harbor will not be available for the securities of a U.S. target issuer because there appears to be no need to accommodate foreign offering practices in that instance.

The safe harbor only affects the triggering of the filing and procedural requirements of the Williams Act, and would not affect the scope or applicability of the antifraud prohibition of Section 14(e)[40] of the Exchange Act, or the prohibition against trading on material nonpublic information regarding a tender offer in Rule 14e–3[41] under the Exchange Act.

The purpose of the Tender Offer safe harbor is to prevent the application of the U.S. tender offer rules before a bidder is prepared to proceed with the offer. After an offer has commenced with the filing of documents with the Commission under Regulation 14D, the safe harbor would not be available.

B. Conditions

The applicability of the Tender Offer safe harbor is subject to several conditions that are analogous to the Securities Act safe harbor conditions. Both U.S. and foreign journalists must have access to the offshore press activity, and the written materials that are covered by the safe harbor must be appropriately legended in circumstances where significant U.S. investor interest in the tender offer is likely. In addition, no means to tender securities, or coupons that could be returned to indicate interest in the tender offer may be provided as part of any press-related materials.

If the present or proposed tender offer described in the written materials released under the proposed tender offer safe harbor is for equity securities registered under Section 12[42] of the Exchange Act, the materials must comply with certain requirements ("Written Materials Requirements").[43] These requirements are as follows:

1. The materials must include a statement that the materials are not an extension of the tender offer in the United States for a class of equity securities of the subject company. In addition, if the bidder intends to extend the tender offer in the United States at some future time for a class of equity securities of the subject company, the materials must include a legend stating this intention and stating that the procedural and filing requirements of the Williams Act will be satisfied at that time.

2. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer may be provided as part of, or attached to, any press-related materials.

IV. Certain Findings

Section 23(a) of the Exchange Act[44] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, if any, and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Furthermore, Section 2[45] of the Securities Act and Section 3[46] of the Exchange Act, as amended by the National Securities Markets Improvement Act of 1996,[47] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered the rule and amendments discussed in this release in light of the comments received in response to the Proposing Release and the standards in Section 23(a) of the Exchange Act. The rule and amendments are intended to reduce anti-competitive barriers between U.S. and foreign journalists. As a result of the rule and amendments, U.S. journalists will have increased access to offshore press activities conducted by issuers and selling security holders and, in the case of tender offers, by bidders for foreign private issuers, as well as the foreign target company itself. Although some of the requirements under the safe harbors, such as the legending requirements and coupon prohibition, may place certain burdens on those who wish to rely on the safe harbors, the overall effect of the safe harbors is to decrease anti-competitive barriers. Without the safe harbors, U.S. press will continue to be excluded from the offshore press activities of foreign issuers. This may harm U.S. investors because they eventually receive the information disseminated offshore, but on a delayed basis. With the safe harbors, U.S. investors will have access to information about their investments in a more timely and efficient manner. The safe harbors adopted today will facilitate U.S. press access to the offshore press activities, and promote efficiency, competition and capital formation by removing information barriers that may inadvertently harm U.S. investors and otherwise facilitating foreign issuer access to U.S. markets.

V. Cost-Benefit Analysis

The new rule and amendments will not impose any significant new burdens on issuers. No new registration, reporting or filing burdens will be imposed on issuers and selling security holders as a result of the safe harbors. The purpose of the safe harbors is to increase the access of U.S. journalists to the offshore press activities of issuers and selling security holders and, in the case of tender offers, bidders for foreign private issuers and the target company itself. Currently, U.S. journalists are excluded from the offshore press activities of foreign issuers. Instead of protecting U.S. investors, this practice may disadvantage U.S. investors because their access to information is delayed. The new rule and amendments will eliminate this unintended consequence of the Securities Act's regulation of offering publicity.

Although some of the Written Materials Requirements under either safe harbor marginally may increase burdens for those wishing to rely on the safe harbors, these requirements are intended to ensure that activities covered by the safe harbors are not actually offerings of securities or tender offers in the United States. Because the safe harbors should eliminate barriers to press access, the overall result of the safe harbors is to reduce the burdens and costs currently associated with limited and uneven press access. Moreover, the burdens imposed by the Written Materials Requirements are negligible. Based on an informal survey taken by Commission staff of attorneys in private practice whose clients could be expected to rely on these safe harbors, the Commission has estimated that the maximum compliance costs of these legending requirements is $500 in printing costs for each instance that the requirements are triggered.

Under the Securities Act safe harbor, the Written Materials Requirements are intended to help ensure that press-related materials distributed under the safe harbor will not result in an offering of securities to U.S. investors without the protection of the securities laws. The written materials must include a legend explicitly stating that the materials are not an offer of securities in the United States, and that no money or other consideration is being solicited through the materials. The issuer or selling security holder also must state if it intends to register any part of the offering in the United States. In addition to these legending requirements, issuers and selling security holders may not include a purchase order or coupon with the written materials.

Although some commenters contended that these requirements are unnecessary and burdensome, the Commission has determined that these requirements are necessary to safeguard the safe harbor from potential abuse. The burdens imposed are minimal, and enable the Commission to adopt an objective approach that should reduce needless barriers to U.S. press participation in offshore press activities with minimal burden.

The Tender Offer safe harbor contains similar Written Materials Requirements. Bidders for the securities of foreign private issuers and the foreign target companies must comply with these requirements when they release written press-related materials under this safe harbor. The materials must include a legend stating that the materials should not be construed as extending a tender offer in the United States, and that no money or other consideration is being solicited through the materials. If the bidder intends to extend the tender offer in the United States in the future, the written materials must include a statement to that effect. In addition, no coupons or means of tendering securities must be included with the materials.

The requirements under both safe harbors are intended to protect U.S. investors from potential use of the safe harbors as a means of circumventing the protections provided by the federal securities laws. The Commission does not consider these requirements to be unduly burdensome, especially in light of the important investor protections they provide and the benefits provided by the new safe harbors. Moreover, each issuer can engage in its own cost-benefit analysis to determine whether the burdens imposed by the legending and coupon conditions preclude reliance on the safe harbors.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604 regarding the new rule and amendments. The rule and amendments are intended to provide companies with greater certainty in determining when journalists, both foreign and domestic, may have access to offshore press conferences, meetings with company representatives conducted offshore, or press materials released offshore without violating the U.S. federal securities laws.

The rule and amendments should eliminate an unintended and potentially harmful consequence of the Securities Act's regulation of offering publicity. Currently, these regulations have been interpreted to deny U.S. journalists access to the offshore press activities of foreign issuers. This practice may harm U.S. investors because they eventually receive the same information, but on a delayed basis. The rule and amendments should remedy this unintended and harmful consequence.

The new rule and amendments will not impose any reporting, recordkeeping or other compliance burdens other than the Written Materials Requirements, which only apply to those issuers that choose to rely on the safe harbors. Although the Written Materials Requirements will impose certain legending requirements on written materials released offshore for those wishing to rely on the safe harbors, the Commission does not consider these requirements to be unduly burdensome on small businesses. A small issuer will make its own determination of whether the requirements would impose too much of a burden to make reliance on

[36] Several commenters objected to this limited application of the safe harbor. They noted, among other things, that bidders may have difficulty ascertaining whether a target company qualifies as a foreign private issuer. However, the Commission has determined that the safe harbor is easiest to apply if a foreign private issuer definition is used. A bidder may presume that a target company qualifies as a "foreign private issuer" if the target company is a foreign issuer that files registration statements with the Commission on the disclosure forms specifically designated for foreign private issuers (such as Form F–1 or Form 20–F), claims the exemption from Exchange Act registration pursuant to Exchange Act Rule 12g3–2(b) [17 CFR 240.12g3–2(b)], or is not reporting in the United States.

[37] 17 CFR 240.14d–1.

[38] Offshore press activity during a tender offer would not trigger the following requirements: Section 14(d)(1) [15 U.S.C. 78n(d)(1)] through Section 14(d)(7) [15 U.S.C. 78n(d)(7)] of the Exchange Act, Regulation 14D [17 CFR 240.14d–1 through 17 CFR 240.14d–10), and Rules 14e–1 [17 CFR 240.14e–1] and 14e–2 [17 CFR 240.14e–2].

[39] The Tender Offer safe harbor, however, would not exempt from the Securities Act registration requirements exchange offers in which a U.S. bidder is involved.

[40] 15 U.S.C. 78n(e).

[41] 17 CFR 240.14e-3.

[42] 15 U.S.C. 78*l*.

[43] As with the Written Materials Requirements under the Securities Act safe harbor, some commenters objected to the legending and coupon conditions of the Tender Offer safe harbor. The Commission believes that these conditions reduce the possibility that the Tender Offer safe harbor will be used to circumvent the protections provided by the federal securities laws. The Written Materials Requirements do not apply where those protections are not applicable, including in the case of tender offers for a class of equity securities that is not registered with the Commission, or tender offers for debt securities.

[44] 15 U.S.C. 78w(a).

[45] 15 U.S.C. 77b.

[46] 15 U.S.C. 78c.

[47] Pub. L. No. 104–290, § 106, 110 Stat. 3416 (1996).

the safe harbors useful to it. As a result, the Commission does not consider the rule and amendments unduly burdensome on small businesses.

The term "small business," as used in reference to an issuer for purposes of the Regulatory Flexibility Act, is defined by Rule 157 [48] under the Securities Act as an issuer that had total assets of $5 million or less on the last day of its most recent fiscal year, and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. When used in reference to an issuer other than an investment company, the term also is defined in Rule 0–10 [49] of the Exchange Act as an issuer that had total assets of $5 million or less on the last day of its most recent fiscal year.

The Commission is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 0–10. Because the rule and amendments affect multinational offerings by foreign issuers in which there would be press interest, it is likely that most of these issuers would not satisfy the definition of "small business."

The Commission has considered different alternatives to the rule and amendments. However, alternatives for providing different means of compliance for small entities or for exempting small entities from the rule and amendments would be inconsistent with the Commission's statutory mandate of investor protection. The new rule and amendments are intended to facilitate U.S. press access to offshore press activities of all issuers, regardless of size, such that further distinctions between companies based on size would not be appropriate.

The Commission requested comment with respect to the Initial Regulatory Analysis ("IRFA") prepared in connection with the Proposing Release, but did not receive any comments that specifically addressed the IRFA.

VII. Statutory Basis for the Amendments

The amendments to the Securities Act rules are being adopted pursuant to Sections 3, 4, 5 and 19 of the Securities Act as amended, and as required by Pub. L. No. 104–290, § 109, 110 Stat. 3416 (1996). The amendment to the Exchange Act rule is being adopted pursuant to Sections 14(d), 14(e) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.135d [Added]

2. Section 230.135d is added and reserved.

3. By adding § 230.135e to read as follows:

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

(a) For the purposes only of Section 5 of the Act [15 U.S.C. 77e], an issuer that is a foreign private issuer (as defined in § 230.405) or a foreign government issuer, a selling security holder of the securities of such issuers, or their representatives will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

Note to Paragraph (a)(1): An offering will be considered not to be made solely in the United States under this paragraph (a)(1) only if there is an intent to make a bona fide offering offshore.

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press-related materials pertaining to transactions in which any of the securities will be or are being offered in the United States satisfy the requirements of paragraph (b) of this section.

(b) Any written press-related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press-related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(3) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press-related materials.

(c) For the purposes of this section, "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 230.502 [Amended]

4. By amending § 230.502 to remove the period at the end of paragraph (c)(2) and to add the following: "; *Provided further*, that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section."

Preliminary Note 7 [Amended]

5. By amending Preliminary Note 7 following the undesignated heading "Regulation S" and before § 230.901 to add the following after the first sentence: "Where applicable, issuers and bidders may also look to § 230.135e and § 240.14d–1(c) of this chapter."

6. By amending § 230.902 to add paragraph (b)(8) to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed Selling Efforts.* * * *

(8) Notwithstanding paragraph (b)(1) of this section, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed "directed selling efforts" if the requirements of § 230.135e are satisfied.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

8. By amending § 240.14d–1 by redesignating paragraphs (c) and (d) as paragraphs (e) and (f), and adding paragraphs (c) and (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act [15 U.S.C. 78n(d)(1) through 78n(d)(7)], Regulation 14D promulgated thereunder (§§ 240.14d–1 through 240.14d–10), and §§ 240.14e–1 and 240.14e–2 shall not apply by virtue of the fact that a bidder for the securities of a foreign private issuer, as defined in § 240.3b–4, the subject company of such a tender offer, their representatives, or any other person specified in § 240.14d–9(d), provides any journalist with access to its press conferences held outside of the United States, to meetings with its representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed, if:

(1) Access is provided to both U.S. and foreign journalists; and

(2) With respect to any written press-related materials released by the bidder or its representatives that discuss a present or proposed tender offer for equity securities registered under Section 12 of the Act [15 U.S.C. 78*l*], the written press-related materials must state that these written press-related materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company. If the bidder intends to extend the tender offer in the United States at some future time, a statement regarding this intention, and that the procedural and filing requirements of the Williams Act will be satisfied at that time, also must be included in these written press-related materials. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, these written press-related materials.

(d) For the purpose of § 240.14d–1(c), a bidder may presume that a target company qualifies as a foreign private issuer if the target company is a foreign issuer and files registration statements or reports on the disclosure forms specifically designated for foreign private issuers, claims the exemption from registration under the Act pursuant to § 240.12g3–2(b), or is not reporting in the United States.

* * * * *

Dated: October 10, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27523 Filed 10–16–97; 8:45 am]

BILLING CODE 8010–01–P

[48] 17 CFR 230.157.

[49] 17 CFR 240.0–10.

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 702

RIN 1215–AB17

Longshore Act Civil Money Penalties Adjustment

AGENCY: Office of Workers' Compensation Program, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On July 2, 1997, the Department of Labor published a proposal to amend various provisions of the regulations implementing the Longshore and Harbor Workers' Compensation Act (LHWCA). More specifically, the amendments, which are now being published in final with only minor word changes in §§ 702.204 and 702.236, will increase the maximum civil penalties that may be assessed under the LHWCA as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA).

EFFECTIVE DATE: The rule is effective on November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph F. Olimpio, Director for Longshore and Harbor Workers' Compensation, Employment Standards Administration, Room C–4315, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219–8721.

SUPPLEMENTARY INFORMATION: The LHWCA authorizes the assessment of a civil money penalty in three situations: (1) Where an employer fails to file a report within sixteen days of the final payment of compensation, it shall be assessed a $100.00 civil penalty (LHWCA, section 14(g)); (2) where an employer, insurance carrier, or self-insured employer knowingly and willfully fails to file any report required by section 30, or knowingly or willfully makes a false statement or misrepresentation in any required report, the employer, insurance carrier, or self-insured employer shall be assessed a civil penalty not to exceed $10,000.00 (LHWCA, section 30(e)); and (3) where an employer is found to have discriminated against an employee because the employee had claimed or attempted to claim compensation, or has testified or is about to testify in proceedings under the LHWCA, the employer shall be liable for a civil penalty of not less than $1,000.00 or more than $5,000.00 (LHWCA, section 49). The DCIA, amending the FCPIAA, requires each agency to issue regulations adjusting the amount of civil money penalties they may levy. The DCIA requires that the civil money penalties be adjusted by a cost-of-living increase equal to the percentage, if any, by which the Department of Labor's Consumer Price Index for all-urban customers (CPI) for June of the calendar year preceding the adjustment exceeds the June CPI for the calendar year in which the civil penalty amount was last set or adjusted. Due to inflation since the LHWCA civil money penalties were last set or adjusted, the increase will, in every case, be the maximum 10% initially permitted under the DCIA. The adjusted civil penalties will apply only to violations occurring after the regulations become effective.

The Department did not receive any comments concerning the substance of its proposal. It did, however, receive a letter from the Chief Counsel of the Office of Advocacy at the Small Business Administration requesting clarification on whether the expected increase in the amount to be collected under the revised regulations is $2,500.00 in the aggregate, or $2,500.00 per case. Under the revised rules, the Department expects to collect an additional $2,500.00 for all cases in

which civil money penalties are assessed. This estimate is based on an analysis of the penalties collected in 1995 and 1996. During that period the total civil penalties collected for all cases was $50,000.00, or an average of $25,000.00 for each year. Each year penalties were collected from an average of 206 cases, so that the average penalty in each case was $121.36. Thus, assuming the maximum 10 percent increase is collected in each case under the final rule, the average increase for each individual case is estimated to be $12.14.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each agency to perform an initial regulatory flexibility analysis for all proposed rules unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. This rule does no more than mechanically increase certain statutory civil money penalties to account for inflation, pursuant to specific directions set forth in the FCPIAA, as amended. The statute specifies the procedure for calculating the adjusted civil money penalties and does not allow the Department to vary the calculation to minimize the effect on small entities. Moreover, as noted above, the total additional amount collected from all projected cases will not exceed $2,500.00. Therefore, the Assistant Secretary hereby certifies that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1985, as well as E.O. 12875, this rules does not include any federal mandate that may result in increased expenditures by State, local or tribal government, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The rule does not contain any collection of information requirements.

Submission to Congress and the General Accounting Office

In accordance with the Small Business Regulatory Enforcement Act of 1996, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule does not constitute a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' Compensation.

For the reasons set forth in the preamble, part 702 of chapter VI of title 20, Code of Federal Regulations, is amended as follows:

PART 702—ADMINISTRATION AND PROCEDURE

1. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 *et seq.*, Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR 1949–1953, Comp., p. 1004, 64 Stat. 1263; 28 U.S.C. 2461, 33 U.S.C. 930, 36 D.C. Code 501 *et seq.*, 42 U.S.C. 1651 *et seq.*, 43 U.S.C. 1331; Secretary's Order 5–96, 62 FR 107.

2. Section 702.204 is revised to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $10,000.00 for each such failure, refusal, false statement, or misrepresentation. *Provided, however,* that for any violations occurring on or after November 17, 1997 the maximum civil penalty may not exceed $11,000.00. The district director has the authority and responsibility for assessing a civil penalty under this section.

3. Section 702.236 is revised to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of $100.00. *Provided, however,* that for any violation occurring on or after November 17, 1997 the civil penalty will be $110.00. The district director has the authority and responsibility for assessing a civil penalty under this section.

4. Paragraph (a) of § 702.271 is revised to read as follows:

§ 702.271 Discrimination against employees who bring proceedings, prohibition and penalty.

(a)(1) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his/her employment because that employee: (i) Has claimed or attempted to claim compensation under this Act; or (ii) has testified or is about to testify in a proceeding under this Act. To discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of this section.

(2) Any employer who violates this section shall be liable to a penalty of not less that $1,000.00 or more than $5,000.00 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless the employee has ceased to be qualified to perform the duties of employment. *Provided however,* that for any violation occurring on or after November 17, 1997 the employer shall be liable to a penalty of not less than $1,100.00 or more than $5,500.00.

* * * * *

Signed at Washington, D.C., this 14th day of October 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 97–27593 Filed 10–16–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0111]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 6/66 copolymers as components of nonfood-contact layers of multilayer food packaging used at temperatures that do not exceed 212 °F. This action is in response to a petition filed by Allied-Signal, Inc.

DATES: The regulation is effective October 17, 1997; written objections and requests for a hearing by November 17, 1997.

ADDRESS: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 3, 1993 (58 FR 26325), FDA announced that a food additive petition (FAP 3B4369) had been filed by Allied-Signal, Inc., c/o 1100 G St. NW., Washington, DC 20001 (presently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 177.1395 *Laminate structures for use at temperatures between 120 °F and 250 °F* (21 CFR 177.1395) to provide for the safe use of Nylon 6/66 copolymers complying with 21 CFR 177.1500(b), item 4.2, as components of nonfood-contact layers of multilayer food packaging used at temperatures that do not exceed 100 °C (212 °F).

In reviewing the environmental assessment (EA), the agency found that the petitioner's proposed regulation was much broader than the proposed use covered in the EA. Whereas the analysis in the EA considered only the use of Nylon 6/66 copolymers in laminate films, the petitioner proposed the use of these copolymers in laminate structures, which includes the use in laminate films. In a subsequent communication with the agency, the petitioner agreed that the proposed regulation should be narrowed to state specifically that the intended use of Nylon 6/66 copolymers is in laminate films. Therefore, this regulation limits the use of these copolymers to laminate films, which is consistent with the proposed use covered in the EA.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have the intended technical effect, and therefore, that the regulations in § 177.1395 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before November 17, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1395 is amended in the table in paragraph (b)(4) by revising the entry for "Nylon 6/66 resins complying with § 177.1500(b), item 4.2 * * *" to read as follows:

§ 177.1395 Laminate structures for use at temperatures between 120 °F and 250 °F.

* * * * *

(b) * * *

(4) * * *

Substances	Limitations
Nylon 6/66 resins complying with § 177.1500(b), item 4.2 of this chapter. (CAS Reg. 24993–04–2).	For use only with: 1. Nonalcoholic foods at temperatures not to exceed 82.2 °C (180 °F). Laminate structures with authorized food-contact materials yield no more than 0.15 milligram of *epsilon*-caprolactam per square inch when extracted with water at 82.2 °C (180 °F) for 5 hours. 2. Nonalcoholic foods at temperatures not to exceed 100 °C (212 °F). Laminate films with authorized food-contact materials yield no more than 0.15 milligram of *epsilon*-caprolactam per square inch when extracted with water at 100 °C (212 °F) for 5 hours.

Dated: September 30, 1997.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–27527 Filed 10–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[DEA Number—169N]

Comprehensive Methamphetamine Control Act of 1996; Registration Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of fee wavier.

SUMMARY: DEA is waiving a portion of the registration fee for non-retail distributors of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products. Under the Comprehensive Methamphetamine Control Act of 1996 (MCA), wholesale distributors of these drug products are subject to the existing List I chemical registration and fee requirements. However, because the drug products are distributed in substantially different channels than other List I chemicals, the existing pre-registration investigation procedures, which were established primarily with respect to the handlers of chemicals, as opposed to drug products, are not necessarily applicable to the new type of applicant. DEA will be reviewing the pre-registration investigation procedures to determine what changes will be necessary to account for the different manner of distribution of the drug products. Recognizing that changes are likely to be made in the pre-registration process, thus causing changes to the fees assessed, DEA is waiving a portion of the fee at this time, rather than requiring that new applicants pay a fee that would not be consistent with the resources actually expended in the issuance of the registration.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The MCA's removal of the exemption for pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products (regulated drug products) opens up to chemical registration and regulation a new and different segment of industry from that previously subject to the chemical controls. Prior to the MCA the group subject to chemical registration consisted primarily of specialty chemical handlers distributing products of limited consumer end-use to a largely industrial customer base. By contrast, the principal group subject to registration under the MCA consists of general merchandisers distributing a wide variety of consumer products to retail outlets for sale to the public. Often, one company will operate several distribution centers to serve wholly owned or independent retail outlets. In response to applications submitted by this new group, DEA is re-examining the pre-registration investigation process for issuing registrations. This process will affect the registration application fees.

The procedures for issuing a chemical registration and the associated application fee were developed in 1994 as part of the implementation of the Domestic Chemical Diversion Control Act of 1993 (DCDCA). (For specific details regarding the procedures and fees, see DEA's notice of proposed rulemaking (NPRM) regarding Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) which was published in the **Federal Register** on October 13, 1994 (59 FR 51887)). The procedures were developed based on the type of applicants expected under the DCDCA, e.g., specialty chemical handlers dealing with products of limited consumer end-use. These applicants dealt almost exclusively in chemicals and often distributed from contract operated warehouses/storage depots. Pursuant to the requirements of the Office of Management and Budget (OMB) Circular A–25, the costs and resources required to conduct the pre-registration investigation and issue the registration were assessed to the applicants as the application fee.

The group subject to registration under the MCA is significantly different, consisting principally of general merchandisers distributing hundreds or thousands of different consumer products, often from a large number of applicant-owned warehouse/distribution centers, to retail outlets for sale to the public. The volume of regulated drug products handled is often only a very small portion of the total volume of products distributed by the location. For these applicants,the pre-registration procedures developed for chemical handlers are not entirely suitable. DEA has, therefore, initiated a review of the pre-registration procedures to determine what changes will be necessary to make the process consistent with the different activities of this group of applicants. This review will affect the costs and resources associated with the issuance of registrations to these applicants and, thus, the fee to be charged. DEA will publish notice, with opportunity for comment, in the **Federal Register** regarding any proposed change to the procedures and consequent changes to the fees.

The MCA removed the exemption from regulation for combination ephedrine drug products effective October 3, 1996, and will remove the exemption from regulation for pseudoephedrine and phenylpropanolamine drug products effective October 3, 1997, making persons who distribute the respective products subject to the registration requirement on those dates. Determination of the appropriate procedures and amendment of the regulations to set the new fees will extend well beyond those deadlines for registration. Therefore, DEA is waiving a portion of the application fee for new registration. It would be inconsistent with the principles of OMB Circular A–25 to charge a fee for a specific service, e.g., completing the processing of the application and the pre-registration investigation, knowing that the costs and resources to be expended in providing that service will change. Persons who have already applied for registration to distribute regulated drug products and paid the existing fee will be refunded the amount of fee that is being waived.

The Acting Deputy Administrator of DEA is, therefore, waiving that portion of the fee for registration as a non-retail distributor of regulated drug products associated with the 12 hours of investigator time allocated for the on-site visit and travel time, which, at $39.92 per hour, amounts to $479.00 (See 59 FR 51892). The remaining administrative costs and time allotted for background checks and reports will continue. Thus the fee for an initial application for registration as a non-retail distributor of regulated drug products is $116.00. That fee will remain in effect until the review of the registration procedures has been completed and a determination has been made regarding how the processing of such applications and the pre-registratıcn investigation will be carried out. At that time, a notice will be published in the **Federal Register** regarding the procedures to be followed and fee that will be required for future applications.

This waiver applies only to applicants for registration as non-retail distributors of regulated drug products. All other applicants remain subject to the full fees, as set forth in Title 21, Code of Federal Regulations, Section 1309.11. As noted earlier, persons who have already submitted an application for registration as a non-retail distributor of regulated drug products and paid the full fee will be provided with a $479.00 refund.

Dated: October 8, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–27452 Filed 10–16–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[DEA Number 168I]

RIN 1117–AA46

Temporary Exemption From Chemical Registration for Distributors of Pseudoephedrine and Phenylpropanolamine Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim Rule with request for comments.

SUMMARY: DEA is amending its regulations to provide a temporary exemption from registration for persons who distribute pseudoephedrine and phenylpropanolamine drug products. The Comprehensive Methamphetamine Control Act of 1996 (MCA) amends the Controlled Substances Act of 1970 (CSA) to require that, effective October 3, 1997, persons who distribute these drug products shall be subject to the chemical registration requirement. To avoid interruption in the legitimate distribution of the drug products pending promulgation of final regulations and issuance of registrations, DEA is amending its regulations to provide certain temporary exemptions from the registration requirement.

DATES: October 17, 1997. Persons required to register to handle pseudoephedrine or phenylpropanolamine must submit an application on or before December 3, 1997, in order to continue their activities pending final action by DEA on their application. Written comments or objections must be submitted on or before December 16, 1997.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Comprehensive Methamphetamine Control Act of 1996 (MCA) requires that, effective October 3, 1997, pseudoephedrine and phenylpropanolamine drug products (regulated drug products) will become subject to regulation as List I chemicals. Under this new requirement, any person who wishes to distribute, import, or export these products must first obtain a DEA chemical registration. Because full implementation of this provision and issuance of the registrations will not be possible prior to the October 3, 1997 deadline, DEA is establishing temporary exemptions from the registration requirement for persons handling regulated drug products to allow for continuation of legitimate commerce in the products. In addition, the existing exemptions from chemical registration for persons registered with DEA to handle controlled substances, which is contained in 21 CFR 1309.25, and for distributors of prescription drug products, which is contained in 21 CFR 1309.28, will also apply to the regulated drug products.

The first exemption applies to retail distributors of regulated drug products. A single transaction limit of 24 grams has been established by the MCA for retail distributions of regulated drug products. Consistent with previous proposals regarding the regulation of retail distributions of drug products that contain List I chemicals, DEA is temporarily exempting retail distributors from the registration requirement. Under this exemption, retail distributors will not be required to obtain a registration if they engage exclusively in distributions of regulated drug products below the 24-gram limit in a single transaction for legitimate medical use, either directly to walk-in customers or in face-to-face transactions by direct sales. This exemption is set out in 21 CFR 1309.29(b).

The second exemption applies to those persons who are required to obtain a registration. Any such person who submits an application for registration for activities involving regulated drug products on or before December 3, 1997 will be exempt from the registration requirement for their lawful activities with regulated drug products until the Administration has taken final action with respect to that application. This exemption is set out in 21 CFR 1310.09.

DEA recognizes that, unlike the second exemption, which provides a general benefit to all affected persons, the first exemption is limited in its application. Therefore, while the regulatory changes in this notice take

effect upon publication, the notice is open for public comment or objection until December 16, 1997. Further, the exemptions are temporary and may be subject to change, based on the comments or objections received.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that this interim rulemaking will not have a significant economic impact upon a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This interim rulemaking is an administrative action to make the regulations consistent with the law and to avoid interruption of legitimate commerce by granting temporary exemptions from registration pending promulgation, through notice and comment, of the regulations necessary to implement the provisions of the MCA pertaining to regulated drug products. Further, since this is a temporary action which provides affected persons with a means to comply with the law pending promulgation of regulations implementing the MCA, this action is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR parts 1309 and 1310 are amended to read as follows:

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.29 is revised to read as follows:

§ 1309.29 Exemption of retail distributors of regulated drug products.

The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are restricted to the distribution of below-threshold quantities of a drug product that contains a List I chemical that is regulated pursuant to § 1300.02(b)(28)(1)(D) of this chapter to an individual for legitimate medical use.

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.09 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(b) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a drug product that contains pseudoephedrine or phenylpropanolamine that is regulated pursuant to § 1300.02(b)(28)(1)(D) of this chapter is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before December 3, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

Dated: October 8, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–27453 Filed 10–16–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH72

Informed Consent for Patient Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA medical regulations concerning informed consent for patient care. It describes the requirements for obtaining and documenting informed consent. It also describes the types of treatments or procedures for which the patient's or surrogate's signature on a VA-authorized form is required and establishes a list and priority of surrogates authorized to act on behalf of patients who lack decision-making capacity. Further, it establishes an internal decision-making process for patients who lack decision-making capacity and who have no authorized surrogate. This is intended to protect patient rights and ensure that the patient (or the patient's surrogate or representative) receives sufficient information to make an informed health-care decision.

DATES: *Effective Date:* November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, Patient Care Services (11B), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8473.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 7, 1996 (61 FR 41108), we proposed to amend our regulations concerning informed consent for patient care. Interested parties were invited to submit written comments on or before October 7, 1996. We received comments from one commenter, the American Psychiatric Association.

Comments

The commenter suggested that whenever the word "patient" appears in the document, the phrase "or patient surrogate" should be added. In response, we have added the words "or surrogate" wherever appropriate. This is intended to clarify, consistent with the intent of the proposal, that a surrogate may give informed consent on behalf of a patient who lacks decision-making capacity.

With respect to requirements regarding the administration of psychotropic medication to an involuntarily committed patient, the commenter asserted that the prescribing of such medications should be limited to psychiatrists, and further asserted that the multi-disciplinary review committee constituted for purposes of review of the decision to administer or continue the administration of such medications should be required to include a psychiatrist. We do not believe that psychotropic medication should be prescribed only by psychiatrists. We believe that patients are adequately served as long as the prescribing physician is privileged to prescribe such medication. Also, we have added the requirement that the committee must include a psychiatrist or a physician who has psychopharmacology privileges. We believe this is adequate for the types of determinations that need to be made.

With respect to the revocation of consent (including the revocation of HIV testing consent), the commenter suggested that the regulations should require that documentation immediately be added at the place in the medical records that contained the earlier record of consent. No changes are made based on this comment. We note that the regulations provide that the informed consent process must be appropriately documented in the medical record. This requires documentation for revocations of consent, and we do not believe further instructions in the regulations are necessary (see § 17.32(d)).

The commenter suggested that consents regarding HIV testing (required to be on VA form 10–0012) be filed in the patient record. No changes are made based on this comment. This already is required by these regulations (see § 17.32(g)(4)).

The proposal provided that HIV antibody testing must be accomplished by pre-test and post-test counseling. The commenter suggested that the counseling be at least equivalent to guidelines for testing from the Centers for Disease Control and Prevention and other Federal or State agencies which set HIV serologic testing policies. The commenter further suggested that the form and language of such counseling should be appropriate to the patient's or surrogate's educational level as well as cognitive and emotional state. No changes are made based on these comments. VA health-care professionals are provided with guidance commensurate with the guidelines suggested by the commenter. Further, there does not appear to be a need to specifically address the educational level and cognitive and emotional state of the patient or surrogate. This already is covered since the final rule requires that health-care professionals explain consent matters in language understandable to the patient or surrogate (see § 17.32(c)).

Paperwork Reduction Act

The collection of information contained in the notice of the proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). The information collection subject to this rulemaking concerns the disclosure requirements that non-VA physicians contracting to perform services for VA must follow in conducting informed consent procedures. The information provided is designed to ensure that the patients (or in some cases, others) have sufficient information to provide informed consent. Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information collection under control number 2900–0583.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the final rule would affect VA beneficiaries but would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.009, 64.010, 64.011.

Lists of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing home, Philippines, Reporting and recordkeeping requirements, scholarships and fellowships, Travel and transportation expenses, and Veterans.

Approved: September 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

In consideration of the foregoing, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.32 is revised to read as follows:

Protection of Patient Rights

§ 17.32 Informed consent.

(a) *Definitions:*

Close Friend. Any person eighteen years or older who has shown care and concern for the patient's welfare, who is familiar with the patient's activities, health, religious beliefs and values, and who has presented a signed written statement for the record that describes that person's relationship to and familiarity with the patient.

Decision-making capacity. The ability to understand and appreciate the nature and consequences of health-care treatment decisions.

Health-Care Agent. An individual named by the patient in a Durable Power of Attorney for Health Care.

Legal Guardian. A person appointed by a court of appropriate jurisdiction to make decisions for an individual who has been judicially determined to be incompetent.

Practitioner. Any physician, dentist, or health-care professional who has been granted specific clinical privileges to perform the treatment or procedure involved. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents regardless of whether they have been granted clinical privileges.

Signature consent. The patient's or surrogate's signature on a VA-authorized consent form, *e.g.*, a published numbered VA form (OF 522) or comparable form approved by the local VA facility.

Special Guardian. A person appointed by a court of appropriate jurisdiction for the specific purpose of making health-care decisions.

Surrogate. An individual, organization or other body authorized under this section to give informed consent on behalf of a patient who lacks decision-making capacity.

(b) *Policy.* Except as otherwise provided in this section, all patient care furnished under title 38 U.S.C. shall be carried out only with the full and informed consent of the patient or, in appropriate cases, a representative thereof. In order to give informed consent, the patient must have decision-making capacity and be able to communicate decisions concerning health care. If the patient lacks decision-making capacity or has been declared incompetent, consent must be obtained from the patient's surrogate. Practitioners may provide necessary medical care in emergency situations

without the patient's or surrogate's express consent when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient or others and the patient is unable to consent and the practitioner determines that the patient has no surrogate or that waiting to obtain consent from the patient's surrogate would increase the hazard to the life or health of the patient or others. In such circumstances consent is implied.

(c) *General requirements for informed consent.* Informed consent is the freely given consent that follows a careful explanation by the practitioner to the patient or the patient's surrogate of the proposed diagnostic or therapeutic procedure or course of treatment. The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must explain in language understandable to the patient or surrogate the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. The patient or surrogate must be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant permission freely without coercion. The practitioner must advise the patient or surrogate if the proposed treatment is novel or unorthodox. The patient or surrogate may withhold or revoke his or her consent at any time.

(d) *Documentation of informed consent.* (1) The informed consent process must be appropriately documented in the medical record. In addition, signature consent is required for all diagnostic and therapeutic treatments or procedures that:

(i) Require the use of sedation;

(ii) Require anesthesia or narcotic analgesia;

(iii) Are considered to produce significant discomfort to the patient;

(iv) Have a significant risk of complication or morbidity;

(v) Require injections of any substance into a joint space or body cavity; or

(vi) Involve testing for Human Immunodeficiency Virus (HIV).

(2) The patient's or surrogate's signature on a VA-authorized consent form must be witnessed. The witness' signature only attests to the fact that he or she saw the patient or surrogate and the practitioner sign the form. When the patient's or surrogate's signature is indicated by an "X", two adults must witness the act of signing. The signed form must be filed in the patient's medical record. A properly executed OF 522 or other VA-authorized consent form is valid for a period of 30 calendar days. If, however, the treatment plan involves multiple treatments or procedures, it will not be necessary to repeat the informed consent discussion and documentation so long as the course of treatment proceeds as planned, even if treatment extends beyond the 30-day period. If there is a change in the patient's condition that might alter the diagnostic or therapeutic decision, the consent is automatically rescinded.

(3) If it is impractical to consult with the surrogate in person, informed consent may be obtained by mail, facsimile, or telephone. A facsimile copy of a signed consent form is adequate to proceed with treatment. However, the surrogate must agree to submit a signed consent form to the practitioner. If consent is obtained by telephone, the conversation must be audiotaped or witnessed by a second VA employee. The name of the person giving consent and his or her authority to act as surrogate must be adequately identified for the record.

(e) *Surrogate consent.* If the practitioner who has primary responsibility for the patient determines that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time, informed consent must be obtained from the patient's surrogate. Patients who are incapable of giving consent as a matter of law, i.e., persons judicially determined to be incompetent and minors not otherwise able to provide informed consent, will be deemed to lack decision-making capacity for the purposes of this section. If the patient is considered a minor in the state where the VA facility is located and cannot consent to medical treatment, consent must be obtained from the patient's parent or legal guardian. The surrogate generally assumes the same rights and responsibilities as the patient in the informed consent process. The surrogate's decision must be based on his or her knowledge of what the patient would have wanted, *i.e.*, substituted judgment. If the patient's wishes are unknown, the decision must be based on the patient's best interest. The following persons are authorized to consent on behalf of patients who lack decision-making capacity in the following order of priority:

(1) Health-care agent;

(2) Legal guardian or special guardian;

(3) Next-of-kin: a close relative of the patient eighteen years of age or older, in the following priority: spouse, child, parent, sibling, grandparent, or grandchild; or

(4) Close friend.

(f) *Consent for patients without surrogates.* (1) If none of the surrogates listed in paragraph (e) of this section are available, the practitioner may request Regional Counsel assistance to obtain a special guardian for health care or follow the procedures outlined in this paragraph (f).

(2) Facilities may use the following process to make treatment decisions for patients who lack decision-making capacity and have no surrogate. For treatments or procedures that involve minimal risk, the practitioner must verify that no authorized surrogate can be located. The practitioner must attempt to explain the nature and purpose of the proposed treatment to the patient and enter this information in the medical record. For procedures that require signature consent, the practitioner must certify that the patient has no surrogate. The attending physician and the Chief of Service (or his or her designee) must indicate their approval of the treatment decision in writing. Any decision to withhold or withdraw life-sustaining treatment for such patients must be reviewed by a multi-disciplinary committee appointed by the facility Director. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the Chief of Staff who must note his or her approval of the report in writing. After reviewing the record, the facility Director may concur with the decision to withhold or withdraw life support or request further review by Regional Counsel.

(g) *Special consent situations.* In addition to the other requirements of this section, additional protections are required in the following situations.

(1) No patient will undergo any unusual or extremely hazardous treatment or procedure, *e.g.*, that which might result in irreversible brain damage or sterilization, except as provided in this paragraph (g). Before treatment is initiated, the patient or surrogate must be given adequate opportunity to consult with independent specialists, legal counsel or other interested parties of his or her choosing. The patient's or surrogate's signature on a VA authorized consent form must be witnessed by someone who is not affiliated with the VA health-care facility, *e.g.*, spouse, legal guardian, or patient advocate. If a surrogate makes the treatment decision, a multi-disciplinary committee, appointed by the facility Director, must review that decision to ensure it is consistent with the patient's wishes or in his or her best interest. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the facility Director. The Director may authorize treatment consistent with the surrogate's decision or request that a special guardian for health care be appointed to make the treatment decision.

(2) Administration of psychotropic medication to an involuntarily committed patient against his or her will must meet the following requirements. The patient or surrogate must be allowed to consult with independent specialists, legal counsel or other interested parties concerning the treatment with psychotropic medication. Any recommendation to administer or continue medication against the patient's or surrogate's will must be reviewed by a multi-disciplinary committee appointed by the facility Director for this purpose. This committee must include a psychiatrist or a physician who has psychopharmacology privileges. The facility Director must concur with the committee's recommendation to administer psychotropic medications contrary to the patient's or surrogate's wishes. Continued therapy with psychotropic medication must be reviewed every 30 days. The patient (or a representative on the patient's behalf) may appeal the treatment decision to a court of appropriate jurisdiction.

(3) If a proposed course of treatment or procedure involves approved medical research in whole or in part, the patient or representative shall be advised of this. Informed consent shall be obtained specifically for the administration or performance of that aspect of the treatment or procedure that involves research. Such consent shall be in addition to that obtained for the administration or performance of the nonresearch aspect of the treatment or procedure and must meet the requirements for informed consent set forth in 38 CFR Part 16, *Protection of Human Subjects.*

(4) Testing for Human Immunodeficiency Virus (HIV) must be voluntary and must be conducted only with the prior informed and (written) signature consent of the patient or surrogate. Patients who consent to testing for HIV must sign VA form 10–012, "Consent for HIV Antibody Testing." This form must be filed in the patient's medical record. Testing must be accompanied by pre-test and post-test counseling.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0583)

(Authority: 38 U.S.C. 7331, 7332, 7333)

[FR Doc. 97–27585 Filed 10–16–97; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI16

Loan Guaranty: Credit Standards

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations regarding credit standards used by lenders to evaluate the creditworthiness of veteran-borrowers for home loans. VA is committed to regular review and revision of the standards used to determine the creditworthiness of veteran-applicants as issues arise and as the mortgage industry changes. These changes are designed to keep VA in step with the rest of the home mortgage industry, at least to an extent appropriate for a Government benefit-related mortgage program.

DATES: Effective Date: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on May 7, 1997 (62 FR 24874), VA proposed to amend its loan guaranty credit standards, set forth at 38 CFR 36.4337, used by lenders to evaluate the creditworthiness of veteran-borrowers for home loans. Based on the rationale set forth in the proposed rule and this document the proposed changes are adopted, with differences explained below.

Please refer to the May 7, 1997, **Federal Register** for a complete discussion of the proposed amendments. Interested persons were given 60 days to submit comments. The comment period ended July 7, 1997. VA received three comments regarding the proposed changes.

The first commenter, an association which represents mortgage lenders, supported adoption of the proposed rule.

The second commenter, an association representing home builders, suggested that the language of proposed paragraph 36.4337(c)(5)(xii) be changed to accept other forms of tax credits in addition to those for child care as compensating factors. This was intended to cover child care tax credits of a continuing nature. VA agrees that there is no basis for distinguishing child care tax credits from other forms of tax credits of a continuing nature. The final rule at paragraph 36.4337(c)(5)(xii) is changed accordingly.

The third commenter, a lender who actively participates in the VA Guaranteed Home Loan Program, expressed general support for the proposed rule, but raised several concerns. The first concern related to proposed paragraphs 36.4337 (d) and (f), which would allow lenders to "gross up" income to account for the impact of tax-free income on the debt-to-income-ratio when underwriting a loan. The commenter observed that the "grossing-up" calculations should be kept simple and suggested that it would be helpful if VA could provide an example or formula of how "grossing up" calculations are performed. We agree that the "grossing up" calculation needs to be simple and understandable and believe that the revised regulations on this point are simple and understandable. Also, we note that the term "grossing up" is well understood by the mortgage industry. The mortgage industry has been "grossing up" income on conventional loans for many years.

Under paragraph 36.4337(f)(4), the adjustment may be made by using current income tax tables. The lender need only determine what amount of income, when taxed at the proper combination of State and Federal rates, would yield an after-tax income equivalent to the tax-free income the veteran actually receives. The purpose of allowing lenders to "gross up" income is to enable the lender to calculate the debt-to-income ratio as if the veteran's tax-free income were "after-tax" income. The arithmetic will vary by State, depending on various State and local tax rates. The lender would then use this amount to calculate the veteran's debt-to-income ratio, while using the actual tax-free income to calculate the residual income.

For example, in a State with no income tax, the lender could simply show that, for a veteran in the 15 percent Federal income tax bracket, $1,000 of tax-free income is equivalent

to 85 percent of taxable income. Thus, by dividing $1,000 by .85, it is possible to calculate that the "grossed up" income is $1,176.50. In a State with a 5 percent income tax, the "grossed up" income would be calculated by combining the State and Federal tax rates, 20 percent. Thus in the same example, $1,000 of tax-free income would be "grossed up" by dividing it by .80 and the "grossed up" income is $1,250.

Note: This amount is a close estimate if the veteran itemizes deductions, since the State income tax is deductible in calculating federal income tax. No particular form is prescribed for this material (see paragraph 36.4337(f)(4)). It can be on a separate sheet of paper, or simply explained on the loan analysis form, so long as the explanation is one that would be understandable to a VA or other agency loan specialist trained in reviewing loan applications, or can be made understandable with any further information the lender wishes to submit.

The commenter questioned whether the change to VA's residual income guidelines in paragraph 36.4337(e) is a one-time adjustment or whether VA was providing for automatic future annual adjustments. The answer is that this is a one-time increase. Paragraph 36.4337(e) is being changed by increasing the amount of residual income required for family support by 4 percent for all categories. The computation of the Residual Income tables is based upon cost-of-living and expenditure data compiled by the U.S. Bureau of Labor Statistics. These tables have not been increased since 1992. This amendment increases the Residual Income amounts by 4 percent across the board. Any future adjustments will be made by separate regulatory actions.

This commenter also raised an issue regarding the inclusion of all household members in the residual income calculations set forth in paragraph 36.4337(e). More specifically, the commenter questioned whether lenders would be required to verbally confirm that there are no additional non-claimed dependents in the veteran's household. No changes are made based on this comment. Prudent lenders clearly would discuss the information provided by the veteran and a lender would need to ask sufficient questions to ensure the completeness and accuracy of the information provided for a loan.

In its comments, this commenter stated that imposing the same documentation requirements for Reserve and National Guard applicants that are currently required for active military personnel within 12 months of release is somewhat burdensome. Currently, under paragraph 36.4337(f)(2)(ii), active duty military personnel who are within 12 months of release must provide one of the following: (1) Documentation that the servicemember has in fact already reenlisted or extended his/her period of active duty to a date beyond the 12-month period following the projected closing of the loan; (2) Verification of a valid offer of local civilian employment following release from active duty, which includes all data pertinent to sound underwriting procedures such as date employment will begin, earnings, etc.; (3) A statement from the servicemember that he/she intends to reenlist or extend his/her period of active duty to a date beyond the 12 month period following the projected loan closing date, and a statement from the servicemember's commanding officer confirming that the servicemember is eligible to reenlist or extend his/her active duty as indicated and that the commanding officer has no reason to believe that such reenlistment or extension of active duty will not be granted; or (4) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only a minimal income from the active duty servicemember is needed to qualify.

In light of the fact that members of the Selected Reserves are subject to the same downsizing as the regular military, we believe that if the income from service in the Reserves is necessary to qualify it must likewise be subject to the same stability criteria. For this reason, VA does not believe any substantive change to this paragraph of the proposed regulatory amendments is warranted.

Finally, this commenter has requested further clarification regarding the treatment of employment history and the probability of the veteran's continued employment. If a veteran has a short-term employment history or has recently changed to a new career, it very well may not be possible to determine that the veteran's income is stable. The purpose of the change is to remove the burden of trying to follow up with an employer when the employer declines to verify the probability of continued employment. Instead, reliability will be determined based on the duration of the borrower's current employment together with his or her overall documented employment history.

Nonsubstantive changes have been made for purposes of clarification.

Paperwork Reduction Act

Information collection and recordkeeping requirements in 38 CFR 36.4337 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0521. The information collection subject to this rulemaking concerns the information to be submitted for approval of a VA loan guaranty and contains material which further explains the quality of the information needed for approval.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of the regulations.

Interested persons were invited to submit comments on the collection of information. All comments received are discussed above.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Industry norms for other lending programs already require lenders to comply with most of the standards set forth in this final rule. Further, activities concerning loans subject to the VA Loan Guaranty Program do not constitute a significant portion of activities of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.106, 64.114, 64.118 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Veterans.

Approved: September 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4337, the section heading; paragraphs (c) through (h), (j) through (l), and (n); and the section authority citation are revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

* * * * *

(c) *Methods.* The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file), the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent, the second level review and statement of justification are not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in paragraph (c)(5) of this section, justifying the approval of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean that the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on the criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;

(ii) Conservative use of consumer credit;

(iii) Minimal consumer debt;

(iv) Long-term employment;

(v) Significant liquid assets;

(vi) Downpayment or the existence of equity in refinancing loans;

(vii) Little or no increase in shelter expense;

(viii) Military benefits;

(ix) Satisfactory homeownership experience;

(x) High residual income;

(xi) Low debt-to-income ratio;

(xii) Tax credits of a continuing nature, such as tax credits for child care; and

(xiii) Tax benefits of home ownership.

(6) The list in paragraph (c)(5) of this section is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) of the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. All members of the household must be included in determining if the residual income is sufficient. They must be counted even if the veteran's spouse is not joining in title or on the note, or if there are any other individuals depending on the veteran for support, such as children from a spouse's prior marriage who are not the veteran's legal dependents. It is appropriate, however, to reduce the number of members of a household to be counted for residual income purposes if there is sufficient verified income not otherwise included in the loan analysis, such as child support being regularly received as discussed in paragraph (e)(4) of this section. In the case of a spouse not to be obligated on the note, verification that he/she has stable and reliable employment as discussed in paragraph (f)(3) of this section would allow not counting the spouse in determining the sufficiency of the residual income. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $79,999 and for loan amounts of $80,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher-than-average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA-guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets, such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be

reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts of $79,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $79,999 and below]

Family size *	Northeast	Midwest	South	West
1	390	382	382	425
2	654	641	641	713
3	788	772	772	859
4	888	868	868	967
5	921	902	902	1,004

* For families with more than five members, add $75 for each additional member up to a family of seven. "Family" includes all members of the household.

(2) Table of residual incomes by region (for loan amounts of $80,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $80,000 and above]

Family size *	Northeast	Midwest	South	West
1	450	441	441	491
2	755	738	738	823
3	909	889	889	990
4	1,025	1,003	1,003	1,117
5	1,062	1,039	1,039	1,158

* For families with more than five members, add $80 for each additional member up to a family of seven. "Family" includes all members of the household.

(3) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) *Military adjustments.* For loan applications involving an active-duty servicemember or military retiree, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e) of this section.)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, prohibits any request for, or consideration of, information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling, or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 120 days (180 days for new construction) old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(2) *Active-duty, Reserve, or National Guard applicants.* (i) In the case of an active-duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 120 days old (180 days for new construction) and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave & Earnings Statement is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(ii) For servicemembers within 12 months of release from active duty, or members of the Reserves or National Guard within 12 months of release, one of the following is also required:

(A) Documentation that the servicemember has in fact already reenlisted or extended his/her period of active duty or Reserve or National Guard service to a date beyond the 12-month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the servicemember that he/she intends to reenlist or extend his/her period of active duty or Reserve or National Guard service to a date beyond the 12 month period following the projected loan closing date, and a statement from the servicemember's commanding officer confirming that the servicemember is eligible to reenlist or extend his/her active duty or Reserve or National Guard service as indicated and that the commanding officer has no reason to believe that such reenlistment or extension will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty servicemember or member of the Reserves or National Guard is needed to qualify.

(iii) Each active-duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and, thus, should be properly considered in determining ability to meet the mortgage payments. If an employer puts N/A or otherwise declines to complete a verification of employment statement regarding the probability of continued employment, no further action is required of the lender. Reliability will be determined based on the duration of the borrower's current employment together with his or her overall documented employment history. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement, must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income, such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as described in this paragraph. Also, the likely duration of certain military allowances cannot be determined and, therefore, will be used only to offset intermediate-term debts, as described in this paragraph. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and, thus, should be added to the base pay. Income derived from service in the Reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue beyond 12 months. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify for a loan if it can be determined that the income will probably continue for 3 years or more.

(4) *Tax-exempt income.* Special consideration can be given to verified nontaxable income once it has been established that such income is likely to continue (and remain untaxed) into the foreseeable future. Such income includes certain military allowances, child support payments, workers' compensation benefits, disability retirement payments and certain types of public assistance payments. In such cases, current income tax tables may be used to determine an amount which can be prudently employed to adjust the borrower's actual income. This adjusted or "grossed up" income may be used to calculate the monthly debt-to-income ratio, provided the analysis is documented. Only the borrower's actual income may be used to calculate the residual income. Care should be exercised to ensure that the income is in fact tax-exempt.

(5) *Alimony, child support, maintenance, workers' compensation, foster care payments.* (i) If an applicant chooses to reveal income from alimony, child support or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(ii) If the applicant chooses to reveal income related to workers' compensation, it will be considered as income to the extent it can be determined such income will continue.

(iii) Income received specifically for the care of any foster child(ren) may be counted as income if documented. Generally, however, such foster care income is to be used only to balance the expenses of caring for the foster child(ren) against any increased residual income requirements.

(6) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense to utilize available on-base housing when possible. In order for a quarters

allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. A Department of Defense form, DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(7) *Automobile (or similar) allowance.* Generally, automobile allowances are paid to cover specific expenses related to an applicant's employment, and it is appropriate to use such income to offset a corresponding car payment. However, in some instances, such an allowance may exceed the car payment. With proper documentation, income from a car allowance which exceeds the car payment can be counted as effective income. Likewise, any other similar type of allowance which exceeds the specific expense involved may be added to gross income to the extent it is documented to exceed the actual expense.

(8) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(9) *Self-employment.* Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit-and-loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and balance sheet based on the financial records. The financial statement must be sufficient for a loan underwriter to determine the necessary information for loan approval and an independent audit (on the veteran and/or the business) by a Certified Public Accountant will be required if necessary for such determination; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed Federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(10) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA-guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or an apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of paragraph (f)(10), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(11) *Employment of short duration.* The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(12) *Rental income*—(i) *Multi-unit subject property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units or other collection activities. The amount of rental income to be used in the loan analysis will be based on 75 percent of the amount indicated on the lease or rental agreement, unless a greater percentage can be documented.

(ii) *Rental of existing home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) *Other rental property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(13) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(14) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those states with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(14) *Mortgage credit certificates.* (i) The Internal Revenue Code (26 U.S.C.) as amended by the Tax Reform Act of 1984, allows states and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the

indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30 percent×$600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12×$180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98–369) or $167 per month ($2,000/12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(14)(iii) of this section, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500/12).

(g) *Credit.* The conclusion reached as to whether or not the veteran and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, requires that lenders, in evaluating creditworthiness, shall consider, on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's creditworthiness. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B prohibits any request for or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the veteran and spouse are satisfactory credit risks, the basis for the decision must be explained. If a veteran and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. Such defenses are not applicable when the debt has been reduced to judgment. Where a collection account has been established, if it is determined that the borrower is a satisfactory credit risk, it is not mandatory that such an account be paid off in order for a loan to be approved. Court-ordered judgments, however, must be paid off before a new loan is approved.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last one to two years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period; and

(ii) The bankruptcy was caused by circumstances beyond the control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. Divorce is not generally viewed as beyond the control of the borrower and/or spouse. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. If a borrower or spouse has been discharged in bankruptcy within the past 12 months, it will not generally be possible to determine that the borrower or spouse is a satisfactory credit risk.

(3) *Petition under Chapter 13 of Bankruptcy Code.* A petition under chapter 13 of the Bankruptcy Code (11 U.S.C.) filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled-down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least 12 months' worth of payments have been made satisfactorily and the Trustee or Bankruptcy Judge approves of the new credit.

(4) *Foreclosures.* (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage; e.g., a VA-guaranteed or HUD-insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA-guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies that occurred over 3 years ago.

(7) *Consumer credit counseling plan.* If a veteran, or veteran and spouse, have prior adverse credit and are participating in a Consumer Credit Counseling plan, they may be determined to be a satisfactory credit risk if they demonstrate 12 months' satisfactory payments and the counseling agency approves the new credit. If a veteran, or veteran and spouse, have good prior credit and are participating in a Consumer Credit Counseling plan, such participation is to be considered a neutral factor, or even a positive factor, in determining creditworthiness.

(8) *Re-establishment of satisfactory credit.* In circumstances not involving bankruptcy, satisfactory credit is generally considered to be reestablished after the veteran, or veteran and spouse, have made satisfactory payments for 12 months after the date of the last derogatory credit item.

(9) *Long-term v. short-term debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long term, i.e., 10 months or over. Other accounts for terms of less than 10 months must, of course, be considered in determining ability to meet family expenses. Certainly, any severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical months of the home loan.

(10) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days of the date of the application is received by VA. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is required when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled. When a pay stub or leave-and-earnings statement indicates an allotment, the lender must investigate the nature of the allotment(s) to determine whether the allotment is related to a debt. Debts assigned to an ex-spouse by a divorce decree will not generally be charged against a veteran-borrower.

(11) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(12) *Credit reports.* Credit reports obtained by lenders on VA-guaranteed loan applications must be either a three-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). If used, the RMCR must meet the standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the

loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment (see § 36.4336(a)(3)) of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA.) Verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 120 days (180 days for new construction) of the date of the veteran's application to the lender. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

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(j) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports, such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) *Definitions.* The definitions contained in part 42 of this title and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint* includes the assessment of liability served pursuant to this section.

(iii) *Defendant* means a lender named in the complaint.

(iv) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.* (i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after November 17, 1997, the following certification shall accompany each loan closing or assumption package:

The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.* (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

* * * * *

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900–0521)

(Authority: 38 U.S.C. 3703, 3710)

[FR Doc. 97–27564 Filed 10–16–97; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–154; RM–9116]

Radio Broadcasting Services; Newaygo, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Newaygo, Michigan, as that community's first local FM broadcast service in response to a petition filed by Robert R. Moore, Jr. *See* 62 FR 38246, July 17, 1997. The coordinates for Channel 223A at Newaygo are 43–22–12 and 85–51–49. There is a site restriction 7.6 kilometers (4.7 miles) southwest of the communtiy. Since Newaygo is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective November 17, 1997. The window period for filing applications for Channel 223A at Newaygo, Michigan, will open on November 17, 1997, and close on December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–154, adopted September 24, 1997, and released October 3, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Newaygo, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27514 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D.100997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod in Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels catching Pacific cod for processing by the offshore component to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 1997 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 10, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that vessels catching Pacific cod for processing by the offshore component will not be able to harvest 3,000 metric tons (mt) of Pacific cod allocated to those vessels under § 679.20(a)(6)(iii). As of October 4, 1997, NMFS estimates 4,091 mt remain in the offshore component's allocation of the 1997 Central GOA Pacific cod TAC and projects that vessels catching Pacific cod for processing by the offshore component will take 1,091 mt during the remainder of 1997.

Therefore, in accordance with § 679.20(a)(6)(v)(C), NMFS is apportioning the projected unused amount, 3,000 mt of Pacific cod, from vessels catching Pacific cod for processing by the offshore component to vessels catching Pacific cod for processing by the inshore component.

Classification

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for vessels catching Pacific cod for processing by the inshore component in the GOA. Without this action, the Pacific cod allocation for vessels catching Pacific cod for processing by the offshore component in the GOA would be underharvested. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 9, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27521 Filed 10–10–97; 4:23 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 201
Friday, October 17, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF73

Codes and Standards; IEEE National Consensus Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate by reference IEEE Std 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. This action is necessary to endorse the latest version of this national consensus standard in NRC's regulations, and replace an IEEE Standard currently endorsed in the NRC's regulations which has been withdrawn by the IEEE.

DATES: Comments on the proposed rule must be received on or before December 1, 1997.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (lower level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Senior Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6005, Fax (301) 415–5074, E-mail: SKA@NRC.GOV

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Rules and Regulations Section of this **Federal Register.**

Procedural Background

Because NRC considers this rulemaking noncontroversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on January 1, 1998. However, if the NRC receives significant adverse comments on the direct final rule by December 1, 1997, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in a subsequent final rule. The NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

Electronic Access

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

List of Subjects in 10 CFR Part 50

Antitrust, Classified Information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganizations Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.55a, paragraph (h) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(h) *Protection and Safety Systems.* (1) IEEE Std. 603–1991, including the correction sheet dated January 30, 1995, which is referenced in paragraph (h)(3), are approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register.** Copies of IEEE Std. 603–1991 may be purchased from the Institute of Electrical and Electronics Engineers Service Center, 445 Hoes Lane, Piscataway, NJ 08855. It is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, MD 20852–2738, and at the Office of the Federal Register, 800 North Capital Street, NW, Suite 700, Washington, DC. IEEE Std. 279, which is referenced in paragraph (h)(2) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard are also available as indicated for IEEE Std. 603–1991.

(2) Definitions.

(i) For purposes of this paragraph the terms "protection systems," "safety

systems," and "safety-related systems" are synonymous.

(ii) Changes to protection systems include modification, augmentation or replacement of protection systems permitted by license amendments, changes made to protection systems by licensees pursuant to 10 CFR 50.59, and plant specific departures from a design certification rule under 10 CFR part 52.

(3) Protection systems. For nuclear power plants with construction permits issued after January 1, 1971, but prior to January 1, 1998, protection systems must meet the requirements set forth in either the Institute of Electrical and Electronics Engineers (IEEE) Std. 279, "Criteria for Protection Systems for Nuclear Power Generating Stations," or in IEEE Std. 603–1991, "Criteria for Safety Systems for Nuclear Power Generating Stations," and the correction sheet dated January 30, 1995. However, changes to protection systems initiated on or after January 1, 1998 must meet the requirements set forth in IEEE Std. 603–1991, and the correction sheet dated January 30, 1995.

(4) Safety systems. For construction permits, operating licenses, final design approvals, design certifications and combined licenses issued on or after January 1, 1998, safety systems must meet the requirements set forth in IEEE Std. 603–1991, and the correction sheet, dated January 30, 1995.

Dated at Rockville, Maryland, this 9th day of October, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–27419 Filed 10–16–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–245–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This proposal would require replacement of the operating handles of the overwing emergency exits with improved handles that have self-illumination. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that the operating handles of the overwing emergency exits are clearly visible during an emergency evacuation.

DATES: Comments must be received by November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–245–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that the operating handles of the overwing emergency exits installed on Fokker Model F28 Mark 0070 and Mark 0100 series airplanes equipped with the new "Jetline" interior do not meet the illumination requirements of section 25.811(e) of the Federal Aviation Regulations (14 CFR 25.811(e)). Section 25.811(e) requires the handles to be either conspicuously located and well illuminated, or self-illuminated with an initial brightness of at least 160 microlamberts. The operating handles of the overwing emergency exits installed on these airplanes do not have adequate illumination, and, therefore, the handles may not be clearly visible in emergency conditions. This condition, if not corrected, could result in reduced ability to evacuate the airplane during an emergency.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–52–060, dated October 10, 1995, which describes procedures for replacement of the operating handles of the overwing emergency exits with improved operating handles that have self-illumination. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive BLA 1995–104(A), dated October 31, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 127 Fokker Model F28 Mark 0100 series airplanes and 4 Fokker Model F28 Mark 0070 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97-NM-245-AD.

Applicability: Model F28 Mark 0070 and Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–52–060, dated October 10, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the operating handles of the overwing emergency exits are clearly visible during an emergency evacuation, accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the operating handle assemblies of the overwing emergency exits, having part number (P/N) D32965–403, and install new self-illuminating handle assemblies, having P/N D32965–407, in accordance with Fokker Service Bulletin SBF100–52–060, dated October 10, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Netherlands airworthiness directive BLA 1995–104 (A), dated October 31, 1995.

Issued in Renton, Washington, on October 10, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27580 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–01–AD]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters. This proposal would require removing and replacing the cyclic control pilot's grip assembly (grip assembly) with an airworthy grip assembly. This proposal is prompted by a report of a crack in the welded corner of a grip assembly. The actions specified by the proposed AD are intended to prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter.

DATES: Comments must be received by December 16, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This action proposes the adoption of a new AD that is applicable to Robinson Model R44 helicopters. The proposed AD would require removing the grip assembly, part number (P/N) A756–6 Revision N (or prior), and replacing it with an airworthy grip assembly, P/N A756–6 Revision M (or later), within 25 hours time-in-service (TIS) or 30 calendar days after the effective date of this AD, whichever occurs first. This proposal is prompted by one report of a crack in the welded corner of the grip assembly. The actions specified in this proposal are intended to prevent use of a grip assembly that may crack, which could result in failure of the grip assembly and subsequent loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996, which describes procedures for replacement of the grip assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the proposed AD would require removing the grip assembly, P/N A756–6 Revision N (or prior), and replacing it with an airworthy grip assembly, P/N A765–6 Revision M (or later), within 25 hours TIS or 30 calendar days after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with the kit instructions described previously.

The FAA estimates that 5 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $576 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Robinson Helicopter Company: Docket No. 97–SW–01–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0159, except S/N 0143, 0150, and 0156, with cyclic control pilot's grip assembly (grip assembly), part number (P/N) A756–6 Revision N or prior, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Within 25 hours time-in-service or 30 calendar days after the effective date of this AD, whichever occurs first.

To prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the grip assembly, P/N A756–6 Revision N (or prior), and replace it with an airworthy grip assembly, P/N A756–6 Revision M (or later), in accordance with KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on October 9, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–27585 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–21–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model BO 105 C and BO 105 S Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to Eurocopter Deutschland GmbH (ECD) (Eurocopter Deutschland) Model BO 105 C and BO 105 S helicopters. That action would have required modifying the main relay box by replacing the voltage regulator; modifying the cockpit overhead panel by installing two additional switches; and performing a functional test of the new voltage regulator, generators, and new switches. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has determined that the modification proposed is only necessary for Instrument Flight Rule (IFR) configurations, and since there is no IFR FAA type-design approval for the affected models, it is unnecessary to issue an AD.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to Eurocopter Deutschland Model BO 105 C and BO 105 S helicopters, was published in the **Federal Register** on February 13, 1997 (62 FR 6746). The proposed rule would have required modifying the main relay box 1VE; modifying the cockpit overhead panel, and performing a functional test of the new voltage regulator, generators, and new switches for the affected helicopters. That action was prompted by an in-service report of a helicopter that experienced a generator overvoltage. The proposed actions were intended to prevent failure of essential electrical equipment that could result in spatial disorientation and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, the FAA has determined that the need for overvoltage protection is associated with the IFR requirement to have certain avionics available; however, there is no FAA IFR type-design approval for the affected models, therefore there is no type design model on which to issue an AD.

Upon further consideration and review of this new data, the FAA has determined that the unsafe condition no longer exists and is extremely unlikely to develop. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 96–SW–21–AD, published in the **Federal Register** on February 13, 1997 (62 FR 6746), is withdrawn.

Issued in Fort Worth, Texas, on October 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–27584 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–22]

Proposed Establishment of Class D Airspace; Hickory, NC

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice or proposed rulemaking.

SUMMARY: This proposed rule would establish Class D airspace at Hickory, NC. A non-federal control tower will open at Hickory Regional Airport, Hickory, NC, on or about October 1, 1997. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–22, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Hickory, NC. A nonfederal control tower will open at Hickory Regional Airport, Hickory, NC, on or about October 1, 1997. Class D surface area airspace is required when the control tower is open to accommodate current SIAPs and for IFR operations at the airport. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference, in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class airspace.

* * * * *

ASO NC D Hickory, NC [New]

Hickory Regional Airport, NC
(Lat. 35°44'28"N, long. 81°23'22"W)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.1-mile radius of Hickory Regional Airport. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on September 9, 1997.

Nancy B. Shelton,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–27391 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–35]

Proposed Establishment of Class E Airspace; Churchville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Churchville, MD. The development of new Standard Instrument Approach Procedures (SIAP) at Harford Country Airport based on the Global Positioning System (GPS) and VHF Omnidirectional Radio Range (VOR) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–35, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The office docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–35". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Churchville, MD. A GPS RWY 10 SIAP and a VOR A SIAP have been developed for Harford County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Churchville, MD [New]

Harford County Airport, MD
(Lat. 39°43'02" N., long. 76°12'07" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Harford County Airport, excluding the airspace in Restricted Area R–4001 A when it is in effect, and the Aberdeen, MD, and Edgewood, MD, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on August 20, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27373 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–37]

Proposed Establishment of Class E Airspace; Ticonderoga, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Ticonderoga, NY. The development of new Standard Instrument Approach Procedures (SIAP) at Ticonderoga Municipal Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–37, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy

International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–37". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comment received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Ticonderoga, NY. A GPS RWY 2 SIAP and a GPS RWY 20 SIAP have been developed for Ticonderoga Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Ticonderoga, NY [New]

Ticonderoga Municipal Airport, NY
(Lat. 43° 52′ 37″N., long. 73° 24′ 47″W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Ticondergoa Municipal Airport, excluding the portion that coincides with the Rutland, VT, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on August 20, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27372 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–26]

Proposed Amendment to Class E Airspace; Wellsboro, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Class E airspace area at Wellsboro, PA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and an amendment to an existing SIAP, at Grand Canyon State Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport. A correction is also being proposed in the geographic position coordinates of Grand Canyon State Airport and a correction to the airspace use time restrictions.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–26, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Wellsboro, PA. A GPS RWY 28 SIAP has been developed, and the VOR/GPS A SIAP has been amended, for the Grand Canyon State Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. The geographic position coordinates of the airport have been revised and the airspace use time restrictions are deleted. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Wellsboro, PA [Revised]

Grand Canyon State Airport, Wellsboro, PA
(Lat. 41°43′40″N., long. 77°23′47″W.)
Stonyfork VORTAC
(Lat. 41°41′43″N., long. 77°25′12″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grand Canyon State Airport and within 4 miles each side of the 208° bearing from the Stonyfork VORTAC extending from the 6.5-mile radius to 7 miles southwest of the VORTAC.

* * * * *

Issued in Jamaica, New York, on August 20, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27371 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–27]

Proposed Amendment to Class E Airspace; Pineville, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Class E airspace area at Pineville, WV. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and VHF Omnidirectional Radio Range (VOR) at Kee Field Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–27, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–27". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Pineville, WV. A GPS RWY 25 SIAP, GPS RWY 7 SIAP, and a VOR RWY 25 SIAP have been developed for the Kee Field Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Pineville, WV [Revised]

Kee Field Airport, Pineville, WV
(Lat. 37°36'01" N., long. 81°33'33" W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Kee Field Airport and within 4 miles each side of the 249° bearing from the Kee Field Airport extending from the 7.2-mile radius to 10 miles southwest of the airport and within 4 miles south and 5.7 miles north of the 062° bearing from the Kee Field Airport extending from the 7.2 mile radius to 21 miles northeast of the airport excluding that portion that coincides with the Beckley, WV Class E airspace area.

* * * * *

Issued in Jamaica, New York, on August 20, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27370 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–15]

Proposed Amendment of Class E Airspace; Birmingham, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Class E airspace at Birmingham, AL. A Global Positioning System (GPS) Runway (RWY) 23 Standard Instrument Approach Procedure (SIAP) has been developed for Birmingham International Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Birmingham International Airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–15, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availaiblity of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Birmingham, AL. A GPS RWY 23 SIAP has been developed for Birmingham International Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Birmingham International Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASQ AL E5 Birmingham, AL [Revised]

Birmingham International Airport, AL
(lat. 33°33'47"N, long. 86°45'13"W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Birmingham International Airport.

* * * * *

Issued in College Park, Georgia, on September 4, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–27369 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–39]

Proposed Amendment to Class E Airspace; Syracuse, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Class E airspace area at Syracuse, NY. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Syracuse Hancock International Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the

SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–39, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–39." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Syracuse, NY. A GPS runway (RWY) 10 SIAP, GPS RWY 14 SIAP, GPS RWY 28 SIAP, and a GPS RWY 32 SIAP have been developed for Syracuse Hancock International Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9585, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, airspace designations and reporting points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Syracuse, NY [Revised]

Syracuse Hancock International Airport, Syracuse, NY
(Lat. 43°06'40" N., long. 76°06'23" W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Syracuse Hancock International Airport and within a 20-mile radius of the airport extending clockwise from a 245° bearing to a 305° bearing from the airport, excluding that portion that coincides with the Fulton, NY, Durhamville, NY, and Skaneateles, NY Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on September 5, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27368 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–40]

Proposed Amendment to Class E Airspace; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Class E airspace area at Lewisburg, WV. The development of new Standard Instrument Approach Procedures (SIAP) based on a VHF Omnidirectional Radio Rand (VOR) at Greenbrier Valley Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–40, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views, and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–40." The post card will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Lewisburg, WV. A VOR runway (RWY) 4 SIAP and a VOR RWY 22 SIAP have been developed for the Greenbrier Valley Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 10120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Lewisburg, WV [Revised]

Greenbrier Valley Airport, Lewisburg, WV
(Lat. 37°51'40" N., long. 80°23'58" W.)
BUSHI NDB (LOM)
(Lat. 37°46'56" N., long. 80°28'06" W.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Greenbrier Valley Airport and within 4.4 miles each side of the 217° bearing from the BUSHI NDB (LOM) extending from the 12-mile radius to 10 miles southwest of the NDB (LOM).

* * * * *

Issued in Jamaica, New York, on September 5, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27367 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–29]

Proposed Amendment of Class E Airspace; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend the Class E airspace area at Yuma, AZ. The establishment of a Global Positioning System (GPS)

Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 17 and a GPS SIAP to RWY 21 R at Yuma Marine Corp Air Station (MCAS)-Yuma International Airport has made this proposal necessary. Additional controlled airspace areas extending upward from the surface, and from 700 feet above ground level (AGL) are needed to contain aircraft executing the approach. The intended effect of this proposal would be to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yuma MCAS-Yuma International Airport, Yuma, AZ.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–29, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261. The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (210) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Yuma, AZ. The establishment of a GPS RWY 17 SIAP and GPS RWY 21R SIAP at Yuma MCAS-Yuma International Airport has made this proposal necessary. Additional controlled airspace areas extending upward from the surface, and from 700 feet AGL are needed to contain aircraft executing the approach. The intended effect of this proposal would be to provide adequate controlled airspace for aircraft executing the GPS RWY 17 SIAP and GPS RWY 21R SIAP at Yuma MCAS-Yuma International Airport, Yuma, AZ. Class E airspace designations for airspace areas designated as an extension to a Class D or Class E surface area and for airspace areas extending upward from 700 feet or move above the surface of the earth are published in Paragraphs 6004 and 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. There, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area

* * * * *

AWP AZ E4 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(lat. 32°39'23" N, long. 114°36'22" W)
Bard VORTAC
(lat. 32°46'05" N, long. 114°63'10" W)

That airspace extending upward from the surface within 1.8 miles either side of the Bard VORTAC 181° radial extending from the Bard VORTAC to the 5.2-mile radius of the Yuma MCAS-Yuma International Airport and within that airspace bounded by a line beginning at lat. 32°44'30" N, long. 114°33'30" W; to lat. 32°50'00" N, long. 114°31'00" W; to lat. 32°49'00" N, long. 114°27'00" W; to lat. 32°41'00" N, long. 114°30'00" W, thence counterclockwise via the 5.2-miles radius of the Yuma MCAS-Yuma International Airport to the point of beginning.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(lat. 32°39'23" N, long. 114°36'22" W)

That airspace extending upward from 700 feet above the surface beginning at lat. 32°41'00" N, long. 114°25'09" W, thence clockwise via the 9.6-mile radius of Yuma MCAS-Yuma International Airport to lat. 32°29'58" N, long. 114°34'09" W; to lat. 32°28'00" N, long. 114°34'33"W; to lat. 32°28'00" N, long. 114°38'43" W; to lat. 32°29'58" N, long. 114°38'31" W, thence clockwise via the 9.6-mile radius of the Yuma MCAS-Yuma International Airport excluding that portion outside of the United States to lat. 32°47'44" N; long. 114°42'03" W; to lat. 33°08'00" N, long. 114°55'00"W; to lat. 33°08'00" N, long. 114°30'00" W; to lat. 32°57'30" N, long. 114°30'00" W; to lat. 32°57'30" N, long. 114°15'03" W; to lat. 32°41'00" N, long. 114°15'03" W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by an area starting at a point lat. 33°02'00" N, long. 114°51'03" W; to lat. 33°05'30" N, long. 114°24'33" W; to lat. 32°23'00" N, long. 114°24'33" W; to lat. 32°29'30" N, long. 114°46'03" W, thence to the point of beginning excluding that portion outside the United States. That airspace extending upward from 4,000 feet MSL, bounded by an area at lat. 33°22'30" N, long 114°47'33" W; to lat. 33°08'00" N, long. 114°45'00" W; to lat. 33°08'00" N, long. 114°55'00" W; to lat. 33°00'00" N, long. 114°50'00" W; to lat. 32°49'33"N, long. 114°49'08" W; to lat. 32°49'12" N, long. 115°15'16" W; to lat. 32°52'23" N, long. 115°15'24" W; to lat. 32°56'20" N, long. 115°15'03" W; to lat. 33°04'00" N, long. 114°56'03" W; to lat. 33°24'00" N, long. 114°53'03" W, thence to the point of beginning. That airspace extending upward from 9,000 feet MSL bounded on the west by the eastern edge of V–135, on the south by lat. 33°08'00" W, on the north by the arc of the 15.8-mile radius south of the Blythe Airport, and on the east by the eastern edge of R–2306B and R–2306A, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on August 14, 1997.

Kathleen Y. Brown,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–27375 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–36]

Proposed Establishment of Class E Airspace; Towanda, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Towanda, PA. The development of a new Standard Instrument Approach Procedure (SIAP) at Bradford County Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–36, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–36". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy international Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL at Towanda, PA. A GPS RWY 23 SIAP has been developed for Bradford County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9 E, dated September 10, 1997 and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Towanda, PA [New]

Bradford County Airport, PA
(Lat. 41° 44'36"N., long. 76° 26'40"W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Bradford County Airport and within 4 miles each side of the 035° bearing from the Bradford County Airport extending from the 6-mile radius to 11 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27388 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–49]

Proposed Modification of Class E Airspace; Osceola, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class E airspace at Osceola, WI. A Global Position System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 28 and a Nondirectional Beacon (NDB) SIAP to RWY 28 have been developed for L.O. Simenstad Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing these approaches. This proposal would increase the radius of the existing controlled airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–49, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Osceola, WI. This modification would accommodate aircraft executing the GPS RWY 28 SIAP and the NDB RWY 28 SIAP at L.O. Simenstad Municipal Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing these approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Osceola, WI [Revised]

L.O. Simenstad Municipal Airport, WI
(Lat. 48°18'31" N, long. 92°41'24" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the L.O. Simenstad Municipal Airport and within 2.5 miles each side of the 113° bearing from the airport extending from the 6.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27389 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–46]

Proposed Modification of Class E Airspace; London, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class E airspace at London, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 08 has been developed for Madison County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This proposal would increase the radius and enlarge the west extension of the existing controlled airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–46, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–46." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at London, OH. This additional airspace would accommodate aircraft executing the GPS RWY 08 SIAP at Madison County Airport by increasing the radius and enlarging the west extension of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 London, OH [Revised]

Madison County Airport, OH
(Lat. 39°55'58" N, long. 83°27'43" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Madison County Airport and within 3.7 miles each side of the 267° bearing from the airport extending from the 6.4-mile radius to 7.4 miles west of the airport.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27390 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–43]

Proposed establishment of Class E Airspace; Bottineau, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Bottineau, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Bottineau Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) and upward from 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comment must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–43, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–43." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Bottineau, ND, to accommodate aircraft executing the GPS RWY 31 SIAP at Bottineau Municipal Airport. Controlled airspace extending upward from 700 and 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, as amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Bottineau, ND [New]

Bottineau Municipal Airport, ND
(Lat. 48°49'49"N, long. 100°25'00"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Bottineau Municipal Airport and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by latitude 49°00'00"N, on the east by longitude 99°49'00"W, on the south by the 10.5-mile radius of the Rugby, ND, Class E airspace, and on the west by the 47-mile radius of the Minot, ND, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27392 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–45]

Proposed Modification of Class E Airspace; Mankato, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class E airspace at Mankato, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 and a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or GPS SIAP to RWY 33 have been developed for Mankato Municipal Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. This proposal would increase the radius of the surface area and add an extension to the northeast for the existing controlled airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–45, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal

Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–45." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Mankato, MN, to accommodate aircraft executing the GPS RWY 22 SIAP and the VOR/DME or GPS RWY 33 SIAP at Mankato Municipal Airport by increasing the radius of the surface area and adding a northeast extension to the existing controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005X of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13'16"N, long. 93°55'08"W)
Mankato VOR/DME
(Lat. 44°13'12"N, long. 93°54'44"W)

Within a 4.1-mile radius of Mankato Municipal Airport and within 1.8 miles each side of the Mankato VOR/DME 167° radial, extending from the 4.1-mile radius to 7 miles south of the VOR/DME, and within 2.7 miles each side of the Mankato VOR/DME 326° radial, extending from the 4.1-mile radius to 7 miles northwest of the VOR/DME. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13'18"N, long. 93°55'08"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Mankato Municipal Airport and within 2 miles each side of the 047° bearing from the airport, extending from the 7-mile radius to 8 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on September 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–27394 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–41]

Proposed Amendment to Class E Airspace; York, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Class E airspace area at York, PA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and amendments to existing SIAPs at York Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–41, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy international Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–41." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA pesonnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at York, PA. A GPS RWY 17 SIAP has been developed, and the GPS RWY 35 SIAP and the NDB RWY 17 SIAP have been amended for the York Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 York, PA [Revised]

York Airport, PA
(Lat. 39°55'05"N., long. 76°52'26"W.)
York NDB
(Lat. 39°55'12"N., long. 76°52'39"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of York Airport and within 4 miles each side of the 155° bearing from the York Airport extending from the 6.5-mile radius to 11 miles southeast of the airport and 4 miles west and 8 miles east of the 339° bearing from the York NDB extending from the 6.5-mile radius to 11 miles north of the NDB, excluding that portion that coincides with the Harrisburg, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27397 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–067–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Alabama's proposed rules pertain to Rule 880–X–5A–.22, Orders and Decisions; and Rules 880–X–10C–.40 and 880–X–10D–.36, Coal Mine Waste: Refuse Piles (Surface Mining Activities and Underground Mining Activities, respectively). The amendment is intended to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t., November 3, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Arthur W. Abbs, Director, Birmingham Field Office at the address listed below.

Copies of the Alabama program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Discussion of the Proposed Amendment

By letter dated March 28, 1997, (Administrative Record No. AL–0562), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment at its own initiative. The provisions of the Alabama Surface Mining Commission Rules that Alabama proposes to amend are: Rule 88–X–5A–.22, Orders and Decisions; Rule 880–X6A–.06, License Application Requirements; Rule 880–X–7B–.07, Procedures for Permit Application Review; Rule 880–X–9E–.05, Determination of Forfeiture Amount; Rule 880–X–10C–.23, Hydrologic Balance: Surface and Ground Water Monitoring; Rule 880–X–10C–.36, Disposal of Excess Spoil (Surface Mining Activities); Rule 880–X–10C–.38, Coal Mine Waste: General Requirements (Surface Mining Activities); Rule 880–X–10C–.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities); Rule 880–X–10D–.33, Disposal of Excess Spoil and Underground Development Waste (Underground Mining Activities); Rule 880–X–10D–.34, Coal Mine Waste: General Requirements (Underground Mining Activities); and Rule 880–X–10D–.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities).

OSM announced receipt of the proposed amendment in the April 25, 1997, **Federal Register** (62 FR 20138) and invited public comment on its adequacy. The public comment period ended May 27, 1997.

During its review of the amendment, OSM identified concerns relating to Rule 880–X–5A–.22, Orders and Decisions; Rule 880–X–10C–.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities); and Rule 880–X–10D–.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities). On June 16, 1997, OSM notified Alabama of the concerns by telephone and by fax (Administrative Record No. AL–0572). Alabama responded in a letter dated July 30, 1997, (Administrative Record No. AL–0572) by submitting a revision to the amendment and additional explanatory information.

Alabama proposes revisions to Rule 880–X–5A–.22, Orders and Decisions; Rule 880–X–10C–.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities); and Rule 880–X–10D–.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities).

Specifically, Alabama proposes at Rule 880–X–5A–.22, Orders and Decisions, to change from 60 days to 30 days the time in which the hearing officer must make a written decision after the close of any hearing. For Rule 880–X–10C–.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities) and Rule 880–X–10D–.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities), Alabama proposes to issue a policy statement clarifying that the phrase "safety factor" means "static safety factor."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alabama program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866.

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 1997.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–27624 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX27–1–5945; FRL–5910–2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Texas Clean Fuel Fleet Program Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: The EPA is proposing disapproval of the Texas Clean Fuel Fleet (CFF) SIP revision submitted on August 9, 1996, by the State of Texas for the purpose of establishing a substitute CFF program. The EPA is disapproving the State's SIP revision due to changes in the State law that altered the current SIP revision submittal and because, in EPA's opinion, the State did not make a convincing and compelling equivalency determination with the Federal CFF program.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas, 78711–3087.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, all comments must be submitted in writing to the EPA Region 6 address above.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act (the Act); Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The CFF program is contained under part C, entitled, "Clean Fuel Vehicles," of Title II of the Act, as amended November 15, 1990. Part C was added to the Act to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide nonattainment areas.

Section 182(c)(4) of the Act, 42 U.S.C. 7511a (c)(4), allows states to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. The EPA may approve such a revision only if it consists exclusively of provisions other than those required under this Act for the area.

The State of Texas chose to opt-out of the Federal CFF program in a committal SIP revision submitted to EPA on November 15, 1992. In July 1994, Texas submitted the State's opt-out program in a SIP revision to EPA and adopted rules to implement the Texas CFF Program. The Texas CFF SIP was revised based upon changes to State law and resubmitted to EPA on August 6, 1996. On June 20, 1997, the Governor of Texas signed into law Senate Bill 681 that modified the supporting legislation (Chapter 382 of the Texas Health and Safety Code) for the current submitted revision.

II. EPA Analysis of State Submittal

The EPA is proposing disapproval based on the finding that changes to the supporting legislation have altered the August 6, 1996, submitted SIP revision.

As a result, the specific legislative authority in the submission is no longer in effect. In addition to the above changes, Texas's technical and equivalency method has not identified and quantified accurately the covered fleets in the Federal and State covered areas. The Texas CFF program has excluded certain covered fleets from its total fleet aggregation in the El Paso and Houston/Galveston nonattainment areas. Without an adequate determined fleet baseline for comparison, the SIP revision's technical evaluation is not sufficiently comprehensive to determine equivalency with the Federal CFF program. These and additional concerns with the State CFF program and broad compliance exemptions lead EPA to conclude that the State has not made a convincing and compelling demonstration of equivalency with the Federal CFF program. A more detailed discussion of the Texas CFF program elements and control strategy can be found in the Technical Support Document available from the EPA Region VI office.

III. Proposed Action

The EPA is proposing disapproval of the Texas CFF SIP revision submitted to EPA on August 6, 1996. The State's proposed substitute program is codified in 30 Texas Administrative Code, Chapter 114, Sections 114.30, 114.32 through 114.34, and 114.36 through 114.40. The EPA is soliciting public comments on the proposed action discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

The regional office, with EPA's Office of Mobile Sources has initiated efforts to help ensure that this action is consistent with the Act and will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. State Options

The following are options available to Texas in the implementation of its CFF Program. The State may choose to; adopt the Federal CFF Program; or revise the current Texas CFF program and resubmit to EPA or substitute another State program or control strategy for the Texas CFF program. Such a substitution could be a stationary or mobile source control program, but only if it consists exclusively of provisions other than those required under the Act.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to private sectors, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements.

Dated: October 8, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27622 Filed 10–16–97; 8:45 am]
BILLING CODE 6560–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

42 CFR Part 84

National Institute for Occupational Safety and Health; Certification of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: In response to public comments received from its May 16, 1996, request (61 FR 24740), NIOSH is announcing the intended priority order for the development of the next proposed rule amendments (modules) to the current NIOSH procedures for certifying respiratory devices used to protect workers in hazardous environments. The priority order is based on the comments and data in the public record. The priority order of the planned modules is provided to help the respirator community plan for potential changes.

FOR FURTHER INFORMATION CONTACT: Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone (304) 285–5907.

Availability and access of copies: Additional copies of this notice can be obtained by calling the NIOSH toll-free information number (1–800–35-NIOSH, option 5, 9 a.m.–4 p.m. ET); the electronic bulletin board of the Government Printing Office, (202) 512–1387; and the NIOSH Home Page on the World-Wide Web (http://www.cdc.gov/niosh/homepage.html).

SUPPLEMENTARY INFORMATION: NIOSH intends to propose technical modules in the following areas:

1. Powered Air Purifying Respirator (PAPR)—Establishment of N, R, and P series filters; Use of active low flow or low pressure warning devices; and Addition of new duration ratings.
2. Airline Respirator—Single airline for pneumatic devices and breathing air; Airline suits (i.e., Department of Energy/Los Alamos National Laboratory suits); Metabolic simulator tests; Air flow/pressure rate requirements; and Air flow measuring and warning devices.
3. Self Contained Breathing Apparatus (SCBA)—Maximum weight limit, with accessory definition; Upgrade of cylinder air specifications; Incorporation of National Fire Protection Association (NFPA) requirements; Non-facepiece SCBA; Metabolic simulator tests; Air flow/pressure rate requirements; and Alternatives to Department of Transportation and Compressed Gas Association requirements.
4. Gas and Vapor Respirator—Certification to a wider variety of specific substances and addition of service life categories.

NIOSH intends to propose three Administrative/Quality Assurance modules. The intended subjects for these modules are:

1. Corrections to 42 CFR part 84 and existing program policies not included in the regulations.
2. Upgrade of Quality Assurance requirements; Use of independent quality auditors in the certification program and updated fee schedule.
3. Use of independent testing laboratories in the certification program and restructured fee schedule.

I. Background

On May 16, 1996, NIOSH published a document in the **Federal Register** (61 FR 24740) to request public comments on what the agency's priorities should be in the area of respirator certification. NIOSH sought public comments on issues of privatization and fees related to possible changes in its administration of respirator certification, and comments on establishing priorities for future rulemaking. NIOSH held three public meetings in June 1996 to discuss these issues. All comments provided in response to the notice were considered in developing the rulemaking priorities.

II. Public Comment on Priority Issues

Thirty-two commenters responded to the document including: eleven respirator manufacturers, seven private sector testing and certification laboratories, five safety professionals, two public utilities, two trade or manufacturers' associations, one Federal agency, one National Laboratory, one fire department, one professional society, and one respirator accessory manufacturer.

III. Ranking Criteria for Technical Modules

NIOSH requested input on what determinants should be used as the criteria to rank the priority of each module, in addition to recommendations for module subject areas. The determinants for ranking listed in the notice were; consideration of the number of persons (workers) affected, the seriousness of hazards or problems that would be addressed, the extent to which changes would improve protection, opportunity for cost savings (reducing costs for manufacturers and purchasers of respirators) and the expediency by which a change could be implemented (e.g., the existence of adoptable consensus standards).

NIOSH specifically sought comments on the following issues for prioritizing the development of modules: the criteria to prioritize each module, existing national or international standards that could be adopted to replace current NIOSH certification requirements, and public health effects of any recommended changes.

A. Discussion of Comments Received

Commenters generally agreed with the determinants listed in the notice. Two commenters stated that allowing flexibility of design and innovative approaches to design and use, as well as encouraging new product development should be included in the priority ranking criteria.

B. Conclusions

NIOSH believes that the ability to use innovative approaches and flexibility in design results in new product development. Performance standards allow manufacturers to use innovative approaches and flexibility in design, resulting in new products to address hazards. NIOSH intends to develop performance-based technical criteria to the extent possible in its rulemaking activities. Therefore, although neither of these suggestions were included as determinants in the priority ranking criteria, NIOSH expects both will result from the rulemaking activities.

The ranking criteria used to develop the module priority order was: the number of workers affected, the seriousness of hazards or problems that would be addressed, the extent to which changes would improve protection, the expediency by which a change can be implemented (e.g., the existence of adoptable consensus standards), and opportunity for cost savings (reducing costs for manufacturers and purchasers of respirators).

IV. Technical Module Priority

NIOSH requested input to develop a complete, ranked list of priorities for rulemaking, including justification for the ranking. NIOSH specifically sought comments on the following issues for module development ranking: changes needed to current respirator certification requirements in the modules identified in the notice, subject areas for improving current certification requirements not identified in the notice, suggested module rankings, with ranking criteria and data or reasoning, industries and workers affected by potential changes, technical feasibility of suggested changes, economic impact to respirator manufacturers, purchasers, and users, and other factors related to the priority ranking.

A. Discussion of Comments Received

NIOSH has developed a ranked list of priorities for rulemaking, including justification for the ranking based on the comments received. Areas recommended for modification by commenters were grouped into feasible modules, then ranked according to the priority ranking criteria. The ranking justifications, based on the available supporting information, are included with the listing of the identified modules in IV.B. Conclusions.

The purpose of this notice is to inform the respirator community of regulatory priorities to allow research and planning to be coordinated with the development of new standards. NIOSH research and development efforts will be directed primarily at the highest priority areas identified in this notice. NIOSH also encourages others in the respirator community to conduct research in the identified module areas.

Research results and planning information for the regulatory priorities identified in this notice should be submitted to the NIOSH docket when they become available. The information will then be in a forum for public

review and comment. The information received in the NIOSH docket will establish a database to help develop future regulatory proposals.

Most of the determinants in the ranking criteria are based up the agency's current understanding of the capabilities of the manufacturing community as well as the science upon which the product development is based. Chief among these is the expediency by which a change can be implemented. NIOSH has attempted to estimate the research needed for each identified module in this priority-ranking process. It must be recognized that module development will be based on the successful completion of research in most of the identified module areas. Therefore, the rulemaking order of the identified modules may vary slightly from the priority order identified in this notice.

B. Conclusions

The following module list identifies the priority assessment for development of technical improvements based on the information provided by commenters:

1. Powered Air Purifying Respirator (PAPR)

Areas for potential modification in this module are: Establishment of N, R, and P series filters; Use of active low flow or low pressure warning devices; and Addition of new duration ratings.

The regulations require the PAPR battery to have a service time sufficient to maintain a stated air flow throughout 4 hours of operation during a silica dust loading test with particulate filters.

One commenter stated that the current requirements result in units that are too heavy and burdensome for most applications. Another commenter specifically suggested that modifications should be made to allow a light weight hood type PAPR for the health-care industry.

One commenter recommended the requirement of low flow and negative pressure warning devices to assure workers are protected from overbreathing the PAPR air supply. This commenter also recommended the establishment of a pressure demand PAPR. Two other commenters suggested the use of these devices and breathing-assist devices to establish positive pressure and negative pressure classes of PAPR's. These commenters indicated that PAPR duration may be able to be defined by an active alarm from a low pressure or low flow sensor, signaling an end of the battery's service life.

Presently, the filter choices for use with PAPR's has been limited to only high efficiency particulate air (HEPA) filters with the implementation of part 84. Commenters indicated that additional choices are necessary.

Four commenters stated that the regulations should be modified to include the same filter classes for PAPR's as are provided for non-powered filter respirators under 42 CFR 84. PAPR filter testing was included in the proposed 42 CFR 84 (59 FR 26850), but was not included in the final rule because additional research is needed to make the proposed tests more feasible and consistent with the part 84 filter tests.

Seven commenters indicated that PAPR requirements should be the top priority for technical revision of the regulations. The possibility of increased worker protection with lighter, cheaper units was represented by most of these commenters.

Estimates of more than 500,000 PAPR users in chemical, health care, pharmaceutical, agriculture and welding were provided by a commenter.

2. Airline Respirator

Areas for potential modification in this module are: Single airline for pneumatic devices and breathing air; Airline suits (i.e., Department of Energy/Los Alamos National Laboratory suits); Metabolic simulator tests; Air flow/pressure rate requirements; and Air flow measuring and warning devices.

Presently, 42 CFR part 84 does not contain a respirator classification that allows a single airline to the person for pneumatic devices and breathing air. NIOSH has recommended against this practice due to concerns over potential contamination of the air supply, and the high potential for negative impacts on respirator performance. In the absence of a dedicated breathing-air system, there is an increased risk of a contaminated air supply and negative impacts on respirator performance due to: backflow of contaminants from the pneumatic device line to the respirator air supply, low air flow and pressure to the respirator from a severed pneumatic-tool line, and excessive air flow and pressure from a blocked pneumatic-tool line.

Four commenters asserted that the breathing air could be filtered to Grade D specifications at the person wearing the respirator (e.g. on the belt). They stated that technology is available to ensure that an air filtering system incorporated into a respirator design would provide Grade D breathing air at the wearer, and this design should be certified by NIOSH. One of the commenters indicated that by providing safeguards against robbing air from the respirator, or feedback from pneumatic tools, a criteria could be developed for supplied air respirators (SAR) that allow a single airline for tools and breathing air. The use of air flow or pressure devices were suggested to provide needed assurances and warning of appropriate user air supply. Three of the commenters indicated that appropriate European standards that NIOSH could adopt exist for such a respirator class.

Presently, there is a standardized set of exercises and work rate criteria used in the evaluation of SAR's. The use of a metabolic simulator for testing was recommended by two commenters to help eliminate the variability associated with human testing. According to several commenters, the criteria for certifying SAR's could be upgraded by modifying the class criteria to reflect differing work rates with minimum flow rates and pressure differential from atmosphere. This would result in new, additional classifications for SAR's. One commenter recommended the use of air flow volume measuring and low flow warning devices. Three commenters suggested that a positive pressure class be defined. Another commenter suggested that a positive pressure within the facepiece should be required at the tested work rate.

Two commenters stated that a criteria is needed for NIOSH-acceptance of airline suits for respiratory protection. These commenters asserted that airline suits (i.e., Department of Energy/Los Alamos National Laboratory suits) have been used for respiratory protection against hazardous and toxic substances for twenty years under a Department of Energy acceptance program. In addition to respiratory protection, one of the commenters stated that the suits provide benefits such as total body protection and relief of heat stress. A Los Alamos National Laboratory evaluation protocol (LA–10156–MS) was recommended for as an acceptable criteria by both commenters.

Estimates of 50,000 auto body shops with over 100,000 workers, with additional unnumbered workers in other industries were given by one commenter as potential users of single airline respirators.

Several commenters stated that workers were improperly protected because the NIOSH-certified supplied air respirators were not conducive to use because they require two airlines to separate pneumatic device air from breathing air. Estimates were given that less than 5% of U.S., more than 95% of British, and more than 90% of European auto painters use proper respirators. Cost savings and greater user acceptance were projected based on the possible elimination of the installation and maintenance of a second airline.

3. Self Contained Breathing Apparatus (SCBA)

Areas for potential change in this module are: maximum weight limit, with accessory definition; Upgrade of cylinder air specifications; Incorporation of NFPA requirements; Non-facepiece SCBA; Metabolic simulator tests; Air flow/pressure rate requirements.

Presently, 42 CFR part 84 limits the weight of a completely assembled and fully charged SCBA apparatus to 35 pounds for most units. A maximum weight of 40 pounds is allowed only where the weight decreases by more than 25 percent of its initial charge weight during its rated service life or where an apparatus employs a cooling system. NIOSH does not include the weight of accessories in the total weight of a respirator.

Four commenters suggested that the maximum weight limit of an SCBA apparatus should be permitted to exceed 35 pounds where other fire fighter protective clothing or equipment is incorporated with the SCBA. One of them recommended a definition for accessories is needed to better define those items not included in the weight calculation. These commenters stated that this change could result in more comfort, greater protection, and a lower overall ensemble weight for fire fighters.

Presently, there is a standardized set of exercises and work rate criteria used in the evaluation of air supplied respirators. According to several commenters, the criteria for certifying SCBA's could be upgraded by modifying the class criteria to reflect differing work rates with minimum flow rates and pressure differential from atmosphere. This would result in new, additional classifications specifically for SCBA's. One commenter recommended the use of air flow volume measuring and low flow warning devices. Three commenters suggested that a positive pressure class be defined. Another commenter suggested that a positive pressure within the facepiece should be required at the tested work rate. One commenter suggested that the requirements for open circuit apparatus should be separated from the requirements for closed circuit apparatus.

The use of a metabolic simulator for testing was recommended by two commenters to help eliminate the variability associated with human testing.

Incorporation of standards consistent with life support efficacy portions of the NFPA requirements were recommended to upgrade the current standards. Three commenters stated that some NFPA 1981–1992 requirements should be included in the NIOSH requirements. Higher air flow rates and lens abrasion resistance were provided as examples. One of these commenters recommended the incorporation of NFPA 1981–1992 for fire fighter SCBA, with some of the requirements applicable to all SCBA. This commenter also stated that the dew point and particulate level requirements of NFPA 1500–1992 should be required for SCBA cylinder air.

One commenter requested provisions be developed for NIOSH to approve SCBA without a facepiece. This commenter asserted that the National Aeronautics and Space Administration (NASA) has used non-facepiece, suit SCBA since the early 1960's without any serious problems. This commenter stated that similar suits are being developed for decontamination and decommissioning of Department of Energy sites and other chemical waste sites. The commenter recommended a revision to the regulations to allow NIOSH certification of this class of respirator.

One commenter suggested that NIOSH should accept alternatives to Department of Transportation (DOT) and Compressed Gas Association (CGA) cylinder requirements. This commenter asserted that a cylinder could be incorporated as an integral part of the SCBA design without a standardized CGA cylinder thread, which is design restrictive. The commenter also recommended that cylinder acceptances of other certifying agencies throughout the world be recognized as equivalent to the United State's DOT requirements. No user population size or overall user type estimates were provided by commenters for SCBA. However, NIOSH is aware of estimates of the number of fire fighters in the U.S. While not representing users of all SCBA, fire fighters are believed to be a significant portion of the SCBA user population.

According to the National Fire Protection Association's (NFPA) 1995 Fire Department Profile, there are 1,098,850 fire fighters (260,850 career and 838,000 volunteer) in the United States. According to the National Volunteer Fire Council, a non-profit membership association representing the interests of the volunteer fire, emergency medical, and rescue services, there are 1.5 million volunteer firefighters who staff more than 28,000 fire departments throughout the United States. The International Association of Fire Fighters (IAFF) represents over 225,000 professional fire fighters and emergency medical personnel in the United States and Canada. In 1992, NIOSH estimated 400,000 firefighter SCBA's were in use by some 200,000 full time and 1,000,000 volunteer and non-municipal firefighters in the U.S.

4. Gas and Vapor Respirator

Areas for potential modification in this module are: Certification to a wider variety of specific substances and addition of service life categories.

Presently, NIOSH certifies gas and vapor (chemical cartridges included) respirators only to provide protection against only sixteen specific substances. Gas mask canisters and chemical cartridges may be classified for protection against the general category of organic vapors. Gas mask canisters may also be classified for protection against the general category of acid gases. Their use against substances with poor warning properties has not been recommended.

One commenter stated that there is a need for a new class of respirators for protection against the accidental release or terroristic use of chemical agents. This commenter asserted that local law enforcement, first response teams, and local and state agencies are seeking and need NIOSH-certified respirators in responding to these events. The use of existing facilities that test and evaluate equipment against chemical warfare agents for the military was proposed as an alternative to new NIOSH facilities.

The current standards in 42 CFR 84 provide for a canister or cartridge absorption capacity test criteria based on the respirator type. Two commenters indicated that NIOSH-certified canisters and cartridges are heavy and bulky because of too severe service life requirements. They asserted that various service times (or sorbent capacities) could be appropriately used, based on the conditions of use. They recommended modifying the certification standards to include other service time possibilities and absorption capacities under additional test parameters. One of these commenters recommended the regulations be modified to allow for certification of three cartridge capacity sizes by using three challenge levels of exposure for certification, similar to the European standards.

No precise user population estimates were cited by commenters. Users were identified only as unnumbered workers such as law enforcement personnel and first response teams with accidental release of chemical agents and chemical warfare agents.

V. Notification of Revised Priority Assessment

A. Comment Request

NIOSH will readily notify respirator manufacturers directly about changes to the regulatory priorities established in this notice. NIOSH specifically sought comments on how respirator purchasers and users should be notified of revised priorities.

B. Discussion of Results

Commenters suggested various mechanisms for notifying respirator purchasers and users of revised priorities. One commenter suggested the use of a Respirator Users' Notice. Three commenters suggested the use of the NIOSH internet Web site. Three commenters recommended the information be published in safety industry newspapers, magazines, and newsletters like the BNA "Occupational Safety and Health Reporter". Two commenters suggested the use of another **Federal Register** notice. One commenter each suggested that the respirator manufacturers, sales and marketing managers, and major users groups like the American Industrial Hygiene Association (AIHA), Chemical Manufacturers Association (CMA), National Association of Manufacturers (NAM), and American Iron and Steel Institute (AISI) be used to notify respirator purchasers and users.

C. Conclusions

NIOSH has established the priorities for rulemaking based on the comments received to the May 16, 1996 request. However, these priorities may change as new needs are identified or unforeseen delays are encountered with research efforts. New modules may be needed to respond to emerging hazards and developing technology.

Commenters failed to reveal any new mechanisms for NIOSH use to better disseminate rulemaking priority updates. NIOSH has used respirator-related mailing lists (including the Users Notice List and Respirator Manufacturers List), the NIOSH internet Web site, the Government Printing Office electronic bulletin board, press releases, and the NIOSH toll-free information number to disseminate **Federal Register** notices.

Publication of the information in safety industry newspapers, magazines, and newsletters is dependent on the publishers' expectations of reader interest. Dissemination of the information by the respirator manufacturers, sales and marketing managers, and major users groups depends on their willingness and ability to relay the information to their clientele. NIOSH respirator-related mailing lists have historically been generated as a result of public comments or a request for respirator-related publications. World-Wide Web and electronic bulletin board listings rely on the reader to go to the site to find the information.

NIOSH will continue to disseminate **Federal Register** notices as in the past, while continuing to seek better notification methods.

VI. Administrative and Quality Assurance Issues

A. Private Sector Testing Laboratories

Specifically, NIOSH sought comments on the following issues for the potential use of private sector testing laboratories for the certification process:

- Capability of private sector testing laboratories to conduct the respirator testing currently performed by NIOSH.
- Qualification requirements of private laboratories if they were to perform certification and product audit testing under NIOSH guidance.
- Assignment of a manufacturer's respirators to testing laboratories by NIOSH or manufacturer choice among approved laboratories.
- Monitoring of private sector laboratories to assure quality service would be continued if they were to perform certification and product audit testing under NIOSH guidance.

1. Discussion of Comments Received

Many of the commenters endorsed, with reservation, the idea of empowering private sector testing laboratories to conduct the NIOSH certification testing. Concerns about NIOSH's ability to empower these laboratories were raised by most of the commenters. These concerns centered around (1) the existence of lab capability in the private sector, (2) impartiality and credibility of testing and (3) documentation of the NIOSH testing procedures and reproducibility of results.

Five commenters questioned the existence of testing laboratory capability in the private sector. Nine commenters supported the belief that private sector testing laboratories are capable of performing the NIOSH testing. Several of these commenters indicated that the testing ability and capacity currently exists with certification of self contained breathing apparatus to NFPA requirements. They further stated that added capacity would be quickly obtained for other respirators once the market was there.

Five commenters stated that the documentation of the NIOSH testing procedures need to be improved before other testing authorities should be authorized to conduct the certification testing. These commenters expressed concern that test results would not be reproducible among a number of testing facilities. That is, test results could vary from laboratory to laboratory without an inter-laboratory validation program.

Concerns were raised by several commenters that impartiality and credibility would be lost with the testing portion of the certification process removed from NIOSH control. One commenter was concerned that any laboratory not have any vested interest in the certification of products or with manufacturers. A few commenters indicated increased NIOSH staff would be more productive than using private sector laboratories. These commenters felt that NIOSH resources would be consumed with oversight of accredited laboratories.

Another commenter stated that the survivability of private sector testing laboratories depends on their ability to demonstrate impartiality and credibility in their test results. Several other commenters indicated that use of already established accreditation or certification programs would require little or no additional NIOSH oversight.

Four commenters indicated that the European experience with privatization and U.S. certification authorities such as the NFPA and Safety Equipment Institute (SEI) have been good. Experiences with favorable turnaround times and costs were reported.

Commenters recommended that NIOSH adopt an existing system, rather than create a new one. Three commenters recommended accreditation by the American National Standards Institute (ANSI) to ANSI Z34.1. This standard was judged inappropriate for lab privatization by another because it is a complete program that includes design, QA and product testing requirements for the certification of manufacturers' products by the authorized entity. This is similar to the current NIOSH process. ISO Guide 25, a tool to assess and accept a laboratory's calibration and QA procedures for accurate and consistent results, was recommended by four commenters. Two more commenters suggested that NIOSH should become ISO certified as well.

2. Conclusions

NIOSH agrees with those commenters who stated that the use of private sector testing laboratories could expedite the approval process and the availability of the latest and safest technology. This will be accomplished only if the use of these laboratories increases the resources available to conduct the tests. NIOSH shares the concern expressed by some commenters that an insufficient business base may exist to assure the increased resources, quality level and cost would be acceptable.

Private sector testing laboratories can be utilized in the certification of respirators, provided that adequate procedures and safeguards are in place. No existing testing laboratory accreditation or certification programs have standards and procedures that accredit or certify laboratories to perform the NIOSH tests. The procedures and standards to accredit or certify testing laboratories to conduct the NIOSH tests need to be developed before a laboratory could be accredited. Clear, objective test requirements and protocols that provide test results reproducible between laboratories also need to be finalized and made available before most NIOSH tests can be used by private testing laboratories.

NIOSH has determined that there are private sector testing laboratories with the capability to perform the NIOSH tests. However, NIOSH is concerned that there is insufficient testing capacity to meet the demand for testing. NIOSH has seen no evidence that this capacity is present, especially considering the comments that refined procedures are needed to allow others to conduct the NIOSH tests. Efforts to develop testing laboratory certification and auditing criteria will consume some NIOSH resources to establish the program.

NIOSH is continuing to explore options for the potential use of private sector testing laboratories for the certification process. However, the infrastructure to define and support the use of these laboratories remains to be established. NIOSH intends to propose an Administrative module to address the use of private sector testing laboratories for the certification process after the infrastructure needs are better determined.

B. Private Sector Quality Auditors

Specifically, NIOSH sought comments on the following issues for the potential use of private sector quality auditors for the certification process:

- Qualification requirements (e.g., certification by ANSI-Registrar Accreditation Board, United Kingdom Accreditation Service, International Auditor and Training Certification Association, etc.) of independent quality auditors if they were to perform manufacturing site audits under NIOSH guidance.
- Assurances of integrity for a program using private quality auditors.
- Frequency of audits needed to assure that only quality products are distributed.
- Auditing of manufacturing sites prior to the issuance of a NIOSH certification.

1. Discussion of Comments Received

No commenters opposed the use of private sector quality auditors for the certification process. Three commenters endorsed the use of the International Organization of Standardization certification standards (ISO) for evaluation of the manufacturers' quality assurance systems. Two of these commenters pointed out that, specifically, ISO 9001 should be adopted because it documents the design and development process, unlike ISO–9002.

The ISO standards were perceived by several commenters as sufficient to ensure the integrity of the program. One commenter stated that the ISO system requires auditors to be certified by authorities such as Underwriters Laboratories. A commenter stated that NIOSH must develop the criteria for an acceptable quality assurance plan for use by an ISO auditor. Two commenters believed that ISO 9001 audits could be used instead of NIOSH audits because the ISO audit would ensure the quality assurance plan is met. These same commenters thought that the ISO semiannual or annual frequency of audit was appropriate.

Two commenters pointed out that ISO 9000 requires site audits prior to registration. Therefore, if a manufacturer has been ISO-certified, they stated no NIOSH pre-certification audit would be needed. If the manufacturer has not been ISO-certified or is a new manufacturer, they stated that a NIOSH pre-certification audit would be appropriate.

2. Conclusions

Qualified quality auditors may be used to perform site audits for verification that the manufacturers' quality systems are being followed and are appropriate. Empowering qualified auditors would expand the audit portion of the certification program to levels consistent with most contemporary certification authority requirements. NIOSH has been developing audit guidelines that could enable a qualified auditor to evaluate compliance with the salient points of a manufacturer's quality assurance plan.

NIOSH is evaluating the appropriateness of the ISO 9000 series standards with NIOSH-added requirements specific to respirators, or equivalent, to evaluate a manufacturer's quality system. NIOSH is also considering requirements for certification of auditors, and the oversight needed to ensure that audit quality is comparable to that which has been provided by NIOSH employees. Audits conducted by independent auditors would be used to complement NIOSH audits. The requirement for a pre-certification audit is also under evaluation. NIOSH intends to address the use of private sector quality auditors for the certification process in an Administrative/Quality Assurance module to be proposed in the near future.

C. Fee Schedule

Specifically, NIOSH sought comments on the following issues for updating the fee schedule to reflect the actual costs to maintain the program:

- Certification fee structure and calculation to recoup the cost of the certification process.
- NIOSH fee collection for manufacturing site and product audits.
- NIOSH fee collection for respirator complaint investigations.

1. Discussion of Comments Received

Eight commenters supported fair fee charges that accurately reflect the services received. These commenters stated that fees should be fair and equitable to NIOSH and the manufacturers. One of these commenters noted that excessive fees would be a deterrent to improving products, while another stated a willingness to pay more for faster approval. Two commenters recommended that collected fees be retained in the certification program to make it self-sustaining.

Five commenters did not think that NIOSH should recoup all costs of the program. One of these commenters felt there should not be charges for site and product audits. The other four argued against fees for product complaint investigations. One of them suggested there could be challenge procedures where the loser pays the investigative costs for a complaint. Another stated that the manufacturer should not be responsible for most complaints, because they are minor or frivolous. Another commenter believed that fees would be unfair because the manufacturer may not necessarily be at fault. The fifth commenter felt that NIOSH should bear the cost of complaint investigations because they are a NIOSH responsibility. Three of these commenters did indicate, however, that a fee may be appropriate if the basis for the complaint is

determined to be the manufacturer's fault.

Five commenters specifically endorsed a NIOSH fee to recoup the total cost for audits. One of these commenters stated that this would not be an additional expense for NIOSH or ISO-certified manufacturers if NIOSH accepted the results of ISO audits. Conversely, this commenter believed that NIOSH should conduct audits and charge fees to recoup their cost for manufacturers not ISO-certified. Another of these commenters suggested that the original fees that NIOSH charges for issuing a certification should include the costs of site and product audits.

One commenter stated that the fees should relate to all the tasks performed in the certification process. Another stated that the fee structure should include fees for each discrete, identifiable part of the process. A third commenter supported flat fees as the preferred fee structure. This commenter also stated that NIOSH should charge an hourly rate based on staff time and supply costs if flat rates can't be calculated. Two commenters suggested an annual maintenance fee based on the number of units produced or sales. One of these commenters further stated that an annual fee should be collected per model.

Two commenters suggested that fees should be reviewed and recalculated annually. Another commenter stated that the fees should be computed based on actual costs, and published for comment.

Several commenters recommended that collected fees be retained in the certification program to make it self-sustaining.

One commenter requested the establishment of fee accounts for withdrawal of fees when due.

2. Conclusions

The fees and fee structure for activities conducted in the certification program are currently based on the fee schedule contained in 42 CFR part 84. This fee schedule has not been updated since 1972. The costs of conducting a certification program have risen over the years, but these increased costs have not been reflected in certification charges. The fees charged for NIOSH services do not recover the costs to maintain the program.

NIOSH intends to update the current fee structure to offset the expenses and administrative costs of the program. NIOSH intends to update the current fee structure in an Administrative/Quality Assurance module to be proposed in the near future. For future updates in the fees, NIOSH may consider other fee structures to better cover the program costs.

D. Component Part Certification

Specifically, NIOSH sought comments on the following issues for evaluation and certification of respirator component parts:

- Authorization of manufacturers other than the original respirator manufacturer for replacement parts.
- Effectiveness of replacement parts, if alternate suppliers for replacement parts were allowed.
- Component-specific requirements of replacement parts, if alternate suppliers for replacement parts were allowed.
- Certification of respirator components in addition to, or instead of, complete respirators.
- Other certifying agencies or standards organizations that allow suppliers other than the original manufacturer to provide replacement parts for certified units.
- Monitoring of alternate suppliers, if suppliers other than the original manufacturer were permitted to provide replacement parts.
- Monitoring of replacement parts, if suppliers other than the original manufacturer were permitted to provide them.
- Interchangeability of parts by design specifications, if alternate suppliers for replacement parts were allowed.

1. Discussion of Comments Received

Three commenters endorsed the concept of component certification for the manufacture and sale of replacement parts by persons other than the respirator manufacturer. Two of these commenters stated that other standards or certifying organizations, including NFPA, allow third party replacement parts. One commenter stated that lower prices for respirators and disposable parts would result from standards that facilitate interchangeability of some parts. Two commenters stated that the replacement parts should be certified just as complete respirators, documenting equivalent form, fit and function of the original respirator. Component-specific requirements should be able to be covered in the general certification scheme, according to one commenter.

Most commenters did not favor the concept of component certification for the manufacture and sale of replacement parts by persons other than the respirator manufacturer. Nine commenters objected to allowing replacement parts from a manufacturer other than the respirator's original manufacturer. Respirator design restrictions to allow interchangeability of parts, copyright infringements and liability concerns were expressed as reasons for opposition.

Two commenters indicated that replacement parts by others should be permitted only if the manufacturer is in agreement. Four commenters voiced concerns of product liability of replacement parts by others. One commenter stated that the acceptable use of third party parts would encourage copyright infringements.

Six commenters believed there would be no way to verify original specifications are met with other manufacturers' parts. Therefore, they asserted, the certification program could not assure respirator system performance. Two commenters supported certification of complete respirators only. Two commenters stated that other standards, including SEI certification, Japanese, Korean, and Australian loosely-EN-based standards do not allow interchangeability of components.

Four commenters pointed out that interchangeability in Europe is allowed only for certain components. Two of these commenters asserted that the conformity required for interchangeability in Europe creates design restrictions. One commenter believed that developing component-based requirements would be horrendous. Another commenter reported the European experience to be that users don't utilize the option to obtain replacement parts from third parties. One commenter pointed to significant administrative expenses with testing and certification of replacement parts as another rationale for not adopting this concept.

Five commenters stated that NIOSH would need to monitor third party parts and suppliers the same as respirator manufacturers. Three commenters stated that allowing replacement parts by other than the respirator manufacturer would require testing to assure overall compliance of assembled respirator.

Some of the commenters opposing the concept recognized potential cost and program savings if a limited component certification program were developed. Three suggestions were made for components to be certified for use within the assembly of a single manufacturer's components, to make a complete respirator by the assembly of certified components. The certification for interchangeability of air lines and some air-supplied respirator parts were also suggested as viable program options by two commenters.

2. Conclusions

The certification standards limit NIOSH to certify only complete respirators. Component parts are not evaluated independently. Any component part, or replacement part, certification program would require the development of component-specific requirements that ensure that the respirator continues to perform effectively.

No commenters raised safety or health concerns to support development of a component parts certification program. Only economic benefits were provided as reasons for support. Commenters raised seemingly valid safety and health, legal and technical concerns opposing component parts certification. Based on the comments received, NIOSH is not developing a component certification program at this time.

E. Product Auditing

Specifically, NIOSH sought comments on the following issues for product auditing of respirators:

- The maximum number of respirators per year, aside from problem investigations, that NIOSH should request from a manufacturer, at no charge to NIOSH.
- Acquisition of products for audit (i.e., by voucher, reimbursement, random selection by NIOSH at the manufacturer or distributor).
- Reimbursement of NIOSH costs for product audits.

1. Discussion of Comments Received

One commenter stated that there should be no charge for conducting product audits. This commenter stated that auditing costs should be included in the cost of government enforcement activities. Another commenter believed that, with the resources available to the government, the government should pay for all products it acquires. Five commenters indicated that fees should relate to the task, and that the total cost for any audit should be charged. One of these commenters thought that the original fees for a certification should include costs of site and product audits.

One commenter suggested that products for audit should be selected from the manufacturer's warehouse during site audits, as is done in other programs. A second commenter recommended a voucher system be used to acquire audit samples from distributors. This commenter stated that it was important that the manufacturer not be allowed to pre-screen audit samples to assure compliance.

2. Conclusions

NIOSH has historically purchased product audit samples from distributors. Although NIOSH occasionally requests audit samples from the manufacturer's inventory during site audits, products for audit are predominately purchased with appropriated funds. This severely limits the number and type of products that can be audited each year.

NIOSH is considering options to obtain appropriate numbers of product audit samples from manufacturers at no cost to NIOSH. NIOSH intends to address the acquisition of product audit samples in an Administrative/Quality Assurance module to be proposed in the near future.

F. Approval Duration

Specifically, NIOSH sought comments on the following issues for limiting the time duration or number of units for which a respirator certification would be valid:

- Time limits for the NIOSH certification to be valid.
- Conditions for renewing a NIOSH certification, if it were time-limited.
- Recommended time limits for a NIOSH certification and renewal, if it were time-limited.
- Notification requirements for changes in production status and the number of produced units when production is halted.
- Affect on purchasers and users if the certification of their respirator expires.
- Benefits to purchasers and users of an expired certification.
- Benefits to purchasers and users of knowing the number of respirators produced under a certification.

1. Discussion of Comments Received

Generally, comments were divided on the issue of time limits on an approval. Five commenters opposed time limits, while four commenters endorsed the concept.

Suggestions for a renewal process varied. One commenter suggested that annual renewal should be required. Another commenter pointed out that the National Fire Protection Association's standard for firefighter SCBA certification (NFPA 1981) requires recertification every 5 years. Yet another commenter stated that product approvals of this type are generally required to be requalified after a one to five year period. One commenter believed that a complete resubmittal from the manufacturer of the product should be required 9 years after certification, or the authority to manufacture and sell the product as NIOSH-certified would expire in the tenth year.

Commenters opposed to time or quantity limitations contended that certification expirations would cause undue user confusion and be overly burdensome on the manufacturers, and users would not benefit in knowing the population of specific models. One commenter pointed out that similar European requirements resulted in increased cost and obstructed sales. Several commenters also believed that production and sales levels are confidential to the manufacturer. Other commenters contended that such limitations were not needed because the evolution of products through technological advancements and approval schedule updates will limit the age of approvals that can remain active.

Three commenters suggested that NIOSH could require production change reports from the respirator manufacturers. A fourth commenter suggested that NIOSH could check the production status of approved respirators in conjunction with annual quality audits. Two commenters recommended that approvals be classified as Active, Inactive or Obsolete based on their production status. One of these commenters suggested inclusion of the production status in the NIOSH Certified Equipment List (CEL). Yet another commenter stated that users would be notified of an approval's expiration by removal from the equipment list.

2. Conclusions

NIOSH agrees with commenters who asserted that user notification of the status of NIOSH-certified respirators is important. NIOSH also agrees with commenters who believed that time or quantity limitations on certifications could create an added burden on manufacturers and NIOSH by creating added applications for recertification of products.

NIOSH is aware that manufacturers generally sell components individually that can be used in configurations covered under a number of certifications. Therefore, potentially little data exists to represent the number of respirators sold or in use under a specific approved design.

NIOSH has concluded that it would not be appropriate or beneficial to initiate time or quantity limitations on certifications at this time. The purpose of user notification on certifications could be served by receiving production status reports from respirator manufacturers to indicate if the respirator is currently being produced (active), no longer produced but units in

the field are supported with parts (inactive), or no longer in production or supported with replacement parts (obsolete).

The status listing of Active, Inactive, or Obsolete status is included in the NIOSH certified equipment list (CEL). In accordance with received comments, NIOSH is requesting the manufacturers to provide this production status information as soon as it becomes available, to update the CEL. NIOSH intends to address the reporting of production status information in an Administrative/Quality Assurance module to be proposed in the near future.

VII. Priority of Quality Assurance/ Administrative Modules

Based on the comments received, NIOSH intends to propose three Administrative/Quality Assurance modules. The intended subjects for these modules are:

A. Corrections and Existing Policies

1. Discussion of Comments Received

One commenter recommended that NIOSH publish technical amendments to 42 CFR part 84 prior to any other modules. Specifically, this commenter requested clarification of the 200 mg. filter loading levels for particulate filters used in pairs.

One commenter suggested that air purifying respirators with end of service life indicators (ESLI) should be certified for polyisocyanate catalyzed paints. Several commenters stated that workers were improperly protected because the adequate NIOSH-certified (supplied-air) respirators were not conducive to use. Estimates of 50,000 auto body shops with over 100,000 workers, with additional unnumbered workers such as law enforcement personnel and first response teams with accidental release of chemical agents and chemical warfare agents were given.

Air-purifying respirators can be certified with ESLI's in accordance with requirements published in the **Federal Register** on July 19, 1984 (49 FR 29270). That notice provided for the approval of air purifying respirators with either effective passive or active ESLI for use against gases and vapors with adequate warning properties or for use against gases and vapors with inadequate warning properties whenever there is a regulatory standard already permitting the use of air purifying respirators.

Two commenters suggested a module to address self contained self rescuers (SCSR) that are used in the mining industry. Both commenters urged development of a duration testing protocol using a metabolic simulator to replace human subject testing.

2. Conclusions

There are typographical errors in 42 CFR 84 to be corrected. There are also a number of existing program policies that have been developed since 1972 that are not included in the regulations. Policies affecting areas such as ESLI for air purifying respirators and service life plans for SCSR, need to be codified in the regulations as a single source for the respirator approval requirements.

NIOSH will publish a module to make corrections and incorporate all existing certification program policies into 42 CFR 84.

B. Upgrade of Quality Assurance Requirements and Fee Schedule

1. Discussion of Comments Received

As discussed previously in VI.B., no commenter opposed the use of private sector quality auditors in the certification program. Commenters also generally endorsed the use of ISO–9000 or similar quality assurance requirements. NIOSH acceptance of audits conducted by private sector auditors was also generally recommended by commenters.

As discussed previously in VI.C., the majority of commenters supported fees that reflect the costs of the certification program.

As discussed previously in VI.F., a number of commenters supported use of the NIOSH CEL to notify respirator users of the production status of approved respirators.

2. Conclusions

NIOSH intends to publish a module to address the use of independent quality auditors, respirator production status information and updated fees.

C. Use of Independent Testing Laboratories in the Certification Program and Restructured Fee Schedule

1. Discussion of Comments Received

As discussed previously in VI.A., a number of commenters expressed reservations about the ability of NIOSH to use private sector testing laboratories in the certification program. Several concerns, such as the availability of test procedures and the accreditation method, were presented.

As discussed previously in VI.C., some of the comments on fee revision recommended substantial changes to the fees structure. These recommendations included concepts such as: retention of the fees in the certification program; annual maintenance fees; and fees for complaint investigations.

2. Conclusions

NIOSH intends to publish a module to address the use of independent testing laboratories and a restructured fee schedule.

VIII. Continued Comments

As stated previously, NIOSH is requesting additional comments and information on content for the modules identified and prioritized in this notice. Comments for the need to prioritize other module topics are also welcomed. NIOSH will periodically review the information in the docket to assist in determining if a priority reassessment is needed. Comments should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8450, fax (513) 533–8285. Comments may also be submitted by e-mail to: DMM2@CDC.GOV. E-mail attachments should be formatted as WordPerfect 4.2, 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

Dated: October 8, 1997.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27224 Filed 10–16–97; 8:45 am]

BILLING CODE 4163–19–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–210, RM–9166]

Radio Broadcasting Services; Soldiers Grove, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lyle Robert Evans d/b/a Rural Radio Company proposing the allotment of Channel 290A to Soldiers Grove, Wisconsin, as that community's first local FM broadcast service. There is a site restriction 11.8 kilometers (7.3 miles) northeast of the community at coordinates 43–28–16 and 90–40–21.

DATES: Comments must be filed on or before November 24, 1997, and reply comments on or before December 9, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle Robert Evans, d/b/a Rural Radio Company, 1296, Marian Lane, Green Bay, Wisconsin 54304.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–210, adopted September 24, 1997, and released October 3, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27513 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.97–209, RM–9152]

Radio Broadcasting Services; Coarsegold, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Thomas L. Whitlock d.b.a. West Coast Wireless, seeking the allotment of FM Channel 233A to Coarsegold, California, as that community's first local aural transmission service. Coordinates for this proposal are 37–18–51 and 119–42–20.

DATES: Comments must be filed on or before November 24, 1997, and reply comments on or before December 9, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James A. Koerner, Esq., Baraff, Koerner & Olender, P.C., Three Bethesda Metro Center, Suite 640, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–209, adopted September 24, 1997, and released October 3, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27512 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–136, RM–9083 and RM–9136]

Radio Broadcasting Services; Ironton, Malden and Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order to Show Cause.

SUMMARY: In response to a counterproposal filed by B.B.C., Inc. and Dockins Communications, Inc., we have issued an Order to Show Cause to the Ultra-Sonic Broadcast Stations, Inc., licensee of Station KMMC, Channel 240A, Salem, Missouri. This document affords Station KMMC an opportunity to object to the proposed channel change but it does not afford an additional opportunity to comment on the merits of the proposal set forth in the Notice of Proposed Rule Making and Order to Show Cause or the proposal advanced in the counterproposal. *See* 62 FR 29090, May 29, 1997.

DATES: Comments must be filed on or before November 24, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 97–136, adopted September 24, 1997, and released October 3, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27515 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 216, 245, and 252

[DFARS Case 97–D027]

Defense Federal Acquisition Regulation Supplement; Title to Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Under Secretary of Defense, Acquisition and Technology, has requested the Director, Defense Procurement, to obtain public comment on Government property management policy changes intended to reduce the amount of Government-owned tooling and equipment in the possession of DoD contractors. This proposed rule solicits those comments and is structured as a deviation from the Federal Acquisition Regulation (FAR) Part 45 proposed rule on Government property (FAR Case 95–013) that was published in the **Federal Register** on June 2, 1997 (62 FR 30186). This proposed DFARS rule will be amended at a later date to incorporate changes resulting from public comments on the FAR Part 45 proposed rule.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Director, Defense Procurement, Deputy Director, Major Policy Initiatives, Attention: Ms. Angelena Moy, Room 3C128, 3060 Defense Pentagon, Washington, DC 20301–3060. Please cite DFARS Case 97–D027 in all correspondence related to this proposed rule. Address E-mail (Internet) comments to Moyac@acq.osd.mil.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by phone at (703) 695–1097/8, by fax at (703) 695–7569, or at the E-mail address provided above. Please cite DFARS Case 97–D027.

SUPPLEMENTARY INFORMATION:

A. Background

The value of Government-owned equipment and tooling in the possession of DoD contractors increased substantially during the past decade although long-standing acquisition policy generally requires contractors to furnish the property needed to perform Government contracts. An Integrated Process Team, led by the Office of the Under Secretary of Defense, Industrial Affairs and Installations, has made recommendations intended to reverse this trend and reduce the amount of Government property in the possession of DoD contractors. These recommendations are:

1. Under cost-reimbursement contracts, DoD should cease taking title automatically to contractor acquired or fabricated equipment and tooling. DoD should have the right to take title to all special tooling and special test equipment for which costs are allocated to DoD contracts as direct costs, and items of equipment having an acquisition cost in excess of the DoD internal property accountability threshold (currently $2,500), the costs of which are allocated as direct costs to DoD contracts. This recommendation will reduce contract performance costs by removing low value equipment items from the property control, management, and disposal requirements in FAR Part 45. To implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 252.216–7002(c) and 252.245–7002(b)(2).

2. When a contractor that acquired or fabricated equipment, special tooling, or special test equipment to which DoD has taken title needs that equipment, special tooling, or special test equipment to perform follow-on contracts for the same items, DoD should furnish the equipment, special tooling, or special test equipment items to the contractor on an "as is" basis. To implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 252.245–7001(d)(2).

3. Property no longer needed for performance of a particular contract should be disposed of immediately if not needed for future procurements and placed under funded storage contracts if the future need is not within 60 days following the date the contractor identifies the property as no longer needed. This recommendation is intended to expedite property disposal and assure that contractors are paid for storing Government property. To implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 245.101–71.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq., because the rule further reduces the economic impact on small entities from the estimated impact contained in the proposed rule under FAR Case 95–013, FAR Part 45, Government Property Rewrite, by reducing the administrative burden on contractors through reduction of the amount of Government property in the possession of contractors. The impact is not considered significant because the rule applies only to those small entities that request Government property to perform a contract or create Government property during contract performance, and contract prices compensate such contractors for their Government property management activities. An initial regulatory flexibility analysis has, therefore, has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D027 in correspondence.

C. Paperwork Reduction Act

This proposed rule reduces the amount of property that will become Government property under cost-reimbursement contracts. Therefore, the paperwork burden approved under Office of Management and Budget Clearance No. 9000–0151 for the proposed FAR rule published at 62 FR 30186 on June 2, 1997, is expected to be reduced.

List of Subjects in 48 CFR Parts 216, 245, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

There, 48 CFR Parts 216, 245, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 216, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

2. Section 216.307 is added to read as follows:

216.307 Contract clauses.

(a)(1) Use the clause at 252.216–7002, allowable Cost and Payment, instead of the clause at FAR 52.216—7, Allowable Cost and Payment, in all cost-reimbursement contracts.

(2) Use the clause at 252.216–7002 with its Alternate I if the contract is a construction contract that contains the clause at FAR 52.232–27, Prompt Payment for Construction Contracts.

PART 245—GOVERNMENT PROPERTY

3. Section 245.101, 245.101–70, and 245.101–71 are added to read as follows:

245.101 Policy.

(d) Contractors are expected to have the means to perform DoD contracts. Furnish property to contractors only under the circumstances described in FAR 45.201 and only for performance of a specific contract or contracts.

245.101–70 Equipment, special tooling, and special test equipment.

Items of equipment, special tooling, or special test equipment that otherwise may be furnished to contractors under FAR 45.201 shall be furnished on an "as is" basis to the contractor that acquired or fabricated the items when that contractor needs the items for performance of follow-on contracts and the Government took title to the items under 252.245–7002, Right to Title—Equipment, Special Tooling, and Special Test Equipment.

245.101–71 Disposal and storage.

Immediately dispose of Government furnished property that a contractor has identified as no longer needed for contract performance except when there is a contractual requirement to furnish that property as Government furnished property under a follow-on contract. Contract for the property's storage when the property owner has a known future need for the property, a follow-on contract(s) has not been awarded, and the property will not be used within 60 days of the date upon which the contractor identified the property as no longer needed for contract performance.

4. Section 245.102 is added to read as follows:

245.102 Contract clauses.

(a)(1) Use the clause at 252.245–7001, Government Furnished Property, instead of the clause at FAR 52.245–1, Government Furnished Property (Fixed-Price and Labor-Hour Contracts), in all solicitations and contracts for supplies, services, or research and development if the Government anticipates furnishing property for performance of the contract.

(2) Use the clause at 252.245–7001 with its Alternate I in fixed-price competitive contracts or competitive labor-hour contracts.

(b)(i) Use the clause at 252.245–7002, Right to Title—Equipment, special Tooling, and Special Test Equipment, instead of the clause at FAR 52.245–2, Special Tooling and Special Test Equipment—Right to Title (Fixed-Price Contracts), in all solications and contracts.

(ii) Use the clause at 252.245–7002 with its Alternate I in cost-reimbursement or time-and-materials solicitations and contracts for basic or a applied research to be conducted by nonprofit organizations whose primary purpose is the conduct of scientific research on nonprofit in stitutions of higher education (see FAR 35.014).

(c)(i) Use the clause at 252.245–7003, Government Property Control, instead of the clause at FAR 52.245–3, Government Property Control, in all solicitations and contracts that include the clause at 252.245–7001.

(ii) Use the clause at 252.245–7003 with its Alternate I when the Government will maintain the Government's official property records (see FAR 45.302(b)).

(d) Use the clause at 252.245–7001, Government Furnished Property, instead of the clause at FAR 52.245–4, Government Property (Cost-Reimbursement and Time-and-Material Contracts), in all solicitations and contracts for supplies, services, or research and development if the Government anticipates furnishing property for performance of the contract.

245.505–14 [Removed]

5. Section 245.505–14 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.216–7002 is added to read as follows:

252.216–7002 Allowable Cost and Payment.

As prescribed in 216.307(a)(1), used the following clause:

Allowable Cost and Payment (XXX 19XX)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.*

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other post-retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (h) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (e) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost reimbursement under this clause.

(c) *Title.*

(1) Title to property acquired or fabricated by the Contractor for performance of this

contract, the costs of which are allocable to this contract as direct costs, shall vest in the Government. For property acquired or produced prior to execution of this contract, vestiture occurs upon execution of the contract. Otherwise, vestiture occurs when the property is or should have been allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices. Except as provided in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of the contract, upon completion of deliveries under a contract for supplies or upon completion of effort required under a contract for services, the Contractor shall have title to all property acquired or fabricated for this contract that is not required to be delivered to the Government.

(2) Property to which the Government has obtained title under this clause is not "Government furnished property."

(d) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(e) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity, proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of this contract.

(f) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—(1) Shall be the anticipated final rates; and (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(g) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(h) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by the Contracting Officer not to constitute allowable costs or adjusted for prior overpayments or underpayments.

(i) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (e)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

ALTERNATE I (XXX 19XX). As prescribed in 216.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the Prompt Payment for Construction Contracts clause of this contract. Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

7. Section 252.245–7001 is revised to read as follows:

252.245–7001 Government Furnished Property.

As prescribed in 245.102(a) (1) and (d), use the following clause:

Government Furnished Property (XXX 19XX)

(a) *Definitions.*

The terms defined in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract have the same meaning in this clause.

(b) *Property furnished for performance of this contract.*

(1) The Government furnished property identified in this contract may be used for performance of the contract on a rent-free basis. The Contractor shall not use such property on any other Government contracts or for commercial purposes without the Contracting Officer's prior approval. Unless otherwise permitted by law, commercial use shall be on a rental basis. The terms and conditions of the Rental Charges for Commercial Use clause of this contract shall apply to each rental.

(2) The Contractor shall not improve or make structural alterations to real property owned or leased by the Government and made available for performance of this contract unless expressly authorized to do so in writing by the Contracting Officer. Title to such improvements or alterations shall vest in the Government if the property is accountable under this contract or will be determined by the terms of the contract under which the real property is accountable.

(3) The Government retains title to Government furnished property including Government furnished property that is incorporated into or attached to any property it does not own. Government furnished property does not become a fixture or lose its identity as personal property by being attached to real property.

(4) The Government shall, when requested by the Contractor, provide information reasonably required for the property's intended use to the extent the Government has the right to release or disclose the information.

(5) If the Contractor commingles Contractor acquired or fabricated material with

Government furnished material, the provisions of paragraph (c) of this clause regarding suitability for intended use shall not apply to the commingled Government furnished material. Notwithstanding any other provision of this contract, the Contractor shall be responsible for any failure to comply with contract requirements attributable to material that was commingled.

(c) *Suitability for intended use.*

The contract delivery or performance dates are based upon the expectation that Government furnished property will be suitable for its intended use, except property furnished "as is" (see paragraph (d) of this clause), and delivered to the Contractor at the times stated in the contract or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(1) The Contractor shall notify the Contracting Officer promptly following receipt of Government furnished property that is not suitable for its intended use and take corrective action or dispose of the property as directed by the Contracting Officer. The contract shall be equitably adjusted in accordance with paragraph (g) of this clause.

(2) The Contractor may request an equitable adjustment when Government furnished property is not delivered to the Contractor by the required time and such untimely delivery has affected contract performance. Any equitable adjustment shall be made in accordance with paragraph (g) of this clause.

(d) *Property furnished as is.*

(1) Offerors and the Contractor are responsible for assuring that Government property made available on an "as is" basis is suitable for the offerors' or Contractor's purposes. Such property is furnished f.o.b. at the location specified in the solicitation or contract. Any cost incurred by the Contractor to transport, install, modify, repair, or otherwise make such property suitable for the Contractor's intended use shall not result in an increase in price or fee. Modifications to property furnished "as is" require the Contracting Officer's prior written approval.

(2) Equipment, special tooling, or special test equipment is furnished "as is" for performance of this contract if the Contractor acquired or fabricated, and the Government took title to, such items under this or a prior contract.

(3) The Government makes no warranty whatsoever with respect to property furnished "as is" except that the property will be in the same condition when placed at the specified f.o.b. location as when inspected by the Contractor or, if not inspected by the Contractor, as of the last date identified in the solicitation or contract for Contractor inspection. The Contractor is responsible for verifying that the property's condition has not changed during that period. If the Contractor determines the property's condition has changed and such change will adversely affect the Contractor, the Contractor shall immediately notify the Contracting Officer and identify the changed condition. If the Contracting Officer concurs that the property's condition has changed, the Contracting Officer may restore the property or substitute other Government property at no change in price or fee; permit the Contractor to restore the property subject to an equitable adjustment; or decline to furnish the property subject to an equitable adjustment. The foregoing provisions for adjustment are the exclusive remedies available to the Contractor. The Government has no liability for changes in the property's condition discovered after removal from the specified f.o.b. location.

(4) Repairs to or modifications of property furnished "as is" do not affect the Government's title to such property.

(e) *Changes in Government furnished property.*

(1) The Contracting Officer may increase, decrease, or substitute other Government property for the property furnished or to be furnished for performance of this contract or require use of Government furnished property in lieu of Contractor property.

(2) Except as provided in paragraph (e)(4) of this clause, any increase in the amount of property furnished for performance of this contract shall result in an equitable reduction in price or fee, and an appropriate adjustment of the contract delivery or performance dates.

(3) The Contractor may request an equitable adjustment in accordance with paragraph (g) of this clause for a decrease in or substitution for the property identified in the contract or withdrawal of authority to use property accountable under another contract in performance of this contract, provided such decrease, substitution, or withdrawal increases the costs of contract performance.

(4) If the Contracting Officer directs the Contractor to use Government furnished property in lieu of Contractor property in performance of this contract, any adjustment to the contract shall be made in accordance with the Changes clause of this contract.

(f) *Limited risk of loss.*

(1) The Contractor's liability for loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract shall be limited if the Contractor maintains a property control system that satisfies the requirements of the Government Property Control clause of this contract (hereinafter referred to as an approved system).

(2) When the Contractor maintains an approved system, the Contractor shall not be liable for loss, theft, or destruction of, or damage to, Government property accountable under this contract except loss, theft, destruction, or damage for which the Contractor is expressly responsible under the terms of this contract or loss, theft, destruction, or damage that results from—

(i) A risk expressly required to be insured under this contract but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) A risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or

(iii) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(3) Following notice from the Government's property administrator to one of the Contractor's managerial personnel that the Contractor's or a subcontractor's property control system is not in compliance with the requirements of the Government Property Control clause of this contract, the Contractor's failure to correct its system or to have a subcontractor's system corrected within the dates specified by the Government's property administrator, or such other mutually agreed dates, shall be considered willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. The Contractor shall be liable for any loss, theft, or destruction of, or damage to, the Government furnished property accountable under this contract except such loss, theft, destruction, or damage that the Contractor can establish by clear and convincing evidence—

(i) Did not result from the Contractor's failure to maintain an approved system; or

(ii) Occurred while an approved system was maintained by the Contractor.

(4) Except as provided in paragraphs (f)(3)(i) and (ii) of this clause, the Contractor shall be liable for loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract immediately upon notice by certified mail that the Government has withdrawn approval of the Contractor's property control system.

(5) The Contractor is not liable for Government furnished property properly consumed in performing this contract. The Contractor shall have no liability for loss, theft, or destruction of, or damage to, Government property furnished for performance of services entirely on real property owned or leased by the Government when the Contractor does not control the use of, or access to, such property.

(6) The Contractor's transfer of Government furnished property to the possession and control of a subcontractor, does not affect the Contractor's liability for loss, theft, or destruction of, or damage to, that property.

(7) Except as provided in paragraph (f)(8) of this clause, the Contractor shall notify the Government's property administrator in writing promptly following the loss, theft, or destruction of, or damage to, Government furnished property. Such notice shall identify—

(i) Lost, stolen, destroyed, or damaged Government property by description, contract number, national stock number (if known), and either part number or identification number;

(ii) The date a loss or theft was discovered or damage or destruction occurred and, if known, the circumstances;

(iii) Each property item's acquisition cost;

(iv) The contracts affected;

(v) All known interests in commingled property of which Government furnished property is a part; and

(vi) The insurance, if any, covering any part of or interest in such commingled property.

(8) The Contractor is not required to provide notice of loss, theft, or destruction of, or damage to, low value property that the Contractor does not need for continued performance of this contract until contract

completion or termination. Such notice shall include the information required by paragraph (f)(7) of this clause.

(9) The Contractor shall take all reasonable action to protect damaged Government furnished property from further damage and to physically separate such property from all other property.

(10) The Contractor shall repair, renovate, or take such other action with respect to lost, stolen, damaged, or destroyed Government furnished property as the Contracting Officer directs and adjust the property records accordingly. When such repair, renovation, or action is not the Contractor's responsibility under this contract, the Contractor shall be entitled to an equitable adjustment in accordance with paragraph (g) of this clause. Contractor-responsible repairs to, or replacement of, Government furnished property shall be accomplished at no change price or fee.

(11) The Contractor shall not include in the price or fee of this contract any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss, theft, or destruction of, or damage to, Government furnished property except to the extent the Government might have expressly required the Contractor to carry such insurance under another provision of this contract.

(12) If the Contractor is reimbursed or otherwise compensated for any loss, theft, or destruction of, or damage to, Government furnished property, the Contractor shall use the proceeds to repair, renovate, or replace such property or equitably reimburse the Government, as directed by the Contracting Officer, and adjust the property records accordingly.

(13) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, or destruction of, or damage to, Government furnished property. When requested by the Contracting Officer, the Contractor shall, at Government expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(g) *Equitable adjustments.* (1) Equitable adjustments shall be the Contractor's exclusive remedy for Government actions under this clause and shall be made in accordance with the procedures of the Changes clause of this contract. The Government shall not be liable to suit for breach of contract for—

(i) Any delay in delivery of Government furnished property;

(ii) Delivery of Government furnished property in a condition not suitable for its intended use;

(iii) An increase or decrease in, or substitution of, Government furnished property; or

(iv) Failure to repair or replace Government furnished property when the Government is responsible for repair or replacement.

(2) An equitable adjustment for Government furnished property that is not in a condition suitable for intended use or the withdrawal or substitution of Government furnished property may include an amount for the restoration and rehabilitation of the Contractor's premises caused by such condition, withdrawal, or substitution.

(h) *Maintenance responsibilities.* (1) The Contractor is responsible for the maintenance of Government furnished property accountable under this contract, including such property stored at a Contractor managed site. The Contractor shall perform all maintenance, including preventive maintenance, necessary to assure that Government furnished property remains suitable for its intended use unless the Contracting Officer specifically relieves the Contractor of its maintenance responsibility for a particular item or class of items. If routine and preventive maintenance are not sufficient to sustain a property item's suitability for intended use, the Contractor shall notify the Contracting Officer promptly and request direction regarding repair or replacement.

(2) The Contractor shall notify promptly the Government's property administrator of the need for any replacement of, or major repair or rehabilitation to, Government furnished property discovered during its maintenance activities and shall not effect such repair, replacement, or rehabilitation unless authorized to do so by the Contracting Officer.

(i) *Return of Government furnished property.* If this contract requires Government furnished property to be returned directly to the Government and not entered into the property disposal process—

(1) The Contractor shall notify the Contract Administration Office of its intent to return such property at least 10 working days prior to return. Notices shall identify the contracts under which the items are accountable and provide each item's name, description, and national stock number, if known, or part number or identification number.

(2) The property shall be returned to the Government in a condition suitable for its intended use except—

(i) Lost, stolen, or destroyed property that the Government has determined will not be replaced;

(ii) Damaged property that the Government has determined will not be repaired;

(iii) Property consumed in performance of this contract;

(iv) Property attached to, incorporated into, or delivered with, a deliverable end item; or

(v) Property furnished "as is" shall be returned in equal or better condition than when furnished to the Contractor.

(j) *Disposal of Government furnished property.*—(1) *Inventory disposal schedules.* Except as provided in paragraph (i) or (j)(2) of this clause, the Contractor shall identify Government furnished property no longer required for performance of this contract using Standard Form 1428, Inventory Disposal Schedule. Unless the plant clearance officer has agreed to a different submission basis, or the contract requires inventory disposal schedules to be submitted electronically, the Contractor shall prepare separate inventory disposal schedules for: special test equipment with general purpose components; special test equipment that does not contain general purpose components; printing equipment; automatic data processing equipment; nonnuclear hazardous materials; and nuclear materials. Property with the same description, condition code, and reporting location may be grouped in a single line item. Special test equipment shall be described in sufficient detail to permit an understanding of the special test equipment's intended use. The Contractor may annotate the schedule to identify test equipment the Contractor wishes to purchase from the Government or general purpose components thereof the Contractor wishes to purchase or use in the performance of other Government contracts.

(2) *Scrap Lists.* Contractors that have Government approved scrap procedures may prepare scrap lists (provided such lists are consistent with the approved scrap procedures) in lieu of inventory disposal schedules except for scrap that—

(i) Requires demilitarization;

(ii) Is a classified item;

(iii) Is generated from classified items;

(iv) Contains hazardous materials; or

(v) Is dangerous to the public health, safety, or welfare.

(3) *Corrections.* If the plant clearance officer finds that property identified on an inventory disposal schedule or scrap list is not accountable under this contract or is not in the quantity or condition indicated on the inventory disposal schedule or scrap list, the plant clearance officer may require the Contractor to correct the inventory disposal schedule or scrap list, may reject such schedules or lists at any time, or may require submission of an inventory control schedule in lieu of a scrap list.

(4) *Submission requirements.* Inventory disposal schedules or scrap lists shall be submitted to the plant clearance officer for approval no later than—

(i) 30 days following the Contractor's determination that a Government furnished property item is no longer required for performance of the contract;

(ii) 60 days following completion of contract deliveries or performance or such longer period as may be approved by the plant clearance officer; or

(iii) 120 days following contract termination in whole or in part or such longer period as may be approved by the Contracting Officer.

(5) *Inventory schedule adjustments.* The Contractor shall provide the plant clearance officer at least 10 working days advance written notice of its intent to remove a Government furnished property item, including an item identified as scrap, from an approved inventory disposal schedule. Unless the plant clearance officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(6) *Storage.* The Contractor shall store the Government furnished property identified in an inventory disposal schedule pending receipt of disposal instructions. If the Government fails to provide disposal instructions within 120 days following receipt of an acceptable inventory disposal schedule, the Contractor might be entitled to an equitable adjustment for costs incurred to store such property on or after the 121st day following receipt of an acceptable schedule.

(7) *Disposal.* Except as provided in paragraph (j)(7)(i) of this clause, Government furnished property shall not be disposed of until the Contractor has been authorized to do so by the plant clearance officer.

(i) If the Government does not provide disposition instructions to the Contractor within 60 days following receipt of an acceptable scrap list, the Contractor may dispose of the listed scrap.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government furnished property as directed by the plant clearance officer. The Contractor shall remove and destroy any markings identifying the property as Government property when the plant clearance officer directs disposal by sale or donation, notifies the Contractor that the Government has abandoned the property, or directs the Contractor to scrap the property.

(iii) The net proceeds from a disposal action of scrapped Government furnished property shall be credited to the contract under which the Government furnished property was accountable or, when scrapped Government furnished property cannot be segregated from other scrap, to an appropriate overhead account. The Contractor shall credit the net proceeds or other disposal actions in accordance with instructions provided by the plant clearance officer.

(iv) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any adjustment in contract price incident to the Contracting Officer's direction to demilitarize Government furnished property shall be made in accordance with paragraph (g) of this clause.

(8) *Contractor removal of property.* The Contractor must obtain the plant clearance officer's approval to remove Government furnished property from its premises prior to receipt of final disposition instructions. If approval is granted, the Contractor shall transport and store the property at no change in price or fee. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of liability for loss, theft, or destruction of, or damage to, such property.

(9) *Subcontractor inventory disposal schedules.* When the Contractor permits a subcontractor or supplier to use, at a subcontractor or supplier managed site, Government property furnished to the Contractor for performance of this contract, the Contractor shall require the subcontractor or supplier to submit inventory disposal schedules or scrap lists to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment and restoration of Contractor's premises.* (1) The Government shall not abandon Government furnished property that is or contains a hazardous material at a Contractor-owned location without the Contractor's written concurrence. The Contractor may request an equitable adjustment incident to such agreement.

(2) The Government, upon notice to the Contractor, may abandon any nonhazardous Government property in place at which time all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances and, except as provided in paragraphs (g)(2) and (k)(1) of this clause, has no liability for such restoration or rehabilitation.

(l) *Overseas contracts.* In a contract performed outside the United States, its territories, or possessions, the words "Government" and "Government furnished," as used in this clause, mean "United States Government" and "United States Government furnished," respectively.

(End of clause)

Alternate I (XXX 19XX). As prescribed in 245.102(a)(2), substitute the following paragraph (f) for paragraph (f) of the basic clause:

(f) *Risk of loss.*

(1) Except as provided in paragraph (f)(3) of this clause, the Contractor is liable for any loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract.

(2) Contractor-responsible repairs to, or replacements of, Government furnished property shall be accomplished at no change in price or fee.

(3) The Contractor is not liable for—

(i) Government furnished property properly consumed in performing this contract; or

(ii) Loss, theft, or destruction of, or damage to, Government furnished property when the Contractor is providing services performed entirely on real property owned or leased by the Government and the Contractor does not control the use of, or access to, the Government furnished property.

(4) Except as provided in paragraph (f)(5) of this clause, the Contractor shall notify the Government's property administrator in writing promptly following the loss, theft, or destruction of, or damage to, Government furnished property. Such notice shall identify—

(i) Lost, stolen, destroyed, or damaged Government property by description, contract number, national stock number (if known), and either part number or identification number;

(ii) The date a loss or theft was discovered or damage or destruction occurred and, if known, the circumstances;

(iii) Each property item's acquisition cost;

(iv) The contracts affected;

(v) All known interests in commingled property of which the Government property is a part; and

(vi) The insurance, if any, covering any part of or interest in such commingled property.

(5) The Contractor is not required to provide notice of loss, theft, or destruction of, or damage to, low value property that the Contractor does not need for continued performance of this contract until contract completion or termination. Such notice shall include the contract number and each such property item's acquisition cost, description, national stock number (if known), and either its part number or identification number.

(6) The Contractor shall take all reasonable action to protect damaged Government furnished property from further damage and to physically separate such property from all other property.

(7) The Contracting Officer may replace, direct the Contractor to repair or replace, or direct the Contractor to take other appropriate action regarding lost, stolen, damaged, or destroyed Government furnished property for which the Government has specifically assumed such risks in this contract. When lost, damaged, stolen, or destroyed Government furnished property is replaced by the Government or the Contractor, the replacement property shall be entered into the property control system as a Government furnished property item. Any equitable adjustment incident to such direction shall be determined in accordance with paragraph (g) of this clause.

8. Section 252.245–7002 is added to read as follows:

252.245–7002 Right to Title—Equipment, Special Tooling, and Special Test Equipment.

As prescribed in 245.102(b)(i), use the following clause:

Right to Title—Equipment, Special Tooling, and Special Test Equipment (XXX 19XX)

(a) *Definitions.*

As used in this clause—

"Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; or operations at a site connected with performance of this contract.

"Equipment" means items whose use is not limited to, or with only minor modification would be limited to, the development, production, or maintenance of a particular item or the performance of a particular service. The term includes, but is not limited to, automatic data processing equipment, office equipment, construction equipment, hand tools, machine tools (other than special tooling), test equipment (other than special test equipment or components thereof), furniture, and vehicles.

"Government property" means property the Government owns or leases.

"Government furnished property" means property provided by the Government to a contractor for performance of a contract.

"Low value property" means equipment, special tooling, or special test equipment that has an acquisition cost of $2,500 or less and is not sensitive property.

"Material" means property to be consumed or expended to perform a service or produce a deliverable end item and property incorporated into or attached to an end item. The term includes assemblies, components, parts, raw and processed materials, and supplies that may be consumed in normal use in performing a contract. It does not include equipment, real property, special test equipment, special tooling, or unique Federal property.

"Nonprofit organization" means a business entity organized and operated exclusively for

charitable, scientific, or educational purposes, the net earnings of which do not inure to the benefit of any private shareholder or individual, that is exempt from Federal income taxation under section 501 of the Internal Revenue Code and does not conduct a substantial portion of its activities carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office.

"Personal property" means property of any kind or interest in it except real property, battleships, cruisers, aircraft carriers, destroyers, submarines, and records of the Government.

"Plant clearance officer" means a person appointed to perform plant clearance functions.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Preventive maintenance" means regularly scheduled maintenance performed to sustain suitability for intended use and detect and correct minor deficiencies before they result in serious consequences.

"Property" means real and personal property.

"Property administrator" means a person appointed to perform Government property administration.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

"Scrap" means personal property that has no value except its basic metallic, mineral, or organic content.

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that must be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Special test equipment" means a test unit or units designed, fabricated, or modified to accomplish special purpose testing, groupings of such items, that are interconnected and interdependent so as to become a new functional entity.,

"Special tooling" means items, such as jigs, dies, fixtures, molds, patterns, taps, gauges, or other equipment and manufacturing aids, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development, production, repair, or maintenance of particular supplies or components thereof, or to the performance of particular services.

"Unique Federal property" means Government owned personal property, or components thereof, that is specially designed to perform or support the mission of one or more Federal agencies and is not available to the public.

"Work in process" means bench stock materials, complete or incomplete fabricated parts, subassemblies, assemblies, and similar items that are created during production of deliverable end items or are required to construct special tooling or special test equipment needed to produce deliverable end items.

(b) *Right to title.—(1) Fixed-price contracts.* The Government has the right, at no change in contract price, to take title to each special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(2) *Cost-reimbursement contracts.* The Government has the right, at no change in cost or fee, to take title to each—

(i) Special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(ii) Item of equipment acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is greater than $2,500 and is allocable to this contract as a direct cost.

(3) *Expiration.* The Government's rights in paragraphs (b)(1) and (b)(2) of this clause end upon expiration of the time period in paragraph (e) of this clause.

(c) *Reports.* (1) The Contractor shall submit to the Contracting Officer a report identifying right to title items as soon as practicable during contract performance but not later than the earlier of—

(i) 90 days prior to completion of scheduled deliveries (other than technical data) under this contract; or

(ii) 30 days following the Contractor's determination that a right to title item is no longer required for contract performance.

For each right to title item or groups of identical items, the reports shall identify the item's or group's—

(i) Nomenclature;

(ii) Quantity;

(iii) Acquisition cost;

(iv) Contract number;

(v) Part number(s) made or tested; and

(vi) Identification number.

(d) *Storage.* The Contractor shall store each right to title item identified in a report required by paragraph (c) of this clause at no increase in fee or price. The Contractor's storage obligations for a right to title item end when the Government notifies the Contractor that it has taken title to that item or upon expiration of the Government notice period. Items shall be stored in a manner sufficient to preserve capability and provide protection from damage. If the Government requires items to be stored subsequent to the Government's assumption of title, the Contractor might be entitled to an equitable adjustment as provided in paragraph (g) of this clause.

(e) *Assumption of title.* (1) The Government must notify the Contractor that it is taking title to an item or items within 120 days, or such other period mutually agreed upon, following receipt of a report required by paragraph (c) of this clause or other written notice from the Contractor identifying the item or items as no longer required for performance of this contract.

(2) The Government's notice shall be in writing, shall identify the item(s), and may, in any combination—

(i) Provide packing, packaging, marking, and shipping instructions;

(ii) Direct the Contractor to prepare the property for storage at the Contractor's facility or a Government facility; or

(iii) Provide instructions when accountability is to be transferred to another contract.

(3) The Contractor's storage obligations are not diminished if the Government notice period, or any extension thereof, extends beyond the date contract deliveries are completed.

(f) *Marking.* The Contractor shall legibly and conspicuously mark property to which the Government has taken title under this contract with the phrase "U.S. Government Property" (or a similar phrase that conveys Government ownership), as soon as practicable following the Government's assumption of title.

(g) *Price adjustment.* The cost and fee of a cost-reimbursement contract or the price of a fixed-price contract may be equitably adjusted for costs incurred by the Contractor to store, prepare for storage, package, pack, or mark for shipment, the equipment, special tooling, or special test equipment to which the Government has taken title. Any adjustment shall be made in accordance with the procedures of the Changes clause of this contract and only to the extent the Contracting Officer's actions under paragraph (e) of this clause required the Contractor to incur costs that it would not have incurred under customary commercial practices.

(h) *Risk of loss.* The Contractor is responsible for any loss, theft, or destruction of, or damage to, right to title items during the period commencing upon the Government's delivery of the notice required by paragraph (e) of this clause and ending upon placement aboard a carrier's conveyance (f.o.b. origin) or delivery at the specified f.o.b. destination point.

(i) *Flow down.* The Contractor shall insert this or a substantially similar clause in all contracts and similar instruments with its first-tier subcontractors or suppliers, other than subcontractors or suppliers of commercial items, that will fabricate or acquire equipment, special tooling, or special test equipment for performance of this contract.

(End of clause)

ALTERNATE I (XXX 19XX). As prescribed in 245.102(b)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Right to title—(1) General.* The Government has the right, at no change in cost or fee, to take title to each—

(i) Special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(ii) Item of equipment acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is greater than $2,500 and is allocable to this contract as a direct cost.

(2) *Expiration.* Except as provided in paragraph (b)(3) of this clause, the Government's rights in paragraphs (b)(1)(i) and (b)(1)(ii) of this clause end upon expiration of the time period in paragraph (e) of this clause.

(3) *Relinquishment of rights.* Prior to purchasing equipment, special tooling, or special test equipment with Government funds provided for the conduct of basic or applied research, nonprofit organizations whose primary purpose is the conduct of scientific research or nonprofit institutions of higher education (see FAR 35.014) may request the Contracting Officer to relinquish the Government's right to take title of such items. If the Contracting Officer agrees, prior to purchase, the Contractor shall have title to each such item having an acquisition cost less than $5,000. The Contractor shall furnish the Contracting Officer a list of all purchased property to which the Government has relinquished right to title within 10 days following the end of the calendar quarter during which the Contractor receives the property. The Contractor agrees that it will not allocate depreciation or amortization costs for such property to any existing or future Government contract and such property may be used by the Government or its subcontractors without charge in performance of any Government contract or subcontract thereunder. As a condition for the Government's relinquishing its rights to title under this clause, the Contractor, by signing this contract, agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination (42 U.S.C. 2000d) under this contemplated financial assistance (title to equipment, special tooling or special test equipment).

9. Section 252.245–7003 is added to read as follows:

252.245–7003 Government Property Control.

As prescribed in 245.102(c)(i), use the following clause:

Government Property Control (XXX 19XX)

(a) *Definitions.* The terms defined in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract have the same meaning in this clause.

(b) *General.* (1) This clause is applicable to Government furnished property and Government property stored by the Contractor at the Government's direction including property to which the Government has taken title under the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract. It does not apply to property in which title is vested in the Government solely as a result of the financing provisions of this contract.

(2) The Contractor is responsible for the maintenance, protection, and preservation of Government property in its or its subcontractors' possession. The Contractor shall account for such property as required by this contract.

(3) If the Contractor does not have a property control system that is approved by the Government's property administrator, it shall establish a system that satisfies the requirements of this clause within 90 days following contract award (or such other mutually agreeable period). Notwithstanding any other provision of this contract regarding liability for loss, theft, or destruction of, or damage to, Government property in the Contractor's or its subcontractors' possession, the Contractor shall be liable for such loss, theft, destruction, or damage until its system is approved by the Government's property administrator. The Contractor shall maintain its system during the period Government property is in its or its subcontractors' possession.

(4) The Contractor should use its existing property control system or a modification thereof when the existing or modified system satisfies the requirements of this clause.

(c) *Control system requirements.* The property control system shall include written processes for—

(1) Assessing the system's efficiency and effectiveness, recommending corrective action or general improvements, and implementing appropriate changes;

(2) Obtaining approval of property actions from the responsible Government representative no later than the time specified in this contract (when such approval is required by this contract) and appropriately documenting such approval;

(3) Inspecting property acquired by the Contractor or furnished by the Government for performance of this contract upon receipt;

(4) Identifying Government property received by the Contractor that was intended for other persons or discrepancies between the type, quantity, or condition of Government furnished property shipped to and actually received by the Contractor and initiating corrective action;

(5) Promptly entering all Government property into the property control system;

(6) Ensuring that Government property is properly classified (see paragraph (f)(2)(viii) of this clause);

(7) Ensuring that Government property's used only as authorized by the Contracting Officer;

(8) Controlling the distribution and return of pilferable property;

(9) Scheduling and monitoring Government property maintenance to ensure timely performance and recording of all maintenance actions;

(10) Accurately recording by type and quantity Government furnished material consumed during contract performance;

(11) Performing, reporting, and recording all inventories required by this contract;

(12) Identifying and reporting lost, damaged, or destroyed Government property and generating corrective action recommendations;

(13) Maintaining special security for classified or sensitive property commensurate with the property's security classification, special handling requirements, or both;

(14) Accurately preparing and timely submitting the records and reports required by this contract;

(15) Ensuring the subcontractors have adequate procedures for the control and protection of Government property;

(16) Justifying the continued need for Government property to perform this contract;

(17) Moving and storing Government property in a manner commensurate with the property's handling and storage requirements; and

(18) Disposing of Government property in accordance with the requirements of this contract.

(d) *Access.* The Government shall have access, at all reasonable times, to the premises at which any Government property is located and to the Contractor's Government property records and supporting information.

(e) *Property control system submission, review, and approval.* (1) Except as provided in paragraph (e)(2) of this clause, offerors shall submit their written property control systems and processes with their offer if—

(i) The offeror does not have an existing property control system or its existing system has not been approved by a Government property administrator;

(ii) The offeror's property control system last was approved, or approval validated, more than 2 years prior to the date of its offer;

(iii) A Government property administrator has requested corrections to the offeror's system or procedures and such corrections have not been made; or

(iv) Approval of the system has been withdrawn.

(2) The submission requirements in paragraph (e)(1) of this clause do not apply to offerors that have a Government property system that has been approved or validated by the Government no more than 2 years prior to the time for submission offers. Such offerors are required only to submit to the Government's property administrator, within 90 days following contract award, changes required to conform the system with requirements in this contract. The submission date may be extended by the Government's property administrator if the property administrator determines that an extension is warranted.

(3) The Government's property administrator shall review the Contractor's system for conformance with contract requirements and approve or require corrections to the system and its implementing procedures. The Contractor shall accomplish the required corrections at no change in price or fee.

(4) The Government may review the Contractor's previously approved system or require the Contractor to review a subcontractor's system to assure compliance with contract requirements. The Government's property administrator may validate approval of, require corrections to, or with the Administrative Contracting Officer's concurrence, withdraw approval of the Contractor's system or require the Contractor to have a subcontractor's system corrected. The Contractor shall implement corrections required by the Government's property administrator by the date specified by the property administrator or such other date agreed upon at no change in price or fee. The Contractor's failure to implement corrections in a timely manner might result in the system's approval being withdrawn.

(5) The Contractor shall make available to the Government's property administrator all records and related information reasonably required to verify that the Contractor's or a subcontractor's property control system conforms to contract requirements. Any disagreement as to the amount or type of information required for such verification shall be referred to the Administrative Contracting Officer for resolution.

(f) *Property records and supporting information*—(1) *General.* (i) The Contractor shall establish or maintain a property record that is current and complete for each Government property item in its or its subcontractors' possession. Identical items may be consolidated in a single property record if the consolidated record provides the information required by this clause. The Contractor shall identify useable components permanently removed from Government property as Governmental property items, enter such items into its property control system, and establish and maintain appropriate property records. Property records created by a subcontractor that has an approved property system may be used in lieu of creating new records.

(ii) If the Contractor has an approved property control system, its documents evidencing receipt and issue shall be the property control records for Government material issued for immediate consumption.

(iii) When the Government is responsible for the replacement of a property item under this contract and has elected—

(A) To replace or have the Contractor replace the item, the Contractor shall annotate appropriately the property record for the item being replaced, close that record, and create a new property record for the replacement item; or

(B) Not to replace or have the Contractor replace the item, the Contractor shall close the property record for that item.

(iv) The Government shall provide the acquisition cost for Government furnished property within 30 days following delivery of the property to the Contractor. The Contractor shall notify the Government's property administrator promptly if the acquisition cost information is not received within the period.

(v) Property records are not required for work in process.

(2) *Standard information.* Each property control record shall contain the following information.

(i) The item's name, description, and national stock number (if the item has a national stock number). The national stock number for property controlled by documents evidencing that receipt and issue is not required until property disposal.

(ii) Contract number or equivalent code designation.

(iii) Quantity received, issued, and on hand.

(iv) The date of the most recent physical inventory or other posting reference.

(v) Acquisition cost.

(vi) Current location (for low value property, identify the initial location only).

(vii) The most recent transaction date.

(viii) The property's classification. (Use only one of the following for each property item: Land, Buildings, Other Real Property, Equipment, Special Test Equipment, Special Tooling, Unique Federal Property, or Material.)

(3) *Additional information*—(i) *Special test equipment records.* The Contractor shall provide the information required by paragraph (f)(2) of this clause for each general purpose test equipment item that is a removable or reusable component or Government owned special test equipment it removal and reuse is economically feasible.

(ii) *Equipment records.* Each record shall include the manufacturer's name, Commercial and Government Entity (CAGE) code or equivalent information, serial number, and model or part number.

(iii) *Real property records.* (A) Records are not required for portable buildings or facilities specifically acquired or constructed for tests that will result in the destruction of such buildings or facilities.

(B) Real property records must be itemized, indexed, and contain a description of the property, its location, original acquisition cost, a description of property alterations made or construction work performed by the Contractor including an identification of the construction sites supporting such alterations or construction, and separately identify the cost of such alterations or construction. Supporting documentation shall include maps, drawings, plans, specifications, and, if necessary, supplementary data needed to completely describe and value the property.

(C) Costs incurred by the Government or the Contractor, to acquire, construct, alter, or improve Government owned or leased real property, including additions, expansions, extensions, conversions, shall be added to the property's acquisition cost if they increase the value, life, utility, capability, or serviceability of the property.

(D) The real property records shall be modified and annotated with a statement of the pertinent facts when property is sold, transferred, donated, destroyed, abandoned by the Government in place, or condemned.

(iv) *Records of maintenance actions.* The property records for items requiring maintenance shall contain the maintenance schedule, the dates maintenance actions were performed, and identify and deficiencies discovered.

(v) *Scrap records.* (A) The scrap records shall provide the—

(1) Contract number or equivalent code designation from which the scrap was derived;

(2) Scrap classification by material content; and

(3) Disposition and disposition dates.

(B) When Contractor and Government owned property of the same stock or classification are used to produce an item or any component thereof and property scrapped during such production cannot be identified as Contractor or Government owned property, the Government property scrap records shall reflect a proportional, equitable share of such scrap.

(vi) *Property returned under warranty.* The Contractor shall establish a separate property record for each item returned for correction under a warranty and maintain the records on a contract-by-contract basis. The records shall identify the date received, the contract number under which the item was returned, the corrective action performed, and the date the item is returned to the Government. Once a property record has been established, identical items received for corrective action shall be added to the established record and the information required by this paragraph maintained for each item.

(vii) *Sensitive property.* Property records shall legibly and conspicuously identify sensitive property.

(g) *Reports*—(1) *Government property.* The Contractor shall report all Government property accountable under this contract that is in its or its subcontractors' possession as of September 30 of each calendar year or upon completion of all property disposal actions under this contract, whichever is sooner. The report shall be prepared using Standard Form 1422, U.S. Government Property in the Custody of Contractors (or an agency equivalent furnished by the Contracting Officer), and submitted to the Government's property administrator no later than October 31 of each calendar year.

(2) *Misdirected Government property.* The Contractor shall submit a written report to the Government's property administrator immediately following receipt of Government property intended for another person or Government property not required for performance of a Government contract and request disposition instructions. To the extent practical, the report shall identify the shipment's content, the intended recipient, the carrier that made delivery, the Government activity from which the shipment originated, and the shipment's current location.

(3) *Late Government furnished property.* The Contractor shall report to the Contracting Officer, with a concurrent copy to the Government's property administrator, a failure to receive Government furnished property at the time stated in the contract or, when a time is not stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates. Each report shall forward the Contractor's estimate of the extent to which such failure has affected or might affect contract performance.

(h) *Physical inventories.*—(1) *Periodic.* Except for low value property and work in process, the Contractor shall periodically physically inventory all Government property in its possession. The Contractor, with the approval of the property administrator, shall establish the method, frequency, and procedures for such inventories to ensure that the existence and location of such property are accurately established and the records and reports required by this clause are complete and accurate. For purposes of this clause, electronic, optical, electro-magnetic, or similar inventory systems approved by the Government's property administrator satisfy the requirement for physical inventories.

(2) *Contract termination or completion inventories.* The Contractor shall inventory all property furnished by the Government and all property to which the Government has taken title under this contract immediately following a notice of termination or partial termination of this contract or upon completion of deliveries or performance under the contract except property that is authorized for use on a follow-on or other Government contract. Such property does not have to be inventoried if the Contractor has notified the property administrator that record balances have been transferred to the receiving contract.

(3) *Restriction.* The Contractor personnel who perform physical inventories shall not be the same individuals who maintain the property records required by this contract or have custody of the property unless authorized to do so by the property administrator.

(i) *Markings.* Promptly following receipt of Government furnished property, the Contractor shall determine whether the property bears a Government ownership marking, legibly and conspicuously mark unmarked property with the phrase "U.S. Government Property" (or a similar phrase that conveys Government ownership), and replace any control numbers affixed by others with the Contractor's control number.

(j) *Overseas contracts.* In a contract performed outside the United States, its territories, or possessions, the words "Government" and "Government furnished," as used in this clause, mean "United States Government" and "United States Government furnished," respectively.

(End of clause)

ALTERNATE I (XXX 19XX) As prescribed in 245.102(c)(ii), substitute the following paragraphs (f) and (g) for paragraphs (f) and (g) of the basic clause:

(f) *Property records.* The Contractor shall establish a separate property record for each Government property item returned for correction under a warranty and maintain the records on a contract-by-contract basis. The records shall identify the item's name, description, property classification, and national stock number (if the item has a national stock number), the date received, the contract number under which the item was returned, the corrective action performed, and the date the item is returned to the Government. Once a property record has been established, identical items received for corrective action shall be added to the established record and the information required by this paragraph maintained for each item.

(g) *Reports.*—(1) *Misdirected Government property.* The Contractor shall submit a written report to the Government's property administrator immediately following receipt of Government property intended for another person or Government property not required for performance of a Government contract and request disposition instructions. To the extent practical, the report shall identify the shipment's content, the intended recipient, the carrier that made delivery, the Government activity from which the shipment originated, and the shipment's current location.

(2) *Late Government furnished property.* The Contractor shall report to the Contracting Officer, with a concurrent copy to the Government's property administrator, a failure to receive Government furnished property at the time stated in the contract or, when a time is not stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates. Each report shall forward the Contractor's estimate of the extent to which such failure has affected or might affect contract performance.

[FR Doc. 97–27438 Filed 10–16–97; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97–D029]

Defense Federal Acquisition Regulation Supplement; Reporting of Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to raise the threshold for reporting contract performance outside the United States from $25,000 to the simplified acquisition threshold, under contracts exceeding $500,000.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D029 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D029 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.225–7026, Reporting of Contract Performance Outside the United States, presently requires a contractor to submit a report to the Deputy Director of Defense Procurement (Foreign Contracting) under a contract exceeding $500,000, when any part that exceeds $25,000 will be performed outside the United States, unless a foreign place of performance is the principal place of performance and was indicated as such in the offer for the contract. This rule proposes to increase the $25,000 threshold to the simplified acquisition threshold ($100,000). In addition, the rule proposes to increase the threshold for incorporation of the clause in first-tier subcontracts from $100,000 to $500,000. These amendments are expected to reduce information collection requirements by approximately 40 percent.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Annually, approximately 55 contractors submit a total of approximately 1400 reports of contract performance outside the United States. Reporting varies from 1 to 50 reports per contractor. Most of the contractors that submit the reports are not small businesses, and the report is not excessively time-consuming. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D029 in correspondence.

C. Paperwork Reduction Act

The rule will result in a reduction of paperwork burden on contractors. The clause at DFARS 252.225–7026 presently has an approved annual information collection requirement of 900 hours under Office of Management and Budget Clearance Number 0704–0229. Based on a review of 1995 and 1996 data, it is estimated that the amendments in this rule will reduce annual information collection requirements by approximately 360 hours.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 252 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.225–7026 is amended by revising the clause date and the introductory text of paragraph (a)(3); by redesignating paragraphs (d)(i), (d)(ii), and (d)(iii) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and by revising paragraph (c)(1). The revised text reads as follows:

252.225–7026 Reporting of Contract Performance Outside the United States.

* * * * *

REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (XXX 19XX)

(a) * * *

(3) Contracts exceeding $500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is—

* * * * *

(c) * * *

(1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding $500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

* * * * *

[FR Doc. 97–27437 Filed 10–16–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Atlantic Sturgeon (Acipenser oxyrhinchus oxyrhinchus) in the United States as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of 90-day petition finding and request for information.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively the "Services") announce a 90-day finding for a petition to add the Atlantic sturgeon (*Acipenser oxyrhinchus oxyrhinchus*), where it continues to exist in the United States, to the List of Threatened and Endangered Wildlife and to designate critical habitat. The Services find that the petition presents substantial information indicating that the petitioned action to list Atlantic sturgeon may be warranted. The Services are now initiating a status review to determine whether listing of the Atlantic sturgeon in its North American range, including Atlantic Canada, is warranted, and to prepare a 12-month finding. To assure that the review is comprehensive, the Services are soliciting information and data on this species.

DATES: The finding announced in this document was made on October 2, 1997. Comments and materials related to this petition finding must be submitted to National Marine Fisheries Service, Northeast Region, Habitat and Protected Resources Division, at the **ADDRESS** below, by December 16, 1997, to be considered in the 12-month finding.

ADDRESSES: Information, comments or questions concerning the Atlantic sturgeon petition should be submitted to Christopher Mantzaris, Chief, Habitat and Protected Resources Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930. The petition, finding, supporting data, and comments are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Colligan (508–281–9116) or Ray Santos (508–281–9103) at the above address, or Anne Hecht of the U.S. Fish and Wildlife Service (508–443–4325).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531–1544) requires that the Services make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Services are required to commence a status review of Atlantic sturgeon and to disclose their findings within 12 months of receipt of the petition (12-month finding).

On June 2, 1997, a petition dated May 29, 1997, was received by the Services from the Biodiversity Legal Foundation. The petitioner requested the Services to list Atlantic sturgeon, in the United States where it continues to exist, as threatened or endangered and to designate critical habitat within a reasonable period of time following the listing. The petitioner submitted biological, distributional, and historical information on Atlantic sturgeon populations and identified potential threats including commercial fishing (directed and incidental), river damming, habitat loss, and water quality. Also, the petitioner cited scientific references in support of the petition.

There are two subspecies of Atlantic sturgeon. The first subspecies, *Acipenser oxyrhinchus desotoi*, known as Gulf sturgeon, occurs from the Mississippi River to Tampa Bay, Florida. This subspecies was listed in 1991 as threatened under the ESA. The petition and this finding address the second subspecies, *Acipenser oxyrhinchus oxyrhinchus*, known as the Atlantic sturgeon, which is distributed in the western North Atlantic from Hamilton Inlet, Labrador, south to the St. Lucie River, Florida.

Atlantic sturgeon are anadromous fish that may live up to 60 years, reach lengths of up to 4 meters (m) (14 feet (ft)), and weigh over 363 kilograms (kg) (800 pounds (lb)). They are distinguished by armor-like plates and a long protruding snout. Ventrally located on the snout is a protruding mouth with four barbels crossing in front. Sturgeon are omnivorous benthic feeders eating opportunistically and filtering quantities of mud along with their food. Adult sturgeon diets include mollusks, gastropods, amphipods, isopods, and fish. Juvenile sturgeon feed on aquatic insects and other invertebrates.

Depending on geographic location and sex, sturgeon reach sexual maturity at different ages. Males tend to reach maturity faster than females and the average age of maturity for both males and females increases with increasing latitude along the Atlantic coast. Age at sexual maturity for males ranges from 5 to 24 years, and for females, from 7 to 30 years (ASMFC 1990). Sexually mature sturgeon begin their spawning run as early as March (in the southern Atlantic coast) and as late as July (in the higher latitudes). Spawning occurs in flowing fresh or estuarine waters with a hard bottom, where the extremely adhesive eggs stick together in clusters. After hatching, juveniles may remain in fresh/estuarine waters for several years. Juveniles then head seaward to grow to maturity and join the adult migration run which can range many miles away from their home rivers.

Historical records from the early 1800s document large numbers of sturgeon in many river systems along the Atlantic coast. It does not appear that the historical range has been reduced significantly; however, remnant populations in some river systems, if not extirpated, are quite small. Systems presently known to support reproducing populations are the Hudson River in New York, the Ashepoo-Combahee-Edisto River system in South Carolina, and the Altamaha and Savannah rivers in Georgia (ASMFC 1997). In the Hudson River, numbers of juvenile sturgeon were estimated at less than 5,000 during 1994, an 80 percent decline from the 25,000 juveniles believed to have been in the Hudson during the 1970s (New York State Department of Environmental Conservation 1996). Recent documentation of gravid females and/or young of the year exists for the Delaware River (DE), James River (VA), Roanoke/Chowan and Cape Fear rivers (NC), and Santee/Cooper rivers (SC) (W. Laney, USFWS, pers. comm., 1997). Additional research is needed to determine the extent of reproduction, if any, in these rivers.

Both commercial fishing and incidental take may have a substantial effect on Atlantic sturgeon. Commercial fishing is frequently cited as a major reason for the species' decline. Historical commercial landings provide the only long-term estimates of stock abundance; unfortunately, Atlantic and shortnose sturgeon were probably not differentiated in those records. Annual commercial harvest levels reached approximately 3 million kg (7 million lb) at the end of the nineteenth century. Since that time, a severe decline took place with annual United States commercial landings not exceeding 136,000 kg (300,000 lb) (ASMFC 1990). In addition to directed commercial fishing for sturgeon, incidental catches of juvenile and adult sturgeon in State and Federal waters are frequently reported as having a substantial impact on stocks. Coast-wide, the 1987 incidental catch exceeded the directed catch (ASMFC 1990). Current information indicates that Atlantic sturgeon are taken incidentally in every commercial type of fishing gear.

Prior to 1990, commercial landings averaged between 91,000 and 136,000 kg (200,000 and 300,000 lb) per year. In 1990, the Atlantic States Marine Fisheries Commission (ASMFC), developed an Interstate Fishery Management Plan for Atlantic sturgeon regulating harvest and initiated a coordinated stock assessment from Maine to Florida. The goal of the plan is to provide framework for the restoration of Atlantic sturgeon to fishable abundance throughout its range. The plan recommended that the states control harvests by adopting either—(1) A minimum length of 2.4 m (7 ft); (2) a moratorium on all harvest; or (3) alternative measures determined to be conservationally equivalent. Coast-wide landings fell to less than 45,000 kg (100,000 lb) by 1994; but in 1996, the ASMFC determined that the current harvest levels were still too large for stock recovery. Subsequently, all but two states have banned harvest and those (Delaware and Connecticut) have reported no landings. Currently, the ASMFC is considering an amendment to the plan to institute a coast-wide moratorium. Due to the current low levels of abundance, long life cycle, and sporadic spawning, a moratorium would likely have to last decades to allow stock recovery.

Other threats to Atlantic sturgeon and their habitat include habitat loss and degradation, and disease. Dams, mostly constructed during the 1800s, destroyed riverine habitat and impeded access to upstream areas, and may have played a role in the historic decline of this species. Biologists also suspect that siltation and water pollution may be factors in recent sturgeon reproduction declines, but the extent is unknown (R. St. Pierre, USFWS, pers. comm., 1997). Transportation of white sturgeon to the Atlantic coast for the pet trade may cause genetic and health impacts (disease) to Atlantic sturgeon if released into the wild (Laney, pers. comm., 1997).

The Services have determined that the petitioners have adequately presented information about the status, distribution, and abundance of Atlantic sturgeon, in addition to having identified potential threats to the species in the United States. After review of the petition and information available within the agencies' records, the Services find that substantial information has been presented to indicate that the petitioned action to list the Atlantic sturgeon may be warranted. A status review will now be conducted on the Atlantic sturgeon in North America, including Atlantic Canada. While the petition was limited to U.S. populations of sturgeon, the Services have decided to expand their review to encompass the entire North American range. Existing information indicates Atlantic sturgeon undertake long migrations and therefore a broader scope is required to understand stock structure throughout its range.

Within one year from the date the petition was received, a finding will be made as to whether listing the Atlantic sturgeon is warranted, as required by section 4(b)(3)(B) of the ESA. The petitioner also requested that critical habitat be designated. If the 12-month finding determines that the petitioned action to list the Atlantic sturgeon as threatened or endangered is warranted, then the designation of critical habitat would be addressed at that time.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons—(1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, the Services are soliciting information concerning the following—(1) Current and historical abundance and distribution of Atlantic sturgeon; (2) existence and viability of reproducing populations; (3) threats to the species and its habitat (fresh, estuarine, and marine); (4) ongoing efforts to protect Atlantic sturgeon and their habitat; and (5) whether or not any population is threatened or endangered based upon the above listing criteria. The Services request that data, information, and comments be accompanied by—(1) Supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the person's name, address, and any association, institution, or business that the person represents. Such information may be submitted to the above address.

References Cited

ASMFC Fisheries Focus. 1997. Species profile: Atlantic Sturgeon. Atlantic States Marine Fisheries Commission, Vol. 6, Iss. 3: pp. 4–7.

ASMFC Draft Public Information Document. 1996. Amendment 1 to the Fishery Management Plan for Atlantic Sturgeon. Pp. 1–9.

ASMFC Fisheries Management Report No. 17. 1990. Fishery Management Plan for Atlantic Sturgeon. Atlantic States Marine Fisheries Commission, Nov. 1990. 73 pp.
New York State Department of Environmental Conservation. 1996. DEC Announces Emergency Moratorium on Atlantic Sturgeon. News Release dated March 22, 1996.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated: October 2, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27547 Filed 10–16–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE36

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Three Aquatic Snails as Endangered, and Three Aquatic Snails as Threatened in the Mobile River Basin of Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition findings.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*) as endangered; and the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*) as threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). These aquatic snails are found in localized portions of the Black Warrior, Cahaba, Alabama, and Coosa rivers or their tributaries in Alabama. Impoundment and water quality degradation have eliminated the six snails from 90 percent or more of their historic habitat. Surviving populations are currently threatened by pollutants such as sediments and nutrients that wash into streams from the land surface. This proposed rule, if made final, would extend the Act's protection to these six snail species.

DATES: Comments from all interested parties must be received by December 16, 1997. Public hearing requests must be received by December 1, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Hartfield at the above address, or telephone 601/965–4900, Ext. 25.

SUPPLEMENTARY INFORMATION:

Background

The Mobile River Basin (Basin) historically supported the greatest diversity of freshwater snail species in the world (Bogan *et al.* 1995), including six genera and over 100 species that were endemic to the Basin. During the past few decades, publications in the scientific literature have primarily dealt with the apparent decimation of this fauna following the construction of dams within the Basin and the inundation of extensive shoal habitats by impounded waters (Goodrich 1944, Athearn 1970, Heard 1970, Stein 1976, Palmer 1986, Garner 1990).

In 1990, the Service initiated a status review of the endemic freshwater snails of the Basin. An extensive literature survey identified sources of information on taxonomy, distribution, ecology, and status of the fauna and was used to assemble a checklist of the Basin's snails and their distributions (Bogan 1992). Field surveys and collections were made for snails and other freshwater mollusks throughout the Basin (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989–1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993–1994; J. Garner, Alabama Department of Conservation, pers. comm. 1996; J. Johnson, Auburn University, *in litt.* 1996).

Bogan *et al.* (1995) summarized the results of their efforts noting the apparent extinction of numerous snail species in the Coosa and Cahaba River drainages, and the imperiled state of many other aquatic snails in the Basin.

The taxonomy used in this proposal follows Burch (1989), which relies almost exclusively on shell morphology. Many of the Basin's freshwater snail species, particularly in the family Pleuroceridae, are known to exhibit marked clinal variation (gradual change in characters of a species that manifests itself along a geographic gradient) in shell form, some of which has been described as environmentally induced (e.g., Goodrich 1934, 1937). Four of the six species considered in this proposal belong to the family Pleuroceridae and their relationships to each other, as well as to other Pleuroceridae, are poorly understood. In order to better document taxonomic relationships among these snails, a genetic study was conducted during the status review of a select group of the Basin's Pleuroceridae (Lydeard *et al.* 1997). The four snails within this family considered herein (lacy elimia, round rocksnail, plicate rocksnail, and painted rocksnail) were included in the genetic study. This study supported their current taxonomic status (Lydeard *et al.* 1997).

The cylindrical lioplax (*Lioplax cyclostomaformis* (Lea 1841)) is a gill-breathing snail in the family Viviparidae. The shell is elongate, reaching about 28 millimeters (mm) (1.1 inches (in)) in length. Shell color is light to dark olivaceous-green externally, and bluish inside of the aperture (shell opening). The cylindrical lioplax is distinguished from other viviparid snails in the Basin by the number of whorls, and differences in size, sculpture, microsculpture, and spire angle. No other species of lioplax snails are known to occur in the Mobile Basin (see Clench and Turner 1955 for a more detailed description).

Habitat for the cylindrical lioplax is unusual for the genus, as well as for other genera of viviparid snails. It lives in mud under large rocks in rapid currents over stream and river shoals.

Other lioplax species are usually found in exposed situations or in mud or muddy sand along the margins of rivers. Little is known of the biology or life history of the cylindrical lioplax. It is believed to brood its young and filter-feed, as do other members of the Viviparidae. Life spans have been reported from 3 to 11 years in various species of Viviparidae (Heller 1990).

Collection records for the cylindrical lioplax exist from the Alabama River (Dallas County, Alabama), Black Warrior River (Jefferson County, Alabama) and tributaries (Prairie Creek, Marengo County, Alabama; Valley Creek, Jefferson County, Alabama), Coosa River

(Shelby, Elmore counties, Alabama) and tributaries (Oothcalooga Creek, Bartow County, Georgia; Coahulla Creek, Whitfield County, Georgia; Armuchee Creek, Floyd County, Georgia; Little Wills Creek, Etowah County, Alabama; Choccolocco Creek, Talladega County, Alabama; Yellowleaf Creek, Shelby County, Alabama), and the Cahaba River (Bibb, Shelby counties, Alabama) and its tributary, Little Cahaba River (Jefferson County, Alabama) (Clench and Turner 1955). A single collection of this species has also been reported from the Tensas River, Madison Parish, Louisiana (Clench 1962), however, there are no previous or subsequent records outside of the Alabama-Coosa system, and searches of the Tensas River in Louisiana by Service biologists (1995) and others (Vidrine 1996) have found no evidence of the species or its typical habitat.

The cylindrical lioplax is currently known only from approximately 24 kilometers (km) (15 miles (mi)) of the Cahaba River above the Fall Line in Shelby and Bibb counties, Alabama (Bogan and Pierson 1993b). Survey efforts by Davis (1974) failed to locate this snail in the Coosa or Alabama rivers, and more recent survey efforts have also failed to relocate the species at historic localities in the Alabama, Black Warrior, Little Cahaba, and Coosa rivers and their tributaries (Bogan and Pierson 1993a, 1993b; M. Pierson *in litt.* 1993, 1994; Service Field Records 1991, 1992, 1993).

The flat pebblesnail (*Lepyrium showalteri* (Lea 1861)) is a small snail in the family Hydrobiidae; however, the species has a large and distinct shell, relative to other hydrobiid species. This snail's shell is also distinguished by its depressed spire and expanded, flattened body whorl. The shells are ovate in outline, flattened, and grow to 3.5 to 4.4 mm (0.1–0.2 in) high and 4 to 5 mm (0.2 in) wide. The umbilical area is imperforate (no opening), and there are 2 to 3 whorls which rapidly expand. The anatomy of this species has been described in detail by Thompson (1984). The flat pebblesnail is found attached to clean, smooth stones in rapid currents of river shoals. Eggs are laid singly in capsules on hard surfaces (Thompson 1984). Little else is known of the natural history of this species.

The flat pebblesnail was historically known from the mainstem Coosa River in Shelby and Talladega counties, the Cahaba River in Bibb and Dallas counties, and Little Cahaba River in Bibb County, Alabama (Thompson 1984). The flat pebblesnail has not been found in the Coosa River portion of its range since the construction of Lay and Logan Martin Dams, and recent survey efforts have failed to locate any surviving populations outside of the Cahaba River drainage (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989–1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993–1994; J. Garner pers. comm. 1996; J. Johnson *in litt.* 1996). The flat pebblesnail is currently known from one site on the Little Cahaba River, Bibb County, and from a single shoal series on the Cahaba River above the Fall Line, Shelby County, Alabama (Bogan and Pierson 1993b).

The lacy elimia (*Elimia crenatella* (Lea 1860)) is a small species in the family Pleuroceridae. Growing to about 1.1 centimeters (cm) (0.4 in.) in length, the shell is conic in shape, strongly striate, and often folded in the upper whorls. Shell color is dark brown to black, often purple in the aperture, and without banding. The aperture is small and ovate. The lacy elimia is easily distinguished from other elimia species by a combination of characters (i.e., size, ornamentation, color).

In a recent genetic sequence study of the 16S rRNA gene, the lacy elimia was found to be very similar to the compact elimia (*Elimia showalteri*) (Lydeard *et al.* 1997). Despite their apparent close genetic relationship, the authors made no suggestion that the two species represented a single species. Upon review of Lydeard *et al.* (1997), Dillon (College of Charleston, Charleston, South Carolina, *in litt.* 1997) suggested that additional genetic studies were needed to demonstrate the genetic uniqueness of the lacy elimia. However, the Lydeard *et al.* (1997) genetic study addressed only one small genetic character of the genome of these species, and other characters strongly support the taxonomic status of the lacy elimia. The two species are allopatric (the compact elimia occurs in the Cahaba River, whereas the lacy elimia was found in the Coosa River and tributaries), and are strikingly different in size, appearance, and behavior. The compact elimia has a large, robust, smooth shell boldly colored brown and/or green, whereas the lacy elimia has a small, delicate, darkly colored, and ornamented shell. The lacy elimia is one of the few elimia snails in the Basin that does not exhibit clinal variation (Goodrich 1936). In addition, compact elimia are found grazing individually throughout shoal habitats, whereas the lacy elimia is usually found in tight clusters or colonies on larger rocks within a shoal (P. Hartfield, Jackson, MS, pers. obsv.). Allopatry, morphology, and behavior are strong characters supporting species specific status of the lacy elimia.

Elimia snails are gill breathing snails that typically inhabit highly oxygenated waters on rock shoals and gravel bars. Most species graze on periphyton growing on benthic substrates. Individual snails are either male or female. Eggs are laid in early spring and hatch in about 2 weeks. Snails apparently become sexually mature in their first year, but, in some species, females may not lay until their second year. Some elimia may live as long as 5 years (Dillon 1988).

The lacy elimia was historically abundant in the Coosa River main stem from St. Clair to Chilton County, Alabama, and was also known in several Coosa River tributaries—Big Will's Creek, DeKalb County; Kelley's Creek, St. Clair County; and Choccolocco and Tallaseehatchee creeks, Talladega County, Alabama (Goodrich 1936). The lacy elimia has not been recently located at any historic collection site. However, as a result of the recent survey efforts previously unreported populations were discovered in three Coosa River tributaries—Cheaha, Emauhee, and Weewoka creeks, Talladega County, Alabama (Bogan and Pierson 1993a). The species is locally abundant in the lower reaches of Cheaha Creek. This stream originates within the Talladega National Forest; however, no specimens of the lacy elimia have been collected on Forest Service lands. The species has also been found at single sites in Emauhee and Weewoka creeks, where specimens are rare, and difficult to locate.

The painted rocksnail (*Leptoxis taeniata* (Conrad 1834)) is a small to medium snail about 19 mm (0.8 in.) in length, and subglobose to oval in shape. The aperture is broadly ovate, and rounded anteriorly. Coloration varies from yellowish to olive-brown, and usually with four dark bands. Some shells may not have bands and some have the bands broken into squares or oblongs (see Goodrich 1922 for a detailed description). All of the rocksnails that historically inhabited the Basin had broadly rounded apertures, oval shaped shells, and variable coloration. Although the various species were distinguished by relative sizes, coloration patterns, and ornamentation, identification could be confusing. However, the painted rocksnail is the only known survivor of the 15 rocksnail species that were historically known from the Coosa River drainage.

Rocksnails are gill breathing snails found attached to cobble, gravel, or other hard substrates in the strong currents of riffles and shoals. Adult

rocksnails move very little, and females probably glue their eggs to stones in the same habitat (Goodrich 1922). Heller (1990) reported a short life span (less than 2 years) in a Tennessee River rocksnail. Longevity in the painted and the Basin's other rocksnails is unknown.

The painted rocksnail had the largest range of any rocksnail in the Mobile River Basin (Goodrich 1922). It was historically known from the Coosa River and tributaries from the northeastern corner of St. Clair County, Alabama, downstream into the mainstem of the Alabama River to Claiborne, Monroe County, Alabama, and the Cahaba River below the Fall Line in Perry and Dallas counties, Alabama (Goodrich 1922, Burch 1989). Surveys by Service biologists and others (Bogan and Pierson 1993a, 1993b; M. Pierson, *in litt.* 1993) in the Cahaba River, unimpounded portions of the Alabama River, and a number of free-flowing Coosa River tributaries have located only three localized Coosa River drainage populations.

The painted rocksnail is currently known from the lower reaches of three Coosa River tributaries—Choccolocco Creek, Talladega County; Buxahatchee Creek, Shelby County (Bogan and Pierson 1993a); and Ohatchee Creek, Calhoun County, Alabama (Pierson *in litt.* 1993).

The round rocksnail (*Leptoxis ampla* (Anthony 1855)) grows to about 20 mm (0.8 in) in length. The shell is subglobose, with an ovately rounded aperture. The body whorl is shouldered at the suture, and may be ornamented with folds or plicae. Color may be yellow, dark brown, or olive green, usually with four entire or broken bands (Goodrich 1922). Round rocksnails inhabit riffles and shoals over gravel, cobble, or other rocky substrates.

Lydeard *et al.* (1997) found slight differences in DNA sequencing between the painted rocksnail and the round rocksnail, and considered them to be sister species. Following analysis by allozyme electrophoresis on these same species, Dillon (*in litt.* 1997) speculated that the two species represented isolated populations belonging to a single species. The two species are geographically separated, with the painted rocksnail inhabiting Coosa River tributaries, while the round rocksnail is the only surviving rocksnail species in the Cahaba River drainage. Both species are currently recognized by the malacological community (e.g., Burch 1989; Turgeon *et al.* 1988, revision in review), and are treated as distinct in this proposed rule.

The round rocksnail was historically found in the Cahaba River, and its tributary, Little Cahaba River, Bibb County, Alabama; and the Coosa River, Elmore County, and tributaries—Canoe Creek and Kelly's Creek, St. Clair County; Ohatchee Creek, Calhoun County; Yellowleaf Creek, Shelby County; and Waxahatchee Creek, Shelby/Chilton counties, Alabama (Goodrich 1922).

The round rocksnail is currently known from a shoal series in the Cahaba River, Bibb and Shelby counties, Alabama, and from the lower reach of the Little Cahaba River, and the lower reaches of Shade and Six-mile creeks in Bibb County, Alabama (Bogan and Pierson 1993b).

The plicate rocksnail (*Leptoxis plicata* (Conrad, 1834)) grows to about 20 mm (0.8 in) in length. Shells are subglobose with broadly rounded apertures. The body whorl may be ornamented with strong folds or plicae. Shell color is usually brown, occasionally green, and often with four equidistant color bands. The columella (central column or axis) is smooth, rounded, and typically pigmented in the upper half. The aperture is usually bluish-white, occasionally pink or white. The operculum (plate that closes the shell when the snail is retracted) is dark red, and moderately thick (Goodrich 1922). Although morphologically similar to the Basin's other three surviving rocksnail species, the plicate rocksnail is genetically distinct (Lydeard *et al.* 1997, Dillon *in litt.* 1997).

The plicate rocksnail historically occurred in the Black Warrior River and its tributary, the Little Warrior River, and the Tombigbee River (Goodrich 1922). Status survey efforts found populations of plicate rocksnails only in an approximately 88km (55 mi) reach of the Locust Fork of the Black Warrior River, Jefferson and Blount counties, Alabama (Service Field Records, Jackson, Mississippi 1991, 1992; Malcolm Pierson, Calera, Alabama, Field Notes 1993). Surveys during 1996 (Garner in progress) indicate that the snail has recently disappeared from the upstream ⅘ portion of that habitat and now appears restricted to an approximately 17.6 km (11 mi) reach in Jefferson County.

Previous Federal Action

The six aquatic snails were identified as Category 2 species in notices of review published in the **Federal Register** on November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7956). The six snails considered in this proposal were approved as Candidate species by the Service on November 9, 1995, and identified as Candidates in the 1996 Notice of Review. A Candidate species is defined as a species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

A status review summary, that included these six snails, was mailed on August 23, 1994 (62 letters), to appropriate species authorities, State and Federal agencies, private organizations, and interested individuals. A cover letter provided notification that a status review was in progress by the Service, stated that the species appeared to qualify for listing under the Act, and requested a review of the status review summary for accuracy regarding taxonomy, distribution, threats, and status. Three species authorities responded by telephone concurring with the status reviews. No other comments were received as a result of this notification.

An updated status report, along with a review request, was mailed on March 11, 1997 (157 letters), following elevation of the snails to Candidate status. One snail authority concurred with the status review analysis; however, he recommended additional genetic studies on the lacy elimia (see *Background* section above). Two other snail authorities responded concurring with the analysis, as well as the taxonomic treatment of the six species.

On September 5, 1995, the Service received two petitions, dated August 31, 1995, from a coalition of environmental organizations (Coosa-Tallapoosa Project, Biodiversity Legal Foundation, and Alabama Wilderness Alliance) represented by Mr. Ray Vaughan. The petitioners requested the Service to list the plicate rocksnail as endangered and to designate critical habitat for this species. The second petition requested the Service to list the lacy elimia as a threatened species and to designate critical habitat.

Section 4 (b)(3)(A) of the Act and implementing regulations at 50 CFR part 424.14 require that, to the extent practicable, the Service make a finding of substantiality on any petition within 90 days of its receipt, and publish a notice of its finding in the **Federal Register**. If a substantial 90-day finding is made, the Service is required, to the extent practicable, within 12 months of receipt of the petition, to make a finding as to whether the action requested in the petition is (a) not warranted, (b) warranted, or (c) warranted but precluded. Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium, the Service is processing petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process listing actions during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) is given to resolving the conservation status of Candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of these two petitions and the proposed rule falls under Tier 3. At this time, the Southeast Region has no pending Tier 1 actions and is near completion of its pending Tier 2 actions. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). This proposal constitutes the 90-day and 12-month finding on the petitioned actions.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), plicate rocksnail (*Leptoxis plicata*), painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The cylindrical lioplax, flat pebblesnail, lacy elimia, round rocksnail, painted rocksnail, and plicate rocksnail have all disappeared from more than 90 percent of their historic ranges. All of these snails were historically, and continue to be, strongly associated with river or stream habitats characterized by flowing currents, and hard, clean bottoms (e.g., bedrock, boulder, gravel) (Goodrich 1922, 1936; Clench and Turner 1955). The curtailment of habitat and range for these six species in the Basin's larger rivers (Coosa, Alabama, Tombigbee and Black Warrior) is primarily due to extensive construction of dams and the inundation of the snail's shoal habitats by impounded waters. Thirty dams have changed this system from a continuum of free-flowing riverine habitats into a series of impoundments connected by short, free-flowing reaches. On the Alabama River there are 3 dams (built between 1968–1971); the Black Warrior has 5 (1915–1959); the Coosa 10 (1914–1966), and the Tombigbee 12 (1954–1979). Dams impound approximately 1,650 km (1,022 mi) of river channel in the Basin.

These six snail species have disappeared from all portions of their historic habitats that have been impounded by dams. As noted earlier, they are all associated with fast currents over clean, hard bottom materials. Dams change such areas by eliminating or reducing currents, and allowing sediments to accumulate on inundated channel habitats. Impounded waters also experience changes in water chemistry which could affect survival or reproduction of riverine snails. For example, many reservoirs in the Basin currently experience eutrophic conditions, including chronically low dissolved oxygen levels (Alabama Department of Environmental Management (ADEM) 1994, 1996). Such physical and chemical changes can affect feeding, respiration, and reproduction of these riffle and shoal snail species.

A site on the Locust Fork River is currently considered for the construction of a water supply impoundment (C. Waldrep, Gorham & Waldrep, P.C., Montgomery, Alabama, *in litt.* 1995). If constructed, this impoundment would bisect and threaten the only single surviving population of the plicate rocksnail. Plicate rocksnails occurred in riffle and shoal habitats above and below the reservoir site in 1994. In 1996, plicate rocksnails could not be relocated in the portion of the river to be flooded by the reservoir; however, they were confirmed to continue to survive in an approximately 17.6 km (11 mi) reach of river below the proposed dam site, which would be subject to impacts from construction activities and post-construction changes in water quality (Garner pers. comm. 1996).

In addition to directly altering snail habitats, dams and their impounded waters also formed barriers to the movement of snails that continued to live below dams or in unimpounded tributaries. It is suspected that many such isolated colonies gradually disappear as a result of local water and habitat quality changes. Unable to emigrate, the isolated snail populations are vulnerable to local discharges as well as any detrimental land surface runoff within their watersheds. Although many watershed impacts have been temporary, eventually improving or even disappearing with the advent of new technology, practices, or laws, dams and their impounded waters prevent natural recolonization by snail populations surviving elsewhere.

Prior to the passage of the Clean Water Act and the adoption of State water quality criteria, water pollution may have been a significant factor in the disappearance of snail populations from unimpounded tributaries of the Basin's impounded mainstem rivers. For example, Hurd (1974) noted the extirpation of freshwater mussel communities from several Coosa River tributaries, including the Conasauga River below Dalton, Georgia, the Chatooga River, and Tallaseehatchee Creek, apparently as a result of textile and carpet mill waste discharges. He also attributed the disappearance of the mussel fauna from the Etowah River, Talladega and Swamp creeks, and from many of the lower tributaries of the Coosa River, to organic pollution and siltation.

Short-term and long-term impacts of point and nonpoint source water and habitat degradation continue to be a primary concern for the survival of all these snails, compounded by their isolation and localization. Point source discharges and land surface runoff (nonpoint pollution) can cause nutrification, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that are likely to seriously impact aquatic snails. Point sources of water quality degradation include municipal and industrial effluents.

Nonpoint source pollution from land surface runoff can originate from virtually all land use activities, and may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases (ADEM 1996). During many recent surveys for these snails, sediment deposition and nutrient enrichment of stream reaches was noted as being associated with the absence of snails from historic collection localities (Bogan and Pierson 1993a, 1993b; Hartfield 1991; Service Field

Observations 1992–1994, Jackson Field Office, MS).

Excessive sediments are believed to impact riverine snails requiring clean, hard shoal stream and river bottoms, by making the habitat unsuitable for feeding or reproduction. Similar impacts resulting from sediments have been noted for many other components of aquatic communities. For example, sediments have been shown to abrade and/or suffocate periphyton (organisms attached to underwater surfaces, upon which snails may feed); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Watters 1995).

Sediment is the most abundant pollutant produced in the Basin (ADEM 1989). Potential sediment sources within a watershed include virtually all activities that disturb the land surface, and all localities currently occupied by these snails are affected to varying degrees by sedimentation. The amount and impact of sedimentation on snail habitats may be locally correlated with the land use practice. For example, the use of agriculture, forestry, and construction Best Management Practices can reduce sediment amounts and impacts.

Land surface runoff contributes the majority of human-induced nutrients to water bodies throughout the country (Louisiana Department of Environmental Quality 1995). Excessive nutrient input (from fertilizers, sewage waste, animal manure, etc.) can result in periodic low dissolved oxygen levels that are detrimental to aquatic species (Hynes 1970). Nutrients also promote heavy algal growth that may cover and eliminate clean rock or gravel habitats of shoal dwelling snails. Nutrient and sediment pollution may have synergistic effects on freshwater snails and their habitats, as has been suggested for aquatic insects (Watters 1995).

The cylindrical lioplax, flat pebblesnail, and the round rocksnail currently survive in localized reaches of the Cahaba River drainage. Water quality studies in the upper Cahaba River drainage by the Geological Survey of Alabama (Shepard *et al.* 1996) found that discharges from 34 waste water treatment plants (WWTPs) in the upper drainage have contributed to water quality impairment. This was reflected by low levels of dissolved oxygen downstream of Birmingham; ammonia and chlorination by-products in excess of recommended water quality criteria; and eutrophication due to excessive levels of phosphorus and nitrogen. The study noted that these problems are chronic and have been a factor in a loss of mollusk and fish diversity throughout the drainage. Their results indicate that the upper Cahaba River drainage is primarily impacted by nonpoint runoff and WWTPs through physical habitat destruction by sedimentation, and chronic stress from exposure to toxics and low dissolved oxygen. The middle Cahaba River is primarily impacted by eutrophication and associated affects.

The lacy elimia is now restricted to three small stream channels in Talladega County, Alabama—Cheaha, Emauhee, and Weewoka creeks (Coosa River drainage). The painted rocksnail currently survives in localized reaches of three other Coosa River tributaries, Choccolocco, Buxahatchee, and Ohatchee creeks. The plicate rocksnail inhabits a single short reach of the Locust Fork River in Jefferson County, Alabama (Black Warrior River drainage). All of these streams are variously impacted by sediments and nutrients from a variety of upstream rural, suburban, and/or urban sources. The streams are all small to moderate in size and volumes of flow, and their water and habitat quality can be rapidly affected by local and offsite pollution sources.

Habitat fragmentation and population isolation are a significant threat to the continued survival of the lacy elimia and painted rocksnail. The known populations of these two species are isolated by extensive areas of impoundment, and there is little, if any, possibility of genetic exchange between them. Over time, this isolation may result in genetic drift, with each population becoming unique and vulnerable to environmental disturbance.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The six aquatic snail species addressed in this proposed rule are currently not of commercial value, and overutilization has not been a problem. However, as their rarity becomes known, they may become more attractive to collectors. Unregulated collecting by private and institutional collectors poses a threat. The cylindrical lioplax, flat pebblesnail, plicate rocksnail, painted rocksnail, round rocksnail, and lacy elimia inhabit shallow, fast-flowing waters of shoals and riffles. Because of their occurrence and exposure in such areas, they are readily vulnerable to overcollecting and/or vandalism. In these areas, the snails are also exposed to crushing by recreational activities such as canoeing, wading, swimming, or fishing; however, normal recreational activities are not believed to be a factor in their decline.

C. *Disease or predation.* Aquatic snails are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not considered a threat to these species. However, the potential now exists for black carp (*Mylopharyngodon piceus*), a nonselective molluskivore recently introduced into waters of the United States, to eventually enter the Mobile River Basin. Exotic black carp recently escaped to the Osage River in Missouri when hatchery ponds were flooded during a 1994 spring flood of the river (LMRCC newsletter, 1994). The extent of stocking black carp for snail control in aquaculture ponds within the Basin is unknown; however, black carp are currently cultured and sold within the State of Mississippi (D. Reike, Mississippi Department of Wildlife, Fisheries, and Parks, 1997).

D. *The inadequacy of existing regulatory mechanisms.* Although the negative effects of point source discharges on aquatic communities have probably been reduced over time by compliance with State and Federal regulations pertaining to water quality, there is currently no information on the sensitivity of the Mobile River Basin snail fauna to common industrial and municipal pollutants. Current State and Federal regulations regarding such discharges are assumed to be protective; however, these snails may be more susceptible to some pollutants than test organisms currently used in bioassays. A lack of adequate research and data currently prevents existing authorities, such as the Clean Water Act (CWA), administered by the Environmental Protection Agency (EPA) and the Army Corps of Engineers, from being fully utilized. The Service is currently working with EPA to develop a memorandum of agreement (MOA) that will address how EPA and the Service will interact relative to CWA water quality criteria and standards within the Service's Southeast Region.

Lacking State or Federal recognition, these snails are not given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The narrow distribution of extant populations of all six snail species and the nature of their habitats (i.e., small to moderate sized streams) renders them vulnerable to a natural catastrophic event (e.g., flood, drought).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on these evaluations, the preferred action is to list the cylindrical lioplax, flat pebblesnail, and plicate rocksnail as endangered; and the painted rocksnail, round rocksnail, and lacy elimia as threatened. All of these species have been rendered vulnerable due to significant loss of habitat and severe range restriction.

The cylindrical lioplax is confined in distribution to a short reach of the Cahaba River. The flat pebblesnail currently survives in localized portions of the Cahaba River and the Little Cahaba River. Both species are vulnerable to extinction by their confined ranges, and current impacts from water quality degradation in the Cahaba River drainage. The single known population of the plicate rocksnail is threatened by the proposed construction of an impoundment within its remaining habitat in the Locust Fork, and water quality degradation. The plicate rocksnail has also experienced a significant reduction in range within the Locust Fork within the past 2 years, apparently due to pollution of its habitat from nonpoint sources. Endangered status is appropriate for these three species due to their single populations, restricted numbers within these populations, existing threats to their occupied habitats, and in the case of the plicate rocksnail, an ongoing decline in range.

The lacy elimia, painted rocksnail, and round rocksnail are each currently known from three distinct drainage localities. Extant populations and colonies of these three species are localized, isolated, and are vulnerable to water quality degradation, future human activities that would degrade their habitats, and random catastrophic events. Threatened status is considered more appropriate for these species due to the larger number of populations or colonies, and the less immediate nature of these threats.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for any of these six aquatic snails.

Critical habitat designation, by definition, directly affects only Federal agency actions. Since these snail species are aquatic throughout their life cycles, Federal actions that might affect these species and their habitats include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and stormwater runoff. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. The cylindrical lioplax, flat pebblesnail, plicate rocksnail, round rocksnail, painted rocksnail, and lacy elimia have become so restricted in distribution that any significant adverse modification or destruction of their occupied habitats would likely jeopardize their continued existence. This would also hold true as the species recovers and its numbers increase. Therefore, habitat protection for these six species can be accomplished through the section 7 jeopardy standard and there is no benefit in designating currently occupied habitat of these species as critical habitat.

Recovery of these species will require the identification of unoccupied stream and river reaches appropriate for reintroduction. Critical habitat designation of unoccupied stream and river reaches may benefit these species by alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate projects which may affect these areas. The Service is currently working with the State and other Federal agencies to periodically survey and assess habitat potential of stream and river reaches for listed and candidate aquatic species within the Mobile River basin. This process provides up to date information on instream habitat conditions in response to land use changes within watersheds. Information generated from surveys and assessments is disseminated through Service coordination with other agencies. Should this rule become final, the Service will work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify stream reaches and potential sites for reintroduction of these species. Thus, the benefit provided by designation of unoccupied habitat as critical will be accomplished more effectively with the current coordination process and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, the Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation, as discussed below.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as other collection threats (See Factor B under "Summary of Factors Affecting the Species"). For example, in 1993 the Alabama sturgeon was proposed for endangered status with critical habitat (59 FR 33148). Critical habitat included the lower portions of the Alabama, Cahaba, and Tombigbee rivers in south Alabama. The proposal generated thousands of comments with the primary concern that the actions would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon. A primary contributing factor to this controversy was the proposed designation of critical habitat for the sturgeon.

The six snail species addressed in this proposal are especially vulnerable to vandalism. They all are found in shallow shoals or riffles in restricted stream and river segments. The flat

pebblesnail, plicate rocksnail, round rocksnail, painted rocksnail, and lacy elimia attach to the surfaces of bedrock, cobble, or gravel, while the cylindrical lioplax is found under large boulders. The six species are relatively immobile and unable to escape collectors or vandals. They inhabit remote but easily accessed areas, and they are sensitive to a variety of easily obtained commercial chemicals and products. Because of these factors, vandalism or collecting could be undetectable and uncontrolled. For example, the plicate rocksnail recently disappeared from approximately 80 percent of its known occupied habitat. While the Service has been unable to determine the cause of this decline, the disappearance illustrates the vulnerability of this and the other snail species.

All known populations of these six snail species occur in streams flowing through private lands. The primary threat to all surviving populations appears to be pollutants in stormwater runoff that originate from private land activities (see Factor A). Therefore, the survival and recovery of these snails will be highly dependent on landowner cooperation in reducing land use impacts.

Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act (e.g., spotted owl, golden cheeked warbler). The Alabama sturgeon experience suggests that critical habitat designation could affect landowner cooperation within watersheds occupied by these six snails.

Based on the above analysis, the Service has concluded critical habitat designation would provide little additional benefit for these species beyond those that would accrue from listing under the Act. The Service also concludes that any potential benefit from such a designation would be offset by an increased level of vulnerability to vandalism or collecting, and by a possible reduction in landowner cooperation to manage and recover these species. The designation of critical habitat for these six snail species is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could occur and impact these species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met. Other than a potential dam on the Locust Fork River, Jefferson and Blount counties, Alabama, no other Federal activities that may affect these species are currently known to be under consideration.

The Act and its implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23 for endangered species and 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if these species are listed. The intent of this policy is to increase public awareness as to the effects of these proposed listings on future and ongoing activities within a species' range.

Activities which the Service believes are unlikely to result in a violation of section 9 for these six snails are:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES)).

(2) Typical agriculture and silviculture practices.

(3) Development and construction activities designed and implemented pursuant to State and local water quality regulations.

(4) Existing recreational activities such as swimming, wading, canoeing, and fishing.

Activities that the Service believes could potentially result in "take" of these snails, if they should be listed, include:

(1) The unauthorized collection or capture of the species;

(2) Unauthorized destruction or alteration of the species habitat (e.g., instream dredging, channelization, discharge of fill material);

(3) Violation of any discharge or water withdrawal permit;

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the species.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should these snails become listed. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a future violation of section 9 should these snails be listed should be directed to the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–7313; Fax 404/679–7081).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) the location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of this species; and

(4) current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Paul Hartfield (see **ADDRESSES** section)(601/965–4900, Ext. 25).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Elimia, lacy	*Elimia crenatella*	U.S.A. (AL)	NA	T		NA	NA
Lioplax, cylindrical	*Lioplax cyclostomaformis.*	U.S.A. (AL)	NA	E		NA	NA
Pebblesnail, flat	*Lepyrium showalteri*	U.S.A. (AL)	NA	E		NA	NA
Rocksnail, painted	*Leptoxis taeniata*	U.S.A. (AL)	NA	T		NA	NA
Rocksnail, plicate	*Leptoxis plicata*	U.S.A. (AL)	NA	E		NA	NA
Rocksnail, round	*Leptoxis ampla*	U.S.A. (AL)	NA	T		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.

Dated: September 12, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–27548 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE41

Endangered and Threatened Wildlife and Plants; Proposal to List the St. Andrew Beach Mouse as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes endangered status for the St. Andrew Beach Mouse (*Peromyscus polionotus peninsularis*) pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is restricted to coastal sand dunes and had a historic distribution that included the northeast Florida panhandle from Gulf County into portions of Bay County. Its current range is limited to a portion of the St. Joseph Peninsula in Gulf County. Habitat impacts causing loss of mice and the species' local capability to recover from such impacts are primarily responsible for the range curtailment. Threats to beach mouse habitat include severe storms, coastal land development and its associated activities, and non-storm related, natural shoreline erosion. Additional threats include predation by free-ranging domestic cats and displacement by house mice. This proposal, if made final, would implement the protection provisions provided by the Act for this beach mouse.

DATES: Comments from all interested parties must be received by December 16, 1997. Public hearing requests must be received by December 1, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to Michael M. Bentzien, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, at the above address (telephone 904/232–2580, ext. 106; facsimile 904/232–2404).

SUPPLEMENTARY INFORMATION:

Background

The oldfield mouse (*Peromyscus polionotus*) occurs in northeastern Mississippi, Alabama, Georgia, South Carolina, and Florida. Beach mice are coastal subspecies of the oldfield mouse restricted to beach and sand dune habitat. Hall (1981) recognized eight coastal subspecies whose common distinguishing characteristics include white feet, large ears, and large black eyes. Their fur is variously patterned in shades of white, yellow, brown, and grey. The head, back, and rump are darkly patterned, though to a lighter and less extensive degree than inland oldfield mice. The all-white underparts extend higher up to the sides than on the inland subspecies (Sumner 1926, Bowen 1968). Howell (1939) described the type (original) specimen of the St. Andrew beach mouse as having a very pale, buff-colored head and back with extensive white coloration underneath and along the sides. Bowen (1968) noted two distinct rump color pigmentations, one a tapered and the other a squared pattern, which extended to the thighs. Head and body lengths average 75 millimeters (mm) (2.95 inches (in)), tail mean length 52 mm (2.05 in), and hind foot mean length 18.5 mm (0.73 in) (James 1992).

Beach mice subspecies historically occurred on both the Atlantic Coast of Florida from St. Johns through Broward counties and the eastern Gulf of Mexico from Gulf County, Florida, to Baldwin County, Alabama (Ivey 1949, Bowen 1968, James 1992, Stout 1992, Gore and Schaefer 1993). The St. Andrew beach mouse is the easternmost of the five Gulf coast subspecies. Howell (1939) collected the type specimen at St. Andrew Point on Crooked Island, Tyndall Air Force Base, Bay County, Florida (type locality). Other historic collection records for the subspecies include nine additional specimens from the type locality, seven mice from St. Joseph Point and four mice from Cape San Blas on the St. Joseph Peninsula in Gulf County, 48 individuals at or near the town of Port St. Joe located on the central Gulf County coastal mainland, and four specimens near Money Bayou in eastern Gulf County (Bowen 1968). Based on these records, Bowen (1968) and James (1992) described the former range of the St. Andrew beach mouse as likely extending from the St. Joseph Spit (Peninsula) northwest along the coastal mainland adjacent to St. Joseph Bay, to Crooked Island at the East Pass of St. Andrews Bay. This range also included about 0.6 kilometer (km) (1 mile (mi)) of mainland sand dune habitat east of the landward end of the St. Joseph Peninsula to Money Bayou on the Gulf of Mexico. The absence of past collection records and lack of beach mouse sign and trapping success in the area east of Money Bayou to the southeastern corner of Gulf County (James 1987; J. Gore, Florida Game and Fresh Water Fish Commission, in litt. 1994) suggest that this area may not be part of the subspecies' historic range.

Coastal tidal marsh and upland habitat between the mainland city of Port St. Joe and the St. Joseph Peninsula naturally divided the former range of the St. Andrew beach mouse into two segments. Initial genetic analysis of a small sample of mice from these segments and another subspecies, the Choctawhatchee beach mouse (*P. polionotus allophrys*), from nearby habitat found similarities between the Crooked Island and St. Joseph Peninsula samples at one gene location (locus). The Crooked Island sample was distinctly different from the Choctawhatchee beach mouse sample at the same locus. Additional work is needed to determine if these patterns are consistent at several loci (Moyers 1997).

Typical beach mouse habitat generally consists of several rows of sand dunes paralleling the shoreline. Prevailing wind, beach sand, and vegetation combine to form and shape coastal dunes. A common complex of animal species, vegetation, and habitat types characterize the coastal sand dune ecosystem. The types and amount of animals, vegetation, and habitat may differ, however, among specific sites. The common types of sand dune habitat include frontal dunes, primary dunes, secondary dunes, inter and intradunal swales, and scrub dunes. Frontal dunes and primary dunes are those closest to

the shoreline, most recently formed, and highly dynamic. The foreslope of primary dunes grades into the developing frontal dunes on the open beach. Frontal dunes on the Gulf Coast are sparsely vegetated, usually by sea oats (*Uniola paniculata*), bluestem (*Schizachyrium maritimum*), beach grass (*Panicum amarum*), and sea rocket (*Cakile constricta*). Primary dunes also support stands of these species and include other broad-leaved plants such as seaside pennywort (*Hydrocotyle bonariensis*), seashore elder (*Iva imbricata*), and beach morning glory (*Ipomea stolonifera*) (Clewell 1985). Secondary dunes consist of one or more dune lines landward of the primary dune with a similar though denser vegetative cover. Interdunal swales are wet or dry depressions between primary and secondary dunes while intradunal swales occur within primary dunes as a result of wave action, storm surges, and wind erosion. Wet swales are those whose water table is at or near the surface. Swale vegetation includes plants found on primary and secondary dunes as well as salt meadow cordgrass (*Spartina patens*), rushes (*Juncus* sp.), sedges (*Cyperus* sp.), and saltgrass (*Distichlis spicata*). Scrub dunes are the oldest of the dune habitat types and are dominated by woody plants including saw palmetto (*Serenoa repens*), myrtle oak (*Quercus myrtifolia*), sand live oak (*Q. geminata*), sand pine (*Pinus clausa*), slash pine (*P. elliottii*), seaside rosemary (*Ceratiola ericoides*), greenbrier (*Smilax* sp.), and bush goldenrod (*Chrysoma pauciflosculosa*). Reindeer moss (*Cladonia leporina*) often covers otherwise bare dune surfaces. Some primary and secondary dune vegetation is also present but at reduced densities (Blair 1951, Gibson and Looney 1992). Size and density of understory and overstory vegetation may vary.

Trap surveys at Crooked Island and on the St. Joseph Peninsula documented the presence of St. Andrew beach mouse on frontal dunes, as well as on primary and secondary dunes (James 1987; Gore in litt. 1990, 1994; Bates 1992, Moyers *et al.* 1996, Mitchell *et al.* 1997). These results supported other surveys which found that the greatest concentration of most other beach mice subspecies occurred in these habitat types (Blair 1951, Hill 1989, Frank and Humphrey 1992, Holler 1992). This concentration is due in part to a predominance of plants whose seeds and fruits are important seasonal constituents of beach mouse diets (Moyers 1996).

Although beach mice occur on interdunal and intradunal swales, studies of other beach mouse subspecies indicate that, in general, they use this habitat type less frequently when compared to frontal, primary, and secondary dunes (Blair 1951, Hill 1989, Gore and Schaefer 1993, Novak 1997). James (1987) only rarely observed St. Andrew beach mouse tracks in the interdunal areas within St. Joseph Peninsula State Park (SJPSP), located within the northern 15 km (9 mi) of the peninsula.

Various researchers have also documented the occurrence of other beach mouse subspecies within scrub dunes (Extine and Stout 1987, Hill 1989, Rave and Holler 1992, Gore and Schaefer 1993, Swilling *et al.* 1996, Moyers *et al.* 1996, Novak 1997). Blair (1951) believed that the scrub dunes on Santa Rosa Island offered abundant food and cover for the Santa Rosa beach mouse (*P. p. leucocephalus*). Scrub dunes may also function as refugia during and after storms and as a source for recolonization of storm-damaged dunes (Moyers *et al.* 1996, Swilling *et al.* 1996). Their use by the St. Andrew beach mouse is not well documented. James (1987) noted the absence of tracks in scrub dunes within SJPSP, although she did collect mice in 1986 from well-vegetated back dunes on Crooked Island (James 1992). Moyers *et al.* (1996) captured beach mice within SJPSP in secondary dunes immediately adjacent to scrub dunes.

Based on a study of other Gulf coast subspecies that included habitat conditions following Hurricane Frederick, Meyers (1983) reported that the minimum post-storm area needed to allow beach mice to persist was 50 hectares (ha) (124 acres (ac)). He also determined that a habitat size from 100 to 200 ha (247 to 494 ac) supporting a population of 127 mice was optimal for that population to recover from habitat impacts produced by a storm of comparable intensity. Meyer's figures should be used with caution, however, since he did not know pre-storm habitat conditions or population numbers within the study area.

Beach mouse populations can at times undergo great seasonal variations in numbers (Bowen 1968, Extine and Stout 1987). Prior to human disturbance, hurricanes and tropical storms likely were the dominant factors producing rapid and possible widespread impacts on beach mice and their habitat. Because the St. Andrew beach mouse evolved under adverse weather conditions, the subspecies developed the capability to survive and recover from these periodic severe impacts to its numbers and habitat. During this century, however, more rapid land development, dune encroachment by pedestrians and vehicles, and military activities began to contribute to these impacts (James 1992). Bowen (1968) was unable to collect beach mice from one or more historic sites during a 1961 field trip. Hurricane Eloise split Crooked Island into east and west segments in 1975, and multiple attempts to collect beach mice from the western segment during the early and mid-1980's were unsuccessful (Gore in litt. 1987). During this same period, trap surveys collected small numbers of beach mice on the eastern segment. Limited trap and track surveys during the late 1980's found no evidence of beach mice within undeveloped coastal mainland habitat between Crooked Island and Money Bayou, as well as on the St. Joseph Peninsula from near the southern border of SJPSP through Cape San Blas to the northeastern end of the peninsula (Gore in litt. 1990, James 1987). Both surveys revealed that mice still existed on Crooked Island East and also occurred within SJPSP. Gore collected 3.6 mice per 100 trap nights during his 1989 survey within the park. Based on her survey results, James (1992) estimated the Crooked Island East population at 150 mice and the population within SJPSP at 500 mice. Gore speculated that the range wide population at its lowest contained several hundred mice.

Extensive surveying of primary, secondary, and scrub dune habitat on Crooked Island East during the 1990's revealed that the beach mouse population there no longer existed (Gore in litt. 1994, Holler in litt. 1994). Similar efforts at Cape San Blas on Eglin Air Force Base and U.S. Coast Guard properties yielded no mice (Gore in litt. 1994). Bates (1992) did capture 338 separate individuals within SJPSP at a rate of 26.64 mice per 100 trap nights. In 1993 and 1994, Gore (in litt. 1994) again sampled habitat between SJPSP and Cape San Blas and trapped nine beach mice for a capture rate of 7.56 mice per 100 trap nights. Based on the survey findings to date, Gore (in litt 1994, 1995) assumed that the St. Andrew beach mouse was then restricted to the northern 20 to 25 km (12.5 to 15.5 mi) of the St. Joseph Peninsula.

In October 1995, Hurricane Opal caused extensive coastal damage to the Florida panhandle. Habitat impacts within the St. Joseph Peninsula appeared more extensive outside SJPSP boundaries (Gore in litt. 1995). Using an average density estimate of 2.5 mice per hectare, Gore (in litt. 1995) calculated that the total population of St. Andrew beach mice remaining after the storm was around 190 individuals. Moyers *et al.* (1996) trapped a total of about 5.25 km (3 mi) of habitat throughout SJPSP

in December 1995 and captured 62 individuals for a rate of 3.44 mice per 100 trap nights. They estimated the population size within the sampled area at 127, a figure which compared favorably to Gore's post-hurricane estimate. Moyers (1996a) later collected an additional 11 mice on William J. Rish State Park and on some private parcels within the St. Joseph Peninsula immediately south of SJPSP. The most recent trap survey within SJPSP (February 1997) collected 117 mice for a capture rate of 9.00 mice per 100 trap nights (Mitchell *et al.* 1997). They estimated that SJPSP currently may support between 300 and 500 mice. The estimate represents a significant increase over the 1995 post-Hurricane Opal survey and is comparable to the last pre-Hurricane Opal survey within the park (Bates 1992).

In addition to habitat impacts, other factors believed to potentially threaten the continued existence of the St. Andrew beach mouse are predation, particularly by free-ranging domestic cats (*Felis silvestris*) and non-native coyotes (*Canis latrans*), and displacement by house mice (*Mus musculus*).

Previous Federal Action

The Service included the St. Andrew beach mouse as a category 2 species in its September 18, 1985, notice of review of vertebrate wildlife (50 FR 37958). At that time, category 2 species were defined as those for which information in possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) were not currently available to support a proposed rule. The Service published an updated, combined animal notice of review (ANOR) on January 6, 1989, which retained the species' category 2 classification (54 FR 554). In the November 21, 1991, ANOR update, the St. Andrew beach mouse was designated a candidate for listing (56 FR 58804). The Service retained this classification in the November 15, 1994, ANOR (59 FR 59020) and in the most recent notice of review published on February 28, 1996 (61 FR 7596).

The processing of this proposed rule conforms with the Service's fiscal year 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) is given to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of this proposed rule falls under Tier 3. At this time, the Southeast Region has no pending Tier 1 actions and is near completion of its pending Tier 2 actions. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities included in Tiers 1, 2, and 3" (61 FR 64480).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Using historic topographic maps and their habitat references, the Service calculated that 66 km (41 mi) of the estimated 86 km (53.5 mi) of linear area within the historic range of the St. Andrew beach mouse contained sand dune habitat. From field surveys, Gore (in litt. 1994, 1995) estimated the amount of recently occupied habitat to be between 20 and 23 km (14.3 to 12.5 mi), all within the northern two-thirds of the St. Joseph Peninsula. This represents up to a 68 percent curtailment of historic sand dune habitat within the subspecies' former range.

Natural events and manmade activities that have impacted the St. Andrew beach mouse and its habitat include severe storms, land development, military exercises on Crooked Island, dune encroachment by vehicles and pedestrians, and non-storm related shoreline erosion. Between 1871 and 1995, nearly 50 hurricanes or tropical storms occurred within 90 mi of St. Joe Bay, which is about midway within the historic range of the species. In this century, storm strength, proximity to the historic range, and degree of habitat impact have been especially intense during the last 30 years (Doehring *et al.* 1994). In 1975, Hurricane Eloise breached Crooked Island, dividing it into two segments and severely eroding and fragmenting dunes, particularly within the newly-formed western segment (R. Bates, pers. comm. 1995). In 1985, Hurricane Kate scoured dunes within the entire range of the St. Andrew beach mouse. These storms caused extensive blowouts in the high dunes throughout the St. Joseph Peninsula (James 1992). In 1995, Hurricane Opal, which made landfall 85 mi west of St. Joe Bay, severely damaged and fragmented frontal and primary sand dunes within the historic range of the beach mouse. The most seriously impacted areas were the unoccupied habitat from Crooked Island to Mexico Beach. Gore (in litt. 1995) estimated an average loss of 52 percent of occupied area within the St. Joseph Peninsula, with the greatest impacts occurring south of SJPSP. Although the population within the SJPSP has since recovered, the Service believes that, coupled with additional land development, consecutive years of severe weather or a single season of intense storms over or in close proximity to currently occupied habitat may result in extinction of the subspecies.

Land development has been primarily responsible for the permanent loss of St. Andrew beach mouse habitat. Historic maps suggest that earlier construction of State Road 98 and incorporated development from the vicinity of Port St. Joe to Mexico Beach occurred within one or more types of coastal sand dune habitat. Little or no suitable habitat currently occurs at the seaward side of some of these incorporated areas (J. Danford, Gulf County Division of Solid Waste, pers. comm. 1997). This density of development also tends to fragment remaining undeveloped habitat. Meyers (1983) believed that intense development could act as a barrier to migration, isolating mice within these habitat segments and making them more vulnerable to local extinction from one or more threats. Neither Gore (in litt. 1990) nor James (1987) found evidence of beach mice within these fragmented parcels located along the coast between Port St. Joe and Mexico Beach. The current status of beach mice within these parcels is unknown.

Gore (in litt. 1994) ranked continued habitat loss on the St. Joseph Peninsula as one of the most serious long-term threats to the St. Andrew beach mouse outside of the State parks. He attributed beach mouse presence in the area between SJPSP and Cape San Blas in 1994 to the relatively low density of housing compared to mainland areas, and the apparent low threat from free-ranging domestic cats, which he believed was related to the primary use of the residences as vacation homes. In addition, most structures are set back from the frontal and primary dune lines. Since 1994, additional construction has occurred in this area, as well as within unoccupied habitat on the remainder of the peninsula (J. Danford, pers. comm. 1997). The construction has proceeded despite the unavailability of federally financed loans or flood insurance (see factor D). The Service believes that continued construction may result in intense development of secondary and scrub dunes, resulting in the severe fragmentation or loss of these habitat types. These areas are known to be important to other beach mice subspecies (see "Background" section). Intense impacts to these habitat types, coupled with severe storms affecting frontal and primary dunes, may contribute to the extinction of the St. Andrew beach mouse. Gulf County has constructed snow fencing and planted dune vegetation to restore frontal and primary dunes on the St. Joseph Peninsula and elsewhere damaged as a result of Hurricane Opal (J. Danford, pers. comm. 1997).

Other human activities impact beach mouse habitat. Gore (in litt. 1994) described the sand dunes east of Cape San Blas as having little vegetation and generally in poor quality. He attributed this situation to a combination of storm damage exacerbated by vehicular traffic on the beach. Although Gulf County has updated its beach driving ordinance in an attempt to eliminate dune impacts on the St. Joseph Peninsula (Gulf County Commission 1997), some areas continue to have problems with dune encroachment by all-terrain vehicles (D. Wibberg, Office of the Gulf County Board of Commissioners, pers. comm. 1997). Prior to 1985, trial exercises with military hovercraft contributed to habitat degradation on Crooked Island (James 1992). The Department of Defense has since discontinued this practice (R. Bates, Tyndall Air Force Base, pers. comm. 1995) and is restoring dune habitat and funding translocation of beach mice onto Crooked Island.

Severe natural erosion within a section of beach north of Cape San Blas, primarily within U.S. Coast Guard property on the St. Joseph Peninsula, has resulted in the loss of frontal, primary, and secondary dunes (Gore in litt. 1994). Sporadic natural shoreline erosion of frontal and primary dunes is also occurring north of this area to SJPSP, as well as between Cape San Blas and Money Bayou. The principal effect in the area of severe erosion has been to isolate occupied habitat on the northern peninsula from unoccupied habitat between Cape San Blas and Money Bayou. The additional natural erosion has resulted in some habitat fragmentation.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This factor is not now known to be applicable.

C. Disease or Predation

The impact of parasites and pathogens on beach mice populations and their potential contribution to the decline of the St. Andrew beach mouse are unknown. Significant adverse impacts from these factors might occur when combined with or as a function of other threats. Studies and observations by various researchers strongly suggest that predation, especially by free-ranging domestic cats, is an important factor contributing to the loss of mice from local habitat within or adjacent to developed areas (Blair 1951, Humphrey and Barbour 1981, Holliman 1983, Humphrey *et al.* 1987). Bowen (1968) provided an anecdotal report on the complete absence of beach mouse sign on a 3.2 km (2 mi) stretch of beach having abundant cat tracks. Frank and Humphrey (1992) noted a reduction of cat sign on dunes and an increase in Anastasia Island beach mouse (*P. p. phasma*) numbers and mean survivorship following removal of 15 to 20 cats from the camping area at Anastasia State Recreation Area. Gore and Schaeffer (1993) found a significant inverse relationship between the ratio of Santa Rosa beach mice to cat tracks on sample transects within developed and undeveloped dune areas on Santa Rosa Island. Their median transects in the developed areas contained no mouse tracks and 13 cat tracks. Bates (1992) found that predators in SJPSP did not appear to concentrate near dunes and the infrequent house cat tracks observed occurred mainly near structures. Although Bates failed to capture beach mice in dunes adjacent to the camping areas, Moyers *et al.* (1996) did capture mice and observe tracks in these areas. Gore (in litt. 1994) believed that the house cat population then on private lands south of SJPSP was less of a problem than other developed areas because the residences there served mainly as seasonal vacation homes. He nevertheless believed further introductions associated with additional land development could pose a serious threat to beach mouse populations.

Other mammalian predators occurring on sand dunes within SJPSP include fox, bobcat, raccoon, and coyote (Bates 1992). Coyotes are relatively recent migrants to SJPSP and Crooked Island, where they have become predators on sea turtle nests (S. Shea, Tyndall Air Force Base, pers. comm. 1994; J. Bente, Florida Department of Environmental Protection, pers. comm. 1995).

D. The Inadequacy of Existing Regulatory Mechanisms

The Federal Coastal Barrier Resources Act of 1982 and the Coastal Barrier Improvement Act of 1990 (CBRA) prohibit most new Federal expenditures and financial assistance within Coastal Barrier Resources System (CBRS) units. CBRA also prohibits the sale of new Federal flood insurance for new construction or substantial improvements within otherwise protected areas. There are two CBRS units and one otherwise protected area within the historic range of the St. Andrew beach mouse. The Cape San Blas Unit (P30) covers all of the St. Joseph Peninsula, while the otherwise protected area (P30P) corresponds with the boundaries of St. Joseph Peninsula State Park. Habitat west of the city of Mexico Beach, including Crooked Island East and West, are part of the St. Andrew Complex Unit (P31). CBRA does not prohibit use of non-Federal or private funds to finance or insure projects within CBRS units or otherwise protected areas. As a result, coastal construction may still proceed within all remaining undeveloped parcels within the subspecies' historic range.

Eglin Air Force Base currently allows beach driving through its Cape San Blas property and adjacent property it leases from and manages for the U.S. Coast Guard. However, the agreement with Gulf County prohibits vehicles and pedestrians from encroaching on or near sand dunes. Strict enforcement of this provision has been difficult due to the distance of Eglin's main base from the Cape San Blas unit and the lack of onsite enforcement personnel. The distance also hampers efforts at evaluating and taking action on potential problems associated with free-ranging domestic cats.

State laws protect sea oats, a critical component of the dune vegetative community, from being picked on public land but do not prohibit this activity on private land nor their destruction during construction activities. State-regulated Coastal Construction Control Lines (CCCL) correspond to the limits of the coastal high hazard 100-year storm event impact area. Construction seaward of the CCCL requires permits whose stringent requirements generally result in protection of beach, frontal dune, and primary dune habitats (G. Chelicki, Florida Department of Environmental

Protection, pers. comm. 1997). The same protections are not afforded to secondary and scrub dune habitats occurring landward of the CCCL. The State has designated Crooked Island East and West as critical wildlife areas, which would protect plants and animals from take or disturbance by pedestrians, vehicles, and dogs, but this designation does not address habitat protection (S. Shea in litt. 1997).

The St. Andrew beach mouse is listed as a State endangered species. Chapter 39–27.002 of the Florida Administrative Code prohibits the take, possession, or sale of endangered species except as authorized by specific permit for the purpose of enhancing the survival potential of the species. The law does not provide for the protection or conservation of a listed species' habitat.

Bay County, Florida, restricts beach driving to permitted vendors. State parks on the St. Joseph Peninsula do not permit beach driving within their boundaries. Gulf County regulates beach driving on the peninsula between Indian Pass and SJPSP by ordinance and permits. The ordinances restrict the number of vehicle access points and prohibits driving in, on, or over sand dunes or vegetated areas. They do not address pedestrian encroachment. The most recent revised ordinance creates a 7.6 meter (25 foot) dune buffer zone within a portion of the St. Joseph Peninsula, in which beach driving and parking are prohibited (Misty Nabers, Florida Department of Environmental Protection, pers. comm. 1997). This revision does not apply to the section of the peninsula between about 3.2 km (2 mi) northwest of Cape San Blas to Money Bayou (D. Wibberg, pers. comm. 1997).

Gulf County does not have any ordinances relating to the ownership, control, and handling of free-ranging domestic cats.

E. Other Natural or Manmade Factors Affecting its Continued Existence

In addition to severe storms, other widespread climatic conditions that can occur within the range of the St. Andrew beach mouse include periods of drought and freezing weather. The extent of any direct or indirect impacts of these factors on beach mouse survival, either alone or in combination with manmade threats, is not known.

Storms and residential and commercial development can fragment and isolate beach mouse habitat. This isolation precludes movement and gene flow among other habitat blocks. In smaller blocks, the lack of gene flow may result in a loss of genetic diversity, which can reduce the population's fitness. Increased predation pressure and competition for available food and cover may further weaken populations through direct mortality and reduced reproductive success. The combined threats may result in severe decline leading to extinction of these isolated populations (Caughley and Gunn 1996).

The ecological similarity of house mice and oldfield mice (Gentry 1966, Briese and Smith 1973) suggests that competition and aggression may occur between these species. An inverse relationship appears to exist between the population densities of the house mouse and inland oldfield mice (Caldwell 1964, Caldwell and Gentry 1965, Gentry 1966). Humphrey and Barbour (1981) documented mutually exclusive distribution patterns of house mice and other Gulf coast beach mice, a pattern similar to that observed by Frank and Humphrey (1992) for the Anastasia Island beach mouse, and by Gore (in litt. 1987, 1990, 1994) and Holler (in litt. 1994) for the St. Andrew beach mouse. The significance of competition to the observed patterns is not clear. In general, the observations suggest that where conditions favor one of the two species, that species will predominate or exclude the other species. Briese and Smith (1973) noted that house mice primarily invade disturbed areas, such as when development occurs, and are able to establish themselves in these and adjacent habitats occupied by low densities of oldfield mice. They also noted that house mice seem to be less affected by predation from house cats than oldfield mice.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) as endangered. The primary threats to the continued existence of the species are habitat impacts from periodic severe weather and land development, which result in direct loss of mice and the capability of remaining mice to recover from such impacts. Other potentially significant threats include predation by free-ranging domestic cats and possible competitive displacement by the house mouse. The Service considers the threat of extinction of high magnitude and imminent because of the more than two-thirds estimated range curtailment, the species' restriction to a single land unit, and the recent high frequency of severe storms occurring within or in close proximity to the species' historic range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be threatened or endangered. The Service finds that designation of critical habitat is not prudent for the St. Andrew beach mouse at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Designated critical habitat is protected by the Act only under section 7(a)(2), which provides that activities that are federally funded, permitted, or carried out may not destroy or adversely modify critical habitat. However, section 7(a)(2), which also prohibits Federal activities likely to jeopardize listed species, provides substantial protection to the habitat of listed species, even if critical habitat is not designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. For most species, including the St. Andrew beach mouse, the protection afforded the species' habitat through application of the no jeopardy standard is so strong, the Service believes there would be no direct net conservation benefit from designating critical habitat.

Regulations (50 CFR part 402.02) define "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The St. Andrew beach mouse is restricted to coastal sand dunes that consist of several rows paralleling the shoreline. The common types of sand dune habitat include frontal dunes, primary dunes, secondary dunes, inter and intradunal swales, and scrub dunes. Beach mice occur mostly in frontal, primary, and secondary dunes due in part to the predominance of plants whose seeds and fruits are important seasonal constituents of beach mouse diets. Further, scrub dunes may function as refugia during and after storms and as a source for recolonization of storm-damaged dunes. Because of the highly precarious status of the St. Andrew beach mouse, destruction or adverse modification of any of these habitat features to the point of appreciably diminishing habitat value for recovery and survival would also jeopardize the species' continued existence by reducing its reproduction, numbers, or distribution.

For the St. Andrew beach mouse, the Service, therefore, has determined that designation of critical habitat would not add any protection over that afforded by the jeopardy standard. Any appreciable diminishment of habitat sufficient to appreciably reduce the value of the habitat for survival and recovery would also appreciably reduce the likelihood of survival and recovery by reducing reproduction, numbers, or distribution. The Service has found this to be the case for several listed species, for which an appreciable reduction in habitat value would trigger the jeopardy standard, for example the Appalachian elktoe mussel, listed as endangered on November 23, 1994 (59 FR 60324), and three Texas aquatic invertebrates, listed as endangered on June 5, 1995 (60 FR 29537).

Within unoccupied lands under Federal management, both Eglin and Tyndall Air Force bases are actively involved in conservation of sand dune habitat. Eglin Air Force Base does not allow dune encroachment by vehicles and pedestrians within its Cape San Blas unit boundaries and closely reviews mission-related activities for potential habitat impacts (R. McWhite, Eglin Air Force Base, pers. comm. 1997). Eglin recently completed an ecological survey of Cape San Blas that will assist them in deciding how best to manage the natural resources within the unit. On Crooked Island, Tyndall Air Force Base restricts beach access on both east and west segments to pedestrians and authorized vehicles, and also prohibits dune encroachment. Natural resource personnel review all requests for military operations to minimize or eliminate potential habitat disturbances. Because of these current conditions, the Service believes that a designation of Crooked Island or Cape San Blas as critical habitat is not prudent because it would not result in any additional benefit to the species.

Based on the above discussion, the Service has determined that the lack of additional conservation benefit from critical habitat designation for this species makes such designation not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions that are expected to require conference and/or consultation as described in the preceding paragraph include mission-related activities authorized or carried out by Tyndall Air Force Base on Crooked Island and by Eglin Air Force Base at the Cape San Blas unit, following any translocation of beach mice to these locations. The Service's experience with other beach mice indicates that, with planning, beach mouse conservation and military activities are compatible.

The Federal Emergency Management Agency (FEMA) provides flood insurance for completed structures through the National Flood Insurance Program. Section 7 of the Act normally would require FEMA to consider conference or consultation with the Service where the agency provides flood insurance to private landowners with structures located in occupied habitat. In this case, private property occupied by the beach mouse within the St. Joseph Peninsula is also located within a CBRS unit and subject to the CBRA prohibitions against the acquisition of new federally-funded coastal flood insurance for new construction or substantial improvements (see factor D under "Summary of Factors Affecting the Species"). The Service, therefore, believes the proposed listing will have no additional impact on the application of FEMA's flood insurance program.

U.S. Army Corps of Engineers involvement in the section 7 consultation process may result from the issuance of permits for the filling of wet interdunal swales subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). Conference or consultation will be required should the Corps determine that such permit issuance may affect the St. Andrew beach mouse.

The Service may undertake internal consultations when carrying out recovery activities such as dune restoration and construction of pedestrian crossovers or when reviewing incidental take permit applications under section 10(a)(1)(B) of the Act.

The National Oceanic and Atmospheric Administration administers the Coastal Energy Impact Program (CEIP). CEIP is a Federal assistance program providing grant and loan assistance for use in planning studies, public works construction, land acquisition, and environmental loss mitigation projects, all associated with energy-related facility siting. Such a siting, however unlikely, within

occupied or potentially occupied habitat might result in some modification that minimizes or avoids impacts to the species. The great majority of section 7 consultations traditionally result either in no project changes or modifications rather than curtailment of the affected Federal activity.

Actions taken and in progress for the St. Andrew beach mouse include updated status surveys within a portion of the historic range, a population genetics analysis, and population viability modeling. Future actions include a translocation of some mice from the St. Joseph Peninsula to Crooked Island East through the cooperation and support of Tyndall Air Force Base. The Service plans to continue pursuing conservation actions it believes will be effective in measurably reducing the threats to the species' continued existence.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or any foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Should this rule be finalized, the prohibitions of section 9 will not apply to St. Andrew Beach mice which were held in captivity or a controlled environment on the date of the final rulemaking, provided that such holding and any subsequent holding of such mice was not in the course of a commercial activity.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Beneficial activities whose implementation does not result in take of beach mice. Such activities include, but are not limited to, boardwalk construction on or over dunes, use of snow fencing and planting of local, native dune vegetation to accelerate dune restoration, and dune reconstruction using beach quality sand.

(2) Normal residential activities on unoccupied habitat that would not result in take of beach mice, such as, landscape maintenance, private development and dune access by vehicles and pedestrians.

(3) Activities authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with section 7 of the Act.

Potential activities involving the St. Andrew beach mouse that the Service believes will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Take of St. Andrew beach mouse without a permit.

(2) Possession, sale, delivery, carrying, transportation, or shipping of illegally taken St. Andrew beach mice.

(3) Destruction or alteration of occupied habitat that results in the death of or injury to the St. Andrew beach mouse through the significant impairment of essential behaviors including breeding, feeding, or sheltering.

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain approved guidelines for actions within beach mouse habitat, contact the Field Supervisor of the Service's Panama City Field Office, 1612 June Avenue, Panama City, Florida 32405–3721 (telephone 850/769–0552). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permit Coordinator, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7110; facsimile 404/679–7081).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Jacksonville Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author: The primary author of this document is John Milio (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
•	•	•	•	•	•	•	•
Mouse, St. Andrew beach.	Peromyscus polionotus peninsularis.	U.S.A.(FL)	Entire	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: October 2, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–27549 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644, and 678

[I.D. 100697B]

Atlantic Highly Migratory Species; Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scoping meetings; request for comments.

SUMMARY: NMFS will hold 21 scoping meetings to receive comments from fishery participants and other members of the public on Atlantic tunas, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries. A scoping document of issues and options for Highly Migratory Species (HMS) fishery management is available for public comment (see **ADDRESSES**). The purpose of this announcement is to notify the public of meetings and provide for public participation in the management process.

DATES: Meetings will be held October 27 through November 17, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Written comments on the issues must be received on or before December 1, 1997.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting locations.

Written comments should be sent to Rebecca J. Lent, Chief, Highly Migratory Species Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Scoping Comments." Copies of the scoping document can be requested by telephone: 301–713–2347 or fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Liz Lauck or Jill Stevenson, telephone: 301-713-2347.

SUPPLEMENTARY INFORMATION: NMFS is considering future management measures for Atlantic tunas, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries to be included in a comprehensive Fishery Management Plan (FMP) for Atlantic tunas, swordfish and sharks, and an amendment to the Billfish FMP. Options for management may include long-term rebuilding programs, reallocation of quotas, recreational bag limits, commercial trip limits, minimum size restrictions, time/area closures, regional quotas, consistency between state and Federal regulations, gear restrictions, limited access, essential fish habitat, and permitting and reporting requirements.

Consistent with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS established an HMS Advisory Panel (AP) and a billfish AP to assist in developing and amending FMPs for HMS species. In the case of any species identified as overfished, the APs would also assist in developing rebuilding programs.

The scoping meetings are intended to gather public input on a broad range of options to be considered in addressing HMS issues. The scoping document was developed with input from the APs and outlines major issues and options under consideration. NMFS is seeking public input on these and other issues and options for HMS fisheries.

As part of the FMP development process, NMFS intends to prepare Environmental Impact Statement (EIS) documents due to the potentially significant impact of upcoming regulations on the human environment, and because changes have occurred in the fisheries since the last EISs were prepared (62 FR 45614, August 28, 1997). Participants in the fishery, including processors, may be required to operate under alternative management measures that may redistribute fishing effort and/or mortality in order to facilitate recovery of HMS. The EIS documents will address the impacts of potential future management options on the natural and human environment for the Atlantic tuna, Atlantic swordfish, Atlantic shark, and Atlantic billfish fisheries.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Liz Lauck at least 5 days before the meeting date (see **FOR FURTHER INFORMATION CONTACT**). Written comments on the issues and options for future management of HMS fisheries are also welcome.

Meeting Locations

The meeting schedule is as follows:

Monday, Oct 27, 1997, 7–10 p.m.

1. Holiday Inn, 290 State Highway 37 East, Toms River, NJ 08753, (908) 244–4000;

Monday, Oct 27, 1997, 6:30–9:30 p.m.

2. SC Dept. of Natural Resources, Marine Research Institute Auditorium, 217 Fort Johnson Road, Charleston, SC 29412, (803) 762–5037;

Tuesday, October 28, 1997, 7–10 p.m.

3. City Hall, 3rd Street and Baltimore Ave., Ocean City, MD 21842, (410) 289–8221;

4. Comfort Inn I–95, 5308 New Jessup Hwy., Brunswick, GA 31523, (912) 264–7268;

5. The San Luis, 5222 Sea Wall Blvd., Galveston, TX 77551, (409) 744–1500;

6. Holiday Inn (site of Mid-Atlantic Fishery Management Council meeting); 3900 Atlantic Ave., Virginia Beach, VA 23451, (757) 428–1711;

Wednesday, October 29, 1997, 7–10 p.m.

7. Holiday Inn, 1300 North Atlantic Ave., Cocoa Beach, FL 32931, (407) 783–2271;

8. NC Aquarium Auditorium, Airport Road, Manteo, NC 27954, (919) 473–3494;

9. The Hampton Inn, 32988 Perdido Beach Blvd., Orange Beach, AL 36561, (334) 974–1598;

Thursday October 30, 1997, 7–10 p.m.

10. Riverhead Town Hall, 200 Howell Ave. (corner E. Main), Riverhead, NY 11901, (516) 727–3200;

Monday, November 3, 1997, 7–10 p.m.

11. Holiday Inn (site of U.S. ICCAT Advisory Committee meeting), Georgia Ave., Silver Spring, MD 20910, (301) 589–0800;

Tuesday, November 4, 1997, 4–7 p.m.

12. Holiday Inn Beachside, Marquesas Room, 3841 N. Roosevelt Blvd., Key West, FL 33040, (305) 294–2571;

Tuesday, November 4, 1997, 7–10 p.m.

13. Holiday Inn By the Bay (site of New England Fishery Management Council meeting), 88 Spring St., Portland, ME 04101, (207) 775–2311;

Wednesday, November 5, 1997, 7–10 p.m.

14. Sheraton Biscayne Bay Hotel, Washington Room, 495 Brickell Ave., Miami, FL 33131, (305) 373–6000;

Thursday, November 6, 1997, 7–10 p.m.

15. Game Fishing Club of the Virgin Islands (above Frigate Restaurant), Red Hook, St. Thomas, U.S.V.I. 00802, (809) 775–9144;

16. Corliss Auditorium, Watkins Building, Graduate School of Oceanography, University of Rhode Island, 215 South Ferry Road, Narragansett, RI 02882, (401) 874–6222;

Friday, November 7, 1997, 10:00 a.m.–1:00 p.m.

17. International WorkBoat Show, Ernest N. Morial Convention Center - Room 16, New Orleans, LA 70898,(207) 842–5693;

Friday, November 7, 1997, 2–5 p.m.

18. NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930, (508) 281–9260;

19. Club Nautico, 482 Fernandez Juncos Ave., Old San Juan, PR 00905, (787) 722–0177;

Monday, November 10, 1997, 7–9 p.m.

20. Holiday Inn Long Boat Key (site of Gulf of Mexico Fishery Management Council meeting), 4949 Gulf of Mexico Drive, Long Boat Key, FL 34228, (941) 383–3771;

Monday, November 17, 1997, 7–10 p.m.

21. Duke University Marine Laboratory (site of South Atlantic Fishery Management Council meeting), 135 Duke Marine Lab Road, Beaufort, NC 28546, (919) 504–7504.

Additional meetings may be announced at a later date in the **Federal Register**.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 10, 1997.

Rebecca Lent,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

[FR Doc. 97–27519 Filed 10–10–97; 4:23 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 201

Friday, October 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Clancy-Unionville Vegetative Treatment/Travel Management Plan EIS; Helena National Forest, BLM Headwaters Resource Area, Lewis & Clark and Jefferson Counties, Montana

AGENCIES: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare Environmental Impact Statement and BLM Resource Management Plan (RMP) Amendment.

SUMMARY: The USDA, Forest Service and USDI, Bureau of Land Management are gathering information and preparing an Environmental Impact Statement (EIS) for a planning effort involving vegetative treatments and motorize travel management actions. This EIS will analyze the impacts of utilizing prescribed fire on grassland vegetation types and a combination of prescribed fire and tree removal within the forested vegetation. It will also evaluate the effects of alternative strategies for managing motorized travel uses throughout the affected area. Alternative travel management actions will address spatial, temporal and vehicle type allocations. Travel planning will also guide the long-term management of new roads needed to access the vegetation treatment areas. The project area is located immediately south of Helena, Montana, and totals 40,000 acres of public lands (including 5,000 acres of BLM lands).

The Forest Service and Bureau of Land Management propose to treat approximately 5750 acres of grassland and forested vegetation through prescribed burning and tree removal. On the National Forest, approximately 2800 acres would be treated with prescribed burning and 2200 acres of timber would be harvested. On the Bureau of Land Management lands approximately 750 acres would be harvested of which 250 acres would be treated further with prescribed burning.

Timber would be sold and removed using commercial thinning, selection, shelterwood, seedtree and clearcut harvest systems. Approximately 17.4 miles of new temporary road construction is needed to access treatment areas. Following treatment all but 1 mile of the temporary roads would be recontoured and physically closed. New road construction would occur in the Grizzly Gulch, Go Devil Creek, Whiteman Gulch, Little Buffalo Gulch, Jackson Creek, Lump Gulch and Quartz Creek vicinities.

The travel management proposal is to establish a "Restricted Area" designation for the entire area that would limit public motorized travel to designated routes. The use of some roads and trails would also be restricted to specific seasons and/or certain vehicle classes. Snowmobile users would be able to travel off routes in some portions of the area.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan and move selected areas towards the desired conditions identified from the Forest Plan. These needs are supported by the findings of the Divide Landscape Analysis (September 1996). This proposal would fulfill the vegetative management direction of the BLM Headwaters RMP and create some changes regarding travel management direction, ultimately requiring an amendment.

More specifically, the proposal has the following purpose:

- to create a more diverse forest with a wide variety of trees of varying ages, species and sizes.
- to minimize the threat of large scale, catastrophic wildfire by reducing the amount of forest vegetation (trees, shrubs and grasses) and litter on the forest floor. Vegetation treatments would be done in concert with the existing qualities of the urban/rural setting, while protecting the area's scenic and recreational amenities.
- to insure a variety of different plant and animal habitats which would meet the needs of the area's plant and animal species.
- to manage the area with designated roads and trails that serve the needs of a wide variety of public users, both motorized and non-motorized, while still protecting other resource values of the landscape.
- to produce an array of forest wood products (i.e. saw timber, post and pole material, firewood, Christmas trees) while still maintaining a sustainable forest.
- to improve water quality through sediment reduction measures and an up-dated travel management plan.

DATE: Comments concerning the scope of the analysis should be received in writing on or before November 17, 1997.

The draft EIS is scheduled for public release and comment in the spring of 1998.

ADDRESSES: The responsible officials are Tom Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59601. Phone: (406) 449–5201, and James R. Owings, Butte District Manager, Bureau of Land Management, 106 N. Parkmont, Butte, MT. 59701, Phone (406) 494–5059.

FOR FURTHER INFORMATION CONTACT: Denis A. Hart, Helena District Ranger, Helena Ranger District, 2001 Poplar Helena, MT. 59601. Phone: (406) 449–5490; or Merle Good, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT. 59702. Phone: (406) 494–5059; or Fan Mainwaring, Interdisciplinary Team Leader, Helena Ranger District, 2001 Poplar, Helena, MT. 59601.

SUPPLEMENTARY INFORMATION: The prescribed burning, timber harvest, and temporary road construction would occur on National Forest and Bureau of Land Management lands in portions of Grizzly Gulch, Go Devil Creek, Whiteman Gulch, Little Buffalo Creek, Jackson Creek, Lump Gulch and Quartz Creek drainages of the Helena Ranger District of the Helena National Forest and Headwaters Resource Area of the Bureau of Land Management. Included in the area being analyzed is all or portions of T.10N., R.4W., Sections 34–35; T.9N., R.4W., Sections 1–5, 8–12, 20–23, 26–29; T9N., R3W., Sections 29–33; T8N., R3W., Sections 12–14, 25–27, 35–36; T8N., R4W., Sections 7–8, 17–20, 29–30, Montana Principle Meridian.

The areas of proposed tree removal and prescribed burning are within

Management Areas T–1, T–4, T–5, L–1, R–1, W–1 and M–1 described in the Helena Forest Plan. The Forest Plan direction states that:

—T–1 Lands available and suitable for timber production. Although these areas consist primarily of suitable forest lands, there are inclusions on non-forest and non-productive forest lands.

—T–4 Productive timberland within sensitive viewing area of many major travel routes, use areas and water bodies. Most of the area is suitable forest land, but there may be inclusions of non-forest or non-productive forest land.

—T–5 Suitable timberlands interspersed with natural openings, generally with existing livestock allotments.

—L–1 Generally nonforested forage producing areas where forage production is optimized and timber harvest and prescribed fire may be used as tools for this purpose, but not for timber management sake.

—R–1 These management areas consist of large blocks—greater than 3,000 acres—of undeveloped land suited for dispersed recreation. These areas provide opportunities for semi-primitive, non-motorized recreation and are characterized predominantly by natural or natural appearing environment where there is a high probability of isolation from man's activities.

—W–1 This management area consists of a variety of wildlife habitat ranging from important big game summer range to big game winter range.

—M–1 Non-forest and forested land where timber management and range or wildlife habitat improvements are currently uneconomical or environmentally infeasible.

The affected area of this EIS includes portions of Management Units (MUs) 8, 23 and 24 as described in the BLM Headwaters RMP of 1984. These MUs were identified as having high forest land values with a high priority for management. This vegetative treatment analysis will meet the RMP directive to complete a Compartment Management Plan in this area. The RMP designated MUs 8 and 24 as open to motorized travel and available for permitted motorized event consideration. MU 23 is classified as restricted to motorized travel and closed to motorized events. The travel management proposal complies with the RMP direction for MU 23 and is inconsistent with the direction for MUs 8 and 24. Therefore, Plan Amendment procedures will be followed in this EIS planning effort.

The decisions to be made, based on this environmental analysis, are:

1. Whether or not to treat the forested and nonforested vegetation at this time, and if so, what areas to treat, and what treatment methods would be employed.
2. What roads, trails, and areas need to be closed or restricted to ensure resource protection and what roads, trails and areas should remain open for motorized users.

If it is decided to implement the proposal, activities may begin as early as 1998 and take up to 3 years to implement.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986 and the BLM Headwaters RMP of 1984 that provide program goals, objectives and standards and guidelines for conducting management activites in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the two plans. The Forest Service will also strive to meet the objectives further refined in the Divide Landscape Analysis.

The Forest Service and the Bureau of Land Management are seeking information and comments from Federal, State, local agencies and others organizations or individuals who may be interested in or affected by the proposed action. The Forest Service and the Bureau of Land Management invite written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those that have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

Prescribed harvest treatments in this proposal include: a) unevenaged management techniques such as individual tree selection and group selection; b) intermediate treatments such as commercial thinning; and c) regeneration treatments include seedtree, shelterwood, and clearout harvest methods. Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments would be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. The effects of the vegetative treatments on existing noxious weed populations.
2. The effects of the vegetative treatments and temporary road construction on wildlife resources.
3. The effects of the vegetative treatments on existing recreation use.
4. The effectiveness of the vegetative treatment upon forest health and forest fuel accumulations.
5. The effects on threatened, endangered and sensitive plant and animal species.
6. The effects on motorized and non-motorized recreation use.
7. The economic trade-offs of implementing this proposal.
8. The effects on cultural resources within the project area.
9. The effects upon public safety and adjacent private lands from log hauling and prescribed burning.

The Forest Service and Bureau of Land Management will analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with the Forest Service and Bureau of Land Management officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service and Bureau of Land management. This period extends for 30 days from the date of publication of this notice, in the **Federal Register**. The second review period is during the 45 day review of the DEIS in and when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1998. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service and the Bureau of Land Management believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objects are made available to the Forest Service and Bureau of Land Management at a time when they can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service and Bureau of Land Management in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service and Bureau of Land Management in preparing the FEIS. The FEIS is expected to be filed in July 1998.

Dated: October 6, 1997.

Tom Clifford,

Forest Supervisor, Helena National Forest.

Dated: September 29, 1997.

James R. Owings,

Butte District Manager, Bureau of Land management.

[FR Doc. 97–27542 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Squirrel Meadows-Grand Targhee Resort Land Exchange; Targhee National Forest, Teton County, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposed land exchange with Booth Creek, Inc., dba Grand Targhee Resort.

In this proposed exchange the Targhee National Forest would trade parcels of National Forest System Lands totaling about 265 acres to Booth Creek, Inc., for a private parcel totaling approximately 330 acres. The National Forest System lands to be conveyed are located at the base of the Grand Targhee Resort, 7 miles east of Alta, Wyoming. The lands to be acquired are located at Squirrel Meadows, 26 miles east of Ashton, Idaho.

Values of the parcels will be appraised following a process stipulated for Federal land adjustments. In order for the exchange to take place, the appraised values of the lands must be equal. Differences in appraised values may be made up by reducing the acreage of National Forest System lands offered for exchange, or by including a cash payment. The cash value may not exceed 25 percent of the appraised value of the Federal lands to be conveyed.

DATES: Written comments concerning the scope of the analysis described in this notice should be received on or before December 1, 1997.

ADDRESSES: Send written comments to Teton Basin Ranger District, Attn: Jack Haddox, PO Box 777, Driggs, ID 83422. The responsible official for this decision is Robert W. Ross, Jr., Director, Recreation and Lands, USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, UT 84401.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Patty Bates, Teton Basin District Ranger, Targhee National Forest, phone: (208) 354–2312.

SUPPLEMENTARY INFORMATION: The Targhee National Forest is proposing to exchange up to 265 acres of National Forest System lands within the Grand Targhee Resort permit area for 330 acres of private land at Squirrel Meadows. The final acreage will be decided through an appraisal process pursuant to the Uniform Federal Appraisal Standards for land adjustments. Values must be equal in order for the exchange to proceed. If it becomes necessary to equalize values the National Forest System acreage may be reduced from the proposed 265 acres. In the event the values cannot be equalized by the adjustment a cash equalization payment of up to 25 percent of the appraised value of the Federal lands may be made by either party.

The decision to be made is whether to proceed with the exchange as proposed; modify the exchange; or withdraw from the exchange. Public scoping will be completed through letters, news releases and public meetings. Dates have not yet been set.

Preliminary issues identified are:

(1) Impacts from potential development of the exchanged lands at Grand Targhee on the base area and in Teton Valley, Idaho.

(2) Impacts on wildlife in the area of Grand Targhee from potential development and increased use of the area in general.

(3) Impacts on the Jedediah Smith Wilderness from the potential increased use and development of the grand Targhee area.

(4) Creation of a private inholding within the boundary of the Targhee National Forest.

(5) The effects on grizzly bears (listed as threatened under the Endangered Species Act) and other threatened, endangered and sensitive species from the potential development of the exchanged lands and potential development of the lands if they are not exchanged.

Other issues may be identified during the scoping period. Written suggestions and comments are invited on the issues related to the proposal and the area being analyzed. Information received will be used in the preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this notice in the Federal Register.

The Forest Service is the lead agency. The Forest Service estimates the draft EIS will be filed in May, 1998, and the final EIS will be filed in December, 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give

reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be revised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circ 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D.) Wis. 1980. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 15 days.

Dated: October 9, 1997.

Jack A. Blackwell,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 97–27569 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Use of Certified Forage To Prevent the Spread of Noxious Weeds on National Forest System Lands in Montana

AGENCY: Forest Service, USDA.

ACTION: Notice: adoption of final policy.

SUMMARY: The Regional Forester for the Northern Region of the Forest Service has adopted a final policy which prohibits the use of hay, grain, straw, cubes or pelletized feed on National Forest System lands in Montana unless it is certified as free of noxious weeds or noxious weed seeds. This requirement will affect such users as recreationists using pack and saddle stock, ranchers operating under Forest Service grazing permits, outfitters and guides operating under Forest Service permits, and contractors who use straw or hay for reseeding or erosion control purposes on National Forest System-administered lands in Montana. This proposal has been developed in coordination with the State of Montana and Bureau of Land Management Montana State Office, which is publishing a similar decision in a separate notice in this same part of today's **Federal Register**. The intended effect is to coordinate prevention of the spread of undesirable weeds on federal lands in Montana.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: James Olivarez, Forest and Rangeland Staff, Northern Region, Forest Service, (406) 329–3621.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 261.50, the Regional Forester is issuing orders to close or restrict uses on National Forest System lands. As adopted, this requirement to close National Forest System lands to users who do not use a certified weed-free forage or similar products results in a standard closure order applicable to all National Forest System lands in Montana. The Northern Regional Forester has been implementing a similar policy on a forest-by-forest basis in Montana since 1989. The Montana State Office of the Bureau of Land Management (BLM) is adopting a similar standard requirement for all public lands under its jurisdiction. The BLM decision appears in a separate notice in this part of today's **Federal Register**.

Response to Public Comments

There was one written comment received. It was in support of this policy implementation via a closure order.

The text of the Special Closure Order shall be published in newspapers across the State of Montana, as well as direct notification by mail of interested and effected groups and individuals.

Dated: October 9, 1997.

Hal Salwasser,

Regional Forester.

[FR Doc. 97–27574 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–11–M

U.S. ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 49th Meeting in Arlington, VA on November 3 and 4, 1997. On Monday, November 3, the Commission will conduct an invitation only program review. This review will concentrate on three topics:

(1) Global Change in the Arctic.
(2) Arctic Native Environmental Health Issues.
(3) Petroleum Exploitation in the Arctic.

On Tuesday, November 4 the Commission will hold a Business Session. Agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the minutes of the 48th Meeting.
(3) Reports of Congressional Liaisons.
(4) Agency Reports.

Any person planning to attend the Tuesday meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 97–27617 Filed 10–16–97; 8:45 am]

BILLING CODE 7565–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 17, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Fly Tent, Nylon; Polyurethane Coated
8340–00–102–6370
8340–01–185–5512
NPA: Alabama Industries for the Blind, Talladega, Alabama
Character Lunch Bags
M.R. 402
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Administrative Services
General Services Administration, PBS
Sacramento Field Office
Sacramento, California
NPA: Goodwill Labor Power, Inc., Sacramento, California
Operation of Customer Supply Center
Hickam Air Force Base, Hawaii
NPA: Makaala Inc., Honolulu, Hawaii

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–27625 Filed 10–16–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: November 17, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 22 and 29, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 44637 and 45792) of proposed addition to and deletions from the Procurement List.

Addition

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Access Control
Fleet and Industrial Supply Center
Oakland, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following services are hereby deleted from the Procurement List:

Administrative Services

Federal Supply Service
Tool Acquisition Division I
2611 Jefferson Davis Highway
Arlington, Virginia

Commissary Shelf Stocking
Naval Air Station
Alameda, California

Commissary Shelf Stocking
Naval Air Station
Long Beach, California

Commissary Shelf Stocking and Custodial
Naval Station
Treasure Island, California

Food Service

White Sands Missile Range
Consolidated Dining Facility
White Sands, New Mexico

Janitorial/Custodial
Social Security Administration
4377 Mission Street
San Franciso, California

Janitorial/Custodial
Weather Bureau Building
2400 M Street, NW
Washington, DC

Janitorial/Custodial
Naval Air Warfare Center
Aircraft Division
6000 E. 21st Street
Indianapolis, Indiana

Janitorial/Custodial
Nuclear Regulatory Commission Warehouse
5000–5010 Boiling Brook Parkway
Rockville, Maryland

Janitorial/Custodial
Federal Building
35 Ryerson Street
Brooklyn, New York

Janitorial/Custodial
U.S. Army Reserve Center
Huntingdon, Pennsylvania

Janitorial/Custodial
U.S. Army Reserve Center
Moore Hall
Salt Lake City, Utah

Photocopying
National Agricultural Library Building
Beltsville, Maryland

Repair and Maintenance of Electric Typewriters
General Services Administration
(including Onondaga County)
Syracuse, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–27626 Filed 10–16–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: Bureau of Export Administration.

Title: Reporting and Recordkeeping Requirements Under the Wassenaar Arrangement.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Review.

Burden: 851 Hours.

Number of Respondents: 2,275.

Avg. Hours per Response: Ranges between one and ten minutes depending on the requirement.

Needs and Uses: This collection of information is required as the result of a multilateral export control agreement called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in the transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Victoria Baecher-Wassmer or Pat Boyd, (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Pat Boyd or Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503. An emergency approval has been requested by Friday, October 17, 1997.

Dated: October 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27524 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Regulations Under the Marine Mammal Protection Act Governing the Small Take of Marine Mammals Incidental to Specified Activities.

Agency Form Number: None.

OMB Approval Number: 0648–0151.

Type of Request: Reinstatement of a previously approved collection.

Burden: 3,926.

Number of Respondents: 35.

Avg Hours Per Response: 60 hours (requests for regulations average 483 hours, applications for Letters of Authorization average 3 hours, applications for Incidental Harassment Authorizations average 200 hours, and reports range from 30–150 hours a response.

Needs and Uses: The harassment, injury or death of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA), unless permitted, exempted, or otherwise authorized. Providing the taking (harassment, injury, mortality) is negligible, maritime activities that result in the incidental taking of marine mammals need an authorization under the MMPA to avoid prosecution under the MMPA. The Act requires applicants to submit information justifying the authorization. The MMPA also requires monitoring and reporting on marine mammal interactions with the activity.

Affected Public: Federal Government, businesses or other for-profit organizations, not-for-profit institutions and state, local or tribal government.

Frequency: Annually, and 90 day reporting requirements.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27577 Filed 10–16–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Regulations.

Agency Form Number: None.

OMB Approval Number: 0648–0075.

Type of Request: Reinstatement of a previously approved collection.

Burden: 330 hours.

Avg. Hours Per Response: 6 minutes.

Number of Respondents: 110 with multiple responses.

Needs and Uses: Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act. Collection of information from permitted foreign vessels is necessary for enforcement by allowing the monitoring of vessel activities and whereabouts in U.S. waters. Reports are also necessary for fishery management purposes to monitor the amount of fish caught or received by foreign vessels.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27578 Filed 10–16–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Information for Share Transfer in Wreckfish Fishery.

Agency Form Number: None.

OMB Approval Number: 0648–0262.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1 hour.

Avg. Hours Per Response: 15 minutes.

Number of Responses: 4.

Needs and Uses: The individual transferable quota system for the wreckfish fishery is based on percentage shares. The purpose of this collection is to provide information on the transfer of ownership of percentage shares.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27526 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Information for Share Transfer in Wreckfish Fishery.

Agency Form Number: None.

OMB Approval Number: 0648–0262.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1 hour.

Avg. Hours Per Response: 15 minutes.

Number of Responses: 4.

Needs and Uses: The individual transferable quota system for the wreckfish fishery is based on percentage shares. The purpose of this collection is to provide information on the transfer of ownership of percentage shares.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27579 Filed 10–16–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On June 10, 1997, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 21 manufacturers/exporters. The period of review (POR) is May 1, 1995, through April 30, 1996.

Based on our analysis of the comments received, we have made changes, including corrections of certain

inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

France

Chip Hayes (SKF), Lyn Johnson (SNFA), Michael Panfeld (SNR), Robin Gray or Richard Rimlinger.

Germany

John Heires (Torrington Nadellager), J. David Dirstine (SKF), Suzanne Flood (INA), Michael Panfeld (NTN Kugellagerfabrik), Thomas Schauer (FAG), Robin Gray or Richard Rimlinger.

Italy

Chip Hayes (SKF), Mark Ross (FAG) or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Gregory Thompson (NTN), Kristie Strecker (NPBS), Thomas Schauer (NSK Ltd., Nachi-Fujikoshi Corp.) or Richard Rimlinger.

Romania

Kristie Strecker (Tehnoimportexport, S.A.) or Robin Gray.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden

Mark Ross (SKF) or Richard Rimlinger.

United Kingdom

Hermes Pinilla (FAG, Barden, NSK/RHP) or Robin Gray.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Background

On June 10, 1997, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (62 FR 31566). The reviews cover 21 manufacturers/exporters. The period of review (the POR) is May 1, 1995, through April 30, 1996. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held public hearings for General Issues on July 8, 1997, and for Japan-specific issues on July 15, 1997. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise: Ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes of kinds of merchandise, including a compilation of all pertinent scope determinations, *see* the "Scope Appendix," which is appended to this notice of final results.

Use of Facts Available

For a discussion of our application of facts available, *see* the "Facts Available" section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded home market (HM) sales below cost for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Class or kind of merchandise
France	SKF	BBs
	SNR	BBs
Germany	NTN	BBs
	FAG	BBs, CRBs, SPBs
	INA	BBs, CRBs, SPBs
	SKF	BBs, CRBs, SPBs
Italy	FAG	BBs
	SKF	BBs
Japan	Koyo	BBs, CRBs
	Nachi	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
	NPBS	BBs
Singapore	NMB/Pelmec	BBs
Sweden	SKF	BBs
United Kingdom	NSK–RHP	BBs, CRBs
	Barden	BBs

Duty Absorption

We have determined that duty absorption has occurred with respect to the following firms and with respect to the following percentages of sales which these firms made through their U.S. affiliated parties:

Name of Firm	Class or kind	Percentage of U.S. affiliate's sales with dumping margins
France		
SKF	BBs	23.24
	SPBs	100.00
SNR	BBs	36.22
	CRBs	44.64
Germany		
FAG	BBs	54.57
	CRBs	40.14
	SPBs	21.10
INA	BBs	64.47
	CRBs	40.89
NTN	BBs	36.44
SKF	BBs	7.03
	CRBs	53.78
	SPBs	21.17
Italy		
FAG	BBs	20.43
SKF	BBs	8.15
Japan		
Koyo Seiko	BBs	49.49
	CRBs	86.02
Nachi	BBs	58.49
	CRBs	31.87
NPBS	BBs	55.46
NSK	BBs	24.23
	CRBs	36.19
NTN	BBs	37.50
	CRBs	19.26
	SPBs	73.03
Singapore		
NM Singapore/Pelmec Inc..	BBs	8.51
Sweden		
SKF	BBs	45.26
United Kingdom		
NSK/RHP	BBs	27.78
	CRBs	52.51
Barden	BBs	13.36

For a discussion of our determination with respect to this matter, *see* the "Duty Absorption" section of the Issues Appendix.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1995, through April 30, 1996:

Company	BBs	CRBs	SPBs
France			
SKF	5.38	(2)	42.79
SNFA	66.42	18.37	(3)
SNR	8.60	10.14	(2)
Germany			
FAG	12.40	19.49	10.32
INA	49.62	20.08	28.62
NTN	9.44	(2)	(2)
SKF	4.25	17.82	4.72
Torrington Nadellager	(3)	76.27	(3)
Italy			
FAG	1.76	(1)	
SKF	3.59	(3)	
Japan			
Koyo Seiko	14.20	15.38	(1)
NPBS	16.70	(2)	(2)
NSK	9.88	6.88	(2)
NTN	7.10	3.86	7.69
Nachi	12.89	3.15	(2)
Romania			
TIE	.20		
Singapore			
NMB Singapore/Pelmec Ind.	2.10		
Sweden			
SKF	12.62		
United Kingdom			
NSK–RHP	16.49	68.26	
Barden	4.00	(1)	

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

[3] No review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of AFBs.

1. Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Constructed Export Price Sales

For constructed export price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net value for that exporter's sales for each relevant class or kind of merchandise to the United States during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates shown

above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993) and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 8, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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B. Burden of Proof
C. HTS
D. Certification of Conformance to Past Practice
E. Pre-Existing Inventory
F. Inland Freight
G. Other Issues

Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The HTS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made:

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 19006, 19019 (May 3, 1989):

Products covered:

- Rod end bearings and parts thereof.
- AFBs used in aviation applications.
- Aerospace engine bearings.
- Split cylindrical roller bearings.
- Wheel hub units.
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination (*see International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488 (May 18, 1989)).
- Wave generator bearings.
- Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery.

Products excluded:

- Plain bearings other than spherical plain bearings.
- Airframe components unrelated to the reduction of friction
- Linear motion devices.
- Split pillow block housings.
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review.
- Thermoplastic bearings.
- Stainless steel hollow balls.
- Textile machinery components that are substantially advanced in function(s) or value.
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions.

Scope rulings completed between April 1, 1990, and June 30, 1990 (*see Scope Rulings*, 55 FR 42750 (October 23, 1990)):

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability.

Scope rulings completed between July 1, 1990, and September 30, 1990 (*see Scope Rulings*, 55 FR 43020 (October 25, 1990)):

Products covered:

- Rod ends.
- Clutch release bearings.
- Ball bearings used in the manufacture of helicopters.
- Ball bearings used in the manufacture of disk drives.

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I)*, 56 FR 31692, 31696 (July 11, 1991):

Products covered:

- Load rollers and thrust rollers, also called mast guide bearings.
- Conveyor system trolley wheels and chain wheels.

Scope rulings completed between April 1, 1991, and June 30, 1991 (*see Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products excluded:

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys.

Scope rulings completed between July 1, 1991, and September 30, 1991 (*see Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products covered:

- Snap rings and wire races.
- Bearings imported as spare parts.
- Custom-made specialty bearings.

Products excluded:

- Certain rotor assembly textile machinery components:
- Linear motion bearings.

Scope rulings completed between October 1, 1991, and December 31, 1991 (*see Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products covered:

- Chain sheaves (forklift truck mast components).
- Loose boss rollers used in textile drafting machinery, also called top rollers.
- Certain engine main shaft pilot bearings and engine crank shaft bearings.

Scope rulings completed between January 1, 1992, and March 31, 1992 (*see Scope Rulings*, 57 FR 19602 (May 7, 1992)):

Products covered:

- Ceramic bearings.
- Roller turn rollers.
- Clutch release systems that contain rolling elements.

Products excluded:

- Clutch release systems that do not contain rolling elements.
- Chrome steel balls for use as check valves in hydraulic valve systems.

Scope rulings completed between April 1, 1992, and June 30, 1992 (*see Scope Rulings*, 57 FR 32973 (July 24, 1992)):

Products excluded:

- Finished, semiground stainless steel balls.
- Stainless steel balls for non-bearing use (in an optical polishing process).

Scope rulings completed between July 1, 1992, and September 30, 1992 (*see Scope Rulings*, 57 FR 57420 (December 4, 1992)):

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1.
- Model 15BM2110 bearings.

Products excluded:

- Certain textile machinery components.

Scope rulings completed between October 1, 1992, and December 31, 1992 (*see Scope Rulings*, 58 FR 11209 (February 24, 1993)):

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1.

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings.

Scope rulings completed between January 1, 1993, and March 31, 1993 (*see Scope Rulings*, 58 FR 27542 (May 10, 1993)):

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1.

Scope rulings completed between April 1, 1993, and June 30, 1993 (*see Scope Rulings*, 58 FR 47124 (September 7, 1993)):

Products covered:

- Certain series of INA bearings.

Products excluded:
• SAR series of ball bearings.
• Certain eccentric locking collars that are part of housed bearing units.

Scope rulings completed between October 1, 1993, and December 31, 1993 (*see Scope Rulings*, 59 FR 8910 (February 24, 1994)):

Products excluded:
• Certain textile machinery components.

Scope rulings completed between January 1, 1994, and March 31, 1994:

Products excluded:
• Certain textile machinery components.

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products excluded:
• Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope rulings completed between April 1, 1995 and June 30, 1995 (*see Scope Rulings*, 60 FR 36782 (July 18, 1995)):

Products covered:
• Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
• Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products covered:
• Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products excluded:
• Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.
• Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.
• Enkotec Company, Inc.—"Main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

Issues Appendix

Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd. and the Barden Corporation
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG U.K.—FAG (U.K.) Ltd.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp., Nachi America Inc. and Nachi Technology, Inc.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN Japan—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF-France; SKF-Germany; SKF-Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
TIE—Tehnoimportexport
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NV—Normal Value
HM—Home Market
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

AFB Administrative Determinations

LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs III—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs IV—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs V—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

AFBs VI—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 2081 (January 15, 1997).

1. Facts Available

Comment: SKF France maintains that, with respect to its CRBs, the Department had no basis upon which to make an adverse inference since SKF companies did not sell French CRBs to the United States during this review period and since in its questionnaire responses it stated that SKF France did not make such sales. SKF France maintains that its response demonstrates that only BBs and SPBs were subject to review and, further, that SKF's reporting of HM and U.S. sales of SKF's French AFBs has been verified consistently. Finally, SKF France argues that, because the Department's use of facts available and an adverse inference is inappropriate as to CRBs, it is also inappropriate as to duty absorption by SKF with respect to CRBs.

Department's Position: We agree with SKF France. We sent a no-shipment inquiry to U.S. Customs on March 24, 1997. Customs did not indicate that there were any entries of CRBs from SKF France. Without such entries during the review period, there is nothing upon which we may assess any duties we determine in the course of the review. Therefore, the issue of whether SKF France had any sales of CRBs is moot.

In addition, we will continue to apply the "all others" rate, which is the rate established in the LTFV investigation, to CRBs from France for future entries of this merchandise. Because we are not applying facts available to SKF France's CRBs, we have not applied facts available in our duty-absorption determination on CRBs from SKF France.

2. Discounts, Rebates, and Price Adjustments

We have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. We did not treat such adjustments as direct (or indirect) selling expenses but, rather, as direct adjustments necessary to identify the correct starting price. While we prefer that respondents report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these AFBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner. *See* section 776 of the Tariff Act. Accordingly, we have accepted these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

In applying this standard, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Significant differences in such areas may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of in-scope and out-of-scope merchandise. While we scrutinize any such differences carefully between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would not be reasonable to require that respondents submit sale-specific adjustment data on out-of-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by a respondent that has cooperated to the best of its ability.

Where we have found that a company has not acted to the best of its ability in reporting the adjustment in the most specific and non-distortive manner feasible, we have made an adverse inference in using the facts available with respect to this adjustment pursuant to section 776(b) of the Tariff Act. With respect to HM adjustments, in accordance with the Court of Appeals for the Federal Circuit's (CAFC) decision in *The Torrington Company* v. *United States*, 82 F.3d 1039, 1047–51 (CAFC 1996) (*Torrington I*) , we have not treated improperly allocated HM price adjustments as if they were indirect selling expenses (ISEs), but we have instead disallowed downward adjustments in their entirety. However, we have included positive (upward) HM price adjustments (*e.g.*, positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to NV, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible. *See AFBs V* at 66498.

Comment 1: Torrington asserts that some respondents reported home-market discounts, rebates, and post-sale price adjustments (PSPAs) by allocating amounts across all sales or across all sales to a given customer, even when some sales were not entitled to the adjustment. Torrington cites the CAFC's decision in *Torrington I* (at 1047–51), arguing that direct PSPAs must be reported on a sale-specific basis in order for the Department to make a downward adjustment to NV and that the Department may not make an adjustment for improperly allocated direct expenses as if these were indirect expenses. Torrington contends that the new statute retains the distinction between direct and indirect selling expenses, citing sections 772(d)(1)(B) and (D) and section 773(a)(7)(B) of the Tariff Act. Petitioner argues that, while the discussion in the SAA at 823–824 demonstrates the intention to continue the practice of allowing allocations when allocations were non-distortive, this statement is no longer valid because it was written in 1994, prior to *Torrington I*, when the Administration held the belief that its practice was sustained by the courts. Therefore, Torrington asserts, the Department should deny all rebates, discounts, and PSPAs that respondents did not report on a transaction-specific basis or which they did not allocate in such a manner as to be tantamount to reporting on a transaction-specific basis.

FAG, Koyo, Nachi, NSK, and SKF argue that the Department should make direct adjustments to price when the allocation of PSPAs is reasonable and not distortive and that such practice conforms with the SAA and the new regulations at 351.401(g)(1). Koyo, Nachi, NSK, and SKF contend that, in *Torrington I*, the CAFC did not disallow an adjustment merely because it involved an allocation. According to respondents, the court stated that, regardless of the allocation method, the Department could not treat direct price adjustments as indirect selling expenses, but the court did not address the propriety of the allocation methodology. Additionally, respondents claim, the allocation of these expenses does not detract from their relation to particular transactions, thereby making them direct expenses and deductible from price.

NSK further argues that the Department need not disallow price adjustments simply because the respondent is unable to report these expenses on a sales-specific basis (citing *Smith-Corona* v. *United States*, 713 F. 2d 1568, 1580 (CAFC 1983)). Additionally, Koyo argues that the Department treated the PSPAs properly as direct adjustments to gross price,

rather than as direct or indirect selling expenses, since they are corrections to the sales price and do not arise as a result of preparing the merchandise for sale or from selling activities.

NTN contends it reported such adjustments on a transaction-specific basis. Therefore, NTN claims that Torrington's arguments do not apply to its response.

Department's Position: We agree with FAG, Koyo, Nachi, NSK, SKF, and NTN. As we discussed in the introductory remarks to this section, our practice is not to reject an allocation of price adjustments when it was not feasible for a respondent to report the adjustments on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

We see no conflict between *Torrington I* and our acceptance of allocated price adjustments subject to the above conditions because the CAFC did not address the propriety of the allocation methods respondents used in reporting the price adjustments in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (see *Torrington I* at n.15), it held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses and could not be used to offset the deduction of U.S. indirect selling expenses. The CAFC did not find that such price adjustments could not be based on allocations. In fact, such a holding would have been inconsistent with the CAFC's prior holding in *Smith-Corona Group* v. *United States*, 713 F. 2d 1568, 1580–81 (CAFC 1983), which the *Torrington I* court did not question.

Comment 2: Torrington asserts that, if the Department accepts allocated PSPAs as a direct adjustment to NV in these reviews, it should not follow the method it used in the 1994/95 administrative reviews to determine whether the allocations are distortive. Rather, Torrington argues, the Department should judge all allocations using product-specific sales information. Torrington notes that different classes or kinds of AFBs cannot be deemed similar for purposes of expense allocations because the Department found in the original less-than-fair-value proceeding that there are several "classes or kinds" of bearings, each requiring a separate proceeding. Torrington explains that the physical characteristics of non-subject merchandise should not be considered similar to those of subject merchandise for purposes of expense allocations. Torrington argues that, if the physical characteristics of an out-of-scope bearing are considered similar to those of an in-scope bearing for purposes of allocating price adjustments, then the former should be included within the scope of the order.

FAG, Koyo, NSK, and SKF assert that the Department's 1994/95 review methodology used to determine the distortiveness of the allocation of PSPAs is sufficient. These respondents contend that the Department has reviewed the propriety of their allocation methodologies correctly by considering those products receiving allocated expenses according to the value and physical characteristics of the products and the manner in which they were sold. FAG, Koyo, NSK, and SKF contend that there is no evidence that the Department's methodology allowed disproportionate allocations of PSPAs across subject and non-subject merchandise and conclude that the Department should continue their use.

NTN asserts that Torrington's argument concerning the Department's methodology for determining distortiveness of allocations does not apply to it because it reported discounts on a product-specific basis.

Department's Position: We agree with FAG, Koyo, NSK, NTN, and SKF. As stated above in the introductory remarks to this section, in determining the propriety of respondents' allocation methodologies for price adjustments, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, we did not accept such allocations where we had reason to believe that a respondent granted such adjustments in disproportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it was sold. Significant differences in such areas may increase the likelihood that respondents granted price adjustments in disproportionate amounts with respect to sales of in-scope and out-of-scope merchandise.

Comment 3: Torrington contends that the Department should disallow certain discounts NTN Japan reported. Torrington argues that, based on documentation the Department obtained at verification which relates to the negotiation of certain discounts, NTN Japan's reported discounts were not granted on a customer-and product-specific basis and were not limited to subject merchandise. In addition, Torrington asserts that evidence on record indicates that these adjustments may not be discounts but, rather, may be claims for a different kind of adjustment for which, Torrington asserts, NTN has not met the Departmental standard.

NTN Japan maintains that negotiating discounts is a part of its normal business activity and that the Department verified its reported discounts in detail and found that they were granted on a customer-and product-specific basis. NTN asserts that Torrington's argument is based improperly on limited documentation included on the record and it fails to consider the overall verification by the Department officials, which included the examination of numerous documents relevant to these discounts which were not entered on the record. NTN notes that the Department is not required to enter all documents examined during verification on the record.

Department's Position: We disagree with the petitioner. We verified this discount and found that NTN granted it "by product for each customer." In addition, it meets the Department's standard for a discount. We reached this conclusion after reviewing numerous documents at verification, although we did not include all reviewed information was included in the record as a verification exhibit. (*See* Verification Report dated May 8, 1997, at 5.) Therefore, petitioner's argument regarding whether the discount should be treated as something other than a discount is incorrect.

Comment 4: Koyo contends that the Department correctly accepted one of its billing adjustment claims (designated BILADJ1H in the response) but inexplicably failed to accept the other billing adjustment claim (designated BILADJ2H in the response). Koyo contends that both billing adjustments have been accepted in past AFB and tapered roller bearing (TRB) administrative reviews and that there have been no changes in its reporting methodology since the completion of those reviews.

Torrington argues that both of Koyo's billing adjustments, which it reported on a customer-specific basis, should be rejected. Torrington contends that BILADJ1H, which it claims was granted on a model-specific basis but was reported on a customer-specific basis, and BILADJ2H, which it claims was granted on a lump-sum basis, should both be rejected as both reporting methods result in the application of price adjustments to transactions which were not subject to these adjustments.

Department's Position: With respect to BILADJ1H, Koyo granted the adjustment amount on a customer- and model-specific basis. Koyo then totaled the price adjustments granted and sales of subject merchandise sold to each customer to calculate an overall adjustment factor per customer in order to allocate the adjustment over subject merchandise sales to the respective customer. Our examination of the record leads us to conclude that, while Koyo has paper records of the adjustment, it is not feasible for Koyo to retrieve the information electronically or to allocate this adjustment more specifically, given the large volume of transactions involved, the level of detail contained in Koyo's normal accounting records, and the time constraints imposed by the statutory deadlines under which all parties must operate. Therefore, we have accepted Koyo's reporting methodology for these billing adjustments.

With respect to BILADJ2H, Koyo granted both lump-sum adjustments which it negotiated with its customers without reference to model-specific selling prices and some adjustments which it granted on a model-specific basis but which Koyo reported on a customer-specific basis. Koyo allocated BILADJ2H to subject merchandise on the basis of sales value.

We have reconsidered our disallowance of BILADJ2H for the preliminary results and now agree with Koyo that we should allow its lump-sum billing adjustments as a direct adjustments to NV. We determine that Koyo acted to the best of its ability in reporting this information using customer-specific allocations. Given the fact that Koyo's records do not readily identify a discrete group of sales to which each billing adjustment pertains and the extremely large number of POR sales Koyo made, it is not feasible for Koyo to report this adjustment on a more specific basis. Moreover, we are satisfied that Koyo's allocation methodology across subject merchandise by sales value was not distortive.

Comment 5: Torrington argues that FAG Germany reported HM rebates improperly. Torrington notes that, while some rebates were payable only in connection with purchases of certain types of products, FAG reported these rebates on a customer-specific basis, creating the likelihood that some rebates were reported on sales when no rebates were actually paid. For this reason, Torrington asserts that the Department should deny the claimed adjustment.

FAG argues that it reported all rebates properly so that no rebates were reported where they did not apply. For customer-specific rebates, FAG claims it reported instances where the rebate was applicable to only certain products and factored the rebate only over sales of those products.

Department's Position: We disagree with Torrington. As Exhibit B–6 of FAG's questionnaire response dated September 9, 1996 demonstrates, FAG allocated its rebates on a customer-specific basis over sales only of those products that actually received rebates. Therefore, we determine that FAG's methodology for reporting rebates is reasonable and not distortive, and, in accordance with our policy, we have accepted FAG's HM rebates as reported.

Comment 6: Torrington argues that the Department should disallow certain post-sale price adjustments which SKF Germany reported in an inaccurate manner. Torrington contends that SKF Germany reported support rebates to distributors in a manner different from the manner in which the rebate was actually granted and, therefore, the Department should reject the adjustment to price. Torrington purports that, whereas SKF determines eligibility by comparing SKF Germany's invoice price to the reseller's invoice price, the reporting methodology allocates the rebate across all sales to the reseller, thereby reporting rebates on sales where none actually occurred.

Additionally, Torrington argues that the Department should reject SKF Germany's billing adjustment 2 in the HM, as it was not reported in an accurate manner. Petitioner contends that customer-specific reporting of the adjustment is not accurate unless the adjustment applies equally to all sales to that customer. Torrington also asserts that SKF did not report the timing of such billing adjustments accurately. Furthermore, Torrington points out that SKF was able to report such billing adjustments on a transaction-specific basis for U.S. sales but did not explain why it was unable to report the same adjustment on a transaction-specific basis for HM sales.

Finally, Torrington claims that it should not be responsible for demonstrating the distortive nature of such allocations because it does not have access to information which would allow such demonstration. Torrington maintains that it is SKF Germany's responsibility to produce evidence to demonstrate that its methodology is not distortive. Torrington concludes that, while the Department requested additional information for purposes of determining the distortiveness of such allocations, SKF Germany responded in a general, non-specific manner, precluding such a judgment by the Department.

SKF Germany argues that the Department was correct in accepting support rebates and billing adjustment 2 as adjustments to HM price. SKF Germany contends that Torrington is incorrect in arguing that SKF's reporting methodology regarding support rebates is likely to result in rebates on sales where none actually occurred. SKF Germany notes that, for each customer for whom SKF reported a support rebate, it actually granted a rebate to that customer and the actual amount granted does relate to the totality of sales to that customer. SKF Germany argues that the allocation of the rebate on aggregate sales to that customer is proper since the amount is based on sales of the customer, not sales of SKF Germany to the customer. As such, SKF states that it reported the rebate in exactly the manner in which it was incurred.

SKF Germany also disagrees with Torrington concerning billing adjustment 2, arguing that this billing adjustment applies only in instances where transaction-specific attribution was not possible. SKF disagrees further with Torrington's argument that SKF USA's ability to report billing adjustments on a transaction-specific manner supports Torrington's contention that the adjustment should be disallowed in the HM. Rather, SKF contends this difference in reporting methodology supports the allowance of SKF Germany's billing adjustment 2 because it demonstrates the two types of billing adjustments the two companies made. SKF USA only grants transaction-specific billing adjustments (billing adjustment 1), while SKF Germany grants rebates associated with a specific transaction (billing adjustment 1) and those that are not linked with a particular transaction (billing adjustment 2).

Department's Position: We agree with SKF Germany regarding our treatment of support rebates and billing adjustment 2. We find that SKF Germany's allocation methodologies are not unreasonably distortive. Due to the nature of the support rebates, transaction-specific reporting is not appropriate. SKF Germany grants these rebates to distributors/dealers to ensure that they obtain a minimum profit level on sales to select customers. Hence, because SKF Germany does not issue these rebates based on specific sales to the distributor/dealers but rather on the sales of the distributors/dealers, SKF Germany cannot report transaction-

specific rebate amounts. Rather, SKF Germany has allocated the rebates it granted to a specific customer over all sales to that customer. SKF Germany's allocation methodology is not unreasonably distortive, as we are satisfied that each adjustment was granted in proportionate amounts with respect to the value of sales of in-scope and out-of-scope merchandise.

With respect to billing adjustment 2, SKF Germany reported billing adjustments not associated with a specific transaction. SKF Germany could not tie these adjustments to a specific transaction because the billing adjustments it reported in this field were part of credit or debit notes, issued to the customer, that related to multiple invoices, products, or invoice lines. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, given the large volume of transactions involved in these AFB reviews and the time constraints imposed by the statutory deadlines. Furthermore, we found that the products which received the adjustment were similar in terms of value, physical characteristics, and the manner in which they were sold. For these reasons, we find that this methodology is not unreasonably distortive.

We agree with Torrington that it should not be responsible for demonstrating the distortive nature of this allocation; rather it is the responsibility of the respondent to demonstrate that its methodology is not unreasonably inaccurate or distortive. SKF Germany has satisfied this responsibility with regard to the reporting of its support rebates and billing adjustment 2 with adequate explanation in its response. SKF Germany demonstrated that its allocation methodology was reasonable and that the AFB products over which it allocated a PSPA were similar in terms of value, physical characteristics and the method in which they were sold.

Comment 7: INA argues that the Department did not transfer negative billing adjustments from the HM sales database submitted by INA to the HM sales file used for the preliminary results, since the Department did not include in its preliminary results calculations the negative billing adjustments INA reported in the Department's preliminary results calculations. INA claims that this is a clerical error and that this error should be corrected in the final results.

In rebuttal, Torrington contends that the Department should disallow all of INA's claimed downward billing adjustments in calculating NV because INA provided only a brief description of its HM billing adjustments which did not indicate whether the adjustments were limited to in-scope merchandise. Torrington argues that the CAFC held that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment in calculating NV.

Department's Position: We disagree with INA. We do not view the omission of downward HM billing adjustments as a clerical error and have disallowed this adjustment for the final results. As we discussed in the introductory remarks to this section, our practice is to accept claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive (see section 776 of the Tariff Act).

In our supplemental questionnaire dated January 23, 1997, we requested specifically that INA provide additional information to explain and demonstrate the nature of its reported billing adjustments and how they were incurred and recorded in INA's accounting system, as well as to demonstrate that the allocations were not unreasonably distortive. In INA's February 12, 1997 supplemental questionnaire response at page 16, the firm provided only a brief description of its HM billing adjustments by stating that all were made strictly on a transaction-specific basis and were made in cases in which INA Germany had to correct billing errors and in cases where the prices were definitely agreed upon with the customers after the shipments. However, INA did not provide sufficient evidence to demonstrate that the allocations of downward billing adjustments were limited to in-scope merchandise or were not otherwise unreasonably distortive. Because there is nothing on the record to support the accuracy of INA's claim, we have denied the adjustment.

As we mentioned in the introductory remarks at the beginning of this section, when we reject a respondent's allocation of price adjustments, we only reject the downward adjustments to NV. Therefore for these final results, we have included INA's upward billing adjustments in our analysis.

3. Circumstance-of-Sale Adjustments

3.A. Technical Services and Warranty Expenses

Comment 1: Torrington argues that the Department should treat certain of NTN's U.S. technical service expenses as direct rather than indirect selling expenses. Torrington asserts that NTN's supplemental questionnaire response did not meet the burden of demonstrating the indirect nature of the technical service expenses and, therefore, maintains that the Department should treat such expenses as direct selling expenses.

NTN argues that it responded adequately to the Department's supplemental inquiries regarding NTN's reported U.S. technical service expenses and notes that Torrington misread the question the Department posed in its supplemental questionnaire. NTN argues further that, if the Department determined that the technical service information provided in its responses did not demonstrate the indirect nature of such expenses, the Department would have requested NTN to submit additional information. NTN maintains that the manner in which it reported the expense in these reviews is based on the same methodology with which it reported the expense in the 94/95 administrative reviews and states that, in those reviews, the Department accepted NTN's methodology of reporting this expense.

Department's Position: We disagree with Torrington. In its supplemental response, NTN explained that the expenses are fixed expenses and do not vary with sales volumes. Therefore, because we are satisfied with NTN's responses to our questions, we have treated these expenses as indirect in nature.

Comment 2: Torrington asserts that SKF Germany under-reported its direct warranty expenses with regard to U.S. sales and that the Department should recalculate the direct adjustment to U.S. prices for warranty claims, including a facts-available amount for additional expenses which SKF Germany did not report properly. Torrington explains that, while SKF Germany reported the cost of replacement bearings as a direct warranty expense in the U.S. market, elsewhere in its response SKF Germany describes that in its warranty activities it incurs expenses associated with "customer contact, processing warranty claims, testing of bearings, and directing the shipment of defective and replacement bearings." Therefore, petitioner claims, SKF Germany incurs direct expenses other than merely the replacement cost of bearings and the Department must account for these expenses in its calculations.

SKF Germany disagrees with Torrington's contention that direct warranty expenses for SKF USA were under-reported and that the Department should apply facts available, arguing that certain expenses which Torrington considers to be direct are indirect expenses and were reported properly as such.

Department's Position: We disagree with Torrington. Based on our analysis of the information SKF Germany submitted in these reviews, we agree with SKF Germany that it referred to fixed types of expense activities correctly, such as salary expenses for customer service representatives and salesmen who make customer contacts and process warranty claims as well as salary expenses for application engineers who test bearings and other internal testing expenses, as indirect expenses. Because these are fixed expenses, it was proper to report them as indirect expenses. Because there are no other issues with respect to SKF Germany's reporting of its U.S. direct warranty expenses, we have accepted SKF Germany's U.S. direct warranty expenses as reported for these final results.

3.B. Credit

Comment 1: Torrington contends that the adjusted price SKF Germany used to calculate credit expenses in the HM differed in its adjustments from the adjusted price used to calculate credit expenses in the U.S. market. According to Torrington, the adjusted price SKF Germany used in the U.S. market calculation included a deduction of cash discounts from the gross unit price incorrectly, though the HM adjusted price did not reflect such a deduction. Torrington contends that, because the calculation in the U.S. market was therefore lower, the result is an under-reporting of U.S. credit expenses. Because SKF Germany reported cash discounts in both the United States and the HM, Torrington asserts that the Department should recalculate reported credit expenses using fully adjusted prices in the calculation or apply facts-available information.

SKF Germany argues that it has not changed its methodology of calculating credit expense from that it used in prior reviews and notes that the Department has accepted it in prior reviews.

Department's Position: We agree with Torrington. SKF Germany calculated U.S. credit expense based on prices net of cash discounts but did not include deductions for reported cash discounts in the adjustment of prices SKF Germany used for calculation of HM credit expense. We have recalculated SKF Germany's HM credit expenses based on adjusted prices net of discounts for these final results.

Comment 2: Torrington contends that the Department should recalculate NTN's U.S. credit expense because NTN reported a customer-specific average credit expense rather than a transaction-specific credit expense. Torrington argues that reporting credit expense on an average basis may be distortive in cases where not all U.S. sales are dumped. Torrington points out that NTN has provided the necessary information on the record to recalculate a transaction-specific credit expense.

NTN rebuts Torrington's argument that its credit expense should be recalculated and points out that the Department has accepted NTN's methodology of reporting an average credit expense in all previous AFB administrative reviews. NTN argues that the only argument raised by Torrington, that reporting credit expense on an average basis may yield distortive results, is a statement applicable to dumping in general and is not specific to NTN's calculation of NTN's reported credit expense.

Department's Position: We agree with Torrington with regard to CEP sales. We have data on the record which allows us to calculate transaction-specific credit expense for CEP sales. Therefore, we have recalculated NTN's credit expense using the dates of payment which NTN reported. However, Torrington is incorrect in asserting that NTN reported transaction-specific payment dates for EP sales. NTN does not maintain its payment records in a manner which allows it to provide us with transaction-specific payment dates for EP sales to the United States (*see* NTN's September 9, 1996 submission at C–15). Therefore, in these reviews, as in past reviews, we are allowing NTN to calculate its U.S. credit expense for EP sales for each customer on the basis of the average number of days that receivables are outstanding. *See AFBs VI* at 201.

3.C. Indirect Selling Expenses

Comment 1: Torrington acknowledges that section 351.402(b) of the Department's new regulations directs the Department to deduct only those indirect expenses associated with sales to the unaffiliated customer in the United States and not those expenses which relate to the sale by the exporting company to the affiliated sales company in the United States. However, because SKF Germany has not provided adequate descriptions that would allow the Department to determine whether the expenses are associated with the sale to the affiliated company in the United States or with the subsequent resale to the unaffiliated U.S. customer, Torrington contends that the Department should deduct all indirect expenses incurred in Germany from CEP.

Torrington argues that, because Koyo attributed certain indirect selling expenses to its sales through its U.S. subsidiary, these expenses are related to sales to unaffiliated customers in the United States and the Department should deduct such expenses from CEP.

With regard to NSK, Torrington argues that the Department should deduct indirect selling expenses NSK incurred in Japan from CEP if they are associated with sales to the unaffiliated customer in the United States because NSK has not provided adequate descriptions which would allow the Department to determine with certainty whether indirect expenses incurred in Japan were associated with the sale to NSK's U.S. affiliate or with the subsequent resale to the unaffiliated U.S. customer. Citing NSK's chart of selling functions, Torrington asserts that it appears from the record that all of these expenses are related to U.S. resales, rather than sales to the U.S. affiliate, and argues that the Department should deduct all of these indirect expenses from CEP. Torrington argues that, at a minimum, the Department should regard the advertising component of NSK's indirect selling expenses incurred in Japan as associated with the resale to the unaffiliated U.S. customer and deduct the amount therefor from CEP.

Torrington argues that FAG has not demonstrated that certain expenses are associated with its sales to the U.S. affiliate rather than to the unaffiliated customers. Torrington contends that certain printing costs could be incurred in connection with sales to unaffiliated customers and, as such, the Department should deduct such expenses from CEP.

SKF Germany argues that the Department should not deduct these expenses from CEP because SKF Gleitlager and SKF GmbH incur the expenses with respect to their sales to SKF USA, not with respect to SKF USA's sales to the unaffiliated U.S. customer. SKF claims that the Department may only make such a deduction when these expenses are incurred in Germany with respect to sales in the United States to the unaffiliated customer.

Koyo states that Torrington has mischaracterized Koyo's commercial structure, which it states has remained unchanged from prior reviews. Koyo

further contends that the Department has verified that Koyo produces the subject merchandise and ships it to its U.S. affiliate, not the ultimate customer in the United States, and that its U.S. affiliate inventories the product and ultimately negotiates with and sells the merchandise to the unaffiliated U.S. customer. Thus, Koyo argues, its expenses attributable to U.S. sales are almost exclusively incurred in its transactions with its U.S. affiliate, not in that affiliate's transactions with the unaffiliated customers.

NSK argues that the indirect selling expenses to which Torrington refers were all associated with NSK's sales to its U.S. affiliate. NSK notes that Torrington asked the Department to request more information regarding these expenses in a supplemental questionnaire and asserts that, because the Department did not ask NSK any questions regarding these expenses, the Department must have been satisfied with NSK's explanation. With regard to advertising expenses, NSK asserts that this expense is general international advertising which the foreign parent incurred and is not related to NSK's sales to unaffiliated customers and, therefore, the Department should not make such a deduction from CEP.

FAG argues that there is nothing on the record to support Torrington's assertion that certain selling expenses could be incurred with regard to sales to unaffiliated customers. FAG argues that it reported these expenses properly for the following reasons: (1) They are exclusively related to the sales relationship between FAG Germany and FAG US; (2) they are not a direct advertising cost of FAG US incurred by FAG Germany; (3) they are in no way related to economic activity occurring in the United States and are therefore not deductible from CEP.

Department's Position: As we stated in *AFBs VI* at 2124, we will deduct only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. We found no information on the record for this review period to indicate that the indirect selling expenses SKF Germany, Koyo, NSK, or FAG incurred in their respective HMs were incurred on sales to the unaffiliated customer in the United States. Regarding NSK, the evidence on the record does not suggest that NSK incurred these expenses, including advertising expenses, on its U.S. affiliate's sales to unaffiliated customers in the United States. Rather, the U.S. affiliate does its own advertising in the United States which we have deducted from CEP as a direct expense. Furthermore, NSK has cooperated with all of our requests for information with regard to indirect selling expenses. Deducting these expenses from CEP on the basis of Torrington's speculation that there is a possibility that respondents may have incurred them on the U.S. affiliates' resales would be inappropriate. Therefore, because indirect selling expenses respondents incurred in the foreign countries were not related specifically to commercial activity in the United States, we did not deduct them from CEP.

Comment 2: FAG claims the Department treated certain other HM direct selling expenses improperly as indirect selling expenses. FAG argues that, while it incurs an indirect expense regardless of whether a particular sale takes place, the other expenses were related directly to the distributor's sale of a particular bearing to an unrelated original equipment manufacturer (OEM) at the behest of FAG. FAG asserts that it explained in its questionnaire response that the direct credit to this distributor is functionally equivalent to a commission because it is a payment to the distributor on account of its sale to FAG's OEM customer. FAG contends that the Department should not consider this expense as an indirect selling expense since it incurred the expense with respect to a particular customer. Furthermore, FAG claims that allocation of a direct expense on a customer-specific basis is reasonable and proper when transaction-specific reporting is not possible, citing the SAA at 823–824.

Torrington counters that the selling expenses under contention should not be classified as direct selling expenses as FAG requests because FAG has not demonstrated how these are tied to a specific transaction. Torrington points out that the Department requested information from FAG which could demonstrate how the distributor's sale to its customer was tied directly to FAG's sale to the distributor and that FAG answered that there was no direct tie between the two sales. Since FAG did not link these payments directly to sales it made to the distributor, Torrington asks that the Department continue to treat these payments as indirect expenses.

Department's Position: We disagree with FAG. As Torrington observes, we asked FAG in a supplemental questionnaire "[i]f there is a direct * * * tie between your sales and the customer's sales for which this expense is incurred, please explain the tie and submit documentary evidence to support your claim," to which FAG responded "[t]here is no direct tie between FAG's reported sales to the distributor and the sales of the distributor that generate the payment or credit." *See* FAG KGS Section A–D Supplemental Response dated December 10, 1996 at 30. FAG acknowledges in its case brief that this expense is "directly related to the distributor's sale of a particular bearing to an unrelated OEM at the behest of FAG." *See* FAG's German Case Brief dated June 30, 1997. Because the expense is related directly to the distributor's sale, FAG would have to demonstrate that there is a direct tie between its sales to the distributor and the distributor's sale that generates the payment for us to regard this as a direct expense. As noted above, FAG did not demonstrate such a tie.

FAG argues that this expense is functionally equivalent to a commission. We note, however, that "[g]enerally speaking, a commission is a payment to a sales representative for engaging in sales activity, normally on behalf of the seller but occasionally on behalf of the customer" and that "the key question * * * is whether there was one transaction between [the respondent] and the ultimate purchaser in which the trading companies acted as [the respondent's] sales representatives for a commission " or " whether there were two transactions, one in which the trading companies bought from [the respondent] and received a [payment or credit] for that initial sale and the ultimate purchaser then bought from the trading companies." *See Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 65264 at 65278. In the instant situation, there are two transactions, one from FAG to the distributor and one from the distributor to the downstream customer (*e.g.*, sales to the unaffiliated third party). Thus, these expenses cannot be considered a commission. Finally, we note that FAG did not demonstrate that these payments were contemplated at the time of sale to the distributor. Therefore, because this expense is related to a downstream sale and not to the sales which FAG reported, this expense is an indirect selling expense, not a direct selling expense or a commission.

Finally, we did not treat these selling expenses as indirect because they were allocated on a customer-specific basis. Had we concluded that the expense was direct in nature but that FAG had failed to report it to the best of its ability or that its allocation was unreasonable, we would have denied the adjustment entirely. The fact that FAG allocated this expense did not enter into our decision to treat it as an indirect expense. As stated above, we treated these selling expenses as indirect expenses because FAG did not demonstrate that there is a direct tie between its sales to the distributor and the distributor's sale that generates the payment.

Comment 3: Torrington contends that NTN excluded certain expenses improperly from the category of reported U.S. indirect selling expenses and states that, for the purpose of the final results, the Department should deduct these expenses from CEP.

NTN argues that the Department has rejected Torrington's claim previously that the expenses to which Torrington refers were excluded from the category of reported U.S. indirect selling expenses improperly. NTN points out that, in the 1994/95 administrative reviews, the Department found that NTN's reporting of such expenses was not unreasonably distortive. NTN asserts that it has used the same methodology to report this category of expenses in the current reviews and, therefore, Torrington's argument is baseless.

Department Position: We agree with NTN. Having verified these expenses in past reviews and found the adjustments to be reasonable, we accepted them in the 1994/95 administrative reviews. *See AFBs VI* at 2105. For these reviews, after examining the record, we asked supplemental questions which NTN answered appropriately. Inasmuch as the record in these reviews indicates no reason that a different methodology should be used, we have accepted NTN's adjustments to its reported U.S. indirect selling expenses.

Comment 4: NTN Japan contends that the Department should recalculate NTN Japan's U.S. selling expenses to reflect its reported indirect-selling-expenses level-of-trade allocations. NTN Japan argues that the Department intended to calculate NTN Japan's U.S. selling expenses based on the reported levels of trade but did not do so in its preliminary calculations. NTN Japan maintains further that, in the 1992/93 TRB administrative review in which NTN Japan was involved, the Department accepted NTN Japan's level-of-trade-based U.S. selling expenses because it concluded that it prevents distortions.

Torrington contends that the Department should reject NTN Japan's reported selling expense allocations based on level of trade. Torrington states that, for the preliminary results, the Department recalculated NTN Japan's U.S. selling expenses without regard to level of trade correctly. Torrington states further that, in *AFBs VI*, the Department rejected NTN Japan's allocation methodology because it was distortive and unsubstantiated. Finally, Torrington states that NTN Japan's cite to the TRB case is misplaced because, in that case, the Department recalculated NTN Japan's U.S. selling expense allocations based on level of trade as a result of other problems inherent in NTN Japan's response.

Department's Position: We agree with Torrington. In *AFBs III* (and subsequently in *AFBs IV* at 10940, *AFBs V* at 66489, and *AFBs VI* at 2105), we determined that NTN Japan's indirect-selling-expense allocation methodology based on levels of trade bears no relationship to the manner in which it actually incurs these U.S. selling expenses, which ultimately results in distorted allocations. The CIT upheld this decision in *NTN Bearing Corp. v. United States*, 905 F. Supp. 1083 at 1094–95 (1995)*(NTN III)*. NTN Japan did not provide record evidence to substantiate its claim that its indirect selling expenses are attributable to and vary by its reported levels of trade. Therefore, for these final results, we have maintained the recalculation of NTN Japan's U.S. indirect selling expenses we made for the preliminary results to represent such selling expenses for all U.S. sales.

4. Level of Trade

As set forth in section 773(a)(7) of the Tariff Act and in the SAA at 829–831, to the extent practicable, we have determined NV based on sales at the same level of trade as the level of trade of the EP or CEP. When we were unable to find comparison sales at the same level of trade as the EP or CEP, we compared the U.S. sales to sales at a different level of trade in the comparison market.

We determined the level of trade of EP on the basis of the starting prices of sales to the United States. We based the level of trade of CEP on the price in the United States after making the CEP deductions under section 772(d) but before making the deductions under section 772(c). Where HM prices served as the basis for NV, we determined the NV level of trade based on starting prices in the NV market. Where NV was based on constructed value (CV), we determined the NV level of trade based on the level of trade of the sales from which we derived selling, general and administrative expenses (SG&A) and profit for CV.

In order to determine the level of trade of U.S. sales and comparison sales, we reviewed and compared distribution systems, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade but are insufficient to establish a level of trade. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. *See AFBs VI* at 2105.

As in the preliminary results, where we established that the comparison sales were made at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the differences in levels of trade affected price comparability. We determined the effect on price comparability by examining sales at different levels of trade in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign market sales used for comparison and foreign market sales at the level of trade of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different levels of trade. We used the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there was a pattern of no price differences, the differences in levels of trade did not have a price effect and, therefore, no adjustment was necessary.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving EP sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the comparison market but we could only match the U.S. sale to comparison-market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the HM. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels

of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted NV as the level-of-trade adjustment.

We were unable to quantify price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP for merchandise under review did not exist in the comparison market for any respondent except NMB/Pelmec. We also did not find the same level of trade in the comparison market for some EP sales of merchandise under review. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondents' HM sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that "if information on the same product and company is not available, the level-of-trade adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling expenses of other producers in the foreign market for the same product or other products." *See* SAA at 830. Accordingly, where necessary, we attempted to examine the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods for companies that, unlike NMB/Pelmec, did not have a HM level of trade equivalent to the level of the CEP.

The only company for which we made a level-of-trade adjustment for CEP sales in these final results was NMB/Pelmec. *See* the discussion at Comment 7, below. However, we concluded that it would be inappropriate to apply the level-of-trade adjustment we calculated for NMB/Pelmec to any of the other respondents. The SAA at 160 states that "if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may consider the selling experience of other producers in the foreign market for the same product in other products." Because no respondent reported sales in the same market as NMB/Pelmec (*i.e.*, Singapore), we have not used NMB/Pelmec's data as the basis of a level-of-trade adjustment for any other respondents.

In those situations where the U.S. sales were EP sales and we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, the statute requires no further adjustments. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the HM sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Tariff Act.

Comment 1: Koyo, NMB/Pelmec, NTN Germany, SNR France, NSK, and NSK/RHP contend that the Department's practice with regard to level of trade effectively precludes a level-of-trade adjustment to NV for CEP sales and is thus contrary to law and Congressional intent.

NMB, NSK, and NSK/RHP contend that there is no statutory requirement that a level-of-trade adjustment be based on the full difference in prices between the HM comparison level of trade and the HM level of trade equivalent to CEP and suggest that a partial level-of-trade adjustment is contemplated by the statute. NMB/Pelmec argues that neither the URAA nor the SAA specifies which two levels of trade must be the basis for the adjustment. NSK and NSK/RHP contend that the plain reading of the statute requires that the Department must adjust NV for CEP sales for the difference between price levels at the two levels of trade which do exist in the HM. NSK and NSK/RHP argue further that the Department should at least make such a level-of-trade adjustment when comparing CEP to HM aftermarket (AM) sales which, they contend, is more advanced than HM OEM sales because prices are higher at the HM AM level of trade than at the HM OEM level of trade. Finally, NSK and NSK/RHP contend that CEP sales should be matched to HM OEM sales before they are matched to HM AM sales.

Koyo asserts that it and other respondents have proposed to the Department alternative methods by which the Department could construct an appropriate HM level of trade by deducting from NV those HM expenses that correspond to the expenses that are deducted from CEP, but that the Department has failed to provide a reasonable explanation for rejecting the proposals.

SNR France contends that its claim for a level-of-trade adjustment is based on information on the record that demonstrates a consistent pattern of price differences between OEM and distributor customers. Moreover, SNR France claims that its OEM sales are made at a level similar to the CEP level of trade. It suggests that if the CEP and OEM level of trade were identical (*i.e.*, if selling functions and activities performed were the same) price differences between OEM and distributor customers would be even greater. Thus, SNR France asserts, its claimed adjustment is understated and it is entitled to this conservative adjustment when CEP sales are compared to HM sales at the distributor level of trade.

Torrington contends that an analysis of patterns of consistent price differences between sales at different levels of trade in the HM cannot be performed absent a HM level of trade equivalent to the level of trade of the U.S. sale. Torrington also argues that the Department's requirement that price differences be due to HM level-of-trade differences before price-based adjustments are allowed is logical since many factors, not all of which pertain to level of trade, determine price. Torrington contends further that the balance achieved by the Department in selecting the appropriate sales to compare in the two markets on the basis of level of trade would be disturbed if the Department allowed a level-of-trade adjustment to eliminate a whole set of price determinants in one market while not removing them in the other market. Thus, Torrington concludes, the respondents' suggested level-of-trade adjustment would result in unfair comparisons. Finally, Torrington argues that Koyo's position concerning alternative methods is without supporting authority.

Department's Position: We disagree with respondents. Our methodology does not preclude level-of-trade adjustments to NV for CEP sales; we made such an adjustment in the case of NMB/Pelmec. Rather, we did not make a level-of-trade adjustment to NV for CEP sales where the facts of the case did not warrant such an adjustment.

Based upon our examination of the information on the record, with the exception of NMB/Pelmec, we found that no respondent in these reviews had a HM level equivalent to the level of the CEP. Furthermore, we find no provision in the statute for making a "partial"

level-of-trade adjustment. We may make level-of-trade adjustments when there is "any difference * * * between the export price or constructed export price and the [NV] that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and the normal value." *See* section 773(a)(7)(A) of the statute. While respondents seize on the phrase "wholly or partly" to justify a partial level-of-trade adjustment, we interpret this phrase to mean that we may make a level-of-trade adjustment if only part of the differences in prices between two levels of trade is attributable to a difference in levels of trade. In other words, we need not demonstrate that no factor other than level of trade influenced a pattern of price differences. Thus, we do not read into this language of the statute the authority to make a level-of-trade adjustment between two HM levels of trade where neither level is equivalent to the level of the U.S. sale.

With regard to SNR's claim that its OEM sales are made at a level of trade similar to the CEP level of trade and that SNR should be granted a level-of-trade adjustment when comparing CEP sales to distributor sales, we found that all of SNR's HM sales are made at a different level of trade than the level of the CEP. Therefore, for the reasons enumerated above, it is inappropriate to grant a level-of-trade adjustment to SNR for its CEP sales.

We disagree with Koyo that we should adopt proposed alternative methods by which to construct HM levels of trade. We base HM levels of trade on the respondent's actual experience in selling in the HM. There is no statutory basis for us to "construct" levels in the HM or elsewhere. Therefore, we have not used Koyo's claimed constructed NV levels of trade in order to calculate a level-of-trade adjustment for Koyo's CEP-sales comparisons.

Finally, we disagree with NSK and NSK/RHP that these companies' CEP sales should be matched to HM OEM sales before they are matched to HM AM sales. Based upon our examination of the information on the record, we found that no HM level of trade for either NSK or NSK/RHP had conclusively more selling functions than another HM level. Rather, the HM levels of trade each involved different degrees of various selling functions. We conclude that, for these companies, and for respondents generally, while the reported HM levels of trade are different from one another, no HM level of trade is more advanced than any other based upon the evidence on the record. We also disagree with NSK's and NSK/RHP's assertion that, because their OEM prices are generally lower than their AM prices, their OEM levels of trade is less advanced than the distributor/aftermarket levels of trade. We determine whether one level of trade is more advanced than another on the basis of the selling functions performed by a respondent with respect to the two levels of trade. NSK and NSK/RHP's HM OEM and AM sales are more advanced than the level of trade of the CEP because comparatively fewer selling functions are associated with the CEP than are performed for sales to either of the other levels of trade. Therefore, we have not altered our matching methodology.

Comment 2: Torrington contends that SKF Germany and SKF Sweden did not provide adequate information to support their claims for a CEP offset and requests that the Department deny this adjustment. Torrington asserts that respondents' explanation of differences in selling functions between the CEP level of trade and the two HM levels do not support an offset because an examination of these selling functions reveals that they are either duplicative, *de minimis*, equally applicable to sales to U.S. affiliate and HM sales, or the Department adjusts for them otherwise. Torrington concludes that the information respondents provided regarding differences in selling activities is insufficient for the Department to determine whether respondents' CEP is less remote than the level of trade of HM OEM sales.

SKF Germany and SKF Sweden assert that the Department determined correctly that they are entitled to a CEP offset based on differences in selling activities and functions between the HM levels of trade and the CEP level of trade. Respondents contend that they substantiated their CEP-offset claims fully in submissions to the Department, including the differences in selling functions between HM levels of trade and the CEP level of trade. SKF Germany contends further that these claimed differences are "identical in all material respects" to the information the Department verified in the 1994/95 reviews. SKF Sweden notes that during the current segment of these proceedings the Department verified the information it provided concerning selling activities and functions for each level of trade. Respondents assert that the preliminary results are in accordance with section 773(a)(7)(B) of the Tariff Act and entirely supported by the record. On this basis, respondents request that the Department reject Torrington's arguments and continue to grant the CEP offset in the final results.

Department's Position: We disagree with Torrington and determine that respondents provided adequate factual information to support their claims that the HM levels of trade are in fact more advanced than the CEP level of trade. It appears that Torrington may have misinterpreted the data presented in respondents' submissions. We conducted a thorough analysis of the information SKF Sweden and SKF Germany submitted on the record and determined that after deducting respondents' expenses from CEP pursuant to section 772(d) there exists adequate factual information to conclude that fewer selling functions are associated with the CEP than are performed on sales at their HM levels of trade. Thus, for both respondents, we considered the CEP level of trade to be different from either HM level of trade and a less advanced stage of distribution. *See* Memorandum to Laurie Parkhill, Level of Trade, March 24, 1997, in Import Administration's Central Records Unit (Room B–099 of the main Commerce building (hereafter, B–099)).

For the final results, because we could neither match the CEP level of trade to sales at the same level of trade in the HM nor determine a level-of-trade adjustment based on these respondents' HM sales, to the extent possible we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act (*see AFBs VI* at 2105).

Comment 3: Torrington claims that the Department's pattern-of-prices analysis does not support a downward level-of-trade adjustment to NV for differences between SKF France's EP sales matched to HM sales at the distributor level of trade.

SKF France disagrees with Torrington, arguing that the Department's adjustment methodology is correct. SKF France asserts that a clerical error in the Department's analysis memorandum, which reverses the relative price levels of the two HM levels, misled Torrington into thinking that the downward adjustment is inappropriate. SKF France cites to the results of the Department's level-of-trade adjustment calculations to support that a downward adjustment to NV is appropriate when matching its EP sales to HM sales at the distributor level.

Department's Position: We disagree with Torrington. We did not err in making a downward level-of-trade adjustment for SKF France's EP sales which we matched to HM distributor sales. Torrington's contentions are based upon a typographical error in the SKF

France preliminary results analysis memorandum which reversed the price levels of the HM levels of trade. Therefore, respondent's downward level-of-trade adjustment was proper.

Comment 4: NTN Japan and NTN Germany state that the Department should make a price-based level-of-trade adjustment for CEP sales made at a different level of trade in the United States than the comparison home market sales. Respondents suggest that using the transaction to the first unaffiliated U.S. customer prior to the deduction of expenses pursuant to section 772(d) would be consistent with the use of those levels of trade in matching U.S. CEP and HM sales and with evidence demonstrating that different selling activities are performed at each level of trade that affect price comparability.

Torrington argues that the Department's requirement that price differences be due to HM level-of-trade differences before price-based adjustments are allowed is logical since many factors, not all of which pertain to level of trade, determine price.

Department's Position: We disagree with NTN Japan and NTN Germany. The statutory definition of "constructed export price" contained at section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price, as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a "constructed" EP. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act ("Additional Adjustments for Constructed Export Price"), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and associated selling functions) that we deduct pursuant to this sub-section. With regard to respondents' characterization of our matching methodology, we generally matched CEP sales to HM sales on the basis of the level of trade of the resale by the U.S. affiliate *only* where all HM levels of trade were more remote than the level of the CEP. The purpose of this methodology is to use the CEP offset to deduct indirect selling expenses from NV similar to those deducted from the U.S. starting price. For example, we were able to determine the CEP offset "cap" for HM OEM sales on the basis of indirect selling expenses incurred on OEM sales in the United States. Therefore, because no HM levels of trade reported by NTN Germany or NTN Japan were equivalent to the level of trade of these respondents' CEP sales, we were unable to make a level-of-trade adjustment for such sales.

Comment 5: Torrington argues that the record does not support NSK/RHP's claim for a CEP offset. Torrington contends that the Department improperly found that several selling functions associated with the CEP level of trade are substantially different from the sales functions associated with the comparison sales in the HM. For instance, Torrington states that the Department claimed erroneously that, at the CEP level of trade, little or no advertising was involved. Torrington states further that the Department determined incorrectly that certain selling functions (*e.g.*, technical support and strategic and economic planning) did not apply to the CEP level of trade. With respect to repacking expenses, Torrington contends that this function is not involved in the selling process and therefore should not justify a CEP offset. Citing *Certain Corrosion Resistant Carbon Steel Flat Products*, 62 FR 18,452 (April 15, 1997), Torrington argues that differences in selling functions, even substantial ones, may not be enough to warrant finding different levels of trade. Torrington suggests that the Department continue to compare prices within the broad comparison patterns but reject NSK/RHP's claim for a CEP offset based on these reasons.

NSK/RHP asserts that Torrington compares incorrectly the activities in which an international distributor engages when selling to a U.S. national distributor with activities of a U.K. national distributor selling to customers. Moreover, NSK/RHP contends that, after the initial error, Torrington then compares a category of expense (*e.g.*, advertising) at different points in the chain of distribution and suggests that the same function is performed by each national distributor. NSK/RHP contends further that, for CEP sales, it did not report advertising for its end-user customers because the Department deducts expenses for the function of advertising to unaffiliated U.S. customers in the calculation of CEP pursuant to section 772(d) of the Tariff Act. NSK/RHP notes that it agrees with Torrington that repacking is not a selling expense within the scope of section 772(d) of the statute. NSK/RHP therefore suggests that the Department remove repacking from the CEP-selling-function variable in the final results. NSK/RHP asserts that the Department should follow the statute as written and grant a level-of-trade adjustment for CEP matches or, at a minimum, grant a level-of-trade adjustment for CEP sales matched to HM aftermarket sales.

Department's Position: We disagree with Torrington. Torrington compares erroneously activities of an international distributor when selling to a U.S. affiliate with activities of a U.K. national distributor selling to customers. As we stated in our March 24, 1997 Memorandum (*Id.*), we could not determine whether these sales (*i.e.*, sales from the international distributor to the U.K. national distributor) were made at arm's length. Therefore, we did not use these sales to determine NV or as the basis of any level-of-trade adjustments. As a result of this determination, we compared sales made by the U.K. national distributor to customers in the HM with sales made at the CEP level of trade (*i.e.*, sales made by the international distributor to the U.S. affiliate). *See* NSK/RHP's February 6, 1997, supplemental questionnaire response (Exhibit S–2). Based on our analysis, we found that, for CEP sales, NSK/RHP did not engage in any of these selling activities (*e.g.*, freight and delivery arrangement, inventory maintenance, repacking, pre-sale warehousing and sales calls). However, we found that, at the HM levels of trade, NSK/RHP participated in these activities and therefore the HM levels of trade were substantially dissimilar from the CEP level of trade. Accordingly, as we explain in our level-of-trade memorandum, we considered the HM sales to be at different levels of trade and at a more advanced stage of distribution than CEP.

We agree with Torrington that differences in selling functions may not be enough in themselves to warrant finding different levels of trade. However, consistent with our practice in *AFB VI*, we consider the class of customer as one factor, along with selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the level of trade associated with the sales in question. *See AFB VI* at 2107.

With respect to expenses associated with repacking, please see our discussion in comment 1 of section 7 of this notice for an explanation of our treatment of repacking expenses.

Comment 6: Torrington argues, with respect to Barden's HM sales to government users, that the Department should not have determined that government users are at a different level of trade than OEM sales. Torrington asserts that there is no evidence on the record to support Barden's claim that government sales should be treated separately. In addition, Torrington contends that Barden's assertion that AM sales to airlines and repair contractors should be treated separately is also unsupported. Torrington states that Barden has not submitted adequate evidence to support its claim that AM sales should be treated separately from distributor sales. Moreover, Torrington claims that Barden's narrative explanations for certain selling functions (*e.g.*, computer, legal and accounting, personnel training, advertising, and strategic and economic planning) do not support the level-of-trade chart found in Exhibit A–4 of Barden's July 23, 1996, Section A Response. Therefore, according to Torrington, the Department should treat AM sales as being at the same level as distributor sales.

Barden states that it agrees with Torrington that the Department's redesignation of its HM level-of-trade categories was in error. Barden contends that neither the record nor commercial reality supports the inclusion of these two very distinct and separate channels of distribution (airline and repair AM contractors and government customers) under one level of trade. Therefore, according to Barden, the Department should use the customer category designations Barden submitted originally in its responses for these final results. Barden also contends that the Department should designate sales to its EP customers (*e.g.*, network distribution customers) as Barden originally identified on the record. Barden asserts that the Department unlawfully applied a facts-available level-of-trade adjustment to these sales because Barden allegedly failed to include them in their proper channels of distribution. Barden contends that it disclosed the types of selling activities and functions it incurred on its EP sales fully in its response to the Department's questionnaire.

Department's Position: We disagree with Torrington and Barden. While we acknowledge that Barden did not provide sufficient evidence to warrant a distinction for government sales, we disagree with Torrington that we should treat these sales as OEM sales. Torrington has provided no evidence nor any references to information on the record that supports its conclusion. Moreover, there is no evidence on the record that would suggest that government sales are similar to OEM sales. In addition, with respect to Barden's assertion that government sales differ substantially from any of the other level-of-trade categories, we determined that Barden's narrative explanation does not provide sufficient information to support its conclusion. Therefore, we have not changed our analysis from that in our preliminary results with respect to this issue.

We also disagree with Torrington's contention that we should treat AM sales as being at the same level as distributor sales. As we explained in our March 24, 1997 Memorandum (*Id.*), we found that the selling activities for level two (*e.g.*, distributors network) differed from those of level three (*e.g.*, airlines repair contractors (AM sales) and government customers) in after-sales services and warranties, advertising, administrative support and personnel training. While we agree with Torrington's assertion that there are certain discrepancies between Barden's narrative explanations and its level-of-trade chart, we have determined that such inconsistencies were not substantial. Thus, we have not made any changes with respect to this issue.

Finally, we have reexamined our facts-available determination with respect to Barden's EP sales. Upon further consideration, we determined that Barden did provide sufficient information concerning the nature of its customers and the selling functions it performed with respect to these sales. Therefore, we have accepted Barden's information and have not applied facts available to these sales for the final results.

Comment 7: Torrington claims that NMB/Pelmec failed to demonstrate entitlement to either a level-of-trade adjustment or a CEP offset to its HM prices and that the Department should not make either adjustment to NV in the final results.

Torrington notes that, in the preliminary results for NMB/Pelmec, the Department adjusted NV downward in the amount of the CEP offset. Torrington also notes that NMB admits that its distributor sales in the HM are at the same level of trade as the CEP level of trade in the United States. Torrington concludes that, because NMB/Pelmec reported no distributor sales in the HM during the POR, NMB is entitled to an adjustment in the form of a CEP offset only if it demonstrated that OEM sales in the HM were at a more advanced level of trade than the CEP level of trade. Torrington argues that this is not the case. It notes that NMB/Pelmec admits that selling expenses, such as after-sales service/warranties, technical advice and engineering services, and direct advertising, were all negligible or non-existent and, therefore, NMB/Pelmec omitted them from the computer-database fields. Torrington continues that, because these expenses were not reported, NMB/Pelmec made no visits to customers for these functions. Therefore, Torrington argues, these functions do not support NMB/Pelmec's claim for a CEP offset. Torrington notes further that indirect expenses with regard to solicitation of customer orders were also admittedly negligible. Thus, Torrington argues, there is no other information on the record to support NMB/Pelmec's claim that this function is more active in the case of sales to OEM customers.

Finally, Torrington alleges that NMB/Pelmec reports substantial activity at the CEP level of trade, which, at a minimum, undermines NMB/Pelmec's claim that a downward adjustment to NV is needed when comparison sales are to OEMs. Torrington points to a description in NMB/Pelmec's financial report of its U.S. affiliate as evidence.

NMB/Pelmec claims that Torrington's characterizations of its sales are incorrect. It argues that the Department should find that NMB/Pelmec is entitled to a level-of-trade adjustment and, at a minimum, a CEP offset whenever CEP sales are not compared to HM distributor sales. NMB/Pelmec contends that Torrington's claim that it did not report any distributor sales in the HM during the period is incorrect. NMB/Pelmec notes that the Department's preliminary findings that NMB/Pelmec did not report such sales were also incorrect. NMB/Pelmec points out that the record in this administrative review demonstrates clearly that it made substantial sales to distributors. Thus, NMB/Pelmec argues that the Department should have compared CEP sales to HM distributor sales. NMB/Pelmec asks that the Department correct its findings in the final results.

In addition, NMB/Pelmec contests Torrington's argument that NMB/Pelmec has not demonstrated that its HM OEM sales were at a more advanced level than the CEP level of trade. NMB/Pelmec replies that it provided detailed descriptions of selling functions for HM OEMs in its initial and supplemental responses, explaining that most of these functions were not performed for distributors, in addition to providing detailed sample support documentation. NMB/Pelmec states that, during the Department's verification of the 1994/95 administrative review, the Department verified NMB/Pelmec's claim that it performed more advanced selling functions for OEMs. NMB/Pelmec alleges that Torrington's claim appears to be based on confusion regarding the difference between direct and indirect selling expenses and on its failure to review the correction regarding selling

functions NMB/Pelmec made in its supplemental response. NMB/Pelmec contends that Torrington ignored the supplemental corrections and based its claims on obvious errors.

Finally, NMB/Pelmec argues that Torrington failed to support its claim that NMB/Pelmec reported substantial activity at the CEP level of trade. It notes that the activities to which Torrington refers in NMB/Pelmec's consolidated financial statement were between NMB/Pelmec's parent company and its U.S. affiliate, not between NMB/Pelmec and its U.S. affiliate. Thus, NMB/Pelmec concludes, these activities do not support Torrington's claim. NMB/Pelmec also notes that the record shows that its parent company provides the same types of activities to its other subsidiaries and affiliates.

Department's Position: NMB/Pelmec reported distributor sales for the POR. We stated incorrectly in our analysis memorandum for NMB/Pelmec that it only made sales to OEM/trading companies during the period. This statement was a result of our mis-coding the customer categories NMB/Pelmec reported when applying our methodology for identifying the proper level of trade. We have now made the appropriate changes to calculate NMB/Pelmec's margins properly for these final results.

We agree with NMB/Pelmec that it is entitled to a level-of-trade adjustment whenever CEP sales are not compared to HM distributor sales. We re-examined NMB/Pelmec's response and determined that NMB/Pelmec's HM distributor sales are equivalent to the CEP level of trade. The evidence on the record suggests, contrary to Torrington's assertion, that NMB/Pelmec performs comparatively few selling activities either for sales to its U.S. affiliate or for HM sales to distributors. Furthermore, we determined that NMB/Pelmec's HM sales to OEMs are made at the same level of trade as its HM sales to trading companies but that these sales are made at a different level of trade than its HM distributor sales. Accordingly, we attempted to match CEP sales to HM distributor sales first and we matched CEP sales to OEM/trading company sales when no HM distributor sales existed. When we matched CEP sales to HM distributor sales, we made no level-of-trade adjustment or CEP offset because the sales are made at the same level of trade. When we matched CEP sales to HM OEM/trading company sales, we made a level-of-trade adjustment because we found that there was a pattern of consistent price differences between the two HM levels of trade. *See* NMB/Pelmec Final Results Analysis Memorandum dated September 22, 1997.

Finally, because we made a level-of-trade adjustment for comparisons involving HM OEM/trading company sales, we did not make a CEP offset for any comparisons of NMB/Pelmec's sales.

Comment 8: Torrington contends that NTN failed to provide record evidence demonstrating its entitlement to either a level-of-trade adjustment to NV for CEP sales or a CEP offset for those sales. With respect to NTN's identification of comparative selling activities, Torrington argues that, primarily, NTN identifies selling activities associated with CEP-resale transactions and states that NTN failed to provide a complete and accurate list of selling activities. In addition, Torrington contends that NTN did not provide a comprehensive description of its distribution and selling processes. Torrington also maintains that the quantification information that NTN provided in its response lacks the necessary detail to support a level-of-trade adjustment. Torrington concludes that, for the purpose of the final results, the Department should not grant NTN either a level-of-trade adjustment or a CEP offset to NV.

NTN contends that Torrington misreads the Department's questions and misinterprets NTN's data. NTN argues that, in its response, it identified distinct selling functions related to the different LOTs in the United States for both EP and CEP sales. NTN maintains that it provided responses to the Department's requests for information related to the selling functions and sales processes performed for, and the services offered to, each class of customer in both the United States and HM. NTN argues that it based its responses to the Department's level-of-trade and channel-of-distribution inquiries on its responses in the 1994/95 administrative reviews and states that, in those reviews, the Department accepted NTN Japan's responses.

Department's Position: We disagree with Torrington. NTN Japan provided adequate factual information to support its claims that its HM levels of trade are in fact more remote than the CEP level of trade. We conducted a thorough analysis of the information NTN Japan submitted on the record and determined that after deducting NTN Japan's expenses from CEP pursuant to section 772(d) there exists adequate factual information to conclude that fewer selling functions are associated with the CEP than are performed on sales at its HM levels of trade. Thus, for NTN Japan we considered the CEP level of trade different from all HM levels of trade and at a less-advanced stage of distribution.

For the final results, because we could neither match the CEP level of trade to sales at the same level of trade in the HM nor determine a level-of-trade adjustment based on NTN's HM sales, to the extent possible we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* our position in response to comment 4, above.

Comment 9: Torrington contends that, with respect to the customers to which NTN made EP sales, the Department should not make a level-of-trade adjustment to NV based on the record evidence developed in the instant reviews. Torrington asserts that the record contains little information pertaining to such sales. In addition, Torrington argues that the information that is on the record is inadequate to warrant a level-of-trade adjustment.

NTN argues that it has not changed the facts related to these sales from those of the 1994/95 administrative reviews and states that, in those reviews, the Department made a level-of-trade adjustment for such sales. NTN also points out that the Department verified, in detail, NTN's response as it relates to its claimed levels of trade and found no discrepancies. NTN asserts that, because the Department made no further requests for information, the Department has, in essence, accepted NTN's responses as sufficient to warrant a level-of-trade adjustment with respect to EP sales it made to both customers.

Department Position: We disagree with Torrington. NTN Japan provided adequate factual information to support its claims with regard to the differences and similarities of its HM levels of trade and the EP level of trade. Therefore, where possible, we matched EP sales to sales at the same level of trade in the HM and made no level-of-trade adjustment. Where we matched EP sales to HM sales made at a different level of trade, in accordance with section 773(a)(7)(A) of the Tariff Act, we first determined whether there was a pattern of consistent price differences between these different levels of trade in the HM and, if so, made a level-of-trade adjustment accordingly.

5. Cost of Production and Constructed Value

5.A. Cost-Test Methodology

Comment 1: INA claims that the Department used CV for NV rather than seeking to make a family-match comparison where identical HM

matches existed but were disregarded because they were below cost. INA contends that this approach is in error because it gives priority to the use of CV over price-based NV. Citing section 773(a)(4) of the Tariff Act, INA contends that the Department is to use CV only when it determines that the NV of the merchandise cannot be determined by comparison with sales of the foreign like product. INA asserts further that section 773(b)(1) reinforces this conclusion by stating that, when below-cost sales are disregarded, "normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the NV shall be based on the constructed value of the merchandise." INA contends that the Department has defined potential "foreign like products" in terms of bearing families. INA concludes that, where there are remaining HM sales in the same family, the Department should base NV on those sales rather than on CV.

INA notes that, in *AFBs VI*, the Department defended its methodology on the ground that it makes the "foreign like product" determination under the criteria of section 771(16) only once and that the result of the cost test is not a criterion in determining the foreign like product under section 771(16). INA contends that the Department's automatic reliance on CV when all identical matches are disregarded as below cost is inconsistent with its approach with regard to contemporaneity because the Department applies the contemporaneity rule as a criterion for comparability even though that rule is not included in the section 771(16) definition.

Torrington argues that the Department should follow its decision in *AFBs VI* and continue to resort to CV rather than HM family sales when all sales of identical bearings are disregarded pursuant to the cost test.

Department's Position: We disagree with INA. Section 771(16) of the Tariff Act directs us to select the foreign like product "in the first" of several categories: identical in physical characteristics, similar in physical characteristics and commercial value, or of the same general class or kind that can be reasonably compared. The Department interprets the reference in section 773(b)(1) of the Tariff Act that it base NV "on the remaining sales of the foreign like product in the ordinary course of trade" to mean the selected foreign like product, not a succession of foreign like products. Therefore, we have resorted directly to CV where we have disregarded all contemporaneous identical HM sales as below cost instead of determining whether contemporaneous sales of a less similar model would survive the cost test and remain available as comparators. We explained this practice in detail in *AFBs V* at 66490–91 and *AFBs VI* at 2111–2112.

We disagree with INA's suggestion that our practice of using CV when all identical matches are disregarded is inconsistent with our policy with regard to choosing contemporaneous matches. We conduct a search for sales of the best model for comparison within a contemporaneity window pursuant to section 773(a)(1)(A) of the statute, which directs that "[t]he NV of the subject merchandise shall be the price described in subparagraph (B), *at a time reasonably corresponding to the time of the sale* used to determine the export price or constructed export price" (emphasis added). We have a longstanding practice of considering sales within 90 days before and 60 days after the month of the U.S. sale to be acceptable as potential comparators (*see Certain Small Business Telephone Systems and Subassemblies Thereof from Korea: Final Results of Antidumping Administrative Review*, 57 FR 8300 (March 9, 1993); *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review*, 61 FR 1332 (January 19, 1996); *AFBs III* at 39735). Thus, our determination of which merchandise will be considered the foreign like product is based on (1) the product categories set forth in 771(16) and (2) the ability to review contemporaneous sales as contemplated in 773(a)(1)(A).

5.B. Research and Development

Comment: Torrington notes that the SKF Group companies, *i.e.*, SKF France, SKF Germany, SKF Italy, and SKF Sweden, allocated the general research and development (R&D) expenses incurred by their European Research Center (ERC) based on proportionate share holdings in the facility. Torrington contends that, if the Department accepts this methodology, the Department must account for expenses attributable to the share holding in the ERC by the SKF Group's parent company, AB SKF.

Respondents argue that their allocation methodology is proper and consistent with determinations in prior segments of this proceeding. Regarding Torrington's allegation of under-reporting, respondents explain that their parent company holds shares in the ERC on behalf of SKF Sweden and that SKF Sweden has reported the general R&D expenses attributable to these shares.

Department's Position: We agree with respondents. In section A of SKF Sweden's questionnaire response, respondent identifies the shares to which Torrington refers as SKF Sweden's share in the ERC. SKF Sweden reported the R&D expenses attributable to these shares as part of its general and administrative expenses. Thus, based on record evidence we are satisfied that respondents allocated the ERC expenses properly. Accordingly, for the final results, we did not adjust the R&D expenses reported by these respondents.

5.C. Profit for Constructed Value

Comment 1: NSK, INA, FAG Germany, FAG Italy, SNR France, and Barden argue that the methodology the Department used in the calculation of CV profit is unlawful. According to respondents, section 773(e)(2) of the Tariff Act authorizes the Department to make this calculation using one of four methods, depending on the information on the record. Respondents contend that, while in the preliminary results the Department calculated a CV-profit ratio for each level of trade within each class or kind of product sold in the HM in the ordinary course of trade, this method is not authorized by section 773(e)(2)(A) of the Tariff Act. Citing to this provision, respondents claim that the profit calculation must be equivalent to the sum of profits "in connection with the production and sale of a foreign like product." Respondents argue that "foreign like product" is a statutorily defined term of art equivalent to the first of three enumerated categories of merchandise as defined by section 771(16) of the Tariff Act and that these three categories are narrower than "class or kind".

FAG Germany, FAG Italy and SNR France disagree with the Department's assertion that the use of the phrase "a foreign like product" rather than "the foreign like product" allows it to aggregate total profits across each class or kind of merchandise and that the meaning of "foreign like product" remains the same in both cases, as defined in the statute regardless of the preceding article, citing the *Notice of Proposed Rulemaking*, 61 FR at 7335. Thus, respondents argue, although Congress knew the meaning of "foreign like product," it adopted this term intentionally in place of "class or kind." Respondents also contend that, in accordance with section 771(16) of the Tariff Act, the foreign like product must be produced in the same country by the same person, disallowing the

Department's method of including sales of merchandise they sold that other manufacturers produced. Respondents contend further that the SAA at 840 clears any ambiguity regarding the term "foreign like product" in section 773(e)(2)(A) of the Tariff Act by recommending the alternative methods of 773(e)(2)(B) in instances where 773(e)(2)(A) cannot be used either because there are no HM sales of the foreign like product or because all such sales are at below-cost prices.

Torrington counters that the Department need not change its policy with regard to the CV-profit calculation, claiming that "foreign like product" refers to the entire class of merchandise that meets the definitions of section 771(16) and not just the identical part number or family. It notes that such a similar reference is made to foreign like product with respect to statutory passages concerning the viability test at section 773(a)(1)(C). Torrington adds that the interpretation of "foreign like product" as a family would necessarily create a gap in the statutory scheme. As an example, petitioner describes a situation where, if family-specific profit could not be calculated, the use of profits on the "same general category" would never be considered because "foreign like product" is too narrow to constitute "the same general category" as directed in section 773(e)(2)(B) of the Tariff Act. Torrington continues by arguing that the use of the indefinite article "a" rather than the definite article "the" in section 773(e)(2)(A) of the Tariff Act is significant and is meant to refer to "any" foreign like product, as in more than one foreign like product. In addition, Torrington disagrees with respondents' argument that Congress replaced the term "class or kind of merchandise" deliberately in order to restrict the calculation of profit only to the foreign like product corresponding to a U.S. sale. Torrington contends that the removal of the term was simply to conform the terminology of the U.S. antidumping law to the international Antidumping Code. Finally, Torrington contends that the respondents' suggested methodology would resort to the application of alternative methodologies too soon in the hierarchy of preferable methods. Petitioner argues that section 773(e)(2)(B) of the Tariff Act outlines alternative profit methodologies for use only when the method described in section 773(e)(2)(A) of the Tariff Act cannot be used, as in instances where there are no HM sales of the foreign like product or all such sales are below cost.

Department's Position: We disagree with the respondents. As we stated in *AFBs VI*, respondents' definition of the term "foreign like product" is overly narrow with respect to its use in the CV-profit provisions. In applying the "preferred" method for calculating profit (as well as SG&A) under section 773(e)(2)(A) of the Tariff Act, the use of aggregate data that encompasses all foreign like products under consideration for NV results in a practical measure of profit that we can apply consistently in each case. By contrast, an interpretation of section 773(e)(2)(A) of the Tariff Act that would result in a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping proceedings without generating more accurate results. It would also make the statutorily preferred CV-profit methodology inapplicable to most cases involving CV. We discussed in the preamble to our final regulations that, although we recognize that there are other methods available for computing profit for CV under section 773(e)(2)(A) of the Tariff Act, we continue to believe that our method represents a reasonable interpretation of the statute. *See Final Rule*, 62 FR at 27359. We also note that this approach is consistent with our method of computing SG&A and profit under the pre-URAA version of the statute, and, despite the fact that the URAA revised certain aspects of the SG&A and profit calculations, we do not believe that Congress intended to change this particular aspect of our practice. Therefore, we have not changed our methodology for the final results. *See also Notice of Proposed Rulemaking*, 61 FR at 7335 (discussing the Department's practice for calculating profit (and SG&A) using aggregate figures).

Comment 2: FAG Italy, FAG Germany, SNR France, and Barden contend that the Department's CV-profit methodology of calculating profit on an aggregate basis for all foreign like products is most similar to the first alternative CV-profit methodology described in 773(e)(2)(B)(i) of the Tariff Act because it aggregates profits encompassing sales from multiple foreign like products. However, respondents contend, contrary to the Department's methodology, section 773(e)(2)(B)(i) does not limit the CV-profit calculation to sales in the ordinary course of trade. Citing the SAA at 841, respondents argue that the absence of any language in section 773(e)(2)(B)(i) of the Tariff Act referring to sales in the ordinary course of trade and the presence of this precise limitation in descriptions of the other profit methodologies necessitates the inclusion of sales outside the ordinary course of trade in methodologies using all sales of the same class or kind.

SKF argues that below-cost sales should be included in the calculation of CV profit when grouping products of the same general category (citing section 773(e)(2)(B)(i) of the Tariff Act). Because the Department has chosen to calculate profit on a class-or-kind basis rather than for each family (foreign like product), these respondents contend that the Department is without authority to exclude sales outside the ordinary course of trade such as below-cost sales.

SKF argues that, if the Department continues to exclude below-cost sales from the calculation of total profits for each class or kind of merchandise, it should include the COP for below-cost sales when calculating the profit ratio for each class or kind of merchandise. Before dividing total profits by the total COP of all sales producing those profits, respondents argue that the Department should add the COP for below-cost sales back into the total costs of production for each respective group of sales. Respondents argue that this would allow the Department to determine the profit rate per sale more accurately.

Torrington asserts that respondents' arguments with respect to the inclusion of below-cost sales in the calculation of CV profit under section 773(e)(2)(B) of the Tariff Act is inconsistent logically with their argument concerning section 773(e)(2)(A) of the Tariff Act. Torrington contends that under respondents' methodology, before calculating an overall aggregate profit under section 773(e)(2)(B) of the Tariff Act, the Department would first have to test all sales of identical and similar models to determine whether any sales were made in the "ordinary course of trade." Torrington contends further that below-cost sales would first be excluded under section 773(e)(2)(A) before resorting to aggregate profit data under section 773(e)(2)(B).

Torrington argues that below-cost sales must be excluded for purposes of calculating CV profit and should not be included in the average-profit calculation as so-called zero-profit sales. Citing section 771(15) of the Tariff Act and the SAA, Torrington contends that inclusion of sales outside the "ordinary course" are not a proper basis for determining profit under section 773(e)(2)(A) of the Tariff Act. Torrington argues that the SAA also establishes that "only" ordinary-course-of-trade sales will be the basis for the profit calculation and, therefore, the Department should not include the full costs of sales at a loss in the denominator of the profit-ratio calculation as this would make these part of the profit calculation.

Department's Position: We disagree with respondents that our CV-profit methodology is most similar to the first alternative CV-profit methodology described in 773(e)(2)(B)(i) of the Tariff Act based on our interpretation of "foreign like product." We agree with Torrington that we should not include sales that failed the below-cost test in the calculation of profit for CV because these sales fall outside the ordinary course of trade. As we stated in the preliminary results, we have calculated CV profit using the profit methodology as stated in section 773(e)(2)(A) of the Tariff Act. This provision requires that we base profit on sales made in the ordinary course of trade which, in turn, do not include sales that we disregarded as a result of the below-cost test. See section 771(15) of the Tariff Act. Furthermore, we do not believe that we should retain the full costs of disregarded sales while setting those sales' profits to zero. The use of partial information from the sales would distort the profit rate for sales in the ordinary course of trade and frustrate the intent of the statute.

Comment 3: NSK and NSK/RHP argue that the Department erred when it calculated CV profit based upon the HM database. Respondents contend that the HM database consists of sample-week sales and is not representative of its HM profit experiences with respect to the class or kind of merchandise. NSK and NSK/RHP maintain that the SAA intended the Department to use Financial Statement profit when determining CV profit and that the Department must apply the preferred profit methodology at the model-specific or family-specific level or it must resort to one of the alternative profit methodologies.

Torrington rebuts that respondents offer no evidentiary or rational basis for concluding that the HM database is not representative of the profit experiences in the HM when sample week sales are reported.

Department's Position: We disagree with NSK and NSK/RHP. We rejected this argument in *AFBs VI*, stating that HM sales and cost data provided by respondents on a sampled basis does not render such data inappropriate for purposes of calculating CV profit. Pursuant to the statutory authority provided at section 777A of the Tariff Act, we routinely use data in our analysis that has been reported on a sampled basis. Thus, the statute does not explicitly provide for such an automatic elimination of these profit methodologies in such cases. *See* our response to Comment 1 of section 6.C of *AFBs VI*, 62 FR at 2112, for a more comprehensive discussion on this topic.

Comment 4: SNR France argues that the CV profit the Department calculated for CRBs is based on U.S. sales rather than on HM sales. Moreover, SNR France asserts that this calculation is unlawful because it is not based on the actual profit that SNR France earns on HM sales of the foreign like product made in the ordinary course of trade. Specifically, SNR France contends that the Department based its profit calculation on costs taken from SNR France's U.S. CV database which, SNR France argues, is a mere microcosm when compared to its total HM sales. SNR France suggests that the Department should instead calculate a profit ratio based on its financial statements.

Torrington points to the fact that the Department did not request COP data from SNR France for CRBs. Torrington states that, while SNR France suggests that financial-statement data would be a more appropriate proxy for the entire profit calculation, Torrington contends that SNR France failed to propose appropriate ratios based on the financial statements. Moreover, Torrington asserts that this data would necessarily include non-scope products.

Department's Position: We disagree with SNR-France. We must balance the need to calculate an accurate margin with the need to reduce the burden on respondents. Because we did not request complete COP data for SNR-France's sales of CRBs, we were unable to calculate CV profit under the "preferred methodology" of section 773(e)(2)(A). Instead, we calculated CV profit based on the following methodology.

We subtracted the home market COP from the home market sales value. Home market COP consists of three costs: COM, interest expenses, and G&A expenses. First, we aggregated the expenses reported in the CV dataset. Then, we calculated the ratio of variable COM to total COM based on data contained in the CV dataset. We applied this ratio to the variable COM reported in the home market sales dataset. Thus, we created a reasonable proxy for home market total COM. Likewise, we calculated a ratio of G&A and interest expenses to the total COM reported in the CV dataset. We multiplied each of these ratios by the home market total COM. Finally, we summed these amounts to arrive at total home market COP.

This methodology results in a reasonable estimation of COP, since the major element in COP, the variable COM, is an actual amount and the proxy is limited to fixed costs, G&A, and interest expenses. Thus, this is a reasonable methodology allowed under section 773(e)(2)(B)(iii).

We agree with Torrington that SNR-France's financial statements would contain data for non-scope merchandise. Thus, SNR's suggested methodology would be a proxy as well. The record does not support the conclusion that SNR-France's financial statements would form a more appropriate proxy nor has SNR-France established that the Department's current methodology is distortive. Therefore, we have not changed the methodology we used in our preliminary results.

Comment 5: NPBS contends that the Department calculated a level-of-trade-specific profit mistakenly for purposes of calculating CV. NPBS asserts that profit for CV should not be calculated by level of trade, particularly when there is no match between HM and U.S. levels of trade. NPBS argues further that calculating CV profit by level of trade is contrary to law. Citing section 733(e) of the Tariff Act, NPBS asserts that the statute says nothing about level of trade in describing how to calculate CV. NPBS also asserts that the SAA says nothing about calculating profit for CV on a level-of-trade basis. To the contrary, citing the SAA at 839–841, NPBS asserts that Congress intended the Department to calculate profit for CV on a company-wide basis. NPBS concludes that it would be bad policy to calculate CV profit by level of trade because it would make dumping calculations unpredictable.

Torrington requests that the Department reject NPBS's arguments. Torrington asserts that the lack of explicit instructions in the law does not prevent the Department from calculating profit for CV on a level-of-trade basis. In support of this argument, Torrington cites *Mobile Communications Corp. of America* v. *F.C.C.*, 77 F.3d 1399, 1404–05 (D.C. Cir. 1996). Torrington concludes that the methodology represents a reasonable interpretation of the statute's requirements.

Department's Position: We agree with petitioner. Profit for CV should be calculated on a level-of-trade basis because the level-of-trade-specific profit calculation recognizes that profit levels may differ depending on the level of trade. Thus, in the final results we calculated NPBS's profit for CV on a level-of-trade-specific basis for each class or kind of merchandise. *See* our response to Comment 1 of section 6.C of

AFBs VI, 62 FR 2081 at 2112, for more information on our methodology for the calculation of profit for CV.

5.D. Affiliated-Party Inputs.

Comment 1: NSK contends that the Department has no reasonable basis for requiring the submission of cost information on inputs from affiliated suppliers and should therefore accept the transfer prices of such products as NSK reported.

Torrington argues that the Department should reject NSK's argument for the reasons the Department set forth in detail in *AFBs VI*.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to this issue, which we rejected, and NSK offers no new arguments for altering our position. Pursuant to section 773(f)(2) of the Tariff Act, we generally use the transfer price of inputs purchased from an affiliated supplier in determining COP and CV, provided that the transaction occurred at an arm's-length price. In determining whether a transaction occurred at an arm's-length price, we generally compare the transfer price between the affiliated parties to the price of similar merchandise between two unaffiliated parties. If transactions of similar merchandise between two unaffiliated parties are not available, we may use the affiliated supplier's COP for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties. In the case of a transaction between affiliated persons involving a major input, we use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input. *See AFBs VI* at 2115. Therefore, we have not altered our methodology for these final results.

Comment 2: NSK argues that the Department should recognize the unique situation pertaining to a certain affiliated supplier of inputs and determine that purchases from this supplier were made at arm's-length prices.

Torrington argues that the situation pertaining to this supplier does not demonstrate that purchases from the supplier were necessarily made at arm's-length prices.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to an affiliated supplier, which we rejected, and offers no new arguments to convince us to alter our position. *See AFBs VI* at 2115. There is no evidence on the record that indicates that purchases from this supplier were necessarily made at arm's-length prices. Therefore, we have made no change in our treatment of this supplier for the final results.

Comment 3: NSK argues that the Department should not regard a certain type of input as a major input because this type of input does not meet the statutory definition of major inputs.

Torrington argues that NSK does not dispute that this type of input is an essential component of many types of bearings and that NSK's reported data demonstrates that this type of input can account for a significant percentage of the cost of manufacture.

Department's Position: We disagree with NSK. NSK made an identical argument in the prior review with respect to this type of input, which we rejected, and offers no new arguments for altering our position. *See AFBs VI* at 2116. Therefore, we have made no change in our treatment of this type of input for the final results.

Comment 4: Nachi contends that the Department should not reject its reported cost of affiliated-party inputs. Nachi asserts that the Department misunderstood its characterization of its methodology for reporting such costs and the underlying reasons for using this methodology. Nachi explains that its affiliated suppliers were small, captive producers that lacked the capability to provide product-specific cost information. Nachi contends that, if the affiliate is profitable during the POR, the transfer price must necessarily be above the affiliate's cost of producing the input. By contrast, if an affiliate had operated at a loss during the POR, Nachi asserts that it would have reported the COP for the input. Nachi notes that it reported the transfer price for purchases from all affiliates because all of its affiliates were profitable during the POR. Nachi also asserts that the Department accepted this methodology in every prior review in which Nachi participated.

Torrington argues that the overall profitability of an affiliated supplier is not determinative as to whether the transfer prices of particular inputs are above cost or reflect arm's-length prices. Torrington notes that Nachi did not provide prices of similar inputs it obtained from unaffiliated suppliers. Torrington further contends that the Department's preliminary determination to reject Nachi's reported cost of affiliated-party inputs is in accordance with the precedent the Department set in *AFBs VI* at 2115.

Department's Position: We disagree with Nachi. We require costs to be reported on a product-specific basis. Though Nachi's affiliated suppliers may have been captive to Nachi during the POR and though these suppliers may have all been profitable, the fact remains that some inputs may have been sold at transfer prices which were below the affiliate's cost of producing the input during the POR. Finally, we note that each review stands alone and the fact that we accepted Nachi's methodology in prior reviews is not determinative of which methodology we use in this review. Because Nachi did not report its data in such a way that we could determine whether all affiliated-party inputs were sold at a transfer price which was below the affiliate's cost of producing the input on a product-specific basis, for these final results we have used the facts available as described in our preliminary analysis memorandum for Nachi dated March 28, 1997.

Comment 5: Torrington contends that NMB/Pelmec reported COP and CV for all models using transfer prices for inputs purchased from affiliated parties. Torrington asserts that the transfer price of the input material did not exceed the COP of that material in all cases. Torrington argues that, in conformance with the policy the Department enunciated in *AFBs VI*, the Department should use the higher of the transfer price, cost, or market value for major inputs NMB/Pelmec obtained from its affiliated companies.

NMB/Pelmec rebuts that the Department is not strictly required to use COP in every instance, especially in the case where transfer price exceeds COP for the vast majority of inputs. Citing the preamble of *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27296, 27362 (May 19, 1997), NMB/Pelmec contends that the Department has the discretion to use transfer prices after considering the specific facts of each case. NMB/Pelmec also notes that, in other comparable aspects of the antidumping margin calculation, such as the below-cost test for HM sales, the Department does not automatically exclude all below-cost prices as long as the vast majority are above cost.

Department's Position: We agree with Torrington that we should have used COP in cases where COP exceeded transfer price for the value of affiliated-party major inputs for NMB/Pelmec. We have made this change for the final results. *See* our response to comment 1 of section 6.D of *AFBs VI* at 2115 for a comprehensive discussion of our practice with regard to affiliated-party inputs.

Comment 6: Torrington argues that NTN Japan purchased components from an affiliated supplier at prices below the cost of producing such items. Torrington states that it based its examination on a submission made by NTN Japan's affiliated party for the record of these reviews. Torrington argues that the Department should restate NTN Japan's reported COP to reflect arm's-length values for those models in which NTN Japan purchased components from this affiliated party. Torrington also maintains that the Department should request all necessary information from NTN Japan to restate such values or apply facts available if NTN Japan is unable to provide such information.

NTN Japan argues that, while it received a public version of the argument regarding transfer prices from NTN Japan's affiliated supplier, it did not receive the full argument because Torrington had deleted the proprietary information. NTN Japan objects to its denial of access through its counsel to this information and notes that NTN Japan's affiliated party permitted such access to the original submission from which Torrington conducted its analysis.

Department Position: We agree with Torrington in part. After re-examining the record, we determine that NTN Japan's costs should be restated because the transfer prices from some affiliated parties were below the affiliate's COP. However, since it is unclear from the record for which models NTN Japan uses the purchased components, we are unable to restate NTN's costs on a model-specific basis. Therefore, we are applying facts available to NTN Japan's costs. Because of the proprietary nature of the information we are using, we cannot discuss the facts available we are applying in this public notice. *See* NTN Japan's final results analysis memorandum dated September 22, 1997 for a complete discussion of the facts available we are using to restate NTN Japan's costs. Finally, while we note NTN Japan's objection to being denied access to the proprietary version of Torrington's arguments, we could not redress the situation due to the circumstances surrounding the treatment of proprietary information in this case. For a complete discussion of these circumstances, see Memorandum from Greg Thompson to the File dated September 22, 1997.

5.E Abnormally High Profits

Comment 1: Torrington argues that no respondent has shown adequately that profits it earned on certain sales were aberrational or abnormal or otherwise should be disregarded for purposes of calculating CV profit. Torrington notes that the statute does not address abnormal profits but provides that sales which are outside the ordinary course of trade should be excluded from the calculation of NV and likewise the calculation of CV profit. Torrington states that, once the Department has excluded sales outside the ordinary course of trade from the calculation of NV, the Department has already ensured that it will use no sales with abnormally high profits in its CV-profit calculation. Torrington therefore concludes that it is illogical for the Department to re-examine the remaining sales for abnormally high profits before calculating a CV-profit rate.

Similarly, Torrington contends that, if a respondent fails to submit adequate information to establish that particular sales were outside the ordinary course of trade, the Department need not re-examine the same sales to determine whether some sales involved abnormally high profits. Torrington concludes that, because it is rational to maximize profits, evidence that maximum profits were extracted on some subset of total sales is not alone sufficient to indicate that profits were abnormal and that there is no profit margin that is abnormally high simply by reference to the costs or prices in the abstract.

Citing section 773(a)(1)(B) of the Tariff Act, INA, NSK, NSK/RHP, NTN, and SKF argue that the Department, in determining NV, must disregard sales which have "abnormally high" profits outside the ordinary course of trade. NTN, NSK, and NSK/RHP claim that the Department's new regulations at 351.102(b) and the SAA at 164 give the Department clear instruction to exclude sales made with abnormally high profits and sales made at aberrational prices as outside the ordinary course of trade. INA and NTN argue that sales with abnormally high profits are a category of transactions whose inclusion in the profit calculations would result in unrepresentative price comparisons and distortive results, citing the SAA and *IPSCO* v. *United States*, 714 F. Supp. 1211, 1217 (1989). INA, NTN, and SKF assert that Torrington is incorrect in arguing that, once the Department has eliminated some sales which are outside the ordinary course of trade, it does not need to reexamine the remaining sales to determine if they may have abnormally high profits and are therefore also outside the ordinary course of trade. Rather, respondents contend, the presence of abnormally high profits supports the conclusion that such sales are outside the ordinary course of trade and, therefore, must be excluded from the calculation of NV. NSK and NSK/RHP assert that the benchmark for concluding that sales are outside the ordinary course of trade due to the presence of abnormally high profits is not abnormally high profits *per se* but rather an analysis of the characteristics of the transaction in the context of the specific market.

FAG responds that abnormal profit ratios and inflated CVs resulted from the Department's unlawful calculation of CV profit on a class-or-kind basis rather than on a foreign-like-product basis (discussed at Comment 1 of section 5.C. (Profit for CV), above). Therefore, FAG argues, the Department has calculated abnormally high profit rates unlawfully beyond a reasonable degree of normality. FAG maintains that the URAA requires the Department to first calculate profit earned in connection with the production and sale of a foreign like product, citing section 773(e)(2)(A) of the Tariff Act. FAG argues that, despite the Department's purported use of this "foreign like product" methodology, the Department actually determines profit by reference to total revenue and total cost of all class-or-kind sales which pass the cost test. FAG argues that, because the Department determined profit rates on a class-or-kind basis according to section 773(e)(2)(B)(i), it should not exclude from the calculation of profit those sales made below cost while including sales with abnormally high profits. By eliminating sales in this manner, FAG contends, the Department has created profit rates which do not reflect ordinary experience. FAG argues that determination of profit rates on a category of sales more general than the foreign like product requires inclusion of all sales regardless of whether they were made in the ordinary course of trade. FAG requests that the Department recalculate profit rates based on all sales of the product group without regard to whether those sales were made in the ordinary course of trade.

Department's Position: We agree with Torrington that no respondent has adequately shown that profits earned were aberrational or abnormal or otherwise outside the ordinary course of trade. As in past reviews, the fact that a respondent identifies sales as having abnormally high profits does not necessarily render such sales outside the ordinary course of trade. Profits are not automatically abnormally high and such sales are not automatically outside the ordinary course of trade for purposes of computing CV profit simply because certain HM sales had profits higher than those of other sales. In *Large*

Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany (61 FR 38166, July 23, 1996), we stated that, in order to determine that profits are abnormally high, there must be certain unique or unusual characteristics related to the sales in question. Verification of the designation of certain sales as having abnormally high profits merely proves that the respondent identified sales as having abnormally high profits in its own records. This evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating NV in these reviews. Accordingly, we excluded no HM sales from the CV-profit calculation on the basis of finding abnormally high profits.

We disagree with FAG's contention that abnormal profit ratios and inflated CVs resulted from our unlawful calculation of CV profit on a class-or-kind basis rather than on a foreign-like-product basis. See our position with respect to "Profit for Constructed Value" above. With respect to FAG's argument that we should not have eliminated sales below cost from our analysis while including those sales it believes to have been made with abnormally high profits, we note that we have followed the requirements set forth in section 773(e)(2)(A) of the Tariff Act. By calculating the profit earned in connection with the sale of the foreign like product, we have examined HM sales properly to determine if they were made within the ordinary course of trade. Upon examining these sales, we have eliminated from our consideration all below-cost sales disregarded under section 773(b) of the Act, as these fall outside the ordinary course of trade. As stated above, respondents have not provided adequate evidence to support the conclusion that any sales which resulted in abnormally high profits were outside the ordinary course of trade. No unique or unusual characteristics related to these sales were demonstrated by any respondent. For these reasons, we have not excluded HM sales on the basis of abnormally high profits. Once we have eliminated sales outside the ordinary course of trade from the HM database, our profit methodology reflects the profit experience fully of the companies for those sales made within the ordinary course of trade and is, therefore, reasonable.

Comment 2: INA claims that there was one specific sale in the HM in the INA–FRG HM sales list that by any measure was made at an aberrational price with an abnormally high profit. INA argues that this is a sufficient basis for concluding that the sale was outside the ordinary course of trade and should be excluded from the Department's final margin calculations. INA cites section 773(a)(1)(B) of the Tariff Act, believing that it provides examples of this type of transaction that may be considered to be outside the ordinary course of trade. INA also points to *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany* (61 FR 38166, July 23, 1996), where the Department rejected arguments that sales with abnormally high profit margins should be excluded from NV, saying that "numerical profit amounts" alone were not enough to show that the profits were abnormally high and that "there must be certain unique or unusual characteristics related to the sales in question" (at 38178). However, INA asserts that that case should not be read to exclude the possibility that in a particular case "numerical profit amounts" alone would be sufficient, since the SAA at 164 specifically identifies abnormally high profit, without more, as a circumstance which would qualify as making a sale outside the ordinary course of trade. In sum, INA asserts that the use of this sale in the calculation of NV would result in irrational and unrepresentative results which is what the "ordinary course of trade" requirement of the statute is intended to prevent. Accordingly, INA contends, the Department should exclude the transaction from its final calculations.

In rebuttal, Torrington argues that the Department should not exclude any HM sales allegedly made at aberrational prices or with abnormal profits. Torrington also refers back to its argument that no respondent has shown adequately that profits each earned on certain sales were "aberrational" or "abnormal" or otherwise should be disregarded for purposes of calculating CV-profit rates for these reviews.

Department's Position: We disagree with INA. The presence of profits higher than those of numerous other sales does not necessarily place the sale outside the ordinary course of trade for purposes of computing CV profit. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be certain unique and unusual characteristics related to the sale in question. However, the respondents have provided no information other than the numerical profit amounts to support their contention that certain HM sales had abnormally high profits. Accordingly, we have not excluded INA's specific sale from the CV-profit calculation.

5.F. Credit and Inventory Costs

Comment 1:

NSK and NSK-RHP claim that the Department made a clerical error in its calculation of imputed credit and inventory carrying costs for CV. Respondents contend that this clerical error understates imputed credit and inventory carrying costs since the ratios the Department used to calculate these adjustments are based on a price denominator that includes movement charges while the values to which the Department applied the ratios are net of movement charges. They request that the Department correct this error by either removing movement charges from the price denominator used in the ratio calculation or adding movement charges to the values to which the Department applies these ratios.

SKF France, SKF Germany, SKF Italy, SKF Sweden, and Torrington agree that the Department committed a clerical error in its calculation of imputed credit and inventory carrying costs for CV. These parties also agree with NSK's and NSK-RHP's suggested methodology for correcting the error.

Department's Position: We disagree with the interested parties' assertion that the methodology we applied for the preliminary results was a clerical error since it was intentional. However, upon considering all comments on our methodology, we have decided to make a change to our methodology since it understates the imputed credit and inventory carrying costs we calculated for CV. To correct the problem, we deducted movement charges from the denominator of the ratio calculations we used to derive imputed credit and inventory carrying costs for CV. This ensures that the ratios, and values to which we apply them, are comparable.

Comment 2: SNR France asserts that the Department used a price-based denominator, *i.e.*, total HM price, erroneously in the calculation of ratios used to derive imputed credit and inventory carrying costs for CV. SNR France contends that since the Department applies these ratios on a cost basis it must also calculate the ratios on a cost basis by using HM total COP in the denominator. SNR France notes that the Department made this change for the *Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 34201 (June 25, 1997) in *AFBs VI*.

Department's Position: As we explained in response to Comment 1 of this section, a change in the denominator of the ratio calculation is necessary for the sake of comparability. However, we do not agree with the

change SNR France requested. To derive imputed credit and inventory carrying costs for CV, which is a surrogate for HM price, we apply the ratios to a CV that includes the COP, direct selling expenses, indirect selling expenses, commissions, profit, and packing. Thus, the CV we use is essentially on the same basis as the price in the denominator of the ratio calculation because both include and exclude the same expenses (except movement expenses, an error we corrected for these final results pursuant to Comment 1 of this section). Furthermore, we believe that an allocation based on price is more appropriate than one based on cost because we calculate imputed expenses by applying an expense factor to the price, not the cost, of transactions.

5.G. Other Issues

Comment 1: Torrington argues that, in the instant review, NTN allocated its reported COP and CV selling expenses on the basis of levels of trade. Torrington contends that, in the 1994/95 review, with respect to U.S. indirect selling expenses, the Department did not accept this allocation method because NTN could not demonstrate how these expenses were attributable to different levels of trade. Torrington asserts that, for these final results, the Department should reach the same conclusion as it did in the *AFBs VI* review and recalculate NTN's COP and CV selling expenses.

NTN argues that, although the Department did not accept NTN's selling expenses based on level of trade in *AFBs VI*, the Department did permit such level-of-trade-based selling expenses in previous reviews. NTN also argues that, in the most recently completed TRB review in which it was involved, the Department accepted its level-of-trade-based selling expenses and even stated that they "prevent distortion" (*citing Tapered Roller Bearings, Finished and Unfinished from Japan; Final Results of Administrative Review*, 61 FR 57629, 57636 (November 7, 1996)). NTN points out that the Department did not make any changes in the preliminary results of review to NTN's reported level-of-trade-based HM selling expenses and states that the Department normally uses such selling expenses in its CV calculations. Further, NTN argues that, absent Torrington raising the argument that NTN's HM selling expenses be denied, the Department should accept NTN's reported level-of-trade-based selling expenses.

Department Position: We agree with Torrington that these expenses should not be allocated based on level of trade. The CIT remanded this issue to the Department in *The Timken Company* v. *United States* on May 31, 1996 (*see* Slip Op. 96–86 for the 1990/92 reviews of the order on TRBs over four inches from Japan). The remand directed us to recalculate NTN's indirect selling expenses without regard to level of trade or explain our reasons why we thought the expenses were allocated correctly. In our remand, we explained that, because we could not determine on the basis of the information provided by NTN whether expenses varied according to level of trade, we recalculated the expense information without regard to level of trade. On July 3, 1997, the CIT affirmed our remand (*see* Slip Op. 97–87). Consistent with our remand determination in the TRB case, because NTN has not provided us with the necessary information for this review period to determine whether the expenses varied according to level of trade, we have recalculated its expenses so that they do not reflect levels of trade (*see* Analysis Memo dated September 22, 1997).

6. Further Manufacturing

Comment: Although SKF does not challenge the Department's methodology in applying the special rule of section 772(e) in these reviews, it suggests that the methodology for determining whether there are sufficient quantities of sales of non-further-processed subject merchandise for calculating a margin may not be an appropriate test under all circumstances.

Torrington rebuts that, since SKF does not contest the Department's preliminary results and SKF's comment is not based on the current record, the Department need not address the issue.

Department's Position: Since there is no information or argument on the record demonstrating that our methodology in this case is unreasonable, we have not changed our methodology for these final results. However, as a general matter, we note that the statute has left to our discretion how to determine whether a sufficient quantity of sales exists. We intend to develop our practice in this area on a case-by-case basis.

7. Packing and Movement Expenses

Comment 1: NSK argues that expenses associated with repacking in the United States are not selling expenses and thus should not be included in the selling expenses the Department uses to calculate CEP profit. Citing the statute at sections 772(c) and (d), NSK contends that repacking expenses are deducted pursuant to section 772(c)(2)(A) of the statute and thus should not be included in the CEP-profit calculation. In addition, NSK alleges that the Department has stated this implicitly by asking for packing and repacking expenses in a part of its questionnaire which is separate from selling expense.

Torrington argues that the Department treated repacking expenses as selling expenses correctly for the purposes of calculating CEP profit. Torrington notes that NSK reported that it normally does not perform repacking for U.S. sales but that it does some repacking to accommodate orders for smaller distributors. Torrington contends that this characterization is consistent with the Department's treatment of repacking as a selling expense.

Department's Position: We disagree with NSK. As NSK notes, section 772(c)(2)(A) of the Tariff Act covers "transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." *See* SAA at 153. We do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. Rather, we view repacking expenses as direct selling expenses respondents incur on behalf of certain sales which we deduct pursuant to section 772(d)(1)(B) of the statute. Section 772(d)(1)(B) of the statute directs that CEP shall be reduced by "expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties." We regard repacking expense as a direct selling expense because it was performed on individual products in order to sell the merchandise to the unaffiliated customer in the United States. Presumably, if a respondent could have sold the merchandise without repacking it, the respondent would have done so. Thus, it is an expense associated with selling the merchandise.

Section 772(d)(1)(B) of the Tariff Act does not limit direct selling expenses deducted from CEP to credit expenses, guarantees or warranties. Furthermore, as noted in the SAA, under section 772(d), CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of any selling expenses which result from, and bear a

direct relationship to, selling activities in the United States. Finally, the format of our questionnaire is not germane to our analysis in determining how we treat reported expenses. Accordingly, we have continued to include repacking in the pool of selling expenses we use to calculate CEP profit.

Comment 2: Torrington asserts that NTN's reported HM packing expense is overstated based on a comparison it made between the information NTN and several other Japanese respondents provided. Torrington determined these rates by dividing the reported packing expenses by the reported gross unit prices. Torrington also asserts that NTN included expenses other than packing in its reported packing expense. In addition, Torrington alleges that NTN did not provide all of the worksheets necessary to support the manner in which NTN calculates its reported packing expense and states that, given this information, it cannot determine whether exports were included in the reported expense. Torrington maintains that, if exports were included in the calculation of NTN's packing expense, this expense may be based, in part, on transfer prices which could yield distortive figures. Further, Torrington asserts that NTN did not allocate its packing expense accurately. Torrington maintains that NTN did not adhere to the Department's requirement, as specified in its questionnaire, to report the expense based on identifiable costs. Torrington suggests that, for the above-mentioned reasons, the Department should either recalculate this expense or use the lowest packing rate from any other Japanese respondent.

NTN contends that it reported its HM packing expense accurately. NTN states that the experience of other Japanese companies has no bearing on the actual packing expense NTN incurred. NTN also states that, even if expenses other than packing were included in its reported packing expense, such expenses are negligible and, therefore, would have little impact on the reported packing expense. In addition, NTN argues that Torrington's allegation that NTN's packing expense includes export sales is incorrect. NTN maintains that the Department verified this expense and found no discrepancies with regard to this expense. NTN argues that it allocated its packing expense correctly and states that Torrington's suggestion that the Department recalculate this expense is baseless.

Department Position: Other respondents' packing costs are irrelevant to determining the accuracy of NTN's claimed amounts. We verified the calculation and allocation of NTN's packing expenses and found them to be reasonably undistortive (*see* verification report dated May 8, 1997, at 8). Therefore, we have accepted NTN's packing expenses as they were submitted.

8. Affiliated Parties

Comment 1: NPBS states that the Department should not treat a certain customer as affiliated. NPBS explains that the apparent basis for such treatment is that the customer's stockholding in NPBS barely meets the 5-percent threshold in 771(33)(E) of the statute when only the stock outstanding as of the time of the review is taken into account. NPBS claims that, in fact, the shares were previously held by employees of the NPBS company in question that would have taken the customer's shareholding below the 5-percent threshold. NPBS argues that, when some employees retire, their shares temporarily are converted into treasury stock but are then re-issued. NPBS claims that the Department should have included these shares in the denominator for the 5-percent test and, therefore, the Department would not have found the customer to be affiliated. NPBS contends that the customer's minimal shareholding does not place it in a position to satisfy the "control" criterion of 771(33)(G) of the Tariff Act and, accordingly, the Department should not treat the customer as affiliated.

Torrington responds that NPBS's argument should be rejected. Torrington explains that the Department applied its test correctly on the basis of facts observable and verifiable, rather than on speculation that the company expects to reissue certain stock, effectively reducing the percentage share of the customer.

Department's Position: We agree with petitioner. For these final results, we have continued to treat NPBS and the customer in question as affiliated. In accordance with section 771(33)(E) of the Tariff Act, the Department employs a 5-percent stock-ownership rule to determine whether two parties are affiliated. The party in question stated, and we verified, that during the POR it held 5 percent of the outstanding stock of NPBS. Once a party attains 5-percent ownership, for whatever reason, the Department determines that the parties are affiliated. Therefore, we have continued to treat the two companies as affiliated.

Comment 2: Torrington contends that the Department should not excuse NTN from obtaining sales information from its affiliated resellers in the HM. Torrington argues that NTN's excuses regarding the size of its resellers, its legal inability to obtain proprietary information from companies in which it holds a minority interest, the time involved to obtain such information, and the insignificant impact this information would have on the calculated margin are insufficient. Torrington also dismisses NTN's argument that the Department permitted NTN's reporting of sales to resellers in prior reviews because, Torrington states, each review is a separate proceeding. Torrington maintains that NTN has failed to demonstrate the arm's-length nature of such sales. Torrington argues further that, rather than disregard such sales when they fail the arm's length test, the Department should apply facts available to NTN's sales to affiliated resellers. Torrington also argues that, if the Department does not apply facts available to such sales, it should exclude such sales from the final margin calculations.

NTN contends that the application of facts available is not warranted because it provided responses to the Department's questionnaires and, as per the questionnaire, notified the Department of the difficulty involved in obtaining sales information from its affiliated resellers. NTN also argues that the Department did not request that NTN provide the sales information but, rather, requested an explanation concerning NTN's inability to obtain this information which it provided subsequently.

Department's Position: We disagree with the petitioner. NTN notified us of the sales to affiliated customers in the HM prior to answering our questionnaire. Given that these sales constituted a small percentage of NTN's HM sales and that collecting the data was not possible, we determined that NTN should report the sales to its affiliates. In the preliminary results, we conducted an arm's-length test and, in accordance with section 773(f)(2), we disregarded those sales which were not made at arm's-length prices. Based upon these facts and our determination not to request data concerning sales to unaffiliated customers, we have determined that the application of facts available is not warranted in this case.

9. Sample Sales and Prototypes/Zero Price Transactions

On June 10, 1997, the Court of Appeals for the Federal Circuit (CAFC) held that the term "sold" requires both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States*, 115 F.3d 965, 975 (CAFC 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation lacked consideration. *Id.* Moreover, the CAFC found that, since free samples did not constitute "sales," they should not have been included in calculating U.S. price.

In light of the CAFC's opinion, we have reevaluated and revised our policy with respect to sales of samples. Therefore, pursuant to the CAFC's opinion, the Department will now exclude sample transactions, transactions for which a respondent has established that there is either no transfer of ownership or no consideration, from the dumping calculations.

This new policy does not mean that the Department automatically excludes from analysis any transaction to which a respondent applies the label "sample." In fact, for these reviews, we determined that there were instances where it is appropriate not to exclude such alleged samples from our dumping analysis. It is well-established that the burden of producing support rests with the party in possession of the needed information. *See, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (CAFC 1993), (citing *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573, 1583 (CAFC 1993), and *Tianjin Mach. Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992)). In several cases, as discussed below, respondents failed to demonstrate or to submit documentation to show that their claimed sample sales lacked consideration. When respondents failed to support their sample claim, we did not exclude the alleged samples from our margin analysis.

With respect to HM sales, in addition to excluding sample transactions which do not meet the definition of "sales," we may exclude sales designated as samples or prototypes from our analysis, pursuant to section 773(a)(1) of the Tariff Act, when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade as defined in section 771(15). We have addressed comments regarding ordinary course of trade separately in the section titled "Ordinary Course of Trade."

With regard to assessment rates, in order to ensure that we collect duties only on sales of subject merchandise, we included the entered values and quantities of the sample transactions in our calculation of the assessment rates and set the dumping duties due for such transactions to zero. We have done this because U.S. Customs will collect the *ad valorem* (or per-unit, where applicable) duty-assessment rate on all entries of subject merchandise regardless of whether the merchandise was a sample transaction. However, to ensure that sample transactions do not dilute the cash deposit margin, we excluded both the calculated U.S. prices and quantities for sample transactions from our calculation of the cash deposit rates.

Comment 1: Torrington argues that the CAFC's recent determination in *NSK* does not require a modification of the preliminary results and that the Department should continue to include in the U.S. database free samples which respondents gave to parties in the United States. Torrington argues further that the Department rejected respondents' claims properly that certain sales should be excluded based upon the information contained in respondents' questionnaire responses. Torrington maintains that negative inferences could be made in respondents' questionnaire responses where respondents did not supply the requested information. Torrington maintains further that the Department should determine whether to exclude free samples from the sales database by distinguishing between situations where sample recipients undertake actual obligations or engage in parallel transactions and where the recipients remain free to purchase a product of their own accord.

NSK, NSK/RHP, SKF, FAG, and NTN respond that the *NSK* decision requires the Department to re-evaluate U.S. samples and exclude all sample sales from the U.S. database. Respondents argue that the *NSK* decision held that a transfer of a zero-priced sample lacks consideration and does not constitute a sale; therefore, they argue, the Department cannot use such transfers in the dumping analysis. NSK and NSK/RHP contend further that the Department must apply the ordinary meaning of "sale" to the antidumping law, which involves not only the transfer of ownership but also the payment, or promise, of consideration.

NSK, NSK/RHP, SKF, FAG, and INA argue that the Department's requirement that respondents report free samples is not based on the information presented in their questionnaire responses. Respondents maintain that the Department's position regarding samples sales is based on the assertion that giving away a sample constitutes a sale for purposes of the antidumping duty statute unless proven otherwise. Respondents argue that, since the *NSK* decision overturned the Department's past practice, the Department should now exclude free samples from the U.S. database.

Department's Position: We agree with both parties in part. We agree with respondents that the *NSK* decision requires us to examine, in our determination of whether samples offered to customers at no charge constitute sales, whether the transactions involved both a transfer of ownership and consideration.

We also agree with Torrington that, in our determination of whether to exclude transactions identified as samples from the sales database, we should examine the information on the record to determine whether the recipients of the samples have undertaken actual obligations to purchase AFBs from the provider of the free bearings or whether the recipients remained free to purchase bearings of their own accord. This approach is consistent with the CAFC's decision which, in finding that NSK's samples given to potential customers at no charge lacked consideration, noted "[t]hese customers were free to transact with NSK based solely on their whim." *See NSK*, at 975. As the CAFC noted, "[c]onsideration generally requires a bargained for exchange" (*Id.*) and we did not limit our review of consideration to the payment of a monetary price for the sample products.

With regard to NSK's reported U.S. sample and prototype transactions, it appears from the record that NSK did not receive consideration for sample transactions, but that NSK did receive consideration for its reported prototype transactions. *See* Proprietary Exhibit C–24 of NSK's September 9, 1996 response. Therefore, in accordance with the CAFC's decision in *NSK*, we have excluded NSK's reported sample transactions but not its claimed prototype transactions from its U.S. sales database. We note that we had removed NSK's reported HM sample transactions from its HM sales database for the preliminary results because NSK demonstrated that such transactions were outside the ordinary course of trade. We have not altered this treatment for the final results.

With regard to NSK/RHP's and Nachi's reported sample transactions, we examined the record and found no evidence that NSK/RHP and Nachi received consideration for such transactions. Therefore, we have excluded NSK/RHP's and Nachi's reported sample sales from their U.S. sales databases. NSK/RHP and Nachi did not report sample sales in the HM. With respect to FAG, INA, NTN, and SKF, we have addressed each company's specific arguments below.

Comment 2: Torrington contends that, if the Department determines, based upon the *NSK* decision, to exclude

certain sales claimed to be samples from the U.S. database, then the Department should require that the expenses incurred in connection with providing the free samples be accounted for as a direct selling expense to be attributed to the first sales transaction following the sample transaction. Torrington contends that, where this approach is not appropriate, the Department should attribute the expense (based on the COP of the sample) to all sales to the customer who received the sample and should cover the full COP of the sample.

NSK, NSK/RHP, SKF, INA, and FAG contest Torrington's proposal to treat the cost of samples as a direct selling expense. NSK and NSK/RHP respond that the Department should treat the cost of samples as an indirect advertising expense incurred in the general promotion of sales. They argue that the cost of a sample bearing is not properly charged to the recipient and that Torrington's approach is commercially unrealistic as it places more weight on the sample than it can reasonably bear. NSK, NSK/RHP, and SKF argue that the provision of free samples is not linked to specific sales; many factors drive the decision to purchase bearings. NSK and NSK/RHP contend further that, under Torrington's approach, if samples are provided and no sales occur, the expense would not be allocated to any U.S. sales.

SKF argues that, given the *NSK* decision, the Department need not inquire whether expenses associated with free samples were reported as indirect selling expenses. SKF maintains that, because the CAFC's holding in *NSK* did not rest upon the reporting of expenses, the Department should not base its decision to exclude sample sales upon whether the respondents had accounted for the related expenses. SKF contends that, if the Department disagrees with its argument, the Department should inquire about expense information only in future reviews. Finally, SKF argues that it reported its expenses related to sample sales as indirect selling expenses.

NTN argues that sample-related expenses cannot, as Torrington suggests, be attributed to the first sale following the sample transaction because there can be no selling expenses associated with the transaction since there has been no sale.

FAG and INA respond that Torrington failed to explain why the cost of samples should be treated as a direct selling expense. FAG argues further that there is no need to report the cost of manufacturing the samples since the samples were not sold. In addition, FAG maintains that respondents have accounted for all U.S. and HM selling expenses, as required by the questionnaire.

Department's Position: We have determined that we should treat the cost of zero-priced samples as an indirect selling expense respondents incurred in the general promotion of sales. However, we examined the record for these reviews and compared the total entered value of sample transactions with the total pool of expenses respondents used to calculate indirect selling expenses and found the total entered value of the sample transactions for all respondents for which we eliminated zero-price samples for these final results to be *de minimis*. Due to the burden of factoring these *de minimis* amounts into respondents' complex calculations of their indirect selling expenses, we did not recalculate indirect selling expenses to reflect the cost of zero-priced samples. Although we did not make this adjustment for these final results, in future reviews we will require respondents to include the costs associated with free samples as an indirect selling expense.

Comment 3: FAG Germany and FAG Italy request that the Department exclude all zero-priced U.S. sample transactions from the dumping margin calculation. Citing *NSK*, FAG Germany and FAG Italy contend that the sample transactions in their U.S. sales databases do not constitute "sales" since they provided them to potential customers at no charge.

Torrington contends that, since respondents repeatedly refer to zero-priced U.S. sample transactions as "sales" in their responses, the Department should draw an adverse inference and not exclude them from the margin calculation. Torrington also claims that respondents did not provide sufficient data regarding the individual sales they claimed for exclusion. Regarding FAG Italy, Torrington also contends that the Department should not exclude transactions from the margin calculation since the record is contradictory about whether this company had any such sample transactions. In support of this argument, Torrington cites to a statement in FAG Italy's supplemental questionnaire response that suggests that there are no samples in the U.S. sales database.

Department's Position: We have examined the record with regard to FAG Germany's reported sample transactions and found no evidence that FAG Germany received consideration for reported U.S. sample transactions. We did find evidence that indicated that FAG Germany received consideration for claimed HM sample transactions. Furthermore, FAG Germany did not demonstrate or submit documentation to show that its claimed HM sample sales were outside the ordinary course of trade. Therefore, in accordance with the CAFC's decision in *NSK*, we have excluded FAG Germany's reported sample sales from its U.S. sales database; however, we did not exclude FAG Germany's claimed HM "samples" from the calculation of NV.

With regard to FAG Italy, we have examined its HM and U.S. sales databases and found that FAG Italy did not identify any transactions as samples. Moreover, we also looked for zero-priced sales and found that FAG Italy did not report any zero-priced sales in either database. Therefore, we determined that FAG Italy's argument regarding sample sales is irrelevant with respect to these reviews.

Comment 4: The NTN companies (NTN Japan and NTN Germany) request that the Department exclude their sample sales from their U.S. sales databases in accordance with the CAFC's ruling in *NSK*.

Torrington argues that the Department must first determine whether a respondent has answered the Department's questions adequately regarding sample sales before making any exclusions. When all the information is not presented, Torrington asserts that the Department should assume that withheld information would have established that consideration (to which the court referred in *NSK*) was provided. Torrington maintains that such a fact pattern exists for the NTN companies and the Department should make adverse inferences. Torrington points to the NTN companies' questionnaire responses wherein they declined to answer questions regarding sample sales.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. The NTN companies did not answer our questions regarding the purchase history of parties receiving samples. The NTN companies also did not answer our questions regarding the prices and quantities involved in sample sales. Rather, the NTN companies stated that the information is irrelevant. The answers to these questions would have aided us in determining whether the NTN companies received a bargained-for exchange from their U.S. customers. Lacking knowledge of the details of these transactions, we cannot conclude that the NTN companies received no consideration for these alleged samples. In other words, because the NTN companies impeded our investigation of these transactions, we determined that an adverse inference is appropriate. Therefore, for these final results, we have included the NTN companies' sample sales in their respective U.S. sales database.

Comment 5: SNR France requests that the Department exclude its sample sales from its U.S. sales database in accordance with the CAFC's ruling in *NSK*. SNR France states that it responded to the Department's questionnaire regarding sample sales fully and the Department did not ask additional questions in its supplemental questionnaire.

Torrington responds that the Department must first determine whether a respondent has answered the Department's questions regarding sample sales at a sufficient level and a deficiency in this regard should draw an appropriate adverse inference. Torrington contends that the Department should assume that withheld information would have established that consideration (to which the court referred in *NSK*) was provided. Torrington maintains that such a fact pattern exists for SNR France and the Department should make an adverse inference. Torrington points to SNR France's questionnaire response wherein it declined to answer questions regarding sample sales.

Department's Position: We agree with SNR France. The firm provided a basic description of the sample sales it reported for the review period. Moreover, we found no evidence on the record that SNR France received consideration for reported U.S. sample transactions. Therefore, for these final results, we have excluded these sales from the U.S. sales database.

Comment 6: Torrington argues that the Department should reject SKF Germany's claims that sales identified as samples or prototypes should be excluded from the HM sales database because SKF Germany did not supply much of the information the Department required to support exclusion. In arguing that the respondent has the burden of proof when claiming favorable adjustments, Torrington cites *Fujitsu General Limited* v. *United States*, 88 F.3d 1034, 1040 (CAFC 1996). Torrington adds that the Department denied such claims with regard to SKF and NTN in the 1994/95 reviews.

SKF Germany argues that its response regarding samples and prototypes should be sufficient to justify SKF Germany's claim for exclusion of these transactions from its HM database. SKF Germany explains that there were few transactions involving samples and prototypes in the HM, thereby not warranting the expenditure of the substantial resources needed to provide the detailed data responsive to the Department's request.

Department's Position: We agree with SKF Germany. SKF Germany provided a basic description of the sample and prototype sales it reported for the review period. Moreover, we found no evidence on the record that SKF Germany received consideration for reported HM sample and prototype transactions. Therefore, for these final results, we have excluded these sales from the HM sales database.

Comment 7: INA asserts that the Department must exclude zero-priced samples given to customers at no charge from the U.S. sales database as these are not "sales" within the meaning of the antidumping law, citing *NSK*.

With regard to INA's zero-priced sample transactions, Torrington asks that the Department draw an adverse inference and not exclude any such transactions from the U.S. sales database. Torrington asserts that INA elected not to provide the information the Department requested and stated that it could not systematically identify sample transactions from its sales records.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. INA did not answer our questions regarding the purchase history of parties receiving samples. INA also did not answer our questions regarding the prices and quantities involved in sample transactions. The answers to these questions would have aided us in determining whether INA received a bargained-for exchange from its U.S. customers. Lacking knowledge of the details of these transactions, we cannot conclude that INA received no consideration for these alleged samples. In other words, because INA impeded our investigation of these transactions, we determined that an adverse inference is appropriate. Therefore for these final results, we have included INA's sample sales in its U.S. sales database.

With regard to INA's HM "zero-priced" sample transactions, INA provided a complete response with respect to these transactions. We examined the record and found no evidence that INA received consideration for its HM sample transactions. Therefore, in accordance with the CAFC's decision in *NSK*, we have excluded INA's reported HM "zero-priced" sample transactions.

10. Export Price and Constructed Export Price

Comment 1: INA argues that the Department calculated CEP profit incorrectly on a class-or-kind basis. INA contends that the calculation should have been on a product-specific basis, since the Department makes the CEP-profit adjustment on a transaction-specific basis.

INA contends that section 772(d) of the Tariff Act provides that, in establishing CEP, the Department will make certain additional deductions beyond those it makes in establishing EP. According to INA, all of these deductions are transaction-specific since they are applied to a particular U.S. price and among the deductions is CEP profit, which is allocated to CEP expenses.

INA argues further that section 772(f) provides that the Department will determine the CEP-profit rate with reference to "the expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country." Therefore, INA argues, since the Department uses the profit rate to determine transaction-specific profit under section 772(d) and applies it to transaction-specific expenses, it is apparent that "the subject merchandise sold in the United States" in section 772(f) refers to the particular merchandise for which CEP profit is being calculated. Thus, INA claims the "foreign like product" must refer to merchandise in the same family as the U.S. merchandise.

Furthermore, INA argues that merchandise that may be a foreign like product with respect to one model sold in the United States may not be a foreign like product with respect to another.

Therefore, INA argues that it is logically impossible for an aggregation of like products to be "the foreign like product" to all subject merchandise.

Finally, INA argues that the expense and profit data necessary to calculate CEP profit for each bearing family is on the record and, therefore, the Department should calculate CEP profit on this basis, not on an aggregation of reported HM and U.S. data. In support of INA, SKF argues that calculating CEP profit on a product-specific basis would lead to more accurate results.

Torrington counters that the Department's methodology for calculating CEP profit on a class-or-kind basis is a reasonable application of the statute, citing section 772(e) and the SAA at 824–825. Torrington disagrees with INA and SKF by arguing that the statute does not require the Department to calculate CEP profit on a product-specific basis and that, where the statute is silent or ambiguous with respect to a specific issue, the agency's methodology is permissible if based on a reasonable construction of the statute. Petitioner argues that the Department's methodology is reasonable and, therefore, is permissible.

Department's Position: We agree with Torrington. As discussed in more detail in *AFBs VI*, neither the statute nor the SAA requires us to calculate CEP profit on bases more specific than the subject merchandise as a whole. *See AFBs VI*, 62 FR at 2125. Respondent's suggestion would add a layer of complexity to an already complicated exercise with no increase in accuracy. Furthermore, a subdivision of the CEP-profit calculation would be more susceptible to manipulation.

Comment 2: SNR France and INA Germany argue that the Department excluded imputed expenses (credit expenses and inventory carrying costs) erroneously from its calculation of CEP profit, yet it applied the resulting profit factor to a U.S. selling expense total that includes these imputed costs. This, SNR France and INA Germany maintain, results in an unfair adjustment to U.S. price.

Torrington argues that this methodology conforms with the Department's practice in the 1994/95 reviews. Torrington suggests that the Department reject SNR France's and INA Germany's arguments for the reasons in *AFBs VI* at 2126.

Department's Position: We agree with Torrington. SNR France's approach blurs the definition of U.S. expenses, as defined in section 772(f)(2)(B), and U.S. selling expenses, as defined in section 772(d) (1) and (2). As we discussed in *AFBs VI*, 62 FR at 2126, sections 772(f) (1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the "total actual profit" calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1). When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute, which defines "total United States Expense" as the total expenses described under sections 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs. *See Certain Stainless Wire Rods from France*, 61 FR 47874, 47882 (September 11, 1996).

Comment 3: Torrington alleges that NTN failed to include certain expenses incurred in the United States within the NTN organizational structure as CEP selling expenses. In rebuttal, NTN argues that the Department asked NTN the exact question that Torrington now raises and accepted NTN's response appropriately.

Department's Position: We agree with NTN. Because of the proprietary nature of the comments we received on this issue, however, we are not able to respond adequately in this notice. *See* proprietary memorandum to the file dated September 22, 1997.

Comment 4: Torrington alleges that certain of NTN's claimed EP transactions are actually CEP transactions when examined in light of the criteria for defining EP transactions as outlined in the Department's *Antidumping Manual*. Petitioner notes that these criteria are (1) the sales transaction occurs prior to importation; (2) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (3) this was a customary commercial channel for sales of this merchandise between the parties involved; and (4) the related agent in the United States acted only as a processor of the sales-related documentation and a communication link with the unrelated U.S. buyer. Citing to *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18,404 (April 15, 1997)(*Steel*), petitioner contends that, when the activities of the related selling agent exceed the functions normally associated with a related agent involved with EP sales, this indicates that the related agent is involved in more than just EP sales. Petitioner cites the following passage from the Department's *Antidumping Manual* (1994) as examples of selling activities that exceed those associated with EP sales:

> The extent of the related selling agent's normal functions, such as the administration of warranties, advertising, extensive in-house technical assistance, and the supervision of further manufacturing, may indicate that the agent is more than the "paper-pusher" envisioned for purchase price sales. *Id.* chapter 7 at 4–5.

Torrington concludes that this is the case for the sales in question and that they should be reclassified as CEP transactions.

In response, NTN argues that *Steel* provides no support for its position since it involved instances where there was a sale by the affiliated U.S. importer. NTN states that the Department verified the sales in question and found them to be sales by NTN Japan to an unaffiliated customer in the United States. NTN argues that for the petitioner to contend that such sales are CEP sales ignores the verification findings and effectively creates a sale between the unaffiliated customer and a NTN U.S. subsidiary (NBCA) where there were no sales negotiations between the unaffiliated customer and NBCA, no purchase orders from the unaffiliated customer, no invoices from NBCA, NBCA never takes title to the merchandise, NBCA never carries the merchandise in its inventory, and NBCA never acts as the importer of record. In summary, NTN states that these sales were made in Japan and met the Department's definition of EP sales transactions and that its affiliated party in the United States performed no activities other than those of being a communications link or processor of documents. Finally, NTN argues that it provided further information in response to a supplemental questionnaire and that the Department accepted this information.

Department's Position: We agree with NTN. Torrington lists the criteria the Department considers when deciding whether sales should be classified as EP or CEP. Of the criteria outlined, however, the only area that Torrington questions is the activities of NBCA's liaison office. As NTN notes, there is no information on the record suggesting that NBCA is the seller for the sales in question or that NTN has otherwise misreported the sales. Moreover, although we did not verify NTN's response for these reviews, we have verified this issue in past reviews and found no activities related to these sales. Therefore, after examining documentation for sales to the customer in question, concluded that they were categorized properly as EP transactions. Inasmuch as nothing on the record indicates any change in NTN's business practices, we determine these sales to be EP transactions.

Comment 5: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. NTN maintains that the statute expresses a preference for CEP profit to be calculated on the narrowest possible basis which, NTN states, ensures more accurate results, citing section 772f(2)C)(ii). NTN argues that, in accordance with the statute and for the purpose of employing as specific and accurate expenses as is possible in the calculation of NV and CEP, the Department accepted NTN's reported level-of-trade-based selling expenses and should, for the same reasons, calculate CEP profit based on level of trade such that it accounts for price differences at the levels.

Torrington contends that sections 772(C) and (D) of the statute requires that total expenses and profit be reported, not level-of-trade-specific expenses and profit. Torrington maintains further that, as the Department stated in the preamble to its new regulations, CEP profit should be based on all sales and anything less would further complicate the calculation and make the Department more vulnerable to manipulation.

Department's Position: We agree with Torrington for the reasons we discussed in response to comment 1 above and in *AFBs VI*, 62 FR at 2125.

11. Programming and Clerical Errors

FAG Germany, INA, Koyo, Nachi, NPBS, NTN Japan, SKF Italy, SKF Germany, SKF France, SKF Sweden, SNR France, and Torrington made allegations of programming or clerical errors. Where all parties and we agree that a programming or clerical error occurred, we made the necessary correction and addressed the comment in the final results analysis memoranda. The comments we included here address situations where parties alleged that we made a programming or clerical error but either we or another party to the proceedings disagrees with the allegation. This section of the notice also deals with clerical errors that respondents made but did not bring to our attention until after issuance of the preliminary results.

Comment 1: Nachi contends that, due to a programming error, the Department's credit-period calculation improperly inflates imputed credit expenses for U.S. sales. (The reason for this error is proprietary; therefore, we are not able to include a summary in this notice. For a detailed description of the error, please see page 3 of Nachi's July 1, 1997, Japan Issues Case Brief.) Nachi provides programming language intended to correct this error.

Instead of making the programming correction Nachi requested, Torrington requests a methodological change. Citing the questionnaire and the antidumping manual, Torrington asserts that the Department should base imputed credit expense solely upon the short-term interest rate of the U.S. affiliate. Torrington argues that the credit terms offered to the U.S. affiliate by the foreign exporter do not provide a basis to recalculate part of the U.S. credit expense. Torrington argues further that, if the Department accepts Nachi's methodology for calculating credit expense, the Department should not correct the programming error by using the computer language Nachi presented. Torrington contends that Nachi's suggested computer language is flawed.

Department's Position: We agree with Nachi that the credit-period calculation contains a programming error that inflates the imputed credit expense for U.S. sales improperly. As described below, we corrected the programming error using the programming language Torrington suggested on page 4 of its July 8, 1997, Japan Issues Rebuttal Brief.

We disagree with Torrington's allegation that Nachi's credit-expense calculation methodology is improper. The foreign parent has to finance its receivables using short-term loans during the period in which its U.S. affiliate has not paid for purchases from the foreign parent. Only after the U.S. affiliate reimburses its parent does it absorb the cost of purchasing the merchandise and thus have to begin to finance its own receivables. Therefore, we have accepted Nachi's U.S. credit expense methodology.

We agree with Torrington, however, that Nachi's suggested computer language is flawed as Torrington describes in its rebuttal brief. After analyzing the programming language Nachi suggested and the language Torrington suggested, we conclude that Torrington's language calculates credit expense as we intended for the preliminary results. Therefore, we have adopted Torrington's suggested programming language to account for the programming error Nachi alleged.

Comment 2: Torrington contends that an error occurred in the cost-test section of the Department's computer program for Barden. Torrington claims that the program should have identified as below-cost sales several observations that it treated as above cost.

Barden asserts that Torrington neither offers an explanation of how or why this alleged error occurred nor does Torrington offer computer language to correct it. Barden claims that it re-ran the computer program and found no discrepancies with this portion of the program. Barden requests that the Department therefore dismiss Torrington's argument.

Barden also argues that the Department had no legal or factual authority upon which to apply the below-cost test to its HM database. Barden asserts that the Department unlawfully disregarded below-cost sales in a previous review covering the 1993/94 period. Therefore, according to Barden, there is no lawful basis for the Department to request or utilize Barden's COP data in this review. Thus, Barden requests that the Department not apply a below-cost test to Barden's HM sales.

Department's Position: We disagree with Torrington. We have confirmed that the cost test is working properly. Specifically, it is disregarding individual below-cost sales where more than 20 percent of the quantity of sales of a model are below cost. Therefore, we have determined that the error Torrington alleged does not exist.

With respect to our application of the cost test to Barden's HM sales, we disagree with Barden. As we stated in *AFBs V* at 66490, we cannot disregard the fact that we found that Barden was selling its products below the COP in the HM. Therefore, we are required to disregard such sales in accordance with section 773(b) of the Tariff Act. Moreover, pursuant to our *AFBs V* determination of below-cost sales by Barden in the HM, in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we have the authority in this review to request COP information and apply the cost test. As a result of applying the cost test, we found below-cost sales and, therefore, disregarded Barden's below-cost sales in accordance with the statute.

Comment 3: SNR France contends that it reported an incorrect adjustment for one of the U.S. sales transactions that the Department used for the antidumping margin calculations. SNR France explains that it should have reported a quantity adjustment but that instead it reported a billing adjustment equal to an amount of the gross unit price. SNR France requests that the Department review its submission dated June 19, 1997, and correct the error accordingly.

Department's Position: We established our criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results in *Certain Fresh Cut Flowers from Colombia*, 61 FR 42833, 42834 (August 19, 1996) (*Flowers from Colombia*). In *Flowers from Colombia*, we stated that we will correct these types of errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) we must be satisfied that the corrective documentation provided in support of the clerical-error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical-error allegation, and any corrective documentation, must be submitted to us no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification.

SNR France has satisfied the Department's criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results. Thus, we made the requested correction.

Comment 4: NPBS contends that, when testing prices to affiliated customers, the Department's computer program mistakenly treats sales to one customer as if they were sales to several different customers. NPBS explains that it assigned a different customer code for each of the customer's sales offices and the sales offices of the customer's sales subsidiary affiliate. NPBS requests that the Department rerun the arm's-length test, treating the separate codes as a single customer. NPBS also contends that, in the Department's arm's-length test, two of the customer codes used for identifying sales to the affiliated customer apply to different customers. NPBS states that the two customer codes identify unaffiliated customers that have the same first word in their names as the customer the Department intended to treat as an affiliate. NPBS argues that the customers in question have no affiliation with NPBS or the customer which the Department intended to treat as an affiliate.

Torrington contends that the Department has no obligation to comply with NPBS's request to rerun the arm's-length test and treat the separate codes as one customer. Torrington argues that NPBS has not alleged a clerical error in the application of the test but is taking issue with how the Department applied the test. Torrington asserts that the Department should make no change since NPBS has not explained why its methodology is better than the Department's.

Department's Position: We agree with respondent. NPBS is correct that we mistakenly treated sales to one customer as if they were sales to several different customers. For the arm's-length test, it was our intent to analyze the transactions as sales to a single customer. We have corrected this clerical error by assigning the affiliated customer a single code.

We also agree with NPBS that we should treat two of the customers we treated as affiliated in our preliminary results as unaffiliated. This clerical error occurred when we inadvertently assigned the customers the affiliation code because they have the same first word in their name as the affiliated customer. To correct the problem, we have conducted the arm's-length test without designating the two companies as affiliates.

Comment 5: Torrington contends that there is a programming error in the section of the Department's computer program for SKF France that converts expenses incurred in French francs on U.S. sales to U.S. dollars. To correct this problem, Torrington requests that the Department insert an "ELSE" statement in the line of programming that performs the exchange-rate conversion.

Department's Position: We disagree with Torrington. In the programming language to which Torrington refers, no "ELSE" statement is necessary. In SAS programming, an "ELSE" statement gives an alternative action if the "THEN" clause in an "IF-THEN" statement is not executed. In the section of SKF France's program to which Torrington refers, when the original "IF" clause is executed (*i.e.*, SKF France has reported no expense for the transaction), then the program simply multiplies the exchange rate by zero. If SKF France has reported an expense, then the program multiplies the exchange rate properly by the reported expense denominated in French francs. Torrington's suggested language will only result in the conversion being executed when an expense is missing and has been designated as zero. Because Torrington's suggested language does not affect the outcome of the programming instruction, we did not make the change.

Comment 6: NSK Japan argues that certain U.S. sales receiving facts available should be deleted from the Department's antidumping analysis. NSK Japan asserts that these sales were inadvertently included in the database due to a programming error on its part.

Department's Position: We agree with NSK Japan and have deleted these sales from our analysis for these final results. Though the proprietary nature of the comment prevents a full discussion here, we note that the accuracy of NSK Japan's assertion in its July 1, 1997, Japan Issues Case Brief is obvious from the record. Thus, NSK Japan has satisfied the Department's criteria for the correction of clerical errors made by a respondent but discovered after the preliminary results. *See Flowers from Colombia* at 42834 and our response to Comment 3 of this section.

Comment 7: Torrington argues that, when calculating NTN Japan's margin, the Department should assign a facts-available rate to certain HM transactions that lack a corresponding price. Torrington claims that the Department neglected to use these transactions in the preliminary margin calculations.

Department Position: Torrington has misinterpreted the results of our preliminary analysis. We have not applied facts available to these transactions. Due to the proprietary nature of the information, this issue is discussed further in the analysis memorandum (*see* NTN's analysis memorandum dated September 22, 1997).

12. Duty Absorption

Section 751(a)(4) of the Tariff Act provides for the Department, if requested, to determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) authorizes this type of investigation during an administrative review initiated two years or four years after publication of an order.

For transition orders as defined in section 751(c)(6)(C) of the Tariff Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* 62 FR 27296, 27394 (May 19, 1997). Although these antidumping regulations are not binding upon the Department for these AFB reviews, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Tariff Act. This approach ensures that interested parties will have the opportunity to request a

duty-absorption determination prior to the time of the sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Tariff Act; therefore, based on the policy stated above, the Department will consider a request for an absorption determination during a review initiated in 1996 or 1998. On May 31, 1996 and July 9, 1996, Torrington requested the Department to determine, with respect to various respondents, whether antidumping duties had been absorbed during the POR. These being reviews initiated in 1996 and a request having been made, we have made a duty-absorption determination as part of these administrative reviews.

In our preliminary results of review, we calculated the percentage of sales by a U.S. affiliate with dumping margins for each exporter. We stated that, with respect to those companies (with affiliated importer(s)) that had dumping margins, we would rebuttably presume that the duties will be absorbed for those sales which were dumped. Subsequent to the preliminary results, we received comments.

Comment 1: Respondents claim that the Department has interpreted section 351.213(j) of its regulations incorrectly as providing for duty-absorption inquiries in the second and fourth years following a sunset review after which an order is continued and in periods such as the seventh and ninth reviews for transition orders. Citing the principle of statutory construction "*expressio unius est exclusio alterius*," wherein there is an inference that all omissions should be understood as exclusions, respondents conclude that the lack of explicit Congressional approval for duty-absorption inquiries for the latter transition orders shows that Congress did not intend for duty-absorption inquiries to be initiated more than four years after publication of an antidumping order. Finally, respondents contend that the Department is incorrect in justifying the duty-absorption inquiry by calling AFBs orders transition orders in accordance with section 751(c)(6)(C) of the Tariff Act. According to respondents, section 751(c)(6)(C) of the Tariff Act only applies to "sunset" reviews.

Torrington claims that narrowing the applicability of the duty-absorption inquiries to only the second and fourth years of sunset reviews would unduly limit the effectiveness of the statute. Torrington claims that there is no indication that sections 751(a)(4) or 751(c)(6)(D) intended to create such a narrow application. Torrington's response to the legal principle of "all omissions should be understood as exclusions" is that it has little force in the administrative setting because deference is granted to an agency's interpretation of a statute, unless Congress has directly spoken to the question at issue (citing *Mobile Communications Corp. Of America* v. *F.C.C.*, 77 F.3d 1399, 1404–1045). Torrington further argues that "whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look at the statute as a whole" (citing *Massachusetts Trustees of Eastern Gas & Fuel Associates* v. *United States*, 312 F.2d 214,220 (1st Cir. 1963) (citing authority), *aff'd*, 377 U.S. 235 (1964)).

Department's Position: With regard to the time frame in which we are conducting these reviews, section 351.213(j)(1), in accordance with section 751(a)(4), provides for the conduct, upon request, of absorption inquiries in reviews initiated two and four years after the publication of an antidumping order. The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year (61 FR at 7317). Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Tariff Act. This being a review initiated in 1996 and a request having been made, we are making duty-absorption determinations as part of these administrative reviews.

Comment 2: Respondents state that gauging absorption on information that they do not know until completion of an administrative review is unfair. More specifically, they claim that the nature of the review process prevents them from determining the U.S. price increase necessary to pass dumping duties onto customers because the ultimate liability is not determined until the end of a review. Respondents claim further that, other than dumping duties paid at the time of entry, they have no means of estimating the price increases necessary to pass dumping duties to the customers.

Finally, respondents argue that the Department cannot presume "rebuttably" that duty absorption on sales to the U.S. affiliate exists if the record does not contain evidence of the U.S. purchaser's assumption of liability for ultimate assessment. Respondents claim that the Department's rebuttable presumption ignores commercial reality in that no U.S. buyer would agree to assume liability for an unascertainable amount of duties. Respondents claim that the Department has not provided any reason for adopting the presumption of duty absorption and that the presumption is not allowable by law, citing *NLRB* v. *Baptist Hosp. Inc.*, 442 U.S. 773, 787 (1979), and *United Scenic Artists, Local 829* v. *NLRB*, 762 F.2d 1027, 1034 (D.C. Cir 1985).

SNR and SKF state that the 15-day deadline for submitting evidence to rebut the assumption that unaffiliated U.S. purchasers will pay the assessed dumping duty is too short, given the amount of evidence that would have to be collected and the number of customers that would have to be approached.

Finally, FAG Germany and FAG Italy contend that the duty-absorption inquiry is only applicable to the foreign producer or exporter, citing section 751(a)(4) of the Tariff Act.

Torrington agrees with the Department's approach in using the rebuttable presumption that the duties for sales that were dumped will be absorbed. Torrington argues that the Department's examination of whether duty absorption occurred by reviewing data on the volume of dumped imports and dumping margins follows the guidelines of the SAA. Torrington argues that the Department's decision was reasonable, given the lack of record evidence that the first unrelated customer will be responsible for paying the duty that is ultimately assessed and the consistency of the Department's dumping determinations and the fact that the Department gives the respondents the opportunity to provide evidence that the unaffiliated purchasers will pay the assessed duty. Additionally, Torrington asks that the Department reject respondents' inference that the absorption inquiry only extends to the foreign producer, rather than the foreign producer and affiliated importer(s). Torrington cites the preamble to the new regulations and the SAA at 885 in support of the latter.

Finally, Torrington claims that, while the difficulty of obtaining evidence increases with the extent of dumping involved, this does not mitigate against the Department's 15-day deadline (after the publication of preliminary results) for submitting evidence that unaffiliated U.S. purchasers will pay the assessed dumping duty.

Department's Position: We agree with Torrington. An investigation as to whether there is duty absorption does not simply involve publishing the margin in the final results of review. As

the Department noted in the preliminary results of these reviews, the determination that duty absorption exists is also based on the lack of any information on the record that the first unaffiliated customer will be responsible for paying the duty that is ultimately assessed. Absent such an irrevocable agreement between the affiliated U.S. importer(s) and the first unaffiliated customer, there is no basis for the Department to conclude that the duty attributable to the margin is not being absorbed.

This is an instance where the existence of a margin raises an initial presumption that the respondent and its affiliated importer(s) are absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. *See Creswell Trading Co., Inc.* v. *United States*, 15 F.3d 1054 (CAFC 1994). Here, the respondents have failed to place evidence on the record, despite being given ample time to do so, in support of their position that they and their affiliated importer(s) are not absorbing the duties.

Comment 3: Torrington argues that, even though the Department's duty-absorption methodology is reasonable because it relies on a weighted-average dumping margin which takes all dumped sales into account, a more accurate reflection of the impact of dumping on the domestic industry could be achieved by taking weighted-average dumping margins divided by the percentage of the U.S. affiliate's sales with dumping margins. Torrington also contends that the proposal made by several respondents of taking into account negative margins masks dumping and contributes to an importer's financial ability to continue the practice of duty absorption.

Respondents contend that, once an importer has certified that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct a duty-absorption inquiry unless there is evidence of fraud. Respondents also emphasize that, if such weighted-average dumping margins were calculated, they could be highly distortive when applied to a small volume of transactions. Respondents claim further that, if the total profits exceed the amount of antidumping liability, this can be taken as proof that duty absorption is not occurring. SKF argues that, using data already available on the record, the Department is able to conduct an accurate analysis of whether dumping duties are being absorbed by comparing the total profit of CEP sales to the total amount of the antidumping liability. SKF also emphasizes that, while dumping must be measured on a transaction-specific basis, there are no reasons why a duty-absorption inquiry can not be done on an aggregate basis.

SKF, Koyo, NSK, and SNR argue that the Department's duty-absorption methodology fails to measure duty absorption on respondents' U.S. sales database as a whole. Respondents claim that by not considering sales made at non-dumped prices the Department fails to get an accurate measure of whether absorption has occurred. SKF and SNR emphasize that, because the Department calculates dumping margins after U.S. sales are shipped and invoiced, companies cannot calculate precisely the price necessary to eliminate dumping. Therefore, respondents assert they can only be expected to reach non-dumping price levels on an overall basis. As a result, SKF contends that the Department should use weighted-average margins which exclude from the percentage of dumped sales those transactions with *de minimis* margins as a threshold test for duty-absorption inquiries.

Department's Position: We disagree with respondents that we should aggregate negative and positive margins in our duty-absorption determination. The Department treats so-called "negative" margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. *See Final Determination of Sales at Less Than Fair Value; Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan*, 58 FR 30149 (May 26, 1993). It would be inconsistent on one hand to calculate margins using only positive-margin sales, which is the Department's practice, and then argue, in effect, that there are no margins for duty-absorption purposes because a deduction from the total duties determined should be made for sales without margins. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 62 FR 18744, 18745 (April 17, 1997). However, non-dumped sales affect the percentage of sales through affiliated importers which are dumped and therefore affect the results of the absorption inquiry. Therefore, we disagree with Torrington's suggestion as well. Only using the sales with dumping margins in the denominator of our calculations would distort the calculations by overstating the percentage margin of dumping.

Finally, a company's profit on CEP sales is not a relevant issue. This, too, does not negate the fact that these are duties absorbed by the affiliate.

13. Reimbursement

Comment 1: Torrington states that the Department should apply the reimbursement regulation in situations where the transfer prices to an affiliated importer are below the actual COP and the transactions were found to have dumping margins. Torrington contends that below-cost transfer prices are tantamount to an indirect transfer of funds, allowing "foreign deep pockets" to relieve importers from having to raise resale prices to finance assessment of antidumping duties. Torrington, citing *Color Television Receivers from Korea*, 61 FR 4408, 4411(Feb. 6, 1996), states further that, because the Department concluded that the reimbursement regulation applies in exporter's-sales-price situations, the Department should apply the reimbursement rule to indirect payments between affiliated parties in these reviews. Finally, Torrington states that the Department should ask each respondent whether it transferred subject merchandise to its affiliated U.S. importer at prices below the COP and whether it made any capital, equity or other contributions to its U.S. affiliate during the POR.

Respondents state that when deciding this issue the Department should maintain its reliance, as it did during the 1992/93, 1993/94, and 1994/95 reviews, on whether explicit and specific factual evidence exists of direct reimbursement of dumping duties by an affiliated importer. Koyo, NSK, INA, and SNR state that Torrington's allegations of below-cost transfer prices do not establish the specific and direct links between transfer pricing and reimbursement, cited in *Federal-Mogul Corp* v. *United States*, 918 F.Supp. 386, 394 (CIT 1996)(*Federal-Mogul I*), necessary to conclude reimbursement has occurred. Koyo further states that the *Korean TVs* case does not undermine the CIT's decision in *Federal-Mogul I*, or the Department's refusal to undertake reimbursement investigations in the last four AFBs reviews, simply on the basis of below-cost transfer prices.

NTN cites the Department's revision of its regulations on antidumping and countervailing duties to conform with the URAA multilateral trade negotiations (62 FR 27355) as evidence that Congress has rejected the application of the reimbursement regulation (section 351.402(f) (1997)) to below-cost transfer pricing between affiliated parties. NTN claims that, when the express intent of Congress is unclear or ambiguous, deference will be

granted to the Department's interpretation of its own regulations and, therefore, the Department has been granted broad discretion in determining what constitutes reimbursement of antidumping duties for purposes of 19 CFR 353.26 (1996).

In response to Torrington's suggestion to pursue two additional lines of inquiry regarding reimbursement, NSK states that the Department should conclude reimbursement has occurred only when dumping duties are paid directly on behalf of the importer or when dumping duties are actually reimbursed to the importer. FAG Italy, NSK, Barden, and NTN state that, when certification of non-reimbursement is filed and there is no evidence of Customs fraud, the Department has no further obligation to investigate because there is no basis for presumption of reimbursement and no statutory authority to place any burden on respondents to rebut such a position. SKF Italy and Germany also note that their borrowing behavior is already addressed in their responses to the Department's questionnaire and that the Department verified this issue, eliminating the need to collect further data.

FAG Italy, SKF, Koyo and Nachi state that, despite having numerous chances to present new arguments or evidence to the Department, Torrington failed to offer anything that would warrant reconsideration of the Department's previous position.

Department's Position: We disagree with Torrington. Although we agree that the reimbursement regulation is applicable in CEP situations, there must be evidence that the parent has reimbursed (*e.g.*, the exporter directly paid the duties for the importer or the exporter lowered the amount invoiced to the importer) its subsidiary for antidumping duties to be assessed (*see Korean TVs* at 4410–11). In that case, we reaffirmed our original view that reimbursement, within the meaning of the regulation, takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties (*see The Torrington Company* v. *United States*, Slip Op. 97–136 (CIT September 19, 1997)(*Torrington II*)). In this case, there is no evidence that any of the named respondents engaged in reimbursement activity with their respective affiliated U.S. subsidiary. *See also Brass Sheet and Strip from the Netherlands*, 57 FR 9534, 9537 (March 19, 1992), *Brass Sheet and Strip from Sweden*, 57 FR 2706, 2708 (January 23, 1992), and *Brass Sheet and Strip from Korea*, 54 FR 33257, 33258 (August 14, 1989).

Furthermore, Torrington has presented no evidence of inappropriate financial intermingling, an agreement to reimburse, or reimbursement in general. FAG, Koyo, and Nachi are correct in that the presence of both below-cost transfer prices and actual dumping margins do not, in and of themselves, constitute evidence that reimbursement is taking place. Therefore, consistent with our position in previous reviews of these orders, we reject Torrington's contention that below-cost transfer prices are tantamount to an indirect transfer of funds for reimbursement of antidumping duties and that we should make a deduction therefore in CEP transactions (*see AFBs III* (39736), *AFBs IV* (10906–07), *AFBs V* (66519), and *AFBs VI* (2129)).

14. Tooling Revenue

Comment: NSK argues that the Department should not consider tooling to be part of revenue for the purpose of calculating the dumping margins. NSK claims that tooling revenue is not an integral part of the product, that the Department did not include this item in its questionnaire for previous reviews, and that Torrington did not consider tooling as part of revenue in past AFB reviews. NSK also cites the Department's position in *Mechanical Transfer Presses from Japan*, 55 FR 335, 339 (Jan. 4, 1990), where the Department did not adjust prices by an amount for tooling. Finally, NSK points out that, in situations where tooling can be considered subject merchandise, it is specifically identified as an integral component of the price, citing *Certain Forged Steel Crankshafts from the United Kingdom*, 56 FR 5975, 5978 (Feb. 14, 1991).

NSK argues that, even if the Department maintains that tooling revenue should be added to NV, the Department should not add tooling revenue to NV as facts available in its analysis of NSK. NSK argues that it is inappropriate to use facts available in its case because it responded fully to all of the Department's requests for information. NSK argues that it provided tooling revenue on a product-specific basis and the fact that the Department could not match the tooling revenue to the product codes in its HM sales database demonstrates that those products to which it would apply were not reported in the database.

Torrington disagrees with NSK's position, claiming that the Department should include tooling revenue in the computation of NV pursuant to the terms of the antidumping duty order, the applicable law, and the questionnaire. Petitioner cites two cases where the Department ruled as such: *Certain Forged Steel Crankshafts From the United Kingdom*, 56 FR 5975, 5978 (Feb. 14, 1991), where tooling revenues were included in price even when tooling is billed separately, and *Bicycle Speedometers From Japan*, 58 FR 54328 (Oct. 21, 1993), where amortized tooling costs were added to, not subtracted from, price. Torrington claims that the supplemental questionnaire in these AFB reviews further demonstrates the Department's policy of including tooling in revenue since it asks for detailed information on tooling costs. Finally, Torrington states that tooling is a cost of producing bearings and that, in all market-type transactions, prices are set to cover costs.

Department's Position: In the *Final Determination of Sales at Less Than Fair Value: Oscillating Fans From the People's Republic of China*, 56 FR 55271, 55279 (Oct. 25, 1991), the Department established its policy of considering tooling as part of factory overhead and, therefore, a component of final price. The Department has followed this practice in subsequent cases. *See, e.g., Certain Forged Steel Crankshafts from the United Kingdom, 55 FR at 5978, and Bicycle Speedometers from Japan*, 58 FR at 54328. In *Mechanical Transfer Presses from Japan*, 55 FR at 339, the Department disallowed die tooling from revenue computation because it was identified separately in the contractual sales documentation along with spare parts and other optional item prices and, therefore, was not an "integral" cost of the commodity. In contrast, tooling revenue associated with AFBs is additional revenue on the sale of the AFB, not a separate accessory.

However, upon re-examining the record, we determine that it is clear from the record that NSK's reported tooling revenue pertains to models which NSK did not report, appropriately, in its HM sales database. Therefore, we have not added tooling revenue to NSK's NV for these final results. We note, however, that the application of facts available in our preliminary results was not meant to be a tool to punish NSK but rather to be an estimate of NSK's actual experience with regard to tooling revenue when we were unable to match the models for which tooling revenue was incurred to the models NSK reported in the HM sales database.

15. Cash Deposit Financing

Comment: NTN and NTN Germany (collectively "NTN") argue that the

Department's decision to ignore adjustments to its U.S. indirect selling expenses for interest on cash deposits of antidumping duties is contrary to the Department's position in past reviews of these orders and in recent litigation.

NTN argues that section 772(d)(1) of the Tariff Act only allows for the deduction of selling expenses. However, NTN contends, the Department has previously stated that it does not consider cash deposit financing expenses as such. As an example, NTN contends, the Department noted in *AFBs VI* at 2,104 that such expenses were not selling expenses since they "were incurred only because of the existence of the antidumping duty orders" and the Department concluded that "the expenses cannot correctly be characterized as selling expenses." NTN also points to the Department's acceptance of this adjustment in the first three reviews of these orders (*AFBs I-III*), in the two most recently completed reviews of these orders (*AFBs V and VI*), and in the position the Department took in comments it filed with the CIT in the litigation arising from AFBs IV. According to NTN, the CIT adopted these comments in large part, holding that "interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses." *Federal-Mogul* v. *United States*, 20 CIT —, —, Slip Op. 96–193 (December 12, 1996) (*Federal-Mogul II*).

NTN argues that, notwithstanding Departmental and judicial precedent, the Department's statements in the instant review are flawed. First, NTN contends, the Department's statement in the preliminary results that it is "not convinced that there are opportunity costs associated with paying deposits" contradicts the well-reasoned analysis the Department set forth in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part (TRBs Final Results)*, 62 FR 11,825, 11828–830 (March 13, 1997), in which the Department explained that it "recognize(s) that opportunity costs * * * have a real financial impact on the firm."

Second, NTN argues, the Department misunderstands the basis for its allowance of the adjustment in prior reviews in its statement that "the dumping margin should not vary depending on whether a party has funds available to pay cash deposits or requires additional funds in the form of loans." NTN agrees that this statement is correct but contends that this does not necessarily lead to the Department's preliminary conclusion that it should deny the adjustment. NTN points to *TRBs Final Results* where the Department reasoned that a firm may also choose to divert funds from other corporate activities to pay cash deposits but the opportunity costs associated with the diversion reflect a real cost to the firm.

Third, NTN asserts, the Department's statements that opportunity costs are not associated with making cash deposits is a misunderstanding of the definition of "opportunity costs." NTN argues that opportunity costs are "the real economic loss which an entity experiences when it must forgo some other, more profitable use of its resources," citing *Cartersville Elevator, Inc.* v. *ICC*, 724 F. 2d 668, 670 (8th Cir. 1984), and *Mira* v. *Nuclear Measurements Corp.*, 107 F. 3d 466, 472 (7th Cir. 1997) (describing the diversion of funds from more profitable activity as "the classic definition of opportunity costs"). NTN argues that the expense associated with making cash deposits fits these definitions. In NTN's view, the source of the funds does not determine whether this is an opportunity cost because, in either case, these funds cannot be put to a more profitable use.

NTN concludes that, since the only reference to this issue in these proceedings is a memorandum to the file regarding an ex parte meeting with the Torrington Company dated April 23, 1997, there is no change in fact pattern or the law which would compel such a sudden shift in the Department's position. Moreover, NTN argues that, at some point, the Department's prior decisions become case law, citing *Shikoku Chemicals* v. *United States*, 16 CIT 383, 388 (1992). NTN requests that the Department allow the adjustment to U.S. indirect selling expenses for the final results.

Torrington argues that the Department properly rejected an adjustment to NTN's U.S. selling expenses for cash deposit financing expenses. Torrington contends that there are both policy and legal reasons that support the Department's decision.

Torrington argues that the Department's previous policy actually encouraged dumping by allowing larger and larger adjustments to selling expenses as deposit rates increased. Torrington reasons that, the more a company dumps its merchandise in the United States, the larger the interest payments covering duty deposits will be. Torrington concludes that, as the interest expense becomes greater and greater, so does the offset to indirect selling expenses. Likewise, the smaller the offset, the lower the final dumping margin. Thus, Torrington contends the Department's old policy actually encourages dumping. Torrington suggests that this scenario will be exacerbated over time as interest expense accumulates and in any interest expenses the Department imputes. Torrington asserts that, if offsets become sufficiently large, dumping margins can disappear without any change in pricing behavior.

Moreover, if the Department only allows an adjustment for actual interest paid, Torrington asserts that the previous policy discriminates against importers who finance deposits with cash because these importers would not have any interest payments.

Torrington agrees with the Department's statements in the *Preliminary Results* questioning whether "opportunity costs" are actually incurred because, Torrington argues, "opportunity costs" exist only in economic theory. Torrington contends that, if deposits were not made, then there would be no merchandise to resell. Thus, Torrington concludes, deposits are a cost of doing business for those who choose to trade unfairly.

Torrington acknowledges that the CIT, in *Federal-Mogul II*, reached a contrary conclusion, but, petitioner contends the CIT upheld bad policy and the Department is right in changing its policy. Torrington argues that money is fungible and loans to finance duty deposits make money available for other endeavors. Torrington argues that the CIT, in *Federal-Mogul II*, failed to account for this.

Torrington argues that section 772(d)(1) mandates the deduction of certain selling expenses from CEP. Since imputed expenses do not appear on the company's books, Torrington contends that an offset to those selling expenses is contrary to law because it reduces a mandatory deduction improperly.

In addition, Torrington argues that, under the URAA, CEP is meant to be a proxy for an arm's-length price to an unaffiliated importer. As such, Torrington contends, selling expenses such as those incurred for financing cash deposits are related solely to the sale to the affiliated importer and are not related to the resale to the unaffiliated U.S. customer. Torrington contends that the Department's new regulations reflect the contemporaneous construction of the URAA as evidenced by the preamble statement: "In these final regulations, we have clarified that the Secretary will deduct only expenses

associated with a sale to an unaffiliated customer in the United States." By the same logic, Torrington argues, credit costs imputed to the importer on account of duty deposits should not be added back to CEP because these costs will not be deducted from CEP in the first place.

Torrington argues that, although the Department's new regulations do not apply to the current review per se, the foregoing analysis reflects existing practice under the new law, citing *Extruded Rubber Thread from Malaysia*, 62 FR 33,588 at 33597–98 (June 20, 1997). In sum, Torrington maintains that antidumping cash deposits (and any credit expenses imputed to those deposits) do not represent activities of the importer in selling the merchandise in the U.S. market.

Finally, Torrington argues that there is no evidence that any affiliated importers actually obtained loans for the purpose of paying cash deposits. Therefore, Torrington contends, there is no evidence that imputed credit costs are "specifically associated with economic activities in the United States," citing *Certain Internal-Combustion Industrial Forklift Trucks from Japan*, 62 FR 5592 at 5611 (February 6, 1997). Without evidence that credit costs were incurred, Torrington asserts there is no basis to conclude that any deductions from CEP on account of the importer's expenses included such costs in the first place. As such, Torrington concludes, there is no basis for NTN's claimed adjustment.

Department's Position: We agree with Torrington that we should deny an adjustment to NTN's U.S. indirect selling expenses for expenses which NTN claims are related to financing of cash deposits. However, we have not adopted Torrington's logic entirely.

The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, removed such expenses from indirect selling expenses for such financing expenses in past reviews of these orders. However, we have reconsidered our position on this matter and have now concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. *See, e.g., AFBs II.* We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order. As we stated in the preliminary results: "money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost." *See Preliminary Results* at 31,569. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

In a different context, we have made similar observations. For example, we stated that "debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit" (*see Ferrosilicon from Brazil*, 61 FR at 59412 (regarding whether the Department should allocate debt to specific divisions of a corporation)).

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from U.S. price, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. To draw an analogy as to why this logic is flawed, we also do not deduct corporate taxes from U.S. price; however, we would not consider a reduction in selling expenses to reflect financing alleged to be associated with payment of such taxes.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. As Torrington points out, there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

16. Romania-Specific Issues

Comment 1: TIE contends that the Department should use the factory overhead, SG&A, and profit values of an Indonesian steel producer (Jaya Pari) placed on the record for the POR rather than rely upon the surrogate values obtained from a cable submitted by the U.S. embassy in Jakarta. TIE purports that the Jaya Pari data identifies how the overhead, SG&A, and profit values were derived, whereas the embassy cable does not reveal how these values were calculated and, thus, TIE cannot determine and comment on the accuracy and representativeness of such values. TIE recognizes that, although Jaya Pari is not a bearings producer, the Department has established a preference for use of publicly available information (PAI) over embassy cable data. TIE argues further that the embassy cable is nearly six years old, whereas Jaya Pari's data was derived from a 1995 financial statement, a source upon which the Department has relied in prior non-market-economy bearing reviews. In addition, TIE maintains that the SG&A rate in the embassy cable is

extraordinarily high and has significantly contributed to its dumping margin.

Torrington discusses several reasons as to why the Jaya Pari financial statement is inappropriate. Torrington asserts that Jaya Pari's financial statement is missing certain pages which may contain information relevant to assessing the validity of the document. Torrington argues that the 1995 financial statement TIE placed on the record does not contain the level of detail necessary to determine how certain values (in particular, materials and factory overhead) were calculated. Torrington contends further that the financial statement reflects a much higher raw-materials value than the overhead value and, thus, such figures may be disproportionately allocated because certain elements such as energy, electrodes, and rolls relative to steel manufacturing do not appear to be included in the overhead category.

Torrington argues that the embassy cable explains clearly how the overhead figure was derived and may need only an additional adjustment made for energy costs. Torrington maintains that the factory overhead and SG&A rates the Department employed in the preliminary margin calculations are understated because they did not take energy costs into account. Torrington asserts that the ratios the Department obtained from the embassy cable and used in the calculation of overhead and SG&A are less affected by the lapse of time as opposed to absolute figures which are found in the financial statement.

Department's Position: We agree with TIE. We have determined that the financial statement of Jaya Pari provides more appropriate surrogate information than the information in the cable from the U.S. embassy. In our hierarchy for selecting data for possible surrogate values, we prefer to use current, publicly available information. The cable which we used in the preliminary results is over five years old and therefore substantially less contemporaneous than the Jaya Pari information. Torrington's concern that certain pages are missing is irrelevant because the necessary pages, which show the overhead, SG&A and profit calculations as well as the explanatory notes, have been submitted. Additionally, the level of detail shown in the financial statements is greater than that of the cable. Finally, we cannot accept Torrington's contention that the financial statements have included certain elements relative to steel making incorrectly under "raw materials" rather than "overhead." We have no factual basis for concluding that the raw-materials category is disproportionally high relative to the overhead category, and it also would be contrary to normal accounting procedures to place these elements—energy, electrodes and rolls are the ones hypothesized by Torrington—under the category of "raw materials."

Comment 2: Torrington argues that, in the preliminary results of review, the Department published an incorrect value for TIE's dumping margin. Torrington suggests that, for the final results of review, the Department multiply by 100 the dumping margin published in the preliminary results of review in order to convert it properly to a percentage.

Department's Position: We agree with Torrington. In the preliminary results, we did not express the calculated margin as a percentage and, therefore, the published margin was understated. We have converted the margin to a percentage for the final results.

Comment 3: Torrington contends that the International Labor Office (ILO) costs the Department employed in the preliminary results of review are flawed for several reasons: (1) the wage rates used reflect only minimum wages in Indonesia and, thus, do not represent actual labor wage costs accurately; (2) the minimum wage rates do not include fringe benefits and, thus, such rates do not reflect labor rates accurately; and (3) certain information the Department used to value both direct and indirect labor pertain to the industries which have different international standard industrial classification (ISIC) codes than bearings. Torrington points out that the proper ISIC code for the products under review was determined in a prior segment of this proceeding. Torrington argues that, in the interest of the Department's desire to obtain actual, or as accurately as possible, Indonesian labor rates, the Department should use for the final results of review a particular table from the ILO *Yearbook of Labour Statistics* for 1994 instead of information from the *Special Supplement to the Bureau of Labor Statistics* used in the preliminary results. Torrington maintains that the ILO *Yearbook of Labour Statistics* contains actual wage rates and states that, because this document is based on the same year and serves as the same source of information from which the Department extrapolated the wage rates for the preliminary results of review, it should not constitute new information. Torrington argues further that using such information is consistent with the Department practice to use independent sources of information.

TIE contends that the information Torrington proposes that the Department use for the final results of review constitutes new information because it is untimely and has not been placed on the record previously. TIE also argues that, despite the fact that this information is new, it is a deficient source of information upon which to rely for the final results of review for the following reasons: (1) the data is more than two years older than that which the Department relied upon for the preliminary results of review and, thus, does not meet the Department's standard of using information that is most contemporaneous to the POR; (2) the wage rates employed in the preliminary results of review represent actual costs; (3) unskilled direct labor would be overstated because the data Torrington proposes includes salaried or skilled labor rates; and (4) the data Torrington proposes may be affected by time and, thus, it is likely that the data may have changed over the past five years.

Department's Position: Petitioner discusses the suitability of surrogate labor rates and has submitted information in its case brief recommending that the Department adjust the rates. TIE has pointed out that this information was not previously on the record and constitutes new information. The Department agrees with TIE that the labor rates which petitioner presents constitute new information. As such, we have not considered it, in accordance with 19 CFR 353.31(a), because it was submitted after the publication of the preliminary results and more than 180 days after the date of publication of the notice of initiation of this review.

We agree with TIE that the wage rates we used in the preliminary results represent actual costs. Although the ILO data is a minimum wage, it does indeed include such costs as "cost-of-living allowances and other guaranteed and regularly paid allowances," according to the ILO's Special Supplement to the Bulletin of Labor statistics (1994). However, we agree with Torrington that the wage rates do not include fringe benefits. We have made an adjustment to the rates to include employee benefits, following the methodology in *Final Determination of Sales at Less than Fair Value; Disposable Pocket Lighters from the People's Republic of China*, 60 FR 22359 (May 5, 1995) (*Disposable Pocket Lighters*), which calculated supplementary benefits as 33 percent of manufacturing earnings. Finally, for indirect labor, rather than continue to use the rates for supervisors and general foremen from the crude petroleum and natural gas industries, we have used the supervisory labor rates from *Disposable Pocket Lighters*, which we have inflated for the POR. This rate is not industry-specific but, rather, represents a general estimate of supervisory labor in Indonesia. It is more accurate than the crude rate for the petroleum and natural gas industries, which represents supervisory labor in an industry which is not representative of AFB production.

Comment 4: TIE contends that the foreign inland freight rate which the Department used in the preliminary margin calculations is extraordinarily high compared with the rates used in prior Romanian AFB and TRB reviews and rates used in a prior Chinese TRB review. TIE also argues that the proposed rate is also much higher than ocean freight, implying that it costs more to transport bearings within Romania than it costs to ship them from Romania to the United States. TIE maintains that the high inland freight rate is attributable to either a mathematical error in the Department's calculations or the estimated freight rate which incorporates a division of an arbitrary distance of 40 kilometers per trip and yields an estimated per kilometer rate. TIE provides a hypothetical example based on a 1500-kilometer distance between its factories and the port. TIE asserts that using this distance in the Department's calculation would yield a freight rate that is 20 percent of the sales value which, TIE claims, is overtly incorrect. TIE maintains that the Department has a long-established practice to ascertain whether surrogate values are reasonable and argues that, in the instant review, the Department should use a more reliable and reasonable rate for foreign inland freight.

Torrington contends that TIE did not attempt to substantiate that the foreign inland freight rate in the preliminary margin calculations was too high other than comparing that rate with rates used in other determinations. In addition, Torrington argues that TIE's hypothetical example is baseless because the actual distance between the factories and the port is under 400 kilometers. Torrington also contends that utilizing a distance of 1500 kilometers in the Department's calculation results in a percentage that is nowhere near 20 percent of the sales prices as claimed by TIE.

Department's Position: We agree with TIE. We have changed the truck freight rate for these final results. Because the freight-rate calculation includes a division by an estimated distance for the distance of transporting goods, we have determined that the resulting estimated rate is less accurate than the rate we used in *Disposable Pocket Lighters*. See Surrogate Freight submission, March 4, 1997. We consider the freight rate we applied in *Disposable Pocket Lighters* to be more accurate because it is based on actual data from a cable from the U.S. Embassy in Indonesia and does not contain an estimated component. Additionally, we have inflated the value using the World Price Index for the POR. Therefore, we have used the rate of $.0326 per MT/km for the truck freight rate for the final results.

17. Miscellaneous Issues

17. A Ocean & Air Freight

Comment: Torrington notes that the Department permitted respondents to aggregate and then allocate ocean and air freight costs. Torrington argues that this practice is potentially distortive because air freight is considerably more expensive on a per-unit basis. Torrington claims further that it is relatively easy to segregate air freight from ocean freight because the situations in which companies use air freight, such as emergencies and production scheduling, are easily identified. Torrington states that the Department should require respondents to submit information segregating air freight expenses or, absent such information, apply facts available.

FAG Germany, FAG Italy, NSK, SKF France, SKF Germany, SKF Italy, SKF Sweden, Koyo, NSK Japan, INA, Barden, and NMB/Pelmec contend that it is impractical and in some cases impossible to isolate air and ocean freight charges with their record-keeping systems. Respondents also assert that the Department verified their reported freight costs and found them to be non-distortive in these reviews or in prior reviews. NSK argues that it is unreasonable to have to resubmit freight charges at a late date. Koyo and NSK also contend that past administrative and legal procedures support the aggregation and allocation of freight costs, asserting that the Department in past reviews and the CIT in various decisions have both upheld their freight-reporting methodologies.

In addition, Barden contends that all of its U.S. freight charges were by air and reported as such, while NSK states that it kept records of "expedited deliveries" that could be tied to specific sales and reported such expenses separately.

Department's Position: We disagree with Torrington. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. *See, e.g.*, NSK's September 9, 1996 section C response at 22. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. *See AFBs VI*, 62 FR at 2121; *see also The Torrington Company* v. *United States*, Slip Op. 97–57 at 11–14 (CIT May 14, 1997)(*Torrington III*) (affirming the Department's methodology for accepting co-mingled ocean and air freight where a respondent could not report the two expenses separately). Furthermore, we note that § 351.401(g) of our new antidumping regulations provide that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. *See* 62 FR 27410 (May 19, 1997). As discussed above, the Department has determined that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis.

Furthermore, while we have considered Torrington's claim that aggregating and then allocating air and ocean freight is "potentially" distortive, we have no evidence that this methodology in fact distorts respondents' reported freight costs. While the new regulations are not binding in the instant reviews, they are a codification of our intended practice.

Because we determined that respondents acted to the best of their ability, it would be improper to make adverse inferences about their reported data by applying facts available simply because their record-keeping systems do not record their data on a transaction-specific basis. Therefore, we have accepted respondents' reported air and ocean freight expenses.

17.B. Burden of Proof

Comment: Torrington argues that the Department has shifted the burden of proof improperly to petitioner to demonstrate the invalidity of respondents' claims. Torrington asserts that the Department's error originated in the 1994/95 reviews and was aggravated by the Department's refusal to require respondents to state when they have disregarded prior determinations and by the Department's acceptance of petitioner-challenged respondent data without Department verification. Torrington maintains that, when the Department found there to be no information demonstrating distortive allocations of post-sale price adjustments, it effectively shifted the burden of proof to petitioners to present information to refute respondents'

claims. Torrington argues that, since it has no right to conduct discovery or to attend verifications and since respondents possess all of the information relevant to distortion, respondents should bear the burden of proof regarding the distortion issue. Torrington asserts that *Fujitsu General Ltd.* v. *United States*, 88 F.3d 1034 (CAFC 1996), and *Timken Co.* v. *United States*, 673 F. Supp. 495 (CIT 1987), support its contention that respondents should bear the burden of demonstrating whether an allocation causes distortive results.

Torrington maintains that the Department shifts the burden of proof when it chooses not to verify and accepts respondents' data and when the Department does not require respondents to state on the record whether their questionnaire responses conform to prior rulings. Torrington claims that the Department also shifts the burden of proof upon petitioner by requiring petitioner to demonstrate, beyond a showing of below-cost transfer pricing, that foreign producers have in fact reimbursed dumping duties. Torrington also asserts that the Department places the burden of proof upon petitioner with regard to the reporting of product-specific R&D by allowing general allocations instead of product-specific allocations when respondents' annual reports mention new products. Torrington maintains further that the Department places the infeasible burden upon petitioner of proving, with regard to reseller transactions, that sales to HM buyers, related to U.S. OEMs or who distribute merchandise for export to third countries, are sales for export, not HM sales.

Torrington argues that, by shifting the burden of proof to petitioner, the Department has abdicated its fact-finding responsibilities and required the petitioner to perform the Department's investigation. Torrington cites *Rhone-Poulenc, Inc.* v. *Unites States*, 927 F. Supp. 451, 456–457 (CIT 1996), to support its contention. Torrington notes that the Department placed the burden of proof correctly upon respondents in these reviews with regard to duty absorption and that the burden should be similarly placed upon respondents for each issue parties address. Torrington concludes that, since respondents have had sufficient time to develop their records, the Department should not accept respondents' claims that they made their best efforts to substantiate their assertions.

NTN, SKF, and Koyo respond by stating that Torrington's argument is a vague, overly general criticism raised against all adjustments favorable to respondents. NTN argues that Department findings favorable to respondents do not shift the burden of proof to petitioner. Koyo argues that the Department is not required to investigate every claim petitioner alleges, and the Department required additional evidence correctly in support of petitioner's allegations of distortive adjustment methodologies. Koyo argues further that Torrington's position is similar to that taken by a party in *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277 (CIT 1983), in that the Department's requirement of additional information from petitioner when petitioner's claims were based on mere suspicion did not place an undue burden upon petitioner. Respondents argue that they and the Department have met their burdens of proof in that the Department has investigated petitioner's claims thoroughly and has conducted repeated verifications. SKF notes that it has provided thousands of pages of data in responding to the Department's questionnaires. NTN contends that the Department verified all of NTN's records regarding adjustments and reimbursement and found no evidence to support petitioner's claims. NTN notes, furthermore, that the cases petitioner cites to support its position, *Fujitsu General Ltd.*, v. *United States* and *Timken Co.* v. *United States*, are inappropriate because there is no basis for the Department to make a presumption of bad faith on the respondents' part, as was the situation in the cited cases. Koyo notes, moreover, that petitioner's argument regarding below-cost transfer pricing is immaterial since the level of transfer prices in relation to the benchmark Torrington proposes is irrelevant for determining whether the reimbursement of antidumping duties occurred. Finally, SKF argues that, contrary to petitioner's claims that the Department has abdicated its investigatory responsibilites, in the area of duty absorption—where petitioner approves of the Department's findings—the Department has invoked a methodology inappropriate in an investigatory fact-finding proceeding.

Department's Position: We agree with respondents that the petitioner does not bear an undue burden of proof in substantiating its claims. First, we disagree with petitioner's claim that our decision not to require respondents to state when they have disregarded prior determinations somehow results in or aggravates a shift in the burden of proof upon the petitioners. *See* our response to Comment 17(E). Second, we disagree that we shift the burden when we choose not to verify a particular respondent's data. As petitioner is aware, the Department has, over the course of the seven completed AFB reviews, verified all of the respondents subject to these 1995/96 reviews. The fact that respondents' data is subject to verification serves to ensure its accuracy. Moreover, where the Department has encountered difficulties in verifying a particular respondent's data, it has been careful to examine closely such information in later reviews.

With respect to the allocations at issue, the Department has examined fully and, in certain cases, verified respondents' data regarding petitioner's claims. Where we have been satisfied that a given allocation methodology is non-distortive, we have had no reason to require respondents to submit additional information. The mere fact that petitioner claims a methodology is distortive does not make it so. Where we have disagreed with petitioner, we have explained our positions throroughly in response to specific comments contained in this issues appendix. We have also addressed petitioner's allegations of reimbursement through below-cost transfer pricing (*see* our response to section 13, comment 1, above). In such cases, we have neither failed to meet our investigatory responsibilities nor placed an undue burden upon petitioner.

17.C. HTS.

Comment: Torrington argues that the Department should amend the list of HTS subheadings listed in the preliminary results by replacing HTS number 8482.99.6590, which Torrington claims does not currently exist, with HTS 8482.99.7060 and HTS 8482.99.7090 (1994 HTS) and also with HTS 8482.99.6560 and HTS 8482.99.6595 (1995 HTS and later). Torrington states that HTS 8482.99.6590 existed to cover parts of ball bearings and spherical plain bearings other than balls or races.

NSK agrees that HTS number 8482.99.6590 does not exist and should be removed from the references to the HTS classification in the final results. However, NSK states that Torrington did not describe accurately the HTS numbers and, along with SKF, suggests that the Department should examine the current HTS classifications applicable to scope merchandise before adding the references Torrington claims are appropriate.

Department's Position: We have confirmed that HTS number 8482.99.6590 has been deleted from the 1997 Harmonized Tariff Schedule and, therefore, we have removed it from the description of scope merchandise for the final results. We disagree with Torrington on the need to replace HTS 8482.99.6590 with HTS 8482.99.7060 and HTS 8482.99.7090 because these numbers refer to 1994 HTS numbers that no longer exist. Instead, after consulting with the U.S. Customs Service, we concluded that HTS 8482.99.6590 should be replaced with the 1997 HTS numbers HTS 8482.99.6560 and HTS 8482.99.6595. We also emphasize that HTS item numbers are provided for convenience and that the written descriptions of the scopes of the orders remain dispositive.

17.D. Certification of Conformance to Past Practice

Comment: Torrington claims that the Department should require all respondents to identify each instance where they have not followed previous Department rulings when responding to the Department's questionnaires. Torrington claims that, by accepting information which does not conform to previous agency determinations, the Department changes its position effectively without providing a reasoned explanation, which is contrary to administrative law. Torrington asserts that, when the Department does not verify questionnaire responses and respondents do not indicate where they have departed from prior agency rulings, then the quality of evidence upon which the Department relies is called into question profoundly under the substantial-evidence standard. Additionally, citing *Freeport Minerals Co.* v. *United States*, 776 F.2d. 1029 (CAFC 1985), among others, Torrington claims that the Department failed to discharge its affirmative duty to investigate and ascertain facts where (a) it knows that certain respondents take the position that they have no obligation to conform to prior agency rulings, and (b) it declines to take steps to ascertain whether those respondents are failing to conform.

Torrington analogizes the administration of the antidumping laws with customs-law enforcement. Torrington notes that, pursuant to 19 CFR 177.8(a)(2), importers are required to conform with prior customs rulings issued to the importer in question and suggests that the Department should take a parallel position in the administration of the antidumping law.

In addition, Torrington considers it illogical and unfair to continue an approach which requires the Department or Torrington to comb through every questionnaire response anew to detect instances wherein companies fail to follow prior rulings. Torrington states that respondents know when they are complying and where they are disregarding prior determinations. Torrington suggests that the Department should recognize this by requiring them to identify instances where their reporting reinstates a previously rejected method.

Torrington raises issues specifically pertaining to NTN and disagrees with NTN's position that it has no obligation to follow prior Department rulings expressly pertaining to NTN when answering subsequent Department questionnaires on the theory that each review is an independent proceeding, citing *AFBs V*, 61 FR at 66520–21. Torrington discusses several instances in which the Department rejected NTN's position in the various bearings reviews and suggests that the Department pursue the question carefully of whether NTN has disregarded prior negative rulings in these reviews. In Torrington's view, failure to apply past determinations when circumstances are essentially unchanged would constitute arbitrary administrative action and departures from precedent without explanation. If the Department cannot allay concerns on any of the foregoing pre-decided issues, Torrington urges the Department to resort liberally to facts available since Torrington believes that NTN should assume any risk of disregarding prior determinations.

NTN responds to Torrington's comments specifically addressing NTN's reporting methodology and states that, for four of Torrington's points, Torrington has mischaracterized NTN's reporting methodology. NTN observes that the CIT reversed the fifth issue. NTN claims that Torrington is unfamiliar with this case since it does not stand for the proposition that the Department may "liberally resort to facts available" when NTN has used a methodology with which Torrington disagrees. NTN also disagrees with Torrington's interpretation of the manner in which NTN has reported expenses and costs in prior segments of this proceeding.

Koyo submits that, if Torrington is to insist on such a practice, the Department should likewise restrict the issues that a petitioner may raise in its various filings in these proceedings to matters which have not already been addressed and rejected repeatedly by the Department and, often, by the Court of International Trade and not further appealed by the petitioner. Koyo suggests that, if Torrington persists with this proposal and the Department approves it, the Department should also restrict petitioners to matters not rejected previously.

SKF asserts that Torrington's reference to customs law is inapposite. SKF rebuts that one cannot compare a Customs tariff-classification ruling applicable to an entry of a particular type of merchandise to a complicated antidumping investigatory proceeding where, in any given review, hundreds or thousands of rulings and Department practices may be at issue. Moreover, SKF asserts that Customs has itself determined by rule that the cited entry procedure is necessary for the effective enforcement of the customs laws.

NTN, Koyo, SKF, NSK, and FAG disagree with Torrington's demand that respondents identify all cases where they are not following prior Departmental rulings and view the argument as pointless and impossible. Respondents state that Torrington has raised this argument in previous AFB reviews and the Department ultimately rejected Torrington's argument. Respondents point out that they are not bound by decisions in prior reviews as each administrative review is a distinct proceeding involving different sales, adjustments, and underlying facts and what transpired in previous reviews is not binding precedent in later reviews. Respondents also claim that Torrington has failed to provide any statutory support for such a drastic change in reported requirements. Respondents argue that Torrington's request be rejected because it would be unduly burdensome on both respondents and the Department.

Department's Position: We disagree with Torrington that we should require all respondents to conform their submissions, their allocations, and their methodology to our most recent determinations and rulings. In accordance with our usual practice, we also did not require respondents to identify where they have continued to use any methodology that we rejected in a prior review and justify the departure from established practice. Each administrative review is a separate reviewable proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews and parties are entitled, at the risk of the Department's determining otherwise, to argue against a prior Department determination. As a practical matter, methodologies the Department accepts in one review are generally used by respondents in subsequent reviews and methodologies the Department rejects are not perpetuated in later reviews. The Department, however, may reconsider

its position on an issue during the course of the proceeding in light of facts and arguments presented by the parties. *See AFBs V* and *AFBs VI*.

While the issue of a party's conformance to the Department's previous rulings has been addressed in prior administrative reviews, Torrington raises a new argument in these reviews with respect to its analogy of the administration of the antidumping law with customs-law enforcement. We have considered this argument, but we did not find that we are required by statute to adopt Torrington's suggestions or that the administration of the antidumping statute would be best served by changing our practice in this regard.

17.E. Pre-Existing Inventory

Comment: SKF claims that SKF USA made some CEP sales of merchandise that entered into the United States prior to suspension of liquidation (November 9, 1988) and that, although SKF identified these sales in the questionnaire response, the Department did not exclude these sales from the margin calculations. SKF cites *Stainless Steel Wire Rod From France: Final Results of Antidumping Duty Administrative Review* (61 FR 27296, 27314 (Sept. 11, 1996))(*Wire Rods from France*) to support its argument that merchandise which entered the United States prior to the 1988 suspension of liquidation (and in the absence of affirmative critical-circumstances finding) is not subject merchandise and is therefore not subject to review by the Department. SKF asserts that it demonstrated at verification the accuracy of its tracing system, so the Department should be satisfied that these sales involve merchandise which entered the United States prior to the suspension of liquidation.

Torrington claims that, because sampling prevents the Department from linking a sale to an entry, it is incorrect to exclude any POR sales from the margin calculations. Torrington claims that SKF has neither demonstrated a link between these sales and entries made prior to the suspension of liquidation nor has it provided sufficient explanation of the circumstances involving the extended length of time these bearings spent in inventory.

Department's Position: The record regarding the alleged pre-November 9, 1988 entries is insufficient to satisfy us that SKF's country-of-origin tracking system establishes conclusively that the specific sales were of bearings which entered the United States prior to the original suspension of liquidation. SKF's only explanation, submitted in its case brief, is that its inventory system can link European invoices with receipts into inventory at the U.S. affiliate.

Therefore, SKF has not demonstrated a link between the entry to inventory and the sale to the unaffiliated party during the POR.

17.F. Inland Freight

Comment 1: Torrington contends that the Department should recalculate NTN Japan's reported HM pre-sale inland freight and U.S. inland freight expenses. Torrington maintains that determining these expenses based upon sales value yields distortive figures. Torrington points out that NTN Japan's current method of valuing these expenses date back to the LTFV investigation in which the Department permitted this approach because NTN japan could not calculate a sale-by-sale freight expense. Torrington argues that these expenses should be valued based on weight and/or distance which are more relevant and accurate factors than sales value.

NTN Japan argues that it incurs the pre-sale freight and inland freight expenses regardless of weight. NTN Japan also contends that the Department has verified these expenses in previous reviews and has found that the basis upon which it calculates these expenses is not unreasonably distortive. NTN Japan therefore maintains that the Department should not recalculate freight on the basis of weight.

Department's Position: We agree with NTN Japan. We have accepted the methodology NTN Japan used in past reviews and did not find it to be distortive. *See AFBs VI* at 2122. Since there is nothing on the record in the current reviews that would indicate that a change in methodology is necessary, we have accepted NTN Japan's methodology for allocating freight expenses.

17.G. Other Issues

Comment: Agusta Aerospace Corporation (AAC), an importer of subject merchandise produced by SNFA France, argues that it is exempt from the antidumping duty order in this review pursuant to the Agreement on Trade in Civil Aircraft, 31 U.S.T. 619, April 12, 1979, (hereinafter "the Agreement"). It maintains that the Agreement, which applies to aircraft, components and spare parts, provides that signatories agree to eliminate "all customs duties and other charges of any kind levied on, or in connection with, the importation of products * * * if such products are for use in a civil aircraft and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion * * *." (citing 31 U.S.T. 619, Art. 2). AAC asserts that the AFBs it imported during the POR were used as parts in A109 helicopters and such helicopters are exempt from duties under the Agreement. AAC argues further that the improved AFBs which it imported as a result of a mandate from its parent company should also be exempt from antidumping duties since the mandate from its parent company is functionally equivalent to AAC's parent company installing the bearings on the aircraft at manufacture. AAC concludes that, since the Agreement is an international treaty, the Department should not establish antidumping orders which conflict with it, absent express congressional language to the contrary.

AAC also argues that the Department should not assess antidumping duties on AAC's imported AFBs because AAC imports a relatively small amount of AFBs which comprise less than one percent of the total price of their completed aircraft. AAC argues further that, since AAC and its parent corporation permit only a finite, authorized market restricted to Agusta aircraft service centers and owners and operators of their aircraft to have access to the AFBs, the AFBs AAC imported cannot have a negative material impact on the U.S. AFB market since AAC has not authorized the U.S. AFB market to purchase AAC's AFBs. AAC concludes that, if the Department were to impose antidumping duties against AAC, the Department would defeat the purpose of the antidumping law, particularly since AAC cannot elect to purchase bearings by other manufacturers.

AAC challenges the Department's assessment of AFBs imported by AAC as adverse facts available and argues that the assessment is the unfair byproduct of SNFA's failure to respond to the Department's questionnaire. AAC argues that the Department should take into consideration the fact that, in its pre-preliminary results comments, AAC provided the Department with detailed import information but, given SNFA's refusal to respond, could not obtain information from SNFA. AAC argues that it lacks any authority or influence over SNFA to secure information from SNFA. AAC argues that the Department is punishing AAC for SNFA's unwillingness to cooperate in this review by rejecting the information AAC provided and by not requesting further information from AAC or its parent corporation.

Torrington rebuts that the Department should reject AAC's arguments. Citing *ASG Industries, Inc.* v. *United States*, 610 F. 2d 770, 777 n. 14 (1979), Torrington states that antidumping and countervailing duties are imposed in addition to regular duties. Torrington also notes that, pursuant to Section 1335 of the Omnibus Trade and Competitiveness Act of 1988, the Department may exclude certain sales of bearings that have no substantial non-military use and are made pursuant to an existing Memorandum of Understanding, citing 61 FR 66471, 66508 (December 17, 1996). Torrington argues that AAC makes no such claim.

Department's Position: We disagree with AAC. The elimination of duties discussed in article 2 of the Agreement on Trade in Civil Aircraft refers to the elimination of ordinary customs duties, not antidumping duties imposed to offset unfair foreign trade practices. Indeed, U.S. law makes even U.S. government agencies acting as importers subject to antidumping or countervailing duties applicable to the merchandise imported unless it is merchandise "acquired by, or for the use of," the Department of Defense from a country with which Defense had a Memorandum of Understanding in effect on January 1, 1988, or merchandise imported by Defense which "has no substantial nonmilitary use." *See* section 771(20) of the Tariff Act; *AFBs V*, 61 FR 66,472, 66,508 (Dec. 17, 1996). *See also Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 865 n.6 (CIT 1993) (stating that in case of a conflict between GATT and U.S. law, U.S. law applies). Therefore, the Agreement on Trade in Civil Aircraft does not exempt AAC from the requirement to pay antidumping duties on the merchandise at issue.

We also reject AAC's request that it be exempted from the order because it imported and sold only a small amount of subject merchandise from SNFA during the POR and because it imported and installed the bearings in response to a "mandate" from its parent company. Neither the statute nor our regulations provides exemptions from the dumping law for such reasons. Thus, importing subject merchandise subject to a "mandate" is not "functionally equivalent" to installing merchandise on the aircraft at manufacture. Moreover, the fact that AAC's bearings comprise under one percent of the total price of the finished product when sold to unrelated customers does not exempt it from paying antidumping duties.

Finally, we have not used the information provided by AAC regarding its imports of SNFA bearings to calculate an antidumping duty rate for SNFA or AAC. In market-economy cases, the Department's practice is to calculate a single rate for each respondent investigated or reviewed. As AAC notes, however, SNFA did not respond to the Department's questionnaire. While we recognize the difficulty that AAC may have encountered in trying to obtain information from SNFA, the information provided by AAC was based on its own imports of subject merchandise and, absent SNFA's data, was insufficient to allow for the calculation of an antidumping duty rate. As stated in the SAA at page 826, imported components which are further manufactured are not exempt from antidumping duties.

[FR Doc. 97–27473 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–820]

Ferrosilicon from Brazil: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of Antidumping Duty Administrative Review.

SUMMARY: On August 14, 1997, the Department of Commerce published the final results of the second administrative review of the antidumping duty order or ferrosilicon from Brazil. The review covered Companhia Ferroligas Minas Gerais-Minasligas and Companhia Brasileria Carbureto de Calcio manufacturers/exporters of the subject merchandise to the United States. The period of review is March 1, 1995 through February 29, 1996. Interested parties submitted ministerial error allegations with respect to the final results of administrative review for Minasligas on August 20, 1997. Based on the correction of certain ministerial errors made in the final results of review, we are amending our final results of review with respect to Minasligas and the All Others rate.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Sal Tauhidi or Irene Darzenta, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4851 or (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 353 (April 1996).

Background

On August 14, 1997, the Department published the final results of the second administrative review of the antidumping duty order or ferrosilcon from Brazil (62 FR 43504), covering the period March 1, 1995 through February 29, 1996. The respondents are Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) and Companhia Brasileria Carbureto de Calcio (CBCC). The petitioners are Aimcor and SKW Metals & Alloys, Inc.

On August 20, 1997, the petitioners and Minasligas filed allegations that the Department had made certain ministerial errors in this administrative review with respect to Minasligas. Specifically, the petitioners alleged three ministerial errors with respect to the following issues: (1) the use of Brazilian reais-denominated gross unit prices instead of U.S. dollar-denominated gross unit prices for U.S. sales; (2) the treatment of marine insurance expenses for certain U.S. sales; and (3) the date of sale for one U.S. sale. Minasligas alleged two ministerial errors with respect to the following issues: (1) the adjustment to U.S. price for insurance revenue applicable to one U.S. sale; and (2) the treatment of value-added taxes (VAT) on U.S. sales. On August 27, 1997, both parties submitted comments on these allegations. For a complete discussion of the allegations, *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas.

As discussed below, in accordance with 19 CFR 353.28(d), we have determined that certain ministerial errors were made in our margin calculations for Minasligas. In addition, the Department also determined that a clerical error was made regarding the

"All Others" rate as stated in the notice of the final results.

Scope of Review

The merchandise subject to this review is ferrosilicon, a ferro alloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is a ferro alloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant. Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilcon are specifically excluded from the scope of this review. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferro alloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferro alloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Ferrosilicon in the form of slag is included within the scope of this order if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of ferrosilicon slag do not meet these definitions should contact the Department and request a scope determination.

Alleged Ministerial Errors

Issue 1: The Use of Brazilian Reais-denominated Gross Unit Prices Instead of U.S. Dollar-denominated Gross Unit Prices for U.S. Sales

The petitioners contend that because the Department believed that Minasligas' U.S. dollar prices were not on the record, it used Brazilian reais-denominated gross unit prices instead of U.S. dollar-denominated gross unit prices for U.S. sales in its margin analysis. The Department thus mistakenly converted the U.S. sales prices reported in Brazilian currency to U.S. dollars on the date of sale. However, the petitioners assert that in Exhibit 6 of Minasligas' October 11, 1996 supplemental response, Minasligas reported the gross unit prices for its U.S. sales in U.S. dollars. The petitioners argue that the Department should have used the U.S. dollar-denominated gross unit prices for Minasligas' U.S. sales, as reported in Exhibit 6 of Minasligas' October 11, 1996 supplemental response, instead of the Brazilian reais-denominated gross unit prices in its margin analysis.

Minasligas contends that because the Department was able to verify the accuracy of the Brazilian reais-denominated prices by examining relevant commercial invoices for selected U.S. sales at verification, it should reject petitioners' request to use the U.S. dollar-denominated gross unit prices reported in Exhibit 6. In this respect, Minasligas argues that the Department did not make a clerical error but applied an appropriate methodology.

DOC Position

We agree with the petitioners. In the final results of review, the Department mistakenly concluded that Minasligas' U.S. dollar-denominated gross unit prices for U.S. sales were not on the record and, therefore, used the Brazilian reais-denominated U.S. prices in its final margin analysis. Upon further review of the record, we find that Minasligas reported U.S. dollar-denominated prices in Exhibit 6 of its October 11, 1996 supplemental response and that these prices were consistent with sales documentation obtained at verification. Thus, we inadvertently omitted the U.S. dollar-denominated price data contained in Exhibit 6 from our original final margin analysis. For complete discussion and analysis *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas. Therefore, for these amended final results, we have used the U.S. dollar-denominated gross unit prices for U.S. sales as reported in Exhibit 6 of Minasligas' October 11, 1996 supplemental response.

Issue 2: Clerical Error Allegations Regarding the Treatment of Marine Insurance Expenses for Certain U.S. Sales, the Date of Sale for One U.S. Sale, and the Adjustment to U.S. Price for Insurance Revenue Applicable to One U.S. Sale

The petitioners and Minasligas contend that the Department failed to correctly input certain data for certain U.S. sales in its final margin calculations. Specifically, the petitioners contend that the Department made input errors with respect to marine insurance expenses for certain U.S. sales and the date of sale for one U.S. sale. Minasligas contends that the Department made an input error with respect to the adjustment to U.S. price for insurance revenue applicable to one U.S. sale.

DOC Position

We agree with both the petitioners and Minasligas' allegations and have corrected these clerical errors. For complete discussion and analysis, *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas.

Issue 3: Value-added Taxes Collected on U.S. Sales

Minasligas asserts that the Department stated in its final results that Minasligas was unable to substantiate its claim that VAT charges are passed along to U.S. customers and are included in the reported U.S. prices. Minasligas maintains that for purposes of making price-to-price comparisons, however, the Department treated VAT on U.S. export sales as if it had been passed along to U.S. customers and included it in the U.S. price. According to Minasligas, there is a contradiction between the Department's finding of fact (*i.e.*, that Minasligas was unable to substantiate its claim that VAT charges are passed along to U.S. customers and are included in the reported prices) and the Department's calculation methodology. Minasligas maintains that if the Department's finding of fact is correct, it was a mistake to deduct VAT from the U.S. price or to account for it in price-to-price comparisons. However, if the Department's finding of fact is not correct, Minasligas maintains that it is the Department's practice to calculate U.S. imputed credit expenses based on a U.S. price exclusive of VAT.

The petitioners contend that the Department did not subtract VAT taxes on U.S. sales from the U.S. price. Instead, petitioners argue that the Department determined the difference between the weighted-average per unit VAT taxes collected on home market sales and the per-unit VAT taxes owed by Minasligas on each U.S. sale, and then subtracted this difference from normal value (NV) which included VAT taxes collected on home market sales, in accordance with its normal practice.

Department's Position

We agree with Minasligas that this adjustment was inappropriate. For complete discussion and analysis, *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas. Therefore, for these amended final results, we have not made an adjustment to NV for VAT on U.S. sales.

Issue 4: All Others Rate

The Department erroneously reported an "All Others Rate" of 91.06 percent in the notice of final results. The correct "All Others Rate" is 35.95 percent. (*See Amended Final Determination of Sales at Less Than Fair Value (LTFV): Ferrosilicon from Brazil*, 59 FR 8599, February 23, 1995.) Thus, we are amending the final results to replace the incorrect rate of 91.06 percent with the correct rate of 35.95 percent.

Amended Final Results

As a result of our correction of the ministerial errors for Minasligas, we have determined the following amended margin exists for Minasligas for the period covering March 1, 1995 through February 29, 1996:

Manufacturer/Exporter	Amended Weighted-Average Margin (percent)
Minasligas	2.54

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company named above will be the rate as stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for all other manufacturers or exporters will be 35.95 percent, the All Others rate established in the amended final LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice services as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and the terms of the APO is an sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.28(c)).

Dated: October 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27631 Filed 10–14–97; 3:02 pm]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is amending its final results of review, published on January 14, 1997, of the antidumping duty order on silicon metal from Brazil, to reflect the correction of ministerial errors in those final results. The period covered by these amended final results is the period July 1, 1994 through June 30, 1995.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–2924 (Baker), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Background

The Department published the final results of the fourth administrative review, covering the period July 1, 1994 through June 30, 1995, of the antidumping duty order on silicon metal from Brazil on January 14, 1997 (62 FR 1970) (*Fourth Review Final Results*). The respondents are Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais-Minasligas (Minasligas),

Eletrosilex Belo Horizonte (Eletrosilex), Rima Industrial S.A. (RIMA), and Camargo Corrêa Metais (CCM). The petitioners are American Alloys, Inc., Elken Metals, Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals & Alloys.

On January 31, 1997, Minasligas and RIMA filed clerical error allegations. On February 4, 1997, the petitioners filed clerical error allegations with respect to Eletrosilex, Minasligas, RIMA, and CBCC. On February 6, 1997, Eletrosilex filed clerical error allegations. On February 7, 1997, petitioners filed a response to the clerical error allegations submitted by Minasligas and RIMA. Also on February 7, 1997, RIMA submitted a response to the petitioners' clerical error allegations. On February 11, 1997, CBCC submitted a response to petitioners' clerical error allegations. On February 13, 1997, petitioners submitted a response to Eletrosilex's clerical error allegations. Pursuant to the CIT's order, we are now addressing the ministerial allegations and amending our final results of the fourth review. *See American Silicon Technologies et al.; v. United States,* Slip Op. 97–113, August 18, 1997.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

Clerical Error Allegations

Comment 1

Minasligas argues that the Department erred in its calculation of its cost of production/constructed value (COP/CV) by failing to offset Minasligas' financial expenses with its financial income. That Minasligas had short-term financial income, Minasligas argues, is evident from its 1994 financial statement. Minasligas argues that there are three categories of financial income which the Department erroneously determined not to allow as an interest income offset. The first is "income from short term applications," which Minasligas alleges the Department disallowed as an offset because it mistook it to be compensation for inflation. In fact, Minasligas argues, the record shows that the effects of inflation are reflected on the financial statements through the recording of monetary correction of fixed assets, shareholders equity, and other accounts subject to such correction. Thus, Minasligas argues, the Department cannot interpret Minasligas' submissions or its financial statements to indicate that inflation is included in "income from short term applications."

The second category of income which the Department erroneously failed to include as an offset to Minasligas' financial expenses, Minasligas argues, is the category "exchange gains." Minasligas argues that the Department should include exchange gains as an offset to financial expenses because it included exchange losses as a financial expense.

The third category of income which the Department erroneously failed to include as an offset to financial expenses, Minasligas argues, is the category "gains on monetary correction." Minasligas argues that the Department should include this category of income as an offset to financial expenses because it included an amount for monetary correction of loans (*i.e.*, the inflation adjustment on monetary liabilities) in financial expenses.

Petitioners argue that the Department's calculation of Minasligas' financial expenses was correct. It cites the final results notice in which the Department stated:

> [A]lmost all of Minasligas' reported "interest income" consists of items that are totally unrelated to interest income. The financial statements for Minasligas and its parent, Delp Engenharia Mecanica S.A. (Delp), demonstrate that over 95 percent of both companies' reported "interest income" consists of "monetary variation," "monetary correction," and "income from short-term applications." The Department's verification report for Minasligas in the immediately preceding review clarifies that "financial applications" (which would include "income from short-term applications") refers to compensation for inflation. At no point has Minasligas demonstrated for the record that the amounts reported for these categories of income constitute interest income derived from short-term investments of working capital. Nor has Minasligas demonstrated that the claimed interest income was derived from short-term investments of working capital merely by stating in its rebuttal brief that its net interest income exceeded its net interest expense.
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> Similarly, the financial statements submitted by Minasligas show that the category "interest received" included *inter alia*, (1) charges paid by customers for Delp's granting of delayed payment terms, which are really sales revenue; (2) discounts obtained from suppliers; (3) dividends received; and (4) exchange gains or losses. See Minasligas' April 30, 1996 SQR at 37 and exhibit 19. These items clearly do not represent interest income from short-term investments.
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> For the above reasons, we have reduced Minasligas' interest income by the total amount of the items incorrectly included therein by Minasligas (see Final Analysis Memorandum from Fred Baker to the File).

See Fourth Review Final Results, at 1974. Based on the analysis in the final results, petitioners argue that the Department's calculation of Minasligas' interest expense was neither a ministerial nor a non-ministerial error.

Department's Position: As petitioners have noted, we addressed this issue in the final results of the fourth review. Our treatment of Minasligas' financial income was intentional, and not a ministerial error. The disagreement Minasligas has expressed is in regard to our analysis, and is thus not a proper subject for review under the ministerial errors correction process.

Comment 2

Minasligas argues that the Department made a ministerial error in its revaluation of Minasligas' beginning inventory. The Department, based on Minasligas' October 15, 1996 submission, revalued Minasligas' beginning inventory in order to account for hyperinflation that occurred prior to the start of the period of review (POR). The raw material costs Minasligas reported in its October 15, 1996 submission, it argues, were its inventory of both ferrosilicon and silicon metal. Minasligas states that the Department did not request that Minasligas report silicon metal inventory separately, nor could Minasligas have done so because it does not maintain separate inventory records. Minasligas argues that the Department mistakenly overstated the adjustment to the reported silicon metal costs by calculating an inflation adjustment on raw materials for the entire company, and applying the additional costs entirely to silicon metal, rather than proportionately to subject and non-subject merchandise.

Petitioners argue that there is no evidence on the record, and Minasligas has cited to none, to support Minasligas' claim. For this reason, petitioners argue, the Department should reject Minasligas' argument. Furthermore, petitioners point out that in its April 30, 1996 supplemental questionnaire response, Minasligas stated that it maintains separate inventories for charcoal. Thus, petitioners argue, Minasligas' argument that it does not maintain separate inventory records for its raw materials is contradicted by other information on the record, at least with respect to charcoal.

Department's Position: We agree with both parties in part. We agree with Minasligas that the revalued costs should be allocated to silicon metal so that ferrosilicon costs are not attributed to silicon metal, and that it would be an error not to perform an allocation where one is warranted. However, we agree with petitioners that Minasligas has cited to no evidence on the record that the inventory volumes and values Minasligas reported in its October 15, 1996 submission were its entire inventory of raw materials used in the production of both ferrosilicon and silicon metal. Our review of the record indicates that the figures for charcoal Minasligas' reported in its October 15, 1996 submission reflects its entire inventory for charcoal, but the figures it reported in its October 15, 1996 submission for woodchips, quartz, and carbon electrodes reflects only the inventory used in the production of silicon metal. We made this determination based on the value of material inputs Minasligas reported in tab 8 of its April 30, 1996 submission (where Minasligas reported the value of its inputs for silicon metal), as compared to the material input values Minasligas reported in its October 15, 1996 submission, which Minasligas now alleges reflects its entire inventory of the four inputs. These two exhibits demonstrate that the cost figures Minasligas reported for woodchips, quartz, and carbon electrodes in the production of silicon metal in tab 8 of its April 30, 1996 submission are identical to those it reported in its October 15, 1996 submission. However, such is not the case for charcoal. Furthermore, other evidence on the record indicates that the consumption volume figures Minasligas reported for charcoal were used in the production of silicon metal and ferrosilicon (*see* tab 18 (exhibit 36c) of its April 30, 1996 submission). Therefore in these amended final results, we have performed an allocation of the revalued costs only for charcoal. We performed the allocation based on the volume of charcoal consumed in the production of silicon metal relative to the volume of charcoal consumed in the production of ferrosilicon. *See* the amended final results analysis memorandum for our calculations.

Comment 3

Minasligas argues that the Department made a ministerial error by double-counting packing costs in COP/CV. It argues that the Department added packing costs to a COP which already included packing costs. It argues that the Department failed to deduct home-market packing costs from the cost of manufacture (COM) before adding U.S. packing costs in calculating CV.

Petitioners argue that information on the record indicates that the Department double-counted only the labor and machine costs for packing, and not the cost of packing materials. *Department's Position:* We agree with petitioners that we double-counted only the labor and machine costs for packing, and not the material costs. In these amended final results of review we have revised our calculations of COP and CV so as not to double-count labor and machine costs. *See* the amended final results analysis memorandum for our calculations.

Comment 4

Minasligas argues the Department made three errors in calculating profit for CV. The first alleged error was that the Department based profit on Minasligas' financial statement data, rather than on the actual profit calculated on above-cost sales of subject merchandise. Minasligas argues that this was an error because the statute directs the Department to add to CV the "actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade for consumption in the foreign country* * *" 19 U.S. 1677b(e)(2)(A). Based on this statutory language, Minasligas argues that the Department is required to calculate profit based on above-cost sales wherever possible.

Furthermore, Minasligas argues that in calculating profit based on above-cost sales, the Department erred by limiting the calculation to only the sales of regular grade silicon metal. Rather, Minasligas argues, the Department should have included sales of both regular and high-purity grade silicon metal even if all the U.S. sales to be compared to CV are regular-grade silicon metal. Minasligas contends that the Department has in the past based profits on the entire foreign like product, and not on a subset of the subject merchandise. In support of this contention, it cites *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 F.R. 2081, 2112–2114 (January 15, 1997), where the Department rejected a respondent's argument that where there are no appropriate identical or family matches (and hence the Department uses CV), there are no sales of "a foreign like product" to calculate a profit margin. In further support of this contention, Minasligas cites *Professional Electric Cutting Tools from Japan; Final Results of Antidumping Duty Administrative Review,* 62 F.R. 386, 389–390 (January 3, 1997), in which the Department stated, "For purposes of calculating CV and CEP profit, we interpret the term 'foreign like product' to be inclusive of all merchandise sold in the home market which is in the same general class or kind of merchandise as that under consideration," and *Notice of Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unossembled, from Japan,* 61 F.R. 38139, 38145–38147 (July 23, 1996), in which the Department stated, "[Respondent] is incorrect to suppose that because we did not find home-market sales which provided practicable price-to-price matches, no foreign like product existed. The foreign like product . . . did exist, as revealed by our examination of . . . equipment sold in the home market for purposes of the Department's home-market viability test."

The second alleged error the Department made was using an allegedly incorrect total profit figure to calculate Minasligas' profit ratio. In calculating the total profit figure, the Department included the line item for interest income found on Minasligas' 1994 financial statement. Minasligas argues that it was an error for the Department to reject the line item for interest income as an offset to financial expenses (presumably because it was unrelated to production of the foreign like product) but to include it in the calculation of profit. It argues that if the interest income is unrelated to production then it cannot be used for the purpose of calculating CV.

The third alleged error that the Department made was its failure to apply the profit cap required by the statute. Minasligas argues that the

statute allows profit to be calculated in one of three ways:

(i) the actual amounts incurred and realized by the specific producer for profits, in connection with the production and sale for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise;

(ii) the weighted average of the actual amounts incurred and realized by producers that are subject to the review for profits in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or

(iii) the amounts incurred for profits based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

See 19 U.S.C. 1677b(e)(2)(B). Minasligas argues that the Department's method of calculating profit does not comport with either items (i) or (ii), and therefore must have been (iii). Thus, Minasligas argues, the statutory profit cap applies, but the amount the Department calculated for profit exceeded this cap because it exceeded the amount normally realized by other exporters or producers.

Petitioners retort that the Department did not make an error in the calculation of Minasligas' profit. First, they contend that the statute requires not that sales of subject merchandise be used in the calculation of profit (as Minasligas claims), but that actual amounts for profits "in connection with the production and sale of a foreign like product" be used. *See* 19 U.S.C. 1677(16). Second, petitioners argue that the Department's regulations define the term "ministerial error" as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other type of unintentional error which the Secretary considers ministerial." Based on this definition, petitioners argue that the Department's calculation of profit was not a ministerial error. Indeed, petitioners argue, the Department's analysis memorandum demonstrates that it acted intentionally when it calculated profit as it did. Third, petitioners argue that the Department does not have on the record of the review the information necessary to calculate a profit cap in accordance with the statute. Thus, petitioners argue, the Department properly calculated Minasligas' profit on a facts-available basis because the Statement of Administrative Action states that the Department may do so under such circumstances.

Department's Position: We agree with petitioners that our calculation of profit did not constitute a clerical error. Our calculation of profit used in the programming is identical to that described in the final results analysis memorandum for Minasligas. *See* the January 24, 1997 analysis memorandum, pp. 4 and 5.

Comment 5

Minasligas argues that the Department erred in its calculation of CV by calculating general and administrative expenses (G&A), profit, and financial expense ratios as a percentage of cost of goods sold (which does not include value-added taxes) and applying these ratios to a COM which includes value-added taxes. It argues that since the value-added taxes are not reflected anywhere as a cost on Minasligas' audited financial statements, it would be inappropriate to calculate a G&A, profit, or financial expense ratio from its financial statements and then apply the ratio to a COM which includes value-added taxes. Similarly, RIMA and Eletrosilex argue that the Department erred in its calculation of CV by calculating G&A and financial expense ratios as a percentage of cost of goods sold (COGS) from their 1994 financial statements (which do not include value-added taxes and depreciation expenses) and applying them to a COM which does include value-added taxes and depreciation expenses. RIMA also argues that the Department erred in its calculation of financial expenses by calculating a ratio which includes late payment fees, and applying it to a COM which also includes late payment fees. By so doing, RIMA argues, the Department double-counted late payment fees.

Furthermore, Minasligas argues that the Department's calculation of CV was inconsistent with the statute because the G&A and interest expense values used in CV are different from those used in COP. Minasligas argues that because 19 U.S.C. § 1677b(e)(2)(A) requires the Department to base selling, general, and administrative expenses on the actual amounts incurred and realized in production of the foreign like product, and because the actual amount of G&A and interest does not differ for the product between CV and COP, the Department's method was a violation of the statute.

Petitioners argue, with respect to Eletrosilex, that the Department made no error in its calculations. It argues that the Department did not, contrary to Eletrosilex's claims, calculate its G&A ratio from Eletrosilex's financial statements. Instead, petitioners state, the Department used the monthly G&A expenses that Eletrosilex reported in exhibit 36 of its October 20, 1995 questionnaire response. With respect to Eletrosilex's financial expenses, petitioners argue that the COM does not include the depreciation that the Department calculated, nor does it include the ICMS tax (a value-added tax).

Department's Position: We agree with respondents that where the COGS recorded on the financial statements do not include value-added taxes or depreciation, the COM values used to calculate profit, G&A, and interest for CV should be net of value-added taxes or depreciation in order to avoid overstating these expenses. Therefore, in these amended final results of review, we have calculated CV using G&A, profit, and interest expense figures for Minasligas and RIMA based on a COM that is net of value-added taxes and (for RIMA) net of depreciation. We also agree with RIMA that because late payment fees were included in the financial expenses reported on its financial statement, we would double count late payment fees by including them in the COM used to calculate interest expenses. Therefore, in these amended final results, we have removed the late payment fees from the financial expenses in calculating RIMA's financial expense ratio.

With respect to Eletrosilex, we agree with petitioners that, in the final results, we did not include all value-added taxes in the COM used to calculate Eletrosilex's interest expenses for CV. (We included only the IPI, and not the ICMS.) Therefore, in these amended final results of review, we have removed the IPI from the COM used to calculate interest. Furthermore, we also agree with petitioners that we did not calculate Eletrosilex's G&A from its financial statement, but instead used the monthly G&A figures it submitted in exhibit 36 of its October 20, 1995 questionnaire response. However, we disagree with petitioners that the COM we used to calculate Eletrosilex's interest was net of depreciation. Therefore in these amended final results, we have calculated Eletrosilex's interest using a COM that is net of depreciation.

Comment 6

Minasligas and RIMA argue that the Department made a clerical error in the calculation of CV by increasing normal value (NV) by the amount of U.S. imputed credit expenses, but not reducing NV by the amount of imputed home-market credit expenses. They argue that the Department should subtract imputed home-market credit from NV.

Petitioners argue that the Department was correct in not subtracting home-market credit from NV. They argue that the Department's practice is to include only actual, not imputed, expenses in CV. Therefore, petitioners say, because the Department did not include home-market imputed credit expenses in CV, it would have been wrong to subtract home-market imputed credit expenses from CV when making the circumstance-of-sale adjustment for imputed credit.

Department's Position: We agree with respondents that our failure to subtract imputed credit from the calculation of CV constituted a ministerial error. It is our practice to make a circumstance-of-sale adjustment for differences in credit costs between the home and U.S. markets even in a CV margin calculation. Hence, we have done so in these amended final results.

Comment 7

Minasligas argues that the Department erred in its computation of net home-market price and home-market credit by including in the computation the addition of a variable representing the PIS/COFINS taxes. The Department included this variable in the preliminary results of review, but its final results analysis memorandum indicates that the Department intended to delete it for the final results. Minasligas argues that the Department did not do so.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 8

Minasligas, RIMA, and Eletrosilex argue that the Department erred by failing to deduct from CV the difference between the ICMS tax due on home-market sales and on U.S. sales. To support their argument, Minasligas, RIMA, and Eletrosilex cite the Department as stating in the final results: "In order to achieve tax neutrality with respect to the ICMS tax we should deduct from NV only the amount of the difference between ICMS tax due on home-market sales and ICMS tax due on U.S. sales." *See Fourth Review Final Results* at 1983. Furthermore, Minasligas, RIMA, and Eletrosilex argue that the Department has in the past stated that its practice is to make circumstance-of-sale adjustments in price-to-CV as well as price-to-price margin calculations. *See Tapered Roller Bearings and Parts Thereof Finished or Unfinished from Japan*, 52 FR 30700 (August 17, 1987).

Petitioners argue that the language cited by Minasligas, RIMA, and Eletrosilex applies only to price-to-price comparisons, and not price-to-CV comparisons. Petitioners argue that the correct interpretation of the Department's statement cited by Minasligas is governed by another statement the Department made in the same context: "This approach is in accordance with 19 U.S.C. § 1677b(a)(6)(B)(iii)." This section of the statute, petitioners argue, refers to price, and not CV. It states that "the price described in paragraph (1)(B) shall be * * *reduced by* * * the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign-like product."

Department's Position: We disagree with respondents that our treatment of ICMS taxes in a CV situation constitutes a ministerial error. We intended to treat ICMS taxes in a CV situation exactly as we did in the final results. Therefore, this issue is a methodological issue, and not a proper subject for review under the ministerial errors correction process.

Comment 9

Minasligas, RIMA, and Eletrosilex argue that the Department made a clerical error in calculating U.S. imputed credit by dividing the annual interest rate by 30 rather than 365.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 10

RIMA argues that the Department incorrectly calculated depreciation. In the final results, the Department stated that it based its calculation of RIMA's depreciation on facts available, and explained:

> As facts available the Department has chosen to use one-half of the audited total RIMA depreciation expenses for the fiscal year as RIMA's total POR depreciation expenses, and to allocate to silicon metal production a share of that total based on the highest monthly percentage of cost of goods sold accounted for by silicon metal, as appearing in verification exhibit OH1. We allocated one-twelfth of this total, in turn, to each month of the POR.

See Fourth Review Final Results, at 1984. RIMA argues that the Department failed to divide the total depreciation by two as is necessary if the calculated amount is to be "*one-half* of the audited total RIMA depreciation expenses for the fiscal year," as described above.

Petitioners argue that the Department's calculations, as laid out in the January 24, 1997 final results analysis memorandum, indicate that the Department did in fact divide total depreciation by two.

Department's Position: We agree with petitioners. The attachment labeled "Calculation of RIMA's Depreciation—4th Review" in the final results analysis memorandum for RIMA indicates that the Department did divide the depreciation expenses in half. Thus, we did not make a clerical error.

Comment 11

Petitioners argue that the Department made a clerical error in its calculations for Eletrosilex by failing to add U.S. imputed credit expenses to CV.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 12

Petitioners argue the Department made a clerical error in its calculations for Eletrosilex by adding U.S. post-sale warehousing expenses expressed in Brazilian currency to a CV expressed in U.S. dollars.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 13

Petitioners argue that the Department made a clerical error in its calculations for CBCC by adding, rather than subtracting, international freight from United States Price (USP).

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 14

Petitioners argue that the Department made a clerical error in its calculations for CBCC by treating the bank charges incurred to finance some of CBCC's U.S. sales as expressed in U.S. dollars, rather than in Brazilian currency.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 15

Petitioners argue that the Department made a clerical error in its calculations

of USP for some of CBCC's U.S. sales by including in the computer field "BANKCHRG" only the cost of interest, and not the cost of bank charges.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 16

Petitioners argue that the Department made a clerical error in its calculations for CBCC by failing to include the depreciation expenses for all of CBCC's idle furnaces for all months of the POR. This was an error, petitioners state, because the final results notice says that the Department included depreciation expenses for idle assets in the total depreciation expenses. *See Fourth Review Final Results*, at 1980.

CBCC argues that the Department's calculation was proper because during part of the POR the furnaces in question were producing a product other than silicon metal. For the same reason CBCC argues further that if the Department decides to attribute depreciation for the furnaces at issue to silicon metal, it should attribute only part of it to silicon metal, and not all of it, as petitioners argue.

Department's Position: We agree with petitioners that for some months of the POR we failed to include depreciation for idle assets in total depreciation, which was a clerical error. We have corrected this error in these amended final results. We have allocated to the furnaces at issue a proportion of depreciation expenses equal to the volume of silicon metal produced by those furnaces relative to the volume of other products produced by those furnaces during the POR. *See* the amended final results analysis memorandum for our calculations.

Comment 17

Petitioners argue that the Department made a clerical error calculating Minasligas' variable overhead expenses. The Department, in order to allocate overhead costs to silicon metal, applied a ratio to Minasligas' total variable overhead amounts as given in exhibit 4 of Minasligas' October 15, 1996 supplemental questionnaire response. Petitioners argue that this was an error because the total variable overhead reported in exhibit 4 had already been allocated to silicon metal by Minasligas.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 18

Petitioners argue that the Department made a clerical error by not basing RIMA's charcoal costs on the price RIMA paid to its unaffiliated suppliers, and instead using the material costs RIMA reported in verification exhibit 7. In the final results the Department stated that it would base RIMA's charcoal costs on the prices it pays to its unaffiliated suppliers. *See Fourth Review Final Results*, at 1985.

RIMA argues that the costs reported in verification exhibit 7 are from unaffiliated suppliers, and that the Department therefore did not make a clerical error.

Department's Position: We agree with RIMA. The verification report says, "By reviewing the documents pertaining to purchased charcoal, *e.g.*, the general ledger, supplier's invoices, and payment records, we confirmed that Rima's per-unit costs were based on the purchase price from third-party suppliers." *See* October 3, 1996 verification report, p. 12. Thus, our use of the charcoal costs contained in verification exhibit 7 does not constitute a clerical error.

Comment 19

Petitioners argue that the Department made a clerical error in its calculation of RIMA's imputed U.S. credit expenses. RIMA shipped each of its U.S. sales from its plant to the port of export in lots over a period of days, and reported to the Department the date of shipment for each lot. The Department stated in its final results analysis memorandum for RIMA that it used as the credit period the average number of days between the shipment date for each lot and the payment date. However, petitioners argue that the Department did not use the average credit period.

RIMA argues that the Department used an annual rate, and not a monthly rate, in its calculation of U.S. imputed credit expenses. Thus, RIMA argues, the Department should divide the rate used in the determination of imputed credit by 365 days, not 30 days.

Department's Position: We agree with petitioners that we did not use the average credit periods in the calculation of U.S. credit, although the final results analysis memorandum states the contrary. *See* July 24, 1997 RIMA final results analysis memorandum, p. 3. We have corrected this error in these amended final results. For our response to RIMA's argument that we should calculate credit using a denominator of 365, see our response to comment 9, above.

Comment 20

Eletrosilex argues that the Department made a ministerial error in its treatment of depreciation expenses. Eletrosilex argues that it explained in its submission that it had taken no depreciation in 1994 in order to compensate, as necessary under Brazilian accounting principles, for having taken accelerated depreciation in prior years, and that it had returned to normal depreciation in 1995. In comment 36 of the final results notice, the Department stated that evidence from Eletrosilex's financial statement indicates that its accounting of depreciation was not in accordance with Brazilian generally accepted accounting principles (GAAP). The Department therefore used the depreciation estimates given by Eletrosilex's independent auditor. Eletrosilex contends that the Department's determination that its accounting of depreciation was not in accordance with Brazilian GAAP constitutes a ministerial error. It argues that the financial statement made no determination as to whether Eletrosilex's accounting for depreciation was consistent with Brazilian GAAP in light of the earlier accelerated depreciation; it merely reflected the current year accounting. Eletrosilex argues that the Department mistakenly relied upon the financial statement out of context, instead of relying upon the actual data submitted by Eletrosilex and the explanation as to why no depreciation expense was shown for 1994.

Furthermore, Eletrosilex argues that the Department's recalculation of depreciation was flawed by exaggerating depreciation expense. The Department used one half of the audited depreciation expenses for all of 1994 and 1995. Eletrosilex argues that this method was doubly mistaken. First, the Department used numbers from the column designated as "in currency with constant purchase power." Eletrosilex states that this column includes monetary adjustment, and therefore inflates the true number. Second, it double counts depreciation for 1995 because the depreciation expense is already included in fixed overhead.

Petitioners argue that the Department correctly determined that Eletrosilex's accounting of depreciation was not in accordance with Brazilian GAAP. It bases this argument on a statement contained in the report of the independent auditor which says that "the company did not recognize . . . amounts corresponding to the depreciation of the fixed assets as required by the accounting principles foreseen in the CORPORATE'S LEGISLATION and by the main accounting principles." Therefore, petitioners argue, the Department was correct in not using the depreciation expenses that Eletrosilex reported to the Department.

Furthermore, petitioners argue that because Eletrosilex's 1994 financial statement did not contain any information about depreciation, the Department was obliged to use Eletrosilex's 1995 financial statement for information about Eletrosilex's depreciation for both 1994 and 1995. Thus, petitioners argue, the Department was justified in using the column "in currency with constant purchase power" for 1994 because that is how the information was presented in Eletrosilex's 1995 financial statement.

Finally, petitioners argue that information on the record indicates that the Department did not double count depreciation for all of the months that Eletrosilex claims it did.

Department's Position: We disagree with Eletrosilex that our calculation of depreciation is a clerical error. Rather, it is a methodological issue, and not a proper subject for review under the ministerial errors correction process. However, we do agree with Eletrosilex that we double counted depreciation for 1995. Therefore, in these amended final results of review we have corrected this error. *See* our amended final results analysis memorandum for our calculations.

Comment 21

Eletrosilex argues that the Department mistakenly disallowed an alleged short-term investment as an offset to its financial expenses because it incorrectly believed the claimed offset to be a capital gain. Eletrosilex argues that there is no basis for the Department so to interpret the transaction. It states that the claimed offset at issue was interest income accrued from bonds purchased as a short-term investment. The treatment of this short-term investment creating accrued interest is fully consistent, Eletrosilex argues, with the Department's traditional treatment of short-term interest as an offset to financial expenses, and the Department's treatment otherwise in the final results was based on a mistaken interpretation of the claim.

Petitioners argue that the Department made no ministerial error in its calculation of Eletrosilex's financial expenses. They argue that it is a respondent's responsibility to provide a detailed explanation of any claimed offset to expenses, and that Eletrosilex failed to meet this responsibility because it failed to provide the information necessary to distinguish interest income from capital gains. Furthermore, petitioners argue that the Department acted intentionally in denying this adjustment. Indeed, the Department specifically addressed the transaction in question in comment 5 of the final results notice. *See Fourth Review Final Results*, at 1974. Thus, petitioners argue, the Department's denial of this adjustment does not fit the regulatory definition of a clerical error, which is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." 19 C.F.R. 353.28(d).

Department's Position: We agree with petitioners that our denial of this requested offset is not a clerical error. As reflected in the fourth review final results notice, we intended to deny this adjustment. *See Fourth Review Final Results* at 1974.

Comment 22

Eletrosilex argues that the Department erred by failing to grant a duty drawback adjustment. In the final results the Department denied this adjustment because Eletrosilex did not submit a claim for it until it submitted its case brief, subsequent to the 180-day regulatory deadline for submitting factual information. *See* 19 CFR § 353.31(a)(1)(ii). Eletrosilex argues that this decision unfairly distorted reality for no valid reason. It argues that the Department recognizes that mistakes occur, and has established the "ministerial error" provision for the purpose of correcting its own mistakes. Therefore, Eletrosilex argues, parties to proceedings should also be permitted to correct their mistakes where there is no prejudice or detriment to any of the parties. The oversight in question, Eletrosilex states, was just such an error. The Department's failure to correct the error, Eletrosilex argues, is an overly narrow interpretation which serves no purpose other than to punish Eletrosilex and increase a dumping margin for U.S. importers.

Petitioners argue that the Department made no ministerial error in denying Eletrosilex a duty drawback adjustment. The regulatory definition of "ministerial error" is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other type of unintentional error which the Secretary considers ministerial." *See* 19 CFR § 353.28(d). Furthermore, petitioners argue that the Department specifically addressed this issue in the final results. *See Fourth Review Final Results*, at 1988. Therefore, petitioners argue, the Department's denial of this adjustment was not a ministerial error.

Department's Position: We agree with petitioners that our denial of a duty drawback adjustment was not a ministerial error. It is a methodological issue, and not a proper subject for review under the ministerial errors correction process.

Comment 23

Eletrosilex argues that the Department used an incorrect amount for U.S. packing expenses. The final results analysis memorandum states that it used the packing expense that Eletrosilex submitted on its U.S. sales file. Eletrosilex argues that in the computer program the Department used a different amount.

Petitioners argue that the Department used the amount for packing that appears on Eletrosilex's U.S. sales file, and that therefore the Department did not make an error.

Department's Position: We disagree with Eletrosilex that we used the incorrect packing amount. *See* line 3805 of the final results program. We acknowledge, however, that our final results analysis memorandum incorrectly states that we used the figure that Eletrosilex submitted on its U.S. sales file. In the preliminary results, we recalculated Eletrosilex's packing figure based on the itemized packing costs Eletrosilex submitted because the figure it reported on its sales tape differed from the figure it reported in the narrative section of its questionnaire response. For our recalculations, see the September 3, 1996 Eletrosilex preliminary results analysis memorandum, p. 2. Thus, in neither the preliminary nor final results of review did we use the packing figure Eletrosilex submitted on its U.S. sales file, nor did we intend to do so. (In their comments on the preliminary results no party commented on the recalculation of packing.)

In addition to the changes made in the margin calculations in response to the above comments, we have also made the following changes to the programming in these amended final results:

- For Minasligas and Eletrosilex, we calculated U.S. imputed credit net of the ICMS tax assessed on the U.S. sale; and,
- For Eletrosilex, we used as the unit price of the U.S. sale the CIF value of the sale in U.S. dollars as given in exhibit 19 of Eletrosilex's October 25, 1995 submission.

Amended Final Results

As a result of our review, we have determined that the following margins exist for the period July 1, 1994 through June 30, 1995:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	0.37
CCM	35.23
Eletrosilex	6.68
Minasligas	43.53
RIMA	51.23

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of amended final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates published in these amended final results; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original less-than-fair-value (LTFV) investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 56 FR 26977 (June 12, 1991).

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and section 353.28(c) of the Department's regulations.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27632 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is amending its final results of review, published on January 14, 1997, of the antidumping duty order on silicon metal from Brazil, to reflect the correction of ministerial errors in those final results. These amended final results are for the review covering the period July 1, 1993 through June 30, 1994.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–2924 (Baker), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the regulations are references to the provisions as they existed on December 31, 1994.

Background

The Department published the final results of the third administrative review of the antidumping duty order on silicon metal from Brazil on January 14, 1997 (62 FR 1954) (*Third Review Final Results*), covering the period July 1, 1993 through June 30, 1994. The respondents are Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), Rima Industrial S.A. (RIMA), and Camargo Corrêa Metais (CCM). The petitioners are American Alloys, Inc., Elken Metals, Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals & Alloys.

On February 12, 1997, the petitioners filed clerical error allegations with respect to CCM and Minasligas. The same day we received clerical error allegations from respondent CCM. On February 18, 1997, we received rebuttal comments from the petitioners regarding CCM's clerical error allegations. Pursuant to the CIT's order, we are now addressing the ministerial allegations and amending our final results of the third review. *See American Silicon Technologies et al.*, v. *United States*, Slip Op. 97–114, August 18, 1997.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

Clerical Error Allegations

Comment 1

CCM argues that the Department erred in its calculation of its U.S. imputed credit expenses in three ways. First, it argues that the Department should have used CCM's "actual credit" expense, rather than an imputed figure. (The "actual credit expense" figure reported by CCM reflects the actual interest charged on its export credit line for its U.S. shipment.) CCM argues that this "actual credit expense" amount is the most accurate, transaction-specific measure of CCM's interest expense in connection with its U.S. sale. Second, CCM argues that if the Department continues to believe that it should use an imputed credit figure, it should use CCM's bill of lading date as the start of the credit period, rather than the date of shipment from CCM's factory. It bases this argument on the fact that title transfers from CCM to the U.S. purchaser on the bill of lading date. Thus, CCM argues, the credit period should begin on the bill of lading date because a credit expense cannot be incurred until CCM is no longer in possession of the merchandise. Third, CCM argues that the Department erred in its calculation of credit by not removing from the U.S. price the value of the ICMS tax (a value-added tax (VAT)) that the Brazilian government assessed on the sale. Doing so was an error, CCM argues, because in its response to comment 10 of the final results the Department stated that its practice "is to calculate imputed credit exclusive of VAT." *See Third Review Final Results* at 1961.

Petitioners argue that the Department made no clerical error in calculating an imputed figure for CCM's credit expenses or in using the date of shipment from CCM's plant as the start of the credit period. They argue that the Department specifically addressed these issues in the final results of review when it stated:

> We disagree with CCM that we should use its reported "actual expense" for U.S. credit. The Department requires that the credit expenses reflect the opportunity cost of the entire period between shipment from the plant and payment by the customer. That is not the case for CCM's reported "actual expense." The actual expense covers only a portion of the imputed credit expense period. Therefore, in these final results of review we have calculated imputed credit using the shipment date from CCM's plant as given in verification exhibit 11.

See Third Review Final Results at 1962.

Department's Position: We agree with both parties in part. We agree with petitioners that we did specifically address CCM's first two contentions in our final results of review. Thus, calculating an imputed credit figure and using the date of shipment from CCM's plant as the start of the credit period did not constitute clerical errors. However, we do agree with CCM that in the calculation of U.S. imputed credit we inadvertently included the ICMS tax assessed on the sale. We have corrected this error in these amended final results.

Comment 2

Petitioners argue that the Department made a ministerial error in the cost test for CCM. It states that the Department made a number of changes to CCM's reported costs, and that when it made these changes it gave the revised costs the variable name COP. However, when the Department performed the cost test, petitioners argue, it used the variable TOTCOP, which represents CCM's reported costs without any of the intended changes.

Department's Position: We agree, and have corrected this error in these amended final results of review.

Comment 3

Petitioners argue the Department made a clerical error in its calculation of Minasligas' G&A expenses. It argues that the Department incorrectly transcribed the G&A expenses for one month of the period of review (POR).

Department's Position: We agree, and have corrected this error in these amended final results of review.

Comment 4

Petitioners argue that the Department made a clerical error in converting Minasligas' brokerage, foreign inland freight, and warehousing expenses from Brazilian cruzeiros reais into U.S. dollars. They argue that the Department should have used the exchange rates of the dates of shipment for these expenses, rather than the exchange rates of the dates of sale.

Department's Position: We agree, and have corrected this error in these amended final results of review.

In addition to the changes made in response to the above comments, we have corrected an error in our calculations for all respondents with calculated margins. In our final results, we calculated G&A and interest expenses for the computation of COP/CV using a COM figure inclusive of VAT. In these amended final results we have calculated G&A and interest expenses using a COM figure exclusive of VAT. See our amended final results analysis memoranda for our revised calculations.

Amended Final Results of Review

As a result of this review, we have determined that the following margins exist for the period July 1, 1993 through June 30, 1994:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	61.58
CCM	35.23
Eletrosilex	38.39
Minasligas	0.00
RIMA	91.06

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of amended final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates published in the amended final results of review for the antidumping duty order on silicon metal from Brazil for the period July 1, 1994 through June 30, 1995, published concurrently with this notice; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 56 FR 26977 (June 12, 1991).

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the

disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and section 353.28(c) of the Department's regulations.

Dated: October 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27633 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

South Pacific Tuna Act of 1988; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 16, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dan Viele, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802, (562–980–4039).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, in 1987, and its annexes, schedules and implementing agreements, as amended (Treaty), authorizes U.S. tuna vessels to fish within fishing zones of a large region of the Pacific Ocean. The South Pacific Tuna Act (16 U.S.C. 973g and 973j) and U.S. implementing regulations (50 CFR 282.3 and 282.5) authorize the collection of information from participants in the Treaty fishery.

Vessel operators who wish to participate in the Treaty fishery must submit annual license and registration applications and periodic written reports of catch and unloading of fish from a licensed vessel. The information collected is submitted to the Forum Fisheries Agency (FFA) on forms supplied by the FFA through the U.S. government (National Marine Fisheries Service [NMFS]). License and registration application information is used by FFA to determine the operational capability and financial responsibility of a vessel operator interested in participating in the Treaty fishery. Information obtained from vessel catch and unloading reports is used by FFA to assess fishing effort and fishery resources in the region and to track the amount of fish caught within each Pacific island state's exclusive economic zone for fair disbursement of Treaty monies. If the information is not collected, the U.S. government will not meet its obligations under the Treaty, and the lack of fishing information will result in poor management of the fishery resource.

II. Method of Collection

The information is collected using the forms required under the Treaty.

III. Data

OMB Number: 0648–0218.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Businesses (respondents are the operators of U.S. commercial tuna purse seine vessels participating in the Treaty fishery).
Estimated Number of Respondents: Approximately 32 vessels are expected to participate in the fishery during each year the Treaty is in effect, however, the number may vary.
Estimated Time Per Response: The estimated response times for the reporting requirements are: .25 hours for a license application form; .25 hours for a registration application form; 1 hour for a catch report form; and .5 hours for an unloading log sheet.
Estimated Total Annual Burden Hours: The estimated total annual burden has decreased from 337 hours to 248 hours due to a decrease in the number of respondents and responses.
Estimated Total Annual Cost to Public: $576 for mailing costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27525 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of Hawaii and New Jersey Coastal Zone Management Programs and the Chesapeake Bay National Estuarine Research Reserve in Maryland.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The GZMA requires a continuing review of the performance of states with respect to coastal program or estuarine research reserve program implementation. Evaluation of Coastal Zone Management and Estuarine Research Reserve Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits

The Hawaii Coastal Zone Management Program site visit will be from December 8–12, 1997. One public meeting will be held during the week. This meeting is scheduled for 7:00 p.m., Thursday, December 11, 1997, at the State Capitol Auditorium (on the basement level by the parking garage entrance beneath Beretania Street entrance), Honolulu, Hawaii.

The New Jersey Coastal Zone Management Program site visit will be from December 8–12, 1997. Two public meetings will be held during the week. The meetings are scheduled for 7:30 p.m., on Tuesday, December 9, 1997, at Monmouth University, McGill Commons Clubroom, Rooms 107 & 108, Cedar Avenue, West Long Branch, New Jersey and for 7:30 p.m., on Thursday, December 11, 1997, at the Cape May City Municipal Building, Auditorium, 643 Washington Street, Cape May City, New Jersey.

The Chesapeake Bay National Estuarine Research Reserve in Maryland site visit will be from November 17–21, 1997. Two public meetings will be held during the week. The meetings are scheduled for 7:30 p.m., Tuesday, November 18, 1997, at the Patuxent River 4–H Center, 18405 Queen Anne Road, Upper Marlboro, Maryland, and for 7:30 p.m., Wednesday, November 19, 1997, at the Anita C. Leight Estuary Center, Leight Park, 700 Otter Point Road, Abingdon, Maryland.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: October 10, 1997.

Captain Evelyn Fields,

Acting Deputy Assistant, Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–27546 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.091797C]

Marine Mammals; Scientific Research Permit No. 878–1410

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Daniel F. Cowan, Professor of Pathology, The University of Texas Medical Branch, Galveston, Texas 77555–0555, has been issued a permit to import and export marine mammal specimens for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment. (see **SUPPLEMENTARY INFORMATION**)

SUPPLEMENTARY INFORMATION: On August 7, 1997, notice was published in the **Federal Register** (62 FR 44251) that a request for a scientific research permit to import and export marine mammal specimen materials had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*).

Issuance of this permit as required by the ESA is based on a finding that such permit: (1) Was applied for in good faith: (2) Will not operate to the disadvantage of the endangered species which are the subject of this permit: and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Addresses:

Documents are available in the following offices: Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2289 (508/281–9250);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070 (206/526–6150); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Dated: October 8, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–27520 Filed 10–16–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Wednesday, October 22, 1997.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 1998 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1998.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 15, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–27737 Filed 10–15–97; 2:31 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Plattsburgh Air Force Base (AFB), New York

On October 2, 1997, the Air Force issued a Record of Decision (ROD) for the Disposal and Reuse of Plattsburgh AFB, New York. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Plattsburgh AFB, filed with the Environmental Protection Agency and made available to the public on November 9, 1995.

Plattsburgh AFB closed on September 25, 1995, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. § 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others. This ROD supplements the Partial ROD (PROD) the Air Force issued on August 21, 1996, which documented a number of decisions regarding the intended disposal of Government-owned property at the base. It announced that the base would be disposed of in parcels, described the parcels, and identified the methods of disposal for some of the parcels. It also discussed possible environmental impacts and mitigations. Disposal decisions for the remainder of the former base were deferred.

This ROD addresses the methods of disposal for real property not addressed in the PROD. That portion of the former base located west of U. S. Route 9, referred to as the "New Base," for which disposal decisions were not announced in the PROD, will be made available for disposal through a public airport conveyance (approximately 3,070 acres of improved land). That portion of the base located east of U. S. Route 9, referred to as the "Old Base," for which disposal decisions were not announced in the PROD, will be made available for disposal through an Economic Development Conveyance (approximately 250 acres). Both of the disposal decisions are subject to eligible applicants submitting approvable applications by December 31, 1998. After that date, the respective property would be offered for disposal by sale. The ROD also addresses what actions, if any, the Air Force will take to avoid or mitigate adverse environmental consequences from its disposal actions, if different from those described in the PROD.

The implementation of these conversion activities and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John Carr, Program Manager, (703) 696–5546. Correspondence should be sent to: AFBCA/DA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–27607 Filed 10–16–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent to Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Tel Med Technologies (hereafter TMT), a Michigan Corporation, an exclusive license, under United States Patent Application Serial No. 08/581/795 filed in the name of Stephen M. Schmitt for a "Method of Fabricating Precise Cast or Noncast Implant-Retained Dental Restorations Using Electrical Discharge Machining."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Patent Attorney, Secretary of the Air Force, Office of the General Counsel, SAF/GCQ, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, telephone (703) 696–9037.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–27606 Filed 10–16–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Exclusive License Announcement: U.S. Army Research Laboratory

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(I), announcement is made of prospective exclusive license of U.S. Patent 5,617,031, "Buried Pipe Locator Utilizing a Change in Ground Capacitance," for the purpose of manufacturing, using, and selling a product for buried pipe and cable finder.

This invention is described as a buried pipe detection device based upon the principle of sensing of differences in the dielectric/conductive properties of the ground in the vicinity of where the pipe is disclosed. The right to this United States Patent is owned by the United States of America, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35 United States Code, the Department of the Army, as represented by the U.S. Army Research Laboratory, intends to grant a limited term exclusive license of the above mentioned patent to Charles Machine Works, Inc., 1959 West Fir Avenue, Perry, Oklahoma, represented by, General Manager, Subsite Electronics, 1950 W. Fir, Perry, Oklahoma, for buried pipe and cable finder.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197; tel: (301) 394–2952; fax (301) 394–5815; e-mail: nvaught@arl.mil.

SUPPLEMENTARY INFORMATION: Pursuant to 37 CFR 404.7(a)(1)(I), any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to the above address on or before 60 days from the publication of this notice.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–27536 Filed 10–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–84–001]

Caprock Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1997.

Take notice that on October 8, 1997, Caprock Pipeline company (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets, to be effective October 1, 1997:

Substitute Sixth Revised Sheet No. 4
Substitute Sixth Revised Sheet No. 5

Caprock states that these substitute Tariff sheets are being submitted to comply with the Commission's September 29, 1997 Order in this proceeding.

Caprock states that copies of the filing were served upon Caprock's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27562 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Technical Conference

October 10, 1997.

In the Commission's order issued July 31, 1997, the Commission held that, if necessary, the Staff may convene a technical conference to address issues raised by comments on CNG's supplemental filing concerning changes to its terms and conditions of service.

Take notice that the technical conference will be held on Friday, October 31, 1997 at 9:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27558 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–6–000]

Dauphin Island Gathering Partners; Notice of Application

October 10, 1997.

Take notice that on October 3, Dauphin Island Gathering Partners (DIGS), c/o OEDC, Inc., 1400 Woodloch Forest Drive, Suite 200, the Woodlands, Texas 77380, filed in Docket Nos. CP98–6–000 an application, pursuant to Section 7(c) of the Natural Gas Act and Section 157 of thy Commission's Regulations, for a certificate of public convenience and necessity to construct facilities to implement the second phase of a two-stage construction project to attach offshore supplies to an onshore delivery point near Coden, Louisiana. Specifically, DIGS proposes to (1) construct and operate approximately 13 miles of 24-inch pipeline extending from Alabama state waters at State Tract 73 to a proposed processing facility near Coden, Alabama, and (2) abandon a temporary interconnection located in Alabama State Tract 73 between DIGS existing facilities and DIGS' 65-mile pipeline authorized to be constructed by DIGS in Docket No. CP97–300–000, and for approval of *pro forma* tariff sheets providing for negotiated rates for both firm and interruptible services, and other tariff modifications, all as more fully set forth in the applications, which are on file with the Commission and open for public inspection.

DIGS states that, in its application filed in Docket No. CP97–300–000, it proposed to construct its system in two stages, with authorization sought in that application only for the first phase. DIGS indicated that the Phase I facilities would extend from Main Pass Block 225 to Alabama State Tract 73 (MP facilities). DIGS also stated that, pending completion of the Phase II facilities, which are being proposed in this application, the Phase I facilities would interconnect temporarily with existing facilities that extend from Block 73 onshore to Coden, Alabama (the DI facilities) where gas would be delivered to the systems of interstate pipeline companies.

DIGS estimates a construction cost of the proposed facilities of $19,368,716, which would be financed from cash on hand from the various partners of DIGS.

DIGS has included *pro forma* tariff sheets with its application as First Revised Volume No. 1 to its tariff setting forth the rate schedules, general terms and conditions and forms of service agreements that would be provided if the requested certificate is granted. It is indicated the proposed tariff would replace the Original Volume No. 1 of the tariff filed on September 2, 1997, in compliance with the June 27, 1997, order approving the Phase I facilities. It is also stated that the proposed tariff reflects separate service for the DI facility in that, after Phase II is completed, Dauphin Island's DI facilities and MP facilities will no longer be connected and will ship gas of different qualities. DIGS states that as a result, different quality specifications are set forth for the transportation of rich gas through the MP facilities and lean gas through the DI facilities.

DIGS states that the Commission's June 27, 1997, order permitted DIGS to charge and collect a recourse rate of $0.1756 for Rate Schedule FT–1 and further authorized DIGS to charge negotiated rates for service under Rate Schedules FT–2 and FT–3. It is indicated that the June 27, 1997, order stated that the Commission would review DIGS' rate methodology when DIGS filed its certificate application for the Phase II facilities. DIGS now proposes to modify its methodology to reflect that it will be operating two separate jurisdictional facilities because of different operational requirements related to the rich versus lean nature of the two gas streams and assertion of Commission jurisdiction over facilities previously operated as gathering

facilities. DIGS now proposes to establish a separate recourse rate for each facility to reflect that discrete DIGS facilities will be operated independently of each other. DIGS indicates that the recourse rate for each facility will be the applicable FT–1 rate. DIGS also proposes to continue to collect negotiated rates under Rate Schedules FT–2 and FT–3. Also, DIGS for the first time proposes negotiated rates for interruptible service.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 31, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DIGS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27552 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–53–001]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1997.

Take notice that on October 8, 1997, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to become effective October 1, 1997:

Third Revised Volume No. 1–A

Substitute Fourth Revised Sheet No. 4–D

First Revised Volume No. 1–C

Substitute Ninth Revised Sheet No. 4

KNI states that these substitute tariff sheets are being submitted to comply with the Commission's September 29, 1997 Order in this proceeding.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27561 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–9–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 10, 1997.

Take notice that on October 7, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–9–000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to abandon 10 delivery taps and establish six new delivery taps in Mobile County, Alabama, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon ten farm taps on its Index 276 transmission pipeline in Mobile County, Alabama. In addition. Koch Gateway proposes to install six taps and minor piping to tie over certain taps to its adjacent Index 300 pipeline facilities or to the facilities of Mobile Gas Service Corporation (MGS), a local distribution company. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of MGS, and that MGS concurs with the proposed abandonment and tie-over measures.

Koch Gateway states that no abandonment of service is proposed herein, and that it will continue to provide transportation service on a firm basis to these relocated taps. Koch Gateway estimates the cost of the proposed abandonment and construction activities to be $46,000 and states that the purchaser of the Index 276 pipeline will reimburse Koch Gateway for all such costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27555 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1247–015]

NORAM Energy Services, Inc.; Notice of Filing

October 10, 1997.

Take notice that on August 28, 1997, NORAM Energy Services, Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27556 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–7–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 10, 1997.

Take notice that on October 3, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–7–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade the Marquette #1A and Negaunee #1 town border stations in Marquette County, Michigan, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to upgrade the two existing delivery points by replacing the existing meters, regulators and associated piping. Northern estimates that the peak day and annual volumes to be delivered to SEMCO Energy Gas Company (SEMCO) are 9,612 MMBtu and 982,346 MMBtu at the Marquette #1A and 3,748 MMBtu and 383,046 MMBtu at the Negaunee #1. Deliveries of the estimated volumes will be made pursuant to Northern's currently effective throughput service agreements with SEMCO. Northern states that SEMCO requested the proposed delivery point upgrades to accommodate a growth of natural gas requirements in the respective areas. The total estimated cost to upgrade is $130,000.

Northern states that the proposed activity is not prohibited by its existing tariff, that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers and that the total volumes delivered after the request will not exceed total volumes authorized prior to the request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27553 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–129–006]

Questar Pipeline Company; Notice of Tariff Filing

October 8, 1997.

Take notice that on October 2, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the below-listed tariff sheets to be effective November 1, 1997:

Proposed Tariff Sheets

Original Sheet Nos. 46C, 81B and 84A
First Revised Sheet Nos. 75A, 99A, 99B, 99C and 99D
Second Revised Sheet Nos. 43, 46B, 75B, 75C, 80A, 81A and 84
Third Revised Sheet Nos. 44 and 75
Fourth Revised Sheet Nos. 45 and 46A
Sixth Revised Sheet No. 46

Questar states that the filing is being made in compliance with the September 24, 1997, OPR Director Letter Order in Docket No. RP97–129–003.

Questar states that the proposed tariff sheets implement the requirements of Order No. 587–C and comply with the Commission's September 24 directive to (1) correct a typographical error in Standard 2.3.31 and (2) revise the tariff language that incorporates GISB Standard 2.3.9.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27563 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–526–000]

Southern Natural Gas Company; Notice of Site Visit

October 10, 1997.

On October 14, 1997, beginning at 8:30 a.m., the Office of Pipeline Regulation staff will conduct a pre-certificate inspection of the facilities proposed by Southern Natural Gas Company (Southern) for its East Tennessee Expansion Project. The inspection will originate from Southern's office at 1900 Fifth Avenue North, Birmingham, Alabama, and proceed to proposed facility locations in Perry County, Alabama; Spalding, Henry, Clayton, Fulton, Floyd, and Catoosa Counties, Georgia; and Hamilton County, Tennessee.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–27550 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–5–000]

Texas Eastern Transmission Corporation; Notice of Application

October 10, 1997.

Take notice that on October 2, 1997, Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas 77056–5310 filed in Docket No. CP98–5–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act for permission and approval for TETCO to construct and operate certain replacement facilities in Harrison County, Texas and to abandon by removal certain facilities being replaced all as more fully set forth in the application on file with the Commission and open to public inspection.

TETCO states that it has been informed by Texas Eastman, Division of Eastman Chemical Company (Eastman), an industrial chemical plant and right-of-way grantor, of Eastman's proposed rail yard expansion in Harrison County, Texas, which is being undertaken to alleviate capacity restrictions in Eastman's operations. TETCO asserts that Eastman has requested that TETCO expedite the relocation and lowering of TETCO's 20-inch Line No. 13, which crosses Eastman's property. TETCO indicates that the replacement will be offset 35 feet to the northeast of the existing pipeline and approximately 3.51 acres of land and one landowner, in addition to Eastman, are to be affected by the proposed relocation.

Specifically, TETCO proposes to replace, construct, own and operate approximately 598 feet of 20-inch mainline in Harrison County, Texas and to abandon by removal the existing 20-inch pipeline segments to be replaced. TETCO estimates the total capital cost of the replacement to be $701,000 and states that it will be reimbursed 100% for the project by Eastman.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 31, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TETCO to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27551 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

October 10, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, October 28, 1997, at 1:30 p.m. and Wednesday, October 29, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purposes of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kathleen M. Dias at (202) 208-0524 or Michael D. Cotleur at (202) 208-1076.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27557 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–8–000]

Transwestern Pipeline Company; Notice of Request Under Blanket Authorization

October 10, 1997.

Take notice that on October 3, 1997, Transwestern Pipeline Company (Transwestern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP98–8–000 a request pursuant to §§ 157.205 and 147.212 of the Commission's Regulations (18 CFR 157.205 and 157.212) under the Natural Gas Act (NGA) for authorization to operate existing facilities in Coconino County, Arizona, as a delivery point under Transwestern's blanket certificate issued in Docket No. CP82–534–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern proposes to utilize the facilities for deliveries of natural gas to Citizens Utility Company (CUC), which has requested the delivery point to serve residential customers. It is asserted that Transwestern will use the facilities to deliver up to 250 MMBtu equivalent of gas on a peak day to CUC and 36,500 MMBtu on an annual basis. It is asserted that the proposal is not prohibited by Transwestern's existing tariff and can be accomplished without detriment or disadvantage to Transwestern's other customers. It is further asserted that the total volumes delivered to CUC to not exceed the volumes authorized prior to the request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27554 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–52–000]

Western Gas Interstate Company; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1997.

Take notice that on September 26, 1997, Western Gas Interstate Company (WGI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet no. 10, to be effective October 1, 1997.

WGI states that the purpose of this filing is to increase its Annual Charge Adjustment (ACA) unit rate from $0.0020 to $0.0022. The ACA rate is designed to recover the annual charge assessed by the Commission pursuant to Part 382 of the Regulations.

WGI states that copies of the filing were served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27560 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4691–000, et al.]

Montaup Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER97–4691–000]

Take notice that on September 19, 1997, Montaup Electric Company (Montaup), tendered for filing amendments to its open access transmission tariff to provide for (a) pass-through of any NEPOOL ancillary services charges not billed directly to the customer and (b) a formula for determining transmission revenue requirements. Montaup requests waiver of the notice requirements so that the amendments may become effective July 1, 1997.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Company

[Docket No. ER97–4692–000]

Take notice that on September 22, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated September 16, 1997, with Market Responsive Energy, Inc. (MREI), under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds MREI as an eligible customer under the Tariff.

PP&L requests an effective date of September 22, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to MREI and to the Pennsylvania Public Utility Commission.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4693–000]

Take notice that on September 22, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and Sonat Power Marketing L.P., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of September 4, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company

[Docket No. ER97–4694–000]

Take notice that on September 22, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated September 16, 1997, with Williams Energy Services Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Williams Energy Services Co., as a customer under the Tariff. DLC requests an effective date of September 16, 1997, for the Service Agreement.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company

[Docket No. ER97–4695–000]

Take notice that on September 22, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated September 16, 1997, with MidCon Power Services Corp., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds MidCon Power Services Corp., as a customer under the Tariff. DLC requests an effective date of September 16, 1997, for the Service Agreement.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER97–4696–000]

Take notice that on September 22, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 18, 1997, between KCPL Transmission Services and KCPL Power Sales & Services. KCPL proposes an effective date of September 18, 1997, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4697–000]

Take notice that on September 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Central Hudson Gas and Electric Corp., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Central Hudson Gas and Electric Corp.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–4698–000]

Take notice that on September 22, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 16, 1997, with Equitable Power Services Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Equitable Power Services Co., as a customer under the Tariff. DLC requests an effective date of September 16, 1997, for the Service Agreement.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–4699–000]

Take notice that on September 22, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 4, 1997, with e prime, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds e prime, Inc., as a customer under the Tariff. DLC requests an effective date of September 4, 1997, for the Service Agreement.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–4700–000]

Take notice that on September 22, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 4, 1997, with e prime, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds e prime, Inc., as a customer under the Tariff. DLC requests an effective date of September 4, 1997, for the Service Agreement.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Sierra Pacific Power Company

[Docket No. ER97–4701–000]

Take notice that on September 22, 1997, Sierra Pacific Power Company (Sierra), tendered for filing a Service Agreement (Service Agreement) with ConAgra Energy Services, Inc., for Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Sierra filed the executed Service Agreement with the Commission in compliance with Section 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit and effective date of August 25, 1997, for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER97–4702–000]

Take notice that on September 22, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corporation

[Docket No. ER97–4703–000]

Take notice that on September 22, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement between Tennessee Valley Authority and Florida Power for service under Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective September 9, 1997.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Rochester Gas and Electric Corporation

[Docket No. ER97–4704–000]

Take notice that on September 22, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Virginia Electric and Power Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 5, 1997, for the Virginia Electric and Power Company Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER97–4705–000]

Take notice that on September 22, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the New Energy Ventures Inc.(Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 15, 1997, for the New Energy Ventures Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27586 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to License

October 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment to License.

b. Project No: 2833–057.

c. Date Filed: September 3, 1997.

d. Applicant: Public Utility District No. 1 of Lewis County.

e. Name of Project: Cowlitz Falls Hydroelectric Project.

f. Location: The project is located on the Cowlitz River just below its confluence with the Cispus River in Lewis County, Washington.

g. Filed Pursuant to: 18 CFR § 4.200.

h. Applicant Contact: Mr. Gary Kalish, Public Utility District No. 1 of Lewis County, P.O. Box 330, Chehalis, WA 98532, (360) 740–2411.

i. FERC Contact: Steve Hocking (202) 219–2656.

j. Comment Date: December 5, 1997.

K. Description of Amendment: Public Utility District No. 1 of Lewis County (licensee) filed an application to amend its approved fish and wildlife mitigation plan for the Cowlitz Falls Hydroelectric Project. The licensee requests Commission approval of a land-swap already approved by the Washington Department of Fish and Wildlife. The licensee proposes substituting land in the newly designated Kiona Wildlife Management Unit (80.6 acres) for land in Wildlife Management Units No. 7 and 8 (37 acres total) that must be acquired pursuant to its approved fish and wildlife mitigation plan. The application would amend the plan with other minor changes as well.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27559 Filed 10–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 06, 1997 Through October 10, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970390, Draft Supplement, USA, MS, Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Updated Information, Final Site Selection Authorization for Implementation of the Proposed G.V. (Sonny) Montgomery Ranges, Special Use Permit, DeSoto National Forest, Forrest, George and Perry Counties, MS, Due: December 01, 1997, Contact: Col. Parker Hills (601) 973–6349.

EIS No. 970391, Draft EIS, FHW, NY, US–20/Broadway (Transit Road to Lancaster East Village Line) Reconstruction, Funding, COE Section 10 and 404 Permit, in the Villages of Depew and Lancaster, Erie County, NY, Due: December 12, 1997, Contact: Harold J. Brown) (518) 472–3616.

EIS No. 970392, Final EIS, BOP, KY, United States Penitentiary Martin County, Construction and Operation, Possible Sites, Bizwell and Honey Branch Sites, located in Martin and Johnson Counties, KY, Due: November 17, 1997, Contact: David J. Dorworth (202) 514–6470.

EIS No. 970393, Final EIS, IBR, ND, Arrowwood National Wildlife Refuge, Implementation, Water Management Capability to Mitigate for Past, Present and Future Impacts of Jamestown Reservoir, Stutsman and Foster Counties, ND, Due: November 17, 1997, Contact: Greg Hiemenz (701) 250–4242 Ext. 361.

EIS No. 970394, Draft EIS, AFS, CA, Liberty Forest Health Improvement Project, Implementation, Tahoe National Forests, Sierraville Ranger District, Sierra and Nevada Counties, CA, Due: December 01, 1997, Contact: Phil Horning (916) 478–6210.

EIS No. 970395, Final EIS, NPS, AZ, Organ Pipe Cactus National Monument General Management Plan and Development Concept Plan Implementation, Portion of the Sonoran Desert, Pima County, AZ, Due: November 17, 1997, Contact: Dan Olson (415) 744–3968.

EIS No. 970396, Final EIS, COE, MD, WV, Jennings Randolph Lake 1997 Master Plan Update and Integrated Programmatic EIS—Use and Development of Natural and Constructed Resource, Garrett County, MD and Mineral County, WV, Due: November 18, 1997, Contact: Ms. Heather Wells (410) 962–5174.

EIS No. 970397, Final EIS, AFS, NH, Waterville Valley Ski Resort Project, Development of Snowmaking Water Impoundments Project, Special-Use-Permits, Dredge and Fill Permit and COE Section 404 Permit, White Mountain National Forest, Pemigewasset Ranger District, Town of Waterville Valley, Grafton County, NH, Due: November 17, 1997, Contact: Beth LeClair (802) 767–4261.

EIS No. 970398, Final Supplement, EPA, TX, South Hallsville Surface Lignite No. 1 Mine Expansion, Referred to Herein as South Marshall Project Area, (Previously Known as Henry W. Pirkey Power Plant and South Hallsville No. 1 Mine Project), Updated Information NPDES and COE Section 404 Permits, Sabine River, Harrison County, TX, Due: November 17, 1997, Contact: Joe Swick (214) 665–7456.

EIS No. 970399, Final EIS, AFS, UT, High Uintas Wilderness Forest Plan Amendment, Implementation, Ashley and Wasatch-Cache National Forests, Duchesne and Summit Counties, UT, Due: November 17, 1997, Contact: Laura Jo West (801) 789–1181.

EIS No. 970400, Draft EIS, COE, CA, South Sacramento County Streams Investigation, Proposed to Increase Flood Protection, Non-Federal Sponsor, Sacramento Waste Water Treatment Plant and along portions of Morrison, Elder, Unionhouse and Florin Creeks, Sacramento County, CA, Due: December 01, 1997, Contact: Jane Rinck (916) 557–6715.

Dated: October 14, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–27627 Filed 10–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 15, 1997 through September 20, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–J65276–CO Rating EC2, Dome Peak Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Eagle Ranger District, Glenwood Spring, Eagle and Garfield Counties, CO.

Summary: EPA expressed environmental concerned about potential sedimentation and water quality impacts. EPA requested data clarifying potential for impacts and information related to helicopter yarding and wildlife impacts.

ERP No. D–AFS–K65272–CA Rating EC2, Chico Genetic Resource Center for Pest Management Program, Implementation, Mendocino National Forest, Willow, Butte County, CA.

Summary: EPA expressed environmental concern about data gaps in the DEIS's analysis of water quality impacts.

ERP No. D–AFS–K65273–AZ Rating LO, Grand Canyon/Tusayan Growth Area Improvements, General Management Plan (GMP), Special-Use-Permit, Approvals and Licenses Issuance, Coconino County, AZ.

Summary: EPA expressed a lack of objections and commended the Forest Service for its excellent analysis of issues related to the expansion of lodging and related services.

ERP No. D-BLM-K67045-NV Rating EC2, Florida Canyon Mine Expansion Project and Comprehensive Reclamation Plan, Construction and Operation of New Facilities and Expansion of Existing Gold Mining Operations in Imlay Mining District, Plan-of-Operation Approval and Right-of-Way Permit Issuance, Pershing County, NV.

Summary: EPA expressed environmental concerns because the Proposed Alternative would disturb 143 acres more than another alternative assessed in the DEIS, and the DEIS did not clearly indicate which action alternative is the least environmentally damaging to aquatic resources under Clean Water Act Section 404. EPA also expressed concerns regarding how the site was geochemically characterized and offered recommendations for facility design and additional monitoring.

ERP No. D-DOA-G31002-TX Rating LO, Bexar-Medina-Atascosa Counties Water Conservation Plan, Renovation and Installation, Funding, Medina Lake, Bexar, Medina and Atascosa Counties, TX.

Sumary: EPA had no objection to the selection of the lead agency's preferred alternative as described in the draft EIS.

ERP No. D-DOE-C06013-NY Rating LO, Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Implementation, Located at the Knolls Atomic Power Laboratory Kesselring Site near West Milton, Saratoga County, NY.

Summary: EPA had no objection to the action as proposed.

ERP No. D–IBR–K28018–CA Rating EC2, Central Valley Project, Municipal and Industrial Water Supply Contracts, Sacramento County Water Agency and San Juan Water District, City of Folsom, Sacramento County, CA.

Summary: EPA expressed environmental concerns with the identified additional adverse cumulative impacts of the proposed new water supply diversions, and urged selection of diversion points on the Sacramento River below the confluence with the American River or as far downstream on the American River as feasible.

EPA expressed support for water conservation, water pricing strategies, water reclamation, conjunctive use, and other demand reduction measures as means to achieving additional water supply. EPA suggested a more aggressive water conservation approach as part of the proposed action, integration of other demand reduction measures, and continued pursuit of conservation alternatives (e.g. metering, water reclamation), whether or not new contract water is provided.

ERP No. D–ICC–G53007–LA Rating EC2, Kansas City Southern Railway (KCS) Construction and Operation to Connect the Geismar Industrial Area to KCS' Mainline near Sorrento, Construction Exemption Approval, Ascension Parish, LA.

Summary: EPA expressed environmental concerns for the lead agency's preferred alternative and requests additional information, environmental justice alternatives analysis, and cumulative impacts assessment.

Final EISs

ERP No. F–FHW–E40759–AL Birmingham Northern Beltline Project, Construction, I–59/20 west to I–59 northeast in the City of Birmingham, Funding and Possible COE Section 404 Permit, Jefferson County, AL.

Summary: EPA's review revealed that all alternatives will have major impacts on environmental resources in the highway corridor. EPA recommends that the shortest alternative, "D", be reconsidered with modification.

ERP No. F–FHW–J40212–CO CO–82 Highway Transportation Project, Improvements to "Entrance to Aspen", Funding and COE Section 404 Permit, City of Aspen, Pitkin County, CO.

Summary: EPA's review has not identified any potential environmental impacts requiring substantive changes to the Preferred Alternative.

ERP No. F–FTA–C40137–NY Wassaic Extension Project, Expand Metro-North, Funding and Right-of-Way, Dutchess and Litchfield Counties, NY.

Summary: EPA believed that the proposed project would not result in significant adverse environmental impacts, and therefore, has no objections to its implementation.

Dated: October 14, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–27628 Filed 10–16–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5910–5]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Council Meeting, and the CSI Petroleum Refining and Printing Sector Subcommittee Meetings; open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the CSI Council Meeting and the CSI Petroleum Refining and Printing Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at all three meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the three announcements below.

(1) Common Sense Initiative Council Meeting—November 3 and 4, 1997

The Common Sense Initiative Council will hold an open meeting on Monday, November 3, 1997 from 1:00 p.m. EST to 6:00 p.m. EST, and on Tuesday, November 4, 1997 from 8:30 a.m. to 3:00 p.m. EST. The meeting will be held at the George Washington University Club and Conference Center, 800 21st Street, N. W., Washington, D.C. 20062, telephone (202) 994–6611.

The Council Agenda will focus on a variety of topics including: A report from the Reinventing Environment Information (REI) Council workgroup on the Agency's draft Implementation Plan; an update on the Center for Environmental Information and Statistics; a request for approval of the Metal Finishing Sector Subcommittee's Strategic Goals 2000 Program; presentation of the Print Sector Subcommittee's Comprehensive Strategy for an Alternative Multi-Media Flexible Permit System; an Agency report on the status of the Iron and Steel, Auto, and Metal Finishing Sector Subcommittees' recommendations that were approved and forwarded to EPA at the July Council meeting; Sector Guidance and a strategic approach and work plan for the Council; as well as documentation of the Computer and Electronics Sector Subcommittee's Consolidated Uniform Report on the Environment (CURE) Stakeholder Needs Assessment, and the final white paper on Consensus Decision-making Principles and Applications in CSI.

For further information concerning this Common Sense Initiative Council meeting, contact Kathleen Bailey, DFO on (202) 260–7417, or E-mail: bailey.kathleen@epamail.epa.gov.

(2) Petroleum Refining Sector Subcommittee Meeting—November 4–5, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Petroleum Refining Sector Subcommittee on November 4 and 5, 1997. Work Group meetings will be held from 9:00 a.m. EST to 12:00 noon EST on Tuesday, November 4. The full Subcommittee will meet from approximately 2:00 p.m. EST until 5:00 p.m. EST on Tuesday, November 4, and from approximately 8:00 a.m. EST until 4:00 p.m. EST on Wednesday, November 5. The meeting

will be held at the Madison Hotel, 15th and M Streets, NW, Washington, DC 20005. The hotel telephone number is 202–862–1600.

The Subcommittee meeting agenda includes a discussion of compliance issues for the petroleum refining industry, a presentation on accidents and worker safety issues, and an update on the status of the One Stop Reporting and Public Access Project and the Equipment Leaks Project. The Subcommittee also plans to discuss potential new project ideas. A public comment period has been scheduled from approximately 2:00 p.m. EST until 3:00 p.m. EST on Wednesday, November 5, 1997.

For further information concerning this meeting of the Petroleum Refining Sector Subcommittee, please contact either Craig Weeks, Designated Federal Officer (DFO), at US EPA Region 6 (6EN), 1445 Ross Avenue, Dallas, TX 75202–2733, by telephone at 214–665–7505 or E-mail at weeks.craig@epamail.epa.gov or Steve Souders, Alternate DFO, at US EPA by mail (5306W), 401 M Street, SW, Washington, DC 20460, by telephone at 703–308–8431 or E-mail at souders.steve@epamail.epa.gov.

(3) Printing Sector Subcommittee—November 6, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Printing Sector Subcommittee on Thursday, November 6, 1997, from approximately 1:00 p.m. EST until 4:00 p.m. EST. The New York City Education Project Team (NYCEP) and the Alternative Multi-Media Flexible Permit Project Team (MFP) will hold meetings the previous day, Wednesday, November 5, 1997, from approximately 9:00 a.m. EST until 5:00 p.m. EST, and if needed on November 6 from 1:30 p.m. EST to 3:30 p.m. EST. The Meetings will be held at the Washington National Airport Hilton, located at 2399 Jefferson Davis Highway in Crystal City, VA, Telephone number (703) 418–6800.

The Printing Sector Subcommittee will hear reports from its two project teams, the Alternative Multi media Flexible Permit Project Team and the New York City Education Project Team.

The Alternative Multi media Flexible Permit Project Team will report on its presentation to the Common Sense Initiative Council planned for November 4. This team is approaching the final stages of crafting an alternative permit system that leads to reduced emissions, greater operational flexibility, enhanced public involvement, and lower transaction costs. The New York City Education Project Team will report on progress implementing its model outreach program. NYCEP coordinates state and local technical assistance providers and community interest groups as partners in promoting environmentally sound printing practices to neighborhood printers.

For further information concerning meeting times and agenda of this Printing Sector Subcommittee meeting, please contact either Frank Finamore, Designated Federal Officer (DFO), at EPA, by telephone on (202) 564–7039, or Mick Kulik, Alternate DFO, at EPA Region 3 in Philadelphia, PA on (215) 566–5337.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: October 14, 1997.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 97–27623 Filed 10–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5910–4]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement (Purchaser Agreement) associated with the Kane and Lombard Superfund Site in Baltimore, Maryland was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against Double Eagle Enterprises, Inc. (Purchaser). The settlement would require the Purchaser to, among other things, pay $1500.00 within thirty (30) days of the effective date of the Purchaser Agreement to the EPA Hazardous Substances Superfund and abide by certain land use restrictions intended to protect the integrity of surface and subsurface structures installed by EPA in accordance with a CERCLA Record of Decision issued by EPA in September 1987.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before November 17, 1997.

Availability

The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Kane and Lombard Superfund Site Prospective Purchaser Agreement" and "EPA Docket No. III–97–82-DC," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew S. Goldman (3RC21), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 566–2487.

Dated: October 9, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–27618 Filed 10–16–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

October 9, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 16, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0182.

Title: Section 73.1620, Program Tests.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 1,162.

Estimated Hour Per Response: 1–5 hours (1 hour for Section 73.1620(a)–(f); 5 hours for Section 73.1620(g)).

Frequency of Response: On occasion filing requirement.

Estimated Total Annual Burden: 1,226 hours.

Needs and Uses: Section 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests. An application for license must be filed within 10 days of this notification. Section 73.1620(a)(2) requires a permittee of an AM or FM station with a directional antenna to file a request for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license. Section 73.1620(f) requires licensees of UHF TV stations, assigned to the same allocated channel which a 1000 watt UHF translator station is authorized to use, to notify the licensee of the translator station at least 10 days prior to commencing or resuming operation and certify to the FCC that such advance notice has been given. Section 73.1620(g) requires permittees to report any deviation from their promises, if any, in their application for license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests. The notification in Section 73.1620(a) alerts the Commission that construction of a station has been completed and that the station is broadcasting program material. The notification in Section 73.1620(f) alerts the UHF translator station that the potential of interference exists. The report in Section 73.1620(g) stating deviations are necessary to eliminate possible abuses of the FCC's processes and to ensure that comparative promises relating to service to the public are not inflated.

OMB Approval No.: 3060–0187.

Title: Section 73.3594, Local Public Notice of Designation for Hearing.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 14.

Estimated Hour Per Response: 3 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion filing requirement.

Cost to Respondents: $24,000.

Estimated Total Annual Burden: 28 hours.

Needs and Uses: Section 73.3594 requires that applicants of any AM, FM or TV broadcast station designated for hearing must give notice of such designation. Section 73.3594(a) requires that this notice be given in a daily newspaper of general circulation published in the community in which the station is or will be located. This notice must be published twice a week for two consecutive weeks. Section 73.3594(b) requires applicants for modification, assignment, transfer or renewal of an operating broadcast station to give notice over the broadcast station in addition to publishing the notice in a daily newspaper. Section 73.3594(g) requires that applicants file a statement with the FCC setting forth information regarding the publication or broadcast. This notice gives interested parties an opportunity to respond.

OMB Approval No.: 3060–0190.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 363.

Estimated Hour Per Response: 2 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion filing requirement.

Cost to Respondents: $47,375.

Estimated Total Annual Burden: 363 hours.

Needs and Uses: Section 73.3544 sets forth the filing procedures for broadcast licensees to obtain a modified station license when prior authority is not required to make changes to the station. Licensees are required to notify the FCC in writing when there is a change in the name of the licensee where there is no change in ownership or control. An informal application (written request) may be filed by licensees: (1) correcting the routing instructions and description of an AM station directional antenna system field monitoring point, when that point is not changed; (2) changing the type of AM station directional antenna monitor; (3) changing the location of the station main studio; or (4) changing the location of a remote control point of an AM or FM station.

TV or FM licensees changing the type of transmitting antenna or output power

of their transmitter must file the appropriate license application form (FCC Form 302–FM/302–TV, OMB Control Numbers 3060–0506/0029) with the FCC.

The data is used by FCC staff to ensure changes are in accordance with FCC rules and regulations and to issue a modified station license.

OMB Approval No.: 3060–0488.

Title: Section 73.30, Petition for Authorization of an Allotment in the 1605–1705 kHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1.

Estimated Hour Per Response: 2 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion filing requirement.

Cost to Respondents: $200.

Estimated Total Annual Burden: 1 hour.

Needs and Uses: Section 73.30(a) requires any party interested in applying for an AM broadcast station to be operated on one of the ten channels in the 1605–1705 kHz band must first file a petition for the establishment of an allotment to its proposed community of service. Each petition must include the following information: (1) name of community for which allotment is sought; (2) station call letters; (3) frequency of its licensed operation; (4) whether operation with stereo is proposed. The data is used by FCC staff to determine whether applicant meets basic technical requirements to migrate to the expanded band.

OMB Approval No.: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 285.

Estimated Hour Per Response: 6–16 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).

Frequency of Response: On occasion filing requirement.

Cost to Respondents: $428,125.

Estimated Total Annual Burden: 285 hours.

Needs and Uses: Section 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed.

Section 73.37(f) requires applicants seeking facilities modification that would result in spacings that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model 1 facilities.

The data is used by FCC staff to ensure that objectionable interference will not be caused to other authorized AM stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27516 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 10, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 17, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Long Form Application for Authorization in the Auctionable Services.

Form Number: FCC Form 601.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 43,719.

Estimated Time Per Response: 2 hours.

Cost to Respondents: $23,224,619.

Total Annual Burden: 21,860 hours.

Needs and Uses: FCC Form 601 is a general application form for use by winners of FCC auctions and will be used as part of the Universal Licensing System. FCC Form 601 consists of a main form and a series of schedules containing technical information. Auction winning respondents will be required to submit FCC Form 601 electronically. There are no application fees, electronic filing fees or frequency coordination costs associated with filing this form.

OMB Approval Number: 3060–XXXX.

Title: Ownership Form.

Form Number: FCC Form 602.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 10,000.

Estimated Time Per Response: 2 hours.

Cost to Respondents: $4,656,750.

Total Annual Burden: 5,000 hours.

Needs and Uses: FCC Form 602 will serve as a cover sheet to the ownership package and be used in addition to the extensive ownership collection information required by rule for each radio service. It will be used in conjunction with new applications, Transfers of Control, Assignments of Authorizations, and any other ownership information updates required by rule. While the Commission is currently seeking approval only for the forementioned purpose, the Commission also anticipates continued use of FCC Form 602 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to replace other existing FCC forms/methods of collecting ownership information. FCC Form 602 is a new collection that eliminates lengthy ownership information being filed each time an applicant files. It will be a one-time annual filing of information for only the lone real party of interest that controls the license(s).

OMB Approval Number: 3060–XXXX.

Title: Application for Assignment of Authorization for Auctionable Services.

Form Number: FCC Form 603.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 2,000.

Estimated Time Per Response: 4 hours.

Cost to Respondents: $1,952,450.

Total Annual Burden: 1,000 hours.

Needs and Uses: FCC Form 603 will be used to file for Assignment of Authorization. It will consist of a main form and a section to detail the call signs. While the Commission is currently seeking approval for use of the form for only auctionable service purposes, the Commission also anticipates continued use of FCC Form 603 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to replace other existing FCC forms/methods of collecting assignment of authorization information. This assignment form is a consolidated form and will be utilized as part of the Universal Licensing System (ULS) currently under development. The goal of producing a consolidated form is to create a form with a consistent "look and feel" that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated assignment form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured on its own form or schedule.

OMB Approval Number: 3060–XXXX.

Title: Application for Transfer of Control for Auctionable Services.

Form Number: FCC Form 604.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,500.

Estimated Time Per Response: 3 hours.

Cost to Respondents: $1,164,338.

Total Annual Burden: 750 hours.

Needs and Uses: FCC Form 604 will be used to file for Transfer of Control for auctionable services. It will consist of a main form and a section to detail the transferred call signs. The form will only be filed by the licensee (transferor) on behalf of the transferor and the transferee. This transfer of control form is a consolidated form and will be utilized as part of the Universal Licensing System currently under development. Auctionable services respondents will be required to submit FCC Form 604 electronically. There are no application fees or electronic filing fees associated with filing of this form.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–27634 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 97–2182]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

October 10, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9 AM to 4:30 PM. Interested persons may file comments on or before December 12, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–38.

Applicant: Department of Health and Human Services, State of North Carolina.

File No: TRS–97–43.

Applicant: California Public Utiliities Commission, State of California.

File No. TRS–97–47.

Applicant: D.C. Public Service Commission, District of Columbia.

File No. TRS–97–48.

Applicant: Public Utility Commission of Texas, State of Texas.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27511 Filed 10–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as

required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Occasional Qualitative Surveys."

DATES: Comments must be submitted on or before December 16, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst, (202) 898–7453, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Occasional Qualitative Surveys." Comments may be hand-delivered to Room F–4001B, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Occasional Qualitative Surveys.
OMB Number: New collection.
Frequency of Response: Occasional.
Affected Public: Business institutions and other federal and government agencies.
Estimated Number of Respondents: 5,000.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden: 5,000 hours.
General Description of Collection: The collection involves the occasional use of qualitative surveys to gather anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), and similar concerns.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 14th day of October, 1997.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

[FR Doc. 97–27612 Filed 10–16–97; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Community Reinvestment Act; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), the FDIC is rescinding its Statement of Policy on the "Community Reinvestment Act." The statement of policy has been rendered obsolete by the amendment of part 345 (Community Reinvestment) of the FDIC's regulations, and thus is being rescinded. This action furthers the goals of section 303(a) of CDRIA by removing inconsistencies and outmoded and duplicative requirements from the FDIC's supervisory policies.

DATES: The statement of policy is rescinded effective October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Louise N. Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs (202–942–3599), or Ann Hume Loikow, Counsel, Legal Division (202–898–3796), FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and policy statements pursuant to section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (12 U.S.C. 4803(a)), which requires the FDIC, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System (agencies) to streamline and modify their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the agencies to remove inconsistencies and outmoded and duplicative requirements.

The FDIC adopted jointly with the agencies a new part 345 to the FDIC's rules and regulations, entitled "Community Reinvestment," to implement the Community Reinvestment Act of 1977 (CRA), which was published in the **Federal Register** on October 12, 1978 (43 FR 47144). On March 31, 1980, the FDIC Board of Directors adopted a Statement of Policy on the Community Reinvestment Act (Statement of Policy) which discussed the act and regulations, how FDIC examiners would assess a bank's record of meeting community credit needs, and how the FDIC would take such assessment into account when evaluating various types of applications for deposit facilities.

On May 4, 1995, the FDIC published jointly with the agencies, significant amendments to part 345 of the FDIC's rules and regulations (60 FR 22156). Subsequent technical amendments were made to part 345 and published in the **Federal Register** on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362), respectively. Part 345 of the FDIC's rules and regulations, as amended, reduces unnecessary regulatory burden and replaces the 12 assessment factors contained in the 1979 rule and Statement of Policy with a more performance-based evaluation process to assess a bank's record in meeting the credit needs of its community, including low- and moderate-income neighborhoods. The new regulation was phased in over a two-year period beginning July 1, 1995. On July 1, 1997, all remaining portions of the rule became effective and all insured state nonmember banks are now evaluated under the new CRA performance tests.

As part of the Corporation's regulatory review project required by section 303(a) of CDRIA, the Board has reviewed the Statement of Policy and determined that the supervisory guidance contained in it has been rendered obsolete by the amendment of part 345 and should be rescinded. Furthermore, the Board concludes that rescission of this Statement of Policy would further the goal of section 303(a) of CDRIA of removing inconsistencies and outmoded and duplicative requirements.

Rescission of this Statement of Policy does not reflect any substantive change in the FDIC's supervisory attitude toward insured state nonmember banks' compliance with the Community Reinvestment Act and part 345.

For the foregoing reasons, the Statement of Policy is hereby rescinded.

By order of the Board of Directors.

Dated at Washington, D.C. this 6th day of October, 1997.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

[FR Doc. 97–27518 Filed 10–16–97; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, October 14, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of John F. Downey, acting in the place and stead of Director Nichols P. Retsinas (Director, Office of Thrift Supervision), seconded by Julie L. Williams, acting in the place and stead of Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Joseph H. Neely (Appointive), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: October 14, 1997.

Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.

[FR Doc. 97–27690 Filed 10–15–97; 10:14 am]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–201036.
Title: Port of New Orleans/Maritrend, Inc. Lease Agreement.
Parties:
The Board of Commissioners of the Port of New Orleans ("Port")
Maritrend, Inc. ("Maritrend")

Synopsis: The proposed Agreement authorities the Port to lease to Maritrend 9.33 acres, and improvements thereon, at the Port's Alabo Street facilities for a period of one year, with the option to extend the lease for two additional renewal periods of one year each.

Dated: October 10, 1997.

By Order of the Federal Maritime Commission.
Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 97–27533 Filed 10–16–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have file with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Esprit International Shipping Combined Transport, Inc., 7940 E. Garvey Avenue, Suite 203, Rosemead, CA 91770, *Officers:* Amy Choi, President, Tracy Cheuk-See Chan, Vice President

Bestway Shipping, Inc., 269 E. Redondo Beach Blvd., Gardena, CA 90248, *Officer:* Harry Hyungsuk Choi, President

III Star Freight Services, Inc., 140 Eastern Avenue, Chelsea, MA 02150, *Officers:* Mikhail Kravetskil, President, Joseph A. Scali, Treasurer

Asian Pacific Logistics, 23202 Audrey Avenue, Torrance, CA 90505, Paul Yoon, Sole Proprietor

Unlimited Logistics, 2395 Giltner Road, Smithfield, KY 40068, Martha A. Works

Pacific Shipping Company, 1011 Klickitat Way, Suite 203, Seattle, WA 98134, *Officers:* Kim Knise, President, James G. Rosselot, Vice President

Maromar International Freight Forwarders Inc., 8262 N.W. 14th Street, Miami, FL 33126, *Officers:* Maricel Barth, President, Marta Barth, Operations Director

Guardian Moving and Storage Co., Inc. d/b/a Guardian International Forwarders, 1901 Light Street, Baltimore, MD 21202, *Officers:* Eugene W. Smoot, President, Mario S. Smoot, Vice President

Global Marine Services, Inc., 2085 Talleyrand Avenue, Building "A", P.O. Box 2239, Jacksonville, FL 32206, *Officers:* Carlton H. Spence, Director, Jeffrey C. Spence, Director/President.

Dated: October 10, 1997.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 97–27534 Filed 10–16–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices

of the Board of Governors. Comments must be received not later than October 30, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Billy Miller Smith, Hindman, Kentucky; Marcia Lawrence, Lexington, Kentucky; Valerie Smith Bartley, Pikeville, Kentucky; Tracey Smith Weinberg, Hindman, Kentucky; Carew Smith Barley, Pikeville, Kentucky; Benjamin Lee Smith, Archbold, Ohio; Stuart Granby Smith, Leburn, Kentucky; Dirk Smith Trust, Hindman, Kentucky; William Dirk Smith, Hindman, Kentucky; William Samuel Smith, Archbold, Ohio; National City Bank, Trustee for U/W Philip Lawrence, Cleveland, Ohio, collectively referred to as the Smith Family; to acquire voting shares of Hindman Bancshares, Inc., Hindman, Kentucky, and thereby indirectly Hindman Bank, Hindman, Kentucky.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wendell A. Jacobson, Fountain Green, Utah; to acquire additional voting shares of Bank of Ephraim, Ephraim, Utah.

Board of Governors of the Federal Reserve System, October 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27510 Filed 10-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-26546) published on page 52339 of the issue for Tuesday, October 7, 1997.

Under the Federal Reserve Bank of Dallas heading, the entry for Amador Merger Corporation, Las Cruces, New Mexico, is revised to read as follows:

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Amador Merger Corporation, Las Cruces, New Mexico; to become a bank holding company by acquiring 100 percent of the Amador Bancshares, Inc., Las Cruces, New Mexico, and thereby indirectly acquire Citizens Bank of Las Cruces, Las Cruces, New Mexico.

Comments on this application must be received by October 31, 1997.

Board of Governors of the Federal Reserve System, October 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27508 Filed 10-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fidelity Ban Corporation, Independence, Iowa; to acquire 100 percent of the voting shares of Benton County Savings Bank, Norway, Iowa.

Board of Governors of the Federal Reserve System, October 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-27509 Filed 10-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 22, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-27702 Filed 10-15-97; 11:34 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Submission for OMB review; comment request.

SUMMARY: The FTC has submitted information collection requirements associated with the Alternative Fuel Rule, 16 CFR part 309, to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). On July 25, 1997, the FTC solicited comments from the public concerning these information collection requirements, and provided the information specified in 5 CFR 1320.5(a)(1)(iv). 62 FR 40089. No comments were received. The current OMB clearance for these requirements expires on November 30, 1997. The FTC has requested that OMB extend the PRA clearance through November 30, 2000.

DATES: Comments must be filed by November 17, 1997.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20530, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission. Comments may also be sent to Elaine W. Crockett, Attorney, Office of the General Counsel, Room 598, 6th St. and Pennsylvania Ave., N.W. 20580, telephone: (202) 326–2453; fax: (202) 326–2477; e-mail ecrockettftc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed extensions of the information requirements should be addressed to Elaine W. Crockett at the address listed above.

SUPPLEMENTARY INFORMATION: *Title:* Alternative Fuel Rule, 16 CFR part 309—(OMB Control Number 3084–0094)—Extension. On May 9, 1995, the Commission issued the Alternative Fuel Rule, which requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels, and on labels on alternative fueled vehicles (AFVs). To ensure the accuracy of the labeling disclosures, the Rule also requires that sellers maintain records substantiating the product-specific disclosures that they include on these labels. The labeling requirements provide consumers with reliable and comparable information about the fuel ratings of similar types of fuel and alternative fueled vehicles. The primary purpose of the recordkeeping requirements is to preserve evidence of compliance with the Rule.

Burden statement: The Rule, which primarily establishes fuel rating determination, certification, labeling, and recordkeeping requirements, imposes burden on the alternative vehicle fuel industry and the alternative fuel vehicle manufacturing industry. When the Rule was issued in 1995, the FTC found that the non-liquid alternative vehicle fuel industry consisted of approximately 1,600 members, of which approximately 1,300 import, produce, refine, distribute or retail compressed natural gas to the public for use in alternative fueled vehicles. The FTC also estimated that approximately 50 industry members manufacture or distribute electric vehicle fuel dispensing systems and that no more than 250 companies retail electricity to the public through electric vehicle fuel dispensing systems. As to the alternative fueled vehicle industry, the FTC found that approximately 58 companies manufactured such vehicles and were subject to labeling and recordkeeping requirements. Staff at the Department of Energy inform us that the current numbers for both industries are approximately the same as they were in 1995.

1995 Non-Liquid Alternative Fuel Burden Hour Estimates

Determination and Certification: In 1995, staff estimated that the Rule's fuel rating determination requirements and the Rule's fuel rating certification requirements would affect approximately 350 industry members which produce natural gas and distribute and manufacture electric vehicle fuel dispensing systems. *Labeling:* Staff also estimated that labeling requirements would affect approximately nine of every ten industry members (or 1,400 members), but the number of affected members would decrease in subsequent years because labels may remain effective for several years. *Recordkeeping:* Staff estimated that all 1,600 industry members would be subject to the Rule's recordkeeping requirements.

1995 Alternative Fueled Vehicle Burden Hour Estimates

Labeling: Producing: In 1995, staff estimated that there were approximately 350,000 AFVs, consisting of 36 models. Staff rounded the number of models to 40 to allow for the introduction of new AFV models into the marketplace. Further, staff estimated 2.5 hours as the average time required to produce labels for each of the 40 models. *Labeling: Posting:* Staff estimated the average time to comply with the posting requirements to be 2 minutes for each of the 350,000 vehicles. *Recordkeeping:* Staff estimated that all 58 manufacturers would require 30 minutes to comply with the Rule's recordkeeping requirements. Accordingly, in 1995, burden hours were calculated as follows:

Fuel Rating Determination: 2 hours x 350 industry members = 700 burden hours.

Fuel Rating Certification: 24 hours x 350 industry members = 8,400 burden hours.

Labeling: 1 hour x 1,400 industry members = 1,400 burden hours.

Recordkeeping associated with fuel rating determination and certification: 6 minutes x 1,600 industry members = 160 hours.

AFV labeling: producing: 2.5 hours x 40 models = 100 burden hours; posting: 2 minutes x 350,000 AFVs = 11,667 burden hours; recordkeeping: 30 minutes x 58 industry members = 29 burden hours.

Total 1995 burden hours: 22,500 (rounded).

1997 Burden Hour Estimates

In 1997, all of the requirements related to the processes involved in fuel rating determination, certification, labeling, and recordkeeping remain the same, We have, however, reduced the 1995 total burden estimate of 22,500 hours because, as stated in the original application for PRA clearance, it is now and always has been, common practice for industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. "Burden" for OMB purposes is defined to exclude effort that would be expended regardless of any regulatory requirement 5 CFR 1320.2(b)(2).

One-time letters of certification or the use of permanent marks or labels on electric vehicle fuel dispensing systems may be used once and thereafter remain in effect for several years. Also, the specifications for labels were designed to produce a label that would withstand the elements for several years. Nonetheless, there is still some burden associated with producing, distributing, posting, and maintaining new labels. There also will be some burden associated with new or revised certification of fuel ratings. The burden on vehicle manufacturers will be less because label production will be needed for only a few models and because only newly-manufactured vehicles will require label posting. Accordingly, we have calculated the revised burden hour estimates as follows:

(Fuel Rating Determination numbers are no longer applicable because these numbers are no longer associated with start-up costs and are determined during the ordinary course of business).

Fueld Rating Certification: 1 hour x 350 industry members = 350 burden hours.

Labeling: 1 hour x 280 industry members = 280 burden hours. (This calculation assumes that only 20% of 1,400 industry members will be affected because it is unnecessary to replace labels each year.)

Recordkeeping associated with fuel rating determination and certification: 6 minutes x 1,600 industry members = 160 burden hours.

AFV labeling: producing: 2.5 hours x 5 new models per year = 12.5 burden hours; posting: 2 minutes x 20,000 new AFVs per year = 667 burden hours. (The number of new AFVs per year was determined after discussions with staff at the Department of Energy.);

recordkeeping: 30 minutes x 58 industry members = 29 burden hours.

Total 1997 burden hours: approximately 1,500 (rounded).

To re-emphasize, the FTC is not amending, nor is it in the process of amending, the Alternative Fuel Rule. The burden hours associated with the Rule have been recalculated because, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes. In addition, the FTC has reduced the estimated burden hours because the industry complies with many of these requirements in the ordinary course of business and, as stated above, the definition of "burden" excludes effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2).

Debra A. Valentine,

General Counsel.

[FR Doc. 97–27620 Filed 10–16–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hospital Infection Control Practices Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hospital Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., November 17, 1997 and 8:30 a.m.–1 p.m., November 18, 1997.

Place: Centers for Disease Control and Prevention, Building 16, Room 1107/1107A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. In addition to the Committee, the room will accommodate approximately 25 guests.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals; and (3) updating guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: Agenda items will include an overview of Strategic Direction of HICPAC; a review of the public response to the Draft Guideline for Infection Control in Hospital Personnel; a review of the second draft of the Guideline for Prevention of Surgical Site Infections; and a review of CDC activities of interest to the Committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Medical Epidemiologist, Investigation and Prevention Branch, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S E–69, Atlanta, Georgia 30333, telephone 404/639–6413.

Dated: October 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27568 Filed 10–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meetings.

Name: Workshop on Screening and Tracking Systems for Early Hearing Detection and Intervention (EHDI).

Times and Dates: 8 a.m.–5 p.m., October 22, 1997; 8:30 a.m.–1 p.m., October 23, 1997; 8 a.m.–5 p.m., December 11, 1997; 8:30 a.m.–1 p.m., December 12, 1997.

Place: Sheraton Colony Square Hotel, 188 14th Street, NE, Atlanta, Georgia 30346. Telephone 404/892–6000 or 800/422–7865.

Status: Meetings will be open for participation by anyone with an interest in EHDI data systems.

Purpose: To explore the feasibility of an integrated data management and tracking system for hearing impairment and other childhood disabilities. Participants will review the evidence and issues related to a public health decision to screen all infants and will discuss ways in which early hearing detection and intervention could be implemented.

Matters to be Discussed: Invited Speakers will present issues and describe existing systems. Topics to be discussed during the meetings include (1) evidence related to the screening of all infants for hearing impairment; (2) current developments in tracking systems for childhood disabilities; (3) issues to be considered; (4) whether a centralized tracking system developed for EHDI can contribute to an integrated data management system of childhood disabilities.

CONTACT PERSON FOR MORE INFORMATION: June Holstrum, Ph.D., Division of Birth Defects and Developmental Disabilities, CDC, NCEH, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341, e-mail: ehdi@cdc.gov, telephone 770/488–7401, fax 770/488–7361.

Dated: October 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27571 Filed 10–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–972]

Administration for Native Americans; Notice

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities

On September 5, 1996, in Vol. 61, No. 173 of the **Federal Register**, pages 46994 to 46999, the Administration for Native Americans announced the "Availability of Finance Assistance for the Mitigation of Environmental Impacts to Indian Lands due to Department of Defense Activities". For purposes of this program announcement, Indian land is defined as all lands used by American Indian tribes and Alaska Native villages.

Two deadline dates for submission of applications were published in this announcement: November 8, 1996 and November 7, 1997. This notice serves as a reminder for the November 7, 1997 deadline for submission of applications.

Dated: October 10, 1997.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 97–27619 Filed 10–16–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0070]

Hedviga Herman; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Ms. Hedviga Herman, 1326 42d St., Brooklyn, NY 11219, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Herman was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Ms. Herman has failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

EFFECTIVE DATE: October 17, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1994, the United States District Court for the District of Maryland entered judgment against Ms. Hedviga Herman for, among other counts: (1) One count of introducing adulterated drugs into interstate commerce, a Federal felony offense under 21 U.S.C. 331(a) and 333(a)(2); (2) one count of introducing unapproved new drugs into interstate commerce, a Federal felony offense under 21 U.S.C. 331(d) and 333(a)(2); and (3) one count of obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505.

As a result of these convictions, FDA served Ms. Herman by certified mail on February 20, 1996, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application, and offered her an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that she was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Ms. Herman was provided 30 days to file objections and request a hearing. Ms. Herman did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Ms. Hedviga Herman has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Ms. Hedviga Herman is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 17, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Herman, in any capacity, during her period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Ms. Herman, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Herman during her period of debarment.

Any application by Ms. Herman for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 95N–0070 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–27586 Filed 10–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0421]

Yoshitomi Fine Chemicals, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Yoshitomi Fine Chemicals, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Di-tert-butylcresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4557) has been filed by Yoshitomi Fine Chemicals, Ltd., 6–9 Hiranomachi 2-chome, Chuo-ku, Osaka 541, Japan. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of Di-tert-butylcresyl phosphonite condensation product with biphenyl,produced by the condensation of 2,4-di-tert-butylcresol with the Friedel-Crafts addition product of phosphorous trichloride and biphenyl,for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 23, 1997.
Alan M. Rulis,
Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
[FR Doc. 97–27532 Filed 10–16–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 19 and 20, 1997, 8 a.m. to 5:30 p.m.; and November 21, 1997, 8 a.m. to 2 p.m.

Location: Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 19, 1997, the committee will discuss issues relating to the development of fluoroquinolones for use in pediatric patients. On the morning of November 20, 1997, the committee will discuss new drug application (NDA) 50–585/S046, ceftriaxone sodium (Rocephin® sterile vials, Roche Laboratories) for single dose intramuscular treatment of acute otitis media. On the afternoon of November 20, 1997, the committee will discuss NDA 20–799, ofloxacin otic (Floxin®, Daiichi Pharmaceuticals) for treatment of otitis externa, chronic suppurative otitis media with perforated tympanic membrane, and acute otitis media in pediatric patients with tympanostomy tubes. On November 21, 1997, the committee will discuss NDA 50–753, tobramycin solution for inhalation (TOBI®, PathoGenesis Corp.) for the management of cystic fibrosis patients.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 12, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on November 19 and 20, and between approximately 11 a.m. and 12 m. on November 21. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 12, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–27530 Filed 10–16–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on regulatory issues.

Date and Time: The meeting will be held on November 18 and 19, 1997, 8:30 a.m. to 5 p.m.

Location: Quality Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Ermona McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 18, 1997, the Committee will discuss the evidence of safety and effectiveness in new drug application (NDA) 20–861, Prosynap (lubeluzole injection, Janssen Research Foundation) for the treatment of acute ischemic stroke in adults. On November 19, 1997, the Committee will discuss the evidence of safety and effectiveness in NDA 20–764, Lamictal CD Chewable Dispersible Tablets (lamotrigine, Glaxo Wellcome) for the treatment of the generalized seizures of Lennox-Gastaut syndrome in pediatric and adult patients.

Procedure: Interested persons may present data, information, or views, orally, or in writing, on issues pending before the Committee. Written submissions may be made to the contact person by November 12, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on November 18, 1997, and between 9 a.m. and 10 a.m. on November 19, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 12, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app.2).

Dated: October 9, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–27529 Filed 10–16–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 11 and 12, 1997, 8:30 a.m. to 5:30 p.m.

Location: Quality Hotel, Maryland Room, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, (FedEx—Chapman Bldg., 801 Thompson Ave., rm. 200, Rockville, MD 20852), or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will discuss the Biopharmaceutics Classification System, topicals-dermatological drug products, and Narrow Therapeutic Index Drugs and relevance to product quality testing. On December 12, 1997, the committee will discuss the drug-drug interaction studies, and bioequivalence studies that fail to meet established confidence intervals.

Procedure: Interested persons may present data, information, or views, orally, or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on December 11, 1997, and between approximately 1:30 p.m. and 2 p.m. on December 12, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–27531 Filed 10–16–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 12 and 13, 1997, 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Jacquelyn L. Pace, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5920, FAX 301–594–4512, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss veterinary medical issues related to the quality standards for the manufacture of animal drugs, such as current good manufacturing practices. Requests for the tentative questions for committee discussion may be addressed to the contact person (address above).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 5, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 3 p.m. on November 12, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–27528 Filed 10–16–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–25]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/

unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Mr. Robert Swieconek, Army Corps of Engineers, Management & Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749: ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: October 9, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 10/17/97

Suitable/Available Properties

Buildings (by State)

Hawaii

Bldg. 5421
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740002
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Bldg. 5423
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740003
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Bldg. 5425
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740004
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Bldg. 5427
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740005
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Bldg. 5429
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740006
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Bldg. 5431
Iroquois Point Housing
Navy Public Works Center
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 779740007
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible)

Missouri

Riverlands Ofc. Bldg.
Melvin Price Locks & Dam
Access Road
West Alton Co: St. Charles MO 63386–
Landholding Agency: COE
Property Number: 319730001
Status: Excess
Comment: 5000 sq. ft., most recent use—office, flood damaged, off-site use only

New Jersey

ESMT Manasquan
124 Ocean Ave.
Manasquan Co: Monmouth NJ
Landholding Agency: GSA
Property Number: 549730025
Status: Excess
Comment: main bldg. (5714 sq. ft.), paint locker (96 sq. ft.), garage (3880 sq. ft.), need repairs, presence of asbestos/lead paint, Coast Guard easement
GSA Number: 1–U–NJ–0632

New York

Stockton School/Maint Garage
Mill Street
Stockton NY 14784–
Landholding Agency: GSA
Property Number: 549730024
Status: Excess
Comment: 13,555 sq. ft., 1-story, most recent use—training center, 4.8 acres of land
GSA Number: 1–L–NY–0860

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Bldg. 8026
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force

Property Number: 189730009
Status: Underutilized
Comment: heat plant, 4-story

Bldg. 9023
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730010
Status: Underutilized
Comment: 4112 sq. ft., most recent use—preschool

Bldg. 9027
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730011
Status: Underutilized
Comment: 4112 sq. ft., most recent use—child care center

Bldg. 9214
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730012
Status: Underutilized
Comment: 1403 sq. ft., most recent use—aero club

Land (by State)

Texas

Parcel #222
Lake Texoma Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Unsuitable Properties

Buildings (by State)

Delaware

Mispillion River Light
Milford Co: Sussex DE 19963–
Landholding Agency: GSA
Property Number: 549740001
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–DE–461

Florida

Sigsbee Park Annex (174 units)
Naval Air Station
Key West Co: Monroe FL 33043–
Landholding Agency: Navy
Property Number: 779740001
Status: Unutilized
Reason: Extensive deterioration

Idaho

STF Area, Natl Eng & Env Lab
#601, 607, 612, 501, 502, ARA–628
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419740003
Status: Excess
Reason: Extensive deterioration

New Jersey

Bldg. 329
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 779740008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 779740009
Status: Unutilized
Reason: Extensive deterioration

Ohio

GP–5, MEMP Site
Miamisburg Co: Montgomery OH 45343–
Landholding Agency: Energy
Property Number: 419740001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Mound Site, MEMP
Miamisburg Co: Montgomery OH 45343–
Landholding Agency: Energy
Property Number: 419740002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Virginia

Fleet Training Center
Fire Fighting Training Facility
SDA–323, SDA–324, SDA–325, SDA–326
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779740010
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 97–27344 Filed 10–16–97; 8:45 am]

BILLING CODE 4210–29–M

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting; Inter-American Foundation Board Meeting

TIME AND DATE: 11:30 a.m.–3:00 p.m., October 29, 1997.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open Session.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the July 17, 1997, Meeting of the Board of Directors.
2. Chair's Report.
3. Swearing-in of New Board Members.
4. President's Report.
5. Executive Session to Discuss Personnel Issues.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: October 14, 1997.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 97–27754 Filed 10–15–97; 3:40 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: November 4–5, 1997, at 8:30 a.m.

ADDRESS: Fourth floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a discussion of the restoration reserve fund.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 97–27517 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Summary of Incidental Take Permits Issued by the Southeast Region of the U.S. Fish and Wildlife Service Pursuant to the Authority of Section 10(a)(1)(B) of the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice.

SUMMARY: The Southeastern Regional office of the Fish and Wildlife Service (Service) is providing notice of issued permits which incidentally take threatened and endangered species pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531–1536) and the Service's implementing regulations governing listed fish, wildlife, and plant permits (50 CFR parts 13 and 17).

Issuance of these permits, as required by the Act, was based on findings that such permits: (1) Were applied for in good faith; (2) will not operate to the

disadvantage of the listed species which are the subject of the permit, and; (3) are consistent with the purposes and policies set forth in Section 2 of the Act. Each permit issued was also found in compliance with and are subject to parts 13 and 17 of Title 50 CFR, the Service's regulations governing listed species permits.

ADDRESSES: Persons wishing to review any of the issued permits or accompanying documents may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits). Please reference the applicable permit number when requesting the documents.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110.

SUPPLEMENTARY INFORMATION: The following is a listing of issued permits. Each entry identifies permit number, the Applicant's name, the species for which incidental taking was sought, the location of the activity, and the date the permit was issued.

Permit Number: 800149.
Applicant: Red Oak Timber Company.
Species: Red-cockaded woodpecker.
Project Location: Vernon Parish, Louisiana.
Date Issued: July 17, 1995.

Permit Number: 804465.
Applicant: Pinebelt Regional Landfill Authority.
Species: Gopher tortoise.
Project Location: Perry County, Mississippi .
Date Issued: September 22, 1995.

Permit Number: 804465.
Applicant: Jack Primus Partners, LLC.
Species: Red-cockaded woodpecker.
Project Location: Berkeley County, South Carolina .
Date Issued: October 24, 1995.

Permit Number: 802986.
Applicant: Martinique Developers, LLC.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama .
Date Issued: January 26, 1996.

Permit Number: 807952.
Applicant: Potlatch Corporation.
Species: Red-cockaded woodpecker.
Project Location: Bradley and Calhoun Counties, Arkansas .
Date Issued: February 28, 1996.

Permit Number: 810934.
Applicant: Gasque/Felkel.
Species: Red-cockaded woodpecker.
Project Location: Orangeburg County, South Carolina .
Date Issued: March 29, 1996.

Permit Number: 809898.
Applicant: Brett Real Estate Developments, Inc..
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama .
Date Issued: April 8, 1996.

Permit Number: 806150.
Applicant: Joseph A. Hill.
Species: Florida scrub jay.
Project Location: Brevard County, Florida .
Date Issued: April 16, 1996.

Permit Number: 811415.
Applicant: Macmillan Blowdel.
Species: Red hills salamander.
Project Location: Monroe and Conecuh Counties, Alabama .
Date Issued: April 26, 1996.

Permit Number: 811416.
Applicant: Sage Development.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: May 15, 1996.

Permit Number: 800150.
Applicant: Waterside Down Development Corporation.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: May 21, 1996.

Permit Number: 811902.
Applicant: Woolbright Venture.
Species: Florida scrub jay.
Project Location: Indian River County, Florida.
Date Issued: July 10, 1996.

Permit Number: 809072.
Applicant: Weyerhaeuser Company.
Species: American burying beetle.
Project Location: McCurtain County, Oklahoma, and Little River County, Arkansas.
Date Issued: July 11, 1996.

Permit Number: 808474.
Applicant: Windover Farms/Pineda Crossing.
Species: Red-cockaded woodpecker.
Project Location: Brevard County, Florida.
Date Issued: August 1, 1996.

Permit Number: 816491.
Applicant: Ben Cone.
Species: Red-cockaded woodpecker.
Project Location: Pender County, North Carolina.
Date Issued: October 2, 1996.

Permit Number: 816732.
Applicant: Snow Construction, Inc.
Species: Bald eagle.
Project Location: Osceola County, Florida.
Date Issued: October 22, 1996.

Permit Number: 819363.
Applicant: Collins-Miller.
Species: Alabama beach mouse/sea turtles.
Project Location: Baldwin County, Alabama.
Date Issued: November 8, 1996.

Permit Number: 811813.
Applicant: Volusia County Government.
Species: Sea turtles.
Project Location: Coastline of Volusia County, Florida.
Date Issued: November 21, 1996.

Permit Number: 816555.
Applicant: Plantation Palms.
Species: Alabama beach mouse and nesting sea turtles.
Project Location: Baldwin County, Alabama.
Date Issued: November 27, 1996.

Permit Number: 819464.
Applicant: Fort Morgan Paradise Joint Venture.
Species: Alabama beach mouse and nesting sea turtles.
Project Location: Baldwin County, Alabama.
Date Issued: December 9, 1996.

Permit Number: 821527.
Applicant: Union Camp Corporation.
Species: Red hills salamander.
Project Location: Butler, Conecuh, Covington, and Crenshaw Counties, Alabama.
Date Issued: January 8, 1997.

Permit Number: 821992.
Applicant: Mulaski.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: January 22, 1997.

Permit Number: 824543.
Applicant: Wilmon Timber Company.
Species: Red hills salamander.
Project Location: Monroe County, Alabama.
Date Issued: March 19, 1997.

Permit Number: 822026.
Applicant: Charles Ingram Lumber Company.
Species: Red-cockaded woodpecker.
Project Location: Florence County, South Carolina.
Date Issued: April 14, 1997.

Permit Number: 811416 Amendment #1.
Applicant: Sage Development.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: May 5, 1997.

Permit Number: 827374.
Applicant: Friendfield Plantation, Inc.
Species: Red-cockaded woodpecker.
Project Location: Georgetown County, South Carolina.

Date Issued: July 21, 1997.
Permit Number: 829937.
Applicant: Holnam Inc./HCR Limestone Inc.
Species: Red-cockaded woodpecker.
Project Location: Citrus and Alachua Counties, Florida.
Date Issued: August 21, 1997.
Permit Number: 832536.
Applicant: E.J. Mouhot.
Species: Florida scrub jay.
Project Location: Charlotte County, Florida.
Date Issued: September 29, 1997.

Dated: October 10, 1997.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 97–27573 Filed 10–16–97; 8:45 am].

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[1020–04 MT–001–EA97]

Final Supplementary Rule Requiring the Use of Certified Noxious Weed Seed-Free Forage on Public Lands in Montana and the Availability of the Environmental Assessment, Decision Record, and Finding of No Significant Impact for Implementation of Requirements for Weed Seed-Free Forage on Public Lands in the Bureau of Land Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Montana State Office of the Bureau of Land Management (BLM) recently prepared an environmental assessment (EA) documenting the analysis of two alternatives for managing noxious weeds on public lands in Montana. The EA's proposed action consisted of a supplementary rule under 43 CFR 8365.1–6 to require the use of certified noxious weed seed-free forage on those public lands. Forage subject to this rule would include hay, grains, cubes, pelletized feeds, straw, and mulch. The State Director of the BLM's Montana State Office has issued a decision record that the EA's proposed action and supplemental rule will not have any significant impact on the human environment and that an environmental impact statement is not required.

Therefore, the State Director is requiring that public land users, including permittees and local, state, or federal government agents conducting administrative activities, use certified noxious weed seed-free forage on BLM-administered public lands in Montana.

Six people commented on the Proposed Supplementary Rule Requiring the Use of Certified Noxious Weed Seed-Free Forage on Public Lands in Montana, placed in the **Federal Register** dated March 28, 1997. The comments are covered in the USDI, 43CFR4130.0–2, October 1, 1996, concerning supplemental feeding on BLM-administered lands.

Montana encompasses approximately 8,069,002 acres of public land administered by BLM. This rule will affect public land users who use hay or other forage products on the BLM-administered public lands in Montana such as recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors who use straw or other mulch for reclamation purposes. These individuals or groups would be required to use only certified noxious weed seed-free forage products, while on BLM-administered public lands in Montana.

EFFECTIVE DATES: The rule will become effective November 17, 1997 and will remain in effect until modified or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Hank McNeel, Weed Management Specialist, BLM Montana State Office, P.O. Box 36800, Billings, MT 59107, 406 255–2931.

SUPPLEMENTARY INFORMATION: The EA is consistent with the land use plans for Montana BLM.

Noxious and undesirable weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the West include 2,300 acres per day on BLM-administered public lands and 4,600 acres per day on all federally-administered land in the West. Species such as leafy spurge, spotted knapweed, Russian knapweed, musk thistle, dalmatian toadflax, purple loosestrife, houndstoungue, and other non-native noxious and undesirable weeds have no natural controls to keep their populations in balance. Consequently, these weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and damage wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken revegetation efforts, reduce livestock and wildlife grazing capacity, occasionally affect the health of public land users by aggravating allergies and other ailments, and threaten federally-protected or native plants and animals.

To help reduce the spread of noxious weeds, a number of Western States are jointly developing noxious weed-free or weed seed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Because hay and other forage products containing noxious weed seed are part of the infestation problem, Montana has developed the Montana Noxious Weed Seed Free Forage Program and the Regional Weed Free Forage Certification Standards for crop inspection; a certification-identification process; participates in a regional inspection certification-identification process; and encourages forage producers in Montana to grow noxious weed seed-free products and have them certified.

Region I of the United States Forest Service, Department of Agriculture, implemented a similar policy for all National Forest lands in Montana in 1997. This proposal will provide a standard regulation for all users of BLM-administered public lands in the Montana and will provide for coordinated and consistent management with the U.S. Forest Service.

In cooperation with the State of Montana and the U.S. Forest Service, Montana State Office is implementing a ban of the use of forage that has not been certified, on all BLM-administered lands within Montana. This proposal includes public information to insure that: (1) this ban is well publicized and understood, and (2) visitors to and land users of public lands administered by the Montana BLM will know where they can purchase state-certified hay and other forage products.

These supplementary rules will not appear in the Code of Federal Regulations. The principal author of these supplementary rules is Hank McNeel, Weed Management Specialist, BLM Montana State Office.

For the reasons stated above, under the authority of 43 Code of Federal Regulations 8365.1–6, the Montana State Director issues supplementary rules to read: Supplementary Rules to Require the Use of Certified Noxious Weed Seed-Free Forage on Bureau of Land Management-Administered Public Lands in Montana.

1. To help prevent the spread of weeds on BLM-administered lands in Montana, shall be closed to possessing, transporting or storing hay, grain, cubed or pelletized products, straw, and mulch that has not been certified as free of noxious weed seed.

2. Certification will comply with "Montana Noxious Weed Seed Free Forage Program and the Regional Weed Free Forage Certification Standards Procedures Manual for Certification of: Hay, Pellets, Mulch, Straw, Cubes and Feeds by the State of Montana

Department of Agriculture, Helena, Montana, April 1, 1997.

3. The possession or storage of hay, grain, straw, or cubedor pelletized products that have an identifiable label as being certified Noxious Weed and/or Noxious Weed Seed-Free by an authorized State or County Department of Agriculture Official; the authorizing State must be recognized as having a Noxious Weed Certification Program for agronomic products; each individual bale or container must be tagged or marked as weed or weed seed-free and reference the written certification.

4. The following persons are exempt from this order: (1) Any person with a permit signed by an authorized officer of the BLM's Montana State Office or field offices within Montana, specifically authorizing the prohibited act or omission within that resource area; (2) Persons transporting forage products on Federal and State Highways and County roads that are not BLM Development Road or Trails.

5. Any person who knowingly and willfully violates the provisions of these supplemental rules may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code 1733(a).

Dated: October 3, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–27327 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

[CA–350–1230–00]

Notice of Intent To Prepare Land Use Plan Amendment

AGENCY: Bureau of Land Management, Department of the Interior, Eagle Lake Resource Area, California.

SUMMARY: This is a Notice of Intent to Prepare a Land Use Plan Amendment for the Fort Sage OHV Area. The planning process to date included scoping, a public meeting and development of an Environmental Assessment for revised OHV designations. This Notice of Intent is specifically to amend the Honey Lake/Beckwourth Management Framework Plan of 1976.

PUBLIC PARTICIPATION: Scoping commended on May 20, 1996. A public meeting was held June 12, 1996 in Susanville, California. All comments received since scoping commenced and during the public meetings, are being considered in this process.

SUPPLEMENTARY INFORMATION: The Honey Lake/Beckwourth Management Framework Plan is in the area of the Northwest Great Basin in Southeastern Lassen County, California. The scoping, and public participation covers the whole of the Fort Sage OHV Area. This draft plan amendment for the Honey Lake/Beckwourth Management Framework Plan is scheduled for completion in late December, 1997.

FOR FURTHER INFORMATION OR RELATED DOCUMENTS CONTACT: Linda Hansen, Area Manager, Eagle Lake Resource Area, 2950 Riverside Drive, Susanville, California 96130. Telephone: (916) 257–0456.

Linda Hansen,

Area Manager.

[FR Doc. 97–27616 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00: GP8–0010]

Notice of Meeting of John Day-Snake Resource Advisory Council

October 7, 1997.

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; November 24, 1997.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on November 24, 1997 from 8:00 am to 5:00 pm, at the Double Tree Inn, 304 SE Nye Ave, Pendleton, Oregon. The meeting is open to the Public. Public comments will be received at 1:00 pm. Topics to be discussed by the council include the Interior Columbia Basin Ecosystem Management Project, Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, development of a John Day River Management Plan, and an update on significant land exchanges within the council's geographic area.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, or call 541–416–6700.

Dated: October 7, 1997.

James L. Hancock,

District Manager.

[FR Doc. 97–27537 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–08–0777–52]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Utah Resource Advisory Council.

SUMMARY: A meeting of the Utah Resource Advisory Council (RAC) will be held November 7, 1997, from 8:00 a.m. until 3:00 p.m. at the Provo Park Hotel, 101 West 100 North in Provo, Utah. The purpose of this meeting is to review and accept, by the RAC, the fire rehab methods and policies which will then be submitted to the State Director for implementation. We will also discuss recreation issues across the state.

Resource Advisory Council meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public. A public comment period has been scheduled from 2:30–3:00 p.m.

FOR FURTHER INFORMATION: Anyone interested in attending the meeting or wanting to address the Council, should contact Sherry Foot at the Bureau of Land Management, Utah State Office, 324 South State Street, Salt Lake City, Utah, 84111 or by calling (801) 539–4195.

Dated: October 9, 1997.

Ted Stephenson,

Acting. State Director.

[FR Doc. 97–27575 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of meeting.

SUMMARY: The next meetings of the Northwest Colorado Resource Advisory Council will be held on Friday, November 7, 1997, in Eagle, Colorado.

DATES: Friday, November 7, 1997.

ADDRESSES: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3037.

SUPPLEMENTARY INFORMATION: The meeting will be held at the Eagle Municipal Library, 600 Broadway, Eagle, Colorado. Agenda items include the introduction of the new BLM Colorado State Director, subcommittee reports, and wilderness inventory update.

All resource advisory council meetings are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meetings. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 9, 1997.

Mark T. Morse,

Grand Junction/Craig District Manager.

[FR Doc. 97–27611 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–01; NMNM 94904/G–010–G7–0252]

Public Land Order No. 7291; Withdrawal of Public Lands and Federal Minerals to Allow Sale of Humate; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,188.30 acres of public lands from surface entry and mining, and 988.40 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 20-years, for the Bureau of Land Management to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area Office, 435 Montano Road NE, Albuquerque, New Mexico 87107, 505–761–8787.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 19 N., R. 1 W.,
Sec. 4, lots 1 and 3, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 10, W½W½SW¼;
Sec. 17, E½E½SE¼;
Sec. 20, NE¼, N½SW¼, and NW¼SE¼.
T. 20 N., R. 1 W.,
Sec. 27, S½N½, NE¼SW¼, S½SW¼, and N½SE¼;
Sec. 33, NW¼SW¼.

The areas described aggregate 1,188.30 acres in Sandoval County.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described lands are hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 19 N., R. 1 W.,
Sec. 3, lot 3, SW¼NW¼, and W½SW¼;
Sec. 4, lot 2; sec. 9, E½, and E½W½;
Sec. 21, NE¼.
T. 20 N., R. 1 W.,
Sec. 33, NE¼SW¼, and S½SW¼;
Sec. 34, W½W½SW¼.

The areas described aggregate 988.40 acres in Sandoval County.

3. The surface estate of the lands described in paragraph 2 is non-Federal. If the United States subsequently acquires these lands, the lands will be subject to the terms and conditions of this withdrawal.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: October 9, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–27587 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1430–01; AZA 30301]

Arizona: Notice of Reality Action; Classification of Public Land for Recreation and Public Purposes Lease or Conveyance, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reality action.

SUMMARY: The following described public lands in La Paz County have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 1 S., R. 23 W.,
Sec. 5, portion of lot 8.
Containing 4.65 acres, more or less.

SUPPLEMENTARY INFORMATION: La Paz County has filed a Recreation and Public Purposes Act application for a park and interpretative historic museum that would be located near the community of Cibola, approximately 3 miles east of the Colorado River. This facility is needed in order to serve the public demand for both day use park facilities and cultural facilities. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove minerals.

4. All valid existing rights documented on the official public land records at the time of lease issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and

proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, Arizona 85365.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park and museum. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park and museum.

EFFECTIVE DATE: Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification will become effective December 16, 1997. The lands will not be offered for lease until the classification becomes effective.

FOR FURTHER INFORMATION CONTACT: Reality Specialist Lucas Lucero, Yuma Field Office, 2555 East Gila Ridge Road, Yuma AZ 85365, telephone (520) 317–3215.

Dated: October 8, 1997.

Gail Acheson,

Field Manager.

[FR Doc. 97–27610 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–016–1220–00]

Supplementary Rules for Public Lands in the Carrizo Plain Natural Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Supplementary Rules relating to shooting, access, vehicle use, camping, and resource protection within the Carrizo Plain Natural Area in San Luis Obispo and Kern Counties, California.

SUMMARY: The Caliente Resource Area hereby gives notice and establishes the following closures and Special and Supplementary Rules for the Carrizo Plain Natural Area (CPNA) effective as of the date of this publication, as provided for under Title 43, Code of Federal Regulations, Subparts 8341.2, 8364.1, and 8365.1–6:

A. Public lands within ¼ mile of any campground, Painted Rock, administrative facility (including the Washburn, Saucito, Goodwin, and MU ranch headquarters), and all developed overlooks, interpretive sites or pullouts, are closed to the discharge of firearms. Public lands within the Painted Rock "no shooting zone" are posted with signs at the most prominent points of public access. The boundaries of this closure are described in the CPNA Management Plan and are available from the Bakersfield District BLM Office. Those exempted from this closure order include law enforcement officers in the commission of their official duties. These closures are for the purpose of enhancing public safety and will also decrease potential conflicts with recreational users.

Recreational target shooting is prohibited within the entire CPNA. Hunting is allowed on public within the CPNA where public safety is not at risk or that have not been closed to shooting. No person shall violate any federal, state or local laws pertaining to use, possession or discharge of firearms while on any BLM administered public lands. This closure governing the discharge of firearms affects approximately 5,200 acres of public lands in San Luis Obispo County. The recreational target shooting closure affects approximately 200,000 acres of public lands in San Luis Obispo and Kern Counties.

B. Certain public lands in the CPNA are subject to closure to all public use, including but not limited to vehicle operation, camping, shooting, hiking, and sightseeing. All public lands within ¼ mile of Sulfur Springs are closed to public access, except under permit from the BLM, in order to protect sensitive resources. All public lands within ¼ mile of Painted Rock are closed to public access from March 1 through July 15 each year, except for tours authorized by the Bureau of Land Management, in order to protect sensitive resources. The Washburn Administrative Site, the Goodwin Education Center, the MU, Goodwin, Saucito, and Painted Rock Ranch headquarters, and Painted Rock may be closed to public access as needed to protect these resources and facilities. This closure affects approximately 250 acres in San Luis Obispo County.

C. Operation of motor vehicles, aircraft, and boats and flotation devices of any kind, are prohibited on or within Soda Lake and any adjacent stream, channel, dry lake, and body of water. This closure affects approximately 4,300 acres in San Luis Obispo County. Exceptions may be allowed, but must be approved in advance in writing by the Authorized Officer. Law enforcement and fire protection personnel operating within the scope of their official duties are exempt from the provisions of this closure order.

D. Off-Highway vehicle use within the CPNA is limited to designated routes. Designated routes are defined as existing well traveled roads which have been identified and mapped. Maps of these routes will be made available to the public. The operation of any motorized vehicle off of designated routes of travel is prohibited within the CPNA. Open routes are available for use by all vehicle, bicycle, foot and equestrian travel. All vehicle use on routes posted or designated as closed is prohibited. Except on county roads, or unless otherwise posted, the speed limit on such open roads is 25 miles per hour. Vehicles parked adjacent to any open road must be parked as close to the road as possible without preventing passage of other vehicles. Open roads may be closed temporarily at the discretion of the BLM if necessary for safety or resource protection.

Roads or routes designated as being for administrative use only are closed to all motor vehicles except those used by employees of the BLM, the California Department of Fish and Game, or The Nature Conservancy when conducting official business. Other uses require the prior approval of the BLM. Roads designated as being for administrative use only are open to bicycles and other nonmotorized vehicles, pedestrians, and casual horse use unless otherwise posted.

This limited use designation does not apply to emergency vehicles, fire suppression and rescue vehicles, law enforcement vehicles, and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management. The closure affects approximately 200,000 acres. A map of the open route network is available from the Bureau of Land Management, 3801 Pegasus Dr., Bakersfield, CA 93308, (805) 391–6000.

E. Overnight camping is allowed within designated campgrounds and designated camping areas in the CPNA. All other public lands within the CPNA are closed to overnight parking or camping. Camping or overnight parking within all portions of the CPNA is prohibited within 200 yards of any natural or artificial water source. Overnight camping is limited to 14 days within any 30 day period, for a total of no more than 28 days within any one year period, except as specified in writing by the authorized officer.

The primary purpose of all corrals, loading chutes, and other appurtenant livestock facilities during the authorized grazing season will be for livestock management. Camping or parked vehicles may not interfere with their use. All litter, waste, and refuse at campsites must be kept within a container or receptacle while camping, and removed when leaving the CPNA.

F. Other supplemental rules prescribed by the CPNA Management Plan include:

—Property left unattended for more than three days without the prior approval of the Authorized Officer will be treated as abandoned and may be removed and stored by law enforcement personnel at the owner's expense.

—Pets and pack animals must be controlled by the owner at all times. Pack animals shall be within corrals, or adequately restrained. Pets must be prevented from chasing, harassing, or taking wildlife.

—Organized groups with 20 or more persons or 5 or more vehicles must secure a permit for any activities off county roads.

—The use of metal detectors is prohibited, except for approved administrative purposes.

—All research and study activities require a permit or written authorization from the BLM.

EFFECTIVE DATE: These rules are effective October 17, 1997 and will remain in effect until revised, revoked or amended by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The above supplementary rules are being implemented for the following purposes:

The BLM administers approximately 200,000 acres in the Carrizo Plain Natural Area (CPNA). The CPNA is managed jointly with the California Department of Fish and Game and The Nature Conservancy for the benefit of indigenous species within a fully functional ecosystem. The natural area is important to fifteen species of plants and animals that are currently listed, proposed to be listed, or fully protected by either the federal or California Endangered Species Acts. In addition, the natural area encompasses world-class archaeological sites, and continues to be of great importance to native peoples. These values have contributed toward making the CPNA an increasingly popular destination for sightseeing and outdoor recreation. Use is concentrated at certain sites and along trails, but many activities are highly dispersed. The purpose of these actions is to protect and efficiently manage these special resources, and enhance visitors safety on public lands.

This order is in no way intended to affect the rights of private land owners, or their interests within the closure area, with respect to private lands. Further, this order does not infer any Bureau of Land Management jurisdiction over private or state lands within closure areas.

A copy of this **Federal Register** notice and maps showing the affected areas are available for review in the Bakersfield District Office of the Bureau of Land Management.

PENALTIES: The authorities for these closures and supplementary rules are 43 CFR 8341.2, 8364.1, and 8365.1–6. Violations of these rules are punishable by fines of up to $1,000 and/or imprisonment not to exceed 12 months as well as the penalties provided under State law.

FOR FURTHER INFORMATION CONTACT: Ronald D. Fellows, Bureau of Land Management, Bakersfield District Manager, 3809 Pegasus Dr., Bakersfield CA 93308, Phone (805) 391–6000.

Dated: October 7, 1997.

John Skibinski,

Acting District Manager.

[FR Doc. 97–27615 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award 17 concession permits authorizing the operation of sport hunting guide-outfitter services for the public at Wrangell St. Elias National Preserve, Alaska for a period of five years from January 1, 1998 through December 31, 2002. Currently there are sixteen concessioners providing the services described in this prospectus. One permit is for a hunt area for which there is no current operator.

EFFECTIVE DATE: December 16, 1997.

ADDRESSES: Interested parties should contact the Superintendent, Wrangell-St. Elias National Park & Preserve, P.O. Box 439, Copper Center, Alaska 99573 or by calling (907) 822–5234 for a copy of the prospectus.

SUPPLEMENTARY INFORMATION: These permits have been determined to be categorically excluded for the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The 16 existing concessioners have performed their obligations to the satisfaction of Secretary under existing permits which expire by limitation of time on December 31, 1997, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (16 U.S.C. 20), are entitled to be given preference in the renewal of the permit, providing that the existing concessioners submit a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by an existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concession agrees to match the best offer, then the permit will be awarded to the existing concessioner. If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer. The Secretary will consider and evaluate all offers received as a result of this notice.

There is no incumbent concessioner for the 17th permit, and accordingly, no preference will be awarded to an applicant for this guide area.

Any offer, including that of the existing concessioner, must be received by the Superintendent, Wrangell-St. Elias National Park and Preserve, P.O.

Box 439, Copper Center, AK 99573, not later than on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Judith Gottlieb,

Acting Regional Director, Alaska Region.

[FR Doc. 97–27590 Filed 10–16–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:00 a.m., Tuesday, November 18, 1997 (changed from October 21, 1997).

PLACE: Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204.

STATUS: Open.

MATTERS TO BE CONSIDERED: Updates on NIC's strategic planning; survey concerning civil commitment of sex offenders; interstate compact; victims' issues discussion points; amendment of the Bylaws; election of officers/liaisons; orientation for new Board members; and the Office of Justice Programs quarterly report.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director. (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 97–27599 Filed 10–16–97; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Hearing on Submission #9701

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of hearing.

SUMMARY: The purpose of this notice is to announce a hearing, open to the public, on Submission #9701.

Submission #9701, filed with the U.S. National Administrative Office (NAO) by Human Rights Watch (HRW), the International Labor Rights Fund (ILRF), and the National Association of Democratic Lawyers (ANAD) of Mexico, involves labor law matters in Mexico and was accepted for review by the NAO on July 14, 1997. Notice of acceptance for review was published in the **Federal Register** on July 17, 1997 (62 FR 38327).

Article 16 (3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with U.S. domestic procedures. Revised procedural guidelines pertaining to the submission, review, and reporting process utilized by the Office were published in the **Federal Register** on April 7, 1994 (59 F.R. 16660). The guidelines provide for a discretionary hearing as part of the review.

DATES: The hearing will be held on November 19, 1997, commencing at 9:00 a.m. Persons desiring to present oral testimony at the hearing must submit a request in writing, along with a written statement or brief describing the information to be presented or position to be taken.

ADDRESSES: The hearing will be held in Brownsville, Texas, at the Brownsville Public Library located at 2600 Central Boulevard, Brownsville, Texas 78520, Main Meeting Room, Room #102. Written statements or briefs and requests to present oral testimony may be mailed or hand delivered to the U.S. National Administrative Office (NAO), Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Requests to present oral testimony and written statements or briefs must be received by the NAO no later than close of business, November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Nature and Conduct of Hearing

As set out in the notice published in the **Federal Register** on July 17, 1997, the objective of the NAO's review of the submission is to gather information to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3(1) of the NAALC, and on the steps the Government of Mexico has taken to ensure access to tribunals for the enforcement of labor law and recourse to procedures under which labor rights are protected in accordance with Articles 4(1) and 4(2) of the NAALC.

The hearing will be conducted by the Secretary of the NAO or the Secretary's designee. It will be open to the public. All proceedings will be conducted in English, with simultaneous translation in English and Spanish provided. The public files for the submission, including written statements, briefs, and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearing.

The hearing will be transcribed. A transcript of the proceeding will be made available for inspection, as provided for in Section E of the procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than November 5, 1997, if special accommodations are needed.

II. Written Statements or Briefs and Requests To Present Oral Testimony

Written statements or briefs shall provide a description of the information to be presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. Five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement or brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and public interest.

Signed at Washington, D.C. on October 14, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–27592 Filed 10–16–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the description classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and the other Federal statues referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV:

Michigan
- MI970082 (Oct. 17, 1997)
- MI970083 (Oct. 17, 1997)
- MI970084 (Oct. 17, 1997)
- MI970085 (Oct. 17, 1997)
- MI970086 (Oct. 17, 1997)

Ohio
- OH970036 (Oct. 17, 1997)
- OH970037 (Oct. 17, 1997)

Modificaitons to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Maine
- ME970005 (Feb. 14, 1997)
- ME970007 (Feb. 14, 1997)
- ME970010 (Feb. 14, 1997)
- ME970022 (Feb. 14, 1997)
- ME970037 (Feb. 14, 1997)

Rhode Island
- RI970001 (Feb. 14, 1997)

Volume II:

Delaware
- DE970001 (Feb. 14, 1997)
- DE970002 (Feb. 14, 1997)
- DE970004 (Feb. 14, 1997)
- DE970005 (Feb. 14, 1997)
- DE970009 (Feb. 14, 1997)

Maryland
- MD970001 (Feb. 14, 1997)
- MD970021 (Feb. 14, 1997)
- MD970034 (Feb. 14, 1997)
- MD970036 (Feb. 14, 1997)
- MD979937 (Feb. 14, 1997)
- MD970042 (Feb. 14, 1997)
- MD970057 (Feb. 14, 1997)
- MD970058 (Feb. 14, 1997)

Pennsylvania
- PA970001 (Feb. 14, 1997)
- PA970002 (Feb. 14, 1997)
- PA970004 (Feb. 14, 1997)
- PA970005 (Feb. 14, 1997)
- PA970006 (Feb. 14, 1997)
- PA970017 (Feb. 14, 1997)
- PA970018 (Feb. 14, 1997)
- PA970020 (Feb. 14, 1997)
- PA970026 (Feb. 14, 1997)
- PA970032 (Feb. 14, 1997)
- PA970033 (Feb. 14, 1997)
- PA970038 (Feb. 14, 1997)
- PA970042 (Feb. 14, 1997)
- PA970051 (Feb. 14, 1997)
- PA970053 (Feb. 14, 1997)
- PA970065 (Feb. 14, 1997)

Virginia
- VA970025 (Feb. 14, 1997)
- VA970052 (Feb. 14, 1997)
- VA970078 (Feb. 14, 1997)
- VA970079 (Feb. 14, 1997)

Volume III:

Florida
- FL970039 (Feb. 14, 1997)

Kentucky
- KY970001 (Feb. 14, 1997)
- KY970002 (Feb. 14, 1997)
- KY970003 (Feb. 14, 1997)
- KY970004 (Feb. 14, 1997)
- KY970006 (Feb. 14, 1997)
- KY970007 (Feb. 14, 1997)
- KY970025 (Feb. 14, 1997)
- KY970027 (Feb. 14, 1997)
- KY970029 (Feb. 14, 1997)
- KY970032 (Feb. 14, 1997)
- KY970035 (Feb. 14, 1997)
- KY970054 (Feb. 14, 1997)

Tennessee
- TN970002 (Feb. 14, 1997)
- TN970005 (Feb. 14, 1997)
- TN970018 (Feb. 14, 1997)
- TN970038 (Feb. 14, 1997)
- TN970039 (Feb. 14, 1997)

Volume IV:
Indiana
IN970004 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
IN970017 (Feb. 14, 1997)
IN970020 (Feb. 14, 1997)
Michigan
MI970001 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970004 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970017 (Feb. 14, 1997)
MI970030 (Feb. 14, 1997)
MI970031 (Feb. 14, 1997)
MI970046 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970078 (Feb. 14, 1997)
MI970079 (Feb. 14, 1997)
MI970080 (Feb. 14, 1997)
Minnesota
MN970007 (Feb. 14, 1997)
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MN970015 (Feb. 14, 1997)
MN970027 (Feb. 14, 1997)
MN970031 (Feb. 14, 1997)
MN970035 (Feb. 14, 1997)
MN970039 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio
OH970001 (Feb. 14, 1997)
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OH970003 (Feb. 14, 1997)
OH970009 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970026 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970035 (Feb. 14, 1997)

Volume V
Arkansas
AR970003 (Feb. 14, 1997)
Iowa
IA970013 (Feb. 14, 1997)
Kansas
KS970006 (Feb. 14, 1997)
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MO970001 (Feb. 14, 1997)
MO970002 (Feb. 14, 1997)
MO970006 (Feb. 14, 1997)
MO970009 (Feb. 14, 1997)
MO970011 (Feb. 14, 1997)
MO970013 (Feb. 14, 1997)
MO970041 (Feb. 14, 1997)
MO970042 (Feb. 14, 1997)
MO970050 (Feb. 14, 1997)
MO970058 (Feb. 14, 1997)
MO970067 (Feb. 14, 1997)
MO970072 (Feb. 14, 1997)
Texas
TX970018 (Feb. 14, 1997)
TX970114 (Feb. 14, 1997)

Volume VI:
Idaho
ID970001 (Feb. 14, 1997)
ID970002 (Feb. 14, 1997)
Oregon
OR970001 (Feb. 14, 1997)
OR970017 (Feb. 14, 1997)
Washington
WA970005 (Feb. 14, 1997)

Volume VII:
California
CA970001 (Feb. 14, 1997)
CA970002 (Feb. 14, 1997)
CA970028 (Feb. 14, 1997)
CA970029 (Feb. 14, 1997)
CA970030 (Feb. 14, 1997)
CA970031 (Feb. 14, 1997)
CA970032 (Feb. 14, 1997)
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CA970041 (Feb. 14, 1997)
CA970042 (Feb. 14, 1997)
CA970043 (Feb. 14, 1997)
CA970044 (Feb. 14, 1997)
CA970045 (Feb. 14, 1997)
CA970046 (Feb. 14, 1997)
CA970047 (Feb. 14, 1997)
CA970048 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 10th day of October 1997.

Margaret Washington,
Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–27415 Filed 10–16–97; 8:45 am]
BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 6–7, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, January 23, 1997 (62 FR 3539).

Thursday, November 6, 1997

8:30 A.M.—8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.—10:15 A.M.: Use of Uncertainty Versus Point Values in the PRA-Related Decisionmaking Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the adequacy of the guidance being provided by the staff relative to the use of uncertainty versus point values in the PRA-related decisionmaking process.

10:30 A.M.—12:00 Noon: Proposed Final Generic Letter Regarding Loss of Reactor Coolant Inventory and Associated Potential for loss of Emergency Mitigation Functions While in a Shutdown Condition (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Generic Letter noted above.

1:00 P.M.—2:30 P.M.: Meeting with the Acting Deputy Executive Director for Regulatory Effectiveness (Open)—The Committee will hear presentations by and hold discussions with the Acting Deputy Executive Director regarding regulatory excellence and related matters.

2:45 P.M.—4:15 P.M.: NRC Safety Research Program (Open)—The Committee will hear presentations by and hold discussions with the staff, as needed, regarding the NRC Safety Research Program and related matters.

4:30 P.M.—7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, November 7, 1997

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.—9:35 A.M.: Severe Accident Management (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff evaluation of the BWR Owners Group emergency procedure and severe accident guidelines and the Westinghouse severe accident guidelines.

9:35 A.M.—10:30 A.M.: Staff Actions Related to the Development of a Revised Fire Protection Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff actions related to the development of a revised Fire Protection Rule.

10:45 A.M.—11:15 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Sub-committee regarding items proposed for consideration by the full Committee during future meetings.

11:15 A.M.—11:30 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports. The EDO responses are expected to be provided to the ACRS prior to the meeting.

11:30 A.M.—12:00 Noon: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, qualifications of candidates nominated for appointment to the ACRS, and organizational and personnel matters relating to the ACRS.

[Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

1:00 P.M.—1:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

1:30 P.M.—7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion regarding proposed ACRS reports on matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written statements may be presented by members of the public and representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." The Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: October 10, 1997.

Andrew L. Bates,
Advisory Committee Management Officer.

[FR Doc. 97–27598 Filed 10–16–97; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of Pub. L. 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the three sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, Chapter I, Title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The rates are established as follows:

1. Department of Defense

The Fiscal Year 1998 (FY98) Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Section 1095 of title 10, United States Code. Due to size, the sections containing the Drug Reimbursement Rates (Section III.D) and the rates for Ancillary Services Requested by Outside Providers (Section III.E) are not included in this package. The Office of the Assistant Secretary of Defense (Health Affairs) will provide these rates upon request. The medical and dental service rates in this package (including the rates for ancillary services, prescription drugs or other procedures requested by outside providers) are effective October 1, 1997.

2. Health and Human Services

The sum of obligations for each cost center providing medical service is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each cost center. Total inpatient costs and outpatient costs thus determined are

divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation cost were incorporated to conform to requirements set forth in OMB Circular A–25. In addition, each cost center's obligations include costs for certain other accounts, such as Medicare and Medicaid collections and Contract Health funds used to support direct program operation. Certain cost centers that primarily support workload outside of the directly operated hospitals or clinics (public health nursing, public health nutrition, health education) were excluded this year as not being a part of the traditional cost of hospital operations and not contributing directly to the inpatient and outpatient visit workload. Overall, these rates reflect a more accurate indication of the cost of care in HHS facilities.

In addition, separate rates per inpatient day and outpatient visit were computed for Alaska and the rest of the United States. This gives proper weight to the higher cost of operating medical facilities in Alaska.

3. Department of Veterans Affairs

Actual direct and indirect costs are compiled by type of care for the previous year, and facility overhead costs are added. Adjustments are made using the budgeted percentage changes for the current year and the budget year to compute the base rate for the budget year. The budget year base rate is then adjusted by estimated costs for depreciation of buildings and equipment, central office overhead, Government employee retirement benefits, and return on fixed assets (interest on capital for land, buildings, and equipment (net book value)), to compute the budget year tortiously liable reimbursement rates. Also shown for the tortiously liable inpatient per diem rates are breakdowns into three cost components: Physician; Ancillary; and Nursing, Room, and Board. As with the total per diem rates, these breakdowns are calculated from actual data by type of care.

The interagency rates shown are to be used when VA medical care or service is furnished to a beneficiary of another Federal agency, and that care or service is not covered by an applicable local sharing agreement. Government employee retirement benefits and return on fixed assets are not included in the interagency rates, but in all other respects the interagency rates are the same as the tortiously liable rates.

Inpatient charges will be at the per diem rates shown for the type of bed section or discrete treatment unit providing the care. Prescription Filled charge in lieu of the Outpatient Visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. This charge applies whether the patient receives the prescription in person or by mail.

When medical care or service is obtained at the expense of the Department of Veterans Affairs from a non-VA source, the charge for such care or service will be the actual amount paid by the VA for that care or service.

1. Department of Defense

For the Department of Defense, effective October 1, 1997 and thereafter:

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
A. Burn Center	$2,618.00	$4,754.00	$5,079.00
B. Surgical Care Services (Cosmetic Surgery)	955.00	1,733.00	1852.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3])			

1. FY98 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Other interagency	(Full/Third party)
Large Urban	$2,199.00	$4,131.00	$4,372.00
Other Urban/Rural	2,194.00	4,215.00	4,499.00
Overseas	2,450.00	5,614.00	5,960.00

2. Overview

The FY98 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the nonteaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.9769. (DRG statistics shown are from FY 1996).

c. The DoD adjusted standardized amount to be charged is $4,372 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor (2.9769) in 3.b., above, multiplied by the amount ($4,372) in 3.c., above.

e. Cost to be recovered is $13,015.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.9769	11.2	7.8	1	30

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Nonteaching Hospital	Large Urban	1.0	1.0	$4,372.00	$4,372.00

Patient	Length of stay	Days above threshold	Relative weighted product			TPC
			Inlier*	Outlier**	Total	Amount***
#1	7 days	0	2.9769	0.0000	2.9769	$13,015
#2	21 days	0	2.9769	0.0000	2.9769	13,015
#3	35 days	5	2.9769	0.6297	3.6066	15,768

*DRG Weight
**Outlier calculation = 33 percent of per diem weight' number of outlier days = .33 (DRG Weight/Geometric Mean LOS)' (Patient LOS—Long Stay Threshold)
=.33 (2.9769/7.8) ' (35–30)
=.33 (.38165)' 5 (take out to five decimal places)
=.12594' 5 (take out to five decimal places)
=.6297 (take out to four decimal places)
*** Applied ASA' Total RWP

II. Outpatient Rates [1] [2] Per Visit

MEPRS Code [4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	A. Medical Care			
BAA	Internal Medicine	$105.00	$195.00	$208.00
BAB	Allergy	39.00	73.00	78.00
BAC	Cardiology	81.00	150.00	160.00
BAE	Diabetic	44.00	82.00	87.00
BAF	Endocrinology (Metabolism)	85.00	158.00	168.00
BAG	Gastroenterology	110.00	203.00	216.00
BAH	Hematology	145.00	269.00	287.00
BAI	Hypertension	81.00	149.00	159.00
BAJ	Nephrology	171.00	317.00	338.00
BAK	Neurology	109.00	202.00	215.00
BAL	Outpatient Nutrition	34.00	63.00	67.00
BAM	Oncology	114.00	211.00	225.00
BAN	Pulmonary Disease	141.00	260.00	278.00
BAO	Rheumatology	84.00	156.00	166.00
BAP	Dermatology	63.00	117.00	124.00
BAQ	Infectious Disease	141.00	260.00	278.00
BAR	Physical Medicine	78.00	145.00	155.00
BAS	Radiation Therapy	72.00	132.00	141.00
BAZ	Medical Care Not Elsewhere Classified (NEC)	84.00	156.00	166.00
	B. Surgical Care			
BBA	General Surgery	119.00	220.00	235.00
BBB	Cardiovascular and Thoracic Surgery	110.00	203.00	216.00
BBC	Neurosurgery	137.00	253.00	270.00
BBD	Ophthalmology	84.00	155.00	166.00
BBE	Organ Transplant	191.00	353.00	376.00
BBF	Otolaryngology	88.00	162.00	173.00
BBG	Plastic Surgery	100.00	184.00	196.00
BBH	Proctology	67.00	124.00	132.00

MEPRS Code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
BBI	Urology	101.00	187.00	199.00
BBJ	Pediatric Surgery	89.00	164.00	175.00
BBZ	Surgical Care NEC	65.00	120.00	127.00
	C. Obstetrical and Gynecological (OB–GYN) Care			
BCA	Family Planning	45.00	83.00	89.00
BCB	Gynecology	74.00	136.00	146.00
BCC	Obstetrics	68.00	126.00	135.00
BCZ	OB-GYN Care NEC	112.00	207.00	221.00D
	D. Pediatric Care			
BDA	Pediatric	54.00	100.00	106.00
BDB	Adolescent	55.00	101.00	108.00
BDC	Well Baby	36.00	66.00	70.00
BDZ	Pediatric Care NEC	64.00	119.00	126.00
	E. Orthopaedic Care			
BEA	Orthopaedic	83.00	153.00	164.00
BEB	Cast	45.00	82.00	88.00
BEC	Hand Surgery	38.00	70.00	75.00
BEE	Orthotic Laboratory	59.00	110.00	117.00
BEF	Podiatry	49.00	91.00	97.00
BEZ	Chiropractic	21.00	38.00	40.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	97.00	179.00	191.00
BFB	Psychology	71.00	132.00	141.00
BFC	Child Guidance	59.00	109.00	117.00
BFD	Mental Health	80.00	147.00	157.00
BFE	Social Work	80.00	149.00	159.00
BFF	Substance Abuse	62.00	115.00	123.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	67.00	124.00	132.00
BHA	Primary Care	64.00	118.00	126.00
BHB	Medical Examination	59.00	109.00	117.00
BHC	Optometry	42.00	77.00	82.00
BHD	Audiology	30.00	55.00	58.00
BHE	Speech Pathology	81.00	149.00	159.00
BHF	Community Health	41.00	75.00	80.00
BHG	Occupational Health	59.00	108.00	115.00
BHH	TRICARE Outpatient	42.00	78.00	83.00
BHI	Immediate Care	82.00	152.00	162.00
BHZ	Primary Care NEC	43.00	79.00	84.00
	H. Emergency Medical Care			
BIA	Emergency Medical	107.00	198.00	211.00
	I. Flight Medical Care			
BJA	Flight Medicine	85.00	157.00	167.00
	J. Undersea Medical Care			
BKA	Undersea Medicine	32.00	58.00	62.00
	K. Rehabilitative Services			
BLA	Physical Therapy	29.00	54.00	57.00
BLB	Occupational Therapy	53.00	98.00	104.00

III. Other Rates and Charges[1 2] Per Visit

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
FBI	A. Immunization	$10.00	$19.00	$20.00
DGC	B. Hyperbaric Chamber[5]	180.00	333.00	355.00
	C. Ambulatory Procedure Visit (APV)[6]	376.00	691.00	737.00
	D. Family Member Rate (formerly Military Dependents Rate)	10.20		

E. Reimbursement Rates For Drugs Requested By Outside Providers[7]

The FY98 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided. Final rule of 32 CFR part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs)—see Tab N for the point of contact.

F. Reimbursement Rates for Ancillary Services Requested By Outside Providers[8]

Final rule of 32 CFR part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The list of FY98 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD(Health Affairs)—see Tab N for the point of contact.

G. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT)[9]	FY98 charge[10]	Amount of charge
Mammaplasty	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mentoplasty (Augmentation Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Lipectomy suction per region[11].	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Minor Skin Lesions[12]	86.30	1578__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Arm/Thigh Dermolipectomy.	86.83	1583__	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)

H. Dental Rate[13] Per Procedure

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (Full/third party)
	oDental Services ADA code and DoD established weight.	$35.00	$101.00	$106.00

I. Ambulance Rate[14] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (Full/Third party)
FEA	Ambulance	$32.00	$60.00	$64.00

J. Laboratory and Radiology Services Requested by an Outside Provider[8] Per Procedure

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	Laboratory procedures requested by an outside provider CPT–4 Weight Multiplier.	$9.00	$13.00	$14.00
	Radiology procedures requested by an outside provider CPT–4 Weight Multiplier.	23.00	35.00	37.00

K. AirEvac Rate[15] Per Visit

MEPRS code[4]	Clinical service	International military education and training (IMET)	Interagency and other federal agency sponsored patients	Other (Full/third party)
	AirEvac Services—Ambulatory	$113.00	$209.00	$223.00
	AirEvac Services—Litter	323.00	598.00	638.00

Notes on Cosmetic Surgery Charges

[a]Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b]Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The APV rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c]Charges for outpatient clinic visits are listed in section II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates

[1]Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional charges. The outpatient per visit percentages are 88 percent outpatient services and 12 percent professional charges.

[2]DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3]The cost per DRG (Diagnosis Related Group) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4]The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows: Outpatient Care (Functional Category), B (MEPRS Code), Medical Care (Summary Account), BA (MEPRS Code), Internal Medicine (Subaccount), BAA (MEPRS Code).

[5]Hyperbaric services charges shall be based on hours of service in 15 minute increments. The rates listed in section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[6]Ambulatory Procedure Visit (APV) is defined in DOD Instruction 6025.8, September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). Care is required in the facility for less than 24 hours. This rate is also used for elective cosmetic surgery performed in an APU.

[7]Prescription services requested by outside providers (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (tablets, capsules, etc.) by the unit cost and adding a $5.00 dispensing fee per prescription. Final rule of 32 CFR part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold (by changing it from $25 to $0) and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold ipso facto eliminates the bundling of costs whereby a patient was billed if the total ancillary services costs in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[8]Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF that are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated using the Physicians' Current Procedural Terminology (CPT)–4 Report weight multiplied by either the laboratory or radiology multiplier (section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and come to the MTF for services. Final rule of 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold (by changing it from $25 to $0) and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold ipso facto eliminates the bundling of costs whereby a patient was billed if the total ancillary services costs in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[9]The attending physician is to complete the CPT–4 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: Ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10]Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III G. The patient shall be charged the rate as specified in the FY98 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III.C, or the appropriate outpatient clinic rate in section II A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. NOTE: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.

[11]Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12]These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges shall be for the entire treatment, regardless of the number of visits required.

[13]Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[14]Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[15]Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The charges are billed only by the Air Force Global Patient Movement Requirement Center (GFMRC).

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 1997 and thereafter:

Hospital Care Inpatient Day

General Medical Care	Alaska	$1,702
	Rest of the United States	1,049

Outpatient Medical Treatment

Outpatient Visit	Alaska	340
	Rest of the United States	209

3. Department of Veterans Affairs

For the Department of Veterans Affairs, effective October 1, 1997 and thereafter:

	Tortiously liable rates	Interagency rates
Hospital Care, Rates Per Inpatient Day		
General Medicine:		
Total	$1208	$1098
Physician	145	
Ancillary	315	
Nursing, Room, and Board	748	
Neurology:		
Total	1154	1042
Physician	169	
Ancillary	305	

	Tortiously liable rates	Interagency rates
Nursing, Room, and Board	680	
Rehabilitation Medicine:		
Total	808	729
Physician	92	
Ancillary	247	
Nursing, Room, and Board	469	
Blind Rehabilitation:		
Total	957	873
Physician	77	
Ancillary	475	
Nursing, Room, and Board	405	
Spinal Cord Injury:		
Total	886	801
Physician	110	
Ancillary	223	
Nursing, Room, and Board	553	
Surgery:		
Total	2079	1904
Physician	229	
Ancillary	631	
Nursing, Room, and Board	1219	
General Psychiatry:		
Total	557	518
Physician	54	
Ancillary	91	
Nursing, Room, and Board	432	
Substance Abuse (Alcohol and Drug Treatment):		
Total	333	300
Physician	32	
Ancillary	77	
Nursing, Room, and Board	224	
Intermediate Medicine:		
Total	396	356
Physician	19	
Ancillary	58	
Nursing, Room, and Board	319	

Nursing Home Care, Rates Per Day

Nursing Home Care:		
Total	299	270
Physician	9	
Ancillary	40	
Nursing Room, and Board	250	

Outpatient Medical and Dental Treatment

Outpatient Visit:		
Total	229	211
Emergency Dental	143	127
Outpatient Visit Prescription Filled	25	25

For the period beginning October 1, 1997, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget, October 31, 1996 (61 FR 56360).

Franklin D. Raines,

Director, Office of Management and Budget.

[FR Doc. 97–27629 Filed 10–16–97; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR Part 4007), including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions (OMB control number 1212–0009; expires February 28, 1998). The collection of information also includes a certification (on Schedule A) of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR Part 4011), and surveys of plan administrators to assess compliance with those requirements. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by November 17, 1997.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005–4026, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040). The premium payment regulation can be accessed on the PBGC's home page at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, or Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the Pension Benefit Guaranty Corporation ("PBGC") to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file certain forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The forms prescribed are PBGC Form 1–ES and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1 and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

The premium forms are needed to determine the amount and record the payment of PBGC premiums, and the submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more of the premium payment forms each year. The PBGC uses the information on the premium payment forms to identify the plans paying premiums and to verify whether plans are paying the correct amounts. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with Part 4011, plan administrators must indicate on Schedule A to Form 1 that the participant notice requirements have been complied with. The PBGC has also conducted surveys of plan administrators to assess compliance.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009 through February 28, 1998. This collection of information also includes the certification and surveys of compliance with the participant notice requirements (but not the participant notices themselves). The PBGC is requesting that OMB extend its approval of this collection of information for another three years. (The participant notices constitute a different collection of information that has been separately approved by OMB.)

Under the Retirement Protection Act of 1994, certain special premium rules for regulated public utility company plans cease to apply for plan years beginning after 1997. The premium forms and instructions are being revised for 1998 to reflect this change. The revised forms and instructions will also include provisions regarding the use of electronic funds transfers as an optional form of payment for premiums and for PBGC payment of premium refunds, and will permit plan administrators whose filings are prepared by consultants to request that the PBGC no longer send them unneeded forms packages. In addition, reporting of plan-to-plan transfers will now be required only where the transferor plan ceases to exist, rather than in all cases.

The 1998 forms and instructions will eliminate multiple repetition of the rules regarding the date as of which the premium is calculated by using a new defined term, "premium snapshot date," for this purpose. Instructions and line items for variable-rate premium exemptions (which are relatively brief) are being placed before those for non-exempt filing methods to save exempt filers from having to read through the relatively lengthy filing method descriptions.

The 1998 Form 1 will also give plans a way to notify the PBGC of their participation in the PBGC's new premium "self-audit" program. Under this program, plans could elect to engage independent auditors to review their premium filings as part of the regular plan audit cycle. The PBGC expects to announce details about the "self-audit" program within the next few months.

Other appropriate revisions (*e.g.*, clarifying and editorial changes) are also being made.

The PBGC estimates that it receives responses annually from about 49,500 plan administrators and that the total annual burden of the collection of information is about 4,042.5 hours and $11,236,125.

Issued in Washington, DC, this 15th day of October, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–27705 Filed 10–16–97; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22848; File No. 812–10732]

Alexander Hamilton Life Insurance Company of America, et al.

October 9, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act granting

exemptions from the provisions of Section 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of certain registered management investment companies ("Substituted Funds") for shares of certain other registered management investment companies currently serving as underlying investment options for variable annuity contracts and variable life insurance policies ("Replaced Funds"). Applicants also seek an order, pursuant to Sections 6(c) and 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out certain of the substitutions wholly or partly in-kind.

Applicants: Alexander Hamilton Life Insurance Company of America ("AH Life"), Alexander Hamilton Variable Annuity Separate Account ("AH Separate Account") (together, the "AH Applicants"), Chubb Life Insurance Company of America ("Chubb Life"), Chubb Separate Account A ("Chubb Separate Account") (together, the "Chubb Applicants"), Jefferson-Pilot Life Insurance Company ("JP Life") and Jefferson-Pilot Separate Account A ("JP Separate Account") (together, the "JP Applicants") (hereinafter referred to collectively as the "Applicants," "Life Company Applicants," and "Separate Account Applicants" as appropriate).

Filing Date: The application was filed on July 22, 1997, and amended on October 1, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 3, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Shari J. Lease, Esq., Chubb Life Insurance Company of America, One Granite Place, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Life Company Applicants are affiliated stock life insurance companies wholly owned by Jefferson Pilot Corporation. Jefferson-Pilot Corporation acquired AH Life on October 6, 1995, with an effective date of September 30, 1995. The purchase of Chubb Life was closed on May 13, 1997, with an effective date of April 30, 1997.

2. AH Life, a stock life insurance company organized under the insurance laws of Michigan, is engaged primarily in the sale of annuity contracts and life insurance policies. AH Life is the sponsor and depositor of the AH Separate Account.

3. Chubb Life, a stock life insurance company chartered under the laws of Tennessee and redomesticated to New Hampshire on July 1, 1991, is authorized to write life insurance business in Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and all states of the United States except New York. Chubb Life is the sponsor and depositor of the Chubb Separate Account.

4. JP Life, a stock life insurance company organized under the insurance laws of North Carolina, is primarily engaged in the writing of whole life, term, endowment, and annuity policies on an individual ordinary basis, plus industrial and group insurance. JP Life is the sponsor and depositor of the JP Separate Account.

5. The Separate Account Applicants are segregated asset accounts registered under the 1940 Act as unit investment trusts. The AH Separate Account is used to fund certain variable annuity contracts issued by AH Life and is divided into eight sub-accounts, seven of which invest in corresponding series (each a "Fund") of the Alexander Hamilton Variable Insurance Trust (the "Trust") with the remaining sub-account investing in the Federated Prime Money Fund II of the Federated Insurance Series ("Federated Prime Money Fund II"). Chubb Separate Account is used to fund certain variable life insurance policies issued by Chubb Life and is divided into 13 sub-accounts, nine of which invest in corresponding series (each a "Portfolio") of the Chubb America Fund, Inc. ("CAF") with the remaining sub-accounts investing in the Templeton International Fund of Templeton Variable Products Series Fund, the High Income Portfolio of Variable Insurance Products Fund ("Fidelity VIP"), the Contrafund Portfolio and the Index 500 Portfolio of Variable Insurance Products Fund II ("Fidelity VIPII"). JP Separate Account is used to fund certain variable annuity contracts issued by JP Life, and is divided into 16 sub-accounts, two of which invest in shares of the Trust, two of which invest in shares of Oppenheimer Variable Account Funds, eight of which invest in shares of Fidelity VIP and Fidelity VIPII, two of which invest in shares of The Alger American Fund, and two of which invest in shares of the MFS Variable Insurance Trust.

6. The Trust is an open-end management investment company, organized as a Massachusetts business trust. The Trust consists of seven Funds, each of which operates as a separate investment fund, that have differing investment objectives, policies, and sub-advisers. Shares of the Funds are currently available to the public only through the purchase of certain variable annuity contracts issued by AH Life and JP Life and to retirement plans qualified under the Internal Revenue Code of 1986, as amended ("qualified retirement plans"). Alexander Hamilton Capital Management, Inc. acts as the Trust's investment adviser and has retained other unaffiliated investment advisers to act as sub-advisers who provide the day-to-day portfolio management for each Fund.

7. CAF is an open-end, diversified management investment company incorporated in Maryland. Shares of CAF's Portfolios are available for purchase only by the divisions of Chubb Life's separate accounts and qualified retirement plans. Chubb Investment Advisory Corporation ("CIAC") acts as CAF's investment manager and has retained other investment advisers to act as sub-advisers in providing the day-to-day portfolio management of each portfolio of CAF. CAF consists of nine Portfolios, each of which is a separate investment portfolio, that have differing investment objectives.

8. The Oppenheimer Bond Fund is one series of Oppenheimer Variable Account Funds which is organized as a Massachusetts business trust. Oppenheimer Variable Account Funds is a diversified open-end investment company consisting of nine separate funds. Shares of Oppenheimer Variable Account Funds are offered for purchase by insurance company separate accounts as the investment medium for variable life insurance policies and variable annuity contracts. Oppenheimer Funds, Inc. acts as investment adviser for the Oppenheimer Bond Fund.

9. The Federated Prime Money Fund II is an investment portfolio of Federated Insurance Series, an open-end management investment company, which is organized as a Massachusetts business trust. Federated Advisers acts as investment adviser for Federated Prime Money Fund II.

10. Jefferson-Pilot Corporation, the parent company of the Life Company Applicants, and the Life Company Applicants have determined to maintain only one proprietary mutual fund as an underlying investment option for the variable annuity contracts ("Contracts") and variable life insurance policies ("Policies") issued by the Applicants as well as other variable life insurance policies and variable annuity contracts which the Applicants may offer in the future. Applicants state that it has been determined that CAF should be the surviving proprietary investment option. Applicants, therefore, are proposing the substitutions described in the application and summarized below (the "Substitutions"). After the Substitutions have been effected, the Trust will be de-registered and will cease operations. Applicants will continue to offer certain unaffiliated funds as investment options.

11. Applicants state that CAF has been in existence since 1984 and as of March 31, 1997 had total net assets of $362.7 million. CIAC does not waive or assume any of the expenses of CAF. In contrast, the Trust has been in existence since 1994 and did not commence operations until February 1996. As of March 31, 1997, the Trust had net assets of $37.3 million. As a result of the Trust's small size, the Trust's investment adviser has voluntarily waived or assumed expenses for all of the Trust's Funds. Moreover, the Trust's Funds have not generated substantial interest among purchasers of the Contracts. The Life Company Applicants believe that the CAF Portfolios are generally more responsive to the preferences of purchasers of the Contracts, while offering a larger fund with similar investment objectives, providing a potential for economies of scale.

12. Applicants note that the one exception to substituting the CAF Portfolios relates to the CAF Bond Portfolio. Given the sale of Chubb Life to Jefferson-Pilot Corporation, the former owner of Chubb Life and Jefferson-Pilot Corporation have determined that Chubb Asset Managers, Inc. will no longer be available to act as sub-adviser for the CAF Bond Portfolio. It has been determined that the Oppenheimer Bond Fund provides a better investment alternative than continuation of the CAF Bond Portfolio with a new adviser.

13. In addition, the substitution involving the unaffiliated mutual fund, Federated Prime Money Fund II, is being proposed. The actual expense ratio of the CAF Money Market Portfolio is lower than that of the Federated Prime Money Fund II, and its performance is slightly better since inception.

The Proposed Transactions

1. The AH Applicants propose that AH Life substitute: (1) Shares of the Money Market Portfolio of CAF for shares of the Federated Prime Money Fund II; (2) shares of the Balanced Portfolio of CAF for shares of the Balanced Fund of the Trust; (3) shares of the Growth and Income Portfolio of CAF for shares of the Growth & Income Fund of the Trust; (4) shares of the Capital Growth Portfolio of CAF for shares of the Growth Fund of the Trust; (5) shares of the Emerging Growth Portfolio of CAF for shares of the Emerging Growth Fund for the Trust; (6) shares of the World Growth Stock Portfolio of CAF for shares of the International Equity Fund of the Trust; (7) shares of the Oppenheimer Bond Fund for shares of the Investment Grade Bond Fund of the Trust; and (8) shares of the Oppenheimer Bond Fund for shares of the High Yield Bond Fund of the Trust.

2. The Chubb Applicants propose that Chubb Life substitute shares of the Oppenheimer Bond Fund for shares of the Bond Portfolio of CAF.

3. The JP Applicants propose that JP Life substitute: (1) Shares of the Capital Growth Portfolio of CAF for shares of the Growth Fund of the Trust; and (2) shares of the Emerging Growth Portfolio of CAF for shares of the Emerging Growth Fund of the Trust.

4. Applicants state that each of the Life Company Applicants will redeem for cash or kind of the shares of each Replaced Fund that it currently holds on behalf of its applicable Separate Account Applicant at the close of business on the date selected for the Substitutions. It is anticipated that the redemptions of the Federated Prime Money Fund II, the Trust Investment Grade Bond Fund, the Trust High Yield Bond Fund and the CAF Bond Fund will be redeemed all for cash. The Trust Investment Grade Bond Fund, the Trust High Yield Fund, and the CAF Bond Fund will be replaced by the Oppenheimer Bond Fund. With regard to all other Replaced Funds, it is anticipated that redemptions will be partly or wholly in-kind, and thus purchases of the applicable Substituted Funds will be paid for partly or wholly with portfolio securities. Thus, the Replaced Funds whose shares will be redeemed wholly or partly in-kind are the Trust's Balanced, Growth and Income, Growth, Emerging Growth and International Equity Funds.

5. The Life Company Applicants, each on behalf of its applicable Separate Account Applicant, will simultaneously place a redemption request with each applicable Replaced Fund and a purchase order with each applicable Substituted Fund so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to contract owners and policy owners ("Owners") then invested in the Replaced Funds will remain fully invested and will result in no change in the amount of any Owner's contract or policy value, death benefit or investment in the applicable Separate Account Applicant.

6. The Trust will effect the redemptions-in-kind and the transfers of portfolio securities in a manner that is consistent with the investment objectives, policies and restrictions, and federal tax law and 1940 Act diversification requirements applicable to the Substituted Fund. AH Life and JP Life each will take appropriate steps to assure that the portfolio securities selected for redemptions-in-kind are suitable investments for the Substituted Funds.

7. Applicants state that the Life Company Applicants have undertaken to assume all transaction costs and expenses relating to the Substitutions, including any direct or indirect costs of liquidating the assets of the Replaced Funds so that the full net asset value of redeemed shares of the Replaced funds held by the each Separate Account Applicant will be reflected in the Owners' Policy values' accumulation unit or annuity unit values following the Substitutions.

8. As part of the Substitutions, AH Life will combine the sub-accounts invested in the Trust's Investment Grade Bond Fund and the Trust's High Yield Bond Fund and designate the continuing sub-account as the Oppenheimer Bond Fund Sub-account.

9. Each of the Life Company Applicants will supplement the prospectus for the applicable Separate Account Applicant to reflect the proposed Substitutions. Within five days after the Substitutions, the

Applicants will send to their respective Owners written notice of the Substitutions (the "Notice") identifying the shares of the Replaced Funds which have been eliminated and the shares of the Substituted Funds which have been substituted. Applicants will include in such mailing the prospectuses for the Substituted Funds and the applicable revised prospectus or supplement for the Contracts and Policies of the Separate Account Applicants describing the Substitutions. Owners will be advised in the Notice that for a period of 31 days from the date of the Notice, Owners may transfer all assets, as substituted, to any other available sub-account, without limitation, without charge and without any such transfer counting as one of the limited number of transfers permitted in a contract or policy year free of charge ("Free Transfer Period").

10. Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts and Policies, as they currently have.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent scrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses Section 26(b) was designed to prevent. Applicants submit that the Substitutions involving the Trust are appropriate solutions to the insufficient size of the Trust which makes it difficult to achieve consistent investment performance and reduce operating expenses. Given the longer operating history of CAF and attendant investment performance, as well as its much larger asset size and resultant lack of fee waivers or assumption of expenses, Applicants maintain that it is in the best interest of the Owners to have CAF act as an underlying investment option for the variable products as opposed to the Trust. With regard to the CAF Bond Portfolio, the Chubb Applicants represent that the unavailability of the current sub-adviser as a result of the sale of Chubb Life to Jefferson-Pilot Corporation supports the selection of the Oppenheimer Bond Fund as an alternative investment.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was designed to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Replaced Funds have objectives, policies and restrictions sufficiently similar to the objectives of the Substituted Funds so as to continue to fulfill the Owners' objectives and risk expectations; (b) after receipt of the Notice informing an Owner of the Substitutions, an Owner may request that assets be reallocated to another sub-account or division selected by the Owner, and the Free Transfer Period provides sufficient time for Owners to consider their reinvestment options; (c) the Substitutions, in all cases, will take place at the net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) the Life Company Applicants have undertaken to assume the expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions relating to the Substitution and are effecting the redemption of shares in a manner that attributes all transaction costs to the Life Company Applicants; (e) the Substitutions in no way will alter the insurance benefits to Owners or the contractual obligations of the Life Company Applicants; (f) the Substitutions in no way will alter the tax benefits to Owners; and (g) the Substitutions are expected to confer certain economic benefits on Owners by virtue of the enhanced asset size and lower expenses of the Substituted Funds, as described in the application.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company, or an affiliated person of an affiliated person, from purchasing any security or other property from such registered investment company.

5. Applicants state that certain of the Substitutions will be effected, partly or wholly, through redemptions and purchases in-kind and may be deemed to entail the indirect purchase of shares of the related Substituted Funds with portfolio securities of the Replaced Funds, and the indirect sale of securities of the Replaced Funds for shares of the Substituted Funds, and thus may entail each such Fund in the purchase and sale of such securities, acting as principal, to the other Fund in contravention of Section 17(a).

6. Moreover, immediately following the Substitutions, AH Life will combine the sub-accounts invested in the Trust's Investment Grade Bond and High Yield Bond Funds and designate the continuing sub-account as the Oppenheimer Bond Fund Sub-Account. AH Life could be said to be transferring unit values between its sub-accounts. The transfer of unit values could be said to involve purchase and sale transactions between sub-accounts that are affiliated persons. The sale and purchase transactions between sub-accounts could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively.

7. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants represent that the terms of the proposed transactions: (a) Are reasonable and fair, including the consideration to be paid and received, and do not involve overreaching; (b) are consistent with the investment policies of the Replaced Funds of the Trust; and (c) are consistent with the general purposes of the 1940 Act. Applicants state that the transactions effecting the Substitutions will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Moreover, Applicants state that, in effecting the redemptions in-kind and transfers, the Trust will comply with the requirements of Rule 17a–7 under the 1940 Act to the extent possible and the procedures established thereunder by the Board of Trustees of the Trust. Applicants submit that Owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore, reasonable and fair.

9. Applicants assert that the investment objectives of each of the Substituted Funds are sufficiently similar to the investment objectives of the Replaced Funds. In this regard, the Substitutions are consistent with Commission precedent pursuant to Section 17 of the 1940 Act. Applicants also assert that the Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent.

10. Section 6(c) of the 1940 Act provides that the Commission may grant an order exempting persons and transactions from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicants submit that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Owners will be fully informed of the terms of Substitutions through the prospectus supplements and the Notice, and will have an opportunity to reallocate investments prior to and following the Substitutions.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and related transactions involving in-kind redemptions and the combination of certain separate account sub-accounts should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27545 Filed 10–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26764]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 31, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Resources, Inc. (70–9097)

Western Resources, Inc. ("WRI"), located at 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas public utility holding company exempt under section 3(a) pursuant to rule 2 from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act in connection with a proposed sale of its gas utility operations.

WRI, itself a public utility company, is engaged through its Kansas Power & Light Company division in the generation, purchase, transmission, distribution and sale of electric energy in Kansas and the transportation and sale of natural gas predominantly in Kansas, with some small operations in Oklahoma. WRI provides retail electric service to approximately 329,000 customers in Kansas and northeastern Oklahoma. WRI also provides wholesale electric generation and transmission services to numerous municipal customers in Kansas, and, through interchange agreements, to surrounding integrated systems. WRI provides natural gas service to approximately 648,000 retail customers in Kansas and northeastern Oklahoma. WRI is regulated as a public utility with respect to retail electric and gas rates and other matters by the Kansas Corporation Commission ("KCC") and with respect to retail gas rates and other matters by the Oklahoma Corporation Commission ("OCC"). WRI is also subject to the jurisdiction of the Federal Energy Regulatory Commission, including jurisdiction with respect to rates for sales of electricity for resale.

WRI has one utility subsidiary, Kansas Gas and Electric Company ("KGE").[1] KGE provides retail electric service to approximately 277,000 residential, commercial and industrial customers in Kansas and wholesale electric generation and transmission services to numerous municipal customers in Kansas and, through interchange agreements, to surrounding integrated systems. KGE does not own or operate any gas properties. KGE has one active subsidiary, Wolf Creek Nuclear Operating Corporation ("Wolf Creek"), a Delaware Corporation which is 47% owned by KGE and operates the Wolf Creek Generating Station on behalf of the plant's owners, including KGE.[2] KGE is regulated as a public utility company with respect to retail electric rates and other matters by the KCC. It is also regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, in connection with its ownership interest in Wolf Creek.

WRI also has numerous direct and indirect non-utility subsidiaries, including (1) Westar Capital, Inc. ("Westar Capital"), a Kansas corporation that is holding company for certain of WRI's non-regulated activities,[3] (2)

[1] WRI has entered into an Agreement and Plan of Merger dated February 17, 1997 with Kansas City Power & Light Company ("KCPL"), a public utility company which operates as an electric utility company in Kansas and Missouri ("KCPL Merger Agreement"). The KCPL Merger Agreement calls for KCPL to be acquired by WRI, after which, WRI would claim, or seek an order from the Commission granting, an exemption under Section 3(a).

[2] KGE has obtained no-action assurance from the Commission regarding its ownership interest in Wolf Creek. SEC No-Action Letter (June 26, 1995).

[3] Westar Capital's subsidiaries and affiliates are: (i) Hanover Compressor Company (offers compression services to the natural gas industry), (ii) Westar Financial Services, Inc. (funds activities of other WRI subsidiaries), (iii) Wing Columbia, L.L.C. (invests in power generation projects in Columbia, South America), (iv) WestSec, Inc.

Continued

Westar Energy, Inc. ("Westar Energy"), a Kansas corporation that provides energy related services to large commercial and industrial customers,[4] and (3) Mid Continent Market Center, Inc. ("MCMC"), a Kansas corporation that offers natural gas transportation, wheeling, parking, balancing and storage services to natural gas procedures.[5]

For the year ended December 31, 1996, WRI had consolidated operating revenues of approximately $2,047 billion, approximately $549 million of which was derived from the company's natural gas operations, approximately $1.197 billion of which was derived from its electric energy operations and approximately $301 million of which was derived from its non-utility activities. Consolidated assets of WRI and its subsidiaries at December 31, 1996 were approximately $6.65 billion, approximately $4.36 billion of which consisted of identifiable utility property, plant and equipment. WRI's common stock, $5.00 par value, is listed on the New York Stock Exchange. There were 65,220,373 shares of WRI common stock outstanding as of July 30, 1997.

ONEOK, Inc., is a Delaware corporation which, among other things, operates as a gas utility company ("ONEOK"). ONEOK has its principal office in Tulsa, Oklahoma. It engages through its divisions and subsidiaries in several aspects of the energy business, including local distribution of natural gas. ONEOK is a gas utility company as defined in Section 2(a)(4) of the Act and is presently neither an associate nor an affiliate of a public-utility holding company. Oklahoma Natural Gas Company, a division of ONEOK, and two subsidiaries, ONG Transmission Company and ONG Sayre Storage Company comprise a fully integrated intrastate natural gas gathering, storage, transmission and distribution operation that provides natural gas service to approximately 730,000 customers, primarily in Oklahoma. The operations of the division and two subsidiaries are consolidated for ratemaking purposes by the OCC. ONEOK also engages in a number of non-regulated energy-related businesses, including natural gas marketing and oil and gas exploration and production. As of May 31, 1997, there were 27,997,925 shares of ONEOK common stock outstanding. For the year ended August 31, 1996, ONEOK's operating revenues on a consolidated basis were approximately $1.224 billion, of which approximately $538 million was attributable to regulated natural gas distribution activities and approximately $686 million to gas marketing, gas processing, gas exploration, gas production and other operations. Consolidated assets of ONEOK and its subsidiaries at May 31, 1997 were $1.40 billion, of which approximately $678 million consists of its gas distribution property, plant and equipment.

WRI requests authorization to acquire up to (1) 9.9% of the outstanding common stock of WAI, Inc. (WAI), a newly-formed Oklahoma corporation,[6] and (2) shares of WAI's non-voting convertible preferred stock, which, when aggregated with the common stock, may amount to as much as 45% of the total capital stock of WAI (collectively, "WAI Stock"). In return for the WAI Stock, and pursuant to an amended and restated agreement dated May 19, 1997 (the "Agreement") among WRI, WAI and ONEOK, WRI will transfer all of the assets of its Kansas and Oklahoma gas distribution operations and all of the outstanding capital stock of its MCMC and Westar Gas Marketing subsidiaries[7] (collectively, the "WRI Gas Business") to WAI (the "Asset Transaction").[8] ONEOK will then merge with and into WAI, with WAI as the surviving corporation (the "Merger," and together with the Asset Transaction, the "Transactions"), and WAI will be renamed ONEOK, Inc. ("New ONEOK").[9]

Immediately following the Merger, the New ONEOK board of directors and management will be the same as that of ONEOK prior to the Merger, except for (i) the expansion of the board from 14 to 16 directors to allow the appointment two directors designated by WRI[10] and (ii) the appointment of five persons who are currently officers of WRI with respect to the WRI Gas Business (including officers of MCMC and Westar) as additional officers of New ONEOK, with comparable responsibilities.[11] New ONEOK will be subject to regulation with respect to rates and other corporate matters by KCC and OCC.

Upon consummation of the Transactions, on a fully diluted basis, after giving affect to the Transactions and based on the number of shares of ONEOK Common Stock outstanding as of December 12, 1996, WRI will hold 2,966,702 shares of New ONEOK Common Stock and 19,317,584 shares of Series A Convertible Preferred Stock of New ONEOK,[12] representing up to 9.9% of the New ONEOK Common Stock outstanding before conversion of any of the Series A Convertible Preferred Stock into New ONEOK Common Stock and up to 45% of the New ONEOK Common Stock that would be outstanding after conversion of all such stock. The present shareholders of ONEOK Common Stock will hold shares of New ONEOK Common Stock representing at least 90.1% of the New ONEOK Common Stock then outstanding and not less than 55% of the New ONEOK Common Stock that would be outstanding after conversion of all of the Series A Convertible Preferred Stock to be held by WRI.

WRI and New ONEOK will enter into a shareholder agreement ("Shareholder Agreement"), upon the closing of the Transactions, which will place certain restrictions on WRI's actions as a New ONEOK shareholder during the term of the Shareholder Agreement.[13] Among other things, the Shareholder Agreement will provide that the "Shareholder Group" (defined as WRI, its affiliates, partners and certain other persons and groups contemplated by Section 13(d) of the Securities Exchange Act of 1934) will be prohibited from acquiring (1) any Voting Securities (as defined in the Shareholder Agreement) that would cause the Shareholder Group to have more than a 9.9% Voting Ownership Percentage,[14] prior to the occurrence of a Regulatory Change (as defined in the Shareholder Agreement),[15] or (2) any securities that would, at any time, cause the Shareholder Group's Total Ownership Percentage[16] to exceed the Maximum Ownership Percentage specified in the Shareholder Agreement.[17] The Shareholder Agreement gives the Shareholder Group certain "top-up" and "dilutive issuance" rights that enable the Shareholder Group to ensure that the Voting Ownership Percentage does not fall below 9.9% and the Total Ownership Percentage does not fall below the Maximum Ownership Percentage. The Shareholder Agreement will also impose certain restrictions on WRI's ability to vote[18] or transfer the securities of New ONEOK.

Applicant states that the proposed Transactions satisfy all of the requirements of Sections 9(a)(2) and 10 under the Act.[19] In addition, WRI and ONEOK have requested a no-action letter from the Commission in connection with the proposed Transactions seeking assurances that WRI's ownership interest in New ONEOK will not cause NEW ONEOK to be deemed a "subsidiary" of WRI or WRI to be deemed a "holding company" under the Act.

For the Commission, pursuant to delegated authority, by the Division of Investment Management.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

(engaged in the business of monitored home and business security systems), (v) Westar Limited Partners, Inc. ("Westar Limited") (participates in limited partnerships and investments related to the business of WRI), (vi) Valence, L.L.C. (develops, manufactures, produces and distributes electronic parts, equipment and products), (vii) Thunderbird Limited, III, L.P. (a low income housing project in which Westar Limited is an 82% limited partner), (viii) Thunderbird Montery, L.P. (a low income housing project in which Westar Limited is a 99% limited partner), and (ix) Oakwood Manor, L.P. (a low income housing project in which Westar Limited is a 99% limited partner).

[4] Westar Energy's subsidiaries are: (i) Westar Energy Investments, Inc. (holds investments of Westar Energy), (ii) Westar Gas Marketing, Inc. ("Westar Gas Marketing") (arranges natural gas purchasing, transportation and delivery for natural gas users), (iii) Westar Gas Company (gathers and processes natural gas in Oklahoma and Kansas), (iv) Indian Basin Venture I and II (collectively, Indian Basin Ventures) (operates a gas processing plant in New Mexico), (v) Westar Electric Marketing, Inc. (arranges electric marketing and brokering for commercial and industrial customers on a wholesale level), and (vi) Westar Business Services, Inc. (provides energy related services to commercial and industrial customers).

[5] MCMC has a subsidiary, Market Center Gathering, Inc., which facilitates the operation of gas gathering systems.

[6] WAI has been formed initially as a wholly-owned subsidiary of WRI.

[7] As noted above, MCMC provides natural gas transportation, wheeling, parking, balancing and storage services to natural gas producers and Westar Gas Marketing arranges natural gas purchasing, transportation and delivery for natural gas users.

[8] Applicant states that transfer of the WRI Gas Business to New ONEOK will improve the efficiency of WRI's gas utility operations, will be in the public interest and the interests of investors and consumers and will not be detrimental to the proper functioning of the resulting holding company system.

[9] Pursuant to a Registration Rights Agreement to be entered into by WRI and New ONEOK upon closing of the Transactions, the outstanding shares of ONEOK common stock ("ONEOK Common Stock") will be converted on a one-for-one basis into the right to receive shares of New ONEOK common stock ("New ONEOK Common Stock"). Each share of New ONEOK Common Stock will be issued together with the corresponding number of associated rights to purchase one one-hundredths of a share of Series C Preferred Stock of New ONEOK.

[10] Only one of the two directors may be an officer, director or employee of WRI or its subsidiaries. The two directors to be designated by WRI approximate the number of directors it could elect in ordinary circumstances, based on its 9.9% common equity interest, if cumulative voting applied. No board member designated by WRI will serve on the New ONEOK board nominating committee, or chair any other committee of New ONEOK's board.

[11] Under certain circumstances, following the occurrence of a "Regulatory Change," WRI has the right to designate additional directors providing for aggregate representation of up to one-third of the New ONEOK Board.

[12] Shares of Series A Convertible Preferred Stock are non-voting, except that they vote with the New ONEOK Common Stock (and any other class or series of stock which may be similarly entitled to vote with the holders of New ONEOK Common Stock) as a single class with respect to certain extraordinary matters such as transactions constituting a Change in Control (as defined in the Shareholder Agreement) or proposed changes to New ONEOK's Certificate or Incorporation or By-Laws. The Series A Convertible Preferred Stock is convertible, at the option of the holder, in whole or in part, at any time following the occurrence of a Regulatory Change (as defined in the Shareholder Agreement), into New ONEOK Common Stock at the rate of one share of New ONEOK Common Stock for each share of Series A Convertible Preferred Stock (as adjusted to reflect any stock split or similar events). In addition, any shares of the Series A Convertible Preferred Stock transferred by WRI to any person other than WRI or its affiliates is required to be converted into New ONEOK Common Stock.

[13] The Shareholder Agreement terminates under certain circumstances described in Article V of the agreement.

[14] "Voting Ownership Percentage" means the Voting Power (as defined in the Shareholder Agreement) represented by New ONEOK Common Stock and shares of any other class of capital stock of New ONEOK then entitled to vote in the election of directors (not including Convertible Preferred Stock) ("Voting Securities") beneficially owned by the person whose voting ownership percentage is being determined.

[15] The Shareholder Agreement states that a "Regulatory Change" will be deemed to have occurred upon the receipt by WRI of an opinion of counsel (which counsel must be reasonably acceptable to New ONEOK) to the effect that either (1) the 1935 Act has been repealed, modified, amended or otherwise changed or (2) WRI has received an exemption, or, in the unqualified opinion of WRI's counsel, is entitled without any regulatory approval to claim an exemption, or has received an approval or no-action letter from the Commission or its staff under the 1935 Act or has registered under the 1935 Act, or any combination of the foregoing, and as a consequence of (1) and/or (2), WRI may fully and legally exercise such rights under the Shareholder Agreement as take effect in the period after the Regulatory Change has occurred.

[16] "Total Ownership Percentage" means the Voting Power (as defined in the Shareholder Agreement) which would be represented by the Securities Beneficially Owned (as defined in the Shareholder Agreement) by the Person whose Total Ownership Percentage is being determined if all shares of Convertible Preferred Stock (as Defined in the Shareholder Agreement), or other Securities convertible into Voting Securities (as defined in the Shareholder Agreement), Beneficially Owned by such Person were converted into shares of Common Stock (or other Voting Security.

[17] The Shareholder Agreement defines "Maximum Ownership Percentage" as a Total Ownership Percentage of 45%, less the Voting Power (as defined under the Shareholder Agreement) represented by all Voting Securities (as defined in the Shareholder Agreement) transferred by the Shareholder Group during the term of the Shareholder Agreement, including the Voting Power represented by any shares of Convertible Preferred Stock which were converted into shares of New ONEOK Common Stock contemporaneously with such transfer pursuant to the terms of the Shareholder Agreement.

[18] Among other things, the Shareholder Agreement provides that, with respect to the election of directors to New ONEOK's board of directors, WRI will vote all New ONEOK Common Stock held by it in accordance with the recommendation of New ONEOK's nominating committee. The New ONEOK nominating committee recommends nominees to fill vacancies on the board, establishes procedures to identify potential nominees, recommends criteria for membership on the board, and recommends the successor chief executive officer when a vacancy occurs. The New ONEOK By-laws provide that the chief executive officer of New ONEOK must be elected by the affirmative vote of 80% of the directors of New ONEOK.

[19] Section 9(a)(2) makes it unlawful, without approval of the Commission under Section 10, "for any person * * * to acquire, directly or indirectly, any security of any public utility company, if such person is an affiliate * * * of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate." Commission approval under Section 9(a)(2) is required because WRI (which is already an affiliate of its subsidiary, KGE) will become an affiliate of New ONEOK as a result of the proposed Transactions.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22850; 812–10806]

Security First Trust, et al.; Notice of Application

October 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

Summary of Application: Signet Banking Corporation ("Signet"), parent of Virtus Capital Management, Inc. ("Subadviser"), has entered into an agreement and plan of merger with First Union Corporation ("First Union"). The indirect change in control of the Subadviser will result in the assignment, and thus the termination, of the existing subadvisory contract between Security First Investment Management Corporation ("Adviser") on behalf of Security First Trust ("Fund"), and the Subadviser. The order would permit the implementation, without shareholder approval, of a new investment subadvisory agreement for a period of up to 120 days following the date of the change in control of the Subadviser (but in no event later than April 30, 1998). The order also would permit the Subadviser to receive all fees earned under the new subadvisory agreement following shareholder approval.

Applicants: Fund, Adviser, and the Subadviser.

Filing Dates: The application was filed on October 7, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 4, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Rosemary D. Van Antwerp, Esq., Evergreen Keystone Investment Services Inc., 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end management investment company. The Fund currently offers two series, the Virtus Equity Series and Virtus U.S. Government Income Series (the "Portfolios"), to the public. The Adviser and the Subadviser, a wholly-owned subsidiary of Signet, are investment advisers registered under the Investment Advisers Act of 1940. The Fund and the Adviser have entered into a sub-advisory agreement for the Portfolios.

2. On July 18, 1997, First Union entered into an agreement and plan of merger with Signet, under which Signet would be merged with and into First Union in exchange for shares of common stock of First Union in exchange for shares of common stock of First Union (the "Transaction"). As a result of the Transaction, Signet will become a wholly-owned subsidiary of First Union and the Subadviser will remain a wholly-owned subsidiary of Signet. Applicants expect consummation of the Transaction on November 13, 1997.

3. Applicants request an exemption to permit implementation, prior to obtaining shareholder approval, of a new investment subadvisory agreement between the Adviser and the Subadviser, on behalf of the Fund, ("New Agreement"). The requested exemption will cover an interim period of not more than 120 days beginning on the date the Transaction is consummated and continuing through the date on which the New Agreement is approved or disapproved by the shareholders of each Portfolio, but in no event later than April 30, 1998 (the "Interim Period"). Applicants state that the New Agreement will be identical in substance to the existing investment subadvisory agreement ("Existing Agreement"). The contractual rates chargeable for subadvisory services under the New Agreement will remain the same as under the Existing Agreement.

4. On October 7, 1997, the Fund's board of trustees held an in-person meeting to evaluate whether the terms of the New Agreement are in the best interests of the Fund and its shareholders. At the meeting, a majority of the members of the board, including a majority of members who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees"), voted in accordance with section 15(c) of the Act to approve the New Agreement and to submit the New Agreement to the shareholders of each of the Portfolios at meetings expected to be held in February, 1998 (the "Meetings").

5. Applicants expect that proxy materials for the Meetings will be mailed during January 1998. Applicants believe that the requested relief is necessary to permit continuity of investment management for the Fund during the Interim Period and to prevent disruption of the services for the Fund.

6. Applicants also request an exemption to permit the Subadviser to receive from the Fund, upon approval by its shareholders, all fees earned under the New Agreement during the Interim Period. Applicants state that the fees paid during the Interim Period will be unchanged from the fees paid under the Existing Agreement.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Subadviser during the Interim Period under the New Agreement will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) To the Adviser only upon approval of the relevant New Agreement by the shareholders of the Portfolios; or (b) to the relevant Portfolio if the Interim Period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Fund will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, Signet will become a wholly-owned subsidiary of First Union. Applicants believe, therefore, that the Transaction will result in an "assignment" of the Existing Agreement and that the Existing Agreement will terminate by its terms upon consummation of the Transaction.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by an assignment in which the adviser does not directly or indirectly receive a benefit, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to Signet, the Subadviser's parent, arising from the Transaction, applicants may not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Transaction were determined by First Union and Signet and arose primarily out of business considerations beyond the scope of the Act and unrelated to the Fund and the Subadviser, including the time needed to obtain federal and state banking approvals for the Transaction. Applicants submit that it is in the best interests of shareholders of the Fund to avoid any interruption in services to the Fund, to allow sufficient time for the consideration and return of proxies, and to hold a shareholders meeting.

6. Applicants submit that the scope and quality of services provided to the Fund during the Interim Period will not be diminished. During the Interim Period, the Subadviser would operate under the New Agreement, which would be substantively the same as the Existing Agreement, except for its effective date. Applicants submit that if the personnel providing material services pursuant to the New Agreement change materially, the Subadviser will apprise and consult with the Fund's board of trustees to assure that the board (including a majority of the Independent Trustees) is satisfied that the services provided by the Subadviser will not be diminished in scope or quality. Accordingly, the Fund should receive, during the Interim Period, the same subadvisory services, provided in the manner, at the same fee levels as the Fund received before the Transaction.

7. Applicants contend that the best interests of shareholders of the Fund would be served if the Subadviser receives fees for its services during the Interim Period. Applicants state that the fees are essential to maintaining the subadviser's ability to provide services to the Fund. In addition, the fees to be paid during the Interim Period will be unchanged from the fees paid under the Existing Agreements, which have been approved by the shareholders of each respective Portfolio.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement will have substantially the same terms and conditions as the Existing Agreement, except for its effective date.

2. Fees earned by the Subadviser in respect of the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Subadviser in accordance with the New Agreement, after the requisite shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of shareholder approval with respect to such Portfolio.

3. The Fund will hold a meeting of shareholders to vote on approval of the New Agreement on or before the 120th day following the termination of the Existing Agreement (but in no event later than April 30, 1998).

4. Either First Union or the Subadviser will bear the costs of preparing and filing the application, and costs relating to the solicitation of shareholder approval of the Fund necessitated by the Transaction.

5. The Subadviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Subadviser will apprise and consult with the board to assure that the board, including a majority of the Independent Trustees of the Fund, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27594 Filed 10–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [62 FR 53040, October 10, 1997].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: October 7, 1997.

CHANGE IN THE MEETING: Time Change/Deletions.

The closed meeting scheduled for Tuesday, October 14, 1997, at 11:00 a.m. was changed to Tuesday, October 14, 1997, at 2:00 p.m. and the following items were not considered:

Institution of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: October 15, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27755 Filed 10–15–97; 3:43 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39225; File No. SR–Phlx–97–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Respecting the Public Order Exposure System for PACE Orders

I. Introduction

On June 30, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend the duration of its automatic execution system order exposure time period for eligible orders from the current 15 seconds to 30 seconds.

The proposed rule change was published for comment in Securities Exchange Act Release No. 38864 (July 23, 1997), 62 FR 40882 (July 30, 1997). No comments were received on the proposal. This order approves the proposed rule change.

II. Description

The operation of the Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System is governed by Phlx Rule 229 ("PACE Rule"). The PACE System is the Exchange's automatic order routing and executing system for securities on its equity trading floor.

With respect to market orders entered into PACE, Supplementary Material .05 to the PACE Rule provides that, in ⅛ point markets or greater, round-lot market orders up to 500 shares and partial round-lot ("PRL") market orders up to 599 shares (*i.e.*, orders that combine a round-lot with an odd-lot order) are stopped at the PACE Quote[3]

[1] 15 U.S.C. §78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). *See* PACE Rule.

at the time of their entry into PACE ("Stop Price") in the Public Order Execution System ("POES"). In addition, market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participate in POES.[4]

Supplementary Material .05 to the PACE Rule states that the purpose of stopping eligible market orders in POES is to allow such orders to receive an opportunity for price improvement. Supplementary Material .05 further states that if a stopped order is not executed within the applicable order exposure time period, or "window," the order will be automatically executed at the Stop Price.

Upon its adoption in early 1995, POES utilizes a 15 second order exposure window.[5] Following Phlx Floor Procedure Committee ("FPC") approval in December 1995, however, the Exchange increased the duration of the POES window from 15 to 30 seconds.[6] At this time, the Exchange proposes to codify the 30 second time period into Supplementary Material .05, which currently reflects a 15 second window. The Exchange has represented that it believes that extending the POES window to 30 seconds enables the specialist to better gauge the market and thus, improves the likelihood of price improvement. Moreover, the Exchange stated that it has learned, in its two years of experience with POES, that additional time is needed for a meaningful opportunity for price improvement to be afforded to such orders. In this regard, the Exchange represented that the 30 second window better enables the specialist to locate between-the-market interest and probe other market centers.[7]

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9]

As stated in the previous section, the purpose of the proposed rule change is to amend Supplementary Paragraph .05 to the PACE Rule in order to increase the duration of the Exchange's POES order exposure window from 15 to 30 seconds. Each regional exchange has incorporated an order exposure feature similar to POES into its automatic order execution system.[10] Initially, the Chicago Stock Exchange ("CHX") and the Pacific Exchange ("PCX") had adopted 30 second order exposure windows into their rules. The CHX and PCX, however, amended their rules in 1990 to reduce the duration of their order exposure windows from 30 to 15 seconds.[11]

In the order approving the CHX and PCX proposals, the Commission acknowledged that any decrease in the duration of an order exposure window would have an adverse effect on price improvement opportunities available to eligible orders, while having a positive effect on the timeliness of the execution of such orders.[12] The Commission's analysis of the appropriateness of these proposals therefore required a balancing of their positive and negative effects. The Exchange's current proposal to increase the duration of the POES window requires that a similar analysis be undertaken; namely, balancing the proposal's potential positive effect on price improvement opportunities for customers orders against any negative effect that it may have on the timeliness of customer order execution. In this regard, based upon the Exchange's representations of its experience with POES, the system's functionalities, and the realities of competition for order flow between markets, the Commission believes that the Exchange's proposal strikes an appropriate balance in that the positive effects of increased order exposure time should offset any negative effects on the efficiency of order execution.

With regard to opportunities for price improvement, the Commission notes that, as stated above, the Exchange has had experience with both 15 and 30 second order exposure windows. The Exchange has represented that this experience has indicated that a 15 second window often was insufficient to allow the specialist to attempt price improvement at all, while the additional time afforded by a 30 second window provided specialists with a more meaningful opportunity to do so. In light of the Exchange's experience, and absent any empirical evidence to the contrary, the Commission believes that the proposal is appropriate in that the increase in order exposure time should result in a concomitant, and beneficial, increase in the price improvement opportunities afforded by Phlx specialists to customer orders that are eligible for POES.

Moreover, the Commission believes that the proposal should have a limited impact on the timeliness of order executions on the Phlx. In this regard, the Commission notes that under the proposal a specialist will maintain the ability to execute manually an order residing on POES prior to the expiration of the POES window. Accordingly, if the specialist determines that price improvement is unlikely to occur, the specialist may execute the order at the Stop Price prior to the end of the 30 second period. In addition, the effect of the proposal on the overall timeliness of Phlx executions is further limited by the fact that the POES window only is applicable to certain market orders and then only in ⅛ point markets or greater. Finally, the Commission believes that the competition between Phlx specialists and other markets for order flow should provide a continuing incentive for specialists to execute customer orders promptly, thereby serving to further alleviate any potential adverse impact that the proposal may have on the provision of timely executions of customer orders.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–97–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27544 Filed 10–16–97; 8:45 am]

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[4] *See* Supplementary Material .05 to the PACE Rule.

[5] Securities Exchange Act Release No. 35283 (January 26, 1995), 60 FR 6333 (February 1, 1995) (File No. SR–Phlx–94–58).

[6] The Exchange has represented that by its oversight, this change was not filed with the SEC as a proposed rule change prior to its implementation pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. The Exchange contends that upon the discovery of this oversight in the course of drafting changes to the PACE Rule, the change was promptly filed with the SEC. *See* Securities Exchange Act Release No. 37479 (July 25, 1996), 61 FR 40276 (August 1, 1996) (File No. SR–Phlx–96–25). The Exchange has re-filed this change as a separate proposed rule change due to the withdrawal of File No. SR–Phlx–96–25. The Exchange represents that, to date, it has not distributed marketing material reflecting an order exposure window of 30 seconds.

The Commission notes that Section 19(b) of the Act provides that each self-regulatory organization is required to file any proposed rule change with the Commission and that no proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with its provisions.

[7] In addition, the Exchange previously had stated its reasoning behind the expansion of the POES window to 30 seconds in an amendment letter respecting File No. SR–Phlx–96–25. *See* Letter from Gerald D. O'Connell, Senior Vice President, Phlx, to Jennifer Choi, Attorney, SEC, dated July 19, 1996. Specifically, the Exchange stated that the FPC recognized that 15 seconds was often too short of a time period for the specialist to act. In this regard, specialists has informed the Exchange that by the time they noticed an order was stopped, it had been automatically executed. The Exchange further stated that its decision to expand the POES window to 30 seconds "is rooted in the logical principle that more time means more opportunity for price improvement." *Id.*

[8] 15 U.S.C. § 78f(b).

[9] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[10] BSE Rules, Ch. XXXIII, Section 3(c); CHX Rules, Art. XX, Rule 37(b)(6); and Securities Exchange Act Release No. 27727 (February 22, 1990), 55 FR 7396 (March 1, 1990) (order approving amendment of order exposure feature to PCX's P/COAST automatic execution system). *See also* CSE Rule 11.9(a)(2) (requires exposure of any unexecuted portion of any market or marketable limit order not fully executed pursuant to the CSE's public agency guarantee). In addition, the CSE has adopted a price improvement policy that requires preferencing dealers either to: (1) expose eligible customer orders on the Exchange for a minimum of 30 seconds in greater than minimum variation markets; or (2) immediately execute the order at an improved price. CSE Rule 11.9(u), Interpretation and Policy .01.

[11] *See* Securities Exchange Act Release No. 27727, *supra* note 10 (order reducing CHX and PCX order exposure time periods from 30 to 15 seconds). *See also* Securities Exchange Act Release No. 28667 (November 30, 1990), 55 FR 50624 (December 7, 1990) (order approving change in order exposure time from 30 to 15 seconds in CSE Rule 11.9(a)(2).

[12] *See* Securities Exchange Act Release No. 27727, *supra* note 9.

[13] 15 U.S.C. § 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 29,1996 (61 FR 55835–55836) and a Notice of Final Determination was published on June 10, 1997 (62 FR 31655–31661).

DATES: Comments must be submitted on or before November 17, 1997.

FOR FURTHER INFORMATION CONTACT: For information about the submission to OMB, Form OMB 83–I, including supporting statements for this collection contact the US DOT Dockets, Room PL 401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 1–800–647–5527. For Technical issues in the submission: Mr. Robert F. Schultz, Jr., Office of Motor Carrier Research and Standards, (202) 366–2718, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Motor Carrier Regulatory Relief and Safety Demonstration Project.

OMB Number: 2125–0575.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Motor Carriers operating commercial motor vehicles with a gross vehicle weight rating between 10,001 and 26,000 pounds in interstate commerce.

Abstract: The National Highway System Designation Act of 1995 (Payable–59, 109 Stat. 568) was signed by the President on November 28, 1995. Section 344 of the Act requires FHWA to implement a pilot program under which motor carriers operating commercial motor vehicles (CMS) with a gross vehicle weight rating between 10,001 and 26,000 pounds in interstate commerce may qualify for exemption from certain Federal Motor Carrier Safety Regulations (FMCSRS) (49 CFR part 325 *et seq.*). The Act directs the FHWA to establish criteria for admission to the pilot, and to monitor the performance of those participating in the pilot. Section 344 also states that "[the Secretary] shall complete the review [of the pilot program] by the last day of the 3-year period beginning on the date of the enactment of this paragraph [November 28, 1995]. [On November 28, 1998] the Secretary shall, after notice and an opportunity for public comment, grant such exemptions or modify or repeal existing regulations to the extent appropriate." By this language, Congress has directed the FHWA in explicit terms. The agency is bound not to just conduct and evaluate the pilot, but to grant exemptions, and modify or repeal regulations, immediately upon its conclusion, save only the time necessary to solicit public comment. On August 28, 1996, the agency published a notice for this collection, providing a proposed plan for this Project, soliciting public comment on the proposed Project, and referring to the agency's intent to request emergency processing. On October 29, 1996, the FHWA published a Supplemental Notice seeking public comment on the specific issue of whether the rules of the Project would preempt conflicting laws of the States. In February 1997, OMB granted emergency approval to the collection requirements of this Project until August 31, 1997. On June 10, 1997 the agency published a Notice of Final Determination on the Project, providing

STATE DEPARTMENT

[Public Notice No. 2615]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 4, 5, and 6, at the U.S. Department of State, Washington, D.C. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/ security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Nick Proctor, Overseas Security Advisory Council, Department of State, Washington, D. C. 20522–1003, phone: 202–663–0869.

Dated: September 26, 1997.

Gregorie W. Bujac,

Director of the Diplomatic Security Service.

[FR Doc. 97–27538 Filed 10–15–97; 8:45 am]

BILLING CODE 4710–24–M

a comprehensive outline of the criteria for admission, the application process, and the terms of the agreement between the FHWA and participant motor carriers. The agency also indicated that the information collections requirements related to the Project had been approved through emergency processing by the OMB until August 31, 1997, and that approval on a permanent basis of the collection requirements of the Project would be sought.

Estimated Annual Burden Hours: 420.

Number of Respondents: 125.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 10, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–27613 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Charlotte for the Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with the applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Charlotte/Douglas International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 30, 1998.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is September 30, 1997. The public comment period ends December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Atlanta Airports District Office, Federal Aviation Administration, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Telephone 404/305–7153. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Charlotte/Douglas International Airport are in compliance with applicable requirements of part 150, effective September 30, 1997. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 30, 1998. This notice also announces the availability of this program for public review and comment. Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Charlotte submitted to the FAA on August 26, 1997, noise exposure maps, descriptions and other documentation which were produced during Charlotte/Douglas International Airport's FAR. Part 150 Study Update, August 1997. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Charlotte. The specific maps under consideration are Noise Exposure Map 1996 and Noise Exposure Map 2001 in the submission. The FAA has determined that these maps for the Charlotte/Douglas International Airport are in compliance with the applicable requirements. This determination is effective September 30, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of the specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of the specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibilities for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Charlotte/Douglas International Airport, also effective on September 30, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 30, 1998.

The FAA's detail evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591;

Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747;

Ms. Carolyn Morehead, Reception Area, Charlotte/Douglas International Airport, Charlotte, North Carolina 28219.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Atlanta, Georgia, September 30, 1997.

Dell T. Jernigan,

Manager, Atlanta Airports District Office.

[FR Doc. 97–27386 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MSP–006]

Sea-Land Service, Inc.; Notice of Application To Increase Service in the Non-Contiguous Domestic Trade for Puerto Rico

Sea-Land Service, Inc. (Sea-Land), by application dated October 1, 1997, has applied for an increase in the authorized level of the service Sea-Land provides to the Commonwealth of Puerto Rico (Puerto Rico), pursuant to section 656(d) of Subtitle B, Title VI, of the Merchant Marine Act, 1936, as Amended (1936 Act). In support of its application, Sea-Land has provided information related to the growth of real gross product for the Commonwealth of Puerto Rico, as supplied to Sea-Land by the Planning Board of the Office of the Governor of Puerto Rico.

As originally approved, Sea-Land's authorized service level for Puerto Rico was 230,612 Twenty-foot Equivalent Units (TEUs), as of August 9, 1995. Based on increases in the gross product of Puerto Rico for Fiscal Year (FY) 1996 (July 1, 1995 to June 30, 1996) Sea-Land has asked for an additional 6,365 TEUs of authorized service. Based on increases in Puerto Rico's gross product for FY 1997 (July 1, 1996 to June 30, 1997), Sea-Land has asked for a second additional increase in authorized service of 6,365 TEUs. Additionally, Sea-Land has requested a third increase of 3,167 TEUs projected for the period July 1, to December 31, 1997. In summary, Sea-Land is seeking an increase of 16,167 TEUs in the trade to a total of 246,779 TEUs. A summation of Sea-Land's request is attached hereto as Table I.

Any person, firm or corporation having an interest in this application for increased service authorization, and who desires to submit comments concerning Sea-Land's application, is requested to provide those comments to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Such comments must be filed in triplicate and received no later than 5:00 pm Eastern Time November 17, 1997.

Dated: October 10, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

Sea-Land Service, Inc.; Requested Increases in Authorized Non-Contiguous Domestic Service for the Commonwealth of Puerto Rico

Original Grandfather authorization as of August 9, 1995: 230,612 TEUs

For Fiscal Year 1996 (July 1, 1995 to June 30, 1996).

Gross Product for FY 1996: +3.1 Percent.

Proration, August 9, 1995 to June 30, 1996 = 328/366 Days (1996 was a leap year) = .89

(.89) × (3.1) = 2.76 Percent.

Increase = (.0276) × (230,612) = 6,365 TEUs

Total for June 30, 1996 = 236,977 TEUs

For Fiscal Year 1997 (July 1, 1996 to June 30, 1997)

Gross Product for FY 1997: +2.8 Percent (Tentative)

Increase = (.028) × (236,977) = 6,635 TEUs

Total for June 30, 1997 = 243,612 TEUs

Projected Increase July 1, 1997 to December 31, 1997

Gross Product: +2.6 Percent (Projected)

July 1 to December 31=184 days

184/365 = .5

Proration, July 1 to December 31, 1997 = (.5) × (2.6) = 1.3 Percent.

Increase = (.013) × (243,977) = 3,167 TEUs

Total for December 31, 1997 = 246,779 TEUs

Total Requested Increase: 16,167 TEUs

[FR Doc. 97–27614 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–100; Notice No. 1]

Tires and Rims Labeling

Correction

In notice document 96–33121 beginning on page 68812 in the issue of Monday, December 30, 1996, make the following correction:

On page 68813, in the first column, the OMB Clearance Number should read 2127–0503.

Dated: October 10, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–27595 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–057–NO1]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 16, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St., SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, SW., Room 5111, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

49 CFR Part 571.218, Motorcycle Helmets

Type of Request—Extension of a currently approved clearance.

OMB Clearance Number—2127–0518.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of clearance.

Summary of the Collection of Information—NHTSA has issued Federal Motor Vehicle Safety Standard No. 218, Motorcycle Helmets, which establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users. Standard No. 218 requires that each helmet shall be labeled permanently and legibly (S5.6), in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Description of the Need for the Information and Proposed Use of the Information—NHTSA requires labeling information to ensure that helmet owners have important safety information. The information currently provided on the helmet from the labels includes the manufacturer's name or identification, model, size, month and year of manufacture, shell and liner construction of the helmet. The owners will also receive important information on caring for the helmet from the labels. Finally, the DOT symbol signifies the manufacturer's certification that the helmet meets all the requirements in the standard. Labeling is necessary for NHTSA to identify the helmet, particularly, if the helmet failed the compliance tests.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA estimates that 24 manufacturers of motorcycle helmets offer their products for sale in the United States. The frequency of response to the collection of information depends on the number of helmets that each manufacturer sells.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—Currently, 24 manufacturers produce, on the average, a total of approximately 1,200,000 motorcycle helmets a year. NHTSA estimates that the total annual information collection burden on all manufacturers is 4,000 hours. NHTSA estimates that annualized costs on all manufacturers is $480,000.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: October 1, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–27596 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–041; Notice 01]

Denial of Petition To Adopt a Federal Motor Vehicle Safety Standard To Require That New Vehicles Be Equipped With Technology (Computer Chips) Embedded in Ignition Keys To Deter Theft

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the Consumers for Auto Reliability and Safety's (CARS) petition to adopt a Federal Motor Vehicle Safety Standard (FMVSS) to require that new motor vehicles be equipped with specific technology, such as computer chips in the ignition keys, to deter theft. CARS believes that the standard it proposed would ensure a safer and more effective means of deterring theft than the steering lock systems presently required by 49 CFR Section 571.114, Theft Protection.

The agency is denying this petition because it cannot mandate specific technologies that motor vehicle manufacturers are to use to deter theft. The definition of "motor vehicle safety standard" in the vehicle safety law limits the agency's discretion with respect to petitions that seek to specify the design of vehicles or equipment rather than their performance. In addition, the Department of Transportation (DOT) and the Department of Justice (DOJ) are currently assessing the existing theft prevention program to determine what, if any, changes are needed to further deter motor vehicle theft. Accordingly, the agency believes it would be premature to promulgate additional requirements before this comprehensive assessment is completed.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Motor Vehicle Theft Group, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: By facsimile dated April 21, 1997, CARS petitioned the agency to adopt a new Federal Motor Vehicle Safety Standard (FMVSS) which will require new motor vehicles to be equipped with specific technology, such as computer chips embedded in the ignition keys, to deter theft. CARS believes that adopting such a standard would reduce crime and ensure a safer and more effective means of deterring theft than that offered by the steering lock systems presently required by 49 CFR Section 571.114, Theft Protection. Additionally, CARS notes that the European Union has mandated that model year (MY) 1999 vehicles must use some form of this technology to deter motor vehicle theft in its market. CARS contention is that adopting the proposed standard would be compatible with the agency's goal of moving toward harmonization with other countries without jeopardizing a stronger U.S. standard.

Agency Analysis

Because there is already a standard (FMVSS 114) covering theft protection, the agency is treating CARS' petition as a petition to amend the existing standard rather than to adopt a new standard as the petitioner requests. FMVSS 114 specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of motor vehicles, or from rollaway of parked vehicles. Specifically, this standard requires that each vehicle have a key-locking system that requires the vehicle transmission lever to be in "park" before removal of the key is permitted; and that, whenever the key is removed, prevents the vehicle from starting, and prevents the steering and/or forward mobility of the vehicle.

Although NHTSA is interested in actions that would reduce motor vehicle theft and provide for a safer and more effective means of deterring theft than that presently offered by steering lock systems, the definition of "motor vehicle safety standard" in the vehicle safety law, 49 U.S.C. 30102(9), provides that a safety standard is "a minimum standard for motor vehicle or motor vehicle equipment performance." This definition limits the agency's discretion with respect to petitions that seek to specify the design of vehicles or equipment rather than their performance. This prohibits the agency from mandating specific technologies that motor vehicle manufacturers are to use to deter theft, as the CARS petition requests.

In addition to FMVSS 114, Congress and NHTSA recognized the economic impact and seriousness of motor vehicle theft and have taken actions aimed at alleviating theft in a cost-effective manner. The Motor Vehicle Theft Law Enforcement Act (the Theft Act) was passed by Congress in 1984. The purpose of the Theft Act was to reduce the incidence of motor vehicle thefts and to facilitate the tracing and recovery of stolen motor vehicles and parts from stolen vehicles. The Department of Transportation implemented this legislation by issuing the Federal Motor Vehicle Theft Prevention Standard (49 CFR part 541), which requires manufacturers of designated high-theft passenger cars to inscribe or affix the vehicle identification number onto the major parts of that vehicle. In 1992, the Theft Act was amended to provide tougher law enforcement against auto theft, impede automobile title fraud, and extend the parts-marking requirements to light-duty trucks and multipurpose passenger vehicles.

49 CFR part 543, Exemption from Motor Vehicle Theft Prevention Standard, provides that manufacturers of high-theft vehicle lines may petition the agency for an exemption from the parts-marking requirements if an antitheft device is installed as standard equipment on the entire vehicle line. A manufacturer may be exempted from the parts-marking requirements for any line of passenger motor vehicles equipped with an antitheft system that is determined to be as effective in reducing and deterring theft as parts marking would be.

The exemption provisions of the Theft Act have already resulted in manufacturers installing antitheft systems, including systems that incorporate the technology advocated by CARS, in many high-theft models. Thus, vehicles with higher-than-median theft rates are already equipped with theft deterrents (parts marking and/or antitheft systems) that add to the protection provided by FMVSS No. 114.

All manufacturers are attempting to reduce motor vehicle theft through development and installation of effective antitheft devices as standard equipment. Additionally, along with meeting mandatory requirements, all manufacturers have moved forward in manufacturing new vehicles with other improved antitheft deterrents, such as hardened collars that shield the upper and lower casing of the steering column. These deter theft by increasing significantly the time required to disable the locking mechanism for the ignition, steering wheel and automatic transmission gear selector.

In its petition, CARS also asserts that by adopting a new FMVSS comparable to the European Union's, NHTSA would be meeting its goal of moving toward harmonization without jeopardizing the U.S. standard. The European Union has mandated that its model year (MY) 1999 vehicles must use some form of antitheft technology. Some manufacturers have already developed and installed antitheft devices which utilize specific ignition keys and sophisticated electronic control modules similar to that required by the European Union. The agency has also granted exemptions from parts marking under 49 CFR part 543 for models equipped with PASS-KEY and other antitheft devices with computer chips imbedded in the ignition key.

The statutory basis for granting these exemptions under the vehicle theft law is a finding by the agency, on a case-by-case basis, that these systems are at least as effective as the parts-marking requirements of the theft prevention standard in reducing and deterring theft (49 U.S.C. 33106(b). Part 543 does not specify how the antitheft device is to perform or be designed. Instead, it requires a manufacturer applying for an exemption to provide information on how the device is activated and functions. The agency then uses the information provided about these functions to decide whether the system will be sufficiently effective in deterring theft to warrant an exemption from the parts-marking requirements of the Theft Prevention Standard.

It should be noted that by October 25, 1997, the Department of Transportation is required to provide a Report to Congress which will evaluate the effects of federal regulations on auto theft and comprehensive insurance premiums, and recommend what changes, if any, to these regulations are appropriate. Specifically, the Report to Congress will evaluate the effects of the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984. This report will provide information on the efficacy of parts-marking and antitheft devices. It will also recommend whether the Theft Prevention Standard should be continued without change, modified to cover more or fewer lines of passenger motor vehicles; modified to cover other classes of motor vehicles or to terminate the standard for all future motor vehicles. The notice seeking public review and comment on the report prior to its submission to Congress was published in the **Federal Register** on June 26, 1997 (See 62 FR 34494). The Department of Transportation and the Department of Justice are assessing the current theft prevention program to determine what, if any, changes are needed to further deter motor vehicle theft. Upon review of the public comments, recommendations for changes, if any, to the regulations will be considered.

The agency believes that the Theft Prevention Standard (49 CFR part 541), in conjunction with FMVSS No. 114 and Part 543, provides a comprehensive scheme for deterring motor vehicle theft. Until DOT and DOJ complete their assessment of the existing theft prevention program, it would be premature to promulgate any regulatory requirement under the vehicle safety law even if a way could be found to develop performance criteria rather than the design criteria suggested by the CARS petition.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the request by the petitioner would be amended at the conclusion of a rulemaking proceeding. Accordingly, it denies CARS' petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8

Issued on: October 9, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–27597 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Reinstatement, without change of a previously approved collection for which approval has expired.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. Chapter 35).

Title: Annual Report form R–1 Class I Railroads.

OMB Form Number: 2140–0009.

No. of Respondents: 10.

Total Burden Hours: 8,000.

DATES: Persons wishing to comment on this information collection should submit comments by November 17, 1997.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., 202 565-1533. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1875.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation. Annual reports are required to be filed by Class I railroads pursuant to authority in Sections 49 U.S.C. 11145, 11144 and 11901 of the Act. The Board will use this information to monitor industry growth, company financial stability, traffic, and facilitate informed decision making.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27604 Filed 10–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33464]

Ashland Railway, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.

Ashland Railway, Inc., a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate 25.85 route miles of rail line owned by the CSX Transportation, Inc. The track to be purchased, known as the Willard to Mansfield Line, extends from Mansfield, OH, milepost 61.07, to Willard,OH, milepost 86.92.

The transaction is expected to be consummated after the October 1, 1997 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33464, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 1126 Eighth Avenue, Suite 403, Altoona, PA 16602.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27601 Filed 10–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33469]

Georgia Northeastern Railroad Company, Inc.—Lease and Operation Exemption—Georgia Department of Transportation

Georgia Northeastern Railroad Company, Inc., a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from the Georgia Department of Transportation and operate three rail lines in the State of Georgia as follows: (i) From Valuation Station 20975+35 (milepost 382.47), at McCaysville, to Valuation Station 21726+83 (milepost 396.7), at Blue Ridge, a distance of 14.23 miles in Fannin County; (ii) from Valuation Station 21726+83 (milepost 396.7), at Blue Ridge, to Valuation Station 22154+46 (milepost 404.8), at White Path, a distance of 8.1 miles in Fannin and Gilmer Counties; and (iii) from Valuation Station 21556+55 (milepost 393.47) on the north leg of the wye including the south leg of the wye, at Murphy Junction, to Valuation Station 21706+72 (milepost 396.32), in Mineral Bluff, a distance of 2.85 miles in Fannin County.

The transaction is expected to be consummated on or after the effective date of the exemption. Because the notice of exemption was filed on October 3, 1997, the transaction can be consummated no sooner than October 10, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33489, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin R. Armbruster, Esq., Cushing, Morris, Armbruster & Jones, LLP, Suite 2110, International Tower, 229 Peachtree Street, N.E., Atlanta, GA 30303.

Decided: October 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27603 Filed 10–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33487]

Iowa Northern Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

Iowa Northern Railway Company (IANR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate an 8,692-foot portion of rail line, known as the Bristow Subdivision, owned by Union Pacific Railroad Company (UP), between the crossing of the UP and IANR lines at MP 288.8 and the end of the Bristow Subdivision at approximately MP 287.4 (end of track) to the east of that crossing in Clarksville, IA.[1] The transaction was expected to be consummated as soon as practicable after October 9, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33487, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit,1925 K Street, NW, Washington, DC 20423–0001 and served on: David A. Hirsh, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036.

Decided: October 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27602 Filed 10–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–534 (Sub-No. 1X)]

Lake State Railway Company—Abandonment Exemption—in Alpena County, MI

Lake State Railway Company (Lake State) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 8-mile line of railroad between milepost 0.0 near Alpena, and milepost 8.0 near Hillman, in Alpena County, MI. The line traverses United States Postal Service Zip Code 49707.

Lake State has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic moving over the line during this time; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 16, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 27, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 6, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Lake State has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 22, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days

[1] IANR states that, although the official UP milepost designations suggest a track length of 1.4 miles, IANR personnel have measured the track length as 8,692 feet, or approximately 1.6 miles.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Lake State shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Lake State's filing of a notice of consummation by October 17, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27600 Filed 10–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Office; Debt Management Advisory Committee; Meeting

The notice of the public meeting of the Treasury Borrowing Advisory Committee of The Bond Market Association that was announced in the **Federal Register** of October 7, 1997 (62 FR 52378) is hereby amended. The time of the meeting has been changed from 11:30 a.m. to 12:30 p.m. Eastern Time on October 28, 1997. The notification that was published on October 1 remains unchanged in all other respects.

October 10, 1997.

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 97–27543 Filed 10–16–97; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978) 43.FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Flowers Underfoot: Indian Carpets of the Mughal Era" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 17, 1997, to on or about March 1, 1998, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register.**

Dated: October 10, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–27591 Filed 10–16–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 62, No. 201
Friday, October 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Control of the National Park Service, Haleakala National Park, Makawao, HI

Correction

In notice document 97–27215, appearing on page 53652, in the issue of Wednesday, October 15, 1997, make the following correction:

On page 53652, in the third column, in the tenth line, "*[thirty days after publication in the* **Federal Register**]" should read "November 14, 1997".

BILLING CODE 1505–01–D

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federal register

Friday
October 17, 1997

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Occupational Exposure to Tuberculosis; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The Occupational Safety and Health Administration is proposing a health standard, to be promulgated under section 6(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, to control occupational exposure to tuberculosis (TB). TB is a communicable, potentially lethal disease that afflicts the most vulnerable members of our society: the poor, the sick, the aged, and the homeless. As many as 13 million U.S. adults are presently believed to be infected with TB; over time, more than 1 million of these individuals may develop active TB disease and transmit the infection to others. TB remains a major health problem with 22,813 active cases reported in the U.S. in 1995. A number of outbreaks of this disease have occurred among workers in health care settings, as well as other work settings, in recent years. To add to the seriousness of the problem, some of these outbreaks have involved the transmission of multidrug-resistant strains of *Mycobacterium tuberculosis*, which are often fatal. Although it is the responsibility of the U.S. Public Health Service to address the problem of tuberculosis in the general U.S. population, OSHA is solely responsible for protecting the health of workers exposed to TB as a result of their job.

OSHA estimates that more than 5 million U.S. workers are exposed to TB in the course of their work: in hospitals, homeless shelters, nursing homes, and other work settings. Because active TB is endemic in many U.S. populations, including groups in both urban and rural areas, workers who come into contact with diseased individuals are at risk of contracting the disease themselves. The risk confronting these workers as a result of their contact with TB-infected individuals may be as high as 10 times the risk to the general population. Although the number of reported cases of active TB has slowly begun to decline after a resurgence between 1985–1992, 16 states reported an increase in the number of TB cases in 1995, compared with 1994. Based on a review of the data, OSHA has preliminarily concluded that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures. To reduce this occupational risk, OSHA is proposing a standard that would require employers to protect TB-exposed employees by means of infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections. These measures include the use of respirators when performing certain high hazard procedures on infectious individuals, procedures for the early identification and treatment of TB infection, isolation of individuals with infectious TB in rooms designed to protect those in the vicinity of the room from contact with the microorganisms causing TB, and medical follow-up for occupationally exposed workers who become infected. OSHA has preliminarily determined that the engineering, work practice, and administrative controls, respiratory protection, training, medical surveillance, and other provisions of the proposed standard are technologically and economically feasible for facilities in all affected industries.

DATES: Written comments on the proposed standard must be postmarked on or before December 16, 1997 and notices of intention to appear at the informal rulemaking hearings must be postmarked on or before December 16, 1997.

Parties requesting more than 10 minutes for their presentation at the hearings and parties submitting documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than December 31, 1997.

The informal public hearings will begin at 10:00 a.m. on the first day of hearing and at 9:00 a.m. on each succeeding day. The informal public hearings will be held in Washington, D.C. and are scheduled to begin on February 3, 1998.

ADDRESSES: Hearings will be held in the Auditorium of the U.S. Department of Labor (Frances Perkins Building), 200 Constitution Avenue, NW, Washington, D.C. Subsequent additional informal public hearings will be held in other U.S. locations. A **Federal Register** notice will be issued upon determination of the locations and dates of these hearings.

Comments on the proposed standard, Notices of Intention to Appear at the informal public hearings, testimony, and documentary evidence are to be submitted in quadruplicate to the Docket Officer, Docket No. H–371, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter. The hours of operation of the Docket Office are 10:00 a.m. until 4:00 p.m.

Written comments, Notices of Intention to Appear at the informal rulemaking hearings, testimony, documentary evidence for the hearings, and all other material related to the development of this proposed standard will be available for inspection and copying in the Docket Office, Room N–2625, at the above address.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, Telephone (202) 219–8148, FAX (202) 219–5986.

SUPPLEMENTARY INFORMATION:

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References to the rulemaking record are in the text of the preamble. References are given as "Ex." followed by a number to designate the reference in the docket. For example, "Ex. 1" means exhibit 1 in the Docket H–371. This document is a copy of the petition for a permanent standard filed by the Labor Coalition to Fight TB in the Workplace on August 25, 1993. A list of the exhibits and copies of the exhibits are available in the OSHA Docket Office.

I. Introduction

The preamble to the Proposed Standard for Occupational Exposure to Tuberculosis discusses the events leading to the development of the proposed standard, the health effects of exposure to tuberculosis, and the degree and significance of the risk. An analysis of the technological and economic feasibility of the proposal and an explanation of the rationale supporting the specific provisions of the proposed standard are also included.

Public comment on all matters discussed in this notice and all other relevant issues is requested for the purpose of assisting OSHA in the development of a new standard for occupational exposure to tuberculosis.

A. Issues

OSHA requests comment on all relevant issues discussed in this preamble, including the health effects, risk assessment, significance of risk determination, technological and economic feasibility and requirements that should be included in the final standard. OSHA is especially interested in responses, supported by evidence and reasons, to the following questions. This list is provided to assist persons in formulating comments, but is not intended to be all inclusive or to indicate that participants need to respond to all issues or follow this format. Please give reasons for your answers and provide data when available.

Specific issues of concern to OSHA are the following:

Health Effects

1. What, if any, additional studies or case reports on TB should be included in the health effects analysis?

2. Is there information that will provide data for estimating the rise in Multidrug-resistant TB (MDR–TB)? Is the rise in MDR–TB a serious threat?

Risk Assessment

1. Are there alternative risk assessment methodologies available? What are they? Are there other studies available that would be useful for assessing risk?

2. Are there factors other than or in addition to the ones OSHA has chosen that would be useful in estimating the background risk for TB?

Technological and Economic Feasibility

1. Are OSHA's estimates of the numbers and types of workers currently exposed to *M. tuberculosis* reasonable? If not, please provide estimates of the number of workers currently at risk and the percentage of the total workforce these workers represent, by industry.

2. Are OSHA's estimates of controlled access rates (i.e., the percentage of workers currently at risk who would remain at risk after employers minimize the number of workers exposed to individuals with suspected or confirmed infectious TB) reasonable? If the number of workers exposed to individuals with suspected or confirmed infectious TB is minimized, by what percentage could the number of workers at risk be reduced in each affected industry? In each industry, what are the job categories that would continue to be occupationally exposed?

3. Are OSHA's estimates of the numbers of affected establishments reasonable? If not, please provide estimates of the number of affected establishments, by industry.

4. Are OSHA's estimates of occupational and job turnover rates reasonable? If not, please provide estimates of turnover rates for each of the affected industries.

5. Under what conditions would social work, social welfare services, teaching, law enforcement or legal services need to be provided to individuals identified as having suspected or confirmed infectious TB? What, if any, procedures could not be postponed until such individuals are determined to be noninfectious? How many workers in each of these categories may need to have contact with individuals with suspected or confirmed infectious TB under these conditions?

6. Using the proposed definition of "suspected infectious TB," how many individuals with suspected infectious TB are likely to be encountered for every confirmed infectious TB case in each of the covered industries?

7. Are OSHA's estimates of the average number of suspected or confirmed infectious TB cases that would be transferred, per establishment in each industry, reasonable? If not, on average, how many TB cases per facility in each of the affected industries would be transferred?

8. How are individuals with suspected infectious TB transferred to establishments with AFB isolation facilities? Who pays for the transport of such cases, particularly for individuals transferred from homeless shelters? OSHA solicits comment on the feasibility of temporary AFB isolation facilities in homeless shelters and on methods that could be used to temporarily isolate individuals with suspected or confirmed infectious TB in homeless shelters.

9. Of the suspected infectious TB cases referred to hospitals from other facilities, how many are immediately ruled out without needing to be isolated?

10. Are OSHA's estimates of the number of necessary AFB isolation rooms reasonable? Are existing AFB isolation rooms reasonably accessible to facilities that transfer individuals with suspected or confirmed infectious TB?

11. What types of respirators are currently being used to protect workers against occupational exposure to *M. tuberculosis*?

12. Which of the NIOSH-approved N95 respirators meet all of the proposed criteria, including fit testing and fit checking criteria?

13. Are OSHA's estimates of respirator usage rates reasonable? For each of the covered industries, how often could respirators meeting the proposed requirements be reused and still maintain proper working condition? How often, on average, would respirators need to be replaced? Please specify the type of respirator.

14. OSHA has assumed, in its Preliminary Economic Analysis, that hospitals will have licensed health care professionals on-site to perform the medical procedures that would be required by the proposed rule, and that in the other industries, employees will have to travel off-site to receive the medical procedures. Which of the other affected industries typically have licensed health care professionals on site who could perform the required medical procedures? If employers were allowed two weeks to provide the medical procedures, rather than being required to provide them prior to initial assignment to jobs with occupational exposure, will it be less likely that employees will have to travel off site to receive these tests/procedures? What would the costs be if employees travel off-site for these tests/procedures?

15. Are OSHA's estimates of baseline compliance reasonable? If not, what types of controls are currently in place to protect workers against occupational exposure to *M. tuberculosis*, and what proportion of facilities in each of the affected industries currently are using such controls?

16. For facilities that have implemented controls to protect workers against occupational exposure to *M. tuberculosis*, how effective have such controls been in reducing the transmission of TB?

17. OSHA's Initial Regulatory Flexibility Analysis assesses the impacts of the proposed standard on small entities using the Small Business Administration's (SBA) size standards.

In addition, OSHA analyzed the impacts of the proposed standard on entities employing fewer than 20 workers. Are these definitions appropriate for the covered industries? If not, how should small entities be defined for each industry?

18. The SBA defines small government jurisdictions as "governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000." OSHA requests comment on the number of such small government jurisdictions.

19. Some parties have suggested that OSHA should allow the use of the CDC guidelines as an alternative to the proposed rule. However, OSHA believes that the CDC guidelines are not written in a regulatory format that would allow OSHA's Compliance Safety and Health Officers (CSHOs) to determine whether or not an employer is in compliance with the Guidelines. Others have suggested that OSHA could judge compliance with the guidelines by determining the number or rate of skin test conversions at the employer's facility. OSHA does not believe that smaller facilities have an adequate population for trends in test conversions to have any statistical validity. OSHA welcomes suggestions on any methods of making the CDC guidelines an enforceable alternative to an OSHA regulation or methods of measuring performance that could be applied across all types and sizes of facilities.

20. Because of the limited availability of data, OSHA characterized the risk in many sectors as similar to that in hospitals, and less than that documented in nursing homes and home health care. OSHA welcomes industry-specific data on test conversion rates or active case rates.

21. OSHA is unable to determine the effectiveness of specific elements of an effective infection control program in hospitals. OSHA welcomes any evidence on the relative effectiveness of individual elements in such programs, such as the identification and isolation of suspect cases, the use of engineering controls, the use of respirators, and employee training.

22. OSHA based its estimate of the effectiveness of infection control programs in other sectors on studies of the effectiveness of such programs in hospitals. OSHA welcomes any data concerning the effectiveness of OSHA's proposed infection prevention measures, or of other alternative infection control measures, in sectors other than hospitals.

23. SBREFA Panel members suggested a number of alternative approaches to the regulation. OSHA believes that it has at least partially adopted a number of these approaches. OSHA welcomes comments and suggestions on these approaches and the extent to which OSHA should further adopt them:

- Cooperative initiatives, such as expanding OSHA's current cooperative initiative with JCAHO;
- A federal-state government public health partnership to develop guidelines in various industry sectors;
- Performance standards developed with the assistance of federal, state, and local government, and labor and industry stakeholders;
- Separate approaches for the health and non-health industries (the approach for the health industries could be keyed to existing industry standards and that for non-health industries to guidelines);
- Different levels of compliance requirements for different industries, depending on their expertise, resources, and risk;
- Less stringent trigger mechanisms for the more burdensome portions of the standard; and
- Separate standards for each affected industry.

24. OSHA is proposing to include homeless shelters in the Scope of the standard. During the informal public hearings, OSHA intends to schedule a special session for participants to present additional information on homeless shelters. Also, OSHA is conducting a special study of the homeless shelter sector. The information gathered in the study will be placed in the docket for public comment. OSHA welcomes comment on any of the topics this study will cover including:

- Percentage of homeless persons that would meet OSHA's definition of a suspected infectious TB case (A breakdown of which symptoms are particularly common will help OSHA construct the best definition);
- Turnover among the homeless who use shelters;
- Employee turnover in homeless shelters;
- Trends in the number of homeless persons served in shelters.
- Criteria currently used by some homeless shelters to identify suspected infectious TB cases;
- Current practices used in homeless shelters to address TB hazards so that baseline compliance with the proposed standard can be determined. Of particular concern to OSHA are:

—Methods of isolation; and
—How suspected TB cases are handled.

- Feasibility of hospitals providing cards to the homeless indicating TB skin test status;
- Number of TB skin test conversions and active cases among the homeless and homeless shelter employees;
- Types of benefits offered to homeless shelter employees (e.g., health insurance);
- Economic feasibility:

—Costs of running a shelter;
—Revenue sources;
—How costs are accommodated as the number of homeless persons served increases; and
—Opportunities for cost pass-through;

- Number, location and types (e.g., family-oriented, walk-in, all-male) of homeless shelters;
- Number or proportion of homeless shelter workers who are unpaid volunteers; and
- The OSH Act applies to employees, not bona fide volunteers. However, OSHA understands that some states may, as a matter of law, require facilities to provide volunteers with protections established by OSHA standards. OSHA is seeking information on:

—Economic impacts in such states of covering volunteers (e.g., how costs would be handled, cost pass-through); and
—Protections currently offered to volunteers.

25. In what states, if any, do employers provide volunteers in the sectors affected by this proposed standard with the same protections as they provide to employees? How many volunteers might be affected by such requirements?

26. OSHA is concerned that medical removal protection and medical treatment of active cases of TB may have significant economic impacts on small firms that have an employee with an active case of TB. Is there any form of insurance available for covering the costs of medical removal protection or medical treatments required by the OSHA standard? Should OSHA consider phasing-in these provisions of the standard?

27. OSHA believes that substance abuse treatment centers, particularly in-patient treatment centers, normally have entry procedures that may include medical examinations. OSHA solicits comments on entry procedures for substance abuse treatment programs, the extent to which these entry procedures now include medical examinations, and the extent to which these examinations now include and examination for TB symptoms.

28. OSHA requests comment on the effects of extended compliance phase-in dates for the proposed requirements, particularly for respirators, for small businesses and facilities relying on charitable and/or Medicare and Medicaid funding.

29. OSHA requests comment on all assumptions and estimates used in developing the Preliminary Economic Analysis. Please provide reasons and data to support suggested changes to the assumptions and estimates.

30. The World Health Organization (WHO) has launched an initiative to reduce active TB through the use of multi-drug therapy and using directly observed therapy. OSHA solicits comment on whether it should revise its risk assessment or any of its benefits estimates as a result of this initiative.

31. OSHA requests comment on the number of affected facilities that are tribally-operated, by industry.

General

1. A number of provisions in the proposed standard are triggered by the identification of an individual as having either "suspected infectious tuberculosis" or "confirmed infectious tuberculosis." Of these provisions, are there some that should be triggered only once an individual has been identified as having "confirmed infectious tuberculosis?" If so, which provisions and why?

2. A number of the proposed standard's provisions require compliance or performance on an annual basis, e.g., reviews of the exposure control plan, the biosafety manual for laboratories, and the respiratory protection program; certification of biological safety cabinets; fit testing or a determination of the need for fit testing of respirators; medical histories, TB skin tests; and training. In addition, certain requirements must be performed on a semi-annual basis, e.g., inspection and performance monitoring of engineering controls, verification of air flow direction in laboratories, and, in some instances, TB skin testing. How can OSHA reduce the aggregate burden of these requirements, particularly in small entities, while still providing equal protection to employees? Of these annual and semi-annual provisions, which, if any, should be performed less frequently? Why and at what frequency? Which of these provisions, if any, should be performed more frequently? Why and at what frequency?

Scope

1. Is there information demonstrating risk of TB transmission for employees in work settings other than those included in the scope? Should OSHA, for example, expand the scope of this standard to cover all or some offices of general practitioners or dentists and if so, how? Should OSHA expand the scope to cover all teachers?

2. Are there provisions of the standard with which emergency medical services, home health care, and home-based hospice care employers cannot comply because their employees are at temporary work settings over which the employer has little or no control? If so, what are those provisions and why would an employer be unable to comply with them?

3. In covering only long-term care facilities for the elderly, is OSHA excluding similar facilities where there is increased risk of transmission of TB? If so, what are these facilities? Should OSHA include long-term care populations in addition to the elderly, such as long-term psychiatric care facilities? If so, what are these populations?

4. OSHA is proposing that employers provide medical management and follow-up for their employees who work in covered work settings, but who are not occupationally exposed, when they have an exposure incident resulting from an engineering control failure or similar workplace exposure. Is this the best way of assuring such employees receive medical management and follow-up?

5. OSHA is covering employees who have occupational exposure in covered work settings yet are not employees of the work setting (e.g., physician employed by another employer with hospital privileges, who is caring for a TB patient in the hospital). Can this be made more clear?

6. OSHA has proposed that facilities offering treatment for drug abuse be covered in the scope of the standard. Is coverage of such facilities appropriate? What factors unique to facilities that offer treatment for drug abuse would make compliance with the provisions of this proposed standard infeasible (e.g., would complying with certain provisions of the standard compromise the provision of services at facilities that offer treatment for drug abuse)?

Application

1. OSHA has proposed that an employer covered under the standard (other than an operator of a laboratory) may claim reduced responsibilities if he or she can demonstrate that his or her facility or work setting: (1) Does not admit or provide medical services to individuals with suspected or confirmed infectious TB; (2) has had no case of confirmed infectious TB in the past 12 months; and (3) is located in a county that, in the past 2 years, has had 0 cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year. Are there alternative methods that can be used to assure protection of employees in areas where infectious TB has not recently been encountered?

Exposure Control Plan

1. OSHA has proposed that the employer's exposure control plan contain certain policies and procedures. What, if any, policies and procedures should be added to the plan?

2. The proposed standard requires exposure incidents and skin conversions to be investigated, but does not require aggregate data regarding employee conversions to be collected and analyzed. Would the collection and analysis of aggregate data provide benefits beyond those provided by investigating each individual exposure incident or conversion? Why or why not? If aggregate data collection and analysis were required, what type of analysis should be required, at what analytical endpoint should employer action be required, and what should that action be?

3. OSHA has set forth the extent of responsibility for transfer of individuals based upon the type of work setting where such individuals are encountered. What are current practices regarding transfer of individuals with suspected or confirmed infectious TB in the work settings covered by the proposal?

Work Practices and Engineering Controls

1. Is OSHA's time limit of 5 hours following identification for transferring an individual with suspected or confirmed infectious TB to another facility or placing the individual into AFB isolation appropriate? If not, what is the maximum amount of time that an individual should be permitted to await transfer or isolation in a facility before the employer must implement the other provisions of the proposed standard?

2. OSHA has considered requiring facilities that encounter 6 or more individuals with confirmed infectious TB within the past 12 months to provide engineering controls in intake areas where early identification procedures are performed (e.g., emergency departments, admitting areas). Should this be a requirement? Are there types of controls, engineering or otherwise, that would be effective in controlling transmission in intake areas? Would the trigger of 6 individuals with confirmed infectious TB be appropriate?

3. Are there methods other than smoke trail testing and continuous monitors that would be effective for verifying negative pressure in AFB isolation rooms or areas?

4. OSHA is requiring engineering controls to be inspected and performance monitored every 6 months. Is this frequency appropriate?

5. OSHA is allowing exhaust air from AFB isolation rooms or areas where *M. tuberculosis* may be aerosolized that cannot feasibly be discharged directly outside to be HEPA-filtered and recirculated back into general ventilation. Is permitting such recirculation appropriate? If used, should there be any requirements to detect system failure?

6. OSHA is permitting stand-alone HEPA filter units to be used as a primary control measure. Is this appropriate? What, if any, methods other than ventilation and filtration can provide consistent protection?

7. Should ambulances that have carried an individual with suspected or confirmed infectious TB be required to be ventilated for a specific period of time or in a particular way before allowing employees to enter without a respirator? What engineering controls are available for ambulances?

Laboratories

1. The standard does not require labeling of laboratory specimens. Should OSHA require that laboratory specimens be labeled within the facility or when specimens are being shipped? If so, what should the label contain? Are there other agencies that require these specimens be labeled? What are these agencies and what is required?

2. OSHA has attempted to incorporate the CDC/NIH recommendations given in "Biosafety in Microbiological and Biomedical Laboratories" into the standard. Do any provisions need to be added in order for employees in clinical and research laboratories to be fully protected against exposures to *M. tuberculosis*?

Respirators

1. OSHA is requiring employees who are transporting an unmasked individual with suspected or confirmed infectious TB within a facility to wear a respirator. Is this appropriate? How often would an individual with suspected or confirmed infectious TB be transported unmasked through a facility? Under what circumstances would it be infeasible to mask such an individual? What other precautions should be taken when transporting such an individual who is not masked?

2. OSHA is requiring that maintenance personnel use respiratory protection during maintenance of air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis*. When would it be necessary to access such an air system at the time it was carrying air that may contain aerosolized *M. tuberculosis*? Should OSHA require that such air systems be purged and shut down whenever these systems are accessed for maintenance or other procedures?

3. OSHA has received information that the use of certain kinds of respirators in helicopters providing emergency medical services may hamper pilot communication. Have other air ambulance services encountered this problem? Does this problem exist when the employee is using a type N95 respirator or other types of respiratory protection such as powered air purifying respirators? What other infection control or industrial hygiene practices could be implemented to minimize employee exposure in these circumstances?

4. The CDC states that there may be selected settings and circumstances (e.g., bronchoscopy on an individual with suspected or confirmed infectious TB or an autopsy on a deceased individual suspected of having had active TB at the time of death) where the risk of transmission may be such that increased respiratory protection such as that provided by a more protective negative-pressure respirator or a powered air purifying respirator may be necessary. Are there circumstances where OSHA should require use of a respirator that is more protective than a type N95 respirator? If so, what are the circumstances and what type of respiratory protection should be required?

5. OSHA is proposing that respirators be fit-tested annually, which is consistent with general industrial hygiene practice, or, in lieu of an annual fit test, that employees have their need to receive the annual fit test be evaluated by the physician or other licensed health care professional, as appropriate. For the circumstances and conditions regulated by this standard, will the evaluation provide enough ongoing information about the fit of a respirator to be an adequate substitute for fit testing? Should OSHA require that an actual fit test be performed periodically? If so, at what frequency?

6. OSHA has not included any provisions regarding the use of supplied air respirators. Are there circumstances in which supplied air respirators would be used to protect against *M. tuberculosis*? Should OSHA include provisions addressing supplied air respirators in the standard?

7. OSHA is permitting the reuse of disposable respirators provided the respirator does not exhibit excessive resistance, physical damage, or any other condition that renders it unsuitable for use. Will the respirators continue to protect employees throughout the reuse period?

8. In the proposed standard for TB, OSHA has included separate provisions for all aspects of a respiratory protection program for tuberculosis. What other elements might need to be included? Which respiratory protection provisions, if any, are not appropriate for protection against TB? Please provide reasons and data to support inclusion or exclusion of particular provisions.

Medical Surveillance

1. Should any provisions be added to the Medical Surveillance program?

2. OSHA has not required that physical exams be included as part of the baseline evaluation. Is there information that is essential to medical surveillance for TB that can only be learned from a baseline physical exam?

3. OSHA is specifying tuberculin skin testing frequencies for employees with negative skin tests. Should tuberculin skin testing be administered more or less frequently? Are there other ways to determine the frequency of tuberculin skin testing?

4. OSHA is proposing that employees entering AFB isolation rooms or areas be skin tested every 6 months. However, employees providing home health care, home care, and home-based hospice care are to be skin tested annually. Employees entering the home of an individual who has suspected or confirmed infectious TB may have the same potential for exposure to aerosolized *M. tuberculosis* as employees who enter an isolation room. In light of this, should employees providing care to individuals with suspected or confirmed infectious TB in private homes be skin tested every 6 months?

5. OSHA is requiring that all tuberculin skin testing be administered, read, and interpreted by or under the supervision of a physician or other licensed health care professional, as appropriate, according to current CDC recommendations. Should OSHA require specific training for individuals who are administering, reading, and interpreting tuberculin skin tests? If so, what type of training should be required?

6. Should OSHA require a declination form for employees who do not wish to undergo tuberculin skin testing?

7. OSHA is including Medical Removal Protection (MRP) provisions for employees who are unable to wear respiratory protection or who contract infectious tuberculosis. Are there additional provisions that need to be included? What remedies are available to employees in states where worker compensation system do not consider occupational TB a compensable disease? What benefits are provided to workers who are unable to wear a respirator?

8. OSHA is requiring that employees who must wear a respirator be provided a face-to-face determination of their ability to wear the respirator. Does this determination need to be made through a medical evaluation or would the use of an appropriately designed questionnaire be adequate? What would be the advantages and disadvantages of relying on a questionnaire to make this determination? Are there sample questionnaires that have proven to be effective for determining an employee's ability to wear a respirator?

9. OSHA has drafted Medical Surveillance, paragraph (g), to explain first who must be provided with the protections listed in the paragraph and how the surveillance is to be administered and secondly, in paragraphs (g)(2), Explanation of Terms, and (g)(3), Application, how the general medical terms are to be construed to meet the standard and in what instances the medical examinations or tests are to be offered. The Agency realizes that there is some repetition in these paragraphs and seeks comment on whether there might be a better way to list the requirements.

Communication of Hazards and Training

1. OSHA is requiring that signs for isolation rooms and areas bear a "STOP" Sign and the legend "No Admittance Without Wearing A Type N95 or More Protective Respirator." Is there another sign that would assure patient confidentiality while providing adequate notification of the hazard and the necessary steps to minimize the hazard for employees who may be inadvertently exposed?

2. OSHA is requiring that ducts be labeled "Contaminated Air—Respiratory Protection Required." Should OSHA require that duct labels also include the "STOP" sign?

3. Is the labeling of ducts carrying air that may contain aerosolized *M. tuberculosis* (e.g., from isolation rooms and areas, labs) at all access points feasible? What, if any, equally protective alternative exists to permanent labeling in situations where an exhaust duct from a room may or may not be carrying air containing aerosolized *M. tuberculosis* (e.g., the exhaust duct would only be carrying aerosolized *M. tuberculosis* when an individual with infectious TB is being isolated in the room)?

Dates

1. OSHA has proposed that very small businesses with fewer than 20 employees be given an additional 3 months to comply with the standard's engineering control provisions (i.e., the start-up date for engineering controls for small businesses would be 270 days from the Effective Date of the standard). Are there other requirements of the proposed standard (e.g., respiratory protection) for which very small businesses should be given additional time to come into compliance? If so, for which provisions would they need additional time and why? Are 20 employees an appropriate cut-off for this purpose? Are there other employers that may need extended time to achieve compliance?

Definitions

1. A number of provisions in the standard are triggered by the identification of an individual as having "suspected infectious tuberculosis." Under the definition of "suspected infectious tuberculosis", OSHA has proposed criteria that the Agency believes are the minimum indicators that, when satisfied by an individual, require an employer to consider that the individual may have infectious tuberculosis. Are there other criteria that should be included in this definition?

2. Coverage of an employee under the standard is based upon the definition of "occupational exposure." Similar to OSHA's Bloodborne Pathogens standard, occupational exposure is dependent upon reasonable anticipation of contact with an individual with suspected or confirmed infectious tuberculosis or with air that may contain aerosolized *M. tuberculosis*. Are there additions that could be made to this definition that would help employers determine which of their employees are occupationally exposed?

3. OSHA has proposed requirements for research laboratories that differ from those of clinical laboratories. The standard includes definitions of "research laboratory" and "clinical laboratory" to assist the employer in differentiating between these two types of laboratory. Do the definitions clearly differentiate between these two types of laboratories? Should such a distinction be made? Are there any modifications that should be made to these definitions?

B. Information Collection Requirements

This proposed Tuberculosis standard contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA'95), 44 U.S.C. 3501 *et seq.* and the regulation at 5 CFR § 1320. PRA'95 defines collection of information to mean, "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format." [44 U.S.C. § 3502(3)(A)].

The title, description of the need for and proposed use of the information, summary of the collections of information, description of the respondents, and frequency of response of the information collection are described below with an estimate of the annual cost and reporting burden, as required by 5 CFR § 1320.5(a)(1)(iv) and § 1320.8(d)(2). Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OSHA invites comments on whether the proposed collection of information:

(1) Ensures that the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Estimates the projected burden accurately, including whether the methodology and assumptions used are valid;

(3) Enhances the quality, utility, and clarity of the information to be collected; and

(4) Minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title: Tuberculosis 29 CFR 1910.1035.

Description: The proposed Tuberculosis (TB) Standard is an occupational safety and health standard that will prevent or minimize occupational exposure to TB. The standard's information collection requirements are essential components that will protect employees from occupational exposure. The information will be used by employers and employees to implement the protection

required by the standard. OSHA compliance officers will use some of the information in their enforcement of the standard.

Respondents: The respondents are employers whose employees may have occupational exposure in the following settings: hospitals; long-term care facilities for the elderly; correctional facilities and other facilities that house inmates or detainees; hospices; shelters for the homeless; facilities that offer treatment for drug abuse; facilities where high hazard procedures are performed; and laboratories that handle specimens that may contain *M. tuberculosis* or process or maintain the resulting cultures, or perform related activity that may result in the aerosolization of *M. tuberculosis*.

Also, occupational exposure occurring during the provision of social work, social welfare services, teaching, law enforcement or legal services would be covered if the services are provided in the work settings previously mentioned, or in residences, to individuals who are in AFB isolation or are segregated or otherwise confined due to having suspected or confirmed infectious TB. Respondents also include employers whose employees are occupationally exposed during the provision of emergency medical services, home health care and home-based hospice care. Approximately 101,875 employers will be responding to the standard.

Total Estimated Cost: First year $62,972,210; Recurring years $53,691,915.

SUMMARY OF THE COLLECTION OF INFORMATION

Information collection requirement	Number of responses	Frequency of response	Average time per response[1]	Total burden (hours)
Exposure Control Plan:				
(c)(2)(i)	101,875	All Affected Employers to Develop Plan.	• 24 hours per Hospital • 8 hours per Facility for all Other Industries	906,980
(c)(2)(vii)(B)	101,875	Annual Reviews and Updates for All Affected Employers.	• 8 hours per Hospital • 2 hours per Facility for all Other Industries	238,243
Respiratory Protection:				
(f)(2)	82,138	All Employers not Qualified for Appendix A Program to Develop Program.	• 8 hours per Hospital • 4 hours per Facility for all Other Industries	335,323
(f)(5), Appendix B	2,207,580	Initially, for all employees assigned respirators.	• 30 minutes per employee	551,962
	22,078	Annual refit tests for 1% of population assigned respirators.	• 30 minutes per employee	5,520
(f)(8)	82,138	Annual Evaluation of Program for All Affected Employers not Qualified for Appendix A Program.	• 2 hours per Hospital • 1 hour per Facility for all Other Industries	83,831
Medical Surveillance:				
• Medical History (g)(3)(i)(A)	1,831,724	Initially for All Affected Employees	• 1 hour per Hospital Employee (inc. LHCP time). • 1 hour per Employee in all Other Industries (inc. travel time)	1,831,724
	1,595,432	Annually for All Affected Employees in Facilities not Qualified for Appendix A.	• 1 hour per Hospital Employee (inc. LHCP time). • 1 hour per Employee in all Other Industries (inc. travel time)	1,595,432
	47,953	Initially, for New Employees	• 1 hour per Hospital Employee (inc. LHCP time). • 1 hour per Employee in all Other Industries (inc. travel time)	47,953
• Medical Examination (inc. History and Physical) (g)(3)(i)(B)–(D).	47,863	Annually, 3% of Controlled Population at Risk estimated to request exam as a result of having signs or symptoms of TB; have a TST conversion; or indicated as a result of an exposure incident.	• 2 hours per Hospital Employee in Facilities not Qualified for Appendix A (inc. LHCP time). • 1½ hour per Employee in All Other Industries (inc. travel time)	72,518
• Tuberculin Skin Tests				
Initial 2-Step TST (g)(3)(i)(A)	474,627	Initially, for Entire Controlled Population at Risk.	• 1½ hours per Hospital Employee (inc. LHCP time). • 2¼ hour per Employee in All Other Industries (inc. travel time)	1,026,377
Exposure Incident (g)(3)(i)(C).	8,268	Annually, 2% of Controlled Population at Risk in Facilities Qualified for Appendix A.	• 1½ hours per Hospital Employee (inc. LHCP time). • 2¼ hour per Employee in All Other Industries (inc. travel time)	17,879
Pre-Exit (g)(3)(i)(E)	76,257	Annually for Employment Turnover	• 1 hour for each Hospital Employee (inc. LHCP time). • 1½ hour per Employee in All Other Industries (inc. travel time)	110,504
Prior to Initial Assignment	76,257	All New Employees with Occupational Exposure.	• 1½ hour per Hospital Employee (inc. LHCP time).	165,756

SUMMARY OF THE COLLECTION OF INFORMATION—Continued

Information collection requirement	Number of responses	Frequency of response	Average time per response[1]	Total burden (hours)
Annual (g)(3)(ii)(A)	413,400	All employees in facilities not qualified for Appendix A.	• ½ hour per Hospital Employee (inc. LHCP time). • 45 minutes per Employee in all Other Industries (inc. travel time)	297,991
Additional 6-month TST (g)(3)(iii).	131,367	All employees who: • Enter an AFB isolation room or area • Perform or are present during the performance of high-hazard procedures • Transport or are present during the transport of an individual with suspected or confirmed infectious TB in an enclosed vehicle • Work in an intake area in facilities where 6 or more confirmed TB cases have been encountered in the past 12 mos	• 1 hour per Hospital Employee (inc. LHCP time). • 1½ hour for each Employee in All Other Industries (inc. travel time)	171,314
• Information Provided to Licenced Health Care Professional (LHCP) (g)(6)(I).	1,965,967	Information for each affected establishment to provide a copy of the rule, and for information on each employee with a respirator.	• 10 minutes per employee	327,661
	558,549	Information for each new employee assigned a respirator.	• 10 minutes per employee	93,091
	64,692	Information surrounding exposure incidents (2% of controlled population at risk).	• 10 minutes per employee	10,782
• LHCP Written Opinion (g)(7)	2,745,188	Initially, for each medical procedure performed.	• 5 minutes per written opinion	228,766
	2,034,269	Annually, for each medical procedure performed.	• 5 minutes per written opinion	169,522
Training:				
(h)(3)(ii)(B)	202,066	Number of training sessions in first year.	• 2 hours for employees required to wear respirators. • 1 hour for employees with occupational exposure who are not assigned respirators • Assumes 20 employees per session	237,829
(h)(3)(ii)(A)	106,258	Number of training sessions for new employees entering affected occupations for the first time + number of training sessions for employees staying in affected occupations, but starting new jobs.	• For new employees: 2 hours for employees required to wear respirators 1 hour for employees with occupational exposure who are not assigned respirators ½ hours for employees required to wear respirators 15 minutes for employees with occupational exposure who are not assigned respirators	50,193
(h)(3)(ii)(C)	154,966	Recurring number of training sessions.	• For 25% of exposed employees unable to demonstrate competence: 1 hour for employees required to wear respirators ½ hour for employees with occupational exposure who are not assigned respirators • For 75% of exposed employees able to demonstrate competence • Assumes 20 employees per session	57,313
Recordkeeping:				
Medical (l)(1)(I)	3,713,645	Initially, to create a medical record for each affected employee.	• 10 minutes to set up each record	631,320
	1,358,800	Create medical records for each new employee with occupational exposure.	• 10 minutes to set up each record	230,996
	2,447,669	Annually, for each medical procedure performed.	• 5 minutes to update each record	195,814

SUMMARY OF THE COLLECTION OF INFORMATION—Continued

Information collection requirement	Number of responses	Frequency of response	Average time per response[1]	Total burden (hours)
Training (I)(3)(I)	264,451	Initially, to create records for each training session.	• 10 minutes to create each training record.	44,957
	217,351	Annually, to reflect recurring training sessions and initial training for new employees.	• 10 minutes to create each training record.	36,950
Engineering controls (I)(4)(I)	24,761	Annually, for each engineering control.	• 5 minutes per record	3,962
Availability (I)(5)	2,037	Annually, for 2% of affected employers.	• 5 minutes per employer	163
Transfer to NIOSH	1	Annually, for estimated 1 employer per year to transfer records.	• 1 hour per employer	1
Totals.				
• First-Year				7,098,011
• Recurring				3,655,728

[1] Estimates represent average burden hours per response. The actual burden hours per response will vary depending on factors such as the size of the facility, current practices at the facility, and whether the facility transfers or admits individuals with suspected or confirmed infectious TB.

Note: Estimates take into account baseline compliance with the proposed requirements.

The Agency has submitted a copy of the information collection request to OMB for its review and approval. Interested parties are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, Attn. OSHA Desk Officer, OMB New Executive Office Building, 725 17th Street NW, Room 10235, Washington DC 20503.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the final information collection request: they will also become a matter of public record.

Copies of the referenced information collection request are available for inspection and copying in the OSHA Docket Office and will be mailed immediately to any person who request copies by telephoning Todd Owen at (202) 219–7075. For electronic copies of the Tuberculosis information collection request, contact the Labor News Bulletin Board (202) 219–4784, or OSHA web page on the Internet at http://www.osha.gov/. Copies of the information collection requests are also available at the OMB docket office.

C. Federalism

This standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Throughout the development of this proposed standard, OSHA has sought and received assistance from state representatives. Representatives of state departments of health and labor and industries have helped direct OSHA to pertinent information and studies on TB and have submitted drafts of state standards relevant to TB. In addition, representatives of state occupational safety and health departments participated in the review of the draft standard by OSHA field offices and in OSHA's TB Stakeholder meetings, where the requirements of the proposed standard were presented and information was collected from employers, employees, and their representatives on what was being done to prevent occupational exposure to TB in the various worksites and how an OSHA standard for TB could further reduce the exposures.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State-Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The proposed tuberculosis standard is drafted so that employees in every State will be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by States and employers to provide as much safety as possible using varying methods consonant with conditions in each State.

There is a clear national problem related to occupational safety and health for employees exposed to *M. tuberculosis*. Approximately 6.5% of the U.S. adult population is infected (i.e., carrying the tuberculosis bacillus, not manifesting active disease), and although the prevalence of TB infection and disease varies throughout the country, TB disease has been reported in every state. Political and geographic boundaries do not contain infection and disease spread. The U.S. population is mobile, moving freely from place to place for business and pleasure. Immigrants, a group whose members are known to have a high prevalence of TB, settle throughout the country. While there are counties that do not report cases in a given year, the counties change from year to year along with the number of cases reported. In addition, reports do not always reflect all the locations where exposure incidents can occur; infectious TB cases are often transferred from their site of diagnosis to a distant location for treatment and reported as a TB case only in the county where treatment is administered. Finally, underreporting may occur because some individuals with infectious TB, in particular the homeless and clients of drug abuse facilities, do not avail themselves of further diagnosis and treatment. TB infection and disease is truly national in scope.

Those States which have elected to participate under Section 18 of the OSH Act would not be preempted by this regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

D. State Plans

The 23 States and 2 territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months after the publication of a final standard for occupational exposure to tuberculosis or amend their existing standard if it is not "at least as effective" as the final Federal standard. OSHA anticipates that this standard will have a substantial impact on state and local employees. The states and territories with occupational safety and health state plans are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming. (In Connecticut and New York, the plan covers only State and local government employees). Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

II. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* ("the Act") is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. § 651(b). To achieve this goal Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. §§ 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).

A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. § 652(8).

A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk, and is economically feasible, technologically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency actions, supported by substantial evidence, and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 Fed. Reg. 16612—16616 (March 30, 1993).

OSHA has generally considered, at a minimum, a fatality risk of 1/1000 over a 45-year working lifetime to be a significant health risk. See the Benzene standard, *Industrial Union Dep't* v. *American Petroleum Institute*, 448 U.S. 607, 646 (1980); the Asbestos standard, *International Union, UAW* v. *Pendergrass*, 878 F.2d 389, 393 (D.C. Cir. 1989).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA*, 452 U.S. 490, 513 (1981) ("*ATMI*"), *American Iron and Steel Institute* v. *OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991)("*AISI*").

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See *ATMI*, 452 U.S. at 530 n. 55; *AISI*, 939 F.2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI*, 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) ("*LOTO III*").

All standards must be highly protective. See 58 FR 16614—16615; *LOTO III*, 37 F.3d at 669. However, health standards must also meet the "feasibility mandate" of Section 6(b)(7) of the Act, 29 U.S.C. § 655(b)(5). Section 6(b)(5) requires OSHA to select "the most protective standard consistent with feasibility" that is needed to reduce significant risk when regulating health hazards. *ATMI*, 452 U.S. at 509.

Section 6(b)(5) also directs OSHA to base health standards on "the best available evidence," including research, demonstrations, and experiments. 29 U.S.C. § 655(b)(5). OSHA shall consider "in addition to the attainment of the highest degree of health and safety protection * * * the latest scientific data * * * feasibility and experience gained under this and other health and safety laws." *Id.*

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. § 655(b)(7).

Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired." *Id.*

III. Events Leading to the Proposed Standard

Tuberculosis (TB) is a contagious disease caused by the bacterium *Mycobacterium tuberculosis (M. tuberculosis)*. Infection is usually acquired by the inhalation of airborne particles carrying the bacterium. These airborne particles, called droplet nuclei, can be generated when persons with infectious pulmonary or laryngeal TB cough, sneeze, or speak. TB has long been considered an occupational hazard in the health care setting. However, it is inhalation exposure to aerosolized *M. tuberculosis* and not some other factor unique to the health care setting that places workers at risk of infection. Thus, any work setting where employees can reasonably be anticipated to encounter individuals with infectious TB also contains the occupational hazard of TB infection.

On December 21, 1992, the Labor Coalition to Fight TB in the Workplace (the Coalition) requested the Agency to issue nationwide enforcement guidelines to protect workers against exposure to TB in health care, criminal justice, and other high risk settings and to issue a Joint Advisory Notice on TB in conjunction with the Centers for Disease Control and Prevention (CDC) (Ex. 2). This petition was signed by the presidents of the Service Employees International Union (SEIU), the American Federation of State, County, and Municipal Employees (AFSCME), and the American Federation of Teachers (AFT), and was endorsed by 9 other unions. The petition included a list of provisions that the petitioners felt should be included in the guidelines, ranging from a written control plan and medical surveillance to anti-discrimination language and medical removal protection.

Eight months later, on August 25, 1993, the Coalition petitioned OSHA to initiate rulemaking for a permanent standard issued under § 655(b) of the Act to protect workers from occupational transmission of TB (Ex. 1). Citing the recent resurgence of TB and the emergence and increasing rate of new cases of multidrug-resistant TB (MDR–TB), the petitioners stressed the need for a substance-specific standard to address the hazards associated with occupational exposures to TB. The petitioners contended that the non-mandatory CDC TB Guidelines do not provide adequate protection because they are not fully or rigorously implemented in most workplaces. They also stated that in every outbreak of TB investigated by CDC, noncompliance with the Guidelines was evident.

In addition to a permanent standard, the petitioners also requested that OSHA immediately issue the nationwide enforcement guidelines that the Coalition had previously requested, and that OSHA promulgate an Emergency Temporary Standard (ETS) as an interim measure. The Coalition requested that the standard be applicable to all work settings where employees can reasonably anticipate contact with infectious TB. The petition included a discussion on occupational risk that included both the traditional high-risk occupations and other occupations such as sheet metal workers, postal workers, airline employees, teachers, and office workers.

Like the request for nationwide enforcement guidelines, the petition contained provisions that the petitioners requested be included in the standard. Examples include a facility hazard assessment and written exposure control plan, engineering and work practice controls, respiratory protection, medical surveillance (e.g., tuberculin skin testing) and counseling, post-exposure management, outbreak management, training, and recordkeeping.

On October 8, 1993, OSHA issued nationwide enforcement procedures for occupational exposure to TB. The compliance document contained the enforcement procedures that the Agency could and would use in certain work settings for protecting workers with occupational exposure to TB. In the compliance procedures, the Agency noted that although OSHA has no standard designed specifically to reduce occupational exposure to TB, the Agency has existing standards that apply to this hazard. For example, 29 CFR 1910.134 requires employers to provide respiratory protection equipment and 29 CFR 1910.145(f) requires accident prevention tags to warn of biological hazards. In addition, section 5(a)(1), the General Duty Clause of the Act, requires that each employer:

> * * * furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

On January 26, 1994, in response to their August 25 petition, Secretary of Labor Robert B. Reich informed the petitioners that OSHA was initiating rulemaking on a permanent standard to be issued under Section 6(b)(5) of the Act for occupational exposure to TB (Ex. 1B). At the same time, the petitioner's request for an ETS was denied. The Agency had determined that the available data did not meet the criteria for an ETS as set forth in Section 6(c) of the Act. However, OSHA committed to enforcing existing regulations and Section 5(a)(1) of the Act in certain work settings while preparing this standard.

On October 28, 1994 the CDC issued revised guidelines for preventing the transmission of tuberculosis in health care facilities (Ex. 4B). In addition, in June of 1995, the National Institute for Occupational Safety and Health (NIOSH) published revised certification procedures for non-powered air purifying particulate respirators (Ex. 7–261). As a result of changes in these two documents, OSHA issued revised enforcement policies and procedures relative to TB in February of 1996 (Ex. 7–260).

In October and November of 1995, OSHA held a series of meetings with stakeholder groups representing labor unions, professional organizations, trade associations, state and federal government, representatives of employers, as well as frontline workers from the various sectors anticipated to be covered by the proposed standard. During these meetings, participants provided input relative to the concepts and approaches OSHA was considering for the proposed tuberculosis standard.

In September of 1996, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a Small Business Advocacy Review Panel was convened to consider the impact of OSHA's draft proposed tuberculosis standard on affected small entities. The panel, comprised of members from the Office of Advocacy of the Small Business Administration (SBA), the Office of Management and Budget (OMB), and OSHA, prepared a report based on the Panel's findings and recommendations with regard to comments on the standard received from small business employers. This report was submitted to the Assistant Secretary for OSHA for its consideration during the development of the standard (Ex. 12). OSHA's proposed standard reflects input generated during both the stakeholder meetings and the SBREFA review process.

Comparison of OSHA's Proposed Standard and CDC's Revised Guidelines

In preparing its proposed standard for TB, OSHA has relied heavily on the expertise of CDC. The Agency has consulted with CDC and has incorporated the basic elements of CDC's revised guidelines for preventing the transmission of *M. tuberculosis* in health care facilities in this proposed standard. Both CDC and OSHA rely on minimizing exposures and consequent transmission by identifying suspected infectious TB individuals and isolating them. The OSHA proposed standard includes the following CDC components: written exposure control plans, procedures for early identification of individuals with suspected or confirmed infectious TB, procedures for initiating isolation of individuals with suspected or confirmed infectious TB or for referring those individuals to facilities with appropriate isolation capabilities, procedures for investigating employee skin test conversions, and education and training for employees. In addition, OSHA has incorporated CDC recommendations for engineering control measures such as the use of negative pressure for AFB isolation rooms or areas, daily monitoring of negative pressure while AFB isolation rooms are in use for TB, HEPA filtration of recirculated air from AFB isolation rooms, and periodic maintenance and monitoring of engineering controls. With regard to respiratory protection, OSHA has adopted CDC's standard performance criteria for the selection of respiratory protection devices appropriate for use against *M. tuberculosis*. And finally, where appropriate, OSHA has attempted to assure that where certain practices are required by OSHA's proposed standard, e.g., tuberculin skin testing and medical management and follow-up of employees who acquire TB infections or active disease, these practices are conducted according to the current recommendations of the CDC. Therefore, OSHA's proposed standard for occupational exposure to TB closely follows CDC's recommended elements for a TB infection control program.

However, there are some minor differences between OSHA's proposed standard and CDC's guidelines that go beyond the obvious enforcement distinction between a guideline and a standard. These differences are found primarily in the areas of risk assessment, medical surveillance and respiratory protection. Even so, OSHA believes that despite these differences the vast majority of the provisions included in this proposed standard closely track the recommendations of the CDC. The following discussion identifies where these differences occur and describes the extent of these differences and the degree to which they impact on employers' responsibilities under the proposed standard.

Risk Assessment

As a part of its guidelines, CDC recommends that a risk assessment be conducted in all facilities to assess the risk of transmission of *M. tuberculosis* in each facility. This risk assessment is to be conducted using information such as the profile of TB in the community, the number of suspected and confirmed cases of TB among patients and health care workers, results of health care worker tuberculin skin testing (i.e., conversion rates), and observation of TB infection control practices. Using the results of this risk assessment, appropriate infection control interventions can then be selected based on the actual risk in the facility. CDC includes a protocol for conducting this risk assessment in which there are 5 categories of risk: "minimal", "very-low", "low", "intermediate", and "high". Each category from "minimal" to "high" has an increasing number of infection control interventions that are recommended for each particular level of risk.

OSHA, however, has chosen a simpler approach and is not requiring employers to conduct such a risk assessment. Consistent with other standards, OSHA has determined that employees in the work settings and employees providing services set forth in the scope section are at risk of occupational exposure to TB. Their employers are required to conduct an exposure assessment to determine which employees have occupational exposure, i.e., reasonably anticipated contact with an individual with suspected or confirmed infectious TB or air that may contain aerosolized *M. tuberculosis*. The standard then specifies the provisions applicable for the employees whom the employer has identified as having occupational exposure. In addition, consistent with its approach in other standards, OSHA does not require that individual risk assessments be conducted by each work setting covered under the standard, as they may be too difficult and burdensome for employers to prepare. Also, many work settings will have too few occupationally exposed employees to do an accurate risk assessment. Finally, conducting the risk assessments in order to determine applicable duties may require a level of expertise some facilities lack, making enforcement burdensome for the Agency.

OSHA realizes, however, that in many work settings, very few individuals with suspected or confirmed infectious TB may be seen and that in many of those work settings, individuals with suspected or confirmed infectious TB will be transferred to other facilities that are better equipped to provide services and care using appropriate TB isolation precautions. Because there is likely to be less risk of transmission of *M. tuberculosis* in those situations, OSHA believes that it is possible to make the standard less burdensome for the employers with these types of work settings while still maintaining worker protection.

For example, an employer who can demonstrate that his or her facility or work setting: (1) Does not admit or provide medical services to individuals stwith suspected or confirmed infectious TB, (2) has not had any individuals with confirmed infectious TB within the work setting within the last 12 months, and (3) is located in a county that, in the past 2 years, has had 0 cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year, does not have to comply with all provisions of the standard. Such employers would only be responsible for compliance with certain provisions, e.g., a written exposure control plan, a baseline skin test and medical history, medical management and follow-up after exposure incidents, medical removal protection where necessary, employee training, and recordkeeping. These provisions are very similar to the recommendations of the CDC for facilities classified as having "minimal risk," i.e., no TB in the community or in the facility. The only major difference is that CDC does not recommend baseline skin testing. However, CDC does state that baseline skin testing would be advisable so that if an unexpected exposure does occur, conversion could be distinguished from positive skin test results caused by previous exposures.

Medical Surveillance

In the area of medical surveillance, the main differences between OSHA and CDC are related to tuberculin skin testing. OSHA requires baseline skin testing for all employees whom the employer identifies as having occupational exposure. CDC recommends baseline skin testing for all employees with potential exposure except those who work in facilities that fall into CDC's "minimal risk" category. However, CDC notes that even for employees in "minimal risk" facilities, it may be advisable to perform baseline skin testing so that if unexpected exposures do occur, conversions can be distinguished from positive skin test results caused by previous exposures. Thus, there is little difference between OSHA requirements and CDC recommendations with regard to baseline skin testing.

Relative to periodic skin testing, OSHA requires periodic re-testing for all employees identified as having occupational exposure who have negative skin tests except for the employees of those employers who have no TB in the community and who have not encountered any individuals with confirmed infectious TB in their work settings within the past year. CDC recommends re-testing for employees in the "low", "intermediate", and "high" risk categories. According to the CDC guidelines, periodic re-testing is not necessary for employees in the "minimal" risk category or the "very-low" risk categories. CDC's periodic skin test recommendations for the "minimal" risk category are similar to OSHA's limited program for employers who do not admit or provide medical services to individuals with suspected or confirmed infectious TB, have not encountered any confirmed infectious TB in their work setting, and are located in a county that, in the past 2 years, has reported 0 cases of confirmed infectious TB in one year and fewer than 6 cases in the other year. OSHA is different from the CDC in that employees in a "very-low risk category" are required to be periodically retested. However, CDC notes that even in the "very-low" risk category, employees who are involved in the initial assessment of individuals in emergency departments and admitting areas may have potential exposure and thus may need periodic re-testing.

Another difference between CDC and OSHA is the frequency of the re-testing. This is primarily due to the fact that OSHA's required frequencies are based on the type of work that employees do that result in exposures whereas CDC's recommendations are based more on evidence of conversions. For example, OSHA requires re-testing every six months for all employees who (1) enter AFB isolation rooms or areas, (2) perform high-hazard procedures, (3) –

transport individuals with suspected or confirmed infectious TB in an enclosed vehicle, or (4) work in intake areas where early identification procedures are performed (e.g., emergency departments, admitting areas) in facilities where 6 or more individuals with confirmed infectious TB have been encountered in the past 12 months. For all other employees with occupational exposure, re-testing is required every 12 months. In comparison, CDC recommends re-testing every year for employees in "low" risk categories, every 6–12 months for employees in "intermediate" risk categories, and every 3 months for employees in "high" risk categories. Under CDC recommendations, employees in "low" risk categories who enter AFB isolation rooms or areas or employees who transport individuals with suspected or confirmed infectious TB in an enclosed vehicle would be re-tested every 12 months. However, under OSHA requirements, those same employees would be required to be re-tested every six months. Thus, OSHA is more protective than CDC in this case.

OSHA also would require that employees who perform high-hazard procedures or who work in intake areas where early identification procedures are performed in facilities that encounter 6 or more individuals with confirmed infectious TB be re-tested every six months. Under CDC's Guidelines employees in areas in which cough-inducing procedures are performed on individuals who may have active TB are recommended to follow an intermediate risk protocol. Similarly, CDC recommends that an intermediate risk protocol be followed in areas where more than six individuals who may have active TB receive initial assessment and diagnostic evaluation (e.g., ambulatory care, emergency departments, admitting areas). CDC recommends re-testing every 6–12 months for employees in intermediate risk categories. OSHA would require re-testing every 6 months for the two situations above, which is very similar to CDC's recommendation of re-testing every 6–12 months.

CDC is more protective in its recommendations for employees in the "high" risk category. These employees are recommended to be re-tested every 3 months. OSHA does not have a requirement for re-testing employees every 3 months. However, after an exposure incident, OSHA requires that a skin test be administered as soon as feasible and again 3 months after the exposure incident, if the first skin test is negative. Since it is possible that an exposure incident(s) could be the type of event that would cause an employee(s) to be included in the "high" risk category as defined by CDC, OSHA requirements, to some extent, track the CDC recommendations for a higher frequency of periodic skin testing.

With regard to two-step testing, both OSHA and CDC require or recommend two-step testing at the time baseline skin testing is administered. Also, both OSHA and CDC add that two-step testing is not necessary if the employee has had a documented negative skin test within the last 12 months. CDC is different from OSHA in that its Guidelines imply that two-step testing can be discontinued if there is evidence of a low frequency of boosting in the facility. OSHA's proposed standard does not allow such an exemption, i.e., for each employee who must have a baseline skin test at the time of the initial medical examination, the skin test must include a two-step test unless the employee has a documented negative test within the last 12 months, regardless of the frequency of boosting in the facility. The value of two-step skin testing is that it enables one to distinguish true conversions from boosted reactions. OSHA believes that this is important to know for each employee because if the employee is incorrectly identified as having converted, he or she may needlessly be subjected to preventive therapy that may have toxic side effects of its own. Since it is important to know the true skin test status for each employee, OSHA has preliminarily concluded that it is inappropriate to allow the overall frequency of boosting among employees in a facility to dictate whether any one employee receives two-step testing at the time of his or her baseline testing.

Respiratory Protection

OSHA requirements and CDC recommendations for respiratory protection are very similar. A respirator is a personal protective equipment device worn over the nose and mouth of the employee that filters certain airborne contaminants from the inhaled air. OSHA has adopted CDC's performance criteria for respirators appropriate for use for TB. Also, both OSHA and CDC have similar requirements or recommendations that respirators be worn when entering an isolation room, when performing cough-inducing procedures or aerosol-generating procedures on an individual with suspected or confirmed infectious TB, when repairing or maintaining air systems that may contain aerosolized *M. tuberculosis*, when transporting an individual with suspected or confirmed infectious TB in an enclosed vehicle and when working in a residence where an individual with suspected or confirmed infectious TB is known to be present. However, OSHA also requires that respirators be worn when employees are transporting individuals with suspected or confirmed infectious TB within the facility if those individuals are not masked (e.g., a surgical mask or a valveless respirator). CDC does not have a similar recommendation for respiratory protection while transporting individuals within the facility, but CDC does recommend, and assumes to some extent, that individuals with suspected or confirmed infectious TB are masked whenever they are outside an isolation room. In addition, OSHA requires that respirators be worn when employees work in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined. For example, this provision would cover employees such as those who work in admitting areas and must attend to unmasked individuals with suspected or confirmed infectious TB while those individuals are awaiting transfer. These types of employees are likely to be found in facilities that would meet CDC's definition of "minimal" risk. CDC states that respiratory protection is not necessary for employees in the "minimal" risk category. However, again, CDC recommends that if an individual with suspected or confirmed infectious TB is identified in a "minimal" risk facility, the individual should be masked while he or she is awaiting transfer to another facility, thus obviating the need for respiratory protection. OSHA, on the other hand, cannot require employers to mask clients or patients in a facility, and the Agency must therefore include provisions for respirator use to protect potentially exposed employees. However, consistent with CDC, OSHA proposes not to require respirators where the employer elects, as a part of his or her own administrative policies, to mask individuals with suspected or confirmed infectious TB. Thus, when individuals with suspected or confirmed infectious TB are masked while they are awaiting transfer to another facility or while they are being transported within the facility, employees would not be required by the standard to wear a respirator.

In some instances, the CDC may be more protective than OSHA with regard to respiratory protection. The CDC states that the facility's risk assessment may identify selected settings where the estimated risk of transmission of *M. tuberculosis* may be such that a level of respiratory protection exceeding the standard performance criteria is appropriate (e.g., more protective negative pressure respirators, powered air purifying respirators). The examples given of such selected settings are a bronchoscopy performed on an individual suspected of having TB and an autopsy performed on a deceased person suspected of having had active TB at the time of death. OSHA does not have a similar requirement for more protective respiratory protection. Respirators meeting the minimal performance criteria laid out by the standard would be required by OSHA for employees performing all high-hazard procedures, including bronchoscopies and aerosol-generating autopsy procedures.

IV. Health Effects

Introduction

For centuries Tuberculosis (TB) has been responsible for the death of millions of people throughout the world. It was not until 1882, however, that Robert Koch identified a species of bacteria, *Mycobacterium tuberculosis (M. tuberculosis)*, as the cause of TB.

TB is a communicable disease that usually affects the lungs. The airborne route is the predominant mode of transmission, a situation created when individuals with infectious TB discharge the bacilli from the lungs when coughing, sneezing, speaking or singing. Some individuals who breathe contaminated air become infected with TB. Most often, the immune system responds to fight the infection. Within a few weeks, the infected lesions become inactive and there is no residual change except for possible lymph node calcifications. These individuals will have a positive skin test result. They will harbor the infection for life. At some time in the future, the infection can progress and can become an active disease, with pulmonary infiltration, cavitation, and fibrosis, possibly causing permanent lung damage and even death. With some exceptions, however, TB is treatable with antimicrobial drugs. If the active TB is treated early, there will be minimal residual lung damage. For this reason, individuals who have a TB exposure incident and develop a TB infection are treated to prevent progression to active TB disease.

With the introduction of antimicrobial drug treatment in the 1940s and the creation of programs in the United States such as the U.S. Public Health Service's Tuberculosis Program, there began a decline in the incidence of active TB cases in the U.S. From 1953, when active cases began to be reported in the U.S., until 1984, the number of annual reported cases declined 74%, from 84,304 (53 per 100,000) to 22,255 (9.4 per 100,000) (Ex. 7–50). However, this steady decline in TB cases did not continue. Instead, from 1985 through 1992, the number of reported TB cases increased 20.1% from 22,201 to 26,673 (10.5 cases per 100,000) (Ex. 6–13).

This resurgence in TB brought to attention a number of problems in the existing TB control programs. The direction of resources to areas with the highest increase in active cases has caused this increase to decline. The number of cases reported for 1995 indicates that the rate of active TB has returned to its 1985 levels. In 1995, a total of 22,813 cases of TB (8.7 per 100,000) was reported to CDC (Ex. 6–34). While this represents a decline in active TB, the 1995 rate is still two and one half times greater than the target case rate of 3.5 per 100,000 for the year 2000 and approximately 87 times the goal of less than one case per million population by the year 2010 proposed by the Advisory Committee on the Elimination of Tuberculosis (Ex. 6–19).

TB continues to be a national problem. Each year, cases of active disease are reported in every state in the Nation and in a substantial majority of counties nationwide. CDC estimated in 1990 that approximately 10 million people were infected with the tuberculosis bacterium and that approximately 90% of the new cases of active disease that arise in the United States come from this already infected group (Ex. 7–52). Given the recent resurgence of TB, it is likely that a new population of individuals has been infected as well. Of great concern are strains of *M. tuberculosis* that have emerged that are resistant to several of the first-line anti-TB drugs normally used to treat TB infection and disease (e.g., isoniazid and rifampin). This drug-resistant form of the disease, referred to as multidrug-resistant TB or MDR–TB, is more often a fatal form of TB due to the difficulty in finding antimicrobial drugs to stop the bacteria's growth and progressive tissue destruction. In addition, individuals with MDR–TB often remain infectious for longer periods of time due to delays in diagnosing resistance patterns and initiating appropriate treatment. This, in turn, increases the risk that infectious individuals will transmit the organism to other persons coming in contact with them.

Most of the decreases in reported cases of TB since 1992 have occurred in areas such as New York City, where resources have been invested to improve or initiate TB control provisions, such as those outlined in OSHA's proposed standard. However, the 1995 statistics show that over the course of four years there is substantial variability in the increases and decreases of cases reported by each state for any given year (Ex. 6–34). In 1995, 15 states reported an increase in the number of TB cases compared with 1994. In addition, a recent study has shown that MDR–TB has spread to patients in Florida and Nevada, and to health care workers in Atlanta, Georgia and Miami, Florida. Moreover, one individual with MDR–TB infected or caused disease in at least 12 people in a nursing home in Denver, Colorado (Ex. 7–259). This study shows very clearly the ability of TB to be spread to different areas of the country. This is to be expected given the mobile nature of today's society and the frequency with which people travel. Immigration also contributes to the incidence of the disease. For example, while the number of active TB cases has decreased among U.S. born persons, the number of foreign born persons reported with TB has increased 63% since 1986, with a 5.4% increase in 1995 (i.e., from 7,627 cases in 1994 to 8,042 cases in 1995). Thirty to fifty percent of these cases were diagnosed 1 to 5 years after the individual enters the U.S. (Ex. 6–34). Thus, tuberculosis continues to be a public health problem throughout the United States.

The following discussion will briefly describe the basic concepts and terminology associated with TB as well as common factors that facilitate its transmission from one individual to another. This discussion will also include a review of studies relating to the occupational transmission of TB.

Background

TB is a contagious disease caused by the bacterium *M. tuberculosis*. Infection is generally acquired by the inhalation of airborne particles carrying the bacterium. These airborne particles, called droplet nuclei, can be generated when persons with pulmonary or laryngeal tuberculosis in the infectious state of the disease cough, sneeze, speak or sing.

In some individuals exposed to droplet nuclei, tuberculosis bacilli enter the lung and establish an infection (Ex. 7–52). Once in the alveoli, the tuberculosis bacilli are taken up by alveolar macrophages and spread throughout the body by the lymphatic system, until the immune response limits further growth (usually a period of two to ten weeks). In most cases the tuberculosis bacilli are contained by the

immune response. Macrophage cells engulf the bacteria, which limits the spread of the bacilli. Initial lesions from infection heal; however, small calcifications called tubercles are formed and may remain a potential site of later reactivation.

Individuals in this state are infected with TB. They will show a positive skin test and they are at risk of developing active TB, a risk they carry throughout their lifetime. In many cases, as described below, preventive therapy is initiated with anti-TB drugs to prevent the progression to active TB disease. These drugs are toxic and may cause adverse effects such as hepatitis. Severe preventive therapy-associated hepatitis cases have necessitated liver transplants and in some cases have resulted in death (Ex. 6–10).

When the bacilli are not contained by the immune system, they continue to grow and invade the tissue, leading to the progressive destruction of the organ involved, which in most cases is the lung, i.e., pulmonary tuberculosis. The inflammatory response caused by the disease produces weakness, fever, chest pain, cough, and, when blood vessels are eroded, bloody sputum. Also, many individuals have drenching night sweats over the upper half of the body several times a week (Ex. 5–80). The extent of disease varies from minimal symptoms of disease to massive involvement with extensive cavitation and debilitating constitutional and respiratory symptoms. Since tuberculosis bacilli are spread throughout the body after the initial infection, other organs may also be infected and disease may occur at sites outside the lung, i.e., extrapulmonary tuberculosis.

There are two general stages of TB, tuberculosis infection and active tuberculosis disease. Individuals with tuberculosis infection and no active disease are not infectious. These tuberculosis infections are asymptomatic or subclinical and are only detected by a positive response to a tuberculin skin test. However, there are some individuals whose immune system is impaired and cannot mount a sufficient response to skin test antigens, i.e., they are anergic. Such individuals may be infected, although they do not show a positive response to the skin test. Individuals with tuberculosis infection and no disease would have negative bacteriologic studies and no clinical or radiographic evidence of tuberculosis disease. However, these individuals are infected for life and are at risk of developing active TB in the future.

Anti-tuberculosis drugs may be used for individuals with TB infection but who do not have active disease. In these cases, the antimicrobials are used as preventive therapy to prevent the onset of active disease. Because of the toxicity associated with the antimicrobials, preventive therapy may not be appropriate for all infected individuals. Various factors are considered to determine whether an infected individual is an appropriate candidate for preventive therapy (e.g., age, immune status, how recently the infection occurred, and other high-risk factors associated with TB) (Ex. 7–52, pg. 17). Isoniazid is currently the only drug that has been well tested in humans for its efficacy as preventive therapy (Ex. 7–50, pg. 61). However, serious side effects may result from isoniazid. A study in New York for the years 1991 to 1993 examined cases of hepatitis induced by isoniazid preventive therapy. In this study, 10 patients undergoing preventive therapy for TB were identified at a transplant center. Eight of these patients had developed hepatitis from isoniazid. Five received a liver transplant; the other three died while awaiting a liver donor. In addition, one of the transplant patients died after transplantation. Thus, preventive therapy may carry considerable risks for infected individuals.

In those cases where isoniazid cannot be tolerated by the patient or where it is suspected that infection resulted from exposure to isoniazid-resistant strains of *M. tuberculosis*, rifampin may be recommended for preventive therapy. Considerations for such alternative drug therapies are made on a case-by-case basis by the health care provider based on the medical and case history of the infected patient. Rifampin has adverse side effects as well. However, preventive therapy using rifampin has not been followed as well as that involving isoniazid and therefore, its side effects are less well characterized.

Individuals with active TB have clinical and/or radiographic evidence of disease. The initial laboratory method for diagnosing TB is the Acid Fast Bacilli (AFB) smear. This is a quick and easy technique in which body fluids, typically sputum samples, from individuals with suspected TB are examined for mycobacteria. However, this type of test only permits a presumptive diagnosis of TB since the test cannot distinguish between tuberculosis mycobacteria and other non-tuberculosis mycobacteria. Chest X-rays may also be used to diagnose active TB; however, some individuals with TB may have X-ray findings that are atypical of those usually associated with TB (e.g., HIV infected individuals). The diagnosis of clinically active TB is most definitively established by the isolation of *M. tuberculosis* in culture. However, it may take three to six weeks or longer from obtaining a culture to getting a result.

Individuals with active TB disease may be infectious, especially if they are untreated or inadequately treated and if the disease is in the lungs. The clinical symptoms of pulmonary TB include loss of appetite, weight loss, fatigue, fever, night sweats, malaise, cough with productive sputum and/or blood, and chest pain. The extent of the disease varies from very minimal symptoms to extensive debilitating constitutional and respiratory symptoms. If untreated, the pulmonary TB follows a chronic and progressive course in which the tissue is progressively destroyed. It has been estimated that approximately 40 to 60% of untreated cases result in death (Exs. 5–80, 7–50, and 7–66). However, even among cured cases of TB, long-term damage can result, including impaired breathing due to lung damage (Ex. 7–50, pg. 31).

Approximately 90% of immunocompetent adults who are infected do not develop active TB disease. However, for 10% of infected immunocompetent adults, either directly after infection or after a latency period of months, years or even decades, the initial infection progresses to clinical illness, that is, active TB (Ex. 4B). The risk of developing active TB is increased for individuals whose immune system is impaired (i.e., immunocompromised). Such individuals include persons undergoing treatment with corticosteroid or immunosuppressive drugs (e.g., persons with organ transplants or persons undergoing chemotherapy for cancer), persons suffering from malnutrition or chronic conditions such as asthma and emphysema, and persons infected with the human immunodeficiency virus (HIV).

The main first-line drugs currently used to treat active TB are isoniazid, rifampin, pyrazinamide, ethambutol and streptomycin. Combinations of these antimicrobials are used to attack the tuberculosis bacilli in the body. Recommended treatment regimens include two or more drugs to which the bacilli are susceptible, because the use of a single drug can lead to the development of bacilli resistant to that drug (Ex. 5–85). Treatment with these first-line drugs involves a two-phase process: an initial bactericidal phase for the quick elimination of the bulk of bacilli from most body sites and a longer-term sterilizing phase for eliminating the remaining bacilli.

Different regimes of drug treatment (i.e., the types of drugs and frequency of administration) are recommended depending on the medical history of the patient involved and the results of drug susceptibility testing. The U.S. Public Health Service has recommended options for the initial therapy and dosage schedules for the treatment of drug-susceptible TB (Ex. 4B). While these antimicrobials are effective in the treatment of active TB, some of these drugs also have toxic potential. Adverse side effects of these drugs include hepatitis, peripheral neuropathy, optic neuritis, ototoxicity and renal toxicity (Ex. 7–93). Thus, patients undergoing TB therapy must also be monitored for drug toxicity that may occur from anti-tuberculosis drugs.

Individuals with active disease who are infectious may need to be hospitalized in order to provide isolation so that they will not infect other individuals. After the initiation of treatment for active TB, improvement of the disease can be measured through clinical observations such as loss of fever, reduction in coughing, increased appetite and weight gain. A reduction in the number of bacilli in sputum smears also indicates improvement. Three consecutive negative sputum smears generally indicate that the individual is no longer infectious. However, decisions about infectiousness are usually determined on a case-by-case basis after taking a number of factors into consideration, such as the presence of cough, the positivity of sputum smears, and the status or response to chemotherapy. Although no longer infectious to other individuals, the individual undergoing treatment still has tuberculosis disease and must continue treatment. Discontinuing or erratically adhering to the treatment regime can allow some of the bacilli to survive such that the individual will be at risk of becoming ill and infectious again (Ex. 7–52, p. 25).

Not all strains of the tuberculosis bacilli are susceptible to all of the antimicrobials used to treat TB. In some instances, drug-resistant forms of *M. tuberculosis* may emerge. Drug resistance may emerge by 1 of 3 mechanisms (Exs. 5–85; 7–50, pp. 44–47). Drug-resistant TB may occur naturally from random mutation processes, i.e., primary resistance. In addition, drug-resistant TB may result due to inadequate or erratic treatment, i.e., acquired resistance. In these cases, erratic or inadequate treatment allows the tuberculosis bacilli to become resistant to one or several of the drugs being used. Finally, drug-resistant TB may result due to the active transmission of drug-resistant TB from an individual already infected with drug-resistant strains of the tuberculosis bacteria, i.e., transmitted resistance. In recent years, drug-resistant forms of TB have emerged that are resistant to two or more of the first-line drugs used to treat TB, such as isoniazid and rifampin, two of the most effective anti-TB drugs. These drug-resistant forms of the disease are referred to as multidrug-resistant TB or MDR–TB. MDR–TB represents a significant form of drug-resistant TB from a public health standpoint, since its resistance to the first-line drugs used for therapy complicates finding adequate therapy regimens that will control the bacilli's growth.

Treatment of drug-resistant TB is determined on a case-by-case basis, using information from the patient's medical history and drug susceptibility testing. The recommended course of treatment will vary depending on the drugs to which the bacilli are susceptible. Compared to conventional TB drug therapy, MDR–TB, in general, requires more complex interventions, longer hospitalization and more extensive laboratory monitoring. The risk of death from such infections is markedly increased. For example, from January 1990 through September 1992, the CDC investigated eight outbreaks of MDR–TB. In these outbreaks, 253 patients were infected, of whom approximately 75% died (Ex. 3–38–A). Many of these were immunocompromised due to infection with HIV. The interval from the time of TB diagnosis to the time of death ranged from 4 to 16 weeks, with a median time of 8 weeks.

Factors Affecting Transmission

A number of factors can influence the likelihood of acquiring a tuberculosis infection: (1) The probability of coming into contact with an individual with infectious TB, (2) the closeness of the contact, (3) the duration of the contact, (4) the number of tuberculosis bacilli in the air, and (5) the susceptibility of the uninfected individual. Several environmental conditions can influence the likelihood of infection. For example, the volume of shared air space, the amount of ventilation, the presence or absence of sunlight, the humidity and the crowded nature of the living quarters. These types of factors will affect the probability of acquiring a tuberculosis infection after being exposed to an individual with infectious TB. MDR–TB is not more contagious than drug-susceptible forms of the disease. However, due to time delays in diagnosing resistance patterns and initiating adequate treatment, individuals with active MDR–TB may remain infectious for longer periods of time. Consequently, the likelihood that they will infect other noninfected individuals is increased.

Once infection occurs, other factors may influence the probability of progressing to the active form of disease. As previously discussed, 10% of immunocompetent adults infected with TB develop active TB. Three to five percent of untreated immunocompetent adults develop active TB within the first year after infection (Ex. 7–50, pg. 30; 7–52). Thus, recently infected individuals have the highest risk of developing active TB. This risk is increased for individuals whose immune system is impaired (e.g., persons being treated with immunosuppressive or glucocorticoid drugs, persons with chronic conditions such as asthma or emphysema or persons infected with the HIV). The probability of developing active disease can also be influenced by other conditions that may alter immune function such as overall decreased general health status, malnutrition, and increasing age.

The resurgence of TB in the United States from 1985 to 1992 has been attributed to a number of interacting factors: (1) The inadequate control of disease in high prevalence areas; (2) the increase in poverty, substance abuse, poor health status and crowded substandard living conditions; and (3) the growing number of inmates, residents of homeless shelters, elderly persons in long-term care facilities, persons with HIV infection and immigrants from countries with a high prevalence of TB infection (Ex. 7–50). This increase has begun to decline, with the 1995 case levels approaching the 1985 levels. However, a main reason for this decrease is the implementation of TB control measures, like those proposed in this standard, in selected areas of the country such as New York City. OSHA believes that implementation of such measures is necessary to prevent a resurgent peak such as that observed from 1985 to 1992 and to realize the goal set out by the National Advisory Committee for the Elimination of Tuberculosis. The following discussion describes some of the health effects data related to occupational exposure to TB and illustrates how the presence of TB control measures influences TB infection and disease.

Occupational Exposure

Exposure to TB in the health care setting has long been considered an occupational hazard. With the steady

decline in reported TB cases from 1953 to 1985, some of the concern for occupational exposure and transmission also declined. However, from 1985 to 1992 the number of reported cases of TB increased. In addition, in recent years, several outbreaks of TB among both patients and staff in hospital settings have been reported to the CDC. These outbreaks have been attributed to several factors: (1) Delayed recognition of active TB cases, (2) delayed drug susceptibility testing, (3) inadequate isolation of individuals with active TB (e.g., lack of negative pressure ventilation in isolation rooms, recirculation of unfiltered air, and allowing infectious patients to freely move in and out of isolation rooms), and (4) performance of high-risk procedures on infectious individuals under uncontrolled conditions (Ex. 7–50). In addition to hospitals, outbreaks of TB have also been reported among the patients, clients, residents and staff of correctional facilities, drug treatment centers, homeless shelters and long-term health care facilities for the elderly. The factors contributing to the outbreaks in these other occupational settings are very similar to those factors contributing to the outbreaks in hospital settings (i.e., delayed recognition of TB cases and poor/inadequate ventilation for isolation areas).

The following is a discussion of some of the studies that have examined occupational transmission of TB. A large proportion of the available information comes from exposures occurring in hospitals, in part because this occupational setting has been recognized for many years as an area of concern with regards to the transmission of TB. However, in more recent years this concern has spread to other occupational settings which share factors identified in the hospital setting as contributing to the transmission of disease. The following sections will include a discussion of some of the historical data from the hospital setting, as well as the more recent data that have been developed in hospitals and other occupational settings where the transmission of TB has occurred as a result of the recent resurgences in the number of active TB cases.

Hospitals—Prior to 1985

Even prior to the recent resurgence of TB in the general population, studies have shown an increased risk of transmission of TB to health care workers exposed to individuals with infectious TB. These studies clearly demonstrate that in the absence of appropriate TB control measures (e.g., lack of early identification procedures, lack of appropriate engineering controls), employees exposed to individuals with infectious TB have become infected and in some cases have developed active disease.

In 1979, Barrett-Connor (Ex. 5–11) examined the incidence of TB among currently practicing physicians who graduated from California medical schools from approximately 1950 to 1979. Through mailed questionnaires, physicians were asked to provide information that included their year of graduation from medical school, BCG vaccination history, history of active TB, results of their tuberculin skin testing, and the number of patients they were exposed to with active TB within the past year. They were also asked to classify themselves as tuberculin positive or negative and to indicate the year of the last negative and first positive tuberculin test.

Of the 6425 questionnaires mailed out, 4140 responses were received from currently practicing physicians. Twelve percent of the physicians had received the BCG vaccine. Sixty-one percent of the unimmunized physicians, who also had no history of active tuberculosis, considered themselves to be tuberculin negative. A total of 1542 (42%) reported themselves as having a positive response to the tuberculin skin test, with approximately 44 percent of those tuberculosis infections occurring before entering medical school. Of those infections occurring before entering medical school, approximately eight percent were reported as having been a result of contact following work experience in the hospital prior to entering medical school. For those physicians infected either during or after medical school, the sources of infection were reported as occurring as a result of a known patient contact (45.1%), an unknown contact (41.5%) and a non-patient contact (13.4%). In some cases, the nonpatient contact was reported as another physician or another hospital employee. Approximately one in ten of the physicians infected after entry into medical school developed active TB disease.

The authors also examined the incidence of infection, measured as the conversion rates in those remaining negative at the end of different time intervals (e.g., the last three years of medical school and five to 10 years after graduation). This examination indicated that from 1950 to 1975, there was a 78% decrease in tuberculin conversion rates despite the expanding pool of susceptible medical students (i.e., an increasing number of medical students who were tuberculin negative). Yet despite this overall decrease in infection rates over a 25 year period, tuberculin conversion rates among recent graduates exceeded 1% per year and age-specific infection rates among all the physicians studied were more than twice that of the U.S. population at comparable ages. The authors did not obtain information from the physicians on what type of infection control measures were being used in the facilities where they acquired their infections.

A similar analysis by Geisleler et al. (Ex. 7–46) evaluated the occurrence of active tuberculosis among physicians graduating from the University of Illinois medical school between the years 1938 and 1981. This study, also conducted by questionnaire, reported that among 4575 physicians questioned, there were 66 cases of active TB, of which 23% occurred after 1970. Sixty-six percent of the cases occurred within 6 years of graduation. In addition, the authors reported that in most years the incidence of TB was greater among these physicians than the general population.

Weiss (Ex. 7–45) examined tuberculosis among student health nurses in a Philadelphia hospital. From 1935 to 1939, before the introduction of anti-TB drugs and the beginning of the general decline of TB in the United States, 100% conversion rates were observed among those students who were initially tuberculin negative. For example, of 643 students admitted, 43% were tuberculin negative. At the end of only 4 months, 48% were tuberculin positive. At the end of 1 year, 85.9% were tuberculin positive and by the end of the third year 100% were positive. Of those students who converted during their student nursing tenure, approximately 5 percent developed active TB disease.

A decline in the rate of infection was observed over the next 36 years among student nurses at this hospital. The rates of infection were followed for ten classes of student nurses from 1962 to 1971. The students had little contact with patients during their first year but spent 4 weeks of their second year of training on the tuberculosis wards. Among those students initially tuberculin negative, the average conversion rate was 4.2% over the nine year period, ranging from 0 to 10.2%. Of the students who converted, 0.6% developed active TB disease. The authors attributed the decreases in conversion rates to not only the general decrease in TB disease in the community, but also to the increased efficiency of surveillance of patients entering the hospital for the early identification of potential cases of TB and the increased efficiency of isolation

for TB patients. Despite the dramatic decreases in conversion rates among these student nurses, conversion rates were observed at levels as high as 10% for a given year, indicating that while the infection rates had decreased substantially since 1939, there still remained a significant amount of occupational transmission of TB in 1971. Moreover, this study shows that short term exposure, i.e., 4 weeks, is capable of infecting hospital employees.

Similar rates of conversion among hospital employees initially tuberculin negative were observed in a 1977 study by Ruben et al. (Ex. 7–43) which analyzed the results of a tuberculin skin testing program 31 months after its inception at a university hospital in Pittsburgh. Of 626 employees who were tested twice with the tuberculin skin test, 28 (4.5%) converted from negative to positive. The employees were classified as either having a "presumed high degree of patient exposure" or a "presumed low degree of patient exposure". Employees presumed to have high patient exposure included nurses, X-ray and isotope laboratory personnel and central escort workers. Employees presumed to have low exposure included secretaries, persons in housekeeping and dietary work, and business office, laundry and central supply personnel. The rates of conversion for employees with presumed high exposure (6%) and for employees with presumed low exposure (8%) were not significantly different. However, this study excluded physicians and medical and nursing students. These groups of employees would also presumably have had high exposure to patients since they are often the hospital staff most directly involved in administering patient care. Had these employees been included the number of conversions among employees with presumably high exposure may have been significantly increased.

The study was not designed to determine the source of exposure for any of the employees who converted. However, the authors suggested that the high level of conversions among those employees with presumed low exposure to patients may have resulted from exposures at home. A majority of this group was comprised of housekeeping staff who were of low socio-economic status. The authors also suggested that unrecognized cases of tuberculosis may be playing an important role in the occupational transmission of TB in the hospital.

Unrecognized cases of TB have been shown to play a significant role in the outbreak of TB in a general hospital. In 1972, Ehrenkranz and Kicklighter (Ex. 5–15) reported a case study in which 23 employees converted after exposure to a patient with an undetected case of tuberculosis bronchopneumonia. In this study, the source case was an individual who was admitted to the emergency room with pulmonary edema. Upper lobe changes of the lung were noted in the chest X-ray, and TB was mentioned as a possible cause. However, no sputum cytology was conducted. The patient spent 3 hours in the emergency room, 57 hours in a private room and another 67 hours in intensive care until his death. Treatment of the patient included intubation with an endotracheal tube and vigorous nasotracheal suctioning. It was only upon microscopic examination of tissue samples of the lung and lymph nodes after the autopsy of the patient that tuberculosis mycobacteria were detected.

Employees who worked in the emergency room, the intensive care unit and on the floor of the private room (NW 3) and who were also tuberculin negative before the admission of the patient, were retested to detect possible conversion. In addition, 21 initially tuberculin negative employees on an adjacent floor (NW 2) were also retested. Of the 121 employees tested, 24 were identified as having converted to positive status (21 working on NW 3, 2 working in the intensive care unit and 1 working on NW 2). No conversions were observed among those working in the emergency room.

The employees who were retested were classified as either having close contact (e.g., providing direct care), little contact (e.g., more distant contact), unknown contact (e.g., no record or recollection of contact) or indirect contact (e.g., in the same room a day or two after the patient's stay). Conversions occurred in 50% (13 of 26) of those employees with close contact, 18.5% (6 of 33) of those with little contact, 21.4% (3 of 14) of those with unknown contact and 3.7% (1 of 29) of those with indirect contact.

While the majority of conversions seems to have occurred in those employees on NW 3 who had close or little contact, there also were employees with more distant contact who were infected. An analysis of the ventilation of NW 3 indicated that the central air conditioning recycled 70% of the air with no high efficiency filter and no record of balancing the air conditioning system, thus allowing the air from the patients' rooms to mix with and return to the central corridor air. In addition, smoke tube tests detected direct air flow from the patients' rooms to the hall corridor. Perhaps the more important factor was that the patient was not diagnosed with infectious TB until after his death, by which time he had already infected 24 employees.

These earlier studies illustrate that despite the decrease in TB morbidity since the advent of anti-tuberculosis drugs in the 1940's, occupational transmission of TB continues to be a problem. In addition, while many improvements have been made in infection control procedures for TB in hospitals, evidence of occupational transmission of TB continues to be reported.

Hospitals—1985 to Present

As discussed above, the transmission of TB has been well established as an occupational hazard in the hospital setting. Many improvements were made in infection control practices. However, the resurgence in TB from 1985 to 1992 has brought to attention the fact that many TB control measures have not been implemented or have been inadequately applied. These studies demonstrate that TB continues to be an occupational hazard in the hospital setting. In addition, similar to the earlier studies, the more recent data show that the lack of early identification procedures and the lack of appropriate ventilation, performance of high-hazard procedures under uncontrolled conditions and the lack of appropriate respiratory protection have resulted in the infection of employees and in some cases the development of active disease. The more current outbreaks are even more troubling due to the emergence of multidrug-resistant forms of TB disease, which in some cases have resulted in fatality rates approaching 75%.

In a 1985 study, Chan and Tabak (Ex. 7–3) investigated the risk of TB infection among physicians in training at a Miami hospital. In this study a survey was conducted among 665 physicians in training who were in their first four years of postgraduate training. Only 404 responded to the survey, of which 13 were illegible. Another 72 were excluded because they had received the BCG vaccination. Of the remaining 319 physicians, 55 were tuberculin positive.

Of the 279 who were tuberculin negative at the beginning of their post graduate training, 15 were excluded because they had more than four years of training and 43 were excluded because they had not had repeat skin tests. Of the 221 remaining available for evaluation, 15 converted to positive tuberculin status, of which two developed active disease.

The overall conversion rate for these physicians was 6.79%. In addition, the

authors observed a positive correlation between the rate of conversion and the duration of postgraduate training. The conversion rate increased with the duration of training, beginning with a cumulative percentage of conversion of 2.06% in the first year, 8.62% in the 2nd year, 11.11% in the third year and 14.29% in the fourth year, resulting in a linear conversion rate of 3.96% per year. As noted by the authors, this linear increase suggests the hospital environment as the source of the infection. In addition, the prevalence rate of conversions in the hospital (17.24%) was much higher than would have been expected in the community for individuals of the same age.

The authors suggested that these high rates of conversion may have been a result of the fact that the hospital in this study encounters 5 to 10 times more active TB cases than most other urban hospitals. In addition, the physicians in training also are expected to be the first in line to perform physical evaluations and evaluate body fluids and secretions. While the authors did not go into detail about what, if any, TB infection control precautions were taken by these physicians in training, they did note that the evaluation of body fluids and secretions was often done in poorly ventilated and ill-equipped laboratories.

Increased rates of conversion were observed among employees in a New Orleans hospital in a 1986 study by Ktsanes et al. (Ex. 7–6). Similar to Miami, New Orleans also has a high rate of TB in the community. This study examined the skin test conversions among a cohort of 550 new employees who were followed for five years after assignment to the adult inpatient services. Of these 550 employees who were initially tuberculin negative, 17 converted to positive status over the five-year study period, resulting in an overall five-year cumulative conversion probability of 5.2%.

Regression analyses were done to examine potential contributing factors. Factors examined in the regression model included race, job, age at employment, and department. Only race (i.e., black vs. white employees) and job (i.e., nursing vs. other jobs) were found to be associated with skin test conversion. To further examine the potential job effect, conversions among blacks in nursing and blacks in other jobs were compared. Overall, the cumulative probability of converting was higher among blacks in nursing, suggesting that the acquired infections resulted from employment at the hospital rather than from the community at large. The authors thus concluded that there is an increased risk of occupational transmission of TB in TB-prevalent areas for those in close patient contact jobs.

In 1989, Haley *et al.* (Ex. 5–16) conducted a case study of a TB outbreak among emergency room personnel at a Texas hospital. In this study, a 70 year old male diagnosed with pulmonary TB and undergoing treatment was diverted, due to respiratory arrest, to Parkland Memorial Hospital while in route to another hospital. The man was admitted to the emergency room for approximately 4 hours until he was stabilized. Afterwards, the patient was placed in an intensive care unit, where he remained for 2 months until his death.

Six cases of active TB developed among emergency room employees after exposure to the TB patient, i.e., the index case. Five of these were among nurses who recalled contact with the index patient and a sixth case was an orderly who may have been infected from one of the employee TB cases. In addition, a physician exposed while administering treatment in the intensive care unit also developed active disease.

Skin test conversions were evaluated for the 153 employees of the emergency room. Of 112 previously negative employees, 16 had positive skin tests, including 5 nurses diagnosed with active TB. Fifteen of the conversions were a result of exposure to the index case. Skin tests were also evaluated for physicians in the intensive care unit. Of 21 resident physicians, two of whom had intubated the index patient, five had newly positive reactions to the tuberculin skin tests. One of the remaining three residents later developed active disease.

The authors attributed the outbreak to several factors. First, the index case had a severe case of pulmonary TB in which he produced copious amounts of sputum. Second, sixty percent of the emergency room air was recirculated without filtration adequate to remove TB bacilli, allowing for the recirculation of contaminated air. Finally, employees in the emergency room were provided surgical masks that were ineffective for protecting against transmission of airborne TB droplet nuclei. This study illustrates that the lack of effective measures for controlling TB transmission can result in the infection and development of active disease in a relatively high number of employees even after exposure to only one case of active TB.

Similarly, the lack of effective controls while performing high-hazard, cough-inducing procedures on individuals with infectious TB has also been shown to result in an increased risk of TB transmission. A 1990 report by Malasky et al. (Ex. 7–41) investigated the potential for TB transmission from high-hazard procedures by examining tuberculin skin test conversion rates among pulmonary physicians in training. In this study, questionnaires were sent annually, for 3 years, to training programs located in the top 25 cities for TB in 1983. The purpose of the study was to compare the conversion rates of pulmonary disease fellows to the conversion rates of infectious disease fellows. It was presumed that both groups have contact with patients with TB but that pulmonary disease fellows are usually more involved with invasive procedures such as bronchoscopies. Information requested on the questionnaires included the type of fellowship (i.e., pulmonary or infectious disease fellow), prior tuberculin skin test status, tuberculin status by the Mantoux technique at the end of the 3 year fellowship program, history of BCG vaccination, age, sex and ethnicity. In addition, the pulmonary disease fellows were asked to give information on the number of bronchoscopies they performed and their use of masks during the procedure.

Fourteen programs submitted data that were usable. Only programs that had both pulmonary and infectious disease fellows in the same system were used for the study. From this information, it was observed that 7 of 62 (11%) of the pulmonary fellows at risk converted their tuberculin skin test from negative to positive during the two year training period. In contrast, only 1 of 42 (2.4%) of the infectious disease fellows converted. The expected conversion rate from previous surveys was 2.3%. In addition, the pulmonary disease fellows were grouped according to tuberculin skin status. Skin test status was evaluated for its relationship to the number of bronchoscopies performed and the pattern of mask usage. No correlations were found with these factors and tuberculin skin status at the end of the fellowship. The authors suggested that the lack of correlation between mask usage during bronchoscopies and skin test conversion implies that masks worn by physicians may be inadequate. While little information was presented to evaluate this suggestion, the study does suggest that high-hazard procedures such as bronchoscopies that induce coughing, performed under uncontrolled conditions, present a risk for TB transmission.

Pearson *et al.* (1992) conducted a case-control study to investigate the factors associated with the development of MDR–TB among patients at a New York City hospital (Ex. 5–24). As a part of this study, tuberculin skin test conversion rates were compared among health care workers assigned to wards where patients with TB were frequently admitted (e.g., HIV unit, general medical ward, respiratory therapy) or rarely admitted (operating room, orthopedic ward, outpatient clinic, psychiatry ward). In addition, infection control procedures and ventilation systems were evaluated.

Of 79 health care workers who were previously negative, 12 (15%) had newly positive skin tests. Those health care workers who were assigned to wards where patients with TB were frequently admitted were more likely to have skin test conversions (i.e., 11 of 32) than health care workers assigned to wards where patients with TB were rarely admitted (i.e., 1 of 47).

Evaluations of the infection control procedures and ventilation systems revealed that patients who were receiving isolation precautions for suspected or confirmed TB were allowed to go to common areas if they wore a surgical mask. However, many of the patients did not keep their masks on when out of their rooms. In addition, neither the isolation rooms nor rooms used for cough-inducing procedures were under negative pressure, thus allowing contaminated air to exhaust to the adjacent corridors.

Edlin *et al.* (1992) (Ex. 5–9) investigated an outbreak of MDR–TB in a New York hospital among patients with acquired immunodeficiency syndrome (AIDS). This study compared the exposure period of AIDS patients diagnosed with MDR–TB to the exposure period of AIDS patients with drug-susceptible TB. The date of diagnosis was defined as the date the sputum sample was collected from which tuberculosis bacteria were grown in culture. Patients were assumed to be infectious two weeks before and two weeks after the date of diagnosis. The period of exposure was the period in which the patient may have been infected with TB. Because of the rapid progression from infection to disease, the exposure period was defined as 6 months preceding the date of diagnosis, excluding the last two weeks.

The patients with MDR–TB were found to be more likely to have been hospitalized during their exposure periods. Those who were hospitalized were more likely to have been on the same ward and on the same day as a patient with infectious TB and were more likely to have been near a room housing an infectious patient. Examination of the infectious patients' rooms revealed that only 1 of 16 rooms had negative pressure. Based on this evidence, the authors concluded that the observed cases of MDR-TB were a likely result of infections acquired in the hospital (i.e., primary TB) rather than as a result of the reactivation of infections acquired in the past. The authors attributed these nosocomial infections to the lack of adherence to recommended infection control procedures.

While the primary focus of this study was to investigate the transmission of TB among patients, the increased likelihood of nosocomial infections among patients in the hospital would seem equally likely to apply to health care workers working in the same environment. A survey of tuberculin skin test conversions revealed an 18% conversion rate for health care workers who previously had negative skin tests and were present during this outbreak of MDR-TB. Although no statistics were reported, the authors stated that the pattern of skin test conversions suggested an ongoing risk over time rather than a recent increase during the outbreak period.

Based on an earlier 1990 report from the CDC (Ex. 5–22), Beck-Sague *et al.* 1992 (Ex. 5–21) conducted a case-control study to investigate an outbreak of MDR–TB among the staff and patients in a HIV ward and clinic of a Miami hospital. As part of the overall study the authors compared the skin test conversion rates of health care workers in the HIV ward and clinic to the skin test conversion rates of health care workers in the thoracic surgery ward where TB patients were rarely seen. In addition, the authors also evaluated the relationship between the presence of patients with infectious MDR–TB and patients with infectious drug-susceptible TB on the HIV ward and the risk of skin test conversion among the HIV ward health care workers. Infection control procedures in the HIV ward and clinic were also examined.

All patients with suspected or confirmed TB were placed in isolation. However, some patients whose complaints were not primarily pulmonary and whose chest X-rays were not highly suggestive of TB were not initially suspected of TB and were not placed in isolation. Patients who were admitted to isolation rooms were allowed to leave TB isolation 7 days after the initiation of chemotherapy regardless of clinical or bacteriologic response. Thus, in some instances, patients with MDR–TB were allowed to leave isolation while they were still infectious, before drug resistance was recognized. In addition, patients in isolation rooms sometimes left the doors open, left their rooms, and/or removed their masks while outside their rooms. Patients with TB who were readmitted to the HIV ward and who were receiving anti-TB drugs were not admitted to isolation. In some cases, these patients were later found to have infectious MDR–TB.

An environmental assessment of the ventilation revealed that among 23 rooms tested with smoke tubes, 6 had positive pressure and many of the rooms under negative pressure varied from negative to positive depending on the fan setting and whether the bathroom door was open. Aerosolized pentamidine administration rooms were also found to have positive pressure relative to adjacent treatment areas. In addition, the sputum induction rooms were found to recirculate air back to the HIV clinic.

Skin test conversions were evaluated for all health care workers (i.e., nurses and clerical staff) who tested negative on the tuberculin skin test before the outbreak period, March 1988 through April 1990. Health care workers on the HIV ward and in the HIV clinic exhibited a significantly higher rate of skin test conversion than health care workers on the thoracic surgery ward (e.g., 13/39 vs. 0/15). Ten of the conversions occurred among the 28 health care workers in the HIV ward. Among these health care workers, the authors reported a significant correlation between the risk of infection in health care workers and the number of days that patients with infectious MDR–TB were hospitalized on the HIV ward. No correlation was observed between the risk of infection among health care workers on the HIV ward and the number of days that patients with infectious drug-susceptible TB were hospitalized on the ward.

Based on skin test conversions and the evaluation of infection control practices in the HIV ward and clinic, the authors concluded that the health care workers most likely were infected by patients on the HIV ward with MDR–TB. The factors most likely contributing to this increased risk of infection included: (1) The prolonged infectiousness and greater number of days that patients with infectious MDR–TB were hospitalized, (2) the delayed recognition of TB and failure to suspect infectious TB in patients receiving what proved to be ineffective anti-TB treatment, (3) the inadequate duration of, and lapses in, isolation precautions on the HIV ward, and (4) the lack of negative pressure ventilation in isolation and treatment rooms. While the evidence in this study primarily points to the transmission of MDR–TB

from patients to health care workers, many of the problems identified with infection control procedures and ventilation would also increase the risk of acquiring drug-susceptible TB.

In addition to MDR–TB outbreak investigations in Miami, in 1993 the CDC reported an outbreak in New York City in which health care workers became infected after being exposed to patients with MDR–TB (Ex. 6–18). In this investigation, for the period December 1990 through March 1992, 32 patients were identified with MDR–TB. Twenty-eight of these patients had documented exposure to an undiagnosed infectious MDR–TB patient while all of them were in the HIV ward of the hospital.

During November 1991, health care workers who were assigned to the HIV inpatient unit and who were also previously negative on the tuberculin skin test, were given an additional skin test. Of 21 health care workers tested, 12 (57%) had converted to positive status (7 nurses, 4 aides and 1 clerical worker). None of the health care workers had used respiratory protection.

An investigation of infection control practices revealed that of 32 patients with MDR–TB, 16 were not initially suspected of TB and in these cases isolation precautions either were not used or were instituted late during the patients' hospitalization. In addition, patients who were admitted to isolation frequently left their rooms and when in their room the doors were frequently left open. Moreover, all rooms were found to be under positive pressure relative to the hall. Thus, similar to the findings in Miami, the results of this study indicate that the inability to properly isolate individuals with MDR–TB and also the use of inadequate respiratory protection may increase the risk of infection among health care workers.

Undiagnosed cases may also present a significant source for occupational transmission of TB. A case study by Cantanzaro (Ex. 5–14) described an outbreak of TB infection among hospital staff at a San Diego hospital where the hospital staff were exposed to a single patient with undiagnosed TB. In this case, a 64 year old man suffering from generalized seizures was transferred from a local jail to the emergency room and later admitted to a four bed intermediate care unit. While in the intermediate care unit he was treated with anticonvulsants but continued to have seizures accompanied with vomiting. He was therefore placed in intensive care where he underwent a variety of procedures including bronchoscopies and endotracheal intubation. During his stay, he received frequent chest therapy and suctioning. Three sputum samples were taken from the patient for smears and cultures. All AFB smears were negative. However, two cultures were positive for tuberculosis.

Despite the presence of positive cultures the patient was not diagnosed with active TB. The problem was not recognized until a physician on staff later developed symptoms of malaise and slight cough and requested a tuberculin skin test and was found to be positive. Because the physician had been tuberculin negative 8 months earlier, a contact investigation was initiated. As a part of this investigation, all employees who previously had negative tuberculin tests and who also worked in the intermediate and intensive care units where the patient had been treated were given repeat skin tests. Of 45 employees who previously had negative tuberculin skin tests, 14 (31%) converted to positive status (6 physicians, 3 nurses, 2 respiratory therapists and 1 clerk). Ten of these conversions were among the 13 previously tuberculin negative staff members who were present at the time bronchoscopies were conducted (10/13=76.9%). Four of the conversions were among 32 susceptible staff members who were not present at the bronchoscopies (4/32=12.5%). The author thus concluded that being present during the bronchoscopy of the patient was a major risk factor in acquiring the TB infection. However, the evidence did not show a significant correlation between skin test conversion and the type of exposure, i.e., close (administered direct contact) versus casual (in the room) contact. Thus, people who were present in the room during the bronchoscopy had an equal risk of infection as those administering direct patient care, presumably, as the author suggests, because droplet nuclei can disperse rapidly throughout the air of a room.

Similarly, Kantor *et al.* (Ex. 5–18) reported an outbreak of TB infection among hospital staff exposed to a single undiagnosed case of TB. The index case in this investigation was a 50 year old man who was admitted for lung cancer and was receiving chemotherapy, steroids and radiation treatment. After a month of treatment, the patient complained of a cough and chest pain and was found to have emphysema requiring additional drug treatment and a chest tube. However, even after the emphysema resolved, the patient complained of weakness, loss of appetite and fever. A sputum culture and smear were conducted for mycobacteria and found to be negative. Lung X-rays were found to be irregular but were attributed to the lung cancer. Upon his death the autopsy revealed extensive necrosis in the lung but tuberculosis was not suspected. Thus, no cultures for mycobacteria were performed and no infection control procedures were initiated. It was only upon histological examination of tissue samples one month later that the presence of TB was confirmed. Five months later one of the staff performing the autopsy developed active TB. His only history of exposure was to the index case.

As a result, a contact investigation was initiated for hospital personnel who had shared air with the patient during his stay, including the autopsy staff. Of susceptible hospital staff (i.e., those not previously found to react positive to the tuberculin skin test), infection developed in 9 of 56 (16%) exposed employees (4 autopsy staff, 4 nursing staff and 1 radiology staff). Only 3 of 333 unexposed personnel were found to have converted to positive tuberculin status at the hospital during the same period of investigation, thus indicating a 17.8 fold increase in the infection rate for the exposed group.

Undiagnosed cases of TB at time of autopsy were also indicated as the likely cause for development of active TB among staff and students in an autopsy room in a Swedish hospital (Ex. 5–19). In this study, three medical students and one autopsy technician, who were present during the autopsy of a patient with previously undiagnosed pulmonary TB, developed active TB. Both the medical students and the autopsy technician had previously received the BCG vaccine but none had any other known contact with a tuberculosis subject. Thus, it was concluded that the tuberculosis infections were most likely to have been transmitted during the autopsy. The findings of this study further illustrate the risks that undiagnosed cases of active TB present to health care workers. The lack of recognition of an active case of TB often results in a failure to initiate appropriate infection control procedures and provide appropriate personal protective equipment. In addition, this study illustrates that, while TB is most often transmitted by individuals with infectious pulmonary TB who generate droplet nuclei when they cough or speak, the autopsy procedures on deceased individuals with pulmonary TB may also aerosolize bacteria in the lungs and generate droplet nuclei.

Exposure during autopsy procedures was also suspected as a possible route of TB transmission in an upstate New York Medical Examiner's Office (Ex. 7–152). This Medical Examiner's Office conducted autopsies on deceased inmates from upstate New York prisons. In 1991, the same year that an outbreak of MDR–TB occurred among inmates from an upstate New York prison, the Medical Examiner's office conducted autopsies on 8 inmates with TB, six of whom had infectious MDR–TB at death and who were also HIV positive and had disseminated TB disease.

Skin tests were administered to employees who had worked for at least one month during 1991 at the Medical Examiner's Office. Among 15 employees who had originally tested negative on a baseline skin test, 2 were found to have converted. These two employees worked as morgue assistants and had recent documented exposure to persons with extensive disseminated MDR–TB. No potential exposure to TB outside the Medical Examiner's Office could be found.

The autopsy area of the office had a separate ventilation system. However, air was returned to a common air plenum, allowing the air to mix between the autopsy area and other areas of the office. In addition, the autopsy room was found to be at positive pressure relative to the adjacent hallway. Employees performing or assisting at autopsies on persons known to be infected with HIV were required to wear plastic gowns, latex gloves and surgical masks. Particulate respirators were not required until November of 1991, after the installation of germicidal UV lamps. However, this was after the last MDR–TB autopsy. This study suggests that the conversion of these two morgue assistants occurred as a result of exposure to aerosolized *M. tuberculosis* resulting from autopsy procedures, either as a result of participation in an autopsy in the autopsy area or from exposure to air contaminated with aerosolized *M. tuberculosis* that was exhausted into other areas of the Medical Examiner's Office.

In addition to autopsy procedures, other procedures, such as the irrigation of abscesses at sites of extrapulmonary TB, can result in the generation of droplet nuclei. An outbreak investigation in an Arkansas hospital (Ex. 5–17) reported the transmission of TB among hospital employees exposed to a patient with a tuberculous abscess of the hip and thigh. In this study, the source case was a 67 year old man who was admitted to the hospital with a fever of unknown origin and progressive hip pain. The patient did not present any signs of pulmonary TB; however, the examination of soft tissue swelling in the hip area revealed an abscess that required drainage and irrigation. Due to the suspicion of TB, specimens for AFB smear and culture were obtained and the patient was placed in isolation. While in isolation, drainage from the abscess continued and irrigation of the abscess cavity was initiated on an 8-hour schedule. After four days, acid fast bacilli were observed in the AFB smears and TB therapy was begun. The patient remained in isolation until his death except for three days that he spent in the Intensive Care Unit (ICU) due to high fever.

An investigation of skin test surveys among the hospital employees revealed 55 skin test conversions among 442 previously nonreactive employees and 5 conversions among 50 medical students. In addition, 5 of the employees who had conversions also had active TB, including one who developed a tuberculous finger lesion at the site of a needle-stick injury incurred during the incision and drainage of the patient's abscess. All the skin test converters, except for two, recalled exposure to the source case. Of the 442 susceptible employees, 108 worked at least one day on one of the floors where the patient stayed (i.e., the surgical ward, the medical floor of the patient's room and the ICU). Four (80%) of 5 surgical suite employees who had direct contact with the patient through their assistance with the incision and irrigation of the patient's abscess had skin test conversions. In addition, 28 (85%) of 33 employees on the general medical floor and 6 (30%) of 20 ICU employees had skin test conversions. All those employees converting recalled exposure to the patient, some of whom had no direct contact with the patient.

Environmental studies revealed that two of the areas in which the patient stayed during his hospitalization did not have negative pressure. The isolation room was under positive pressure relative to adjacent rooms and the corridor. In addition, the patient's cubicle in the ICU had neutral pressure relative to the rest of the ICU. Employees in these two areas had skin test conversions even in cases where there was no direct patient contact. The lack of negative pressure was thought to have significantly contributed to the dispersion of droplet nuclei generated from the irrigation of the tuberculous abscess. In the surgical ward, air was directly exhausted to the outside. However, all employees present in the surgical ward when the patient was being treated had direct contact with the patient. There was no indication that the surgical staff had taken any special infection control precautions or had worn any personal protective equipment.

Thus, similar to other outbreak investigations, the lack of appropriate ventilation and respiratory protection stand out as the key factors in the transmission of TB to employees who are exposed to individuals with infectious TB. Moreover, this particular case study demonstrates that certain forms of extrapulmonary TB in conjunction with aerosolizing procedures, e.g., the irrigation of a tuberculous abscess, have the potential for presenting significant airborne exposures to *M. tuberculosis*.

Other aerosolizing procedures have also shown evidence of presenting airborne exposures to *M. tuberculosis*. For example, tissue processing was associated with the skin conversion of two pathologists working at a community hospital in California (Ex. 6–27). In this case study, after autopsy, a 62 year old man who had died from bronchogenic carcinoma was discovered to have a caseating lung lesion. A stain revealed a heavy concentration of acid-fast bacilli, which were identified in culture as *M. tuberculosis*. As a result, a contact investigation was initiated.

This investigation found twenty employees who had contact with the patient, including two pathologists and a laboratory assistant. All were given a tuberculin skin test and found to be negative. However, after follow-up skin testing three months later, the two pathologists had converted. Other than contact with the source case, the two had no other obvious sources of infection. One of the pathologists had been present at the autopsy. Both pathologists were present when the frozen lung sections were prepared. During this process, the lung tissue was sprayed with a compressed gas coolant, which created a heavy aerosol. Masks were not routinely worn during this tissue processing. The investigators suspected that this aerosol promoted the transmission of TB and was the likely cause of the observed infections.

While much of the health effects literature has focused on outbreaks of TB or MDR–TB, a more recent study investigated the status of infection control programs among "non-outbreak" hospitals (Ex. 7–147). Investigators from the Society of Health care Epidemiology of America (SHEA) and the CDC surveyed members of SHEA to assess compliance in the respondents' hospitals with the 1990 CDC Guidelines for Preventing the Transmission of TB in Health Care Facilities for the years 1989 to 1992. The survey included questions on tuberculin skin testing programs (e.g., frequency of testing,

positivity at hire, and percent newly converted). AFB isolation capabilities (e.g., negative pressure, air changes per hour, HEPA filtration) and respiratory protection.

The survey showed that of the 210 hospitals represented by the SHEA members' survey results, 193 (98%) admitted TB patients from 1989 to 1992, 40% of which had one or more patients with MDR–TB. In addition, the proportion of hospitals caring for drug susceptible TB patients rose from 88% to 92% and the proportion of hospitals caring for MDR–TB patients rose from 5% to 30%. While the number of hospitals caring for TB patients increased, the majority of those hospitals cared for a small number of patients. In 1992, approximately 89% of the hospitals reported 0 to 25 patients per year, while approximately 5% reported greater than 100 patients per year.

Few hospitals reported routine tuberculin skin testing for each of the years surveyed. For example, while 109 (52%) of the responding hospitals reported tuberculin skin test results for at least one of the years from 1989 to 1992, only 63 (30%) reported results for each of these years. When examining the conversion rates over time from 1989 to 1992, the investigators limited their analysis to the 63 hospitals reporting skin test data for each of these 4 years. Among these hospitals the median percentage of employees newly converting to positive skin test status remained constant over the 4 year period at approximately 0.34% per year (i.e., 3/1000 per year). However, when including all hospitals in the analysis, from 1989 to 1992, the number of hospitals reporting conversion rates increased from 63 to 109 and the conversion rates increased from 0.26% (i.e., 2/1000) to 0.50% (i.e., 5/1000).

With regard to AFB isolation capabilities, 62% of 181 responding hospitals reported that they had isolation facilities consistent with the 1990 CDC TB Guidelines (i.e., single-patient room, negative pressure, air directly exhausted outside, and ≥6 air changes per hour). Sixty-eight percent of the reporting hospitals had isolation facilities meeting the first three of these recommendations. For respiratory protection, the majority of health care workers in the hospitals used surgical masks. However, there was an increase in the use of dust-mist or dust-mist-fume respirators. The use of dust-mist respirators increased from 1 to 13% from 1989 to 1992 and the use of dust-mist-fume respirators increased from 0 to 10% for the same period. The only use of high efficiency particulate air (HEPA) filter respirators was by bronchoscopists and respiratory therapists at 4 hospitals.

As a second phase of this investigation, the survey responses were analyzed to determine the efficacy of the TB infection control programs among the member hospitals participating in the survey (Ex. 7–148). In this analysis, the reported conversion rates were compared to reported infection control measures (i.e., AFB isolation capabilities and respiratory protection). For purposes of comparison, hospitals were categorized as having either less than or ≥6 TB patients, less than or ≥437 beds, and admitting or not admitting MDR–TB patients.

Conversion rates were higher among health care workers from hospitals with ≥437 beds than among health care workers from smaller hospitals (0.9% vs. 0.6%, p≤0.05). This difference was more pronounced among "higher-risk" health care workers (i.e., health care workers including bronchoscopists and respiratory therapists). "Higher-risk" health care workers from hospitals with 437 or more beds had a 1.9% conversion rate compared to a conversion rate of 0.2% for "higher-risk" health care workers from smaller hospitals. Similarly, health care workers from hospitals where 6 or more TB patients were admitted per year had higher conversion rates than health care workers from hospitals with fewer than 6 TB patients per year (e.g., 1.2% vs. 0.6%).

For hospitals with 6 or more TB patients, conversion rates also varied depending on the level of TB infection control practices that were in place in the hospital. For example, among hospitals with 6 or more TB patients and whose AFB isolation capabilities included at least single-room occupancy, negative pressure and directly exhausted air, the conversion rates among health care workers were lower than the conversion rates among health care workers at hospitals with 6 or more TB patients but which did not have similar isolation capabilities (0.62% vs. 1.83%, p=0.03). For respiratory protection, however, no differences in conversion rates were observed among health care workers wearing surgical masks (0.94%) and health care workers using submicron surgical masks, dust-mist respirators or dust-mist-fume respirators (0.98%). Very few survey respondents reported use of HEPA filter respirators. For example, only four hospitals reported use of any HEPA respirators, and these were not the predominant type of respiratory protection used (Ex. 7–147). Thus, it is not possible to evaluate the efficacy of these particulate respirators in reducing conversion rates from the reported survey data.

For hospitals with fewer than 6 TB patients or with fewer than 437 beds, no differences in conversion rates were reported among health care workers from hospitals that had implemented AFB isolation capabilities such as single-room occupancy, negative pressure, or directly exhausted air and those hospitals that had not. The investigators suggested that this finding may support contentions that the efficacy of TB infection control measures vary depending on characteristics of the hospital or community exposure. However, given the small sample size of the survey, as well as the reduced potential for exposure in hospitals with fewer than 6 TB patients per year, it would be difficult to detect any differences in conversion rates among health care workers from hospitals with or without certain levels of infection control. Where more opportunity does exist for exposure (e.g., hospitals with ≥6 TB patients), this analysis does show that the implementation of TB infection control procedures can reduce the transmission of TB among health care workers.

Hospitals—Summary

In summary, the evidence clearly shows that in hospital settings, employees are at risk of occupational exposure to TB. Various studies and TB outbreak investigations have shown that employees exposed to individuals with infectious TB have converted to positive tuberculin skin status and in some cases have developed active disease. In these reports, a primary factor in the transmission of TB has been a failure to promptly identify individuals with infectious TB so that appropriate infection control measures could be initiated to prevent employee exposure. In addition, another major factor identified as contributing to occupational exposures was the lack or ineffective implementation of appropriate exposure control methods (e.g., lack of negative pressure in isolation rooms, lack of appropriate respiratory protection for exposed employees, performance of high-hazard procedures under uncontrolled conditions). The lack of early identification and appropriate control measures resulted in the exposure and subsequent infection of various hospital employees. These employees included not only health care providers administering direct patient care to individuals with infectious TB, but also hospital staff providing support services to the infectious individuals, hospital staff working in adjacent areas of the hospital using shared air, autopsy staff and laboratory staff working with infected culture and tissue samples.

Other Occupational Settings

While hospitals have been historically recognized as the primary type of work setting where TB presents an occupational hazard, there are other work settings where the transmission of TB presents a hazard to workers. There are a variety of occupational settings in which workers can reasonably be anticipated to encounter individuals with active TB as a part of their job duties. Several work settings have been identified by the CDC where exposure to TB presents an occupational hazard: correctional facilities, long-term care facilities for the elderly, homeless shelters, drug treatment centers, emergency medical services, home-health care, and hospices. Similar to the hospital setting, these work settings have a higher number of individuals with active TB than would be expected for the general population. Many of the clients of these work settings have many characteristics (e.g., high prevalence of TB infection, high prevalence of HIV infection, intravenous drug use) that place them at an increased risk of developing active TB. These types of work settings are also similar to hospitals in that workers at these sites may also provide medical services and perform similar types of high-hazard procedures that are typically done in a hospital setting.

In addition to employees who provide medical services in these other types of work settings, there are other types of workers (e.g., guards, admissions staff, legal counsel for prisoners) who may also be exposed to individuals with infectious TB. Similar to hospitals, these work settings have an over-representation of populations at high risk for developing active TB, e.g., individuals infected with HIV, intravenous drug users, elderly individuals, and individuals with poor nutritional status and who are medically underserved. In addition to having a higher percentage of individuals with TB infection and a higher percentage of individuals at an increased risk for developing active TB, many of these work settings also share environmental factors that facilitate the transmission of TB, such as overcrowding and inadequate ventilation, which increases the occupational hazard. The following discussion describes some of the studies available in the literature that have examined the occupational transmission of TB in other occupational settings such as those listed above. Not all the settings listed by the CDC as places where TB transmission may be likely to occur have been adequately studied and thus can not be included in this discussion. However, the discussion of the following sectors clearly demonstrates that the occupational transmission of TB is not limited to the hospital setting. Occupational settings where there is an increased likelihood of exposure to aerosolized *M. tuberculosis* present the same types of occupational hazards as have been documented in the hospital setting.

Correctional Facilities

Many correctional facilities have a higher incidence of TB cases than occur in the general population. For example, the CDC reported that the incidence of TB among inmates of correctional facilities was more than three times higher than that for nonincarcerated adults aged 15–64, based on a survey of TB cases in 1984 and 1985 by 29 state health departments (Ex. 3–33). In particular, among inmates in the New York correctional system, the TB incidence increased from an annual average of 15.4 per 100,000 during 1976 to 1978 to 105.5 per 100,000 in 1986 (Ex. 7–80) to 156.2/100,000 for 1990–1991 (Ex. 7–137). Similarly, in 1987, the incidence of TB among inmates in New Jersey was 109.9 per 100,000 (approximately 11 times higher than the general population in New Jersey) and in California the incidence of TB among inmates was 80.3 per 100,000 (approximately 6 times higher than that for the general population for California) (Ex. 3–33). In 1989, the CDC reported that since 1985, eleven known outbreaks of TB have been recognized in prisons (Ex. 3–33).

The increased incidence of TB in correctional facilities has been attributed to several factors (Ex. 7–25). One, correctional facilities have a higher incidence of individuals who are at greater risk for developing active TB. For example, the population in prisons and jails may be dominated by persons from poor and minority groups, many of whom may be intravenous drug users. These particular groups may also suffer from poor nutritional status and poor health care, factors that place them at increased risk of developing active disease. Two, special types of correctional facilities, such as holding facilities associated with the Immigration and Naturalization Services, may have inmates/detainees from countries with a high incidence of TB. For foreign-born persons arriving in the U.S., the case rate of TB in 1989 was estimated to be 124 per 100,000, compared to an overall TB case rate of 9.5 per 100,000 for the U.S. (Ex. 6–26). In 1995, TB cases reported among the foreign born accounted for 35.7% of the total reported cases, marking a 63.3% increase since 1986 (Ex. 6–34). Three, many correctional facilities have a high proportion of individuals who are infected with HIV. The CDC reported that in addition to the growing increase in AIDS among prisoners, the incidence of AIDS in prisons is markedly higher than that for the U.S. general population. In 1988, the incidence of AIDS cases in the U.S. population was 13.7 per 100,000 compared to an estimated aggregate incidence for state/federal correctional systems of 75 cases per 100,000 (Ex. 3–33). Individuals who are infected with HIV or who have AIDS are at an increased risk of developing active TB due to their decreased immune capacity. The likelihood of pulmonary TB in individuals with HIV infection is reflected in the CDC's Revised Classification System for HIV infection (Ex. 6–30). In this revised classification system, the AIDS surveillance case definition was expanded to include pulmonary TB. Moreover, X-rays of individuals infected with HIV who have TB often exhibit radiographic irregularities that make the diagnosis of active TB difficult (Exs. 7–76, 7–77, 7–78, and 7–79). HIV-infected individuals may have concurrent pulmonary infections that confound the radiographic diagnosis of pulmonary TB. In addition, it may be difficult to distinguish symptoms of TB from *Pneumocystis carinii* pneumonia or other opportunistic infections. This difficulty in TB diagnosis can result in true cases of active TB going undiagnosed in this population. Undiagnosed TB has been shown to be an important cause of death in some patients with HIV infection (Ex. 7–76). Fourth, environmental conditions in correctional facilities can aid in the transmission of TB. For example, many prisons are old, have inadequate ventilation systems, and are overcrowded. In addition, inmates are frequently transferred both within and between facilities, thus increasing the potential for the spread of TB infection among inmates and staff. This increased potential for mobility among inmates also enhances the likelihood that inmates undergoing therapy for active disease will either discontinue their treatment or inadequately follow their prescribed regime of treatment. The inadequacy of their treatment may give rise not only to relapses to an infectious state of active disease, but also potentially give rise to strains of MDR–

TB. These strains of TB have a higher incidence of fatal outcome and are generally characterized by prolonged periods of infectiousness during which the risk of infection to others is increased.

The high incidence of TB among the inmate population presents an occupational hazard to the staff in these types of facilities. Recent outbreak investigations by the CDC have documented the transmission of TB to exposed workers. In an investigation of a state correctional facility in New York for 1991 (Exs. 6–3 and 7–136), eleven persons with TB were identified (10 inmates and one correctional facility guard). Nine persons (8 inmates and the guard) had MDR–TB. All eight inmates were HIV positive. The guard was HIV negative; however, he was also immunocompromised as a result of treatment for laryngeal cancer. Seven of the inmates and the guard died from MDR–TB. The eighth inmate was still alive and receiving treatment for MDR–TB 2 years after being diagnosed as having the disease. DNA analysis identified the strains of tuberculosis bacteria from these individuals to be identical.

The investigation revealed that the source case was an inmate who had been transferred from another prison where he had been previously exposed to MDR–TB. He arrived at the prison with infectious TB but refused evaluation by the infirmary staff. This inmate was placed in the general prison population where he stayed for 6 months until he was admitted to the hospital where he later died. However, before his hospitalization, he exposed two inmates living in his cell block who later developed MDR–TB. These two inmates continued to work and live in the prison until shortly before their final hospitalization. The other inmates who subsequently developed MDR–TB had several potential routes of exposure: social contact in the prison yard, contact at work sites in the prison, and contact at the prison infirmary where they shared rooms with other inmates before diagnosis with TB.

The guard who developed MDR–TB had exposure to inmates while transporting them to and from the hospital. The primary exposure for this guard apparently occurred when he was detailed outside the inmates' room during their hospitalization for MDR–TB. The inmates were hospitalized in an isolation room with negative pressure. However, upon investigation it was discovered that the ventilation system for the room had not been working correctly and had allowed air to be exhausted to the hospital corridors and other patient rooms.

A contact investigation in the prison was conducted to identify other inmates who might have been exposed during this outbreak of MDR–TB. Of those inmates with previous negative tuberculin skin tests and without active disease (306), ninety-two (30%) had documented skin test conversions. There was no tuberculin skin test program for prison staff; therefore, conversions among prison employees could not be evaluated.

The primary factors identified as contributing to this outbreak were deficiencies in identifying TB among transferred inmates, laboratory delays, and lapses in isolating inmates with active TB within the facility. Inmates with symptoms of active disease were not sent for evaluation in some cases until they became so ill they could not care for themselves. Some of these inmates were placed in the infirmary with other inmates until their diagnosis with TB. On other occasions, drug susceptibility testing was not reported until after an inmate's death, which means that appropriate patient management was not initiated.

As a result of this outbreak, a retrospective epidemiological investigation was conducted to examine the potential extent and spread of MDR–TB throughout the New York State prison system during the years 1990–1991 (Ex. 7–137). This investigation revealed that 69 cases of TB were diagnosed in 1990 and another 102 were diagnosed in 1991, resulting in a combined incidence of 156.2 cases/100,000 inmate years for 1990 and 1991 combined. Of the cases, 39 were identified as being MDR–TB, 31 of which were shown to be epidemiologically linked. Thirty-three of the individuals with MDR–TB never received any treatment for MDR–TB, 3 were diagnosed at death, and 23 died before drug susceptibility results were known. These inmates were also discovered to be highly mobile. The 39 inmates lived in 23 different prisons while they were potentially infectious. Twenty transfers were documented for 12 inmates with potentially infectious MDR–TB (9 shortly before diagnosis, one after diagnosis with TB but before diagnosis with MDR–TB, and 2 after a diagnosis of MDR–TB).

Several factors were identified as contributing to the spread of MDR–TB throughout the New York prison system: delays in identifying and isolating inmates, frequent transfers without appropriate medical evaluation, lapses in treatment, and delays in diagnosis and susceptibility testing.

A similar investigation in a California state correctional institution identified three active cases of TB (two inmates and one employee) during September and October 1991 (Ex. 6–5). As a result, an investigation was commenced to determine whether transmission of TB was ongoing in the institution. Eighteen inmates with active TB were identified. TB in 10 of these inmates was recognized for the first time while they were in the institution during 1991, resulting in an annual incidence of TB of 184 per 100,000, a rate greater than 10 times that for the state (17.4 per 100,000). Two of the 10 inmates had negative tuberculin skin tests prior to their entry into the institution. Three of the cases were determined to have been infectious during 1991.

A review of skin test data revealed that for the 2944 inmates for whom skin test results were available, 324 tested positive for the first time while in the prison system. Of these, 106 were tuberculin negative before their entry into the prison system, 96 of which occurred in the previous two years.

The employee identified as having active TB had worked as a counselor on the prison's HIV ward, where he recalled exposure to one of the 3 infectious inmates. This employee could recall no known exposures outside the prison. Similarly, two other prison employees had documented skin test conversions while working at the prison. Neither recalled exposures outside the prison; one reported exposure to an inmate with possible TB.

No information was provided in this report as to whether any isolation precautions were implemented at this facility. However, the investigators concluded that their findings suggested the likelihood that transmission of TB had occurred in the prison. Their conclusion was based on the fact that a substantial number of skin test conversions were documented among the inmates and that at least two inmates with active TB became infected while at the prison.

The transmission of TB was also reported in another California prison among prison infirmary physicians and nurses and correctional officers (Ex. 6–8). In this investigation, an inmate with active MDR–TB spent 6 months during 1990–1991 in the infirmary. The infirmary had no isolation rooms and inmates' cells were found to be under positive pressure. Employees occasionally recalled wearing surgical masks when entering the rooms of TB patients.

An analysis of available skin testing data revealed that of the 21 infirmary health care providers, only 10 had been tested twice during the period from 1987 to 1990. Of these 10, two were newly positive, one of whom had recently converted in 1991 and had spent 5 months in the preceding year providing health care to the source case in this investigation. Another health care provider and a correctional officer who worked in the infirmary also were identified as having newly converted while at the prison. There was no yearly skin test screening, and thus their conversions could have occurred at any time between 1987 and 1991. However, 13 other inmates were diagnosed with pulmonary TB during that same period. An additional correctional officer who did not work in the infirmary also was found to have newly converted. His reported exposure occurred at a community hospital where he was assigned to an inmate with infectious TB. The officer was not provided with any respiratory protection. The lack of isolation precautions and the lack of appropriate respiratory protection suggest transmission of TB from infectious inmates in the infirmary to the prison staff, either as a result of exposure to the source case or other inmates with pulmonary TB who were also treated in the prison infirmary. Because of the lack of contact tracing or routine annual screening of inmates or staff, the full extent of transmission from the source case or other TB cases could not be determined.

Thus, similar to the evidence for the hospital setting, the evidence on correctional facilities shows that the failure to promptly identify individuals with infectious TB and provide appropriate infection control measures can result in the exposure and subsequent infection of employees with TB. These employees include the correctional facility infirmary staff, guards on duty at the facility, and guards assigned to escort inmates during transport to other facilities (e.g., outside health care facilities and other correctional facilities).

Homeless Shelters

Tuberculosis has also been recognized as a health hazard among homeless persons. The growth of the homeless population in the United States since the 1980s and the subsequent increase in the number of shelters for the homeless, furthers heightens the concern about the potential for the increased incidence and transmission of TB among the homeless, especially in crowded living conditions such as homeless shelters.

A number of factors are present in homeless shelters which increase the potential for the transmission of TB among the shelter residents and among the shelter staff. A high prevalence of TB infection and disease is common among many homeless shelters. This is not surprising, since the residents of these facilities usually come from lower socio-economic groups and often have characteristics that place them at high risk. Screening of selected clinics and shelters for the homeless has shown that the prevalence of TB infection ranges from 18 to 51% and the prevalence of clinically active disease ranges from 1.6 to 6.8% (Ex. 6–15). The CDC estimates this to be 150 to 300 times the nationwide prevalence rate (Ex. 6–17).

In addition to having a high prevalence of individuals with TB infection in the shelters, many of the shelter residents possess characteristics that impair their immunity and thus place them at a greater risk of developing active disease. For example, homeless persons generally suffer from poor nutrition, poor overall health status and poor access to health care. Many also suffer from alcoholism, drug abuse and psychological stress. Moreover, a significant portion of homeless shelter residents are infected with the HIV. In 1988, the Partnership of the Homeless Inc. conducted a survey of 45 of the nation's largest cities and estimated that there were between 5,000 and 8,000 homeless persons with AIDS in New York City and approximately 20,000 nationwide (Ex. 7–55). Due to these factors, homeless shelter residents are at increased risk of developing active disease. Thus, there is the increased likelihood that these individuals will be infectious as a result of active disease and thereby present a source of exposure for other homeless persons and for shelter employees.

In addition to having factors which increase their risk of developing active TB disease, homeless persons also are a very transient population. Because they are transient, homeless persons are more likely to discontinue or to erratically adhere to the prescribed TB therapy. Inadequately adhering to TB therapy can result in relapses to an infectious state of the disease or the development of MDR–TB. Both outcomes result in periods of infectiousness, during which they present a source of exposure to other residents and staff. In addition, environmental factors at homeless shelters, such as crowded living conditions and poor ventilation, facilitate the transmission of TB.

Outbreaks of TB among homeless shelter residents have been reported. For example, during 1990, 17 individuals with active pulmonary TB were identified among residents of homeless shelters in three Ohio cities: Cincinnati, Columbus, and Toledo (Ex. 7–51). In Cincinnati, 11 individuals with active TB were identified in a shelter for homeless adults. The index case was a man who had resided at the shelter and later died from respiratory failure. He was not diagnosed with TB until his autopsy. Of these 11 individuals, of which the index case was one, 7 were determined to be infectious. There was no indication as to whether any infection control measures were in place in the shelter. DNA analysis of 10 individual *M. tuberculosis* isolates showed identical patterns. The similarity among these DNA patterns suggested that transmission of the TB occurred in the shelter.

While the primary focus of this investigation was on the active cases reported among the residents in this Cincinnati shelter, the risk of transmission identified in this shelter also would apply to the shelter staff. Possible transmission of TB infection from the infectious individuals to the shelter staff might have been identified through tuberculin skin test conversions. However, no tuberculin skin test information for the staff was reported in this investigation.

Tuberculin skin testing results were reported in the investigation of a Columbus, Ohio shelter. In this investigation, a resident of a Columbus homeless shelter was identified with infectious pulmonary TB at the local hospital in March of 1990. The patient also had resided in a shelter in Toledo. As a result, a city-wide TB screening was initiated from April to May 1990 among the residents and staff of the city's men's shelters. Tuberculin skin tests were conducted on 363 shelter residents and 123 shelter employees. Among 81 skin-tested residents of the shelter in which the index case had resided, 32 (40%) were positive compared to 47 (22%) of 210 skin-tested residents of other shelters in Columbus who had positive skin test reactions. Similarly, among 27 employees of the shelter where the index case resided, 7 (26%) had positive skin test reactions compared to 9 (11%) of 85 employees in other men's shelters. These skin test results suggest an increased risk of transmission of TB among residents and employees of the homeless shelter where the index case resided. However, due to the lack of baseline skin test information among these residents and employees it is not possible to determine when their conversion to positive status occurred and whether this index case was their source of exposure. These results, however, do indicate a high prevalence of TB infection among homeless residents

(e.g., 40% and 22%). Many of these individuals are likely to have an increased risk of developing active TB and, as a result, they may present a source of exposure to residents and staff.

The transmission of TB has also been observed among residents and staff of several Boston homeless shelters (Exs. 7–75 and 6–25). From February 1984 through March 1985, 26 cases of TB were confirmed among homeless residents of three large shelters in Boston. Nineteen of the 26 cases occurred in 1984, thus giving an incidence of approximately 317 per 100,000, 6 times the homeless case rate of 50 per 100,000 reported for 1983 and nearly 16 times the 1984 case rate of 19 per 100,000 for the rest of Boston (Ex. 6–25).

Of the 26 cases of TB reported, 15 had MDR–TB. Phage typing of isolates from 13 of the individuals with drug-resistant TB showed identical phage types, thus suggesting a common source of exposure. As a result of this outbreak, a screening program was implemented in November 1984 over a four-night period. Of 362 people who received skin tests, 187 returned for reading, 42 (22%) were found to be positive and 3 were recent converters. Screening also was reported for the shelter staff at the three homeless facilities. At the largest of the three shelters, 17 of 85 (20%) staff members had skin test conversions. In the other two shelters, 3 of 15 (20%) and 3 of 18 (16%) staff members had skin test conversions.

Whereas MDR–TB was primarily involved in the outbreak in Boston, an outbreak of drug-susceptible TB was reported in a homeless shelter in Seattle, Washington (Ex. 7–73). From December 1986 to January 1987, seven cases of TB from homeless residents were reported to the Seattle Public Health Department. The report of 7 individuals with active TB in one month prompted an investigation, including: (1) A mass screening to detect undiagnosed cases, (2) phage typing of isolates from shelter clients to detect epidemiologically linked cases, and (3) a case-control study to investigate possible risk factors for the acquisition of TB.

A review of the case registries revealed that 9 individuals with active TB had been reported from the homeless shelter for the preceding year and four cases in the year previous to that. As a result of the mass screening in late January 1987, an additional 6 individuals with active TB were detected. Phage typing of 15 isolates from the shelter-associated cases revealed that 6 individuals with active TB diagnosed around the time of the outbreak were of the same phage type, suggesting that there was a predominant chain of infection, i.e., a single source of infection. However, there also were other phage types, suggesting several sources of infection. Therefore, the investigators suggested that there was probably a mixture of primary and reactivated cases.

In addition to the similarity of phage types among TB cases, tuberculin skin testing results suggested the ongoing transmission of TB in the shelter. For example, 10 shelter clients who were previously tuberculin negative in May 1985 were re-tested in January 1987 and 3 (30%) had converted. In addition, 43 clients who were negative in January 1987 were re-tested in June 1987 or February 1988 and 10 (23%) had converted. Factors identified as contributing to the outbreak were the increased number of men with undiagnosed infectious pulmonary TB, the close proximity of beds in the shelter, and a closed ventilation system that provided extensive recirculation of unfiltered air.

As a result of the outbreak, a control plan was implemented. This plan included repetitive mass screening, repetitive skin testing, directly observed therapy, preventive therapy and modification of the ventilation system to incorporate UV light disinfection in the ventilation duct work. After the control plan was in place, five additional individuals with active TB were observed over a 2-year follow-up period.

While the primary focus in this study was on clients of the shelter rather than the shelter staff, the risk factors present in the shelter before implementation of the control plan would have also increased the likelihood for transmission of TB to shelter employees from infectious clients.

Thus, similar to correctional facilities, homeless shelters have a number of risk factors that facilitate and promote the transmission of TB (e.g., high incidence of infected residents with an increased likelihood of developing active disease, crowded living conditions and poor ventilation). Also, similar to correctional facilities, the evidence in homeless shelters shows that the failure to promptly identify homeless residents with infectious TB and the lack of appropriate TB control measures (e.g., lack of isolation precautions or prompt transfer to facilities with adequate isolation precautions) resulted in the transmission of TB to shelter employees.

Long-Term Care Facilities for the Elderly

Long-term care facilities for the elderly also represent a high-risk population for the transmission of TB. TB disease in persons over the age of 65 constitutes a large proportion of TB in the United States. Many of these individuals were infected in the past, before the introduction of anti-TB drugs and TB control programs when the prevalence of TB disease was much greater among the general population, and have harbored latent infection over their lifetimes. However, with advancing age, these individuals' immune function starts to decline, placing them at increased risk of developing active TB disease. In addition, they may have underlying disease or overall poor health status. Moreover, residents are often clustered together and group activities are often encouraged. TB case rates are higher for this age group than for any other. For example, the CDC reports that in 1987, the 6,150 cases of TB disease reported for persons ≥65 years of age accounted for 27% of the U.S. TB morbidity although this group only represented 12% of the U.S. population (Ex. 6–14).

Because of the higher prevalence of TB cases among this age group, employees of facilities that provide long-term care for the elderly are at increased risk for the transmission of TB. More elderly persons live in nursing homes than in any other type of residential institution. The CDC's National Center for Health Statistics reports that elderly persons represent 88% of the nation's approximately 1.7 million nursing home residents. As noted by the CDC, the concentration of such high-risk individuals in long-term care facilities creates a high-risk situation for the transmission of TB (Ex. 6–14).

In addition to having a higher prevalence of active TB, the recognition of TB in elderly individuals may be difficult or delayed because of the atypical radiographic appearance that TB may have in elderly persons (Exs. 7–59, 7–81, 7–82, and 7–83). In this situation, individuals with active TB may go undiagnosed, providing a source of exposure to residents and staff.

While the increased incidence of TB cases among the elderly in long-term care facilities may be a result of the activation of latent TB infections, the transmission of TB infection to residents and staff from infectious cases in the facilities has been observed and reported in the scientific literature.

For example, Stead *et al.* (1985) examined the reactivity to the tuberculin skin test among nursing home residents in Arkansas (Ex. 7–59). This study involved a cross-sectional survey in which tuberculin skin tests were given to all current nursing home residents. In addition, all newly-admitted nursing home residents were skin tested. For the three year period evaluated, 25,637 residents of the 223 nursing homes in Arkansas were tested.

Of 12,196 residents who were tested within one month of entry, only 12 percent were tuberculin positive, including those for whom a booster effect was detected. However, among the 13,441 residents for whom the first test was delayed for more than a month, 20.8% were positive. In addition, the results of retesting 9,937 persons who were tuberculin negative showed an annual conversion rate of approximately 5% in nursing homes in which an infectious TB case had been recognized in the last three years. In nursing homes with no recognized cases, the authors reported an annual conversion rate of approximately 3.5%. The authors concluded that their data supported the contention that tuberculosis may be a rather common nosocomial infection in nursing homes and that new infections with tuberculosis is an important risk for nursing home residents and staff.

Brennen *et al.* (Ex. 5–12) described an outbreak of TB that occurred in a chronic care Veteran's Administration Medical Center in Pittsburgh. This investigation was initiated as a result of two skin test conversions identified through the employee testing program. One converter was a nurse working on ward 1B (a locked ward for neuropsychiatric patients) and the other was a physician working in an adjacent ward, 1U, who also had significant exposure to ward 1B. The source of infection in this investigation was traced to two patients who had resided on ward 1B and who had either a delayed or undiagnosed case of TB. The contact investigation revealed 8 additional conversions among patients, 4 in ward 1B and 4 in wards 2B and 4B (units on the floor above 1B).

Because the source cases were initially unidentified, no isolation precautions were taken. Smoke tracer studies revealed that air discharged from the window air conditioning unit of one of the source patients discharged directly into the courtyard. Air from this courtyard was the air intake source for window air conditioning units in the converters' room on ward 2B and thus was one of the possible sources of exposure.

In addition to the contact investigation on ward 1B and the adjacent units, hospital-wide skin testing results were evaluated. Of 395 employees tested, 110 (28%) were positive. The prevalence in the surrounding community was estimated to be 8.8%. Of those employees initially negative, 38 (12%) converted to positive status. Included among these were employees in nursing (18), medical (3), dental (1), maintenance/engineering (3), supply (1), dietary (9), and clerical (2) services.

Occupational transmission of TB was also reported in a nursing home in Oklahoma (Ex. 6–28). In August 1978, a 68 year old female residing in the east wing of the home was diagnosed with pulmonary TB. She was subsequently hospitalized. However, by that time she had already had frequent contact with other residents in the east wing. As a result, a contact investigation, in which all residents of the home were given skin tests, was initiated.

The investigation revealed that the reaction rate for residents in the east wing (34/48, 71%) was significantly higher than the reaction rates of residents living in the north and front wings (30/87, 34%). No baseline skin test information was presented for the residents to determine the level of conversion. However, it was noted that half of the nursing home residents were former residents of a state institution for the developmentally disabled. A 1970 tuberculin skin test survey of that institution had shown a low rate of positive reactions.

In addition to the nursing home residents, nursing home employees were also skin tested. Of the 91 employees tested, 61 (67%) were negative and 30 (33%) were positive. Similar to results observed among the residents, positive reaction rates were higher for employees who had ever worked in the east wing (50%) than for those who had never worked in the east wing (23%). Retesting of the employees 3 months later revealed 3 conversions. These results suggested that there may have been occupational transmission of TB in this facility.

Occupational transmission has also been observed in a retrospective study of residents and employees who lived or worked in an Arkansas nursing home between 1972 and 1981 (Ex. 7-83). In this retrospective study, investigators reviewed the skin testing and medical chart data collected over a 10-year period at an Arkansas nursing home. Among the nursing home residents who were admitted between 1972 and 1982, 32 of 226 residents (17%) who were initially tuberculin negative upon admittance became infected while in the home, based on conversion to positive after at least two previous negative tests. Twenty-four (63%) of these conversions were infected in 1975, following exposure to one infectious resident. This resident, who had negative skin tests on three previous occasions during his stay in the home, was not diagnosed with TB until after he was hospitalized because of fever, loss of weight and productive cough. The remaining 37% converted in the absence of a known infectious case. Thus, the authors suggested that nosocomial infections are likely to result from persons unsuspected of having TB.

Skin testing was also reviewed for employees of the nursing home. Questionnaires were completed by 108 full-time employees. Eleven of 68 employees with follow-up skin tests converted to positive skin status during the study period. Ten of the 11 (91%) converters reported that they had been in the nursing home in 1975, the same year in which many of the residents were also found to have converted from a single infectious case. In addition, employees working at least 10 years in the home had a higher percentage of conversions (9 of 22, 40%) than employees working less than 10 years (2 of 46, 4.4%). Based on the results of this study, the authors concluded that, in addition to occurrence of TB cases from the reactivation of latent infections among the elderly, TB can also be transmitted from one resident to another resident or staff. Consequently, TB must be considered as a potential nosocomial infection in nursing homes.

Thus, long-term care facilities for the elderly represent a high-risk situation for the transmission of TB. These types of facilities possess a number of characteristics that increase the likelihood that active disease may be present among the facility residents and may go undetected. Similar to other high-risk settings, the evidence shows that the primary factors in the transmission of TB among residents and staff have been the failure to promptly identify residents with infectious TB and initiate and adequately implement appropriate exposure control measures.

Drug Treatment Centers

Another occupational setting that has been identified as a high-risk environment for the transmission of TB is drug treatment centers. Similar to other high-risk sites, drug treatment centers have a higher prevalence of TB infection than the general population. For example, in 1989 the CDC funded 25 state and city health departments to support tuberculin testing and administration of preventive therapy in conjunction with HIV counseling and testing. In this project, 28,586 clients from 114 drug treatment centers were given tuberculin skin tests. Of those, 2,645 (9.7%) were positive (Ex. 6–8). When persons with previously

documented positive tests were included, 4167 (13.3%) were positive.

There is also evidence to suggest that drug dependence is a risk factor for TB disease. For example, Reichman et al. (Ex. 7–85) evaluated the prevalence of TB disease among different drug-dependent populations in New York: (1) An in-hospital population, (2) a population in a local drug treatment center, and (3) a city-wide population in methadone clinics. For the in-hospital population of 1,283 patients discharged with drug dependence, 48 (3.74%) had active disease, for a prevalence rate of 3,740 per 100,000. In comparison, the TB prevalence rate for the total inpatient population was 584 per 100,000 and for New York City as a whole was 86.7 per 100,000. Screening of clients at a local drug treatment center in Harlem revealed a TB prevalence of 3750 per 100,000 in the drug-dependent population. Similarly, in the New York methadone program, the city-wide TB prevalence was 1,372 per 100,000. The authors also reported that although estimates of TB infection rates for both drug-dependent and non-drug dependent people were similar, the prevalence of TB disease among the drug-dependent was higher, thus suggesting that drug dependency may be a risk factor for disease.

Clients of drug treatment centers not only have a high prevalence of TB infection, a majority of them are intravenous drug users. Of the estimated 645,000 clients discharged each year from drug treatment centers, approximately 265,000 are intravenous drug users who either have or are at risk for HIV infection. In the Northeastern U.S., HIV seroprevalence rates of up to 49% have been reported (Ex. 6–8). These individuals are at increased risk of developing active TB disease.

To determine the risk of active TB associated with HIV infection, Selwyn *et al.* (Ex. 5–6) prospectively studied 520 intravenous drug users enrolled in a methadone maintenance program. In this study, 217 HIV seropositive and 303 seronegative intravenous drug users, who had complete medical records documenting their history of TB and skin test status, were followed from June 1985 to January 1988. On admission to the methadone program, and at yearly intervals, all patients were given tuberculin skin tests.

Forty-nine (23%) of the seropositive patients and 62 (20%) of the seronegative patients had positive reactions to the skin test before entry into the study. Among the patients who initially had negative skin tests, 15 of 131 (11%) seropositive patients and 62 of 303 (13%) seronegative patients converted to positive tuberculin status. While the prevalence and incidence rates of TB infection were similar for the two groups of patients, seropositive patients showed a higher incidence of developing active disease. Active TB developed in 8 of the seropositive subjects with TB infection (4%), whereas none of the seronegative patients with TB infection developed active TB during the study period.

Among individuals who are infected with HIV or who have AIDS, TB disease may be difficult to diagnosis because of the atypical radiographic appearance that TB may present in these individuals. In these individuals, TB may go undiagnosed and present an unsuspected source of exposure. Clients of drug treatment centers also may be more likely to discontinue or inadequately adhere to TB therapy regimens in instances where they develop active disease. As in other instances, this increases the likelihood of relapse to active disease or possibly the development of MDR–TB, both of which result in additional or even prolonged periods of infectiousness during which other clients or staff can be exposed.

There is evidence showing the transmission of TB in drug treatment facilities among both the clients and the staff. In a CDC case study (Ex. 5–6), a Michigan man who was living in a residential substance abuse treatment facility and was undergoing therapy for a previously diagnosed case of TB disease, was discovered by the local health department to have MDR–TB. As a result, a contact investigation was initiated at the drug treatment facility in which he resided.

Of the 160 clients and staff who were identified as potential contacts, 146 were tested and given tuberculin skin tests in November. No health screening program had been in place at the facility. The following March repeat skin tests were given. Of the 70 persons who were initially tuberculin negative and were still present in the facility, 15 (21%) had converted to positive status (14 clients and 1 staff member). The investigators noted that the number of converters may have been underestimated for two reasons. Many of the clients were at risk for HIV infection and thus may have been anergic and not responded to the tuberculin skin tests. In addition, nearly half of the clients who were initially negative were not available for repeat skin testing.

Several factors may have contributed to the observed conversions in this facility. For example, no health screening program was in place. Therefore, individuals with TB would go unidentified. In addition, the clients were housed in a building with crowded dormitories for sleeping. The only ventilation in this building was provided by opening windows and doors. Thus, environmental conditions were ideal for the transmission of TB.

Consequently, the high-risk characteristics of clients who frequent these centers (e.g., high prevalence of infection and factors increasing the likelihood of developing active disease) and environmental characteristics of the center (e.g., crowding and poor ventilation), lead to drug treatment centers being considered a high-risk setting for the transmission of TB. The available evidence shows that the failure to promptly identify clients with infectious TB and to initiate and properly implement exposure control methods (e.g., proper ventilation) resulted in the infection of clients and staff at these facilities.

Conclusion

The available evidence clearly demonstrates that the transmission of TB represents an occupational hazard in work settings where employees can reasonably be anticipated to have contact with individuals with infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* as a part of their job duties. Epidemiological studies, case reports, and outbreak investigations have shown that in various work settings where there has been an increased likelihood of encountering individuals with active TB or where high-hazard procedures are performed, employees have become infected with TB and in some cases developed active disease. While some infections were a result of more direct and more prolonged exposures, other infections resulted from non-direct and brief or intermittent exposures. Because of the variability in the infectiousness of individuals with active TB, one exposure may be sufficient to initiate infection.

Several factors, common to many of these work settings, were identified as contributing to the transmission of TB: (1) Failure or delayed recognition of individuals with active TB within the facility, and (2) failure to initiate or adequately implement appropriate infection control measures (e.g., performance of high-hazard procedures under uncontrolled conditions, lack of negative pressure ventilation, recirculation of unfiltered air, and lack of appropriate respiratory protection). Thus, in work settings where employees can reasonably be anticipated to have contact with individuals with infectious TB or air that may contain aerosolized *M. tuberculosis* and where appropriate infection control programs are not in place, employees are at increased risk of becoming infected with TB.

Infection with TB is a material impairment of the worker's health. Even though not all infections progress to active disease, infection marks a significant change in an individual's health status. Once infected, the individual is infected for his or her entire life and carries a lifetime risk of developing active disease, a risk they would not have had they not been infected. In addition, many individuals with infection undergo preventive therapy to stop the progression of infection to active disease. Preventive therapy consists of very toxic drugs that can cause serious adverse health effects and, in some cases, may be fatal.

Although treatable, active disease is also a serious adverse health effect. Some TB cases, even though cured, may result in long-term damage to the organ that is infected. Individuals with active disease may need to be hospitalized while they are infectious and they must take toxic drugs to stop the progressive destruction of the infected tissue. These drugs, as noted above, are toxic and may have serious side effects. Moreover, even with advancements in treating TB, individuals still die from TB disease. This problem is compounded by the emergence of multidrug-resistant strains of TB. In these cases, due to the inability to find adequate drug regimens which can treat the disease, individuals remain infectious longer, allowing the disease to progress further and cause more progressive destruction of the infected tissue. This increases the likelihood of long-term damage and death.

V. Preliminary Risk Assessment for Occupational Exposure to Tuberculosis

Introduction

The United States Supreme Court, in the "benzene" decision (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980)), has stated the OSH Act requires that, prior to the issuance of a new standard, a determination must be made, based on substantial evidence in the record considered as a whole, that there is a significant health risk under existing conditions and that issuance of a new standard will significantly reduce or eliminate that risk. The Court stated that

> "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. 642).

The Court in the Cotton Dust case (*American Textile Manufacturers Institute* v. *Donovan,* 452 U.S. 490 (1981)), rejected the use of cost-benefit analysis in setting OSHA health standards. However, the Court reaffirmed its previous position in the "benzene" case that a risk assessment is not only appropriate, but also required to identify significant health risk in workers and to determine if a proposed standard will achieve a reduction in that risk. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as a matter of policy agrees, that assessments should be put into quantitative terms to the extent possible. The following paragraphs present an overall description of OSHA's preliminary quantitative risk assessment for occupational exposure to tuberculosis (TB).

An earlier version of this risk assessment was reviewed by a group of four experts in the fields of TB epidemiology and mathematical modeling. The reviewers were George Comstock, MD, MPH, DPH, Alumni Centennial Professor of Epidemiology, The Johns Hopkins University; Neil Graham MBBS, MD, MPH, Associate Professor of Epidemiology, The Johns Hopkins University; Bahjat Qaqish, MD, PhD, Assistant Professor of Biostatistics, University of North Carolina; and Patricia M. Simone, MD, Chief, Program Services Branch, Division of Tuberculosis Elimination, CDC. The reader is referred to the peer review report in the docket for additional details (Ex. 7–911). The revised version of OSHA's risk assessment, as published in this proposed rule, includes OSHA's response to the reviewers' comments as well as updated risk estimates based on recent purified protein derivative (PPD) skin testing data made available to the Agency since the peer review was performed and is generally supported by the reviewers or is consistent with reviewers' comments. (Note: PPD skin test and tuberculin skin test (TST) are synonymous terms.)

The CDC estimates that, once infected with *M. tuberculosis,* an untreated individual has a 10% lifetime probability of developing active TB and that approximately half of those cases will develop within the first or second year after infection occurs. Individuals with active TB represent a pool from which the disease may spread. Based on data from the CDC, OSHA estimates that every index case (i.e., a person with infectious TB) results in at least 2 other infections (Ex. 7–269). For some percentage of active cases, a more severe clinical course can develop which can be attributed to various factors such as the presence of MDR–TB, an allergic response to treatment, or the synergistic effects of other health conditions an individual might have. Further, OSHA estimates that for 7.78% of active TB cases, TB is expected to be the cause of death. Section 6(b)(5) of the OSH Act states that,

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

For this rulemaking, OSHA defines TB infection as a "material impairment of health", for several reasons. First, once infected with TB, an individual has a 10% lifetime likelihood of developing active disease and approximately 1% likelihood of developing more serious complications leading to death. Second, allergic reaction and hepatic toxicity due to chemoprophylaxis with isoniazid, which is one of the drugs used in the recommended course of preventive treatment, pose a serious threat to a large number of workers. Third, defining infection with *M. tuberculosis* as material impairment of health is consistent with OSHA's position in the Bloodborne Pathogens standard and is supported by CDC and several stakeholders who participated in the pre-proposal meetings, as well as Dr. Neil Graham, one of the peer reviewers of this risk assessment. In his comments to OSHA, Dr. Graham stated,

> The focus of OSHA on risk of TB infection rather than TB disease is appropriate. TB infection is a potentially adverse event, particularly if exposure is from a MDR–TB patient, or if the health-care or institutional worker is HIV seropositive. In addition, a skin test conversion will in most cases mandate use of chemoprophylaxis for >6 months which is at least inconvenient and at worst may involve adverse drug reactions. (Ex. 7–271)

The approach taken in this risk assessment is similar to the approach OSHA took in its risk assessment for the Bloodborne Pathogens standard. As with bloodborne pathogens, the health response (i.e., infection) associated with exposure to the pathogenic agent does not depend on a cumulative level of exposure; instead, it is a function of intensity and frequency of each

exposure incident. However, unlike hepatitis B, where the likelihood of infection once an exposure incident occurs is known with some degree of certainty, the likelihood of becoming infected with TB after an exposure incident is not as well characterized. With TB, the likelihood of infection depends on the potency of an exposure incident and the susceptibility of the exposed individual (which is a function of the person's natural resistance to TB and his or her health status). Further, the potency of a given exposure incident is highly dependent on several factors, such as the concentration of droplet nuclei in the air, the duration of exposure, and the virulence of the pathogen (e.g., pulmonary and laryngeal TB are considered more infectious than other types).

The Agency has sufficient data to quantify the risk associated with occupational exposure to TB among health care workers in hospitals on a state-by-state basis. In addition to hospital employee data, OSHA has obtained data on selected health care employee groups from the TB Control Office of the Washington State Health Department. These groups include workers employed in long-term health care, home health care, and home care. Small entities are encouraged to comment and submit any data or studies on TB infection rates relevant to their business.

Because it is exposure to aerosolized *M. tuberculosis* that places workers at risk of infection, and not some factor unique to the health care profession, the Agency concluded that the experience of these groups of health care workers is representative of that of the other "high-risk" workers covered by this proposal. This means that the risk estimates calculated for these groups of workers are appropriate to use as the basis for describing the potential range of risks for workers in other work settings where workers can be expected to come into close and frequent contact with individuals with infectious TB (or with other sources of aerosolized *M. tuberculosis*) as an integral part of their job duties. As discussed in section IV (Health Effects), epidemiological studies, case reports, and outbreak investigations have shown that workers in various work settings, including but not limited to hospitals, have become infected with tuberculosis as a result of occupational exposure to aerosolized *M. tuberculosis* when appropriate infection control programs for tuberculosis were not in place.

In this preliminary risk assessment, OSHA presents risk estimates for TB infections, cases of active disease, and TB-related deaths (i.e., where TB is considered the cause or a major contributing cause of death) for workers with occupational exposure to tuberculosis.

A number of epidemiological studies demonstrate an increased risk of TB infection among health care workers in hospitals and other work settings. A brief review of a selection of these studies is presented below, followed by OSHA's estimates of excess risk due to occupational exposure. Finally, OSHA presents a qualitative assessment of the risk of TB infection caused by occupational exposure to tuberculosis in correctional facilities, homeless shelters, drug treatment centers, medical laboratories, and other high-risk work groups.

Review of the Epidemiology of TB Infection in Exposed Workers

There are several studies in the published scientific literature demonstrating the occupational transmission of infectious TB. Reports of TB outbreaks and epidemiologic surveillance studies have shown that health care and certain other workers are, as a result of their job duties, at significantly higher risk of becoming infected than the average person.

OSHA conducted a thorough search of the published literature and reviewed all studies addressing occupational exposure to tuberculosis and TB infection in hospitals and other work settings. All published studies show positive results (i.e., workers exposed to infectious individuals have a high likelihood of becoming infected with TB). Because there are so many studies, OSHA selected a representative subset of the more recent studies conducted in the U.S. to include in this section. These studies were chosen because they show occupational exposure in various work settings, under various working conditions, and under various scientific study designs.

OSHA's summary of the studies is presented in Table V–1(a) and Table V–1(b). These studies represent a wide range of occupational settings in hospitals, ranging from TB and HIV wards in high prevalence areas, such as New York City and Miami, to hospitals with no known TB patients located in low prevalence areas such as the state of Washington. The studies include prospective studies of entire hospitals or groups of hospitals, retrospective surveys of well-controlled clinical environments, such as an HIV ward in a hospital, and case studies of single-source infection (i.e., outbreak investigations).

TABLE V–1(A).—OUTBREAK INVESTIGATIONS OF TB INFECTION

Authors/year	Setting/source	Risk of TB in health care workers	Contributing factors
Catanzaro (1982)	Hospital intensive care unit/San Diego/1 index case—7-day hospital stay.	14/45 (31%) PPD conversions, 10/13 (77%) PPD conversions among health care workers present at bronchoscopy.	Poor ventilation. No report on respirator use.
Kantor et al. (1988)	VA hospital in Chicago autopsy room/1 index case undiagnosed until histology exam of autopsy tissue.	9/56 (16%) PPD conversions among exposed workers vs. 3/333 (1%) conversions among unexposed (RR=17.8) 3 workers developed active TB.	No mechanical ventilation on medical ward (autopsy room): no isolation. Autopsy room had 11 air changes/hour and no air recirculation.
Beck-Segue (1992)	Jackson Memorial Hospital in Miami MDR–TB in HIV/patients on HIV ward and clinic during 1989–91.	13/39 (33%) PPD conversions on HIV ward and clinic.	Some rooms had positive pressure. Inadequate triage of patients with suspected TB. Delay in use of isolation. Early discharge from isolation.

TABLE V–1(B).—SURVEILLANCE STUDIES OF TB INFECTION IN EXPOSED HEALTH CARE WORKERS

Authors/year	Setting/source	Study period	Population	Risk of TB in health care workers	Comments
Price et al. (1987)	19 Eastern North Carolina hospitals.	1980–84	All Hospital workers	1.80% annual PPD conversion rate.	
	29 Central North Carolina hospitals.			0.70% annual PPD conversion rate.	
	8 Western North Carolina hospitals.			0.61% annual PPD conversion rate.	
Aitken et al. (1987)	64 hospitals in Washington State.	1982–84	All Hospital workers	0.1% PPD conversion rate/in 3 years.	Strict adherence to CDC guidelines.
Malasky et al. (1990)	14 urban hospitals in U.S	(1)	Physicians in training in pulmonary medicine and infectious disease.	11% PPD conversion/3 years among pulmonary fellows, 2.4% PPD conversions/3 years among infectious disease fellows.	
Dooley et al. (1992)	Hospital in Puerto Rico TB in HIV-infected patients.	1989–90	Hospital workers (n=908)	Prevalence study: 54/109 (50%) nurses exposed to TB patients had positive PPDs 35/188 (19%) clerical workers with no exposure to TB had positive PPDs (p<0.001).	Isolation rooms did not have negative pressure. Recirculated air was not filtered.
NIOSH	Jackson Memorial Hospital, Miami.	1989–92	Hospital workers in selected wards (n=607).	60% annual PPD conversion among 263 exposed workers, 0.6% annual PPD conversion among 344 unexposed workers.	Incomplete isolation facilities. Improper application of isolation procedures.
Cocchiarella et al. (1996).	Cook County Hospital, Chicago.	1991	Graduating physicians with at least 1 year of clinical work at CCH (n=128).	18.8% 3-year PPD conversion rate for house staff in internal medicine vs. 2.2% PPD conversion rate for house staff in other specialties.	Residents were offered limited respiratory protection during exposures. No protocol available for early identification of suspect TB cases. PPD testing program incomplete. Inadequate isolation facilities.

(1) Mid 1980's (3 years).

Outbreak investigations describe occupational exposure to tuberculosis from single index patients or a well-defined group of patients. Such investigations are more likely to demonstrate an upper limit of occupational risk in different settings, usually under conditions of suboptimal environmental and infection controls. Although outbreak investigations demonstrate the existence of occupational risk under certain conditions and the importance of the early identification of suspect TB patients quite well, these studies do not provide information conducive to risk assessment estimations. Limitations of outbreak investigations include the frequent absence of baseline PPD test results, the difficulty of extrapolating the results to non-outbreak conditions of TB exposure, and, often, small sample sizes. Table V–1(a) lists some of the published outbreak investigations and shows the risks posed to health care workers by such outbreaks, as well as the failures in control programs contributing to these episodes.

Prospective and/or retrospective surveillance studies are used to estimate conversion rates from negative to positive in PPD skin testing programs. These conversion rates can be used to estimate the excess incidence of TB infection. Surveillance studies among health care workers lend themselves to a more systematic evaluation of the risk of TB infection than outbreak investigations, for several reasons. First, these studies better reflect the risk of TB experienced by workers under routine conditions of exposure. Second, these studies are usually based on a larger group of workers and therefore yield more precise and accurate estimates of the actual risk of infection. However, the extent to which results from surveillance studies can be generalized depends on a careful evaluation of the study population. Some studies report skin test conversion rates for all workers in the hospital(s) under study. Such studies often include large groups of employees with little or no exposure to TB. Results from such studies may reflect an overall estimate of risk in that environment, but may underestimate the occupational risk of those with frequent exposure.

Other surveillance studies report PPD conversion rates of more narrowly-defined groups of workers, usually those working in "high-risk" areas within a hospital such as the HIV or TB wards. Some of these studies have internal control groups (i.e., they compare PPD conversion rates between a group of workers with extensive exposure to TB and a group of workers with minimal or no exposure to TB), thus making it possible to more precisely quantify the magnitude of excess risk due to occupational exposure. However, these studies are also limited in their usefulness for risk assessment purposes. They usually have small sample sizes, making it more difficult to observe statistically significant differences. More

importantly, internal control groups may overestimate background risk, and thus underestimate excess occupational risk, unless painstaking efforts are made to eliminate from the control group those individuals with the potential for occupational exposure, a difficult task in some hospital environments. Table V–1(b) contains a selected list of published surveillance studies.

In reviewing Table V–1(a) and Table V–1(b), the reader should bear in mind that these tables are not intended to present an exhaustive list of epidemiologic studies with TB conversion rates in occupational settings. Instead, these tables present brief summaries of some of the epidemiologic evidence of occupational TB transmission found in the published literature; they are intended to convey the seriousness of the risk posed to health care workers and to illustrate how failures in control programs contribute to this risk. Upon reviewing these studies, a consistent pattern emerges: these work settings are associated with a high likelihood for occupational exposure to tuberculosis, and high rates of TB infection are being observed among health care workers.

Quantitative Assessment of Risk

Data availability usually dictates the direction and analytical approach OSHA's risk assessment can take. For this rulemaking, three health endpoints will be used: (1) TB infection, which is "material impairment of health" for this proposed standard; (2) Active disease following infection; and, (3) Risk of death from active TB.

In order to account for regional variability in TB prevalence and therefore to account for expected variability in the risk of TB infection in different areas, the Agency chose to develop occupational risk estimates on a state-by-state basis. This approach was criticized by Dr. Neil Graham as being too broad and "* * * insufficient in light of the tremendous variability * * * that can occur within a state." (Ex. 7–911). The Agency recognizes that risk estimates on a county-by-county basis would be preferable; however, the unavailability of comprehensive county data has prevented the Agency from conducting such analysis.

The annual excess risk of TB infection due to occupational exposure is defined as a multiplicative function of the background rate of infection and is expressed as:

$p = ERR_o * R_b$

where:

p is the annual excess risk due to occupational exposure,

R_b is the background rate of TB infection, and

ERR_o is a multiplicative factor denoting the excess relative risk due to occupational exposure (ERR_o).

Estimates of ERR_o are derived from surveillance studies of workers with occupational exposure to TB. ERR_o is defined as the relative difference between the overall exposed worker risk and the background (population) risk and is calculated as the difference between overall worker and background risk divided by the background risk.

The annual excess risk due to occupational exposure is defined as a function of the background risk because of data limitations. If data on overall worker risk were available for each state, then the excess risk due to occupational exposure would simply be the difference between overall worker risk and background risk. Instead, the annual excess risk due to occupational exposure (i.e., p) is estimated using a multiplicative model because data on overall worker risk (i.e., R_w) were available only for the states of Washington, and North Carolina and for Jackson Memorial Hospital located in Miami, Florida. Therefore, the annual excess risk due to occupational exposure in state i (p_i) is expressed as:

$$p_i = \frac{(R_{wj} - R_{bj})}{R_{bj}} * R_{bi}$$

where:

R_{wj} is the overall worker risk estimated from surveillance studies (study j),

R_{bj} is the study control group risk (i.e., study background risk), and

R_{bi} is the background rate for state i.

When i=j (i.e., Washington State or North Carolina), the excess risk due to occupational exposure, is expressed as the straight difference between overall worker risk and background risk.

OSHA calculated estimates of ERR_o based on three occupational studies: the Washington State study, the North Carolina study, and the Jackson Memorial Hospital study (Exs. 7–263, 7–7, 7–108). These estimates were expressed as percent change above each study's background. The derivation of these estimates is described in section 2.

In order to estimate an overall range of occupational risk of TB infection, taking into account regional differences in TB prevalence in the U.S., OSHA: (1) Estimated background TB infection rates by state (R_{bi}), and (2) applied estimates of ERR_o, derived from the occupational studies, to the state background rates to calculate estimates of excess risk due to occupational exposure by state.

OSHA used a multiplicative function of each state's background infection rate to estimate excess risk of TB infection because the probability of occupational infection can be viewed as a function of the number of contacts and frequency of contacts with infectious individuals. Thus, estimates of expected relative increase in risk above background due to occupational exposure are calculated for the three available studies and these relative increases (i.e. ERR_o) are multiplied by background rates for each state to derive estimates of excess occupational risk by state. These state estimates are then used to derive a national estimate of occupational risk.

The CDC compiles and publishes national statistics on the incidence of active TB in the U.S. by state based on reported cases. OSHA relied on these data to estimate TB infection background rates through the use of a mathematical model because information on TB infection is not being collected nationwide by CDC. A more detailed discussion on the methodology and derivation of background risk estimates by state is found in section 3, and discussion on the estimation of occupational risk estimates by state is found in section 4 of this risk assessment.

Because section 6(b)(5) of the OSH Act requires OSHA to assess lifetime risks, OSHA has converted the annual excess risk due to occupational exposure into an excess lifetime risk based on a 45-year working lifetime. The formula used to calculate lifetime occupational risk estimates of the probability of at least one occurrence of TB infection due to occupational exposure in 45 years is expressed as $\{1-(1-p)^{45}\}$, where p is the annual excess risk due to occupational exposure. Two assumptions are critical in defining lifetime risk: (1) the exposure period is 45 years, and (2) the annual excess risk remains constant. The implication of the second assumption is that the worker's exposure profile and working conditions, which may affect the level and intensity of exposure, and the virulence of the pathogen, remain unchanged throughout a working lifetime. The merit of this assumption was questioned by Dr. Graham, because, as he states "* * * patient contact may vary greatly throughout a career for many HCWs [health care workers]." and "* * * physicians (and nurses) often do not have extensive patient contact until [their] mid-twenties, while other workers increasingly retire early." Dr. Graham recommends that OSHA's risk assessment be adjusted to account for variable exposure levels and variable working lifetimes. Although accounting for variable exposure levels could result in more precise risk estimates, the unavailability of comprehensive information on lifetime TB exposure scenarios by occupational group prevented the Agency from developing a more complex risk model.

OSHA has customarily assumed a 45 year working lifetime in setting health standards. The Agency believes that this assumption is reasonable and consistent with the Act. The Act requires the Secretary to set a standard for toxic substances that would assure "no employee * * * suffer material impairment of health or functional capacity *even if such employee has regular exposures to the hazard for the period of his working lifetime.*" 29 U.S.C. § 655(b)(5) (emphasis added). The U.S. Court of Appeals for the District of Columbia upheld the use of a 45-year lifetime in the asbestos standard against an assertion by the Asbestos Information Association that the average duration of employment was five years. *Building and Construction Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1264, 1265 (D.C. Cir. 1988). The Court said that OSHA's assumption "appears to conform to the intent of Congress" as the standard must protect even the rare employee who would have 45 years of exposure. *Id.* at 1264. In addition, while working lifetimes will vary, risk is significant for some who work as little as one year and, at any rate, individual and population risks are likely to remain the same so long as employees who leave one job are replaced by others, and those who change jobs remain within a covered sector. Nevertheless, the Agency solicits information regarding the likelihood of exposure to active TB in the workplace and duration of employment in various occupational groups. Lifetime risk estimates of TB infection by state are described in section 4.

Lifetime risk estimates of developing active TB are calculated from lifetime risk estimates of TB infection assuming that, once infected, there is a 10% likelihood of progressing to active TB. These estimates are discussed in section 4. Further, the number of deaths caused by TB is calculated from the lifetime estimates of active TB using OSHA's estimate of TB case fatality rate, also discussed in section 4.

1. Definitions

For the purpose of estimating incidence rates, *TB infection* rate is defined as the annual probability of an individual converting from negative to positive in the tuberculin skin test. *Annual occupational* risk is defined as the annual excess risk of becoming infected with TB due to occupational exposure, and is estimated as a function of the background risk. *Lifetime occupational risk* is defined as the excess probability of becoming infected with TB due to exposure in the workplace, at least once, in the course of a 45-year working lifetime and is estimated as $\{1-(1-p)^{45}\}$ where p is the annual occupational risk of TB infection.

2. Data Sources for Estimating Occupational Risk

The quantitative data needed to develop an overall national estimate of risk for TB infection due to occupational exposure are not available. The CDC does not publish occupational data associated with TB infection incidence and active TB on a nationwide basis. There has been some effort to include occupational information on the TB reporting forms, but only a limited number of states are currently using the new forms that capture occupational information in a systematic way.

However, there are a number of sources that permit the risk in occupational settings to be reasonably estimated and, with the aid of mathematical models, to develop estimates of excess relative occupational risk (ERR_o), which can then be multiplied by the state-specific background rates to yield estimates of excess occupational risk. OSHA has identified three data sources that are suitable for assessing the excess risk of TB infection in health care workers with occupational exposure. These include: (1) A 1994 survey of tuberculin skin testing in all health care facilities in Washington State; (2) A state-wide survey of hospitals in North Carolina, conducted in 1984–1985, which addressed TB skin testing practices, TB infection prevalence, and TB infection incidence among hospital employees in that state; and (3) the employee tuberculin skin test conversion database from Jackson Memorial Hospital in Miami, Florida. In addition to these hospital employee data, the Agency has obtained data on selected other work groups from the state of Washington. These groups include workers employed in long-term health care, home health care, and home care.

On the issue of data availability for this risk assessment, Dr. Graham agrees with OSHA that there are no comprehensive data available with respect to occupational risk of TB infection in health care and other institutions in the U.S. Instead of relying on two state specific studies, Dr. Graham recommends, though with serious reservations, the use of a review study by Menzies et al. (Ex. 7–130). Dr. Graham admits that the "validity of the estimates in these reports [reviewed in the Menzies et al. study] must be open to serious question * * *" for the following reasons, which were pointed out by Dr. Graham: several of the studies reviewed are very old and not relevant to TB risk in the 1990s; four studies use tine tests and self-reports of skin test results, which are not useful for estimation of risk of TB infection; the studies were not consistent in the inclusion of high and low risk workers; two-step testing was not done; and the participation rates were extremely low or unreported in many of the studies included in this review.

OSHA has chosen not to rely on the Menzies et al. review study, because, in addition to Dr. Graham's reservations (which the Agency shares), OSHA is also concerned about the inclusion in the Menzies et al. review article of studies conducted outside the U.S. Factors known to affect the epidemiology of TB, such as environmental conditions, socio-economic status, and work practices, are expected to differ greatly from one country to another, and are not controlled for in the statistical analyses of these studies. For all of these reasons, the Agency has chosen to rely solely on U.S. studies for its quantitative risk estimations.

Estimates of excess risk due to occupational exposure are expressed as the percent increase above background based on relative risk estimates derived from occupational studies. Internal control groups provided estimates of background risk for the Washington state and Jackson Memorial data sets. In the absence of a suitable internal control group, the estimated annual state-wide TB infection rate, as calculated in Section 3, was used as the background rate in the North Carolina study.

(a) *Washington State Data:* Initially, OSHA relied on a three-year prospective study, conducted between 1982 and 1984 in the state of Washington, to derive an estimate of excess risk for TB infection as a result of occupational exposure (Ex. 7–42). OSHA received several objections to the use of this study. The study used hospitals with no known TB cases as "controls" based on the assumption that in those hospitals the risk of TB infection to employees may be the same as for the general population. Dr. Qaqish noted that this assumption is highly questionable and that the use of such controls is not appropriate. Dr. Graham and Dr. Qaqish pointed out that the published results did not include conversions identified through contact investigations, which

means that the conversion rate reported in that study was likely to be an underestimate of the true risk. In addition, the commenters noted that the study was designed to estimate the effectiveness of the TB screening program and may have produced skin testing results biased toward the null; the study is relatively old; and, the study was conducted prior to the AIDS epidemic and therefore the results may not be relevant to the occupational risk at present because the relationship between HIV and TB is not reflected in this study.

In an effort to respond to reviewers' comments, the Agency chose to update the analysis by relying on a data set of tuberculin skin testing results from a survey of the state's tuberculin skin testing program in 1994. This survey is conducted by the TB Control Office in the Washington State Health Department and it covers all hospitals in the state, as well as long-term care, home health care, and home care facilities. OSHA was given access to the database for the 1994 survey as well as data on conversions identified through contact investigations for the same year (Ex. 7–263). Table V–2 summarizes the results of the 1994 survey. Of the 335 health care establishments in the state of Washington, 273 responded to the survey, for an overall response rate of 81.5%. Of those, 76 were hospitals, 142 were long-term care, 47 were home health care, and 8 were home care facilities. Hospitals had the highest survey response rate (85%) and home health care had the lowest (77%). Every employee at risk for TB infection (i.e., who was known to be tuberculin skin test negative at the start of the study period) in the participating hospitals and long-term care facilities was given a tuberculin skin test, including administrators, housekeepers, business office staff, and all part-time employees. Testing in home health care facilities was generally confined to those nursing staff who had direct client contact. Employees in home care are those who provide services to patients in home health care and include food handlers, cleaning aides, personal care-givers, and some social workers.

TABLE V–2—WASHINGTON STATE 1994 SURVEY RESULTS

Type of facility	Number of [a] establishments	Number of skin tests	Number of conversions	Annual rate of TB conversion
Hospital	76 (85%)	39,290	50	1.22/1,000
Long-term Care	142 (81%)	11,332	111	9.80/1,000
Home Health Care	47 (77%)	2,172	11	5.06/1,000
Home Care	8 (80%)	537	1	1.86/1,000
Total	273 (81.5%)	53,331	173	3.24/1,000

[a] Numbers in parentheses are study response rates for each group.

The overall rate of skin test conversion for workers in the health care system in Washington State in 1994 was 3.24 per 1,000 employees tested. This is greater than a 4-fold increase from the estimated state-wide background rate of 0.69 per 1,000 at risk, as calculated in section 3. The annual rate of TB conversion ranged from 1.27 per 1,000 tested for hospital employees to 9.80 per 1,000 tested for long-term care employees.

The annual rate of 9.8 per 1,000 for long-term care employees probably reflects the high potential for exposure to undiagnosed active TB in those facilities. As a rule, long-term facilities in Washington State do not have AFB isolation rooms. Therefore, residents with no obvious TB symptoms but who might be infectious spend most of their time in open spaces exposing other residents and workers to infectious droplet nuclei. However, once a resident has been identified as a suspect TB patient, that person is transferred to a hospital until medically determined to be non-infectious.

Also, since employees who were 35 years of age or younger were not given a two-step test at hiring, and a high percentage of employees are foreign born and therefore most likely to have been vaccinated during childhood with the BCG vaccine, some of the conversions observed might be late boosting because of BCG. However, an almost two-fold increase in risk for long-term care workers even as compared to the significant excess risk among home health care workers clearly indicates that the risk of TB infection for workers in long-term care is high and not likely to be fully explained by late boosting. Beginning in 1995, two-step testing has been done on all new hires in Washington State. Thus, tuberculin skin testing data for 1995 are not expected to be influenced by possible late boosting; OSHA will place the 1995 data in the rulemaking record as they become available.

Hospital workers had the lowest overall rate of conversion (overall rate of 1.27 per 1,000). This, in part, can be attributed to the existence of extensive TB control measures in that environment in Washington State. Compliance with the CDC Guidelines and OSHA's TB Compliance Directive is quite high in Washington State because: (a) There is a strong emphasis on early identification of suspect TB patients; (b) there is a strong emphasis on employee training and regular tuberculin skin testing (although on a less-frequent basis than recommended in the Guidelines: All employees are tested at hire and annually thereafter); (c) the use of respirators is expected when entering an isolation room; and (d) all isolation rooms are under negative pressure, have UV lights, and exhaust to the outside. In addition, conversion data in hospitals are more likely to represent true TB infections than in the other health care settings, because hospitals are more likely to re-test converters in an effort to eliminate false-positive cases.

A more thorough analysis of the hospital data is presented in table V–3. Because the Washington State survey was not designed to compare exposed persons with matched controls who have had no exposure, several alternative definitions of an internal control (unexposed) group were used in analyzing this data set. Three different analyses, shown in table V–3, produced estimates of annual occupational infection rates ranging from 0.4 to 0.6 per 1,000 above control (i.e., ranging from a 47% to an 84% increase above control). In order to minimize the likelihood of contaminating the control group with persons having significant occupational exposure, OSHA defined the control group as workers in hospitals located in zero-TB counties and with no known TB patients. This analysis is summarized in table V–3 as Definition 1. If potential for occupational exposure is defined as either working in a hospital in a county that has active TB or in a hospital that has had TB patients, then the annual risk due to occupational exposure is 47% above background. The excess annual risk due to occupational exposure appears to be approximately 60% above background, if workers in hospitals with a transfer-out policy for TB patients are considered to be the control group, shown as Definition 2 in table V–3. A 60% increase above background is not statistically significantly different from a 47% increase and therefore these two "control" groups can be viewed as producing "statistically" equivalent results. However, the Agency believes that Definition 1 is more appropriate, though the risk estimates are higher if the control group is defined based on Definition 2, because there is a higher likelihood of potential for exposure to a patient with undiagnosed TB under Definition 2 conditions. Comparisons of all hospital TST data to the state-wide estimate of TB infection rate resulted in an estimate of the annual excess occupational risk of approximately 84% above background, shown in table V–3 as Definition 3. Estimates of the annual and lifetime occupational risk of TB infection for the average health care worker in hospitals by state, extrapolated from this study and using Definition 1 as the control group, are presented and summarized in section 4.

TABLE V–3—WASHINGTON STATE DATA HOSPITAL PPD SKIN TESTING RESULTS

Definition of exposed and control groups	Sample size	Number of skin tests given	Number of conversions observed	Average conversion rate 1[a]	Overall conversion rate 2[b]	Relative risk Rate 1	Relative risk Rate 2
Definition 1							
Control: Hospitals in zero-TB counties and with no-known TB patients	16	1,142	1	0.477	0.8756		
Exposed: Hospitals in counties reporting TB or having TB patients	60	38,148	49	1.523	1.28447	3.19	1.47
Definition 2							
Control: Hospitals that transfer out TB patients	35	3,645	3	0.498	0.823		
Exposed: Hospitals with isolation rooms	41	35,645	47	1.989	1.3185	3.99	1.602
Definition 3							
Control: State-wide estimates of annual risk of infection				[c]0.69	[c]0.69		
Exposed: All PPD testing data	76	39,290	50	1.302	1.27	1.89	1.84

[a] Rate 1 is estimated as the arithmetic average of hospital specific conversion rates.
[b] Rate 2 is estimated as the ratio of the sum of all conversions reported divided by the total number of skin tests given within each group.
[c] Source: Table V–3(b), state-wide rate of infection.

Annual rates of excess risk due to occupational exposure were estimated for long-term care, home health care, and home care and are presented in Section 4. The same control group used in the hospital data analysis, Definition 1 (i.e., 0.876/1,000 workers at risk) was used to estimate the background risk among workers in long-term care, health care, and home care facilities and settings. Using 0.876 as the background infection rate for workers in these settings (a) provided a level of consistency among the Washington data analyses, and (b) resulted in a lower estimate of occupational risk for the non-hospital health care workplaces than would have resulted had the state-wide background risk estimate (i.e., 0.67/1,000 see Section 3) been used. When industry-specific risk data are used, there is approximately a 10-fold increase in annual risk for workers in long-term care, a 5-fold increase in annual risk for workers in home health care, and a 1-fold increase in annual risk for workers in home care (see Section 4).

Estimates of the range of annual and lifetime occupational risk for the average health care worker in long-term care, home health care, and home care by state, extrapolated from the Washington State study, are presented in Section 4.

(b) *North Carolina Study:* A state-wide survey of all hospitals in North Carolina (NC) was conducted in 1984–1985 (Ex. 7–7). The survey's questionnaire was designed to address three main areas of concern affecting hospital employees: (1) Tuberculin skin testing practices; (2) TB infection prevalence; and (3) TB infection incidence. The incidence of new infections among hospital personnel was assessed over a five-year period by reviewing tuberculin skin test conversion data during calendar years 1980 through 1984 and was calculated as the number of TB skin test conversions divided by the number of skin tests administered. (Since most employees were only given annual testing, the number of tests administered is a very close estimate of the total number of people tested within a year and thus can be used as the denominator in estimating infection incidence.) Only 56 out of 167 hospitals reported information on TB conversion rates (34% response rate). The authors estimated a state-wide TB infection rate of 11.9 per 1,000 per year for hospital employees in 1984 and a five-year mean annual infection rate of 11.4 per 1,000, with a range of 0-89 per 1000 employees at risk for TB infection. An analysis of the data by region (i.e., eastern, central, western) showed that the eastern region had consistently higher rates (with an average infection rate of 18.0 per 1,000) followed by the central region (7.0 per 1,000) and the western region (6.1 per 1000). Results of this study are shown in table V–4.

TABLE V–4—SKIN TEST CONVERSION RATES [a] NORTH CAROLINA HOSPITAL PERSONNEL [b]

Region	Year					
	1980	1981	1992	1993	1984	5-year mean
Eastern	19.3 (7)	30.8 (10)	17.7 (11)	11.2 (12)	15.7 (18)	18.0 (19)
Central	3.0 (6)	3.7 (8)	7.2 (13)	6.6 (23)	10.0 (25)	7.0 (29)
Western	1.9 (2)	13.5 (4)	5.3 (4)	4.1 (4)	7.2 (8)	6.1 (8)

[a] Conversion rates are expressed as number of conversions per 1,000 workers tested.
[b] In parentheses is the number of hospitals included in the study.

Use of this study's overall results for risk estimates was criticized by the peer reviewers because of design flaws in the study (e.g., high non-response rate, inconsistent skin testing practices, and limited two-step testing) and, most importantly, the presence of atypical mycobacteria (contributing to false positive results) in the eastern part of the state. Based on further input from Dr. Comstock, the Agency chose to rely on the study results from the western region only, because they are considered to be more representative of the "true" risk of infection and are expected to be less confounded by cross-reactions to atypical mycobacteria. Further, the Agency chose to rely on the conversion rate estimated for 1984 because it was the most recent data reported in the study. Therefore, the western region conversion rate of 7.2 per 1,000, estimated based on responses to the survey from eight hospitals in 1984, was used as an overall worker conversion rate. Further, the 1984 rate was adjusted by the percent decrease of active TB between 1984 and 1994 in North Carolina so that the final worker conversion rate for 1994 based on the western region rates reported in this study was estimated to be 5.98 (7.2 * 532/841 = 5.98) per 1,000 employees at risk for TB infection.

The North Carolina study did not have an internal control group to use as the basis for estimating excess risk due to occupational exposure because the conversion rates presented in this study were based on TST results for the entire hospital employee population. In the absence of an internal control group, the Agency used the estimated state-wide background rate of 1.20 per 1,000 as the background rate of infection for the western region in North Carolina (see Section 3) to estimate excess risk due to occupational exposure.[1] Based on this study, annual occupational risk is approximately four times greater than background [(5.98–1.2)/1.2 = 3.98]. Estimates of the annual and lifetime occupational risk of TB infection based on this study by state are presented in Section 4.

(c) *Jackson Memorial Hospital Study:* Jackson Memorial Hospital (JMH) is a 1500-bed general facility located in Miami, Florida, employing more than 8,000 employees. It is considered one of the busiest hospitals in the U.S. It is the primary public hospital for Dade County and the main teaching hospital for the University of Miami School of Medicine. JMH treats most of the TB and HIV cases in Dade County and, consequently, there is a higher likelihood of occupational exposure to TB in this facility than in the average hospital in the U.S. From March 1988 to September 1990, an outbreak of multidrug-resistant TB (MDR–TB) occurred among patients and an increased number of TST conversions was observed among health care workers on the HIV ward. This prompted a re-evaluation of the hospital's infection control practices and the installation of engineering controls to minimize exposure to TB. As part of the evaluation of the outbreak, NIOSH did a Health Hazard Evaluation and issued a report (Ex. 7–108). In addition, NIOSH conducted a retrospective cohort study of JMH to determine whether the risk of TB infection was significantly greater for health care workers who work on wards having patients with infectious TB than those who work on wards without TB patients.

For the data analysis of this study, "potential for occupational exposure" was defined based on whether an employee worked on a ward that had records of 15 or more positive cultures for pulmonary or laryngeal TB during 1988–1989. In other words, positive culture was taken as a surrogate for exposure to infectious TB. The authors restricted the "exposed" group to employees on wards with exposures to pulmonary or laryngeal TB because they intended to restrict the study to hospital workers with exposure to patients with the highest potential for being infectious. There were 37 wards at JMH that had submitted at least one positive culture during 1988–1989. Seven wards met the criteria of 15 or more and were therefore included in the "exposed" group. These were the medical intensive care unit, five medical wards, and the emergency room. The "control" group was defined as hospital workers assigned to wards with no TB patients (i.e., wards with no records of positive cultures during 1988–89). The "control" wards were post-partum, labor and delivery, newborn intensive care unit, newborn intermediate care unit, and well newborn unit. The results of this analysis are presented in Table V–5.

TABLE V–5—SKIN TEST CONVERSION RATES FOR HOSPITAL PERSONNEL AT JACKSON MEMORIAL HOSPITAL [a, b]

Year	Exposed group	Control group	Relative risk	95% confidence interval
1989	62.2 (13/209)	6.2 (2/324)	10.1	2.3—44.2

[1] Using the state-wide estimate of population risk as the background estimate of risk for this study most likely results in an underestimate of the true excess risk due to occupational exposure, because the true background estimate of risk for the western region in North Carolina is expected to be less than the state-wide estimate, which is influenced by the large number of infections found in the eastern region of that state.

TABLE V–5—SKIN TEST CONVERSION RATES FOR HOSPITAL PERSONNEL AT JACKSON MEMORIAL HOSPITAL [a, b]—Continued

Year	Exposed group	Control group	Relative risk	95% confidence interval
1990	75.5 (16/212)	6.5 (2/309)	11.7	2.7—50.2
1991	31.7 (6/189)	3.5 (1/282)	9.0	1.1—73.8

[a] Rates are expressed as number of conversions per 1,000 workers tested.
[b] Source: Ex. 7–108

Table V–5 shows a substantially elevated risk for those workers with potential exposure to patients with infectious TB. The relative risk ranges from 9 to 11.7 between 1989 and 1991 and is statistically significant for all of those years. This suggests that the excess risk due to occupational exposure is approximately 8-fold above background; this is an overall risk estimate that reflects the occupational risk of TB infection for JMH employees with patient contact, because this analysis included everyone tested in the "exposed" and "control" group, regardless of his or her specific job duties or length of patient contact.

An analysis of various occupational groups within this cohort showed that nurses and ward clerks in the "exposed" groups had the highest conversion rates: 182 and 156 conversions per 1,000 workers tested, respectively. Other studies have shown that health care workers who provide direct patient care are at greater risk for infection than workers who do not provide direct patient care. The high risk seen in ward clerks was unexpected since these workers are not involved in direct patient care. However, in the emergency room, the risk for TST conversion for the ward clerks was almost three times higher than for the nurses, 222 and 83 per 1,000, respectively. Ward clerks in the emergency room are responsible for clerical processing of patients after triage, handling specimens for the laboratory, and gathering clothing and valuables from admitted patients. During these interactions, there may have been less strict adherence to infection control measures, and this could explain the high conversion rate.

OSHA used the results from the 1991 analysis of the data in the JMH study to estimate occupational risk of TB infection in hospital workers with a relatively high likelihood of occupational exposure, for the following reasons: (a) 1991 represents the most recent year for which conversion data are available prior to the time when TB infection control measures were fully implemented at JMH; and (b) The higher conversion rates reported for 1990 and 1989 (75.5 and 62.2 per 1,000 respectively) may be atypical, i.e., they may to some extent reflect the effect of the outbreak and not the long-term occupational risk.

Based on the results of this study, OSHA estimates that the annual excess risk of TB infection due to occupational exposure is 7.95 times greater than background. Estimates of annual and lifetime occupational risk of TB infection for the average health care worker in hospitals by state, extrapolated from this study, are presented and summarized in section 4.

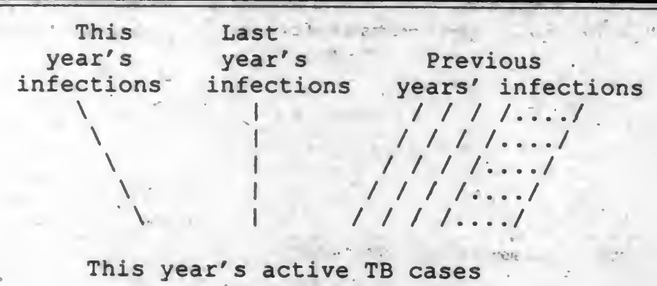
3. Estimation of Background Risk of TB Infection

OSHA's methodology for estimating population (background) TB infection rates relies on the assumption that TB infection occurring in an area can be expressed as a numerical function of active TB cases reported in the same area. If the likelihood of observing any infection in a population is minimal, then the likelihood of observing active disease diminishes. Conversely, the presence of active TB implies the presence of infection, since active disease can only progress from infection. Therefore, there is a functional relationship linking TB infections to active disease being observed in a particular area during a specified time period.

Peer reviewer comments on this assumption varied. Neil Graham states in his comment "Although factors such as migration and distribution of the population may influence this relationship it seems probable that this assumption is largely correct and justifiable." (Ex. 7–271). On the other hand, Dr. Simone expresses concern over this assumption and states "It is not necessarily true that a change in cases now reflects the risk of infection now." Dr. Qaqish demonstrates in his comment that the net effect of assuming a proportional relationship between the number of active cases and the number of new infections is to introduce a possible bias into the estimate of background risk of TB infection, although such a bias could work in either direction, i.e., toward increasing or decreasing the estimate of risk. Dr. Qaqish further states that in the absence of more "relevant data," it is not possible to determine the actual net effect in magnitude and direction of the bias and "without obtaining additional data, it would be impossible for the Agency to improve on the accuracy of the risk estimates * * *" OSHA has considered all of the reviewer comments and is aware of the inherent uncertainty and the potential for bias associated with the use of this assumption; however, in the absence of the additional "relevant" data to which Dr. Qaqish refers, the Agency believes this approach to be justifiable.

In defining the model used to estimate the annual infection rates occurring in a geographical area based on data on active disease cases reported for the same area, infections progressing to active disease are assigned to one of three distinct groups: those occurring this year, last year, and in previous years.

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TB cases reported to CDC each year are a combination of new and old infections that have, for various reasons, progressed to active disease. Until recently, it was believed that most of the active cases were the product of old infections. However, with the use of DNA fingerprinting techniques, researchers have reported that a larger percentage of active cases may be attributed to new or recent infections. Small *et al.* reported, in an article on tracing TB through DNA fingerprinting, that as many as 30% of the active cases reviewed in the study may be the result of recent infections (Ex. 7–196).

In this risk assessment, the Agency assumes the lifetime risk that an infection will progress to active TB to be approximately 10%. This estimate is supported by CDC and in her comment, Dr. Simone states that: "The assumption * * * is generally agreed upon." Dr. Comstock and Dr. Qaqish both questioned the validity and accuracy of CDC's estimate. Their comments suggest that the true lifetime rate of progression from infection to active disease for adults may be less than 10 percent. However, as Dr. Graham points out, the 10% assumption is a widely accepted "rule of thumb" and is also in relative agreement with data from the unvaccinated control group of the British Medical Research Council (MRC) vaccination trial in adolescents (Ex. 7–266).

In the MRC study, 1,338 adolescents' skin tests converted following TB exposure where the precise date of conversion was known. Of these, 108 (8.1%) individuals developed active TB during follow-up. Of these, 54% developed active TB within one year and 78% within 2 years. This results in a risk of approximately 4% at one year, 6% at two years, and an overall risk of 8%. Given that the risk of TB reactivation increases with age, the lifetime risk is expected to be higher than the 8% attained in this study and, as Dr. Graham points out, a 10% overall lifetime risk seems reasonable.

Based on Dr. Graham's recommendation to rely on the progression rates from the MRC study, OSHA changed the assumption on the progression parameters from 2.5% (first year), 2.5% (second year), and 5% (remaining lifetime) to 4%, 2% and 4%, respectively. Therefore the total 10% progression from infection to active disease is partitioned into 3 groups: progression during the first year after infection (40% of all infections that eventually progress, for a net probability of 4%), progression during the second year (20% of all infections that eventually progress, for a net probability of 2%), and progression during all subsequent years (the remaining 40% of progressing infections). This last probability (4%) is assumed to be uniformly distributed across the remaining lifespan.

TB rates vary considerably by geographic area, socio-economic status, and other factors. In an attempt to account for some of those factors, to the extent possible, background TB infection rates have been estimated separately for each state. The derivation of background infection rates involves several steps for which the process and formulae are presented below.

Step 1: Background rate of TB infection for state i in year j is defined as:

$B_{i(j)}=I_{i(j)}/X_{i(j)}$ (1)

where:

$B_{i(j)}$ is the background TB infection rate for state i in year j

$I_{i(j)}$ is an estimate of the number of new infections that occurred in state i in year j

$X_{i(j)}$ is the population at risk for TB infection in state i in year j.

Step 2: Estimation of $I_{i(j)}$, the number of new TB infections:

Let:

$A_{i(j)}$ be the total number of adult TB cases reported to CDC by state i in year j.

$A_{(j)}$ be the total number of adult TB cases reported to CDC by all states in year j.

$P_{i(j)}$ be the estimated prevalence of adult TB infection in state i during year j.

R_i be the ratio of the number of adult TB cases reported in 1993 to the number of adult cases reported in 1994 in state i.

The number of TB cases reported in 1994 can be expressed as a function of TB infections expected to have progressed to active disease, by the following formula:

$A_{i(1994)}=.04*I_{i(1994)}+.02*I_{i(1993)}+(.04/73)*I_{i(1992)}*\text{prob(alive in 1994)}+(.04/73)*I_{i(1991)}*\text{prob(alive in 1994)}+\ldots+\ldots+(.04/73)*I_{i(1919)}*\text{prob(alive in 1994)}$

This can be expressed as:

$A_{i(1994)}=.04*I_{i(1994)}+.02*I_{i(1993)}+(.04/73)*\sum[I_{i(j)}*\text{prob(alive in 1994)}]$,

where j ranges from 1919 to 1992. The quantity inside the summation symbol is the sum of all people who were infected with TB between 1919 and 1992 and are still alive in 1994. This summation can be approximated by the prevalence of TB infection in 1992, $P_{i(1992)}$. Therefore, the number of active TB cases reported in 1994 can be expressed as:

$A_{i(1994)}=.04*I_{i(1994)}+.02*I_{i(1993)}+(.04/73)*P_{i(1992)}$ (2)

Further, if we assume that the number of new infections is directly proportional to the number of active cases, then $I_{i(1993)}$ can be expressed as follows:

$I_{i(1993)}=I_{i(1994)}*(A_{i(1993)}/A_{i(1994)})$ (3)

and (2) can be expressed as:

$A_{i(1994)}=[(.02*(A_{i(1993)}/A_{i(1994)})+.04]*I_{i(1994)}+(.04/73)*P_{i(1992)}$

$A_{i(1994)}=[(.02*R_i+.04]*I_{i(1994)}+(.04/73)*P_{i(1992)}$ (4)

then solving for $I_{i(1994)}$ becomes: [2]

[2] Using the prevalence of TB infection in 1992 (i.e., $P_{i(1992)}$) to approximate the quantity inside the summation sign (i.e., everyone infected between 1919 and 1992 and alive in 1994) slightly overestimates the quantity inside the summation (i.e., $P_{i(1992)}$ is slightly larger than the quantity it approximates.) It includes a small number of people who were infected with TB and were alive as of 1992 and who were therefore included in the prevalence figure, but who died before 1994, and, technically, are not included in the summation. This implies that, in equation (5), a slightly larger number is being subtracted from $A_{i(1994)}$ than should be, resulting in an underestimate of the number of new infections in 1994 and an underestimate of the occupational risk.

$I_{i(1994)}=[A_{i(1994)}-.04/73*P_{i(1992)}]/(.02*R_i+.04)$ (5)

Step 3: Estimation of $X_{i(1994)}$:

$X_{i(1994)}$, the population at risk for TB infection in state i in 1994, is estimated as follows:

$X_{i(1994)}=N_i-P_{i(1993)}$ (6)

Where:

N_i is the adult population for state i as reported by U.S. Census in 1994.

$P_{i(1993)}$ is the estimated number of infected adults in state i in 1993 (i.e., prevalence of TB infection in state i among adults).

To estimate the number of adults currently at risk for TB infection in each state, the number of already infected adults (i.e., prevalence of TB infection P_i in 1993) is subtracted from the adult population in 1994.

Step 4: Estimation of population currently infected as of 1993 by state, $P_i(1993)$:

The prevalence of TB infection in each state is estimated as a function of TB infection prevalence in the U.S. in 1993 and the percent TB case rate for each state.

$P_{i(1993)}=P_{(1993)}*(A_{i(1993)}/A_{(1993)})$ (7)

Where:

$P_{(1993)}$ is the prevalence of TB infections in the U.S. in 1993 (Ex. 7–66) and

$A_{(1993)}$ is the total number of adult TB cases reported in 1993.

Estimates of TB infection prevalence in the U.S. were developed for OSHA by Dr. Christopher Murray of the Harvard Center for Population and Development Studies and are presented in Table V–6 (Ex. 7–267). The mathematical model used by Dr. Murray to estimate TB infection prevalence has been designed to capture the transmission dynamics of TB by modeling transfers between a series of age-stratified compartments using a system of differential equations. The model adjusts for various epidemiological factors known to influence the course of active TB, such as onset of infection (i.e., old vs. new infections) and the impact of immigration rates and the HIV epidemic. However, it does not differentiate among gender or race categories. The model has been successfully validated using actual epidemiological data on active TB from 1965 to 1994. The estimates of TB prevalence rates presented here are specific for adults (i.e., older than 18 years of age), which make them more appropriate for estimating risk of transmission in an occupational setting.

TABLE V–6.—NATIONAL PREVALENCE OF TB INFECTION IN ADULTS (18+) [a] [b]

Year	Expected	Minimum	Maximum
1992	6.87% (12,978,461)	6.53% (12,336,150)	7.22% (13,639,663)
1993	6.64% (12,667,062)	6.31% (12,037,524)	6.97% (13,296,599)
1994	6.47% (12,449,445)	6.14% (11,814,465)	6.79% (13,065,182)

[a] Numbers in parentheses are population prevalence figures.
[b] Estimated for OSHA by Christopher Murray MD, PhD, Harvard University, Center for Population and Development Studies (Ex. 7–267).

To estimate the number of previously infected adults in each state (P_i), the estimated national TB prevalence figure was multiplied by the active cases for each state and divided by the total number of active cases reported [see equation (7)] (i.e., the national prevalence estimate was apportioned among the states based on each state's percent contribution to active TB reported for 1993). To estimate the number of adults at risk of TB infection, (X_i), the number of already infected adults was subtracted from the adult population estimate for each state (see equation (6)). The number of new infections expected to have occurred in 1994 was estimated using equation (5).

The background rate of TB infection for 1994 was then estimated by dividing the number of new infections (I_i) by the number of susceptible adults in each state (X_i) (see equation (1)).

Results on estimated TB background annual infection rates for each state are presented in Table V–7(a)—Table V–7(c). In Table V–7(a) TB infection rates are based on an average value of TB infection prevalence, as estimated by Dr. Murray, in the U.S. (i.e., 12,667,062). In Table V–7(b), infection rates are based on the minimum value of TB infection prevalence in the U.S. (i.e., 12,037,524). In Table V–7(c), infection rates are based on the maximum value of TB infection prevalence in the U.S. (i.e., 13,296,599). An overall range of background annual TB infection rates was constructed by combining all three sets of infection rates and was estimated to be between 0.194 and 3.542 per 1,000 individuals at risk of TB infection, with a weighted average of 1.46 per 1,000 using state population size as weights.

TABLE V–7(a).—ESTIMATES OF ANNUAL BACKGROUND TB INFECTION RATES [a]

[Referent Year 1994]

State	TB cases reported in 1994 A_i	Population size [a] N_i	Population currently infected [b] $P_{i(1993)}$	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection B_i
Alabama (01)	413	3,139	250,083	2,888,917	4,779	1.65
Alaska (02)	78	414	27,787	386,213	1,182	3.06
Arizona (04)	233	2,936	118,231	2,817,769	2,858	1.01
Arkansas (05)	235	1,813	107,334	1,705,666	2,906	1.70
California (06)	4,291	22,754	2,437,044	20,280,956	47,852	2.36

TABLE V–7(a).—ESTIMATES OF ANNUAL BACKGROUND TB INFECTION RATES[a]—Continued
[Referent Year 1994]

State	TB cases reported in 1994 A_i	Population size[a] N_i	Population currently infected[b] $P_{i(1993)}$	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection B_i
Colorado (08)	90	2,686	52,850	2,633,150	1,045	0.40
Connecticut (09)	144	2,487	81,182	2,405,818	1,665	0.69
Delaware (10)	51	531	26,152	504,848	671	1.33
D.C. (11)	116	451	80,092	370,908	1,162	3.13
Florida (12)	1,675	10,691	846,687	9,844,314	20,545	2.09
Georgia (13)	676	5,162	396,646	4,765,354	7,082	1.49
Hawaii (15)	234	875	132,942	742,058	25,890	3.49
Illinois (17)	1,021	8,669	622,211	8,046,789	10,994	1.37
Indiana (18)	201	4,279	129,673	4,149,327	2,083	0.50
Iowa (19)	62	2,180	31,056	2,068,943	859	0.42
Kansas (20)	77	1,864	37,049	1,826,951	1,065	0.58
Kentucky (21)	316	2,857	203,227	2,653,773	3,273	1.23
Louisiana (22)	412	3,080	185,792	2,894,208	5,582	1.93
Maine (23)	31	934	14,712	919,289	419	0.46
Maryland (24)	344	3,743	211,399	3,531,601	3,582	1.01
Massachusetts (25)	299	4,617	183,067	4,433,933	2,889	0.65
Michigan (26)	438	6,971	246,269	6,724,731	5,036	0.75
Minnesota (27)	127	3,326	68,105	3,257,895	1,413	0.43
Mississippi (28)	262	1,913	141,659	1,771,341	3,120	1.76
Missouri (29)	241	3,899	128,583	3,770,417	2,922	0.78
Montana (30)	22	618	11,987	606,013	290	0.48
Nebraska (31)	22	1,181	12,531	1,168,469	233	0.20
Nevada (32)	111	1,181	50,670	1,130,330	1,514	1.34
New Hampshire (33)	17	845	13,076	831,924	182	0.22
New Jersey (34)	764	5,973	456,579	5,516,421	8,150	1.48
New Mexico (35)	78	1,156	35,415	1,120,585	944	0.84
New York (36)	3,414	13,658	2,044,797	11,613,203	34,728	2.99
North Carolina (37)	532	5,314	298,574	5,015,426	6,000	1.20
North Dakota (38)	10	466	3,813	426,186	132	0.29
Ohio (39)	318	8,248	161,274	8,086,726	3,763	0.47
Oklahoma (40)	231	2,378	101,886	2,276,114	3,064	1.35
Oregon (41)	146	2,303	78,457	2,224,543	1,793	0.81
Pennsylvania (42)	583	9,154	379,211	8,774,789	5,886	0.67
Rhode Island (44)	47	757	31,601	725,399	495	0.68
South Carolina (45)	362	2,712	205,406	2,506,594	4,273	1.70
South Dakota (46)	26	513	8,173	504,827	342	0.68
Tennessee (47)	494	3,878	283,863	3,594,137	5,759	1.60
Texas (48)	2,276	13,077	1,199,200	11,877,800	27,306	2.30
Utah (49)	47	1,236	23,973	1,212,027	427	0.35
Vermont (50)	10	434	2,724	431,276	160	0.37
Virginia (51)	330	4,949	226,110	4,722,890	3,220	0.68
Washington (53)	241	3,935	142,729	3,792,251	2,554	0.67
West Virginia (54)	80	1,393	40,318	1,352,682	919	0.68
Wisconsin (55)	104	3,735	50,126	3,684,874	1,307	0.35
Wyoming (56)	12	339	3,814	335,186	188	0.56

[a] Expressed in thousands.
[b] Based on 6.64% rate of TB infection prevalence in the U.S. (expected)

TABLE V–7(b).—Estimates of Annual Background TB Infection Rates
[Referent Year 1994[a]]

State	TB cases reported in 1994 A_i	Population size[a] N_i	Population currently infected[b] $P_i(1993)$	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection B_i
Alabama (01)	413	3,139	237,654	2,901,346	4,871	1.68
Alaska (02)	78	414	26,406	387,594	1,196	3.09
Arizona (04)	233	2,936	112,355	2,823,645	2,913	1.03
Arkansas (05)	235	1,813	102,000	1,711,000	2,967	1.73
California (06)	4,291	22,754	2,350,136	20,403,864	48,956	2.40
Colorado (08)	90	2,686	50,223	2,635,777	1,066	0.40
Connecticut (09)	144	2,487	77,147	2,409,853	1,700	0.71
Delaware (10)	51	531	24,853	506,147	681	1.34
D.C. (11)	116	451	76,111	374,889	1,192	3.18

TABLE V–7(b).—Estimates of Annual Background TB Infection Rates—Continued
[Referent Year 1994[a]]

State	TB cases reported in 1994 A_i	Population size[a] N_i	Population currently infected[b] $P_i(1993)$	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection B_i
Florida (12)	1,675	10,691	804,607	9,886,393	20,944	2.12
Georgia (13)	676	5,162	376,933	4,785,067	7,275	1.52
Hawaii (15)	234	875	126,335	748,665	2,652	3.54
Illinois (17)	1,021	8,669	591,288	8,077,712	11,260	1.39
Indiana (18)	201	4,279	123,228	4,155,772	2,136	0.51
Iowa (19)	62	2,180	29,513	2,070,487	869	0.42
Kansas (20)	77	1,864	35,208	1,828,792	1,079	0.59
Kentucky (21)	316	2,857	193,126	2,663,874	3,357	1.26
Louisiana (22)	412	3,080	176,558	2,903,442	5,667	1.95
Maine (23)	31	934	13,980	920,020	425	0.46
Maryland (24)	344	3,743	200,893	3,542,107	3,677	1.04
Massachusetts (25)	299	4,617	173,969	4,443,031	2,983	0.67
Michigan (26)	438	6,971	234,030	6,736,970	5,144	0.76
Minnesota (27)	127	3,326	64,721	3,261,279	1,448	0.44
Mississippi (28)	262	1,913	134,619	1,778,381	3,183	1.79
Missouri (29)	241	3,899	122,193	3,776,807	2,978	0.79
Montana (30)	22	618	11,391	606,609	294	0.48
Nebraska (31)	22	1,181	11,909	1,169,091	240	0.21
Nevada (32)	111	1,181	48,152	1,132,848	1,536	1.36
New Hampshire (33)	17	845	12,426	832,574	185	0.22
New Jersey (34)	764	5,973	433,887	5,539,113	8,357	1.51
New Mexico (35)	78	1,156	33,655	1,112,345	965	0.86
New York (36)	3,414	13,658	1,943,173	11,714,827	35,735	3.05
North Carolina (37)	532	5,314	283,735	5,030,265	6,138	1.22
North Dakota (38)	10	466	3,624	462,376	134	0.29
Ohio (39)	318	8,248	153,259	8,094,741	3,845	0.48
Oklahoma (40)	231	2,378	96,822	2,281,178	3,116	1.37
Oregon (41)	146	2,303	74,558	2,228,442	1,825	0.82
Pennsylvania (42)	583	9,154	360,365	8,793,635	6,047	0.69
Rhode Island (44)	47	757	30,030	726,970	506	0.70
South Carolina (45)	362	2,712	195,197	2,516,803	4,356	1.73
South Dakota (46)	26	513	7,766	505,234	350	0.69
Tennessee (47)	494	3,878	269,756	3,608,244	5,875	1.63
Texas (48)	2,276	13,077	1,139,601	11,937,399	27,853	2.33
Utah (49)	47	1,236	22,782	1,213,218	446	0.37
Vermont (50)	10	434	2,589	431,411	162	0.37
Virginia (51)	330	4,949	214,873	4,734,127	3,311	0.70
Washington (53)	241	3,935	135,654	3,799,346	2,621	0.69
West Virginia (54)	80	1,393	38,315	1,354,685	941	0.69
Wisconsin (55)	104	3,735	47,634	3,687,366	1,332	0.36
Wyoming (56)	12	339	3,624	335,376	190	0.57

[a] Expressed in thousands.
[b] Based on a 6.31% rate of TB infection in the U.S.

TABLE V–7(c).—ESTIMATES OF ANNUAL BACKGROUND TB INFECTION RATES
[Referent Year 1994[a]]

State	TB cases reported in 1994 A_i	Population size N_i	Population currently infected[b] $P_i(1993)$	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection, B_i
Alabama (01)	413	3,139	262,512	2,876,488	4,685	1.63
Alaska (02)	78	414	29,168	384,832	1,167	3.03
Arizona (04)	233	2,936	124,107	2,811,893	2,801	1.00
Arkansas (05)	235	1,813	112,669	1,700,332	2,843	1.67
California (06)	4,291	22,754	2,595,951	20,158,049	46,720	2.32
Colorado (08)	90	2,686	55,476	2,630,524	1,024	0.39
Connecticut (09)	144	2,487	85,216	2,401,784	1,629	0.68
Delaware (10)	51	531	27,452	503,508	661	1.31
D.C.	116	451	84,072	366,928	1,131	3.08
Florida (12)	1,675	10,691	888,766	9,802,234	20,137	2.05
Georgia (13)	676	5,162	416,359	4,745,641	6,884	1.45
Hawaii (15)	234	875	139,539	735,451	2,526	3.43
Illinois (17)	1,021	8,669	653,134	8,015,866	10,721	1.34

TABLE V–7(c).—ESTIMATES OF ANNUAL BACKGROUND TB INFECTION RATES—Continued
[Referent Year 1994 a]

State	TB cases reported in 1994 A_i	Population size N_i	Population currently infected b P_i(1993)	Population at risk X_i	Estimate of new infections I_i	Annual population rate of TB infection, B_i
Indiana (18)	201	4,279	136,117	4,142,883	2,029	0.49
Iowa (19)	62	2,180	32,600	2,067,401	849	0.41
Kansas (20)	77	1,864	38,891	1,825,109	1,052	0.58
Kentucky (21)	316	2,857	213,327	2,643,673	3,187	1.21
Louisiana (22)	412	3,080	195,025	2,884,975	5,496	1.91
Maine (23)	31	934	15,442	918,558	413	0.45
Maryland (24)	344	3,743	221,905	3,521,095	3,484	0.99
Massachusetts (25)	299	4,617	192,166	4,424,834	2,793	0.63
Michigan (26)	438	6,971	258,508	6,712,492	4,925	0.73
Minnesota (27)	127	3,326	71,490	3,254,510	1,377	0.42
Mississippi (28)	262	1,913	148,700	1,764,300	3,057	1.73
Missouri (29)	241	3,899	134,973	3,764,027	2,865	0.76
Montana (30)	22	618	12,582	605,418	286	0.48
Nebraska (31)	22	1,181	13,154	1,167,846	227	0.20
Nevada (32)	111	1,181	53,189	1,127,811	1,491	1.32
New Hampshire (33)	17	845	13,726	831,274	178	0.21
New Jersey (34)	764	5,973	479,270	5,493,730	7,938	1.44
New Mexico (35)	78	1,156	37,175	1,118,825	922	0.82
New York (36)	3,414	13,658	2,146,421	11,511,421	33,696	2.92
North Carolina (37)	532	5,314	313,413	5,000,587	5,859	1.17
North Dakota (38)	10	466	4,003	461,997	129	0.28
Ohio (39)	318	8,248	169,289	8,078,711	3,678	0.46
Oklahoma (40)	231	2,378	106,949	2,271,051	3,011	1.33
Oregon (41)	146	2,303	82,357	2,220,643	1,760	0.80
Pennsylvania (42)	583	9,154	398,057	8,755,943	5,722	0.66
Rhode Island (44)	47	757	33,171	723,829	483	0.67
South Carolina (45)	362	2,712	215,614	2,496,386	4,188	1.68
South Dakota (46)	26	513	8,579	504,421	334	0.67
Tennessee (47)	494	3,878	297,971	3,580,029	5,641	1.58
Texas (48)	2,278	13,077	1,258,799	11,818,201	26,748	2.26
Utah (49)	47	1,236	25,165	1,210,835	408	0.34
Vermont (50)	10	434	2,860	431,140	158	0.37
Virginia (51)	330	4,949	237,347	4,711,653	3,126	0.66
Washington (53)	241	3,935	149,843	3,785,157	2,485	0.66
West Virginia (54)	80	1,393	42,322	1,350,679	896	0.66
Wisconsin (55)	104	3,735	52,617	3,682,383	1,283	0.35
Wyoming (56)	12	339	4,003	334,997	185	0.55

a Expressed in thousands.
b Based on 6.97% rate of TB infection prevalence in the U.S. (maximum estimate).

Step 5 Model validation:

An alternative, but less sophisticated, way to estimate annual risk of infection, if prevalence is known in a specific age group, is to use the following formula:

Annual Rate of Infection = -ln(1-P)/d (8)

Where:

P is the percent prevalence of infection and

d is the average age of the population (Ex. 7–265).

In order to validate the model used by OSHA to estimate background infection rates, estimates of TB infection prevalence for 1994 were used to calculate predicted infection rates using equation (8). Based on Murray's model, TB infection prevalence is expected to range from 6.31% to 6.97% in 1994 among adults (18+). Using these figures and assuming the average age to be 45 years, formula (8) predicts that infection rates can range from 1.45 to 1.61 per 1,000. These results are in close agreement with OSHA's weighted average estimate of the national TB infection rate, which is 1.46 per 1,000.

4. Occupational Risk Estimations

OSHA used the three different data sources to obtain estimates of risk of TB infection for health care employees: the Washington State data, the North Carolina study, and the NIOSH Health Hazard Evaluation (HHE) from Jackson Memorial Hospital (Exs. 7–263, 7–7, 7–108). The Washington State data represent workplaces located in low TB prevalence areas, where TB infection control measures and engineering controls are required by state health regulations. The North Carolina data represent workplaces located in areas with moderate TB prevalence and inadequate TB infection control programs. Finally, the Jackson Memorial Hospital data are representative of county hospitals serving high-risk patients whose employees have a high frequency of exposure to infectious TB. These data sources provide information on the magnitude of the expected excess risk in three different environments, and are used to provide a range of possible values of excess risk.

Based on the Washington State data, the annual risk is expected to be 1.5 times the background rate for hospital employees, approximately 11 times the background rate for long-term care employees, 6 times the background rate for home health care workers, and double the background rate for home care employees. Based on the North Carolina data, the annual risk is expected to be approximately 5 times the background rate. Based on the Jackson Memorial Hospital data, the annual risk is expected to be approximately 9 times the background.

Estimates of expected excess risk of TB infection for workers with occupational exposure by state are calculated by applying the excess relative risk ratios, derived from the three occupational studies, to the overall background rate of infection for each state and are presented in table V–8(a)—table V–8(c). A range of excess risk of TB infection due to occupational exposure is constructed by using the minimum and maximum estimates of excess risk among all states for each data source. These results are presented in table V–9 and table V–10 for workers in hospitals and for workers in other work settings, respectively.

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TABLE V-8(a)
Occupational Risk Estimates of TB Infection
Based on the Washington State Study

State	Annual Background TB Infection Rate per 1,000 at Risk	Excess Occupational Risk	
		Annual	Lifetime
Alabama (01)	1.63 - 1.68	0.77 - 0.79	34 - 35
Alaska (02)	3.03 - 3.09	1.43 - 1.45	62 - 63
Arizona (04)	1.00 - 1.03	0.47 - 0.48	21 - 22
Arkansas (05)	1.67 - 1.73	0.79 - 0.81	35 - 36
California (06)	2.32 - 2.40	1.09 - 1.13	48 - 50
Colorado (08)	0.39 - 0.40	0.18 - 0.19	8 - 9
Connecticut (09)	0.68 - 0.71	0.32 - 0.33	14 - 15
Delaware (10)	1.31 - 1.34	0.62 - 0.63	27 - 28
District of Columbia (11)	3.08 - 3.18	1.45 - 1.49	63 - 65
Florida (12)	2.05 - 2.11	0.97 - 1.00	43 - 44
Georgia (13)	1.45 - 1.52	0.68 - 0.71	30 - 32
Hawaii (15)	3.43 - 3.54	1.61 - 1.66	70 - 72
Illinois (17)	1.34 - 1.39	0.63 - 0.66	28 - 29
Indiana (18)	0.50 - 0.51	0.23 - 0.24	10 - 11
Iowa (19)	0.41 - 0.42	0.19 - 0.20	9 - 9
Kansas (20)	0.58 - 0.59	0.27 - 0.28	12 - 12
Kentucky (21)	1.21 - 1.26	0.57 - 0.59	25 - 26
Louisiana (22)	1.91 - 1.95	0.90 - 0.92	39 - 40
Maine (23)	0.45 - 0.46	0.21 - 0.22	9 - 10
Maryland (24)	0.99 - 1.04	0.46 - 0.49	21 - 22
Massachusetts (25)	0.63 - 0.67	0.30 - 0.32	13 - 14
Michigan (26)	0.73 - 0.76	0.34 - 0.36	15 - 16
Minnesota (27)	0.42 - 0.44	0.20 - 0.21	9 - 9
Mississippi (28)	1.73 - 1.79	0.81 - 0.84	36 - 37
Missouri (29)	0.76 - 0.79	0.36 - 0.37	16 - 17
Montana (30)	0.47 - 0.48	0.22 - 0.23	10 - 10
Nebraska (31)	0.19 - 0.20	0.09 - 0.10	4 - 4
Nevada (32)	1.32 - 1.35	0.62 - 0.64	27 - 28
New Hampshire (33)	0.21 - 0.22	0.10 - 0.10	5 - 7
New Jersey (34)	1.44 - 1.51	0.68 - 0.71	30 - 31
New Mexico (35)	0.82 - 0.86	0.39 - 0.40	17 - 18
New York (36)	2.93 - 3.05	1.38 - 1.43	60 - 63
North Carolina (37)	1.17 - 1.22	0.55 - 0.57	24 - 25
North Dakota (38)	0.28 - 0.29	0.13 - 0.13	6 - 6
Ohio (39)	0.46 - 0.48	0.21 - 0.22	9 - 10
Oklahoma (40)	1.33 - 1.36	0.62 - 0.64	9 - 10
Oregon (41)	0.79 - 0.82	0.37 - 0.38	17 - 17
Pennsylvania (42)	0.65 - 0.69	0.31 - 0.32	14 - 14
Rhode Island (44)	0.67 - 0.70	0.31 - 0.33	14 - 15
South Carolina (45)	1.68 - 1.73	0.79 - 0.81	35 - 36
South Dakota (46)	0.66 - 0.69	0.31 - 0.33	14 - 15
Tennessee (47)	1.58 - 1.63	0.74 - 0.77	33 - 34
Texas (48)	2.26 - 2.33	1.06 - 1.10	47 - 48
Utah (49)	0.34 - 0.37	0.16 - 0.17	7 - 8
Vermont (50)	0.36 - 0.37	0.17 - 0.18	8 - 8
Virginia (51)	0.66 - 0.70	0.31 - 0.33	14 - 15
Washington (53)	0.66 - 0.69	0.31 - 0.32	14 - 14
West Virginia (54)	0.66 - 0.70	0.31 - 0.33	14 - 15
Wisconsin (55)	0.35 - 0.36	0.16 - 0.17	7 - 8
Wyoming (56)	0.55 - 0.57	0.26 - 0.27	12 - 12

TABLE V-8(b)
Occupational Risk Estimates of TB Infection
Based on the North Carolina Study

State	Annual Background TB Infection Rate per 1,000 at Risk	Excess Occupational Risk	
		Annual	Lifetime
Alabama (01)	1.63 - 1.68	6.48 - 6.68	254 - 260
Alaska (02)	3.03 - 3.09	12.07 - 12.28	421 - 427
Arizona (04)	1.00 - 1.03	3.97 - 4.11	164 - 169
Arkansas (05)	1.67 - 1.73	6.66 - 6.90	260 - 268
California (06)	2.32 - 2.40	9.22 - 9.55	341 - 351
Colorado (08)	0.39 - 0.40	1.55 - 1.61	67 - 70
Connecticut (09)	0.68 - 0.71	2.70 - 2.81	115 - 119
Delaware (10)	1.31 - 1.34	5.23 - 5.35	210 - 215
District of Columbia (11)	3.08 - 3.18	12.27 - 12.66	426 - 436
Florida (12)	2.05 - 2.11	8.18 - 8.43	309 - 317
Georgia (13)	1.45 - 1.52	5.77 - 6.05	229 - 239
Hawaii (15)	3.43 - 3.54	13.67 - 14.10	462 - 472
Illinois (17)	1.34 - 1.39	5.32 - 5.55	214 - 221
Indiana (18)	0.50 - 0.51	1.95 - 2.05	84 - 88
Iowa (19)	0.41 - 0.42	1.64 - 1.67	71 - 73
Kansas (20)	0.58 - 0.59	2.29 - 2.35	98 - 100
Kentucky (21)	1.21 - 1.26	4.80 - 5.02	195 - 202
Louisiana (22)	1.91 - 1.95	7.58 - 7.77	290 - 296
Maine (23)	0.45 - 0.46	1.79 - 1.84	77 - 80
Maryland (24)	0.99 - 1.04	3.94 - 4.13	163 - 170
Massachusetts (25)	0.63 - 0.67	2.51 - 2.67	107 - 113
Michigan (26)	0.73 - 0.76	2.92 - 3.04	123 - 128
Minnesota (27)	0.42 - 0.44	1.68 - 1.77	73 - 77
Mississippi (28)	1.73 - 1.79	6.90 - 7.12	268 - 275
Missouri (29)	0.76 - 0.79	3.03 - 3.14	128 - 132
Montana (30)	0.47 - 0.48	1.88 - 1.93	81 - 83
Nebraska (31)	0.19 - 0.20	0.77 - 0.82	34 - 36
Nevada (32)	1.32 - 1.35	5.26 - 5.40	211 - 216
New Hampshire (33)	0.21 - 0.22	0.85 - 0.88	38 - 39
New Jersey (34)	1.44 - 1.51	5.75 - 6.01	229 - 237
New Mexico (35)	0.82 - 0.86	3.28 - 3.42	137 - 143
New York (36)	2.93 - 3.05	11.65 - 12.14	410 - 423
North Carolina (37)	1.17 - 1.22	4.66 - 4.86	190 - 196
North Dakota (38)	0.28 - 0.29	1.11 - 1.16	49 - 50
Ohio (39)	0.46 - 0.48	1.81 - 1.89	78 - 82
Oklahoma (40)	1.33 - 1.36	5.28 - 5.44	212 - 216
Oregon (41)	0.79 - 0.82	3.15 - 3.26	133 - 137
Pennsylvania (42)	0.65 - 0.69	2.60 - 2.74	111 - 116
Rhode Island (44)	0.67 - 070	2.66 - 2.77	113 - 117
South Carolina (45)	1.68 - 1.73	6.68 - 6.89	260 - 267
South Dakota (46)	0.66 - 0.69	2.64 - 2.76	112 - 117
Tennessee (47) °	1.58 - 1.63	6.27 - 6.48	247 - 254
Texas (48)	2.26 - 2.33	9.01 - 9.29	334 - 343
Utah (49)	0.34 - 0.37	1.34 - 1.46	59 - 64
Vermont (50)	0.36 - 0.37	1.46 - 1.49	63- -65
Virginia (51)	0.66 - 0.70	2.64 - 2.78	112 - 118
Washington (53)	0.66 - 0.69	2.61 - 2.75	111 - 116
West Virginia (54)	0.66 - 0.70	2.64 - 2.77	112 - 117
Wisconsin (55)	0.35 - 0.36	1.39 - 1.44	61 - 63
Wyoming (56)	0.55 - 0.57	2.20 - 2.25	94 - 97

TABLE V-8(c)
Occupational Risk Estimates of TB Infection
Based on the Jackson Memorial Hospital Study

State	Annual Background TB Infection Rate per 1,000 at Risk	Excess Occupational Risk	
		Annual	Lifetime
Alabama (01)	1.63 - 1.68	13.33 - 13.75	454 - 464
Alaska (02)	3.03 - 3.09	24.84 - 25.27	678 - 684
Arizona (04)	1.00 - 1.03	8.16 - 8.45	308 - 317
Arkansas (05)	1.67 - 1.73	13.69 - 14.20	462 - 475
California (06)	2.32 - 2.40	18.98 - 19.66	578 - 591
Colorado (08)	0.39 - 0.40	3.19 - 3.31	134 - 139
Connecticut (09)	0.68 - 0.70	5.55 - 5.78	222 - 230
Delaware (10)	1.31 - 1.34	10.75 - 11.01	385 - 392
District of Columbia (11)	3.08 - 3.18	25.24 - 26.04	683 - 695
Florida (12)	2.05 - 2.11	16.83 - 17.35	534 - 545
Georgia (13)	1.45 - 1.52	11.88 - 12.45	416 - 431
Hawaii (15)	3.43 - 3.54	28.13 - 29.01	723 - 734
Illinois (17)	1.34 - 1.39	10.95 - 11.42	391 - 404
Indiana (18)	0.50 - 0.51	4.01 - 4.21	165 - 173
Iowa (19)	0.41 - 0.42	3.36 - 3.44	141 - 144
Kansas (20)	0.58 - 0.59	4.72 - 4.83	192 - 196
Kentucky (21)	1.21 - 1.26	9.87 - 10.32	360 - 373
Louisiana (22)	1.91 - 1.95	15.60 - 15.99	507 - 516
Maine (23)	0.45 - 0.46	3.69 - 3.79	153 - 157
Maryland (24)	0.99 - 1.04	8.11 - 8.50	307 - 319
Massachusetts (25)	0.63 - 0.67	5.17 - 5.50	208 - 220
Michigan (26)	0.73 - 0.76	6.01 - 6.25	238 - 246
Minnesota (27)	0.42 - 0.44	3.46 - 3.64	145 - 151
Mississippi (28)	1.73 - 1.79	14.19 - 14.66	474 - 485
Missouri (29)	0.76 - 0.79	6.23 - 6.46	245 - 253
Montana (30)	0.47 - 0.48	3.87 - 3.96	160 - 164
Nebraska (31)	0.19 - 0.20	1.59 - 1.68	69 - 73
Nevada (32)	1.32 - 1.35	10.83 - 11.10	387 - 395
New Hampshire (33)	0.21 - 0.22	1.76 - 1.82	76 - 79
New Jersey (34)	1.44 - 1.51	11.83 - 12.36	415 - 429
New Mexico (35)	0.82 - 0.86	6.75 - 7.05	263 - 273
New York (36)	2.93 - 3.05	23.97 - 24.98	664 - 680
North Carolina (37)	1.17 - 1.22	9.60 - 9.99	352 - 364
North Dakota (38)	0.28 - 0.29	2.29 - 2.38	98 - 102
Ohio (39)	0.46 - 0.48	3.73 - 3.89	155 - 161
Oklahoma (40)	1.33 - 1.36	10.86 - 11.19	388 - 397
Oregon (41)	0.79 - 0.82	6.49 - 6.71	254 - 261
Pennsylvania (42)	0.65 - 0.69	5.35 - 5.63	214 - 224
Rhode Island (44)	0.67 - 0.70	5.47 - 5.70	218 - 227
South Carolina (45)	1.68 - 1.73	13.74 - 14.18	463 - 474
South Dakota (46)	0.66 - 0.69	5.42 - 5.68	217 - 226
Tennessee (47)	1.58 - 1.63	12.91 - 13.33	443 - 453
Texas (48)	2.26 - 2.33	18.54 - 19.10	569 - 580
Utah (49)	0.34 - 0.37	2.76 - 3.01	117 - 127
Vermont (50)	0.36 - 0.37	2.99 - 3.07	126 - 129
Virginia (51)	0.66 - 0.70	5.43 - 5.73	217 - 228
Washington (53)	0.66 - 0.69	5.38 - 5.65	215 - 225
West Virginia (54)	0.66 - 0.70	5.44 - 5.70	217 - 226
Wisconsin (55)	0.35 - 0.36	2.86 - 2.96	121 - 125
Wyoming (56)	0.55 - 0.57	4.53 - 4.64	185 - 189

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TABLE V–9.—OCCUPATIONAL RISK ESTIMATES FOR HOSPITAL EMPLOYEES [a]

Source	Overall risk/ (exposed)	Background risk based on study	Excess risk based on study (percent)	Range of excess occupational risk [d]	
				Annual	Lifetime
Washington State 1994 data	1.24/1000	0.88/1000	47	0.09–1.66	4.1–72.2
North Carolina Western Counties	[b]5.98/1000	[d]1.20/1000	398	0.77–14.1	34.2–472
Jackson Memorial (1991)	31.7/1000	3.5/1000	795	1.54–28.2	67.1–723

[a] Background TB infection rate ranges from 0.194 to 3.542 per 1,000 at risk for TB infection.
[b] Ajusted for 1994, i.e., 5.98=7.2*(532/641)
[c] The range reflects regional differences in TB prevalence as well as inherent uncertainty in the estimate of TB infection prevalence in the U.S., as estimated by Dr. Christopher Murray, and used in the internal calculations of annual background TB infection rate.
[d] State-wide estimate of population risk for North Carolina, shown in Table V–3(a).

TABLE V–10.—OCCUPATIONAL RISK ESTIMATES FOR OTHER WORK SETTINGS [a,b]

Type	Overall risk/ (exposed)	Background risk State-wide [c]	Excess risk based on study (percent)	Range of excess occupational risk [d]	
				Annual	Lifetime
Long-term Care	9.8/1000	0.8756/1000	1019	1.98–36.1	85–807
Home Health Care	5.06/1000	0.8756/1000	478	0.93–16.9	40.9–526
Home Care	1.86/1000	0.8756/1000	112	0.22–3.97	9.7–164

[a] Background TB infection rate ranges from 0.194 to 3.542 per 1,000 employees at risk of infection.
[b] Based on the Washington State data.
[c] Background rate for this analysis is assumed to be the same as in the case-control analysis of the Washington State hospital data (i.e. 0.8756 per 1,000 employees).
[d] The range reflects regional differences in TB prevalence as well as inherent uncertainty in the estimate of TB infection prevalence in the U.S., as estimated by Dr. Christopher Murray, and used in the internal calculations of annual background TB infection rate.

Lifetime estimates of the excess risk of TB infection were estimated based on the annual excess risk by using the formula $\{1-(1-p)^{45}\}$, where p is the annual excess risk. Lifetime excess estimates of TB infection are presented in table V–9 and table V–10. Lifetime risk estimates of developing active TB are calculated from lifetime risk estimates of TB infection assuming that, once infected, there is a 10% likelihood of progressing to active TB; these estimates are presented in table V–11 and table V–12. Further, the risk of death caused by TB is calculated from the lifetime estimates of active TB using OSHA's estimate of the TB case fatality rate (also presented in table V–11 and table V–12). The methodology used to estimate a TB case fatality rate is presented below.

TABLE V–11.—LIFETIME OCCUPATIONAL RISK ESTIMATES FOR HOSPITAL EMPLOYEES [a b c]

Source	TB infection [d]	Active disease [e]	Death caused by TB
Washington State (1994)	4.1–72.2	0.4–7.2	0.03–0.6
North Carolina Western Region	34.2–472	3.4–47.2	0.3–3.7
Jackson Memorial Hospital (Miami)	67.1–723	6.7–72.3	0.5–5.6

[a] Risk estimates reflect excess risk due to occupational exposure and are expressed per 1,000 employees at risk.
[b] Estimates of death caused by TB due to occupational exposure are derived based on an estimated TB case death rate of 77.85 per 1,000 TB cases and are estimated by multiplying the lifetime active disease rate by .07785.
[c] The ranges of risk presented in this TABLE reflect expected variance in the annual background TB infection rate by state. They are estimated based on the assumption that the annual background TB infection rate ranges from 0.194 to 1.542 per 1,000 employees at risk.
[d] Lifetime infection rate is estimated by $(1-(1-p)^{45})$, where p is the annual excess TB infection rate due to occupational exposure.
[e] Lifetime active disease rate is estimated to be 10% of lifetime infection rate.

TABLE V–12—LIFETIME OCCUPATIONAL RISK ESTIMATES FOR EMPLOYEES IN OTHER WORK SETTINGS [a b c]

Work setting	TB infection [d c]	Active disease [e]	Death caused by TB
Long-term Care	85–807	8.5–80.7	0.7–6.2
Home Health Care	40.9–536	4.1–53.6	0.3–4.2
Home Care	9.7–164	1.0–16.4	0.1–1.3

[a] Risk estimates reflect excess risk due to occupational exposure and are expressed per 1,000 employees at risk of TB infection.
[b] Estimates of death caused by TB due to occupational exposure are derived based on an estimated TB case death rate of 77.85 per 1,000 cases and are estimated by multiplying the lifetime active disease rate by .07785.
[c] The ranges of risk presented in this TABLE reflect expected variance in the annual background TB infection rate by state. They are estimated based on the assumption that the annual background TB infection rate ranges from 0.194 to 3.542 per 1,000 employees at risk.
[d] Lifetime infection rate is estimated by $(1-(1-p)^{45})$, where p is the annual excess TB infection rate due to occupational exposure.
[e] Lifetime active disease rate is estimated to be 10% of lifetime infection rate.

As outlined in the Health Effects section, several possible outcomes are possible following an infection. Approximately 90% of all infections never progress to active disease. An estimated 10% of infections is expected to progress to active disease; most of these cases are successfully treated. However, a percentage of active TB cases develop further complications. Approximately 7.8% of active TB cases may take a more severe clinical course and lead to death. The TB case fatality rate was estimated using information on reported deaths caused by TB from table 8–5 of the Vital Statistics for the U.S. and cases of TB reported in CDC's TB Surveillance system for 1989 through 1991 (Exs. 7–270, 7–264). As shown in table V–13, the TB case death rate ranged from 69.94 to 89.18 per 1,000 with a 3-year average of 77.85 per 1,000 TB cases. The Agency used the 3-year average (77.85 per 1,000) for its estimate of deaths caused by TB. This estimate is in close agreement with published results from a retrospective cohort study conducted in Los Angeles County on TB cases in 1990 (Ex. 7–268). In this study, all confirmed TB cases reported in the county in 1990 were tracked and the number of deaths where TB was the direct or contributing cause was ascertained. "Contributing cause" was defined as a case of TB of such severity that it would have caused the death of the patient had the primary illness not caused death earlier. Of the 1,724 cases included in the study, TB was considered the cause of death or the contributing cause of death in 135 cases (78.31 per 1,000).

TABLE V–13.—TB CASE DEATH RATES FOR ADULTS (18+)

Year	Number of deaths [a]	Number of TB cases [b]	TB case death rate [c]
1991	1,700	24,307	69.94
1990	1,796	23,795	75.48
1989	1,956	21,934	89.18
3-year Average	1,817	23,345	77.85

[a] Source: Vital Statistics for the U.S., Table 8–5, (age 20+).
[b] Source: CDC, TB surveillance system, (age 18+).
[c] Rate expressed per 1,000 TB cases. Any deaths caused by TB in persons 18 or 19 years of age are not included in the numerator.

National estimates of annual and lifetime risk for TB infection, active disease and death caused by TB due to occupational exposure are computed as weighted averages of the state estimates and are presented in table V–14.

TABLE V–14.—AVERAGE OCCUPATIONAL RISK ESTIMATES [a, b] PER 1,000 WORKERS AT RISK

Work setting	Annual TB infection	Lifetime TB infection	Lifetime active TB	Death caused by TB [c]
Hospitals:				
WA	0.68	30	3.0	0.2
NC	5.7	219	22.0	1.7
JM	11.8	386	38.6	3.0
Long-term Care	14.6	448	44.8	3.5
Home Health Care	6.9	225	25.5	2.0
Home Care	1.6	69	6.9	0.5

[a] Weighted by each state's population in 1994.
[b] Risk estimates reflect excess risk due to occupational exposure and are expressed per 1,000 employees at risk.
[c] Number of deaths caused by TB due to occupational exposure are derived based on an estimated TB case death rate of 77.85 per 1,000 cases and are computed by multiplying the lifetime active disease rate by .07785.

(a) *Risk Estimates for Hospital Employees:* Logistic regression analysis of the Washington state hospital data indicated an increase in annual risk (47% above background) for employees with potential exposure to TB. For this particular analysis the control group was defined as those hospitals with no-known TB patients that are located in counties that did not report any active TB cases in 1994. However, an increased risk of 47% above background in the annual infection rate is expected to produce a range of 4 to 72 TB infections per 1000 exposed workers in a working lifetime, which could result in as many as 7 cases of active TB and approximately 1 death per 1,000 exposed workers.

Based on the survey of hospitals in North Carolina's western region, the expected overall risk due to occupational exposure is estimated to be 4 times the background rate. This results in an expected range of lifetime risk between 34 and 472 infections per 1,000 employees at risk for TB infection. Lifetime estimates of active TB cases resulting from these infections are expected to range between 3 and 47, resulting in as many as 4 deaths per 1,000 exposed employees at risk of TB infection. As done previously, the North Carolina study results were adjusted to reflect 1994 TB disease trends.

Based on the data from Jackson Memorial Hospital, the overall risk due to occupational exposure is estimated to be 8 times the background rate. This results in an expected range of lifetime risk between 67 and 723 infections per 1,000 employees at risk. Lifetime estimates of the number of active TB case per 100 exposed workers are expected to range between 7 and 72, resulting in as many as 6 deaths per 1,000 exposed employees at risk for TB infection.

In summary, table V–9 and table V–14 show that the annual occupational risk of infection is expected to range:

(a) From .09 to 1.66 with a weighted average of 0.68 per 1,000 for workplaces located in relatively low TB prevalence areas, and where TB infection measures and engineering controls are required;

(b) From 0.77 to 14.1 with a weighted average of 5.7 per 1,000 for workplaces located in areas with moderate TB prevalence and inadequate TB control programs; and

(c) From 1.54 to 28 with a weighted average of 11.8 per 1,000 for workplaces

located in high TB prevalence areas, serving high risk patients, with high frequency of exposure to infectious TB.

Similarly, the lifetime occupational risk is expected to range:

(a) From 4 to 72 with a weighted average of 30 per 1,000 for workplaces located in relatively low TB prevalence areas, and where TB infection measures and engineering controls are required;

(b) From 34 to 472 with a weighted average of 219 per 1,000 for workplaces located in areas with moderate TB prevalence and inadequate TB control programs; and

(c) From 67 to 723 with a weighted average of 386 per 1,000 for workplaces located in high TB prevalence areas, serving high risk patients, with high frequency of exposure to infectious TB.

Risk estimates derived from either study (Washington State or North Carolina) represent an overall rate of occupational risk, because both studies include PPD skin testing results from the entire hospital employee population, whereas the Jackson Memorial study addresses the occupational risk to workers where exposure to infectious TB is highly probable.

Although the exact compliance rate is not known, hospitals in Washington State have been required to implement the CDC TB guidelines with respect to engineering controls (requiring isolation rooms with negative pressure) and infection control measures (advocating early patient identification, employee training, respiratory protection, and PPD testing).

Neither the facilities in North Carolina nor Jackson Memorial had engineering controls fully implemented at the time these data were collected. Early identification of suspect TB patients has always been recommended in North Carolina. However, engineering controls in isolation rooms were either not present or did not function properly because of modifications in the physical structure of the building (i.e., isolation rooms had been subdivided using partitions, air ducts had been re-directed because of remodeling, etc.). Tuberculin skin testing was very inconsistent and sporadic. In addition, employee training and use of respiratory protection were not emphasized.

By 1991, Jackson Memorial had most of the engineering controls in place in the HIV ward (where the first outbreak took place) and in selected areas with high TB exposure, but not in the entire hospital. However, the staff training program was still being developed and respiratory protection was not always adequate. Although exposures had been greatly reduced, "high risk" procedures were still being performed in certain areas of the hospital without adequate engineering controls, such as the Special Immunology clinic where HIV–TB patients received pentamidine treatments. Like the hospitals in the North Carolina study, Jackson Memorial represents a working environment that serves a patient population known to have high TB prevalence. In addition, Jackson Memorial only tested employees with patient contact in areas where active TB had been detected.

(b) *Risk Estimates for Workers in Other Work Settings:* In long-term care facilities for the elderly there is also a significantly increased likelihood that employees will encounter individuals with infectious TB. Persons over the age of 65 constitute a large proportion of the TB cases in the United States. In 1987, CDC reported that persons aged 65 and over accounted for 27% (6150) of the reported cases of active TB in the U.S., although they account for only 12% of the U.S. population. Many of these individuals were infected in the past and advancing age and decreasing immunocompetence have caused them to develop active disease. In 1990 the CDC estimated that approximately 10 million people were infected with TB. As the U.S. population steadily ages, many of these latent infections may progress to active disease. Because elderly persons represent a large proportion of the nation's nursing home residents and because the elderly represent a large proportion of the active cases of TB, there is an increased likelihood that employees at long-term care facilities for the elderly will encounter individuals with infectious TB.

Similarly, there are other occupational settings that serve high-risk client populations and thus have an increased likelihood of encountering individuals with infectious TB. For example, hospices, emergency medical services, and home-health care services provide services to client populations similar to those in hospitals and thus are likely to experience similar risks.

OSHA used information from the 1994 Washington state PPD skin testing survey to estimate occupational risk for workers in long-term care, home health care, and home care. Annual estimates of excess risk for TB infection are presented in TABLE V–10 and lifetime estimates for TB infection, active TB, and death caused by occupational TB are presented in TABLE V–12.

Based on the Washington State data, the overall annual excess risk for TB infection is estimated to be 10-fold over background for workers in long-term care. This results in an expected range of lifetime risk of between 85 and 800 infections per 1,000 employees at risk for TB infection. Lifetime estimates of the number of active TB cases resulting from these infections range from 9 to 81 and are projected to cause as many as 6 deaths per 1,000 exposed employees at risk of TB infection. Similarly, the overall annual excess risk of TB infection for workers in home health care is estimated to be approximately 500% above background. This results in an expected range of lifetime risk of between 41 and 536 infections per 1,000 employees at risk for TB infection. Lifetime estimates of the number of active TB cases range from 4 to 54 per 1,000, and are projected to cause as many as 4 deaths per 1,000 exposed employees at risk of TB infection. Similarly, the overall annual excess risk of TB infection for workers in home care is estimated to be approximately 100% above background. This results in an expected range of lifetime risk of between 10 and 164 infections per 1,000 employees at risk for TB infection. Lifetime estimates of the number of active TB cases range from 1 to 16, and are expected to result in approximately 1 death per 1,000 exposed employees at risk of TB infection.

Clearly, employees in all three groups (long-term care for the elderly, home health care, and home care) have higher risks than hospital employees in Washington. This could be attributed, in part, to the lack of engineering controls in these work settings. That respirators may be used only intermittently may also play a role. Although workers in these three groups are encouraged by local health authorities to use respiratory protection while tending to a suspect TB patient, the actual rate of respirator usage is difficult to ascertain. A third factor that may contribute to higher risk in these work settings is delayed identification of suspect TB patients due to confounding symptoms presented by the individuals. For example, many long-term care residents exhibit symptoms of persistent coughing from decades of smoking. Consequently, an individual in long-term care with a persistent cough may be infectious for several days before he or she is identified as having suspected infectious TB.

Qualitative Assessment of Risk for Other Occupational Settings

The quantitative estimates of the risk of TB infection discussed above are based primarily upon data from hospitals and selected other health care settings. Data from hospitals and certain health care settings were selected because OSHA believes that these data represent the best information available to the Agency for purposes of quantifying the occupational risks of TB infection and disease. However, as discussed above, it is their exposure to aerosolized *M. tuberculosis* that places these workers at risk of infection and not factors unique to these particular kinds of health care activities. Thus, OSHA believes that the risk estimates derived from hospitals and selected other work settings can be used to describe the potential range of risks for other health care and other occupational settings in which workers can reasonably anticipate frequent and substantial exposure to aerosolized *M. tuberculosis*.

In order to extrapolate the quantitative risk estimates calculated for hospital employees and other selected health care settings, OSHA, as a first step, identified risk factors that place employees at risk of exposure. Some amount of exposure to TB could occur in any workplace in the United States. TB is an infectious disease that occurs in the community and thus, individuals may bring the disease into their own workplace or to other businesses or work settings that they may visit. However, there are particular kinds of work settings where risk factors are present that substantially increase the likelihood that employees will be frequently exposed to aerosolized *M. tuberculosis*. First among these factors is the increased likelihood of exposure to individuals with active, infectious TB. Individuals who are infected with TB have a higher risk of developing active TB if they are (1) immunocompromised (e.g., elderly, undergoing chemotherapy, HIV positive), (2) intravenous drug users, or (3) medically underserved and of generally poor health status (Exs. 6–93 and 7–50). Thus, in work settings in which the client population is composed of a high proportion of individuals who are infected with TB, are immunocompromised, are intravenous drug users or are of poor general health status, there is a greatly increased likelihood that employees will routinely encounter individuals with infectious TB and be exposed to aerosolized *M. tuberculosis*. A second factor that places employees at high risk of exposure to aerosolized *M. tuberculosis* is the performance of high-hazard procedures, i.e., procedures performed on individuals with suspected or confirmed infectious TB where there is a high likelihood of the generation of droplet nuclei. A third factor that places employees at risk of exposure is the environmental conditions at the work setting. Work settings that have overcrowded conditions or poor ventilation will facilitate the transmission of TB. Thus, given that a case of infectious TB does occur, the conditions at the work setting itself may promote the transmission of disease to employees who share airspace with the individual(s) with infectious TB.

The second step in extrapolating the quantitative risks is to identify the types of work settings which have some or all of the risk factors outlined above. Once these work settings have been identified, OSHA believes that it is reasonable to assume that the quantitative risk estimates calculated for hospitals and other selected health care settings can be used to describe the risks in the identified work settings.

Correctional Facilities

Employees in correctional facilities or other facilities that house inmates or detainees have an increased likelihood of frequent exposure to individuals with infectious TB. Many correctional facilities have a higher incidence of TB cases in comparison to the incidence in the general population. In 1985, the CDC estimated that the incidence of TB among inmates of correctional facilities was more than three times higher than that for noninarcerated adults aged 15–64 (Ex. 3–33). In particular, in states such as New Jersey, New York, and California, the increased incidence of annual TB cases in correctional facilities ranged from 6 to 11 times greater than that of the general population for their respective states (Exs. 7–80 and 3–33). A major factor in the increased incidence of TB cases in correctional facilities is the fact that the population of correctional facilities is over-represented by individuals who are at greater risk of developing active disease, e.g., persons from poor and minority groups who may suffer from poor nutritional status and poor health care, intravenous drug users, and persons infected with HIV. Similarly, certain types of correctional facilities, such as holding facilities associated with the Immigration and Naturalization Service, may have inmates/detainees from countries with a high incidence of TB. For foreign-born persons arriving in the U.S., the case rate of TB in 1989 was estimated to be 124 per 100,000, compared to an overall TB case rate of 9.5 per 100,000 for the U.S. (Ex. 6–26). Moreover, in the period from 1986 to 1989, 22% of all reported cases of TB disease occurred in the foreign-born population. Given the increased prevalence of individuals at risk for developing active TB, there is an increased likelihood that employees working in these facilities will encounter individuals with infectious TB. In addition, environmental factors such as overcrowding and poor ventilation facilitate the transmission of TB. Thus, given that a case of infectious TB does occur, the conditions in the facility itself promote the transmission of the disease to other inmates and employees in the facility who share airspace.

As discussed in the Health Effects section, a number of outbreak investigations (Exs. 6–5, 6–6) have shown that where there has been exposure to aerosolized *M. tuberculosis* in correctional facilities, the failure to promptly identify individuals with infectious TB and provide appropriate infection control measures has resulted in employees being infected with TB. These studies demonstrate that, as in hospitals or health care settings, where there is exposure to aerosolized TB bacilli and where effective control measures are not implemented, exposed employees are at risk of infection. Thus, estimates based on the risk observed among employees in hospitals and in selected other work settings that involve an increased likelihood of exposure can be appropriately applied to employees in correctional facilities.

Recently, scientists at NIOSH have completed a prospective study of the incidence of TB infection among New York State correctional facilities employees (Ex. 7–288). This study is the first prospective study of TB infection among employees in correctional facilities in an entire state. Other studies have reported on contact investigations, which seek to identify recent close contacts with an index case and determine who might subsequently have been infected. Studies based on contact investigations have the advantage of a good definition of potential for exposure and they serve to identify infected persons for public health purposes. On the other hand, prospective studies of an entire working group have the advantage of covering the entire population potentially at risk, of considering all inmate cases simultaneously as potential sources of infection, and, most importantly, of permitting the calculation of incidence rates and risk attributable to occupational exposure.

Following an outbreak of active TB among inmates that resulted in transmission to employees in 1991, the state of New York instituted a mandatory annual tuberculin skin testing program to detect TB infection among employees. The authors used data from the first two years of testing to estimate the incidence of TB infection

among 24,487 employees of the NY Department of Corrections. Subjects included in the study had to have two sequential PPD skin tests, have a negative test the first year, and have complete demographic information. The overall conversion rate was estimated to be 1.9%. Preliminary results show that after controlling for age, ethnicity, gender, and residence in New York City, corrections offices and medical personnel, working in prisons with inmate active TB cases, had odds ratios of TB infection of 1.64 and 2.39, respectively, compared to maintenance and clerical personnel who had little opportunity for prisoner contact. Based on these results, the annual excess risk due to occupational exposure is estimated to be 1.22% and 2.64% for corrections officers and medical personnel, respectively. This translates into lifetime occupational risks of 423 and 700 per 1,000 exposed employees, respectively. In prisons with no known inmate TB cases, there were no significant differences in TB infection rates among employees in different job categories.

Homeless Shelters

Employees in homeless shelters also have a significantly increased likelihood of frequent exposure. A high prevalence of TB infection and disease is common in many homeless shelters. Screening in selected shelters has shown the prevalence of TB infection to range from 18 to 51% (Ex. 6–15). Many shelter residents also possess characteristics that impair their immunity and thus place them at greater risk of developing active disease. For example, homeless persons often suffer from poor nutrition and poor overall health status, and they also have poor access to health care. In addition, they may suffer from alcoholism, drug abuse and infection with HIV. Screening of selected shelters has shown the prevalence of active TB disease to range from 1.6 to 6.8% (Ex. 6–15). Thus, there is an increased likelihood that employees at homeless shelters will frequently encounter individuals with infectious TB in the course of their work.

In addition, as in the case for correctional facilities, homeless shelters also tend to be overcrowded and have poor ventilation, factors that promote the transmission of disease and place shelter residents and employees at risk of infection. Outbreaks reported among homeless shelters (Exs. 7–51, 7–75, 7–73, 6–25) also provide evidence that where there is exposure to individuals with infectious TB and effective infection control measures are not implemented, employees are at risk of infection. It is reasonable to assume, therefore, that risk estimates calculated for hospital employees who have an increased likelihood of exposure to individuals with infectious TB can be used to estimate the risks for homeless shelter employees.

Facilities That Provide Treatment for Drug Abuse

Employees in facilities that provide treatment for drug abuse have an increased likelihood of frequent exposure to individuals with infectious TB. Surveys of selected U.S. cities by the CDC have shown the prevalence of TB infection among the clients of drug treatment centers to range from approximately 10% to 13% (Ex. 6–8). Clients of these centers are also generally at higher risk of developing active disease. The clients typically come from medically underserved populations and may suffer from poor overall health status. As discussed in the Health Effects section, drug dependence has also been shown to be a possible risk factor in the development of active TB. Moreover, many of the drug treatment center clients are intravenous drug users and are infected with HIV, placing these individuals at an increased risk of developing active TB. Given these risk factors for the clients served at drug treatment centers, there is an increased likelihood that employees in these work settings will be exposed frequently to individuals with infectious TB.

Medical Laboratories

Medical laboratory work is a recognized source of occupational hazards. CDC considers workers in medical laboratories that handle *M. tuberculosis* to be at high risk for occupational transmission of TB either because of the volume of material handled by routine diagnostic laboratories or the high concentrations of pathogenic agents often handled in research laboratories.

Few surveys of laboratory-acquired infections have been undertaken; most reports are of small outbreaks in specific laboratories. Sulkin and Pike's study of 5,000 laboratories suggested that brucellosis, tuberculosis, hepatitis, and enteric diseases are among the most common laboratory-acquired infections (Ex. 7–289). In 1957, Reid noted that British medical laboratory workers had a risk of acquiring tuberculosis two to nine times that of the general population (Ex. 7–289). This result was validated in 1971 by Harrington and Channon in their study of medical laboratories (Ex. 7–289). A retrospective postal survey of approximately 21,000 medical laboratory workers in England and Wales showed a five-times increased risk of developing active TB among these workers as compared with the general population. Technicians were at greater risk, especially if they worked in anatomy departments. A similar survey carried out in 1973 of 3,000 Scottish medical laboratory workers corroborates the results from England and Wales. Three cases, one doctor and two technicians, were noted in the 1973 survey, which resulted in an overall incidence rate of 109 per 100,000 person-years. The general population incidence rate for active TB was 26 per 100,000 person-years, giving a risk ratio of 4.2 (Ex. 7–289).

The studies reviewed in this section indicate that workers in medical laboratories with potential for exposure to *M. tuberculosis* during the course of their work have a several-fold (ranging from 2- to 9-fold) increased risk of developing active disease compared with the risk to the general population. Although these studies were conducted over two decades ago, they represent the most recent data available to the Agency, and OSHA has no reason to believe that the conditions giving rise to the risk of infection at that time have changed substantially in the interim. The Agency is not aware of any more current data on transmission rates in medical laboratories. OSHA solicits information on additional studies addressing occupational exposure to active TB in laboratories; such studies would then be considered by OSHA in the development of a final rule.

Other Work Settings and Activities

In addition to the information available for correctional facilities, homeless shelters, and facilities that provide treatment for drug abuse, there are other work settings and activities where there is an increased likelihood of frequent exposure to aerosolized *M. tuberculosis*. For example, hospices serve client populations similar to those of hospitals and perform similar services for these individuals. Individuals who receive care in hospices are likely to suffer from medical conditions (e.g., HIV disease, end-stage renal disease, certain cancers) that increase their likelihood of developing active TB disease once infected. Thus, employees providing hospice care have an increased likelihood of being exposed to aerosolized *M. tuberculosis*. CDC has recommended that hospices follow the same guidelines for controlling TB that hospitals follow.

Emergency medical service employees also have an increased likelihood of encountering individuals with infectious TB. Like hospices, emergency medical services cater to the same high risk client populations as hospitals. Moreover, emergency medical services are often used to transport individuals identified with suspected or confirmed infectious TB from various types of health care settings to facilities with isolation capabilities.

In addition, other types of services (e.g., social services, legal counsel, education) are provided to individuals who have been identified as having suspected or confirmed infectious TB and have been placed in isolation or confined to their homes. Employees who provide social welfare services, teaching, law enforcement or legal services to those individuals who are in AFB isolation are exposed to aerosolized *M. tuberculosis*. In particular, employees performing high-hazard procedures are likely to generate aerosolized *M. tuberculosis* by virtue of the procedure itself. Thus, employees providing these types of services also have an increased likelihood of exposure to aerosolized *M. tuberculosis* and are therefore likely to experience risks similar to those described above for hospital workers.

Although they do not have contact with individuals with infectious TB, employees who repair and maintain ventilation systems which carry air contaminated with *M. tuberculosis* and employees in laboratories who manipulate tissue samples or cultures contaminated with *M. tuberculosis* also have an increased likelihood of being exposed to aerosolized *M. tuberculosis*. Like employees in the work settings discussed above, these employees have an increased risk of frequent exposure to aerosolized *M. tuberculosis*.

Therefore, OSHA believes that the quantitative risk estimates derived from data observed among health care workers in the hospital setting can be generally used to describe the potential range of risks for workers in other occupational settings where there is a reasonable anticipation of exposure to aerosolized *M. tuberculosis*. The reasonableness of this assumption is supported by the overall weight of evidence of the available health data. As discussed in the Health Effects section, epidemiological studies, case reports and outbreak investigations have shown that in correctional facilities, homeless shelters, long-term care facilities for the elderly, drug treatment centers, and laboratories where appropriate TB infection control programs have not been implemented, employees have become infected with TB as a result of occupational exposure to individuals with infectious TB or to other sources of aerosolized *M. tuberculosis*. Thus, although the data on employee conversion rates in other work settings cannot be used to directly quantify the occupational risk of infection for those work settings, there is strong evidence that employees in various work settings other than hospitals can reasonably be anticipated to have exposure to aerosolized *M. tuberculosis* and that TB can be transmitted in these workplaces when appropriate TB infection control programs are not implemented.

VI. Significance of Risk

Section 6(b)(5) of the OSH Act vests authority in the Secretary of Labor to issue health standards. This section provides, in part, that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

OSHA's overall analytical approach to making a determination that workplace exposure to certain hazardous conditions presents a significant risk of material impairment of health is a four step process consistent with interpretations of the OSH Act and rational, objective policy formulation. In the first step, a quantitative risk assessment is performed where possible and considered with other relevant information to determine whether the substance to be regulated poses a significant risk to workers. In the second step, OSHA considers which, if any, of the regulatory alternatives being considered will substantially reduce the risk. In the third step, OSHA examines the body of "best available evidence" on the effects of the substance to be regulated to set the most protective requirements that are both technologically and economically feasible. In the fourth and final step, OSHA considers the most cost-effective way to achieve the objective.

In the Benzene decision, the Supreme Court indicated when a reasonable person might consider the risk significant and take steps to decrease it. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*), 448 U.S. at 655).

The Court indicated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straitjacket" and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court (is) to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge and that the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection." (448 U.S. at 655, 656).

As a part of the overall significant risk determination, OSHA considers a number of factors. These include the type of risk presented, the quality of the underlying data, the reasonableness of the risk assessments, and the statistical significance of the findings.

The hazards presented by the transmission of tuberculosis, such as infection, active disease, and death are very serious, as detailed above in the section on health effects. If untreated, 40–60% of TB cases have been estimated to result in death (Exs. 5–80, 7–50, 7–66). Fortunately, TB is a treatable disease. The introduction of antibiotic drugs for TB has helped to reduce the mortality rate by 94% since 1953 (Ex. 5–80). However, TB is still a fatal disease in some cases. From 1989–1991 CDC reported 5,452 deaths among adults from TB (see TABLE V–13, Risk Assessment section). In addition, there has been an increase in certain forms of drug-resistant TB, such as MDR–TB, in which the tuberculosis bacilli are resistant to one or more of the front line drugs such as isoniazid and rifampin, two of the most effective anti-TB drugs. The information available today is not adequate to estimate the future course of MDR–TB, but the reduction in the potential of transmitting this deadly form of the disease is itself another benefit of this standard. The current data indicate that among MDR–TB cases, the risk of death is increased compared to drug-susceptible forms of the disease. A CDC investigation of 8

outbreaks of MDR–TB revealed that among 253 people infected with MDR–TB, 75% died within a period 4 to 16 weeks after the time of diagnosis (Ex. 38–A). MDR–TB may be treated, but due to the difficulty in finding adequate therapy which will control the bacilli's growth, individuals with this form of the disease may remain infectious for longer periods of time, requiring longer periods of hospitalization, additional lost worktime, and an increased likelihood of spreading TB infection to others until treatment renders the patient non-infectious. Because of the difficulty in controlling these drug-resistant forms of the disease with antibiotics, progressive lung destruction may progress to the point where it is necessary to remove portions of the lung to treat the advance of the disease.

The OSH Act directs the Agency to set standards that will adequately assure, to the extent feasible, that no employee will suffer "material impairment of health or functional capacity." TB infection represents a material impairment of health that may lead to active disease, tissue and organ damage, and death. Although infected individuals may not present any signs or symptoms of active disease, being infected with TB bacilli is a serious threat to the health status of the infected individual. Individuals who are infected have a 10% chance of developing active disease at some point in their life, a risk they would not have had without being infected. The risk of developing active disease is even greater for individuals who are immunocompromised, due to any of a large number of factors. For example, individuals infected with HIV have been estimated as having an 8–10% risk *per year* of developing active disease (Ex. 4B).

In addition, since infected individuals commonly undergo treatment with anti-TB drugs to prevent the onset of active disease, they face the additional risk of serious side effects associated with the highly toxic drugs used to treat TB. Preventive treatment with isoniazid, one of the drugs commonly used to treat TB infection, has been shown in some cases to result in death from hepatitis or has damaged the infected person's liver to the extent that liver transplantation was performed (Ex. 6–10). Thus, the health hazards associated with TB infection clearly constitute material impairment of health.

Clinical illness, i.e., active disease, also clearly constitutes material impairment of health. Left untreated, 40 to 60 percent of active cases may lead to death (Exs. 7–50, 7–66, 7–80). Individuals with active disease may be infectious for various periods of time and often must be hospitalized. Active disease is marked by a chronic and progressive destruction of the tissues and organs infected with the bacteria. Active TB disease is usually found in the lungs (i.e., pulmonary tuberculosis). Long-term damage can result even when cases of TB are cured; a common result of TB is reduced lung function (impaired breathing) due to lung damage (Ex. 7–50, pp. 30–31). Inflammatory responses caused by the disease produce weakness, fever, chest pain, cough, and, when blood vessels are eroded, bloody sputum. Also, many individuals have drenching night sweats over the upper part of the body several times a week. The intensity of the disease varies, ranging from minimal symptoms of disease to massive involvement of many tissues, with extensive cavitation and debilitating constitutional and respiratory problems. Long-term damage can also result from extrapulmonary forms of active disease; such damage may include mental impairment from meningitis (infection of membranes surrounding the brain and spinal cord) and spinal deformity and leg weakness due to infection of the vertebrae (i.e., skeletal TB) (Ex. 7–50, p. 31). Active disease is treatable but it must be treated with potent drugs that have to be taken for long periods of time. The drugs currently used to treat active TB disease may be toxic to other parts of the body. Commonly reported side effects of anti-TB drugs include hepatitis, peripheral neuropathy, optic neuritis, ototoxicity and renal toxicity (Ex. 7–93). Active disease resulting from infection with MDR–TB is of even greater concern due to the inability to find adequate drug regimens. Although OSHA has not been able to precisely quantify the increase in incidence of MDR–TB, the number of cases of MDR–TB is clearly on the rise. In these cases, individuals may remain infectious for longer periods of time and may suffer more long-term damage from the chronic progression of the disease until adequate therapy can be identified.

In this standard, OSHA has presented quantitative estimates of the lifetime risk of TB infection, active disease and death from occupational exposure to *M. tuberculosis*. Qualitative evidence of occupational transmission is also included in OSHA's risk assessment.

In preparing its quantitative risk assessment, OSHA began by seeking out occupational data associated with TB infection incidence in order to calculate an estimate of risk for TB infection attributable to occupational exposure for all U.S. workers. Unfortunately, an overall national estimate of risk for TB infection attributable to occupational exposure is not available. CDC, which collects and publishes the number of active TB cases reported nationwide each year, does not publish occupational data associated with the incidence of TB infection and active TB on a nationwide basis. There has been some effort to include occupational information on the TB reporting forms, but only a limited number of states are currently using the new forms and capturing occupational information in a systematic way. In the absence of a national database, OSHA used two statewide studies, from North Carolina and Washington (Exs. 7–7, 7–263), and data from an individual hospital, Jackson Memorial Hospital (Ex. 7–108), on conversion rates of TB infection for workers in hospitals. The Washington State database also contained information on three additional occupational groups: long-term care, home health care and home care employees. OSHA used these data to model average TB infection rates and estimate the range of expected risks in the U.S. among workers with occupational exposure to TB.

The conversion rates in the selected studies were used to estimate the annual excess relative risk due to occupational exposure, which was expressed as the percent increase of infection above each study's control group. In order to estimate an overall range of occupational risk of TB infection, taking into account regional differences in TB prevalence in the U.S. and indirectly adjusting for factors such as socio-economic status, which might influence the rate of TB observed in different parts of the country, OSHA: (1) Estimated background rates of infection for each state by assuming that the number of new infections is functionally related to the number of active cases reported by the state each year (i.e., the distribution of new infections is directly proportional to the distribution of active cases), and 2) applied estimates of the annual excess relative risk, derived from the occupational studies, to the state background rates to calculate estimates of excess risk due to occupational exposure by state. Thus, the excess occupational risk estimates are actually calculated from the three available studies, on a relative increase basis, and these relative increases are multiplied by background rates for each state to derive estimates of excess occupational risk by state. The state estimates are then used to derive a national estimate of annual occupational risk of TB infection. Given an annual rate of infection, the lifetime risk of infection was calculated assuming that workers

are exposed for 45 years and that the worker's exposure profile and working conditions remain constant throughout his or her working lifetime. Lifetime infection rates are then used to calculate the lifetime risk of developing active disease based on the estimate that 10% of all infections result in active disease. Given a number of active cases of TB, the number of expected deaths can be calculated based on the estimated average TB case death rate (i.e., number of TB deaths per number of active TB cases averaged over 3 years as reported by CDC).

OSHA estimates that the risk of material impairment of health or functional capacity, that is, the average lifetime occupational risk of TB infection for hospital workers ranges from 30 to 386 infections per 1,000 workers who are occupationally exposed to TB. These are different national averages, each derived by calculating the risk in each state and weighting it by the state's population. The low end of this range is derived by using the Washington State data, and is likely to seriously underestimate the true risk to which workers are exposed. This is because the Washington data represent occupational exposures among employees in hospitals which are located in areas of the country with a low prevalence of active TB and which have implemented TB controls (e.g., early identification procedures, annual skin testing, and negative pressure in AFB isolation rooms). The high end of this range is derived by using the Jackson Memorial Hospital study, and represents occupational risk for workers in hospitals located in high TB prevalence areas, serving high risk patients, and with a high frequency of exposure to infectious TB.

OSHA also used information from the Washington State database to estimate national average estimates of lifetime risk for workers in long-term care (i.e., nursing homes), home health care, and home care. The national average lifetime risk of TB infection is estimated to be 448 per 1,000 for workers in long-term care facilities, 225 per 1,000 for workers in home health care (primarily nursing staff), and 69 per 1,000 for workers in home care. The higher likelihood of occupational exposure in long-term care facilities (early identification of suspect TB cases is often difficult among the elderly) and the presence of fewer engineering controls in these facilities may explain the high observed occupational risk in that work setting.

The national average lifetime risk of developing active disease ranges from approximately 3 to 39 cases per 1,000 exposed employees for workers in hospital settings. Similarly, the average lifetime risk of active disease is estimated to be approximately 45 per 1,000 for workers in long-term care, 26 per 1,000 in home health care, and 7 per 1,000 in home care. This range is based on the estimate that 10% of infections will progress to active disease over one's lifetime. This risk may be greater for immunocompromised individuals.

The national average lifetime risk of death from TB ranges from 0.2 to approximately 3 deaths per 1,000 exposed employees for workers in hospital settings. Similarly, the average lifetime risk of death from TB is estimated to be approximately 3.5 per 1,000 for workers in long-term care, 2 per 1,000 for workers in home health care, and 0.5 per 1,000 in home care. The lower range of the national lifetime risk of deaths, 0.2 per 1,000, is based on the Washington State hospital data where the prevalence of TB is low and infection control measures have been implemented. Thus, this lower range of risk underestimates the risk of death from TB for other employees who work in settings where infection control measures, such as those outlined in this proposed standard, have not been implemented. The risk assessment data show that where infection control measures were not in place, the estimated risk of death from TB was as high as 6 deaths per 1,000 exposed employees.

The quantitative risk estimates are based primarily upon data from hospitals and selected other work settings. However, it is frequent exposure to aerosolized *M. tuberculosis* which places workers at substantially increased risk of infection and not factors unique to the health care profession or any job category therein. Qualitative evidence, such as that from the epidemiological studies, case reports and outbreak investigations reported for various types of work settings, as discussed earlier in the Health Effects section, clearly demonstrates that employees exposed to aerosolized *M. tuberculosis* have become infected with TB and have gone on to develop active disease. These work settings share risk factors that place employees at risk of transmission. For example, these work settings serve client populations that are composed of a high prevalence of individuals who are infected with TB, are immunocompromised, are injecting drug users or are medically underserved and of poor general health status. Therefore, there is an increased likelihood that employees in these work settings will encounter individuals with active TB. In addition, high-hazard procedures, such as bronchoscopies, are performed in some of these work settings, which greatly increases the likelihood of generating aerosolized *M. tuberculosis*. Moreover, some of the work settings have environmental conditions such as overcrowding and poor ventilation, factors that facilitate the transmission of disease. Therefore, OSHA believes that the quantitative risk estimates based on hospital data and other selected health care settings can be extrapolated to other occupational settings where there is a similar increased likelihood of exposure to aerosolized *M. tuberculosis*.

Having specific data for non-health care workers and workplace conditions would add more precision to the quantitative risk assessment, but that level of detail is not possible with the currently available information. However, the Agency believes that such a level of detail is not necessary to make its findings of significant risk because the risk of infection is based upon occupational exposure to aerosolized *M. tuberculosis*. Nevertheless, OSHA seeks information on conversion rates and the incidence of active disease among employees in non-health care work settings in order to give more precision to its estimates of risk.

OSHA's risk estimates for TB infection are comparable to other risks which OSHA has concluded are significant, and are substantially higher than the example presented by the Supreme Court in the Benzene Decision. After considering the magnitude of the risk as shown by the quantitative and qualitative data, OSHA preliminarily concludes that the risk of material impairment of health from TB infection is significant.

OSHA also preliminarily concludes that the proposed standard for occupational exposure to TB will result in a substantial reduction in that significant risk. The risk of infection is most efficiently reduced by implementing TB exposure control programs for the early identification and isolation of individuals with suspected or confirmed infectious TB. Engineering controls to maintain negative pressure in isolation rooms or areas where infectious individuals are being isolated will reduce the airborne spread of aerosolized *M. tuberculosis* and subsequent exposure of individuals, substantially reducing the risk of infection. In addition, for those employees who must enter isolation rooms or provide services to individuals with infectious TB, respiratory protection will reduce exposure to aerosolized *M. tuberculosis* and thus reduce the risk of infection.

Several studies have shown that the implementation of infection control measures such as those outlined in this proposed standard have resulted in a reduction in the number of skin test conversions among employees with occupational exposure to TB. For example, results of a survey conducted by the Society of Healthcare Epidemiology of America (SHEA) of its member hospitals (Exs. 7–147 and 7–148) revealed that among hospitals that treated 6 or more patients with infectious TB per year there were 68% fewer tuberculin skin test conversions in hospitals that had AFB isolation rooms with one patient per room, negative pressure, exhaust air directed outside and six or more air changes per hour, compared to hospitals that did not have AFB isolation rooms with these same characteristics. Similarly, an 88% reduction in tuberculin skin test conversions was observed in an Atlanta hospital after the implementation of infection control measures such as an expanded respiratory isolation policy, improved diagnostic and testing procedures, the hiring of an infection control coordinator, expanded education of health care workers, increased frequency of tuberculin skin tests, implementation of negative pressure, and use of submicron masks for health care workers entering isolation rooms (Ex. 7–173). Improvements in infection control measures in a Florida hospital after an outbreak of MDR-TB reduced tuberculin skin test conversions from 28% to 18% to 0% over three years (Ex. 7–167). These improvements included improved early identification procedures, restriction of high-hazard procedures to AFB isolation rooms, increased skin testing, expansion of initial TB treatment regimens, and daily inspection of negative pressure in AFB isolation rooms. Thus, these investigations show that the implementation of infection control measures such as those included under OSHA's proposed standard for TB can result in substantial reductions in infections among exposed employees.

As discussed in further detail in the following section of the Preamble to this proposed standard, OSHA estimates that full implementation of the proposed standard for TB will result in avoiding approximately 21,400 to 25,800 work-related infections per year, 1,500 to 1,700 active cases of TB resulting from these infections and 115 to 136 deaths resulting from these active cases. In addition, because the proposed standard encourages the identification and isolation of active TB cases in the client populations served by workers in the affected industries, there will also be non-occupational TB infections that will be averted. OSHA estimates that implementation of the proposed standard will result in avoiding approximately 3,000 to 7,000 non-occupational TB infections, 300 to 700 active cases of TB resulting from these infections, and 23 to 54 deaths resulting from these active cases. OSHA preliminarily concludes that the proposed standard for TB will significantly reduce the risk of infection, active disease and death from exposure to TB and that the Agency is thus carrying out the Congressional intent and is not attempting to reduce insignificant risks.

Although the current OSHA enforcement program, which is based on the General Duty Clause of the Act, Section 5(a)(1), and the application of some general industry standards, such as 29 CFR 1910.134, Respiratory Protection, has reduced the risks of occupational exposure to tuberculosis to some extent, significant risks remain and it is the Agency's opinion that an occupational health standard promulgated under section 6(b) of the Act will much more effectively reduce these risks for the following reasons. First, because of the standard's specificity, employers and employees are given more guidance in reducing exposure to tuberculosis. Second, it is well known that a standard is more protective of employee health than an enforcement program based upon the general duty clause and general standards. Unlike the proposed standard, the general duty clause specifies no abatement methods and the general industry standards do not set forth abatement methods specifically addressing occupational exposure to TB. Third, the general duty clause imposes heavy litigation burdens on OSHA because the Agency must prove that a hazard exists at a particular workplace and that it is recognized by the industry or the cited employer. Since the proposed standard specifies both the conditions that trigger the application of the standard and the employer's abatement obligations, thereby establishing the existence of the hazard, no independent proof that the hazard exists in the particular workplace need be presented. The reduction in litigation burdens will mean that the Labor Department, as well as the employer, will save time and money in the investigation and litigation of occupational TB cases. Finally, the promulgation of this proposed standard will result in increased protection for employees in state-plan states which, although not required to adopt general duty clauses, must adopt standards at least as effective as Federal OSHA standard.

In summary, the institution of the enforcement guidelines has been fruitful, but it has not eliminated significant risks among occupationally exposed employees. Therefore, OSHA preliminarily concludes that a standard specifically addressing the risks of tuberculosis is necessary to further substantially reduce significant risk. OSHA's preliminary economic analysis and regulatory flexibility analysis indicate that the proposed standard is both technologically and economically feasible. OSHA's analysis of the technological and economic feasibility is discussed in the following section of the preamble.

VII. Summary of the Preliminary Economic Analysis and Regulatory Flexibility Analysis

OSHA is required by the Occupational Safety and Health Act of 1970 and several court cases pertaining to that Act to ensure that its rules are technologically and economically feasible for firms in the affected industries. Executive Order (EO) 12866 and the Regulatory Flexibility Act (as amended) also require Federal agencies to estimate the costs, assess the benefits, and analyze the impacts on the regulated community of the regulations they propose. The EO additionally requires agencies to explain the need for the rule and examine regulatory and non-regulatory alternatives that might achieve the objectives of the rule. The Regulatory Flexibility Act requires agencies to determine whether the proposed rule will have a significant economic impact on a substantial number of small entities, including small businesses and small government entities and jurisdictions. For proposed rules with such impacts, the agency must prepare an Initial Regulatory Flexibility Analysis that identifies those impacts and evaluates alternatives that will minimize such impacts on small entities. OSHA finds that the proposed rule is "significant" under Executive Order 12866 and "major" under Section 804(2) of the Small Business Regulatory Enforcement Fairness Act of 1996. Accordingly, the Occupational Safety and Health Administration (OSHA) has prepared this Preliminary Economic and Regulatory Flexibility Analysis (PERFA) to support the Agency's proposed standard for occupational exposure to tuberculosis (TB). The following is an executive summary of that analysis. The entire test of the PERFA can be found in the rulemaking docket as Exhibit 13.

The complete PERFA is composed of various chapters that describe in detail the information summarized in the following section.

Statement of Need

TB is a communicable, potentially lethal disease caused by the inhalation of droplet nuclei containing the bacillus *Mycobacterium tuberculosis* (*M. tuberculosis*). Persons exposed to these bacteria can respond in different ways: by overcoming the challenge without developing TB, by becoming infected with TB, or by developing active TB disease. Those who become infected harbor the infection for life, and have a 10 percent chance of having their infection progress to active disease at some point in their life. Those with active disease have the signs and symptoms of TB (e.g., prolonged, productive cough; fatigue; night sweats; weight loss) and have about an 8 percent risk of dying from their disease.

TB has been a worldwide health problem for centuries, causing millions of deaths worldwide. In the United States, however, there has been a decline in the number of active TB cases over the last four decades. Between 1953 and 1994, the number of active cases declined from 83,304 to 24,361, an annual rate of decline of 3.6 percent over the period as a whole (Figure VII–1). The 1988–1992 period, however, saw the first substantial increase in the number of active cases since 1953. A number of outbreaks of this disease have occurred among workers in health care settings, as well as other work settings, in recent years. To add to the seriousness of the problem, some of these outbreaks have involved the transmission of multi-drug resistant strains of *M. tuberculosis*, which are often fatal. Very recently, i.e., after 1992, this trend has reversed, and the number of such cases appears once again to have begun to decline. Nevertheless, TB remains a major health problem, with 22,813 active cases reported in 1995. Because active TB is endemic in many U.S. populations—including groups in both urban and rural areas—workers who come into contact with diseased individuals are at risk of contracting the disease themselves.

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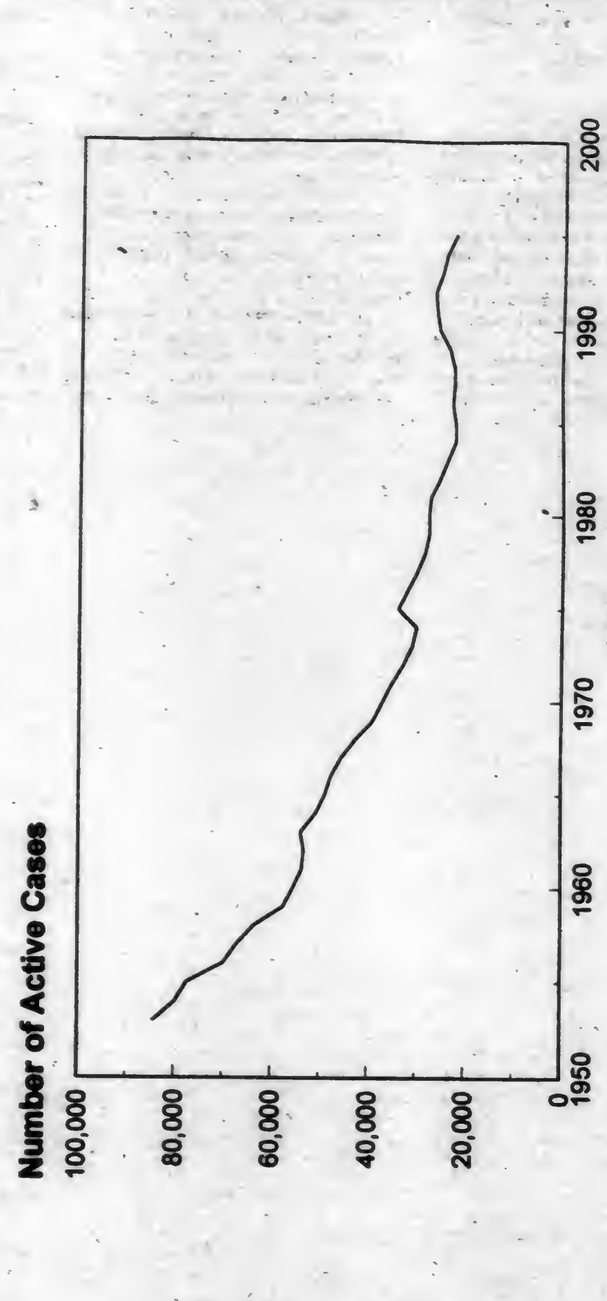


Figure VII-1. Cases of Tuberculosis by Year (1953-1995)

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Many occupational groups, including workers in health care, nursing homes, homeless shelters, hospices, correctional facilities, laboratories, physicians' offices, and other settings are at risk of contracting TB on the job. These workers are at risk because they are exposed in the course of their work to patients and others with active TB disease, perform procedures that expose them to airborne concentrations of *M. tuberculosis*, or serve client populations where the incidence of active disease is unusually high.

The purpose of OSHA's standard is to reduce these risks in health care and other work settings where active TB cases are likely to be encountered by employees. To accomplish this goal, the proposed standard requires those employers who are responsible for the working conditions where such encounters occur to implement a program of infection prevention and infection control that is designed to prevent occupational infections in the first place, and to identify and treat any job-related infections that do occur. The approach taken in the proposed standard is similar to that adopted by OSHA in its 1991 bloodborne pathogens standard, which is given credit for achieving a dramatic reduction in the number of cases of hepatitis among health care and other workers since it was issued. OSHA predicts that, once implemented, the proposed TB standard will have similar results, achieving reductions on the order of 70 to 90 percent in the number of TB infections, active cases, and directly related deaths.

This Preliminary Economic and Regulatory Flexibility Analysis includes an introductory chapter that describes the major provisions of the standard. The proposal would apply to occupational exposure to TB occurring in, during, or through the provision of services by:

- Hospitals.
- Nursing homes.
- Correctional facilities.
- Immigration detainment facilities.
- Law enforcement facilities.
- Hospices.
- Substance abuse treatment centers.
- Homeless shelters.
- Medical examiners' offices.
- Home health care providers.
- Emergency medical services.
- Research and clinical laboratories handling TB.
- Contract work on ventilation systems or areas of buildings that may contain aerosolized *M. tuberculosis*.
- Physicians performing certain high hazard procedures.
- Social service workers providing services to individuals identified as having suspected or confirmed infectious TB.
- Personnel service agencies when providing workers to covered facilities.
- Attorneys visiting known or suspected infectious TB patients.

The groups, industries, and work settings covered by the standard have been included in its scope for specific reasons. For example, hospitals are included because they treat patients with active TB disease, while hospices, certain laboratories, pulmonary and certain other physicians, medical examiners, and contract HVAC workers are covered because employees in these settings/jobs are exposed to aerosolized *M. tuberculosis* during the performance of high-hazard procedures, such as bronchoscopies, sputum induction, autopsies, and during work on ventilation systems that may contain TB bacteria. Other work settings, such as homeless shelters and nursing homes, are covered because their employees serve a client population known to have a high incidence of TB infection. Another group of employees included within the scope of the standard are workers who must occasionally serve patients with active TB who are being treated in "isolation," i.e., a room or area specifically designed to contain the TB microorganism and prevent its spread to surrounding areas. Attorneys and social workers are typical of this group. Finally, the proposed standard covers personnel service agencies that provide temporary, seasonal, or "leased" personnel to hospitals and other covered work settings.

OSHA estimates that the standard would apply to approximately 102,000 establishments and provide protection to more than 5 million workers currently at risk of occupational exposure to TB. More than half of these workers—almost 4 million—work in the two industries most affected by the standard: hospitals and nursing homes. Other covered industries with large numbers of workers are home health care, emergency medical services, and correctional institutions.

Table VII–1 shows the number of affected establishments and the population at risk for each covered industry. (Table VII–1 does not include all sectors that might hypothetically be covered by the standard. For example, a chiropractor who engaged in high hazard procedures would be covered by the standard. However, this possibility is sufficiently rare for this activity not to have been included in this analysis. OSHA solicits comments on any affected job categories or industries it may have omitted.) Because the standard requires employers in the covered industries to make an initial determination that will identify which job classifications, employees, and activities within their workplace involve occupational exposure to TB, its requirements are narrowly targeted to those workers most at risk. Thus, for example, only approximately 57 percent of hospital workers are potentially affected by the standard; these workers would include those working on infectious disease floors or wards, radiology units, autopsy suites, and in other, similarly exposed locations.

TABLE VII–1.—NUMBER OF AFFECTED ESTABLISHMENTS AND POPULATION AT RISK, BY INDUSTRY

Industry	Number of affected establishments	Population at risk
Hospitals	5,749	2,663,996
Nursing Homes	20,254	1,200,034
Correctional Institutions	2,079	268,432
Immigration Detainment	12	990
Law Enforcement	4,950	27,469
Hospices	1,755	17,250
Homeless Shelters	10,450	85,168
Substance Abuse Treatment Centers	9,730	120,115
Medical Examiners	100	2,000
Home Health Care	10,921	418,538
Emergency Medical Services	5,099	255,200
Laboratories	851	11,108
Contract HVAC	300	2,500
Social Services	2,342	20,000
Physicians	21,698	43,395
Pulmonary Physicians	1,853	3,705
Personnel Services	1,426	161,608
Attorneys	2,306	4,611
Total	101,875	5,306,119

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Technological Feasibility

Chapter III of the analysis evaluates the technological feasibility of the proposed standard for affected establishments. OSHA preliminarily concludes that no provisions of the rule pose technological feasibility problems for any potentially affected entities. This is the case because the standard emphasizes administrative controls, such as the early identification of suspected or confirmed cases of TB and employee information and training, rather than engineering controls. In

addition, the engineering controls that are required, such as AFB isolation rooms, biological safety cabinets, and temporary AFB isolation facilities, would be mandated only in those situations where individuals with suspected or confirmed infectious TB are admitted and isolated, where high hazard procedures are performed, and in situations where individuals cannot be placed into AFB isolation rooms within five hours of being identified as having suspected or confirmed infectious TB. All of the engineering controls required by the standard are currently available and in widespread use in many affected establishments.

Benefits of the Proposed Standard

Workers employed in the work settings covered by the standard are at significant risk of material impairment of health as a result of exposure to *M. tuberculosis* on the job. These workers will be the primary beneficiaries of the protection provided by the rule. However, because TB is a communicable disease, many other individuals will also benefit from the standard. Reducing the number of cases of TB among workers who are regularly in contact both with patients and infected members of client populations will reduce the incidence of TB infections and active cases in these client populations (since infected individuals spend the most time with other members of their group) and among members of the families of exposed workers. OSHA has expressed the benefits of the standard in terms of the numbers of TB infections, active cases, and TB-related deaths averted by the standard. In addition to reducing morbidity and mortality among workers, their families, and client populations, the standard will also generate readily quantifiable cost savings in the form of lower medical costs, less lost production, and reduced costs for administering workers' compensation claims and other private and social insurance system transactions.

OSHA's estimates of the potential benefits of the standard take into account the extent of current industry compliance with the provisions of the proposed standard, i.e., the benefits estimates do not include the benefits that employers in affected sectors are already garnering as a result of their voluntary efforts to provide protections to their TB-exposed employees. The benefits assessment presented in Chapter IV of the economic analysis is based on OSHA's Preliminary Risk Assessment (see that section of the preamble), which quantifies the occupational risk of TB infection among workers in hospitals, nursing homes, home health care work settings, and home care work settings. The estimates of risk are based on the rate of tuberculin skin test (TST) conversions among these populations. TST conversions are a widely used and well-documented index of TB infection; rates of conversion among the exposed populations are then compared with rates in unexposed or less-exposed "control" populations to obtain an estimate of the "excess" risk associated with occupational exposure. Table VII–2 shows the results of OSHA's estimates of the risks confronting workers in various work settings, based on statistical analyses and studies in the literature.

TABLE VII–2.—ESTIMATES OF OCCUPATIONAL RISK CONFRONTING WORKERS IN VARIOUS SETTINGS

Setting	Location and date	Excess risk (percent)	Estimated annual excess rate of TB infection per 1,000 workers
Hospital	North Carolina Western Region—1984–1985	398	5.7
Hospital	Washington State—1994	47	.68
Hospital	Jackson Memorial Hospital, Miami, Florida—1991	795	11.8
Nursing Homes	Washington State—1994	1019	14.6
Home Health Care	Washington State—1994	478	6.9
Home Care	Washington State—1994	112	1.6

Source: OSHA, Preliminary Assessment of Risk.

Where risk data of good quality were available for a specific industry, OSHA relied on that data. However, such data were available only for the hospital, nursing home, home health care, and home care industries. Accordingly, OSHA identified the best data to use to characterize the occupational risk of TB infection posed to workers in the other work settings covered by the proposed rule. After a careful review of the available data, OSHA chose to rely on data from western North Carolina that looked at occupational risk in a total of eight hospitals. These data were selected because they derived from hospitals that were relatively "uncontrolled," i.e., that had not yet implemented many of the controls that would be required by the proposed standard. Data from the other hospitals shown in Table VII–2 were judged to be less appropriate for the purpose of extrapolation because Washington State hospitals are already generally in compliance with the requirements of the proposed rule and Jackson Memorial Hospital had recently experienced an outbreak of multi-drug resistant TB among its patients at the time the risk data were gathered. OSHA believes that using occupational risk data from hospitals to characterize the risk in other occupational settings for which risk data are unavailable is appropriate because employees in these other settings serve client populations that have a high incidence of active TB cases, perform high-hazard procedures, or visit hospitalized TB patients. The use of a hospital-based risk estimate results in a lower estimate of risk than would be the case if OSHA had used risk data from nursing homes or home health care to characterize the risk in other settings, but a higher risk than if OSHA had used risk data from the home care industry to do so.

To predict the effectiveness of the proposed standard, OSHA evaluated the reduction in occupational risk that various control measures required by the standard can be expected to achieve. Effectiveness is measured as the percent reduction in TST conversions and in the TB infections, active cases, and deaths represented by those conversions. Based on a thorough review of the available literature on the effectiveness of control programs that have actually been implemented in a number of hospitals, OSHA believes that the proposed standard, once implemented, would

reduce TB infections among occupationally exposed hospital workers by 90 percent, and would decrease such infections in the other work settings covered by the standard by 70 to 90 percent. OSHA also estimated the effectiveness and medical surveillance and follow-up in preventing infections from advancing to active cases of TB. OSHA found that such measures reduced the probability of an infection advancing to an active case by 35 to 47 percent, depending on the frequency of testing.

Using these effectiveness data, taking account of the current levels of compliance in various workplaces, and relying on the estimates of excess risk presented in OSHA's Preliminary Risk Assessment, OSHA predicts that the proposed standard will avert about 21,000 to 26,000 work-related TB infections per year, 1,500 to 1,750 active disease cases resulting directly from these infections, and 115 to 136 deaths directly related to the same infections. Preventing this number of infections among workers will, in turn, prevent about 3,000 to 7,000 infections, 300 to 700 active cases, and 23 to 54 deaths among the families, friends, clients, and contacts of these workers. In addition, the standard will annually generate cost savings of $89 to $116 million dollars in avoided medical costs, lost production caused by absence from work and other factors, and insurance administration costs. Table VII–3 shows the benefits of the proposed standard.

TABLE VII–3.—SUMMARY OF BENEFITS ASSOCIATED WITH THE PROPOSED STANDARD

Type of benefit	Work-related	Transmissions from work-related sources	Total number averted
Infections Avoided	21,380–25,769	2,954–6,978	24,334–32,747.
Active Cases Avoided	1,477–1,744	295–698	1,772–2,442.
Deaths Avoided	115–136	23–54	138–190.
Cost Savings	$80,721,000–$95,393,000	$8,614,000–$20,381,000	$89,335,000–$115,774,000.

Source: Office of Regulatory Analysis, OSHA, DOL.

Chapter V of the economic analysis projects the costs employers in the various industries covered by the standard are estimated to incur to achieve compliance with the rule's requirements. OSHA estimated costs for each covered industry and for each provision of the standard. These costs take account of the baseline levels of compliance prevailing in each industry at the present time and are presented as annualized costs discounted at 7 percent. Annualized costs are the sum of annualized initial costs and recurring annual costs. For example, a temporary AFB isolation room costing $4,095 with annual maintenance costs of $50 would have annualized costs of $633 ($583 + $50).

The total estimated costs of compliance for the standard as a whole are $245 million per year. The most costly provisions of the standard are those requiring medical surveillance and training for occupationally exposed employees. Together, these two provisions account for 60 percent of the costs of compliance. The two industries projected to incur the highest costs are hospitals and nursing homes. Together, the costs incurred by these two industries are estimated to be $138 million per year. Tables VII–4 and VII–5 summarize the annualized costs of compliance, by provision and industry, respectively.

TABLE VII–4.—TOTAL ANNUALIZED COSTS, BY PROVISION

Provision	Total annualized cost
Exposure Control	$12,858,183
Work Practice Controls	9,740,559
Transfers	9,740,559
Engineering Controls	22,529,248
AFB Isolation Rooms	7,547,912
Temporary AFB Isolation	10,792,678
Laboratories	780,270
Autopsies	2,903,077
Daily Testing of Negative Pressure	505,310
Respiratory Protection	45,771,276
Respirators	32,225,228
Respirator Program	1,670,677
Fit Testing	8,905,821
Evaluation of Program	2,969,549
Medical Surveillance	94,901,455
Medical History/Physical Exam	62,974,255
Tuberculin Skin Testing (TST)	21,907,252
Medical Management/Follow-up	4,773,377
Medical Removal	5,246,570
Communication of Hazards	52,268,172
Signs and Labels	58,284
Training	52,209,888
Recordkeeping	7,228,533
Engineering Control Maintenance	20,052
Medical	6,785,014
Training	423,467

TABLE VII–4.—TOTAL ANNUALIZED COSTS, BY PROVISION—Continued

Provision	Total annualized cost
Total	245,297,426

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE VII–5.—SUMMARY OF COMPLIANCE COSTS, BY INDUSTRY

Provision	Total annualized cost
Hospitals	$61,819,637
Nursing Homes	76,500,314
Correctional Institutions	20,187,666
Immigration Detainment	145,378
Law Enforcement	6,708,174
Hospices	2,237,959
Homeless Shelters	11,287,278
Substance Abuse Treatment Centers	12,751,545
Medical Examiners	557,811
Home Health Care	16,448,605
Emergency Medical Services	4,981,780
Laboratories	1,696,383
Contract HVAC	396,197
Social Services	3,063,444
Physicians	5,663,949
Pulmonary Physicians	930,775
Personnel Services	18,363,135
Attorneys	1,557,398
Total	245,297,426

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Chapter VI assesses the economic impacts of the proposed standard on the industries affected by the proposed standard and also analyzes the impacts on the small businesses within each of these industries. OSHA preliminarily concludes that the standard is economically feasible for affected firms. On average, annualized compliance costs for all entities amount only to 0.06 percent of revenues and only 1.8 percent of profits. For all industries, costs as a percentage of revenues are less than 1 percent. For two industries, costs as a percentage of profits exceed 5 percent; these industries are substance abuse treatment centers and personnel services. OSHA does not believe, however, that these profit impacts will actually be incurred by facilities in these two sectors. Only 18.5 percent of substance abuse treatment centers operate on a for-profit basis. If substance abuse treatment centers can increase their revenues by as little as 0.34 percent, they can completely offset their compliance costs. The revenue increases or reductions in services needed to achieve cost passthrough are not expected to represent significant impacts for these facilities. The situation for personnel service firms is similar; these firms would have to increase the prices charged to their customers by as little as 0.56 percent to completely offset the costs of compliance. It is likely that these agencies will be able to pass such a small increase in costs through to their customers, i.e., to facilities purchasing personnel services. Table VII–6 shows compliance costs as a percentage of revenues, by industry.

TABLE VII–6.—SCREENING ANALYSIS TO IDENTIFY POTENTIAL ECONOMIC IMPACTS ON AFFECTED ENTITIES

Industry	Number of affected establishments	Percent of for-profit establishments in industry	Cost as a percentage of revenues
Hospitals	5,749	15.5	0.02
Nursing Homes	20,254	71.4	0.16
Correctional Institutions	2,079	0.0	0.10
Immigration Detainment	12	0.0	0.16
Law Enforcement	4,950	0.0	0.03
Hospices	1,755	12.0	0.09
Homeless Shelters	10,450	0.0	0.64
Substance Abuse Treatment Centers	9,730	18.5	0.34
Medical Examiners	100	0.0	0.28
Home Health Care	10,921	40.6	0.11
Emergency Medical Services	5,099	14.5	0.11

TABLE VII–6.—SCREENING ANALYSIS TO IDENTIFY POTENTIAL ECONOMIC IMPACTS ON AFFECTED ENTITIES—Continued

Industry	Number of affected establishments	Percent of for-profit establishments in industry	Cost as a percentage of revenues
Laboratories	851	100.0	0.13
Contract HVAC	300	100.0	0.17
Social Services	2,342	0.0	0.27
Physicians	21,698	95.0	0.03
Pulmonary Physicians	1,853	95.0	0.06
Personnel Services	1,426	100.0	0.56
Attorneys	2,306	89.8	0.10
Total	101,875	48.7	0.06

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

OSHA has preliminarily concluded that the proposed standard will have a significant impact on a substantial number of small entities and has therefore, as required by the Regulatory Flexibility Act Amendments of 1996, conducted an Initial Regulatory Flexibility Analysis (IRFA). This analysis has identified significant impacts on the small entity portion of the hospital, nursing home, correctional institution, homeless shelter, substance abuse treatment center, contract HVAC, and personnel services industries.

For the purposes of this analysis, OSHA defines small for-profit entities using the Small Business Administration's (SBA's) Table of Size Standards. For businesses affected by the proposed standard, the SBA classifies entities with annual revenues of less than $5 million as small for all industries, with the exception of contract HVAC firms, for which entities with less than $7 million in annual revenues are classified as small.

A small not-for-profit entity is defined as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. Based on this definition, all not-for-profit entities affected by the proposed standard are considered small.

Many of the affected industries consist almost entirely of public sector facilities, such as correctional facilities, immigration detainment facilities, law enforcement facilities, medical examiners' offices, and social service organizations. Several other affected industries include some government-owned facilities, such as hospitals, nursing homes, and emergency medical services. Under the Regulatory Flexibility Act, "small governmental jurisdiction" refers to governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. For most of the affected industries, information on the number of such entities was not readily available. Where data were unavailable, the number of small publicly-owned entities was estimated based on the average number of people served per employee in each industry, from which OSHA estimated the average employment size of establishments serving populations of less than 50,000. These entities are considered small for the purposes of this analysis. OSHA requests information on size standards for public-sector entities.

OSHA requests comment on these definitions and estimates of the number of small entities. The complete IRFA is presented in Chapter VI of the economic analysis, and is also presented here.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996, requires that an Initial Regulatory Flexibility Analysis contain the following elements:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

In addition, a regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes (in this case the OSH Act) and that minimize any significant economic impact of the proposed rule on small entities.[3] This section of the analysis closes with a review of the recommendations of the SBREFA Panel concerning this proposed rule and discusses how OSHA has responded to these recommendations.

Reasons for the Proposed Rule

From 1985 to 1994, the number of active TB cases in the United States increased by 9.4 percent, reversing a 30-year downward trend. Although the number of cases reported to the CDC has declined over the past few years, TB remains a serious problem in the United States. In 1994, 24,361 active TB cases were reported to the Centers for Disease Control and Prevention (CDC), and TB was reported to have caused 1,590 deaths in that year alone (Ex. 7–283).

Transmission of *M. tuberculosis* is a recognized risk in several work settings. A number of outbreaks of this dreaded disease have occurred among workers in health care settings, as well as other work settings, in recent years. To add to the seriousness of the problem, some of these outbreaks have involved the transmission of multidrug-resistant strains of *M. tuberculosis*, a form of the disease that is often fatal.

Objectives of the Proposed Rule

The objective of this proposal is to reduce the risk of occupational exposure to *M. tuberculosis* in exposed working populations through the use of engineering controls, work practice controls, respiratory protection, medical

[3] The Regulatory Flexibility Act states that a Regulatory Flexibility Analysis need not contain all of the above elements *in toto* if these elements are presented elsewhere in the documentation and analysis of the rule. The Regulatory Flexibility Analysis should, however, summarize where these elements can be found elsewhere in the rulemaking record.

surveillance, training, signs and labels, and recordkeeping. Implementation of these measures has been shown to minimize or eliminate occupational exposure to *M. tuberculosis*, and thus to reduce the risk of TB infection among workers. The legal authority for this proposed standard is the Occupational Safety and Health Act, 29 U.S.C. 655(b).

Description of the Number of Small Entities

The proposed rule would cover 80,400 establishments operated by 67,116 small entities, as defined above. Of the 67,116 small entities, about 49 percent (32,605 entities) are for-profit small entities, 20 percent (13,622 entities) are publicly-owned, and 31 percent (20,889 entities) are not-for-profit. About 79 percent of the total number of affected establishments are operated by small entities. The proposed rule covers 48,804 establishments operated by 48,044 very small entities, defined as entities of all kinds employing fewer than 20 workers. Almost 48 percent of the affected establishments are operated by very small entities.

Description of Proposed Reporting, Recordkeeping and Other Compliance Requirements

Avoiding a One-Size-Fits-All Standard. Occupational TB occurs in a wide variety of settings, which means that the risk varies substantially, and control measures differ, from one facility to another. OSHA's proposed TB standard has been tailored to recognize these differences. With respect to the background risk of exposure, the OSHA standard distinguishes between work settings in counties that have had no cases of TB in one of the past two years and fewer than 6 cases in the other of the past two years, work settings in counties with one or more cases of TB in both of the past two years or that have had 6 or more cases of TB in one of the past two years, and work settings that have encountered 6 or more cases of TB in the past 12 months. In addition, the OSHA standard treats different types of exposure to TB differently. For example, the standard has different requirements for employers who own facilities that treat TB patients, employers whose client populations have high TB rates, employers whose employees (such as attorneys and social service providers) visit patients who have been identified as having suspected or confirmed cases of TB, employers whose employees engage in various high hazard procedures, employers whose employees provide maintenance for ventilation systems serving confirmed or suspected TB patients, and employers who provide personnel to treat patients in their own homes. In part because of these many distinctions, the SBREFA Panel found that the regulation was difficult for many employers to understand (Ex. 12). To make the tailoring of the standard to specific situations easier to see, OSHA has developed tables showing which provisions of the standard are most likely to apply to employers in different circumstances and in various affected sectors (see the Scope paragraph discussion in Section X of the Preamble, "Summary and Explanation"). In addition, OSHA intends to provide extensive outreach when the standard is published in final form. OSHA solicits comments on other ways to avoid a "one-size-fits-all" standard while at the same time making the standard easier to follow. For example, would developing a flow chart and/or expert system that asks employers a series of questions and then directs employers to applicable requirements be an aid to affected small entities?

Description of the Proposed Standard. The proposed rule would require that employers develop and implement exposure control plans; institute work practice and engineering controls; provide respiratory protection in various situations; provide medical surveillance (e.g., tuberculin skin testing, medical histories, medical management, medical follow-up, medical removal); and communicate hazards through the use of signs, labels, and training. These proposed requirements are discussed in greater detail in the Introduction (Chapter I) of this analysis.

The proposed standard would also require that employers establish and maintain medical, training, illness/injury, and engineering control maintenance and performance monitoring records. All establishments affected by the proposed rule would be affected by these proposed requirements. However, only establishments with engineering controls would be required to maintain records of the maintenance and monitoring of engineering controls.

In estimating the cost of establishing and maintaining medical records, OSHA used the wage rate of a clerical worker with some knowledge of medical recordkeeping as the base wage. However, the knowledge required to perform such duties can be acquired by most clerical workers with little effort. All recordkeeping requirements included in the proposed rule could therefore be performed by the existing staff in any of the covered industries. A detailed description of the proposed requirements appears in the Introduction and in the Costs of Compliance chapters of this analysis.

Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

On October 28, 1994, the Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services published "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Facilities," which recommends that facilities adopt many of the requirements included in this proposed standard. CDC has also published guidelines for the prevention of transmission of TB in homeless shelters, long-term care facilities for the elderly, and correctional institutions. OSHA has consulted with CDC in developing the proposed standard, and the basic elements of the standard correspond to the basic elements in the CDC guidelines. However, the CDC publication is only recommendatory and is therefore not enforceable. OSHA's studies (see chapters IV and V) show that few facilities are following all elements of these guidelines. Further, many portions of the CDC guidelines are written in language that does not lend itself to enforcement even if the guidelines were made mandatory. For example, portions of the CDC guidelines for health care facilities suggest that the employer "consider" adopting certain controls. A fuller discussion of the similarities and differences between OSHA's proposed rule and the CDC's recommendations is provided in Section III of the Preamble, which describes the events leading to the proposed standard. Although the U.S. Public Health Service has overall responsibility for the control of TB in the U.S. population, OSHA is the only agency specifically mandated to address the problem of TB transmission in occupational settings.

The Health Care Financing Administration (HCFA) of the U.S. Department of Health and Human Services requires that facilities undergo an initial accreditation inspection prior to receiving Medicare and Medicaid funding. Such facilities include hospitals, nursing homes and other long-term care facilities, and clinical laboratories. Hospitals are reinspected annually, nursing homes every 15 months, and laboratories every two years. One of the requirements of such accreditation is the implementation of an infection control program. However, unlike the OSHA proposed rule, HCFA's requirements do not specify the elements that must be included in such a program. HCFA may cite facilities with poor results for specific program deficiencies but does not have the authority to cite facilities for failing to include specific elements in their infection control programs, unless those program elements are specifically required by an OSHA standard. This means that in the absence of an OSHA TB standard, HCFA could not require implementation of specific controls. The proposed rule does not in any way conflict with HCFA requirements. Further, the existing HCFA requirements have not ensured that health care facilities adopt the elements of an effective infection control and have not prevented outbreaks of TB in this workforce.

One small entity representative to the SBREFA Panel suggested that the OSHA regulation might conflict with state and local requirements for skin testing and for tracing contacts of active cases of TB (Ex. 12). OSHA has considered this suggestion and believes there is no conflict. Some states do have rules covering TB testing and contact tracing, but most states do not. In 1993, only 18 states had requirements for TB screening of employees in medical facilities, and only 23 states had testing requirements for nursing home employees. Further, these requirements are sometimes not as stringent as those OSHA is proposing; for example, some states require only an initial skin test. Although 49 states require the investigation of reported cases of TB, only 29 states require contact tracing by health departments. In states where local health departments provide contact tracing, such contact tracing would constitute compliance with OSHA's requirements for contact tracing by employers. Employers merely need to assure that contact tracing takes place; they need not do the contact tracing themselves if others are available to do this job for them. Thus, there is no conflict between the OSHA standard and existing state requirements, nor do existing state laws obviate the need for a standard that requires TB testing of exposed employees and the investigation of reported TB exposures. However, OSHA solicits comment on the interaction of state rules regarding testing and tracing and the proposed standard.

One small entity representative was concerned with how medical removal protection and worker compensation programs would interact (Ex. 12). Medical removal protection requires that workers receive full salaries, full benefits, and no loss of job position or seniority while the employee is unable to work, or unable to work at his/her usual position, as a result of incurring an occupational case of TB. The purpose of medical removal protection is to assure that workers provide timely and accurate information to their employers concerning their medical symptoms. In the absence of medical removal protection, workers have financial and job security incentives to avoid reporting symptoms. OSHA counts any payments workers receive from workers' compensation toward the goal of assuring medical removal protection; that is, employers may deduct from the amount they pay out to the worker any monies paid to the ill worker by workers' compensation. Workers' compensation is not an adequate substitute for medical removal protection because workers' compensation does not fully replace lost wages and provides no guarantee of maintenance of seniority, job security, current position, or non-wage benefits. Medical removal protection requires the employer to provide any of these elements that are not a part of workers' compensation. Thus, the employer of a worker already receiving workers' compensation would need to provide an additional salary increment in order to restore the employee's full salary and would need to provide the worker his or her full non-wage benefits.

One small entity representative expressed concern over a possible conflict between the proposed rule and Federal Confidentiality Regulations covering chemically abusive or dependent clients participating in licensed and federally-funded programs [Ex. 12]. These regulations prohibit disclosing information regarding the identification of a patient as a substance abuser without the patient's consent. This representative noted that, without patient consent, a disclosure may be made only to medical personnel to meet a situation that has been declared a medical emergency by the Surgeon General. This small entity representative was referring to Public Health regulations: Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR 2, and a similar state statute: Confidentiality of Records, Minnesota Statute 254A.09. Both the Federal Confidentiality Regulations and the state statute cover records that would identify a patient as an alcoholic or drug abuser or concern his or her prognosis, diagnosis, treatment, attendance, status or physical whereabouts. No requirements of the standard would require the disclosure of records of this kind. These are not the kinds of records that are relevant to determining whether an individual has suspect or confirmed infectious TB. In addition, a medical referral for the client who is exhibiting signs and symptoms of TB can be made without revealing any of the prohibited confidential information. Moreover, in the case of an exposure incident, the identity of the individual with suspected or confirmed infectious TB need not be told to employees. Records maintained by employers on their employees are not covered by the regulations or statute, but would be subject to the same confidentiality requirements that govern all medical records. The identification and notification requirements in the proposed TB standard are the minimum necessary to prevent transmission of TB to employees. The contagious nature of the disease mandates early detection and early monitoring of individuals who have had an exposure incident.

One small entity representative to the SBREFA Panel expressed concern over possible interactions between the proposed standard and the Family and Medical Leave Act (FMLA) (Ex. 12). The Family and Medical Leave Act does not provide for leave with pay, and does not guarantee the continuation of any benefits other than health insurance. Further, the Family and Medical Leave Act covers a more limited timeframe (12 weeks) than the proposed standard's medical removal protection provisions (18 months). Thus, the only overlap between the proposed standard and the FMLA would occur in the area of health insurance benefits in the first 12 weeks of the worker's absence from work. Since the standard would specifically allow the employer to deduct from medical removal protection benefits any benefits paid to the worker from other sources, employers would not pay for the same benefits twice.

One small entity representative felt that the Americans with Disabilities Act (ADA) may offer protection to the "worker who becomes ill as a result of an occupational exposure or who cannot work because of an inability to wear a PR [respirator]." (Ex. 12) The ADA prohibits employers of 15 or more employees from discriminating, because of the disability, against a qualified individual with a disability with regard to terms, conditions and privileges of employment. An employer must provide reasonable accommodation for known physical or mental limitations for a qualified individual with a disability, unless accommodation can be shown to impose undue hardship on the employer. OSHA representatives noted that there is no conflict between an OSHA standard and the ADA requirements prohibiting discrimination. The ADA says that:

Nothing in this Act shall be construed to invalidate or limit the remedies, rights and procedures of any Federal law * * * that provides greater or equal protection for the rights of individuals with disabilities that are afforded by this Act. 42 U.S.C.A. 12201(b).

Further, the ADA would not provide the same protections as medical removal protection. In order for an employee to take advantage of the provisions of the ADA, certain conditions must be met. For example, the employee must work for a covered employer and be a qualified individual with a disability, i.e., one who can perform his or her job with or without reasonable accommodation. Thus, while the ADA may offer some protection to an employee who has or is suspected of having infectious TB or who cannot work because he or she cannot wear a respirator, the protection proposed to be provided by the OSHA standard for TB is more comprehensive and will lead to greater participation in the entire medical surveillance program. The OSHA proposed standard, in paragraph (g)(5)(ii), would provide to the employee with suspected or confirmed infectious TB:

* * * his or her total normal earnings, seniority, and all other employee rights and benefits, including the employee's right to his or her former job status * * * until the employee is determined to be noninfectious or for a maximum of 18 months, whichever comes first.

For each employee who must be removed for his or her job because he or she cannot wear a respirator (paragraph (g)(5)(iii)), the employer is required to:

transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the use of respiratory protection is not required [and] * * * maintain the total normal earnings, seniority, and all other employee rights and benefits. If there is no such work available, the employer shall maintain the employee's total normal earnings, seniority, and all other employee rights and benefits until such work becomes available or for a maximum of 18 months, whichever comes first.

OSHA's MRP provisions provide each employee, who must be medically removed, with the level of protection that is needed to assure that the employee promptly reports his or her symptoms of TB (which makes the workplace safer for all employees) and reports his or her difficulty with wearing a respirator (which makes the workplace safer for that employee).

Significant Alternatives to the Rule Considered by OSHA

This section first considers alternatives that OSHA was urged to consider by the SBREFA Panel and then turns to other alternatives considered by the Agency.

Alternatives Suggested by SBREFA Panel Members

Small entity representatives and SBREFA Panel members suggested a wide variety of possible clarifications and alternatives to the regulation. In response to these suggestions, OSHA has made a number of changes to the regulation, clarified the meaning of many sections of the rule, provided additional analysis, and added tables to the Preamble designed to clarify the requirements of the rule in various situations. A full discussion of OSHA's responses to all of the SBREFA Panel recommendations is given in the next section. This section only presents alternative approaches to the proposed rule and a discussion of the extent to which OSHA has adopted these alternative approaches. OSHA welcomes comments on these and other alternatives and on ways OSHA could adopt additional aspects of these alternative approaches and still meet the requirements of the OSH Act, particularly that Act's requirement to control significant risk to the extent feasible.

Less Stringent Trigger Mechanisms for the More Burdensome Portions of the Standard, Including Raising the Zero-Case Per County Per Year Trigger

OSHA has re-examined each provision of the proposed standard to ensure that it is necessary and appropriate to reduce risk. In the draft of the proposal reviewed by the Panel, OSHA required that a facility would only be eligible for the reduced TB control program requirements of Appendix A if the facility did not treat TB patients and if there had been no cases of TB in the county or the facility in the previous year. In its review, OSHA found that applying the standard's Appendix A requirements to facilities in counties with no TB cases in one of the last two years and fewer than 6 TB cases in the other of the last two years would not substantially increase the risk to employees in facilities located in such counties. This change from the trigger OSHA originally considered increases the number of counties qualifying for the Appendix A program from 43 percent to 55 percent of all U.S. counties.

Consider Allowing Portability of Training

The draft proposal reviewed by the SBREFA Panel required that all new employees be provided complete training. OSHA has examined its training provisions and decided that the non-site-specific components of training, such as training in the difference between tuberculosis infection and disease, can be transferred between employers without reducing the protection such training affords employees.

Do Not Require Annual Retraining

The draft proposal reviewed by the SBREFA Panel required annual retraining of all employees. OSHA believes that some method of assuring continuing competency is necessary, and that one-time training will not provide such assurance. However, the proposal now would allow employers to develop methods of assuring the competency of their employees, such as asking them questions about procedures, controls, etc., as an alternative to retraining. This change in the regulation will result in cost savings of $20 million per year.

Cooperative Initiatives, Such as Expanding OSHA's Current Cooperative Initiative With JCAHO

Some Panel members felt that cooperative initiatives could substitute for regulation in some areas. As noted above, however, in the absence of an OSHA standard, HCFA (and accrediting associations working with HCFA, such as JCAHO) does not have the authority to enforce specific infection control requirements. As a result, a cooperative initiative alone would leave employees exposed to TB in hospitals, who account for 13 percent of the active cases of TB projected to be prevented by the standard, without any new initiative designed to prevent these active cases of TB. If this approach were extended to nursing homes, and all nursing homes chose to be accredited, then 70 percent of the active cases of TB projected to be prevented by the standard would be denied coverage. Thus, OSHA does not feel that cooperative initiatives, even with accrediting organizations, can substitute for regulation.

Others suggested that OSHA could turn over enforcement of any TB regulation to HCFA, JCAHO or another accrediting or standards organization. In the eyes of its proponents, the suggestion that others could enforce OSHA's regulation has several major advantages. First, it would assure regular and more frequent inspections at health care facilities and nursing homes than OSHA alone could provide. Second, it would require health care facilities and nursing homes to deal only with a single inspection for infection control procedures, rather than

inspections by two different federal agencies. Third, these organizations may have greater penalty powers than OSHA, in that denial of HCFA acceptance or of accreditation can result in a health care facility losing significant funding or even being required to close.

For several reasons, providing exclusive HCFA enforcement of OSHA's TB requirements is an unsound approach. First, OSHA inspectors already inspect health care facilities, just as they inspect any other facility covered by the OSH Act, for possible violations of any OSHA requirement, e.g., safety as well as health requirements. The need for these OSHA inspections would not change even if HCFA or accrediting agencies enforced OSHA's TB requirements. Second, OSHA does not believe that it is legally appropriate under the OSH Act to tell its inspectors that, when they inspect health care facilities, they must ignore violations of the Agency's occupational exposure to TB requirements. Third, OSHA also cannot legally ignore employee complaints relating to occupational exposure to TB. For all of these reasons, OSHA believes that exclusive enforcement of the rule by HCFA or by agencies, such as JCAHO, that are authorized to provide accreditation, is not an appropriate or legally defensible approach.

However, OSHA does favor expanding its cooperative agreements, such as the current agreement with JCAHO, in any ways that both agencies agree would be beneficial, and OSHA is currently pursuing this option. On August 5, 1996, OSHA and JCAHO announced a 3-year partnership to promote health and safety for healthcare workers. This partnership will help health care facilities to meet accreditation expectations and OSHA compliance requirements. The initiatives of this partnership will include cataloging and evaluating duplicative compliance activities; undertaking cross-education and training of JCAHO and OSHA staff on corresponding requirements that relate to the management of worker safety and health; and developing a series of collaborative publications and user education programs.

A Federal-State Government Public Health Partnership to Develop Guidelines in Various Industry Sectors

The CDC is already charged with developing guidelines for the control of TB, and has already issued guidelines for correctional institutions, laboratories, health care facilities, long-term care facilities for the elderly, and homeless shelters. In fact, OSHA has made extensive use of these guidelines in developing its proposed occupational exposure to TB standard. OSHA feels that the CDC guidelines alone have not served adequately to protect TB-exposed workers, however. OSHA research indicates that the CDC guidelines are not being followed in most facilities, and believes that this is the reason that occupational exposure to TB remains such a serious problem in this country. In Chapter VII of the analysis, OSHA shows that these guidelines are not being followed and explains why many employers have little economic incentive to implement these guidelines.

Performance Standards Developed With the Assistance of Federal, State, and Local Government, and Labor and Industry

OSHA feels that its standard is a performance oriented standard that has benefited from both CDC's expertise and from many stakeholder meetings (which include representatives of other federal, state and local government agencies, labor, and industry) and the SBREFA Panel Process.

OSHA's proposed standard is performance oriented in a variety of ways. For example, OSHA does not specify procedures by which facilities must achieve AFB isolation, but instead allows any workable design. Similarly, OSHA sets performance criteria for respirators, but does not specify the types of respirators that must be used. OSHA does specify procedures for identification of suspect cases, but allows any method that assures that persons with the appropriate symptoms are identified as suspect cases. However, OSHA did not consider it appropriate to specify performance in terms of rates of TB cases or TB skin test conversions. Such an approach is not preventive, in that application of proper procedures would only occur after TB infection had occurred. Furthermore, most smaller facilities do not have enough TST conversions for statistically meaningful trends to be established. OSHA requests comments on this issue.

Some proponents of this approach feel that OSHA's proposed standard may not reflect the best ideas for controlling occupational exposure to TB and argue that stakeholder meetings would be a useful way of developing a better approach. OSHA held five stakeholder meetings involving representatives from more than thirty interested organizations. Furthermore, the CDC has made use of the best expertise in the country in developing its guidelines, and OSHA has adopted most elements of these guidelines and will hold public hearings on the standard at which interested parties can present their views. OSHA welcomes comments about alternative approaches to reducing occupational exposure to TB, particularly suggestions concerning more performance oriented approaches, but feels that this proposal is the result of an extensive review of the literature and of input from stakeholders on the available prevention and control methods and should be issued as a proposal at this time to prompt further discussion and exchange of information. OSHA is particularly interested in alternative methods of identifying suspected cases of TB and in whether the proposed requirements would preclude or impede programs that employers have found to be effective.

Separate Approaches for Health and Non-Health Industries The Approach for Health Industries Should Be Keyed to Existing Industry Standards and That for Non-Health Industries to Guidelines

This suggested alternative incorporates several concepts. First, it assumes that the health and non-health care sectors should be given separate treatment because of differences in existing regulations and expertise. OSHA agrees that sectors that differ in relevant ways should be given different treatment, and the standard therefore has provided for different approaches to different sectors. For example, OSHA's standard does treat facilities that treat TB patients differently from the way it treats those that transfer TB patients out of their facilities, and treats employers whose employees are routinely in contact with client populations with high rates of infectious TB (such as homeless shelters and drug abuse treatment centers) differently from employers whose employees only come into contact with infectious TB cases on an occasional basis (such as attorneys and social workers).

Second, this alternative posits that the health care sector is already subject to an extensive regulatory system with respect to occupational exposure to TB. Although some states have laws on contact tracing and skin testing, and HCFA inspects infection control systems in hospitals and long-term care facilities for the elderly, there are no existing enforceable standards aimed specifically at occupational exposure to TB. Thus OSHA's proposed provisions with respect to preventive measures have no equivalent in existing regulations, and only a limited number of states require skin testing of the kind OSHA's proposed standard requires. OSHA (and CDC) believes that these

provisions are essential to any program to control occupational exposure to TB. Third, proponents of this alternative believe that the non-health care sectors, particularly those engaged in charitable work such as homeless shelters, are better approached through guidelines than regulations. OSHA believes that there is relatively little need to develop guidelines for non-healthcare sectors, such as correctional institutions and homeless shelters, because such guidelines already exist and have not been implemented in many, if not most, facilities. Some proponents of this approach believe that the failure of non-health care sectors to implement existing guidelines is due to the absence of outreach and information. OSHA is not substituting a system of regulation for a system of outreach. OSHA intends to continue a program of outreach on occupational TB, and hopes that facilities in all sectors will adopt appropriate policies before the regulation is finalized. However, given that even in the relatively knowledgeable health care sector, implementation of the CDC guidelines has been limited, it is unlikely that outreach alone can assure the full implementation of suitable measures for control of occupational exposure to TB.

Different Levels of Requirements for Different Industries, Depending on Their Expertise, Resources, and Risk

OSHA's proposed standard recognizes three levels of risk and provides separate treatment for employers engaged in different kinds of activities, where those differences are relevant to the purposes of the standard. This subject is discussed in the next sections. Such tailoring, however, must be consistent with the mandate of the Occupational Safety and Health Act to reduce significant risk to the full extent feasible. OSHA has preliminarily found all of the standard's provisions to be technologically and economically feasible, within the meaning of the Act, for facilities in all affected industries. (The special potential problems of homeless shelters and substance abuse treatment centers are discussed further below.) The statutory requirement to eliminate significant risk to the extent feasible means that if inadequate resources and expertise would make any provision of the proposed standard infeasible, then OSHA would have to consider alternative approaches. However, it also means that the resources and expertise that are feasible for an employer to acquire must be employed if they will reduce significant risk.

Separate Standards for Each Affected Industry

Proponents of this alternative had two goals: first, to assure that OSHA gave full consideration to the circumstances of each affected industry, and second, to make the standard easier to follow for affected small entities. With respect to the first goal, OSHA has recognized a wide variety of distinctions in risk of exposure and practice among affected employers. Some of these differences follow industry lines. Accordingly, the proposed standard includes special provisions for laboratories and home health care providers. However, most of the relevant differences among employers do not strictly follow industry lines, and attempts to write separate standards for different industries would not significantly reduce the complexity of the regulation. For example, all industries need to realize that different requirements are applicable for each of three types of risk of exposure. Similarly, the applicability of certain requirements depends on whether TB patients are treated onsite and on whether certain hazardous procedures are performed. While, for example, the typical nursing home would not treat TB patients or perform high hazard procedures on site, some might, and thus these provisions would need to be included in an industry standard written for nursing homes. OSHA's proposed standard carefully distinguishes a variety of activities that may occur in different industries and has different requirements for each activity. Although this makes the standard somewhat more complex, this approach is essential to avoid a "one size fits all" standard. In addition, as presented in the discussion of the scope in the Summary and Explanation of the Preamble, OSHA has developed charts showing the requirements of the proposed standard that are applicable to each industry. OSHA welcomes any suggestions on ways to make the standard easier to understand, or on ways to adapt the standard to the situation of specific industries while reducing significant risk.

Revise the Proposed Standard for Consistency With CDC Guidelines

The issue of how the CDC Guidelines fit into a regulatory scheme to prevent or reduce occupational exposure to TB has been considered by OSHA and other reviewers. OSHA's view is embodied in the proposed standard, in which the Agency has attempted to translate the CDC's recommendations into enforceable regulatory language that can be applied to a variety of occupational settings where the risk of transmission of TB is significant. The Agency believes that, in addition to the basic difference between a "guideline" and a "regulation," there are only three general areas where the proposed standard differs substantially from the CDC Guidelines for health care facilities: the use of site-specific risk assessment, the frequency of skin testing in certain situations, and the required use of respiratory protection around unmasked individuals with suspected or confirmed infectious TB. Several small entity representatives, along with some SBREFA Panel members, have suggested that the Agency consider allowing employers to follow the CDC Guidelines as an additional option to comply with the OSHA standard.

Both the OMB and SBA Panel representatives believe that for at least some of the work sites OSHA has proposed to cover, the CDC Guidelines currently provide an adequate measure of protection. They believe it would be burdensome for employers who are already in compliance with the Guidelines to have to become familiar with the OSHA proposal and to implement its provisions. These employers have already invested in a TB prevention and response program consistent with the Guidelines. In other words, the employers have conducted their risk assessments, implemented the suggested provisions and trained their workers to comply. Moreover, these reviewers point out that where the Guidelines have allowed for discretion on the part of the employer as, for example, where an employer may first consider the symptoms specified in the several CDC Guidelines' definition of "suspected infectious TB" before adopting a definition for his or her own work site, prevention of the transmission will more easily be achieved because the employer is allowed to tailor the requirements to actual conditions in his or her workplace. To assure that the employer's adoption of the CDC Guidelines is effective, these reviewers recommended that the employer assert or certify that he or she is in compliance and, if challenged in an OSHA inspection, prove the efficacy of his or her program through a performance measure, such as skin test conversion rates. These reviewers believe that this approach will result in a more efficient use of scarce health resources.

OSHA agrees that the various CDC Guidelines are the most important sources for setting an occupational health standard that will reduce or prevent the spread of TB. However, although certain facilities adhere to the

Guidelines, OSHA's research has shown that most facilities have not fully implemented the CDC recommendations. TB remains an occupational hazard, and OSHA has preliminarily concluded that the risk of transmission of TB to employees is significant. OSHA believes there are a number of reasons why the Guidelines cannot take the place of an OSHA standard. First, the Guidelines are not written in language that can be enforced. For example, the Guidelines suggest, recommend and set forth what an employer could or should do, not what he or she must do. Unless the Guidelines are converted to regulations, an employer may adhere to some applicable recommendations while not implementing others, which could result in uneven and inadequate employee protection. OSHA standards are written in mandatory language, letting employers and employees know what they have to do in order to be in compliance with the regulation. This permits an employer, an employee or a compliance officer to determine easily whether an entity is in compliance with a standard. Second, the establishment-specific risk assessment approach of the Guidelines imposes a tremendous paperwork burden on covered entities and requires a level of professional expertise in risk assessment that few entities outside of large hospitals possess. OSHA believes that recommendations or regulations that necessitate this level of expertise could make it difficult to determine if an entity is in compliance. Third, OSHA knows of no objective criterion that could be reliably used as a measure of proof of an effective program. Tuberculin skin testing has been suggested as a means of proving compliance with the CDC Guidelines, e.g., zero conversions would be accepted as proof that an entity was complying with the Guidelines. However, the use of conversions as a compliance measurement has two problems. First, skin test conversions are not necessarily indicative of implementation of the Guidelines' recommendations. For example, an entity may have implemented very few of the Guidelines' recommendations, yet been fortunate enough to experience no conversions. Therefore, compliance with the Guidelines' recommendations has not been achieved even though there have been no employee conversions. Furthermore, while an increase in the number of conversions indicates employee exposure, a lack of conversions does not necessarily mean that employees are not being exposed. For example, some employees have already skin-tested positive, not all exposures result in conversions, and many entities will not have enough TST-negative employees to generate sufficient statistical power to accurately determine an increased conversion rate. With regard to this last point, the CDC states:

> A low number of HCWs in a specific area may result in a greatly increased rate of conversion for that area, although the actual risk may not be significantly greater than that for other areas. Testing for statistical significance (e.g., Fisher's exact test or chi square test) may assist interpretation; however, lack of statistical significance may not rule out a problem (i.e., if the number of HCWs tested is low, there may not be adequate statistical power to detect a significant difference). Thus, interpretation of individual situations is necessary. (Ex. 4B)

Second, OSHA believes that reliance on number of TST conversions as a performance measure is reactive rather than proactive, because it emphasizes the identification of employees who have already incurred a status change as a result of an exposure instead of averting exposures.

OSHA believes that compliance with the proposed standard by all affected facilities within the covered sectors is the way to assure that employees will be protected from occupational transmission of TB. The Agency believes that compliance will not be difficult for employers who have already implemented the Guidelines, because many of the elements of the Guidelines have been incorporated into the proposed standard. Also, employers who are not in compliance with the Guidelines will find that the standard gives them clear instructions on what to do. In addition, the structure of OSHA's proposed TB standard is similar to that of the Bloodborne Pathogens standard (BBP). Since the vast majority of workplaces that will be covered by the TB standard are subject to BBP, becoming familiar with and implementing the requirements of the TB standard should not be difficult.

Another issue raised in the review process was what would happen if, after the OSHA standard was promulgated, the CDC issued a new guideline that was different from the OSHA standard on an item addressed by the standard. OSHA believes this is already addressed by OSHA's citation policy, in particular, the policy for De Minimis Violations, which states that violations of standards which have no direct or immediate relationship to safety or health are not to be included in citations. An example of a de minimis violation occurs when an employer complies with a proposed OSHA standard or a consensus standard rather than with the OSHA standard in effect at the time of the inspection and the employer's action clearly provides equal or greater employee protection [OSHA Field Inspection Reference Manual, Instruction CPL 2.103, September 26, 1994]. In cases where an employer is complying with another provision, such as a consensus standard, the Agency looks at the consensus standard to make sure the consensus standard is at least as protective as the OSHA standard. Because CDC Guidelines reflect the views of many of the country's leading experts and practitioners in public health measures to prevent the spread of TB, the updated CDC Guidelines can be assumed to provide equal or greater protection against occupational transmission of TB to employees. Because these guidelines carry great authority, the De Minimis Violation policy would not only be a defense, but would be accorded such deference that OSHA would incur a heavy burden in showing that an updated CDC guideline on an item addressed by the OSHA TB standard did not provide equal or greater protection against occupational transmission of TB to employees. In order to ensure that the new CDC Guidelines would be communicated to the OSHA Regions and others who would need to know, OSHA will issue a Memorandum for Regional Administrators that will address how the new Guideline could be implemented in the work place, include a copy of the new Guideline, and instruct the Regional Administrator to contact area offices and the OSHA state designees. In addition, the Memorandum would be posted on the OSHA Computer Information Service (OCIS) and OSHA CD–ROM, which are accessible to the public.

OSHA seeks comment on all issues related to the CDC Guidelines, particularly whether they could be implemented in lieu of an OSHA standard and, if so, how compliance and efficacy could be determined.

Change the Approach to the Identification of Suspect Cases for Homeless Shelters or Substance Abuse Treatment centers

The SBREFA Panel found that "Given the current definition of suspect cases, it is not clear that homeless shelters can comply fully with the standard. Accordingly, OSHA should reexamine the definition of suspect cases and/or reexamine its approach to homeless shelters." The SBREFA Panel also noted that this same finding might be relevant to substance abuse treatment centers. The Panel arrived at this finding as a

result of statements made by small entity representatives from the homeless shelter sector. Small entity representatives concerned with homeless shelters had serious problems with OSHA's definition of a suspect case and questioned the feasibility of screening the homeless by using questions about symptoms. Mr. Wayne Anderson of the National Health Care for the Homeless Council argued that OSHA's definition of a suspect case would result in the identification of most of the homeless as suspect cases during the winter months. Major Dalberg of the Salvation Army found OSHA's definition of a suspect case confusing and ambiguous, and stated that it would cover a substantial portion of the homeless. All three small entity representatives from this sector questioned whether the standard's screening procedures were workable in the homeless shelter context. They asserted that the homeless might avoid screening questions, be unable to answer them, learn how to lie in response to such questions, or choose to remain on the street rather than be transferred to a hospital. The small entity representatives for this sector felt that this portion of the standard should be abandoned. Because substance abuse treatment centers serve a similar clientele, the Panel was concerned that the same problems might apply to substance abuse treatment centers.

To address this issue, and other issues related to the feasibility of the proposed standard for homeless shelters, OSHA has decided to hold special sessions during the public hearings on the proposed standard and to study these issues further through an onsite survey of a number of homeless shelters. The study will address the following issues:

- Percentage of homeless persons that would be identified by OSHA's definition of a suspected infectious TB case. (Breakdown of which symptoms are particularly common so a better definition might be designed.)
- Turnover among the homeless who use shelters.
- Employee turnover in homeless shelters.
- Trends in number of homeless persons served in shelters.
- Criteria currently used by some homeless shelters to identify suspected infectious TB cases.
- Current practices used in homeless shelters to address the TB hazard (baseline compliance with the draft proposed standard).

—Methods of isolation.
—How suspected TB cases are handled.

- Feasibility of having hospitals provide cards to the homeless indicating TB skin test status.
- Number of TB skin test conversions and active cases among the homeless and homeless shelter employees.
- Types of benefits offered to homeless shelter employees (e.g., health insurance).
- Economic feasibility:

—Costs of running a shelter.
—Revenue sources.
—How costs are accommodated as the number of homeless persons served increases.
—Opportunities for cost pass-through.

- Number, location and types (e.g., family-oriented, walk-in, all-male) of homeless shelters.
- Number or proportion of homeless shelter workers who are unpaid volunteers.

The study will also address the issue of volunteers. The OSH Act applies to employees, not bona fide volunteers; however, OSHA understands that some states may, as a matter of state law, require facilities to provide volunteers with the protections established by OSHA standards. Thus, OSHA's study will address the following issues:

- Economic impacts, in such states, of covering volunteers (e.g., how costs would be handled, cost pass-through opportunities).
- Protections currently offered to volunteers.

The results of the study will be made available for comment in the public record.

OSHA does not feel that the same problems apply to substance abuse treatment centers, even if a high percentage of clients might be defined as suspect cases. Inpatient substance abuse treatment centers routinely provide some form of entrance physical: this would be an appropriate time to screen for suspect cases and provide for their referral.

Outpatient substance abuse treatment centers do not provide any form of shelter for patients, and thus could readily refer suspect cases to a hospital without either denying them shelter or having to pay for the referral. Such a facility could simply insist that suspect cases not return without data showing that they had been to a doctor and did not have TB. Since outpatient facilities handle a known population, such an approach might involve high initial referrals, but could thereafter settle into a system that checked for suspect cases on entry to the program.

OSHA estimates that the proposed standard will result in a reduction of 28 to 33 active disease cases and 2 to 3 deaths per year in the homeless shelter sector. A standard requiring skin testing and follow-up treatment alone would have only one third the benefits (such an approach would reduce the number of active disease cases to only 10 per year and the number of lives saved to 1 per year). The annual costs of the proposed standard for homeless shelters are estimated to be $11,287,278, or approximately $1,080 per shelter per year.

OSHA solicits comments on all of the issues listed above to be covered by its study of homeless shelters, and solicits comment on the feasibility of the standard for substance abuse treatment centers, and particularly on the extent to which substance abuse treatment centers already provide for medical examinations prior to entry into their programs.

Other Alternatives Considered by OSHA

OSHA considered several additional alternatives but has preliminarily concluded that the proposed rule will better carry out the objectives of the OSH Act, while minimizing the economic impact on affected establishments, and especially on small establishments. OSHA requests comment on the validity of this preliminary conclusion. First, OSHA considered making all of the proposed requirements applicable to every establishment in the covered industries. The prevalence of TB, however, varies by geographical areas and by the populations served by facilities in different industries. OSHA therefore believes it will be possible to reduce significant risk without imposing the full regulatory requirements on each covered employer. Second, OSHA considered proposing requirements similar to the CDC's guidelines, which recommend that risk assessments be conducted to determine the level of risk in each facility and that the controls implemented vary in accordance with the level of risk in each facility. This would require that employers conduct risk assessments by evaluating factors, such as the number of suspected or confirmed TB cases among patients and employees, employee tuberculin skin testing results, and the amount of TB in the community. The CDC recommendations include five levels of risk (i.e., minimal, very-low, low, intermediate, and high), and the recommended controls vary by the level of risk. However, adopting such a requirement in the OSHA standard would impose a large cost and a heavy paperwork burden on affected facilities.

To avoid imposing unnecessary burdens on facilities where the risk of occupational exposure to *M. tuberculosis* may be lower, OSHA is proposing to exempt facilities from certain requirements (i.e., respiratory protection, annual medical histories, and annual skin tests) if the facility transfers, instead of admits, individuals with suspected or confirmed infectious TB and can additionally demonstrate that there have been (1) no reported confirmed infectious TB cases in the county within one of the last two 12-month reporting periods; (2) fewer than 6 infectious cases of TB in the other 12-month reporting period; and (3) no infectious cases of TB encountered within their employees' work settings within the past 12 months.

OSHA also considered proposing a requirement that facilities implement engineering controls in all intake areas in which early identification procedures are performed, if the facility had encountered six or more individuals with confirmed infectious TB in the past 12 months. The engineering controls considered were single-pass ventilation, filtration of air through the use of HEPA filters installed as part of the ventilation system, or stand-alone auxiliary HEPA filtration units. However, areas where early identification procedures are performed vary widely in size and configuration, making it difficult to assess the effectiveness of such controls in reducing the risk of occupational exposure to *M. tuberculosis* in a particular setting. Given the high cost of such controls and the lack of data on their effectiveness, OSHA is not proposing such a requirement. However, the Agency requests comment on the potential effectiveness of such controls in intake areas.

Another alternative considered was to propose that each occupationally exposed employee be provided with a baseline medical examination, including a physical examination that emphasized the pulmonary system and an evaluation for the signs and symptoms of active TB disease and factors affecting immunocompetence. However, requiring a baseline physical examination for all exposed employees would impose a heavy cost burden on affected establishments, and OSHA could find no evidence that providing a baseline physical examination would accomplish more than a baseline and annual medical history and tuberculin skin test in identifying or reducing occupationally induced TB infections. Thus, OSHA is proposing to require physical examinations only when they are deemed necessary by the physician or other licensed health care professional, as appropriate.

OSHA also considered providing medical management and follow-up to each employee who had been exposed to air originating from an area where an individual with suspected or confirmed infectious TB was present. However, stakeholders contacted prior to the issuance of this proposal stated that a requirement for medical management and follow-up would impose an unnecessary burden on affected establishments for those cases that were suspected but were subsequently ruled out. In response to stakeholders' comments, the Agency is proposing that medical management and follow-up be provided only when an employee is actually exposed to an individual with confirmed infectious TB or to air containing aerosolized *M. tuberculosis* without the benefit of the applicable exposure control measures (e.g., respiratory protection) that would be required under the proposed rule.

Another alternative considered was to require tuberculin skin tests every six months for all employees assigned to wear respirators. However, to reduce the burden on facilities that do not encounter many infectious TB cases, OSHA is not requiring 6-month skin testing for workers assigned to wear respirators and who work in the intake areas of facilities where fewer than six confirmed infectious TB cases are encountered each year.

Rejecting these regulatory alternatives has reduced the estimated costs of the proposed rule by a minimum of $100 million.

The RFA emphasizes the importance of performance-based standards for small businesses. OSHA considers the proposed standard to be highly performance oriented. The proposed standard emphasizes the early identification and isolation of individuals with suspected or confirmed infectious TB. Affected employers have been allowed wide discretion in the selection of procedures they use to achieve this. Without early identification and isolation, prevention of the spread of TB from patients and clients to workers is virtually impossible. OSHA has also limited requirements for work settings located in a county that, in the past 2 years, has had zero cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year. OSHA welcomes comment on other ways that the standard can be made more performance oriented.

Another approach considered is compliance date phase-ins for small businesses. OSHA is proposing to extend the standard's compliance deadlines for engineering controls and has considered extending the compliance deadlines for the other proposed requirements; however, since these other requirements are not capital-intensive for most affected facilities, such an extension would do little to reduce the burden on small entities and would only result in a delay in the protection of workers provided by compliance with the proposed rule. OSHA solicits comment on the effects of extending phase-in dates for the other proposed requirements, particularly those for respirators, for small entities.

After considering all of the above alternatives and adopting those that were consistent with the mandate imposed by the OSH Act, OSHA has developed a proposed rule that will minimize the burden on affected employers, while maintaining the necessary level of worker protection.

OSHA's Response to SBREFA Panel Recommendations

Table VII–7 lists the SBREFA Panel Recommendations and OSHA's response to these recommendations. The complete SBREFA Panel Report is available for comment in the record as Exhibit 12 of Docket H–371.

TABLE VII–7.—OSHA'S RESPONSES TO SBREFA PANEL RECOMMENDATIONS

Panel recommendation	OSHA response
OSHA should define the terms "establishment," "firm" and "facility" in the IRFA.	These terms are now defined in Chapter VI of the PEA.
OSHA should consider analyzing additional size classes of firms	OSHA now uses the SBA definitions of small entities and also analyzes entities with fewer than 20 employees in the IRFA.
OSHA should clarify and more carefully explain the requirements and engage in extensive outreach efforts to assure that the regulated community understands the regulation.	OSHA has provided tables illustrating requirements for groups of affected firms, added many clarifications to the Preamble and regulatory text, and plans extensive outreach upon publication of the final standard (see Preamble Section IX).

TABLE VII–7.—OSHA'S RESPONSES TO SBREFA PANEL RECOMMENDATIONS—Continued

Panel recommendation	OSHA response
OSHA should reexamine the definition of a suspect case and/or reexamine its approach to homeless shelters.	OSHA will conduct a special study of homeless shelters. This study is discussed in the IRFA. OSHA will also designate certain hearing dates for persons who wish to testify on homeless shelter issues.
OSHA should reconsider applying the standard to substance abuse centers.	OSHA has explained in the IRFA why it thinks that its treatment of substance abuse treatment centers is feasible and has solicited comment on this issue in the Issues Section of the Preamble.
OSHA should more carefully address the economic impacts on facilities that rely on Medicaid/Medicare or charitable funding.	OSHA has added a discussion of this issue to Chapter VI of the PEA.
OSHA's preamble and IRFA should explain OSHA's role and authority as compared to other voluntary and regulatory organizations; preamble should explain ongoing cooperative efforts; solicit comments on conflicts and ways of better coordinating with other organizations.	OSHA has added a preamble discussion of why OSHA regulates occupational exposure to TB, why other organizations are unable to do so effectively, and how OSHA has worked with other organizations. OSHA solicits comments on possible conflicts and better methods of coordination.
OSHA should examine additional alternatives, such as revising the proposed standard for greater consistency with CDC guidelines.	OSHA has added a discussion of additional alternatives suggested by SBREFA Panel members to the IRFA and has solicited comment on these alternatives in the Preamble.
OSHA should clarify that employers would only be required by the standard to determine the TB status of their county once per year, rather than monthly.	OSHA has clarified this issue in the Preamble.
OSHA should reexamine the standard and the economic analysis to ensure that the issues of part-time, multi-employer, and off-site workers have been adequately addressed. OSHA should also specifically address the issue of portability of training. OSHA should clarify the term "accessibility" in the context of employers with off-site employees.	OSHA has modified the standard to allow portability of non-site specific elements of training and to allow portability of skin tests. For off-site workers, OSHA has clarified in the Preamble that the standard may be made available at the primary workplace facility, provided there is a mechanism for immediate availability of information during the workshift.
OSHA should clarify exactly what is required for temporary AFB isolation.	The Summary and Explanation Section of the Preamble describes temporary AFB isolation, and OSHA's assumptions concerning the costs of such units are given in Chapter V of the PEA.
OSHA should clarify that engineering control provisions do not apply to home health care.	OSHA has clarified the point in Section IX of the Preamble.
OSHA should explain the differences in protection provided by surgical masks and respirators.	OSHA has explained this difference in Section IX of the Preamble.
OSHA should explain the reasons for its detailed respiratory protection program, why it considers manufacturers' instruction inadequate as a substitute for a respirator program, and why annual respirator program evaluation is necessary.	OSHA has discussed this issue in the Summary and Explanation Section of the Preamble.
OSHA should explain its intent to fold many aspects of respiratory protection provisions for occupational exposure to TB into the upcoming respirator standard.	OSHA has discussed this issue in the Summary and Explanation Section of the Preamble.
OSHA should explain the number of employees required to have medical surveillance in homeless shelters, the elements of a written medical opinion, and the importance of two-step skin testing.	OSHA provides an estimate of the number of employees requiring medical surveillance in Chapter V of the PEA. The regulation lists the elements of a medical opinion. The Preamble explains the importance of two-step skin testing.
OSHA should explain its basis for believing that two-step skin testing is appropriate for employees who have had BCG vaccinations.	OSHA has discussed this issue in the Summary and Explanation Section of the Preamble.
OSHA should clarify the interaction of workers' compensation and medical removal protection and examine more carefully the costs and impacts of medical removal protection on small firms that actually have an employee with a serious and costly active case of TB.	OSHA has addressed this interaction in both the Preamble and the IRFA, and has provided a special discussion in Chapter VI of the PEA on the economic impacts of the medical removal protection provision on small firms. OSHA has solicited comment on this issue.
OSHA should examine the potential cost savings associated with a provision that allows training to be "portable" (assuming the training is equivalent to that required by the standard). OSHA should clarify that posting a copy of the standard will be considered an adequate means of providing employees with the standard. OSHA should clarify its performance-oriented interpretations of the training requirements in the Preamble, and OSHA should examine the need for annual retraining for all employees.	OSHA has modified the proposed regulation to allow portability of non-site specific training and to allow employers to demonstrate employee competence rather than provide annual retraining. OSHA has clarified in the Preamble that posting a copy of the standard will be considered an adequate means of providing employees with the standard. OSHA has clarified in the preamble that the training is performance oriented and need not include training in topics not relevant to an employee's duties.
OSHA should clarify how the identification, referral, and notification requirements of the proposed standard can be met without breaching federal and state confidentiality regulations and statutes.	OSHA has added a discussion of this issue to the IRFA and the Preamble.
OSHA should include a discussion of the interaction between medical removal protection provisions and the Americans with Disabilities Act and the Family and Medical Leave Act.	OSHA has added a discussion of this issue to the IRFA and the preamble.
OSHA should solicit comment and request data on industry turnover rates in the Summary of the Preliminary Economic Analysis in the Preamble.	OSHA has solicited comment on this issue.
OSHA should reexamine its estimate of the number of hospices and adopt the most accurate figure.	OSHA has reexamined the issue of the number of hospices and retained its original estimate. OSHA has clarified that this estimate includes only free-standing hospices. Hospices that are parts of nursing homes and hospitals are included in estimates for those sectors.

TABLE VII–7.—OSHA'S RESPONSES TO SBREFA PANEL RECOMMENDATIONS—Continued

Panel recommendation	OSHA response
OSHA should clarify why family practice physicians were not included in the analysis, and solicit comment on the extent to which family practitioners conduct the kind of hazardous procedures that would place them within the scope of the rule.	OSHA has added physicians who conduct high hazard procedures to its economic analysis and has sought comment on whether family practitioners commonly conduct such procedures.
OSHA should consider estimating the effects of the rule on volunteers and should include a discussion explaining that the proposed rule does not apply to volunteers, although some states may choose to apply it to these categories of individuals.	OSHA has explained in the Preamble that the standard does not apply to bona fide volunteers. OSHA has solicited comments on states or localities that elect to extend OSHA requirements to volunteers and on the number of affected volunteers. OSHA will further examine the issue of the number of potentially affected volunteers in homeless shelters in its homeless shelter study.
OSHA should solicit comment on the number of small government jurisdictions affected by the draft proposed standard.	OSHA has solicited comments on this issue in the Preamble.
OSHA should include a discussion of tribal governments in its analysis and solicit comment on this issue.	OSHA has provided an estimate of the number of affected tribal facilities and has sought comment from tribal governments in the Preamble.
OSHA should remind small entities that OSHA's risk assessment will be part of the public record and is subject to comment, and that small entities may submit any appropriate additional literature or studies that OSHA should consider in determining the risk of occupational TB.	OSHA has solicited comments on several specific aspects of the risk assessment and benefits analysis, and on these analyses as a whole.
OSHA should discuss the annualization of costs in greater detail in the economic analysis.	Chapter V of the PEA and the summary of the PEA in the Preamble now discuss the annualization of costs.
OSHA should clarify its position on the costs and durability of various respirators that can be used to comply with the standard, and should seek additional comment on the costs and durability of respirators.	OSHA has reanalyzed the costs of respirators in hospitals, and has added a discussion of the uncertainties concerning the costs and durability of respirators to the PEA. OSHA has solicited comments on these issues in the Preamble.
OSHA should perform further analyses to identify the marginal costs of medical removal protection above and beyond worker compensation, should further assess the probability that employers will actually incur costs for medical removal protection if they have an employee with an active case of TB, and should incorporate the results of this reexamination into its determination of feasibility.	OSHA specifically addresses this issue in Chapter VI of the PEA and has sought comment on this issue.
OSHA should reassess whether affected facilities have reasonable access to facilities with AFB isolation rooms, solicit comments on this issue, and incorporate the results of this reexamination into its determination of feasibility.	OSHA has further examined this issue, and found that affected facilities do have reasonable access to AFB isolation rooms; however, OSHA is seeking comments on whether some affected facilities may not have adequate local access to facilities with AFB isolation.
OSHA should reexamine its analysis of the economic impacts of the proposed rule on firms, such as emergency medical services firms, that operate under the constraint of being unable to charge some of their clients.	OSHA has discussed this issue in Chapter VI of the PEA.

VIII. Unfunded Mandates Analysis

The proposed TB standard has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. OSHA estimates that compliance with the proposed standard will require expenditures of more than $100 million each year by employers in the private sector. Therefore, the proposed TB standard establishes a federal private sector mandate and is a significant regulatory action within the meaning of Section 202 of UMRA (2 U.S.C. 1532). OSHA has included this statement to address the anticipated effects of the proposed TB standard pursuant to Section 202.

OSHA standards do not apply to state and local governments except in states that have voluntarily elected to adopt an OSHA State Plan. Consequently, the proposed TB standard does not meet the definition of a "federal intergovernmental mandate" (Section 421(5) of UMRA (2 USC 658 (5)). In sum, the proposed TB standard does not impose unfunded mandates on state, local, and tribal governments.

The remainder of this section summarizes OSHA's findings as required by Section 202 of UMRA (2 U.S.C. 1532):

This standard is proposed under Section 6(b) of the OSH Act. The proposed standard has annualized costs estimated at $245 million and would save an estimated 138 to 190 lives per year as a result of TB infections avoided. An estimated 1,772 to 2,442 active TB cases will be averted annually as a result of the proposed rule. Compliance will also result in an estimated 24,333 to 32,719 infections averted. The proposed standard will impose no more than minimal costs on state, local or tribal governments. OSHA pays 50 percent of State plan costs but does not provide funding for state, local or tribal governments to comply with its rules.

OSHA does not anticipate any disproportionate budgetary effects upon any particular region of the nation or particular state, local, or tribal governments, or urban or rural or other types of communities. Chapters V and VI of the economic analysis provide detailed analyses of the costs and impacts of the proposed standard on particular segments of the private sector. OSHA has analyzed the economic impacts of the standard on the affected industries and found that compliance costs are, on average, only 0.18 percent of sales, and that few, if any, facility closures or job losses are anticipated in the affected industries. As a result, impacts on the national economy would be too small to be measurable by economic models. OSHA requests information on state and local government issues.

Pursuant to Section 205 of the UMRA (2 U.S.C. 1535), and having considered a variety of alternatives outlined in the Preamble and in the Regulatory Flexibility Analysis above, the Agency preliminarily concludes that the

proposed rule is the most cost-effective alternative for implementation of OSHA's statutory objective of reducing significant risk among employees to the extent feasible. OSHA solicits comment on these issues.

IX. Environmental Impacts

The provisions of this proposed standard have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. 432, *et seq.*], the Council on Environmental Quality (CEQ) NEPA regulations [40 CFR Part 1500], and OSHA's DOL NEPA Procedures [29 CFR Part 11]. As a result of this review, OSHA has preliminarily determined that this proposed standard will have no significant effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

X. Summary and Explanation of the Standard

Based on currently available data in the record, OSHA has preliminarily concluded that the requirements set forth in this proposed standard are those that are necessary and appropriate to provide adequate protection to employees exposed to tuberculosis (TB). In the development of this proposed standard, OSHA has carefully considered the numerous reference works, journal articles, and other data collected by OSHA since the initiation of this proceeding. In particular, OSHA has carefully considered the recommendations given in the document, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Facilities" published by the Centers for Disease Control and Prevention beginning on page 54242 in the **Federal Register** of October 28, 1994 (Ex. 4B). OSHA also held a series of informal stakeholder meetings during the development of the proposal and considered the major points raised by the stakeholders during these meetings (Ex. 10). In addition, the proposal has undergone the Panel review process required by the Small Business Regulatory Enforcement Fairness Act (SBREFA)(5 U.S.C. Chapter 8) (Exs. 11 and 12). All of the information developed to assist the small entity representatives involved in the SBREFA panel process, the comments of these representatives, and the Panel's findings and recommendations to OSHA have been placed in the rulemaking record (Exs. 11 and 12).

Upon publication of the final standard, the Agency will undertake a number of compliance assistance activities that will be particularly beneficial to small entities. Past compliance assistance activities have included: publication of booklets summarizing the provisions of the standard; development of a compliance directive that answers compliance-related questions about the standard; development of compliance guides directed at assisting small businesses in complying with the standard; designation of certain OSHA employees in each Regional office with the responsibility of answering questions from the public about the standard; development of training materials; and provision of speakers and information for meetings and workshops of affected parties (particularly small business entities). OSHA anticipates initiating similar activities upon publication of the final standard for occupational exposure to tuberculosis.

Paragraph (a) Scope

Tuberculosis is a well-recognized occupational hazard (Ex. 4B). As discussed in the Health Effects section above, there are numerous epidemiological studies, case reports, and outbreak investigations that provide evidence to show that employees who are exposed to aerosolized *M. tuberculosis* have become infected with TB and in some cases have developed active TB disease. Of particular concern is the emergence of strains of multidrug-resistant TB. MDR–TB presents an additional hazard because individuals with MDR–TB may be infectious for weeks or months until an effective drug regimen can be successfully implemented and the patient rendered noninfectious. This in turn increases the likelihood that employees who must provide health care or other services to these individuals will be exposed. The risk of death from infections with MDR–TB is markedly increased. Outbreaks involving strains of MDR–TB have had mortality rates as high as 75% with death occurring 4 to 16 weeks after the diagnosis of disease (Ex. 3–38A).

Most of the TB outbreaks investigated occurred in large metropolitan areas. However, a recent study has shown that MDR–TB spread from New York City to patients in Florida and Nevada and health care workers in Atlanta, Georgia and Miami, Florida and to staff and patients in a nursing home in Denver, Colorado (Ex. 7–259). In addition, a growing percentage of TB cases are occurring among the foreign born. CDC reported that in 1995 the number and proportion of cases among the foreign-born had increased 63% since 1986 (Ex. 6–34). These two pieces of information taken together clearly illustrate the relationship between population mobility and the spread of TB disease. Thus, TB is a nationwide problem. Although the total number of cases declined to its pre-1985 levels after a resurgence from 1985 to 1994, the rate of active TB cases reported in 1995 (i.e., 8.7/100,000) is still two and one half times greater than the target rate of 3.5 active cases per 100,000 population for the year 2000 proposed by the Advisory Committee on the Elimination of Tuberculosis (Ex. 6–19). In addition, there is substantial variability from year to year in the increases and decreases in the number of cases reported by each state. In 1995, all fifty states reported cases of TB, and fifteen of these reported increases over 1994 (Ex. 6–34). At the county level, approximately 57% of counties in the U.S. reported one or more cases of active TB, with 17% of the counties in the U.S. reporting 5 or more cases (Ex. 7–262). In addition, approximately 91% of the U.S. population resides in the counties that reported one or more cases of active TB. Thus, while 43% of the counties in the U.S. reported no cases of active TB, 10% of the U.S. population resides in those counties. The nationwide prevalence of TB infection in the U.S. population in 1994 (age 18 years an older) is approximately 6.5 percent.

The recent resurgences in the number of reported cases of active TB have brought to attention a number of problems in existing TB control plans. The problem is most apparent in health care facilities such as hospitals, but it also extends to other work settings where the population served is at increased risk for tuberculosis, such as shelters for the homeless, correctional institutions and settings where high-hazard procedures are performed.

There are a number of factors that make occupational exposure to tuberculosis an important concern at the present time. One factor is that the results from OSHA's quantitative risk assessment show a high potential for TB infection for employees who work in close proximity to individuals with infectious TB. A second factor is that the cases of tuberculosis are not distributed evenly throughout the entire population. There is a relatively high prevalence of tuberculosis infection and disease in certain populations, such as residents of nursing homes and inmates of correctional institutions. A third factor is the rise of MDR-TB. These factors increase the risk for workers who have occupational exposure.

Occupational exposure occurs through contact with air that may contain aerosolized *M. tuberculosis* as a result of the performance of an employee's duties. Most often this occurs when an employee is working in the same environment with an individual with infectious TB. It could also occur when repairing air systems that may be carrying aerosolized *M. tuberculosis*.

Individuals with infectious tuberculosis expel airborne particles called droplet nuclei when they cough, sneeze, or speak. These droplet nuclei contain the organism that causes tuberculosis, *M. tuberculosis*. Normal air currents can keep these droplet nuclei airborne for long periods of time and spread them throughout a building (Ex. 5–5). When employees breathe the air that contains *M. tuberculosis*, they are at risk for TB infection which may result in illness and, in some cases, death. Employees also may be exposed when laboratory procedures produce aerosols of *M. tuberculosis*. There is an extensive discussion of the scientific literature related to occupational transmission in Section IV, Health Effects, which will not be repeated here.

Because the CDC does not consider fomites, e.g., objects such as clothing or silverware, to present a hazard for transmission of *M. tuberculosis*, this standard is designed to eliminate or reduce airborne exposures only. Even though it is well established that exposure to TB contaminated air is the route of exposure related to the development of disease, it is not known what levels of contamination in the air cause the disease. Unlike toxic chemicals, a Permissible Exposure Limit (PEL) for air concentration of TB cannot be determined. As described in the Health Effects section of this preamble, it is known that a number of factors contribute to the probability of infection. For example, exposures of relatively short duration, such as a day or two, can result in infection of the employee. OSHA has used these findings to show that certain types of work, in certain industries, can result in significant risk of TB infection. For these reasons, OSHA is defining the scope of the standard by listing the locations and services where this proposed standard would apply. Employers with employees working at those locations, and employers whose employees provide the listed services, are covered by the standard. The proposed standard applies to occupational exposures to tuberculosis that occur in certain specified workplaces, such as a hospital, or as the result of providing services, such as emergency medical treatment. Paragraphs (a)(1) through (10) of the proposal describe the various work settings and services that are covered under the scope of the standard.

Paragraph (a)(1) states that the standard applies to occupational exposure to TB occurring in hospitals. The record contains many examples of occupational exposures with resultant TB infection and disease that have occurred in hospitals (e.g., Exs. 5–11; 5–15; 7–43; 7–45). Recent outbreaks involving multidrug-resistant strains of *M. tuberculosis* have compounded the long recognized risk of TB in such settings.

Hospitals not only provide medical care for persons with diagnosed tuberculosis, they also provide medical care for individuals who may be at increased risk for TB. For example, hospitals provide isolation for individuals with suspected or confirmed infectious TB and contain rooms or areas where high-hazard procedures on individuals with infectious TB are performed that place employees at risk of exposure. In addition, the client population encountered in hospitals is generally at higher risk of developing active TB. Individuals with HIV disease, for example, are at increased risk for developing disease when they have been infected with *M. tuberculosis*. In addition, medically underserved populations with an increased prevalence of tuberculosis (e.g., homeless persons) may seek acute care in the emergency rooms of hospitals.

Employees who are at risk for occupational exposure and potential infection and disease include all employees who have direct contact with persons with infectious tuberculosis. These may include but are not limited to physicians, nurses, aides, dental workers, medical technicians, workers in laboratories and autopsy suites, and emergency medical service personnel (Ex. 4B). They may also include persons not involved in direct patient care but who have occupational exposure as a result of providing other services such as dietary, housekeeping, and maintenance staff.

Paragraph (a)(2) covers occupational exposure occurring in long-term care facilities for the elderly. Persons aged 65 and older constitute a large repository of *M. tuberculosis* infection in the United States (Ex. 6–14). Many of these individuals were infected many decades ago when TB was a much more common disease. Some of the TB occurring in this age group arises from preexisting infection of long duration and other cases may be the result of recent infections. In addition, elderly persons residing in nursing homes are at greater risk than elderly persons living in the community. In its 1990 guidelines, "Prevention and Control of Tuberculosis in Facilities Providing Long-term Care to the Elderly," the CDC cited 1984–1985 data indicating a TB case rate of 39.2 per 100,000 population, a rate that was twice that of elderly persons living in the community (Ex. 6–14). The same document stated that CDC had found that the increased risk for nursing home employees was three times higher than the rate expected for employed adults of similar age, race, and sex. Examples of employees in long-term care facilities who may have occupational exposure include, but are not limited to, registered nurses, licensed practical nurses, nursing assistants, and auxiliary personnel. OSHA has not included other long-term care facilities under the scope of the standard. The Agency requests comment and supporting data on whether it is appropriate to expand the scope of the standard to include other long-term care facilities that may provide health care or other services to individuals who may be at an increased risk of developing infectious TB, thereby presenting a potential source of exposure to employees working in those facilities. An example of another long-term care facility is a psychiatric hospital.

Paragraph (a)(3) covers occupational exposure occurring in correctional facilities and other facilities that house inmates or detainees. Facilities such as prisons, jails and detainment centers operated by the Immigration and Naturalization Service (INS) would be included in the scope of the standard. The CDC considers TB to be a "major" problem in correctional institutions, with cases occurring at a frequency three times that of the general population (Ex. 7–25). In addition to a number of outbreaks that have occurred, the overall incidence of tuberculosis in the prison population is increasing. This can be attributed to, (1) the over-representation of populations at high risk for TB in prisons and jails, and (2) environmental factors that promote the transmission of TB. Compared to the general population, inmates have a higher prevalence of TB infection. The population of correctional facilities is also characterized as having a high prevalence of individuals with HIV infection and intravenous drug users, factors that place these inmates at a higher risk of developing active TB. In addition, many prisons and jails are old, overcrowded, and have inadequate ventilation. Inmates may be moved frequently within a facility and between facilities, increasing the number of persons, both inmates and employees, exposed to an infected individual and making contact tracing difficult.

Medical records and treatment information may not follow the inmate in a timely manner, which may, in turn, lead to inadequate drug therapy.

Detention facilities, such as those operated by the INS, may house persons who are entering this country from countries with a prevalence of TB many times that of the U.S. population (Ex. 6–26). In addition, there may be a substantial number of individuals in these facilities currently awaiting deportation who have an additional increased risk of TB because they have been previously incarcerated in correctional institutions. In 1995, CDC reported that approximately 36% of the total reported cases of active TB were among the foreign-born (Ex. 6–34). This marks a 63% increase since 1986. In addition, among those persons whose records contained information on date of arrival to the U.S., approximately 30% developed active TB within one year of entering the country and approximately 53% developed active TB within 5 years of entering the country. Employees who may have occupational exposure in these facilities include, but are not limited to, correctional officers, physicians, dentists, nurses, and other health care workers.

Paragraph (a)(4) covers occupational exposure occurring in hospices. CDC identified hospices as one of the inpatient health care facilities to which its 1994 TB guidelines apply. CDC's Guidelines recommend that individuals with suspected or confirmed infectious TB be managed in the same manner using similar methods of infection control as recommended for hospitals. Hospices serve the same high-risk populations that hospitals serve. In addition, individuals receiving hospice care may be at increased risk for tuberculosis if they are members of a high risk group, which includes groups whose members have a medical condition that increases the likelihood of developing active tuberculosis (e.g., HIV disease, end stage renal disease, certain carcinomas). Employees who may have occupational exposure include, but are not limited to, physicians, nurses, aides, social workers, and other health care workers.

Occupational exposure occurring in shelters for the homeless is covered under paragraph (a)(5). Residents of shelters for the homeless comprise a population that is also at increased risk for tuberculosis. Members of this population are more likely to have risk factors that are associated with TB than the general population although the exact prevalence of TB in this population is unknown. The data quoted in CDC's 1992 document "Prevention and Control of Tuberculosis Among Homeless Persons" indicated a prevalence of clinically active tuberculosis among homeless adults ranging from 1.6% to 6.8% (Ex. 6–15). The prevalence of latent tuberculosis ranged from 18% to 51% and there was a point prevalence of active TB of 968 cases/100,000 homeless adults (Ex. 6–15). Similar to the population in correctional facilities, residents of homeless shelters have a high prevalence of HIV infection and intravenous drug use, factors that increase the likelihood that their infections will progress to active TB. In addition, environmental factors such as overcrowding and poor ventilation promote the transmission of disease. Examples of employees who may have occupational exposure include, but are not limited to, intake workers and health care workers who have contact with residents of homeless shelters.

Paragraph (a)(6) covers occupational exposure occurring in facilities that provide treatment for drug abuse. Based on tuberculin skin testing reported in 1993, 13.3% of the clients of drug treatment facilities had evidence of TB infection (Ex.6–8). Many of these persons have a history of intravenous-drug use and either have or are at risk for HIV infection. These persons are at increased risk for developing active TB and transmitting the disease to others. Many of these individuals may discontinue treatment prematurely even if they are diagnosed and started on effective drug treatment. In addition, the CDC reported that studies in some areas have shown that over 20% of selected inner city intravenous drug user populations have tuberculous infection (Ex. 3–37). The CDC thus concluded that drug center clients and staff are at risk of becoming infected. Employees in drug treatment facilities who may have occupational exposure include, but are not limited to, counselors, nurses, physicians and other staff.

Work settings where occupational exposure occurs as a result of the performance of high-hazard procedures, which, for the purposes of this standard, are certain procedures performed on individuals with suspected or confirmed infectious TB, are also covered under the scope of the standard as stated under paragraph (a)(7). High-hazard procedures are procedures that are cough-inducing or aerosol-generating that are likely to result in droplet nuclei being expelled into the air. A definition and discussion of high-hazard procedures can be found under paragraph (j), Definitions, of this Summary and Explanstion. Health care workers and other employees who are either performing or assisting with these procedures or are in the general vicinity are at an increased risk of inhaling droplet nuclei and therefore have occupational exposure. The 1994 CDC guidelines recommend in Section G, "Cough-Inducing and Aerosol-Generating Procedures" that special precautions be taken when these procedures are performed (Ex. 4B). Health care workers, such as physicians, nurses, technicians and others who perform or assist in the performance of high-hazard procedures have occupational exposure. Other employees who may be in the room or area when such procedures are performed would be expected to have occupational exposure as well.

Paragraph (a)(8) applies to occupational exposure that occurs in laboratories that handle specimens that may contain *M. tuberculosis*, process or maintain those specimens or the resulting cultures, or perform any related activity that may result in the aerosolization of *M. tuberculosis*. *M. tuberculosis* is a proven hazard to laboratory personnel (Exs. 7–68, 7–72, 7–142, 7–143). Aerosols present the greatest hazard in laboratories. Tubercle bacilli may be present in sputum, gastric lavage fluids, cerebrospinal fluid, urine, and in lesions from a variety of tissues. In addition, the bacilli are grown in culture to increase their concentration beyond what would normally be found in the sample for purposes of identification and susceptibility testing. The bacilli may survive in heat-fixed smears and may be aerosolized in the preparation of frozen sections and during manipulation of liquid cultures. CDC/NIH's manual "Biosafety in Microbiological and Biomedical Laboratories" recommends Biosafety Level 2 or 3 for such laboratories depending on the procedures being performed (Ex. 7–72). Employees who may have occupational exposure include a wide variety of laboratorians. Examples include, but are not limited to, medical technologists, laboratory technicians, physicians, and research scientists.

Occupational exposure incurred by temporary or contract employees is also covered under the Scope to the extent that the occupational exposure occurs in one of the work settings listed under paragraphs (a)(1) through (a)(8). For example, if a nurse working for a temporary employment service were hired by a hospital to work on a TB ward, that temporary nurse would be covered under the scope of the standard. Physicians who are employees (e.g., of an independent corporation) yet who

practice and are exposed in a covered facility, such as a hospital, are also covered by the standard. Similarly, in any of the work settings listed under paragraph (a)(1), temporary or contract personnel who incur occupational exposure to TB as a result of their temporary or contract work would be covered by the standard. The occupational exposure experienced by these employees would be expected to be similar to that of other employees performing the same tasks and procedures in the work setting that has contracted for their services. A note has been added to the proposed standard to make clear that these types of employees are covered under the scope.

This note also clarifies that repair, replacement, or maintenance personnel, working in any of the work settings covered under paragraphs (a)(1) through (a)(8), who service air systems or equipment or who renovate, repair or maintain areas of buildings that may reasonably be anticipated to contain aerosolized *M. tuberculosis* are also covered under the scope of the standard. The standard requires the use of engineering controls, such as isolation rooms, to reduce the concentration of droplet nuclei and therefore reduce the likelihood of TB infection and subsequent illness. The ventilation systems that exhaust air from isolation rooms may reasonably be anticipated to contain aerosolized *M. tuberculosis*. Maintenance and other workers who are responsible for the servicing and repair of ventilation systems that handle air that may contain aerosolized *M. tuberculosis* are at risk for occupational exposure when, as the result of performing their duties, they are exposed to TB contaminated air moving through the ventilation system. Examples of employees who may have occupational exposure include heating, ventilation, and air conditioning (HVAC) maintenance personnel.

In addition, there may be employees who are responsible for renovating, repairing, or maintaining areas of buildings where exposure to aerosolized *M. tuberculosis* may occur other than those associated with the ventilation systems. Maintenance staff who need to repair fixtures in an isolation room, or contractor personnel hired to provide housekeeping in isolation rooms or areas, are examples of such employees who would also be covered under the standard. OSHA expects that such exposures would occur only rarely. In many circumstances, minor non-emergency maintenance activities could be performed by health care personnel required to enter the isolation rooms or areas for other reasons, such as to care for a patient. However, there may be activities that necessitate the expertise of certain maintenance employees which could place those employees at risk of occupational exposure. Those employees would therefore be covered under the scope of the standard.

Paragraph (a)(9) applies to occupational exposure occurring during the provision of social work, social welfare services, teaching, law enforcement or legal services, where the services are provided in the facilities included in paragraphs (a)(1) through (a)(8), or in residences, to individuals who are in AFB isolation, or are segregated or otherwise confined due to having suspected or confirmed infectious tuberculosis. This paragraph is intended to cover those types of employees who must provide services to individuals who have been identified beforehand as having suspected or confirmed infectious tuberculosis and who have either been isolated or segregated in isolation rooms or areas or have been confined in their homes. For example, certain social workers may need to enter AFB isolation rooms or areas or visit homes of people who have suspected or confirmed infectious tuberculosis for the purposes of collecting information or providing discharge planning. While OSHA believes that it would be preferable to collect such information over the telephone in order to prevent occupational exposure, the Agency realizes that there may be situations where direct contact with these isolated or confined individuals may be necessary. In these limited situations, these employees would be covered under the scope of the standard. There may also be situations where teachers may be providing tutoring to individuals isolated with suspected or confirmed infectious tuberculosis. Again, OSHA believes that such situations would be limited and that most educational instruction could be delayed until an individual was determined to be noninfectious. However, where teachers must provide instruction to individuals identified as having suspected or confirmed infectious TB, those teachers would be covered under the scope of the standard. In addition, certain law enforcement officers might have to be in contact with individuals who have been identified as having suspected or confirmed infectious tuberculosis. For example, they may have to transfer such an individual from a correctional or detainment facility to a hospital for diagnosis or treatment. Because these workers must be in direct contact with the individual during transport, perhaps for long periods of time and probably in an enclosed vehicle, such employees could incur significant occupational exposure. Paragraph (a)(9) would assure that such employees would be covered under the standard. Similarly, there may be occasions where attorneys must consult with clients or inmates who have been isolated or segregated because they have been identified as having suspected or confirmed infectious tuberculosis. Such attorneys would be covered under the standard in the limited situations where these consultations cannot be done by phone or delayed until the individual has been determined to be noninfectious. Under paragraph (a)(9), OSHA has specified certain employee groups that it believes would have to enter AFB isolation rooms or areas or homes where individuals are confined due to suspected or confirmed infectious TB, in order to provide services which may result in occupational exposure. OSHA requests comments and data as to whether there are other employee groups that may incur occupational exposure and thus need protection under this paragraph.

Paragraph (a)(10) applies to occupational exposure occurring during the provision of emergency medical services, home health care, and home-based hospice care. Emergency medical service employees may provide emergency treatment and transportation for individuals with suspected or confirmed tuberculosis. For example, in addition to serving the same high-risk client population as hospitals, emergency medical services are often used to transport individuals who have been identified as having either suspected or confirmed infectious tuberculosis from a facility with inadequate isolation capabilities to another facility better equipped to isolate these individuals. Proximity to the patient and time spent within an ambulance or other emergency vehicle affects the likelihood of occupational exposure as the result of breathing droplet nuclei generated when the patient coughs or speaks. Examples of employees who may have occupational exposure include but are not limited to emergency medical technicians, paramedics, and, in some localities, fire fighters.

The 1994 CDC guidelines identify health care workers who provide medical services in the homes of patients with suspected or confirmed infectious tuberculosis as being at risk and recommend precautions to be used in these settings (Ex. 4B). Employees who provide home-based care serve a

client population similar to that of hospitals (e.g., individuals who may be immunocompromised). Employees such as nurses and aides who provide care to these individuals would be expected to have occupational exposure.

OSHA is also proposing that certain limited construction activities be included under the scope of the standard; however, the Agency believes that the proposed standard would have little impact on this sector. The standard would apply to construction operations occurring in the work settings covered by the scope of the standard where there is a reasonable anticipation of exposure to aerosolized *M. tuberculosis*, e.g., while rebuilding an HVAC system that would connect to an existing one that is in use. The standard is not intended to cover employees involved in other construction operations where they would not have occupational exposure to air which may reasonably be anticipated to contain aerosolized *M. tuberculosis* (e.g., a crane operator constructing a new wing of a hospital). The standard would apply only to construction employees who would incur occupational exposure to tuberculosis. Such a case might arise during maintenance operations on an air system that carries air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* or during renovation, repair, or alteration of areas of buildings that may reasonably be anticipated to contain aerosolized *M. tuberculosis*. The probability of exposure to *M. tuberculosis* during these activities may be high and it is necessary, therefore, for employees performing the work to wear respirators, receive medical surveillance and be protected by the other provisions of the proposed TB standard. Employees of such contractors are subject to the same levels of TB exposure and need the same protection as other exposed employees. Therefore, OSHA proposes to cover these employees under the TB standard and has included construction within the standard's scope.

Thus, although the impact of the standard will be limited, OSHA believes that construction should not be exempted from the proposed standard. OSHA believes that a loophole would be opened in the enforcement of the standard if construction were exempted. The distinction between maintenance and construction is often an ambiguous one. If construction were excluded, contractors, such as HVAC contractors, might argue that their work is "construction" and that they are not covered by the standard. By covering construction, this ambiguity does not arise. This approach is consistent with that taken in other standards (e.g., Ethylene Oxide, 29 CFR 1910.1047; Benzene, 29 CFR 1910.1028).

Several of the sectors covered by the proposed standard may be utilizing volunteers for assistance in the workplace. Under the OSH Act, OSHA is mandated to protect employees against workplace hazards. Consequently, volunteers are not covered by OSHA standards because they are not employees. However, employers should be aware that simply labeling a person as a volunteer is not determinative of whether an employer/employee relationship exists, if the person is compensated for his or her services. Some states or localities may decide to extend the protections of OSHA standards to volunteers; however, such action is the independent decision of these jurisdictions and is not a requirement of the OSH Act.

In addition, the proposed standard applies in situations when an employer has part-time employees, or where employees of other employers are working in a covered facility. These employees are covered by the standard in the same manner as other employees who have occupational exposure to tuberculosis. For example, they would be provided with the same protections as full-time on-site employees, such as being included in the exposure determination, being trained, being provided with medical surveillance, and being issued respiratory protection if necessary. With regard to employers who provide employees to other employers (e.g., personnel providers, temporary help agencies, nurse registries), a shared responsibility for worker protection exists between the provider and the client or "host" employer. The safety and health rights of temporary or "leased" or contracted employees are the same as the rights of those who are employed directly by the host employer. The host employer is generally responsible for safety and health measures taken to address hazards that are an integral part of the workplace the host employer controls. Where other employers are involved, contractors or other "providers," a joint employer-employee relationship may exist in which both (or more) employers share responsibility for the safety and health of the employees. OSHA's concern is to assure that workers receive full protection under this standard. Who provides which protections to the various employees may be specified as a matter of contract or employment agreement existing between the client/host and the contractor/provider. In a typical arrangement, for example, the provider employer might provide the generic training required by the standard and assure that proper follow-up medical evaluation occurs after an exposure incident. Host employers would typically control potential exposure conditions and fulfill other requirements of the standard, such as site-specific training and respiratory protection.

While the proposed standard covers a number of different work settings, as described above, OSHA recognizes that many different types of activities occur in these different settings. Thus, not all provisions of the proposed standard would apply in each work setting. The provisions that are required will vary to some degree, depending on the type of activities done in the work setting. In order to give employers guidance as to what provisions would be applicable in their work setting, OSHA has developed a series of charts of the requirements that are most likely to be applicable for the affected industries.

The following charts outline provisions that would be required for employers covered under the scope of the proposed TB standard. (*Employers who qualify for the limited program as outlined under Paragraph (b), Application, should consult Appendix A for applicable provisions.*) The charts are categorized either by the types of infection control activities that may be common among different work settings (e.g., early identification and transfer of individuals with suspected or confirmed infectious TB) or by a particular occupational work group (e.g., emergency medical services, home health care). These charts are designed to give employers a guide to the regulatory text by outlining the provisions of the proposed standard that are applicable for various types of work settings. These charts summarize the general responsibilities of a particular required provision. The regulatory text should be consulted for more specific details on particular provisions.

In addition, it should also be kept in mind that even though these charts are categorized by the type of activities occurring at a worksite, the categories do not necessarily always follow industry lines (i.e., an employer under a specific industry sector may not always fall under a particular category outlined in the following charts). The charts are not designed to serve as a stand alone check list for any one industry sector. Due to the varying activities that may take place in work settings encompassed by an industry sector, the charts may not account for every applicable provision in every work setting. The charts are intended to provide general guidance as to what

OSHA anticipates to be applicable provisions. Therefore, it is important that employers evaluate the types of activities occurring in settings where their employees work to determine which of the provisions of the proposed standard would be applicable. In order to give employers guidance, OSHA has listed some of the types of industry sectors that the Agency assumes are likely to fall under a particular category, given OSHA's current understanding of the activities commonly occurring in these work settings.

OSHA requests comments on these assumptions and on the charts, and particularly, on how the charts can be made more user friendly and be better organized to help serve as a guide for employers trying to comply with the standard. The following charts are included:

Chart 1: What Would Be Required in Work Settings Where Individuals with Suspected or Confirmed Infectious TB are Admitted or Provided Medical Services?
Chart 2: What Would Be Required in Work Settings Where Early Identification and Transfer Procedures are Used for Individuals with Suspected or Confirmed Infectious TB?
Chart 3: What Would Be Required for Employers with Employees Who Provide Services to Individuals Who Have Been Isolated or Otherwise Confined Due to Having Suspected or Confirmed Infectious TB or Who Work in Areas Where the Air Has Been Identified As Reasonably Anticipated to Contain Aerosolized *M. tuberculosis*?
Chart 4: What Would Be Required for Home Health Care and Home-Based Hospice Care?
Chart 5: What Would Be Required for Emergency Medical Services?
Chart 6: What Would Be Required for Clinical and Research Laboratories?
Chart 7: What Would Be Required for Personnel Services?

Chart 1: What Would Be Required in Work Settings Where Individuals with Suspected or Confirmed Infectious TB Are Admitted or Provided Medical Services?

OSHA anticipates that Hospitals will be the primary type of facility falling under this category. In general, individuals requiring isolation are transferred to hospitals that have isolation capabilities. In addition, medical services such as diagnostic testing for evaluating TB disease are performed in a hospital setting. This category also covers work settings where high-hazard procedures are performed, e.g., medical examiners' offices. (Laboratories are covered in a later chart). However, there may be other work settings such as correctional facilities or long-term care facilities for the elderly that provide isolation or perform high-hazard procedures on individuals with suspected or confirmed infectious TB. In these cases, employers at these facilities would be required to comply with the provisions outlined in this chart.

What Would Be Required in Work Settings Where Individuals With Suspected or Confirmed Infectious TB Are Admitted or Provided Medical Services?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including:
(A) the exposure determination
(B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(C) procedures for reporting exposure incidents
(c)(2)(iii):
(A) procedures for prompt identification of individuals with suspected or confirmed infectious TB
(B) procedures for isolating and managing the care of individuals with suspected or confirmed infectious TB (e.g., minimizing the time and number of employees entering an isolation room)
(C) a list of high-hazard procedures
(D) a schedule for inspection, maintenance, and performance monitoring of engineering controls
(c)(2)(iv) If the employer operates an onsite laboratory, the plan must include a determination as to whether the facility should operate at Biosafety Level 2 or 3 containment and document the need for controlled access, anterooms, sealed windows, directional airflow, measures to prevent the recirculation of lab exhaust air, filtration of exhaust air and thimble exhaust connections.
(c)(2)(vi) Document the number of confirmed cases of TB if claiming reduced responsibilities under paragraph (g)(3)(iii)(D)
(c)(2)(vii) The exposure control plan must be:
(A) accessible
(B) reviewed annually and updated whenever necessary
(C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
All provisions of paragraph (d) are applicable
(e) Clinical and Research Laboratories
If the facility operates an onsite laboratory, the additional provisions under paragraph (e) must be followed (See Chart 6 for Clinical and Research Laboratories)
(f) Respiratory Protection
(f)(1)(i) Provide respirators to employees who:
(A) enter isolation rooms or areas in use for TB isolation
(B) are present during the performance of procedures or services for an individual with suspected or confirmed infectious TB who is not masked
(C) transport an unmasked individual with suspected or confirmed infectious TB within the facility
(D) repair, replace, or maintain air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(E) work in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before entering any of the work settings or performing any of the tasks identified in paragraph (f)(1)(i) (A) through (E) and uses it until leaving the work setting or the task has been completed
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)–(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training

What Would Be Required in Work Settings Where Individuals With Suspected or Confirmed Infectious TB Are Admitted or Provided Medical Services?
(h)(1)(i) Label air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis* "Contaminated Air—Respiratory Protection Required"
(h)(1)(ii) If the employer operates an onsite laboratory, label clinical and research laboratory wastes with the biohazard symbol
(h)(2)(i) Post signs at entrances to:
(A) isolation rooms or areas
(B) areas where procedures or services are being performed on an individual with suspected or confirmed infectious TB
(C) clinical and research laboratories where *M. tuberculosis* is present if the employer operates an onsite laboratory
(h)(2)(ii) Ventilate isolation rooms or areas vacated by individuals with suspected or confirmed infectious TB, in accordance with Appendix C, unless those individuals are medically determined to be noninfectious
(h)(2)(iii) Signs must be readily visible and have a stop sign with the legend "No Admittance Without Wearing a Type N95 or More Protective Respirator"
(h)(2)(iv) Signs at the entrances to clinical or research laboratories (for employers who operate onsite laboratories) and autopsy suites where procedures are being performed that may generate aerosolized *M. tuberculosis*
(h)(3) Information and Training
All elements are applicable
(i) Recordkeeping
All recordkeeping is applicable

Chart 2: What Would Be Required in Work Settings Where Early Identification and Transfer Procedures Are Used for Individuals With Suspected or Confirmed Infectious TB?

OSHA anticipates that the types of establishments falling under this category are likely to be long term care facilities for the elderly, correctional facilities, immigration detainment facilities, hospices, homeless shelters, substance abuse treatment centers, and hospitals that do not admit individuals with suspected or confirmed infectious TB. In these work settings, employers will use the signs and symptoms of active TB as well as any other available information (e.g., tuberculin skin test status) to identify individuals with suspected or confirmed infectious TB. These individuals will then be transferred to facilities with appropriate isolation capabilities. Therefore, facilities that transfer do not need to have engineering controls. Temporary engineering controls will only be necessary in limited situations where transfer cannot be accomplished within 5 hours.

What Would Be Required in Work Settings Where Early Identification and Transfer Procedures Are Used for Individuals With Suspected or Confirmed Infectious TB?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including:
(A) the exposure determination
(B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(C) procedures for reporting exposure incidents
(c)(2)(ii) Employers who transfer individuals with suspected or confirmed infectious TB must include in the plan: procedures for prompt identification, masking or segregation, and transfer of such individuals
(c)(2)(vi) Document the number of confirmed cases of TB if claiming reduced responsibilities under paragraph (g)(3)(iii)(D)
(c)(2)(vii) The exposure control plan must be:
(A) accessible
(B) reviewed annually and updated whenever necessary
(C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices and engineering controls to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(d)(3) Identify individuals with suspected or confirmed infectious TB and:
(i) mask or segregate the individual until transfer can be accomplished
(ii) place the individual in temporary isolation if transfer cannot be accomplished within 5 hours from the time of identification
(d)(5) Engineering controls (i.e., negative pressure, direct exhaust or HEPA filtration, etc.) shall be used when temporary isolation is used
(d)(6) Provide information about TB hazards to any contractor who provides temporary or contract employees who will incur occupational exposure
(f) Respiratory Protection
(f)(1)(i) Provide respirators to employees who:
(A) enter a temporary isolation room or area
(E) work in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined and is awaiting transfer
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before entering the work setting and uses it until leaving the work setting
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)–(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training
(h)(1)(i) Label air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis* "Contaminated Air—Respiratory Protection Required" if temporary isolation is used
(h)(2)(i)(A) Post signs at entrances to temporary isolation rooms or areas
(h)(2)(ii) Ventilate temporary isolation rooms or areas vacated by individuals with suspected or confirmed infectious TB in accordance with Appendix C, unless those individuals are medically determined to be noninfectious
(h)(2)(iii) Signs used for temporary isolation must be readily visible and have a stop sign with the legend "No Admittance Without Wearing a Type N95 or More Protective Respirator"

What Would Be Required in Work Settings Where Early Identification and Transfer Procedures Are Used for Individuals With Suspected or Confirmed Infectious TB?
(h)(3) Information and Training
All elements are applicable
(i) Recordkeeping
All recordkeeping is applicable

Chart 3: What Would Be Required for Employers With Employees Who Provide Services to Individuals Isolated or Otherwise Confined Due to Having Suspected or Confirmed Infectious TB or Who Work in Areas Identified as Reasonably Anticipated to Contain Aerosolized M. tuberculosis?

OSHA anticipates that the type of employees falling under this category will be workers providing social work services, social welfare services, teaching, law enforcement or legal services to individuals who are in isolation or confined to their homes due to having suspected or confirmed infectious TB. Also included in this category are maintenance employees such as contract HVAC maintenance employees who work on air systems that have been identified as carrying air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*. Employers in these situations will not need to perform early identification procedures since the identification of individuals with suspected or confirmed infectious TB has already been accomplished. Similarly, air systems will already be labeled as containing "Contaminated Air".

What Would Be Required for Employers with Employees Who Provide Services to Individuals Isolated or Otherwise Confined Due to Having Suspected or Confirmed Infectious TB or Who Work in Areas Identified as Reasonably Anticipated to Contain Aerosolized *M. tuberculosis*?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including:
(A) the exposure determination
(B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(C) procedures for reporting exposure incidents
(c)(2)(vii) The exposure control plan must be:
(A) accessible
(B) reviewed annually and updated whenever necessary
(C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(d)(6) Provide information about TB hazards to any contractor who provides temporary or contract employees who will incur occupational exposure
(f) Respiratory Protection
(f)(1)(i) Provide respirators to employees who:
(A) enter isolation rooms or areas
(D) repair, replace or maintain air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(F) work in a residence where an individual with suspected or confirmed infectious TB is known to be present
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before entering the work setting and uses it until leaving the work setting
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)—(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training
(h)(3) Information and Training
All elements are applicable
(i) Recordkeeping
All recordkeeping, except for engineering controls records, is applicable

Chart 4: What Would Be Required for Home Health Care and Home-Based Hospice Care?

In general, most of the provisions of the proposed standard would be applicable for employers providing home health care or home-based hospice care. However, OSHA realizes that home health care providers do not have control over the home environment and therefore, the standard would not require these employers to provide or maintain engineering controls in the homes of their clients. OSHA also realizes that some individuals with infectious TB may be sent home instead of being admitted to the hospital; OSHA would not expect employers to transfer such individuals out of their home. However, individuals with suspected or confirmed infectious TB need to be identified so that home health care providers can take appropriate precautions to protect themselves while in the home.

What Would Be Required for Home Health Care and Home-Based Hospice Care?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including:

What Would Be Required for Home Health Care and Home-Based Hospice Care?
(A) the exposure determination (B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* (C) procedures for reporting exposure incidents
(c)(2)(v) Employers who provide home health care or home-based hospice care must include procedures for prompt ID of individuals with suspected or confirmed infectious TB, procedures for minimizing exposure to such individuals, a list of high-hazard procedures performed, if any, and procedures for delaying elective high-hazard procedures or surgery until the individual is noninfectious
(c)(2)(vii) The exposure control plan must be: (A) accessible (B) reviewed annually and updated whenever necessary (C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(d)(3) Identify individuals with suspected of confirmed infectious TB
(d)(6) Provide information about TB hazards to any contractor who provides temporary or contract employees who will incur occupational exposure
(f) Respiratory Protection
(f)(1)(i) Provide respirators to employees who: (F) work in a residence where an individual with suspected or confirmed infectious TB is known to be present
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before entering the work setting and uses it until leaving the work setting
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)–(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training
(h)(3) Information and Training
All elements are applicable except those related to the use of engineering controls
(i) Recordkeeping
All recordkeeping, except for engineering controls records, is applicable

Chart 5: What Would Be Required for Emergency Medical Services?

Similar to Home Health Care or Home-Based Hospice Care, employers providing emergency medical services do not have control over many of the work settings in which they may provide services. Thus, OSHA would not require these employers to provide or maintain engineering controls. In addition, while these types of employers are likely to be transferring individuals with infectious TB, it is not their responsibility to initiate the transfer of an individual identified as having suspected or confirmed infectious TB to a facility with appropriate isolation capabilities. However, where it is feasible to do so, such individuals need to be identified so that emergency medical service employees can take precautions to protect themselves.

What Would Be Required for Emergency Medical Services?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including: (A) the exposure determination (B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* (C) procedures for reporting exposure incidents
(c)(2)(iii): (A) Procedures for prompt identification of individuals with suspected or confirmed infectious TB (B)(4) Procedure or policy for using properly-fitted masks on individuals with suspected or confirmed infectious TB (C) A list of high-hazard procedures
(c)(2)(vii) The exposure control plan must be: (A) accessible (B) reviewed annually and updated whenever necessary (C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(d)(3) Identify individuals with suspected or confirmed infectious TB
(d)(6) Provide information about TB hazards to any contractor who provides temporary or contract employees who will incur occupational exposure
(f) Respiratory Protection
(f)(1)(i) Provide respirators to employees who: (A) enter an isolation room or area (B) are present during the performance of procedures or services for an individual with suspected or confirmed infectious TB who is not masked (C) transport an individual with suspected or confirmed infectious TB in an enclosed vehicle or who transport an unmasked individual with suspected or confirmed infectious TB within the facility (F) work in a residence where an individual with suspected or confirmed infectious TB is known to be present
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before entering the work setting and uses it until leaving the work setting

What Would Be Required for Emergency Medical Services?
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)–(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training
(h)(3) Information and Training
All elements are applicable except those related to the use of engineering controls
(i) Recordkeeping
All recordkeeping, except for engineering controls records, is applicable

Chart 6: What Would Be Required for Clinical and Research Laboratories?

Employers in clinical and research laboratories that handle specimens that may contain *M. tuberculosis* or process or maintain the resulting cultures or perform activities that may result in the aerosolization of *M. tuberculosis* must follow most of the provisions of the proposed standard. In addition, a special paragraph has been added to address the unique hazards of the lab environment. Clinical and research labs are not responsible for developing or implementing procedures for the early ID of individuals with suspected or confirmed infectious TB or the transfer of those individuals.

What Would Be Required for Clinical and Research Laboratories?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including: (A) the exposure determination (B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* (C) procedures for reporting exposure incidents
(c)(2)(iv) Employers who operate a laboratory must include a determination as to whether the facility should operate a laboratory at Biosafety Level 2 or 3 containment and document the need for controlled access, anterooms, sealed windows, directional airflow, measures to prevent the recirculation of lab exhaust air, filtration of exhaust and thimble exhaust connections
(c)(2)(vii) The exposure control plan must be: (A) accessible (B) reviewed annually and updated whenever necessary (C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices and engineering controls to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(d)(6) Provide information about TB hazards to any contractor who provides temporary or contract employees who will incur occupational exposure
(e) Clinical and Research Laboratories
All provisions of paragraph (e) are applicable
(f) Respiratory Protection
(f)(1)(ii) For research laboratories, provide respirators to employees who are present when aerosols of *M. tuberculosis* cannot be safely contained
(f)(1)(iii) Provide respirators at no cost and assure that the employee uses the respirator in accordance with this standard
(f)(1)(iv) Assure that the employee dons the respirator before performing the tasks under (f)(1)(ii) and uses it until completing the tasks
All remaining provisions of paragraph (f) are applicable, i.e., (f)(2)–(f)(8)
(g) Medical Surveillance
All provisions of paragraph (g) are applicable
(h) Communication of Hazards and Training
(h)(1)(i) Labels:
(h)(1)(i) Label air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis* "Contaminated Air—Respiratory Protection Required"
(h)(1)(ii) Label clinical and research laboratory wastes with the biohazard symbol
(h)(2) Signs:
(h)(2)(i)(C) Post signs at entrances to clinical and research laboratories where *M. tuberculosis* is present
(h)(2)(iv) Include on the sign the biohazard symbol, the name and telephone number of the laboratory director or other designated responsible person, the infectious agent designation *M. tuberculosis*, and special requirements for entering the laboratory
(h)(3) Information and Training
All elements are applicable
(i) Recordkeeping
All recordkeeping is applicable

Chart 7: What Would Be Required for Personnel Services?

This category covers employers who provide temporary employees to any of the other employers covered under the scope of the standard (e.g., temporary nurses hired to work at a hospital, temporary lab technicians working in a clinical laboratory). Employees in these situations are covered by the standard in the same manner as other employees who have occupational exposure to tuberculosis. A shared responsibility for worker protection exists between the personnel service employer and the client (or "host") employer. These matters may be specified as a matter of contract or employment agreement existing between the personnel service employer and the host employer. In this chart OSHA has assumed that a typical contract or employment agreement exists between the two employers with the personnel provider accepting responsibility for the general requirements and the host employer being responsible for site-specific measures. Therefore, the personnel service provider is shown complying with non-site specific provisions such as exposure determination, medical surveillance, and non-site specific employee training. The host employer would comply with more site-specific

provisions such as procedures for early ID, engineering controls and site-specific employee training. In addition, the chart assumes that the personnel service provider has accepted the responsibility for respiratory protection. OSHA requires that workers in these situations receive full protection under the standard.

What Would Be Required for Personnel Services?
(c) Exposure Control
(c)(1) Exposure Determination
(c)(2)(i) Written Exposure Control Plan including:
(A) the exposure determination
(B) procedures for providing information to occupationally exposed employees about individuals with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(C) procedures for reporting exposure incidents
(c)(2)(vii) The exposure control plan must be:
(A) accessible
(B) reviewed annually and updated whenever necessary
(C) available for copying by the Assistant Secretary and Director upon request
(d) Work Practices and Engineering Controls
(d)(1) Use work practices to eliminate or minimize employee exposure to *M. tuberculosis*
(d)(2) Implement the work practices in the Exposure Control Plan
(f) Respiratory Protection
All provisions of paragraph (f) are applicable
(g) Medical Surveillance
All provisions of paragraph (g) are applicable except those related to conducting site-specific follow-up investigations after an exposure incident or skin test conversion
(h) Communication of Hazards and Training
(h)(3) Information and Training
All elements are applicable except those training elements which are site-specific
(i) Recordkeeping
All recordkeeping, except for engineering control records, is applicable

OSHA's preliminary conclusion is that all employees who have occupational exposure to aerosolized *M. tuberculosis*, as a result of performing their duties, are at risk of infection. Under paragraph (a) the Agency has listed those facilities, work settings and services where it believes that significant occupational exposure is most likely to occur. OSHA requests comment and supporting data as to whether there are other work settings or services where significant occupational exposures can be reasonably anticipated.

Paragraph (b) Application

As discussed above, OSHA has preliminarily determined that there are elevated risks of TB infection associated with certain types of work settings and services. However, the Agency realizes that there may be employers covered under the scope of the standard who have work settings in counties where the risk of TB infection is low. Some geographical areas in the U.S. have not reported cases of TB to CDC and facilities in these areas have not encountered any individuals with confirmed infectious TB in their work settings within the recent past.

In consideration of the lessened likelihood of employee exposure in these work settings, OSHA is proposing that some employers be permitted to qualify for a more limited program. Paragraph (b), Application, states that an employer covered under paragraph (a), Scope, other than the operator of a laboratory, may choose to comply only with the provisions of Appendix A if the Exposure Control Plan demonstrates that his or her facility or work setting: (1) does not admit or provide medical services to individuals with suspected or confirmed infectious TB; (2) has not encountered a case of confirmed infectious TB in the past 12 months; and (3) is located in a county that, in the past 2 years, has had no cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year. Thus, in the past two year period, the number of reported TB cases must be 0 for at least one of the two years. (It may even be zero for both years). In the other year, the number of cases must be no greater than 5. For example, if in the first year of the preceding two-year period the number of reported cases was 0, but in the second year there were 4 reported cases of confirmed infectious TB in the county, an employer would still qualify for the limited program under paragraph (b), provided that none of the cases were encountered in his or her employees' work setting. However, for the employer in this scenario to continue to qualify for the limited program, the number of cases reported in the third year would have to return to zero. Similarly, employers would not qualify for the limited program if the number of cases of confirmed infectious TB reported in the county was greater than zero in both of the preceding two years or if 6 or more cases were reported in one of the preceding two years.

OSHA has taken this approach because the number of TB cases fluctuates widely and different locations and geographical areas may be affected at different times. For example, many counties report no cases in one year or even in two consecutive years, or report a few cases in one year but then have no cases in the following year. From 1992 to 1994 (Ex.7–262), 55.3 percent of the counties in the U.S., representing 12.9 percent of the population, reported no confirmed cases of TB in one year of the preceding two-year period and fewer than 6 cases in the other year. OSHA believes that the approach described above is appropriate given these fluctuations and that it reduces the burden on employers who rarely encounter TB cases by allowing them to qualify for the limited program. OSHA initially considered allowing employers to qualify for the limited program only if there had been no cases of confirmed infectious TB reported in the county in the preceding one-year period. This would have meant that an employer would be required to comply with the full program if even a single case was reported in the county in any year. OSHA requests comment on the approach taken in the proposed rule and the appropriateness of the "zero-county" trigger used in the standard.

Although OSHA believes that the risk of incurring TB is substantially reduced in facilities located in counties qualifying for the limited program, the risk of infection continues because all counties have residents who are infected and who may therefore develop active TB and transmit it. In addition, the mobility of the U.S. population means that it is easy to carry the disease from higher risk areas to lower risk areas. Thus, OSHA believes that certain TB exposure control provisions, i.e., those reflected in the limited program required by the standard, need to be in place in all work settings where cases of TB could be encountered.

Under the limited program, employers are responsible for (1) preparing a written exposure control plan with certain minimal elements, (2) providing a baseline skin test and medical history, (3) making medical management and follow-up available after an exposure incident, (4) providing medical removal protection if necessary, (5) providing information and training to employees with potential occupational exposure, and (6) complying with pertinent recordkeeping requirements. The specific paragraphs of the proposed standard that would apply in these situations are outlined in Appendix A.

OSHA believes that these provisions are the minimum requirements necessary for employee protection, even in work settings where no TB has recently been reported in the county and no individuals with confirmed infectious TB have been encountered within the work setting during the past 12 months. OSHA's reasoning is that, although no cases of confirmed infectious TB have been reported for the preceding two years, there is considerable fluctuation among counties from one year to the next, as explained above. In addition, as discussed in the preliminary risk assessment section of the preamble, there is a high prevalence of TB infection nationwide, approximately 6.5 percent. Infections may become active after a latency period of years. Therefore, the absence of a reported active case in the immediate past does not mean that active cases will not be manifested in the current or subsequent years. For these reasons, it is necessary for covered facilities to maintain, at a minimum, a TB program that incorporates the basic TB exposure control provisions that will protect employees from exposures.

A primary element of the limited program is a written exposure control plan. The exposure control plan includes an exposure determination to identify those employees who would incur occupational exposure if an individual with infectious TB were encountered in the work setting. The exposure control plan would also have to contain procedures and policies for the early identification and masking of individuals with suspected or confirmed infectious TB and procedures for transferring those individuals to other facilities. This would assure that if an individual with suspected or confirmed infectious TB were to enter the workplace, he or she would be promptly identified and transferred to a facility with AFB isolation capabilities. In addition, while awaiting transfer, these individuals could be masked to the extent that it is feasible (e.g., in the case of a non-combative individual) in order to prevent transmission. Similarly, the exposure control plan must include procedures for reporting exposure incidents should they occur. Employees need to know what steps to take if an exposure occurs so that appropriate follow-up can be initiated for the medical management of the exposed employee and investigation of the incident.

In order to qualify for the limited program pursuant to paragraph (b), the employer must include in his or her exposure control plan the number of TB cases reported in the county and the number of individuals with confirmed infectious TB who have been encountered within the work setting. An employer is required by the standard to check and document the number of confirmed infectious TB cases in the county once a year. Typically, county health departments collect this information for reporting purposes and report it both on a monthly and an annual basis. Obtaining the annual count from the county health department would meet the requirements of the proposed rule. County case counts must be recorded for the two most recent annual reporting periods, i.e., the two preceding years. This count must be reflected in the employer's Exposure Control Plan, as described below in paragraph (c), Exposure Control Plan, of this Summary and Explanation. The count of cases and the notation in the Plan can be kept in any media, e.g., paper or electronic.

In addition to an abbreviated exposure control plan, the limited program would include some of the basic elements of medical surveillance, i.e., baseline skin tests and medical histories for employees identified under the exposure determination and medical management and follow-up for those employees who have had an exposure incident. Baseline skin tests and histories will help to assure that true conversions are appropriately identified should an exposure incident occur. Medical management and follow-up provisions will assure that exposed employees receive the proper medical evaluation after an exposure incident and that the incident is properly investigated so that it will not occur again. Under this limited program, no periodic medical surveillance would be required.

Where necessary, the employer is also required to provide medical removal and protection (MRP) of benefits for those employees who develop active TB. OSHA anticipates that the need to provide MRP would be a rare event because little active TB has been reported in many of these counties. In addition, if employees are properly trained to identify suspected and confirmed infectious TB and to promptly transfer those individuals, few occupational exposures should occur, thus minimizing the likelihood that employees will become infected. Therefore, training is an important element of the limited program. Training is a key element in assuring that employees know how to identify individuals with suspected or confirmed infectious TB and the necessary steps to take if such an individual is encountered.

Certain minimal records must also be kept by the employer. Medical records for documenting baseline skin tests and any potential medical evaluations made as a result of an exposure incident, as well as records for training and records for OSHA illnesses and injuries, would have to be kept. Keeping records should not be burdensome for the employer since it is likely that only a minimal number of employees would be identified by the exposure determination as having potential occupational exposure (e.g., intake workers in admitting areas or emergency departments); only such employees need medical surveillance or training.

The elements of the limited program outlined under this paragraph closely track the recommendations of the CDC for facilities designated as having "minimal risk" under the CDC's TB Guidelines for Health Care Facilities (Ex. 4B). Under these guidelines, CDC considers facilities to have "minimal risk" if there is no TB in the community and no TB in the facility. CDC's recommendations for such facilities include a written TB control plan, procedures for early identification and prompt transfer of individuals with suspected or confirmed infectious TB, and employee training. CDC does not specifically recommend baseline skin testing. However, CDC's guidelines do say that baseline testing would be

advisable in these facilities so that, if an unexpected exposure does occur, conversions can be distinguished from positive skin test results caused by previous exposures. CDC also recommends that a risk assessment be conducted by such facilities each year. In the case of a "minimal risk" facility, as defined by CDC, this would essentially involve checking on the number of reported cases of TB in the community and within the facility, which is essentially what OSHA requires under the exposure control plan as documentation to qualify for the limited program available under paragraph (b).

Paragraph (c) Exposure Control

Employees incur risk each time they are exposed to aerosolized *M. tuberculosis*. A worker can become infected from a single exposure incident, and thus it is necessary to prevent exposure incidents whenever possible. The goal of this proposed standard is to reduce the significant risk of infection by minimizing or eliminating occupational exposure to aerosolized *M. tuberculosis*.

One purpose of paragraph (c), Exposure Control, is to identify the tasks and procedures where occupational exposure may occur and to identify those employees whose duties include these tasks and procedures. An additional purpose of the paragraph is to develop and document, in an exposure control plan, policies and procedures for eliminating or minimizing occupational exposure, e.g., developing procedures for identifying individuals with suspected or confirmed TB, for appropriately isolating and minimizing employee contact with those individuals, and for reporting exposure incidents.

Paragraph (c)(1) requires each employer who has an employee with occupational exposure to prepare an exposure determination that identifies those employees who have occupational exposure to aerosolized *M. tuberculosis*. As discussed under paragraph (j), Definitions, "occupational exposure" means "reasonably anticipated contact that results from the performance of an employee's duties, with an individual with suspected or confirmed infectious TB or air that may contain aerosolized *M. tuberculosis*." Thus, the exposure determination needs to include, in addition to those employees who have direct contact with individuals with suspected or confirmed infectious TB and employees who perform procedures that may aerosolize *M. tuberculosis*, those employees who can reasonably be anticipated as part of their job duties to be exposed to air that may contain aerosolized *M. tuberculosis*.

For example, while an admissions clerk in a homeless shelter will not perform medical procedures on a client with suspected infectious tuberculosis, the clerk may reasonably be anticipated to encounter and share the same airspace with such an individual. Therefore, the admissions clerk would be included in the Exposure Control Plan and would be covered by this standard.

Exposure determination is a key provision of exposure control because the employer must know which tasks or procedures involve occupational exposure in order to determine what measures can be taken to eliminate or minimize exposure incidents. In addition, an exposure determination is necessary in order to ascertain which employees are to be provided with respiratory protection, medical surveillance, and training.

Each employer is required to consider the duties, tasks, and procedures of all employees in each job classification in each work area where occupational exposure occurs when making the exposure determination. OSHA believes that it is appropriate to allow the employer to identify and document job classifications where all or some employees have occupational exposure as a basis for the required exposure determination. By identifying the job classification, each employee included in the description will know that he or she is within the scope of the standard. Listing of every employee's name is not required, however, because that may be burdensome for employers who have many employees with occupational exposure.

The term "job classification" is used generically. During the development of the Bloodborne Pathogens standard, commenters used several terms (e.g., "job category", "job responsibility", "job title", "position description") to identify and document employees at risk in the exposure determination. OSHA sought to use a term that would encompass all of these terms. Therefore, as in the Bloodborne Pathogens standard, OSHA has chosen to use the term "job classification" because it has the broadest application to facilities of all sizes that use formal and less formal designations to classify employees. Thus, the standard would allow employers to use existing job titles, job descriptions, or other designations to identify those job classifications in which occupational exposure occurs. OSHA solicits comment on whether this term needs further defining in this paragraph or in paragraph (j), Definitions.

The standard does not require that every task and procedure that could result in occupational exposure be listed in the exposure control plan, but instead gives the employer a choice in how to document the exposure determination. Paragraph (c)(1)(i) states that the exposure determination shall contain:

(A) A list of the job classifications in which all employees have occupational exposure; and

(B) A list of the job classifications in which some employees have occupational exposure, and a list of all tasks and procedures (or groups of closely related tasks and procedures) that these employees perform and that involve occupational exposure.

This means that the employer may choose to extend "blanket" coverage to those job classifications where essentially all employees have occupational exposure [the paragraph (c)(1)(i)(A) option]. In this case, the employer would not have to list all tasks and procedures for those employees in the exposure control plan, since all of these employees would be covered by the standard. For example, if a hospital determines that all employees within the job classification "respiratory therapist" have duties or responsibilities that involve tasks and procedures where occupational exposure occurs, the job classification "respiratory therapist" can simply be listed in the exposure determination in accordance with paragraph (c)(1)(i)(A) and no subsequent listing of those tasks and procedures is required. Similarly, the job classification of "homeless shelter admissions clerk" in the previous example could be included under the "blanket" job classification list in paragraph (c)(1)(i)(A).

On the other hand, the employer may determine that job classifications exist in which only *some* employees have occupational exposure. The employer may determine that it is not necessary to include all employees in such job classifications under the standard since only a portion of them have occupational exposure. In these situations [paragraph (c)(1)(i)(B)], the employer must list the job classification as well as the tasks and procedures or groups of closely related tasks and procedures performed by employees within that job classification that result in occupational exposure. For example, within the job classification "laboratory technician," there may be some employees who experience occupational exposure (e.g., laboratory technicians who perform microbiological procedures on *M. tuberculosis* cultures), while others would not be expected to have such exposure (e.g., laboratory technicians who work in clinical chemistry). In such a case, the employer may not wish to extend coverage to all employees in the job classification "laboratory technician". Consequently, the job classification "laboratory technician" would be listed in the exposure determination along with the tasks and procedures in which occupational exposure occurs. This approach would inform employees within the job classification "laboratory technician" about those tasks that they perform that involve occupational exposure and that employees performing those tasks and procedures triggers their inclusion in the scope of the standard. However, it would not be necessary for the employer to list each procedure performed by a "laboratory technician". For example, performing sputum smears, culturing the bacteria in the sputum, and conducting drug-susceptibility testing on the culture all involve manipulation of specimens that could contain *M. tuberculosis*. Therefore, these tasks could be grouped under the designation "manipulation of specimens that may contain *M. tuberculosis*."

Although the standard permits the exposure determination to list job classifications, grouping job classifications according to location would not be sufficient to meet the requirement for identifying job classifications with occupational exposure. For example, identifying job classifications by using the "Emergency Department" would not fulfill this requirement because it does not identify the specific employee job classifications that have occupational exposure. An employer who has determined that employees in the "Emergency Department" warrant coverage under the standard would have to list the job classifications that involve occupational exposure and identify the tasks and procedures that result in occupational exposure. OSHA believes that merely grouping employees by location, e.g., designating all employees who work in the Emergency Department, may exclude employees who have occupational exposure since such a grouping could overlook employees who may occasionally enter the Emergency Department but are not routinely assigned there. OSHA seeks comment about the protectiveness of permitting exposure determinations to be made by location within a work setting in certain specific instances where the employer believes such a delineation is useful and will not misclassify employees and specifically requests examples of regulatory language that could achieve these objectives.

Paragraph (c)(1)(ii) requires that the exposure determination be made without regard to the use of respiratory protection. It has been OSHA's long-standing position that the determination of occupational exposure be made without regard to the use of personal protective equipment such as respirators. The reason for this is that several conditions must be met for respiratory protection to effectively lessen exposures. First, the employee must be trained to use the equipment properly. Second, respiratory protection must be used each time the task requiring such protection is performed. Third, respiratory protection must fit properly. If even one of these conditions is not fully met, protection cannot be assured. Therefore, all tasks that entail occupational exposure need to be included in the exposure determination, regardless of the use of respiratory protection. This approach is consistent with other OSHA standards (e.g., Bloodborne Pathogens, 29 CFR 1910.1030; Formaldehyde, 29 CFR 1910.1048; Cadmium, 29 CFR 1910.1027) and is essential to designing an appropriate exposure control program. Utilizing this approach assures that workers who perform tasks requiring respiratory protection will receive the training, medical surveillance, and other provisions of this standard that will enhance their safety should respiratory protection fail.

Paragraph (c)(2) requires that each employer covered under the scope of the standard establish a written exposure control plan. The exposure control plan is a key provision of the standard because it requires the employer to identify the employees who receive training, respiratory protection and medical surveillance and to develop a number of policies and procedures that will eliminate or minimize employees' exposure to sources of aerosolized *M. tuberculosis*. However, because not all employers' work settings are the same, not all employers' exposure control plans will need to contain the same elements. The goal of the exposure control plan is to address the type of exposure that occurs in a given work setting, as identified under the exposure determination, and then to develop procedures and policies to minimize or eliminate that exposure. Thus, the size and complexity of the exposure control plan will be relative to the types of exposure encountered in the employer's work setting. For example, social service employees who must provide services to individuals who are in AFB isolation are covered under the scope of the standard. The employer in this case would only have to include certain minimal elements in his or her exposure control plan. This employer would not have to include elements for identifying individuals with suspected or confirmed infectious TB since these individuals will already have been identified by someone else. Similarly, the exposure control plan of such employers would not have to include procedures for isolating or managing the care of individuals with infectious TB. On the other hand, hospitals that admit or provide medical services to individuals with suspected or confirmed infectious TB would be required to have a more extensive exposure control plan since the employer in this case would be responsible for identifying, isolating and possibly performing high-hazard procedures on individuals with suspected or confirmed infectious TB.

Under paragraph (c)(2)(i), the proposed standard requires that the exposure control plan be written. There are several reasons for having the plan in writing. First, because exposure control must be practiced by everyone—employee and employer—it is imperative that an employee be able to find out what provisions are in place in his or her workplace. In addition, the exposure determination gives an employee who may be unfamiliar with the job a ready reference for ascertaining which job classifications, tasks, and procedures entail occupational exposure. Second, the exposure control plan also serves as an on-site adjunct to the overall infection control plan for the work setting and reinforces the employer's training program. Employees will be trained about the various procedures developed by the employer to eliminate and minimize exposure. Having the procedures written and available at the work site will provide a ready reference for employees and will serve as an adjunct to their training. Third, having the plan in writing is also important for enforcement purposes. By reviewing the exposure control plan, an OSHA compliance officer will be able to become familiar with the employer's determination of tasks and procedures with occupational exposure, the job classifications whose duties include those identified tasks, and the policies and procedures the employer uses to minimize occupational exposure along with any revisions to the exposure control plan.

OSHA realizes that many workplaces covered under the scope of the proposed standard may already have comprehensive infection control plans

that may include many of the measures required by the proposed standard. It is not OSHA's intent for employers to duplicate current infection control plans solely for the purpose of complying with the standard. Therefore, the exposure control plan may be comprised of existing documents that are part of a larger infection control plan. However, all elements of the exposure control plan for TB required by the proposed standard must be included. In addition, the plan must be in some manner a cohesive entity by itself or a guidance document must exist that states the overall policy goals and directs the reader to the location of the separate documents that are being used to fulfill the requirements of the standard.

While there will be differences in the elements of employers' exposure control plans, each employer covered under the scope of the standard must have certain minimal elements in his or her plan. Paragraphs (c)(2)(i)(A) through (c)(2)(i)(C) contain the minimal elements that must be included in the exposure control plans of every employer covered under the scope of the standard. Paragraph (c)(2)(i)(A) requires that the exposure control plan must include the exposure determination required under paragraph (c)(1). As discussed above, the exposure determination is necessary to identify those employees who have occupational exposure so that the employer can determine which employees are to be given respiratory protection, medical surveillance and training.

Paragraph (c)(2)(i)(B) requires that the employer develop procedures for informing occupationally exposed employees about suspected or confirmed infectious TB cases and about air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* in order that the employees can take proper precautions against *M. tuberculosis* exposure. Once individuals with suspected or confirmed infectious tuberculosis have been identified, it is necessary to convey this information to employees who may be exposed so that they may take the steps necessary to eliminate or minimize their exposure. When patient confidentiality may be a concern, it is not necessary to use an individual's name to satisfy this provision. For example, lists do not need to be made of all patients in the hospital with active TB. Information may be conveyed to employees by simply labeling the isolation room with the warning sign required under paragraph (h)(2)(iii) while the room is in use for TB isolation. Labeling the room will inform the employees that the individual in the room is in respiratory isolation and the employee must stay out of the room or don the appropriate respiratory protection before entering. Another scenario in which such notification is necessary would be when such an individual must be transported to another facility in an ambulance. In this case, the employees who will be present in the ambulance would have to be notified so that they could utilize proper precautions during the transport.

Paragraph (c)(2)(i)(C) requires that the employer include in the exposure control plan procedures for reporting exposure incidents, including identification of the person to whom the incident is to be reported, and the procedures the employer will use for evaluating the circumstances surrounding exposure incidents as required by paragraph (g)(4)(iv). Under paragraph (j), Definitions, an *exposure incident* * * * is defined as

> * * * an event in which an employee has been exposed to an individual with confirmed infectious TB or to air containing aerosolized *M. tuberculosis* without the benefit of all applicable exposure control measures required by this section.

In the event that unprotected employees are exposed to aerosolized *M. tuberculosis*, it is necessary that this exposure incident be reported to the employer as soon as feasible in order to promptly initiate proper medical management and follow-up of the exposed employee. In addition, quick reporting of exposure incidents permits the employer to investigate the circumstances surrounding such incidents while pertinent conditions remain relatively unchanged and are fresh in the employee's memory.

Procedures need to be in place describing how the exposure incident is to be investigated. Having investigation procedures in place beforehand will help to assure that such investigations are able to be done promptly and in a consistent and thorough manner from case to case. This will assist the employer in complying with the requirement of paragraph (g)(4)(iv) that directs the employer to investigate and document the circumstances surrounding the exposure incident to determine if changes can be instituted that will prevent similar occurrences in the future.

Paragraph (c)(2)(ii) applies to employers who transfer individuals with suspected or confirmed infectious TB to a facility with AFB isolation capabilities. This would apply to employers who operate a facility from which an individual with suspected or confirmed infectious TB is transferred and would not apply to employers whose employees provide certain services such as social welfare services to individuals who have been isolated and in settings where home health care and home hospice care is provided.

The standard does not require any employer to transfer individuals with suspected or confirmed infectious TB. Transfer is an option that employers have that relieves the employer of many provisions of the standard, such as AFB isolation rooms. If an employer chooses to use the transfer option, the employer must include the procedure for implementing the transfer in the exposure control plan.

Paragraph (c)(2)(ii) requires employers who transfer individuals with suspected or confirmed infectious TB to develop exposure control plan procedures that address the following: (1) prompt identification of individuals with suspected or confirmed infectious TB; (2) masking or segregation of individuals with suspected or confirmed infectious TB; and (3) transfer of such individuals to a facility with AFB isolation capabilities.

One of the most important steps in preventing TB transmission is the early detection of individuals who may have infectious TB (Exs. 3–33, 3–34, 3–35, 4B). It is essential that individuals with suspected or confirmed infectious TB be identified as soon as possible so that employees who must have contact with them will be warned early and be able to use appropriate infection control practices to protect themselves from exposure. Obviously, the sooner this is done, the less occupational exposure there will be and the less likely that TB will be transmitted. In addition, early identification of individuals with suspected or confirmed infectious TB will allow for the timely transfer and initiation of effective treatment of those individuals for whom the diagnosis of TB is likely. By promptly administering effective treatment, these individuals can be rendered noninfectious, thus decreasing the time they are infectious and their potential for exposing employees and other people.

OSHA is proposing that employers develop a procedure for the prompt identification of individuals with suspected or confirmed infectious TB as part of the exposure control plan. In order to assure prompt identification, it is necessary for the employer to have procedures in place regarding how this identification will be made. CDC has recommended that identification procedures be based on the prevalence and characteristics of TB in the population served by the specific facility (Ex. 4B). For example,

individuals who come from communities with a high prevalence of TB and exhibit certain signs of TB may be more highly suspected as having infectious TB than individuals from communities with a low prevalence of TB. OSHA, therefore, expects that the procedures may be different depending upon the local conditions.

The procedure needs to contain the following:

Methodology—The employer must describe how he or she will make the determination that an individual should be considered as having suspected or confirmed infectious TB. There are several ways of doing this. The employer can use information provided by a physician or other health care provider in advance of an individual's admission to the employer's facility that the individual has been diagnosed with suspected or confirmed infectious TB. If this is not available the employer must determine whether an individual should be considered as having suspected infectious TB. OSHA defines suspected infectious TB as:

> * * * a potential disease state in which an individual is known, or with reasonable diligence should be known, by the employer to have one or more of the following conditions, unless the individual's condition has been medically determined to result from a cause other than TB: (1) to be infected with *M. Tuberculosis* and to have the signs or symptoms of TB; (2) to have a positive acid-fast bacilli (AFB) smear; or (3) to have a persistent cough lasting 3 or more weeks and two or more symptoms of TB, e.g., bloody sputum, night sweats, anorexia, weight loss and fever. An individual with suspected infectious TB has neither confirmed infectious TB nor has he or she been medically determined to be noninfectious.

Although the definition specifies the criteria the employer must incorporate in his or her plan, the employer will still need to exercise judgment in determining whether an individual meets one or more prongs of the definition. Of course, an employer, such as one who operates a facility in an area of particularly high TB prevalence, is free to use more stringent (i.e., additional) criteria for considering an individual to have suspected infectious TB in his or her particular work setting.

In situations where a medical diagnosis is not available either before or at the time of admission, an employer must collect the information he or she needs to make the determination. This can be accomplished in two ways. The employer can have an employee administer a medical history questionnaire to individuals seeking services from the facility. Another way to obtain information to make this determination is by having an employee observe the individual to ascertain his or her health status, looking for the signs, and asking about the symptoms included in OSHA's definition that may indicate infectious TB. Many employers will use both questionnaires and observation. The employee collecting the information will have to be trained on how to conduct the investigation effectively and with respect for the privacy of the individual.

Responsibilities—The employer must designate responsibilities for determining whether an individual should be considered as having suspected or confirmed infectious TB. However, all employees need to be given clear instructions regarding their roles in the prompt identification of suspected or confirmed infectious TB cases. For example, the health care workers who are the first points of contact in ambulatory care settings and emergency rooms in hospitals could be involved with the initial screening of patients. They may be given several questions to ask a patient, which would be used as information to begin the determination. The next actions would depend upon the responses, and the authority of the health care workers. Some employees, for example, would only report answers to questions or their observation of signs of infectious TB in the client population to someone more knowledgeable. Other employees would be making determinations. The hospital would probably have a different procedure that would be used before or at admission to the hospital for scheduled services. The same hospital might have still another procedure designating responsibility to other employees for identifying patients who develop TB while in the hospital. The Exposure Control Plan must designate those employees who make the determination as to whether an individual has suspected or confirmed infectious TB. An employer should consider such designation(s) carefully because, regardless of who determines that an individual has suspected infectious TB, it is the employer who is responsible for ensuring that the employee knows and uses the proper criteria.

The identification procedures will likely vary among establishments, depending upon the type of work done in the facility. For example, facilities that provide long-term care for the elderly will likely have a different procedure from hospitals that have an open admissions policy. OSHA also expects that the methods different employers use may vary depending on whether the employer is in an area of high or low TB prevalence. This approach is consistent with CDC recommendations.

Promptness—Prompt identification of an individual with suspected or confirmed infectious TB is important because it allows isolation before the disease is spread through the facility. CDC recommends that procedures be in place for prompt identification. However, OSHA expects that the determination will be made as soon as reasonably practical since an employer cannot always make such a determination immediately. For many situations, such as those occurring in a hospice, the employer will have information regarding an individual's health status prior to admitting the individual to the facility. The employer can use this information to determine whether the individual should be considered as having suspected or confirmed infectious TB. In a long-term health care facility, the employer needs to be continually aware of each resident's health status because it can change rapidly. Information regarding the signs or symptoms suspected infectious TB needs to be reported and processed as soon as possible.

Effectiveness—OSHA believes that an effective procedure, when implemented, will identify individuals as having suspected or confirmed infectious TB. OSHA believes that many employers affected by this proposed standard currently use effective procedures and find them to be practical. However, OSHA also recognizes that it will not be possible to ensure that the identification procedure will promptly detect all individuals with infectious TB each time. In homeless shelters, for example, the clients may withhold information requested in a questionnaire because they believe that such information may persuade the shelter to refuse to admit them. Therefore, homeless shelters may have to place greater reliance on observation of the residents for the cluster of signs and symptoms associated with infectious TB. Although this standard would require that homeless shelter workers and others be trained to look for signs in individuals, it is unlikely that all cases will be identified. However, if the employer finds that individuals with suspected and confirmed infectious TB are not being identified, the employer must investigate in order to determine what procedures need to be modified. During an inspection, an OSHA compliance officer will review the adequacy of the procedures, and although a citation would not be issued solely on the basis of failure to identify an individual with suspected infectious TB because no identification system is fool-proof,

failure to identify a number of individuals with undetected suspected or confirmed infectious TB would be good evidence that the procedures or their implementation need to be investigated and improved and could result in a citation.

The employer must also include in the exposure control plan procedures for transferring individuals with suspected or confirmed infectious TB to facilities with AFB isolation capabilities. The procedures must address how those transfers are to take place in order that the transfers may be conducted promptly and with minimal exposure to employees. Specifically, they will include where the cases are to be transferred, how the transfer will occur, and what precautions employees are to take while individuals with suspected or confirmed TB are awaiting transfer.

As the note to paragraph (c)(2)(ii) states, an employer's duties regarding transfer of an individual with suspected or confirmed infectious TB will vary with the type of facility the employer operates and the work performed by his or her employees. For example, the transfer responsibilities of hospitals, long-term care for the elderly, correctional facilities, and hospices may include contacting the receiving facility, providing transport, and taking other steps to ensure the individual can get to the receiving facility. These types of facilities often exercise custodial care over such individuals and, hence, have more responsibility for assuring completion of the transfer. Conversely, the responsibilities a homeless shelter or a facility that offers drug treatment for drug abuse, but that does not have custody over individuals, may only include providing information about the receiving facility, contacting the facility, and providing directions to the facility. An employer who provides home health care or home-based hospice care has no obligation to transfer an individual from his or her home to a receiving facility. Transferring an individual with suspected or confirmed infectious TB protects employees within the facility by making sure the source of occupational exposure is removed and, of course, benefits the individual in that he or she receives help in locating and getting to a receiving facility with the capability for appropriately managing their care.

Paragraph (c)(2)(iii) outlines the additional elements required of employers who have work settings where individuals with suspected or confirmed infectious TB are admitted or provided with medical services. Paragraph (c)(2)(iii)(A) requires that their exposure control plans include procedures for the prompt identification of individuals with suspected or confirmed infectious TB. As discussed above, the early identification of individuals with infectious TB will help to assure that employees who must have contact with those individuals will be warned early and be able to use appropriate infection control practices to protect themselves from exposure. In addition, for employers who have facilities where individuals with suspected or confirmed infectious TB are admitted and provided medical services, prompt identification is essential so that isolation precautions and effective treatment can be initiated as soon as possible, thereby reducing exposure to employees and other people.

Paragraph (c)(2)(iii)(B) requires that the employer develop procedures for isolating and managing the care of individuals with suspected or confirmed infectious TB. Having isolation procedures in place will help to assure that employees are aware of the steps to take in the event that individuals with suspected or confirmed infectious TB are identified. If employees know the proper procedures to follow, they will be better equipped to initiate isolation promptly, thereby reducing the likelihood that individuals with infectious TB will infect others. This provision is in accordance with the most recent CDC guidelines, which also recommend the procedures include:

(1) The indications for isolation, (2) who is authorized to initiate and discontinue isolation, (3) isolation practices, (4) monitoring of isolation, (5) management of patients who will not comply with isolation practices, and (6) criteria for discontinuing isolation. (Ex. 4B)

While OSHA allows the employer to determine what criteria should be included in the procedures to isolate, the Agency believes that it is prudent for the employer also to consider the elements listed in the CDC guidelines.

Paragraph (c)(2)(iii)(B) also requires that the employer develop policies and procedures for managing the care of individuals with suspected or confirmed infectious TB once they have been placed in isolation. The exposure control plan must include procedures and polices addressing: (1) Minimization of the time an individual with suspected or confirmed infectious TB remains outside of an AFB isolation room or area, (2) minimization of employee exposure in AFB isolation rooms or areas, (3) delay of elective transport or relocation of individuals with infectious TB within the facility and, to the extent feasible, performance of services or procedures for such individuals in an AFB isolation room or area, (4) masking of individuals with infectious TB or use of portable containment engineering controls during transport outside of AFB isolation rooms and return of the individual to an AFB isolation room or area as soon as is practical after completion of the service or procedure, and (5) delay of elective high-hazard procedures and elective surgery until an individual with suspected or confirmed infectious TB is determined to be noninfectious.

It is important to minimize, to the extent feasible, exposure of employees to aerosolized *M. tuberculosis* even while maintaining a high quality of health care and other required services. Developing policies and procedures addressing the items listed above will help to assure that this overall goal is met. For example, there may be times when an individual with suspected or confirmed infectious TB must leave the isolation room or area (e.g., when certain equipment necessary for providing care to the patient cannot be brought into the room). On these occasions having policies in place that minimize the time those individuals must be outside the isolation room or area will help to reduce the likelihood that droplet nuclei are spread. For example, if a particular procedure must be performed outside of the isolation room, time could be minimized by taking the individual directly to the procedure area, performing the procedure upon arrival, and returning the individual to isolation immediately after completion of the procedure. In addition, if a procedure is to be performed outside of the isolation room, a time could be chosen when the procedure area is not being used by others.

The exposure control plan must also contain procedures for minimizing employee exposure in AFB isolation rooms or areas. For example, policies addressing minimizing both the number of employees and time that such employees spend in isolation rooms can reduce exposure. This can be accomplished in a variety of ways. For example, in order to minimize the number of employees entering an isolation room, certain tasks or procedures that might normally be done by several different employees could be done by one person. A nurse coming into the room to administer daily TB treatment could also bring in the patient's breakfast at the same time rather than have a hospital dietician deliver the meal. In addition, the employer must address minimization of time that employees spend in an isolation room or area. For example, rather than conducting an entire discharge planning interview with an individual in person, the employee may be able to collect and convey a large part of the information over the phone with the individual. Personal contact could be limited to just the time needed to obtain items requiring direct interaction, such as the individual's signature.

Policies are to be included that address the masking of individuals with infectious TB during transport outside of AFB isolation rooms or areas. Masking of individuals may be accomplished, for example, through the use of surgical masks or valveless respirators. A barrier such as a surgical mask, when placed over the mouth of an individual who is coughing, will reduce the formation of droplet nuclei because the mask will collect and contain the droplets as they are discharged before they have time to evaporate and form droplet nuclei. A respirator that does not have an exhalation valve can also be used to capture droplets being discharged. An exhalation valve would permit droplets to pass through and discharge into the air, where they could evaporate and form droplet nuclei. However, while surgical masks prevent the formation of droplet nuclei, they do not prevent exposure to droplet nuclei. As the document "Biosafety Precautions for Airborne Pathogens" states:

There is no reciprocity between the means of prevention of the actual formation of droplet nuclei (coughing into a tissue) and the means of prevention of exposure (barriers to breathing in the droplet nuclei). Once a droplet nucleus has been allowed to form, its small size can penetrate the fiber of a tissue or a surgical mask. Thus these products do not represent adequate physical barriers to the aerosol transmission of droplet nuclei. The appropriate barrier is a well fitted respirator that does not allow leakage of air around the edges and blocks passage of microorganisms in the filter media (fibers or pores) through which air is inspired. Although a simple surgical mask applied to a tuberculosis patient who must be transported outside the isolation room will prevent the dispersal of organisms as droplet nuclei, such a mask does not provide adequate protection to the individual who must breathe air containing droplet nuclei. (Ex. 7–134)

Since masking of an individual with suspected or confirmed infectious TB will reduce the number of droplet nuclei expelled into the air, the employer is required to develop policies addressing the masking of such individuals during transport outside of an AFB isolation room.

It is not OSHA's intent to dictate patient management practices, nor will it be the Compliance Officer's responsibility to determine the correctness of certain patient management policies. However, the Agency believes that the employer must consider the above situations and develop policies that address them, keeping in mind the goal of minimizing employee exposure. This provision is in accordance with CDC recommendations (Ex. 4B).

The exposure control plan must also contain policies for the delay of elective transport or relocation within the facility of individuals with suspected or confirmed infectious TB outside of an AFB isolation room or area. For example, delaying the transfer of an inmate with suspected or confirmed infectious TB from one prison to another, where possible, until the inmate has been determined to be noninfectious, will reduce not only the number of employees exposed, but will also minimize the exposure of other inmates, thereby decreasing the risk of transmission of disease.

Similarly, the exposure control plan is to include policies for the delay of elective high-hazard procedures until an individual with suspected or confirmed infectious TB has been determined to be noninfectious. Elective high-hazard procedures (e.g., pulmonary function testing) or elective surgery (e.g., noncritical dental procedures) might be easily delayed, without compromising care, until an individual with infectious TB has been determined to be noninfectious.

Paragraph (c)(2)(iii)(C) requires the employer to list all high-hazard procedures performed in the workplace. As discussed in paragraph (j), Definitions, high-hazard procedures are defined as "* * * those procedures performed on an individual with suspected or confirmed infectious tuberculosis in which the potential for being exposed to *M. tuberculosis* is increased due to the reasonably anticipated generation of aerosolized *M. tuberculosis* * * *." Under paragraph (d)(4) of Work Practice and Engineering Controls, the proposed standard requires that all employers assure that high-hazard procedures are conducted in an AFB isolation room or area. Thus, listing the high-hazard procedures will serve to identify those procedures that require special ventilation considerations (e.g., maintaining negative pressure and properly exhausting contaminated air). This will assist employees in determining which procedures must be performed using such engineering controls and, consequently, will help minimize employee exposure.

For employers who have work settings where TB cases are isolated, paragraph (c)(2)(iii)(D) requires the employer to develop a schedule for the inspection, maintenance, and performance monitoring of engineering controls. Engineering controls required by the proposed standard play an essential role in reducing employee exposures to *M. tuberculosis*. Thus, it is necessary that these controls be appropriately maintained, inspected and monitored in order to assure that they are functioning properly. Since engineering controls are mechanical systems, they are prone to occasional lapses in performance caused by occurrences such as clogged filters, slipping or broken drive belts, burned-out motors, obstructed ducts, and so forth. Since these situations cannot be predicted, it is necessary to regularly inspect engineering controls for proper functioning. Hence, a schedule must be developed for such activities. In addition, employees who are responsible for the maintenance will have a record that they can check to see when certain engineering controls need to be inspected, maintained or monitored. In general, OSHA has left the time frame for these activities up to the employer, except as required under paragraphs (d)(5)(ii) and (d)(5)(iii), since the employer is familiar with the characteristics of the workplace that could affect the performance of these controls (e.g., dusty conditions, high heat and humidity, seasonal variations).

For facilities with clinical or research laboratories, Paragraph (c)(2)(iv) requires that the exposure control plan contain a determination from the director of the laboratory as to whether the laboratory facility should operate at Biosafety Level 2 or 3 containment according to CDC/NIH recommendations. Under paragraph (e), Clinical and Research Laboratories, the proposed standard requires a number of provisions to eliminate or minimize exposure in clinical and research laboratory settings. These provisions are based on CDC/NIH recommendations (Ex. 7–72) for laboratory procedures performed under Biosafety Levels 2 and 3 for an infectious agent such as *M. tuberculosis*. However, as noted in the CDC/NIH recommendations, the selection of a biosafety level depends on a number of factors and it may be necessary to adapt the biosafety level based upon such factors. For example, the CDC/NIH recommendations state that:

Occasions will arise when the laboratory director should select a biosafety level higher than that recommended. For example, a higher biosafety level may be indicated by the unique nature of the proposed activity (e.g., the need for special containment for experimentally generated aerosols for inhalation studies) or by the proximity of the laboratory to areas of special concern (e.g., a diagnostic laboratory located near patient care areas). Similarly, a recommended biosafety level may be adapted to compensate for the absence of certain recommended safeguards. For example, in those situations where Biosafety Level 3 is recommended, acceptable safety may be achieved for routine or repetitive operations (e.g., diagnostic procedures involving the propagation of an agent for identification, typing and susceptibility testing) in laboratories where facilities satisfy Biosafety Level 2 recommendations, provided the recommended Standard Biological Practices, Special Practices, and Safety Equipment for Biosafety Level 3 are rigorously followed. (Ex. 7–72, pg. 70)

OSHA agrees that it is appropriate that such decisions be made by the laboratory director and would allow such adaptations to the CDC/NIH recommendations. However, regardless of adaptations, OSHA requires the laboratory director to determine and document the need for controlled access, anterooms, sealed windows, directional airflow, preventing recirculation of laboratory exhaust air, filtration of exhaust air before discharge outside, and thimble exhaust connections for biological safety cabinets. These determinations, along with any adaptations to the CDC/NIH biosafety level, must be made a part of the exposure control plan. The documentation will provide information to the laboratory employees of adaptations to and changes in recommended biosafety levels.

For employers who provide home health care or home-based hospice care, paragraph (c)(2)(v) specifies the elements that are to be included in the exposure control plan. In home health care and home-based hospice care situations, individuals are in their private homes receiving health care and other services and thus the employer has limited control over the work site in which he or she provides those services. In addition, employers providing such home-based care will not be transferring individuals identified as having suspected or confirmed infectious TB from their homes to facilities with isolation capabilities, nor will the employer be initiating isolation precautions in the home. In recognition of the uniqueness of home-based work settings, OSHA has limited the elements of the exposure control plan for an employer who provides home health care and home-based hospice care. The elements included under this paragraph are intended to address the type of activities that are likely to occur in the home health care work setting. Under this paragraph the employer must include procedures for prompt identification of individuals with suspected or confirmed infectious TB and for minimizing employee exposure to such individuals. As discussed above, in order for employees to take proper precautions in protecting themselves from exposure to TB, it is essential that there be procedures to identity potentially infectious individuals. In many cases the home health care employer may already know that the individual has been identified as having suspected or confirmed infectious TB and has been confined to their home. However, in other cases, an individual may be suffering from other immunocompromised conditions and may develop active TB. Because employees in home health care and home-based hospice care may be providing services to individuals at risk of developing active TB, it is necessary that there be procedures in place for identifying those individuals. In addition, the exposure control plan must include procedures for minimizing employee exposure. Such procedures might include minimizing the time spent in the home by combining tasks to limit the number of entries or by minimizing the number of employees who must enter the home along with the time they spend there. Paragraph (c)(2)(v) also requires that the exposure control plan include a list of high-hazard procedures, if any, performed in the workplace and procedures for delaying elective high-hazard procedures until the individual is noninfectious. Listing the high-hazard procedures will serve to identify those procedures that may require special considerations. In the home setting, this would not include the use of AFB isolation precautions. To the extent possible the employer should also include procedures for when these types of procedures can be delayed. This will decrease the exposure of employees to aerosolized *M. tuberculosis* that might be generated performing these procedures.

Paragraph (c)(2)(vi) stipulates that the employer must document the number of confirmed infectious tuberculosis cases encountered in the work setting in the past 12 months in the Exposure Control Plan whenever the employer is using this information to claim reduced responsibilities related to paragraph (b), Application, and paragraph (g)(3)(iii)(D), Medical Surveillance, of the standard. Under paragraph (b), employers are relieved from implementing certain provisions of the standard if they do not admit or provide medical services to individuals with suspected or confirmed infectious TB and they can demonstrate that, in the past 2 years, there have been no cases of confirmed infectious TB reported in the local county in one or both years and, if any cases have occurred in one of the past 2 years, fewer than 6 confirmed infectious cases were reported in that year. Furthermore, employers desiring to follow the limited program must demonstrate that no such cases have been encountered in his or her employees' work setting in the past 12 months. Under paragraph (g)(3)(iii)(D) of Medical Surveillance, employees with negative TB skin tests are to be provided with a TB skin test every 6 months if the employee works in an intake area where early identification procedures are performed in facilities where six or more individuals with confirmed infectious TB have been encountered in the past 12 months. However, if the employer can document that fewer than 6 individuals with confirmed infectious TB have been encountered in the facility, the employee in the intake area would only have to be provided with a TB skin test annually. The count of the number of confirmed infectious TB cases in the exposure control plan would serve to document that fewer than 6 individuals with confirmed infectious TB had been encountered in the past 12 months, thus relieving the employer of the burden of providing skin tests every 6 months for those affected employees.

Paragraph (c)(2)(vii)(A) requires that a copy of the exposure control plan be accessible to employees. The reason for this is to assure that an employee can get and consult the exposure control plan within a reasonable time, place and manner. Having access to the plan encourages employees to develop a complete understanding of the plan and its application, so that the program can be carried out by both employer and employees. Having the plan available also serves as an on-site adjunct to the overall infection control program and may reinforce the training programs.

For fixed work sites and primary workplace facilities, the plan must be maintained on-site at all times. For those situations where an employee(s) travels between work sites or where the employee's work is carried out at more than one geographical location, the plan may be maintained at the primary workplace facility. To ensure access, the plan should be in a central location

where an employee may see it whenever he or she wishes. However, in order to allow flexibility, OSHA is not specifying where the plan must be kept. The employer is permitted to determine where the plan is kept provided that the employee can access a copy of the plan at the workplace, within the workshift. For example, if the plan is maintained on a computer, access to the computer or hard copy must be available to the employee. Likewise, if the plan is comprised of several separate policy documents, copies of all documents must be accessible in addition to any general policy statement or guiding document that may exist.

Paragraph (c)(2)(vii)(B) requires that the exposure control plan be reviewed at least annually and updated whenever necessary to reflect new or modified tasks, procedures, or engineering controls that affect occupational exposure and to include new or revised employee positions with occupational exposure. An example of such a situation would be when an employer in a facility that had previously transferred individuals with suspected or confirmed infectious TB decided that such individuals would be admitted and provided medical services. The purpose of this requirement is to assure that all new tasks and procedures are evaluated in order to determine whether they could result in occupational exposure. New and revised job classifications must be added to the lists of job classifications and tasks and procedures identified in (c)(1)(i) of this section in order to assure full coverage of occupationally exposed employees. The updating must occur as soon as feasible and may not be postponed until the annual review.

Paragraph (c)(2)(vii)(C) requires that the exposure control plan be made available to the Assistant Secretary and the Director upon request for examination and copying. The purpose of this requirement is to allow the OSHA representative to review an employer's plan, including the exposure determination of employees at risk for occupational exposure. Although the Assistant Secretary or the Director could request the plan at any time, it will usually be requested by an OSHA compliance safety and health officer (CSHO) during the course of a workplace inspection. The CSHO needs to examine the plan in order to see what procedures and program planning for the control of occupational exposures have been instituted and whether they meet the requirements of the standard.

Paragraph (d) Work Practices and Engineering Controls

It is generally acknowledged that protection of the employee is most effectively attained by elimination or minimization of the hazard at its source, which engineering controls and work practices are both designed to do. Industrial hygiene principles also teach that control methods that depend upon the vagaries of human behavior are inherently less reliable than well-maintained mechanical methods. For these reasons, OSHA has preferred engineering and work practice controls and has required, under paragraph (d)(1), that they be used to eliminate or minimize employee exposure to *M. tuberculosis*. Nevertheless, OSHA recognizes that situations may exist in which neither of these control methods is feasible and that, in these circumstances, employee protection must be achieved through the use of personal protective equipment, primarily respirators. In other situations, personal protective equipment may have to be utilized in conjunction with engineering controls and/or work practices to obtain a further reduction in employee exposure.

Engineering controls serve to reduce employee exposure in the workplace by either removing the hazard or isolating the worker from exposure. These controls include process or equipment redesign, process or equipment enclosure (e.g., biosafety cabinets), and employee isolation. In general, engineering controls act on the source of the hazard and eliminate or reduce employee exposure without reliance on the employee to take self-protective action.

In comparison, work practice controls reduce the likelihood of exposure through alteration of the manner in which a task is performed (e.g., closing the door of an AFB isolation room immediately upon entering or exiting). Although work practice controls also act on the source of the hazard, the protection they provide is based upon employer and employee behavior rather than installation of a physical device. In many instances these two control methodologies work in tandem, because it is often necessary to employ work practice controls to assure effective operation of engineering controls. Under the provisions of the preceding paragraph, Exposure Control Plan, the employer is required to develop a number of work practices relative to controlling occupational exposure to TB. In paragraph (d)(2), these work practices are required to be implemented in the work setting.

In developing the methods of compliance section for this proposal, OSHA carefully considered the work environments that have the potential for producing occupational exposures. Since the source of the hazard is frequently a living person, typical methods of reducing or eliminating the hazard at the source may not always be feasible. For example, in an industrial operation a process may be entirely enclosed and operated or monitored by an employee at a remote location, a situation that would rarely, if ever, occur in the work settings covered by this standard. The Agency believes, therefore, that prevention of exposures to *M. tuberculosis* will often require use of a combination of control methods to achieve adequate protection of employees. Paragraph (d)(1) requires work practices and engineering controls to be used to eliminate or minimize employee exposures.

Not all facilities will have the capabilities to admit or provide medical services to individuals with suspected or confirmed infectious tuberculosis. Consequently, these facilities will have to transfer such individuals to another facility where isolation rooms or areas are available. Paragraph (d)(3) requires that individuals with suspected or confirmed infectious TB must be identified and, except in settings where home health care or home-based hospice care is provided, shall be: (i) masked or segregated in such a manner that contact with employees who are not wearing respiratory protection is eliminated or minimized until transfer or placement in an AFB isolation room or area can be accomplished; and (ii) placed in an AFB isolation room or area or transferred to a facility with AFB isolation rooms or areas within 5 hours from the time of identification, or temporarily placed in AFB isolation within 5 hours until placement or transfer can be accomplished.

Masking or segregation of individuals with suspected or confirmed infectious TB while those individuals are awaiting placement in isolation or transfer to another facility is done to assure that employee exposure is minimized to the extent feasible. This provision, drawn from CDC recommendations (Ex. 4B), is aimed at minimizing the exposure of employees in areas where individuals are first identified as having suspected or confirmed infectious TB. Although CDC recommends masking such individuals, OSHA presents a choice of masking or segregation because the Agency believes that this practice is directly involved with the medical management of such individuals. It is OSHA's mission to protect employees

from occupational exposure to tuberculosis and it is not the Agency's intent to dictate medical practice relative to individuals with suspected or confirmed infectious TB. Therefore, where the employer has chosen not to mask individuals with suspected or confirmed infectious TB when they are not in isolation rooms or areas or when such individuals cannot be masked (e.g., because they are combative), the employer must segregate these individuals in a manner such that contact with employees who are not wearing respiratory protection is eliminated or minimized. Segregation could be accomplished, for example, by having the individual wait in an area out of the main traffic of a waiting room or intake area or in a vacant examination room that is not needed for patient/client consultations. The time that a facility can permit an individual to await placement or transfer is limited to 5 hours. After that the individual must be placed in isolation.

The primary purposes of AFB isolation rooms or areas are to (1) isolate patients who are likely to have infectious TB from unprotected employees, (2) prevent escape of droplet nuclei from the room, thus preventing entry of *M. tuberculosis* into the corridor and other areas of the facility where unprotected employees may be exposed, and (3) provide an environment that will promote reduction of the concentration of droplet nuclei through various engineering controls (Ex. 4B). All of these will reduce employee exposure. Indeed, placement of individuals with suspected or confirmed infectious TB in an AFB isolation room is the most effective way to prevent or lessen transmission.

OSHA has proposed that individuals with suspected or confirmed infectious TB be isolated or transferred within 5 hours from the time of being identified as a suspected or confirmed case. The Agency realizes that the time it will take to isolate or transfer an individual once he or she is identified as having suspected or confirmed infectious TB may vary and that circumstances may arise that cause delays in initiating isolation (e.g., all isolation rooms may be occupied by other patients). However, OSHA is also concerned about the amount of time an individual, who has been identified as having suspected or confirmed infectious TB, should be permitted to stay in non-isolation areas. Individuals who must wait for extended periods of time before placement in AFB isolation or transfer may present a risk of exposure to employees working in these areas even though these individuals may be masked. A study by Moran et. al. shows that emergency departments that made a presumptive diagnosis of TB were able to initiate isolation in an average of 5 hours from the time of patient registration (Ex. 7–251). Patient registration usually precedes identification. The standard requires that procedures be in place for prompt identification of individuals with suspected or confirmed infectious TB. In view of this requirement and the fact that the study was based on time elapsed from patient registration to isolation, which included the time the patient waited to be medically observed, the Agency has preliminarily concluded that five hours from the time of being identified is a reasonable cutoff point for transfer or placement in isolation.

The Agency's concern regarding permitting identified individuals to wait for extended periods, even though they are masked, before they are transferred or isolated is not unfounded. The American Thoracic Society, in its document Control Of Tuberculosis In The United States, states:

> * * *Patients unable to cooperate in covering coughs and sneezes can wear ordinary surgical masks for *short periods*, for example, while being transported within institutions. For *longer periods*, masks on patients are stigmatizing, uncomfortable, and probably ineffective. (Ex. 5–80) (emphasis added)

Consequently, a cutoff point of 5 hours has been proposed as the maximum amount of time individuals who have been identified with suspected or confirmed infectious TB may await transfer or placement into AFB isolation. As discussed under the Exposure Control Plan, paragraph (c), employers are required to have procedures in place for isolating or transferring individuals identified with suspected or confirmed infectious TB so that AFB isolation can be executed expeditiously. Five hours would appear to be a reasonable amount of time to carry out these procedures. OSHA believes that longer periods of time are likely to pose too great a risk of exposure to employees in the vicinity. The longer an individual with suspected or confirmed infectious TB remains outside of AFB isolation, the greater the risk of transmission.

It should be noted that the 5-hour cutoff is the amount of time allotted *per facility* to accomplish AFB isolation or transfer of these individuals. More specifically, if an individual spent 4 hours awaiting transfer at an identifying facility, the receiving facility would still be allowed 5 hours to accomplish isolation, not just the one hour remaining since initial identification of the individual. The intent of the proposed facility-based 5-hour period is to allow the receiving facility adequate time to accomplish isolation and to recognize that the receiving facility should not be held responsible for circumstances beyond the facility's control (e.g., the time the individual waited before arrival at the receiving facility).

If placement or transfer cannot be completed within five hours, it must be done as soon as possible thereafter. In addition, the employer must assure in such a case that his or her facility has AFB isolation rooms or areas for the isolation of the individual until placement or transfer can be accomplished. More specifically, it is not necessary to construct a dedicated AFB isolation room or area to isolate such individuals while awaiting transfer or placement within the facility. The definition of "AFB isolation room or area" states that this may be a room, area, booth, tent, or other enclosure that is maintained at negative pressure to adjacent areas in order to control the spread of aerosolized *M. tuberculosis*. For example, such isolation might be achieved by placing a portable stand-alone HEPA filtration unit (vented to the outside) in an unused examination room. Another method is the use of a rigid enclosure on casters with a ventilation unit to achieve negative pressure, a window kit to safely exhaust the enclosure's air to the outside, and a digital pressure monitor to assure maintenance of negative pressure within the enclosure. As is the case with any AFB isolation room or area, the means used to isolate an individual awaiting placement or transfer must achieve negative pressure and have its air safely discharged to the outside. OSHA seeks comment regarding the 5-hour limit on placement or transfer and measures that can be used for AFB isolation in those situations when transfer or placement cannot be accomplished within that time.

Paragraph (d)(4) stipulates that high-hazard procedures must be conducted in AFB isolation rooms or areas. High-hazard procedures as defined in paragraph (b), Definitions, are procedures performed on an individual with suspected or confirmed infectious TB in which the probability of *M. tuberculosis* being expelled into the air is increased. These procedures include, but are not limited to, endotracheal intubation and suctioning, diagnostic sputum induction, aerosol treatments (including pentamidine therapy), pulmonary function testing, and bronchoscopy. These procedures also include autopsy, clinical, surgical, and laboratory procedures that may aerosolize *M. tuberculosis*. In view of the increased probability of droplet nuclei generation associated with these procedures, all high-hazard procedures are required to be performed in rooms, areas, or booths that meet AFB isolation criteria (e.g., negative pressure) in order to contain the droplet nuclei and eliminate or minimize employee exposure. Other procedures that may generate aerosols (e.g., irrigation of tuberculous abscesses, homogenizing or lyophilizing infectious tissue), are also covered by this provision. (See paragraph (e) of this proposal for requirements for microbiological practices and containment equipment in laboratories.)

Paragraph (d)(5) requires that engineering controls be used in facilities that admit or provide medical services or AFB isolation to individuals with suspected or confirmed infectious TB except in settings where home health care or home-based hospice care is being provided. For example, engineering controls must be used in isolation rooms or areas, areas where high hazard procedures are performed, and autopsy rooms where *M. tuberculosis* may be aerosolized. This provision specifically excepts settings where home health care or home-based hospice care is being provided. In such situations, the employer is not in control of the employee's work setting because the setting is the private home of the individual being provided with care. In view of this, an employer providing home health care or home-based hospice care would not be required to implement engineering controls in the individual's home.

In conjunction with this provision, paragraph (d)(5)(i) requires that negative pressure be maintained in AFB isolation rooms or areas. The purpose of this provision is to prevent the escape of aerosolized *M. tuberculosis* from a room and into the corridors and other areas of the facility where unprotected employees may be exposed. In order for air to flow from one area to another, there must be a difference in the pressure between the two areas. Air will flow from the higher pressure to the lower pressure area. The lower pressure area is at "negative pressure" relative to the higher pressure area. The level of negative pressure achieved will depend on the physical configuration of the area, including the air flow path and flow openings. A pressure differential of 0.001 inch of water and an inward air velocity of 100 feet per minute (fpm) are minimum acceptable levels. The pressure difference necessary to achieve and maintain negative pressure in a room is very small and may be difficult to measure accurately. Negative pressure can be achieved by balancing the room supply and exhaust flows to set the exhaust flow to a value of 10% [but no less than 50 cubic feet per minute (cfm)] greater than the supply (Ex. 4B).

As stated above, the negative pressure principle plays an important role in controlling the spread of *M. tuberculosis* to other areas of the facility where unprotected workers may be exposed. In isolation rooms and areas, and in areas where high hazard procedures (including autopsies) are performed, engineering controls creating negative pressure will prevent the escape of droplet nuclei from the room, thus preventing dispersion of *M. tuberculosis* into the corridor and other areas of the facility where unprotected employees may be working.

In addition, negative pressure fulfills the secondary purpose of general ventilation by reducing the concentration of contaminants in the air. General ventilation maintains air quality by two processes, dilution and removal of airborne contaminants. Dilution reduces the concentration of contaminants in a room by supplying air that does not contain those contaminants. The supply air mixes with and then displaces some of the contaminated room air, which is subsequently removed from the room by the exhaust system. This process reduces the concentration of droplet nuclei in the room air and the risk of TB transmission.

OSHA is not proposing to allow the use of ultraviolet germicidal irradiation (UVGI) in place of ventilation for controlling aerosolized *M. tuberculosis*. Although the germicidal properties of certain wavelengths of ultraviolet light (UV–C) are generally recognized, the Agency has not included UVGI as a primary engineering control in the proposed standard. With regard to the use of UVGI, CDC states:

> Because the clinical effectiveness of UV systems varies, and because of the risk for transmission of *M. tuberculosis* if a system malfunctions or is maintained improperly, UVGI is not recommended for the following specific applications: 1. Duct systems using UVGI are not recommended as a substitute for HEPA filters if air from isolation rooms must be recirculated to other areas of a facility. 2. UVGI alone is not recommended as a substitute for HEPA filtration or local exhaust of air to the outside from booths, tents, or hoods used for cough-inducing procedures. 3. UVGI is not a substitute for negative pressure. (Ex. 4B)

The CDC goes on to discuss a number of factors that affect the effectiveness of UVGI and UV lamps in killing airborne tubercle bacilli. These factors include the intensity of UVGI, the duration of irradiation of the organism, the relative humidity of the environment, the age of the UV lamp, and the amount of dust on the lamp's surface (Ex. 4B). In light of this information, the Agency does not believe that UVGI can reliably and uniformly control airborne tubercle bacilli. Consequently, UVGI is not acceptable as a primary engineering control. However, some employers may choose to use UVGI as a supplement to ventilation or HEPA filtration. In recognition of this, OSHA has included information regarding UVGI safety and health concerns in Appendix D of this section.

Paragraph (d)(5)(ii) requires that in those areas where negative pressure is required (i.e., AFB isolation rooms or areas), maintenance of negative pressure must be qualitatively demonstrated (e.g., by smoke trails) daily while in use for tuberculosis isolation. In Supplement 3 of its 1994 guidelines, CDC states:

> TB isolation rooms should be checked daily for negative pressure while being used for TB isolation. (Ex. 4B)

The principle and advantages of negative pressure have been discussed above. Proper maintenance of negative pressure will prevent the contaminated air from escaping from the room or area and exposing unprotected employees. One means of qualitatively demonstrating negative pressure is through the use of smoke trail testing (see Appendix G of this section). Other methods include flutter strips or continuous monitoring devices. With regard to the safety and effectiveness of these methods, the CDC states:

> The concern over the use of smoke tubes is unfounded. Controlled tests by NIOSH have shown that the quantity of smoke that is released is so minute that it is not measurable in the air. The location of the patient and the length of time the patient is exposed dilute the smoke to several orders of magnitude below an 8-hour exposure limit. It is not practical and often not effective to use flutter strips or continuous monitoring devices as alternatives to indicate directional air movement. The air flow (due usually to the small clearance area under the door) is insufficient to move the flutter strip. Likewise, low negative pressure, which will satisfactorily provide adequate directional air flow into the isolation room, may not be readable on continuous monitoring devices. Devices must be capable of reading 0.001 inch of water, the established minimum, to be effective. (Ex. 4B)

In light of this information, employers should be aware that when choosing a method other than smoke trails to demonstrate maintenance of negative pressure, the method chosen should be

reviewed carefully in order to assure that the intended test can be effectively conducted.

Paragraph (d)(5)(iii) stipulates that engineering controls must be maintained, and inspected and performance monitored for filter loading and leakage every six months, whenever filters are changed, and more often if necessary to maintain effectiveness. The primary intent of this provision is to assure that engineering controls are maintained in such a manner that they continue to function effectively. As discussed previously, a number of factors can affect the functioning of engineering controls, such as frozen bearings, broken belts, and burned out motors. It is the employer's responsibility to maintain engineering controls in proper working condition. That is, if a belt breaks on a fan motor, it is not appropriate to delay repairs until the six-month inspection. This provision does, however, stipulate a maximum time period of six months between inspections and performance monitoring of engineering controls and HEPA filters in air systems carrying air that may reasonably be anticipated to contain aerosolized *M. tuberculosis*. The employer's maintenance schedule may specify more frequent inspection, maintenance, and performance monitoring based upon conditions found in that particular work site. For example, the employer, being more familiar with his or her own work setting, may have knowledge that the work environment is very dusty, thus necessitating a more frequent period for changing the filters. When filters are changed, performance monitoring must be conducted to assure that the filter has been correctly installed and is functioning properly. In view of the importance of these systems in reducing the concentration of droplet nuclei and thereby the risk of TB transmission, OSHA believes that six months is the longest period that these systems should be allowed to operate without inspection and performance monitoring. This maximum six-month period of time between consecutive inspections and performance monitoring of HEPA filters is supported by CDC (Ex. 4B).

Paragraph (d)(5)(iv) requires that air from AFB isolation rooms or areas must be exhausted directly outside, away from intake vents and employees. If the air from these areas cannot be exhausted in such a manner or must be recirculated, it must pass through HEPA filters before discharge or recirculation.

In order for the air to be safely discharged, exhaust ducts must not be located near areas that may be populated (e.g., sidewalks or windows that may be opened). In addition, ventilation system exhaust discharges must be designed to prevent re-entry of exhaust air. Wind blowing over a building creates a highly turbulent recirculation zone, which can cause re-entry of the exhaust into the building. Exhaust flow needs to be discharged above the zone. When exhaust air cannot be safely discharged, it must pass through HEPA filters to remove droplet nuclei, thereby precluding re-entry of potentially contaminated air or exposure of individuals who may have to pass through the exhaust airstream. The employer should be aware that exhausting of this air may also fall under federal, state and local regulations concerning environmental discharges.

This provision also states that if a portion of this air is recirculated, it must pass through a properly designed, installed, and maintained HEPA filter before discharge back into general facility ventilation. HEPA filters clean air through the physical removal of particulates from the airstream. These filters have a minimum removal efficiency of 99.97% for particles ≥ 0.3 microns in diameter. Droplet nuclei of *M. tuberculosis* range in size from 1 micron to 5 microns in diameter. Therefore, HEPA filtration can be expected to remove most droplet nuclei from the air. It should be noted that whenever feasible, exhaust air from the AFB isolation rooms or areas must be exhausted to the outside. In its 1994 guidelines, CDC states:

> Air from TB isolation rooms and treatment rooms used to treat patients who have confirmed or suspected infectious TB should be exhausted to the outside in accordance with applicable Federal, state, and local regulations. The air should not be recirculated into the general ventilation. In some instances, recirculation of air into the general ventilation system from such rooms is unavoidable (i.e., in existing facilities in which the ventilation system or facility configuration makes venting the exhaust to the outside impossible). In such cases, HEPA filters should be installed on the exhaust duct leading from the room to the general ventilation system to remove infectious organisms and particulates the size of droplet nuclei from the air before it is returned to the general ventilation system (Section II.F; Suppl. 3). Air from TB isolation rooms and treatment rooms in new or renovated facilities should not be recirculated into the general ventilation system. (Ex. 4B)

The Agency agrees with CDC that exhaust air should be vented to the outside. However, OSHA recognizes that there may be instances where outside discharge may not be feasible and has, therefore, permitted recirculation with HEPA filtration of the recirculated air, in such instances.

Paragraph (d)(5)(v) states that ducts carrying air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* must be maintained under negative pressure for their entire length before in-duct HEPA filtration or until the ducts exit the building for discharge. Ducts maintained under negative pressure will contain exhaust air within the system. Air will not escape to the outside as it would under positive pressure even if there are leaks in the ducts. The purpose of this provision is to prevent escape of air that may contain aerosolized *M. tuberculosis* into areas where occupational exposure is not anticipated and unprotected employees may be exposed.

Paragraph (d)(5)(vi) requires that, while in use for TB isolation, doors and windows of AFB isolation rooms or areas must be kept closed except when doors are opened for the purpose of entering or exiting and when windows are part of the ventilation system being used to achieve negative pressure. For example, the window may be serving as the exit for the exhaust from an in-room HEPA filtration unit. As stated above, AFB isolation rooms and areas are to be maintained under negative pressure while in use for TB isolation. Negative pressure in a room can be altered by small changes in the ventilation system operation, or by the opening and closing of the isolation room doors or windows. In order to assure that the ventilation system functions as intended, it is essential that, once an operating configuration has been established, doors and windows be opened only when necessary.

Paragraph (d)(5)(vii) stipulates that when an AFB isolation room or area is vacated by an individual with suspected or confirmed infectious TB, the room or area must be ventilated for an appropriate period of time, according to current CDC recommendations for a removal efficiency of 99.9%, before permitting employees to enter without respiratory protection (see Appendix C of this section). The time required for removing airborne particles from an enclosed space depends on several factors. These include the number of air changes per hour (which is determined, in part, by the number of cubic feet of air in the room or booth), the rate at which air is entering the room or booth at the intake source versus the rate at which it is being exhausted, the location of the ventilation inlet and outlet, and the physical configuration of the room or booth. The times needed to achieve a given removal efficiency (i.e., 90%, 99%, and 99.9%) presented in Appendix C of this section assume perfect air mixing within a space. However, perfect mixing of air normally does not occur because a number of factors, such as room configuration, may influence the movement of air. Because perfect air mixing is not likely to occur, the necessary time required for a specific removal efficiency, as presented in Appendix C of this section, may be underestimated. In order to compensate for this shortcoming, OSHA has proposed that the most conservative (i.e., protective) removal efficiency, i.e., 99.9%, be used to determine the appropriate amount of time an AFB isolation room or area must be ventilated before permitting employees to enter without respiratory protection. Using this conservative approach will help to assure that an appropriate time has passed before unprotected employees enter the area, even in situations where perfect air mixing has not occurred. Ventilation of the room would not be necessary if the room was previously occupied by an individual with suspected infectious tuberculosis and that individual was medically determined to be noninfectious, since there would be no droplet nuclei present.

Paragraph (d)(6) requires that the employer must inform any outside contractor who provides temporary or contract employees who may incur occupational exposure of the hazard, so that the contractor can institute precautions to protect his or her employees. OSHA is concerned that the contractor be aware of the existence of TB hazards so that appropriate actions can be undertaken to prevent the contractor's employees from being unwittingly exposed. By conveying such information to the contractor, accountability for these employees is established. If the contractor is aware of the hazards, then it is the responsibility of the contractor to institute procedures to protect his or her employees from occupational exposure to *M. tuberculosis*.

Paragraph (e) Clinical and Research Laboratories

This paragraph addresses requirements that must be met by clinical and research laboratories engaged in the culture, production, concentration, experimentation, and manipulation of *M. tuberculosis*. These requirements apply in addition to the other requirements of the standard.

The risks associated with direct and routine work with pathogens have long been recognized:

> Microbiology laboratories are special, often unique, work environments that may pose special infectious disease risks to persons in or near them. Personnel have contracted infections in the laboratory throughout the history of microbiology. (Ex. 7–72)

Clinical and research laboratories working with *M. tuberculosis* are no exception, and the risks associated with work in such facilities warrant additional protective measures.

Prior to 1984, no single code of practice, standards, guidelines or other publication providing detailed descriptions of techniques or equipment for laboratory activities involving pathogens was available. In that year, the CDC and the National Institutes of Health (NIH) published guidelines entitled "Biosafety in Microbiological and Biomedical Laboratories". These biosafety guidelines were based on combinations of standard and special practices, equipment, and facilities recommended for use when working with various infectious agents in laboratory settings. The most current revision of these guidelines is dated 1993. (Ex. 7–72)

The biosafety guidelines are not limited to *M. tuberculosis*, which is the subject of this standard. They are applicable to work with any infectious agent. The basic format for the biosafety guidelines categorizes infectious agents and laboratory activities into four classes or levels denoted as Biosafety Levels 1 through 4. These biosafety levels (BSL) are comprised of combinations of laboratory practices and techniques, safety equipment, and laboratory facilities appropriate for the operations performed and the hazard posed. The Guidelines indicate the BSL to be used when working with various infectious agents and infected animals.

There is a risk to employees working with materials containing *M. tuberculosis*. When the concentration of this bacterium is increased as the result of growing it in cell culture or through artificial concentration, then the risk of transmission to employees increases if the bacteria are not contained. Therefore, the proposed standard requires the employer to implement a number of provisions specifically related to these laboratory work settings.

The requirements in paragraph (e), including those regarding biosafety cabinets, are derived primarily from the CDC/NIH recommendations found in "Biosafety in Microbiological and Biomedical Laboratories" (Ex. 7–72). Only those provisions that relate to the health and safety of employees are required by the standard. The provisions in paragraph (e) are a minimal program, and OSHA anticipates that employers affected by this paragraph will continue to follow any other appropriate portions of the above recommendations in addition to the requirements of this standard. In addition, the employer is responsible for following this entire standard (e.g. training employees, medical surveillance).

Paragraph (e) applies to two types of facilities that OSHA has designated as "clinical laboratories" and "research laboratories." For the purpose of this standard a clinical laboratory is a laboratory or area of a facility that conducts routine and repetitive operations for the diagnosis of TB, such as preparing acid-fast smears and culturing sputa or other clinical specimens for identification, typing or susceptibility testing. A research laboratory is a laboratory that propagates and manipulates cultures of *M. tuberculosis* in large volumes or high concentrations that exceed those used for the identification and typing activities common to clinical laboratories.

The proposed standard requires, in paragraphs (e)(2)(i)(A) through (D), that both clinical and research laboratories follow several standard microbiological practices. All procedures are to be performed in a manner that minimizes the creation of aerosols. In view of the mode of transmission of *M. tuberculosis*, that is, through inhalation of airborne organisms, this provision is extremely important in eliminating or minimizing employee exposure. It is the responsibility of the employer to evaluate laboratory tasks and institute the measures necessary to minimize the creation of aerosols.

OSHA also proposes to adopt the good laboratory and infection control practice of prohibiting pipetting or suctioning by mouth. The use of cotton plugs or other barriers does little to reduce the hazards of mouth pipetting. Even a technician who is skilled in mouth pipetting may inadvertently suck fluids containing *M. tuberculosis* into the mouth. In addition to producing *M. tuberculosis*-containing aerosols when the fluid is expelled, these fluids may also contain bloodborne pathogens that would have contacted the employee's mucous membranes (i.e., the mouth) as well as any blisters, cuts, or other lesions in the mouth or on the lips.

Work surfaces and laboratory equipment must be decontaminated at the end of each shift and after any spill of viable material. This is recognized as good laboratory practice in minimizing the spread of contamination.

Finally, the proposed standard requires that all cultures, stocks, and other wastes contaminated with *M. tuberculosis* be decontaminated before

disposal by a decontamination method, such as autoclaving, known to effectively destroy *M. tuberculosis*. Materials to be decontaminated outside of the immediate laboratory are to be placed in a durable leakproof container, closed to prevent leakage for transport from the laboratory, and labeled or color coded in accordance with paragraph (h)(1)(ii) of this section. Decontamination before disposal helps assure that other employees are not inadvertently exposed to the bacterium.

Although the proposed standard requires proper containerization of laboratory wastes, it includes no such requirement for wastes originating from the provision of care or services to individuals with suspected or confirmed infectious TB (e.g., facial tissues that the individual has used). The reason for this is that items, such as facial tissues, capture and contain the liquids generated by the individual. Once captured, the liquid is not readily aerosolized. In their guidelines, the CDC states:

> Disposable items contaminated with respiratory secretions are not associated with transmission of *M. tuberculosis*. (Ex. 4B)

In the laboratory, however, the liquids containing *M. tuberculosis* are generally not captured or contained on an item but exist as an individual specimen or culture. Also, in some instances, the bacilli have been concentrated. The possibility, therefore, for formation of droplet nuclei from these wastes is increased. Consequently, it is necessary to properly containerize and label laboratory wastes to assist in preventing droplet nuclei formation and possible infection. Proper containerization and labeling of wastes to be decontaminated outside a laboratory not only help prevent employee exposure but also warn employees who come in contact with this waste of the hazard within the container.

Paragraphs (e)(2)(ii)(A) through (E) describe special practices to be followed in clinical and research laboratories, such as limiting access to the laboratory to authorized personnel, preparing and maintaining a biosafety manual, properly containerizing materials contaminated with *M. tuberculosis*, immediately containerizing and cleaning up all spills potentially contaminated with *M. tuberculosis*, and posting a sign with the universal biohazard symbol on access doors when materials containing or animals infected with *M. tuberculosis* are present. Limiting access to these laboratories assures that unauthorized individuals are not placed at risk, and that they do not distract or otherwise interfere with the activity of the authorized employees. This provision works in concert with the requirement for signs in paragraph (h)(2)(iv) and ensures that only employees who meet the special requirements set forth by the laboratory director, which will include training, personal protective equipment, and other requirements, could enter the area.

The requirement for a biosafety manual helps assure that any additional procedures are developed to address situations that are unique to a particular facility and to provide appropriate protection to exposed employees. The manual must be reviewed as necessary and at least annually. The manual must also be updated as necessary to reflect changes in the work setting. The phrase "as necessary" has been used to indicate that updating of the manual to reflect work setting changes is to be done as soon as possible and is not to be postponed until the annual review. Employees are required to read the biosafety manual's sections on potential hazards and practices and procedures.

The requirement that contaminated material removed from the work area be placed in a container that prevents leakage during collection, handling, processing, storage, transport, or shipping is to assure that there are no accidental spills or other contamination that may place other employees at risk.

Paragraph (e)(2)(ii)(D) requires that spills be cleaned up immediately by employees trained and equipped to work with potentially concentrated *M. tuberculosis*. Because *M. tuberculosis* can become aerosolized during cleanup procedures, the task cannot be done by someone who is not skilled and properly equipped. In addition, exposure incidents must be reported so that the post-exposure management and follow-up required by paragraph (g) can be initiated and the circumstances surrounding the exposure incidents can be investigated.

Paragraph (e)(2)(ii)(E) requires that, when materials or animals infected with *M. tuberculosis* are present in the laboratory, a hazard warning sign, in accordance with paragraph (h)(2)(iv) of Communication of Hazards and Training, incorporating the universal biohazard symbol, shall be posted on all laboratory and animal room access doors. Because *M. tuberculosis* is present in the materials listed above, it is necessary to warn individuals who may enter this area of the hazards that are present so that they can take proper precautions to guard themselves against exposure.

The requirements of paragraph (e)(2)(iii)(A) stipulate that whenever activities with the potential for generating aerosols of *M. tuberculosis* are conducted, and whenever high concentrations or volumes of *M. tuberculosis* are used, a certified Class 2 biological safety cabinet must be used. Such materials may be centrifuged in the open laboratory, i.e., outside of a biosafety cabinet, if sealed rotor heads or centrifuge safety cups are used. These requirements protect employees from exposure during the performance of procedures by assuring that aerosolized *M. tuberculosis* will be contained and kept away from the worker's breathing zone.

Paragraph (e)(2)(iii)(B) requires that biological safety cabinets shall be certified when they are installed, annually thereafter, whenever they are moved, and whenever filters are changed. Biological safety cabinets must be certified to ensure that they will provide the proper protection. The National Sanitation Foundation (NSF) Standard 49 describes design, construction, and performance criteria for biosafety cabinets. (Ex. 7–135) Moreover, this NSF standard is subject to periodic review by the NSF in order to keep the requirements consistent with new technology. OSHA has incorporated the current NSF Standard 49 performance criteria into the OSHA standard. For example, Standard 49 states:

> * * * that each cabinet be tested and performance evaluated on site, assuring that all physical containment criteria are met at the time of installation, prior to use, and periodically thereafter. (Ex. 7–135)

NSF Standard 49 also calls for recertification of cabinets at least annually, when HEPA filters are changed, and after maintenance repairs or relocation of a cabinet. Therefore, OSHA believes that the requirements in the proposed standard are appropriate and that cabinets that are certified by the manufacturer as Class 2 or 3 will provide adequate protection to employees.

Paragraph (e)(2)(iv) requires that a method for decontamination of wastes contaminated with *M. tuberculosis* (e.g., autoclave, chemical disinfection, incinerator, or other approved decontamination system known to effectively destroy *M. tuberculosis*) must be available within or as near as feasible to the work area. The availability of such methods of decontamination is required for inactivating or destroying *M. tuberculosis* in or on a variety of media, including culture fluids, plastic ware, and equipment. These materials must be decontaminated to prevent potential aerosolization of *M. tuberculosis* and inadvertent exposure of employees outside of the laboratory.

Research laboratories working with *M. tuberculosis* are held to several additional requirements. Paragraph (e)(3)(i)(A) requires that research facilities keep laboratory doors closed when working with *M. tuberculosis*. Paragraph (e)(3)(i)(B) requires that access to the work area be limited to persons who comply with specified entry and exit requirements. These provisions are adopted from the CDC/NIH recommendations for "Biosafety in Microbiological and Biomedical Laboratories" (Ex. 7–72). In addition, paragraph (e)(3)(i)(C) requires that respiratory protection shall be worn in research laboratories when aerosols cannot be safely contained (e.g., when aerosols are generated outside a biological safety cabinet). As stated previously, research laboratories are working with larger volumes and higher concentrations of *M. tuberculosis* than clinical laboratories. As such, the risk to employees from aerosolized bacilli is increased, necessitating that these employees be protected whenever lapses in containment occur. An example of when aerosols would be generated would be when a flask containing *M. tuberculosis* is dropped and broken outside of the biosafety cabinet. Another example would be centrifugation of *M. tuberculosis*-containing cultures in an open centrifuge without aerosol-proof centrifuge safety containers, or utilizing such containers but then opening them outside of the biosafety cabinet (Ex. 7–134).

Paragraph (e)(3)(ii) requires employers to ensure that employees manipulating cultures and clinical or environmental materials that may generate *M. tuberculosis*-containing aerosols, challenging animals with *M. tuberculosis* aerosols, harvesting tissues or fluids from infected animals, or performing necropsies on infected animals use the appropriate containment equipment and/or devices when performing these activities. Such equipment and devices include Class 2 or 3 biosafety cabinets, or appropriate combinations of personal protective equipment and physical containment devices (such as respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals). This requirement, like the others in this paragraph, is intended to ensure that employees are protected during the performance of these potentially high-hazard procedures.

Research laboratories are also held to additional requirements with regard to facility construction. Paragraph (e)(3)(iii)(A) requires that the laboratory be separated from areas that are open to unrestricted traffic flow within the building. Passage through two sets of self-closing doors is the requirement for entry into the work area from access corridors or other contiguous areas. This type of entrance reduces the likelihood of untrained employees accidentally entering the work area, since such entry necessitates deliberate action on the part of the individual.

Paragraph (e)(3)(iii)(B) requires that windows in the laboratory be closed and sealed. This helps assure containment of any aerosols and helps maintain proper operation of biosafety cabinets through minimization of cross drafts.

Paragraph (e)(3)(iii)(C) requires that a ducted exhaust air ventilation system shall be provided which creates directional airflow that draws air from clean areas into the laboratory toward contaminated areas. The proper direction of the airflow shall be verified (i.e., into the work area) by the employer at least every six months. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The requirement that research laboratories have verified directional airflow into the work area is to assure that air is drawn into the laboratory toward contaminated areas to assist in maintaining containment of aerosols within the laboratory.

Paragraph (e)(3)(iii)(D) requires that the HEPA-filtered exhaust from Class 2 or 3 biosafety cabinets is to be discharged to the outside of the building or through the building exhaust system. If it is discharged through the building exhaust system, it must be connected to this system in a manner that avoids any interference with the air balance of the cabinets or the building exhaust system. This is required to assure that biosafety cabinets and the building exhaust system continue to function as intended.

Paragraph (e)(3)(iii)(E) requires that continuous flow centrifuges or other equipment that may produce aerosols must be contained in devices that exhaust air through a HEPA filter before discharge into the laboratory. This assures that any aerosols which may contain *M. tuberculosis* are effectively filtered from the exhaust air before discharge into the laboratory, thereby protecting employees against inadvertent exposure.

All of the requirements discussed above were derived directly from the CDC/NIH's "Biosafety in Microbiological and Biomedical Laboratories." OSHA requests comment on the applicability and OSHA's application of CDC/NIH's guidelines for their use in laboratories which handle *M. tuberculosis*.

Paragraph (f) Respiratory Protection

Respirators serve as supplemental protection to reduce employee exposures when engineering and work practice controls are not sufficient to provide adequate protection against airborne contaminants.

At the opening of the public hearings for the revision of OSHA's General Industry Respiratory Standard, 29 CFR 1910.134, the Agency stated that all aspects of respirator use for protection against tuberculosis would be addressed in the rulemaking for Occupational Exposure to Tuberculosis. Consequently, the respiratory protection portion of this proposal contains all of the respiratory protection provisions that have been preliminarily determined to be applicable to respirator use for TB. In the past, OSHA standards have referred to the Respirator Standard (29 CFR 1910.134) for the general requirements for respirator use (e.g., written respiratory protection program; respirator maintenance) and have included only the respirator provisions specific to the hazard addressed by the standard. OSHA's approach in this proposal, however, is to include provisions relative to all aspects of respirator use for tuberculosis. This will provide interested parties with the opportunity to review and comment on these aspects. To assure consistency across OSHA respiratory protection standards, however, OSHA is considering including in the final TB rule cross-referencing to the general requirements of the Respiratory Protection Standard (29 CFR 1910.134) and retaining in the final TB rule only those provisions specific to respirator use for TB. OSHA seeks comment on this intended approach in the final standard for TB.

Paragraph (f)(1)(i) states that each employer must provide a respirator to each employee who: (A) enters an AFB isolation room or area in use for TB isolation; (B) is present during performance of procedures or services for an individual with suspected or confirmed infectious TB who is not masked; (C) transports an individual with suspected or confirmed infectious TB in an enclosed vehicle or who transports an individual with suspected or confirmed infectious TB within the facility whenever that individual is not masked; (D) repairs, replaces, or maintains air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis*; (E)

is working in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined (e.g., while awaiting transfer), and (F) is working in a residence where an individual with suspected or confirmed infectious TB is known to be present. In addition, paragraph (f)(1)(ii) requires that each employer who operates a research laboratory provide a respirator to each employee who is present when aerosols of *M. tuberculosis* cannot be safely contained.

In discussing the use of respiratory protection in their guidelines, CDC states:

> Personal respiratory protection should be used by (a) persons entering rooms where patients with known or suspected infectious TB are being isolated, (b) persons present during cough-inducing or aerosol-generating procedures performed on such patients, and (c) persons in other settings where administrative and engineering controls are not likely to protect them from inhaling infectious airborne droplet nuclei. These other settings include transporting patients who may have infectious TB in emergency transport vehicles and providing urgent surgical or dental care to patients who may have infectious TB before a determination has been made that the patient is noninfectious. (Ex. 4B)

The guidelines also state that respiratory protection should be worn by personnel who are performing maintenance and testing procedures on HEPA filtration systems (Ex. 4B). Furthermore, the CDC/NIH document "Biosafety in Microbiological and Biomedical Laboratories" recommends that respiratory protection be worn whenever aerosols of organisms such as *M. tuberculosis* cannot be safely contained (Ex. 7–72). Consequently, employees who may need to wear respirators could include not only health care providers but also employees such as housekeepers, dietary personnel, laboratory technicians, employees in intake areas, maintenance personnel, social workers, and so forth. It is the employer's responsibility to determine which occupationally exposed employees would be covered under this provision and, therefore, would need to wear a respirator.

With regard to utilization of respiratory protection when entering an AFB isolation room or area, the reader is referred to the definition of "AFB isolation room or area" in paragraph (j), Definitions. This definition clarifies that the requirement refers not only to situations such as entering a patient room occupied by an individual with suspected or confirmed infectious TB but also refers to entering any area where high-hazard procedures are being performed and entering an autopsy room where *M. tuberculosis* may be aerosolized.

Paragraph (f)(1)(i)(B) requires respirator use when an employee is present during performance of procedures or services for an unmasked individual with suspected or confirmed infectious TB. This provision is intended to cover those situations in which a procedure or service is performed outside of an AFB isolation room or area. For example, a facility may not have a portable X-ray and may, therefore, perform this procedure in a standard X-ray room. If the individual is not masked in such a situation, all employees present (i.e., the X-ray technician and any other employees in the room) must utilize respiratory protection.

As stated previously under discussion of Scope, employees rendering emergency medical services may spend time in very close proximity to individuals with suspected or confirmed infectious TB within an enclosed vehicle. Even though the individual may be masked, droplet nuclei that escape capture in the mask are contained within the vehicle, thereby increasing the likelihood that employees will breathe droplet nuclei generated when the patient coughs or speaks. In addition, under paragraph (f)(1)(i)(D), employees who repair, replace, on maintain air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis* are at risk of occupational exposure as a result of exposure to air that could contain aerosolized bacilli. Therefore, respirator use would be required in this situation.

As discussed under Scope, aerosolized *M. tuberculosis* is a recognized hazard to laboratory personnel. When aerosols of *M. tuberculosis* cannot be safely contained, such as during a spill, the employer is required to provide a respirator to each employee who is present during this time. This is consistent with CDC/NIH recommendations regarding respirator use in research laboratories (Ex. 7–72).

Unlike some other airborne contaminants, the quantity of *M. tuberculosis* that, when inhaled, will result in infection (i.e., infectious dose) has not been determined conclusively. The number of droplet nuclei expelled into a room by an infectious individual or aerosol-producing procedure and the concentration of droplet nuclei in a room or area are unknown. Consequently, there is no basis to judge the effectiveness of other control measures present even though they may be operating as intended. OSHA therefore agrees with the CDC that, in the above situations, other controls that may be in place cannot be assumed to adequately protect employees against exposure to airborne TB droplet nuclei and therefore that the use of respiratory protection is necessary.

While OSHA agrees with and has adopted most of the CDC's recommendations regarding when respiratory protection is necessary, the Agency has extended respirator use to two additional situations. More specifically, when an individual with suspected or confirmed infectious TB is not masked and is transported within a facility, the employee transporting the individual must wear a respirator. While CDC recommends masking individuals with suspected or confirmed infectious TB prior to transporting them, there may be special circumstances in which the individual may not be masked (e.g., individual is combative and will not wear a mask). The employee transporting the individual would most likely spend an extended period of time in close proximity to the individual, either walking beside or behind (e.g., pushing a wheelchair) the individual. The employee would, therefore, be walking directly through the airspace into which the individual would be expelling droplet nuclei, receiving exposure each time the individual coughed, resulting in multiple relatively concentrated exposures. In view of this, the latter portion of paragraph (f)(1)(i)(C) addresses the Agency's belief that it is necessary and justified that respiratory protection be worn by the employee to protect against occupational exposure if the individual is not masked.

The second situation, under paragraph (f)(1)(i)(E), requires respirator use by an employee when working in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined, for example while awaiting transfer. As discussed above, it is assumed that such individuals would normally be masked. Here again, however, there may be circumstances that preclude the individual from being masked (e.g., the individual is combative). Therefore, employees who must work in the area where these unmasked individuals are located, whether working directly with the individual or performing other duties, must wear a respirator to protect against possible tuberculosis infection.

Paragraph (f)(1)(i)(F) requires that a respirator be worn by an employee who is working in a residence where an individual with suspected or confirmed infectious TB is known to be present. In this situation, whether the individual is masked or unmasked does not trigger respirator use since the individual has been releasing droplet nuclei into the residence airspace. The CDC refers to this type of situation in its discussion of the provision of home health care and states:

> Health care workers who provide medical services in the homes of patients who have suspected or confirmed infectious TB should instruct such patients to cover their mouths and noses with a tissue when coughing or sneezing. Until such patients are no longer infectious, HCWs should wear respiratory protection when entering these patients' homes. (Ex. 4B)

In addition to home health care and home-based hospice care workers, other employees, such as social workers who are entering these residences, would come under this provision. It is the Agency's intent that a respirator be used by an employee in these situations for the time that the employee is in the residence and that respirator use continue until the individual is noninfectious.

The proposed standard, in paragraphs (f)(1)(iii) and (f)(1)(iv), places several general responsibilities upon the employer regarding respiratory protection. Paragraph (f)(1)(iii) states that where respirators are required by the standard, the employer shall provide them at no cost to the employee and assure that they are used in accordance with the requirements of the standard. Paragraph (f)(1)(iv) stipulates further that the employer must assure that the employee dons a respirator before entering the work settings or performing the tasks set forth in paragraphs (f)(1)i and (f)(1)(ii) above and uses it until leaving the work setting or completing the task, regardless of other control measures in place.

It has been OSHA's long-standing policy to hold the employer responsible for controlling exposure to hazards in his or her workplace and to fulfill this responsibility at no cost to the employee. Therefore, the financial burden for purchasing and providing personal protective equipment, including respirators, rests upon the employer just as it does for all other control measures (e.g., engineering controls). OSHA believes that in order to assure that employees are adequately protected, the employer has the responsibility not only to provide respiratory protection, but also to assure that it is utilized when necessary. Furthermore, respiratory protection must be donned prior to entering the above work settings or performing the tasks, for the period of time that the employee remains in these work settings, and must not be removed until the employee leaves the work setting or completes the tasks. In this way, the employee is protected for the entire period of occupational exposure.

It is not OSHA's intent that each employee be monitored constantly for compliance; however, the Agency does believe that the employer has the power to assure that employees follow specific rules. For example, most employers have requirements that they require employees to follow, such as reporting to work on time, working a minimum number of hours per day, notifying the employer when the individual is unable to report for work, and taking certain precautions to prevent nosocomial infections. Following these requirements is not left to the employee's discretion, and employers generally have some process to ensure conformance with these procedures. Therefore, the Agency believes that the employer has not only the responsibility, but also the ability, to assure that respiratory protection is used in accordance with the requirements of this section.

Paragraph (f)(2)(i) requires that each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described in paragraph (f)(1) must establish and implement a written respiratory protection program that assures that respirators are properly selected, fitted, used, and maintained. The program must include the following elements: (A) Procedures for selecting respirators for use in the work setting; (B) a determination of each employee's ability to wear a respirator, as required under paragraph (g)(3)(ii), Medical Surveillance, for each employee required to wear a respirator; (C) procedures for the proper use of respirators; (D) fit testing procedures for tight-fitting respirators; (E) procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, or otherwise maintaining respirators; (F) training of employees to assure the proper use and maintenance of the respirators as required under paragraph (h), Communication of Hazards and Training; and (G) procedures for periodically evaluating the effectiveness of the program. Written standard operating procedures are essential to an effective respiratory protection program. Developing and writing down standard operating procedures require employers to think through how all of the requirements pertaining to respirators will be met in their workplace. In addition, this provision assures that the employer establishes standardized procedures for selecting, using, and maintaining respirators in the workplace. OSHA's long-standing position has been that a systematic respiratory protection program is necessary to provide for consistency in protection. Guidance that has been developed by an outside party (e.g., a respirator manufacturer) on the general use of a particular respirator would not address the site-specific aspects of the employer's work setting and would not be an appropriate substitute for a respiratory protection program.

Paragraph (f)(2)(ii) requires the employer to designate a person qualified by appropriate training or experience to be responsible for the administration of the respiratory protection program and for conducting the required periodic evaluations of its effectiveness. To assure that the integrity of the respiratory protection program is maintained through the continuous oversight of one responsible individual, OSHA is proposing that a qualified person be designated as responsible for the administration of the program. That individual can work with a committee or assign responsibility for portions of the program to other personnel, but the overall responsibility for the operation of the program remains with the designated person. This approach ensures coordination of all facets of the program. The level of training or experience necessary for a designated person has been left performance oriented since this will vary with the complexity of the respirator program. However, the person chosen would need to have sufficient knowledge of respiratory protection and the workplace to properly supervise the program.

Employers are required, in paragraph (f)(2)(iii), to review and update the written program as necessary to reflect current workplace conditions and respirator use. Reviewing and updating will assure that the program addresses current conditions. The reason OSHA has not set a schedule for reviewing the program is because conditions may change frequently in some work settings while remaining relatively stable in others. Thus, the employer determines the frequency of the review. However, when an employer is aware of changes in the workplace or respirator use which could necessitate changes in the written program, it is not appropriate to delay revising the written program. OSHA's use of the phrase "as necessary" in the requirement is intended to assure that such changes are incorporated into the written program expeditiously. As the workplace situation or respirator use

changes, the program is to be revised. In addition, paragraph (f)(2)(iv) requires that employers, upon request, make the written respiratory protection program available to affected employees, their designated representatives, the Assistant Secretary, and the Director. This provision also requires that a copy of the program be submitted to the Assistant Secretary and/or the Director, if requested.

Paragraph (f)(3) sets out the respirator characteristics that must be satisfied in order to provide employees with a respirator that will protect them against aerosolized *M. tuberculosis*. These criteria are presented in performance-oriented language to provide flexibility in choice of respirators and have been drawn from CDC recommendations (Ex. 4B). CDC has based these criteria on currently available information relative to respirators that includes:

* * * (a) data on the effectiveness of respiratory protection against noninfectious hazardous material in workplaces other than health-care settings and on an interpretation of how these data can be applied to respiratory protection against *M. tuberculosis*; (b) data on the efficiency of respirator filters in filtering biological aerosols; (c) data on face-seal leakage; and (d) data on the characteristics of respirators that were used in conjunction with administrative and engineering controls in outbreak settings where transmission to HCWs and patients was terminated (Ex. 4B).

The CDC Guidelines go on to state:

Available data suggest that infectious droplet nuclei range in size from 1 [micron] to 5 [microns]; therefore, respirators used in health-care settings should be able to efficiently filter the smallest particle in this range. Fifty liters per minute is a reasonable estimate of the highest airflow rate an HCW is likely to achieve during breathing, even while performing strenuous work activities (Ex. 4B).

In their 1994 TB guidelines, the CDC states:

Respiratory protective devices used in health-care settings for protection against *M. tuberculosis* should meet the following standard performance criteria:

1. The ability to filter particles 1 um in size in the unloaded state with a filter efficiency of ≤ 95% (i.e., filter leakage of ≤ 5%), given flow rates of up to 50 L per minute.
2. The ability to be qualitatively or quantitatively fit tested in a reliable way to obtain a face-seal leakage of ≤ 10%.
3. The ability to fit different facial sizes and characteristics of HCWs [health care workers], which can usually be met by making the respirators available in at least three sizes.
4. The ability to be checked for facepiece fit, in accordance with standards established by the Occupational Safety and Health Administration (OSHA) and good industrial hygiene practice, by HCWs each time they put on their respirators. (Ex. 4B)

The various respirator provisions that OSHA is proposing rely heavily on the CDC's aforementioned respirator performance criteria. The second, third, and fourth CDC criteria are addressed by paragraphs (f)(3)(i) (A) and (B) and paragraph (f)(5)(ii). Paragraph (f)(3)(i) requires the employer to select and provide properly fitted negative pressure or more protective respirators. Negative pressure respirators must be capable of being: (A) Qualitatively or quantitatively fit tested in a reliable way to verify a face-seal leakage of no more than 10%; and (B) fit checked by the employee each time the respirator is donned. Paragraph (f)(5)(ii) requires that employers assure that each employee who must wear a tight-fitting respirator is fit tested and passes the fit test. All of these provisions deal with the ability of the respirator to achieve a good face seal with a particular employee.

Good face fit is critical in assuring proper performance of respiratory protection. When an employee inhales through a respirator that does not fit properly, contaminated workplace air can enter the respirator through gaps and leaks in the seal between the face and the facepiece. OSHA is requiring the employer to provide each employee who must wear a respirator with one that fits. To do so, the employer will have to consider the facial sizes and characteristics in his or her workplace. It is not necessary for the employer to have respirators of different sizes of characteristics unless the employees need them. In other words, an employer may need only one or two styles and sizes. However, in workplaces where employees have different facial sizes and characteristics, obtaining proper respirator fit for each employee may require the fit testing of different mask sizes, possibly from several manufacturers. Proper respirator fit reduces inhalation leakage through the face-to-facepiece seal to a minimum.

Once a respirator has been selected based on its ability to achieve an adequate face-to-facepiece seal, the employee must be able to check that the respirator is properly seated and sealed to his or her face each time it is donned. The respirator, therefore, must be able to be fit checked by the employee. This is a procedure in which the employee covers the filter surface of the respirator and inhales (negative fit check) and exhales (positive fit check). If the respirator has an exhalation valve, this valve must be covered during the positive fit check. A respirator that is properly sealed will firmly adhere to the wearer's face upon inhalation due to the negative pressure created inside the mask. Upon exhalation, the mask should lift slightly off of the wearer's face to allow air to escape around the face seal. Employers should be aware that a problem could exist with fit checking some disposable negative pressure respirators. That is, it is difficult to cover the entire filter surface, thereby hindering the employee's ability to perform a proper fit check. At least one respirator manufacturer has developed a "fit-check cup" that covers the filter surface of their disposable respirator, thereby permitting the user to more easily perform a fit check. Reusable elastomeric facepiece respirators utilize filter cartridges that can be covered for performing a fit check.

CDC's first criteria, regarding filter efficiency, is addressed under paragraph (f)(3)(ii) of the standard. This provision requires the employer to select a respirator that will function effectively in the conditions of the work setting. In addition to meeting the criteria in paragraph (f)(3)(i) above, the respirator shall be, at a minimum, either a High Efficiency Particulate Air (HEPA) respirator selected from among those jointly approved as acceptable by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11, or an N95 respirator certified by NIOSH under the provisions of 42 CFR part 84.

NIOSH and MSHA are the government agencies charged with testing and certifying respiratory protective devices. It has always been OSHA's policy that respiratory protection must be certified by these agencies before being deemed acceptable. Until recently, HEPA respirators were the only NIOSH certified negative pressure respirators that met the CDC's filter efficiency criteria. However, on July 10, 1995, NIOSH's original respirator certification procedures for air-purifying particulate respirators, 30 CFR part 11, were replaced by revised procedures, 42 CFR part 84 (Ex. 7–261). Under the new procedures, all nonpowered air-purifying particulate respirators are challenged with a 0.3 micron particle (the most penetrating size) at a flow rate of 85 liters per minute. At the conclusion of the test, those respirators that pass are placed into one of nine classes of filters (three levels of filter efficiency, with three categories of resistance to filter efficiency degradation). The three levels of filter efficiency are 99.97%, 99%, and 95%. The three categories of resistance to filter efficiency degradation are labeled N (not resistant to oil), R (resistant to oil), and P (oil proof). Given these categories, a type N95 respirator would meet or exceed the filter efficiency performance criteria set forth in the CDC guidelines which state that a respirator appropriate for use in protecting against transmission of tuberculosis must be able to filter particles 1 micron in size in the unloaded state with a filter efficiency of ≥95%, given flow rates up to 50 liters per minute (Ex. 4B). The underlying reasoning for the acceptability of type N95 respirators is that their filter efficiency of 95% for a 0.3 micron particle will exceed 95% filtering efficiency for a particle three times as large (i.e., 1 micron). Also, the Agency assumes that oil aerosols are not likely to be found in the work settings covered by the standard, and therefore, that the use of a category N respirator would be sufficient. However, if oil aerosols are present, the employer would be expected to consider this when selecting the category of respirator to be used in his or her workplace.

OSHA is permitting the employer to select either a HEPA respirator certified under 30 CFR part 11 or a respirator certified under 42 CFR part 84, since particulate respirators certified under both of these regulations are currently on the market. HEPA respirators are the only nonpowered particulate respirators certified under 30 CFR part 11 that meet the CDC guidelines filtration criteria. However, applications for certification of nonpowered particulate respirators under 30 CFR part 11 are no longer being accepted by NIOSH. Therefore, dwindling stocks of HEPA respirators certified under that regulation will eventually lead to their unavailability, and employers will of necessity be selecting respirators from those approved under 42 CFR part 84.

Paragraph (f)(4)(i) states that the employer shall not permit any respirator that depends on a tight face-to-facepiece seal for effectiveness to be worn by employees having any conditions that prevent such a seal. Examples of these conditions include, but are not limited to, facial hair that comes between the sealing surface of the facepiece and the face or facial hair that interferes with valve function, absence of normally worn dentures, facial scars, or headgear that projects under the facepiece seal. Paragraph (f)(4)(ii) requires the employer to assure that each employee who wears corrective glasses or goggles wears them in such a manner that they do not interfere with the seal of the facepiece to the face of the wearer. Tight-fitting facepiece respirators rely on a good face-to-facepiece seal in order to achieve effective protection. Therefore, the employer must not allow employees to wear such respirators with conditions that prevent such a seal. Several studies support the prohibition of facial hair that comes between the sealing surface of the facepiece and the face (Exs. 7–243, 7-242, 7–182). A study by Skretvedt and Loschiavo found that bearded subjects wearing half-mask respirators had a median face seal leakage 246 times greater than clean shaven subjects. They go on to state:

Even though a number of bearded individuals did obtain fit factors above OSHA's minimum requirement for half-mask respirators, they all failed the qualitative fit test. No relationship was found between the length, shape, density and texture of beards and the amount of face seal leakage. Therefore, the only way to identify bearded negative-pressure respirator wearers obtaining fit factors above OSHA's minimum requirements would be by performing a quantitative fit test on them. However, even if quantitative fit tests are performed on all bearded individuals, another problem must be faced. The drop in the fit factor experienced when a beard is present is of such magnitude that no confidence can be placed in the protection the respirator will provide in the workplace or in future donnings. All respirator users experience variability from one donning to the next. This fit variability from donning to donning occurs due to changes in strap tension, positioning on the face, and a host of other variables. Donning-to-donning fit variability for bearded individuals will be even greater since additional variables will be introduced. A beard is a dynamically changing thing. The hair length constantly changes as well as the orientation of the hair in the sealing surface. Beards also accumulate moisture, natural oils, and debris from the workplace. Even though a percentage of bearded respirator wearers obtain fit factors slightly above OSHA's minimum requirements, the tremendous drop in fit factor resulting from the presence of a beard is such that the safety factor necessary to accommodate the variability of fit no longer exists. In summary, although bearded individuals may be able to achieve fit factors above OSHA's minimum requirements during a specific quantitative fit test, the drop in protection caused by a beard coupled with the large fit variability from donning to donning makes it quite likely that the individual will not obtain the minimum required protection in the workplace. (Ex. 7–243)

Therefore, while a bearded respirator wearer may be able to obtain a satisfactory fit on a particular occasion, one cannot assume that the individual can reliably be expected to achieve that same protection level each time the respirator is used. Beards grow and change daily. Each time a respirator is donned there is fit variability. Such variability in face seal is greatly increased for bearded workers. This large variability in fit means that a reliable seal cannot be reasonably expected. This provision should not be construed as a blanket prohibition on beards among respirator wearers. There are other types of respiratory equipment such as hoods, helmets and suits that can be worn by employees with beards, since they do not rely upon a tight facepiece fit. In addition, this provision refers to facial hair that interferes with the facepiece seal rather than simply growth of beard or sideburns. It is the interference with the facepiece seal that is the concern, not the presence of facial hair. Other conditions such as the absence of normally worn dentures, facial scarring and cosmetic surgery change the geometry of the face, thereby changing the ability of the respirator wearer to achieve a facepiece seal. Facepiece seal may also be compromised when headgear, temple pieces and nose pieces of glasses, the edges of goggles and so forth project underneath the respirator's sealing surface. Both of the above provisions are intended to eliminate or minimize conditions that jeopardize face-to-facepiece seal and could permit leakage of outside air into the facepiece.

Paragraph (f)(4)(iii) states that disposable respirators must be discarded when excessive resistance, physical damage, or any other condition renders the respirator unsuitable for use. It is not expected that the filter media of respiratory protective devices would become occluded with particulates in the work settings covered by this standard. However, if excessive resistance is noted, the respirator must be discarded. Also, such respirators must be structurally sound in order to provide a proper face seal and maintain their effectiveness. Whenever physical damage occurs (e.g., the respirator is crumpled or torn; the flexible face seal is damaged; a head strap is broken), effective functioning cannot be assured and the respirator must be replaced. In addition, other conditions may render the respirator unsuitable for use (e.g., the respirator may become contaminated with blood), thereby requiring discard.

In view of the types of activities carried out and the environmental conditions encountered in the work settings covered by this standard, OSHA is proposing to allow the multiple use of disposable respirators. However, this action should in no way be construed as setting a precedent for the use of disposable respirators in any other OSHA standards or in how OSHA views multiple use of disposable respirators in other work settings. OSHA requests comment on the approach taken in this proposal toward the reuse of disposable respirators.

Paragraph (f)(4)(iv) requires the employer to assure that each employee, upon donning a tight-fitting respirator, performs a facepiece fit check prior to entering a work area where respirators are required. In performing the fit check, the procedures in Appendix B or other procedures recommended by the respirator manufacturer that provide equivalent protection to the procedures in Appendix B must be used. This provision is supported by a recent study by Meyers et al. that concluded:

> * * * for wearers of respirators that have been properly fit by a recognized fit test, conducting fit checks according to the manufacturer's instructions can be a useful tool for more consistently maintaining the quality of respirator donning. (Ex. 7–233)

The use of such seal checks are a way of helping to assure that attention is paid to obtaining an adequate facepiece seal each time a respirator is used.

The standard requires, under paragraph (f)(4)(v), that respirators be immediately repaired, or discarded and replaced when they are no longer in proper working condition. Examples of these changes in condition would be that a strap has broken, the respirator has lost its shape, or the face seal can no longer be maintained. As discussed above, respirators must be in good working condition in order to function effectively. Therefore, it is imperative that they not be used if they have been impaired in any way. The respirator manufacturers can supply replacement parts for damaged portions of their elastomeric respirators. Disposable respirators cannot be repaired and must be discarded when damaged.

Paragraph (f)(4)(vi) stipulates that the employer shall permit each employee to leave the respirator use area as soon as practical to: (A) change the filter elements or replace the respirator whenever the ability of the respirator to function effectively is compromised or the employee detects a change in breathing resistance; or (B) wash his or her face and respirator facepiece as necessary to prevent skin irritation associated with respirator use. This provision encourages and facilitates the proper use of respirators by employees by authorizing employees to take specific actions to assure the effective functioning of their respirators. This provision is consistent with requirements in other health standards (e.g., Lead, 29 CFR 1910.1025; Cadmium, 29 CFR 1910.1027).

Considering the health problems that may be exacerbated with respirator use and their associated detrimental effects on an employee, the proposal states in paragraph (f)(4)(vii) that each employee required to wear a respirator under this section shall be evaluated in accordance with paragraph (g), Medical Surveillance, of this section to determine whether any health conditions exist that could affect the employee's ability to wear a respirator. In addition, paragraph (f)(4)(viii) states that no employee shall be assigned a task requiring the use of a respirator if, based upon the employee's most recent evaluation, the physician or other licensed health care professional, as appropriate, determines that the employee will be unable to continue to function adequately while wearing a respirator. If the physician or other licensed health care professional, as appropriate, determines that the employee's job activities must be limited, or that the employee must be removed from the employee's current job because of the employee's inability to wear a respirator, the limitation or removal shall be in accordance with paragraph (g)(5)(iii) under Medical Removal Protection of this section.

Common health problems that could interfere with respirator use include claustrophobia (an intolerance of feeling enclosed and a subjective feeling of breathing difficulty), chronic rhinitis, nasal allergies that would necessitate frequent removal of the respirator to deal with nasal discharges, and chronic sinusitis. In addition, difficulties with the use of respirators may arise in employees with respiratory or cardiac diseases. Respiratory diseases include chronic obstructive pulmonary disease, emphysema, asthma, and moderate to severe pneumoconiosis. Cardiac or cardiorespiratory diseases that may affect respirator wear include any type of congestive heart disease, other ischemic heart diseases, and hypertension.

As discussed further under paragraph (g)(5)(iv), Medical Surveillance, of this section, employees who are removed from work due to the inability to wear a respirator are afforded certain medical removal protection relative to retention of earnings, seniority, rights and benefits. The Agency believes that these provisions will encourage all employees, including those experiencing difficulty with respirator use, to participate in the Medical Surveillance Program and will minimize an employee's fear of losing his or her job due to the possible inability to wear a respirator.

Paragraph (f)(5)(i) requires the employer to perform either quantitative or qualitative face fit tests in accordance with the procedures outlined in Appendix B of this section.

Quantitative fit testing is an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the facepiece. One method of accomplishing this assessment utilizes a procedure whereby the level of penetration of a test agent of a known concentration is measured inside the facepiece of the respirator. In this quantitative fit test procedure, the respirator is worn in a stable test atmosphere containing a suitable challenge agent. The adequacy of fit is determined by measuring the actual levels of the challenge agent, both outside and inside the facepiece of the respirator. This provides a quantitative assessment of the fit (the fit factor). Fit testing allows the employer to continue testing different facepieces until a properly fitting respirator is identified and selected for the employee. Quantitative fit testing requires the use of moderately sophisticated testing equipment and is more expensive to perform than qualitative fit testing, which may reduce its availability in some work sites. Also, testing services may not be available in all parts of the country to provide quantitative fit testing services for small businesses.

Qualitative fit testing does not provide a numerical measure of the quality of the fit but simply determines whether a respirator fits or not. The outcome of the test is simply a pass or fail result. Qualitative fit testing involves the detection of a gas, vapor, or aerosol challenge agent through subjective means such as odor, taste, or nasal irritation. If the challenge agent's presence is detected, the respirator fit is considered to be inadequate. Qualitative fit testing is more subjective than quantitative testing because it depends on the individual's ability to detect the test agent.

OSHA believes that while quantitative fit testing has some advantages, qualitative fit testing conducted in accordance with the protocols described in Appendix B of this section can generally accomplish the intent of the standard, which is to assure that each employee is assigned and wears a respirator that provides a proper fit.

Paragraph (f)(5)(ii) states that the employer shall assure that each employee who must wear tight-fitting respirator passes a fit test: (A) at the time of initial fitting; (B) whenever changes occur in the employee's facial characteristics that affect the fit of the respirator; (C) whenever a different size or make of respirator is used; and (D) at least annually thereafter unless the annual determination required under paragraph (g)(3)(ii)(A), Medical Surveillance, indicates that the annual fit test of the employee is not necessary. This frequency of fit testing is necessary to assure that factors that may affect the proper fit of a respirator are detected and necessary adjustments are performed to assure the integrity of the faceseal. For example, the fit of respirators is not standardized among manufacturers. Fit testing would be required, therefore, whenever a different size or make of respirator is used. In addition, a change in an employee's facial structure can compromise a respirator's faceseal. Examples of such changes include loss of weight, cosmetic surgery, facial scarring, and the installation of dentures or the absence of dentures that are normally worn by the individual. Therefore, fit testing is required when any facial changes, such as those mentioned above, occur.

Requiring annual fit testing, unless the annual determination by the physician or other licensed health care professional indicates that the annual fit test is not necessary, assures that factors that could affect respirator fit are detected and the employee's respirator is adjusted or replaced as necessary. It is OSHA's intent in this provision that each employee be evaluated annually for respirator fit. This can be accomplished through either an actual fit test or through a person-to-person evaluation consisting of a questionnaire and personal observation by the evaluator carried out under paragraph (g)(3)(ii)(A), Medical Surveillance, of this section. It should be noted that an annual determination of respirator fit is required, either through fit testing or the person-to-person evaluation. The employer may use the determination of the need for the annual fit test in lieu of an annual fit test if that determination indicates that a fit test is not necessary.

One of the criteria that must be satisfied when selecting respirators is a faceseal leakage of 10% or less. OSHA considers any respirator that passes a qualitative fit test to meet this criteria. However, quantitative fit testing necessitates that a particular numerical value be achieved. Therefore, paragraph (f)(5)(iii) requires that when quantitative fit testing is performed, the employer shall not permit an employee to wear a tight-fitting respirator unless a minimum fit factor of one hundred (100) is obtained in the test chamber. This value corresponds to a faceseal leakage of 10% or less.

In order to assure that continuing protection is achieved by reusable and powered air purifying respiratory protective devices, it is necessary to establish and implement proper maintenance and care procedures. A lax attitude toward this part of the respiratory protection program will negate successful selection and fit because the devices will not deliver the assumed protection unless they are kept in proper working order. A basic program for assuring proper respirator function would contain procedures for cleaning, inspection, repair, and replacement of respirators used in the workplace.

Paragraph (f)(6)(i) requires that the employer clean and disinfect the respirators using the manufacturer's recommended procedures at the following intervals: (A) as necessary for respirators issued for the exclusive use of an employee; and (B) after each use for respirators issued to more than one employee. Respirators that are not cleaned and disinfected can cause skin irritation and dermatitis. When more than one employee uses the same respirator, cleaning and disinfecting after each use provides the additional benefit of minimizing the respirator's role as a vehicle for spreading infections (e.g., skin, respiratory) between employees.

In order to assure continued respirator reliability, they must be inspected on a regular basis. Therefore, paragraph (f)(6)(ii) requires that respirators be inspected before each use and during cleaning after each use. As stipulated in paragraph (f)(6)(iii), such inspections must include: (A) a check of respirator function, tightness of connections and condition of the facepiece, head straps, valves, connecting tube, and cartridges, canisters, or filters; and (B) a check of the rubber or elastomer parts for pliability and signs of deterioration. In this way, the employer can assure that the respirator is functioning as intended, is able to be adjusted by the user, will not allow leakage through cracks or breaks in the respirator, and is pliable enough to achieve a proper faceseal.

The standard also contains provisions regarding those respirators that are found to be deficient upon inspection. Paragraph (f)(6)(iv) states that respirators that fail to pass inspection must be removed from service and repaired or adjusted in accordance with the following: (A) repairs or adjustments to respirators are only to be made with NIOSH-approved parts designed for the respirator by the respirator manufacturer and by persons appropriately trained to perform such operations; (B) only repairs of the type and extent covered by the manufacturer's recommendations may be performed; and (C) reducing or admission valves or regulators shall be returned to the manufacturer or given to an appropriately trained technician for adjustment or repair. It is self-evident that repairs to respirators should only be performed by trained individuals, using parts designed for the specific respirator under repair (not all respirator designs are identical), and that the individual should not attempt repairs that he or she is not qualified to undertake or which are not recommended by the manufacturer.

Another important aspect of assuring appropriate respirator function is proper storage. Therefore, paragraph (f)(6)(v) stipulates that the employer assure that respirators are stored in a manner that protects them from contamination, damage, dust, sunlight, extreme temperatures, excessive moisture, damaging chemicals and that prevents deformation of the facepiece or exhalation valve. Proper storage, of both new respirators and those already in service, assists in maintaining appropriate respirator function by minimizing conditions that may cause deterioration of the respirator or filter, interfere with filter efficiency, change faceseal geometry, and prevent sealing of valves against inhalation of contaminated air.

As discussed previously, OSHA accepts those respirators certified by MSHA and NIOSH. Therefore, paragraph (f)(7)(i) requires that filters, cartridges, and canisters used in the workplace are properly labeled and color-coded with the NIOSH approval label as required by 30 CFR part 11 or 42 CFR part 84, whichever is applicable, before they are placed into service. The employer must assure that the existing NIOSH approval label on a filter, cartridge, or canister is not intentionally removed, obscured, or defaced while it is in service in the workplace, as required by paragraph (f)(7)(ii) of this section.

Paragraph (f)(8) requires the employer to review the overall respiratory protection program at least annually, and conduct inspections of the workplace as necessary to assure that the provisions of the program are being properly implemented for all affected employees. The reason an employer must conduct an annual review and inspections as necessary is because respirators are utilized as supplemental and, in some instances, sole protection to prevent transmission of infectious TB. Therefore, it is of primary importance to assure proper implementation of the program. The review of the program must include an assessment of each element required under paragraph (f)(2) of this section. Once the respiratory protection program is implemented, the employer retains responsibility for detecting and

addressing problems that arise. While the written respiratory protection program is required to be reviewed and updated under paragraph (f)(2)(iii) of the standard, the overall review requires that the employer evaluate actual implementation in the workplace. Consequently, this provision stipulates inspections of the workplace and an assessment of each element required under paragraph (f)(2) of this section to assure proper implementation of the program.

OSHA believes that the proposed provisions regarding respirators are both appropriate and justified. OSHA seeks comments and data on all aspects of the proposed respirator requirements.

Paragraph (g) Medical Surveillance

(1) General

The purpose of this section is early detection and prevention of disease through employee medical histories and physical examinations, TB skin testing, medical management and follow-up of exposure incidents and skin test conversions, and medical removal of employees with suspected or confirmed infectious TB. These requirements are designed to ensure early detection of TB infections and disease by providing appropriate medical examinations to enable identification of infection or disease and to minimize the spread of TB to other employees in the workplace. Additionally, there are requirements in this section to assure that employees required to wear respiratory protection are evaluated to determine their ability to wear a respirator and advised about the need for annual fit testing. The needs of employees who have health conditions that might require special attention are also addressed (e.g., anergy testing, more frequent screening, or further medical examinations to diagnose TB).

Paragraph (g)(1) calls for medical surveillance to be provided for each employee who has occupational exposure, as defined in this standard. Occupational exposure may result in TB infection and the subsequent development of TB disease. Paragraphs (c)(1)(i, ii), (exposure determination) require the employer to identify employees with occupational exposure in the facility. These employees must be offered medical surveillance.

OSHA believes that early detection and management of exposed employees helps prevent severe illness and death. According to CDC's 1994 edition of the Core Curriculum on Tuberculosis (Ex. 7–93), approximately ten percent of the persons infected will develop active TB disease at some point in their lives (Exs. 4B, 7–50, 7–93). Five per cent of those infected develop disease within the first two years following infection and another five percent develop disease later in their lives. Immunosuppressed persons are at a considerably greater risk of developing active disease following a TB infection. For example, individuals infected with HIV and TB have been estimated to have a 8–10% risk per year of developing active disease (Ex. 7–50). However, according to the American Thoracic Society:

> Clinical trials have shown that daily isoniazid preventive therapy for 12 months will reduce the risk of developing tuberculosis in infected persons by about 70 percent and in over 90 percent of patients who are compliant in taking the medications. (Ex. 5–80)

Most infected people have a positive reaction to the TB skin test within 2–10 weeks after exposure. Consequently, early detection of newly infected workers is critical as it permits early initiation of appropriate therapy and results in a decrease in morbidity and mortality.

Paragraph (g)(1)(ii) requires that information about the signs and symptoms of pulmonary tuberculosis disease, a medical history, a physical examination, TB skin testing, medical management and follow-up, and if indicated, other related tests and procedures and medical removal protection if the employee develops infectious TB, be provided to each employee in work settings described in paragraph *(a) Scope* who sustains an "exposure incident." This provision is applicable when the employee has not been categorized as having occupational exposure in the employer's Exposure Control Plan. OSHA recognizes that there may be times when employees who are not "reasonably anticipated" to have occupational exposure to TB may be exposed, (e.g., if engineering controls break down or an individual with infectious tuberculosis is unidentified during intake procedures). Employees exposed under such circumstances incur the risk of TB infection and subsequent disease (Ex. 7–93) as a result of their work duties. OSHA includes this provision so that these employees are provided protection.

Paragraph (g)(1)(iii)(A) requires the employer to provide all medical surveillance at no cost to the employee. This is consistent with OSHA policy. Providing services at no cost to the employee is an important factor in successful workplace health and safety programs because it encourages employee participation in medical surveillance programs.

Paragraph (g)(1)(iii)(B) requires that all medical surveillance be provided at a reasonable time and place for the employee. Convenience of these procedures increases the likelihood of employee participation in the program. This helps assure that employees receive the full benefits provided by the standard. OSHA recognizes the need for this provision and has included it in other standards (e.g., Ethylene Oxide, 29 CFR 1910.1047; Asbestos, 29 CFR 1910.1001; and Bloodborne Pathogens 29 CFR 1910.1030).

Paragraph (g)(1)(iii)(C) states that all medical surveillance is required to be performed by or under the supervision of a physician or other licensed health care professional, as appropriate. OSHA has included in paragraph *(j) Definitions*, a description of the licensed health care professional. Such an individual is a physician or other health care professional who holds a license enabling her or him to independently provide or be delegated the responsibilities to provide some or all of the health care services required by this paragraph. In several states, nurse practitioners may be licensed to independently perform or supervise the evaluations and procedures required by this paragraph. In such cases, the requirements of this standard can be accomplished by those practitioners. In addition, where registered nurses are licensed to perform or supervise some of the requirements of this standard, those requirements can be accomplished by those professionals.

Paragraph (g)(1)(iii)(D) requires that medical surveillance procedures be provided according to recommendations of the CDC, current at the time these procedures are performed, except as specified by this paragraph (g). In other words, employers must comply with paragraph (g), and with the most current CDC recommendations in providing medical surveillance. OSHA has set forth what an employer must do to prevent or minimize occupational exposure in the employer's workplace. However, CDC, an agency of the U.S. Public Health Service (USPHS), follows the epidemiology of *M. tuberculosis* and periodically revises and updates its guidelines and recommendations to reflect changes in the diagnosis and treatment of TB. OSHA believes that in addition to meeting the requirements of paragraph (g), it is appropriate to follow CDC recommendations, which address screening, medical evaluations, TB skin test procedures and follow-up (e.g., the administration and interpretation of skin tests).

OSHA recognizes the dynamic nature of medical knowledge relating to tuberculosis and notes that CDC recommendations current at the time of the standard's publication may differ from recommendations at some future time when an employee evaluation takes place. Knowledge about tuberculosis is expanding. For example, the medical response to HIV/AIDS as related to tuberculosis continues to evolve. These are the reasons why OSHA has not simply required the employer to comply with a particular CDC guideline. OSHA believes that incorporating the CDC recommendations into the standard by reference enhances the quality of medical surveillance. This assures that employees are provided the most current and effective evaluation and treatment. Furthermore, the CDC recommendations provide consistency with regularly updated medical science and health care practice. A similar provision was included in the Bloodborne Pathogens standard 29 CFR 1910.1030 and met with widespread acceptance from the regulated community. The CDC recommendations cover the specific details of the medical protocols.

Paragraph (g)(1)(iv) requires that all laboratory tests be performed by an accredited laboratory. Accreditation by a national accrediting body or its state equivalent means that the laboratory has participated in a recognized quality assurance program. (For an explanation of "accredited laboratory" see paragraph *(j) Definitions* below). This accreditation process is required to assure a measure of quality control so that employees receive accurate information concerning their laboratory tests. The accreditation requirement assures long-term stability and consistency among laboratory test procedures and interpretations of results. OSHA recognizes the need for this requirement and has included it in other standards (e.g., Benzene, 29 CFR 1910.1028; Bloodborne Pathogens, 29 CFR 1910.1030).

(2) Explanation of Terms

This paragraph explains the terms used in paragraph *(g) Medical Surveillance*. Paragraphs (g)(2)(i) to (g)(2)(vii) include explanations of the "medical history", the "physical examination (with emphasis on the pulmonary system, signs and symptoms of infectious tuberculosis, and factors affecting immunocompetence)", "TB skin testing", the "face-to-face determination of ability to wear a respirator and need to be re-fit tested", "medical management and follow-up", "other related procedures or tests determined to be necessary", and "Medical Removal Protection". The applications section, paragraph (g)(3), describes what must be provided and at what time.

Paragraph (g)(2)(i) describes a medical history, during which the examiner questions the employee in order to gather information on the employee's pulmonary system, TB exposure, vaccination, testing and disease status and factors affecting immunocompetence. A medical history questionnaire may be used as a starting point for this discussion. OSHA believes that a medical history is essential for interpreting the TB skin test results, which are also required by this paragraph (g). The CDC Core Curriculum states:

> TB skin testing is a useful tool, but is not perfect. Several factors can affect the skin test reaction: for example, infection with mycobacteria other than *M. tuberculosis* and vaccination with BCG. These factors can lead to false-positive reactions * * * Other factors, such as anergy, can lead to false-negative reactions. (Ex. 7–93).

Therefore, the medical history is used to assist in interpreting the TB skin test results. The medical history also provides information regarding the employee's potential for increased risk if exposed to tuberculosis. Based on this information, discussions between the employee and the examiner regarding the employee's increased risk can assist the employee in decision-making.

Paragraph (g)(2)(ii) describes the physical examination. The physical examination is to emphasize the pulmonary system, signs and symptoms of active TB disease, and factors affecting immunocompetence. Such an examination assists the examiner in detecting evidence of active disease (e.g., rales), differentiating TB disease from other causes of cough or other signs/symptoms associated with TB disease, and ascertaining whether signs are present that are compatible with an immunocompromising health condition. The physical examination is also required when an employee has signs or symptoms of TB or after a TB skin test conversion and at other times, if indicated.

That the pulmonary system is emphasized in both the medical history and physical examination assures that the employee is evaluated with specific attention to the most common site of infectious TB. Although extrapulmonary tuberculosis can occur (e.g., in bone, meninges of the brain, and draining abscesses), it is not usually a source of infection for others. The language "with emphasis on the pulmonary system" is used to indicate that while the history and physical examinations evaluate the health of the patient as a whole, particular emphasis should be placed on the pulmonary system.

Paragraph (g)(2)(iii) explains the required TB skin testing. TB skin testing is the cornerstone for early detection of TB transmission among exposed workers. The American Thoracic Society notes that:

> Although currently available TB skin tests are substantially less than 100% sensitive and specific for detection of infection with *M. tuberculosis*, no better diagnostic methods have yet been devised. (Ex. 5–4)

The TB skin test is an important tool that is useful in identifying employees who may be eligible for appropriate, early treatment; initiating contact investigations; and evaluating the effectiveness of the facility's control program. The requirement for TB skin testing is supported by AHA (Exs. 7–61, 7–29), APIC (Ex. 7–30), AIHA (Ex. 7–170) and the CDC 1994 Core Curriculum which states, "TB screening should be done in groups for which rates of TB are substantially higher than the general population." [Ex. 7–93]. In this document, CDC specifically mentions screening for health care workers, staff of long term care facilities, correctional facilities, hospices, drug treatment centers, and nursing homes.

Paragraph (g)(2)(iii) describes the requirement for TB skin testing. TB skin testing, which only applies to employees whose TB skin test status is not known to be positive, includes anergy testing if indicated, and consists of an initial 2-step protocol for each employee who has not been previously skin tested and/or for whom a negative test in the past 12 months cannot be documented. If the employer has documentation that the employee has had a negative TB skin test within the past 12 months, that test may be used to fulfill the skin testing portion of the initial medical surveillance requirements. For example, if an employer has a new or existing employee for whom: (1) a TB skin test has not previously been performed, or (2) a negative skin test result within the past 12 months that cannot be documented, the employer is required to provide an initial two-step skin test for the employee. Conversely, if the employer can document a negative skin test result from a test performed on the employee within the past 12 months, that test can be used to fulfill the initial skin testing requirement of this section. Subsequent periodic retesting of the employee is to be performed in accordance with paragraph (g)(3), as discussed below.

It is important for the employer to determine the current TB skin test status

of employees prior to their initial assignment to a job with occupational exposure. This "baseline" status can then be used to evaluate changes in the employees' TB skin test.

In their 1992 guidelines, the American Thoracic Society recommended the following:

> Individuals at high risk for TB should have a TB skin test at least once to assess their need for preventive therapy and to alert the health care providers of those with positive skin tests of this medical problem. In institutional settings, baseline information on the TB skin test status of staff and residents is a means of identifying candidates for preventive therapy as well as determining whether transmission of TB is occurring in the facility. For this reason, TB skin testing upon employment or upon entry should be mandatory for staff and residents * * * (Ex. 5–80)

Previous BCG vaccination is not a contraindication for skin testing. In its 1994 guidelines, the CDC states:

> During the pre-employment physical or when applying for hospital privileges, HCWs who have the potential for exposure to *M. tuberculosis* [sic]; including those with a history of BCG vaccination, should have baseline PPD skin testing performed * * *
>
> BCG vaccination may produce a PPD reaction that cannot be distinguished reliably from a reaction caused by infection with *M. tuberculosis*. For a person who was vaccinated with BCG, the probability that a PPD test reaction results from infection with *M. tuberculosis* increases (a) as the size of the reaction increases, (b) when the person is a contact of a person with TB, (c) when the person's country of origin has a high prevalence of TB, and (d) as the length of time between vaccination and PPD testing increases. For example, a PPD test reaction of ≥10 mm probably can be attributed to *M. tuberculosis* in an adult who was vaccinated with BCG as a child and who is from a country with a high prevalence of TB. (Ex. 4B)

CDC does not state that BCG vaccination negates the need for baseline and periodic skin testing but does state that skin tests on vaccinated individuals need to be interpreted carefully. OSHA's proposed rule is consistent with the CDC Guidelines on this point. PPD testing is thus not contraindicated for BCG vaccinated employees; however, such prior vaccination does mean that other factors, such as the age of the employee and the extent of induration, must be considered in interpreting the results.

The purpose of performing a *two-step test* is to correctly identify the baseline TB skin test status of those employees who are infected with TB but whose sensitivity to the tuberculin testing material may have waned over the years. This procedure enhances the proper interpretation of subsequent positive TB skin test results and is based upon current CDC and American Thoracic Society recommendations (Exs. 5–80, 6–15, 7–52, 7–93, 7–169).

Two-step testing requires an employee to be tested initially and, if the test results are negative, to be tested again within 1–3 weeks. This second test stimulates or "boosts" the body's response to the testing material and results in a more valid reaction. For example, an employee who has not been recently tested but who is infected with TB from an earlier exposure may fail to respond to this current test because his or her immune response has waned over time. However, a second test of this employee will produce a positive TB skin test that more accurately reflects his or her true TB skin test status. Thus, the initial use of a two-step testing procedure ensures that the baseline TB skin test is an accurate reflection of the employee's TB status and will reduce the likelihood of misinterpreting a "boosted" reaction on subsequent tests as a conversion. Two-step testing is also appropriate for individuals who have been BCG vaccinated, since these individuals can exhibit a boosted reaction. Therefore, two-step testing of BCG vaccinated individuals can be used to determine their baseline status, although the skin test results must be interpreted in light of their previous BCG vaccination.

The two-step testing procedure does not identify those persons who are truly anergic and, therefore, are not capable of mounting a typical immune response to the test material. Evaluation of adequate immune response, when determined to be necessary by the physician or other licensed health care professional, as appropriate, is determined through anergy testing, and this is provided for in the explanation of TB skin testing in paragraph (g)(2)(iii).

The CDC recommendations are the guiding documents for TB skin test protocols. By referring the employer to these recommendations in Paragraph (g)(1)(iii)(D), OSHA allows for future changes in protocols and procedures that result from continuing research. Consistent with the CDC guidelines (Exs. 3–33, 3–35, 3–32, 6–15), the American Thoracic Society recommends:

> The Mantoux test with 5 Tuberculin Units (TU) of PPD may be used as a diagnostic aid to detect tuberculous infection and to determine the prevalence of infection in groups of people. (Ex. 5–4)

Proper administration of a TB skin test results in a reaction described as a classic example of a delayed (cellular) hypersensitivity reaction. This reaction indicates infection with mycobacterium, most commonly *M. tuberculosis*. The reaction characteristically begins in 5–6 hours, is maximal at 48–72 hours, and subsides over a period of days (Ex. 5–4).

Proper administration and interpretation of the test is critical and can be complex. In 1990, the American Thoracic Society revised the criteria for interpreting the TB skin test (Ex. 5–4). Information such as the health status of the tested employee, history of BCG vaccination, recent close contact with persons with active TB, chest x-ray results, and other factors must be considered when interpreting the TB skin test results. CDC has established criteria for a TB skin test *conversion*; that is, when an employee's TB skin test results change from negative to positive, indicating a recent TB infection (Ex. 4–B).

Because of the complexity in properly administering and interpreting TB skin tests, it is essential that only trained individuals perform this function. For this reason, TB skin testing is to be administered and interpreted by or under the supervision of a physician or other licensed health care professional as appropriate and according to CDC recommendations. This language allows employers to chose from a variety of health care professionals who can administer and interpret TB skin tests. OSHA is aware that in some worksites, employees have been allowed to read and interpret their own skin test results. A surveillance system that allows self-reading and interpretation of TB skin tests can be problematic. With regard to interpretation of TB skin test results, the American Thoracic Society states:

> Intelligent interpretation of skin test results requires a knowledge of the antigen used (tuberculin), the immunologic basis for the reaction to the antigen, the technique(s) of administering and reading the test, and the results of epidemiologic and clinical experience with the test. (Ex. 5–4)

In its 1994 *Core Curriculum on Tuberculosis* (Ex. 7–93), CDC describes the complexities of interpreting the induration resulting from TB skin testing. A number of factors can affect the size of a TB skin test induration relative to whether or not the test should be interpreted as being positive. For example, induration of 5 mm or more is classified as positive for persons with known or suspected HIV infection, while an induration must be 10 mm to be classified as positive in persons who are foreign-born in high prevalence countries. An induration of 15 mm or more is classified as positive in certain other situations. In addition, TB skin testing can result in both false positive and false negative results.

Clearly, interpreting TB skin test results requires professional expertise and must be performed by or under the supervision of a physician or other licensed health care professional, as appropriate, by an individual with training and experience in performing the test and interpreting the result. Proper use of the TB skin test as a medical surveillance tool will require two visits to the health care professional: one to receive the test and one to read/interpret the test results. However, considering the critical importance of this element, OSHA believes that allowing employees to read and interpret their own tests or allowing their peers to do so (unless they meet the criteria discussed above) compromises the quality and accuracy of the testing procedure.

Paragraph (g)(2)(iv) describes the determination of each employee's ability to wear a respirator and of his or her need for re-fit testing for employees required to wear a respirator. This face-to-face determination includes a verbal exchange between the employee and the examiner regarding the employee's health factors such as illness or injuries, that may impact his or her ability to wear a respirator (e.g. vascular or heart disease, asthma, claustrophobia, facial structure defects, certain skin conditions, etc.) (Ex.7–64). Based on this history and the observation of the employee, the need for further testing or physical examinations for the ability to wear a respirator can be determined. In addition, assessment of the need for re-fit testing is to be performed, which assures that the examiner consider whether re-fit testing is needed. OSHA has included a note stating that the determination of the need for re-fit testing may only be performed after the required initial fit test of the employee and cannot be used in lieu of any other required fit tests, as, for example, when a different size or make of respirator is used.

Paragraph (g)(2)(v) explains that medical management and follow-up include diagnosis, and, where appropriate, prophylaxis and treatment related to TB infection and disease. The employer must provide medical management and follow-up for occupationally exposed employees with skin test conversions [paragraph (g)(3)(i)(D)], or those who undergo an exposure incident whether or not they are categorized as occupationally exposed [paragraphs (g)(1)(ii) and (g)(3)(i)(C)]. In addition, any time an occupationally exposed employee develops signs and symptoms of infectious tuberculosis, medical management and follow-up are required [paragraph (g)(3)(i)(B)]. John E. McGowan addressed follow-up in the 1995 article entitled "Nosocomial Tuberculosis: New Progress in Control and Prevention," published in Clinical Infectious Diseases. He states,

> If the PPD skin testing program for health care workers is to be useful, several steps are crucial: * * * The institution also must make sure that the occupational health service undertakes careful follow-up of workers found to have positive TB skin tests or tuberculosis disease. This follow-up should include counseling, careful monitoring of therapy (when prescribed) until its completion and evaluation of fitness to return to work. (Ex. 7–248).

Paragraph (g)(2)(vi) explains that other related tests and procedures are any TB-related tests and procedures determined to be necessary by the physician or other licensed health care professional, as appropriate. These procedures or tests could include chest radiographs, sputum smears, or other testing determined to be necessary to make an assessment, a diagnosis, or medically manage the employee. An example of a program that integrates testing and examinations was given at the 1994 meeting of the Society for Occupational and Environmental Health, by Carol Murdzak who presented the University of Manitoba's Medical Surveillance program. Her presentation, entitled "Conducting a Medical Surveillance Program to Prevent and Control Transmission of TB in a Health Care Institution" demonstrates the use of skin testing and general review of health status for employee surveillance. Results of TB skin testing and the review of health status determine the need for chest x-ray and further medical evaluation in this program (Ex.7–169).

(3) Application

Medical examinations in the form of medical histories, physical examinations, TB skin testing and other related tests and procedures are necessary in order to promptly identify and treat employees with infectious tuberculosis.

Paragraph (g)(3), Application, specifies what an employer must provide. In each situation set forth in paragraph (g)(3), the employer must provide medical examinations, tests and procedures as specified. Some of the provisions are offered only "if indicated," which means that the physician or other licensed health care professional, as appropriate, has determined that further tests or procedures are needed. For example, an employee who has no history of illness or being immunocompromised and whose TB skin test is negative at the time of initial assignment is not required to be offered a physical examination unless the examiner determines that a physical examination is indicated. However, if at the time of annual skin test, the employee has a skin test conversion, a physical examination is required.

Paragraph (g)(3)(i)(A) requires that, before the time an employee is initially assigned to a job with occupational exposure (or within 60 days from the effective date of the standard for employees already assigned to jobs with occupational exposure), the employee be provided with a medical history, TB skin testing, and, if indicated, a physical examination and other related tests and procedures.

OSHA requires the initial medical history to assist in assessing the employee's health. This information will provide a baseline health status that can be used to evaluate (1) whether the employee has a pre-existing condition that may be exacerbated by occupational exposure to TB and (2) any future health conditions that may arise that are relevant to occupational exposure to TB.

OSHA does not believe that an initial physical examination for all occupationally exposed employees is necessarily warranted. However, the Agency does believe that a physical examination, if determined to be indicated by the examiner based on the medical history and TB skin test results, is useful and effective.

The note to paragraph (g)(3)(i)(A) specifies that if an employee has had a medical examination within the twelve (12) months preceding the effective date of the standard and the employer has documentation of that examination, only the medical surveillance provisions required by the standard that were not included in the examination need to be provided. The Agency realizes that employees may have received at least some of the elements of the required medical surveillance provisions shortly before the effective date of the standard. In these situations, a full TB examination would not need to be repeated.

In addition, the proposed standard allows the baseline TB skin testing status of an employee to be established by documentation of a TB skin test that was administered within the previous 12 months. For example, if an employee has a written record of a TB skin test within the last 12 months, that information can be used to document the employee's baseline TB skin test status and another TB skin test at the

time of the initial medical examination is not necessary. When utilizing results from a previous medical examination and skin test to fulfill the initial medical surveillance requirements, the employer must use the date(s) of the previous medical exam and skin test to determine the date(s) of the employee's next medical examination and skin test. In no case shall the interval between the previous examination and skin test and the next examination and skin test exceed 12 months. These provisions are designed to avoid unnecessary testing of employees and do not compromise the quality of the medical surveillance.

Information (e.g., medical history) obtained from a medical examination in the past 12 months is unlikely to change within this span of time. However, this may not be the case with regard to previous skin testing results. While OSHA is proposing to accept a skin test performed within the past 12 months as a substitute for performing an initial baseline skin test, an employer utilizing a new employee's negative skin testing result obtained more than 3 months prior to beginning the new job may be uncertain as to the source and time of infection if the employee tests positive at his or her next skin test. More specifically, conversion normally occurs within 3 months of infection. Therefore, an employee would have been negative at his or her last skin test, e.g., 7 months previously, and have been infected just after the skin test and subsequently converted. In such a case, an employer may rely on the previous negative skin test as the baseline does not need to test the new employee until 5 months later (i.e., annual skin test frequency), at which time the employee would test positive and be identified as a converter. In this situation, the new employer would not be able to determine if the employee's conversion had occurred as a result of exposure occurring previous to hire or from exposure in his or her current work setting. Regardless of the source of the conversions, the employer would be required by the standard to initiate medical management and a follow-up investigation, which might also entail skin testing other employees in the worksite to determine if other conversions had taken place, a step that would not be necessary if the employee had been correctly identified as positive upon entry into the workplace. In view of this, employers may choose to perform an initial baseline skin test on each new employee before the employee enters the work setting.

Once an employee is on the job, paragraph (g)(3)(i)(A) requires employers to periodically retest employees who have negative TB skin tests in order to identify those employees whose skin test status changes, indicating that they have been infected. Because the baseline TB skin test provides only a "snapshot" of the TB skin test status of the employee and because exposure and subsequent infection can occur at any time, periodic testing is necessary. The American Thoracic Society recommends:

> • • • follow-up skin-testing should be conducted on at least an annual basis among the staffs of TB clinics, health care facilities caring for patients with HIV infection, mycobacteriology laboratories, shelters for the homeless, nursing homes, substance-abuse treatment centers, dialysis units, and correctional institutions. (Ex. 5–80)

When TB exposure results in infection, early identification allows employees to have options regarding prophylactic treatment, thereby reducing the likelihood that the infection will progress to disease.

OSHA recognizes the importance of periodic testing to monitor the status of employee's skin test results. In their 1994 Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, the CDC recommends that the frequency of PPD skin testing of employees be based upon the individual facility's risk assessment in conjunction with the criteria put forth by the CDC (Ex. 4B). For situations that meet certain CDC criteria, CDC recommends that employees receive a repeat TB skin test every 3 months, six months or annually, depending upon the risk assessment.

OSHA's proposed standard does not require a risk assessment of the type described by CDC and would extend coverage to worksites other than "health-care facilities" as described in the CDC document (Ex. 4B). Consequently, OSHA is proposing that repeat TB skin test be performed every 6 months or annually, depending upon the exposure determination. This testing frequency is expected to be both practical and effective in early identification of skin test conversions in the various worksites described in the Scope. The requirements for more frequent TB skin tests (e.g., 3 months after an exposure incident, or if deemed necessary by a licensed health care professional) ensures that employees' health is not compromised.

An exemption to this annual testing is permitted for an employer who can demonstrate that his or her facility or work setting: (1) Does not admit or provide medical services to individuals with suspected or confirmed infectious TB, (2) has had no cases of confirmed infectious TB in the past 12 months, and (3) is located in a county that, in the past two years, has had 0 cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year. In these settings only a baseline TB skin test is required. This is discussed earlier under paragraph *b, application*.

Paragraph (g)(3)(i)(B) requires that, when an employee has signs or symptoms of TB, either observed or self-reported, the employee be provided a medical history, physical examination, TB skin testing, medical management and follow-up, and other related tests and procedures determined to be necessary. CDC states that the presence of signs or symptoms of tuberculosis in the employee requires prompt medical evaluation (Ex. 7–52, 7–93), and such evaluation provides an opportunity for initiating drug therapy. Furthermore, identifying those with infectious pulmonary TB disease enables the employer to remove them from the workplace, preventing exposure of other employees.

Paragraph (g)(3)(i)(C) requires that when an employee incurs an exposure incident, a medical history, TB skin testing, medical management and follow-up, and, if indicated, a physical examination and other related tests and procedures be provided. Evaluation and follow-up after each exposure incident help detect any resultant infections, as well as prevent infection in other employees, benefitting the health of all employees.

Following exposure, infected workers will usually develop a positive response to a TB skin test (Exs. 7–50, 7–93, 5–4). In certain cases, workers may also display signs or symptoms compatible with tuberculosis disease such as complaints of persistent cough (over 3 weeks in duration), bloody sputum, night sweats, weight loss, loss of appetite or fever. Use of the TB skin test has been recognized as a tool in the early identification of infection and for disease surveillance and follow-up. In paragraph (g)(3)(i)(C), the proposed standard also requires employers to provide testing for employees as soon as feasible after an exposure incident, unless a negative TB skin test has been documented within the preceding 3 months. If this baseline skin test is negative, another TB skin test shall be repeated 3 months after the exposure incident.

In order to accurately determine if an exposure incident has resulted in infection, the employer must first know the baseline skin test status of the affected employee(s) at the time of the exposure incident. Typically, skin test conversion can be documented approximately 2–10 weeks following

infection (Ex. 7–52). Consequently, it can be reasonably assumed that a negative TB skin test within the three months prior to the incident is sufficiently indicative of the employee's status at the time of the exposure incident.

For those employees who do not have a documented negative skin test within the past three months, the employer must determine their TB skin test status as soon as feasible after the exposure incident. The requirement of "as soon as feasible" in the provision puts the employer under the obligation of performing the TB skin test quickly, i.e., before infection resulting from the exposure would be manifested as a conversion. This assures that a true indication of the employee's skin test status at the time of the incident is obtained.

The purpose of the initial TB skin test following an exposure incident is to establish the TB skin test status of the employee(s) at the time of the incident. From this baseline, changes in TB skin test status can be identified. This initial test would not detect infection resulting from the exposure, since there would not have been sufficient time for conversion to occur. Hence, the employer is required to provide a repeat TB skin test three months after the exposure incident to determine if infection has occurred. This requirement reflects current CDC recommendations (Ex. 4B).

Paragraph (g)(3)(i)(D) requires that when an employee has a TB skin test conversion, the employee receive a medical history, a physical examination, medical management and follow-up, and other tests and procedures determined to be necessary. This provision assures that employees with skin test conversions receive appropriate evaluation for preventive therapy and for infectious tuberculosis. OSHA included the provision for early identification of disease since, as the CDC has stated in their guidelines, infectious tuberculosis disease can be prevented by the early treatment of tuberculosis infection.

In paragraph (g)(3)(i)(E), the proposed standard requires employers to provide TB skin testing within 30 days prior to termination of employment. The rationale for this requirement is two-fold. First, this requirement permits employees whose employment is terminated after an unrecognized exposure incident, but before their next regularly scheduled TB skin test, to determine their current (exit) TB skin test status. OSHA recognizes that in some instances employees may be in the process of converting from negative to positive TB skin test results at the time of the exit testing and that some of these cases will be missed. Also missed will be employees who decline testing or who vacate their position immediately or without notice. While such situations are possible, the Agency believes that these occurrences would be rare. Secondly, by detecting recent conversions, appropriate steps can be taken by the employer to investigate the cause of the exposure. This helps prevent future exposures in those areas or situations where the exiting employee's infection may have occurred.

Paragraph (g)(3)(i)(F) requires that a medical history, physical examination, TB skin testing, determinations of the employee's ability to wear a respirator, medical management and follow-up or other related tests and procedures be conducted at any other time determined necessary by the physician or other licensed health care professional, as appropriate. This allows the physician or other licensed health care professional, as appropriate, to recognize the individual differences in employees' medical status and response to TB infection and increase the frequency or content of examination as needed. Some workers who have certain health conditions may need more frequent evaluation (Ex. 4B). For example, individuals who have a condition that may interfere with an accurate interpretation of TB skin test results (e.g., the development of test anergy in an employee who is on chemotherapy for cancer treatment), may warrant more frequent evaluations because of the high risk for rapid progression to TB disease if he or she becomes infected. (Ex. 4B)

Paragraph (g)(3)(ii) sets forth provisions regarding employees who wear respirators. Paragraph (g)(3)(ii)(A) requires that a face-to-face determination of the employee's ability to wear the respirator be accomplished before initial assignment to a job with occupational exposure (or within 60 days of the effective date of the standard) and at least annually thereafter. As discussed above under explanation of terms, this is a verbal exchange to assess health factors that could affect the employee's ability to wear a respirator. An initial determination is made before assignment to a job requiring respirator use to assure that the employee's health factors have been properly evaluated prior to incurring exposure to *M. tuberculosis*. This determination must also be made annually to assure that no health conditions have arisen that might limit an employee's ability to wear a respirator.

Such conditions may arise and be noted prior to the annual determination. For example, the employee may experience unusual difficulty while being fitted or while using the respirator. In these situations, it is not appropriate to wait until the annual determination. Therefore, paragraph (g)(3)(ii)(B) requires that a face-to-face determination of the employee's ability to wear a respirator, including relevant components of a medical history and, if indicated, a physical examination and other related tests and procedures, be provided whenever the employee experiences unusual difficulty while being fitted or while using a respirator.

Paragraph (g)(3)(iii) requires employers to provide TB skin tests every 6 months for each employee who enters AFB isolation rooms or areas, performs or is present during the performance of high-hazard procedures, transports or is present during the transport of an individual with suspected or confirmed infectious TB in enclosed vehicles, or works in intake areas where early identification is performed in facilities where 6 or more individuals with confirmed infectious TB have been encountered within the past 12 months. OSHA believes that employees who perform these activities are exposed more intensely and frequently to individuals with suspected or confirmed infectious tuberculosis and should, therefore, be tested more frequently.

(4) Additional Requirements

Paragraph (g)(4) (i) through (iv) contain the additional requirements an employer must meet. Paragraph (g)(4)(i) requires that the physician or other licensed health care professional, as appropriate, verbally notifies the employer and the employee as soon as feasible if an employee is determined to have suspected or confirmed infectious tuberculosis. In this way an infectious employee can be removed from the workplace, thereby minimizing occupational exposure for other workers. Paragraph (g)(7)(i), Written Opinion, allows 15 days before the employer must provide the employee with the written opinion of medical evaluations from the physician or other licensed health care professional, as appropriate. In situations where an employee is determined to be potentially infectious, this time period leads to unnecessary delays in removal from the workplace and disease treatment. Therefore, OSHA requires the verbal notification to expedite treatment

and prevent spread of disease to other employees.

The proposed standard, in paragraph (g)(4)(ii), requires the employer to notify each employee who has had an exposure incident when the employer identifies an individual with confirmed infectious TB who was previously unidentified. For example, if a newly admitted patient undergoes diagnostic and therapeutic evaluation for suspected pulmonary malignancy, and the diagnosis of infectious tuberculosis is not made until several days after hospitalization, all hospital staff who have had exposure must be identified and provided TB skin test and follow-up. OSHA intends to assure that employees are provided with opportunities for early detection of tuberculosis infection. These provisions are consistent with the general purpose of tuberculosis medical surveillance as recommended by the CDC, and they are included to assist all employees in receiving the full benefits provided by the standard.

Determination of the drug susceptibility of the *M. tuberculosis* isolate from the source of an exposure incident resulting in a TB skin test conversion is required by paragraph (g)(4)(iii) unless the employer can establish that such a determination is infeasible. Information regarding drug susceptibility assists the examiner in deciding the most effective treatment therapy for the exposed employee, particularly if the source is a drug resistant strain of *M. tuberculosis*. Drug susceptibility testing of the source isolate is recommended by CDC (Ex. 4B). OSHA includes the provision regarding infeasibility because certain TB skin test conversions may involve unknown exposure sources. This can make identification of the isolate and therefore drug susceptibility testing infeasible or even impossible. It is the responsibility of the employer to establish that this is infeasible, if such is the case. Employers must make a good faith effort to identify *M. tuberculosis* isolates and obtain the drug susceptibility testing.

Paragraph (g)(4)(iv) requires the employer to investigate and document the circumstances surrounding an exposure incident or TB skin test conversion and to determine if changes can be instituted that will prevent similar occurrences in the future.

The provision assures that employers obtain feedback regarding the circumstances of employee exposures and use the information to eliminate or decrease specific circumstances leading to exposure. For example, exposure incident investigation shows that an employee was exposed to tuberculosis as a result of recirculation of air containing infectious droplet nuclei. Further investigation shows inadequate local or general ventilation in the workplace. The employer can now repair the ventilation system and prevent future exposure incidents. Another example of corrective measures may be including a stronger training emphasis on certain procedures where proper work practices might have decreased the likelihood of transmission of tuberculosis. Employers can obtain further guidance regarding investigations for TB skin test conversions and exposure incidents in health care workers by reading the 1994 CDC guidelines.

(5) Medical Removal Protection

Paragraph (g)(5)(i) requires that employees with suspected or confirmed infectious tuberculosis be removed from the workplace until determined to be non-infectious according to current CDC recommendations. Infectious TB is contagious and removal is essential for the protection of other workers. An employee's "infectiousness" is determined by the physician or other licensed health care professional, as appropriate, who informs the employer as required in paragraphs (g)(4)(i) and (g)(7) of this section.

Paragraph (g)(5)(ii) states that for employees removed from the workplace under paragraph (g)(5)(i), the employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits, including the right to former job status, as if the employee had not been removed from the job or otherwise been medically limited until the employee is determined to be noninfectious or for a maximum of 18 months, whichever comes first. Paragraph (g)(5)(iii) provides medical removal protection for employees removed from the workplace under paragraph (f)(4)(viii) of Respiratory Protection. The provision requires the employer to transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the use of respiratory protection is not required. OSHA requires that if no such work is available, the employer shall maintain the employee's total normal earnings, seniority, and all other employee rights and benefits until such work becomes available or for 18 months, whichever comes first.

The requirement referring to the employee's right to return to his or her former job is not intended to expand upon or restrict any rights an employee has or would have had, to a specific job classification or position under the terms of a collective bargaining agreement. Where the employer removes an employee from exposure to tuberculosis, the employee is entitled to full medical removal protection benefits as provided for under the standard.

The medical removal requirement is an indispensable part of this standard. The medical removal protection helps assure that affected employees participate in medical surveillance and seek appropriate care. If employees fear losing their jobs as a result of their medical condition they may attempt to hide the illness, thereby infecting many more workers and other people and jeopardizing their own health. The requirement for medical removal assures that an infectious employee will not be terminated, laid off, or transferred to another job (possibly at a lower pay grade) upon returning to work. Consequently, this protection should reduce reluctance on the part of the employee to participate in medical surveillance. The employee's health will be protected and the health of co-workers and others who come into contact with that employee will be protected, also.

OSHA believes that the cost of protecting worker health to the extent feasible is an appropriate cost of doing business since employers are obligated by the OSH Act to provide safe and healthful places of employment. Consequently, the costs of medical removal, like the costs of respirators and engineering controls, are borne by employers rather than individual workers.

If a removed employee files a claim for workers' compensation payments for a tuberculosis-related disability, then the employer must continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation may be reduced by such amount. The employer's obligation to provide medical removal protection benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with another employer which was made possible by virtue of the employee's removal.

Medical removal should not be viewed as an alternative to primary control (prevention) of workers' exposure to tuberculosis; rather, it should be used as a secondary means of protection, where other methods of control have failed to protect. The stipulation of an 18 month time period of protection is consistent with other OSHA standards (e.g., Cadmium, 29 CFR 1910.1027; Lead in Construction, 29 CFR 1926.62). The provision of medical removal and the costs associated with the program may indirectly provide employers with economic incentives to comply with other provisions of the standard. It can be expected that the costs of medical removal will decrease as employer compliance with other provisions of the standard increases.

(6) Information Provided to Physician or Other Licensed Health Care Professionals

Paragraph (g)(6)(i) requires the employer to assure that the health care professionals responsible for the medical surveillance receive a copy of this regulation. OSHA believes it is the employer's responsibility to inform the health care professionals responsible for medical surveillance of the requirements of this standard. This will help assure that these individuals are aware of and implement the requirements. This provision is included in other OSHA standards (e.g., Benzene, 29 CFR 1910.1028; Bloodborne Pathogens, 29 CFR 1910.1030).

Paragraph (g)(6)(ii) requires the employer to assure that the physician or other licensed health care professional, as appropriate, evaluating an employee after an exposure incident receives: (A) A description of the exposed employee's duties as they related to the exposure incident; (B) a description of the circumstances under which the exposure incident occurred; (C) the employee's diagnostic test results, including drug susceptibility pattern, or other information relating to the source of exposure that could assist in the medical management of the employee; and (D) all of the employee's medical records relevant to the medical evaluation of the employee, including TB skin test results. Since the individual responsible for medical surveillance may not necessarily be the person evaluating an employee after an exposure incident, it is necessary to also provide a copy of this standard to the evaluating physician or other appropriate licensed health care professional, as required by paragraph (g)(6)(i). In this way, the evaluator will also be informed of and implement the standard's requirements. All of the above information is essential to follow-up evaluation, and helps assure that an accurate determination can be made regarding appropriate medical treatment of the exposed employee. This provision is consistent with other OSHA standards (e.g., Bloodborne Pathogens, 29 CFR 1910.1030, Benzene, 29 CFR 1910.1028).

(7) Written Opinion

Paragraph (g)(7)(i) states that the employer shall obtain and provide the employee with a copy of the written opinion of the physician or other licensed health care professional, as appropriate, within 15 days of the completion of all medical evaluations required by this section. The purpose of requiring the employer to obtain a written opinion is to assure that the employer is provided with documentation that the medical evaluation of the employee (1) has taken place and that the employee has been informed of the results; (2) has included an evaluation of the employee's need for medical removal or work restriction; (3) describes the employee's TB skin test status so that the employer can assess action needed to prevent further exposure; and (4) informs the employer of the employee's infectivity status so that the employer can take action to prevent the employee from becoming a source of infection for other employees.

The employer has a right to know the information contained in the written opinion and may retain the original written opinion, but must provide a copy to the employee. The 15 day provision assures that the employee is informed in a timely manner regarding information received by the employer and is consistent with other OSHA standards (e.g., Formaldehyde, 29 CFR 1910.1048; Benzene, 29 CFR 1910.1028; Bloodborne Pathogens, 29 CFR 1910.1030).

In addition, the written opinion is required to assure the employer that the employee has been provided with information about any medical conditions resulting from exposure to tuberculosis which require further evaluation or treatment.

OSHA believes it is important that employers know if their employees have had evaluations for tuberculosis infection or exposure incidents, and that physicians or other appropriate licensed health care professionals, acting as agents for the employer, have provided the employer with written documentation that these evaluations occurred. However, paragraph (g)(7)(ii) limits the information the employer is provided in order to protect the privacy of the employee. The requirement for a written opinion after a medical evaluation has been included in other OSHA standards (e.g., Occupational Exposures to Hazardous Chemicals in Laboratories, 29 CFR 1910.1450; Formaldehyde, 29 CFR 1910.1048; Bloodborne Pathogens, 29 CFR 1910.1030).

Paragraph (g)(7)(ii)(E) requires the written opinion to state any recommendations for medical removal or work restrictions and the employee's ability to wear a respirator. This recommendation must be in accordance with paragraphs (g)(5)(i) and (f)(5)(viii) of this section. Including this information in the written opinion assures that the employer is provided with written documentation of the need for removal of an employee with infectious tuberculosis from the workplace. The provision also assures that the employer is aware of any work restrictions on the employee and the employee's ability or inability to wear a respirator. This information enables the employer to take appropriate steps in managing the employee's duties upon return to the workplace. OSHA recognizes the need for this provision and has included it in other standards (e.g., Lead in Construction, 29 CFR 1926.62).

Paragraph (g)(7)(iii) states that all other findings or diagnoses shall remain confidential and shall not be included in the written report. OSHA believes that all health care professionals have an obligation to view medical information gathered or learned during tuberculosis medical surveillance or post-exposure evaluation as confidential medical information. As stated previously, the maintenance of confidentiality encourages participation in medical surveillance by allaying employee concern that medical conditions unrelated to tuberculosis exposure will be communicated to the employer. OSHA also recognizes that successful medical surveillance and medical management and follow-up programs must guarantee this confidentiality, the specific requirements on confidentiality can be found in applicable state and federal laws and regulations that cover medical privacy and confidentiality. Finally, OSHA recognizes the need for this provision and has included it in other standards (e.g., Bloodborne Pathogens, 29 CFR 1910.1030).

Paragraph (h) Communication of Hazards and Training

Paragraph (h), Communication of Hazards and Training, addresses the issues of transmitting information to employees about the hazards of tuberculosis through the use of labels, signs, and information and training. These provisions apply to all operations that come under the coverage of

paragraph (a), *Scope*, of this section. Although OSHA has an existing standard, Hazard Communication (29 CFR 1910.1200), which requires an employer to inform employees about the hazards of chemical substances they are exposed to occupationally, that standard does not apply to biological hazards such as TB. Consequently, it is OSHA's intent in this paragraph to assure that employees will receive adequate warning through labels, signs, and training so that the employee understands the hazard and can take steps to eliminate or minimize his or her exposure to tuberculosis.

Paragraphs (h)(1) and (h)(2) of the proposed standard for tuberculosis provide the specific labeling and sign requirements that are to be used to warn employees of hazards to which they are exposed. The requirements for labels and signs are consistent with section 6(b)(7) of the OSH Act, which prescribes the use of labels or other appropriate forms of warning to apprise employees of occupational hazards. As noted in paragraphs (c)(2)(v), (d)(3), and (d)(5) above, settings where home health care and home-based hospice care are provided are not required to have engineering controls and, therefore, the signs and labeling would not be required in these cases.

Labels

Paragraph (h)(1)(i) requires that air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis* must be labeled at all points where ducts are accessed prior to a HEPA filter and at duct access points, fans, and discharge outlets of non-HEPA filtered direct discharge systems. The label must state "Contaminated Air—Respiratory Protection Required." The provision for labeling of air ducts that may reasonably be anticipated to contain aerosolized *M. tuberculosis*, with the proposed hazard warning, is supported by the CDC in its discussion of HEPA filter systems. This discussion states:

> Appropriate respiratory protection should be worn while performing maintenance and testing procedures. In addition, filter housing and ducts leading to the housing should be labeled clearly with the words "Contaminated Air" (or a similar warning). (Ex. 4B)

The intent of this provision is to assure that employees who may be accessing these systems for the purposes of activities such as maintenance, replacement of filters, and connection of additional ductwork are warned of the presence of air that may contain aerosolized *M. tuberculosis* so that appropriate precautions can be taken. Consequently, labels are to be placed at all points where these systems are accessed.

In situations where air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* is discharged directly to the outside, the exhaust outlets are also to be labeled. This is especially important since these outlets will most likely be at a remote location from the contaminated air source. Employees working in these locations would have no warning of the hazard if these ducts were not labeled. In addition, a number of exhaust outlets from a variety of sources may be present in an area (e.g., a hospital roof). In such situations, labeling also serves to distinguish contaminated air exhaust outlets from others in the vicinity.

The proposed provision does not require that a symbol (e.g., "STOP" sign) be included on the duct labels. OSHA believes that, in many situations, the label will be stenciled onto the duct, similar to the labeling used on other piping and duct labels currently being employed in some of these facilities. In addition, the group of workers accessing ducts will likely be a well-defined, skilled group that can be trained to recognize the text's warning. However, OSHA seeks comment on whether a symbol on duct labels is necessary and any information regarding the current use of such symbols.

Paragraph (h)(1)(ii) requires that clinical and research laboratory wastes that are contaminated with *M. tuberculosis* and are to be decontaminated outside of the immediate laboratory must be labeled with the biohazard symbol or placed in a red container(s). This provision is intended to assure that employees are adequately warned that these containers require special handling. In addition, the label or color-coding serves as notice that certain precautions may be necessary should materials in the container be released (e.g., a spill). This provision closely follows the recommendations outlined in the CDC-NIH publication "Biosafety in Microbiological and Biomedical Laboratories" (Ex. 7–72) and is in accordance with the labeling requirements of paragraph (e)(2)(i)(D), Clinical and Research Laboratories, of this section.

Signs

Paragraph (h)(2) contains the provisions relative to the posting of warning signs in areas where employees may be exposed to droplet nuclei or other aerosols of *M. tuberculosis*. More specifically, paragraph (h)(2)(i)(A) requires that signs be posted at the entrances to rooms or areas used to isolate an individual with suspected or confirmed infectious TB. The term "rooms or areas" is used in order to expand the requirement beyond the AFB isolation room or area. Throughout the course of a day various employees may enter such rooms or areas in order to carry out their duties. These employees can include physicians, nurses, respiratory therapists, housekeepers, and dietary workers. Posting a sign at the entrance of those rooms or areas where an individual with suspected or confirmed infectious TB is isolated serves to warn employees that entry into the room or area requires that certain precautions be taken. In addition, the employer may have implemented a program to minimize the number of employees who enter such rooms or areas. In this case, the sign serves as notice that entry may not be permitted for a particular employee or group of employees. As an additional public health benefit, such signs will also provide warning to visitors or family members who may be entering the area and are unaware of the hazard.

Paragraph (h)(2)(i)(B) requires that signs be posted at the entrances to areas where procedures or services are being performed on an individual with suspected or confirmed infectious TB. Although it is critically important to provide appropriate warning to employees who may inadvertently enter an isolation room, other areas of the facility are of concern as well. Special treatment areas, such as bronchoscopy suites, respiratory therapy areas where cough-inducing procedures are performed, or radiology examination rooms may, at one time or another, be occupied by an individual with suspected or confirmed infectious TB. When individuals with suspected or confirmed tuberculosis are occupying these areas, the area must have signs placed at the entrances in order to warn employees of the hazard.

The risk of exposure to aerosolized *M. tuberculosis* also exists in clinical and research laboratories where specimens, cultures, and stocks containing the bacilli are present. Therefore, paragraph (h)(2)(i)(C) requires that a sign be posted at the entrance to laboratories where *M. tuberculosis* is present. Posting of such a sign is consistent with the recommendations of the CDC/NIH publication "Biosafety in Microbiological and Biomedical Laboratories" (Ex. 7–72) and is in accordance with the sign posting requirement of paragraph (e)(2)(ii)(E), Clinical and Research Laboratories, of this section.

Even though a suspected or confirmed infectious individual is no longer present in a room or area, the droplet nuclei generated by that individual may continue to drift in the air. Consequently, the air in the room or area presents a risk of TB infection until the droplet nuclei are removed. With this in mind, paragraph (h)(2)(ii) requires that when an AFB isolation room or area is vacated by an individual with suspected or confirmed infectious TB, unless the individual has been medically determined to be noninfectious, the sign shall remain posted at the entrance until the room or area has been ventilated according to CDC recommendations for a removal efficiency of 99.9%, to prevent entry without the use of respiratory protection [The rationale for specifying this removal efficiency has been discussed previously under paragraph *(d), Work Practices and Engineering Controls*]. This provision is supported by the CDC's current recommendations for tuberculosis control (Ex. 4B).

The CDC has published guidelines regarding the length of time for such sanitation of the room air based upon the air exchanges per hour (see Appendix C of this section). Requiring that the sign remain posted until the room or area is adequately ventilated will assure that unprotected employees do not inadvertently enter while an infection risk is still present.

Until such time as the room or area has been adequately ventilated, employees entering the area must wear respiratory protection. This paragraph is designed to address the situations where employees will be entering or using a room or area previously occupied by an individual with suspected or confirmed infectious TB before the room or area has been satisfactorily ventilated. For example, when an infectious tuberculosis patient is discharged from a facility and the room is needed for an incoming new patient, certain housekeeping and maintenance functions need to be done between patient occupancies. Employees who must perform the tasks required to prepare the room for the next patient must wear respiratory protection until such time as the room has been adequately ventilated, based upon the CDC criteria. Obviously, if the room was previously occupied by an individual with suspected infectious TB and that individual is medically determined to be noninfectious, it would not be necessary to ventilate the room to remove *M. tuberculosis* nor to continue to post a sign at the entrance to the room since there would be no tuberculosis bacilli present.

OSHA has given much consideration to what sign should be required for posting outside of isolation rooms or areas and for areas where procedures or services are performed on individuals with suspected or confirmed infectious TB. The purpose of the sign is to convey a uniform warning along with the necessary precautions to be used for the particular situation.

The sign recommended by the CDC in 1983 in their "CDC Guidelines for Isolation Precautions in Hospitals" (Ex. 7–112) read "AFB Isolation" and then listed the requirements for entry. However, the instructions on the CDC sign are different from OSHA's requirements. For example, the sign instructed workers that "Masks are indicated only when patient is coughing and does not reliably cover mouth", a recommendation that is currently outdated and no longer recommended by CDC. The document contained another sign for "Respiratory Isolation" but this sign was designed for use with a number of respiratory hazards (rubella, meningococcal meningitis, chickenpox) that are not addressed in OSHA's proposed standard. Neither the 1990 CDC tuberculosis guidelines (Ex. 3–32) nor the 1994 CDC tuberculosis guidelines (Ex. 4B) provided help with this issue. OSHA also considered using a sign having the words "AFB Isolation" however, there is some concern that "AFB Isolation" could compromise patient confidentiality. For example, that sign outside of a treatment area or isolation room would allow members of the public or employees with no "need to know" to discern the potential diagnosis of the individual being isolated.

In addition, OSHA was unable to find uniform recommendations about signs in sources outside of the CDC. A number of facilities use signs to warn employees of the hazard of TB, but these signs vary widely and often had been developed for a particular facility. Thus, facilities that were using TB warning signs did not appear to be universally applying a specific sign.

The Agency does not believe, however, that development of a sign should be left to individual employers since this could lead to a variety of signs that may not provide adequate warning of the hazard. In the work settings covered by the proposal, there are many employees who move from facility to facility or even from industry to industry. In fact, a substantial number, like contract nurses, will work in several facilities at one time. A universal sign will enable these employees to recognize the hazard wherever it occurs and then take proper precautions. The issue of whether OSHA should specify colors that must be included on the sign was raised at TB stakeholder meetings. OSHA realizes there is a part of the population, perhaps as high as 10% of all men, that is color blind and that at some work sites some colors have been employed that are different from the red that OSHA proposes be used. However, stakeholders, particularly those whose jobs took them to several different work sites, urged OSHA to require a standardized sign and, of those who considered the issue, there was general agreement that the red on the familiar "stop" sign was appropriate. OSHA has preliminarily concluded that the colors required provide needed warning even though not all employees (e.g., those who are color blind) may benefit from them, and that the colors chosen are consistent with conventions on health signage. The Agency has developed a sign that it believes will provide appropriate warning and be easily recognizable. Failing to find either a guideline recommendation or a generally accepted community standard regarding what sign should be placed at the entrances to these areas, OSHA looked to generic, broad-based sources for symbols which would be easily identifiable, understandable to workers who were not able to read well or are non-English speaking, and simple to construct.

In paragraph (h)(2)(iii), therefore, OSHA is proposing that a "STOP" sign with the accompanying legend, "No Admittance Without Wearing A Type N95 Or More Protective Respirator", meets these criteria. The sign is easily recognizable, requires a simple color scheme, and should be understandable to employees with minimal training.

OSHA is seeking information on the effectiveness of the proposed sign to warn workers of the presence of a hazard, as well as information on other signs that may be more effective. Please be specific when providing information, keeping in mind the wide variety of work sites where signs will be needed. Where an alternative is being proposed, please enclose a model or drawing as well as the rationale for believing that it will be more effective than OSHA's proposed sign.

Paragraph (h)(2)(iv) requires that signs at the entrances of clinical or research laboratories and autopsy suites where procedures are being performed that may generate aerosolized *M. tuberculosis* include the biohazard symbol, name and telephone number of the laboratory director or other designated responsible person, the infectious agent designation

"Mycobacterium tuberculosis", and special requirements for entering the laboratory or autopsy suite. This provision has been taken directly from the CDC/NIH publication "Biosafety in Microbiological and Biomedical Laboratories" (Ex. 7–72). As previously discussed, the purpose for this sign is to warn employees of the potential TB hazard and inform them of precautions that must be taken to prevent exposure.

Information and Training

It is OSHA's position that employees must understand the nature of the hazards in their workplace and the procedures to follow in order to eliminate or minimize their risks of exposure to these hazards. (Exs. 4–B, 7–169, 7–170, 7–61, 7–64) In the case of *M. tuberculosis*, employee exposures may result in a TB infection, which may ultimately result in disease and even death. The provisions in paragraph (h)(3) of this proposed standard set forth the training that each employer must provide to his or her employees. OSHA believes that effective training is a critical element in any occupational safety and health program. In this proposed standard, the employer would be required to provide training for each employee covered by the scope of the standard.

Paragraph (h)(3)(i) requires that employers assure that each employee with occupational exposure participates in training, which must be provided at no cost to the employee and be made available at a reasonable time and place. Since appropriate training is considered to be critical in assuring employee protection, the employer is responsible for making sure that each employee with occupational exposure participates in the training program. Having the employee pay in some manner for all or part of the training or requiring the employee to attend training at an unreasonable time and place would be a disincentive to participation. If training cannot feasibly be provided during work hours, employees are to be paid for training scheduled outside of normal working hours.

In view of the importance of training, OSHA is proposing that it be provided at several particular points in time. (Exs. 7–169; 4–B) More specifically, paragraph (h)(3)(ii) requires that training be provided: (A) before initial assignment to tasks where occupational exposure may occur, for those employees without previous occupational exposure; (B) within 60 days after the effective date of the final standard, for those employees who have occupational exposure at the time of the standard's promulgation; and (C) at least annually thereafter, unless the employer can demonstrate that the employee has the specific knowledge and skills required under paragraph (h)(3)(vii). The employer must provide re-training to an employee in any of the topic(s) in paragraph (h)(3)(vii) in which that employee cannot demonstrate the necessary knowledge and/or skill. This approach to training frequency assures that employees entering jobs with occupational exposure will be fully trained before exposure occurs. In addition, employees who are already working in jobs with occupational exposure at the time of the standard's promulgation will receive training and must become knowledgeable in all of the required aspects of the standard (e.g., employer's exposure control plan, medical surveillance program, warning signs and labels) within a short period of time.

Annual re-training reinforces the initial training and provides an opportunity to present new information that was not available at the time of initial training. The Agency recognizes that, as a result of training previously provided by the employer, employees may possess some of the knowledge and skills listed in the training topics in paragraph (h)(3)(vii). Consequently, OSHA is proposing that re-training be provided annually unless the employer can demonstrate that the employee has the specific knowledge and skills required by this paragraph. The employer must provide re-training to an employee in any topic(s) in paragraph (h)(3)(vii) in which the employee cannot demonstrate specific knowledge and skills.

An employee with occupational exposure to TB who moves to a job with another employer that also involves occupational exposure to TB would not need to meet all of the initial training requirements. In such instances, the Agency has determined that the employee's prior training in the general topics required by the standard (e.g., the general epidemiology of tuberculosis, the difference between tuberculosis infection and tuberculosis disease) would remain relevant in the new work setting and that the new employer need not re-train in these topics. However, the employee would not possess knowledge of the topics required by the standard that are specific to the new employer's particular work setting (e.g., the new employer's exposure control plan and respiratory protection program and the means by which the employee could access the written plans for review). OSHA is proposing to permit limited "portability" of training, as noted in the standard. This note states that training in the general topics listed in paragraph (h)(3)(vii) that has been provided in the past 12 months by a previous employer may be transferred to an employee's new employer. However, the new employer must provide training in the site-specific topics listed in paragraph (h)(3)(vii) in accordance with the requirements of paragraph (h) (e.g., at no cost to the employee and at a reasonable time and place).

OSHA is aware that some employers have already established training for their occupationally exposed employees. (Ex. 7–169) In light of this, paragraph (h)(3)(iii) of the proposed standard requires only that limited training be conducted for those employees who already have received training on tuberculosis in the year preceding the effective date of the standard. The additional training would only have to address those provisions of the standard not previously covered in the earlier training.

The requirement for annual training within one year of the employee's previous training, in paragraph (h)(3)(iv), assures that each employee receives training within 12 calendar months of his or her last training. Annual training is not based on a calendar year; that is, training will not be permitted to be provided to an employee in January of one year and in December of the following year, essentially a 23-month span between training sessions. Employers may establish schedules for training around this requirement.

Also, paragraph (h)(3)(v) stipulates that the employer must provide additional training whenever changes in the occupational environment, such as modification of tasks or procedures or institution of new tasks or procedures, affect the employee's occupational exposure to *M. tuberculosis*. This provision will assure that employees remain apprised of any new exposure hazards and the precautions necessary to protect themselves from exposure. This additional training does not need to entail a complete reiteration of the annual training, but may be limited to addressing the new sources of potential exposure.

The proposed standard requires that training material be used that is appropriate in content and vocabulary to the educational level, literacy and language of employees. Employees must be able to comprehend the information being conveyed in order for it to be useful. Therefore, the employer has the responsibility for assuring that the training is provided in an understandable manner to the audience being addressed. This provision would assure that employees, regardless of their educational or cultural background, will receive adequate training.

Paragraph (h)(3)(vii) of the proposed standard contains the specific elements that would comprise a minimum training program. (Exs. 4–B; 7–169; 7–64) The provisions for employee training are performance oriented, stating the categories of information to be transmitted to employees and not the specific ways that this is to be accomplished. This assures that important information is communicated to employees about the nature of this occupational hazard while allowing employers the most flexible approach to providing training. OSHA has set forth the objectives to be met and the intent of training. The specifics of how the employer assures that employees are made aware of the hazards in their workplace and how they can help to protect themselves are left up to the employer who is best qualified to tailor the training to the TB hazards in his or her workplace.

The proposed standard would require the employer to explain a number of particular topics in the training session(s). Paragraph (h)(3)(vii)(A) requires the employer to provide an explanation of the contents of this standard and the location of an accessible copy of the regulatory text and appendices to this standard. This enables the employee to have access to the standard and to become familiar with its provisions. It is not necessary for the employer to provide each employee with a copy of the standard; it is sufficient for the employer simply to make a copy accessible. For example, a copy of the standard could be posted in a location where it could be readily and easily viewed by employees.

An important element in the training involves an overview of the epidemiology of tuberculosis, the pathogenesis of the disease and an explanation of various aspects of risk to employees. (Ex. 4B) More specifically, paragraph (h)(3)(vii)(B) requires that the training include an explanation of: the general epidemiology of tuberculosis, including multidrug-resistant TB and the potential for exposure in the facility; the signs and symptoms of TB, including the difference between TB infection and TB disease; the modes of transmission of tuberculosis, including the possibility of reinfection in persons with a positive tuberculin skin test; and the personal health conditions that increase an employee's risk of developing TB disease if infected.

Since the employer can tailor the training to the needs of his or her employees, the training program will likely be more technical for some audiences and less technical for others. The general goal of this paragraph is to assure that each employee being trained understands what tuberculosis is, how it is spread, and possible risks that may affect the employee.

Employees need to be able to recognize symptoms associated with TB disease. (Ex. 4B) The employee must understand that certain symptoms (e.g., a persistent cough lasting 3 or more weeks, bloody sputum, night sweats, anorexia, weight loss, fever) may be related to TB. In addition, information on non-occupational risk factors that place employees at increased risk of developing tuberculosis disease following an infection permits those individuals at increased risk to make informed decisions about their employment situations.

Paragraph (h)(3)(vii)(C) requires an explanation of the employer's exposure control plan and respiratory protection program. Employees must also be informed about what steps they need to take to review the written plans, if they so desire.

Paragraph (h)(3)(vii)(D) requires the employer to train employees regarding the tasks and other activities that may involve occupational exposure to tuberculosis. Employees must be made aware of those job duties which may expose them to tuberculosis. For example, although certain health care professionals may easily recognize the hazard involved in transporting a person with infectious TB, the staff of a correctional facility may not. On the other hand, some health care professionals may not immediately recognize that their mere presence in a room where an individual with suspected or confirmed infectious TB is being X-rayed presents an exposure risk and necessitates wearing a respirator. All occupationally exposed employees need training that will enable them to recognize those activities that put them at risk of exposure.

Paragraph (h)(3)(vii)(E) of this section requires employers to train employees regarding both the uses and limitations of various control measures, specifically those used at the employees' worksite. Exposed employees must be familiar with the employer's tuberculosis policies and procedures in order for them to be properly implemented. Control of exposure frequently involves using a variety or combination of engineering controls, administrative controls, work practice procedures and personal protective equipment. To assure that employees will be able to identify and implement methods of reducing occupational exposure to tuberculosis, they must understand how these controls are applied in their work sites and the limitations thereof. With this understanding, employees will be more likely to use the appropriate control for the situation at hand and to use it correctly. For example, employees must be able to recognize the labels and signs used to identify rooms or areas where suspected or confirmed infectious individuals are present so that they can take appropriate precautions before entering. Understanding of the limitations of control measures will also enable employees to recognize when inappropriate or inadequate control measures have been taken and increases the likelihood that they will report such situations.

Training must be relevant to the specific site where the employee will be working. Each employee must know, for example, the procedures used in his or her particular facility to identify suspected infectious TB cases, where respiratory protection is kept, and what engineering controls are in place within the facility. This training is particularly important for workers who move between several facilities in the course of their work, for example, "leased" personnel, part-time employees, "moonlighters", or contractors.

The provision covering the selection, types, proper use, location, removal and handling of respiratory protection, paragraph (h)(3)(vii)(F), is particularly important because many of the employees and employers proposed to be covered by the tuberculosis standard may not be accustomed to the use, selection, and upkeep of respiratory protection. Consequently, training on aspects such as the necessity for respiratory protection, the appropriate type of respiratory protection, where to obtain it, and its proper use, fit, and the general upkeep is necessary to assure the effectiveness of respirator use. (Ex. 7–64)

OSHA believes that employees who have a clear understanding of the medical surveillance program (its purpose, methodology, and the significance of the results of examinations and tests), will be much more likely to participate in that program. Therefore, paragraph (h)(3)(vii)(G) requires that the training include an explanation of the employer's medical surveillance program, including the purpose of tuberculin skin testing, the importance of a positive or negative skin test result, anergy testing, and the importance of participation in the program. This increased participation by trained

employees helps the employee to identify changes in his or her personal health status and also aids the employer in assessing the effectiveness of his or her TB control program.

Each employee must understand the actions to be taken if an occupational exposure occurs as well as what is available to them regarding appropriate medical treatment, prophylaxis, and post exposure follow-up in order for the employee to lessen the chance of developing active disease. Therefore, paragraph (h)(3)(vii)(H) would require an explanation of the procedures to follow if an exposure incident occurs, including the method of reporting the incident, an explanation of the medical management and follow-up that the employer is required to provide, and the benefits and risks of drug prophylaxis. In addition, the employee must be provided with an explanation of the procedures to follow if the employee develops signs or symptoms of tuberculosis disease (paragraph (h)(3)(vii)(I)). In this way, an employee who notes the signs or symptoms of personal disease development will be aware of the appropriate steps to take, thereby speeding initiation of medical evaluation. Quick evaluation protects the employee, co-workers, and the public.

In paragraph (h)(3)(viii), the proposed standard mandates that the person conducting the training must be knowledgeable in the subject matter as it relates to the specific workplace being addressed. OSHA believes that a variety of persons are capable of providing effective training to employees. OSHA has approached this section of the proposed standard in much the same way as the trainer requirements were addressed in the standard for Occupational Exposure to Bloodborne Pathogens. That is, a knowledgeable trainer is one who is able to demonstrate expertise in the area of the occupational hazard of tuberculosis and is familiar with the manner in which the elements of the training program relate to the particular workplace.

A number of resources are available through the Centers for Disease Control and Prevention and professional organizations such as the American Lung Association and the American Thoracic Society that can be used to educate trainers and prepare them for this task. In addition, specialized training courses in the area of tuberculosis control can also assist in educating trainers (Ex. 7–189).

In addition to general knowledge of the subject matter, it is important that the trainer be able to instruct the participants in site-specific features of the Exposure Control Plan that will reduce their risk in the particular facility. This benefits not only employees within the facility but also provides temporary employees with the information needed to protect themselves against exposure while working in the facility. For example, workers who have received general training by their employer (e.g., a personnel staffing agency) will also receive training about the facility where they will actually perform their duties (e.g., a specific hospital).

An important component of an effective learning experience is the opportunity for the learner to interact with the trainer for the purposes of asking questions and obtaining clarification. Paragraph (h)(3)(ix) would require that the employer provide employees with this opportunity as part of the training program. The trainer must be available at the time that the training takes place. OSHA would expect that in most instances, the individual who would provide answers to the employee's question would be physically present when the employee is trained. The Agency does recognize, however, that there may be some instances where this is not possible. In these cases, it would be acceptable for the employee to ask questions by telephone.

An employer would not be expected to train employees in site-specific topics that are not applicable to the employer's work setting. For example, if a facility was not required by the standard to utilize engineering controls, the employer would not be responsible for training his or her employees about the various aspects of engineering controls.

OSHA believes that the information and training requirements incorporated into this proposed standard are needed to inform employees about the hazard of tuberculosis and to provide employees with an understanding of the degree to which they can minimize the health hazard. Training is essential to an effective overall hazard communication program and serves to explain and reinforce the information presented to employees on signs and labels. These forms of information and warning will be meaningful only when employees understand the information presented and are aware of the actions to be taken to avoid or minimize exposure.

OSHA seeks comment on the proposed content of the training program and requests that model TB training programs be submitted to the docket, particularly those designed for audiences whose participants may have language difficulties or have no health care background, and those that have been judged to be successful in communicating information to employees. It is OSHA's intent, upon publication of the final standard, to include information on training programs in compliance guides to be developed for small entities.

Paragraph (i) Recordkeeping

This proposed standard requires employers to keep records related to TB, including medical surveillance and training records for all employees with occupational exposure and engineering control maintenance and monitoring records. OSHA has made a preliminary determination that, in this context, medical and training records are necessary to assure that employees receive appropriate information on hazards and effective prevention and treatment measures, as well as to aid in the general development of information on the occupational transmission of TB. Specifically, OSHA believes that maintenance of medical records is essential because documentation is necessary to ensure proper evaluation of an employee's infection status and for prompt and proper healthcare management following an exposure incident. OSHA has also preliminarily determined that maintenance and monitoring records for engineering controls are necessary for two reasons: to enable the employer to know that the control methods remain in good working order so as to assure their effectiveness and to aid the Agency in enforcement of the standard.

In paragraph (i)(1), OSHA proposes to require employers to establish and maintain a medical record in accordance with 29 CFR 1910.1020 for each employee with occupational exposure to TB. The record must include: (A) The name, social security number, and job classification of the employee; (B) A copy of all results of examinations, medical testing, including the employee's tuberculin skin test status; and follow-up procedures required by paragraph (g); (C) The employer's copy of the physician's or other licensed health care professional's written opinion as required by paragraph (g)(7); and (D) A copy of the information provided to the physician or other health care professional required by paragraph (g)(6). The information that must be included in the medical record is necessary for the proper evaluation of the employee's infection status and management of occupational exposure incidents. This record will aid OSHA in enforcing the standard and the information therein, when analyzed, will further the development of health data on the causes and prevention of occupational transmission of TB. Similar provisions for collection and retention of such information have been included in other OSHA health standards including, most recently, Bloodborne Pathogens (29 CFR 1910.1030) and Cadmium (29 CFR 1910.1027).

In paragraph (i)(1)(iii), OSHA is proposing to require that the employee medical records be kept confidential and not be disclosed or reported to anyone without the employee's express written consent except as required by section i or as may be required by law. In nearly every health standard rulemaking, employees have told the Agency that keeping medical records confidential is extremely important to them. Employees stated that, without assurance of confidentiality, they would be reluctant to participate in medical surveillance, a predicament that would be detrimental to their health and could affect health and safety conditions in the workplace. During the Bloodborne Pathogens rulemaking, confidentiality of medical records was a major issue due to the nature of the diseases addressed. Of particular concern was keeping the medical records from being disclosed to the employer. It was explained in the Bloodborne Pathogens standard and is applicable here that such confidentiality can be accomplished by having the records kept by the physician or other licensed health care provider at the expense of the employer. In those cases where the employer is the health care provider, the records can be maintained separately from other employee records so that disclosure can be strictly limited to the physician or other licensed health care professional and his or her staff who are responsible for the medical management of the employee. It was pointed out in the preamble to the Bloodborne Pathogens standard, and bears repeating here, that the confidentiality provisions in the proposed standard are reiterations of existing standards of conduct in the health care professions and that the OSHA requirements do not abridge, enlarge or alter existing ethical or statutory codes (56 FR 64170). This section of the proposal requires that medical records be disclosed to the Assistant Secretary or the Director (of NIOSH) and as may be required by law, which means that this proposed standard would not prevent employers from reporting TB cases to federal, state, or municipal health departments where that reporting is required by law.

Paragraph (i)(1)(iv) proposes to require that medical records be maintained in accordance with 29 CFR 1910.1020 for at least the duration of employment plus 30 years. The Access to Medical Records Standard contains an exception to the 30-year requirement that provides that the medical records of an employee who has worked less than one year must be maintained throughout his or her employment, but need not be retained afterwards as long as they are given to the employee upon termination of employment. Maintaining the records for the duration of employment serves several purposes: the records can provide valuable information to the employee's healthcare provider; the records enable the employer to know that employees are benefitting from regular surveillance and timely intervention following occupational exposure to TB; analysis and aggregation of the records can provide insight into the causes and consequences of occupational exposure to TB; and, the records will aid in the enforcement of the standard. Requiring the records to be kept 30 years beyond employment is necessary because TB can have a long incubation period, with disease often appearing only many years after initial infection. This retention time is also consistent with other OSHA health standards (See for example Benzene, 29 CFR 1910.1028; Bloodborne Pathogens, 29 CFR 1910.1030; Ethylene Oxide, 29 CFR 1910.1047).

In paragraph (i)(2), OSHA proposes to require employers to record TB infection and disease in accordance with 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses, and 29 CFR 1960, the equivalent requirement for Federal Agency programs. This should not be an unfamiliar requirement to employers because occupational TB infections and disease must be reported in accordance with 29 CFR 1904 and 29 CFR 1960, as directed by current OSHA enforcement policy (Ex. 7–1).

In paragraph (i)(3), OSHA proposes to require training records, which include: (A) The dates of the training sessions; (B) The contents or a summary of the training sessions; (C) The names and qualifications of persons conducting the training; and (D) The name and job classification of all persons attending the training sessions. This requirement is consistent with other OSHA standards, particularly Bloodborne Pathogens, and it represents the minimum amount of information an employer, an employee, or an OSHA compliance officer would need in order to determine when and what training had been provided, who administered it and who attended. Additionally, such a record is an invaluable aid to the employer when evaluating his or her training program.

OSHA proposes, in paragraph (i)(3)(ii) to require that training records be maintained for three years beyond the date the training occurred. The Agency anticipates that employers will not have difficulty maintaining the records for three years because the information to be included is not extensive and many employers are already keeping training records three years as required by other OSHA standards (e.g., Bloodborne Pathogens, 29 CFR 1910.1030). Moreover, these records are not required to be kept confidential and so may become part of an employee's personnel file or part of a larger file, at the discretion of the employer.

In paragraph (i)(4), OSHA proposes to require engineering control maintenance and monitoring records be kept that include: (A) Date; (B) Equipment identification; (C) Task performed; and (D) Sign-off. The performance monitoring records must include: (A) Date and time; (B) Location; (C) Parameter measured; (D) Results of Monitoring; and (E) Sign-off. Only two of these items will require more than a few words or numbers to record; the two items that require more extensive information are the maintenance task performed and the results of the performance monitoring. Where the employer has not already developed a method for recording the task performed, the maintenance person can list the tasks or use a previously prepared check-list. The results of performance monitoring can be recorded in the same way or another way that meets the needs of the particular workplace so long as it includes all of the information required by the paragraph. OSHA believes that the information in these records is the usual data that are generated by persons maintaining and servicing equipment so that the status of the equipment and its effectiveness can be known for a given time. The information is also useful in determining when further servicing is needed.

Proposed paragraph (i)(4)(iii) requires engineering control maintenance and monitoring records to be maintained for three years. The three year period is a reasonable period of time and it will enable the employer to develop and sustain a proper maintenance program and to track the effectiveness of the controls. Moreover, the records will aid the OSHA compliance officer in enforcing the standard's requirements for engineering controls.

Availability of medical records is specified in section 8(c) of the Act. In paragraph (i)(5) of this standard, OSHA

proposes to restrict the availability of employee medical records while making employee training records and engineering control and monitoring records generally available upon request. Medical records must be provided to the subject employee, to anyone having written consent from the employee, to the Director and to the Assistant Secretary in accordance with 29 CFR 1910.1020, which sets forth the procedures that will protect the privacy concerns of the employees. This paragraph does not affect existing legal and ethical obligations concerning maintenance and confidentiality of employee medical records. An employer's access is governed by existing federal, state and local laws and regulation. This standard, like Bloodborne Pathogens (29 CFR 1910.1030) and other OSHA standards, limits employer access to confidential information while allowing the employer access to the information needed to make appropriate decisions relative to his or her medical surveillance program. For example, paragraph (g)(7)(ii) limits the information that can be included in the physician's or other licensed health care professional's written opinion and paragraph (g)(7)(iii) requires that other medical diagnoses or findings be kept confidential. There is no language in this proposed standard that grants an employer access to the confidential information in an employee's medical file. OSHA illness and injury records are accessible under 29 CFR 1904 and 29 CFR 1960, as appropriate, to the facility. In this proposal, as in OSHA's other health standards, training records and engineering control maintenance and monitoring records are to be provided upon request to the employees, their representatives, the Director and the Assistant Secretary. Employers should not have difficulty complying with this provision because most will have experience with such recordkeeping from other standards. There are no confidentiality issues raised by these records.

In paragraph (i)(6), an employer who goes out of business is required to transfer medical records as set forth in 29 CFR 1910.1020(h) and 29 CFR 1904, which address the transfer of medical records. Specifically, medical records must be transferred to a successor employer who must accept them and keep them in accordance with the requirements of 29 CFR 1910.1020. In the event the employer ceases to do business and there is no successor employer, the employer is required to notify the Director, at least three months prior to disposal of the records, and transmit them to the Director if required by the Director to do so. This is consistent with other health standards and ensures that a successor employer (and the employees) can benefit from the information contained in the records. The reason the records are transferred (if requested) to the Director of NIOSH is that NIOSH has a vested interest in maintaining records of occupational injuries and illnesses and is in an excellent position to decide how the records can be best used to be of value to the exposed employee, subsequent employees in the field and OSHA. At NIOSH, the records remain confidential as required by 29 CFR 1910.1020(e). Thus, only the employee or his or her representative with the permission of the employee retains access to the medical records transferred to NIOSH.

Paragraph (j) Definitions

Acid-Fast Bacilli (AFB) means bacteria that retain certain dyes after being washed in an acid solution. Most acid-fast organisms are mycobacteria. Smears of sputum samples and other clinical specimens may be stained with dyes to detect acid-fast mycobacteria such as *M. tuberculosis*. However, AFB smear tests cannot distinguish one type of mycobacteria from another. Therefore, as noted by CDC, when AFB are seen on a stained smear of sputum or other clinical specimens, a diagnosis of TB should be suspected; however, the diagnosis of TB is not confirmed until a culture is grown and identified as *M. tuberculosis* (Ex. 4B).

Accredited Laboratory for purposes of this standard means a laboratory that has participated in a quality assurance program leading to a certification of competence administered by a governmental or private organization that tests and certifies laboratories. Under the medical surveillance provisions of the proposed standard, paragraph (g)(1)(iv) requires that all laboratory tests required by the standard be conducted by an accredited laboratory. This definition makes clear OSHA's intent about the type of laboratory that would be required to conduct these types of tests.

The term *AFB Isolation Room or Area* refers specifically to the rooms or areas where individuals with suspected or confirmed infectious TB are isolated. For purposes of this standard this term includes, but is not limited to, rooms, areas, booths, tents or other enclosures that are maintained at negative pressure relative to adjacent areas in order to control the spread of aerosolized *M. tuberculosis*. Such rooms or areas are able to contain droplet nuclei through unidirectional airflow into the room (i.e., negative pressure). A definition of negative pressure is presented below and a more detailed explanation can be found in the Summary and Explanation of paragraph *(d), Work Practices and Engineering Controls.*

Air purifying respirator means a respirator that is designed to remove air contaminants from the ambient air or air surrounding the respirator. Air purifying respirators remove particular contaminants (e.g., particulates, organic vapors, acid gases) from the ambient air by drawing the air through appropriate filters, cartridges, of canisters.

Anergy means the inability of a person to react to skin test antigens (even if the person is infected with the organism(s)tested because of immunosuppression. More specifically, an anergic individual's immune system has become so compromised that it is unable to mount a sufficient reaction to the test organism. Because of their inability to respond immunologically, persons with anergy will have a negative tuberculin skin test even if they are infected with *M. tuberculosis*. Therefore, as noted by the CDC, it may be necessary to consider other epidemiologic factors (e.g., the proportion of other persons with the same level of exposure who have positive tuberculin skin test results and the intensity or duration of exposure to infectious TB patients that the anergic person experienced) when making a determination as to whether that anergic individual has been infected with *M. tuberculosis* (Ex. 4B). As discussed under paragraph (g)(2)(iii), Medical Surveillance, tuberculin skin testing is to include anergy testing when the physician or other licensed health care professional, as appropriate, determines such testing is necessary. Knowing which individuals are anergic will help to determine those situations where information other than skin test status will need to be ascertained and considered in order to assess the likelihood of infection for exposed employees.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative, and is a definition consistent across all OSHA standards.

BCG (Bacille Calmette-Guerin) vaccine means a tuberculosis vaccine used in many parts of the world. Because of its variable efficacy and its impact upon tuberculin skin tests (i.e., making skin test interpretation more difficult), routine BCG vaccination is not currently recommended in the United States (Ex. 7–50). However, many foreign countries still use BCG as part of their tuberculosis control programs, especially for infants (Ex. 7–72). Since individuals vaccinated with BCG may have a tuberculin skin test that cannot be distinguished reliably from a reaction caused by infection with *M. tuberculosis*, it is helpful to know whether an individual has been vaccinated with BCG and when such vaccination occurred. Thus, under the medical surveillance provisions of the proposed standard, the medical history is to include a history of BCG vaccination.

Cartridge or canister means a container with a filter, sorbent, or catalyst, or a combination of these items, that removes specific air contaminants from the air drawn through the container. With respect to this standard, respirators would be equipped with cartridges or canisters containing particulate filters.

Clinical laboratory has been defined for purposes of this standard as a facility or an area of a facility that conducts routine and repetitive operations for the diagnosis of TB, such as preparing acid-fast smears and culturing sputa or other clinical specimens for identification, typing or susceptibility testing. This definition is meant to apply to laboratories where routine diagnostic tests for TB are conducted as compared to research laboratories where *M. tuberculosis* may be cultured in large volumes or concentrated for research or commercial production. Clinical laboratories may be located within facilities such as hospitals or clinics, or they may be freestanding facilities.

Confirmed infectious tuberculosis (TB) means a disease state that has been diagnosed by positive identification of *M. tuberculosis* from body fluid or tissue through positive culture, positive gene probe, or positive polymerase chain reaction (PCR); and the individual is capable of transmitting the disease to another person. The disease state may be manifested as pulmonary or laryngeal TB or extrapulmonary TB if the infected tissue is exposed and could generate droplet nuclei.

As discussed under the definition for AFB, a positive AFB smear indicates only that an individual has an identifiable mycobacterium. The three methods listed here provide positive confirmation of *M. tuberculosis*. In addition, the definition states that the disease state must be capable of being transmitted to another person (i.e., infectious). This provision of the definition is to differentiate this state of the disease from other active forms of TB disease where the individual is not infectious. For example, an individual may contract active TB disease and become infectious. After adequate drug therapy has been initiated the individual may become noninfectious, at which point he or she cannot transmit the disease to other individuals. However, the individual, while no longer infectious, still has active disease and must continue treatment for several months because living bacilli are still in his or her body. The definition also states that the disease may be manifested as pulmonary or laryngeal TB or extrapulmonary TB if the infected tissue is exposed and could generate droplet nuclei. In most cases, it is the pulmonary or laryngeal forms of infectious TB that present a risk of infection for other individuals. This is due to the fact that tuberculosis bacilli in the pulmonary or laryngeal tracts may be easily dispelled when infectious individuals cough or speak. Other body sites infected with the bacilli, i.e., extrapulmonary TB, do not present an infection hazard in most cases because the bacilli are not capable of being dispelled outside the body. However, in some situations, such as a lesion or an abscess where the infected tissue is exposed, there may be a risk of transmission of disease when certain procedures are performed (e.g., tissue irrigation) that could generate droplet nuclei containing the bacilli.

Conversion means a change in tuberculin skin test results from negative to positive, based upon current Centers for Disease Control and Prevention (CDC) guidelines. Under paragraph (g), the employer is required to provide medical management and follow-up to employees who have converted to positive tuberculin skin test status (e.g., providing preventive therapy, if appropriate, and conducting follow-up investigations of circumstances surrounding the conversion). Since a number of specific actions are required of the employer as a result of a conversion, it is necessary that conversions be correctly identified. An important part of this identification is the interpretation as to whether an employee has a positive skin test response. As such, this definition states that the interpretation of the positive reaction should be based upon current CDC guidelines (Ex. 4B). It is not OSHA's intent to define what should constitute a positive reaction, but rather to assure that such determinations are made using currently accepted public health guidelines.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative. Similar to the definition for Assistant Secretary, the definition for Director is consistent across OSHA standards.

Disposable respirator means a respiratory protective device that cannot be resupplied with an unused filter or cartridge and that is to be discarded in its entirety after its useful service life has been reached. In general, the facepiece of these respirators is constructed from the particular filter media of interest (e.g., particulate filter).

Exposure incident for purposes of this standard means an event in which an employee has been exposed to an individual with confirmed infectious TB or to air containing aerosolized *M. tuberculosis* without the benefit of all of the applicable exposure control measures required by this section. This definition is limited to those situations involving exposure to an individual with confirmed infectious TB or air originating from an area where a source of aerosolized *M. tuberculosis* is present; it does not include exposure to individuals with suspected infectious TB. OSHA has limited the definition in this way because several provisions in the proposed standard are triggered by the occurrence of an exposure incident. For example, under paragraph *(g), Medical Surveillance*, the employer is required to provide additional tuberculin skin testing to each affected employee and to investigate and document the circumstances surrounding each exposure incident to determine if changes can be instituted to prevent similar occurrences in the future. OSHA believes that it would be burdensome and unnecessary for the employer to conduct follow-up investigations for those occurrences where an employee's exposure is to an individual suspected of having infectious TB but for whom infectious disease is subsequently ruled out.

An example of an exposure incident is an employee entering an AFB isolation room or area occupied by an individual with confirmed infectious TB without the employee wearing appropriate personal respiratory protection equipment. This occurrence would not be defined under the standard as an exposure incident if the individual in the AFB isolation room had only suspected infectious TB. If the individual in AFB isolation room was later confirmed to have infectious TB, the employee entering the isolation room without appropriate respiratory equipment would then be considered to have had an exposure incident and the required medical management and follow-up provisions for an exposure

incident under paragraph *(g), Medical Surveillance,* would be required.

Another example of an exposure incident is a failure of engineering controls, e.g., the ventilation system in an AFB isolation room housing an individual with confirmed infectious TB malfunctioned, negative pressure was lost, and air containing *M. tuberculosis* was dispelled into the hall corridor, exposing unprotected employees. Although OSHA would consider this type of loss of negative pressure in an AFB isolation room to be an exposure incident, the Agency does not intend that each opening of the door to an AFB isolation room be considered an exposure incident, even though some loss of negative pressure may result when the door to an AFB isolation room is opened. As a practical matter, OSHA believes it would be infeasible to consider every instance that a door to an isolation was opened as an exposure incident. In addition, these losses of negative pressure are generally small, if doors are kept open only briefly for purposes of entry and exit and are kept closed at all other times while the room is in operation for TB isolation as required under the Work Practices and Engineering Controls paragraph (d)(5)(vi).

There is a significant difference in the meaning of the terms "exposure incident" and "occupational exposure" as they are used in this standard. This difference is discussed further under the definition of "occupational exposure".

Filter means a component used in respirators to remove solid or liquid aerosols from the inspired air. The filter is the medium that captures the aerosol, preventing it from passing through to the respirator wearer.

Fit factor is a quantitative measure of the fit of a particular respirator on a particular individual. Fit factor is derived from the ratio of the concentration of a challenge agent (or air pressure) outside of the respirator to the concentration of the test agent (or air pressure) inside the respirator.

High Efficiency Particulate Air (HEPA) Filter means a specialized filter that is capable of removing 99.97 percent of particles greater than or equal to 0.3 micrometer in diameter.

High-hazard procedures are those procedures performed on an individual with suspected or confirmed infectious tuberculosis in which the potential for being exposed to *M. tuberculosis* is increased due to the induction of coughing or the generation of aerosolized *M. tuberculosis.* Such procedures include, but are not limited to, sputum induction, bronchoscopy, endotracheal intubation or suctioning, aerosolized administration of pentamidine or other medications, and pulmonary function testing. They also include autopsy, clinical, surgical and laboratory procedures that may aerosolize *M. tuberculosis.* The procedures listed above present a high hazard because they are performed on individuals with suspected or confirmed infectious TB or on specimens or deceased individuals where *M. tuberculosis* may be present. For example, some of the procedures listed above, such as bronchoscopies and pentamidine administration, cause people to cough. For individuals with pulmonary TB, coughing will increase the likelihood that they will generate aerosols with a high concentration of droplet nuclei. In addition, certain autopsy procedures, such as cutting into a lung containing *M. tuberculosis,* and certain laboratory procedures, such as processing infected tissue samples with pressurized freezants, can generate aerosols containing droplet nuclei. In the absence of *M. tuberculosis,* these procedures would not be high-hazard. For example, endotracheal intubation on an individual who does not have suspected or confirmed infectious TB would not be considered a high-hazard procedure.

M. tuberculosis means *Mycobacterium tuberculosis,* the scientific name of the bacillus that causes tuberculosis.

Negative Pressure means the relative air pressure difference between two areas. A room that is under negative pressure has lower pressure than adjacent areas, which keeps air from flowing out of the room and into adjacent rooms or areas. Paragraph (d)(5)(i) of Work Practices and Engineering Controls requires that negative pressure be maintained in all AFB isolation rooms or areas, and paragraph (d)(4) requires that all high-hazard procedures be performed in such rooms or areas. Maintaining negative pressure in such rooms or areas helps to assure that droplet nuclei are contained and not spread to other areas of the facility where unprotected employees may be exposed. A further discussion of this principle can be found in the Summary and Explanation of paragraph *(d), Work Practices and Engineering Controls.*

Negative pressure respirator means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator. In a negative pressure respirator, the wearer's inhalation creates a drop in pressure inside the facepiece, consequently drawing outside air through the filter and into the respirator.

Occupational exposure is one of the key terms upon which the proposed standard rests. It contains the criteria that trigger application of the standard for employees in work settings covered under the scope of the standard as listed in paragraphs (a)(1) through (a)(8) and for employees providing the care and services listed in paragraphs (a)(9) and (a)(10). Although a variety of work settings and several specific types of work are covered within the scope of the standard, it is only employees who have "occupational exposure" in those work settings and who are providing the particular services that must be given the protection mandated by the standard. The exception to this is that an employer covered under paragraph *(a), scope,* must provide medical management and follow-up to other employees who have an exposure incident.

For purposes of this standard, occupational exposure means reasonably anticipated contact, which results from the performance of an employee's duties, with an individual with suspected or confirmed infectious TB or air that may contain aerosolized *M. tuberculosis.* An example of reasonably anticipated contact between an employee and an individual with suspected or confirmed infectious TB would be an admissions clerk working in a homeless shelter. In view of the high incidence of TB among the homeless, it can reasonably be anticipated that an employee screening people for admission into the shelter would have contact with a person with infectious TB during the performance of his or her job duties. Another, more obvious, example would be a bronchoscopist in a hospital that provides care for individuals with suspected or confirmed infectious TB. Others could include some physicians, nurses, paramedics and emergency medical technicians, health aides, prison guards, and intake workers in the facilities listed in paragraph (a) of this section. An example of an employee who would not be reasonably anticipated to have occupational exposure is an worker, in a covered facility, whose duties were limited to working in an area where suspected or confirmed TB patients or clients do not go and where the air would not contain aerosolized *Mycobacterium tuberculosis.* The risk of exposure for this employee is comparable to the exposure potential by the general population.

The term *occupational exposure* is used differently than the term *exposure incident* in the proposed standard. Occupational exposure is used to define a condition of the employee's work and to identify which employees are affected in a way that can reasonably be anticipated, due to their job duties, to involve potential exposure to aerosolized *M. tuberculosis,* i.e., contact with an individual with suspected or confirmed infectious TB or with air that may contain aerosolized *M. tuberculosis.* The intent of the standard is to prevent exposure to aerosolized *M. tuberculosis;* therefore, certain proactive measures are required by the standard, e.g., training and medical surveillance, when occupational exposure is present. In order to provide these measures, it is necessary to identify which employees may be exposed *before* exposure occurs. The definition of "occupational exposure" is the basis for making this identification.

An *exposure incident,* on the other hand, is a discrete event in which it is known that an employee has had contact with aerosolized *M. tuberculosis,* i.e., with an individual with confirmed infectious TB or air containing aerosolized *M. tuberculosis.* The term "exposure incident" is used to define those occasions when certain reactive measures are required by the standard, such as medical management and follow-up. It is exposure to an individual with confirmed infectious TB that matters, since it is not necessary to take reactive measures after being exposed to an individual with suspected infectious TB if that individual has subsequently been determined not to have infectious TB.

Physician or Other Licensed Health Care Professional means an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows her or him to independently perform or be delegated to perform some or all of the health care services required by paragraph (g) of this section. Paragraph (g) requires that all medical evaluations and procedures and medical management and follow-up be performed by or under the supervision of a physician or other licensed health care professional, as appropriate. OSHA is aware that a variety of health care professionals are licensed by their respective states to legally perform different medical provisions required under this proposed standard. This definition clarifies that it is not OSHA's intent to dictate the specific type of health care professional to perform the activities required by the medical surveillance paragraph. OSHA's intent is merely that these activities be performed by persons who are legally permitted to independently perform or be delegated to perform some or all of the health care services required under the medical surveillance provisions of the standard. Employers wishing to use the services of a variety of health care providers must be familiar with the licensing laws of their state to ensure that the activities being performed are within the scope of that health care provider's licensure.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to deliver air through the air-purifying element to the wearer's breathing zone. A PAPR uses a blower to draw ambient air through a filter and provide this filtered air, under pressure, to the facepiece of the wearer.

Qualitative fit test means a pass/fail fit test to assess the adequacy of respirator fit that relies on the respirator wearer's response. Generally, this assessment of adequacy of respirator fit is made by determining whether an individual wearing the respirator can detect the odor, taste, or irritation of a challenge agent introduced into the vicinity of the wearer's breathing zone.

Quantitative fit test means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator. Leakage can be assessed through means such as measuring the concentration of a challenge agent (or air pressure) outside of the respirator versus the concentration of the agent (or air pressure) inside the respirator. The ratio of the two measurements is an index of the leakage of the seal between the respirator facepiece and the wearer's face.

Research laboratory is defined as a laboratory that propagates and manipulates cultures of *M. tuberculosis* in large volumes or high concentrations that are in excess of those used for identification and typing activities common to clinical laboratories. The purpose of this definition is to distinguish research laboratories from clinical laboratories. Under paragraph (e) of the proposed standard, research laboratories are required to meet additional provisions beyond those required for clinical laboratories (e.g., use of a hazard warning sign incorporating the biohazard symbol when materials containing *M. tuberculosis* are present in the laboratory and use of two sets of self-closing doors for entry into the work area from access corridors). These additional requirements are proposed due to the higher degree of hazard that may be present in research laboratories as a result of the presence of research materials that may contain *M. tuberculosis* in larger volumes and higher concentrations than would normally be found in diagnostic specimens or cultures in clinical laboratories.

Respirator means a device worn by an individual and intended to provide the wearer with respiratory protection against inhalation of airborne contaminants. While the term "respirator" may be used in medical situations to refer to a device that provides breathing assistance to an individual who is experiencing breathing difficulty, this section utilizes this term only in reference to the type of protective device defined above.

Suspected infectious tuberculosis means a potential disease state in which an individual is known, or with reasonable diligence should be known, by the employer to have one or more of the following conditions, unless the individual's condition has been medically determined to result from a cause other than TB: (1) to be infected with *M. tuberculosis* and to have the signs or symptoms of TB; (2) to have a positive acid-fast bacilli (AFB) smear; or (3) to have a persistent cough lasting 3 or more weeks and two or more symptoms of active TB (e.g., bloody sputum, night sweats, weight loss, fever, anorexia). An individual with suspected infectious TB has neither confirmed infectious TB nor has he or she been medically determined to be noninfectious.

Suspected infectious TB is another key term in the proposed standard. The presence of a person with suspected infectious TB triggers and is associated with a number of the provisions required of employers. Applying the criteria associated with suspected infectious TB is the first step in the early identification of individuals with infectious TB and is therefore a key factor in the elimination and minimization of occupational transmission of TB. Therefore, for purposes of implementing the standard it is important that what constitutes "suspected infectious TB" is clear.

The first criterion in identifying an individual as having suspected infectious TB is the presence of TB infection and the signs and symptoms of active TB. Under the second criterion, an individual would be suspected of having infectious TB if that individual had a positive AFB smear. The third criterion is based primarily on observation of an individual. The CDC states that:

> * * * A diagnosis of TB may be considered for any patient who has a persistent cough (i.e., a cough lasting for ≥ 3 weeks) or other signs or symptoms compatible with active TB (e.g., bloody sputum, night sweats, weight loss, anorexia

or fever). * * * Diagnostic measures for identifying TB should be conducted for patients in whom active TB is being considered. These measures include obtaining a medical history and performing a physical examination, PPD skin test, chest radiograph, and microscopic examination and culture of sputum or other appropriate specimens. (Ex. 4B)

OSHA has relied on the CDC's list of symptoms, but does not agree that employers need only "consider" a TB diagnosis when any of the symptoms appear. The Agency believes that requiring employers merely to consider a TB diagnosis under these circumstances may allow too many individuals with infectious TB to slip through this screen and remain unidentified. In addition, the CDC recommendations do not identify the minimum number of signs or symptoms that should trigger employer concern. The problem with the CDC's approach is that the signs and symptoms are so general that they would be difficult to apply in many of the occupational exposure circumstances covered by the standard. For example, if OSHA required employers to identify each individual with even one of the signs or symptoms of TB as having suspected infectious TB, too many individuals would be likely to be identified, thereby wasting valuable health care resources. For these reasons, OSHA has proposed that employers be required to determine that an individual has suspected infectious TB when the individual has a prolonged cough and at least two of the other signs or symptoms of infectious TB. The Agency believes that requiring the employer to identify individuals as suspect cases when they have only a prolonged cough, which is the primary mode of transmission, and at least 2 other signs or symptoms strikes the appropriate balance between over inclusion and under inclusion, i.e., between considering almost every individual in poor health as a suspect case and missing individuals who should be suspected of having infectious TB. OSHA believes that setting forth these more definitive criteria will meet the needs of the many employers covered by this standard who will not have skilled medical persons making initial determinations about whether or not an individual has suspected infectious TB. Employer who are in a position to make medical determinations are permitted by the standard to rule out infectious TB by determining that a given individual's signs and symptoms are the result of a cause other than TB.

That an employer knows or with reasonable diligence should know that an individual meets one or more of these criteria means that an employer must utilize the means at his or her disposal to gather relevant information about the individual. For example, the employer may have access to the medical records of the individual or may question an individual who has signs or symptoms of TB in order to obtain information about the individual, such as skin test status, AFB smear status, and so forth. How much questioning the employer might do depends on the work setting. For example, a hospital will have intake procedures that include asking questions, as will most homeless shelters and other fixed work sites. In other work settings, such as the many places in which emergency medical services and home health care are provided to unidentified individuals with infectious TB, the employer's obligation will be to respond when an employee notices signs or symptoms compatible with TB. In many of these instances, it is the training employees receive in identifying individuals with suspected TB that will be the most important factor.

In addition, as noted above, an individual who meets one or more of the above criteria but whose condition has been medically determined to result from a cause other than TB need not be considered to have suspected infectious TB. For example, a physician or other licensed health care professional, as appropriate, could determine that the signs and symptoms exhibited by the individual were the result, for example, of pneumonia and not TB.

Tight-fitting respirator means a respiratory inlet covering that is designed to form a complete seal with the face. A half-facepiece covers the nose and mouth while a full facepiece covers the nose, mouth, and eyes.

Tuberculosis (TB) means a disease caused by *M. tuberculosis*.

Tuberculosis infection means a condition in which living *M. tuberculosis* bacilli are present in the body, without producing clinically active disease. Although the infected individual has a positive tuberculin skin test reaction, the individual may have no symptoms related to the infection and may not be capable of transmitting the disease.

Tuberculosis disease is a condition in which living *M. tuberculosis* bacilli are present in the body, producing clinical illness. The individual may or may not be infectious.

Tuberculin skin test means a method used to evaluate the likelihood that a person is infected with *M. tuberculosis*. The method utilizes an intradermal injection of tuberculin antigen with subsequent measurement of reaction induration. It is also referred to as a PPD skin test.

Two-step testing is a baseline skin testing procedure used to differentiate between a boosted skin test reaction and a skin test reaction that signifies a new infection. If the initial skin test is negative, a second skin test is administered 1 to 3 weeks later. If the second skin test is positive, the reaction is probably due to boosting. If the second skin test is negative, the individual is considered to be not infected. A subsequent positive skin test in this individual would thus indicate a new infection. Boosting is discussed in more detail in connection with the Medical Surveillance paragraph.

Paragraph (k) Dates

As proposed, the final rule would become effective ninety (90) days after publication in the **Federal Register**. This will allow time for public distribution and give employers time to familiarize themselves with the standard. The various provisions have phased-in effective dates.

The employer's initial duty under the standard is the exposure determination and establishment of the written Exposure Control Plan required by paragraph (c) of this section. The plan would need to be completed 30 days after the effective date.

Thirty days later, 60 days after the effective date, paragraphs (h)(3), Information and Training, (g) Medical Surveillance, and (i) Recordkeeping would take effect.

Ninety (90) days after the effective date, the work practice procedures and engineering controls required by paragraph (d) (in work settings other than those noted below), the respiratory protection required by paragraph (f), and the labels and signs required by paragraphs (h) (1) and (2) would take effect. The work practices that are directly related to the engineering controls would have to be implemented as soon as the engineering controls were functional. Finally, the requirements for clinical and research laboratories contained in paragraph (e) would also take effect 90 days after the effective date.

For businesses with fewer than 20 employees, the engineering controls required by paragraph (d) of this section would take effect 270 days after the effective date. As noted above, the work practices directly related to the engineering controls being installed in accordance with paragraph (d) of this section must be implemented as soon as the engineering controls are implemented. Since engineering controls may necessitate more extensive planning than is required to comply with other provisions of the standard, OSHA is proposing an extended phase-in for the smallest employers.

Since many employers have many of these provisions already in effect through current infection control plans, OSHA believes that these dates provide adequate time for compliance. Nevertheless, OSHA seeks comment on the appropriateness of the dates for compliance with the various provisions of the standard.

XI. Public Participation—Notice of Hearing

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before December 16, 1997, and submitted in quadruplicate to the Docket Officer, Docket No. H–371, Room N2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter.

Written submissions must clearly identify the provisions of the proposal that are being addressed and the position taken with respect to each issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing scheduled to begin at 10:00 A.M. on February 3, 1998, in Washington, DC in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate at the hearings must file in quadruplicate a notice of intention to appear postmarked on or before December 16, 1997 addressed to the Docket Officer, Docket No. H–371, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–7894. The Notice of Intention to Appear also may be transmitted by facsimile to (202) 219–5046, provided the original and 3 copies of the notice are sent to the above address thereafter.

The Notices of Intention to Appear, which will be available for inspection and copying at the OSHA Docket Office, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The hearing site that the party is requesting to attend;

(3) The capacity in which the person will appear;

(4) The approximate amount of time requested for the presentation;

(5) The specific issues that will be addressed;

(6) A detailed statement of the position that will be taken with respect to each issue addressed;

(7) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

(8) Whether the party wishes to testify on the days set aside to focus on homeless shelters.

Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing to the Docket Officer at the above address. This material must be postmarked by December 31, 1997 and will be available for inspection and copying at the OSHA Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearings

The hearings will commence at 10:00 a.m. on February 3, 1998. At that time any procedural matters relating to the proceeding will be resolved.

The nature of an informal hearing is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding shall remain informal and legislative in type. The essential intent is to provide an opportunity for effective oral presentations that can proceed expeditiously in the absence of rigid procedures that would impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR Part 1911. The hearing will be presided over by an Administrative Law Judge who makes no recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911 and the prehearing guidelines, including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections, and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) At the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) At the Judges's discretion, to keep the record open for a reasonable, stated time to written information and additional data, views and arguments from any person who has participated in the oral proceeding.

Information on Homeless Shelter Issues for the Public Hearing

OSHA seeks to gather additional information related to homeless shelters during the written comment period and the public hearing. OSHA recognizes the unique service provided by homeless shelters, yet is also aware that shelters serve a client population that has been identified as possessing a high prevalence of active TB. OSHA is seeking information on all aspects of TB and employee protection against occupational transmission of TB in homeless shelters (e.g., means successfully being used by shelters to achieve early identification of shelter clients with suspected or confirmed infectious TB; successful programs currently being used to protect employees against occupational transmission of TB).

The Agency intends to designate a special session during the Washington, D.C. hearing to focus on the issues surrounding homeless shelters. We encourage hearing participants whose primary testimony will involve homeless shelters to indicate this in their Notice of Intention to Appear; OSHA will attempt to schedule these participants on the day(s) of the hearing set aside to focus on homeless shelters. Other participants whose testimony will not be primarily on homeless shelter issues but who wish to address the topic of homeless shelters will be scheduled another day, but they may enter a separate statement in the record during this period. In any case, participants are free to discuss homeless shelters or any other issue related to this proposed standard whenever they present their testimony.

Certification of Record and Final Determination After Hearing

Following the close of the posthearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

List of Subjects

29 CFR Part 1910

Health professionals, Occupational safety and health, Reporting and recordkeeping requirements, Tuberculosis.

XII. Authority and Signature

This document was prepared under the direction of Greg Watchman, Acting Assistant Secretary of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210.

It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 1–90 (55 FR 9033) and 29 CFR Part 1911.

Signed at Washington, DC, this 15th day of September, 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

XIII. The Proposed Standard

General Industry

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The general authority citation for Subpart Z of 29 CFR Part 1910 continues to read as follows and a new citation for § 1910.1035 is added:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657, Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

* * * * *

Section 1910.1035 also issued under 29 U.S.C. 653.

* * * * *

2. Section 1910.1035 is added to read as follows:

§ 1910.1035 Tuberculosis

(a) Scope. This section applies to occupational exposure to tuberculosis (TB) occurring:

(1) In hospitals;

(2) In long term care facilities for the elderly;

(3) In correctional facilities and other facilities that house inmates or detainees;

(4) In hospices;

(5) In shelters for the homeless;

(6) In facilities that offer treatment for drug abuse;

(7) In facilities where high-hazard procedures (as defined by this section) are performed;

(8) In laboratories that handle specimens that may contain *M. tuberculosis*, or process or maintain the resulting cultures, or perform related activity that may result in the aerosolization of *M. tuberculosis*;

Note to paragraph (a)(8): Occupational exposure incurred in any of the work settings listed in paragraphs (a)(1) through (a)(8) of this section by temporary or contract employees or by personnel who service or repair air systems or equipment or who renovate, repair, or maintain areas of buildings that may reasonably be anticipated to contain aerosolized *M. tuberculosis* is covered by this section.

(9) During the provision of social work, social welfare services, teaching, law enforcement or legal services if the services are provided in any of the work settings listed in paragraphs (a)(1) through (a)(8) of this section, or in residences, to individuals who are in AFB isolation or are segregated or otherwise confined due to having suspected or confirmed infectious TB.

(10) During the provision of emergency medical services, home health care and home-based hospice care.

(b) Application. An employer covered under paragraph (a) of this section, Scope (other than the operator of a laboratory), may choose to comply only with the provisions of appendix A to this section if the Exposure Control Plan demonstrates that his or her facility or work setting: (1) Does not admit or provide medical services to individuals with suspected or confirmed infectious TB; and

(2) Has had no case of confirmed infectious TB in the past 12 months; and

(3) Is located in a county that, in the past 2 years, has had 0 cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year.

(c) Exposure control—(1) *Exposure determination.* (i) Each employer who has any employee with occupational exposure shall prepare an exposure determination that contains the following:

(A) A list of the job classifications in which all employees have occupational exposure; *and*

(B) A list of the job classifications in which some employees have occupational exposure, and a list of all tasks and procedures (or groups of closely related tasks and procedures) that these employees perform and that involve occupational exposure.

(ii) The exposure determination shall be made without regard to the use of respiratory protection.

(2) *Exposure Control Plan.* (i) Each employer who has any employee with occupational exposure shall establish a written Exposure Control Plan that must include:

(A) The exposure determination required by paragraph (c)(1) of this section;

(B) Procedures for providing information about individuals with suspected or confirmed infectious TB or about air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* to occupationally exposed employees who need this information in order to take proper precautions; and

(C) Procedures for reporting an exposure incident, including procedures specifying the individual to whom the incident is to be reported, and procedures for evaluating the circumstances surrounding the exposure incident.

(ii) Each employer who transfers individuals with suspected or confirmed infectious TB to a facility with AFB isolation capabilities shall include in the Exposure Control Plan procedures for prompt identification, masking or segregation, and transfer of such individuals.

Note to paragraph (c)(2)(ii): An employer's duties regarding transfer will vary with the type of facility the employer operates and the work performed by his or her employees. For example, the transfer responsibilities of hospitals, long-term care facilities for the elderly, correctional facilities, and hospices may include contacting the receiving facility, providing transport, and taking other steps to ensure that the individual with suspected or confirmed infectious TB reaches the receiving facility. By contrast, the responsibilities of facilities that do not maintain custody over individuals, such as homeless shelters or facilities that offer treatment for drug abuse, might only include providing information about the receiving facility, contacting the facility, and providing directions to the facility.

(iii) Each employer in whose facility individuals with suspected or confirmed infectious TB are admitted or provided medical services shall include each of the following provisions in the Exposure Control Plan:

(A) Procedures for prompt identification of individuals with suspected or confirmed infectious TB;

(B) Procedures for isolating and managing the care of individuals with suspected or confirmed infectious TB, including:

(*1*) Minimizing the time an individual with suspected or confirmed infectious TB remains outside of an AFB isolation room or area (e.g., in an emergency room);

(*2*) Minimizing employee exposure in AFB isolation rooms or areas by combining tasks to limit the number of entries into the room or area and by minimizing the number of employees who must enter and minimizing the time they spend in the room or area;

(*3*) Delaying elective transport or relocation within the facility of an individual with suspected or confirmed infectious TB. Procedures are to be established to assure that, to the extent feasible, services and procedures for individuals with suspected or confirmed infectious TB are brought into or conducted in an AFB isolation room or area;

(*4*) Using properly-fitted masks (e.g., surgical masks, valveless respirators) on individuals with suspected or confirmed infectious TB or transporting such individuals in portable containment engineering controls when relocation or transport outside of AFB isolation rooms or areas is unavoidable. Procedures are to be established to assure that the individual is returned to an AFB isolation room or area as soon as is practical after completion of the service or procedure;

(*5*) Delaying elective high-hazard procedures or surgery until an individual with suspected or confirmed infectious TB is determined to be noninfectious;

(C) A list of all high-hazard procedures, if any, performed in the work setting; and

(D) A schedule for inspection, maintenance, and performance monitoring of engineering controls (see appendix E to this section).

(iv) Each employer who operates a laboratory shall include in the Exposure Control Plan a determination from the director of the laboratory as to whether the facility should operate at Biosafety Level 2 or 3 containment according to current CDC recommendations (CDC/NIH Biosafety in Microbiological and Biomedical Laboratories). The laboratory director shall determine and document the need for:

(A) Controlled access;

(B) Anterooms;

(C) Sealed windows;

(D) Directional airflow;

(E) Measures to prevent recirculation of laboratory exhaust air;

(F) Filtration of exhaust air before discharge outside; and

(G) Thimble exhaust connections for biological safety cabinets.

(v) Each employer who provides home health care or home-based hospice care shall include in the Exposure Control Plan procedures for prompt identification of individuals with suspected or confirmed infectious TB and procedures for minimizing employee exposure to such individuals; a list of the high-hazard procedures, if any, performed in the work setting; and procedures for delaying elective high-hazard procedures or surgery until the individual is noninfectious.

(vi) Each employer who claims reduced responsibilities related to paragraph (b), Application, or paragraph (g)(3)(iii)(D), Medical Surveillance, of this section shall document in the Exposure Control Plan the number of individuals with confirmed infectious tuberculosis encountered in the work setting in the past 12 months.

(vii) The Exposure Control Plan shall be:

(A) Accessible to employees in accordance with 29 CFR 1910.20(e);

(B) Reviewed at least annually and updated whenever necessary to reflect new or modified tasks, procedures, or engineering controls that affect occupational exposure and to reflect new or revised employee job classifications with occupational exposure; and

(C) Made available for examination and copying to the Assistant Secretary and/or the Director upon request.

(d) Work Practices and Engineering Controls. (1) Work practices and engineering controls shall be used to eliminate or minimize employee exposures to *M. tuberculosis*.

(2) The work practices in the Exposure Control Plan shall be implemented.

(3) Individuals with suspected or confirmed infectious TB shall be identified, and except in settings where home health care or home-based hospice care is being provided, shall be:

(i) Masked or segregated in such a manner that contact with employees who are not wearing respiratory protection is eliminated or minimized until transfer or placement in an AFB isolation room or area can be accomplished; and

(ii) Placed in an AFB isolation room or area or transferred to a facility with AFB isolation rooms or areas within 5 hours from the time of identification, or temporarily placed in AFB isolation within 5 hours until placement or transfer can be accomplished as soon as possible thereafter.

(4) High-hazard procedures shall be conducted in an AFB isolation room or area.

(5) Engineering controls shall be used in facilities that admit or provide medical services or AFB isolation to individuals with suspected or confirmed infectious TB except in

settings where home health care or home-based hospice care is being provided.

(i) Negative pressure shall be maintained in AFB isolation rooms or areas.

(ii) Negative pressure shall be qualitatively demonstrated (e.g., by smoke trails) daily while a room or area is in use for TB isolation (see appendix G to this section).

(iii) Engineering controls shall be maintained, and inspected and performance monitored for filter loading and leakage every 6 months, whenever filters are changed, and more often if necessary to maintain effectiveness (see appendix E to this section).

(iv) Air from AFB isolation rooms or areas shall be exhausted directly outside, away from intake vents, employees, and the general public. Air that cannot be exhausted in such a manner or must be recirculated must pass through HEPA filters before discharge or recirculation.

(v) Ducts carrying air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* shall be maintained under negative pressure for their entire length before in-duct HEPA filtration or until the ducts exit the building for discharge.

(vi) Doors and windows of AFB isolation rooms or areas shall be kept closed while in use for TB isolation, except when doors are opened for entering or exiting and when windows are part of the ventilation system being used to achieve negative pressure.

(vii) When an AFB isolation room or area is vacated by an individual with suspected or confirmed infectious TB, the room or area shall be ventilated according to current CDC recommendations for a removal efficiency of 99.9% before permitting employees to enter without respiratory protection (see appendix C to this section).

(6) The employer shall provide information about the TB hazard to any contractor who provides temporary or contract employees who may incur occupational exposure so that the contractor can institute precautions to protect his or her employees.

(e) Clinical and Research Laboratories. (1) This paragraph applies to clinical and research laboratories that engage in the culture, production, concentration, experimentation, or manipulation of *M. tuberculosis*. The requirements in this paragraph apply in addition to the other requirements of the standard.

(2) Clinical and research laboratories shall meet the following criteria:

(i) Standard microbiological practices.

(A) Procedures shall be performed in a manner that minimizes the creation of aerosols.

(B) Mouth pipetting shall be prohibited.

(C) Work surfaces and laboratory equipment shall be decontaminated at the end of each shift and after any spill of viable material.

(D) Cultures, stocks and other wastes contaminated with *M. tuberculosis* shall be decontaminated before disposal by a decontamination method, such as autoclaving, known to effectively destroy *M. tuberculosis*. Materials to be decontaminated outside of the immediate laboratory shall be placed in a durable, leakproof container, closed and sealed for transport from the laboratory and labeled or color-coded in accordance with paragraph (h)(1)(ii) of this section.

(ii) *Special practices.* (A) Access to the laboratory shall be limited by the laboratory director when work with *M. tuberculosis* is in progress.

(B) A biosafety manual that includes procedures for spill management shall be adopted. The employer shall review the manual as necessary and at least annually. The employer shall update the biosafety manual as necessary to reflect changes in the work setting. Employees shall be advised of potential hazards, shall be required to read instructions on practices and procedures, and shall be required to follow them.

(C) Cultures, tissues, or specimens of body fluids contaminated with *M. tuberculosis* shall be placed in a container that prevents leakage during collection, handling, processing, storage, transport, or shipping.

(D) All spills shall be immediately contained and cleaned up by employees who are properly trained and equipped to work with potentially concentrated *M. tuberculosis*. A spill or accident that results in an exposure incident shall be reported immediately to the laboratory director or other designated person.

(E) When materials containing or animals infected with *M. tuberculosis* are present in the laboratory or containment module, a hazard warning sign, in accordance with paragraph (h)(2)(iv), incorporating the universal biohazard symbol, shall be posted on all laboratory and animal room access doors.

(iii) *Containment equipment.* (A) Certified biological safety cabinets (Class 2) shall be used whenever procedures with a potential for generating aerosols of *M. tuberculosis* are conducted or whenever high concentrations or large volumes of *M. tuberculosis* are used. Such materials may be centrifuged in the open laboratory if sealed rotor heads or centrifuge safety cups are used, and if these rotors or safety cups are opened in a biological safety cabinet.

(B) Biological safety cabinets shall be certified when installed, annually thereafter, whenever they are moved, and whenever filters are changed.

(iv) Laboratory facilities. A method for decontamination of wastes contaminated with *M. tuberculosis* (e.g., autoclave, chemical disinfection, incinerator, or other decontamination system known to effectively destroy *M. tuberculosis*) shall be available within or as near as feasible to the work area.

(3) Research laboratories shall meet the following additional criteria:

(i) *Special practices.* (A) Laboratory doors shall be kept closed when work involving *M. tuberculosis* is in progress.

(B) Access to the work area shall be limited to authorized persons. Written policies and procedures shall be established so that only persons who have been advised of the potential biohazard, who meet any specific entry requirements, and who comply with all entry and exit procedures shall be allowed to enter the work areas and animal rooms.

(C) Respiratory protection shall be worn when aerosols cannot be safely contained (e.g., when aerosols are generated outside of a biological safety cabinet).

(ii) *Containment equipment.* Certified biological safety cabinets (Class 2 or 3) or appropriate combinations of personal protection or physical containment devices, such as respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals, shall be used for manipulations of cultures and those clinical or environmental materials that may be a source of aerosols containing *M. tuberculosis;* aerosol challenge of animals with *M. tuberculosis;* harvesting of tissues or fluids from animals infected with *M. tuberculosis;* or the necropsy of animals infected with *M. tuberculosis*.

(iii) *Laboratory facilities.* (A) The laboratory shall be separated from areas that are open to unrestricted traffic flow within the building. Passage through two sets of self-closing doors shall be required for entry into the work area from access corridors or other contiguous areas.

(B) Windows in the laboratory shall be closed and sealed.

(C) A ducted exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air from "clean" areas into the laboratory toward "contaminated" areas. The employer shall verify the proper direction of the airflow (i.e., into the work area) at least every six months. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes.

(D) The high efficiency particulate air (HEPA)-filtered exhaust air from Class 2 or Class 3 biological safety cabinets shall be discharged directly to the outside or through the building exhaust system. If the HEPA-filtered exhaust air from Class 2 or 3 biological safety cabinets is to be discharged to the outside through the building exhaust air system, it shall be connected to this system in a manner (e.g., thimble units) that avoids any interference with the air balance of the cabinets or building exhaust system.

(E) Continuous flow centrifuges or other equipment that may produce aerosols shall be contained in devices that exhaust air through HEPA filters before discharge into the laboratory.

(f) Respiratory Protection—(1) *General.* (i) Each employer shall provide a respirator to each employee who:

(A) Enters an AFB isolation room or area in use for TB isolation;

(B) Is present during the performance of procedures or services for an individual with suspected or confirmed infectious TB who is not masked;

(C) Transports an individual with suspected or confirmed infectious TB in an enclosed vehicle (e.g., ambulance, helicopter) or who transports an individual with suspected or confirmed infectious TB within the facility when that individual is not masked;

(D) Repairs, replaces, or maintains air systems or equipment that may reasonably be anticipated to contain aerosolized *M. tuberculosis;*

(E) Is working in an area where an unmasked individual with suspected or confirmed infectious TB has been segregated or otherwise confined (e.g., while awaiting transfer); or

(F) Is working in a residence where an individual with suspected or confirmed infectious TB is known to be present.

(ii) Each employer who operates a research laboratory shall provide a respirator to each employee who is present when aerosols of *M. tuberculosis* cannot be safely contained (e.g., when aerosols are generated outside of a biological safety cabinet).

(iii) The employer shall provide the respirator at no cost to the employee and shall assure that the employee uses the respirator in accordance with the requirements of this section.

(iv) The employer shall assure that the employee dons the respirator before entering any of the work settings or performing any of the tasks set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section and uses it until leaving the work setting or completing the task, regardless of other control measures in place.

(2) *Respiratory Protection Program.* (i) Each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described in paragraph (f)(1) of this section shall establish and implement a written respiratory protection program that assures respirators are properly selected, fitted, used, and maintained. The program shall include the following elements:

(A) Procedures for selecting the appropriate respirators for use in the work setting;

(B) A determination of each employee's ability to wear a respirator, as required under paragraph (g)(3)(ii) of this section, Medical Surveillance, for each employee required to wear a respirator;

(C) Procedures for the proper use of respirators;

(D) Fit testing procedures for tight-fitting respirators;

(E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, or otherwise maintaining respirators;

(F) Training of employees to assure the proper use and maintenance of the respirator, as required under paragraph (h) of this section, Communication of Hazards and Training; and

(G) Procedures for periodically evaluating the effectiveness of the program.

(ii) The employer shall designate a person qualified by appropriate training or experience to be responsible for the administration of the respiratory protection program and for conducting the periodic evaluations of its effectiveness.

(iii) The employer shall review and update the written program as necessary to reflect current workplace conditions and respirator use.

(iv) The employer shall, upon request, make the written respiratory protection program available to affected employees, their designated representatives, the Assistant Secretary, and the Director. A copy of the program shall be submitted to the Assistant Secretary and/or the Director, if requested.

(3) *Respirator Selection.* (i) The employer shall select and provide properly fitted negative pressure or more protective respirators. Negative pressure respirators shall be capable of being:

(A) Qualitatively or quantitatively fit tested in a reliable way to verify a face-seal leakage of no more than 10%; and

(B) Fit checked by the employee each time the respirator is donned.

(ii) The employer shall select a respirator that will function effectively in the conditions of the work setting. In addition to meeting the criteria in paragraph (f)(3)(i) of this section, the respirator shall be, at a minimum, either a HEPA respirator selected from among those jointly approved as acceptable by the Mine Safety and Health Administration and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11, or an N95 respirator certified by NIOSH under the provisions of 42 CFR part 84.

(4) *Respirator Use.* (i) The employer shall not permit any respirator that depends on a tight face-to-facepiece seal for effectiveness to be worn by employees having any condition that prevents such a seal. Examples of these conditions include, but are not limited to, facial hair that comes between the sealing surface of the facepiece and the face or if facial hair interferes with valve function, absence of normally worn dentures, facial scars, or headgear that projects under the facepiece seal.

(ii) The employer shall assure that each employee who wears corrective glasses or goggles wears them in a manner that does not interfere with the seal of the facepiece to the face of the wearer.

(iii) Disposable respirators shall be discarded when excessive resistance, physical damage, or any other condition renders the respirator unsuitable for use.

(iv) The employer shall assure that each employee, upon donning a tight-fitting respirator, performs a facepiece fit check prior to entering a work area where respirators are required. The procedures in appendix B to this section or other procedures recommended by the respirator manufacturer that provide protection equivalent to that provided by the procedures in appendix B shall be used.

(v) Respirators shall be immediately repaired, or discarded and replaced, when they are no longer in proper working condition.

(vi) The employer shall permit each employee to leave the respirator use area as soon as practical to:

(A) Change the filter elements or replace the respirator whenever the ability of the respirator to function effectively is compromised or the employee detects a change in breathing resistance; or

(B) Wash his or her face and respirator facepiece as necessary to prevent skin irritation associated with respirator use.

(vii) Each employee required to wear a respirator under this section shall be evaluated in accordance with paragraph (g), Medical Surveillance, of this section.

(viii) No employee shall be assigned a task requiring the use of a respirator if, based upon the employee's most recent evaluation, the physician or other licensed health care professional, as appropriate, determines that the employee will be unable to function adequately while wearing a respirator. If the physician or other licensed health care professional, as appropriate, determines that the employee's job activities must be limited, or that the employee must be removed from the employee's current job because of the employee's inability to wear a respirator, the limitation or removal shall be performed in accordance with paragraph (g)(5)(iii) of this section.

(5) *Fit Testing.* (i) The employer shall perform either quantitative or qualitative face fit tests in accordance with the procedures outlined in appendix B to this section.

(ii) The employer shall assure that each employee who must wear a tight-fitting respirator passes a fit test:

(A) At the time of initial fitting;

(B) Whenever changes occur in the employee's facial characteristics which affect the fit of the respirator;

(C) Whenever a different size or make of respirator is used; and

(D) At least annually thereafter unless the annual determination required under paragraph (g)(3)(ii)(A), Medical Surveillance, of this section indicates that the annual fit test is not necessary.

(iii) When quantitative fit testing is performed, the employer shall not permit an employee to wear a tight-fitting half-mask respirator unless a minimum fit factor of one hundred (100) is obtained in the test chamber.

(6) *Maintenance and care of reusable and powered air purifying respirators.* (i) Respirators shall be cleaned and disinfected using the cleaning procedures recommended by the manufacturer at the following intervals:

(A) As necessary for respirators issued for the exclusive use of an employee; and

(B) After each use for respirators issued to more than one employee.

(ii) Respirators shall be inspected before each use and during cleaning after each use;

(iii) Respirator inspections shall include:

(A) A check of respirator function, tightness of connections and the condition of the facepiece, head straps, valves, connecting tube, and cartridges, canisters, or filters; and

(B) A check of the rubber or elastomer parts for pliability and signs of deterioration.

(iv) Respirators that fail to pass inspection shall be removed from service and shall be repaired or adjusted in accordance with the following:

(A) Repairs or adjustments to respirators are only to be made with NIOSH-approved parts designed for the respirator by the respirator manufacturer, and conducted by persons appropriately trained to perform such operations;

(B) Only repairs of the type and extent covered by the manufacturer's recommendations may be performed; and

(C) Reducing or admission valves or regulators shall be returned to the manufacturer or given to an appropriately trained technician for adjustment or repair.

(v) Respirators shall be stored in a manner that protects them from contamination, damage, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals and prevents deformation of the facepiece or exhalation valve.

(7) *Identification of filters, cartridges, and canisters.* (i) Filters, cartridges, and canisters used in the workplace shall be properly labeled and color-coded with the NIOSH approval label as required by 30 CFR part 11 or 42 CFR part 84, whichever is applicable, before they are placed into service.

(ii) The NIOSH approval label on a filter, cartridge, or canister shall not be intentionally removed, obscured, or defaced while it is in service in the workplace.

(8) *Respiratory protection program evaluation.* The employer shall review the overall respiratory protection program at least annually, and shall conduct inspections of the workplace as necessary to assure that the provisions of the program are being properly implemented for all affected employees. The review of the program shall include an assessment of each element required under paragraph (f)(2) of this section.

(g) Medical Surveillance—(1) *General.* (i) Each employer who has any employee with occupational exposure shall provide the employee with medical surveillance as described in this paragraph.

(ii) Each employer covered under paragraph (a), *Scope*, of this section shall provide information about the signs and symptoms of pulmonary TB, a medical history, a physical examination, TB skin testing, medical management and follow-up and, if indicated, other related tests and procedures, and medical removal protection if the employee develops infectious TB, to any of his or her employees who have an exposure incident while working in a covered work setting, even if such employee is not categorized as having occupational exposure.

(iii) Medical surveillance provisions, including examinations, evaluations, determinations, procedures, and medical management and follow-up, shall be:

(A) Provided at no cost to the employee;

(B) Provided at a reasonable time and place for the employee;

(C) Performed by or under the supervision of a physician or other licensed health care professional, as appropriate; and

(D) Provided according to recommendations of CDC current at the time these evaluations and procedures take place, except as specified by this paragraph (g).

(iv) Laboratory tests shall be conducted by an accredited laboratory.

(2) *Explanation of Terms.* This paragraph explains the terms used in paragraph (g).

(i) *Medical history* emphasizes the pulmonary system, and includes previous exposure to *M. tuberculosis*, BCG vaccination, TB skin test results, TB disease, prior and current preventive or therapeutic treatment, current signs or symptoms of active TB disease, and factors affecting immunocompetence;

(ii) *Physical examination* emphasizes the pulmonary system, signs and symptoms of active TB disease, and factors affecting immunocompetence;

(iii) *TB skin testing*, includes anergy testing if indicated, and is only for employees whose TB skin test status is not known to be positive. An initial 2-step protocol is to be used for each employee who has not been previously skin tested and/or for whom a negative test cannot be documented within the past 12 months. If the employer has documentation that the employee has had a negative TB skin test within the past 12 months, that test may be utilized to fulfill the skin testing portion of this requirement. Periodic retesting shall be performed in accordance with paragraph (g)(3) of this section.

(iv) "Determination of the employee's ability to wear a respirator" is a face-to-face assessment of the health factors affecting respirator use and the need for the annual fit test.

Note to paragraph (g)(2)(iv): A determination of the need for the annual fit test may only be performed after the required initial fit test of the employee and cannot be used in lieu of any other required fit tests, for example, when a different size or make of respirator is used.

(v) "Medical management and follow-up" include diagnosis, and, where appropriate, prophylaxis and treatment related to TB infection and disease.

(vi) *Other related tests and procedures* include those associated with TB infection and disease and determined to be necessary by the physician or other licensed health care professional, as appropriate.

(vii) Medical Removal Protection is the maintenance of earnings, seniority and other benefits specified in paragraph (g)(5) of this section for an employee who has confirmed or suspected infectious TB or is unable to wear a respirator.

(3) *Application.* (i) Each employee with occupational exposure shall be provided with the following at the times specified:

(A) Before initial assignment to a job with occupational exposure or within 60 days of the effective date of this standard and at least annually thereafter: A medical history and TB skin testing, and, if indicated, a physical examination and other related tests and procedures;

Note to paragraph (g)(3)(i)(A): If an employee has had a medical examination within the twelve (12) months preceding the effective date of the standard and the employer has the documented results of that examination, only the medical surveillance provisions required by the standard that were not included in the examination need to be provided. The date(s) of the previous medical examination and skin test shall be used to determine the date(s) of the employee's next medical examination and skin test but in no case shall the interval between the previous examination and skin test and the next examination and skin test exceed 12 months.

(B) When the employee has signs or symptoms of TB, either observed or self-reported: A medical history, a physical examination, TB skin testing, medical management and follow-up, and, if indicated, other related tests and procedures;

(C) When an employee undergoes an exposure incident: A medical history, TB skin testing as soon as feasible (unless there is documented negative TB skin testing within the past 3 months), and if the result is negative, another skin test 3 months later, medical management and follow-up and, if indicated, a physical examination and other related tests and procedures;

(D) When the employee has a TB skin test conversion: A medical history, a physical examination, medical management and follow-up, and, if indicated, other related tests;

(E) Within 30 days of the termination of employment: A TB skin test; and

(F) At any other time the physician or other licensed health care professional, as appropriate, deems it necessary: Any or all the provisions of paragraph (g).

(ii) Each employee who must wear a respirator shall be provided with the following at the times specified:

(A) Before initial assignment to a job with occupational exposure or within 60 days of the effective date of this standard and at least annually thereafter: A determination of the employee's ability to wear a respirator; and

(B) When the wearer experiences unusual difficulty while being fitted or while using a respirator: A determination of the employee's ability to wear a respirator, including relevant components of a medical history, and, if indicated, a physical examination and other related tests and procedures.

(iii) An employee with negative TB skin test status shall be provided with a TB skin test every 6 months if the employee in the course of his or her duties:

(A) Enters an AFB isolation room or area;

(B) Performs or is present during the performance of high-hazard procedures;

(C) Transports or is present during the transport of an individual with suspected or confirmed infectious TB in an enclosed vehicle; or

(D) Works in an intake area where early identification procedures are performed (e.g., emergency departments, admitting areas) in facilities where six (6) or more individuals with confirmed infectious TB have been encountered in the past twelve months.

(4) *Additional Requirements.* (i) The employer shall assure that when the physician or other licensed health care professional, as appropriate, determines that an employee has suspected or confirmed infectious TB, the physician or other licensed health care professional, as appropriate, shall notify the employer and the employee as soon as feasible.

(ii) When the employer first identifies an individual with confirmed infectious TB, the employer shall notify each employee who has had an exposure incident involving that individual of his or her exposure to confirmed TB; and

(iii) When an exposure incident results in a TB skin test conversion, the employer shall assure that a determination is made of the drug susceptibility of the *M. tuberculosis* isolate from the source, unless the employer can demonstrate that such a determination is not feasible.

(iv) When an exposure incident or a TB skin test conversion occurs, the employer shall investigate and document the circumstances surrounding the exposure incident or conversion (e.g. failure of engineering controls or work practices and events leading to the exposure incident) to determine if changes can be instituted to prevent similar occurrences in the future.

(5) *Medical Removal Protection.* (i) Each employee with suspected or confirmed infectious TB shall be removed from the workplace until determined to be noninfectious.

(ii) For each employee who is removed from the workplace under paragraph (g)(5)(i) of this section, the employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits, including the employee's right to his or her former job status, as if the employee had not been removed from the employee's job or otherwise medically limited until the employee is determined to be noninfectious or for a maximum of 18 months, whichever comes first.

(iii) For each employee who is removed from his or her job under paragraph (f)(4)(viii), Respiratory Protection, of this section the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the use of respiratory protection is not required. The employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits. If there is no such work available, the employer shall maintain the employee's total normal earnings, seniority, and all other employee rights and benefits until such work becomes available or for a maximum of 18 months, whichever comes first.

(iv) An employer's obligation to provide earnings, seniority and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(6) *Information Provided to Physician or Other Licensed Health Care Professionals.* (i) Each employer shall assure that all physicians or other licensed health care professionals responsible for making determinations and performing procedures as part of the medical surveillance program are

provided a copy of this regulation and, for those employees required to wear respirators under this section, information regarding the type of respiratory protection used, a description of the work effort required, any special environmental conditions (e.g., heat, confined space entry), additional requirements for protective clothing and equipment, and the duration and frequency of usage of the respirator.

(ii) Each employer shall assure that the physician or other licensed health care professional, as appropriate, who evaluates an employee after an exposure incident is provided the following information:

(A) A description of the exposed employee's duties as they relate to the exposure incident;

(B) Circumstances under which the exposure incident occurred;

(C) Any diagnostic test results, including drug susceptibility pattern or other information relating to the source of exposure which could assist in the medical management of the employee; and

(D) All of the employee's medical records relevant to the management of the employee, including tuberculin skin testing results.

(7) *Written Opinion.* (i) Each employer shall obtain and provide the employee with a copy of the written opinion of the physician or other licensed health care professional, as appropriate, within 15 days of the completion of all medical evaluations required by this section.

(ii) The written opinion shall be limited to the following information:

(A) The employee's TB skin test status;

(B) The employee's infectivity status;

(C) A statement that the employee has been informed of the results of the medical evaluation;

(D) A statement that the employee has been told about any medical conditions resulting from exposure to TB that require further evaluation or treatment;

(E) Recommendations for medical removal or work restrictions and the physician's or other licensed health care professional's opinion regarding the employee's ability to wear a respirator.

(iii) All other findings or diagnoses shall remain confidential and shall not be included in the written report.

(h) Communication of Hazards and Training—(1) *Labels.* (i) Air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis* shall be labeled "Contaminated Air—Respiratory Protection Required." The label shall be placed at all points where ducts are accessed prior to a HEPA filter and at duct access points, fans, and discharge outlets of non-HEPA filtered direct discharge systems.

(ii) Clinical and research laboratory wastes that are contaminated with *M. tuberculosis* and are to be decontaminated outside of the immediate laboratory shall be labeled with the biohazard symbol or placed in a red container(s).

(2) *Signs.* (i) Signs shall be posted at the entrances to:

(A) Rooms or areas used to isolate an individual with suspected or confirmed infectious TB;

(B) Areas where procedures or services are being performed on an individual with suspected or confirmed infectious TB; and

(C) Clinical and research laboratories where *M. tuberculosis* is present.

(ii) When an AFB isolation room or area is vacated by an individual with suspected or confirmed infectious TB, unless the individual has been medically determined to be noninfectious, the sign shall remain posted at the entrance until the room or area has been ventilated according to CDC recommendations for a removal efficiency of 99.9% (see Appendix C to this section).

(iii) Signs for AFB isolation rooms or areas, except as required in paragraph (h)(2)(iv) of this section, shall be readily observable and shall bear the following legend with symbol and text in white on a red background:

BILLING CODE 4510-28-P



BILLING CODE 4510-28-C

No Admittance Without Wearing a Type N95 or More Protective Respirator

Note to paragraph (h)(2)(ii): Employers may include additional information on signs provided it does not interfere with conveyance of this message.

(iv) Signs at the entrances of clinical or research laboratories and autopsy suites where procedures are being performed that may generate aerosolized *M. tuberculosis* shall include the biohazard symbol, name and telephone number of the laboratory director or other designated responsible person, the infectious agent designation *Mycobacterium tuberculosis*, and special requirements for entering the laboratory or autopsy room.

(3) *Information and Training.* (i) Each employer shall assure that each employee with occupational exposure participates in a training program, which must be provided at no cost to the employee and be made available at a reasonable time and place.

(ii) Training shall be provided as follows:

(A) Before initial assignment to tasks where occupational exposure may occur;

(B) Within 60 days after the effective date of the standard; and

(C) At least annually thereafter, unless the employer can demonstrate that the employee has the specific knowledge and skills required under paragraph (h)(3)(vii) of this section. The employer must provide re-training to the employee in any topic(s) in which specific knowledge and skills cannot be demonstrated.

Note to paragraph (h)(3)(ii): Training in the general topics under paragraph (h)(3)(vii) of this section which has been provided in the past 12 months by a previous employer may be transferred to an employee's new employer. However, the new employer must provide training in the site-specific topics under paragraph (h)(3)(vii) in accordance with the requirements of paragraph (h).

(iii) For employees who have received training on TB in the year preceding the effective date of the standard, only training with respect to the provisions of the standard that were not included in such training need be provided. The annual retraining shall be conducted within one year from the date of the training that occurred before the effective date of the standard.

(iv) Annual training for each employee shall be provided within one calendar year of the employee's previous training.

(v) The employer shall provide additional training when changes such as modification of tasks or procedures or institution of new tasks or procedures affect the employee's occupational exposure. The additional training may be limited to addressing the new or modified exposures.

(vi) Material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

(vii) The training program shall include an explanation of:

(A) The contents of this standard and the location of an accessible copy of the regulatory text of this standard;

(B) The general epidemiology of TB, including Multidrug-Resistant TB (MDR–TB), and the potential for exposure within the facility; the signs and symptoms of TB, including the difference between tuberculosis infection and tuberculosis disease; the modes of transmission of tuberculosis, including the possibility of reinfection in persons with a positive tuberculin skin test; and the personal health conditions that increase the employee's risk of developing TB disease if infected (e.g., HIV infection, prolonged corticosteroid therapy, other immunocompromising conditions);

(C) The employer's exposure control plan and respiratory protection program and the means by which the employee can review the written plans;

(D) The tasks and other activities that may involve exposure to *M. tuberculosis*;

(E) The use and limitations of methods that will prevent or reduce exposure, including appropriate engineering controls, work practices, respiratory protection, and site-specific control measures;

(F) Why a respirator is necessary, and the basis of selection of the respirators used, the types of respirators used, upkeep and storage of the respirators used, and their location and proper use, including procedures for inspection, donning and removal, checking the fit and seals, and wearing the respirator. This instruction shall allow sufficient practice to enable the employee to become thoroughly familiar with and effective in performing these tasks;

(G) The employer's medical surveillance program, including the purpose of tuberculin skin testing, the importance of a positive or negative skin test result, anergy testing, and the importance of participation in the program;

(H) The procedures to follow if an exposure incident occurs, including the method of reporting the incident and the medical management and follow-up that the employer is required to provide, and the benefits and risks of prophylaxis; and

(I) The procedures to follow if the employee develops signs or symptoms of TB disease.

(viii) The person(s) conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

(ix) The employer shall provide employees with an opportunity for interactive questions and answers with the person conducting the training session.

(i) Recordkeeping—(1) *Medical Records.* (i) Each employer shall establish and maintain an accurate record for each employee with occupational exposure, in accordance with 29 CFR 1910.1020.

(ii) This record shall include:

(A) The name, social security number, and job classification of the employee;

(B) A copy of all results of examinations; medical testing, including the employee's tuberculin skin test status; and follow-up procedures;

(C) The employer's copy of the physician's or other licensed health care professional's written opinion; and

(D) A copy of the information provided to the physician or other licensed health care professional.

(iii) Confidentiality. The employer shall assure that employee medical records required by paragraph (i) are:

(A) Kept confidential; and

(B) Not disclosed or reported without the employee's express written consent to any person within or outside the workplace, except as required by this section or as may be required by law.

(iv) The employer shall maintain the records required by paragraph (i)(1) for at least the duration of employment plus 30 years, in accordance with 29 CFR 1910.1020. The medical records of employees who have worked for less than one year for the employer need not be retained beyond the term of employment if they are provided to the employee upon termination of employment.

(2) *OSHA Illness and Injury Records.* The employer shall record TB infection or disease in accordance with 29 CFR 1904 and 29 CFR 1960, as applicable.

(3) *Training Records.* (i) Training records shall include the following information:

(A) The dates of the training sessions;

(B) The contents or a summary of the training sessions;

(C) The names and qualifications of persons conducting the training; and

(D) The name and job classification of all persons attending the training sessions.

(ii) Training records shall be maintained for 3 years from the date on which the training occurred.

(4) *Engineering Control Maintenance and Monitoring Records.* (i) Engineering control maintenance records shall include the following information:

(A) Date;

(B) Equipment identification;

(C) Task performed; and

(D) Sign-off.

(ii) Performance monitoring records shall include the following information:

(A) Date and time;

(B) Location;

(C) Parameter measured, including units when appropriate;

(D) Results of monitoring; and

(E) Sign-off.

(iii) Engineering control maintenance and monitoring records shall be maintained for three years.

(5) *Availability.* (i) Employee medical records required by paragraph (i)(1), Recordkeeping, of this section shall be provided upon request for the examination and copying to the subject employee, to anyone having the written consent of the subject employee, to the Director, and to the Assistant Secretary in accordance with 29 CFR 1910.1020. OSHA Illness and Injury Records shall be accessible under the provisions of 29 CFR 1904 and 29 CFR 1960, as applicable.

(ii) Employee training records required by paragraph (i)(3), Recordkeeping, of this section shall be provided upon request for examination and copying to employees, to their representatives, to the Director, and to the Assistant Secretary.

(iii) Engineering control maintenance and monitoring records required by paragraph (i)(4), Recordkeeping, of this section shall be provided upon request for examination and copying to employees, their representatives, to the Director, and to the Assistant Secretary.

(6) *Transfer of Records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.1020(h) and 29 CFR 1904 and 29 CFR 1960, as applicable.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least three months before their disposal and transmit them to the Director, if required by the Director to do so, within the three month period.

(j) *Definitions.* For the purposes of this section, the following shall apply:

Acid-fast bacilli (AFB) means bacteria that retain certain dyes after being washed in an acid solution. Most acid-fast organisms are mycobacteria.

Accredited laboratory means a laboratory that has participated in a quality assurance program leading to a certification of competence administered by a governmental or private organization that tests and certifies laboratories.

Air-purifying respirator means a respirator that is designed to remove air contaminants from the ambient air or air surrounding the respirator.

AFB isolation room or area includes, but is not limited to, rooms, areas, booths, tents, or other enclosures that are maintained at negative pressure to adjacent areas in order to control the spread of aerosolized *M. tuberculosis*.

Anergy means the inability of a person to react to skin test antigens (even if the person is infected with the organisms tested) because of immunosuppression.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

BCG (Bacille Calmette-Guerin) vaccine is a tuberculosis vaccine.

Canister or *cartridge* means a container with a filter, sorbent, or catalyst, or a combination of these items, that removes specific air contaminants from the air drawn through the container.

Clinical laboratory is a laboratory or area of a facility that conducts routine and repetitive operations for the diagnosis of TB such as preparing acid-fast smears and culturing sputa or other clinical specimens for identification, typing or susceptibility testing.

Confirmed infectious tuberculosis is a disease state that has been diagnosed by positive identification of *M. tuberculosis* from body fluid or tissue through positive culture, positive gene probe, or positive polymerase chain reaction (PCR). The disease state must be capable of being transmitted to another individual (e.g., pulmonary or laryngeal TB or extrapulmonary TB where the infected tissue is exposed and could generate droplet nuclei).

Conversion means a change in tuberculin skin test results from negative to positive, based upon current Centers for Disease Control and Prevention (CDC) guidelines.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Disposable respirator means a respiratory protective device that cannot be resupplied with an unused filter or cartridge and that is to be discarded in its entirety after its useful service life has been reached.

Exposure incident means an event in which an employee has been exposed to an individual with confirmed infectious TB or to air containing aerosolized *M. tuberculosis* without the benefit of applicable exposure control measures required by this section.

Filter means a component used in respirators to remove solid or liquid aerosols from the inspired air.

Fit factor means a quantitative measure of the fit of a particular respirator on a particular individual.

High efficiency particulate air (HEPA) filter means a specialized filter that is capable of removing 99.97% of particles greater than or equal to 0.3 micrometer in diameter.

High hazard procedures are procedures performed on an individual with suspected or confirmed infectious tuberculosis in which the potential for being exposed to *M. tuberculosis* is increased due to the reasonably anticipated generation of aerosolized *M. tuberculosis*. Such procedures include, but are not limited to, sputum induction, bronchoscopy, endotracheal intubation or suctioning, aerosolized administration of pentamidine or other medications, and pulmonary function testing. They also include autopsy, clinical, surgical and laboratory procedures that may aerosolize *M. tuberculosis*.

M. tuberculosis means *Mycobacterium tuberculosis*, the scientific name of the bacillus that causes tuberculosis.

Negative pressure means the relative air pressure difference between two areas. A room that is under negative pressure has lower pressure than adjacent areas, which keeps air from flowing out of the room and into adjacent rooms or areas.

Negative pressure respirator means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

Occupational exposure means reasonably anticipated contact, that results from the performance of an employee's duties, with an individual with suspected or confirmed infectious TB or air that may contain aerosolized *M. tuberculosis*.

Physician or other licensed health care professional means an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the health care services required by paragraph (g) of this section.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to deliver air through the air-purifying element to the wearer's breathing zone.

Qualitative fit test means a pass/fail fit test to assess the adequacy of respirator fit that relies on the respirator wearer's response to a challenge agent.

Quantitative fit test means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Research laboratory is a laboratory that propagates and manipulates cultures of *M. tuberculosis* in large volumes or high concentrations that are in excess of those used for identification and typing activities common to clinical laboratories.

Respirator means a device worn by an individual and intended to provide the wearer with respiratory protection against inhalation of airborne contaminants.

Suspected infectious tuberculosis means a potential disease state in which an individual is known, or with reasonable diligence should be known, by the employer to have one or more of the following conditions, unless the individual's condition has been medically determined to result from a cause other than TB:

(1) To be infected with *M. tuberculosis* and to have the signs or symptoms of TB;

(2) To have a positive acid-fast bacilli (AFB) smear; or

(3) To have a persistent cough lasting 3 or more weeks and two or more symptoms of active TB (e.g., bloody sputum, night sweats, weight loss, fever, anorexia). An individual with suspected infectious TB has neither confirmed infectious TB nor has he or she been medically determined to be noninfectious.

Tight-fitting facepiece means a respiratory inlet covering that is designed to form a complete seal with the face. A half-facepiece covers the nose and mouth; a full facepiece covers the nose, mouth, and eyes.

Tuberculosis (TB) means a disease caused by *M. tuberculosis*.

Tuberculosis infection means a condition in which living *M. tuberculosis* bacilli are present in the body without producing clinically active disease. Although the infected individual has a positive tuberculin skin test reaction, he or she may have no symptoms related to the infection and may not be capable of transmitting the disease.

Tuberculosis disease is a condition in which living *M. tuberculosis* bacilli are present in the body, producing clinical illness. The individual may or may not be infectious.

Tuberculin skin test means a method used to evaluate the likelihood that a person is infected with *M. tuberculosis*. The method utilizes an intradermal injection of tuberculin antigen with subsequent measurement of the reaction induration. It is also referred to as a PPD skin test.

Two-step testing is a baseline skin testing procedure used to identify a boosted skin test reaction from that of a new infection. The procedure involves placing a second skin test 1 to 3 weeks after an initial negative test. A positive reaction on the second test indicates a boosted reaction.

(k) Dates.—(1) *Effective Date.* The standard shall become effective on [insert date 90 days after publication of final rule in the **Federal Register**].

(2) *Start-up dates.* (i) *Exposure control.* The exposure control provisions required by paragraph (c) of this section shall take effect on [insert date 30 days after effective date of final rule].

(ii) The *Information and Training* provisions required under paragraph (h)(3), the *Medical surveillance* provisions required by paragraph (g), and the *Recordkeeping* provisions required by paragraph (i) of this section shall take effect on [insert date 60 days after effective date of final rule].

(iii) *Work practices and Engineering controls.* The work practice and engineering control provisions required by paragraph (d) of this section shall take effect on [insert date 90 days after effective date of final rule]. For businesses with fewer than 20 employees, engineering controls required by paragraph (d) of this section shall take effect [insert 270 days after effective date of final rule]. Work practice controls that are directly related to engineering controls being installed in accordance with this paragraph shall be implemented as soon as those engineering controls are implemented.

(iv) *Respiratory protection.* Respiratory protection provisions required by paragraph (f) of this section shall take effect on [insert date 90 days after effective date of final rule].

(v) *Labels and signs.* The labels and signs provisions required by paragraphs (h)(1) and (h)(2) of this section shall take effect on [insert date 90 days after effective date of final rule].

(vi) *Clinical and research laboratories.* The additional requirements for Clinical and Research Laboratories contained in paragraphs (e)(1) through (e)(3) shall take effect on [insert date 90 days after effective date of final rule].

Appendix A to § 1910.1035—Provisions for Employers Claiming Reduced Responsibilities Under Paragraph (b), Application (Mandatory)

(c) Exposure Control

Paragraph (c)(1)(i & ii) Exposure Determination
(c)(2)(i) Written Exposure Control Plan with the following elements:
(c)(2)(i)(A) The exposure determination
(c)(2)(i)(B) Procedures for providing information to employees about individuals identified with suspected or confirmed infectious TB or air that may reasonably be anticipated to contain aerosolized M. tuberculosis
(c)(2)(i)(C) Procedures for reporting an exposure incident
(c)(2)(ii) Procedures for identifying, masking or segregating and transferring individuals with suspected or confirmed infectious TB
(c)(2)(vi) Documentation of the number of individuals with confirmed infectious TB encountered in the past 12 months
(c)(2)(vii) (A–C) Accessible exposure control plan, reviewed annually and updated as necessary, and made available to the Assistant Secretary and Director

(d) Work Practice Procedures and Engineering Controls

(d)(1) Use of work practices to eliminate or minimize employee exposure
(d)(2) Implementation of the work practice procedures in the exposure control plan
(d)(3)(i) Identification and masking or segregating of individuals with suspected or confirmed infectious TB
(d)(3)(ii) Temporary isolation of individuals who cannot be transferred within 5 hours
(d)(5)(i–vii) Engineering controls if temporary isolation is used
(d)(6) Provide information about TB hazards to temporary or personnel who may incur occupational exposure

(g) Medical Surveillance

(g)(1)(i–iv) Medical surveillance program for each employee with occupational exposure or who has an exposure incident in one of the covered work settings, at no cost, at a reasonable time, by a physician or other licensed health care professional, according to current recommendations of the CDC and with laboratory tests conducted by an accredited laboratory
(g)(2)(i, ii, iii, v, vi & vii) Explanation of terms: Medical history, Physical examination, tuberculin skin testing, medical management and follow-up, medical removal protection, and other related tests and procedures
(g)(3)(i)(A) Initial TB skin testing and medical history (NOTE: Annual skin testing and medical histories are not required)
(g)(3)(i)(B) Medical history, TB skin testing and follow-up for employees who develop signs or symptoms of TB
(g)(3)(i)(C) Medical history, TB skin testing and medical management and follow-up of employees after an exposure incident
(g)(4)(i) Notification of employee and employer as soon as feasible about infectious TB disease status of the employee
(g)(4)(ii) Notification of employees about previously unidentified individuals with infectious TB
(g)(4)(iii) Determination of drug susceptibility of *M. tuberculosis* source after an exposure incident
(g)(4)(iv) Investigations of exposure incidents and TB skin test conversions
(g)(5)(i, ii & iv) Medical removal and protection of benefits for individuals with infectious TB
(g)(6)(i & ii) Information provided to the physician or other licensed health care professional
(g)(7)(i–iii) Physician or other licensed health care professional's written opinion

(h) Communication of Hazards and Training

(h)(1)(i) If temporary isolation is used, label air systems that may reasonably be anticipated to contain aerosolized *M. tuberculosis*
(h)(2)(i)(A) If temporary isolation is used, post signs at entrance to temporary isolation
(h)(2)(ii) When temporary isolation room or area is vacated by an individual with suspected or confirmed infectious TB, ventilate for an appropriate period
(h)(2)(iii) Signs for temporary isolation rooms or areas must have a stop sign with the legend "No Admittance Without Wearing a Type N95 or More Protective Respirator"
(h)(3)(i–viii) Annual training with specified elements for employees with occupational exposure

(i) Recordkeeping

(i)(1)(i–iv) Medical Records
(i)(2) OSHA Illness and Injury Records
(i)(3)(i & ii) Training Records
(i)(4)(i–iii) If temporary isolation is used, engineering control maintenance records
(i)(5)(i & ii) Availability of medical and training records
(i)(6)(i & ii) Transfer of records

(k) Dates

(k)(1) Effective date
(k)(2)(i, ii & iii) Start up dates for exposure control, medical surveillance, information and training, recordkeeping, and work practices and engineering controls

Appendix B to § 1910.1035—Fit Testing Procedures (Mandatory)

Part I. Approved Fit Test Protocols

A. Fit Testing Procedures

The employer shall conduct fit testing using the following procedures. These provisions apply to both QLFT and QNFT.

1. The test subject shall be allowed to pick the most acceptable respirator from a selection of respirators of various sizes and models.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine an acceptable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject shall be informed that he or she is being asked to select the respirator that provides the most acceptable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each chosen facepiece up to the face and eliminate those that obviously do not give an acceptable fit.

5. The more acceptable facepieces are noted; the most acceptable mask is donned

and worn at least five minutes to assess acceptability. Assistance in assessing acceptability can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of acceptability shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the acceptability of the respirator:

(a) Position of the mask on the nose,

(b) Room for eye protection,

(c) Room to talk;

(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed;

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip;

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described in this appendix or other fit check procedures recommended by the respirator manufacturer providing equivalent protection to the procedures in this appendix. Before conducting the negative or positive pressure fit checks, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, mustache or sideburns that cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician or other licensed health care professional, as appropriate, to determine whether the test subject can wear a respirator while performing her or his duties.

11. If the employee finds the fit of the respirator unacceptable, the test subject shall be given the opportunity to select a different respirator and to be retested.

12. *Exercise regimen.* Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

13. *Test Exercises.* The test subject shall perform exercises, in the test environment, while wearing any applicable safety equipment that may be worn during actual respirator use which could interfere with fit, in the manner described below:

(a) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally.

(b) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) *Turning head side to side.* Standing in place, the subject shall slowly turn his or her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) *Moving head up and down.* Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

(f) *Grimoce.* The test subject shall grimace by smiling or frowning. (Only for QNFT testing, not performed for QLFT)

(g) *Bending over.* The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) *Normal breathing.* Same as exercise (a).

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the acceptability of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate within the parameters for which it was designed.

2. Isoamyl Acetate Protocol

Note: This protocol is not appropriate, by itself, for fit testing particulate respirators. If chosen for use in fit testing particulate respirators, the respirator must be equipped with an organic vapor cartridge, provided the employee will be using the same facepiece in the work setting except that it will be equipped with particulate filters.

(a) Odor threshold screening. The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1 liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known at isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated to prevent the odor of IAA from becoming evident in the general room air where testing takes place.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil.

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent the test medium that is not contained will be removed from the general room air.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the test exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test is failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test is failed, the subject shall return to the selection room and remove the respirator. The test subject shall repeat the odor sensitivity test, select and put on another respirator, return to the test area and again begin the fit test procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When the subject wearing the respirator passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test, so there is no significant IAA concentration buildup in the chamber during subsequent tests. The used towels shall be kept in a self sealing bag to keep the test area from being contaminated.

3. Saccharin Solution Aerosol Protocol

The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening. The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her slightly open mouth with tongue extended.

(4) Using a nebulizer device such as the DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 100 ml of warm water. It can be prepared by putting 1 ml of the fit test solution (see (b)(5) below) in 100 ml of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, and is then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 ml of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), smoke, or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section I.A. above. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second nebulizer device such as the DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 ml of warm water.

(6) As before, the test subject shall breathe through the slightly open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test. A minimum of 10 squeezes is required.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 13 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. Bitrex (Denatonium benzoate) Solution Aerosol Qualitative Fit Test Protocol

The Bitrex (Denatonium benzoate) solution aerosol QLFT protocol uses the published saccharin test protocol because of its current acceptance and past validation. Bitrex is routinely used as a taste aversion agent in household liquids which children should not be drinking and is endorsed by the American Medical Association, the National Safety Council, and the American Association of Poison Control Centers. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste Threshold Screening. The Bitrex taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of Bitrex.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches (30.5 cm) in diameter by 14 inches (35.6 cm) tall. The front portion of the enclosure shall be clear from the respirator and allow free movement of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # 14 and # 15 combined, is adequate.

(2) The test enclosure shall have a ¾ inch (1.9 cm) hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his or her slightly open mouth with tongue extended.

(4) Using a nebulizer device such as a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 13.5 milligrams of Bitrex in 100 ml of 5% NaCl solution in distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that the bulb collapses completely, and is then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the Bitrex can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the Bitrex is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the Bitrex is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the Bitrex is not tasted after 30 squeezes (step 10), the test subject may not perform the Bitrex fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 ml of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken to dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Bitrex solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), smoke, or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section I.A. of this appendix. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second nebulizer device such as a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 337.5 mg of Bitrex in 200 ml of a 5% solution of NaCl in warm water.

(6) As before, the test subject shall breathe through his or her slightly open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I.A.13 of this appendix.

(9) Every 30 seconds the aerosol concentration shall be replenished using half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of Bitrex is detected.

(11) If the taste of Bitrex is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

5. Irritant Fume Protocol

(a) The respirator to be tested shall be equipped with high-efficiency particulate filters (i.e., HEPA, N100, R100, or P100).

(b) No form of test enclosure or hood for the test subject shall be used.

(c) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its irritating properties.

(d) Break both ends of a ventilation smoke tube containing stannic chloride. Attach one end of the smoke tube to an aspirator squeeze bulb and cover the other end with a short piece of tubing to prevent potential injury from the jagged end of the smoke tube.

(e) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his or her eyes closed while the test is performed.

(f) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject beginning at least 12 inches from the facepiece and gradually moving to within one inch, moving around the whole perimeter of the mask.

(g) The exercises identified in section I.A. 13 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(h) Each test subject passing the smoke test without evidence of a response (involuntary cough) shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he or she reacts to the smoke. Failure to evoke a response shall void the fit test.

(i) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocols

The following quantitative fit testing procedures have been demonstrated to be acceptable:

(1) Quantitative fit testing using a non-hazardous challenge aerosol (such as corn oil or sodium chloride) generated in a test chamber, and employing instrumentation to quantify the fit of the respirator.

(2) Quantitative fit testing using ambient aerosol as the challenge agent and appropriate instrumentation (condensation nuclei counter) to quantify the respirator fit.

(3) Quantitative fit testing using controlled negative pressure and appropriate instrumentation to measure the volumetric leak rate of a facepiece to quantify the respirator fit.

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean, maintained and calibrated according to the manufacturer's instructions so as to operate at the parameters for which it was designed.

2. Generated Aerosol Protocol

(a) *Apparatus.* (1) Instrumentation. Aerosol generation, dilution, and measurement systems using particulates (corn oil or sodium chloride) or gases or vapors as test aerosols shall be used for quantitative fit testing.

(2) *Test chamber.* The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(3) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter (i.e., HEPA, N100, R100, P100) supplied by the same manufacturer in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(4) The sampling instrument shall be selected so that a computer record or strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers that integrate the amount of test agent penetration leakage into the respirator for each exercise may be used, provided a record of the readings is made.

(5) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process based upon the length of the exposure and the exposure limit duration.

(6) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator. The in-mask sampling device (probe) shall be designed and used so that the air sample is drawn from the breathing zone of the test subject, midway between the nose and mouth and with the probe extending into the facepiece cavity at least ¾ inch.

(7) The test set-up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(8) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant to within a 10 percent variation for the duration of the test.

(9) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event and its being recorded.

(10) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(11) The exhaust flow from the test chamber shall pass through an appropriate filter (i.e., high efficiency or sorbent) before release.

(12) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(13) The limitations of instrument detection shall be taken into account when determining the fit factor.

(14) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

(b) *Procedural Requirements.* (1) When performing the initial positive or negative pressure fit check, the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these fit checks.

(2) An abbreviated screening QLFT test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. The use of the CNC QNFT instrument in the count mode is another method that can be used to obtain a quick estimate of fit and eliminate poor fitting respirators before going on to perform a full QNFT.

(3) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(4) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(5) A stable challenge concentration shall be obtained prior to the actual start of testing.

(6) Respirator restraining straps shall not be over tightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable fit typical of normal use.

(7) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested.

(c) *Calculation of fit factors.* (1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration measured inside the respirator for each test exercise except the grimace exercise.

(2) The average test chamber concentration shall be calculated as the arithmetic average of the concentration measured before and after each test (i.e., 8 exercises) or the arithmetic average of the concentration measured before and after each exercise or the true average measured continuously during the respirator sample.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak penetration method, which is the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers that calculate the actual test agent penetration into the respirator for each exercise also meet the requirements of the average peak penetration method.

(ii) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(iii) Integration by calculation of the area under the individual peak for each exercise except the grimace exercise is another method. This includes computerized integration.

(iv) The calculation of the overall fit factor using individual exercise fit factors involves first converting the exercise fit factors to penetration values, determining the average, and then converting that result back to a fit factor is also appropriate. This procedure is described in the following equation:

$$\text{Overall Fit Factor} = \frac{\text{Number of exercises}}{1/ff_1 + 1/ff_2 + 1/ff_3 + 1/ff_4 + 1/ff_5 + 1/ff_6 + 1/ff_7 + 1/ff_8}$$

Where ff_1, ff_2, ff_3, etc. are the fit factors for exercise 1,2,3, etc.

(4) The test subject shall not be permitted to wear a half mask or quarter facepiece respirator unless a minimum fit factor of 100 is obtained, or a full facepiece respirator unless a minimum fit factor of 500 is obtained.

(5) Filters used for quantitative fit testing shall be replaced whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced if there is any indication of breakthrough by a test agent.

3. Ambient Aerosol Condensation Nuclei Counter (CNC) Protocol

The ambient aerosol condensation nuclei counter (CNC) quantitative fit testing (Portacount™) protocol quantitatively fit tests respirators with the use of a probe. The probed respirator is only used for quantitative fit tests. A probed respirator has a special sampling device, installed on the respirator, that allows the probe to sample the air from inside the mask. A probed respirator is required for each make, model, and size that is intended to be used and can be obtained from the respirator manufacturer or distributor. The CNC instrument manufacturer TSI also provides probe attachments (TSI sampling adapters) that permit fit testing in an employee's own respirator. A minimum fit factor pass level of 100 is necessary for a half-mask respirator and a minimum fit factor of at least 500 is required for a full facepiece respirator. The Agency does not recommend the use of homemade sampling adapters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Portacount Fit Test Requirements.

(1) Check the respirator to make sure the respirator is fitted with a high efficiency filter (i.e., HEPA, N100, R100, P100) and that the sampling probe and line are properly attached to the facepiece.

(2) Instruct the person to be tested to don the respirator several minutes before the fit test starts. This purges the particles inside the respirator and permits the wearer to make certain the respirator is comfortable. This individual should have already been trained on how to wear the respirator properly.

(3) Check the following conditions for the adequacy of the respirator fit: Chin properly placed; Adequate strap tension, not overly tightened; Fit across nose bridge; Respirator of proper size to span distance from nose to chin; Tendencies for the respirator to slip; Self-observation in a mirror to evaluate fit; and respirator position.

(4) Have the person wearing the respirator do a fit check. If leakage is detected, determine the cause. If leakage is from a poorly fitting facepiece, try another size of the same type of respirator.

(5) Follow the instructions for operating the Portacount and proceed with the test.

(b) *Portacount Test Exercises*—(1) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally for 1 minute.

(2) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply for 1 minute, taking caution so as not to hyperventilate.

(3) *Turning head side to side.* Standing in place, the subject shall slowly turn his or her head from side to side between the extreme positions on each side for 1 minute. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(4) *Moving head up and down.* Standing in place, the subject shall slowly move his or her head up and down for 1 minute. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(5) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song for 1 minute.

(8) *Grimace.* The test subject shall grimace by smiling or frowning for 15 seconds.

(7) *Bending Over.* The test subject shall bend at the waist as if he or she were to touch his or her toes for 1 minute. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units that prohibit bending at the waist.

(8) *Normal Breathing.* Remove and re-don the respirator within a one-minute period. Then, in a normal standing position, without talking, the subject shall breathe normally for 1 minute.

After the test exercises, the test subject shall be questioned by the test conductor regarding the acceptability of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried.

(c) *Portacount Test Instrument.* (1) The Portacount will automatically stop and calculate the overall fit factor for the entire set of exercises. The overall fit factor is what counts. The Pass or Fail message will indicate whether or not the test was successful. If the test was a Pass, the fit test is over.

(2) A record of the test needs to be kept on file assuming the fit test was successful. The record must contain the test subject's name; overall fit factor; make, model and size of respirator used, and date tested.

4. Controlled Negative Pressure (CNP) Protocol

The CNP protocol provides an alternative to aerosol fit test methods. The CNP fit test method technology is based on exhausting air from a temporarily sealed respirator facepiece to generate and then maintain a constant negative pressure inside the facepiece. The rate of air exhaust is controlled so that a constant negative pressure is maintained in the respirator during the fit test. The level of pressure is selected to replicate the mean inspiratory pressure that causes leakage into the respirator under normal use conditions. With pressure held constant, air flow out of the respirator is equal to air flow into the respirator. Therefore, measurement of the exhaust stream that is required to hold the pressure in the temporarily sealed respirator constant yields a direct measure of leakage air flow into the respirator.

The CNP fit test method measures leak rates through the facepiece as a method for determining the facepiece fit for negative pressure respirators. The CNP instrument manufacturer Dynatech Nevada also provides attachments (sampling manifolds) that replace the filter cartridges to permit fit testing in an employee's own respirator. To perform the test, the test subject closes his or her mouth and holds his or her breath, then an air pump removes air from the respirator facepiece at a pre-selected constant pressure. The facepiece fit is expressed as the leak rate through the facepiece, expressed as milliliters per minute. The quality and validity of the CNP fit tests are determined by the degree to which the in-mask pressure tracks the challenge pressure during the system measurement time of approximately five seconds. Instantaneous feedback in the form of a real-time pressure trace of the in-mask pressure is provided and used to determine test validity and quality. A minimum fit factor pass level of 100 is necessary for a half-mask respirator and a minimum fit factor of at least 500 is required for a full facepiece respirator.

The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *CNP Fit Test Requirements.*—(1) The instrument shall have a non-adjustable challenge pressure of 15.0 mm water pressure.

(2) The CNP system defaults for challenge pressure shall be tested at −0.58 inches of water and the modeled inspiratory flow rate shall be 53.8 liters per minute.

Note: CNP systems have built-in capability to conduct fit testing that is specific to unique work rate, mask, and gender situations that might apply in a specific workplace. Use of system default values, which were selected to represent respirator wear with medium cartridge resistance at a low-moderate work rate, will allow inter-test comparison of the respirator fit.

(3) The individual who conducts the CNP fit testing shall be thoroughly trained to perform the test.

(4) The respirator filter or cartridge needs to be replaced with the CNP test manifold. The inhalation valve downstream from the manifold either needs to be temporarily removed or propped open.

(5) The test subject shall be trained to hold his or her breath for at least 20 seconds.

(6) The test subject shall don the test respirator without any assistance from the individual who conducts the CNP fit test.

(7) The QNFT protocol shall be followed according to section I.C.1 except that the CNP test exercises shall be used.

(b) *CNP Test Exercises*—(1) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally for 1 minute. After the normal breathing exercise, the subject needs to hold head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(2) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply for 1 minute, taking caution not to hyperventilate. After the deep breathing exercise, the subject needs to hold head straight ahead and hold his or her breath for 10 seconds during test measurement.

(3) *Turning head side to side.* Standing in place, the subject shall slowly turn his or her head from side to side between the extreme positions on each side for 1 minute. The head shall be held at each extreme momentarily so the subject can inhale at each side. After the turning head side to side exercise, the subject needs to hold head full left and hold his or her breath for 10 seconds during test measurement. Next, the subject needs to hold head full right and hold his or her breath for 10 seconds during test measurement.

(4) *Moving head up and down.* Standing in place, the subject shall slowly move his or her head up and down for 1 minute. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling). After the moving head up and down exercise, the subject needs to hold head full up and hold his or her breath for 10 seconds during test measurement. Next, the subject needs to hold head full down and hold his or her breath for 10 seconds during test measurement.

(5) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song for 1 minute. After the talking exercise, the subject needs to hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(6) *Grimace.* The test subject shall grimace by smiling or frowning for 15 seconds. After the grimace exercise, the subject needs to hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(7) *Bending Over.* The test subject shall bend at the waist as if he or she were to touch his or her toes for 1 minute. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units that prohibit bending at the waist. After the bending over exercise, the subject needs to hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(8) *Normal Breathing.* Remove and re-don the respirator within a one-minute period. Then, in a normal standing position, without talking, the subject shall breathe normally for 1 minute. After the normal breathing exercise, the subject needs to hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

After the test exercises, the test subject shall be questioned by the test conductor regarding the acceptability of the respirator upon completion of the protocol. If it has become unacceptable, another model of a respirator shall be tried.

(c) *CNP Test Instrument.*—(1) The test instrument shall have an effective audio warning device when the test subject fails to hold his or her breath during the test. The test shall be terminated whenever the test subject failed to hold his or her breath. The test subject may be refitted and retested.

(2) A record of the test needs to be kept on file, assuming the fit test was successful. The record must contain the test subject's name; overall fit factor; make, model and size of respirator used, and date tested.

Part II. Facepiece Fit Checks (Nonmandatory)

A. *Positive pressure check.* Close off the exhalation valve and exhale gently into the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

B. *Negative pressure check.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold

the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

Appendix C to § 1910.1035—Ventilation Chart for Isolation Rooms or Areas (Mandatory)

Under paragraph(d)(5)(vii), the proposed standard requires that when an AFB isolation room or area is vacated by an individual with suspected or confirmed infectious TB, the room or area shall be ventilated according to current CDC recommendations for a removal efficiency of 99.9% before permitting employees to enter without respiratory protection. The following appendix is an excerpt of the CDC recommendations of the air changes per hour (ACH) and time in minutes required for removal efficiencies of 90%, 99% and 99.9% of airborne contaminants (Ex.4B). This table specifies the time necessary to ventilate an isolation room or area, for a given air change per hour, before allowing employees to enter without respiratory protection.

Minutes required for a removal efficiency of:

ACH	90%	99%	99.9%
1	138	276	414
2	69	138	207
3	46	92	138
4	35	69	104
5	28	55	83
6	23	46	69
7	20	39	59
8	17	35	52
9	15	31	46
10	14	28	41
11	13	25	38
12	12	23	35
13	11	21	32
14	10	20	30
15	9	18	28
16	9	17	26
17	8	16	24
18	8	15	23
19	7	15	22
20	7	14	21
25	6	11	17
30	5	9	14
35	4	8	12
40	3	7	10
45	3	6	9
50	3	6	8

This table has been adapted from the formula for the rate of purging airborne contaminants. (Ex. 5–100) Values have been derived from the formula $t_i = [\ln (C_2 + C_2) + (Q + V)] \times 60$, with $t_i = 0$ and $C_1 + C_2$—(removal efficiency + 100), and where:

t_i = initial timepoint
C_1 = initial concentration of contaminants
C_2 = final concentration of contaminants
Q = air flow rate (cubic feet per hour)
V = room volume (cubic feet)
Q + V = ACH

The times given assume perfect mixing of air within the space (i.e., mixing factor = 1). However, perfect mixing usually does not occur, and the mixing factor could be as high as 10 if air distribution is very poor (Ex. 5–99). The required time is derived by multiplying the appropriate time for the table by the mixing factor that has been determined for the booth or room. The factor and required time should be included in the operating instructions provided by the manufacturer of the booth or enclosure, and these instructions should be followed.

Appendix D to § 1910.1035—Ultraviolet Radiation Safety and Health Provisions (Nonmandatory)

This appendix sets forth non-mandatory guidelines on safety and health provisions concerning the use of ultraviolet germicidal irradiation (UVGI). Because the effectiveness of UVGI systems will vary, and the interaction of factors such as humidity, UV intensity, duration of exposure, lamp placement, and air mixing have not been adequately evaluated, employers may choose to use UVGI systems as supplements to the administrative, engineering, and work practice controls required by this standard. OSHA does not consider UVGI as a substitute or replacement for:

(1) Negative pressure;

(2) Exhaust of contaminated air directly to the outside away from intake vents and employees;

(3) High efficiency particulate air (HEPA) filtration of contaminated air before being recirculated to the general facility or exhausted directly outside (permitted only when it cannot be safely discharged).

UVGI Systems

The intent of UVGI systems is to kill or inactivate airborne microorganisms, including *M. tuberculosis.* Two types of systems are generally employed for this purpose: duct irradiation systems, and upper room air irradiation systems. (Floor level UVGI systems are used in some laboratory facilities, but are not specifically discussed in this appendix.) UVGI systems utilize low-pressure mercury vapor lamps that emit radiant energy predominantly at a wavelength of 254 nanometers (nm).[1] In duct irradiation systems, one or more UV tubes are positioned within a duct to irradiate air being exhausted from a room or facility. In upper room air irradiation systems, UV lamps are suspended from a ceiling or mounted on a wall. The lamps are positioned such that air in the upper part of the room is irradiated. The intent is to minimize the levels of UV radiation in the lower part of the room where the occupants are located. These systems rely on air mixing to move the air from the lower portion of the room to the upper portion of the room where it can be irradiated.

Safety and Health Considerations

UV radiation at 254 nm is absorbed by the outer surfaces of the eyes and skin. Overexposure to UVGI can result in photokeratitis (inflammation of the cornea) and/or conjunctivitis (inflammation of the conjunctiva).[2] Keratoconjunctivitis is a reversible condition but can be debilitating while it runs its course. Because there is a latency period before health effects are observed, workers may not recognize this as an occupational injury. Symptoms may include a feeling of sand in the eyes, tearing, and sensitivity to light. Overexposure of the skin to UVGI also can result in erythema (reddening). This effect is also reversible, with recovery occurring within 2 to 3 days.

In 1992, the International Agency for Research on Cancer (IARC) classified UV–C radiation as "probably carcinogenic to humans (Group 2A)".[3] This classification was based on studies suggesting that UV–C radiation can induce skin cancers in animals, DNA and chromosome damage in human cells in vitro, and DNA damage in mammalian skin cells in vivo. In the animal studies, exposure to UV–B could not be excluded; however, the observed effects were greater than expected for UV–B alone.[3] Laboratory studies have shown that UV radiation can activate human immunodeficiency virus (HIV) gene promoters in human cells (genes in HIV that prompt replication of the virus); however, the implications of these findings for humans exposed to UVGI are unknown.[4,5,6,7,8,9]

Occupational Exposure Criteria for Ultraviolet Radiation

In 1972, the National Institute for Occupational Safety and Health (NIOSH) published a recommended exposure limit (REL) for UV radiation to prevent adverse effects on the eyes and skin.[2] The NIOSH REL for UV radiation is wavelength dependent because different wavelengths of ultraviolet radiation have differing abilities to cause skin and eye effects. The American Conference of Governmental Industrial Hygienists (ACGIH) also has a Threshold Limit Value® for UV radiation that is identical to the REL in this spectral region.[10] It should be noted that photosensitive individuals and those concomitantly exposed to photosensitizing agents (including certain medications) may not be protected by these occupational exposure limits.[10]

The term relative spectral effectiveness is used to compare UV sources with a source producing UV radiation only at 270 nm, the wavelength of maximum sensitivity for corneal injury. For example, the relative spectral effectiveness (S_λ) at 254 nm is 0.5; therefore, twice as much energy is required at 254 nm to produce the same biological effect at 270 nm. Thus, at 254 nm, the NIOSH REL is 0.006 joules per square centimeter (J/cm²), and at 270 nm it is 0.003 J/cm².

For germicidal lamps, proper use of the REL (or TLV) requires that the measured irradiance level (E) in microwatts per square centimeter (μW/cm²) be multiplied by the relative spectral effectiveness at 254 nm (0.5) to obtain the effective irradiance (E_{eff}). The maximum permissible exposure time (t) for workers with unprotected eyes and skin can then be read directly from Table 1 for selected values of E_{eff}, or can be calculated (in seconds) by dividing 0.003 J/cm² (the NIOSH REL at 270 nm) by E_{eff} in W/cm². To protect workers who are exposed to germicidal UV radiation for eight hours per day, the measured irradiance (E), should be ≤0.2 μW/cm². This is calculated by using Table 1 to obtain E_{eff} (0.1 μW/cm²), and then dividing by S_λ (0.5).

Example: If the measured irradiance was 0.4 μW/cm², then the maximum permissible exposure time is 15,000 seconds, or approximately 4 hours as shown below:

$$E_{eff} = E \times S_\lambda$$
$$= 0.4\ \mu W/cm^2 \times 0.5$$
$$= 0.2\ \mu W/cm^2$$
$$t(sec) = \frac{0.003\ J/cm^2}{E_{eff}\ (W/cm^2)}$$
$$= \frac{0.003\ J/cm^2}{0.2 \times 10^{-6}\ W/cm^2}$$
$$= 15{,}000\ sec.\ (approx\ 4\ hours)$$

TABLE 1—MAXIMUM PERMISSIBLE EXPOSURE TIMES FOR SELECTED VALUES OF E_{eff}.

Duration of exposure per day	Effective irradiance E_{eff} ($\mu W/cm^2$)
8 hrs	0.1
4 hrs	0.2
2 hrs	0.4
1 hr	0.8
30 min	1.7
15 min	3.3
10 min	5.0
5 min	10.0

This table was adapted from a table in *Criteria for a Recommended Standard . . . . Occupational Exposure to Ultraviolet Radiation.*[2] Maximum permissible exposure times refer to workers with unprotected eyes and skin.

Measurement Equipment. A UV radiometer can be used to measure the irradiance levels in the room and to document lamp output. Some UV measurement systems rely on the use of a detector or probe which is most sensitive at 254 nm, while others rely on the use of a broad-band radiometer with an actinic probe. The latter instrument has a response that accounts for the wavelength dependence of the REL, allowing direct measurement of the effective irradiance (E_{eff}).[11] While both types of systems are acceptable, persons performing the measurements should be aware of the differences so that the measurements obtained are appropriately compared with the recommended occupational exposure limits. Equipment used to measure UV radiation should be maintained and calibrated on a regular schedule, as recommended by the manufacturer.

UVGI Safety and Health Program

Employers should consult with persons having expertise in industrial hygiene, engineering, and/or health physics before designing and installing UVGI systems. In addition, the following guidelines should be used to protect workers from overexposure to UV radiation. These guidelines should be incorporated into a UVGI safety and health program. One person should be given responsibility for managing the program.

(1) Exposure Monitoring

a. *Upper Air Irradiation Systems.* Before an upper air UVGI system is activated in the workplace, exposure monitoring should be conducted to determine the levels of UV radiation in the room. The UV radiation levels will be affected by the position of the lamp, fixture design (including presence and position of baffles and louvers), tube type, room dimensions, and presence of UV absorbing or reflecting materials. At a minimum, UV radiation measurements should be made with the detector directly facing the lamp at head or eye height (with maximum levels recorded), to assess the potential UV exposure to the eyes, the most sensitive organ. Because workers typically move around a room or area while performing their duties, it is often not possible to predict how long a worker will be in a given location, nor is it practical to attempt to control exposures administratively by limiting the duration of exposure at a given location. Therefore, the exposure monitoring should be conducted in representative locations to adequately assess the range of potential worker exposures. Worker exposures should be maintained below the NIOSH REL[2] and ACGIH TLV[10] for ultraviolet radiation.

UV radiation measurements should be made: (1) at the time of initial installation of the UVGI system; (2) whenever new tubes are installed; and (3) whenever modifications are made to the UVGI system or to the room that may affect worker exposures (i.e., adjustment of fixture height, location, or position of louvers; addition of UV absorbing or reflecting materials; and changes in room dimensions).

UV radiation measurements may also be obtained to document the UV output of the lamp for tube replacement or other purposes. Because these types of measurements are commonly done close to the source of the UV output, the person obtaining the measurements may be exposed to high levels of UV radiation. UV radiation levels up to 840 $\mu W/cm^2$ (420 μ/cm^2 effective irradiance) have been measured at a distance of four inches from the face of a 30W tube that had been in use several months.[12] Using the NIOSH REL, this exposure level would result in a permissible exposure time of only 7 seconds for workers with unprotected eyes and skin. Because of the high irradiance levels, it would not be practical in this situation to control UV exposures by limiting exposure duration. Skin and eye protection would be needed to protect the worker when making UV measurements close to the source.

b. *Duct Irradiation Systems.* Duct irradiation systems frequently involve the placement of several UV tubes within a section of duct work. Thus, workers who have contact with these lamps are potentially exposed to high levels of UV radiation. This presents a hazard for maintenance workers and others who are responsible for documenting the UV output of these lamps. At one facility where a duct irradiation system was used, UV radiation levels up to 950 $\mu W/cm^2$ were measured at a distance of approximately three feet from a bank of four 39W UV tubes.[11] In this situation, the NIOSH REL would be exceeded in about 6 seconds; therefore, skin and eye protection would be needed to prevent worker overexposures to UV radiation. Most UV exposures resulting from duct irradiation systems can be avoided by inactivating the lamps before maintenance work is done, and providing an access port for viewing the lamps during preventive maintenance inspections. These control measures are discussed further in the Control Methods section of this appendix.

(2) Control Measures

The following control measures should be used to prevent or reduce UV exposures.

a. *Engineering Controls.* 1. In upper air irradiation systems, the UV tubes in the fixture should not be visible from any usual location/position in the room. The fixtures should contain baffles or louvers that are appropriately positioned to direct the UV irradiation to the upper air space. The baffles and louvers should be constructed so that they cannot be easily bent or deformed.

2. In upper air irradiation systems, all highly UV reflecting material should be removed, replaced, or covered. Reflectance values for various materials have been published.[13] Etched aluminum and chromium are examples of materials that have high reflectance values (88 and 45% reflectance, respectively) for 254 nm radiation. Unpainted white wall plaster is reported to have reflectance values of 40–60%.[13]

3. UV-absorbing paints (such as those containing titanium dioxide) can be used on ceilings and walls to minimize reflectance of UV in the occupied space, as needed.

4. The on/off switch for the UVGI lamps should not be located on the same switch as the general room lighting. In addition, these switches should be positioned in such a location that only authorized persons have access to them and they should be locked to ensure that they are not accidentally turned on or off.

5. In duct irradiation systems, there should be an access panel for conducting routine maintenance, monitoring, and cleaning. This access panel should have an interlock or other device to ensure that the tubes are deactivated whenever the panel is opened. To prevent unnecessary UV exposures to maintenance personnel, this port should have a window for viewing the tubes during routine inspections. Ordinary glass (not quartz) and plastics (polycarbonate and polymethylmethacrylate) are sufficient to filter out the UV radiation.[14]

6. All UVGI systems should be inactivated prior to maintenance activity in the affected areas, such as when maintenance workers replace lamps or when entering the upper air space for room maintenance, renovation, or repair work.

b. *Personal Protective Equipment.* UV exposures should be maintained below existing recommended levels. Despite the use of the engineering controls listed above, there may be situations when worker exposures exceed the NIOSH REL, such as when UV measurements are being made close to the lamp source in order to document lamp output, or when maintenance procedures must be performed in areas where UVGI systems are activated. In these and other situations where the NIOSH REL is exceeded, personal protective equipment is needed to prevent worker overexposure to UV radiation. This includes the use of UV-absorbing eyewear with side-shields, head, neck, and face covering opaque to UV radiation, gloves, and long-sleeved garments. The weave of the fabric has been shown to be the major factor affecting transmission of UV radiation,[15] thus, tightly woven fabrics are recommended. UV-absorbing sunscreens with solar-protection factors of 15 or higher may help protect photosensitive persons.[16]

(3) Labeling

Warning labels should be placed on UV lamp fixtures in upper air irradiation systems and on access panels in duct irradiation systems to alert workers and other room occupants to this potential hazard. These warning labels should be of sufficient size to be visible to room occupants and should be in the appropriate language(s). Examples of warning labels are shown below:

BILLING CODE 4510-26-P

CAUTION
HIGH INTENSITY ULTRAVIOLET ENERGY
PROTECT EYES AND SKIN

CAUTION
HIGH INTENSITY ULTRAVIOLET ENERGY
TURN OFF LAMP BEFORE ENTERING
UPPER ROOM OR DUCT

BILLING CODE 4510-26-C

(4) Training

All workers who have potential exposure to UV radiation from UVGI systems should be receiving training on the hazards, relevant symptoms, and precautions concerning exposure. This training should include specific information on:

a. The rationale for use of UVGI and general principles of operation, including its limitations;

b. Control measures used to prevent or reduce UV radiation exposure;

c. Health effects associated with overexposure to UV radiation (including the potential for additive exposure from other UV sources, such as solar radiation and welding);

d. Recognition of the symptoms of eye and skin damage; and

e. Special precautions to be taken by workers to prevent overexposure to UV radiation (including the use of personal protective equipment).

(5) Medical Recommendations

The worker's medical history should be obtained to determine if the worker suffers from any condition that may be exacerbated by exposure to UV radiation. Workers should be advised that any eye or skin irritation that develops after acute exposure to UV radiation, or any skin lesion that appears on skin repeatedly exposed to UV radiation should be examined by a physician.

(6) Recordkeeping

The employer should maintain accurate and complete records pertaining to the following:

a. Exposure monitoring;

b. Instrument calibration;

c. Documentation of health effects;

d. Training;

e. Maintenance of UVGI systems, including cleaning and replacement of tubes.

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Appendix E to § 1910.1035—Performance Monitoring Procedures for HEPA Filters (Nonmandatory)

This appendix offers nonmandatory guidance on design considerations and performance monitoring of HEPA filters used in air systems that carry air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* (e.g., recirculation into building circulating air system, exhausting outdoors near air intakes, etc.).

Both OSHA and CDC recommend against the recirculation of air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* into the general circulating air system of the building or other opportunities where such air may become entrained into the circulating air system (e.g., outdoor exhausting near intakes, transfer to heat wheels, etc.). When recirculation is unavoidable, the air should be cleaned with HEPA filtration. In order to assure effective functioning of these systems, they should be properly designed, installed, and maintained.

Design of HEPA Filtration Systems

The following elements should be considered for incorporation into the design of HEPA filtration systems:

1. Provide upstream prefiltering to reduce dust that may plug the HEPA filter.

2. Provide worker-entry into housings for visual examinations and probe scanning for leaks of filter media and frame-to-filter interfaces. In addition, adequate access should be provided to allow for replacement of the HEPA filters and pre-filters without contaminating the work area by unintentional jarring or dropping of the filters.

3. Provide devices for measuring HEPA filter loading (e.g., pressure differential across a filter).

4. Provide appropriate mounting frames and seals to minimize frame-to-filter leakage.

5. Specify filter media to match operating criteria (e.g., face velocity, volumetric flow rate, pressure drop, etc.).

6. Design upstream and downstream duct to facilitate performance monitoring (e.g., good air mixing for uniform dispersal of challenge aerosols, sectioning to allow isolation of leaks, etc.).

7. HEPA filters must operate in dry airstreams. Tests have shown that exposure

to high humidity for a period of five hours will result in a threefold increase in particle penetration.

Maintenance of HEPA Filtration Systems

HEPA filtration systems are generally passive systems without moving parts, so the majority of filter maintenance activities are associated with performance monitoring. In terms of performance monitoring, HEPA filters are to be monitored for *filter loading* and for possible *leakage* every 6 months, whenever filters are changed, and more often if necessary to maintain effectiveness. Leaks in HEPA filters can occur in the following ways: (1) in the filter media, (2) in the bond between media and frame, (3) in the frame gasket, (4) in the support frame, and (5) in between the frame and the wall.

Testing of HEPA filters after installation is used to detect leaks associated with shipping damage and with installation problems such as handling damage, variations in gasket thickness and poorly formed gasket corners.

Periodic testing detects deterioration of components, relaxation of gaskets, clamping devices, weld cracks or other leaks that may develop during use. This deterioration will take place even if the system is not on-line and in use.

Monitoring for Filter Loading

HEPA filtration systems become loaded with particulate matter through use. Although this loading improves particulate arrestance, it eventually increases the pressure drop across the filter assembly. Consequently, the flow capacity begins to diminish and bypass leakage at the frame-to-filter interface increases. Therefore, these filters need to be monitored and changed.

It is imperative that the differential pressures across the HEPA filter remain below the maximum operating resistance level set by the manufacturer and stamped on the filter label. Filter penetration by contaminants can occur when HEPA filters exceed the manufacturer's maximum resistance rating, making the system ineffective.

The operating resistance level is determined by measuring the pressure differential across the filter through use of a pressure sensing device. Measurements of differential pressure across the HEPA filters should be made when the prefilters have been removed. These measurements should be used to predict future HEPA filter replacement or for determining the need for immediate HEPA filter replacement.

Additional control measures can be used to detect a differential pressure that exceeds the maximum operating resistance which signals the alarm's set point (i.e., audible/visual alarms or computerized error messages).

All pressure measurements should be logged and retained in accordance with paragraph (i)(4)(ii) of this standard.

Monitoring for In-service Filter Leakage

In CDC's "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Facilities" [Ex. 4B], the dioctal phthalate (DOP) penetration test as described in Chapter 25 of the *1992 Systems Handbook from the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)* is offered as a method of performance monitoring HEPA filters. The basis of this well-recognized test is to challenge a HEPA filter assembly with a uniformly distributed cloud of 0.3 μm (mass median diameter) DOP aerosol and measure the DOP smoke upstream and downstream with a light-scattering photometer. Penetration "P" through the filter assembly is the performance criterion typically specified and is defined as:

$$P = 100\left(\frac{\text{downstream concentration}}{\text{upstream concentration}}\right)\%$$

Penetration is related to filter efficiency "E" by the equation:

$$E = 100(1-P)\%$$

Therefore, an efficiency of 99.97% is equivalent to P=0.0003.

Other Filter Testing Methods

There are many recognized HEPA filter testing standards. Most of these standards utilize DOP aerosol to challenge the HEPA filters and provide penetration performance data for 0.3 μm size particles. Since TB droplet nuclei range in size from 1 to 5 μm, the DOP aerosol challenge is indicative of droplet nuclei penetration. Some manufacturers may provide bench test data for filtration efficiency versus particle size which may be useful information when selecting filters but may be difficult to duplicate in the field for in-service testing. These test standards include:

1. Standard UL 586, *High-Efficiency, Particulate, Air Filter Units* as published by Underwriters Laboratories, 1990 (Ex. 7–227). This test is designed for bench testing at the factory and does not include the frame-to-filter bypass leakage measured by in-service testing. This test method uses a light beam-photocell combination (photometer) to measure the density of the DOP smoke in the air.

2. Standard ASTM F1471–92, *Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System*, as published by the American Society for Testing and Materials, 1993 (Ex. 7–222). This test can be used in the field for in-service testing of HEPA filters. This test method utilizes a laser aerosol spectrometer which can count particles by particle size.

3. Standard NSF–49, Appendix B, *HEPA Filter Leak Test for Biosafety Cabinets*, as published by the National Sanitation Foundation (Ex. 7–226). This test is designed for in-service HEPA filter testing and utilizes a portable photometer probe which can be passed over the filter frame perimeter to check for bypass leaks.

Unfortunately, there are hazards associated with exposure to DOP. The Material Safety Data Sheet for DOP reports irritation, nausea and numbness as symptoms associated with DOP inhalation. Nausea, diarrhea, reproductive effects, liver enlargement, and cancer are effects associated with ingestion of DOP. Therefore, performance testing that does not utilize DOP should also be considered.

Alternative methods are in use and being developed that capitalize on recently developed optical particle counters (e.g., lasers) that can count particles at specified sizes. For example, the National Environmental Balancing Bureau (NEBB) publishes *Procedural Standards for Certified Testing of Clean rooms'* Section 8.3 presents an *Ambient Particle Aerosol Challenge Method* that utilizes new-generation optical particle counters to measure upstream and downstream concentrations of particles of a specified size (Ex. 7–228). Only ambient air is measured and no aerosol is generated. This method may have merit for TB applications because ambient air has a statistically significant quantity of particles less than 3.0 μm, but at the same time, this high number of particles may overload the instrument.

Because a dark DOP smoke is not required to attenuate light as is the case with a photometer, recently developed optical particle counters offer the opportunity for an alternative non-toxic challenge aerosol like that described in the proposed Standard 52.2 *Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size* from the American Society of Heating, Refrigerating and Air-Conditioning Engineers. This non-toxic challenge aerosol is based upon potassium chloride (KC) particles which are generated in the 0.3 to 10 μm size range (Ex. 7–224).

Filter Testing Performance Criteria

The following should be considered when setting performance testing criteria: (1) Failure of a HEPA filter in a recirculating air system can have serious consequences; (2) HEPA filters are more efficient in removing droplet nuclei than DOP due to the larger particle size of droplet nuclei; (3) In-service filter penetration testing should match factory testing that is P≤ 0.0003 for 0.3μm challenge particle; (4) The differential pressure drop across a HEPA filter from dirt loading should never exceed the maximum operating resistance set by the manufacturer and stamped on the filter label; (5) Penetration should not exceed 0.0001 when performing localized penetration scanning with a photometer probe around filter frames and across the filter face.

Appendix F to § 1910.1035—A Guide to Writing an Exposure Control Plan (Non-mandatory)

A Guide to Writing an Exposure Control Plan is a non-mandatory appendix developed to assist employers in complying with § 1910.1035 Occupational Exposure to Tuberculosis. This standard requires employers to have a written Exposure Control Plan (ECP) documenting procedures they use to control exposure to Tuberculosis (TB).

The following guide aids employers in writing the required ECP by reviewing the standard's requirements and providing examples of policy, narrative statements, and a "fill-in-the-blank" sample ECP. Before using this guide, employers will need to read the standard. Once familiar with the standard, they can use this appendix to develop a program specific to their facility.

Employers are not required to use the sample ECP included in this guide. They may develop their own format and may include the TB ECP in their overall infection control plan. However, the ECP must include all OSHA required information and all policies and procedures in the plan must be implemented whether the ECP is a separate plan or included in another document. If the TB elements are included in an overall infection control plan, the employer must develop an index referring the reader to their locations within that plan. Since the elements in the sample ECP are the minimum necessary to meet the standard's requirements, employers may enhance the sample with more comprehensive procedures if they wish.

OSHA developed the guide to help employers comply with the standard. The information contained in this Guide to Writing an Exposure Control Plan for Occupational Exposure to Tuberculosis is not considered to be a substitute for the OSH Act or any provisions of the OSHA Standard. It provides general guidance for a particular standards-related topic and should not be considered a legal authority for compliance with OSHA requirements. The reader should consult the OSHA standard in its entirety for specific compliance requirements.

Employers who have additional questions concerning this standard may contact the nearest OSHA office.

How to Use This Guide

A Guide to Writing An Exposure Control Plan has two components: Notes to the Employer and a Sample Exposure Control Plan. Notes to the Employer consists of explanations for some of the standard's ECP requirements, guidance about writing an ECP and information about practices common to a variety of employers. Notes to the Employer is organized to correspond chronologically to the Sample Exposure Control Plan.

The Sample Exposure Control Plan contains examples of policy statements and procedures. It has a number of sections and is organized in program development form. Although it does not always follow the exact sequence of the standard, all elements of the standard are included. Each section of the Sample ECP is cross-referenced to the specific provisions of the standard using the letter and numerical paragraph designation. The Sample ECP has blank speces to be completed by the employer with site-specific information.

The standard provides a tiered approach to compliance. Not all provisions apply to all facilities. This approach accommodates facilities with varying factors. OSHA's sample ECP accommodates the difference between these types of facilities.

(1) The first tier is employers (other than the operators of a laboratory) that do not admit or provide medical services to individuals with suspected or confirmed infectious TB, have had no cases of confirmed TB in the past 12 months and are located in counties that in the past two years have had zero cases of confirmed infectious TB in one year and fewer than 6 cases of confirmed infectious TB in the other year. Work settings in this tier have presented minimal occupational exposure and therefore may choose to comply with only a limited number of provisions. (See Appendix A). Required elements for these facilities are underlined in the sample ECP. They include: procedures for exposure determination, prompt identification of individuals with suspected or confirmed infectious TB, exposure incident reporting, and procedures for referring individuals with suspected or confirmed TB to facilities with appropriate isolation capabilities.

Employers who wish to have a minimal exposure control plan as described in Appendix A must document the number of cases of tuberculosis reported in their county in the previous twelve month reporting period and the number of individuals with confirmed tuberculosis encountered in the facility in the previous twelve months.

(2) The second tier encompasses employers who use early identification and transfer procedures rather than admit individuals with suspected or confirmed infectious TB. They typically do not have AFB isolation rooms or autopsy rooms or conduct high-hazard procedures in their facility. These facilities can omit the sections about AFB isolation rooms and engineering controls since these provisions do not apply to them unless they have to use temporarily isolate when it is not possible to transfer individuals with suspected or confirmed infectious TB within five hours. Paragraph (c)(2)(ii) lists the requirements of the ECP for this type of facility. In the sample ECP, certain sections are starred (*) to assist facilities that transfer individuals with suspected or confirmed infectious TB within five hours of discovery. These employers may omit the starred sections when writing their ECP.

(3) The third tier covers employers who admit and provide medical services to individuals with suspected or confirmed infectious TB. These employers are required to have AFB isolation rooms and procedures to protect employees working in or around those rooms. In addition, they must have maintenance schedules for engineering controls as well as other protections. Paragraph (c)(2)(iii) lists specific requirements for these facilities. However, if these employers transfer some individuals with suspected or confirmed infectious TB as well as admit and provide medical services for those individuals, the facility must have procedures for the transfer. The sample ECP includes all required ECP elements thus providing guidance to facilities that admit and provide medical services.

Sample Exposure Control Plan Notes to the Employer

Exposure Control Plan (c)(2)

Policies and Program Administration

The standard requires each employer to have a written exposure control plan and to review and update it annually. The Sample Exposure Control Plan has examples of statements reflecting the employer's policy. Blanks are provided for the employer to designate the facility name.

Employers have limited ECP provisions (see Appendix A) if they (1) do not admit or provide medical services to individuals with suspected or confirmed infectious TB, (2) have had no case of confirmed infectious TB in the past 12 months and (3) are located in a county that, in the past 2 years, has had zero cases of confirmed infectious TB reported in one year and fewer than 6 cases of confirmed infectious TB reported in the other year. (Paragraph (b)). In addition, these employers must determine the number of reported cases in the county for the last twelve month reporting period and record it in the ECP. They must also document the number of confirmed cases of TB in their facilities. The numbers can be recorded in this first section of the ECP.

The written ECP must be accessible to employees, OSHA and NIOSH representatives for viewing and copying as necessary. (Paragraph (c)(2)(vii)) A sample statement regarding the accessibility is written below. OSHA does not require this statement to be written. However, employers may include this type of statement in their ECP to clearly define the company's/organization's policy.

Sample Statement: Employees and/or OSHA or NIOSH representatives may view the ECP at _____ (location of ECP)_____ and may copy the plan as necessary.

Designating a specific person to be responsible for maintaining the exposure control plan is not a requirement of the regulation. However, it is a common practice.

Sample Statement: _____ (responsible person/department) _____ is responsible for maintaining, reviewing and updating the Exposure Control Plan (ECP).

Employee Exposure Determination (Paragraph (c)(1)(i)(A))

In paragraph (c)(1)(i) & (ii), OSHA requires employers to review job classifications in their facilities and determine which employees have occupational exposure to infectious TB (Occupational exposure is defined in paragraph (j) of the standard). All TB exposure determinations must be made without regard to the use of respiratory protection.

There are two basic employee job classifications for employers to consider: (1) jobs in which all employees have occupational exposure to infectious tuberculosis because of the very nature of the job such as respiratory therapists and nurses who work on a pulmonary unit and (2) jobs that result in occupational exposure to tuberculosis when certain tasks or procedures are performed; for example, dietary personnel delivering meals to an individual in AFB isolation or housekeeping staff cleaning an AFB isolation room.

All employees in the first job classification are considered to have occupational exposure to infectious TB, so specific job tasks for this classification are not required to be defined. In the second category, however, only some employees may have occupational exposure and , then, only when performing certain tasks. Therefore, OSHA requires the employer to define those tasks. Examples of tasks in which employees may have occupational exposure to TB include: transporting patients; entering occupied isolation areas to clean or deliver meals; performing maintenance on HVAC systems that exhaust air from occupied AFB isolation rooms; and, performing suctioning and/or aerosolized treatments on patients with suspected/confirmed TB. Tasks may be listed in closely related groups or as individual tasks.

Not all employers have both types of job classifications. Employers are not required to complete both categories unless there are job classifications that pertain to each.

Employee Notification of TB Hazards (Paragraph (c)(2)(i)(B))

The standard requires that the employer include procedures in the ECP "for providing information about individuals with suspected or confirmed infectious TB or about air that may reasonably be anticipated to contain aerosolized *M. tuberculosis* to occupationally exposed employees who need this information in order to take proper precautions."

The employer must assure that employees have enough information to take proper precautions against exposure to TB. However, the employer must also consider the medical confidentiality of the infectious individual and assure that this confidentiality is maintained to the extent possible and consistent with applicable laws.

Employers are expected to define responsibilities and outline procedures used to inform employees of TB hazards. OSHA requires that an employer notify employees by posting signs and labeling ventilation ducts. (Paragraphs (h) (1) & (2))

The following sample statements provide an abbreviated example of some procedures that might be used in a health care facility. These statements are not OSHA requirements but examples.

Sample Statement: As soon as infectious TB is suspected the nurse in charge of the unit must be informed. The nurse in charge of the unit also must assure that (1) the individual is placed in an AFB isolation room marked with a sign: "No Admittance Without Wearing a Type N95 of More Protective Respirator", (2) the nursing supervisor and infection control specialist are notified, (3) all staff working on the unit are notified, and (4) proper equipment is obtained.

If the individual with suspected or confirmed infectious TB must be transferred to be placed in an isolation room, all procedures required by this ECP will be utilized, such as masking the individual or if that cannot be done, having the employee don a respirator.

The nurse in charge of the unit immediately notifies the facility engineer to assure that (1) the engineering controls are working properly and (2) all maintenance and contract employees are informed of the potential TB hazard. _____ (maintenance engineer) _____ is to immediately check to assure that all ducts carrying exhaust air from the room occupied by the individual with suspected or confirmed infectious TB are labeled "Contaminated air—Respiratory Protection Required".

Dietary, laboratory, and other test order sheets are specially noted to indicate "Respiratory Isolation—No admittance without an N95 or More Protective Respirator."

In addition to informing their own employees, host employers are required to notify contractors of TB hazards. Some contractors and contracting employees may be required to enter or work in AFB isolation areas or other areas in the facility where occupational exposure is likely to occur or where air systems may reasonably be anticipated to contain aerosolized *M. tuberculosis*. Since host employers know the location of the hazards, they must inform the contractor. (Paragraph (d)(6))

OSHA requires the employer to post signs at the entrance to (1) rooms or areas used to isolate individuals with suspected or confirmed infectious TB, (2) areas where procedures or services are being performed on an individual with suspected or confirmed infectious tuberculosis and (3) clinical/research laboratories where *M. tuberculosis* is present. (Paragraph (h)(2))

Signs must include a picture of a stop sign, have a red background with white lettering and say: "No Admittance Without Wearing a N95 or More Protective Respirator." The employer may include additional language provided the major message on the sign remains clear. (Paragraph (h)(2)(iii))

After the room is vacated, the sign must remain posted at the entrance until the room or area is ventilated, using the USPHS recommendations for removal efficiency of 99.9%, for the time necessary to permit entry without the use of a respirator. See Appendix C of the standard. (Paragraph (h)(2)(ii))

The room does not need to be ventilated and the sign may be removed immediately if both of the following criteria are met (1) the room was occupied by an individual with suspected infectious tuberculosis and (2) that individual is medically determined to be non-infectious. (Paragraph (h)(2)(ii))

If employers have engineering controls, those controls must be labeled appropriately and the labeling procedures must be noted in the ECP. (Paragraph (h)(1))

The type of HVAC system in the facility will determine where ducts are labeled. Ducts that have HEPA filtration must be labeled at all duct access points located prior to the HEPA filter. HVAC systems that exhaust air directly to the outside must be labeled at all access points, fans and exhaust outlets. (Paragraph (h)(1))

Signs at the entrance to clinical or research laboratories and autopsy suites must include the biohazard symbol, name of the laboratory director or other designated responsible person, *M. tuberculosis*, and special requirements for entering the laboratory or autopsy room. In addition, contaminated laboratory wastes must be labeled with the biohazard symbol or be placed in a red container. (Paragraph (h)(2)(iv))

Although the standard does not require noting this in the ECP, employers may want to document where engineering controls are located in their facility. If an employer chooses to note this, sample verbiage may be:

Sample Statement: _____ (list type of engineering controls in place) _____ engineering controls are used in the Bronchoscopy suite located on the third floor of this building.

OR

There are no high-hazard procedures performed in this facility. There are no engineering controls in place.

Exposure Incident Reporting (Paragraph (c)(2)(i)(C))

The employer must investigate circumstances surrounding TB Skin Test conversions and exposure incidents to determine the cause and ways to make changes to prevent similar occurrences. (Paragraph (g)(4)(iv))

The procedures used to report and then to evaluate the incident must be included in this section of the ECP. In addition, employees are required to report incidents to a particular department or person. (Paragraph (c)(2)(i)(C)) This information must be included here, also.

Sample Statement: Exposure incidents are to be reported to _____ (name and department)

_____

The reporting procedures utilized at __ (organization's name) __ are:

_____

_____

_____

Procedures for evaluating the circumstances surrounding the exposure incident at _____ (organization's name) _____ are:

_____

_____

_____

Prompt Identification of Individuals With Suspected or Confirmed Infectious TB (Paragraph (c)(2)(ii) & (iii)(A))

Each facility is required to establish procedures for promptly identifying individuals with suspected or confirmed infectious TB. The standard considers "suspected or confirmed infectious TB" to be:

"A potential disease state in which an individual is known or with reasonable diligence should be known, by the employer to have one or more of the following conditions, unless the individual's condition has been medically determined to result from a cause other than TB: (1) to be infected with *M. tuberculosis* and to have signs and symptoms of TB; (2) to have a positive acid fast bacilla (AFB) smear; or (3) to have a persistent cough lasting 3 or more weeks and two or more symptoms of active TB (e.g., bloody sputum, night sweats, weight loss, fever, anorexia)". (Paragraph (j))

This definition must be included in the early identification criteria. Although not mandated by OSHA, some employers add high risk factors like IV drug use,

immunocompromised status, recent immigration from Asia, Africa, Latin America, etc.

Some employers use the *1994 CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care Facilities* to assist in early identification of TB (Ex. 4). These guidelines state, "TB is not distributed evenly throughout all segments of the U.S. population" and defines groups known to have a higher prevalence of TB infection. These high risk groups include "foreign born persons from Asia, Africa, Latin America and the Caribbean; medically under served populations(e.g. some African-Americans, Hispanics, Asians, and Pacific Islanders, American Indians, and Alaskan Natives); homeless persons; current or former correctional-facility inmates; alcoholics; intravenous drug-users; and the elderly." Persons with certain medical conditions have a greater risk of progression from latent infection to active disease. These medical conditions are defined in the 1994 CDC guidelines as: "HIV infection, silicosis, diabetes mellitus, gastrectomy or jejuno-ileal bypass, being greater than 10% below ideal body weight, chronic renal failure or renal dialysis, immuno-suppression due to drug therapy and some malignancies."

There are several ways to conduct early identification. Many employers use a questionnaire to quickly assess the individual's health status at intake or admission. Some employers located in communities considered to have a high incidence of TB or working with high risk populations use chest x-rays. Since use of a questionnaire is a common practice, OSHA included one in the Sample ECP. This is not mandatory but is a guide for those employers who may wish to develop a questionnaire.

An example of a policy statement referring to use of a questionnaire is:

Sample Statement: ____ (organization's name) _____ uses the attached questionnaire to assess the individual's health status as related to suspected or confirmed infectious TB. An individual who has two or more of the symptoms of Tuberculosis in addition to a prolonged cough, a positive AFB smear or is known by ____ (organization's name) _____ or any of its employees to be infected with *M. tuberculosis* is categorized as having suspected or confirmed infectious TB.

Employers Who Transfer (Paragraph (c)(2)(ii))

Procedures for Transfer of Individuals With Suspected or Confirmed Tuberculosis

Employers that transfer rather than admit and provide medical services must document their procedures for isolating an individual while awaiting transfer such as segregating and masking the individual and procedures used if the individual cannot be transferred within 5 hours. This includes documenting the type of equipment used (e.g. masks, respirators).

In the remainder of the sample ECP, employers who transfer suspected or confirmed infectious TB within 5 hours of identification may omit starred sections if they do not have isolation rooms and engineering controls.

Employers who do not admit or provide medical services to individuals with suspected or confirmed infectious TB, have not encountered any individuals with confirmed TB in their facility in the past twelve months and who are located in counties that in the past two years have had zero cases of confirmed TB reported in one year and fewer than 6 cases in the other year and wish to claim reduced responsibilities must be prepared to transfer such individuals. Therefore, the standard requires these facilities to have procedures for transferring an individual with suspected or confirmed infectious TB, if encountered. (Appendix A)

Employers Who Admit and Provide Medical Services (Paragraph(c)(2)(iii))

Procedures for Isolating and Managing Care (Paragraph (c)(2)(iii)(B))

The employer must document procedures for isolating individuals with suspected or confirmed infectious TB such as using AFB isolation rooms and procedures for managing care to minimize employee exposure.

Procedures listed in the Sample ECP are limited to the standard requirements. Employers should add any other isolation and segregation procedures used in their facility to assure that their ECP reflects the way they manage isolation and segregation.

Employers who transfer individuals with suspected or confirmed infectious TB do not need to include procedures for isolating and managing care. However, as stated above, they must list procedures for transferring the individual and segregating and masking these individuals while awaiting transfer. In addition, employers who do not perform high hazard procedures in their facilities do not need to notate anything in the high hazard section of the ECP. These employers may wish to enhance their ECP by clarifying their functions, however. A sample of a statement to enhance and clarify is:

Sample Statement: (1) This facility transfers individuals with suspected or confirmed infectious TB within 5 hours of identification, (2) high-hazard procedures are not performed in this facility, (3) there are no engineering controls for TB control at this facility.

Again, the above statements are not OSHA requirements.

Each employer who admits or provides services to individuals with suspected or confirmed infectious TB is required to institute policies and procedures to address the following issues. The procedures in the Sample ECP are an abbreviated version of the OSHA requirements. (Paragraph (c)(2)(iii)(B) (1 through 5)):

- Minimizing the time the suspected/confirmed infectious individual spends outside the AFB isolation room.
- Minimizing the time of employee exposure in AFB isolation rooms or areas by combining as many tasks as possible into one entry.
- Minimizing the number of workers entering AFB isolation rooms.
- Using a properly fitted mask (e.g. surgical mask or valveless respirator) on individuals with suspected or confirmed infectious TB or transporting these individuals in portable containment engineering control when transport or relocation outside of AFB isolation rooms or areas is unavoidable.
- Delaying of elective transport or relocation.
- Providing services in an AFB isolation room or area to the extent feasible (e.g. portable x-ray).
- Assuring that the individual is returned to the isolation room as soon as is practical after the completion of the service or procedure.
- Delaying elective high-hazard procedures or elective surgery until the individual with suspected or confirmed infectious TB is determined to be non-infectious.

Some facilities may have extensive procedures while others may have less involved procedures. The extensiveness of the procedures is determined by the type of tasks and services provided the individual with suspected or confirmed infectious TB in that facility.

Whatever the procedures are, the employer is expected to assure that the procedures comply with the OSHA requirement and that all procedures are implemented.

*High-Hazard Procedures (Paragraph (c)(2)(iii)(C))

The ECP must contain a list of high-hazard procedures performed in the facility.

(*)All high-hazard procedures that may aerosolize *M. tuberculosis* must be performed in an AFB isolation room, an AFB isolation area, or in a special AFB containment booth. Examples of high hazard procedures include bronchoscopy, pulmonary function testing, endoscopy and autopsy on an individual with suspected or confirmed infectious TB.

*Engineering Controls Maintenance Schedules and Records (Paragraph (c)(2)(iii)(D))

Employers who have engineering controls in any part of their facility must include a maintenance and performance monitoring schedule in this section of the ECP. (Appendix E)

Sample Statement: Engineering controls for infectious TB are inspected, maintained and undergo performance monitoring according to the following schedule:

_____

_____

_____

Clinical and Research Laboratory Biosafety Procedures Paragraph (c)(2)(iv))

OSHA requires that the facility's laboratory director determine and document the biosafety level at which the laboratory operates.

In addition, the laboratory director must determine and document the need for (1) controlled access, (2) anterooms, (3) sealed windows, (4) directional airflow, (5) preventing recirculation of laboratory exhaust air, (6) filtration of exhaust air before discharge to the outside and (7) thimble exhaust connections for biological safety cabinets.

The laboratory director must consult and follow the guidelines found in the OSHA regulation.

Home Health Care or Home-Based Hospice Care (Paragraph (c)(2)(v))

OSHA requires employers of Home Care or Home-based Hospice care to include procedures for prompt identification of individuals with suspected or confirmed infectious TB. In addition procedures to minimize employee exposure to such individuals and a list of any high-hazard procedures performed in the home and procedures for delaying elective high hazards procedures or surgery until the individual is non-infectious must be included in the ECP.

Sample Exposure Control Plan

Exposure Control Plan (Paragraph(c)(2))

Policies and Program Administration

*(company name) maintains, reviews and updates the Exposure Control Plan (ECP) at least annually, and whenever necessary to reflect new or modified tasks, procedures and engineering controls * that affect occupational exposure. The ECP is also updated to reflect new or revised employee positions with occupational exposure.*

This facility has had _____ cases of confirmed TB in the last 12 months. (Paragraph (c)(2)(vi))

(b) This facility is located in _____ county which has reported cases of TB in the last twelve month reporting period.

Employee Exposure Determination (Paragraph (c)(2)(i)(A))

ALL employees in the following job classifications have or may have occupational exposure to TB (Paragraph(c)(1)(i)(A)): JOB TITLE

_____

_____

_____

Employees in the following job classifications have or may have exposure to TB when they are performing the listed tasks and procedures (Paragraph (c)(1)(B)):

JOB TITLE	TASKS/PROCEDURES

Employee Notification of TB Hazard (Paragraph (c)(2)(i)(B))

(organization's name) uses the following procedures to assure that all employees with job tasks that offer potential for occupational exposure are informed of the hazard and take proper precautions against exposure to TB.

(procedures described)

_____

(*) _____ (responsible person(s)/department) _____ maintains contact with all outside contractors who provide temporary or contract employees who may incur occupational exposure. This allows the contractor to institute precautions to protect his or her employees. Theses contractors are informed of the TB hazard and the facility's procedures for protecting themselves from exposure.

(*) Signs are posted at the entrance to:

(*) 1) Rooms or areas used to isolate an individual with suspected or confirmed infectious TB,

(*) 2) Areas where procedures or services are being performed on an individual with suspected/confirmed infectious TB, and

(*) 3) clinical land research laboratories where *M. tuberculosis* is present.

(*) All signs are red with white text stating "No Admittance Without a Type N95 of More Protective Respirator" and have a picture of a stop sign. (See attached sample).

(*) _____ (organization's name) _____ ensures that warning labels are placed on AFB isolation room exhaust ducts and areas where occupational exposure to TB is expected.

(*) All systems carrying air that may be contain aerosolized M. Tuberculosis are labeled at all points where ducts are accessed prior to HEPA filter, at fans and at the discharge outlets of non-HEPA filtered direct discharge systems. The label says: "Contaminated Air—Respiratory Protection Required".

(*) ____ (organization's name) ____ notifies employees entering the laboratory and the autopsy room of the occupational hazards by using signs at the entrance to both these locations. These signs indicate the name and telephone number of the director of the laboratory, infectious agent—*M. tuberculosis*, and the special requirements for entering the laboratory or autopsy room. The sign displays the Biohazard symbol.

Exposure Incident Reporting (Paragraph (c)(2)(i)(C))

All employees must report exposure incidents immediately to (responsible person(s)/department). ____ (Organization's name) is responsible for investigating, evaluating, and documenting the circumstances surrounding the exposure incident for instituting changes to prevent similar occurrences.

The following procedures are used to investigate/evaluate exposure incidents at (organization's name):

_____

_____

_____

Prompt Identification of Individuals With Suspected or Confirmed Infectious TB (Paragraph (c)(2)(ii) and (iii)(A))

(Organization's name) considers an individual to be suspected of having Infectious TB (unless the individual's condition has been medically determined to result from a cause other than TB) if either the company or any of its employees determine(s)/learn(s)that the individual:

- *has a persistent cough lasting 3 or more weeks with 2 or more signs and symptoms of active infectious TB (e.g., bloody sputum, night sweats, weight loss, fever, anorexia),*
- *has a positive AFB smear,*

Based on the criteria listed above, (Organization's name) utilizes the following procedures for early detection of individuals with suspected/confirmed infectious TB.

_____

_____

_____

Employers Who Transfer (Paragraph(c)(2)(ii))

Procedures for Transfer of Individuals With Suspected or Confirmed Infectious TB:

If/when an isolation room is not available at our facility, the individual is transferred within 5 hours of identifying the infectivity to a facility (name of facility) where isolation rooms are available. The following procedures for transfer of an individual with suspected/confirmed infectious tuberculosis are utilized:

_____

_____

_____

While awaiting transfer, the individual is masked or segregated to protect employees who are without respiratory protection. (organization's name) uses the following procedures/equipment when masking and segregating an individual with suspected/confirmed infectious TB:

_____

_____

If a situation arises and the individual is not able to be transferred within 5 hours of identifying the suspected or confirmed infectious TB, the following procedures, including AFB isolation, are instituted: (list procedures used)

_____

_____

_____

Employers Who Admit and Provide Medical Services (Paragraph (c)(2)(iii))

Procedures to Isolate and Manage Care (Paragraph(c)(2)(iii)(B))

(*) The following procedures are used to isolate individuals with suspected or confirmed infectious TB.

(*) All individuals with suspected or confirmed infectious TB are placed in AFB isolation rooms or areas.

(*) _____ (organization's name) _____ uses the following procedures to minimize the time an individual with suspected or confirmed infectious TB remains outside of an AFB isolation room or area: _____ (detail responsibilities and steps)

_____

_____

(Paragraph(C)(2)(iii)(B)(1))

(*) Employee exposure in AFB isolation rooms is minimized by combining tasks the amount of time an employee spends in an AFB isolation room is minimized by _____ (list procedures used)

_____

_____ (Paragraph (c)(2)(iii)(B)(2))

(*) ____ (organization's name) _____ uses the following procedures, minimizing the number of workers entering AFB isolation rooms:

_____

_____

(*) ____ (organization's name) _____ utilizes the following procedures to delay transport or relocation within the facility until the individual is considered non-infectious:

_____

_____

_____

(Paragraph (c)(2)(iii)(B)(3))

(*) Services are provided in the patient's room whenever feasible such as portable x-ray and _____ (list other services provided in the patient's room to minimize exposure)

_____

_____

_____

(*) This facility uses _____ (list the type of engineering controls in use—properly fitted masks or valveless respirators for the for the patient to be masked or portable containment devices)

_____

on individuals with suspected or confirmed infectious TB when it is necessary to transport or relocate the individual.

(Paragraph (c)(2)(iii)(B)(4))

(*) The following procedures assure that the individual is returned to the AFB isolation room as soon as practical after completion of the procedure _____ (list of procedures)

_____

_____

_____

(*) Services that cannot be rendered in the patient's room are provided in and area that meets the requirements for an AFB isolation room.

(*) Elective high-hazard procedures and surgery are delayed until the patient is non-infectious.(Paragraph(c)(2)(iii)(B)(5))

(*) HIGH-HAZARD PROCEDURES (Paragraph(c)(2)(iii)(C))

(*) High-hazard procedures (where TB may be aerosolized) require special precautions to prevent/minimize occupational exposure to infectious TB. The following high-hazard procedures are performed at this facility: _____ (list procedures)

_____

_____

_____

(*) Engineering Controls Maintenance Schedules and Records (Paragraph (c)(2)(iii)(D))

(*) The maintenance schedule for engineering controls is as follows:

(*) Daily—Negative pressure areas are qualitatively demonstrated by using smoke trails.

(*) Whenever HEPA filters are changed, the system is inspected and its performance monitored in accordance with current USPHS guidelines. HEPA filters are changed every _____ in this facility or whenever

_____

_____

_____

(*) Every six months—HEPA filters in contained air exhaust systems are inspected, maintained and performance monitored in accordance with current USPHS guidelines.

Clinical and/or Research Laboratories (Paragraph (c)(2)(iv))

The _____ (type of laboratory—clinical or research) _____ operates at biosafety level _____ as determined by _____ (name of laboratory director) _____ for _____ (organization's name) _____. This is in accordance with CDC/NIOSH Biosafety in Microbiological and Biomedical Laboratories).

The following controls are in operation in the laboratory at this facility _____ (list controlled access, anterooms, sealed windows and other controls required in the standard and determined necessary by the laboratory director)

_____

_____

_____

(c)(2)(v) HOME HEALTH CARE OR HOME-BASED HOSPICE

See the following sections of this sample ECP for information regarding the ECP requirements:

(1) (c)(2)(ii) & (iii)(A) for sample statements regarding the Prompt identification of individuals with suspected or confirmed infectious TB.

(2) (c)(2)(iii) for sample statements re: procedures for minimizing employee exposure.

(3) (c)(2)(iii)(C) for a sample statement regarding high hazard procedures.

The procedures in this Exposure Control Plan minimize the occupational exposure to TB. The procedures for isolating and managing care are used until the individual with suspected or confirmed infectious TB is determined to be non-infectious or until the diagnosis for TB is ruled out.

Evaluation

Early Detection of Tuberculosis

This questionnaire gives guidance in identifying individuals who meet OSHA's definition of "suspected infectious tuberculosis" so that appropriate controls can be initiated.

The questionnaire has two parts: (1) reviewing the individual's TB history and (2) assessing current symptoms.

INSTRUCTIONS:

- Record each answer with a check mark
- Add your comments as the evaluator at the bottom of the page.
- Institute the facility's exposure control measures outlined in the facility's Exposure Control Plan, Respiratory Protection and Medical Surveillance Program and refer the individual for further evaluation if the individual has:

(1) A persistent cough lasting 3 or more weeks and two or more symptoms of active TB.

(2) Had a positive TB test on mucous that he/she coughed up.

(3) Been told that he/she had TB and was treated, but never finished the medication.

TB HISTORY
(Part One)

Have you ever had a positive TB skin test?
Yes No Don't Know

Have you ever had an abnormal chest x-ray?
Yes No Don't Know
If yes, how long ago?

Have you recently had the mucous you cough up tested for TB?
Yes No Don't Know
If yes, were you told it was positive
Yes No Don't Know

Have you ever been told you have Infectious Tuberculous?
Yes No Don't Know
If yes, how long ago?

Have you ever been treated with medication for Infectious TB?
Yes No Don't Know
If yes, how many medications?
One Two Over Two
Are you still taking TB medicine?
Yes No
Did you take all the TB medicine until the health care professional told you that you were finished?
Yes No

Do you live with or have you been in close contact with someone who was recently diagnosed with TB? (e.g. shelter roommate, close friend, relative)
Yes No Don't Know

CURRENT SYMPTOMS
(Part Two)

Do you have a cough that has lasted longer than three weeks?
Yes No

Do you cough up blood or mucous?
Yes No

Have you lost your appetite? Aren't hungry?
Yes No

Have you lost weight (more than 10 pounds) in the last two months? without trying to?
Yes No

Do you have night sweats (need to change the sheets or your clothes because they are wet)?
Yes No

Evaluator Comments:

_____

_____

Exposure Control Methods Implemented?
Yes No

Referred for Further Evaluation? Yes No

Evaluator's Signature

_____

Date

Appendix G to § 1910.1035—Smoke-trail Testing Method for Negative Pressure Isolation Rooms or Areas

A. Test Method Description

The purpose of a negative pressure AFB isolation room or area is to prevent TB droplet nuclei from escaping the isolation room or area and entering adjacent or surrounding spaces (e.g., a corridor). One method to check for negative room pressure is to use smoke-trails to demonstrate that the pressure differential is inducing airflow from the corridor through the crack at the bottom of the door (undercut) and into the isolation room or area. When performing a smoke-trail test, follow these recommendations where applicable:

1. Test only with the isolation room or area door shut. If not equipped with an anteroom, it is assumed that there will be a loss of space pressure control when the isolation or area door is opened and closed. It is not necessary to demonstrate direction of airflow when the door is open.

2. If there is an anteroom, release smoke at the inner door undercut, with both anteroom doors shut.

3. In addition to a pedestrian entry, some isolation rooms or areas are also accessed through a wider wheeled-bed stretcher door. Release smoke at all door entrances to isolation rooms or areas.

4. So that the individual conducting the test does not advertently force the smoke into the isolation room or area, hold the smoke bottle/tube parallel to the door so the smoke is released perpendicular to the direction of airflow through the door undercut.

5. Position the smoke bottle/tube tight to the floor, centered in the middle of the door jamb and approximately two inches out in front of the door.

8. Release a puff of smoke and observe the resulting direction of airflow. Repeat the test at least once or until consistent results are obtained.

7. Minimize momentum imparted to the smoke by squeezing the bulb or bottle slowly. This will also help minimize the volume of smoke released.

8. Depending on the velocity of the air through the door undercut, the smoke plume will stay disorganized or it will form a distinct streamline. In either case, the smoke will directionally behave in one of three ways. It will:

(a) Go through the door undercut into the isolation room or area,

(b) Remain motionless, or

(c) Be blown back into the corridor.

Negative pressure requires that the smoke be drawn into the isolation room or area through the door undercut.

9. Release smoke from the corridor side of the door only for occupied AFB isolation rooms or areas. If the room is unoccupied, also release smoke inside the isolation room or area (same position as in Step No. 5) to verify that released smoke remains contained in the isolation room or area (i.e., the smoke serves as a surrogate for TB droplet nuclei).

10. To assist in observing the smoke when photography or videotaping is performed, it is recommended that a dark surface be placed on the floor to maximize the contrast. Be aware that most autofocusing cameras cannot focus on smoke.

B. Testing "As Used" Conditions

Testing of negative pressure AFB isolation rooms or areas requires that the test reflect as-used conditions. As-used means that the isolation room or area shall remain the same during testing conditions as it is when in use for isolation. Consider the following use variables that may affect space pressurization and the performance of the negative pressure AFB isolation room or area:

1. Patient toilet rooms are mechanically exhausted to control odors. The position of the toilet room door may affect the pressure differential between the isolation room or area and the corridor. Smoke-trail tests should be performed both with the toilet room door open and the toilet room door closed. This will not be necessary if the toilet room door is normally closed and controlled to that position by a mechanical door closer.

2. An open window will adversely affect the performance of a negative pressure AFB isolation room or area. If the isolation room or area is equipped with an operable window, perform smoke-trail tests with the window open and the window closed.

3. There may be corridor doors that isolate the respiratory ward or wing from the rest of the facility. These corridor doors are provided in the initial design to facilitate space pressurization schemes and/or building life safety codes. Leaving the corridor doors open to the rest of the facility may cause pressure changes in the corridor (e.g., proximity to an elevator lobby) and affect the performance of the negative pressure AFB isolation room or area. Perform isolation room or area smoke-trail testing with these corridor doors in their "as-used" position, which is either normally open or normally closed.

4. Isolation rooms or areas may be equipped with auxiliary, fan-powered, recirculating, stand alone HEPA filtration or UV units. These units must be running when smoke-trail tests are performed.

5. Do not restrict corridor foot traffic while performing smoke-trail tests.

6. Negative pressure is accomplished by exhausting more air than is supplied to the isolation room or area. Some HVAC systems employ variable air volume (VAV) supply air and sometimes VAV exhaust air. By varying the supply air delivered to the space to satisfy thermal requirements, these VAV systems can adversely impact the performance of a negative pressure isolation room. If the isolation room or area or the corridor is served by a VAV system, the smoke test should be performed twice. Perform the smoke test with the thermostat set at the desired temperature and again with the thermostat set at a lower or higher temperature, depending upon the season, thus simulating the full volumetric flowrate range of the VAV system serving the area being tested.

C. Smoke

Most smoke tubes, bottles and sticks use titanium chloride ($TiCl_4$) to produce a visible fume. There is no OSHA PEL or ACGIH TLV for this chemical, although it is a recognized inhalation irritant. Health care professionals may be concerned about releasing $TiCl_4$ around pulmonary patients. The smoke released at the door undercut makes only one pass through the isolation room and is exhausted directly outside. (Isolation room air is typically not "recirculated.")

The CDC in the supplementary information to the 1994 TB Guidelines has indicated that "The concern over the use of smoke is unfounded."(Ex. 4B) Controlled tests by NIOSH have shown that the quantity of smoke released during the test is so minute that it is not measurable in the air. Nonirritating smoke tubes are available and may be utilized.

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federal register

Friday
October 17, 1997

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1214

Kiwifruit Research, Promotion, Consumer Information Order and Referendum Procedures; Final Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[FV–96–708FR]

Kiwifruit Research, Promotion, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether the issuance of the proposed Kiwifruit Research, Promotion, and Consumer Information Order (Order) is approved by a majority of the producers and importers voting in the referendum and that the producers and importers favoring approval produce and import 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

EFFECTIVE DATE: This rule is effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: This rule is issued under the Kiwifruit Research, Promotion, and Consumer Information Act [7 U.S.C. 7461-7473], hereinafter referred to as the Act.

This rule provides the procedures under which the referendum will be conducted.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 558 of the Act [7 U.S.C. 7467], after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of this rule on small entities. Accordingly, we have performed this Final Regulatory Flexibility Analysis.

Legislation to create a generic program of promotion and research for kiwifruit became effective on April 4, 1996.

Section 561 of the Act [7 U.S.C. 7470] provides that the Secretary of Agriculture (Secretary) shall conduct a referendum during the 60-day period immediately preceding the proposed effective date of an Order to determine whether the issuance of an Order is favored by a majority of the producers and importers voting in the referendum. Paragraph (a)(2) of Section 561 of the Act [7 U.S.C. 7470] requires that the Order be approved by a majority of producers and importers voting in the referendum and that the producers and importers favoring approval produce and import 50 percent or more of the volume of kiwifruit produced and imported by persons voting in the referendum.

There are approximately 650 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. Small agricultural service firms, which will include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million or more in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. The Department does not have specific information regarding the size of importers. However, it could be concluded that the majority of kiwifruit producers and importers may be classified as small entities.

The Department is aware of kiwifruit producers in California, Oregon, Pennsylvania, South Carolina, and importers that import kiwifruit from Chile, New Zealand, and Italy. The Department believes that these individuals would include a majority of the producers and importers that would be covered under the program. The Department is also aware that some individuals may be producers of "hardy kiwifruit," a different species of kiwifruit, known as *Actinidia arguta*, which would not be covered under the proposed program. However, the Department does not have specific information regarding how many individuals produce only the "hardy kiwifruit" versus the "fuzzy" most common kiwifruit species, known as *Actinidia deliciosa*. Therefore, the total number of producers believed to be covered by the program is the same as in the proposed rule on this action.

Other names for the species *Actinidia arguta* (hardy kiwifruit) are baby kiwifruit, kiwifruit grape, and kiwiberry. There are no official statistics on this commodity because it is such a small and new crop. According to comments received on the Order published on October 2, 1996, in the **Federal Register**, this species is grown in California, Oregon, Pennsylvania, Washington, Virginia, and British Columbia. The production in Virginia and Pennsylvania is not commercially marketed. Oregon production on 5 acres was a total of 216,000 pounds over the last 3 years. It takes 3 to 5 years to harvest the first crop. The hardy kiwifruit is hand-harvested and packed in 6-ounce berry baskets like raspberries. The harvesting, storage, handling, consumer recognition, and marketing of this species is completely different from the most common fuzzy kiwifruit or *Actinidia deliciosa*. Accordingly, we changed the definition of kiwifruit in the proposed order to mean all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*. That definition of kiwifruit is added in this rule as well. All references to "kiwifruit" in this document, therefore, mean the *Actinidia deliciosa* species.

California is the source for practically all (99.7 percent) of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 75 percent between 1984 and 1996, increasing from 18 thousand tons to 31.5 tons. In the period from 1984 through 1996, the value of production fell by 26 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization increased by 123 percent between 1984 and 1996, growing from 11.7 thousand tons to 26.1 thousand tons. The season average price during 1984 through 1996 fell by 53 percent, declining from $1,070 per ton to $502 per ton. Exports accounted for about 30 percent of U.S. fresh utilization during that period.

Between 1992 and 1996, the average annual production per producer, including kiwifruit for processing, was 99 tons or 28,286 7-pound trays of kiwifruit. The average price was $406 per ton, giving an average return of about $40,000 per producer per year. A typical tray price during this period was $1.42 per tray, and the average amount shipped per handler was about 148,276 trays, yielding an average annual revenue per handler of $210,552. U.S. importers handled an average of 184,857 trays per year per importer. During this period, the average value of total imports per year was $18.3 million (f.o.b. country of origin). The majority of kiwifruit came from Chile, with the remaining coming from New Zealand and Italy. In 1996, imports totaled 87.9 million pounds, up 5 percent from 1995. The value of imports in 1996 was $26.5 million.

The proposed rule published in the **Federal Register** on October 2, 1996, provided statistics on production, value of production, fresh utilization, average price, average return per producer, average annual revenue per handler, and other related statistics that are different from the statistics provided in this rule. These changes are due to the fact that the October 2, 1996, rule relied on statistics from 1985 through 1995 because 1996 crop year statistics were not available. When 1996 statistics are added to the averages, the final averages change because the domestic 1996 crop statistics are considerably lower in terms of production, and fresh utilization. For example, production from 1985 to 1995 increased an average of 119 percent. However, when adding 1996 production, the average from 1985 to 1996 shows an average increase of only 75 percent. Therefore, adding the 1996 statistics to the averages provided in the October 2 proposed rule changes the statistical averages, in some cases considerably, making the statistics for production and fresh utilization lower than previously indicated.

This rule provides the procedures under which kiwifruit producers and importers may vote on whether they want the kiwifruit research and promotion program to be implemented. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually can vote in the referendum. There are approximately 700 eligible voters.

The Department will keep all these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. In addition, trade associations and related industry media will receive news releases and other information regarding the implementation and referendum process.

There is a federal marketing order program and a California state program for kiwifruit. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers of consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. The California Kiwifruit Commission (CKC) administers the California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers.

In 1996–97 it is estimated that producers would pay $1.15 million in assessments at a rate of 17 cents per kiwifruit tray or tray equivalent. Handlers collect the assessments and remit the money to the CKC.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether they want the program or not.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location by mail ballot is more cost effective for this program. Also, the Department will provide easy access to information for potential voters through a toll free telephone line.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 6 years (.16).

Estimated Total Annual Burden on Respondents: 29 hours.

No comments were received concerning the collection of information, the accuracy of the estimated burden, or ways to enhance or minimize the collection of information.

Background

The Act authorizes the Secretary to establish a national kiwifruit research, promotion, and consumer information program. The program would be funded by an assessment levied on producers and importers not to exceed 10 cents per 7-pound tray of kiwifruit. Producers who produce less than 500 pounds annually, importers who import less than 10,000 pounds annually, and kiwifruit sold directly to a consumer by a producer for a purpose other than resale and domestic and imported kiwifruit for processing are exempt from assessments.

Assessments would be used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 561 of the Act [7 CFR part 7470] requires that a referendum be conducted among eligible producers and importers of kiwifruit to determine whether they favor implementation of the Order. The Order shall become effective if it is approved by a majority of producers and importers voting in the referendum and the producers and importers favoring approval produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

A proposed rule containing the proposed Order was published in the October 2, 1996, issue of the **Federal Register** [61 FR 51378]. A proposal containing that proposed order that will be subject to referendum is being published separately in this issue of the **Federal Register**.

This final rule provides the procedures under which kiwifruit producers and importers may vote on whether they want the kiwifruit research and promotion program to be implemented. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually can vote in the referendum. There are approximately 700 eligible voters.

This final rule will add a new subpart which establishes procedures to be used in the referendum. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A proposed rule with a request for comments on the referendum procedures was published in the October 2, 1996, issue of the **Federal Register** [61 FR 51391]. No comments were received on the proposal.

However, comments were received on the proposed Order regarding the definition of kiwifruit. The commenters expressed that some individuals may be producers of "hardy kiwifruit," a different species of kiwifruit, known as *Actinidia arguta*. Other names for this species (hardy kiwifruit) are baby kiwifruit, kiwifruit grape, and kiwiberry. There are no official statistics on this commodity because it is such a small and new crop. According to comments received on the proposed Order this species is grown in California, Oregon, Pennsylvania, Washington, Virginia, and British Columbia. The production in Virginia and Pennsylvania is not commercially marketed. Oregon production on 5 acres was a total of 216,000 pounds over the last 3 years. It takes 3 to 5 years to harvest the first crop. The hardy kiwifruit is hand-harvested and packed in 6-ounce berry baskets like raspberries. The harvesting, storage, handling, consumer recognition, and marketing of this species is completely different from the most common fuzzy kiwifruit or *Actinidia deliciosa*. Accordingly, we changed the definition of kiwifruit in the proposed order to mean all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*. That definition of kiwifruit is added in this rule as well. All references to "kiwifruit" in this document, therefore, mean the *Actinidia deliciosa* species.

Accordingly, no changes to the text of the regulation as proposed are made in this final rule, except for the addition of the definition of kiwifruit that appears in the proposed order. After consideration of all relevant material presented, it is found that this final rule effectuates the declared policy of the Act.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1214 is added to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart A—Reserved

Subpart B—Reserved

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

Sec.

1214.200 General.
1214.201 Definitions.
1214.202 Voting.
1214.203 Instructions.
1214.204 Subagents.
1214.205 Ballots.
1214.206 Referendum report.
1214.207 Confidential information.

Authority: 7 U.S.C. 7461–7473.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

§ 1214.200 General.

A referendum to determine whether eligible producers and importers favor the issuance of a proposed Kiwifruit Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1214.201 Definitions.

Unless otherwise defined in this section, the definition of terms used in this subpart shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Kiwifruit Research, Promotion, and Consumer Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, kiwifruit production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of kiwifruit and the authority to transfer title to the kiwifruit so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produced 500 pounds or more of kiwifruit during the representative period and who:

(1) Owns or shares in the ownership of kiwifruit production facilities and equipment resulting in the ownership of the kiwifruit produced;

(2) Rents kiwifruit production facilities and equipment resulting in the ownership of all or a portion of the kiwifruit produced;

(3) Owns kiwifruit production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the kiwifruit produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit who share the risk of loss and receive a share of the kiwifruit produced. No other acquisition of legal title to kiwifruit shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imported 10,000 pounds or more during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced kiwifruit immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of kiwifruit from the U.S. Customs Service when such kiwifruit are entered or withdrawn for consumption in the United States.

(h) *Kiwifruit* means all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*, whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States.

§ 1214.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of kiwifruit produced by the voting producer during the representative period; and

(3) The total volume of kiwifruit imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in presence of an agent of the Office of Inspector General.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1214.204 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions in this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1214.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1214.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1214.207 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: October 8, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–27323 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[FV–96–705–PR2]

Proposed Kiwifruit Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an industry-funded research, promotion, and consumer information program for fresh kiwifruit. Under the proposed Kiwifruit Research, Promotion, and Consumer Information Order (Order), producers and importers would pay an assessment not to exceed 10 cents per 7-pound tray of kiwifruit to the proposed National Kiwifruit Board (Board). Composed of producers and importers or exporters, the Board would use the assessments collected to conduct a generic program of research, promotion, and consumer information to maintain, expand, and develop markets for kiwifruit.

DATES: A referendum order establishing the voting period for the referendum and the representative period for voter eligibility will be published at a later date in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, STOP Code 0244, 1400 Independence Ave, SW, Washington, DC 20250–0244, fax (202) 205–2800, telephone (202) 720–9916 or (1)(888) 720–9917.

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, Subtitle V of the Federal Agricultural Improvement and Reform Act of 1996 [Pub. L. 104–127], enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 558 of the Act [7 U.S.C. 7467], after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of the proposed rule on small entities.

The kiwifruit industry initiated this program by asking the U.S. Congress (Congress) to pass legislation to create a generic program of promotion and research for kiwifruit. Congress found that this program is vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit; strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and to treat domestically produced kiwifruit and imported kiwifruit equitably.

The industry support for the program will be determined during the referendum to be conducted by the Department. Dates for the referendum will be announced by the Secretary no later than 60 days before the referendum.

This program was initiated by industry, industry must approve the program in a referendum in advance of its implementation, and industry members would serve on the promotion board that would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the order or any provision is not in accordance with law and requesting a modification of the order or an exemption from the order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the promotion board. Importers would be required to remit to the promotion board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the promotion board. In addition, exempt producers and importers would be required to file an exemption application. While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information to the promotion board by the 780 respondents would be $7,842.50 or $10.32 per respondent per year.

The Department would oversee program operations and, if the program is implemented, every 6 years would conduct a referendum to determine whether the kiwifruit industry supports continuation of the program.

There are approximately 650 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. Small agricultural service firms, which would include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million or more in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. Accordingly, the majority of handlers and producers may be classified as small entities. While the Department does not have specific information regarding the size of importers, it may be concluded that the majority of importers may be classified as small entities.

The Department is aware of producers in California, Oregon, Pennsylvania, and South Carolina, and importers that import kiwifruit from Chile, New Zealand, and Italy. The Department believes that these individuals would include a majority of the producers and importers that would be covered under the program. The Department is also aware that some individuals may be producers of "hardy kiwifruit," a different species of kiwifruit, known as *Actinidia arguta*, which would not be covered under the proposed program. However, the Department does not have specific information regarding how many individuals produce only the "hardy kiwi" versus the "fuzzy" most common kiwifruit species, known as *Actinidia deliciosa*. Therefore, the total number of producers believed to be covered by the program is the same as in the first proposed rule.

Other names for the species *Actinidia arguta* (hardy kiwifruit) are baby kiwifruit, kiwifruit grape, and kiwiberry. There are no official statistics on this commodity because it is such a small and new crop. According to comments received, this species is grown in California, Oregon, Pennsylvania, Washington, Virginia, and British Columbia. The production in Virginia and Pennsylvania is not commercially marketed. Oregon production on 5 acres was a total of 216,000 pounds over the last 3 years. It takes 3 to 5 years to harvest the first crop. The hardy kiwifruit is hand-harvested and packed in 6-ounce berry baskets like raspberries. The harvesting, storage, handling, consumer recognition, and marketing of this species is completely different from the most common fuzzy kiwifruit or *Actinidia deliciosa*. All references to "kiwifruit" in this document, therefore, mean the *Actinidia deliciosa* species.

California is the source for practically all (99.7%) of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 75 percent between 1984 and 1996, increasing from 18 thousand tons to 31.5 thousand tons. In the period from 1984 through 1996, the value of production fell by 26 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization increased by 123 percent between 1984 and 1996, growing from 11.7 thousand tons to 26.1 thousand tons. The season average price during 1984 through 1996 fell by 53 percent, declining from $1,070 per ton to $502 per ton. Exports accounted for about 30 percent of U.S. fresh utilization during that period.

Between 1992 and 1996, the average annual production per producer, including kiwifruit for processing, was 99 tons or 28,286 7-pound trays of kiwifruit. The average price was $406 per ton, giving an average return of about $40,000 per producer per year. A typical tray price during this period was $1.42 per tray, and the average amount shipped per handler was about 148,276 trays, yielding an average annual revenue per handler of $210,552. U.S. importers handled an average of 184,857 trays per year per importer. During this period, the average value of total imports per year was $18.3 million (f.o.b. country of origin). The majority of kiwifruit came from Chile, with the remaining coming from New Zealand and Italy. In 1996, imports totaled 87.9 million pounds, up 5 percent from 1995. The value of imports in 1996 was $26.5 million.

The proposed rule published in the Federal Register on October 2, 1996, provided statistics on production, value of production, fresh utilization, average price, average return per producer, average annual revenue per handler, and other related statistics that are different from the statistics provided in this rule. These changes are due to the fact that the October 2, 1996, rule relied on statistics from 1985 through 1995 because 1996 crop year statistics were not available. When 1996 statistics are added to the averages, the final averages change because the domestic 1996 crop statistics are considerably lower in terms of production, and fresh utilization. For example, production from 1985 to 1995 increased an average of 119 percent. However, when adding 1996 production, the average from 1985 to 1996 shows an average increase of only 75 percent. Therefore, adding the 1996 statistics to the averages provided in the October 2 proposed rule changes the statistical averages, in some cases considerably, making the statistics for production and fresh utilization lower than previously indicated.

The proposed kiwifruit Order would authorize assessment fees on producers (to be collected by first handlers) and on importers (collected by the U.S. Customs Service) of up to 10 cents per 7-pound tray. The Board, which will be composed of kiwifruit producers, importers, and, possibly, exporters, must recommend the assessment rate, which is subject to oversight by the Secretary, as are the other rules and regulations. At the maximum rate of assessment, the promotion board would collect $2.1 million to administer the program. Assessments on domestic production are expected to represent 45 percent of the income under the program.

The effect of the assessments will depend on the actual rate recommended by the Board. At the maximum rate, it is expected that the effect on producers would be approximately 8 percent of their average return. However, the Order would exempt producers of less than 500 pounds of kiwifruit a year, importers of less than 10,000 pounds a year, and kiwifruit sold for processing and sold directly to consumers. Furthermore, under the proposed program, the promotion board could authorize different reporting schedules based on different marketing practices. This could be of benefit specially to small businesses for whom a less frequent reporting period would diminish the reporting burden.

The Department would keep all of these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the implementation process. In addition, trade associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available through e-mail.

If the program is implemented, the promotion board would develop guidelines for compliance with the program.

In addition, the kiwifruit industry would nominate individuals to serve as members of the promotion board. These individuals would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. The Department would ensure that the nominees represent the kiwifruit industry as specified in the Act.

There is a federal marketing order program for kiwifruit in California which is administered by the Kiwifruit Administrative Committee (KAC), under the Department's supervision. KAC is composed of California producers. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers of consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. Under the marketing order, handlers are required to submit information pertaining to and pay assessments on kiwifruit shipments. The assessment rate recommended by the KAC is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the KAC's expected expenses. The 1996–97 assessment rate was set at 1.75 cents per tray or tray equivalent of kiwifruit. The 1995–96 rate of assessment was 1.5 cent

per tray or tray equivalent of kiwifruit. Each handler pays an average of $2,000 per year in assessments. The estimated reporting burden per year on individual handlers is estimated at 4.2 hours or $42.00 per handler under the marketing order.

The California Kiwifruit Commission (CKC) administers a California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers. In 1995–96 producers paid $1.4 million in assessments at a rate of 17 cents per tray or tray equivalent. In 1996–97 it is estimated that producers would pay $1.15 million in assessments at a rate of 17 cents per tray or tray equivalent. Handlers collect the assessments and remit them to the CKC.

The collection of information required under the proposed order for the research and promotion program would be similar to the marketing order program. However, the KAC and the promotion board would keep their information separate to comply with confidentiality requirements under the programs. Furthermore, using the same source of information would reduce the burden on producers and handlers of all sizes.

In the past, the CKC participated in a voluntary promotional program with Chilean kiwifruit growers to jointly advertise kiwifruit in the United States. This program, however, does not provide enough resources to be as effective as a national generic program could be. In addition, other importing countries and private companies spend considerable amounts of resources in kiwifruit advertising. The purpose of this proposed program is not to restrict the individual promotions but to add a generic promotion program for kiwifruit where industry segments pull together resources for the benefit of the whole industry.

The absence of a generic program for kiwifruit may have a negative impact on the industry because other commodity groups, specifically for competing fruits, conduct promotion activities to maintain and expand their markets. The kiwifruit industry would be at a disadvantage because individual producers, handlers, and importers would not be able to implement and finance such a program without cooperative action. In addition, Agricultural Issues Forum, a group of 15 California commodity organizations, conducted a study in mid-1995 and reported in early 1996 that consumers strongly support the concept of farmers working together to promote their products, conduct product research, engage in consumer education programs, and set quality standards and inspect products. Consumers said that they benefitted from these activities and were more inclined to buy those products. Eighty-one percent of the farmers surveyed said that mandated programs were either very important or important in promoting products. The survey was conducted among farmers, public policy leaders, consumers, retailers, and allied industries.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, the proposed rule that was published in the **Federal Register** on October 2, 1996 [61 FR 51378] invited comments concerning the potential effects of the proposed Order. No comments were received concerning the impact of the proposed order on small entities. However, as explained earlier in this rule, "hardy kiwifruit" producers would not be covered under the program because the species *Actinidia arguta* is considerably different from the most common "fuzzy kiwifruit" species *Actinidia deliciosa*. This would have a positive impact on small businesses since most of the producers of "hardy kiwifruit" are considered small businesses.

In addition, it is expected that the proposed order would be very beneficial to the kiwifruit industry, especially small businesses who would not be able to afford a nationwide comprehensive program individually.

It is estimated that there are approximately 700 kiwifruit producers and importers that would be eligible to vote in the referendum. It would take an average 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 29 hours.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that would be imposed by this proposed Order were approved by OMB on December 16, 1996.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB number 0505–0001.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The proposed Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers under the federal marketing order program in California and the CKC. The information needed would be taken from financial reports or sales receipts already maintained.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly coincides with normal business practices. Collecting information less frequently would hinder the promotion board from effectively carrying out the provisions of its program. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available onto the forms. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, importers, and handlers who are subject to or exempted from the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

The estimated cost in providing information to the promotion board by the 760 respondents would be $7,842.50 or $10.32 per respondent. This total has been estimated by multiplying 784.25 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Information collection requirements that are included in this proposal include:

(1) *A periodic report by each handler who handles kiwifruit.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per each handler reporting on kiwifruit handled.

Respondents: Handlers.

Estimated Number of Respondents: 65.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 390 hours.

(2) *A periodic report by each importer who imports kiwifruit.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per each importer reporting on kiwifruit imported.

Respondents: Importers.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 135 hours.

(3) *An exemption application for producers and importers of kiwifruit producing less than 500 pounds and importing less than 10,000 pounds of kiwifruit a year respectively, persons which sell directly to consumers or sell kiwifruit for processing who will be exempt from assessments and reporting requirements.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt producer and importer.

Respondents: Exempt producers and importers

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours.

(4) *A referendum ballot to be used to determine whether producers and importers covered by the Order favor implementation or continuance of the Order.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .26 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 6 years (.16).

Estimated Total Annual Burden on Respondents: 29 hours.

(5) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Producers and importers.

Estimated number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 3 years (.33)

Estimated Total Annual Burden on Respondents: 115.5 hours.

(6) *A request for refund of assessments collected by Customs for exempt importers.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt importer requesting a refund of assessments collected by Customs.

Respondents: Exempt importers.

Estimated number of Respondents: 5

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 1.25 hours.

(7) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response for each producer, importer, and public member nominated to the Board.

Respondents: Producers, importers, and public member.

Estimated Number of Respondents: 22 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22 hours for the initial nominations to the Board and 12 hours annually thereafter.

(8) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

Recordkeepers: Handlers and importers.

Estimated number of Recordkeepers: 160.

Estimated Total Recordkeeping Hours: 80 hours.

No comments were received on the recordkeeping requirements.

Background

The Act authorizes the Secretary to establish a national kiwifruit research, promotion, and consumer information program. The program would be funded by an assessment levied on producers and importers not to exceed 10 cents per 7-pound tray of kiwifruit. Kiwifruit sold directly to a consumer by a producer for a purpose other than resale and domestic and imported kiwifruit for processing would be exempt from assessments.

Assessments would be used to pay for: Research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The first handler would be responsible for the collection of assessments from the producer and payment to the promotion Board. Handlers would be required to maintain records for each producer for whom kiwifruit is handled, including kiwifruit produced by the handler. In addition, handlers would be required to file reports regarding the collection, payment, or remittance of the assessments. All information obtained through handler reports would be kept confidential.

Customs would collect assessments on imported kiwifruit and would remit those assessments to the promotion Board for a fee.

The Act requires the Department to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum, and producers and importers favoring approval must produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum. Subsequent referenda would be conducted every 6 years after the program is in effect or when requested by 30 percent of kiwifruit producers and importers covered by the Order. The Secretary would give serious consideration to requests for referendum when requested by a group representing a considerable amount of the volume covered by the program.

Since the Department has incurred costs in connection with implementing this national research, promotion, and consumer information program for fresh kiwifruit, the Department is requesting the proponents to post, prior to the referendum, a bond or other collateral to cover the Department's costs prior, during, and after referendum. The current estimate for implementation, including the referendum, is $150,000. The Secretary will issue a referendum order, which establishes the voting period, representative period, method of voting, and designates the referendum agents, soon after the bond is posted.

A final rule on the referendum procedures which will be used to conduct the referendum will be published separately.

The Act provides for the submission of proposals for a kiwifruit research, promotion, and consumer information Order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed Order provide for the establishment of a promotion Board. The promotion Board would be composed of 11 voting members: 6 producers, 4 importers or exporters, and 1 public member. Each member would have an alternate. Members would serve a three-year term of office. No member may serve more than two consecutive three-year terms.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order or any of its provisions is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The individual would be given the opportunity to a hearing on the petition.

The Department issued a news release on May 6, 1996, requesting proposals for an initial Order or portions of an initial Order by May 17, 1996. A second news release, extending the deadline for submission of proposals to June 3, 1996, was issued on May 24, 1996.

An entire proposed Order was submitted by the CKC. The CKC is an industry group created by the State of California to promote California kiwifruit. In addition, a partial proposal was submitted by the New Zealand Kiwifruit Marketing Board (NZKMB). The NZKMB represents all New Zealand exporters of kiwifruit into the United States.

In addition to minor editorial changes, the Department modified the CKC's proposed text by: adding the power and duty to investigate violations of the Act and Order; deleting a definition for industry information because it is not authorized under the Act; revising definitions to make them in accordance with the Act; clarifying that the collection of assessments from imports would be performed through Customs; clarifying that the promotion board would have control over voluntary contributions made to the promotion board; clarifying that the assessment rate may only be changed prior to a fiscal year; clarifying that the assessment rate may only be changed by regulation rather than in the budget; and adding a provision regarding federal debt collection procedures. The CKC also submitted referendum procedures. The final rule on the referendum procedures will be published separately.

A proposed rule seeking comments on a proposed kiwifruit research, promotion, and consumer information order was published on October 2, 1996, in the **Federal Register** [61 FR 51378]. Comments were invited on the CKC proposal for an entire Order (Proposal I), the NZKMB proposals regarding board membership and limiting promotions to the U.S. market (Proposal II), and the NZKMB alternate proposal regarding board membership (Proposal III). The deadline for comments was December 2, 1996. Seventy-five comments were received. Comments were received from eight Chilean kiwifruit growers or grower associations, 31 Chilean kiwifruit exporters or exporter associations, one international exporter association, 26 importers of Chilean kiwifruit, two U.S. growers, the CKC (which represents California growers), four universities, and the embassies of Australia and New Zealand.

The National Kiwifruit Growers Association from Chile submitted a comment in opposition to the proposed order. The same comment was submitted by Fedefruta, a trade association of Chilean fruit growers; the Chilean Fresh Fruit Association (CFFA), a trade association composed of Chilean fruit exporting companies; and the Chilean Exporters Association (CEA), a trade association comprised of Chilean fruit exporting companies. Twenty-nine comments were received from exporters of kiwifruit from Chile that opposed the proposed order and adopted the reasons explained in the comment submitted by the CFFA. Twenty-six comments were received from importers of kiwifruit from Chile that opposed the proposed order. These comments also adopted the rationale in the comment submitted by the CFFA. In addition, six comments were received from growers of kiwifruit from Chile that opposed the proposed order. Three of these comments adopted the reasons explained in the comment submitted by CFFA while the remaining three comments adopted the comment submitted by Fedefruta. Accordingly, in discussing these 59 comments in the preamble, for ease of reference we will refer to them collectively as the Chilean commenters or comments.

The Chilean commenters provided six reasons for their opposition to the proposed order. They were of the view that the proposed program: (1) Was unnecessary to achieve legitimate marketing objectives; (2) would be ineffective in achieving legitimate marketing objectives; (3) was inherently biased against imported kiwifruit; (4) would violate the First Amendment and the Foreign Commerce Clause of the U.S. Constitution; (5) would contravene international principles of free trade embodied in the General Agreement on Tariffs and Trade (GATT); and (6) would violate provisions of the Chilean Constitution that prohibit monopolistic practices.

With regard to the first reason presented, the Chilean commenters argued that the proposed program was unnecessary because the CFFA had been coordinating its promotional activities for kiwifruit in the U.S. market with the CKC by participating in a voluntary funded program; that there was no substantive difference in the objective of the voluntary program and the proposed program; that a trade case brought by the CKC against New Zealand kiwifruit [*California Kiwifruit Commission* v. *Moss*, 53 Cal. Rptr. 2d 138 (Cal. App. 3d Dist. 1996] demonstrated that a mandatory program such as the proposed program could lead to significant abuses and the pursuit of non-marketing objectives; and finally that AMS does not have sufficient data at hand to warrant the imposition of a mandatory order. We disagree with the commenters.

It is the Department's understanding that the voluntary program funded by the CKC and the CFFA was not funded this past year. For a program to be effective, it is necessary that promotional activities be conducted on a regular basis and with no interruptions. Furthermore, it is not the intention of the proposed research and promotion program to obstruct the activities of other promotional activities for kiwifruit. The promotional activities of the CFFA and the CKC could continue independently of the proposed research and promotion program if the parties so desire.

In addition, the proposed program is authorized under the Act and is consistent with the intent and provisions of Act. The program as proposed herein contains all of the necessary and appropriate provisions under the Act needed to conduct a national program. This program would be subject to similar oversight and supervision as is currently provided for research and promotion programs administered by the Department.

The activities of the proposed Board would be closely monitored by the Department to assure that only authorized activities are funded by the proposed Board. In addition, section 556(e) of the Act [7 U.S.C. 7465] and § 1214.53 of the proposed Order prohibit the use of funds for the purpose of influencing legislation or governmental policy or action. Furthermore, under Title V, Subtitle A of the 1996 Farm Bill (Commodity Promotion and Evaluation), research and promotion program are required to evaluate the accomplishments of their programs. The Department is working with current programs to develop guidelines for the programs to meet the objectives of the required evaluations. If, as a result of the evaluations, a program is determined to not have a positive impact in the industry, those covered by the program would have the necessary information to make a determination on whether to continue the program. Furthermore, a referendum would be conducted to determine the level of support for the program.

The Chilean commenters also argue that the Department should not proceed with a referendum on the proposed order until a decision of the Supreme Court in *Daniel Glickman, Secretary of Agriculture* v. *Wileman Brothers & Elliot, Inc. et al.* (Wileman) [Supreme Court case 95–1184] so that the Department has the benefit of that opinion and is able to conform any proposed order to its requirements.

On June 25, 1997, the Supreme Court decided the case and upheld the constitutionality of generic advertising funded by growers of California nectarines and peaches. The case sought review of First Amendment issues raised in generic advertising programs under Federal marketing orders for California nectarines and peaches. The U.S. Court of Appeals for the Ninth Circuit had previously found that mandatory assessments implicated handlers' First Amendment right because they were compelled to provide financial support for particular generic commercial advertisements. The Supreme Court held that the requirement that growers finance generic advertising does not violate the First Amendment of the Constitution. Consequently, there is no reason to delay the current rulemaking because this program as proposed is consistent with applicable law.

In its second reason for opposing the proposed program, the Chilean commenters argued that a mandatory promotional program could only be successful if a general consensus exists in the affected industry and was of the view that no such consensus exists; that the proposed Order should be substantially altered to conform to GATT principles as are more reflected in the Commodity Promotion, Research, and Information Act of 1996 (generic statute) [7 U.S.C. 7411 *et seq.*]; that the mandatory objectives and the market for domestic kiwifruit producers in the United States were not necessarily the same as that for Chilean kiwifruit; and that the proposed order does not have the necessary safeguards to prevent potential misallocation or biased allocation of funds. We disagree with the commenters' arguments and conclusions. The Order as proposed herein is consistent with applicable law and will be subject to a referendum vote of kiwifruit producers and importers who will be subject to assessments under the Order to determine whether such producers and importers approve and support the implementation of the Order. In addition, the industry has the option of amending the proposed program consistent with the Act in order to reflect the industry's needs at anytime. Furthermore, this program, as are other similar commodity research and promotion programs, will be subject to Department oversight and supervision.

The third reason argued by the Chilean commenters was that the proposed program is inherently biased and discriminates against imported kiwifruit. The comment asserted that this bias is evident throughout the regulation but is most obvious in proposed provisions for adoption of the Order, composition of the board, voting procedure for adopting of assessment and subsequent referenda. The comment went on to conclude that the biases render the proposed Order invalid under the Constitution. We disagree. The proposed program is consistent with the enabling statute.

The commenters then discussed what they view as the most objectionable provisions of the proposed Order that must be modified before a referendum takes place.

The first proposed provision cited was § 1214.30 *Establishment, adjustment, and membership.* The comments asserted that the composition of the Board does not bear any rational relationship to the interests that are subject to assessments. However, the proposed provision is consistent with the relevant statutory provisions that provide for a diverse 11-member Board consisting of six producer members not exempt from assessment; four importer members not exempt from assessment or exporters; and one member appointed from the general public. The Act also provides that, subject to the 11-member limit, the Secretary may adjust membership on the Board to accommodate changes in production and import levels of kiwifruit. However, the proposed order reflects provisions in the Act requiring 51 percent or more of the members of the promotion Board to be domestic producers.

Arguing that unfairness could result from a program controlled by a domestic board representing a minority of the market, the Chilean commenters asserted that in order to avoid a potential for abuse, the provisions of the generic statute concerning geographic representation and provisions concerning periodic reappointment should be invoked. However, these statutory provisions in the generic statute are not part of and do not apply to the kiwifruit statute, the authority for the program proposed herein.

With regard to proposed § 1214.36, *Procedure*, the commenters noted that the voting procedures provide that all motions need only a simple majority vote of a quorum to pass except for approval of an assessment rate which requires a two-thirds vote of a quorum to pass. The commenters pointed out that the Act in § 556(a)(2) [7 U.S.C. 7465] requires a two-thirds vote of a quorum of the board for approval of a budget. We agree, and § 1214.36(b)(2) is revised to reflect the need of a two-thirds vote of a quorum of the board for approval of a budget. The commenters also expressed concern that the four importer members would have a less effective role in setting an assessment rate and budget based on the composition of the Board and the number of votes needed to approve these items. The proposed four importer or exporter members on the Board is consistent with the membership provisions in the Act. A two-thirds vote of a quorum of the board further assures agreement by all parties on budget and assessment rate issues. In addition, the assessment rate would be recommended by the promotion Board and § 556 of the Act [7 U.S.C. 7465] specifies that a budget and assessment rate must be approved by the Secretary before becoming effective. Rulemaking and public comments would be sought by the Department before a final decision is made on the assessment rate.

The Chileans also commented on proposed §§ 1214.39 *Duties*, 1214.40 *Programs, Plans, and Projects*, and

1214.50 *Budget and expenses.* The Chilean commenters argued that, while the specific controls established in these sections are needed to prevent fraud, waste, or abuse in the promotional program, the bureaucratic layer of supervision and expense of a mandatory government-supervised program cause it to be necessarily less efficient than a voluntary program. We disagree and believe that such safeguards contribute to a sound and effective program for the industry. The commenters also stated that the meaning of the term administrative expenses in § 1214.50(f) should be clearly specified. We disagree and believe that the term does not need further clarification in the proposed order. Further, USDA has developed guidelines to identify administrative costs and ensure consistency between programs. These guidelines are being used in other programs.

In commenting on § 1214.51, the Chilean comments asserted that the assessment provisions on imports could operate either as a disguised tariff or as a trade barrier. The commenters argued that domestic producers may default on the payment of assessments whereas importers never will because Customs collects the assessments on imports at the time of entry into the United States. The comments went on to state that, if an initial assessment was set at 10 cents per tray, it would diminish returns to growers in Chile under existing market conditions by 30 percent. The commenters then concluded that a program that uses up 30 percent of a foreign grower's return, without demonstrated market share or price increases, is protectionist. We again disagree with the comment. The statute itself provides for collection of import assessments by Customs. This method of collection is efficient and cost effective and has been used successfully in similar research and promotion programs. We also note that the assessment is imposed on each importer of kiwifruit and not upon the foreign grower.

The comments also expressed concern regarding the board's authority to enter into agreements authorizing state-mandated organizations to collect assessments on its behalf. The comments raised concern about abuse and self-dealing. Any such agreement would be subject to approval of the Secretary and to supervision and oversight. In addition, the proposed promotion Board may or may not decide to utilize a state mandated organization to administer the proposed program. The final issue raised by the comments regarding § 1214.51 was concerning the permitted level of administrative expenses which cannot exceed 30 percent of the budget except in the first year of operation. This provision reflects § 556(c)(3) of the Act [7 U.S.C. 7465] which provides for just such a limitation in the case of assessments.

The CKC commented that the current organization takes great pride in keeping administrative costs at a minimum and that combining the operations of the CKC and the Board would result in substantial savings for all segments of the industry. In addition, the CKC stated that limiting administrative costs would ignore the reality of start-up costs and would tie the hands of future Boards.

The CKC indicated in its comment that it would support a limitation or cap on administrative expenses. The Act provides in § 556(c)(3) [7 U.S.C. 7465] that the level of administrative expenses cannot exceed 30 percent of the budget except in the first year of assessments. The proposed Order reflects that provision of the Act, and, accordingly, no change is made to the proposal as a result of this comment.

The last section discussed by the Chilean comments was § 1214.71 *Suspension or termination.* The commenters were of the view that the provision reflected a structural and discriminatory bias in the regulation against imported kiwifruit. The comments suggested that to correct this problem the votes should be weighted to reflect the number of growers that each importer represents. We disagree. The voting levels provided for in the proposed order concerning suspension or termination reflect the provisions of § 561 of the Act [7 U.S.C. 7470]. Not only does suspension or termination have to be favored by a majority of the producers and importers voting in the referendum, but those producers and importers must also produce or import more than 50 percent of the total volume of kiwifruit produced or imported by persons voting in the referendum. Further, the Secretary is authorized to suspend or terminate the operation of an order or provision if the Secretary finds that it obstructs or does not tend to effectuate the purposes of the Act.

In their fourth, fifth, and sixth reasons for opposing the proposed order, the Chilean commenters argued that the proposed program would violate several provisions of the United States Constitution, provisions of GATT, and lastly principles embodied in the Constitution and laws of Chile.

With regard to the U.S. Constitution, the comments identified not only violations of the First Amendment and Foreign Commerce Clause but also argued violations of the Import-Export Clause, the Interstate Commerce Clause, the Equal Protection Clause, and the Separation of Powers Principle. The comments argued that the proposed order violated the national treatment provision of the GATT by treating imported kiwifruit less favorably than domestic kiwifruit. We disagree and are of the view that the proposed program is consistent with its authorizing statutory provisions and the applicable law. Under the proposed program, producers and importers of kiwifruit would pay an equal assessment to support a generic program of research and promotion for kiwifruit.

The commenters also argued that the proposed program is contrary to free market principles embodied on the Constitution of Chile, noting that mandatory assessments for generic promotion are not legal in Chile. The commenters stated that without appropriate credit for voluntary contributions, Chilean interests may be forced to mount legal challenges. We do not believe that this rulemaking action raises any pertinent legal issues with regard to the Constitution and laws of Chile. Furthermore, the Act does not authorize credit for voluntary or mandatory contributions to other programs.

In conclusion, the Chilean commenters state that the Department should not submit the proposed Order to a referendum. However, if it is submitted to referendum, the commenters stated that the proposed Order should conform to GATT principles and the statutory limitations for programs under the generic statute and should be modified to address the concerns raised in the comment. The commeat goes on to state that the Department should refrain from further action on this rulemaking until opinions are rendered in the Wileman and Moss cases.

In response to the Chilean commenters, for the reasons previously discussed, the Department is continuing with this rulemaking but has modified the proposed rule in § 1214.36 (b)(1) and (b)(2), based on the comments.

A comment was received from the New Zealand Embassy on behalf of the New Zealand Government. That comment supported Proposal II and the alternate Proposal III. Proposal II, in part, stated that two of the four importer/exporter seats on the promotion Board should be filled with New Zealand exporters since this country has been the major exporting country into the U.S. for the past 10 years. Proposal III stated that promotional expenditures of the exporting countries for the last 10 years should be considered when assigning seats on the promotion Board. In addition, the comment expressed strong reservations concerning the proposed Order, and other similar schemes, on the grounds that: (1) New Zealand exporters and their import agents would have to contribute to funding domestic promotions with their related administrative costs; (2) funds collected from New Zealand exporters would be used to fund U.S. exports of kiwifruit to third markets in direct competition with New Zealand's interests; (3) the proliferation of checkoff schemes such as the proposed order would encourage other countries to levy importers in order to introduce similar schemes; and (4) there appears to be some question about the World Trade Organization (WTO) consistency of the checkoff schemes in general, particularly in relation to the discrimination involved in using foreign contributions to fund the marketing of domestic products.

We disagree with the commenter. All producers and importers under the proposed Order would contribute to generic program of research, promotion, and consumer information. Such a program is intended to maintain, expand, and develop markets for kiwifruit. The proposed Order does specifically provide that all promotions are to be generic in nature without attribution to origin. Further, an amendment to the proposed Order to address concerns raised by the Government of Australia and the NZKMB would add a provision to the Order to limit promotions to the U.S. domestic market. Accordingly, we believe that the proposed Order would benefit both domestic and imported kiwifruit alike, consistent with applicable law including the WTO. With regard to the commenters concern regarding actions of other countries to levy importers in order to introduce similar scheme, we believe that such a view is speculative and as such we cannot offer an opinion of what a particular country might do. Accordingly, we disagree with this part of the comment.

The New Zealand Embassy also stated that representation of importers on the Board should be based on promotion expenditures by the exporting countries in the United States. In its comment concerning this issue, the CKC stated that there is no reasonable way to verify foreign countries' expenditures on advertising and marketing in the U.S. Further, the CKC expressed its views opposing the NZKMB proposal to provide in the Order that the Secretary ensure that at least two of the four importers/exporters member seats be selected from nominees nominated by importers and/or exporters of New Zealand kiwifruit. It also expressed concern regarding any proposal to limit the importer positions to import or export who have no domestic production interests.

We agree that it would be very difficult to verify the promotional expenditures of each country in the U.S. Further, this would not be a reasonable measure to determine the number of importer members on the Board. The Department believes that the Secretary should have the latitude to appoint representatives to the Board in a manner that best reflects the interests of the various importer and/or exporter segments. Accordingly, this part of proposal II and all of proposal III are denied.

A comment was received from the Embassy of Australia concerning the proposed Order. The Australian Government indicated that it welcomed certain elements of the proposed program. First, the commenter noted that the proposed program would treat domestically produced and imported kiwifruit equitably by using assessment collected to undertake generic promotion for the whole industry. Second, there would be an equitable spread of representation on the Board. Third, the comment looked favorably on the exemption for importers of less than 10,000 pounds a year and kiwifruit sold for processing and the referendum to be conducted before the program would be implemented.

The comment, however, did raise a concern if the generic promotion activities discriminated against counter-seasonal produce and/or importers. The commenter stated that it would be concerned if assessments were used for the promotion of kiwifruit in competing export markets. The comment concluded that assessments should be used for the generic promotion of kiwifruit in the United States only.

Part of Proposal II recommended that all promotions be intended to promote kiwifruit consumption in the U.S. domestic market and not U.S.-produced kiwifruit in foreign markets.

We believe that these two concerns have merit. To avoid any negative effects of seasonal promotion, proposed § 1214.40, *Programs, plans, and projects,* is revised to include a new paragraph (e) to require that promotions be conducted all year round to promote kiwifruit during all seasons which would result in kiwifruit from all countries being promoted equitably. In addition, the Department is adopting this part of Proposal II and a new paragraph (f) is added to provide that all programs established by the Board with the approval of the Secretary will be required to promote kiwifruit consumption on the U.S. domestic market and that no program could promote exports of U.S. produced kiwifruit in foreign markets. Section 557(e) of the Act [7 U.S.C. 7466] provides for the use of funds to be used for the development and expansion of sales in foreign markets of kiwifruit produced in the United States. However, this provision is permissive and not required to be in an Order. Accordingly, we believe that the most effective use of funds based upon the evidence in the rulemaking would be to limit the use of assessments to domestic promotion only.

In its comment concerning the proposed order, the Southern Hemisphere Association of Fresh Fruit Exporters opposed its implementation because it is contrary to the free trade principles embodied in the Uruguay Round of GATT. The commenter was of the view that the Order would restrict free market access and would operate as a non-tariff barrier to trade. The comment also stated that the restrictive trade effects of the proposed Order were apparent from its essential provision and noted that the proposed Order was drafted by the CKC. The comment went on to state that: (1) The proposed Order was anti-competitive in that it would divert funds from promotional programs of individual companies or countries and would operate as an anti-competitive non-tariff trade barrier; (2) the mandatory aspects of the order conflict with the domestic trade laws of many countries; (3) such mandatory programs are now subject to legal review in the Supreme Court on constitutional grounds; and (4) the implementation of the proposed Order would set a precedent for adoption of similar orders in other countries.

We disagree with the commenter's views and conclusions. As discussed previously in responding to similar comments received, we are of the view that the proposed Order is consistent with applicable law including the GATT. We again note the Supreme Court in Wileman held in favor of the government with regard to the constitutional arguments. We offer no view with regard to the domestic trade laws of the countries as to whether other countries would adopt similar programs.

The CKC commented on the proposed Order and Proposals II and III. The CKC comments regarding Proposals II and III were discussed previously.

With regard to § 1214.36(b)(2), the CKC stated that it would support a

three-quarters of a quorum requirement for votes on budget and assessment rate issues rather than the proposed two-thirds requirement. Referencing the CEA comment about adopting the voting provision contained in the generic statute, the commenter supported accommodating the Chilean concern by changing the two-thirds requirement to three-quarters and adopting by-laws to assure that there is near unanimous agreement among all interests on assessment and budget issues. However, the Act provides for the vote of two-thirds of a quorum of the Board for both budget and assessment recommendations to the Secretary. Accordingly, this proposed change is not adopted and the Order will provide for the percentages that are required by the Act.

As to § 1214.39(l), which specifies duties of the Board, the CKC would support a provision on the Order to prohibit the Promotion Board from making expenditures in any market other than the United States. This concern has been previously addressed in response to a comment received by the Australian Government and, as a result, § 1214.40 would be revised to include a new paragraph (f) to limit promotions of kiwifruit consumption to the U.S. domestic market.

The CKC raised concern about other commenters requesting that the proposal include a provision concerning credits. While expressing a lack of understanding of what purpose a generic credit would have, the CKC indicated that it would oppose a brand credit. The Act does not authorize credits for such expenditures.

Seven comments were received concerning the definition of kiwifruit as proposed in § 1214.8. Four of the comments were received from university professors, Extension Service personnel at Clemson University, Cornell University, Ohio State University, and Oregon State University, and from two growers of kiwifruit. In addition, the CKC commented on that section of the proposal.

Both the Act and the proposed Order define kiwifruit as all varieties of fresh kiwifruit grown in or imported into the United States. The university commenters requested that the definition of kiwifruit be revised to include only the species *Actinidia deliciosa*. They pointed out that this is the predominant species with one commenter noting that this species controls over 95 percent of the domestic market. There are other species of kiwifruit. These commenters all expressed concerns regarding the species *Actinidia arguta* or hardy kiwifruit. One comment noted that while the inside of the fruit was similar to *Actinidia deliciosa*, this was really the only similarity. Exterior appearance, harvesting, production areas (Oregon, Washington, and Pennsylvania), production levels (an estimated 100,000 flats in the next 5 years), and marketing are all different.

The university commenters were concerned about the impact of the proposed Order on hardy kiwifruit producers. Two of the commenters suggested that, if such kiwifruit is assessed, then a percentage of funds should be earmarked for research and development of this new crop of hardy kiwifruit. The two grower comments also raised concerns regarding the definition of kiwifruit in the proposed Order. One grower opposed the inclusion of hardy kiwifruit grown in the State of Pennsylvania and stated that the Order should be limited to the State of California. The second grower raised issues similar to the university comments concerning hardy kiwifruit.

We agree that the species *Actinidia arguta* is a different species from the most common known *Actinidia deliciosa* or fuzzy kiwifruit. Therefore, the definition of kiwifruit was changed in the proposed order to mean all varieties of the fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*, whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States. This definition would exclude the species *Actinidia arguta* also known as "hardy" kiwifruit from coverage under the program.

In its comment the CKC was in favor of the assessment being levied on all varieties that are referred to as "Kiwifruit or Kiwi" but stated that it would support a provision to allow the Board to exempt certain varieties due to their limited volume, perhaps under 80,000 pounds of total domestic production, differences in appearance, or other reasons.

Section 556(b)(5) of the Act [7 U.S.C. 7465] does provide for exemptions from assessment for producers who produce less than 500 pounds of kiwifruit per year, importers who import less than 10,000 pounds of kiwifruit a year, sales of kiwifruit made directly from the producer to a consumer for a purpose other than resale, and the production or importation of kiwifruit for processing. No other exemption is authorized in the Act. In addition, the proposed order will cover all varieties of kiwifruit under the *Actinidia deliciosa* species that meet the exemption levels.

In summary, § 1214.8, § 1214.36(b)(1) and (2), and § 1214.40 have been revised as a result of comments received.

Section 1214.8 was revised to define kiwifruit as all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa*.

Section 1214.36(b)(2) was revised to require a two-third vote of a quorum for budget issues.

In § 1214.40, a new paragraph (e) was added to specify that promotions shall be conducted all year round. Also, a new paragraph (f) was added to this section to prohibit the use of funds for promotional activities in other countries.

There were no other changes to the proposed Order as a result of the comments received on the text of the Order provisions as they were proposed in the October 2, 1996, issue of the **Federal Register**.

For the Order to become effective, the Order must be approved by a majority of kiwifruit producers and importers voting in a referendum, with such majority producing or importing more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

The proposed Order is summarized as follows:

Sections 1214.1 through 1214.19 of the proposed Order define certain terms, such as kiwifruit, handler, producer, and importer, which are used in the proposed Order.

Sections 1214.30 through 1214.39 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about kiwifruit, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1214.40 and 1214.50 provide information on these activities.

Sections 1214.51 through 1214.53 would authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. in addition, it would prohibit use of funds to influence government policy or action.

The assessment rate may not exceed 10 cents per 7-pound tray of kiwifruit. The actual rate would be recommended by the Board and approved by the Secretary through regulation. Direct sales to consumers by a producer and kiwifruit for processing are exempt from assessments.

The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; establish a 1.5 percent per month interest charge for unpaid or late assessments; and provide for refunds of assessments paid by importers who import less than 10,000 pounds of kiwifruit a year.

Sections 1214.60 through 1214.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1214.70 through 1214.73 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1214.74 through 1214.77 are miscellaneous provisions including the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to the Order; and separability of Order provisions.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1214 is added to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order

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Authority: 7 U.S.C. 7461–7473.

Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order

Definitions

§ 1214.1 Act.

Act means the National Kiwifruit Research, Promotion, and Consumer Information Act, subtitle D of title V of the Federal Agricultural Improvement and Reform Act of 1996, Public Law 104–127, 7 U.S.C. 7461–7473, and any amendments thereto.

§ 1214.2 Consumer information.

Consumer information means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of kiwifruit.

§ 1214.3 Department.

Department means the United States Department of Agriculture.

§ 1214.4 Exporter.

The term *exporter* means any person outside the United States who exports kiwifruit into the United States.

§ 1214.5 Fiscal year.

Fiscal year means the 12-month period from October 1 to September 30 each year, or such other period as recommended by the Promotion Board and approved by the Secretary.

§ 1214.6 Handler.

Handler means any person, excluding a common carrier, engaged in the business of buying and selling, packaging, marketing, or distributing kiwifruit as specified in the Order.

§ 1214.7 Importer.

Importer means any person who imports kiwifruit into the United States.

§ 1214.8 Kiwifruit.

Kiwifruit means all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*, whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States.

§ 1214.9 Marketing.

Marketing means to sell or otherwise dispose of kiwifruit into interstate, foreign, or intrastate commerce by buying, marketing, distribution, or otherwise placing kiwifruit into commerce.

§ 1214.10 Part and subpart.

Part means this kiwifruit research, promotion, and consumer information order and all rules and regulations and

supplemental orders issued thereunder, and the term subpart means the kiwifruit research, promotion, and consumer information order.

§ 1214.11 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

§ 1214.12 Processing

Processing means kiwifruit that are commercially canned, fermented, distilled, extracted, preserved, ground, crushed or processed in such manner as the Promotion Board, with the approval of the Secretary, may determine.

§ 1214.13 Producer.

Producer means any person who grows kiwifruit in the United States for sale in commerce.

§ 1214.14 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, and consumer information plans, studies, projects, or programs conducted pursuant to this part.

§ 1214.15 Promotion.

Promotion means any action taken under this Order including paid advertising, to present a favorable image for kiwifruit to the general public for the purpose of improving the competitive position of kiwifruit and stimulating the sale of kiwifruit.

§ 1214.16 Promotion Board.

Promotion Board means the administrative body referred to as the National Kiwifruit Board or otherwise named Kiwifruit Promotion Board or Promotion Board established under § 1214.30.

§ 1214.17 Research.

Research means any type of research relating to the use, nutritional value, and marketing of kiwifruit conducted for the purpose of advancing the image, desirability, marketability, or quality of kiwifruit.

§ 1214.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom the authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1214.19 United States.

United States means the 50 states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

National Kiwifruit Board

§ 1214.30 Establishment, Adjustment, and membership.

(a) Establishment of National Kiwifruit Board. There is hereby established a National Kiwifruit Board of 11 members appointed by the Secretary as follows:

(1) Six members who are producers (or their representatives) and who are not exempt from an assessment.

(2) Four members who are importers (or their representatives) and who are not exempt from an assessment, or are exporters (or their representatives).

(3) One member appointed from the general public.

(b) Adjustment of Membership.

(1) Subject to the 11 member limit, the Secretary may adjust membership on the Promotion Board to accommodate changes in production and import levels of kiwifruit, so long as producers comprise not less than 51 percent of the membership of the Board.

(2) At least every five years, and not more than every three years, the Promotion Board shall review changes in the volume of domestic and imported kiwifruit. If the annual kiwifruit production and imports over the preceding four years, indicate that such changes in production and import levels have occurred warranting reapportionment, the Promotion Board shall recommend reapportionment of Board membership subject to the 51 percent requirement, for approval of the Secretary.

(3) In determining the volume of kiwifruit produced in the United States or imported into the United States for purposes of this section, the Promotion Board and the Secretary shall:

(i) Only consider kiwifruit produced or imported by producers and importers, respectively, as those terms are defined in § 1214.13 and 1214.7; and

(ii) Use the information received by the Promotion Board under § 1214.60, and data published by the California Kiwifruit Commission, U.S. Department of Commerce import statistics and other government kiwifruit production data.

(c) Appointment and nomination.

(1) *Appointment.* The Secretary shall appoint the members of the Promotion Board from nominations submitted in accordance with this section.

(i) Producers shall be appointed from individuals nominated by producers.

(ii) Importers and exporters shall be appointed from individuals nominated by importers and/or exporters.

(iii) The public representative shall be appointed from nominations submitted by the Promotion Board.

(iv) If producers, importers, or exporters fail to nominate individuals for appointment, the Secretary shall appoint members in the manner specified in § 1214.31. If the Promotion Board fails to nominate a public representative, such member may be appointed by the Secretary without a nomination.

(2) The Secretary shall appoint an alternate for each member of the Promotion Board. Alternates shall:

(i) Be appointed in the same manner for whom such individual is an alternate; and

(ii) Serve on the Promotion Board as a voting member if such member is absent or disqualified.

(3) For purposes of the provisions of this section relating to the appointment of producers and importers or exporters to serve on the Promotion Board, the term producer, importer, or exporter refers to any person who is a producer, importer, or exporter, respectively, or if the producer, importer, or exporter is an entity other than an individual, an individual who is an officer or employee of such producer, importer, or exporter. Persons who qualify to serve as either a producer member or an importer member must select the industry group that they want to represent.

§ 1214.31 Nominations.

All nominations for appointments to the Promotion Board under § 1214.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Promotion Board shall be obtained from producers and importers or exporters by the Secretary. In any subsequent year in which an appointment to the Promotion Board is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers or exporters, and certified as eligible candidates by the Promotion Board and submitted to the Secretary by May 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made through mail ballot in accordance with procedures prescribed in this section.

(c) Except for initial Promotion Board members, whose nomination process will be initiated by the Secretary, the Promotion Board shall issue a call for nominations by March 1 of each year in which nominations for an appointment to the Promotion Board is to be made. The call shall include, at a minimum, the following information:

(1) A list by importer/exporter and producer category of the vacancies for which nominee may be submitted.

(2) The date by which the names of nominees shall be submitted for consideration to be in compliance with paragraph (a) of this section.

(3) Nominations for each position shall be made by mail. Nomination forms shall be mailed to all known producers, importers in the United States, and kiwifruit exporters and/or exporter organizations where possible. The nomination form shall have attached to it the requirements of the position, term, eligibility requirements, and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Promotion Board, publicizing the nomination process and vacant positions shall be the responsibility of the Promotion Board.

(4) All producers, importers within the United States, and exporters may participate in the nomination process. However, if a producer is engaged in the production of kiwifruit and is also an importer, such person's participation shall be limited to one vote. The following nomination process shall be followed:

(i) Nomination forms shall be sent to all known producers, importers, or exporters. The Promotion Board shall determine the eligibility and willingness to serve of all names of the individuals listed on the nomination forms returned to the Promotion Board. The names of the individuals who are eligible and willing to serve will be listed on a selection ballot. The selection ballot will be sent to all known producers and importers for final selection of the nominees to be sent to the Secretary. Exporters will not be sent a selection ballot.

(ii) Each nominee shall meet the qualifications set forth in this part.

(iii) If a producer nominee is engaged in the production of kiwifruit and is also an importer, such individual shall participate within the category that such individual so elects in writing to the Promotion Board and such election shall remain controlling until revoked in writing to the Promotion Board.

(d) When producers or importers are voting for nominees to the Promotion Board the following provisions shall apply:

(1) Voting for any open position shall be on the basis of one vote per eligible voter.

(2) Producers will vote for producer positions and importers will vote for importer and exporter positions only.

(3) Whenever the producers or importers are choosing nominees for one open position on the Promotion Board, the proposed nominee with the highest and second highest number of votes cast shall be the nominees submitted to the Secretary.

(4) Each open position will be a separate position. Alternate and member selections will also be held as separate positions. A person shall only be nominated for one open member or alternate position.

(5) Voters shall certify on their ballots as to their eligibility. Such certification may be subject to verification.

(e) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Promotion Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(f) Whenever producers or importers fail to nominate individuals for an open position on the Promotion Board under the preceding provisions of this section the Secretary may appoint members in such manner as the Secretary determines appropriate.

§ 1214.32 Acceptance.

Each individual nominated for membership on the Promotion Board shall qualify by filing a written acceptance with the Secretary at the time of nomination. Such acceptance shall represent the nominee's willingness to serve if selected and to operate in accordance with the provisions of this part.

§ 1214.33 Appointment.

From the nominations made pursuant to this subpart, the Secretary shall appoint the members and alternates.

§ 1214.34 Term of office.

(a) The members and alternates of the Promotion Board shall serve for terms of three years, except that five members and their alternates appointed to the initial Promotion Board shall be appointed for a term of two years and six members and their alternates shall be appointed for a term of three years.

(b)(1) Except with respect to terms of office of the initial Promotion Board, the term of office for each member and alternate of the Promotion Board shall begin on July 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Promotion Board shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following July 1, or such other date that is the generally applicable beginning date for terms under paragraph (b)(1) of this section approved by the Secretary, shall not count toward the tenure limitation of office.

(c) Promotion Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (d)(2) of this section and § 1214.35(b)(1). Members serving two consecutive three-year terms are eligible to serve as alternates, and alternates serving two consecutive three-year terms are eligible to serve two three-year terms as members.

(2) Those members serving initial terms of two years may serve one successive three-year term.

§ 1214.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Promotion Board, the alternate of that member shall automatically assume the position of said member. If an alternate member position becomes vacant, the Secretary shall appoint an alternate member in the manner specified in § 1214.31. Each successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Promotion Board, except as provided in paragraph (b)(2)(ii) of this section.

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Promotion Board consistently refuses to perform the duties of a member of the Promotion Board, or if a member of the Promotion Board is engaged in acts of dishonesty or willful misconduct, the Promotion Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Promotion Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Promotion Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1214.36 Procedure.

(a) At a properly convened meeting of the Promotion Board, a majority of the members shall constitute a quorum.

(b) Each member of the Promotion Board will be entitled to one vote on any matter put to the Promotion Board. At assembled meetings of the Promotion Board, all votes will be cast in person.

(1) A motion, except motions to set an assessment rate and motion to approve a budget, will carry if supported by a simple majority of those voting.

(2) Motions to establish an assessment rate and motions to approve a budget shall require a two-thirds vote of a quorum of the Promotion Board for passage.

(c) Meetings of the Promotion Board may be conducted by other means of communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(d) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Promotion Board such action is considered necessary, the Promotion Board may take action upon the concurring votes of a majority of its members by mail, telephone, electronic mail, facsimile, or any other means of communication, and, if appropriate, confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Promotion Board. All votes shall be recorded in Promotion Board minutes.

(e) The organization of the Promotion Board and the procedures for conducting meetings of the Promotion Board shall be in accordance with its bylaws, which shall be established by the Promotion Board and approved by the Secretary.

§ 1214.37 Compensation and reimbursement.

The members and alternate members of the Promotion Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses or a reasonable per diem allowance, as approved by the Promotion Board and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1214.38 Powers.

The Promotion Board shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of kiwifruit, as well as proposed programs, plans, or projects for research and consumer information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals. The Board shall seek, to the extent possible, to employ or contract with personnel who are already associated with state chartered organizations involved in promoting kiwifruit;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To establish committees and subcommittees of Promotion Board members, including an executive committee whose powers and membership shall be determined by the Promotion Board, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(g) To establish committees which may include individuals other than Promotion Board members, and pay the necessary and reasonable expenses and fees for the members of such committees;

(h) To recommend to the Secretary amendments to this subpart;

(i) With the approval of the Secretary, to enter into contracts or agreements for the development and conduct of programs, plans, or projects authorized under § 1214.40 and for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Promotion Board shall not contract with any person covered by the program or serving on the promotion board for the purpose of kiwifruit programs, plans, or projects. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Promotion Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Promotion Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Promotion Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Promotion Board contractor and who receives or otherwise uses funds allocated by the Promotion Board shall be subject to the same provisions as the contractor;

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1214.51, and any other funds received by the Promotion Board in, and only in, obligations of the United States or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(k) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(l) Such other powers as may be approved by the Secretary.

§ 1214.39 Duties.

The Promotion Board shall have the following duties:

(a) To meet not less than two times per year, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, and consumer information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart and a marketing plan with all the programs, plans, and projects as provided in §§ 1214.40 and 1214.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Promotion Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Promotion Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any industry member;

(k) To follow the Department's equal opportunity/civil rights policies;

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation and industry information designed to strengthen the kiwifruit industry's position in the marketplace, maintain and expand existing markets and uses for kiwifruit, develop new markets and uses for kiwifruit, and to carry out programs, plans, and projects designed to provide maximum benefits to the kiwifruit industry;

(m) To conduct periodic review or evaluation of each program, plan, or project to ensure that it contributes to an effective program of research, promotion, and consumer information;

(n) Not less than every 5 years, authorize and fund, from funds otherwise available to the Promotion Board, an independent evaluation of the effectiveness of the programs conducted by the Promotion Board. The Promotion Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section; and

(o) To investigate violations of the Order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Order.

Promotion, Research, and Consumer Information

§ 1214.40 Programs, plans, and projects.

(a) The Promotion Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and consumer information with respect to kiwifruit; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing, of kiwifruit and kiwifruit products, and the creation of new products thereof, to the end that marketing and use of kiwifruit may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of kiwifruit.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Promotion Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Promotion Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Promotion Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Promotion Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of kiwifruit or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Kiwifruit of all origins shall be treated equally. All promotions shall be generic in nature.

(e) Promotions shall be conducted to promote kiwifruit during all seasons and from all countries.

(f) All programs developed and implemented by the Board shall promote kiwifruit consumption in the U.S. domestic market. No program shall be implemented by the Board to promote exports of U.S.-produced kiwifruit in foreign markets.

Expenses and Assessments

§ 1214.50 Budget and Expenses

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Promotion Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(2) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f) of this section.

(3)(i) Subject to paragraph (a)(3)(ii) of this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Promotion Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Promotion Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Promotion Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Promotion Board.

(c) The Promotion Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Promotion Board shall retain complete control of their use.

(d) The Promotion Board shall reimburse the Secretary, from funds received by the Promotion Board, for administrative costs incurred by the Secretary in implementing and administering this subpart, including the salaries of Department employees and costs incurred in conducting referenda.

(e) The Promotion Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established. Such reserve funds may be

used to defray any expenses authorized under this subpart.

(f) With the approval of the Secretary, the Promotion Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Promotion Board. This provision is limited to the first year of operation of the Promotion Board.

§ 1214.51 Assessments.

(a) Any handler initially purchasing, or otherwise placing into interstate, foreign, or intrastate commerce, kiwifruit produced in the United States shall, in the manner as prescribed by the Promotion Board and approved by the Secretary, collect an assessment based upon the number of pounds of kiwifruit marketed in the United States for the account of the producer, and remit the assessment to the Promotion Board.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment shall not exceed $0.10 per seven pound tray of kiwifruit or the equivalent thereof.

(2) The rate of assessment for a fiscal year may be changed at the beginning of the fiscal year only and by regulation as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraph (b)(1) of this section.

(c) Any person marketing kiwifruit of that person's own production into the channels of commerce in the United States, through retail or wholesale outlets, shall be considered a handler and shall remit to the Promotion Board an assessment on such kiwifruit at the rate then in effect, at such time and in such form and manner prescribed by the Promotion Board, with the approval of the Secretary.

(d)(1) Each importer of kiwifruit shall pay an assessment to the Promotion Board on kiwifruit imported for marketing in the United States, through the U.S. Customs Service. A person acting as a principal or as an agent, broker, or consignee for any person who produces kiwifruit outside the United States shall be considered an importer.

(2) The assessment rate for imported kiwifruit shall be the same or equivalent to the rate provided for kiwifruit produced in the United States.

(3) The import assessment shall be uniformly applied to imported kiwifruit that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh kiwifruit.

(4) The assessments due on imported kiwifruit shall be paid when the kiwifruit are entered or withdrawn for consumption in the United States.

(5) Only one assessment shall be paid on each unit of kiwifruit imported.

(e)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (f) of this section, and importers if the U.S. Customs Service fails to collect the assessment, shall remit the assessments due to the Promotion Board on a monthly basis no later than the fifteenth day of the month following the month in which the kiwifruit were marketed, in such manner as prescribed by the Promotion Board.

(2)(i) The Promotion Board shall impose a late payment charge on any person that fails to remit to the Promotion Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) The Promotion Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Promotion Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall be applicable.

(4) Persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(f) The Promotion Board, with the approval of the Secretary, may enter into agreements authorizing other state mandated organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Promotion Board for collection purposes. Any reimbursement by the Promotion Board for such services shall be based on reasonable charges for services rendered.

(g) The Promotion Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Promotion Board shall not be obligated to pay interest on any advance payment.

(h) Except for the first year of operation of the promotion board, expenses for the administration, maintenance, and functioning of the board may not exceed 30 percent of the budget for a year.

§ 1214.52 Exemption from assessment.

(a) Producers who produce less than 500 pounds of kiwifruit annually shall be exempted from assessment.

(b) Importers who import less than 10,000 pounds of kiwifruit per year shall be exempted from assessment.

(c) Sales of kiwifruit made directly from the producer to a consumer for a purpose other than resale are exempt from assessment.

(d) Domestic and imported kiwifruit used for processing are exempt from assessment. The Promotion Board shall develop a list of approved processors.

(e) To claim an exemption, a producer or importer shall submit an application to the Promotion Board stating the basis on which the person claims the exemption for such year.

(f) If, after a person claims an exemption from assessments for any year under this section, and such person no longer meets the requirements of this paragraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on all the kiwifruit produced or imported by such person during the year for which the person claimed the exemption.

(g) Exempted individuals are subject to such safeguards as prescribed in rules and regulations in this part to prevent improper use of this exemption.

§ 1214.53 Influencing governmental action.

No funds received by the Promotion Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

Reports, Books, and Records

§ 1214.60 Reports.

(a) Each producer marketing kiwifruit of that person's own production for resale, and each handler responsible for the collection of assessments under § 1214.51(a) shall be required to report monthly to the Promotion Board, on a form provided by the Promotion Board, such information as may be required under this subpart or any rules and regulations issued in this part. Such information shall include, but not be limited to, the following:

(1) The handler's name, address, telephone number, and social security number or Employer Identification Number;

(2) Date of report, which is also the date of payment to the Promotion Board;

(3) Period covered by the report; and

(4) The number of kiwifruit containers, weight, size, and type purchased, initially transferred or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1214.52 from those who claim such exemptions.

(b) If determined necessary by the Promotion Board and approved by the Secretary, each importer shall file with the Promotion Board periodic reports, on a form provided by the Promotion Board, containing at least the following information:

(1) The importer's name, address, telephone number, and social security number or Employer Identification Number;

(2) The quantity of kiwifruit entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) For persons who have an exemption from assessments under § 1214.52, such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted kiwifruit.

§ 1214.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Promotion Board staff or the Secretary such books and records as are deemed necessary by the Promotion Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued in this part, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1214.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued in this part shall be kept confidential by all persons, including all employees and former employees of the Promotion Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Promotion Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only by judicial order in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1214.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Promotion Board shall be submitted to the Secretary for approval.

§ 1214.71 Suspension or termination.

(a) Whenever the Secretary finds that this part obstructs or does not tend to effectuate the declared purpose of the Act, the Secretary shall terminate or suspend the operation of provisions of this part.

(b)(1) Six years after the date on which this subpart becomes effective, and at the end of every six-year period thereafter, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) The Secretary shall also hold a referendum:

(i) At the request of the Promotion Board; or

(ii) If not less than 30 percent of the kiwifruit producers and importers subject to assessments under the Order submit a petition requesting a referendum be held.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the kiwifruit producers and importers voting in a referendum under paragraphs (b) (1) or (2) of this section who, during a representative period determined by the Secretary, have been engaged in producing and importing kiwifruit and who, on average, annually produced and imported more than 50 percent of the volume of kiwifruit produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subpart shall be conducted in such manner as the Secretary may prescribe.

§ 1214.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Promotion Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Promotion Board. Such persons, upon designation by the Secretary, shall become trustees for all the funds and property owned, in the possession of, or under the control of the Promotion Board, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Promotion Board under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Promotion Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Promotion Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same

obligations imposed upon the Promotion Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1214.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued in this part, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations issued in this part;

(b) Release or extinguish any violation of this subpart or any rules or regulations issued in this part; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1214.74 Personal liability.

No member or employee of the Promotion Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1214.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Promotion Board under this subpart shall be the property of the United States Government as represented by the Promotion Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Promotion Board. Upon termination of certain provisions in this subpart, § 1214.72 shall apply to determine disposition of all such property.

§ 1214.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Promotion Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1214.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

Definitions

§ 1214.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order of this part.

Nomination Procedures

§ 1214.110 Nominations.

Nominations shall be made by mail ballot in accordance with the procedures prescribed in § 1214.31. Each mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by May 1, or such other date approved by the Secretary.

§ 1214.111 Mail balloting.

(a) The Promotion Board shall conduct nominations of individuals as candidates for appointment to the Promotion Board by mail nomination form.

(b)(1) Notice of mail balloting to nominate candidates for a position on the Promotion Board shall be publicized by the Promotion Board to producers, importers, kiwifruit exporter organizations and to the Secretary, by March 1 of each year.

(2) Nomination forms will be used to collect names of individuals to be placed on a ballot to be sent to producers and importers to select the individuals for the Secretary's appointment. Completed nomination forms must be returned to the Promotion Board prior to March 30.

(c) Once proposed nominations have been submitted, the Promotion Board shall cause each proposed nomination, if the individual qualifies, to be placed on the producer or importer ballot. The Promotion Board then shall mail a ballot to each known producer or importer.

(d) Each producer or importer shall cast a ballot for each open position on the Promotion Board assigned to the producers or importers/exporters in accordance with the procedures prescribed in § 1214.31. The completed ballot must be returned to the Promotion Board or its designee within 30 days after the ballot is issued.

(e) Within 45 days after a mail ballot is issued, the Promotion Board shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the top two vote getters for each open position on the Promotion Board.

(f) The Promotion Board shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Promotion Board and asked to forward such completed documentation to the Promotion Board within 14 days of such notification.

§ 1214.112 Appointment.

If an employee, partner, officer, or shareholder of a producer, importer or exporter is a current member of the Promotion Board, no nominee who is also an employee, partner, officer, or shareholder of such producer, importer, or exporter shall be appointed to the Promotion Board. A Promotion Board member shall be disqualified from serving on the Promotion Board if such individual ceases to be affiliated with a producer, importer, or exporter the Promotion Board member represents.

General

§ 1214.115 Financial statements.

(a) As requested by the Secretary, the Promotion Board shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Promotion Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

Assessments

§ 1214.120 Payment of assessments.

(a) Each handler responsible for collecting assessments on domestic kiwifruit shall collect the amounts assessed and remit such amounts to the Promotion Board on a monthly basis not later than the fifteenth day of the month following the month in which the kiwifruit were marketed to or through the handler, whatever comes first.

(b) A state mandated organization may collect producer assessments from handlers then remit the funds to the Promotion Board on a monthly basis. The state mandated program collecting the assessments must provide access to records for the purpose of periodic audit.

(c) Each producer who is also a handler responsible for paying any assessment amount on the producer's own kiwifruit shall complete a shipment data form to the Promotion Board not later than the fifteenth day of the month following the month in which the kiwifruit were marketed by the producer. An invoice will be sent to the producer for the amount owed.

(d) Each importer shall be responsible for remittance to the Promotion Board of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Promotion Board on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports kiwifruit, as principal or as an agent, broker, or consignee for any person who produces kiwifruit outside the United States shall be considered an importer.

(e) Remittance shall be by check, draft, or money order payable to the National Kiwifruit Board or Kiwifruit Promotion Board, and shall be accompanied by a report, on a form provided by the Promotion Board.

(f) The Promotion Board shall impose a late payment charge on any handler or importer who fails to make timely remittance to the Promotion Board of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the kiwifruit involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(g) In addition to the late payment charge, the Promotion Board shall charge interest at a rate of 1.5 percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the Kiwifruit involved were marketed. However, handlers paying their assessments, in accordance with paragraph (i) of this section, will not be subject to the 1.5 percent per month interest under this paragraph until the last day of the second month after such assessments were due under paragraph (i) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Promotion Board.

(h) Any assessment determined by the Promotion Board at a date later than prescribed by this section, because of a person's failure to submit a report to the Promotion Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (f) and (g) of this section.

(i) In lieu of the monthly assessment payment and reporting requirements of §§ 1214.125 and 1214.60, the Promotion Board may permit a handler to make advance payment of the total estimated assessment amount due to the Promotion Board for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable kiwifruit.

(j) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Promotion Board shall not, in any case, be obligated to pay interest on any advance payment.

§ 1214.121 Exemption procedures.

(a) Any producer who produces less than 500 pounds of kiwifruit annually or who produces kiwifruit for processing and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 shall apply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption. Such producer shall certify that their production of kiwifruit shall be less than 500 pounds, for the fiscal year for which the exemption is claimed. Any importer who imports less than 10,000 pounds of kiwifruit annually or who imports kiwifruit for processing and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 shall apply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption. Such importer shall certify that their importation of kiwifruit shall not exceed 10,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the Promotion Board shall determine whether an exemption may be granted. The Promotion Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on kiwifruit. Handlers and importers, except as otherwise authorized by the Promotion Board, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Promotion Board.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Promotion Board for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service and determined to be exempt at a later time. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the year the kiwifruit were actually imported.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption.

(e) The Promotion Board may require persons receiving an exemption from assessments to provide to the Promotion Board reports on the disposition of exempt kiwifruit and, in the case of importers, proof of payment of assessments.

Reports

§ 1214.125 Reports.

Each handler or producer that is also a handler shall be required to report monthly to the Promotion Board such information as may be required under § 1214.60. In addition, each handler may be required to provide the farm identification number or social security number of each producer the handler

has dealt with during the time period covered by the report.

Miscellaneous

§ 1214.130 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

Dated: October 8, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–27322 Filed 10–16–97; 8:45 am]

BILLING CODE 3410–02–U

federal register

Friday
October 17, 1997

Part IV

The President

Proclamation 7041—International Rural Women's Day, 1997

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Title 3—

The President

Proclamation 7041 of October 15, 1997

International Rural Women's Day, 1997

By the President of the United States of America

A Proclamation

Our world has been continually uplifted and renewed by the contributions of women. Women of courage and conscience, women of strength and compassion, women of vision and talent have enriched every aspect of international society. In our own Nation, the names of such extraordinary individuals as Harriet Tubman, Susan B. Anthony, Jane Addams, Rosa Parks, Dolores Huerta, and so many more, are etched on our history and in our hearts. But there are millions of other women who live and work among us whose names will never be known, but whose efforts and energy contribute profoundly to the quality of our lives. Rural women are numbered among these many quiet heroes.

Today rural women comprise more than one-quarter of the world's population, and they form the basis of much of the world's agricultural economy. In the United States, working on farms and ranches, they play a vital part in ensuring a healthy, safe, and abundant supply of food and fiber for our people. In developing countries, as small farmers, laborers, and entrepreneurs, rural women help produce most of the food, create many of the jobs, and manage most of their countries' natural resources. While millions of rural women worldwide live below the poverty level, struggling to survive with scarce resources and little training and education, they still manage to feed their families and contribute to their communities.

When the international community came together in Beijing in 1995 for the Fourth United Nations World Conference on Women, rural women made their voices heard by world leaders, and their hard work and sacrifice were at last recognized by people across the globe. Next year, when the United States hosts the Second World Conference on Women in Agriculture, we will continue to focus on the status of rural women and their contributions to our world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 15, 1997, as International Rural Women's Day in the United States. I call upon the American people to observe this day with appropriate programs and activities in recognition of the extraordinary contributions rural women make to the quality of our lives, both in America and around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-27814
Filed 10-16-97; 11:12 am]
Billing code 3195-01-P

federal register

Friday
October 17, 1997

Part V

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Treasury and General Government Appropriations Act, 1998; Notices

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Treasury and General Government Appropriations Act, 1998

October 16, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 16, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

THE WHITE HOUSE
Washington,
October 16, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amount of discretionary budget authority, as specified in the attached report, contained in the "Treasury and General Government Appropriations Act, 1998" (Public Law 105–61; H.R. 2378). I have determined that the cancellation of this amount will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachment, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Newt Gingrich,
Speaker of the House of Representatives,
Washington, D.C. 20515.

THE WHITE HOUSE
Washington,
October 16, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amount of discretionary budget authority, as specified in the attached report, contained in the "Treasury and General Government Appropriations Act, 1998" (Public Law 105–61; H.R. 2378). I have determined that the cancellation of this amount will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachment, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, D.C. 20510.

Cancellation No. 97–56

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Treasury and General Government Appropriations Act, 1998" (H.R. 2378).

1(A). Dollar Amount of Discretionary Budget Authority: $8,000 thousand in FY 1998, $183,000 thousand in FY 1999, $209,000 thousand in FY 2000, $221,000 thousand in FY 2001, and $233,000 thousand in FY 2002 due to reductions in employee contributions to the Civil Service Retirement and Disability Fund (CSRDF). These reduced contributions would result from employee elections to switch retirement coverage to the Federal Employees Retirement System (FERS) from enrollment in the Civil Service Retirement System (CSRS) that is authorized by Section 642.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: Section 642 would require the Office of Personnel Management to conduct an Open Season to permit Federal employees to switch enrollment from CSRS to FERS between July 1, 1998 and December 31, 1998. The estimated impact is the net reduction in employee contributions to the CSRDF trust fund from 7 percent of pay under CSRS to 0.8 percent under FERS. It is estimated that 5 percent of CSRS-covered employees would switch. This provision is being canceled because: (1) it would require the employing agencies to absorb increased retirement costs, using funds that otherwise would be available for payroll and other agency needs; (2) it would inhibit agency downsizing and restructuring efforts by discouraging voluntary turnover; (3) it was not requested in the President's FY 1998 budget; and (4) it was not the subject of extensive deliberation and debate prior to enactment.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal receipts will not decrease, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Receipt changes

[In thousands of dollars]

Fiscal year:	
1998	−8,000
1999	−183,000
2000	−209,000
2001	−221,000
2002	−233,000
Total	−854,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: The estimated budget authority effect for each year is equal to the receipt changes shown above.

Outlays: The estimated outlay effect for each year is equal to the receipt changes shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Office of Personnel Management.

2(A). Bureau: None.

2(A). Governmental Function/Project (Account): Civil Service retirement (Civil Service Retirement and Disability Fund).

2(B). States and Congressional Districts Affected: All.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: The provision would have had a national effect.

[FR Doc. 97–27914 Filed 10–16–97; 4:12 pm]

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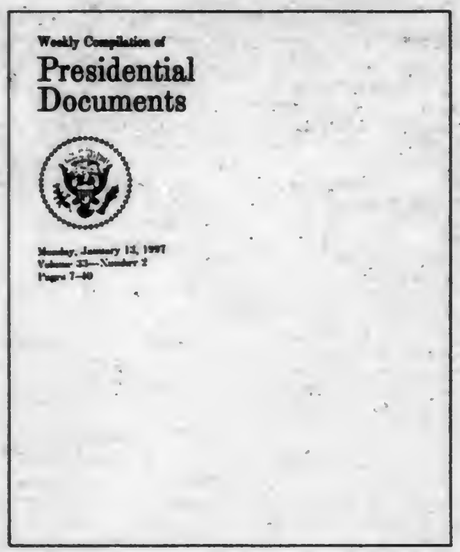
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Rules and Regulations

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Canning and Processing Tomato Endorsement; and Common Crop Insurance Regulations, Processing Tomato Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of processing tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current canning and processing tomato endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current canning and processing tomato endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 6413, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563–0053. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, June 23, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 33763–33768 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.160, Processing Tomato Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring canning and processing tomatoes found at 7 CFR part 401 (Canning and Processing Tomato Endorsement). FCIC

also amends 7 CFR 401.114 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 62 comments were received from an insurance service organization, reinsured companies, agents, a California Tomato Growers Association, and tomato growers. The comments received, and FCIC's responses are as follows:

Comment: An insurance service organization recommended that a number of definitions common to most crops be removed from the crop provisions and placed into the Basic Provisions.

Response: FCIC agrees and is currently in the regulatory review process that will move commonly used definitions from the crop provisions to the Basic Provisions and this rule will be revised to delete the definitions when the Basic Provisions are published as a final rule.

Comment: A reinsured company and a crop insurance agent recommended changing the sales closing date in California from January 15 to February 28. The commenter indicated that the sales closing date of January 15 causes inefficiency because it differs from the February 28 sales closing date for most other spring crops.

Response: The Federal Crop Insurance Reform Act of 1994 required the sales closing date to be moved from February 15 to January 15. This date cannot be extended without appropriate legislative changes. Therefore, no change has been made.

Comment: An insurance service organization recommended changing the definition of "bypassed acreage" to read as follows: "Land on which production is ready for harvest but is left unharvested in favor of harvesting other fields."

Response: The definition of *bypassed ocreage* has been revised to clarify that land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Comment: An insurance service organization expressed concern with the definition of "good farming practice," which makes reference to cultural practices generally in use in the county and that are recognized by the Cooperative State Research, Education, and Extension Service (CSREES) as compatible with agronomic and weather conditions in the county. The comment questioned whether cultural practices exist that are not necessarily recognized (or possible known) by the CSREES. The comment suggested changing the term "county" to "area."

Response: FCIC believes that the CSREES recognizes farming practices that are considered acceptable for producing processing tomatoes. If a producer is following practices not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Although cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. No change has been made.

Comment: An insurance service organization recommended changing the definition of "planted acreage" so that either initially or replanted acreage must be planted in rows to be considered planted.

Response: FCIC agrees and has amended the definition as suggested. The definition of replanting has also been changed accordingly.

Comment: An insurance service organization recommended that the definition of "replanting" be clarified by inserting "processing tomato" between the last two words ("successful" and "crop") in the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that "replanting" is performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

Comment: An insurance service organization recommended that the definition of "timely planted" be clarified by inserting the word "initially" at the beginning of the definition.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC believes the definition is clearly stated. Therefore, no change has been made.

Comment: An insurance service organization, a reinsured company, insurance agents, a tomato growers association, and a tomato grower disagreed with the provisions that remove "units by share" in California (section 2(a.). The comments indicated that: (1) Unit division by share is no more difficult to administer for tomatoes than it is for other crops in California; (2) The change will give producers a greater incentive to purchase CAT than buy-up, since the CAT Endorsement allows basic units by share; and (3) Inequitable loss payments between tenants and landlords would result.

Response: FCIC agrees that optional units based on share should be provided. Section 2(a) has been deleted and the remaining sections have been redesignated accordingly. The language in 8(b) is intended to cover a producer who has a crop share agreement, who rents, or who owns acreage. This should be separate from the unit issue.

Comment: An insurance service organization, reinsured companies, a grower association, insurance agents, and tomato producers stated that section 2(b) eliminates optional units for nearly all California producers since most contracts are written for a specific amount of production. Removal of this benefit will have a detrimental impact on producers who had optional units in the past. For example: A producer with 6,000 contracted tons, 200 acres of land, an approved yield of 30 tons per acre, and a production guarantee of 22.5 tons per acre, receives no benefit if only one unit is allowed and 4,500 tons of tomatoes are produced. However, if two 100 acre units are allowed, the first unit produces 3,000 tons and the second unit produces 1,500 tons (4,500 total tons), an indemnity based on 750 tons would be allowed on the second unit.

Response: FCIC agrees that optional units should remain available in California and has amended section 2(b) (redesignated 2(a)) accordingly. Premium rates also will reflect adoption of this change.

Comment: An insurance service organization and reinsured companies indicated that the "earlier of" * * * aspect of section 3(b) eliminates the need for item (1). Item (2), the acreage reporting date, will always be earlier than item (1) (August 20). One comment questioned why the provision allows until August 20 to obtain signed contracts in all but a few counties in California.

Response: Section 3(b) was not intended to indicate the earlier of item (1) or (2). It was intended to indicate the earlier of August 20 or the date of damage only in those counties with a July 15 acreage reporting date, and the earlier of the acreage reporting date or the date of damage in all other counties. In years of high production, it is common for contracts in northern California counties to be signed as late as August 20. The provision was designed to accommodate this practice and permit insurance to continue for all contracted tonnage. The provision has been clarified accordingly.

Comment: Five comments from reinsured companies asked why section 3(c) was changed to reduce the price election rather than the production guarantee.

Response: The Federal Crop Insurance Act authorizes FCIC to reduce the payment to producers who elect catastrophic coverage for acreage that is not harvested or for any other costs that are not incurred if the crop is lost prior to harvest. The change is in compliance with this provision of law.

Comment: An insurance service organization and a reinsured company stated that provisions in section 6 that require the producer to provide a copy of the processor contract no later than the acreage reporting date: (1) Could allow producers to wait until the acreage reporting date to decide if they want coverage; and (2) will be nearly impossible to implement since processor contracts will not be finalized by the dates specified in section 3.

Response: Virtually all processor contracts should be completed within the time frame provided for in the policy. Production covered by contracts completed after these time frames will not be insured. Therefore, no change has been made.

Comment: A reinsured company questioned why the price election for unharvested acreage is used in the premium calculations in section 7.

Response: The provision should have referred to the price election for the third (final) stage. The provision has been revised accordingly.

Comment: An insurance service organization and a reinsured company stated that section 8(b) is confusing and seems to indicate that the landlord does not have a share unless the landlord's name is written on the tomato contract. Another reinsured company interpreted the provision to mean that a tenant cannot have a share since that person does not retain possession of the acreage.

Response: The language in 8(b) is intended to cover a producer who has a crop share arrangement, who rents, or who owns acreage. The provision has been clarified by indicating that control of the acreage is retained rather than possession.

Comment: An insurance service organization stated that section 8(a)(4) would allow coverage by written agreement or Special Provisions on tomatoes following tomatoes in either of the two previous years, interplanted with another crop or planted into an established grass or legume and asked if these practices would ever be allowed by the processor contract. The comment indicated that consideration should be given to inserting some of this language into the Basic Provisions since it is duplicated in most Crop Provisions.

Response: Some processor contracts may not stipulate rotation or planting practices. Therefore, the provisions have been retained to limit insurance when a crop is interplanted, planted into a grass or legume, or is planted in an unusual rotation. These provisions vary among Crop Provisions and therefore, should not be moved to the Basic Provisions. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company questioned whether the provisions in sections 10(a) and (b) that end the insurance period on the date sufficient production is harvested to fulfill the producers processor contract: (a) Eliminate unit division benefits or (b) conflict with the provision in section 12(a) that states "We will determine your loss on a unit basis." The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. One commenter also questioned whether "delivered to" is the same as "acceptable by" the processor.

Response: Sections 10(a) and (b) do not eliminate unit division provisions or conflict with section 14(a). All indemnities will be paid on a unit basis. Once acreage is harvested and the processor contract is fulfilled, the insurance period ends. If there is unharvested production and the processor contract has not been fulfilled, due to an insured cause of loss is still covered. Appraised acreage will not be used to determine whether the contract has been fulfilled and the insurance period ends, although it will be used to determine production to count and in determining the producer's APH. When determining production to count, only the harvested production shown on the settlement sheet or rejected as a result of uninsured cause of loss will be used. FCIC has revised section 10(a) to clarify that insurance ceases "the date you harvest sufficient production to fulfill your processor contract if your processor contract stipulates a specific amount of production to be delivered." The contract is not fulfilled if the production is not accepted by the processor. However, rejected production maybe considered as production to count unless damaged by an insurable cause of loss occurring during the insurance period. Further, records are maintained as production is delivered to the processor. Therefore, the insured should know when the contract is fulfilled.

Comment: An insurance service organization questioned the summary of changes to the proposed rule in section 13(a)(2). The commenter stated the summary of changes says "the producer must give notice on or before the date the tomatoes should be harvested if any acreage on a unit will not be harvested," but the provision states the producer must give notice "not later than 48 hours after: (1) Total destruction of the tomatoes in the unit; or (2) Discontinuance of harvest on a unit on which production remains.

Response: FCIC agrees that the summary was in error and the provisions as proposed are correct.

Comment: An insurance service organization questioned the notification requirement in section 13(b), which states that the insured must notify the insurance provider "within 3 days of the date harvest should have started on any acreage that will not be harvested..." The commenter stated there is a difference between notice "within 3 days" as the policy provision indicates and "on or before" as item 21 of the summary of changes indicates. The commenter also asked how the date tomatoes should have been harvested will be determined.

Response: The summary of changes was not correct. It should have indicated "within 3 days after the date harvest should have started...." The insured is best able to assess the date tomatoes should be harvested based on the maturity of the crop. Therefore, no change has been made.

Comment: An insurance service organization stated that the language in 13(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: The notice requirement in section 13 are in addition to the requirements in section 14 of the Basic Provisions that require notice of loss within 72 hours of initial discovery of damage. Notice within this time period would be required if damage is discovered less than 15 days before harvest. If damage is discovered during harvest, notice must be given immediately. FCIC believes that these provisions, as a whole, are adequate. Therefore, no change has been made.

Comment: An insurance service organization stated that section 14(c)(1)(iii) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company recommended removal of the requirement to renew written agreements each year if there are no significant changes to the farming operation.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue from year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. FCIC has proposed that the written agreement provision be included in the Basic Provisions. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Tomato Provisions:

1. The paragraph preceding section 1 is amended to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Added a definition of "approved yield". The definitions of "bypassed acreage," "planted acreage" "practical to replant" "production guarantee (per acre)" and "replanting" have been revised for clarification.

3. Removed the reference to "written agreement" in section 2(a) of the proposed rule and added it to section 2(e)(4) of the final rule to clarify which provisions may be revised by written agreement.

4. Section 2(a)—Added provisions to clarify that no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

5. Section 3(b)—Has been revised for clarification.

6. Section 3(e)—Added provisions to clarify when appraised production on bypassed acreage not bypassed due to an insurable cause of loss will be used when determining the producer's approved yield.

7. Section 3(f)—Added provisions to clarify when acreage is bypassed because it was damage by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

8. Section 6—Clarify a producer must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

9. Sections 8(b), (c)(1), (2), and (3)—Have been revised for clarification.

10. Section 10(a)—Revised to conform this provision with other processing crop provisions, which specify that once the processor contract has been fulfilled, the insurance period will end if the processor contract stipulates a specific amount of production.

11. Section 10(b)—Clarify that the insurance period will end when the crop should have been harvested.

12. Section 11(a)(5)—Clarified the wildlife cause of loss by deleting the language "unless proper measures to control wildlife have not been taken" to be consistent with other crop provisions.

13. Section 11(a)(ii)—Has been revised for clarification.

14. Section 11(a)(9)—Deleted this provision because it is unnecessary since other listed causes of loss are what results in physical damage.

15. Section 11(b)(4)—Deleted this provision since such damage would occur outside the insurance period specified in section 10.

16. Section 13(b)—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started is the acreage will not be harvested. The insured must also provide documentation stating why the acreage was bypassed.

17. Section 14(b)(1) thru (7)—Revised and added an example of settlement of claim.

18. Section 14(c)(E)—Deleted this provision as proposed.

19. Section 14(c)(iii)—Added provisions to clarify production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract. 14(c)(iii) as proposed has been redesignated as 14(c)(iv).

20. Section 14(d)—Clarified that once harvest has begun on acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

21. Section 15—Added statement that late and prevented planting is not applicable to processing tomatoes.

22. Section 16—Written agreements had been redesignated. Clarify when provisions of the policy may be altered by written agreement.

List of Subjects in CFR Parts 401 and 457

Crop insurance, Canning and processing tomato endorsement, Processing tomato.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U. S. C. 1506(1), 1506(p).

2. Section 401.114 introductory text is revised to read as follows:

§ 401.114 Canning and processing tomato endorsement.

The provisions of the Canning and Processing Tomato Crop Insurance Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.160 is added to read as follows:

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured polices:

Processing Tomato Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2) etc.

1. Definitions

Acre. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart (g).

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Days. Calendar days.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

First fruit set. The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the tomato processor contract with the processing company, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The severance of tomatoes from the vines.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Plant stand. The number of plants per acre considered to be normal for the applicable tomato variety and growing area.

Planted acreage. Land in which seed or plants have been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Tomatoes must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75% of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing tomatoes within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

Production guarantee (per acre). The number of tons determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2,000) pounds avoirdupois.

USDA. United States Department of Agriculture.

Written agreement. A written document that alters designated terms of this policy in accordance with section 16.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit, as defined in section in section 1 of the Basic Provisions, may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Notwithstanding the provisions of this section on unit division, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) *Optional units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, as the equivalent of their sections for unit purposes. In areas that have not been surveyed using sections are equivalent systems, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where "non-irrigated" practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

(iii) *Optional Units on Separate Acreage Planted to Tomatoes:* In California only, in addition to or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent or FSA Farm Serial Number.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) Liability under this policy will not exceed the number of tons required to be accepted by the processor under a processor contract in effect on or before:

(1) The earlier of August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of July 15; or

(2) The earlier of the acreage reporting date or the date of damage in all other counties. (Exclude indemnities that occur in stage one and replant payments.)

(c) The price election used to determine the amount of an indemnity is progressive by stage and increases, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and applicable price elections are:

(1) First stage is from planting until first fruit set. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 50 percent of your price election;

(2) Second stage is from the first fruit set until harvest. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 80 percent of your price election; and

(3) Third stage (final stage) is harvested acreage. The price election used in this stage to establish the amount of any indemnity owed will be 100 percent of your price election.

(d) Any acreage of tomatoes damaged to the extent, that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of an indemnity will be that applicable to the stage in which the tomatoes were destroyed.

(e) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(f) Acreage that is bypassed because it was damaged by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 15 in California and March 15 in all other states.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 of the Basic Provisions, the annual premium amount per acre is determined by multiplying the production guarantee per acre by the price election for the third (final) stage; by the premium rate; by the insured acreage; by the applicable share at the time of planting; and ultimately by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest as processing tomatoes;

(3) That are grown under, and in accordance with, the requirements of a processor contract executed on or before August 20 in all counties with an acreage reporting date of July 15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Grown on acreage on which tomatoes were grown in either of the two previous years, except in California;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the tomatoes are grown, you are at risk of loss, and the processor contract provides for delivery of processing tomatoes under specified conditions and at a stipulated price.

(c) A tomato producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a contract under this policy; and

(3) Our inspection provides that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

10. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) You harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(b) The tomatoes should have been harvested but was not harvested;

(c) The tomatoes were abandoned;

(d) Harvest was completed;

(e) Final adjustment of a loss was completed; or

(f) The following calendar date for the end of the insurance period

(1) October 20 in California; and

(2) October 10 in all other states.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections

11(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Acreage being bypassed, if the acreage is bypassed because:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment;

(2) The processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss; or

(3) Your failure to follow the requirements contained in the processor contract.

12. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share.

13. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains;

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect the damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 14(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 14(b)(2) if there are more than one type;

(4) Multiplying the total production to counted (see section 14(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 14(b)(4) if there are more than one type;

(6) Subtracting the result of section 14(b)(4) from the result of section 14(b)(2) if there is only one type or subtracting the result of section 14(b)(5) from the result of section 14(b)(3) if there are more than one type; and

(7) Multiplying the result of section 14(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of type A processing tomatoes in the unit, with a guarantee of 18.8 tons per acre and a price election of $50.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 tons guarantee;

(2) 940.0 tons × $50.00 price election = $47,000.00 value guarantee;

(4) 10.0 tons × $50.00 price election = $500.00 value of production to count;

(8) $47,000.00 − $500.00 = $46,500.00 loss; and

(7) $46,500 × 100 percent = $46,500.00 indemnity payment.

You also have a 100 percent share in 50 acres of type B processing tomatoes in the same unit, with a guarantee of 15.0 tons per acre and a price election of $35.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 ton guarantee for type A and 50.0 acres × 15.0 tons = 750.0 ton guarantee for type B;

(2) 940.0 ton guarantee × $50.00 price election = $47,000.00 value of guarantee for type A and 750.0 ton guarantee × $35.00 = $26,500.00 value of guarantee for type B;

(3) $47,000.00 + $26,500.00=$72,500.00 total value of guarantee;

(4) 10.0 tons × $50.00 price election=$500.00 value of production to count for type A and 5.0 tons × $35.00 price election=$175.00 value of production to count for type B;

(5) $500.00 + $175.00=$875.00 total value of production to count;

(6) $72,500.00 − $875.00=$71,575.00 loss; and

(7) $71,575 loss × 100 percent=$71,575.00 indemnity payment.

(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

(iv) Potential production on insured acreage that you intend to put to another use or abandoned, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Written Agreements.

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 16(e);

(b) The application for a written agreement must contain all variable terms of the

contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–27652 Filed 10–17–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 213a and 299

[INS No. 1807–96]

RIN 1115–AE58

Affidavits of Support on Behalf of Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (the Act) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the procedures that Federal, State, or local agencies or private entities must follow to seek reimbursement from the sponsor for provision of means-tested public benefits, and provides procedures of imposing the civil penalty provided for under section 213A of the Act, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the Act.

DATES: *Effective Date:* This interim rule is effective on December 19, 1997.

Comment Date: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1807–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Miriam J. Hetfield, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536; telephone (202) 514–5014; or Lisa S. Roney, Office of Policy and Planning, 425 I Street NW., Room 6052, Washington, DC 20536; telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: On September 30, 1996, the President approved enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208. Section 531(a) of IIRIRA amends section 212(a)(4) of the Act to provide that an alien is inadmissible as an alien likely to become a public charge if the alien is seeking an immigrant visa, admission as an immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based immigrant, or (c) an employment-based immigrant, of a relative if the alien is the petitioning employer or owns a significant ownership interest in the entity that is the petitioning employer. To overcome this ground of inadmissibility, the alien must be the beneficiary of an affidavit of support filed under the new section 213A of the Act. Section 213A of the Act specifies the conditions that must be met in order for an affidavit of support to be sufficient to overcome the public charge inadmissibility ground.

Under 531(b) of IIRIRA, the new affidavit of support will be required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997. Section 531(b) of IIRIRA excuses an applicant for admission from the affidavit of support requirement if the applicant had "an official interview with an *immigration* officer" before December 19, 1997. Because of the massive administrative burden that would result from requiring aliens who obtain immigrant visas before December 19, 1997, but do not apply for admission until on or after December 19, 1997, this interim rule designates Consular Officers as Immigration Officers, solely for purposes of section 531 of IIRIRA and this new part 213a. Thus, an alien who is issued an immigrant visa before December 19, 1997 will not be required to present an affidavit of support that complies with the requirements of section 213A of the Act, even if the alien does not apply for admission until December 19, 1997, or later.

Under section 213A of the Act, Form I–864, Affidavit of Support Under Section 213A of the Act, is a legally enforceable contract between the sponsor and the Federal Government, for the benefit of the sponsored immigrant and of any Federal, State, or local government agency or private entity that provides the sponsored immigrant with any means-tested public benefit. The sponsor must sign the Form I–864 before a notary public or a United States Immigration Officer or Consular Officer. By executing Form I–864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies which provide means-tested public benefits to a sponsored immigrant. The sponsor must, under civil penalty, notify the Service and the State(s) in which the sponsored immigrant(s) reside of any change in the sponsor's address. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This interim rule implements section 213A of the Act by adding a new 8 CFR part 213a. Intending immigrants who require an affidavit of support under section 213A of the Act.

Under section 212(a)(4)(C) of the Act, all family-sponsored immigrants, including immediate relatives, are inadmissible unless the petitioner has executed an affidavit of support under section 213A of the Act. Aliens who immigrate under the classification for battered spouses and children and widow/widowers (see sections 204(a)(1)(A) (ii), (iii), or (iv) and 204(a)(1)(B) (ii) or (iii) of the Act) do not require a Form I–864 to overcome the public charge ground of inadmissibility.

The Act also provides that certain employment-based immigrants under section 203(b) of the Act are inadmissible unless an affidavit of support has been executed on their behalf. Sections 212(a)(4(D) and 213A(f)(4)(A) of the Act state that an employment-based immigrant requires an affidavit of support if a relative of the immigrant, or an entity in which a relative of the immigrant has a significant ownership interest, filed the employment-based immigrant petition. This interim rule defines a relative for purposes of this section as a spouse, parent, child, adult son or daughter, or sibling, which are relationships recognized in the Act as according immigration benefits. Neither the statute nor the legislative history defines the term "significant ownership interest." The Service examined the use of the term in other statutes and regulations. Several statutes and regulations defined "significant ownership interest" as a 5 percent ownership interest in a for-profit entity. See 26 U.S.C. 613A(d)(3) and 26 CFR 1.613A–7 (for determining relationship between entities for purposes of determining limits on oil and natural gas depletion allowances); 42 CFR 424.22(d)(1) (physician's interest in a home health agency); 45 CFR 94.3 and 42 CFR 50.603 (for determining researcher's interest in an entity receiving research grants); 48 CFR 952.204–73(c) (for questions relating to foreign ownership of certain Department of Energy contractors). In only one situation was "significant ownership interest" defined to mean more than a 5 percent interest; 17 CFR 104.735–2 (for limiting investments of members of the Commodity Futures Trading Commission). And, in that case, it is a 10 percent ownership interest that is deemed significant. Accordingly, this interim regulation defines the term "significant ownership interest" as a 5 percent or greater ownership interest in a for-profit entity.

Aliens who are "accompanying or following to join" the beneficiary of a petition pursuant to section 203(d) of the Act are seeking an immigrant visa or adjustment of status under the same immigrant visa category as the beneficiary of the immigrant visa petition. See section 203(d) of the Act. This interim regulation, therefore, provides that a Form I–864 must be executed on behalf of any accompanying or following to join spouse or child under section 203(d) of the Act, if they are filing applications for immigrant visas or adjustment of status after December 19, 1997 in a classification for which an affidavit of support is required.

Affidavit of Support Sponsors Under Section 213A of the Act

Section 212(a)(4)(C)(ii) of the Act states that the person petitioning for the alien's admission on an immigrant relative visa petition must execute an affidavit of support in order for the alien to overcome the ground of inadmissibility. United States citizens who petition for an orphan under 8 CFR 204.3 must also execute a Form I–864. Similarly, under section 212(a)(4)(D) of the Act, the relative who filed an employment-based petition on behalf of the immigrant or a relative who has a significant ownership interest in the entity which filed an employment-based petition on behalf of the immigrant must also execute an affidavit of support. The petitioner must also sign and submit a separate Form I–864 on behalf of any spouse or children who accompany or follow to join the principal beneficiary of the immigrant visa petition. This interim rule uses the term "sponsor" to define the individual who executes an affidavit of support. A sponsor must be a natural person and cannot be a corporation or other entity.

If there is a spouse or any children immigrating with a sponsored immigrant, the sponsor may complete the Form I–864 for the principal immigrant and sign and submit photocopies of the completed form and all accompanying documentation for each spouse and/or child listed in part 3 of the Form I–864. The sponsor must sign each photocopy of the form I–864 with an original signature before a notary public or an Immigration or Consular Officer. If a spouse or child files an application for an immigrant visa or adjustment of status 6 months or more after the sponsor originally signed the affidavit of support, the sponsor must execute a new Form I–864 on his or her behalf.

Sponsorship Requirements

Section 213A(f)(1) of the Act sets forth the requirements to be a sponsor. The individual executing the Form I–864 must be a citizen or national of the United States or a lawful permanent resident of the United States, be at least 18 years of age, be domiciled in the United States or any of its territories or possessions, and demonstrate the means to maintain an income of at lease 125 percent of the Federal poverty guideline (100 percent of the poverty guideline for sponsors on active duty in the Armed Forces of the United States who are petitioning for their spouse or child).

The term "domicile" is defined in accordance with the generally accepted definition of the term. A lawful permanent resident who is living abroad is considered to have a domicile in the United States if he or she has applied for and obtained preservation of residence benefit under section 316(a) or 317 of the Act. A U.S. citizen living abroad whose employment meets the requirements of section 319(b)(1) of the Act will be considered to have a domicile in the United States.

Sections 213A(f)(1)(E) and 213A(f)(5) of the Act state that a sponsor, including a joint sponsor, must demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line. Section 213A(f)(3) of the Act reduces the income requirements to 100 percent of the Federal poverty line for persons on active duty (other than active duty for training) in the Armed Forces of the Untied States who are filing petitions on behalf of their spouse or child. Under section 213A(h) of the Act, the "Federal poverty line" means the level of income equal to the official poverty line, as defined by the Director of the Office of Management and budget and revised annually by the Secretary of Health and Human Services, that is applicable to the size of the sponsor's household. For purposes of the Form I–864, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

Section 213A(f)(6)(A)(iii) of the Act defines the size of the sponsor's household for purposes of determining ability to maintain income. The sponsor's household size includes the sponsor, all persons who are related to the sponsor by birth, marriage, or adoption and who live at the same residence as the sponsor, including the sponsor's spouse, and any other dependents whom the sponsor has lawfully claimed on the sponsor's personal Federal income tax return (even if those dependents do no live with the sponsor), plus all aliens included in the current affidavit of support, and any immigrants who have been previously sponsored under section 213A of the Act, unless the obligation has terminated.

By signing the new affidavit of support under section 213A of the Act, the sponsor agrees to provide support to maintain the sponsored immigrant(s) at or above 125 percent of the Federal poverty line. See section 213A(a)(1)(A) of the Act. Because the sponsor has an

obligation to support the sponsored immigrant(s) at or above 125 percent of the poverty line, for purposes of the Form I–864, the sponsor's household size is increased by the number of immigrants sponsored in the affidavit of support. This applies to all affidavits of support under section 213A of the Act, regardless of whether the sponsored immigrant(s) will be living in the same residence as the sponsor. Therefore, under this interim rule, the sponsor's ability to maintain income is measured against the number of family members residing with the sponsor and other dependents, plus any persons for whom the sponsor has previously executed a Form I–864 for whom the support obligation has not terminated, and the number of immigrants sponsored in the current affidavit of support.

Section 213A(f)(6)(A)(i) of the Act provides that a sponsor must provide a copy of the sponsor's individual Federal income tax return for each of the 3 most recent tax years, and that the sponsor must certify under penalty of perjury that the copies are true and correct copies of the returns as filed with the Internal Revenue Service (IRS). The new Form I–864 includes a certification that any attached tax returns are true and correct copies. Accordingly, this interim rule requires the sponsor to attach his or her Federal income tax returns as filed with the IRS for each of the 3 most recent tax years. If the sponsor has not filed tax returns for any of the 3 most recent tax years, he or she must explain his or her failure to file. For purposes of demonstrating means to maintain income, the total income, before deductions, in the sponsor's tax return for the most recent taxable year will be generally determinative. See section 213A(f)(6)(B) of the Act. If the sponsor can establish that he or she was not legally obligated to file a Federal income tax return for any of the 3 most recent tax years, other evidence of annual income may be considered.

In order to meet the income threshold, the sponsor may rely on his or her own income, the income of his or her spouse, and the income of any other individuals who are related to the sponsor by birth, marriage, or adoption, and have been living in the sponsor's residence for the previous 6 months or who are listed as dependents on the sponsor's most recent income tax return. In order to rely on the income of these other persons, however, the sponsor must include with the affidavit of support a written contract on Form I–864A, Contract Between Sponsor and Household Member, between the sponsor and each person whose income the sponsor will rely on to meet the income threshold. This written contract will provide that each person whose income the sponsor will rely on has agreed, in consideration of the sponsor's signing of the Form I–864, to assist the sponsor in supporting the sponsored immigrant(s), to be held jointly and severally liable for payment of any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any competent court.

If the sponsor will rely on the income of a member of the sponsor's household who is also the immigrant who is sponsored in the affidavit of support being filed, the sponsored immigrant need not sign a Form I–864A, unless the sponsored immigrant's income will be used to determine the sponsor's ability to support a spouse or any children listed in Part 3 of Form I–864 who are immigrating with the sponsored immigrant. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse and/or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A, agreeing to make his or her income available to support the other sponsored immigrants. Either the sponsor, as a party to the contract, or the sponsored immigrant(s) and any Federal, State, local, or private agency, as third party beneficiaries, will be able to bring a civil action to enforce the written contract.

Federal individual income tax returns for the 3 most recent tax years must be attached to the Form I–864 for each individual whose income is used to qualify. These individuals must certify on Form I–864A, under penalty of perjury, that any attached tax returns are true and correct copies of the returns as submitted to the IRS. If any of these individuals has no legal obligation to file a Federal income tax return for any of the 3 most recent tax years, he or she must explain his or her failure to file and provide other evidence of annual income. The sponsor and any other individual whose income is used to a qualify must also submit current evidence of employment or self-employment (if any).

After calculating household income, the sponsor must determine whether his or her total income level meets or exceeds the poverty guidelines, based on the applicable household size, including family members residing with the sponsor, dependents, and any immigrants sponsored in the Form I–864 being filed or in a previous Form I–864 where the obligation has not terminated. There may be instances in which an Immigration or Consular Officer may question the sponsor's ability to maintain income based on the sponsor's current employment situation, on the Federal income tax returns for the 3 most recent tax years, or on receipt of welfare benefits.

If the petitioner is unable to demonstrate the means to maintain income equal to at least 125 percent of the poverty line, the intending immigrant is inadmissible under section 212(a)(4) of the Act, unless the petitioner and/or the sponsored immigrant(s) demonstrate significant assets which are available for the support of the sponsored immigrant(s) or a joint sponsor also executes a Form I–864. In order to be a joint sponsor, the individual must execute a separate Form I–864 and must accept joint legal responsibility with the petitioning sponsor and have an income and/or assets, based on his or her household size, including dependents and the number of persons previously and currently sponsored on Form I–864, which meets or exceeds 125 percent of the Federal poverty line. See section 213A(f)(5) of the Act.

Under section 213A(f)(6)(A)(ii) of the Act, a sponsor may demonstrate the means to maintain income through demonstration of significant assets of the sponsor and/or the sponsored immigrant(s), if such assets are available for the support of the sponsored immigrant(s). This section allows either the sponsor or the sponsored immigrant(s) to demonstrate that he or she owns significant assets which enable the sponsor to demonstrate that sufficient resources exist to support the sponsored immigrant(s), even if the sponsor's household income is below the Federal poverty line. The sponsor may also rely on the assets of any individuals who are listed as dependents on the sponsor's tax return for the most recent tax year or any individuals who are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months, provided that such individuals execute a contract on Form I–864A. Because section 213A(f)(6)(A)(ii) of the Act specifically permits the sponsor to rely on the assets of the immigrant sponsored in the affidavit of support being filed, the sponsored immigrant is not required to sign Form I–864A in order for the Consular Officer or Immigration Officer to consider the sponsored immigrant's assets. To reiterate, a sponsored immigrant who is a member of the sponsor's household is required to sign a Form I–864A only if the sponsor will rely on that sponsored immigrant's *income* to show the sponsor's ability to support a spouse or child immigrating with the sponsored immigrant.

The Service has determined that assets must be sufficient to support the intending immigrant(s) for at least 5 years, if necessary. Under section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–194, any alien (with certain exceptions) who obtains lawful permanent resident status after enactment is ineligible for any Federal means-tested public benefit for a period of 5 years. In addition, 5 years is the general residency requirement to qualify for naturalization. See section 316(a) of the Act. This interim rule, therefore, provides that significant assets must total at least five times the difference between the Federal poverty line and the sponsor's household income.

Effect of Affidavit of Support

Under section 213A(a)(1) of the Act, the execution of an affidavit of support under section 213A of the Act, coupled with the sponsored immigrant's acquisition of permanent residence, creates a contract between the sponsor and the U.S. Government which is legally enforceable against the sponsor by the sponsored immigrant, any Federal, State, or local governmental agency, or by any other entity which provides any means-tested public benefits to the sponsored immigrant. The sponsor is obligated to reimburse government agencies and private entities which provide means-tested public benefits to the sponsored alien. Section 423(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 specifically exempts some benefits from the reimbursement requirement. This interim rule defines "means-tested public benefit" as both a "Federal means-tested public benefit" and a "State means-tested public benefit." The former is defined as any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds defines as a "Federal means-tested public benefit." As of the date of the publication of this interim rule, two Federal agencies had published notices stating which of the programs they administer are considered "Federal means-tested public benefits." The Department of Health and Human Services has determined that payments under the Medicaid and Temporary Assistance to Needy Families (TANF) programs are the only "Federal means-tested public benefits" paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. See 62 FR 45256 (August 26, 1997). The Social Security Administration has determined that the only "Federal means-tested public benefits" paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are Supplemental Security Income (SSI) payments made under Title XVI of the Social Security Act. See 62 FR 45284 (August 26, 1997).

"State means-tested public benefit" is defined as any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State defines as a "means-tested public benefit." This interim rule also indicates that Federal agencies and States should issue determinations of which benefits are considered "means-tested public benefits" before the effective date of this rule or as soon as possible thereafter. In addition, no benefit is considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b), or 423(d) of Public Law 104–193. Means-tested benefits may be determined on such bases as income, resources, or the financial need of an individual, household, or unit.

Under section 213A(a)(2) of the Act, the sponsor's obligation terminates upon the sponsored immigrant's naturalization or when the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work. This interim rule also provides that the sponsor's obligation terminates if the sponsor or the sponsored immigrant dies, or if the sponsored immigrant ceases to hold permanent resident status and has departed the United States. Termination of the support obligation does not relieve the sponsor, or the sponsor's estate, of any liability for reimbursement that accrued before the termination of the support obligation. If the sponsor can establish that the obligation to support an immigrant under a previous Form I–864 no longer exists, that immigrant will not be considered as part of the sponsor's household size for purposes of determining the sponsor's income requirement when executing a new affidavit of support on behalf of another alien.

Sponsor's Change of Address Obligations

Under section 213A(d) of the Act, the sponsor must notify the Attorney General and the State in which each sponsored immigrant is currently a resident of the sponsor's new address within 30 days of any change of address. If the sponsor fails to do so, the sponsor may be subject to a civil penalty. The sponsor meets the obligation of reporting a change of address by completing Form I–865, Sponsor's Notice of Change of Address, and filing the completed Form I–865 with the Service. Any agency which provides means-tested public benefits may obtain information on the sponsor's current address through the Service's established system for verifying alien status. Since this information will be available to an agency through this verification procedure, the Service will consider the sponsor's filing of Form I–865 with the Service as sufficient for complete compliance with requirements of section 213A(d)(1) of the Act. This is, a sponsor will be considered to have given notice to both the Service and the State where the sponsored immigrant resides, and so will avoid a civil penalty under section 213A(d)(2) of the Act, if the sponsor files a properly completed Form I–865 with the Service in accordance with new 8 CFR 213a.3. The States do not have independent authority to impose a civil penalty under section 213A(d) of the Act; section 213A(d)(2) expressly gives enforcement authority to the Attorney General. This rule is not intended to preempt a State from requiring a sponsor to file a change of address with the State, as well as with the Service. But failure to comply with a State's requirement, if any, will not subject the sponsor to a civil penalty under section 213A(d) of the Act, if the sponsor filed the Form I–865 with the Service.

The Service will adjudicate cases involving imposition of the civil penalty for failure to comply with the section 213A(d) change of address requirement under the previously established procedures for cases involving civil penalties under the Act. These procedures are codified at 8 CFR part 280. If the sponsor is a lawful permanent resident, the sponsor must also comply with the change of address requirement imposed by 8 CFR 265.1, in addition to the change of address requirement of section 213A(d) of the Act.

Actions for Reimbursement

This interim rule implements section 213A(b) of the Act by specifying the

manner in which an agency or entity requesting reimbursement must notify the sponsor of his or her obligations and how a Federal, State, or local agency or private entity may take judicial action to obtain reimbursement. Requests for reimbursement must be served by personal service, as defined by 8 CFR 103.5a(a)(2). The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service or Consular office, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the type(s) of means-tested public benefit that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. If the sponsor fails to respond to a formal request for reimbursement issued by a nongovernmental entity or a government agency within 45 days by indicating a willingness to commence payment, the agency or entity may sue the sponsor in State or Federal court. Section 213A(b)(2) of the Act sets forth the procedures to compel reimbursement. Section 213A(b)(2)(C) fixes a 10-year statute of limitations on suits to collect reimbursement.

Reports to Congress

Section 213A(i)(3) of the Act and section 565 of IIRIRA require the Attorney General to make periodic reports to Congress. This interim rule incorporates these reporting requirements into 8 CFR 213a.4(b). Under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an agency that provides means-tested public benefits may deem the income and resources of an immigrant to include the income of any sponsor (including the income of the sponsor's spouse) who has executed an affidavit of support on behalf of the immigrant. However, if an agency determines that without its assistance the immigrant would be unable to obtain food and shelter, the amount of income that may be attributed to the immigrant is limited to the support the sponsor and spouse actually provide to the sponsored immigrant. If the agency makes this determination, section 421(e)(2) requires the agency to notify the Attorney General of information that the Attorney General would need to make the report required under section 565 of IIRIRA.

Notice and Comment Requirements

Sections 531(b) and 551(c) of the IIRIRA, Public Law 104–208, make the new affidavit of support requirement effective as of the date that is 60 days after promulgation of the new affidavit of support form. The Service is promulgating the new affidavit of support form simultaneously with the publication of this interim rule. To begin using the new affidavit of support form without this accompanying rule would cause widespread confusion about these new requirements. Only by having this rule in effect on the date that aliens must begin submitting the new affidavit of support can this confusion be mitigated. For this reason, the Commissioner finds that good cause exists to make this rule effective without observing the provisions of 5 U.S.C. 553 for prior notice and comment. The Commissioner nevertheless invites written comments on this interim rule and, in formulating the final rule, will consider any written comments that are received timely.

Regulatory Flexibility Act

The Commissioner has determined, in accordance with 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule applies to the individual sponsor and the sponsored immigrant, who are not within the definition of small entities established by 5 U.S.C. 601(6). In this regard, it is important to note that it is the immigrant's relative in that relative's individual capacity, and not the firm, that incurs the obligation to support an employment-based immigrant who is subject to the affidavit of support requirement. Since the duties imposed on the sponsor arise from the sponsor's participation in a voluntary Federal program, this rule is not a Federal private sector mandate, as defined by 2 U.S.C. 658(7)(A)(ii). The rule implements statutory requirements placed on Federal, State, and local government agencies related to seeking reimbursement of benefits from a sponsor under an affidavit of support. Agencies must also make certain reports to the Service. Under 2 U.S.C. 1531, however, no Federal Intergovernmental Mandate Assessment is required because this rule "incorporate[s] requirements specifically set forth in law."

Executive Order 12866

The Commissioner considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, because, over time, it will have a significant economic impact on the Federal Government in excess of $100 million.

Under provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, most immigrants are barred from receiving SSI benefits and food stamps until they become U.S. citizens or can be credited with 40 quarters of work. This restriction applies to most newly arriving immigrants, and to any aliens who were already admitted as immigrants, but whose eligibility for benefits was not preserved under the Balanced Budget Act of 1997, Public Law 105–33. Most immigrants are also barred from most other Federal means-tested public benefits for their first 5 years in the United States. Veterans and persons on active duty in the U.S. military, their spouses and dependent children and their unremarried surviving spouses are exempt from the 5-year ban. Refugees, asylees, aliens whose deportation or removal is being withheld, immigrants who are Cuban-Haitian entrants and certain Amerasian immigrants are also exempt. American Indians born in Canada referred to in section 289 of the Act are exempt from the 5-year ban with respect to SSI and Medicaid benefits only. The number of newly admitted permanent residents in these categories who are subject to the affidavit of support requirement in section 213A of the Act is small.

This regulation implements provisions of the Personal Responsibility Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which require that all family-based and certain employment-based immigrants be sponsored through legally enforceable affidavits of support. If a sponsored immigrant applies for Federal means-tested public benefits, all of the income and resources of the sponsor and the sponsor's spouse will be deemed to be available to the sponsored immigrant in determining eligibility for the benefit. In most cases this would make the sponsored immigrant ineligible for the benefit sought. Affidavits of support will be enforceable against sponsors by any agency providing Federal, State, or local means-tested benefits, with certain exceptions (notably emergency medical care, disaster relief, school lunches, foster care, student loans, and Head Start benefits) to sponsored immigrants until the sponsored immigrants become U.S. citizens or can be credited with 40 quarters of work.

Significant savings due to deeming of the income and resources of sponsors and their spouses to sponsored immigrants will accrue only after the fifth anniversary of welfare and illegal immigration reform implementation. Before that time, savings would be minimal since very few new immigrants would be exempt from the bar to receiving benefits, and only a small fraction of that group would be expected to apply for Federal means-tested benefits, resulting in the deeming of sponsors' income and resources.

Estimates of cost savings due to the deeming of sponsors' incomes to immigrants who seek benefits made in early 1996 during consideration of illegal immigration reform legislation are not applicable because they could not take into account the enactment of welfare reform in August 1996 which preempted the impacts of sponsor deeming by making most permanent resident aliens, with or without sponsors, ineligible for Federal means-tested public benefits for 5 years, and potentially longer for SSI and food stamps.

Because of the 5-year ban on immigrant access to means-tested public benefits, the Congressional Budget Office has projected that savings due to the deeming of sponsor's income will not begin to be realized until the first immigrants who arrived after the enactment of welfare reform are no longer subject to the 5-year ban. According to the Congressional Budget Office, the greatest savings to the Federal Government will be realized in the Medicaid program since most permanent residents will remain ineligible for SSI and food stamp benefits until they become U.S. citizens, at which time sponsor deeming will no longer apply. Therefore, savings in the Medicaid program due to the deeming of sponsor income and resources through the legally enforceable affidavit of support are projected as first becoming significant in the sixth full year following implementation, fiscal year 2003. Based on Congressional Budget Office data, savings to the Medicaid program resulting from the new sponsorship deeming provisions are estimated to be about $300 million in that year. Savings due to the deeming of sponsor income and resources to sponsored immigrants who would otherwise apply for Medicaid are estimated to increase to about $600 million in 2004, $900 million in 2005, $1.3 billion in 2006, and $1.7 billion in 2007. Reduced Federal outlays beginning in 2003 are transfers from permanent resident aliens and their families to the U.S. Treasury to the extent that third parties such as States and charities do not increase their spending to cover these benefits.

There will also be administrative costs to the Federal Government associated with these provisions. Some of these costs may be offset by subsequent adjustments to fees for Consular immigrant visa and Service adjustment of status applications, a cost borne primarily by new family-based immigrants to the United States. The Department of State and the Immigration and Naturalization Service will print and distribute the new affidavits of support forms to their offices in the United States and overseas, and will review affidavits of support for an estimated 565,000 family-based immigrants annually. The number of employment-based immigrants who will need affidavits of support is unknown but assumed to be small.

Under current procedures Consular and Immigration Officers determine whether each new immigrant is likely to become a public charge, either through examining a non-legally binding affidavit of support or other documentation, including demonstration of significant assets or job offers in the United States. The new legally enforceable affidavit and supporting documentation are likely to take longer to review for many principal immigrants. The cost of the additional review of the new affidavit of support is not expected to exceed $1 million annually.

The Immigration and Naturalization Service will also maintain automated sponsorship information on some 565,000 new family-based immigrants annually and make this information available to benefit-providing agencies. Federal and State agencies administering Federal means-tested public benefit programs will also have costs associated with deeming sponsor income and resources and recovering the costs of any benefits provided to sponsored immigrants. These costs will depend on the number of cases where sponsored immigrants apply for means-tested benefits and the number of instances in which agencies provide means-tested public benefits and subsequently request sponsors to reimburse the cost of the benefits and/or sue for recovery of these funds.

This regulation may also have an economic impact on State and local governments, either because they choose to deem sponsor income and resources for their own programs or because they choose to make their own locally or State-funded assistance programs available to permanent residents while they are not eligible for Federal means-tested programs. Savings to States from reduced use of Federally funded means-tested public benefits toward which States match funds may be offset by some increased use of locally and State-funded programs. In the absence of information about what actions States will choose to take, costs and savings to State and local governments are not estimated.

Supporting immigrants so that they will not become public charges may also impose costs on sponsors. These costs are hard to quantify since in many cases the sponsored immigrants will become largely or entirely self-supporting. Under the sponsorship provisions of the law, sponsors are required to support the immigrants for whom they have signed affidavits of support at 125 percent of the poverty line until the sponsorship obligation terminates, usually through the naturalization of the sponsored immigrants.

Executive Order 12612

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule will benefit the States by protecting their treasuries from the burden of supporting immigrants who are not entitled to receive means-tested public benefits. The burdens on the States under this rule are the requirements (a) to request reimbursement from the sponsor before suing the sponsor for reimbursement and (b) to notify the Service, if the State elects to make a determination under section 421(e) of the Personal Responsibility and Work Opportunity Act of 1996. These requirements simply incorporate requirements that already exist by statute. Moreover, the States remain free to determine whether to sue for reimbursement in a given case, or to make a determination under section 421(e). Therefore, in accordance with Executive Order 12612, the Commissioner determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule may result in an annual effect on the economy of $100 million or more, as discussed in the preceding paragraphs pertaining to Executive Order 12866.

Paperwork Reduction Act

The information collection requirements contained in this rule (Form I–864, Affidavit of Support Under Section 213A of the Act, Form I–864A, Contract Between Sponsor and Household Member, and Form I–865, Sponsor's Notice of Change of Address), have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 213a

Administrative practice and procedure, Aliens, Affidavits of Support, Immigrants Immigration and Nationality Act.

8 CFR Part 299

Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

1. A new part 213a is added, to read as follows:

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

Sec.

213a.1 Definitions.
213a.2 Use of affidavit of support.
213a.3 Notice of change of address.
213a.4 Actions for reimbursement, public notice, and congressional reports.
213a.5 Relationship of this part to other affidavits of support.

Authority: 8 U.S.C. 1183a; 8 CFR part 2.

§ 213a.1 Definitions.

As used in this part, the term:

Domicile means the place where a sponsor has a residence, as defined in section 101(a)(33) of the Act, in the United States, with the intention to maintain that residence for the foreseeable future, *provided*, that a permanent resident who is living abroad temporarily shall be considered to be domiciled in the United States if the permanent resident has applied for and obtained the preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily shall be considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

Federal poverty line means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I–864, Affidavit of Support Under Section 213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

Household income means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the sponsor's income and may also include the incomes of any individuals who either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such dependents do not live at the same residence as the sponsor.

Household size means the number obtained by adding: (1) The sponsor and all persons living at the same residence with the sponsor who are related to the sponsor by birth, marriage, or adoption; (2) all persons whom the sponsor has claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, even if such persons do not live at the same residence as the sponsor; and (3) the number of aliens the sponsor has sponsored under any prior Forms I–864 for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current Form I–864, even if such aliens do not or will not live at the same residence as the sponsor.

Immigration Officer, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by § 103.1(j) of this chapter.

Income means an individual's gross income, for purposes of the individual's Federal income tax liability, including a joint income tax return.

Intending immigrant means any beneficiary of an immigrant visa petition filed under section 204 of the Act, including any alien who will accompany or follow-to-join the principal beneficiary.

Means-tested public benefit means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104–193.

Program official means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

Sponsor means a person who either is eligible to execute or has executed an affidavit of support under this part.

Sponsored immigrant means an immigrant on whose behalf a sponsor has executed an affidavit of support under this part, including any spouse or child who will accompany or follow-to-join the beneficiary of an immigrant visa petition filed by a sponsor.

§ 213a.2 Use of affidavit of support.

(a) *General.* (1) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless a sponsor has executed on behalf of the intending immigrant a Form I–864, Affidavit of Support Under Section 213A of the Act, in accordance with section 213A of the Act, this section, and the instructions on Form I–864. An affidavit of support is executed when a sponsor signs a Form I–864 before a notary public or an Immigration or Consular Officer and that form I–864 is submitted to an Immigration or Consular officer. The sponsor must execute a separate affidavit of support for each visa petition beneficiary and for each alien who will accompany or follow-to-join a visa petition beneficiary. For any spouse or children immigrating with a sponsored immigrant, the sponsor may execute an affidavit of support by submitting photocopies of the Form I–864 and all accompanying documentation, but each photocopy of the Form I–864 must have an original signature. Under this rule, a spouse or child is immigrating with a sponsored immigrant if he or she is listed in Part 3 of Form I–864 and applies for an immigrant visa or adjustment of status within 6 months of the date the Form I–864 is originally signed. The signature on the Form I–864, including photocopies, must be notarized by a notary public or signed before an Immigration or Consular Officer.

(2) (i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies to any application for an immigrant visa or for adjustment of status filed on or before December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative of the intending immigrant either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act; or

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued before December 19, 1997.

(b) *Affidavit of support sponsors.* The following individuals must execute Form I–864 on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed the immigrant visa petition, the approval of which forms the basis of the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status as an immediate relative or as a family-sponsored immigrant, must execute a Form I–864 on behalf of the intending immigrant.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act who either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an entity that filed an immigrant visa petition on behalf of the intending immigrant.

(c) *Sponsorship requirements.* (1) *General.* A sponsor must:

(i) Be at least 18 years of age;

(ii) Be domiciled in the United States or any territory or possession of the United States; and

(iii) (A) Be a citizen of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(A) or (B) of this section; or

(B) Be a citizen or national of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(C) of this section or if the individual is a joint sponsor.

(2) *Demonstration of ability to support sponsored immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the sponsor's spouse or child, the sponsor's income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must file with the Form I–864 a copy of his or her Federal income tax returns for each of the 3 most recent taxable years, if he or she had a legal duty to file. By executing Form I–864, the sponsor certifies under penalty of perjury under United States law that each return is a true and correct copy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for any of the 3 most recent tax years, the sponsor must explain why he or she had no legal duty to a file a Federal income tax return for each year for which no Federal income tax return is available. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income.

(C) (1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. The sponsor may rely entirely on his or her own income as his or her household income if it is sufficient to meet the requirement. If needed, the sponsor may include in his or her household income the incomes of other individuals if they either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year. In order for the Immigration Officer or Consular Officer to consider the income of any of these individuals, the sponsor must include with the Form I–864 a written contract on Form I–864A between the sponsor and each other individual on whose income the sponsor seeks to rely.

Under this written contract each other individual must agree, in consideration of the sponsor's signing of the Form I–864, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the sponsored immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The sponsored immigrants and any Federal, State, or local agency or private entity that provides a means-tested public benefit to a sponsored immigrant are third party beneficiaries of the contract between the sponsor and the other individual or individuals on whose income the

sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A, even if the sponsor will rely on the income of the sponsored immigrant to meet the income requirement. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A.

(2) If the sponsor relies on the income of any other individual, the sponsor must also attach that individual's Federal income tax returns for each of the 3 most recent tax years. That individual must certify, under penalty of perjury, on Form I–864A that each tax return submitted is a true and correct copy of the Federal income tax return filed with the Internal Revenue Service. If that individual has no legal obligation to file a Federal income tax return, he or she must explain and submit other evidence of annual income. If the individual whose income the sponsor will rely on is not lawfully claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, then the sponsor must also attach proof of the relationship between the sponsor and that individual and proof of residency in the sponsor's residence during at least the preceding 6 months.

(ii) *Proof of employment or self-employment.* The sponsor must attach evidence of current employment which provides the sponsor's salary or wage, or evidence of current self employment. If the sponsor is unemployed or retired, the sponsor must state the length of his or her unemployment or retirement. The same information must be provided for any other person whose income is used to qualify under this section.

(iii) *Determining the sufficiency of an affidavit of support.* The sufficiency of an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor shall first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section.

(B) *Number of persons to be supported.* The sponsor shall then determine his or her household size as defined in § 213a.1.

(C) *Sufficiency of Income.* The sponsor's income shall be considered sufficient if the household income calculated under paragraph (c)(2)(iii)(A) of this section would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in § 213a.1, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child.

(iv) *Inability to meet income requirement.* If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible unless the sponsor and/or the intending immigrant demonstrates significant assets or a joint sponsor executes a separate Form I–864.

(A) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. A sponsored immigrant may submit evidence of the sponsored immigrant's assets as a part of the affidavit of support, even if the sponsored immigrant is not required to sign a Form I–864A. The assets of any person who has signed a Form I–864A will also be considered in determining whether the assets are sufficient to meet this requirement. The combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force under this section).

B. *Joint sponsor.* A joint sponsor must execute a separate Form I–864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor. A joint sponsor must meet the eligibility requirements under paragraph (c)(1) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section.

(v) *Immigration or Consular Officer's determination of insufficient income and/or assets.* Notwithstanding paragraphs (c)(2)(iii) (C) and (c)(2)(iv) (A) and (B) of this section, an Immigration Officer or Consular Officer may determine the income and/or assets of the sponsor or a joint sponsor to be insufficient if the Immigration Officer or Consular Officer determines, based on the sponsor's or joint sponsor's employment situation, income for the previous 3 years, assets, or receipt of welfare benefits, that the sponsor or joint sponsor cannot maintain his or her income at the required level.

(vi) *Verification of employment, income and assets.* The Government may pursue verification of any information provided on or with Form I–864, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration.

(vii) *Effect of fraud or material concealment or misrepresentation.* If the Consular Officer or Immigration Officer finds that the sponsor or joint sponsor has concealed or misrepresented facts concerning income, or household size, or any other material fact, the Consular Officer or Immigration Officer shall conclude that the affidavit of support is not sufficient to establish that the sponsored immigrant is not likely to become a public charge, and the sponsor or joint sponsor may be liable for criminal prosecution under the laws of the United States.

(d) *Legal effect of affidavit of support.* Execution of a Form I–864 under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement of the sponsor's obligations through an appropriate civil action.

(e) *Termination of support obligation.* (1)(i) The sponsor's support obligation with respect to a sponsored immigrant terminates by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(B) Has worked, or can be credited with, 40 qualifying quarters of work; *provided,* that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives any Federal means-tested public benefit;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and has departed the United States; or

(D) Dies.

(ii) The sponsor's support obligation also terminates if the sponsor dies.

(2) The termination of the sponsor's support obligation does not relieve the sponsor (or the sponsor's estate) of any reimbursement obligation under section 213A(b) of the Act that accrued before the support obligation terminated.

(f) In the case of an alien who seeks to follow-to-join the principal sponsored immigrant, as provided for by section 203(d) of the Act, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must, at the time that the alien seeks to follow-to-join the principal sponsored immigrant, sign an affidavit of support on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant. If that sponsor has died, then the alien who seeks to follow-to-join the principal sponsored immigrant shall be held to be inadmissible, unless another person, who would qualify as a joint sponsor if the principal sponsor were still alive, submits on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant, an affidavit of support that meets the requirements of this section. If the original sponsor is deceased and no other eligible sponsor is available, the principal sponsored immigrant may sign an affidavit of support on behalf of the alien seeking to follow-to-join the principal immigrant, if the principal sponsored immigrant can meet the requirements of paragraph (c) of this section.

§ 213a.3 Notice of change of address.

(a) *General.* If the address of a sponsor (including a joint sponsor) changes for any reason while the sponsor's support obligation under the affidavit of support remains in effect with respect to any sponsored immigrant, the sponsor shall file Form I–865, Sponsor's Notice of Change of Address, with the Service no later than 30 days after the change of address becomes effective.

(b) *Civil penalty.* (1) *Amount of penalty.* (i) Except as provided in paragraph (b)(1)(ii) of this section, if the sponsor fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act.

(ii) If the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act.

(2) *Procedure for imposing penalty.* The procedure for imposing a civil penalty under this paragraph follows that which is established at 8 CFR part 280.

(c) *Change of address.* If the sponsor is an alien, filing Form I–865 under this section does not satisfy or substitute for the change of address notice required under § 265.1 of this chapter.

§ 213a.4 Actions for reimbursement, public notice, and congressional reports.

(a) *Requests for reimbursement.* Requests for reimbursement under section 213A(b)(2) of the Act must be served by personal service, as defined by § 103.5a(a)(2) of this chapter. The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. Prior to filing a lawsuit against a sponsor to enforce the sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, State, or local governmental agency or a private entity must wait 45 days from the date it issues a written request for reimbursement under section 213A(b)(1) of the Act. If a sponsored immigrant, a Federal, State, or local agency, or a private entity sues the sponsor and obtains a final civil judgment against the sponsor, the sponsored immigrant, the Federal, State, or local agency, or the private entity shall mail a certified copy of the final civil judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536. The copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act." Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(b) Federal, State, and local government agencies should issue public notice of determinations regarding which benefits are considered "means-tested public benefits" prior to December 19, 1997, the date the new affidavit of support goes into effect, or as soon as possible thereafter. Additional notices should be issued whenever an agency revises its determination of which benefits are considered "means-tested public benefits."

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, a sponsor shall be considered to be in compliance with the financial obligations of section 213A of the Act unless the sponsored immigrant or a Federal, State, or local agency or private entity has sued the sponsor, obtained a final judgment enforcing the sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act, and mailed a certified copy of the final judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536.

(2) If a Federal, State, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the Service's Statistics Branch. The written notice should include the reference "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

§ 213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of Form I–134, Affidavit of Support (other than INA section 213A), or of Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, in any case, other than a case described in § 213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I–134 or Form I–361, although the person who executes Form I–361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of § 204.4(i) of this chapter.

PART 299—IMMIGRATION FORMS

2. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

3. Section 299.1 is amended by adding the entries for Forms "I–864," "I–864A," and "I–865" to the listing of forms, in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–864	10–06–97	Affidavit of Support Under Section 213A of the Act.
I–864A	10–06–97	Contract Between Sponsor and Household Member.
I–865	10–06–97	Sponsor's Notice of Change of Address.
*	*	*

4. Section 299.5 is amended by adding to the list of forms, in proper numerical sequence, the entries for Forms "I–864," "I–864A" and "I–865" to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–864	Affidavit of Support under Section 213A of the Act.	1115–0214
I–864A	Contract between Sponsor and Household Member.	1115–0214
I–865	Sponsor's Notice of Change of Address.	1115–0215
*	*	*

Dated: October 8, 1997.

Doris Meissner,

Commissioner, Immigrant and Naturalization Service.

[FR Doc. 97–27605 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–0975]

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA). In order to account for future amendments to the Rules, the sections have been renumbered.

The review of the Board's Rules that produced this final rule was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the amendments to the Rules clarify certain provisions and simplify the processing of requests for access to information in certain circumstances.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, (202/452–2418), Legal Division; or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452–2407). For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, which amends the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records, and permits agencies to promulgate regulations that provide for multitrack processing of requests. In addition to amending its Rules to comply with EFOIA, the Board has taken this opportunity, in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, to review and streamline those Rules.[1] In addition, the Board is amending the Rules to take account of various statutes that have been enacted since the Rules were last revised in 1988.[2]

To implement these changes, the Board published proposed changes to Subparts A, B, and D of its Rules on June 10, 1997 (62 FR 31526). The Board received four comments: one from a Federal Reserve Bank, one from a commercial bank, one from a credit union, and one from a community group. Three of the comments supported the proposal; the community group, however, opposed some of the proposed changes. A discussion of the specific comments is included in the section-by-section analysis. In 1996, the Board published for comment proposed amendments to the Rules (61 FR 7436, February 28, 1996) that primarily concerned Subpart C of the Rules and the definitions in Subpart A of terms that are used in Subpart C. In addition, the Board had proposed changes to certain portions of Subpart B and Subpart D, which were republished in the June 1997 proposed rule. The changes to Subparts A, B and D are being adopted in this final rule; the proposed amendments to Subpart C are still under consideration.

Subpart A

Subpart A contains the General Provisions, describing the authority, purpose, and scope; listing the definitions applicable to this part, and explaining the responsibilities of the Secretary of the Board as custodian of the Board's records. The changes to this subpart are primarily in the "Authority" section to clarify the ability of the Board to provide exempt records to certain entities outside of the FOIA process in specific circumstances. In addition, certain definitions that were included in the section on FOIA fees and fee waivers have been moved forward to the "Definitions" section. One commenter noted that the definition of "records" specifically excludes handwritten notes, and questions the authority for this exclusion. The intention was to exclude personal notes that are not a part of official Board records. This, however, is accomplished by the exclusion of personal files, so the reference to handwritten notes has been deleted.

Section 261.3 is amended to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated. An additional change to § 261.3(c) states that the Secretary of the Board is the Board's agent for service of all process, and that the Board will not accept process on behalf of employees in connection with purely private matters except as specifically provided by law.

[1] The regulatory citations contained in this final rule refer to the regulation, as amended. As noted above, the sections have been renumbered.

[2] The Board's Rules have been implemented in a manner consistent with these and other changes described in this final rule.

Subpart B

Subpart B is amended to comply with the EFOIA requirements for expedited processing. The Board also is implementing multitrack processing. In addition, the Board has revised the section on fees and fee waivers; and portions of this Subpart have been reorganized and streamlined.

Section 261.10 lists the information that the Board publishes on a regular or intermittent basis. This section has been streamlined. No substantive changes have been made.

Section 261.11 describes the information that is made available for inspection or copying, either in the Board's reading room or over the Internet, as required by EFOIA. The records provided over the Internet cover a much smaller scope than those available in the Board's reading room, because the requirement to provide records over the Internet covers only records created by the Board after November 1, 1996. One of the commenters suggested that the Board expand the categories of documents provided over the Internet to include policies, interpretations, orders, and requests for comments, as well as provide indexing and an appropriate search mechanism on the website. The Board is in the process of expanding the information that is made available over the Internet. Legal interpretations dating from January 1996, and Press Releases, which include some Board orders, have been placed on the website. The remaining Board orders dating after November 1, 1996, will be provided in the near future. Other information that the Board believes is of interest to the public is being provided as quickly as the Board's resources permit. With regard to indexing or a search mechanism, there is a general index provided on the site, and the Board expects to install a search mechanism soon. Another commenter requested that the Board place the text of the public sections of its Community Reinvestment Act examination reports on its website. The Board expects to have this information on its website by the end of this year. This commenter also noted that the Board has not placed its administrative manuals on its website. EFOIA requires such manuals to be made available in the reading room if they are not published and offered for sale. All Board manuals of this type are published and offered for sale.

Section 261.12 describes the procedures for requesting records that are not published or routinely made available for inspection. This section includes the requirement that FOIA requests not be combined with any other requests to the Board except requests under the Privacy Act. This requirement is intended to ensure that FOIA requests are delivered promptly to the Board's Freedom of Information Office (FOI Office) when they are received, which may not occur if the FOIA request is included in a request for other action by the Board. One commenter opposed this amendment on grounds that it would prohibit a requester from combining a FOIA request with comments submitted in connection with an application under the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. 1841 *et seq.* The commenter believes that it should be permissible to combine a FOIA request with substantive comments regarding an application, or in the alternative, a process should be established for making requests under the Board's ex parte rules for processing BHCA applications. A separate, clearly identified FOIA request delivered directly to the Secretary insures a faster FOIA response, however, because comment letters are not routinely sent to the FOIA office for action. Procedures for BHCA applications are set forth in the Board's Regulation Y, which was recently revised after notice and comment.

Section 261.13 describes the Board's procedures for processing FOIA requests. This section has been extensively revised to reflect the changes required by EFOIA. In the review process, one sentence was inadvertently dropped from the section when it was published for comment. The existing rule states that the Secretary will assign responsible staff to process particular requests. This provision has been restored to section 261.13(d) to provide the Secretary with the authority to assign the requests to the appropriate staff at the Board.

The revised regulation provides for multitrack processing. Fast-track processing will apply to records that are easily identifiable by the FOI Office staff and that have already been cleared for release to the public. Fast-track requests will be handled as expeditiously as possible, in the order in which they are received. All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOI Office staff to narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing is extended to twenty business days, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the Board has determined to expedite the response. The time limit for determination whether to grant expedited processing is set at ten days, with expedited procedures for an appeal of the Secretary's determination not to provide expedited processing. Under EFOIA, there are only two types of circumstances that can meet the compelling need standard: where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the section uses the term "representative of the news media," to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the Board's Rules. To demonstrate a compelling need, a requester must submit a certified statement. A form for the certified statement may be obtained from the FOI Office. One commenter objected that the definition of "compelling need" does not include public interest requesters who wish to comment on pending BHCA applications. The definition of compelling need is established by EFOIA, not the Board.

Section 261.14 lists the exemptions from disclosure under FOIA. This section has been reorganized and streamlined, but no substantive changes have been made.

Sections 261.15 and 261.16, which were previously located in Subpart D, have been moved to Subpart B for clarity, since they apply only to FOIA requests. Accordingly, a separate Subpart D is no longer necessary. These provisions implement Executive Order 12,600, June 23, 1987, by establishing certain predisclosure notification procedures for confidential business or financial information that may be exempt under (b)(4) of the FOIA, 5 U.S.C. 552(b)(4).[3]

[3] These provisions are intended only to address matters of the kind covered by Executive Order 12,600. This, however, does not preclude the Board

Continued

Section 261.15 sets forth the procedures for requesting confidential treatment. The Board wishes to emphasize that failure to properly segregate confidential material from other material may result in the release of that material without prior notice to the submitter. This is particularly important in light of the Board's intention, in connection with processing BHCA applications, to provide, upon request, the public portion of an application within three business days of the request. In order to meet this deadline, the Board's and Reserve Bank's staff must rely on the applicant to properly designate the material submitted. A careful review of the material designated as "Confidential" will be made and any information improperly labeled as "Confidential" will be provided to requesters immediately upon identification as publicly available.

Section 261.16 sets forth the procedures for responding to a FOIA request for information that has been designated by the submitter as confidential. It provides for notice to the submitter that permits the submitter to provide written objections to the release of the confidential information. Section 261.16(e) describes the information that a submitter should include in its written submission objecting to the release of the documents, including whether the information was provided voluntarily under the standards set by the court case, *Critical Mass Energy Project* v. *NRC*, 975 F. 2d. 871 (D.C. Cir. 1992). If the information was not provided voluntarily, the submitter must provide detailed facts and arguments showing either the likelihood of substantial competitive harm resulting from release of the information, or that release would impair the Board's ability to obtain necessary information in the future.

Section 261.17 contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin until payment is received in cases where advance payment is required. Where a person has requested a waiver of the fees and has not agreed to pay the fees, the processing time does not begin until a fee waiver has been granted, or if the waiver is denied, until the requester has agreed to pay the applicable fees. One commenter objected to this provision, stating that it unfairly affects nonprofit groups with limited budgets that must promise to pay the fees for an application in order to receive it in a timely manner. This commenter requested that the Board establish a procedure to certify groups, on an ongoing basis, for fee waivers, instead of making the determination on a case-by-case basis.

FOIA, itself, establishes certain categories that receive favorable treatment with regard to fees, *e.g.*, the news media and educational institutions. FOIA also provides for fee waivers where disclosure of the information is in the public interest (not based on the requester's status). Thus, a requester must meet the standards for a fee waiver in each request. This requirement is supported by the legislative history (see, 132 Cong. Rec. H. 9463 (Oct.8, 1986)(Rep. English)) and court decisions (see, *National Wildlife Federation* v. *Hamilton*, No. 95–017–BU(D. Mont. July 15, 1996)). The Board reviews each fee waiver request pursuant to the standards set forth in the Act and its Rules. If a non-profit community group demonstrates in its request for a waiver of fees that the requested information will be distributed to the public and will contribute significantly to the public understanding of the activities of the Board, then the requester should qualify under the Act and the Board's Rules for a waiver of the fees.

The standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. Additionally, the regulation provides for administrative appeal of a denial of a waiver request, which reflects the Board's current procedure of permitting such administrative appeals.

Subpart C

The sections in Subpart C have been renumbered to be consistent with the renumbering of Subparts A and B in this proposal. No substantive changes have been made at this time. Proposed changes to this Subpart were published in 1996 (61 FR 7436, February 28, 1996), and the comments received on these changes are still under consideration.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the Board, therefore they should not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0281.

The collection of information requirements in this regulation are found in 12 CFR 261.12, 261.13, 261.16, and 261.17. (The hour burden for requests for confidential treatment made under 261.15 are included in the hour burden associated with the information collections for which the respondent desires confidential treatment.) The information will be used to fulfill requests for information made under the Freedom of Information Act, or to determine the appropriateness of fulfilling such requests. The respondents may include small entities. This information is required to obtain a benefit (5 U.S.C. 552). Generally, requests made under 12 CFR 261.12, 261.13, 261.16, and 12 CFR 261.17 are not exempt from disclosure under the Freedom of Information Act.

The annual hour burden estimates are presented in the following table. There is estimated to be no annual cost burden over the annual hour burden, and no associated capital or start up cost. One comment specifically addressing the burden estimates was received from a federal credit union, stating that the burden estimates seemed accurate.

	Estimated annual frequency	Estimated response time (hours)	Estimated annual burden hours
Initial request (261.12 (b) and (c) and 261.13(c))	4,900	.5	2,450
Limits on an earlier request that included a request for expedited processing that has been denied (261.13(b)(2))	100	.5	50
Appeal of denial of request (261.13(i))	30	2	60
Written objections by submitter to release of data (261.16(e))	30	2	60
Request to waive or reduce fees (261.17(l))	100	.5	50
Total			2,670

The Federal Reserve has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0281), Washington, DC 20503.

List of Subjects in 12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of Information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261 as follows:

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for part 261 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

Subpart D—[Removed]

2. Subpart D, consisting of §§ 261.15 through 261.17, is removed.

§§ 261.11–261.14 [Redesignated as §§ 261.20–261.23]

3. Sections 261.11 through 261.14 in Subpart C are redesignated as §§ 261.20 through 261.23, respectively, in Subpart C.

4. Subparts A and B are revised to read as follows:

Subpart A—General Provisions

Sec.
261.1 Authority, purpose, and scope.
261.2 Definitions.
261.3 Custodian of records; certification; service; alternative authority.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

261.10 Published information.
261.11 Records available for public inspection and copying.
261.12 Records available to public upon request.
261.13 Processing requests.
261.14 Exemptions from disclosure.
261.15 Request for confidential treatment.
261.16 Request for access to confidential commercial or financial information.
261.17 Fee schedules; waiver of fees.

Subpart A—General Provisions

§ 261.1 Authority, purpose, and scope.

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.*, (including 326), 611 *et seq.*; Section 22 of the Federal Home Loan Bank Act, 12 U.S.C 1442; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.*, and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*; the International Banking Act, 12 U.S.C. 3101 *et seq.*; the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*; the Securities and Exchange Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board has determined that the Board, or its delegees, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(3) The Board has also determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive such information in carrying out its own statutory responsibilities, or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

(b) *Purpose.* This part sets forth the categories of information made available to the public, the procedures for obtaining documents and records, the procedures for limited release of exempt and confidential supervisory information, and the procedures for protecting confidential business information.

(c) *Scope.* (1) This subpart A contains general provisions and definitions of terms used in this part.

(2) Subpart B of this part implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C of this part sets forth:

(i) The kinds of exempt information made available to supervised institutions, supervisory agencies, law enforcement agencies, and others in certain circumstances;

(ii) The procedures for disclosure; and

(iii) The procedures with respect to subpoenas, orders compelling production, and other process.

§ 261.2 Definitions.

For purposes of this part:

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or its staff from giving notice to submitters in other situations where, for example, documents obtained pursuant to a confidentiality commitment are subpoenaed in civil litigation. The Board exercises its discretion in such cases consistent with applicable law. The Board does not disclose its receipt of federal grand jury subpoenas, however, except in accordance with law following consultation with appropriate law enforcement authorities.

(a) *Board's official files* means the Board's central records.

(b) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c)(1) *Confidential supervisory information* means:

(i) Exempt information consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports;

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, Pub.L. 89-695, 80 Stat. 1028 (codified as amended in scattered sections of 12 U.S.C.), the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the International Banking Act of 1978, Pub.L. 95–369, 92 Stat. 607 (codified as amended in scattered sections of 12 U.S.C.), and the International Lending Supervision Act of 1983, 12 U.S.C. 3901 *et seq.*; except—

(A) Such final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to 12 U.S.C. 1818(u), or other applicable law, including the record of litigated proceedings; and

(B) The public section of Community Reinvestment Act examination reports, pursuant to 12 U.S.C. 2906(b); and

(iii) Any documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a federal or state financial institutions supervisory agency, or a bank or bank holding company or other supervised financial institution.

(2) *Confidential supervisory information* does not include documents prepared by a supervised financial institution for its own business purposes and that are in its possession.

(d) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 261.12.

(e) *Duplication* refers to the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(f) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education, which operates a program of scholarly research.

(g) *Exempt information* means information that is exempt from disclosure under § 261.14.

(h) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i)(1) *Records of the Board* include:

(i) In written form, or in nonwritten or machine-readable form; all information coming into the possession and under the control of the Board, any Board member, any Federal Reserve Bank, or any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board that constitute part of the Board's official files; or

(ii) That are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

(2) *Records of the Board* does not include personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems.

(j) *Report of examination* means the report prepared by the Board, or other federal or state financial institution supervisory agency, concerning the examination of a financial institution, and includes reports of inspection and reports of examination of U.S. branches or agencies of foreign banks and representative offices of foreign organizations, and other institutions examined by the Federal Reserve System.

(k) *Report of inspection* means the report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries.

(l) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term "news" means information that is about current events or that would be of current interest to the public.

(2) Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(3) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though they are not actually employed by it.

(m)(1) *Review* refers to the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n)(1) *Search* means a reasonable search, by manual or automated means, of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain information of the kind requested. For purposes of computing fees under § 261.17, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

(2) *Search* does not mean or include research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Board's automated information systems.

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

§ 261.3 Custodian of records; certification; service; alternative authority.

(a) *Custodian of records.* The Secretary of the Board (Secretary) is the official custodian of all Board records, including records that are in the possession or control of the Board, any Federal Reserve Bank, or any Board or Reserve Bank employee.

(b) *Certification of record.* The Secretary may certify the authenticity of any Board record, or any copy of such record, for any purpose, and for or before any duly constituted federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process, demanding access to any Board records or making any claim against the Board, shall be addressed to and served upon the Secretary of the Board at the Board's office at 20th and C Streets, N.W., Washington, D.C. 20551. Neither the Board nor the Secretary are agents for service of process on behalf of any employee in respect of purely private legal disputes, except as specifically provided by law.

(d) *Alternative authority.* Any action or determination required or permitted by this part to be done by the Secretary, the General Counsel, or the Director of any Division may be done by any employee who has been duly designated for this purpose by the Secretary, General Counsel, or the appropriate Director.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

§ 261.10 Published information.

(a) **Federal Register.** The Board publishes in the **Federal Register** for the guidance of the public:

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure, descriptions of forms available and the place where they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;

(4) Substantive rules, interpretations of general applicability, and statements of general policy;

(5) Every amendment, revision, or repeal of the foregoing in paragraphs (a)(1) through (a)(4) of this section;

(6) Notices of proposed rulemaking;

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) and the Change in Bank Control Act (12 U.S.C. 1817);

(8) Notices of all Board meetings, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b);

(9) Notices identifying the Board's systems of records, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); and

(10) Notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 U.S.C. 3501 *et seq.*).

(b) *Board's Reports to Congress.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 U.S.C. 247), which is made public upon its submission to Congress, contains a full account of the Board's operations during the year, the policy actions by the Federal Open Market Committee, an economic review of the year, and legislative recommendations to Congress. The Board also makes periodic reports to Congress under certain statutes, including but not limited to the Freedom of Information Act (5 U.S.C. 552); the Government in the Sunshine Act (5 U.S.C. 552b); the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a); and the Privacy Act (5 U.S.C. 552a).

(c) *Federal Reserve Bulletin.* This publication is issued monthly and contains economic and statistical information, articles relating to the economy or Board activities, and descriptions of recent actions by the Board.

(d) *Other published information.* Among other things, the Board publishes the following information:

(1) *Weekly publications.* The Board issues the following publications weekly:

(i) A statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks, pursuant to 12 U.S.C. 248(a);

(ii) An index of applications received and the actions taken on the applications, as well as other matters issued, adopted, or promulgated by the Board; and

(iii) A statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(2) *Press releases.* The Board frequently issues statements to the press and public regarding monetary and credit actions, regulatory actions, actions taken on certain types of applications, and other matters.

(3) *Call Report and other data.* Certain data from Reports of Condition and Income submitted to the Board are available through the National Technical Information Service and may be obtained by the procedure described in § 261.11(c)(2).

(4) *Federal Reserve Regulatory Service.* This is a multivolume looseleaf service published by the Board, containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Portions of the service are also published as separate looseleaf handbooks relating to consumer and community affairs, monetary policy and reserve requirements, payments systems, and securities credit transactions. The service and each handbook contain subject and citation indexes, are updated monthly, and may be subscribed to on a yearly basis.

(e) *Index to Board actions.* The Board's Freedom of Information Office maintains an index to Board actions, which is updated weekly and provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. Copies of the index may be obtained upon request to the Freedom of Information Office subject to the current schedule of fees in § 261.17.

(f) *Obtaining Board publications.* The Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of publications is published in the *Federal Reserve Bulletin.* All publications issued by the Board, including available back issues, may be obtained from Publications Services, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.). Subscription or other charges may apply to some publications.

§ 261.11 Records available for public inspection and copying.

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, the following records shall be made available for inspection and copying at the Freedom of Information Office:

(1) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Board that are not published in the **Federal Register;**

(3) Administrative staff manuals and instructions to staff that affect the public;

(4) Copies of all records released to any person under § 261.12 that, because

of the nature of their subject matter, the Board has determined are likely to be requested again;

(5) A general index of the records referred to in paragraph (a)(4) of this section; and

(6) The public section of Community Reinvestment Act examination reports.

(b) *Reading room procedures.* (1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.).

(2) The Board may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are filed.

(c) *Electronic records.* (1) Except as set forth in paragraph (c)(2) of this section, information available under this section that was created by the Board on or after November 1, 1996, shall also be available on the Board's internet site (which can be found at http://www.bog.frb.fed.us).

(2) *NTIS.* The publicly available portions of Reports of Condition and Income of individual banks and certain other data files produced by the Board are distributed by the National Technical Information Service. Requests for these public reports should be addressed to: Sales Office, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650.

(3) *Privacy protection.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

§ 261.12 Records available to public upon request.

(a) *Types of records made available.* All records of the Board that are not available under §§ 261.10 and 261.11 shall be made available upon request, pursuant to the procedures and exceptions in this Subpart B.

(b) *Procedures for requesting records.* (1) A request for identifiable records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations.

(2) The request shall be submitted in writing to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7562 or 7565. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(3) A request may not be combined with any other request to the Board except for a request under 12 CFR 261a.3(a) (Rules Regarding Access to and Review of Personal Information under the Privacy Act of 1974) and a request made under § 261.23(b)(1)(ii).

(c) *Contents of request.* The request shall contain the following information:

(1) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(2) Whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative;

(3) A statement agreeing to pay the applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies § 261.17(h); and

(4) If the request is being made in connection with on-going litigation, a statement indicating whether the requester will seek discretionary release of exempt information from the General Counsel upon denial of the request by the Secretary. A requester who intends to make such a request to the General Counsel may also address the factors set forth in § 261.23(b).

(d) *Defective requests.* The Board need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(e) *Oral requests.* The Freedom of Information Office may honor an oral request for records, but if the requester is dissatisfied with the Board's response and wishes to seek review, the requester must submit a written request, which shall be treated as an initial request.

§ 261.13 Processing requests.

(a) *Receipt of requests.* Upon receipt of any request that satisfies § 261.12(b), the Freedom of Information Office shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Freedom of Information Office actually receives the request.

(b) *Multitrack processing.* (1) The Board provides different levels of processing for categories of requests under this section. Requests for records that are readily identifiable by the Freedom of Information Office and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c)(2) of this section.

(2) The Freedom of Information Office will make the determination whether a request qualifies for fast-track processing. A requester may contact the Freedom of Information Office to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to limit the request in order to qualify for fast-track processing. Limitations of requests must be in writing.

(c) *Expedited processing.* When a person requesting expedited access to records has demonstrated a compelling need for the records, or when the Board has determined to expedite the response, the Board shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Freedom of Information Office. The statement, which must be certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 261.2, and there is urgency to inform the public concerning actual or alleged Board activity.

(2) In response to a request for expedited processing, the Secretary shall notify a requester of the determination within ten calendar days of receipt of the request. If the Secretary denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the Board shall respond to the appeal within ten working days after the appeal was received by the Board.

(d) *Priority of responses.* The Secretary will assign responsible staff to process particular requests. The Freedom of Information Office will normally process requests in the order they are received in the separate processing tracks, except when expedited processing is granted. However, in the Secretary's discretion, or upon a court order in a matter to which the Board is a party, a particular request may be processed out of turn.

(e) *Time limits.* The time for response to requests shall be 20 working days, except:

(1) In the case of expedited treatment under paragraph (c) of this section;

(2) Where the running of such time is suspended for payment of fees pursuant to § 261.17(b)(2);

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B). In such circumstances, the time limit may be extended for a period of time not to exceed:

(i) 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(ii) Such alternative time period as mutually agreed to by the Freedom of Information Office and the requester when the Freedom of Information Office notifies the requester that the request cannot be processed in the specified time limit.

(f) *Response to request.* In response to a request that satisfies § 261.12(b), an appropriate search shall be conducted of records of the Board in existence on the date of receipt of the request, and a review made of any responsive information located. The Secretary shall notify the requester of:

(1) The Board's determination of the request;

(2) The reasons for the determination;

(3) The amount of information withheld;

(4) The right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (i) of this section; and

(5) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

(g) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request to that agency for a response and inform the requester promptly of the referral.

(h) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Freedom of Information Office or makes other acceptable arrangements, or the Board deems it appropriate to send the documents by another means.

(2) The Board shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Board in that form or format, but the Board need not provide more than one copy of any record to a requester.

(i) *Appeal of denial of request.* Any person denied access to Board records requested under § 261.12 may file a written appeal with the Board, as follows:

(1) The appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7562 or 7565.

(2) An initial request for records may not be combined in the same letter with an appeal.

(3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. The Board may consider an untimely appeal if:

(i) It is accompanied by a written request for leave to file an untimely appeal; and

(ii) The Board determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.

(5) The Secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of the denial come to the attention of the Secretary while an appeal is pending.

§ 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

(1) *National defense.* Any information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to the Executive Order.

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be available by law to a party (other than an agency) in litigation with an agency, including, but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act).

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7); including information relating to administrative enforcement proceedings of the Board.

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting

those portions that are exempt under this section.

(c) *Discretionary release.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this part or 12 CFR part 265, determines that such disclosure would be in the public interest.

(2) The Board may make any exempt information furnished in connection with an application for Board approval of a transaction available to the public in accordance with § 261.12, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(d) *Delayed release.* Publication in the **Federal Register** or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

(e) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the performance of official duties).

§ 261.15 Request for confidential treatment.

(a) *Submission of request.* Any submitter of information to the Board who desires confidential treatment pursuant to 5 U.S.C. 552(b)(4) and § 261.14 (a)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Federal Reserve Bank) at the time the information is submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request and its legal justification. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *CONFIDENTIAL* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall so indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board or the Secretary determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.14(c).

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this part or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over this section.

§ 261.16 Request for access to confidential commercial or financial information.

(a) *Request for confidential information.* A request by a submitter for confidential treatment of any information shall be considered in connection with a request for access to that information. At their discretion, appropriate Board or staff members (including Federal Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(b) *Notice to the submitter.* When a request for access is received pursuant to the Freedom of Information Act (5 U.S.C. 552):

(1) The Secretary shall notify a submitter of the request, if:

(i) The submitter requested confidential treatment of the information pursuant to 5 U.S.C. 552(b)(4); and

(ii) The request by the submitter for confidential treatment was made within 10 years preceding the date of the request for access.

(2) Absent a request for confidential treatment, the Secretary may notify a submitter of a request for access to information provided by the submitter if the Secretary reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(3) The notice given to the submitter shall:

(i) Be given as soon as practicable after receipt of the request for access;

(ii) Describe the request; and

(iii) Give the submitter a reasonable opportunity, not to exceed ten working days from the date of notice, to submit written objections to disclosure of the information.

(c) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Secretary determines that the request for access should be denied;

(2) The requested information lawfully has been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary, except that in this last instance the Secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to disclosure.

(d) *Notice to requester.* At the same time the Secretary notifies the submitter, the Secretary also shall notify the requester that the request is subject to the provisions of this section.

(e) *Written objections by submitter.* Upon receipt of notice of a request for access to its information, the submitter may provide written objections to release of the information. Such objections shall state whether the information was provided voluntarily or involuntarily to the Board.

(1) If the information was voluntarily provided to the Board, the submitter shall provide detailed facts showing that the information is customarily withheld from the public.

(2) If the information was not provided voluntarily to the Board, the submitter shall provide detailed facts and arguments showing:

(i) The likelihood of substantial harm that would be caused to the submitter's competitive position; or

(ii) That release of the information would impair the Board's ability to obtain necessary information in the future.

(f) *Determination by Secretary.* The Secretary's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary determines to disclose the information and the submitter has objected to such disclosure pursuant to paragraph (e) of this section, the Secretary shall provide the submitter with the reasons for disclosure, and shall delay disclosure for ten working days from the date of the determination.

(g) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information.

(2) The Secretary shall promptly notify the requester of any suit filed against the Board to enjoin the disclosure of any documents requested by the requester.

§ 261.17 Fee schedules; waiver of fees.

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 261.11 and 261.12 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at $5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 261.12 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed $100, the Freedom of Information Office shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Freedom of Information Office to reformulate the request to lower the costs. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the requester agrees to pay the applicable fees.

(2) *Advance payment.* The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the Freedom of Information Office receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.13(e), shall not begin until a waiver has been granted; or if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

(v) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

(i) A clear statement of the requester's interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with § 261.13(j).

(g) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are $50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services.* The Secretary may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

APPENDIX A TO § 261.17.—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page	$0.10
Paper copies of microfiche, per frame	.10
Duplicate microfiche, per microfiche	.35
Search and review:	
Clerical/Technical, hourly rate	20.00
Professional/Supervisory, hourly rate	38.00
Manager/Senior Professional, hourly rate	65.00
Computer search and production:	
Computer operator search, hourly rate	32.00
Tapes (cassette) per tape	6.00
Tapes (cartridge), per tape	9.00
Tapes (reel), per tape	18.00
Diskettes (3½"), per diskette	4.00
Diskettes (5¼"), per diskette	5.00
Computer Output (PC), per minute	.10
Computer Output (mainframe)	(1)

[1] Actual cost.

By order of the Board of Governors of the Federal Reserve System, October 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–27566 Filed 10–17–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–137–AD; Amendment 39–10159; AD 97–21–06]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires repetitive inspections of the torsion tubes and fittings of the elevator and rudder assemblies to detect stress corrosion cracking, and replacement of cracked parts. This action also requires accomplishment of a modification that constitutes terminating action for the repetitive inspections. This amendment is prompted by reports indicating that stress corrosion cracking in these parts has been found on some airplanes. The actions specified by this AD are intended to prevent loss of control of the elevator and/or rudder, due to failure of the elevator and/or rudder assemblies as a result of stress corrosion cracking.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on February 7, 1997 (62 FR 5785). That action proposed to require repetitive inspections of the torsion tubes and fittings of the elevator and rudder assemblies to detect stress corrosion cracking, and replacement of discrepant parts. In addition, that action proposed to require eventual installation of newly designed torsion tube assemblies on all airplanes, which, when accomplished, would constitute terminating action for the required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 CASA Model CN–235 series airplane of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish each required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on the single affected U.S. operator is estimated to be $360, per inspection cycle.

It will take approximately 40 work hours to accomplish the required terminating modification, at an average labor rate of $60 per work hour. (The work hour figure does not include the time needed for preparation of the airplane or equipment; familiarization with the service bulletin; curing times for adhesive, sealant, paint, etc.; tool

collection; or down time). Required parts will cost approximately $8,900 per airplane. Based on these figures, the cost impact of the required modification on the single affected U.S. operator is estimated to be $11,300.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–06 CASA: Amendment 39–10159. Docket 96–NM–137–AD.

Applicability: CASA Model CN–235 airplanes; as listed in CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (non-military airplanes), and CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (military airplanes); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of control of the elevator and/or rudder, due to failure of the elevator and/or rudder assemblies as a result of stress corrosion cracking in the torsion tubes and fittings, accomplish the following:

Note 2: Actions required by this AD that were accomplished previous to the effective date of this AD, and in accordance with earlier versions of the specified CASA service bulletins, are considered acceptable for compliance with the applicable requirements of this AD.

(a) At the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD, conduct a visual inspection of the torsion (torsion) tubes on the elevator and rudder assemblies to detect stress corrosion cracking, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes) or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes), as applicable.

(1) For airplanes that have accumulated more than 600 total hours time-in-service, or more than 1,000 total landings, as of the effective date of this AD: Conduct the inspection required by paragraph (a) of this AD prior to the accumulation of 50 hours time-in-service, or 100 landings, or within 3 months, after the effective date of this AD, whichever occurs first.

(2) For all other airplanes: Conduct the inspection required by paragraph (a) of this AD prior to the accumulation of 600 total hours time-in-service, or 1,000 total landings, or within 6 months, after the effective date of this AD, whichever occurs first.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, repeat that inspection at intervals not to exceed 600 hours time-in-service, or 1,000 landings, or 6 months, whichever occurs first.

(c) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace cracked parts with a new parts of the original design, in accordance with the service bulletin. After replacement, repeat the visual inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service, or 1,000 landings, or 6 months, whichever occurs first. OR

(2) Replace cracked parts with a newly-designed parts, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes); or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes); as applicable. This replacement constitutes terminating action for the repetitive visual inspections of that part required by paragraph (b) of this AD.

(d) Within 2 years after the effective date of this AD, replace all original design parts comprising the torsion tube assemblies on the elevator and rudder assemblies with newly-designed parts, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes); or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes); as applicable. This action constitutes terminating action for the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and P21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993; and CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996; as applicable; which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SB–235–27–05, Revision 1, September 29, 1993	1, 2	1	September 29, 1993.
	3–23	Original	February 5, 1993.
SB–235–27–05M, Revision 2, January 25, 1996	1	2	January 25, 1996.
	2–23	Original	October 28, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Spanish airworthiness directive 06/94, dated August 1994.

(h) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27222 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–274–AD; Amendment 39–10158; AD 97–21–05]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A Series Airplanes; and Hawker 800 and Hawker 800 XP Series Airplanes Including Military Variants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A series airplanes; and Hawker 800 and Hawker 800 XP series airplanes (including military variants C29A, U125, U125A). This amendment requires a one-time inspection to determine if certain high pressure oxygen hose assemblies are installed, and, if installed, replacement of those hose assemblies with new, improved hose assemblies. This amendment is prompted by a report that certain high pressure oxygen hose assemblies are susceptible to leakage due to those hose assemblies not meeting design specifications during manufacturing. The actions specified by this AD are intended to prevent leaks in high pressure oxygen hose assemblies, which, if not detected and corrected, could result in insufficient oxygen available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE–115W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A series airplanes; and Hawker 800 and Hawker 800 XP series airplanes (including military variants C29A, U125, U125A), was published in the **Federal Register** on July 24, 1997 (62 FR 39787). That action proposed to require a one-time inspection to determine if certain high pressure oxygen hose assemblies are installed, and, if installed, replacement of those hose assemblies with new, improved hose assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 404 Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A; and Hawker 800 and Hawker 800 XP series airplanes (including military variants) of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the initial inspection required by this AD on U.S. operators is estimated to be $24,240, or $60 per airplane.

Should an operator be required to accomplish the replacement, it would take approximately 1 work hour per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–05 Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Amendment 39–10158. Docket 96–NM–274–AD.

Applicability: All Model DH.125–400A, BH.125–400A and –600A, HS.125–600A and –700A, and BAe 125–800A series airplanes; and Model Hawker 800 and Hawker 800 XP series airplanes (including Military Variants C29A, U125, and U125A airplanes); having serial numbers 1 through 258294 inclusive; on which Modification 252036 has been installed with a high pressure oxygen hose assembly having part number WKA 34609; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Raytheon (Beech) Model DH.125–400B, BH.125–400B and –600B, HS. 125–600B and –700B, and BAe 125–800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD, and therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which those models are approved for operation should consider adopting corresponding action, applicable to these models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaks in high pressure oxygen hose assemblies, which could result in insufficient oxygen quantity available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to determine whether any high pressure oxygen hose assembly having a discrepant part number WKA 34609 is installed, in accordance with Raytheon Service Bulletin SB.35–46, dated September 30, 1996. If no discrepant part number is detected, no further action is required by this AD. If any hose assembly having discrepant part number WKA 34609 is installed, prior to further flight, replace the hose assembly with a hose assembly having part number 58179–101, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install a high pressure oxygen hose having part number WKA 34609 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Raytheon Service Bulletin SB.35–46, dated September 30, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27223 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–64–AD; Amendment 39–10157; AD 97–21–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes Equipped With Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, this amendment requires replacement of the existing seal of the accessory gearbox with a new, improved seal assembly; this replacement terminates the requirement for repetitive

flow checks. This amendment is prompted by reports indicating that hydraulic fluid had contaminated the engine oil system as a result of failure of the seal of the hydraulic pump shaft. The actions specified by this AD are intended to prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil; this condition could result in an in-flight engine shutdown.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax(425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on February 18, 1997 (62 FR 7184). That action proposed to require repetitive flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, the action proposed to require replacement of the existing seal of the accessory gearbox with a new, improved seal assembly. This replacement, when accomplished, would provide terminating action for the repetitive flow checks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

References to Service Bulletin Change Notices

Since the issuance of the proposal, Airbus has issued Service Bulletin Change Notice No. O.A., dated June 17, 1993, for Airbus Service Bulletin A300–72–6018 (for Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines). This change notice revises the service bulletin by specifying the latest French airworthiness directive: 92–231–136(B)R1, dated March 27, 1993.

Airbus also has issued Service Bulletin Change Notice No. O.A., dated June 17, 993, for Airbus Service Bulletin A300–72–6019 (for Model A300–600 series airplanes equipped with Pratt & Whitney PW 4000 engines). This change notice also revises the service bulletin by referencing the French airworthiness directive specified previously. Additionally, the change notice revises the service bulletin effectivity by specifying the operators of airplanes having certain manufacturer's serial numbers.

The FAA has revised the final rule to include references to these service bulletin change notices.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 Airbus Model A300–600 and A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required one-time inspection, and that the average labor rate is $60 per work hour. It will take approximately 10 work hours per airplane to accomplish the required terminating modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,840, or $2,280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–04 Airbus: Amendment 39–10157. Docket 96–NM–64–AD.

Applicability: Model A300B4–620, –622, –622R, and A300C4–620; and Model A310–221, –222, –322, –324, and –325 series airplanes; equipped with Pratt & Whitney turbofan engines; on which Airbus Modification 10399 or 10400 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil, and could result in an in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a flow check of the hydraulic pump drain system to ensure that it is not clogged and, prior to further flight, correct any discrepancies, in accordance with either paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the flow check, thereafter, at intervals not to exceed 500 flight hours until the modification required by paragraph (b) of this AD is accomplished.

(1) For Model A310 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A310–72–2022, dated February 16, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4D1 and –7R4E1 engines are installed); or Airbus Service Bulletin A310–72–2023, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

Note 2: Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A310–72–2023 are considered acceptable for compliance with the applicable action specified in this AD.

(2) For Model A300–600 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A300–72–6018, Revision 1, dated December 22, 1993, as revised by Service Bulletin Change Notice No. O.A., dated June 17, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6019, Revision 1, dated December 22, 1993, as revised by Service Bulletin Change Notice No. O.A., dated June 17, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

Note 3: Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A300–72–6018 or Airbus Service Bulletin A300–72–6019 are considered acceptable for compliance with the applicable action specified in this AD.

(b) Within 12 months after the effective date of this AD, replace (on both engines) the existing seal of the green hydraulic system gearbox with a new, improved seal assembly in accordance with either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of this replacement terminates the repetitive flow check requirements for this AD.

(1) For Model A310 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A310–72–2018, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4D1 and -7R4E1 engines are installed); or Airbus Service Bulletin A310–72–2019, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

Note 4: Replacement of the existing seal on the green hydraulic system gearbox with a new, improved seal assembly accomplished prior to the effective date of this AD, in accordance with the original issuance or Revision 1 of Airbus Service Bulletin A310–72–2019, or with the original issuance or Revision 1 of Airbus Service A310–72–2018, is considered acceptable for compliance with the applicable action specified in this AD.

(2) Model A300–600 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A300–72–6014, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6015, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following Airbus service bulletins, as applicable, which include the specified effective pages:

Service bulletin No.	Page No.	Revision level shown on page	Date shown on page
A310–72–2022, February 16, 1993	1–7	Original	February 16, 1993.
A310–72–2023, Revision 1, December 22, 1993	1, 2, 4–6	1	December 22, 1993
	3, 7	Original	February 16, 1993.
A300–72–6018, Revision 1, December 22, 1993	1, 2, 4	1	December 22, 1993.
	3, 5–7	Original	February 16, 1993.
A300–72–6018, Service Bulletin Change Notice No. O.A., June 17, 1993	1	Original	June 17, 1993.
A300–72–6019, Revision 1, December 22, 1993	1–6	1	December 22, 1993.
	7	Original	February 16, 1993.
A300–72–6019, Service Bulletin Change Notice No. O.A., June 17, 1993	1–2	Original	June 17, 1993.
A310–72–2018, Revision 2, December 22, 1993	1–3, 5–7	2	December 22, 1993.
	4, 9	Original	March 15, 1993.
	8	1	August 6, 1993.
A310–72–2019, Revision 2, December 22, 1993	1–3, 5–7	2	December 22, 1993.
	4, 9	Original	March 15, 1993.
	8	1	August 6, 1993.
A300–72–6014, March 15, 1993	1–7	Original	March 15, 1993.
A300–72–6015, March 15, 1993	1–9	Original	March 15, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27221 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–126–AD; Amendment 39–10165; AD 97–21–12]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S. A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires a one-time inspection to detect fatigue cracking in the area of the center wing-to-fuselage attachment fitting, and repair, if necessary. This amendment also would require installation of a reinforcing plate in the attachment area of that fitting. This amendment is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing, fatigue cracks were detected in this area. The actions specified by this AD are intended to prevent fatigue cracking, which consequently could reduce the structural integrity of this area.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on March 3, 1997 (62 FR 9388). That action proposed to require a one-time inspection to detect fatigue cracking in the area where the center wing-to-fuselage attachment fitting is located, and repair, if necessary. In addition, that action proposed the installation of a reinforcing plate in the attachment area of the center wing-to-fuselage attachment fitting, after inspection and any necessary repairs have been accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 25 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $645 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,290, or $2,145 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–12 Construcciones Aeronauticas, S.A. CASA: Amendment 39–10165.Docket 96–NM–126–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes); and Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military airplanes); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the area of the center wing-to-fuselage attachment fitting, which consequently could reduce the structural integrity of this area, accomplish the following:

(a) For non-military airplanes: Prior to the accumulation of 17,000 total landings, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. ("Removal") of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994.

(2) After all parts and other items have been removed in accordance with paragraph (a)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (a)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(b) For military airplanes: Prior to the accumulation of 15,000 total landings, accomplish the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. ("Removal") of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995.

(2) After all parts and other items have been removed in accordance with paragraph (b)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (b)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Certain actions shall be done in accordance with CASA Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military airplanes); and CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes), which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	April 13, 1994.
2	2	June 9, 1994.
3–11	Original	July 29, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 03/94, dated August 1994.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 9, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27354 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–18–AD; Amendment 39–10161; AD 97–21–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company CT58 series turboshaft engines, that requires removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts. This amendment is prompted by reports of certain cooling plates forged with contaminated alloy that could reduce the lives of the parts. The actions specified by this AD are intended to prevent cooling plate fracture, which could result in a contained engine failure, and an inflight engine shutdown.

DATES: Effective December 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company (GE), 1000 Western Ave., Lynn, MA 01909; telephone (781) 594–9894, fax (781) 594–1527. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, –140–2, and T58–GE–3/–5/–8F/–10/–100 turboshaft engines was published in the **Federal Register** on June 9, 1997 (62 FR 31370). That action proposed to require removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

Since publication of the proposed rule, GE Aircraft Engines has issued GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), Revision 1, dated July 15, 1997. This final rule references this current revision.

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

There are approximately 400 engines of the affected design in the worldwide fleet. The FAA estimates that 126 engines installed on aircraft of U.S. registry will be affected by this AD, that it will not take any additional work hours per engine to accomplish the required actions at next part exposure. Required parts will cost approximately $2,730 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $343,980. The manufacturer, however, has advised the FAA of a program to prorate the cost of required parts downward by a factor equal to the quotient of the difference between the original life limit of 4,000 hours time in service and the total cycles of life consumed at time of removal, divided by the original life limit. Therefore, the actual cost to operators may be less than the FAA's estimate.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–08 General Electric Company: Amendment 39–10161. Docket 97–ANE–18–AD.

Applicability: General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, and –140–2, and T58–GE–3/–5/–8F/–10/–100 series turboshaft engines, with stage 1 forward cooling plate, Part Number (P/N) 37C300055P101, stage 2 forward cooling plate, P/N 3000T88P02, and stage 2 aft cooling plate, P/N 3002T27P01, installed. These engines are installed on but not limited to Boeing Vertol 107 series, and Sikorsky S61 and S62 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cooling plate fracture, which could result in a contained engine failure and an inflight engine shutdown, accomplish the following:

(a) Remove from service affected cooling plates, listed by serial number in GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), Revision 1, dated July 15, 1997, and replace with serviceable parts, at the next part exposure, or next light overhaul, whichever occurs first, but not to exceed 1,000 hours time in service (TIS) for engines installed on aircraft that have engaged in Repetitive Heavy Lift (RHL) operations, or 2,000 hours TIS for engines installed on aircraft that have never engaged in RHL operations, in accordance with that SB.

(b) For the purpose of this AD, the following definitions apply:

(1) RHL operation is defined as performing more than 10 lift-carry-drop cycles per hour TIS without landing, or more than 10 takeoffs and landings per hour TIS.

(2) Light overhaul is defined as scheduled engine maintenance that allows the engine to continue in service until scheduled major overhaul time is reached.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request shall be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following GE Aircraft Engines SB:

Document No	Pages	Revision	Date
72–188 (CEB–293) ..... Total Pages: 7.	1–7	1	July 15, 1997

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company (GE), 1000 Western Ave., Lynn, MA 01909; telephone (781) 594–9894, fax (781) 594–1527. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 19, 1997.

Issued in Burlington, Massachusetts, on October 8, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–27351 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–05–AD; Amendment 39–10168; AD 97–21–15]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Avro 146–RJ series airplanes, that requires a modification of the electrical system in the equipment bay area by replacing certain cables, clamps, and fairleads with new components. This amendment is prompted by a report indicating that the incorrect size of electrical cables were used in the generator feeder circuit to certain busbars from the generator contactors. As a result, the electrical cables are not compatible with generator rating requirements and can overheat. The actions specified by this AD are intended to prevent possible overheating of electrical generator feeder cables and consequent damage, which could lead to possible fire or the loss of essential electrical systems.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 4, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim H. Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes was published in the **Federal Register** on February 28, 1997 (62 FR 9111). That action proposed to require modifying the electrical system in the equipment bay area by replacing certain cables, clamps, and fairleads with new components.

Consideration of Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Request to Revise the Summary Section of the Preamble of the Proposed AD

The commenter requests that the description of what prompted the NPRM that appeared in the Summary section of the preamble to the NPRM be revised to read, "* * * the generator feeder circuit to certain busbars from the generator contactors. As a result, the cables are not compatible * * *." The commenter suggests that this statement is more accurate. The FAA acknowledges that the commenter's wording is more accurate and has revised the final rule to reflect the suggested changes. In addition, the FAA has included the word "electrical" to identify which type of cables are not compatible.

Request to Revise Other Sections of the Preamble of the Proposed AD

The commenter also requests that the description of what the CAA advises that appeared in the Discussion section of the preamble to the NPRM be revised to read, "* * * generator feeder circuit to busbars AC1 and AC2."

In addition, the commenter requests that a description of the procedures referenced in the service bulletin that appeared in the Explanation of Relevant Service Information section of the preamble to the NPRM be revised to read "* * * existing 6ANC generator feeder cables installed to the AC1 and AC2 busbars from the generator contactors * * *."

The commenter states that these statements will improve the technical accuracy of the proposal. The FAA recognizes that the suggested changes to these sections provide improved technical accuracy. However, since neither the Discussion nor the Explanation of Relevant Service Information sections of the preamble to the NPRM are restated in the final rule, no change to the final rule is necessary.

Explanation of Changes Made to the Proposal

For clarification purposes, the FAA has revised the description of the unsafe condition that appeared throughout the NPRM to read, "* * * possible overheating of the electrical generator feeder cables and consequent damage, which could lead to a possible fire or the loss of essential electrical systems."

The FAA also has revised the final rule to reflect the corporate name change of British Aerospace Regional Aircraft Limited, Avro International Aerospace Division to British Aerospace Regional Aircraft. In addition, the address for obtaining service information has been revised to AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171.

Furthermore, the FAA has revised the area code from (206) to (425) of the telephone numbers in the For Further Information Contact section of the final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 10 British Aerospace Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD. Modification of the electrical system will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,400, or $540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–15 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10168. Docket 97–NM–05–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible overheating of the electrical generator feeder cables and consequent damage, which could lead to possible fire or loss of essential electrical systems, accomplish the following:

(a) Prior to the accumulation of 500 flight cycles after the effective date of this AD, modify the electrical system in the electrical equipment bay in accordance with British Aerospace Service Bulletin SB.24–113–01532A, dated March 12, 1996, or British Aerospace Service Bulletin SB.24–113–01532A, Revision 1, dated June 18, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests to through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.24–113–01532A, dated March 12, 1996; or British Aerospace Service Bulletin SB.24–113–01532A, Revision 1, dated June 18, 1996, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	1	June 18, 1996.
3–15	Original	March 12, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 006–03–96, dated March 12, 1996.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27576 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–120–AD; Amendment 39–10167; AD 97–21–14]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that requires an initial inspection of the restrictor pistons on the shock absorbers of the left and right main landing gear (MLG) to determine the number and condition of threaded screw pins that are installed; replacement of any discrepant pin; and repetitive inspections of certain pistons. Modification of certain pistons by the installation of two additional pins terminates these inspections. This amendment is prompted by reports indicating that the threaded screw pin that holds the restrictor piston on the slide tube of the shock absorber has been found to have loosened on some airplanes. The actions specified by this AD are intended to prevent the loss of hydraulic damping in the MLG, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model C–212 series airplanes was published in the **Federal Register** on March 7, 1997 (62 FR 10488). That action proposed to require an initial inspection of the restrictor pistons on the shock absorbers of the left and right main landing gear (MLG) to determine the number and condition of threaded screw pins that are installed; replacement of any discrepant pin; and repetitive inspections of certain pistons. Pistons on which one pin is installed are required to be modified by drilling two new holes and unsealing two previously drilled holes, and installing two additional pins. This modification terminates these repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 41 CASA Model C–212 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 20 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $11 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $49,651, or $1,211 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–14 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–10167. Docket 96–NM–120–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of hydraulic damping in the main landing gear, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane, accomplish the following:

(a) Prior to the accumulation of 600 hours time-in-service after the effective date of this AD, conduct an inspection of each restrictor piston to detect the number and condition of installed threaded screw pins; in accordance with CASA Service Bulletin SB–212–32–38, dated June 16, 1994. Prior to further flight, replace any loose pin, in accordance with the service bulletin and accomplish the following, as applicable:

(1) For any piston on which three threaded screw pins are installed: No further action is required by this AD for this piston.

(2) For any piston on which one pin is installed and two holes are sealed with epoxy: Remove the epoxy, and install two additional threaded screw pins, in accordance with the service bulletin. Thereafter, no further action is required by this AD for this piston.

(3) For any piston on which one pin is installed and no other holes exist:

(i) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service until the modification required by paragraph (a)(3)(ii) of this AD is accomplished.

(ii) Prior to the accumulation of 1,800 hours time-in-service after the effective date of this AD, or within 3 years after the effective date of this AD, whichever occurs later, modify this piston in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(3)(i) of this AD. Thereafter, no further action is required by this AD with regard to that piston.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with CASA Service Bulletin SB–212–32–38, dated June 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 07/94, dated October 1994.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27581 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–06–AD; Amendment 39–10166; AD 97–21–13]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model 382 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (707) 703–6063; fax (707) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model 382 series airplanes was published in the **Federal Register** on March 26, 1997 (62 FR 14369). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop, and to provide a statement of consequences of positioning the power levers below the flight idle stop.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 18 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–13 Lockheed Aeronautical Systems Company: Amendment 39–10166. Docket 97–NM–06–AD.

Applicability: All Model 382 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This may be accomplished by inserting a copy of this AD or Lockheed AFM 382/E/G, Revision 24, dated November 15, 1996, into the AFM.

Positioning of power levers below the flight idle stop while the airplane is in-flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) Except as provided by paragraph (a) of this AD, the AFM revision shall be done in accordance with Lockheed Airplane Flight Manual (AFM) 382/E/G, Revision 24, dated November 15, 1996, which contains the following list of effective pages:

Page No.	Revision level shown on page
Log of Revisions ..... Page viE/(viF Blank)	24

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27579 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–02]

Amendment of Class E Airspace; Alamosa, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Alamosa, CO, Class E airspace by increasing the radius of the Class E surface area, and by expanding the lateral boundaries of the Class E airspace at and above 1,200 feet Above Ground Level (AGL). The additional controlled airspace is necessary to contain two Standard Instrument Approach Procedures (SIAP) which have recently been developed for the Alamosa Airport. The intended effect of this action is to provide the additional controlled airspace necessary to enable the FAA to provide Instrument Flight Rules (IFR), Air Traffic Control (ATC) services and separation to IFR aircraft operating on the SIAP's and transitioning between the terminal and en route environments. The areas will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–520.1, Federal Aviation Administration, Docket No. 97–ANM–02, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On April 2, 1997, the FAA proposed to amend Part 71 of Federal Aviation Regulations (14 CFR part 71) to provide additional Class E airspace area at Alamosa, Colorado (62 FR 15635). The recent commissioning of the Alamosa Instrument Landing System (ILS), and Global Positioning System (GPS) SIAP requires adjustment of Class E airspace in order to segregate aircraft operating in instrument flight conditions from aircraft operating in visual flight conditions. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. This action is the same as described in the proposal. Class E airspace designated as a surface area for an airport and airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6002 and paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This action amends 14 CFR part 71 Class E airspace at Alamosa, CO. The portion of the existing airspace area extending upward from the surface will be expanded by increasing the radius of the area from 4.3 nautical miles (NM) to 5 NM. Where a SIAP has been designated for the airport and communications and weather reporting criteria are met, the FAA establishes Class E airspace extending upward from the surface to the base of overlying controlled airspace to contain terminal instrument operations if such action is justified and/or in the pubic interest. This action also expands and simplifies the portion of the area extending upward from 1,200 feet AGL by redefining the lateral boundaries of the area. The FAA establishes Class E airspace extending upward from 1,200 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The FAA has recently established GPS and ILS SIAP's for use by aircraft arriving at the Alamosa Airport. The additional Class E airspace established by this rule is necessary to accommodate the new SIAP's. The intended effect of this action is to provide the controlled airspace necessary to enable the FAA to provide IFR ATC services and separation to IFR aircraft operating on the GPS and ILS SIAP's, and while transitioning between the en route and terminal environments. The areas will be dipicted on appropriate aeronautical charts for pilot reference.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration 14 CFR part 71 is amended as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

ANM CO E2 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(lat. 37°26'06" N, long. 105°52'01" W)
Alamosa VORTAC
(lat. 37°20'57" N, long. 105°48'56" W)

Within a 5-mile radius of the San Luis Valley Regional/Bergman Field, and within 3 miles each side of the Alamosa VORTAC 127° and 335° radials extending from the 5-mile radius to 10.1 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(lat. 37°26'06" N, long. 105°52'01" W)
Alamosa VORTAC
(lat. 37°20'57" N, long. 105°48'56" W)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and miles southwest of the Alamosa VORTAC 335° and 155° radials extending from 20.1 miles northwest to 10.5 miles southeast of the VORTAC, and within 1.8 miles northwest and 5.3 miles southeast of the Alamosa VORTAC 200° radial extending from the VORTAC to 14 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 37°37'00" N, long. 106°14'00" W; lat. 37°44'00" N, long. 105°55'00" W; lat. 37°52'00" N; long. 105°43'00" W; lat. 37°49'00" N, long. 105°31'00" W; lat. 37°20'30" N, long. 105°18'00" W; lat. 37°03'30" N, long. 105°18'00" W; lat. 37°01'30" N, long. 105°46'00" W; lat. 37°05'25" N, long. 106°02'00" W; lat. 37°09'00" N, long. 106°19'00" W; lat. 37°17'00" N, long. 106°21'00" W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on September 9, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–27364 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

RIN 2700–AC26

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising subpart H, "Delegation of Authority to Make Determinations in Original Classification Matters." This amendment changes the designated officials for Secret and Confidential authority, deletes old NASA position titles, replaces them with current NASA organization position titles, and adds original declassification authorities in compliance with Executive Order 12958.

EFFECTIVE DATE: October 20, 1997.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202–358–2314.

SUPPLEMENTARY INFORMATION: NASA published 14 CFR Part 1203 subpart H in the **Federal Register** on November 9, 1988 (53 FR 45259). It identified NASA officials who are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. This amendment reflects NASA's current organizational position titles.

Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined the following:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12866.

List of Subjects in 14 CFR Part 1203

Security Classified information, Foreign relations, Security measures.

For reasons set out in the Preamble, 14 CFR part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 is revised to read as follows:

Authority: 42 U.S.C. 2451 *et seq.* and E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Subpart H is revised to read as follows:

Subpart H—Delegation of Authority to Make Determinations in Original Classification Matters.

Sec.
1203.800 Delegations.
1203.801 Redelegation.
1203.802 Reporting.

Subpart H—Delegation of Authority to Make Determinations in Original Classification

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) (1) and (2) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations, and they shall be subject to any contrary determination that has been made by the Senior Agency Official for Classified National Security Information, or by any other NASA official authorized to make such a determination. The Director, Security Management Office, is designated to act as the Senior Agency Official for Classified National Security Information. The NASA officials listed in paragraph (b)(3) of the section are authorized to declassify top Secret security classification assignments over 25 years old to information under their jurisdiction for which NASA has original classification authority. The NASA officials listed in paragraphs (b)(4) of this section are authorized to declassify Secret and Confidential security classification assignments to information under their jurisdiction for which NASA has original classification authority.

(b) *Designated officials.* (1) *TOP SECRET Classification Authority—(i) Administrator.*

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Associate Deputy Administrator (Technical).

(v) Senior Agency Official for Classified National Security Information.

(2) *SECRET and CONFIDENTIAL Classification Authority.* Officials listed in paragraph (b)(1) of this section.

(3) *Declassification Authority, Top Secret Assignments over 25 years Old.* (i) Agency Security Program Manager, NASA Headquarters.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(4) *Declassification Authority, Secret and Confidential.* (i) Security Administrative Team Leader, Headquarters NASA.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(c) Written requests for original classification authority or declassification authority shall be forwarded to the Senior Agency Official for Classified National Security Information, with appropriate justification appended thereto.

(d) The Senior Agency Official for Classified National Security Information shall maintain a list of all delegations of original classification of declassification authority by name or title of the position held.

(e) The Senior Agency Official for Classified National Security Information shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority or declassification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated under this section shall ensure that feedback is provided to the Senior Agency Official for National Security Information. The Senior Agency Official for National Security Information shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Daniel S. Goldin,

Administrator.

[FR Doc. 97–27651 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014245–7245–01]

Temporary Rule Prohibiting Anchoring by Vessels 50 Meters or Greater in Length on Tortugas Bank Within the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Temporary rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues a temporary rule prohibiting anchoring by vessels 50 meters in length or greater on the Tortugas Bank within the Florida Keys National Marine Sanctuary (Sanctuary). This temporary rule is necessary to prevent future injury to, and destruction of, living coral on Tortugas Bank caused by such anchoring.

EFFECTIVE DATES: This temporary rule is effective from 12:01 am October 17, 1997 until February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Billy D. Causey, Superintendent, Florida Keys National Marine Sanctuary (FKNMS), Post Office Box 500368, Marathon, Florida 33050. (305) 743–2437.

SUPPLEMENTARY INFORMATION: In accordance with 15 CFR 922.165 of the Florida Keys National Marine Sanctuary regulations (62 FR 32154, June 12, 1997) and the Co-Trustees Agreement for Cooperative Management of the Florida Keys National Marine Sanctuary made between the Governor and Cabinet of the State of Florida and NOAA dated May 19, 1997, NOAA has consulted with and received approval from the Governor of the State of Florida concerning the issuance of this temporary rule.

Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect in Florida territorial waters until approved by the Governor of the State of Florida.

Background

This temporary rule is necessitated by the recent discovery of significant injury to, and destruction of, living coral on Tortugas Bank, west of the Dry Tortugas National Park, caused by the anchoring of vessels 50 meters or greater in length, and the need to prevent future injury.

Current 15 CFR 922.163(a)(5)(ii) prohibits having vessels anchored in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, this regulation does not protect the coral located in the area covered by this temporary rule because the water there is deeper than 40 feet.

Anchoring of vessels 50 meters or greater in length on Tortugas Bank has been documented as having caused significant injury to living coral reef resources. Vessels of such size have anchoring gear of massive weight and

size with heavy chains hundreds of feet in length weighing as much as 8 to 10 tons. Vessels smaller than 50 meters in length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear generally is less massive in size and weight. Therefore, this temporary rule only prohibits anchoring by vessels of 50 meters or greater in length on the Tortugas Bank. The location by coordinates of the prohibited anchoring area is set forth below.

Transit, fishing and all other activities currently allowed in the area are not affected by this temporary rule. Alternative anchor sites for vessels 50 meters or greater in length are located within approximately two nautical miles of the prohibited area. The close proximity of these alternative anchoring sites should mitigate any potential economic impact on such vessels since cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the additional anchor chain should be minimal.

The location of alternative anchoring sites for vessels greater than 50 meters in length are provided below.

Location and Boundary of Area Where Anchoring by Vessels 50 Meters or Greater in Length is Prohibited

The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Park, closed to anchoring by vessels 50 meters or greater in length are:

(1) 24° 45.75' N 82° 54.40' W
(2) 24° 45.60' N 82° 54.40' W
(3) 24° 39.70' N 83° 00.05' W
(4) 24° 32.00' N 83° 00.05' W
(5) 24° 37.00' N 83° 06.00' W
(6) 24° 40.00' N 83° 06.00' W

Alternative Anchoring Sites

Alternative anchoring locations in the vicinity of the area closed to anchoring are:

Areas to the west of the Sanctuary boundary in depths greater than the 20 fathom contour line, indicated on NOAA Nautical Chart Numbers 11434 and 11420. The bottom type in these areas is sand/mud or sand/shell. This location is approximately 2 nautical miles west of the living coral reefs that form Tortugas Bank where anchoring damage to the corals is occurring. Mariners should note the existence of a submerged shipwreck located at 24° 38' N 83° 08.00' W. This shipwreck is a landing ship transport which was lost in 1948.

Penalties

Pursuant to 15 CFR 992.45, any violation of the rule is subject to a maximum civil penalty of $110,000 per violation per day. Furthermore, the NMSA and regulations authorize a proceeding *in rem* against any vessel used in violation of any such regulation.

Classification

Under 5 USC 553(b)(B), the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA for good cause finds that providing prior notice and public procedure thereon with respect to this rule is contrary to the public interest. This is due to recent evidence that has come to light that severe damage to coral in the area has been caused by the chains and anchors of vessels 50 meters or greater in length. Further damage to the living coral reef will occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

Likewise, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA for good cause finds that delaying the effective date of this rule for 30 days is contrary to the public interest. First, if the rule is delayed for 30 days, significant damage to the living coral resources could result. Further, 30 days is not necessary to give notification to vessels which might anchor in the area in the future or for any vessel presently anchored to move to an alternative anchoring site. The U.S. Coast Guard will give immediate notification to vessels and they then can, in a short period of time, move and re-anchor in the recommended location. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Dry Tortugas National Park staff on the water within the area. This rule is effective on 12:01 am on the second day after the filing of this rule at the Office of the Federal Register, to allow adequate time for any vessels to relocate.

Executive Order 12866

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of Section 3(f) of Executive Order 12866.

Executive Order 12612

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

Because this rule is not required to be issued with prior notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, it is not subject to the Regulatory Flexibility Act requirement for preparation of a regulatory flexibility analysis, and none has been prepared.

Paperwork Reduction Act

This rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

Dated: October 17, 1997.

Nancy Foster,

Assistant Administrator.

[FR Doc. 97–27700 Filed 10–15–97; 12:17 pm]

BILLING CODE 3510–08–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA95

Methylene Chloride; Amendment; Extension of Start-up Dates

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final Rule; amendment; extension of start-up dates of compliance.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the start-up date for most provisions of the methylene chloride standard for larger employers by 45 days to December 21, 1997. Larger employers were required to commence initial monitoring by September 7, 1997, and that date is unchanged. OSHA is also extending the start-up date for initial monitoring for foam manufacturers with 20 to 99 employees by 45 days to December 21, 1997, Employers with fewer than 20 employees have later start-up dates, which are not changed.

DATES: The effective date of this amendment is October 20, 1997.

Compliance: The start-up date for all provisions of the methylene chloride standard except initial monitoring and engineering controls for employers specified in § 1910.1052(n)(2)(iii)(C) is extended to December 21, 1997 (255 days after the effective date of the standard). The start-up date for the initial monitoring provision of the methylene chloride standard is extended to December 21, 1997 (255 days after the effective date of the standard) for employers specified in § 1910.1052(n)(2)(i)(B).

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA published a new methylene chloride standard January 10, 1997 (62 FR 1494). That standard included extended start-up dates for its various provisions depending on the size of the employer. The three categories of employers were employers with fewer than 20 employees, foam manufactures with 20–99 employees, and "all other employers."

OSHA published notification of OMB approval of information collection requirements on August 8, 1997 (62 FR 42666). As the start-up date for initial monitoring for "all other employers" was August 8, 1997, OSHA extended that date to September 7, 1997 to provide added notice to implement compliance.

On September 15, 1997 (62 FR 48175), OSHA published a notice extending the start-up date for all provisions of the standard except initial monitoring (and engineering controls, which already had a later start-up date) from October 7, 1997 to November 6, 1997 for "all other employers." Other start-up dates were left unchanged.

OSHA has concluded that an additional 45 days (to December 21, 1997) is needed for implementation of the provisions except initial monitoring and engineering controls for "all other employers." This allows for a more efficient and effective implementation of those provisions. OSHA has also concluded that an additional 45 days (to December 21, 1997) is needed for foam manufacturers with between 20 and 29 employees to comply with the initial monitoring requirements. OSHA is amending paragraphs § 1910.1052(n)(2)(i)(B) and § 1910.1052(n)(2)(iii)(C) to implement this decision.

The date for completion of initial monitoring for employers with fewer than 20 employees is February 4, 1998, and remains unchanged. See 62 FR 1606 (January 10, 1997) for a listing of effective and start-up dates.

OSHA finds that there is good cause to issue this extension without notice and public comment because following such procedures would be impractical, unnecessary or contrary to the public interest in this case. OSHA believes that it is in the public interest to give certain employers additional time to implement certain provisions.

Authority And Signature

This document was prepared under the direction of Gregory R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, DC this 15th day of October 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous Substances, Occupational safety and health, Reporting and recordkeeping requirements.

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of CFR 29 part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62(FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. Paragraphs (n)(2)(i)(B) and (n)(2)(iii)(C) of § 1910.1052 are revised to read as follows:

§ 1910.1052 Methylene Chloride.

* * * * *

(n) * * *

(2) * * *

(i) * * *

(B) for polyurethane foam manufactures with 20 to 99 employees with 255 days after the effective date of this section.

(ii) * * *

(iii) * * *

(C) For all other employers within 255 days after the effective date of this section.

* * * * *

[FR Doc. 97–27691 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA42

OCHAMPUS; State Victims of Crime Compensation Programs; Voice Prostheses

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule establishes OCHAMPUS as primary payer to State Victims of Crime Compensation Programs and establishes voice prostheses as a CHAMPUS benefit.

DATES: The amendments to § 199.2 and § 199.8 are effective September 13, 1994 and the revision of § 199.4(g)(48) is effective October 5, 1994. Written comments will be accepted until December 19, 1997.

ADDRESSES: Forward comments to the OCHAMPUS, Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Connie Kiese, OCHAMPUS, Program Development Branch, telephone (303) 361–1178.

SUPPLEMENTARY INFORMATION: Under 10 U.S.C. 1079(j)(1), no CHAMPUS benefits shall be available for the payment for any service or supply for persons enrolled in any other insurance, medical service, or health plan to the extent that the service or supply is a benefit under the other plan, except in the case of those plans administered under title XIX of the Social Security Act (Medicaid)(51 FR 24008). Therefore, in all double coverage situations, and for all classes of beneficiaries, CHAMPUS shall be secondary payer except when the other medical coverage is provided through Medicaid.

However, on September 13, 1994, Public Law 103–322 was signed into effect. Section 230202 of that law states that notwithstanding any other law, if the compensation paid by an eligible crime victim compensation plan would cover costs that a Federal program or a federally financed State or local program would otherwise pay,——

(1) Such crime compensation program shall not pay that compensation; and

(2) The other program shall make its payments without regard to the existence of the crime victim compensation program.

This provision mandates that CHAMPUS assume primary payer status

to State Victims of Crime Compensation Programs.

This interim final rule is being published and no previous public comment period has been requested. The change is mandated through public law signed into effect on September 13, 1994, and we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule. However, for a period of 60 days following the date of publication of this interim final rule in the **Federal Register**, we will accept public comments and, when appropriate, will revise the amendment. A notice advising of any revision prompted by public comments will be published in the **Federal Register** not later than 90 days following the end of the comment period. Benefits will be granted retroactively, effective September 13, 1994 for State Victims of Crime Compensation Programs and voice prostheses.

The National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337), section 705, October 5, 1994, added voice prostheses to the benefits available under CHAMPUS. Benefits will be granted retroactively, effective October 5, 1994.

Because this change is also mandated through public law, we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule. A comment period of 60 days following the date of publication of this amendment in the **Federal Register** is provided.

Effective September 13, 1994, CHAMPUS is considered primary payer to state victims of crime compensation programs. The effective date for the new CHAMPUS benefit of voice prosthesis is October 5, 1994.

Regulatory Procedures

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This interim final rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this interim final rule are minor revisions to the existing regulation. Since this interim final rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding a definition "State Victims of Crime Compensation Programs" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

State Victims of Crime Compensation Programs. Benefits available to victims of crime under the Violent Crime Control and Law Enforcement Act.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(48) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(48) *Prosthetic devices.* Prostheses, except artificial limbs, voice prostheses and eyes, or if an item is inserted surgically in the body as an integral part of a surgical procedure. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

* * * * *

4. Section 199.8 is amended by revising paragraphs (b)(3)(iii), (b)(3)(iv) and by adding paragraph (b)(3)(v) as follows:

§ 199.8 Double coverage.

* * * * *

(b) * * *

(3) * * *

(iii) Entitlement to receive care from Uniformed Services medical care facilities;

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service); or

(v) State Victims of Crime Compensation Programs.

* * * * *

Dated: October 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27641 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–018]

RIN 2115–AE47

Drawbridge Operation Regulations; Bronx River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the Bruckner Boulevard Bridge, over the Bronx River in the Bronx, New York. In addition, the location of the bridge in this section will be more clearly identified and redundant language regarding openings for public vessels and vessels in distress is removed. The owner of the bridge has requested that a 4 hours notice for openings be provided, except between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m., Monday through Friday, when the bridge need not open for the passage of vessels. This change is expected to provide for the needs of navigation and relieve the bridge owner of the burden of crewing the bridge at all times.

DATES: This final rule is effective November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. J. Arca, project officer, First Coast Guard District, Bridge Branch at the Battery Park Bldg., New York, New York 10004. The telephone number is (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 30, 1997, the Coast Guard published a notice of proposed rulemaking entitled "Drawbridge Operation Regulations; Bronx River, New York" in the **Federal Register** (62 FR 23410). The Coast Guard received two comments on the notice of proposed rulemaking. No public hearing was requested, and one was not held.

Background and Purpose

The Bruckner Boulevard Bridge, at mile 1.1, over the Bronx River in the Bronx, New York, has vertical clearances of 27′ above mean high water (MHW) and 34′ above mean low water (MLW) in the closed position. The existing rules at 33 CFR part 117.771(a) require the Bruckner Boulevard Bridge to open on signal, except during designated rush hour periods. On September 27, 1988, the Coast Guard approved plans for the rehabilitation of the bridge. To facilitate the work, a temporary final rule (54 FR 18281, April 28, 1989) was approved, permitting the bridge to remain closed for 36 months from April 9, 1989, through April 9, 1992. Prior to the rehabilitation of the bridge, there were three openings recorded in 1988. Since the rehabilitation was completed in 1992, there have been no requests for openings.

Discussion of Comments and Changes

Two comments were received in response to the notice of proposed rulemaking. Both offered no objection.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the bridge as long as they provide four hours advance notice. This rule will not prevent mariners from passing through the Bruckner Boulevard Bridge so long as they provide advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation above, the Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as revised by 60 FR 32197, June 20, 1995), this rule promulgates operating regulations for drawbridges and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.771 is revised to read as follows:

§ 117.771 Bronx River.

(a) The draw of the Bruckner Boulevard Bridge, mile 1.1, at the Bronx, New York, shall open on signal if at least 4 hours notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or NYCDOT Bridge Operations office, except that between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m. Monday through Friday, the bridge need not be opened for the passage of vessels.

(b) The draw of the Conrail Bridge, mile 1.6 at the Bronx, New York, need not be opened for the passage of vessels.

(c) The owners of the Bruckner Boulevard Bridge, mile 1.1, and the Conrail Bridge, mile 1.6, both at the Bronx, New York, shall provide and keep in good legible condition two clearance gauges designed, installed and maintained in accordance with the provisions of § 118.160 of this chapter.

Dated: September 29, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 97–27707 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule; re-opening of comment period.

SUMMARY: The Coast Guard is re-opening the comment period for its interim final rule establishing a system to identify vessels numbered or titled under the laws of a State. This action is necessary to respond to questions raised by States, banking interests, and legal associations.

DATES: Comments must reach the Coast Guard on or before December 4, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 89–050), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT James Whitehead, Marine Safety and Environmental Protection, Office of Information Resources (G–MRI), 202–267–0385.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, arguments, or data. Persons submitting comments should include their names and addresses, identity this rulemaking (CGD 89–050) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during this comment period. It may change this rule in view of the comments.

Background

The Coast Guard published an Interim Final Rule in the **Federal Register** (60 FR 20310; April 25, 1995). The rule established a vessel identification system (VIS) for vessels numbered or titled by a State that elects to participate in the system, The rule was to go into effect on April 24, 1996. However, on February 23, 1996 (61 FR 6943), the Coast Guard suspended the effective date of subpart D of the rule (33 CFR part 187, subpart D, Guidelines for State Vessel Titling Systems) through April 23, 1998. The suspension was intended to allow the Coast Guard, States, and public more time to review the complexities of the guidelines relating to State titling. Since the suspension began, representatives of the States, marine banks, and legal associations have met several time to discuss issues involving the State titling guidelines. Notes from these meetings have been included in the docket.

Questions

We are reopening the comment period to gather further information on all aspects of this rulemaking. We particularly need your help in answering the following questions:

(a) Should the regulations be revised to respond to ownership concerns, rather than just law enforcement concerns? Both concerns are addressed in the VIS statute (46 U.S.C. 12501). Such a revision may allow members of the marine industry to get ownership information from the VIS, such as an individual owner's name and address in order to match that owner with a particular vessel.

(b) Should the information used to identify vessels in 33 CFR 187.103 be the same as that used for a certificate of number in 33 CFR 174.19?

(c) What changes, if any, to 33 CFR part 187, subpart D, are needed to address the complexities of State titling?

Your comments need not be limited to these questions.

Dated: October 14, 1997.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–27706 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7674]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Michigan:				
Bridgeport, charter township of, Saginaw County.	260186	February 18, 1975, Emerg; March 15, 1984, Reg.; October 16, 1997, Susp.	October 16, 1997.	October 16, 1997
Buena Vista, charter township of, Saginaw County.	260499	July 30, 1976, Emerg; July 5, 1984, Reg.; October 16, 1997, Susp.	.....do	Do.
Carrollton, township of, Saginaw County	260187	July 23, 1974, Emerg.; June 15, 1983, Reg.; October 16, 1997, Susp.	.....do	Do.
Chesaning, village of, Saginaw County	260591	September 20, 1982, Reg.; October 16, 1997, Susp.	.....do	Do.
Frankenmuth, city of, Saginaw County ..	260188	September 5, 1975, Emerg.; September 2, 1982, Reg.; October 16, 1997, Susp.	.....do	Do.
James, township of, Saginaw County ...	260802	April 13, 1987, Emerg.; September 9, 1991, Reg.; October 16, 1997, Susp.	.....do	Do.
Kochville, township of, Saginaw County	260501	October 26, 1977, Emerg.; January 19, 1983, Reg.; October 16, 1997, Susp.	.....do	Do.
Maple Grove, township of, Saginaw County.	260891	June 6, 1997, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp.	.....do	Do.
Saginaw, city of, Saginaw County	260189	February 26, 1975, Emerg.; November 16, 1983, Reg.; October 16, 1997, Susp.	.....do	Do.
Saginaw, township of, Saginaw County	260190	July 13, 1973, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp.	.....do	Do.
Spaulding, township of, Saginaw County.	260303	August 6, 1974, Emerg.; June 15, 1979, Reg.; October 16, 1997, Susp.	.....do	Do.
St. Charles, village of, Saginaw County	260593	April 16, 1979, Emerg.; October 18, 1983, Reg.; October 16, 1997, Susp.	.....do	Do.
Swan Creek, township of, Saginaw County.	260888	May 12, 1995, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp.	.....do	Do.
Taymouth, township of, Saginaw County.	260503	June 2, 1977, Emerg.; December 16, 1988, Reg.; October 16, 1997, Susp.	.....do	Do.
Thomas, township of, Saginaw County	260603	February 13, 1975, Emerg.; January 19, 1983, Reg.; October 16, 1997, Susp.	.....do	Do.
Tittabawassee, township of, Saginaw County.	260504	February 16, 1981, Emerg.; February 1, 1987, Reg.; October 16, 1997, Susp.	.....do	Do.
Zilwaukee, city of, Saginaw County	260285	January 21, 1974, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp.	.....do	Do.
Zilwaukee, township of, Saginaw County.	260286	January 21, 1974, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp.	.....do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: October 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–27709 Filed 10–17–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7233]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield.	Town of New Canaan.	June 26, 1997, July 3, 1997, *New Canaan Advertiser.*	Mr. Richard P. Bond, First Selectman of the Town of New Canaan, 77 Main Street, New Canaan, Connecticut 06840.	October 1, 1997 ...	090010 B
Florida: Duval	City of Jacksonville.	July 8, 1997, July 15, 1997, *The Florida Times-Union.*	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202.	July 1, 1997	120077 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Orange	Unincorporated Areas.	August 18, 1997, August 25, 1997, *The Orlando Sentinel.*	Mr. Ajit Lalchandani, P.E., Director, Orange County Public Works Division, 4200 South John Young Parkway, Orlando, Florida 32829–9205.	August 11, 1997 ..	120179 C
Georgia: Gwinnett	Unincorporated Areas.	July 21, 1997, July 28, 1997, *Gwinnett Daily Post.*	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30245–6900.	October 26, 1997	130322 C
Illinois: Cook	Village of Chicago Ridge.	August 30, 1996, September 5, 1996, *The Chicago Ridge Citizen.*	The Honorable Eugene Siegel, Mayor of the Village of Chicago Ridge, 10655 South Oak Avenue, Chicago Ridge, Illinois 60415.	August 23, 1996 ..	170076 B
DuPage and Cook.	Village of Bensenville.	September 3, 1997, September 10, 1997, *Press Publications.*	Mr. John C. Geils, President of the Village of Bensenville, 700 West Irving Park Road, Bensenville, Illinois 60106.	August 27, 1997 ..	170200 C
Illinois: DuPage	City of Darien	August 21, 1997, August 28, 1997, *Darien Progress.*	The Honorable Carmen D. Soldato, Mayor of the City of Darien, 1702 Plainfield Road, Darien, Illinois 60561.	November 26, 1997.	170750 A
DuPage County.	Village of Lisle	July 25, 1997, August 1, 1997, *The Lisle Sun.*	The Honorable Ronald F. Ghilardi, Mayor of the Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532.	July 18, 1997	170211 B
Stephenson	Unincorporated Areas.	June 11, 1997, June 18, 1997, *The Journal Standard.*	Mr. Dean Danner, Chairman of the Stephenson County Board of Commissioners, 15 North Galena Avenue, Freeport, Illinois 61032.	June 6, 1997	170639 B
Will and DuPage.	City of Naperville	September 10, 1997, September 17, 1997, *Naperville Sun.*	The Honorable A. George Pradel, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566.	December 16, 1997.	170213 C
Winnebago	Unincorporated Areas.	June 11, 1997, June 18, 1997, *Rockford Register Star.*	Ms. Christine Cohn, Chairman of the Winnebago County Board of Commissioners, 404 Elm Street, Room 504, Rockford, Illinois 61101.	June 6, 1997	170720 B
Michigan: Wayne ..	Township of Canton.	August 14, 1997, August 21, 1997, *Canton Observer.*	Mr. Thomas Yack, Canton Township Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	November 19, 1997.	260219 B
Maine: York	Town of Kittery	June 3, 1997, June 10, 1997, *Portsmouth Herald.*	Mr. Phil McCarthy, Kittery Town, Manager, P.O. Box 808, Kittery, Maine 03904.	May 23, 1997	230171 D
Mississippi: Madison.	City of Ridgeland	July 24, 1997, July 31, 1997, *Madison County Journal.*	The Honorable Gene McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	October 29, 1997	280110 D
New Hamsphire: Grafton.	Town of Bridgewater.	June 11, 1997, June 18, 1997, *Record Enterprise.*	Mr. Terrance Murphy, Head Selectman, Town of Bridgewater, 297 Mayhew Turnpike, Bristol, New Hampshire 03222.	December 5, 1997	33046 C
New Jersey: Ocean	Borough of Island Heights.	July 16, 1997, July 23, 1997, *Ocean County Observer.*	The Honorable David Siddons, Mayor of the Borough of Island Heights, P.O. Box AH, Island Heights, New Jersey 08732.	January 7, 1998 ...	340374 C
Passaic	Borough of West Paterson.	March 5, 1997, March 12, 1997, *North Jersey Herald and News.*	The Honorable Matthew T. Capano, Mayor of the Borough of West Paterson, 5 Brophy Lane, West Paterson, New Jersey 07424.	June 10, 1997	340412 B
North Carolina: Dare.	Unincorporated Areas.	August 28, 1997, September 4, 1997, *Coastland Times.*	Mr. Robert Z. Owens, Jr., Chairman of the Dare County, Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 17954.	August 21, 1997 ..	375348 D
Ohio: Cuyahoga	City of Beachwood	June 30, 1997, July 7, 1997, *The Plain Dealer.*	The Honorable Merle S. Gorden, Mayor of the City of Beachwood, 2700 Richmond Road, Beachwood, Ohio 44122.	December 19, 1997.	390094 A

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Cuyahoga	City of North Olmsted.	August 28, 1997, September 4, 1997, *Sun Herald.*	The Honorable Edward J. Boyle, Mayor of the City of North Olmsted, 5200 Dover Center Road, North Olmsted, Ohio 44070.	December 3, 1997	390120 C
Franklin & Fairfield.	City of Columbus	August 12, 1997, August 19, 1997, *The Columbus Dispatch.*	The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	August 5, 1997	390170 G
Lake	Unincorporated Areas.	June 18, 1997, June 25, 1997, *The News Herald.*	Ms. Mildred Teuscher, President of the Lake County Board of Commissioners, P.O. Box 490, 105 Main Street, Painesville, Ohio 44077.	June 11, 1997	390771 C
Pennsylvania: Blair	Township of Blair	July 8, 1997, July 15, 1997, *Altoona Mirror.*	Mr. George Harley, Secretary/Treasurer of the Township of Blair, 575 Cedarcrest Drive, Duncansville, Pennsylvania 166635.	June 30, 1997	421386 A
Bucks	Borough of Chalfont.	August 19, 1997, August 26, 1997, *Intelligencer/Record.*	The Honorable Marilyn J. Becker, Mayor of the Borough of Chalfront, P.O. Box 80, Chalfont, Pennsylvania 18914.	November 24, 1997.	420184 B
Cambria	City of Johnstown	June 13, 1997, June 20, 1997, *Tribune-Democrat.*	The Honorable Linda Weaver, Mayor of the City of Johnstown, 401 Main Street, Johnstown, Pennsylvania 15901.	June 6, 1997	420231 C
South Carolina: Horry	Unincorporated Areas.	July 10, 1997, July 17, 1997, *The Sun News.*	Ms. Linda Angus, Horry County Administrator, 103 Elm Street, Conway, South Carolina 29526.	October 15, 1997	450104 E
Virginia: (Independent City).	City of Harrisonburg.	August 15, 1997, August 22, 1997, *Daily News-Record.*	The Honorable Rodney L. Eagle, Mayor of the City of Harrisonburg, City Hall, Harrisonburg, Virginia 22801.	August 5, 1997	510078 B
Wisconsin: Washington.	Village of Germantown.	June 5, 1997, June 12, 1997, *Germantown Banner-Press.*	Mr. Paul Brandenburg, Village of Germantown Administrator, P.O. Box 337, Germantown, Wisconsin 53022–0337.	September 10, 1997.	550472 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–27712 Filed 10–17–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield (FEMA Docket No. 7197).	Town of Darien	September 12, 1996, September 19, 1996, Darien News-Review.	Mr. Hank Sanders, First Selectman of the Town of Darien, 2 Renshaw Road, Town Hall, Darien, Connecticut 06820.	September 5, 1996.	090005 D
Florida: Pinellas (FEMA Docket No. 7201).	Town of Belleair ...	November 25, 1996, December 2, 1996, St. Petersburg Times.	The Honorable Stephen G. Watts, Mayor of the Town of Belleair, 901 Ponce De Leon Boulevard, Belleair, Florida 34616–1096.	November 18, 1996.	125088 B
Pinellas (FEMA Docket No. 7201).	Unincorporated Areas.	November 15, 1996, November 22, 1996, St. Petersburg Times.	Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 34616.	November 6, 1996	125139 D
Illinois: Cook and Lake (FEMA Docket No. 7201).	Village of Buffalo Grove.	October 24, 1996, October 31, 1996, Daily Herald.	Mr. Sidney Mathias, Village President, 50 Raupp Boulevard, Municipal Building, Buffalo Grove, Illinois 60089.	October 16, 1996	170068 D
Cook (FEMA Docket No. 7174).	Village of Matteson.	July 18, 1996, July 25, 1996, The Matteson-Richton Park Star.	Mr. Mark Stricker, Matteson Village President, 3625 West 215th Street, Matteson, Illinois 60443.	February 1, 1996	170123 C
Tazewell (FEMA Docket No. 7201).	Village of Morton ..	December 11, 1996, December 18, 1996, Tazewell News.	Robert D. Hertenstein, M.D., President of the Village of Morton, Board of Trustees, P.O. Box 28, Morton, Illinois 61550–0028.	December 4, 1996	170652 D
Indiana: Johnson (FEMA Docket No. 7197).	Unincorporated Areas.	September 16, 1996, September 23, 1996, Daily Journal.	Mr. Alfred Chappel, Chairman of the Johnson County Board of Commissioners, 86 West Court Street, Courthouse Annex Franklin, Indiana 46131.	September 9, 1996.	180111 C
Maryland: Frederick (FEMA Docket No. 7201).	Unincorporated Areas.	September 30, 1996, October 7, 1996, Frederick Post.	Mr. Mark Hoke, President of the Frederick County Board of Commissioners, 12 East Church Street, Frederick, Maryland 21701.	January 5, 1997 ...	240027 A
Minnesota: Anoka (FEMA Docket No. 7201).	City of Centerville	October 8, 1996, October 15, 1996, Quad Community Press.	The Honorable Thomas Wilharber, Mayor of the City of Centerville, 1880 Main Street, Centerville, Minnesota 55038.	January 13, 1997	270008
Mississippi: DeSoto County (FEMA Docket No. 7201).	City of Olive Branch.	October 16, 1996, October 23, 1996, DeSoto County Tribune.	The Honorable D.M. Nichols, Mayor of the City of Olive Branch, 9189 East Pigeon Roost Avenue, Olive Branch, Mississippi 38654.	October 8, 1996 ...	280286 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Durham (FEMA Docket No. 7197).	City of Durham	August 30, 1996, September 6, 1996, The Herald-Sun.	The Honorable Sylvia Kerckhoff, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	August 23, 1996 ..	370086 G
Edgecombe and Nash (FEMA Docket No. 7201).	City of Rocky Mount.	December 16, 1996, December 23, 1996, Rocky Mount Evening and Sunday Telegram.	Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802–1180.	December 9, 1996	370092 C
Wake County (FEMA Docket No. 7201).	Unincorporated Areas.	December 11, 1996, December 18, 1996, The News and Observer.	Mr. Richard Y. Stevens, Wake County Manager, 336 Fayetteville Street, P.O. Box 550, Raleigh, North Carolina 27602.	December 4, 1996	370368 E
Wilkes (FEMA Docket No. 7201).	North Wilkesboro	November 25, 1996, December 2, 1996, Journal Patriot.	Mr. James H. Bentley, Town Manager, P.O. Box 218, North Wilkesboro, North Carolina 28659.	November 20, 1996.	370257 B
Ohio:					
Franklin (FEMA Docket No. 7201).	City of Dublin	November 14, 1996, November 21, 1996, Columbus Dispatch.	Mr. Tim Hansley, City of Dublin Manager, 6665 Kaufman Road, Dublin, Ohio 43017.	November 7, 1996	390673 G
Summit (FEMA Docket No. 7197).	City of Hudson	August 28, 1996, September 4, 1996, Hudson Hub.	The Honorable Harold L. Bayleff, Mayor of the City of Hudson, 27 East Main Street, Hudson, Ohio 44236.	August 22, 1996 ..	390660 B
South Carolina:					
Greenville County (FEMA Docket No. 7201).	Unincorporated Areas.	December 9, 1996, December 16, 1996, The Greenville News.	Mr. Gerald Seals, Greenville County Administrator, 301 University Ridge, Suite 100, Greenville, South Carolina 29601.	December 2, 1996	450089 B
Lancaster (FEMA Docket No. 7201).	City of Lancaster ..	September 27, 1996, October 4, 1996, The Lancaster News.	The Honorable Robert Mobley, Mayor of the City of Lancaster, P.O. Box 1149, Lancaster, South Carolina 29721.	September 5, 1996.	450121 B
Tennessee: Shelby (FEMA Docket No. 7191).	City of Memphis ...	June 14, 1996, June 21, 1996, The Commercial Appeal.	The Honorable W.W. Harrenton, Mayor of the City of Memphis, 125 North Main Street, Memphis, Tennessee 38103.	September 19, 1996.	470177 E
Virginia: Stafford (FEMA Docket No. 7201).	Unincorporated Areas.	July 23, 1996, July 30, 1996, Free Lance-Star.	Mr. C.M. Williams, Jr., Stafford County Administrator, 1300 Courthouse Road, P.O. Box 339, Stafford, Virginia 22555–0339.	October 28, 1996	510154 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–27710 Filed 10–17–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Wilton (Town), Fairfield County (FEMA Docket No. 7219)	
West Branch Saugatuck River:	
Approximately 840 feet upstream of Westport/Wilton corporate limits	*95
Approximately 800 feet upstream of Route 53 (Cedar Road)	*159
Maps available for inspection at the Inland Wetland Commission, Wilton Town Hall Annex, 238 Danbury Road, Wilton, Connecticut.	
FLORIDA	
Century (City), Escambia County (FEMA Docket No. 7199)	
Escambia River:	
Approximately 3.0 miles downstream of State Route 4	*56
At State Route 4	*59
Maps available for inspection at the Century Town Hall, 7995 North Century Boulevard, Century, Florida.	
Pensacola Beach—Santa Rosa Island Authority (Escambia County) (FEMA Docket No. 7199)	
Gulf of Mexico:	
At the intersection of Bulevar Mayor and Ensenada Siete	*11
Maps available for inspection at the Santa Rosa Island Authority, 1 Viva De Luna, Pensacola Beach, Florida.	
ILLINOIS	
Lake-In-The-Hills (Village), McHenry County (FEMA Docket No. 7164)	
Woods Creek:	
Just downstream of Huntley Algonquin Road	*782
Just upstream of Huntley Algonquin Road	*850
Kishwaukee Creek:	
At State Route 47	*859
Approximately 0.63 mile upstream of Huntley Crystal Lake Road	*872
Maps available for inspection at the Village Hall, 1115 Crystal Lake Road, Lake-In-The-Hills, Illinois.	
INDIANA	
Peru (City), Miami County (FEMA Docket No. 7223)	
Prairie Ditch:	
Approximately 0.8 mile downstream of North Broadway Street	*646
At downstream side of Lovers Lane (upstream corporate limits)	*671
Shallow Flooding Area:	
Approximately 800 feet south of Lovers Lane, approximately 400 feet east of Chili Street, approximately 1,000 feet north of Harrison Avenue	*2
Maps available for inspection at the Miami County Courthouse, Room 102, Corner of Main and Broadway Streets, Peru, Indiana.	
MISSISSIPPI	
Canton (City), Madison County (FEMA Docket No. 7164)	
Bear Creek:	
Approximately 200 feet upstream of Fulton Street (State Highway 22)	*219
Approximately 340 feet upstream of Illinois Central Railroad	*221
Maps available for inspection at the City Hall, 226 East Peace Street, Canton, Mississippi.	
Madison County (Unincorporated Areas) (FEMA Docket No. 7164)	
Bear Creek:	
At State Highway 22	*219
At Illinois Central Railroad	*221
Maps available for inspection at the Madison County Office and Chancery Court Building, 146 West Center Street, Canton, Mississippi.	
New York	
Yonkers (City), Westchester County (FEMA Docket No. 7219)	
Saw Mill River:	
Approximately 1,420 feet downstream of Ashburton Avenue	*95
Approximately 0.4 mile upstream of Hearst Street	*115
Crestwood Lake:	
Entire shoreline	*161
Maps available for inspection at the Engineering Department, Room 313, Yonkers City Hall, Yonkers, New York.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
North Carolina	
Brevard (City), Transylvania County (FEMA Docket No. 7223)	
Confluence with Davidson River	*2,113
Divergence from Davidson River	*2,123
Davidson River:	
Confluence with French Broad River	*2,103
Downstream side of U.S. Highway 64/276 Eastbound	*2,124
French Broad River:	
Approximately 400 feet downstream of confluence of Davidson River	*2,103
Approximately 0.53 mile upstream of confluence of Unnamed Tributary to French Broad River	*2,124
Lamb Creek:	
Confluence with French Broad River	*2,104
Approximately 1,630 feet upstream of Lambs Creek Road	*2,251
Lambo Creek:	
Confluence with French Broad River	*2,104
At footbridge dam	*2,184
Nicholson Creek:	
Confluence with French Broad River	*2,116
Approximately 25 feet downstream of Southern Railway	*2,149
King Creek:	
Confluence with French Broad River	*2,105
Approximately 1,430 feet upstream of Mill Brook Drive	*2,266
Long Branch:	
Confluence with King Creek	*2,139
Approximately 600 feet downstream of Southern Railway	*2,143
Unnamed Tributary to Davidson River:	
Confluence with Davidson River	*2,108
Approximately 260 feet upstream Southern Railway Spur	*2,109
Gilbreath Branch:	
Confluence with Lambo Creek	*2,105
Approximately 320 feet downstream Old U.S. Highway 64	*2,107
Unnamed Tributary to French Broad River:	
Confluence with French Broad River	*2,124
Approximately 620 feet downstream Country Club Road	*2,128
Maps available for inspection at the City of Brevard Planning Department, 151 West Main Street, Brevard, North Carolina.	
North Topsail Beach (Town), Onslow County (FEMA Docket No. 7219)	
Atlantic Ocean:	
Approximately 225 feet south of the intersection of 14th Avenue and Ocean Boulevard (SR 1583)	*19
Just north of the intersection of Gray Street and North Carolina State Route 210	*11
Stump Sound/Intracoastal Waterway:	
Approximately 0.7 mile north of the intersection of Sand Piper Drive and New River Inlet Road	*13
Approximately 0.5 mile northeast of confluence of Normans Creek and Old Sound Channel	*11
Maps available for inspection at the North Topsail Beach Town Hall, 2008 Loggerhead Court, North Topsail Beach, North Carolina.	
North Wilkesboro (Town), Wilkes County (FEMA Docket No. 7221)	
Yadkin River:	
Approximately 2.3 miles downstream of confluence with Reddies River	*957
Approximately 1.4 miles upstream of confluence with Reddies River	*967
Reddies River:	
At confluence with Yadkin River	*963
Approximately 2,950 feet upstream of confluence with Yadkin River	*969
Tributary M–1:	
Approximately 375 feet downstream of confluence with Tributary M–1–1	*1,065
Approximately 225 feet upstream of confluence with Tributary M–1–1	*1,075
Tributary Y–1:	
From confluence with Yadkin River	*959
Approximately 750 feet upstream of confluence with Yadkin River	*959
Maps available for inspection at the North Wilkesboro Town Hall, 801 Main Street, North Wilkesboro, North Carolina.	
Surf City (Town), Pender and Onslow Counties (FEMA Docket No. 7219)	
Atlantic Ocean:	
Approximately 250 feet south of the intersection of NC 50 and Reachwood Drive	*19
At intersection of Goldsboro Avenue and New River Drive	*11
Topsail Sound:	
Approximately 1,250 feet northwest of the intersection of Pender Avenue and Shore Drive	*12
Approximately 1,400 feet northwest of the intersection of NC 50 and Reachwood Drive	*9
Maps available for inspection at the Surf City Town Hall, 214 North New River Drive, Surf City, North Carolina.	
Topsail Beach (Town), Pender County (FEMA Docket No. 7219)	
Atlantic Ocean:	
Approximately 350 feet southeast of the intersection of Clark Avenue and NC State Route 1554	*20
At intersection of Humphrey Avenue and Shore Drive	*13
Topsail Sound:	
Approximately 700 feet west of the intersection of Shore Line Drive and Godwin Avenue along Shoreline Drive	*13
Approximately 450 feet northwest of intersection of Fields Avenue and Shore Drive	*10
Maps available for inspection at the Topsail Beach Town Hall, 820 South Anderson Boulevard, Topsail Beach, North Carolina.	
OHIO	
Butler County (Unincorporated Areas) (FEMA Docket No. 7221)	
Mill Creek:	
At East Crescentville Road	*585
Approximately 0.9 mile upstream of Tylersville Road	*628
East Fork Mill Creek:	
At East Crescentville Road	*586
Approximately 1,450 feet upstream of Station Road	*661
Tributary to East Fork Mill Creek:	
At confluence with East Fork Mill Creek	*602
Approximately 1,900 feet upstream of Dimmick Road	*655
Gregory Creek:	
Approximately 1,680 feet downstream of Hamilton Mason Road	*703
Approximately 1,120 feet upstream of Shawnee Lane	*737
Maps available for inspection at the Butler County Administrative Center, 130 High Street, 3rd Floor, Hamilton, Ohio.	
Franklin County (Unincorporated Areas) (FEMA Docket No. 7215)	
Georges Creek Overland Flow:	
At confluence with Georges Creek	*747
Approximately 2,080 feet upstream of confluence with Georges Creek	*752
Maps available for inspection at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Castanea (Township), Clinton County (FEMA Docket No. 7215)	
West Branch Susquehanna River:	
At confluence of Bald Eagle Creek	*564
Approximately 140 feet upstream of Constitution Street	*566
Bald Eagle Creek:	
At confluence with West Branch Susquehanna River	*564
Approximately 1,750 feet upstream of upstream CONRAIL bridge	*567
Ponding Areas:	
On west side of U.S. Highway 220 approximately 0.5 mile south of U.S. Highway 220 overpass over Jay Street	*550
Approximately 2,000 feet northeast of the CONRAIL crossing over Bald Eagle Creek	*564
Maps available for inspection at the Castanea Municipal Building, 347 Nittany Road, Castanea, Pennsylvania.	
Heidelberg (Township), Berks County (FEMA Docket No. 7195)	
Tulpehocken Creek:	
Approximately 270 feet downstream of U.S. 422	*359
Downstream side of U.S. 422	*359
Furnace Creek No. 2:	
Approximately 175 feet downstream of upstream corporate limits	*505
At upstream corporate limits	*508
Maps available for inspection at the Heidelberg Township Building, 373 Charming Forge Road, Robesonia, Pennsylvania.	
Landingville (Borough), Schuylkill County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 750 feet downstream of CONRAIL	*476
Approximately 1,830 feet upstream of Main Street	*490
Maps available for inspection at the Landingville Planning and Zoning Department, 401 North 2nd Street, Pottsville, Pennsylvania.	
Port Clinton (Borough), Schuylkill County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 550 feet downstream of confluence of Little Schuylkill River	*406
Approximately 0.7 mile upstream of CONRAIL	*412
Little Schuylkill River:	
At confluence with Schuylkill River	*407
Approximately 600 feet upstream of Broad Street	*407
Maps available for inspection at the Port Clinton Borough Fire Hall, Broad Street, Port Clinton, Pennsylvania.	
Shoemakersville (Borough), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,050 feet downstream of confluence of Pigeon Creek	*308
Approximately 3,580 feet upstream of Miller Street	*315
Tributary No. 2 to Schuylkill River:	
At confluence with Schuylkill River	*314
Approximately 100 feet downstream of Private Lane	*347
Maps available for inspection at the Shoemakersville Borough Office, 242 Main Street, Shoemakersville, Pennsylvania.	
Winslow (Township), Jefferson County (FEMA Docket No. 7219)	
Soldier Run:	
Downstream corporate limits	*1,376
Upstream corporate limits	*1,482
Maps available for inspection at the Winslow Township Municipal Building, R.D. 1, Reynoldsville, Pennsylvania.	
Wyomissing (Borough), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,200 feet upstream of Buttonwood Street	*212
Approximately 40 feet downstream of confluence of Tulpehocken Creek	*213
Lauers Run:	
At downstream side of Old Mill Road	*254
Approximately 25 feet downstream of downstream end of Lauer's Lane culvert	*265
Tributary No. 1 to Lauers Run:	
At confluence with Lauers Run	*261
Tributary No. 2 to Lauers Run:	
At confluence with Lauers Run	*262
Wyomissing Creek:	
Approximately 2,000 feet downstream of Wyomissing Boulevard	*220
Approximately 1,300 feet downstream of Wyomissing Boulevard	*227
Maps available for inspection at the Wyomissing Borough Hall, 22 Reading Boulevard, Wyomissing, Pennsylvania.	
TENNESSEE	
Jackson (City), Madison County (FEMA Docket No. 7215)	
South Fork of Forked Deer River:	
Approximately 1,200 feet downstream of U.S. Route 70	*346
Approximately 1,200 feet upstream of the confluence of Jones Creek	*357
Cane Creek:	
At the confluence with South Fork of Forked Deer River	*355
Approximately 200 feet downstream of Hicks Street	*356
Anderson Branch:	
At the confluence with South Fork of Forked Deer River	*356
Approximately 0.9 mile upstream of Lexington Street	*414
Bond Creek:	
At the confluence with South Fork of Forked Deer River	*356
Approximately 375 feet downstream of Perry Switch Road	*356
Meridian Creek:	
At the confluence with South Fork of Forked Deer River	*357
Approximately 250 feet downstream of Illinois Central Railroad	*357
Moize Creek:	
Approximately 900 feet upstream of Old Humboldt Road	*402
Approximately 0.78 mile upstream of Glen Echo Road	*436
Bayberry Creek:	
Approximately 0.5 mile upstream of the confluence with South Fork of Forked Deer River	*345
At Old Hickory Boulevard	*424
Maps available for inspection at the Jackson City Planning Department, 111 North Church Street, Jackson, Tennessee.	
Madison County (Unincorporated Areas) (FEMA Docket No. 7215)	
Matthews Creek:	
At confluence with Middle Fork of Forked Deer River	*344
Approximately 0.61 mile upstream of John Smith Road	*410
Deloach Creek:	
Approximately 250 feet downstream of Illinois Central Railroad	*346
At McClellan Road	*416
Moize Creek:	
Approximately 250 feet downstream of Illinois Central Railroad	*350
At the upstream side of Old Humboldt Road	*399
Turkey Creek:	
Approximately 700 feet downstream of Mason Road	*357

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At county boundary 2.2 miles upstream of U.S. Road 45E	*393
Dyer Creek:	
Approximately 0.84 mile downstream of the Florida Steel Railroad	*359
At Christmasville Road	*444
South Fork of Forked Deer River:	
At Westover Road	*348
Approximately 1.1 miles upstream of U.S. Route 45 (South Highland Avenue)	*357
Johnson Creek (South Fork Basin):	
Approximately 950 feet downstream of Lower Brownsville Road	*343
At downstream side of Mt. Pinson Road	*424
North Fork of South Fork of Forked Deer River:	
Approximately 350 feet downstream of Range Road (State Route 8241)	*378
At county boundary	*388
Jones Creek:	
Approximately 1,500 feet downstream of Illinois Central Railroad	*366
Approximately 650 feet downstream of Bendix Drive	*390
Dry Branch:	
Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 5	*476
Little Johnson Creek:	
Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 10	*478
Hart Creek:	
Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 4	*465
Lackey Creek:	
Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 7	*436
Sandy Creek:	
At county boundary	*396
Approximately 1.86 miles upstream of Bowman-Collins Road	*492
Brown Creek:	
At the confluence with North Fork of South Fork of Forked Deer River	*367
Approximately 1.14 miles upstream of Beech Bluff Road	*382
Sandy Creek Tributary:	
At the confluence with Sandy Creek	*432
Approximately 850 feet upstream of Collins Road	*455
Maps available for inspection at the Madison County Commissioner's office building, Madison County Courthouse, 100 East Main Street, Jackson, Tennessee 38301.	
Medon (Town), Madison County (FEMA Docket No. 7215)	
Sandy Creek:	
Approximately 375 feet downstream of the confluence of Sandy Creek Tributary	*430
Approximately 1,375 feet upstream of Bowman Collins Road	*434
Maps available for inspection at the Medon City Hall, 20 College Street, Medon, Tennessee.	
WISCONSIN	
Chippewa County (Unincorporated Areas) (FEMA Docket Nos. 7199 and 7215)	
Chippewa River:	
Downstream county boundary	*804
Approximately 6,250 feet upstream of upstream City of Chippewa Falls corporate limits	*853
Maps available for inspection at the Chippewa County Courthouse, 711 North Bridge Street, Chippewa Falls, Wisconsin.	
Chippewa Falls (City), Chippewa County (FEMA Docket Nos. 7199 and 7215)	
Chippewa River:	
Approximately 1 mile downstream of U.S. Highway 53	*821
Approximately 3.2 miles upstream of Soo Line Railroad	*852
Maps available for inspection at the Chippewa Falls City Hall, Inspection Department, 30 West Central Street, Chippewa Falls, Wisconsin.	
Eau Claire (City), Chippewa and Eau Claire Counties (FEMA Docket No. 7219)	
Chippewa River:	
At Interstate 94	*773
Upstream corporate limits	*806
Sherman Creek:	
Confluence with Chippewa River	*776
Approximately 1.0 mile upstream of Menomonie Street	*808
Eau Claire River:	
At the confluence with Chippewa River	*782
Approximately 1,150 feet upstream of South Dewey Street	*783
Maps available for inspection at the Eau Claire City Hall, Inspection Service Office, 203 South Farwell Street, Eau Claire, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–27711 Filed 10–17–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Petition for amendment to final rule; denial.

SUMMARY: The Federal Maritime Commission is denying a request submitted by Japanese liner shipping companies that per-voyage fees owed to the agency pursuant to the final rule in this proceeding be made payable to escrow accounts, rather than to the Commission directly.

ADDRESSES: Requests for publicly available information or additional filings should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's final rule in this proceeding (62 FR 9696, amended 62 FR 18532 and 62 FR 18533) assessing per-voyage fees on Japanese liner shipping companies in response to longstanding restrictive and unfavorable requirements for the use of Japanese ports become effective on September 4, 1997. Under the rule, Japanese shipping lines are scheduled to make their first payment of fees, covering the month of September, on October 15.

On October 7, 1997, the Japanese carriers submitted a letter requesting that the Commission "consider alternative ways and means by which the Carriers could fulfill their payment obligations." Specifically, the Japanese lines urged that the Commission require that the carriers establish escrow accounts and pay the fees into these accounts, rather than paying them directly to the Commission. The carriers further requested that the Commission take any other steps to "accomplish the objectives of this request." As the relief sought by the Japanese lines would involve changing the payment procedures set forth in the final rule, the Commission has determined to treat the letter as a petition for amendment of the final rule, which would have been the appropriate pleading in this instance. Copies of the request were served on other participants in this proceeding; no comments or responses were received from any party.

In their request for alternative payment arrangements, the Japanese carriers have failed to cite any material improvements or reforms in the unfavorable Japanese port conditions that are the subject of this proceeding. Indeed, the Commission is unaware of any such progress since it last suspended the final rule in April. Accordingly, we find no basis for altering the collection procedures set forth in the final rule to postpone or redirect the payment of the fees. The Commission appreciates concerns raised by the Japanese lines regarding the complexity of the matters at issue; however, the Government of Japan has had ample opportunity to develop and implement necessary improvements. It has not, to date, done so.

The Japanese carriers' request for alternative payment arrangements is denied.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–27668 Filed 10–17–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 101497A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in that area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with §§ 679.20 (a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl catcher vessels in the BSAI was established as 63,450 metric tons (mt) by the Final 1997 Harvest Specifications for Groundfish (62 FR 7168, February 18, 1997). The trawl catcher vessel portion was increased by a reallocation of the projected unused amount of the trawl catcher/processor allocation to 65,450 mt (62 FR 51609, October 2, 1997). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 64,450 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific cod by trawl catcher vessels in the BSAI was closed to directed fishing under §§ 679.20(d)(1)(iii) on April 29, 1997, (62 FR 24508, May 2, 1997).

NMFS has determined that as of September 29, 1997, 2,432 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by trawl catcher vessels in the BSAI.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing a portion of the Pacific cod TAC for trawl catcher vessels in the BSAI. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 14, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27736 Filed 10–15–97; 3:26 pm]

BILLING CODE 3510–22–U

Proposed Rules

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 97N–0416]

Revocation of Lather Brushes Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke its regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. FDA is proposing to revoke this regulation because it has tentatively concluded that the regulation is no longer necessary to protect the public health.

DATES: Written comments by January 5, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Policy Development and Coordination Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 1949 (14 FR 278), the Federal Security Agency issued a regulation to prohibit "interstate traffic" in lather brushes unless the brushes complied with 42 CFR 71.151 or with certain requirements in 42 CFR 72.21. 42 CFR 71.151 barred importation of lather brushes made from animal hair or bristles, unless the brushes were permanently marked with the manufacturer's name or identifying mark and a U.S. medical officer had determined that the brushes were free of anthrax spores. The regulation also directed medical officers to sample brushes from each shipment, subject them to laboratory analysis, and to issue a certificate if the shipment appeared to be free of spores. If the shipment contained anthrax spores, the shipment would be denied entry into the United States.

The Federal Security Agency was abolished in a reorganization in 1953, and its functions were transferred to the then newly-created Department of Health, Education, and Welfare. The department later became the Department of Health and Human Services.

42 CFR 72.21, which applied primarily to lather brushes manufactured in the United States, established specific treatment, sterilization, handling, storage, and marking requirements for these products; and it required that persons engaged in processing or handling of hair or bristles for use in lather brushes, as well as persons manufacturing lather brushes, permit inspections by authorized representatives of the Surgeon General. The rule was transferred, without change, from title 42 to title 21 of the Code of Federal Regulations on February 6, 1975 (40 FR 5620), and, as a result, became § 1240.70 (21 CFR 1240.70).

In the **Federal Register** of August 9, 1983 (48 FR 36143 at 36144), the Centers for Disease Control (CDC), now known as the Centers for Disease Control and Prevention, proposed to revoke various foreign quarantine regulations, including 42 CFR 71.151. The preamble to that proposal explained that:

> The proposed regulations will no longer require lather brushes made from animal hair or bristles, imported into the United States, to carry identifying markings or to be certified as treated and stored to prevent possible contamination with spores of *Bacillus anthracis*. No case of cutaneous anthrax in the United States has been associated with lather brushes since 1930, and the continuation of existing requirements is unnecessary to protect the public health. Should the importation of anthrax in lather brushes become a threat to public health in the future, inspection and control measures authorized under provisions of the regulations will be implemented.

CDC revoked 42 CFR 71.151 on January 11, 1985 (50 FR 1516), without any further discussion.

In the **Federal Register** of June 12, 1989 (54 FR 24890), FDA issued a final rule amending various regulations to correct outdated cross-references and typographical errors and to make other corrections. This rule revised § 1240.70, without explanation, to eliminate the reference to 42 CFR 71.151. Yet, in all other respects, § 1240.70 has remained essentially unchanged since 1949.

Recently, FDA has been reexamining its regulations to determine whether any are obsolete or no longer necessary. One regulation that caught the agency's attention is § 1240.70. The agency is unaware of any reliance on the lather brush requirements in this regulation or of any current concerns associated with lather brushes. Additionally, CDC's decision to remove 42 CFR 71.151 because no case of cutaneous anthrax in the United States has been associated with lather brushes since 1930 suggests that § 1240.70 also is no longer necessary to protect the public health. Consequently, FDA is proposing to revoke this regulation.

II. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). The agency believes that this proposed rule is consistent with the principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule, if finalized, would eliminate certain manufacturing requirements for lather brushes. Consequently, the proposed rule would not impose any additional regulatory burdens on small entities, and so, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Request for Comments

Interested persons may, on or before January 5, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1240 be amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1240.70 [Removed]

2. Section 1240.70 *Lather brushes* is removed.

Dated: October 10, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–27694 Filed 10–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 1000, 1003, and 1005

[Docket No. FR–4170–N–14]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This notice announces the final implementation meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 30, 1996).

DATES: The meetings will be held on October 27, 28 and 29, 1997. The October 27 and 28, 1997 meetings will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m., local time. The October 29, 1997 meeting will begin at approximately 8:30 a.m. and end at approximately noon, local time.

ADDRESS: The meetings will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW, Washington, DC 20024; telephone 1–800–635–5065 or (202) 484–1000; FAX (202) 863–4497 (With the exception of the "800" telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. The proposed rule was published on July 2, 1997 (62 FR 35718) and provided for a 45-day public comment period. The public comment deadline was August 18, 1997.

The Committee met from August 22–29, 1997 in Denver, Colorado and from September 21–26, 1997 in Arlington, Virginia to consider the public comments submitted on the proposed rule. The Committee is meeting for a final time to discuss issues left unresolved and to reach consensus on the Committee's final report to the Secretary of HUD.

The meeting dates are: October 27, 28, and 29 1997. The agenda planned for the meetings includes: (1) discussion of the draft Committee report; (2) discussion of issues left unresolved; and (3) approval of a final Committee report for submission to the Secretary of HUD.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the address in the same section.

Dated: October 14, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–27674 Filed 10–17–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AA07

[Notice No. 856]

Establishment of the San Francisco Bay Viticultural Area and the Realignment of the Boundary of the Central Coast Viticultural Area (97–242)

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area in the State of California to be known as San Francisco Bay. The proposed area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and partly in Santa Cruz and San Benito Counties. The proposed San Francisco Bay viticultural area encompasses approximately 3,087 square miles total containing nearly 6,000 acres planted to grapes and over 70 wineries. In conjunction with the petition, ATF received a proposal to amend the boundaries of the current Central Coast viticultural area to include the proposed San Francisco Bay viticultural area. As the current boundaries already encompass part of the proposed San Francisco Bay viticultural area, approximately 1,278 square miles would be added to Central Coast with an additional 3,027 acres planted to grapes and 21 more wineries.

DATES: Written comments must be received by January 20, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol,

Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 856). Copies of the petitions, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC., 20226.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC., 20226 (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition for the Proposed San Francisco Bay Viticultural Area

ATF has received a petition from Mr. Philip Wente, Vice President of Wente Bros., proposing to establish a new viticultural area in Northern California to be known as San Francisco Bay. The proposed San Francisco Bay viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The petitioner claims that Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name San Francisco Bay. The portion of the Santa Clara Valley located in San Benito County has been included. The proposed viticultural area encompasses approximately 3,087 square miles total containing nearly 6000 acres planted to grapes and over 70 wineries.

The petitioner claims that the proposed San Francisco Bay viticultural area is a distinctive grape growing region. According to the petitioner, the area is distinguished by a unique marine climate which is heavily influenced by the proximity of the San Francisco Bay and the Pacific Ocean. Specifically, the San Francisco Bay and the local geographical features surrounding it permit the cooling influence of the Pacific Ocean to reach farther into the interior of California in the Bay Area than elsewhere along the California coast.

In proposing boundaries for the San Francisco Bay viticultural area, the petitioner has purposely included the waters of the San Francisco Bay as well as urban areas, particularly the City of San Francisco. The petitioner feels that the San Francisco Bay is the "heart and soul of this appellation, its namesake and unifying force, the source of its weather, the focal point of its history." As such, the petitioner believes that it should not be cut out of the center of the appellation. Although it is not a feasible vineyard site, the city has long been a wine industry hub.

The evidence submitted by the petitioner is discussed in detail below. Given the scope of the proposals and the wide range of interests that are likely to be affected by the establishment of a San Francisco Bay viticultural area, ATF wishes to solicit public comment particularly with respect to the following questions raised by the petition:

(1) Is there sufficient evidence that the name, "San Francisco Bay," can be associated with regions south and east of the bay such as Santa Clara Valley and Livermore? Do these regions have climatic or geographic differences with other regions of the proposed area to such a degree that they cannot be considered as one viticultural area?

(2) Does the evidence support exclusion from the proposed viticultural area of the regions north of the Bay, *i.e.*, Marin, Napa, Solano, and Sonoma Counties?

(3) Can the regions where grapes cannot be grown in the proposed viticultural area, such as the dense urban settings and the Bay itself, be easily segregated from the rest of the proposed area? Does it undermine the notion of a viticultural area to keep them included?

Evidence That the Name of the Area is Locally or Nationally Known

According to the petitioner, San Francisco Bay is a locally, nationally and internationally recognized place name. Therefore, the petitioner believes that San Francisco Bay is the appropriate name for the proposed area, since even people who do not know the names of any California counties have an idea where the San Francisco Bay is. The petitioner claims that to people all over the world, San Francisco Bay calls to mind the well-known body of water by that name and, by inference, the land areas that surround it.

The counties of San Francisco, Contra Costa, Alameda, Santa Clara and San Mateo—within which the proposed area is located—border the San Francisco Bay. According to the petitioner, Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name San Francisco Bay. The petitioner also included the portion of the Santa Clara Valley located in San Benito County.

According to the petitioner, the names "San Francisco Bay area" or "San Francisco Bay region" sometimes refer to an area that is different than the area discussed in this petition. The petitioner claims that although sources differ in how broadly they define the San Francisco Bay region, the various definitions—without exception—include the counties mentioned above. The following sources, are cited by the petitioner as being representative of the consensus among experts that the petitioned area is widely known by the name San Francisco Bay.

According to the petitioner, the name San Francisco Bay is more frequently

and more strongly associated with the counties lying south and east of the San Francisco Bay than with nearby counties to the north. For example, the petitioner cites the 1967 Time Life book entitled "The Pacific States," which describes the San Francisco Bay Area as a megalopolis with the city [of San Francisco] as the center, stretching 40 miles south to San Jose and from the Pacific to Oakland and beyond.

The petitioner also cites weather expert Harold Gilliam, in his book *Weather of the San Francisco Bay Region*, as discussing an area including San Francisco, San Mateo, Alameda, Contra Costa, and Santa Cruz Counties. The petitioner points out that James E. Vance, Jr., Professor of Geography at the University of California, Berkeley, studied the same area in his book entitled *Geography and Urban Evolution in the San Francisco Bay Area*. Also, according to the petitioner, climatologist Clyde Patton studied the same region in his definitive work *Climotology of Summer Fogs in the San Francisco Bay Area*. Mr. Vance's and Mr. Patton's maps of "Bay Area Place Names" are included with the petition.

A final source cited by the petitioner is Lawrence Kinnaird, University of California Professor of History, who wrote a *History of the Greater San Francisco Bay Region*. According to the petitioner, Mr. Kinnaird's book also covers the counties of San Francisco, Santa Clara, Alameda, Contra Costa, San Mateo, and Santa Cruz.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, within the grape growing and winemaking community, the name San Francisco Bay has always been identified with the area proposed in the petition. In support of this claim, the petitioner cited several references to reflect the industry's perception of this place name.

For example, wine writer Hugh Johnson, in his book *The World Atlas of Wine*, devotes a separate section ("South of the Bay") to the winegrowing areas of the San Francisco Bay and Central Coast. According to the petitioner, Mr. Johnson describes the traditional centers of wine-growing in this area as concentrated in the Livermore Valley east of the Bay; the western foot-hills of the Diablo range; the towns south of the Bay, and along the slopes of the Santa Cruz mountains down to a cluster of family wineries round the Hecker Pass. The petitioner claims that Mr. Johnson repeatedly distinguishes the winegrowing region south and east of the Bay from areas to the north of the Bay. In support of this claim, the petitioner refers to a statement from Mr. Johnson's book pointing out that the area just south and east of San Francisco Bay is wine country as old as the Napa Valley.

Another writer cited by the petitioner is Robert Lawrence Balzer who devotes a chapter to "Vineyards and Wineries: Bay Area and Central Coast Counties" in his book *Wines of California*. According to the petitioner, this chapter and the accompanying map include wineries and vineyards in Alameda, Contra Costa, San Mateo, Santa Clara, and Santa Cruz Counties. The petitioner claims that throughout his book, Mr. Balzer makes it clear that he differentiates the San Francisco Bay area grape growing areas from those north of San Francisco Bay and south of Monterey Bay. In support of this claim, the petitioner cites several quotes from the book. For example, Mr. Balzer states that, "Logic, as well as geography, dictates our division into these unofficial groups of counties: North Coast, Bay Area and Central Coast, South Central Coast, Central Valley, and Southern California. The vineyard domain south of San Francisco is as rich and colorful in its vintage history as the more celebrated regions north of the Bay Area." According to the petitioner, it is clear that this author does not consider Napa and Sonoma Counties as part of the Bay Area. As evidence of this, the petitioner cites the following statement, "Alameda County does not have the scenic charm of * * * Napa and Sonoma * * *." The petitioner points out that the same book contains a photograph showing the Golden Gate Bridge and San Francisco Bay with the caption, "San Francisco Bay divides the North Coast from the other wine areas of California."

According to the petitioner, in his book *Vineyards and Wineries of America*, Patrick W. Fegan distinguishes the winegrowing region of the San Francisco Bay Area from Monterey, noting that when urban development around the Bay Area began to threaten vineyard areas, University of California professors proposed planting vineyards in Monterey County.

Another source cited by the petitioner in support of the proposed boundaries is Grape Intelligence, a reporting service for California winegrape industry statistics. According to the petitioner, Grape Intelligence issues a yearly report for grape varieties in the San Francisco Bay Area. Reports for this region cover San Francisco, San Mateo, Santa Cruz, Alameda and Contra Costa counties.

The petitioner also cited historic evidence. According to the petitioner, the San Francisco Viticultural District, defined by the State Viticultural Commissioners at the end of the last century, comprised the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey—but no areas north of the Bay.

The petitioner claims that the California Department of Food and Agriculture currently considers the proposed area as a single unit. The petitioner states that the Grape Pricing Districts established by the State of California reflect the joined perception of the six San Francisco Bay counties, by grouping San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, and Contra Costa together in District 6.

The petitioner provided a list of "Largest Bay Area Wineries" from a chart which appeared in the San Francisco Business Times of November 21, 1988. The list includes 21 wineries in Alameda, Contra Costa, San Francisco, and San Mateo Counties. No wineries from the North Coast counties of Sonoma, Napa, Mendocino, or Lake are included.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

According to the petitioner, the unifying and distinguishing feature of the coastal climate of the proposed area is the influence of both the Pacific Ocean and the San Francisco Bay. The petitioner claims that coastal areas north of the proposed area are influenced by the Pacific Ocean and by the San Pablo and Richardson Bays, while areas south of the proposed area are influenced by the Pacific Ocean and by Monterey Bay. In addition, the ocean influence enters each region through different routes—through the Estero Gap in the North Coast, through the Golden Gate in the San Francisco Bay region, and through Monterey Bay in the southerly portion of Central Coast.

According to the petitioner, west to east flowing winds named the westerlies, which bring weather systems in California onshore from the ocean, prevail in the proposed area. Directly affecting the weather in the San Francisco Bay area is the Pacific high pressure system, centered a thousand miles off the Pacific Coast. The petitioner claims that during winter months, its location south of San Francisco allows the passage of

westward moving, rain producing, low pressure storms through the area.

According to the petitioner, during the summer months the high is located closer to the latitude of San Francisco. It then deflects rain producing storms to the north, producing a dry summer climate in San Francisco area. The petitioner claims that the winds from the high (which flow onshore from the northwest to the southeast) produce a cold southward flowing surface water current (called the California Current) off the California coast by a process called upwelling, in which cold deep water is brought to the surface. When moist marine air from the Pacific High flows onshore over this cold water, it cools, producing fog and/or stratus cloud areas which are transported inland by wind.

Climatic Affect and Proposed Boundaries

The petitioner states that from a meteorological perspective, the northwesterly windflow through the Estero Gap (near Petaluma in Sonoma County) into the Petaluma Valley, provides the major source of marine influence for areas north of the Golden Gate. Airflow inland from San Pablo Bay also affects the climate of southern Napa and Sonoma Counties. According to the petitioner, San Francisco Bay has little impact on the weather in the region to its north. The onshore prevailing northwesterly flow direction, in combination with the coastal range topographic features of counties north of the Bay and the pressure differential of the Central Valley, minimize a northward influence from the air that enters the Golden Gate. According to the petitioner, the higher humidity, lower temperatures and wind flow that enter the Golden Gate gap do not flow north of the San Francisco Bay.

The petitioner states that, as a result of the different air mass sources, grape growing sites immediately north of the Bay are cooler than corresponding sites in the Bay Area. As an example, the petitioner cites *General Viticulture* which lists Napa with 2,880 degree days, while Martinez (directly south of Napa on the Carquinez Strait) has 3,500 degree days. Calistoga is listed as 3,150 degree days, while Livermore (approximately equidistant from the Carquinez Strait, but to the south) has 3,400. According to the petitioner, the degree day concept was developed by UC Davis Professors Amerine and Winkler as a measure of climate support for vine growth and grape ripening; large degree day values indicate warmer climates.

According to the petitioner, the proposed San Francisco Bay viticultural area is also distinguished from the counties north of the San Francisco Bay by annual rainfall amounts. The petitioner states that most winter storms that hit the Central California coast originate in the Gulf of Alaska. Thus, locations in the North Coast viticultural area generally receive more rain than sites in the proposed viticultural area.

According to the petitioner, this effect is illustrated by Hamilton Air Force Base on the northwest shore of the San Pablo Bay in Marin County. The base gets 25% more rain in a season than does San Mateo, which has a corresponding bayshore location 34 miles to the south. The petitioner points out that San Francisco gets an average of 21 inches of rain annually, but nine miles north of the Golden Gate, Kentfield gets 46 inches—more than double the amount of rain. According to the petitioner, average rainfall over the entire south bay wine producing area is only 18 inches, while the City of Napa averages 25 inches, Sonoma County (average of 5 sites) averages 35 inches, and Mendocino County averages 40 inches.

According to the petitioner, it should be noted that the California North Coast Grape Growers supported the petitioner's position. In a letter to the Bureau of Alcohol, Tobacco and Firearms dated September 14, 1979, they asked that the term North Coast Counties be applied only to Napa, Sonoma and Mendocino counties. The petitioner claims that part of their reasoning was the observations of Professor Crowley of the Geography Department at Sonoma State University who said that the counties north of the San Francisco Bay have different climates from the counties south of the bay.

Thus, the petitioner maintains that the main determinants of the northern boundary of the proposed viticultural area include the: (1) Natural geographic/topographic barriers, (2) lack of direct San Francisco Bay influence in areas to its north, and (3) different predominant coastal influences in the northern area. The petitioner feels that these factors lead to significant wind flow, temperature, and precipitation differences between the areas north and south of San Francisco Bay. Thus, the petitioner claims that it is logical to draw the northern boundary of the proposed area at the point where the Golden Gate Bridge and San Francisco Bay separate the northern counties, i.e., Marin, Napa, Solano, and Sonoma of the North Coast viticultural area from the counties of San Francisco and Contra Costa.

According to the petitioner, the eastern boundary of the proposed San Francisco Bay Viticultural Area matches the existing boundary of the Central Coast Viticultural area and is located at the inland boundary of significant coastal influence, *i.e.*, along the hills and mountains of the Diablo Range that form a topographical barrier to the intrusion of marine air.

According to the petitioner, east of the Diablo Range lies the Central Valley, distinguished from the proposed area by its higher temperature, lower humidity, and decreased rainfall. The petitioner states that, the Central Valley has a completely continental climate, i.e., much hotter in summer and cooler in winter. Amerine & Winkler categorize the grape growing areas in the Central Valley (Modesto, Oakdale, Stockton, Fresno) as Region V (over 4,000 degree days), while sites in the proposed area range from Region I to III. This is illustrated on a "Degree Day Map" provided by the petitioner.

According to the petitioner, north of Altamont, the proposed boundary continues to follow the inland boundary of coastal influence. (This portion of the boundary matches the concurrently submitted proposed boundary extension for the Central Coast Viticultural area.) Like the existing eastern boundary of the Central Coast, this extension excludes the innermost range of coastal mountains. The eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

The petitioner claims that the average precipitation in the Central Valley is lower than in the proposed San Francisco Bay viticultural area. The following are thirty year average rainfall statistics in inches for locations in the Central Valley: Modesto 10.75, Fresno 10.32, Los Banos 7.98, Lodi 12.74, Antioch 12.97.

Thus, according to the petitioner, the main determinants of the proposed eastern boundary of the proposed viticultural area include the (1) historic existing eastern boundary of the Central Coast viticultural area, (2) natural geographic/topographic climatic barrier created by the Diablo Range, and (3) the inland boundary of the coastal marine influence. The petitioner feels that these factors lead to significant temperature, humidity and precipitation differences between the areas east and west of the proposed eastern boundary.

According to the petitioner, the southern boundary matches those of the Santa Cruz and Santa Clara viticultural areas. As discussed in the section on

climate, the San Francisco Bay influence is diminished and the Monterey Bay influence is felt south of the proposed area. According to the petitioner, the regional northwestern prevailing wind flow direction generally prevents the Monterey Bay influence from affecting the climate in the proposed area.

According to the petitioner, Monterey Bay has a very broad mouth with high mountain ranges to both the north and south. The petitioner claims that fog and ocean air traveling along the Pajaro River do on rare occasions reach the south end of the Santa Clara Valley to the north, but most of the Monterey Bay influence travels to the east and south (borne by the prevailing northwest wind) into the Salinas Valley and up against the eastern coastal hills.

According to the petitioner, Central Coast climate thus gradually warms with increased distance from the San Francisco Bay, as air traveling over land areas south of the bay accumulates heat and dries out. The petitioner claims that the warming trend reverses, however, at the point where the south end of the Santa Clara Valley meets the Pajaro River. Here wind and fog from the Monterey Bay, flowing westward through the Pajaro River gap, begins to assert a cooling influence.

According to the petitioner, the decrease of San Francisco Bay influence, and the concurrent increase of Monterey Bay influence, is demonstrated by the difference in heat summation between Gilroy and Hollister. The petitioner claims that Central Coast sites warm with increasing distance from the San Francisco Bay, but this pattern reverses at the southern boundary of the Santa Clara Valley viticultural area, between Gilroy and Hollister, as the influence of the Monterey Bay becomes dominant. According to the petitioner, this produces significantly cooler temperatures in Hollister than in Gilroy, even though Hollister is farther from San Francisco Bay.

Petition Table 2 "Decrease in San Francisco Bay Influence," indicates a gradual warming trend as one travels southward from the San Francisco Bay. According to the petitioner, past Gilroy to Hollister, however, a new cooling trend is observed due to the influence of the Monterey Bay.

According to the petitioner, Hollister is significantly cooler than Gilroy even though its location is sheltered by hills from the full influence of Monterey Bay. The weather station near coastal Monterey shows the strongest cooling from the Monterey Bay. The petitioner claims that continuing south in the Salinas Valley, the climate again grows warmer with increasing distance from Monterey Bay.

In summary, according to the petitioner, the southern boundary of the proposed area has been defined to match the southern boundary of the Santa Clara Valley and Santa Cruz viticultural areas because this is the location of the transition from a climate dominated by flow from the San Francisco Bay to one dominated by flow from Monterey Bay.

According to the petitioner, the west boundary of the proposed San Francisco Bay Viticultural Area follows the Pacific coastline from San Francisco south to just north of the City of Santa Cruz. This area is greatly influenced by Pacific Ocean breezes and fog. According to the petitioner, the western hills of the Santa Cruz Mountains are exposed to the strong prevailing northwest winds. The climate of the eastern portion of these hills is affected by the moderating influences of the San Francisco Bay.

According to the petitioner, just north of the City of Santa Cruz, the western boundary turns east excluding a small portion of Santa Cruz County from the proposed area, as it was from the Santa Cruz Mountains viticultural area. The petitioner claims that the area around Santa Cruz and Watsonville is close to sea level, and is sheltered from the prevailing northwesterly Pacific Ocean winds by the Santa Cruz mountains. Therefore, fog and bay breezes from Monterey Bay impact the area, while the San Francisco Bay does not influence the area.

Thus, according to the petitioner, the main determinant of the western boundary of the proposed viticultural area include the (1) natural geography of the coastline, (2) Pacific Ocean and San Francisco Bay influence, and (3) historical identity as part of the San Francisco Bay Area.

Topography

According to the petitioner, the weather in the bay region is a product of the modification of the onshore marine air masses described above by the topography of the coast ranges, a double chain of mountains running north-northwest to south-southeast. Each chain divides into two or more smaller chains, creating a patchwork of valleys.

According to the petitioner, as the elevation of the western chain of the coastal ridge is generally higher than the altitude of the inversion base, the inversion acts as a lid to prevent the cool onshore flowing marine air and fog from rising over the mountains and flowing inland. Because of this, successive inland valleys generally have less of a damp, seacoast climate and more of a dry, continental climate.

According to the petitioner, this pattern is modified by a few gaps and passes in the mountain ranges that allow marine influences to spread farther inland without obstruction. The petitioner claims that these inland areas are, however, somewhat protected from the Pacific fogs, which are evaporated as the flow is warmed by passage over the warmer land surfaces.

The three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma, Golden Gate into San Francisco Bay, and Monterey Bay. According to the petitioner, several smaller mountain pass gaps (San Bruno and Crystal Springs) sometimes also allow for the inland spread of coastal climate in the Bay Area when the elevated inversion base is high enough.

According to the petitioner, the Bay Area climate is greatly modified by San Francisco Bay, whose influence is similar to that of the ocean, *i.e.*, it cools summer high temperatures and warms winter low temperatures. The petitioner states that the narrowness of the Golden Gate limits the exchange of bay and ocean waters, and thus bay waters are not quite as cold as the coastal ocean currents during the summer.

According to the petitioner, marine air exits the San Francisco Bay (without having experienced the normal drying and heating effects associated with over-land travel) in several directions. The predominant outflow is carried by the onshore northwesterly winds toward the south through the Santa Clara Valley to Morgan Hill and to the east via the Hayward Pass and Niles Canyon.

According to the petitioner, temperatures at given locations in the Bay Area are thus dependent on streamline distance (actual distance traveled) from the ocean, rather than its "as the crow flies" distance from the ocean. The petitioner claims that Livermore Valley temperatures show this phenomenon. Ocean air flows across San Francisco Bay, through the Hayward Pass and Niles Canyon, and into the Livermore Valley, causing a cooling effect in summer and a warming effect in winter.

In summary, because of the interaction of topography with the prevailing winds in the Bay Area, the Pacific Ocean and San Francisco Bay are the major climatic influences in the proposed viticultural area. According to the petitioner, this interaction has two principal effects: (1) To allow the coastal influence of the Pacific Ocean to

extend farther east than otherwise possible, and (2) to modify that coastal influence because of the moderating effects of Bay waters on surrounding weather.

Proposal To Amend the Boundaries of the Central Coast Viticultural Area

In conjunction with the petition to establish the San Francisco Bay viticultural area, Mr. Philip Wente, Vice President of Wente Bros., proposes to amend the boundaries of the Central Coast viticultural area to encompass the proposed San Francisco Bay viticultural area.

According to the petitioner, an examination of the three large viticultural areas on the California coast reveals a gap between Monterey and Marin, where many acres of existing and potential vineyards are not represented by any viticultural area. In petitioning for the revision of the Central Coast viticultural area, the petitioner claims to be continuing the logical pattern already established in the organization of viticultural areas on the California coast. According to the petitioner, the proposed revised Central Coast viticultural area is a larger area that ties together several smaller sub-appellations (Santa Clara Valley, Santa Cruz Mountains, Ben Lomond Mountain, Livermore Valley, San Ysidro District, Pacheco Pass, San Benito, Cienega Valley, Mount Harlan, Paicines, Lime Kiln Valley, Monterey, Carmel Valley, Chalone, Arroyo Seco, Paso Robles, York Mountain, Edna Valley, Arroyo Grande Valley, Santa Maria Valley, Santa Ynez Valley, and the proposed San Francisco Bay viticultural area), all of which are dominated by the same geographic and general marine influences that create their climate.

According to the petitioner, the evidence presented in the petition establishes that the well-known Central Coast name and the general marine climate extend north and northwest beyond the current Central Coast boundaries.

The Name, Central Coast as Referring to Santa Cruz and the Counties Surrounding San Francisco Bay

According to the petitioner, the name Central Coast, as used by wine writers and the state legislature, extends north and west into Santa Cruz County and five counties that surround the San Francisco Bay, beyond the area currently recognized as the Central Coast viticultural area. In support of this claim, the petitioner cited several references.

Patrick W. Fegan's book *Vineyards and Wineries of America*, contains a map of "Central Coastal Counties" designating Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo and Santa Barbara.

Another example cited by the petitioner is *Central Coast Wine Tour*, published by Vintage Image in 1977 and 1980, which covers the area from San Francisco to Santa Barbara and specifically describes past and present wineries in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo and Santa Cruz Counties.

According to the petitioner, The Connoisseurs' Handbook of California Wines defines "Central Coast" in the section entitled "Wine Geography" as: "The territory lying south of San Francisco and north of the city of Santa Barbara—San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, and Santa Barbara counties."

According to the petitioner, Bob Thompson and Hugh Johnson, in their book *The California Wine Book*, describe the "Central Coast" as an indeterminate area between San Francisco and Santa Barbara, including San Francisco, Contra Costa, Alameda, Monterey, Santa Clara and Santa Cruz Counties.

According to the petitioner, in *Wines of California*, by Robert Balzer, the wine producing areas on the California coast are categorized into three groups: North Coast counties, Bay Area and Central Coast counties, and South Central Coast counties. The section on "Bay Area and Central Coast" features a map, included with the petition, illustrating the counties surrounding San Francisco Bay and the Santa Cruz Mountains. The petitioner points out that listed among the San Francisco Bay and Central Coast wineries in the book are seven of the vintners who signed the petition to establish the Santa Cruz Mountains Viticultural Area (David Bruce Winery, Felton-Empire Vineyards, Mount Eden Vineyards, Martin Ray Vineyards, Ridge Vineyards, Roudon-Smith Vineyards and Woodside Vineyards). Finally, the petitioner provided a vineyard and winery map published by Sally Taylor and Friends in the 1980's which includes Santa Cruz County on the map entitled "North Central Coast."

According to the petitioner, in addition to the numerous viticultural writings, government and scholarly studies on the climate and geography of the California Central Coast also include the counties around the San Francisco Bay in the proposed area.

According to the petitioner, the historic San Francisco Viticultural District in 1880 grouped the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz and Contra Costa together. The 1930 University of California monograph "Summer Sea Fogs of the Central California Coast" by Horace R. Byers focuses on an area "from Point Sur to the entrance of Tomales Bay, including San Francisco and Monterey Bays: Santa Clara, San Ramon, Livermore, San Benito, and Salinas valleys * * *" These valleys are located in Santa Clara, Contra Costa, Alameda, San Benito and Monterey Counties, respectively.

The petitioner cites section 25236 of the 1955 California Alcoholic Beverage Control Act which allows the use of the description "central coastal counties dry wine" on wine originating in several counties including Santa Clara, Santa Cruz, Alameda, Contra Costa, Monterey, San Luis Obispo counties. The petitioner recognizes that "central coastal counties" is not a legal appellation under the Federal Alcohol Administration Act. The petitioner stated that this law is mentioned solely to support the fact that the counties surrounding San Francisco Bay are well-accepted in California as belonging within the place name "Central Coast."

According to the petitioner, the California Division of Forestry's "Sea Breeze Effects on Forest Fire Behavior in Central Coastal California" summarizes the results of several fireclimate surveys conducted in the 1960's in several counties surrounding San Francisco Bay. Currently, the petitioner points out that the National Oceanic and Atmospheric Administration/National Climatic Data Center publishes monthly summaries of climatological data grouped into geographical divisions. The "Central Coast Drainage" division includes locations in San Francisco, Alameda, Contra Costa, San Mateo, Santa Clara, Santa Cruz, Monterey and San Luis Obispo counties.

The petitioner believes that the sources discussed above demonstrate that the counties included in the proposed revised Central Coast boundaries are commonly and historically known as being within the place-name "Central Coast."

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas

Coastal Climate and Marine Influence

According to the petitioner, the coastal climate of the Central Coast viticultural area is the principal feature which unifies the area and distinguishes it from surrounding areas. As an

indication of the "coastal climate" effect on the area, the petitioner cites the difference between July and September temperatures. According to the petitioner, September (fall) is usually warmer than July (summer) in coastal areas, while the reverse is true in continental areas. The petitioner states that this unique coastal characteristic results from two factors: fogs and air flows. Fogs keep summer coastal temperatures low while the interior regions absorb all of the sun's summer energy. These fogs diminish in strength and frequency in the fall allowing more coastal solar gain and the resultant temperature rise, while interior temperatures begin their relative decline. According to the petitioner, this seasonal fluctuation comes about when, (1) the pressure differential between the Pacific high and the Central Valley is reduced which eliminates the inversion cap over the coast ranges and, (2) the temperature of the Pacific Ocean reaches its highest level in the fall which reduces the cooling of onshore air flows. According to the petitioner, these air flows from the Pacific Ocean invade the land mass through gaps in the coast range. Thus, the petitioner claims that a location's climate is dictated primarily by its position relative to the windstream distance from the Pacific—the greater the windstream distance the greater the July/October temperature differential and the greater the degree day accumulation as the windstream will be increasingly warmed by the ground it passes over.

Table 1 in the petition lists California cities in windstream groups from the most coastal (initiation) to the most continental (terminus). This table lists the difference (in degrees) between the average July and September temperatures in each city, which constitutes the measure of "coastal" character. Continental cities (Antioch to Madera), which are outside the current and proposed boundaries of the Central Coast, exhibit the highest July temperatures and the greatest difference in temperature from July to September. Also, included are accumulated Degree Days for April through October following Winkler's system. According to the petitioner, this chart demonstrates that within the coastal region—north and south—there is a continuum of coastal influence and the ensuing heat gradient during the growing season (Degree Days).

According to the petitioner, within the proposed extension, the climate acts in an identical manner to the area in the existing Central Coast viticultural area. To support this claim, the petitioner cites petition Table I demonstrating that locations within the proposed revision to the Central Coast viticultural area (San Francisco, Richmond, Oakland, Berkeley, Half Moon Bay, Martinez, San Jose, Ben Lomond, Palo Alto) share the same coastal character (*i.e.*, (1) higher September temperatures and, (2) an airstream continuum of Degree Day temperatures correlated with the airstream distance from the Pacific Ocean) as found at the current Central Coast cities (Monterey, Salinas, Hollister, King City, Livermore, Gilroy). A Coastal Character Map showing this data is attached to the petition. Accordingly, the petitioner believes that the data presented above establishes that the Central Coast boundary should be revised to accurately reflect the extent of the central coast climate.

According to the petitioner, the proposed San Francisco Bay viticultural area and the Central Coast viticultural area lie within the same botanic zone. The petitioner cites the Sunset *Western Garden Book* published for 55 years by the editors of Sunset Magazine. The petitioner states that this comprehensive western plant encyclopedia has become a leading authority regarding gardening in the western United States. The *Western Garden Book* divides the region from the Pacific Coast to the eastern slope of the Rocky Mountains into twenty-four climate zones. The Central Coast viticultural area lies within Zones 7, 14, 15, 16, 17.

The petitioner believes that the climate zones established by Sunset Magazine demonstrate that the main distinguishing feature of Central Coast—the coastal climate—extends west to the Santa Cruz coastline and north to the Golden Gate. The proposed revision to the Central Coast viticultural area also lies within these zones.

According to the petitioner, the characteristic cool Mediterranean climate of the Central Coast viticultural area extends north and west of the current boundaries. This coastal Mediterranean climate is cool in the summer and the marine fog which penetrates inland makes the coast very oceanic, with little difference in temperature between mild winters and cool summers. The Mediterranean climate classification is so called because the lands of the Mediterranean Basin exhibit the archetypical temperature and rainfall regimes that define the class. In support of the Mediterranean climate claim, the petitioner cited The Climatic Regions Map from *Atlas of California*. This map is based on the Koeppen classification, which divides the world into climate regions based on temperature, the seasonal variation of drought, and the relationship of rainfall to potential evaporation. The Koeppen system uses letters based on German words having no direct English equivalents. The Climatic Regions Map depicts the extent of cool Mediterranean climate both north and west of the current Central Coast boundary and within it.

The map shows that Alameda, Contra Costa, Santa Clara, San Mateo and Santa Cruz counties in the proposed revision to the Central Coast viticultural area, like Monterey, San Benito, San Luis Obispo and Santa Barbara counties in the current Central Coast viticultural area, are mostly classified as Csb Mediterranean climates (average of warmest month is less than 22 °C), with partial Csbn climate (more than thirty days of fog) along the coast.

The petitioner states that it is due to this coastal climate (mainly fog and wind), that the degree of marine influence in the proposed revision to the Central Coast viticultural area is similar to the degree of marine influence found at other places inside the current Central Coast viticultural area. A map of central California, submitted with the petition, shows the extent of marine fog in the area. This map shows that the fog pattern in the proposed area is similar to other areas included in Central Coast. The fog extends inland to approximately the same extent throughout the proposed revised viticultural area. According to the petitioner, the "Retreat of Fog" map submitted with the petition also shows the similarity in the duration of fog in the current and proposed Central Coast viticultural area. The petitioner points out that the similar fog pattern is most evident along the coastal areas of Big Sur, Monterey Bay and San Francisco.

Topography

According to the petitioner, Santa Cruz and the other San Francisco Bay counties share the Central Coast's terrain. The petitioner pointed out that one of the major California coast range gaps which produces the climate within the current Central Coast boundaries lies within the proposed revision to the Central Coast. The petitioner claims that the three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma County, Golden Gate into San Francisco Bay, and Monterey Bay. According to the petitioner, the Golden Gate and Monterey Bay allow the ocean influence to enter into the current Central Coast viticultural area creating its coastal climate which is the unifying and distinguishing feature of the area. The main gap in the current Central Coast

viticultural area, the Monterey Bay allows marine air and fog from the Pacific Ocean to travel south and inland, into the Salinas Valley. The petitioner believes that this feature creates the ideal grape-growing climate that exists in the Salinas Valley, but from a meteorological perspective, it has comparatively little influence on the portion of Central Coast viticultural area lying north of it. The on-shore prevailing northwesterly flow direction, combined with the coastal range topographical features north of the Bay's mouth, minimize northward influence from the air that enters the Monterey Bay. According to the petitioner, the Golden Gate gap introduces a cooling marine influence and the San Francisco Bay allows marine air and fog to travel much further inland and south through the Santa Clara and Livermore Valleys and provides most of the coastal influence affecting the northern portion of the Central Coast viticultural area.

The petitioner states that although the Golden Gate and San Francisco Bay are primary influences on the current Central Coast climate, neither shoreline is included in the current Central Coast boundary. The petitioner believes that the proposed revision to the Central Coast viticultural area logically extends the current Central Coast boundaries to include the shores of the Golden Gate and San Francisco Bay.

Boundaries

The proposed extension of the Central Coast viticultural area would include the currently excluded portions of five counties which border the San Francisco Bay. These counties are San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and all of Santa Cruz County. The proposed San Francisco Bay appellation would add approximately 1,278 square miles to Central Coast. This area contains 3,027 acres planted to grapes and 21 wineries.

The proposed revision to the Central Coast boundary follows the Pacific coastlines of Santa Cruz, San Mateo and San Francisco Counties, crosses San Francisco Bay, follows the northern boundary of Contra Costa County to Concord, and then follows the inland boundary of coastal influence, according to the petitioner, along straight lines between landmarks in the Diablo Mountain Range to the current Central Coast boundary.

The southern boundary of the Central Coast viticultural area remains unchanged. The proposed changes to the western boundary, the California coastline, consists of extending the boundary north to the Golden Gate. The proposed eastern boundary is extended to include the area northwest of Livermore up to the San Pablo Bay. From Altamont (just east of Livermore) south, the proposed eastern boundary follows the current boundary of the Central Coast viticultural area. North of Altamont, the proposed boundary extension excludes the easternmost range of coastal mountains. The proposed eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

After consideration of all comments and suggestions, ATF may issue a Treasury decision. The proposals discussed in this notice may be modified due to comments and suggestions received.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.75 is amended by revising paragraph (b) to add 23 U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps (19) through (41), by revising paragraph (c) introductory text to add three counties, by removing paragraphs (c)(2) through (c)(12) and replacing them with new paragraphs

(c)(2) through (c)(9) and, renumbering existing paragraphs (c)(13) through (c)(40) as paragraphs (c)(10) through (c)(37).

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.75 Central Coast

(a) Name. * * *

(b) Approved maps. * * *

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(19) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980

(20) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980

(21) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980

(22) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980

(23) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980

(24) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980

(25) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980

(26) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980

(27) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980

(28) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973

(29) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980

(30) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980

(31) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973

(32) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968

(33) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(34) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(35) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968

(36) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968

(37) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981

(38) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980

(39) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968

(40) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980

(41) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980.

(c) Boundary. The Central Coast viticultural area is located in the following California counties: Monterey, Santa Cruz, Santa Clara, Alameda, San Benito, San Luis Obispo, Santa Barbara, San Francisco, San Mateo, and Contra Costa. * * *

* * * * * *

(2) The boundary follows north along the shoreline of the Pacific Ocean (across the Watsonville West, Soquel, Santa Cruz, Davenport, Año Nuevo, Franklin Point, Pigeon Point, San Gregorio, Half Moon Bay, Montara Mountain and San Francisco South maps) to the San Francisco/Oakland Bay Bridge. (San Francisco North map)

(3) From this point, the boundary proceeds east on the San Francisco/Oakland Bay Bridge to the Alameda County shoreline. (Oakland West map)

(4) From this point, the boundary proceeds east along the shoreline of Alameda County and Contra Costa County across the Richmond, San Quentin, Mare Island, and Benicia maps to a point marked BM 15 on the shoreline of Contra Costa County. (Vine Hill map)

(5) From this point, the boundary proceeds in a southeasterly direction in a straight line across the Honker Bay map to Mulligan Hill elevation 1,438. (Clayton map)

(6) The boundary proceeds in southeasterly direction in a straight line to Mt. Diablo elevation 3,849. (Clayton map)

(7) The boundary proceeds in a southeasterly direction in a straight line across the Diablo and Tassajara maps to Brushy Peak elevation 1,702. (Byron Hot Springs map)

(8) The boundary proceeds due south, approximately 400 feet, to the northern boundaries of Section 13, Township 2 South, Range 2 East. (Byron Hot Springs map)

(9) The boundary proceeds due east along the northern boundaries of Section 13 and Section 18, Township 2 South, Range 3 East, to the northeast corner of Section 18. (Byron Hot Springs map)

Par. 3. The table of sections in subpart C is proposed to be amended by adding § 9.157 to read as follows:

* * * * *

9.157 San Francisco Bay

Par. 4. Subpart C is proposed to be amended by adding § 9.157 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.157 San Francisco Bay

(a) Name. The name of the viticultural area described in this section is "San Francisco Bay."

(b) Approved maps. The appropriate maps for determining the boundary of the San Francisco Bay viticultural area are forty-two U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps and one U.S.G.S. Quadrangle 5 × 11 Minute (Topographic) map. They are titled:

(1) Pacheco Peak, California, scale 1:24,000, dated 1955, Photorevised 1971

(2) Gilroy Hot Springs, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(3) Mt. Sizer, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(4) Morgan Hill, California, scale 1:24,000, dated 1955, Photorevised 1980

(5) Lick Observatory, California, scale 1:24,000, dated 1955, Photoinspected 1973, Photorevised 1968

(6) San Jose East, California, scale 1:24,000, dated 1961, Photorevised 1980

(7) Calaveras Reservoir, California, scale 1:24,000, dated 1961, Photorevised 1980

(8) La Costa Valley, California, scale 1:24,000, dated 1960, Photorevised 1968

(9) Mendenhall Springs, California, scale 1:24,000, dated 1956, Photoinspected 1978, Photorevised 1971

(10) Altamont, California, scale 1:24,000, dated 1953, Photorevised 1981

(11) Byron Hot Springs, California, scale 1:24,000, dated 1953, Photorevised 1968

(12) Tassajara, California, scale 1:24,000, dated 1953, Photoinspected 1974, Photorevised 1968

(13) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980

(14) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980

(15) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980

(16) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980

(17) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980

(18) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980

(19) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980

(20) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980

(21) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980

(22) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973

(23) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980

(24) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980

(25) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973
(26) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968
(27) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968
(28) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968
(29) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968
(30) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968
(31) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1961
(32) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980
(33) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968
(34) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980
(35) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980
(36) Loma Prieta, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968
(37) Watsonville East, California, scale 1:24,000, dated 1955, Photorevised 1980
(38) Mt. Madonna, California, scale 1:24,000, dated 1955, Photorevised 1980
(39) Gilroy, California, scale 1:24,000, dated 1955, Photorevised 1981
(40) Chittenden, California, scale 1:24,000, dated 1955, Photorevised 1980
(41) San Felipe, California, scale 1:24,000, dated 1955, Photorevised 1971
(42) Three Sisters, California, scale 1:24,000, dated 1954, Photoinspected 1978, Photorevised 1971

(c) Boundary. The San Francisco Bay viticultural area is located mainly within the five counties which border the San Francisco Bay and partly within two other counties in the State of California. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The boundaries of the San Francisco Bay viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of the 37 degree 00′ North latitude parallel with State Route 152 on the Pacheco Peak Quadrangle.

(2) Then proceed in a northwesterly direction in a straight line to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South on the Gilroy Hot Springs Quadrangle.

(3) Then proceed in a northwesterly direction in a straight line to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East on the Mt. Sizer Quadrangle.

(4) Then proceed in a northwesterly direction in a straight line (across the Morgan Hill Quadrangle) to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East on the Lick Observatory Quadrangle.

(5) Then proceed in a northwesterly direction in a straight line to the intersection of State Route 130 with the township line dividing Township 6 South from Township 7 South on the San Jose East Quadrangle.

(6) Then proceed in a northeasterly direction following State Route 130 to its intersection with the range line dividing Range 1 East from Range 2 East on the Calaveras Reservoir Quadrangle.

(7) Then proceed north following this range line to its intersection with the Hetch Hetchy Aqueduct on the La Costa Valley Quadrangle.

(8) Then proceed in a northeasterly direction in a straight line following the Hetch Hetchy Aqueduct to the western boundary of Section 14 in Township 4 South, Range 2 East on the Mendenhall Springs Quadrangle.

(9) Then proceed south along the western boundary of Section 14 in Township 4 South, Range 2 East to the southwest corner of Section 14 on the Mendenhall Springs Quadrangle.

(10) Then proceed east along the southern boundary of Section 14 in Township 4 South, Range 2 East to the southeast corner of Section 14 on the Mendenhall Springs Quadrangle.

(11) Then proceed south along the western boundary of Section 24 in Township 4 South, Range 2 East to the southwest corner of Section 24 on the Mendenhall Springs Quadrangle.

(12) Then proceed east along the southern boundary of Section 24 in Township 4 South, Range 2 East and Section 19 in Township 4 South, Range 3 East to the southeast corner of Section 19 on the Mendenhall Springs Quadrangle.

(13) Then proceed north along the western boundaries of Sections 20, 17, 8, and 5 on the Mendenhall Springs Quadrangle in Township 4 South, Range 3 East, north (across the Altamont Quadrangle) along the western boundaries of Sections 32, 29, 20, 17, 8, and 5 in Township 3 South, Range 3 East, and north along the eastern boundaries of Sections 31, 30, 19, and 18 in Township 2 South, Range 3 East to the northeast corner of Section 18 on the Byron Hot Springs Quadrangle.

(14) Then proceed due west along the northern boundaries of Section 18 and Section 13 (Township 2 South, Range 2 East) to a point approximately 400 feet due south of Brushy Peak on the Byron Hot Springs Quadrangle.

(15) Then proceed due north to Brushy Peak (elevation 1,702) on the Byron Hot Springs Quadrangle.

(16) Then proceed in a northwesterly direction in a straight line (across the Tassajara and Diablo Quadrangles) to Mt. Diablo (elevation 3,849) on the Clayton Quadrangle.

(17) Then proceed in a northwesterly direction in a straight line to Mulligan Hill (elevation 1,438) on the Clayton Quadrangle.

(18) Then proceed in a northwesterly direction in a straight line (across the Honker Bay Quadrangle) to a point marked BM 15 on the shoreline of Contra Costa County on the Vine Hill Quadrangle.

(19) Then proceed west along the shoreline of Contra Costa County and Alameda County (across the Quadrangles of Benicia, Mare Island, Richmond, and San Quentin) to the San Francisco/Oakland Bay Bridge on the Oakland West Quadrangle.

(20) Then proceed west on the San Francisco/Oakland Bay Bridge to the San Francisco County shoreline on the San Francisco North Quadrangle.

(21) Then proceed along the San Francisco, San Mateo, and Santa Cruz County shoreline (across the Quadrangles of San Francisco South, Montara Mountain, Half Moon Bay, San Gregorio, Pigeon Point, Franklin Point, Año Nuevo and Davenport) to the place where Majors Creek flows into the Pacific Ocean on the Santa Cruz Quadrangle.

(22) Then proceed northeasterly along Majors Creek to its intersection with the 400 foot contour line on the Felton Quadrangle.

(23) Then proceed along the 400 foot contour line in a generally easterly/northeasterly direction to its intersection with Bull Creek on the Felton Quadrangle.

(24) Then proceed along Bull Creek to its intersection with Highway 9 on the Felton Quadrangle.

(25) Then proceed along Highway 9 in a northerly direction to its intersection with Felton Empire Road.

(26) Then proceed along Felton Empire Road in a westerly direction to its intersection with the 400 foot contour line on the Felton Quadrangle.

(27) Then proceed along the 400 foot contour line (across the Laurel, Soquel, Watsonville West and Loma Prieta Quadrangles) to its intersection with Highway 152 on the Watsonville East Quadrangle.

(28) Then proceed along Highway 152 in a northeasterly direction to its intersection with the 600 foot contour line just west of Bodfish Creek on the Watsonville East Quadrangle.

(29) Then proceed in a generally east/southeasterly direction along the 600 foot contour line (across the Mt. Madonna and Gilroy Quadrangles), approximately 7.3 miles, to the first intersection of the western section line of Section 30, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(30) Then proceed south along the section line approximately 1.9 miles to the south township line at Section 31, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(31) Then proceed in an easterly direction along the township line (across the San Felipe Quadrangle), approximately 12.4; miles to the intersection of Township 11 South and Township 12 South and Range 5 East and Range 6 East on the Three Sisters Quadrangle.

(32) Then proceed north along the Range 5 East and Range 6 East range line approximately 5.5 miles to Pacheco Creek on the Pacheco Creek Quadrangle.

(33) Then proceed northeast along Pacheco Creek approximately .5 mile to the beginning point.

Signed: October 1, 1997.

John W. Magaw,

Director.

[FR Doc. 97–27692 Filed 10–17–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations

AGENCIES: National Park Service, Interior.

ACTION: Proposed Rule; extension of the public comment period.

SUMMARY: The National Park Service (NPS) announces that the public comment period for the proposed Glacier Bay National Park Commercial Fishing Regulations, published in the **Federal Register** on April 16, 1997 (62 FR 18547), has been extended to May 15, 1998. The original comment period was through October 15, 1997. This extension will allow the NPS, in a forthcoming environmental assessment on commercial fishing within Glacier Bay National Park, to fully describe and analyze the potential effects of a range of alternative actions under consideration.

The public review and comment period for the environmental assessment and the proposed rule coincide. The NPS will hold public meetings on the proposal and alternatives and publish a schedule of times, dates and locations in the **Federal Register**. No final decisions will be reached until all applicable legal requirements have been met, including environmental review requirements.

DATES: Comments on the proposed rule and environmental assessment will be accepted through May 15, 1998.

ADDRESSES: Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, PO Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: J. M. Brady, Superintendent, Glacier Bay National Park and Preserve, PO Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

Dated: October 8, 1997.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 97–27731 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5910–3]

Acid Rain Program: Public Workshop on an Emissions Trading Program for Oxides of Nitrogen (NO_X)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public workshops on a NO_X emissions trading program.

SUMMARY: This fall, EPA will be issuing a Notice of Proposed Rulemaking to reduce regional transport of ozone. As part of this rulemaking, EPA is planning to develop a NO_X emissions trading program for large combustion sources. States will be encouraged to participate in the trading program as a simple and cost-effective strategy for meeting the requirements of the upcoming regional transport rule.

EPA supported the Ozone Transport Assessment Group (OTAG), which fostered a collaborative process among States and stakeholders in developing analyses and proposing strategies to address the problem of ozone transport. The central conclusion from the OTAG process was that regional reductions of NO_X are needed to reduce the transport of ozone and its precursors. EPA considered OTAG's recommendations when crafting the transport rule, which will limit NO_X emissions through implementation of state-wide NO_X emissions budgets. OTAG also concluded that cost effective emission reductions from large stationary sources could be greatly facilitated through an emissions trading program.

As a way to increase flexibility, maximize cost savings, and promote workable solutions, EPA is offering to administer a multi-state cap and trade program for large stationary sources. States are encouraged to participate in the trading program as a simple and cost-effective strategy for meeting their state-wide emission budget requirements. In developing the framework for a cap and trade program, EPA will build upon the work produced by OTAG's Trading/Incentives Workgroup. The NO_X Trading Rule Workshops will provide an opportunity for interested participants to contribute to the development of the model trading rule. It is anticipated that the model trading rule will be included in a supplemental notice of proposed rulemaking for the transport rule in early 1998 and will be finalized along with the transport rule in September 1998.

EPA would like to continue the cooperative, open process established by OTAG as we develop the trading program. Two workshops will be held, in early November and early December. The purpose of these workshops is to provide a forum for input on the framework of an emissions trading program that can be used to cost-effectively reduce emissions of NO_X.

DATES: The first workshop will be held on November 5, from 9:00 a.m. to 5:00 p.m. A second workshop will be scheduled for early December and will be announced in a future document.

ADDRESSES: The November workshop will be held at the Washington Marriott located at 1221 22d Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie Benkovic in EPA's Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 233–9142.

Dated: October 10, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–27621 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5910–7]

RIN: 2060–AE–81

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects errors in the preamble and regulatory text for the "National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production" which was published in the **Federal Register** on September 4, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David Svendsgaard; Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380.

SUPPLEMENTARY INFORMATION:

Corrections to the Preamble

In proposed rule FR Doc. 97–22364, beginning on page 46804 in the issue of September 4, 1997, make the following correction in the Supplementary Information section. On page 46805 in the first column, replace the first and second paragraphs of the column with the following:

"The Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols—Basis and Purpose Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–010a.

Other materials related to this rulemaking are also available for review in the docket. Some of the technical memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols— Supplementary Information Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–010c."

In the same proposed rule document, under Discussion of Major Issues, on page 46815 in the second column, replace the second sentence of the second paragraph with the following:

"The approach used for determining these emission factors is explained in Docket No. A–96–38, Item No. II–B–6."

Corrections to the Regulatory Text

In the same proposed rule document, in section 63.1423(b), on page 46824 in the second column, replace the definition for *Group 1 wastewater stream* with the following:

"*Group 1 wastewater stream* means a process wastewater stream at an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) of subpart G, with the exceptions listed in § 63.1433(a)(10) for the purposes of this subpart (i.e., for organic HAP listed on Table 4 of this subpart only)."

In the same proposed rule document, in section 63.1423(b), on page 46826 in the first column, replace the definition for *Wastewater* with the following:

"*Wastewater* means water that: (1) Contains either (a) an annual average concentration of organic HAP listed in Table 4 of this subpart of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater or (b) an annual average concentration of organic HAP listed on Table 4 of this subpart of at least 10,000 parts per million by weight at any flow rate, and that (2) is discarded from a PMPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater."

In the same proposed rule document, under Process Vent Control Requirements, on page 46827 in the second column, replace section 63.1425(d) with the following:

"*Requirements for Nonepoxide Organic HAP Emissions From Catalyst Extraction.* The owner or operator of an existing affected source where polyether polyol products are produced using epoxide compounds shall reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 90 percent for each PMPU. The owner or operator of a new affected source where polyether polyol products are produced using epoxide compounds shall reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 98 percent for each PMPU. A PMPU that does not use any nonepoxide organic HAP in catalyst extraction is exempt from the requirements of this paragraph."

In the same proposed rule document, under Wastewater Provisions, on page 46843 in the first and second columns, replace section 63.1433(a)(2) with the following:

"When §§ 63.132 through 63.149 of subpart G refer to table 9 or table 36 of subpart G, the owner or operator shall only consider organic HAP listed in table 9 or table 36 of subpart G that are also listed on table 4 of this subpart, for the purposes of this subpart. Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 of subpart G that pertain solely and exclusively to organic HAP listed on table 8 of subpart G. In addition, when §§ 63.132 through 63.149 of subpart G refer to List 1, List 2, and/or List 3, as listed in table 36 of subpart G, the owner or operator shall only consider organic HAP contained in those lists that are also listed on table 4 of this subpart, for the purposes of this subpart."

Dated: October 14, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–27730 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7231]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Delaware	Newark (City), New Castle County.	Christina River	Approximately 100 feet downstream of State Route 273.	*131	*130
			At Wedgewood Road	*161	*158
		West Branch Christina River.	Approximately 580 feet upstream of confluence with Christina River.	*88	*87
			At state boundary	*108	*107
		Persimmon Run	At the confluence with West Branch Christina River.	*97	*96
			Approximately 380 feet upstream of confluence with West Branch Christina River.	*99	*98
		Tributary to West Branch Christina River.	At confluence with West Branch Christina River.	*108	*106
			Approximately 300 feet upstream of confluence with West Branch Christina River.	*108	*107
Maps available for inspection at the Newark Planning Department, 220 Elkton Road, Newark, Delaware. Send comments to Mr. Carl F. Luft, Newark City Manager, 220 Elkton Road, Newark, Delaware 19711.					
Delaware	New Castle County (Unincorporated Areas).	Christina River	Approximately 50 feet upstream of State Route 273 (Nottingham Road).	*134	*133
			At State boundary	*162	*160
		West Branch Christina River.	Approximately 1,500 feet upstream of confluence with Christina River.	*91	*90
			Approximately 900 feet upstream of State Route 2.	*108	*106
		East Branch Christina River.	At confluence with Christina River	*158	*156
			Approximately 100 feet upstream of the confluence with Christina River.	*158	*157

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the New Castle County Department of Planning, 2701 Capitol Trail, Newark, Delaware. Send comments to Mr. Thomas P. Gordon, New Castle County Executive, 800 North French Street, Wilmington, Delaware 19801.					
Florida	Auburndale (City) Polk County.	Lake Arianna	Shoreline within community	None	*138
		Lake Lena	Shoreline within community	None	*138
Maps available for inspection at the City of Auburndale Building and Zoning Division, 207 Orange Street, Auburndale, Florida. Send comments to The Honorable W. B. Whatley, Mayor of the City of Auburndale, 110 Tampa Street, P.O. Box 186, Auburndale, Florida 33823.					
Florida	Dundee (Town) Polk County.	Peace Creek Drainage Canal.	At downstream Town of Dundee corporate limit.	*122	*124
			At upstream Town of Dundee corporate limit.	*122	*124
		Lake Dell Outlet Ditch	At downstream Town of Dundee corporate limit.	*123	*125
			Upstream side of U.S. Highway 27	*125	*126
		Peace Creek Drainage Canal Tributary 3.	At confluence with Peace Creek Drainage Canal.	*122	*124
			At upstream corporate limit	None	*124
Maps available for inspection at the Dundee Town Hall, 105 Center Street, Dundee, Florida. Send comments to Mr. Ben Saag, Dundee Town Manager, 105 Center Street, Dundee, Florida 33838.					
Florida	Eagle Lake (City), Polk County.	Lake McLeod	Entire shoreline within community	None	*135
		Eagle Lake	Entire shoreline within community	None	*132
Maps available for inspection at the Eagle Lake City Hall, 75 North Seventh Street, Eagle Lake, Florida. Send comments to Ms. Linda Weldon, Eagle Lake City Manager, P.O. Box 129, Eagle Lake, Florida 33839.					
Florida	Haines City (City), Polk County.	Hammock Lake	Entire shoreline within community	*134	*135
		Lake Brooks	Entire shoreline within community	None	*135
		Little Lake Hamilton	Entire shoreline within community	*123	*124
		Lake Alice	Entire shoreline within community	*130	*131
		Shallow Flooding Area	Between Melbourne Avenue and Johnson Avenue.	None	*110
			Between Baker Dairy Road and Johnson Avenue.	None	*115
Maps available for inspection at the Haines City City Hall, 502 East Hinson Avenue, Haines City, Florida. Send comments to The Honorable Kenneth Thompson, Mayor of the City of Haines City, P.O. Box 1507, 502 East Hinson Avenue, Haines City, Florida 33845.					
Florida	Hillcrest Heights (Town), Polk County.	Crooked Lake	Entire shoreline within community	None	*126
Maps available for inspection at the Lake Wales City Hall, 152 East Central Avenue, Lake Wales, Florida. Send comments to The Honorable Andrew E. Bryan, Mayor of the Town of Hillcrest Heights, P.O. Box 129, Badson Park, Florida 33827.					
Florida	Keystone Heights (City).	Lake Geneva	Entire shoreline within community	None	*108
	Clay County	Brooklyn Lake	Entire shoreline within community	None	*118
Maps available for inspection at the Keystone Heights City Hall, 555 South Lawrence Boulevard, Keystone Heights, Florida. Send comments to The Honorable Archie Green, Mayor of the City of Keystone Heights, P.O. Box 420, Keystone Heights, Florida 32656. Florida					
Florida	Lake Alfred (City), Polk County.	Lake Alfred	Entire shoreline within community	*134	*135
		Lake Swoope	Entire shoreline within community	None	*134
Maps available for inspection at the Lake Alfred City Hall, 120 East Pomelo Street, Lake Alfred, Florida. Send comments to The Honorable Larry Clark, Mayor of the City of Lake Alfred, 155 East Pomelo Street, Lake Alfred, Florida 33850.					
Florida	Lakeland (City), Polk County.	Lake Parker #1	Shoreline within community	*132	*134
		Lake Gibson	Shoreline within community	None	*146
		Lake Parker Tributary	At Lake Parker Drive	*132	*134
			Approximately 1,000 feet downstream of State Road 33.	*133	*134

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Lakeland Building Inspection Division, 228 South Massachusetts Avenue, Lakeland, Florida. Send comments to Mr. E.S. Strickland, Lakeland City Manager, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.					
Florida	Lake Hamilton (Town), Polk County.	Lake Hamilton	Entire shoreline within community	*123	*124
		Flooding effects from Little Lake Hamilton.	Approximately 200 feet north of Hughes Road/U.S. Route 27 intersection southeast to Cunningham Street/Kokomo Road intersection.	*123	*124
Maps available for inspection at the Lake Hamilton Town Hall, 100 Smith Avenue, Lake Hamilton, Florida. Send comments to The Honorable Roger Knaus, Mayor of the Town of Lake Hamilton, P.O. Box 126, Lake Hamilton, Florida 33851.					
Florida	Lake Wales (City), Polk County.	Peace Creek Drainage Canal.	Approximately 0.95 mile upstream of State Road 653.	None	*119
			Approximately 0.60 mile upstream of Olson Road.	None	*123
		Peace Creek Drainage Canal Tributary 2A.	Approximately 900 feet downstream of CSX Transportation.	None	*118
			Approximately 1.20 miles downstream of CSX Transportation.	None	*118
		Peace Creek Drainage Canal Tributary 2B.	Confluence with Peace Creek Drainage Canal.	None	*122
			Downstream side of Mountain Lake Cutoff Road.	None	*122
		Lake Myrtle #2	Entire shoreline within community	None	*120
Maps available for inspection at the Lake Wales City Hall, 152 East Central Avenue, Lake Wales, Florida. Send comments to Mr. David L. Greene, Lake Wales City Manager, 152 East Central Avenue, Lake Wales, Florida 33853.					
Florida	Lee County (Unincorporated Areas).	Imperial River	Approximately 2,225 feet upstream of Matheson Avenue.	*11	*12
			Just upstream of Bonita Grande Road	None	*17
Maps available for inspection at the Fort Myers/Lee County Library, 2050 Lee Street, Fort Myers, Florida. Send comments to Mr. Donald D. Stilwell, Lee County Manager, P.O. Box 398, Fort Myers, Florida 33902–0398.					
Florida	Polk City (Town), Polk County.	Lake Agnes	Entire shoreline within community	None	*136
		Mud Lake	Entire shoreline within community	None	*143
		Mud Lake Drain	Approximately 550 feet upstream of Sand Lane.	None	*133
			At confluence of Mud Lake/ approximately 450 feet upstream of State Road 33.	None	*143
Maps available for inspection at the Surface Water Management Department, 330 West Church Street, Bartow, Florida. Send comments to Mr. John Swanson, Polk City Town Manager, P.O. Box 1139, Polk City, Florida 33868.					
Florida	Polk County (Unincorporated Areas).	Fox Branch Tributary	At confluence with Fox Branch	None	*144
			Approximately 400 feet upstream of Duff Road.	None	*152
		Blackwater Creek	At downstream county boundary	None	*112
			At North Galloway Road	None	*137
		Blackwater Creek Tributary 2.	At downstream county boundary	None	*108
			Approximately 900 feet upstream of Ross Creek Road.	*130	*132
		Wahneta Farms Canal	Approximately 0.6 mile upstream of confluence with Peace Creek Drainage Canal.	*107	*111
			Downstream side of Hoover Road	None	*133
		Wahneta Farms Canal Tributary.	At confluence with Wahneta Farms Canal	None	*121
			Approximately 1.1 miles upstream of Eagle Lake Loop Road.	None	*132
		Peace Creek Drainage Canal.	Approximately 0.7 mile downstream of 91 Mine Road.	*100	*101

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.6 miles upstream of 91 Mine Road.	*106	*107
		Peace Creek Drainage Canal Tributary 2A.	Confluence with Peace Creek Drainage Canal.	None	*115
			Approximately 4.6 miles upstream of Crews Road.	None	*118
		Peace Creek Drainage Canal Tributary 2B.	Confluence with Peace Creek Drainage Canal.	None	*122
			Approximately 1.6 miles upstream of Mountain Lake Cutoff Road.	None	*122
		Peace Creek Drainage Canal Tributary 3.	At confluence with Peace Creek Drainage Canal.	None	*124
			Approximately 1.3 miles upstream of Lake Daisy Road.	None	*129
		Peace Creek Drainage Canal Tributary 4.	At confluence with Peace Creek Drainage Canal.	None	*125
			Approximately 0.5 mile upstream of Dundee Road.	None	*126
		Blackwater Creek Tributary 1.	At downstream county boundary	None	*111
			Approximately 0.1 mile upstream of Lewellyn Road.	*132	*135
		Itchepackesassa Creek	At downstream county boundary	None	*114
			At confluence of Itchepackesassa Tributaries 1 and 2.	None	*120
		Itchepackesassa Creek Tributary 1.	At the confluence with Itchepackesassa Creek.	None	*120
			Approximately 2,400 feet downstream of North Wabash Avenue.	*137	*136
		Itchepackesassa Creek Tributary 2.	At the confluence with Itchepackesassa Creek.	None	*120
			Approximately 450 feet upstream of Airport Road.	None	*139
		Fox Branch	At Polk County boundary	None	*86
			Approximately 1,000 feet upstream of U.S. Route 98.	None	*150
		Lake Lowery	Entire shoreline within community	*134	*135
		Mountain Lake	Entire shoreline within community	None	*121
		Lake Effie	Entire shoreline within community	None	*122
		Lake Lee #2	Entire shoreline within community	None	*124
		Venus Lake	Entire shoreline within community	None	*127
		Lake Parker #2	Entire shoreline within community	None	*123
		Hammock Lake	Entire shoreline within community	*134	*135
		Tower Lake	Entire shoreline within community	*134	*135
		Bonnet Lake	Entire shoreline within community	*134	*135
		Lake Brooks	Shoreline within county	*134	*135
		Scott Lake	Entire shoreline within community	None	*172
		Banana Lake	Entire shoreline within community	None	*107
		Lake Myrtle #1	Entire shoreline within community	None	*142
		Little Van Lake	Entire shoreline within community	None	*142
		Lake Griffin	Entire shoreline within community	*134	*135
		Lake Alfred	Entire shoreline within community	*134	*135
		Lake Medora	Entire shoreline within community	None	*141
		Lake Mariana	Entire shoreline within community	*139	*140
		Lake Blue	Entire shoreline within community	None	*151
		Sears Lake	Entire shoreline within community	None	*144
		Lake Grass	Entire shoreline within community	None	*140
		Lake Gibson	Entire shoreline within community	*145	*146
		Lake McLeod	Entire shoreline within community	None	*135
		Spirit Lake	Entire shoreline within community	None	*135
		Grassy Lake #2	Entire shoreline within community	None	*136
		Eagle Lake	Entire shoreline within community	None	*132
		Millsite Lake	Entire shoreline within community	None	*126
		Lake Parker #1	Entire shoreline within community	*132	*134
		Lake Bonnet Drain	Just downstream of North Chestnut Road	None	*140
			Approximately 300 feet downstream of Brunnell Parkway.	None	*144
		Lake Garfield	Entire shoreline within community	*107	*108
		Lake Myrtle #2	Entire shoreline within community	None	*120
		Round Lake	Entire shoreline within community	None	*131

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Reeves Lake	Entire shoreline within community	None	*126
		Lake Hart	Entire shoreline within community	None	*126
		Lake Ruby	Entire shoreline within community	None	*126
		Lake Daisy	Entire shoreline within community	*131	*132
		Lake Fox	Entire shoreline within community	None	*136
		River Lake	Entire shoreline within community	None	*143
		Lake Florence	Entire shoreline within community	*129	*130
		Crystal Lake #3	Entire shoreline within community	None	*131
		Lake Reed	Entire shoreline within community	None	*140
		Lake Annie	Entire shoreline within community	None	*124
		Lake Arbuckle	Entire shoreline within community	None	*59
		Lake Bess	Entire shoreline within community	None	*126
		Dinner Lake #1	Entire shoreline within community	None	*130
		Dinner Lake #2	Entire shoreline within community	None	*124
		Grassy Lake #3	Entire shoreline within community	None	*129
		Thomas Lake #1	Entire shoreline within county	None	*137
		Camp Lake	Entire shoreline within county	*133	*134
		Lake Eva #1	Entire shoreline within county	*134	*135
		Lake Swoope	Entire shoreline within county	None	*134
		Lake Joe	Entire shoreline within county	None	*126
		Lake Marion	Entire shoreline within community	*68	*72
		Little Lake Hamilton	Entire shoreline within county	*123	*124
		Lake Hamilton	Entire shoreline within county	*123	*124
		Middle Lake Hamilton	Entire shoreline within county	*123	*124
		Lake Streety	Entire shoreline within community	None	*110
		Hickory Lake	Entire shoreline within community	None	*99
		Silver Lake	Entire shoreline within community	None	*106
		Lake Wedhyakapka	Entire shoreline within community	*64	*65
		Lake Leonore	Entire shoreline within community	None	*88
		Blue Lake	Entire shoreline within community	None	*125
		Lake Moody	Entire shoreline within community	None	*94
		Mud Lake	Entire shoreline within community	*141	*143
		Surveyors Lake	Entire shoreline within community	None	*135
		Gator Lake	Entire shoreline within community	None	*135
		Grassy Lake #4	Entire shoreline within community	None	*140
		Polecat Lake	Entire shoreline within community	None	*144
		Tiger Lake	Entire shoreline within community	None	*57
		Lake Aurora	Entire shoreline within community	None	*107
		Big Gum Lake	Entire shoreline within community	*95	*96
		Cypress Lake	Entire shoreline within community	None	*102
		Little Gum Lake	Entire shoreline within community	None	*98
		Parks Lake	Entire shoreline within community	None	*105
		Thomas Lake #2	Entire shoreline within community	None	*106
		Lake Mabel	Entire shoreline within community	None	*117
		Lake Tennessee	Entire shoreline within community	None	*136
		Lake Juliana	Entire shoreline within community	*135	*136
		Lake Starr	Entire shoreline within community	None	*117
		Lake Otis	Entire shoreline within county	*130	*134
		Lake Ring	Entire shoreline within county	None	*138
		Lake Elizabeth	Entire shoreline within county	None	*135
		Lake Ida #1	Entire shoreline within community	*135	*138
		Lester Lake	Entire shoreline within community	*130	*132
		Polk Lake	Entire shoreline within community	None	*110
		Mud Lake Drain	Approximately 700 feet downstream of State Road 33.	*137	*138
			At confluence of Mud Lake	*141	*143
		Crystal Lake #1	Entire shoreline within county	None	*140
		Lake Davenport	Entire shoreline within county	None	*121
		Horse Creek	Approximately 1,450 feet above State Route 547.	None	*115
			Approximately 2,300 feet above State Route 547.	None	*115
		Lake Hatchineha	Entire shoreline within community	None	*57
		Lake Boomerang	Entire shoreline within community	None	*123
		Grassy Lake No. 1	Entire shoreline within community	None	*134
		Lake Holloway	Entire shoreline within community	None	*141
		Crews Lake	Entire shoreline within community	None	*149
		Lake Henry No. 2	Entire shoreline within community	None	*160
		Old Lake Davneport	Entire shoreline within community	None	*112
		South Prong Alafia River	At downstream county boundary	None	*97

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
			Approximately 1.1 miles upstream of Bethlehem Road.	None	*117

Maps available for inspection at the Polk County Engineering Department, 330 West Church Street, Bartow, Florida.
Send comments to Mr. Neil Combee, Chairman of the Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831.

Florida	Stuart (City) Martin County.	St. Lucie River	Approximately 200 feet east of the intersection of U.S. 1 and Fern Avenue.	*6	*10
			Approximately 1500 feet east of the intersection of East Ocean Boulevard and Flamingo Drive.	*8	*7
		North Fork St. Lucie River	Approximately 300 feet east of the intersection of East Ocean Boulevard and Flamingo Drive.	None	*7
			Entire reach within community	*6	*9
		South Fork St. Lucie River	Approximately 300 feet west of the intersection of West 1st Street and Atlanta Avenue.	*6	*9
			Approximately 1000 feet southwest of the intersection of South Carolina Drive and Palm City Avenue.	*6	*7
		Krueger Creek	Approximately 250 feet east of the intersection of East Ocean Boulevard and Krueger Parkway.	*6	*7
		Fraizer Creek	Approximately 50 feet south of the intersection of 7th Street and Colorado Avenue.	*6	*7
		Poppolton Creek	Approximately 300 feet south of the intersection of Federal Highway and Riverview Avenue.	*6	*7
			Approximately 0.4 mile east along Central Parkway from intersection with State Route 76.	None	*7

Maps available for inspection at the Stuart City Hall, City Development Department, 121 S.W. Flagler Avenue, Stuart, Florida.
Send comments to Mr. David Collier, Stuart City Manager, 121 S.W. Flagler Avenue, Stuart, Florida 34994.

Florida	Winter Haven (City), Polk County.	Lake Hamilton	Entire shoreline within community	*123	*124
		Middle Lake Hamilton	Entire shoreline within community	*123	*124
		Lake Otis	Entire shoreline within community	*130	*134
		Lake Elbert	Entire shoreline within community	*137	*139
		Lake IDA #1	Entire shoreline within community	*135	*138
		Lake Silver	Entire shoreline within community	*147	*148
		Lake Idyl	Entire shoreline within community	*134	*137

Maps available for inspection at the Winter Haven City Hall, Building Department, 451 Third Street, N.W., Winter Haven, Florida.
Send comments to Mr. Carl Cheatham, Winter Haven City Manager, P.O. Box 2277, Winter Haven, Florida 33883.

Georgia	Alpharetta (City), Fulton County.	Lake Windward	Upstream of Lake Windward at city limit	*1,033	*1,028
			Approximately 100 feet upstream of Lake Windward Drive.	*992	*1,028

Maps available for inspection at the City Engineer's Office, 11875 Haynes Bridge Road, Alpharetta, Georgia.
Send comments to Mr. Michael Wilkes, Alpharetta City Administrator, City Hall, 2 South Main Street, Alpharetta, Georgia 30201.

Illinois	Glenview (Village), Cook County.	South Navy Ditch	At confluence with Chicago River, North Branch, West Fork.	*630	*628
			Approximately 100 feet downstream of Soo Line Railroad.	*630	*628
		Des Plaines River	Upstream side of Central Road	None	*637
			Approximately 0.7 mile upstream of Central Road.	None	*637
		Chicago River, North Branch, West Fork.	At the downstream corporate limits	*624	*621
			At the upstream corporate limits	*632	*631
		Chicago River, North Branch.	Approximately 300 feet upstream of corporate limits.	None	*624
			At Central Road	None	*621

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified

Maps available for inspection at the Glenview Village Hall, 1225 Waukegan Road, Glenview, Illinois.
Send comments to Ms. Nancy Firfer, Glenview Village President, 1225 Waukegan Road, Glenview, Illinois 60025.

Illinois	Northbrook (Village), Cook County.	Chicago River, North Branch, West Fork.	Approximately 80 feet downstream of Old Willow Road.	None	*631
			Approximately 300 feet downstream of Interstate Route 94.	*652	*651
		Chicago River, North Branch, Middle Fork.	Approximately 200 feet downstream of Meadow Brook Drive.	*635	*636
			Approximately 300 feet upstream of Red Oak Drive.	None	*651
		Underwriters Tributary	Approximately 300 feet upstream of confluence with Chicago River, North Branch, West Fork.	*651	*649
			Approximately 200 feet downstream of Helen Drive.	*664	*665
		Techny Drain	Approximately 300 feet upstream of confluence with Chicago River, North Branch, West Fork.	None	*636
			Downstream face of culvert approximately 70 feet downstream of Pfingston Road.	*668	667
		Techny Drain, South Fork	At confluence with Techny Drain	*653	*652
			Approximately 200 feet upstream of Wood Drive.	*666	*663

Maps available for inspection at the Northbrook Village Hall, Engineering Department, 1225 Cedar Lane, Northbrook, Illinois.
Send comments to Mr. Mark Damisch, President of the Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062.

Maine	Sanford (Town), York County.	Mousam River (Lower Reach).	At the downstream corporate limits	None	*154
			At downstream side of Estes Lake Dam	None	184

Maps available for inspection at the Town of Sanford Code Enforcement Office, 267 Main Street, Sanford, Maine.
Send comments to Mr. John Webb, Sanford Town Administrator, 267 Main Street, Sanford, Maine 04073.

Minnesota	Olmsted County (Unincorporated Areas).	North Run of the North Fork of Cascade Creek.	At U.S. Highway 14	*1,007	*1,006
			Approximately 550 feet downstream of KR–6 Dam.	*1,043	*1,037
		South Run of the North Fork of Cascade Creek.	Approximately 100 feet upstream of the confluence with Cascade Creek.	*1,007	*1,006
			Approximately 1.31 miles upstream of Chicago and Northwestern Railroad.	*1,041	*1,040
		South Fork Zumbro River	Approximately 600 feet downstream of 55th Street NW.	None	*968
			Approximately 700 feet downstream of Mayowood Road.	*1,028	*1,027
		Bear Creek	Approximately 520 feet upstream of the confluence of Willow Creek.	*1,013	*1,012
			Approximately 220 feet upstream of the confluence of Badger Creek.	*1,017	*1,016
		Cascade Creek	Approximately 0.4 mile upstream of the confluence of North Run of the North Fork of Cascade Creek.	*1,006	*1,005
			Approximately 250 feet downstream of County Road 34.	*1,014	*1,015
		Shallow Flooding Area	Between the Chicago and Northwestern Railroad and North Run of the North Fork of Cascade Creek.	#1	#2

Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota.
Send comments to Mr. Richard Devlin, Olmsted County Administrator, 151 4th Street, S.E., Rochester, Minnesota 55904.

Minnesota	Rochester (City) Olmsted County.	North Run of the North Fork of Cascade Creek.	At confluence with Cascade Creek	*1,006	*1,004
			Approximately 1,000 feet upstream of 19th Street NW.	*1,028	*1,027
		South Run of the North Fork of Cascade Creek.	At confluence with Cascade Creek	*1,007	*1,006

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.5 mile upstream of Chicago and North Western.	*1,027	*1,026
		Bear Creek	Approximately 300 feet downstream of 4th Street SE.	*987	*986
			Approximately 50 feet downstream of confluence of Willow Creek.	*1,012	*1,011
		South Fork Zumbro River	At 55th Street NW	None	*986
			Approximately 1,500 feet downstream of Mayowood Road.	*1,027	*1,026
		Cascade Creek	At confluence with South Fork Zumbro River.	*979	*978
			Approximately 250 feet downstream of County Road 34.	*1,014	*1,015
		Willow Creek	Approximately 660 feet upstream of the confluence with Bear Creek.	*1,012	*1,013
			Approximately 265 feet downstream of 11th Avenue SE.	*1,014	*1,015
		Shallow Flooding Area	Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 850 feet northwest of the intersection of 7th Street NW and U.S. Highway 14.	#1	#2
			Between the Chicago and Northwestern Railroad and the North Run of the North Fork of Cascade Creek.	#2	#1
			Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 400 feet northwest of the intersection of 7th Street NW and U.S. Highway 14.	#1	#3

Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota.
Send comments to Mr. Gary Neumann, Assistant City Administrator, City Administrator's Office, 201 4th Street, S.E., Room 266, Rochester, Minnesota 55904–3781.

New Hampshire	Alexandria (Town), Grafton County.	Newfound Lake	Entire shoreline within the community	None	*591

Maps available for inspection at the Alexandria Town Hall, Plummer Hill, Alexandria, New Hampshire.
Send comments to Mr. Ernest Parmenter, Chairman of the Town of Alexandria Board of Selectmen, Alexandria Town Office, Plummer Hill, Alexandria, New Hampshire 03222.

New Jersey	Brick (Township), Ocean County.	Atlantic Ocean	Approximately 250 feet east of the intersection of Ocean Avenue and Bay Avenue South.	*10	*15
			Entire shoreline within community	*13	*15
		Shallow Flooding	Approximately 50 feet west of the intersection of Ocean Avenue and Grandview Avenue.	*8	#1
			At intersection of southbound lane of State Route 35 and 9th Avenue.	*7	#2
		Barnegat Bay	Approximately 1,200 feet west of the intersection of southbound lane of State Route 35 and Brigantine Lane.	*6	*7
			At intersection of Curtis Point Drive and southbound lane of State Route 35.	*9	*7

Maps available for inspection at the Township of Brick Engineering Department, Brick Town Hall, 401 Chambers Bridge Road, Brick, New Jersey.
Send comments to The Honorable Joseph Scarpilley, Mayor of the Township of Brick, 401 Chambers Bridge Road, Brick, New Jersey 08723.

New York	Canton (Town), St. Lawrence County.	Grass River	Approximately 1.02 miles downstream of State Route 68.	None	*323
			Approximately 150 feet downstream of upstream Town of Canton corporate limit.	None	*497

Maps available for inspection at the Town of Canton Code Enforcement Office, Canton Municipal Building, 60 Main Street, Canton, New York.
Send comments to Mr. James T. Smith, Canton Town Supervisor, Canton Municipal Building, 60 Main Street, Canton, New York 13617.

North Carolina	Alexander County (Unincorporated Areas).	Catawba River (Lake Hickory).	At upstream side of Oxford Dam	None	*935

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At downstream side of State Highway 127.	None	*936
		Catawba River (Lookout Shoals Lake).	At downstream county boundary	None	*847
			Approximately 1.9 miles upstream of downstream county boundary.	None	*849

Maps available for inspection at the Alexander County Planning and Inspection Emergency Management Office, 322 1st Avenue, S.W., Taylorsville, North Carolina.
Send comments to Mr. Craig Mayberry, Chairman of the Alexander County Commission, 255 Liledoun Road, Taylorsville, North Carolina 28681.

North Carolina	Atlantic Beach (Town), Carteret County.	Bogue Sound	At the intersection of Salter Path Road and Henderson Boulevard.	None	*7
			Approximately 800 feet northwest of the intersection of Salter Path Road and Henderson Boulevard.	*7	*8
		Atlantic Ocean	Approximately 150 feet south from the intersection of Henderson Boulevard and Asbury Avenue.	None	*12
			Approximately 330 feet south from the intersection of Henderson Boulevard and Ess Pier along Ess Pier.	*15	*18

Maps available for inspection at the Atlantic Beach Town Hall, 125 West Fort Macon Road, Atlantic Beach, North Carolina.
Send comments to Mr. Kim A. Cox, Atlantic Beach Town Manager, 125 West Fort Macon Road, P.O. Box 10, Atlantic Beach, North Carolina 28512.

North Carolina	Burke County (Unincorporated Areas).	Rhodhiss Lake	At Lake Rhodhiss Dam	None	*1,003
			At State Route 1001	None	*1,005

Maps available for inspection at the Avery Avenue Government Building, 200 Avery Avenue, Morganton, North Carolina.
Send comments to Mr. Jimmy Jacumin, Chairman of the Burke County Board of Commissioners, Resource Center, P.O. Box 219, Morganton, North Carolina 28680–0219.

North Carolina	Caldwell County (Unincorporated Areas).	Catawba River	At Lake Rhodhiss Dam	None	*1,003
			At State Route 1001	None	*1,005

Maps available for inspection at the Caldwell County Planning Department, Caldwell County Offices, 905 West Avenue, Lenoir, North Carolina.
Send comments to Dr. John Thuss, Chairman of the Caldwell County Board of Commissioners, P.O. Box 2200, Lenoir, North Carolina 28645–2200.

North Carolina	Catawba County (Unincorporated Areas).	Catawba River (Lake Hickory).	At Oxford Dam	None	*935
			At confluence of Snow Creek	None	*935
		Catawba River (Lookout Shoals Lake).	At Lookout Shoals Lake	None	*849
			Approximately 4.3 miles upstream of Lookout Shoals Dam.	None	*849
		Catawba River (Lake Norman).	At downstream county boundary	None	*761
			Approximately 0.6 mile downstream of NC 1004.	None	*762
		Elk Shoal Creek	Approximately 875 feet upstream of confluence with Catawba River.	*840	*849
			Approximately 750 feet upstream of State Route 1700.	*848	*849
		Dellinger Creek	At confluence with Elk Shoal Creek	*849	*850
			Approximately 680 feet upstream of confluence with Elk Shoal Creek.	*851	*852

Maps available for inspection at the Catawba County Zoning Office, 100A Southwest Boulevard, Newton, North Carolina.
Send comments to Mr. Tom Lundy, Catawba County Manager, P.O. Box 389, Newton, North Carolina 28658.

North Carolina	Emerald Isle (Town), Carteret County.	Atlantic Ocean	At intersection of Bogue Court and Inlet Drive.	None	*15

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			500 feet south of intersection of Ocean Drive and Sea Dunes Drive.	*16	*19
		Bogue Sound	200 feet north of intersection of Burlington Street and Emerald Drive.	None	*8
			1,000 feet north of the intersection of Bugue Court and Inlet Drive.	*12	*15
Maps available for inspection at the Emerald Isle Town Hall, 7500 Emerald Drive, Emerald Isle, North Carolina.					
Send comments to Mr. Peter S. Allen, Emerald Isle Town Manager, 7500 Emerald Drive, Emerald Isle, North Carolina 28594–9320.					
North Carolina	Goldsboro (City), Wayne County.	Mills Creek	Approximately 600 feet upstream of confluence with West Bear Creek.	None	*95
			Approximately 1,075 feet upstream of State Route 13.	None	*116
Maps available for inspection at the Goldsboro City Hall Annex, 222 North Center Street, Goldsboro, North Carolina.					
Send comments to The Honorable Howell K. Plonk, Mayor of the City of Goldsboro, P.O. Drawer A, Goldsboro, North Carolina 27530.					
North Carolina	Haywood County (Unincorporated Areas).	West Fork Pigeon River	Approximately 200 feet upstream of confluence with East Fork Pigeon River.	*2,653	*2,654
			At confluence with Lake Logan	None	*2,865
Maps available for inspection at the Haywood County Planning Director's Office, 2143 Asheville Road, Waynesville, North Carolina.					
Send comments to Mr. Jack Horton, Haywood County Manager, 215 North Main Street, Courthouse Annex One, Waynesville, North Carolina 28786.					
North Carolina	Hickory (City), Burke and Catawba Counties.	Lake Hickory	At downstream corporate limits	None	*935
			At NC 127	None	*936
Maps available for inspection at the City of Hickory Planning Office, 76 North Center Street, Hickory, North Carolina.					
Send comments to The Honorable William R. McDonald, Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603–0398.					
North Carolina	High Point (City) Davidson, Guilford, and Randolph Counties.	Boulding Branch	Approximately 300 feet upstream of Deep River Road.	*777	*776
			Approximately 100 feet downstream of Boundary Avenue.	*850	*849
		Payne Creek Tributary	At confluence with Payne Creek	None	*744
			Approximately 1.1 miles upstream of Canterbury Road.	None	*782
		Payne Creek (formerly Stream 95 In High Point).	Just upstream of corporate limits	*741	*743
			Approximately 1,470 feet upstream of Rockford Road.	*825	*826
		Stream 97	Approximately 1.1 miles downstream of Chestnut Glen Way.	None	*750
			Approximately 115 feet upstream of Westchester Drive.	None	*823
		Sandy Ridge Tributary	Approximately 1,550 feet downstream of State Route 68.	None	*797
			Approximately 150 feet downstream of Gallimore Dairy Road.	None	*832
		Tributary to West Fork Deep River.	At confluence with West Fork Deep River	None	*817
			Approximately 1,700 feet upstream of confluence with West Fork Deep River.	None	*817
		Davis Lake Tributary No. 1.	At the confluence with East Fork Deep River.	None	*787
			Just downstream of State Route 68	None	*805
		Davis Lake Tributary No. 2.	At confluence with Davis Lake Tributary No. 1.	None	*797
			Approximately 1,775 feet upstream of Highway 68.	None	*819
		Long Branch	Approximately 1,800 feet downstream of Jamesford Road.	*771	*770
			Approximately 0.51 mile upstream of Jamesford Drive.	*776	*777

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Stream No. 18	Approximately 0.46 mile upstream of confluence with West Fork Deep River.	*776	*777
			Approximately 1,350 feet upstream of Hickswood Road.	None	*820
		Stream No. 92	Approximately 300 feet downstream of corporate limits.	*778	*770
			Approximately 60 feet downstream of confluence of Stream No. 93.	*792	*779
		Stream No. 93	Approximately 25 feet upstream of confluence with Stream No. 92.	*793	*792
			Approximately 50 feet downstream of Westchester Drive (State Route 68).	*823	*827
		Stream 99	Approximately 1.4 miles downstream of Westchester Drive.	None	*748
			Approximately 20 feet downstream of Westchester Drive.	*825	*826
		Richland Creek	Approximately 1,550 feet upstream of Kersey Valley Road.	*706	*705
			Approximately 900 feet upstream of Brentwood Street.	*783	*784
		Rich Fork	Approximately 1,450 feet downstream of Rock Bridge Road.	*745	*748
			Approximately 250 feet upstream of upstream corporate limits.	*753	*754
		Mile Branch	At confluence with Richland Creek	*707	*705
			Approximately 950 feet upstream of confluence with Richland Creek.	*707	*706
Maps available for inspection at the City of High Point Municipal Office Building, 211 South Hamilton Street, High Point, North Carolina.					
Send comments to The Honorable Rebecca Smothers, Mayor of the City of High Point, P.O. Box 230, High Point, North Carolina 27261.					
North Carolina	Iredell County (Unincorporated Areas).	Catawba River (Lake Norman).	At downstream county boundary	None	*761
			Approximately 1 mile downstream of State Route 1004.	None	*763
		Catawba River (Lookout Shoals Lake).	At Lookout Shoals Dam	None	*847
			At upstream county boundary	None	*847
Maps available for inspection at the Iredell County Planning Department, 227 South Center Street, Statesville, North Carolina.					
Send comments to Mr. Joel Mashburn, Iredell County Manager, P.O. Box 788, Statesville, North Carolina 28687.					
North Carolina	Lincoln County (Unincorporated Areas).	Lake Norman	Entire shoreline within community	None	*761
Maps available for inspection at the Lincoln County Building and Land Development Department, 302 North Academy Street, Lincolnton, North Carolina.					
Send comments to Mr. Richard French, Lincoln County Manager, 115 West Main Street, Lincolnton, North Carolina 28092.					
North Carolina	Mecklenburg County (Unincorporated Areas).	Lake Norman	Entire shoreline within county	None	*761
		Mountain Island Lake	At mountain island Dam	None	*655
			Approximately 4.8 miles upstream of State Route 16.	None	*657
		Lake Wylie	At downstream county boundary	None	*571
			Approximately 2.4 miles downstream of State Route 49.	None	*572
Maps available for inspection at the Mecklenburg County Engineering and Building Standards, 700 North Tryon Street, Charlotte, North Carolina.					
Send comments to Mr. H. Parks Helms, Chairman of the Mecklenburg Board of County Commissioners, 600 East Fourth Street, Charlotte, North Carolina 28202–2835.					
North Carolina	Transylvania County (Unincorporated Areas).	Lake Toxaway	Entire shoreline within community	None	*3,012
		Cardinal Lake	Entire shoreline within community	None	*3,044

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Transylvania County Community Services Building, 203 East Morgan Street, Brevard, North Carolina.					
Send comments to Mr. Robert Masengill, Chairman of the Transylvania County Board of Commissioners, 28 East Main Street, Brevard, North Carolina 28712.					
North Carolina	Whiteville (City) Columbus County.	Soules Swamp	Approximately 0.6 mile south of intersection of Canal Street and Mill Street.	None	*53
			Approximately 0.3 mile south of the intersection of State Roads 1437 and 1439.	None	*53
Maps available for inspection at the Whiteville City Hall, 317 South Madison, Whiteville, North Carolina.					
Send comments to The Honorable Horace Whitley, Mayor of the City of Whiteville, P.O. Box 607, Whiteville, North Carolina 28472.					
Ohio	Champaign County (Unincorporated Areas).	Anderson Creek	At confluence with Mad River	None	*978
			Approximately 3,050 feet upstream of Stickley Road.	None	*1,013
		Mad River	At upstream side of County Line Road	None	*954
			Approximately 1.7 miles upstream of U.S. Route 36.	None	*1,009
		Moore Run	At upstream side of County Line Road	None	*963
			Approximately 5,000 feet upstream of Woodburn Road.	None	*1,000
Maps available for inspection at the Champaign County Engineer's Office, 428 Beech Street, Urbana, Ohio.					
Send comments to Mr. Carmen L. Scott, Director of Logan, Union, and Champaign County Regional Planning Commission, P.O. Box 141, East Liberty, Ohio 43319.					
Puerto Rico	Bayamón (Municipality) Bayamón County.	Municipio de Toa Baja	Entire shoreline	◆1.6 None	◆2.5 ◆1.6
Maps available for inspection at the Bayamón Planning Office, Street 4L20, Santa Monica, Bayamón, Puerto Rico.					
Send comments to Ms. Matilde Lopez, Director of the Municipality of Bayamón Planning Office, Street 4L20, Santa Monica, Bayamón, Puerto Rico 00957.					
Puerto Rico	Lajas Valley	Atlantic Ocean Municipio de Cabo Rojo.	Entire shoreline	◆1.6 ◆1.6	◆2.8 ◆1.5
		Municipio de Guanica	Entire shoreline	◆2.2 ◆2.0	◆3.2 ◆2.4
		Municipio de Lajas	Entire shoreline	◆2.5 ◆2.5	◆3.8 ◆2.0
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Lower Rio Grande de Arecibo Basin.	Municipio de Hatillo	Entire shoreline	◆1.6 None	◆2.4 ◆1.8
		Municipio de Arecibo	Entire shoreline	◆1.6 ◆None	◆2.4 ◆2.1
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Quebrada del Agua		Approximately 0.75 kilometers upstream of confluence with Caribbean Sea.	None	◆2.4
			Approximately 3.45 kilometers upstream of confluence with Caribbean Sea.	None	◆19.6
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Anton Ruiz	Atlantic Ocean: Municipio de Humacao.	Entire shoreline	◆2.9 ◆2.9	◆3.3 ◆2.7

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Blanco Basin	Atlantic Ocean: Municipio de Humacao.	Entire shoreline	◆2.9 ◆2.5	◆3.3 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Camuy Basin	Municipio de Quebradillas	Entire shoreline	◆1.6 None	◆2.4 ◆2.0
		Municipio de Camuy	Entire shoreline	◆1.6 ◆1.6	◆2.4 ◆1.5
		Municipio de Hatillo	Entire shoreline	◆1.6 ◆1.6	◆2.4 ◆1.8
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Canos		At confluence with Rio Matilde	None	◆11.7
			Approximately 0.4 kilometers upstream of Las Delicias bridge.	None	◆38.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Canos	Caribbean Sea: Municipio de Juana Diaz.	Entire shoreline	◆2.0 1.8	◆3.3 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Cibulo Basin	Municipio de Vega Baja	Entire shoreline	◆1.6 None	◆2.4 ◆2.2
			Laguna Turtuguero	None	◆1.5
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
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Puerto Rico	Rio Coamo	Caribbean Sea: Municipio de Santa Isabel.	Entire shoreline	◆2.3 ◆2.0	◆3.9 ◆2.3
		Municipio de Juana Diaz	Entire shoreline	◆2.0 ◆1.8	◆3.3 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Culebrinos Basin.	Atlantic Ocean: Municipio de Rincon.	Entire shoreline	◆1.6 ◆1.6	◆2.5 ◆2.0
		Municipio de Aguada	Entire shoreline	◆1.6 ◆1.6	◆2.3 ◆1.8
		Municipio de Aguadilla	Entire shoreline	◆1.6 ◆1.6	◆2.3 ◆1.5

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Daguao Basin	Atlantic Ocean: Municipio de Ceiba.	Entire shoreline	◆2.9 ◆2.9	◆3.6 ◆2.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Espiritu Santo Basin.	Atlantic Ocean: Municipio de Loiza.	Entire shoreline	◆1.6 ◆1.6	◆2.6 ◆2.1
		Municipio de Rio Grande	Entire shoreline	◆2.3 ◆2.3	◆2.6 ◆2.1
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Fajardo Basin	Atlantic Ocean: Isla de Culebra.	Entire shoreline	None None	◆4.3 ◆2.1
		Municipio de Luquillo	Entire shoreline	None ◆3.1 ◆2.8	◆2.1 ◆2.7 ◆1.8
		Muncipio Fajardo	Entire shoreline	◆3.1 ◆2.9	◆3.4 ◆1.8
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Grande de Anasco Basin.	Atlantic Ocean: Municipio de Anasco.	Entire shoreline	◆1.6 ◆1.6	◆2.6 ◆2.0
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Grande de Guayanes.	Caribbean Sea: Municipio de Yabucoa.	Entire shoreline	◆2.3 ◆2.5	◆1.0 ◆3.0
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Grande de Loiza Basin.	Atlantic Ocean: Municipio de Carolina.	Entire shoreline	◆1.6	◆2.4
		Municipio de Loiza	Entire shoreline	◆1.6	◆2.7
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Grande de Manati Basin.	Atlantic Ocean: Municipio de Barceloneta.	Entire shoreline	◆1.6	◆2.4
		Municipio de Manati	Entire shoreline	◆1.6 ◆1.6	◆2.4 ◆1.5
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rios Grande de Patillas and Guamani.	Caribbean Sea: Municipo de Patillas.	Entire shoreline	◆1.8 ◆1.8	◆3.4 ◆2.4

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Municipio de Arroyo	Entire shoreline	◆1.9 ◆1.8	◆3.4 ◆2.2
		Municipio de Guayama	Entire shoreline	◆2.2 ◆1.9	◆3.5 ◆2.4
		Municipio de Salinas	Entire shoreline	◆2.3 ◆2.2	◆2.2 ◆2.7
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Grande de Plata Basin.	Atlantic Ocean: Municipio de Dorado.	Entire shoreline	◆1.6 ◆1.6	◆2.4 ◆1.8
		Municipio de Vega Alta	Entire shoreline	◆1.6 None	◆2.4 ◆2.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Guajataca Basin.	Municipio de Isabel	Entire shoreline	None None	◆2.3 ◆1.5
		Municipio de Quebradillas	Entire shoreline	None None	◆2.3 ◆1.5
		Municipio de Aguadilla	Entire shoreline	◆1.6 ◆1.6 None	◆2.3 ◆1.5 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Guanajibo	Atlantic Ocean: Municipio de Cabo Rojo.	Entire shoreline	◆1.6 ◆1.6	◆3.0 ◆1.8
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rios Guayarilla and Tallaboa.	Caribbean Sea: Municipio de Peñuelas.	Entire shoreline	◆1.8 ◆1.8	◆3.4 ◆2.4
		Municipio de Guayarilla	Entire shoreline	◆1.8 ◆1.8	◆3.5 ◆2.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Humacao	Atlantic Ocean: Isla de Vieques.	Entire shoreline	None None	◆3.7 ◆2.4
		Municipio de Humacao	Entire shoreline	◆2.7 ◆2.5	◆3.3 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Majada	Caribbean Sea: Municipio de Santa Isabel.	Entire shoreline	◆2.3 ◆2.0	◆3.9 ◆2.3
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Rio Mameyes Basin	Atlantic Ocean: Municipio de Rio Grande.	Entire shoreline	◆4.3 ◆3.1	◆2.7 ◆2.0

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Río Manaubo	Caribbean Sea: Municipio de Maunabo.	Entire shoreline	◆2.3	◆3.2
		Municipio de Patillas	Entire shoreline	◆2.3	◆3.3
				None	◆2.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Río Matilde		Approximately 0.18 kilometers upstream of confluence with Caribbean Sea.	None	◆2.4
			At confluence of Río Pastillo and Río Canas.	None	◆11.7
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Ríos Matilde, Pastillo, Portugues, Canos, Bucana.	Caribbean Sea: De La Ciudad de Ponce.	Entire shoreline west of Río Portugues	None	◆3.4
				None	◆2.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Río Pastillo		At confluence with Río Matilde	None	◆11.7
			Approximately 0.13 kilometers upstream of Puerto Rico Route 132 bridge.	None	◆42.7
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Río Piedras Basin	Atlantic Ocean and Bahia de San Juan: Municipio de San Juan.	Entire shoreline	◆1.6	◆2.7
				None	◆2.1
		Atlantic Ocean: Municipio de Carolina.	Entire shoreline	◆1.6	◆2.4
		Municipio de Guaynabo	Entire shoreline	◆1.6	◆2.7
				◆1.6	◆1.8
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Río Yaquez Basin	Atlantic Ocean: Municipio de Mayagüez.	Entire shoreline	◆1.6	◆3.0
				◆1.6	◆1.8
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
Puerto Rico	Yauca	Caribbean Sea: Municipio de Yauca.	Entire shoreline	◆2.0	◆3.2
				◆2.0	◆2.4
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.					
Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
South Carolina	Mullins (City), Marion County.	Unnamed Tributary to White Oak Creek.	At confluence of White Oak Creek	None	*85
			At downstream side of Yarboro Street	None	*94

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Mullins City Hall, 151 Northeast Front Street, Mullins, South Carolina.					
Send comments to Mr. J. C. Richardson, Mullins City Administrator, P.O. Box 408, Mullins, South Carolina 29574.					
Virginia	Rappahannock County (Unincorporated Areas).	Thornton River	At State Route 620	None	*593
			Approximately 1.7 miles upstream of State Route 667.	None	*960
		North Fork Thornton River	At confluence with Thornton River	None	*635
			Approximately 1,500 feet upstream of State Route 600.	None	*755
Maps available for inspection at the Rappahannock County Administration and Zoning Office, 290 Gay Street, Washington, Virginia.					
Send comments to Mr. John McCarthy, Rappahannock County Administrator, P.O. Box 519, Washington, Virginia 22747.					
Wisconsin	Oconto County (Unincorporated Areas).	Pensaukee River	At U.S. Route 41	None	*596
			Approximately 0.96 mile downstream of confluence of Spring Creek.	None	*635
		Brookside Creek	At the confluence with Pensaukee River	*606	*607
			Approximately 750 feet downstream of Moody Road.	*606	*607
Maps available for inspection at the Oconto County Land and Water Resources-Zoning Division, 301 Washington Street, Oconto, Wisconsin.					
Send comments to Mr. Kevin Hamann, Oconto County Administrative Coordinator, Oconto County Courthouse, 301 Washington Street, Oconto, Wisconsin 54153.					
Wisconsin	Westfield (Village), Marquette County.	Westfield Creek	Approximately 400 feet downstream of U.S. Route 51.	*839	*840
			Approximately 75 feet downstream of Spring Street Branch/Dam.	*841	*843
Maps available for inspection at the Westfield Village Hall, 124 East Third Street, Westfield, Wisconsin.					
Send comments to Ms. Frances L. Demke, President of the Village of Westfield, 124 East Third Street, Westfield, Wisconsin 53964.					

◆ Elevation in meters, Mean Sea Level.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 9, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–27708 Filed 10–17–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7246–01; I.D. 100897D]

RIN 0648–AK44

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications for the 1998 summer flounder, scup, and black sea bass fisheries; request for comments.

SUMMARY: NMFS proposes specifications for 1998 for summer flounder, scup, and black sea bass. The implementing regulations for these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to reduce fishing effort on summer flounder, scup, and black sea bass and to continue rebuilding stock abundance of these species.

DATES: Public comments must be received on or before November 17, 1997.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (IRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

Comments on the proposed specifications should be sent to: Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—1998 Summer Flounder, Scup, and Black Sea Bass Specifications."

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281–9221.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outline the process for specifying annually the allowed catch limits for both commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes) for these fisheries. These measures are specified to attain annual targets (either a fishing mortality rate or an exploitation rate) specified for each species in the FMP.

A Monitoring Committee for each species, with members from NMFS, the Atlantic States Marine Fisheries Commission (Commission), and both the Mid-Atlantic Fishery Management Council (Council) and New England Fishery Management Council, are required to conduct a review of available information and to recommend catch specifications and other management measures necessary

to achieve the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held September 23–25, 1997.

Summer Flounder

The target F specified in the FMP for 1998 is 0.24, the level of fishing that produces maximum yield per recruit, F_{max}. Summer flounder was most recently assessed at SAW–25 (August 1997). SAW–25 indicates that the FMP measures have not yet reduced F below 1.0 and recommended that, in light of the FMP target, total allowable landings (TAL) should be no more than 13.889 million lb (6.30 million kg) (a commercial quota of 8.333 million lb (3.80 million kg), and a recreational harvest limit of 5.556 million lb (2.52 million kg)). In addition, SAW–25 recommended that additional measures should be considered to minimize commercial and recreational discard mortality. The Council's staff and Monitoring Committee both recommended adopting the SAW recommendation (13.889 million lb; 6.30 million kg) for 1998. This level represents a 25-percent reduction from the initial 1997 TAL of 18.518 million lb (8.40 million kg), but a 12-percent reduction from the actual 1997 allowed harvest of 15.8 million lb (7.17 million kg) after deduction of commercial overages in 1996.

The Council and Board reviewed the Committee's recommendation and voted instead to recommend a 1998 TAL equal to the 1997 level (18.518 million lb (8.40 million kg): 11.11 million lb (5.04 million kg) commercial quota; 7.4 million lb (3.36 million kg) recreational harvest limit). SAW–25 estimated that this proposed TAL has a 50-percent probability of resulting in F = 0.34.

The Council and Board also took action to address the SAW–25 concerns about discards by specifying that 15 percent of the commercial quota will be set aside by the states for a bycatch fishery. Since the FMP does not specifically include a provision for such an allocation, the measure must be enacted by the states. Therefore, the Board adopted motions to make it mandatory for the states to implement the bycatch set aside, and to implement trip limits with the objective of keeping the fishery open all year; these measures will be Commission compliance criteria. The Council and Board also voted to retain the existing commercial minimum fish size (14 inches (35.6 cm)) and to continue the Small Mesh Exemption program.

NMFS believes that the bycatch allocation is a serious attempt to address discards, and is, in effect, a 15-percent reduction in the commercial quota allocated to the directed fishery. The bycatch quota allocation will extend the season and will reduce waste in the fishery.

The Council submission notes several factors that it believes will increase the probability that a 1998 TAL equal to the 1997 level has a reasonable likelihood of attaining F_{max}: (1) A new retrospective pattern in the assessment that shows for terminal year 1994, the stock size was underestimated, and for 1994 and 1995 the fishing mortality was overestimated; (2) the quota overages in 1997 will result in reductions to the allowed commercial landings in 1998; (3) the reductions in mortality anticipated from measures to reduce discard in the commercial fishery (and planned future hook specifications to reduce discard in the recreational fishery); and (4) the fact that the SAW–25 projections are very dependent upon the recruitment estimate for 1996, which may be underestimated.

NMFS agrees that the first three of these factors are valid points to support the Council recommendation. SAW–25 notes that the retrospective pattern for 1994–95 alters the pattern noted in the last assessment. SAW–25 concluded that the reversal in terminal year F estimates may be due to improved accuracy of catch estimates in 1995 and 1996, more accurate indices of stock size due to revised aging, and improved monitoring and estimation of discards. There is no reason to expect that these factors will change and, in fact, NMFS agrees that there have been substantive improvements in quota monitoring and prevention of quota overages over the past year. Therefore, this pattern is likely to hold for 1996 estimates. A greater stock size in 1996 would increase the projected stock size in 1998, which means more fish being available for harvest at a given F. This, in turn, increases the probability that the proposed TAL of 18.518 million lb (8.4 million kg) would achieve F_{max} in 1998.

Based on landings to date, the Council estimates that there will be a quota overage in 1997 of 166,935 lb (75,720 kg), or 1.05 percent, if there is no further late reporting during 1997 and all states are closed with no additional overages. The Council believes that the reduction in the final 1998 TAL due to overages, will also contribute to increasing the probability in achieving F_{max}.

The Council believes that the 15 percent quota set-aside for bycatch fisheries will reduce discards of sublegal fish as well as reduce regulatory discards as the result of landing limits in the states. A decrease in the amount of discards would increase the likelihood that the target F would be achieved in 1998, i.e, summer flounder that had been discarded dead would now be landed and apply to the quota reducing the amount of fish killed by commercial fishers. Projected discard levels for 1998 are 1.76 million lb (0.80 million kg) in the commercial and recreational fisheries. In addition, states would be required to implement programs to collect additional data on discards in the commercial fishery. The Commission voted to make these two requirements mandatory compliance measures for the states. As such, the states are required to submit plans to meet these requirements so that the plans are approved before the beginning of the 1998 commercial fishery.

In addition, the Council anticipates that Amendment 10 will be approved, the measure requiring the minimum mesh size throughout the net will be implemented mid-year and reductions in F on sublegal fish will result. The Council also intends to advocate for a recreational hook specification that will reduce recreational discard and discard mortality. Among other comments concerning discards, SAW–25 recommended that there should be additional measures to reduce discard mortality. The measures noted above are efforts to address these comments. These measures also will improve the probability of attaining F_{max}.

NMFS does not rely strongly on the Council's feeling that recruitment for 1996 is underestimated. Raising this as a factor in supporting the TAL does not comply with NMFS policy, which is to be cautious in the face of uncertainty. The Council explains its rationale in its EA. However, there is little information at this time to confirm that recruitment for 1996 is underestimated. At the September 1997 Council meeting, some state representatives indicated preliminary results from young-of-the-year surveys might indicate better than average recruitment. The surveys, for the most part, were still underway. Consequently, the results are inconclusive. The commercial quotas by state for 1998 are presented in Table 1.

TABLE 1.—1998 STATE COMMERCIAL QUOTAS (PROPOSED)

State	Share (percent)	1998 quota (percent)	1998 quota (kg)*
ME	0.04756	5,284	2,397
NH	0.00046	51	23
MA	6.82046	757,841	343,751
RI	15.68298	1,742,583	790,422
CT	2.25708	250,791	113,757
NY	7.64699	849,680	385,408
NJ	16.72499	1,858,363	842,939
DE	0.01779	1,977	897
MD	2.03910	226,570	102,770
VA	21.31676	2,368,569	1,074,365
NC	27.44584	3,049,589	1,383,270
Total		11,111,298	5,039,999

*Any differences expressed in the conversion of pounds to kilograms are due to rounding.

Scup

The target exploitation rate for scup in 1998 is 47 percent, the rate associated with F = 0.72. The FMP establishes a total allowable catch (TAC) that is allocated to commercial (78 percent) and recreational (22 percent) sectors. Discard estimates are deducted from both TACs to establish TAL for both sectors.

Scup was most recently assessed in SAW–25 (1997). The assessment indicates that F has been above 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 34-percent reduction from that exploitation level would result in a TAC of 7.275 million lb (3.30 million kg), which would likely reduce F below 1.0. The staff recommended establishing the TAC at that level. The Monitoring Committee recommended that the Council should set the TAC no higher than that level and should also consider a further reduction.

The Council and Board adopted the recommendation for a TAC of 7.275 million lb (3.30 million kg). The resulting commercial TAC is 5.675 million lb (2.57 million kg). Both groups debated two ways to calculate the commercial discard estimate: Employing the same discard estimate used in the 1997 specifications (1.103 million lb; 0.50 million kg), or using an amount based on the ratio of 1996 estimated landings to discards (2.048 million lb; 0.93 million kg). In making its recommendations last year, the Council and Board reviewed discard estimates based on fishery data and reduced those estimates to reflect anticipated reductions in discards associated with the implementation of the minimum mesh and minimum fish restrictions under emergency regulation in March 27, 1996 (61 FR 13452).

The Council and Board decided to also use the 1997 discard estimate for the 1998 specifications. They chose not to use the estimate based on 1996 data because it reflects discards that occurred in the first quarter of the year, prior to the emergency measures. The deduction of the resulting discard allowance of 1.103 million lb (0.50 million kg) from the commercial TAC of 5.675 million lb (2.57 million kg) results in a 1998 proposed commercial quota of 4.572 million lb (2.07 million kg). This quota represents a 24-percent reduction from the 1997 commercial quota of 6.0 million lb (2.72 million kg).

The Council and Board adopted a 20,000-lb (9,072-kg) trip limit in the Winter I period, which is to decrease to 1,000 lb (454 kg) when 85 percent of the Winter I quota is harvested, and an 8,000-lb (3,629-kg) trip limit throughout the Winter II period. They retained the 4.5-inch (2.0-cm) codend, the threshold limits to trigger the minimum mesh size, and the minimum fish size. They also maintained for 1998 the same ratio of recreational landings to discards as in 1997. The resulting recreational harvest limit is 1.553 million lb (0.70 million kg) —a TAC of 1.6 million lb (0.73 million kg) minus a discard estimate of 0.048 million lb (0.02 million kg). The quota allocated to the periods is shown in Table 2.

TABLE 2.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC[1]	2Discards[2]	Quota Allocation (LB)	Quota Allocation (KG)[3]
Winter I	45.11	2,559,992	497,563	2,062,429	935,502
Summer	38.95	2,210,413	429,619	1,780,794	807,755
Winter II	15.94	904,595	175,818	728,777	330,568
Total	100.00	5,675,000	1,103,000	4,572,000	2,073,824

[1] Total Allowable Catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

The 1998 commercial quota for the summer period (1,780,794 lb; 807,755 kg) apportioned among the states according to the percentage shares specified in § 648.120(d)(3) is presented in Table 3.

TABLE 3.—SUMMER PERIOD (MAY-OCTOBER) COMMERCIAL SCUP QUOTA SHARES

State	Share (percent)	1998 Allocation	
		(LB)	(KG) [1]
Maine	0.13042	2,322	1,053
New Hampshire	0.00004	1	0
Massachusetts	15.49117	275,866	125,131
Rhode Island	60.56588	1,078,554	489,224
Connecticut	3.39884	60,526	27,454
New York	17.05295	303,678	137,746
New Jersey	3.14307	55,972	25,388
Delaware	0.00000	0	0
Maryland	0.01288	229	104
Virginia	0.17787	3,167	1,437
North Carolina	0.02688	479	217
Total	100.00000	1,780,794	807,755

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 1998, equivalent to F = 0.73. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) sectors; 1998 is the first year that a TAL has been specified. The commercial quota is specified on a coastwide basis by quarter.

Black sea bass was also assessed at SAW–25, which estimated that F has generally exceeded 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 33-percent reduction in landings from the 1996 level (9 million lb; 4.08 million kg) would be necessary to reduce F below 1.0. The staff recommended adopting the TAL associated with the 33-percent reduction, 6.173 million lb (2.80 million kg), for 1998. The Monitoring Committee recommended that the TAL should be no higher than the staff recommendation, but that the Council should consider a lower TAL because it would be more likely to achieve the target exploitation rate.

The Council and Commission adopted the recommendation for a TAL of 6.173 million lb (2.80 million kg) for 1998. This TAL results in a commercial quota of 3.025 million lb (1.37 million kg) and a recreational harvest limit of 3.148 million lb (1.43 million kg). The following trip limits were recommended for all commercial gear types: 11,000 lb (4,990 kg) in Quarter 1 (Q1), 7,000 lb (3,175 kg) in Q2, 3,000 lb (1,361 kg) in Q3, and 4,000 lb (1,814 kg) in Q4. The Council and Board also recommended an increase in the minimum fish size to 10 inches (25.4 cm), consistent with measures being implemented by the Commission and proposed by the South Atlantic Fishery Management Council. Additionally, the Council proposes to increase the possession limit threshold that would trigger minimum mesh size requirements from 100 lb (45.4 kg) to 1,000 lb (453.6 kg).

The Council submission demonstrates that these proposed measures are likely to attain the FMP target. Although the stock size is uncertain and a 1998 stock size was not projected, exploratory results indicate that stock size is stable or has increased in recent years. If that is the case, a 33-percent reduction in landings from the 1996 level should achieve the target exploitation rate. The TAL will control mortality on fully recruited, older fish. The minimum size and gear regulations will reduce discard and escape mortality of undersized black sea bass.

TABLE 4.—1998 BLACK SEA BASS PROPOSED QUARTERLY COASTWIDE QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent (%)	Pounds	(kg) [1]	Trip limits	
				(lbs)	(kg)
1 (Jan–Mar)	38.64	2,385,247	1,081,930	11,000	4,990
2 (Apr–May)	29.26	1,806,220	819,288	7,000	3,175
3 (Jul–Sep)	12.33	781,131	345,243	3,000	1,361
4 (Oct–Dec)	19.77	1,220,402	553,565	4,000	1,814

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

NMFS requests public comments on all of the proposed specification measures. NMFS also requests, in particular, comments concerning the utility of the proposed black sea bass trip limits. The Council and Board examined data that demonstrated that the recommended trip limits impact only 5 percent of the trips in this fishery. NMFS questions whether the effectiveness of these trip limits justifies the expenses of enforcement.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These proposed specifications have been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As explained below, this certification is based on an assessment of this action under NMFS' long-standing Regulatory Flexibility Act guidelines. However, while not required to do so, given that understanding the economic impact of this rule is important, NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities.

According to unpublished NMFS weighout data (Maine to Virginia, CT not included) 715 commercial vessels landed summer flounder, 548 landed scup, and 665 landed black sea bass in 1996. In Connecticut, in 1996, 65 commercial vessels landed summer flounder, 81 landed scup, and 52 landed black sea bass (Mark Alexander pers. comm.). NMFS permit files indicate that, as of October 01, 1997, there were 519, 380, and 243 party/charter firms holding current summer flounder, scup, and black sea bass recreational permits, respectively. Most firms are likely to hold permits for more than one of these species, and a more accurate estimate of the total number of commercial vessels impacted is 1,022, the number of vessels that landed one or more of these species in 1996. All these vessels readily fall within the definition of small business, so according to guidelines on regulatory analysis of fishery management actions, a substantial number of small entities are affected to some extent by this action. Of these 1,022 vessels, 140 (13%) would be estimated to have a greater than a 5 percent revenue loss.

NMFS Regulatory Flexibility Act guidelines establish 20 percent of small entities being impacted in a significant manner by a particular regulatory action as constituting a substantial number of small entities. This action does not meet that threshold.

These three fisheries have been under management for several years, and while existing requirements are modified by this action, there are no new compliance requirements. Therefore, the action does not result in an increase in compliance costs of > 10 percent for 20 percent or more of the participants. Since the most severe cumulative impact projected for this action is a 30–35 percent reduction in revenue for 7 vessels (<1 percent of participants), the action would not result in 2 percent of the entities ceasing operations.

The IRFA indicates that, while small entities may be impacted by this action in a significant manner, the proposed regulatory action will not result in significant economic impacts upon a substantial number of such entities. However, we recognize that the number of small entities that would be significantly impacted is a large, though not substantial, number. This fact led the agency to prepare an IRFA though none was required.

These measures are proposed in order to attain the rebuilding objectives specified in the FMP for summer flounder, scup and black sea bass. The negative economic impacts upon small entities in the immediate future will be offset by the future increases in harvest and associated revenues anticipated from eliminating overfishing and rebuilding a healthy stock.

The Council considered several alternatives to each of these proposed measures. These alternatives to the proposed rule were ultimately rejected by the Council since those measures which significantly miminized economic impact on small entities did not accomplish the rebuilding objectives of the FMP for each species, and those that did accomplish those objectives did not minimize impacts on small entities. The Council adopted the measures proposed here as those measures which achieved a balance for both. A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (u)(1) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

* * * * *

3. In § 648.143, the first sentence of paragraph (a) is revised to read as follows:

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) which fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border.

* * *

* * * * *

4. In § 648.144, paragraph (a)(1)(i) is revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * * (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0-inches (10.2-cm) diamond or 3.5-inches (8.9-cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

* * * * *

[FR Doc. 97–27821 Filed 10–16–97; 1:12 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Commonality of the Chemistries Involved in Moisture, Biological, Ultraviolet, and Thermal Degradations of Wood; Notice of Intent To Enter Into Cooperative Research and Development Agreements

Program Description—Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to enter into Cooperative Research and Development Agreements (CRADAs) dedicated to understanding the commonality of the chemistries involved in moisture, biological, ultraviolet, and thermal degradations of wood, and developing basic approaches to protecting wood from degradation without loss of other basic properties, under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be a Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the current status of preventing wood degradation is as follows:

(a) Wood is a three-dimensional, polymeric composite made up primarily of cellulose, hemicelluloses, and lignin. These polymers, along with extractives and inorganics, and the matrix they are in, make up the cell wall and are responsible for the characteristics, properties and performance of wood.

When considering wood as a long term engineering material it must be remembered that wood is a hygroscopic resource that was designed to perform, in nature, in a wet environment and that nature is programmed to recycle wood in a timely way through biological, thermal, aqueous, photochemical, chemical, and mechanical degradations.

There are four basic chemical reactions involved in all the degradation reactions of wood: oxidation, hydrolysis, reduction, and dehydration. Because of the similarities in degradation chemistry, all these degradation reactions will be studied together.

Cell wall polymers and responsible for the properties of wood. Wood changes dimension with changing moisture content because the cell wall polymers contain hydroxyl and other oxygen-containing groups that attract moisture through hydrogen bonding. The hemicelluloses are mainly responsible for moisture sorption, but the accessible cellulose, noncrystalline cellulose, lignin, and surface of crystalline cellulose also play minor parts to major roles. Moisture swells the cell wall and the wood expands until the cell wall is saturated with water (fiber saturation point (FSP)). Beyond this saturation point, moisture exists as free water in the void structure and does not contribute to further expansion. The process is reversible and the wood shrinks as it loses moisture below the FSP.

Wood exposed to moisture frequently is not at equilibrium and has wet areas and drier areas. This exacerbates the moisture problem resulting in differential swelling followed by cracking and/or compression set. Over the long term, wood undergoes cyclic swelling and shrinking as moisture levels change resulting in more severe moisture effects than those encountered under steady moisture conditions.

Wood is degraded biologically because organisms recognize the carbohydrate polymers (mainly the hemicelluloses) in the cell wall and have both specific and non-specific chemical and specific enzyme systems capable of hydrolyzing these polymers into digestible units. Biodegradation of both the matrix and the high molecular weight cellulose weakens the fiber cell wall. Strength is lost as the matrix and cellulose polymer undergo degradation through oxidation, hydrolysis, and dehydration reactions. As degradation continues, removal of cell wall content results in weight loss.

Wood exposed outdoors undergoes photochemical degradation caused by ultraviolet radiation. This degradation takes place primarily in the lignin component, which is responsible for the characteristic color changes. The surface becomes richer in cellulose content as the lignin degrades. In comparison to lignin, cellulose is much less susceptible to ultraviolet radiation degradation. After the lignin has been degraded, the poorly bonded carbohydrate-rich fibers erode easily from the surface, which exposes new lignin to further degradative reactions. In time, the "weathering" process causes the surface of the composite to become rough and can account for a significant loss in surface fibers.

Wood burns because the cell wall polymers undergo pyrolysis reactions with increasing temperature to give off volatile, flammable gasses. The hemicelluloses and cellulose polymers are degraded by heat much before the lignin. The lignin and carbohydrate components contribute to char formation, and the charred layer helps insulate the composite from further thermal degradation.

The idea of protecting wood in adverse environments dates back to early human history. Perhaps the earliest reference is in the Old Testament (Genesis 6:14) when God instructed Noah to build an ark of gopher wood (a naturally durable and hard wood) and cover it inside and outside with pitch (for both water repellency and decay protection).

Ancient civilization in Burma, China, Greece, and Italy used various animal, vegetable and mineral oils, tars, pitches or charring to preserve wood. Sometime during the second half of the eighteenth century, the science of wood preservation started with a search for toxic chemicals that could be used to treat wood to stop decay. The time line might include: Mercuric chloride first used in 1705, patented in 1832; copper sulfate first introduced in 1767, patented in 1839; zinc chloride first used in 1815; creosote first used in 1836; copper, chromium and arsenic salts introduced in the early 1900's; and pentachlorophenol first introduced in the 1930's. All of these treatments were based on broad spectra toxicity with little concern for environmental implications.

The earliest references to treating wood for fire retardancy dates back to the first century AD when the Romans used alum and vinegar to protect boats against fire. The science of fire retardancy started in the first half of the nineteenth century. In 1820 Gay-Lussac used ammonium phosphates and borax as fire retardants. Most of the inorganic fire retardants used today were developed between 1800 and 1870.

Protecting wood from moisture damage also dates back into antiquity. Waxes, oils, resins, paints, and coatings have been used to help exclude moisture since shortly after wood was first used by humans.

Protecting wood from damage caused by weathering also dates from the early use of wood. Stains and coatings have been used to cover wood from the degradation caused both by water and ultraviolet radiation.

The process of protecting wood from one type of degradation can cause another type of degradation to take place. For example, in fire retardant formulations involving free phosphoric acid, treated wood has been shown to lose strength. While the wood is very effectively treated for fire retardancy, service life is shortened by the loss in strength. Similarly, wood decking treated with chromated-copper-arsenate (CCA), while having excellent anti-fungal properties, is being replaced after a few years due to cracking and splitting caused by moisture damage.

Since there are only four basic chemistries involved in the degradation mechanisms of wood (hydrolysis, oxidation, dehydration, and reduction), there are many similarities in the degradation pathways regardless of the source of the degradation. Through a better understanding of these common degradation chemistries, it should be possible to protect wood in a more holistic way. That is, controlling one degradation chemistry can lead to the protection of another degradation mechanism. This leads to the idea of combined treatments to control several degradation pathways.

The Forest Products Laboratory is requesting support for this project. The support is in the form of funding in the amount of $15,000.00 per year for the two-year proposed duration of the study.

An informational and organizational meeting of the Consortium will be held beginning November 18, 1997, 1:00 P.M. and ending November 19, 1997, at 12:00 Noon, at the USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

Technical questions may be directed to Roger M. Rowell at the above address, by fax at (608) 231–9262, or by phone at (608) 231–9416.

Questions of a business or legal nature may be directed to John G. Bachhuber at the above address, by fax at (608) 231–9585, or by phone at (608) 231–9282.

A copy of the proposed Cooperative Research and Development Agreement to be executed by consortium members may be obtained by writing Joanne M. Bosch at the above address, by faxing her at (608) 231–9585, or by phoning her at (608) 231–9205.

Done at Madison, WI, on October 10, 1997.

Thomas E. Hamilton,

Director.

[FR Doc. 97–27849 Filed 10–17–97; 8:45 am]

BILLING CODE 3410–11–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 52325.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, October 23, 1997.

CHANGES IN THE DATE: The Commodity Futures Trading Commission has cancelled the meeting to discuss program objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27802 Filed 10–16–97; 1:43 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 28, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27803 Filed 10–16–97; 1:13 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 21, 1997.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27804 Filed 10–16–97; 1:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 14, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27805 Filed 10–16–97; 1:45 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 7, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27806 Filed 10–16–97; 1:36 pm]

BILLING CODE 6351–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Monday, November 24, 1997.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27807 Filed 10–16–97; 1:18 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, November 17, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27808 Filed 10–16–97; 1:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, November 3, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27809 Filed 10–16–97; 1:37 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, November 10, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–27810 Filed 10–16–97; 12:32 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Advanced Research Projects Agency.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Advanced Research Projects Agency (DARPA) announces the proposed review of the Technology Reinvestment Project (TRP) and seeks public comment on the information collection and provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 1997.

ADDRESSES: Written comment and recommendations on the proposed information collection should be sent to: Mr. John D. Jennings, DARPA/JDUPO, 3803 N. Fairfax Dr., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mr. John D. Jennings (DARPA/JDUPO) at 703–526–1930.

Title; Associated Forms; and OMB Number: TRP Review Project, No form number.

Needs and Uses: The TRP is no longer receiving Federal funding, but new initiatives have begun to broaden and normalize the application of dual-use technologies and products. As part of its support of these initiatives, DARPA is sponsoring this review project to quantitatively express the status and performance of the TRP projects and to document lessons learned. This review will also provide an opportunity to present TRP products and technologies to the Services for adoption. The information collected will be used by DARPA's Joint Dual Use Program Office (JDUPO) and the Office of the Secretary of Defense (OSD) to define and document the status of each TRP project and to derive performance metrics suitable for the Government Performance Results Act (GPRA).

TRP project successes and failures and lessons learned from the TRP will be compiled from the information gathered as well as materials for education and training. Because the TRP projects are nearing completion, this data must be collected now or it will become nearly impossible to track down. If that happens, the opportunity will be lost to assess the benefits of the TRP and to learn lessons that will help to expand dual-use and embed it into the Military Services. It is also a last chance to develop quantitative assessment data for GPRA.

Affected Public: Business or other for profit; not-for-profit.

Annual Burden Hours: 280.

Number of Respondents: 140.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion, generally only one time.

SUPPLEMENTARY INFORMATION: Several steps are being taken to minimize the burden of this data collection on participating businesses. Duplication will be avoided by carefully formulating the questions which must be asked, and by designating a Review Team which will conduct the review consistently, while sharing resulting insights as they emerge. In addition, whenever possible, data collection will be combined with regularly scheduled project review meetings. While industry will receive the questions early, the data will generally be developed with a Review Team member. Government program managers and agents will be consulted for data prior to interviewing industrial participants in order to further reduce the latter's time expenditure. For example, DARPA personnel in the JDUPO have been consulted as to the availability of material. Their files have been used to minimize further collection. In addition, Service, Department of Transportation (DOT), Department of Energy (DOE), National Science Foundation (NSF), and other agencies involved have been contacted and consulted. Further, this review will be conducted only once (as opposed to yearly) although a follow-up will be made on each unfinished project in order to update the data.

There is no need for respondents to make any capital expenditures to support this effort. The average time required of the respondents is estimated at two hours. (Since most of the questions have already been addressed as part of normal business practices, little preparation is usually needed).

Dated: October 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–27642 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulations Supplement Part 243, Contract Modifications, and Associated Clauses at 252.243; No Forms; OMB Number 0704–0397.

Type of Request: Extension.

Number of Respondents: 575.

Responses Per Respondent: 1.

Annual Responses: 575.

Average Burden Per Response: 6.7 hours.

Annual Burden Hours: 3,850.

Needs and Uses: The information collection required by the clause at 252.243–7002, Certification of Requests for Equitable Adjustment, is required by 10 U.S.C. 2410(a). The information is used by DoD contracting officers and auditors to evaluate requests for equitable adjustment. The clause at DFARS 252.243–7002 requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete, and to provide full disclosure of all relevant facts in support of the requested adjustment.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DOIR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 14, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–27640 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–10, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: October 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON DC 20301-2800

2 OCT 1997

In reply refer to:
I-50006/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-10, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $105 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 68 million
Other	$ 37 million
TOTAL	$ 105 million

(iii) Description of Articles or Services Offered:
Two MK-41 Vertical Launch Systems (VLS), two MK-48 Guided Missile Vertical Launch Systems (GMVLS), two MK-36 Decoy Launching Systems, systems engineering and testing services, U.S. Government and contractor engineering and logistics services, spare and repair parts, personnel training and training equipment, support equipment, publications and technical documentation, system software support and other related elements of logistics support.

(iv) Military Department: Navy (LQV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 2 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - Vertical Launch System

The Government of Japan has requested a possible sale of two MK-41 Vertical Launch Systems (VLS), two MK-48 Guided Missile Vertical Launch Systems (GMVLS), two MK-36 Decoy Launching Systems, systems engineering and testing services, U.S. Government and contractor engineering and logistics services, spare and repair parts, personnel training and training equipment, support equipment, publications and technical documentation, system software support and other related elements of logistics support. The estimated cost is $105 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an allied country which has been and continues to be an important force for political stability and economic progress in Asia.

Japan will use these weapon systems and equipment to outfit naval vessels under construction, to augment its current missile weapon system inventories and to provide an air defense capability for operational naval vessels. Japan currently operates these naval weapon systems and equipment and therefore will have no difficulty absorbing this additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin Aerospace and Naval Systems, Baltimore, Maryland and Raytheon Company, Wayland, Massachusetts. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government personnel or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Classified Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Vertical Launch System equipment, technical data, training, services, and documentation are not sensitive and are Unclassified. Computer Operational tapes/programs are Confidential.

2. The Guided Missile Vertical Launch System equipment, technical data, training, services and documentation are not sensitive and are Unclassified. Computer operational tapes/program are Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements of the aforementioned systems, the information could be used to develop countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97-27646 Filed 10-17-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services Fiscal Year 1998

ACTION: Notice.

SUMMARY: Notice is hereby given that the Deputy Chief Financial Officer in a memorandum dated September 26, 1997 established the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 1998. These rates are effective October 1, 1997.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient rates [1 2]

Per inpatient day	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
A. Burn Center	$2,618.00	$4,754.00	$5,079.00
B. Surgical Care Services (Cosmetic Surgery)	955.00	1,733.00	1,852.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3])			

1. FY98 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (Full/Third party)
Large Urban	$2,199.00	$4,131.00	$4,372.00
Other Urban/Rural	2,194.00	4,215.00	4,499.00
Overseas	2,450.00	5,614.00	5,960.00

2. Overview

The FY98 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the nonteaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.9769. (DRG statistics shown are from FY 1996).

c. The DoD adjusted standardized amount to be charged is $4,372 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor (2.9769) in 3.b., above, multiplied by the amount ($4,372) in 3.c., above.

e. Cost to be recovered is $13,015.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.9769	11.2	7.8	1	30

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Nonteaching Hospital	Large Urban	1.0	1.0	$4,372.00	$4,372.00

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.9769	0.0000	2.9769	$13,015

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#2	21 days	0	2.9769	0.0000	2.9769	13,015
#3	35 days	5	2.9769	0.6297	3.6066	15,768

*DRG Weight
**Outlier calculation = 33 percent of per diem weight × number of outlier days
= .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold)
= .33 (2.9769/7.8) × (35–30)
= .33 (.38165) × 5 (take out to five decimal places)
= .12594 × 5 (take out to five decimal places)
= .6297 (take out to four decimal places)
***Applied ASA × Total RWP

II. Outpatient Rates [1 2] Per Visit

MEPRS code [4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	A. Medical Care			
BAA	Internal Medicine	$105.00	$195.00	$208.00
BAB	Allergy	39.00	73.00	78.00
BAC	Cardiology	81.00	150.00	160.00
BAE	Diabetic	44.00	82.00	87.00
BAF	Endocrinology (Metabolism)	85.00	158.00	168.00
BAG	Gastroenterology	110.00	203.00	216.00
BAH	Hematology	145.00	269.00	287.00
BAI	Hypertension	81.00	149.00	159.00
BAJ	Nephrology	171.00	317.00	338.00
BAK	Neurology	109.00	202.00	215.00
BAL	Outpatient Nutrition	34.00	63.00	67.00
BAM	Oncology	114.00	211.00	225.00
BAN	Pulmonary Disease	141.00	260.00	278.00
BAO	Rheumatology	84.00	156.00	166.00
BAP	Dermatology	63.00	117.00	124.00
BAQ	Infectious Disease	141.00	260.00	278.00
BAR	Physical Medicine	78.00	145.00	155.00
BAS	Radiation Therapy	72.00	132.00	141.00
BAZ	Medical Care Not Elsewhere Classified (NEC)	84.00	156.00	166.00
	B. Surgical Care			
BBA	General Surgery	119.00	220.00	235.00
BBB	Cardiovascular and Thoracic Surgery	110.00	203.00	216.00
BBC	Neurosurgery	137.00	253.00	270.00
BBD	Ophthalmology	84.00	155.00	166.00
BBE	Organ Transplant	191.00	353.00	376.00
BBF	Otolaryngology	88.00	162.00	173.00
BBG	Plastic Surgery	100.00	184.00	196.00
BBH	Proctology	67.00	124.00	132.00
BBI	Urology	101.00	187.00	199.00
BBJ	Pediatric Surgery	89.00	164.00	175.00
BBZ	Surgical Care NEC	65.00	120.00	127.00
	C. Obstetrical and Gynecological (OB-GYN) Care			
BCA	Family Planning	45.00	83.00	89.00
BCB	Gynecology	74.00	136.00	146.00
BCC	Obstetrics	68.00	126.00	135.00
BCZ	OB-GYN Care NEC	112.00	207.00	221.00
	D. Pediatric Care			
BDA	Pediatric	54.00	100.00	106.00
BDB	Adolescent	55.00	101.00	108.00
BDC	Well Baby	36.00	66.00	70.00
BDZ	Pediatric Care NEC	64.00	119.00	126.00
	E. Orthopaedic Care			
BEA	Orthopaedic	83.00	153.00	164.00
BEB	Cast	45.00	82.00	88.00
BEC	Hand Surgery	38.00	70.00	75.00

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
BEE	Orthotic Laboratory	59.00	110.00	117.00
BEF	Podiatry	49.00	91.00	97.00
BEZ	Chiropractic	21.00	38.00	40.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	97.00	179.00	191.00
BFB	Psychology	71.00	132.00	141.00
BFC	Child Guidance	59.00	109.00	117.00
BFD	Mental Health	80.00	147.00	157.00
BFE	Social Work	80.00	149.00	159.00
BFF	Substance Abuse	62.00	115.00	123.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	67.00	124.00	132.00
BHA	Primary Care	64.00	118.00	126.00
BHB	Medical Examination	59.00	109.00	117.00
BHC	Optometry	42.00	77.00	82.00
BHD	Audiology	30.00	55.00	58.00
BHE	Speech Pathology	81.00	149.00	159.00
BHF	Community Health	41.00	75.00	80.00
BHG	Occupational Health	59.00	108.00	115.00
BHH	TRICARE Outpatient	42.00	78.00	83.00
BHI	Immediate Care	82.00	152.00	162.00
BHZ	Primary Care NEC	43.00	79.00	84.00
	H. Emergency Medical Care			
BIA	Emergency Medical	107.00	198.00	211.00
	I. Flight Medical Care			
BJA	Flight Medicine	85.00	157.00	167.00
	J. Undersea Medical Care			
BKA	Undersea Medicine	32.00	58.00	62.00
	K. Rehabilitative Services			
BLA	Physical Therapy	29.00	54.00	57.00
BLB	Occupational Therapy	53.00	98.00	104.00

III. Other Rates and Charges[1 2] Per Visit

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
FBI	A. Immunization	$10.00	$19.00	$20.00
DGC	B. Hyperbaric Chamber[5]	180.00	333.00	355.00
	C. Ambulatory Procedure Visit (APV).[6]	376.00	691.00	737.00
	D. Family Member Rate (formerly Military Dependents Rate)	10.20		

E. Reimbursement Rates For Drugs Requested By Outside Providers[7]

The FY 1998 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided. Final rule of 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs), LTC Michael Montgomery, 703–681–8910.

F. Reimbursement Rates for Ancillary Services Requested By Outside Providers[6]

Final rule of 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The list of FY 1998 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD (Health Affairs) LTC Michael Montgomery, 703–681–8910.

G. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International Classification Diseases (ICD–9)	Current Procedural Terminology (CPT)[9]	FY 1998 charge[10]	Amount of charge
Mammaplasty	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Lipectomy suction per region.[11]	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Scar Revisions beyond CHAMPUS.	86.84	1578_	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Minor Skin Lesions.[12]	86.30	1578_	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Arm/Thigh Dermolipectomy.	86.83	1583_	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	abc

H. Dental Rate[13] Per Procedure

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	Dental Services ADA code and DoD established weight.	$35.00	$101.00	$106.00

I. Ambulance Rate[14] Per Visit

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
FEA	Ambulance	$32.00	$60.00	$64.00

J. Laboratory and Radiology Services Requested by an Outside Provider[8] Per Procedure

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	Laboratory procedures requested by an outside provider CPT–4 Weight Multiplier.	$9.00	$13.00	$14.00

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	Radiology procedures requested by an outside provider CPT–4 Weight Multiplier.	23.00	35.00	37.00

K. AirEvac Rate[15] Per Visit

MEPRS code[4]	Clinical service	International Military Education & Training (IMET)	Interagency and other Federal agency sponsored patients	Other (Full/Third party)
	AirEvac Services—Ambulatory	$113.00	$209.00	$223.00
	AirEvac Services—Litter	323.00	598.00	638.00

Notes on Cosmetic Surgery Charges:

[a] Per diem charges for inpatient surgical care services are listed in Section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in Section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in Sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates:

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional charges. The outpatient per visit percentages are 88 percent outpatient services and 12 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

	MEPRS code
Outpatient Care (Functional Category)	B
Medical Care (Summary Account)	BA
Internal Medicine (Subaccount)	BAA

[5] Hyperbaric services charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). Care is required in the facility for less than 24 hours. This rate is also used for elective cosmetic surgery performed in an APU.

[7] Prescription services requested by outside providers (e.g., physicians or dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (e.g., tablets or capsules) by the unit cost and adding a $5.00 dispensing fee per prescription. The final rule at 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the dollar threshold for high cost ancillary services (by changing the threshold from $25 to $0) and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold also eliminates the bundling of costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[8] Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF that are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated using the Physicians' Current Procedural Terminology (CPT)–4 Report weight multiplied by either the laboratory or radiology multiplier (Section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for services. The final rule at 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the dollar threshold for high cost ancillary services (by changing the threshold from $25 to $0) and the associated term "high cost ancillary service." In anticipation of that change, the phrase "high cost ancillary service" has been replaced with the phrase "ancillary services requested by an outside provider." The elimination of the threshold also eliminates the bundling of costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[9] The attending physician is to complete the CPT–4 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: Ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III.G. The patient shall be charged the rate as specified in the FY 1998 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient per diem surgical care services in Section I.B., ambulatory procedure visits as contained in Section III.C, or the appropriate outpatient clinic rate in Sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (NOTE: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges shall be for the entire treatment, regardless of the number of visits required.

[13] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[14] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[15] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC).

Dated: October 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR No. 97–27647 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Task Force on Defense Reform

AGENCY: Department of Defense, Task Force on Defense Reform.

ACTION: Notice.

SUMMARY: The Task Force on Defense Reform will meet in closed sessions on November 4, 6, 13, 18, 20, and 25, 1997.

The Task Force on Defense Reform was established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in the Department of Defense (DoD), with emphasis on the Office of the Secretary of Defense, the Defense Agencies, the DoD field activities, and the Military Departments.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended, 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meetings, and that, accordingly, these meetings will be closed to the public.

Dated: October 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27645 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Aerial Targets, UAVs, and Ranges Symposium in support of the HQ USAF Scientific Advisory Board will meet in Las Vegas, NV on November 12–13, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings on Aerial Targets, UAVs, and Ranges.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–27681 Filed 10–17–97; 8:45 am]

BILLING CODE 3910–01–U

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date And Time: Friday, November 14, 1997, 8:30 am.

Place: Hyatt Regency, Westshore, 6200 Courtney Campbell Causeway, Tampa, FL.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to order and opening remarks by Clifford Miercort, Chairman of the National Coal Council.
—Approve agenda.
—Remarks by Department of Energy representative.
—Report of the Coal Policy Committee.
—Administrative reports.
—Coal's Future—Technological Challenges and Opportunities, Kurt Yeager, President & CEO Electric Power Research Institute.
—Global Climate Change Forum.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 15, 1997.

Rachel M. Samuel,

Deputy Committee Advisory, Management Advisory Officer.

[FR Doc. 97–27719 Filed 10–17–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. ETEC–T030]

Certification of the Radiological Condition of Building T030 at the Energy Technology Engineering Center Near Chatsworth, CA

AGENCY: U.S. Department of Energy, Office of Environmental Restoration.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate Building T030, Particle Accelerator Facility, located at the Energy Technology Engineering Center (ETEC) near Chatsworth, California. This property was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment, a subsidiary of Boeing North American Incorporated, Rocketdyne Division, owned the land.

FOR FURTHER INFORMATION CONTACT: Mike Lopez, Program Manager, Environmental Restoration Division, Oakland Operations Office, U.S. Department of Energy, Oakland, CA 94612–5208.

SUPPLEMENTARY INFORMATION: DOE has implemented environmental restoration projects at ETEC (Ventura County, Map Book 3, Page 7, Miscellaneous Records) as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC/ERDA during the early years of the Nation's atomic energy program.

ETEC is comprised of a number of facilities and structures located within Administrative Area IV of the Santa Susana Field Laboratory. The work performed for DOE at ETEC consisted primarily of testing of equipment, materials, and components for nuclear and energy related programs. These nuclear energy research and development programs, conducted by Atomics International under contract to AEC/ERDA, began in 1946. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. Building T030 is one ETEC area that has been designated for cleanup under the DOE Environmental Restoration Program. Other areas undergoing decontamination will be released as they are completed and are verified to meet established cleanup criteria and standards for release without radiological restrictions as established in DOE Order 5400.5.

Building T030 is located in the northeastern section of ETEC on 10th Street, off the west side of G Street, among several adjacent buildings on paved ground. Building T030 was constructed in 1958 as a Particle Accelerator Facility. The building has a total enclosed area of 2,311 sq. ft. The facility consists of two connecting sections, both with steel framing, siding, and roofs. The rear open (west) section was constructed perpendicular to the front office (east) section. The rear section was configured to accommodate a low-voltage particle accelerator used as a proton on tritium (P-T) neutron source. An outside concrete wall, north of the west section, provided shielding for the accelerator beam. Men's and women's restrooms were built into the facility so that the facility provided a complete self-contained accelerator test installation. A fenced-in area between Buildings T030 and the adjacent building T641 was previously used as a palletized material holding area. To the north of T030, south of T641, and west of both buildings are outcroppings of Chatsworth sandstone formation. This formation is only about 50 ft. from the north and west sides of T030.

After facility construction in 1958, a Van de Graaf accelerator was moved into the facility in 1960. The accelerator could provide a proton beam of up to tens of microamperes in current, with continuously adjustable energies from a few hundred KeV up to a maximum of about 1 MeV. The particle beam was well focused, with a diameter of a few millimeters. Neutrons were generated using a tritium target via the $^3H(p,n)^3He$ reaction. Five-gallon cans of borated water were used for neutron shielding around the machine.

The accelerator was operated from 1960 through 1964, at which time the facility was decommissioned. Even though it was not in use, the accelerator remained in the facility after 1964. In 1966, a smear survey of the accelerator showed tritium contamination. It was believed that the tritium contamination had not spread to surrounding areas. Following removal of the accelerator in 1966, the building was surveyed and no residual contamination was found. The building was released for other uses, and had subsequently been used as an office building for purchasing and on-site traffic administrative work until 1995.

In 1988, a general radiological survey was conducted to clarify and identify areas at ETEC requiring further radiological inspection or remediation; Building T030 was included in this survey. The scope of the Building T030 survey included ambient gamma exposure rate measurements, "indication" beta surveys of the accelerator room and the outside paved area used for storing palletized containers, and exterior soil samples for tritium content. The result of that survey showed no detectable contamination in the facility. Tritium analyses on ten soil samples and the beta survey showed no detectable activity. Background-corrected gamma measurements were all less than the acceptance limit of 5 μR/hr.

In September 1995, the Oak Ridge Institute for Science and Education (ORISE) conducted a confirmatory survey of several facilities at ETEC, including Building T030. With the exception of a single finding for removable tritium contamination of 6,600 dpm/100 cm² (below the acceptance limit of 10,000 dpm/100 cm2) found on the north wall of the accelerator room, no unusual findings were noted. However, ORISE did question the completeness of the 1988 survey. Specifically, ORISE recommended complete measurements of total or removable surface activity and additional sampling for tritium activity in the accelerator area. Consistent with ORISE's advice, a comprehensive final survey of Building T030 was conducted by ETEC in 1996.

In 1996 approximately 2,311 sq. ft. of asbestos floor tile was removed and disposed of. The cost associated with the removal of the asbestos floor tile was approximately $9,200. The radiological survey cost associated with Building T030 could not be isolated from total radiological facility surveys but is estimated to have cost approximately $20,000.

No appreciable personnel radiation exposure was anticipated or encountered during decontamination and decommissioning and surveying of Building T030.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. Department of Energy, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; California State University, Northridge, Urban Archives Center, Oviatt Library, Room 4, 18111 Nordhoff, Northridge, California; Simi Valley Library, 2629 Tapo Canyon Road, Simi Valley, California; and the Platt Branch, Los Angeles Public Library, 23600 Victory Boulevard, Woodland Hills, California.

DOE has issued the following statement of certification.

Statement of Certification: Energy Technology Engineering Center, Building T030

The U.S. Department of Energy (DOE), Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of Building T030 at the Energy Technology Engineering Center. Based on analysis of all data collected and the results of the independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property Owned by Boeing North American Incorporated

Building T030 at the Energy Technology Engineering Center (situated within Area IV of the Santa Susana Field Laboratory), located in a portion of Tract "A" of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Issued in Washington, D.C., on October 10, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 97–27720 Filed 10–17–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed extension to the Form EIA–1605, "Voluntary Reporting of Greenhouse Gases," (long version) and the Form EIA–1605EZ, "Voluntary Reporting of Greenhouse Gases," (short version).

DATES: Written comments must be submitted on or before December 19, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Stephen E. Calopedis, Energy Information Administration, Office of Integrated Analysis and Forecasting, EI–81, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–1156, e-mail: stephen.calopedis@eia.doe.gov, and FAX: (202) 586–3045.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stephen E. Calopedis at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

The EIA developed these greenhouse gas forms pursuant to section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) to reflect the guidelines set forth in Voluntary Reporting of Greenhouse Gases under section 1605(b) of the Energy Policy Act of 1992: General Guidelines (DOE/PO–0028). These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation. Further, the forms support the Climate Change Action Plan by collecting information on commitments to reduce greenhouse gas emissions and to sequester carbon in

future years, including the progress made toward meeting those commitments. The Office of Management and Budget approved these forms on May 26, 1995 (OMB No. 1905–0194).

You may wish to participate in the program to: (1) Establish a public record of your emissions and reductions for any years from 1987 onwards; (2) demonstrate progress toward meeting commitments made under voluntary programs to reduce emissions of greenhouse gases; (3) inform the public about greenhouse gas emissions and reduction strategies; and (4) contribute to educational exchanges on the most effective ways to reduce emissions of greenhouse gases. The EIA publishes an annual report/review of the 1605(b) voluntary reporting of greenhouse gases program. In addition, EIA has established a publicly available database of the information reported each year, which serves as a clearinghouse of information and case studies.

II. Current Actions

This action represents a request for the extension of the expiration date with no other changes, of existing collections (Form EIA–1605 and Form EIA–1605EZ). The request will include an extension from the currently approved OMB expiration dates (May 31, 1998) to May 31, 2001, i.e., 3-year extension of the Forms EIA–1605 and EIA–1605EZ.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for this collection is estimated to average:
Form EIA–1605: 40 hours per response
Form EIA–1605EZ: 4 hours per response
Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the request for a 3-year extension of the forms. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, October 17, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–27718 Filed 10–17–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–12–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

October 14, 1997.

Take notice that on October 9, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–12–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale certain facilities to Peoples Gas System (PGS), under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon by sale to PGS the following facilities: (1) 1.7 miles of the 6-inch Miami Lateral from the outlet of M&R Station-POI No. 16119 to the terminus, (2) 6.1 miles of 4-inch Green Covet Springs Lateral and meter station site starting from the connection on the Jacksonville Lateral to the terminus of the Lateral, (3) the Sarasota PGS Lateral that consists of 5.7 miles of the 8-inch Sarasota lateral downstream or South of FGT's Lateral Line Valve 25–6 through and including LLV25–7 at the terminus of the 8-inch lateral, and the 633 feet of 3-inch lateral line from the 8-inch Sarasota Lateral at MP 90.3 to the Sarasota M&R Station, and (4) the Sarasota M&R Station, (with the exception of the EFM equipment that will be removed and placed in FGT's inventory for future use).

FGT states that the abandonment will not result in any disruption or disadvantage any of FGT's customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27662 Filed 10–17–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–290–003]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

October 14, 1997.

Take notice that on October 8, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Second Revised Sheet No. 132A.07, Original Sheet No. 132A.07a and Sub Second Revised Sheet No. 132A.08 to be effective April 14, 1997.

CIG states the tariff sheets are filed in compliance with the order issued September 25, 1997 in Docket No. RP97–290–002 to correct pagination errors and a footnote reference. CIG states that it has made no change to the text of the tariff sheets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27665 Filed 10–17–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2375, ME and 8277, ME]

International Paper Company, Otis Hydroelectric Company; Notice of Applications Tendered for Filing; Notice of Applications and Applicant Prepared EA Accepted for Filing; Notice Requesting Interventions and Protests; Notice Establishing Procedural Schedule and Final Amendment Deadline; and Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

October 14, 1997.

International Paper Company and Otis Hydroelectric Company have filed with the Federal Energy Regulatory Commission (Commission) an Applicant Prepared Environmental Assessment (APEA) and License Applications for the Riley-Jay-Livermore Project No. 2375 and the Otis Project No. 8277 located on the Androscoggin River, Maine.

The proposed Riley-Jay-Livermore Project consists of three separate developments. The existing facilities at the Riley Project include: (1) A 19.2 ft-high by 757 ft-long L-shaped dam constructed of rock-filled timber cribbing; (2) two contiguous spillway sections topped with 48 inch-high flash boards; (3) a 7.3 mile-long impoundment with a surface area of 578 acres; (4) a triangular shaped forebay; (5) a powerhouse intake containing six timber gates; (6) a powerhouse containing six identical 1.3 megawatt (MW) generating units with a total rated hydraulic capacity of 5,556 cfs; and (7) a substation connected to a one-mile long, 13.8 kilovolt (kV) transmission line.

The existing facilities at the Jay Project include; (1) An 893 foot-long dam comprised of three non-contiguous sections, two with 32-inch high flashboards; (2) a 150-foot-long by 37 foot wide powerhouse intake containing six timber gates; (3) six identical horizontal shaft turbines with maximum and minimum hydraulic capacities of 550 cubic feet per second (cfs) and 200 cfs, respectively, for a total rated hydraulic capacity of 3,300 cfs; (4) a 1.5 mile-long impoundment with a surface area of 206 acres; (5) a 320 foot-long forebay; (6) a powerhouse containing six generators with a total installed capacity of 3,125 kilowatts (kW); and (7) a substation connected to a 6,000 foot-long, 13.8 kV transmission line.

The existing facilities at the Livermore Project include; (1) An 849 foot-long concrete gravity dam; (2) a 25-foot-long forebay intake structure with 10 steel gates; (3) a 0.75 mile-long impoundment with 46 acres surface area; (4) a powerhouse intake structure containing eight timber gates; (5) a powerhouse containing eight identical turbines with maximum and minimum hydraulic capacities of 432 cfs and 100 cfs, respectively, for a total rated hydraulic capacity of 3,456 cfs; (6) eight generators with an installed capacity of 8,165 kW; and (7) a sub station connected to a 3.2 mile-long, 13.8 kV transmission line.

International Paper proposes the following new facilities at the Livermore Project: (1) Refurbishing three existing generating units; (2) removing two existing generating units from operation; (3) installing two new 4.12 MW horizontal Kaplan units which would discharge into the existing tailrace; (4) installing a 1.32 MW vertical Kaplan unit discharging into the lower portion of the bypass reach; and (5) upgrading 0.8 mile of transmission line between Livermore and Otis Projects to a 13.8 kV overhead line. The proposed Livermore project would have a total of 6 generating units. Total hydraulic capacity would increase from 3,456 cfs to 5,400 cfs. Installed capacity at

Livermore would increase from 7.8 MW to 12.26 MW.

The Otis Project consists of one development. The existing facilities at the Otis Project include: (1) A 577 foot-long concrete gravity dam in two sections, one with 2 foot-high flash boards, and the second with 2.21 foot-high flashboards; (2) an 80-foot-long forebay intake structures with 2 headgates; (3) a 2.5 mile-long impoundment with 115 acres surface area; (4) a powerhouse containing two identical 5,175 kW generating units with a total hydraulic capacities of 6,000 cfs; and (5) a substation connected to a 3.0 mile-long 13.8 kV transmission line.

Purpose of Notice

The purpose of this notice is to: (1) Inform all interested parties that an APEA and final license applications for the Riley-Jay-Livermore Project and Otis Project have been filed with the Commission on September 25, 1997, and are available for the public inspection; (2) inform all parties that the applications and APEA are hereby accepted; (3) invite interventions and protests; (4) solicit comments, final recommendations, terms and conditions, or prescriptions on the final license applications and APEA; and (5) identify an approximate schedule and procedures that will be followed in processing the applications and APEA.

International Paper Company and Otis Hydroelectric Company have used a Collaborative Team approach to prepare the APEA for the Riley-Jay Livermore and Otis Hydroelectric Projects. The Collaborative Team consists of federal, state, and local agencies, non-governmental organizations, and the public. The Collaborative Team has been meeting since September 1994 to guide the study process and prepare the APEA. The Collaborative Team has reached agreement as to the preferred alternative for relicensing these projects. This agreement is reflected in the APEA as the preferred alternative.

Applicant Prepared EA Process and Processing Schedule

The Energy Policy Act of 1992 (EP Act) gives the Commission the authority to allow the filing of an APEA with a license application. The EP Act also directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeable required by the Commission.

On April 27, 1995, the Director, Office of Huydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated processing of the license applications and the APEA. Since then, the Commission has been working cooperatively in advising the Collaborative Team of studies or other information foreseeable required by the Commission.

National Environmental Policy Act (NEPA) scoping was conducted on the projects through scoping documents issued December 8, 1994, and May 12, 1995, and in public scoping meetings on January 10, 1995. Draft license applications and preliminary DEA (PDEA) were issued by the Collaborative Team for comment on March 28, 1997. The final license applications and APEA were filed with the Commission on October 25, 1997. The APEA includes responses to all comments received on the PDEA.

Commission staff have reviewed the APEA and license applications and have determined that the applications are acceptable and no additional information or studies are needed to prepare the Commission's draft EA. The deadline for applicants filing any final amendments to the application is 45 days from the date of this notice. Comments, as indicated below, are now being requested from interested parties. Any comments received will be addressed in the draft EA issued by Commission by late December 1997, or early 1998. There will be a 30-day comment period on the draft EA. A final EA is scheduled for March 30, 1998, or earlier.

Interventions and Protests

All such filings must: (1) Bear in all capital letters the title "MOTION TO INTERVENE", (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protecting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene must be received 60 days from the date of this notice. A copy of any motion to intervene or protest must be served on each applicant.

Comments, Final Terms and Conditions, Recommendations and Prescriptions

Interested parties have 60 days from the date of this notice to file with the Commission, any final comments, final recommendations, terms and conditions and prescriptions for the Riley-Jay-Livermore and Otis Hydroelectric Projects. The applicants will have 45 days to respond. In view of the high level of early involvement of the Collaborative Team, we expect the majority of comments to reflect the agreement and preferred alternative in the DEA.

Copies of the Applications and APEA

A copy of the DEA and final license applications are available for review by contacting Steve W. Groves, International Paper Company, Androscoggin Mill, Riley Road, Jay, Maine 04239, or phone 207–897–1389. Copies of these documents are also available for review in the Commission's Public Reference Room.

Filing Requirements

The above documents *must* be filed by providing an original and 8 copies as required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

In addition to the above copies, comments or interventions may also be submitted on a 3½-inch diskette formatted for MS–DOS based computers to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

Questions regarding this notice may be directed to Commission staff Monte J. TerHaar at 202–219–2768.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–27699 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–446–001]

Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 14, 1997.

Take notice that on October 9, 1997, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the Tariff sheets set forth on Appendix B to the filing in compliance with the Commission's Order Nos. 587, 587–B and 587–C to become effective November 1, 1997.

On July 17, 1996, the Commission issued order No. 587 which revised the Commission's regulations governing interstate natural gas pipelines to follow standardized business practices issued by the Gas Industry Standards Board (GISB). On January 30, 1997, the Commission issued Order No. 587–B which it adopted some of the EDM standards for conducting business transactions over the Internet using an Internet server model. On March 4, 1997, the Commission issued Order No. 587–C which incorporated by reference 27 GISB business practices that revised and supplemented the standards adopted in Order No. 587 as well as one new communication standard. Nautilus states that the tariff sheets submitted herewith revise its tariff to comply with Order Nos. 587, 587–B and 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27666 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–311–000 and CP96–311–001]

Williams Natural Gas Company; Notice of Meeting

October 14, 1997.

Take notice that there will be a meeting on October 22, 1997, at 10:00 a.m. in Room 71–56, between representatives of Williams Natural Gas Company (Williams) and the Commission staff. The purpose of the meeting is to review the technical details of Williams' reservoir engineering study and new operational plan for Williams' Elk City Storage Field, both of which Williams must file with the Commission by November 30, 1997.

In order that we may assess whether the seating at the designated location will be adequate, those planning to attend should notify Mr. Marc Poole, at (200) 208–0482, of the number of representatives that you expect to send to the meeting.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27660 Filed 10–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–724–000]

NorAm Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed 1998 Line F Replacement Project and Request for Comments on Environmental Issues

October 14, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the 1998 Line F Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

NorAm Gas Transmission Company (NGT) wants to replace an existing mainline pipeline, abandon gas storage and supply pipelines, and make mainline enhancements to its pipeline system in Louisiana. NGT states that these actions would improve the safety, reliability, and efficiency of its pipeline system. Specifically, NGT seeks authorization for the following activities in Louisiana:

- Abandon about 60 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, and Lincoln Parishes and replace it with about 61 miles of 20-inch-diameter pipeline in ten segments ranging from 200 feet to 32.8 miles in length. Some portions of the pipeline to be abandoned would be removed, other portions would be left in place.
- Abandon in place Line 1–F (0.8 mile of 20-inch-diameter pipeline) and Line FT–5 (0.9 mile of 10-inch-diameter pipeline) located in Lincoln Parish.
- Reclassify about 8.2 miles of Line F as a low pressure gas supply line and operate it as part of Line F–1–F in Caddo Parish.
- Abandon 63 delivery taps installed on the old Line F to deliver gas to rural customers served by Arkansas Louisiana Gas Company, and relocate 36 other delivery taps to the new Line F.
- Install pipeline maintenance facilities at the Buckley Compressor Station in Caddo Parish, the Red Chute Compressor Station in Bossier Parish, and the Ruston Storage Compressor Station in Lincoln Parish.

NGT proposes to begin construction of its facilities in June 1998. The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 855 acres of land. Following construction, about 249 acres would be maintained as new permanent right-of-way. The remaining acreage would be restored and allowed to revert to its former use.

NGT intends to use a up to a 85-foot-wide construction right-of-way for the installation of the replacement pipeline. Where the replacement pipeline would be parallel to the existing line, 15 to 30 feet of the construction right-of-way would be within NGT's existing right-of-way. Consequently, about 45 feet of new clearing would be required in most areas. All but the eastermost 1.8 miles of the replacement pipeline would be built adjacent to NGT's existing pipeline. In this area, 75 feet of new right-of-way would be cleared for construction.

After the replacement pipeline is in service, NGT would remove the majority of the old pipeline. Abandonment activities would take place entirely within NGT's existing 40-foot-wide right-of-way. Following construction, NGT would maintain a 40-foot-wide permanent right-of-way.

Additional temporary work space would be required adjacent to the planned construction right-of-way at road and stream crossings. These areas would vary in size between 4,000 and 168,000 square feet.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

[1] NorAm Gas Transmission Company's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NGT.

This preliminary list of issues may be changed based on your comments and our analysis.

- The proposed replacement pipeline would cross 68 waterbodies, 13 of which are greater than 100 feet wide.
- The project would disturb about 17 acres of wetland during construction, including 8 acres of forested wetland.
- Eleven residences would be within 50 feet of the edge of the construction right-of-way.
- The pipeline would cross Bayou Dorcheat, a Louisiana Natural and Scenic Waterway, using a directional drilling technique.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP97–724–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before November 17, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27661 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File An Application

October 14, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 309.

c. *Date filed:* October 3, 1997.

d. *Submitted By:* Pennsylvania Electric Company, current licensee.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* On the Clarion River, in the Clarion County, Pennsylvania.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* June 1, 1979.

i. *Expiration date of current license:* October 12, 2002.

j. The project consists of: (1) A 125-foot-high, 700-toot-long concrete gravity arch dam; (2) a 653-acre reservoir; (3) a powerhouse containing three generating units with a total installed capacity of 28,800 kW; (4) a 115-kV and 34.5-kV transmission and distribution facility; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA 15907, (814) 533–8111.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 12, 2000.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27663 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

October 14, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–10768–001.

c. *Date Filed:* August 28, 1997.

d. *Applicant:* City of Portland, Michigan.

e. *Name of Project:* Municipal Hydroelectric Facility.

f. *Location:* On the Grand River in Ionia County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Robert Masselink, P.E. or Glen Hendrix, Earth Tech, Inc., 5555 Glenwood Hills Parkway, Grand Rapids, MI 49588, (616) 942–9600.

i. *FERC Contact:* William Diehl, P.E. (202) 219–2813.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The constructed project consists of the Portland Municipal Dam, a reservoir of about 625 acre-feet on the Grand River, and a forebay and powerhouse complex located at the south end of the dam. The powerhouse is equipped with two turbine-generator units having a total installed capacity of 375 kW.

1. With this notice, we are initiating consultation with the MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27664 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5910–6]

Agency Announcement of Information Collection Activities: 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the United States Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01). This industry includes cokemaking, sintering, ironmaking, steelmaking, ladle metallurgy, vacuum degassing, casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning, hot coating, and electroplating. Before submitting an Information Collection Request (ICR) to OMB for review and approval, EPA is soliciting comments from the public on specific aspects of the proposed information collection survey instrument as described below.

DATES: Comments must be received by EPA no later than December 19, 1997.

ADDRESSES: The public may contact Mr. George Jett at the EPA for a paper copy of the draft survey instrument or may download the draft survey instrument from the Internet at: http://www.epa.gov/ost/Events/index.html#ann. Mr. Jett may be reached by mail at the U.S. EPA, Engineering and Analysis Division (Mail Code 4303), 401 M Street SW., Washington, DC 20460; or by telephone at (202) 260–7151 or FAX at 202–260–7185. The draft survey instrument includes all pertinent instructions, information request questions, and definitions.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities affected by the proposed survey include facilities that manufacture iron and steel included in the following manufacturing operations: cokemaking, sintering, ironmaking, steelmaking, ladle metallurgy, vacuum degassing, casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning, hot coating, and electroplating. The survey is intended to identify and collect data from iron and steel industrial sites that generate and discharge process wastewater from all manufacturing processes associated with potential water-using industrial activities.

Title: 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01).

Abstract: The survey is intended to collect technical (Part A) and economic (Part B) information required by EPA in order to develop revised effluent limitations guidelines for the iron and steel manufacturing point source category as described above. EPA is required by section 304 (m) of the Clean Water Act of 1987 (33 U.S.C. 1314 [m]) to review effluent limitations guidelines and standards periodically to determine whether the current regulations remain appropriate in light of changes in the industrial category caused by advances in manufacturing technologies, in-process pollution prevention, or end-of-pipe wastewater treatment. EPA is also required by the terms of a Consent Decree with the Natural Resources Defense Council, Inc. (NRDC), to develop revised effluent limitations guidelines and standards for the Iron & Steel industry (D.D.C. Civ. No. 89–2980, January 31, 1992, as modified). This survey is being conducted pursuant to those legislative and judicial requirements.

This survey instrument will be issued under authority of section 308 of the Clean Water Act of 1987 (Federal Water Pollution Control Act, 5 U.S.C. 1318), and responses from data collection survey instrument recipients are mandatory. The survey instruments will be mailed to respondents after OMB approves the ICR. The ICR that will be submitted by EPA to OMB will include discussion of the comments received in response to today's announcement. The proposed survey instrument is a necessary part of the data collection portion of the effluent limitations guidelines development process. The proposed survey instrument will provide EPA with the technical and economic data required to evaluate effective pollution control technologies and the economic achievability of any final rule that the Agency issues. EPA will consider both technical performance and economic achievability when making final decisions on 40 CFR part 420.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The proposed survey instrument was developed in such a manner as to reduce burden and improve clarity. EPA has conducted several outreach meetings through project status briefings with the major industry trade associations. Additionally, the survey instrument was distributed in advance of this notice to the following industry trade associations: American Iron and Steel Institute, Steel Manufacturers Association, Specialty Steel Industry of North America, the Cold Finished Steel Bar Institute, The Wire Association International, Incorporated, the Steel Tube Institute of North America, and the American Galvanizers Association, Incorporated.

Because of the complexity of the industry and the substantial changes in the iron and steel industry since part 420 was promulgated (47 FR 23284, May 27, 1982), EPA has decided to prepare a detailed survey instrument to characterize accurately current conditions in the iron and steel industry as a basis for establishing equitable regulations. The September 1995 "Preliminary Study of the Iron and Steel Category, 40 CFR part 420 Effluent Limitations Guidelines and Standards" (EPA 821–R–95–037), provides the basis for reassessing the existing regulations. This document is available through the National Technical Information Services under document number PB 96–126–156.

EPA typically develops and distributes a screener questionnaire in order to better define the target population for a regulation. The screener allows the agency to eliminate facilities from consideration which are not anticipated to fit under the scope of the regulation. However, for the iron and steel industry, a number of factors make this additional step unnecessary. These factors include the existence of well organized trade associations, facility lists from a variety of data sources, and past agency experience. EPA believes that the target population for this regulation (approximately 577 facilities) is small enough that the survey instrument can be distributed to all facilities. (This number may change before the survey is mailed as we refine our methodology for determining the target population). Therefore there will be no screener questionnaire, and the survey instrument will be considered as a complete census and not merely a partial survey of the industry. This will allow the Agency to characterize more accurately the industry, and thereby develop a regulation more pertinent to the entire industry than if a partial survey were used. The Agency solicits comment on this decision.

The EPA burden estimate on industrial facilities is deemed to be primarily proportional to the types and number of manufacturing processes. The EPA burden estimate is presented in Table 1. The EPA burden estimate is based on an estimated population of 577 facilities with different configurations of manufacturing processes (from large integrated mills to medium sized mills (mini-mills) to small stand alone facilities). EPA estimates that the total burden will be 98,895 hours.

TABLE 1.—BURDEN ESTIMATE FOR 1997 IRON AND STEEL INDUSTRY SURVEY

	Large	Medium	Small
Number of Facilities	22	130	425
Technical Hours/Facility	515	195	105
Economic Hours/Facility	45	40	30

Finally, EPA will maintain a temporary, toll-free telephone number once the survey instrument has been mailed that survey recipients may call to obtain assistance in completing the survey instrument. EPA believes that the toll-free telephone number will greatly reduce burden by helping recipients to answer specific questions within the context of their individual operations.

Request for Comments: Since EPA must develop a sound technical and economic basis for equitable national standards, EPA is soliciting comments and suggestions regarding the substance and form of the draft survey instrument. For example, are the directions and questions clear and concise; are the definitions consistent with industry jargon and use of terms; are the right questions in the survey; if not, please suggest more appropriate ones; do the questions adequately cover all pertinent factors relevant to developing equitable guidelines; if not, what needs to be added? EPA is also soliciting comments on means of reducing the data collection burden. EPA requests that all suggestions be supported in order to properly evaluate the suggestion. Any burden reduction suggestions must consider the need to collect information on the pollutants being discharged by the industries, the processes that generate the pollutants, alternative controls, the economic achievability of the proposed regulations, and the benefits derived from reducing pollution in our oceans, lakes, rivers, and streams. Please send any suggestions to Mr. George Jett at the address listed above.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 97–27729 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5910–8]

National Advisory Council for Environmental Policy and Technology: Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting is being held to formally present reports and recommendations to EPA and to discuss future activities and projects of NACEPT.

Reports and recommendations will be presented by the Reinvention Criteria Committee, the Community-Based Environmental Protection Committee, the Toxic Data Reporting Committee, and the Effluent Guidelines Committee. Future activities for these committees will also be discussed, as well as plans for the topics to be addressed by the Environmental Information and Public Access Committee, and the Environmental Capital Markets Committee, which are two new NACEPT Committees.

DATES: The two-day public meeting will be held on Wednesday, November 5, 1997, from 9:00 a.m. to 4:30 p.m., and Thursday, November 6, 1997 from 8:30 a.m. to 12:00 Noon. On both days, the meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

ADDRESSES: Material may be transmitted to the Committee through Gordon Schisler, Deputy Director, Office of Cooperative Environmental Management (1601–F), 401 M Street, SW., Washington, DC 20460; telephone (202) 260–9741.

FOR FURTHER INFORMATION CONTACT: Clarence Hardy, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, (1601–F), Washington, D.C. 20460; telephone (202) 260–9741.

Dated: October 9, 1997.

Gordon Schisler,

Acting Designated Federal Official.

[FR Doc. 97–27728 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5752–3; CWA–97–H–001]

GTE Corporation; Proposed Clean Water Act Class II Administrative Complaint Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has filed a civil administrative complaint against GTE Corporation (GTE) for failure to prepare Spill Prevention Countermeasure and Control (SPCC) plans for 89 facilities where it stored diesel oil, 88 with above ground and one with below ground tanks, in violation of the Clean Water Act (CWA) and its implementing regulations. EPA under CWA section 311 has assessed a civil penalty and provided GTE notice of the proposed issuance of an order assessing a penalty and an opportunity for a hearing. The Administrator, as required by CWA section 311, is providing public notice and reasonable opportunity to interested persons to comment on the proposed issuance of the order.

DATES: Comments on this proposed order are due on or before November 19, 1997.

ADDRESSES: Mail written comments to Ms. Angela DeVore, Multimedia Enforcement Division (2248–A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Ms. Angela DeVore, Multimedia Enforcement Division, Environmental Protection Agency, Rm. 3117, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC.

Comments may also be submitted electronically to: devore.angela@epamail.epa.gov. Follow the instructions under Unit II. of this document.

The public record for the proceeding is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of 40 CFR Part 22—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, to review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact Ms. Angela DeVore, Multimedia Enforcement Division (2248–A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 564–2235; fax (202) 564–9001; e-mail: devore.angela@epamail.epa.gov.

For technical information contact: Gerard C. Kraus, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance, at (202) 564–6047.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

I. Background

GTE, One Stamford Forum, Stamford, CT 06904, self-disclosed to EPA that it had failed to prepare SPCC plans for 89 facilities where it stored diesel oil, 88 with above ground and one with below ground tanks, in violation of the CWA and 40 CFR part 112. The disclosures were made pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("the Audit Policy") (60 FR 66706, December 22, 1995). EPA filed an administrative civil complaint against GTE on September 29, 1997 (in re: GTE Corporation, CWA–97–H–001). The administrative penalty proposed in the complaint is the statutory maximum, $125,000. EPA intends to settle this action under the Audit Policy. Using the criteria set forth in the policy, EPA intends to waive any gravity based penalty and collect economic benefit enjoyed by the Respondent because of delayed compliance with the SPCC regulations. The proposed settlement figure for this matter is $16,708. This settlement is subject to public notice and comment under CWA section 311 (33 U.S.C. 1321).

Under CWA section 311(b)(6) (33 U.S.C. 1321(b)(6)), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3) (33 U.S.C. 1321(b)(3)), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j) (33 U.S.C. 1321(j)) may be administratively assessed a civil penalty of up to $125,000 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22 rules.

The procedures by which the public may submit written comments on a

proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in 40 CFR part 22. The deadline for submitting public comment on a proposed Class II order is November 19, 1997. All comments will be transferred to the Environmental Appeals Board of EPA for consideration and/or incorporation into the final order.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to the close of the public comment period.

II. Public Record and Electronic Submissions

The public record for this proceeding (including comments submitted electronically as described below) has been established. A public version of this record, including printed, paper versions of electronic comments is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

Comments may be submitted on disk in WordPerfect 5.1/6.1. Electronic comments on this proposed order may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: October 15, 1997.

Melissa P. Marshall,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–27726 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 22, 1997 special meeting of the Farm Credit Administration Board (Board) will not be held. *See* 62 FR 49227, September 19, 1997. The FCA Board will hold a meeting at 9:00 a.m. on Thursday, November 13, 1997. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 15, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–27811 Filed 10–16–97; 1:27 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 97–330]

Revised Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has released a public notice (notice) which revises various procedural requirements and policies relating to the Commission's processing of Bell Operating Company applications to provide in-region, interLATA services pursuant to new section 271 of the Communications Act of 1934, as amended, 47 U.S.C. 271 (Act). These procedures originally were set out on a public notice released December 6, 1996 (62 FR 68040 (December 26, 1996)). The notice revises those procedures and policies and supersedes the December 6, 1996 public notice.

FOR FURTHER INFORMATION CONTACT: Florence Grasso, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

OMB Control Number: 3060–0756.

Expiration Date: 03/31/98.

Title: Revised Procedures for Bell Operating Company Applications under New Section 271 of the Communications Act.

Respondents: Business or other for-profit; federal government; and state, local or tribal government.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approximately)	Annual hour burden per response	Total annual burden (hours)
Submission of applications by the BOCs	7	125 hours per application 7 (companies) × 7 (estimated filings each) × 120 (hours).	6,125
Submission of written consultations by the State Regulatory Commissions	49	120 hours	5,880
Submission of written consultations by the Department of Justice	1	4,900 49 (states) × 100 (hours per state).	4,900
Submission of written comments by interested third parties	75	25 hours	1,875

Total Annual Burden: 18,780.

Frequency of Response: One-time, unless an application must be resubmitted.

Estimated Costs Per Respondent: $0.

Needs and Uses: The Commission issued a public notice (FCC 97–330) on September 19, 1997 which revised various procedural requirements and policies relating to the Commission's processing of Bell Operating Company applications to provide in-region, interLATA services pursuant to new section 271 of the Communications Act of 1934, as amended, 47 U.S.C. 271 (Act).

Synopsis of Public Notice

A. Application Filing Requirements

Under section 271, the Bell Operating Companies must file applications to provide in-region interLATA services on a state-by-state basis. By "application," we mean: (1) A stand-alone document

entitled Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [state name]; and (2) any supporting documentation. The content of both parts of the application is addressed later in this public notice.

Under the revised procedures established in this Public Notice, applicants must file at least twelve copies of each section 271 application with the Commission to be distributed as follows:

(1) Applicants must file an original and six copies of each section 271 application with the Office of the Secretary at the Federal Communications Commission. If the applicant wants each Commissioner to receive a copy of the section 271 application, the applicant should file an original plus eleven copies with the Office of the Secretary. The applicant must also submit the application on a computer diskette as described below. The original, the six (or, if applicable, eleven) copies, and the 3.5 inch computer diskette described below should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, D.C. 20554.

(2) In addition, applicants must submit five copies of the section 271 application to Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 544, 1919 M Street, N.W., Washington, D.C. 20554.

Applications will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The applicant must also submit a copy of the application simultaneously to: (i) The Department of Justice c/o Donald J. Russell, Telecommunications Task Force, Antitrust Division, Room 8205, 555 Fourth Street, N.W., Washington, D.C. 20001; (ii) the relevant state regulatory commission; and (iii) the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, tel. (202) 857–3800.

The 3.5 inch computer diskette submitted to the Commission should be formatted in WordPerfect 5.1. It should contain the Applicant's Brief in Support. If electronically available, the supporting documentation must be included on the computer diskette as well. With respect to supporting materials that are not provided on diskette, the applicant should include a note at the end of the electronic version of the Brief in Support specifying which materials are not contained on the disk and indicating that such materials are on file with the Commission. All filings submitted on diskette will be posted on the Internet for public inspection at http://www.fcc.gov. We also urge the applicant to post its electronic filings on its own Internet home page and to inform us of such posting in the Brief in Support.

B. Preliminary Matters

Section 271(d)(3) states that "[t]he Commission shall not approve the authorization requested in an application * * * unless it finds" three specified conditions to be met. As stated in our *December 6th public notice*, we expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. An applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application. Thus, an applicant may not submit factual evidence gathered after the applicant's initial filing. The applicant, however, may submit new factual evidence if the sole purpose of that evidence is to rebut arguments made, or facts submitted. But in no event shall such evidence post-date the filing of the relevant comments. In the event that the applicant submits new or post-dated evidence in replies or *ex parte* filings, we reserve the right to start the 90-day review process anew or to accord such evidence no weight in making our determination. All factual assertions made by any applicant (or any commenter) must be supported by credible evidence, or they may not be entitled to any weight. Such factual assertions, as well as expert testimony, submitted by any party must also be supported by an affidavit or verified statement of a person or persons with personal knowledge thereof. Applicants and participants in section 271 proceedings also have an obligation to present their position in a clear and concise manner. In the section 271 proceedings conducted so far, each application—as well as some of the subsequent responsive filings—totalled several thousand pages. In addition, certain parties have included substantive arguments in affidavits or other supporting materials, rather than in their legal briefs. As a result, in some cases, we have found it burdensome and time-consuming to determine the positions of parties. Because of the shortness of the 90-day review period, we believe that it is necessary to make the section 271 review process as efficient as possible, consistent with the requirements of the statute. We therefore require applicants and commenting parties to make all substantive legal and policy arguments in a legal brief (*i.e.*, Applicant's Brief in Support, comments in opposition or support, reply comments, *ex parte* filings). The Commission retains the authority to strike, or to decline to consider, substantive arguments that appear only in affidavits or other supporting documentation. We note that the United States Court of Appeals for the District of Columbia Circuit has found that the Commission "need not sift pleadings and documents to identify" arguments that are not "stated with clarity." It is the petitioner who has the "burden of clarifying its position" before the agency. This duty is even more crucial in the context of section 271 proceedings, because of the limited period in which the agency has to review section 271 applications. We recognize, however, that the question of whether an applicant has satisfied the requirements of section 271 raises numerous complex and fact-intensive issues, which may necessitate lengthy filings in support of or in opposition to an application. In order to ensure that applicants and other participants in section 271 proceedings have the ability to present their positions fully, we have increased the page limits for the Applicant's Brief in Support and third party comments and replies, and we have eliminated the page limits for applicants' replies, as noted below. In addition, we expect that applicants and other participants in section 271 proceedings will continue to use affidavits and other supporting documentation to support factual and legal assertions made in their legal briefs, to provide expert testimony in support of the positions articulated in their briefs, and to clarify detailed factual issues. Because the statute affords us only 90 days to review the application, we encourage the applicant to meet with likely objectors in order to attempt to narrow the issues in dispute. As noted in section C of this Public Notice, we require that an applicant submit, either in the application itself or in a supplemental statement within five days after the application is filed, a signed statement that describes efforts that the applicant has made to narrow the issues in dispute and the results of those efforts.

C. Content of Applications

Applications shall conform to the Commission's general rules relating to

applications. As noted above, applications shall have two parts: (1) A Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [state name]; and (2) any supporting documentation, such as records of state proceedings, interconnection agreements, affidavits, etc. The Applicant's Brief in Support may not exceed 125 pages. The table of contents, summary of argument, and list of appendices (items (a), (b), and (i) below) shall not be counted in determining the length of the Brief in Support. There is no page limit on supporting documentation, but, as discussed above, the applicant may not make substantive legal or policy arguments in its supporting documentation.

The Brief in Support should contain the following items:

(a) A table of contents;

(b) A concise summary of the substantive arguments presented in the Brief;

(c) A statement identifying all of the agreements that the applicant has entered into pursuant to negotiations and/or arbitrations under section 252, including the dates on which the agreements were approved under section 252 and the status of any federal court challenges to the agreements pursuant to section 252(e)(6);

(d) A statement identifying how the applicant meets the requirements of section 271(c)(1), including a list of the specific agreements on which the applicant bases its application if it intends to rely on a subset of the list set forth in item (c) above;

(e) A statement summarizing the status and findings of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof;

(f) A statement describing the efforts the applicant has made to meet with likely objectors to narrow the issues in dispute and the results of those efforts (as indicated above, this statement may be filed separately from the application; but not later than five days after the filing of the application);

(g) All legal and factual arguments that the three requirements of section 271(d)(3) have been met, supported as necessary with selected excerpts from the supporting documentation (with appropriate citations) (Item (g) is obviously the core portion of the Brief in Support, and may be quite lengthy. It may help to divide it, therefore, into three subsections, one corresponding to each of the three requirements set forth in section 271(d)(3).);

(i) A list of all appendices (including affidavits) and the location of and subjects covered by each of those appendices;

(h) The name, address, and phone number of the person who will address inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by the applicant;

(i) An Anti-Drug Abuse Act certification as required by 47 CFR § 1.2002; and

(j) An affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate to the best of his or her information and belief.

The name of the applicant, the date the application is filed, and the state to which it relates should appear in the upper right-hand corner of each page of the Brief in Support.

As for the supporting documentation, we require that it contain, at a minimum, the complete public record, as it exists on the date of filing, of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

D. Comments By Interested Third Parties

After an application has been filed, the Common Carrier Bureau will issue a public notice (initial public notice) establishing the specific due dates for the various filings set forth below. The initial public notice will also establish procedures for the treatment of confidential information submitted by participants (including the applicant, the Department of Justice, and the relevant state commission). Simultaneously with the issuance of the initial public notice, the Bureau will notify the Department of Justice and the affected state of our receipt of the application. Interested third parties will have approximately 20 days from the issuance of the initial public notice to file comments in opposition or support, which may not exceed 100 pages. We are increasing the page limit for initial comments from 50 pages to 100 pages in the expectation that parties will include all substantive arguments in their legal brief. We reiterate that the Commission may strike or decline to consider substantive arguments made only in affidavits or other supporting documentation. The specific due date for comments will be set forth in the initial public notice. We retain discretion to adjust the due date for comments and replies on a case-by-case basis to ensure that interested third parties have sufficient time to review and comment on each application. We strongly discourage, and will take appropriate steps to prevent, an applicant from attempting to limit the time for interested third parties to review an application (*e.g.*, by filing on a Friday or the day before a national holiday). The name of the commenter, the name of the applicant, and the state to which the application relates should appear in the upper right-hand corner of each page. Comments in support or opposition shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of the comments shall be counted in determining the length of the comments. To file comments or replies (or any other filing set forth below) in a section 271 proceeding, commenters must follow the applicable procedures outlined in section A of this public notice.

Commenters shall not incorporate by reference, in their comments or replies, entire documents or significant portions of documents that were filed in other proceedings, such as comments filed or arguments made in a previous section 271 proceeding. Although commenters are permitted to note arguments that were presented in earlier filings, they must provide a complete recitation in their current filing of any argument that they wish the Commission to consider.

There is no page limit on supporting documentation. As discussed in section B of this public notice, however, commenters must make all substantive legal and policy arguments in their comments, rather than in supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

If a commenter submits confidential information to the Commission, it shall include in a cover letter to the Commission the name, address, and phone number of the person who will address inquiries regarding access to the confidential information by other participants in the proceeding (subject to the terms of any applicable protective order).

E. State Commission and Department of Justice Written Consultations

Many state commissions have already commenced proceedings to examine Bell Operating Company compliance with section 271 or portions thereof. In light of this fact and in light of the shortness of the 90-day period for deciding a section 271 application, we require that the relevant state commission file any written consultation not later than approximately 20 days after the issuance of the intial public notice. The specific due date for the state's written consultation will be set forth in the intial public notice. The relevant state commission shall also follow the applicable procedures outlined in section A of this public notice.

Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed not later than approximately 35 days after the issuance of the intial public notice. The specific due date for the Department's written consultation will be set forth in the intial public notice. The Department of Justice shall also follow the applicable procedures outlined in section A of this public notice.

The state commission and the Department of Justice are also welcome to file a reply pursuant to section F of this public notice, as well as written *ex parte* submissions in accordance with section H of this public notice.

F. Replies

All participants in the proceeding—the applicant, interested third parties, the relevant state commission, and the Department of Justice—may file a reply to any comment made by any other participant. Such replies will be due approximately 45 days after the intial public notice is issued. The specific due date for replies will be set forth in the intial public notice. All replies except that of the applicant are limited to 50 pages. There is no page limit for the applicant's reply.

The name of the submitter, the name of the applicant (if different), and the state to which the application relates should appear in the upper right-hand corner of each page. Replies shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of a reply shall be counted in determining the length of the reply.

The applicant's and third parties' reply comments may not raise new arguments or include new data that are not directly responsive to arguments other participants have raised, nor may the replies merely repeat arguments made by that party in the application or initial comments. An applicant may submit new factual evidence in its reply if the sole purpose of that evidence is to rebut arguments made, or facts submitted, by commenters, provided the evidence covers only the period placed in dispute by commenters and in no event post-dates the filing of the relevant comments. In addition, as discussed in section D of this public notice, participants are not permitted, in their replies, to incorporate by reference entire documents or significant portions of documents that were filed in other proceedings.

There is no page limit on supporting documentation. As discussed in section B of this public notice, however, participants submitting replies must make all substantive legal and policy arguments in their replies, rather than in affidavits or other supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

G. Motions

Because of the shortness of the 90-day period to review section 271 applications, a dispositive motion filed with the Commission in a section 271 proceeding (*e.g.*, motion to dismiss) will be treated as an early-filed pleading and will not be subject to a separate pleading cycle, unless the Commission or Bureau determines otherwise in a public notice issued after the motion is filed. We generally expect, however, that such a separate pleading cycle will not be necessary. Thus, in general, dispositive motions filed before the due date for third party comments will be treated as early-filed comments; dispositive motions filed after the due date for third party comments but before the due date for replies will be treated as early-filed replies; and dispositive motions filed after the due date for replies will be treated as *ex parte* submissions. Such motions will be counted toward the applicable page limit for the submitting party, as established in this public notice.

Non-dispositive motions (*e.g.*, motions to strike) will be subject to the default pleading cycle in section 1.45 of our rules, unless the Commission or Bureau determines otherwise in a public notice. Because of the expedited nature of section 271 proceedings, section 1.4(h) of our rules will not apply to motions filed in section 271 proceedings. Thus, parties will not be allowed an extra three days (beyond the time permitted in section 1.45) to respond to non-dispositive motions and oppositions thereto, regardless of whether the filing was served on the party by mail. In lieu of that rule, however, a party submitting a non-dispositive motion must, on the day of filing, serve that motion either by hand or by facsimile on any party whose filing is the subject of the motion. In addition, parties must submit non-dispositive motions and oppositions to such motions to the Commission on a 3.5 inch computer diskette formatted in WordPerfect 5.1 (as well as in hard copy form). All filings submitted on diskette will be posted on the internet for public inspection at http://www.fcc.gov. Such motions, oppositions, and replies will not be counted toward the submitting party's page limit.

H. Ex Parte Rules—Permit-But-Disclose Proceeding

Because of the broad policy issues involved, section 271 application proceedings initially will be considered permit-but-disclose proceedings. Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules. Because of the statutory timeframe, however, we strongly encourage parties to set forth their views comprehensively in the formal filings specified above (*e.g.*, the Brief in Support, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may not file more than a total of 20 pages of written *ex parte* submissions. This 20-page limit does not include: (1) Written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. The Commission retains the right not to consider as part of the record *ex parte* submissions in excess of the 20-page limit.

For purposes of these proceedings, and in light of the explicit role the Act gives to the Department of Justice and the state commissions under section 271, any oral *ex parte* presentations from the Department of Justice and the relevant state commission will be deemed to be exempt *ex parte*

presentations. To the extent that we obtain through such oral *ex parte* presentations new factual information on which we subsequently rely in our decision-making process, we will either request the Department of Justice or the relevant state commission to disclose or disclose ourselves such new factual information in the record no later than the time we release our decision. There are no page limits on written *ex parte* submissions by the Department of Justice or the relevant state commission.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.

I. FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

Pursuant to Section 271 of the Communications Act of 1934, as amended, the Bell Operating Companies must file applications to provide in-region interLATA services on a state-by-state basis. State regulatory commissions must file written consultations relating to the applications not later than approximately 20 days after the issuance of an Initial Public Notice establishing specific due dates for various filings. Interested third parties may file comments on the applications not later than approximately 20 days after the issuance of the Initial Public Notice. The Department of Justice must file written consultations relating to the applications not later than approximately 35 days after the issuance of the Initial Public Notice. All of the information would be used to ensure that the Bell Operating Companies have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to section 271. Obligation to respond is not mandatory.

We have estimated that each response to this collection of information will take, on average, 250 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD–PERM, Washington, DC 20554, Paperwork Reduction Project (3060–0756). We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please do not send completed application forms to this address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0756.

This notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1974, 5 U.S.C. Section 552a(e)(3) and the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–27698 Filed 10–17–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Broun Family Partnership LLP and Conway C. Broun, Managing Partner, Athens, Georgia; to retain voting shares of Georgia National Bancorp, Inc., Athens, Georgia, and thereby indirectly retain shares of The Georgia National Bank, Athens, Georgia.

Board of Governors of the Federal Reserve System, October 14, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–27637 Filed 10–17–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina; to merge with Barnett Banks, Inc., Jacksonville, Florida, and thereby indirectly acquire Barnett Bank, National Association, Jacksonville, Florida, and Community Bank of the Islands, Sanibel, Florida.

In connection with this application, Applicants also have applied to acquire First of America Bank - Florida, FSB, Tampa, Florida, and thereby engage in traditional thrift activities, pursuant to § 225.28(b)(4) of the Board's Regulation Y;

Barnett Community Development Corporation, Jacksonville, Florida, and thereby engage in investing in corporations or projects designed primarily to promote community welfare, pursuant to § 225.28(b)(12) of the Board's Regulation Y; EquiCredit Corporation, Jacksonville, Florida, and its direct and indirect subsidiaries, and thereby engage in the activities of originating home equity and purchase money loans, acquiring such loans originated from third parties, and securitizing such loans in the secondary market, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in acting as principal, agent, or broker for credit related insurance, pursuant to § 225.28(b)(11) of the Board's Regulation Y; Equity/Protect Reinsurance Company, Jacksonville, Florida, and thereby engage in the activities of reinsuring credit related insurance policies sold to EquiCredit Corporation customers, pursuant to § 225.28(b)(11) of the Board's Regulation Y; and Honor Technologies, Inc., Maitland, Florida, and thereby engage in operating an electronic funds transfer network and in data processing and management consulting activities, pursuant to §§ 225.28(b)(9) and (b)(14), respectively of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 14, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–27636 Filed 10–17–97; 8:45 am]
BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–245]

Public Buildings and Space

TO: Heads of Federal Agencies.

SUBJECT: Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace.

1. *PURPOSE.* This bulletin announces the policy concerning the protection of Federal employees and the public from exposure to tobacco smoke in the Federal workplace.

2. *EXPIRATION DATE.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

Background

a. On August 9, 1997, President Clinton signed Executive Order 13058, entitled "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace," (62 FR 43451, August 13, 1997), to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The General Services Administration (GSA) is providing governmentwide policy guidance concerning the requirements of this Executive Order so that federal agencies may benefit from GSA's real property management expertise.

b. The policy previous to Executive Order 13058, enunciated in FPMR § 101–20.105–3, declared all GSA-controlled space non-smoking except where designated smoking areas are identified by agency heads. This Executive Order prohibits, with some exceptions, the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government. GSA will amend FPMR § 101–20.105–3 in the near future to reflect the new policy in this Executive Order.

c. Unlike the previous policy, this Executive Order requires that designated smoking areas be enclosed and exhausted directly to the outside and away from air intake ducts, and maintained under negative pressure sufficient to contain tobacco smoke within the designated area. Agency officials must not require workers to enter such areas during business hours while smoking is ongoing.

Action

a. In accordance with Executive Order 13058, Federal agencies must prohibit the smoking of tobacco products in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

b. The only exceptions are designated smoking areas; residential accommodations for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government; portions of federally-owned buildings leased, rented, or otherwise provided (in their entirety) to nonfederal parties; and places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more federal employees.

c. The heads of Federal agencies may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

d. The heads of Federal agencies must evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

e. The heads of Federal agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

f. The heads of Federal agencies must implement and ensure compliance with the policy set forth in this Executive Order no later than August 9, 1998. Prior to this date, the heads of Federal agencies must inform all employees and visitors to executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

Dated: October 9, 1997.
G. Martin Wagner,
Associate Administrator, Office of Governmentwide Policy.
[FR Doc. 97–27703 Filed 10–17–97; 8:45 am]
BILLING CODE 6820–23–P

GENERAL SERVICES ADMINISTRATION

Office of Transportation Audits; Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/Office of Transportation is changing the stocking of the following Standard form because of low use demand:

SF 362, U.S. Government Freight Loss/Damage Claim

Since this form is not authorized for local reproduction, you can obtain the updated camera copy in three ways:

From the "U.S. Government Management Policy CD–ROM";
On the internet. Address: http://www.gsa.gov/forms; or
From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Transportation Audit Division, (202) 219–1494. This contact is for information on completing the form and interpreting the FPMR only.

DATES: Effective October 20, 1997.

Dated: October 1, 1997.
Barbara M. Williams,
Deputy Standard and Optional Forms Management Officer.
[FR Doc. 97–27648 Filed 10–17–97; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0227]

Nandlal G. Rana; Debarment Order

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Nandlal G. Rana, 184 Parsonage Rd., Edison, NJ 08817, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Rana was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Rana failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: October 20, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1993, the United States District Court for the District of Maryland entered judgment against Mr. Nandlal G. Rana for one count of obstructing an agency proceeding, a Federal felony under 18 U.S.C. 1505.

As a result of this conviction, FDA served Mr. Rana by certified mail on February 17, 1995, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application, and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Rana was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Rana was provided 30 days to file objections and request a hearing. Mr. Rana did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Nandlal G. Rana has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Mr. Nandlal G. Rana is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Rana, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Rana, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Rana during his period of debarment.

Any application by Mr. Rana for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 94N–0227 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 1997.
Janet Woodcock,
Director, Center for Drug Evaluation and Research.
[FR Doc. 97–27693 Filed 10–17–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Cardiovascular and Renal Drugs Advisory Committee. This meeting was announced in the **Federal Register** of September 18, 1997. The amendment is being made to: Remove the second agenda item scheduled on October 23, 1997; add a closed session to the agenda scheduled on October 23, 1997; and provide a new location site for this closed session. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Danyiel D'Antonio (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 18, 1997 (62 FR 49015), FDA announced that a meeting of the Cardiovascular and Renal Drugs Advisory Committee would be held on October 23 and 24, 1997. This amendment is to provide an update to the information provided earlier pertaining to the October 23, 1997, meeting day. There are no changes for the October 24, 1997, meeting day. On page 49015, beginning in column 3, portions of the notice pertaining to the October 23, 1997, meeting day are amended to read as follows:

Location: October 23, 1997, 8:30 a.m. to 2 p.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

October 23, 1997, 2 p.m. to 5:30 p.m., Hyatt Regency Bethesda, Susquehanna/Severn Room, One Bethesda Metro Center, Bethesda, MD.

Agenda: On October 23, 1997, the committee will discuss basic statistical considerations for the evaluation of active control clinical trials.

Procedure: On October 23, 1997, from 8:30 a.m. to 2 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 16, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on October 23, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 16, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 23, 1997, from 2 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will discuss pending investigational new drug applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–27695 Filed 10–15–97; 11:17 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; 1997/98 World Health Organization Study of Health Behavior in School Children

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Thursday, March 27, 1997, 14687–14688 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number (5 CFR 1320.5).

Proposed collection Title

Title: 1997/98 World Health Organization Health Behavior in School Children. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this study is to analyze differences in risk factors and determinants of injuries and other health related behavior for the early- to mid-adolescent age group across the majority of developed countries. A representative U.S. school-based sample of adolescents is needed to participate in the international study. Data will be used to improve the quality of health promotion programs for youth. *Frequency of Response:* This is a one time study. *Affected Public:* Individuals or households. *Type of Respondents:* U.S. youth in grades 6 through 10. The annual reporting burden is as follows: *Estimated Number of Respondents:* 19,315; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.71; and *Estimated Total Annual Burden Hours Requested:* 13,759. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mary D. Overpeck, DrPH, Epidemiology Branch, Division of Epidemiology, Statistics and Prevention Research, Building 6100, Room 7B03, 9000 Rockville Pike MSC 7510, Bethesda, MD 20892–7510, or call non-toll-free number (301) 496–1711.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 19, 1997.
Benjamin E. Fulton,
Executive Officer, NICHD.
[FR Doc. 97–27671 Filed 10–17–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Notice of Meeting of the NIH Director's Advisory Panel on Clinical Research

Notice is hereby given that the NIH Director's Advisory Panel on Clinical Research, a group reporting to the Advisory Committee to the Director (ACD), National Institutes of Health (NIH), will meet in public session at the William H. Natcher Building (Building 45) Conference Center, Conference Room D, National Institutes of Health, Bethesda, Maryland 20892, on November 7, 1997 from 9:00 a.m. until approximately 3:00 p.m.

The goal of the Panel is to review the status of clinical research in the United States, and to make recommendations to the ACD about how to ensure its effective continuance. At this meeting items of special concern to the Panel will be discussed preparatory to submission of the Panel's final recommendations by the Panel Chair to the ACD in December, 1997.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact the person named below in advance of the meeting.

Attendance may be limited to seat availability. If you plan to attend the meeting as an observer or make a statement or if you wish additional information, please contact Mrs. Janet Smith, National Institutes of Health, Building 10, Room 1C–116, 10 Center Drive, MSC 1154, Bethesda, Maryland 20892–1154, telephone (301) 402–3444, fax (301) 402–3443, by October 31, 1997.

Dated: October 7, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–27670 Filed 10–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–43]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 19, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 551 7th Street, Southwest, Washington, DC 24010, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 10, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Current Population Survey: Effects of Disclosure on Public Awareness of Lead Pain Hazard.

Office: Lead Hazard Control.

OMB Approval Number: 2539–0006.

Description of the Need for the Information and its Proposed Use: Section 1061 of the Housing and Community Development Act of 1992 requires HUD and the Census Bureau to conduct a survey on the effects of disclosure of lead paint hazards to buyers and prospective tenants. This information collection is needed to assess public awareness on lead paint hazards. HUD will use this information to report to Congress on lead paint hazard reduction activity.

Form Number: None.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	48,000		1		.138		6,640

Total Estimated Burden Hours: 6,640.

Status: Extension, with changes.

Contact: Barbara A. Haley, HUD, (202) 708–1785 x126; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 10, 1997.

[FR Doc. 97–27680 Filed 10–17–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4294–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Redelegation of authority.

SUMMARY: In this notice, all power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is additionally redelegated from the Assistant Secretary for Housing—Federal Housing Commissioner, through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices, as specified herein.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Charles E. Patterson, Chief, Program Analysis Branch, Management Services Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 9116, Washington, D.C. 20410–0400, Telephone No. (202) 708–0826. Persons with hearing or speech impairments may also utilize HUD's TTY No. (202) 708–1455, or the Federal Information Relay Service's TTY No. at (800) 877–8339. With the exception of the "800" number, the telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: In order to assist in meeting the Department's goal of increasing single family homeownership, as part of the HUD 2020 Management Reform Plan, the Secretary has authorized the establishment of four Single Family Homeownership Centers, located in Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA. The Single Family Homeownership Centers will enable the Department to more expeditiously provide increasingly efficient services with respect to Single Family Housing programs to HUD clients, lenders and borrowers. This redelegation of authority will provide the Single Family Homeownership Center Directors with the authority required to implement their charge.

In this notice, all power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is hereby additionally redelegated from the Assistant Secretary for Housing—Federal Housing Commissioner, through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices. The authority being redelegated has been published in the **Federal Register** at 60 FR 16034, published on March 28, 1995; and in the field reorganization Revocation and Redelegation of Authority for the Office of Housing, at 50 FR 62739, published on December 6, 1994, as amended by the following: 60 FR 29862, published on June 6, 1995; 61 FR 33130, published on June 26, 1996; 62 FR 23477, published on April 30, 1997; and 62 FR 44132, published on August 19, 1997.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

All power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is hereby additionally redelegated through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices. The authority being redelegated has been published in the **Federal Register** at 60 FR 16034, published on March 28, 1995; and in the field reorganization Revocation and Redelegation of Authority for the Office of Housing, at 59 FR 62739, published on December 6, 1994, as amended by the following: 60 FR 29862, published on June 6, 1995; 61 FR 33130, published on June 26, 1996; 62 FR 23477, published on April 30, 1997; and 62 FR 44132, published on August 19, 1997.

Section B. Authority to Further Redelegate

The authority redelegated may be further redelegated in writing to appropriate Single Family Homeownership Center staff.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 10, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–27676 Filed 10–17–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication; AA–6986–C; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Cape Fox Corporation for approximately 565 acres. The lands involved are in the vicinity of Saxman, Alaska.

Copper River Meridian, Alaska

T. 74 S., R. 89 E., T. 74 S., R. 91 E., T. 73 S., R. 92 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until *November 19, 1997* to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–27685 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP8–0012 ; OR–53642]

Notice of Public Meeting; Proposed Protective Withdrawal for Leslie Gulch Area of Critical Environmental Concern; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Department of Interior, Bureau of Land Management's application for protective withdrawal for the Leslie Gulch Area of Critical Environmental Concern in eastern Malheur County.

EFFECTIVE DATE: November 18, 1997.

FOR FURTHER INFORMATION CONTACT: Bill Holsheimer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, 541–473–3144.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the application by the Department of Interior, Bureau of Land Management for a 20-year protective withdrawal as to 12,426.43 acres of public lands in eastern Malheur County, Oregon.

The meeting will begin at 7 p.m., Tuesday, November 18, 1997, at the Bureau of Land Management, Vale District Office, 100 E. Oregon Street, Vale, Oregon. The agenda will include: (1) An information briefing by the Bureau of Land Management; (2) oral statements by interested parties addressing the proposed withdrawal; and (3) a question and answer period. Written comments will be accepted or can be mailed to the Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208. Only comments concerning the proposed protective withdrawal of 12,426.43 acres in Malheur County, Oregon, will be accepted.

The meeting is open to the public. Interested parties may make oral

statements at the meeting and may file written statements with the Bureau of Land Management, Oregon/Washington State Office no later than December 19, 1997. At this informational meeting, oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the proposed mineral withdrawal is submitted to the Secretary of Interior for final action under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: October 7, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–27714 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0014]

Notice of Meeting of Advisory Board for the National Historic Oregon Trail Interpretive Center

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, November 6, 1997, from 8 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, 1 Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2:00 p.m. to 2:30 p.m., November 6, 1997. Topics to be discussed are administrative activities of the Board, organizational processes, funding for the National Historic Oregon Trail Interpretive Center and the building of partnerships, and the progress of construction projects.

DATES: The meetings will begin at 8:00 a.m. and run to 4:00 p.m. November 6, 1997.

ADDRESSES: The meeting will take place at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987, Baker City OR 97814 (Telephone 541–523–1845).

Edwin J. Singleton,

Vale District Manager.

[FR Doc. 97–27682 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5410–77–F002]

Notice of Segregation

SUMMARY: An application for the conveyance of federally-owned minerals has been filed for the following described land, under the provisions of 43 U.S.C. 1719:

Parcel 1

A tract of land being situate in the North half of the Southwest Quarter, and a portions of the Northwest Quarter, the Northwest Quarter of the Northeast Quarter, and the South half of the Southwest of Section 34, Township 19 North, Range 19 East, M.D.M., Washoe County Nevada, being more particularly described as follows:

Commencing at the Southeast corner of said Section 33, also being the Southeast corner of said Parcel 1 of Land Map 57, thence along the West line of the Southwest quarter of said Section 34, also being along the East line of said Land Map 57 North 00° 02′ 21″ East a distance of 1312.91 feet to the Southwest corner of the South half of the Southwest Quarter of said Section 34, said point being the true point of beginning, thence continuing along said line, North 02° 02′ 21″ East a distance of 1312.91 feet to the West quarter corner of said Section 34; thence along the West line of the Northwest quarter of said Section 34 and the East line of Land Map 57, North 00° 34′ 33″ West a distance of 2303.09 feet; thence leaving said West line, North 88° 05′ 47″ East a distance of 552.37 feet; thence North 01° 54′ 13″ West a distance of 264.00 feet to a point on the southerly right of way line of McCarran Boulevard as described in Document 937490, recorded in the Office of the County Recorder of Washoe County, Nevada on July 19, 1984 and depicted on Record of Survey 1678 for Reno Properties, recorded in the Office of the County Recorder of Washoe County, Nevada on June 28, 1984 as File No. 933716; thence along said southerly right of way line the following courses and distances:

Along a non tangent curve to the left, having a tangent bearing of South 51° 26′ 28″ East, a radius of 1820.00 feet, a central angle of 09° 56′ 26″, a distance of 315.76 feet;

South 61° 22′ 54″ East a distance of 1180.93 feet;

Along a tangent curve to the left, having a radius of 1045.00 feet, a central angle of 82° 07′ 35″, a distance of 1497.88 feet;

North 36° 29′ 31″ East a distance of 254.63 feet;

Along a tangent curve to the right, having a radius of 955.00 feet, a central angle of 18° 32′ 15″, a distance of 308.98 feet;

North 55° 01′ 46″ East a distance of 227.89 feet to a point on the North line of the Northeast quarter of said Section 34;

Thence leaving the Southerly right of way line of said McCarran Boulevard and along the North line of the Northeast quarter of said Section 34, South 89° 09′ 48″ East a distance of 187.93 feet; thence South 00° 19′ 50″ West a distance of 668.33 feet to the Northeast corner of Parcel 1 of Parcel Map 2060 for Thelma and Sam Jaksick, recorded in the Office of the County Recorder of Washoe County, Nevada on November 24, 1986 as File No. 1119089; thence along the northerly and westerly lines of said Parcel 1 the following courses and distances:

North 89° 25′ 25″ West a distance of 663.85 feet;

South 00° 07′ 09″ West a distance of 671.37 feet;

North 89° 41′ 12″ West a distance of 252.48 feet;

South 00° 00′ 17″ West a distance of 1345.05 feet;

thence South 89° 46′ 59″ West a distance of 406.63 feet to the Center of said Section 34, thence along the North-South center Section line of said Section 34, South 00° 05′ 25″ East a distance of 1321.87 feet to the Southeast corner of the North half of the Southwest Quarter of said Section, thence along the South line of the North half of the Southwest Quarter, South 89° 58′ 56″ West a distance of 2581.06 feet to the Southwest corner of the North half of the Southwest Quarter of said Section, said point being the true point of beginning, containing 231.43 acres more or less.

The basis of bearing of the above legal description is the West line of the Northwest quarter of Section 11, Township 18 North, Range 19 East, M.D.M., as shown on the Official Plat of the Forest Hills Subdivision, recorded in the Office of the County Recorder of Washoe County, Nevada on July 27, 1979, as File No. 619595.

Parcel 2

A tract of land being situate in Lot 4, a portion of the South half of the Northwest Quarter and a portion of the North half of the Southwest Quarter of Section 2, Township 18 North, Range 19 East, M.D.M, Washoe County, State of Nevada being more particularly described as follows:

Beginning at the Northwest corner of said Section 2; thence North 89° 37′ East along the northerly line of said Section 2 a distance of 879.2 feet; thence South 1° 26′ West a distance of 2726.4 feet to a point on the East-West center line of said Section 2; thence South 0° 07′ East 1320.7 feet to the southerly line of the North half of the Southwest quarter of said Section 2; thence South 89° 08′ West along said southerly line a distance of 879.2 feet to the westerly line of said Section 2; thence North 0° 07′ West along said westerly line a distance of 1317.9 feet to the West one quarter corner of said Section 2; thence North 1° 26′ East 2736.6 feet to the point of beginning.

Containing 81.75 acres more or less.

DATES: Upon publication in the **Federal Register**, the mineral interests owned by the United States in the land described above, will be segregated from appropriation under the public land laws, including the mining laws. The segregation will terminate upon: issuance of a patent for the mineral interests, rejection of the the application, or 2 years from the date of this publication, whichever comes first.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ron Moore at (702) 885–6155.

Dated: October 7, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Nonrenewable Resources, Carson City, Nevada.

[FR Doc. 97–27658 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–00; N–57696]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Our Lady of Victory Catholic Church proposes to use the land for a church facility.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,

Sec. 14: W½SW¼NW¼NE¼NW¼.

Containing 1.25 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. And will be subject to:

1. An easement 30.00 feet in width along the West boundary in favor of Clark County for roads, public utilities and flood control purposes. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89126.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 8, 1997.

Mark R. Chatterton,

Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. 97–27669 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for General Management Plan/Development Concept Plans, Organ Pipe Cactus National Monument, Arizona; Notice of Availability

SUMMARY: The National Park Service (NPS), Department of the Interior, has prepared a Final Environmental Impact Statement (FEIS) for the General Management Plan and Development Concept Plans (GMP/DCP) for Organ Pipe Cactus National Monument, Arizona. This document is an abbreviated FEIS. The contents of this abbreviated document must be integrated with the Draft EIS (1995) and the Supplemental EIS (1996) in order to reflect completely the proposed action, its alternatives, and full analysis of environmental factors. As an aid to readers, the FEIS contains a guide to finding the most relevant portions of each document, along with a summary of anticipated activities to clarify the proposed action to all concerned.

SUPPLEMENTARY INFORMATION: Four alternatives were considered. The proposed action, detailed in the SEIS, is entitled the New Proposed Action Alternative. In response to public comments on the SEIS, the proposed action is further clarified in the FEIS. Except for factual corrections (detailed in the Errata section), there are no substantive changes in activities proposed initially in the SEIS. However,

reasonable and prudent mitigation measures are added, resulting from formal consultation with the U.S. Fish and Wildlife Service on the endangered Sonoran pronghorn, the lesser long-nosed bat, and the recently listed cactus ferruginous pygmy-owl. The concept of the proposed action is two-fold: within the region, enact principles of the Man and the Biosphere (MAB) program by adopting a regional perspective to improve visitor services and conserve resources; and within the monument, improve management capabilities to enhance visitor opportunities and protect resources and wilderness values. The effect desired from implementing these actions is to enhance protection, understanding, and recognition of Sonoran desert ecosystems and further strengthen relations with the Tohono O'odham Nation, Mexico, and other neighbors of the monument. Under the proposed plan, the NPS would seek redesignation of the monument as Sonoran Desert National Park. No tolls, traffic re-routes, or speed limit reductions are proposed for State Route 85.

In addition to the proposed action, three other alternatives are presented (which are detailed in the SEIS). The Existing Conditions/No Action Alternative would basically continue the existing management situation. The Former Preferred Future Alternative proposed adding 2,130 acres to the National Wilderness Preservation System, and called for significant cultural resource preservation efforts and new facilities in several locations within the monument. The New Ideas Alternative proposed 3,650 acres for wilderness, and existing or new park facilities would be relocated at or outside the monument boundary.

REVIEW COPIES: Copies of the FEIS will be available for on-site review as follows: (1) Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW, Washington, DC 20240, (202) 208–6843; (2) Planning Team Leader, Denver Service Center, National Park Service, 12795 W. Alameda Parkway, Denver, CO 80225–0287, (303) 969–2273; and (3) Superintendent, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, AZ 85321, (520) 387–7661. A limited number of copies for distribution are available on request from either the Superintendent or Planning Team Leader.

DECISION: A Record of Decision will be approved no sooner than 30 days after the Environmental Protection Agency's filing of their receipt of this FEIS in the **Federal Register**. The National Park Service officials jointly responsible for the decision will be the Regional Directors of the Intermountain and the Pacific West Regions. Subsequently, the officials responsible for implementing the plan will be the Regional Director, Intermountain Region and the Superintendent, Organ Pipe Cactus National Monument.

Dated: October 1, 1997.

John J. Reynolds,

Pacific West Region.

[FR Doc. 97–27732 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–21]

Robert M. Binenfeld, M.D. Revocation of Registration

On June 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Binenfeld, M.D., (Respondent), of Monroe, New York. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB4921210, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of New York.

On July 11, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On July 21, 1997, Judge Randall issued an Order for Prehearing Statements. Thereafter, on August 8, 1997, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings, alleging that effective December 19, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct (Board) revoked Respondent's license to practice medicine and therefore, Respondent is not authorized to handle controlled substances in that state.

On August 11, 1997, Judge Randall issued an Order providing Respondent with an opportunity to respond to the Government's motion. In addition, Judge Randall stayed the proceedings pending her ruling on the Government's motion.

On August 21, 1997, Respondent filed a response to the Government's motion, arguing that, "[m]any statements made by the [Board] are untrue." Respondent however, did not deny that he is not currently authorized to handle controlled substances in the State of New York.

On August 26, 1997, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of New York; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on October 1, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in its entirety, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Hearing Committee of the Board issued a Decision and Order dated August 26, 1994, finding among other things, that Respondent committed gross negligence, gross incompetence, negligence and incompetence in his practice of medicine. As a result, the Hearing Committee ordered the revocation of Respondent's license to practice medicine in the State of New York. Effective December 19, 1994, the Board's Administrative Review Board affirmed the Hearing Committee's decision to revoke Respondent's medical license. Subsequently, on February 21, 1995, the State of New York, supreme Court-Appellate Division, Third Judicial Department denied Respondent's request for a stay of the Board's order.

Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of New York. As a result, the Acting Deputy Administrator concludes that it is reasonable to infer that Respondent is not authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D. 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Since Respondent lacks authority in the State of New York to handle controlled substances, he is not entitled to a DEA registration in that state.

While, Respondent argues that many untrue statements were made by the Board in revoking his license to practice medicine, he does not dispute that he is currently not authorized to handle controlled substances in the State of New York. Under the circumstances, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Phillip E. Kirk, M.D., 48 FR 32,887 (1983) *aff'd sub nom Kirk V. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.R.F. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB4921210, previously issued to Robert M. Binenfeld, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are denied. This order is effective November 19, 1997.

Dated: October 10, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–27638 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Benjamin R. Borja, D.M.D.; Revocation of Registration

On June 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Benjamin R. Borja, D.M.D., of North Hills, California, notifying him of an opportunity to show case as to why DEA should not revoke his DEA Certificate of Registration AB8143024, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Borja that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Borja on June 30, 1997. No request for a hearing or any other reply was received by the DEA from Dr. Borja or anyone purporting to represent him in his matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Borja is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on March 22, 1996, the Board of Dental Examiners, Department of Consumer Affairs, State of California issued a Default Decision and Order revoking Dr. Borja's dental license effective May 1, 1996, based upon a finding that Dr. Borja engaged in unprofessional conduct, incompetence, gross negligence, and/or repeated acts of negligence in his treatment of a patient. The Acting Deputy Administrator finds that in light of the fact that Dr. Borja is not currently licensed to practice medicine in the State of California, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Borja is not currently authorized to handle controlled substances in the State of California. Therefore, Dr. Borja is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 1 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB8143024, previously issued to Benjamin R. Borja, D.M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective November 19, 1997.

James S. Milford,

Acting Deputy Administrator.

Dated: October 9, 1997.

[FR Doc. 97–27639 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 14, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is nececesary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Former Federal Employees, Handbook No. 391.

OMB Number: 1205–0179 (extension).

Frequency: One-time.

Affected Public: Individuals or households; Federal Government; State, Local or Tribal Government.

Form	Respondents	Average time per response
ES 931	144,000	3 minutes.
ES 391A	33,120	3 minutes.
ES 935	144,000	5 minutes.
ES 933	2,360	3 minutes.
ES 934	15,025	3 minutes.
ES 936	7,200	3 minutes.
ES 939	75	1 hour 45 minutes.
ETA 8–32	53	5 minutes.

Total Burden Hours: 28,434.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $66,000.

Description: Federal Law (5 U.S.C. 8501–8509) provides unemployment insurance protection to former (or partially unemployed) Federal civilian employees. It is referred to, in abbreviated form, as "UCFE." The forms contained throughout the UCFE Handbook are used in connection with the provision of this benefit assistance.

Agency: Employment and Training Administration.

Title: ETA Data Validation Handbook No. 361.

OMB Number: 1205–0055 (revision).

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 152 hours.

Total Burden Hours: 8,056.

Total Annualized capital/startup costs: $21,200,000.

Total annual costs (operating/maintaining systems or purchasing services: $189,977,000.

Description: Data provided to the Unemployment Insurance Service must be credible for use in the distribution of administrative funds as well as triggering the Extended Benefits Program and as economic indicators as well as general information for operating the program. Validation attempts to ensure the accuracy and compatibility of reported data.

Agency: Employment and Training Administration.

Title: Work Application/Job Order Recordkeeping.

OMB Number: 1205–0001 (extension).

Frequency: On occasion (recordkeeping).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 416.

Total Annualized capital/startup costs: - 0 -.

Total annual costs (operating/maintaining systems or purchasing services: - 0 -.

Description: Request is for retention of information on work applications and job orders.

Agency: Employment and Training Administration.

Title: Worker Adjustment Formula Financial Report.

OMB Number: 1205–0326 (extension).

Affected Public: State, Local or Tribal Government.

Activity	Number of respondents	Frequency	Average time per response (hours)
Data Collection	52	3 quarters	6
	52	1 quarter	7
Recordkeeping	52	one-time	10

Total Burden Hours: 1,820.

Total Annualized capital/startup costs: - 0 -.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information will be used to assess formula programs under Title III of JTPA, as amended. Participant and financial data will be used to monitor program performance, and to prepare reports and budget requests.

Agency: Employment and Training Administration.

Title: Preliminary Estimates of Average Employer Tax Rates.

OMB Number: 1205–0228 (reinstatement).

Agency Form Number: ETA 205.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 16 minutes.

Total Burden Hours: 14 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The average tax rate collected from States is used to compute average tax rate for the United States and, along with the current tax rate schedule, are used to certify that States are complying with the law.

Agency: Occupational Safety and Health Administration.

Title: Respiratory Protection (29 CFR part 1910.134).

OMB Number: 1218–0099 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 130,000.

Estimated Time Per Respondent: Time per response ranges from 5 minutes to mark emergency-use respirator storage compartments to 8 hours to develop a written respiratory protection program.

Total Burden Hours: 1,166,092.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The purpose of this standard and its information collection is designed to provide protection for employees from workplace atmospheric contamination. The standard requires employers to develop a written respiratory protection program, to inspect and certify emergency-use respirators, and mark emergency-use respirator storage compartments.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–27735 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

New Mexico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act.

By letter dated August 12, 1997, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: Amendment to 1910, Subpart B, Adoption and Extension of Established Federal Standards (61 FR 56831–56855, dated 11/4/96), and Amendment to 1926.55, Appendix A, Gases, Vapors, Fumes, Dust, and Mist (61 FR 56856, dated 11/4/96).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.1 and 11 NMAC 5.2, were promulgated on August 8, 1997, in accordance with applicable State law.

The subject standards became effective September 15, 1997, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

2. *Decision.* OSHA has determined that the State standards at 11 NMAC 5.1, and 11 NMAC 5.2 are identical to the comparable Federal standards, and therefore approves the standards.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes, and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective September 8, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this eighth day of September 1997.

Emzell Blanton, Jr.,

Regional Administrator.

[FR Doc. 97–27653 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10412, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of

Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY

[Application No. D–10412]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective April 1, 1997, to (1) the purchase or retention by an employee benefit plan (the Plan) and (2) the sale or continuation by MetLife or an affiliate (collectively, MetLife) of a synthetic guaranteed investment contract (the MetLife Trust GIC) entered into between the Plan and MetLife under which MetLife guarantees (the Guarantee) certain amounts (the Guaranteed Value).

This proposed exemption is conditioned upon the following requirements:

(a) The decision to enter into a MetLife Trust GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of MetLife.

(b) A Plan investing in a MetLife Trust GIC has assets that are in excess of $25 million.

(c) Prior to the execution of the MetLife Trust GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the MetLife Trust GIC, including—

(1) A Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC;

(3) A copy of the Investment Management Agreement between MetLife and the Plan fiduciary;

(4) Information explaining in a manner calculated to be understood by a Plan fiduciary that, if a MetLife affiliated manager underperforms or if adverse market conditions occur, the interest rate that is credited (the Credited Rate) to a MetLife Trust GIC account (the Account) may be as low as 0 percent;

(5) The pertinent features of a MetLife conventional GIC (the MetLife Conventional GIC) that a Plan fiduciary may obtain upon the discontinuance of a MetLife Trust GIC, including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract; and

(6) If granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given—

(1) A summary of the pertinent features of the documents listed above in paragraph (c) which are deemed appropriate for distribution to such participant;

(2) A copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued; and

(3) A copy of the operative language of the final exemption (i) to the extent that there have been modifications to the operative language of proposed exemption, or (ii) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted.

(e) Subsequent to a Plan's investment in a MetLife Trust GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive the following ongoing disclosures regarding such investment:

(1) A monthly report consisting of a Guaranteed Value Statement, which specifies the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current interest rate and a summary of transactions;

(2) A quarterly report consisting of a Market Value Statement, which specifies the prior quarter's ending market value for a Plan's MetLife Trust GIC, contributions, withdrawals, the fees paid to MetLife, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions; and

(3) An annual portfolio listing or letter describing key events, depending upon its arrangements with a Plan fiduciary.

(f) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) Each MetLife Trust GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife.

(i) Prior to the affirmation of a maturity date, MetLife informs the Plan fiduciary of the new reset rate for the Credited Rate.

(j) MetLife maintains books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records are subject to

annual audit by independent, certified public accountants.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 1, 1996.

Summary of Facts and Representations

1. The parties to the transactions are described as follows:

(a) *MetLife* is a mutual life insurance company organized under New York law and subject to supervision and examination by the Insurance Commissioner of the State of New York. It is the second largest life insurance company in the United States. As of December 31, 1996, MetLife and its subsidiaries had $279 billion in assets under management. MetLife provides funding, asset management and other services for Plans covered by the Act. MetLife also maintains pooled and single separate accounts pursuant to New York Insurance Law. These accounts are used in connection with group annuity and group life insurance contracts issued to Plans as well as other entities. The assets in these accounts are insulated from MetLife's general account. The returns generated from such accounts are used to support contractual obligations. Accounts are created to invest in one or more asset classes and are managed by MetLife, an affiliate of MetLife or a nonaffiliated company.

As of June 11, 1996, MetLife's ratings were as follows:

Rating firm	Rating	Rationale
A.M. Best	A+ (Superior)	Financial position and operating performance.
Duff & Phelps	AA+	Claims-paying ability.
Moody's	Aa2 (Excellent)	Financial strength.
Standard & Poor's	AA (Excellent)	Claims-paying ability.

(b) *State Street Research & Management Company (State Street Research)*, a wholly owned subsidiary of MetLife, is an investment management company registered as an investment adviser under the Advisers Act. State Street Research, which is Boston-based, was founded in 1927 and acquired by MetLife in 1983. As of December 31, 1996, State Street Research managed $41 billion in equity, fixed income and balanced accounts for retirement plans, foundations and endowments and mutual funds.

(c) *The Plans* involved herein will consist primarily of defined contribution plans that are subject to the provisions of Act as well as Plans that are subject to sections 401(a) and 403(b) of the Code.

2. MetLife has offered a variety of guaranteed investment contracts or "GICs" to Plans for many years. A GIC is a group annuity contract from an insurance company which provides contractholders with a fixed rate of return for a specified period, while paying benefits to Plan participants at guaranteed value. The GICs issued by MetLife, which are described herein, will have predefined maturity dates.

Plan fiduciaries frequently use GICs as funding vehicles for the "fixed income" or "stable value" investment options of defined contribution plans. According to Plan provisions, participants may have the right to transfer funds among a Plan's various investment options, or to take funds out of the Plan in withdrawals or loans. Such payments from a given option are called "participant-initiated withdrawals" or "benefits."

Recently, many Plan sponsors have begun to request the direct ownership of the assets that back the GIC since nominal ownership of the assets affords such sponsors full insulation in case of the insurance company's insolvency. For this reason, insurers have begun to develop "synthetic GICs" which offer all or nearly all of the same features as traditional GIC products except that the assets are placed in a segregated trust or custodial bank account owned by the Plan rather than being owned by the insurer.

3. Since April 1, 1997, MetLife has been offering an investment product (referred to herein as a "MetLife Trust GIC") to Plans having assets that are in excess of $25 million. MetLife believes that the transaction would violate section 406(a)(1) (A) and (B) of the Act because MetLife would be guaranteeing a certain asset value (i.e., the Guaranteed Value) to a Plan and thereby extending credit to such Plan as the result of a Plan's purchase of a MetLife Trust GIC. In addition, MetLife believes that the transaction would violate section 406 (b)(1) and (b)(2) of the Act because MetLife or an affiliate, in honoring a withdrawal initiated by either a Plan participant or a Plan sponsor (see Representations 15 and 16 of this proposed exemption), would be using their discretion in selecting securities that will be subject to the Guarantee and in reducing the Guaranteed Value to reflect the withdrawal.

Further, MetLife asserts that the proposed Guarantee could be perceived as giving rise to a conflict of interest between MetLife or an affiliate and the Plans in violation of section 406 (b)(1) and (b)(2) of the Act because the amount of the cumulative total return of each MetLife Trust GIC will be affected in part by MetLife or its affiliate's exercise of fiduciary authority or control, including the valuation of assets. In this regard, MetLife notes that both it and its affiliates have an interest in maximizing the cumulative total return of a MetLife Trust GIC, thereby reducing the amount of, or entirely eliminating, MetLife's obligation to make a payment on the Guarantee. Accordingly, MetLife requests exemptive relief from the Department.

4. Each MetLife Trust GIC will consist of a group annuity contract and an Investment Management Agreement between the Plan sponsor and MetLife, which will typically be the investment manager. A MetLife Trust GIC will be offered to a Plan having total assets that are in excess of $25 million. The principal amount of such Trust GIC will be negotiated between MetLife and the Plan fiduciary.

5. The decision to enter into a MetLife Trust GIC will be made on behalf of the Plan by a Plan fiduciary who is independent of MetLife and its affiliates. MetLife represents that due to the large size of the Plans involved, the independent fiduciaries authorizing Plans to enter into the MetLife Trust GICs can be expected to be (or retain) sophisticated, professional asset managers with specialized expertise in the area of GICs and similar investments. However, prior to the Plan's investment, MetLife will furnish the Plan's independent fiduciary with a full and detailed disclosure of all features concerning the MetLife Trust GIC. In addition to the MetLife Trust GIC document, such disclosures will include (a) a Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties; (b) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC; (c) a copy of the Investment

Management Agreement between MetLife and the Plan fiduciary; (d) an explanation that if a MetLife affiliated manager underperforms or if adverse market conditions occur, the Credited Rate applied to a MetLife Trust GIC Account may be as low as 0 percent; (e) the pertinent features of a MetLife Conventional GIC including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract, assuming the Plan fiduciary decides to discontinue a MetLife Trust GIC by converting it into a MetLife Conventional GIC; and (f) if granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Section 404(c) Plan will be provided with a summary of the pertinent features of the documents listed above which are deemed appropriate for distribution to such participant. In addition, the participant will be given a copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued. Further, the participant will receive a copy of the operative language of the final exemption (a) to the extent there have been modifications to the operative language of the proposed exemption, or (b) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted. In the event the participant wishes to review the underlying documents, including the proposed and final exemptions, such information will be made available to the participant upon request.

6. Plan assets that are invested in a MetLife Trust GIC will be placed in a segregated custodian account or trust account. The Plan sponsor will select an independent custodian and/or trustee, with the approval of MetLife. MetLife will not be a party to the custodial agreement or the master trust document. Thus, each MetLife Trust GIC will have its own Account. At all times, the Plan, through the trustee, will own all of the assets in the Account.

7. As stated above, MetLife, acting in a fiduciary capacity, will generally be the Account's investment manager. However, by mutual agreement with the Plan sponsor, MetLife may designate State Street Research as sub-manager with respect to some or all of the assets in an Account. At its discretion and by agreement with the Plan sponsor, MetLife may also designate an unaffiliated investment manager as sub-manager to manage some or all of the Account assets, assuming MetLife obtains appropriate regulatory approvals. Under all circumstances, each investment manager or sub-manager servicing an Account will acknowledge in writing to the Plan fiduciary that it will be a fiduciary of the Plan with respect to a MetLife Trust GIC and as such, will be subject to the fiduciary provisions of the Act.

8. Before an Account is established, MetLife and the Plan sponsor will agree to a set of investment guidelines which will define how the investment manager will manage the Account's assets, identify the assets that are approved for investment by the Plan and allow performance to be measured against one or more published indices based upon recognized industry sources. It is anticipated that these guidelines will vary from one Plan to another. Once the investment guidelines are established, they can be changed only by mutual agreement between MetLife and the Plan sponsor. The investment guidelines will be subject to review by the New York Department of Insurance and possibly, by the insurance departments of other states.

Objective performance benchmarks for an Account will allow the Plan sponsor to evaluate the performance of the investment manager or sub-manager. The benchmarks selected for the Account will be appropriate to the assets and specific investment objectives of the Account. The benchmarks will be based on objectively-published indices such as the Lehman Brothers Intermediate Government/Corporate Index, the Merrill Lynch Intermediate Government/Corporate Index, or a combination of one or more indices, as appropriate to the composition of the Account.[1]

9. Contributions placed into an Account will be invested immediately by the investment manager or, if applicable, sub-manager, primarily in publicly-traded, fixed income securities. The specific classes of investments allowed in any particular Account will be set forth in the Account's investment guidelines. These investments may include U.S. Treasury securities, U.S. agency debt, corporate bonds, mortgage-backed securities, asset-backed securities, equities, foreign government and agency debt, supranational agency debt or other asset classes and employer debt securities within the meaning of section 407(d) of the Act.[2] The investment guidelines may also allow the use of options (other than naked put and call options), futures, warrants, forwards or similar instruments on a limited basis for hedging and risk management purposes.[3]

MetLife does not expect any single Account to utilize every one of these types of assets or asset quality specifications. Therefore, the aforementioned investments are intended to represent the universe of investment alternatives among which the Plan sponsor can choose to meet its investment and benefit needs.

As part of the investment guidelines, the appropriateness of the broad asset classes and asset quality levels will be subject to the review and approval of the New York State Insurance Department (and possibly the insurance departments of other states).

10. The value of the Account will be its fair market value (the Market Value). In the case of an asset consisting of a security for which market quotations are readily available, the quoted Market Value of such security, as determined by the investment manager or the sub-manager, will be the fair market value. Because MetLife expects the investments will be composed primarily of publicly-traded, fixed income securities, it expects that in virtually all cases, asset investment values can be determined readily from any of a number of widely-available, independent published sources.

In the case of any other asset, quotations will be obtained from broker-dealers or pricing services that are independent of MetLife, the investment manager and/or the sub-manager. The asset will be valued based on the average of at least three bid and three ask prices obtained from such independent sources. To the extent that quotations cannot be obtained, the Market Value of the asset will be based upon an appraisal made by an independent appraiser selected by either the custodian or a Plan sponsor or fiduciary which is not affiliated with MetLife, the investment manager, and/or the sub-manager.[4]

11. Each MetLife Trust GIC will provide a Guaranteed Value that will be available exclusively for participant-initiated benefit withdrawals. The Guaranteed Value is defined as the amount of any contributions, plus interest at a credited rate (i.e., the Credited Rate), minus withdrawals. It is expected that the Guaranteed Value and the Market Value of the Account may differ at any given time. However, MetLife will seek to maintain the Guaranteed Value as reasonably close to the Market Value by reflecting any difference between them in the Credited Rate.[5]

12. MetLife will determine the initial Credited Rate by using an objective methodology that is fully disclosed and agreed to by Plan sponsors. The initial Credited Rate will reflect three factors: (a) The expected yield-to-maturity of assets in an Account; (b) payments expected into or out of an Account; and (c) the anticipated expenses to be charged under the MetLife Trust GIC.[6] The Credited Rate will not be affected by the length of time that MetLife has managed a MetLife Trust GIC Account.

The period for which the Credited Rate is in effect will be agreed to in advance by MetLife and the Plan sponsor and it will not exceed one year.[7] At the end of this period, on an agreed-upon date, MetLife will reset the Credited Rate by declaring a new interest rate (which can never be less than 0 percent) to be credited to the Guaranteed Value. The new Credited Rate will be based upon the criteria noted above and also reflect the amortization of any difference between the Guaranteed Value and Market Value. (The amortization period will be no longer than the period specified in the MetLife Trust GIC which is typically the approximate average duration of the assets in the Account.)

In resetting the Credited Rate, MetLife will utilize the following formula:

$(MV+CF)*(1+YTM)^n=(GV+CF)*(1+i)^n$

Where—

- MV = Market Value (includes fees and expenses)
- CF = Expected Cash Flow
- GV = Guaranteed Value (includes fees and expenses)
- YTM = Anticipated Yield-To-Maturity (net of fees and expenses)
- n = Duration
- i = Credited Rate.[8]

To solve the equation for the Credited Rate, (i), the formula can be mathematically restated as—

$((MV+CF/GV+CF)*(1+YTM)^n)^{1/n}-1=i$

The formula then shows that the Credited Rate, (i), equals the Anticipated Yield-To-Maturity of the assets in the Account (YTM), adjusted by the difference between the Market and Guaranteed Values (MV/GV) spread over the portfolio's Duration (1/n) of the Account's investment portfolio. In other words, the starting point for the Credited Rate will always be the current net Anticipated Yield-To-Maturity or the expected return on assets in the portfolio. The Credited Rate will then be adjusted to account for the differences between the prior expected returns and the portfolio's actual returns. To provide a smooth pattern of returns for Plan participants, MetLife will factor these differences in over time. For example, if a portfolio has a duration of three years, one-third of the difference will be recognized in the current reset.

The Credited Rate may also be reset by MetLife as a result of certain actions by a contractholder or in the event of a contract discontinuance. Specifically, the events that will trigger a reset of the Credited Rate before the end of the stated period are (a) notice of the discontinuance of a MetLife Trust GIC, (b) Plan contributions beyond those anticipated under the Plan's formula, (c) withdrawals that are not initiated by Plan participants, and (d) a Plan fiduciary's request for an earlier reset. Any reset of the Credited Rate will be

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[1] It is represented that data from indices such as the Lehman Brothers Intermediate Government/Corporate Index is available on a daily basis from Bloomberg or by subscription from Lehman Brothers.

[2] The Department is not proposing, nor it the applicant requesting, exemptive relief herein with respect to the acquisition and holding of employer debt securities beyond that provided under sections 407 and 408 of the Act.

[3] In this regard, it is represented that the use of options and futures contracts will be governed by the investment guidelines that are negotiated between MetLife and Plan fiduciaries. Any guidelines permitting investment in derivatives must be approved by both the Plan fiduciaries and MetLife. The use of derivatives will be for hedging purposes only. Futures contracts will not be permitted to be used to leverage a MetLife Trust GIC and only unaffiliated brokers will be used to purchase such contracts.

MetLife represents that the yield-to-maturity calculated on equities and hedge securities will be calculated, depending on the nature of the Account, on a proxy that will provide an equivalent to the historical yield. MetLife also states that the Credited Rate reset formula will ensure that all market performance is passed through in future Credited Rates.

[4] MetLife anticipates that in many cases, the custodian bank will perform the asset valuation function in reliance on published sources. If the assets are not listed in published sources, the custodian may ask the investment manager to supply the price. To the extent that MetLife or an affiliated manager or sub-manager has the authority to establish the value of the assets of a MetLife Trust GIC, MetLife proposes a three-part method in order of preference: (a) From independent published sources, (b) the average of at least three bid and ask prices from independent sources; or (c) based on an appraisal by an independent appraiser which is not selected by or affiliated with MetLife, the investment manager and/or the sub-manager.

[5] For example, assume that the Guaranteed Value of a MetLife Trust GIC is $10,000,000 while its Market Value is $10,250,000. Assume also that the Anticipated Yield-To-Maturity of such investment is 7.25 percent based upon an objective, external index and the approximate duration of the MetLife Trust GIC is 5.23 years, again based upon an external, objective index. Assume further that no deposits or withdrawals are ever made to or from the MetLife Trust GIC.

The 2.5 percent difference between the Market Value and the Guaranteed Value will be amortized by MetLife over the 5.23 year Duration of the MetLife Trust GIC by increasing the Credited Rate. Therefore, the first year's addition to the Credited Rate will be approximately 48 basis points (2.5 percent/5.23 years).

Instead of crediting the 7.25 percent anticipated yield of the MetLife Trust GIC, MetLife represents that participants will be credited with an effective annual rate of 7.73 percent for the first year (7.25 percent + 0.48 percent).

In the foregoing example, if the Guaranteed Value of the MetLife Trust GIC is $10,000,000 and the Market Value is $9,750,000, MetLife states that there will be a reduction in the Credited Rate of approximately 48 basis points. Rather than crediting participants with the 7.25 percent yield, participants will be credited with an effective annual rate of 6.77 percent for the first year (7.25 percent—0.48 percent).

For subsequent years, the Credited Rate will be determined in the same manner.

[6] The applicant notes that factors (a) and (c), cited above, are components of the net Anticipated Yield-to-Maturity or YTM and that factor (b) comprises the Cash Flow or CF variable in the Credited Rate reset formula which is discussed later in this Representation.

[7] Typical Credited Rate reset dates may occur monthly, quarterly, semiannually or annually at the choice of the Plan sponsor. For example, during the period from 24 to 12 months prior to the final maturity date of a MetLife Trust GIC (see Representation 13), the Credited Rate may be reset as frequently as quarterly. During the period from 12 months prior to the final maturity date to the final maturity date, the Credited Rate may be reset as frequently as monthly.

[8] In this proposed exemption, MetLife has described such components of the Credited Rate reset formula as the Market Value and the Guaranteed Value. MetLife has further defined the terms "Expected Cash Flow," "Duration," and "Yield-to-Maturity," and represents that such variables, with the exception of Expected Cash Flow, are based upon objective, external criteria which would be communicated by MetLife to the Plan fiduciary. MetLife also explains that a Plan fiduciary would then be able to verify the accuracy of the index data directly from the index provider or from a third party news or information source.

MetLife represents that the Expected Cash Flow is the net amount of participant-initiated contributions and withdrawals expected to flow into or out of a MetLife Trust GIC Account during the period for which the Credited Rate will be effective (i.e., the Credited Rate Period). MetLife notes that the Expected Cash Flow is not related to any external index but reflects the cumulative effect of individual participants' asset allocation decisions. According to MetLife, the level of Expected Cash Flow is determined in consultation with the Plan and is based upon the Plan's historical cash flow pattern as well as expected Plan events.

MetLife explains that the Duration is the period from the effective date of the Credited Rate reset until the maturity date or average maturity date. MetLife notes that the Credited Rate reset formula for a MetLife Trust GIC will use the duration of the index unless specifically requested by the Plan with MetLife's consent. MetLife represents that it will not calculate the duration of the index. Rather, such calculation will be made by the index provider.

According to MetLife, the Yield-to-Maturity is the yield of a Treasury security with a comparable duration once a Plan has selected a defined maturity date. Prior to the selection of a maturity date, MetLife states that the Yield-to-Maturity component will be the Yield-to-Maturity of an external index unless specifically requested by the Plan with MetLife's consent. MetLife further represents that the yield-to-maturity of the index will be calculated by the index provider.

MetLife further points out that should a Plan choose another source for the aforementioned variables, the source may only be used with MetLife's consent. MetLife notes that the consent must be renewed by the Plan at least annually.

determined by the Credited Rate reset formula described above and will reflect any change in the parameters (such as Market Value and Guaranteed Value) since the prior reset. Such reset of the Credited Rate will be disclosed to the sponsor of a Plan. Depending upon the events causing the rate change, up to 30 days' advance written notice of such change will be given by MetLife to the Plan fiduciary. Assuming the Plan fiduciary does not agree to the reset under circumstances (b) and (d), such fiduciary will be afforded the opportunity to discontinue the MetLife Trust GIC.

13. Each MetLife Trust GIC will have a defined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. One month before the anniversary date of the MetLife Trust GIC, MetLife will notify the Plan fiduciary, in writing, of the impending anniversary of such MetLife Trust GIC, as well as the new reset rate for the Credited Rate, and afford the fiduciary the opportunity to notify MetLife that it will affirm the maturity date. If the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to affirm the maturity date, the date will be extended by one year and the notification procedure will be repeated prior to the next impending anniversary date of the MetLife Trust GIC.[9] Upon the maturity of a MetLife Trust GIC, MetLife represents that if the Market Value of the assets invested in the MetLife Trust GIC is less than the amount initially placed in the Account plus guaranteed interest at the Credited Rate, it will make up the difference. Such amount will be adjusted for interim contributions and withdrawals. As an additional benefit, MetLife states that if at maturity the Market Value of a MetLife Trust GIC exceeds the Guaranteed Value, the Plan will retain the full Market Value appreciation of the underlying assets.

14. The Plan sponsor will pay MetLife a single contract charge that is based upon a specified percentage of the Guaranteed Value. The contract charge will include management fees, risk charges and administrative expense charges, all of which will not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.[10] The contract charge, which will be negotiated by MetLife with each Plan fiduciary, will be influenced by the composition of the MetLife Trust GIC, the investment guidelines and the nature of the Plan. In general, the higher the dollar investment in a MetLife Trust GIC, the lower the contract charge.

The contract charge will be calculated monthly by multiplying the specified percentage of the MetLife Trust GIC's average Guaranteed Value for the month by an applicable fee schedule percentage.[11] MetLife will withdraw the contract charge from the Account each month. Afterwards, MetLife will compensate the affiliated and unaffiliated investment managers and sub-managers from the contract charge unless the Plan fiduciary elects to compensate the investment manager or sub-manager directly.

15. In the event of a participant-initiated benefit withdrawal, which will trigger the Guarantee mechanism in a MetLife Trust GIC, MetLife typically requests written notice of such a benefit withdrawal at least 48 hours in advance. Sometimes, such a benefit withdrawal request may be made by a Plan orally and then followed by a confirming fax. Under such circumstances, the investment manager or the sub-manager will make sufficient liquidity available to meet the withdrawal and the custodian/trustee will transfer this amount. Such liquidity for participant-initiated benefit withdrawals will be made by MetLife at the Guaranteed Value of the Account. No additional fees will be charged. If the investment manager or sub-manager has liquidated more assets than are needed to meet the benefit withdrawal, the excess will be immediately reinvested.

16. In addition to participant-initiated benefit withdrawals, the Plan sponsor can choose to withdraw funds from a MetLife Trust GIC at any time. In a non-benefit withdrawal, the Plan fiduciary will remove assets from the MetLife Trust GIC Account. A non-benefit withdrawal will be made at Market Value. Under these circumstances, MetLife will reduce the Guaranteed Value by a proportionate amount that bears the same ratio to the entire Guaranteed Value as the amount withdrawn has to the entire Market Value.

17. MetLife represents that it is precluded from selling depreciating assets and retaining appreciating assets held in a MetLife Trust GIC Account to honor non-benefit withdrawals because all assets are reported at their current market values. Under such circumstances, all gains and losses will flow through to the Plan and the Plan will retain ownership of the assets at all times. Therefore, MetLife states that the selection of assets to be liquidated to satisfy a withdrawal request will have no bearing on the type of withdrawal transaction.

18. MetLife will provide monthly and quarterly written reports to Plan fiduciaries following their preparation.[12] The monthly report will consist of a Guaranteed Value Statement showing the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current credited interest rate and a summary of transactions. MetLife represents that the monthly report will not reflect the Market Value because the assets that comprise the Market Value are owned by the Plan and are held in the Plan's MetLife Trust GIC Account. Because these are Plan assets, MetLife explains that the Plan fiduciary can check the Market Value of the Account whenever he or she may so choose. MetLife further notes that it expects the trustee or custodian of the Account will generate this type of information to the Plan fiduciary.

The quarterly report will consist of a Market Value Statement which will reflect the prior quarter's ending market value for a Plan's MetLife Trust GIC (based upon data provided to MetLife by the trustee or the custodian), contributions, withdrawals, the fees paid to MetLife from which MetLife will make payments to an investment manager or sub-manager, if applicable, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions.[13] In addition to the Market Value Statement, MetLife will provide a Guaranteed Value Statement to the Plan fiduciary on a quarterly basis.

Although there is no specific requirement that MetLife issue an annual report, the Plan fiduciary will be provided with either an annual portfolio listing or a letter describing key events. Any further information provided to the Plan fiduciary will depend upon particular arrangements with such fiduciary.

In addition to the aforementioned reports, MetLife will maintain books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records will be subject to annual audit by independent, certified public accountants.

19. A Plan sponsor may discontinue a MetLife Trust GIC at any time and for any reason. However, MetLife may discontinue the MetLife Trust GIC for cause only (e.g., a Plan's disqualification), a material breach of the MetLife Trust GIC (e.g., a Plan sponsor's encouraging participants to withdraw or transfer funds invested in a MetLife Trust GIC) or a material alteration of a Plan's practices and procedures as specified in the MetLife Trust GIC. Assets that are held in a MetLife Trust GIC will be valued in accordance with the valuation methodology described above in Representation 10. If the discontinuance occurs prior to the maturity date, the assets of the MetLife Trust GIC will be liquidated at the Market Value. However, if the discontinuance occurs at the maturity date of the MetLife Trust GIC, the underlying assets will be liquidated at the greater of the Guaranteed Value or the Market Value.

Neither MetLife nor any investment manager or sub-manager will have the right to purchase or otherwise acquire these assets. In addition, no surrender or withdrawal fees will be paid to MetLife or to any investment manager or sub-manager upon the discontinuance of a MetLife Trust GIC.

20. If a MetLife Trust GIC is discontinued prior to maturity, three options will generally be available. The assets of a MetLife Trust GIC Account may (a) revert to the Plan sponsor, (b) be converted into a MetLife "benefit responsive, nonparticipating, general account conventional GIC (i.e., the MetLife Conventional GIC) or (c) be fully liquidated and distributed to the Plan in cash.[14]

(a) *Reversion Option.* With respect to this option, management of the Account may revert to the Plan sponsor. Under such circumstances, the Plan sponsor will receive the MetLife Trust GIC portfolio intact with whatever appreciation or depreciation has occurred. In the event of a loss, MetLife will not be required to make restitution to the Plan sponsor because the sponsor will receive the actual results of investment performance. In the event of a gain, MetLife will not be permitted to retain the gain and the Plan will benefit from the full amount of the gain.

(b) *The MetLife Conventional GIC Option.* If a MetLife Trust GIC is discontinued at a time when there are losses and other than for cause, the Plan sponsor may select the second option by liquidating the Account in order to purchase a MetLife Conventional GIC. The MetLife Conventional GIC will be identical to a traditional GIC which could be purchased by a Plan fiduciary with "new money" except that the maturity structure and credited rate will reflect the experience of the MetLife Trust GIC. The maturity date (or average maturity date, as appropriate) of the MetLife Conventional GIC may not exceed the duration of the index that has been used to set the MetLife Trust GIC's Credited Rate, unless agreed to by the Plan fiduciary. The credited rate of the MetLife Conventional GIC will reflect the rate MetLife is then offering for GICs with similar average maturity dates, adjusted so that any market value loss or gain present in the MetLife Trust GIC will be amortized over the period ending with the final maturity date of the MetLife Conventional GIC. The credited rate for the MetLife Conventional GIC will also be fixed for the entire contractual period and it cannot be lower than 0 percent.

MetLife represents that under this option, Plan participants will continue to have full access to their accounts on the basis of the guaranteed amount of the MetLife Conventional GIC which they may withdraw or transfer, as permitted under the terms of the Plan, at any time (including the day following the conversion), and without interruption. In practice, this means that even if the Market Value of a MetLife Trust GIC Account is less than its Guaranteed Value, the Plan fiduciary will have the option to discontinue the MetLife Trust GIC without recognizing a loss in value to participant accounts.[15]

Assuming this investment option is selected, MetLife will disclose in advance to a Plan fiduciary, and if applicable, to a Plan participant, pertinent features regarding the MetLife Conventional GIC including a representation to the effect that although a MetLife Conventional GIC may guarantee principal, it may have a credited rate of 0 percent.[16]

(c) *Cash Distribution Option.* Under this option, the Plan sponsor may agree to a cash distribution whereby the Plan will receive the full Market Value of the Account including any appreciation or losses that have occurred.

21. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision to enter into a MetLife Trust GIC has been made and will be made on behalf of a participating Plan in writing by a fiduciary of such Plan who is independent of MetLife.

(b) Each Plan investing in a MetLife Trust GIC has and will have assets that are in excess of $25 million.

(c) Prior to and subsequent to the execution of the MetLife Trust GIC, the Plan fiduciary, and if applicable, Plan participants, have received and will receive written disclosures of all material features concerning the MetLife Trust GIC, including a description of all applicable fees and charges, as well as ongoing disclosures with respect to such investment.

(d) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC has not and will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Each MetLife Trust GIC has provided and will specifically provide an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(f) MetLife has maintained and will maintain for a period of six years from the date of each MetLife Trust GIC

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[9] MetLife notes that the procedures governing the maturity date of a MetLife Trust GIC will not affect the ability of a Plan fiduciary to discontinue such investment as described in Representation 19.

[10] The Department expresses no opinion herein on whether such compensation will satisfy the terms and conditions of section 408(b)(2) of the Act.

[11] MetLife has constructed the following fee schedule to illustrate its contract charges under a hypothetical arrangement:

- First $100 million—50 basis points;
- Next $100 million—45 basis points;
- Excess over $200 million—35 basis points.

MetLife notes that due to the bundled nature of the fees and the fee variations among the investment managers and sub-managers, it would be impossible to forecast precisely how MetLife would allocate the investment management component of such fees among the managers. However, MetLife explains that a recent survey of institutional investment managers indicated that fees for managing this type of assets could range from 12 to 44 basis points. Therefore, MetLife expects that at least initially, the investment management component of the contract charge that is paid by MetLife to State Street Research or any other affiliated or unaffiliated investment manager or sub-manager for managing a MetLife Trust GIC should be close or within this range. MetLife further explains that in no event will such fees exceed reasonable compensation.

[12] The reports described above may also be provided by Plans to Plan participants upon such participants' request.

[13] It is represented that the Guaranteed Value Statement does not include a separate entry for fees because fees are reflected in the Credited Rate and are not deducted separately from the Guaranteed Value. It is also represented that a custodian or trustee of a MetLife Trust GIC may provide periodic statements to a Plan fiduciary.

[14] MetLife represents that it will not be precluded from presenting a Plan sponsor with other options that are deemed to be better-suited to the needs of the Plan.

[15] Assuming a Plan sponsor directs participants to withdraw their account balances from a MetLife Conventional GIC, MetLife reserves the right not to honor withdrawals based upon the guaranteed value of the GIC.

[16] The Department notes that the decision by a Plan fiduciary to convert a MetLife Trust GIC into a MetLife Conventional GIC, which guarantees principal but provides a below market rate of return (e.g., 0 percent), is subject to the provisions of section 404 of the Act. Accordingly, the Department emphasizes that it expects the Plan fiduciary to evaluate fully the terms of this investment option before electing a MetLife Conventional GIC.

transaction, books and records of such transactions that will be audited annually by independent, certified public accountants.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 60 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will be mailed by MetLife to Plan fiduciaries that have already entered into MetLife Trust GIC arrangements. The notice will include (a) a copy of the proposed exemption, as published in the **Federal Register**, which will be given to the Plan fiduciaries, (b) the text of the operative portion of the proposed exemption, which will be distributed by Plan fiduciaries to Plan participants in Section 404(c) Plans, and (c) a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests regarding the proposed exemption will be due 90 days from the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Valley Forge Consulting Corporation, Profit Sharing Trust (the Plan), Located in King of Prussia, PA

[Application No. D–10466]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a first mortgage note (the Note) by the individually-directed account (the Account) in the Plan of Steven R. Eyer to Mr. Eyer, provided—

(a) The terms of the transaction are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account is not required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note represents a one-time transaction for cash.

(d) The fair market value of the Note is determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account receives an amount that is no less than the fair market value of the Note as of the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Valley Forge Consulting Corporation, a pension design and administration firm maintaining its principal place of business in King of Prussia, Pennsylvania. The Plan provides for participant-directed investments. As of May 16, 1997, the Plan had 19 participants, one of whom included Mr. Eyer who serves as a Plan trustee. The other trustees of the Plan are Jack C. Holland, W. Gerald Murphy and Leonard A. Mayo. As of February 28, 1996, the Plan had net income of $743,918. Also on that date, Mr. Eyer had $514,027 in his individual Account in the Plan.

2. Mr. Eyer requests an administrative exemption from the Department in order to purchase a defaulted mortgage note (the Note) from his Account in the Plan. The Note, dated August 3, 1990, is a first mortgage note that was executed between the Account, as lender, and Willie Torres, an unrelated party, as the borrower. The Note is secured by a parcel of improved real property located at 629–631–633 W. Girard Avenue and 1213 N. Seventh Street, Philadelphia, Pennsylvania (the Property). The Note was in the original principal amount of $22,000 and carried interest at the rate of 14½ percent per annum. The Note required 60 monthly payments of principal and interest in the amount of $269. It was amortized on the basis of a 30 year amortization schedule and matured on August 2, 1995. The Note required a balloon payment at maturity.

3. From August 1990 until July 1995, Mr. Eyer's Account received 59 monthly payments under the Note totalling $15,895 and it paid $211 in connection with the Note's administration. Because Mr. Torres made no further payments after July 1995, the Note was considered to be in default. At the time of the default, the Note had an outstanding principal balance of $21,695. Moreover, at the time of the default, there was a second mortgage on the Property in the principal amount of $38,150 which had been provided by Milton and Sandra Klein, the original owners of the Property as well as unrelated parties, to Mr. Torres. The second mortgage note had been executed contemporaneously with the Note.

4. Currently, the Property consists of an abandoned shell having multiple apartments. There is no glass in the windows and water damage has been extensive. In addition, Mr. Torres has filed for bankruptcy and is unable to make payments under the Note. Although foreclosure on the Property has been considered as a way of recouping the Account's investment in the Note, Mr. Eyer does not believe the potential value of the Property will cover over $15,000 in back taxes, $2,000 in back utilities and the second mortgage. Therefore, Mr. Eyer proposes to purchase the Note from his Account in order that the sale proceeds may be invested by his Account in performing assets.

5. The Note has been appraised by Vincent DiPentino, a licensed real estate salesman and broker. Mr. DiPentino is affiliated with the real estate firm of Century 21-DiPentino Associates, which is located in Philadelphia, Pennsylvania.

Mr. DiPentino represents that he has been in the real estate business in the Philadelphia area since 1978 and states that he has bought and sold properties both as principal and agent in the vicinity of the Property. Mr. DiPentino also states that he is independent of the parties involved in the proposed sale.

In an appraisal report dated June 23, 1997, Mr. DiPentino has determined the fair market value of the Note by first examining the fair market value of the underlying Property. In this regard, he notes that the Property is located in a distressed section of Philadelphia and has incurred substantial deterioration. Based on sales of comparable rental properties, he concludes that the fair market value of the Property is approximately $35,000 as of June 23, 1997. However, from this base value, Mr. DiPentino notes that the following costs must be deducted: (a) $3,000 in selling costs, (b) $16,000 in outstanding taxes, and (c) $2,000 in outstanding water and sewer bills. In addition, because the Note is in default, Mr. DiPentino states that it will be necessary to foreclose on the Property, an action that will result in additional costs of approximately $3,000. Thus, considering the foregoing factors as well as conversations with other parties potentially interested in purchasing the Note, Mr. DiPentino has placed the maximum fair market value of the Note at $10,000 as of June 23, 1997.

6. Mr. Eyer proposes to purchase the Note from his Account for $10,000, which represents the fair market value of the Note as determined by Mr. DiPentino.[17] Mr. Eyer will not pay his Account accrued interest with respect to the Note inasmuch as all such interest had been paid through the date of default. The Account will not incur any sales commissions, fees or other expenses in connection with the proposed sale. All transactional costs will be borne entirely by Mr. Eyer.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the transaction will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account will not be required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note will represent a one-time transaction for cash.

(d) The fair market value of the Note has been determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account will receive an amount that is no less than the fair market value of the Note as of the date of the sale.

Notice to Interested Persons

Because Mr. Eyer is the only participant in the Plan whose Account in the Plan will be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. However, comments and requests for a hearing must be received by the Department within 30 days of the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert A. Doneff Custodial IRA (the IRA) Located in Manitowoc, WI

[Application No. D–10480]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the IRA [18] to Robert A. Doneff (Mr. Doneff), a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) the IRA receives the fair market value of the Property, as established at the time of the Sale by a qualified, independent appraiser; and

(d) the IRA is not required to pay any commissions, costs, or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by Mr. Doneff, the sole participant and beneficiary. As of June 1997, the IRA held assets valued at approximately $179,500. The trustee of the IRA is the First National Bank of Manitowoc.

2. The Property consists of a single parcel located north of Manitowoc, Wisconsin. It consists of approximately 71.5 acres of level to gently rolling land zoned for agricultural use and surrounded by other properties utilized for agricultural purposes. Although the zoning also permits building of single family residences with a minimum of five (5) acre lots and 330 feet of road frontage, the Property is presently used to grow crops. Mr. Doneff represents that he does not own any land adjacent to the Property and that the Property has not been leased or used by any disqualified persons.

3. According to the applicant, the IRA originally acquired the Property as a real estate investment. The IRA purchased the Property in 1993 from an unrelated third party in a cash transaction for $74,000. Since acquiring the Property, the IRA has rented it for agricultural usage at a rate of $45 per acre per year and has generated a net income of $6,095.43.

4. Lyle J. Hartman (Mr. Hartman), an accredited appraiser with Lyle Hartman, Appraisals, located in Manitowoc, WI, originally appraised the Property on March 22, 1997, and updated his appraisal on September 9, 1997. After inspecting the Property, Mr. Hartman determined that a fee simple interest in the Property is worth $171,600.

In his appraisal, Mr. Hartman relied primarily on the market approach. This method of appraisal involves an analysis of similar recently sold properties in the area in question, so as to derive the most probable sales price of the Property. Mr. Hartman determined the present highest and best use for the Property to be agricultural. However, due to the proximity of the Property to the City of Manitowoc, Mr. Hartman also considered the potential of the Property as a rural building site or, in case of its annexation by the City of Manitowoc, a residential building site.

Mr. Hartman states that he is a full time qualified, independent appraiser, as demonstrated by his status as a Senior Member of the National Association of Real Estate Appraisers. He has over 20 years experience and is familiar with the market changes and current market conditions pertaining to real estate in Manitowoc County, Wisconsin. In addition, Mr. Hartman represents that both he and his firm are independent of Mr. Doneff and that he possesses no present or future interest in the Property.

5. The applicant requests an exemption for the proposed sale of the Property by the IRA to Mr. Doneff. As noted above, the IRA would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Property, thus enabling the IRA to diversify the investments and facilitate distributions from the IRA when appropriate. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the IRA will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale and will incur no commissions, costs, or other expenses as a result of the Sale.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the IRA as those obtainable in an arm's length

[17] It should be noted that the $11,695 "loss" or differential between the outstanding principal balance of the Note ($21,695) and its independently appraised value ($10,000) will only affect Mr. Eyer's Account in the Plan rather than the accounts of the other Plan participants.

[18] Because Mr. Doneff is the only participant in the IRA, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

transaction with an unrelated third party; (b) the Sale would be a one-time cash transaction allowing the IRA to diversify its investments and facilitate the making of distributions from the IRA when appropriate; (c) the IRA would receive the fair market value of the Property, established by a qualified, independent appraiser as of the date of sale; (d) the IRA would not be required to pay any commissions, costs, or other expenses in connection with the Sale; and (e) Mr. Doneff has determined that the proposed Sale of the Property would be feasible, in the best interests of the IRA, and protective of the participant and beneficiary.

Notice to Interested Persons

Because Mr. Doneff is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of October, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–27701 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–153)]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Airframe Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register *Citation of Previous Announcement:* 62 FR 50965, notice number 97–141, September 29, 1997.

Previously Announced Dates and Addresses of Meeting: October 21, 1997, 8:00 p.m. to 4:30 p.m., October 22, 1997, 8:00 a.m. to 4:30 p.m., and October 23, 1997, 8:00 a.m. to 12:30 p.m. National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681–0001.

October 21, 1997: Building 1219, Room 225

October 22, 1997: Building 1229, Room 124 (Structures and Materials); Building 1212, Room 200 (Aerodynamics and Aerothermodynamics); Building 1268A, Room 1141 (Airborne Systems)

October 23, 1997: Building 1219, Room 225

Changes in the Meeting: Dates changed to December 9, 1997, December 10, 1997, and December 11, 1997. Location changed to Building 1202A.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Hernandez, National Aeronautics and Space Administration, Mail Stop 113, Langley Research Center, Hampton, VA 23681–0001, 757/864–6033.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 10, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–27650 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–155)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: November 5, 1997, 8:30 a.m. to 5:00 p.m.; November 6, 1997, 8:30 a.m. to noon and 2:00 p.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- NASA Enterprise Presentations
- Review Status of Office of Chief Technologist

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 14, 1997.

Alan M. Ladwig,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–27723 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Wednesday, October 22, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Requests from Two (2) Federal Credit Unions to Convert to Low-Income Community Charters.
3. Request from a Credit Union to Convert to Private Insurance.
4. Appeal from a Federal Credit Union of the Regional Director's Denial of a Field of Membership Expansion Request.
5. Delegations of Authority.
6. Request from a Federal Credit Union to Merge and Convert Insurance.
7. Request from a Federal Credit Union to Convert and Merge into a Federal Mutual Savings Association.
8. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
9. Notice of Proposed Rulemaking: Amendments to Part 792, Subpart A, NCUA's Rules and Regulations, Procedures for Processing Freedom of Information Act Requests for NCUA Records.
10. Final Rule: Amendments to Part 792, Subpart C, and Section 792.4, NCUA's Rules and Regulations, Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings.
11. Proposed Amendments to Interpretative Ruling and Policy Statement (IRPS) 94–1, Chartering Manual.
12. Overhead Transfer Rate.
13. National Credit Union Share Insurance Fund (NCUSIF) Dividend for 1997 and NCUSIF Insurance Premium for 1998.

RECESS: 12:00 Noon.

TIME AND DATE: 1:00 p.m., Wednesday, October 22, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Two (2) Administrative Actions under Sections 125, 205 and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
3. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–27781 Filed 10–16–97; 1:10 pm]

BILLING CODE 7535–01–M

NATIONAL EDUCATION GOALS PANEL

Notice of a Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES AND TIMES: Wednesday, November 5, 1997 from 9:00 a.m. to 11:00 a.m.

ADDRESSES: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Columbia Ballroom B, Washington, DC 20001.

FOR FURTHER INFORMATION: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724–0015.

SUMMARY: National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

AGENDA ITEMS: The meeting of the Panel is open to the public. The first item on the agenda is the release of the 1997 National Education Goals Report. The theme of this year's report is "Mathematics and Science Achievement for the 21st Century." The report highlights student achievement in math and science, with a special emphasis on the Third International Math and Science Study (TIMSS). It provides national data on 26 indicators and state data on 33 indicators for the eight National Education Goals.

The second item on the agenda will have the Panel receive and discuss the policy recommendations of its Goals 3/4/5 Standards Implementation Advisory Group.

Dated: October 15, 1997.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 97–27717 Filed 10–17–97; 8:45 am]

BILLING CODE 4010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22855; File No. 812–10622]

Acacia National Life Insurance Company, Inc., et al.

October 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under Section 26(b) of the Investment Company Act of 1940 (the "Act") approving proposed substitutions of securities.

SUMMARY OF APPLICATION: Applicants seek an order to permit the substitution of shares of the Neuberger & Berman Advisors Management Trust Limited Maturity Bond Portfolio ("N&B Bond Portfolio") for shares of the Strong Advantage Fund II ("Strong Advantage") and the substitution of shares of Acacia Capital Corporation Calvert Responsibly Invested Balanced Portfolio ("Calvert Balanced Portfolio") for shares of the Strong Asset Allocation Fund II ("Strong Asset Allocation" and, collectively with Strong Advantage, the "Strong Funds").

APPLICANTS: Acacia National Life Insurance Company ("Acacia National"), Acacia National Life Insurance Company Variable Life Separate Account I ("Separate Account I"), Acacia National Life Insurance Company Variable Annuity Separate Account II ("Separate Account II", together with Separate Account I, the "Separate Accounts").

FILING DATES: The application was filed on April 17, 1997, and amended on September 25, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving

the Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 pm., on November 4, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Ellen Jane Abromson, Esq., Acacia National Life Insurance Company, 7315 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. (tel. (202) 942–8090).

Applicants' Representations

1. Acacia National is a stock life insurance company organized under the laws of Virginia. Acacia National is a wholly owned subsidiary of Acacia Mutual Life Insurance Company, a mutual life insurance company chartered by special act of Congress and subject to the laws of the District of Columbia. The Separate Accounts were established by Acacia National under the insurance laws of Virginia to fund, in the case of Separate Account I, variable life insurance policies and, in the case of Separate Account II, variable annuity policies (together, the "Policies"). The Separate Accounts are registered with the Commission under the 1940 Act as unit investment trusts.

2. Each Separate Account currently consisted of twenty-one sub-accounts. Each sub-account invests its assets in the shares of one of twenty-one designated investment portfolios of seven open-end management investment companies. Strong Advantage, Strong Asset Allocation, N&B Bond Portfolio, and Calvert Balanced Portfolio are four of the twenty-one existing portfolios.

3. Strong Advantage is a series of Strong Variable Insurance Funds, Inc. ("Strong Variable Funds") for which Strong Capital Management, Inc. ("SCM") is the investment adviser. Strong Advantage seeks to provide current income with a low degree of share-price fluctuation by investing in ultra short term, investment grade debt obligations; its average effective portfolio maturity is normally less than one year. Strong Advantage is designed for investors who seek higher yields than money market funds and who are willing to accept some modest principal fluctuation in order to achieve that objective. Under normal market conditions, at least 75% of its net assets are invested in investment grade debt obligations. Strong Advantage may also invest up to 25% of its net assets in non-investment grade debt obligations that are rated in the fifth-highest rating category or in unrated securities of comparable quality.

4. Strong Asset Allocation is also a series of Strong Variable Funds for which SCM is the advisor. Strong Asset Allocation seeks high total return consistent with reasonable risk over the long term by allocating its assets among a diversified portfolio of equity securities, bonds and short-term fixed-income securities with benchmark allocations of 60% stock, 35% bonds and 5% cash.

5. N&B Bond Portfolio is a portfolio of the Neuberger & Berman Advisors Management Trust. As a feeder fund in a "master-feeder" arrangement, the fund invests its assets in a corresponding series, AMT Limited Maturity Bond Investments ("AMT Series"), of Advisors Management Trust, an open-end management investment company registered under the 1940 Act. The investment objective of the N&B Bond Portfolio and the AMT Series is to provide the highest current income consistent with low risk to principal and liquidity and, secondarily, total return. The AMT Series invests in short-to-intermediate term fixed and variable debt securities and seeks to increase income and preserve or enhance total return by actively managing average portfolio duration. The AMT Series invests primarily in investment grade securities but may invest up to 10% of its pet assets, measured at the time of investment, in debt securities rated below investment grade or in unrated securities determined by its adviser to be of comparable quality.

6. The Calvert Balanced Portfolio, a series of Acacia Capital Corporation, is advised by Calvert Asset Management Company, Inc. It seeks to achieve a total return above the rate of inflation through an actively managed portfolio of common and preferred stocks, bonds, and money market instruments. For its fixed-income investments, the Calvert Balanced Portfolio normally invests in investment grade bonds but may invest up to 20% of its assets in obligations rated lower than B. No more than 10% of assets may be invested in privately placed instruments. Each investment of the Calvert Balanced Portfolio is selected with a concern for its social impact.

7. On November 1, 1996, SCM notified Acacia National that Strong Variable Funds intended to cease offering shares of the Strong Funds for inclusion in variable polices due to the small amount of assets in the two portfolios and the corresponding absence of economies of scale. New allocations to the Strong Funds are no longer permitted.

8. Acacia National proposes to provide policyowners with the option to transfer into any of the other portfolios offered under the Policies. However, because some policyowners will not voluntarily transfer from the affected sub-accounts, Acacia National proposes to substitute shares of the N&B Bond Portfolio for shares of Strong Advantage and Calvert Balanced Portfolio shares for shares of Strong Asset Allocation in the sub-accounts.

9. The Policies give Acacia National the right to eliminate or add sub-accounts, combine two or more sub-accounts, or substitute one or more new underlying mutual funds or portfolios for others in which one or more sub-accounts are invested. These contractual provisions are disclosed in the prospectuses or statements of additional information relating to the Policies.

10. Acacia National will schedule the substitutions to occur as soon as practicable following the issuance of an exemptive order. As of the effective date of the substitutions, Acacia National will redeem shares of the Strong Funds. Simultaneously, Acacia National will use the proceeds of the redemptions to purchase the appropriate number of shares of N&B Bond Portfolio and Calvert Balanced Portfolio. The substitution will take place at the relative net asset values of the portfolios with no change in the amount of any policyowner's account values.

11. Acacia National will pay all expenses and transaction costs of the substitutions. SCM may reimburse Acacia National for some or all of those costs but none will be borne by policyowners. Affected policyowners will not incur any fees or charges as a result of the substitutions, nor will the rights or obligations of Acacia National under the Policies be altered in any way.

12. The substitutions were first described to policyowners in a prospectus supplement dated November 25, 1996, and again in correspondence to policyowners dated May 1, 1997, or May 16, 1997, depending on the state in which the Policy was issued. The prospectus supplement advised policyowners that the Strong Funds would cease offering shares under the Policies effective May 1, 1997, and, consequently, deposits would no longer be accepted into the Strong Funds after that time. Policyowners were also notified that if the substitutions were approved by the SEC, the substitutions would be effected at the net asset value of the relevant portfolios, that policyowners would be given the opportunity to transfer into any other available portfolio, and that no costs for any substitution would be borne by policyowners.

13. Within five days after the substitutions, Acacia National will send to policyowners written notice stating that the substitutions have occurred. Acacia National will include in the mailing a supplement to the prospectus which discloses the completion of the substitutions. Affected policyowners will be advised that for a period of 30 days from the mailing of the notice, they may transfer all assets, as substituted, to any other available sub-account without limitation and without charge, and no such transfer will be counted as a transfer under any contractual provision that may limit the number of transfer in any year. No transfer charge is currently in effect and none will be imposed prior to the expiration of the 30 day period. Following the substitutions, policyowners will be afforded the same rights, including surrender and other transfer rights with regard to amounts invested under the Policies as they currently have. Thus policyowners may choose simply to withdraw amounts credited to them following the substitutions under the conditions that currently exists, subject to any applicable surrender charge.

14. The investment advisory fee for Strong Advantage is, on an annual basis, .60% of the average daily net asset value of the portfolio. As a result of an expense limitation agreement, the expense ratio for Strong Advantage for the year ending December 31, 1996, was 2.00%. in the absence of this agreement, the expense ratio would have been 2.85%.

15. The investment advisory fee for Strong Asset Allocation is, on an annual basis, .85% of the average daily net asset value of the portfolio up to a value of $35 million in assets and .80% of the portfolio's assets in excess of $35 million. As a result of an expense limitation agreement, the expense ratio for Strong Asset Allocation for the year ending December 31, 1996, was 2.00%. In the absence of this agreement, the expense ratio would have been 4.29%.

16. The investment advisory fee for the N&B Bond Portfolio equals a percentage of the average daily net asset value of the portfolio, on an annual basis, as follows: .65% for the first $500 million; .615% for the next $500 million; .60% for the next $500 million; .575 for the next $500 million; and .55% thereafter. The expense ratio for the N&B Bond Portfolio for the year ending December 31, 1996, was .80%.

17. The investment advisory fee for the Calvert Balanced Portfolio is, on an annual basis, .70% of the average daily net asset value of the portfolio. Its expense ratio for the year ending December 31, 1996, was .81%.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants submit that the purposes, terms and conditions of the substitutions are consistent with the principals and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants believe that the N&B Bond and Calvert Balanced portfolios will better serve policyowner interests because the expenses of each portfolio have been significantly lower than, and the performance of each has been essentially equivalent to or better than, the expenses and performance of the funds to be eliminated. Also, Applicants submit that Policyowners may transfer their assets to any of seventeen additional portfolios currently available under the Policies.

3. Applicants believe that Calvert Balanced is an appropriate replacement for Strong Asset Allocation notwithstanding the fact that Calvert Balanced seeks to invest in organizations that: (a) Deliver safe products and services; (b) are managed with participation throughout the organization in defining and achieving objectives; (c) negotiate fairly with their workers and provide a supportive working environment; and (d) foster awareness of a commitment to human goals within the organization and the word. Applicants submit that each portfolio invests a percentage of its assets in stocks, bonds and money market instruments. Also, Calvert Balanced can be expected to outperform Strong Asset Allocation, were the latter to remain in existence, because Calvert Balanced has much lower expenses than Strong Asset Allocation, and, as Strong Asset Allocation's assets continue to decrease and its expenses remain the same, its performance will necessarily decline. Further, Applicant's assert that even though Strong Asset Allocation has slightly outperformed Calvert Balanced since each portfolio's inception, Calvert Balanced has gone through many market cycles during its more than ten years of existence whereas Strong Asset Allocation, which commenced operations in late 1995, has a briefer history characterized by a rising market. For the past year, the two Portfolios' total returns were identical (20.67%).

4. Applicants state that Acacia National has reserved the right to substitute securities held by the Sub-Accounts of the Separate Accounts and this right is disclosed in the prospectuses or statements of additional information for the Separate Accounts.

5. Finally, Applicants represent that the substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

a. The N&B Bond Portfolio and Calvert Balanced Portfolio have objectives, policies and restrictions that are substantially similar to the objectives, policies and restrictions of the funds being replaced.

b. The expense ratio of the N&B Bond and Calvert Balanced Portfolios are

significantly lower than those of the Strong funds.

c. The performance of the N&B Bond and Calvert Balanced Portfolios has been essentially equivalent to or better than the performance of the portfolios that will be eliminated.

d. The substitutions will, in all cases, be at the net asset value of the respective portfolios without the imposition of any transfer or similar charge.

e. The costs of the substitutions will be borne by Acacia National and SCM and will not be borne by policyowners. No charges will be assessed to effect the substitutions.

f. Within 5 days after the substitutions, Acacia National will send to policyowners written notice of the substitutions that identifies the shares that were substituted and discloses the shares which replaced them. Included in the mailing will be a supplement to the prospectus that discloses completion of the substitutions.

g. For 30 days following the mailing of the notice of substitutions, policyowners may transfer substituted assets without any charge. No such transfer will be counted as a transfer under any contractual provision which limits the number of transfers in any year.

h. The substitutions will in no way alter the insurance benefits to policyholders or the contractual obligations of Acacia National.

i. The substitutions will in no way alter the tax benefits to policyowners. Counsel for Acacia National has advised that the substitutions will not give rise to any tax consequences to the policyowners.

Applicants' Conclusions

Applicants assert that, for the reasons and upon the facts set forth in the application, the requested order approving the proposed substitution meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27697 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22853; 812–10574]

Equus II Incorporated; Notice of Application

October 10, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant Equus II Incorporated seeks an order approving its 1997 Stock Incentive Plan (the "Plan") for certain of its directors, and the grant of certain stock options under the Plan.

FILING DATES: The application was filed on March 11, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 3, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan as it applies to each director of the applicant who is neither an officer nor an employee of the applicant ("Non-employee Director") and to each new Non-employee Director who may be elected in the future to applicant's board of directors. The order also would approve the automatic grant of options, pursuant to the Plan, to purchase shares of applicant's common stock to each current and future Non-employee Director.

2. Applicant's board of directors (the "Board") consists of eight members. Five members of the Board are persons who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant. The Plan was approved by the Board on February 7, 1997, and by the applicant's shareholders on April 9, 1997, at a special meeting of shareholders. Officers, employees, and directors of the applicant are eligible to participate in the Plan. Applicant seeks approval of the Plan as it applies to Non-employee Directors. On May 15, 1997, the Board implemented part of the Plan. The portion of the Plan applicable to Non-employee Directors will not be implemented until an order is received from the Commission approving that portion of the Plan.

3. Each Non-employee Director of the applicant receives an annual director's fee of $20,000, a fee of $2,000 for each meeting of the Board attended in person, a fee of $1,000 for participation in each telephonic meeting and for each committee meeting attended, and reimbursement of all out-of-pocket expenses relating to attendance at meetings.

4. Equus Capital Management Corporation ("ECMC") is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and serves as the applicant's management company. ECMC receives no compensation from the applicant under section 205(1) of the Advisers Act. Other than stock options issued to officers of the applicant under the Plan, the applicant does not currently have outstanding any warrants, options or rights to purchase its voting securities.

5. The Plan provides that each Non-employee Director serving on the Board as of the later of the date of approval of the Plan by: (a) The applicant's shareholders, or (b) an order of the Commission, will be granted a nonqualified stock option to purchase 5,000 shares of common stock, $.01 par value (the "Common Stock"), of applicant that will vest 50% immediately and 16⅔% on the first, second, and third anniversaries of the date of the grant. Each new Non-employee Director will be granted upon his or her election a nonqualified stock option for a similar number of shares. In addition, beginning with the 1998 annual meeting of shareholders of applicant, each Non-employee Director elected will, on the first business day following the annual meeting, be granted a nonqualified stock option to purchase 2,000 shares of Common Stock. The exercise price of the options will be the closing price of the Common Stock on the American Stock Exchange on the date the option is granted or, if no market for the Common Stock exists, the current net asset value of the shares of the Common Stock. Each option will be exercisable during the period beginning six months after the date of the grant and ending ten years after the date of the grant.

6. In the event that a Non-employee Director's services are terminated because of death, permanent disability, or retirement, any invested options will vest, and the Non-employee Director or, if the Non-employee Director is not living, the Non-employee Director's estate, may exercise his or her options during the one-year period following the date of death, permanent disability, or retirement. The termination of a Non-employee Director's services will not otherwise accelerate the termination date of his or her options. Options may not be assigned or transferred other than by will or the laws of descent and distribution.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Non-employee Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan and the options that would be granted automatically to current and future Non-employee Directors would comply with the requirements of section 61(a)(3)(B) of the Act. In addition, in support of its application, applicant states that its directors devote substantial time and attention to matters relating to applicant's portfolio companies, thus functioning more like the board of an operating company than the board of a traditional investment company. Applicant relies extensively on the judgment and experience of its directors, and believes that these factors are critical to its success. Further, applicant states that the Plan would provide incentives to the Non-employee Directors to remain on the Board and devote their best efforts to the success of applicant's business.

5. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Under the Plan, the amount of stock options that would be granted to the six current Non-employee Directors would be 30,000 shares in 1997 and 12,000 shares each year commencing in 1998, or approximately 1% of the 4,300,682 shares of Common Stock outstanding. Applicant submits that, given the relatively small number of options that may be granted and exercised by Non-employee Directors under the Plan, the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of the applicant. Further, because the options may not be exercised until six months after the date of grant and 50% of the stock options granted to Non-employee Directors vest on a ratable basis over the three years following the date of grant, the plan provides Non-employee Directors with an incentive to remain with the applicant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27656 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22851; 812–10356]

Investors Bank & Trust Company, et al.; Notice of Application

October 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under (i) section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") granting relief from section 12(d)(1) of the Act; (ii) sections 6(c) and 17(b) of the Act granting relief from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit the lending agent for certain investment companies to invest cash collateral derived from securities lending transactions in shares of affiliated registered investment companies organized as a master-feeder fund.

APPLICANTS: Investors Bank & Trust Company (the "Bank"); Merrimac Funds (the "Feeder Trust"), on behalf of its Merrimac Cash Fund and Merrimac Treasury Fund, each a series of the Feeder Trust, and each other series of the Feeder Trust established in the future in which cash collateral from securities lending transactions may be invested (collectively, the "Feeder

Funds"); Merrimac Master Portfolio (the "Master Trust"), on behalf of its Merrimac Cash Portfolio and Merrimac Treasury Portfolio, each a series of the Master Trust, and each other series of the Master Trust established in the future in which a Feeder Fund invests (collectively, the "Master Funds"); and all registered management investment companies and series that may participate from time to time as lenders (collectively, the "Lending Funds") in the securities lending program administered by the Bank (the "Program").

FILING DATES: The application was filed on November 15, 1996, and amendments to the application were filed on June 10, 1997, and September 29, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; Merrimac Funds, 200 Clarendon Street, Boston, MA 02116; and Merrimac Master Portfolio, P.O. Box 501, Cardinal Avenue, George Town, Grand Cayman, Cayman Islands, BWI.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Feeder Trust is a Delaware business trust organized under a Master Trust Agreement and registered as an investment company under the Act. The Feeder Trust has established two series, the Merrimac Cash Fund and the Merrimac Treasury Fund, each of which has three classes (the "Premium Class," the "Institutional Class," and the "Placement Class") of shares. Lending Funds will acquire only Premium Class shares.[1] Shares of the Feeder Trust are sold without a distributor exclusively to "accredited investors" in accordance with the requirements of Regulation D under the Securities Act of 1933. Each Feeder Fund will be a "feeder" in a "master-feeder" structure with the Master Trust and invest all of its investable assets in a Master Fund having the same investment objective and policies as the Feeder Fund.

2. The Master Trust is a New York common law trust established under a Declaration of Trust and registered as an investment company under the Act. The Master Trust has established two series, the Merrimac Cash Portfolio and the Merrimac Treasury Portfolio.[2] Interests in each Master Fund are offered exclusively to one or more Feeder Funds and to other "accredited investors." Shares of the Master Trust are sold without a distributor and are not subject to a sales load, redemption fee, asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Conduct Rules of the National Association of Securities Dealers), or shareholder servicing fee.

3. The Bank, a wholly-owned subsidiary of Investors Financial Services Corp., is a Massachusetts chartered trust company. The Bank provides domestic and global custody, multi-currency accounting, institutional transfer agency, performance measurement, foreign exchange, securities lending and mutual fund administration services to a variety of financial asset managers, including mutual fund complexes, investment advisers, banks and insurance companies. The Bank acts as agent for its clients for both international and domestic securities lending services.

4. The Bank and one or more of its affiliates will serve as custodian, transfer agent, and administrator to each Feeder Fund and Master Fund. The Bank also will serve as the investment adviser to each Master Fund. Applicants anticipate that one or more entities will serve as a sub-adviser to each Master Fund. The Bank will be responsible for the payment of all fees for the services of any sub-adviser. The Bank will charge each Feeder Fund and Master Fund, as applicable, fees for services it provides as custodian, transfer agent, administrator and investment adviser.

5. From time to time, the Bank will be appointed to serve as lending agent for various Lending Funds.[3] The Bank will enter into a securities lending authorization agreement (a "Lending Agreement") with each Lending Fund.[4] The Lending Agreement will authorize the Bank, as agent for the Lending Fund, to lend portfolio securities of the Lending Fund to each person designated by the Lending Fund as an eligible borrower (each, a "Borrower"), and to enter into a master borrowing agreement with each Borrower (each, a "Borrowing Agreement"). The pool of eligible Borrowers may be modified from time to time by each Lending Fund, acting through its authorized officers.

6. The Lending Agreement and the Borrowing Agreement will establish, for each transaction, the initial and ongoing collateralization requirements, the types of collateral that may be accepted, and the manner in which the Borrower's return on the collateral (the "Borrower's Rebate") will be established. The Lending Agreement will (i) fix the percentage difference between the Borrower's Rebate and the actual return on the investment of the collateral (the "Net Income") to be retained by the Lending Fund and the percentage to be paid by the Lending Fund to the Bank, and (ii) authorize the Bank, as agent for the Lending Fund, to negotiate the Borrower's Rebate for each transaction and to commit the Lending Fund to pay the Borrower's Rebate. The Lending Fund will be responsible for paying the Borrower's Rebate and returning the principal amount of the collateral to the Borrower. Each loan will be terminable, at any time, by the Borrower or the Lending Fund.

7. During the term of each loan, the Lending Fund will retain the economic rights of an owner of the securities that are the subject of a loan, including the right to receive from the Borrower all dividends and distributions made with respect to those securities. The Bank will monitor corporate actions with respect to securities loaned by each Lending Fund and will reallocate or terminate loans at the direction of the Lending Fund, as necessary, to enable the Lending Funds to vote those securities.[5]

8. Applicants anticipate that the collateral delivered in connection with most loans will consist of cash. In order to maximize investment return on the securities lending activities, each Lending Agreement will authorize the Bank, as agent for the Lending Fund, to invest the cash in shares of one or more Feeder Funds, in accordance with the terms of the Lending Agreement and instructions received from authorized officers of the Lending Fund.[6] The Bank, as agent for a Lending Fund, will not purchase shares of any Feeder Fund with cash collateral unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund who are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the Lending Fund. Each Lending Fund will reserve the right to rescind authorization to invest in a Feeder Fund. Moreover, each Lending Fund that authorizes the Bank to invest cash collateral in a Feeder Fund will be provided a copy of the confidential offering circular for such Feeder Fund, and with such other disclosure documents that the Bank determines may be appropriate to ensure that each Lending Fund is fully informed with respect to the investment considerations and risks associated with investing cash collateral in the Feeder Funds.

9. Applicants request an order to permit (i) the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in shares of the Feeder Trust; and the Lending Funds to purchase from the Feeder Trust, and (ii) the Feeder Trust to sell to the Lending Funds, shares issued by the Feeder Trust. Applicants also request an order to permit the Lending Funds, the Feeder Trust, the Master Trust, and the Bank to effect certain joint transactions incident to the Program.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in the Feeder Funds in excess of the limits imposed by section 12(d)(1) of the Act.

3. Applicants believe that the investment of cash collateral by Lending Funds in the Feeder Funds will provide Lending Funds with the opportunity to maximize returns with less investment risk than if the cash collateral received by each Lending Fund were segregated in a separate account from which purchases and sales of securities would be made. In addition, applicants believe that participation in the Program will permit the Lending Funds to minimize credit risk and interest rate risk through diversification. Applicants also believe that the administrative burdens, such as the daily monitoring of total assets and other investments of the Lending Funds associated with compliance with section 12(d)(1) may impair the ability of the Bank to provide securities lending services to Lending Funds in an economical and administratively efficient manner, and, therefore, may create competitive disadvantages for the Lending Funds relative to other institutional investors that seek to engage in securities lending activities.

4. Applicants submit that the investment of cash collateral received in connection with securities loans by Lending Funds in the Feeder Funds does not give rise to the policy concerns of section 12(d)(1), which include unnecessary duplication of costs (such as sales loads, advisory fees, and administrative costs), and undue influence by the fund holding company over its underlying funds arising from the threat of large scale redemptions of the securities of the underlying investment companies. Applicants state that there will be no layering of sales or distribution charges because shares of the Feeder Funds acquired by the Lending Funds will be sold without a sales charge or redemption fee and the assets allocated to the Lending Funds will not be subject to any asset-based sales charge. Applicants also state that each Master Fund will be structured to accommodate the increased needs of liquidity associated with securities lending transactions by maintaining an appropriate average weighted maturity or effective duration and, therefore, will not be susceptible to control through the threat of large scale redemptions. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 17(a)

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as a principal, to sell any security to, or purchase any security from, such registered investment company. From time to

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[1] The Premium Class shares are subject to a $10 million minimum investment requirement.

[2] The Merrimac Cash Portfolio may invest in U.S. Treasury bills, notes and bonds, and other instruments issued or guaranteed by the U.S. Government or its agencies or instrumentalities ("U.S. Government Obligations"); securities of U.S. and non-U.S. banks and thrift organizations; corporate debt obligations; asset-backed securities; variable rate obligations; and repurchase agreements that the collateralized by the securities listed above. The Merrimac Treasury Portfolio invests at least 65% of its assets in U.S. Government Obligations. All investments of each Portfolio will qualify as "eligible securities" within the meaning of rule 2a–7 under the Act. Moreover, each Feeder Fund and Master Fund will seek to maintain a stable net asset value by valuing the portfolio using the amortized cost method and will comply with the requirements of rule 2a–7 under the Act.

[3] The Bank will not be an affiliated person of any Lending Fund or an affiliated person of an affiliated person of any Lending Fund within the meaning of section 2(a)(3) of the Act, except that, if any Lending Fund directly or indirectly owns, controls, or holds with the power to vote 5% or more of the shares of a Master Fund, the Bank will be an affiliated person of an affiliated person of the Lending Fund. Moreover, no Lending Fund will be an affiliated person of any Feeder Fund or an affiliated person of an affiliated person of any Feeder Fund, except that a Lending Fund may (i) directly or indirectly own, control, or hold with power to vote more than 5% of the voting securities of a Feeder Fund or a Master Fund, or (ii) be an affiliated person of another Lending Fund that directly or indirectly owns, controls, or holds with the power to vote more than 5% of the voting securities of a Feeder Fund or Master Fund.

[4] Certain Lending Funds participating in the Program may be management investment companies that hold themselves out as "money market funds" and comply with the requirements of rule 2a–7 under the Act ("Money Market Lending Funds").

[5] The Borrowing Agreement will provide that within three trading days (or such other time period as is the customary settlement period for the loaned securities) of the Lending Fund giving notice of the termination of any loan, the Borrower is required to transfer the loaned securities (or certificates for identical securities) to the Bank, as agent for the Lending Fund, or to the Lending Fund's custodian, and pay to the Bank or to the Lending Fund's custodian the amount of all dividends and distributions that would have been payable to the Lending Fund on or with respect to such securities if they had not been loaned, to the extent not previously paid.

[6] Cash collateral from transactions in which the lender is a Money Market Lending Fund will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a–7.

time, it is possible that a Lending Fund may directly or indirectly own, control, or hold with power to vote 5% or more of the shares of a Feeder Fund, which will result in the Lending Fund being an "affiliated person" of the Feeder Fund. In these circumstances, the purchase or redemption of shares of a Feeder Fund for the same Lending Fund or an affiliated person of such Lending Fund could violate section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act. Because section 17(b) could be interpreted to exempt only a single transaction, applicants are also seeking relief pursuant to section 6(c) of the Act to permit the investment of cash collateral in shares of the Feeder Funds as proposed in the application.[7]

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule or regulation thereunder "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. Applicants believe that relief is appropriate under section 6(c) of the Act for the same reasons that it is appropriate under section 17(b), as discussed below.

4. Applicants believe that the proposed transactions will be reasonable and fair, and consistent with the general purposes of the Act as well as the policies of each Lending Fund. The Lending Funds will not be able to purchase or redeem shares of the Feeder Funds at a price lower or higher than the per share net asset value of the Feeder Funds, and no sales load, redemption fee, or asset-based sales charge will be charged with respect to shares of the Feeder Funds sold to Lending Funds. Moreover, applicants note that the low fees charged by the Bank for services provided to the Feeder Trust and Master Trust will be subject to intense scrutiny and, therefore, will remain fair and reasonable to the Feeder Trust and the Master Trust, the Feeder Trust's shareholders and the Lending Funds. Finally, the Bank will not purchase shares of any Feeder Fund, as agent for a Lending Fund, unless the Lending Fund, or an authorized officer of the Lending Fund, has represented to the Bank that (i) its policies generally permit the Lending Fund to engage in securities lending transactions, (ii) such transactions will be conducted in accordance with the securities lending guidelines established in a series of no-action letters issued by the SEC's Division of Investment Management,[8] (iii) its policies permit the Lending Fund to purchase shares of the Feeder Funds with cash collateral, and (iv) its securities lending activities will be conducted in accordance with all representations and conditions in the application applicable to such Lending Fund.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which such registered investment company participates. The ownership by a Lending Fund or its affiliates, from time to time, of 5% or more of the shares of a Feeder Fund or Master Fund, could cause such Lending Fund to be an affiliated person of the Feeder Trust or the Master Trust, or an affiliated person of an affiliated person of the Feeder Trust or the Master Trust. In addition, the Bank, as investment adviser for each Master Fund, will be an affiliated person of the Master Trust. As an affiliated person of the Master Trust, the Bank may, from time to time, be an affiliated person of an affiliated person of one or more Lending Funds by virtue of such Lending Fund's interests in the Master Trust. Consequently, the proposed purchase of shares of a Feeder Fund with cash collateral, the redemption of such shares, the sharing of Net Income among the Bank and the Lending Funds, and the payment of fees by the Feeder Trust and the Master Trust to the Bank may constitute a joint transaction for which an exemptive order is required.

2. Rule 17d–1 permits the SEC to issue an order with respect to a joint transaction. In passing on applications for orders under rule 17d–1, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that it is appropriate to grant an exemption under rule 17d–1 from the restrictions of section 17(d) of the Act.

3. Each Lending Fund will invest in a class of shares of the Feeder Trust on the same basis as every other shareholder of the Feeder Trust investing in the same class of shares, and all shares within a class will be priced in the same manner and will be redeemable under the same terms. In addition, no class of shares of a Feeder Fund in which a Lending Fund invests will be subject to any sales load, redemption fee, or asset-based sales charge. The arrangements regarding the sharing of Net Income between the Bank and each Lending Fund are the product of arm's length negotiations between the Lending Fund and the Bank. Finally, applicants state that the proposed investment of cash collateral by Lending Funds in shares of the Feeder Funds is consistent with the provisions and purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Lending Fund will purchase shares of any Feeder Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund that are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the Lending Fund.

2. The Bank will lend portfolio securities of each of the Lending Funds only in accordance with the guidelines specified by such Lending Fund.

3. Cash collateral from loans by Lending Funds will be invested in shares of each Feeder Fund subject to such limitations and guidelines as are specified by the Lending Funds.

4. Cash collateral from loans by Money Market Lending Funds will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. The shares of a Feeder Fund sold to Lending Funds will not be subject to a sales load or redemption fee and assets of the Feeder Fund and the Master Fund allocable to Feeder Funds will not be subject to any asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Rules of Conduct of the National Association of Securities Dealers).

6. The Bank will not acquire shares of any Feeder Fund on behalf of any Lending Fund if, at the time of such acquisition, (i) the Bank is an affiliated person of the Lending Fund or an affiliated person of an affiliated person of the Lending Fund, or (ii) the Lending Fund is an affiliated person of the Feeder Fund or an affiliated person of an affiliated person of the Feeder Fund, in either case, by means other than by directly or indirectly owning, controlling, or holding with the power of vote 5% or more of the shares of a Feeder Fund or a Master Fund by the Lending Fund or an affiliated person of the Lending Fund.

7. In connection with all matters requiring a vote of shareholders of a Feeder Fund, the Bank will pass through voting rights to those Lending Funds that have a beneficial interest in such Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27657 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

[7] See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

[8] See *e.g. Sife Trust Fund* (pub. avail. Feb. 17, 1962).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 22852; File No. 812–10534]

New England Life Insurance Co et al.; Notice of Application

October 10, 1997.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from rule 6e–2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e–2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e–2(b)(12) and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) To permit them to offer and sell certain "hybrid" variable life insurance policies with modified scheduled premiums ("Policies"); and (2) to permit certain other persons which may become the principal underwriter for such Policies ("Future Underwriters") to offer and sell such Policies.

APPLICANTS: New England Life Insurance Company ("NELICO"), New England Variable Life Separate Account ("Variable Account"), and New England Securities Corporation ("New England Securities").

FILING DATE: The application was filed on February 28, 1997 and amended and restated on October 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, c/o Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. NELICO is a Massachusetts stock life insurance company and is a wholly owned subsidiary of Metropolitan Life Insurance Company ("MetLife").

2. The Variable Account was established as a separate investment account of NELICO on January 31, 1983, under Delaware law, and became subject to Massachusetts law when NELICO changed its domicile to Massachusetts on August 30, 1996. The Variable Account is registered under the Act as a unit investment trust. The Variable Account currently consists of eighteen investment sub-accounts, each of which invests its assets in a different portfolio of the New England Zenith Fund (the "Zenith Fund"), the Variable Insurance Products Fund (the "VIP Fund"), and the Variable Insurance Products Fund II (the "VIP Fund II").

3. New England Securities, which will act as the principal underwriter for the Polices, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc ("NASD").

4. Scheduled premiums for the Policy are payable until the insured reaches age 100. The scheduled premium amount depends on the face amount of the Policy, the insured's age, sex (if the Policy is sex-based), and underwriting class, the frequency of premium payments and any rider benefit premiums. Scheduled premiums for substandard and automatic issue classes reflect additional premiums that are charged for Policies in those categories. If all scheduled premiums are paid when due, the Policy will not lapse and will retain its minimum death benefit guarantee, even if unfavorable investment experience has reduced the cash value to zero.[1]

5. The Policy also provides considerable flexibility with respect to the timing and amount of premium payments. An owner of a Policy may make unscheduled payments at any time that the Policy is in force on a premium-paying basis (except any period during which scheduled premiums are being waived pursuant to a waiver-of-premium rider), provided that the unscheduled payment is at least $25 (or at least $10 for certain Policies) and, if required by NELICO, the insured has submitted evidence of insurability satisfactory to NELICO. In addition, NELICO's consent is required if, in order to satisfy tax law requirements, the payment would increase the Policy's death benefit by more than it would increase the cash value. NELICO reserves the right to prohibit or limit the amount of unscheduled payments under a Policy covering a substandard risk insured or under an automatic issue Policy.

6. An owner of a Policy may plan to make a certain amount of unscheduled payments, subject to NELICO's administrative procedures. Each net unscheduled payment will be allocated to the same sub-accounts as net scheduled premiums. At the owner's request, NELICO will include the amount of any unscheduled payments, planned to be made on the Policy anniversary, in the premium notice sent to the owner. However, the owner is required to pay only the scheduled

[1] A Policy may terminate when a Policy loan plus accrued interest exceeds the Policy's cash value, less the applicable Surrender Charge, on the next loan interest due date (or, if greater, on the date the calculation is made). NELICO notifies the Policy owner of such pending termination, and the Policy will terminate 31 days thereafter unless NELICO has received sufficient repayment to eliminate the excess Policy loan.

premium in order to keep the Policy in force on a premium paying basis.

7. The amount of net scheduled premiums due is automatically allocated to the Policy's sub-accounts, chosen by the Policy owner, on each scheduled premium due date. A scheduled premium which is unpaid as of its due date is in default, but the Policy provides a 31-day grace period for the payment of each scheduled premium after the first. For 60 days after the due date of a premium in default, NELICO will not impose the normal monthly administrative, minimum death benefit guarantee and cost of insurance charges against a Policy's cash value. If the scheduled premium in default is paid, these deductions will be made retroactively. If the Policy is surrendered while the premium is in default, the monthly deduction and a prorated cost of insurance charge are deducted from surrender proceeds. If the insured dies during the grace period and before the premium is paid, a prorated portion of the unpaid scheduled premium, measured from its due date to the date of death, will be deducted from the amount otherwise payable. As owner of a Policy may choose among several lapse options, which may include extended term insurance, fixed paid-up insurance or variable paid-up insurance, subject to restrictions set forth in the Policy.

8. An owner of a Policy may also elect the Special Premium Option, which permits an owner to skip one or more scheduled premium payments after the first Policy year, subject to the following conditions. NELICO will determine that payment of a scheduled premium that has not been paid by the end of the grace period is not required if: (a) The Policy's cash value on the premium due date (before NELICO advanced the premium due) exceeds the Policy's "tabular cash value" on that date by at least the amount of the scheduled premium due, including any rider and substandard risk or automatic issue premiums due; and (b) immediately after the Special Premium Option is exercised, the amount of any Policy loan outstanding plus accrued interest will not exceed the Policy's loan value.[2]

[2] The "tabular cash value" is a hypothetical value that is used to determine the Option 2 death benefit, availability of the Special Premium Option, and the amount of cash value available to be withdrawn from the Policy. The "tabular cash value" is the value the Policy would have if: (a) All scheduled premiums were paid when due; (b) no unscheduled payments, partial surrenders, partial withdrawals or loans were made; (c) the cash value in the Policy's sub-accounts (and cash value in the fixed account) earned a 4.5% annual net rate of return; and (d) the maximum guaranteed cost of insurance rates and maximum levels of other Policy charges were deducted.

9. If NELICO permits nonpayment of a scheduled premium under the Special Premium Option, NELICO will deduct from the Policy's cash value, as of the premium due date, 91% of the portion of the annual administrative charge and of any rider, substandard risk or automatic issue premiums due on that date.

10. An owner of a Policy may also elect an automatic premium loan option. Under this option, if a scheduled premium has not been paid by the end of the grace period, the Policy's loan value will be used to pay the scheduled premium. If an owner of a Policy has elected both the Special Premium Option and the automatic premium loan provision, NELICO will first determine whether the Special Premium Option can be used in the event of nonpayment of a scheduled premium. If the Special Premium Option conditions are not met, then NELICO will determine whether the premium can be paid by means of an automatic premium loan.

11. The Policy provides for two alternate death benefit options. The Option 1 death benefit is equal to the greater of: (a) The face amount of the Policy; or (b) the Policy's cash value divided by the net single premium per $1 of death benefit at the insured's attained age. The alternative in (b), above, means that the death benefit will not be less than the amount of insurance which could be purchased on that date by a net single premium equal to the Policy's cash value, and is designed to ensure that the Policy will satisfy Federal tax law requirements.

12. The Option 2 death benefit is equal to the greater of: (a) The face amount of the Policy plus any excess of the Policy's cash value over its "tabular cash value"; or (b) the Policy's cash value divided by the net single premium per $1 of the death benefit at the insured's attained age. The Policy does not provide for changes in death benefit options.

13. Under either death benefit option, the death benefit is guaranteed not to be less than the Policy's face amount, regardless of the investment experience of the Policy's subaccounts, as long as scheduled premiums have been paid in a timely manner or nonpayment has been permitted in accordance with the terms of the Policy. However, if Policy loans plus accrued interest exceed the Policy's cash value less the surrender charge, the Policy may terminate even if all scheduled premiums have been paid.

14. The Option 1 death benefit remains fixed in the amount initially stated in the Policy as long as scheduled premiums are paid (or need not be paid pursuant to the Special Premium Option), until the death benefit is increased for Federal tax law purposes, described below. The Option 2 death benefit varies daily with the net investment experience of the Variable Account, but will never be less than the amount initially stated in the Policy as long as scheduled premiums are paid (or need not be paid pursuant to the Special Premium Option). In order to qualify the Policy as life insurance for Federal tax law purposes, the death benefit will be an amount, if greater than the amount otherwise provided under Option 1 or Option 2, as appropriate, equal to the Policy's cash value divided by the net single premium per $1.00 of death benefit at the insured's attained age. Thus, the death benefit under either Option 1 or Option 2 varies with investment experience when the cash value is sufficiently large that the death benefit is increased in order for the Policy to qualify as life insurance for Federal tax law purposes.

15. NELICO permits (in states where it has been approved by the state insurance department) a Policy owner to effect a reduction in the Policy's face amount (without receiving a distribution of any of the Policy's cash value) but not, without NELICO's consent, below NELICO's minimum face amount requirements at issue. A reduction in face amount will reduce the Policy's cash value by the amount of any applicable Surrender Charge, will also reduce the scheduled premium level and "tabular cash value," and may require a reduction in any related rider benefits. Generally, the Policy's death benefit will also be decreased. However, if the death benefit at the time of a face amount reduction is determined by dividing the cash value by the net single premium per dollar of death benefit, the death benefit will not be decreased unless a Surrender Charge was deducted from the cash value in connection with the face amount reduction.

16. NELICO deducts the following amounts from each scheduled premium paid under a Policy to arrive at a basic scheduled premium: (a) Charges for any supplementary benefits provided by rider; (b) any extra premiums paid for a Policy in a substandard risk or automatic issue class; and (c) an annual Policy administrative charge. NELICO does not deduct any of these charges from unscheduled payments.

17. NELICO also deducts sales load (5.5%), state premium tax (2.5%), and federal tax (1%) charges from each basic scheduled and unscheduled premium payment made during the life of the Policy.

18. NELICO deducts from a Policy's cash value, on the Policy date and on the first day of each Policy month, a monthly deduction, consisting of an administrative charge and a minimum death benefit guarantee charge, and a charge for the cost of providing insurance protection for the Policy month equal to the amount at risk multiplied by the cost of insurance rate for that month. NELICO also charges the sub-accounts of the Variable Account for mortality and expense risks, at an annual rate of 0.60% (guaranteed not to exceed 0.90%) of the value of each sub-account's assets attributable to the Policies; and charges for investment advisory and other Fund expenses are deducted from Fund assets and are indirectly borne by owners of Policies.

19. During the first eleven Policy years, NELICO deducts a charge from a Policy's cash value upon a full or partial surrender, upon a reduction in face amount, or upon lapse of the Policy (the "Surrender Charge"). The Surrender Charge is calculated as a percentage of basic scheduled premiums, and will be applied to an amount equal to the total annualized basic scheduled premiums for the Policy payable through the Policy year in which total or partial surrender, lapse, or face amount reduction occurs, up to a maximum of four annualized basic scheduled premiums.

20. The Surrender Charge rate that applies in each Policy year is indicated below:

Policy year	Percentage	Applied to
1	55.00	One annualized basic scheduled premium.
2	55.00	Two annualized basic scheduled premiums.
3	36.67	Three annualized basic scheduled premiums.
4	27.50	Four annualized basic scheduled premiums.
5*	26.25	Four annualized basic scheduled premiums.
6*	25.00	Four annualized basic scheduled premiums.
7*	20.00	Four annualized basic scheduled premiums.
8*	15.00	Four annualized basic scheduled premiums.
9*	10.00	Four annualized basic scheduled premiums.
10*	5.00	Four annualized basic scheduled premiums.
11*	0.00	Four annualized basic scheduled premiums.

*End of policy year.

21. For the first four Policy years the Surrender Charge rate that applies in a particular year remains level throughout that year. Beginning in the fifth Policy year, the Surrender Charge rate declines on a monthly basis to the end of year rates shown in the table above.[3] The maximum dollar amount of the charge applies in Policy years two through four. The dollar amount of the Surrender Charge is also limited to an amount per $1,000 of a Policy's face amount. These limits are:

	Policy year										
	1	2	3	4	5	6	7	8	9	10	11
Maximum surrender charge per $1,000 of face amount	$47	$44	$42	$39	$37	$35	$33	$31	$29	$27	$25

22. In the case of a partial surrender or reduction in face amount, the Surrender Charge is deducted from the Policy's cash value in an amount proportional to the amount of the face amount surrender.

23. The Surrender Charge is deducted from the Policy's available cash value, regardless of whether the cash value comes from scheduled premiums, unscheduled payments or investment experience. If the applicable Surrender Charge amount equals or exceeds the available cash value, there will be no proceeds paid to the Policy owner upon surrender or lapse. The Surrender Charge covers the following expenses: developmental costs associated with the Policies (such as actuarial, legal, systems and other overhead costs), underwriting, and marketing and other distribution expenses.

[3] In all cases, the annualized premium amount to which the Surrender Charge applies is calculated based on the premium payment frequency in effect at the time. Therefore, if basic scheduled premiums are being paid in quarterly installments rather than annually at the time of a full or partial surrender, a reduction in face amount or lapse of a Policy, the dollar amount of the Surrender Charge may be higher because the dollar amount of an annual basic scheduled premium is somewhat higher if it is paid in installments rather than once a year.

Applicant's Legal Analysis

Definition of "Variable Life Insurance Contract"

1. Rule 6c–3 grants exemptions from those provisions of the Act that are specified in paragraph (b) of Rule 6e–2 (except for Sections 7 and 8(a)) to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. The term "variable life insurance contract" is defined by Rule 6e–2(c)(1) to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy. Applicants request relief from the definition of "variable life insurance contracts" set forth in Rule 6e–2(c)(1) because Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in connection with the issuance and sale of the Policies.

2. Applicants must avail themselves of certain relief provided by Rule 6e–2(b), as set forth below, in order to issue, sell, and maintain the Policies.[4] Applicants request relief to the extent necessary to permit reliance on the exemptions provided in each of the provisions of Rule 6e–2 that are set forth below, in connection with the issuance and sale of the Policies.

(a) Paragraph (b)(1)—Sales load is no longer subject to the specific quantitative limits set forth in the Act, and rules thereunder. It is nonetheless possible that the amount of "sales load" imposed under the Policies would need

[4] Certain of the relief requested may not currently be necessary in light of the structure of the Variable Account as a "unit investment trust," but would become necessary if the Variable Account were to be restructured as an open-end management company in the future. The Policies permit such a restructuring.

to be determined (for example, in connection with analyzing an exchange offer involving the Policies; or analyzing variations in sales load pursuant to Section 22(d) of the Act). Accordingly, Applicants seek relief permitting them to rely on paragraph (b)(1) of Rule 6e–2.

(b) Paragraph (b)(3)—Relief is requested to permit the Variable Account to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(c) Paragraph (b)(4)—Relief is requested to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)(4).

(d) Paragraph (b)(5)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to the imposition by an insurance regulatory authority of certain requirements on the investment policies of the Variable Account; and disapproval by NELICO of changes in the investment policy of the Variable Account initiated by contract owners, under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5).

(e) Paragraph (b)(6)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(f) Paragraph (b)(7)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 15 (a), (b), and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by NELICO of changes in the principal underwriter for the Variable Account initiated by contract holders; and disapproval by NELICO of changes in the investment adviser to the Variable Account initiated by contract owners, under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7).

(g) Paragraph (b)(8)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account, under circumstances contemplated by and in accordance with the replacements of paragraph (b)(8).

(h) Paragraph (b)(9)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of NELICO or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(i) Paragraph (b)(10)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(j) Paragraph (b)(12)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e) and Rule 22c–1 in connection with the issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(k) Paragraph (b)(14)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(l) Paragraph (b)(15)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by NELICO of shares of management investment companies held by the Variable Account in disregard of contract owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on the exemptions provided from Section 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by NELICO in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

3. Applicants believe the Option 2 death benefit under the Policies falls within the requirement that it "vary to reflect the investment experience of the separate account." Although the Option 2 death benefit varies only when the Policy's cash value exceeds its "tabular cash value," it is analogous to more conventional scheduled premium variable life insurance policies, which provide for death benefits that increase when investment experience exceeds an assumed investment rate. A policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements.

4. The Policies also contain other provisions, relating primarily to the flexibility of premium payments, that are not specifically addressed in Rule 6e–2. Applicants therefore request relief to the extent necessary to permit reliance on the definition of "variable life insurance contract" in Rule 6e–2(c)(1), and on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth above, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2.

5. Applicants submit that the considerations that led the commission to adopt Rules 6c–3 and 6e–2 apply equally to the Variable Account and NELICO's Policy, and that the exemptions provided by these rules should be granted to the Variable Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

Redeemability

6. Section 27(i)(2)(A) of the Act provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such a contract unless it is a "redeemable security." Section 2(a)(32) defines a "redeemable security" as one entitling its holder to receive "approximately his proportionate share" of the issuer's current net asset value upon presentation to the issuer. Applicants request relief from the requirement in Section 27 that the Policy be a "redeemable security," and from the definition of "redeemable security" set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies.

7. Rule 22c–1 requires that a Policy be redeemed at a price based on the current net asset value of the Policy next computed after receipt of the request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. A contingent deferred charge such as the Surrender Charge may, however, not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with Rule 6e–2(b)(12), to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12), to the extent necessary to permit the deduction of the Surrender Charge on surrender, partial surrender, face amount reduction or lapse of a Policy.

8. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants assert that such charges are not necessarily inconsistent with the definition of "redeemable security."

9. Applicants submit that although the deferred imposition of the Surrender Charge (upon surrender or lapse) may not fall within the historical pattern of all the provisions described in this Application, that does not change the charge's essential nature. Moreover, the proposed amendments to Rule 6e–2 would permit a sales charge to be imposed on a contingent deferred basis. Contingent deferred charges are also authorized by Rule 6e–3(T) for policies able to rely on that rule. Therefore, Applicants submit that the Surrender Charge is consistent with the principles and policies underlying the limitations in Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and 22c–1 thereunder.

Class Exemption for Future Underwriters

10. Applicants seek to have the relief they request extend to underwriters that may, in the future, act as principal underwriters of the Policies ("Future Underwriters"). Future Underwriters will be members of the NASD.

11. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that such additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants submit that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27655 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22854; File No. 812–10288]

The Prudential Insurance Company of America, et al.

October 10, 1997.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under section 11(a) of the Investment Company Act of 1940 (the "1940 Act") permitting certain exchange offers between certain unit investment trusts and certain open-end management investment companies.

SUMMARY OF APPLICATION: Applicants seek an order amending a previous order[1] (the "Prior Order"), which approved the terms of certain offers of exchange from interests in certain unit investment trusts to certain open-end management investment companies. Applicants seek an amended order: (1) To extend relief to open-end management investment companies that have succeeded to the assets of those open-end management investment companies granted relief in the Prior Order; (2) to permit exchanges both ways between the unit investment trusts and the successor management investment companies; and (3) to permit exchanges between the unit investment trusts and certain other similar current and future funds.

APPLICANTS: The Prudential Insurance Company of America ("Prudential"), Prudential Dryden Fund ("Dryden Fund," formerly The Prudential Institutional Fund ("PIF")), The Prudential Variable Contract Account–10 ("VCA–10"), The Prudential Variable Contract Account–11 ("VCA–11"), The Prudential Variable Contract Account–24 ("VCA–24," collectively with VCA–10 and VCA–11, the "Medley separate accounts"), Prudential Investment Management Services LLC ("PIMS"), Prudential Jennison Series Fund, Inc. ("Jennison Fund"), Prudential Allocation Fund ("Allocation Fund"), Prudential World Fund, Inc. ("World Fund"), Prudential Government Income Fund, Inc. ("Government Income Fund"), Prudential MoneyMart Assets, Inc. ("MoneyMart Fund"), and Prudential Securities Incorporated ("PSI").

FILING DATES: The application was filed on June 20, 1996 and was amended and restated on July 8, 1997 and September 17, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 1997, and should be accompanied by proof of service on Applicants in the from of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC. 450 Fifth Street, N.W. Washington, D.C. 20549. Applicants, c/o Christopher E. Palmer, Shea & Gardner, 1800 Massachusetts Ave., N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Prudential is a mutual life insurance company organized under New Jersey Law.

2. The Dryden Fund, formerly PIF, is an open-end, no-load, registered management investment company. Prior to the reorganization described below, PIF was a series mutual fund with the following seven series, each of which is referred to as a "PIF Fund": PIF Growth Stock Fund, PIF Balanced Fund, PIF International Stock Fund, PIF Income Fund, PIF Money Market Fund, PIF Active Balanced Fund, and PIF Stock Index Fund. PIF was generally available only as an investment vehicle to certain retirement programs and other institutional investors.

3. The Jennison Fund, the World Fund, the Government Income Fund,

[1] *Prudential Insurance Company of America*, File No. 812–8536, Rel. No. IC–19826 (Nov. 8, 1993) (Notice), Rel. No. IC–19918 (Dec. 2, 1993) (Order).

and the MoneyMart Fund are organized as Maryland corporations and each is registered under the 1940 Act as a diversified open-end management investment company. The Jennison Fund consists of two series: The Jennison Growth Stock Fund and the Jennison Growth and Income Fund. Currently, the World Fund consist of two series: the International Stock Series and the Global Series. The Allocation Fund is organized as a Massachusetts business trust and is registered under the Act as a diversified open-end management investment company. The Allocation Fund consists of two series: the Balanced Portfolio and the Strategy Portfolio. The Jennison Growth Stock Fund of the Jennison Fund, the International Stock Series of the World Fund, the Government Income Fund, the MoneyMart Fund, and the Balanced Portfolio of the Allocation Fund are referred to individually as a "PMF Fund" and collectively as the "PMF Funds." Each PMF Fund offers Class Z shares to certain institutional investors and other investors meeting specified criteria without a sales charge or a Rule 12b–1 fee.

4. VCA–10 and VCA–11 are separate accounts of Prudential that are registered as open-end management investment companies under the 1940 Act. Prudential is the investment manager of VCA–10 and VCA–11. VCA–24 is a separate account of Prudential that is registered as a unit investment trust under the 1940 Act. VCA–24 has seven separate subaccounts, each of which invests exclusively in a single corresponding portfolio of The Prudential Series Fund, Inc. (the "Series Fund"), an open-end management investment company.

5. PIMS is a direct wholly-owned subsidiary of Prudential and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). It is the principal underwriter of the group variable annuity contracts funded through the Medley separate accounts.

6. The Medley program consists of Prudential group annuity contracts issued to employers ("Contractholders") who make contributions under them on behalf of their employees ("Participants"). The contracts are offered for use in connection with retirement arrangements that qualify for federal tax benefits under Sections 401, 403(b), 408 or 457 of the Internal Revenue Code of 1986, as amended, and with certain non-qualified annuity arrangements. Under the Medley program, a Contractholder may hold a fixed-dollar group annuity contract (the "Companion Contract") and up to three group variable annuity contracts, funded by VCA–10, VCA–11 and VCA–24, respectively. Typically, a Participant may choose to have contributions invested in any one or more of the Companion Contract, VCA–10, VCA–11 and the subaccounts of VCA–24. Subject to certain limitations, Participants may transfer amounts credited to their accumulation accounts during the accumulation period.

7. The Prior Order approved an exchange program referred to as "Medley Plus" under which Participants could transfer amounts from any of the Medley separate accounts to PIF. No fee of any kind was imposed at the time of the exchange and PIF shares acquired in an exchange were not subject to any deferred sales load or redemption fee. Although these exchanges were effected at relative net asset value, the Prior Order was obtained because of the involvement of VCA–24, which is a unit investment trust. Section 11(c) of the 1940 Act requires the Commission's approval of exchange offers involving registered unit investment trusts unless the exchange can be effected pursuant to an exemptive rule.

8. The PMF Funds (Jennison Growth Stock Fund, Balanced Portfolio of the Allocation Fund, International Stock Series of World Fund, Government Income Fund and MoneyMart Fund) have acquired all or substantially all of the assets of five of the seven PIF Funds (PIF Growth Stock Fund, PIF Balanced Fund, PIF International Stock Fund, PIF Income Fund and PIF Money Market Fund, respectively) in exchange for Class Z shares of the relevant PMF Fund, and have distributed such Class Z shares to the shareholders of the PIF Funds (the "Reorganization"). The two remaining PIF Funds did not merge into a different fund, but entered into new investment advisory and distribution contracts with Prudential Mutual Fund Management LLC ("PMF") and related entities, and thereby became part of the same "group of investment companies" as the PMF Funds, as that term is defined in Rule 11a–3 under the 1940 Act. PIF's name was changed to "Prudential Dryden Fund," and its two remaining series (the Prudential Active Balanced Fund and the Prudential Stock Index Fund) now each issue Class Z shares with no sales load or Rule 12b–1 fees. The five PMF Funds and the two Dryden Funds are referred to together as the "PMF/Dryden Funds."

9. PSI is an indirect, wholly-owned subsidiary of Prudential and is registered as a broker-dealer under the 1934 Act. PSI distributes the shares of each class of the PMF/Dryden Funds.

10. Applicants request that the Commission amend the Prior Order to allow Participants to exchange any or all of their units of the Medley separate accounts for Class Z shares of any or all of the PMF/Dryden Funds, the successor funds to PIF (the "Medley-to-PMF/Dryden Exchanges"). Any Medley-to-PMF/Dryden Exchange will be effected at the relative net asset values of the securities exchanged, and will be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge will be imposed at the time of a Medley-to-PMF/Dryden Exchange. Moreover, all PMF/Dryden Fund Class Z shares, including those acquired in a Medley-to-PMF/Dryden Exchange, are not subject to any deferred sales load upon their subsequent redemption because Class Z shares are completely no-load.

11. Applicants also request that the Commission amend the Prior Order to permit holders of Class Z shares of any PMF/Dryden Fund to exchange any or all such shares for units of any or all of the Medley separate accounts (the "PMF/Dryden-to-Medley Exchanges"). Any PMF/Dryden-to-Medley Exchange will be effected at the relative net asset values of the securities to be exchanged, and will be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge will be imposed at the time of a PMF/Dryden-to-Medley Exchange. No sales load will be imposed on the subsequent surrender of any interests in the Medley separate accounts acquired in a PMF/Dryden-to-Medley Exchange.

12. With respect to both Medley-to-PMF/Dryden Exchanges and PMF/Dryden-to-Medley Exchanges, Prudential will, in its sole discretion, determine to whom an exchange offer will be made, the time period during which the exchange offer will be in effect, and when an exchange offer is terminated. Prudential may, for example, establish fixed periods of time for exchanges under a particular contract (a "window") of at least 60 days in length. No open-ended exchange offer will be terminated or its terms amended materially without prominent notice to any Contractholder subject to that offer of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment; provided, however, that no such notice will be required if, under extraordinary circumstances, either: (a) There is a suspension in redemption of the exchanged security under Section 22(e) of the 1940 Act or rules thereunder; or (b) the offering company temporarily delays or ceases the sale of the security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

13. Applicants represent that at the commencement of the exchange offer, and at all times thereafter, the Medley prospectus will: (a) Disclose that no administrative or redemption fee will be imposed in connection with the exchange program; (b) disclose that the exchange offer is subject to termination and that its terms are subject to change; and (c) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange. Applicants anticipate that the exchange offers will be extended only to persons that have been provided a copy of the current Medley prospectus. As long as that is the case and the disclosure about the exchange offer is in the Medley prospectus, no additional disclosure about the exchange offers will be included in the PMF/Dryden prospectuses because those funds are offered to a significant number of persons who will not be given the exchange offer. Applicants represent that if the exchange offer is extended to persons that have not been provided copies of the current Medley prospectus, the PMF/Dryden prospectuses also will: (a) Disclose that no administrative or redemption fee will be imposed in connection with the exchange program; (b) disclose that the exchange offer is subject to termination and its terms are subject to change; and (c) describe the tax implications of the exchanges including, where appropriate, a description of any adverse tax consequences of an exchange.

14. Applicants request that the Commission amend the Prior Order to allow exchanges not only with the PMF/Dryden Funds, but also with all other current and future classes of registered open-end management investment companies for which Prudential or an affiliate serves as investment adviser or principal underwriter for which there is no front-end sales charge, no Rule 12b–1 fee, and no contingent deferred sales charge (each a "Prudential Class Z Fund"). Specifically, Applicants request that the Commission amend the Prior Order to allow Participants to exchange any or all of their units in the Medley separate accounts for shares of any or all of the Prudential Class Z Funds (the "Medley-to-Prudential Class Z Exchanges"). In addition, Applicants request that the Commission amend the Prior Order to permit holders of Prudential Class Z Fund shares to exchange any or all such shares for units of any or all of the Medley separate accounts (the "Prudential Class Z-to-Medley Exchanges"). Applicants represent that all Medley-to-Prudential Class Z Exchanges will be subject to the same conditions as those set forth in the application that is the subject of this notice (the "Application") as applicable to the Medley-to-PMF/Dryden Exchanges. Applicants further represent that all Prudential Class Z-to-Medley Exchanges will be subject to the same conditions as those set forth in the Application as applicable to the PMF/Dryden-to-Medley Exchanges.

Applicants' Legal Analysis

1. Section 11(a) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the 1940 Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust, or any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges will be at net asset value, Commission approval is required for the proposed exchanges because of the involvement of VCA–24, a registered unit investment trust. Applicants state that they cannot rely on existing exemptive rules because neither Rule 11a–2 nor Rule 11a–3 permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of Section 11 of the 1940 Act indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made "solely for the purpose of exacting additional selling charges." H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed offers of exchange involve no possibility of such abuse. On a Medley-to-PMF/Dryden Exchange, there is no sales load or transaction fee, and the acquired PMF/Dryden shares are completely no-load. On a PMF/Dryden-to-Medley Exchange, there is not sales load or transaction fee, and so sales load will be imposed on the subsequent surrender of any interests in the Medley separate accounts acquired in such an exchange.

3. Applicants submit that providing class relief is appropriate. Applicants request that the order extend to all Prudential Class Z Funds which, like the PMF/Dryden Funds, offer shares that are subject to no front-end sales charge, no Rule 12b–1 fee, and no contingent deferred sales charge. Those exchanges would be on the same terms as the exchanges with the PMF/Dryden Funds, and therefore there would be no possibility of the abuses Congress sought to prevent through Section 11. Furthermore, without such exemptive relief, before Medley Participants could be given any additional exchange options, Applicants would have to apply for and obtain additional approval orders. Applicants believe that such additional applications would present no new issues under the 1940 Act not already addressed in the Application.

4. Applicants submit that the proposed offers of exchange meet all the requirements of Section 11, and provide a benefit to Contractholders and Participants by providing new investment options and an attractive way to exchange existing securities for interests in those options.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27654 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39230; File No. SR–CHX–97–24]

Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing of Proposed Rule Change Regarding A Ban on the Entry of Certain Stop Orders and Stop Limit Orders

October 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 1997, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article IX, Rule 10B (Stop Order Ban Due to Extraordinary Market Volatility). The new rule would prohibit the entry of certain stop orders and stop limit orders if the New York Stock Exchange ("NYSE") implements a stop order ban pursuant to NYSE Rule 80A. The new rule would exempt stop orders and stop limit orders of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to its Rule 80A, the NYSE currently prohibits the entry of stop orders and stop limit orders if the price of the primary Standard and Poor's 500 Stock Price Index[3] futures contract traded on the Chicago Mercantile Exchange reaches a value 12 points below the contract's closing value on the previous trading day. Likewise, the Boston Stock Exchange ("BSE") prohibits the entry of stop and stop limit orders on the BSE when the NYSE has a ban in place.[4]

The Exchange has previously adopted circuit breaker rules on a pilot basis[5] which parallel the circuit breaker rules of the NYSE.[6] Such rules are designed to dampen market volatility by providing a "time-out" to permit investors and market professionals to evaluate the state of the market. However, unlike the NYSE, the Exchange has not previously prohibited the entry of stop and stop limit orders during times of market stress.

The Exchange believes that the prohibition of stop orders and stop limit orders, except for individual investor orders of up to 2099 shares, during periods of market stress will facilitate the maintenance of an orderly market and reduce market volatility.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[7] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[3] Standard and Poor's 500 Stock Index is a service mark of Standard and Poor's Corporation.

[4] See Ch. II, Sec. 35(b) of the BSE's rules.

[5] See Securities Exchange Act Release Nos. 26218 (October 26, 1988), 53 FR 44137 (November 1, 1988) (order approving File No. SR–MSE–88–9); 27370 (October 23, 1989), 54 FR 43881 (October 27, 1989) (order approving File No. SR–MSE–89–9); 28580 (October 25, 1990), 55 FR 45895 (October 31, 1990) (order approving File No. SR–MSE–90–16); 29868 (October 28, 1991), 56 FR 56535 (November 5, 1991) (order approving File No. SR–MSE–91–14); 33120 (October 29, 1993), 58 FR 59503 (November 9, 1993) (order approving File No. SR–CHS–93–22); 36414 (October 25, 1995), 60 FR 55630 (November 1, 1995) (order approving File No. SR–CHX–95–23); 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (order approving File No. SR–CHX–96–20); and 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (order approving File No. SR–CHX–96–33).

[6] See CHX Art. IX, Rule 10A.

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File Number SR–CHX–97–24 and should be submitted by November 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27696 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice PN 2604]

Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of persons who have had their eligibility to apply for export/retransfer authorizations reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations, (the ITAR), (22 C.F.R. Parts 120–130).

EFFECTIVE DATE: June 17, 1997.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(g)(A) of the AECA and section 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; and any consignee or end user of any item to be exported.

The statute permits reinstatement of eligibility to apply for export/retransfer authorizations on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective June 17, 1997, eligibility for Teledyne Wah Chang (TWC) export and retransfer authorizations has been reinstated pursuant to section 38(g)(4) of the AECA and section 127.11 of the ITAR.

The effect of this notice is that TWC may once again participate in the export or transfer of defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: October 2, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 97–27678 Filed 10–17–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice PN 2605]

Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of persons who have had their eligibility to apply for export/retransfer authorizations reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations (the ITAR), (22 CFR Parts 120–130).

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(g)(A) of the AECA and section 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; and any consignee or end user of any item to be exported.

The statute permits reinstatement of eligibility to apply for export/retransfer authorization on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective August 28, 1997, eligibility for Delft Instruments N.V., (Delft) to apply for export and retransfer authorizations has been reinstated pursuant to section 38(g)(4) of the AECA and section 127.11 of the ITAR.

The effect of this notice is that Delft may once again participate in the export or transfer or defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: October 2, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 97–27679 Filed 10–17–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice No. 2621]

Notice of Briefing

The Department of State announces the next briefing on U.S. foreign policy economic sanctions programs to be held on Thursday, October 30, 1997, from 2:00 p.m. until 3:30 p.m., in the State Department Dean Acheson auditorium, 2201 C Street N.W., Washington, D.C.

This briefing is a continuation of the series of briefings conducted last year in March, July and December and held last in April 1997. As in the earlier briefings, Deputy Assistant Secretary for Energy, Sanctions, and Commodities Bill Ramsay will present an overview of the foreign policy economic sanctions regimes overseen by the State Department's Bureau of Economic and Business Affairs. State Department desk officers will be on hand to discuss country-specific sanctions issues following Ambassador Ramsay's briefing.

Please Note: Persons intending to attend the October 30 briefing must announce this not later than 48 hours before the briefing, and preferably further in advance, to the Department of State by sending a fax to 202–647–3953 (Office of the Coordinator for Business Affairs). The announcement must include name, affiliation, Social Security or passport number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's

license with picture, passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the C Street entrance.

Dated: October 9, 1997.

Marshall P. Adair,

Acting Coordinator for Business Affairs.

[FR Doc. 97–27677 Filed 10–17–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #97–03–U–00–STL To Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comment must be received on or before November 19, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the St. Louis Airport Authority, Lambert-St. Louis International Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 9, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 7, 1998.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: April, 1996.

Estimated charge expiration date: June, 1998.

Total approved net PFC revenue: $80,186,867.

Brief description of proposed project: Airport Noise Land Acquisition/ Relocation Program (Phase II).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other document germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri, on October 9, 1997.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 97–27683 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, New Hampshire

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 19, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than December 24, 1997.

The following is a brief overview of the application.

PFC Project #: 97–05–C–00–MHT.

Level of the proposed PFC: $3.00.

Charge effective date: February 1, 1998.

Estimated charge expiration date: October 1, 1998.

Estimated total net PFC revenue: $2,506,162.

Brief description of project.

Construct Two Remote Parking Aprons
Acquire Snow Removal Equipment
Acquire Snow Removal Equipment
Storage Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts, on October 9, 1997.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 97–27684 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–056; Notice 1]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes four collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 19, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following four proposed collections of information.

Labeling of Retroreflective Materials for Heavy Trailer Conspicuity, 49 CFR 571.108

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0569.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—The permanent marking of the letters "DOT–C2", "DOT–C3" or "DOT–C4" at least 3mm high at regular intervals on retroreflective sheeting material is the information collection.

Description of the Need for the Information and Proposed Use of the Information—Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment," specifies requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic results by providing adequate roadway illumination, improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. For certification and identification purposes, the Standard requires the permanent marking of the letters "DOT–C2", "DOT–C3" or "DOT–C4" at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity.

The manufacturers of new tractors and trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing trailer conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements of the standard, and the compliance testing of new tractors and trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them to certify compliance. Because wider stripes of material of lower brightness also can provide the minimum safety performance, the marking system serves the additional role of identifying the minimum stripe width required for the retroreflective brightness of the particular material. Since the differences between the brightness grades of suitable retroreflective conspicuity material is not obvious from inspection, the marking system is necessary for tractor and trailer manufacturers and repair shops to assure compliance and for FHWA to inspect tractors and trailers in use.

Permanent labeling is used to identify retroreflective material having the

minimum properties required for effective conspicuity of trailers at night. The information enables the FHWA to make compliance inspections, and it aids tractor and trailer owners and repair shops in choosing the correct repair materials for damaged tractors and trailers. It also aids small trailer manufacturers in certifying compliance of their products. The FHWA will not be able to determine whether trailers are properly equipped during roadside inspections without labeling. The use of cheaper and more common reflective materials, which are ineffective for the application, would be expected in repairs without the labeling requirement.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—The respondents are likely to be manufacturers of the conspicuity material. The agency is aware of at least three. Based on the estimated number of feet of conspicuity material for a year's installation on new tractors and trailers, the number of imprints of the information is estimated to be 10 million.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The cost to manufacturers of extending the label requirement is the maintenance and amortization of printing rollers and the additional dye or ink consumed. The labels are to be placed at intervals of about 18 inches on rolls of retroreflective conspicuity tape. The labels are printed during the normal course of steady flow manufacturing operations without a direct time penalty.

Two methods of printing the label are in use. One method uses the same roller that applies the dye to the red segments of the material pattern. The roller is resurfaced annually using a computerized etching technique. The "DOT–C2" label was incorporated in the software to drive the roller resurfacing in 1993, and there is no additional cost to continue the printing of the label. In fact, costs would be incurred to discontinue the label.

The second method uses a separate roller to apply the label. The manufacturer using this technique reports that these rollers have been in service for 5 years without detectable wear and predicts a service life of at least fifteen years. Four rollers costing about $2,500 each are used. A straight line depreciation of the rollers over 15 years equals $667 per year. With an annual allowance for $333 for additional dye, the annual total industry cost of maintaining the "DOT–C2" label is about $1,000.

Labeling of Warning Devices, 49 CFR 571.125

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0506.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—Federal Motor Vehicle Safety Standard No. 125, "Warning Devices" applies to triangular highway warning devices, without self contained energy sources, that are designed for large motor vehicles in interstate commerce and be placed on the roadway forward and rearward of vehicles to warn approaching traffic of the presence of a stopped vehicle. The Standard requires that each manufacturer of warning triangles must label each device. Without proper deployment and use, the effectiveness of the devices may be greatly diminished, and may lead to serious injuries due to rear end collisions between moving traffic and disabled vehicles. The warning device shall be permanently and legibly marked and also provide instructions for its erection and display. Each device shall be labeled with: (a) The name of the manufacturer, (b) the month and year of manufacture, (c) the DOT symbol, or the statement that the warning device complies with all applicable FMVSS. The instructions for each device shall include a recommendation that the driver activate the vehicular hazard warning signal lamps before leaving the vehicle to erect the warning device. Also, the instructions shall include an illustration indicating recommended positioning.

Description of the Need for the Information and Proposed use of the Information—The purpose of the certification symbol is to assure consumers that the devices are of the level of performance required by federal law. Additionally, each motor vehicle in interstate commerce is required to be equipped with such warning devices that comply with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing complying warning devices from look-alike products that do not comply. Without labeling, FHWA will not be able to enforce their requirement.

The purpose of the requirement for instructions is to provide information so that the motoring public can erect and position the warning device so that the warning device is positioned to alert the oncoming traffic of a disabled vehicle and prevent rear end collisions.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—There are three manufacturers labeling approximately 2.85 million warning devices (triangles) per year.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—There are three manufacturers labeling approximately 2.85 million warning devices (triangles) per year for the last few years. The tooling would be replaced after about 20 years of service being used to make about 200K devices per year. The machining each mold that would be replaced is about 8 hours at a cost of $37.50 per hour, or a cost of $300. Assuming that this past years production level of 2.85M devices per year were built each year for the last twenty years (an over-estimate that ignores the long steady growth of the market), the total number of devices manufactured would be 57M. The tooling needs to be replaced every 4M uses; the total number of tools used in the last 20 years is 14.25. The machining for the labeling in each tool would be 14.25 times 8 hours divided by 57M, or 0.000002 hour per device. Thus the current annual cost for the 2.85 M devices manufactured is 5.7 hours × $37.50 = $213.75 .

Collection of Replaceable Headlamp Light Source Information: 49 CFR Part 564

Type of Request—Renewal of clearance.

OMB Clearance Number—2127–0563.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—The information to be collected is in response to 49 CFR Part 564; Replaceable Light Source Dimensional Information. Persons desiring to use newly designed replaceable headlamp light sources are required to submit interchangeability and performance specifications to the agency. After a short agency review to assure completeness, the information is placed in a public docket for use by any person who would desire to manufacture headlamp light sources for highway motor vehicles. In Federal Motor Vehicle Safety Standard No. 108, "Lamps, reflective devices and associated equipment," Part 564 submissions are referenced as being the source of information regarding the performance and interchangeability information for legal headlamp light sources, whether original equipment or replacement equipment. Thus, the submitted information about headlamp light sources becomes the basis for certification of compliance with safety standards.

Description of the need for the information and proposed use of the information—The information is to be placed in a public docket for the use by vehicle, headlamp and headlamp light source manufacturers for determining the interchangeability aspects of headlamp light sources for manufacturing purposes and for the design and manufacture of headlamps. In order for replacement light sources to be designated as acceptable replacements, the replacement light sources also are required to comply with the dimensional and performance information in the docket for its type. The Federal program for reducing highway fatalities, injuries and accidents would likely be adversely affected if the information was not collected, because the bulbs would, in fact, not be standardized for performance and interchangeability. If the interchangeability information were not available to manufacturers who normally provide original equipment and aftermarket parts, replacements could become significantly more costly to replace upon burnout, and ready availability would also likely diminish because the replacements would be available from only the vehicle's manufacturer or its dealer. As a potential adverse safety consequence, more and more vehicles would likely be on the highways at night with headlamps having one or more failed bulbs because of the higher expense and lower availability, and therefore reduce the roadway illumination and increase the risk of accident. In the event that the information collection were not reapproved, it is likely that the agency would have to reinstate headlamp light source information as part of the federal lighting standard and thus any new light source designs could be used only after a lengthy and costly rulemaking instead of this simple review and reference procedure.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information—For the burdened parties, only those which develop a new or modified headlamp light source or other additional interchange information will have to submit information. Based on the last three years of Part 564 data collection, thirteen submissions have been received from seven manufacturers; three for new light sources, four for modification of existing information, and six for additional information to existing light sources.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The average estimated cost of the information submissions is estimated to be 4.2 hours per submission at $100 per hour for a cost of $420 each, thus at a rate of 13/3 submissions per year, the average annual cost is $1820 and the average annual hour burden is 18.2 hours.

Labeling of Motor Vehicle Brake Fluid Containers, 49 CFR 571.116

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0521.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluids," specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure the following: the contents of the container are clearly stated; these fluids are used for their intended purpose only; and, the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire crash safety consequences for the operators of vehicles or equipment in which they are used.

Description of the Need for the Information and Proposed Use of the Information—This labeling information is used by motor vehicle owners, operators, and vehicle service facilities to aid in the proper selection of brake fluids and hydraulic system mineral oils for use in motor vehicles and hydraulic equipment, to assure the continued safety of motor vehicle braking and hydraulic systems, respectively. The information required on the label of brake fluid and hydraulic mineral oil containers identifies performance capabilities of the fluid. The safety warnings required on brake fluid and hydraulic system mineral oil containers are provided to prevent improper use, storage, etc. which might result in motor vehicle brake failure and the failure of equipment utilizing hydraulic system mineral oil.

Properties of these fluids and their use necessitate the package labeling information specified in this standard. Brake fluid and hydraulic system mineral oil must be free of contaminants in order to perform as intended; therefore, the labeling instructions warn against storing in unsealed containers or mixing these fluids with other products. Also, avoiding the absorption of moisture is extremely important since moisture in a brake system degrades braking performance and safety by lowering brake fluid's boiling point, increasing the fluid's viscosity at low atmospheric temperatures and increasing the risk of brake system component corrosion. Lower boiling points increase the risk of brake system failure and increase the possibility of vapor lock. The safety warnings also alert users of brake fluids sold in containers with capacities less than five gallons that the containers should not be refilled or reused for other purposes.

If the labeling requirements were not mandatory, improving safety on the nation's highways would be more difficult to accomplish. Proper vehicle brake performance is crucial to the safety of motor vehicle occupants, and the information on fluid containers is necessary to aid in reducing brake system failures resulting from the use of improper or contaminated fluid. The labeling on fluid containers also helps to ensure that only fluid that complies with federal requirements is sold, and this also facilitates agency enforcement efforts by identifying the fluid packager or manufacturer.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—There are an estimated 200 respondents, mainly those manufacturers involved with the production of motor vehicle brake and hydraulic fluids. A label is required on each container of fluid sold.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The cost of manufacturing and affixing the labels will vary greatly for various manufacturers. The majority of the labels will be manufactured and affixed in an automated fashion by

major manufacturers involving low material or labor costs. However, for small manufacturers, the costs in terms of labor, and to a lesser extent, material will be somewhat greater. Labels are a standard part of fluid containers, even in the absence of a federal requirement for adding information to the containers. Thus, the added information required by the Standard would be added to the label already existing on the container. Thus the only cost is for adding the required information to an existing label. Typically such labels are silk-screened onto a label material. Thus, the added information to a label would be some small part of the total cost of the silk-screen process used for the production of the label.

The cost estimate for the total annualized costs to the respondent for the incremental aspect of adding this information to the printing cost of an existing label may be derived as follows:

(1) Estimate of the number of respondents—200

(2) Estimate of the number of different types of labels per respondent—24

(3) Technical burden-hours required to design the layout of a label that includes the incrementally added information—8

(4) Number of hours of label design for all respondents—38,400

(5) Average annual label design hours assuming a 5 year label redesign cycle—7,680

(6) Annual label design cost assuming $37.50 hourly wage—$288,000

(7) Annual cost of incrementally added ink for label production (@ $400 per respondent)—$80,000

(8) Total annual cost of added information on label (#6+#7)—$368,000

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: October 14, 1997.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 97–27716 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 19, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11965–N ..	RSPA–97–2989	J.R. Simplot Company, Edison, CA.	49 CFR 174.67(i) & (j).	To authorize tank cars to remain connected during unloading of Class 8 material without the physical presence of an unloader. (Mode 2.)
11966–N ..	RSPA–97–2990	FMC Corporation, Philadelphia, PA.	49 CFR 173.31(b)(6)(i).	To authorize the transportation in commerce of DOT 111A–60A1W2 aluminum tank cars equipped with half head shields instead of full for use in transporting Hydrogen peroxide aqueous solutions, Division 5.1. (Mode 2.)
11967–N ..	RSPA–97–2991	Savage Industries Inc., Norristown, PA.	49 CFR 174.67(i) & (j).	To authorize tank cars to remain connected during unloading of various hazardous materials to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
11968–N ..	RSPA–97–2992	Air Liquide America Corp., Houston, TX.	49 CFR 177.834(i)(3)	To authorize the unloading of Division 2.1 and 2.2 material from DOT Specification cargo tanks without the physical presence of an unloader. (Mode 1)
11970–N	RSPA–97–2993	Exxon Chemical, Inc., Baytown, TX.	49 CFR 172.101, 178.245–1(c).	To authorize the transportation in commerce of DOT-Specification 51 portable tanks equipped with a bottom outlet and no internal shutoff valve for use in transporting pyrophoric solids, inorganic, n.o.s., Division 4.2. (Modes 1, 2, 3.)
11971–N ..	RSPA–97–2994	Regional Airline Assoc., Washington, DC.	49 CFR 173.34(e)	To authorize an alternative retesting procedure for Specification 4DA and 4DS hermetically sealed cylinders which serves as components of aircraft systems. (Modes 1, 2.)
11972–N ..	RSPA–97–2996	Snaketan, Woodland, CA.	49 CFR 172.411, 172.448, 172.519, 173.118.	To authorize the transportation in commerce of small quantities of hazardous materials as essentially non-regulated. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1804; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 10, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–27672 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 4, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
11344–M		E.I. DuPont, Wilmington, DE (See Footnote 1)	11344
11956–M	RSPA–97–2988	Scott Aviation, Lancaster, NY (See Footnote 2)	11956

[1] To modify the exemption to provide for tank cars, containing chlorine, Division 2.3, to remain standing with unloading connections attached without the physical presence of an unloader.

[2] To reissue the exemption originally issued on an emergency basis for protective breathing equipment (PBE), containing chemical oxygen generators which utilize special integral packaging as a secondary means of preventing actuation.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 10, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–27673 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held at the Adams Mark Hotel, 2900 Briarpark Drive at Westheimer, Houston, TX 77042.

On November 18, 1997, at 9:00 a.m., the THLPSSC will meet. OPS will discuss current regulatory activities, and the THLPSSC will review the following OPS proposed rulemakings: (1) Incorporation by Reference of Industry Standard on Leak Detection; (2) Risk-Based Alternative to Pressure Testing Rule; and (3) Adoption of Industry Standards for Breakout Tanks. Part of the Advisory Committee's function is to discuss OPS proposed rulemakings and assess, by vote, if the rulemaking is feasible, reasonable, and practicable.

On November 18, 1997 at 1:00 p.m., the THLPSSC will be joined by members of the TPSSC for a joint session in which OPS will provide a brief update on major OPS activities. However, this session will focus on the issue of cost-benefit analysis. Topics of discussion will include: (1) A description of the approach to cost-benefit analysis by both OPS and the pipeline industry; and (2) the role of the Advisory Committees in reviewing cost benefit in their review of OPS rulemakings, in accordance with the Accountable Pipeline Safety and Partnership Act of 1996.

OPS will hold a public meeting on risk management in conjunction with the Technical Advisory Committee meetings on the morning of November 19, 1997, from 8:00 A.M. TO 12:00 noon. OPS announced this meeting in a **Federal Register** notice (62 FR 50654), published on September 26, 1997. The purpose of this meeting is to provide an update on the Risk Management Demonstration Program and to receive input on the progress of the Demonstration Program thus far and on the specific demonstration projects under review.

On November 19, 1997, at 1:00 p.m. the TPSSC will meet. Although this committee will not be voting on any OPS proposed rulemakings, brief updates of OPS regulatory activities will be provided by OPS staff.

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Peggy Thompson, Room 2335, Department of

Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4595, no later than November 5, 1997. Requests should include the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC, on October 14, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–27715 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 114X)]

Union Pacific Railroad Company—Abandonment Exemption—In Washburn County, WI

On September 30, 1997, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Hayward Industrial Lead, extending from milepost 83.32 near Trego to milepost 96.0 near Hayward Junction, in Washburn County, WI, which traverses U.S. Postal Service ZIP Codes 54888 and 54875, a distance of 12.68 miles.[1] The line includes the non-agency stations of Trego at milepost 83.3, Earl at milepost 87.3, and Spring Brook at milepost 91.4.

The line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 16, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 10, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 114X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27734 Filed 10–17–97; 8:45 am]

BILLING CODE 4915–00–P

[1] UP states that the Hayward Industrial Lead previously extended from Trego in Washburn County to a location near Hayward in Sawyer County, WI. The segment between Hayward Junction and Hayward was acquired by Wisconsin Central Ltd. (WCL) pursuant to an acquisition exemption in *Wisconsin Central Ltd.—Acquisition Exemption— Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997). WCL operates another rail line that connects to the acquired line at Hayward Junction. UP states that the line to be abandoned does not now connect to any UP rail line.

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Owner For Reissue of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

DATES: Written comments should be received on or before December 22, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner For Reissue Of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request for reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 300,000.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–27686 Filed 10–17–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

DATES: Written comments should be received on or before December 22, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application By Preferred Creditor For Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

OMB Number: 1535–0042.

Form Number: PD F 2216.

Abstract: The information is requested to support a request for payment by a preferred creditor of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Businesses.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 835.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–27687 Filed 10–17–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

DATES: Written comments should be received on or before December 22, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Subscription For Purchase And Issue Of U.S. Treasury Securities—State And Local Government Series.

OMB Number: 1535–0092.

Form Number: PD F 4144.

Abstract: The information is requested to establish accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 4,585.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are

invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97-27688 Filed 10-17-97; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Certificates of Indebtedness—State and Local Government Series.

DATES: Written comments should be received on or before December 22, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535-0091.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 167.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

DATED: October 14, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97-27689 Filed 10-17-97; 8:45 am]

BILLING CODE 4810-39-P

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federal register

Monday
October 20, 1997

Part II

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–5909–5]

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition requesting amendment of the Facility Response Plan rule.

SUMMARY: EPA is denying the request submitted by various trade associations to amend the Facility Response Plan (FRP) rule that the Agency promulgated under section 311(j) of the Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA) of 1990. These organizations had requested that EPA modify the FRP rule in a number of ways to treat facilities that handle, store, or transport animal fats and vegetable oils in a manner differently from those facilities that store petroleum-based oils. EPA believes that the petition did not substantiate the claimed differences between animal fats and vegetable oils and petroleum oils so as to support a further differentiation between these groups of oils under the FRP rule. Instead, EPA continues to find that a worst case discharge or substantial threat of discharge of animal fats and/or vegetable oils to navigable waters, adjoining shorelines, or the exclusive economic zone could reasonably be expected to cause substantial harm to the environment, including wildlife that may be killed by the discharge of fats or vegetable oils. Moreover, EPA believes that in setting different response strategies for petroleum and non-petroleum oils, (with animal fat and vegetable oils in the latter category), the FRP rule already provides for adequate differentiation in response planning requirements for all covered facilities.

ADDRESSES: The official record for this decision is located in the Superfund Docket, at the U.S. Environmental Protection Agency, [Docket Number SPCC–3]. The docket is available for inspection between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays, at US EPA Crystal Gateway 1 (CG1), 1235 Jefferson Davis Highway, Arlington, VA 22202. Appointments to review the docket can be made by calling 703–603–8917. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, Oil Pollution Center, Office of Emergency and Remedial Response (5203G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 703–356–8774 (lively.barbara@epamail.epa.gov); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: The contents of this Denial of Petition are listed in the following outline:

I. Background
A. The Organizations' Petition
B. Background on the Processing and Storage of Vegetable Oils and Animal Fats
II. Technical Evaluation of Petitioners' Claims
A. General
B. Petitioners' Claim: Animal Fats and Vegetable Oils Are Non-Toxic
1. How Animal Fats and Vegetable Oils Produce Adverse Environmental Effects
2. Physical Properties
3. Chemical Composition
4. Environmental Effects
a. Physical Effects of Spilled Oil
b. Effects of Oil on Metabolic Requirements
c. Effects of Oil on Food and the Food Web, Communities, and Ecosystems
d. Indirect Effects
5. Toxicity
a. Principles of Toxicology
b. Exposure From Oil Spills
c. Toxicity of Petroleum Oils
d. Toxicity of Vegetable Oils and Animal Fats
Figure 1. Toxicity and Adverse Effects of Components and Transformation Products of Vegetable Oils and Animal Fat
6. Epidemiological Studies
a. Human Health
b. Comparison of Effects From Oil Spills With Human Consumption of Vegetable Oils and Animal Fats
7. Other Adverse Effects from Oil Spills
a. Aesthetic Effects: Fouling and Rancidity
b. Fire Hazards
c. Effects on Water Treatment
8. FWS Comments
C. Petitioners' Claim: Animal Fats and Vegetable Oils Are Essential Components of Human and Wildlife Diets
1. Nutritional Requirements for Dietary Fat
2. Essential Fatty Acids (EFA)
3. Adverse Effects of High Levels of EFAs
4. Adverse Effects of High Levels of Fats and Oils
5. Relevance of EFA Principles to Spills
6. FWS Comments on Essential Fatty Acids
D. Petitioners' Claim: Animal Fats and Vegetable Oils Are Readily Biodegradable and Do Not Persist in the Environment
1. Chemical and Biological Processes Affecting Vegetable Oils and Animal Fats in the Environment
a. Chemical Processes
b. Biological Processes
c. Rancidity
2. Environmental Fate and Effects of Spilled Vegetable Oils and Animal Fats: Real-World Examples
3. FWS Comments on Degradation
E. Petitioners' Claim: Vegetable Oils and Animal Fats Have a High BOD, Which Could Result in Oxygen Deprivation Where There Is a Large Spill in a Confined Body of Water
F. Petitioners' Claim: Vegetable Oils and Animal Fats Can Coat Aquatic Biota and Foul Wildlife
III. Petitioners' Suggested Language to Amend the July 1, 1994, Facility Response Plan Rule
A. Background
B. Regulatory Language Changes Proposed by the Petitioners
IV. Conclusions
Acronym List
Bibliography
Appendix I: Supporting Tables
Table 1. Comparison of Physical Properties of Vegetable Oils and Animal Fats with Petroleum Oils
Table 2. Comparison of Vegetable Oils and Animal Fats with Petroleum Oils
Table 3. Comparison of Aqua Methods and Standard Acute Aquatic Testing Methods
Table 4. Effects of Real-World Oil Spills
Appendix II: Edible Oil Regulatory Reform Act Differentiation

I. Background

The OPA (Pub. L. 101–380, 104 Stat. 484) was enacted to expand prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund administered by the U.S. Coast Guard.

Section 4202(a) of the OPA amends CWA section 311(j) to require regulations for owners or operators of facilities to prepare and submit "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." This requirement applies to all offshore facilities and any onshore facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone" ("substantial harm facilities").

On July 1, 1994, EPA published its Final Rule amending the Oil Pollution Prevention regulation (40 CFR part 112) to incorporate new requirements to implement amended section 311(j)(5) of the CWA. (Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule, 59 FR 34070, July 1, 1994). Under authority of section 311(j)(1)(C) of the CWA, the Final Rule also requires planning for a small and medium discharge of oil, as appropriate.

In the final rule, EPA determined that for the purposes of section 311(j) planning, the OPA includes non-petroleum oils. The Agency noted that the definition of "oil" in the Clean Water Act includes oil of any kind, and that EPA uses this broad definition in 40 CFR part 110, Discharge of Oil. Animal fats and vegetable oils fall within the CWA definition of "oil."

Only a small number, no more than 1¼ percent of the total SPCC community regulated (approximately 5,400 of a total of 435,000 facilities) under 40 CFR part 112.1–112.7 meet the criteria for substantial harm under 40 CFR 112.20. Only a small number of the 5,400 substantial harm facilities (an estimated 50 to 100) store or use vegetable oil and animal fat and have prepared and submitted FRPs.

A. The Organizations' Petition

By a letter dated August 12, 1994, EPA received a "Petition for Reconsideration and Stay of Effective Date" of the OPA-mandated FRP final rule as that rule applies to facilities that handle, store, or transport animal fats or vegetable oils. The petition was submitted on behalf of seven agricultural organizations ("the Organizations" or "Petitioners"): the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association.

To support the Petition, the Organizations referenced an industry-sponsored report titled "Environmental Effects of Release of Animal Fats and Vegetable Oils to Waterways" (prepared by ENVIRON Corporation, June 28, 1993), and an associated study titled "Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, Pimephales Promelas" (prepared by Aqua Survey, Inc., May 21, 1993). Both the report and the study had been submitted to EPA during the facility response plan rulemaking as enclosures to a comment filed over nine months after the close of the comment period. Based, in part, on these studies (the ENVIRON report and Aqua Survey study), the Petitioners asked EPA to create a regulatory regime for response planning for non-petroleum, "non-toxic" oils separate from the regime established for petroleum oils and "toxic," non-petroleum oils.

The report and the study provided information on certain physical, toxicological, and chemical properties of animal fats and vegetable oils compared with other types of oil. The petitioners argued that according to the ENVIRON report, the presence of animal fats and vegetable oils in the environment does not cause significant harm. Six specific conclusions of the ENVIRON report regarding vegetable oils and animal fats were that these substances are not toxic to the environment; are essential components to human and wildlife diets; readily biodegrade; are not persistent in the environment like petroleum oils; do have a high Biochemical Oxygen Demand (BOD), which could result in oxygen deprivation where there is a large spill in a confined body of water that has low flow and dilution; and can coat aquatic biota and foul wildlife.

The Petitioners also submitted an Appendix to their Petition that included specific suggested language to amend the July 1, 1994, FRP rule. The submitted language would have resulted in the following changes regarding facilities that handle, store, or transport animal fats and vegetable oils: Further clarified the definition of animal fats and vegetable oil (set out in Appendix E, 1.2 of the FRP); allowed mechanical dispersal and "no action" options to be considered in lieu of the oil containment and recovery devices otherwise specified for response for a worst case discharge; required the use of a containment boom only for the protection of fish and wildlife and sensitive environments; and increased required on-scene arrival time for response resources from 12 hours (including travel time) to 24 hours plus travel time for medium discharges and worst case Tier 1 response resources.

The Federal natural resource trustee agencies, including the Fish and Wildlife Service (FWS), had reviewed the ENVIRON study. In an April 11, 1994, letter to the Department of Transportation's (DOT) Research and Special Projects Administration (RSPA), the FWS stated that the Report did not provide an accurate assessment of the dangers that non-petroleum oils pose to fish and wildlife and environmentally sensitive areas. The letter stated that the key facts were misrepresented, incomplete, or omitted in the Report. FWS also observed that the ENVIRON report failed to give appropriate significance to the fouling potential of edible oils (USDOI/FWS, 1994).

The National Oceanic and Atmospheric Administration (NOAA) also had evaluated the effects on the environment of spilled non-petroleum oils, including coconut, corn, cottonseed, fish, and palm oils. (Memorandum of Record, dated June 3, 1993, from the Department of Commerce (DOC)/NOAA Hazardous Materials Response and Assessment Division.) The NOAA assessment, based on literature research, addresses physical and chemical properties and toxicity of these and other oils, and indicates that some edible oils, when spilled, may have adverse environmental effects. (The views of the FWS and NOAA on the adverse effects of animal fats and vegetables are discussed in detail in the preamble to the U.S. Coast Guard's final rule setting forth response plan requirements for marine transportation-related facilities, [61 FR 7890, 7907–7908, Feb. 29, 1996] and are included in the docket that supports this decision. These views also are discussed in EPA's Request for Data and Comment on Response Strategies for Facilities That Handle, Store, or Transport Certain Non-Petroleum Oils, 59 FR 53742–53743, October 26, 1994.)

On October 26, 1994, in view of the differing scientific conclusions reached by the Petitioners, the FWS, and other groups and agencies, EPA requested broader public comment on issues raised by the Petitioners in a notice and request for data (Request for Data and Comment on Response Strategies for Facilities That Handle, Store, or Transport Certain Non-Petroleum Oils, 59 FR 53742, October 26, 1994). These issues included whether to have different specific response approaches for releases of animal fats and vegetable oils (rather than increased flexibility), and the effects on the environment of releases of these oils. EPA also asked commenters to recommend specific data that relate to the comparison of petroleum and non-petroleum oils. EPA received fourteen comments in response to its October 26, 1994, notice and request for data.

Of these fourteen commenters, most agreed with the trade associations' request that EPA should modify the FRP rule. Most of the commenters asserted that, based upon the ENVIRON report, animal fats and vegetable oils are readily biodegradable and not persistent

in the environment. Certain commenters also argued that vegetable oils and animal fats are less toxic than other types of oils. Other commenters argued that edible oils pose less risk to the environment because they are typically stored in smaller tanks at food processing facilities, whereas petroleum-based oils are stored in larger tanks at petroleum facilities. One commenter, citing the unnecessary and burdensome regulations and the excellent spill record of the animal fat and vegetable oil industry, stated that EPA should differentiate animal fats and vegetable oils from other types of oils. One commenter questioned the accuracy of the ENVIRON report and stated that non-petroleum oils can adversely affect fish and wildlife and environmentally sensitive areas.

B. Background on the Processing and Storage of Vegetable Oils and Animal Fats

In 1992, approximately 20.8 billion pounds of vegetable oils and animal fats were consumed in the United States, including over 14.8 billion pounds for edible uses; and more than 5.9 billion pounds for inedible uses, such as soap, paint or varnish, feed, resins and plastics, lubricants, fatty acids, and other products (Hui, 1996a). The extent of processing of vegetable oils and animal fats depends on the ultimate use of the product. Chemical composition, which determines the toxicity and fate of oils in the environment, changes at each step in processing, as impurities or specific components are removed or chemicals formed; chemical composition can also be changed by storage, heating, or reactions in the environment (Hui, 1996d; Brekke, 1980).

Processing steps in vegetable oil facilities are generally independent operations that are not connected by continuous flow, and between each processing step there may be one or more storage tanks (Hui, 1996d). Many crude vegetable oil storage tanks, which are usually constructed of welded carbon steel, have a capacity of 1 million pounds (approximately 140,000 gallons) (Hui, 1996d). They may be located in the open or enclosed in a structure. Storage tanks for finished fats and oils are generally made of iron, stainless steel, or aluminum and typically hold between 75 and 200 tons (about 21,000 to 56,000 gallons) of product.

In a typical integrated vegetable oil processing facility, steps may include crude oil storage, preparation, extraction and meal finishing, removal of gums and lecithin processing, caustic refining, bleaching and dry removal of gums and waxes, hydrogenation, interesterification, fractionation, deodorizing, and shortening or margarine production (Hui, 1996d; Brekke, 1960). During these steps, several classes of materials may be removed, such as gums, phospholipids, pigments, free fatty acids, color bodies, pigments, metallic prooxidants, and residual soaps. New compounds, including oxidation products, polymers and their decomposition products, may be formed and contaminants introduced during processing (Hui, 1996d).

Impurities are also removed and chemical structure modified during processing of animal fats (Hui, 1996d). The major animal fats are lard and tallow. Steps in the processing of animal fats may include rendering, bleaching, hydrogenation, deodorizing, interesterification, and fractionation. Rendering, the removal of fat from animal tissues using heat or mechanical means, is often a continuous process that results in products that require no further treatment. Further refining removes materials, such as free fatty acids or collagen or protein, or changes the characteristics of the fat for specialized use.

Spills of crude vegetable oils containing gums, phospholipids, free fatty acids, and a host of other chemical components can differ greatly from spills of processed oils in their persistence in the environment, the environmental compartments in which they are distributed, the breakdown products that they form, their rate of degradation, and the exposure and environmental effects that they produce. Some minor components of oils can affect their properties or cause adverse health and environmental effects. Spilled oils and fats can be transformed by physical, chemical, or biological processes to form products that are more or less toxic than the original oil, depending on the specific oil and the products that are formed.

The EPA has considered the Petitioners' claims in detail. EPA's technical evaluation on the Petitioners' claims is set forth in section II. EPA's responses to suggested changes in the FRP regulation are provided in section III. Detailed studies and information to support this document are provided in a Technical Document, which is located in the Docket.

II. Technical Evaluation of Petitioners' Claims

A. General

The Petitioners claim that unlike most if not all other oils, animal fats and vegetable oils are non-toxic, readily biodegradable, not persistent in the environment, and in fact are essential components of human and wildlife diets. Most of the Petitioners' arguments focus on toxicity, although toxicity is only one of several mechanisms by which oil spills cause environmental damage.

In making its claims, the Petitioners have disregarded fundamental scientific principles and ignored a large body of scientific evidence that was considered by EPA in its promulgation of rules implementing the requirements of the CWA. The ENVIRON report submitted by the Petitioners acknowledges that animal fats and vegetable oils can cause oxygen deprivation and coating of animals, but the Petitioners incorrectly minimize the importance of these mechanisms in causing environmental damage and rely instead on limited studies in narrow areas of toxicity, which are then improperly generalized to support the Petitioners' claims.

Petitioners' submission emphasizes that animal fats and vegetable oils are used by all organisms for food. The ingestion of small quantities of edible oils by humans, however, is a completely different situation from spills of oil into the environment. These situations differ markedly in the extent and duration of exposure, the route of exposure, the species exposed, the composition of the chemicals involved, the circumstances surrounding the exposure, and the types of effects produced—factors that determine the toxicity and severity of the adverse effects of chemicals. Thus, even if the human consumption of small quantities of oils in food were judged completely safe, no inferences could be drawn about the toxicity and other effects of vegetable oils and animal fats on environmental organisms exposed in the very different circumstances of oil spills.

The Petitioners' arguments about toxicity do not address the central issue: Spills of animal fats and vegetable oils kill or injure fish, birds, mammals, and other species and produce a host of other undesirable effects. Whether this death and destruction results from toxicity or from other processes, spills of animal fats and vegetable oils should be prevented and if spills occur, quickly removed to reduce the environmental harm and other adverse effects they produce.

B. Petitioners' Claim: Animal Fats and Vegetable Oils Are Non-Toxic

The Petitioners claim that EPA's implementation of the response plan provisions and other regulatory changes

under the CWA are inconsistent with established regulatory principles and with the available scientific data related to animal fats and vegetable oils, which, unlike other oils, are non-toxic.

EPA Response: For a number of reasons that are detailed in this document and the Technical Document, EPA disagrees with the Petitioners' contention that animal fats and vegetable oils are non-toxic when spilled into the environment. First, while the Petitioners rely on laboratory tests that measure only the acute lethal effects of some vegetable oils and animal fats in one species of fish, these tests say nothing about other acute toxic effects or long-term toxic effects, or toxic effects on other species or ecosystems, or toxic effects of oil spilled in the environment under conditions that differ from those in the laboratory. Second, the tests submitted by the Petitioners cannot demonstrate "non-toxicity" of vegetable oils and animal fats; indeed the tests described in the study only measure the lethality of the oils tested under a given set of experimental conditions. Third, other information and data indicate that animal fats and vegetable oils, their components, and degradation products are not as "non-toxic" as the Petitioners assert. Fourth, while low levels of certain animal fats and vegetable oils or their components may be essential constituents of the diet of humans and wildlife, adverse effects occur from exposure to high levels of these chemicals. Numerous examples in the scientific literature demonstrate that essentiality does not confer safety and essential elements can produce toxic effects (Klaassen et al., 1986; NAS, 1977a; Rand and Petrocelli, 1985; Hui, 1996b).

Furthermore, EPA emphasizes that toxicity is only one of several mechanisms by which oil spills cause environmental damage. As discussed below, the physical effects of spilled oil—such as coating animals and plants with oil and suffocation of aquatic organisms from oxygen depletion—and the destruction of the food supply kill birds and mammals, destroy fish and other aquatic species, and damage their habitats.

By contaminating food sources, reducing breeding animals and plants that provide future food, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, even oils that remain in the environment for relatively short periods of time can cause long-term deleterious effects years after the oil was spilled.

1. How Animal Fats and Vegetable Oils Produce Adverse Environmental Effects

The deleterious environmental effects of spills of petroleum oils and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources as well as toxic contamination (USDOC/NOAA, 1996; NAS, 1985e; Crump-Wiesner and Jennings, 1975; Frink, 1994; Frink and Miller, 1995; Hartung, 1995; USDOI/FWS, 1994). Nearly all of the most immediate and devastating environmental effects from oil spills—such as smothering of fish or coating of birds and mammals and their food with oil—are physical effects related to the physical properties of oils and their physical interactions with living systems (Hartung, 1995).

While these immediate physical effects and effects on food sources may not be considered the result of "toxicity" in the classic sense—i.e., effects that are produced when a chemical reacts with a specific receptor site of an organism at a high enough concentration for a sufficient length of time (Rand and Petrocelli, 1985)—severe debilitation and death of fish and wildlife are caused by spills of animal fats and vegetable oils, other non-petroleum oils, and petroleum oils and their products. Adverse environmental effects can occur long after the initial exposure to animal fats and vegetable oils because of toxicity, persistence of products in the environment, or destruction of food sources and habitat and diminished reproduction resulting from physical effects or toxicity.

2. Physical Properties

Petroleum oils and non-petroleum oils, including vegetable oils and animal fats, share common physical properties and produce similar environmental effects (Crump-Wiesner and Jennings, 1975; USDOI, 1994; Frink, 1994). When spilled in the aquatic environment, petroleum oils, animal fats and vegetable oils and their fatty acid constituents may float on the water's surface, become solubilized or emulsified in the water column, or settle on the bottom as a sludge, depending on their physical and chemical properties (Crump-Wiesner and Jennings, 1975; DOC/NOAA, 1992, 1996). Vegetable oils and animal fats that are solid at room temperature still serve as potent physical contaminants and are much more difficult to remove from affected animals than petroleum oil (Frink, 1994).

While the physical properties of vegetable oils and animal fats are highly variable, most fall within in a range that is similar to the physical parameters for petroleum oils. (See Appendix I, Table 1: Comparison of Physical Properties of Vegetable Oils and Animal Fats With Petroleum Oils and Table 2: Comparison of Vegetable Oils and Animal Fats with Petroleum Oils). Common properties—such as solubility, specific gravity, and viscosity—are responsible for the similar environmental effects of petroleum and vegetable oils and animal fats. Petroleum and vegetable oils and animal fats can enter all parts of an aquatic system and adjacent shoreline, and similar methods of containment, removal and cleanup are used to reduce the harm created by spills of petroleum and vegetable oils and animal fats.

3. Chemical Composition

The chemical composition and physical properties of petroleum and non-petroleum oils, including vegetable oils and animal fats, determine their fate in the environment (where they go, reactions, rate of disappearance) and the exposure and adverse effects that they produce. The chemical composition changes at each step in processing, as impurities or specific components are removed or chemicals formed (Hui, 1996d; Brekke, 1980). Chemical composition can also change with storage, heating, or reactions in the environment.

The main constituents of vegetable oils and animal fats are esters of glycerol and fatty acids (Hui, 1996b). The ester linkages can be hydrolyzed to yield free fatty acids and glycerol. While triglycerides (triacylglycerols) predominate, fats and oils also contain mono- and diglycerides (mono-and diacylglycerols) and other lipids, e.g., phosphatides and cholesterol, free fatty acids, and small amounts of other compounds. Fats and oils also contain other minor components, such as polynuclear aromatic hydrocarbons (PAHs). Like vegetable oils and animal fats, petroleum crude oils are hydrocarbon mixtures that can be further processed to make specific products; but the hydrocarbon constituents of petroleum oils are primarily alkanes (paraffins), cycloalkanes, and aromatic hydrocarbons (IARC, 1989).

Fatty acids largely determine the chemical and physical properties of triglycerides (Hui, 1996a) and influence their fate and effects in the environment. The structure of the fatty acids can change as they are processed, stored, heated, or transformed by physical, chemical, and biological processes in the environment. The fatty acid composition of vegetable oils and

animal fats varies with plant or animal species, season, geographical location, feed, and other factors.

The physical and chemical properties of petroleum and non-petroleum oils can change after they have spilled into the environment. Spilled oil can be transformed through a wide variety of physical, chemical, and biological processes (USDOC/NOAA, 1992a, 1996). These processes are affected by many factors, among them temperature, oxygen, light, ionizing radiation, and the presence of metals (Kiritsakis, 1990; Hui, 1996a, 1996d).

As the composition of the oil changes, so does its fate in the environment and its toxicity. The products that are formed can be more or less toxic than the original oil, depending on the specific oil and the products that are formed. Oxidation of vegetable oils and animal fats, which may contribute rancid off-flavors and odors, can create products, such as cyclic monomers and oxycholesterols that are toxic at relatively low concentrations (Hui, 1996a). Polymers of soybean oil and sunflower oil can form concrete-like aggregates with soil or sand that cannot be readily degraded by bacteria and remain in the environment for many years after they are spilled (Minnesota, 1963; Mudge, 1995, 1997a, 1997b). Petroleum oils also undergo oxidation and polymerization reactions and can form tars that persist in the environment for years (NAS, 1985d).

4. Environmental Effects

Spills of petroleum and vegetable oils and animal fats can harm aquatic organisms and wildlife in many ways (Crump-Wiesner and Jennings, 1975):

- Oil can coat the feathers and fur of birds and mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.
- Oils can act on the epithelial surfaces of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes of reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.
- Oils can increase BOD and deplete water of oxygen sufficiently to kill fish.
- Oils can cause starvation of fish and wildlife by coating food and removing the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as the result of the oil ingested. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.
- Oils can exert a direct toxic action on fish, wildlife, or their food supply.
- Oils can taint the flavor and cause intestinal lesions from laxative properties in fish.
- Oils can foul shorelines and beaches. Oil spills can also create rancid odors.

The environmental effects of vegetable oils and animal fats and petroleum oils, their chemical and physical properties, and their environmental fate are compared in Appendix I, Table 2.

a. Physical Effects of Spilled Oil. Physical effects produce nearly all of the most immediate and devastating environmental effects from oil spills. Even oils that remain in the environment for relatively short periods of time can cause long-term deleterious effects years after the oil was spilled.

Coating with Oil. Among the immediate effects of oil spills is the coating of the feathers of birds and fur of mammals (Hartung, 1995). Coating of animals and their food supply is produced by spills of petroleum and non-petroleum oils alike. Birds and some mammals, such as sea otters and river otters that depend upon entrained air for buoyancy and insulation, are particularly vulnerable to harm from spills of non-petroleum and petroleum oils (NAS, 1985e; Hartung, 1967, 1995). In freshwater or tidal brackish waters, oiled birds are usually waterfowl and wading birds, such as herons (Alexander, 1983).

Birds and mammals become coated with oil when they land in an oil slick or surface from underneath (Hartung, 1995). Oil alters the structure and function of the feathers and fur by disrupting their orderly arrangement, thereby reducing entrainment of air and causing loss of buoyancy and thermal insulation (Rozemeijer, 1992; Leighton, 1995; Frink and Miller, 1995; NAS, 1985e; Alexander, 1983; Hartung, 1967, 1995; Crump-Wiesner and Jennings, 1975). As the plumage absorbs water, the weight and body mass of the birds increases, and the birds sink and may drown. Birds and mammals, with feathers or fur matted down by petroleum or non-petroleum oils, can also die from hypothermia and/or dehydration and diarrhea or fall victim to predators.

Birds that are able to endure excess chilling while avoiding their predators may reach shore and sit or stand in a state of shock (NAS, 1985e; Alexander, 1983). To maintain body temperature, such birds would have to eat twice the normal amount of food; yet they are often isolated from their food supply (Hartung, 1967, 1995; Alexander, 1983). Fat and muscular energy reserves of these birds are rapidly exhausted and their body temperature drops (Hartung, 1967; Croxall, 1977; Alexander, 1983; Rozemeijer et al., 1992). As their appetite declines, death from starvation ensues. Similarly, sea otters with fur coated with oil require increased metabolism to compensate for major changes in conductance and heat flow across the body surface (Hartung, 1967, 1995; Kooyman, 1977; Williams et al., 1990; NAS, 1985e).

Oiled birds tend to preen their feathers and may ingest large amounts of oil from attempting to clean themselves and from consuming oil-contaminated food and oil particles (Frink, 1994; Frink and Miller, 1995; Alexander, 1983; NAS, 1985e; Hartung, 1965, 1967, 1995). Bird rescuers have described dead birds with organs filled with oil from eating oiled food (Lyall, 1996; Frink and Miller, 1995). Oil can also be transferred to birds through consumption of fouled prey or direct contact with the oiled shoreline or surface water (Frink and Miller, 1995; Smith and Herunter, 1989). The coated birds that are observed after oil spills are probably a small proportion of the total affected, as weakened birds are likely victims of predators (Hartung, 1995; Alexander, 1983; NAS, 1985e; Lyall, 1996; Frink and Miller, 1995; McKelvey et al., 1980; Smith and Herunter, 1989; Minnesota, 1963).

Small spills of vegetable oil, animal fat and petroleum oils can cause great ecological damage, depending upon the location of the spill and other factors. Even a small spill of vegetable oil can be far more damaging to aquatic birds than certain petroleum oils (McKelvey et al., 1980; Smith and Herunter, 1989).

Suffocation. Suffocation and death of fish and other biota are often the consequence of oxygen depletion of the water. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil or from the high BOD produced by microorganisms degrading oil (Crump-Wiesner and Jennings, 1975; Mudge, 1995). While a higher BOD is associated with greater biodegradability, it also reflects the increased likelihood of oxygen depletion and potential suffocation of aquatic organisms under certain environmental conditions (Crump-Wiesner and Jennings, 1975). Oxygen depletion and suffocation are produced by petroleum and non-petroleum oils, including animal fats and vegetable oils. Under certain conditions, however, some vegetable oils and animal fats present a far greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater BOD.

According to studies designed to measure the degradation of fats in wastewater, some food oils exhibit nearly twice the BOD of fuel oil and several times the BOD of other petroleum-based oils (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). While the higher BOD of food oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). Oil creates the greatest demand on the dissolved oxygen concentration in smaller water bodies, depending on the extent of mixing (Crump-Wiesner and Jennings, 1975).

Contamination of Eggs. After spills of non-petroleum and petroleum oils, oil can be transferred from birds' plumage to the eggs they are hatching. Petroleum and non-petroleum oils, including vegetable oils and animal fats, can smother an avian embryo by disrupting the egg/air interface, sealing pores, and preventing gas exchange (Albers, 1977; Szaro and Albers, 1977; Leighton, 1995; USDOI, 1994).

In addition to the severe physical effects produced by non-petroleum and petroleum oils, some petroleum oils can also damage embryos apparently through mechanisms of toxicity (Albers, 1977; Szaro and Albers, 1977; Leighton, 1995; Szaro, 1977; NAS, 1985e). Very small quantities of petroleum or crude oil cause mortality and developmental effects in avian embryos from a wide variety of species (Leighton, 1995; NAS, 1985c). Whether vegetable oils and animal fats can harm embryos through toxicity as well as physical effects is unknown, for no studies of the toxicity of vegetable oils and animal fats to avian embryos and developing birds were located.

b. Effects of Oil on Metabolic Requirements. To survive spills of petroleum and non-petroleum oils, animals require increased energy (NAS, 1985e; Hartung, 1967, 1995). Birds coated with oil must eat twice their food ration to maintain body temperature (Hartung 1967, 1995). Yet birds are often isolated from their food sources following an oil spill or find their food coated with oil (Hartung 1967, 1995). Sublethal effects can increase vulnerability to disease or decrease growth and reproductive success, although the individual may continue to live for some time (NAS, 1985e; Frink and Miller, 1995; Smith and Herunter, 1989).

Studies of polluted animals show that physiological stress is manifested in higher energy demand (Sanders et. al., 1980). When increasing environmental stress greatly elevates metabolism and reduces assimilation, little energy remains for growth and reproduction, so that most species disappear and only a few tolerant species survive in chronically polluted environments. Oil pollution also forces animals to turn from the most economical biochemical pathways to other more costly physiological pathways.

c. Effects of Oil on Food and the Food Web, Communities, and Ecosystems. The effects of oil on the food web and community structures depend on the type and amount of oil spilled, the physical nature of the area, nutritional status, oxygen concentration, and previous exposure of the impacted area (NAS, 1985e). Geographic location appears far more important in determining the impacts of oil spills than spill size (Frink and Miller, 1995; McKelvey et al., 1980). The community structure and activities of microbes that degrade petroleum oil are affected by both catastrophic and chronic spills. The risks from oil spills can be shifted from those associated with toxicity to those associated with habitat, e.g., predator-prey interaction (NAS, 1985e).

The vulnerability of species and individuals to oil spills varies greatly (NAS, 1985e), and the extent and rate of recovery depends on many factors. In enclosed waters where recruitment of organisms from outside becomes less important, intrinsic factors may limit the recovery of the zooplankton community. Plant communities too can be affected long after an oil spill, with imbalances persisting for a decade or more, even after the floral community is reestablished (Sanders et al., 1980). When diversity and density have increased and stabilized many years after a spill, behavioral responses may continue to be distorted or biochemical pathways may be shifted from efficient to more costly pathways.

d. Indirect Effects. While not generally regarded as classic "toxicity," high levels of fatty acids and triglycerides from vegetable oils and animal fats can upset the fermentation and digestion of ruminants, such as cattle, goats, deer, antelope, sheep, moose, buffalos, and bighorn sheep (Van Soest, 1994). Although intake of normal levels of lipids does not affect fermentation in ruminants, excess unsaturated fatty acids and triglycerides can profoundly suppress essential fermentation bacteria and alter fermentation balance, lipid metabolism, and milk fat production. Methane suppression is likely with a single large dose of unsaturated oil that exceeds the threshold of tolerance by fermentation bacteria. A practical limit for fat of about 8–10% of dietary dry matter is expected (personal communication, D. Ullrey, 1996).

Indirect effects also occur when petroleum oil is spilled in the environment (NAS, 1985e). After a spill of number 5 fuel oil, the herring population was reduced because of increased fungal damage to fish eggs, which in turn resulted from a decreased population of amphipods which graze fungi growing on fish eggs.

5. Toxicity

Adverse effects occur through both non-toxic and toxic mechanisms. Whether an adverse effect occurs through toxicity or other mechanisms is often unknown (Yannai, 1980). For example, birds exposed to spilled oil may die from non-toxic mechanisms —starvation, hypothermia, drowning, shock, susceptibility to predators because of a food supply that is inadequate to support increased energy requirements, and consumption of oiled food or oil from preening that clogs their organs— or from the toxicity of chemicals or biotransformation products in the oil. The deaths of the birds occur, regardless of the mechanisms involved or knowledge about these mechanisms.

Toxicology is the study of the adverse effects of chemicals on living organisms, including lethality; reproductive effects; effects on development; cancer; effects on the nervous system, kidney, liver, immune system, or other organs; and biochemical effects, such as enzyme inhibition (Klaassen et. al., 1986; Rand and Petrocelli, 1985). To examine the nature of toxic effects and evaluate the probability of their occurrence, factors that affect toxicity must be known. A brief discussion of toxicity is presented below. The supporting Technical Document discusses toxicology in greater depth.

a. Principles of Toxicology. The toxicity of chemicals depends on factors that are related to the organism itself, chemical composition, external environmental factors, and the exposure situation. The necessity of considering many factors in the evaluation of toxicity is underscored in basic textbooks about toxicology, such as *Casarett and Doull's Toxicology* that state:

"* * * Whether or not a toxic response occurs is dependent * * * on the chemical

and physical properties of the agent, the exposure situation, and the susceptibility of the biologic system or subject. Thus to characterize fully the potential hazard of a specific chemical agent, we need to know not only what type of effect it produces and the dose required to produce the effect but also information about the agent, the exposure, and the subject * * *" (Amdur *et al.*, 1991).

The hazards and risks from environmental exposures to chemicals are assessed with toxicological studies in the laboratory and with epidemiological studies, while field studies may be used to assess the ecological effects of chemicals on multiple species or ecosystems (NAS, 1985c; NAS, 1977a; OSTP, 1985; Rand and Petrocelli, 1985). Toxic chemicals enter the body primarily by ingestion, inhalation, and skin contact (Klaassen et al., 1986). The toxic effects from acute exposure to a chemical (e.g., a single dose during a short period of time such as 24 hours) may differ greatly from those produced by long-term (chronic) exposures. Toxic effects can be immediate or they can be delayed.

A substance that is harmless at low concentrations in food may be hazardous if it comprises a large portion of the diet. Because there is little margin of safety for many of the elements to which people are exposed daily, the daily intake of many elements in the diet, such as iron, could not be increased 5 or 10 times without adverse effects (Klaassen *et al.*, 1986).

b. Exposure From Oil Spills. Spills of petroleum and vegetable oils and animal fats during processing, storage, and transportation can result in acute or chronic exposures to fish and wildlife. Not only massive spills but small quantities that are spilled repeatedly may result in environmental harm (Alexander, 1983; McKelvey et al., 1980; Smith and Herunter, 1989). Small volume spills can produce severe environmental damage because of the behavior of oils in the environment, their physical effects, and the toxicity of some oil constituents and transformation products. Many of the immediate, devastating effects of spilled petroleum and vegetable oils and animal fats, such as coating, suffocation, and other physical effects occur during acute exposures. Long-term effects have also been reported from spills of petroleum oil, vegetable oils and animal fat.

During an oil spill, the potential for significant exposures is very high (Hartung, 1995). Unlike laboratory experiments using controlled amounts of oil, large amounts of oil may be released during spills. While the initial mortalities of birds and mammals exposed to spilled oil are usually from drowning or hypothermia resulting from coating, the ingestion of oil begins to contribute to effects later as birds consume large amounts of oil through preening or ingestion of oil-contaminated food and oil particles (Hartung, 1967, 1995). Fish and other aquatic organisms may die from suffocation soon after an oil spill or exhibit toxic effects, including cancer and adverse effects on growth and reproduction, following acute or chronic exposures to spilled oils and fats or their breakdown products.

Spilled oil can be transformed through a wide variety of physical, chemical, and biological weathering processes that change oil composition, behavior, exposure routes, and toxicity (USDOC/NOAA 1992, 1996). Whether the environmental fate and toxicity of the transformation products differs from that of the parent depends upon the specific oil and products that are formed.

c. Toxicity of Petroleum Oils. The toxic effects of petroleum oils are summarized in Appendix I, Table 2. The effects of petroleum oils have been investigated extensively in many species (NAS, 1985e; IARC, 1984; Albers, 1995). Commonly reported individual effects of petroleum oils include impaired reproduction and reduced growth as well as death in plants, fish, birds, invertebrates, reptiles and amphibians; blood, liver, and kidney disorders in fish, birds, and mammals; malformations in fish and birds; altered respiration or heart rate in invertebrates, fish, reptiles, and amphibians; altered endocrine function in fish and birds; altered behavior in many animal species; hypothermia in birds and mammals; impaired salt gland function in birds, reptiles, and amphibians; altered photosynthesis in plants; and increased cells in gills and fin erosion in fish. Among the group effects of petroleum are changes in local population and community structure in plants, invertebrates and birds and changes in biomass of plants and invertebrates.

Petroleum oils affect nearly all aspects of physiology and metabolism and produce impacts on numerous organ systems of plants and animals as well as altering local populations, community structure, and biomass (Albers, 1995; NAS, 1985e). Impaired reproduction, reduced growth and development, malformations, behavioral effects, blood and liver and kidney disorders, altered endocrine function, and a host of other effects of petroleum oils on organisms have been reported.

Certain petroleum products and crude oil fractions are associated with increased cancer in refinery workers and laboratory animals (IARC, 1989). Many of these petroleum oils contain benzene and polynuclear aromatic hydrocarbons (PAHs), toxic constituents that are carcinogenic in humans and animals. Untreated and mildly treated mineral oils are carcinogenic to humans. In experimental animals, some distillates and cracked residues derived from the refining of crude oil and residual (heavy) fuel oils are carcinogenic. There is limited evidence in experimental animals for the carcinogenicity of unleaded automotive gasoline, fuel oil number 2, crude oil, and naphtha and kerosene produced by certain processes.

d. Toxicity of Vegetable Oils and Animal Fats. The toxicity of vegetable oils and animal fats and the toxic effects on many systems and organs in the body are summarized in Appendix I, Table 2 and described briefly below. A detailed discussion of these effects is included in the supporting Technical Document.

The acute and chronic toxicity of vegetable oils and animal fats, types of fats, and their components and degradation products have been evaluated in toxicology and epidemiological studies. Chemical and physical properties of the particular animal fat or vegetable oil, the exposure situation, the biologic systems exposed, and the environmental conditions that are present are factors that influence the toxicity of a chemical.

Acute lethality tests are among several measures used to evaluate acute toxicity. They can be employed to rank chemicals or to screen doses that may be selected for longer term toxicity testing, or they can be an early step in tiered hazard assessment approaches. The use of different protocols and test species in acute lethality tests makes comparisons between tests difficult. For example, although the Petitioners claim that the tests conducted by Aqua indicate that smaller amounts of petroleum oils than certain vegetable oils and animal fats kill half the population of some aquatic species; other acute lethality studies suggest that by one measure, vegetable oils are more toxic than petroleum-derived mineral oil. In studies comparing the acute lethality of corn oil, cottonseed oil, and petroleum-derived mineral oil in albino rats, no rats receiving mineral oil died, while smaller doses of the vegetable oils administered for a shorter time period killed rats (Boyd, 1973).

Vegetable oils and animal fats produce other types of acute toxicity as well. Like petroleum oils, vegetable oils and animal fats are laxatives that can produce diarrhea or cause lipid pneumonia in animals. These effects can compromise the ability of animals in the wild to escape their predators (USDOI, 1994; Frink, 1994). Clinical signs of toxicity in rats fed large amounts of corn oil or cottonseed oil for 4 or 5 days include decreased appetite, loss of body weight, abnormal lack of thirst, diarrhea, fur soiling, listlessness, pale skin, incoordination, cyanosis (dark blue skin color from deficient oxygenation of the blood), and prostration, followed by respiratory failure and central nervous system depression, hypothermic coma, and death. Autopsies of the rats showed violent local irritation of the gastrointestinal tract, which allowed the absorption of oil droplets into the bloodstream and deposition of oil in tissues, resulting in inflammation, congestion in the blood vessels, dehydration, degenerative changes in the kidney, loss of organ weights, and stress reaction (Boyd, 1973).

Animals exposed to vegetable oils and animal fats can manifest a range of chronic toxic effects. High levels of some types of fats increase growth and obesity but cause early death in several species of animals and may decrease their reproductive ability or the survival of offspring (NAS/NRC, 1995). On the other hand, the growth of some fish decreases with elevated levels of vegetable oils (Salgado, 1995; Mudge 1995, 1997a). Mortality of mussels exposed to one of four vegetable oils began after 2 or 3 weeks of exposure. Growth inhibition, effects on shells and shell lining, and decreases in foot extension activity that are essential to survival were observed in mussels exposed to low levels of sunflower oil.

Dietary fat consumption has been associated with the incidence of some types of cancer, including mammary and colon cancer, in laboratory animals and humans (Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). The intake of dietary fat or certain types of fat has also been correlated with the incidence of coronary artery disease, diabetes, and obesity in epidemiological studies (Hui, 1996a; FAO/WHO, 1994; Nelson, 1990; Katin at al, 1995). High dietary fat intake has also been linked to reduced longevity and altered reproduction in laboratory animals and altered immunity, altered steroid excretion, and effects on bone modeling and remodeling in humans.

Some vegetable oils and animal fats contain toxic constituents, including specific fatty acids and oxidation products formed by processing, heating, storage, or reactions in the environment (Hui, 1996a; Berardi and Goldblatt, 1980; Yannai, 1980; Mattson, 1973). Toxic effects on the heart, red blood cells, and immune system; effects on metabolism; and impairment of reproduction and growth can be caused by constituents or transformation products of vegetable oils and animal fats. In addition, some constituents of vegetable oils and animal fats cause cancer in rainbow trout, while lipid oxidation products may play a role in the development of cancer and atherosclerosis (Hendricks at al 1980a and 1980b).

Acute Toxicity: Acute Lethality Test (LC_{50} Test) Submitted by Petitioners. The tests by Aqua that were submitted by the Petitioners are acute lethality tests that measure only the death of organisms. These tests provide no data on nonlethal acute toxicity, including irreversible damage, or long-term effects experienced by organisms and ecosystems. The LC_{50} (lethal concentration 50) value or LD_{50} (lethal dose 50) value does not describe a "safe" level but rather a level at which 50% of test organisms are killed under the experimental conditions of the test (Rand and Petrocelli, 1985; Klaassen *et al.*, 1986). (A high LC_{50} value indicates low acute lethal toxicity, for a large concentration of chemical is needed to cause 50% mortality.) If the Aqua test results were accurate, they would indicate that diesel fuel kills half the population of fathead minnows at lower concentrations than aerated crude soybean oil, RBD soybean oil, and beef tallow. Spills of petroleum oils, vegetable oils and animal fats that result in LC_{50} concentrations in the environment could kill half the organisms with sensitivity similar to fathead minnows when conditions are identical to those in the Aqua tests.

Although the manner in which the Aqua tests were conducted precludes accurate determination of the LC_{50} values, the tests nevertheless demonstrate that petroleum oils and vegetable oils and animal fats can injure and kill fish by toxicity or oxygen depletion and suffocation. In the first set of the Aqua tests, all of the minnows exposed to diesel fuel and unaerated crude soybean oil died. The fish surfaced and gulped for air or swam spasmodically before dying, just as they do in the environment when suffocating from oxygen depletion following spills of petroleum and non-petroleum oils, including vegetable oils and animal fats.

Results Questionable. However, the test procedures used by Aqua render questionable the results suggesting that diesel fuel is more deadly at lower concentrations than soybean oil. The procedures deviate in important ways from standardized methodology, although the Aqua report states that test procedures are based on accepted methodologies. Appendix I, Table 3: Comparison of Aqua Methods and Standard Acute Aquatic Testing Methods lists key differences between the methods used by Aqua and the standard methods referenced in the Aqua report as well as more recent methods published by these same organizations that were omitted from the Aqua report. The accuracy of the LC_{50} estimates provided by Aqua is highly doubtful because of the following deficiencies:

- Oxygen depletion. In the first set of Aqua tests, dissolved oxygen was below acceptable levels in the vessels with crude soybean oil. It is impossible to determine whether oxygen depletion or toxicity killed fish.
- Short exposure period. The Aqua tests were conducted for only 48 hours, instead of the 96 hours used in most methods. Fish that are alive at 48 hours may not survive for 96 hours.
- Unknown concentrations of test material encountered by fish during the test: (1) Oil sheens floated on test solutions and cloudiness was so severe that fish could not be observed for 24 hours; (2) the Aqua report contained no data on actual chemical concentrations of parent chemical or breakdown product, a critical determination in static tests where concentrations change over time (Rand and Petrocelli, 1985; NAS, 1985c). Aqua relied instead on the original nominally designated concentrations that are highly dubious, especially given the turbidity of the test solutions that cleared up over the course of the test, the likely degradation of test material in the aerated test system, and the use of vessels that were not stainless steel or glass and may have adsorbed test material; (3) the Aqua test did not aerate all test solutions and controls, did not maintain dissolved oxygen concentration at 80% or more of the nominal concentration, and did not test non-aerated and aerated oils together—requirements of standardized methods that allow gentle aeration. If vegetable oils degrade rapidly, as Petitioners claim elsewhere, aeration will increase the degradation of the oils in the test system; (4) the Aqua report provided no data on oil particle size, even when visual inspection showed that solutions of test material were cloudy and the NAS study referenced in the report cautioned against relying on visual inspections of clarity (NAS, 1985c); and (5) improper data reporting and evaluation. Results from two dissimilar tests were combined, although the tests

lacked a common test substance, used different test conditions, failed to measure actual concentrations, and included no estimates of variability between the two sets of tests. Aqua also failed to provide data on confidence intervals and slopes, as required by all of the standardized methods referenced by Aqua and by the Aqua protocol.

Relevance of Acute Lethality Tests to Spills in the Environment Challenged. Serious questions remain about the relevance of the LC_{50} laboratory results to spills in the environment (NAS, 1985c, 1985e). The many test variables that influence estimates of LC_{50}—including the nature of the chemicals or mixtures tested, test parameters (e.g., route and method of administration, frequency and duration of exposure, mixing energy, temperature, salinity, static vs. flow-through systems, duration of observations) and biological factors (e.g., species selected for testing, sex, age or life-stage, weight, contamination history of the organism)—rarely reflect the conditions that occur following a spill (Rand and Petrocelli, 1985; NAS, 1985c; Wolfe, 1986; Abel, 1996). The water-soluble fraction used in static tests does not simulate the dynamic process of the change in stages between aqueous and oil phases that depends on parameters unique to each spill (NAS, 1985c). Once oil is spilled in the environment, the composition, concentration, and toxicity of oil and its components can be profoundly altered by chemical and biological processes, such as evaporation and biological oxidation.

Further, acute lethality tests by their very nature usually provide no data on toxic effects other than death (NAS, 1985c; Rand and Petrocelli, 1985; Klaassen *et al.*, 1986). Indeed, a widely-used toxicology text warns that "defining acute toxicity based only on the numeric value of an LD_{50} is dangerous" (Hayes, 1982). Animals that survive a toxic response nevertheless may suffer irreversible damage (NAS, 1985e). These nonlethal, adverse effects must be considered in assessing the risks of chemical exposure. Nor do acute lethality tests measure long-term effects or effects on ecological communities or changes in predator-prey relationships which occur, for example, when animals coated with spilled oil are weakened and become more susceptible to predators.

Acute Toxicity: Other Acute Lethality Tests (Aquatic Tests). (See Appendix I, Table 2, for other aquatic lethality information.) Free fatty acids are among the products formed from vegetable oils and animal fats by processing, storage, heating, or reactions in the environment. Static tests with juvenile fathead minnows indicate that oleic acid, which is found in Canola, safflower, and sunflower oils, is more acutely lethal at 96 hours than at 24 hours and is intermediate in lethality in tests of a series of 26 organic compounds (USEPA, 1976; Hui, 1996a).

Acute Toxicity: Other Acute Lethality Tests (Tests with Laboratory Animals). (See Appendix I, Table 2.) Studies comparing the acute lethality of corn oil, cottonseed oil, and mineral oil in albino rats show that by one measure cottonseed oil and corn oil are more toxic than petroleum-derived mineral oil, although interpretation of the studies is complicated by differences in the experimental protocol (Boyd, 1973). No albino rats receiving mineral oil by gavage (tube into stomach) for 15 days died, while smaller doses of cottonseed oil and corn oil administered for a shorter time period killed rats.

The toxic effects differed significantly in rats receiving corn oil or cottonseed oil and those administered mineral oil (Boyd, 1973). Clinical signs of toxicity in rats receiving corn oil or cottonseed oil included anorexia (decreased appetite), loss of body weight, abnormal lack of thirst, decreased urination, diarrhea, fur soiling, listlessness, pallor (pale skin), incoordination, cyanosis (dark blue skin color from deficient oxygenation of the blood), and prostration (Boyd, 1973). Rats administered corn oil died after respiratory failure and hypothermic coma, while death followed central nervous system depression and coma in rats ingesting cottonseed oil. Autopsies showed violent local irritation of the gastrointestinal tract that allowed the absorption of oil droplets into the bloodstream. Oil droplets were deposited in many body organs with resultant inflammation, vascular congestion, degenerative changes in the kidney, and other effects. In contrast, no deaths occurred among rats administered mineral oil for 15 days and clinical signs differed in many respects from those observed in rats treated with corn or cottonseed oil.

Chronic Toxicity. Appendix I, Table 2 summarizes the chronic toxicity of vegetable oils and animal fats and petroleum oils. Cancer and adverse effects on growth, reproduction, development, and longevity as well as other toxic effects have been observed in several species following chronic or subchronic exposures to vegetable oils and animal fats or their constituents. (Subchronic exposures are longer than acute exposures, generally 1–3 months for rodents and longer than 4 days for aquatic species.)

Dietary fat and some classes of fats that are found in vegetable oils and animal fats have been associated with the increased incidence of some types of cancer, including mammary and colon cancer, in laboratory animals and humans (Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). The intake of dietary fat or of certain types of fat has also been correlated with the incidence of coronary artery disease, diabetes, and obesity in epidemiological studies. High dietary fat intake has also been linked to reduced longevity and altered reproduction in laboratory animals and altered immunity, altered steroid excretion, and effects on bone modeling and remodeling in humans.

In addition, some vegetable oils and animal fats contain toxic constituents or form toxic degradation products, including specific fatty acids and oxidation products, when they undergo processing, heating, storage, or reactions in the environment. The toxic effects of these chemicals are summarized briefly in Appendix I, Table 2 and described further in section II.5.d Toxicity of Specific Fatty Acids and Other Constituents of Vegetable Oils and Animal Fats. Among the toxic effects observed after exposure to these chemicals are cardiac toxicity, rupture of red blood cells, growth suppression, anemia, impaired reproduction, and adverse effects on the immune system and metabolism. In addition, the cyclopropene fatty acid constituents of cottonseed oil and some other vegetable oils cause liver cancer in rainbow trout and increase carcinogenesis of other chemicals, and some oxidation products may play a role in the development of colon cancer and atherosclerosis.

Cancer. Unlike petroleum oils that contain a large proportion of PAHs, including some PAHs that are animal and/or human carcinogens, vegetable oils and animal fats contain only small amounts of PAHs (Kiritsakis, 1991; IARC, 1984). Dietary fat intake and consumption of some classes of fats that are found in vegetable oils and animal fats have been implicated in the development of certain types of cancer—including cancer of the breast and colon and probably cancer of the prostate and pancreas—in studies of laboratory animals and in epidemiological studies (NAS/NRC, 1985c; Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). An expert panel organized by two United Nations organizations concluded that abundant data show that animals fed high-fat diets develop tumors of the mammary gland, intestine, skin, and pancreas more readily than animals fed low-fat diets, although caloric restriction can override

the effect (WHO/FAO, 1994). Animal studies also indicate correlations between total fat intake and liver cancer and between high-fat diets and certain types of chemically-induced or light-induced skin tumors. Studies describing the relationships between fat consumption and cancer in animals and humans have been summarized recently (Hui, 1996a).

Development of some types of cancer is influenced by the type of fat consumed. Breast cancer increased (shortened latency period for tumor appearance, promotion of growth, and increased mammary tumor incidence) in rodents receiving diets rich in the essential fatty acid linoleic acid (polyunsaturated fatty acid or PUFA of the n-6 family) compared to rodents consuming diets high in saturated fatty acids (Hui, 1996a). In contrast, fish oil containing different fatty acids (n-3 PUFA) inhibited mammary tumor development, probably by inhibiting the effects of linoleic acid. The incidence of colon cancer is strongly associated with diet, especially diets high in total fat and low in fiber content in laboratory animals and epidemiological studies (Hui 1996a; USDHHS, 1990). Some types of fat, such as dietary cholesterol and certain long-chain fatty acids, have been proposed as colon cancer promoters, while other types of fat (n-3 PUFA) may inhibit development of colon cancer (Hui, 1996a).

Non-Carcinogenic Toxic Effects. The non-carcinogenic toxic effects of vegetable oils and animal fats on aquatic organisms and laboratory animals are summarized in Appendix I, Table 2, briefly described below and are discussed in greater detail in the Technical Document.

Non-Carcinogenic Toxic Effects on Mussels. The detrimental environmental effects of sunflower oil have been investigated extensively in laboratory studies and in the field at the site of the 1991 wreck of the cargo tanker M.V. Kimya, where much of its 1500-tonne cargo of crude sunflower oil was spilled over a 6–9 month period (Mudge *et al.*, 1993, 1994, 1995; Mudge, 1995, 1997b; Salgado, 1992, 1995). Mussels died in the intertidal shores at sites near the wreck; in other areas where mussels survived, their lipid profiles revealed an altered fatty acid composition reflecting the fatty acids in sunflower oil (Mudge et al., 1995; Mudge, 1995, 1997a, 1997b; Salgado, 1992, 1995). Mobile species that left the spill area were replaced with other species, affecting diversity.

Sunflower oil, olive oil, rapeseed oil, and linseed oil produced several types of adverse effects in mussels at low exposure rates in the laboratory (Salgado, 1995; Mudge, 1995; Mudge, 1997a). These four vegetable oils killed mussels or reduced their growth rate as much as fivefold within 4 weeks, even at low exposure rates (1 part of oil in 1000 in a flow-through sea water system). Mussels exposed to sunflower oil were more likely to die. Exposure to sunflower oil created behavioral differences in the mussels, such as decreased foot extension activity and altered gaping patterns. Interference with foot extension activity that allows the mussels to form threads for attachment to the substratum can dislodge mussels and endanger their survival; removal of the oil reversed the effect (Salgado, 1995).

All four oils killed mussels in mortality studies in the laboratory; 10% mortality was observed in mussels exposed to sunflower oil, rapeseed oil, or olive oil for up to 4 weeks, while 70% or 80% mortality was reported when mussels were exposed to linseed oil (Salgado, 1995; Mudge, 1997b). No control mussels died. Mussels began dying the second week after exposure to linseed or sunflower oil, and later when exposed to rapeseed or olive oil. Death may have been caused by suffocation in mussels that refused to gape in the presence of the oil or by formation of a toxic metabolite. The death of mussels in aerated growth tanks where anoxia (lack of oxygen) was not the cause of death suggests that vegetable oils kill mussels through mechanisms of toxicity.

The shells of mussels exposed to the vegetable oils in the laboratory lacked the typical nacre lining, perhaps because of altered behavior in the presence of oil stressors (Salgado, 1995; Mudge, 1997a). The internal shell surfaces of mussels treated with vegetable oils were chalky in contrast to controls that exhibited an iridescent luster. Prolonged closure of the mussels in response to oil can cause anoxia and increase the acidity of the internal water with dissolution of the inner shell.

Sunflower oil from the wreck of the M.V. Kimya polymerized in water and on sediments and formed hard "chewing gum balls" that washed ashore over a wide area or sank, contaminating the sediments inhabited by benthic and intertidal communities near the spill (Mudge, 1995). Concrete-like aggregates of sand bound together with sunflower oil remain on the shore near the site of the M.V. Kimya spill almost six years later (Mudge, 1995, 1997a, 1997b; Mudge *et al.*, 1995). In laboratory experiments with saltmarsh sediments simulating a spill over a 35-day period, linseed oil percolated rapidly through the sediments but sunflower oil polymerized and formed an impermeable cap, reducing oxygen and water permeability (Mudge *et al.*, 1995; Mudge, 1997a). In the environment, oxygen reduction would eventually produce anoxia in sediments with the death and removal of benthic organisms, changes in species from a community that is aerobic to an anaerobic community, and erosion of the saltmarsh sediments (Mudge *et al.*, 1994, 1995).

Non-Carcinogenic Toxic Effects on Fish. Other studies have also shown that exposure to an excess of fat or fatty acids can be detrimental to fish, even though fish and other aquatic organisms require certain essential fatty acids for growth and survival. Poor growth and low feed efficiency were observed in rainbow trout fed 4% or more of certain polyunsaturated acids (Takeuchi and Watanabe, 1979). High levels of dietary fatty acids reduced growth in channel catfish; while saturated, monounsaturated, or PUFA from fish oil enhanced channel catfish growth (Stickney and Andrews, 1971, 1972). Some dietary fatty acids inhibited the growth of common carp, but saturated and monounsaturated acids and other classes of polyunsaturated fatty acids from fish oil enhanced carp growth (Murray *et al.*, 1977). More recent papers show the relatively efficient use of high levels of dietary lipid by warmwater and coldwater fishes, provided essential fatty acid requirements are met (NAS/NRC, 1981a, 1983). Increased lipid intake, however, has been associated with increased deposition of body fat.

Non-Carcinogenic Toxic Effects on Laboratory Animals. The chronic toxic effects of petroleum oils and vegetable oils and animal fats on laboratory animals are summarized in Appendix I, Table 2 and detailed in the accompanying Technical Document. High levels of dietary fat have been associated with shortened lifespan and altered reproduction in laboratory animals (NAS/NRC, 1995). While 5% dietary fat is recommended for most laboratory animals, growth usually increases significantly when animals are fed higher levels of fat. Apparently, this increased growth comes at a high cost, however, for longevity is often reduced and reproduction may be affected adversely in animals consuming high levels of fat.

The relationship between dietary fat intake and kidney diseases has been demonstrated in laboratory animals (Hui, 1996a). Rats, rabbits, and guinea pigs fed high cholesterol diets developed kidney damage. Diets containing 2% cholesterol increased the

incidence or severity of coronary atherosclerosis in rats exposed chronically to the cold (Sellers and Baker, 1960). Histological aberrations in the small intestine and nearby lymph nodes have also been reported in rats consuming high doses of fish oil concentrate in a subchronic toxicology study (Rabbani et al., 1997).

Increasing the consumption of some dietary lipid components, such as oleic acid and cholesterol, also increases the need for other fatty acids in rats (NAS/NRC, 1995). The ratios of PUFA and polyunsaturated to saturated fatty acids greatly influence tissue lipids and the formation of important compounds, such as prostaglandins. The type of fat can influence bone formation rates and fatty acid composition of cartilage in chicks (Hui, 1996a).

Toxicity of Specific Fatty Acids and Other Constituents of Vegetable Oils and Animal Fats. In addition to the adverse effects produced in humans and other animals by high fat diets or by consumption of certain classes of fats and oils, toxic effects can be produced by constituents of some animal fats and vegetable oils, including specific fatty acids and gossypol, and their transformation products (Hui, 1996a; Berardi, 1980; Yannai, 1980; Mattson, 1973). While plant breeding and processing can reduce the levels of some constituents in the final product, the constituents are present during the early stages of processing and storage of some vegetable oils and may enter the environment. Although the development of varieties of glandless, gossypol-free cottonseed and new varieties of rape seed with little erucic acid have reduced these two constituents in some oils, gossypol is found in crude oils and in oils derived from older cottonseed varieties with greater resistance to disease and insects and high amounts of erucic acid are contained in rapeseed oil used for the manufacture of lubricants and fatty acid derivatives (Hui, 1996a, 1996b). Toxic materials can be formed during normal processing procedures, heating, and storage or by reactions that occur when such materials are released in the environment. Spills of crude vegetable oils may differ greatly in their toxicity and other effects from spills of processed vegetable oils and animal fats. Figure 1: Toxicity and Adverse Effects of Components and Transformation Products of Vegetable Oils and Animal Fats illustrates the variety of toxic effects that may be caused by constituents and breakdown products of vegetable oils and animal fats. For example, small amounts of gossypol are lethal when they are ingested for prolonged periods despite the relatively high LD_{50} values obtained in acute toxicity tests; fat accumulated in heart muscle of weanling rats after a single day of consuming diets containing erucic acid; and cyclopropene acids, such as sterculic acid, are liver carcinogens in rainbow trout (Berardi, 1980; Mattson, 1973; Hendricks et al., 1984). Phytoestrogens, which occur naturally in some legumes and oils, including soybean, fennel, coffee, and anise oils, exhibit estrogen-like activity in reproductive organs of laboratory animals (Hui, 1996a; Sheehan, 1995; Levy et al., 1995).

When vegetable oils are spilled, air, moisture and heat in the environment can cause these oils to form various harmful oxidation products, which may be more toxic than the original product. Releases of used oil from restaurants or releases of oil during refining may already contain toxic oxidation products that may be further oxidized in the environment. Cholesterol oxidation products or COPs that are formed by autooxidation of cholesterol when it is exposed to air, heat, photooxidation, and oxidative agents have numerous biological activities and may play a role in the development of atherosclerosis (Hui, 1996a). Lipid oxidation products (LOPs) that can be formed when unsaturated fatty acids are oxidized upon exposure to oxygen, light, and inorganic and organic catalysts have been associated with colon cancer (Hui, 1996a; Hoffmann, 1989; Lawson, 1995).

FIGURE 1. TOXICITY AND ADVERSE EFFECTS OF COMPONENTS AND TRANSFORMATION PRODUCTS OF VEGETABLE OILS AND ANIMAL FATS

Component or transformation products	Type of oil	Effects
Gossypol [1,2,3]	Cottonseed oil	Cardiac irregularity in several species of animals, death from circulatory failure or rupture of red blood cells and decreased oxygen-carrying capacity in blood. Discolors egg yolks in laying hens by interacting with yolk iron; effect decreased by ferrous sulfate, increased by cyclopropene fatty acids in cottonseed oil. Crosslinks proteins in several species; reduces protein quality, uncouples respiratory-linked energy processes, reduces activity of respiratory enzymes and protein kinases and proteins involved in sterol, steroid, and fatty acid metabolism. High LD_{50} in acute tests for mice and swine, but small amounts are lethal when ingested for prolonged period. Death from pulmonary edema in subacute poisoning; wasting and lack of assimilation of food with chronic poisoning. Depressed appetite, loss of body weight, diarrhea, effects on red blood cells, heart and lung congestion, degenerative changes in liver and spleen, various pathological effects depending on species. Body weight depression, reduced sperm production and motility in male rats; loss of appetite, diarrhea, hair loss, anemia, hemorrhages in stomach and intestines, congestion in stomach, intestines, lungs, and kidneys of rats. Spastic paralysis of hind legs, degeneration of sciatic nerve, rapid pulse, cardiac effects in cats. Posterior incoordination, stupor, lethargy, weight loss, diarrhea, vomiting, loss of appetite, lung and heart congestion, hemorrhaging of liver, fibrosis of spleen and gallbladder in dogs. Stupor, lethargy, loss of appetite, spastic paralysis, decreased litter weights, congestion of large intestine, hemorrhaging in small intestines, lungs, brain, and legs in rabbits.

FIGURE 1. TOXICITY AND ADVERSE EFFECTS OF COMPONENTS AND TRANSFORMATION PRODUCTS OF VEGETABLE OILS AND ANIMAL FATS—Continued

Component or transformation products	Type of oil	Effects
Erucic Acid [2,4,5]	Rapeseed oil, mustardseed oil.	Weight loss, decreased appetite, leg weakness, reduced red blood cells, congestion, vacuoles in liver, enlarged gallbladder and pancreas, decreased egg size, decreased egg hatchability, discolored yolk in poultry. Thumps or labored breathing, weakness, emaciation, diarrhea, enzyme effects, hair discoloration, dilated heart, reduced hemoglobin, lipid in kidneys, widespread congestion of organs in swine. Erratic appetite, breathing difficulties, fatty degeneration of liver, decreased blood clotting, and death in young calves but no toxicity in older ruminants. No human toxicity in China, where gossypol used as male contraceptive, antifertility reversible. Adverse effects on heart in laboratory animals; inflammation of heart in rat ; fat deposition until fat content of heart 3 to 4 times normal, fat droplets visible in heart followed by mononuclear cell infiltration and replacement of fat and droplets with fibrous tissue in muscle; weanling rats accumulated fat in heart muscle after only one day; fatty infiltration of heart absent with fully hydrogenated rapeseed oil, indicating effects from erucic acid; erucic acid in heart muscle in rats exposed long-term; changes in skeletal muscle in rats. Lipid accumulation in hearts of rats, hamsters, minipigs, squirrel monkeys and ducklings; fluid accumulation around heart and liver cirrhosis in ducklings. Enlarged spleen, increased cell permeability and destruction of red blood cells in guinea pigs (erucic and nervonic acids in rapeseed oil). Growth suppression in rats, pigs, chickens, turkeys, guinea pigs, hamsters, and ducklings fed rapeseed oil; suppressed body weight gain in rats fed fats plus erucic acid. Degenerative changes in liver and kidney, fewer and smaller offspring in rats fed high levels of rapeseed oil.
Cyclopropene Fatty Acids [2,3,4,6,7,8,9,10]	Cottonseed oil, kapok seed oil, cocoa butter.	Discolors egg whites, can be removed by hydrogenation; growth suppression in rats; reduced comb development in roosters. Impaired female reproduction in laboratory animals and hens; depressed egg production, reversible in hens; embryomortality in hens and rats; developmental abnormalities in rats, increased mortality in rat pups. Liver carcinogen in rainbow trout; increases carcinogenic effects of other chemicals; adverse effects on cholesterol and fatty acid metabolism in several species; aortic atherosclerosis in rabbits; liver damage in rabbits and rainbow trout.
Oxidation Products [2,4,11,12,13,14,15]	Many vegetable oils and animal fats.	Cholesterol Oxidation Products (COPs): Numerous biological activities include adverse effects on blood vessels, destruction of cells, mutagenicity, suppression of immune response, inhibition of certain metabolic mechanisms; may contribute to development of atherosclerosis. Lipid Oxidation Products (LOPs): Associated with colon cancer; lipid peroxides act as cancer promoters or cocarcinogens and form crosslinks between DNA and proteins; lipid peroxidation correlated with severity of atherosclerosis. Oxidative fatty acid fraction of products of thermal and oxidative changes from prolonged heating of fats and oils in laboratory studies (may not simulate commercial heat treatment); severe heart lesions, distended stomach, kidney damage, hemorrhage of liver and other tissues, reduced liver enzyme activity in laboratory animals; reduced body weight gain and feed consumption, enlarged liver and kidney, damage to thymus and sperm reservoir, diarrhea, skin inflammation, and fur loss in weanling rats fed heated corn and peanut oil; reduced antioxidant tocopherol in gastrointestinal tract of chicks fed thermally oxidized PUFA; reports of formation of cocarcinogens during heating of corn oil and promotion of chemically-induced mammary tumors.
Branched Chain Fatty Acids [3,4,16]	Ruminant fats, dairy products.	Individuals with genetic disorder Refsum's syndrome: neurological abnormalities resulting from inability to metabolize branched chain fatty acids.

[1] Berardi and Goldblatt, 1980
[2] Hui, 1996a
[3] Hayes, 1982
[4] Mattson, 1973
[5] Roine et al., 1960
[6] Phelps et al., 1965
[7] Lee et al., 1968
[8] Miller et al., 1969
[9] Hendricks et al., 1980a
[10] Hendricks et al., 1980b
[11] Yannai, 1980
[12] Boyd, 1973
[13] Frankel, 1984
[14] Artman, 1969
[15] Andrews et al, 1960
[16] Steinberg et al., 1971

6. Epidemiological Studies

Although the focus of this document is the environmental effects of spilled vegetable oils and animal fats, a brief discussion of the effects of these oils on human health is included for several reasons. First, the ENVIRON report submitted by the Petitioners incorrectly states that there are no accumulating or otherwise harmful components in animal fats and vegetable oils that are irritating, toxic, or carcinogenic; and that animal fats and vegetable oils are consumed safely by wildlife and humans. The large number of human health studies, many with a substantial population size, provide a significant data base for examining the effects of long-term oral exposure to fats and certain classes of fats or their components or degradation products.

Second, humans may be exposed to spilled non-petroleum and petroleum oils through several routes. Inhalation of harmful vapors and dusts or mists and aerosols is often a significant route of human exposure to spilled petroleum oils, though it is rarely an important exposure route of less volatile vegetable oils and animal fats.

Third, humans and many animals often handle chemicals by similar mechanisms in the body and exhibit similar toxic effects, a tenet underlying the frequent use of animal tests in evaluations of human health risk. For example, certain PAHs that are human carcinogens also cause cancer in laboratory animals and in fish and other aquatic organisms in the environment. Thus, the findings of epidemiology studies are relevant to the evaluation of mechanisms of toxicity in animals, particularly when the epidemiology studies are large enough to overcome statistical limitations that are found with smaller data sets.

a. Human Health. Although fat is a major component of the human diet, the consumption of high amounts of fat or certain types of dietary fats and oils has been associated with several chronic diseases (Hui, 1996a; FAO/WHO, 1994; Nelson, 1990; Katan *et al.*, 1995). In a number of epidemiology studies, the intake of dietary fat and some fat types (e.g., saturated fats, unsaturated fats, polyunsaturated fatty acids, trans-fatty acids, cholesterol) has been correlated with the incidence of coronary artery disease. Dietary fat consumption has been associated with the incidence of certain types of cancer, including mammary and colon cancer, presumably because dietary fat is acting as a cancer promoter. Dietary fat intake has also been linked to hypertension, diabetes, and obesity (Hui, 1996a). Other studies report that high dietary fat intake is related to altered immunity and altered steroid excretion and may affect bone modeling and remodeling.

In many animal and human studies, dietary fat intake has been linked to cardiovascular disease and atherosclerosis through its effects on the levels of cholesterol and triglycerides in plasma and the lipid composition of lipoproteins (Hui, 1996a). A 2% rise in risk of coronary heart disease has been predicted for every 1% increase in serum cholesterol. The American Heart Association, American Cancer Society, and National Cancer Institute have recommended lowering fat intake to 30% of total consumed calories in adults; the American Heart Association also recommends limiting the intake of polyunsaturated fatty acids to less than 10% of calories and replacing saturated acids with monounsaturated acids (USDHHS, 1990; FAO/WHO, 1994; Hui 1996a).

b. Comparison of Effects From Oil Spills With Human Consumption of Vegetable Oils and Animal Fats. The ENVIRON report, which was submitted by the Petitioners, draws incorrect comparisons between the human consumption of vegetable oils and animal fats and the environmental effects of oil spills. The effects on humans who consume small quantities of vegetable oils and animal fats in their foods cannot be easily translated to environmental effects produced by oil spills. These situations differ in many respects. A few of the differences are highlighted below:

- Differences in factors relating to the host organism: Sensitivity; humans may not be the most sensitive species. Species differences; while similarities in metabolism and biokinetic parameters exist between some species, it is often unclear how effects on humans can be translated to effects on fish. Differences in susceptibility; there are no controls for differences in genetics, age, life-stage, strain, gender, health, nutritional status, presence of other chemicals, or other factors inherent to the exposed organisms.
- Differences in dose-response relationships. It is unclear how dose-response relationship can be extrapolated from humans to other species, even if such information had been provided.
- Exposure. Exposure differs in route, frequency, and duration. Animals are exposed to large quantities of oil during an oil spill, and the exposure may be short-term or long-term. The animals may ingest the oil, or they may be exposed through their gills or skin. Humans consuming foods, however, are exposed to small quantities of oils for intermittent periods of time, and their exposure is via ingestion only.
- Differences in chemical composition. The composition of oils used in small quantities in processed foods may differ from the composition of the oils spilled in the environment, particularly when the oils are acted upon by chemical and biological processes in the environment.
- Environmental factors. The effects of oil in the environment depend on a wide variety of factors, including pH and temperature. These factors are different from those that affect humans consuming food oils.
- Effects. Effects, such as reduced egg hatchability or effects on molting, cannot be measured in humans.
- Ecosystems. Ecosystems, food webs, and predator-prey relationships can be affected by oil spills; these are not factors in determining human health effects.
- Statistical power of studies. Those epidemiologic studies with large numbers of people have demonstrated possible adverse effects from consumption of high levels of dietary fat or types of fat. Negative studies may indicate that too few subjects were included in the study or that confounding factors obscured the effect because of statistical limitations of the methodology.

7. Other Adverse Effects of Oil Spills

a. Aesthetic Effects: Fouling and Rancidity. Fouling of beaches and shoreline and rancid odors have been reported after spills of vegetable oils and animal fats; some real-world examples are provided in section II.D.2. Rancidity is the deterioration of fats and oils in the presence of oxygen (oxidative rancidity) or water (hydrolytic rancidity) with formation of off-flavors and odors (Hui, 1996b, 1996d; Kiritsakis, 1990). The hydrolysis and oxidation of spilled vegetable oils and animal fats and decomposition of hydroperoxides leads to formation of aldehydes, ketones, fatty acids, hydroperoxides, and other compounds that produce off-flavors and rancid odors. Rancidity occurs especially with oils that contain PUFA, such as linoleic acid (Hui, 1996a). Fish oils, which contain high levels of PUFA, are especially susceptible to oxidative rancidity and production of toxic byproducts and are often supplemented with antioxidants to reduce their oxidation.

Unlike vegetable oils and animal fats, rancid odors have not been reported following petroleum oil spills, although off-flavors and tainting of fish have occurred (Crump-Wiesner, 1975; Hartung, 1995). Fish collected near petroleum refineries or in petroleum-polluted areas can be tainted (Lee, 1977), and commercial species have been contaminated with petroleum oils (Michael, 1977). Thousands of observations of floating tar balls and beach tar have been tabulated over a 4-year period in a petroleum monitoring project for marine pollution (NAS, 1985d).

b. Fire Hazards. While some petroleum oils and products present fire and explosion hazards, most vegetable oils and animal fats do not, unless flammable chemicals, such as hexane used during processing, are present or temperatures are elevated. A few vegetable oils, such as coconut oil (copra oil) are spontaneously combustible (Lewis, 1996). Because of their low vapor pressures, some petroleum products are highly volatile and flammable. In addition, most vegetable oils and animal fats have a high flash point (temperature at which decomposition products can be ignited), while the flash point for many petroleum products is below or near room temperature.

Although most vegetable oils and animal fats do not easily catch fire by themselves, once fires begin they are difficult to extinguish and may cause considerable environmental damage. For example, a butter and lard fire in Wisconsin that was apparently started by an electric forklift resulted in the release of some 15 million pounds of melted butter that threatened nearby aquatic resources (Wisconsin, 1991a, 1991b, 1991c; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e).

c. Effects on Water Treatment. Oils and greases of animal and vegetable origin and those associated with petroleum sources have long been a concern in wastewater control (USEPA, 1979; Metcalf and Eddy, 1972). Too much oil, i.e., spills or discharges of oil and grease to a municipal wastewater treatment system in quantities that exceed the levels the treatment plant was designed to handle, can overwhelm the water treatment plant that maintains sanitary conditions and removes water pollutants that are harmful to aquatic organisms or interfere with the recreational value of waters (Institute, 1985; Metcalf and Eddy, 1972). Certain fatty acid products, such as quaternary amines, may inhibit biological treatment and affect in-plant facilities and downstream municipal sanitary sewage treatment facilities (Hui, 1996d).

Under normal operations, floating oil can be removed before wastewater is discharged to water treatment plants, and highly variable discharges of flow and organics can be minimized (Institute, 1985). With large quantities of spilled oil and high organic loads, however, these conditions may not be controlled adequately and water treatment systems can be damaged. To prevent potential damage to water treatment plants from oil spills, officials may halt water treatment and interrupt water supplies, as occurred when 15 municipal drinking water intakes were shut down following a spill of one million gallons of diesel fuel from a collapsed storage tank at the Ashland Oil facility in Floreffe, Pennsylvania in 1988 (USEPA, 1988).

8. FWS Comments

The FWS submitted a memorandum with the following position to the EPA in 1994. The potential for harm from petroleum and non-petroleum oils is equivalent; the path to injury is different. Edible non-petroleum oils cause chronic effects with the potential of mortality. Both petroleum and non-petroleum oil impact natural resources through the fouling of coats and plumage of wildlife. Secondary effects from fouling include drowning, mortality by predation, starvation, and suffocation. The removal of edible oil is more difficult and strenuous for wildlife due to the low viscosity of vegetable oil, which allows deeper penetration into body plumage or fur and thorough contamination of the wildlife.

Edible oils ingested in large quantities can cause lipid pneumonia. Edible oil consumed by wildlife during preening or cleaning of their coats also acts as a laxative resulting in diarrhea and dehydration. Small amounts of edible oil on plumage can cause thermal circulation troubles and embryo death in eggs exposed to oil through disruption of egg/air interface (USDOI/FWS, 1994).

C. Petitioners' Claim: Animal Fats and Vegetable Oils Are Essential Components of Human and Wildlife Diets

Petitioners claim that animal fats and vegetable oils are essential components of human and wildlife diets.

EPA Response: While EPA agrees that some components of animal fats and vegetable oils are essential components of human and wildlife diets, EPA disagrees with the Petitioners that all animal fats and vegetable oils are essential components of human and wildlife diets. Most species require only one or two essential fatty acids. Most animals need some level of fat to supply energy and fat-soluble vitamins. Intake of high levels of dietary fat, some types of fat, and essential fatty acids, however, can cause adverse effects.

While low levels of certain chemicals are essential for health, exposure to high levels of these chemicals produces toxicity. Numerous examples in the scientific literature demonstrate that essentiality does not confer safety and essential elements can produce toxic effects. Among these chemicals are vitamin A; the fatty acid a-linolenic acid, an essential fatty acid in humans and coldwater fish; and trace metals such as iron, manganese, selenium, and copper (Klaassen et al., 1986; NAS, 1977a; USEPA, 1980; Rand and Petrocelli, 1985; Abernathy, 1992; Hui, 1996a; NAS/NRC 1981a).

Further, high levels of fats and oils alter the requirements for essential fatty acids and change the balance between certain types of lipids and fatty acids. For many species of fish and laboratory animals, levels of essential fatty acids must be increased for the animals to tolerate high lipid levels (NAS/NRC, 1983, 1995). High levels of some fatty acids (n-6 PUFA, including the essential fatty acid linoleic acid) deplete other fatty acids (n-3 PUFA, including the essential fatty acid a-linolenic acid), thereby creating nutritional deficiency. In addition, constituents of vegetable oils and animal fats also affect requirements for essential fatty acids. Erucic acid, a constituent of rapeseed oil, adversely affects reproduction in rats by interfering with the metabolism of essential fatty acids (Roine *et al.*, 1960).

Animals often die from starvation after oil spills destroy their food supply by oiling food or making it unavailable. In addition to a reduction in food supply and a need to consume twice their normal amount of food to maintain body temperature (Hartung, 1965; 1995), oiled birds that are unable to float or fly cannot retrieve food from the water that usually provides their food. Bird rescuers have described dead birds with organs were filled with oil after eating oiled food or consuming oil while preening their feathers to remove oil (Croxall, 1975; Lyall, 1991; Frink and Miller, 1995). Thus, EPA finds that Petitioners' arguments are non-persuasive and have little relevance to the large quantities of oil released into the environment from oil spills.

1. Nutritional Requirements for Dietary Fat

In addition to their roles in cellular structure, membrane integrity, and microsomal enzyme function, fats play an important nutritional role by supplying energy and essential nutrients (Rechigl, 1981; Hui, 1996b; Van Soest,

1982). The caloric value of fats is more than twice that of carbohydrates or proteins (Hui, 1996a). Fats are a source of the fat-soluble vitamins A, D, E, and K and are rich in antioxidants, including tocopherols, such as vitamin E, and carotenes such as provitamin A. They also facilitate the digestion and absorption of vitamins.

The nutritional requirements for dietary fat vary greatly among species. A diet containing about 5% dietary fat is recommended for most laboratory animals (NAS/NRC, 1995). Growth usually increases greatly in animals fed a diet containing higher levels of fat, but lifespans are shortened and lactation performance and reproduction adversely affected in rats fed diets with 30% lipid (French *et al.*, 1953). In minks, diets with 35–40% fat have been satisfactory for meeting energy requirements, but higher levels (44–53%) are recommended for fur development, pregnancy and lactation (NAS/NRC, 1992.) Up to 44% fresh fat was used in fox diets without detrimental effects (NAS/NRC, 1992). For coldwater fish, 10% to 20% lipid is needed in diets, and higher levels of lipid alter carcass composition by deposition of excess lipid and reduction of the percentage of body protein (NAS/NRC, 1981a).

Nutritional requirements for fats are affected by environmental influences and the health status of the organisms. Birds must consume twice as much food after a spill for thermal regulation (Hartung, 1967). In laboratory animals, the requirement for certain fatty acids (n-6 PUFA) is increased during lactation (NAS/NRC, 1995).

For many animals (cattle, goats, and sheep), vitamin and energy requirements rather than specific dietary requirements for fat are enumerated (NAS/NRC 1981b; NAS/NRC, 1985; NAS/NRC, 1984). Certain types of fat are necessary for other animals. For example, sterols and perhaps lecithin are necessary for crustaceans (NAS/NRC, 1983).

Dietary Requirements of Wild Animals. Unlike domestic animals that are fed under regimens to maximize their productivity, wild animals and free-ranging domestic animals may have different nutritional requirements for their survival, growth, and reproduction (Van Soest, 1982). Diets that promote growth and obesity may also shorten life and are undesirable for wild animals.

2. Essential Fatty Acids (EFA)

Certain unsaturated fatty acids that must be supplied in the diet are called essential, because humans or other animals lack the enzymes to synthesize them (Hui, 1996a; Rechigl, 1983). Two fatty acids are considered essential in humans—linoleic acid and a-linolenic acid (Hui 1996a). These essential fatty acids are required for fetal development and growth. Long-chain n-3 polyunsaturated fatty acids, such as a-linolenic acid, are needed by the brain and retina; learning disabilities and loss of visual acuity have been observed in animals with low levels of these fatty acids. A balance of PUFA from both the n-6 and n-3 families is needed to maintain health (Hui, 1996a).

EFA requirements differ according to species. In chickens, 1% of the EFA linoleic acid is required; the essentiality of a-linolenic acid has not yet been proven for poultry (NAS/NRC, 1994). Linoleic acid is an EFA for pigs; arachidonic, which is generally added to swine diets, can be synthesized from linoleic acid (NAS/NRC, 1988). Minks require linoleic acid, and rabbits can develop EFA deficiency (NAS/NRC, 1992, 1977b). Silver foxes need 2 to 3 grams of EFA linoleic and linolenic acids daily to prevent skin problems and dandruff (NAS/NRC, 1992). The dietary EFA requirements of ruminants are about an order of magnitude lower than those of non-ruminants (Van Soest, 1982).

Studies of fish and crustaceans demonstrate that EFA requirements of aquatic animals vary with species and are apparently related to the ability of the animals to convert linolenic acid (18:3w3) to highly unsaturated fatty acids (Kanazawa et al., 1979). While some animals can synthesize necessary fatty acids, others require them in their diets. The n-3 fatty acids are essential for good health and growth in rainbow trout, red sea bream, and turbot (NAS/NRC, 1981a). For chum salmon, the requirement for linoleic and linolenic acids is 1%, or 0.5–1% for n-3 PUFA in the diet. For coho salmon, the optimal level of n-3 fatty acids is 1–2.5%, and the optimal level of n-3 plus n-6 fatty acids appears to be approximately 2.5%. EFA requirements can be affected by many factors, including fat content of the diet and temperature. In fish, EFA requirements change with temperature and culture conditions (NAS/NRC, 1983, 1981a.)

3. Adverse Effects of High Levels of EFAs

While certain levels of fat and essential fatty acids are necessary, higher levels can produce adverse effects. Although requirements for linolenic acid, a n-3 polyunsaturated fatty acid, are as high as 0.5% of total caloric intake in humans, consumption of a diet high in the same family of fatty acids (n-3 PUFA) may cause oxidative stress to cell membranes through lipid oxidation reactions, thereby increasing requirements for antioxidants (Hui, 1996a).

A balance of types of lipid and various fatty acids is needed. For example, many species of fish and laboratory animals tolerate high levels of lipid if the essential fatty acid levels are increased. (NAS/NRC, 1983, 1995). Similarly, a high level of other dietary components can increase the need for certain PUFAs (n–6 PUFA) in rats, and alter the fatty acid balance (between n–6 PUFA and n–3 PUFA) (NAS/NRC, 1995). High levels of some fatty acids (n–6 PUFA) deplete other fatty acids (n–3 PUFA), thereby creating adverse effects associated with nutritional deficiency.

Compared to rodents consuming diets high in saturated fatty acids, rodents receiving diets rich in linoleic acid—one of the two essential fatty acids for humans—exhibited increased development of breast tumors, including a shortened latency period for tumor appearance, promotion of tumor growth, and increased incidence of mammary tumors (Hui, 1996a). Once the dietary linoleic acid exceeded 4–5% of total calories, saturated or unsaturated fats linearly increased tumor incidence. Dietary linoleic acid enhanced the spread of mammary tumors to lungs in rats, apparently by acting as a cancer promoter. Fish oil, which contains n–3 PUFAs, inhibited mammary tumor development, apparently inhibiting the effects of linoleic acid.

The importance of balance in essential fatty acids is clearly seen in studies of coldwater fish. An optimum level of unsaturated fatty acids is required for maximum growth of coldwater fish, and the requirement for n–3 fatty acids may be species-specific (NAS/NRC, 1981a). EFA deficiency is characterized by poor growth as well as numerous other symptoms, and the deficiency of most symptoms can be reversed with certain fatty acids (n–3 PUFA); the addition of other fatty acids (n–6 PUFA) to the diet reverses some symptoms, while others are aggravated.

In coho salmon, extremely low and high levels of n–3 fatty acids inhibit growth; concentrations of n–6 fatty acids above 1% also depressed growth (NAS/NRC, 1981a). In studies of rainbow trout fed different levels of triglycerides containing n–3 and n–6 fatty acids in diets containing 10% lipid, growth was reduced when diets were deficient in n–3 fatty acids, high in n–6 and low in n–3 fatty acids, or high in both n–3 and n–6 fatty acids.

4. Adverse Effects of High Levels of Fats and Oils

Although fat intake is necessary to provide energy, vitamins, and EFA, ingestion of high levels of dietary fat can cause adverse effects in fish and aquatic species, other animals, and humans. The adverse effects of consumption of high levels of dietary fat and certain classes of fat by humans and animals have been discussed extensively in section II.C.3.

5. Relevance of EFA Principles to Spills

For most animals, only one or two fatty acids are essential, and these are not necessarily the fatty acids present in an oil spill. Animals require only small quantities of these EFAs that are provided in a normal diet, and these quantities must be in balance. While low levels of one or two fatty acids are needed by some species, in several species tested, high levels of these fatty acids produce adverse effects by toxicity or by creating nutrient imbalances that deplete other essential nutrients.

After a spill, high levels of animal fats and vegetable oils other than the EFA are present in the environment. High levels of total dietary fat, certain classes of fats, imbalances of types of fat, and some components and breakdown products produce adverse effects in laboratory animals and in some animals that have been examined in the field and are associated with adverse effects in humans. Further, some constituents of vegetable oils, such as erucic acid in cottonseed oil, actually interfere with EFA metabolism, thereby causing adverse effects (Roine et al., 1960).

When food is coated with oil from a spill of vegetable oils or animal fats, animals are unable to forage or consume the food or suffer the consequences of ingesting large quantities of oil as they consume food. Oil-coated birds die of hypothermia or starvation when they are unable to obtain or consume twice their normal amount of food to provide the increased metabolic requirements needed to survive oil spills.

Some oils, their constituents, or transformation products remain in the environment for years. By contaminating the food source biomass, reducing breeding animals and plants that provide future food sources, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, oil spills can cause long-term effects for years even if the oil remains in the environment for relatively short periods of time.

6. FWS Comments on Essential Fatty Acids

The FWS commented that although fats and oils are used by cells of living organisms in small amounts, too much will cause harm to organisms through means other than toxicity. Ingestion of concentrated vegetable oil or animal fat could cause indigestion, nausea, and diarrhea. This could incapacitate a bird or mammal (USDOI/FWS, 1994).

D. Petitioners' Claim: Animal Fats and Vegetable Oils Are Readily Biodegradable and Do Not Persist in the Environment

EPA disagrees with Petitioners' claim that all animal fats and vegetable oils are readily biodegradable and notes that when biodegradation does occur in the environment, it can lead to oxygen depletion and death of fish and other aquatic organisms. Some products formed by biodegradation and other transformation processes are more toxic than the original oils and fats. While some animal fats and vegetable oils are degraded rapidly under certain conditions, others persist in the environment years after the oil was spilled (Mudge *et al.*, 1995; Mudge, 1995, 1997a, 1997b). Further, spilled animal fats and vegetable oils can cause long-term deleterious environmental effects even if they remain in the environment for relatively short periods of time, because they destroy existing and future food sources, reduce breeding animals and plants, and contaminate eggs and nesting habitats.

Every spill is different. How long the vegetable oil or animal fat remains in the environment after it is spilled, what proportion of the oil is degraded and at what rate, what products are formed, and where the oil and its products are transported and distributed are determined by the properties of the oil itself and those of the environment where the oils is spilled. Factors such as pH (acidity), temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location of the spill profoundly influence the degradation of oil.

Like petroleum oils, vegetable oils and animal fats can float on water, settle on sediments or shorelines, and form emulsions when there is agitation or prolonged exposure to heat or light (Crump-Wiesner and Jennings, 1975; DOC/NOAA, 1992, 1996). Environmental processes can alter the chemical composition and environmental behavior of the spilled oils and influence their proximity to environmentally sensitive areas and the environmental damage they cause.

The detrimental environmental effects of several spills of vegetable oils and animal fats are described below and in Appendix I, Table 4: Effects of Real-World Oil Spills. These reports provide examples of the effects of some specific spills where death, injuries, and damage were observed. No structured survey on the effects and numbers of victims of spills of vegetable oils and animal fats has been conducted (Rozemeijer *et al.*, 1992). Because birds and other animals show only a "wet look" when they are coated with vegetable oils and animal fats, they are difficult to identify and may never be found if they sink when they die or are consumed by predators (NAS, 1985e).

1. Chemical and Biological Processes Affecting Vegetable Oils and Animal Fats in the Environment

Vegetable oils and animal fats that are spilled in the environment can be transported and transformed by a wide variety of physical, chemical, and biological processes that alter the composition of the oil, its fate in the environment, and its toxicity. Oil that is spilled in inland waters, such as small rivers and streams, may be especially harmful if there are limited oxygen resources in the water body and little dispersal of the oil (NOAA/FWS, 1996).

Whether the toxicity of these transformation products formed by chemical and biological processes increases compared to that of the original oil depends on the specific oil and the products that are formed. For example, lipid oxidation products that are formed following exposure of fats to oxygen, light, and inorganic and organic catalysts have been associated with colon cancer; and cholesterol oxidation products that are formed by autoxidation of cholesterol exposed to air, heat, photooxidation, and oxidation agents have numerous biological activities (Hui, 1996a). (See section II.B.5.d for a discussion of the toxicity of transformation products.)

a. Chemical Processes. The fate of petroleum and non-petroleum oils can be altered by environmental processes. Primary weathering processes include spreading, evaporation, dissolution, dispersion, emulsification, and sedimentation (DOC/NOAA, 1992a, 1994, 1996). The rate and relative importance of each of these processes depends on the specific oil that is spilled and environmental conditions that are present and that may change over time. Wind transport, photochemical degradation, and microbial degradation may also play

important roles in the transformation of petroleum oils, vegetable oils and animal fats.

Different parts of the ecosystem are affected as the composition of the spilled oil changes. For example, weathered petroleum oils penetrate into marsh vegetation less than fresh oil, for weathered oil is composed of relatively insoluble compounds and often forms mats or tarballs (DOC/NOAA, 1994; Hartung, 1995; NAS, 1985e). Thus, weathering decreases the potential exposure to fish through the water column while increasing the potential exposure of species that ingest tarballs. As the lighter fractions dissolve or evaporate, oil sinks, thereby contaminating sediments and contributing to water column toxicity. Spilled sunflower oil is hydrolyzed and polymerized to chewing gum balls that can be washed ashore or can sink and cover sediments, thereby exposing benthic and intertidal marine communities (Mudge, 1993).

Vegetable oils and animal fats can undergo several types of chemical reactions. They can be hydrolyzed to yield free fatty acids and diglycerides, monoglycerides, or glycerol; this hydrolysis can be catalyzed by acids, bases, enzymes, and other substances (Hui, 1996a; Lawson, 1995; Kiritsakis, 1990; Hoffmann, 1989). Vegetable oils and animal fats can be oxidized to form hydroperoxides and free radicals which perpetuate the oxidation reaction until they are destroyed by reacting with other chemicals, such as natural or added antioxidants. The free radicals that initiate an autoxidation reaction are formed by decomposition of hydroperoxides, exposure to heat or light, or other means. COPs are formed by autoxidation of cholesterol that is exposed to air, heat, photooxidation, and oxidative agents derived from dietary sources and metabolism (Hui, 1996a).

Several types of reactions can occur during processing, cooking, or storage of fats and oils, including hydrogenation of unsaturated fatty acids in oils (hardening); esterification; interesterification, including transesterification; and halogenation (Lawson, 1995; Hui, 1996a; Hoffmann, 1989; Yannai, 1980). Thermal oxidation and polymerization during cooking, frying, or processing operations at high temperatures, generally between 180°C to 250°C, can lead to conjugation (act of being joined) of polyunsaturated fatty acids and cylization and the formation of volatile decomposition products.

b. Biological Processes. Petroleum oils and vegetable oils and animal fats that are spilled in the environment can be transformed by bacteria, yeast, fungi, and other microorganisms. Although microbial degradation rarely occurs when there are controlled conditions during normal storage of animal fats and vegetable oils, microorganisms can grow on vegetable oils and animal fats and degrade them when environmental conditions are favorable (Ratledge, 1994).

Investigations of biological approaches to remediating sites contaminated with petroleum oils have shown that numerous environmental factors must be carefully controlled for biodegradation to be effective in reducing contamination from oily materials in soil (Venosa et al., 1996; Salanitro *et al.*, 1997). While bioremediation has been used for soil cleanup at some petroleum-contaminated sites (e.g., in tests at refineries, in treatment of oily sludges in oil and gas operations, and at pipeline sites for spills of crude oil), successful cleanup requires management of appropriate levels of applied waste to soil, aeration and mixing, nutrient fertilizer addition according to the ratios of carbon: nitrogen: phosphorus present, pH amendment, and moisture control to optimize degradation by soil micoorganisms (Salanitro *et al.*, 1997). The extent of biodegradation apparently depends upon the type of soil and crude oil involved.

The promise and the limitations of microbial degradation have been highlighted in numerous studies of factors influencing the microbial utilization of animal fats and vegetable oils (Ratledge, 1994). These studies were conducted in experimental cultures and cannot be applied readily to cleanups of oil spills, where control of pH, oil dispersal, and nutrient supplementation are difficult to achieve. They are described briefly, primarily to illustrate the complexity of biotransformation processes, the many factors that can affect biodegradation, and the difficulty in accurately reflecting conditions and determining rates of biodegradation or other transformation processes at specific spill locations. A more detailed discussion of the microbial degradation of vegetable oils and animal fats is provided in the accompanying Technical Document. (See Technical Document, Claims V and VI, Biological Processes, Section A.)

Factors that affect the biodegradation of oils include pH, dispersal of oil, dissolved oxygen, presence of nutrients in the proper proportions, soil type, type of oil, and the concentration of undissociated fatty acids in water. In addition to microorganisms, other biota can also alter the chemical composition of vegetable oils and animal fats. The reactions may depend on the species, for organisms such as invertebrates, lack enzymes that participate in certain metabolic pathways found in other organisms.

c. Rancidity. Biological and chemical processes can lead to the formation of rancid products that cause off-flavors and unpleasant odors. Rancidity results from the oxidation of unsaturated fatty acids that are acted upon by peroxide radicals or enzymes to form a variety of products, some of which are toxic (Hui, 1996a; Yannai, 1980). Rancidity can also be produced by hydrolysis of triglycerides and lipolysis by microorganisms or natural enzymes (Kiritsakis, 1990). The hydrolysis and oxidation of spilled vegetable oils and animal fats leads to formation of aldehydes, ketones, fatty acids, and other compounds responsible for off-flavors and rancid odors. The rate of rancidity increases with thermal decomposition of fats (Hui, 1996a), although enzymatic peroxidation and oxidation of unsaturated fatty acids by lipoxygenases can also occur in plant food stuffs even during storage at low temperature and in the dark (Yannai, 1980).

2. Environmental Fate and Effects of Spilled Vegetable Oils and Animal Fats: Real-World Examples

The reports in this section describe the spread of vegetable oils and animal fats after spills into the environment and detail the deleterious effects produced by these spills. While some aspects of specific spills have been discussed earlier, the examples presented below demonstrate that factors such as the nature of the oil, its environmental fate, and proximity of the spill to environmentally sensitive areas determine the adverse effects of spills of vegetable oils and animal fats in the environment. Many spills are never reported. Animals injured or killed by oils may never be found, for they are highly vulnerable to predators or may drown and sink (USDOI, 1994; Frink, 1994; NAS, 1985e). Thus, the reports that are summarized in Appendix I, Table 4 and below are not a comprehensive study of the adverse environmental effects of spills of vegetable oils and animal fats, but rather a snapshot revealing some of the deleterious effects caused by spills of oil into the environment.

Minnesota Soybean Oil and Petroleum Oil Spills. Oil from two spills in Minnesota killed thousands of ducks and other waterfowl and wildlife or injured them through coating with oil. The peak of waterfowl damage occurred within two days of the breakup of ice on the Minnesota and Mississippi rivers in the spring of 1963 (Minnesota, 1963; USDHHS, 1963). There were two sources of oil—an estimated 1 million to 1.5 million gallons of soybean oil that entered the Minnesota River via the Blue Earth River when storage facilities failed at a plant in Mankato, Minnesota; and an estimated 1 million gallons of low viscosity cutting oil that escaped to the Minnesota River near Savage, Minnesota, from a marsh that was flooded with oil when storage facilities failed. Oil spilled during the winter months from mechanical failure of storage tanks or pipelines, moved little until the breakup of ice in the spring. The varnish-like covering of willows on the river banks showed that the soybean oil had escaped into the river during the spring run-off.

While the petroleum oil and soybean oil slicks could not be distinguished by field observation, laboratory analysis of samples of oil and oil scraped from ducks revealed that soybean oil caused much of the waterfowl loss (Minnesota, 1963). Approximately 5,300 birds were affected or killed by oil, including 1369 live oil-soaked ducks rescued and 1842 dead birds collected. They included lesser scaup ducks, ringnecked ducks, coots and grebes, several other types of ducks, gulls, and mergansers, and a cormorant. While some birds may have been counted more than once, the numbers probably underestimate the impact of the oil spills, because ducks covered with oil crawl into dense cover and are hard to find.

Mammals and other dead animals were reported, including about 26 beaver, 177 muskrats, and 50 others, among them turtles, herons, kingfisher, songbirds, other birds, skunk, squirrel, dog, and cows (Minnesota, 1963). The death of 7,000 fish was attributed to causes other than oil pollution, because winterkill is common in shallow backwater areas of the river and a BOD study indicated that the sample analyzed would not have sufficient oxygen demand to significantly affect oxygen resources in the river. Bottom fauna used as fish food may have been affected temporarily in localized areas.

The character of the soybean oil on and in the water changed with time, as thick orange-colored slicks that were first observed changed to pliable greyish and somewhat rubbery floating masses that were stringy or somewhat rounded and were sometimes surrounded by a light oil slick (Minnesota, 1963). Limited areas of the bottom were covered.

Oil that normally floated on the surface of the river tended to sink to the lake bottom or settled into low areas of the river bottom near the shoreline, apparently because of entrapment of heavy materials in the oily mass. A sample of soybean oil collected from the bottom of the lake contained sand, dirt, twigs, and leaves when it was analyzed in the laboratory.

Soybean oil also mixed with sand on the beach, creating a hard crust 3 feet above water level. White balls, apparently from soybean oil that was once near the surface of a lake, moved toward shore and broke up into long, white stringy material that collected on shore. Pools of tough, milky material covered with brown scum were found in low areas of the beech along with a hard varnish-like crust on the beach.

Spill of Coconut Oil, Palm Oil, and Edible Materials. In 1975, a cargo ship that was carrying primarily vegetable oils and edible raw materials (copra or dried coconut meat, palm oil, coconut oil, and cocoa beans) went aground on Fanning Atoll, Line Island and dumped its cargo onto a pristine coral reef (Russell and Carlson, 1978). The effects of the oily substances were similar to those following a petroleum oil spill. Fish, crustaceans, and mollusks were killed. Shifts in the algal community were observed, with excessive growth of some types of green algae and the elimination of other algal competitors. The effects on the algal community continued for about 11 months.

Sunflower Oil Spill in North Wales. When a cargo of unrefined sunflower oil was spilled into the environment off the coast of Anglesey, North Wales in January 1991, surface slicks of the oil were formed for many miles around the ship (Mudge *et al.*, 1993; Salgado, 1992, 1995). Some oil was hydrolyzed and polymerized to form "chewing gum balls" that were washed ashore over a wide area. The denser balls sank, allowing the sunflower oil to contact a wide range of benthic and intertidal communities near the spill. Sunflower oil polymerized in seawater and formed lumps that could not be degraded by bacteria.

Mussels that were near the spill died. Polymerized sunflower oil formed a cap that reduced the permeability of sediments to water and oxygen and killed organisms living on the sediments (Mudge et al., 1993, 1995, Mudge, 1995). Polymerization of sunflower oil that washed ashore produced concrete-like aggregates that still persist nearly 6 years after the spill (Mudge, 1997a, 1997b).

Rapeseed Oil Spills in Vancouver Harbor. Three small spills of rapeseed oil caused greater losses of birds than 176 spills of petroleum oils over a 5-year period in Vancouver harbor from 1974 to 1978 (McKelvey et al., 1980). An estimated 35 barrels of rapeseed oil killed an estimated 500 birds, while all of the petroleum oil spills combined oiled less than 50 birds, perhaps because the vegetable oils lacked the strong, irritating odor of petroleum or its eye-catching iridescence. Both petroleum and non-petroleum oils coat the feathers of birds, destroying their waterproofing qualities and allowing water to penetrate to the skin with loss of insulation and buoyancy, which results in exposure, and death (Mudge, 1995; Hartung, 1967; NAS, 1985e; Smith and Herunter, 1989; Rozemeijer, 1992).

Another spill of rapeseed oil (Canola) occurred in Vancouver Harbor on February 26, 1989 (Smith and Herunter, 1989). During product transfer, an estimated 400 gallons of rapeseed oil spilled into the harbor. A thin film covered large portions of the harbor, and a patchy slick of yellow oil from the spill site to the center of the harbor was visible from above. It was estimated that at least 700 birds were in the harbor at the time of the spill, including 500 diving ducks, 100 gulls, and 100 other divers.

Initially, booms were not used to contain the spill, and an attempt to disperse the oil with multiple passes of a small tug through the thick oil were ineffective (Smith and Herunter, 1989). EPA notes that the trade association requested that this ineffective mechanical dispersal be allowed as a response to spills of vegetable oil and animal fat under the FRP rule. After several hours, booms were set up to contain the oil and skimmer boats recovered the oil.

Cleanup was concluded 15 hours after the spill was discovered (Smith and Herunter, 1989). Nevertheless, 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment.

The authors caution that because vegetable oils are edible, they may not be considered as threatening to aquatic birds as petroleum oils. However, the end result is the same. Birds die (Smith and Herunter, 1989). The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers.

Smith and Herunter emphasize that containing and recovering the spilled oil as soon as possible is critical to minimizing environmental damage

(1989). Using booms, testing transfer lines, having spill detection equipment in place, training on-site personnel, and reporting spills immediately are essential to reducing environmental harm.

Fat and Oil Pollution in New York State Waters. Pollution of surface waters by oils and fats from a wide variety of sources killed waterfowl, coated boats and beaches, tainted fish, and created taste and odor problems in water treatment plants in New York State (Crump-Wiesner and Jennings, 1975). Sources of the fats and oils included spills, food and soap manufacturing, refinery wastes, construction activities, industrial waste discharges, and sanitary sewage. Grease-like substances were seen along the shore or floating in Lake Ontario. Grease-balls that contaminated the shoreline near Rochester and smelled like fat or lard were analyzed and characterized as mixtures of animal and vegetable fats with similar fatty acid contents.

Spills of Fish Oil Mixtures in South Africa. Oil that was discharged from a fish factory effluent pipe near Bird Island, Lamberts Bay, South Africa, the breeding ground for 5,000 pairs of Cape Gannets and home to tens of thousands of Cape Cormorants and 500 Jackass Penguins, killed at least 709 Cape Gannets, 5,000 Cape Cormorants, and 108 Jackass Penguins (Percy Fitzpatrick Institute, 1974). A few days after the oiling incident, researchers found penguins covered with a sticky, white, foul-smelling coat of oil. They were shivering on the shore and gannet chicks, who were observed walking straight into the oil, were dead or dying. They observed a milky white sea on one side of the island and a frothy mixture and clots of oil thrown up on the island. The oil smelled strongly of fish.

Damage from fish-oil pollution was detailed at two other fish factories in South Africa (Newman and Pollock, 1973). In the rock lobster sanctuary at St. Helena Bay, 10,000 rock lobsters and thousands of sea urchins were killed, probably from oxygen depletion caused by the release of organic material from the fish factory. At least 100,000 clams died near a fish factory at Saldanha Bay along with large numbers of black mussels and prawns and some polychetes and anemones. Other effects were also described by the authors: the sea was discolored and smelled, water quality was poor, and the aesthetic appeal of the beaches located near a town and popular camping site was adversely affected.

Spill of Nonylphenol and Vegetable Oils in the Netherlands. Thousands of seabirds, mostly Guillemots and Razorbills, washed ashore in the Netherlands during a four-month period from December 1988 to March 1989 (Zoun, 1991). They were covered with an oil-like substance. Nearly all of the 1,500 sick birds that were taken to bird hospitals died; many exhibited emaciation, aggressive behavior, bloody stools, and leaky plumage. Autopsies and pathological examination of 30 birds revealed hepatic degeneration and necrosis as well as aspergilliosis in the air sacs and lungs. Chemical analysis of the feathers and organs showed the presence of high levels of nonylphenol and vegetable oils, such as palm oil. No source of the contaminants was established, but they may have been discharged from a ship.

Soybean Oil Spills in Georgia From a Tanker Truck and a Vegetable Oil Refinery. Aesthetic effects were a major concern to property owners on an oiled cove at Lake Lanier, Georgia (Rigger, 1997). The strong, unpleasant odor of soybean oil spilled from a tanker truck became more rancid as the oil weathered. Rapid response action minimized the damage and costs, although the oil adhered to boat dock floats and boats and produced several thousand dollars in claims for cleaning boats and docks and replacing dock floats.

In a vegetable oil refinery in Macon, Georgia, soybean oil was released from an aboveground storage tank that was accidentally overfilled (Rigger, 1997). Rapid response prevented significant damage from the spilled oil, which had flowed through a storm water system and entered a stream. Investigation of the spill incident revealed that previous spills from the facility had entered the sanitary sewer system and damaged the sewage treatment plant.

Wisconsin Butter Fire and Spill. In 1991, a major butter and grease fire apparently triggered by an electric forklift destroyed two large refrigerated warehouses at Central Storage facility in Madison, Wisconsin and resulted in the release of large volumes of butter, lard, cheese, meat, and other food products (Wisconsin, 1991a, 1991b, 1991c; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e). The warehouses contained 15 million pounds of butter—much of it part of the USDA surplus program. Thick, black smoke filled the air, and melted butter and lard streamed from the burning building and threatened to pollute a nearby creek and lake.

The quick action of firefighters, city engineers, and other responders was credited by the company and state environmental officials with saving a nearby creek and lake from environmental disaster and limiting the losses and injuries from the fire (Wisconsin, 1991; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e). If the buttery material had flowed through storm sewers into the creek and lake, it could have depleted the available oxygen required by walleyed pike, bass, and other aquatic organisms living in the creek and connecting lake and ruined a recent one million dollar cleanup effort in the watershed.

After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment.

3. FWS Comments on Degradation

Vegetable oils and animal fats may biodegrade quicker than petroleum; however, in the short term, this advantage is neutralized by the ability of many petroleum compounds to evaporate quickly. In addition, the higher BOD of vegetable oils and animal fats pose an increased risk of oxygen depletion in shallow waters and wetlands. Both kinds of oil will degrade more slowly in low-energy waters and can become submerged in an anoxic aquatic habitat, settle to the bottom and into sediments, or form thick layers because the vegetable oil is no longer being exposed to oxygenated waters or surroundings. In such instances, the edible oil or fat will remain in the environment for a long period of time and continue to create a risk to the natural environment. The variability of circumstances surrounding each spill (location, spill volume, weather, tides, water currents, effectiveness of spill response) will have a greater influence in the short term on environmental effects than will biodegradability. (USDOI/FWS, 1994)

E. Petitioners' Claim: Vegetable Oils and Animal Fats Have a High BOD, Which Could Result in Oxygen Deprivation Where There Is a Large Spill in a Confined Body of Water

Petitioners claim that vegetable oils and animal fats have a high BOD, which could result in oxygen deprivation where there is a large spill in a confined body of water with low flow and dilution.

EPA Response: EPA agrees with the Petitioners' claim that vegetable oils and animal fats have a high BOD, which could lead to oxygen depletion and severe environmental consequences. (For a detailed discussion of this topic, see section II.B.4.a.Suffocation.) EPA disagrees, however, that oxygen depletion would occur only with large oil spills. Small spills are sufficient to cause oxygen depletion and suffocation and death of fish and other biota, depending on the conditions that apply at the location of the spill. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil or from the high BOD by microorganisms degrading oil (Crump-Wiesner and Jennings, 1975; Mudge, 1995). Examples of environmental damage produced by small spills of vegetable oils and animal fats are provided above.

While a higher BOD is associated with greater biodegradability, it also reflects the increased likelihood of oxygen depletion and potential suffocation of aquatic organisms under certain environmental conditions (Crump-Wiesner and Jennings, 1975). Oxygen depletion and suffocation are produced by petroleum and vegetable oils and animal fats. Under certain conditions, however, some vegetable oils and animal fats present a far greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater BOD.

According to studies designed to measure the degradation of fats in wastewater, some food oils exhibit nearly twice the BOD of fuel oil and several times the BOD of other petroleum-based oils (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). While the higher BOD of food oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions (Groenewold, 1982; Institute, 1985; Crump-Wiesner, 1975). Oil creates the greatest demand on the dissolved oxygen concentration in smaller water bodies, depending on the extent of mixing (Crump-Wiesner and Jennings, 1975).

FWS Comments on BOD. Decomposition of vegetable oils and animal fats causes oxygen depletion problems for aquatic species (USDOI/FWS, 1994).

F. Petitioners' Claim: Vegetable Oils and Animal Fats Can Coat Aquatic Biota and Foul Wildlife

EPA Response: EPA agrees with the Petitioners' claim that vegetable oils and animal fats can coat aquatic biota and foul wildlife but disagrees with the lack of significance accorded this potentially devastating effect in Petitioners' ENVIRON report. Many animals and plants die when they are coated with spilled petroleum oils or vegetable oils and animal fats. (See section II.B.4.a. Coating with Oil for a discussion of these effects.) Coating with oil can contaminate existing and future food sources, destroy habitat, and damage eggs and nesting areas, thereby inflicting environmental damage years after an oil spill occurs (Frink and Miller, 1995).

Trustees Comments on Fouling. The biggest oversight of the ENVIRON report, which was never subject to peer review as are journal publications, is the insignificance given to the fouling potential of vegetable oils and animal fats (USDOI/FWS, 1994). Wildlife rehabilitators consider edible oils and fats to be some of the most difficult of substances to remove from wildlife because of their low viscosity. These less viscous oils are good wetting agents, allowing deeper penetration into plumage or fur and creating a thoroughly contaminated animal, as opposed to surface and intermediate penetration. In many instances, complete removal can only be accomplished with extremely hot water, which is detrimental because of scalding, and excessive washing.

The FWS takes issue with statements in the ENVIRON report that observed birds clean themselves and return to feeding areas (USDOI/FWS, 1994). Such observations are difficult to confirm without banding or radio tagging the birds and closely observing them. It is highly doubtful that the birds were able to clean themselves, for only minuscule amounts of oil can be completely preened from plumage. Even birds fouled with petroleum oils will preen and fly back to their nests. Small amounts of oil on the birds' plumage can cause thermal circulation trouble and smother embryos in eggs exposed to the oil. Birds may appear to act normally, but it is not the immediate effects of the oils but those that appear later that cause problems. Secondary effects from fouling include drowning, mortality by predation, starvation, and suffocation.

Both petroleum and non-petroleum oils foul the coats and plumage of wildlife (USDOI/FWS, 1994). The risks from vegetable oils and animal fats are magnified by their lack of repugnant smell or iridescence to frighten wildlife away, making it more likely that wildlife will come in contact with these oils.

III. Petitioners' Suggested Language To Amend the July 1, 1994, Facility Response Plan Rule

This section begins with a short discussion about EPA's inland area of jurisdiction and also provides some characterization of the amounts of vegetable oil and animal fats produced or consumed, and reported spills. These discussions are followed by EPA's response to the Petitioners' specific regulatory language to amend the July 1, 1994, facility response plan rule.

A. Background

Examples of water systems that occur in the inland area within EPA's zone of authority are major freshwater rivers, smaller streams, creeks, lakes and wetlands or mixed freshwater—saltwater estuary and wetlands areas subject to tides. (See a Memorandum of Understanding [MOU] between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 [36 FR 24080].) Many of these areas, including wetlands and estuary areas, are often very sensitive, highly productive areas where a large number of organisms such as shrimp, crabs, fish, and water fowl nest, breed and feed. Lakes and larger rivers may be used as water supplies and have drinking water and industrial intakes that must be protected. Inland spills have a much higher potential to contaminate both ground and surface water supplies. Some lakes, estuaries and bays are often highly developed with industry, recreational beaches, marinas and other highly visible areas that need protection from oil spills.

Vegetable oil and animal fat were among the most frequently spilled organic materials, ranking sixth and seventh respectively, and were responsible for over 6% of all spills (384 of 6076 spills) of organic materials reported along the coasts and major waterways in the United States in 1973–1979 (Wolfe, 1986). Other authors estimate that at least 5% of all spill notifications are for vegetable oils and animal fats (Crump-Wiesner, 1975). Of the 18,000 to 24,000 spills in the United States reported annually to the National Response Center and EPA Regions, 2–12% are from non-petroleum oils, including vegetable oils and animal fats (USEPA/ERNS, 1995, 1996). These figures represent the minimum number of spills; it is likely that they greatly underestimate the actual number of spills because of significant underreporting. A comparison was made of reports of spills in Ohio of vegetable oil and soybean oil from January, 1984 to June, 1993 to the State

of Ohio Environmental Protection Agency (Ohio EPA) and to the National Response Center (NRC). Only 7 of 27 reports (26%) to the Ohio EPA were also reported to the NRC (USEPA, 1994a). There were a number of reports of vegetable and soybean oil spills to the NRC that were not on the State list (USEPA, 1994a).

B. Regulatory Language Changes Proposed by the Petitioners

Language to further clarify the definition of vegetable oil and animal fats. EPA Response: EPA has decided not to incorporate Petitioners' proposed definitions of "animal fat and vegetable oils" in the regulatory provisions of section 112.2. In issuing the final FRP rule, EPA included a definition of "non-petroleum oil" in an Appendix to the rule. (See 40 CFR part 112, Appendix E, section 1.2.3.) "Non-petroleum oil" is defined to mean "oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils." *Id.*

EPA included this definition of "non-petroleum oil" in the rule because the Agency established different and more flexible response planning requirements for facilities that handle, store, or transport non-petroleum oil, including animal fats and vegetable oils. For example, in calculating required response resources for non-petroleum facilities, the owner/operator of such a facility, including those facilities which handle, store, or transport animal fats or vegetable oils, is not required to use emulsification or evaporation factors in Appendix E of the rule. Rather, these facilities need only: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic area, and respond within the required times; and (4) ensure the availability of required resources by contract or other approved means. 40 CFR Part 112, Appendix E, section 7.7. Importantly, EPA does not prescribe the type or amount of equipment that preparers of response plans for non-petroleum oil discharges must identify. *Id.*

Moreover, at the time of issuing the final rule, EPA also set forth definitions for both "animal fat" and "vegetable oil" in the preamble to the FRP rule (59 FR 34070, 34088 (July 1, 1994)). To assist owners and operators in distinguishing between oil types, EPA defined "animal fat" to mean "a non-petroleum oil, fat, or grease derived from animal oils not specifically identified elsewhere." *Id.* The Agency defined "vegetable oil" to mean "a non-petroleum oil or fat derived from plant seed, nuts, kernels or fruits not specifically identified elsewhere." *Id.* The Agency stands behind these definitions, and because EPA is not modifying the FRP rule as requested by Petitioners (see below), the Agency sees no need to include these definitions in the rule provisions.

Petitioners express a concern that animal fats and vegetable oils have been included with other types of "non-petroleum oils," although the planning requirements for owners and operators of *all* facilities storing "non-petroleum" oils are more flexible than those requirements for facilities storing, handling, or transporting petroleum oil. Petitioners' main concern appears to be premised upon the claim that vegetable oils and animal fats are "non-toxic" compared to other non-petroleum oils. EPA believes that Petitioners have failed to make a demonstration that animal fats and vegetable oils should be subject to less stringent planning requirements than other types of non-petroleum oils. This is so for all of the reasons set forth elsewhere in this notice.

Allow mechanical dispersal and "no action" options to be considered in lieu of oil containment and recovery devices specified for response to a worst case discharge of vegetable oil and animal fats. EPA Response: The Agency declines this proposed language. Although the "no action" and mechanical dispersal options proposed by the Petitioners may be considered in response to an actual spill under certain conditions, i.e., river currents too high for the effective use of a boom, neither option would meet the intent of OPA for planning purposes. The intent of OPA was for industry to plan for and secure the equipment and resources needed to respond to a worst case discharge, which may be a discharge of 1 million gallons or greater for a large vegetable oil facility.

A "no action" plan would allow a large amount of oil to remain in the environment, which would in turn cause immediate physical effects to resources that could extend for considerable distances as the oil spreads. This oil would have the potential to remain in the environment for long periods of time.

One issue raised by the Petitioners is that the response to a spill of vegetable oil or animal fat may do more harm to the environment than a "no action" alternative. A consideration in the response to any type of oil, including petroleum or vegetable oil or animal fat, is whether the measures used in response to the spill will cause unacceptable damage to a specific type of environment. This determination is based on the conditions existing at the time of the spill. Specific spill conditions will often dictate the need for different techniques for the same water environment or shoreline habitat. A study, which evaluated the relative impact of various generic characteristics of response techniques in the absence of oil, rated booming and skimming as having a "Low" impact in open water, small lakes/ponds, large rivers and small rivers and streams (DOC/NOAA, 1992) and therefore, causing little environmental harm.

Mechanical dispersal of the vegetable oil or animal fat into the water column could shut down or negatively impact drinking intakes due to flavor changes and odors, reduce cooling efficiency in cooling waters of power plants, contaminate food from receiving waters, increase BOD levels, violate water quality standards, cause sludges, and adversely impact benthic organisms and the resulting food chain in inland areas. Oil dispersed by mechanical means may resurface and cause further environmental damage in the same area or a different area depending on the characteristics of the water body. (See section II.D.2, Rapeseed Oil Spills in Vancouver Harbor on the ineffective use of mechanical dispersal.) This Notice references studies that document spills of vegetable oils that have remained in the water environment for several years and that continued to kill shellfish and other organisms.

Limit the use of containment boom to the protection of fish and wildlife and sensitive environments: EPA's Response. Based on tests and studies summarized in the data in this Decision Document and the Technical Document, vegetable oils and animal fats clearly have adverse impacts on the aquatic and terrestrial environment and its inhabitants. EPA declines to modify the FRP rule as suggested by the Petitioners. EPA continues to believe that an OPA required FRP must limit the impacts of the oil through response techniques that include containment and removal in addition to protection of priority fish and wildlife and environmentally sensitive areas.

The Area Contingency Plan (ACP) identifies and prioritizes the fish and wildlife and environmentally sensitive areas to be protected and also determines the type of protection to be used when a spill occurs. CWA section 311(j)(5)(C)(I) requires that a FRP must be consistent with the applicable ACP, which usually requires that a

containment boom be positioned to protect drinking water intakes and environmentally sensitive areas.

In addition, facility response planning must also include the use of measures appropriate to the body of water to contain and limit and concentrate the spread of oil for removal. The spreading rate of oil is a function of its viscosity. Low viscosity materials spread easily over the surface of water. At lower temperature, the oil spreads less rapidly. Generally, vegetable oils and petroleum oils are of low viscosity. The spread of spilled oil over a large area will hamper recovery of the oil. The thicker the concentration of animal fat or vegetable and petroleum oil in an area, the greater the efficiency for oil removal. As the oil spreads over time into thinner slicks, its removal becomes less efficient and more costly. In tidally influenced areas, oil may move back and forth with each tide and be redeposited on the shore line, tidal flats, and marshes and cause adverse effects.

Since vegetable oils and animal fats usually have few volatile fractions and therefore usually do not decrease in volume through evaporation as do many of the lighter factions of petroleum oils, most of the quantity of vegetable oil and animal fats spilled into water remain in the environment. When this happens, there is the potential for adverse impacts to environmentally sensitive areas and water intakes. Although most vegetable oils and animal fats break down more quickly than some petroleum oils, under certain conditions and times of the year, these oils may remain in the aquatic environment for long periods of time, polarize and form toxic degradation products and kill shellfish and other organisms.

If a facility storing animal fat and/or vegetable oil does not provide for the use of containment booms in its plan to respond to a worst case discharge, it will not have the equipment and trained personnel available for an actual spill and many miles of shoreline and aquatic resources over a large area of water may be impacted. Rapid and immediate response and removal, including the use of containment booms, offer the most effective means of minimizing the immediate and long term effects of spills of petroleum and non-petroleum oils, including vegetable oils and animal fats. EPA does not believe that the Petitioners have shown why the use of containment booms should be limited to only protecting fish and wildlife and environmental sensitive areas. Without the use of containment booms, a worst case discharge of vegetable oil or animal fats could cause harm not only to fish and wildlife and environmentally sensitive areas, but also damage the aquatic and terrestrial environment. Such a discharge could also present risks to humans if the vegetable oil and animal fats adversely affect drinking water intakes.

Increase the time for the arrival of on-scene response resources for medium discharges and worst case Tier 1 response resources to 24 hours plus travel time from the currently required 12 hours including travel arrival time: EPA's Response. A rapid response to an oil spill is important in the recovery of as much oil product as possible. Any oil that remains in the environment will continue to adversely impact the aquatic and shoreline environment and cause lasting damage. (This document contains discussions of environmental, physical and other impacts that occur when vegetable oil and animal fats are spilled.) A 24 hour plus travel time delay in the arrival of response resources would result in an unacceptable increase in impacts to drinking water intakes, fish and wildlife and sensitive environments, greater response costs, less product recovered, and increased water and other types of pollution.

A delay in the arrival of response resources will increase the difficulty of the removal of the spilled oil and will also result in an increase in the cost to recover this oil. If effective containment and cleanup procedures are initiated within an hour of a spill occurrence, estimated removal costs are $250 per barrel (42 gallons). If two or more hours elapse before the oil is removed, the cost can be four or more times that amount and continue to increase with the time to respond to the release (USEPA, 1995). The "window of opportunity" for the most effective and efficient response to oil spills occurs within the early hours after the spill.

Immediate action is required when oil spills occur on water to prevent the oil from becoming so widely spread that containment and cleanup become extremely expensive and a larger area of fish and wildlife and environmentally sensitive areas are adversely affected. There are immediate physical effects to the environment from releases of vegetable oil and animal fat. There is the potential for additional sensitive areas to be contaminated within the 24 hours plus travel time proposed by the Petitioners for the arrival of response resources. This is 12 hours plus travel time longer than the FRP requirement for rivers, canals, inland, and near shore areas. Sensitive areas within many additional miles would be affected with the delay in the arrival of response resources proposed by the Petitioners since booms would not be made available for their protection until much later. Rapid response is imperative to limit adverse effects, protect resources, and contain oil for removal.

Extending the time for arrival of response resources would increase the FRP distance calculation for a facility and could result in additional vegetable oil and animal fat facilities meeting the criteria for substantial harm and having to prepare and submit a facility response plan to EPA. The requirements for determination of substantial harm in the FRP rule for facilities with 1 million gallons or above capacity includes a calculation in Appendix C–III of 40 CFR Part 112 of the distance an oil discharge from the facility would travel within the time it would take for the appropriate tier of response resources to arrive. Once the distance is calculated, the facility must determine whether fish and wildlife and environmentally sensitive areas or drinking water intakes are located within this distance. If so, the facility is considered a substantial harm facility and must prepare and submit a response plan. An additional twelve hours plus travel response time would more than double the distance a spill could travel on water before the arrival of response resources and therefore potentially increase impacts to drinking water intakes and environmentally sensitive areas and increase the number of vegetable oil and animal fat facilities that have to prepare and submit FRPs. For the above reasons, EPA declines to modify the FRP rule in this manner.

IV. Conclusions

The environmental effects of petroleum and non-petroleum oils, including vegetable oils and animal fats, are similar because of physical and chemical properties common to both. Many of the most devastating effects of spills of petroleum oils and vegetable oils and animal fats are physical effects, such as coating of animals, suffocation, or starvation. Some tests measuring BOD suggest that certain vegetable oils and animal fats may present a greater environmental risk of suffocation to organisms than spilled petroleum oils under certain conditions. Petroleum oils and vegetable oils and animal fats can be transferred to the eggs of nesting birds from the parents' feathers and smother the embryos inside. Embryos in eggs are also killed by petroleum oils through mechanisms of toxicity; whether non-petroleum oils also cause direct embryotoxicity has not been evaluated in tests.

Petroleum oils and vegetable oils and animal fats, can enter all parts of the

aquatic environment and adjacent shoreline. They can form a layer on water, settle on the bottom in sediments, foul shorelines, and be transported and distributed to other areas.

Some vegetable oils and animal fats, their components, or breakdown products remain in the environment for years. Whether or not the oil persists in the environment, spilled oil can have long-lasting deleterious environmental effects. By contaminating food sources, reducing breeding animals and plants that provide future food, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, oil spills can cause long-term effects years later even if the oil remains in the environment for relatively short periods of time.

In addition to physical effects and the destruction of food and habitat, petroleum oils and vegetable oils and animal fats, their constituents, or degradation products can cause short-term and long-term toxic effects in some animals. Petroleum oils contain PAHs and benzene which are animal and human carcinogens. While vegetable oils and animal fats contain only small quantities of PAHs, high dietary intake of fats and certain types of fats have been associated with increased cancer incidence in laboratory animals and humans as well as coronary artery disease, diabetes, obesity, and altered immunity and other effects. Lethality, impaired growth, reproductive effects, and behavioral effects are among the subchronic and chronic toxic effects observed in other studies of vegetable oils and animal fats.

Spills of petroleum and vegetable oils and animal fats can affect drinking water supplies, and they have forced the closing of water treatment systems. Rancid smells, fouling of beaches, and destruction of recreational areas have been reported after spills of vegetable oils and animal fats.

Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous larger spills of petroleum oils.

Because petroleum oils and vegetable oils and animal fats exhibit similar behavior in the environment, similar methods are used to contain them and attempt to clean them up after a spill. Because every spill is different, decisions on what cleanup methods are most effective and least harmful to the environment must be made case-by-case, considering the nature of the oil, the characteristics of the contaminated area, and the proximity of the spill to environmentally sensitive areas.

Once oil is spilled in the environment, however, the opportunities for reducing environmental damage and other adverse effects are limited. Although methods for rescuing and cleaning oil-contaminated birds, otters, and other wildlife have improved, only a small proportion of affected animals are recovered, and even fewer of the rescued animals survive. Further, by affecting current and future food sources, nesting habitats, and reproduction, oil spills can damage the environment long after the spilled oil has been removed from the environment. Prevention measures and rapid response offer the only effective means of minimizing the immediate, devastating effects and long-term environmental effects of spills of petroleum and non-petroleum oils, including vegetable oils and animal fats.

In summary, EPA finds that Petitioners' arguments about the manner in which environmental species die or become injured following spills of vegetable oils and animal fats, their claims about degradation of oil in the environment, and their assertion that fats are essential to humans and wildlife in no way obviate the need to prevent spills of vegetable oils and animal fats that can cause lasting environmental damage. Nor do the Petitioners' claims obviate the need to reduce environmental damage from these spills by planning in advance for effective response resources and actions. EPA hereby declines to modify the July 1, 1994, Final Rule.

Dated: October 1, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Acronym List

ACP—Area Contingency Plan
BOD—Biological Oxygen Demand
CFR—Code of Federal Regulations
COPs—Cholesterol Oxidation Products
CWA—Clean Water Act
DNA—Deoxyribonucleic Acid
DNR—Department of Natural Resources
DOT—Department of Transportation
EFA—Essential Fatty Acids
EPA—Environmental Protection Agency
ERNS—Emergency Response Notification System
FAO/WHO—Food and Agriculture Organization/World Health Organization
FR—Federal Register
FRP—Federal Response Plan
FWS—Fish and Wildlife Service
IARC—International Agency for Research on Cancer
Institute—Institute of Shortening and Edible Oils, Inc.
LC_{50}—Lethal Concentration 50
LD_{50}—Lethal Dose 50
LOPs—Lipid Oxidation Products
MOU—Memorandum of Understanding
NAS—National Academy of Sciences
NOAA—National Oceanic and Atmospheric Administration
NRC—Nuclear Regulatory Commission
NRC—National Response Center
OPA—Oil Pollution Act
PAHs—Polynuclear Aromatic Hydrocarbons
PCBs—Polychlorinated Biphenyls
PUFA—Polyunsaturated Fatty Acid (n-6 PUFA, including essential fatty acid linoleic acid; n-3 PUFA, including the essential fatty acid, a-linolenic acid)
RCRA—Resource Conservation and Recovery Act
RSPA—Research and Special Projects Administration
SPCC—Spill Prevention Countermeasure and Control
USDA—United States Department of Agriculture
USDHHS—United States Department of Health and Human Services
USDOC—United States Department of Commerce
USDOI—United States Department of Interior
USEPA—United States Environmental Protection Agency

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Appendix I—Supporting Tables

Table 1. Comparison of Physical Properties of Vegetable Oils and Animal Fats with Petroleum Oils

Table 2. Comparison of Vegetable Oils and Animal Fats with Petroleum Oil

Table 3. Comparison of Aqua Methods and Standard Acute Aquatic Testing Methods

Table 4. Effects of Real-World Oil Spills

TABLE 1.—COMPARISON OF PHYSICAL PROPERTIES OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS

Oil type	Solidification point	Solubility	Specific Gravity at 25°C unless otherwise specified	Vapor pressure (mmHg)
Edible Oils				
Tallow	40 to 46°C[1]	Insoluble in water[1]	0.87 at 80°C[3]	
Corn oil	14 to 20°C[4]	Insoluble in water; soluble in acetone.[1,2]	0.916–0.921[4], 0.91875.[5]	Negligible.[6]
Coconut oil	Solid to liquid at 15°C, 1 atm.[7]	Insoluble in water; very soluble in ether.[1]	0.922[7]	
Rapeseed/Canola oil	−2 to −10°C; liquid at 15°C.[4]	Insoluble in water; soluble in chloroform and ether.[4]	0.913–0.917[8]	250°C, 0.535mmHg.[9]
Fish oil	−2 to 4°C; liquid at 15°C.[4]	Insoluble in water[1]	0.93 at 20°C.[7]	
Soybean oil	−10 to −16°C; liquid at 15°C.[5]	Insoluble in water and acetone.[1]	0.916–0.922[4], 0.9175[5]	250°C, 0.351mmHg.[9]
Cottonseed oil	0 to −5°C; liquid at 15°C.[4]	Insoluble in water; slightly soluble in alcohol.[1]	0.915–0.921[4], 0.917[5]	250°C, 0.317mmHg.[9]
Palm oil	Solid to liquid at 15°C, 1 atm.[7]	Insoluble in water.[1]	0.920–0.927 (fruit), 0.952 (seed).[4]	
Lard	−2 to 4°C[1]	Insoluble in water or cold alcohol; soluble in ether and benzene.[1]	0.917[4] <1[1]	
Petroleum Oils				
Diesel	Liquid at 15°C, 1 atm[7]	Insoluble in water[7]	0.841 at 16°C[7]	38°C, 0.201mmHg.[9]
Fuel Oil #1 (kerosene)	Liquid at 15°C, 1 atm[7]	Insoluble in water; miscible with other petroleum solvents.[1]	0.80[4]	21°C, 2.12–26.4mmHg.[11]
Fuel Oil 2–D	Liquid at 15°C, 1 atm[7]	Insoluble in water[7]	0.87–0.9 at 20°C[7]	21°C, 2.12–26.4mmHg.[11]
Crude	Liquid at 15°C, 1 atm[7]	Insoluble in water[7]	0.89[6]	37.8°C, 3.27mmHg.[10]
Fuel Oil #6 Residual	Liquid at 15°C, 1 atm[7]	Insoluble in water[7]	0.95 approx. at 20°C[7]	37.8°C, 0.092mmHg.[10]
Jet Fuel JP #7				260°C, 2,480 mmHg.[12]
T 1				180–380°C, 6,907mmHg.[13]
T 6				170–450°C, 7,120mmHg.[13]

Oil type	Viscosity dynamic (centipoises)	Viscosity kinematic (centistokes)
Edible Oils		
Tallow	16.5 at 100°C[3]	
Corn oil	30.8 at 40°C[5]	
Coconut oil	32.6 at 32°C[7]	29.79 at 37.8°C.[14]
Rapeseed/Canola oil		50.64 at 37.8°C[14], 62.6 at 25°C, 36.7 at 40°C for RBD Soybean Oil.[5]
Fish oil		32.7 at 37.8°C (cod liver 12).[14]
Soybean oil	28 at 40°C[15]	28.49 at 37.8°C[14], 50.1 at 25°C, 28.9 at 40°C.[5]
Cottonseed oil	34 at 40°C[15]	38.88 at 37.8°C.[14]
Palm oil		
Lard	45 at 40°C[15]	44.41 at 37.8°C.[14]
Petroleum Oils		
Diesel	11.9 at 37.8°C[7]	6.8 at 20°C.[10]
Fuel Oil #1 (kerosene)	1.15 at 21°C[7]	1.7 at 15°C.[10]
Fuel Oil 2–D	1.97 at 21°C[7]	2.0 to 3.6 at 38°C.[10]
Crude	5.5 at 21°C[7]	5.96 at 20°C.[10]
Fuel Oil 6 Residual	123 to 233 at 20°C[10]	>130 at 40°C.[10]

[1] HSDB: Hazardous Substances Data Base. National Library of Medicine, 1997.
[2] USDOC/NOAA, 1994.
[3] Chemical Hazards Response Information System (CHRIS), DOT, USCG, January, 1991.
[4] Merck Index, 1989.
[5] Hui, 1996a, 1996b.
[6] Material Safety Data Sheet (MSDS), 1997, Corn Oil, Fisher Scientific.
[7] Chemical Hazards Response Information System (CHRIS), Department of Transportation, U.S. Coast Guard, 1995.

[8] Allen and Nelson, 1983.
[9] Murata et al., 1993.
[10] Whiticar et al., 1993.
[11] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 1995b.
[12] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 1995c.
[13] Dubovkin et al.,1981. Translated.
[14] Rescorla and Carnahan, 1945.
[15] Weiss, 1983.

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS

	Vegetable oil/animal fats	Petroleum oils
Chemical Properties:		
Chemical Structure	Triglycerides (triacylglycerols), cholesterol, phospho lipids, fatty acids, other components in crude oils.[1,2,3]	Alkanes, cycloalkanes, aromatic hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), other components in crude oils.[4]
Chemical Form	Some liquids, some solids.[1,5,6,7,8,9]	Some liquids, some solids.[10,11,12,13]
Physical Properties:		
Density	Most 0.908–0.927 at 20 ° C; most float on water, some sink.[1,5,6,7,9,14]	Most 0.80–0.95 at 20° C; most float on water, some sink.[8,9,14]
Solubility	Most insoluble in water, soluble in organic solvents.[6,8,9]	Most insoluble in water, soluble in organic solvents.[6,8, 12]
Viscosity	Wide range, depends on temperature.[1,5,7,8,15,16]	Wide range, depends on temperature.[8,10]
Volatility	Generally small proportion volatile, most not volatile.[1,5,13,17]	Some fractions (e.g., gasoline) volatile, some not volatile; 11–90% volatile, depending on type of oil.[10,11,12,18]
Environmental Fate:		
Environmental Distribution	Oil found in water, soil/sediment, biota; usually little in air.[1,5,19,20,21,22,23]	Oil found in water, air, soil/sediment, biota.[4,12,24,25,26,27,28,29,30,31,32,33]
Persistence	May persist in environment for many years or degrade rapidly; depends on oil, media, environmental conditions where spilled.[22,34,35,36,37]	May persist in environment for many years; depends on oil, media, environmental conditions where spilled.[6, 30,38,39]
Chemical, Physical, and Biological Reactions.	Oxidation, hydrolysis, polymerization; photolysis, other chemical reactions; degraded by microorganisms, metabolized by plants and animals.[1,2,3,40,41]	Oxidation, photolysis, weathering processes; degraded by microorganisms; petroleum components taken up by plants and animals, metabolized by macroinvertebrates and some other animals.[4,30,33]
Toxic Components, Degradation Products	Some oils contain toxic components or may be degraded to form toxic products.[1,2,43,44,45]	Many contain benzene, PAHs, and other toxic components; may be degraded to form toxic products.[46,47,48]
Physical Effects:		
Smothering	Yes; suffocation when oil blocks aeration at water surface or depletes oxygen through biodegradation.[20,22,49,50,51,52,53]	Yes; suffocation from oxygen depletion.[30,47]
Coating	Yes, can cause hypothermia, increased need for food, loss of buoyancy, decreased ability to escape predators.[22,29,36,37,54,55,56,57,58,59]	Yes, can cause hypothermia, increased need for food, loss of buoyancy, decreased ability to escape predators.[28,29,47,54,55,56,57,58]
Egg Contamination	Yes; can be transferred from coated parents and kill embryos by blocking air exchange at egg surface.[22,29,54,55,56,57,58]	Yes; can be transferred from coated parents and kill embryos by blocking air exchange at egg surface and by toxicitytion.[28,29,47,56,57,60,61,62,63]
Food and Habitat Destruction	Yes; can cause starvation or ingestion of oiled food, destruction of future food sources, destruction of habitat, community effects.[22,29,55,56,57]	Yes, can cause starvation or ingestion of oiled food that clogs organs, destruction of future food sources, destruction of habitat, community effects.[28,29,47,54,55,56,57,58,61,64,65]
Lethality (LD_{50}, LC_{50})	Results vary by test, organism, conditionsG546,47,66,67 Tests submitted by Petitioners Other tests: Corn oil and cottonseed more lethal than mineral oil in albino rats—55 g/kg was LD50 for 5 days for corn oil and for 4 days for cottonseed oil; no fatalities at 130 g/kg with mineral oil for 15 days.[69] Other tests: Several free fatty acids intermediate in lethality in series of chemicals in fathead minnows.[70] Other tests: Mussels died after two weeks or more of exposure to low levels of oils (0.3 ml/min flowrate for oils, 300 ml/min flowrate seawater).[19,21]	Results vary by test, organism, conditions.[46,47,66,67,68] Tests submitted by petitioner Other tests: 0.5–28 ppm 96-hour LC50 static tests for some aromatic hydrocarbons for selected marine macroinvertebrates and fish.[46,47,68]
Acute Toxicity	Laxative, diarrhea, lipid pneumonia, decreased ability to escape predators; some vegetable oils, such as safflower oil, are irritating to human skin and eyes.[55,56,57,71,72]	Laxative, decreased ability to escape predators, pneumonia; affects lung, liver, kidney, blood, gastrointestinal and nervous systems.[28,29,47,57]
Chronic Toxicity:		

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS—Continued

	Vegetable oil/animal fats	Petroleum oils
Cancer	High-fat diets and diets containing certain types of fats increase cancer incidence in studies of laboratory animals and epidemiological studies.[1,73,74,75,76,77,78]	Benzene and some PAHs are human carcinogens; certain crude oil fractions and petroleum products sufficient evidence of carcinogenicity in laboratory animals and associated with increased cancer in refinery workers.[47,48,79]
Effects on Growth	High levels of some types of fats increase growth and obesity but early death and decreased reproductive ability in several species of animals; elevated levels of some oils or components decrease growth in some fish; growth inhibition in mussels exposed to low levels of sunflower oil.[1,21,35,74,78,80,81,82,83,84,85,86]	Petroleum hydrocarbons affect nearly all aspects of physiology and metabolism; reduced feeding rates in most animal species studied at concentrations similar to those in spills; benthic organisms especially sensitive; varying responses in marine plants.[28,29,38,47]
Reproductive and Developmental Effects	Decreased reproduction or growth and survival of offspring in some animals ingesting high levels of oils; kills embryos in eggs by physical effects, unknown whether toxicity also occurs.[22,55,56,57,74]	Affect broad range of reproductive and developmental processes; sensitivities to hydrocarbons vary widely between species and life stages; significant reproductive impairment rarely seen in field although coral, mussels, fiddler crabs,fish, birds, crustaceans, teleosts can be affected, some for years; decreased reproductive capacity and malformations in fish, birds; reduced egg production and toxicity in several bird species.[28,29,30,38,47,59,60,61,62]
Other Toxic Effects	Effects on shells of mussels exposed to low levels of oils, decreased foot extension activity; human and some animal studies show correlation of high levels of dietary fats with coronary artery disease, some types of cancer, hypertension, diabetes, obesity, altered immunity, altered steroid excretion, effects on bone modeling; increased atherosclerosis in rats fed high cholesterol levels; decreased lifespan in some animals consuming high levels of certain types of oils that increased growth . and obesity.[1,21,35,73,74,78,86,87]	Affect broad range of organ systems and functions; increased vulnerability to disease and decreased growth and reproductive success; adverse skin effects in workers; components affect immune and hematopoeitic systems.[28,29,30,38,39,47,48]
Toxicity of Components or Degradation Products.	Most common chronic toxic effects of gossypol, a cottonseed oil component, in animals are cardiac irregularity, circulatory failure or rupture of red blood cells, and death; erucic acid in rapeseed oil and mustardseed oil causes cardiac effects, fat deposition in hearts of animals, growth suppression, anemia, and other effects, affects essential fatty acids; cyclopropene fatty acids in cottonseed and other oils suppress growth and impair female reproduction in laboratory animals, produce embryomortality in hens and rats, increase liver toxicity of other chemicals, and cause liver cancer in rainbow trout; oxidation products of animal fats and vegetable oils—cholesterol oxidation products can adversely affect the heart, immune system, and metabolism, and some lipid oxidation products may act in cancer development and affect atherosclerosis.[1,42,43,44,88,89,90,91,92,93]	Single exposures to benzene, a component of petroleum oils, at very high concentrations fatal in man; can cause central nervous system stimulation followed by depression and respiratory failure; can produce nausea, giddiness, headache, unconsciousness, convulsions, and paralysis; chronic exposure of humans to benzene can produce anemia and other blood effects and decrease immune defense mechanisms; some PAHs, components of petroleum oils, have reproductive effects and cause birth defects in animals and can affect skin, body fluids, and the immune system after short and long-term exposures in animals, and cause some respiratory effects in workers; some breakdown products are mutagenic or linked to carcinogenicity.[12,28,29,38,47,48,66,79,94]
Indirect Effects	High levels of oils upset fermentation and digestion in ruminants.[95]	Fuel oil no. 5 reduced herring population by decreasing amphipod grazers that control fungal damage to fish eggs.[47]
Aesthetics (Fouling, Rancidity)	Rancid odors of breakdown products; fouling of beaches, polymers formed in water and on sediments and concrete-like aggregates of oil and sand foul beaches.[1,2,3,5,19,21,22,34,35,96]	Fouling of beaches with tar balls and weathered oil.[31,32,33,47]
Fire/Explosion Hazard	Usually not a hazard, unless hexane or other chemicals present.[1,2,15,17]	Many petroleum products contain volatile chemicals that are flammable or explosive under certain conditions.[11,12,18,31,39]

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS—Continued

	Vegetable oil/animal fats	Petroleum oils
Interference With Water Treatment	Large amounts can overwhelm microorganisms used in water treatment plants; treatment plants must be shut down and alternative water supply provided to prevent disruption from spills.[96,97,98,99,100]	Spills can interfere with water treatment processes, requiring shutdown of plants and provision of alternate water supply; can contaminate groundwater.[30,52,97,98,99]

[1] Hui, 1996a
[2] Hoffmann, 1989
[3] Lawson, 1995a
[4] NAS, 1985a
[5] Hui, 1996b
[6] Hazardous Substances Data Base, National Library of Medicine, 1997
[7] CHRIS (Chemical Hazards Response Information System), DOT, 1991
[8] CHRIS (Chemical Hazards Response Information System), DOT, 1995
[9] Merck Index, 1989
[10] Whiticar et al., 1993
[11] Dubovkin et al., 1995
[12] USDHHS/ATSDR, 1995b
[13] Material Safety Data Sheet on Corn Oil, 1997
[14] Allen and Nelson, 1983
[15] Rescoria and Carnahan, 1936
[16] Weiss, 1983
[17] Murata et al., 1993
[18] USDHHS/ATSDR,1995a
[19] Salgado, 1992
[20] Mudge et al., 1993
[21] Mudge, 1995
[22] Crump-Wiesner and Jennings, 1975
[23] Russell and Carlson, 1978
[24] Sanders et al., 1980
[25] Shaw, 1977
[26] Lee, 1977
[27] Teal, 1977
[28] Alexander, 1983
[29] Hartung, 1995
[30] USDOC/NOAA, 1996
[31] USDOC/NOAA, 1992b
[32] Clark, 1993
[33] NAS, 1985d
[34] Mudge, 1997a
[35] Mudge, 1997b
[36] Minnesota, 1963
[37] USDHHS, 1963
[38] Entrix, 1992
[39] USDOC/NOAA, 1992a
[40] Hui, 1996d
[41] Ratledge, 1994
[42] Hayes, 1982
[43] Mattson, 1973
[44] Berardi and Goldblatt, 1980
[45] Rechcigl, 1983
[46] NAS, 1985c
[47] NAS, 1985e
[48] IARC, 1989
[49] Mudge et al., 1995
[50] Mudge et al., 1997b
[51] Straughan , 1977
[52] Groenewold et al., 1982
[53] Institute, 1985
[54] Michael, 1977
[55] USDOI/FWS, 1994
[56] Frink, 1994
[57] Frink and Miller, 1995
[58] Rozemeijer et al., 1992
[59] Smith and Herunter, 1989
[60] Albers, 1995
[61] Leighton, 1995
[62] Albers, 1977
[63] Szaro and Albers, 1977
[64] Croxall, 1975
[65] Lyall, 1996
[66] Klaassen et al., 1986
[67] Rand, 1985
[68] Mecklenburg et al., 1977
[69] Boyd, 1973
[70] USEPA, 1978
[71] Gilman et al., 1985
[72] Lewis, 1996
[73] USDHHS, 1990
[74] NAS/NRC, 1995

[75] Tannenbaum, 1942
[76] Carroll, 1990
[77] Freedman, 1990
[78] FAO/WHO, 1994
[79] IARC, 1984
[80] NAS/NRC, 1983
[81] NAS/NRC, 1981a
[82] Takeuchi and Watanabe, 1979
[83] Stickney and Andrews, 1971
[84] Stickney and Andrews, 1972
[85] Murray et al., 1977
[86] Salgado, 1995
[87] Sellers and Baker, 1960
[88] Frankel, 1984
[89] Hendricks et al., 1980a
[90] Phelps et al., 1965
[91] Miller et al., 1969
[92] Roine et al., 1960
[93] Yannai, 1980
[94] USDHHS/ATSDR, 1995d
[95] Van Soest, 1994
[96] Rigger, 1997
[97] USEPA, 1978; Identification of Conventional Pollutants, 43 FR 32857–32859, July 28, 1978
[98] USEPA, 1979; Final Rule, Identification of Conventional Pollutants, 44 FR 44501–44503, July 30, 1979
[99] Metcalf and Eddy, 1972
[100] Goodrich, 1980

TABLE 3. COMPARISON OF AQUA METHODS AND STANDARD ACUTE AQUATIC TESTING METHODS

Method	Number of species	Fish size	Acclimation
AQUA Report 1993	1—Fathead minnow	0.066±0.041 g, 20.4±3.7 mm, approximately 4 weeks old.	5 days.
USEPA/OPP 1982 (update 1985)[1].	2—1 warmwater, 1 coldwater (2—1 warmwater, 1 coldwater).	0.5-5 g, very young not used, longest no more than twice shortest (0.5-5g).	(At least 2 weeks).
ASTM 1986	List of recommended species.	0.5-5 usually, not very young, similar size and age, length of longest no more than twice shortest.	2 days or more with 100% dilution water and maximum temperature, change no more than 3 °C over 72 hours.
USEPA/OTS 1985 (update 1987).	Fathead minnow or other listed species.	2±1 cm recommended length	Held 12 to 15 days before testing; maintained in water of quality to be used in test at least 7 days.
USEPA/ORD 1985 (update 1991) {update 1993b}[2].	Species depends on regulatory requirements.	Age: 1–90 days {Age: 1–14 days}	At least 24 hours in 100% dilution water at temperature range of test.
APHA 1989	List; sensitive to effluent, material, envi. conditions.	Most sensitive life stage, depending on test purpose; longest no more than 1.5 times length of shortest.	Acclimaté fish to lab conditions at least 14 days; 100% dilution water for at least 2 days.
OECD 1984	1 or more	Recommended total length for several species; 2±1 cm for fathead minnow; rationale if others.	12 days or more; fish exposed to water of test quality and temperature at least 7 days.
EEC 1984	1 or more	Recommended length 5±2 cm for fathead minnow.	12 days or more; fish exposed to water of test quality and temperature at least 7 days.

Method	Static test duration	Aeration
AQUA Report 1993	48 hours	No—Set 1. Yes—Crude soybean oil and diesel fuel, set 2 aerated for 48 hours; others not aerated.
USEPA/OPP 1982 (update 1985)	96 hours (96 hours)	(No, except aerate reconstituted water prior to use).
ASTM 1986	96 hours, except 48 hours for daphnids and midge larvae; record mortality at 24, 48, 96 hours for LC_{50}.	May gently aerate all chambers and controls; use simultaneous test without aeration; toxicant concentration in aerated chamber not more than 20% lower than unaerated.
USEPA/OTS 1985 (update 1987)	96 hours preferred, mortality at 24, 48, 72, 96 hours, LC_{50}, 95% confidence limits (96 hours).	Dilution water aerated until oxygen saturation, stored 2 days without further aeration.
USEPA/ORD 1985 (update 1991) {update 1993b}.	24–48 hours; 96 hours, some states (24–96 hours, depends on requirements).	May alter results, only as last resort; none, unless dissolved oxygen <4mg/l, at which time gentle single-bubble aeration (Aeration rate not over 100 bubbles/min in all test solutions).
APHA 1989	96 hours for LC_{50}; 24 hours, range-finding	Avoid aerating, because aeration may alter results.
OECD 1984	96 hours preferred; mortality recorded at 24, 48, 72, and 96 hours and LC_{50}.	May be used if no significant loss of test substance; must show test substance concentration at least 80% nominal concentration over test period.

Method	Static test duration	Aeration
EEC 1984	96 hours preferred, 48 hours minimum; morality recorded each 24 hours and LC_{50}.	
Method	**Test Vessels**	**Dissolved oxygen**
AQUA Report 1993	Polyethylene buckets	Protocol says not below 4.5 mg/l (but was below 4.5 in 100% beef tallow and all concentrations of crude soybean oil, Set 1).
USEPA/OPP 1982 (update 1985)	(Glass or welded stainless steel; polyethylene absorbs test materials; for other materials, analyze toxicant concentration).	Measure concentration at start and every 48 hours to end; first 48 hrs., 60–100% saturation, then 40–100% (Measure in control, high, medium, low concentration).
ASTM 1986	Welded stainless steel or glass; size and shape of chamber may affect results if toxicant volatilizes or sorbs onto chamber.	60–100% saturation for first 48 hours, 40–100% saturation after 48 hours.
USEPA/OTS 1985 (update 1987)	Not contain substances that leached or dissolved into aqueous solutions or chemical sorption; glass, stainless steel, perfluorocarbon plastic.	Maintain above 4.5 mg/l or at least 60% air saturation value.
USEPA/ORD 1985 (update 1991) {update 1993b}.	Usually soft glass {Borosilicate glass or non-toxic disposable plastic, covered}.	4 mg/l minimum warmwater species, 6 mg/l minimum coldwater species.
APHA 1989	No material with leachable substances or adsorbs substances from water; stainless steel probably best, glass adsorbs organics; do not use rubber or plastics with fillers, additives, stabilizers..	At or near saturation, never below 4 mg/l or 60% saturation.
OECD 1984	Chemically inert materials, suitable capacity	At least 60% of air saturation value throughout.
EEC 1984		At least 60% of air saturation value at selected temperature throughout.
Method	**Dilution Water**	**Chemical Analysis of Concentration**
AQUA Report 1993	72 mg/l $CaCO_3$ (moderately hard, lab fresh water deionized).	None reported; nominal concentrations listed in report.
USEPA/OPP 1982 (update 1985)	Describe source, characteristics, pretreatment (Reconstituted water, soft, aged 1–2 weeks, aerated before use or natural water, hardness 40–48 mg/l as $CaCO_3$; animals not stressed).	Describe methods, concentration, validation and blanks if done (Chemical analysis of test solutions preferred, especially if aerated, material insoluble, containers not stainless steel or glass, or chemical adsorbs to container).
ASTM 1986	Test organisms survive without stress or grow and reproduce; reconstituted, surface, or natural water, requirements described.	Measure concentration at beginning and end in all chambers if possible; desirable to measure degradation products and report methods of analysis, standard deviation and validation studies.
USEPA/OTS 1985 (update 1987)	Drinking, natural, or reconstituted water, 50–250 mg/l as $CaCO_3$, pH6–8.5 preferred.	Measure concentration in each at beginning and end; validate analytical methods, degradation products not interfere; replicates within 20% (Concentration in each chamber not vary >30% from measured at start).
USEPA/ORD 1985 (update 1991) {update 1993b}.	Receiving water, other surface water, ground water, soft synthetic water {Same water, culturing and dilution}.	Use methods in CWA Sec 304(h) for analysis {Measure in each test concentration at start, daily, and end}.
APHA 1989	Reconstituted or natural water; standard water conditions for comparative toxicity, sensitivity tests.	Measure concentration in each container at start and once during test; measured concentration within 15% of calculated.
OECD 1984	Drinking, natural or reconstituted water; prefer hardness 50–250 mg $CaCO_3$ per liter, pH 6–8.5.	Must show concentration maintained and measured concentration at least 80% of nominal.
EEC 1984	Drinking water, natural water, reconstituted water; prefer 50–250 mg/l as $CaCO_3$, pH 6–8.5.	Evidence from analysis, chemical properties, or test system used that concentration maintained and within 80% of initial concentration.

Method	Results reported
AQUA Report 1993	48-hour LC_{50}; no confidence limits reported, but protocol says intervals computed.
USEPA/OPP 1982 (update 1985)	Effect criteria, percent with effects; 96-hour LC_{50}, 95% confidence limits, slope or show LC_{50}>100 mg/l (at least 30 organisms exposed) or >100,000 times maximum expected environmental concentration or estimated environmental concentration (Methods, materials, organisms, LC_{50}, 95% confidence limits, slope, calculations, chemical analysis).
ASTM 1986	24, 48, and 96-hour LC_{50}, 95% confidence limits, percentage died at each concentration and controls, calculation methods, and detailed information on test and organisms and findings, validation studies for analytical methods and accuracy.
USEPA/OTS 1985 (update 1987)	Test procedures and conditions, preparation of test solutions, maximum concentration with 0% mortality, minimum concentration with 100% mortality, cumulative mortality each concentration and time, LC_{50} based on nominal concentration at each time, 95% confidence limits, concentration-mortality curve at end, procedures for determining LC_{50}, mortality of controls, test according to guidelines.

Method	Results reported
USEPA/ORD 1985 (update 1991) {update 1993b}.	Chemical analysis, organisms died or effect in each chamber, observations, LC_{50}, 95% confidence intervals and methods to calculate, deviation from methods {Raw toxicity data, relationship between LC_{50} and NOAEL if NOAEL, pass/fail}.
APHA 1989	LC_{50}'s for exposure times, 95% confidence limits; mortality in controls, describe test conditions and methods, observations, test material, response criteria.
OECD 1984	Cumulative percent mortality vs. concentration; LC_{50}; confidence limits, p=0.95; where data inadequate, geometric mean of highest concentration with 0% mortality and lowest concentration with 100%.
EEC 1984	Methodology, highest concentration with 0% mortality, lowest concentration with 100% mortality, cumulative mortality, control, LC_{50}, 95% confidence limits, LC_{50} calculations, dose-response at end, slope, dissolved oxygen and pH and temperature every 24 hours.
Method	**Special considerations**
AQUA Report 1993	
USEPA/OPP 1982 (update 1985)	Required to register end-use pesticide product introduced directly into aquatic environment, LC_{50} below or equal to maximum expected environmental concentration, or ingredient enhances toxicity (Required if insoluble; flow-through if high BOD; 17–22 °C, at least 10 organisms/concentration, loading limits; reviews statistical analysis; invalid if aerated or not glass or solubility problems).
ASTM 1986	Use flow-through if chemical has high BOD; loading limits specified so dissolved oxygen acceptable, metabolic products not above acceptable level, and no crowding; temperature not vary > 1°C; 10 organisms per concentration group.
USEPA/OTS, 1985 (update, 1987)	Guidelines for development of test rules standards, test data under Toxic Substances Control Act; loading limits; 23° ± 2°C.
USEPA/ORD 1985 (update 1991)	For National Pollutant Discharge Elimination System effluents; definitive vs. screening tests; loading, limits; 20° C; 2 replicates, 10 organisms/concentration.
{update 1993b}	{If pH outside 6–9, two parallel tests, one adjusted; or static renewal or flow-through}.
APHA 1989	5 concentrations and control; 10 fish/tank, 20 fish/concentration; species in receiving water or similar, available for tests, healthy in lab, important trophic link or economic resource.
OECD 1984	21–25° C; carry out without pH adjustment, adjust pH of stock solution if necessary so concentration not changed and no reaction or precipitation.
EEC 1984	20–24 °C ± 1°C; carry out without pH adjustment, adjust if necessary; interpret results with care if stability or homogeneity of test substance not maintained.

[1] In some instances, other test conditions were allowed (USEPA, 1996). Draft Amendment to Standard Evaluation Procedures, 1996 states: Individual fish should weigh 0.1–5 g. Hardness of natural dilution water of less than 200 mg/l as CaCO3 can be used in lieu of reconstituted water for organic chemicals. Chemicals that are poorly soluble or with a water solubility less than 100 ppm (<100 mg/l) should be tested up to the maximum water solubility if certain conditions apply.
[2] Final Report of Fourth Edition, August, 1993.

TABLE 4.—EFFECTS OF REAL-WORLD OIL SPILLS

Name and location of spill	Oil spilled	Effects
Minnesota Soybean Oil and Petroleum Oil Spills (1962–1963).[1,2]	1 to 1.5 million gallons soybean oil from storage facilities, 1 million gallons low viscosity cutting oil.	Killed thousands of ducks and other waterfowl and wildlife or injured them through coating; 5,300 birds injured or died, 26 beavers, 177 muskrats. Formed stringy, rubbery masses with slicks; sank to bottom; milky material and hard crusts of soybean oil with sand on beaches. Soybean oil caused much of waterfowl loss, as shown by lab analysis of oil scraped from ducks.
Fanning Atoll Spill (1975).[3]	Cargo ship with coconut oil, palm oil, and edible materials; ran aground, dumped cargo onto coral reef.	Effects similar to petroleum oil spill. Killed fish, crustaceans, mollusks; shifts in algal community continued for 11 months.
Kimya Spill, North Wales (1991).[4,5,6,7,8]	Cargo of unrefined sunflower oil ...	Killed mussels, shifts in ecological communities around spill. Polymerized, covered bottom, killed benthic organisms; formed impermeable cap, shut out oxygen, bacteria cannot break down; polymers remain nearly 6 years later. Concrete-like aggregates of oil and sand on beach. Lab studies of mussels show small amounts of sunflower and other vegetable oils kill mussels after 2 weeks; affect mussel lining.
Rapeseed Oil Spills (1974–1978).[9]	3 small spills, total about 35 barrels rapeseed oil.	Greater losses of birds from 3 small spills of rapeseed oil than 176 spills of petroleum oils over 5 years in Vancouver Harbor. Killed 500 birds; petroleum spills killed less than 50 birds. Perhaps vegetable oils lack strong, irritating odor of petroleum oils, so birds do not avoid.
(1989).[10]	About 10 barrels (400 gallons) of rapeseed oil.	88 oiled birds of 14 species, half of them dead; half of rescued birds died; casualties probably higher. About 300 oiled Barrow's Goldeneyes spotted 2 days after spill crowded onto islands where they remained for 2 days—fate unknown, but weakened birds often die.

TABLE 4.—EFFECTS OF REAL-WORLD OIL SPILLS—Continued

Name and location of spill	Oil spilled	Effects
Fat and Oil Pollution in New York State Waters (1967).[11]	Wide variety of sources.	Killed waterfowl, coated boats and beaches, tainted fish, created taste and odor problems in water treatment plants. Grease like substances on shore or floating on Lake Ontario; shoreline grease balls smelled like lard, analyzed as mixtures of animal and vegetable fats.
Spills of Fish Oil Mixtures near Bird Island, Lamberts Bay, South Africa (1974).[12]	Fish factory effluent pipe near breeding ground for Cape Gannets.	Killed at least 709 Cape Gannets, 5,000 Cape Cormorants, and 108 Jackass Penguins. Penguins with sticky, white, foul-smelling coat of oil shivering; gannet chicks dead. Milky white sea and clots of oil on island smelling of fish.
Releases at two other fish factories at St. Helena Bay and Saldanha Bay, South Africa (1973).[13]	Two other fish factories; storage pits and processing effluents and off loading water from vessels.	Two other fish factories; at one, killed 10,000 rock lobsters and thousands of sea urchins probably from oxygen depletion; at second, killed 100,000 clams and black mussels, prawns, polychetes, and anemones, and smelled bad and adversely affected aesthetics of beaches and camping site.
Soybean Oil Spills in Georgia (1996).[14]	Soybean oil from tanker truck and soybean vegetable oil refinery with overfilled aboveground storage tank.	Aesthetic effects at Lake Lanier; rancid oil as weathered; adhered to boats and docks. At Macon, rapid response prevented significant damage from oil, which flowed through storm water system and entered stream; previous spills from facility had entered sanitary sewer system and damaged sewage treatment plant.
Spill of Nonylphenol and Vegetable Oils in Netherlands (December,1988 to March, 1989).[15]	Unknown source	Thousands of seabirds, mostly Guillemots and Razorbills, washed ashore. 1,500 sick birds died; covered with oil, emaciation, aggressive behavior, bloody stools, leaky plumage; liver damage, lung infections. High levels of nonylphenol and vegetable oils, such as palm oil.
Wisconsin Butter Fire and Spill (1991).[16,17,18,19,20,21,22,23]	Butter, lard, cheese as well as meat and other food products.	Released 15 million pounds of butter and 125,000 pounds of cheese into the environment and damaged at least 4.5 million pounds of meat; thousands of pounds of butter ran offsite; rapid response prevented flow of buttery material through storm sewers to nearby creek and lake, where fish and other aquatic organisms could have suffocated from oxygen depletion. Destroyed two large refrigerated warehouses with $10 million to $15 million in property damage. Cost tax payers $13 million for butter and cheese stored under USDA surplus program. Damage to fire equipment from grease, loss of business, overtime pay for 300 firefighters and responders, costs for cleaning equipment and drains, rodent control. Environmental cleanup costs; thousands of gallons of melted butter; butter and spoiled meat declared hazardous waste.

[1] Minnesota, 1963.
[2] USDHHS, 1963.
[3] Russell and Carlson, 1978.
[4] Salgado, 1992.
[5] Mudge et al., 1993.
[6] Mudge et al., 1995.
[7] Mudge, 1997a.
[8] Mudge, 1997b.
[9] McKelvey et al., 1980.
[10] Smith and Herunter, 1989.
[11] Crump-Wiesner and Jennings, 1975.
[12] Percy-Fitzpatrick Institute, 1974.
[13] Newman and Pollock, 1973.
[14] Rigger, 1997.
[15] Zoun et al., 1991.
[16] Wisconsin, 1991a.
[17] Wisconsin, 1991b.
[18] Wisconsin, 1991c.
[19] Wisconsin State Journal, 1991a.
[20] Wisconsin State Journal, 1991b.
[21] Wisconsin State Journal, 1991c.
[22] Wisconsin State Journal, 1991d.
[23] Wisconsin State Journal, 1991.

Appendix II—Edible Oil Regulatory Reform Act Differentiation

Edible Oil Regulatory Reform Act

Congress enacted the Edible Oil Regulatory Reform Act on November 20, 1995. The Act requires all Federal agencies (with the exception of the Food and Drug Administration) to (1) differentiate between and establish separate classes for animal fats and oils and greases, fish and marine mammal oils, oils of vegetable origin, including oils from certain seeds, nuts, and kernels, from other oils and greases, including petroleum; and (2) apply standards to different classes of fats and oils based on certain considerations. In differentiating between the classes of fats, oils, and greases, each Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. These requirements apply when Federal agencies are issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law.

EPA's Final Rule amending the Oil Pollution Prevention regulation (Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule, 59 FR 34070, July 1, 1994) was promulgated before the Edible Oil Regulatory Reform Act was enacted; Congress did not make the requirements of the Act retroactive. EPA is, therefore, not obligated to evaluate the statutory criteria to determine if a further differentiation between edible oils and other oils should be made in its Final Rule. EPA does, however, present the following information in support of its conclusion that spills of vegetable oils and animal fats can indeed pose a serious risk to fish, wildlife, and sensitive environments.

A summary of the properties and effects of vegetable oil and animal fats are presented in Appendix I, Tables 1 and 2. Additional detailed discussion and studies of these properties and effects are contained in the Technical Document in support of this document.

Physical Properties. Vegetable oils and animal fats are generally solids in water at ambient temperatures. They both have limited water solubility but high solubility in organic solvents. They generally are of low viscosity, have a low evaporation potential, and their specific gravity can range from 0.87 to 0.92. Petroleum oils also have limited water solubility and high solubility in organic solvents. They form an emulsion in turbulent water, and they evaporate faster than edible oils. Their specific gravity can range from 0.78 to 0.97. Data regarding petroleum oil's solidity and viscosity vary. (See Appendix I, Table 1. Comparison of Physical Properties of Vegetable Oils and Animal Fats with Petroleum Oils and Table 2. Comparison of Vegetable Oils and Animal Fats with Petroleum Oils.

Vegetable oils and animal fats and petroleum oils all have similar physical properties. One difference is the low volatility of most vegetable oils and animal fats, which results in less product removed from a spill by evaporation and reduces the combustion and explosive potential of these oils.

Chemical Properties. Animal fats and vegetable oils are water-insoluble substances that consist predominantly of glyceryl esters of fatty acids or triglycerides. Petroleum oils are extremely complex mixtures of chemical compounds. Many classes of compounds are present in petroleum, and each class is represented by many components. For example, hydrocarbons are a major class of constituents of petroleum. Similar behavior of fatty acids and petroleum oil in the aquatic environment is largely a result of their predominantly hydrocarbon character.

Biological Properties. Some vegetable oils and animal fats do biodegrade more readily than petroleum oils; however, because their evaporation potential is low, vegetable oils and animal fats may tend to stay in the water in larger quantities and for longer periods of time than petroleum oils. Under certain circumstances, vegetable oils and animal fats can remain in the environment for periods of time greatly exceeding their potential degradation time. Environmental circumstances play an important part with regard to the comparative degradation rates of petroleum and non-petroleum oils including vegetable oil and animal fats. Both kinds of oil degrade more slowly in low-energy and poorly oxygenated waters, and both tend to disappear quickly in high-energy, well oxygenated, open water areas. Both petroleum and non-petroleum oils can remain in the environment for extended periods of time if buried under sediment or spilled in large enough quantities to form thick layers. The high BOD of vegetable oils and animal fats increases the rate of biodegradation but also quickly depletes the available oxygen of the surrounding environment. This could result in significant harm to shallow near-shore areas or wetlands. Oxygen depletion could be as serious as toxicity with regard to its impact on aquatic wildlife.

Environmental Effects. Certain effects of non-petroleum oils are similar to the effects of petroleum oils because of the physical properties common to both. Significant environmental harm from petroleum oils, animal fats and vegetable oils, and other non-petroleum oils can occur as a result of the following: physical effects such as coating with oil, suffocation, contamination of eggs and destruction of food and habitat, short and long term toxic effects, pollution and shut down of drinking water supplies, rancid smells, fouling of beaches and recreational areas.

Summary of Analysis after Reviewing the Act's Criteria. Based on the significant degree of similarity between animal fats and vegetable oils and other petroleum and non-petroleum oils, especially with respect to negative environmental effects associated with the common physical properties of all oils, EPA stands by its decision not to make further changes to its July 1, 1994, Final Rule. The Final Rule already provides a greater degree of flexibility for owners or operators of facilities storing only non-petroleum oils, including vegetable oils and animal fats, to devise different and more appropriate response strategies than owners or operators of petroleum oil facilities.

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Part III

Department of Housing and Urban Development

24 CFR Part 3280
Snow Load Map for Manufactured Homes; Technical Correction; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR-4276-F-01]

Snow Load Map for Manufactured Homes; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule corrects the omission of a snow load map from the codified regulations establishing standards for the construction and safety of manufactured houses. The design requirements and designations applicable to the snow loads to which a manufactured home must be designed have not changed, even though other unrelated revisions have been made to the applicable section of the regulations. These other revisions have been included in the Code of Federal Regulations (CFR), however, a map that illustrated the designated snow load zones was inadvertently omitted from the CFR. This final rule corrects the omission by recodifying the snow load map.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9158, (202) 708–6401; or Marion Connell, Director, Manufactured Housing and Standards Division, Room 9152, (202) 708–6409 (these are not toll-free numbers). For hearing-and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000.

SUPPLEMENTARY INFORMATION: On January 14, 1994, at 59 FR 2456, HUD published a final rule that, in part, revised several provisions in 24 CFR 3280.305(c), to improve the resistance of manufactured homes in high wind zones to wind damage. Because of the scattered nature of the revisions made at that time and because the maps in the then-existing codification were full-page graphics that were referenced in the regulations only as being included in § 3280.305 and were not clearly referenced as being included in a particular paragraph of that section, there was confusion about the amendatory instructions which resulted in the omission of the graphic for the snow load requirements in subsequent editions of the CFR.

This final rule clarifies that the snow load map that had been included as a graphic in earlier editions of the CFR has not been changed as a result of the January 1994 or any subsequent rulemaking. In addition to this explanation in the preamble of this rule, this rule amends the regulations at § 3280.305(c) to reinsert the omitted snow load map and to reference clearly that the snow and wind load maps are codified as part of paragraph (c)(4) of § 3280.305. Appropriate references have, therefore, been added to the heading of the table in paragraph (c)(3)(i) and to paragraph (c)(4) of § 3280.305.

The Roof Snow Load Zone Map that is recodified by this rule is the same map that manufacturers have been continuing to include on the Data Plate, as required by § 3280.305(c)(4), since the requirement for the map was first made effective by a final rule published on December 15, 1975 (40 FR 58752, 58762).

Over the years, the Department has received inquiries from communities subject to large snow accumulations that express concern that HUD's snow load standards do not adequately protect the public in these areas. As indicated in § 3280.305(c)(3)(ii), HUD has authority to establish more stringent requirements for manufactured homes in areas where records or experience indicate significant differences from the snow load requirements established by the chart and map in § 3280.305(c). Any person or community interested in strengthening the snow load requirement for manufactured homes in a specific area or jurisdiction may contact HUD, at the address stated above, to request reconsideration of the applicable requirement.

In addition, the Department invites observations from interested parties, which might include suggestions for updating the snow load map and standards. The existing boundaries are often unclear, and there may be significant variations of snow fall within a particular snow load area. HUD is particularly interested in suggestions on how to protect persons living in manufactured homes in areas subject to high snow loads, without unduly increasing consumer costs or burdening retailers and manufacturers. These suggestions may include specific alternate protections for consumers in high snow load areas. HUD also invites suggestions on methods that could be used in the future to determine snow load requirements in areas where standard methods of data collection or periods of evaluation are not adequate, for example where substantial local variations result from differences in elevation.

Justification for Final Rulemaking

In general, in accordance with the Department's regulations on rulemaking (24 CFR part 10), the Department publishes a rule for public comment before issuing a rule for effect. Part 10 does provide, however, for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. Public procedure is unnecessary because this action does not affect any of the requirements that have been, or currently are, in effect with respect to the required design loads for roofs in the designated snow load areas. The recodification of the snow load map should merely make it easier to identify and understand the application of the current requirements regarding the design requirements for manufactured homes in the various snow load areas.

Findings and Certifications

Environmental Impact

This amendment is excluded from the environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321–4347) and the other related Federal environmental laws and authorities, as set forth in 24 CFR part 50. In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not "direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy." Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends a previous document where the underlying document as a whole would not fall within the exclusion set forth in 24 CFR 50.19(c)(1), but the amendment by itself does.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely makes a technical correction and does not change any of the requirements of the program.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.171.

List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 3280 of title 24 of the Code of Federal Regulations is amended as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. Section 3280.305 is amended as follows:

a. Paragraph (c)(3)(i) is amended by adding the following heading in the first column of the first row of the table:

"Zone (see Map in § 3280.305(c)(4))"; and

b. Paragraph (c)(4) is amended by revising the second sentence and by adding after the graphic "Basic Wind Zone Map for Manufactured Housing" a graphic entitled "Roof Snow Load Zone Map", as follows:

§ 3280.305 Structural design requirements.

* * * * * *

(c) * * *

(3) * * *

(i) * * *

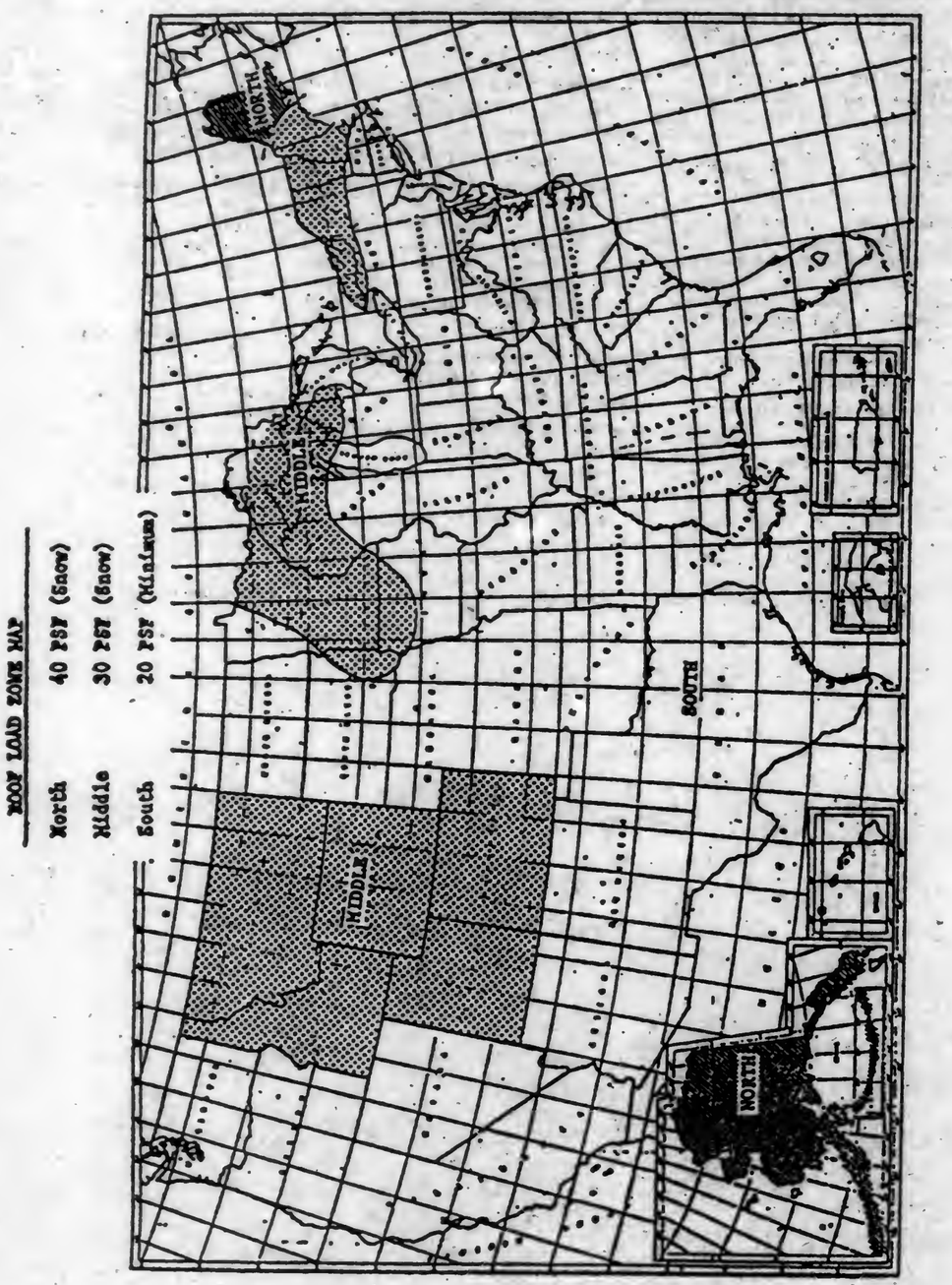
Zone (see Map in § 3280.305(c)(4))	Pounds per square foot
North Zone	40
Middle Zone	30
South Zone	20

* * * * * *

(4) * * * The Data Plate shall include reproductions of the Load Zone Maps shown in this paragraph (c)(4), with any related information. * * *

* * * * * *

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Dated: October 4, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97-27675 Filed 10-17-97; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 80
Transitional and General Opt Out Prodecures for Phase II Reformulated Gasoline Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5903–3]

Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the regulations for states to opt-out of the federal reformulated gasoline (RFG) program for areas where a state had previously voluntarily opted into the program. The previously published opt-out provisions provide that EPA-approved opt-out petitions become effective 90 days from approval. Under today's action, if a state has not submitted an opt-out petition to EPA by December 31, 1997, it must participate in the federal RFG program until December 31, 2003. The Agency believes this rule is necessary to ensure a smooth transition between the two phases of the reformulated gasoline program. The use of Phase II RFG will provide greater health benefits than Phase I by requiring further reductions from the refiners' 1990 gasoline baseline for volatile organic compounds (VOCs) and toxics by about 25% and 20% respectively. The requirements also include a nitrogen oxides (NO_X) reduction of about 6%.

Effective January 1, 2004, the current opt-out procedures become effective again. States that want to end their involvement in the federal RFG program prior to December 31, 1999, and not participate in Phase II of the program, must submit a complete opt-out petition to EPA by December 31, 1997.

Today's action does not affect the regulations for opting in to the RFG program. In a separate action EPA will publish a final rule which would permit former ozone nonattainment areas to opt into the federal reformulated gasoline program.

EFFECTIVE DATE: This final rule is effective November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Christine Hawk or Diane Turchetta at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.
State governments	State departments of environmental protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Extended Summary

EPA published a Notice of Proposed Rulemaking on March 28, 1997, (62 FR 15077) proposing changes to the existing opt-out rule which provides criteria and general procedures for states to opt-out of the RFG program through December 31, 1997. This final rule promulgates the revisions as proposed by EPA with minor changes. 61 FR 35673 (July 8, 1996).

This final rule applies to areas where the state voluntarily opted into the federal RFG program and subsequently decides to withdraw from it referred to as "opt-out." This final rule establishes the criteria and procedures for states to opt-out from the RFG program after December 31, 1997. Today's rule does not change the process a state must follow to petition for removal from the program or the criteria used by EPA to evaluate a request. For example, the rule maintains the requirements that the governor, or the governor's authorized representative, submit an opt-out petition. This rule changes the time period before the opt-out becomes effective for opt-out petitions received from January 1, 1998, through December 31, 2003. This period includes the remaining two years of Phase I (January 1, 1998 to December 31, 1999) and the first four years of Phase II (January 1, 2000, to December 31, 2003).

This final rule specifies that for all opt-out petitions received on or before December 31, 1997, the previously published procedures (61 FR 35673) will apply and that the effective date that an area will no longer be a covered area as defined in 40 CFR section 80.70 will be 90 days (or more at a state's request) from the date of EPA's letter of notification to the Governor of the requesting state or from the effective date of an agency approval of a revision to the State Implementation Plan (SIP) where applicable. States which have opted in to the RFG program that do not submit a completed opt-out request by December 31, 1997 and subsequently submit an opt-out request before January 1, 2004, will be required to participate in the federal RFG program, including Phase II of the program, until at least December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever date is later, unless the Governor requests a later date.

The Agency may grant up to a five month extension to the December 31, 1997 deadline in limited circumstances. An extension can be granted where the State's Legislature has pending legislation on the use of federal RFG that was active prior to March 28, 1997, when this opt-out rule was proposed. The request for an extension must demonstrate that the legislation cannot reasonably be acted upon until after the December deadline. Such legislation must be related to either opting out of or remaining in the RFG program. The Governor must submit a request for an extension to EPA containing such information before December 31, 1997. The Agency can then grant an extension up to May 31, 1998.

Today's requirements will also cover those areas opting into the RFG program subsequent to December 31, 1997; areas opting-in during that time period must remain in the program at least until December 31, 2003. The opt-out procedures would revert back to the previously published rule (90 day requirements) as of January 1, 2004.

Today's action will help provide certainty to the industry as it makes decisions that are likely to affect the supply and cost of RFG, which in turn could affect the cost-effectiveness of Phase II RFG. Additionally, the action maintains the flexibility that states have in air quality planning to the degree possible and practicable.

I. Opt-out Petitions Received January 1, 1998 Through December 31, 2003; and After December 31, 2003

A. Background

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels and air toxics in areas of the country that are required to or volunteer to adopt the program. Reformulated gasoline reduces motor vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. RFG also achieves a significant reduction in air toxics. In Phase II of the program emissions of nitrogen oxides (NO_X), another precursor of ozone, are also reduced. The Clean Air Act requires RFG in ten metropolitan areas with the highest levels of ozone.[1] In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for other areas classified under Subpart 2 of Part D of Title I as ozone nonattainment areas.

EPA issued final rules establishing requirements for RFG on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule, a number of states inquired as to whether they would be permitted to opt-out of the RFG program at a future date, or opt-out of certain requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). States with that concern wished to retain the flexibility to opt-out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993, did not include procedures for opting-out of the RFG program because EPA had not proposed and was not ready to adopt such procedures at that time. Since then, the Agency has adopted general procedures for future opt-outs. 61 FR 35673 (July 8, 1996). These procedures apply to opt-out petitions received through December 31, 1997.

Based upon EPA concerns regarding smooth implementation of Phase II of the RFG program and public comments that were received in response to the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995, EPA is changing the regulations in this final rule for opt-out petitions received between January 1, 1998, through December 31, 2003. The previously published procedures in place today (61 FR 35673) will take effect again beginning January 1, 2004.

In the proposal to the previous opt-out rulemaking, EPA outlined its rationale for determining that it is appropriate to interpret section 211(k) as authorizing states to opt-out of the program. 60 FR 31269 (June 14, 1995). EPA concluded that any conditions on opting out should be focused on achieving a reasonable transition out of the program. There were two primary areas of concern to the Agency. The first was coordination of air quality planning. The second involved appropriate lead time for industry to transition out of the program.

Today's final rule addresses this lead time concern by changing the conditions for opting out during the period from January 1, 1998, to December 31, 2003. As the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investment decisions based in part on anticipated demand for RFG. Unanticipated changes in demand, due to opt-outs, could make cost recovery of investment difficult. To avoid this, refiners would tend to minimize capital investments and rely on costly operational changes which may be more to meet the Phase II requirements. This approach to compliance requirements could lead to higher gasoline prices which would diminish the cost-effectiveness of EPA's RFG program. Thus, EPA believes it must consider these special circumstances which affect industry directly and consumers indirectly and make appropriate changes to the opt-out procedures. Therefore, EPA is requiring states to decide by December 31, 1997 if they intend for opt-in areas to participate in Phase I RFG up to December 31, 1999, and/or to participate in Phase II RFG, which begins on January 1, 2000. If a state has not submitted an opt-out petition by December 31, 1997, it must continue to participate in Phase I RFG through December 31, 1999, and participate in Phase II RFG until December 31, 2003. The Agency however may grant up to a five month extension to the December 31, 1997 deadline if the state meets specific criteria.

B. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by section 211(c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a). For a more complete discussion of statutory authority, see the proposal for general rules establishing criteria and procedures for states to opt-out of the RFG program. 60 FR 31271 (June 14, 1995).

As discussed there, EPA believes it is appropriate to interpret section 211(k) as authorizing states to opt-out of the RFG program, provided that a process is established for a reasonable transition out of the program. EPA believes allowing states to opt out is consistent

[1] EPA recognizes that there are currently ten areas required to use Federal RFG and that these areas currently do not have an opt-out option. Those areas are: Los Angeles–Anaheim–Riverside, CA; San Diego County, CA; Hartford–New Haven–Meriden–Waterbury, CT; New York–Northern New Jersey–Long Island–Connecticut area; Philadelphia–Wilmington–Trenton–Cecil County, MD; Chicago–Gary–Lake County, IL–Indiana–Wisconsin area; Baltimore, MD; Houston–Galveston–Brazoria, TX; Milwaukee–Racine, WI; Sacramento, CA.

with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. Given this deference to state decision making, it follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the RFG program, as compared to requiring a state to justify its decision.

EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. The second involves appropriate lead time for industry to transition out of the program. Today's rule addresses the latter concern. EPA's authority allows it the discretion to authorize opt-outs in a way that appropriately balances the interests of the parties affected by the regulations. The previous rule establishing opt-out criteria and procedures placed only limited conditions on the states, focusing on the information that must be submitted before EPA may approve an opt-out request. The previous rule also generally required a 90-day time period to pass before an EPA-approved opt-out became effective. Today, EPA is proposing to lengthen this time period for certain future opt-outs because it believes the circumstances affecting industry have changed enough to warrant an appropriate change.

C. Need for a Required Participation Period

In the NPRM, EPA proposed a four year required participation period in Phase II for RFG opt-in areas. EPA solicited comments on the impact of future opt-outs during this time period, and the expected impacts on supply and cost from such opt-outs if they were allowed to occur. Two petroleum associations commented that they support the establishment of a minimum participation period for the Phase II RFG program which would provide market certainty and stabilization. One association specifically remarked that industry needs market certainty to not only ensure adequate planning and investments to satisfy RFG demand at the lowest cost, but to continue investments in RFG facilities by providing assurance that the program would be in effect for a reasonable time to allow a return on investment. It further commented that EPA must make every effort to guarantee a stable regulatory climate for the highly capital intensive RFG program. The other association remarked that it agreed with the U.S. Department of Energy's (DOE's) comments to the Agency's June 1995 NPRM, specifically the cost recovery issue. Several refiners/suppliers commented that they agree with the associations' comments. One company added that the Agency must take into account the long term impact on all parties, including small refiners and marketers when deciding RFG opt-ins or opt-outs. A state commented that consumers would benefit from a stable price market which would be encouraged by a long-term commitment to the program. The Agency did not receive any comments arguing against the need for a required participation period.

Based on these comments, EPA maintains its belief in the need for a required Phase II participation period as proposed. The proposed requirement was prompted by the concerns expressed by DOE in its comments during the previous opt-out rulemaking. Specifically, DOE commented that a short time frame to opt-out by states who originally intended to participate in Phase II of the RFG program makes it difficult for refiners to recover their investments in refinery facilities needed to comply with the requirements of Phase II RFG. (Air Docket A–94–68) The Department further explained in its comments that the ability to price gasoline at a level that recovers investments depends very heavily on marginal supply and demand. Small unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall.

Refinery investments for Phase II RFG were originally estimated by the U.S. Department of Energy (DOE) to be about $1 billion for East Coast refiners and about $2 billion for Gulf Coast PADD III refiners. These estimates were included in DOE's December 1994 report, *Estimating the Costs and Effects of RFG. Using improved modeling and real-world RFG* production volume data, EPA worked closely with API and DOE to improve the DOE refinery model. This work was conducted in concert with EPA's review of the NO_x waiver petition submitted by the American Petroleum Institute (API). Based on the over 200 improvements and changes to the refinery model, DOE released an updated report in 1997 entitled *Re-Estimation of the Refining Cost of RFG NO_x* Control. The updated investment estimates in this report for 6.8% NO_x reduction range from about $0.2 to $0.8 billion for PADD I and about $0.0 to $0.6 billion for PADD III.

The investment estimates decreased for several reasons but predominantly because refiners are producing a lower volume of RFG than was originally anticipated in 1994 due to subsequent opt-outs, due to a smaller quantity of spillover than anticipated, and because the refinery models used have been revised to more accurately project capital investments by the refining industry. Although the investment estimates are lower, EPA agrees with DOE's assessment that the estimated investments remain significant and that a required participation period is still appropriate. Such a requirement will encourage refiners to make the appropriate investments which in turn will help keep RFG prices low.

Refiners who expect to be producing Phase II RFG starting January 1, 2000, and who need additional facilities to meet the requirements of that gasoline, are likely to begin making commitments to refinery investments in 1997, two years in advance of the Phase II start date. The decision to invest in the capital needed to comply with Phase II RFG is based on each refiner's product capabilities, desire to participate in the program, and likely anticipated demand.

Those refiners who chose to supply Phase II RFG are each uniquely situated to comply with the year 2000 Phase II requirements. Different levels of investment will be pursued by each refiner when investment is chosen or is necessary. The largest investments are expected to be made in the areas of desulfurization and alkylation to control sulfur and olefins. Some are expected to make early refinery changes to come into compliance with the complex model requirements in 1998. While the economic burden of Phase II compliance will fall disproportionately on some refiners, the Agency's main concern in this final rule is to provide a stable regulatory environment which will not unreasonably inhibit cost recovery, given that this could lead to supply problems and cost fluctuations that could diminish the appeal and cost-effectiveness of the RFG program.

D. Four Year Required Participation Period From January 1, 2000 to December 31, 2003

In the NPRM, EPA proposed a four year required participation period to attempt to strike a balance between the potential adverse impacts if refiners have too little time to recoup their Phase II investments and the need of states for some flexibility in using RFG. The Agency solicited comments on the range of investment recovery periods needed by the refineries who plan to invest capital in refining equipment for Phase II RFG.

Several refiners and petroleum associations commented that a four year commitment period is not necessarily sufficient or is the minimum amount of time refiners would need to recover investments made to produce Phase II RFG. These commenters referenced DOE's comments that an eight year period is more adequate given the current competitive gasoline market, as well as EPA's statement that refiners would need a six year investment recovery period assuming a 10% real rate of return (62 FR 15077). Two refiners encouraged EPA to adopt a six year participation period while one suggested at least ten years based on the argument that manufacturing Phase II RFG is a long range project with expected pay outs of 10–20 years. Conversely, two states and two refiners/suppliers of RFG commented that a four-year period is adequate for several reasons including that it strikes a balance between sufficient certainty for RFG producers and flexibility for states to chose air quality control measures, markets tend to become more efficient over time, and that an extended required period may not provide additional cost recovery but instead create a disincentive to continue participation in the program.

The above comments do not represent any new information or compelling arguments to change the proposed four-year participation period beyond four years. Thus the EPA continues to believe that a four year period is the most appropriate. The Agency is not trying to assure that all refiners will recover investments made in Phase II RFG production in a given time period. EPA is instead seeking to structure the federal RFG program in a way that minimizes the potential abrupt decrease in demand that could occur to refiners, thereby making it difficult to recover investments associated with producing this product. The potential for such decreases in demand soon after the implementation of Phase II RFG could be a disincentive to refiners to invest in the kind of capital that would tend to reduce future supply problems and to sustain the cost-effectiveness of the program. This is because a refiner's decision to invest in Phase II RFG is based, in part, upon an opt-in state's decision to have EPA require the sale of Phase II RFG in a particular area. RFG market uncertainty is increased when opt-in states are not bound to remain in the RFG program and by the relatively simple process for states to opt out of the RFG program provided for in the previously published rule. Without greater assurance of the markets for Phase II reformulated gasoline over a sufficient period of time, refiners may limit or delay investments and prepare for a smaller than currently-predicted RFG demand.

EPA is committed to ensuring that non-attainment areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in their plans to attain and maintain the NAAQS. EPA is committed to maintaining, if possible and practical, the flexibility that states have in air quality planning by establishing procedures to opt out and substitute alternative control measures where the state considers appropriate. The Agency believes that requiring RFG in opt-in states for a period greater than four years may create a disincentive for continued participation in those areas where this program is currently considered a cost-effective control measure for the control of ground-level ozone and toxics.

EPA believes that today's action achieves a balance between allowing states with voluntary RFG areas the flexibility to opt-out of the program and giving industry a certain level of assurance as to a predictable demand for Phase II RFG during the important investment recovery period of the program's early years. Today's action helps maintain a consistent market, adequate supplies and reasonable prices, thus maintaining the RFG program's cost-effectiveness.

E. Effective Date for Approved Opt-Out Petitions

In the NPRM, EPA proposed to change the date on which EPA-approved opt-out petitions become effective for opt-out petitions received January 1, 1998, through December 31, 2003. The EPA proposed that States which previously opted in to the RFG program that do not submit an opt-out request by December 31, 1997, and subsequently submit a completed opt-out request before January 1, 2004, will be required to participate in Phase II of the program until December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever is later.

The Agency also proposed that if a state submits an opt-out request prior to December 31, 1997, the state can designate the opt-out to occur at any future date beyond the minimum 90-day period required under current opt-out procedures as long as it is not a date beyond December 31, 1999. Areas opting into the RFG program subsequent to December 31, 1997, will be treated the same as areas opting in prior to that date and will also be included in Phase II of the program until December 31, 2003.

A state commented that the December 31, 1997 deadline should be extended if the Agency revises the National Ambient Air Quality Standards (NAAQS) in the summer of 1997. It stated that a change in the NAAQS would require analysis to verify the appropriateness of RFG as a control strategy and that the proposed opt-out deadline would not be sufficient for the state to make such a decision. The Agency understands this air quality planning concern for a revision to the NAAQS, but extending the opt-out deadline a few months would not be of any significant value to the states for purposes of making decisions on control strategies to meet the new ozone standard. Extending the deadline much beyond December 31, 1997 could jeopardize the intent of the rulemaking by not providing industry with sufficient lead time to make necessary investment decisions.

A representative of the state of Maine commented that the opt-out deadline should be extended at least until end of May 1998. The state discussed the controversy within that state surrounding the decision of whether or not to stay in the RFG program and expressed the importance of providing its legislature the opportunity to approve such decisions. The state's legislative session ended June 1997 and is not scheduled to reconvene until January 1998. In January 1997, a bill was introduced in Maine's Legislature to opt the state out of the RFG program. The Legislature did not act on this legislation and carried it over to the next legislative session beginning January 1998 for consideration. The EPA believes that a limited extension is justified under these circumstances and that a limited extension would not negate the intent of the rulemaking since only a small refining market would be affected. Thus in this final rule EPA is allowing a Governor, that requests an extension so the legislature can consider a decision, to submit a letter to EPA before December 31, 1997 to request an extension up to May 31, 1998. To be eligible for an extension, the State's Legislature must have pending RFG legislation that cannot reasonably be acted upon until after the December deadline. Such legislation must be related to either opting out of or

remaining in the RFG program and it must have been introduced prior to March 28, 1997, the date of the opt-out proposal. The Governor must submit a request for an extension to EPA containing such information before December 31, 1997. The Agency then may grant an extension up to May 31, 1998.

F. Return to Existing Procedures

EPA further proposed that, beginning on January 1, 2004, opt-out requests from states again be approved based on the opt-out provisions in effect before January 1, 1998. A petroleum association commented that opt-outs must follow formal rulemaking process as provided for under the CAA, and that approved opt-outs published by July 1 in a given year should be effective January 1 of the following year to provide adequate time for refiners to meet averaging requirement planning and survey programs.

EPA does not agree that a separate rulemaking must be conducted for each future opt-out request. The petition based process established in the previous opt-out rulemaking (61 FR 35673) addresses, on a case by case basis, future individual state requests to opt out of the federal RFG program. The regulations establish clear and objective criteria for EPA to apply in these future non-rulemaking actions. These criteria address when a state's petition is complete and the appropriate transition time under the regulations. This application of regulatory criteria on a case by case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

The EPA believes the petition approach is the most appropriate as it will allow for expeditious and consistent Agency action on the individual opt-out requests presented by states. It also provides greater certainty in the market than individual rulemakings could provide. Lastly, it provides quick approval for opt-out requests while maintaining a sufficient transition period to minimize costly market disruptions. In certain cases, the affected parties will be able to comment on the state action. In those states where the RFG program is included as a part of an approved state implementation plan (SIP), affected parties that are concerned with the impacts of an opt-out would have the opportunity to comment on a state's revised plan that removes RFG as an air control measure.

At a state's request, the opt-out could be effective later than 90 days after approval of the petition or revised SIP. In such a case, a state must indicate in its petition to the Agency the desired effective date for the opt-out. EPA recommends that a state consider an opt-out date which becomes effective on one of the RFG program's natural transition points. These natural transition points are identified as January 1, the start of the averaging season, and May 1 and September 15, the beginning and end, respectively, of the VOC control season. The Agency supports state efforts to accommodate these natural transition points.

G. Variations to Proposal

In the NPRM, EPA requested comments on two specific possible variations to the proposal in anticipation of interest in these options by outside parties:

(1) An area that reaches attainment of the ozone standard and is redesignated during the period of January 1, 1998, through December 31, 2003, would be allowed to submit an opt-out request to be approved by EPA using the same 90 day opt-out effective date applicable before December 31, 1997 (See 61 FR 35673, July 8, 1996). A petroleum association commented that it opposed this variation of allowing areas to opt out of the program if they redesignate to attainment. It specified that this variation would undercut, possibly negate, the opportunity for cost recovery, create investment uncertainties and instability that EPA is trying to avoid through this rulemaking, and is inconsistent with the rationale underlying the rest of the proposal. Most comments from industry agreed with the association's argument against the variation. One RFG supplier, however, commented that such a variation is important to state, local, and consumer involvement to have every incentive to reach attainment classification as soon as possible.

The EPA believes that this variation could jeopardize the intent of the rule and thus is not including it in the final rule. While the Agency agrees that states should have every incentive to reach attainment, EPA does not believe this variation provides an incentive great enough to outweigh the risk of undercutting the purpose of the rule. If some states have areas that are redesignated to attainment during the required participation period, their state implementation plans (SIP), if applicable, would need to be revised. Even if these processes were completed within the required period, it is likely that the state would need to retain RFG in its maintenance plan to remain in attainment. Thus this variation would not necessarily provide an additional incentive to reach attainment of the ozone standard but instead would retain an element of market uncertainty which contradicts the purpose of the requirement.

(2) A similar participation period for areas first opting into the RFG program subsequent to December 31, 1999, requiring these areas to participate in Phase II of the program for at least four years from the date of their opt-in. This variation, referred to as a "rolling required period", would establish the effective date for the removal of an area from the program as January 1, 2004, or 90 days from the Agency's written notification approving the opt-out, or four years from the effective date of their opt-in, whichever date is later, for all opt-out requests received after January 1, 2000.

Several commenters supported a rolling period to avoid stranded investments. However, one supplier remarked that it may not be necessary to continue with a four year period beyond 2003. The EPA believes that with the information available today and with the uncertainty of the future, the Agency cannot conclude that there is a need for a rolling period to assure a continued cost-effective RFG program. The Agency did not receive a compelling argument or information to continue with a required period for new opt-in areas. The program which began in 1995 has remained very stable with only one new opt-in. If a few areas were to opt-in the future, they may well be located near a pipeline or appropriate infrastructure to meet the new demand without additional refinery investments. However, if new areas opt in remote locations or if there are numerous new areas, industry may need to make unanticipated investments which could impact the price of RFG. In this latter instance a rolling period may be necessary.

EPA believes that based on information available today there is not sufficient justification to include a rolling period in this final rule. However, since the Agency is committed to ensuring a cost-effective RFG program to achieve air quality goals, EPA will take any necessary action in the future if new information indicates a rolling period is warranted.

II. Environmental Impact

If an area opts out of the RFG program, it will not receive the reductions in VOCs, oxides of nitrogen (NO_X), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would only receive control of NOx and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. These areas would be foregoing the air quality benefits obtained from the use of RFG.

In this final rule, EPA continues to recognize that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. However, the final rule also seeks to ensure through the required participation period that the potential for a state to decide to opt-out of Phase II of the RFG program does not cause adverse impacts on the market demand for Phase II RFG during the initial years of the program and thus maintains the cost-effectiveness of the RFG program. EPA expects that states will in fact act prudently in exercising their ability to opt-out under these rules. Any environmental impacts of opting out are, therefore, not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

III. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

IV. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of final rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's final rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

V. Economic Impact and Impact on Small Entities

The Administrator has determined that this rule will not have a significant impact on a substantial number of small entities. A regulatory flexibility analysis has therefore not been prepared. This final rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas by providing more certainty for regulated parties. This final rule imposes no new requirements on states.

With respect to the portion of today's action which requires participation until January 1, 2004, of opt-in areas unless they request to opt-out prior to January 1, 1998, today's final rule is not expected to result in any additional compliance cost to regulated parties. It does no more than maintain the status quo for those entities who have been supplying RFG to the RFG opt-in areas and imposes no additional requirements on parties that must comply with the RFG regulations.

With respect to the portion of today's final rule which would apply to opt-out requests applied for on or after January 1, 2004, the final rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied RFG to the area opting out. This rule also establishes a transition period which maximizes affected parties' ability to plan for smooth transition from the RFG program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of RFG to conventional gasoline.

VI. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final FRG/anti-dumping rule and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting

Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 9, 1997.

Carol M. Browner,

Administrator.

Final Rulemaking

Accordingly, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.72 is amended by revising paragraphs (a) and (c) to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) In accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

* * * * *

(c)(1) For opt-out petitions received on or before December 31, 1997, except as provided in paragraphs (c)(2) and (c)(3) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition, and no later than December 31, 1999.

(2) For opt-out petitions received on or before December 31, 1997, except as provided in paragraph (c)(3) of this section, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be the date requested by the Governor, but no less than 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure.

(3)(i) The Administrator may extend the deadline for submitting opt-out petitions in paragraphs (c)(1) and (2) of this section for a state if:

(A) The Governor or his authorized representative requests an extension prior to December 31, 1997;

(B) The request indicates that there is active or pending legislation before the state legislature that was introduced prior to March 28, 1997;

(C) The legislation is concerning opting out of or remaining in the reformulated gasoline program; and

(D) The request demonstrates that the legislation cannot reasonably be acted upon prior to December 31, 1997.

(ii) The Administrator may extend the deadline until no later than May 31, 1998. If the deadline is extended, then opt-out requests from that state received during the extension shall be considered under the provisions of paragraphs (c)(1) and (2) of this section.

(4) For opt-out petitions received January 1, 1998 through December 31, 2003, except as provided in paragraph (c)(5) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section as requested by the Governor but no earlier than January 1, 2004 or 90 days from the Agency's written notification to the state approving the opt-out petition, whichever date is later.

(5) For opt-out petitions received January 1, 1998 through December 31, 2003, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) of this section shall be the date requested by the Governor, but no earlier than January 1, 2004, or 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure, whichever date is later.

(6) For opt-out petitions received on or after January 1, 2004, except as provided in paragraph (c)(7) of this section, the Administrator shall set an effective date for removal of an area as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition.

(7) For opt-out petitions received on or after January 1, 2004, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) of this section shall be the date requested by the Governor, but no less than 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure.

* * * * *

[FR Doc. 97–27725 Filed 10–17–97; 8:45 am]
BILLING CODE 6560–50–P

federal register

Monday
October 20, 1997

Part V

The President

Notice of October 17, 1997—Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

Presidential Documents

Title 3—

The President

Notice of October 17, 1997

Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad. The order blocks all property and interests in property of foreign persons listed in an Annex to the order, as well as foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property. Because the activities of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause unparalleled violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to significant narcotics traffickers centered in Colombia.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
October 17, 1997.

[FR Doc. 97–27936
Filed 10–17–97; 10:37 am]
Billing code 3195–01–P

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federal register

Monday
October 20, 1997

Part VI

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Energy and Water Development Appropriations Act, 1998; Notices

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Energy and Water Development Appropriations Act, 1998

October 17, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 17, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,
Associate Director for Administration.

THE WHITE HOUSE,
Washington,
October 17, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Energy and Water Development Appropriations Act, 1998" (H.R. 2203, approved October 13, 1997). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, D.C. 20510.

THE WHITE HOUSE,
Washington,
October 17, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Energy and Water Development Appropriations Act, 1998" (H.R. 2203, approved October 13, 1997). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515.

Cancellation No. 97–57

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $3,500 thousand for Lake George, Hobart, Indiana on pages 3 and 54 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The Lake George, Hobart, Indiana, project, which would require total Federal funding of $3.5 million, would have the Army Corps of Engineers fund dredging and construction of sediment traps to reduce further sediment build-up of a recreation lake owned and operated by the City of Hobart. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a Federal project that focuses on one or more of the Corps' primary missions (e.g., flood control, navigation). Since the primary purpose of this project is to enhance local recreation opportunities at a non-Federal lake, it should be undertaken by local interests.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−2,100
1999	−1,400
2000	
2001	
2002	
Total	−3,500

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$3,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Army Corps of Engineers.

2(A). Bureau: n/a.

2(A). Governmental Function/Project (Account): Dredging of Lake George, Hobart, Indiana (Construction, General).

2(B). States and Congressional Districts Affected: Indiana, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Indiana: three; 1st District: one.

Cancellation No. 97–58

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $800 thousand for Neabsco Creek, Virginia, on page 56 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The Neabsco Creek Flood Control Project, Prince William County, Virginia, which would require total Federal funding of over $1 million, would have the Army Corps of Engineers remove creek debris and accumulated sediment from the channel of Neabsco Creek. The Corps of Engineers previously conducted studies under two of its program authorities (Sections 205 and 208) to determine whether a project could be developed that is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Both studies concluded that no economically justified project could be developed for this area. In fact, the studies concluded that the Federal investment would return less than 50 cents on the dollar (national benefit—cost ratio of less than 0.5 to 1.0). The Administration previously informed Congress that it opposed authorization of this project during Congressional consideration of the Water Resources Development Act of 1996.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−480
1999	−320
2000	
2001	
2002	
Total	−800

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$800 thousand in FY 1998

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Army Corps of Engineers.

2(A). Bureau: n/a.

2(A). Governmental Function/Project (Account): Removal of debris and sediment from the channel of Neabsco Creek, Virginia (Construction, General).

2(B). States and Congressional Districts Affected: Virginia, 11th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Virginia: four; 11th District: one.

Cancellation No. 97–59

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $1,900 thousand for Sardis Lake (Shady Cove Marina), Yazoo Basin, Mississippi, on pages 6, 34, and 58 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The Sardis Lake, Mississippi, project, which would require an estimated total Federal funding of $4 million ($2.1 million was appropriated in FY 1997), would have the Army Corps of Engineers dredge at full Federal expense a section of Sardis Lake to create a marina basin for leisure craft and recreational opportunities. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation, it should be undertaken by local interests.

Furthermore, it is premature to begin construction of this project. The Army Corps of Engineers has not completed the normal project planning and review process applied to all such projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

Finally, this project has not been subject to the normal Congressional hearing and authorization process.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−1,425
1999	−475
2000	
2001	
2002	
Total	−1,900

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$1,900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Army Corps of Engineers.

2(A). Bureau: n/a.

2(A). Governmental Function/Project (Account): Dredging of section of Sardis Lake, Mississippi (Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee).

2(B). States and Congressional Districts Affected: Mississippi, 1st and 4th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: one; 1st District: one; 4th District: one.

Cancellation No. 97–60

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $800 thousand for Chena River Dredging, Fairbanks, Alaska on page 7, 35, and 58 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The Chena River Dredging, Fairbanks, Alaska, project, which would require total Federal funding of $800 thousand, would have the Army Corps of Engineers dredge at full Federal expense

Outlay changes—Continued

[In thousands of dollars]

2001	
2002	
Total	−1,900

a recreation channel for use by a single tour boat operator. There is no authorized Army Corps of Engineers navigation project in the area. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will participate in a recreation features only if it is a relatively small part of a project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation, it should be undertaken by local interests. In addition, it is premature to begin construction of this project. This project has not completed the normal Corps of Engineers project planning and review process applied to all Corps projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−480
1999	−320
2000	
2001	
2002	
Total	−800

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$800 thousand in FY 1998

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Army Corps of Engineers.

2(A). Bureau: n/a.

2(A). Governmental Function/Project (Account): Dredging of channel on Chena River, Fairbanks, Alaska (Operation and Maintenance, General).

2(B). States and Congressional Districts Affected: Alaska, Representative At Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Alaska: one.

Cancellation No. 97–61

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $6,000 thousand for Allegheny River (Kittanning Riverfront Park), Pennsylvania, on pages 7, 35, and 65 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The Allegheny River (Kittanning River Front Park), Pennsylvania, project, which would require total Federal funding of $6 million, would have the Army Corps of Engineers dredge at full Federal expense a new recreation channel to allow passenger boat operators access to Kittanning Riverfront Park. There is no Federal channel there now. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a Federal project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation separable from the existing Federal channel, it should be undertaken by local interests. Further, it is premature to fund construction of this project. This project has not completed the normal Corps of Engineers project planning and review process applied to all Corps projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−3,600
1999	−2,400
2000	
2001	
2002	
Total	−6,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$6,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Army Corps of Engineers.

2(A). Bureau: n/a.

2(A). Governmental Function/Project (Account): Dredging of channel on Allegheny River, Pennsylvania (Operation and Maintenance, General).

2(B). States and Congressional Districts Affected: Pennsylvania, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Pennsylvania: four; 12th District: three.

Cancellation No. 97–62

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority: $ 1,000 thousand and $300 thousand, In-situ Copper Mining Research Project, on page 69 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation: Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The purpose of this project has been to demonstrate the technical, economic, and environmental feasibility of in-place recovery of low-grade, copper oxide material. The total cost to date of this demonstration project, which was initially funded in FY 1988 as a Bureau of Mines research project, is $31.7 million. Federal funding to date totals $26.5 million, including $16.8 million for contract work with the private partners and $9.7 million for in-house Federal research.

Federal funding of this demonstration effort is no longer justified. The demonstration facility began operations in February 1996 and test data have been furnished to the Bureau of Reclamation since that time and will continue to be furnished from tests conducted prior to close-out. The FY 1996 appropriation for the Bureau of Mines included funds to close out the In-situ Copper Mining demonstration project. The Bureau of Reclamation assumed oversight responsibility for close out of this project in February 1996. Additional funding beyond FY 1996 was not needed to complete this orderly close out and was not requested in either the President's FY 1997 or FY 1998 Budgets, although Congress added funds in both years. The private cost-sharing partners will keep the $5 million demonstration facility after close-out and can continue the demonstration effort if they believe it is warranted.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−1,053
1999	−247
2000	
2001	
2002	
Total	−1,300

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: -$1,300 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of the Interior.

2(A). Bureau: Bureau of Reclamation.

2(A). Governmental Function/Project (Account): In-situ Copper Mining Research Project, Applied Science and Technology Development Program (Water and Related Resources).

2(B). States and Congressional Districts Affected: Arizona, 5th and 6th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Arizonia: one; 5th District: one; 6th District: one.

Cancellation No. 97–63

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: Energy and Water Development Appropriations Act, 1998 (H.R. 2203)

1(A). Dollar Amount of Discretionary Budget Authority: $1,000 thousand for a research and development partnership to manufacture electric transmission lines using aluminum matrix composite materials on page 82 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The provisions would start a program to fund cost-shared development of high-voltage power cables that use aluminum matrix composites (ceramic fibers glued together with aluminum) for the support member rather than steel as is the current practice. This would provide first-year funding for a program that has been proposed by a private consortium of manufacturing companies and utilities. Materials previously provided to the Department of Energy by the consortium indicated that this would be a 4-year program with a total estimated Federal cost of $15 million, so most of the program costs would be incurred in FY 1999–2001.

There is substantial private-sector incentive to engage in this development, and a Federal subsidy is unnecessary. The Department of Energy eliminated their electric transmission-line R&D program several years ago, so cancellation of these funds would have no effect on on-going programs at the Department of Energy.

1(D): Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of this cancellation, Federal outlays will not increase, as specified below. Future outlays of $14 million may also potentially be avoided. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−450
1999	−400
2000	
2001	
2002	
Total	−1,000

2(A). Agency: Department of Energy.

Bureau: Energy Efficiency and Renewable Energy.

Governmental Function/Project (Account): Energy/Solar and Renewable Energy/Electric Energy Systems (Energy Supply).

2(B). States and Congressional Districts Affected: Minnesota, 5th Congressional District.

2(C). Total Number of Cancellations (Inclusive) in Current Session in each State and District Indicated Above: Minnesota: one; 5th District: one.

Cancellation No. 97–64

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Energy and Water Development Appropriations Act, 1998" (H.R. 2203).

1(A). Dollar Amount of Discretionary Budget Authority (thousands): $4,000 thousand for the Nuclear Regulatory Commission to license a multi-purpose canister design on page 13 of House Report 105–271, dated September 26, 1997.

1(B). Determinations: This cancellation will reduce the Federal

budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The provision would require the Department of Energy (DOE) to provide the Nuclear Regulatory Commission (NRC) $4 million to license a multi-purpose canister (MPC) design. Multi-purpose canisters are expected to be used for temporary storage, transportation, and permanent disposal of spent nuclear fuel (SNF) from commercial nuclear power plants and high level waste from the DOE nuclear weapons complex.

The provision is objectionable for two reasons. First, it constitutes an unwarranted corporate subsidy and would undermine current legal requirements that the NRC recover virtually 100 percent of its costs of operation through charging fees to licensees. The NRC currently awards Certificates of Compliance ("licenses" or "COCs") to canister designers on a cost-reimbursable basis, as required by law. Five of the six known spent fuel storage and transportation cask vendors in the United States have already submitted applications for certification for dual-purpose (as opposed to multi-purpose) canisters to the NRC and, in the absence of this provision, can expect to pay between $400,000 and $600,000 to NRC to complete the 2–3 year certification process for each application. (Dual purpose canisters can be used for temporary storage and transportation but not permanent disposal of spent nuclear fuel.)

Second, it will be impossible for the NRC to certify or license an MPC until the Federal government selects a permanent disposal site and the NRC agrees to the waste acceptance criteria for the disposal canisters to be placed at that site. Under current DOE plans, the Federal government will not decide on a permanent nuclear waste disposal site until at least 2001.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	
1999	
2000	
2001	−2,000
2002	−2,000

Outlay changes—Continued

[In thousands of dollars]

Total	−4,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$4,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Energy and Nuclear Regulatory Commission.

2(A). Bureau: Department of Energy/Office of Civilian Radioactive Waste Management.

2(A). Governmental Function/Project (Account): Nuclear Regulatory Commission multipurpose canister licensing (Nuclear Waste Disposal Fund).

2(B). States and Congressional Districts Affected: All.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: The provision would have had a national effect.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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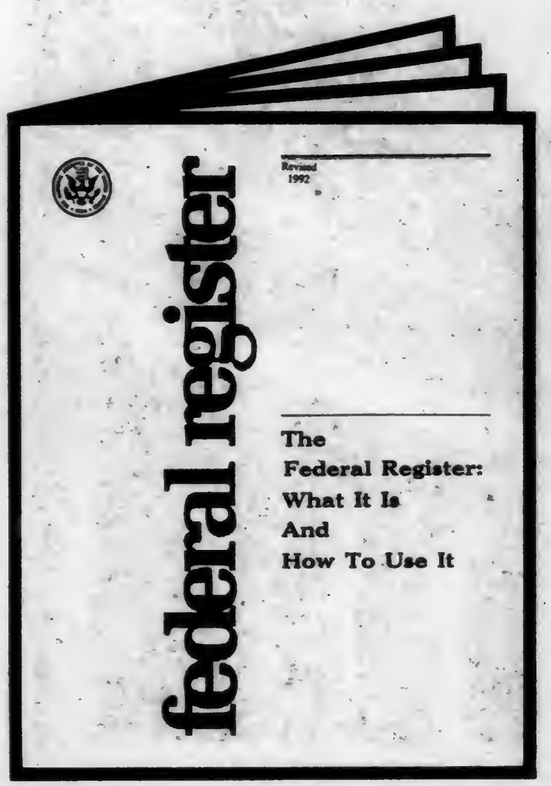
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Federal Register
Vol. 62, No. 203
Tuesday, October 21, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–2

Presidential Determination on the Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Federative Republic of Brazil Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Federative Republic of Brazil Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 9, 1997.

[FR Doc. 97–28026
Filed 10–20–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 62, No. 203
Tuesday, October 21, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–7]

Mediterranean Fruit Fly; Removal of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

DATES: Interim rule effective October 15, 1997. Consideration will be given only to comments received on or before December 22, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–7, Regulatory Analysis and Development, PPD, APHIS, suite 3c03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–7. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in Hillsborough County, FL, in June 1997, quarantined areas have included all or portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas of Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, FL, and an area in Sarasota County, FL.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL. The last finding of the Medfly thought to be associated with the infestation in these areas occurred on July 24, 1997. Since then, no evidence of infestation has been found in these areas. We are, therefore, removing these areas from the list of areas in § 301.78–3(c) quarantined because of the Medfly. As a result of this action, there are no longer any quarantined areas in Manatee, Orange, and Sarasota Counties, FL. Portions of Hillsborough and Polk Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The areas in Florida affected by this document were quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from these areas, and because the continued quarantine status of these areas would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any

amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL. This action affects the interstate movement of regulated articles from these areas. There are approximately 592 small entities that could be affected, including 9 transportation terminals, 223 fruit stands, 28 flea markets, 4 processing plants, 25 farmers' markets, 189 nurseries (primarily retail), 149 mobile produce vendors, 113 food stores, 2 fruit shippers, 3 commercial growers, 6 garbage service firms, 1 vegetable packinghouse, and 1 hauler/harvester.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate movement, and the sale of these articles would not be affected by this interim regulation.

Therefore, removing all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, should have a minimal economic effect on the small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Hillsborough County. That portion of Hillsborough County beginning at the intersection of I–75 and the Hillsborough/Pasco County line; then west along the Hillsborough/Pasco County line to the section line dividing sections 5 and 6, T. 27 S., R. 18 E.; then south along the section line dividing sections 5 and 6, T. 27 S., R. 18 E. to Veterans Expressway; then south along Veterans Expressway to Erhlich Road; then west along Erhlich Road to Gunn Highway; then north along Gunn Highway to Mobley Road; then west along Mobley Road to Racetrack Road; then southwest along Racetrack Road to the Pinellas/Hillsborough County line; then south along the Pinellas/Hillsborough County line to I–275; then east along I–275 to the western most land mass at the eastern end of the Howard Franklin Bridge; then along an imaginary line along the shoreline of the Old Tampa Bay, Tampa Bay, and Hillsborough Bay (including the Interbay Peninsula, Davis Island, Harbour Island, Hooker's Point, and Port Sutton) to the northern shoreline of the Alafia River's extension; then east along the northern shoreline of the Alafia River to I–75; then north along I–75 to the point of beginning.

Polk County. That portion of Polk County beginning at the intersection of State Highway 60 (Van Fleet Drive) and West Van Fleet Drive (not Business 60); then east along State Highway 60 (Van Fleet Drive) to U.S. Highway 17; then north along U.S. Highway 17 to the section line dividing sections 27 and 28 , T. 29 S., R. 25 E.; then north along the section line dividing sections 27 and 28, T. 29 S., R. 25 E. to Thornhill Road; then north along Thornhill Road to State Highway 540; then west along State Highway 540 to the section line dividing sections 31 and 32, T. 28 S., R. 25 E.; then north along the section line dividing sections 31 and 32, T. 28 S., R. 25 E. to State Highway 542; then west along State Highway 542 to State Highway 37 (South Florida Avenue); then south along State Highway 37 (South Florida Avenue) to State Highway 572 (Drane Field Road); then west along State Highway 572 (Drane Field Road) to Harden Boulevard; then south along Harden Boulevard to Lake Miriam Drive; then west along Lake Miriam Drive to Old State Road 37; then south along Old State Road 37 to State Highway 37; then south along State Highway 37 to State Highway 60; then east along State Highway 60 to the point of beginning.

Done in Washington, DC, this 15th day of October 17, 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27813 Filed 10–20–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–102–1]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective October 16, 1997. Consideration will be given only to comments received on or before December 22, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–102–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 113, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Los Angeles County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sights. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding a portion of Los Angeles County, CA, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the quarantined area of Los Angeles County, CA. We estimate that there are 613 entities in the quarantined area of Los Angeles County, CA, that sell, process, handle, or move regulated articles; this estimate includes 2 farmers' markets, 2 community gardens, 31 distributors, 4 food banks, 529 fruit sellers, 4 growers, 30 nurseries, and 11 swapmeets. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 613 entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

Few, if any, of the 613 entities will be significantly affected by the quarantine action taken in this interim rule because few of those entities move regulated articles outside the State of California during the normal course of their business. Nor do consumers of products purchased from those entities generally move those products interstate. The effect on any small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of those small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation to achieve

eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c) is amended by adding an entry for Los Angeles County, CA, in alphabetical order, to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

Los Angeles County. That portion of Los Angeles County in the Walnut Park and Huntington Park areas bounded by a line beginning at the intersection of State Highway 60 and Interstate Highway 5; then southeast along Interstate Highway 5 to Garfield Avenue; then southwest along Garfield Avenue to Florence Avenue; then southeast along Florence Avenue to Old River School Road; then southwest along Old River School Road to Firestone Boulevard; then southeast along Firestone Boulevard to Paramount Boulevard; then southwest along Paramount Boulevard to Interstate Highway 105; then west along Interstate Highway 105 to Interstate Highway 710; then southwest along Interstate Highway 710 to Rosecrans Avenue; then west along Rosecrans Avenue to Interstate Highway 110; then north along Interstate Highway 110 to Interstate Highway 105; then west along Interstate Highway 105 to Normandie Avenue; then north along Normandie Avenue to Martin Luther King, Jr. Boulevard; then east along Martin Luther King, Jr. Boulevard to Interstate Highway 110; then north along Interstate Highway 110 to Adams Boulevard; then southeast along Adams Boulevard to San Pedro Street; then northeast along San Pedro Street to Interstate Highway 10; then east along Interstate Highway 10 to State Highway 60; then east along State Highway 60 to the point of beginning.

* * * * *

Done in Washington, DC, this 16th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27815 Filed 10–20–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–040–2]

Change in Disease Status of Spain Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by removing Spain from the list of countries considered to be free from hog cholera. We took this action based on reports we received from Spain's Ministry of Agriculture that an outbreak of hog cholera had occurred in Spain. As a result of this action, there are additional restrictions on the importation of pork and pork products into the United States from Spain, and the importation of swine from Spain is prohibited.

EFFECTIVE DATE: The interim rule was effective on April 18, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, suite 3B05, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on April 18, 1997, and published in the **Federal Register** on May 27, 1997 (62 FR 28619–28620, Docket No. 97–040–1), we amended the regulations in §§ 94.9(a) and 94.10(a) by removing Spain from the list of countries considered to be free from hog cholera.

Comments on the interim rule were required to be received on or before July 28, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by removing Spain from the list of countries that are considered to be free of hog cholera. We took this action based on reports we received from Spain's Ministry of Agriculture that an outbreak of hog cholera had occurred in Spain. As a result of this action, there are additional restrictions on the importation of pork and pork products into the United States from Spain, and the importation of swine from Spain is prohibited.

The United States produced 17,697 million pounds of pork with a gross income of $10 billion in 1995. Pork imports in 1995 were approximately 593 million pounds, while exports were 582 million pounds. Prior to the interim rule, the United States did not import any live swine from Spain. In 1995, the United States imported 57,320 pounds of pork from Spain and exported 37,480 pounds to Spain. This is equivalent to 0.01 percent and 0.006 percent of the total U.S. imports and exports of pork, respectively. As these proportions show, U.S. pork trade with Spain has been very small. The interim rule could result in less pork being imported into the United States from Spain.

Among the potential entities that may be affected by the interim rule are U.S. producers, consumers, and importers. Since the amount of pork imported from Spain has been so small compared to the amount produced domestically and total pork imports, no impact on consumer and producer prices is expected. Also, there should be little or no impact on importers. Because the amount of pork imported from Spain has been so small, importers should easily find replacements from other approved sources.

Further, if pork imports from Spain were not restricted and hog cholera was introduced into the United States from Spain, the economic impact on consumers, tax payers, and exporters could be great. Consumers would be affected by increased costs and reduced availability of pork. The cost to tax payers to eradicate or contain the disease would be considerable. Exporters would likely face restrictions on exporting pork to traditional foreign markets. Affected producers would face increased production costs. The benefits of avoiding the potential cost of a disease outbreak outweighs by far the minimal impact of this rule on consumers, producers, and importers of pork products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAQUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94 and that was published at 62 FR 28619–28620 on May 27, 1997.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 15th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27812 Filed 10–20–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–23–AD; Amendment 39–10171; AD 86–07–02 R1]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (Formerly Britten-Norman) BN2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 86–07–02, which currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any part found cracked with a like part. This AD removes from the applicability the BN–2A, BN–2B, and BN–2T series airplanes, and retains the repetitive inspection and replacement (if necessary) requirements of AD 86–07–02 for the BN2A MK. 111 series airplanes. This AD results from the Federal Aviation Administration's determination that additional AD action needs to be taken on the BN–2A, BN–2B, and BN–2T series airplanes. This additional action will be addressed in a separate AD. The actions specified by this AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

DATES: Effective November 26, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman BN2A MK. 111 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking on May 27, 1997 (62 FR 28644). The NPRM proposed to revise AD 86–07–02 by removing the BN–2A, BN–2B, and BN–2T series airplanes from the applicability of that AD. The NPRM proposed to retain the requirement of repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies for the BN2A MK. 111 series airplanes. The FAA is issuing a separate AD action for the BN–2A, BN–2B, and BN–2T series airplanes to require a modification that, when incorporated, would eliminate the repetitive inspection requirement currently required by AD 86–07–02. Accomplishment of the proposed inspections as specified in the NPRM would be in accordance with Fairey Hydraulics Limited Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990; and Fairey Hydraulics Limited SB 32–10, Issue 2, dated November 10, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed AD or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the AD as proposed except for minor editorial corrections. The FAA has

determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $540 or $60 per airplane. This figure only takes into account the cost of the initial inspection and does not take into account the cost of any repetitive inspections. The FAA has no way of determining the number of repetitive inspections each of the owners/operators will incur over the life of the affected airplanes.

In addition, the inspections are currently required by AD 86–07–02 on the 9 affected airplanes. This AD does not require any additional actions over that already required by AD 86–07–02.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 86–07–02, Amendment 39–5382, and by adding a new AD to read as follows:

86–07–02 R1 Pilatus Britten-Norman Ltd: Amendment 39–10171; Docket No. 86–CE–23–AD. Revises AD 86–07–02, Amendment 39–5382.

Applicability: Models BN2A MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD (see **Note 2**) or within 100 hours time-in-service (TIS) after the last inspection accomplished in accordance with AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS.

Note 2: The "prior to further flight after the effective date of this AD" compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect the junction of the torque link lug and upper case for cracks (using a 10-power magnifying glass or by dye penetrant methods) in accordance with Fairey Hydraulics Limited Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990; or Fairey Hydraulics SB 32–10, Issue 2, dated November 10, 1992, as applicable. Pilatus Britten-Norman SB BN–2/SB. 173, Issue 3, dated November 16, 1990, references Fairey Hydraulic Limited SB 32–7; and Pilatus Britten-Norman SB BN–2/SB.209, Issue 1, dated November 30, 1992, references Fairey Hydraulic Limited SB 32–10.

(b) If cracked parts are found during any of the inspections required by this AD, prior to further flight, replace the cracked parts with airworthy parts in accordance with the applicable maintenance manual.

(c) If the landing gear is replaced, only equal pairs of the same manufacturer are approved as replacement parts. Mixing of different manufacturer landing gears is not authorized.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved for AD 86–07–02 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) The inspections required by this AD shall be done in accordance with Fairey Hydraulics Limited Service Bulletin 32–7, Issue 3, dated January 30, 1990, or Fairey Hydraulics Service Bulletin 32–10, Issue 2, dated November 10, 1992, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–10171) revises AD 86–07–02, Amendment 39–5382.

(i) This amendment (39–10171) becomes effective on November 28, 1997.

Issued in Kansas City, Missouri, on October 14, 1997.

Mary Ellen Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27785 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–25–AD; Amendment 39–10170; AD 97–22–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (Formerly Britten-Norman) BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive that applies to Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, and BN–2T series airplanes. This AD requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or after a certain period of time if cracks are not found. Replacing all MLG torque link assemblies with Modification A39 MLG torque link assemblies eliminates the need for the repetitive inspections. These repetitive inspections are currently required by AD 86–07–02 for the BN–2A, BN–2B, and BN–2T series airplanes, as well as the BN2A MK. 111 series airplanes. There are no improved design parts for the BN2A MK. 111 series airplanes. The Federal Aviation Administration (FAA) is issuing in a separate action a revision to AD 86–07–02 to retain the repetitive inspection and replacement (if necessary) requirements for the BN2A MK. 111 series airplanes. The actions specified in this AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

DATES: Effective November 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information may also be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 27, 1997 (62 FR 28646). The NPRM proposed to require repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or at a certain period of time if cracks are not found. Installation of the improved part would eliminate the need for the repetitive inspections. Accomplishment of the proposed inspections and installation as specified in the NPRM would be in accordance with Fairey Hydraulics Limited SB 32–4, Issue 4, dated January 30, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA's Aging Commuter-Class Airplane Policy

This AD applies to the FAA's aging commuter-class airplane policy. This policy simply states that reliance on repetitive inspections of critical areas on commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to issuing this AD would be to rely on repetitive inspections to detect failure of the MLG torque link assemblies on the affected airplanes.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that would be affected by this AD, the FAA has determined that approximately 25 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 75 percent are operated in other forms of air transportation such as air cargo and air taxi.

This AD allows at least 1,000 hours TIS after the effective date of the AD before mandatory accomplishment of the design modification (upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of the AD, whichever is later). The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter airplanes involved in commercial operation will have to accomplish the replacement within 5 to 10 calendar months (at the least) after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this will allow 5 to 10 years (at the least) before the replacement becomes mandatory. The time it would take those in air cargo/air taxi operations before the replacement becomes mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 13 workhours per airplane to accomplish this AD (1 workhour per inspection and 12 workhours for the installation), and that the average labor rate is approximately $60 an hour. Parts cost approximately $6,200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is

estimated to be $781,760 or $6,980 per airplane.

The inspections are currently required on the 112 affected airplanes by AD 86–07–02. This AD would not require any additional inspection requirements over that already required by AD 86–07–02. In addition, the cost figures referenced above are based on the presumption that no affected airplane operator has incorporated the inspection-terminating installation. Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

The entities that would be affected by this AD are mostly in the portion of Standard Industrial Classification (SIC) 4512, Operators of Aircraft for Hire, classified as "unscheduled." FAA Order 2100.14A sets the size threshold for small entities operating aircraft in this category at nine or fewer aircraft owned and the annualized cost thresholds of at least $4,975 (1996 dollars) for unscheduled operators. A four-year life for the torque link assembly and capital cost of 15-percent would establish an annualized cost of $2,445 (1996 dollars). This is less than 50-percent of the threshold cost of $4,975 per year. In order to incur costs of at least $4,975, an entity would have to operate three or more of the airplanes referenced in this AD. FAA data shows that only five small entities operate three or more of these airplanes. In addition, this data shows that approximately 60 entities operate the airplanes referenced in this AD, but that only 15 of these entities (one-fourth) operate two or more of these airplanes.

Based on this information, less than one-third of the entities will incur significant operating costs under FAA Order 2100.14A. Therefore, this AD will not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–01 Pilatus Britten-Norman: Amendment 39–10170; Docket No. 96–CE–25–AD.

Applicability: Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, and BN–2T airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the replacement, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Prior to further flight after the effective date of this AD or within the next 100 hours time-in-service (TIS) after the last inspection required by AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS until the installations required by paragraph (c) of this AD are accomplished, inspect the junction of the torque link lug and upper case of all main landing gear (MLG) torque link assemblies for cracks (using a 10-power magnifying glass or by dye penetrant methods). Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990. Pilatus Britten-Norman SB BN–2/SB.170, Issue 4, November 16, 1990, references this service bulletin.

Note 2: The inspections required by paragraph (a) of this AD were initially a part of AD 86–07–02, which applied to the BNZA MK. 111 series airplanes as well as the airplanes affected by this AD. The "prior to further flight after the effective date of this AD" compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

(b) If any cracks are found during any of the inspections required by this AD, prior to further flight, replace the MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(1) Repetitive inspections are no longer required when all MLG torque assemblies are replaced with Modification A39 MLG torque link assemblies.

(2) Repetitive inspections may no longer be required on one MLG torque assembly, but still be required on another if all haven't been replaced with a Modification A39 MLG torque link assembly.

(c) Upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (b) of this AD, replace each MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) The inspections and replacement required by this AD shall be done in accordance with Fairey Hydraulics Limited Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–10170) becomes effective on November 28, 1997.

Issued in Kansas City, Missouri, on October 14, 1997.

Mary Ellen Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27795 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–246–AD; Amendment 39–10169; AD 97–19–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 97–19–16, that was sent previously to all known U.S. owners and operators of Fokker Model F28 Mark 0100 series airplanes equipped with Rolls-Royce Tay 650–15 engines, by individual notices. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to include procedures to prohibit use of reverse engine thrust power settings between idle and emergency maximum; and submission of a report to the airplane manufacturer. This action is prompted by a report that, during preparation for takeoff, an engine fan blade failure occurred, followed by an engine fire. The actions specified by this AD are intended to prevent uncontained engine fan blade failure due to high cycle fatigue cracking, which could result in loss of thrust from the affected engine and secondary damage to aircraft and/or fire.

DATES: Effective October 27, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–19–16, issued on September 12, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: On September 12, 1997, the FAA issued emergency AD 97–19–16, which is applicable to Fokker Model F28 Mark 0100 series airplanes equipped with Rolls-Royce (RR) Tay 650–15 engines.

That action was prompted by a report that during preparation for takeoff, a Fokker Model F28 Mark 0100 series airplane equipped with Rolls-Royce Tay 650–15 engines sustained an engine fan blade failure, followed by an engine fire. Investigation revealed that five fan blades failed at the root area, three fan blades failed at mid-height, and the remainder were severely damaged.

Further investigation revealed that all five fan blades failed due to rapid high cycle fatigue cracking with low cycle fatigue cracking origin. Evidence of rapid high cycle fatigue cracking indicates that an operational effect is causing high vibratory stresses. Rolls Royce considers that the high cycle fatigue cracking was caused by vibration during previous thrust reverser applications. This condition, if not corrected, could result in uncontained engine fan blade failure due to high cycle fatigue cracking, which could result in loss of thrust from the affected engine and secondary damage to aircraft and/or fire.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 97–19–16 to require a revision to the FAA-approved Airplane Flight Manual (AFM). The

revision includes procedures to prohibit use of reverse engine thrust power settings between idle and emergency maximum.

This AD also requires that operators submit a report to the airplane manufacturer describing any occurrence where the idle reverse thrust limitations specified in this AD are exceeded.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on September 12, 1997, to all known U.S. owners and operators of Fokker Model F28 Mark 0100 series airplanes equipped with Rolls-Royce Tay 650–15 engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–246–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–19–16 Fokker: Amendment 39–10189. Docket 97–NM–246–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Rolls-Royce (RR) Tay 650–15 engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of the engine fan blades, which could result in loss of thrust from the affected engine, and secondary damage to the airplane and/or fire, accomplish the following:

(a) Within 72 hours after the effective date of this AD, revise the Limitations Section, Subsection 2.06.01 "Thrust Reverser," of the FAA-approved Airplane Flight Manual (AFM) to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"THRUST REVERSER

Thrust reversers are intended for ground use only. Intentional use of reverse thrust in flight is prohibited. After reverse thrust has been initiated, a full stop landing must be made.

Maximum Reverse Thrust Lever Positions

Normal Operation:

—The idle detent position shall not be exceeded in normal operation.

Emergency Operation:

—In case of emergency, the emergency maximum reverse thrust may be used.

—Stabilized operation with the reverse lever in an intermediate position between idle reverse and emergency maximum reverse is prohibited.

—If directional control problems occur, select forward idle.

Exceeding the idle reverse thrust limitations must be reported."

(b) If the idle reverse thrust limitations specified in paragraph (a) of this AD are exceeded, within 10 days after exceeding the idle reverse thrust limitations, submit a report of that occurrence to Fokker Services, Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Netherlands airworthiness directive BLA 1997–091(A), dated September 9, 1997.

(e) This amendment becomes effective on October 27, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–19–16, issued on September 12, 1997, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 15, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27787 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28968; Amdt. No. 1808]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by references in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPS. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on July 11, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MSL/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective August 14, 1997*

Champaign-Urbana, IL, University of Illinois-Willard, VOR RWY 18, Orig
Champaign-Urbana, IL, University of Illinois-Willard, GPS RWY 18, Orig
Champaign-Urbana, IL, University of Illinois-Willard, GPS RWY 36, Orig
Kendallville, IN, Kendallville Muni, VOR or GPS–A, Amdt 6, CANCELLED
Kendallville, IN, Kendallville Muni, VOR/DME–A, Orig
La Porte, IN, La Porte Muni, VOR or GPS–A, Amdt 6
La Porte, IN, La Porte Muni, LOC RWY 2, Orig
La Porte, IN, La Porte Muni, VOR/DME RNAV or GPS RWY 20, Amdt 5
Fort Worth, TX, Fort Worth Alliance, ILS RWY 16L, Amdt 3
Houston, TX, William P. Hobby, VOR/DME RWY 17, Amdt 1

* * * *Effective September 11, 1997*

Burbank, CA, Burbank-Glendale-Pasadena, GPS–A, Orig
Upland, CA, Cable, GPS RWY 6, Orig
Victorville, CA, Southern California International, GPS RWY 17, Orig
Montrose, CO, Montrose Regional, GPS RWY 13, Orig
Montrose, CO, Montrose Regional, GPS RWY 17, Orig
Montrose, CO, Montrose Regional, GPS RWY 35, Orig
Deland, FL, Deland Muni-Sidney H Taylor Field, VOR or GPS RWY 23, Amdt 2
West Palm Beach, FL, Palm Beach Intl, LOC BC RWY 27R, Amdt 12A, CANCELLED
Agana, Guam, Guam International, GPS RWY 6L, Orig
Agana, Guam, Guam International, GPS RWY 24R, Orig
Houlton, ME, Houlton Intl, VOR RWY 5, Amdt 10
Des Moines, IA, Des Moines Intl, RADAR-1, Amdt 17, CANCELLED
Majuro Atoll, Marshall Islands, Marshall Islands Intl, GPS RWY 7, Orig
Majuro Atoll, Marshall Islands, Marshall Islands Intl, GPS RWY 25, Orig
Sand Island, Midway Islands, Midway Atoll-Henderson Field, GPS RWY 6, Orig
Sand Island, Midway Islands, Midway Atoll-Henderson Field, GPS RWY 24, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, NDB or GPS RWY 30L, Amdt 24
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, NDB or GPS RWY 30R, Amdt 12
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 4, Amdt 26
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 22, Amdt 5
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 12L, Amdt 4
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 30R, Amdt 8
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 12R, Amdt 8
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 30L, Amdt 42
Rochester, NY, Greater Rochester Intl, RADAR 1, Amdt 14, CANCELLED
Rota Island, North Mariana Islands, Rota Intl, GPS RWY 9, Orig
Rota Island, North Mariana Islands, Rota Intl, GPS RWY 27, Orig
Saipan Island, North Mariana Islands, Saipan Intl, GPS RWY 7, Orig
Saipan Island, North Mariana Islands, Saipan Intl, GPS RWY 25, Orig
Tinian Island, North Mariana Islands, West Tinian, GPS RWY 8, Orig
Tinian Island, North Mariana Islands, West Tinian, GPS RWY 26, Orig
John Day, OR, John Day State, GPS RWY 9, Orig
Babelthuap Island, Palau, Babelthuap/Koror, GPS RWY 9, Orig
Babelthuap Island, Palau, Babelthuap/Koror, GPS RWY 27, Orig
Charleston, SC, Charleston AFB/Intl, VOR/DME or TACAN or GPS RWY 3, Amdt 13
Charleston, SC, Charleston AFB/Intl, VOR/DME or TACAN or GPS RWY 21, Amdt 13
Laurens, SC, Laurens County, GPS RWY 8, Orig
Kosrae Island, States of Micronesia, Kosrae, GPS RWY 5, Orig
Kosrae Island, States of Micronesia, Kosrae, GPS RWY 23, Orig
Pohnpei Island, States of Micronesia, Pohnpei Intl, GPS RWY 9, Orig
Pohnpei Island, States of Micronesia, Pohnpei Intl, GPS RWY 27, Orig
Weno Island, States of Micronesia, Chuuk International, GPS RWY 4, Orig
Weno Island, States of Micronesia, Chuuk International, GPS RWY 22, Orig
Yap Island, States of Micronesia, Yap International, GPS RWY 7, Orig
Yap Island, States of Micronesia, Yap International, GPS RWY 25, Orig

[FR Doc. 97–27743 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1228 and 1234

RIN 3095–AA70

Transfer of Electronic Records to the National Archives

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule revises NARA regulations relating to the transfer of permanent electronic records to the National Archives of the United States. The rule clarifies the timing of transfers and expands the forms of acceptable transfer media. The rule affects Federal agencies.

DATES: Effective November 20, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas E. Brown at 301–713–6630.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on July 29, 1996 (61 FR 39373) for a 60-day comment period. Comments were received from four agencies.

One agency expressed concern that the regulation does not change the requirement that records be transferred in either ASCII (American National Standard Code for Information Interchange) or EBCDIC (Extended binary-coded decimal interchange code). While the regulation expands the media which NARA will accept, we are unwilling at this time to expand the coding formats for transfer beyond ASCII or EBCDIC. However NARA continues to explore additional formats which will meet our long-term preservation and access needs. To ensure the ability to access the records over time, the archival format is ASCII or EBCDIC. Conversion to these formats is easier while the records are in their creating systems rather than outside of the creating systems after transfer. Therefore, we have not modified the requirement for data to be in ASCII or EBCDIC format when being transferred to NARA.

One comment stated that NARA should accept relational database files with embedded control characters associated with a particular database management system. Such a format would be proprietary and dependent on a particular software product. Following the transfer to NARA, it would be problematic as to whether the records would be accessible. Rather the new regulation calls for the export of tables from a relational data base as software independent files. The transfer format is, in fact, the logical format used in a relational database. Hence the regulation outlines the procedure through which NARA will accept records from relational databases but free of the proprietary control characters which would limit access.

One comment recommended that NARA should investigate adding to the list of acceptable media CD–ROMs that meet ISO standard 13346. As a result of this comment, NARA technical staff has begun investigating this standard to determine whether NARA can process records from a CD–ROM recorded in this format. If this investigation proves successful, NARA will further amend the CFR.

One agency stated that NARA must not permit public access to non-permanent software on a CD–ROM unless (1) NARA has appropriate permission to use and the public has permission to reproduce the software and (2) the software is necessary to access permanent records. We agree that the public should not be allowed to reproduce copyrighted software without permission. NARA will establish internal controls for managing the research complex to prevent unauthorized reproduction of CD–ROMs which contain copyrighted software. However, section 109 of the Copyright Act of 1976 outlined the "first sale doctrine." This provision allows NARA's researchers to use copyrighted software in the NARA research complex for access to records on a CD–ROM.

One comment stated that NARA should not provide access to temporary files. This comment led us to reconsider the proposed use of CD–ROMs in NARA's research complex, and we concluded that we will not provide access to temporary records. If an agency transfers both permanent and temporary records on a CD–ROM, NARA will copy only the permanent records and return the CD–ROM to the agency or destroy it. In this final rule, we have amended 36 CFR 1228.188(c)(2)(ii) to reflect this policy.

One comment objected that NARA permits but does not require agencies to submit textual documents including formatting codes, because such codes may carry essential structural information. NARA agrees with this comment. Section 1228.188(d)(2) of the regulation adds an option for transferring electronic documents that contain formatting codes. At this time, only SGML formats can be preserved permanently. NARA will explore other possibilities to preserve structure and format of electronic documents. We have not changed the regulation in response to this comment.

One comment stated that the regulations encourage the use of CD–ROMs for the storage of electronic records. It went on to conclude that the proposed regulation may cause technical personnel to argue that CD–ROM is an appropriate storage media. 36 CFR 1228.188 concerns the use of CD–ROMs for the transfer of records to the NARA. It does not address the use of any media for the storage of records. The selection of storage media for electronic records is addressed in 36 CFR 1234.30. An agency may store records on any media but must be able to migrate permanent records to media acceptable for transfer to the National Archives. To clarify the scope of the regulation, we have modified § 1228.188(c) to state: "This section covers the transfer of permanent records to the National Archives; it does not apply to the use and storage of records in agency custody. See 36 CFR 1234.30 for the requirements governing the selection of electronic records storage media." We are also clarifying 36 CFR 1234.30 to reinforce this distinction between storage and transfer media.

One comment noted that a distinction exists between storing records and disseminating information. Specifically, the comment stated that WORM (Write Once—Read Many Times) technology should be used to store records, and CD–ROM technology should be used to disseminate information. NARA agrees that there is a difference between the storage of records and the dissemination of records. Since dissemination of information can include the transfer of records to the National Archives, the comment endorses our proposed change in the regulations. This change in the regulation does not cover the storage of records. See 36 CFR 1234.28 for the requirements governing the selection of electronic records storage media. This latter regulation does not dictate storage media for the records while in agency use; the regulation makes clear that it is an agency option. NARA will, however, continue to monitor the status of standardization of WORM technology.

One comment objected that export of tables from a relational database to flat files is expensive because it requires application programming. Most records schedules for permanent databases require periodic transfers, but special programming would only have to be done once, if at all. Special programming is not necessary in many cases because the files could be exported using any of a variety of off-the-shelf tools for data extraction. Export costs can also be minimized by including migration in the design of those databases that contain permanent records.

One comment thought that NARA should accept imaged documents on WORM media. This raises two issues: (1) acceptance of image formats, and (2) acceptance of WORM media. Currently, with the exception of the CCITT format for digital facsimile (FAX) transmissions, ANSI and ISO standards do not exist for any image format or for any WORM disk. Consequently the acceptance of image documents on WORM media would result in the archival records being stored in a proprietary format dependant on a proprietary retrieval system. The result would be either the loss of information as a result of technological obsolescence or extremely expensive preservation costs to migrate the images and storage media to new technologies.

In § 1228.188(c)(2)(i), we have provided more complete identification of the cited industry standard for CD–ROMs that is incorporated by reference. In § 1228.188(d)(3), we have provided more complete identification of the cited standard for digital spatial data files and its ordering source.

We recognize the concerns that this regulation is narrow in scope and does not fully address the needs of Federal agencies for NARA guidance in an increasingly electronic environment. Impressive developments in technology for creating records have not been matched by technological developments for managing them. Because of these constraints, NARA has taken a conservative approach in this regulation to ensure that the electronic records we accession today are usable 25 and 50 years from now when current software, hardware, and media are no longer available. NARA is working to expand our capabilities to handle electronic formats and media that Federal agencies are using today. We are developing a successor to NARA's Archival Preservation System (APS) for electronic records, and in FY 1999, we will increase APS processing capacity to

50,000 files per year. NARA plans to develop the capability for preserving document image files in FY 2000, textual electronic records by FY 2001, and raster and vector files by FY 2002. We will seek the involvement and assistance of agencies in this effort.

This rule is a significant regulatory action for the purposes of Executive Order 12866, and has been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Parts 1228 and 1234

Archives and records, Computer technology, Incorporation by reference.

For the reasons set forth in the preamble, Chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Section 1228.188 is revised to read as follows:

§ 1228.188 Electronic records.

(a) *Timing of transfers.* Each agency is responsible for the integrity of the records it transfers to the National Archives. To ensure that permanently valuable electronic records are preserved, each Federal agency shall transfer electronic records to NARA promptly in accordance with the agency's records disposition schedule. Furthermore, if the agency cannot provide proper care and handling of the media (see part 1234 of this chapter), or if the media are becoming obsolete and the agency cannot migrate the records to newer media, the agency shall contact NARA to arrange for timely transfer of permanently valuable electronic records, even when sooner than provided in the records schedule.

(b) *Temporary retention of copy.* Each agency shall retain a second copy of any permanently valuable electronic records that it transfers to the National Archives until it receives official notification from NARA that the transfer was successful and that NARA has assumed responsibility for continuing preservation of the records.

(c) *Transfer media.* This paragraph covers the transfer of permanent records to the National Archives; it does not apply to the use or storage of records in agency custody. See 36 CFR 1234.30 for the requirements governing the selection of electronic records storage media. The agency shall use only media that is sound and free from defects for such transfers; the agency shall choose reasonable steps to meet this requirement. The media forms that are approved for transfer are open reel magnetic tape, magnetic tape cartridge, and Compact-Disk, Read Only Memory (CD–ROM), as described in paragraphs (c) (1) and (2) of this section.

(1) *Magnetic tape.* Agencies may transfer electronic records to the National Archives on magnetic tape using either open-reel magnetic tape or tape cartridges. Open-reel magnetic tape shall be on ½ inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE) or ANSI X3.54–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), respectively. Tape cartridges shall be 18-track 3480-class cartridges recorded at 37,871 bpi that meet ANSI X3.180–1990, American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording. The data shall be blocked at no more than 32,760 bytes per block. The standards cited in this paragraph are available from the American National Standards Institute, (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(2) *Compact-Disk, Read Only Memory (CD–ROM).* Agencies may use CD–ROMs to transfer electronic records scheduled to be preserved in the National Archives. The files on such a CD–ROM must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) CD–ROMs used for this purpose must conform to ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange. The standard is available from the National Information Standards Organization (NISO), P.O. Box 1056, Bethesda, MD or the American National Standards Institute, 11 West 42nd Street, 13th floor, New York NY 10036. It is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(ii) Permanently valuable electronic records must be stored in discrete files. The CD–ROMs transferred may contain other files, such as software or temporary records, but all permanently valuable records must be in files that contain only permanent records. Agencies should indicate at the time of transfer if a CD–ROM contains temporary records and, if so, where those records are located on the CD–ROM. The agency must also specify whether NARA should return the CD–ROM to the agency or dispose of it after copying the permanent records to an archival medium.

(iii) In some cases, permanently valuable electronic records that an agency disseminates on CD–ROM exist on other media, such as magnetic tape. In such cases, the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives.

(d) *Formats.* The agency may not transfer to the National Archives electronic records that are in a format dependent on specific hardware and/or software. The records shall be written in ASCII or EBCDIC with all control characters and other non-data characters removed (except as specified in paragraphs (d) (1), (2), and (3) of this section). The records must not be compressed unless NARA has approved the transfer in the compressed form in advance. In such cases, NARA may require the agency to provide the software to decompress the records.

(1) *Data files and databases.* Data files and databases shall be transferred to the National Archives as flat files or as rectangular tables; i.e., as two-dimensional arrays, lists, or tables. All "records" (within the context of the computer program, as opposed to a Federal record) or "tuples," i.e., ordered collections of data items, within a file or table should have the same logical format. Each data element within a record should contain only one data value. A record should not contain nested repeating groups of data items. The file should not contain extraneous control characters, except record length indicators for variable length records, or marks delimiting a data element, field, record, or file. If records or data elements in different files need to be linked or combined, then each record must contain one or more data elements that constitute primary and/or foreign keys enabling valid linkages between the related records in separate files.

(2) *Textual documents.* Electronic textual documents shall be transferred as plain ASCII files; however, such files may contain Standard Generalized Markup Language (SGML) tags.

(3) *Digital spatial data files.* Digital spatial data files shall be transferred to NARA in accordance with the Spatial Data Transfer Standard (SDTS) as defined in the Federal Information Processing Standard 173–1 (June 10, 1994) which is incorporated by reference. Digital geospatial data files created on systems procured prior to February 1994 which do not have a SDTS capability are exempt from this requirement. Agencies should consult with NARA for guidance on transferring noncompliant digital geospatial data files created between February 1, 1994 and the effective date of this paragraph. The standard cited in this paragraph is available from the National Technical Information Service, Department of Commerce, Springfield, VA 22161. When ordering, cite FIPSPUB173–1, Spacial Data Transfer Standard (SDTS). This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(4) *Other categories of electronic records.* Agencies should identify any foreseeable problems in the possible transfer of potentially permanent electronic records in accordance with paragraphs (d) (1), (2), and (3) of this section at the time the records are scheduled. Special transfer requirements agreed upon by NARA and the agency shall be included in the disposition instructions.

(5) *NARA consultation.* The agency shall consult with NARA for guidance on the transfer of types of electronic records other than those prescribed in paragraphs (d) (1), (2), and (3) of this section.

(e) *Documentation.* Documentation adequate to identify, service and interpret electronic records that have been designated for preservation by NARA shall be transferred with the records. This documentation shall include completed NARA Form 14097, Technical Description for Transfer of Electronic Records, and a completed NARA Form 14028, Information System Description Form, or their equivalents. Where possible, agencies should submit required documentation in an electronic form that conforms to the provisions of this section.

(1) *Data files.* Documentation for data files and data bases must include record layouts, data element definitions, and code translation tables (codebooks) for coded data. Data element definitions, codes used to represent data values and interpretations of these codes must match the actual format and codes as transferred.

(2) *Digital spatial data files.* Digital spatial data files shall include the documentation specified in paragraph (e)(1) of this section. In addition, documentation for digital spatial data files may include metadata that conforms to the Federal Geographic Data Committee's Content Standards for Digital Geospatial Metadata, as specified in Executive Order 12906 of April 11, 1994 (3 CFR, 1995 Comp., p. 882).

(3) *Documents containing SGML tags.* Documentation for electronic files containing textual documents with SGML tags shall include a table for interpreting the SGML tags, when appropriate.

PART 1234—ELECTRONIC RECORDS MANAGEMENT

3. The authority citation for part 1234 continues to read:

Authority: 44 U.S.C. 2904, 3101, and 3105

4. In § 1234.30, paragraph (a)(4) is revised to read:

§ 1234.30 Selection and maintenance of electronic records storage media.

(a) * * *

(4) If the media contains permanent records and does not meet the requirements for transferring permanent records to NARA as outlined in § 1228.188 of this chapter, permit the migration of the permanent records at the time of transfer to a medium which does meet the requirements.

* * * * *

Dated: October 15, 1997.

John W. Carlin,

Archivist of the United States.

[FR Doc. 97–27822 Filed 10–20–97; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA079–5020a; FRL–5909–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia—General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of Virginia's regulation for General Conformity which sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related federal projects to all applicable implementation plans. The intended effect of this action is to approve Virginia's General Conformity Rule as a SIP revision.

DATES: This action is effective December 22, 1997 unless notice is received on or before November 20, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On January 27, 1997, the Virginia Department of Environmental Quality (DEQ) submitted a formal revision to its State Implementation Plan (SIP) to EPA for the purpose of meeting the

requirements of 40 CFR 51.851, State Implementation Plans, found under 40 CFR 51, subpart W, Determining Conformity of General Actions to State and Federal Implementation Plans. Part 51, subpart W is commonly referred to as the federal General Conformity Rule. The DEQ submittal, which is the subject of this approval action, is Regulation 9 VAC 5 Chapter 160—Regulation for General Conformity. The Commonwealth of Virginia adopted a rule by the State Air Pollution Control Board on August 13, 1996 in accordance with the requirements of § 10.1–1308 of the Virginia Air Pollution Control Law and 40 CFR Part 51, with an effective date of January 1, 1997. This action to approve Virginia's General Conformity regulation as a SIP revision is being taken under section 110 of the Clean Air Act (CAA).

Summary of SIP Revision

Virginia Regulation 9 VAC 5 Chapter 160, Regulation for General Conformity, establishes standards and procedures to follow when evaluating conformity of non-transportation related federal projects to all applicable implementation plans developed pursuant to section 110 and part D of the CAA.

At 40 CFR part 51, subpart W, EPA promulgated the federal rule for General Conformity to implement section 176(c) of the CAA. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of federal actions to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. The rule generally applies to federal actions except:

(1) Those required under the transportation conformity rule (40 CFR part 93, subpart A);

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by the state and submitted as a SIP revision to implement the General Conformity provisions. The provisions adopted by the Commonwealth of Virginia for General Conformity are those contained in and required by the federal rule. EPA has reviewed Virginia Regulation 9 VAC 5 Chapter 160, Regulation for General Conformity, and has determined that it satisfies the requirements of 40 CFR 51.851. A Technical Support Document (TSD) has been prepared which details the EPA's evaluation of Virginia Regulation 9 VAC 5 Chapter 160. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse and critical comments be filed. This action will be effective December 22, 1997 unless, by November 20, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 22, 1997.

Final Action

EPA is approving the final SIP revision of Virginia Regulation 9 VAC 5 Chapter 160, Regulation for General Conformity, submitted by the Commonwealth of Virginia on January 27, 1997, effective January 1, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to the publication of the rule of today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action to approve revisions to the Virginia SIP must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action pertaining to the Virginia General Conformity Rule may not be challenged later in the proceedings to enforce its requirements. (See section (b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 29, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(118) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(118) Revision to the Virginia State Implementation Plan on January 27, 1997 by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) A letter of January 27, 1997 from the Virginia of Department Environmental Quality transmitting the General Conformity Rule.

(B) Virginia Regulation 9 VAC 5 Chapter 160—Regulation for General Conformity, effective January 1, 1997.

(ii) Additional Material from the Virginia's January 27, 1997 submittal pertaining to Regulation 9 VAC 5 Chapter 160.

[FR Doc. 97–27846 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 193–054; FRL–5907–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on July 11, 1997. The revisions concern rules from the following District: Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to implement the transportation conformity provisions of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules define the criteria and procedures for transportation conformity actions and consultation for the Bay Area. EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals.

DATES: This action is effective on November 20, 1997.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Ruth Verlar, 415–744–1208.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Transportation Strategies Group, 2020 "L" Street, Sacramento, CA 92123–1095; Eric Simon, 916–322–2700.

Bay Area Air Quality Management District , 939 Ellis St., San Francisco, CA 94109, David Marshall, 415–749–4678.

FOR FURTHER INFORMATION CONTACT: Mark Brucker, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: 415–744–1231, brucker.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: BAAQMD, "The San Francisco Bay Area Transportation Air Quality Conformity Procedures," which include sections 93.100–93.104 and sections 93.106–93.136 and "The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures". These rules were submitted by the California Air Resources Board to EPA on December 16, 1996.

II. Background

On July 11, 1997 in 62 FR 37172, EPA proposed to approve the following rules into the California SIP: BAAQMD: "The San Francisco Bay Area Transportation Air Quality Conformity Procedures," which includes sections 93.100–93.104 and sections 93.106–93.136 and "The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures". The rules were adopted by BAAQMD on November 6, 1996. The California Air Resources Board (CARB) submitted these revisions to EPA on December 16, 1996. These rules were adopted as part of BAAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) and in response to section 176(c) transportation conformity requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules is provided in the proposed rule cited above.

EPA has evaluated the above rule(s) for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the proposed rule and in the technical support document (TSD), dated June, 1997, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 37172. No comments were received, so no response has been prepared.

IV. EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of sections 110(a) and 176(c)(4) of the CAA. This approval action will incorporate these rule(s) into the Federally approved SIP. The intended effect of approving these rule(s) is to regulate actions of agencies which affect emissions from on-road mobile sources in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 26, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(243) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

* * * * *

(243) Transportation Air Quality Conformity Procedures and Transportation Conformity Consultation Procedures for the following AQMD were submitted on December 16, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) "The San Francisco Bay Area Transportation Air Quality Conformity Procedures," which includes sections 93.100-93.104 and sections 93.106–93.136, adopted on November 6, 1996.

(*2*) "The San Francisco Bay Area Transportation Air Quality Conformity Interagency Consultation Procedures," adopted on November 6, 1996.

* * * * *

[FR Doc. 97–27857 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NM–33–1–7331a; LA–39–1–7332; FRL–5910–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, New Mexico; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills; Correction for Same, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves the New Mexico State Plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act (the Act). The State Plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits, except those located in Indian Country. Finally, this action makes a correction to a typographical error found in the direct final rulemaking for Louisiana's landfill gas control State Plan.

DATES: This action is effective on December 22, 1997, unless notice is postmarked by November 20, 1997, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State Plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

New Mexico Environment Department, Air Quality Program, 1190 St. Francis Drive, Harold Runnels Bldg., Santa Fe, NM 87501.

Anyone wishing to review this State Plan at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to Section 111(d) of the Act. Section 111(d) requires that the State submit the State Plan not later than 9 months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the EG at 40 CFR part 60, subpart Cc. Thus, the State Plans were due no later than December 12, 1996. The State of New Mexico submitted its State Plan to EPA on January 7, 1997.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants), but to which a standard of performance for new sources applies under section 111. Under section 111(d), emission standards are to be adopted by the States and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the New Source Performance Standards (NSPS). Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. According to subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified. The emission guidelines for landfill gas are promulgated in 40 CFR part 60. The final section 111(d) emission standards and guidelines for landfill gas were promulgated on March 12, 1995 (61 FR 9905), and codified in the CFR at 40 CFR subparts WWW and Cc, respectively. The emission guideline's specified limits for landfill gas requires affected facilities to operate a control system designed to reduce collected non-methane organic compounds (NMOC) concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, using the test methods specified under section 60.754(d).

II. Analysis of State Submittal

The official procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. The EPA promulgated the original provisions on November 17, 1975, and then amended them on December 19, 1995, to incorporate changes specific to solid waste incineration. These changes, which were necessary to conform with the solid waste incineration requirements under section 129 of the Act, are not relevant to MSW landfills. Thus, the procedures described in the original provisions for adopting and submitting State Plans still apply to MSW landfills and are reflected in 40 CFR part 60, subpart B, sections 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance, and enforcement requirements, and cross-references to the MSW landfill EG.

The New Mexico State Plan includes documentation that all applicable subpart B requirements have been met. Please see the evaluation report for a detailed description of EPA's analysis of the Plan's compliance with the subpart B requirements.

The New Mexico Environment Department (NMED) incorporates the NSPS and cross-references the NSPS for existing facilities to adopt the requirements of the Federal rule. The State has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the State Plan. The emission limits, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted into 20 NMAC 2.64, *Municipal Solid Waste Landfills.*

Subpart Cc requires affected existing landfills to be capable of attaining the specified level of emissions within 30 months after the State Plan is federally approved. For compliance schedules for MSW landfills extending more than 12 months beyond the date required for submittal of the plan (December 12, 1996), the compliance schedule must include legally enforceable increments

of progress towards compliance for that MSW landfill. Each increment of progress in section 60.21(h) of subpart B must have a compliance date and must be included as an enforceable date in the State Plan. As an alternative, the State must negotiate specific dates for the increments of progress on a facility-by-facility basis, and submit them to the public participation process. A revision to New Mexico's State Plan must be submitted to EPA once the dates for the increments of progress are established for each affected facility. The State Plan may include such additional increments of progress as may be necessary to permit close and effective supervision of progress towards final compliance. The State did not submit evidence of authority to regulate sources in Indian Country. Therefore, EPA is not approving this State Plan as it relates to those sources.

NMED must submit an updated source inventory once the affected facilities have reported their design capacities and NMOC emissions as required under 40 CFR part 60, subpart Cc (60.35c). In addition, Title V permit applications for the affected facilities are due within one year from the due date of the design capacity reports.

III. Correction of Typographical Error

On August 29, 1997 (62 FR 45730), EPA published the direct final approval of Louisiana's section 111(d) State Plan for the control of landfill gases. Two typographical errors and the omission of a center heading occurred. Sections 62.4631 and 62.4632 were incorrectly numbered 62.4931 and 62.4932, and the center heading "LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS" was omitted. Subpart T of 40 CFR part 62 is corrected in the rulemaking portion of this document to reflect these changes.

IV. Final Action

In this final action EPA is promulgating a revision to the New Mexico State Plan and the Code of Federal Regulations, part 62, to adopt the New Mexico State Plan for the control of landfill gas from MSW landfills, except those located in Indian Country. On January 7, 1997, the State of New Mexico submitted to EPA a plan identifying the existing MSW landfills in the State and establishing standards for the control of landfill gas emissions from these facilities. The State Plan includes regulation 20 NMAC 2.64, *Municipal Solid Waste Landfills*, documentation of the public participation process, a source inventory, and other required elements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to the State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: October 7, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart GG—New Mexico

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. A new center heading consisting of §§ 62.7855 and 62.7856 is added to read as follows:

* * * * *

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

62.7855 Identification of Plan.

Control of landfill gas emissions from existing municipal solid waste landfills, submitted on January 7, 1997.

62.7856 Identification of Sources.

The plan applies to all existing municipal solid waste landfills with design capacities greater than or equal to 2.5 million megagrams and non-methane organic emissions greater than or equal to 50 megagrams per year as described in 40 CFR part 60, subpart Cc.

Subpart T is amended (corrected) to read as follows:

PART 62—[AMENDED]

Subpart T—Louisiana

A new center heading, consisting of Sections 62.4631 and 62.4632 is added to read as follows:

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

62.4631 Identification of Sources.

The plan applies to all existing municipal solid waste landfills with design capacities greater than 2.5 million megagrams and non-methane organic emissions greater than 50 megagrams per year as described in 40 CFR part 60, subpart Cc.

62.4632 Effective Date.

The effective date of the portion of the plan applicable to existing municipal solid waste landfills is October 28, 1997.

[FR Doc. 97–27849 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Amdt. 195–58]

RIN 2137–AD 05

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule; extension of time for compliance.

SUMMARY: This direct final rule extends the time for compliance with the requirements for pressure testing of older hazardous liquid and carbon dioxide pipelines. Plans for testing, or establish maximum operating pressure, which were to be completed by December 7, 1997, would now be required by December 7, 1998. The dates for actual completion of the testing, previously December 7, 1999, and December 7, 2002, are also extended by one year. RSPA is extending these compliance dates to allow time to complete a rulemaking based on the American Petroleum Institute's (API) petition for a risk-based alternative to the required pressure testing rule. In a separate notice, RSPA intends to issue a proposed rule for a risk-based alternative to the existing pressure testing rule.

DATES: *Effective date:* This direct final rule takes effect January 20, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by December 22, 1997, the rule will become effective on the date specified. RSPA will issue a subsequent document in the **Federal Register** by January 5, 1998, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Compliance dates: The deadline that establishes regulations for planning and scheduling pressure testing is to be extended to December 7, 1998. All other deadlines are extended by a year.

ADDRESSES: Written comments must be submitted in duplicate and mailed to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. Comments should identify the docket number and the RSPA rulemaking number. All comments received before December 22, 1997, will be considered before final action is taken. Late-filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in room 401 Plaza between the hours of 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or the Dockets Unit (202) 366–9329, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

API Proposal

In a petition dated June 23, 1995, API submitted a risk-based alternative to the pressure testing rule and requested that RSPA delay implementation of the rule until the API proposal was given full consideration. A copy of the API proposal is available in the docket. API argued that the rule on pressure testing older hazardous liquid and carbon dioxide pipelines presents an opportunity to apply a risk-based approach to pressure testing, and proposed a risk-based alternative to the final rule issued on June 7, 1994 (59 FR 29379).

RSPA has been working with the pipeline industry to develop a risk management framework for pipeline regulation and decided to carefully evaluate the API proposal. Because substantial planning is required before pressure testing older pipelines, an extension of time for compliance was needed to avoid unnecessary costs in planning.

RSPA decided to initiate rulemaking on the API proposal. A notice of proposed rulemaking on risk-based alternative to pressure testing of older hazardous liquid and carbon dioxide pipelines is being published separately.

RSPA published a Final Rule (Docket PS–121; 61 FR 43026; August 20, 1996) extending the compliance deadline to plan and schedule pressure testing or establish maximum operating pressure to December 7, 1997. The dates for actual completion of testing were extended by one year.

To determine merits of the API proposal, RSPA held a public meeting on March 25, 1996. On May 8 and November 6, 1996, and again on May 7, 1997, RSPA briefed the Technical Hazardous Liquid Pipeline Safety

Committee (THLPSSC) on the API proposal and changes proposed by RSPA. RSPA also discussed those changes at the API conference on March 13, 1997, in Dallas, Texas.

RSPA received several comments from the industry during these meetings that all the compliance deadlines for the current pressure test rule should be extended. Industry argued that they were not sure what changes RSPA might suggest in the risk-based alternative rulemaking, so they could not plan in advance.

RSPA agrees with the comments about the need for extension of the comment period while rulemaking on the risk-based alternative is conducted. These new compliance dates are as follows:

—Before December 7, 1998, plan and schedule testing; or establish the pipeline's maximum operating pressure under § 195.406(a)(5).
—Before December 7, 2000, pressure test each pipeline containing more than 50 percent by mileage of electric resistance welded pipe manufactured before 1970; and at least 50 percent of the mileage of all other pipelines; and
—Before December 7, 2003, pressure test the remainder of the pipeline mileage.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review the direct final rule under that order. Also, DOT does not consider the direct final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). This extension of compliance dates does not warrant preparation of a Regulatory Evaluation.

Executive Order 12612

We analyzed the final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; and 49 CFR 1.53.

2. Section 195.302, paragraphs (c)(1), introductory text, and (c)(2)(i), introductory text, and (c)(2)(ii) are revised to read as follows:

§ 195.302 General requirements.

* * * * *

(c) * * *

(1) Before December 7, 1998, for each pipeline each operator shall—

* * * * *

(2) * * *

(i) Before December 7, 2000, pressure test—

* * * * *

(ii) Before December 7, 2003, pressure test the remainder of the pipeline mileage.

* * * * *

Issued in Washington, DC, on October 15, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–27740 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 101697A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1997 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 16, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. processors is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1997 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 365,837 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1997 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 365,587 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of the 1997 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. The fleet has taken the amount of the 1997 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by Sec. 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27885 Filed 10–16–97; 3:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 203
Tuesday, October 21, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Proposed rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is proposing to amend its Freedom of Information Act (FOIA) rules to provide for expedited processing of certain requests, to conform response deadlines with those now provided in the statute, and to add a category of documents to be made available in the Public Reading Room. These changes result from new statutory provisions in the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231. A minor change is also made in the Board's fee provision.

DATES: Comments should be submitted no later than November 20, 1997.

ADDRESSES: Comments should be sent to Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004–2901.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Ave. NW, Suite 700, Washington, D.C. 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, require that all Federal agencies promulgate new regulations on expedited processing of FOIA requests in cases of "compelling need" or other circumstances determined by the agency. 5 U.S.C. 552(a)(6)(E)(i). To implement this requirement, the Board is proposing to add a new paragraph (d) to 10 CFR 1703.105, "Requests for Board Records Not Available Through the Public Reading Room (FOIA Requests)." The text of the new paragraph is self-explanatory.

The Board is also amending its rules to provide a twenty-working-day time limit for response to initial requests. The Board notes, however, that it has provided documents in response to FOIA requests, during the eight years of Board operations, within ten working days in nearly every case. Regardless of the statutory changes, the Board will endeavor to provide requested documents promptly. This is usually within a few days unless an extensive search is required, a large number of documents must be reproduced, or national security concerns require a classification review of documents subject to the request. The Board provides a Public Reading Room with many documents immediately accessible to the public, computer access to the Board's electronic files, and is continuing to upload new categories of records to the Board's Internet home page, http://www.dnfsb.gov. These measures should ensure that the public continues to have speedy access to requested documents, generally within time less than the statutory requirements.

The Board will maintain in its Public Reading Room documents released pursuant to a FOIA request, along with an index of documents so released. In view of the small number of requests received in the past, the Board will include all documents released, beginning in calendar year 1997.

Finally, the Board is making one minor change to its fee provision, § 1703.107, by removing paragraph (b)(2)(iv). The Board has never made it a practice to charge mailing fees responding to FOIA requests, so this provision is not reflective of actual practice.

Executive Order No. 12866

These amendments do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to Office of Management and Budget review.

Regulatory Flexibility Act

These amendments will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 10 CFR Part 1703

Freedom of information.

For the reasons stated in the preamble, the Board proposes to amend 10 CFR Part 1703 as follows:

Defense Nuclear Facilities Safety Board

PART 1703—PUBLIC INFORMATION AND REQUESTS

1. The authority citation for part 1703 continues to read as follows:

Authority: 5 U.S.C. 552 as amended, 42 U.S.C. 2286b(c).

2. Section 1703.103 is proposed to be amended by adding paragraph (b)(12) to read as follows:

§ 1703.103 Requests for Board records available through the public reading room.

* * * * *

(b) * * *

(12) Copies of records released pursuant to FOIA requests, along with an index to these records. The format will generally be the same as the format of the released records.

3. Section 1703.105 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 1703.105 Requests for Board records not available through the public reading room (FOIA requests).

* * * * *

(e)(1) Expedited processing—A person may request expedited processing of a FOIA request when a compelling need for the requested records has been shown "Compelling need" means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information; or

(iii) The records pertain to an immediate source of risk to the public health and safety or worker safety at a defense nuclear facility under the Board's jurisdiction.

(2) A requester seeking expedited processing should so indicate in the initial request, and should state all facts supporting the need to obtain the requested records rapidly. The requester must also state that these facts are true and correct to the best of the requester's knowledge and belief.

(3) When a request for expedited processing is received, the Board will respond within ten calendar days from the date of receipt of the request, stating whether or not the request has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

§ 1703.107 [Removed and Reserved]

4. Section 1703.107(b)(2)(iv) is proposed to be removed and reserved.

5. Section 1703.108 is proposed to be revised to read as follows:

§ 1703.108 Processing of FOIA requests

* * * * *

(b) Action pursuant to this section to provide access to requested records shall be taken within twenty working days. This time period may be extended up to ten additional working days, in unusual circumstances, by written notice to the requester. If the Board will be unable to satisfy the request in this additional period of time, the requester will be so notified and given the opportunity to—

(1) Limit the scope of the request so that it can be processed within the time limit, or

(2) Arrange with the Designated FOIA Officer an alternative time frame for processing the original request or a modified request.

* * * * *

Dated: October 14, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–27704 Filed 10–20–97; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–69–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation), Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–26–05, which currently requires the following on certain The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 airplanes: repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle. The proposed AD results from the Federal Aviation Administration's policy on aging commuter-class aircraft and the determination that an improved design MLG inboard door hinge and attachment assembly (or approved hinges and angles made of steel), when incorporated, will eliminate the need for the currently required repetitive short-interval inspections. The proposed AD would retain the current repetitive inspections contained in AD 80–26–05, and would require installing these improved design or approved steel parts as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent separation of the MLG inboard door from the airplane caused by a cracked inboard door hinge or attachment angle, which could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–69–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6079; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–69–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–69–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On December 1, 1995, the FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–31, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774), and proposed to supersede AD 80–26–05, Amendment 39–3994. The NPRM proposed to (1) retain the requirement of repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard

door hinge and attachment angle assembly of improved design (part number 47529–32) or FAA-approved hinges and angles made of steel, as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would have been in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration was given to the one comment received.

Explanation of the Comment Received on the NPRM

The comment received on the NPRM contained information that the improved design hinge assemblies, part number (P/N) 47529–32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80–26–05. The commenter states that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529–32 hinge assemblies.

Subsequent Actions

The FAA conducted a review of the manufacturer's service history and service difficulty reports in the FAA database associated with the P/N 47529–32 MLG inboard door hinge assembly. Based on a review of this information, including the information received from the commenter, the FAA determined that more information and analysis were needed before MLG inboard door hinge assembly replacements were mandated through an AD, as terminating action for the repetitive inspections currently required by AD 80–26–05.

With the above information in mind, the FAA issued, on February 11, 1997, an advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision as to what course of rulemaking the FAA should take. The ANPRM was published in the **Federal Register** on February 19, 1997 (62 FR 7375). At this time, the FAA also withdrew the NPRM.

Interested persons were encouraged to provide information that describes what they consider the best action (if any) to be taken regarding the P/N 47529–32 MLG hinge assembly. No information or comments were received on the ANPRM.

The FAA's Analysis and Determination

The FAA service difficulty database contains 10 reports of failure or cracks found in the MLG inboard door hinge assembly on the affected airplanes. Six of these reports were submitted by the commenter to the NPRM, with three of these incidents attributed to the original MLG inboard door hinge assemblies. The other four reports are not clear as to whether the original MLG inboard door hinge assemblies were installed or the improved design assemblies were installed. However, the incidents occurred on high service time airplanes and, since there is no AD action mandating the installation of the improved design MLG inboard door hinge assemblies, the FAA presumes that the original hinge assemblies were installed.

The FAA has reviewed the three incident reports on the improved design MLG inboard door hinge assemblies and performed extensive testing and analysis of the improved design MLG inboard door hinge assemblies. The FAA has determined that the incidents were isolated and that mandating repetitive inspections is not needed when the P/N 47529–32 MLG inboard door hinge assemblies are installed. The FAA has determined that Piper Model PA–31–300 airplanes incorporate the same type design as the other PA–31 series airplanes and could incorporate the same part number MLG inboard door hinge assemblies.

After reviewing all available information related to this subject, including the referenced service information, the FAA has determined that AD action should be taken to (1) eliminate the repetitive short-interval inspections required by AD 80–26–05; and (2) prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge or attachment angle, which could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 airplanes of the same type design, the FAA is proposing an AD. The proposed AD would supersede AD 80–26–05 with a new AD that would (1) retain the requirement of repetitively inspecting the MLG inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529-32) or FAA-approved hinges and angles made of steel, as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 682, dated July 24, 1980.

The FAA's Aging Commuter-Class Aircraft Policy

The actions proposed in this AD are part of the FAA's aging commuter-class aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to installing the improved design hinge assemblies on the affected airplanes would be to rely on the repetitive inspections required by AD 80–26–05 to detect cracks in these areas.

Cost Impact

The FAA estimates that 1,769 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,000 per airplane ($500 per assembly × 4 assemblies per airplane). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,750,280 or $2,120 per airplane. This figure is based on the presumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that hinge assemblies have been distributed to equip approximately 400 (1,600 separate assemblies) of the affected airplanes. Presuming that 400 of the affected airplanes have four of these hinge assemblies incorporated, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $848,000 from $3,750,280 to $2,902,280.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 1,369 affected airplanes (1,769 affected airplanes—400 airplanes) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 800 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 8 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 4 to 8 years before the proposed modification would be mandatory.

Compliance Time of the Proposed AD

The FAA established the 800 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined in this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators "within the next 800 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 airplanes (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 8 years to allow low-usage airplanes time to accumulate the 800 hours after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service and general aviation, while still minimizing the impact on the private airplane owners of Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, and PA–31T1 airplanes.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexbility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–26–05, Amendment 39–3994, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 96–CE–69–AD. Supersedes AD 80–26–05, Amendment 39–3994.

Applicability: The following model and serial number airplanes, certificated in any category, that are not equipped with Piper part number (P/N) 47529–32 main landing gear (MLG) inboard door hinge assemblies or FAA-approved MLG inboard door hinges and attachment angles made of steel at all four hinge assembly locations:

Models	Serial numbers
PA–31, PA–31–300, and PA–31–325.	31–2 through 31–8012077.
PA–31–350	31–5001 through 31–8052168.
PA–31P	31P–3 through 31P–7730012.
PA–31T	31T–7400002 through 31T–8020076.
PA–31T1	31T–7804001 through 31T–8004040.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is effected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent separation of a MLG door from the airplane caused by a cracked MLG inboard door hinge or attachment angle, which could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–26–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (c) or (d) of this

AD is incorporated, inspect (using dye penetrant methods) the MLG inboard door hinges and attachment angles for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, install a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or install FAA-approved MLG inboard door hinges and angles made of steel.

(d) Within the next 800 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, install a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly in all four hinge assembly locations or install FAA-approved MLG inboard door hinges and angles made of steel in all four hinge assembly locations.

(e) Installing a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly in all four assembly locations or installing FAA-approved MLG inboard door hinges and angles made of steel in all four assembly locations as required by paragraphs (c) and (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 80–28–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 80–28–05, amendment 39–3994.

Issued in Kansas City, Missouri, on October 14, 1997.

Mary Ellen Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27794 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 96–47, FHWA 97–2295, Notice No. 1]

RIN 2125–AE11

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Markings, Signals, and Traffic Control Systems for Railroad-Highway Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendment to the Manual on Uniform Traffic Control Devices (MUTCD), reopening and extension of comment period.

SUMMARY: The FHWA is reopening and extending the comment period for a notice of proposed amendment to the MUTCD which was published January 6, 1997, at 62 FR 691. The original comment period was set to close on August 30, 1997. This extension responds to concern expressed by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the August 30 closing date does not provide sufficient time for appropriate response to the proposed MUTCD change. The FHWA recognizes that other commenters may be subject to similar time constraints and agrees that the comment period should be reopened and extended. Therefore, the closing date for comments is extended to December 22, 1997, in order to provide the NCUTCD and other interested commenters additional time to evaluate the proposed changes and to submit responses.

DATES: Submit comments on or before December 22, 1997.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendment contact Ms. Linda Brown, Office of Highway Safety, Room 3408, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: As noted, the original comment period for the January 6, 1997, notice of proposed amendment to the MUTCD closed on August 30, 1997. The NCUTCD has expressed concern that this closing date does not provide sufficient time to review the proposed change, consolidate comments, and submit these comments to its member organizations for approval. The NCUTCD only meets in January and June of each year to vote as a full body on proposals and issues relating to the MUTCD. Judging from the number of comments received so far to this docket and considering the large amount of materials contained in this docket, we believe there may be other interested persons who need additional time to respond.

The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0.

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued: October 8, 1997.

Gloria J. Jeff,

Acting Federal Highway Administrator.

[FR Doc. 97–27741 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 57–1–7183; FRL–5911–6]

Approval and Promulgation of State Implementation Plans (SIP) for Texas: Houston Vehicle Miles Traveled (VMT) Offset Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to disapprove the SIP revision submitted by the State of Texas for the Houston/Galveston Area (HGA) severe ozone nonattainment area to meet the VMT offset plan requirements of section 182 of the Clean Air Act, as amended (the Act). The EPA is proposing disapproval because the State's VMT Offset SIP uses modeling which relies upon an Inspection and Maintenance (I/M) program that was halted. This action is being taken under sections 110 and 182 of the Act.

DATES: Comments must be received on or before November 20, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)of the Act, requires ozone nonattainment areas classified as severe or above to develop plans for VMT offsets. Section 182(d)(1)(A) requires the State to submit plans which will identify and adopt specific enforceable transportation control strategies and Transportation Control Measures (TCMs) to offset growth in vehicle emissions so that, as vehicle trips and vehicle miles traveled increase, vehicle emissions stay below an established ceiling as projected out to the attainment date for the National Ambient Air Quality Standards for the nonattainment area requiring the VMT Offsets plan. The HGA is classified as a severe ozone nonattainment area with an attainment deadline of 2007. Reduction in vehicle emissions is to be attained as necessary, in combination with other emission reduction requirements to comply with periodic emissions reduction requirements. States were directed to consider, choose, and implement measures as specified in section 108(f). The VMT Offsets Plans were due to be submitted to EPA by November 15, 1992. The State submitted a "committal" SIP to the EPA for VMT offsets for the HGA nonattainment area on November 15, 1992. This submittal committed to submitting subsequent SIPs in 1993 and 1994 to parallel the development of the Rate-of-Progress SIP revision due November 15, 1993 and the demonstration of attainment SIP revision due by November 1994.

On November 12, 1993, and November 6, 1994, the State of Texas submitted a revision to the SIP for the VMT Offsets Plan to fulfill the "committal" SIP requirement. The Plan was submitted using specific modeling for vehicle emissions based on, among other things, a vehicle inspection and maintenance test-only program with most vehicles receiving an I/M loaded mode transient emission test known as the "IM240." EPA approved the I/M program on August 22, 1994 (59 FR 43046). This program began operation in January 1995, before being halted by the Texas Legislature and Governor.

Various states, including Texas, desired greater flexibility in implementing their I/M programs. On September 18, 1995, EPA revised and finalized I/M rules that gave states much greater flexibility in implementing I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard that would allow for less stringent I/M programs if overall air quality goals were met. In addition, on November 28, 1995, President Clinton signed the National Highway System Designation Act of 1995 (NHSDA) which allowed even greater flexibility in I/M programs for states, especially in the area of emission reduction estimates.

In response to this additional flexibility, the State of Texas submitted a revised I/M program to EPA. The EPA proposed conditional interim approval of this new plan on October 3, 1996 (61 FR 51651). As a result, the State of Texas has implemented a decentralized testing network which allows for both test-and-repair and test-only stations, and includes remote sensing. Vehicles are subject to a two-speed idle test, and an optional Acceleration Simulation Mode (ASM) loaded mode test. This program is referred to as the Texas Motorist Choice Program. Therefore, the modeling in the VMT Offset SIP is no longer current. The Plan's modeling does not reflect the Texas Motorist Choice I/M program; it reflects a program no longer in use. The EPA believes this is a significant deficiency which prohibits approval of the SIP under sections 110 and 182 of the Act.

For further information regarding EPA's analysis of the State submittal, refer to the Technical Support Document for this action found in the official docket.

II. Evaluation of Houston VMT SIP

While the current Texas Motorist Choice vehicle emission testing program appears to fulfill the requirements of the NHSDA, the Clean Air Act, and Federal I/M Rules, it presents a significant inconsistency within the VMT Offset SIP. This review compares the State's VMT Offset SIP submittal with the Act to determine compliance with requirements in the Act. The following narrative highlights the deficiency and rationale for disapproving this SIP revision.

The EPA interprets 182(d)(1)(A) to require sufficient measures be adopted so that projected motor vehicle volatile organic compound emissions will stay beneath a ceiling level established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented by VMT offset measures. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before due to the control measures in the SIP, the VMT offset requirement is satisfied.

In order to make these projections, two curves of vehicle emissions are calculated. The upper curve includes the effects of mandated controls such as reformulated gasoline, Reid Vapor Pressure control of gasoline, the employer trip reduction program, transportation control measures committed to in the 1993 TCM SIP, and an enhanced I/M program. The lower curve is produced by using an enhanced I/M program expanded into additional counties and other TCMs.

The November 15, 1993, VMT Offset SIP revision included a projection of the mobile source emissions profile for the HGA nonattainment area through the year 2010. The profile included the effects of required reductions from the mandatory vehicle I/M program in Harris and Galveston Counties, Reid vapor pressure controls, reformulated gasoline, an employee trip reduction program, Stage II vapor recovery for refueling, and a clean fuel fleets program. An estimation of the lowest point in these emissions projections was established as a ceiling for mobile source emissions. The lower curve includes the expansion of the enhanced

I/M program into three additional counties in 1995 and another three counties in 1997.

The November 6, 1994, submittal included a modification of the mobile source emissions projections and ceiling level to reflect updated information and methodology as well as TCMs and mobile source controls necessary to achieve VMT offset at least through the year 2010.

The final emissions estimates for Volatile Organic Compounds (VOCs) were obtained by multiplying the VMT times the vehicle emissions factor. Vehicle miles traveled data was generated from the Texas Travel Demand Package developed and maintained by the Texas Department of Transportation. Transit mode-choice estimates were performed by the Metropolitan Transit Authority using their mode choice models. Mobile source emission factors were obtained using the MOBILE5a model approved by EPA. Results of the updated modeling demonstration are found in Appendix B of the 1994 SIP submittal. The MOBILE5a model estimated emissions based on a number of input parameters. Among these were I/M program type and test type. The estimates were obtained using a test only I/M program type with either a loaded/idle test or a transient test. The geographic coverage of the I/M program in the Houston area was assumed to cover eight counties to include the commuting areas surrounding Harris County.

In the Texas Motorist Choice I/M Program, adopted by the State and in operation, not only has the program type changed to primarily a test-and-repair format, but the majority of the test stations offer only the loaded/idle test. In addition, the geographic area for mandatory testing has been reduced to just Harris County, with remote testing proposed, but not yet implemented, to monitor traffic coming into Harris County from the surrounding counties. With these major changes in mobile source emission parameters, the modeling may project different estimates of mobile source emissions, thereby impacting the emission levels projected to demonstrate the VMT Offset SIP requirements of the Act. The submitted SIP does not reflect any of the changes discussed above.

Employee Trip Reduction (ETR) programs are no longer required under the Act. Texas has dropped its ETR program and requested a withdrawal of the ETR program from the SIP. However, ETR credits were used in modeling VMT offsets. The ETR credits can no longer be used in VMT modeling, further emphasizing the need to revise the SIP submittal.

In summary, the HGA VMT SIP submittal is based on out-of-date modeling and must be revised. Motor vehicle emission reductions claimed for the vehicle I/M program will have changed since the SIP revision was submitted in 1993 and 1994. Elimination of the ETR program by the State eliminates the use of ETR emission reductions in the VMT SIP modeling demonstration. Based on the above analysis, EPA cannot approve the HGA VMT SIP.

III. Proposed Action

The EPA proposes to disapprove the HGA VMT Offset SIP under sections 110(k) and 182 of the Act because one or more of the elements of the VMT SIP submitted on November 12, 1993, and August 16, 1994, are incorrect. The VMT SIP submittal represents vehicle emission credits at one level based on modeling using a test-only I/M loaded mode transient emission test (IM240). That particular program was halted after a few weeks of operation. The State has since chosen to implement a different program, the Texas Motorist Choice Program, which is a test and repair program with a two-speed idle test or ASM loaded mode test, in a reduced geographic area, plus remote sensing to cover the outlying commuter areas. It is EPA's position that the emission reduction credits for the Texas Motorist Choice Program will be significantly different than those for an IM240 test only program. Consequently, the projected motor vehicle emissions in the August 16, 1994, VMT Offset SIP submittal are incorrect. They are based on an I/M program that is not in existence. They also do not reflect the projections of the new program.

In addition, due to the elimination of the ETR program, the modeling is based on incorrect information. Therefore, the emission reductions projected could not be reflecting the trends of VMT in the Houston area.

The State recently approved and submitted a revision to the HGA VMT offset SIP to correct concerns raised in this notice. We expect to review and take appropriate action on the latest revision rather than finalize this disapproval.

Under section 179(a)(2), if the EPA Administrator takes final disapproval action on a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, and the deficiency is not corrected within 18 months of the effective date of the final disapproval action, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act. Section 179(b) provides two sanctions available to the Administrator: revocation of highway funding and the imposition of emission offset requirements. If the administrator imposes the first sanction and the deficiency is not corrected within six months, the second sanction shall apply. The sanctions shall apply until the administrator determines that the State has come into compliance. This sanctions process is set forth in 40 CFR 52.31. Today's action serves only to propose disapproval of the State's revision, and does not constitute final agency action. Thus, the sanctions process described above does not commence with today's action. The 18 month period for the State to correct the deficiency would begin upon the effective date of a final disapproval action.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's proposed disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this proposed disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandate Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: October 8, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27848 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA079–5020b; FRL–5910–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia, General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing the requirements for determining conformity of general federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 20, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Virginia General Conformity Rule) which is located in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 29, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–27845 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 62

[NM–33–1–7331b; FRL–5911–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, New Mexico; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This document proposes approval of the New Mexico State Plan for controlling landfill gas emissions from existing municipal solid waste landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The State Plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits, except those located in Indian Country. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the State Plan.

DATES: Comments on this proposed rule must be postmarked by November 20, 1997. If no adverse comments are received, then the direct final rule is effective on December 22, 1997.

ADDRESSEES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Program, 1190 St. Francis

Drive, Harold Runnels Bldg., Santa Fe, NM 87501.

Anyone wishing to review this plan at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Sulfuric acid plants, Sulfuric oxides, Landfill gas emissions from municipal solid waste landfills.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 7, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27850 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 62, No. 203

Tuesday, October 21, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., November 3, 1997.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Special Open meeting of February 5, 1996.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
4. Memorandum re: Resolution for Docket CZ–266, Resolution No. 33, Amendment 2, ratification of Commodities Available for Public Law 480 during Fiscal Year 1996.
5. Resolution re: Amendment of Bylaws of the Commodity Credit Corporation.
6. Resolution re: Termination of Obsolete CCC Board Dockets.
7. Resolution re: Amendment of Dockets Requiring Only a Change in Nomenclature.
8. Docket GCX–326, Rev. 1, re: Market Access Program for Fiscal Year 1996 and Subsequent Years.
9. Docket GCZ–136, Rev. 2, re: Policy with Respect to Establishment of Valuation Reserves Against Assets of the Commodity Credit Corporation.
10. Docket CZ–266, Rev. 2, re: Operations Under Agricultural Trade Development and Assistance Act.
11. Docket CZ–148, Rev. 4 re: Capital Fund Commitments and Control of Valuation Reserves Against Assets of the Commodity Credit Corporation.
12. Docket P–CON–96–02, re: Environmental Activities.
13. Docket P–CON–96–03, re: Delegating Authority for CCC Conservation Programs.
14. Docket CZ–332, Rev. 1, re: Food for Progress Program.

CONTACT PERSON FOR MORE INFORMATION: Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: October 16, 1997.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 97–27928 Filed 10–16–97; 4:34 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Respondent Information Evaluation.

DATES: Comments on this notice must be received by December 26, 1997 to be assured of consideration.

ADDITIONAL INFORMATION: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Respondent Information Evaluation.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: The NASS is initiating a coordinated effort to increase survey cooperation. This effort will include the development of a program to educate producers about the functions of NASS and the uses of survey data. The importance of unbiased NASS estimates and the potential consequences of estimates being unavailable are expected to be a major part of the program. Ways to disseminate this message will also be investigated. Data users will be surveyed to gain insight into uses of NASS data. Data providers will be surveyed to obtain their opinions of how NASS survey data are used. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Subscribers to National Agricultural Statistics Service commodity reports and producers (data providers to NASS commodity reports).

Estimated Number of Respondents: 1,000 report subscribers and 4,000 producers.

Estimated Total Annual Burden on Respondents: 833 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture,

1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., October 3, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97–27748 Filed 10–20–97; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Commodity Survey Test.

Form Number(s): MA25Z, MA28X, MA28Z.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,380 hours.

Number of Respondents: 2,900.

Avg Hours Per Response: 1.5 hours.

Needs and Uses: The proposed information collection is a test of an alternate method of collecting manufacturers' product shipments data. Currently, we collect product class shipments from the establishments in the Annual Survey of Manufactures (ASM) and product shipments in the Census of Manufactures every five years. We also collect product shipments for various products from a combination of companies and establishments in the Current Industrial Reports (CIR) series. The data from the CIR, while quite detailed, do not cover all manufactured products. The data from the ASM, while comprehensive, does not provide sufficient detail for some users.

The Census Bureau would like to design a survey that would satisfy the need for both comprehensive and more detailed product data. The survey would collect detailed product shipments data from a sample of all manufacturing companies. The survey would cover all manufacturers' products at greater detail than the current ASM but less detail that is available in the existing CIR. If it is possible to successfully design such a survey, we could reduce the size of the ASM and eliminate much of the existing CIR program and divert those resources to the new survey.

Before we give additional consideration to implementation, we are planning to test the concept. We plan to select a sample of approximately 2,900 companies and ask them to report their company level product shipments for data year 1997. We have drafted questionnaires and developed reporting instructions. We plan to compare the results of this test collection to data from the CIR program and the 1997 Census of Manufactures. Those comparisons and the results of response follow-up to the test survey should help us determine if this type of survey is feasible and likely to produce the results our data users need.

Affected Public: Business or other for-profit.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1997.

W. Dan Haigler,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27820 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970611195–7195–01]

Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of consolidation and republication of a demonstration project plan as a permanent system pursuant to Public Law 104–113.

SUMMARY: This notice (1) consolidates the original plan and the two subsequent amendments into a single document for better understanding and ease of use; (2) documents the procedures by which the equivalent of locality-based comparability payments are applied at the National Institute of Standards and Technology (NIST); (3) specifies how to determine the General Schedule (GS) grade and rates of pay for employees who leave the NIST alternative personnel management system; (4) allows NIST to remove from the pay-for-performance system any positions not filled by career or career-conditional appointment; and (5) corrects, simplifies, and clarifies the project plan.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Allen Cassady at NIST on (301) 975–3031; Gail Redd at OPM on (202) 606–1521.

SUPPLEMENTARY INFORMATION:

1. Background

In accordance with Public Law 99–574, the NIST authorization act for 1987, OPM approved a demonstration project plan, "Alternative Personnel Management System at the National Institute of Standards and Technology," and published the plan in the **Federal Register** on October 2, 1987 (52 FR 37082). The project plan has been modified two times to clarify certain NIST authorities (54 FR 21331 of May 17, 1989, and 54 FR 33790 of August 16, 1989), and to revise the performance appraisal and pay administration systems to better link pay with performance (55 FR 19688 of May 10, 1990, and 55 FR 39220 of September 25, 1990).

In a letter to NIST dated December 30, 1993, OPM offered two options to NIST for implementing locality pay beginning in January 1994. Option 1 would have required implementation of locality pay in a manner as close as possible to the implementation for GS employees. Locality pay would have been separate from basic pay and would have counted as basic pay for the same limited purposes for which it is basic pay for GS employees (5 CFR 531.606(b)). Option 2 would allow NIST to incorporate the equivalent of locality pay into its own basic pay package.

NIST chose Option 2. Adjustments in pay band ranges and in eligible employees' basic pay rates are made at the time of GS general and/or locality pay increases. Pay rates under the NIST Alternative Personnel Management System (NIST APMS) will be basic pay for all purposes except those specifically stated in this notice.

This notice formally changes the project plan to clarify how locality pay is applied at NIST. It also documents or clarifies any administrative change made by OPM under its authority on other pay-related matters.

2. Public Law 99–574, National Bureau of Standards Authorization Act For Fiscal Year 1987

Because many elements of the NIST APMS were originally required by Section 10 of Pub. L. 99–574, the complete text of Section 10 is presented here.

Demonstration Project Relating to Personnel Management

Sec. 10(a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances, (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(2) The Director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal

year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section has not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employees's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriated Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

After the initial five years of the project, OPM twice extended the project administratively. The first extension extended the project from December 30, 1992 through September 30, 1995. The second extension would have extended the project until September 30, 1998. However, the NIST personnel management demonstration project was extended indefinitely by Section 10 of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113, March 7, 1996):

Section 10. PERSONNEL

The personnel management demonstration project established under section 10 of the National Bureau of Standards Authorization Act for Fiscal Year 1987 (15 U.S.C. 275 note) is extended indefinitely.

National Institute of Standards and Technology.

Robert E. Hebner,

Acting Director.

System Plan

The NIST alternative personnel management system plan reads as follows.

An Alternative Personnel Management System To Improve the Ability of the National Institute of Standards and Technology to Attract Highly Qualified Candidates, Motivate Employees, and Retain Successful Performers

Introduction

Executive Summary

The NIST APMS was designed by the National Institute of Standards and Technology, in cooperation with the U.S. Department of Commerce (DoC) and the Office of Personnel Management (OPM). The NIST APMS was built on the concepts of: (1) Market sensitivity; (2) performance; (3) administrative simplicity; (4) management flexibility and accountability; and (5) Broad applicability.

The NIST APMS system was designed to (1) improve hiring and allow NIST to compete more effectively for high-quality researchers, through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff, through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management, through delegation of personnel authorities; and (4) increase the efficiency of personnel systems, through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

Participating Organizations

All sites of the National Institute of Standards and Technology participate in the NIST APMS. The two main sites are located at Gaithersburg, Maryland, which is also the headquarters of NIST, and at Boulder, Colorado. The two main sites are similar in employment profiles, with the following exceptions: (1) about 85 percent of employees covered by the NIST APMS are located at the Gaithersburg site; and (2) all Operating Unit (OU) Directors are located in Gaithersburg. A small number of covered employees may from time to time work at sites other than Gaithersburg or Boulder.

Types and Numbers of Participating Employees

The NIST APMS covers approximately 3150 NIST employees.

Labor Participation

A few General Schedule employees at the Gaithersburg site are represented by the International Association of Firefighters (IAFF) and the International Association of Machinists and Aerospace Workers, AFL–CIO; and at the Boulder site by the American Federation of Government Employees (AFGE). NIST consults and negotiates with these unions, as appropriate, in accordance with 5 U.S.C. 4703(f).

Senior Executive Service (SES) and ST–3104 Positions

The personnel systems for SES positions (see 5 U.S.C. 3131–3136 and 5 U.S.C. 5381–5385) did not change for the NIST APMS. SES classification, staffing, compensation, performance appraisal, awards, and reduction in force are based on standard SES methods. The personnel systems for ST–3104 positions (see 5 U.S.C. 3104 and 5376) changed only to the extent that ST–3104 positions are in the same performance appraisal, awards, and reduction in force systems as General Schedule positions. Classification, staffing, and compensation, however, did not change. Neither SES nor ST–3104 employees were subject to the pro rata share payouts upon conversion to the NIST APMS system. Pay adjustments for their positions under the NIST APMS are carried out in accordance with existing Federal rules pertaining to SES and ST–3104 pay adjustments.

General Schedule (GS) Positions

The GS category no longer exists as an identified category under the NIST APMS. It is incorporated in the new career-path/pay-band system. The step increases of the General Schedule are replaced by the annual performance pay increases. Except as otherwise provided in the NIST APMS plan, laws and regulations pertaining to GS employees (e.g., overtime pay provisions) continue in force for all NIST APMS employees in the same way as they do for GS employees.

Position Classification

Introduction

The objectives of the NIST classification system are to simplify the classification process, make the process more serviceable and understandable, and delegate decision-making authority and accountability to line managers.

Coverage

All former General Schedule positions at NIST are included in the NIST APMS.

Career Paths

A career path aggregates comparable occupations that have parallel career patterns and are suitable for similar treatment in staffing, classification, pay, and other personnel functions.

There are four career paths at NIST:

(a) *Scientific and Engineering* (ZP): research, policy, staff, and managerial positions in science, engineering, computing, and mathematics. Examples of occupational series in this career path are 401—Biologist, 801—General Engineer, 830—Mechanical Engineer, 855—Electronics Engineer, 1301—General Physical Scientist, 1310—Physicist, 1320—Chemist, 1520—Mathematician, and 1530—Statistician.

(b) *Scientific and Engineering Technician* (ZT): science and engineering support positions. Examples of occupational services in this career path are 332—Computer. Operator, 802—Engineering Technician, 856—Electronics Technician, 1311—Physical Science Technician, and 1521—Mathemathics Technician.

(c) *Administrative* (ZA): specialist positions in such fields as finance, procurement, human resources management, public information, technical information, accounting, and management analysis. Examples of occupational series in this career path are 080—Security Officer, 201—Personnel Management Specialist, 340—Program Manager, 341—Administrative Officer, 510—Accountant, 560—Budget Analyst, 1082—Writer-Editor, and 1410—Librarian.

(d) *Support* (ZS): clerical, assistant, secretarial, police, firefighter, and other support positions not fitting the definition of any of the other career paths. Examples of occupational series in this career path are 081—Firefighter, 203—Personnel Clerk/Assistant, 305—Mail and File clerk, 318—Secretary, 525—Accounting Technician, 1105—Purchasing Agent, 1106—Procurement Clerk/Assistant, 1141—Library Technician, and 2102—Transportation Clerk/Assistant.

Pay Bands

Each career path is divided into five pay bands, which replace GS grades. The maximum rate of a pay band is step 10 of the highest GS grade in the band, including locality rates. When a special rate for one or more of the occupations in the band is higher than the applicable locality rate, NIST has the option of using the maximum applicable special rate to set the maximum rate of the band.

For each regular pay band, there is a corresponding supervisory pay band for employees who receive supervisory pay differentials. The supervisory pay band has the same minimum rate as the non-supervisory band, but has a maximum rate 6 percent higher than the maximum rate of the non-supervisory band. Positions in the supervisory pay bands include positions with formal supervisory authority over at least three positions and other positions approved by the Personnel Management Board (PMB) on a case-by-case basis.

The chart below shows the four NIST APMS career paths, the pay bands in each career path, and the relationship between pay bands and General Schedule grades.

NIST CAREER PATHS AND PAY BANDS

GS Grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
CAREER PATHS								BANDS							
Scientific and Engineering				I				II			III		IV		V
Scientific and Engineering			I				II			III		IV		V	
Administrative (ZA)				I				II			III		IV		V
Support (ZS)		I		II		III		IV		V					

Occupational Series

The General Schedule occupational series are retained. New occupational series may be added or deleted in response to programmatic needs. New or revised series may also be established.

NIST Classification Standards

Each NIST classification standard describes each pay band in two factors: (1) general duties and responsibilities, and (2) knowledges, skills, and abilities. These two factors complement each other at each pay band in a career path and may not be separated in classifying a position. OPM classification standards are not used.

Position Descriptions

Line managers follow an automated menu-driven process to classify positions and produce position descriptions.

Delegation of Classification Authority

The NIST Personnel Management Board (PMB) oversees the delegation of classification authority to line managers. NIST will establish a plan to review the accuracy of classification decisions made by line managers and make periodic reports to the NIST Director. The Government-wide system of approval of SES and ST–3104 positions will be maintained.

Staffing

Introduction

NIST uses a variety of staffing options to fill positions. Under all options, the recruiting and examining efforts are based at NIST. OPM registers are not used. These options include Direct Examination and Hiring, Agency-Based Staffing, Merit Assignment, and various noncompetitive placements. The NIST Office of Human Resources Management (OHRM) oversees all examining and hiring activity. Line managers participate actively in the process.

Direct Examination and Hiring

NIST uses two direct examination and hiring authorities: *Direct Hire Critical Shortage Occupations* and *Direct Hire Critical-Shortage Highly-Qualified Candidates*. These vacancies are normally filled through direct recruiting by selecting officials, supplemented by a required search of the NIST Applicant Supply File.

Direct Hire: Critical Shortage Occupations

NIST uses direct-hire procedures for categories of occupations which require skills that are in short supply. All occupations for which there is a special rate under the General Schedule pay system constitute a shortage category; all occupations at Band III and above in the ZP Career Path constitute a shortage category; and Nuclear Reactor Operator positions at Pay Band III and above in the ZT Career Path constitute a shortage category. Any position in these three shortage categories may be filled through direct-hire procedures.

Direct Hire: Critical Shortage Highly Qualified Candidates

NIST uses direct-hire procedures for additional positions for which there is a shortage of highly qualified candidates. Candidates for positions at Band I or II of the ZP Career Path who have a bachelor's degree with at least a 2.9 GPA (on a 4.0 scale) or a master's degree constitute a shortage category; candidates for positions at Band I of the ZT Career Path who have at least a 2.9 GPA in a course of study of at least 2 years in an accredited college, junior college, or technical institute constitute a shortage category; and candidates for positions at Band II of the ZT Career Path who have at least a 2.9 GPA in 4 years of college study constitute a shortage category.

Agency-Based Staffing

NIST uses agency-based staffing procedures to fill vacancies not covered by direct-hire or the NIST Merit Assignment Plan (MAP). Vacancies filled by agency-based procedures are advertised at a minimum through the automated nationwide OPM posting system.

Merit Assignment Plan (MAP)

NIST uses its MAP to fill positions restricted to current or former Federal employees with competitive status. This plan is amended to include any NIST APMS flexibilities.

NIST Applicant Supply File

NIST advertises the availability of job opportunities in direct-hire occupations by continuous posting of the NIST Applicant Supply Bulletin on the OPM electronic job opportunity listing. NIST accepts applications for this file on an open-continuous bases for all direct-hire authorities. NIST selecting officials may recruit directly for applicants, but any applicants they find must compete with applicants who apply through the Applicant Supply Bulletin and other applicants whose applications are stored in the Applicant Supply File.

Referral Procedures for Direct Examination and Hiring and Agency-Based Staffing Authorities

NIST uses either *direct referral* or *rating and ranking* to refer applicants for vacancies under direct-hire and agency-based staffing authorities.

1. Direct Referral

A qualified candidate may be referred directly without rating and ranking:

a. when there are no more than three qualified candidates and no preference eligibles; or

b. if the candidate is a preference eligible with a compensable service-connected disability of 10 percent or more (these preference eligibles are given absolute preference except when the position is at Band III or above in the Scientific and Engineering Career Path). Selecting officials may choose any of these preference eligibles when more than one are referred.

2. Rating and Ranking

Rating and ranking (including veteran preference and "rule-of-three" procedures) are used when the list of qualified candidates contains:

a. more than three candidates; or

b. two or more candidates including at least one preference eligible (except when direct referral of a 10-point veteran is made under 1b above).

Priority Placement

NIST follows all Department of Commerce and OPM priority placement programs.

Paid Advertising

NIST may use paid advertising as one of the first steps in recruitment without having to first try unpaid methods.

Private Sector Temporaries

NIST uses private sector temporary help services as appropriate.

Probationary Period

Probation under the NIST APMS follows current law and regulations, except when an employee in the ZP Career Path is required to serve a probationary period. The ZP probationary period is three years, except that a supervisor may end the probationary period of a subordinate ZP employee anytime after one year.

Qualification Standards

The qualifications required for placement within a pay band and within a career path are based on the OPM Qualification Standards for General Schedule Positions, except that testing requirements are not used and the Superior Academic Criterion is defined as a 2.9 GPA (on a 4.0 scale). The minimum qualifications for the occupation and for the GS grade corresponding to the lowest grade in the pay band apply. NIST may develop its own qualification standards based on current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs.

Recruitment and Retention Allowances

NIST may grant recruiting and retention allowances in appropriate circumstances, not to exceed $10,000 or 25 percent of basic pay, whichever is greater. Decisions on allowances are based on market factors such as salary comparability and salary offer issues; relocation and dislocation issues; programmatic urgency; emerging technologies; turnover rates; special qualifications; and shortage categories or scarcity positions unique to NIST. All scientific, engineering, and other hard-to-fill positions are eligible. Recruitment and Retention Allowances are not considered part of basic pay.

Travel Expenses

Travel and transportation expenses, advancement of funds, per diem expenses incident to travel, and/or relocation expenses may be provided to new hires in the same manner as is authorized in sections 5723, 5724, 5724a, 5724b, and 5724c of title 5, U.S. Code. Recipients must sign service agreements indicating commitment to at least 12 months continued service.

Promotion

A promotion is a change of an employee to (1) a higher pay band in the same career path, or (2) a pay band in another career path in combination with an increase in pay. To be eligible for promotion, an employee must have a current performance rating of Eligible. The time-in-pay-band requirement for promotion eligibility is 52 weeks, with two exceptions: (1) an employee may be promoted from Band I and Band II in the Support Career Path without time restriction; and (2) an employee may be promoted from Band II to Band III in the Support Career Path without time restriction if the employee was not promoted from a Band I to a Band II position during the previous 52 weeks. (For pay provisions related to promotion, see "Pay Administration.")

Reduction In Force

Introduction

NIST follows reduction-in-force procedures contained in law and regulation, with the following differences.

Link Between Performance and Retention

An employee with an overall performance score in the top 10 percent of scores within a peer group (see "Performance Evaluation and Rewards" below) is credited with 10 additional years of service for retention purposes. The total credit is based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to an established cutoff date, for a potential total credit of 30 years. No reduction-in-force credit converts to this system from any other performance appraisal system.

Competitive Areas

Each of the four career paths in each NIST local commuting areas is a separate competitive area—separate from the other career paths and separate from the competitive areas of other NIST employees.

Link Between Pay Bands and Grades

OPM reduction in force regulations on assignments rights (5 CFR 351.701) are applied to the NIST APMS by substituting "one band" for "three grades" and "two bands" for "five grades." OPM severance pay regulations (5 CFR 550.703) are applied to the NIST APMS by substituting "one band" for "two grades" and for "two grade or pay levels."

Pay Administration

Introduction

The NIST APMS pay administration system provides NIST with the ability to attract and retain quality employees through pay setting flexibilities and pay for performance.

Pay for Performance

Pay for performance has three components: (a) the NIST annual adjustment to basic pay; (b) annual performance pay increases; and (c) bonuses. The first component, the annual adjustment to basic pay, is set according to the subsections below referring to general and locality increases. The second component, performance pay increases, is set according to the procedures under "Performance Evaluation and Rewards." The third component, bonuses, is composed of former cash awards.

Placement in a Lower Pay Band

An employee whose performance rating is unsatisfactory does not receive the NIST annual adjustment to basic pay. Because the minimum pay rate for each pay band is increased each year by the amount of the NIST annual adjustment to basic pay, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that pay band who does not receive the NIST annual adjustment to basic pay due to unsatisfactory performance. When this happens, the employee is placed in the next lower pay band. This placement shall not be considered an adverse action under 5 U.S.C. 7512, nor shall grade (i.e., pay band) retention under 5 U.S.C. 5362 be applicable.

Supervisory Pay Differentials

The original legislation authorizing the NIST demonstration project provided that "appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided." The differential does not apply to SES and ST–3104 positions.

Supervisors who formally supervise three or more subordinates and others approved on a case-by-case basis by the PMB receive supervisory differentials. The amounts of the differentials are up to 6 percent of base salary (see "Pay Bands" above for a description of the supervisory pay bands and their maximum rates).

Upon conversion of NIST supervisors to the NIST APMS, all eligible positions are placed in the supervisory pay bands. The incumbents of these positions are converted at their basic pay (including special rates or locality pay) at the time of conversion, except for ZP supervisors, who begin receiving the added differential upon conversion.

There are two types of supervisory differentials. The first type applies to new supervisors in the Scientific and Engineering (ZP) Career Path only. The amount of this type of differential is fixed at 3 percent for supervisors below division chief and 6 percent for division chiefs and equivalent. The second type applies to all bands in all career paths where there are supervisors. Supervisors in these bands may be eligible for higher band ceilings (up to 3 or 6 percent higher than the normal pay band ceiling) which they may reach through pay for performance.

The granting of a differential is not considered a promotion or a competitive action. The differential is canceled when an employee's supervisory responsibilities are discontinued. The cancellation of a supervisory differential does not constitute an adverse action and there is no right of appeal under 5 U.S.C. Chapter 75.

Pay and Compensation Ceilings

The maximum rate for a pay band (excluding special pay bands

established to allow for the supervisory pay differential) is equal to the maximum rate—GS rate, locality rate, or special rate, as applicable—payable to GS employees for the grades corresponding to the pay band. An employee's basic pay may not exceed the maximum rate of the employee's pay band (including a supervisory pay band), except for employees receiving retained rates of pay.

An employee's rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for Level IV of the Executive Schedule. An employee's aggregate monetary compensation for a calendar year may not exceed the basic rate of pay for Level I of the Executive Schedule, as required by 5 U.S.C. 5307 and OPM regulations in subpart B of 5 CFR 530.

Locality Pay Options

On December 30, 1993, OPM approved the extension of locality pay to the NIST demonstration project. Two options were made available.

Option 1 would have required implementation of locality pay in a manner as consistent as possible with implementation for GS employees. Locality pay would have been separate from basic pay and would have counted as basic pay for the same limited purposes for which it is basic pay for GS employees (5 CFR 531.606(b)). All employees would have been eligible for locality pay adjustments regardless of performance rating. Employees in pay bands affected by special rates would have received full locality adjustments if their pay were no higher than the GS step 10 rate of the highest GS grade within the band, but if their pay were higher than that step 10 rate, they would have received an adjustment that would have increased their pay to no higher than the GS locality rate for step 10 (i.e., GS step 10 rate plus applicable locality payment).

Option 2 allows implementation of locality pay as basic pay, as an increase to the bonus pool, or a combination of the two. If applied as basic pay, the locality adjustment would be basic pay for all purposes except as otherwise provided in this plan. The locality adjustment would be applied to the minimum and maximum rates of each pay band. For pay bands affected by special rates, the maximum rate would be the higher of the special rate and the locality rate. A locality adjustment may be applied to an eligible employee's basic pay only to the extent that it does not cause the employee's basic pay to exceed the maximum rate of the pay band.

NIST selected option 2 and has implemented locality pay as basic pay. However, NIST may change its selection after sufficient internal notice toemployees.

Effect of General and Locality Pay Increases on Pay Bands

The minimum and maximum rates of each pay band will be increased at the time of a general pay increase under 5 U.S.C. 5303 and/or a locality pay increase under 5 U.S.C. 5304 or 5304a so that they equal the new locality-adjusted minimum and maximum rates of the grades corresponding to the pay band. The maximum rates of bands set according to special rates, however, may exceed this amount to the extent necessary to equal the 10th step of the appropriate special rate scale if that rate is higher.

Effect of General and Locality Pay Increases on Individual Pay

Only employees with a current performance rating of "eligible" may receive an increase in their basic pay at the time of pay band adjustments. This increase in basic pay will reflect any applicable general and/or locality pay increase for General Schedule employees. The increase in basic pay for eligible employees whose basic pay is at the ceiling of their pay band will equal the increase in the ceiling.

The basic pay increase for eligible employees whose basic pay is below the ceiling of their band will be calculated by applying two factors to the employee's rate of pay. One factor is the general increase factor representing the increase in General Schedule rates under 5 U.S.C. 5303 (e.g., 1.02 if the general increase is 2 percent). The second factor is the locality pay increase factor, which is derived by dividing the newly applicable locality pay percentage factor by the formerly applicable locality pay percentage factor. (For example, if the locality payment percentage for an area increased from 4.23 percent to 5.48 percent, the locality pay increase factor would be 1.0548 divided by 1.0423, or approximately 1.012.) Thus, the new rate of basic pay would be calculated using the following formula:

$$\text{new pay rate} = \text{general increase factor} \times \frac{1 + \text{newly applicable locality pay percentage}}{1 + \text{formerly applicable locality pay percentage}} \times \text{former pay rate}$$

However, a basic pay increase will be applied only to the extent that it does not cause an employee's basic pay to exceed the ceiling of the applicable pay band.

Basic Pay

Employees covered by the NIST APMS do not have separate basic pay rates and locality pay rates, as do General Schedule employees. They have a basic pay rate only, which reflects any general increases and/or locality adjustments calculated by the above formula. NIST APMS basic pay rates are basic pay for all purposes, except as specifically provided in the NIST APMS plan.

Pay Setting Upon Promotion

The new basic pay rate upon promotion may be set at any level in the new pay band (if the move is to a different career path, any pay band in the new career path would be considered a "new pay band"), except that the minimum pay increase upon promotion is 6 percent.

Pay Setting for New Hires

The setting of initial salaries within pay bands for new appointees will be flexible, particularly for hard-to-fill positions in the scientific and engineering career path.

Private Sector Compensation Reports

The Institute will arrange for the preparation of reports that include findings on compensation for private sector positions. NIST will consider these findings when making NIST pay decisions.

Conversion of NIST Employees From the General Schedule to the NIST APMS System

For NIST employees being converted from the GS pay system to the NIST APMS, GS grades will translate directly to the NIST APMS's career-path and pay-band structure. NIST employees will be converted at their current highest rate under the GS pay system (i.e., highest of locality rate or special rate or similar rate) at the time of conversion, except for supervisors in the Scientific and Engineering Career Path who qualify for a supervisory/managerial pay differential upon conversion. No one's salary will be reduced as a result of the conversion. When conversion of a NIST employee into the NIST APMS is accompanied by a geographic move, the employee's GS pay entitlements (including any locality rate or special rate) in the new area will be determined before converting the employee's pay to the NIST APMS pay system.

At the time of conversion, each converted NIST employee will be given a lump-sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade increase. The payment for a General Schedule employee will be computed by (1) calculating the ratio of (a) the number of days the employee will have spent in the employee's current rate through the day prior to the day of conversion, to (b) the total number of days in the employee's current waiting period for a regular within-grade increase (364, 728, or 1092 days), and (2) multiplying that ratio by the dollar value of the employee's next within-grade increase, as in effect at the time of conversion.

Movements of GS Employees From Other Organizations to the NIST APMS System

GS employees can move into the NIST APMS from other organizations through transfer, reassignment, promotion, or new appointment. When the movement is by lateral transfer or lateral reassignment, the employee's GS grade will translate directly to the NIST APMS's career-path/pay-band structure and the employee's rate of basic pay under the NIST APMS will equal his or her current highest rate under the GS pay system (i.e., highest of locality rate or special rate or similar rate), except for the addition of a supervisory differential if the position is a supervisory position in the Scientific and Engineering Career Path. When a lateral transfer or lateral reassignment is accompanied by a geographic move, the employee's GS pay entitlements (including any locality rate or special rate) in the new area will be determined before converting the employee's pay to the NIST APMS pay system. When the movement is by new appointment, promotion, reassignment with pay adjustment (through merit assignment plan competition), or transfer to "higher grade" (i.e., to a band higher than the band that corresponds to the employee's current GS grade) the new pay rate is set according to NIST APMS pay setting flexibilities for new hires and promotions.

Pay Setting Upon Movement of a NIST Employee to a Different Pay Area

NIST employees who move (voluntarily or involuntarily) from one geographic area to another within NIST will have their pay adjusted to account for any change in the pay band maximum rates between the two areas. This adjustment ensures that the employee's relative position in the pay band (measured as a percentage of the pay band maximum rate) will be maintained upon movement. The pay rate in the new area will be derived using the following formula:

$$\text{new pay rate} = \text{former pay rate} \times \frac{\text{pay band maximum rate after movement}}{\text{pay band maximum rate before movement}}$$

The new pay rate is calculated before any other simultaneous pay action (e.g., general pay adjustment or promotion effective on the same date).

Any reduction in pay solely attributable to a movement from one pay area to a lower-paying area shall not be considered a reduction in basic pay under the adverse action provisions of 5 U.S.C. 7512(4) or under the pay retention provisions of 5 U.S.C. 5363. Nor shall such action be considered a reduction in basic pay under the pay retention provisions of 5 U.S.C. 5363. (The employee retains the right to grieve or file a complaint regarding a geographic reassignment if there is an allegation of a violation of nondiscrimination statutes or a prohibited personnel practice.)

Grade and Pay Retention

Grade and pay retention follow current law and regulations, except as allowed by specific waiver (e.g., substitute "career path and band" for "grade"). Specific waivers are listed in the section below, titled, "Authorities and Waiver of Laws and Regulations Required".

Severance Pay

OPM severance pay regulations (5 CFR 550.703) are applied to the NIST APMS by substituting "one band" for "two grades" and for "two grade or pay levels."

Performance Evaluation and Rewards

Introduction

The performance evaluation system provides the basis for decisions on performance ratings, performance pay increases, bonuses, and other performance related actions. The performance year beings October 1 and ends September 30. However, an employee's performance overall or on a single element may be evaluated at any time that adequate information for an evaluation exists.

Coverage

All employees covered by the NIST APMS are covered by the APMS performance evaluation and rewards system, except the NIST may remove from the system any position not filled by career or career conditional appointment. ST–3104 employees have their performance evaluated under the structure of the performance evaluation system and may receive bonuses, but do not receive performance pay increases. Members of the Senior Executive Service remain under the DoC–NIST SES performance appraisal, pay, and bonus system.

Performance Plans

Performance plans are developed each year by supervisors with input from employees. Critical performance elements are established for each position (all elements are critical). The supervisor weights each element so that the total weight of all elements is 100 points. Benchmark performance standards define the range of performance. A supervisor may add supplemental standards to a performance plan to further elaborate the benchmark performance standards.

Mid-Year Review

A required mid-year review addresses mid-year accomplishments, performance successes and deficiencies, and any need for performance plan modifications. Additional reviews may be held as needed.

Performance Appraisal

Performance appraisals bring supervisors and employees together to discuss performance and accomplishments during the performance year. The appraisals lead to decisions by supervisors and pay pool managers on performance scores, performance ratings, performance pay increases, and bonuses. Performance appraisal is scheduled for the final

weeks of the performance year, though at any time of the year a supervisor may place an employee on a performance improvement plan, assign an unsatisfactory rating if performance is still unsatisfactory, and take appropriate action.

Performance Ratings

The NIST ARMS performance ratings are *Eligible* (for performance pay increase, bonus, and annual adjustment to basic pay) and *Unsatisfactory*. *Eligible* covers the same performance range as the former ratings of Marginal, Minimally Successful, Fully Successful, Commendable, and Outstanding. *Unsatisfactory* covers the same performance as the former ratings of Unsatisfactory and Unacceptable. An employee whose performance is unsatisfactory is placed on a performance improvement plan and give an opportunity to improve before a final rating is assigned.

Performance Scores

Each element is evaluated individually against the benchmark performance standards and any supplemental standards. If a single element in an employee's plan is rated *Unsatisfactory*, the overall rating is *Unsatisfactory* and there is no performance score. If all elements meet at least the minimally acceptable benchmark, the overall rating is *Eligible*. Rating Officials score the performance of employees rated *Eligible* on a 100-point scale, which corresponds to the 100-point element weight scale. An individual element score may be as high as the weight of that element. The total performance score is the sum of the element scores. A perfect score on each element would produce a total score of 100 points.

Performance Ranking

Employees are ranked, by performance score, within a *peer group*. A peer group may involve no more than one career path, but may be otherwise organized by any combination of organization, occupation, pay band, or appointment type. Rating Officials rank their own employees, then Pay Pool Managers interleave the rankings of subordinate Rating Officials to produce peer group rankings at the pay pool level. A Pay Pool Manager is a line manager who manages his or her organization's pay increase and bonus fund and has final decision authority over the performance scores, performance pay increase, and bonuses of subordinate employees.

Performance Pay Decisions

The Performance Pay Table divides each pay band into three segments of *intervals*. Each interval is linked to a range of potential percentage pay increases beginning at zero and progressing to a maximum percentage pay increase. The maximum performance pay increase an employee may receive, therefore, depends on the interval into which the employee's salary falls. The Pay Pool Manager maker a performance pay decision for each employee in a peer group, based on the Pay Pool Manager's ranking and the pay increase ranges in the Performance Pay Table. Within a peer group, an employee may not receive a higher proportion-of-range than a higher-ranking employee or a lower proportion-or-range than a lower-ranking employee.

Performance Bonuses

Bonuses are the only cash awards directly linked to the NIST APMS performance appraisal system, and are awarded at the ended of the performance year in conjunction with decisions on performance pay increases. A pay Poll Manager may award a bonus to any employee with an *Eligible* rating.

Actions Based on Unsatisfactory Performance

When an employee's final rating or performance on a single element is *Unsatisfactory* (after an opportunity to improve performance), NIST may take action to reassign or remove the employee, or place the employee in a lower band, in accordance with performance action provisions in law and regulation.

Employee Development

The objective of NIST's Employee Development Program is to develop the competence of employees for maximum achievement of Institute goals and objectives. The NIST APMS legislation mandates the continuation of an employee development program including, in appropriate circumstances, a sabbatical program. The NIST APMS sabbatical program is consistent with the terms and conditions of the SES sabbatical program. It covers all career appointees under the NIST APMS have a least seven years of Federal service and a current performance rating of Eligible.

Evaluation

Periodic evaluations focus on human resource management issues. Evaluation criteria are derived from NIST APMS objectives, such as the objective to compete more effectively for high-quality staff. Evaluations are based on personnel records, collected data, and the results of employee surveys.

Costs

Although the NIST APMS legislation does not require budget neutrality, NIST has set for itself an objective to control total compensation costs associated with the NIST APMS. NIST maintains total compensation during the NIST APMS at the level it would have reached under the current Government-wide system. The procedure permits changes in NIST expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. NIST may offset selected salary increases with savings by reducing turnover, eliminating unnecessary overhead, and cutting other personnel costs. NIST measures its adherence to cost control by preparing budget estimates based on prescribed Federal Budget processes and monitoring actual spending under the NIST APMS against this budget estimate.

Conversion or Movement From a NIST APMS Position to a General Schedule Position

If a NIST APMS employee is moving to a General Schedule (GS) position, the following procedures will be used to convert the employee's APMS pay band to an equivalent GS grade and the employee's APMS rate of pay to equivalent GS rates of pay. The converted GS grade and rates of pay must be determined before movement out of the APMS and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments and lateral transfers, the converted GS grade and rates of pay will become the employee's actual GS grade and rates of pay, unless immediately affected by a simultaneous geographic movement or another pay action. For non-lateral transfers, promotions, and other actions, the converted GS grade and rates of pay will be deemed to be the employee's grade and rates of pay at the time of movement out of the APMS and will be used in applying applicable pay setting rules (e.g., promotion rules).

1. *Grade-Setting Provisions:* An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

a. The employee's NIST APMS basic rate of pay is compared with step 4 rates in the highest applicable GS rate range (including a rate range in the GS base schedule, a rate range in the applicable locality rate schedule, or a rate range in a special rate schedule for the employee's occupation). If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's pay rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's pay rate is lower than the applicable step 4 rate of the highest grade, the pay rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's pay rate equals or exceeds step 4 of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found in which the employee's rate of basic pay equals or exceeds the applicable step 4 of the grade. The employee is then converted at that grade. If the employee's rate of pay is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exceptions: (1) If the employee's pay rate exceeds the maximum rate of the grade assigned under the above-described "step 4" rule but fits in the rate range for the next higher applicable grade in the band (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade; (2) An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the NIST APMS, unless since that time the employee has undergone a reduction in band; (3) In Band I of the ZP and ZA Career Paths, students without a bachelor's degree or comparable experience are converted no higher than GS–4.

2. *Pay-Setting Provisions:* An employee's pay within the converted GS grade is set by converting the NIST APMS rate to GS rates of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement out of the NIST APMS.

b. An employee's NIST APMS rate is converted to a rate in the highest applicable rate range for the converted GS grade (including a rate range in the GS base schedule, a rate range in the applicable locality rate schedule, or a rate range in a special rate schedule for the employee's occupation).

c. If the highest applicable rate range is a locality pay rate range, the NIST APMS rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS rate of basic pay is the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

d. If the highest applicable rate range is a special rate range, the NIST APMS rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

e. Exception: If an employee's NIST APMS of rate exceeds the maximum rate of the highest applicable rate range upon conversion to the General Schedule the affected employee's NIST APMS rate will be converted to a retained rate under 5 U.S.C. 5363. If an employee is entitled to a special rate under the General Schedule, the NIST APMS is converted directly to a retained rate. If an employee is only entitled to locality pay under the General Schedule, this retained rate is derived by dividing the NIST APMS rate by the applicable locality pay factor (i.e., 1 plus the locality payment percentage). Thus, the locality-adjusted retained rate will equal the NIST APMS rate the employee had been receiving before conversion. Since the employee's total rate of pay is not reduced upon conversion, this change to converted rates under the General Schedule will not be considered a reduction in basic pay under 5 U.S.C. 5363 or 7512.

NIST APMS Revisions

Modifications must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Minor procedural modifications of this published NIST APMS plan within already existing waivers may be made by the NIST Director with appropriate notice (e.g., employee, OPM and/or Federal Register notice). No new waivers from law or regulation may be added.

NIST APMS Management and Oversight

In accordance with the original NIST project legislation, the project is "conducted by the Director of the National Bureau of Standards" (now NIST). The Director has delegated management and oversight of the NIST APMS to the Personnel Management Board (PMB), whose members and staff are appointed by the Director. The PMB is the NIST body to manage, evaluate, and make policy and procedural changes to NIST APMS systems when needed. When necessary, the PMB interprets and clarifies NIST APMS policy. The PMB establishes the management and administrative structures for running and evaluating the NIST APMS and oversees the delegations of authorities to managers, supervisors, and management bodies, including the withdrawal of authority when warranted. The PMB has the authority to make exceptions to normal NIST APMS procedures on a case-by-case basis when it believes an exception is warranted. The PMB also has the authority to establish itself as the approving body for any type of NIST APMS personnel action for which NIST has authority.

Authorities and Waiver of Laws and Regulations Required

Public Law 99–574 gave the National Institute of Standards and Technology (NIST) the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulations. In addition to the authorities granted by the original NIST project legislation, the following waivers of law and regulation are included:

Title 5, U.S. Code

Section 5304, Locality-based comparability payments.

Section 5333, Minimum rate for new appointments.

Section 5753–5754 except that relocation bonuses under section 5753 continue to apply.

Subchapter VI of Chapter 53 Grade and Pay Retention, (To the extent necessary to allow the following modifications: (1) Pay retention does not apply to reductions in pay caused solely by geographic movement; and (2) pay retention does not apply to conversions to the General Schedule as long as the employee's total rate of pay is not reduced.)

Section 7512(4), Adverse actions, (To the extent necessary to allow the following modifications: (1) Exclude reductions in pay that are solely due to recomputation upon geographic movement; and (2) exclude conversions to the General Schedule that do not result in a reduction in the employee's total rate of pay.)

Title 5, Code of Federal Regulations

Sections 315.801 Probationary period; when required, (waived only for positions in the Scientific and Engineering Career path)

Section 315.802 Length of probationary period, (waived only for positions in the Scientific and Engineering Career path)

Section 351.401 Determining Retention Standing.

Section 351.402 Competitive area in RIF.

Section 351.403 Competitive level in RIF.

Section 351.504 (a) and (d) Credit for Performance.

Section 351.701 Assignment involving displacement.

Section 531.203 Minimum rate for new appointments.

Part 575, Subpart A Recruitment Bonuses.

Part 575, Subpart C Retention Allowances.

[FR Doc. 97–27796 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce; Commerce.

ACTION: Notice of a government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 96–035.

Title: Mechanical Support For A Two Pill Adiabatic Demagnetization Refrigerator.

Abstract: The invention uses two paramagnetic cooling materials, called pills, supported on only one side of a magnet. The design simplifies the support and provides more active pill area in the bore of the magnet. Also described is a support design in which all of the support strings are placed on a compact support assembly that provides for stable tensioning.

Dated: October 15, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–27797 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce; Commerce.

ACTION: Notice of a jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce and Cornell University. The Department of Commerce's ownership interest in this invention is available for non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

The invention available for non-exclusive licensing is:

NIST Docket Number: 96–019.

Title: Fabrication Of Structures By Metastable-Atom Impact Desorption Of A Passivating Layer.

Description: This invention consists of a new process for fabricating microstructures on a surface. It utilizes the energy contained in neutral metastable rare gas atoms to remove passivating atoms from selected areas of a surface, allowing further chemical processing to add or remove material to the exposed areas. Some of the advantages of this process are realized by the introduction of atom optical techniques, which allow structures to be fabricated with significantly higher resolution than can be achieved with optical lithography, and with a greater amount of parallelism than can be achieved with electron or ion beam techniques.

Dated: October 15, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–27798 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce; Commerce.

ACTION: Notice of a jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce and X-Ray Optical. The Department of Commerce's ownership interest in this invention is available for non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; FAX 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

The invention available for non-exclusive licensing is:

NIST Docket No: 96–034.

Title: Microcalorimeter X-Ray Detectors With X-Ray Lens.

Description: The invention uses an x-ray polycapillary lens to collect x-rays from a point source over a large solid angle and focus them onto an x-ray microcalorimeter detector. The x-ray lens enhances the capabilities of present detectors and allows for the detector to be placed farther from the source.

Dated: October 15, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–27799 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing, special shift, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 21, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
218	8,722,076 square meters.
219	63,803,083 square meters.
315	11,504,704 square meters.
317	40,078,642 square meters.
338/339	3,638,394 dozen.
340/640	1,866,252 dozen.
341	4,436,434 dozen of which not more than 2,529,123 dozen shall be in Category 341–Y[2].
342/642	1,182,485 dozen.
347/348	709,521 dozen.
363	38,338,869 numbers.
369–D[3]	1,299,344 kilograms.
641	1,285,070 dozen.
647/648	661,639 dozen.
Group II 200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O[4], 666, 669, 670, and 831–859, as a group..	104,426,558 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27980 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

October 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 65197, published on December 11, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all

of the provisions of the bilateral, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 21, 1997, you are directed to adjust the limits for the following categories, as provided for in the bilateral agreement between the Governments of the United States and the Kingdom of Nepal:

Category	Adjusted twelve-month limit[1]
336/636	234,214 dozen.
340	280,779 dozen.
341	913,818 dozen.
369–S[2]	954,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–27981 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

October 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 347/348/847 is being increased for additional special shift and additional special carryforward, reducing the limit for Category 647/648 to account for the increase in special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68246, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 21, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
347/348/847	1,883,722 dozen.
647/648	1,095,301 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–27979 Filed 10–20–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 22, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army and Air Force National Guard Bureau, 111 South George Mason Drive, Arlington, Virginia 22202–1382 ATTN: (Major R. Jolly Brown). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Research to Develop a Profile of Army National Guard Members.

Needs and Uses: This research will be a mail survey among Army National Guard members. The research will assist the Army National Guard (ARNG) in making the most effective use of its public relations, advertising and marketing budget for recruiting efforts. The research will help the ARNG and its advertising agency prioritize activities, focus their messages and understand the various segments of Guard members.

Affected Public: Individual or Households.

Annual Burden Hours: 1500.

Number of Respondents: 6000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The public relations, advertising and marketing activities can have a significant impact on recruiting and retention of Guard members. Recruiting and retention have been areas of concern in recent years for the Army National Guard. This research will assist the Army National Guard in making the most effective use of its budget for public relations, advertising and marketing activities.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–27880 Filed 10–20–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS), Devils Lake, North Dakota, Emergency Outlet

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The 1997 Emergency Supplemental Appropriations Act, Public Law (Pub. L.) 105–18, directed the Secretary of the Army to conduct preconstruction engineering and design (PED) for an emergency outlet from Devils Lake, North Dakota, to the Sheyenne River. The PED authorization also required that an EIS be prepared. The construction of an emergency outlet was not authorized by Pub. L. 105–18.

Devils Lake is a terminal lake located in northeastern North Dakota. Devils Lake has a long history of a wide range of fluctuating lake levels. Since 1993, the lake has risen about 20 feet. Rising lake levels have resulted in damage to houses, businesses, infrastructure, transportation systems, and land uses. Significant expenditures of Federal, State, and local funds have been required to relocate structures and to raise and strengthen roads and levees. While these efforts will provide immediate protection, there is great concern that the lake could continue to rise. The Devils Lake Basin is a subbasin of the Hudson Bay drainage system, although Devils Lake has not contributed to the Hudson Bay drainage for many centuries.

FOR FURTHER INFORMATION CONTACT: Questions concerning the DEIS can be directed to: Colonel J.M. Wonsik, District Engineer, St. Paul District, Corps of Engineers, ATTN: Mr. Robert Whiting, 190 Fifth Street East, St. Paul, Minnesota 55101–1638.

SUPPLEMENTARY INFORMATION: The DEIS will assess impacts, identify areas of potential impact, identify mitigation features, discuss monitoring activities, and identify future activities associated with an emergency outlet from Devils Lake.

Significant issues and resources to be identified in the DEIS will be determined through coordination with responsible Federal, State, Canadian, and local agencies; the general public; interested private organizations and parties; and affected Native Americans. Anyone who has an interest in participating in the development of the DEIS is invited to contact the St. Paul District, Corps of Engineers.

Significant issues identified to date for discussion in the DEIS are as follows:

1. Natural resources including: fishery, wildlife, vegetation, wetlands, and riparian areas;
2. Cultural resources;
3. Water quality and quantity, groundwater, erosion, and sedimentation;
4. Federally and State listed threatened or endangered plant or animal species;
5. Social and economic resources;
6. Downstream intrastate, interstate, and international resources;
7. Native American and Tribal Trust resources and responsibilities.

Additional issues of significance may be identified through public and agency meetings. A notice of those meetings will be provided to interested parties and to local news media.

Construction of an emergency outlet would be considered major in scope. An outlet to the Sheyenne River has the potential to result in significant impacts. Our environmental review will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, and applicable laws and regulations.

We anticipate that the DEIS will be available to the public in the fall of 1998.

Dated: September 30, 1997.

J.M. Wonsik,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–27879 Filed 10–20–97; 8:45 am]

BILLING CODE 3710–CY–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Nez Perce Tribal Hatchery Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the Proposed Action Alternative of the Nez Perce Tribal Hatchery Program in the Clearwater River Subbasin in Idaho. This decision is based on the analysis of the alternatives in the Final Environmental Impact Statement (EIS) for the Nez Perce Tribal Hatchery (DOE/EIS–0213, July 1997). In the proposed action, BPA would build and the Nez Perce Tribe would operate two central incubation and rearing hatcheries and six satellite facilities. Spring and fall chinook salmon would be reared and acclimated to different areas in the Subbasin and released at the hatcheries and satellite sites or in other watercourses throughout the Subbasin. Fish would return to reproduce naturally in the areas where they are released.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Leslie Kelleher—ECN–4, Bonneville

Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–7692, fax number (503) 230–5699.

Issued in Portland, Oregon, on October 8, 1997.

Jack Robertson,

Acting Administrator and Chief Executive Officer.

[FR Doc. 97–27840 Filed 10–20–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Activities; Reinstatement of Collection; Comment Request

AGENCY: Department of Energy (DOE).

ACTION: Agency information collection activities; reinstatement of collection; comment request.

SUMMARY: DOE is soliciting comments concerning the reinstatement of OMB's approval to collect information for DOE's Qualified List of Energy Service Companies using a supplemental questionnaire to Standard Form 129.

DATES: Written comments must be submitted by December 22, 1997.

ADDRESSES: Send comments to Tanya Sadler, Office of Federal Energy Management Programs, EE–92, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7755, e-mail: tanya.sadler@hq.doe.gov, and fax: (202) 586–3000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Tanya Sadler at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In accordance with the Energy Policy Act of 1992 and 10 CFR 436, the Department of Energy has established the DOE Qualified List of Energy Service Companies (ESCO), comprised of private industry firms that are eligible to perform work under energy savings performance contracts (ESPC) for Federal facilities. For placement on the list, firms are required to complete an application. The application includes a Standard Form 129, Solicitation Mailing List Application, and a supplemental questionnaire. The supplemental questionnaire asks for: corporate experience including two project descriptions which demonstrate experience in ESPC or the design and installation of energy conservation measures, technological capabilities, proposed staff, financial status, and the submission of two client questionnaires. The data collection is used to evaluate the firms based on criteria established by 10 CFR 436 to be placed on the list. DOE will later seek a reinstatement of the approval by the Office of Management and Budget for the collection under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

II. Current Actions

This is a reinstatement, without change, of a previously approved collection for which approval has expired. The same information will be collected; however, the supplemental questionnaire will be reorganized and the instructions and questions will be clarified to elicit complete responses. OMB will be requested to approve the collection of information for another three years.

III. Request for Comments

Prospective respondents and other interested parties should comment on the action discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency? Does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can DOE make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Public reporting burden for this collection is estimated to average 2 hours per response. Burden includes the total time and effort expended to generate, maintain, retain, or disclose or provide the information. Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

C. DOE estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with the data collection?

D. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternative sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the collection. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, on October 15, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–27841 Filed 10–20–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Fusion Energy Sciences Advisory Committee Notice of Reestablishment

AGENCY: Department of Energy.

ACTION: Notice of reestablishment.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) Pub. L. No. 92–463, and section 101–6.1015, title 41 Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Fusion Energy Sciences Advisory Committee has been reestablished for a two-year period beginning October 1997.

The Committee will provide advice to the Department on long-range plans, priorities, and strategies for demonstrating the scientific and technological feasibility of fusion energy.

The renewal of the Fusion Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the FACA, the Department of Energy Organization Act (Pub. L. 95–91), the GSA regulation on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, HR–7, FORS, Washington, D.C. 20585, Telephone: (202) 586–3279.

Issued in Washington, D.C. on October 14, 1997.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 97–27839 Filed 10–20–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4183–000]

3E Energy Services, LLC; Notice of Issuance of Order

October 16, 1997.

3E Energy Service, LLC (3E) submitted for filing a rate schedule under which 3E will engage in wholesale electric power and energy transactions as a marketer. 3E also requested waiver of various Commission regulations. In particular, 3E requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by 3E.

On October 9, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by 3E should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, 3E is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of 3E's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 10, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27835 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4173–000]

Electrical Associates Power Marketing, Inc.; Notice of Issuance of Order

October 16, 1997.

Electrical Associates Power Marketing, Inc. (EAPM) submitted for filing a rate schedule under which EAPM will engage in wholesale electric power and energy transactions as a marketer. EAPM also requested waiver of various Commission regulations. In particular, EAPM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EAPM.

On October 7, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EAPM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EAPM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect to any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EAPM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 6, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27834 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–808–000, et al.]

Maritimes & Northeast Pipeline L.L.C.; Notice of Public Field Trip for the Proposed Maritimes Phase II Project

October 15, 1997.

On October 29, 30, and 31, 1997, the staff of the Office of Pipeline Regulation will conduct a public field trip of facilities proposed by Maritimes & Northeast Pipeline, L.L.C. in the above referenced docket for the Maritimes Phase II Project. Limited sites along the proposed pipelines including the Skowhegan and Millinocket Laterals, and alternative routes, including the Northern Alternative, will be visited. Anyone interested in participating in the site visit may contact Mr. Paul McKee in the Commission's Office of External Affairs at (202) 208–1088 for more details and must provide their own transportation.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–27836 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-4346-000]

Moulton Niguel Water District; Notice of Issuance of Order

October 16, 1997.

Moulton Niguel Water District (Moulton) submitted for filing a rate schedule under which Moulton will engage in wholesale electric power and energy transactions as a marketer. Moulton also requested waiver of various Commission regulations. In particular, Moulton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Moulton.

On October 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Moulton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Moulton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Moulton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27836 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket ER98-28-000]

PECO Energy Company; Notice of Filing

October 15, 1997.

Take notice that on October 3, 1997, PECO Energy Company (PECO) filed the following documents as part of its request for approval of a form of installed capacity obligation allocation agreement that it intends to utilize in connection with its state approved Retail Access Pilot Program.

Letter of Transmittal

1. Form of Installed Capacity Obligation Allocation Agreement

Copies of the filing were served on the Pennsylvania Public Utility Commission, other Pennsylvania PJM utilities and on electric generation suppliers licensed to sell energy to participants in the Pennsylvania retail access pilot programs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27831 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98-64-000 and EL98-4-000]

Pennsylvania Public Utility Commission, Metropolitan Edison Company and Pennsylvania Electric Company, PECO Energy Company, PP&L, and UGI Utilities, Inc.; Notice of Filing

October 15, 1997.

Take notice that on October 3, 1997, the Pennsylvania Public Utility Commission filed a Petition Requesting Expedited Consideration and Acceptance of Forms of Retail Transmission Service Agency Agreement Necessary to Implement the Pennsylvania Retail Access Pilot Programs. Also, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy), PECO Energy Company, and jointly PP&L, Inc., and UGI Utilities, Inc., filed their Forms of Retail Transmission Service Agency Agreements (Agency Agreements), including unbundled retail transmission rate schedules, that will be used to implement their retail access pilot programs. The Pennsylvania Commission and the Pennsylvania PJM Utilities request the Commission to grant expedited consideration so that the Agency Agreements may become effective on November 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27832 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-1-6-001]

Sea Robin Pipeline Company; Notice of Proposed Changes To FERC Gas Tariff

October 15, 1997.

Take notice that on October 8, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet, with an effective date of October 1, 1997:

First Substitute Sixth Revised Sheet No. 7
First Substitute First Revised Sheet No. 7a
First Substitute Sixth Revised Sheet No. 8
First Substitute Sixth Revised Sheet No. 9

Sea Robin states that the aforesaid tariff sheets comply with the Commission's Order dated September 29, 1997 in Docket No. TM98-1-1-000, *et al.*, ordering Sea Robin to revise its proposed ACA surcharge of $.0023 to $.0022.

Sea Robin states that copies of Sea Robin's filing were served upon all of Sea Robin's customers, affected commissions and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27779 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-4145-000]

Sigma Energy, Inc.; Notice of Issuance of Order

October 16, 1997.

Sigma Energy, Inc. (Sigma) submitted for filing a rate schedule under which Sigma will engage in wholesale electric power and energy transactions as a marketer. Sigma also requested waiver of various Commission regulations. In particular, Sigma requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Sigma.

On October 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sigma should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Sigma is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sigma's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline, for filing motions to intervene or protests, as set forth above, is November 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27833 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-1-9-002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 15, 1997.

Take notice that on October 10, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised, Volume No. 1, Sub Ninth Revised Sheet No. 26, with an effective date of October 1, 1997.

Tennessee states that this tariff sheet is filed in compliance with the Commission's September 29, 1997 Order of the Director Accepting, Rejecting and Allowing Withdrawal of Tariff Sheets in the above-referenced dockets. (September 29 Order). Tennessee Gas Pipeline Company, 80 FERC ¶ 62,290 (1997). In the September 29, Order, the Commission directed Tennessee to file substitute tariff sheets to reflect the Commission's rejection of Ninth Revised Sheet No. 26 and First Revised Sheet No. 26A.1 in Tennessee Gas Pipeline Company, 80 FERC ¶ 61,256 (1997). In accordance with the September 29 Order, Tennessee requests an effective date of October 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-27780 Filed 10-20-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4726–000, et al.]

Cinergy Services, Inc., et al. Electric Rate and Corporate Regulation Filings

October 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER97–4726–000]

Take notice that on September 23,1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and e prime, inc. (E prime).

Cinergy and e prime are requesting an effective date of August 31, 1997.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Pool

[Docket No. ER97–4727–000]

Take notice that on September 22, 1997, the New England Power Pool (NEPOOL) filed two (2) Service Agreements for Through or Out Service or Other Point-to-Point Transmission Service pursuant to § 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of these Service Agreements will permit NEPOOL to provide transmission service to Consolidated Edison Company of New York, Inc., and to Public Service Electric and Gas Company in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented, under the above-referenced dockets. NEPOOL requests an effective date of September 1, 1997 for commencement of transmission services. Copies of this filing were served upon all persons on the Commission's official service lists in the captioned proceedings, the NEPOOL members, the New England Public Utility Commissioners and all parties to the transactions.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company

[Docket No. ER97–4728–000]

Take notice that on September 22, 1997, Consumers Energy Company (Consumers), tendered for filing service agreements for unbundled wholesale power service pursuant to the Consumers' Power Sales Tariff filed on December 31, 1996 and accepted for filing on September 12, 1997 in Docket No. ER97–964–000 with the following customers:

Carolina Power & Light Company
Cinergy Services, Inc.
The Cleveland Electric Illuminating Company
Enron Power Marketing, Inc.
Holland Board of Public Works
Illinois Power Company
Indiana Michigan Power Company
Koch Energy Trading, Inc.
Louisville Gas & Electric Company
Michigan Cooperative Coordinated Pool (Unexecuted)
Michigan South Central Power Agency
Minnesota Power & Light Company
Northern Indiana Public Service Company
Ohio Edison Company
PanEnergy Trading and Market Services, LLC
PECo Energy Company
The Toledo Edison Company
Sonat Power Marketing, L.P.
Southern Minnesota Municipal Power Agency
Virginia Power Company
Vital Gas & Electric LLC
Wabash Valley Power Association, Inc.
Wisconsin Electric Power Company
Wolverine Power Supply Cooperative, Inc.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the respective customers.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power

[Docket No. ER97–4729–000]

Take notice that on September 23, 1997, the Washington Water Power Company (WWP), tendered for filing a Notice of Cancellation from Clark County PUD dated January 31, 1997, terminating service with Clark County PUD under WWP's Power Sales Agreement for an effective termination date of July 31, 1997. Notice is hereby given that effective July 31, 1997, Rate Schedule FERC No. 222 with Clark County PUD and filed with the Federal Energy Regulatory Commission by Washington Water Power is to be canceled at Clark County PUD's request.

Notice of the proposed cancellation has been served upon the following: Mr. James L. Sanders, Clark County PUD, Director of Technical Services, PO Box 8900, Vancouver, Washington 98668.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Alpha Energy Corporation

[Docket No. ER97–4730–000]

Take notice that on September 23, 1997, Alpha Energy Corporation (Alpha) petitioned the Commission for acceptance of Alpha Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Alpha intends to engage in wholesale electric power and energy purchases and sales as a marketer. Alpha is not in the business of generating or transmitting electric power.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER97–4731–000]

Take notice that on September 23, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Delhi Energy Services, Inc., and a Short-Term Firm Point-To-Point Transmission Service Agreement with Public Services Company of Colorado under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER97–4732–000]

Take notice that on September 24, 1997, Commonwealth Edison Company (ComEd) submitted for filing two Service Agreements, establishing Equitable Power Services Company (EPS) and QST Energy Trading (QST), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of August 27, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon EPS, QST, and the Illinois Commerce Commission.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER97–4733–000]

Take notice that on September 24, 1997, Maine Electric Power Company (MEPCO), tendered for filing a Non-Firm Point-to-Point Transmission service agreement entered into with Williams Energy Services Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER97–4734–000]

Take notice that on September 24, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreement for one new customer, US Gen Power Services, L.P.

CILCO requested an effective date of September 22, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER97–4735–000]

Take notice that on September 23, 1997, Arizona Public Service Company, tendered for filing revised Fuel Adjustment Clause Exhibits reflecting changes in the Western System Power Pool Agreement.

A copy of this filing has been served on all parties on the Service List.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Additional Signatory to PJM Interconnection, L.L.C.) Operating Agreement

[Docket No. ER97–4736–000]

Take notice that on September 24, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the L.L.C., a membership application of Energis Resources Incorporated. PJM requests an effective date of September 25, 1997.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER97–4737–000]

Take notice that on September 25, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 11, 1997, with Strategic Energy Ltd., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Strategic Energy Ltd., as a customer under the Tariff. DLC requests an effective date of September 11, 1997, for the Service Agreement.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER97–4738–000]

Take notice that on September 25, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated August 26, 1997, with CMS Marketing, Services & Trading Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds CMS Marketing, Services & Trading Company as a customer under the Tariff. DLC requests an effective date of August 26, 1997, for the Service Agreement.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER97–4739–000]

Take notice that on September 24, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement between Southern Company Services Inc. and Florida Power for service under Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective September 10, 1997.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27837 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–2–000, et al.]

PDC Berkshire Power LLC, et al. Electric Rate and Corporate Regulation Filings

October 10, 1997.

Take notice that the following filings have been made with the Commission:

1. PDC Berkshire Power LLC

[Docket No. EG98–2–000]

On October 8, 1997, PDC Berkshire Power, LLC, 200 High Street, Boston, Massachusetts 02110, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant is a Massachusetts limited liability company that proposes to construct and own a two hundred seventy-two (272) megawatt natural gas-fired electric generation facility, including ancillary and appurtenant structures, on a site in the town of Agawam, Massachusetts.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Arizona Public Service Company

[Docket No. EL97–61–000]

Take notice that on September 22, 1997, Arizona Public Service Company (the Company) tendered for filing an informational report on refunds of overbilled amounts to wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties as follows:

Customers	APS–FPC/FERC Rate Schedule
Electrical District No. 3 (ED–3) ...	12
Tohono O'odham Utility Authority (TOUA) ...	52
Welton-Mohawk Irrigation and Drainage District (Welton-Mohawk) ...	58
Arizona Power Authority (APA)	59
Colorado River Indian Irrigation Project (CRIP) ...	65
Electrical District No. 1 (ED–1) ...	66
Town of Wickenburg (Wickenburg) ...	74
Southern California Edison Company (SCE) ...	120
Electrical District No. 6 (ED–6) ...	126
Electrical District No. 7 (ED–7) ...	128
Electrical District No. 8 (ED–8) ...	140
Aguila Irrigation District (AID) ...	141
McMullen Valley Water Conservation and Drainage District (MVD) ...	142
Tonopah Irrigation District (TID)	143
Harquahala Valley Power District (HVPD) ...	153
Buckeye Water Conservation and Drainage District (Buckeye) ...	155
Roosevelt Irrigation District (RID)	158
Maricopa County Municipal Water Conservation District (MCMWCD) ...	168
City of Williams (Williams) ...	192
San Carlos Indian Irrigation Project (SCIIP) ...	201
Maricopa County Municipal Water Conservation District at Lake Pleasant (MCMWCD-Lk Pl.) ...	209

the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER97–1481–000]

Take notice that on September 22, 1997, Idaho Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER97–2903–000]

Take notice that on September 8, 1997 and September 24, 1997, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing amendments in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Company

[Docket Nos. ER97–3688–000, ER97–3689–000 and ER97–3690–000]

Take notice that on September 9, 1997, Nevada Power Company tendered for filing an amendment in the above-referenced dockets.

Comment date: October 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–4083–000]

Take notice that on September 23, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cleveland Electric Illuminating Company and the Toledo Edison Company

[Docket No. ER97–4158–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed amended Service Agreements, in the above referenced docket, to provide Non-Firm Point-to-Point Transmission Service for American Electric Power, AES Power, Incorporated, Cinergy Services, Incorporated, Engage Energy Incorporated, Noram Energy Services, and Pacificorp Power Marketing, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreements are August 12, 1997.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER97–4241–000]

Take notice that on September 18, 1997, Puget Sound Energy, Inc., tendered for filing a letter of withdrawal in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power Company

[Docket No. ER97–4474–000]

Take notice that on September 22, 1997, The Washington Water Power Company tendered a supplemental filing for the 1997 Agreement For The Hourly Coordination of Projects on the Mid-Columbia River entered into as of July 1, 1997. The supplemental filing included Certificates of Concurrence in Lieu of Filing on behalf of PacifiCorp, Portland General Electric Company, and Colockum Transmission Co., Inc.

A copy of this filing has been mailed to each of the parties to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER97–4496–000]

Take notice that on September 26, 1997, Duke Energy Corporation filed an amendment in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cleveland Electric Illuminating Company and the Toledo Edison Company

[Docket Nos. ER97–4590–000 and ER97–4591–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed amendments in the above-referenced dockets.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cleveland Electric Illuminating Company and the Toledo Edison Company

[Docket No. ER97–4613–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed amended Service Agreements, on the above-referenced docket, Firm Point-to-Point Transmission Service for Vitol Gas & Electric and Enron Power Marketing, Incorporated, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under

Service Agreement are July 25, 1997 and July 28, 1997 respectively.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER97–4706–000]

Take notice that on September 22, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Minnesota Power & Light Company, for sale of power under Entergy Services' Rate Schedule SP.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket No. ER97–4707–000]

Take notice that on September 22, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9., with Tenaska Power Services Co. WWP requests waiver of the prior notice requirement and requests an effective date of June 1, 1997.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER97–4708–000]

Take notice that on September 23, 1997, Western Resources, Inc., tendered for filing three firm transmission agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective September 12, 1997, September 14, 1997, and September 18, 1997, respectively.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER97–4709–000]

Take notice that on September 23, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements to provide umbrella short-term Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Williams Energy Services, Inc., and Idaho Power Company.

A copy of this filing has been served on Williams Energy Services, Inc., Idaho Power Company, the Idaho Public Utilities Commission and the Arizona Corporation Commission.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER97–4710–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to ProLiance Energy L.L.C. (ProLiance), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon ProLiance and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER97–4711–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Amoco Energy Trading Corporation (Amoco) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Amoco and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER97–4712–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Baltimore Gas and Electric Company (BG&E) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon BG&E and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Electric and Gas Company

[Docket No. ER97–4713–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company d/b/a GPU Energy ("GPU") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon GPU and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER97–4714–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Carolina Power & Light Company ("CP&L") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon CP&L and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Electric and Gas Company

[Docket No. ER97–4715–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Duquense Light Company ("Duquense") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Duquesne and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Electric and Gas Company

[Docket No. ER97–4716–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Northeast Utilities Company, acting as agent for The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire ("NU") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon NU and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Electric and Gas Company

[Docket No. ER97–4717–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Federal Energy Sales, Inc. ("Federal Energy") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Federal Energy and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Electric and Gas Company

[Docket No. ER97–4718–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Citizens Power Sales ("Citizens") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Citizens and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Electric and Gas Company

[Docket No. ER97–4719–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to AYP Energy ("AYP") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon AYP and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Electric and Gas Company

[Docket No. ER97–4720–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to CNG Power Services Corporation ("CNG") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon CNG and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Electric and Gas Company

[Docket No. ER97–4721–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Tractabel Energy Marketing, Inc. ("Tractabel") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Tractabel and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Electric and Gas Company

[Docket No. ER97–4722–000]

Take notice that on September 23, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Vitol Gas & Electric, L.L.C. ("Vitol") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 25, 1997.

Copies of the filing have been served upon Vitol and the New Jersey Board of Public Utilities.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. American Electric Power Service Corporation

[Docket No. ER97–4723–000]

Take notice that on September 22, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after August 24, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Southern California Edison Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Pacific Gas and, Electric Company, and Sierra Pacific Power Company

[Docket No. ER97–4724–000]

Take notice that on September 22, 1997, Southern California Edison Company ("Edison"), tendered for filing the revised Western Systems Coordinating Council ("WSCC") Unscheduled Flow Mitigation Plan ("Revised Plan") which alters the methodology for calculating unscheduled flow mitigation dues to be paid by WSCC Members. The Montana Power Company, Nevada Power Company, PacifiCorp, Pacific Gas and Electric Company, and Sierra Pacific Power Company have tendered Certificates of Concurrence supporting the filing. Copies of the filing were served upon all the WSCC Members and all the state utility commissions in which the WSCC Members provide retail electric service.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. ER97–4725–000]

Take notice that on September 23, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and e prime, inc. (E prime).

Cinergy and e prime are requesting an effective date of August 31, 1997.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Southern Indiana Gas & Electric Company

[Docket No. OA96–117–002

Take notice that on September 23, 1997, Southern Indiana Gas & Electric Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27838 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–276–000]

Texas Eastern Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Line 1–A Reactivation Project

October 15, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed reactivation of Line 1–A in Chester and Delaware Counties, Pennsylvania, including:

- Reactivating about 22.7 miles of the 20-inch-diameter Line 1–A, which includes investigating and repairing/replacing 101 anomaly sites, if needed, and hydrostatically testing the entire length of the pipeline;
- Installing new regulating facilities at Eagle Compressor Station;
- Installing a delivery tap off Line 1–A for Texas Eastern's existing Planebrook Measuring and Regulating Station (M&R);
- Installing mainline valves at mileposts 6.8, 12.6, and 16.0;
- Installing delivery taps on Line 1–H and Line 1–A for PICO Energy Company's (PECO) new Hersheys Mill M&R Station;
- Installing delivery taps on Line 1–A and 1–H, and a new Brookhaven M&R Station at the existing Chester Junction site; and
- Replacing the existing temporary pig receiver with a permanent receiver at the Chester Junction site.

The purpose of the proposed facilities would be to allow Texas Eastern to deliver on a firm basis up to 120,000 dekatherms per day (Dth/d) of natural gas to PECO and 8,000 Dth/d to Mobil Oil Corporation.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., FN.E., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2

• Reference Docket No. CP97–276–000; and

• Mail your comments so that they will be received in Washington, DC on or before November 14, 1997.

Comments will be considered by the Commission but will not serve to make the comenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27776 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–690–000]

Florida Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed FGT 24" Calcasieu Pipeline Replacement Project and Request for Comments on Environmental Issues

October 15, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the FGT 24" Calcasieu Pipeline Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Florida Gas Transmission Company (FGT) proposes to reroute one section and replace, within the same right-of-way, two sections of its 24-inch-diameter mainline pipeline in Calcasieu Parish, Louisiana. The sections to be replaced are between mileposts 425.99 and 426.92 (section 1), 430.53 and 432.09 (section 2), and 432.17 and 432.40 (section 3).

Below is an explanation of the work involved:

Section 1: Abandon, 5,070 feet of existing 24-inch-diameter mainline and install about 8,883 feet of new 24-inch-diameter pipeline.

Section 2: Abandon about 8,236 feet of existing 24-inch-diameter mainline and install about 7,586 feet of new 24-inch-diameter pipeline located 10 feet south of the existing pipeline. The remaining 650 feet of new 24-inch-diameter pipeline would be north of the existing pipeline.

Section 3: Abandon about 1,239 feet of existing 24-inch-diameter mainline, and install about 1,239 feet of new 24-inch-diameter pipeline located 10 feet south of the existing mainline.

All of the facilities are in Calcasieu Parish, Louisiana. The pipeline sections must be replaced to comply with Department of Transportation Regulations.

The proposed facilities would cost about $3,762,161.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

The replacement and relocation of the 3 sections of the 24-inch-diameter mainline pipeline would affect about 23 acres with 7 acres being needed for Section 1, 10 acres for Section 2, and 2 acres for Section 3. Section 1 would require an additional 4 acres for a new permanent right-of-way.

Temporary work spaces would require about 3 acres. FGT proposes to deliver pipeline to the site by truck and string the pipeline directly along the construction right-of-way. All other pipe fittings would be stored in a leased warehouse facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur from the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Public safety
- Land use
- Cultural resources
- Endangered and threatened species

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EPA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provide by FGT. This preliminary list of issues may be changed based on your comments and our analysis.

• A horizontal drill would be used to cross the Calcasieu River.

• A total of 11.9 acres of wetlands would be temporarily affected and 2.2 acres of wetlands would be permanently affected.

• Two residences are within 50 feet of the proposed construction work area along Section 2.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, D.C. 20426;

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;

• Reference Docket No. CP97–690–000; and

• Mail your comments so that they will be received in Washington, D.C. on or before November 14, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenor have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your scoping comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27777 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Florida Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188]

Montana Power Company; Notice of Intent To Hold Public Meetings in Great Falls and Ennis, Montana, To Discuss the Draft Environmental Impact Statement (DEIS) for the Proposed Relicensing of the Missouri-Madison Hydroelectric Project

October 15, 1997.

On September 22, 1997, the Commission staff mailed the Missouri-Madison Hydroelectric Project DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations, and individuals. This document evaluates the environmental consequences of the proposed relicensing of the Missouri-Madison Hydroelectric Project. The nine dams (Hebgen, Madison, Hauser, Holter, Black Eagle, Rainbow, Cochrane, Ryan, and Morony dams) that are a part of this project are located between West Yellowstone and above Great Falls, Montana, on over 300 river miles of the Madison and Missouri Rivers.

The public meetings will be recorded by a court reporter and are scheduled as follows: (1) Tuesday, November 18, 1997 at 7:00 p.m. in the Missouri Room of the Great Falls Civic Center, Great Falls, Montana and (2) Thursday, November 20, 1997 at 7:00 p.m. in the Ennis High School Library, Ennis, Montana. These meetings will focus on the DEIS and issues of concern to resource and land management agencies, interested organizations, and individuals. Another meeting is scheduled on Wednesday, November 19, 1997, from 9:00 a.m. to 3:00 p.m. in the Director's Conference Room of the State of Montana's Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. This meeting will focus on clarification of issues of primary concern to state and federal fish and wildlife agencies.

At the public meetings, Commission staff will summarize major DEIS findings and recommendations. Resource agency personnel and other interested persons will be provided an opportunity to submit oral and written comments about the DEIS for the Commission's public record. Written comments on the DEIS may also be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments must be received by December 2, 1997. All correspondence should include the appropriate project name (Missouri-Madison Project) and number (Project No. 2188) on the first page of the correspondence.

The DEIS considers recommendations received from the license applicant, citizens, resource agencies, and organizations. Resource enhancements affect flow regulation, recreation, land use, fish, wildlife, water quality, reservoir shoreline erosion, vegetation resources and other resource issues proposed.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27778 Filed 10–20–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5912–2]

Agency Information Collection Activities Submission for OMB Review; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Subpart T, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning, OMB number 2060–0273, expires *12/31/97*. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 1997.

FOR FURTHER INFORMATION CONTACT: call Sandy Farmer at EPA, (202) 260-2740, or download off the Internet from http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1652.03.

SUPPLEMENTARY INFORMATION:

Title: Subpart T, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning (OMB Control No. 2060–0273; EPA ICR No.1652.03) expiring 12/31/97. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for

compliance with 40 CFR part 63.460, et seq., Subpart T, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance when it begins operation, and informs the Agency if the source remained in compliance during any period of operation. In the Administrator's judgment, emissions of hazardous air pollutants (HAPs) from halogenated solvent cleaners may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP standards were promulgated for this source category, as required under section 112 of the Clean Air Act.

HAP emissions from halogenated solvent cleaners are the result of inadequate equipment design and work practices. These standards rely on the proper design and operation of halogenated solvent cleaners such as working-mode covers, freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners. Certain records and reports are necessary to enable EPA to identify sources subject to the standards and to ensure that the standards are being achieved. Owners/operators of halogenated solvent cleaners must provide EPA with an initial notification of existing or new solvent cleaning machines, initial statement of compliance, an annual control device monitoring report (owners/operators of batch vapor and in-line cleaning machines), an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines), an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines complying with the alternative standard), and exceedance of monitoring parameters or emissions. The records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 06/18/97 (62 FR 33072); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours/response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of halogenated solvent cleaners.

Estimated Number of Respondents: 1,845.

Frequency of Response: 4.

Estimated Total Annual Hour Burden: 32,483 hours.

Estimated Total Annualized Cost Burden: $2,859,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1652.03 and OMB Control No. 2060–0273 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov).

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 14, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27851 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5912–1]

Agency Information Collection Activities: Submission for OMB Review; Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC, OMB Control Number 2060–0318, expiring on November 30, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet from http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1593.03.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments and Containers, 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC, (OMB Control Number 2060–0318; EPA ICR No. 1593.03) expiring on November 30, 1997. This is a request for extension of a currently approved collection.

Abstract: The collection of this information is used by the EPA to ensure that appropriate environmental rules are being complied with and that emission control devices are properly operated and maintained. Reports required under this collection authority are used by the Agency to monitor compliance as well as targeting treatment, storage and disposal facilities for inspection. Section 3004(n) of the Hazardous and Solid Waste Amendments (HSWA) directed the EPA to promulgate regulations for monitoring and control of air emissions from treatment, storage and disposal facilities, as necessary, to protect human health and the environment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1997 (62 FR 33074); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 77 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of facilities that treat, store or dispose hazardous wastes in tanks, surface impoundments and containers.

Estimated Number of Respondents: 9,393.

Frequency of Response: 1 plus on occasion.

Estimated Total Annual Hour Burden: 728,622 hours.

Estimated Total Annualized Cost Burden: $2,925,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1593.03 and OMB Control No. 2060–0318 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 10, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27852 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5911–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA's Transportation Partners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA's Transportation Partners Program, EPA ICR No. 1818.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 1997.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1818.01.

SUPPLEMENTARY INFORMATION:

Title: EPA's Transportation Partners Program, EPA ICR No. 1818.01. This is a new collection.

Abstract: The Transportation Partners program is a new, cooperative, voluntary program that seeks to reduce the growth of vehicle miles traveled (VMT) through the adoption of measures that provide or promote the use of non-single occupancy vehicle transportation choices for citizens. As part of the Climate Change Action Plan, Transportation Partners will play an important role in the nation's commitment to reduce U.S. greenhouse gas emissions.

The Transportation Partners program is designed to work around two types of members: Principal Partners and Project Partners. Principal Partners have substantive areas of expertise and will provide direct assistance to VMT-reducing projects across the country. Project Partners, on the other hand, administer the individual programs and actions designed to reduce VMT. Local governments, regional governments, local non-governmental organizations, and private businesses may become Project Partners.

As voluntary participants in the Transportation Partners program, Project Partners may be asked to complete an annual Partner Profile that requests general project information. Project-related information requested may include background data about the sponsoring entity, a description (and, to the extent possible, quantification) of project effects on travel, other project effects, and comments regarding program participation and technical assistance. As EPA may request additional information from the Project Partners about their projects, organizations may be requested to periodically submit supplementary information to the Agency.

In addition, EPA sponsors the Way to Go! Awards, which honor local innovators who are enhancing their communities and the environment through transportation improvements. Project Partners will receive an application for the Way to Go! awards. Some Project Partners may choose to complete and submit the application to EPA. The application asks for the following information: the name and focus of the project; a description of project management; a description of the end user(s) of the project; and a project summary and narrative.

Principal Partners have a number of responsibilities, which include: First, they will provide EPA with contact lists of prospective Project Partners. Second, they will disseminate information to partners. Third, Principal Partners will review, sign, and forward Project Partner agreements to EPA. Fourth, Principal Partners will assist EPA in reviewing and compiling Partner Profiles and supplemental information from Project Partners.

Participation in the Transportation Partners program is voluntary. If requested, EPA will treat information as confidential business information and will not make the partner-specific information collected under the program available to the general public, unless the partner's approval is obtained.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter

15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/8/97 (FR Doc. 97–20977); Zero (0). comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action may include local and suburban transit providers, business associations, civic organizations, air and water resource and solid waste management agencies, local and regional government agencies and other transportation-related organizations. Additionally, EPA expects to enroll private businesses from a wide range of industries in the Transportation Partners program.

Estimated Number of Respondents: 195.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 8,371 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1818.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: October 14, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–27853 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00511; FRL–5752–7]

State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations Management Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations Management Working Committee will hold a 2-day meeting, October 27, and October 28, 1997. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Pesticide and Operations Management will meet on Monday, October 27, 1997, from 8:30 a.m. to 5 p.m. and Tuesday, October 28, 1997, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at: the National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA, 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: (703) 305–5306; (703) 308–1850 (fax); e-mail: lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Pesticide Operations Management includes the following:

1. Policy regarding pesticides used in greenhouses.
2. Worker protection standard/ restricted-entry interval exception for BRAVO (chlorothalonil).
3. Worker protection standard language on AZTEC insecticide.
4. Enforcement of pesticide laws on federal and tribal lands.
5. Pesticide exposure from use of plant parts - Are cultural-ethnic subgroups considered in risk assessments.
6. Clarification of EPA policy on the usurpation of state 24(c) authority.
7. Update on quality assurance project plans vs. Quality management plans vs. National Environmental Laboratory Accreditation Program.
8. Data quality issues:
   a. Reference files system vs. Pesticide product information system.
   b. How do states report errors detected in EPA's data.
   c. Time frame for posting corrections
9. Labeling issues with the use of commodity fumigant methyl bromide for structural fumigation.
10. Indoor structural pest control concerns.
11. Further review of 24(c) indemnification/waiver of liability language - Mandatory vs. Advisory.
12. Office of Enforcement and Compliance Topics:
    a. Enforceablity of post-application operations on pesticide labels.
    b. Custom dilution/blending.
    c. Antimicrobial efficacy testing.
    d. Worker protection compliance monitoring/enforcement.
    e. Cancellation of section 3 for changed active ingredient source.
13. Reports from committee members and introduction of issue papers.
14. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: October 16, 1997.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 97–27975 Filed 10–20–97; 8:45 am]

BILLING CODE 6560–60–F

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Amendment of a System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of amendment of a system of records maintained on individuals; request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Farm Credit Administration is issuing notice of our intent to amend the system of records entitled Employee Attendance, Leave, and Payroll Records—FCA (Employee Record System) to reflect the addition of several new routine uses and the inclusion of machine readable records, paper records, and some computer-output microfiche in the category of records.

DATE: The changes will become effective as proposed, on November 26, 1997, unless comments which would warrant our preventing the changes from taking effect are received on or before such date.

ADDRESSES: Interested individuals may comment on this publication by writing to Debra Buccolo, Privacy Act Officer, in care of Cindy Nicholson, Farm Credit Administration, McLean, Virginia 22102–5090. Comments should be submitted in triplicate. All communications received will be available for examination by interested parties in the offices of the Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4022, TDD (703) 883–4444, or

Jane Virga, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102–5090, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Discussion of Additions to Routine Use

Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Farm Credit Administration will disclose data from its system of records entitled Employee Attendance, Leave, and Payroll Records—FCA to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The Farm Credit Administration will disclose the following data on individuals hired after October 1, 1997, to the FPLS: the name, address, and social security number of the employee; and the name, address, and Federal Employer Identification Number of the employer.

In addition, names and social security numbers submitted by the Farm Credit Administration to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Farm Credit Administration to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims or the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Additional Routine Use

We are proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose that is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use that is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). Because the proposed uses of the data are required by Pub. L. 104–193, they are necessary and proper uses and, therefore, "compatible uses."

III. Effect of the Proposed Changes on Individuals

We will disclose information under the proposed routine uses only as required under Pub. L. 104–193 and as permitted by the Privacy Act.

IV. Other Changes

The notice also reflects changes in designated points of contact for inquiring about the Employee Record System, accessing the records, and requesting amendments to the records. Several minor technical and editorial changes that reflect reorganizations within the Farm Credit Administration and its relocation from Washington, DC, to McLean, Virginia, have also been included. In addition to the general editorial changes, revisions were made to reflect the inclusion of machine readable records, paper records, and some computer-output microfiche in the category of records.

As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCA has sent notice of this amended system of records to the Office of Management and Budget, the Committee on Government Operations of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

Accordingly, this system notice is amended as set forth below.

FCA–7

SYSTEM NAME:

Employee Attendance, Leave, and Payroll Records—FCA.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of paper, electronic, and microfiche files containing payroll-related information for FCA employees reported on a biweekly, year-to-date, and, in some cases, an annual basis. The records contain the "Agency Time Tracking System," payroll and leave data for each employee, including rate and amount of pay, hours worked, tax and retirement deductions, leave bank records, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, other financial deductions, mailing addresses, and home addresses. From July 1982 to March 1990, FCA payroll services were provided by the Department of Treasury utilizing its Treasury Personnel Payroll Information System (TPPIS). Beginning in April 1990, FCA payroll services have been provided by the National Finance Center's U.S. Department of Agriculture Personnel Payroll System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2249, 2252.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant records in the Employee Record System may be disclosed as a routine use:

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to the appropriate agency or authority, whether Federal, State, local, or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(2) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) To the Department of Justice for use in litigation or in a proceeding before a court or adjudicative body before which the FCA is authorized to appear, when

(a) The FCA, or any component thereof; or

(b) Any employee of the FCA in his or her official capacity; or

(c) Any employee of the FCA in his or her individual capacity where the Department of Justice or the FCA has agreed to represent the employee; or

(d) The United States, where the FCA determines that litigation is likely to affect the FCA or any of its components, is a party to the litigation or proceeding or has an interest in such litigation or proceeding, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the FCA to be relevant and necessary, provided, however, that in each case, the FCA determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is compatible with the purpose for which the records were collected.

(6) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(7) To appropriate offices and agencies to prepare payroll, to meet Government payroll recordkeeping and reporting requirements, and to retrieve and supply payroll and leave information as required for FCA needs. In addition, information in this record system is used to furnish certain information (name; permanent or temporary status; most recent position, grade, or salary) to other Government agencies or commercial or credit organizations or to verify employment to prospective employers.

(8) To Federal, State, and local taxing authorities concerning compensation to employees or contractors for personal services; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to Federal employees' health benefits carriers concerning health insurance of employees; to financial organizations concerning employee savings account allotments and net pay to checking accounts; to State human resource offices administering unemployment compensation programs; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

(9) To the Office of Child Support Enforcement, dministration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS), and Federal Tax Offset System for use in locating individuals and identifying their income sources, to establish paternity, establish and modify orders of support, and for enforcement action.

(10) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

(11) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to a consumer reporting agency in accordance with section 3711(f) of title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in cabinets or records are maintained electronically.

RETRIEVABILITY:

Paper records are retrieved by name. Electronic records are accessed by social security number.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access to records is limited to authorized individuals.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for payroll-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Requests for amendments to a record shall be directed to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. FCA employees who approve the records.

Dated: October 15, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–27789 Filed 10–20–97; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2203]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted (CC Docket No. 90–571)

Released: October 15, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225. These rules are codified at 47 CFR §§ 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM.

Interested persons may file comments on or before December 12, 1997.

Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–42

Applicant: Nebraska Public Service Commission .

State of Nebraska

File No: TRS–97–49

Applicant: North Dakota Information Services Division

State of North Dakota

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–27826 Filed 10–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Affordable Housing Advisory Board Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., established by the Resolution Trust Corporation Completion Act, Pub. L. No. 103–204, § 14(b), 107 Stat. 2369, 2393–2395 (1993), announcement is hereby published of the Affordable Housing Advisory Board (AHAB) meeting. The meeting is open to the public.

DATES: The Federal Deposit Insurance Corporation, Affordable Housing Advisory Board will hold its second meeting of 1997 on Wednesday, November 5, in Washington, D.C. from 9:00 a.m. to 11:00 a.m.

ADDRESSES: The meeting will be held at the following location: Federal Deposit Insurance Corporation, Board Room, 550 17th Street, NW, Room 6010, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Danita M.C. Walker, Committee Management Officer, Federal Deposit Insurance Corporation, 550 17th Street, NW, Room (F–3038), Washington, D.C. 20249, (202) 898–6711.

SUPPLEMENTARY INFORMATION: The Affordable Housing Advisory Board (AHAB) consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Thrift Depositor Protection Oversight Board, or delegate; four persons appointed by the General Deputy Assistant Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two members of the Regional Advisory Board. The AHAB's original charter was issued March 9, 1994, and a re-charter was issued on February 26, 1996.

Agenda

An agenda will be available at the meeting. At this session, the AHAB will review the status and receive reports on four topics: (1) Status of legislative change for Affordable Housing Advisory Board meetings; (2) Status report on FDIC Affordable Housing Program; and (3) Panel discussion on roles regulators can play in facilitating affordable housing. The AHAB will develop recommendations at the conclusion of the Board meeting. The AHAB's chairperson or its Delegated Federal Officer may authorize a member or members of the public to address the AHAB during the public forum portion of the session.

Statement

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the meeting. Seating for the public is available on a first-come first-served basis.

Dated: October 16, 1997.

Danita M.C. Walker,

Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 97–27884 Filed 10–20–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The Federal Labor Relations Authority (FLRA) is requesting an emergency approval by October 31, 1997, in accordance with 5 CFR 1320.13. In order that OMB will have an opportunity to consider comments from interested individuals on the information collection request described below, such comments should be submitted to OMB on or before October 28, 1997.

ADDRESSES: Nancy Speight, Director of Program Development, Office of the General Counsel, Federal Labor Relations Authority, Suite 210, 607 14th

St., N.W., Washington, D.C. 20424. Joseph Lackey, Paperwork Clearance Officer for the FLRA, Office of Management and Budget, 725 17th St., N.W., Room 10235, Washington, D.C. 20503.

FOR FURTHER INFORMATION: For more information, to submit comments or to request a copy of the OMB submission, please contact Nancy Speight at the address listed above or by telephone at 202–482–6680 ext. 205. Interested parties may also submit comments to Joseph Lackey at the address given above.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Survey.

Needs and Uses: The Customer Satisfaction Survey will be disseminated to persons making use of the services and procedures of the FLRA, to obtain input as to the degree of success the agency has achieved in meeting the objective of its Strategic Plan concerning providing high quality services in timely resolving disputes in the federal sector labor-management relations community.

Respondents: Approximately 200 persons, within the meaning of 5 CFR 1320.3(k), who are representatives of labor organizations and are not federal employees. In addition, approximately 4500 federal employees who are either representatives of labor organizations or of management of various employer agencies of the executive branch will also receive the Survey.

Estimated Annual Burden: 30 minutes per response; 200 respondents for the purposes of burden calculation under the Paperwork Reduction Act; 100 total annual burden hours.

Dated: October 15, 1997.

Solly Thomas,

Executive Director, FLRA.

[FR Doc. 97–27733 Filed 10–20–97; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Federal Maritime Commission.

Time and Date: 12:30 P.M.—October 17, 1997.

Place: 800 North Capitol Street, N.W.—Room 1000, Washington, D.C.

Status: Closed.

Matter(s) to be Considered:

1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade

Contact Person for More Information: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28021 Filed 10–17–97; 3:43 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 4, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Rogers Family Limited Partnership No. 2, and Doyle W. Rogers, General Partner*, Batesville, Arkansas; to acquire voting shares of Rogers Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire Metropolitan National Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, October 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–27752 Filed 10–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *WNB Bancshares, Inc.*, Odessa, Texas; to acquire at least 51 percent of the voting shares of City National Bank, Austin, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, October 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–27753 Filed 10–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *The Toronto-Dominion Bank*, Toronto, Canada, and Waterhouse Investors Services, Inc., New York, New York; to acquire Kennedy Cabot & Co., Beverly Hills, California, and thereby engage in investment advisory activities and securities brokerage and riskless principal activities, pursuant to §§ 225.28 (b)(6) and (7) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Louisville Development Bancorp, Inc.*, Louisville, Kentucky; to acquire Louisville Enterprise Center, Inc., Louisville, Kentucky, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–27751 Filed 10–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 19, 1997.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 19, 1997.[1]

[1] Copies of the Minutes of the Federal Open Market Committee meeting of August 19, 1997, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is expanding at a moderate pace. In labor markets, hiring remained robust at midyear, and the civilian unemployment rate, at 4.8 percent in July, matched its low for the current economic expansion. Industrial production increased relatively slowly in July, owing in part to a temporary drop in motor vehicle assemblies. Retail sales rose briskly in June and July after having changed little over the preceding three months. Housing starts rebounded in June and July after having weakened in May. Business fixed investment increased substantially further in the second quarter and available indicators point to further sizable gains in the current quarter. The nominal deficit on U.S. trade in goods and services narrowed slightly on balance over April and May from its downward-revised average rate in the first quarter. Price inflation has remained subdued and increases in labor compensation have been moderate.

Market interest rates generally have declined somewhat further since the start of the Committee meeting on July 1-2, 1997. Share prices in equity markets have increased on balance. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies rose significantly on balance over the intermeeting period.

After fluctuating sharply from April to May, growth of M2 was at a moderate pace over June and July and that of M3 picked up to a relatively rapid rate. For the year through July, M2 expanded at a rate near the upper bound of its range for the year and M3 at a rate appreciably above the upper bound of its range. Total domestic nonfinancial debt has continued to expand in recent months at a rate near the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1988, the Committee agreed on a tentative basis to set the same ranges as in 1997 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5-1/2 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, a somewhat higher federal funds rate would or a slightly lower federal funds rate might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, October 8, 1997.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 97–27775 Filed 10–20–97; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board Meeting

AGENCY: General Accounting Office.

ACTION: Notice of October meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, October 24, 1997, from 9:00 a.m. to 4:00 p.m. in Room 7C13 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Natural Resources; (2) Pension Costs; (3) a request for guidance on the Property, Plant, and Equipment (PP&E) Standard; (4) Government-Wide Supplementary Stewardship Reporting Exposure Draft comments; (5) PP&E Technical Corrections and Amendments; and (6) Social Insurance. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86

Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 15, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–27747 Filed 10–20–97; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Purusant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., November 5, 1997; 9:00 a.m.–4:15 p.m., November 6, 1997.

Place: Conference Room 303A–339A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

Status: Open.

Purpose: The meeting will focus on a variety of data policy and privacy issues. The Committee will review its progress and consider next steps in addressing new responsibilities in health data standards and health information privacy as outlined in the administrative simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as well as on related matters. Department officials will brief the Committee on recent activities of the HHS Data Council, the status of HHS activities in implementing the administrative simplification provisions of P.L. 104–191, and related date policy activities.

The Committee also will hear a briefing on data needs and issues by the Director of the National Center for Health Statistics. Presentations also are schedued relating to the President's Commission on Quality and Consumer Protection, the National Vital Statistics Program and Standard Certificates, and confidentiality and anti-discrimination issues in genetic testing. Breakout sessions are planned for the Subcommittee on Health Data Needs, Standards and Security, the Subcommittee on Privacy and Confidentiality, and the Subcommittee on Population-Specific Issues. In addition, the Committee will discuss its recent recommendations relating to the unique health identifier for individuals, and will discuss priorities and work plans. All topics are tentative and subject to change. Please check the NCVHS website for a detailed agenda.

Contact Person for More Information: Substantive information as well as summaries of the meeting and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) or by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: October 14, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97–27825 Filed 10–20–97; 8:45 am]

BILLING CODE 4161–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (BSC, ATSDR).

Times and Dates: 9 a.m.–5 p.m., November 19, 1997, and 8:30 a.m.–4 p.m., November 20, 1997.

Place: ATSDR, 35 Executive Park Drive, Training Room, Atlanta, Georgia 30329.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Matters To Be Discussed: Agenda items will include introduction of members and special consultants to the Community/Tribal Subcommittee, updates on ATSDR medical monitoring at Hanford and Bunker Hill, ATSDR's methyl parathion experience, the programs and activities of the ATSDR Office of Urban Affairs, the Great Lakes Human Health Effects Research, the ATSDR Child Health Initiative, and the National Institute of Environmental Health Sciences Worker Safety and Training Program; a discussion on ATSDR/Native American cooperation; an overview for determining contaminant levels in water distribution systems; and a presentation of ATSDR's interim policy on dioxins in soil.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Charles Xintaras, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: October 9, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27793 Filed 10–20–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., November 5, 1997, and 8:30 a.m.–5 p.m., November 6, 1997.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies, and an overview of the Fernald Health Effects Subcommittee's mission and activities will be part of the evening session.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE. (M/S F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: October 15, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27792 Filed 10–20–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 1–4:30 p.m., November 18, 1997.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, DC 20008.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance and mix of intramural and extramural research, including laboratory research, and provides guidance on intramural and extramural scientific program matters, both present and future, particularly from a long-range viewpoint. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters To Be Discussed: The Science and Program Review Work Group (SPRWG) will meet to discuss a research grants update, upcoming program announcements, and related issues. Following the Work Group meeting, the full Committee will meet to discuss (1) Safe America Partnership Council; (2) National Partnership Council including Federal and corporate components; (3) a report from SPRWG; and (4) status of the Institute of Medicine study on injury prevention and control.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Mr. Thomas E. Blakeney, Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: October 15, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–27786 Filed 10–20–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 13 and 14, 1997, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 13, 1997, the committee will discuss new drug application (NDA) 20–788, Propecia™ (finasteride 1 milligram tablets, Merck Research Laboratories), for treatment of androgenetic alopecia to increase hair growth and to prevent further hair loss. On November 14, 1997, the committee will participate in a scientific discussion of clinical trial design questions for products intended for the treatment of burn wounds. This is one segment of an overall effort by the agency to develop a guidance document on wound healing products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 4, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m., and between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 4, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–27816 Filed 10–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 17, 1997, 8:30 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: John C. Monahan, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss general issues and vote on an original premarket approval application (PMA) for an ultrasound bone sonometer and an original PMA for a breast impedance scanner.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 1997. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 10, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–27817 Filed 10–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0349]

Guidance for Industry on SUPAC–IR: Immediate Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Level 1 guidance for industry entitled "SUPAC–IR: Immediate Release Solid Oral Dosage Forms—Manufacturing Equipment Addendum." This guidance is intended to provide insight and recommendations to pharmaceutical sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and abbreviated antibiotic applications (AADA's) who wish to change equipment during the postapproval period. This guidance document represents the agency's current thinking on scale-up and postapproval equipment changes (SUPAC) for immediate release dosage forms regulated by the Center for Drug Evaluation and Research (CDER).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John L. Smith, Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–623), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5848.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "SUPAC–IR: Immediate Release Solid Oral Dosage Forms—Manufacturing Equipment Addendum." This guidance is intended to provide recommendations to pharmaceutical manufacturers using CDER'S Guidance for Industry on "Immediate Release Solid Oral Dosage Forms, Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation" (SUPAC–IR), which was issued in November 1995. The manufacturing equipment addendum may be used in conjunction with the SUPAC–IR guidance in determining what documentation should be submitted to FDA regarding equipment changes made in accordance with the recommendations in sections V and VI.A of the SUPAC–IR guidance.

This guidance for industry represents the agency's current thinking on scale-up and post approval equipment changes for immediate release solid oral dosage forms regulated by CDER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain copies of "SUPAC–IR: Immediate Release Solid Oral Dosage Forms—Manufacturing Equipment Addendum" by using the World Wide Web (WWW) and going to "http://www.fda.gov/cder/guidance/index.htm".

Dated: October 14, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–27738 Filed 10–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting George Keller, Ph.D., Technology Licensing Specialist, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057, ext. 246; fax: 301/402–0220; e-mail: KellerG@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Diagnostic Reagents and Vaccines for Multiple Genotypes of Hepatitis C Virus

J Bukh, RH Miller, RH Purcell (NIAID)
Serial Nos. 08/466,601 and 08/468,570 filed 06 Jun 95 (DIV of U.S. Patent 5,514,539 issued 07 May 96)

The invention describes the complete nucleotide and deduced amino acid sequences of the envelope 1 (E1) gene of 51 hepatitis C virus (HCV) isolates from around the world and the grouping of these isolates into twelve distinct HCV genotypes. More specifically, this invention relates to the oligonucleotides, peptides and recombinant proteins derived from the envelope 1 gene sequences of these isolates and to diagnostic methods and vaccines that employ these reagents.

Antigenic Protein of Borrelia Burgdorferi

WJ Simpson, TG Schwan (NIAID)
Serial No. 08/396,957 filed 01 Mar 95 (DIV of U.S. Patent 5,470,712 issued 28 Nov 95)

This patent application describes a 39 kDA protein (P39) that is species-specific and expressed by all North American and European *B. burgdorferi* isolates. The discovery includes the cloning and expression of the gene for P39 in *E. coli* and the use of P39 as a diagnostic antigen for the serodiagnosis of Lyme borreliosis. The P39 described in this invention report has been found not only to be species-specific, but reactive only with human Lyme borreliosis sera. This suggests that any patient's serum that is shown to react to P39, irrespective of the patient's clinical picture, can be diagnosed as having or having had Lyme borreliosis.

Versatile Reagent for Detecting Murine Leukemia Viruses

LH Evans, WJ Britt (NIAID)
Serial No. 08/046,352 filed 08 Apr 93

Monoclonal antibodies directed at the proteins of murine leukemia viruses (MuLVS) have some value as immunological reagents, but differ greatly in their applicability. The kit described in this invention uses a monoclonal antibody designated 83A25, which identifies almost all ecotropic, xenotropic, polytropic, and amphotropic MuLVs. It can be used in a wide variety of procedures, including focal immunofluorescence assays on live or fixed monolayers, immunoblotting, immunoprecipitation, immunohistochemical, and flow cytometric procedures. This kit overcomes some of the problems associated with prior methods, which may not effectively precipitate proteins or react in immunoblots, are not capable of detecting MuLVs belonging to all classes with a single reagent, and may not efficiently neutralize all MuLVs.

Dated: October 7, 1997.

Barbara M. McGarey, J.D.

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–27864 Filed 10–20–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Therapeutic Strategies for Papillomavirus (Telephone Conference Call).

Date: October 29, 1997.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A1, Bethesda, MD 20892, (301) 402–0747.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 15, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–27860 Filed 10–20–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 grant (98–14).
Dates: November 5, 1997.
Time: 2:00 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 grant (98–12).
Dates: November 12, 1997.
Time: 10:00 a.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 grant (98–08).
Dates: November 17, 1997.
Time: 2:30 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 grant (98–13).
Dates: November 20, 1997.
Time: 12:00 noon.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: October 15, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–27861 Filed 10–20–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Deafness and Other Communication Disorders Programs Advisory Committee.

Date: November 3, 1997.
Place: National Institutes of Health, 9000 Wisconsin Avenue, Building 31C, Conference Room 7, Bethesda, MD 20892.
Time: 8 am to 4:30 pm.
Purpose/Agenda: To hold discussions on Extramural Research programs.
Contact Person: Ralph F. Naunton, M.D., Director, Division of Human Communication, NIH/NIDCD, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–1804.

The entire meeting will be open to the public, with attendance limited to space available. A summary of the meeting and a roster of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodation, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 15, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–27862 Filed 10–20–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Research on Women's Health; Notice of Meeting—"Beyond Hunt Valley: Research on Women's Health for the 21st Century"

Notice is hereby given that the Office of Research on Women's Health (ORWH), Office of the Director, National Institutes of Health (NIH), will convene a meeting on November 17, 18, and 19, 1997, at the Bethesda Marriott (formerly Pooks Hill Marriott), Bethesda, Maryland.

The NIH/AES is accredited by the Accreditation Council for Continuing Medical Education to sponsor continuing medical educations for physicians.

The NIH/AES designates this educational activity for a maximum of 10 hours in category 1 credit towards the AMA Physician's Recognition Award. Each physician should claim only those hours of credit that he/she actually spent in the educational activity.

The ORWH/NIH research agenda recognizes the full spectrum of research from basic to clinical research and trials, epidemiological and population studies, clinical applications and health outcomes. Since September 1996, the ORWH has convened a series of three regional meetings for the purpose of updating the NIH scientific agenda on women's health research to meet the challenges of a changing scientific and social world. This mechanism provides an opportunity for the continued collaboration between individuals and groups of women and their families, advocates, scientists, health care practitioners and public health policy makers with the NIH to update and revise the national research agenda for women's health into the twenty-first century. The purpose of this national meeting will be to culminate the dialogue conducted over the last year to update and revise the current biomedical research agenda for women's health, as originally presented in the Report of the National Institutes of Health; Opportunities for Research on Women's Health, a publication based on a conference held in Hunt Valley, Maryland, September 1991.

The first day of the national meeting, November 17, will be devoted to receiving public testimony from 1:00 p.m. to 6:00 p.m. The ORWH invites individuals or individuals representing organizations with an interest in research areas related to women's health to provide written and oral testimony on (1) The state of knowledge and continuing or emerging gaps in knowledge about women's health across the life span, (2) Sex/gender differences: Issues for women's health research, (3) Factors that influence differences between populations of women: Issues for women's health research, (4) New priorities for research on women's health, and (5) Career issues for women scientists: Overcoming barriers and achieving success in biomedical careers.

Due to time constraints, only one representative from each organization may present oral testimony, with presentations limited to 10 minutes. A letter of intent to present such testimony should be sent by interested individuals and representatives of organizations to Ms. Saundra Bromberg, Capital Consulting Corporation, 11900 Parklawn Drive, Suite 350, Rockville, MD 20852. The date of receipt of the letter will establish the order of presentations at the November meeting.

Presenters should send three (3) written copies (up to 18 double-spaced pages) on a diskette in Word Perfect for IBM of their testimony, a one-page summary, and a brief description of their organization, to the above address no later than November 3, 1997. Individuals and individuals representing organizations wishing to provide written statements only may send three (3) copies of their statements to the above address by November 3, 1997. Written testimony will be made available to the conferees prior to the November 18 meeting day. Comments and questions related to the November meeting should be addressed to Ms. Bromberg.

On November 18 and 19, plenary sessions as well as concurrent scientific working groups will address areas of science particularly relevant to women's health across the life span and career issues for women scientists. The meeting on November 18 will be held from 8:00 a.m. to 6:00 p.m., and on November 19 from 8:00 a.m. until approximately 4:00 p.m. All sessions of the meeting are open to the public.

In convening these meetings, the ORWH has reaffirmed the NIH's commitment to seeking broad representation of individuals from across the spectrum of medical specialties and scientific disciplines. Basic and clinical scientists, health providers, and advocates from across the country have met in Philadelphia, Pennsylvania; New Orleans, Louisiana; and Santa Fe, New Mexico, to provide guidance and make recommendations to the ORWH concerning advances in women's health research, continuing and/or emerging gaps in knowledge, areas in need of further research, strategies to take advantage of opportunities in science, and emerging issues in women's health.

The NIH research agenda has focused on sex and gender issues in the health and diseases of women, in considering such matters as normal development, disease prevention, health maintenance, response to interventions, disease prognosis, and treatment outcomes. We have also focused on factors that influence differences in health status and health outcomes among different populations of women.

At this national meeting, experts in basic and clinical science, practitioners interested in women's health, representatives of scientific, professional and women's health organizations, and women's health advocates will continue to assess the current status of research on women's health in these and in other areas, identify gaps in existing knowledge, and recommend scientific approaches and strategies for the future direction for research on women's health.

The conference will focus on scientific issues such as cardiovascular disease, cancer, neurological conditions, reproductive issues, mental disorders, digestive diseases and nutrition, urologic and kidney conditions, bone/musculoskeletal disorders, immunity/autoimmune diseases, behavioral and social sciences, oral health, substance abuse and addictive disorders, pharmacology, and career issues for women scientists. Following the national scientific workshop, the Office of Research on Women's Health will develop a report identifying priorities for research on women's health for the 21st century.

Dated: October 10, 1997.
Ruth L. Kirschstein,
Deputy Director, NIH.
[FR Doc. 97–27863 Filed 10–20–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–44]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Single Family Home Mortgage Insurance Division, telephone number (202) 708–2700 (this is not a toll free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Title I Electronic Data Collection.
OMB Control Number: 2502–.
Description of the need for the information and proposed use: The Department needs additional data from lenders to permit more effective risk management of its Title I loan portfolio. The data will be collected in an electronic format and therefore enhance the Department's ability to monitor individual loan and lender performance.
Agency forms, if applicable: None.
Members of affected public: Lending institutions with FHA approval to originate or service Title I loans.

Status of the proposed information collection: Not applicable.

Estimate of public burden: The additional reporting burden is considered minimal, as the data collected will be electronically reported and consists primarily on information Title I lenders currently collect during the loan origination process. In aggregate the reporting burden is estimated a 1,211 hours annually.

Authority

Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 15, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–27768 Filed 10–20–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 1999 Annual Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 1999 annual funding agreements with self-governance tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 1999.

ADDRESSES: Inquiries or comments regarding this notice may be directed to the Office of Self-Governance, 1849 C Street NW, 2548 MIB, Washington, DC 20240. Telephone (202) 219–0240 or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (P.L. 103–413, the "Self-Governance Act" or the "Act") instituted a permanent tribal self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, functions, services, and activities or portions thereof in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, activities, and functions or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements.

Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance agreement. The Department interprets this provision to require only the inclusion of programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (P.L. 93–638).

Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities, or portions thereof, that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Self-Governance Act, annual agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

II. Annual Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior

During Fiscal Year 1996, one annual funding agreement was negotiated by the Bureau of Reclamation and the Gila River Indian Community for work related to a portion of the Central Arizona Project. This successor annual funding agreement to continue development of an irrigation system on their reservation as authorized by section 301(a) of the Colorado River Basin Project Act was begun in Fiscal Year 1997. Another successor agreement is continuing in Fiscal Year 1998.

In Fiscal Year 1997, two agreements were negotiated by the National Park Service. The annual funding agreement with Kawerak, Inc., supported by funds from the shared Beringian heritage program, builds on the previous agreement and covers work to be completed in Fiscal Year 1998. This work will result in a more complete record of the Bering Strait Region's Inupiat, St. Lawrence Island Yupik and Southern Norton Sound Yupik culture, history, knowledge and traditions. The self governance cooperative agreement with Lower Elwha Klallam Tribe enables the Elwha to carry out selected National Park Service functions, services and activities under the NPS Elwha River Restoration Program.

III. Eligible Programs of the Department of the Interior non-BIA Bureaus

Following this paragraph is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance annual funding agreements because they are either "otherwise available to Indians" and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. This summary is a general listing that represents the bureaus' best estimates of activities that may be available for negotiation at the request of the self-governance tribe. Since 1996, the Bureau of Mines no longer exists and, therefore, is not on this list.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included in this listing, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(3) or 403(c) of the Act. If you have any questions about these programs or other programs that you may be interested in, please contact the appropriate bureau representative.

A. Eligible Programs of the Bureau of Land Management (BLM)

BLM management responsibilities cover a wide range of areas such as recreational activities, timber, range and minerals management, wildlife habitat management and watershed restoration. In addition, BLM is responsible for the survey of certain Federal and tribal lands. Two programs also provide tribal services: (1) Tribal and allottee minerals management; and (2) Survey of tribal and allottee lands. BLM contracts out some of its activities in the management of public lands. These and other activities, dependent upon the availability of funds, the need for specific services, or the self-governance tribe demonstrating a special geographic, cultural, or historical connection, may be available for inclusion in agreements. Once a tribe has made initial contact with BLM, more specific information will be provided by the respective BLM State office.

Programs Otherwise Available

1. *Gadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and may be available for inclusion in an annual funding agreement.

2. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, inspection, enforcement and production verification of Indian sand and gravel operations: These activities, already available for contracts under Title I of the Act, may be available for inclusion in an annual funding agreement.

Potential tribal connection

1. *Cultural Heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Forestry Management.* Activities, such as environmental studies, tree planting, thinning and similar work may be available in specific States.

3. *Range Management.* Activities such as re-vegetation, noxious weed control, fencing, and similar activities may be available in specific States.

4. *Riparian Management.* Activities such as facilities construction, erosion control, rehabilitation, and similar activities may be available in specific States.

5. *Recreation Management.* Activities such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities such as construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

For questions regarding Indian self-governance contact the BLM Self-Governance Coordinator, Dr. Marilyn Nickels, Washington Office, 1849 C Street NW, Washington, D.C. 20240, (202) 452–0330, fax: (202) 452–7701. General information on all contracts available in a given year through the BLM can be obtained from the BLM National Business Center, PO Box 25047, Bldg 50 Denver Federal Center, Denver, CO 80225–0047.

B. Eligible Programs of the Bureau of Reclamation

Reclamation operates a wide range of water resource management projects for hydroelectric power generation, municipal and industrial water supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of Reclamation's activities involve construction, operation and maintenance, and management of water resources projects and associated facilities. Components of the following Fiscal Year 1999 water resource management and construction projects may be eligible for self-governance annual funding agreements.

1. Wetlands Enhancement Project (Sac and Fox Nation of Oklahoma)—OK
2. Klamath Project—CA, OR
3. Newlands Project—NV, CA
4. Trinity River Restoration Program—CA
5. Central Valley Project (Trinity Division)—CA
6. Central Arizona Project—AZ, CA, NM, UT
7. Colorado River Front Work/Levee System—AZ, CA, NV
8. Lower Colorado Indian Water Management Study—AZ, CA, NV
9. Washoe Project—NV, CA
10. Yuma Area Projects—AZ, CA, NV
11. Wild Horse Dam and Reservoir—NV
12. Indian Water Rights Settlement Projects—as Congressionally authorized.

For questions regarding self-governance contact Dr. Barbara McDowell, Native American Affairs Office, Bureau of Reclamation (W–6100), 1849 C Street NW., Washington, DC 20240–0001, (202) 208–4733, fax: (202) 208–6688.

C. Eligible Programs of the Fish and Wildlife Service (FWS)

The mission of FWS is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. FWS has a continuing cooperative relationship with a number of Indian tribes through the National Wildlife Refuge System and the National Fish Hatcheries program. FWS will discuss participation in any program with any Indian tribe, self-governance or non-self-governance. Any tribe may contact a wildlife refuge or fish hatchery about direct contracting or entering into cooperative agreements.

Some elements of the following programs may be eligible for contracting under a self-governance annual funding agreement:

1. *Fish & Wildlife Technical Assistance, Restoration & Conservation*
a. Fish & wildlife population surveys
b. Habitat surveys
c. Sport fish restoration
d. Feeding depredating migratory birds
e. Fish & wildlife program planning
f. Habitat restoration activities

2. *Endangered Species Program*
a. Cooperative management of conservation programs
b. Development of recovery plans
c. Conducting status surveys for high priority candidate species
d. Recovery plan implementation

3. *Education Programs*
a. Interpretation
b. Outdoor classrooms
c. Visitor center operations
d. Volunteer coordination efforts on & off-refuge

4. *Environmental Contaminants Program*
a. Analytical devices
b. Removal of underground storage tanks
c. Specific cleanup activities
d. Natural resource economic analysis
e. Specific field data gathering efforts

5. *Hatchery Operations*
a. Egg taking
b. Rearing/feeding
c. Disease treatment
d. Tagging
e. Clerical/facility maintenance

6. *Wetland & Habitat Conservation and Restoration*
a. Construction
b. Planning activities
c. Habitat monitoring and management

7. *Conservation Law Enforcement*
a. All law enforcement efforts under cross-deputization

8. *National Wildlife Refuge Operations & Maintenance*
a. Construction
b. Farming
c. Concessions
d. Maintenance
e. Comprehensive management planning
f. Biological program efforts
g. Habitat management

Locations of National Wildlife Refuges in Close Proximity to Self-Governance Tribes

1. Humboldt Bay National Wildlife Refuge—CA

2. Kootenai National Wildlife Refuge—ID
3. Agassiz National Wildlife Refuge—MN
4. Rice Lake National Wildlife Refuge—MN
5. Mille Lacs National Wildlife Refuge—MN
6. Pablo National Wildlife Refuge—MT
7. Ninepipe National Wildlife Refuge—MT
8. National Bison Range—MT
9. Sequoyah National Wildlife Refuge—OK
10. Tishomingo National Wildlife Refuge—OK
11. Bandon Marsh National Wildlife Refuge—OR
12. San Juan Islands National Wildlife Refuge—WA
13. Dungeness National Wildlife Refuge—WA
14. Nisqually National Wildlife Refuge—WA
15. Alaska National Wildlife Refuges Statewide—AK
16. Mescalero National Fish Hatchery—NM
17. Alchesay National Fish Hatchery—AZ
18. Quinault National Fish Hatchery—WA
19. Makah National Fish Hatchery—WA

For questions regarding self-governance contact Duncan Brown, Native American Liaison, Fish and Wildlife Service (MS3012), 1849 C Street NW, Washington, D.C. 20240–0001, (202) 208–4133, fax: (202) 208–7407.

D. Eligible Programs of the Minerals Management Service (MMS)

MMS provides responsible stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. MMS is responsible for the management of the Federal Outer Continental Shelf, which are submerged lands off the coasts that have significant energy and mineral resources. MMS also offers mineral-owning tribes other opportunities to become involved in MMS's Royalty Management Program functions.

Within the Offshore Minerals Management program, environmental impact assessments and statements, and environmental studies, may be available if a self-governance tribe demonstrates a special geographic, cultural, or historical connection.

Generally, royalty management programs are available to tribes because of their status as Indians. Royalty management programs that may be available to self-governance tribes are as follows.

1. *Audit of Tribal Royalty Payments.* Audit activities for tribal leases including issuing demands, subpoenas and orders to perform restructured accounting. Excepted activities are the issuance of final valuation decisions, and other enforcement activities. (For tribes already participating in MMS delegated audits, this program is offered as an optional alternative.)

2. *Verification of Tribal Royalty Payments.* Financial compliance verification and monitoring activities, production verification, and appeals research and analysis.

3. *Tribal Royalty Reporting, Accounting and Data Management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, correction of erroneous report data, billing and general ledger.

4. *Tribal Royalty Valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Management of Allottee Leases.* Royalty management of allottee leases including the same activities listed for tribal leases.

6. *Online Monitoring of Royalties and Accounts.* Online computer access to reports, payments, and royalty information contained in MMS accounts. MMS will install equipment at tribal locations, train tribal staff, and assist tribe in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. *Royalty Internship Program.* This is a flexible orientation or training program for auditors and accountants from mineral producing tribes. The program is customized for each tribe's needs to acquaint tribal staff with royalty laws, procedures, and techniques or to prepare them to assume royalty management functions. This program is recommended for tribes that are considering a self-governance agreement but have not yet acquired mineral revenue expertise via a FOGRMA section 202 contract.

For questions regarding self-governance contact Joan Killgore, Royalty Liaison Office, Minerals Management Service, 1849 C Street NW, Room 4241, Washington, D.C. 20240–0001, (202) 208–3512, fax (202) 208–3982.

E. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, interpretation of geology, history, and natural and cultural resources. Some elements of these programs may be eligible for contracting under a self-governance annual funding agreement. The list below was developed considering the geographic proximity to, and/or traditional association of a self-governance tribe with, units of the National Park system, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement.

Otherwise Available On-Going Programs and Activities

Archeological surveys
Comprehensive management planning
Cultural resource management projects
ethnographic studies
Erosion control
Fire protection
Hazardous fuel reduction
Housing construction and rehabilitation
gathering baseline
Subsistence data—AK janitorial services
Maintenance
Natural resource management projects
range assesssment—AK
Reindeer grazing—AK
Road repair
Solid waste collection and disposal
Trail rehabilitation

Components of these programs are potentially eligible for inclusion in a Self-Governance annual funding agreement. Programs may be available within units of the National Park System.

Potential Tribal Connection

Special Programs

Beringia Research
Elwha River Restoration

Aspects of these programs may be available if a self-governance tribe demonstrates a geographical, cultural, or historical connection.

Lake Clark National Park and Preserve—AK
Katmai National Park and Preserve—AK
Glacier BAy National Park and Preserve—AK
Sitka National Historical Park—AK
Kenai Fjords National Park—AK
Wrangell-St. Elias National Park & Preserve—AK
Bering Land Bridge National Park—AK
Northwest Alaska Areas—AK
Gates of the Arctic National Park & Preserve—AK

Yukon Charlie Rivers National Preserve—AK
Casa Grande Ruins National Monument—AZ
Josha Tree National Park—CA
Lassen Volcanic National Park—CA
Redwoods National Park—CA
Whiskeytown National Recreation Area—CA
Hagerman Fossil Beds National Monument—ID
Sleeping Bear Dunes National Lakeshore—MI
Voyageurs National Park—MI
Grand Portage National Monument—MN
Bear Paw Battlefield, Nez Perce National Historical Park—MT
Glacier National Park—MT
Great Basin National Park—NV
Bandelier National Monument—NM
Hopewell Culture National Historical Park—OK
Chickasaw National Recreation Area—OK
Effigy Mounds National Monument—IA
Olympic National Park—WA
San Juan Islands National Historic Park—WA
Mt. Rainier National Park—WA
Ebey's Landing National Historical Reserve—WA

Aspects of the ongoing programs and activities may be available at these park units with known geographic, cultural, or historical connections with a self-governance tribe.

While NPS has tried to indicate the types of programs that may be available, this is not intended to be an all-inclusive listing. NPS will also discuss participation in any program with any Indian tribe, self-governance or non-self-governance.

For questions regarding self-governance contact Dr. Patricia Parker, American Indian Liaison Office, National Park Service (2205), 1849 C Street NW, Room 3410, Washington, D.C. 20240; telephone (202) 208–5475, fax (202) 273–0870.

F. Eligible Programs of the Office of Surface Mining (OSM)

OSM regulates surface coal mining and reclamation operations, and reclaims abandoned coal mines, in cooperation with States and Indian tribes.

1. *Abandoned Mine Land Reclamation Program.* This program to restore eligible lands mined and abandoned or left inadequately restored is available to Indian tribes.

2. *Control of the Environmental Impacts of Surface Coal Mining.* This program includes analyses, NEPA documentation, technical reviews, and studies. Where surface coal mining exists on Indian land, certain regulatory activities that are not inherently Federal, including, for example, designation of areas unsuitable for mining, are available to Indian tribes.

For questions regarding self-governance contact Maria Mitchell, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW, (MS–210–SIB), Washington, D.C. 20240, telephone (202) 208–2847, fax (202) 208–3111.

G. Eligible Programs of the U.S. Geological Survey (USGS)

The mission of the U.S. Geological Survey is to provide information on biology, geology, hydrology, and cartography that contributes to the wise management of the nation's natural resources and to the health, safety, and well-being of the American people. Information includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure and dynamic processes of the earth. Information on these scientific issues is developed through extensive research, field studies, and comprehensive data collection to: Evaluate natural hazards such as earthquakes, volcanoes, landslides, floods, droughts, subsidence and other ground failures; assess energy, mineral, and water resources in terms of their quality, quantity, and availability; evaluate the habitats of animals and plants; and produce geographic, cartographic, and remotely-sensed information in digital and non-digital formats. No USGS programs are specifically available to American Indians or Alaska Natives. Components of programs may have a special geographic, cultural, or historical connection with a tribe.

1. *Mineral, Environmental, and Energy Assessments.* Components of this program that involve geologic research, data acquisition, and predictive modeling may be available for inclusion in an annual funding agreement.

2. *USGS Earthquake Hazards Reduction Program.* Components of this program involves research, data acquisition, and modeling related to earthquakes and seismically active areas may be available for inclusion in an annual funding agreement.

3. *Water Resources Data Collection and Investigations.* Components of this program may be available for inclusion in an annual funding agreement if a self-goverance tribe demonstrates a special geographic, cultural, or historical connection.

4. *Biological Resources Inventory, Monitoring, Research and Information Transfer Activities.* Components of this program may be available for inclusion in an annual funding agreement if a self-goverance tribe demonstrates a special geographic, cultural or historical connection.

For questions regarding self-goverance contact Sue Marcus, American Indian/Alaska Native Liaison, U.S. Geological Survey, 105 National Center, Reston, VA 20192, telephone (703) 648–4437, fax (703) 648–5068.

IV. Programmatic Targets

Each of the non-BIA bureaus will attempt to successfully negotiate at least one annual funding agreement with a self-goverance tribe for implementation in Fiscal Year 1998.

Dated: October 15, 1997.

Juliette Falkner,

Special Assistant to the Secretary.

[FR Doc. 97–27750 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*)

Applicant: Rod Brandenburg, Longmont, CO, PRT–834807.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Julian B. Smith, Jr., Metter, GA, PRT–835364.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael Seaman/Yale University, New Haven, CT, PRT–835315.

The applicant requests a permit to import hair samples from gorillas (*Gorilla gorilla*) collected in the wild in

Uganda, incidental to other research activities, for scientific research.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–824722.

The applicant request an amendment to their current permit to include the import of 60 non-viable eggs of American crocodile (*Crocodylus acutus*) for the purpose of scientific research.

Applicant: National Institutes of Health, Frederick, MD, PRT–694126.

The applicant requests an amendment to their current permit which authorizes import and/or interstate commerce to obtain biological samples taken from endangered and threatened mammals. They request that the authorization specifically include the import and/or interstate commerce of DNA samples taken from endangered and threatened mammals for the purpose of scientific research.

Applicant: Mark Fisher, Visalia, CA, PRT–835472.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Louis Sweet, Tulare, CA, PRT–835477.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: National Cancer Institute, Frederick, MD, PRT–834014.

This amends the previoulsy published activity for the applicant to import hair, tissue, and blood samples from Vicuna (*Vicugna vicugna*) from Bolivia and Argentina, rather than only from Chile and Peru, for the purpose of enhancing of the survival of the species through scientific research.

Applicant: The Hawthorn Corporation, Grayslake, IL, PRT–835641.

The applicant requests a permit to re-export and re-import captive-born Bengal tiger (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Applicant: Ron and Joy Holiday and Charles Lizza, Alachua, FL, RT–835640.

The applicant requests a permit to export and reimport one captive born black leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director by November 20, 1997.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Mark Rayburg, Lower Burrell, PA, PRT–832318.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Gulf of Boothia polar bear population, Northwest Territories, Canada for personal use.

Applicant: William Williamson, Austin, TX, PRT–832316.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Collins Kellogg, Jr., Black River, NY, PRT–835254.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Steven H. Jones, Fort Myers, FL, PRT–835266.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Helmuth Pfennig, Beulah, ND PRT–835227.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Lawrence Epping, Salem, OR, PRT–835236.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on the applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received by November 20, 1997. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address by November 20, 1997.

Dated: October 16, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–27883 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On July 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 142, Page 39854, that an application had been filed with the Fish and Wildlife Service by Gary Frank Bogner, No. Muskegon, MI, for a permit (PRT–832218) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Lancaster Sound population, Northwest Territories, Canada for personal use.

Notice is hereby given that on October 6, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 152, Page 42590, that an application had been filed with the Fish and Wildlife Service by Thomas VanEvery, Troy, MI, for a permit (PRT–832624) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on October 6, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 152, Page 42589, that an application had been filed with the Fish and Wildlife Service by Peter Mansfield, New York City, NY, for a permit (PRT–832731) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 30, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 157, Page 43544, that an application had been filed with the Fish and Wildlife Service by Ron Brunsfeld, Northbrook, IL, for a permit (PRT–832897) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Lancaster Sound population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 24, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 157, Page 43544, that an application had been filed with the Fish and Wildlife Service by Gerald Bader, Federal Dam, MN, for a permit (PRT–832625) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Foxe Basin population, Northwest Territories, Canada for personal use.

Notice is hereby given that on October 6, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 157, Page 43544, that an application had been filed with the Fish and Wildlife Service by Karl Nothdurft, Grosse Pointe Farms, MI, for a permit (PRT–832907) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Foxe Basin population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 30, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 157, Page 43544, that an application had been filed with the Fish and Wildlife Service by the Alaska Science Center, Anchorage, AK for amendment of the permit (PRT–801652) for the purposes of scientific research of walrus (*Odobenus rosmarus*).

Notice is hereby given that on October 1, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: October 16, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–27881 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–014917C, IDI–014461C]

Termination of Desert Land Entry Classifications and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates two Desert Land Entry Classifications on 363.74 acres of land in Owyhee County, as these classifications are no longer needed. Most of the lands affected by these classifications will be exchanged pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On April 18, 1968 and on October 4, 1971, the lands listed below were classified as suitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, et seq.).

These classifications are hereby terminated and the segregation for the following described land is hereby terminated:

T. 6 S., R. 4 E., B.M. section 24: NE¼SE¼.
T. 6 S., R. 5 E., B.M. section 19: lots 2, 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼, NW¼SE¼.

The area described above aggregates 363.74 acres in Owyhee County.

At 9:00 a.m. on October 21, 1997, the Desert Land Entry Classifications identified above will be terminated. A majority of the lands identified above will remain closed to location and entry under the public land laws and the mining laws, as they are currently segregated for exchange. The only lands which will be opened to location and entry are described as follows:

T. 6 S., R. 5 E., B.M. section 19: SW¼NE¼, NW¼SE¼.

At 9:00 a.m. on October 21, 1997, these lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., on October 21, 1997, will be considered simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 9:00 a.m. on October 21, 1997, these lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described above under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in

disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 9, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–27713 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 31137; FES 97–33]

Notice of Availability

AGENCY: Bureau of Land Management, Needles Resource Area.

ACTION: Notice of Availability for the Castle Mountain Mine Expansion Project, Final Environmental Impact Statement/Environmental Impact Report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and in coordination with the County of San Bernardino in its administration of the California Environmental Quality Act as amended, notice is hereby given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third party consultant, a Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)on the proposed Castle Mountain Mine Expansion Project and has made copies available for public and agency review. The Final EIS/EIR addresses the potential environmental impacts associated with expansion and continued operation of an open pit heap leach gold mine in northeastern San Bernardino County, California.

DATES: Comments on the Final EIS/EIR must be received no later than 4 p.m., November 17, 1997.

ADDRESSES: Written comments should be addressed to: George R. Meckfessel, U.S.D.I. Bureau of Land Management, Needles Resource Area, 101 West Spikes Road, Needles California 92363.

FOR FURTHER INFORMATION CONTACT: George R. Meckfessel, Planning and Environmental Coordinator, telephone (760) 326–7000.

SUPPLEMENTARY INFORMATION: Viceroy Gold Corporation has proposed to mine additional ore adjacent to deposits currently being mined at the Castle Mountain Mine, an open-pit heap-leach gold mine. Under the present operating permits, mining, processing and reclamation could continue through December 31, 2010. The mine operating period would be extended 10 years past the currently permitted time to 2010. Under the proposed expansion, these activities could continue through December 31, 2020. The Proposed Action would increase areas of open pit, create an overburden storage site, and expand the heap leach pad, on approximately 485 acres. Mining and processing methods, and rates would not change. Previous permitted and proposed surface disturbances at the conclusion of mining would total 1,375 acres of the 3,910-acre project area.

Molly S. Brady,

Area Manager.

[FR Doc. 97–27782 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Outer Continental Shelf Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for Outer Continental Shelf (OCS) Mineral Exploration Proposal on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes the only proposal for which a Finding of No Significant Impact (FONSI) was prepared by the Alaska OCS Office in the 3-month period preceding this Notice.

Proposal

The proposal is for exploratory-drilling operations that would be conducted in accordance with the OCS Lands Act. The purpose of the Environmental Assessment (EA) is to evaluate the probable environmental effects of the operations, described in the Exploration Plan (EP) for the ARCO Warthog No. 1 Exploration Well, dated July 1997. The Warthog drill site would be located within Camden Bay in the Beaufort Sea, near several former drill sites and the Arctic National Wildlife Refuge. The bottom-hole location would be under adjacent State of Alaska lands on the inner continental shelf. The methods by which the exploratory well would be drilled are detailed in the EP and in the associated Environmental Report and Oil Discharge Prevention and Contingency Plan. Additional details about the proposed operations are included in **Federal Register** Notice 62–FR–37881, summarizing an ARCO application for an Incidental Harassment Authorization from the National Marine Fisheries Service.

Location

Lease	*Block*
OCS–Y–1663 (additional lease)	NR 06–04 7067
OCS–Y–1662	NR 06–04 7066

EA Number: EA No. AK 97–01.
FONSI Date: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposal listed above, or in obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS, are encouraged to contact the Alaska OCS Regional office of MMS.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, phone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Request may also be sent to MMS at akwebmaster@mms.gov.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determing whether or not approvals of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: October 14, 1997.

John Goll,

Regional Director, Alaska OCS Region, Minerals Management Service.

[FR Doc. 97–27784 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Gates of Arctic National Park Subsistence Resource Commission; Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park and Preserve announce a forthcoming meeting of the Gates of the Arctic National Park and Preserve Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of minntes from April 29–May 1, 1997 meeting.
(4) Review agenda.
(5) Superintendent's introduction of guests and review of Commission function and staff purpose.
(6) Superintendent's management/research reports.
a. Administration and management.
b. Park operations.
c. Resource management.
d. Subsistence program.
(7) Public and agency comments.
(8) Old business.
a. Correspondence
b. Federal Subsistence Program update: 1997–1998 regulatory changes.
c. National Park Service Subsistence Program document.
d. Review of Subsistence Management Plan (draft).
(9) New business.
a. Election of officers.
b. Other park Subsistence Resource Commission actions.
c. Review of traditional use areas draft analysis.
d. Work session: Subsistence Hunting Program.
(10) Set time and place of next Subsistence Resource Commission meeting.
(11) Adjournment.

DATES: The meeting will begin at 7:00 p.m. on November 3, 1997 and conclude at approximately 10:00 p.m. The meeting will reconvene at 8:30 a.m. on November 4, 1997 and conclude at approximately 5:00 p.m. The meeting will reconvene at 8:30 a.m. on November 5, 1997 and conclude at approximately noon.

LOCATION: The meeting will be held at the Community Hall, Allakaket, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Judith Gottlieb,

Acting Regional Director, Alaska Region.

[FR Doc. 97–27788 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the twenty-fourth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The Public meeting will be held on November 20, 1997, from 7:00 p.m.–9:00 p.m.

LOCATION: The meeting will be held at Gettysburg Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Update on General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: October 19, 1997.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 97–27819 Filed 10–20–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Jimmy Carter National Historic Site Advisory Committee; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4 p.m., at the following location and date.

DATE: October 31, 1997.

LOCATION: Plains High School Visitor Center/Museum, North Bond Street, Plains, Georgia 31780.

FOR FURTHER INFORMATION, CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343 Extension 17.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows: Dr. Steven Hochman, Dr. James Sterling Young, Dr. Donald B. Schewe, Dr. Henry King Stanford, and Dr. Barbara Fields, Director, National Park Service, Ex-Officio member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 10, 1997.
Daniel W. Brown,
Acting Regional Director, Southeast Region.
[FR Doc. 97–27801 Filed 10–20–97; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Landmarks Committee of National Park System Advisory Board Meeting

AGENCY: National Park Service; Interior.
ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATE: November 5, 1997.
LOCATION: Department of the Interior, Conference Room 7000 B, Main Interior Building, 1849 C Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on November 20–21, 1997, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria for designation for the National Historic Landmarks Program. The members of the National Landmarks Committee are:

Dr. Holly Anglin Robinson, Co-Chair
Mr. Parker Westbrook, Co-Chair
Mr. Peter Dangermond
Dr. Shereen Lerner
Mr. Jerry L. Rogers
Dr. John Vlach
Dr. Richard Guy Wilson
Dr. James Horton, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR part 65. Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey, and Keeper of the National Register of Historic Places, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Washington, DC 20013–7127.

The nominations to be considered are:

ALABAMA

Brown Chapel A.M.E. Church, Selma, Alabama

ALASKA

Kake Cannery, Kake

ARKANSAS

Old State House, Little Rock

CALIFORNIA

United States Immigration Station, Angel Island, Tiburon

ALASKA

Kake Cannery, Kake

ILLINOIS

Farm Creek Section, East Peoria Vicinity

MARYLAND

Riversdale, Riverdale

NEW YORK

Kate Mullany House, Troy
New York State Inebriate Asylum, Binghamton
Radeau Land Tortoise, Lake George
Top Cottage, Hyde Park
Union Square, New York

OHIO

Cincinnati Observatory, Cincinnati
Wilson Bruce Evans House, Oberlin

PENNSYLVANIA

Johnson House, Philadelphia
N.C. Wyeth House and Studio, Chadds Ford

PUERTO RICO

ANTONIO LOPEZ, Dorado Vicinity

VERMONT

Rokeby, Ferrisburgh

VIRGINIA

Monument Avenue Historic District, Richmond

Also, should the necessary waivers be received, the committee will be considering an additional property:

Lower Landing Archeological District (Boundary increas to Colonial Niagara Historic District), Lewiston, NY

Dated: October 16, 1997.
Carol D. Shull,
Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Park Service, Washington Office.
[FR Doc. 97–27865 Filed 10–20–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 8, 1997, a proposed Consent Decree in *United States* v. *Trustees of Boston University*, Civil Action No. 97–12261 PBS (D. Mass.), was lodged with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns violations by the Trustees of Boston University, of the Clean Water Act, 42 U.S.C. § 1251, *et seq.*, and the Resource, Conservation, and Recovery Act, 42 U.S.C. § 6901, *et seq.* The violations alleged in the complaint include the failure by the University to prevent spills of oil into the Charles River in 1992 and 1996 as required by Section 311(b)(3) of the Clean Water Act, 42 U.S.C. § 1321(b)(3); the failure by the University to prepare and implement a Spill Prevention Control and Countermeasures Plan as required by Section 311(j)(1)(c) of the Clean Water Act, 42 U.S.C. § 1321(j)(1)(c); and the failure of the University to comply with hazardous waste management practices at its Medical Campus as required by Subtitle C of the Resource, Conservation, and Recovery Act, 42 U.S.C. §§ 6921–6939.

Under the terms of the Consent Decree, the defendant will pay a total civil penalty of $253,000 for its past violations. In addition, the Consent Decree requires the University to perform two Supplemental Environmental Projects. The first Project will involve the environmental restoration of a community garden in the South End/Lower Roxbury neighborhood of Boston. The second Project will involve the reduction of pollutants contained in stormwater runoff into the Charles River from the University.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Trustees of Boston University*, DOJ Ref. No. 90–7–1–896.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction cost for the Consent Decree excluding Appendices) made payable to Consent Decree Library.

Joel M. Gross,
Section Chief, Environmental Enforcement Section.
[FR Doc. 97–27772 Filed 10–20–97; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Supplemental Consent Decree Pursuant to the Clean Air Act

In accordance with the Clean Air Act, 42 U.S.C. § 7413 (g), and Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed Supplemental Consent Decree in *Concerned Citizens for Nuclear Safety, Inc. & Patrick Jerome Chavez v. United States Dep't of Energy & Siegfried S. Hecker*, Civil No. 94–1039 M (D.N.M.), was lodged with the United States District Court for the District of New Mexico on September 26, 1997. Final approval and entry of the proposed Supplemental Consent Decree are subject to the requirements of Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), and the provisions of 28 CFR § 50.7.

In this case, Plaintiffs CCNS and Patrick Chavez filed suit against Defendants alleging that Los Alamos National Laboratory ("LANL") is not in full compliance with the national emission standard for radionuclides at DOE facilities, set forth at 40 CFR 61.90–61.97 ("Subpart H"). On March 20, 1997, the court entered a Consent Decree resolving Plaintiffs' claims. One of the provisions of the Consent Decree requires DOE to fund up to four independent compliance audits of LANL. The Decree also provided for DOE to pay CCNS' expert and attorneys' fees incurred in monitoring compliance with the Consent Decree, including monitoring the independent audits, pursuant to the attorneys' fees provisions of the Clean Air Act.

On July 24, 1997, CCNS filed a Motion to Enforce Consent Decree, by which CCNS sought to resolve a dispute with DOE regarding the appropriate scope of activities to monitor the first independent audit. CCNS and DOE have reached a settlement of this motion, which takes the form of a proposed Supplemental Consent Decree.

The Department of Justice will receive written comments relating to the proposed Supplemental Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Alan D. Greenberg, U.S. Department of Justice, Environmental Defense Section, 999 18th Street, Suite 945, Denver, CO 80202, should refer to *Concerned Citizens for Nuclear Safety, Inc. & Patrick Jerome Chavez v. United States Department of Energy & Siegfried S. Hecker*, Civil No. 94–1039 M (D.N.M.), and should also make reference to DJ# 90–5–2–1–1749A.

The Supplemental Consent Decree may be examined at the Clerk's Office, Untied States District Court for the District of New Mexico, 500 Gold Avenue, 10th Floor, Albuquerque, NM 87102 or at the Los Alamos National Laboratory Reading Room, 1350 Central Avenue, Suite 101, Los Alamos, NM 87544, ph. (505) 665–2122 or (800) 343–2342.

Letitia J. Grishaw,
Chief, Environmental Defense Section, Environmental and Natural Resources Division.
[FR Doc. 97–27770 Filed 10–20–97; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Inland Steel Company*, Civil Action No. 2:96CV–097 JM, was lodged on September 4, 1997 with the United States District Court for the Northern District of Indiana. The proposed consent decree settles pending Clean Water Act claims against Inland Steel Company in connection with its Harbor Works steelmaking facility in East Chicago, Indiana. The consent decree settles these claims in exchange for Inland's commitment to comply with the Clean Water Act in the future, a civil penalty of $150,000, and a supplemental environmental project consisting of spill control improvements at fueling stations at the Inland facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Inland Steel Company*, Civil Action No. 2:96CV–097 JM, and the Department of Justice Reference No. 90–5–1–1–4282. The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,
Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.
[FR Doc. 97–27774 Filed 10–20–97; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on September 25, 1997, a proposed Consent Decree in *Tex Tin Corp.* v. *United States*, Civil Action No. G–96 247, consolidated with *Amoco Chemical Co.* v. *United States, et al.*, Civil Action No. G–96–272 (S.D. Tex., Galveston), was lodged with the U.S. District Court for the Southern District of Texas, Galveston Division. The United States filed counterclaims against Tex Tin Corp. and Amoco

Chemical Co. in these consolidated actions pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a) for recovery of costs incurred and to be incurred for response actions responding to the release or threat of release of hazardous substances at the Text Tin Superfund Site ("Site") in Texas City, Texas. This Consent Decree resolves the United States claims against Amoco Chemical Company, Amoco Oil Company and Amoco Corporation (collectively "Amoco") for CERCLA response costs at the Site.

Amoco owns 27.33 acres ("Area H") of the 210-acre Site, which Amoco purchased after disposal activities had ceased. With respect to the Site exclusive of Area H, Amoco is a *de minimis* generator potentially responsible party. The proposed settlement recognizes that Amoco has performed the Remedial Investigation/Feasibility study for the Site, and will clean up Area H under a Voluntary Cleanup Program ("VCP") Response Action Work Plan with the state of Texas which will include construction of a soil cover over Area H, installation of a subsurface barrier wall, and continued monitoring of the network of groundwater wells.

With respect to Area H, the Consent Decree provides Amoco with a covenant not to sue under Sections 106 and 107 of CERCLA only if the Environmental Protection Agency issues a written determination that the cleanup, as implemented, is protective of human health and the environment within the meaning of Section 121 of CERCLA. The Consent Decree provides Amoco with a *de minimis* party covenant not to sue for the remainder of the Site. Amoco reserves contribution claims against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *Amoco Chemical Co.* v. *United States, et al.*, D.J. ref. 90–11–3–1669.

The proposed Consent Decree may be examined at the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.50 ($0.25 per page for reproduction costs) payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 97–27773 Filed 10–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Proposed Consent Decree; World Color Press, Inc.

Under 28 CFR 50.7 notice is hereby given that on October 3, 1997, a proposed consent decree in *United States* v. *World Color Press, Inc.*, Civil Action No. 96–CV–1804 was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought injunctive relief and a civil penalty against World Color Press' Alden Printing Facility, located in Elk Grove, Illinois, to bring it into compliance with requirements in its permit to control and limit emissions of volatile organic materials ("VOMs") for its printing presses. Following filing of the complaint, but before settling the litigation, World Color complied with the United States Environmental Protection Agency's request to replace condenser recovery systems with an afterburner at the Alden Facility to control VOM emissions from certain printing presses. The Consent Decree requires World Color to pay a civil penalty of $250,000, and to comply with the Clean Air Act in all respects.

The Department of Justice will receive comments on the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *World Color Press, Inc.*, D.J. Ref. 90–5–2–1–1984.

The C.B. may be examined at the Office of the United States Attorney, 219 S. Dearborn St., Room 12000, Chicago, Illinois 60604, at U.S. EPA Region 5, 77 West Jackson, Air & Radiation Division, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 2005, (202) 624–0892. A copy of the C.D. may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce M. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–27771 Filed 10–20–97; 8:45 am]

BILLING CODE 4410–15–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 18, 1997 from 8:45 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 18, from 10:00 a.m. to 6:00 p.m., on Wednesday, November 19, from 8:30 a.m. to 6:30 p.m., and on Thursday, November 20, from 9:00 a.m. to 1:00 p.m.

PLACE: The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting, however, will be on Arctic issues and on those marine mammal species that occur in Alaska. While subject to change, major issues that the Commission plans to consider at the meeting include: marine mammal co-management agreements; domestic and international polar bear and walrus programs; research and management issues related to bowhead whales, Steller sea lions, harbor seals, North Pacific fur seals, and sea otters; the Arctic Environmental Protection Strategy; the Arctic Council; marine mammal programs of the Russian Federation; the Bering Sea ecosystem; Hawaiian monk seals; and West Indian manatees.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD, 20814, 301/504–0087.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1997 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the September 29, 1997 notice (62 FR 50964).

Dated: October 15, 1997.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 97–27890 Filed 10–16–97; 4:42 pm]

BILLING CODE 6820–31–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on Wednesday, November 5, 1997, from 9 a.m. to 12 noon, in the Conference Room of the Bush Presidential Library, 1000 George Bush Drive West, College Station, Texas.

The agenda for the meeting will be the Presidential library programs and a discussion of future Presidential libraries.

The meeting will be open to the public. For further information, call David F. Peterson at (301) 713–6050.

Dated: October 17, 1997.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 97–27935 Filed 10–20–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

Name: Advisory Panel for Neuroscience (1158).

Date and Time: November 6–7, 1997; 9:00 a.m. to 5:00 p.m.

Place: Room 680, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Part-Open.

Contact person: Dr. Susan F. Volman, Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: November 7; 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. Closed Session: November 6; 9:00 a.m. to 5:00 p.m.; November 7, 9:00 a.m. to 11:00 a.m., and 12:00 p.m. to 5:00 p.m. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27827 Filed 10–20–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Time: 9:30 a.m., Tuesday, October 28, 1997.

Place: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC. 20594.

Status: Open.

Matters to be Discussed:

6921 *Railroad Accident Report:* Derailment of Union Pacific Railroad Unit Freight Train 6205 West, near Kelso, California, January 12, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Ray Smith, (202) 314–6064.

Dated: October 17, 1997.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 97–28022 Filed 10–17–97; 3:45 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

The Cleveland Electric Illuminating Company, Toledo Edison Company, Centerior Service Company, Duquesne Light Company, OES Nuclear, Inc., Ohio Edison Company, and Pennsylvania Power Company Perry Nuclear Power Plant, Unit No. 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring

[Docket No. 50–440]

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order under 10 CFR 50.80, of an application concerning a proposed merger between DQE, Inc. and Allegheny Power System, Inc. (Allegheny Power). DQE, Inc. is the parent holding company of Duquesne Light Company (Duquesne Light). Duquesne Light, The Cleveland Electric Illuminating Company (CEI), The Toledo Edison Company, Centerior Service Company (CSC), OES Nuclear, Inc., Ohio Edison Company, and Pennsylvania Power Company are holders of Facility Operating License No. NPF–58, dated November 13, 1986. Facility Operating License No. NPF–58 authorizes the holders to possess the Perry Nuclear Power Plant, Unit No. 1 (PNPP), and authorizes CEI and CSC to use and operate PNPP in accordance with the conditions and requirements set forth in the operating license. By letter dated August 1, 1997, the Commission was informed that DQE, Inc. and Allegheny Power have entered into a merger agreement which will result in DQE, Inc. becoming a wholly-owned subsidiary of Allegheny Power, and thus the indirect transfer of control of the interest held by Duquesne Light in the Perry operating license to Allegheny Power, which will be renamed Allegheny Energy, Inc. (Allegheny Energy).

According to the application, the merger will have no adverse effect on either the technical management or operation of PNPP since CEI and CSC, responsible for the operation and maintenance of PNPP, are not involved in the merger. The Toledo Edison Company, Ohio Edison Company, OES Nuclear, Inc., CEI, CSC, and Pennsylvania Power Company will remain licensees responsible for their possessory interests and related obligations. No direct transfer of the license will result from the merger.

Pursuant to 10 CFR 50.80, the Commission may consent to the transfer of control of a license after notice to interested persons. Such consent is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the application from Duquesne Light dated August 1, 1997. The August 1, 1997, application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 10th day of October 1997.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27876 Filed 10–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA 97–070, ASLBP No. 98–734–01–EA]

Magdy Elamir, M.D.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

MAGDY ELAMIR, M.D.

Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

IA 97–070

In accordance with 10 C.F.R. § 202, this Board is established as a result of the petitioner, Dr. Magdy Elamir, President of Newark Medical Associates, P.A., requesting a hearing on a September 15, 1997, NRC Order. The Order prohibits Dr. Elamir from engaging in NRC-licensed activities for five years, requires him to inform the NRC of any NRC licensed entity or entities where Dr. Elamir is involved and prohibits such involvements, and requires him to provide a copy of the Order to all such NRC-licensed entities.

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials in this proceeding shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 15th day of October 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–27878 Filed 10–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Notice of Proposed Issuance of a License Amendment and an Order Authorizing Disposition of Component Parts Termination of Facility License and Opportunity for Hearing; Waltz Mill Test Reactor

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment and an order authorizing the Westinghouse Electric Corporation (the licensee) to dismantle the Waltz Mill Test Reactor facility and dispose of the component parts, and termination of Facility License No. TR–2, in accordance with the licensee's application dated July 31, 1997.

The license amendment would be issued following the Commission's review and approval of the licensee's detailed plan for removal of the reactor vessel internal contents, the reactor vessel, the biological shield, and disposal of radioactive components. The license amendment would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue an order terminating the TR–2 license, and relicensing the remaining facility under a Special Nuclear Materials license existing at other parts of the facility at Waltz Mill. Prior to issuance of the license amendment and order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 20, 1997, the licensee may file a request for a hearing with respect to issuance of the subject amendment and order, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules for Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Lisa A. Campagna, Assistant General Counsel, Law Department, Westinghouse Electric Corporation, P.O. Box 355, Pittsburgh, Pennsylvania 15230, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 31, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C.

Dated at Rockville, Maryland, this 14th day of October 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27873 Filed 10–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al. Perry Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order under 10 CFR 50.80, of the indirect transfer of Facility Operating License No. NPF–58, to the extent it is held by the Duquesne Light Company (Duquesne Light) for the Perry Nuclear Power Plant, Unit No. 1 (PNPP), located in Lake County, Ohio.

Environmental Assessment

Identification of the Proposed

The proposed action would consent to the indirect transfer of the license with respect to a proposed merger between DQE, Inc. and Allegheny Power System, Inc. DQE, Inc. is the parent holding company of Duquesne Light, which holds a license to possess an interest in PNPP. Duquesne Light, The Cleveland Electric Illuminating Company (CEI), Toledo Edison Company, Centerior Service Company (CSC), OES Nuclear, Inc., Ohio Edison Company, and Pennsylvania Power Company are holders of Facility Operating License No. NPF–58, dated November 13, 1986. Facility Operating License No. NPF–58 authorizes the holders to possess the PNPP, and authorizes CEI and CSC to use and operate PNPP in accordance with the conditions and requirements set forth in the operating license. By letter dated August 1, 1997, the Commission was informed that DQE, Inc. and Allegheny Power have entered into a merger agreement which will result in the indirect transfer of control of the interest held by Duquesne Light in the PNPP operating license to Allegheny Power, which will be renamed Allegheny Energy, Inc. (Allegheny Energy).

According to the application, the merger will have no adverse effect on either the technical management or operation of PNPP since CEI and CSC, responsible for the operation and maintenance of PNPP, are not involved in the merger. The Toledo Edison Company, Ohio Edison Company, OES Nuclear, Inc., CEI, CSC, and Pennsylvania Power Company will remain licensees responsible for their possessory interests and related obligations. No direct transfer of the license will result from the merger.

The proposed action is in accordance with Duquesne Light's request for approval dated August 1, 1997.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the indirect transfer of the license discussed above. According to the application, the underlying transaction is needed to create a stronger, more competitive enterprise that is expected to save over $1 billion in net savings over the first 10 years, thereby enhancing Duquesne Light's financial resources to possess its interests in the PNPP.

Environmental Impacts of the Proposed Action

The proposed action involves administrative activities unrelated to plant operation.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2," dated August 1982, in NUREG–0884.

Agencies and Persons Consulted

In accordance with its stated policy, on October 1, 1997, the staff consulted with the Ohio State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see Duquesne Light's submittal dated August 1, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 15th day of October 1997.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director, Project Directorate III–3 Division of Reactor Projects III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–27875 Filed 10–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Radiography Workshop

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission staff plans to convene a public workshop to discuss issues concerning industrial radiography associated equipment. The workshop will be held in conjunction with the American Society for Nondestructive Testing, Inc.'s (ASNT's), 1997 Fall Conference and Quality Testing Show, Post Conference Seminar. The issues to be discussed include a vendor petition for rulemaking to remove the reference to associated equipment from radiography equipment regulations and an NRC proposal for resolving certain issues. The workshop will also provide an opportunity for representatives from the radiography industry to comment on how associated equipment should be regulated.

DATE AND TIME: The workshop will meet on October 24, 1997, from 1:00 p.m. to 2:30 p.m.

ADDRESSES: The workshop will be held at the David L. Lawrence Convention Center, Double Tree Hotel Pittsburgh, 1000 Penn Avenue, Pittsburgh, Pennsylvania 15222. Telephone 412–281–3700. ASNT telephone number: (800) 222–ASNT.

FOR FURTHER INFORMATION CONTACT: J. Bruce Carrico, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, telephone (301) 415–7826, e-mail jbc@nrc.gov.

SUPPLEMENTARY INFORMATION: On January 10, 1991, NRC published in the **Federal Register** (55 FR 843) a final rule revising the regulations applicable to industrial radiography, 10 CFR Part 34. The revision introduced a new section, 10 CFR 34.20, that required licensees to only use radiographic exposure devices and associated equipment that comply with criteria specified in that section. Paragraph (d) of 10 CFR 34.20 provided that all newly manufactured radiographic exposure devices and associated equipment (manufactured after January 10, 1992) acquired by NRC licensees must meet 10 CFR 34.20 requirements (specified in American National Standards Institute (ANSI), N432–1980). In addition, licensees were to ensure that all equipment used in radiographic operations after January 10, 1996, complies with the applicable requirements.

Since the final implementation date, i.e., January 10, 1996, some confusion has arisen concerning the regulations' applicability to associated equipment. Associated equipment is currently defined as, "* * * equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube and collimator when it is used as an exposure head." In addition, in April 1996, NRC received a Petition for Rulemaking requesting that "NRC amend its regulations to remove reference to associated equipment from § 34.20 so that continued inspection and enforcement of the rule would be performed on the basis of source and device reviews only." The objective of this workshop is to discuss NRC's understanding of the problems and possible solutions, and provide a forum for an exchange of ideas between industry representatives and NRC on how associated equipment should be regulated. NRC anticipates that representatives from the regulated industry and the equipment manufacturers will be in attendance.

Conduct of the Workshop: The workshop will be chaired by Larry W. Camper, Chief, Medical, Academic, and Commercial Use Safety Branch, Office of Nuclear Material Safety and Safeguards. The workshop will be conducted in a manner that will expedite the orderly conduct of business. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 14th day of October, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–27874 Filed 10–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 20, 27, November 3, and 10, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 20

There are no meetings the week of October 20.

Week of October 27—Tentative

Wednesday, October 29

11:30 a.m.
Affirmation Session (public meeting) (if needed)

2:00 p.m.
Briefing on Site Decommissioning Plan (SDMP) (public meeting) (Contact: John Hickey—301–415–7234)

Thursday, October 30

10:30 a.m. and 1:30 p.m.
All Employees Meetings (public meetings) on "The Green" Plaza Area between buildings at White Flint (Contact: Bill Hill—301–415–1661)

Week of November 3

Tuesday, November 4

2:00 p.m.
Meeting with Commonwealth Edison (public meeting)

Wednesday, November 5

9:30 a.m.
Briefing on Staff's Plans for 50.59 Regulatory Process Improvements (public meeting)

11:00 a.m.
Affirmation Session (public meeting) (if needed)

Week of November 10

There are no meetings the week of November 10.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: October 17, 1997.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–27999 Filed 10–17–97; 2:16 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: October 6, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 51169, September 30, 1997.

CHANGE: At its meeting on October 6, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Compensation Issues.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–28019 Filed 10–17–97; 3:22 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extention: Rule 17a–23 and Form 17A–23; SEC File No. 270–387; OMB Control No. 3235–0442.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17a–23 and Form 17A–23 Recordkeeping and Reporting Requirements Relating to Broker-Dealer Trading Systems

Rule 17a–23 and Form 17A–23, under the Securities Exchange Act of 1934 establish recordkeeping and reporting requirements for approximately 143 registered broker-dealers that operate certain automated trading systems ("Broker-Dealer Trading System" or "BDTS"). Rule 17a–23 requires any registered broker-dealer that sponsors a BDTS to maintain participant, volume, and transaction records. Rule 17a–23 and Form 17A–23 also require system sponsors to submit three reports to the Commission and, under certain circumstances, to an appropriate self-regulatory organization. These recordkeeping requirements assist the Commission with monitoring broke-dealers that operate BDTSs and with ensuring compliance with Rule 17a–23.

The Commission staff estimates the average number of hours necessary for each BDTS sponsor to comply with Rule 17a–23 is 46 hours annually. The total burden is 6,542 hours annually for the broker-dealers operating BDTSs, based upon past submissions. The average cost per hour is approximately $7.00. Therefore, the total annual cost of compliance for the 143 broker-dealers operating BDTSs is $46,046.00.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

Dated: October 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27762 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22856; 812–10632]

Smith Barney Muni Funds, et al.; Notice of Application

October 14, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to allow a series of a registered investment company to acquire substantially all of the assets and certain liabilities of another of its series. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Smith Barney Muni Funds (the "Trust"), Smith Barney Mutual Funds Management Inc. ("SBMFM"), and Smith Barney Inc. ("Smith Barney")

FILING DATES: The application was filed on April 22, 1997, and amended on August 20, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 10, 1997, and should be accompanied by proof of service on applicants, in the from of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 388 Greenwich Street, 22nd Floor, New York, New York 10013. Attention: Christina T. Sydor, Esq.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisley, Staff Attorney, at (202) 942–0517, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth

Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act.[1] The Trust currently consists of nine series, including the Ohio Portfolio (the "Acquired Portfolio") and the National Portfolio (the "Acquiring Portfolio," and, collectively with the Acquired Portfolio, the "Portfolios").

2. SBMFM is the investment adviser to the Portfolios. Smith Barney is the Trust's distributor. As of February 28, 1997, Smith Barney owned 11.2% of the outstanding shares of the Acquired Portfolio. SBMFM and Smith Barney are both wholly-owned subsidiaries of Smith Barney Holdings Inc. ("Holdings").

3. On September 4, 1996, the board of trustees of the Trust (the "Board"), including its disinterested trustees, unanimously approved the reorganization (the "Reorganization") described in a Plan of Reorganization (the "Reorganization Plan"). Pursuant to the Reorganization Plan, the Acquiring Portfolio proposes to acquire all or substantially all of the assets and certain liabilities of the Acquired Portfolio in exchange for shares of the Acquiring Portfolio based on the Portfolios' relative net asset values. The number of full and fractional shares of the Acquiring Portfolio to be issued to shareholders of the Acquired Fund will be determined by dividing the value of the Acquired Portfolio's assets, less liabilities, attributable to each class of shares by the net asset value of one share of the same class of the Acquiring Portfolio, computed as of the close of regular trading on the New York Stock Exchange, Inc. on or about the date on which the closing presently is expected to occur, December 12, 1997 (the "Closing Date").

4. Each Portfolio offers four classes of shares. Class A shares of both Portfolios are sold with a front-end sales charge. Class B and Class C shares of both Portfolios are sold without a front-end sales charge but are subject to a contingent deferred sales charge ("CDSC"). Classd Y shares of both Portfolios are sold without an initial sales charge or CDSC and are available only to investors investing a minimum of $5 million. There are no Class Y shareholders of the Acquired Portfolio.

5. Class A, Class B, and Class C shares of both Portfolios are sold subject to distribution plans adopted pursuant to rule 12b–1 under the Act. Under their respective plans, the Portfolios pay Smith Barney a service fee at the annual rate of 0.15% of the value of each Portfolio's average daily net assets attributable to each Portfolio's Class A, Class B, and Class C shares. In addition, each Portfolio's Class B and Class C shares pay a distribution fee at an annual rate of 0.50% and 0.55%, respectively, of the value of the Portfolio's average daily net assets attributable to those shares.

6. Each Portfolio pays SBMFM a management fee at the annual rate of 0.45% of the value of its average daily net assets. SBMFM currently is waiving this fee for the Acquired Portfolio.

7. Both Portfolios seek a high level of income exempt from Federal income taxes, although the Acquired Portfolio also seeks to pay its shareholders a high level of income exempt from Ohio personal income taxes. The other investment policies and practices of the Portfolios are substantially similar. As of February 28, 1997, the net assets of the Acquired Portfolio were $7.8 million, and the net assets of the Acquiring Portfolio were $385.6 million.

8. Prior to the Closing Date, the Acquired Portfolio will use its best efforts to discharge all of its known liabilities and obligations. On or before the Closing Date, the Acquired Portfolio will have declared a dividend and/or other distribution so that it will have distributed all of its investment company taxable income, exempt-interest income, and realized net capital gain, if any, for the taxable year ending on or prior to the Closing Date.

9. As soon as practicable after the Closing Date, the Acquired Portfolio will liquidate and distribute *pro rata* to its shareholders of record, determined as of the close of business on the Closing Date, the shares of the Acquiring Portfolio received by it pursuant to the Reorganization. The liquidation and distribution will be accomplished by establishing accounts in the names of the Acquired Portfolio shareholders, each account representing the respective *pro rata* number of shares of the Acquiring Portfolio due to the Acquired Portfolio shareholders. Class A, Class B, and Class C shareholders of the Acquired Portfolio will receive Class A, Class B, and Class C shares, respectively, of the Acquiring Portfolio. After the distribution and winding up of its affairs, the Acquired Portfolio will be liquidated.

10. In considering the advisability of the Reorganization Plan, the Board, including its disinterested trustees, found that the Reorganization is in the best interests of each Portfolio and that the interests of existing shareholders of each Portfolio will not be diluted as a result of the Reorganization.

11. The Board considered a number of factors in making its findings, including: (a) the terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the costs of the Reorganization to the Portfolios; (d) the compatibility of the objectives, policies, and restrictions of the Portfolios; (e) the savings in expenses borne by shareholders expected to be realized by the Reorganization; and (f) the potential benefits to the Portfolios' affiliates, including SBMFM, Smith Barney, and Holdings.

12. The Board also considered that combining the Portfolios should benefit the Acquired Portfolio's shareholders because the much greater size of the Acquiring Portfolio enables it to invest more effectively, to achieve certain economies of scale and, in turn, potentially to increase its operating efficiencies and facilitate portfolio management. During the Board's consideration of the Reorganization, it was noted that shareholders of the Acquired Portfolio would no longer have the benefit of a fund which seeks income exempt from Ohio personal income taxes. However, the Acquired Portfolio was not considered to have sufficient assets to justify maintaining it as a standing alone fund, and no potential for substantial future growth was foreseen.

13. Smith Barney will be responsible for the expenses incurred in connection with the Reorganization, except that each Portfolio will be liable for any fees and expenses of its transfer agent incurred in connection with the Reorganization and the Acquired Portfolio will be liable for all fees and expenses incurred relating to its liquidation. The Reorganization expenses will include professional fees and the cost of soliciting proxies for the meeting of the Acquired Portfolio shareholders, consisting principally of printing and mailing expenses, together with the cost of any supplementary solicitation. The Reorganization Plan provides that it may be terminated by the Board at any time prior to the Closing Date if circumstances should develop that, in the opinion of the Board, make proceeding with the Reorganization Plan inadvisable. If the Board determines, prior to the Closing Date, that proceeding with the Reorganization would be inadvisable, the Reorganization Plan provides that each Portfolio will bear any expenses it has incurred incidental to the preparation and carrying out of the Reorganization Plan.

14. A registration statement on Form N–14 containing a combined prospectus/proxy statement has been filed with the SEC. Applicants expect to send the prospectus/proxy statement to shareholders of the Acquired Portfolio in October 1997 for their approval at a meeting of shareholders scheduled to be held on or about November 21, 1997.

15. The consummation of the Reorganization is subject to the following conditions set forth in the Reorganization Plan: (a) the shareholders of the Acquired Portfolio will have approved the Reorganization Plan; and (b) the parties will have received exemptive relief from the SEC with respect to the issues that are the subject of the application. Applicants agree not to make any material changes to the Reorganization Plan that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person that owns 5% or more of the outstanding voting securities of such other person and any person directly or indirectly controlling, controlled by, or under common control with such other person; or, if the other person is an investment company, any investment adviser of the investment company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchasers or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they may not rely upon rule 17a–8 because the Portfolios may be affiliated for reasons other than those set forth in the rule. Smith Barney owns 5% or more of the outstanding voting securities of the Acquired Portfolio. Because of this ownership, the Acquiring Portfolio may be deemed an affiliated person of an affiliated person of the Acquired Portfolio, and vice versa, for reasons not based solely on their common adviser. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that the Board, including the disinterested trustees, has reviewed the terms of the Reorganization as set forth in the Reorganization Plan, including the consideration to be paid or received, and has found that participation in the Reorganization is the best interests of each Portfolio and that the interests of the existing shareholders of each Portfolio will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Portfolio's assets and certain liabilities for the Acquiring Portfolio shares will be based on the Portfolio's relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[1] The Trust was organized on August 14, 1985, under the name Test Managed Municipal Bond Funds. On April 23, 1986, July 31, 1991, and July 20, 1993, the Trust's name was changed to The Muni Bond Funds, Smith Barney Muni Bond Funds, and Smith Barney Muni Funds, respectively.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39236; File No. SR–DCC–97–04]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Granting Approval of a Proposed Rule Change Relating to the Combining of Options and Repo Procedures

October 14, 1997.

On March 17, 1997, Delta Clearing Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DCC–97–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Delta amended the proposed rule change on May 7, 1997, and May 29, 1997. Notice of the proposal was published in the **Federal Register** on September 3, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal combines Delta's procedures for the clearance and settlement of options trades ("Options Procedures") and Delta's procedures for the clearance and settlement of repurchase and reverse repurchase ("repo") agreement transactions ("Repo Procedures") into one set of procedures entitled the Procedures for the Clearing of Securities and Financial Instrument Transactions ("Combined Procedures").

The Combined Procedures allow Delta to integrate the processing of options and repo transactions. For example, the Combined Procedures consolidate the definitions of many terms (e.g., contract, position, and holder) to make these terms applicable to both option and repos.[3] The Combined Procedures also clarify that calculations of a participant's exposure limit and the maximum potential system exposure ("MPSE") are determined on an aggregate system-wide basis by providing for a single uniform definition of these terms and by providing in Section 204 of the Combined Procedures that each participant agrees to conduct all transactions cleared through the system within such participant's exposure limit.[4]

Similarly, Section 307 of the Combined Procedures provides that Delta has a security interest in all money and securities of a participant as security for payment of any liability of such participant to Delta arising from participation in the system. Upon the occurrence of a participant default,[5] Delta may liquidate all of a participant's repo and options positions contained in the defaulting participant's account through one liquidating settlement account established for such participant. The Combined Procedures combine the margin provisions for repos and options to clarify that a participant is required to deposit margin based upon its

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38971 (August 26, 1997), 62 FR 46530.

[3] The Combined Procedures also provide for more uniform use of the terms "repo" and "repurchase agreement."

[4] Both the exposure limit and MPSE are designed to limit Delta's uncollateralized exposure to each participant.

[5] The Combined Procedures contain a new term, "participant default," which means a payment default, a delivery default, a premium default, or a margin default.

aggregate net exposure on its options positions and its term repo positions. The Combined Procedures conform the Options Procedures and Repo Procedures by providing that margin deficits shown on the daily margin report must be deposited at or before the later of 11:00 a.m. or the earliest time practicable following the opening of the Federal Reserve System.[6]

In many places, the Options Procedures and Repo Procedures had inconsistent provisions. The Combined Procedures provide uniform rules for both transactions. For example, the proposed rule change extends certain requirements placed on interdealer brokers for options to interdealer brokers for repos,[7] and the trade reporting method for options is made applicable to repos. Section 2202 of the Combined Procedures also incorporates for options transactions the recently approved rule change[8] to the Repo Procedures permitting participants to deposit treasury notes and treasury bonds as margin and incorporating the schedule of applicable haircuts found in Rule 15c3–1(c)(2)(vi)(A)(1) under the Act. Section 2204 of the Combined Procedures provides that deposits are not required if the margin deficit shown on the daily margin report is $50,000 or less.[9]

The Combined Procedures adopt the definition of business day previously applicable to options transactions, which excludes Saturday, Sunday, a day on which banking institutions in New York City are authorized by law to close, and any day on which government securities dealers in New York City are not open for business. The Repo Procedures did not exclude days on which government securities dealers are closed.

The Combined Procedures adopt the graduated fine schedule of the Options Procedures which provide for sanctions of $100 for the first filing of a late trade report, $200 for any second violation occurring within three months of the first violation, and $300 for any subsequent violation occurring within three months of a prior violation. Section 3301 of the Repo Procedures provided that the sanction for filing a late trade report was an amount not to exceed $500.

The Combined Procedures use the terms "Fed Funds" and "Federal Reserve System" instead of the terms "central bank funds" and "central bank wire system" used in the Repo Procedures.[10] Like the Options Procedures, the Combined Procedures provide that the suspension or termination of Delta's system will not affect the terms of any existing contract absent the consent of the participant which is party to such contract.[11] As currently applicable for repo participants, Section 213 of the Combined Procedures provides that Delta will on an annual basis send a list of current repo and options participants in Delta's system to all participants.

Under the Combined Procedures, a participant may borrow from Delta on an overnight basis up to 35% of the participant's net positive exposure on its options positions and positions in term repos adjusted for performance margin.[12] Previously, participants could only borrow against their exposure on options. Under Section 2212, if the daily margin report shows that the participant has a net positive exposure after adjustment for performance margin, the participant may request on or before 11:00 a.m. of the morning on which the report is sent that Delta lend to it on an overnight basis cash or treasury securities to the extent available to Delta with a value of not more than 35% of the participant's net positive exposure after adjustment for performance margin. In order to make such overnight loans, Delta will generally transmit securities by 3:00 p.m. that day or will transmit funds by 5:00 p.m. that day.

Some provisions are revised from both the Options Procedures and the Repo Procedures. For example, the waiver of suspension provisions of Section 401 are revised to provide that suspension may be deferred not more than two hours in the event of a margin, premium, or payment default and for such period as Delta determines appropriate in the event of a delivery default if Delta determines that the participant required to make delivery has been unable to obtain the security required to be delivered after a good faith effort and that such failure to deliver is not the result of a change in the participant's financial condition.

Section 206 of the Combined Procedures eliminates the requirement that participants deliver audited reports of their internal accounting controls. Participants will continue to be obligated to deliver to Delta annual audited financial statements.

Under the Combined Procedures, Delta, rather than its clearing bank, assumes the authority and obligation to receive, compare, and transmit trade reports and other reports (Articles 23 and 30); to accent trades for clearance (Sections 2303 and 3003); to provide system software (Section 303); to calculate and maintain margin (Article 22); to transmit, receive, and assign exercise notices and to accept exercise notices for clearance (Article 28); and to reconcile differences with participants (Sections 2303 and 3003).

Section 304 of the Combined Procedures provides that inspection by Delta of participants' records will be at such time as may be reasonably requested by Delta and that the scope of such inspections will be limited to matters related to Delta's procedures, the participant's transactions in Delta's system, and other matters related to Delta's business. Previously, Delta's right of inspection of a participant's books and records was not limited to any subject matter.

II. Discussion

Section 17A(b)(3)(F) of the Act[13] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with Delta's obligations under the Act. By combining its Options Procedures and Repo Procedures into a single Combined Procedures manual, this rule change, among other things, clarifies that Delta's risk management procedures apply to options and repos on an aggregate basis. For example, the Combined Procedures provide that calculations of exposure limit and MPSE are to be determined on an aggregate system-wide basis and that liquidation of a participant's positions will be conducted through one account. By ensuring that Delta has access to all of a participant's assets held at Delta, the proposed rule change assists Delta in the safeguarding of securities and funds which are in Delta's control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, the proposed rule change (File No. SR–DCC–97–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27756 Filed 10–20–97; 8:45 am]

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[6] Section 602 of the Options Procedures required the deposit of margin other than intraday additional margin at or before the settlement time on each business day. Section 2602.1 of the Repo Procedures provided for the deposit of margin other than supplemental or intraday additional margin at or before 11:00 a.m.

[7] Such provisions establish qualification requirements for interdealer brokers, including compliance with Rule 17a–23 under the Act, maintenance of books and records, and necessary operational capacity.

[8] Securities Exchange Act Release No. 37639 (September 4, 1996), 61 FR 48186 (File No. SR–DCC–96–09) (order granting approval of proposed rule change relating to acceptable forms of collateral).

[9] Section 602 of the Options Procedures provided that deposits of additional margin with respect to margin deficits shown on the daily margin report are not required if the amount to be deposited by the participant is $5,000 or less. The Repo Procedures in Section 2602.1 provided that deposits are not required if such amount is $50,000 or less.

[10] The Repo Procedures in various places used the terms "central bank funds" and "central bank wire system." The use of these terms was intended to cover the situation where Delta had received authorization to clear trades to be effected by participants through central banks other than the Federal Reserve.

[11] The Repo Procedures provided that the suspension or termination of the operation of the system will not affect the terms of any existing repo agreement.

[12] Performance margin represents an estimate of the net shortfall from the liquidation of a participant's positions at the close of the next business day.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39241; File No. SR–DCC–97–06]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Clearance and Settlement of Mortgage-Backed Securities Repurchase Agreements

October 14, 1997.

On April 7, 1997, the Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DCC–97–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On May 12, May 29, June 18, and July 9, 1997, DCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on July 30, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal amends DCC's Procedures for the Clearing of Securities and Financial Instrument Transactions ("Procedures") to allow DCC to clear and settle repurchase agreements and reverse repurchase agreements ("repos") in which the underlying collateral is book-entry, mortgage-based securities issued by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"). Currently, DCC provides clearance and settlement services for repos in which the underlying collateral is a U.S. Treasury security.[3]

A. Definition of Mortgage-Backed Security

Under the rule change, a mortgage-backed security[4] is defined as a book-entry security which is directly issued by FNMA or FHLMC and whose underlying value is represented by a pool of mortgages accumulated by FNMA or FHLMC through its mortgage origination program and which is designed to receive principal payments using a predetermined principal balance schedule. In addition, the following securities are excluded from the definition of mortgage-backed securities: (i) Securities which are issued in registered or bearer form and therefore cannot be transferred through the Board of Governors of the Federal Reserve System's FedWire communication system, (ii) securities which are not issued or guaranteed directly by FNMA or FHLMC, (iii) securities for which the underlying assets are mortgage-backed securities rather than a pool of mortgages, and (iv) notional, interest only, principal only, accrual, and partial accrual securities and floaters and inverse floaters.[5]

A mortgage-backed security may be either a fixed rate mortgage-backed security or an adjustable rate mortgage-backed security. A fixed rate mortgage-backed security is defined as a mortgage-backed security whose coupon rate is a fixed rate of interest. An adjustable rate mortgage-based security ("ARMS") is defined as a mortgage-backed security whose coupon rate is a variable rate of interest consisting of an index and a spread to such index and whose underlying collateral consists of adjustable rate mortgages with indices and spreads that parallel those of the ARMS.[6]

B. The Clearing Process

Mortgage-backed securities repo transactions involve two settlement dates. The first settlement date ("on-date") is the date on which one participant ("selling participant") delivers participant") in exchange for the delivery of cash ("delivery money") by the purchasing participants to the selling participant. The second settlement date ("off-date") is the date on which the purchasing participant returns to the selling participant the mortgage-backed securities delivered on the on-date in exchange for the return by the selling participant of the delivery money together with interest based upon a rate agreed to by the participants ("repo rate"). DCC generally clears both the on-date and off-date portion of a repo transaction. However, there may be certain repo transactions where DCC clears only the off-date portion of the transaction.[7]

1. Execution and Reporting of Trades

Mortgage-backed securities repo transactions to be cleared by DCC may be entered into directly between the two participants to a transaction and reported to DCC by the participants, or they may be entered into between two participants through the facilities of an authorized broker and reported to DCC by the authorized broker. The terms of the mortgage-backed securities repo transactions will be agreed to by the participants prior to the submission of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38868 (July 23, 1997), 62 FR 40872.

[3] According to DCC, the market for repo transactions in mortgage-backed securities is estimated to be approximately 25% to 40% of the size of of the market for repo transactions in Treasury securities. DCC also states that this estimate suggests that the outstanding notional size of the market is between $250 billion to $400 billion with daily turnover at 10% of the notional size. For a description of DCC's procedures regarding the clearance and settlement of repos on Treasury securities, refer to Securities Exchange Act Release No. 36367 (October 13, 1997), 60 FR 54095 [File No. SR–DGOC–94–06] (order approving implementation of new procedures allowing for the clearance and settlement of repos on Treasury Securities).

[4] The Procedures refer to mortgage-backed securities as "mortgage securities."

[5] For the definitions of these terms, refer to Schedule A of DCC's filing which is attached as Exhibit A.

[6] Sample indices include: (1) The CD rate, which is the weekly average of secondary market interest rates on six month negotiable certificates of deposit as published by the Federal Reserve Board in its Statistical Release H. 15 (519), Selected Interest Rates; (ii) the LIBOR rate, which is a rate which banks charge others banks for U.S. dollar deposits outside the United States for a specified period; (iii) the 11th District cost of funds index, which is the index made available monthly by the Federal Home Loan Bank Board of the cost of funds to members of the Federal Home Loan Bank 11th District; and (iv) the Treasury index, which is the weekly average yield of the benchmark Treasury securities as published by the Federal Reserve Bank. A sample ARMS could bear interest at LIBOR plus 50 basis points with LIBOR adjusting periodically as specified by the terms of the security.

[7] These transactions are referred to the Procedures as novated repos. Securities Exchange Act Release No. 39065 (September 12, 1997), 62 FR 49547 [File No. SR–DCC–97–03] (order approving proposed rule change).

trade reports to DCC.[8] There is an existing practice among mortgage-backed security traders in which the parties to a transaction may agree to a trade amount subject to the right of the delivering party to adjust the amount of the trade by over-delivering mortgage-backed security collateral within a specified percentage of the amount initially agreed to by the parties (*i.e.*, variance). DCC requires that such adjustments be made prior to the submission of trade reports to DCC and be reflected in the trade reports submitted to DCC.

Mortgage-backed securities repo transactions with an on-date later than the trade date will need to be reported to DCC prior to 6:00 p.m. on the trade date. Mortgage-backed securities repo transactions with an on-date on the trade date will need to be reported to DCC: (i) Within one-half hour after the transaction occurs if the transaction occurs prior to 1:30 p.m.; (ii) within five minutes after the transaction occurs if the transaction occurs between 1:30 p.m. and 2:15 p.m.; and (iii) as soon as possible but in no event later than five minutes after the transaction if the transaction occurs after 2:15 p.m.

With respect to mortgage-backed securities repo transactions entered into directly between two participants, each participant will forward a trade report to DCC. If DCC does not receive a trade report from one of the participants to the transaction, DCC will contact that participant within one half-hour of receipt of the trade report to confirm the terms of the trade reported by the other participant. When DCC receives trade reports from both participants, it will match the two trade reports. In order for a transaction to be accepted for clearance, the details of the trade reports for the transaction must agree. If the details of the trade reports do not match, DCC will contact the parties regarding the transaction. Matching of mortgage-backed securities repo transactions will be done continuously throughout the day and at the close of each trading day at 2:30 p.m. All trade reports received through an authorized broker will be confirmed by DCC either orally or via facsimile with the participants to the transaction.

2. Acceptance of Trades

DCC will be deemed to have accepted a transaction for clearance when DCC has matched and verified all the information on the trade reports. However, DCC may reject any transaction if it causes a participant to exceed its exposure limit[9] of if the participant has been suspended from DCC's clearing system. If a transaction is accepted by DCC, DCC will interpose itself as the counterparty to both sides of the transaction. Therefore, for any mortgage-backed securities repo transactions, DCC will assume the position of the purchasing participant with respect to the selling participant and assume the position of the selling participant with respect to the purchasing participant. Prior to 8:00 a.m. each business day, participants will receive a written activity report indicating such participant's transactions which were accepted by DCC the previous business day and indicating all transactions due to settle that day.

3. Clearing and Failures to Deliver or Receive

The details of each transaction accepted by DCC will be sent to DCC's clearing bank. Each participant will need to maintain a bank account in one or more correspondent banks for margin and trade settlements. Because the mortgage-backed securities which DCC proposes to clear repos must be maintained in book-entry accounts at Federal Reserve Banks and will be delivered through the FedWire, the selected correspondent bank must be a depository institution with access to the FedWire.

DCC has established delivery cut-off times. For example, the selling participant on the on-date of a mortgage-backed securities repo transactions and the purchasing participant on the off-date of a mortgage-backed securities repo transaction must deliver mortgage-backed securities to the clearing bank against payment no later than one minute prior to the close of the FedWire system for delivery of securities on the settlement date. The clearing bank will redellver such securities to the purchasing participant on the on-date or the selling participant on the off-date.

If the delivering participant fails to deliver mortgage-backed securities on the settlement date by one minute prior to the close of the FedWire system or the receiving participant does not accept all of the mortgage-backed securities on the settlement date by one half-hour after the close of the FedWire system, DCC has the option to buy-in or sell-out the securities with the cost of buy-in or sell-out being charged to the defaulting participant. If DCC effects a buy-in or sell-out, DCC will give the defaulting participant written notice of the buy-in or sell-out which will describe the security, quantity, and price.

4. Netting

As a general rule, repo transactions in mortgage-backed securities will be cleared on a delivery versus payment basis. Therefore, the delivery of mortgage-backed securities will be required on settlement date. However, if a participant has a repo and reverse repo agreement with the same underlying collateral and the same on-date or off-date, as applicable, the participant's payment and delivery obligations with respect to such agreements will be netted. Payment obligations for such transactions including repo interest will also be netted.

Section 2207 of DCC's Procedures requires the purchasing participant to forward coupon interest with respect to U.S. Treasury securities or mortgage-backed securities to DCC absent an agreement of the parties to the contrary, and upon receipt, DCC will forward the coupon interest to the selling participant. In the event that repo interest on a repo transaction is due from the selling participant on the same day that coupon interest with respect to the same transaction is required to be paid by the purchasing participant, such payments will be netted. If repo interest has accrued but is not yet due with respect to a transaction, payments of coupon interest which are received by the purchasing participant will not be netted against repo interest; instead, the coupon interest will be forwarded to DCC and then to the selling participant.

Unlike U.S. Treasury securities, mortgage-backed securities involve principal payments as well as payments of coupon interest. DCC's Procedures provide that principal payments, like coupon payments, will be forwarded by the purchasing participant upon receipt to DCC and then forward by DCC to the selling participant. In the event that a principal payment on a mortgage-backed security is received by the purchasing participant on the same date on which a payment of repo interest is due from the selling participant with respect to a repo transaction on such mortgage-backed security, the principal payment and the repo interest payments will be netted.

[8] The trade reports for each mortgage-backed securities repo transaction must set forth the identity of the parties to the transaction, including which party is the selling participant and which party is the purchasing participant; the CUSIP number or numbers for the mortgage-backed securities being delivered in connection with the repo transaction; the par amount of the securities being delivered; the delivery money being delivered by the purchasing participant; the trade date and time; the on-date and off-date for the transaction; and any details relating to any rights of substitution, including the number of rights of substitution to be permitted and any restrictions on rights of substitution.

[9] A participant's exposure limit is the limit prescribed for each participant by DCC based on the incremental margin due to DCC by the participant.

C. Margin

DCC has adapted its existing margining methodology for U.S. Treasury security repos to incorporate exposures from mortgage-backed securities repo transactions. Under DCC's current margin system,[10] every participant is obligated to maintain a margin account for the benefit of DCC at DCC's clearing bank. Margin will be calculated every business day using a generally available source of mortgage-backed security prices. With respect to term repos, margin will be based on a mark-to-market amount and an amount based on an estimated shortfall from the liquidation of positions on the next day. For overnight repos, margin will be based on an intraday mark-to-market amount.

D. Exposure Limits and MPSE for Mortgage-Backed Securities

The definition of maximum potential system exposure ("MPSE") is revised to provide that with respect to positions in repo transactions, the MPSE for the DCC's clearance and settlement system shall include net exposure in mortgage-backed securities adjusted to reflect a hypothetical adverse movement in the aggregate of six standard deviations in market prices of mortgage-backed securities.[11] The standard deviation is based upon the volatility represented by the greatest of the following three amounts: (i) The standard deviation of equivalent U.S. Treasury securities for the period of 100 consecutive trading days ending on February 19, 1980, (ii) the standard deviation of equivalent U.S. Treasury securities for any subsequent period of 100 consecutive trading days, and (iii) the standard deviation of mortgage-backed securities during any period of 100 consecutive trading days subsequent to January 1, 1990.[12]

For purposes of clauses (i) and (ii) above, DCC will look to U.S. Treasury securities which are generally accepted equivalents to the applicable mortgage-backed securities. For example, DCC will to treat repo transaction in mortgage-backed securities where the underlying collateral are FNMA and FHLMC securities with original stated maturities of thirty years as equivalent to ten year U.S. Treasury securities. When the underlying collateral are FNMA and FHLMC securities with original stated maturities of fifteen years, DCC will treat these repo transactions as equivalent to five year U.S. Treasury securities. Finally, DCC will treat repo transaction in ARMS as equivalent to one year U.S. Treasury securities.[13]

E. Substitution of Mortgage-Backed Securities as Underlying Collateral

The proposed rule change establishes rights of substitution for both repos on U.S. Treasury securities and for mortgage-backed securities. The right of a selling participant to substitute underlying collateral is subject to various conditions and restrictions. For repo transactions in U.S. Treasury securities, the following requirements apply: (i) A Treasury note or a Treasury bond may be substituted for another Treasury note or Treasury bond; (ii) a Treasury bill may be substituted for a Treasury bill; and (iii) a Treasury note or Treasury bond may not be substituted for a Treasury bill, and a Treasury bill may not be substituted for a Treasury note or Treasury bond. For mortgage-backed securities repo transactions, the following requirements apply: a fixed rate mortgage-backed security may be substituted for a fixed or floating rate mortgage-backed security, but a floating rate mortgage-backed security may only be substituted for a floating rate mortgage-backed security.

In addition to the foregoing requirements, substitution is subject to any restrictions on substitution which have been agreed to by the parties at the time of the trade, including restrictions on the number of rights of substitution. The right of substitution is also subject to the agreement of DCC and the purchasing participant that the fair market value of the collateral which the selling participant proposes to provide in place of the existing underlying collateral for a transaction is at least equal to the fair market value of the existing underlying collateral for such transaction. In order to obtain the consent of the purchasing participant, DCC will notify the purchasing participant of all details of the proposed substitution prior to 12:15 p.m. New York time on the day of the proposed substitution.

II. Discussion

Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that DCC's proposed clearance system will assist in the development of the national clearance and settlement system by providing a clearance mechanism for transactions that are currently settled outside the facilities of a registered clearing agency. These trades may benefit from DCC's margining and other risk reduction procedures which should decrease the likelihood of failure to settle. Furthermore, the number of securities movements may be reduced because of DCC's netting of transactions. This should result in increased efficiency and promote the prompt and accurate clearance and settlement of mortgage-backed repo transactions. The Commission therefore believes that the proposed rule change is consistent with the Act.

Because of the novelty and complexity of clearing repos on U.S. Treasury securities, the Commission initially limited the average principal amount of outstanding repos on U.S. Treasury securities in DCC's system over a ten day moving period to $45 billion.[14] With this limitation, the Commission found that DCC has the capacity to facilitate the prompt and accurate clearance and settlement of repo transactions in U.S. Treasury securities in a safe and sound manner. Since the Commission's approval, DCC has implemented several enhancements to its clearance and settlement procedures.[15] Nevertheless, the Commission believes that due to the novelty and complexity of mortgage-backed repo transactions that, initially, the average principal amount of outstanding repos and reverse repos in mortgage-backed securities in DCC's system over a ten day moving period may reach but not exceed $45 billion. If, as the volume of DCC's clearance and settlement of mortgage-backed repo transactions nears $45 billion, DCC desires to exceed the $45 billion limitation, it must file a proposed a rule

[10] Section 2201 of DCC's Procedures.

[11] The MPSE is designed to limit the amount of liability that DCC is exposed to from the positions of all of its participants. Pursuant to DCC's rules, MPSE cannot exceed one third of the amount of DCC's credit enhancement facility. For a complete discussion of MPSE, refer to Securities Exchange Act Release No. 38646 (May 15, 1997), 62 FR 28085 (order granting approval of proposed rule change relating to definitions of trading limits and MPSE).

[12] For U.S. Treasury securities, the standard deviation is based upon the volatility during the 100 day period ending February 19, 1980, or any subsequent period of 100 days in which volatility was higher than the 100 day period ending February 19, 1980.

[13] Letter from Stephen K. Lynner, President, DCC (July 16, 1997).

[14] *See* supra note 4.

[15] *See* Letter from Stephen K. Lynner, President, DCC (September 15, 1997).

change pursuant to Section 19(b)(2) of the Act. The proposed rule change may request either an increase in the volume limitation or removal of all volume limitations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DCC–97–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Schedule A to Delta Clearing Corp; Procedures for the Clearing of Securities and Financial Instrument Transactions

Excluded Classes of Mortgage Securities

Notional—A class having no principal balance and bearing interest on the related notional principal balance.

Interest Only—A class that receives some or all of the interest payments made on the underlying mortgage or other assets of a series trust and little or no principal. Interest only classes have either a nominal or a notional principal balance.

Principal Only—A class that does not bear interest and is entitled to receive only payments of principal.

Accrual—A class that accretes the amount of accrued interest otherwise distributable on such class, which amount will be added as principal to the principal balance of such class on each applicable distribution date. Such accretion may continue until some specified event has occurred or until such accrual class is retired.

Partial Accrual—A class that accretes a portion of the amount of accrued interest thereon, which amount will be added to the principal balance of such class on each applicable distribution date, with the remainder of such accrued interest to be distributed currently as interest on such class. Such accretion may continue until a specified event has occurred or until such partial accrual class is retired.

Floater—A class other than an adjustable rate mortgage security with an interest rate that resets periodically based upon a designated index and that varies directly with changes in such index.

Inverse Floater—A class other than an adjustable rate mortgage security with an interest rate that resets periodically based upon a designated index and that varies inversely with changes in such index.

[FR Doc. 97–27818 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–3932; File No. SR–DTC–97–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Participant Exchange Service

October 10, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 15, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will expand DTC's participant exchange service system ("PEX") to add an additional notice, letters of free funds ("LOFFs"), to the menu of notices currently available.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PEX is an on-line system that enables DTC participants to use DTC's automated network to send and to respond to various notices required by other self-regulatory organizations.[3] The purpose of the proposed rule change is to automate the exchange of LOFFs by adding LOFFs to the menu of notices that can be transmitted through PEX.[4]

LOFFs are notices exchanged between the receiving and delivering brokers of two party customer trades. Currently, LOFFs are sent in hardcopy (*i.e.,* on paper), usually through the mail or by facsimile. The delivering broker sends a LOFF to the receiving broker requesting the receiving broker to verify that the customer has sufficient funds to settle the trade pursuant to Regulation T under the Act.[5] The receiving broker confirms the existence of the funds and returns the LOFF to the delivering broker.

Under the proposed rule change, a delivering broker will be able to send LOFF notices by entering the notice information into DTC's participant terminal system ("PTS").[6] LOFF notices that do not contain any errors will be stored in a DTC database in open status pending a response from the receiving broker. Each LOFF sent using PEX will be assigned a unique control number. Open notices will be available for browsing and reply through PTS.

Receiving brokers will be able to use PEX to respond to each LOFF notice by its control number.[7] Upon receiving a response, DTC will match its control number to that of an open LOFF notice and mark that notice as either (i) having sufficient funds, (ii) not having sufficient funds, (iii) being rejected, or (iv) having a prime broker relationship with the delivery broker.

All open LOFF notices will be kept on a DTC database for ninety days from the notice's initial send date. LOFF notices that have been accepted (*i.e.,* for which funds are available) will remain on the database for two days. LOFF notices that have been declined (*i.e.,* for which funds are available) will remain on the database for five days. All other LOFF notices that receive replies (i.e., prime broker or rejected) will be removed from the database thirty days after the initial send date of the notice.

[3] For a complete description of PEX, refer to Securities Exchange Act Release No. 28123 (June 13, 1990), 55 FR 25188 [File No. SR–DTC–89–21] (order approving proposed rule change establishing PEX).

[4] DTC attached a detailed description of the method by which LOFFs will be added to PEX as Exhibit B to its filing, which is available for review and copying at the Commission's Public Reference Room and through DTC.

[5] 12 CFR 220.

[6] DTC has informed the Commission that participants initially will be able to exchange LOFFs through PEX only by way of PTS. At some later point, participants will be able to exchange LOFFs by way of mainframe dual host or computer-to-computer facility.

[7] Although LOFF notices will not generate tickets, receiving brokers will be able to view LOFF notices through PTS.

The proposed rule change is designed to eliminate the physical delivery and confirmation of LOFFs thereby providing DTC participants with a more timely and accurate messaging vehicle for these documents. In addition, by incorporating LOFFs into the PEX System, DTC will offer its participants an efficient means of tracking notices of LOFFs.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[8] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited participant comments on the proposed rule change. A working group of participants has requested that DTC incorporate LOFFs into the PEX system and has committed to using such a service.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(e)(4) thereunder[10] because it effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78q–1(b)(3)(A).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(e)(4).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–18 and should be submitted by November 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27758 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39234; File No. SR–MBSCC–97–7]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Use of CUSIP Numbers in Processing Eligible Securities

October 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 25, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends MBSCC's rules to allow MBSCC to use CUSIP numbers to process eligible securities in addition to the current practice of using class codes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, MBSCC processes transactions relating to eligible securities based on a ten character class code identifying the class of such securities.[3] To accommodate the March 1998 industry-wide conversion to a system based on a nine character CUSIP number, MBSCC will permit participants to submit transactions with either the appropriate class code or CUSIP number. MBSCC anticipates that as of January 1, 1999, it will accept only CUSIP numbers.[4] Other than this technical change from a class system to a CUSIP system, the processing of eligible securities will not change.

With respect to MBSCC's electronic pool notification ("EPN") system, there is no similar period of time during which EPN users can submit either the class code or CUSIP number. Beginning March 31, 1998, EPN will operate on a CUSIP number basis.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] "Class" is defined in MBSCC's rules as a particular type of eligible securities issues or guaranteed by the same agency and having the same coupon rate and date of maturity.

[4] At such time, MBSCC will submit a rule filing with the Commission under Section 19(b)(3)(A) of the Act to eliminate all references to class codes.

CUSIP numbers will be assigned based on the same factors as currently used for class codes. Standard & Poor's anticipates publishing CUSIPs for eligible securities no later than December 31, 1997.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. MNSCC will notify the Commission of any written comments its receives.

III. Date for Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and pursuant to Rule 19b–4(e)[7] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of MBSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of MBSCC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–7 and should be submitted by November 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27759 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.
[6] 15 U.S.C. 78s(b)(3)(A)(iii).
[7] 17 CFR 240.19b–4(e).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39233; File No. SR–NSCC–97–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing Fees for the Annuities Processing Service

October 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 14, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for NSCC's annuities processing service ("APS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B), and (C) below, are the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC has filed and had approved by the Commission its APS.[3] APS is a centralized communication link that connects participating insurance carriers with broker-dealers, banks, and the broker-dealers' or banks' affiliated life insurance agencies where appropriate.

The purpose of this proposed rule change is to establish fees for NSCC's APS. Three categories of fees will be established. Membership fees will be $335 per month. Transaction fees will be $0.60 per 1,000 full positions, $0.50 per 1,000 focused positions, and $8.50 per 1,000 commission items. File fees will be $15.00 per file per day for sending or receiving APS related files. The new fees became effective upon implementation of APS.

NSCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act.[4] which requires that the rules of a registered clearing agency provide for an equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified parts of these statements.
[3] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 (order approving proposed rule change).
[4] 15 U.S.C. 78q–1(b)(3)(D).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by NSCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(e)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–97–09 and should be submitted by November 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27757 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).
[6] 17 CFR 240.19b–4(e)(2).
[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39231; File No. SR–OCC–97–16]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

October 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 2, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises OCC's fees for its clearing service and introduces an interim and regular fee for the Dow Jones Industrial Average ("DJIA") index option contract service.

4II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the first half of 1997, OCC experienced a record volume of options cleared. OCC currently refunds a portion of clearing fees collected during the year to its clearing members when it experiences high volume levels. The practice of refunding clearing fees at the end of OCC's fiscal year creates a gap between when it realizes record clearing fees and when the clearing member realizes its year-end discount.

The purpose of the proposed rule change is to revise OCC's per contract clearing fee from $.10 to $.068 for the remainder of 1997 for all contracts cleared between September 1, 1997, through December 31, 1997. In addition, OCC will not bill clearing members for data services fees and exercise fees from July 1, 1997, through December 31, 1997.[3] OCC believes a reduction in fees allows members to realize an immediate reduction in costs rather than having to wait for OCC to disburse refunds at the end of the fiscal year.

The purpose of the rule change is also to introduce an interim discounted and regular fees for the DJIA index option contract which is scheduled to begin trading in October 1997. OCC believes that the DJIA fee structure will encourage trading and clearance of this new contract. OCC is offering an introductory clearing fee of $.00 per contract per side for the first month the DJIA is traded, $.025 per contract per side for the second month, $.05 per contract per side for the third month, and $.10 per contract per side (*i.e.*, the normal OCC rate) thereafter.[4]

OCC has received approval to store media on CD–ROM to replace the practice of storage on microfiche.[5] While OCC no longer stores new media or data on microfiche, there remains historic data stored on microfiche. Because both the need for retrieval of data stored on microfiche and the costs associated with its retrieval remain, the fees associated with microfiche retrieval will remain on the schedule.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among OCC's participants and other parties that use OCC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78S(b)(1).
[2] The Commission has modified the text of the summaries prepared by OCC.
[3] Such fees consist of a $1.00 exercise fee, $269.00 per month for leased line direct data service, $355.00 per month for dial up data service, and $250.00 per month for service bureau data service.
[4] OCC is considering applying the proposed introductory fee structure for the DJIA to all new contracts introduced in the future.
[5] See Letter to James C. Yong, Vice President, OCC (July 23, 1993).
[6] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and pursuant to Rule 19b–4(e)(2)[8] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–16 and should be submitted by November 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27760 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(2).

[9] ???

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension: Rule 23c–1 [17 CFR 270.23c–1]; SEC File No. 270–253; OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 23c–1, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission estimates that approximately 575 closed-end funds may rely on rule 23c–1, and that on average, a fund spends approximately 2.5 hours per year on complying with the rule's paperwork requirements. The total annual burden of the rule's paperwork requirements thus is estimated to be 1,438 hours.

In addition, the fund must file with the Commission, during the calendar month following any month in which a purchase permitted by rule 23c–1 occurs, two copies of a report of purchases made during the month, together with copies of any written solicitation to purchase securities given on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that Form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rule and forms.

Complying with the collection of information requirements of the rule is mandatory. The filings that the rule requires to be made with the Commission are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27763 Filed 10–20–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0409]

New Vista Capital Fund, L.P.; Notice of Issuance of a Small Business Investment Company; License

On May 14, 1997, an application was filed by New Vista Capital Fund, L.P., at 499 Hamilton Avenue, Suite 140, Palo Alto, California 94301, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0409 on September 17, 1997, to NewVista Capital Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 10, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–27790 Filed 10–20–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0314]

Southwest/Catalyst Capital, Ltd.; Notice of Issuance of a Small Business Investment Company; License

On June 6, 1997, an application was filed by Southwest/Catalyst Capital, Ltd., at Three Riverway Suite 770, Houston, Texas, 77056, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0314 on September 26, 1997, to Southwest/Catalyst Capital, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 10, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–27791 Filed 10–20–97; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published 14 October 1977 (Docket No. 9727217).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. (CDT), Wednesday, October 15, 1997.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Allen Fossil Plant Assembly Room, 2574 Plant Road, Memphis, Tennessee,

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—BUDGET AND FINANCING

A1. Approval of Tax-Equivalent Payments

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Senior Vice President, Communications, or a member of his staff can respond to requests for information about this meeting. Call (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Edward S. Christenbury,

General Counsel and Secretary of the Board.

[FR Doc. 97–27932 Filed 10–17–97; 10:13 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comment on Articles To Be Considered for Accelerated Tariff Elimination Under the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States Government and the Governments of Mexico and Canada are engaged in a second round of accelerated tariff elimination talks under the North American Free Trade Agreement ("NAFTA"). The Office of the United States Trade Representative ("USTR") is providing notice of, and is requesting comments on, those articles that the three NAFTA Governments have agreed to consider for accelerated tariff elimination.

DATES: Comments must be received by December 12, 1997.

ADDRESSES: Comments should be submitted by electronic mail to nafta97@ustr.gov, or to the Office of the Western Hemisphere, *Attention:* NAFTA Acceleration Desk, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding this notice should be directed to the Office of Western Hemisphere Affairs, USTR, (202) 395–3412. A description of the products covered in Annex I and public versions of petitions for accelerated tariff elimination are available for inspection at the USTR Reading Room. The Reading Room is located at Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, and is open from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, by appointment only. Appointments can be made by calling Brenda Webb at (202) 395–6186. Information may also be obtained via the Internet (see **SUPPLEMENTARY INFORMATION**). Inquiries regarding proposed accelerated tariff eliminations by Canada should be directed to the Interdepartmental Committee on NAFTA Acceleration, 140 O'Connor Street, 14th Floor, Ottawa, Ontario, Canada K1A–0G5. Inquiries regarding proposed accelerated tariff eliminations by Mexico should be directed to the office of the Subsecretaria de Negociaciones Comerciales Internacionales, Secretaria de Comercio y Fomento Industrial (SECOFI), Alfonso Reyes 30, Colonia Hipodromo Condesa, 06140 Mexico, D.F. The fax number is 52–5 729–9352.

SUPPLEMENTARY INFORMATION: On May 12, 1997, USTR announced the second round of accelerated tariff elimination talks under the NAFTA, and invited petitions for the inclusion of specific articles in these talks (see 62 FR 25992). Based on the petitions received in response to the May 1997 notice, and in consultation with the other NAFTA Governments, USTR has prepared lists of the articles that the three NAFTA Governments have agreed to consider for accelerated tariff elimination.

Annex I to this notice lists the subheadings in the Harmonized Tariff Schedule of the United States ("HTS") that are proposed for accelerated tariff elimination with respect to goods of Mexico. Annex II lists subheadings in the Mexican Tariff Schedule of the General Import Duty Act that are proposed for accelerated tariff elimination with respect to goods of the United States. Annex III lists subheadings in the Customs Tariff of Canada that are proposed for accelerated tariff elimination with respect to goods of Mexico. (The lists do not include proposed accelerated tariff eliminations between Canada and the United States because all applicable U.S.-Canada trade will be duty free as of January 1, 1998.)

Accelerated tariff elimination is generally being considered on a reciprocal basis on the equivalent tariff subheadings by the parties involved. In many cases, however, NAFTA or MFN duty-free treatment may already be provided by one or both other parties. In such cases, the Annexes do not list products already eligible for duty-free treatment.

Descriptions of the goods covered in the subheadings listed in the annexes may be obtained as follows. A description of the articles covered by the HTS subheadings in Annex I is available for inspection on the USTR web site at www.ustr.gov, and in the USTR Reading Room. In addition, the complete HTS is available at the web site of the United States International Trade Commission, www.usitc.gov. The Customs Tariff of Canada and the Mexican Tarifa de la Ley del Impuesto General de Importación (Tariff Schedule of the "General Import Duty Act")

should be consulted for a description of the articles covered in the tariff subheadings in Annexes II and III. An Internet source for tariff subheading descriptions of the United States, Canada and Mexico is www.apectariff.org.

The tariff schedules of the United States, Mexico and Canada provide preferential access for some products through the use of a tariff-rate quota (TRQ) or on a seasonal basis only. In addition to, or in place of, accelerated tariff elimination, the governments may also consider increasing a TRQ or modifying the seasonality of a current tariff subheading.

USTR invites comments on the advisability of accelerated tariff elimination with respect to the subheadings listed in the annexes to this notice. The NAFTA Governments will consider accelerated tariff elimination for all products falling under these subheadings. However, acceleration for a subset of the articles covered in a particular subheading will be considered in the alternative, as necessary. Thus, comments should specify if only a subset of all products is of concern to the commenting party.

Comments should be submitted to USTR by December 12, 1997.

Comments will be accepted by the Governments of Mexico and Canada until the same date. Parties interested in providing comments to the Governments of Canada or Mexico should contact the offices cited above for the relevant requirements.

Comments submitted to USTR should be sent either via electronic mail to nafta97@ustr.gov, or in ten type-written copies to the address specified above. USTR prefers that comments be submitted via electronic mail whenever possible. All submissions *must* specify: (1) The tariff subheadings to which the comments refer, and the importing and exporting NAFTA countries (e.g., goods of the United States exported to Mexico, goods of Mexico exported to the United States, goods of Canada exported to Mexico); (2) the name, address and telephone number of the person, firm or organization making the comments; and (3) an indication as to whether the writer represents a producer, importer, exporter, consumer (or any combination), or other party (please specify interest), for each country (for example, a producer and exporter in the United States, and an importer in Mexico and Canada). Submissions not meeting these requirements cannot be considered.

Comments submitted to USTR will be available for public inspection in the USTR Reading Room. Submitters who wish to exempt information from public disclosure should comply with the requirements of 19 CFR 2003.6 regarding submissions containing business confidential information. In addition, such persons should submit a public version of their comments. Submissions containing business confidential information should be submitted in hard copy, rather than by electronic mail.

ITC and Advisory Committee Advice

Pursuant to Section 103 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3313)), USTR is requesting the advice of the United States International Trade Commission concerning the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the proposed accelerated tariff eliminations with respect to the subheadings listed in Annex I. USTR is also consulting with the appropriate private sector advisory committees.

Jon Huenemann,

Acting Assistant U.S. Trade Representative for North American Affairs.

Annex I

Subheadings in the Harmonized Tariff Schedule of the United States containing products to be considered for accelerated removal of duty on goods of Mexico under the North American Free Trade Agreement (NAFTA).

0401.30.25, 0401.30.75, 0402.10.50, 0402.21.25, 0402.21.50, 0402.21.90, 0402.29.50, 0402.91.70, 0402.91.90, 0402.99.45, 0402.99.55, 0402.99.90, 0403.10.50, 0403.90.16, 0403.90.45, 0403.90.55, 0403.90.65, 0403.90.78, 0403.90.95, 0404.10.15, 0404.10.90, 0404.90.50, 0404.90.70, 0405.10.20, 0405.20.30, 0405.20.40, 0405.20.70, 0405.90.20, 0406.10.08, 0406.10.18, 0406.10.28, 0406.10.38, 0406.10.48, 0406.10.58, 0406.10.68, 0406.10.78, 0406.10.88, 0406.20.10, 0406.20.28, 0406.20.33, 0406.20.39, 0406.20.48, 0406.20.53, 0406.20.55, 0406.20.63, 0406.20.67, 0406.20.71, 0406.20.75, 0406.20.79, 0406.20.83, 0406.20.87, 0406.20.91, 0406.30.18, 0406.30.28, 0406.30.38, 0406.30.48, 0406.30.53, 0406.30.55, 0406.30.63, 0406.30.67, 0406.30.71, 0406.30.75, 0406.30.79, 0406.30.83, 0406.30.87, 0406.30.91, 0406.40.20, 0406.40.40, 0406.40.70, 0406.90.05, 0406.90.12, 0406.90.18, 0406.90.20, 0406.90.25, 0406.90.32, 0406.90.33, 0406.90.37, 0406.90.38, 0406.90.42, 0406.90.48, 0406.90.49, 0406.90.54, 0406.90.59, 0406.90.68, 0406.90.74, 0406.90.78, 0406.90.84, 0406.90.88, 0406.90.92, 0406.90.94, 0406.90.97, 0702.00.20, 0702.00.60, 0703.10.40, 0704.10.40, 0704.10.60, 0704.20.00, 0704.90.40, 0705.11.40, 0705.19.40, 0707.00.40, 0707.00.50, 0708.20.90, 0709.20.90, 0709.30.20, 0709.40.20, 0709.40.60, 0709.51.00, 0709.60.20, 0709.60.40, 0709.90.20, 0709.90.90, 0710.80.20, 0710.80.85, 0710.80.97, 0711.20.40, 0712.20.20, 0712.20.40, 0712.90.40, 0714.90.40, 0804.50.60, 0805.20.00, 0805.30.20, 0805.30.40, 0805.40.60, 0805.40.80, 0807.11.40, 0807.19.10, 0807.19.20, 0807.19.70, 0807.19.80, 0807.20.00, 0811.10.00, 0811.90.22, 0811.90.40, 0812.90.30, 0904.20.40, 1001.10.00, 1006.10.00, 1006.20.20, 1006.20.40, 1006.30.90, 1006.40.00, 1202.10.80, 1202.20.80, 1517.90.60, 1517.90.90, 1604.13.10, 1604.13.20, 1604.13.30, 1701.11.50, 1701.12.50, 1701.91.30, 1701.91.48, 1701.91.58, 1701.99.50, 1702.30.28, 1704.90.58, 1704.90.68, 1704.90.78, 1704.90.90, 1806.20.26, 1806.20.28, 1806.20.36, 1806.20.38, 1806.20.73, 1806.20.77, 1806.20.82, 1806.20.83, 1806.20.87, 1806.20.89, 1806.20.94, 1806.20.98, 1806.20.99, 1806.32.06, 1806.32.08, 1806.32.16, 1806.32.18, 1806.32.70, 1806.32.80, 1806.90.06, 1806.90.10, 1806.90.18, 1806.90.20, 1806.90.28, 1806.90.30, 1806.90.39, 1806.90.49, 1806.90.59, 1901.10.30, 1901.10.40, 1901.10.45, 1901.10.75, 1901.10.85, 1901.10.95, 1901.20.15, 1901.20.25, 1901.20.35, 1901.20.50, 1901.20.60, 1901.20.70, 1901.90.32, 1901.90.36, 1901.90.43, 1901.90.47, 1901.90.54, 1901.90.58, 1901.90.70, 1901.90.90, 2001.90.20, 2001.90.35, 2001.90.60, 2002.10.00, 2002.90.00, 2003.10.00, 2004.90.90, 2005.60.00, 2005.70.02, 2005.70.04, 2005.70.06, 2005.70.08, 2005.70.12, 2005.70.16, 2005.70.18, 2005.70.23, 2005.70.25, 2005.70.50, 2005.70.60, 2005.70.70, 2005.70.75, 2005.70.91, 2005.70.93, 2005.70.97, 2005.90.50, 2005.90.55, 2005.90.80, 2007.91.10, 2007.99.60, 2007.99.65, 2008.11.15, 2008.11.35, 2008.11.60, 2008.30.35, 2008.30.40, 2008.30.65, 2008.30.85, 2008.70.00, 2008.92.10, 2008.99.10, 2008.99.42, 2008.99.60, 2009.11.00, 2009.19.25, 2009.19.45, 2009.20.20, 2009.20.40, 2009.30.40, 2009.30.60, 2009.40.20, 2009.60.00, 2009.90.40, 2103.20.40, 2103.90.78, 2105.00.20, 2105.00.40, 2106.90.09, 2106.90.26, 2106.90.28, 2106.90.36, 2106.90.38, 2106.90.46, 2106.90.48, 2106.90.52, 2106.90.54, 2106.90.66, 2106.90.72, 2106.90.76, 2106.90.80, 2106.90.87, 2106.90.91, 2106.90.94, 2106.90.97, 2202.10.00, 2202.90.28, 2202.90.30, 2202.90.35, 2202.90.36, 2202.90.37, 2203.00.00, 2204.21.30, 2204.21.50, 2204.29.20, 2204.29.40, 2204.29.60, 2204.29.80, 2309.90.28, 2309.90.48, 2710.00.05, 2710.00.10, 2710.00.15, 2710.00.18, 2710.00.20, 2710.00.25, 2710.00.30, 2710.00.45, 2710.00.60, 2901.10.40, 2901.10.50, 2905.17.00, 2906.21.00, 2909.49.10, 2909.49.15, 2915.90.14, 2915.90.18, 2916.11.00, 2916.39.03, 2916.39.06, 2916.39.45, 2916.39.75, 2917.36.00, 2917.39.70, 2921.22.10, 2921.30.10, 2921.30.30, 2922.49.27, 2924.29.75, 2933.40.06, 2933.40.15, 2933.40.20, 2933.40.26, 2933.40.60, 2933.40.70, 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Annex II

Headings and subheadings in the Mexican Tariff Schedule of the General Import Duty Act containing products to be considered for accelerated removal of duty on goods of the United States under the North American Free Trade Agreement (NAFTA). This list is for information purposes only and contains only those subheadings which are currently dutiable for U.S. exports to Mexico under NAFTA. Please refer to the Government of Mexico for the complete and official list.

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Annex III

Headings and subheadings in the the Customs Tariff of Canada that are proposed for accelerated duty elimination for goods of Mexico under the North American Free Trade Agreement (NAFTA). For 6, 4 and 2-digit headings, part or all of each 8-digit subheading contained within this heading is being considered for accelerated duty elimination. This list is for information purposes only. Please refer to the Government of Canada for the official list.

0203.11, 0203.12, 0203.19, 0203.21, 0203.22, 0203.29, 0206.30.00, 0206.41.00, 0206.49.00, 0209.00.10, 0210.11, 0210.12, 0210.19, 0603.10.90, 0701.90, 0702.00.91, 0703.10.31, 0704.90.21, 0706.10.11, 0706.10.12, 0707.00.91, 0707.00.10, 0710.80.10, 0710.80.10, 0710.80.20, 0710.90.00, 0711.40.00, 0713.31, 0713.32, 0713.33, 0713.39, 0713.40, 0811.10.10, 0811.10.90, 0812.20.00, 1001.10, 1001.90, 1003.00, 1103.12.00, 1104.11, 1104.12, 1107.10.11, 1107.10.12, 1107.10.91, 1107.10.92, 1107.20.11, 1107.20.12, 1107.20.91, 1107.20.92, 1208.90, 1214.10, 1214.90, 1501.00.00, 1514.10.00, 1514.90.00, 1516.10.00, 1516.20.00, 1517.10.00, 1517.90.91, 1604.13, 1701.99.00, 2002.90.00, 2004.10, 2004.90.10, 2004.90.20, 2005.20.00, 2005.60.00, 2007.99.10, 2009.50.00, 2103.20.10, 2103.20.90, 2201.10, 2201.90, 2202.10.00, 2203.00.00, 2306.40.00, 2309.10.00, 2309.90, 2903.43.00, 2903.44.00, 2903.45.00, 2903.49.00, 2903.49.00, 2909.19.00, 2909.49.00, 2915.70.00, 2917.33.00, 2917.34.00, 2921.19.00, 2921.21.00, 2921.22.00, 2932.11.00, 3005.10, 3214.10.00, 3822.00.00, 3822.00.00, 3903.20.90, 3903.20.10, 3904.40.00, 3916.90.90, 3917.10.12, 3918.10.90, 3919.10.99, 3920.10.00, 3920.30.00, 3920.30.00, 3920.41.00, 3924.90.00, 3925.90.00, 3926.90.99, 3926.90.99, 3926.90.99, 4015.11.00, 4015.19.00, 4202.11.00, 4202.12.10, 4202.12.90, 4202.19.00, 4202.21.00, 4202.22.10, 4202.22.90, 4202.29.00, 4202.31.00, 4202.32.10, 4202.32.90, 4202.39.00, 4202.91.19, 4202.91.90, 4202.92.19, 4202.92.91, 4202.92.99, 4202.92.11, 4202.99.90, 4203.10.00, 4203.10.00, 4203.21.90, 4203.29, 4205.00.00, 4303.10, 4303.90.00, Chapter 44, 4407, 4408, 4412, 4818.90.10, 4818.90.90, 4819.20, 4819.50, 5106.10, 5106.20, 5107.10, 5107.20, 5108.10, 5108.20, 5109.10, 5109.90, 5111.11, 5111.19, 5111.20, 5111.30, 5111.90, 5112.11, 5112.19, 5112.20, 5112.30, 5112.90, 5113.00, 5204.11.00, 5204.19.00, 5204.20.00, 5205.11.00, 5205.12.00, 5205.13.00, 5205.14.00, 5205.15.00, 5205.21.00, 5205.22.00, 5205.23.00, 5205.24.00, 5205.26.00, 5205.27.00, 5205.28.00, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, 5205.35.00, 5205.41.00, 5205.42.00, 5205.43.00, 5205.44.00, 5205.46.00, 5205.47.00, 5205.48.90, 5205.48.10, 5206.11.00, 5206.12.00, 5206.13.00, 5206.14.00, 5206.15.00, 5206.21.00, 5206.22.00, 5206.23.00, 5206.24.00, 5206.25.00, 5206.31.00, 5206.32.00, 5206.33.00, 5206.34.00, 5206.35.00, 5206.41.00, 5206.42.00, 5206.43.00, 5206.44.00, 5206.45.00, 5207.10.00, 5207.90.00, 5208.11.90, 5208.12.00, 5208.13.00, 5208.19.00, 5208.19.00, 5208.21.00, 5208.22.90, 5208.23.00, 5208.29.00, 5208.29.00, 5208.31.00, 5208.32.90, 5208.33.00, 5208.39.00, 5208.39.00, 5208.41.00, 5208.42.90, 5208.43.00, 5208.49.00, 5208.51.00, 5208.52.90, 5208.53.00, 5208.59.00, 5208.59.00, 5209.11.00, 5209.12.00, 5209.19.00, 5209.19.00, 5209.21.00, 5209.22.00, 5209.29.00, 5209.29.00, 5209.31.00, 5209.32.00, 5209.39.00, 5209.39.00, 5209.41.00, 5209.42.00, 5209.42.00, 5209.43.00, 5209.49.00, 5209.51.00, 5209.52.00, 5209.59.00, 5209.59.00, 5210.11.00, 5210.12.00, 5210.19.00, 5210.19.00, 5210.21.00, 5210.22.00, 5210.29.00, 5210.29.00, 5210.31.00, 5210.32.00, 5210.39.00, 5210.39.00, 5210.41.00, 5210.42.00, 5210.49.00, 5210.51.00, 5210.52.00, 5210.59.00, 5210.59.00, 5211.11.00, 5211.11.00, 5211.12.00, 5211.19.00, 5211.19.00, 5211.21.00, 5211.22.00, 5211.29.00, 5211.29.00, 5211.31.00, 5211.32.00, 5211.39.00, 5211.39.00, 5211.41.00, 5211.42.00, 5211.42.00, 5211.43.00, 5211.49.00, 5211.51.00, 5211.52.00, 5211.59.00, 5211.59.00, 5212.11.20, 5212.11.10, 5212.11.90, 5212.12.10, 5212.12.20, 5212.12.90, 5212.13.90, 5212.13.10, 5212.13.20, 5212.14.10, 5212.14.20, 5212.14.90, 5212.15.10, 5212.15.20, 5212.15.90, 5212.21.10, 5212.21.20, 5212.21.90, 5212.22.10, 5212.22.20, 5212.22.90, 5212.23.10, 5212.23.20, 5212.23.90, 5212.24.10, 5212.24.20, 5212.24.99, 5212.25.10, 5212.25.20, 5212.25.90, 5401.10.00, 5401.20.00, 5402.10.90, 5402.10.10, 5402.20.90, 5402.31.00, 5402.32.90, 5402.33.00, 5402.39.00, 5402.39.00, 5402.41.90, 5402.41.90, 5402.41.90, 5402.43.10, 5402.43.90, 5402.49.90, 5402.49.90, 5402.49.90, 5402.51.00, 5402.51.00, 5402.52.90, 5402.52.10, 5402.52.90, 5402.59.00, 5402.59.00, 5402.59.00, 5402.61.00, 5402.61.00, 5402.62.00, 5402.62.00, 5402.69.00, 5402.69.00, 5402.69.00, 5403.10.00, 5403.20.00, 5403.33.00, 5403.39.00, 5403.42.00, 5403.49.00, 5404.10.90, 5404.10.90, 5404.10.90, 5404.10.90, 5404.10.90, 5404.10.90, 5404.90.90, 5405.00.00, 5405.00.00, 5405.00.00, 5405.00.00, 5406.10.00, 5406.10.00, 5406.10.00,

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[FR Doc. 97–27783 Filed 10–20–97; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 10, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3000.

Date Filed: October 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 7, 1997.

Description: Application of Haiti Aviation, S.A. d/b/a Air D'Ayiti, pursuant to 49 U.S.C. 41302, and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail between the co-terminal points Miami, FL, San Juan, PR, and New York, NY, on the one hand, and Port-Au-Prince, Haiti, on the other hand, and beyond to Santo Domingo, Dominican Republic; Puerto Plata, Dominican Republic; Caracas, Venezuela; Isla Margarita, Venezuela; Pointe-A-Pitre; Fort-de-France; Curacao; and Aruba.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–27742 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–070]

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard has submitted for emergency processing an information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR concerns special permits for the transportation and storage of hazardous materials on board vessels. OMB approval of the ICR was requested by October 6, 1997.

ADDRESSES: You may mail comments about the ICR to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St, SW., Washington, DC 20593–0001, or deliver them to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326.

DATES: Comments must be received on or before December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice and give reasons for each comment. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

A copy of the individual ICR, with applicable supporting documentation may be obtained by contacting Ms. Davis where indicated under **ADDRESSES**.

The comments will become part of this docket [CGD–97–070] and will be available for inspection and copying by appointment at the above address.

Information Collection Requests

Title: Carriage of Bulk Solids Requiring Special Handling.

OMB No.: 2115–0100.

Frequency: On occasion.

Burden Estimate: The estimated burden is 575 hours annually.

Respondents: Solid Bulk Cargo Vessel/Barge Owners or Operators.

Description: The information required to be submitted when applying for a Special Permit allows the Coast Guard to make a determination as to the severity of the hazard posed by the material, allows specific guidelines for safe carriage, or if determined that the material presents too great a hazard, to deny permission for shipping the material.

Need: The U.S. Coast Guard administers and enforces laws and regulations for the safe transportation and stowage of hazardous materials, including bulk solids. Under 46 CFR part 148, the Coast Guard has the authority to issue Special Permits for transportation and stowage of hazardous material on board vessels.

Dated: October 10, 1997.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 97–27744 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–069]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to request renewals for five Information Collection Requests (ICRs). These ICRs include: 1. U.S. Coast Guard Academy Preliminary Application and Supplemental Forms; 2. 33 CFR 157—Requirements for the Installation and Use of Oil Discharge Monitoring Equipment on Tank Vessels and International Oil Pollution Prevention Certificate (IOPP); 3. Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; 4. Emergency Evacuation Plan For Manned Outer Continental Shelf (OCS) Facilities; and 5. Direct User Fees For Inspection of Examination of U.S. and Foreign Commercial Vessels. Before submitting the ICR packages to the Office of Management and Budget (OMB), the U.S. Coast Guard is asking for comments on the collections as described below.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: You may mail comments to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St., SW, Washington, DC 20593–0001, or deliver them to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326.

The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice and the specific ICR to which each comment applies, and give reasons for each comment. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. Title: U.S. Coast Guard Academy Preliminary Application and Supplemental Forms.

OMB Control No. 2115–0012.

Summary: The collection of information will require individuals who wish to compete for an appointment as a Coast Guard Cadet to fill out Preliminary and Supplement Application Forms.

Need: Title 46 U.S.C. 211(a) authorizes the Superintendent of the U.S. Coast Guard Academy to ensure that qualified individuals have every opportunity to compete for a cadet appointment

Respondents: Men and Women between the ages of 17 and 22.

Frequency: One time only.

Burden Estimate: The estimated burden is 6640 hours annually.

2. Title: 33 CFR 157—Requirments for the installation and use of oil discharge monitoring equipment on tank vessels and International Oil Pollution Prevention Certificate (IOPP).

OMB control No.: 2115–0518.

Summary: This collection of information requires U.S. flag tank vessels, 150 gross tons or more, to maintain oily mixture discharge data. Also U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above that engage in international voyages are required to have an IOPP Certificate. This collection is a combination of OMB No. 2115–0526 and OMB No. 2115–0518 under one OMB approval number.

Need: 33 U.S.C. 1901–1911 requires that MARPOL 73/78 requirements be implemented in U.S. regulations.

Respondents: Owners or operators of U.S. flag tank vessels, 150 gross tons or more for discharge data. Owners or operator of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above that engage in international voyages for IOPP Certificates.

Frequency: On occasion and every five years.

Burden Estimate: The estimated burden is 784 hours annually

3. Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control No.: 2115–0016.

Summary: The Coast Guard requires manufacturers of chemicals to submit data on new materials. From this information, the Coast Guard determines the appropriate precautions to be taken.

Need: Under 46 C.F.R. 30–40, 151, 153 and 154, the Coast Guard regulates the transportation of hazardous materials. Due to the nature of the chemical industry, new materials are being produced which must be shipped. Each of these new materials has unique characteristics which require special attention to their mode of shipment.

Repondents: Chemical manufacturers.

Frequency: On occasion.

Burden Estimate: The estimate burden is 300 hours annually.

4. Title: Emergency Evacuation Plan (EEP) For Manned Outer Continental Shelf (OCS) Facilities.

OMB Control No.: 2115–0580.

Summary. This collection of information requires the operators of manned OCS facilities, including Mobile Offshore Drilling Units, (MODUs) to submit facility emergency evacuation plans (EEPs) to the U.S. Coast Guard.

Need: Under 43 U.S.C. Section 133(d), the Coast Guard has the authority to promulgate and enforce reasonable regulations promoting the safety of life and property on OCS facilities. Pub. L. 99–509 required the coast Guard to issue regulations for the evacuation of personnel from manned OCS facilities. This information is used by the Coast Guard to ensure that these facilities establish and maintain efficient and safe methods for evacuation.

Respondents: Operators of manned OCS facilities and MODUs.

Frequency: When facilities are established or when established facilities undergo significant changes.

Burden Estimate: The estimated burden is 3,460 hours annually.

5. Title: Direct User For Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control No.: 2115–0617.

Summary: This collection requires the submission of identifying information such as vessel name, vessel identification number and if the owner chooses to pay fees for future years, a written request to the Coast Guard is requested.

Need: The Omnibus Budget Reconciliation Act of 1990, which amended 46 U.S.C. 2110, now requires the Coast Guard to collect user fees from inspected vessels. In order to properly track the collection and management of fees, the Coast Guard must have current identification information. This collection helps to ensure that fee collection is carried out efficiently.

Respondents: Vessel owners of certain inspected vessels.

Frequency: Annually.

Burden Estimate: The estimated burden is 2,855 annually.

Dated October 10, 1997.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 97–27745 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–044]

Port Access Routes; Approaches to the Mississippi River via Southwest Pass, South Pass, Tiger Pass Including the Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is conducting a study to evaluate the need for vessel routing or other traffic management measures in the Mississippi River. The Coast Guard will conduct two public meetings to obtain information from members of the regulated community and the general public on impediments that interfere with their mobility on the waterway. The information will be used to evaluate the effectiveness of existing traffic management measures as well as identify other safety concerns.

DATES: The meetings will be held Wednesday, November 12, 1997 from 7 p.m. to 10 p.m. and on Thursday, November 13, 1997, from 1 p.m. to 4 p.m. Written material must be received not later than November 20, 1997.

ADDRESSES: The November 12, 1997, meeting will be held in the Buras Auditorium, 111 Auditorium Drive, Buras, LA. The November 13, 1997, meeting will be held in the Basement Conference Room, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Written comments may be mailed to Commander (mov-1), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, or may be delivered to room 1341 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 1341, Eighth Coast Guard District office, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: The Coast Guard initiated a port access route study because of safety concerns raised by the Associated Branch Pilots and the Coast Guard Marine Safety Office in New Orleans, LA. The study was announced in the **Federal Register** on August 21, 1997 (62 FR 44428). The notice of study explained in detail the various traffic management measures, i.e., traffic separation scheme, two-way route, precautionary area, that may be used to address any safety problems in the study area.

The study area encompasses the approaches to the Mississippi River, the Mississippi Gulf Outlet as well as the area offshore of southeast Louisiana used by commercial vessels transiting to and between these ports. The Coast Guard is trying to determine the scope of any safety problems associated with vessel transit in this area.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. The meetings will be workshops to identify and prioritize the impediments which interfere with mobility on the waterway. Written material may be submitted prior to, during, or after the meetings.

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Monty Ledet at (504) 589–4686 as soon as possible.

Dated: October 10, 1997.

T.H. Gilmour,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–27746 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. RSGC–7–SPO, Notice No. 1]

RIN 2130–AA

Temporary Cessation of Sounding of Locomotive Horn

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of interim final order and request for comments.

SUMMARY: FRA is issuing an Interim Final Order in which The Burlington Northern and Santa Fe Railway Company would be ordered to temporarily cease the sounding of locomotive horns at a specific crossing within Spokane County, Washington. As provided by statute, the Secretary of Transportation, in order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail crossings, may, in connection with demonstration of proposed new supplementary safety measures, order a railroad to temporarily cease the sounding of locomotive horns at such crossings.

DATES: Written comments must be received by November 20, 1997. Comments received after that date will be considered to the extent possible without incurring additional delay.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Staff Director, Highway Rail Crossing and Trespasser Programs, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3312); Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3309; or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3171) (e-mail address: mtessler@fra.dot.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 20153 of Title 49 of the United States Code authorizes DOT (and by delegation of the Secretary of Transportation, FRA) to prescribe regulations requiring that locomotive horns be sounded while each train is approaching and entering upon each public highway-rail grade crossing. The statute also permits the Secretary to exempt from the requirement to sound the locomotive horn any category of rail operations or categories of highway-rail grade crossings for which supplementary safety measures fully compensate for the absence of the warning provided by the horn. Section 20153(e)(1) states that "In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new supplementary safety measures, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn."

FRA has been requested by representatives of Spokane County, Washington, the Washington Utilities and Transportation Commission, and the Burlington Northern Santa Fe Railroad Company to order the temporary cessation of sounding of locomotive horns at two crossings in Spokane County in order to demonstrate new and innovative engineering solutions to prevent motorists from entering onto highway-rail grade crossings equipped with fully functioning grade crossing warning devices. The crossings which are the subject of this Order are located at University Road within Spokane County, approximately five miles east of the City of Spokane. Two parallel BNSF tracks, each with a separate set of automatic grade crossing warning devices, cross University Road approximately 100 feet south of State Route 290 (Trent Avenue).

In order to institute this demonstration project as soon as possible, FRA is issuing this order on an interim basis. Upon compliance with

the provisions contained in the order, BNSF will be required to cease sounding of the locomotive horn at the crossings under the terms of the order. FRA will revise the order, rescind it, or issue a final order without change, depending on information contained in any comments received.

FRA has evaluated the proposed actions in accordance with its procedures for ensuring full consideration of the environmental impact of FRA action, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and the DOT Order 5610.1c. It has been determined that the proposed actions will have a beneficial impact on the environment by the cessation of the sounding of locomotive horns.

This action has been evaluated in accordance with existing regulatory policies and procedures and is considered to be non-significant under DOT policies and procedures (44 FR 11304). This action will not have an impact on a substantial number of small entities.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Inasmuch as implementation of this order is, by its own terms, dependent on the request of Spokane County that such order be issued, and the purpose of the order is to enable the county to comply with the purposes of a Washington State statute, there are insufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Public Participation

Interested parties are invited to participate in this proceeding by submitting to the Docket Clerk written data, views, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify the FRA Docket Clerk at the above listed address, in writing, before the end of the comment period and specify the basis for their request.

Interim Final Order

Based on the above, FRA issues the following order:

Interim Final Order to Temporarily Cease Sounding of Locomotive Horns

I find that:

1. Spokane County, Washington, in conjunction with The Burlington Northern and Santa Fe Railway Company (BNSF) and the Washington Utilities and Transportation Commission, and in consultation with the Federal Railroad Administration (FRA), has instituted a demonstration of new and innovative engineering solutions to prevent motorists from entering the public highway-rail grade crossing at University Road in Spokane County.

2. As part of the demonstration, and preliminary to the temporary cessation of the sounding of locomotive horns at the crossing, Spokane County has tested various configurations of non-mountable median curbs. As configured for the principal phases of the demonstration, these curbs are of different dimensions in height and length than arrangements previously evaluated and provide additional security for rail operations over the two-track highway-rail crossing. Roadway geometry in the area is challenging. The maintainability of curbs, roadways, and highly visible delineators during winter conditions also pose issues of interest for policy development.

3. As an integral part of this demonstration, Spokane County gathered data concerning base line safety risk and the impact on risk of installing these proposed new supplementary safety measures. Data concerning responses to the automated warning system by motor vehicle drivers was gathered by means of video monitoring of driver behavior. FRA has evaluated this and other data and finds pursuant to 49 U.S.C. 20153 that the proposed new supplementary safety measures will fully compensate for the loss of the train horn as a warning device at this crossing.

4. All engineering improvements comprising the demonstration have been tested and evaluated and are deemed necessary in lieu of the locomotive horn.

5. Spokane County officials have expressed a strong interest in establishing a quiet zone at this crossing, which is placed within a segment of railroad exceeding one-half mile in length, making establishment of a quiet zone clearly practicable.

6. Issuance of this order will assist the FRA in gathering information and data useful to development of final rules under 49 U.S.C. § 20153.

7. At the request of Spokane County and the FRA, the BNSF has fully cooperated in the exploration of options for safety improvements at the University Road crossing but considers that the company is not able to unilaterally cease use of the train horn at University Road due to requirements of state law, absent issuance of this order.

Accordingly, pursuant to 49 U.S.C. 20153(e)(1), and in order to promote the quiet of Spokane County and to promote the development of innovative safety measures at highway-rail crossings, *I hereby order* the BNSF, during the term of this order and in accordance with its provisions, to cease sounding of locomotive horns on approach to and at the above highway-rail crossing for a period of four months, beginning October 15, 1977 (or such later date as Spokane County may request), subject to the following conditions:

(a) Non-mountable median curbs with delineators as approved by the WUTC, shall remain installed and shall be maintained at the crossing by Spokane County;

(b) All highway-rail grade crossing warning devices installed at the crossing are operating properly in accordance with the provisions of 49 CFR part 234. In the event of a warning system malfunction as defined in 49 CFR 234.5, an engineer operating a train through the crossing is not responsible for sounding the locomotive horn until he or she has been informed of the warning system malfunction.

(c) Advance warning signs, as approved by the WUTC shall be posted and maintained by Spokane County advising motorists that locomotive horns will not be sounded;

(d) Spokane County, through an authorized officer, requests in writing that the sounding of the locomotive horn cease pursuant to the terms of this order and serves such request on the BNSF and the Associate Administrator for Safety, FRA, at least 14 days prior to the date on which cessation is requested;

(e) Spokane County, in consultation with the FRA Regional Administrator, Region 8, provides for further data collection to determine the long-term effect on motorist behavior of the new engineering improvements at this highway-rail crossing without use of a train-borne audible warning.

The Associate Administrator for Safety is delegated the authority to extend the period of this order, as appropriate, until the effective date of a final rule issued pursuant to 49 U.S.C. 20153, if the Associate Administrator for Safety determines that data developed during the initial demonstration period confirms the effectiveness of the subject engineering improvements and periodic monitoring continues to confirm this effectiveness.

Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. This order does not require that such warnings be provided nor does it impose a legal duty to sound the locomotive horn in such situations.

Nothing in this order excuses compliance with sections 214.339, 234.105, 234.106, and 234.107 of title 49, Code of Federal Regulations, concerning use of the locomotive horn under circumstances therein described. Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn or whistle to provide necessary communication with other trains and train crew members if other means of communication are unavailable.

Issued in Washington, D.C. on October 15, 1997.

Jolene M. Molitoris,

Administrator.

[FR Doc. 97–27800 Filed 10–20–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33488]

Norfolk and Western Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company has agreed to grant local and overhead trackage rights to Norfolk and Western Railway Company (NW) over approximately 50.2 miles of rail line located in Illinois as follows: (1) Local access trackage rights over approximately 4.7 miles of line between Monterey Lead milepost 4.4 at Monterey Mine No. 1 (near Carlinville) and Monterey Lead milepost 0.0 at Monterey Junction, and both legs of the wye track and related trackage between milepost 104.5 and milepost 104.8 at Monterey Junction; (2) local access trackage rights over approximately 15.0 miles of line between milepost 104.8 at Monterey Junction, and milepost 119.8 at DeCamp; (3) overhead trackage rights over approximately 15.4 miles of line between milepost 119.8 at DeCamp and milepost 135.2 at Edwardsville; and (4) overhead trackage rights over approximately 15.1 miles of line between milepost 135.2 at Edwardsville and milepost 150.3 at Madison. The transaction is expected to be consummated on or soon after October 15, 1997, the effective date of the exemption.

The purpose of the proposed trackage rights is to permit the movement of coal traffic directly between Monterey Mine No. 1 and Madison, IL, and on to Coffeen, IL, entirely via NW; and to eliminate costly delays in handling and interchanges.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33488, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: James R. Paschall, General Attorney, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: October 14, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27859 Filed 10–21–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0024.

Form Number: ATF F 1 (5320.1).

Type of Review: Extension.

Title: Application to Make and Register Firearm.

Description: This form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act (NFA). The information supplied by the applicant on the form helps to establish the applicant's eligibility for approval of the request.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,271.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,084 hours.

OMB Number: 1512–0129.

Form Number: ATF F 4473 (5300.9) Part I.

Type of Review: Extension.

Title: Firearms Transaction Record, Part I Over the Counter.

Description: This form is used to determine the eligibility of a person to receive a firearm from a Federal Firearms Licensee. It is also used to establish the identify of the buyer. The form is also used in law enforcement in investigations/inspections to trace firearms to confirm criminal activity. Implementing regulations are prescribed in 27 CFR 78.124.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Recordkeepers: 6,000,000.

Estimated Burden Hours Per Recordkeeper: 1,026,000.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,026,000 hours.

OMB Number: 1512–0387.

Recordkeeping Requirement ID Number: ATF REC 5130/5.

Type of Review: Extension.

Title: Principal Place of Business on Beer Labels.

Description: ATF regulations permit domestic brewers who operate more than one brewery to show as their address on labels and kegs of beer, their "principal place of business" address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 172,250.

Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: Other.
Estimated Total Reporting Burden: 559,791 hours.

OMB Number: 1512–0474.
Recordkeeping Requirement ID Number: ATF REC 5130/5.
Type of Review: Extension.
Title: Principal Place of Business on Beer Labels.
Description: ATF regulations permit domestic brewers who operate more then one brewery to show as their address on labels and kegs of beer, their "principal place of business" address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,200.
Estimated Burden Hours Per Respondent: 0 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0490.
Form Number: ATF F 4473 (5300.24) Part I (LV) and ATF F 4473 (5300.25 Part II (LV).
Recordkeeping Requirement ID Number: ATF REC 7570/2.
Type of Review: Extension.
Title: Firearms Transaction Record Part I—Low Volume—Over-the-Counter (4473 LV Part I); and Firearms Transaction Record Part II—Low Volume—Intra-State Non-Over-the-Counter (4473 LV Part II).
Description: ATF Form 4473 LV Parts I and II is for use only by Federal firearms licenses disposing of 50 or fewer firearms per 12-month period. It is kept, at a licensees option, in lieu of ATF F 4473 and records of acquisition and disposition.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Recordkeepers: 5,000.
Estimated Burden Hours Per Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,042 hours.

OMB Number: 1512–0520.
Form Number: ATF F 5300.35.
Type of Review: Extension.
Title: Statement of Intent to Obtain a Handgun.
Description: This form is used to establish the eligibility of the buyer to determine if the handgun sale is legal, prior to the actual delivery of the handgun. This for is retained by the dealer for use by the Office of Enforcement in compliance inspections and criminal investigations. Implementing regulations are prescribed in 27 CFR 178.130.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 478,300 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–27765 Filed 10–20–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1098.
Regulation Project Number: TD 8418 Final (FI–91–86; FI–90–86; FI–90–91; and FI–1–90).
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.
Description: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.
Respondents: Not-for-profit institutions, State, Local or Tribal Governments.
Estimated Number of Respondents/ Recordkeepers: 3,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 46 minutes.
Frequency of Response: On occasion, Other (at most every 5 years).
Estimated Total Reporting/ Recordkeeping Burden: 8,550 hours.

OMB Number: 1545–1160.
Regulation Project Number: CO–93–90 Final.
Type of Review: Extension.
Title: Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.
Description: These regulations prevent elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the NOL's of a disposed subsidiary.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Other (one time).
Estimated Total Reporting/ Recordkeeping Burden: 6,000 hours.

OMB Number: 1545–1440.
Regulation Project Number: INTL–64–93 Final.
Type of Review: Extension.
Title: Conduit Arrangements Regulations.
Description: This document contains regulations relating to when the district director may recharacterize a financing arrangement as a conduit arrangement. Such recharacterization will affect the amount of withholding tax due on financing transactions that are part of the financing arrangement. These regulations will affect withholding agents and foreign investors.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 10 hours.
Estimated Total Recordkeeping Burden: 10,000 hours.

OMB Number: 1545–1449.
Regulation Project Number: IA–57–94.

Type of Review: Extension.
Title: Cash Reporting by Court Clerks.
Description: Section 6050I(g) imposes a reporting requirement on criminal court clerks that receive more than $10,000 in cash as bail. The IRS will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name appears on Form 8300.
Respondents: Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 125 hours.

OMB Number: 1545–1548.
Revenue Procedure Number: Revenue Procedure 97–40.
Type of Review: Extension.
Title: Late S Corporation Election Relief.
Description: Revenue Procedure 97–40 provides that taxpayers whose S corporation election was filed late (but was filed within 6 months of the statutory due date, and before a tax return is due for that taxable year) can obtain late S election relief by filing Form 2553 and attaching a statement explaining the reasonable cause for the failure to file a timely S corporation election.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (must be done within 6 months of Form 2553's due date).
Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1550.
Notice Number: Notice 97–45.
Type of Review: Extension.
Title: Highly Compensated Employee Definition.
Description: This notice provides guidance on the definition of a highly compensated employee within the meaning of section 14(q) of the internal Revenue Code as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii).
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 218,683.
Estimated Burden Hours Per Recordkeeper: 18 minutes.
Estimated Total Recordkeeping Burden: 65,605 hours.

OMB Number: 1545–1551.
Revenue Procedure Numbers: Revenue Procedures 97–36, 97–37, 97–38 and 97–39.
Type of Review: Extension.
Title: Changes in Methods of Accounting.
Description: The information collected in the four revenue procedures is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the conditions of the change.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/ Recordkeepers: 12,350.
Estimated Burden Hours Per Respondent/Recordkeeper: 17 hours, 20 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 214,144 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–27766 Filed 10–20–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1222.
Form Number: IRS Forms 8628, 8635 and 9383.
Type of Review: Revision.
Title: Order Blank for Federal Income Tax Forms for "Plan Only" Accounts (8628); BPOL Order Blank for Federal Income Tax Forms (8635); and Fax Order Blank for BPOL Reorders (9383).
Description: These forms allow banks, post offices and libraries to distribute tax forms and publications to taxpayers at convenient locations. Participation is on a voluntary basis and done as a public service for the Internal Revenue Service.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 63,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Time per response (minutes)
8628	3
8635	6
9383	6

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 5,450 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–27767 Filed 10–21–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–26]

Delegation of Authority To Approve the Use of Cash for Official Travel

October 9, 1997.

1. *PURPOSE.* The purpose of this Directive is to delegate authority to heads of bureaus to approve all cash purchases of passenger transportation services.

2. *DELEGATION.* This Directive delegates to heads of bureaus, the Deputy Assistant Secretary (Administration), and the Inspector General, the authority to approve all

cash purchases of passenger transportation services, including instances where a Federal traveler has failed to use a Government Transportation Request (GTR), a Government Travel Account (GTA), or contractor-issued Government employee charge card. This delegation is in accordance with 41 CFR 101–41.203. For purposes of this Directive, the term "bureau" includes Departmental Offices (DO) and the Office of Inspector General (OIG).

3. *REDELEGATION.*

a. The authority to approve cash purchases in excess of $100 may be redelegated to the Bureau Chief Financial Officer, or the equivalent management official at regional locations. No further redelegation shall be permitted.

b. The authority to approve cash purchases of $100 or less when approval is required by 41 CFR 101–41.203–2 may be redelegated without limitation.

c. All redelegations shall be in writing, and copies of the redelegations shall be retained to permit examination by General Services Administration (GSA) auditors.

4. *GUIDELINES.*

a. As long as the conditions set out in 41 CFR 101–41.203 are met, bureau heads may, in limited circumstances, approve the use of cash to procure emergency or nonemergency transportation services costing more than $100. In the interest of promoting good cash management, all other methods of disbursement should be considered before providing cash. Approval shall be granted only when sufficient justification has been documented. In nonemergency situations, authorization to use cash in excess of $100 should be obtained prior to travel.

b. To justify the use of cash in excess of $100 instead of a Government provided method of payment when procuring passenger transportation services, both the bureau head (or designated representative) and the traveler shall certify on the travel voucher the reasons for such use.

c. 41 CFR 101–41.203–2(b)(1)(i) requires that the agency determine if the use of cash was due to an emergency or another reason. Bureaus shall establish guidelines for approval of cash purchases in excess of $100 and determine if the use of cash is due to: (a) Emergency circumstances where use of a GTR, contractor-issued Government employee charge card, or GTA was not possible, or (b) failure of the bureau to advise new employees and/or invited or infrequent travelers of proper procedures for purchasing transportation services.

d. Cash purchases of transportation services in excess of $100 in nonemergency circumstances shall be discouraged and kept to a minimum. If a cash purchase is determined to have been made under a nonemergency circumstance, reimbursement shall be limited to the cost which would have been properly chargeable to the Government if the transportation services had been procured using one of the Government-provided methods of procurement. Cash shall not be used to circumvent the use of city-pair contracts.

e. Bureaus shall establish procedures to encourage travelers to uso a GTR, contractor-issued Government employee charge card, or GTA instead of cash to purchase passenger transportation services. Use of a credit card other than the contractor-issued Government employee charge card or use of travelers checks shall be considered the equivalent of cash and subject to the $100 limitation.

f. Cash purchases of transportation services costing more than $10 but not more than $100 may be approved if no Government provided method of payment is practical. Bureaus are authorized to implement the guidance set forth in 41 CFR 101–41.203–2.

g. Travelers using cash to purchase individual passenger transportation services shall procure such services directly from the carrier or from travel agents under GSA contract. They shall account for those expenses on their travel vouchers and furnish passenger coupons or other evidence, as appropriate. Furthermore, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment must be preprinted or otherwise annotated on the travel voucher and shall be initialed by the traveler.

h. Each bureau shall apprise travelers using cash to procure passenger transportation services of the provision of FPMR 101–41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space.

i. Travelers using cash to procure passenger transportation services shall adhere to the regulations at 41 CFR 301–3.6 regarding the use of U.S. flag vessels and air carriers.

j. Should a traveler make repeated cash purchases without just cause or deliberately attempt to circumvent use of GSA contract air or rail service for personal convenience, the bureau may send all documents related to the travel to the GSA Board of Contract Appeals, 18th and F Streets, NW, Washington, DC 20548, for a decision on the traveler's right to reimbursement as provided in 31 U.S.C. 3702.

5. *RECORDKEEPING.* Travel vouchers shall be maintained in the bureau to be available for site audit by GSA auditors. General Records Schedule 9, "Travel and Transportation Records," provides instructions for the disposal of travel vouchers. GSA, Transportation Audit Division (FWA) will report suspected travel management errors and/or misroutings which result in higher travel costs to the Government to the appropriate bureau travel manager for appropriate action.

6. *REPORTING REQUIREMENTS.* After the traveler has been reimbursed for a cash purchase, copies of the travel authorization, ticket coupons, and any ticket refund applications, or Standard Form 1170, "Redemption of Unused Tickets," shall be forwarded for audit to the GSA, Transportation Audit Division (FWA), Attention: Code E, Washington, DC 20405.

7. *AUTHORITY.* 41 CFR 101–41.203–2.

8. *REFERENCE.* 41 CFR Part 301–3.6 and 301–15.

9. *EXPIRATION DATE.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

10. *OFFICE OF PRIMARY INTEREST.* Office of Accounting and Internal Control, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 97–27824 Filed 10–20–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–32]

Delegation of Authority Concerning Personnel Security

October 15, 1997.

1. *Delegation.* Pursuant to section 5 of Treasury Order (TO) 102–17, "Delegation of Authority Concerning the Personnel Security Program," this Directive redelegates to the Director, Office of Security, the authority to exercise and perform all duties, rights, powers, and obligations delegated by that Order. This includes the authority to make all determinations and appointments and to issue any regulations required to implement the Department's personnel security program established in TO 102–17 (hereafter "personnel security program"), except:

a. any matter in which, by law, executive order, or regulation of outside agencies, the personal decision of the head of the agency or principal deputy is required; and

b. the Assistant Secretary Management and Chief Financial Officer shall appoint members of any security appeals panel convened pursuant to section 5.2 of Executive Order (E.O.) 12968, "Access to Classified Information."

2. *Redelegation.*

a. The Director, Office of Security, shall redelegate to bureau heads and the Inspector General the authority to perform the operating functions relating to personnel security, except as stated in paragraph 2.c. and Section 4 below, but including:

(1) the designation of position sensitivity; and

(2) making determinations of eligibility for access to classified information, and the consequent granting, suspending, denying, and revoking of access to classified information, in conformity with the provisions of E.O. 12968;

b. Any authority so delegated to a bureau head or the Inspector General may be further redelegated, with the concurrence of the Director, Office of Security, within bureau headquarters or the Office of Inspector General.

c. The Assistant Director (Personnel Security), Office of Security, shall perform the operating functions relating to personnel security for the Departmental Offices.

3. *Responsibilities.* The Director, Office of Security, serves as the principal adviser to the Assistant Secretary Management and Chief Financial Officer with respect to the Department's personnel security program, and shall:

a. define the operating functions relating to personnel security and prescribe uniform policies and general procedures in Treasury Department Publication (TD P) 71–10, "Department of the Treasury Security Manual;"

b. serve as a member of, and chair, any security appeals panel convened pursuant to section 5.2 of E.O. 12968;

c. be responsible for overseeing and implementing the National Industrial Security Program within the Department pursuant to E.O. 12829, "National Industrial Security Program," concerning contractors, subcontractors, vendors, and suppliers requiring access to classified information or material;

d. conduct periodic evaluations of implementation and administration of the personnel security program throughout the Department;

e. represent the Department on all interagency committees and act as liaison with the Security Policy Board, Federal agencies, and the White House concerning personnel security matters; and

f. act as liaison with the Department of Energy on all matters pertaining to clearances for access to information designated "Restricted Data" or "Formerly Restricted Data" pursuant to the Atomic Energy Act of 1954, as amended.

4. *Reserved Functions.* The following functions are reserved to the Director, Office of Security, and may not be redelegated outside of the Office of Security:

a. receiving all reports of investigations involving loyalty matters on Department of the Treasury employees and potential employees, and directing such matters to appropriate authorities for processing or resolution;

b. assuming jurisdiction for all cases within the Department involving a potential determination that an employee should be suspended, reassigned, or terminated on the grounds that such action is necessary in the interests of the national security pursuant to E.O. 10450, "Security Requirements for Government Employment," and 5 U.S.C. 7532;

c. making disclosure determinations concerning loyalty information contained in personnel security files throughout the Department pursuant to 31 CFR Part 1, including requests for disclosure under the Freedom of Information Act or Privacy Act (5 U.S.C. 552 and 552a); and

d. designating position sensitivity and making determinations of eligibility for access to classified information, and the consequent granting, suspending, denying, and revoking of access to classified information, in conformity with the provisions of E.O. 12968, for the following positions:

(1) all presidential appointees in the Department requiring confirmation by the Senate, and the Inspector General, to the extent of the Department's authority with respect to these officials;

(2) heads of bureaus and their first deputies; and

(3) bureau security officers and any official to whom the authority to grant security clearances has been delegated.

5. *Special Assistant To The Secretary (National Security).* The responsibilities of the Special Assistant to the Secretary (National Security) are not affected by this Directive.

6. *Authorities.*

a. E.O. 10450, "Security Requirements for Government Employment," dated April 27, 1953, as amended.

b. E.O. 12968, "Access to Classified Information," dated August 2, 1995.

c. E.O. 12958, "Classified National Security Information," dated October 17, 1995, as amended.

d. E.O. 12829, "National Industrial Security Program," dated January 6, 1993, as amended.

e. 5 U.S.C. 7531–7533.

f. TO 102–17, "Delegation of Authority Concerning the Personnel Security Program," dated May 2, 1996.

7. *References.*

a. TD P 71–10, "Department of the Treasury Security Manual."

b. The Atomic Energy Act of 1954 (42 U.S.C. 2011).

c. Presidential Decision Directive 29, "Security Policy Coordination," dated September 16, 1994.

8. *Cancellation.* TD 12–32, "Delegation of Authority Concerning Personnel Security," dated January 10, 1995, is superseded.

9. *Expiration Date.* This Directive expires three years after the date of issuance unless cancelled or superseded by that date.

10. *Office of Primary Interest.* Office of Security, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for and Chief Financial Officer.

[FR Doc. 97–27823 Filed 10–20–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–112–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–112–88 (TD 8337), Allocation and Apportionment of Deduction for State Income Taxes (§ 1.861–8(e)(6)).

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Deduction for State Income Taxes.

OMB Number: 1545–1224.

Regulation Project Number: INTL–112–88.

Abstract: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27866 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–43–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, FI–43–94 (TD 8649), Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions (§ 1.1258–1).

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

OMB Number: 1545–1452.

Regulation Project Number: FI–43–94.

Abstract: Internal Revenue Code section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized. To be eligible for netting relief, the taxpayer must identify on its books and records all the positions that are part of the conversion transaction. This must be done before the close of the day on which the positions become part of the conversion transaction.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27867 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–54–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Settlement Funds.

OMB Number: 1545–1299.

Regulation Project Number: IA–54–90.

Abstract: This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 2 hours, 22 minutes.

Estimated Total Annual Burden Hours: 3,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27868 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–81–88]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, EE–81–88 (T.D. 8599), Deductions for Transfers of Property (§ 1.83–6(a)):

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deductions for Transfers of Property.

OMB Number: 1545–1448.

Regulation Project Number: EE–81–88.

Abstract: Section 1.83–6(a) of the regulation provides that when property is transferred in connection with the performance of services, the recipient of service may claim a deduction for the amount included as compensation in the gross income of the service provider. The service provider will be deemed to have included an amount in gross income if the service recipient provides a timely Form W–2 or 1099, as appropriate.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

The estimated annual burden of reporting will be reflected in the reporting requirements for Forms W–2 and 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27869 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–78–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, PS–78–91 (TD 8430), Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements (§ 1.42–5).

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements.

OMB Number: 1545–1291.

Regulation Project Number: PS–78–91.

Abstract: The low-income housing credit under Internal Revenue Code section 42 is allowable only if the owner of a qualified low-income building receives an allocation from a state or local housing credit agency, unless the building is exempt under Code section 42(h)(4)(B). This regulation requires state allocation plans to provide a procedure for state and local housing credit agencies to monitor for compliance with the requirements of Code section 42 and report any noncompliance to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 3 hours, 45 minutes.

Estimated Total Annual Burden Hours: 18,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27870 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–48

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Revenue Procedure 97–48, Automatic Relief for Late S Corporation Elections.

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Relief for Late S Corporation Elections.

OMB Number: 1545–1562.

Revenue Procedure Number: Revenue Procedure 97–48.

Abstract: The Small Business Job Protection Act of 1996 provides the IRS with the authority to grant relief for late S corporation elections. This revenue procedure provides that, in certain situations, taxpayers whose S corporation election was filed late can obtain relief by filing Form 2553 and attaching a statement explaining that the requirements of the revenue procedure have been met.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27871 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group (CAG) will be held in Washington, D.C.

DATES: The meeting will be held November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Merci del Toro at (202) 622–5081 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the CAG will be held on November 6, 1997, beginning at 9 a.m., in Room 3313, main IRS building, 1111 Constitution Avenue, NW., Washington, DC. 20224.

The agenda will include the following topics: various IRS issue updates and reports by the CAG subgroups on notification of Appeals rights and process; customer service initiatives; small business issues and initiatives; education and training initiatives; and, Federal tax deposit rules.

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including CAG members and IRS officials. Due to the limited conference space and security specifications, notification of intent to attend the meeting must be made with Lorenza Wilds. Ms. Wilds can be reached at (202) 622–6440 (not toll-free). Attendees are encouraged to arrive early to allow enough time to clear security at the 1111 Constitution Avenue, NW entrance.

If you would like to have the CAG consider a written statement, please call (202) 622–5081 or write: Merci del Toro, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 3308 IR, Washington, D.C. 20224.

Dated: October 9, 1997

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–27872 Filed 10–20–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Future of VA Long-Term Care; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on the Future of VA Long-Term Care will be held on November 6–7, 1997, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the Committee is to provide professional advice on the present scope and structure of VA's long-term care services, and about changes necessary to ensure that services are available and effective in a future healthcare setting. The Committee will begin at 8:30 a.m. (EDT) and continue until 5:00 p.m. (EDT) on November 6 and will begin at 8:30 a.m. (EDT) and continue until 12:00 noon (EDT) on November 7.

The agenda for November 6 will cover issues of investment in institutional and noninstitutional long-term care services, sub-acute care in long-term care settings, enriched housing options for those in need of assisted living, and care management for a long-term care population.

On November 7 the Committee will continue to review long-term care investment strategies and will discuss priorities for facility construction.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care

Strategic Healthcare Group at 202–273–8539 not later than October 31, 1997.

Dated: October 14, 1997.

By direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–27764 Filed 10–20–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
October 21, 1997

Part II

Environmental Protection Agency

40 CFR Parts 9 and 86

Control of Emissions of Air Pollution From Highway Heavy-Duty Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[AMS–FRL–5908–8]

RIN 2060–AF76

Control of Emissions of Air Pollution From Highway Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The new standards and related provisions contained in this final rule will result in significant progress throughout the country in protecting public health and the environment. In this action, EPA is adopting a new emission standard and related provisions for diesel heavy-duty engines (HDEs) intended for highway operation, beginning with the 2004 model year. The new standard represents a large reduction (approximately 50 percent) in emission of oxides of nitrogen (NO_x), as well as reductions in hydrocarbons (HC) from diesel trucks and buses. The reduction in NO_x will also result in significant reductions in secondary nitrate particulate matter (PM) in areas where levels of nitrate PM are high. For diesel HDEs, EPA is also finalizing changes to the existing averaging, banking, and trading program that provide additional flexibility for manufacturers in complying with the stringent new standards. EPA is also adopting several provisions to increase the durability of emission controls, help ensure proper levels of maintenance, and prevent tampering, including during engine rebuilding. The resulting emission reductions will translate into significant, long-term improvements in air quality in many areas of the U.S. This will provide much-needed assistance to states and regions facing ozone and particulate air quality problems that are causing a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

Although EPA proposed new standards and related averaging, banking, and trading provisions for otto-cycle HDEs (e.g., gasoline-fueled engines), EPA is not taking final action for that category of engines at this time. EPA received several comments urging the Agency to adopt more stringent control measures for these engines than those proposed in the NPRM (June 27, 1996). EPA continues to evaluate the comments received regarding otto-cycle engines and plans to issue a Supplemental Notice of Proposed Rulemaking to address otto-cycle engines specifically.

DATES: This regulation is effective December 22, 1997. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of December 22, 1997.

ADDRESSES: Materials relevant to this final rule have been placed in Public Docket No. A–95–26. The docket is located at the Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400) in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Chris Lieske, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Rd., Ann Arbor, Michigan 48105. Telephone: (313) 668–4584. Fax: (313) 741–7816.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that sell new motor vehicles heavy-duty engines in the United States and entities who rebuild/remanufacture such engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle heavy-duty engine manufacturers.
Industry	Heavy-duty engine rebuilders/remanufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in 40 CFR 86.094–1 and, for engine rebuilders/remanufacturers, § 86.004–40 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, Summary and Analysis of Comments, regulatory language and Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic **Federal Register** version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA–AIR/
(either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/
(look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Outline and List of Acronyms

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List of Acronyms and Abbreviations

ABT Averaging, banking, and trading
ANPRM Advance Notice of Proposed Rulemaking
ARB Air Resources Board
ATA American Trucking Association
CAA or Act Clean Air Act as amended in 1990
CFR Code of Federal Regulations
DDC Detroit Diesel Corporation
EGR Exhaust gas recirculation
EPA United States Environmental Protection Agency
FRM Final Rulemaking
GVWR Gross vehicle weight rating
HC Hydrocarbons
HDDEs Heavy-duty diesel engines
HDEs Heavy-duty engines
HDVs Heavy-duty vehicles
HHDDEs Heavy heavy-duty diesel engines
HHDVs Heavy heavy-duty vehicles
ICR Information Collection Request
I/M Inspection and Maintenance
LEV Low emissions vehicle
LHDDEs Light heavy-duty diesel engines
LHDVs Light heavy-duty vehicles
MHDDEs Medium heavy-duty diesel engines
MOU Memorandum of Understanding
NAAQS National Ambient Air Quality Standard
NESCAUM Northeast States for Coordinated Air Use Management
NLEV National Low Emissions Vehicle
NMHC Nonmethane hydrocarbons
NO_x Oxides of nitrogen
NPRM Notice of Proposed Rulemaking
NRDC Natural Resources Defense Council
OBD On-bourd diagnotics
OMB Office of Management and Budget
OTAG Ozone Transport Assessment Group
PM Particulate matter
R&D Research and development
RIA Regulatory Impact Analysis
ROM Regional Oxidant Model
SAE Society of Automotive Engineers
SEA Selective Enforcement Audit
SOP Statement of Principles
UAM Urban Airshed Model
VOC Volatile organic compounds

I. Introduction/Summary of Proposal

Air pollution continues to represent a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. This threat exists despite the fact that, over the past two decades, great progress has been made at the local, state and national levels in controlling emissions from many sources of air pollution. As a result of this progress, many individual emission sources, both stationary and mobile, pollute at only a fraction of their pre-control rates. However, continued industrial growth and expansion of motor vehicle usage threaten to reverse these past achievements. Today, many states are finding it difficult to meet the current ozone and PM National Ambient Air Quality Standards (NAAQSs) by the deadlines established in the Act.[1] Furthermore, other states which are approaching or have reached attainment of the current ozone and PM NAAQSs will likely see those gains lost if current trends persist.

In recent years, significant efforts have been made on both a national and state level to reduce air quality problems associated with ground-level ozone, with a focus on its main precursors, oxides of nitrogen (NO_x) and volatile organic compounds (VOCs).[2] In addition, airborne particulate matter (PM) has been a major air quality concern in many regions. As discussed below, ozone and PM have been linked to a range of serious respiratory health problems and a variety of adverse environmental effects.

The states have jurisdiction to implement a variety of stationary source emission controls. In most regions of the country, states are implementing significant stationary source NO_x controls (as well as stationary source VOC controls) for controlling acid rain, ozone, or both. In many areas, however, these controls will not be sufficient to reach and maintain the current ozone standard without significant additional NO_x reductions from mobile sources. Generally, the Clean Air Act specifies that standards for controlling NO_x, HC, and PM emissions from new motor vehicles must be established at the federal level.[3] Thus, the states look to the national mobile source emission control program as a complement to their efforts to meet air quality goals. The concept of common emission standards for mobile sources across the nation is strongly supported by manufacturers, which often face serious production inefficiencies when different requirements apply to engines or vehicles sold in different states or areas.

Motor vehicle emission control programs have a history of technological success that, in the past, has largely offset the pressure from constantly growing numbers of vehicles and miles traveled in the U.S. The per-vehicle rate of emissions from new passenger cars and light trucks has been reduced to very low levels. As a result, increasing attention is now focused on heavy-duty trucks (ranging from large pickups to tractor-trailers), buses, and nonroad equipment.

Since the 1970s, manufacturers of heavy-duty engines for highway use have developed new technological approaches in response to periodic increases in the stringency of emission standards.[4] However, the technological characteristics of heavy-duty engines, particularly diesel engines, have thus far prevented achievement of emission levels comparable to today's light-duty gasoline vehicles. While diesel engines provide advantages in terms of fuel efficiency, reliability, and durability, controlling NO_x emissions is a greater challenge for diesel engines than for gasoline engines. Similarly, control of PM emissions, which are very low for gasoline engines, represents a substantial challenge for diesel engines. Part of this challenge is that most traditional NO_x control approaches tend to increase PM, and vice versa.

Despite these technological challenges, there is substantial evidence of the ability for heavy-duty highway engines to achieve significant additional emission reductions. In their successful efforts to reach lower NO_x and PM levels over the past 20 years, heavy-duty highway diesel engine manufacturers have identified new technologies and approaches that offer promise for significant new reductions. The emerging technological potential for much cleaner diesel heavy-duty engines is discussed elsewhere in this preamble and in the Regulatory Impact Analysis (RIA) associated with this final rule.

Recognizing the need for additional NO_x and PM control measures to address air quality concerns in several

[1] See 42 U.S.C. 7401 *et seq.*

[2] VOCs consist mostly of hydrocarbons (HC).

[3] The CAA limits the role states may play in regulating emissions from new motor vehicles. California is permitted to establish emission control standards for new motor vehicles, and other states may adopt California's programs (Sections 209 and 177 of the Act).

[4] Highway heavy-duty engines, sometimes referred to as highway HDEs, are used in heavy-duty vehicles, which EPA defines as highway vehicles with a gross vehicle weight rating over 8,500 pounds.

parts of the country and the growing contribution of the heavy-duty engine sector to ozone and PM problems, EPA, the California Air Resources Board, and engine manufacturers representing over 90 percent of annual nationwide engine sales signed a Statement of Principles (SOP) in July of 1995. The SOP established a framework for a proposed rulemaking, setting out goals and conditions supported by the signatories. EPA sought early comment on the general regulatory framework laid out in the SOP in an Advance Notice of Proposed Rulemaking (ANPRM) on August 31, 1995 (60 FR 45580) and issued a Notice of Proposed Rulemaking (NPRM) on June 27, 1996 (61 FR 33421).

The centerpiece of EPA's proposal was a new NO_X plus nonmethane hydrocarbon standard (NMHC) of 2.4 g/bhp-hr (or 2.5 g with a 0.5 g NMHC cap) for 2004 and later model years, which represents over a 50 percent reduction from the 1998 NO_X and HC standard of 4.0 g/bhp-hr and 1.3 g/bhp-hr, respectively. EPA proposed the standard for both diesel and otto-cycle (primarily gasoline-fueled) engines. EPA requested comment on options for more stringent control of emissions from otto-cycle engine in response to comments received by the Agency on the ANPRM. Because the standards would require the use of technologies not yet fully developed and proven, EPA also proposed to reopen the rulemaking in 1999 and review the appropriateness of the standards.

In addition, EPA proposed several other provisions. To provide critical flexibility to the manufacturers and help ease their transition to the new standards, EPA proposed a modified averaging, banking, and trading (ABT) program. The proposed program was viewed to be tied directly to the stringency of the standard. In the NPRM, the Agency stressed that the program changes would allow manufacturers to reasonably achieve a more stringent standard earlier than without the changes. EPA proposed a modified program for model years 1998 through 2006, with the current ABT program resuming in 2007. Under the proposed modified program, engine manufacturers could earn undiscounted, unlimited life NO_X and PM credits for use in meeting the 2004 standards. The current program requires a one-time 20 percent discount on any credits traded or banked for future use and limits credit life to 3 years. For the modified program, EPA also proposed that manufacturers maintain at least a 5 percent compliance margin, unless they had data to support the use of a smaller margin.

EPA also proposed several provisions to help ensure adequate durability of emissions controls and proper maintenance and repair of emissions controls during the life of the engine, including during engine rebuilding. EPA viewed the proposals as necessary because the proposed standards would likely prompt manufacturers to add emissions control technologies, such as exhaust gas recirculation and exhaust aftertreatment. The failure of such systems would not necessarily cause decreased engine performance. Thus, EPA could not be certain that failure of emissions control systems would prompt the owner to perform repairs. Additionally, the proposed changes were intended to update existing requirements to consider recent increases in engine life.

The primary proposals for updating existing regulations included a proposed increase in the useful life mileage interval for heavy heavy-duty engines from 290,000 miles to 435,000 miles, an increase in the minimum allowable maintenance intervals for several emissions related components, and changes in the emissions defect and performance warranties. EPA also proposed provisions to help ensure that emission controls are properly addressed during the process of engine rebuilding and not removed or otherwise dismantled.

This preamble is organized as follows: Section II. describes the need for control and air quality benefits associated with the final rule, Section III. describes in detail the standards and all other provisions being finalized; Section IV. describes each of the proposals, key comments received by EPA, and any changes to the proposals as a result of those comments; Section V. reviews the results of EPA's economic analyses; The remaining preamble sections pertain to administrative requirements, statutory authority, judicial review, and more information on how to obtain copies of rulemaking documents. The actual regulatory language follows the preamble.

II. Need for Control and Air Quality Benefits of This Rule

The new emission standards for highway HDEs that EPA is issuing today represent a major step in reducing the human health and environmental impacts of ground-level ozone and a significant contribution to reducing secondary nitrate particulate matter (PM). This section summarizes the air quality rationale for these new standards and their anticipated impact on heavy-duty vehicle emissions.

A. Ozone

There is a large body of evidence showing that ozone (which is caused by the photochemical reaction of NO_X and VOCs) causes harmful respiratory effects including chest pain, coughing, and shortness of breath, affecting people with compromised respiratory systems and children most severely. In addition, NO_X itself can directly harm human health. Beyond their human health effects, other negative environmental effects are also associated with ozone and NO_X. Ozone has been shown to injure plants and materials; NO_X contributes to the secondary formation of PM (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects noted above, are described in the Regulatory Impact Analysis. (Additional information may be found in EPA's "staff papers" and "air quality criteria" documents for ozone and nitrogen oxides[5 6 7 8]).

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard (NAAQS) for ozone by the deadlines established in the Act.[9] There are 66 areas currently designated "nonattainment" for ozone.

Local, state and federal organizations charged with delivering cleaner air have mounted significant efforts in recent years to reduce air quality problems associated with ground-level ozone, and there are signs of partial success. The main precursors of ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs)[10] appear to have been reduced, and average levels of ozone seem to have begun gradually decreasing. However, this progress is in jeopardy. EPA projects that reductions in ozone precursors that will result from the full implementation of current emission control programs will fall far short of what would be needed to offset the normal emission increases that accompany economic expansion. By the middle of the next decade, the Agency expects that the downward trends will have reversed, primarily due to

[5] U.S. EPA, 1996, Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007.

[6] U.S.EPA, 1996, Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF.

[7] U.S. EPA, 1995, Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–95–005.

[8] U.S.EPA, 1993, Air Quality Criteria for Oxides of Nitrogen, EPA/600/8–91/049aF.

[9] See 42 U.S.C. 7401 *et seq.*

[10] VOCs consist mostly of hydrocarbons (HC).

increasing numbers of emission sources. By around 2020, EPA expects that NO_X levels will have returned to current levels in the absence of significant new reductions.[11] To the extent that some areas are seeing a gradual decrease in ozone levels in recent years, EPA believes that the expected increase in NO_X will likely result in an increase in ozone problems in the future.

NO_X controls are an effective strategy for reducing ozone where its levels are relatively high over a large region (as in the Northeast and much of the Midwest, Southeast, and California). EPA and states see control of NO_X emissions as a key to improving regional-scale air quality in many parts of the country, in addition to local-scale VOC and NO_X controls. Specifically, EPA believes that regional-scale reductions in NO_X emissions will be necessary for many areas to attain and maintain compliance with the current ozone NAAQS. For the regions listed above, the NO_X reductions needed are very large (greater than 50 percent from base 1990 emissions in many cases). New programs to control emissions from both stationary and mobile sources will be necessary in most of these areas, since it is unlikely that cost effective controls of this magnitude can be achieved with either source category alone. Although in some locations and circumstances moderate reductions in local NO_X emissions may be associated with localized increases in ozone, the Agency is convinced that the ultimate attainment goal of all nonattainment areas necessitates continued reduction of regional-scale NO_X emissions.

The new emission standards for highway HDEs issued in today's rule are intended to address the effects of ozone (and also PM, as discussed below) through substantial regional-scale reductions in NO_X throughout the country. EPA projects that the nationwide NO_X reduction by 2020 will be approximately 1.1 million tons per year, or about 9.5 percent of projected 2020 mobile source NO_X emissions and 4.5 percent of all 2020 NO_X emissions. This is shown in Figure 1 and is discussed in detail in the RIA for this rule. The Agency also expects that small NMHC reductions will also result from this program. EPA has designed this program to play a significant role in reducing ozone levels in many areas of the country in concert with other mobile source and stationary source ozone reduction programs at the federal, state, and local levels.

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[11] See Chapter 2 of the Regulatory Impact Analysis associated with this rule.

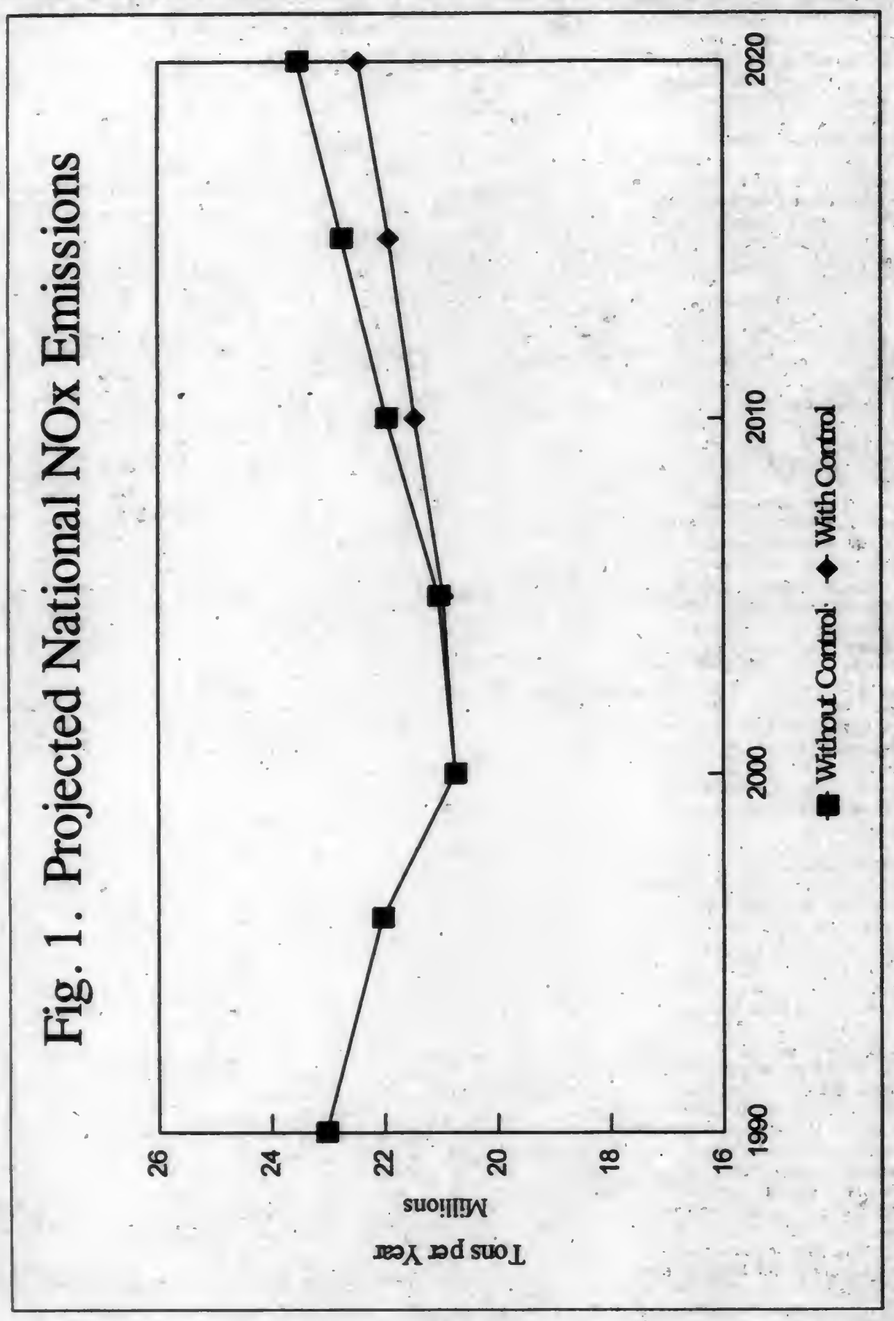


Fig. 1. Projected National NOx Emissions

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B. Particulate Matter

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Particles are deposited deep in the lungs and result in effects including premature death, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, decreased lung function (particularly in children and individuals with asthma), and alterations in lung tissue and structure and in respiratory tract defense mechanisms. These effects are discussed further in the RIA for this rule. (Additional information may be found in EPA's "staff paper" and "air quality criteria document" for particulate matter.[12 13])

Currently, there are 80 PM–10 nonattainment areas across the U.S. (PM–10 refers to particles smaller than 10 microns in diameter). As is the case with NO_X, levels of PM caused by mobile sources are also expected to rise in the future. EPA believes that this projected increase will occur both because of the expected increase in numbers of PM sources, including diesel engines, and because NO_X from heavy-duty diesels and other sources is transformed in the atmosphere into fine secondary nitrate particles.

Secondary nitrate PM accounts for a substantial fraction of the airborne particulate in some areas of the country, especially in the West. Measurements of ambient PM in some western U.S. urban areas that are having difficulty meeting the current NAAQS for PM–10 have indicated that secondary PM is a very important component of the problem. Secondary nitrate PM (consisting mostly ammonium nitrate) is the major constituent of this secondary PM. For example, in Denver, on days when PM levels are high, about 25 percent of the measured PM–2.5 is ammonium nitrate. In the Provo/Salt Lake City area, secondary PM comprises about 40 percent of the measured PM–10. Similarly, in the Los Angeles Basin, secondary nitrate PM levels represent about 25 percent of measured PM–10.[14] Nitrate PM constitutes a smaller, but often important, fraction of PM in other areas of the country.

Because the atmospheric chemistry of secondary PM formation has common attributes to that of ozone, secondary PM also tends to be a regional, rather than a strictly local phenomenon. For this reason, EPA believes that regional-scale NO_X controls, including control of mobile NO_X sources, are very effective in reducing secondary PM over a significant area. For example, California's PM SIPs for serious areas conclude that secondary formation of nitrate particulate due to regional-scale NO_X emissions contributes to the particulate problem in the South Coast Air Basin, Coachella Area, and the San Joaquin Valley.[15] EPA and the State of California believe that reduction of this fraction of the total PM will require additional regional-scale reductions in NO_X emissions.

The primary effect of the standards promulgated in this Notice on ambient PM levels will occur as a result of the large anticipated reductions in NO_X. EPA expects that the resulting reductions in secondary PM will be significant, especially in areas of the West where nitrate PM is a major contributor to overall PM levels. In the proposal, EPA estimated on the basis of existing information that 100 tons of NO_X will on average result in the formation of about 4 tons of nitrate PM. EPA recently evaluated this effect in more detail.[16] The report's conclusions confirmed EPA's earlier estimate, also concluding that 100 tons of NO_X reduction will on average result in about 4 tons of secondary PM reduction. (The conversion rate varies from region to region, and is greatest in the West.). Based on the average conversion rate, EPA estimates that the approximately 1.1 million tons per year of NO_X reduction from today's rule by 2020 will result in a national average reduction in secondary PM of about 44,000 tons per year. This estimated average nitrate PM reduction is similar in magnitude to that which would result from reducing the diesel PM emission standard by half.[17]

III. Content of the Final Rule

The following is a concise description of the regulations being adopted in this final rule, with any changes from the proposal also noted. A summary of the proposal is contained in preamble Section I., above. A full description of the proposals, supporting rationale for these actions, and response to comments are contained in the Summary and Analysis of Comments for the rule. Preamble section IV., Public Participation, also provides additional information.

A. Emission Standards

1. Standard Levels

EPA is adopting the proposed NMHC+NO_X emission standards for on-highway heavy-duty diesel-cycle engines fueled by diesel, methanol, and gaseous fuels and their blends. These standards apply to model year 2004 and later. Engine manufacturers will have the choice of certifying heavy-duty diesel engines to either of two optional sets of standards:

2.4 g/bhp-hr NMHC+NO^x, or
2.5 g/bhp-hr NMHC+NO_X with a limit of 0.5 g/bhp-hr on NMHC.

All emissions standards other than NMHC and NO_X applying to 1998 and later model year heavy-duty engines continue at their 1998 levels. No new standards are being finalized for on-highway heavy-duty otto-cycle engines.

2. 1999 Review

EPA is also finalizing today a regulatory provision providing for 1999 review of the standard levels finalized in this rule. As proposed, this review will reassess the appropriateness of the standards under the Clean Air Act including the need for and technical and economical feasibility of the standards based on information available in 1999. If during the review EPA concludes that a revision is appropriate, a rulemaking will be conducted to determine the appropriate level for the model year 2004 and later standards. The standards finalized today will stay in effect unless revised by this subsequent rulemaking procedure. In addition, EPA, together with the oil and engine industries, is engaged in assessing the potential impact of fuel changes on emissions from 2004 and later model year diesel engine technology.

The 1999 review process has the potential of either tightening or relaxing the standards finalized today. If due to new information in 1999 EPA finds the standards to not be technologically feasible for model year 2004 or otherwise not in accordance with the Act, then EPA expects to propose adjusted standards which do not exceed the following:

[12] U.S. EPA, 1996, Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–013.

[13] U.S.EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF.

[14] Summary of Local-Scale Source Characterization Studies, EPA–230–S–95–002, July, 1994.

[15] Memorandum to the docket from Carol Bohnenkamp, EPA Region 9, regarding regional nature of secondary nitrate PM in California, July 30, 1997. Docket A–95–27.

[16] Benefits of Mobile Source NO_X Related Particulate Matter Reductions, October 1996, EPA Contract No. 68–C5–0010.

[17] Based on the following calculation: The difference between the 1998 and 2004 HDE NO_X standards is nominally 2.0 g/bhp-hr (4.0 vs. 2.0 g/bhp-hr). Using the above estimated average factor of 4% of NO_X being converted to secondary PM, an equivalent reduction in secondary PM of 0.08 g/bhp-hr can be estimated. This reduction in secondary PM compares to the roughly 0.05 g/bhp-hr that potentially would result from a reduction in the HDE PM standard from 0.1 to 0.05 g/bhp-hr.

2.9 g/bhp-hr NMHC+NO_x or

3.0 g/bhp-hr NMHC+NO_x with a limit of 0.6 g/bhp-hr NMHC

EPA believes that the 2004 model year standards being finalized today are technologically feasible without any changes to diesel fuel. As part of the 1999 review, EPA will evaluate in light of any new information whether diesel fuel improvements are needed for the standards to be appropriate for 2004. If EPA finds that diesel fuel changes are needed to meet the standards finalized here and if EPA believes such changes would be a cost-effective method for reducing emissions and appropriate under section 211 of the Clean Air Act, then EPA will address the potential for fuel improvements through a separate rulemaking which will include a separate cost-effectiveness analysis and opportunity for public comment. However, if EPA were to determine in the 1999 review that the feasibility of the standards requires diesel fuel changes and EPA does not engage in a rulemaking to require such changes, EPA expects to propose adjusted standards which do not exceed the following:

3.4 g/bhp-hr NMHC+NO_x or

3.5 g/bhp-hr NMHC+NO_x with a limit of 0.7 g/bhp-hr on NMHC

Based on the technical analysis in the RIA, the levels described above represent upper limits for any potential revisions. Because EPA does not at this point predict further breakthroughs in innovative emission reduction technology for mass production in the 2004 time frame which would allow for a standard lower than that being finalized, a lower limit is not predicted at this time. However, if EPA determines that lower standards are technologically feasible and appropriate under the Clean Air Act, EPA expects to propose those lower standards.

3. NMHC Measurement

For heavy-duty diesel engines, EPA is allowing three options to the measurement procedures currently in place for alternative fueled engines. They are as follows: (1) Use a THC measurement in place of an NMHC measurement; (2) use a measurement procedure specified by the manufacturer with prior approval of the Administrator; or (3) subtract two percent from the measured THC value to obtain an NMHC value. The methodology must be specified at time of certification and will remain the same for the engine family throughout the engines' useful life.

For natural gas vehicles, EPA is allowing the option of measuring NMHC through direct quantification of individual species by gas chromatography.

4. Non-Conformance Penalties

Section 206(g) of the Clean Air Act requires EPA to allow a HDE manufacturer to receive a certificate of compliance for an engine family which exceeds the applicable standard (but does not exceed an upper limit) if the manufacturer pays a non-conformance penalty established by EPA through rulemaking. The NCP program established through rulemaking is codified in Subpart L of 40 CFR Part 86. EPA plans to address provisions related to NCPs for the 2004 model year standards in conjunction with the 1999 review discussed above.

B. In-Use Emissions Control Elements

EPA is finalizing provisions to enhance the control of emissions from in-use vehicles subject to the new model year 2004 standards. Where noted, some of the provisions below also apply to 2004 and later model year otto-cycle engines. The in-use provisions include both: (1) Revisions of existing regulations, including useful life, emissions-related maintenance, and emissions defect and performance warranties, and (2) new provisions regarding maintenance and repair of emissions controls after the end of the useful life, including manufacturer requirements and engine rebuild provisions. All of the following changes to the regulations are effective beginning with the 2004 model year.

1. Useful Life

EPA is finalizing a revised useful life for the heavy heavy-duty diesel engine service class of 435,000 miles, 22,000 hours, or 10 years, whichever occurs first, for all pollutants beginning in model year 2004.[18] In response to comments, EPA has modified the useful life for heavy heavy-duty engines from the proposal by increasing the hours interval and removing a minimum mileage interval. EPA proposed a useful life of 435,000 miles, 13,000 hours, or ten years whichever occurred first, but in no case less than 290,000 miles. As proposed, EPA is also establishing a useful life years interval of 10 years for all heavy-duty engine service classes, otto-cycle and diesel-cycle, and all pollutants.

2. Emissions Related Maintenance

EPA is finalizing the changes to emission related maintenance intervals shown in Table 1, with compliance beginning in 2004. The intervals are in miles or hours, whichever occurs first. The term "Add-on emissions-related component" is being defined as a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine. EPA is not changing the interval for EGR filters and coolers from its current interval of 50,000 miles (1,500 hours). The maintenance interval changes are being finalized as proposed.

TABLE 1—CHANGES TO MINIMUM EMISSION-RELATED MAINTENANCE INTERVALS

Intended service class	Component or system	Change to minimum maintenance interval
Otto-cycle engines	EGR system (except filters and coolers).	Increase from 50,000 miles (1,500 hours) to 100,000 miles (3,000 hours).
Light HDDEs	EGR system (except filters and coolers).	Increase from 50,000 miles (1,500 hours) to 100,000 miles (3,000 hours).
	—Add-on emission-related components.	Establish 100,000 mile (3,000 hour) interval.
	—Catalytic converter	
Medium and heavy HDDEs	EGR system (except filters and coolers).	Increase from 50,000 miles (1,500 hours) to 150,000 miles (4,500 hours).

[18] Note that for an individual engine, if the useful life hours interval is reached before the engine reaches 10 year or 100,000 miles, the useful life shall become 10 years/100,000 miles, whichever occurs first, as required under Clean Air Act section 202(d). EPA believes that this provision will be used only very rarely, if ever, given the usage patterns of affected vehicles.

TABLE 1—CHANGES TO MINIMUM EMISSION-RELATED MAINTENANCE INTERVALS—Continued

Intended service class	Component or system	Change to minimum maintenance interval
	—Add-on emission-related components.	Establish 150,000 mile (4,500 hour) interval.
	—Catalytic converter	

3. Emissions Defect and Performance Warranties

Currently, the emissions defect and emissions performance warranty periods are specified in hours and miles intervals. The regulations also provide that the warranty periods for highway HDEs may in no case be less than the manufacturer's basic mechanical warranty period for the engine family.[19] However, manufacturers often provide extended warranties for individual engines. EPA proposed that the warranty period be at least as long as the basic mechanical warranty of the engine, whether it be the published warranty for the engine family or a longer warranty provided to the engine purchaser. In response to comments, EPA is revising the regulations regarding the warranty period as follows. The warranty period shall not be less than the basic mechanical warranty of the particular engine as provided to the purchaser. Thus, the warranty shall be longer than that published for the engine family in cases where a manufacturer provides to the customer a longer basic mechanical warranty for a particular engine. Extended warranties on select parts do not extend the emissions warranty requirements for the entire engine but only for those parts. Also, in cases where responsibility for an extended mechanical warranty is shared between the owner and the manufacturer, the manufacturer is responsible only for their share of the emissions warranty per the warranty agreement. These changes to the warranty provisions apply to both diesel and otto-cycle engines.

4. Additional Manufacturer Requirements

EPA proposed modest new manufacturer requirements which may increase the likelihood of emissions related maintenance being performed when needed after the end of the engine's useful life by providing information to the vehicle owner. EPA received only supportive comments on these proposals. Therefore, all of the following manufacturer requirements are being finalized as proposed for both diesel and otto-cycle engines.

Engine manufacturers provide owners with manuals specifying maintenance needed to ensure proper engine operation. Starting in 2004, EPA is requiring that manufacturers include in the engine service manual, maintenance which may be needed for emissions related components after the end of the engine's regulatory useful life, including mileage/hours intervals and procedures for determining whether or not maintenance or repair is needed. The recommended practices must also include instructions for accessing and responding to any emissions-related diagnostic codes that may be stored in on-board monitoring systems. The recommended maintenance practices may be based on engineering analysis or other sound technical rationale. In the event that an emission-related component is designed not to need maintenance during the full life of the vehicle, the manual would need to contain, at a minimum, a description of the component, noting its purpose, and a statement that the component is expected to last the life of the vehicle without maintenance or repair. In addition, manufacturers are required to include in the manual the rebuild provisions being adopted by the Agency, as described below, to ensure that owners and rebuilders are aware of the requirements.

Under existing regulations, manufacturers must ensure that critical emissions-related scheduled maintenance has a reasonable likelihood of being performed in-use. Manufacturers may elect to provide such assurance by using some form of on-board driver notification when maintenance is needed on a critical emission related component.[20] The signal may be triggered either based on mileage intervals or component failure. It is currently considered a violation of the Clean Air Act's prohibition on tampering (Section 203(a)(3)) to disable or reset the signal without also performing the indicated maintenance procedure.[21]

EPA is finalizing a requirement that manufacturers of 2004 and later model year engines electing to use such signal systems to ensure that critical emissions-related maintenance has a reasonable likelihood of being performed must design the systems so that they do not cease to function at or beyond the end of the regulatory useful life. For example, if the signal is designed to be actuated based on mileage intervals, it must be designed to continue to signal the driver at the same intervals after the end of the useful life. EPA will not, however, hold the manufacturer responsible or liable for recall due to signal failure in instances where the signal fails to function as designed beyond the end of the useful life. Manufacturer recall liability is limited to failures during the regulatory useful life under section 207 of the Clean Air Act. (The manufacturer is also not responsible for repairs when the signal does function after the end of the useful life unless such repairs are covered by the emission warranty.)

5. Engine Rebuilding Provisions

Clean Air Act section 203(a)(3) states that it is prohibited for "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine" in compliance with regulations, either before or after its sale and delivery to the ultimate purchaser. 42 U.S.C. 7522 (a)(3)(A). EPA commonly refers to violations of this provision of the Clean Air Act as tampering. Engine rebuilding practices are currently addressed in general terms under EPA policies established under Clean Air Act section 203(a)(3) regarding tampering. The Agency has established a policy that when switching heavy-duty engines the new engine must be "identical to a certified configuration of a heavy-duty engine of the same or newer model year".[22] EPA has also established policies regarding the use of aftermarket parts during rebuild.[23] EPA is codifying these policies as they apply to engine rebuilding, and also finalizing new measures, as follows, for both diesel and otto-cycle engines.

[19] 40 CFR 86.094–2(f).

[20] 40 CFR 86.094–25(b)(6)(ii)(C).

[21] 40 CFR 86.094–25(b)(6)(iii).

[22] Engine Switching Fact Sheet, April 2, 1991. Docket A–95–27, II–B–6.

[23] "Interim Tampering Enforcement Policy", Mobile Source Enforcement Memorandum No. 1A., June 25, 1974. Docket A–95–27, II–B–5.

Under the regulatory provisions finalized today, parties involved in the process of rebuilding or remanufacturing model year 2004 and later engines (which may include the removal of the engine, rebuilding, assembly, reinstallation and other acts associated with engine rebuilding) must follow the provisions described below to avoid the actions being characterized as tampering with the engine and its emissions controls:

(1) During engine rebuilding, parties involved must have a reasonable technical basis for knowing that the rebuilt engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications) and the model year(s) of the engine configuration must be identified. A reasonable basis would exist if:

(a) Parts used when rebuilding an engine, whether the part is new, used, or rebuilt, is such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the part performs the same function with respect to emissions control as the original part, *and*

(b) Any parameter adjustment or design element change is made only (i) in accordance with the original engine manufacturer's instructions or (ii) where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(2) When an engine is being rebuilt and remains installed or is reinstalled in the same vehicle, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(3) At the time of rebuild, emissions-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy EPA requirements under 40 CFR 86.094–25 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engines are returned to service. Further, such signals may not be rendered inoperative during the rebuilding process.

(4) When conducting an in-frame rebuild or the installation of a rebuilt engine, all emissions-related components not otherwise addressed by the above provisions must be checked and cleaned, repaired, or replaced where necessary, following manufacturer recommended practices.

Any person or entity engaged in the process, in whole or in part, of rebuilding engines who fails to comply with the above provisions shall be liable for tampering in violation of CAA section 203(a)(3). Parties are responsible for the activities over which they have control and as such there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). EPA is not finalizing any certification or in-use emissions requirements for the rebuilder or engine owner.

In response to comments, EPA has removed proposed provisions requiring that the rebuilder or remanufacturer rebuild engines to the same or newer model year configuration when the engine is not going to be placed back into the original vehicle. EPA has also modified rebuild provision (2) which, in the proposal, read "A replacement engine must be of (or rebuilt to) a configuration of the same or later model year engine. Thus, in addition, under the proposed regulations a party supplying a rebuilt engine would be prohibited from supplying a replacement engine that is not rebuilt to a configuration of the same or later model year as the trade-in engine." Provision (2) was modified because the language regarding "a party supplying a rebuilt engine" could be construed to mean an engine remanufacturer or other party not working directly with the vehicle. EPA believes that parties not working directly with the vehicle should not have an obligation to ensure that the correct engine is placed in the vehicle.

EPA is adopting minor recordkeeping requirements which EPA believes are in-line with customary business practices and which will assist EPA in assessing compliance with the new rebuild provisions. The records shall be kept by persons involved in the process of heavy-duty engine rebuilding or remanufacturing and shall include the mileage and/or hours at time of rebuild and a list of the work performed on the engine and related emission control systems including a list of replacement parts used, engine parameter adjustments, design element changes, emissions related codes and signals that are responded to and reset and the response to the signals and codes, and work performed as described in item (4) of the rebuild provisions above. EPA is requiring such records to be kept for two years after the engine is rebuilt.

Parties may keep the information in whatever format or system they choose, provided that the information can be understood by an EPA enforcement officer. Parties are not required to keep information that they do not have access to as part of normal business practices.

If it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such recordkeeping practices would satisfy these requirements. Rebuilders can use records such as build lists, parts lists, and engineering parameters that they keep for the engine families being rebuilt rather than on individual engines, provided each engine is rebuilt in the same way to those specifications. In addition, rebuilders are not required to keep information on each individual emissions related diagnostic code that might be reset if the codes are always addressed through a set of uniform procedures that are followed during the rebuilding process. For example, if an engine is equipped with a sensor that monitors the EGR flow rate, the rebuilder may keep on record the specifications and procedures used to rebuild the EGR system in all instances. EPA expects that engine remanufacturers currently keep these types of records in order to control the quality of their products.

In the NPRM, EPA explained that it was considering adopting minor recordkeeping requirements in the final rule. In response to comments, EPA has modified the contemplated recordkeeping requirements to: (1) Further clarify that records may be kept on an engine family basis, (2) allow parties to keep information in whatever format or system they choose, provided that the information can be understood by an EPA enforcement officer, and (3) not require parties to keep information that they do not have access to as part of normal business practices.

C. Revised Averaging, Banking, and Trading Provisions

EPA is finalizing with revisions various modifications to the ABT program. EPA believes this program is an important element in making the stringent emissions standards adopted today appropriate with regard to technological feasibility, lead time, and cost. The ABT program provides important flexibility to manufacturers, helping them to transition their entire product lines to the new standards. The ABT program also encourages the early

introduction of cleaner engines, thus securing earlier emissions benefits. The modified ABT program being implemented by EPA for 1998 and later model year engines applies only to diesel cycle engines. EPA proposed but is not finalizing the modified ABT program for otto-cycle engines. (The ABT program implemented in 1990 remains in effect for otto-cycle engines). The provisions being finalized for the modified ABT program are described below. As proposed, the modified program and current program are separate and engines cannot participate in both programs. Credits generated under the modified program may be used only in 2004 and later model years. As was proposed, credits generated between 1998 and 2003 are based on NO_X only, not NMHC+NO_X, and are calculated against the 4.0 g/BHP-hr NO_X emission standard. Diesel PM credits are based on reductions beyond the 0.10 g/BHP-hr emission standard for truck engines and the 0.05 g/BHP-hr emission standard for urban buses. Credits earned under the modified program may be transferred to the current program but would then be subject to the current program's credit life limit of three years from model year of generation and a one-time 20 percent discount.

For the modified program between 1998 and 2003, for engine families certified at NO_X levels ≤3.5 g/BHP-hr, no discount will be applied to any NO_X or PM credits generated for banking or trading. For engine families certified at NO_X levels above 3.5 g/BHP-hr, a one-time 10 percent discount will be applied to all credits generated for banking and trading against the model year 2004 standards, both NO_X and PM. For example, if an engine family is certified to a NO_X level of 3.7 in the modified program, the manufacturer will earn only 0.27 g/bhp-hr (0.3x.9) credit for use in meeting the 2004 standard. The credit life for credits under the modified program is unlimited.

Beginning in 2004, the form of the standard changes from separate HC and NO_X standards to a combined NMHC+NO_X standard. Therefore, starting in 2004, credits will be based on combined NMHC+NO_X values. NMHC+NO_X credits will be generated against the 2.4 g/BHP-hr standard. Diesel PM credits will continue to be generated against the 0.10 g/BHP-hr emission standard for truck engines and the 0.05 g/BHP-hr emission standard for urban buses. For engine families certified with NMHC+NO_X levels at or below 1.9 g/BHP-hr, credits will not be discounted. Credits for banking and trading will be discounted by 10 percent for engines with certification levels above 1.9 g/bhp-hr NMHC+NO_X with the following exception: carry-over engine families certified prior to 2004 with NO_X+NMHC certification levels below the 2004 standards may earn undiscounted credits through model year 2006. For model year 2007 and thereafter, the 10 percent discount applies. As with credits generated in the modified program prior to 2004, there will be no limit on credit life for credits generated after 2004 under the modified program. As proposed, the upper limits for NMHC+NO_X and PM certification will be 4.5 g/BHP-hr and 0.25 g/BHP-hr, respectively. That is, no engine family may use credits to establish FELs above either of these levels.

For reasons discussed later in this document, as well as in the Summary and Analysis of Comments, the provisions regarding credit life and discounting differ somewhat from those proposed. EPA proposed no discounting or credit life limits for the modified program. EPA also proposed that the modified program end in 2007 and that all credits thereafter would be generated under the current program which includes a one-time discount of 20 percent and a three year credit life limit. Under the final rule, the modified program does not end in 2007, but continues indefinitely. In addition, as noted above, credits for engine families certified above the appropriate trigger level will have a 10 percent discount.

There are several other provisions which apply to the modified program beginning in model year 1998. First, as proposed, EPA is eliminating the "buy high-sell low" conversion factor provision of 86.094–(c)(2) and replacing it with the production-weighted average value. Under the current buy high-sell low provision, families generating credits use the lowest horsepower configuration factor and those using credits use the highest horsepower configuration factor in the formula to establish the number of credits generated or used. In the modified program, the production-weighted average value will be used in both cases. Second, because the 2004 standards apply in all fifty states, beginning in 2004, the California and federal programs will harmonize and ABT will be applicable to all federal certifications. Third, EPA is finalizing provisions to allow manufacturers the option to make the NO_X and PM credits generated by their engines available to other persons for use outside the ABT program instead of limiting credits to only manufacturers.

Based on comments received EPA is not finalizing two provisions which had been proposed. First, EPA is not finalizing its proposal for pre-2004 model years to allow NO_X credits to be generated based on a useful life of 435,000 miles while retaining the actual useful life for the engine family at 290,000 mile interval for all other program purposes. EPA proposed to allow manufacturers to establish an FEL based on simple extrapolation of the deterioration factor for NO_X from 290,000 miles to 435,000 miles and earn credits up to 435,000 miles without incurring any additional in-use liability for the mileage between 290,000 mile and 435,000 miles. Because EPA is not finalizing the proposed change, all credits must be based on the useful life of the engine family, which is the current Agency requirement. Manufacturers wanting to generate credits up to 435,000 miles will be required to establish the 435,000 mile interval as the official useful life for the engine family. Second, EPA is not finalizing its proposal to require a compliance margin (i.e., the difference between the engine certification level and the FEL) of at least 5 percent under the modified ABT program. All of the above changes to the modified ABT program are being made for the reasons explained in the Summary and Analysis of Comment document for this rule.

D. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

IV. Public Participation

Following the NPRM, EPA held a public hearing on August 12, 1996, and accepted written comments on the proposals. This preamble section provides an overview of certain key issues raised in the NPRM, a summary of comments on these issues, and EPA's response to the comments, including

any significant changes to the rulemaking as a result of the comments. For EPA's detailed analysis of the comments received on the NPRM, the reader is directed to the Summary and Analysis of Comments document for the rulemaking. For information on how to obtain copies of the public hearing transcript, written comments, and the Summary and Analysis of Comments document, please see the **ADDRESSES** section above.

A. EPA's Air Quality Justification for the Proposed Program

In the NPRM, EPA expressed its belief that improvements in air quality in many parts of the country will continue to be necessary in the future. Specifically, the Agency presented the results of analyses indicating that the emissions of key pollutants can be expected to increase without further controls and that air quality (in the case of both ozone and particulate matter) is likely to worsen as a result. In proposing new standards for highway HDEs, the Agency relied on these projections in concluding that it should proceed with regulatory action as soon as possible.

Some commenters questioned this conclusion, disputing whether the available information in fact justifies establishing new standards for highway HDEs. Others argued the opposite—that immediate action is indeed justified. Those questioning EPA's analysis raised several issues. First, some commenters argued that currently available computer modeling is not of sufficient quality to draw conclusions about the future need for NO_X control. Second, several commenters had differing opinions about how much EPA national ozone reduction policy should be affected by the fact that NO_X reductions can cause increases in ozone under localized conditions. EPA stated its belief in the proposal that the large expected benefits of NO_X control over broad areas within and surrounding nonattainment areas should be pursued even if these NO_X reductions have a neutral or negative effect in localized portions of some nonattainment areas. Third, one commenter presented an analysis of ozone monitors concluding that the number of national ozone exceedances has been steadily decreasing over time (when adjusted for ambient temperatures). These issues are discussed below.

1. Modeling

The emissions and air quality modeling to which the commenters refer falls into two related categories that are generally performed sequentially. The first major step is to develop emission inventories simulating the atmospheric loading of ozone precursors in future years. These inventories are useful for projecting trends in emissions over time and for understanding the relative importance of various emission sources. The second major step is to input specially prepared inventories into a complex grid-based air quality model which simulates the photochemistry of ozone formation over a geographic area for the same future years. Modelers have been able to gradually improve the quality of both of these types of modeling over many years, and improvements continue.

As discussed more fully in the Summary and Analysis of Comments document, EPA believes that the available computer modeling of emissions and air quality, while of necessity complex and continually undergoing improvement, clearly provides a legitimate basis for today's rule. The Agency believes that its modeling projects with reasonable accuracy that, absent new control programs, NO_X emissions would increase in the future and that the expected result would be increased ozone problems for many areas.

2. Possible Ozone Increases From NO_X Reduction

In the ANPRM and NPRM, EPA discussed the well known phenomenon that reducing NO_X emissions in a local area may in certain circumstances result in an increase in ozone in limited parts of the area. Some commenters suggested that, as a result of this phenomenon, any proposed action to reduce NO_X emission would be unwise or premature. After consideration of all comments received on this subject, EPA believes that nothing in the comments warrants a different course of action than that proposed by the Agency. In fact, air quality modeling work done since the analysis presented in the NPRM shows that the Agency's justification for pursuing the proposed program is appropriate.

The OTAG addressed the complex issue of regional impacts due to transport of NO_X and VOC emissions. The OTAG modeling results indicate that urban NO_X reductions produce widespread decreases in ozone concentrations on high ozone days. In addition, urban NO_X reductions also produce limited increases in ozone concentrations locally, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations. Most urban ozone increases modeled in OTAG occur in areas already below the ozone standard and, thus, in most cases, urban ozone increases resulting from NO_X reductions do not cause exceedance of the ozone standard. There are a few days in a few urban areas where NO_X reductions are predicted to produce ozone increases in portions of an urban area with high ozone concentrations. In these circumstances, additional VOC control measures may be needed to offset associated ozone increases due to NO_X emissions decreases in local areas.

Nonetheless, modeling analyses conducted as part of the OTAG process indicated that, in general, NO_X reduction disbenefits are inversely related to ozone concentration. On the low ozone days leading up to an ozone episode (and sometimes the last day or so) the increases are greatest, and on the high ozone days, the increases are least (or nonexistent); the ozone increases occur on days when ozone is low and the ozone decreases occur on days when ozone is high. This indicates that, in most cases, urban ozone increases may not produce detrimental effects. Overall, OTAG modeling thus demonstrates that the ozone reduction benefits of NO_X control outweigh the disbenefits of urban ozone increases in both magnitude of ozone reduction and geographic scope.

The Agency has concluded that the overall benefit of large regional reductions in NO_X, like those that would occur with the HDE standards finalized today, warrant such controls even where localized ozone increases may occur.[24] [25]

3. Trends in Ozone Levels

EPA is aware of data indicating gradual improvements in ozone levels over the past several years. The Agency attributes this apparent trend to the success of past NO_X and VOC control programs. Since the Agency has concluded that NO_X levels will continue downward for several years but then level off and begin to rise, the welcome downward trend in ozone cannot, unfortunately, be expected to continue without new emission reductions. EPA does not agree with the commenter that the current trends indicate that new NO_X control programs are not necessary. Rather, these data help show that NO_X control can be very effective in reducing ozone. Moreover, the data reinforce EPA's belief (as discussed in Section II. above) that there will likely be an upward trend in NO_X emissions and ozone in the future if further NO_X controls are not implemented. The Agency believes, therefore, that further NO_X controls, including the HDE standards issued today, must be vigorously pursued.

[24] "EPA Staff Observations from Recent Air Quality Modeling," Memorandum from Norm Possiel to Tad Wysor, August, 1997.

[25] Also see EPA's notice of denial of API petition for reconsideration of the Phase II reformulated gasoline NO_X standard. (62 FR 11346 (March 12 1997)).

B. Level of Standards

1. Diesel Engines—NO_X Plus NMHC

EPA proposed a combined NMHC+NO_X standard of 2.4 g/bhp-hr with an option to manufacturers of 2.5 g/bhp-hr with a NMHC cap of 0.5 g/bhp-hr. The emission standards proposed in the NPRM for diesel-cycle engines were based on what EPA considered to be the greatest achievable reductions from technology expected to be available in 2004, giving appropriate consideration to cost, energy, and safety. Commenters showed general support for the alternative NMHC+NO_X standards proposed by EPA. The manufacturers commented that the proposed NMHC+NO_X standards will be feasible for most highway heavy-duty diesel engines in 2004, provided that PM standards do not change. Manufacturers expressed specific support for the standards as they were proposed, including the optional 2.5 g/bhp-hr standard with 0.5 g/bhp-hr NMHC cap. EPA did not receive comment recommending another level for the standard for diesel engines.

Based on current information, EPA has determined that the proposed revision of NO_X and NMHC standards is appropriate for 2004. The assessment of feasibility in the NPRM remains unchanged. An overview of the engine changes manufacturers are expected to make to meet the standards can be found in the Economic Impact discussion later in the preamble and in the Regulatory Impact Analysis.

2. Highway Diesel Engine—PM

In the NPRM, EPA proposed to leave the diesel engine PM standards at their current levels: 0.10 g/bhp-hr for truck engines and 0.05 g/bhp-hr (0.07 in-use) for urban buses. State, health, and environmental groups were unanimous in their comments exhorting EPA to move forward with additional control of diesel PM from on-highway heavy-duty diesel engines. These commenters focused on the need for control of diesel PM in the context of health effects from PM exposure and EPA's recent proposal to revise the National Ambient Air Quality Standard for PM. The groups also noted that the urban bus standard for PM was 0.05 g/bhp-hr and argued that all diesel HDEs could meet that level. In contrast, the manufacturers commented that even meeting the current diesel PM standards while reducing NO_X emissions by 50 percent presents a significant technical challenge. The manufacturers commented that further reduction in the PM standard would threaten the overall feasibility and cost-effectiveness of the 2004 NMHC plus NO_X standards. In the case of urban buses, manufacturers asked for a relaxation in the level of the PM standard to be able to meet the new levels for NMHC+NO_X emissions.

EPA understands the concerns that have been raised by the state, environmental, and health commenters and has an interest in pursuing further control of PM emissions if appropriate. As discussed in more detail above and in the Regulatory Impact Analysis, PM emissions can cause risks to public health and welfare, including a range of respiratory illnesses and aggravation of cardiovascular disease. EPA is reviewing and will continue to review many strategies for reducing harmful emissions of PM, including reduction of emissions from internal combustion engines. In fact, the reductions in NO_X emissions resulting from this rule will significantly lower secondary formation of nitrate PM.[26]

However, based on the information available today and the statutory factors set forth in section 202(a)(3)(A) of the Clean Air Act, EPA has determined that the current diesel PM standards are the lowest appropriate levels in 2004 in the context of an approximate 50 percent reduction in NO_X. Because of the trade-off between NO_X and PM emissions, manufacturers will have to undertake considerable effort to keep PM emissions below the current standard while essentially halving NO_X emissions. EPA cannot be certain at this time that any further reductions in PM emissions can be realized in manner that is durable, reliable for the majority of the fleet, and cost-effective. As discussed below and in the Summary and Analysis of Comments, the ability of urban buses to meet a more stringent standard for PM does not necessarily mean that such a standard is feasible and appropriate for all heavy duty diesel engines.

Open issues regarding control technology and strategy have contributed to EPA's decision not to lower PM standards at this time. To date, most medium heavy-duty and all heavy heavy-duty diesel engine families have been successful in meeting the 0.10 g/bhp-hr diesel PM standard using in-cylinder or engine-based control strategies. However, most of the light heavy-duty diesel engines have employed the use of aftertreatment devices such as oxidation catalysts to reech this level. All urban bus engines have used aftertreatment to achieve the applicable 0.05 g/bhp-hr diesel PM standard, albeit at somewhat higher cost and cost effectiveness values than for truck engines. While there are clearly different emission control strategy philosophies among the manufacturers and differences among engines technologies that lead to these variations in technological approach, further work is needed to identify and evaluate what set of control strategies have the greatest potential to achieve full life emission control at diesel PM levels less than 0.10 g/bhp-hr while also reducing NO_X to approximately 2 g/bhp-hr. This ultimate set of strategies may involve aftertreatment techniques similar to those currently used on light heavy-duty diesel engines and urban buses or could be a technology still in research and development. However, at this time, it is uncertain whether potential methods for reduction of PM and NO_X from heavy-duty engines are capable of reducing emission levels for the great majority of the heavy-duty engine fleet below the standards promulgated today in a manner that is reliable for the full useful life of the engines. Further discussion regarding technological feasibility can be found in the Summary and Analysis of Comments and the Regulatory Impact Analysis.

Closely related are the issues of cost and cost effectiveness. The purchase and operating cost implications of any additional control technology must be considered as part of further evaluation, as should the cost-effectiveness of further reductions in new engine emission standards. This is best evaluated in the context of the possible control technologies as discussed above.

There are other open scientific and technical issues that EPA plans to consider prior to the 1999 review. One issue is related to the form of the diesel particulate standard. Current EPA diesel particulate standards are based on mass per unit work (g/BHP-hr), and EPA continues to believe that this is the appropriate form for setting standards. Recently, an issue of a potential impact of technology on particle size distribution has arisen. Virtually all diesel particulate matter has a diameter less than 1.0 micron and is thus fully respirable by humans. A recent study sponsored by the Health Effects Institute on two similar and recent engine models (one of a later technology)

[26] Benefits of Mobile Source NO_X Related Particulate Matter Reductions, October 1996, EPA Contract No. 68–C5–0010.

indicated that while the total mass of PM emissions was lower in the newer technology engine, the remaining particles from the new engine were smaller in diameter and more numerous.[27] The implications of this information are not clear either with regard to technology or health effects. While EPA continues to believe that mass-based emission standards for PM are the most appropriate form, more information on the impact of any advanced engine and emission control technology on diesel PM size, particle count, and chemical constituents as well as the health effects of any changes in these particle characteristics would be helpful.

Another issue is related to the magnitude of the directly-emitted diesel PM inventory and its relative air quality impact. Unlike nonroad diesel engines PM emissions, highway diesel engine PM emissions have been controlled since 1988, and current standards require an 80 to 90 percent reduction over uncontrolled levels. Nonetheless, it is clear that control of diesel PM emissions is important, and more data on the percentage of highway engine diesel PM in the various urban areas and nonattainment area inventories and the in-use performance of controlled highway diesels would be helpful in guiding the Agency's future initiatives with regard to potential highway diesel engine PM control strategies. In any case, tightening NO_x standards alone results in lower levels of ambient PM due to the accompanying reduction in secondary formation of nitrate PM, as discussed elsewhere in this preamble.

EPA considers further control of highway diesel engine PM emissions to be an important air quality goal and plans to further study these issues and others over the next two years, and to reassess the diesel PM standard in the 1999 review. In that context, EPA encourages continued research and development on PM control technology and seeks input in all of the areas described above.

Urban bus engines are and will continue to be a special case because they have unique operating characteristics, are used in only a limited range of vehicle applications, and are treated differently than other heavy duty engines under the Clean Air Act. Urban buses experience a typical duty cycle for which engines can relatively easily be designed; other heavy duty engines, in contrast, can be applied to several different types of truck applications and can experience a much wider range of duty cycles. The duty cycle that engines will see is important because manufacturers must design engines to meet the standards over their full useful lives. Moreover, the particular emphasis on PM reductions in section 219 of the Act indicates that Congress was especially interested in such reductions from urban bus engines and considered more stringent standards appropriate for such engines, even if costs are higher relative to other HDEs. For these reasons, EPA believes that the new $NMHC+NO_x$ standard along with the more stringent urban bus PM standard will be feasible and appropriate for urban buses. As part of the 1999 review, EPA will reevaluate the appropriateness of the urban bus standards.

3. Otto-Cycle Engines

In response to the ANPRM, environmental groups provided comments highlighting manufacturers' certification data for the 1996 model year, which included some engine families with emission levels considerably below the standards proposed for the 2004 model year. While EPA proposed to adopt more stringent emission standards applicable to both diesel and otto-cycle (which are primarily gasoline-fueled) heavy-duty engines, EPA also requested comment on the possibility of adopting more stringent emission standards for heavy-duty gasoline engines. Certification data for 1997 showed a larger number of engine families emitting at or below the 2004 levels, with some engines certified at emission levels only ten to twenty percent of the 2004 emission standards.

At this point, EPA is not yet ready to take final action on the issues associated with otto-cycle HDEs and is not finalizing any revised standards for heavy-duty otto-cycle engines. EPA intends to issue a Supplemental Notice of Proposed Rulemaking to address these engines specifically. A variety of options are under consideration for inclusion in the supplemental proposal. First, as described in the initial proposal, EPA may pursue a more stringent numerical standard using the existing test on an engine dynamometer. Second, EPA will evaluate the appropriateness of adopting emission standards for some otto-cycle heavy-duty vehicles based on testing with a chassis dynamometer. Chassis testing, and associated standards, could be patterned after the program adopted by the California Air Resources Board for medium-duty vehicles. Alternatively, EPA could develop a test and standard using the chassis test cycle specified in 40 CFR Part 86, subpart M for heavy-duty gasoline vehicles.

C. In-Use Emissions Control and Compliance

1. In-Use Emissions Control Regulatory Elements

The NPRM contained several proposals which involved modifications to existing regulations, including regulations for the useful life of the engine, emissions performance and defect warranties, and maintenance requirements. These proposals would update the existing requirements, which were established several years ago, to better align them with current industry experience of longer lasting engines. EPA also proposed some elementary provisions regarding engine rebuilding to help ensure that rebuilding does not result in the removal of emissions control equipment or the reconfiguring of the engine in a way that would result in a significant increase in emissions. EPA's final actions on these items are described in section III.B. of this preamble. The reader is directed to the Summary and Analysis of Comments for a full discussion of comments received by EPA on its in-use emissions related proposals and EPA analysis and response to those comments.

2. State Inspection and Maintenance Programs

EPA noted in the preamble to the NPRM its intention to develop a guidance document for states to follow in designing inspection and maintenance programs for heavy-duty trucks and buses. Several commenters urged EPA to issue guidance to states quickly regarding how to conduct in-use inspection and maintenance programs. Commenters noted that several states and regions are working on in-use emissions programs and EPA guidance is critical to help ensure consistent programs from state-to-state. Commenters requested that EPA evaluate the Society of Automotive Engineers (SAE) test procedure J–1667 and move rapidly to endorse its use in road-side smoke inspection programs. State organizations recommended, further, that EPA move to adopt the J–1667 procedure or other short test procedures as certification short test procedures and develop correlations between the short tests and the full certification tests. This would allow states and EPA to determine vehicle compliance in the field. NESCAUM noted that research is needed on the relationship between smoke opacity and particulate emissions. NRDC commented that the smoke test will be inadequate for verifying compliance with the standard proposed in the rule.

EPA recognizes the importance of providing guidance to states in these matters. EPA has been working informally with stakeholders including representatives from States, the trucking industry, engine manufacturers, and EPA Regions, among others, in its development of such guidance. As a result of this effort, EPA has recently issued guidance to states recommending the SAE J–1667 test procedure for their I/M programs.[28] EPA plans to continue working with stakeholders to address other concerns related to the smoke test procedure such as the establishment of appropriate cut-points. The correlation of test cycles, establishment of certification short tests, and short tests for emissions other than smoke emissions, are complex in nature and must be studied further. For these reasons and also because I/M was not a subject of any proposals in the NPRM, the Agency is not adopting such programs or requirements in this rule.

3. In-use Compliance Issues

EPA received comments in several areas related to in-use emissions control, but not related to any specific proposals contained in the NPRM. Several commenters expressed substantial concern over what they believe to be EPA's lack of a practical in-use compliance program for heavy-duty engines. They contend that EPA relies entirely on self certification and selective enforcement audits for heavy-duty compliance due to the impracticality and high cost of in-use engine testing. Commenters expressed concern that a number of HDEs have failed the SEA testing in recent years. The commenters urged EPA to develop an effective in-use compliance testing program including a viable recall program to ensure that engines comply with applicable standards over their useful lives. One commenter noted that the threat of in-use deterioration will increase as the standards are lowered. Commenters recommended that the Agency develop a supplemental certification test, such as a loaded chassis test, which could be used for in-use compliance and one commenter urged the Agency commit to a schedule for development and implementation.

EPA received comments urging the Agency to adopt requirements for manufacturers to install on-board diagnostics (OBD) systems in heavy-duty vehicles. Commenters believe that OBD could be a valuable tool in improving maintenance practices and assessing the in-use performance of heavy-duty engines. State organizations who commented are interested in having OBD systems available as a tool for inspection and maintenance programs.

EPA also received comment that a more representative test cycle is a key to controlling excess emissions associated with high speeds and loads typical of real world conditions not currently represented in the federal test procedure (i.e., off cycle emissions). The commenter also believes that the increasing use of onboard computers to control the operation of engines further exacerbates the need for different and more variable test cycles. The commenter notes that onboard computers can be used to change the engine operating conditions to optimize fuel economy at the expense of emissions in modes of operation that are not well represented in the EPA test procedure. The commenter urged EPA to evaluate its current heavy-duty engine test procedure and consider such options as a random test cycle to minimize the impact of off-cycle emissions.

While EPA believes that the new standards will achieve the emissions reductions estimated in section II of this preamble, EPA also recognizes that improvements in the understanding of in-use emissions and the need to establish a viable in-use compliance presence are essential. To address these concerns EPA has recently engaged in a number of activities to address in-use emissions. EPA has signed a Memorandum of Understanding (MOU) with the California Air Resources Board (ARB) and the Northeast States for Coordinated Air Use Management (NESCAUM) to develop a better understanding of in-use emissions from heavy-duty vehicles.[29]

Under the context of this MOU, EPA has recently implemented a small-scale chassis-based screening program for in-use HDV's that will establish a viable in-use compliance presence. The screening program seeks to identify high emitting engines or technologies, and the causes of high emissions. The screening program is initially focused on light heavy-duty gasoline engines, although EPA plans to work with ARB and NESCAUM to expand the program to all sectors of the on-highway heavy-duty industry in the next several months and include on-road emissions measurements. Such a screening program will allow EPA to identify high-emitting engine families, potentially signaling the need for recall action under section 207 of the Clean Air Act. In addition, the in-use screening program will allow EPA to enforce certain provisions of section 203 of the Act, including the prohibition against manufacturer-designed strategies or devices that defeat the operation of the emissions control system, and the prohibition against tampering with the emissions control system. Lastly, the screening program will allow EPA to assess in-use deterioration of HDE's by testing trucks at various mileages. Although the screening program will also provide important information regarding off-cycle emissions, EPA understands that further work in this area may be necessary to fully address the off-cycle concern.

In addition to the screening program and engine testing conducted under the MOU, EPA will continue to work with state groups and others to develop tools for states to reduce in-use HDV emissions. Many states are implementing, or are considering implementing, inspection and maintenance (I/M) programs for HDV's. As noted above, EPA has recently issued guidance regarding an in-use I/M smoke test procedure, and plans to follow-up that guidance with recommended pass/fail cut-points. In addition, the EPA plans to study the benefits and feasibility of on-board diagnostics (OBD) and other concepts that may prove to be useful I/M tools.

EPA is also committed to working with states and industry to implement a voluntary retrofit program aimed at reducing emissions from older in-use vehicles that would be modeled after EPA's Urban Bus Retrofit/Rebuild Program. Such a program could lead to emission reductions from the in-use fleet beyond those required by the applicable standards through the retrofit of advanced emission control technologies.

In response to EPA and commenter concerns about the growing number of engines which fail SEA testing, EPA believes that a viable long-term in-use recall presence will provide the necessary assurances that new production engines will comply with applicable standards. In the near-term, EPA plans to engage the industry in constructive dialogue aimed at better understanding production processes and variability, manufacturer-based

[27] K.J. Baumgard, J.H. Johnson, "The Effect of Fuel and Engine Design on Diesel Exhaust Particle Size Distributions," Society of Automotive Engineers, 960131, 1996.

[28] "Guidance to States on In-use Smoke Test Procedure For Highway Heavy-duty Diesel Vehicles", United States Environmental Protection Agency, April 3, 1997. Docket A–95–27.

[29] "Developing an Understanding of In-use Emissions from Heavy-duty Diesel Engines", Memorandum of Understanding, United States Environmental Protection Agency, Northeast States for Coordinated Air Use Management, California Air Resources Board, March 1997, Docket A–95–27.

production line testing programs, and methodologies used determine deterioration factors. Through these discussions, EPA believes that incremental improvements in SEA performance can be achieved. EPA is committed to further review of its compliance programs, and revisions to its regulatory programs if needed.

EPA believes that these near-term actions will begin to address many of the concerns raised by commenters with respect to in-use emissions, and that changes in the HDV compliance program could result from these near-term actions. In addition, continued long-term study of in-use HDV emissions will further enhance our understanding and will provide a basis for future programmatic, regulatory, or other changes to ensure the emissions reductions from more stringent standards are reflected in the in-use emissions from HDV's.

D. Averaging, Banking, and Trading

As discussed above, EPA proposed a modified ABT program as part of the transition to more stringent emissions standards for NOx and NMHC in 2004. Many comments were received on the ABT provisions of the NPRM. As discussed in the Summary and Analysis of Comments supporting this final rule, EPA has considered the comments received on the proposal and revised the provisions as appropriate. The ABT program EPA is implementing is consistent with the goals of the ABT concept as discussed in the NPRM. The modified ABT program being implemented in this rule provides the manufacturers the incentive to achieve improvements on current technology and pull ahead 2004-era technology to generate early emission reductions. These early reductions provide a near-term benefit to the environment and the emission credits generated provide the manufacturers significant compliance flexibility. As stated by the manufacturers, this compliance flexibility is a significant factor in the manufacturers' ability to certify a full line of engines in 2004 and helps to allow implementation of the new more stringent standard as soon as permissible under the Clean Air Act.

1. Applicability

The NPRM proposed a modified ABT program for both diesel and otto-cycle engines. However, as noted above, EPA received comment regarding whether EPA's proposed otto-cycle standards and ABT provisions were appropriate. As a result of EPA's evaluation of these comments, EPA is not promulgating final standards for otto-cycle HDEs in this rule. EPA is also not finalizing a modified ABT program for otto-cycle HDEs. EPA will address such standards and ABT provisions in a Supplemental Notice of Proposed Rulemaking in the future. The modified ABT program being implemented by EPA for 1998 through 2003 and the modified program finalized for 2004 and later apply only to diesel-cycle engines.

2. The Modified ABT Program Diesel-Cycle Engines (1998–2003)

As will be discussed further below, the current ABT program will be retained for credit generation and use by production otto-cycle engines and credit use by diesel-cycle engines during the 1998–2003 model years. Effective for the 1998 model year, EPA is implementing a modified certification ABT program designed to help ensure compliance with the NMHC+NO_x and PM standards beginning in 2004. The provisions of this program are described below.

Credits generated under the modified program may be used only in 2004 and later model years. Manufacturers may not use credits generated in the current program on engines generating credits under the modified program. However, credits generated under the modified program may be used before 2004, subject to the regulatory provisions of the current ABT program. As was proposed, credits generated between 1998 and 2003 under this modified program are based on NO_x only and are calculated against the 4.0 g/bhp-hr NO_x emission standard. The NMHC levels of most heavy-duty engines are well below the present standard and would result in windfall credits if the credit calculation included NMHC. Diesel PM credits are based on reductions beyond the model year 0.10 g/bhp-hr emission standard for truck engines and the 0.05 g/bhp-hr emission standard for urban buses.

In the NPRM, EPA proposed that there be no discounts for credits banked under the modified program. However, in response to comments and further consideration by EPA on the best way to align this program with the general goals of the ABT program and other EPA market incentive programs, EPA is finalizing somewhat different provisions. To better align the ABT program with the goal of pull-ahead technology, EPA has decided to implement a trigger concept as a mechanism to distinguish engine families eligible for no discount. For engine families certified at NO_x levels less than 3.5 g/bhp-hr NO_x, no discount will be applied to any NO_x or PM credits generated for banking. The 3.5 g/bhp-hr cut-point was suggested by commenters and EPA judges this level to be a reasonable discriminator for pull-ahead technology. It is similar in stringency to the California LEV standard for these engines and only three federal 1997 heavy-duty diesel families are certified below this level. For engine families certified at NO_x levels above 3.5 g/bhp-hr, a 10 percent discount will be applied to all credits generated, both NO_x and PM. EPA has decided to retain a discount for this portion of the program because smaller incremental reductions such as this are less likely to represent the pull-ahead technology which ABT is designed to encourage. These smaller credits nonetheless represent early reductions and are appropriate given the stringency of the model year 2004 standard, consistent with the ABT concept.

As was mentioned above, the modified program includes a 10 percent discount for engines certified above the trigger. This level of discount was selected based on a combination of factors. Several commenters stated that a discount should be retained, some suggesting 10 percent, some implying the current 20 percent level. Other commenters supported the Agency's proposal to eliminate all credit discounts. In attempting to design a program which meets all of the goals of ABT, the Agency selected 10 percent. The manufacturers comments indicated that a 20 percent discount was far too large and created a significant disincentive for the introduction of new or improved technology. Conversely, EPA believes that eliminating the discount for all credits as was proposed would have reduced the incentive to develop and implement significantly cleaner technology. A 10 percent discount for credits generated at FELs above 3.5 g/bhp-hr, strikes a balance between these views, and aligns the discount in the heavy-duty engine ABT program with others in the mobile source program such as the National Low Emission Vehicle program.

Some commenters opposed allowing PM credits to be generated and used in the modified program because the PM standard is not changing. In response, EPA believes that it is appropriate to include PM in the modified ABT program. For most in-cylinder control technologies, there is a strong inverse relationship between NO_x and PM which makes it difficult to control both pollutants at the same time. The control technologies expected to be used to reduce NO_x to model year 2004 levels are likely to increase PM. Therefore, EPA believes that applying the ABT modifications to PM as well as NO_x allows the manufacturer more flexibility in addressing the technology issues involved with reducing NO_x emissions to the NO_x plus NMHC standard being finalized in this rule, while maintaining PM emissions at 0.10 g/bhp-hr. The Agency has decided to apply the NO_x trigger to PM emissions because engines generating PM credits at NO_x levels below the trigger in this time frame are likely to employ new, or at least significantly improved, PM control technology, because of the natural trade-off between NO_x and PM emissions.

EPA proposed that the 3 year credit life restriction in the current ABT program not apply in the modified program. After considering comments, EPA is finalizing this provision as proposed. Even though several commenters believed that the credit life limit should be retained, EPA believes that an unlimited credit life is consistent with the emission reduction goal of ABT, not only because of the increased manufacturer flexibility in meeting the new standards but also because it eliminates the "use or lose" aspect of the current program's limit on credit life, which creates the perverse incentive for manufacturers to use credits as quickly as possible. Unused credits are extra emission reductions beyond what the EPA regulations require. The only concern with unlimited credit life is that a manufacturer could stockpile a large number of credits and delay the effectiveness of a new standard in the future. This certainly would be a concern in a situation where standards are less stringent and not technology-forcing. However, 2.4 g/bhp-hr NMHC+NO_x and 0.10 g/bhp-hr PM (0.05 g/bhp-hr for buses) are quite challenging for diesel engines; EPA expects most pre-2004 credits will be needed in the first few years of the new standard.

3. The Modified ABT Program 2004 and Later

EPA proposed that the current program be reinstated for 2007 and later models years, including the 20 percent discount and 3 year credit life. Some commenters who opposed the modified program urged the Agency to reinstate the current program beginning in 2004. Manufacturers argued that the current program should not be reinstated because the current program would remove much of the incentive to pull-ahead technology in the post 2004 time-frame.

EPA considered the comments carefully and decided to implement, beginning in 2004, a modified program which will fully and permanently replace the current ABT program for diesel-cycle engines, though with significant changes from the proposal. Many of the same concepts that appear in the 1998–2003 ABT program will be employed beginning in 2004, but modifications have been made as appropriate. Beginning in 2004, the form of the standard changes from separate HC and NO_x standards to a combined NMHC+NO_x standard. Therefore in 2004, credits will be based on combined NMHC+NO_x values. For diesel engines, NMHC+NO_x credits will be generated against the 2.4 g/bhp-hr standard. Diesel PM credits will continue to be generated against the 0.10 g/bhp-hr emission standard for truck engines and the 0.05 g/bhp-hr emission standard for urban buses. For the same basic reasons as laid out above, the trigger concept will continue to be applied to the discount for NMHC+NO_x and PM credits. This trigger will be set at 1.9 g/bhp-hr NMHC+NO_x. There are currently no diesel-fueled engines certified even close to this level.

As above, there will be no limit on credit life. Removing discounts and credit life limits for the cleaner engines will provide maximum incentive for the development and introduction of petroleum- and alternative-fueled diesel-cycle engines with emission levels approaching the 1.0 g/bhp-hr NO_x and 0.05 g/bhp-hr PM research objectives of the 1995 SOP.

Credit use in 2004 and later years will follow the same pattern as under the current program. As proposed, the upper limits for NMHC+NO_x and PM certification will be 4.5 g/bhp-hr and 0.25 g/bhp-hr, respectively. That is, no engine family may be certified above either of these levels using credits. These limits provide the manufacturers adequate compliance flexibility while protecting against the introduction of unnecessarily high emitting engines.

4. Other Changes for the Modified ABT Program

Five other provisions were proposed or were discussed with requests for comment which impact the modified ABT program. EPA is implementing three of these and not finalizing two of the proposed modifications.

Of the three being finalized, first, EPA proposed to eliminate the "buy high—sell low" provision of § 86.094–15(c)(2) and to replace it with the production-weighted average value. Under this existing provision, families generating credits use the lowest horsepower configuration factor and those needing credits use the highest horsepower configuration factor. In the modified program the production-weighted average value will be used in both cases, as proposed. There was no adverse comment on this change. The second area relates to geographical applicability. The 2004 standards apply in all fifty states. California is not included in the current ABT program because they have a separate control program. Beginning in 2004 the California and federal programs will harmonize and ABT will be applicable for all federally certified HDEs without restrictions based on geographical limitations on the certificate. Prior to 2004, the current ABT program remains limited to HDEs certified for sale outside California. There was no adverse comment on this issue.

The third change EPA is finalizing is related to the ownership of credits. EPA requested comment on the concept that manufacturers be given the option to make the NO_x and PM credits generated by their engines available parties other than the manufacturers for use in other programs. This provision was supported by those who commented, so the regulatory language accompanying the rule includes provisions to permit credits to be excluded from the ABT program by the manufacturer in order to be used by engine purchasers or other parties, while preventing double counting. The ability to transfer credits out of this program does not of course imply that these credits can be used without restriction in other programs. Credits purchased for use in other programs must meet the use requirements of the emission programs for which they are purchased. For example, local emission programs will likely have limits on their geographic scope which may limit the use of emission credits that are used to trade out of local emission requirements.

One provision not being finalized is related to the impact of the change in useful life for heavy heavy-duty diesel engines in 2004 on credit generation and use. The useful life value is a factor in determining the amount of credits earned or used by an engine family. Beginning in 2004 for these engines, the minimum useful life increases 50 percent from 290,000 miles to 435,000 miles. If a manufacturer uses the minimum useful life value of 290,000 miles to calculate credits generated prior to 2004, 50 percent more credits will be needed in 2004 to cover an engine certified with a useful life of 435,000 miles. EPA sought comments on two options to address this issue for NO_x and PM. These included for NO_x allowing manufacturers to base their FEL on an emission level determined from a simple extrapolation of the deterioration factor for NO_x from 290,000 miles to 435,000 miles and to

earn credits up to 435,000 miles. Under such an approach, engine families would continue to have a useful life of 290,000 miles and manufacturers would be liable for emissions only up to the end of the useful life. EPA also sought comment on requiring manufacturers to apply for a longer useful life under the provisions of § 86.094–21(f) if they wanted to earn NO_X credits based on a useful life of more than 290,000 miles. This second option is allowed under the current regulations. For PM, EPA did not propose the use of the former approach proposed for NO_X credits, only the latter approach, due to concerns about the potential for deterioration of PM emissions.

EPA received comments from manufacturers supporting the simple extrapolation of the NO_X deterioration factor for calculating credits and comments arguing that PM deterioration in in-use vehicles was negligible and predictable and that the extrapolation proposed for NO_X should be extended to PM. EPA also received comments that the Agency should not allow credits to be generated over a period where the manufacturer is not liable for emissions control.

As discussed in the Summary and Analysis of Comments, EPA has decided not to finalize the simple deterioration factor extrapolation method for either NO_X or PM. In general, it would be inconsistent with current EPA credit program policy to allow credits without accompanying liability, even if the program is transitional. Furthermore, for both NO_X and PM there is some concern that deterioration after the useful life may not be linear, especially for engines using EGR or aftertreatment. Therefore, manufacturers desiring credits for the longer useful life will have to certify to the longer life for those pollutants as allowed under § 86.094–21(f) of the current regulations.

Finally, EPA is not finalizing the mandatory compliance margin provisions proposed in the NPRM. EPA had proposed these provisions as a means to address concerns that compliance margins (the difference between the family emission limit and the certification level) had been shrinking over time, and that the modified ABT program could provide an incentive to shave margins inappropriately to gather additional credits. One commenter provided examples where margins were reduced by manufacturers in order to earn additional credits. Commenters recommended margins of 10–15 percent due to concerns over margin shaving. Other commenters believed that the best way to ensure that manufacturers set appropriate margins would be through the use of EPA's audit and compliance programs to target suspect engine families. Manufacturers noted that they can improve their manufacturing processes to allow for small margins while still complying with the FEL and should not be penalized with a mandatory compliance margin.

Valid comments were presented on both sides of this issue, but the Agency has concluded that the issue of the size of the compliance margin is not solely an ABT issue. Indeed, compliance margins are important in non-ABT families as well. Thus, the Agency has concluded that any actions to address this issue are better implemented as part of improvements in the overall compliance program, discussed above, rather than as a regulatory fix in the context of a modified ABT program. Moreover, EPA's final regulations, which implement a discount on credits earned by engine families that are less than 0.5 g/bhp-hr below the applicable NO_X or $NMHC+NO_X$ standard should reduce the concern evidenced in the comments regarding the possibility that the modified program will further erode compliance margins.

V. Economic Impact and Cost-effectiveness

The engine manufacturers, by signing the Statement of Principles, have committed themselves to challenging, long-term design targets. This provides manufacturers fully eight years to allocate resources and conduct planning for a very thorough long-term R&D program. Manufacturers have expressed a confidence that several years of research will provide them opportunity to develop a complying engine that they can market with full confidence. EPA's analysis of the costs of complying with the new standards anticipates a significant degree of technological development during this period.

The technologies described in the RIA together show a good deal of promise for controlling emissions, but also make clear that much effort remains to optimize for maximum emission-control effectiveness with minimum negative impacts on engine performance, durability, and fuel consumption. On the other hand, it has become clear that manufacturers have a great potential to advance beyond the current state of understanding by identifying aspects of the key technologies that contribute most to hardware or operational costs or other drawbacks and pursuing improvements, simplifications, or alternatives to limit those burdens. To reflect this improvement and long-term cost saving potential, the cost analysis includes an estimated $270 million (net present value in 1995) in R&D outlays for heavy-duty engine emission control over several years. The cost analysis accordingly presumes extensive improvements on the current state of technology from these future developments. The 1999 program review provides an opportunity to reassess EPA's projected costs in light of new information. EPA will revisit the analysis of the full life-cycle costs as part of the 1999 review. EPA and manufacturers will then confirm whether or not technology development is progressing as needed to meet the 2004 model year emission standards.

In assessing the economic impact of changing the emission standards, EPA has used a current best judgement of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. Full details of EPA's cost and cost-effectiveness analyses, including information not presented here, can be found in the Regulatory Impact Analysis in the public docket. EPA received a variety of comments on the cost analysis, either stating generally that the estimated costs were too low or recommending changes to specific details of the analysis. EPA made several minor changes to the analysis in response to comments received on the proposal. The most significant change was to include a broader use of EGR cooling. Further investigation of the EGR and EGR cooling led to revised cost estimates for those technologies. All the comments related to the cost projections and the associated changes are described in the Summary and Analysis of Comments.

Estimated cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include any expected increases in maintenance or fuel consumption. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2004 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1995 dollars. Life-cycle costs have been discounted to the year of sale.

A. Engine Costs

It is difficult to make a distinction between technologies that are needed to reduce NO_X emissions for compliance with 2004 model year standards and those technologies that offer other benefits for improved fuel economy and engine performance or for better control of particulate emissions. This is because several NO_X control methods such as the use of EGR can have negative impacts on these items for which the manufacturer must then compensate. EPA believes that manufacturers, in the absence of 2004 model year standards, would continue research on and eventually deploy numerous technological upgrades to improve engine performance or more cost-effectively control emissions. EPA therefore believes that a small set of technologies represent the primary changes manufacturers must make to meet the 2004 model year standards. Other technologies applied to heavy-duty engines, before or after implementation of new emission standards, will make relatively minor positive contributions to controlling NO_X emissions and are therefore considered secondary improvements for this analysis. In this category are design changes such as improved oil control, variable-geometry turbochargers, optimized catalyst designs, and variable-valve timing. Lean NO_X catalysts are also considered here to be secondary technologies, not because NO_X control is an incidental benefit, but rather because it is not clear at this time that they will be part of 2004 model year technology packages. Modifications to fuel injection systems will also continue independently of new standards, though some further development with a focus on reducing NO_X emissions would be evaluated.

Several technological improvements are projected for complying with the 2004 model year emission standards. The fact that manufacturers have several years before implementation of the new standards virtually ensures that the technologies used to comply with the standards will develop significantly before reaching production. This ongoing development will lead to reduced costs in three ways. First, research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission control technologies than we would predict given the current state of development. Similarly, the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, manufacturers will focus research efforts on any drawbacks, such as increased fuel consumption or maintenance costs, in an effort to minimize or overcome any potential negative effects.

A combination of primary technology upgrades are anticipated for the 2004 model year. Achieving very low NO_X emissions will require basic research on reducing in-cylinder NO_X and HC while at least holding PM levels below 0.10 g/bhp-hr. Modifications to basic engine design features can be used to improve intake air characteristics and distribution during combustion. Manufacturers are also expected to utilize upgraded electronics and advanced fuel-injection techniques and hardware to modify various fuel injection parameters, including injection pressure, further rate shaping and some split injection. EPA also expects that many engines will incorporate cool EGR that is carefully tailored to an engine's different operating modes.

If not developed and implemented properly, EGR has the potential to increase operating costs, either by increasing fuel consumption or requiring additional maintenance to avoid accelerated engine or component wear. While it is possible to develop scenarios and estimate the impact on operating costs of current diesel EGR concepts, this is of minimal value due to the expected continuing development of these technologies. Nevertheless, EPA has assessed the potential for increased operating costs for EGR-related maintenance and for fuel economy. EPA understands that manufacturers will make a great effort to minimize any potential new maintenance burden for the end user, investing in research to design an engine acceptable to users. The cost to address the durability concern is therefore included both as a maintenance item and as a fixed cost. An additional maintenance cost is anticipated for EGR systems—EPA expects engine rebuilding will include preventive maintenance to clean or replace EGR components.

With respect to fuel economy, several of the secondary technologies described below may lead to cost savings, while EGR has the potential to incur a fuel economy penalty. As with potential new maintenance cost burdens, EPA believes manufacturers will focus their research efforts on overcoming any negative impact on fuel economy caused by EGR. An EGR cooler, which EPA expects to be commonly used, would alone mitigate much of the potential increase in fuel consumption caused by recirculating exhaust gases. In light of the potential fuel economy improvements from some technologies and the anticipated use of cooled EGR systems, it would not be appropriate to include a penalty for increased fuel consumption as part of the cost analysis at this time. EPA will reexamine this issue as part of the 1999 review analysis.

Meeting the new NO_X+NMHC standard will somewhat increase the challenge to control particulate emissions from diesel engines. Manufacturers might use a variety of technologies to maintain control of particulate emissions; however, EPA believes that the fuel system improvements described above will be sufficient to prevent any potential particulate-emission increase while meeting the target levels for NO_X and NMHC. In fact, manufacturers are attempting to lessen the cost of meeting current particulate emission standards over the next several years by decreasing their reliance on catalysts. This underscores EPA's belief that 2004 model year engines will be able to control particulate emissions without major technological innovation.

The costs of these new technologies for meeting the 2004 model year standards are itemized in the Regulatory Impact Analysis and summarized in Table 2. For light heavy-duty vehicles, the cost of a new 2004 model year engine is estimated to increase by $258; operating costs over a full life-cycle increase by about $7. For medium heavy duty vehicles the purchase price of a new engine is estimated to increase by $397, with life-cycle operating costs increasing $62. Similarly, for heavy heavy-duty engines, the initial purchase price is expected to increase by $467, while estimated additional life-cycle operating costs are $131.

For the long term, EPA has identified various factors that would cause cost impacts to decrease over time. First, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. This expectation is similar to manufacturers' stated goal of decreasing their reliance on catalysts to meet emission standards in the future. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or

complexity of component parts.[30] The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2006 model year) and by reducing variable costs again by 20 percent starting with the sixth year of production. Finally, since fixed costs are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Table 2 lists the projected schedule of costs for each category of vehicle over time.

TABLE 2—PROJECTED DIESEL ENGINE COST AND PRICE INCREASES

[1995 dollars discounted to year of sale]

Vehicle class	Model year	Purchase price	Life-cycle operating cost
Light heavy-duty	2004	258	7
	2009 and later	109	7
Medium heavy-duty	2004	397	62
	2009 and later	136	62
Heavy heavy-duty	2004	467	131
	2009 and later	180	131

B. Aggregate Costs to Society

The above analysis develops per-vehicle cost estimates for each vehicle class. Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, these costs can be used to estimate the total cost to the nation for the new emission standards in any year. The result of this analysis is a projected total cost starting at $270 million in 2004. Per-vehicle costs savings over time reduce projected costs to a minimum value of $140 million in 2009, after which the growth in truck population leads to an increase in costs to $205 million in 2020. Total costs for these years are presented by vehicle class in Table 3. The calculated total costs represent a combined estimate of fixed costs as they are allocated over fleet sales, variable costs assessed at the point of sale, and operating costs as they are incurred in each calendar year.

TABLE 3—ESTIMATED ANNUAL COSTS FOR IMPROVED HEAVY-DUTY VEHICLES

[Millions of dollars]

Category	2004	2009	2020
Light heavy-duty	71	41	49
Medium heavy-duty	64	26	38
Heavy heavy-duty	107	56	93
Total	242	123	180

C. Cost-effectiveness

EPA has estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the NO_X plus NMHC standard over the typical lifetime of heavy-duty diesel vehicles covered by today's rule. The RIA contains a more detailed discussion of the cost-effectiveness analyses. No significant comments were received on the cost-effectiveness analysis presented in the proposal and the methodology for estimating the cost-effectiveness remains the same as used in the proposal.

EPA has examined the cost-effectiveness by two different methodologies. The first methodology yields a nationwide cost-effectiveness in which the total cost of compliance is divided by the nationwide emission benefits. The second methodology yields a regional ozone strategy cost-effectiveness in which the total cost of compliance is divided by the emission benefits attributable to the regions that impact ozone levels in ozone nonattainment areas.[31]

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forests.[32] Due to the difficulty in accurately quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. However, based on an analysis of existing studies that have estimated the value of such benefits in the past, the Agency believes that the actual monetary value of the multiple environmental and public health benefits produced by the large NO_X reductions under this action will likely be greater than the estimated compliance costs.[33]

As described above in the cost section, the cost of complying with the standards will vary by model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions and cost-effectiveness of the standards are shown in Table 4 for the same model years discussed above in the cost section. The cost-effectiveness results contained in Table 4 present the range in cost-effectiveness resulting from the two cost-effectiveness scenarios described above.

[30] "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924.

[31] The RIA contains a detailed description of areas included in the regional control strategy.

[32] For further discussion of these benefits, the reader is directed to Chapter 2 of the RIA.

[33] "Benefits of Reducing Mobile Source NO_X Emissions," prepared by ICF Incorporated for Office of Mobile Sources, U.S. EPA, Draft Final, September 30, 1996.

TABLE 4—DISCOUNTED PER-VEHICLE COSTS, EMISSION REDUCTIONS AND COST-EFFECTIVENESS OF THE NO_X PLUS NMHC STANDARD

Vehicle class	Model year	Discounted lifecycle costs	Discounted lifetime reductions (tons)		Discounted cost-effectiveness ($/ton)
			NO_X	NMHC	
Light—Heavy-Duty Diesel Vehicles	2004	$265	0.242	0.003	$1,100–$1,200
	2009 and later	117			500
Medium—Heavy-Duty Diesel Vehicles	2004	459	1.002	0.014	500
	2009 and later	198			200
Heavy—Heavy-Duty Diesel Vehicles	2004	598	3.059	0.043	200
	2009 and later	311			100
All—Heavy-Duty Diesel Vehicles	2004	422	1.377	0.019	300
	2009 and later	202			100–200

VI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is a "significant regulatory action" because the standards and other regulatory provisions have an annual effect on the economy in excess of $100 million. A Regulatory Impact Analysis has been prepared and is available in the docket associated with this rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rule.

B. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The Agency has also determined that the new emission standards and related provisions will not have a significant impact on a substantial number of small entities, since none of the engine manufacturers affected by these regulations is a small business entity (see Chapter 3 of the Final Regulatory Impact Analysis for the rule).

This action also contains provisions clarifying what would and would not be considered a prohibited act (tampering) under CAA Section 203 during the heavy-duty engine rebuilding processes. Also, the rule contains basic recordkeeping requirements for rebuilders which are consistent with current customary rebuilding practices. Small businesses are integral to the heavy-duty engine rebuilding industry as noted in comments provided by the Automotive Engine Rebuilders Association.[34] However, EPA does not believe that the requirements related to engine rebuilding will have a significant impact on a substantial number of these small entities for the following reasons. EPA is defining how a broad existing requirement (CAA Section 203) applies specifically to the process of rebuilding/remanufacturing engines, but EPA is not creating a new program. These requirements are consistent with current customary practices in this industry. During the development of the proposal, EPA consulted with the Engine Manufacturers Association, the Automotive Engine Rebuilders Association, and the Production Engine Rebuilders Association, associations which together represent a substantial portion of the engine rebuilding and related businesses. These organizations did not raise concerns that the proposal may have a significant impact on small businesses. Furthermore, organizations representing small rebuilders submitted only supportive comments during the public comment period for the rulemaking. Finally, an EPA contractor conducted an industry characterization which further supports that engine rebuilding practices are consistent with the requirements and would not be changed as a result of the requirements[35].

C. Compliance With Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104.

EPA is finalizing requirements to collect certification results, durability, maintenance, and averaging, banking and trading information, and is formalizing recordkeeping procedures for engine rebuilding companies which are consistent with current industry practices. This information will be used to ensure compliance with and enforce the provisions in this rule. Section 208 (a) of the CAA requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations, therefore submission of the

[34] EPA Docket A–95–27, II-D–41.

[35] "Industry Characterization: On-road Heavy-duty Diesel Engine Rebuilders", ICF Incorporated. Contract number 68–C5–0010, Work assignment 102, January 3, 1997, Docket A–95–27.

information is mandatory. The confidentiality of any information submitted to EPA will be protected to the full extent provided in 40 CFR Part 2.

EPA estimates the average first year hours burden per response to be 4,670, the frequency of response to be annual, and the estimated number of likely respondents to be twenty. EPA estimates the aggregate first year hours burden to be 93,410. EPA estimates the annual first year cost to be $5,603,280, including the annualized capital and start-up costs. Subsequent year burdens are estimated to be one-tenth of the first year estimates due to the practice of engine family carry-over from model year-to-model year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA e small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the program would significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of $100 million or more in any one year for the private sector. EPA believes that the program represents the least costly, most cost-effective approach to achieving the air quality goals of the rule. EPA has performed the required analyses. The reader is directed to the Regulatory Impact Analysis for further information regarding these analyses.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Reform Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. OMB has designated this a "major rule" as defined in 5 U.S.C. 804(2).

VII. Statutory Authority

Section 202(a)(3) authorizes EPA to establish emissions standards for new heavy-duty motor vehicle engines. See 42 U.S.C. 7521(a)(3). These standards are to reflect the greatest reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology. This provision also establishes the lead time and stability requirements for these standards. Pursuant to Sections 202(a)(1) and 202(d), these emissions standards apply for the useful life period established by the Agency. See 42 U.S.C. 7521(a)(1), 7521(d). Other provisions of Title II of the Act, along with Section 301, are additional authority for the measures finalized in this action.

VIII. Judicial Review

Under section 307(b)(1) of the Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication in the **Federal Register**. Under section 307(b)(2) of the Act, the requirements which are the subject of today's Notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements. This rulemaking and any petitions for review are subject to the provisions of section 307(d) of the Clean Air Act.

IX. Copies of Rulemaking Documents

Copies of documents related to this rulemaking are available in the public docket for the rule and over the internet as described in the **ADDRESSES** section above.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 6, 1997.

Carol M. Browner,

Administrator.

APPENDIX TO THE PREAMBLE—TABLE OF CHANGES MADE TO PART 9 AND SUBPARTS A AND N OF PART 86

Section	Change	Reason
1. §9.1	Revised to add OMB approval numbers.	New OMB approval numbers.
1. Authority	None.	
2. §86.1	Revised to add document reference.	Updated ASTM methodology for significant digits.
3. §86.098–3	Revised to include new abbreviations.	Add abbreviations for terms averaging, banking and trading and heavy-duty engines.
4. §86.098–10	Revision of references	Revise references to averaging, banking, and trading programs.
5. §86.098–11	Revision of references	Revise references to averaging, banking, and trading programs.
6. §86.098–15	Add §86.098–15	Incorporation of revisions to NO_x and particulate averaging, banking and trading programs.
7. §86.098–23	Revise §86.098–23	Incorporate changes due to new standards and ABT programs.
8. §86.098–30	Revise §86.098–30	Incorporate changes due to new ABT programs.
9. §86.099–11	Revise §86.099–11	Revise references to averaging, banking, and trading programs.
10. §86.001–23	Revise §86.001–23	Incorporate references to §98.098–23.
11. §86.001–30	Revise §86.001–30	Incorporate references to §98.098–30.
12. §86.004–2	Add §86.004–2	Incorporation of new useful life for heavy heavy-duty diesel engines.
13. §86.004–11	Add §86.004–11	Incorporation of new NO_x plus NMHC standards for diesel heavy-duty engines.
14. §86.004–15	Add §86.004–15	Incorporation of revisions to NO_x and particulate averaging, banking and trading program.
15. §86.004–21	Add §86.004–21	Incorporate changes due to new standards and ABT programs.
16. §86.004–25	Add §86.004–25	Incorporation of revisions to maintenance requirements.
17. §86.004–28	Revise §86.004–28	Incorporate changes in deterioration factors due to new standards and allow options to NMHC measurement for diesel engines.
18. §86.004–30	Revise §86.004–30	Incorporate changes due to new standards and ABT programs.
19. §86.004–38	Add §86.004–38	Incorporation of maintenance instruction requirements.
20. §86.004–40	Add §86.004–40	Incorporation of engine rebuild practices provisions.
21. §86.1311–94	Revise Section 86.004–40(3)	Incorporate allowance for direct NMHC measurement using a GC for NGVs.
22. §86.1344–94	Revise Section 86.1344–94(e)(22).	Incorporation of NMHC test data requirement.

For the reasons set out in the preamble, chapter I, title 40 is amended as follows:

Part 9 [Amended]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries in numerical order under the indicated heading to the table to read as follows:

§9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	. . . . .
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
86.004.38	2060–0104
86.004.40	2060–0104
* * * * *	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 86.1 the table in paragraph (b)(1) is amended by adding a new entry to the end of the table to read as follows:

§86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 86 reference
. . . . .	. . . . .
ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications	86.098–15, 86.004–15

* * * * *

3. Section 86.098–3 is revised to read as follows:

§ 86.098–3 Abbreviations.

(a) The abbreviations in § 86.096–3 continue to apply. The abbreviations in this section apply beginning with the 1998 model year.

(b) The abbreviations of this section apply to this subpart, and also to subparts B, E, F, G, K, M, N, and P of this part, and have the following meanings:

T_D—Dispensed fuel temperature
ABT—Averaging, banking, and trading
HDE—Heavy-duty engine

4. Section 86.098–10 is amended by revising the first sentence in paragraphs (a)(1)(i)(C)(*2*), (a)(1)(i)(C)(*3*), (a)(1)(ii)(C)(*2*), (a)(1)(ii)(C)(*3*), (a)(1)(iii)(C)(*2*), (a)(1)(iv)(C)(*2*), (a)(1)(v)(C)(*2*), (a)(1)(vi)(C)(*2*) to read as follows:

§ 86.098–10 Emission standards for 1998 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a)(1) * * *

(i) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

(*3*) A manufacturer may elect to include any or all of its liquified petroleum gas-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(ii) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

(*3*) A manufacturer may elect to include any or all of its liquified petroleum gas-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(iii) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(iv) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(v) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(vi) * * *

(C) * * *

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

5. Section 86.098–11 is amended by revising the first sentence in paragraphs (a)(3)(ii) and (a)(4)(iii) introductory text to read as follows:

§ 86.098–11 Emission standards for 1998 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(3) * * *

(ii) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the NO_X or NO_X plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(4) * * *

(iii) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the particulate ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

6. A new § 86.098–15 is added to subpart A to read as follows:

§ 86.098–15 NO_X and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.098–15 includes text that specifies requirements that differ from § 86.094–15. Where a paragraph in § 86.094–15 is identical and applicable to § 86.098–15, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–15."

(a) through (b) [Reserved] For guidance see § 86.094–15.

(c)(1) For each participating engine family, NO_X and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a Megagram (MG). Consistent units are to be used throughout the equation.

(i) For determining credit need for all engine families and credit availability for engine families generating credits for averaging programs only:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

(ii) For determining credit availability for engine families generating credits for trading or banking programs:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6}) \times (\text{Discount})$$

(iii) For purposes of the equations in paragraphs (c)(1)(i) and (ii) of this section:

Std = the current and applicable heavy-duty engine NO_X or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.
FEL = the NO_X or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.
CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.
UL = the useful life, or alternative life as described in paragraph (f) of § 86.094–21, for the given engine family in miles.
Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.
Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. The discount applied here is 0.8. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(2)(i) The transient cycle conversion factor is the total (integrated) cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles.

(ii) When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon a production weighted average value of the configurations in an engine family to calculate the conversion factor.

(d) through (i) [Reserved] For guidance see § 86.094–15.

(j) *Optional program for early banking.* Provisions set forth in paragraphs (a) through (i) of this section apply except as specifically stated otherwise in paragraph (j) of this section.

(1) To be eligible for the optional program described in paragraph (j) of this section, the following must apply:

(i) Credits are generated from diesel cycle heavy-duty engines.

(ii) During certification, the manufacturer shall declare its intent to include specific engine families in the program described in this paragraph (j). Separate declarations are required for each program and no engine families may be included in both programs in the same model year.

(2) *Credit generation and use.* (i) Credits shall only be generated by 1998 and later model year engine families.

(ii) Credits may only be used for 2004 and later model year heavy-duty diesel engines. When used with 2004 and later model year engines, NO_X credits may be used to meet the NO_X plus NMHC standard, except as otherwise provided in § 86.004–11(a)(1)(i)(D).

(iii) If a manufacturer chooses to use credits generated under paragraph (j) of this section prior to model year 2004, the averaging, trading, and banking of such credits shall be governed by the program provided in paragraphs (a) through (i) of this section and shall be subject to all discounting, credit life limits and all other provisions contained therein. In the case where the manufacturer can demonstrate that the credits were discounted under the program provided in paragraph (j) of this section, that discount may be accounted for in the calculation of credits described in paragraph (c) of this section.

(3) *Program flexibilities.* (i) NO_X and PM credits that are banked until model year 2004 under this paragraph (j) may be used in 2004 or any model year thereafter without being forfeited due to credit age. This supersedes the requirement in paragraph (f)(2)(i) of this section.

(ii) There are no regional category restraints for averaging, trading, and banking of credits generated under the program described in paragraph (j) of this section. This supersedes the regional category provisions described in the opening text of paragraphs (d) and (e) of this section.

(iii) *Credit discounting.* (A) For NO_X and PM credits generated under this paragraph (j) from engine families with NO_X certification levels greater than 3.5 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 0.9 shall be used in place of 0.8 in the credit availability equation in paragraph (c)(1) of this section.

(B) For NO_X and PM credits generated under this paragraph (j) from engine families with NO_X certification levels less than or equal to 3.5 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 1.0 shall be used in place of 0.8 in the credit availability equation in paragraph (c)(1) of this section.

(iv) *Credit apportionment.* At the manufacturers option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(A) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.098–11. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

(*1*) For engine sales reported as "ABT-only credits", the credits generated must be used solely in the ABT program described in this section.

(*2*) The engine manufacturer may declare a portion of engine sales "nonmanufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in paragraph (c)(1) of this section, would belong to another party. For ABT, the manufacturer may not generate any credits for the engine sales reported as "nonmanufacturer-owned credits". Engines reported as "nonmanufacturer-owned credits" shall comply with the FEL and the requirements of the ABT program in all other respects.

(B) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(C) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(D) Manufacturers shall determine and state the number of engines sold as "ABT-only credits" and "nonmanufacturer-owned credits" in the end-of-model year reports required under § 86.098–23.

7. Section 86.098–23 is amended by revising paragraphs (a), (b)(1), (b)(3), (b)(4)(i), (b)(4)(ii), (c) through (e)(2), (f) through (l), the first sentence of (m)(1), paragraphs (m)(2)(i) and (m)(2)(iv) to read as follows:

§ 86.098–23 Required data.

* * * * *

(a) The manufacturer shall perform the tests required by the applicable test procedures and submit to the Administrator the information described in paragraphs (b) through (m) of this section, provided, however, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of a vehicle (or engine) for which emission data are available or will be made available under the provisions of § 86.091–29.

(b) *Durability data.* (1)(i) The manufacturer shall submit exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) The manufacturer shall submit exhaust emission deterioration factors for light-duty trucks and HDEs and all test data that are derived from the testing described under § 86.094–21(b)(5)(i)(A), as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.098–30 will meet each emission standard (or family emission limit, as appropriate) in § 86.094–9, § 86.098–10, § 86.098–11 or superseding emissions standards sections as appropriate, in actual use for the useful life applicable to that standard.

* * * * *

(3) For heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines, the manufacturer shall submit evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.094–21(b)(4)(ii).

Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.098–30 will meet the evaporative emission standards in §§ 86.096–10 and 86.098–11 or superseding emissions standards sections as applicable in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses, and evaluations, is available to the Administrator upon request.

(4)(i) For heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, the manufacturer shall submit a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.098–10 or § 86.098–11 or superseding emissions standards sections as applicable as determined by the provisions of § 86.098–28. Furthermore, the manufacturer shall submit a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the requested statement is based, are available to the Administrator upon request.

(ii) For heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, the manufacturer shall submit a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.096–10 or § 86.098–11 or superseding emissions standards sections as applicable as determined by the provisions of § 86.098–28. Furthermore, the manufacturer shall submit a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the requested statement is based, are available to the Administrator upon request.

* * * * *

(c)(1) [Reserved] For guidance see § 86.095–23.

(c)(2) Certification engines. (i) The manufacturer shall submit emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.098–26(c)(4). These data shall also include, where there is a combined standard (e.g., NMHC + NO_x), emissions data for the individual pollutants as well as for the pollutants when combined. In lieu of providing emission data on idle CO emissions or particulate emissions from methanol-fueled diesel-cycle certification engines, or on CO emissions from petroleum-fueled or methanol-fueled diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emission standards of § 86.094–11 or superseding emissions standards sections as applicable. In lieu of providing emission data on smoke emissions from methanol-fueled or petroleum-fueled diesel certification engines, the Administrator may, on the request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emissions standards of § 86.098–11 or superseding emissions standards sections as applicable, except for engines with a particulate matter certification level exceeding 0.25 grams per brake horsepower-hour. In lieu of providing emissions data on smoke emissions from petroleum-fueled or methanol-fueled diesel engines when conducting Selective Enforcement Audit testing under 40 CFR part 86, subpart K, the Administrator may, on separate request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable smoke emissions standards of § 86.098–11 or superseding emissions standards sections as applicable, except for engines with a particulate matter certification level exceeding 0.25 grams per brake horsepower-hour.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with subpart N of this part, when making application for certification. However, for confirmatory, Selective Enforcement Audit, and recall testing by the Agency, both the cold-start and hot-start test data, as specified in subpart N of this part, will be included in the official results.

(d) The manufacturer shall submit a statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.090–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.090–5(b), and that the data derived from such tests, are available to the Administrator upon request.

(e)(1) The manufacturer shall submit a statement that the test vehicles (or test engines) for which data are submitted to demonstrate compliance with the applicable standards (or family emission limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, that they have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification, and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) were not as described in the application for certification or were not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family emission limits, as appropriate). The provisions of § 86.098–30(b) shall then be followed.

(2) For evaporative and refueling emission durability, or light-duty truck or HDE exhaust emission durability, the manufacturer shall submit a statement of compliance with paragraph (b)(1)(ii),(b)(2), (b)(3) or (b)(4) of this section, as applicable.

* * * * *

(f) through (g) [Reserved] For guidance see § 86.095–23.

(h) Additionally, manufacturers participating in any of the emissions ABT programs under § 86.098–15 or superseding ABT sections for HDEs shall submit for each participating family the items listed in paragraphs (h)(1) through (3) of this section.

(1) *Application for certification.* (i) The application for certification will include a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, when included in any of the ABT programs, cause the applicable emissions standard(s) to be exceeded.

(ii) The application for certification will also include identification of the section of this subpart under which the family is participating in ABT (i.e., § 86.098–15 or superseding ABT sections), the type (NOX, NO_x+NMHC, or particulate) and the projected number of credits generated/needed for this family, the applicable averaging set, the projected U.S. (49-state or 50 state, as applicable) production volumes, by quarter, NCPs in use on a similar family and the values required to calculate credits as given in the applicable ABT section. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in the applicable ABT section. The application must project that each engine family will be in compliance with the applicable emission standards based on the engine mass emissions and credits from averaging, trading and banking.

(2) [Reserved]

(3) *End-of-year report.* The manufacturer shall submit end-of-year reports for each engine family participating in any of the ABT programs, as described in paragraphs (h)(3)(i) through (iv) of this section.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. (49-state or 50-state, as applicable) production volume, the values required to calculate credits as given in the applicable ABT section, the resulting type and number of credits generated/required, and the NCPs in use on a similar NCP family. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). Any credit discount factor described in the applicable ABT section must be included as required.

(iii) The production counts for end-of-year reports shall be based on the location of the first point of retail sale (e.g., customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(i) Failure by a manufacturer participating in the ABT programs to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles and engines that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) for each such vehicle and engine.

(j) Failure by a manufacturer generating credits for deposit only in the HDE banking programs to submit their end-of-year reports in the applicable specified time period (i.e., 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(k) Engine families certified using NCPs are not required to meet the requirements outlined in paragraphs (f) through (j) of this section.

(l) [Reserved]. For guidance see § 86.095–23.

(m) * * *

(1) In the application for certification the projected sales volume of evaporative families certifying to the respective evaporative test procedure and accompanying standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, 86.091–10 and 86.094–11 or as set forth or otherwise referenced in §§ 86.096–8, 86.096–9, 86.096–10 and 86.098–11 or as set forth or otherwise referenced in superseding emissions standards sections. * * *

(2) * * *

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: For heavy-duty engines—Director, Engine Programs and Compliance Divisions (6403J), For vehicles—Director, Vehicle Compliance and Programs Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time may result in certificate(s) for the evaporative family(ies) being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

* * * * *

8. Section 86.098–30 is amended by revising paragraphs (a)(4)(iv)(A) through (a)(12) to read as follows:

§ 86.098–30 Certification.

* * * * *

(a)(4)(iv)(A) through (a)(9) [Reserved]. For guidance see § 86.094–30.

(a)(10)(i) For diesel-cycle light-duty vehicle and diesel-cycle light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel-cycle particulate standard, or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void ab initio for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel-cycle engines which are included in the particulate ABT programs under §§ 86.094–15, 86.098–15, or superseding ABT sections, the provisions of paragraphs (a)(10)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with all applicable ABT provisions and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all applicable ABT provisions will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with this

part. The certificate shall be void ab initio for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all HDEs which are included in the NO_x or NO_x plus NMHC ABT programs under § 86.098–15 or superseding ABT sections, the provisions of paragraphs (a)(11)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with all applicable ABT provisions and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all applicable ABT provisions will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(a)(12) [Reserved]. For guidance see § 86.094–30.

* * * * *

9. Section 86.099–11 is amended by revising the first sentence of paragraphs (a)(3)(ii) and (a)(4)(iii) introductory text to read as follows:

§ 86.099–11 Emission standards for 1999 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(3) * * *

(ii) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the NO_x or NO_x plus NMHC ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

(4)* * *

(iii) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the particulate ABT programs for HDEs, within the restrictions described in § 86.098–15 as applicable. * * *

* * * * *

10. Section 86.001–23 is amended by revising paragraphs (a) through (b)(1), (b)(3), (b)(4), (c), (d), (e)(1), (e)(2), and (f) through (m) to read as follows:

§ 86.001–23 Required data.

* * * * *

(a) through (b)(1) [Reserved]. For guidance see § 86.098–23.

* * * * *

(b)(3) and (b)(4) [Reserved]. For guidance see § 86.098–23.

(c)(1) [Reserved]. For guidance see § 86.095–23.

(c)(2) through (e)(1) [Reserved]. For guidance see § 86.098–23.

(e)(2) For evaporative and refueling emissions durability, or light-duty truck or HDE exhaust emissions durability, a statement of compliance with paragraph (b)(2) of this section or § 86.098–23 (b)(1)(ii), (b)(3), or (b)(4) as applicable.

* * * * *

(f) and (g) [Reserved]. For guidance see § 86.095–23.

(h) through (m) [Reserved]. For guidance see § 86.098–23.

11. Section 86.001–30 is amended by revising paragraphs (a)(4)(iv)(A) through (a)(12) to read as follows:

§ 86.001–30 Certification.

* * * * *

(a) * * *

(4) * * *

(a)(4)(iv)(A) through (a)(9) [Reserved]. For guidance see § 86.094–30.

(a)(10) and (a)(11) [Reserved]. For guidance see § 86.098–30.

(a)(12) [Reserved]. For guidance see § 86.094–30.

* * * * *

12. A new § 86.004–2 is added to subpart A to read as follows:

§ 86.004–2 Definitions.

The definitions of § 86.001–2 continue to apply to 2001 and later model year vehicles. The definitions listed in this section apply beginning with the 2004 model year.

Useful life means:

(1) For light-duty vehicles, and for light light-duty trucks not subject to the Tier 0 standards of § 86.094–9(a), intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9. The useful life of evaporative and/or refueling emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96, and/or the refueling emission test requirements of § 86.151–98, is defined as a period of use of 10 years or 100,000 miles, whichever occurs first.

(2) For light light-duty trucks subject to the Tier 0 standards of § 86.094–9(a), and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first. The useful life of evaporative emission and/or refueling control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96, and/or the refueling emission test requirements of § 86.151–98, is also defined as a period of 11 years or 120,000 miles, whichever occurs first.

(3) For an Otto-cycle HDE family:

(i) For hydrocarbon and carbon monoxide standards, a period of use of 10 years or 110,000 miles, whichever first occurs.

(ii) For the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For the portion of evaporative emission control systems subject to the evaporative emission test requirements of § 86.1230–96, a period of use of 10 years or 110,000 miles, whichever first occurs.

(4) For a diesel HDE family:

(i) For light heavy-duty diesel engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbons emissions standards, a period of use of 10 years or 110,000 miles, whichever first occurs.

(ii) For medium heavy-duty diesel engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbons emission standards, a period of use of 10 years or 185,000 miles, whichever first occurs.

(iii) For heavy heavy-duty diesel engines, for carbon monoxide, particulate, and oxides of nitrogen plus non-methane hydrocarbon emissions standards, a period of use of 10 years or 435,000 miles, or 22,000 hours, whichever first occurs, except as provided in paragraphs (4)(iv) and (4)(v) of this definition.

(iv) The useful life limit of 22,000 hours in paragraph (4)(iii) of this definition is effective as a limit to the useful life only when an accurate hours meter is provided by the manufacturer with the engine and only when such hours meter can reasonably be expected to operate properly over the useful life of the engine.

(v) For an individual engine, if the useful life hours limit of 22,000 hours is reached before the engine reaches 10 years or 100,000 miles, the useful life shall become 10 years or 100,000 miles, whichever occurs first, as required under Clean Air Act section 202(d).

(5) As an option for both light-duty trucks under certain conditions and HDE families, an alternative useful life period may be assigned by the Administrator under the provisions of § 86.094–21(f).

Warranty period, for purposes of HDE emissions defect warranty and emissions performance warranty, shall

be a period of 5 years/50,000 miles, whichever occurs first, for Otto-cycle HDEs and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period shall be 5 years/100,000 miles, whichever occurs first. However, in no case may this period be less than the basic mechanical warranty period that the manufacturer provides (with or without additional charge) to the purchaser of the engine. Extended warranties on select parts do not extend the emissions warranty requirements for the entire engine but only for those parts. In cases where responsibility for an extended warranty is shared between the owner and the manufacturer, the emissions warranty shall also be shared in the same manner as specified in the warranty agreement.

13. A new § 86.004–11 is added to subpart A to read as follows:

§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 2004 and later model year diesel HDEs shall not exceed the following:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO_x + NMHC) for engines fueled with either petroleum fuel, natural gas, or liquefied petroleum gas*, 2.4 grams per brake horsepower-hour (0.89 gram per megajoule), as measured under transient operating conditions.

(B) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO_x + NMHCE) for engines fueled with methanol*, 2.4 grams per brake horsepower-hour (0.89 gram per megajoule), as measured under transient operating conditions.

(C) *Optional Standard*. Manufacturers may elect to certify to an Oxides of Nitrogen plus Non-methane Hydrocarbons (or equivalent for methanol-fueled engines) standard of 2.5 grams per brake horsepower-hour (0.93 gram per megajoule), as measured under transient operating conditions, provided that Non-methane Hydrocarbons (or equivalent for methanol-fueled engines) do not exceed 0.5 grams per brake horsepower-hour (0.19 gram per megajoule) NMHC (or NMHCE for methanol-fueled engines), as measured under transient operating conditions.

(D) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the emissions ABT programs for HDEs, within the restrictions described in § 86.004–15 or superseding applicable sections. If the manufacturer elects to include engine families in any of these programs, the NO_x plus NMHC (or NO_x plus NMHCE for methanol-fueled engines) FELs may not exceed 4.5 grams per brake horsepower-hour (1.7 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs. Additionally, families certified to the optional standard contained in paragraph (a)(1)(i)(C) of this section shall not exceed 0.50 grams per brake horsepower-hour (0.19 gram per megajoule) NMHC (or NMHCE for methanol-fueled engines) through the use of credits.

(E) No later than December 31, 1999, the Administrator shall review the emissions standards set forth in paragraph (a)(1)(i) of this section and determine whether these standards continue to be appropriate under the Act.

(ii) *Carbon monoxide*. (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel HDEs only).

(iii) *Particulate*. (A) For diesel engines to be used in urban buses, 0.05 gram per brake horsepower-hour (0.019 gram per megajoule) for certification testing and selective enforcement audit testing, and 0.07 gram per brake horsepower-hour (0.026 gram per megajoule) for in-use testing, as measured under transient operating conditions.

(B) For all other diesel engines, 0.10 gram per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the particulate ABT programs for HDEs, within the restrictions described in § 86.004–15 or superseding applicable sections. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.25 gram per brake horsepower-hour (0.093 gram per megajoule).

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(2) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part, except as noted in § 86.098–23(c)(2) or superceding sections.

(b)(1) The opacity of smoke emission from new 2004 and later model year diesel HDEs shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(3) Evaporative emissions (total of non-oxygenated hydrocarbons plus methanol) from heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(1) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(2) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(C) Fuel dispensing spitback test: 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(1) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(2) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraph

(b)(3)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(iv) All fuel vapor generated during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(4) Evaporative emissions from 2004 and later model year heavy-duty vehicles equipped with natural gas-fueled or liquefied petroleum gas-fueled HDEs shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(4) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(B) For vehicles with a Gross Vehicle Weight Rating greater than 26,000 pounds, the standards set forth in paragraphs (b)(3)(ii) and (b)(4)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 2004 or later model year methanol-, natural gas-, or liquefied petroleum gas-fueled diesel, or any naturally-aspirated diesel HDE. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

14. A new § 86.004–15 is added to subpart A to read as follows:

§ 86.004–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for NO_x, NO_x plus NMHC, and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. Participation in these programs is voluntary.

(2)(i) Engine families with FELs exceeding the applicable standard shall obtain emission credits in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, within the averaging set restrictions described in this section.

(ii) Engine families with FELs below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(iii) Credits scheduled to expire in the earliest model year shall be used, prior to using other available credits, to offset emissions of engine families with FELs exceeding the applicable standard.

(b) Participation in the NO_x, NO_x plus NMHC, and/or particulate averaging, trading, and banking programs shall be done as follows.

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (i.e., NO_x, NO_x plus NMHC, and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these three programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower-hour for NO_x, NO_x plus NMHC, emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_x, NO_x plus NMHC, and particulate emission standards.

(iii) Calculate the projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for engine families requiring credits for certification.

(B) State where the quarterly projected credits will be applied for engine families generating credits.

(C) Credits may be obtained from or applied to only engine families within the same averaging set as described in paragraph (d) or (e) of this section. Credits available for averaging, trading, or banking as defined in § 86.090–2, may be applied exclusively to a given engine family, or reserved as defined in § 86.091–2.

(2) Based on this information each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each engine family has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each engine family involved must state specifically the source (manufacturer/engine family) of the credits being used. In cases where credits are being generated/supplied, each engine family involved must state specifically the designated use (manufacturer/engine family or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-model year reports required under § 86.001–23.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under § 86.091–7(c)(8).

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Engine families without an adequate amount of NO_x, NO_x plus NMHC, and/or particulate emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided ab initio for engine families exceeding the emission standard.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative balances may be adjusted by EPA for retroactive use.

(i) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that engine family to zero, using the discount specified in paragraph (c)(1) of this section on the ratio of credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the family in question to zero, EPA may void the certificate for that engine family ab initio.

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e., resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c)(1) For each participating engine family, NO_x, NO_x plus NMHC, and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

(i) For determining credit need for all engine families and credit availability for engine families generating credits for averaging programs only:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

(ii) For determining credit availability for engine families generating credits for trading or banking programs:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6}) \times (\text{Discount})$$

(iii) For purposes of the equations in paragraphs (c)(1) (i) and (ii) of this section:

Std = the current and applicable heavy-duty engine NO_x, NO_x plus NMHC, or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_x, NO_x plus NMHC, or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life described in § 86.004–2, or alternative life as described in paragraph (f) of § 86.004–21, for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraph (k) of this section, the discount applied here is 0.9 for diesel-cycle engines. The discount applied here is 0.8 for all Otto-cycle engines. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(2)(i) The transient cycle conversion factor is the total (integrated) cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles.

(ii) When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon a production weighted average value of the configurations in an engine family to calculate the conversion factor.

(d) *Averaging sets for NO_x and for NO_x plus NMHC emission credits.* The averaging and trading of NO_x emission credits for Otto-cycle engines and NO_x plus NMHC emission credits for diesel-cycle engines will only be allowed between heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of NO_x and NO_x plus NMHC emission credits for heavy-duty engines are defined as follows:

(1) For NO_x credits from Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Gasoline-fueled heavy-duty vehicles certified under the provisions of § 86.085–1(b) may not average or trade with gasoline-fueled heavy-duty Otto-cycle engines, but may average or trade credits with light-duty trucks.

(iii) The averaging and trading of NO_x emission credits will only be allowed between heavy-duty engine families in the same regional category. Otto-cycle engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. Banking and trading are not applicable to engines sold in California.

(2) For NO_x plus NMHC credits from diesel-cycle heavy-duty engines:

(i) Each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.004–2, constitute an averaging set. Averaging and trading among all diesel-cycle engine families within the same primary service class is allowed.

(ii) Urban buses are treated as members of the primary intended service class where they otherwise would fall.

(e) *Averaging sets for particulate emission credits.* The averaging and trading of particulate emission credits will only be allowed between diesel cycle heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of particulate emission credits for diesel cycle heavy-duty engines are defined as follows:

(1) Engines intended for use in urban buses constitute a separate averaging set from all other heavy-duty engines. Averaging and trading between diesel cycle bus engine families is allowed.

(2) For heavy-duty engines, exclusive of urban bus engines, each of the three primary intended service classes for heavy-duty diesel cycle engines, as defined in § 86.004–2, constitute an averaging set. Averaging and trading between diesel-cycle engine families within the same primary service class is allowed.

(3) Otto cycle engines may not participate in particulate averaging, trading, or banking.

(f) *Banking of NO_X, NO_X plus NMHC, and particulate emission credits.* (1) *Credit deposits.* (i) NO_X, NO_X plus NMHC, and particulate emission credits may be banked from engine families produced in any model year.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) After being generated, banked NO_X credits shall be available for use within three model years following the model year in which they were generated. NO_X credits from Otto-cycle HDE families not used within the period specified above shall be forfeited. NO_X plus NMHC and particulate credits from diesel-cycle HDE families do not expire.

(ii) Manufacturers withdrawing banked NO_X, NO_X plus NMHC, and/or particulate credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and other restrictions described in paragraphs (d) and (e) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits can not be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for NO_X, NO_X plus NMHC, or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(iii) Banked NO_X credits from 2003 and prior may be used in place of NO_X plus NMHC credits after 2003 provided that they are used in the correct averaging set and the NO_X credits have not expired.

(g)(1) For the purposes of paragraph (g) of this section, the following paragraphs assume NO_X, NO_X plus NMHC, and particulate nonconformance penalties (NCPs) will be available for the 2004 and later model year HDEs.

(2) Engine families using NO_X, NO_X plus NMHC, and/or particulate NCPs but not involved in averaging:

(i) May not generate NO_X, NO_X plus NMHC, or particulate credits for banking and trading.

(ii) May not use NO_X, NO_X plus NMHC, or particulate credits from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs and banking and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only while the other, whose FEL does not equal the standard, must use credits only.

(4) If a manufacturer has any engine family in a given averaging set which is using NO_X, NO_X plus NMHC, and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

(h) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(i) Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the engine purchaser. Therefore, upon request by the Administrator, the engine manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

(j) *Credit apportionment.* At the manufacturers option, credits generated from diesel-cycle heavy-duty engines under the provisions described in this section may be sold to or otherwise provided to the another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.004–11. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

(i) For engine sales reported as "ABT-only credits", the credits generated must be used solely in the ABT program described in this section.

(ii) The engine manufacturer may declare a portion of engine sales "nonmanufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in (c)(1) of this section, would belong to the engine purchaser. For ABT, the manufacturer may not generate any credits for the engine sales reported as "nonmanufacturer-owned credits". Engines reported as "nonmanufacturer-owned credits" shall comply with the FEL and the requirements of the ABT program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(4) Manufacturers shall determine and state the number of engines sold as "ABT-only credits" and "nonmanufacturer-owned credits" in the end-of-model year reports required under § 86.001–23.

(k) *Additional Flexibility.* If a diesel-cycle engine family meets the conditions of either paragraph (k)(1) or (2) of this section, a Discount of 1.0 may be used in the trading and banking calculation, for both NO_X plus NMHC and for particulate, described in paragraph (c)(1) of this section.

(1) The engine family certifies with a certification level of 1.9 g/bhp-hr NO_X plus NMHC or lower for all diesel-cycle engine families.

(2) All of the following must apply to the engine family:

(i) Diesel-cycle engines only;

(ii) 2004, 2005, and 2006 model years only;

(iii) Must be an engine family using carry-over certification data from prior to model year 2004 where the NO_X plus the HC certification level prior to model year 2004 is below the NO_X plus NMHC or NO_X plus NMHCE standard set forth in § 86.004–11. Under this option, the NO_X credits generated from this engine family prior to model year 2004 may be used as NO_X plus NMHC credits.

15. A new § 86.004–21 is added to subpart A to read as follows:

§ 86.004–21 Application for certification.

Section 86.004–21 includes text that specifies requirements that differ from § 86.094–21 or § 86.096–21. Where a paragraph in § 86.094–21 or § 86.096–21 is identical and applicable to § 86.004–21, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–21." or "[Reserved]. For guidance see § 86.096–21.".

(a) through (b)(3) [Reserved]. For guidance see § 86.094–21.

(b)(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission and/or refueling emission deterioration factors, as appropriate, required to be determined and supplied in § 86.001–23(b)(2).

(b)(4)(ii) through (b)(5)(iv) [Reserved]. For guidance see § 86.094–21.

(b)(5)(v) For light-duty vehicles and applicable light-duty trucks with non-integrated refueling emission control systems, the number of continuous UDDS cycles, determined from the fuel economy on the UDDS applicable to the test vehicle of that evaporative/refueling emission family-emission control system combination, required to use a volume of fuel equal to 85% of fuel tank volume.

(6) *Participation in averaging programs*—(i) *Particulate averaging.* (A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks or the particulate averaging program for heavy-duty diesel engines, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to hundredth of a gram per mile or hundredth of a gram per brake horsepowerhour for HDEs.

(C) The manufacturer may at any time during production elect to change the level of any family particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in §§ 86.090–2 and 86.094–28(b)(5)(i).

(ii) *NO_X and NO_X plus NMHC averaging.* (A) If the manufacturer elects to participate in the NO_X averaging program for light-duty trucks or otto-cycle HDEs or the NO_X plus NMHC averaging program for diesel-cycle HDEs, the application must list the family emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family emission limits, accurate to one-tenth of a gram per mile or to one-tenth of a gram per brake horsepower-hour for HDEs.

(C) The manufacturer may at any time during production elect to change the level of any family emission limit(s) by submitting the new limits to the Administrator and by demonstrating compliance with the limit(s) as described in §§ 86.088–2 and 86.094–28(b)(5)(ii).

(b)(7) and (b)(8) [Reserved]. For guidance see § 86.094–21.

(b)(9) For each light-duty vehicle, light-duty truck, evaporative/refueling emission family or heavy-duty vehicle evaporative emission family, a description of any unique procedures required to perform evaporative and/or refueling emission tests, as applicable, (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative and/or evaporative/refueling emission family, and a description of the method used to develop those unique procedures.

(10) For each light-duty vehicle or applicable light-duty truck evaporative/refueling emission family, or each heavy-duty vehicle evaporative emission family:

(i) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(ii) Canister bed volume; and

(iii) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c) through (j) [Reserved]. For guidance see § 86.094–21.

(k) and (l) [Reserved]. For guidance see § 86.096–21.

16. A new § 86.004–25 is added to subpart A to read as follows:

§ 86.004–25 Maintenance.

Section 86.004–25 includes text that specifies requirements that differ from § 86.094–25 or § 86.098–25. Where a paragraph in § 86.094–25 or § 86.098–25 is identical and applicable to § 86.004–25, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–25." or "[Reserved]. For guidance see § 86.098–25.".

(a)(1) Applicability. This section applies to light-duty vehicles, light-duty trucks, and HDEs.

(2) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors, as appropriate, is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) Introductory text through (b)(3)(ii) [Reserved]. For guidance see § 86.094–25.

(b)(3)(iii) For otto-cycle heavy-duty engines, the adjustment, cleaning, repair, or replacement of the items listed in paragraphs (b)(3)(iii) (A) through (E) of this section shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(E) Exhaust gas recirculation system related filters and coolers.

(iv) For otto-cycle light-duty vehicles, light-duty trucks and otto-cycle heavy-duty engines, the adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(v) For otto-cycle heavy-duty engines, the adjustment, cleaning, repair, or replacement of the items listed in paragraphs (b)(3)(v) (A) through (H) of this section shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter.

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative emission canister.

(F) Turbochargers.

(G) Carburetors.

(H) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(3)(iii)(E) of this section.

(b)(3)(vi)(A) through (b)(3)(vi)(D) [Reserved]. For guidance see § 86.094–25.

(b)(3)(vi)(E) through (b)(3)(vi)(J) [Reserved]. For guidance see § 86.098–25.

(4) For diesel-cycle light-duty vehicles, light-duty trucks, and HDEs, emission-related maintenance in addition to or at shorter intervals than that listed in paragraphs (b)(4) (i) through (iv) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) For diesel-cycle heavy-duty engines, the adjustment, cleaning, repair, or replacement of the items listed in paragraphs (b)(4)(i) (A) through (C) of this section shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(A) Exhaust gas recirculation system related filters and coolers.

(B) Positive crankcase ventilation valve.

(C) Fuel injector tips (cleaning only).

(ii) For diesel-cycle light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or

replacement of the positive crankcase ventilation valve shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter.

(iii) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (b)(4)(iii) (A) through (G) of this section shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light heavy-duty diesel engines, or, at 150,000 miles (or 4,500 hours) intervals thereafter for medium and heavy heavy-duty diesel engines.

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(E) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(4)(i)(A) of this section.

(F) Catalytic converter.

(G) Any other add-on emissions-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)

(iv) For diesel-cycle light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or replacement shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter of the items listed in paragraphs (b)(4)(iv) (A) through (G) of this section.

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(E) Exhaust gas recirculation system including all related filters and control valves.

(F) Catalytic converter.

(G) Superchargers.

(5) [Reserved]

(6)(i) The components listed in paragraphs (b)(6)(i) (A) through (H) of this section are currently defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(E) Positive crankcase ventilation valve.

(F) Evaporative and refueling emission control system components (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(H) Any other add-on emissions-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (b)(6)(ii) (A) through (F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in-use.

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message "maintenance needed" or "check engine", or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. For HDEs, the system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(6)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.087–38.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(b)(7) through (h) [Reserved]. For guidance see § 86.094–25.

17. Section 86.004–28 of Subpart A is amended by revising paragraphs (c) and (d) to read as follows:

§ 86.004–28 Compliance with emission standards.

* * * * *

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The applicable exhaust emission standards (or family emission limits, as appropriate) for Otto-cycle engines and for diesel-cycle engines apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards (or family emission limits, as appropriate), based on deterioration factors supplied by the manufacturer. Deterioration factors shall be established using applicable emissions test procedures. NO_x plus NMHC deterioration factors shall be established based on the sum of the pollutants. When establishing deterioration factors for NO_x plus NMHC, a negative deterioration (emissions decrease from the official exhaust emissions test result) for one pollutant may not offset deterioration of the other pollutant. Where negative deterioration occurs for NO_x and/or NMHC, the official exhaust emission test result shall be used for purposes of determining the NO_x plus NMHC deterioration factor.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For Otto-cycle engines, separate factors shall be established for transient NMHC (NMHCE), CO, NO_x, NO_x plus NMHC, and idle CO, for those engines utilizing aftertreatment technology (e.g., catalytic converters). For diesel-cycle engines, separate factors shall be established for transient NMHC (NMHCE), CO, NO_x, NO_x plus NMHC and exhaust particulate. For diesel-cycle smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) Paragraphs (c)(4)(iii)(A) (*1*) and (*2*) of this section apply to Otto-cycle HDEs.

(*1*) Otto-cycle HDEs not utilizing aftertreatment technology (e.g., catalytic converters). For transient NMHC (NMHCE), CO, NO_x, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) Otto-cycle HDEs utilizing aftertreatment technology (e.g., catalytic converters). For transient NMHC (NMHCE), CO, NO_x, and for idle CO, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel-cycle HDEs.

(*1*) Diesel-cycle HDEs not utilizing aftertreatment technology (e.g., particulate traps). For transient NMHC (NMHCE), CO, NO_x, NO_x plus NMHC, and exhaust particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) Diesel-cycle HDEs utilizing aftertreatment technology (e.g., particulate traps). For transient NMHC (NMHCE), CO, NO_x, NO_x plus NMHC, and exhaust particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(*3*) Diesel-cycle HDEs only. For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family emission limits, as appropriate) shall be the adjusted emission values of paragraph (c)(4)(iii) of this section, rounded to the same number of significant figures as contained in the applicable standard in accordance with ASTM E 29–93a (as referenced in § 86.094–28 (a)(4)(i)(B)(2)(ii)), for each emission data engine.

(*5*) and (*6*) [Reserved].

(*7*) Every test engine of an engine family must comply with all applicable standards (or family emission limits, as appropriate), as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

(*8*) For the purposes of setting an NMHC plus NO_x certification level or FEL for a diesel-fueled engine family, the manufacturer may use one of the following options for the determination of NMHC for an engine family. The manufacturer must declare which option is used in its application for certification of that engine family.

(i) THC may be used in lieu of NMHC for the standards set forth in § 86.004–11.

(ii) The manufacturer may choose its own method to analyze methane with prior approval of the Administrator.

(iii) The manufacturer may assume that two percent of the measured THC is methane (NMHC =0.98 × THC).

(d)(1) Paragraph (d) of this section applies to heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines.

(2) The applicable evaporative emission standards in this subpart apply to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.098–23(b)(3) for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.098–23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor, provided that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (as referenced in § 86.094–28 (a)(4)(i)(B)(2)(ii)), to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

* * * * *

18. Section 86.004–30 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii), and (a)(4)(iv)(A) through (a)(12) to read as follows:

§ 86.004–30 Certification.

* * * * *

(a)(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and petroleum-fueled diesel cycle light-duty vehicles and light-duty trucks not certified under § 86.098–

28(g), one such certificate will be issued for each engine family-evaporative/refueling emission family combination. Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(ii) For gasoline-fueled and methanol fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.098–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks, or diesel HDEs, included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in § 86.094–28(a)(6), § 86.094–28(b)(5)(i), or § 86.004–28(c)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For light-duty trucks or HDEs included in the applicable NO_x averaging program, the manufacturer may at any time during production elect to change the level of any family NO_x emission limit by demonstrating compliance with the new limit as described in § 86.094–28(b)(5)(ii) or § 86.004–28(c)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the day of issue.

(4)(i) For exempt light-duty vehicles and light-duty trucks under the provisions of § 86.094–8(j) or § 86.094–9(j), an adjustment or modification performed in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(ii) A violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in paragraph (a)(4)(ii) of this section.

(A) When a light-duty vehicle or light-duty truck is exempted from meeting high-altitude requirements as provided in § 86.090–8(h) or § 86.094–9(h):

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle or light-duty truck is exempted from meeting low-altitude requirements as provided in § 86.094–8(i) or § 86.094–9(i):

(*1*) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(a)(4)(iv)(A) through (a)(9) [Reserved]. For guidance see § 86.094–30.

(10)(i) For diesel-cycle light-duty vehicle and diesel-cycle light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel-cycle particulate standard, or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void ab initio for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel-cycle engines which are included in the particulate ABT programs under § 86.098–15 or superseding ABT sections as applicable, the provisions of paragraphs (a)(10)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.098–15 or superseding ABT sections as applicable and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.098–15 or superseding ABT sections as applicable will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with this part. The certificate shall be void ab initio for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all HDEs which are included in the NO_x plus NMHC ABT programs contained in § 86.098–15, or superseding ABT sections as applicable, the provisions of paragraphs (a)(11)(ii) (A) through (C) of this section apply.

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.098–15 or superseding ABT sections as applicable and the ABT related provisions of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.098–15 or superseding ABT sections as applicable will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void ab initio.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(a)(12) [Reserved]. For guidance see § 86.094–30.

* * * * *

19. A new § 86.004–38 is added to subpart A to read as follows:

§ 86.004–38 Maintenance instructions.

Section 86.004–38 includes text that specifies requirements that differ from § 86.094–38. Where a paragraph in § 86.094–38 is identical and applicable to § 86.004–38 this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–38.".

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in § 86.099–8, § 86.004–9, § 86.004–10, or § 86.004–11, as applicable, written instructions for the proper maintenance and use of the vehicle (or engine), by the purchaser consistent with the provisions of § 86.004–25, which establishes what scheduled maintenance the Administrator approves as being reasonable and necessary.

(1) The maintenance instructions required by this section shall be in clear, and to the extent practicable, nontechnical language.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(b) Instructions provided to purchasers under paragraph (a) of this section shall specify the performance of all scheduled maintenance performed by the manufacturer on certification durability vehicles and, in cases where the manufacturer performs less maintenance on certification durability vehicles than the allowed limit, may specify the performance of any scheduled maintenance allowed under § 86.004–25.

(c) Scheduled emission-related maintenance in addition to that performed under § 86.004–25(b) may only be recommended to offset the effects of abnormal in-use operating conditions, except as provided in paragraph (d) of this section. The manufacturer shall be required to demonstrate, subject to the approval of the Administrator, that such maintenance is reasonable and technologically necessary to assure the proper functioning of the emission control system. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator, from that approved under § 86.004–25(b).

(d) Inspections of emission-related parts or systems with instructions to replace, repair, clean, or adjust the parts or systems if necessary, are not considered to be items of scheduled maintenance which insure the proper functioning of the emission control system. Such inspections, and any recommended maintenance beyond that approved by the Administrator as reasonable and necessary under paragraphs (a), (b), and (c) of this section, may be included in the written instructions furnished to vehicle owners under paragraph (a) of this section: Provided, That such instructions clearly state, in a form approved by the Administrator, that the owner need not perform such inspections or recommended maintenance in order to maintain the emissions defect and emissions performance warranty or manufacturer recall liability.

(e) The manufacturer may choose to include in such instructions an explanation of any distinction between the useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuild for the engine family represented by the engine used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, non-technical language that is understandable to the ultimate purchaser.

(f) If approved by the Administrator, the instructions provided to purchasers under paragraph (a) of this section shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

(g) [Reserved]. For guidance see § 86.094–38.

(h) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor engine subject to the standards prescribed in § 86.004–10 or § 86.004–11, as applicable, the following:

(1) Instructions for all maintenance needed after the end of the useful life of the engine for critical emissions-related components as provided in § 86.004–25(b), including recommended practices for diagnosis, cleaning, adjustment, repair, and replacement of the component (or a statement that such component is maintenance free for the life of the engine) and instructions for accessing and responding to any emissions-related diagnostic codes that may be stored in on-board monitoring systems;

(2) A copy of the engine rebuild provisions contained in § 86.004–40.

20. A new § 86.004–40 is added to subpart A to read as follows:

§ 86.004–40 Heavy-duty engine rebuilding practices.

The provisions of this section are applicable to engines subject to the standards prescribed in § 86.004–10 or § 86.004–11 and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine. Any deviation from the provisions contained in this section is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(a) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications) and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emissions control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(b) When an engine is being rebuilt and remains installed or is reinstalled in the same vehicle, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(c) At time of rebuild, emissions-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 86.004–25 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(d) When conducting a rebuild without removing the engine from the vehicle, or during the installation of a rebuilt engine, all critical emissions-related components listed in § 86.004–25(b) not otherwise addressed by paragraphs (a) through (c) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(e) Records shall be kept by parties conducting activities included in paragraphs (a) through (d) of this section. The records shall include at minimum the mileage and/or hours at time of rebuild, a listing of work performed on the engine and emissions-related control components including a listing of parts and components used, engine parameter adjustments, emissions-related codes or signals responded to and reset, and work performed under paragraph (d) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

21. Section 86.1311–94 is amended by revising paragraph (b)(3) to read as follows:

§ 86.1311–94 Exhaust gas analytical system; CVS bag sample.

* * * * *

(b) * * *

(3)(i) Using a methane analyzer consisting of a gas chromatograph combined with a FID, the measurement of methane shall be done in accordance with SAE Recommended Practice J1151, "Methane Measurement Using Gas Chromatography." (Incorporated by reference pursuant to § 86.1(b)(2).)

(ii) For natural gas vehicles, the manufacturer has the option of using gas chromatography to measure NMHC through direct quantitation of individual hydrocarbon species. The manufacturer shall conform to standard industry practices and use good engineering judgement.

* * * * *

22. Section 86.1344–94 is amended by revising paragraph (e)(22) to read as follows:

§ 86.1344–94 Required information.

* * * * *

(e) * * *

(22) Brake specific emissions (g/BHP–hr) for HC, CO, NO_x, and, if applicable NMHC, NMHCE, THCE, CH_3OH, and HCHO for each test phase (cold and hot).

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Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4287–N–01]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986, and describes the methodology used by the United States Department of Housing and Urban Development ("HUD"). The new Difficult Development Areas are based on FY 1997 Fair Market Rents ("FMRs"), FY 1997 income limits and 1990 census population counts as explained below. The corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) remain in effect.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0426, e-mail Kurt_G._Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave, NW, Washington, DC 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3260, e-mail H._JERRY_GROSS@hud.gov. A telecommunications device for deaf persons (TTY) is available at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice is available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUD."

SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 (Pub. L. 99–514), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), as amended by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), as amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), as amended by the Tax Extension Act of 1991 (Pub. L. 102–227), and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). The Secretary of HUD is required to designate Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: Either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income ("AMGI"), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term *rent-restricted* means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: All of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. This Notice does not redesignate Qualified Census Tracts. The corrected designation of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remains in effect. Qualified Census Tracts will not be redesignated until data from the 2000 census become available.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget ("OMB") in OMB Bulletin No. 96–08 on June 28, 1996, *with the exceptions described in section C., below.* The basis for these comparisons was the fiscal year ("FY") 1997 HUD income limits for Very Low Income households ("VLILs") and Fair Market Rents ("FMRs") used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1997 two-bedroom FMR and the FY 1997 four-person VLIL. The numerator of the ratio was the area's FY 1997 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

B. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to three decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 96–08 defining metropolitan areas: "OMB establishes and maintains the definitions of the (Metropolitan Areas) MAs solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds."

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas. In addition, HUD is required by statute to calculate a separate FMR and VLIL for Westchester County, New York, which OMB includes as part of the New York, NY PMSA. The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Atlanta, GA: Carrol, Pickens, and Walton Counties.
Chicago, IL: DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.
Dallas, TX: Henderson County.
Flagstaff, AZ–UT: Kane County, Utah.
New York, NY: Westchester County.
New Orleans, LA: St. James Parish.
Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of

Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions ("MCDs") rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this Notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available.

Effective Date

The list of Difficult Development Areas is effective for allocations of credit made after December 31, 1997. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1997. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remain in effect.

Interpretive Examples for Effective Date

For the convenience of readers of this Notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in Internal Revenue Code section 42(h)(4)(B).

(Case A) Project "A" is located in a newly-designated 1998 Difficult Development Area. Bonds are issued for Project "A" on November 1, 1997, but Project "A" is placed in service March 1, 1998. Project "A" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE December 31, 1997.

(Case B) Project "B" is located in a newly-designated 1998 Difficult Development Area. Project "B" is placed in service November 15, 1997. The bonds which will support the permanent financing of Project "B" are issued January 15, 1998. Project "B" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE December 31, 1997.

(Case C) Project "C" is located in an area which is a Difficult Development Area in 1998, but IS NOT a Difficult Development Area in 1999. Bonds are issued for Project "C" on October 30, 1998, but Project "C" is not placed in service until March 30, 1999. Project "C" is eligible for the increase in basis available to projects located in 1998 Difficult Development Areas because both events (bonds issued and project placed in service) have occurred AFTER December 31, 1997.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions in this notice are determined not to have the potential of having a significant impact on the quality of human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" for use by political subdivisions of the States in allocating the LIHTC, as required by section 42 of the Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" for the use by political subdivisions of the States in allocating the LIHTC, as required under section 42 of the Internal Revenue Code, as amended. The notice also details the technical methodology used in making such designations.

Dated: October 14, 1997.

Andrew M. Cuomo,

Secretary.

BILLING CODE 4210-32-P

1998 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	FLAGSTAFF, AZ (part)	FRESNO, CA	LOS ANGELES-LONG BEACH, CA
	Coconino County, AZ	Fresno County	Los Angeles County
	YUMA, AZ	Madera County	SAN LUIS OBISPO-ATASCADERO-PASO ROBLES, CA
	Yuma County	SAN FRANCISCO, CA	San Luis Obispo County
CA	BAKERSFIELD, CA	San Francisco County	STOCKTON-LODI, CA
	Kern County	Marin County	San Joaquin County
	CHICO-PARADISE, CA	San Mateo County	
	Butte County	SANTA ROSA, CA	
	MERCED, CA	Sonoma County	
	Merced County	SALINAS, CA	
		Monterey County	
	SANTA BARBARA-SANTA MARIA-LOMPOC, CA	SANTA CRUZ-WATSONVILLE, CA	
	Santa Barbara County	Santa Cruz County	
CT	NEW HAVEN-MERIDEN, CT		
	Bethany town	Killingworth town	
	Branford town	Meriden city	
	Cheshire town	New Haven city	
	Clinton town	North Branford town	
	East Haven town	North Haven town	
	Guilford town	Orange town	
	Hamden town	Wallingford town	
	Madison town	West Haven city	
	Woodbridge town		
DE	DOVER, DE		
	Kent County		
FL	DAYTONA BEACH, FL	FORT LAUDERDALE, FL	FORT MYERS-CAPE CORAL, FL
	Flagler County	Volusia County	Broward County	Lee County
	MIAMI, FL	OCALA, FL	ORLANDO, FL	Martin County	St. Lucie County
	Dade County	Marion County	Lake County	Osceola County	PUNTA GORDA, FL
	SARASOTA-BRADENTON, FL		Orange County	Seminole County	Charlotte County
	Manatee County	Sarasota County			
HI	HONOLULU, HI				
	Honolulu County				
MA	BARNSTABLE-YARMOUTH, MA				
	Barnstable city	Harwich town			
	Brewster town	Mashpee town			
	Chatham town	Orleans town			
	Dennis town	Sandwich town			
	Eastham town	Yarmouth town			

1998 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas (cont.)

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
NJ	ATLANTIC-CAPE MAY, NJ Atlantic County Cape May County	JERSEY CITY, NJ Hudson County	MONMOUTH-OCEAN, NJ Monmouth County Ocean County	VINELAND-MILLVILLE-BRIDGETON, NJ Cumberland County
NY	DUTCHESS COUNTY, NY Duchess County WESTCHESTER COUNTY, NY Westchester County	NASSAU-SUFFOLK, NY Nassau County Suffolk County	NEW YORK, NY (part) Bronx County Queens County Kings County Richmond County New York County Rockland County Putnam County	NEWBURGH, NY-PA Pike County, PA Orange County, NY
OR	EUGENE-SPRINGFIELD, OR Lane County	MEDFORD-ASHLAND, OR Jackson County		
PA	STATE COLLEGE, PA Centre County			
PR	AGUADILLA, PR Aguada Municipio Aguadilla Municipio Moca Municipio	CAGUAS, PR Caguas Municipio Gurabo Municipio Cayey Municipio San Lorenzo Mun. Cidra Municipio	MAYAGUEZ, PR Anasco Municipio Mayaguez Municipio Cabo Rojo Mun. Sabana Grande Mu. Hormigueros Mun. San German Mun.	SAN JUAN-BAYAMON, PR Aguas Buenas Mu. Corozal Municipio Barceloneta Mun. Dorado Municipio Bayamon Mun. Fajardo Municipio Canovanas Mun. Florida Municipio Carolina Municipio Guaynabo Municipio San Juan Mun. Humacao Municipio Toa Alta Municipio Juncos Municipio Toa Baja Mun. Las Piedras Mun. Trujillo Alto Mun. Loiza Municipio Vega Alta Mun. Luquillo Municipio Vega Baja Mun. Manati Municipio Yabucoa Municipio Morovis Municipio Catano Municipio Naguabo Municipio Ceiba Municipio Naranjito Municipio Comerio Municipio Rio Grande Mun.
SC	MYRTLE BEACH, SC Horry County			

1998 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas (cont.)

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
TX	BROWNSVILLE-HARLINGEN-SAN BENITO, TX Cameron County	EL PASO, TX El Paso County	LAREDO, TX Webb County	
WA	BELLINGHAM, WA Whatcom County	RICHLAND-KENNEWICK-PASCO, WA Benton County Franklin County	YAKIMA, WA Yakima County	

1998 Internal Revenue Code Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT
PI	PACIFIC ISLANDS			
PR	All			
VI	St. Croix	St. Johns/St. Thomas		
AK	BETHEL CENSUS AREA JUNEAU BOROUGH MATANUSKA-SUSITNA BOROUGH PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA	DILLINGHAM CENSUS AREA KETCHIKAN GATEWAY BOROUGH NOME CENSUS AREA SITKA BOROUGH	FAIRBANKS NORTH STAR BOROUGH KODIAK ISLAND BOROUGH NORTH SLOPE BOROUGH WADE HAMPTON CENSUS AREA	HAINES BOROUGH LAKE AND PENINSULA BOROUGH NORTHWEST ARCTIC BOROUGH YUKON-KOYUKUK CENSUS AREA
AR	BAXTER COUNTY	DREW COUNTY		
AZ	APACHE COUNTY LA PAZ COUNTY	COCHISE COUNTY NAVAJO COUNTY	GILA COUNTY SANTA CRUZ COUNTY	GRAHAM COUNTY YAVAPAI COUNTY
CA	ALPINE COUNTY DEL NORTE COUNTY INYO COUNTY MENDOCINO COUNTY PLUMAS COUNTY TEHAMA COUNTY	AMADOR COUNTY GLENN COUNTY KINGS COUNTY MODOC COUNTY SAN BENITO COUNTY TRINITY COUNTY	CALAVERAS COUNTY HUMBOLDT COUNTY LAKE COUNTY MONO COUNTY SIERRA COUNTY TUOLUMNE COUNTY	COLUSA COUNTY IMPERIAL COUNTY MARIPOSA COUNTY NEVADA COUNTY SISKIYOU COUNTY
CO	ARCHULETA COUNTY PITKIN COUNTY	GARFIELD COUNTY SAN MIGUEL COUNTY	LA PLATA COUNTY SUMMIT COUNTY	PARK COUNTY
CT	LITCHFIELD COUNTY (part) Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town	MIDDLESEX COUNTY (part) Chester town, Deep River town, Essex town, Westbrook town		
DE	SUSSEX COUNTY	BRADFORD COUNTY	CALHOUN COUNTY	CITRUS COUNTY
FL	BAKER COUNTY FRANKLIN COUNTY HAMILTON COUNTY HOLMES COUNTY LAFAYETTE COUNTY MONROE COUNTY SUWANNEE COUNTY WALTON COUNTY	COLUMBIA COUNTY GILCHRIST COUNTY HARDEE COUNTY INDIAN RIVER COUNTY LEVY COUNTY OKEECHOBEE COUNTY TAYLOR COUNTY WASHINGTON COUNTY	DESOTO COUNTY GLADES COUNTY HENDRY COUNTY JACKSON COUNTY LIBERTY COUNTY PUTNAM COUNTY UNION COUNTY	DIXIE COUNTY GULF COUNTY HIGHLANDS COUNTY JEFFERSON COUNTY MADISON COUNTY SUMTER COUNTY WAKULLA COUNTY

1998 Internal Revenue Code Section 42(d)(5)(C) Nonmetropolitan Difficult Develeopment Areas (cont.)

STATE	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT
GA	BUTTS COUNTY	DAWSON COUNTY	LIBERTY COUNTY	
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KS	RILEY COUNTY			
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	ALLEN PARISH CLAIBORNE PARISH EVANGELINE PARISH MADISON PARISH RED RIVER PARISH ST. MARY PARISH WASHINGTON PARISH	AVOYELLES PARISH CONCORDIA PARISH FRANKLIN PARISH MOREHOUSE PARISH RICHLAND PARISH TANGIPAHOA PARISH WEST CARROLL PARISH	CALDWELL PARISH DE SOTO PARISH GRANT PARISH NATCHITOCHES PARISH SABINE PARISH TENSAS PARISH WEST FELICIANA PARISH	CATAHOULA PARISH EAST CARROLL PARISH JEFFERSON DAVIS PARISH POINTE COUPEE PARISH ST. HELENA PARISH VERNON PARISH
MA	BARNSTABLE COUNTY (part) Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town HAMPSHIRE COUNTY (part) Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town	DUKES COUNTY NANTUCKET COUNTY	FRANKLIN COUNTY (part) Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town WORCESTER COUNTY (part) Athol town, Hardwick town, Hubbardston town, Petersham town, New Braintree town, Phillipston town, Royalston town, Warren town	HAMPDEN COUNTY (part) Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town

1998 Internal Revenue Code Section 42(d)(5)(C) Nonmetropolitan Difficult Develeopment Areas (cont.)

STATE	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part) Durham town Leeds town Livermore town Livermore Falls town Minot town	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part) Baldwin town Bridgton town Brunswick town Harpswell town Harrison town Naples town New Gloucester town Pownal town Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KNOX COUNTY	LINCOLN COUNTY	OXFORD COUNTY
	PENOBSCOT COUNTY (part) Alton town Argyle unorg. Bradford town Bradley town Burlington town Carmel town Carroll plantation Charleston town Chester town Clifton town Corinna town Corinth town Dexter town Dixmont town Drew plantation East Central Penobscot unorg. East Millinocket town Edinburg town Enfield town Etna town Exeter town Garland town Greenbush town Greenfield town Howland town Hudson town Kingman unorg. Lagrange town Lakeville town Lee town Levant town Lincoln town Lowell town Mattawamkeag town Maxfield town Medway town Millinocket town Mount Chase town Newburgh town Newport town North Penobscot unorg. Passadumkeag town Patten town Plymouth town Prentiss plantation (unorg.) Seboeis plantation Springfield town Stacyville town Stetson town Twombly unorg. Webster plantation Whitney unorg. Winn town Woodville town	WALDO COUNTY (part) Belfast city Belmont town Brooks town Burnham town Frankfort town Freedom town Islesboro town Jackson town Knox town Liberty town Lincolnville town Monroe town Montville town Morrill town Northport town Palermo town Prospect town Searsmont town Searsport town Stockton Springs town Swanville town Thorndike town Troy town Unity town Waldo town	YORK COUNTY (part) Acton town Alfred town Arundel town Biddeford city Cornish town Dayton town Kennebunk town Kennebunkport town Lebanon town Limerick town Lyman town Newfield town North Berwick town Ogunquit town Parsonsfield town Saco city Sanford town Shapleigh town Waterboro town Wells town	SOMERSET COUNTY
	PISCATAQUIS COUNTY	WASHINGTON COUNTY	SAGADAHOC COUNTY	
MS	BOLIVAR COUNTY WASHINGTON COUNTY	COAHOMA COUNTY	ISSAQUENA COUNTY	LAFAYETTE COUNTY

1998 Internal Revenue Code Section 42(d)(5)(C) Nonmetropolitan Difficult Develeopment Areas (cont.)

STATE	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT
MT	GALLATIN COUNTY			
NC	CAMDEN COUNTY	DARE COUNTY	WATAUGA COUNTY	
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town Bennington town Deering town Francestown town Greenfield town Hancock town Hillsborough town Lyndeborough town New Boston town Peterborough town Sharon town Temple town Windsor town	MERRIMACK COUNTY (part) Andover town Boscawen town Bow town Bradford town Canterbury town Chichester town Concord city Danbury town Dunbarton town Epsom town Franklin city Henniker town Hill town Hopkinton town Loudon town Newbury town New London town Northfield town Pembroke town Pittsfield town Salisbury town Sutton town Warner town Webster town Wilmot town	ROCKINGHAM COUNTY (part) Deerfield town Northwood town Nottingham town	STRAFFORD COUNTY (part) Middleton town New Durham town Strafford town
	SULLIVAN COUNTY			
NM	GRANT COUNTY	LINCOLN COUNTY	LUNA COUNTY	MCKINLEY COUNTY
	QUAY COUNTY	SAN MIGUEL COUNTY	TAOS COUNTY	
NV	DOUGLAS COUNTY			
NY	CHENANGO COUNTY	CLINTON COUNTY	COLUMBIA COUNTY	CORTLAND COUNTY
	ESSEX COUNTY	GREENE COUNTY	HAMILTON COUNTY	JEFFERSON COUNTY
	SCHUYLER COUNTY	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GILLIAM COUNTY
	GRANT COUNTY	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY
	JOSEPHINE COUNTY	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY
	LINN COUNTY	MALHEUR COUNTY	MORROW COUNTY	SHERMAN COUNTY
	TILLAMOOK COUNTY	UMATILLA COUNTY	UNION COUNTY	WALLOWA COUNTY
	WASCO COUNTY	WHEELER COUNTY		
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY	UNION COUNTY	WAYNE COUNTY
RI	NEWPORT COUNTY (part) Middletown town Newport city Portsmouth town	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	

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1998 Internal Revenue Code Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas (cont.)

STATE	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT	NONMETROPOLITAN COUNTY OR COUNTY EQUIVALENT
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY
	LLANO COUNTY	REAGAN COUNTY	VAL VERDE COUNTY	WALKER COUNTY
UT	DAGGETT COUNTY	IRON COUNTY	WASHINGTON COUNTY	
VA	CAROLINE COUNTY	KING AND QUEEN COUNTY	WESTMORELAND COUNTY	
VT	ADDISON COUNTY	BENNINGTON COUNTY	LAMOILLE COUNTY	ORANGE COUNTY
	RUTLAND COUNTY	WASHINGTON COUNTY	WINDHAM COUNTY	WINDSOR COUNTY
WA	ADAMS COUNTY	ASOTIN COUNTY	CHELAN COUNTY	CLALLAM COUNTY
	COLUMBIA COUNTY	DOUGLAS COUNTY	FERRY COUNTY	GARFIELD COUNTY
	GRANT COUNTY	GRAYS HARBOR COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY
	KLICKITAT COUNTY	LEWIS COUNTY	LINCOLN COUNTY	MASON COUNTY
	OKANOGAN COUNTY	PACIFIC COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY
	SKAGIT COUNTY	SKAMANIA COUNTY	STEVENS COUNTY	WAHKIAKUM COUNTY
	WHITMAN COUNTY			
WV	TAYLOR COUNTY	UPSHUR COUNTY		

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BILLING CODE 4210-32-C

federal register

Tuesday
October 21, 1997

Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 8

Assessment of Fees; National Banks; District of Columbia Banks; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 97–21]

RIN 1557–AB60

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The OCC is finalizing, with slight modifications, changes made by two previous interim rules with request for comments. The first interim rule removed the specific calculation of fees for examinations of fiduciary activities, special examinations and investigations, examinations of affiliates, and examinations and investigations of corporate activities (collectively, trust and other examinations and investigations). The second interim rule authorized the OCC to reduce assessments on national banks that are not the largest national bank in a bank holding company (referred to as non-lead banks). These changes have resulted in assessment revenue that more accurately reflects the expenses incurred by the OCC as it supervises banks according to the OCC's Supervision by Risk Program.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Interim Rules and Comments Received [1]

1994 Interim Rule Regarding Fees for Trust and Other Examinations and Investigations

The OCC issued an interim rule on November 18, 1994 (59 FR 59640) (1994 Interim Rule) that removed specific fees for trust and other examinations and investigations. That rule was adopted in response to changes to 12 U.S.C. 482 made by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which, among other things, removed the specific requirement for a fee adequate to recover expenses of examinations of fiduciary activities. In place of that requirement, FDICIA authorized the OCC to impose and collect assessments, fees, and other charges as necessary or appropriate to carry out its responsibilities, and gave the agency increased flexibility to set the assessments, fees, and charges to meet its expenses.

The OCC exercised this flexibility by removing the specific formula for calculating fees that formerly appeared in 12 CFR 8.6. As noted in the preamble to the 1994 Interim Rule, the specific fee structure reflected an outdated view of fiduciary activities as special and separate from other bank operations. The OCC stated in revised § 8.6 that it would assess a fee for examining fiduciary activities and for conducting special examinations and investigations, and that it would publish a fee schedule for these examinations and investigations in the Notice of Comptroller of the Currency Fees described in § 8.8. These changes were immediately effective, but the OCC also sought the views of interested parties.

The OCC received two comments in response to this request for comments. Both commenters supported the interim rule, noting that the changes will result in substantial savings for national banks. One of the commenters requested that the OCC seek additional comments when and if the agency intends to increase fees for fiduciary examinations and investigations or intends to impose a separate trust assessment.

In light of the comments received, the OCC is issuing this final rule that adopts the changes set out in the 1994 Interim Rule. In response to the commenter concerned about the possibility of future increases or separate assessments for trust examinations, the OCC notes that it will seek comment before it changes the manner in which it imposes fees for fiduciary examinations and investigations. While the specific amount of assessments may change from one assessment to the next as reflected in the Notice of Comptroller of the Currency Fees, the OCC will continue to calculate the assessment according to the method provided in part 8.

1996 Interim Rule Regarding Discounts for Non-Lead Banks

On December 2, 1996, the OCC published another interim rule with request for comments (61 FR 64000) (1996 Interim Rule). The 1996 Interim Rule amended part 8 by adding § 8.2(a)(6), which provides that the OCC will reduce the assessments for non-lead banks by a percentage that is to be specified in the Notice of Comptroller of the Currency Fees. In that rule, the OCC defined a "non-lead bank" as a national bank that is not the lead bank in a bank holding company that owns more than one national bank, and defined "lead bank" as the largest national bank controlled by a bank holding company, based on a comparison of total assets held by each national bank as reported in each bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the payment of a semiannual assessment. The OCC defined "bank holding company" by adopting the definition of that term used in section 2 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841(a)(1)).

The 1996 Interim Rule also removed the provisions in part 8 prohibiting the proration of assessments. Prior to adoption of that rule, part 8 provided that each bank and Federal branch or agency subject to the OCC's jurisdiction must pay the full amount of its assessment for the next six-month period, "without proration for any reason." *See* former 12 CFR 8.2 (a)(5) and (b). This prohibition is inconsistent with a reduction in non-lead banks' assessments, because the reduction is effectively a proration of these banks' assessments. Accordingly, the OCC removed the prohibition against prorations.

The OCC received two comments in response to the 1996 Interim Rule, both of which supported the changes. However, one commenter expressed its concern that the discount could unfairly benefit larger banks, which, in the commenter's view, tend to be structured in multi-bank holding companies more often than are smaller banks. The OCC notes that the discount applies equally to all banks, regardless of size, that are non-lead banks in a bank holding company, and, in fact, many community banks have benefitted from the Interim Rule.

The other commenter, which owns several national banks that are credit card banks, suggested that the rule be further amended to cover institutions that are chartered and supervised by the OCC as national banks but that are excluded from the definition of "bank" under section 2(c)(2)(F) of the BHC Act (12 U.S.C. 1841(c)(2)(F)). This commenter noted that the 1996 Interim Rule, by adopting the definition of "bank holding company" used in the BHC Act, technically precludes non-lead banks from receiving an assessment reduction if the institutions are not "banks" under the BHC Act, because their holding companies then are not "bank holding companies" under the BHC Act. The commenter opined that the same economies of scale are realized when supervising non-lead credit card banks, and requested that the OCC clarify that the assessment reduction applies to all non-lead national banks, regardless of whether the parent is a "bank holding company" under the BHC Act. [2]

The OCC agrees with this commenter. The same economies realized when supervising non-lead banks owned by bank holding companies are available when supervising non-lead banks that would qualify for the reduction but for the fact that the parent is not a "bank holding company" under the BHC Act. This conclusion also applies to non-lead Federal branches and agencies of foreign banks, whose level of supervision, enforcement, and licensing are increasingly tied to the condition of the foreign bank. Consistent with this conclusion, the OCC has issued letters in which the OCC applied the assessment reduction to (a) non-lead banks owned by a company that is not a "bank holding company" under the BHC Act and (b) non-lead Federal branches and agencies of a foreign bank.

In light of the comments received, the OCC is adopting in final form the changes contained in the 1996 Interim Rule, as amended to reflect the interpretations noted above. Consistent with these interpretations, the OCC is amending § 8.2(a)(6)(ii) (A)–(C) so that "non-lead bank" includes a national bank that is not the largest national bank controlled by a company (as opposed to a bank holding company) and is adopting a new § 8.2(b)(4) to apply the assessment reduction to non-lead Federal branches and agencies of foreign banks. Finally, the OCC also has adopted a technical change to § 8.2(b)(3) to use the term "Call Report" (in lieu of "Report of Condition") that is used elsewhere in part 8.

Immediately Effective Rule

This final rule is effective upon publication in the **Federal Register**. The OCC has determined that the rule may be immediately effective pursuant to 5 U.S.C. 553(d) (1) and (3). By enabling the OCC to reduce assessments, the rulemaking will have the effect of granting a partial exemption from the assessment obligations that otherwise would apply to non-lead entities. Accordingly, the rule may be immediately effective under 5 U.S.C. 553(d)(1). There also is good cause to dispense with a delayed effective date under 5 U.S.C. 553(d)(3), namely, that the rule needs to be effective in time to ensure that reductions will be reflected in the Notice of Comptroller of the Currency Fees that will be mailed in early December to all national banks and Federal branches and agencies. The OCC will continue to provide a semiannual Assessment Notice to each institution, and each national bank and Federal branch or agency will continue to have at least 30 days following receipt of a semiannual assessment notice in which to pay the assessment.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose any new reporting or recordkeeping requirement. Moreover, to the extent that it has any impact on national banks, the impact will be to lower assessments for non-lead national banks and non-lead Federal branches and agencies of foreign banks and to eliminate a separate assessment for trust and other examinations and investigations. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As discussed in the preamble, the final rule has the effect of reducing the assessments and fees paid by national banks.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. The interim rule amending 12 CFR part 8 that was published at 59 FR 59640 on November 18, 1994 is adopted as a final rule without change.

3. Section 8.2 is amended by revising paragraphs (a)(6) and (b)(3) and adding paragraph (b)(4) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* means the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in

[1] Elsewhere in this issue of the **Federal Register** the OCC is soliciting comments on, among other things, a proposed change to part 8 that would impose a 25 percent surcharge on national banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality).

[2] The OCC received a similar request in connection with Federal branches and agencies of foreign banks, although the request was not submitted in a comment to the 1996 interim rule.

sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)(2) and (b)).

(b) * * *

(3) Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Call Report most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the OCC. Each Federal branch or Federal agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six month period.

(4)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead Federal branch or agency by an amount that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (b)(4):

(A) *Lead Federal branch or agency* means the largest Federal branch or agency of a foreign bank, based on a comparison of the total assets held by each Federal branch or agency of that foreign bank as reported in each Federal branch's or agency's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead Federal branch or agency* means a Federal branch or Federal agency that is not the lead Federal branch or agency of a foreign bank that controls two or more Federal branches or agencies.

Dated: October 15, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–27828 Filed 10–20–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 97–20]

RIN 1557–AB60

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), in order to more accurately reflect the OCC's costs of supervising banks, is proposing to amend its assessment regulation to impose a surcharge on banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality). This amendment will enable the OCC to distribute more equitably the costs it incurs when supervising institutions that are experiencing significant problems. The OCC also is soliciting comments on the appropriate method of computing assessments for those banks that own other banks.

DATES: Comments must be received by November 20, 1997.

ADDRESSES: Comments should be directed to, and may be inspected and copied at: Communications Division, OCC, 250 E Street, SW., Washington, D.C. 20219, Attention: Docket No. 97–20. In addition, comments may be sent via FAX, at (202) 874–5274, or via Internet at regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2,700 national banks and 64 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive National Banking System that supports the citizens, communities, and economy of the United States. The OCC funds the activities that further this mission by imposing assessments, fees, and other charges on banks within its jurisdiction, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank and Federal branch and agency a semiannual assessment according to a formula that is described in 12 CFR 8.2. In general, the OCC calculates the semiannual assessment by using a marginal rate that declines as an institution's asset size grows. The OCC also reduces assessments charged to a "non-lead bank" (which, generally speaking, refers to a national bank that is not the largest national bank owned by the same company [1]) by a percentage determined in accordance with each assessment. For example, the OCC reduced the assessment for non-lead national banks that was due January 31, 1997, by 12 percent.[2]

The marginal rate structure (which applies a declining marginal rate as bank asset size grows) and the assessment reduction for non-lead national banks reflect the OCC's cost savings resulting from the economies of scale realized in the examination and supervision of large institutions and non-lead banks. However, the current assessment regulation does not reflect the *increased* costs that the OCC incurs when supervising a bank whose condition requires special attention. As a result, healthy banks subsidize banks that are experiencing significant problems. The proposed imposition of a surcharge on banks requiring additional OCC resources, discussed in the section that follows, addresses this concern.

Discussion of the Proposal and Request for Comment

Surcharge

The proposal adds new paragraphs (a)(7) and (b)(5) to § 8.2,[3] which provide that the OCC will impose a surcharge equal to 25 percent of the amount of the assessment that otherwise would be due from (a) national banks that receive a UFIRS rating (also referred to as a CAMELS rating [4]) of 3, 4, or 5 and (b) Federal branches and agencies of foreign banks that receive a ROCA rating of 3, 4, or 5. OCC cost data show that there is a significant increase in supervision costs once an institution's rating moves from 2 to 3 and that these increased costs continue while the bank is rated 3, 4, or 5. To reflect this increase in costs of supervising a bank rated 3 or worse, the proposal uses a UFIRS or ROCA rating (as appropriate) of 3 as the threshold for applying the surcharge. Using the most recently available data at the time this proposed rule was prepared, the surcharge would affect a total of approximately 85 national banks and Federal branches and agencies of foreign banks, resulting in an aggregate annual increase in assessments for these banks of approximately $0.7 million.

By linking assessments with the condition of the banks supervised, the proposal ensures that a greater proportion of increased OCC costs attributable to banks whose condition requires additional supervisory resources is funded by those banks rather than by the national banking system as a whole. If more banks were rated 3, 4, or 5, the OCC would need additional and/or more specialized staff to monitor the efforts of those banks to improve their condition. The proposal expands or contracts assessment revenue automatically in a way that responds to the changing demands on the OCC.

The OCC considered the alternative of imposing a 50-percent surcharge on banks that are rated 4 or 5.[5] However, a 50-percent surcharge on UFIRS or ROCA 4-and 5-rated institutions would not cover the increased costs of supervising all institutions rated 3, 4, or 5. As a result, institutions rated 3 would be subsidized both by healthier banks (who would, under the alternative approach, be paying assessments at the same rate as 3-rated institutions even though the healthier banks require less supervision) and by banks in worse condition (who would be paying the assessment surcharge).

The OCC seeks comment on the approach set out in proposed paragraphs (a)(7) and (b)(5) of § 8.2. The OCC also seeks comment on whether the ROCA rating is the appropriate

[1] In a final rule published elsewhere in this issue of the **Federal Register**, the OCC has amended the definition of "non-lead bank" to include a national bank that is not the largest national bank controlled by a company (as opposed to a bank holding company).

[2] The OCC made this reduction pursuant to an interim rule published on December 2, 1996 (61 FR 64000). In the final rule referred to in footnote 1 of this document, the OCC is adopting the changes set forth in that interim rule. The final rule also adopts the changes set forth in an interim rule published in 1994 (59 FR 59640) concerning fees for examinations of fiduciary activities, special examinations and investigations, examinations of affiliates, and examinations and investigations of corporate activities.

[3] In the final rule referred to in footnote 1, the OCC added a new paragraph (b)(4) to § 8.2.

[4] CAMELS is an acronym that stands for capital, assets, management, earnings, liquidity, and sensitivity to market risk.

[5] This is the approach taken by the Office of Thrift Supervision in assessing savings institutions. *See* 12 CFR 502.1.

rating to use in imposing an assessment surcharge on Federal branches and agencies, and, if not, whether some other rating or set of criteria would be more appropriate.

Assessments of a Bank That Owns Another Bank

An issue has arisen concerning the proper method of calculating the assessments of national banks that own other banks. This issue stems from a recent change in the Call Report instructions[6] pursuant to which the assets of a subsidiary bank are reported on a consolidated basis in the Call Report of its parent bank. Given that the subsidiary bank also is required to file a Call Report, the current assessment regulation, which bases assessments on assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

The OCC seeks comment on methods that commenters believe would be appropriate for calculating, for assessment purposes, the assets of a national bank that owns another bank.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with its notice of proposed rulemaking.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any new reporting or recordkeeping requirement. While the proposal would require national banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 58 national banks, Federal branches, and Federal agencies with total assets of under $100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately $287,204 per year, or approximately $4,952 per institution. Accordingly, a regulatory flexibility analysis under 603 of the RFA is not required.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As discussed in the preamble, the proposal, while increasing the annual assessments for institutions receiving a UFIRS or ROCA rating of 3, 4, or 5, will, in the current banking environment, increase assessments in the aggregate only by approximately $0.7 million.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

Dated: October 15, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–27829 Filed 10–20–97; 8:45 am]

BILLING CODE 4810–33–P

[6] *See* 62 FR 8078 (February 21, 1997).

federal register

Tuesday
October 21, 1997

Part V

The President

Proclamation 7042—National Forest Products Week, 1997

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Presidential Documents

Title 3—

The President

Proclamation 7042 of October 17, 1997

National Forest Products Week, 1997

By the President of the United States of America

A Proclamation

America's forests are a precious resource, making numerous rich contributions not only to the natural splendor of our Nation, but also to the well-being of our people. Whether part of the vast acreages that make up our industrial, State, and National forests or rural woodlots and urban forests, they offer us clean water and air, priceless wildlife habitat and fisheries, welcome settings for recreation, and breathtaking beauty. Our forests also provide us with more tangible products essential to everyday living: wood and paper products for our homes, schools, and offices, and even medicines and food.

While the wood products we harvest from our forests can be so durable that they last for centuries, forest ecosystems themselves are very fragile. America's growing population and urban expansion are putting ever-increasing demands on forest lands and resources. We must work together to devise imaginative forest management approaches that will allow us to preserve and cultivate healthy forest ecosystems, meet the need for forest products, provide jobs for those who depend on forests for their livelihood, and continue to offer Americans enjoyable recreational opportunities.

Fortunately, forest research is equipping us with vital knowledge that can help us to balance the many and varied demands on our woodlands. Thanks to such research, we are now using new products and innovative technologies and employing new recycling methods that not only extend the available supply of raw materials, but also help us to process those materials more efficiently and with fewer harmful by-products. This use of science to balance the needs of our people both for forest products and a healthy environment will help us to achieve our goal of sustainable forest management.

All of us are indebted to past generations of Americans whose vision and generosity preserved so many of our Nation's great forests for our use and pleasure. Now it falls to us to continue their wise stewardship so that we may pass on to future generations this priceless natural legacy.

In recognition of the central role our forests play in the long-term welfare of our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 19 through October 25, 1997, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-28081
Filed 10-20-97; 8:45 am]
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Part VI

The President

Proclamation 7043—National Character Counts Week, 1997

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Presidential Documents

Title 3—

The President

Proclamation 7043 of October 17, 1997

National Character Counts Week, 1997

By the President of the United States of America

A Proclamation

The roots of America's greatness are embedded in the character of its citizens. From our Founders' passion for justice and equality to the social consciousness and humanitarian spirit of today's citizens, the character of our people has inspired the world. Undeniably, character does count for our citizens, our communities, and our Nation, and this week we celebrate the importance of character in our individual lives and in the life of our country.

Instilling sound character in our children is essential to maintaining the strength of our Nation into the 21st century. The core ethical values of trustworthiness, fairness, responsibility, caring, respect, and citizenship form the foundation of our democracy, our economy, and our society. These qualities are not innate but learned, and we must ensure that we nurture them—both through our words and our example—in our Nation's young people.

More than any other institution, the family is the cradle of character, giving children their first crucial lessons in attitude and behavior. In today's complex society, where children are subject to pressures and negative influences rarely experienced by earlier generations, parents face great challenges as they strive to impart to their children the values that will help them become caring and responsible members of society.

My Administration has worked hard to give parents new tools to help them fulfill their important responsibilities. We worked to require V-chips on all new televisions to give parents greater control over what their children watch; we collaborated with the television industry to encourage the airing of more educational programming for children; and we negotiated a breakthrough agreement with the entertainment and broadcast industries to create a voluntary ratings system that will help parents identify programs containing material inappropriate for children. Our proposed funding for the Anti-Gang and Youth Violence Strategy will provide for after-school initiatives in communities across the country to help keep young people occupied in wholesome activities, off the streets, and out of trouble while their parents are at work.

Schools also have an important role in educating our young people about the difference between right and wrong. My Administration has recognized this by creating partnerships with the States to help our schools do a better job of teaching character to America's students. Our push for rigorous standards and our promise to open the doors of college to all students who work hard let students know that good character really does count and will be rewarded with expanded opportunity. We also should encourage and commend the schools across our country that have begun to incorporate volunteer service as a curriculum requirement, teaching students the important life lessons of sharing, compassion, and civic responsibility.

Developing strong values in America's children requires the participation of all our people. As we observe this special week, I ask that all Americans demonstrate in their personal and public lives, and teach actively to our country's children, the high ethical standards that are essential to good character and to the continued success of our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 19 through October 25, 1997, as National Character Counts Week. I call upon the people of the United States, government officials, educators, religious, community, and business leaders, and the States to commemorate this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-28090
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 2203/P.L. 105–62

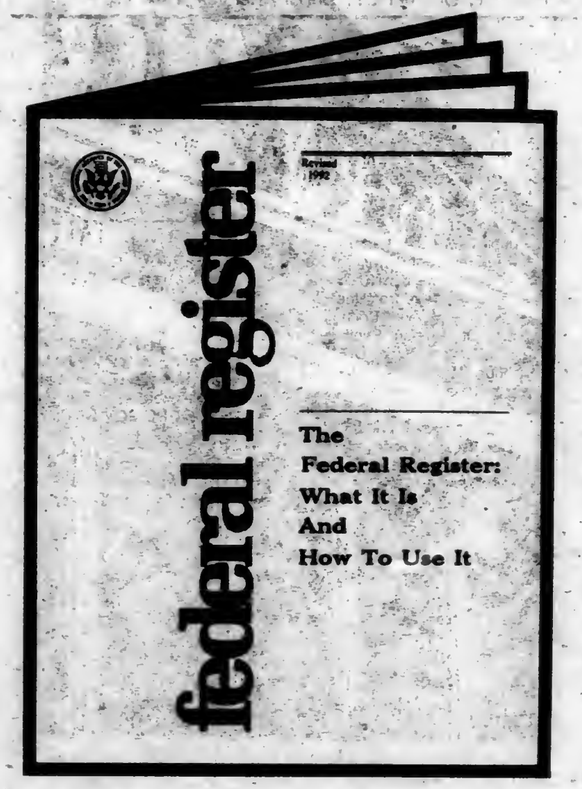
Energy and Water Development Appropriations Act, 1998 (Oct. 13, 1997; 111 Stat. 1320)

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105th Congress, 1st Session, 1997

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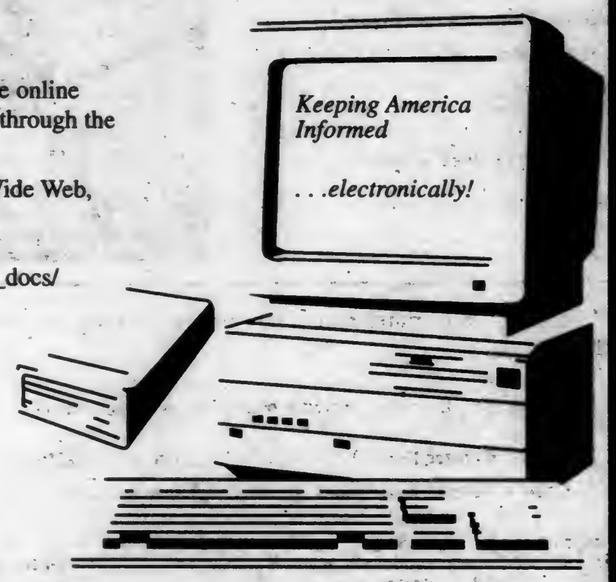
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 78

[Docket No. 96–041–3]

Interstate Movement of Livestock; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on May 22, 1997, and effective June 23, 1997, we amended the regulations governing the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. We also removed the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and the regulations that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. Since the publication of the final rule, three issues arising from omissions or a lack of clarity in the final rule have been brought to our attention. We are publishing this technical amendment to resolve those issues.

DATES: This amendment is effective October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Surveillance and Animal Identification Team, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or E-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on October 31, 1996 (61 FR 56155–56165, Docket No. 96–041–1), we proposed to amend the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. In the same document, we proposed to remove the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera.

In a final rule published in the **Federal Register** on May 22, 1997 (62 FR 27930–27937, Docket No. 96–041–2), and effective June 23, 1997, we adopted the provisions of the proposed rule as a final rule with certain specified changes that were based on comments received in response to the proposed rule. Since the publication of the final rule, three issues arising from omissions or a lack of clarity in the final rule have been brought to our attention. We are publishing this technical amendment to resolve those issues, each of which is explained below.

Animal Identification

In the May 1997 final rule, we provided for the use of premises identification numbers to identify livestock. When used alone, a premises identification number will allow an animal to be traced back to its farm or premises of origin. That degree of traceback specificity is sufficient for certain classes of livestock, such as slaughter swine and feeder swine. However, a premises identification number can also be combined with a producer's own livestock production numbering system to provide a unique identification number for an animal. Such unique individual identification is necessary for other classes of livestock, such as breeder swine, which often require follow-up testing after being moved interstate.

Unique animal identification is most often provided through the use of official eartags, and in our May 1997 final rule, we amended the definition of *official eartag* to provide for the use of premises identification numbers on official eartags. In amending that definition, we failed to specify that a premises identification number must be combined with a producer's livestock production numbering system to provide animal-specific, rather than just premises-specific, identification if that number is to be used on an official eartag. In this document, therefore, we have amended the definition of *official eartag* in §§ 71.1 and 78.1 to clarify that an official eartag bearing a premises identification number must provide a unique identification number. We have also amended § 71.19(b), which lists the means of swine identification approved by the Administrator, to make it clear that a "regular" premises identification number (i.e., a premises-specific number) is approved for the identification of slaughter swine and feeder swine, the two classes of swine that, as noted above, do not require animal-specific identification for interstate movement.

Pseudorabies Provisions

In the May 1997 final rule, we added pseudorabies to the list in § 71.3(a) of diseases considered to be endemic to the United States; that paragraph concludes by stating that animals affected with those endemic diseases shall not be moved interstate. However, paragraph (c) of § 71.3 provides for the interstate movement of animals affected with certain diseases if the animals are moved in accordance to our specific regulations that provide for such interstate movement. Specific regulations do exist that provide for the movement of swine affected with pseudorabies, but we neglected to note those regulations in § 71.3(c) when we added pseudorabies to the list in § 71.3(a). Therefore, in this document we have added a new paragraph § 71.3(c)(4), which reads "Swine infected with or exposed to pseudorabies may be moved interstate in accordance with part 85 of this chapter."

Approved Livestock Facilities for Swine

When we developed the single livestock market approval agreement in § 71.20 to replace the five agreements that had been located in parts 75, 76, and 78, it was our intent to eliminate duplication while retaining any necessary species-specific provisions. With regard to the approval of livestock markets for swine, we stated in our

October 1996 proposed rule that we would incorporate the provisions of § 76.18, "Approval of Livestock Markets," into the single agreement in § 71.20 with four exceptions, three of which were related to the now-removed hog cholera regulations and one that dealt with recordkeeping. We have found that we failed to include one of the disease prevention requirements of § 76.18—i.e., that the pens, alleys, and sales rings for holding, inspecting, and otherwise handling swine in an approved market for swine must be imperviously surfaced—when we incorporated the agreement from § 76.18 into the single agreement in § 71.20. To correct that omission, we have amended the swine-specific provisions of the approved livestock facility agreement in § 71.20(a) to restore the impervious surface requirement.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 71 and 78 are amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 71.1, the definition of *official eartag* is revised to read as follows:

§ 71.1 Definitions.

* * * * *

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and providing unique identification for each animal. An official eartag may conform to the alpha-numeric National Uniform Eartagging System, or it may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

* * * * *

3. In § 71.3, a new paragraph (c)(4) is added to read as follows:

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c) * * *

(4) Swine infected with or exposed to pseudorabies may be moved interstate in accordance with part 85 of this chapter.

* * * * *

4. In § 71.19, paragraph (b)(7) is revised to read as follows:

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(b) * * *

(7) For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated.

* * * * *

5. In § 71.20, paragraph (a), in the sample agreement, paragraphs (15)(ii) through (15)(v) are redesignated as paragraphs (15)(iii) through (15)(vi) and a new paragraph (15)(ii) is added to read follows:

§ 71.20 Approval of livestock facilities.

(a) * * *

(15) * * *

(ii) Pens, alleys, and sales rings for holding, inspecting, and otherwise handling swine shall be imperviously surfaced.

* * * * *

PART 78—BRUCELLOSIS

6. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

7. In § 78.1, the definition of *official eartag* is revised to read as follows:

§ 78.1 Definitions.

* * * * *

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and providing unique identification for each animal. An official eartag may conform to the alpha-numeric National Uniform Eartagging System, or it may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

* * * * *

Done in Washington, DC, this 14th day of October 1997.

Craig M. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27953 Filed 10–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 95–032F]

RIN 0583–AB93

Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule (Docket No. 95–032F) which was published Monday, August 25, 1997 (62 FR 45016). The final rule concerned the elimination of prior approval requirements for establishment drawings and specifications, equipment, and certain partial quality control programs.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, FSIS, Room 402 Annex Building, Washington DC 20250–3700: (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections eliminates requirements for establishments applying for inspection to submit to FSIS multiple sets of drawings and specifications of facilities for the preparation of meat or poultry products. The final rule also eliminates requirements for Agency prior approval of equipment and utensils to be used in preparing edible product and of most partial quality control programs used for the control of food processing or for other purposes.

Need for Correction

As published, the final rule contained errors rendering the regulatory text inconsistent with the preamble explanation.

Correction of Publication

Accordingly, the publication on August 25, 1997, of the final rule (Docket No. 95–032F), which was the subject of FR Doc. 97–21882, is corrected as follows:

§ 318.4 [Corrected]

Paragraph 1. On page 45025, in the second column, in § 318.4, in the paragraph (g) heading, the word "Establishment" is corrected to read "Plant".

* * * * *

§ 381.145 [Corrected]

Paragraph 1. On page 45026, in the third column, the § 381.145 heading is corrected to read "Poultry products and other articles entering or at official establishments; examination and other requirements."

Paragraph 2. On page 45027, in the first column, in § 381.145, the paragraph (g) heading is corrected to read "Termination of Quality Control Systems".

* * * * *

Dated: October 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–27926 Filed 10–21–97; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 545, 556, 557, 561, 563, 563g

[No. 97–108]

RIN 1550–AB00

Deposits

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule streamlining its deposit-related regulations. The final rule will eliminate duplicative, overlapping, and outdated regulations, and those that micromanage savings associations. The final rule also codifies the OTS position on federal preemption of state laws affecting deposit-related activities.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Edward J. O'Connell, III, Project Manager, (202) 906–5694, Supervision Policy; Robyn H. Dennis, Manager, Thrift Policy, (202) 906–5751; Christine Harrington, Counsel (Banking and Finance), (202) 906–7957; or Karen Osterloh, Assistant Chief Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background of the Proposal

OTS published a notice of proposed rulemaking (NPR) on April 2, 1997 proposing to amend its deposit-related regulations.[1] The NPR proposed to streamline the regulations by eliminating duplicative, overlapping, and outdated regulations, and those that micromanage savings associations. Additionally, OTS sought to codify its long-standing position on federal preemption of state laws affecting deposit-related activities. Finally, OTS proposed to remove regulations that merely restate existing statutory authority or universally recognized incidental deposit-related powers.

With these goals in mind, OTS proposed to consolidate all remaining deposit-related regulations in a new part 557. OTS predicted that this change would make deposit-related regulations easier to locate and follow. OTS issued the NPR pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

II. General Discussion of the Comments

Eight commenters responded to the NPR including five federal thrift institutions and three trade associations. The commenters generally supported the proposal to remove unnecessary, duplicative, or outdated regulations. They specifically endorsed the removal of OTS regulations duplicating areas covered by the Federal Reserve Board's (FRB) Regulation D and Regulation DD.[2] Commenters also generally endorsed the proposed consolidation of the remaining deposit-related regulations at new part 557. Comments addressing specific regulations are discussed in the section-by-section analysis below.

III. Section-by-Section Analysis

A. Disposition of Existing Deposit-Related Regulations

The OTS proposed to delete certain existing regulations, and consolidate the remaining relevant provisions in a new part. Sections proposed for deletion included: § 545.10 (Savings Deposits or Shares); § 545.11 (Issuance of Accounts); § 545.12 (Demand Deposit Accounts); § 545.13 (Account Records); § 545.14 (Determination and Distribution of Earnings); § 556.12 (Deposit Assurance of Direct Deposit of Social Security Payments); § 563.2 (Simple Form of Certificate; Passbooks); § 563.3 (Long Form of Membership Certificate); § 563.6 (Payment of Accounts on Demand); § 563.7 (Fixed-Term Accounts); § 563.9 (Eurodollar Deposits); and § 563.10 (Earnings-Based Accounts).

OTS received comments supporting the deletion of most of the cited sections. These sections are deleted as proposed. Comments opposing the deletion of specific sections, however, are discussed below. Comments received on existing provisions that were retained and incorporated into the new part 557 are discussed in connection with the relevant section under that part. A derivation chart has been provided at the end of this preamble.

OTS emphasizes that the changes made in this final rule are not intended to reduce, in any way, the scope of federal thrifts' authority to conduct deposit activities.

Section 545.12 Demand Deposit Accounts. Existing § 545.12(b) prohibits a federal association from paying interest on demand deposits and specifically states that finders' fees, as defined in § 561.16(b), are not interest. OTS proposed to delete this paragraph and to include the finders' fees exception in the Thrift Activities Handbook ("Handbook"). One commenter supported retaining the finders' fee provisions in OTS regulations. This commenter argued that the Handbook would not override the statutory prohibition on interest on demand deposits at 12 U.S.C. 1464(b)(1)(B)(i), and feared that the Handbook may not be issued until after the effective date of the new deposit regulation. Another commenter supported deleting the finders' fee provision.

OTS regulations at § 561.16 define "demand accounts" for the purposes of 12 U.S.C. 1464(b) and the implementing regulations. This definition specifically states that fees paid by a savings association to a person who introduces a depositor to the savings association shall not be deemed an interest payment, if the fee meets certain criteria. OTS believes this definition is sufficient to qualify for the statutory prohibition. Accordingly, the final rule deletes § 545.12(b) as proposed.

Like section 5 of the HOLA, section 11 of the Banking Act of 1933 (12 U.S.C. 371a) and section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) prohibit the payment of interest on demand deposits. The Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC)

[1] 62 FR 15626 (April 2, 1997). (Notice of Proposed Rulemaking on Deposits and Advance Notice of Proposed Rulemaking on Electronic Banking). OTS has separately published a proposed rule on Electronic Banking. 62 FR 51817 (October 3, 1997).

[2] Regulation D addresses the Reserve Requirements of Depository Institutions. 12 CFR part 204 (1997). Regulation DD implements the Truth in Savings Act (TISA). 12 CFR part 230 (1997).

have issued regulations implementing this prohibition at 12 CFR part 217 (1997) and 12 CFR part 329 (1997), and have issued interpretive rules describing when premiums will not be considered to be interest within the scope of this prohibition. *See* 12 CFR 217.101 (1997) and 12 CFR 329.103 (1997). These interpretations permit premiums to be paid, *inter alia*, if the premium is given only when the depositor opens a new account, or adds to, or renews an existing account. As a result of this guidance, FRB- and FDIC-regulated institutions were constrained from offering incentives to use their products, including the use of new services such as automated teller machines (ATM) or debit cards.[3]

To address this issue, FRB and the FDIC recently revised their interpretive guidance to permit regulated institutions to pay any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance.[4] While OTS has no interpretive rule specifically addressing premiums, OTS agrees that premiums under such circumstances are not interest and will generally follow the FRB and FDIC interpretations on this point.

Section 556.12 Deposit Assurance of Direct Deposit of Social Security Payments. The OTS policy statement at § 556.12 states that a federal association has implied powers to provide deposit assurance in connection with the Social Security Administration's direct deposit program. This policy statement also includes advice on safeguards and controls required to address the risks of the direct deposit program. OTS proposed to delete the policy statement.

Two commenters supported this deletion, but noted that additional regulatory guidance would be helpful to address such issues as safeguards and controls, and compliance with the FRB's Regulation E (Electronic Funds Transfers).[5] The OTS Compliance Handbook addresses Regulation E matters in section 330, Electronic Funds Transfer. OTS is reviewing whether the issuance of additional guidance is necessary.

Section 563.7 Fixed-Term Accounts (Term Accounts). Existing § 563.7(d) states that a certificate account may prohibit withdrawal prior to maturity, except under circumstances set forth in the certificate. This paragraph further provides that, in case of the accountholder's death or incompetence, a savings association may not prohibit early withdrawal and may not impose an early withdrawal penalty. OTS proposed to delete this paragraph because it duplicates Regulation D.[6]

Two commenters specifically addressed this paragraph. One supported deletion. The other argued that the section is not duplicative. This commenter argued that Regulation D neither authorizes an institution to prohibit early withdrawal nor forbids an institution from prohibiting early withdrawal. The commenter noted that § 563.7(d) correctly allows the matter to be addressed by the contract between the savings association and its depositors.

Unless restricted by statute or regulation, a federal savings association needs no specific authorization to enter into agreements establishing maturity dates for accounts and prohibiting early withdrawal under circumstances specified in those agreements. Regulation D does, however, limit this broad authority. For example, to meet the definition of time deposit under Regulation D, an institution must limit the depositor's right to withdraw his account unless the deposit is subject to a specified penalty for early withdrawal.[7]

The commenter correctly noted that, unlike existing § 563.7, Regulation D does not *require* a savings association to permit early withdrawal, subject to penalties, upon the death or incompetency of the accountholder. Rather, Regulation D merely *permits* the savings association to take such action under these and other circumstances.[8] However, in the interest of uniformity with other insured institutions, the OTS had determined that it is not necessary to impose this additional requirement on federal savings associations. Therefore, OTS concludes that existing § 563.7 may be deleted in this final rule.

Section 563.9 Eurodollar Deposits. Existing § 563.9 addresses the issuance of Eurodollar deposits. OTS proposed to delete this provision as unnecessary. Three commenters supported deleting this provision. One of these commenters, however, suggested that OTS reiterate, either in a regulation or the preamble, that savings associations have authority to accept Eurodollar deposits under their general authority to accept deposits. OTS has deleted this regulation as proposed, but notes that federal savings associations continue to be permitted to issue Eurodollar certificates as part of their deposit activities authorized by the HOLA.[9]

B. Proposed Part 557

OTS proposed to adopt a new part 557, which would include all of the agency's deposit-related regulations. Although OTS proposed part 557 in a traditional format, this final rule uses the plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register *Document Drafting Handbook* (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes informative headings (often written as a question), non-technical language (including the use of "you"), and sentences in the active voice.

Although commenters did not have an opportunity to comment on the plain language format prior to its use in this final rule, OTS believes that the benefits of the plain language format justify its use. The substance of the proposed regulation did not change as a result of the plain language drafting. OTS welcomes comments on the format and suggestions on how to improve this format.

Subpart A—General

Section 557.1 What does this part do? New § 557.1 states that part 557 applies to savings associations' deposit activities. Specifically, subpart B applies to federal savings associations, while subpart C applies to both federal and state chartered savings associations.

Subpart B—Deposit Activities of Federal Savings Associations

Section 557.10 What authorities govern the issuance of deposit accounts by a federal savings association? Proposed § 557.1 stated that a federal savings association may raise funds through accounts and may issue evidence of accounts under section 5(b)(1) of the HOLA, by the terms of its charter, and by part 557.

OTS received two comments on the proposed section. One commenter feared that savings association personnel may not realize that

[3] For example, one bank was prevented from offering incentives to existing demand customers who signed up for an ATM card because the incentives did not coincide with opening, adding to, or renewing an account. Similarly, another bank was prevented from offering incentives to encourage deposit customers to use an ATM card more than three times per month because premiums from the use of a debit card, which reduce the amount on deposit, would have been interest on the deposit under the FRB and FDIC interpretive guidance.

[4] 62 FR 26736 (May 15, 1997); 62 FR 40731 (July 30, 1997).

[5] 12 CFR part 204 (1997).

[6] 12 CFR 204.2(c)(1) n.1 (1997).

[7] *See* 12 CFR 204.2(c)(1) (1997).

[8] 12 CFR 204.2(c)(1)(i), n.1 (1997).

[9] 12 U.S.C. 1464(b)(1)(A).

Regulation D is applicable. This commenter suggested that the final rule specifically cite Regulation D. OTS believes this suggestion is helpful and has added a reference to Regulation D and Regulation DD in the new § 557.10.

Another commenter suggested deleting the reference to authority granted under the association's charter. The reference to the charter was included to maintain consistency with section 5(b) of the HOLA which authorizes a federal savings association to accept deposits "[s]ubject to the terms of its charter and regulations of the [OTS]."[10] To the extent that the commenter feared that retention of this reference would require charter amendments whenever a new deposit product is offered, the OTS notes that charters are broad authorizing documents that typically do not specifically address unique deposit products. The model federal stock and mutual charters, for example, contain no restrictions on permissible deposit products.[11]

Section 557.11 To what extent does federal law preempt state deposit-related law? Section 557.11 sets forth OTS's long-standing position on federal preemption of state laws purporting to affect deposit-related activities of federal savings associations. It explicitly states our intent to occupy the entire field of deposit-related regulations for federal savings associations, and sets forth the statutory and regulatory bases for preemption. *See* proposed § 557.2(a).

One commenter opposed the preemption provision as an infringement on the dual banking system. OTS disagrees. Deposit-taking is one of the most important functions of a savings association, and preemption is essential to OTS regulation of these activities. Section 557.11 merely restates long-standing preemption principles applicable to federal savings associations' operations, as developed in a long line of court cases and legal opinions issued by OTS and the FHLBB.[12]

This final rule should not be construed as evidencing, in any way, an intent by OTS to change its long-standing position on preemption. Moreover, whether OTS continues to have a specific regulation addressing a particular deposit activity or chooses to remove a federal regulation to streamline its regulations and reduce regulatory burden, OTS still intends to occupy the entire field of regulation of the deposit activities of federal savings associations.

One commenter argued that all preemption questions should be decided on a case-by-case basis, rather than by regulation. Sections 557.11 through 557.13 of the final rule set forth only well-settled principles of preemption and examples of preempted and non-preempted state laws. These are derived from statutory and regulatory authority, as interpreted in case law and prior FHLBB and OTS case-by-case determinations. While OTS will continue to address new questions by issuing interpretive guidance on a case-by-case basis, OTS is hopeful that the increased clarity and specificity of the final rule will reduce confusion and the need for frequent preemption inquiries to OTS.

Section 557.12 What are some examples of preempted state laws affecting deposits? Section 557.12 (proposed § 557.2(b)) contains an illustrative list of preempted state laws. Various commenters suggested additions to the list of preempted state laws. Some would expand the list to reference new types of preempted state laws (e.g., state laws addressing abandoned property, safe deposit boxes, licensing of deposit operations, and reporting requirements).[13]

Except as discussed below, OTS has not revised § 557.12 to add new items to the list of preempted state laws. As the section heading to this final rule emphasizes, the list of preempted state laws is not intended to be exhaustive. Failure to mention a particular state law that affects deposit-taking should not be deemed to constitute evidence of any intent to permit that type of state law to apply.[14] As state laws are addressed in future case law and agency opinions, OTS will consider appropriate revisions to this regulation.

OTS has decided to revise the regulation to include one suggested addition. On numerous occasions, the OTS, FHLBB and the courts, have concluded that states may not impose licensing or registration requirements on federal savings associations.[15] Accordingly, state licensing and registration laws have been added to the list in § 557.12.

One additional type of state law merits discussion—state escheat laws. Some commenters argued that escheat laws should be added to the list of preempted state laws. Other commenters suggested that these laws should be added to the list of laws that are *not* preempted. This agency has concluded in prior opinions that federal law does not preempt state laws requiring a federal savings association to remit the balance of an abandoned account to a state at a designated time. Additionally, the agency has opined that states may review the records of, or obtain reports from, a federal savings association only in very limited circumstances, including determining whether the federal savings association has complied with the escheat law.[16] On the other hand, certain other laws (e.g., state laws prohibiting a savings association from charging any fees for lack of activity during the designated escheat period) are subject to preemption.[17] Because some aspects of state escheat laws are preempted and other aspects are not, OTS declines to address these laws in the final regulation.

Section 557.13 What state laws affecting deposits are not preempted? Section 557.13 describes which state laws are not preempted. Specifically, this section states that OTS has not preempted certain types of laws to the extent that the laws only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purposes of § 557.11. State laws that are not preempted include: Contract and commercial law, tort law, and criminal law. In addition, OTS will not preempt any other state law if OTS, upon review, finds that the law furthers a vital state interest and either has only an incidental effect on deposit-related activities or is not otherwise contrary to the purposes of § 557.11.

One commenter suggested that OTS should clarify that the phrase "incidental effect on deposit-related activities" requires that the state law must be directed at businesses in general, rather than at deposit-related activities in particular. Certainly, many state laws directed at businesses in general will not be preempted.

[10] 12 U.S.C. 1464(b)(1)(A).

[11] 12 CFR 552.3 and 544.1 (1997).

[12] For a discussion of general preemption principles applicable to the operations of federal thrifts, see 61 FR 50951 at 50965–50967 (September 30, 1996).

[13] Other commenters made suggestions that would merely add greater specificity to the proposed list of preempted laws. Commenters suggested adding state laws that address particular special purpose savings services, specific kinds of service charges or fees, or particular aspects of state funds availability laws. The OTS believes that its rule is sufficiently clear, and has not made these changes.

[14] To the contrary, the preemption rules are based on the premise that any state law that affects the deposit activities of federal thrifts is preempted unless it clearly falls within the parameters of § 557.13.

[15] *See e.g.*, OTS Op. Chief Counsel. (December 14, 1994) and opinions and case law cited therein.

[16] OTS Op. Chief Counsel (January 18, 1996) at 3; FHLBB Op. Dep. Chief Counsel (May 24, 1984).

[17] OTS Op. Chief Counsel (July 8, 1992).

However, the focus of this aspect of the preemption inquiry is the effect of a state law on federal associations, not on how many other businesses or industries the law may also affect.

Another commenter suggested that OTS should employ a presumption in favor of preempting state laws. When confronted by interpretative questions under the final rule, OTS will follow the same analytical format that it described in the preemption discussion to the recently issued lending regulation.[18] To determine whether a state law is preempted, the first step is to ascertain whether the law in question is of the type listed in § 557.12 as an example of preempted law. If it is, the analysis ends there; the law is preempted. If the law is not covered by § 557.12, the next question is whether the law affects deposit-taking. If so, then, in accordance with § 557.11, the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of § 557.13. For these purposes, § 557.13 is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

Section 557.14 What interest rate may I pay on savings accounts? New § 557.14 addresses interest payments on savings accounts. The proposed rule, entitled "interest and earnings," stated that a savings association may pay interest on a savings account, whether in the form of a deposit or share, at any rate or anticipated rate of return determined when the account is accepted and as provided in the association's charter and bylaws and the terms of the account. *See* proposed § 557.3.

One commenter suggested that the proposed rule should be revised to delete the outdated term "share" and that the title of any new section should not include the term "earnings." The term "share" is drawn from the HOLA.[19] OTS will continue to use this term in the final regulation to keep the regulation consistent with the statute. OTS dropped the reference to "earnings" since this term is not used in the regulation text.

One commenter noted that modern charters and bylaws do not address interest payments on savings accounts and suggested the final rule on interest should delete the references to these documents. Again, the reference to the association's charter is based on the statute, which authorizes a federal savings association to accept deposits subject to the terms of its charter.[20] In order to maintain consistency with this statutory authority, this reference is retained. OTS agrees that the reference to bylaws is unnecessary, and has deleted it from the final rule.

Another commenter suggested that the regulation should state that all interest payments must be consistent with the TISA and Regulation DD, which implements TISA. This change is unnecessary because OTS has included a citation to Regulation DD in § 557.10, which addresses the authorities governing federal savings associations' issuance of deposit accounts.

One commenter suggested that the proposed rule should be revised to delete the outdated term "anticipated rate of return." Share type mutual associations use this term in making earnings distributions to account holders. Additionally, as discussed under § 557.15, rates may vary and may not be known with certainty when an account is opened. OTS believes the term anticipated rate of return is appropriate, and has retained this term in the final regulation.

The proposed regulation would have allowed federal savings associations to pay fixed rates on savings accounts, or pay rates that vary according to a schedule, index, or formula specified when the account is accepted. *See* proposed § 557.3.

One commenter was concerned that the proposed text would unnecessarily disallow "bump-rate" certificates of deposit. Bump-rate accounts provide the depositor with the option of changing the rate during the certificate's term. OTS did not intend to disallow "bump-rates." Therefore, the final regulation does not require a federal association to fix interest rates on savings accounts when it accepts the accounts. Rather, the final rule requires that the schedule, index, or formula be specified in the account's terms.

Section 557.15 Who owns a deposit account? Section 557.15 provides that a federal association may treat the account holder of record as the owner, regardless of contrary notice, until the account is transferred on the association's records. *See* proposed § 557.4(b). OTS received one comment in support of the proposed rule. Accordingly, OTS adopts this provision without substantive change.

Subpart C—Deposit Activities of All Savings Associations

Section 557.20 What records should I maintain on deposit activities? Section 557.20 states that federal and state chartered savings associations should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of its deposit-related activities. These records should adequately evidence ownership, balances, and all transactions for each account. *See* proposed § 557.4(a). This section replaces the more specific deposit recordkeeping requirements contained in the existing regulations.

One commenter suggested that the recordkeeping requirements should apply only to federal savings associations. OTS specifically intends the recordkeeping requirements to apply to both federal and state chartered savings associations. To make this distinction clear, OTS has included this provision in subpart C which governs the deposit activities of all associations.

Another commenter suggested that the regulation should specifically state that electronic records are acceptable. OTS has recently issued a proposed regulation addressing the electronic operations of federal savings associations.[21] This regulation would permit federal savings associations to use electronic means and facilities to perform any authorized function, including recordkeeping. To clarify that electronic recordkeeping is available, the final rule states that savings associations may maintain records in any format consistent with standard business practices.

C. Related Regulations

Several commenters addressed regulations that were not covered by the NPR. For example, one commenter suggested that OTS delete § 561.28 (a)(2), (a)(3) and (b), which defines money market deposit accounts. This commenter argued that § 561.28(a)(2)(i) which authorizes no more than six transfers per calendar month or statement cycle, prohibits thrifts from offering money market deposit accounts with debit cards. The commenter believed that this restriction and the other restrictions at § 561.28 are unnecessary and may be deleted.

The cited restrictions were originally imposed to preserve uniform treatment of money market accounts between Federal Reserve System members and insured institutions,[22] and are based on the definitions contained in the FRB's Regulation D.[23] Even if the restrictions contained in 12 CFR 561.28 were removed, savings associations would still be subject to such restrictions by

[18] *See* 61 FR 50951, 50966–50967 (September 30, 1996).

[19] 12 U.S.C. 1461(b)(1)(A).

[20] 12 U.S.C. 1464(b)(1)(A).

[21] 62 FR 51817 (October 3, 1997).

[22] 51 FR 10810 at 10812 (March 31, 1986).

[23] *See* 12 CFR 204.2(d)(2) (1997).

Regulation D. Moreover, OTS notes that the FRB recently considered and rejected a proposal to increase the number of transfers permitted on corporate money market accounts.

While one of the purposes of this rulemaking was to remove OTS regulations that duplicate areas covered by the FRB's Regulation D, the regulatory definitions applicable to deposits at 12 CFR parts 541 and 561 were not proposed for revision in the proposed rule. Accordingly, OTS has left these provisions unchanged. The future regulatory restructuring rulemaking may review these definitions to determine if they should be modified or removed.

Several existing OTS regulations contain cross-references to provisions that are being removed.[24] Consequently, technical revisions to remove these cross-references are included in this rule.

One commenter suggested that OTS give thrifts parity with national banks in connection with selling annuities and insurance. Another commenter suggested that the equal housing lender logo should be required only for advertisements for residential mortgage loans, rather than in all advertisements. OTS will review these regulations for possible revision when they are scheduled for reconsideration.

IV. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule simplifies existing procedures and reduces regulatory burden. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule does not have a significant impact on a substantial number of small entities. As discussed in the preamble, this final rule does not impose any additional burdens or requirements on small entities. Rather, the final rule reduces several paperwork and other burdens on all savings associations.

VII. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control No. 1550–0092. Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the OTS, 1700 G Street, N.W., Washington, D.C. 20552.

The recordkeeping requirements contained in this final rule are found at 12 CFR 557.20. The reporting requirements are found in the Federal Reserve Board's Regulation DD, 12 CFR part 230. In part 557, OTS relies on the disclosure requirements applicable to savings associations under Regulation DD. OTS needs the information to supervise savings associations and to develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations.

Records are to be maintained for the period of time the account is open, plus three years.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

VIII. Disposition of Existing Rules

Original provision	New provision	Comment
545.10		Removed.
545.11 (a) & (c)		Removed.
545.11(b)	557.10	Redesignated/modified.
545.12		Removed.
545.13 (a) & (b)(2)	557.20	Redesignated/modified.
545.13(b)(1)	557.15	Redesignated/modified.
545.14(a)	557.14	Redesignated/modified.
545.14(b)	557.14	Redesignated/modified.
545.14(c)		Removed.
556.12		Removed.
563.2		Removed.
563.3		Removed.
563.6		Removed.
563.7 (a), (c) & (d)		Removed.
563.7(b)	557.14	Redesignated/modified.
563.9		Removed.
563.10		Removed.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR 556 and 561

Savings associations.

[24] 12 CFR 561.16, 561.42, 563g.1.

12 CFR Part 557

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, as follows:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding one entry to the table in paragraph (b) in numerical order to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
557.20	1550–0092
* * * * *	

PART 545—OPERATIONS

3. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.10—545.14 [Removed]

4. Sections 545.10, 545.11, 545.12, 545.13, and 545.14 are removed.

PART 556—STATEMENTS OF POLICY

5. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§ 556.12 [Removed]

6. Section 556.12 is removed.

7. Part 557 is added to read as follows:

PART 557—DEPOSITS

Subpart A—General

Sec.
557.1 What does this part do?

Subpart B—Deposit Activities of Federal Savings Associations

557.10 What authorities govern the issuance of deposit accounts by a federal savings association?
557.11 To what extent does federal law preempt state deposit-related law?
557.12 What are some examples of preempted state laws affecting deposits?
557.13 What state laws affecting deposits are not preempted?
557.14 What interest rate may I pay on savings accounts?
557.15 Who owns a deposit account?

Subpart C—Deposit Activities of All Savings Associations

557.20 What records should I maintain on deposit activities?

Authority: 12 U.S.C. 1462a, 1463, 1464.

Subpart A—General

§ 557.1 What does this part do?

This part applies to the deposit activities of savings associations. If you are a federal savings association, subpart B of this part applies to your deposit activities. Subpart C of this part applies to the deposit activities of all federal and state chartered-savings associations.

Subpart B—Deposit Activities of Federal Savings Associations

§ 557.10 What authorities govern the issuance of deposit accounts by a federal savings association?

A federal savings association ("you") may raise funds through accounts and may issue evidence of accounts under section 5(b)(1) of the HOLA (12 U.S.C. 1464(b)(1)), your charter, and this part. Additionally, 12 CFR parts 204 and 230 apply to your deposit activities.

§ 557.11 To what extent does federal law preempt state deposit-related law?

(a) Under sections 4(a) and 5(b) of the HOLA, 12 U.S.C. 1463(a), 1464(b), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when appropriate to:

(1) Facilitate the safe and sound operations of federal savings associations;

(2) Enable federal savings associations to operate according to the best thrift institutions practices in the United States; or

(3) Further other purposes of HOLA.

(b) To further these purposes without undue regulatory duplication and burden, OTS hereby occupies the entire field of federal savings associations' deposit-related regulations. OTS intends to give federal savings associations maximum flexibility to exercise deposit-related powers according to a uniform federal scheme of regulation. Federal savings associations may exercise deposit-related powers as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise effect deposit activities, except to the extent provided in § 557.13. State law includes any statute, regulation, ruling, order, or judicial decision.

§ 557.12 What are some examples of preempted state laws affecting deposits?

The OTS preempts state laws that purport to impose requirements governing the following:

(a) Abandoned and dormant accounts;
(b) Checking accounts;
(c) Disclosure requirements;
(d) Funds availability;
(e) Savings account orders of withdrawal;
(f) Service charges and fees;
(g) State licensing or registration requirements; and
(h) Special purpose savings services.

§ 557.13 What state laws affecting deposits are not preempted?

(a) The OTS has not preempted the following types of state law, to the extent that the law only incidentally affects your deposit-related activities or is otherwise consistent with the purposes of § 557.11:

(1) Contract and commercial law;
(2) Tort law; and
(3) Criminal law.

(b) The OTS will not preempt any other state law if the OTS, upon review, finds that the law:

(1) Furthers a vital state interest; and

(2) Either only incidentally affects your deposit-related activities or is not otherwise contrary to the purposes expressed in § 557.11.

§ 557.14 What interest rate may I pay on savings accounts?

(a) You may pay interest at any rate or anticipated rate of return on savings accounts, either in deposit or in share form, as provided in your charter and the account's terms.

(b) You may pay fixed or variable rates. If you pay a variable rate, you must base it on a schedule, index, or formula that you specify in the account's terms.

§ 557.15 Who owns a deposit account?

You may treat the holder of record as the account owner, even if you receive contrary notice, until you transfer the account on your records.

Subpart C—Deposit Activities of All Savings Associations

§ 557.20 What records should I maintain on deposit activities?

All federal and state chartered savings associations ("you") should establish and maintain deposit documentation practices and records that demonstrate that you appropriately administer and monitor deposit-related activities. Your records should adequately evidence ownership, balances, and all transactions involving each account. You may maintain records on deposit activities in any format that is consistent with standard business practices.

PART 561—DEFINITIONS

8. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.16 [Amended]

9. Section 561.16 is amended, in paragraph (a), by removing the phrase ", as provided in § 563.6(b) of this chapter".

§ 561.42 [Amended]

10. Section 561.42 is amended by removing the phrase "§§ 563.6 and 561.16" and adding in its place "§ 561.16".

PART 563—OPERATIONS

11. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

§§ 563.2, 563.3, 563.6, 563.7, 563.9, 563.10 [Removed]

12. Sections 563.2, 563.3, 563.6, 563.7, 563.9, and 563.10 are removed.

PART 563g—SECURITIES OFFERINGS

13. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.1 [Amended]

14. Section 563g.1 is amended by removing the last sentence of paragraph (a)(13).

Dated: October 15, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–27842 Filed 10–21–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–081–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the "Illinois program") pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas revegetated following the removal of temporary structures such as sedimentation ponds, roads, and small diversions are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment is intended to clarify ambiguities in the State regulations and to improve operational efficiency.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204–1521, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982 **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated June 22, 1992 (Administrative Record No. IL–1192), Illinois submitted a proposed program amendment consisting of revisions to a number of its approved regulations. OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37127) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 17, 1992. Since no one requested an opportunity to testify at a public hearing, the hearing scheduled for September 14, 1992, was canceled.

By letter dated April 27, 1993 (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to concerns raised by OSM in letters dated September 2, 1992, and October 2, 1992 (Administrative Record Nos. IL–1204 and IL–1205, respectively), and in response to comments received from other governmental agencies and individuals. OSM announced receipt of the revised amendment in the May 17, 1993, **Federal Register** (58 FR 28804) and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on June 16, 1993. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, the hearing scheduled for June 11, 1993, was canceled.

OSM subsequently announced its decision on most provisions of the proposed amendment in the September 3, 1993, **Federal Register** (58 FR 46845). However, in the same document, OSM stated at 58 FR 46849–50 (finding 11(c)) and 30 CFR 913.15(o)(4) that it was deferring a decision on the proposed revisions to sections 1816.116(a)(2)(C) and 1817.116(a)(2)(C) of title 62 of the Illinois Administrative Code (IAC) until additional opportunity for public comment was provided in a separate **Federal Register** document. That commitment was fulfilled by the notice published on September 15, 1993 (58 FR 48333), which reopened the public comment period until October 15, 1993. This notice also included similar proposed revisions to the Kentucky and Ohio regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility period every time a small portion of the permit area requires reseeding or replanting. Subsequently, in the May 29,

1996, **Federal Register** (61 FR 26792), OSM approved similar proposed revisions to the Colorado regulations, based on the adoption of the proposed OSM policy published on September 15, 1993 (58 FR 48333).

Only Illinois' proposed revisions are under consideration in this final rule document. The Kentucky and Ohio proposals will be addressed in a separate final rule document. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

The amendment revises two regulations defining normal husbandry practices and other activities that will not restart the liability period. It also includes a document explaining how the State intends to interpret and implement these rules. This policy document specifies that Illinois will consider the reseeding of areas from which temporary features such as sedimentation ponds, roads, and diversions have been removed after vegetation is established on the surrounding area to be non-augmentative.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the deferred revisions at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C) and the accompanying policy document that explains how the State intends to implement these rules.

A. *OSM's policy concerning the term of liability for reclamation of roads and temporary sediment control structures.* As outlined in the May 29, 1996, **Federal Register** (61 FR 26792), OSM has adopted the policy published for comment in the September 15, 1993, **Federal Register** (58 FR 48333). Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are relatively small in size and either widely dispersed or narrowly linear in distribution and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structure unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

The above discussion of the rules in 30 CFR Part 816, which applies to surface mining activities, also pertains to similarly or identically constructed section in 30 CFR Part 817, which applies to underground mining activities.

B. *Comparison of Illinois' policy with OSM's policy clarification.* Illinois' policy document specifies that the State will consider limited reseeding and associated fertilization and liming of areas where features such as sediment ponds, roads, and small diversions have been removed as non-augmentative on agricultural and non-agricultural lands where the area is small in relation to the watershed of the area. The statement also stipulates that any minor reseeded area be revegetated under approved plans and that vegetation be fully established at the time of final bond release. Illinois' reference to roads in its statement is interpreted by OSM to mean those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. Ancillary roads used for maintenance do not include haul roads or other primary roads which should either have been removed upon completion of mining or approved to be retained for an approved postmining land use. On April 11, 1997 (Administrative Record No. IL–1243). OSM discussed the above interpretation of roads with Illinois. Illinois agreed with OSM's interpretation of the meaning of the term "roads" as used in its policy document.

Because Illinois' policy document stipulates that these small reclaimed areas must be revegetated under approved plans, the policy ensures that the vegetation of these areas would be subject to Illinois' counterparts to the Federal regulations at 30 CFR 816.111 and those portion of Illinois' counterparts to the Federal regulations at 30 CFR 816.116 related to the attainment of the postmining land use. Illinois' policy requirement that vegetation on these small areas be fully established at the time of final bond release would tend to discourage the removal of ponds, roads, or diversions toward the end of the liability period for the surrounding area. If removal of the structures occurs toward the end of the liability period for the larger reclaimed area, the areas where the ponds or diversions existed would not qualify for final bond release until diverse, effective, and permanent vegetative cover is established that meets the standards of Illinois' counterpart to 30 CFR 816.111.

Although Illinois' policy document is primarily concerned with the definition of normal husbandry practices, the term "non-augmentative" is used in reference to the removal of sediment ponds, roads, and small diversions that were used in support of reclamation. OSM interprets this to mean Illinois considers removal of these structures as non-augmentative, but not as a normal husbandry practice. OSM agrees that removal of such structures, while being non-augmentative, in not a normal husbandry practice.

Based on the above discussion, the Director finds that Illinois' policy is consistent with and no less effective than the Federal regulations at 30 CFR 816.46(b) (5) and (6), 816.150(f)(6), and sections 515(b) (19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, **Federal Register** (58 FR 48333).

C. *Removal of Required Regulatory Program Amendment 30 CFR 913.16(o).* In the December 13, 1991, **Federal Register** (56 FR 64986), OSM placed required regulatory program amendment 30 CFR 913.16(o) on the Illinois program. It required Illinois to either submit revisions to 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C) to require OSM approval of all normal husbandry practices other than those specifically listed in its approved program or delete the provisions providing Illinois with the authority to approve unspecified husbandry practices. By letter dated June 22, 1992 (Administrative Record No. IL–1192), Illinois submitted proposed changes to its program. As part of these revisions, at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C), Illinois proposed to revise its revegetation standards by specifying normal husbandry practices for the State. These included approved agricultural practices described in the Illinois Agronomy Handbook and those practices which are part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 *et seq.*). The Illinois Agronomy Handbook is published by the University of Illinois—Cooperative Extension Service, Office of Agricultural Communications and Education. It includes recommended fertility management practices for row crops and hayland, which are tailored for site specific soil conditions; crop rotation practices; tillage practices; and application practices on unmined land in Illinois.

Subsequently, by letter dated April 27, 1993 (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to issue letters prepared by OSM on September 2, and October 2, 1992 (Administrative Record Nos. IL–1204 and IL–1205, respectively), and in response to comments received from other agencies and individuals. Included in these revisions was the policy document in which Illinois explained how it would determine what are normal husbandry practices and how it would judge management practices on mined land against the recommended agricultural management practices and soil conservation practices of the referenced documents.

These proposed revisions, which were approved in the September 3, 1993, **Federal Register** (58 FR 46849), and the policy document satisfy required regulatory program amendment 30 CFR 913.16(o). Therefore, the Director is taking this opportunity to remove it from the Illinois program.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on Illinois' policy document and OSM's proposed policy.

Comments were received from the Illinois Department of Mines and Minerals (now the Illinois Department of Natural Resources—Office of Mines and Minerals), the Kentucky Coal Association, the Kentucky Resources Council, the Lignite Energy Council, the National Coal Association, and the North Dakota Public Service Commission. Except for the Kentucky Resources Council, all of the commenters were in favor of the policy.

In response to the Director's proposed clarification of OSM policy, the Kentucky Resources Council initiates its comments with the premise that OSM has proposed to treat the initial seeding and restoration of areas disturbed by diversions, roads and sedimentation ponds as "normal husbandry practices." It then argues that the initial seeding of such areas is not normal husbandry practice, and any revegetation other than "husbandry practices" as defined by 30 CFR 816.116(c)(4) constitutes "augmented seeding" and would therefore require extension of the full liability period for the establishment of permanent vegetation. First, the Director did not base not restarting the liability period on the contention that revegetation of such areas is a normal husbandry practice. Second, the Director does not agree that any revegetation other than "normal husbandry practices" constitutes "augmented seeding." The legislative history of the Act reveals no specific Congressional intent in the use of the term "augmented seeding." Accordingly, OSM's interpretation of augmented seeding is given deference so long as it has a rational basis. OSM would not consider the seeding of small areas, such as ponds and their associated diversions and roads, as augmented seeding. For further discussion of such rationale, see the Director's Finding A. Under the proposed Illinois, Kentucky, and Ohio amendments, areas reclaimed following removal of temporary structures such as sedimentation ponds and associated structures and roads would not be subject to a separate or extended bond liability period apart form the applicable permit area served by such structures. The seeding of sedimentation ponds and their associated diversions and roads is not the result of reclamation failure, but because 30 CFR 816.46(b)(5) prohibits the removal of temporary sedimentation ponds until two years after the last augmented seeding.

The Kentucky Resources Council overlooks the fact that for the vast majority of the reclaimed area the revegetation responsibility period will be at least five years. Neither Congressional history nor the language of the statute distinguishes between initial overall reclamation of a mined area and the subsequent restoration of temporary structures like sedimentation ponds and maintenance roads. In the absence of such distinction, the Secretary is delegated discretion to determine whether a proposed state amendment is no less effective than the Act and consistent with the counterpart Federal regulation. The Director's stated interpretation of Section 515(b)(20) is that it applies "to the increment or permit area as a whole, not individually to those lands within that area upon which revegetation is delayed solely because of their use in support of the reclamation effort of the planted area." See 58 FR 48333, September 15, 1993.

OSM has taken a consistent position in approving an amendment to the Colorado surface mining program which provided that reclaimed temporary drainage control facilities shall not be subject to the extended liability period for revegetative success or the related bond release criteria (61 FR 26792, May 29, 1996). The Director, therefore, does not agree with the commenter's interpretation of Section 515(b)(20) of SMCRA.

Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program. Comments were received from the U.S. Forest Service and the U.S. Bureau of Mines. The U.S. Forest Service commented that it had reviewed OSM's proposed rule to clarify its policy towards revegetation and agreed with the proposed rule.

The U.S. Bureau of Mines suggested that OSM consider the significant differences in the reclamation of sediment structures and roads, since sediment structures generally possess characteristics necessary for successful reclamation, while roads generally require significant initial work to

develop a necessary growth environment. OSM agrees with the commenter. OSM's policy and Illinois' regulations and policy document require that when such structures are removed, the land on which they were located must be regraded and revegetated in accordance with approved plans and the requirements of 30 CFR 816.111 through 816.116, or state counterparts. Because the Illinois policy will be limited to small areas, roads posing significant potential for reclamation problems will be excluded.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The deferred provision from Illinois proposed amendment did not pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. IL–1225). It responded on October 18, 1993 (Administrative Record No. IL–1231), that it concurred without comment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record Nos. IL–1226 and IL–1228). Neither the SHPO and ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves Illinois' regulations at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C) and its policy document as submitted on June 22, 1992, and as revised on April 27, 1993.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 3, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 22, 1992	October 22, 1997.	62 IAC 1816.116(a)(2)(C); 1817.116(a)(2)(C); Non-augmentation Policy Statement.

§ 913.16 [Amended]

3. Section 913.16 is amended by removing and reserving paragraph (o).

[FR Doc. 97–27982 Filed 10–21–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0055a; FRL–5912–7]

Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for the approval of a revision to the California State Implementation Plan. EPA published the direct final rule on August 25, 1997 at 62 FR 44909, approving revisions to a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by September 24, 1997, the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule. EPA will address the comments received in a subsequent final action on this or a future revision of this rule in the near future. EPA will not institute a second comment period on this document.

DATES: The direct final rule published at 62 FR 44909 is withdrawn as of October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the August 25, 1997 **Federal Register**, and in the short informational document located in the proposed rule section of the August 25, 1997 **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 9, 1997.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, Chapter I, Title 40 of the Code of Federal Regulations if amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.220 [Amended]

2. Section 52.220 is amended by removing paragraph (c)(224)(i)(D).

[FR Doc. 97–27978 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5911–8]

Final Determination To Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by an additional one month the deadline for taking final action on petitions that eight States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this document, EPA is making that determination. The eight States that have submitted the petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EFFECTIVE DATE: This action is effective as of October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC–2344, 401 M St. SW, Washington, DC 20460, (202) 260–5892.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action is procedural, and is set in the context of a series of actions EPA is taking to address the problem of the transport of tropospheric ozone and its precursors—especially oxides of nitrogen (NO_X)—across the eastern region of the United States.

The most recent step EPA has taken to address regional ozone transport was the signing of a proposed rulemaking that the State implementation plans (SIPs) of 22 States and the District of Columbia, all in the eastern half of the United States, must be revised under CAA sections 110(k)(5) and 110(a)(1) to include provisions reducing NO_X emissions because those emissions contribute significantly to ozone nonattainment or maintenance problems in downwind states. EPA Administrator Carol M. Browner signed this proposed rulemaking—referred to in this notice as the NO_X SIP call—on October 10, 1997. The proposal is designed to assure that SIPs meet the requirements of CAA section 110(a)(2)(D), which mandates that SIPs contain adequate provisions prohibiting emissions that significantly contribute to downwind nonattainment problems. This proposal is based on information indicating that emissions from those 23 jurisdictions have an adverse impact on downwind areas with respect to both of the ozone National Ambient Air Quality Standards (NAAQS)—the long-standing one-hour standard and the eight-hour standard that was promulgated by notice dated July 18, 1997 (62 FR 38856). EPA's proposals were based generally on recommendations and technical analyses from the Ozone Transport Assessment Group (OTAG), which was an organization comprising EPA, states,

industry, and citizens groups that was formed to focus on interstate ozone transport.

In contrast, today's action is based on a separate set of statutory tools designed to remedy interstate pollution transport that are found in CAA section 126. Section 126(b) authorizes States or political subdivisions to petition EPA for a finding that major stationary sources in upwind states emit in violation of the prohibition of section 110(a)(2)(D), by contributing significantly to nonattainment problems in downwind States.

Beginning on August 14, 1997, EPA received eight petitions under section 126 from eight states. These eight states (and the dates that EPA received the petitions), are:

Connecticut (August 15, 1997)
Maine (August 15, 1997)
Massachusetts (August 14, 1997)
New Hampshire (August 15, 1997)
New York (August 15, 1997)
Pennsylvania (August 15, 1997)
Rhode Island (August 14, 1997)
Vermont (August 15, 1997)

Taken together, the petitions ask EPA to find that major sources of NO_X emissions in States in the eastern half of the United States, from (and including) Louisiana in the southwest, Minnesota in the northwest, and Georgia in the southeast, contribute significantly to nonattainment in areas further to the east and north.

Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. Under section 126(c), with respect to any existing sources for which EPA makes the requested finding, those sources must cease operations within three months of the finding, except that those sources may continue to operate if they comply with emissions limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) provides that EPA must allow a public hearing for the submitted petitions. In addition, EPA's action under section 126 is subject to the procedural requirements of CAA section 307(d). *See* section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

Section 307(d)(10) applies, by its terms, to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months.

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d) procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex. The NO_X SIP call, which proposes a somewhat comparable determination, relied on extensive computer modeling of air quality emissions and the ambient impacts therefrom in the large geographic region of the eastern half of the United States. This modeling was developed over a two-year period. It reflected the input of EPA, the 37 states east of the Rockies as well as numerous industry and citizen groups, all of whom participated in the OTAG. Moreover, EPA is allowing a 120-day comment period on the NO_X SIP call proposal, and expects to take final action on the NO_X SIP call in September, 1998, some 11 months after the date of proposal.

In acting on the section 126 petitions, EPA must make determinations that, generally, are at least as complex as those required for the NO_X SIP call, and EPA must do so for sources throughout the eastern half of the United States. Moreover, if EPA determines that the petitions should be granted, EPA must promulgate appropriate controls for the affected sources.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the usefulness of coordinating generally with the procedural path for the NO_X SIP call. It is imperative that this schedule (i) afford EPA adequate time to prepare a notice that clearly elucidates the issues so as to facilitate public comment, as well as (ii) afford the public adequate time to comment. EPA is currently in the process of discussing an appropriate schedule with the section 126 petitioners and other interested parties.

Accordingly, extending the date for action on the section 126 petitions for another one month is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

EPA is not, at this time, using the full six months provided under section 307(d)(10) for the extension. EPA reserves the right to apply the remaining five months, or a portion thereof, as an additional extension, if necessary, immediately following the conclusion of the one-month period, or to apply the remaining time to the period following EPA's proposed rulemaking.

II. Final Action

A. Rule

Today, EPA is determining, under CAA section 307(d)(10), that a one-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Accordingly, EPA is granting a one-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the dates for action on the section 126 petitions are:

Connecticut—November 15, 1997
Maine—November 15, 1997
Massachusetts—November 14, 1997
New Hampshire—November 15, 1997
New York—November 15, 1997
Pennsylvania—November 15, 1997
Rhode Island—November 14, 1997
Vermont—November 15, 1997

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on October 14, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by one month the October 14, 1997 deadlines for several of the section 126 petitions, and the deadlines for the other section 126 petitions that follow shortly thereafter. Moreover, EPA intends to use immediately the one-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because this rulemaking (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must propose a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. of the APA, 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of October 22, 1997.

Dated: October 14, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–27977 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300560; FRL–5746–6]

RIN 2070–AB78

Spinosad; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for spinosad (Factors A and D) in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5). This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on fruiting vegetables (except cucurbits) crop group (8), leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5). This regulation establishes maximum permissible levels for residues of spinosad in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on September 30, 1998.

DATES: This regulation is effective October 22, 1997. Objections and requests for hearings must be received by EPA on or before December 22, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300560], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300560], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300560]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9357, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide spinosad (Factors A and D) in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5) at 0.25, 0.50, 10.0 and 10.0 parts per million (ppm) respectively. These tolerances will expire and are revoked on September 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Spinosad on Fruiting Vegetables (except Cucurbits) Crop Group (8), Leafy Vegetables (except Brassica Vegetables) Crop Group (4), and Brassica (Cole) Leafy Vegetables Crop Group (5) and FFDCA Tolerances

Florida Department of Agriculture & Consumer Services submitted a regional specific exemption request for Florida, Georgia and Arkansas for the use of spinosad (Spintor 2SC) to control Western Flower Thrips, *Frankliniella occidentalis*, on tomatoes, peppers, eggplant and other members of fruiting vegetable (excluding cucurbits) crop group (8). Season long control measures for western flower thrip and the disease that it vectors, tomato spotted wilt virus, are currently not available and significant economic losses have already occurred.

On July 15, 1997 the Arizona Department of Agriculture requested a specific exemption for use of spinosad (Success) to control beet armyworm on leafy vegetables (except Brassica) crop group (4) and Brassica leafy vegetables crop group (5). A specific exemption request for use of tebufenozide (Confirm) to control this pest on these crops in Arizona was granted earlier this year; however, the state indicates that tebufenozide alone will not provide adequate control of beet armyworm in the fall-season planted crops due to high pest pressure. Beet armyworm pest pressure on Arizona's fall-season planted crops is, on average, three times greater than pressure on its winter-season planted crops. Arizona indicates that both pesticides are needed for the fall-season planting and is recommending the following Integrated Pest Management (IPM) program for use of both pesticides: (1) spinosad and tebufenozide may be used where resistance to currently registered pesticides is occurring; (2) a total of three applications per crop of spinosad are permitted and may be used from plant emergence to thinning when beet armyworm populations exceed 1 larva per 100 plants and after head formation begins (and comparable susceptibility stage for non-head forming vegtables in these crop groups); a total of three applications per crop of tebufenozide are permitted from plant emergence to thinning if beet armyworm populations are less than 1 larva per 100 plants and from thinning to head formation. After having reviewed the requests, EPA concurs: that emergency conditions exist for the states and; with Arizona's IPM recommendations for use of both tebufenozide and spinosad for beet armyworm control under emergency exemption specifications.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of spinosad in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables crop group (4), and Brassica (cole) leafy vegetables crop group (5). In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables crop group (4), and Brassica (cole) leafy vegetables crop group (5) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether spinosad meets EPA's registration requirements for use on fruiting vegetables (except cucurbits) crop group (8), leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5) or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of spinosad by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Arizona, Florida, Georgia and Arkansas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for spinosad, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows:

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least seven days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least seven days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for seven days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-hispanic other than black or caucasian subgroup) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for spinosad (Factors A and D) in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5) at 0.25, 0.50, 10.0 and 10.0 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spinosad are discussed below.

1. *Acute toxicity.* None. For acute dietary risk assessment, the Agency did not select an endpoint based on available data and determined that this risk assessment is not required.

2. *Short - and intermediate - term toxicity.* No short- or intermediate-term toxicological endpoints have been identified. Therefore, a short- or intermediate-term aggregate risk assessment is not required.

3. *Chronic toxicity.* EPA has established the RfD for spinosad at 0.0268 milligrams/kilogram/day (mg/kg/day). The RfD was established based on a 1-year feeding study in dogs. The NOEL was 2.68 mg/kg/day with an uncertainty factor of 100. The LOEL of 8.22 mg/kg/day was based on increases in serum alanine aminotransferase, aspartate aminotransferase, and triglycerides levels, and the presence of tissue abnormalities including vacuolated cell aggregations, arteritis, and glandular cell vacuolation (parathyroid).

4. *Carcinogenicity.* The Agency determined that there was no evidence of carcinogenicity in two species.

B. Exposures and Risks

1. *From food and feed uses.* A time-limited tolerance which expires November 15, 1999 has been established (40 CFR 180.495) for the residues of spinosad (Factors A and D) in or on cottonseed at 0.02 ppm. There are no other tolerances established for spinosad. Risk assessments were conducted by EPA to assess dietary exposures and risks from spinosad as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No acute dietary endpoint of concern was identified by the Agency, therefore this risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting the chronic dietary risk assessment, the Agency used conservative TMRC assumptions as follows: 100% of the leafy vegetables (except Brassica vegetables) crop group commodities, Brassica (cole) leafy vegetables crop group commodities, fruiting vegetable (except cucurbits) crop group commodities, and cotton commodities tolerances will contain spinosad residues and those residues will be at the level of the tolerance.

2. *From drinking water.* Based on information in the EFED One-liner Database (updated 5/6/97), spinosad is not persistent and not mobile. There are no established Maximum Contaminant Levels (MCLs) for residues of spinosad in drinking water. No health advisory levels for spinosad in drinking water have been established. There is no entry for spinosad in EPA's Pesticides in Ground Water Database (9/92).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause spinosad to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with spinosad in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance are granted.

3. *From non-dietary exposure.* Spinosad is currently registered for residential, outdoor, non-food sites, which include: ornamental turf, and ornamental herbaceous and woody plants. Under current Agency guidelines, these uses do not fall under a chronic scenario, but may constitute a short- and/or intermediate-term exposure scenario. However, no short- or intermediate-term toxicological endpoints of concern have been identified and the risk assessment is not required for short- and/or intermediate-term exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute dietary endpoint of concern was identified by the Agency, so this risk assessment is not required.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to spinosad from food will utilize 20% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-hispanics other than blacks or caucasians and aggregate exposure to spinosad from food will utilize 32% of the RfD for this subpopulation. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to spinosad in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current Agency guidelines, the registered residential non-dietary uses do not fall under a chronic scenario. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to spinosad residues from food and water.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Under current Agency guidelines, the registered residential non-dietary uses do not fall under a chronic scenario, but may constitute a short- and/or intermediate-term exposure scenario. However, no short- or intermediate-term toxicological endpoints have been identified. Therefore, a short- or intermediate-term aggregate risk assessment is not required.

D. Aggregate Cancer Risk for U.S. Population

The Agency determined that there was no evidence of carcinogenicity in two species. Therefore, a cancer risk assessment is not required.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the

severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies.*— i. *Rats.* In the developmental study in rats, both the maternal (systemic) NOEL and the developmental (fetal) NOEL were ≥ 200 mg/kg/day at the highest dose tested.

ii. *Rabbits.* In the developmental toxicity study in rabbits, both the maternal (systemic) NOEL and the developmental (fetal) NOEL were ≥ 50 mg/kg/day at the highest dose tested. The Agency concluded that spinosad is not a developmental toxicant.

c. *Reproductive toxicity study. Rats.* in the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 10 mg/kg/day. The parental (systemic) LOEL of 100 mg/kg/day was based on increases in heart, kidney, liver, spleen, and thyroid weights (both sexes). In addition, histopathological lesions were found in the lungs and mesenteric lymph nodes (both sexes), stomach (females), and prostate, and increased incidence of dystocia and/or vaginal bleeding after parturition with associated increases in mortality in the dams. The NOEL for reproductive toxicity was 10 mg/kg/day. The LOEL for reproductive toxicity of 100 mg/kg/day was based on decreases in litter size, survival (F_2 litters), and body weights in the offspring.

d. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for spinosad is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

e. *Conclusion.* Based on the data examined above, the Agency concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect infants and children.

2. *Acute risk.* No endpoint of concern was identified by the Agency, so this risk assessment is not required.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that percentage of the RfD that will be utilized by dietary exposure to residues of spinosad from food ranges from 2 percent for nursing infants less than 1 year old, up to 23% for children 7-12 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to spinosad in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current Agency guidelines, the registered residential non-dietary uses do not fall under a chronic scenario. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate (food plus water) exposure to spinosad residues.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses.

Under current Agency guidelines, the registered residential non-dietary uses do not fall under a chronic scenario, but may constitute a short- and/or intermediate-term exposure scenario. However, no short- or intermediate-term toxicological endpoints have been identified. Therefore, a short- or intermediate-term aggregate risk assessment is not required.

F. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood based on acceptable metabolism studies on cotton, apples, cabbage, tomatoes, and turnips. The results of the metabolism studies have not yet been reviewed by the Agency's Metabolism Committee but, for the purposes of these section 18s only, the residues of concern are the parent compounds (Factors A and D) only, as specified in 40 CFR 180.495.

B. Analytical Enforcement Methodology

For the purposes of these section 18 requests, DowElanco method GRM 95.04 high pressure liquid chromatography/ultraviolet (HPLC/UV) should be adequate to enforce the tolerance expression for the fruiting vegetable (except cucurbits) crop group, and method GRM 94.22 (HPLC/UV) should be adequate to enforce the tolerance expression for the leafy vegetables (except Brassica vegetables) crop group and Brassica (cole) leafy vegetables crop subgroup.

C. Magnitude of Residues

Residues of spinosad (Factors A and D) are not expected to exceed 0.25 ppm in/on the fruiting vegetable (except cucurbits) crop grouping and 0.50 ppm in/on tomato paste as a result of this section 18 use. Residues are not expected to concentrate in/on tomato puree. Residues of spinosad (Factors A and D) are not expected to exceed 10 ppm in/on the leafy vegetables (except Brassica vegetables) crop group and 10 ppm in/on the Brassica (cole) leafy vegetables crop group as a result of this section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with these section 18 uses.

D. International Residue Limits

No Codex, Canadian, and/or Mexican MRLs tolerances have been established for spinosad.

E. Rotational Crop Restrictions

The results of a confined rotational crop study indicate that the parent compound does not appear to be taken up and/or be translocated within the plants tested (wheat, lettuce, and radish). Pending review of the plant metabolism and confined rotational crop studies by the Agency's Metabolism Committee, rotational crop field studies and rotational crop tolerances will not need to be established to support future section 3 permanent tolerance requests. For the purposes of these section 18 requests, the residues of concern in plants are the parent compounds (Factors A and D) only, and rotational crop restrictions and/or tolerances will not be needed.

VI. Conclusion

Therefore, tolerances are established for residues of spinosad (Factors A and D) in or on fruiting vegetables (except cucurbits) crop group (8), tomato paste, leafy vegetables (except Brassica vegetables) crop group (4), and Brassica (cole) leafy vegetables crop group (5) at 0.25, 0.50, 10.0 and 10.0 ppm respectively.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by December 22, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300560] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the time-limited tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 1, 1997.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.495 is amended as follows:

a. By adding a heading to paragraph (a).

b. In paragraph (b) by adding a heading and alphabetically adding the following commodities.

c. Paragraphs (c) and (d) are added and reserved with headings.

§ 180.495 Spinosad; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/Revocation Date
Brassica (Cole) Leafy Vegetables Crop Group (5)	10.0	9/30/98
Fruiting Vegetables (except Cucurbits) Crop Group (8)	0.25	9/30/98
Leafy Vegetables (except Brassica vegetables) Crop Group (4)	10.0	9/30/98
Tomato paste	0.50	9/30/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–27727 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300548; FRL–5742–5]

RIN 2070–AB78

Pyrithiobac Sodium Salt; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the time-limited tolerance for residues of the herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on cottonseed at 0.02 parts per million (ppm). E.I. du Pont de Nemours & Co., Inc., requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170). The tolerance will expire on September 30, 1999.

DATES: This regulation is effective October 22, 1997. Objections and requests for hearings must be received by EPA on or before December 22, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300548], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300548], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300548]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1997 (62 FR 37241)(FRL–5728–7), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 4F4391) for tolerance by E.I. du Pont de Nemours & Co., Inc., Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. This notice included a summary of the petition prepared by du Pont. There were two comments received in response to the notice of filing from cotton growers urging the extension of the time limited tolerance.

The petition requested that 40 CFR 180.487 be amended by extending the time-limited tolerance for residues of the herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on cottonseed at 0.02 ppm. This tolerance will expire on September 30, 1999.

In the **Federal Register** of October 25, 1995 (60 FR 54607)(FRL–4982–8), EPA established a time limited tolerance for residues of the herbicide pyrithiobac sodium in or on cottonseed at 0.02 ppm. The time limited tolerance will expire on September 30, 1997.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special

consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level

and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyrithiobac sodium and to make a determination on aggregate exposure, consistant with section 408(b)(2), for a time-limited tolerance for residues of pyrithiobac sodium on cottonseed at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyrithiobac sodium salt are discussed below.

1. A rat acute oral study with a LD_{50} of 3,300 milligrams (mg)/kilogram (kg) for males and a LD_{50} 3,200 mg/kg for females.

2. A 90–day rat feeding study with a No Observed Effect Level (NOEL) of 50 ppm (3.25 mg/kg/day for males and 4.14 mg/kg/day for females) and a Lowest Observed Effect Level (LOEL) of 500 ppm (31.8 mg/kg/day for males and 40.5 mg/kg/day for females), based on decrease body weight gains and increased rate of hepatic B-oxidation in males.

3. A 90–day mouse feeding study with a NOEL of 500 ppm (83.1 mg/kg/day for males and 112 mg/kg/day for females) and a LOEL of 1,500 ppm (263 mg/kg/day for males and 384 mg/kg/day for females) based on increased liver weight and an increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females.

4. A 3–month dog feeding study with a NOEL of 5,000 ppm (165 mg/kg/day) and a LOEL of 20,000 ppm (626 mg/kg/day), based on decrease red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes.

5. A 21–day rat dermal study with a Dermal Irritation NOEL of 50 mg/kg/day and a dermal irritation LOEL of 500 mg/kg/day based on increased incidence of erythema and edema, and with a systemic dermal NOEL of 500 mg/kg/day and a Systemic Dermal LOEL of 1,200 mg/kg/day based on body weight gain inhibition.

6. A 90–day rat neurotoxicity screening battery with a systemic NOEL of 7,000 ppm (466 mg/kg/day for males and 588 mg/kg/day for females) and a systemic LOEL of 20,000 ppm (1376 mg/kg/day for males and 1,609 mg/kg/day for females), based on decreased hind grip strength and increased foot spay in males, and a neurotoxicity NOEL of 20,000 ppm [Highest Dose Tested (HDT)].

7. A 78–week dietary carcinogenicity study in mice with a NOEL of 1,500 ppm 217 mg/kg/day (males) and 319 mg/kg/day (females) and a LOEL of 5,000 ppm 745 mg/kg/day (males) and 1,101 mg/kg/day (females) based on decreased body weight/gain in both sexes, treatment related increase in the incidence of foci/focus of hepatocellular alternation in males, and increased incidence of glomerulonephropathy murine in both sexes, and an increased incidence of infarct in the kidney and keratopathy of the eyes. There was evidence of carcinogenicity based on significant differences in the pair-wise comparisons of hepatocellular adenomas and combined adenoma/carcinoma in the 150 and 1,500 dose groups (but not at the high dose of 5,000 ppm) with the controls. The carcinogenic effects observed are discussed below.

8. A 24–month rat chronic feeding/carcinogenicity study with a systemic NOEL of 1,500 ppm (58.7 mg/kg/day for males and 278 mg/kg/day for females) and a systemic LOEL of 5,000 ppm (200 mg/kg/day for males and 918 mg/kg/day for females) based on decreases in body weight, body weight gains and food efficiency in females, increased incidence of eye lesions in males and females, mild changes in hematology and urinalysis in both sexes, clinical signs suggestive of urinary tract dysfunction in males and females, increased incidence of focal cystic degeneration in the liver in males, increased rate of hepatic peroxisomal B-oxidation in males and an increased incidence of inflammatory and degenerative lesions in the kidney in females. There was evidence of carcinogenicity based on a significant dose-related increasing trend in kidney tubular combined adenoma/carcinoma in male rats and a significant dose related increasing trend in kidney tubular bilateral and/or unilateral adenomas in females. The carcinogenic effects observed are discussed further below.

9. A 1–year dog chronic feeding study with a NOEL of 5,000 ppm (143 mg/kg/day for males and 166 mg/kg/day for females) and a LOEL of 20,000 ppm (580 mg/kg/day for males and 647 mg/kg/day for females) based on decreases in body weight gain and increased liver weight.

10. A two generation reproduction study in rats with a maternal NOEL of 1,500 ppm (103 mg/kg/day) and a maternal LOEL of 7,500 ppm (508 mg/kg/day ppm), based on decreased body weight/gain and food efficacy. The Reproductive and Offspring NOEL is 7,500 ppm (508 mg/kg/day) and the reproductive and offspring LOEL is 20,000 ppm (1,551 mg/kg/day), based on decreased pup body weight.

11. A developmental toxicity study in rabbits with a maternal and developmental NOEL of 300 mg/kg and a Maternal LOEL of 1,000 mg/kg based on deaths, decreased body weight gain and feed consumption, increased incidence of clinical signs, and an increase in abortions and a developmental LOEL of 1,000 mg/kg, based on decreased fetal body weight gain.

12. A developmental toxicity study in rats with a maternal NOEL 200 mg/kg and a maternal LOEL of 600 mg/kg due to increased incidence of peritoneal staining. The developmental NOEL is 600 mg/kg and the developmental LOEL is 1,800 mg/kg based on the increased incidence of skeletal variations.

13. No evidence of gene mutation was observed in a test for induction of forward mutations at the HGPRT locus in Chinese hamster ovary cells. No evidence was observed for inducing reverse gene mutation in two independent assays with *Salmonella typhimurium* with and without mammalian metabolic activation. Pyrithiobac sodium was negative for the induction of micronuclei in the bone marrow cells of mice, and negative for induction of unscheduled DNA synthesis in rat primary hepatocytes. Pyrithiobac sodium was positive for inducing chromosome aberrations assay in human lymphocytes.

14. A rat metabolism study showed that radio labeled pyrithiobac sodium is excreted in urine and feces with > 90% being eliminated within 48 hours. A sex difference was observed in the excretion and biotransformation. Females excreted a greater amount of the radiolabel in the urine than males following all doing regimens, with a corresponding lower amount being eliminated in the feces compared to the males.

B. Toxicological Endpoints

1. *Acute toxicity.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from 1–day or single-event exposure.

2. *Short - and intermediate - term toxicity.* EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity.* EPA has established the RfD for pyrithiobac sodium at 0.587 milligrams/kilogram/day (mg/kg/day). This RfD is based on the systemic NOEL of 58.7 mg/kg/day for males in the rat chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* The Health Effects Division Carcinogenicity Peer Review Committee has concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pyrithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992, September 24, 1986) and recommended that for the purpose of risk characterization, a low dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q_1^*). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and rare kidney tubular adenomas, carcinomas and combined adenoma/carcinomas in male rats. The unit risk, Q_1^* (mg/kg/day)$^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)$^{-1}$ in human equivalents based on male kidney tumors.

B. Exposures and Risks

1. *From food and feed uses.* Time limited tolerances have been established (40 CFR 180.487) for the residues of pyrithiobac sodium in or on the raw agricultural commodity cottonseed at 0.02 ppm until September 30, 1997. Processing studies for cotton have shown that pyrithiobac sodium does not concentrate in cottonseed processed commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) as follows:

Based on the assumption that 100% of the crop is treated with pyrithiobac sodium, the upper bound limit of the dietary carcinogenic risk is calculated in the range of one incidence in a billion (1.0×10^{-9}).

Using the NOEL of 58.7 mg/kg/day from the most sensitive species in the rat chronic feeding study with a 100-fold safety factor, the Reference Dose (RfD) for systemic effects is 0.58 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.000001 mg/kg/day and utilizes less than 1 percent of the RfD for the overall U.S. population. For exposure of the most highly exposed subgroup in the population, children 1 through 6 years old, the TMRC is 0.000001 mg/kg/day which is still less than 1 percent of the RfD.

2. *From drinking water.* Pyrithiobac sodium concentration in surface water has been estimated by using the Generic Expected Environmental Concentrations (GENEEC) model. The worst case exposure estimate for surface water is 7.76 parts per billion (ppb) and for ground water is 0.778 ppb. Based on the estimated exposures to pyrithiobac sodium from drinking water, the percentage of the RfD utilized for children (1 through 6 years old) would be 0.1% of the RfD. The exposure for the general U.S. population would be less than 0.1% of the RfD.

The worst case estimate for cancer risk from the estimated residues of pyrithiobac sodium in drinking water is 2.3×10^{-7}.

3. *From non-dietary exposure.* There are no non-food uses of pyrithiobac sodium currently registered under the FIFRA, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether pyrithiobac sodium salt has a common

mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrithiobac sodium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyrithiobac sodium has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short-term, and intermediate term risk.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short-term or intermediate-term exposures from the use of pyrithiobac sodium on cotton.

2. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to pyrithiobac sodium from food and drinking water will utilize less than 0.1% of the RfD for the U.S. population. For the major identifiable subgroup with the highest aggregate exposure, children (1 through 6 years old), the aggregate exposure to pyrithiobac sodium from food and drinking water will utilize less than 0.2% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

D. Aggregate Cancer Risk for U.S. Population

Based on the upper bound potency factor (Q_1^*) of 1.05×10^{-3} $(mg/kg/day)^{-1}$, the aggregate upper bound lifetime cancer risk from the use of pyrithiobac sodium on cotton from worst case estimates of residues in food and drinking water is 2.3×10^{-7}.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—a. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyrithiobac sodium, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental and Reproductive toxicity studies.* The pre- and post-natal toxicology data base for pyrithiobac sodium is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the oral rat and rabbit developmental toxicity studies and the two-generation reproductive toxicity study in rats. Therefore, EPA concludes an additional tenfold safety factor is not necessary.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyrithiobac sodium from food and drinking water will utilize less than 0.2% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrithiobac sodium residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of pyrithiobac sodium in plants and animals is adequately understood for purposes of this tolerance.

B. Analytical Enforcement Methodology

An adequate analytical method, High Pressure Liquid Chromatography - Ultra Violet (HPLC-UV) with column switching, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Records Service (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purposes of this time-limited tolerance.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for pyrithiobac sodium.

IV. Conclusion

The analysis for pyrithiobac sodium using tolerance level residues for all population subgroups examined by EPA shows the use on cotton will not cause exposure at which the Agency believes there is an appreciable risk. Based on the information cited above, EPA has determined that the extension of the time limited tolerance for residues of pyrithiobac sodium in cottonseed at 0.02 ppm until September 30, 1999 by amending 40 CFR 180.487 will be safe; therefore, the tolerances are extended as set forth below.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by December 22, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300548] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address ln "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 1, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.487 to read as follows:

§ 180.487 Pyrithiobac sodium; tolerances for residues.

(a) *General.* (1) Time-limited tolerances are established for residues of the herbicide, pyrithiobac-sodium, sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate, in or on the food commodities in the table in paragraph (a)(2). The tolerance will expire on the date specified in the table.

(2) Residues in these commodities not in excess of the established tolerance resulting from the use described in the following table remaining after expiration of the time-limited tolerance

will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of paragraph (a) of this section.

Commodity	Parts per million	Expiration/ revocation date
Cottonseed	0.02	Sept. 30, 1999

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–27843 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300563; FRL–5748–9]

RIN 2070–AB78

Cyromazine; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of cyromazine and its metabolite melamine in or on the meat, fat, and meat byproducts of turkeys. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on turkeys. This regulation establishes a maximum permissible level for residues of cyromazine and its metabolite melamine in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on October 1, 1998.

DATES: This regulation is effective October 22, 1997. Objections and requests for hearings must be received by EPA on or before December 22, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300563], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300563], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300563]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for combined residues of the insecticide (larvicide) cyromazine and its metabolite melamine, in or on meat, fat, and meat byproducts of turkeys at 0.05 part per million (ppm). These tolerances will expire and are revoked on October 1, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cyromazine on Turkeys and FFDCA Tolerances

The applicant has requested an emergency exemption for the use of cyromazine on turkeys to control flies. The applicant states that the flies are thought to carry spiking mortality, an acute form of Poult Enteritis Mortality Syndrome (PEMS). PEMS first appeared in Union County, North Carolina in 1991. Initially, the disease affected turkey flocks only in western North Carolina until it spread to eastern North Carolina and neighboring states in 1994. Since that time, it has devastated the relatively small turkey industry in Georgia, and has had significant impact on turkey production in North Carolina. Estimates are that the disease was responsible for about $55 million in losses to the turkey industry in 1996. Most of these losses were incurred by North Carolina.

Evidence suggests that house fly (*Musca domestica*) can transmit the PEMS disease agent(s). The applicant states that the alternative products available for use on house flies in poultry houses, tetrachlorvinphos, dichlorvos, and dimethoate, are applied as larvicides to the manure accumulated beneath cages or slatted floors. These products were developed for use under caged layers or in chicken houses with slatted floors; however, market turkeys are grown in open-floor environments, and the birds cannot be easily moved from areas needing treatment. One problem with this type of treatment of turkey houses is that rates for larvicidal use of these chemicals are generally the highest rates permitted by the label, creating a concern for the exposed birds. A second problem with these alternatives is that the residual control is 10 to 14 days at best, thus requiring at least two treatments over the course of a brooder house flock cycle. Additionally, it may not be possible to penetrate the breeding substrate with a low pressure sprayer as recommended, due to compaction of the litter. Finally, these alternatives are labeled as adulticides, leaving a question of possible resistance development by house flies to these chemicals. EPA has authorized under FIFRA section 18 the use of cyromazine on turkeys for control of flies in North Carolina. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyromazine in or on the meat, fat, and meat byproducts of turkeys. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on October 1, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on meat, fat, and meat byproducts of turkeys after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether cyromazine meets EPA's registration requirements for use on turkeys or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of cyromazine by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Carolina to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cyromazine, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term

and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroups (non-nursing infants <1 year old and children 1-6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the combined residues of cyromazine and its metabolite melamine in or on meat, fat, and meat byproducts of turkeys at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short - and intermediate - term toxicity.* For short-term Margin of Exposure (MOE) calculations, the Agency is using a systemic NOEL of 0.75 mg/kg/day from a 6-month dog feeding study. At the lowest effect level (LEL) of 7.5 mg/kg/day, there were changes in hematological parameters.

3. *Chronic toxicity.* EPA has established the RfD for cyromazine at 0.0075 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 6 month feeding study in the dog with a NOEL of 0.75 mg/kg/day and a LEL of 7.5 mg/kg/day based on pronounced effects on hematological parameters and an uncertainty factor of 100.

4. *Carcinogenicity.* Cyromazine has been classified as a Group E (evidence of non-carcinogenicity for humans) chemical by the Agency.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.414) for the combined residues of cyromazine and its metabolite melamine, in or on a variety of raw agricultural commodities at levels ranging from 1.0 ppm in tomatoes to 10 ppm in leafy vegetables. Currently there are tolerances for residues of cyromazine and its metabolite melamine on the meat fat and meat by-products of chickens from the use of cyromazine as a feed-through. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyromazine as follows:

Chronic exposure and risk. In conducting this chronic dietary risk assessment, the Agency has made very conservative assumptions which result in an overestimate of human dietary exposure:

(1) 100% crop treated is assumed for all commodities with the exception of tomatoes, sweet peppers, celery, and lettuce, where percent crop treated is used.

(2) All commodities having cyromazine tolerances are assumed to contain cyromazine residues and those residues will be at the level of the established tolerance.

Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment. The existing cyromazine tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Subgroup	Percent
U.S. Population	32
Nursing Infants	12
Non-Nursing Infants (<1 year old)	50
Children (1-6 years old)	50
Children (7-12 years old)	41

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information available to the Agency, cyromazine is persistent and relatively mobile. There are no established Maximum Contaminant Level for residues of Cyromazine in drinking water. No health advisory levels for Cyromazine in drinking water have been established.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cyromazine to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cyromazine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

3. *From non-dietary exposure.* Cyromazine is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of these tolerance actions, therefore, EPA has not assumed that cyromazine or its metabolite melamine have common mechanisms of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the conservative ARC exposure assumptions described above, and taking into account the completeness and reliability of the

toxicity data, EPA has concluded that aggregate exposure to cyromazine from food will utilize 32% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to Cyromazine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Since there are no residential uses, EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to cyromazine residues.

D. Aggregate Cancer Risk for U.S. Population

Cyromazine has been classified as a Group E (evidence of non-carcinogenicity for humans) chemical by the Agency.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal (systemic) NOEL was 100 mg/kg/day, based on increased incidence of clinical signs and decreased body weight at the LOEL of 300 mg/kg/day. The developmental (pup) NOEL was 300 mg/kg/day, based on increased incidence of skeletal variations at the LOEL of 600 mg/kg/day.

From the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, based on decreased weight gain and food consumption at the LOEL of 30 mg/kg/day. The developmental (pup) NOEL was 60 mg/kg/day, the highest dose tested (HDT).

iii. *Reproductive toxicity study.* From the rat reproduction study, the maternal (systemic) NOEL was 50 mg/kg/day, based on body weight loss at the LOEL of 150 mg/kg/day. The reproductive/developmental (pup) NOEL was 50 mg/kg/day, based on decreased pup growth, decreased number of pups per litter, and increased fetotoxicity at the LEL of 150 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for Cyromazine is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. Based on the above, EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

v. *Conclusion.* Aggregate exposure to cyromazine does not pose a risk to infants and children that exceeds the Agency's level of concern.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food ranges from 12% for non-nursing infants less than one year old, up to 50% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residue of concern is parent cyromazine and the metabolite melamine as specified in 40 CFR 180.414.

B. Analytical Enforcement Methodology

Adequate enforcement methodology for the published tolerance for chickens (HPLC with UV detector) is available in PAM II to enforce the tolerance expression. This method is adequate for turkeys.

C. Magnitude of Residues

Residues of Cyromazine and melamine are not expected to exceed 0.05 ppm in/on turkey meat, fat and meat byproducts as a result of this Section 18 use.

D. International Residue Limits

There is a CODEX MRL for residues of cyromazine *per se* on poultry meat at 0.05 ppm.

E. Rotational Crop Restrictions

While there are no crop rotation restrictions on the label of this feed through product, manure from treated animals may be used as a soil fertilizer supplement. There are restrictions on the amount of manure that may be used per acre and manure is not to be used on small grains.

VI. Conclusion

Therefore, tolerances are established for combined residues of cyromazine and its metabolite melamine in or on meat, fat and meat byproducts of turkeys at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with

appropriate adjustments to reflect the new law.

Any person may, by December 22, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300563] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since the tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: October 6, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.414:

i. By adding paragraph (a)(4).

ii. In paragraph (b), by alphabetically adding the following commodities to the table.

The addition and amendment to § 180.414 read as follows:

§ 180.414 Cyromazine; tolerances for residues.

(a) * * *

(4) The additive cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) may be safely used in

accordance with the following prescribed conditions:

(i) It is used as a feed additive only in the feed for chicken layer hens and chicken breeder hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed.

(ii) It is used for control of flies in manure of treated chicken layer hens and chicken breeder hens.

(iii) Feeding of cyromazine-treated feed must stop at least 3 days (72 hours) before slaughter. If the feed is formulated by any person other than the end user, the formulator must inform the end user, in writing, of the 3-day (72 hours) preslaughter interval.

(iv) To ensure safe use of the additive, the labeling of the pesticide formulation containing the feed additive shall conform to the labeling which is registered by the U.S. Environmental Protection Agency, and the additive shall be used in accordance with this registered labeling.

(v) Residues of cyromazine are not to exceed 5.0 parts per million (ppm) in poultry feed.

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * *	* *	* *
Turkey, fat	0.05	10/1/98
Turkey, mbyp	0.05	10/1/98
Turkey, meat	0.05	10/1/98

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

§ 186.1400 [Removed]

b. Section 186.1400 is removed.

[FR Doc. 97–27844 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 68

[CC Docket Nos. 96–128 and 91–35; DA 97–1793]

Pay Telephone Equipment Grandfathering

AGENCY: Federal Communications Commission.

ACTION: Final rules; correction.

SUMMARY: The Federal Communications Commission issues a correction to the previously published final rule in 62 FR 47371, September 9, 1997, concerning the connection of terminal equipment to the telephone network. The rule allows certain terminal equipment presently connected to central-office-implemented payphones to remain connected without registration. This correction is issued to clarify that the rule applies to the "central-office-implemented telephone line" rather than the "central-office-implemented telephone." The correction is intended clarify the distinction between terminal equipment and a central-office-implemented telephone line.

EFFECTIVE DATE: October 5, 1997.

FOR FURTHER INFORMATION CONTACT:

Technical Information: William Von Alven, 202–418–2342.

Legal Information: Alan Thomas, 202–418–2338.

SUPPLEMENTARY INFORMATION: Section 68.2(l) (1) and (2) are corrected. 68.2(1) is corrected by inserting the word "line" after the phrase "central-office-implemented telephone" in the first sentence. Section 68.2(l)(2) is corrected by inserting the word "line" after the phrase "central-office-implemented telephone" in the first and second sentences.

List of Subjects in 47 CFR Part 68

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Correction

For the reasons discussed in Supplementary Information make the following corrections.

§ 68.2 [Corrected]

1. On page 47371, in the third column, in § 68.2, in paragraph (l)(1), in lines 3 and 4, the phrase "central-office-implemented telephone" is corrected to read "central-office-implemented telephone line."

2. On page 47371, in the third column, in § 68.2, in paragraph (l)(2), in lines 4 and 5 and lines 8 and 9, the phrase "central-office-implemented telephone" is corrected to read "central-office-implemented telephone line."

[FR Doc. 97–27635 Filed 10–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–148; RM–9088]

Radio Broadcasting Services; New London, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sound In Spirit Broadcasting, Inc., allots Channel 247A at New London, Iowa, as the community's first local aural transmission service. Channel 247A can be allotted to New London in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) west in order to avoid a short-spacing conflict with the licensed operation of Station WFYR-FM, Channel 247B1, Elmwood, Illinois. The coordinates for Channel 247A at New London are 40–55–30 NL and 91–25–40 WL. With this action, this proceeding is terminated.

DATES: Effective: November 24, 1997. The window period for filing applications for Channel 247A at New London, Iowa, will open on November 24, 1997, and close on December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–148, adopted September 24, 1997, and released October 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding New London, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27943 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–124; RM–8813, RM–8864]

Radio Broadcasting Services; Winner and Wessington Springs, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Midwest Radio Corporation, substitutes Channel 252C1 for Channel 253C1 at Winner, reallots Channel 252C1 from Winner to Wessington Springs, South Dakota, and modifies Station KGGK(FM)'s construction permit accordingly (RM–8813). *See* 61 FR 31489, June 20, 1996. At the request of Dakota Communications, Inc., we also allot Channel 227C1 at Wessington Springs, South Dakota, as the community's second local FM transmission service (RM–8864). Channels 227C1 and 252C1 can be allotted to Wessington Springs in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channels 227C1 and 252C1 at Wessington Springs are North Latitude 44–05–12 and West Longitude 98–34–24. With this action, this proceeding is terminated.

DATES: Effective November 24, 1997. The window period for filing applications for Channel 227C1 at Wessington Springs, South Dakota, will open on November 24, 1997, and close on December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–124, adopted October 1, 1997, and released October 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 253C1 from Winner, and adding Wessington Springs, Channels 227C1 and 252C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27942 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD36

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Nine Plants From the Grasslands or Mesic Areas of the Central Coast of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for nine plants: *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milk-vetch), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checker-mallow), and *Trifolium amoenum* (showy Indian clover). These nine species grow in a variety of habitats including valley grasslands, meadows, freshwater marshes, seeps, and blue oak woodlands in Marin, Napa, and Sonoma Counties on the central coast of California. Habitat loss and degradation, competition from invasive plant species, elimination through plant community succession, trampling and herbivory by livestock and wildlife, collection for horticultural use, and hydrological alterations to wetland areas threaten the continued existence of these plants. This rule implements Federal protection and recovery provisions afforded by the Act for these nine species.

DATES: Effective November 21, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Diane Elam or David Wright, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2120; facsimile 916/979–2128).

SUPPLEMENTARY INFORMATION:

Background

Populations of the nine plant species in this rule are found in Sonoma, Marin, and Napa Counties, California. *Astragalus clarianus* (Clara Hunt's milk-vetch), *Plagiobothrys strictus* (Calistoga allocarya), and *Poa napensis* (Napa bluegrass) are found up to 70 kilometers (km) (32 miles (mi)) inland in a variety of habitats near the City of Calistoga in the Napa Valley, California. *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checker-mallow), and *Trifolium amoenum*

(showy Indian clover) are found in mesic areas mostly within 33 km (15 mi) of the central coast of California. Urbanization, road construction, airport construction, development of hot springs into commercial resorts, agricultural land conversion, hydrological alteration of wetlands, waste disposal, competition with invasive plant species, collection for horticultural use, or livestock grazing have eliminated or adversely impacted much of the habitat and have extirpated numerous populations of these plant species. Historically, these species have not been known to occur outside of Alameda, Marin, Mendocino, Napa, Santa Clara, Solano, and Sonoma Counties.

Willis Jepson (1925a) first described *Astragalus clarianus* in 1909 from specimens collected by Clara Hunt in the Conn Valley near St. Helena, Napa County, California. Axel Rydberg (1929) and Jepson (1936) later treated this taxon as *Hamosa clariana* and *Astragalus rattani* var. *clarianus*, respectively. Rupert Barneby (1950) reestablished *Astragalus clarianus* as a full species, a treatment retained by Spellenberg (1993). *Astragalus clarianus* is a low-growing annual herb in the pea family (Fabaceae). It is a slender, sparsely leafed plant, sparingly covered with sharp, stiff, appressed hairs. The simple single or few basally branching, stems ascend 7 to 20 centimeters (cm) (3 to 8 inches (in)) in height. The leaves are alternate, 1.5 to 6.0 cm (0.5 to 2.5 in) long, with 5 to 9 uncrowded leaflets 2 to 10 millimeters (mm) (0.1 to 0.4 in) long. The leaflets are oblong to obovate, narrow at the base, and notched at the tip. Small flowers appear from March through April. The petals are bicolored, with the wings whitish and the banner and keel purple in the upper third. The keel is longer and wider than the wings. The horizontal to declining seed pods are narrow, linear, slightly curved, pointed at both ends, and are borne on a 1.5 to 2.5 mm (0.06 to 0.10 in) long slender stalk. *Astragalus rattanii* var. *jepsonianus* resembles *A. clarianus*, but grows 10 to 36 cm (4 to 14 in) tall, has larger flowers, and has seed pods that are not elevated on a stalk.

Astragalus clarianus is found on thin, rocky clay soils derived from volcanic or serpentine substrates (Joe Callizo, California Native Plant Society (CNPS), *in litt.* 1996; Jake Ruygt, CNPS, Napa Valley Chapter, pers. comm. 1996, public hearing transcript) in grasslands and openings in whiteleaf manzanita (*Arctostaphylos manzanita*)-blue oak (*Quercus douglasii*) woodlands (Liston 1990) over an elevation range of 75 to 225 meters (m) (240 to 840 feet (ft)). Six historical occurrences were known from Napa and Sonoma counties. Two of these occurrences were extirpated by urbanization and viticulture (California Natural Diversity Data Base (CNDDB) 1996). Of the remaining four occurrences, three are found in northwestern Napa County and one occurs in adjacent Sonoma County. These four disjunct occurrences are restricted to about 28 hectares (ha) (70 acres (ac)) (CNDDB 1996). The trend for Clara Hunt's milk-vetch is one of decline as a result of habitat destruction and modification (California Department of Fish and Game (CDFG) 1991). Extant populations of *A. clarianus* are variously threatened by urbanization, recreational activities, airport maintenance, elimination due to plant community succession, competition from invasive weeds, a proposed water storage project, and random events. Populations occur on private, State, and municipal land.

Edward Greene (1892) and Jepson (Abrams ex Jepson 1951) treated *Plagiobothrys strictus* as *Allocarya stricta* and *Allocarya californica* var. *stricta*, respectively, before Ivan Johnston (1923) assigned the name, *Plagiobothrys strictus*, to specimens collected on alkaline flats near sulphur springs at Calistoga, Napa County, California. This treatment was retained by Messick (1993). *Plagiobothrys strictus* is a small, erect, annual herb belonging to the borage family (Boraginaceae). It grows 1 to 4 decimeters (dm) (4 to 15 in) in height. The nearly hairless plant has either a single stem or branches from near the base. The linear lower leaves are 4 to 9 cm (1.5 to 4 in) long. Small, usually paired, white flowers appear in March to April in a slender, unbranched inflorescence. The fruit is an egg-shaped nutlet about 1.5 mm (0.6 in) long, keeled on the back, with wart-like projections without any prickles. *Plagiobothrys greenei, P. lithocaryus, P. mollis var. vestitus, P. stipitatus,* and *P. tener* have ranges that overlap with that of *Plagiobothrys strictus* and occur in similar habitats, but they do not resemble *P. strictus* and have not been found at the known *P. strictus* sites (J. Callizo, *in litt.* 1996).

Plagiobothrys strictus is found in pools and swales adjacent to and fed by hot springs and small geysers in grasslands within an elevation range of 90 to 160 m (300 to 500 ft). Three historical populations occurred within a 3 km (2 mi) radius of Calistoga, Napa County, California. One population was extirpated by urbanization and agricultural land conversion. Of the two remaining populations of P. strictus, one occurs near a geyser and some undeveloped thermal hot springs while the other occurs at the airport in the city of Calistoga. The combined area of the two remaining populations is less than 80 square meters (m^2) (900 square feet (ft^2)) (CNPS 1990). The overall trend for Calistoga allocarya (*Plagiobothrys strictus*) is one of decline (CDFG 1991). The species is threatened by recreational activities, airport maintenance, urbanization, and random events. Both populations are on private land and neither is protected.

Alan Beetle first described *Poa napensis* in 1948 from specimens that he collected in a meadow moistened by seepage from hot springs, 3 km (2 mi) north of Calistoga at Myrtledale Hot Springs, Napa County, California. This treatment was retained by Soreng (1993). *Poa napensis* is an erect, tufted perennial bunchgrass in the grass family (Poaceae) that grows to 1 dm (4 in) in height. Leaves are folded, stiffly erect, 1 mm (0.04 in) wide, with the basal leaves 20 cm (8 in) long and upper stem leaves to 15 cm (6 in) in length. A few stiff, erect flowering stems appear in May and grow 7 dm (27 in) in height. Flower clusters occur as a pale green to purple, condensed, oblong-oval panicle 10 to 15 cm (4 to 6 in) long and 2 to 5 cm (0.8 to 2.0 in) wide. *Poa napensis* most closely resembles *P. unilateralis* (ocean bluff bluegrass), but differs in leaf and panicle form and habitat.

Poa napensis is found in grasslands and moist, alkaline meadows fed by hot springs. The elevation range of this plant is 100 to 120 m (340 to 400 ft) within a radius of 6 km (4 mi) of Calistoga. Historically, the range of this plant has been diminished by the development of recreational hot springs and the growth of the town of Calistoga. Only two populations of the species are known to exist, one near Myrtledale Hot Springs which is restricted to a 100 m^2 (1,100 ft^2) area, and a second smaller population of 100 plants nearby (CDFG 1979). Both populations of *P. napensis* depend on moisture from adjacent hot springs or surface runoff. Any action that would alter the hydrology or flow from these hot springs would be detrimental to these populations (CDFG 1979). The trend for Napa bluegrass is one of decline (CDFG 1991). *Poa napensis* is threatened by recreational activities, airport maintenance, urbanization, and random events (CNPS 1987, 1990; J. Ruygt, *in litt.* 1993; J. Ruygt, pers. comm. 1996). Both extant populations are located on private land and are not protected.

Peter Rubtzoff (1961) described *Alopecurus aequalis* var. *sonomensis* based on a specimen collected in 1955 in Guerneville Marsh, Sonoma County, California. Specimens assignable to this taxon were collected as early as 1880 in Sonoma and Marin counties, but had been identified as *Alopecurus aequalis* Sobol., a circumboreal foxtail grass found as far south as adjacent Mendocino County. These specimens, however, deviated considerably from typical *A. aequalis* and were identified by Rubtzoff as *A. aequalis* var. *sonomensis*. Although William Crins (1993) only referred to this variety in passing in a discussion of the species, its varietal status adequately reflects its morphological and ecological attributes and it is considered to be a distinct variety (William Crins, Ontario Ministry of Natural Resources, *in litt.* 1993).

Alopecurus aequalis var. *sonomensis* is a tufted perennial in the grass family (Poaceae) that reaches 30 to 75 cm (12 to 30 in) in height. The stems are mostly erect and either straight or weakly bent near the base. The leaf blades are up to 7.5 mm (0.3 in) wide. The panicle is 2.5 to 9.0 cm (1.0 to 3.5 in) long and 4 to 8 mm (0.1 to 0.3 in) wide. The spikelets are usually tinged violet-gray near the tip. The awn (bristlelike part) is straight, and exceeds the lemma body by 1.0 to 2.5 mm (0.04 to 0.1 in). This variety is distinguished from *A. aequalis* var. *aequalis* by its more robust, upright appearance, generally wider panicle, violet-gray tinged spikelets, and longer awn (Rubtzoff 1961; William Crins, Ontario Ministry of Natural Resources, *in litt.* 1993).

When the proposed rule was written, *Alopecurus aequalis* var. *sonomensis* was known from five natural populations. Three of the sites, in Sonoma County, were privately owned, and two sites were on Federal land within Point Reyes National Seashore (PRNS) in Marin County (CNDDB 1993; Virginia Norris, CNPS, Marin Chapter, *in litt.* 1993). Three more natural sites in Marin County have since been identified. Two are on Federal land within PRNS, and the third is a private inholding within the PRNS (CNDDB 1996; V. Norris, *in litt.* 1995; Robert Soost, CNPS, Marin Chapter, *in litt.* 1996). One of the newly discovered populations was initially thought to be the result of seeds washed down from a reintroduced population, but it is now considered a natural population (V. Norris, *in litt.* 1995). All populations occur in moist soils in permanent freshwater marshes between 6 and 210 m (20 and 680 ft) in elevation.

Alopecurus aequalis var. *sonomensis* was known historically from 16 populations. The historical range of the taxon was approximately 48 km (30 mi), extending north from Point Reyes Peninsula to Guerneville and east to Cunningham. Although fewer sites are now present, the range of the species has changed little. The numbers of populations of this species are declining due to competition from invasive plant species, trampling and grazing by cattle, and low reproductive success. Three attempts to reintroduce the species in the PRNS have failed (CNDDB 1996; V. Norris, *in litt.* 1995). The proposed rule, published August 2, 1995 (60 FR 39314), stated that one attempt was destroyed by a flash flood in 1993. It is now thought that the affected population was a natural population and not a reintroduction. This population reestablished and contained 15 plants in 1994 and 13 in 1995 (V. Norris, *in litt.* 1995).

The number of individuals in populations of *Alopecurus aequalis* var. *sonomensis* may fluctuate markedly between years. The largest population recorded in recent years was about 600 plants in 1995; this population dropped to about 100 plants in 1996 (V. Norris, *in litt.* 1995; R. Soost, *in litt.* 1996). A population in Sonoma County reported to have 150 individuals in 1987 had dropped to only 4 plants by 1994 (V. Norris, *in litt.* 1995). Most often, populations of *A. aequalis* ssp. *sonomensis* have about 100 or fewer individuals (CNDDB 1996).

Liberty Bailey (1889) described *Carex albida* based on a specimen collected by John Bigelow in 1854 on Santa Rosa Creek, Sonoma County, California. Specimens of the plant collected by John T. Howell and John W. Stacey in 1937 were described as *C. sonomensis* (Stacey 1937), but Howell (1957) later stated that the type specimen of *C. albida* had been misinterpreted by Stacey and others and that *C. sonomensis* is a synonym of *C. albida*. Howell's interpretation continues to be accepted (Mastrogiuseppe 1993).

Carex albida is a loosely tufted perennial herb in the sedge family (Cyperaceae). The stems are triangular, 4 to 6 dm (1.3 to 2.0 ft) tall, erect, and longer than the leaves. The leaves are flat and 3 to 5 cm (1 to 2 in) wide with closed sheaths. The inflorescence consists of 4 to 7 ovoid or obovoid to oblong spikelets 8 to 18 mm (0.3 to 0.7 in) long. The achenes (fruits) are three-sided when mature. The sacs (perigynia) surrounding the achenes are light green to yellow-green when mature and 3.0 to 4.5 mm (0.1 to 0.2 in) long. Several traits distinguish *C. albida* from other closely related sedges. *Carex albida* has inflorescences with staminate flowers above the pistillate flowers, especially on the terminal inflorescence, lateral spikelets, and leaves that are shorter than the stems and 3 to 5 mm (0.1 to 0.2 in) wide. Some individuals of *Carex lemmonii* resemble *C. albida*, but differ in perigynia and fruit size, or in other respects.

Carex albida was thought to be extinct but is now known from a single population discovered in 1987. *Carex albida* was known historically from four other locations including the type locality on Santa Rosa Creek and three additional populations in two marshes, all in Sonoma County. The marsh containing *C. albida* at the Santa Rosa Creek site was destroyed in the 1960's by channelization and other alterations to Santa Rosa Creek (Betty Guggolz, CNPS, Milo Baker Chapter, *in litt.* 1993). A second marsh has been used for cannery waste disposal since 1971, causing the probable loss of the population (CNDDB 1996). At the third marsh, one of the two historical populations has not been seen since 1951. Access to the other population has been denied by the landowner, and the presence of the plant has not been confirmed since 1976. This marsh has become drier in recent years because the addition of wells and other construction has altered the marsh hydrology, and it likely no longer supports the species (B. Guggolz, *in litt.* 1993).

The only extant population of *C. albida* is found in a sphagnum bog, between 45 and 60 m (150 and 200 ft) in elevation. The population contains about 1,000 plants and occurs on private property in Sonoma County (CDFG 1993a, CNDDB 1996). *Carex albida* is threatened by potential alteration of hydrology from changes in land use or potential disturbance from a proposed wastewater treatment project, competition from invasive species, potential disturbance from repair or alteration of a nearby state highway, and random events.

F. Harlan Lewis and Margaret Lewis (1953) described *Clarkia imbricata* from specimens they collected on July 10, 1951, along Vine Hill Road, Sonoma County. This treatment continues to be accepted (Lewis 1993). *Clarkia imbricata* is an erect, annual herb in the evening-primrose family (Onagraceae). The stems grow to 6 dm (2.5 ft) tall, unbranched or with numerous short branches in the upper parts. This plant is densely leafy, with entire, lanceolate leaves 2.0 to 2.5 cm (0.8 to 1.0 in) long and 4 to 7 mm (0.2 to 0.3 in) broad that are ascending and overlapping. The showy inflorescences appear from June through July. The flowers are grouped closely together and each flower has a conspicuous funnel-shaped tube at its base. Each flower has four fan-shaped, lavender petals 2.0 to 2.5 cm (0.8 to 1.0

in) long with a V-shaped purple spot extending from the middle to the upper margin of the petal. *Clarkia purpurea* ssp. *viminea* is the only other *Clarkia* taxon with which *C. imbricata* can be confused. *Clarkia purpurea* ssp. *viminea* has a much shorter, funnel-shaped tube and does not have the relatively broad, ascending, overlapping leaves of *C. imbricata*.

Clarkia imbricata has never been known to be common. Unsuccessful searches for this plant at its type locality have been made since 1974 (B. Guggolz, *in litt.* 1993). This taxon is only known from two populations, one natural and one planted in a preserve, found in sandy grasslands in Sonoma County. The natural population was the source for cuttings that were transplanted into the 0.6 ha (1.5 ac) preserve in 1974. The two populations are 1.2 km (0.75 mi) apart, have an elevation range of 60 to 75 m (200 to 250 ft), and occur on private land. The natural population contains 2,000 to 5,000 plants and occurs on an open, flat grassland surrounded by a variety of introduced trees and shrubs. The planted population, located in a preserve owned and managed by the CNPS, has fluctuated between 200 and 300 plants. Plants have recently expanded onto an adjacent parcel of private land to the east, where 70 to 100 plants were found in 1993. The planted population is threatened by damage associated with trespassers collecting other rare plants found in the preserve, while the natural population is at risk due to proposed land use conversion (B. Guggolz, *in litt.* 1993). Both populations are also susceptible to adverse impacts from random events.

Lawrence Beane and Albert M. Vollmer first collected *Lilium pardalinum* ssp. *pitkinense* on July 20, 1954, in Sonoma County, California. Beane (1955) described the plant as *Lilium pitkinense*. Mark Skinner (1993) subsequently treated the plant as a subspecies of *L. pardalinum*.

Lilium pardalinum ssp. *pitkinense* is an herbaceous, rhizomatous (underground stem) perennial in the lily family (Liliaceae). The slender, erect stems reach 1 to 2 m (3 to 6 ft) in height. Leaves are yellow-green, up to 14 cm (5.5 in) long, and 1 to 2 cm (0.4 to 0.8 in) wide. The leaves are generally scattered along the stem, but in some plants occur in 2 or 3 whorls of 3 to 6 leaves near the middle of the stem. The inflorescence is a terminal raceme. The flowers are large, showy, and nodding. The petals, which are reflexed from the middle, are red at the outer edge changing to yellow at the center with small, deep maroon dots mostly within the yellow zone. Anthers (pollen-bearing part of the stamen) are purple-brown. The fruit is an elliptical capsule containing many rounded seeds (CDFG 1993b). The species flowers from June to July. *Lilium pardalinum* ssp. *pitkinense* is distinguished from *L. pardalinum* ssp. *pardalinum* by generally shorter petals and anthers.

Lilium pardalinum ssp. *pitkinense* grows only in permanently saturated, sandy soils in freshwater marshes and wet meadows that are 35 to 60 m (115 to 200 ft) in elevation. Only three populations of *L. pardalinum* ssp. *pitkinense* at two sites were recorded historically. All three populations are on private land within a distance of 13 km (8 mi) in Sonoma County. Access to one of the sites has been denied by the landowner since 1975 (CNPS 1988a). As a result, the status of this population has not been confirmed, but it is presumed to be extant. Two populations occur at a second site. The size of these populations has declined due to loss of habitat from urbanization and competition with blackberries (*Rubus* spp.) (CDFG 1993b). About 300 individual plants remain on these two sites (B. Guggolz, pers. comm. 1996). Collection of plants, seeds, and bulbs for horticultural use, competition from invasive plant species, potential disturbance from a proposed subdivision, trampling and herbivory by livestock and wildlife and random events threaten this species (Lynn Lozier, The Nature Conservancy (TNC), *in litt.* 1990; CDFG 1993b; B. Guggolz, pers. comm. 1993, 1996).

Edward L. Greene (1897) first described *Sidalcea oregana* ssp. *valida* in June, 1894, based on material he collected from Knight's Valley, Sonoma County, California. Since then, this taxon has been known as *S. maxima* (Baker), *S. oregana* var. *spicata* (Jepson), *S. eximia* (Baker) and *S. spicata* ssp. *valida* (Wiggins) (CNPS 1988b). C. L. Hitchcock (1957) studied the genus *Sidalcea* and recognized four subspecies, including *S. oregana* ssp. *valida*, a treatment accepted by Steven Hill (1993).

Sidalcea oregana ssp. *valida* is a perennial herb in the mallow family (Malvaceae). The plants are 1 to 2 m (3 to 6 ft) tall. The leaves are rounded. Lower leaves have 5 to 7 shallow lobes; upper leaves are generally smaller and. divided into 3 to 5 entire, lanceolate segments. The compound inflorescence consists of densely flowered, spike-like racemes 2 to 5 cm (0.8 to 2.0 in) long. Petals are 1.0 to 1.5 cm (0.4 to 0.6 in) long, notched at the apex, and deep pink-mauve. The flowers appear from late June to September. *Sidalcea oregana* ssp. *valida* differs from *S. oregana* ssp. *eximia* in having a hairless calyx.

Sidalcea oregana ssp. *valida* has never been recorded as abundant and only two occurrences are known. These occurrences are about 29 km (18 mi) apart in Sonoma County, California. Both are on private land. *Sidalcea oregana* ssp. *valida* inhabits freshwater marshes approximately 150 m (490 ft) in elevation. One population covers less than 0.1 ha (0.25 ac), and was reported to have fewer than 100 plants in 1979 (CDFG 1987) and approximately 60 plants in 1993 (Nick Wilcox, State Water Resources Control Board, pers. comm. 1993). The other population contained approximately 70 individuals in 1993 (Ann Howald, CDFG, pers. comm. 1993). Both populations are adversely affected by trampling and reduced seed set resulting from cattle grazing (CNPS 1988b). The potential alteration of the hydrology of one site due to urbanization and water withdrawal poses a threat to the species (A. Howald, pers. comm. 1993). The plants may also suffer from competition by common tule (*Scirpus acutus*) and yellow star-thistle (*Centaurea solstitialis*), and from periodic maintenance of a local aqueduct located in the marsh (A. Howald, pers. comm. 1993). This species is also susceptible to adverse impacts from random events.

Edward L. Greene (1891) described *Trifolium amoenum* from specimens that he collected near Vanden, Solano County, California, in 1890. This treatment was retained by Duane Isely (1993). Historically, this species has been found in a variety of habitats including low, wet swales, grasslands, and grassy hillsides up to 310 m (1,020 ft) in elevation. This annual plant, which is a member of the pea family (Fabaceae), is hairy, erect, and grows to 1 to 6 dm (4 to 27 in) in height. The leaves are pinnately compound, widely obovate, and 2 to 3 cm (0.8 to 1.2 in) long. The flowers, which are purple with white tips, are 12 to 16 mm (0.5 to 0.6 in) long and occur in dense, round or ovoid heads, 2 to 3 cm (0.8 to 1.2 in) long. Flowers appear from April to June. *Trifolium amoenum* is similar in appearance to *T. macraei*, but is generally larger and the flowers lack subtending bracts.

The historical range of *Trifolium amoenum* was from the western edge of the Sacramento Valley in Solano County, west and north to Marin and Sonoma counties, where many sites were presumed extirpated by urban and agricultural development (CNPS 1977). Until 1993, *Trifolium amoenum* was considered extinct. However, one

locality was discovered in 1993 and a second in 1996. In 1993, Peter Connors, Bodega Marine Laboratory, discovered a single *Trifolium amoenum* plant in Sonoma County. The land on which this plant was found is private (CNDDB 1996), and at the time of writing of the proposed rule the land was for sale (Peter Connors, Bodega Marine Laboratory, pers. comm. 1994). No plants were found at the site in 1994 or 1995, and the site has now been developed (P. Connors, pers. comm. 1996). The only known extant population of *T. amoenum* is that found in 1996. This population consists of about 200 plants growing on two residential lots in Marin County. One lot has a house on it, and a house is being built on the other; both landowners are currently cooperating in the conservation of the species on their property (P. Connors, pers. comm. 1996).

In 1994, Dr. Connors grew 18 plants in cultivation from seed produced by the single plant found in 1993 (Connors 1994). These plants were grown to produce seed for later reintroduction efforts (P. Connors, pers. comm. 1994); the seed is expected to be viable for decades (P. Connors, pers. comm. 1996). Should additional *T. amoenum* be found, these populations would likely be threatened by urbanization, competition with invasive plants, land conversion to agriculture, livestock grazing, and random events.

Previous Federal Action

Federal government actions on these nine species began as a result of section 12 of the Act which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense* (as *L. pitkinense*), *Plagiobothrys strictus, Poa napensis*, and *Trifolium amoenum* as endangered and *Sidalcea oregana* ssp. *valida* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and of its intent to review the status of the plant taxa named therein. The above eight taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis*, and *Trifolium amoenum* were included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published a Notice of Review for plants in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice included *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* as a Candidate species. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640). This supplement changed *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* to category 2. At that time, category 2 taxa were those being considered for possible addition to the Federal List of Endangered and Threatened Wildlife. Designation of category 2 species was discontinued in the February 28, 1996, **Federal Register** notice (61 FR 7596).

The plant notice was revised again on September 27, 1985 (50 FR 39526). The candidate status of eight of the plant species remained unchanged in this notice. *Trifolium amoenum* was indicated as being possibly extinct. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision, *Astragalus clarianus, Plagiobothrys strictus, Poa napensis*, and *Sidalcea oregana* ssp. *valida* were designated as Candidates. The Service made no changes to the status of any of the nine species in the plant notice published on September 30, 1993 (58 FR 51144). The Service approved Candidate status for *Alopecurus aequalis* var. *sonomensis* on August 26, 1993. However, the status change was inadvertently not published in the plant notice published on September 30, 1993. After the publication of that notice, the Service received information that *Trifolium amoenum* had been rediscovered (Connors 1994).

In the August 2, 1995, **Federal Register**, the Service published a proposed rule to list the nine plant species as endangered, and invited public comment (60 FR 39314). Processing of the proposed rule was delayed by a congressional moratorium on activities associated with final listings from April 10, 1995, through April 26, 1996. After the moratorium was lifted, the Service reopened the comment period and scheduled a public hearing on September 11, 1996 (61 FR 47856).

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* because the 1975 Smithsonian report had been accepted as a petition. The Service found that the petitioned listing of those eight species was warranted but precluded by other higher priority listing actions. This finding was reviewed annually in October from 1983 through 1994. Publication of the proposed rule on August 2, 1995 (60 FR 39314), constituted the final finding for the petitioned action for these species.

The processing of this final listing rule conforms with the Service's final listing priority guidance made final on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6) and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling

emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of proposed listings. A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status (Tier 3). The lowest priority actions are in Tier 4, a category which includes processing critical habitat determinations, delistings, or other types of reclassifications. Processing of this final rule is Tier 2 action.

Summary of Comments and Recommendations

In the August 2, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that would contribute to the development of a final determination on the proposed listing. A 65-day comment period closed on October 9, 1995. Appropriate Federal and State agencies, county and city governments, scientists, and interested parties were contacted and requested to comment. The Service published notices in the *Marin Independent Journal, Mill Valley Pacific Sun, Santa Rosa Press Democrat, Ross Valley Reporter, San Francisco Chronicle* and *San Francisco Examiner* on August 9, 1995, in the *Napa Register* on August 10, 1995, and in the *Napa County Record* and *Petaluma Argus-Courier* on August 11, 1995, inviting general public comment. In response to the publication of the proposed rule, the Sonoma County Farm Bureau, Santa Rosa, California, requested a public hearing in one of 2 letters each dated August 28, 1995.

Following the lifting of the listing moratorium, the comment period was reopened on September 11, 1996, for 35 days, closing on October 15, 1996. Upon the reopening of the comment period, the Service again contacted interested parties, and published notices—in the *Petaluma Argus-Courier* on September 17, 1996, in the *Marin Scope* and *Mill Valley Pacific Sun* on September 18, 1996, and in the *Marin Independent Journal, Napa Register,* and *Santa Rosa Press Democrat* on September 19, 1996—inviting general public comment and announcing the scheduling of a public hearing. A public hearing was held at the Best Western Novato Oaks Inn in Novato, California, on October 3, 1996. The hearing was attended by approximately 20 people, of whom nine presented oral or written testimony.

In accordance with Service peer review policy published on July 1, 1994, (59 FR 34270), the Service sent copies of the proposed rule to one ecologist who works for a university, two plant ecologists who work for State agencies, eight university professors who are species experts, and six other species experts. The Service received one response, from a species expert. The comments received in this response did not contain any new information substantive to the listing determination. The remaining reviewers did not respond to the Service.

In total, 24 individuals, groups, or agencies submitted comments, including the California Department of Parks and Recreation, the California Native Plant Society (CNPS), the Marin and the Sonoma County Farm Bureaus, the California Cattlemen's Association, and the Washington Legal Foundation. Several individuals commented more than once. Nine commenters supported the proposed action, eight opposed it or expressed reservations, and seven did not state a position. Several commenters provided corrections or updated information regarding one or more of the species proposed for listing. The Service has incorporated into the final rule any verifiable new information that is substantive to the listing decision.

Written comments and oral statements presented at the public hearing and received during the comment periods are addressed in the following summary. Comments of a similar nature are grouped together into general issues. These issues and the Service's responses are presented below.

Issue 1: Several commenters expressed concern that listing the plants would adversely affect the economies of Marin, Sonoma, and Napa counties, or requested the Service to consider possible economic impacts.

Service Response: Under section 4(b)(1)(A), a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H. R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word 'solely' in this legislation," H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). Because the Service is precluded from considering economic impacts in a final decision on a proposed listing, the Service has not examined such impacts.

Issue 2: One commenter stated that the Service must complete a Taking Implications Assessment, as directed by Presidential Executive Order 12630, before issuing a final rule.

Service Response: The Attorney General has issued guidelines to the Department of the Interior (Department) on implementing Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion, that is, to act solely upon specified criteria that leave the agency no choice. In the present context, the Service's action might be subject to legal challenge if it considered or acted upon economic information in reaching a listing decision.

In such cases, the Attorney General's guidelines state that Taking Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision in which its discretion is restricted. The purpose of the TIAs in these special circumstances is to inform policy makers of areas where unavoidable taking exposures exist. Such TIAs must not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Act, Congress required that listings be based solely on scientific and commercial data showing whether or not the species are in danger of extinction. Thus, by law and by U.S. Attorney General guidelines, the Service is forbidden to conduct TIAs prior to listing.

Issue 3: Several commenters expressed concern that farmers and ranchers would be restricted in their everyday operations by listing of the nine plant species. One worried that farmers and ranchers would be subject to criminal prosecution for the accidental taking of these plants. Another suggested that compensation should be provided for land taken out of range production.

Service Response: The Act does not restrict the taking of listed plants due to otherwise lawful private activities on private land. Listing the nine plants as endangered will not regulate farming or ranching operations, including cattle grazing, on private land. Other activities that do not violate the taking prohibitions of section 9(a)(2) of the Act are discussed further under "Conservation Measures."

Issue 4: Several commenters, including representatives of the California Cattlemen's Association, Sonoma-Marin Cattlemen's Association, and the Marin County Farm Bureau, stated that grazing is likely to be beneficial to the nine plant species, both as a land use alternative to urbanization and other land uses, and in reducing competition from other plant species, notably nonnative grasses. One commenter stated that there is no verifiable evidence of a relationship between grazing and these plants. Another said that because there is public debate about the effects of grazing on land and vegetation, little scientific basis exists for claims that grazing is a threat. One commenter asserted that the Service has a strong bias against all grazing.

Service Response: Some degree of grazing by cattle and other animals is likely to be beneficial to some or all of the nine plant species addressed in this rule. Evidence that heavy grazing is a threat to some of the species, however, is discussed under Factor C. The Service is not opposed to grazing, and maintains that best grazing management practices are compatible with many natural resource objectives.

Issue 5: Two commenters believed that listing would allow the Service or the California Department of Fish and Game to intrude upon private property to search for the listed plants.

Service Response: Listing will have no such effect. The Act does not give any person or government agency the right to trespass.

Issue 6: Several commenters requested an extension of the comment period beyond the second deadline of October 15, 1996. One member of the Marin County Farm Bureau stated that their organization had not had adequate time to notify their membership of the public hearing regarding the proposed rule. Other commenters requested additional hearings at more convenient places and times.

Service Response: The Service believes that the comment period provided was adequate. The beginning of this section reviews the Service's efforts to notify the public of the proposed rule regarding these nine plants. In addition to publication in the **Federal Register** and public notices appearing in several local and regional newspapers, the Service mailed separate notifications of the public hearing to species experts, other individuals, and Federal, State, and county entities, including the Marin County Farm Bureau, on September 17, 1996. The location and time of the public hearing was selected to be convenient to most citizens living around populations of the proposed plant species.

Issue 7: One commenter, noting certain errors in the proposed rule and in a Service press release on the proposed listing, requested an additional public hearing after corrections had been made.

Service Response: One purpose of the public comment period is to seek feedback on the accuracy of the information in the proposed rule; correction of errors in the rule does not mandate the re-opening of public comment. The inaccurate information in the Service's press release dealt only with consequences of any listing, not with information or procedures relevant to this listing determination.

Issue 8: One commenter questioned whether all appropriate public land has been surveyed for the nine plant species, and whether the species can truly be listed as threatened by extinction without such surveys. She requested that the listing decision be postponed and the comment period be extended until such surveys have been conducted. Another commenter asserted that the Service lacks data supporting the likelihood of the purported threats to the species, and that the Service has discussed threats that do not exist. As examples, the commenter stated that the water level of Lake Hennessey has not been raised such that it completely inundates a population of *Astragalus clarianus* and that *Carex albida* is not grazed, yet the Service considers these threats.

Service Response: The Act requires the Service to reach its decision based on the best scientific and commercial information available. The Service believes that botanical study of the appropriate habitats on public and private lands in Marin, Napa, Sonoma, and nearby counties has been adequate to show that the nine plants are indeed extremely rare. The threats to the species discussed under Summary of Factors Affecting the Species are also based on the best information available, and are well documented or reasonably foreseeable. With respect to the assertion that the Service has identified threats that do not exist, threats, by general definition, are descriptions of events that have not yet taken place but that are likely to occur in the foreseeable future.

Issue 9: One commenter argued it would be safer to engage in conservation actions without listing the nine plants, since listing could provoke malicious damage.

Service Response: Factor D presents information about the inadequacy of existing protections for the nine plant species. Additional protections that they will receive as a result of listing are discussed under Available Conservation Measures. The Service believes that listing these nine species as endangered under the Act will significantly reduce the threats to their continued existence. Although real, the Service considers the risk of malicious damage to most of these plants to be relatively small, especially for the species that are inconspicuous. The degree of risk, however, will increase significantly if precise maps of the locations of these species were published. This aspect is discussed further in the Critical Habitat section.

Issue 10: One commenter asserted that the Service has not given proper consideration to data provided by ranchers and other landowners, and that the Service gives much more weight to the information provided by California Native Plant Society volunteers. He further stated that references to grazing impacts in reports to the Natural Diversity Database maintained by the California Department of Fish and Game are inaccurate and biased and that the volunteers who submit these reports lack experience in range management or livestock behavior.

Service Response: The Service considers all information received from all sources. No group's or individual's information receives "more weight" than others. Information received from all sources was carefully evaluated in accordance with Service policy on information standards under the Act, published on July 1, 1994 (59 FR 34271). Criteria for what information may be considered are discussed in the Summary of Factors Affecting the Species, and in the response to Issue 1. The Service has checked all substantive information for accuracy, and believes that the information included in this rule is reliable and credible and represents the best scientific and commercial information available.

Issue 11: One commenter, representing the California Cattlemen's Association, commented that it is very unlikely that grazing is a threat to *Lilium pardalinum* ssp. *pitkinense*, in part because livestock prefer dry areas to the bogs and marshes in which this plant grows.

Service Response: Although cattle prefer dryer areas, they will enter and graze such wet areas, especially if forage in the surrounding dry areas is less attractive. Evidence of cattle and other herbivores grazing on *Lilium pardalinum* ssp. *pitkinense*, is discussed under Factor C.

Issue 12: One commenter suggested that the nine plants may be naturally rare, and may nevertheless be thriving.

Service Response: Decisions on listing plants and animals are based on the threats facing the species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. Evidence that the nine plants are in danger of extinction in all or significant portions of their ranges is discussed under Summary of Factors Affecting the Species.

Issue 13: One commenter noted that the proposed rule claimed that habitat for *Trifolium amoenum* has been lost due to livestock grazing and called for the Service to recognize that livestock grazing does not permanently alter the landscape.

Service Response: The final rule has been changed to clarify that proper grazing generally does not cause permanent habitat loss.

Issue 14: Two commenters suggested that the observation in the proposed rule that a fenced population of *Lilium pardalinum* ssp. *pitkinense* continued to suffer from herbivory demonstrating that something other than domestic livestock is causing the damage.

Service Response: The Service maintains that domestic livestock as well as other vertebrate and invertebrate herbivores are capable of damaging these plants (see Factor C and response to Issue 11).

Issue 15: One commenter said that *Alopecurus aequalis* var. *sonomensis* and *Trifolium amoenum* might prove to have agricultural value, since both are palatable to cattle. *Alopecurus aequalis* var. *sonomensis* appears tolerant of some grazing, and *T. amoenum* might renew soil fertility and provide valuable forage if it could be grown in sufficient quantity. The commenter speculated that these species could be seeded to improve pastures.

Service Response: The Service will evaluate these points as it plans and implements the recovery of these species.

Issue 16: One commenter argued that passive preservation of individual species is ecologically unsound and will not ultimately protect biodiversity.

Service Response: The Service notes that habitat protection helps conserve other species with similar habitat needs contributing to the biodiversity of the ecosystem. Some species require active management and the Service will address this in the recovery plan.

Issue 17: One commenter asserted that policies calling for the removal of nonnative species are based on outdated science, that nonnative plants have increased the biodiversity of California's annual grasslands and that these alien species do not threaten the ecological community of grasslands.

Service Response: The Service has extensive information and has received a large number of comments from farmers, ranchers, and scientists, indicating that competition from invasive plants, mostly of nonnative origin, has played a major role in the decline of several of the nine plant species and is a continuing and serious threat to most of them. This information is summarized under Factor E.

Issue 18: One commenter stated that, under the National Environmental Policy Act (NEPA), the Service must prepare an Environmental Impact Statement (EIS) for this rule.

Service Response: For the reasons set out in the NEPA section of this document, the Service has determined that the rules issued under section 4(a) of the Act do not require the preparation of an EIS. Courts in Pacific Legal Foundation v. Andrus, 657 F.2d 829 (6th Circuit 1981), held that an EIS is not required for listing under the Act. The Sixth Circuit decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act.

Issue 19: One commenter urged the Service, in the event of listing, to designate critical habitat for the nine plant species with a consideration of economic impacts of such designation required by law.

Service Response: The Service has determined that the designation of critical habitat for these nine plant species is not prudent. Please refer to the "Critical Habitat" section of this rule for a detailed discussion of the critical habitat determination.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Alopecurus aequalis* Sobol. var. *sonomensis* Rubtzoff (Sonoma alopecurus), *Astragalus clarianus* Jepson (Clara Hunt's milk-vetch), *Carex albida* Bailey (white sedge), *Clarkia imbricata* Lewis and Lewis (Vine Hill clarkia), *Lilium pardalinum* Kellogg. ssp. *pitkinense* (Beane and Vollmer) M. Skinner (Pitkin Marsh lily), *Plagiobothrys strictus* (Greene) I.M. Johnston (Calistoga allocarya), *Poa napensis* Beetle (Napa bluegrass), *Sidalcea oregana* (Nutt.) Gray ssp. *valida* (Greene) C.L. Hitchcock (Kenwood Marsh checker-mallow), and *Trifolium amoenum* Greene (showy Indian clover) should be classified as endangered species. The Service followed procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) in reaching this determination. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the nine species are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Habitat destruction and modification due to urbanization, land use changes, or alterations in hydrology pose the most serious threats to the survival of these nine plant species.

Astragalus clarianus is known currently from three populations in Napa County and one population in Sonoma County (CNPS 1989, CNDDB 1996). The four populations face a variety of threats to their continued existence. One population in Napa County was reduced in size when the creation of Lake Hennessey in the 1950's inundated much of the site (L. Lozier, pers. comm. 1993). The City of Napa owns the lake and uses Lake Hennessey as a water source. Recently, the City of Napa conducted a feasibility study on the raising in elevation of the dam as part of a project to increase water storage for the city. This would have raised the lake level and submerged the remnant population of *A. clarianus* (J. Ruygt, CNPS, *in litt.* 1993). This increased water-storage project at Lake Hennessey is currently considered too costly (Don Ridenhour, Public Works Dept., City of Napa, pers. comm. 1993). However, any future water storage project that would involve increasing the height of the dam and raising the level of Lake Hennessey would constitute a threat to the population of *A. clarianus* that lies along the lakeshore. In December 1990, this remnant population was nearly destroyed when dredge spoils from the lake were placed on top of it (A. Howald, pers. comm. 1993). The City of Napa, in cooperation with CDFG, removed most of the dredge spoils and fenced the 1 ha (2 ac) area, placing a gate in the fence for fishing access to the lake. Ground disturbance caused by dredge spoil removal resulted in proliferation of invasive weeds that further threaten the site, as discussed below under Factor E. The population has not recovered well (J. Ruygt, pers. comm. 1996). Eight plants of *A. clarianus* were counted at this site in 1991, 325 plants in 1992, 156 plants in 1993 (CDFG 1989; J. Ruygt, *in litt.* 1993), 9 plants in 1994 (CNDDB 1996), and 15 plants in 1996 (J. Ruygt, pers. comm.

1996, public hearing transcript). The area remains a favorite fishing access to the lake and receives significant use by the public (CDFG 1989). The City of Napa has repaired damage to the fence several times (A. Howald, pers. comm. 1993).

Another population of *Astragalus clarianus* occurs in Bothe Napa Valley State Park. Plant numbers have been reported as 8 plants in 1988, 220 plants in 1992, 101 plants in 1993, and 39 plants in 1996 on a 1 ha (2 ac) monitoring site (J. Ruygt, *in litt.* 1993, pers. comm. 1996, public hearing transcript). The larger portion of the population of *A. clarianus* outside of the monitoring zone occurs sparsely on a 6 ha (15 ac) area. This area has been partially protected by placing brush piles next to a foot trail to divert people away from the population (William Grummer, Bothe Napa Valley State Park, California Dept. of Parks and Recreation, pers. comm. 1993). The general plan for the park indicates a campground to be placed over the larger portion of *A. clarianus*, but the Service does not consider the proposed action in this plan as an imminent threat because of lack of funding and possible revisions to the park plan (W. Grummer, pers. comm. 1993). At present, no specific plans to develop a campground have been made (W. Grummer, pers. comm. 1996). Although the campground development may be relocated away from the population of *A. clarianus*, the Service considers that increased recreational use from an additional campground in this park constitutes a potential threat.

The third population of *Astragalus clarianus* occurs near the City of Santa Rosa in eastern Sonoma County. This population was estimated at 2,100 plants in 1996 scattered over 6 ha (15 ac) and appears stable at the present time (Saxon Holt, CNPS, Milo Baker Chapter, pers. comm. 1996). It is on private land under a voluntary protection agreement with TNC. Upslope and adjacent to this population is the 454 ha (1,350 ac) approved Saddle Mountain subdivision (J. Ruygt, *in litt.* 1993, S. Holt, pers. comm. 1996). Soil erosion from proposed road and pad construction for house lots potentially threatens this population of *A. clarianus* (J. Ruygt, *in litt.* 1993). Construction of this development has not yet begun (S. Holt, pers. comm. 1996).

The fourth population of *Astragalus clarianus* consisted of 2,238 plants in 1993 scattered over less than 2 ha (5 ac) of private land (J. Ruygt, *in litt.* 1993). Feral pigs uprooted a substantial number of plants during 1994; the number of plants at this site has declined in 1995 and 1996, although this decline may be attributable to factors other than damage by pigs (J. Ruygt, pers. comm. 1996, public hearing transcript).

One historical occurrence and over 70 percent of the original habitat of *Plagiobothrys strictus* have been extirpated by urbanization and conversion of land to vineyards (CNPS 1990). The two remaining populations of *P. strictus* are threatened by urbanization (CNDDB 1996, CNPS 1990). One of these populations occurs at the Calistoga Airport, where about 5,000 plants were counted in an area of about 180 m^2 (2,000 ft^2) in 1994 (J. Ruygt, pers. comm. 1996, public hearing transcript). The number of individuals in this population fluctuates considerably, perhaps due to variations in spring rainfall between years (CDFG 1988). Future development at this site could threaten this population (J. Ruygt, *in litt.* 1993), as could airport maintenance activities (J. Ruygt, pers. comm. 1996). The other population of *P. strictus* is scattered over a 4 ha (10 ac) area bisected by an asphalt road on private land near Myrtledale Hot Springs in the City of Calistoga. The number of individuals in this population was estimated to be in the hundreds (J. Ruygt, *in litt.* 1993). In recent years, the landowner has denied access to the site. The landowner has proposed to build a hospital on this site, but has been unsuccessful due to current zoning status (CDFG 1988; J. Ruygt, *in litt.* 1993; J. Ruygt, pers. comm. 1996).

Historically, the habitat of the two remaining populations of *Poa napensis* has been reduced by the development of health spas and resorts in the City of Calistoga and other construction activities at the Calistoga Airport (CNPS 1989). The remnant population of *P. napensis* at the Calistoga Airport was thought to be extirpated as a result of construction activities in 1981 because no plants were found that year. By 1987, however, 500 plants were counted at the airport location (CDFG 1989; J. Ruygt, *in litt.* 1993). In 1994 and 1996, about 150 plants were counted at the airport site (J. Ruygt, pers. comm. 1996). The only other population is near Myrtledale Hot Springs in the City of Calistoga, where several thousand plants were reported in a 100 m^2 (1,100 ft^2) area in the early 1980's. The landowner has denied access to the property in recent years. Because *Poa napensis* and *Plagiobothrys strictus* occur at both the Calistoga Airport site and the other site near Myrtledale Hot Springs, the threats from urbanization, including construction of a hospital, are the same for both species (CNPS 1987, 1990; J. Ruygt, *in litt.* 1993; J. Ruygt, pers. comm. 1996).

The single known population of *Carex albida* is located approximately 46 m (150 ft) from a State highway in a sphagnum bog. Any direct impact or change in the hydrology of the area resulting from highway widening or maintenance, or a change in land use would adversely affect the population. Draining the wetland would not only directly impact the species but would encourage the spread of blackberries (*Rubus* spp.), which have become dominant in other parts of the marsh that have been drained (CDFG 1993a; CNDDB 1996; B. Guggolz, *in litt.* 1993).

When the proposed rule was written, a wastewater treatment project was proposed to be built 300 m (328 yards) from the Carex albida population. Potential impacts from this project, as originally proposed, included adverse effects from the application of recycled wastewater and the temporary or permanent removal of wetlands, riparian vegetation, and special status plants and their habitats (Environmental Science Associates 1993). The treatment plant has now been constructed, but the use of recycled wastewater has not been implemented (B. Guggolz, pers. comm. 1996). If implemented, from 1,200 to 4,900 cubic m (1 to 4 ac-ft) of wastewater per year would be applied on approximately 14 to 27 ha (35 to 60 ac) of land. Although the population of *C. albida* would not be directly impacted, the application of this volume of wastewater could result in the alteration of remaining habitat within the historical range of *C. albida* through modification of surface hydrology (Environmental Science Associates 1993). The historical ranges of *Lilium pardalinum* ssp. *pitkinense* and *Alopecurus aequalis* var. *sonomensis* also occur within the project boundaries.

The type locality of *Clarkia imbricata* along the roadside at Pitkin Ranch was extirpated prior to 1974, as a probable result of changes in land use or roadside maintenance (B. Guggolz, *in litt.* 1993). Another population of *C. imbricata* in Sonoma County was extirpated as a result of tree farming and weed control activities (B. Guggolz, *in litt.* 1993). The sole remaining natural population of C. imbricata is threatened by changing land use, such as conversion to agriculture, and inadvertent mowing of its habitat (B. Guggolz, *in litt.* 1993; B. Guggolz, pers. comm. 1996).

One site with two populations of *Lilium pardalinum* ssp. *pitkinense* was largely destroyed by urbanization in 1961; however, approximately 300 plants remain at this site (CDFG 1993b;

B. Guggolz, pers. comm. 1996). Although a subdivision is planned for the area surrounding a portion of this site, the landowner agreed to protect a portion of the habitat of *L. pardalinum* ssp. *pitkinense* (Allan Buckmann, CDFG, *in litt.* 1993; B. Guggolz, pers. comm. 1996). This agreement, if implemented, would place all sensitive natural resource areas in a conservation easement for long-term management, with CDFG as easement holder (A. Buckmann, *in litt.* 1993). Neither this easement, however, nor another easement that would protect the other population of *L. pardalinum* ssp. *pitkinense* at this site, has been executed and recorded (B. Guggolz, pers. comm. 1996). At the second site, wetland fills in the marsh have lowered the water table and resulted in drier soil conditions, which have negatively affected *L. pardalinum* ssp. *pitkinense*. This change in habitat quality is considered a significant threat to the population (CDFG 1993b), since only about 10 plants remain at this site (CNDDB 1996; B. Guggolz, pers. comm. 1996).

One of the two remaining sites of *Sidalcea oregana* ssp. *valida* is threatened by permitted and unauthorized water diversions from a stream that flows into the marsh where two subpopulations of the species occur. In the past, these diversions have removed all water from the stream channel, eliminating a source of surface water to the marsh (A. Howald, pers. comm. 1993). Plant census data from 1991 indicate that the eastern and western subpopulations in the marsh declined by approximately 40 and 30 percent, respectively, compared to 1989 and 1990 data. These figures suggest that this population may have been experiencing a delayed response to a drought period that began in the late 1980's. The adverse effects of future droughts may be exacerbated by increased surface water diversions and result in a further decline, or extinction of the species (John Turner, CDFG, *in litt.* 1993).

Trifolium amoenum was known from about 20 historical occurrences in 7 counties (Skinner and Pavlik 1994; CNDDB 1996). Loss of this habitat resulted primarily from urbanization and land conversion to agriculture (CNPS, 1977; Corelli and Chandik 1995). Two occurrences of *T. amoenum* have been recently discovered. The occurrence found in 1993 in Sonoma County consisted of a single plant located on private property that has subsequently been developed. The second, a population of about 200 plants, is found on two residential lots in Marin County (P. Connors, pers. comm 1996). If this property is further developed or altered, it may no longer contain suitable habitat for *T. amoenum*. Widespread urbanization has occurred, and continues to occur, throughout the historic range of the species. The populations of Sonoma and Marin counties are expected to grow by 11.1 and 10.4 percent, respectively, by the year 2000 (California Department of Finance 1993, 1996).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* One of the remaining populations of *Lilium pardalinum* ssp. *pitkinense* has been nearly extirpated by uncontrolled collection of plants, seeds, and bulbs for horticultural use. This species was abundant historically at this site, but the removal of plants and bulbs for horticultural use reduced this population to two plants by 1993 (CDFG 1993b). This population of *L. pardalinum* ssp. *pitkinense* has since expanded slightly to approximately 10 plants (B. Guggolz, pers. comm. 1996). Similar activities at the remaining site, which contains only 300 individuals in two populations, would likely result in the extinction of the species (B. Guggolz, pers. comm. 1993, 1996). Of the two remaining populations of *Clarkia imbricata*, one population is found in a preserve owned by the CNPS. Although CNPS has attempted to discourage unauthorized collection by fencing the preserve and by not publicizing the exact location of the site, trespassers have damaged the fence, trampled the vegetation, and collected seed of *C. imbricata* on several occasions (B. Guggolz, *in litt.* 1993).

No evidence of over-collection of *Sidalcea oregana* ssp. *valida* by botanists and/or horticulturists for scientific and commercial purposes is known at this time, although the species is considered to have horticultural potential (Hill 1993). Both populations are small enough, however, that even limited collecting pressure would have adverse impacts. *Sidalcea oregana* ssp. *valida* is an attractive plant, and may be sought for collection once the rarity of this species becomes known and if current site locations become known. Wild collected seed of the species, *S. oregana* (no variety given), are available through a seed exchange program offered by an international gardening society (North American Rock Garden Society (NARGS) 1996).

Any occurrences of *Trifolium amoenum* that may be discovered in the future also may attract collectors of plants or seed because the species was previously considered to be extinct. Overutilization is currently not known to be a factor for the remaining five species, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. *Disease or predation.* Little is known about any diseases that may affect the nine plant species considered here. None of the species is currently known to be threatened by disease.

Seven of the 8 known sites of *Alopecurus aequalis* var. *sonomensis* are currently grazed or have been grazed in recent years by cattle (CNDDB 1996; V. Norris, *in litt.* 1995; R. Soost, *in litt.* 1996). All three populations in Sonoma County are currently threatened by cattle grazing (CNDDB 1996), as is a portion of one population outside of a fenced area on the PRNS where three small patches disappeared from a gathering place for cattle over a one week period of observation (V. Norris, *in litt.* 1995). The portion of the population inside of the fenced area decreased from 603 flowering culms (stems) in 1995 to 195 flowering culms in 1996, possibly due to annual fluctuation or competition from other vegetation (R. Soost, *in litt.* 1996). Another population on the PRNS was fenced from cattle in 1987. The number of individuals of *A. aequalis* var. *sonomensis* was 0 in 1990, 14 in 1991, and 0 in 1993, possibly due to competition from a dense growth of other marsh plants (V. Norris, *in litt.* 1993). Since then, experiments have been conducted with partial opening and closing of the entry gate, but few cattle found their way in and no plants have been seen at this site since 1991 (V. Norris, *in litt.* 1995; R. Soost, , *in litt.* 1996). These results suggest that some grazing may be necessary to maintain populations of *A. aequalis* var. *sonomensis* in the face of competition from other plants, but that excessive grazing by cattle can adversely impact the species.

Sidalcea oregana ssp. *valida* is adversely affected at both of its locations by reduced seed set resulting from cattle grazing (CNPS 1988b). Populations of *Lilium pardalinum* ssp. *pitkinense* have been enclosed with various types of wire fencing in an attempt to prevent grazing or browsing by cattle, horses, and deer, but most of the fences have failed to prevent grazing completely. The plants continue to suffer from herbivory by cattle, deer, and perhaps gophers and other herbivores, resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990).

Trifolium amoenum may have disappeared from some of its former locations due to grazing (Connors 1994). This species is a large clover that blooms when many grassland plants have already turned brown, likely making it more attractive to grazing herbivores. Most recent sightings of the plant were located outside of fences along roadsides, suggesting that the species survived for a period where it was protected from grazing (Connors 1994). Threats due to herbivory on the one natural population of this species, which occurs on portions of two residential lots, are unknown, but livestock grazing is unlikely. Grazing may, however, pose a threat to any undiscovered sites for the species.

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission has listed *Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis,* and *Sidalcea oregana* ssp. *valida* as endangered species under the California Endangered Species Act (Division 3, Chapter 1.5 section 2050 et seq. of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The California Fish and Game Commission has also listed *Astragalus clarianus* and *Plagiobothrys strictus* as threatened species. Listing by the State of California requires individuals to obtain authorization from CDFG to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Division 2, Chapter 10, section 1908 and California Endangered Species Act, Division 3, Chapter 1.5, section 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, the California Native Plant Protection Act only requires that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant". (Division 2, Chapter 10, section 1913 of the California Fish and Game Code).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for State listing as rare, threatened, or endangered, but are not so listed, are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved. In addition, CEQA guidelines recently have been revised in ways which, if made final, may weaken protections for threatened, endangered, and other sensitive species.

Hot spring areas and perennial freshwater emergent marshes are generally small and scattered, and treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. However, the Clean Water Act, alone, does not provide adequate protection for *Alopecurus aequalis* var. *sonomensis, Carex albida, Lilium pardalinum* ssp. *pitkinense, Poa napensis, Plagiobothrys strictus, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum*. For example, Nationwide Permit (NWP) No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands. Under current regulations, NWPs may be issued for fills up to 1.2 ha (3.0 ac); fills greater than 1.2 ha require an individual permit. For project proposals falling under NWP 26, the Corps seldom withholds authorization unless a listed threatened or endangered species' continued existence would be jeopardized by the proposed action, regardless of the significance of other wetland resources. Moreover, for fills less than 0.13 ha (⅓ ac) only an after-the-fact report is required by the Corps. This report must be submitted within 30 days of completion of the work and include only the name, address, and telephone number of the permittee; location and description of the work; and the type and acreage of the loss. All of the populations of the seven species in this rule that occur in wetlands are significantly smaller than 0.13 ha (⅓ ac). Although General Condition 11 of the NWP states that "no activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or which is likely to destroy or modify the critical habitat of such species," the after-the-fact nature of the reporting requirement is inadequate to ensure the protection of populations that occur in areas smaller than the 0.13 ha (⅓ ac) threshold. Four of the seven plant species in this rule that occur in wetlands are known from only two populations, and two of the seven species are known only from a single population. Thus, for six of the seven species, the *post facto* reporting requirement may be inadequate to prevent their extinction.

Additionally and equally important, the upland watersheds that contribute significantly to the hydrology of marshes are not provided any direct protection under section 404. Disturbance to, or loss of, seep or marsh habitat and alteration of hydrology have damaged populations and habitat, as discussed previously under Factor A. Reductions in water volume or inundation of the sites have the potential to adversely affect the seven plant taxa listed above. Thus, as a consequence of the small size of these marsh, meadow, and hot spring areas and lack of protection of associated uplands, these types of habitats receive insufficient protection under section 404 of the Clean Water Act.

The Sonoma County Department of Planning has designated several marshes where some of these plants occur as "critical habitat" (Sonoma County 1989). The streams within these marshes are designated as "riparian corridors." It is not likely that these designations will adequately protect the species involved. County policies for "critical habitat" include 15 m (50 ft) setbacks of construction from wetland boundaries and preparation of biotic resource assessments for development of mitigation measures, if the planning director determines that a "critical habitat" area will be impacted (Sonoma County 1989). A setback may be waived, however, if the setback is determined to make the parcel unsuitable for construction. The single population of *Carex albida* and the larger population of *Lilium pardalinum* ssp. *pitkinense* occur within 15 m (50 ft) of streams in Sonoma County (CNDDB 1996). The Sonoma County policy for "riparian corridors" allows the removal of riparian vegetation as part of a pest management program administered by the County Agricultural Commissioner, as well as construction of roads and summer dams (Sonoma County 1989). In addition, agricultural projects that may involve removal of native vegetation, including the species in this

rule and their habitats, are considered in Sonoma County to be "ministerial" (Ken Ellison, Sonoma County Department of Planning, pers. comm. 1993). Ministerial projects are those projects that the public agency must approve after the applicant shows compliance with certain legal requirements. They may be approved or carried out without undertaking CEQA review.

Only a few measures have been taken to protect some of the species in this rule. In 1989, the landowners of the two confirmed populations of *Lilium pardalinum* ssp. *pitkinense* entered into voluntary protection agreements with TNC (CDFG 1993b). Since that time, TNC and the California Conservation Corps have jointly built and maintained cattle exclosures in an attempt to protect the plants at both sites. Some plants, however, continue to suffer herbivory from livestock and wildlife, resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990). A memorandum of understanding is currently in effect between CDFG and the Berry Botanic Garden, Portland, Oregon, for research on germination and recovery of this species (CDFG 1993b). TNC also obtained a voluntary agreement with private landowners in 1990 to protect one population of *Astragalus clarianus*.

CDFG has proposed to purchase approximately 37 ha (90 ac) of the marsh where *Sidalcea oregana* ssp. *valida* occurs to create an ecological preserve (A. Howald, pers. comm. 1993). Acquisition of the preserve, however, is dependent on the cooperation of the current landowners. The owner of one parcel with about half of the population has declined to sell her property to the State (N. Wilcox, pers. comm. 1994). Purchase of the land as a preserve would ensure appropriate grazing practices on the site and would allow direct management of the plant population with possible opportunities to expand the population (A. Howald, pers. comm. 1993). The preserve would include only a small portion of the watershed, however, limiting the protection that the preserve would afford to the hydrology of the marsh (N. Wilcox, pers. comm. 1994).

TNC also has entered into a verbal conservation agreement with a landowner for the protection of the one natural population of *Clarkia imbricata*. However, this population of *C. imbricata* was inadvertently mowed before seed set in 1989 and 1991, reducing the seed production and number of plants in the years following mowing (B. Guggolz, *in litt.* 1993).

Seed from cultivated *Trifolium amoenum* plants is currently being collected for future reintroduction efforts (P. Connors, pers. comm. 1994, 1996). In addition, half of the seed that was recovered from the single plant in 1993 was deposited for long-term storage at the U.S. Department of Agriculture National Seed Storage Laboratory in Fort Collins, Colorado (Connors 1994).

Although the PRNS is part of the National Park system, 17 cattle and dairy ranches are contained within its boundaries. Grazing and ranching, which have occurred on the peninsula for more than a century, have been determined to be "consistent with the purpose for which the Seashore was authorized" (Clark and Fellers 1987). Clark and Fellers (1986) state that grazing has been a serious threat to *Alopecurus aequalis* var. *sonomensis* occurrences located on the Seashore, but more recent reports indicate concerns about both too much and too little grazing (CNDDB 1996; V. Norris, in litt. 1995; R. Soost, *in litt.* 1996).

E. *Other natural or manmade factors affecting their continued existence.* *Alopecurus aequalis* var. *sonomensis* suffers from competition from invasive emergent wetland species, including rushes (*Juncus* spp.) and nutsedges (*Cyperus* spp.) at one location. These wetland plants have nearly extirpated *A. aequalis* var. *sonomensis* from that site (V. Norris, *in litt.* 1993; CNDDB 1996). Additionally, *A. aequalis* var. *sonomensis* is not readily propagated. Three attempts to reintroduce the species from seed to suitable habitat within its range have failed, as has an attempt to start a population in the East Bay Botanic Garden in Tilden Park. Naturally occurring floods also may be an ongoing threat. One population was damaged by a flash flood in 1993 (V. Norris, *in litt.* 1995; R. Soost, *in litt.* 1996).

The population of *Astragalus clarianus* located along the north shore of Lake Hennessey has an infestation of the invasive and dominating alien weed, yellow star-thistle (*Centaurea solstitialis*) (A. Howald, pers. comm. 1993; J. Ruygt, hearing transcript). This infestation was a direct result of ground disturbance associated with the removal of dredge spoils that were placed on top of this population as discussed under Factor A (A. Howald, pers. comm. 1993). Competition from this alien annual weed is also considered a threat to the population of *A. clarianus* at the Bothe Napa Valley State Park (J. Ruygt, *in litt.* 1993). A proposed application to build two small agricultural water storage reservoirs along a creek in Napa County would avoid direct impacts to another population of *A. clarianus*, but ground disturbance would most likely introduce this same alien invasive weed (A. Howald, pers. comm. 1993).

Plant succession may be excluding or reducing the population of *Astragalus clarianus* at one site (J. Ruygt, *in litt.* 1993) where *A. clarianus* grows sparingly in the gaps between manzanita plants. As established plants continue to grow, and new manzanita seedlings become established, less space is available for *A. clarianus*. Fire suppression has reduced fire frequency in the manzanita community. Periodic fire reduces manzanita cover and creates space for other plants, including *A. clarianus*. This species, therefore, is vulnerable to habitat loss from plant succession. Another population of *A. clarianus* is threatened by competition from French broom (*Genista monospessulana*), an invasive alien shrub, and the rooting behavior of wild pigs (CNDDB 1996; J. Ruygt, pers. comm. 1996).

The potential for loss of the only population of *Sidalcea oregana* ssp. *valida* from naturally occurring events, because of the small population size, is exacerbated by drought and water diversions. In addition, this population is being encroached upon by invasive weeds, including yellow star-thistle and blackberry (A. Howald, pers. comm. 1993). One of the subpopulations was damaged by an off-road vehicle during maintenance of a local aqueduct, which passes through the marsh. The maintenance activity occurred late in the season when the soil was relatively dry, resulting in minimal damage to the plants. If such maintenance activities occur during a time when the soil is saturated, they pose a threat to the plants (A. Howald, pers. comm. 1993).

Because *Lilium pardalinum* ssp. *pitkinense* is unlikely to be self-pollinating, single plants or widely separated plants in sparse populations may not set viable seed (Mark Skinner, CNPS, pers. comm. 1994). The remaining plants at one site are monitored closely by CNPS volunteers and, at the time the proposed rule was written, had not been observed to have set seed for several years (M. Skinner, pers. comm. 1994). Much of the habitat for *L. pardalinum* ssp. *pitkinense* has been invaded by blackberry vines that compete for space, light, and nutrients (CDFG 1993b).

Grass mowing, vehicle traffic, and parking have impacted and continue to threaten one population of *Poa napensis* at the Calistoga airport (CNPS 1990; Robert Soreng, Cornell Univ., *in litt.* 1993). Grass mowing is done at regular intervals through the spring and summer to reduce fire and aircraft safety hazards. Mowing for fire control during

the reproductive cycle of *Clarkia imbricata* has reduced the size of one of its populations by a third (B. Guggolz, *in litt.* 1996). Airport users include a spray plane service, recreational gliders, and associated tow planes. Service vehicles for the planes and the private vehicles of the customers impact this population of *P. napensis*, especially during the spring and summer when airport use increases.

The extirpation of historical populations of *Trifolium amoenum* may have partially been a result of competition with weedy, alien plant species. A recent germination study of other *Trifolium* species from historical *T. amoenum* habitat in Sonoma County suggested that some annual *Trifolium* species germinate in late November, well after many introduced species, including redstem storkbill (*Erodium cicutarium*), ripgut brome (*Bromus diandrus*), and California burclover (*Medicago polymorpha*) (Connors 1994). By germinating and growing earlier, it is likely that alien species have reduced the numbers of *T. amoenum* plants by occupying available space (Connors 1994).

The small population size of most of these nine plant species increases the susceptibility to extirpation from random events. Population sizes of 100 or fewer are known for one or more populations of *Alopecurus aequalis* var. *sonomensis*, *Astragalus clarianus*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, and *Sidalcea oregana* ssp. *valida*. The single extant population of Trifolium amoenum contains about 200 individuals. These species may also be subject to increased genetic drift and inbreeding as a consequence of their small population sizes (Menges 1991, Ellstrand and Elam 1993). Increased homozygosity resulting from genetic drift and inbreeding may lead to a loss of fitness (ability of individuals to survive and reproduce) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Ellstrand and Elam 1993). Thus, seven of the nine species are threatened by potential loss of fitness and/or genetic variability associated with small population sizes.

Each of the species addressed in this rule is known from few populations. *Carex albida* and *Trifolium amoenum* each have only one population. *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, and *Sidalcea oregana* ssp. *valida* each have only two confirmed populations. *Astragalus clarianus* is known from four populations. *Alopecurus aequalis* var. *sonomensis* has eight populations. The combination of few populations, small range, and restricted habitat makes the nine species highly susceptible to extinction or extirpation from a significant portion of their ranges due to random events, such as flood, drought, disease, or other occurrences (Shaffer 1981, Primack 1993). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with all of the species discussed here. Once the number of populations, or the plant population size, is reduced due to habitat destruction or fragmentation, the remnant populations, or portions of populations, have a higher probability of extinction from random events.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milkvetch), *Carex albida* (white sedge), *Clarkia* imbricata (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood marsh checker-mallow), and *Trifolium amoenum* (showy Indian clover) as endangered. Competition with invasive plant species or excessive cattle grazing threatens five of the eight remaining populations of *Alopecurus aequalis* var. *sonomensis*. Efforts to reintroduce this species to sites within its range have failed. If combined, all four populations of *Astragalus clarianus* would occupy only a 0.5 ha (1 ac) area, and are threatened variously by a potential water storage project, an approved subdivision, competition from invasive plant species, recreational activities, airport maintenance, and elimination through plant community succession. The single *Carex albida* population, totaling approximately 1,000 plants, is located 46 m (150 ft) from the State highway and is threatened by potential changes in the site's hydrology resulting from wetland drainage or fill, competition from invasive plant species, changes in land management by the owner, highway widening or maintenance, and potential disturbance from a proposed wastewater treatment. The two remaining populations of *Clarkia imbricata* are threatened by changing land use, mowing for fire control, and unauthorized collection. The three remaining populations of *Lilium pardalinum* ssp. *pitkinense*, totaling approximately 300 plants, suffer from uncontrolled collection of plants, seeds, and bulbs for horticultural use, and from herbivory by livestock and wildlife. One site is potentially threatened by a proposed wastewater treatment project; the other site is potentially threatened by a proposed subdivision. Competition from invasive plants such as blackberry also adversely impacts this species. If combined, the remaining populations of *Plagiobothrys strictus* and *Poa napensis* would occupy an area of less than 0.5 ha (1 ac) each. These populations are surrounded by hot springs resorts or housing. *Plagiobothrys strictus* and *Poa napensis* both occur at the same two sites where they are threatened by airport activities, including traffic and vehicle parking on the plants, grass mowing, and land use changes, including the construction of a hospital at one site. Both populations of the two species are also threatened by potential alteration of hot springs hydrology. The only population of *Sidalcea oregana* ssp. *valida* is threatened by trampling and reduced seed set resulting from cattle grazing, aqueduct maintenance, competition from invasive plant species, and the potential alteration of hydrology from urbanization. *Trifolium amoenum* has been extirpated from all 24 historical occurrences in seven counties; the species currently is known from one natural population. This species is threatened by competition with invasive plant species, loss of habitat from urbanization and other land use changes. All nine species, because of their few, small populations and very narrow ranges are also highly susceptible to genetic complications and at increased risk of local extirpation or extinction from random events.

These nine species are imminently threatened by extinction throughout all or a significant portion of their range by the factors summarized above, and the final action, therefore, is to list them as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied

by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is not determinable when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for any of these nine plant taxa. Designation of critical habitat is not prudent for *Astragalus clarianus, Clarkia imbricata, Lilium pardalinum, Carex albida, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida, Trifolium amoenum,* and *Alopecurus aequalis* var. *sonomensis* because of lack of benefit. Moreover, designation of critical habitat for *Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Carex albida, Sidalcea oregana* ssp. *valida,* and some populations of *Alopecurus aequalis* var. *sonomensis* is not prudent because doing so would increase the degree of threat to these species, or another species in this rule with which it occurs. The basis for these conclusions, including the factors considered in weighing the benefits against the risks of designation, are provided by species below.

Astragalus clarianus

None of the four known occurrences of *Astragalus clarianus,* which total about 28 ha (70 ac), are on Federal land (CNDDB 1996). This species does not occur in wetlands and no Federal actions are likely to occur in its habitat. Critical habitat designation outside of the areas where *A. clarianus* occurs also would serve no purpose because all other historical sites have been destroyed by urban development and viticulture (CNDDB 1996) and have no practical value for the survival and recovery of the species. Designation of critical habitat for *A. clarianus,* therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing.

Clarkia Imbricata and *Lilium Pardalinum* ssp. *Pitkinense*

Clarkia imbricata and *Lilium pardalinum* ssp. *pitkinense* are attractive to plant collectors and incidents of overutilization and illegal collection of both species have occurred in the past. Both taxa are known only from private land. One of the two remaining populations of *C. imbricata* occurs on a CNPS preserve where, despite attempts to not publicize the preserve location and to discourage unauthorized collection, trespassers have damaged the fencing, trampled vegetation, and collected seeds of *C. imbricata* on several occasions (B. Guggolz, *in litt.* 1993). Critical habitat designation outside of the areas where *C. imbricata* occurs would serve no purpose because no other sites are known to be essential to the conservation of this species. At one of the two remaining sites for *L. pardalinum* ssp. *pitkinense,* the species was once abundant, but it has now been nearly extirpated by the uncontrolled collection of plants, seeds, and bulbs for horticultural use (CDFG 1993b). No historical sites for this taxon other than the two where it now occurs have ever been reported.

Lilium pardalinum ssp. *pitkinense* is a wetland species and alteration of its habitat may be regulated by the Army Corps of Engineers under section 404 of the Clean Water Act. The Service believes that activities regulated under section 404 that could impact the habitat of *L. pardalinum* ssp. *pitkinense* are unlikely to occur in the foreseeable future, and that this species is primarily threatened by overcollection, unregulated hydrological alterations, competition from alien plants, and trampling and herbivory by livestock and wildlife. Moreover, the inadequacies of the section 404 permitting process for protecting very small plant populations, discussed in detail under factor D of the "Summary of the Factors" section, apply to this species. In addition to these inadequacies, due to the small size of the only two populations of this species and the lack of historical habitat elsewhere, any adverse modification of its habitat would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. Any benefits that might result from the designation of critical habitat for *L. pardalinum* ssp. *pitkinense* would be outweighed by the likely increased threat of uncontrolled collection to this species.

Designation of critical habitat for *Clarkia imbricata* and *Lilium pardalinum* ssp. *pitkinense,* therefore, is not prudent because doing so would increase the degree of threat to these species. Although there may be a Federal nexus for *L. pardalinum* ssp. *pitkinense* through the Clean Water Act, the designation of critical habitat for this species would provide little or no benefit to the protection of this species beyond that provided by listing. The publication of maps and precise locations of populations that is required for designation of critical habitat would contribute to the further decline of this species by facilitating trespassing, uncontrolled collecting, and hindering recovery efforts. Any benefit from designation of critical habitat for these species, therefore, would be outweighed by the increased degree of risk to these species due to the publication of precise maps of their populations.

Carex Albida

The only known population of *Carex albida* occupies less than 300 m² of private land in Sonoma County (CDFG 1993a). Critical habitat designation outside of the areas where *C. imbricata* occurs would serve no purpose. The other four historical localities for the species, due to hydrological alteration and the long-term effects of effluent discharge from a cannery (CDFG 1993a), serve no practical value for the survival and recovery of the species. The Service believes that activities regulated under section 404 that could impact the habitat of *C. albida* are unlikely to occur in the foreseeable future, and that this species is primarily threatened by unregulated hydrological alterations and competition from native and alien plant species favored by drier conditions. Moreover, the inadequacies of the section 404 permitting process for protecting very small plant populations, discussed in detail under factor D of the "Summary of the Factors" section above, apply to this species. Even if a proposed fill was larger than the regulatory threshold and a pre-construction permit was required, any activity that would destroy or adversely modify the habitat of the sole remaining population of this species would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. Because the site occurs within 45 m (150 ft) of a State highway, a potential Federal nexus also exists through activities of the Federal Highway Administration. In such a situation, however, any action that would adversely modify the habitat of the only known population of the species would also likely jeopardize the continued existence of the species. This would also hold true as the species recovers and its numbers increase. Designation of critical habitat for *C. albida,* therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing. In addition, *C. albida* occurs at the same aite as *Lilium pardalinum* ssp. *parkinense* (see previous paragraph) and the designation of critical habitat and publication of detailed maps of this site would contribute to the further decline of the latter species by facilitating trespassing, uncontrolled collecting, and hindering recovery efforts for the latter species. The plants at this site are particularly vunerable since they are close to a State highway and more easily accessible to collectors.

Alopecurus Aequalis var. Sonomensis

Alopecurus aequalis var. *sonomensis* is the only species in this rule that occurs on Federal land. Four of the eight known populations occur on Federal land within the PRNS (CNDDB 1996). The plant appears to have very strict habitat requirements and suitable habitats occur in only a few places within the PRNS (V. Norris, *in litt.* 1995). Several attempts at establishing new populations in seemingly suitable habitat on the PRNS have been unsuccessful. The locations of these four populations are known to the managers of the PRNS and each population is closely monitored by CNPS members, acting in an official capacity as National Park Service (NPS) volunteers (V. Norris, *in litt.* 1995; R. Soost, *in litt.* 1996). This monitoring includes annual surveys for new populations of the species. The NPS has also fenced a portion of one population. The species within the exclosure declined despite this effort. Because the presence of this plant, and its specific locations, are well known to the managers of the PRNS, no modification of its habitat is likely to occur without consultation under section 7 of the Act. Any action which would destroy or adversely modify the habitat of the few remaining populations of this species would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. Designation of critical habitat for any of the four populations of *Alopecurus aequalis* var. *sonomensis* on Federal land with the PRNS, therefore is not prudent because it provides no additional benefit to the species beyond that conferred by listing.

The other four populations occur on private land and may have a Federal nexus through the Clean Water Act. However, the inadequacies of the section 404 permitting process for protecting very small plant populations, discussed in detail under Factor D of the "Summary of the Factors" section, apply to this species. In addition to these inadequacies, due to the small size of the only known populations of this species any adverse modification of its habitat would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase.

Moreover, two of the four populations of *Alopecurus aequalis* var. *sonomensis* on private land are found in proximity to *L. pardalinum* ssp. *pitkinense* (see previous discussion of this species). Although *A. aequalis* var. *sonomensis* is not collected for horticultural use, mapping specific localities of *A. aequalis var. sonomensis* could lead to increased collection of *L. pardalinum* ssp. *pitkinense.* The horticultural value of the latter species makes it highly attractive and one of its two populations has been nearly extirpated by the uncontrolled collection of plants, seeds, and bulbs for horticultural use (CDFG 1993b). Designation of critical habitat for these two populations of *Alopecurus sonomensis,* therefore, would increase the degree of threat to *Lilium pardalinum* ssp. *pitkinense* by facilitating trespassing and uncontrolled collecting, and hindering recovery efforts.

Designation of critical habitat for any of the four populations of *Alopecurus aequalis* var. *sonomensis* on Federal land with the PRNS, therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing. Critical habitat designation for known populations on private land would also confer no benefit beyond that provided by listing. Because of the few small occurrences of this species, any adverse modification of its habitat would likely jeopardize its continued existence. The publication of maps and precise locations of the two private populations at which *A. aequalis* var. *sonomensis* occurs with *Lilium pardalinum* ssp. *pitkinense* would also contribute to the further decline of the latter species by facilitating trespassing and uncontrolled collecting, and hindering recovery efforts.

Plagiobothrys strictus

Plagiobothrys strictus is known only from two populations on private land. The total area of these populations is less than 80 m² (900 ft²). The only other historical locality has been rendered unsuitable by urbanization and agricultural land conversion (CNPS 1990) and has no practical value for the survival and recovery of the species. Thus, the establishment of critical habitat in this unoccupied area would serve no purpose. As with *Carex albida,* the habitat for *P. strictus* will likely be regulated under section 404 of the Federal Clean Water Act, but the total area of the population is significantly smaller than the minimum regulatory threshold of 0.13 ha (⅓ ac) for pre-construction notification. Even if a pre-construction permit was required, any activity that would destroy or adversely modify the habitat of the sole remaining population of this species would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. The designation of critical habitat for *Plagiobothrys strictus,* therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing.

Poa Napensis

Both extant populations of *Poa napensis* occur on private land, where they occupy slightly more than 100 m² (1,100 ft²). Urban growth and recreational development of hot springs in the Calistoga area has rendered all other historical localities unsuitable for this species (CDFG 1979). Thus, the establishment of critical habitat in these unoccupied areas would serve no purpose since these areas have no practical value for the survival and recovery of the species. At least some of the suitable wetland habitat for *P. napensis* may be regulated under section 404 of the Clean Water Act. As with *Carex albida* and *Plagiobothrys strictus,* the total population area is significantly smaller than the 0.13 ha (⅓ ac) minimum regulatory threshold for pre-construction notification. As is also the case with these species, even if a pre-construction permit was required, any activity that would destroy or adversely modify the habitat of the *Poa napensis* would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. Designation of critical habitat for *P. napensis,* therefore, is not prudent because doing so provides no additional benefit to the species beyond that conferred by listing.

Sidalcea Oregana ssp. Valida

Both populations of *Sidalcea oregana* ssp. *valida* occur only on private land. There is no evidence that the species was ever present at any other localities (CNPS 1988b, CDFG 1987). It grows in a habitat which is likely to be regulated under the Clean Water Act but, as with the other wetland species discussed above, the small populations occupy less than the 0.13 ha (1/3 ac) minimum regulatory threshold for pre-construction notification. Moreover, due to the small size of the only two extant populations, any activity that would destroy or adversely modify the habitat of either of the two remaining populations of this species would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. The species is also of recognized horticultural value (Hill 1993), and wild-collected seeds of this species (no variety given) are available through a seed exchange program offered by a international gardening society (NARGS 1996). Both populations are small enough that even limited collecting pressure would have adverse impacts. Designation of critical habitat for *S. oregana* ssp. *valida*, therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing and because doing so would increase the degree of threat to this species. The publication of maps and precise locations of the populations that is required for designation of critical habitat, therefore, would contribute to the further decline of this species by facilitating trespassing and uncontrolled collecting, and hindering recovery efforts.

Trifolium Amoenum

Only a single population of *Trifolium amoenum* is known to be extant. Although the species was widespread north and east of San Francisco Bay historically, it had last been seen in 1969 and presumed extinct until its rediscovery in 1992 after years of searching (Connors 1994). Because it is a large, attractive plant, it is highly likely that it has been extirpated from its historical localities (Connors 1994). The sole population is on private land with little probability of any Federal activity. No other suitable habitat on Federal land, or where any Federal action is likely to occur, is known to exist. The species has probably been eliminated at its other historical localities by competition with alien species of annual plants and because of the prevalance of alien species throughout the historical range of *T. amoenum*, (Connors 1994). Although historically the plant was known from "wet swales," the current site is not a regulated wetland. Even if a Federal nexus were identified, any activity that would destroy or adversely modify the habitat of the sole remaining population of this species would also likely jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. Designation of critical habitat for *Trifolium amoenum* at this site, therefore, is not prudent because it provides no additional benefit to the species beyond that conferred by listing. Although collection is not currently thought to be a threat to the species, the plant is large with showy flowers and its populations are small enough that even limited collecting pressure would have adverse impacts. Designation of critical habitat for *T. amoenum* anywhere within its historical range, therefore, is not prudent because doing so would increase the degree of threat to this species. The publication of maps and precise locations of involved plant populations that is required for designation of critical habitat would contribute to the further decline of this species by facilitating trespassing and uncontrolled collecting, and hindering recovery efforts.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State, and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

To the extent that six of the nine taxa proposed herein are currently known to inhabit marshes, wet meadows, perennial streams, or thermal hot springs, the Service anticipates that the Corps will enter into section 7 consultations regarding these species if it regulates fill of these wetlands under section 404 of the Clean Water Act. Because of the small area covered by these populations, however, actions which could impact their habitats may not be subject to pre-construction notification. The inadequacies of current regulations for NWP 26 processing under the Clean Water Act are discussed in detail under factor D in the "Summary of Factors" section above. The National Park Service may participate in section 7 consultation because of potential grazing effects on *Alopecurus aequalis* var. *sonomensis* at the PRNS, and concerning park management plans that directly or indirectly affect this species.

Listing *Alopecurus aequalis* var. *sonomensis*, *Astragalus clarianus*, *Carex albida*, *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, *Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts, set recovery priorities, and estimate costs of various tasks necessary to accomplish them. The plan(s) also would describe site-specific management actions necessary to achieve conservation and survival of the nine plant species. Additionally, pursuant to section 6 of the Act, the Service would be more likely to grant funds to affected states for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any of the plants, transport them in interstate or foreign commerce in the course of a commercial activity, sell or offer them for sale in interstate or foreign commerce, or remove and reduce any of the plants to possession from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of endangered plants on areas under Federal jurisdiction, as well as the removal, cutting, digging up, or damaging or destroying of such plant species in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. The Service anticipates that few permits would ever be sought or issued for most of the species because they are typically not sought for cultivation and are uncommon in the wild. *Lilium pardalinum* ssp. *pitkinense* and *Clarkia imbricata*, however, are collected for horticultural use.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing of the nine plant species on proposed and ongoing activities within the species' range. Collection, damage or destruction of these species on Federal lands is prohibited, although in appropriate cases a Federal permit may be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal (private) lands would constitute a violation of section 9 when conducted in knowing violation of California State law or regulations or in violation of State criminal trespass law. See Factor D. for a discussion of California's law protecting plants.

As noted above, Federal listing of plant species protects plants occurring on Federal lands and when Federal activities may affect the species. Thus, activities on private lands such as landscape maintenance, clearing vegetation for firebreaks, and livestock grazing, are not prohibited or regulated unless they are conducted in knowing violation of State law or are federally funded or authorized. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Ave., Portland, Oregon 97232–4181 (phone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are Diane Elam and David Wright, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, the Service amends as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend Section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
FLOWERING PLANTS							
Alopecurus aequalis var. *sonomensis.*	Sonoma alopecurus	U.S.A. (CA)	Poaceae	E	625	NA	NA
Astragalus clarianus	Clara Hunt's milk-vetch.	U.S.A. (CA)	Fabaceae	E	625	NA	NA
Carex albida	white sedge	U.S.A. (CA)	Cyperaceae	E	625	NA	NA
Clarkia imbricata	Vine Hill clarkia	U.S.A. (CA)	Onagraceae	E	625	NA	NA

Species		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
•	•	•	•	•	•	•	•
Lilium pardalinum ssp. *pitkinense.*	Pitkin Marsh lily	U.S.A. (CA)	Liliaceae	E	625	NA	NA
•	•	•	•	•	•	•	•
Plagiobothrys strictus	Calistoga allocarya	U.S.A. (CA)	Boraginaceae	E	625	NA	NA
•	•	•	•	•	•	•	•
Poa napensis	Napa bluegrass	U.S.A. (CA)	Poaceae	E	625	NA	NA
•	•	•	•	•	•	•	•
Sidalcea oregana ssp. *valida.*	Kenwood Marsh checker-mallow.	U.S.A. (CA)	Malvaceae	E	625	NA	NA
•	•	•	•	•	•	•	•
Trifolium amoenum	showy Indian clover	U.S.A. (CA)	Fabaceae	E	625	NA	NA
•	•	•	•	•	•	•	•

Dated: September 29, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–27924 Filed 10–21–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 62, No. 204

Wednesday, October 22, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 966 and 980

[Docket No. FV97–966–1 PR]

Tomatoes Grown in Florida and Imported Tomatoes; Reopening of Comment Period on Changing Minimum Size and Size Designation Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes in the minimum size and size designation requirements for Florida and imported tomatoes is reopened until November 5, 1997.

DATES: Comments must be received by November 5, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Information Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on October 2, 1997, and published in the **Federal Register** (62 FR 52047; October 6, 1997). The proposed rule would increase the minimum diameter size requirement for Florida and imported tomatoes from 2⅝32 inches to 2⅝32 inches. For Florida tomatoes alone, the rule would change the size designations from Medium, Large, Extra Large to numeric size designations of 6 × 7, 6 × 6, and 5 × 6. The proposal also would slightly increase the diameter size ranges for the designated sizes. The comment period ended October 16, 1997.

The Secretaria de Comericio Y Fomento Industrial (SECOFI) of Mexico requested that additional time be provided for interested persons to comment on the proposed rule. SECOFI stated that U.S. tomato imports from Mexico have accounted for over 30 percent of U.S. consumption during the marketing order season, on average, over the past 10 years, and that the proposed measures would have a direct and important impact on Mexican producers and exporters. SECOFI further stated that it first became aware of the proposal only after it was published in the **Federal Register**, and that Mexican producers were not given advance notice and allowed to prepare for the possible change. The request indicated that immediate implementation of the proposal could seriously disrupt Mexican exports.

SECOFI also pointed out that Article 1802 of the North American Free Trade Agreement (NAFTA) requires that proposed regulatory measures affecting trade be published in advance, and that interested persons and the NAFTA country governments be provided a "reasonable opportunity" to comment on those proposed measures. SECOFI indicated that the 10-day time limit did not give a "reasonable opportunity" for comments, and requested that the comment period be extended for 60 additional days.

Providing an additional 60 days for comments would delay the final decision on these proposed measures until January of 1998. This is not acceptable because these measures, if adopted, should apply to as much of the 1997–98 domestic and import shipping seasons as possible. The Florida tomato industry has just begun harvesting, packing, and shipping 1997–98 season tomatoes, while Mexico exports to the U.S. each month of the year, with the most significant shipping period starting in mid-December.

Article 909.1(a) of NAFTA generally requires at least a 60-day notice period prior to the adoption or modification of a technical regulation, but, for a technical regulation relating to perishable goods, a 30-day notice prior to adoption of a regulation can be used.

After reviewing the situation, and in accordance with NAFTA, the Department is reopening the comment period for 20 additional days or until November 5, 1997. This will provide interested persons a total of 30 days to review the proposed rule, perform a more complete analysis, and submit any written comments.

This delay should not substantially add to the time required to complete this rulemaking action. Accordingly, the period in which to file written comments is reopened until November 5, 1997. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: October 17, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–28020 Filed 10–20–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–DET–97–550]

RIN 1904–AA85

Energy Conservation Program for Consumer Products: Determination Concerning the Potential for Energy Conservation Standards for Electric Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Determination.

SUMMARY: The Department of Energy (DOE or the Department) has

determined, based on the best information currently available, that energy conservation standards for electric distribution transformers are technologically feasible, economically justified and would result in significant energy savings. This determination initiates the process of establishing, by notice and comment rulemaking, test procedures and energy conservation standards for this product.

ADDRESSES: Copies of "Guide for Determining Energy Efficiency for Distribution Transformers" (NEMA Standards Publication TP 1–1996), "Determination Analysis of Energy Conservation Standards for Distribution Transformers, ORNL–6847," and "Supplement to the Determination Analysis (ORNL–6847) and Analysis of the NEMA Efficiency Standard for Distribution Transformers, ORNL–6925," are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7425, FAX: (202) 586–4617, email: kathi.epping@hq.doe.gov.

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–3410, (202) 586–9507, email: edward.levy@hq.doe.gov.

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I. Introduction

A. Authority

The National Energy Conservation Policy Act of 1978, Pub. L. 95–619, amended the Energy Policy and Conservation Act (EPCA) to add a Part C to Title III, which established an energy conservation program for certain industrial equipment. The most recent amendments to EPCA, in the Energy Policy Act of 1992, Pub. L. 102–486, (EPACT) included amendments that expanded Title III of EPCA to include certain commercial water heaters and heating and air-conditioning equipment, incandescent and fluorescent lamps, electric motors and electric distribution transformers.

Among these amendments is section 124(a) of EPACT, which amended section 346 of EPCA, 42 U.S.C. 6317, to provide that the Secretary of Energy must prescribe testing requirements and energy conservation standards for those distribution transformers for which the Secretary determines that standards "would be technologically feasible and economically justified, and would result in significant energy savings." 42 U.S.C. 6317(a). Section 346 was also amended to require the Secretary, within six months after prescribing energy conservation standards for distribution transformers, to prescribe labeling requirements for such transformers.

Section 346 requires the Department to make a determination that standards for transformers are technologically feasible and economically justified, and would save significant amounts of energy, *before* the Department initiates the process for promulgating test procedures and specific standards. The section could be read as providing that once this initial determination is made, there is no further consideration of technological feasibility, economic justification, or energy savings, and that the Department must proceed to adopt standards. Such an interpretation, however, would be inconsistent with the approach in other provisions of EPCA, and would be impractical. It is inconsistent, for example, with section 325(o) of EPCA, under which economic justification is addressed *after* specific standards have been proposed, based on a detailed evaluation with respect to one or more specific standards. It is impractical because, even if one or more design options has the potential for achieving energy savings, a determination that such savings could in fact be achieved cannot be made without first having developed test procedures to measure the energy efficiency of transformer designs, and then conducting an in-depth analysis of each design option. Such analysis might show that no standard meets all three of the prescribed criteria: i.e., technologically feasible, economically justified and significant energy savings.

For these reasons, the Department construes section 346 as requiring it to: (1) Determine based upon the best information available whether standards for transformers would be "technologically feasible and economically justified, and would result in significant energy savings," and (2) if energy conservation standards appear to be warranted under these criteria, to prescribe test procedures and conduct a rulemaking concerning such standards. During the standards rulemaking, the Department would describe whether and at what level(s) to promulgate standards. This decision would be based on in-depth consideration, with public participation, of the technological feasibility, economic justification, and energy savings of potential standard levels. Thus, the initial determination made today that standards are warranted under the criteria specified in section 346(a) would in effect be reviewed during the rulemaking process, based on more complete information than is currently available as to whether those criteria are met.

B. Rulemaking Procedures

EPCA, which provides rulemaking procedures for the promulgation of test procedures and standards for appliances and commercial equipment, is ambiguous as to whether these procedures apply to rulemakings on test procedures and standards for transformers. For the reasons discussed below, the Department will nonetheless use these procedures in conducting the test procedure and standards rulemakings for transformers.

In conducting rulemakings on all subjects, the Department must, at a minimum, adhere to the procedures required by the Administrative Procedure Act and section 501 of the Department of Energy Organization Act (DOE Organization Act), 42 U.S.C. 7191. Section 501 in essence requires the following: (1) Issuance of a notice of proposed rulemaking (NOPR), (2) an opportunity for comment, (3) an opportunity for presentation of oral comments, if there exists "a substantial issue of fact or law" or if the rule will have a "substantial impact," and (4) publication of the final rule accompanied by appropriate explanation. Pursuant to E.O. 12662, the comment period must be at least 75 days.

With respect to test procedures for transformers, the Department has decided to use the same rulemaking procedures it uses under Part B of EPCA, and for other equipment covered under Part C. Thus, in addition to the generic procedural requirements described above, the Department will provide an opportunity for oral comment (i.e., hold a hearing) on all proposed test procedures, regardless of the "substantial issue" or "substantial impact" criteria, as is done in other EPCA test procedure rulemakings. See, e.g., EPCA section 323(b)(2), 42 U.S.C. 6293(b)(2). Hearings have been useful in promulgating test procedures in the appliance program, and a hearing can help to identify issues that should be addressed and points that should be amplified in the written comments. In addition, permitting oral as well as written comments will maximize the opportunity for interested parties to express their views on the proposed rule. This should give greater assurance of the validity and feasibility of the final test procedure that the Department adopts.

As to energy conservation standards, for most other products covered by EPCA, EPCA requires the Department to take supplemental steps in promulgating standards, including the following, that are not required by the Administrative Procedural Act or the DOE Organization Act:

1. An advance notice of proposed rulemaking (ANOPR) must be issued, followed by a 60-day comment period;
2. The notice of proposed rulemaking (NOPR) must set forth the maximum efficiency improvement that is technologically feasible and, if the proposed standard does not achieve this level, an explanation of why; and
3. A hearing must be held following issuance of the NOPR, regardless of the "substantial issue" or "substantial impact" criteria.

EPCA sections 325(p), 336(a), and 345(a), 42 U.S.C. 6295(p), 6306(a), and 6317(a). The Department also has a policy, in conducting rulemakings on appliance standards, to allow 75 days for comment on the ANOPR (rather than the 60 days required by EPCA), with at least one public hearing or workshop during this period. Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products, 61 FR 36974, (July 15, 1996) (the "Interpretive Rule").

The first sentence of section 345(a) could be interpreted as requiring the Department to employ these EPCA procedures in developing standards on transformers. In any case, the Department has decided it will employ the foregoing procedures set forth in EPCA and the Interpretive Rule. It will do so in part for the same reasons it will use EPCA procedures to promulgate transformer test procedures. These reasons include: (1) EPCA procedures have worked well in the appliance program, and (2) they will provide enhanced the opportunity for public comment, thereby helping to improve the quality of the final rules. In addition, the Department has never developed efficiency standards for a product such as distribution transformers. Therefore, the Department believes that the development of transformer standards will benefit from enhanced opportunities for public participation during the standards development process. Such participation can best be achieved if the Department employs the full range of procedures used in its program to set efficiency standards.

C. Background

After the passage of EPACT, the Department contracted with the Oak Ridge National Laboratory (ORNL) to conduct a study to obtain data and assist the Department in making a determination as to whether standards for distribution transformers are warranted. ORNL developed and published a report, entitled "Determination Analysis of Energy Conservation Standards for Distribution Transformer, ORNL–6847" which was based on information from annual sales data, average load data, and surveys of existing and potential transformer efficiencies that were obtained from several organizations.

In the ORNL analysis, transformers with a primary voltage of 480 V to 35 kV and a secondary voltage of 120 to 480 V are defined as distribution transformers. This definition is consistent with ANSI/IEEE C57.12.80–1978 (subsection 2.3.1.1), which defines a distribution transformer as "a transformer for transferring electrical energy from a primary distribution circuit to a secondary distribution circuit or consumer's service circuit." Typical utility primary distribution voltages in the U.S. range from 5 kV to 35 kV medium-voltage classes, and typical primary consumers' services are 480 V or higher; thus the total primary voltage range is 480 V to 35 kV. Typical secondary voltages in the U.S. range from 120 to 480 V. ANSI/IEEE C57.12.80–1978 indicates that distribution transformers usually have a rated capacity in the order of 5 –500 kVA. However, ANSI/IEEE C57.12.26–1993 defines pad-mounted distribution transformers as transformers with a rated capacity 2500 kVA or lower, with primary voltages of 34,500 V (35 kV class) or lower and secondary voltages of 480 V or lower. The ORNL analysis considered rated capacities ranging from of 10 to 2500 kVA for liquid-immersed transformers, because most manufacturers no longer produce units smaller than 10 kVA. For dry-type transformers a rated capacity range of 0.25 to 2500 kVA was considered; comments from manufacturers indicate that this range covers nearly all the U.S. dry-type transformer market, although the bulk of that market is in the range of 10 to 2500 kVA. The ORNL analysis did not consider transformers which are not continuously connected to a power distribution system as a distribution transformer. For example, transformers that are part of machinery which are switched off from electrical power were considered by the study as a component of the machinery's circuit and not part of the power distribution circuit. Also, special-purpose control and signal transformers, as well as bulk power transformers, were excluded from consideration because they are not classified as distribution transformers.

In the Department's view, the term "distribution transformer" in section 346 of EPCA means all transformers with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 480 V, and a capacity of either 10 to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for transformers described in the foregoing three sentences. This definition encompasses the transformers considered in the ORNL analysis.

ORNL collected data from the following organizations and sources: The American National Standards Institute (ANSI), Department of Commerce (DOC), Department of Energy (DOE), Edison Electric Institute (EEI), Institute of Electrical and Electronics Engineers (IEEE), National Electrical Manufacturers Association (NEMA), North American Electric Reliability Council (NAERC), Office of Management and Budget (OMB), various books and phone conversations with interested parties. In addition, the ORNL report used data from a survey developed by ORNL and circulated by NEMA to NEMA and non-NEMA manufacturers, to obtain no-load losses, load losses and selling prices of various sizes and types of distribution transformers. Data from these surveys and other relevant information were used in the report to show the potential energy savings of various conservation case studies such as: (1) Lowest Total

Owning Cost (TOC)[1] Case, (2) Median TOC Case, (3) Average Losses Case, (4) High-Efficiency Case, and (5) Two-Year Payback Case. The last of these, the Two-Year Payback Case, was not derived from the survey. Rather, a manufacturer developed this case during peer review of the report by using a combination of price and design losses, with the objective of achieving a two-year payback based on typical transformer operation and electricity rates. The efficiency levels used to define the conservation cases are based on responses from surveys completed by manufacturers.

Two peer reviews of the drafts of the report were performed by ORNL. The ORNL peer review consisted of 22 reviewers, including representatives of distribution transformer manufacturers, metal manufacturers, research institutions/laboratories, private as well as municipal electric utilities, manufacturer associations, metal associations, and energy conservation groups. After the comments from stakeholders were incorporated into the draft, the report (ORNL–6847) was published in July 1996. The information contained in this report assisted the Department in making this determination on the feasibility and significance of energy savings for distribution transformers.

In September 1996, shortly after publication of the ORNL report, the National Electrical Manufacturers Association (NEMA) developed and published a voluntary guide entitled "Guide for Determining Energy Efficiency for Distribution Transformers" (NEMA Standards Publication TP 1–1996, referred to "NEMA TP–1") to help purchasers choose more efficient distribution transformers. The NEMA TP–1 is intended to give manufacturers a vehicle to promote the use of high efficiency transformers and to assist purchasers/users in the selection of energy efficient transformers. NEMA TP–1 offers a simplified methodology to help users of utility (liquid-immersed) and commercial/industrial (dry-type) transformers to understand and calculate the equivalent first cost of core and load losses. It also offers an alternative method to users who would rather use tables of minimum efficiencies based on transformer kVA size, voltage considerations, and type (liquid-immersed or dry-type).

Subsequently, the Department determined that the initial estimate, reflected in the initial ORNL report, of the market size for dry-type transformers was too high. In addition, it was determined that the effective annual loads for liquid-immersed transformers were also too high. Consequently, ORNL re-analyzed the energy savings using a more accurate disaggregated model including data for all types and sizes of transformers. This data had not been available for the original ORNL study. Furthermore, the manufacturer that developed the two-year payback case advised ORNL that the actual payback will likely be substantially longer than 2 years due to higher than anticipated manufacturing costs. The two-year payback case was eliminated from the analysis because of this misestimation of cost and because this case is no longer necessary due to the addition of the TP–1 case. A description of the new data and model, ORNL's re-analysis, and an analysis of NEMA TP–1 are set forth in a second report, entitled "Supplement to the 'Determination Analysis' (ORNL–6847) and Analysis of the NEMA Efficiency Standard for Distribution Transformers, ORNL–6925". The purpose of this report is to assess NEMA TP–1 along with the options considered in the determination study, using the more accurate analysis model and transformer market and loading data developed subsequent to the publication of the original ORNL report.

Data and comments received from stakeholders during the peer review of the initial ORNL report have been considered in preparing this determination and will be more fully considered during all actions taken by the Department when proceeding with the rulemaking process to consider conservation standards for distribution transformers. Results of the energy savings analyses of the ORNL reports will be discussed in detail in the following sections of this determination notice.

[1] Total Owning Cost is a capitalized value that permits the first cost of the transformer to be compared to the lifetime cost. The capitalized values can be converted to the equivalent discounted present values of the life-cycle costs by multiplying by the ratio of the fixed charge rate over the capital recovery factor. This information can be used to more accurately assess the tradeoffs between transformer first costs and operating costs, and allow the purchaser to compare the total costs of transformers with different energy efficiency levels.

II. Discussion of ORNL Reports

A. Purpose and Content

ORNL assisted the Department by studying the feasibility of achieving potential energy savings that could result from energy conservation standards for distribution transformers. The potential energy savings presented in the ORNL reports are preliminary estimates. Subsequent analyses will be performed after test procedures are established. These analyses will involve more exact, detailed information which will be developed during the standards rulemaking process, and will cover the effects of energy conservation standards for distribution transformers.

B. Methodology

The study methodology consisted of four major elements: (1) Development of a database, (2) development of conservation options, (3) assessments of the energy conservation options, and (4) incorporation of feedback from stakeholders. The following is a brief description of each element:

- *Database development.* Collecting and processing data was a major part of the study. Data on transformer designs, losses, and sales were provided by NEMA and individual manufacturers. The Edison Electric Institute (EEI), the American Public Power Association (APPA), and selected utilities provided utility user information. The database includes the results of a survey circulated by EEI and APPA to their member utilities. User information on dry-type transformers was provided by the American Institute of Plant Engineers. In addition, the Federal Energy Regulatory Commission's Form 1, Energy Information Administration data and trade journals were used. The basic information included historical information on user purchases, and costs and losses of new transformers for the various options considered in the study. Information on transformer loading factors was obtained from discussions with transformer manufacturers, utilities, and surveys of commercial and industrial users.
- *Development of energy conservation options.* Technically feasible energy conservation cases for distribution transformers were based on results of a survey circulated by NEMA, and other information provided by non-NEMA transformer manufacturers.
- *Assessments.* The technical analysis provided estimates of appropriate transformer loading factors, losses, and energy savings for the energy conservation cases.
- *Stakeholders input.* A distribution transformer review group consisting of manufacturers, users, material suppliers, and public interest groups was formed to provide data, and to review the study (see Appendix A of the initial ORNL report). Input from these stakeholders was incorporated in the report.

Much of the data on losses associated with cost-effective transformer designs used in this study are from a survey of transformers, called the NEMA-ORNL survey, developed by ORNL and circulated by NEMA to its members and several non-NEMA manufacturers. Utilities usually request that manufacturers submit bids for the lowest TOC transformer that they can design by specifying the transformer features and their A and B factors. The NEMA-ORNL survey took this approach. It included what were believed to be the most common features that would be requested for each size and price for the lowest TOC transformer they could design. The survey requested that manufacturers reveal the transformer design that had the lowest TOC in terms of core losses or no load losses (A factor), coil losses or load losses (B factor), and transformer price. While both A and B factors reflect the capitalized cost of losses, they differ in their cost per watt rates for two reasons. First, a watt of core loss represents a continuous loss that occurs whenever a transformer is energized, which is normally 100 percent of the time for most distribution transformers. This continuous loss of energy increases the cost per rated watt of core loss compared with the rated watt of coil loss, which occurs only while power is drawn through the transformer. The second reason for the difference in rate for A and B factors is the cost of energy associated with the losses. Load losses are proportionally higher during peak periods when the per unit cost of producing electricity is relatively high.

Three combinations of A and B factors were requested in the survey. The combinations of A/B factors requested were as follows:

1. A/B=$0/$0, which represents non-evaluated transformers. In the $0/$0 design, only the first cost is considered, and the price of the transformer is used as the TOC value (i.e., the value of losses is not included in the purchase decision). This design was requested in the survey to establish a baseline efficiency for non-evaluated distribution transformers.
2. A/B=$3.50/$2.25, with the B factor of $2.25 per watt representing a transformer with a relatively high average load.
3. A/B=$3.50/$0.75, with the B factor of $0.75 per watt representing a transformer with a normal to low average load while the A factor remains fixed at $3.50 per watt.

Twelve transformer sizes—six liquid-immersed and six dry-type—were surveyed:

Liquid-immersed transformers
1. Single-phase 25-kVA pole-mounted
2. Single-phase 50-kVA pole-mounted
3. Single-phase 50-kVA pad-mounted
4. Three-phase 150-kVA pad-mounted
5. Three-phase 750-kVA pad-mounted
6. Three-phase 2000-kVA pad-mounted

Dry-type transformers
7. Single-phase 1-kVA
8. Single-phase 10-kVA
9. Three-phase 45-kVA
10. Three-phase 1500-kVA
11. Three-phase 2000-kVA
12. Three-phase 2500-kVA

There were 216 transformer designs submitted for the 12 different types of transformers. Each type had at least three designs for each of the three A and B combinations. Eight designs for each of the three A and B combinations were submitted for the liquid-immersed 25-kVA pole, 50-kVA pole, and 50-kVA pad-mounted transformers.

Conservation cases were developed to determine if efficiency standards are warranted for distribution transformers. These cases were based on an economic methodology that is widely used by electric utilities in their purchase of distribution transformers: the TOC (total owning cost) methodology which considers the life cycle cost of owning a transformer. It finds the economically optimal tradeoff between the transformer's capital cost and its operating cost. The TOC methodology is neutral with respect to the technology and materials utilized in the transformer. It is a different approach from conservation based standards that are developed through explicitly considering energy efficient technologies.

For transformers, the technologies applied to alter the losses, and hence efficiencies, are very interactive and involve multiple variables, such as operating current density, flux density, geometric ratios and electrical insulation. For example, reducing no-load losses by using lower loss core materials generally requires an alteration of flux density and core/coil dimensions, which may or may not lower load losses. Hence, the ORNL reports used the TOC approach to allow for this interaction of design parameters in an optimal manner.

The TOC approach allows a utility to purchase the optimum distribution transformer for the particular set of energy costs and operating characteristics that are anticipated over the transformer's life. The TOC approach has led to significant increases in utility transformer efficiencies since it became widespread in the mid-1970's. Because the methodology is neutral with respect to transformer technologies and materials, it leads to choosing transformers that take advantage of any opportunities to economically improve transformer efficiencies.

The TOC approach was used in developing the conservation cases discussed in the ORNL reports. The first step in developing these conservation cases was selection of parameters that define the value of energy losses over a transformer's life. As previously explained, the TOC methodology hinges on the development of the A and B factors which represent the expected lifetime value per watt of a transformer's rated full load losses using the following formula:

TOC=price+(no-load losses × A)+(load losses × B)

A second key for developing these cases was selection of the low-TOC designs for the selected A and B values. During a typical transformer bid process, a buyer submits its required technical specifications and A and B values to a manufacturer. The manufacturer considers many transformer designs that meet the buyer's technical specifications with various load losses, no-load losses, and prices. From this large number of designs and costs, the manufacturer submits a selection of very low TOC designs for the buyer's consideration. The survey of manufacturers requested information on their lowest TOC designs for the selected A and B factors.

The losses and prices for each transformer manufacturer's lowest TOC design were used along with the utility surveys to develop the database. The database was used to develop the conservation cases for the determination study: The base case, the lowest TOC case, the median TOC case, the average losses case, and the high-efficiency case. The base case consisted of data on non-evaluated dry-type transformers and recent utility purchases of liquid-immersed transformers. The average losses case was developed by averaging losses from the three lowest TOC designs for each transformer size and type. A description of the conservation cases and their weighted efficiencies are presented in Table 1.

Amorphous-core transformer designs were excluded from two of the conservation cases, the lowest TOC case and the median TOC case. This exclusion does not imply that amorphous-core transformers are not economical for the A and B factors used in the study. Rather the rationale for excluding the amorphous-core transformers was to develop moderately high-efficiency cases that do not depend on a particular technology.

TABLE 1.—THE CONSERVATION CASES, PLUS THE NEMA TP–1 CASE, LISTED IN ORDER OF WEIGHTED EFFICIENCIES

Case	Description	Case efficiency weighted by sales[a] (%)
Base	Existing mix of transformers	98.40
NEMA TP–1	A voluntary efficiency guide	98.59
Median TOC	Efficiency of the transformer with the median TOC design according to a survey of manufacturers[b]	98.68
Average losses	Efficiency corresponding to the average full-load and no-load losses for the three most cost-effective transformers according to a survey of manufacturers[b].	98.81
Lowest TOC	Efficiency of the most cost-effective transformer according to a survey of manufacturers[b]	98.88
High-efficiency	Efficiency corresponding to highest efficiency according to a survey of manufacturers[b]	99.21

[a] The case efficiencies were recalculated by ORNL for this notice and are also set forth in the supplemental ORNL report.
[b] Distribution transformer manufacturers were asked to submit their lowest TOC designs corresponding to economic parameters developed to represent the nation.

Three of the conservation cases were based on the transformer manufacturers' minimum TOC designs. Use of different criteria to select from among the submitted designs provides a range of cost-effective transformer designs with different efficiencies. Estimates of the potential energy that could be saved if distribution transformers were more energy-efficient were developed for the conservation cases. Each conservation case is based on maximum load and no-load losses for the 12 sizes and types that were used to represent all new transformers by allocating each design to a range of transformer sizes. This approach was used because NEMA reports transformer sales in categories that include a range of transformer sizes. To estimate total annual losses for each conservation case, the average transformer losses per kilovolt-ampere were multiplied by the projected kilovolt-amperage of transformer sales. The energy losses (i.e., energy consumed by the transformer) for each conservation case were subtracted from the energy losses for the base case to provide an estimate of annual savings. The base case defines energy use for existing transformer purchasing practices. Table 2 represents the possible energy savings results based on the surveys circulated by NEMA to several NEMA and non-NEMA transformer manufacturers.

TABLE 2.—CUMULATIVE ENERGY SAVINGS FOR CONSERVATION CASES AND NEMA TP–1 a

Conservation case by transformer type	Cumulative savings, 2004–2034 (quads)
NEMA TP–1:	
Liquid	0.39
Dry	2.12
Total	2.51
Median total owning cost (TOC):	
Liquid	1.26
Dry	5.04
Total	6.30
Lowest TOC:	
Liquid	1.84
Dry	3.58
Total	5.42
Average losses:	
Liquid	2.75
Dry	3.70
Total	6.45
High-efficiency:	
Liquid	5.52
Dry	5.18
Total	10.70

[a] The energy savings were re-calculated by ORNL for this notice and are also set forth in the supplemental ORNL report; these savings have been revised downward from those estimated in the initial ORNL report.

The savings per kilovolt-ampere and the projections of estimated megavolt-amperage of transformer sales have been used to estimate the rate of savings in the first year and cumulative savings over 30 years if a conservation standard were enacted. Table 2 assumes that both utility and non-utility purchases of transformer capacity will grow by 1.2 percent annually, which is consistent with low-to-moderate growth energy scenarios. Sales of liquid-immersed utility distribution transformers depend primarily on new housing starts, while gross private domestic investments provide a good indicator for the growth rate of the non-utility (dry-type) transformer market. Several comments during the peer review of the initial ORNL report indicated that higher growth rates used in the report, such as 2.5% for the dry-type transformer market, were not realistic for the distribution transformer industry. The re-analysis on which Tables 1 and 2 are based essentially accepts these comments.

C. Conservation Cases

1. Base Case

Losses for the base case were estimated from the survey of electric utilities for evaluated liquid-immersed transformers (i.e., A and B factors = $0), and from the survey of manufacturers for the non-evaluated liquid-immersed and dry-type transformers (i.e., A factor = $3.50, and B factor = $2.75 or $0.75). The percentage of evaluated transformers was developed from information provided by transformer manufacturers. The base case non-evaluated transformers were assumed to have the average losses that were reported for the three lowest-priced transformers for the $0/$0 evaluation in the NEMA–ORNL survey. It was assumed that the evaluated transformers for the base case have the same losses as transformers that have been recently purchased by utilities. These losses were calculated from the average no-load and load loss ratings reported in the EEI–ORNL survey. The weighted average transformer efficiency for the base case was calculated at 98.40 percent.

2. Lowest Total Owning Cost (TOC) Case

The lowest TOC case measures savings resulting from the use of the lowest TOC non-amorphous transformer design for each of the 12 types of transformers surveyed in the NEMA–ORNL survey. The potential energy savings for this conservation case is 6.30 quads over a period of 30 years. Liquid-immersed transformers have a potential to achieve 1.26 quads in energy savings and dry-type transformers 5.04 quads. The weighted average transformer efficiency for this case was calculated to be 98.88 percent. The annual energy savings of this case is equivalent to constructing a large coal-fired power plant every four years. Although the technology required to meet this conservation case is feasible, some retooling might be required for manufacturers of dry-type transformers to achieve 5.05 quads of savings over a 30 year period. The actual amount and expenses required of retooling, if any, will be determined by performing a manufacturer impact analysis during the standards rulemaking process.

3. Median Total Owning Cost (TOC) Case

The median TOC case measures savings from the design that represents the median TOC of all submitted designs for each of the 12 types of transformers surveyed. The potential energy savings of this conservation case is 3.7 quads over a 30 year period. Liquid-immersed transformers have a potential to achieve 0.95 quads in energy savings and dry-type 2.75 quads. The weighted average transformer efficiency estimated for this case is 98.68 percent. The technology required to achieve savings at this level is feasible and is currently utilized by manufacturers of liquid and dry-type transformers. Some retooling might be required of dry-type manufacturers to meet this particular conservation case. Further analysis will examine this issue.

4. Average Losses Case

The average losses case measures the average losses for the designs with the three lowest TOC's for each of the 12 types of transformers that were evaluated. If high-efficiency amorphous-core designs qualified as one of the three lowest TOC's, they were included in these averages. Because this case incorporates the losses from several designs that were averaged, it better represents the diversity in cost-effective designs than the other cases. It is more representative of the transformer market than the cases that are based on selecting a single design. It should be reiterated that the transformer losses used to represent the average losses case do not represent the losses of a specific transformer design. Rather, this case represents an average of the losses of the three lowest TOC's for transformers submitted for each category in the survey.

The potential energy savings for this conservation case is 5.42 quads over a 30 year period. Liquid-immersed transformers have a potential energy savings of 1.84 quads and dry-type transformers 3.58 quads. The weighted average efficiency level of this conservation case is 98.81 percent. Although the technology required to meet this conservation case is feasible, retooling might be required for manufacturers of dry-type transformers to meet 3.58 quads of energy savings over a 30 year period. The actual amount and expense required of retooling, if any, will be determined by performing a manufacturer impact analysis during the standards rulemaking process.

5. High-Efficiency Case

This case included both amorphous and non-amorphous core transformer designs and is represented by the highest-efficiency design that was submitted for each of the 12 transformer types surveyed, regardless of the technology used to achieve that efficiency and independent of any economic evaluation criteria such as TOC. The weighted average transformer efficiency for this case is 99.21 percent. For transformer categories where no amorphous-core designs were submitted, the most efficient of the non-amorphous designs was selected.

Although production of amorphous-core transformers may be less process-intensive (i.e., manufacturing involves a smaller number of steps) than that of oriented silicon steel transformers, it is very labor-and materials-intensive. The lack of cost-effective access to this technology by all manufacturers may present an economic hardship to both the transformer manufacturers and end users.

Electric Power Research Institute (EPRI), General Electric (GE), and Allied Signal Amorphous Metals hold most of the U.S. patents for amorphous metal and amorphous technology. The EPRI patents are available under licensing terms and conditions to U.S. manufacturers. An important patent on amorphous ribbon manufacturing held solely by Allied Signal Amorphous Metals will expire this year. However, a critical patent on magnetic field annealing used during transformer core manufacturing is held by GE and will not expire until early in the next century. At present, GE has licensed Allied Signal Amorphous Metals to sublicense transformer manufacturers to use this patent.

If a standard were set at this conservation case level, the impacts on existing liquid-immersed transformer manufacturers that do not produce amorphous core transformers would depend on (1) the ease of access to the technology, (2) the availability of amorphous core material, (3) the level of necessary investments, and (4) the higher transformer selling price. Because the quantity as well as the cost of raw materials in this case is higher than that of oriented silicon steel, the price of these transformers is typically 20 to 40 percent higher than the price of silicon steel transformers. The cost of raw material for amorphous core transformers is twice that of oriented silicon steel. These higher costs are due to the use of ferro-boron, most of which is imported from Japan, China, and the United Kingdom. The cost of this material has decreased during the past two decades from $140 per pound in 1978 to about $1.50 per pound now. By comparison, however, the cost of materials for a non-amorphous core transformer is considerably lower, ranging from $0.70 to $1.15 per pound, depending on the grade of the silicon steel. Although this conservation case is technologically feasible, the increased costs of retooling and of purchasing amorphous core material as opposed to less expensive silicon steel appear to be a potential burden to most manufacturers. Further analysis during the rulemaking process will be performed to determine the potential costs for manufacturers to meet this energy conservation level.

This conservation case includes proprietary amorphous-core technology. Some comments received during the peer review expressed concern regarding the limited access to amorphous core technology. The Department recognizes that standards which effectively limit transformer designs to a particular technology, especially if that particular technology is proprietary, may have adverse competitive and consumer impacts, and that such impacts must be carefully considered in assessing economic justification.

D. Voluntary Programs

1. NEMA TP–1 Guide

In September 1996, NEMA published voluntary guidelines, "Guide for Determining Energy Efficiency for Distribution Transformers" (NEMA TP–1), to help purchasers choose energy efficient distribution transformers. Developed by NEMA's Transformer Committee and approved by participating manufacturers as a means to promote the purchase of high efficiency transformers, the guide recommends the use of the TOC methodology to select the most desirable transformer designs and provides a table of recommended efficiency levels for buyers that do not wish to use the TOC methodology.

NEMA TP–1 is a significant purchase decision tool. It offers utility transformer and commercial/industrial transformer users a simplified method

for determining the equivalent first cost of transformers with different efficiency characteristics. This information can be used by prospective purchasers to more accurately assess the tradeoffs between transformer first costs and operating costs. For those who choose not to use this method for analyzing the total operating costs of transformers, NEMA TP–1 also provides tables of minimum efficiencies based on transformer kVA size and voltage.

NEMA TP–1's impact on energy savings will depend largely on two variables: (1) Manufacturer participation and (2) actual buyer/user purchase decisions. In the supplemental ORNL report, the possible energy impacts of NEMA TP–1 program were analyzed. ORNL has advised the Department that the upper bound of energy savings, with full manufacturer participation and universal acceptance by transformer purchasers of the minimum efficiency levels recommended in the NEMA TP–1 tables, would approach 2.51 quads over a 30-year period.

The ORNL analysis concluded that the efficiency levels recommended in the NEMA TP–1 tables would produce roughly a three year payback. The Department believes that such efficiency levels would capture the most cost-effective energy savings, but may not capture substantial energy savings that appear to be economically justified and technologically feasible.

2. National Business Awareness Campaign

The National Business Awareness Campaign was developed by NEMA to increase awareness of the benefits of more energy efficient electrical products, and to promote purchases of such products. This $1.5 million campaign, which has been under development for three years, will be directed at chief executive officers and chief financial officers of companies that purchase or make electrical products. NEMA is seeking support for the campaign from energy interest groups, distributors, energy service companies, and utilities. NEMA is also seeking partnerships with governmental agencies, such as the Environmental Protection Agency and the Department of Energy. NEMA plans to launch its campaign in the June/July time frame of 1997.

The Department seeks to support NEMA's campaign and intends to monitor its effectiveness in increasing the manufacture and purchase of more energy efficient electrical products.

III. Conclusion

A. Determination

Based on its analysis of the information now available, the Department has determined that energy efficiency standards for transformers appear to be technologically feasible and economically justified, and are likely to result in significant savings. Consequently, the Department will initiate the development of energy efficiency test procedures and standards for electric distribution transformers.

All energy conservation cases discussed in today's determination notice are technologically feasible. Data from the ORNL reports clearly show that current technologies used in the transformer market are available to all manufacturers. These technologies include increased use of higher grade silicon steels, copper, aluminum, and amorphous core materials. The machinery and tools used to produce more energy efficient transformers also appear to be generally available to manufacturers.

The cases analyzed in the determination report show that there is a large potential for energy savings, especially over a 30-year period: the Lowest TOC case has the potential to save 6.30 quads over a 30-year period; the Median TOC case could save 3.70 quads; and the High-Efficiency case could save 10.70 quads. The Lowest and Median TOC cases also demonstrate that increased efficiency could reduce significantly the total operating costs incurred by users of transformers, which is a strong indication that such efficiency levels would be economically justified. It also appears that these efficiency levels can be achieved without imposing substantial costs on manufacturers, thus providing further indication that they are economically justified.

Although all of the cases analyzed are technologically feasible and have significant energy savings, and at least two of these cases appear to be economically justified, it is still uncertain whether further analyses will reconfirm these findings. For example, the Department has not assessed the potential adverse impacts of a national standard on manufacturers or individual categories of users. During the course of the standards rulemaking process, the Department will perform an analysis of the impact of possible standards on manufacturers, as well as a more disaggregated assessment of their possible impacts on users.

The Department supports and commends NEMA's initiative to develop voluntary programs that will promote the manufacture and purchase of energy efficient distribution transformers. Industry-wide support for voluntary programs, such as NEMA's TP–1 guide and the National Business Awareness Campaign, could result in significant energy savings that might obviate the need for Federal regulatory intervention.

Based on the results of the analyses that have been completed, however, the Department believes it would be inappropriate to conclude now that either NEMA TP–1 or the National Business Awareness Campaign are likely to result in savings sufficient to eliminate the potential of technologically-feasible and economically-justified national standards to achieve significant additional energy savings. At this time, the Department does not share NEMA's view that the NEMA TP–1 program will result in efficiency levels that approach the maximum technologically feasible and economically justified levels. The supplemental ORNL report indicated that the potential energy savings of NEMA's TP–1 program is 2.51 quads over a 30-year period, while the potential savings from a higher efficiency level that appears to be both technologically feasible and economically justified exceeds 6 quads over 30 years. Furthermore, based on ORNL's analysis of NEMA TP–1, it appears that many buyers of electric distribution transformers, especially in the commercial market (dry-type transformers), are not likely to participate in NEMA's voluntary TP–1 program, so the actual savings are likely to be below the 2.51 quads estimated. The Department will reassess the impact of these voluntary programs during the rulemaking on standards.

B. Future Proceedings

The Department will begin, therefore, the process of establishing testing requirements for distribution transformers, which it expects will result in the publication of a Notice of Proposed Rulemaking in 1998. During this rulemaking process, the Department will consider the draft test procedure currently being developed through a joint effort of NEMA and the National Institute of Standards and Technology (NIST). The Department will schedule a public hearing and may also hold workshops to receive comments in reference to the test procedures. Publication of a Final Rule containing test procedures is anticipated during 1999.

The Department will also begin a proceeding to consider establishment of conservation standards for distribution transformers. Throughout the rulemaking process, the Department intends to adhere to the provisions of the Interpretive Rule, where applicable. The Department will continue its review and analysis of the likely effects of NEMA TP–1 and National Business Awareness Campaign programs during the standards rulemaking. There will be workshops early in the standards development process to obtain the views of interested parties on design options, the conduct of the engineering and life-cycle cost analyses, and the expertise needed by the Department to perform such analyses. During the rulemaking process, the Department also intends to reevaluate its determination that mandatory standards are technologically feasible and economically justified, and are likely to result in significant energy savings. For example, the Department anticipates that NEMA will strengthen its efforts to promote voluntary standards for distribution transformers and will submit additional data for the Department's review and analysis. The Department welcomes data demonstrating the successful market penetration of NEMA TP–1 and/or the National Business Campaign. If further analyses reveal that standards are not warranted, DOE will revise this determination and will not proceed to promulgate standards.

Issued in Washington, D.C., on September 5, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–27948 Filed 10–21–97; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–237; FCC 97–364]

Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On October 9, 1997, the Commission released a Further Notice of Proposed Rulemaking (FNPRM) addressing carrier identification codes (CICs). The FNPRM is intended to obtain comment on issues related to CIC use and assignment. This FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The Commission concurrently released a Order in the same docket.

DATES: Comments must be filed on or before November 24, 1997, and reply comments must be filed on or before December 22, 1997. Written comments by the public on the proposed information collections are due on November 24, 1997. Written comments must be submitted by OMB on the proposed information collections on or before December 22, 1997.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street, N.W., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the proposed information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352. For additional information concerning the information collections contained in this FNPRM contact Judy Boley at 202–418–0214, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Further Notice of Proposed Rulemaking in the matter of Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket 92–237, adopted October 8, 1997, and released October 9, 1997. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, phone (202) 857–3800.

Paperwork Reduction Act

This FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due 60 days from date of publication of this FNPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Title: Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket 92–237 (Semi-Annual Access and Usage Reporting Requirements), adopted October 8, 1997, and released October 9, 1997.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Title	No. of respondents	Est. time per response	Total annual burden
1. Incumbent LEC and CIC Assignees Semi-Annual Access and Usage Reporting	2600	4x2	20,800
2. NANP Administrator Semi-Annual Access and Usage Reporting	1	16x2	32

Total Annual Burden: 20,832 hours.

Frequency of Response: Semi-annual.

Estimated costs per respondent: $0.

Needs and Uses: Proposal 1: that semi-annual access and usage reporting requirements for Feature Group D CICs be imposed on all incumbent local exchange carriers (LECs) and CIC assignees and that this information be

filed with the North American Numbering Plan (NANP) administrator. Proposal 2: that the NANP administrator file, on a semi-annual basis, a report with the Commission based on the information received from the incumbent LECs and CIC assignees in their semi-annual reports, and that the NANP administrator include any information obtained as a result of its monitoring CIC usage. The proposed collection of information will significantly aid the industry's and this Commission's joint effort to conserve CICs.

Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and proposals in this FNPRM. The Commission solicited written public comments on the IRFA, which must be filed by the deadlines for the submission of comments in this proceeding.

Need for and Objectives of Proposed Rules

The FNPRM continues the Commission's analysis of issues related to carrier identification code (CIC) use and assignment. The FNPRM seeks comment on the use and application of Feature Group D CICs, the CICs that are used to provide equal access. The Commission's actions here are part of an effort to ensure fair and efficient overall administration of numbering resources.

Legal Basis

Authority for actions proposed in this FNPRM may be found in: Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 218 and 251(e)(1).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The proposals made by the Commission in this FNPRM may apply to a variety of entities listed below.

Local Exchange Carriers

We estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the proposals in this FNPRM.

Interexchange Carriers

We estimate that there are fewer than 130 small entity IXCs and 30 "other" toll carriers that may be affected by the proposals in this FNPRM.

Wireless Service Providers

The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,176 such firms that operated during 1992 had 1,000 or more employees.[1] Therefore, even if all 12 of these large firms were radiotelephone companies, all of the remainder were small businesses under the SBA's definition. We assume that all of the current radiotelephone licensees are small entities, as that term is defined by the SBA.

Cellular and Mobile Radio Telephone Service

We estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the proposals in this FNPRM. We assume that all of the current rural cellular and mobile licensees are small businesses.

Personal Communications Service

We conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA[2] and the Commission's auction rules.

Paging and Radiotelephone Service, and Private Land Mobile Radio Services, Paging Operations

We believe that it is possible that a significant number of the estimated 48,393 licensees or potential licensees who could take the opportunity to partition or disaggregate a license or who could obtain a license through partitioning or disaggregation will be a small business.

Competitive Access Providers

We estimate that there are fewer than 57 small entity CAPS that may be affected by the proposals in this *FNPRM*.

Operator Service Providers

We estimate that there are fewer than 25 small entity operator service providers that may be affected by the proposals in this *FNPRM*.

Pay Telephone Operators

We estimate that there are fewer than 271 pay telephone operators that may be affected by the proposals in this *FNPRM*.

Resellers

We estimate that there are fewer than 260 small entity resellers that may be affected by the proposals in this *FNPRM*.

Telecommunications Equipment Manufacturers

We estimate that there are fewer than 436 small manufacturers of wireline telecommunications equipment.

Wireless Telecommunications Equipment Manufacturers

We estimate that there are fewer than 778 small manufacturers of wireless telecommunications equipment.

Fire and Burglar Equipment Manufacturers

We estimate that there are fewer than 469 small manufacturers of alarm equipment that may be affected by the proposals in this *FNPRM*.

Alarm Service Providers

We tentatively conclude that there are approximately 2,190 small security system service providers that may be affected by the proposals in this *FNPRM*.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The FNPRM proposes that semi-annual access and usage reporting requirements for Feature Group D CICs be imposed on all incumbent LECs and CIC assignees and that this information be filed with the North American Numbering Plan (NANP) administrator. The FNPRM also proposes that the NANP administrator file, on a semi-annual basis, a report with the Commission based on the information received from the incumbent LECs and CIC assignees in their semi-annual reports, and that the NANP administrator include any information obtained as a result of its monitoring CIC usage. The *FNPRM* tentatively concludes that the proposed reporting requirements will: (1) impose minimum burdens on businesses, including small businesses; and (2) ensure CIC availability to current and new small business competitors, thereby serving the goals of section 257 of the Act, as amended, and offsetting any burdens of the reporting requirements. The *FNPRM* seeks comment on this tentative conclusion. The IRFA seeks further comment on whether small entities will have additional burdens imposed as a result of these proposed requirements. We believe that monitoring and reporting on CIC usage will significantly aid the industry's and this Commission's joint effort to conserve CICs.

Steps Taken to Minimize Economic Impact on Small Entities and Significant Alternatives Considered

To gather relevant information from all interested parties, including small business entities, about allocation of this scarce numbering resource, we seek comment on a wide array of issues and ask that commenters suggest alternatives to our proposals. The IRFA tentatively concludes that our proposals in the *FNPRM* would impose minimum burdens on small entities. The IRFA seeks comment on these proposals and the impact they may have on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Analysis of Proceeding

The FNPRM asks for comment on the use and application of Feature Group D CICs, the CICs that are used to provide equal access. The FNPRM also seeks comment on the definition of "entity" used to determine who may receive a CIC and on CIC conservation issues, such as: (1) The limit on CIC assignments per entity; (2) the limit on assignable four-digit CICs; (3) CIC reclamation; and (4) usage reporting requirements. For some of these issues, the FNPRM proposes rules. Many of these issues are already addressed in the *CIC Assignment Guidelines*, developed by the industry for the NANP administrator. The intention of the FNPRM is not to propose modifications to the existing guidelines, but rather to propose new Commission rules to govern CIC use and assignment. The Commission's proposals are intended to ensure fair and efficient overall administration of numbering resources; to foster an integrated approach to numbering administration across NANP member countries; and to enable the Commission and regulatory bodies of other nations to ensure that domestic numbering administration is effective through reliance upon the expertise and innovative efforts of industry.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 218 and 251(e)(1), that the Further Notice of Proposed Rulemaking is hereby *adopted*.

It is further ordered that the Commission's Office of Managing Director *shall send* a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–27998 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–P

[1] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC 4812 (issued May 1995).

[2] See para. 9, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.97–215, RM–9168]

Radio Broadcasting Services; Wilson and Turrell, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pollack Broadcasting Company, permittee of Station KAFW(FM), Channel 234A, Wilson, Arkansas, requesting the reallotment of Channel 234A to Turrell, Arkansas, as that community's first local aural transmission service, and modification of the authorization for Station KAFW(FM) accordingly, pursuant to the provisions of §420(i) of the Commission's rules. Coordinates used for Channel 234A at Turrell are 35–22–36 and 90–15–12.

DATES: Comments must be filed on or before December 1, 1997, and reply comments on or before December 16, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood and Paul H. Brown, Esqs., Wood & Brinton, Chartered, Suite 900, 2300 M Street, NW., Washington, DC 20037–1436.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–215, adopted October 1, 1997, and released October 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27944 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.97–216, RM–9153]

Radio Broadcasting Services; Berlin and North Conway, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines, licensee of Station WPKQ, Berlin, NH, seeking the reallotment of Channel 279C from

Berlin to North Conway, NH, as the community's first local aural transmission service, and the modification of Station WPKQ's license accordingly. Channel 279C can be allotted to North Conway, at Station WPKQ's presently licensed transmitter site, at coordinates 44–16–14 North Latitude and 71–18–15 West Longitude, which will maintain the presently grandfathered short-spacings to Station WKNE-FM, Channel 279B, Keene, NH, as well as to both the allotment reference coordinates for Channel 279D and proposed new station on Channel 279A at Montreal, Quebec, Canada, and the station on Channel 279A at Kahnawake, Quebec, Canada. Canadian concurrence in this allotment is required since North Conway is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 1, 1997, and reply comments on or before December 16, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Griffith Johnson, Jr., Paul, Hastings, Janofsky & Walker LLP, 1299 Pennsylvania Avenue, NW, Tenth Floor, Washington, DC. 20004–2400 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.97–216, adopted October 1, 1997, and released October 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–27945 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 564]

Service Obligations Over Excepted Track

AGENCY: Surface Transportation Board.

ACTION: Withdrawal of proposed rule and notice of availability of policy statement.

SUMMARY: In a notice of proposed rulemaking published at 62 FR 24896 (May 7, 1997), the Board sought comments on the circumstances under which it should require a railroad to operate over excepted track that does not meet Federal Railroad Administration (FRA) Class 1 track safety standards, and that the operating railroad deems to be unsafe. After reviewing the comments, the Board has decided not to issue rules, but instead to issue a policy statement declaring that the Board will continue the current practice of evaluating railroad service issues on a case-by-case basis. In evaluating carrier claims that track is embargoed for safety reasons, the Board will consult with the FRA.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board's policy statement may be reviewed at the Board's offices and is available to all persons for a charge by phoning D.C. NEWS & DATA, INC., at (202) 289–4357.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 8, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27971 Filed 10–21–97; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register

Vol. 62, No. 204

Wednesday, October 22, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration, USDA

Proposed Posting of Stockyard

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock market named below is a stockyard as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

IL–175 Greenville Livestock, Inc., Centralia, Illinois

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyard named above as a posted stockyard subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408-South Building, U. S. Department of Agriculture, Washington, D.C. 20250, by November 6, 1997.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 14th day of October 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–27927 Filed 10–21–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held November 7, 1997, 9:00 a.m., at the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania & Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks by the Chairperson.
2. Navy presentation on Uninhabited Air Vehicle (UAV) development and export control implications.
3. Status of Missile Technology Control Regime.
4. Update on The Wassenaar Arrangement.
5. Update on Bureau of Export Administration initiatives.
6. Election of Chairperson.
7. Review of List Review proposals offered by members.
8. Review of action items.
9. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS: 3886C, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

For further information or copies of the minutes, please call (202) 482–2583.

Dated: October 16, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–27947 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 75–97]

Proposed Foreign-Trade Zone—Gregg County, Texas; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Gregg County, Texas, to establish a general-purpose foreign-trade zone in Gregg County, Texas, adjacent to the Shreveport-Bossier Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 14, 1997. The applicant is authorized to make the proposal under Senate Bill 691 of the 70th Legislature of the State of Texas (Regular Session, 1987), codified as Tex. Rev. Civ. Stat. Ann. art. 1446.01.

The proposed zone site (299 acres) is located at the Gregg County Airport, approximately 4 miles south of the City of Longview, Texas. It is owned by the applicant. The proposed FTZ project is designed to serve the entire East Texas Region consisting of fourteen counties. (This would be the second foreign-trade zone associated with the Shreveport-Bossier Customs port of entry. FTZ 145 in Shreveport was established in 1988.)

The application contains evidence of the need for foreign-trade zone services in the East Texas Region. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on November 20, 1997, 2:00 p.m., Gregg County Courthouse, 101 E. Methvin Street, Longview, Texas 75601.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 22, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 5, 1997).

A company of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Gregg County Courthouse 101 E. Methvin Street, Suite 300 Longview, Texas 75601

Office of the Executive Secretary Foreign-Trade Zones Board, Room 3716 U.S. Department of Commerce 14th & Pennsylvania Avenue, NW Washington, DC 20230

Dated: October 15, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-27989 Filed 10-21-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-707]

Granular Polytetrafluoroethylene Resin From Japan; Notice of Rescission of Initiation of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 25, 1997, the Department of Commerce published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on granular polytetrafluoroethylene from Japan, covering one manufacturer/exporter of the subject merchandise, Mitsui-DuPont Polychemical, for the period August 1, 1996 through July 31, 1997. On September 17, 1997, we received a request for withdrawal from this review from Mitsui. Because Mitsui submitted a timely request for withdrawal and because no other interested party requested a review, we are rescinding this review.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Gregory Thompson, AD/CVD Enforcement, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-5760 or (202) 482-0410, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Regulations

Unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

On August 28, 1997, Mitsui-DuPont Polychemical (Mitsui) requested an administrative review with respect to its entries or sales of granular polytetrafluoroethylene (PTFE) resin. On September 25, 1997, in accordance with section 351.221(b) of our regulations, we initiated an administrative review of this order for the period August 1, 1997 through July 31, 1997 (62 FR 50292). On September 17 and 25, 1997, Mitsui withdrew of its request for review.

Pursuant to section 351.213(d)(1) of the Department's regulations, a party may withdraw its request for an administrative review not later than 90 days after the date of publication of the notice of initiation of the administrative review. The Department may extend this time limit if the Department decides it is reasonable to do so.

Because Mitsui submitted a timely withdrawal of its request for review and because no other party requested a review, the Department is rescinding this initiation.

This notice is published in accordance with 19 CFR 351.213(d)(1).

Dated: October 14, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, AD/CVD Enforcement.

[FR Doc. 97-27997 Filed 10-21-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-706]

Nitrile Rubber From Japan: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On August 1, 1997, the Department of Commerce initiated an administrative review of the antidumping duty order on Nitrile Rubber from Japan for one manufacturer or producer of nitrile rubber from Japan, Japan Synthetic Rubber Co., Ltd., covering the period June 1, 1996 through May 31, 1997. The Department of Commerce is terminating the review after receiving a withdrawal of its request for a review from Japan Synthetic Rubber Co., Ltd.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Irene Darzenta, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0065 and (202) 482-6320, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (1997).

Background

On June 30, 1997, Japan Synthetic Rubber Co., Ltd., a manufacturer and exporter of merchandise subject to this order, requested that the Department conduct an administrative review of the antidumping duty order on nitrile rubber from Japan for the period June 1, 1996 through May 31, 1997.

On August 1, 1997, the Department published in the **Federal Register** (62 FR 41339) a notice of initiation of administrative review with respect to Japan Synthetic Rubber Co., Ltd. for the period June 1, 1996 through May 31, 1997. On August 13, 1997, Japan Synthetic Rubber Co., Ltd. requested that it be allowed to withdraw its request for a review and that the review be terminated.

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. In light of the fact that Japan Synthetic Rubber Co., Ltd.'s request for termination was submitted within the 90-day time limit and there were no requests for review from other interested parties, we are terminating this review for Japan Synthetic Rubber Co., Ltd. *See Certain Welded Stainless Steel Pipe from Korea, Termination of Antidumping Duty Administration Review*, 62 FR 47460, (September 9, 1997). We will issue appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with 19 CFR 353.22(a)(5).

Dated: October 15, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97-27993 Filed 10-21-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-824]

Notice of Termination of New Shipper Antidumping Duty Administrative Review: Polyvinyl Alcohol From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4194 or (202) 482-1766, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to those codified at 19 CFR part 353, as they existed on April 1, 1996.

Background

On December 18, 1996, the Department published in the **Federal Register** notice the initiation of a new shipper administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan covering the exporter Perry Chemical Corporation ("Perry") and the period May 1, 1996, through October 31, 1996 (61 FR 68237, December 28, 1996).

Under Section 751(a)(2)(B)(i) of the Act, the Department will conduct an administrative review to establish an individual weighted average dumping margin if the Department receives a request from an exporter or producer that establishes (1) it did not export the merchandise that was the subject of the antidumping duty order to the United States during the period of investigation and (2) it is not affiliated within the meaning of section 771(33), any exporter or producer who exported the merchandise to the United States during that period of investigation.

In the less than fair value (LTFV) investigation, the Department investigated the sales of Chang Chun Petrochemicals, Ltd. (Chang Chun), the only exporter of PVA from Taiwan during the period of investigation, including sales to Perry, a U.S. importer. The record indicates that Perry has had a longstanding business relationship as an importer of PVA produced by Chang Chun and imported the subject merchandise produced and exported by Chang Chun during the period of the LTFV investigation. The Department found Chang Chun to be dumping at a rate of 19.21 percent during the LTFV investigation. In this review, the business relationship remains essentially unchanged. As shown by proprietary information on the record in this review, Perry continues to be the importer and Chang Chun continues to undertake the entire production of PVA.

For the sales in question in this review, Perry states that in addition to being the importer, it is now also the "manufacturer/exporter" of the subject merchandise, and that as a new exporter, it is entitled to a new shipper rate. Perry indicates that to produce the subject merchandise, Perry purchased the primary input of PVA, vinyl acetate monomer (VAM) from a Taiwan producer of VAM through an unaffiliated U.S. trading company. Perry contracted with Chang Chun to produce PVA utilizing Perry's VAM under a tolling arrangement. Perry then sold the PVA to unaffiliated customers in the United States and Canada during the period of review (POR).

In most past cases involving tolling arrangements the Department considered the manufacturer of the product exported to the United States to be the processor or toller, and not the party which controlled the production process, set the prices of the finished product in all markets, and held title to both the inputs and the subject merchandise (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Welded Carbon Steel Pipes and Tubes from the Phillippines*, 51 FR 33099, September 18, 1986).

Within the last few years, the Department has reconsidered its position of deeming the toller the manufacturer. A toller has no control over the price charged to U.S. and domestic buyers of the finished product, nor does a toller set the price in either market. Moreover, because the Department only considered the price or cost of the tolling in making comparisons between U.S. prices and prices of sales of the foreign like product, the Department did not capture all of the costs of manufacturing the subject merchandise, *e.g.*, cost of inputs, as required by the statute section 773. Therefore, this approach did not allow for analysis of price comparisons between the finished products.

To resolve this situation, the Department revised its tolling practice. Rather than treat the toller as the producer, the Department now will treat the party who keeps title to the inputs and the finished product, controls the entire production process, and sets the price of the finished product in each market as the producer and, hence, the proper respondent (*see Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Reviews of Carbon Steel Flat Products*, Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Susan G. Esserman, Assistant Secretary for Import Administration, dated December 12, 1994).

This approach is also reflected in the Department's preamble to its new regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295 (May 19,1997). Under section 351.401(h) of the new regulations, which, although not legally in effect for this new shipper review, are, at the time of this request for review, an expression of the Department's practice, the Department will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership of the finished product and does not control the relevant sale of the subject merchandise and the foreign like product. *See also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27411 (legally effective only for segments of the proceeding initiated based on requests filed after June 18,

1997, but nevertheless a restatement of the Department's practice).

Perry claims that under the tolling agreement between Perry and Chang Chun, Perry maintains control of the entire production process by (1) controlling the supply of the major input, VAM, used to produce tolled PVA by Chang Chun, (2) controlling Chang Chun's production of tolled PVA through the specifications (grades) and amounts to be produced, (3) retaining title to VAM and the finished product throughout the tolling process, and (4) establishing the prices, the quantities and specifications/grade at which the tolled PVA will be sold in the United States and other markets. Perry pays a fee to Chang Chun for these services.

Perry has stated the following on the record of this proceeding:

(1) Perry controlled the sales process of the tolled PVA.

As detailed in its questionnaire responses, Perry controlled all aspects of its tolled PVA sales. It identified customers and negotiated the terms of sale with them. Perry arranged the warehousing and palletization of the tolled PVA prior to delivery to its customers. Perry shipped the merchandise to its customers and carried the accounts receivables until payment was received.

(2) Perry controlled the production of the tolled merchandise.

As detailed in its questionnaire responses, Perry controlled Chang Chun's production of PVA according to the terms of the tolling agreement. Perry determined all specifications for production of the PVA. Chang Chun could not deviate from Perry's production specifications without Perry's written approval. (This is reflected in the warranty terms set out in the contract.) Chang Chun could not produce PVA from the VAM owned by Perry without Perry's written instructions.

(3) Perry held title to the input materials.

As detailed in Perry's questionnaire responses, Perry purchased VAM through an unaffiliated trading company. Perry retained title to the merchandise throughout the PVA production process while the material was in Chang Chun's possession. Title did not transfer until it passed to Perry's customers upon delivery to them.

Petitioner, Air Products and Chemicals, Inc., argues that Chang Chun, not Perry, is the producer of the subject merchandise because the processing performed by Chang Chun is not a minor finishing operation, but rather a substantial transformation which converts VAM into the subject merchandise. Petitioner further contends that the Department should terminate this review because, based on the facts presented in this proceeding, there is no material difference between the Chang Chun sales to Perry in the LTFV investigation, when Perry was merely an importer, and the alleged tolling relationship now in existence between Chang Chun and Perry. The only difference is the paperwork. Petitioner concluded that Perry is not entitled to a new shipper review because Chang Chun is the true manufacturer of the subject merchandise.

Petitioner also argues that Perry is not entitled to a new shipper review because Perry and Chang Chun are affiliated under the affiliated parties provision of section 771(33)(G) of the Act. Petitioner contends that although Perry is not affiliated with Chang Chun through stock ownership, it is affiliated with Chang Chun by its close supplier relationship and its debt financing.

Perry responds that it has fully satisfied the Department's revised interpretation of a manufacturer/exporter of tolled merchandise and, therefore, Chang Chun is not the manufacturer of the merchandise. Perry further states that petitioner's conclusion that Chang Chun is the manufacturer is inconsistent with the standard for manufacturer/producer status codified in the Department's new regulations at 19 CFR section 351.401(h) (1997). Finally, Perry responds that, as the proprietary information placed on the record shows, its accounts payable to Chang Chun is not debt financing and does not establish an affiliation under the Act. Moreover, Chang Chun made a submission asserting that it does not exercise control over Perry through the supplier relationship.

We have determined that Perry does not qualify as a new shipper regardless of whether we regard it as the producer of PVA tolled by Chang Chun. If we were to continue to regard Chang Chun as the producer, Chang Chun (not Perry) would be both the producer and the exporter, because Chang Chun has knowledge at the time it sells to Perry that the subject merchandise is for export to the United States. On the other hand, if Perry is the producer based on a tolling arrangement with Chang Chun, we find that Perry would be affiliated with Chang Chun, an exporter of subject merchandise during the investigation.

Perry claims that it controlled all aspects of the subcontractor's operations in the tolling transaction—*i.e.*, Chang Chun's processing of VAM. Perry's own questionnaire responses indicated that Perry exercised direction over Chang Chun in all facets of the processing of VAM. This direction purportedly also illustrated in the tolling agreement between Perry and Chang Chun, included as part of the February 26, 1997, questionnaire response.

Under section 771(33)(G) of the Act, the Department will consider parties to be "affiliated" if one person controls any other person. The statutory provision defines control as a situation in which one person is legally or operationally in a position to exercise restraint or direction over another person. Based on our analysis of the information on the record, we do not find that Chang Chun exercises control over Perry through debt financing or the supplier relationship. However, based on Perry's own statements on the record, Perry was legally and operationally in a position to exercise direction over Chang Chun's production of PVA under contract to Perry and exported by Perry to the United States during the POR. Accordingly, Perry's assertions indicate that Perry and Chang Chun are affiliated persons within the meaning of section 771(33)(G) of the Act with regard to Perry's sales of PVA tolled by Chang Chun.

Based on this determination of affiliation, this proceeding does not meet the requirements of section 751(a)(2)(B) of the Act for conducting a new shipper review with regard to Perry's sales of tolled PVA since Perry is affiliated with Chang Chun, which was a producer who exported and producer of the subject merchandise during the period of the LTFV. This determination of affiliation under section 771(33)(G) of the Act is based on the particular facts of this review, and is made only in the context of determining Perry's eligibility for a new shipper review under section 751(a)(2)(B). Alternatively, if Perry is not the manufacturer based on a tolling arrangement, there likewise is no basis for conducting a new shipper review. Therefore, the Department is terminating this review.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27991 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 29, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) (62 FR 4250). This review covers shipments by two manufacturers/exporters of this merchandise to the United States during the period December 1, 1993, through November 30, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received (*see Analysis of Comments Received* section below), these final results of review remain unchanged from the preliminary results of review.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–2786.

Applicable Statute and Regulations: Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department published, in the **Federal Register**, the antidumping duty order on POS cooking ware from the PRC (51 FR 43414). On December 6, 1994, the Department published, in the **Federal Register**, a notice of opportunity to request an administrative review of this antidumping duty order (59 FR 62710) covering the period December 1, 1993, through November 30, 1994.

On December 21, 1994, in accordance with 19 C.F.R. 353.22(a)(1), a U.S. importer, CGS International Inc. (CGS), requested that we conduct an administrative review of Clover Enamelware Enterprise Ltd. (Clover), a PRC manufacturer/exporter of the subject merchandise, and its third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd. (Lucky). On December 29, 1994, in accordance with 19 C.F.R. 353.22(a), petitioner, General Housewares Corp. (GHC) requested that we conduct an administrative review of China National Light Import and Export Corporation (China Light), Shanghai Branch, through Amerport (H.K.), Ltd. We published the notice of initiation of this antidumping duty administrative review covering the period December 1, 1993 through November 30, 1994, on January 13, 1995 (60 FR 3192).

On February 29, 1997, the Department published in the **Federal Register** the preliminary results of this administrative review of the antidumping duty order on POS cooking ware from the PRC (62 FR 4250). There was no request for a hearing. The Department has now completed this review in accordance with section 751(a) of the Act.

Related Parties

Clover is two-thirds owned by Lucky and therefore Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky (hereafter Clover/Lucky) to be related pursuant to section 771(13) of the Act. As such, and consistent with prior reviews of this order, we have calculated only one rate for both of these companies. For a further discussion of this issue, see Memorandum from Case Analyst to the File Regarding Status as Related Parties dated January 17, 1997, which is a public document on file in the Central Records Unit (room B–099 of the Department of Commerce).

Scope of Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the HTS item 7323.94.00. HTS item numbers are provided for convenience and Custom purposes. The written description remains dispositive.

Best Information Available

In our preliminary results, we determined, in accordance with sections 776(b) and (c) of the Act, that the use of best information available (BIA) is appropriate for China Light and Clover/Lucky. (*See* "Memorandum for Jeffrey P. Bialos from Barbara E. Tillman Regarding Use of Best Information Available" dated January 16, 1997, which is a public document on file in the Central Records Unit (room B–099 of the Main Commerce Building).) We received written comments on the preliminary results of review. Our analysis of the comments submitted by interested parties has not led us to modify our findings from the preliminary results.

Section 776(b) of the Act states that the Department shall use BIA whenever it is unable to verify the information submitted. Section 776(c) of the Act states that the Department shall use BIA whenever a company refuses or is unable to produce information in a timely manner and in the form required, or significantly impedes an investigation or review.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information or impedes a proceeding. Thus, the Department determines on a case-by-case basis what is BIA. The Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information requested in the form required or otherwise significantly impedes the Department's review (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest rate found in the current review for any firm. When a company has cooperated with the Department's request for information but fails to provide information requested in a timely manner or in the form required such that margins for certain sales cannot be calculated (second tier), the Department will normally assign to those sales the higher of (1) the highest rate applicable to that company for the same class or kind of merchandise from any previous review or the original investigation; or (2) the highest calculated margin for any respondent in the current review. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.*, 58 FR 39729 (July 26, 1993). This practice has been upheld in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185

(Fed. Cir. 1993), and *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).

As mentioned above, China Light did not respond to our questionnaire. As non-cooperative, first-tier BIA, and in accordance with section 776(c) of the Act, we have applied the highest margin from the LTFV investigation, prior administrative reviews, or in this review, which is 66.65 percent. Further, China Light was not found eligible for a separate rate in this review. Consequently, China Light is part of the single NME entity in this review, which has been assigned the PRC country-wide rate (*see, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review;* 61 FR 15218, 15221 (April 5, 1996), and *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review;* 61 FR 15269 (October 1, 1996).

Clover/Lucky cooperated with our requests for information and agreed to undergo verification. From July 17 through July 29, 1995, the Department attempted verification of the company's questionnaire response at Lucky's sales offices in Hong Kong and Clover's factory in Shenzhen, PRC. As a result of these verification efforts with respect to Clover's questionnaire response, we discovered significant discrepancies and were unable to verify substantial sections of the questionnaire response, including statutorily required factors of production information, such as the number of labor hours worked and the per unit quantities consumed of primary material inputs. These discrepancies are detailed in the Department's verification report concerning Clover, dated January 13, 1997.

As a result, the Department has determined that the data the company submitted is unverifiable. Therefore, in accordance with section 776(b) of the Act, there is no basis to accept the integrity of the factors of production information submitted in the questionnaire response, constituting a verification failure. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China*, 61 FR 1708 (January 13, 1997). Because the respondent failed verification, the Department must use BIA. Since Clover/Lucky was cooperative, we have applied second-tier BIA. The second-tier BIA rate is the highest rate applicable to the company from a previous review or the original LTFV investigation, which in this case is 66.65 percent, the rate Clover/Lucky received in the 1990/91 administrative review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from Clover/Lucky (respondent) and a rebuttal brief from General Housewares (petitioner).

Comment 1: Clover/Lucky alleges that the Department's decision to consider verification a failure is unwarranted. According to respondent, the problems at verification were due to: (1) The brevity of the verification at Clover's factory in the PRC; and (2) the Department's failure to explore alternative methods of verification.[1] Clover/Lucky claims that had the Department spent more time at Clover, the Department would have been able to verify much of the allegedly unverified information. According to Clover/Lucky, it is the Department's obligation to allow itself the time necessary to verify the responses and find alternative methods of verification of information, if needed.

Petitioner argues that Clover/Lucky provided no evidence demonstrating that the Department's verification procedures to verify Clover/Lucky were unfair or unreasonable.

Department's Position: We disagree with respondent. The on-site verification at Clover's factory in the PRC was but one portion of the ten-day verification of Clover/Lucky's questionnaire response. Ten days to verify a questionnaire response is well within the normal time period allotted for such verifications. In addition, as Clover/Lucky noted in its case brief, the verification team was willing to, and did, work overtime to allow the company the opportunity to demonstrate the accuracy of the submitted information. Further, upon leaving Clover's factory in the PRC, the team gave Clover the opportunity to send any missing supporting documentation to Lucky's offices in Hong Kong, which the team would then verify at that location. Despite this opportunity, Clover sent no such information.

As we stated in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66481, 66482 (December 17,1996), "It is incumbent on the respondent to establish the accuracy of the information it submits during the time period allotted for verification." This position is supported by the U.S. Court of International Trade (CIT) which stated, "There is no statutory mandate as to how long the process of verification must last, ... [The Department] is afforded discretion when conducting a verification pursuant to 19 U.S.C. 1677e(b)." *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 229, 307 (1994) (holding that a three-day overseas verification was reasonable). *See also Ceramica Regiomontana, S.A. v. United States*, 10 CIT 399, 406, 636 F. Supp. 961, 967 (1986) (held that the Department has wide latitude in determining the time to be spent and the procedures to be used to conduct verification).

We also disagree with Clover/Lucky's contention that it is the Department's obligation to explore alternative approaches to verifying information. As petitioner points out in its rebuttal brief, it is the responsibility of the respondent, and not of the Department, to create a sufficient record in the administrative review. *Tatung Co.*, v. *United States*, 18 CIT 1137, 1140 (1994). The purpose of verification is to verify the accuracy of the response, not to collect information or recreate the response in order to address its errors or deficiencies. *See Belmont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ("verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe"); *see also Monsanto Co.* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988) ("verification is a spot check and is not intended to be an exhaustive examination of the respondent's business"). To accomplish this, the Department uses standard verification methods, and among other things, examines the source documents that respondents claim were used to compile the information contained in their questionnaire response.

To assist respondents in preparing for verification, the Department issues an outline of the verification to respondents prior to the arrival of the verifiers. Prior to verification in this case, the Department sent an outline of the verification procedures to Clover/Lucky. The outline identified the information in the response that the Department intended to verify and the types of source documents that would be examined by the Department when conducting the verification. The outline also indicated that it was not exhaustive, and that the Department might request relevant additional material necessary for a complete verification.

As discussed above, the Department does not have an unlimited amount of time in which to conduct a verification. As characterized by the CIT itself, verification under these conditions is, by its very nature, a spot check rather than a complete audit. As such, it is crucial that the information reported in the questionnaire response can be readily verified if selected for examination. Given the time limits of verification, the Department is unable to await, let alone accept, numerous clarifications or corrections to responses at verification, nor can it explore all conceivable verification methods suggested by a respondent in the hope that one of them might conceivably result in the information being verified at some indefinite point in the future.

The alternative methods of verification suggested by Clover/Lucky would have required significant amounts of additional time to undertake. In this case, such time was no longer available because of the difficulties encountered in verifying the information in the response using standard verification procedures as set forth in the verification outline that was sent to Clover/Lucky. For example, with respect to timing the processing steps on the factory floor as an alternative method of verifying labor hours, respondent noted in its comments that Clover's POS cookware production process is a complicated one. According to Clover/Lucky, the simplest piece of enamelware, a plate, involves seven processes while a teakettle (a covered cookware item) involves 48 processes. Some of these processes (*e.g.*, enameling) involve considerable time between steps. Given the need to take several readings per processing step being examined in order to calculate a meaningful average, this method would require considerable time and effort to verify even one cookware item, much less a meaningful sample of the approximately 45 cookware items under review. Further, Clover manufactures over 450 different enamelware items, only a portion of which are cookware items sold in the United States. Therefore, it is highly unlikely that the Department would be able to randomly select a cookware item from the piece rate table (a table listing the standard amounts of time required to complete individual processing steps for each enamelware item produced by the company) and find that it is being produced that day on the shop floor.

In addition, two of the suggested alternatives, the use of 1995 (post-POR) source documents to verify 1993/94 data and the post-verification shipment of finished and semi-finished cookware products to the United States for examination by the Department are simply not reasonable verification alternatives. The Department cannot accept unrelated information from a future review period to substitute for source documents from the period under review. The comparison of 1995 time cards to 1993/94 labor records and piece rate tables will not result in any meaningful determination as to the accuracy of the submitted 1993/94 information. As to the submission of selected pieces of finished and semi-finished cookware to the Department for examination and weighing, the purpose of on-site verification is to enable the Department not only to check certain factual information but also to be able to further verify the accuracy of the submitted information through questions to, and clarifying statements from, those individuals that either prepared the response, are involved in the manufacture and exportation of the merchandise under review or are responsible for maintaining the company's books and records. This is not possible under Clover/Lucky's suggested alternative methods of verification.

Comment 2: Clover/Lucky alleges that it should not be penalized for failing to maintain the source documentation needed to support its reported labor hours/record retention. Neither the questionnaire nor the outline specifically stated that time cards needed to be retained for verification. Further, these records are not required to be kept by local tax authorities.

Department's Position: Contrary to respondent's characterization that its failure to maintain source documentation for reported labor hours was the cause of the failed verification, in this review, labor hours were among the many items that Clover/Lucky was unable to tie to or support with source documentation.

In addition, we disagree with respondent's claim that it should not be penalized for failing to maintain certain source documents because the Department did not specifically identify these source documents in its questionnaire or outline. Both the questionnaire and the verification outline make it clear that the information submitted in the response may be subject to verification. Because responses submitted in an administrative review may be subject to verification, it is incumbent upon a respondent to retain the source documentation which it used to prepare the questionnaire response. The verification outline further notes that we will be tying the information reported in the response to the company's source documents that support that information. The outline provides examples of the type of documents we examine and clearly states that we may require any additional documentation necessary for a complete verification. Time cards are among the documents that support a company's payroll. That the Department might request to examine these time cards can hardly be considered outside the realm of possibility in a verification of reported labor hours. Section 773(c)(3) of the Act, which enumerates the specific factors of production that the Department examines in NME cases, lists as the very first factor "hours of labor required" (section 773(c)(3)(A)).

The record keeping requirements of local tax authorities are not germane to the records that need to be maintained for verification of the questionnaire response in an antidumping administrative review. *See Krupp Stahl A.G.* v. *United States*, 17 CIT 450; 822 F. Supp. 789, 791–92 (1993) (holding that the fact that a foreign government did not require retention of business records did not absolve the respondent from its obligation or responsibility to respond to the Department's questionnaire response in an antidumping proceeding. The court upheld the Department's use of BIA.) *See also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10990 (February 28, 1995).

Comment 3: Clover/Lucky claims that the Department's conclusion that Clover was unable to document its per-unit enamel consumption figure is

[1] Clover/Lucky suggests the following alternative methods for some portions of the response that could not be verified: (1) The verifiers could have timed the products going through the production process in order to verify the piece rate tables used to calculate the workers' wages; (2) 1995 (post-POR) time cards could be examined to verify the 1993/94 labor hours and piece rates reported in the response; (3) uncoated semi-finished steel blanks, steel blanks with the initial ground coat, steel blanks with the cover coat, double-coated steel blanks and finished goods for selected products could have been shipped to the United States for further examination and weighing in order to verify the reported enamel consumption; and (4) loan documents identifying ownership of machinery between Lucky and Clover could be examined, in conjunction with on-site identification of molds and equipment by knowledgeable floor supervisors, in order to verify the depreciation information included in the response that could not be verified through the depreciation cards.

unfounded. At verification, the company explained the sampling procedure it used to estimate the per-unit consumption. By weighing three to five samples of each model throughout the various coating and drying processes, it calculated a per-unit weighted-average of enamel consumption. Clover/Lucky contends that, based on this procedure, the company prepared the table used to report per-unit enamel consumption in its response. As respondent itself states, because enamel coating is a hand-dipped process, the difference between the actual weight of an individual item may be quite different from the consumption figure calculated in the sample. However, since the consumption figures were derived from actual figures, respondent claims it was not necessary for the company to maintain the underlying source documents.

Department's Position: We disagree with respondent. The verification report does not support Clover/Lucky's contention that it was able to document the per-unit enamel consumption. As stated by Clover/Lucky itself in its case brief, the company did not retain any of the original worksheets or underlying source documents of the per-unit enamel consumption after conducting its sample weighing.

As discussed previously, it is the responsibility of the respondent, and not of the Department, to create a sufficient record in the administrative review. *Tatung Co.*, v. *United States*, 18 CIT 1137, 1140 (1994). The purpose of verification is to verify the accuracy of the response through examination of source documentation, not to collect information or recreate supporting source documentation that respondent has failed to maintain. Further, as discussed previously, we reject Clover's suggestion that the Department allow it to ship, after verification, selected samples of finished and semi-finished cookware products to the Department in order that the Department could further test the accuracy of the reported figures. For further information regarding the Department's position on this, *see* Department's Position to Comment 1.

Comment 4: Clover/Lucky argues that it should not be penalized for failing to report the quantities of water, electricity and fuel consumed in the production process because the Department did not specifically ask the company to report quantities of indirect materials in its factors of production questionnaire. Rather, as stated in Clover/Lucky's case brief, the Department only requested factor inputs for the following: (A) Direct Materials; (B) Direct Labor; (C) Factory Overhead; (D) Selling, General and Administrative Expenses; (E) Other; and (F) Packing. Therefore, the Department cannot not fault Clover for failing to report information that was not fairly requested, citing *Koyo Seiko Company, Ltd. and Koyo Corporation of U.S.A.* v. *The United States*, 92 F.3rd 1162, 1168 (Fed. Cir. 1986). Clover/Lucky argues further that since the Department verified Clover's total value of electricity and fuel consumption against financial statements and vouchers which contained both quantities and values of electricity and fuel consumption, it could just as well have compiled the total quantities of energy used.

Department's Position: We disagree with respondent. Because the prices of materials and inputs in an NME are not considered valid for calculation purposes, the Department requires respondents to report the amount, rather than the value, of materials consumed in the production process. Although the questionnaire did not specifically include "indirect materials" or "energy" in the list of factor input categories, it is clear that such items are covered by the Department's questionnaire. The list of requested information, with respect to the factors of production, is broad and all-inclusive—it includes all the major categories involved in production as well as a catch-all category (*i.e.*, "Other"). Indirect materials and energy consumed in the production process normally fall under Factory Overhead, the very category Clover/Lucky used when reporting its expenses for electricity, water and fuel (rather than the requested quantities for these same three items). However, these inputs could have just as easily been categorized as Other, or in certain cases, if applicable, Direct Materials. All three of these categories were listed by the Department in its questionnaire. Therefore, it cannot be construed that the information asked for at verification was unfairly requested.

As to whether the Department could have gathered the information at verification from financial documents or invoices, again, respondent is asking the Department to take on the responsibility of creating the company's response at verification. As discussed previously, it is the responsibility of the respondent, and not of the Department, to create a sufficient record in the administrative review. *Tianjin Machinery I/E Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992). The Court has held that the Department "is not required to . . . recalculate a respondent's submission to develop an accurate response." *Tatung Co.*, v. *United States*, 18 CIT at 1142 n.3, citing *Chinsung Indus. Co.* v. *United States*, 705 F. Supp. 598, 601–02 (1989).

Comment 5: Clover/Lucky contests the Department's statement in the verification report that there was an extremely large number of typographical errors in the reported quantities of steel purchases. Clover/Lucky also claims that the statements in the verification report that the company was unable to reconcile the quantity of steel requisitioned for production with inventory withdrawals, and that it was also unable to substantiate its reported per unit quantities of steel, are incorrect. The company claims that much of the steel information was verified and that those items that did not verify were not substantial and would not materially affect the company's response.

Department's Position: We disagree with respondent. At verification, we found a number of discrepancies with respect to both steel purchases and steel consumption. From a small sample of selected invoices, the Department discovered typographical errors resulting in the under reporting of individual steel purchases in two cases by 22 and 43 percent, the over reporting of individual steel purchases by 222 percent in another, and the misclassification of one purchase's steel thickness. Because at verification the Department is only able to verify information through spot-checking, where we find discrepancies in the subset that is actually tested, we must judge the effect of such discrepancies that are randomly revealed on the unexamined portion of the response. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081 (January 15, 1997).

Further, Clover/Lucky incorrectly concludes that the reported net discrepancy is inconsequential because it is small when compared to total reported steel purchases. In fact, the figure in the verification report was based on an examination of only a small portion of the steel purchases (those with a thickness of 4 mm), not all steel purchases and includes errors in both directions. Because at verification we examined a subset of steel purchases and found discrepancies in the reporting with respect to this subset, the Department must attribute to all of the steel purchases these same discrepancies. *See Belmont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990); *see also Monsanto Co.* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988). Therefore, the figure understates the impact of the discrepancies, even when properly compared to 4mm steel purchases.

Problems also arose with respect to the verification of steel consumption. The Department was unable to verify the reported ratio for steel scrap, which, because of its significance in the manufacture of POS cookware, is an important factor in determining total steel consumption. The spot check of departmental steel requisitions to inventory withdrawals showed a discrepancy of approximately seven percent that the company was unable to account for.

The Department faced similar problems in its verification of the per unit quantities of steel used in the production of cooking ware that were reported in the response. The company submitted theoretical quantities based on an equation it developed using the specific density of steel. As to the statement in the verification report which noted no discrepancies between the reported per unit steel amounts and the method used by the company to calculate these amounts (cited by respondent as support for their conclusion that the problems in this area were insignificant), the only conclusion that can be drawn from that statement is that the company did not make any mathematical errors in its calculations, nor any transcription errors when typing this figure in the response. As such, the Department's statement in its verification report that it found no discrepancies between the reported per unit steel amounts and the method respondent used to calculate these reported figures has no bearing on either the accuracy of the method the company chose to estimate its per unit steel consumption or the figures in its response. The fact remains that the company could not corroborate the calculated theoretical per unit figures with sampled actual weight readings or support the figures used in the per unit calculations with the measurements from the technical drawings that the company claimed as supporting documentation.

The discrepancies, the errors in reporting and the inability to reconcile the figures reported in the response with supporting documentation, demonstrate that the company's response with respect to, not only its purchases, but also its consumption of steel, the primary material input in the POS production process, cannot be relied upon.

Comment 6: With respect to depreciation expenses regarding certain fixed assets, Clover/Lucky argues it did not create "fixed asset cards" (instead of a fixed-asset ledger, Clover records all its asset-related information on fixed asset cards) for its equipment at the time they were installed because the cards are only required to be created during the first fiscal year period. Further, although Clover admits that it had no system in place to show ownership of the molds,[2] it contends that the Department could have examined loan documents to determine the identity of the fixed assets in question. Moreover, Clover/Lucky claims that its technicians know the identity of the asset by merely looking at it. According to respondent, the Department could have reviewed the loan documents and successfully verified this section of the response if it had allowed sufficient time for verification.

Department's Position: The Department examined depreciation expenses in this case because of Clover/Lucky's claim that the POS cooking ware industry constituted a market-oriented industry (MOI). Since the Department found that the POS cooking ware industry does not constitute an MOI (see Department's position to Comment 9), the issue raised by respondent is moot.

Comment 7: Clover/Lucky argues that even if the Department rejects Clover's factors of production information in this case, it should determine the foreign market value (FMV) based on Lucky's home market (Hong Kong) sales or third country sales.

Petitioner disputes Clover/Lucky's argument, claiming that Clover/Lucky is, in effect, challenging the Department's preliminary finding that the POS cooking ware industry does not constitute a market-oriented industry. Petitioner points out that Clover has provided no information that prices for significant inputs are not controlled by the PRC government. Petitioner argues that the Department must, therefore, calculate FMV using the factors of production methodology.

Department's Position: We disagree with respondent that FMV in this case can be determined on the basis of Lucky's home market or third country sales. In order for FMV to be based on Lucky's home market or third country prices (which respondent, in its case brief, now requests for the first time in this proceeding), Lucky would have had to allege and demonstrate that it had third-country reseller status. Further, it would have to meet the requirements of section 773(f) of the Act in order to have its sales, either home market or third country, used as the basis for FMV. Lucky made no such claim in this proceeding. Moreover, issues of relatedness aside, since Clover knows at the time of the sale the final destination of the merchandise, Lucky does not qualify as a reseller from an intermediate country in any event. (*See* Clover/Lucky's June 20, 1995 Questionnaire Response (Public Version) which, at page 20, states that "Clover is aware of the ultimate destination of the POS cookware because the destination is indicated on the outer carton.") Moreover, given the relationship between Lucky and Clover, we do not consider that there exists a "purchase" from the PRC production facility by Lucky within the meaning of section 773(f). (*See Preliminary Determination of Sales at Less than Fair Value: Disposable Pocket Lighters From the People's Republic of China*, 59 FR 64191, 64194 (December 13, 1994)). Thus, even had Lucky made a proper claim that it was a third country reseller within the meaning of section 773(f) of the Act, the record evidence of this case would not support such a determination. Therefore, Lucky's prices to customers in Hong Kong or third countries could not be used as the basis for FMV—only Clover's factors of production information could form the basis of FMV, the method selected by the Department in this case. Moreover, had we considered using Lucky's prices in Hong Kong or to third countries, we would normally compare those prices to the cost of the merchandise based on factors of production, because the merchandise was produced in an NME country. We could not have performed this test, because we could not verify the factors of production. As stated previously, as a result of the failure of verification with respect to Clover's factors of production information, the Department had to resort to the best information available in this case under section 776(b) of the Act.

With respect to petitioner's rebuttal to respondent's claim, petitioner mistakenly frames respondent's claim as one of advocating the use of PRC prices to determine FMV (*i.e.*, petitioner raises the market-oriented industry discussion). Respondent, however, is not arguing that the Department use Clover's price, but, instead, that the Department use Lucky's home market or third country prices to determine FMV. As respondent itself states on page 19 of its case brief, "Lucky and Clover are not requesting that Commerce use Clover's prices."

Comment 8: Clover/Lucky argues that the Department should conduct a supplemental verification and reexamine the information submitted in

[2] Certain molds were among the fixed assets which the Department selected for verification of depreciation expenses.

its questionnaire response. This would allow the Department sufficient time to explore the alternative verification methods enumerated by Clover/Lucky in its comments.

Petitioner, however, contends that there is no basis to conduct a re-verification, since Clover/Lucky provided no evidence that Department's verification was flawed. Petitioner points out that the CIT ruled that the Department "is not required to re-verify information submitted after verification, or recalculate a submission to develop an accurate response." *Tatung Co.* v. *United States*, 18 CIT at 1142 n.3, citing *Chinsung Indus. Co.* v. *United States*, 705 F. Supp., at 601–02.

Department's Position: We disagree with respondent. Conducting a second verification, particularly after a company fails its first verification, would be an extraordinary action. To do so would signal to respondents that a failed verification can be overcome, which would undermine both our ability to obtain complete and accurate information from Clover/Lucky in time to conduct proper verifications and to complete reviews in a timely manner as required by the Act. As in the case cited by petitioner, the Department is not required to conduct a supplemental verification. The CIT has ruled that "Due to stringent time deadlines and the significant limitations on Commerce's resources it is vital that accurate information be provided promptly to allow the agency sufficient time for review." *Ceramica Regiomontana, S.A.* v. *United States*, 10 CIT 399, 406, 636 F. Supp. 961, 967 (1986).

Although the Department has conducted supplemental verifications in the past (*See, e.g., Cyanuric Acid and its Chlorinated Derivatives from Japan; Final Results of Antidumping Duty Administrative Review*, 51 FR 45495, 45496 (December 19, 1986); *Cell Site Transceivers from Japan; Final Determination of Sales at Less Than Fair Value*, 49 FR 43080, 43084 (October 26, 1984); *High Power Microwave Amplifiers and Components Thereof from Japan*, 47 FR 22134 (May 21, 1982) (final determination of sales at less than fair value), and; *Fireplace Mesh Panels from Taiwan; Final Determination of Sales at Less Than Fair Value*, 47 FR 15393, 15395 (April 9, 1982)), in each of these cases, re-verification was conducted pursuant to requests for additional information requested by the Department, or due to a particular emergency that arose in the case. In contrast, Lucky/Clover's request is based primarily on general time constraints, constraints which must always be imposed on a verification. There is simply no reason for the Department to take the extraordinary measure in this case of conducting a supplemental verification.

Comment 9: Clover/Lucky also argues that the Department should conduct a supplemental verification to redetermine that the POS cookware industry constitutes a market-oriented industry. Respondent claims that, at verification, the Department could verify that the company pays market prices for both labor and the PRC-sourced direct and indirect materials it uses in the production of cooking ware.

Department's Position: We disagree with respondent. As discussed above, in determining whether an industry under examination constitutes a market-oriented industry, the Department examines the industry as a whole, not just the practices of the company or companies under investigation or review. (*See Notice of Final Determination of Less Than Fair Value; Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).) Clover/Lucky has not demonstrated that the POS cooking ware industry constitutes a market-oriented industry in the PRC, and we have adopted our preliminary determination with respect to this issue for these final results. The examination of Clover's purchases from its non-market suppliers and the wages it pays its employees is insufficient to conclude that the POS cooking ware industry as a whole is a market-oriented industry.

For a more detailed discussion of the Department's preliminary determination that the POS cooking ware industry does not constitute a market-oriented industry, *see* Memorandum to Barbara E. Tillman, Director of the Office of CVD/AD Enforcement VI, dated January 17, 1997, "Market-Oriented Industry Request in the 1993–1994 Administrative Review of POS Cooking Ware from the People's Republic of China," which is a public document on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Final Results of Review

Based on our analysis of comments from interested parties, we determine that no changes to the preliminary results are warranted for purposes of these final results. The dumping margins for each company under review are:

Manufacturer/Exporter	Rate(percent)
Clover/Lucky	66.65
PRC-Wide Rate (including China Light)	66.65

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Since the final results for the more recent review period, December 1, 1994 through November 30, 1995 (1995 review period) were published on June 17, 1997 (62 FR 3275), the cash deposit instructions contained in that notice will apply to all shipments to the United States of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 17, 1997. The dumping margins established for the period December 1, 1993 through November 30, 1994 period will have no effect on the cash deposit rate for any firm except for the company China Light. For China Light, which did not respond to our questionnaire, and was not subject to the 1995 review, the cash deposit rate will be the PRC-wide rate for the 1993–1994 period.

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 16, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27990 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Steel Wire Rope From Mexico: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Leah Schwartz or G. Leon McNeill, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on Steel Wire Rope from Mexico. On May 21, 1997, the Department initiated this administrative review covering the period March 1, 1996 through February 28, 1997.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Administrative Review of Steel Wire Rope from Mexico, dated October 16, 1997. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to March 1, 1998, and for the final results to 120 days after the publication of the preliminary results. These extensions of time limits are in accordance with section 751(a)(3)(A) of the Act.

Dated: October 16, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 97–27992 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Virginia, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–034. *Applicant:* University of Virginia, Charlottesville, VA 22908. *Instrument:* Ultrascope, Model MKII. *Manufacturer:* Optech International Ltd., New Zealand. *Intended Use:* See notice at 62 FR 40334, July 28, 1997. *Reasons:* The foreign instrument provides video-enhanced imaging for teaching gross anatomy and tissue dissection for medical students. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–052. *Applicant:* Albert Einstein College of Medicine, Bronx, NY 10461–1602. *Instrument:* Ion Source Kit for Mass Spectrometer, Model ES002. *Manufacturer:* The Protein Analysis Company, Denmark. *Intended Use:* See notice at 62 FR 40334, July 28, 1997. *Reasons:* The foreign instrument provides low flow (nanoliters per minute) electrospray ionization for analysis of biopolymeric samples. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–056. *Applicant:* University of Vermont, Burlington, VT 05405–0084. *Instrument:* Roentgen Stereophotogrammetric Analysis System. *Manufacturer:* RSA BioMedical Innovations AB, Sweden. *Intended Use:* See notice at 62 FR 41361, August 1, 1997. *Reasons:* The foreign instrument provides three-dimensional measurements of the kinematics of skeletal or implant movements using radiographs of small implanted tantalum beads as markers during repeated examinations of body joints. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–059. *Applicant:* University of Connecticut, Storrs, CT 06269–2092. *Instrument:* Interfacial Rheometer, Model CIR–100. *Manufacturer:* Camtel, Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 42236, August 6, 1997. *Reasons:* The foreign instrument provides information on interfacial film strength, concentration and interactions, molecular unfolding and competition between molecules for interfacial space. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–060. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* NMR Spectrometer, Model Avance DRX–600. *Manufacturer:* Bruker Instruments, Inc., Switzerland. *Intended Use:* See notice at 62 FR 43710, August 15, 1997. *Reasons:* The foreign instrument provides a 600-MHz magnet with sample temperature stability to 0.01°C for study of solvation of macromolecules. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–061. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* IR Mass Spectrometer, Model DELTA^{Plus}. *Manufacturer:* Finnigan, Germany. *Intended Use:* See notice at 62 FR 42237, August 6, 1997. *Reasons:* The foreign instrument provides a magnetic sector mass analyzer with a precision of 1 ppt. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–062. *Applicant:* Clemson University, Clemson, SC 29634–0905. *Instrument:* Knee Joint Simulator. *Manufacturer:* UCL Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 43710, August 15, 1997. *Reasons:* The foreign instrument provides pneumatic control of simulator and meniscal knee design testing. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–067. *Applicant:* Princeton University, Princeton, NJ 08544–0033. *Instrument:* EPR Spectrometer, Model E580 FT/CW. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* See notice at 62 FR 43710, August 15, 1997. *Reasons:* The foreign instrument provides

operation of a frequency of 94 GHz for highest sensitivity. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–069. *Applicant:* University of California, Los Angeles, Los Angeles, CA 90095–1569. *Instrument:* Stopped-Flow Reaction Analyzer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 45397, August 27, 1997. *Reasons:* The foreign instrument provides sequential mixing (multi-mixing) capability. Advice received from: National Institutes of Health, September 2, 1997.

Docket Number: 97–070. *Applicant:* Yale University, New Haven, CT 06520–8202. *Instrument:* Signal Conditioner Processor, Model SIGMA–5–DF. *Manufacturer:* CardioDynamics BV, The Netherlands. *Intended Use:* See notice at 62 FR 45397, August 27, 1997. *Reasons:* The foreign instrument provides conductance catheter measurement of right and left ventricular volumes. Advice received from: National Institutes of Health, September 3, 1997.

Docket Number: 97–071. *Applicant:* Colorado School of Mines, Golden, CO 80401. *Instrument:* Mass Spectrometer, Model JMS–700T. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 62 FR 45397, August 27, 1997. *Reasons:* The foreign instrument provides high resolution tandem mass spectrometry for study of pyrolysis products from bacteria. Advice received from: National Institutes of Health, September 3, 1997.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–27994 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–066. *Applicant:* University of California, San Diego, San Diego, CA 92121. *Instrument:* Wave Measurement Equipment. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* See notice at 62 FR 43710, August 15, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) More reliable wave direction estimates at frequencies under 1.0 Hz and over 3.0 Hz with less variability within the range and (2) better wave spread estimates than comparable domestic equipment. Two domestic manufacturers of similar equipment advised on April 23, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–27995 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–068. *Applicant:* University of Florida, Gainesville, FL 32611. *Instrument:* IR Mass Spectrometer, Model DELTA^{Plus}. *Manufacturer:* Finnigan MAT, Germany. Intended Use: See notice at 62 FR 44949, August 25, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A magnetic sector analyzer with double direction (stigmatic) focusing and (2) a universal triple collector suitable for N_2, O_2, CO_2 and SO_2 measurements. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–27996 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate Review, Application No. 88–4A013.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to CISA Export Trade Group, Inc. ("CISA ETG") on October 19, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88–00013 was issued to CISA ETG on October 19, 1988 (53 FR 43253, October 26, 1988) and previously amended on May 31, 1990 (55 FR 23123, June 6, 1990); and December 16, 1991 (57 FR 883, January 9, 1992).

CISA ETG's Export Trade Certificate of Review has been amended. The only change in the CISA ETG Certificate was in its membership. The members of the CISA ETG Certificate are as follows:

(a) Ajax Magnethermic Corporation of Warren, OH;

(b) Allied Minerals Products, Inc. of Columbus, OH;

(c) American Colloid Company of Arlington Heights, IL;

(d) Ashland Chemical Company of Columbus, OH, and its controlling entity Ashland Oil, Inc. of Ashland, KY;

(e) Borden Chemical, Inc. for the activities of its Foundry and Industrial Products Divisions of Westchester, IL;

(f) Centrifugal Casting Machine Company, Inc. of Tulsa, OK;

(g) Delta Resins & Refractories, Inc. of Milwaukee, WI;

(h) Didion Manufacturing Company of St. Peters, MO;

(i) Eirich Machines, Inc. of Gurnee, IL;

(j) Equipment Merchants Int'l, Inc. of Cleveland, OH;

(k) Fargo Wear, Inc. of Detroit, MI;

(l) General Kinematics Corporation of Barrington, IL;

(m) George Fischer Disa, Inc. of Holly, MI;

(n) Hartley Controls Corporation of Neenah, WI, and its controlling entity the Neenah Corporation of Neenah, WI;

(o) Hickman, Williams & Company of Livonia, MI;

(p) Hunter Automated Machinery Corporation of Schaumburg, IL;

(q) Palmer Manufacturing Company of Springfield, OH;

(r) Roberts Sinto Corporation of Lansing, MI;

(s) Sand Mold Systems, Inc. of Newaygo, MI;

(t) Simpson Technologies Corp. of Aurora, IL;

(u) Superior Graphite Company of Chicago, IL;

(v) Thermtronix Corporation of Adelanto, CA;

(w) Vulcan Engineering Company of Helena, AL; and

(x) U.S. Filter/Wheelabrator Corp. of LaGrange, GA;

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 16, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–27925 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Binational Panel decision.

SUMMARY: On September 15, 1997 the Binational Panel issued its second decision in the review of the final antidumping duty administrative review made by the Secretaria de Comercio y Fomento Industrial de Mexico (SECOFI) respecting Flat Coated Sheet Products from the United States, Secretariat File No. MEX–94–1904–01. The Binational Panel unanimously affirmed in part and remanded in part the agency's remand determination. A copy of the complete Panel decision in Spanish or English is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The Binational Panel review in this matter was conducted in accordance with these Rules.

BACKGROUND: On September 1, 1994 Inland Steel Company and USX Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination that was published in the *Diario Oficial* on August 2, 1994. Complaints were filed by Inland, USX, Bethlehem Steel Corporation, LTV Steel Company, New Process Steel Corporation and Industrias Monterrey, S.A. de C.V. (IMSA). Briefs were filed by all participants and oral argument was held in accordance with the Rules.

First Panel Decision

In its first decision, issued on September 27, 1996, the Binational Panel unanimously affirmed in part and remanded in part the final determination. In its Order the panel affirmed all aspects of the final determination except for several specific instructions to SECOFI to take further actions. The Panel Order then enumerated specific actions involving competence and formality requirements, dumping issues, and injury issues. The Panel directed SECOFI, on remand, to comply with the specific instructions within 120 days of the date of the Decision.

Second Panel Decision

On April 30, 1997, SECOFI filed its determination on remand. Challenges were timely filed by two interested parties, New Process Steel Corp. and Inland Steel. New Process challenged certain dumping findings and Inland sought to have its dumping margin conformed to any recalculation of New Process's dumping margin. After review of all relevant information and written arguments made by counsel for the participants, the Panel issued its second decision on September 15, 1997. The Panel remanded the determination on remand to SECOFI to do the following:

(1) Fully inform New Process of all missing information and of all needed clarifications regarding proposed calculations of hand labor cost, overhead expense, profit and credit expenses for New Process, and regarding product exclusions for New Process;

(2) Give New Process an opportunity to provide additional information and to make clarifications regarding proposed calculations of hand labor cost, overhead expense, profit and credit expense, and regarding product exclusions;

(3) Based on the above, make new dumping calculations for New Process and for Inland.

The panel affirmed SECOFI's Remand Results of April 30, 1997, with respect to the allocation of raw material costs of New Process and in all other respects not addressed above. The Panel ordered the second remand determination to be completed within 120 days of the date of the opinion (by not later than January 13, 1998).

Dated: October 14, 1997.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 97–27721 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On September 29, 1997 Electroquimica Mexicana S.A. de C.V. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final countervailing determination made by the Secretaria de Comercio y Fomento Industrial, respecting Hydrogen Peroxide Originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion* on September 2, 1997. The NAFTA Secretariat has assigned Case Number MEX–97–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 29, 1997, requesting panel review of the final antidumping duty investigation described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 29, 1997);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 13, 1997); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 14, 1997.

James R. Holbein,

United States Secretary NAFTA Secretariat.

[FR Doc. 97–27722 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101497B]

American Lobster; Intent to Prepare an Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS to assess the impact on the natural and human environment of possible measures to manage fishing for American lobster in the U.S. Exclusive Economic Zone (EEZ). This NOI requests public input in the form of written comments on issues that NMFS should consider in preparing the EIS. Specifically, the EIS will examine alternatives available to NMFS in addressing the overfishing of American lobsters in the EEZ as well as state waters, including specific recommendations to the Secretary of Commerce (Secretary) by the Atlantic States Marine Fisheries Commission (ASMFC) in its proposed Amendment 3 to the Interstate Fishery Management Plan for Lobster. Public hearings for the EIS will be scheduled at a later date.

DATES: Written comments on the intent to prepare the EIS must be received on or before November 20, 1997. Public hearings will be announced in the **Federal Register** at a later date.

ADDRESSES: Comments should be sent to: Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1996 (61 FR 13478), NMFS published a proposed rule requesting comments on its initial determination to withdraw approval of the American Lobster Fishery Management Plan (FMP) under the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act)(16 U.S.C. 1801 *et seq.*), and its implementing regulations (50 CFR part 649), and develop regulations under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA)(Pub. L. 103-206). The stated reason for the proposed withdrawal of this FMP, as more fully discussed in the proposed rule, was to transfer the lead for lobster management to the states and the ASMFC. In establishing the need for the transfer of management authority, NMFS pointed to the fact that most of the lobster resource resides within state waters and, therefore, without full state cooperation, NMFS could not ensure that it could address overfishing concerns as required under the Magnuson Act (now called the Magnuson-Stevens Act). At that time, NMFS determined that ACFCMA would be a better vehicle for addressing conservation needs in the American lobster fishery, particularly since ACFCMA provides a mechanism for state compliance with any coastal management plans adopted by ASMFC. Nevertheless, NMFS made the promulgation of a final rule to withdraw the FMP contingent upon appropriate action by the ASMFC and the states to address lobster conservation that would allow NMFS to issue effective compatible Federal regulations under ACFCMA, as necessary.

At the time, withdrawal of the American lobster FMP, subject to this contingency, was supported in formal comments submitted by the New England Fishery Management Council (Council), the ASMFC, and Maine's Department of Marine Resources.

Since the issuance of this proposed rule, the Magnuson Act was significantly amended (including a name change to the Magnuson-Stevens Act) by the Sustainable Fisheries Act (SFA)(Pub. L. 104–297) on October 11, 1996. Most notably for purposes of American lobster management, the SFA required that NMFS identify annually all overfished fisheries within the jurisdictions of fishery management councils, and that fishery management councils submit FMPs or amendments to FMPs to end overfishing and to rebuild overfished stocks by September 30, 1998. The SFA further required that, if a council does not submit a required FMP or amendment to end overfishing by the deadline, the Secretary shall prepare the FMP or amendment to stop the overfishing and to rebuild the overfished stocks 9 months after September 30, 1998. On September 30, 1997, NMFS issued its list of overfished fisheries, which includes the American lobster fishery.

The SFA also amended the ACFCMA by adding section 810 which provides that, if no regulations have been issued under section 804(b) of ACFCMA by December 31, 1997, to implement a coastal fishery management plan (CFMP) for American lobster, the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the EEZ by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of:

(1) 100 lobsters (or parts thereof) for each fishing trip of a 24–hour or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

Section 804(b) of the ACFCMA states that, in the absence of an approved and implemented FMP under the Magnuson-Stevens Act, and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the EEZ that are—

1. Compatible with the effective implementation of an ASMFC CFMP; and

2. Consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

Meanwhile, the lobster board of the ASMFC has developed the final draft of Amendment 3 to the ASMFC lobster FMP. The draft amendment includes the following specific recommendations for Secretarial action in the EEZ to support the Commission's FMP:

1. Keep the moratorium on new Federal permits;

2. Continue the Federal regulation currently in place;

3. Require that fishermen comply with the landing laws of the state in which they land lobsters, regardless of where they were caught; and

4. Implement any further measures that will be required on a coastwide basis in this plan including—

Specifications of the Management Unit; Definition of Overfishing; Stock Rebuilding Schedule; Implementation Schedule; Minimum Size; Possession of V-notched Female Lobsters; Permits and Licensing; Maximum Trap Size; Escape Vents on Traps; Area-specific Trap Proposals; Moratorium on Entry; License Limitations; Measures That May Be Optionally Implemented in Various Areas; Management Measures Applicable to Mobile Gear Fisheries; and Monitoring and Reporting.

ASMFC must decide whether to adopt the lobster board's draft Amendment 3 at its next meeting on October 21, 1997. If Amendment 3 is adopted by ASMFC with substantially the same measures as currently proposed, it is not certain whether overfishing will be adequately addressed, even if NMFS were to withdraw the Magnuson-Stevens Act lobster FMP and adopt compatible Federal regulations for the EEZ portion of the lobster fishery. If NMFS determines that overfishing will not be adequately addressed by the ASMFC amendment, the contingency for withdrawing the Magnuson-Stevens Act FMP will not have been met.

Therefore, NMFS is facing a difficult dilemma given the new requirements in the Magnuson-Stevens Act to address overfishing in the lobster fishery by a time certain as opposed to NMFS' stated intent to withdraw the lobster FMP and transfer the lead for lobster conservation management to the ASMFC and the states. Complicating this scenario is the new ACFCMA provision that mandates a possession limit on lobsters by non-trap vessels if the Magnuson-Stevens Act FMP is not withdrawn and replaced by Federal regulations under ACFCMA.

Although NMFS has not yet determined under which regulatory authority to proceed to implement conservation measures in the lobster fishery because ASMFC has not made a final determination on its Amendment 3, NMFS has decided that it must move forward with the process of implementing significant conservation measures to address overfishing in the lobster fishery. Accordingly, NMFS is issuing this NOI to prepare an EIS and soliciting public comments on the impacts of possible lobster conservation measures. This step is necessary to implement such measures, whether they are promulgated under the Magnuson-Stevens Act or ACFCMA. In addition to the possible measures recommended by ASMFC draft Amendment 3, described in this document, NMFS is also considering other measures, including, but not limited to the following: (1) Effort caps based on an historic number of traps or a flat cap of traps for all Federal limited access lobster permitted vessels that take lobsters in the EEZ by a method of traps, with possible consideration of the areas fished; (2) a trap reduction program to 1991 fishing levels; (3) a percent cap on landings based on the total reported catch of previous years allowable catch of lobster, or 100 lobsters (or parts thereof) for each fishing trip of a 24–hour or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period), or 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer, for all Federal limited access

lobster permitted vessels that take lobsters in the EEZ by a method other than traps, (4) a prohibition on the taking or possession of lobster in the EEZ; (5) the application of current Federal regulations (50 CFR part 649) to the EEZ under ACFCMA; and (6) status quo or no action taken. NMFS also requests comments on the appropriate regulatory authority under which it should proceed with lobster conservation measures.

NMFS has determined that the preparation of an EIS is appropriate, because of the potentially significant impact of EEZ regulations on the human environment. All of the Federal EEZ measures recommended in draft Amendment 3 to the ASMFC FMP will be assessed also during the EIS process. Participants in this fishery will be affected and may face more restricted harvests of lobster while the natural stocks of lobster are allowed to recover.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–27966 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101597A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 860–1374

SUMMARY: Notice is hereby given that Mr. Michael deGruy, The Film Crew, 629 State Street, Suite 222, Santa Barbara, California 93101, has been issued a permit to take by Level B harassment gray whales (*Eschrichtius robustus*) and northern elephant seals (*Mirounga angustirostris)* for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, (301) 713-2289.

SUPPLEMENTARY INFORMATION: On September 3, 1997, notice was published in the **Federal Register** (62 FR 46484) that the above-named applicant had submitted a request for a permit to take gray whales and northern elephant seals by Level B harassment during the course of commercial photographic activities in California waters. The requested permit has been issued, under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: October 15, 1997.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 97–27929 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Request for Comments on Patent Formalities Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: The Patent and Trademark Office is seeking comments to obtain views of the public on the international effort to simplify the formal requirements associated with patent applications and patents and the consequent changes to United States law and practice. Comments may be offered on any aspect of this effort.

DATES: All comments are due by December 1, 1997.

ADDRESSES: Persons wishing to offer written comments should address those comments to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231, marked to the attention of Mrs. Lois E. Boland.

Comments may also be submitted by facsimile transmission to (703) 305–8885 or by electronic mail through the Internet to plt.comments@uspto.gov. All comments will be maintained for public inspection in Room 902 of Crystal Park II, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mrs. Lois E. Boland by telephone at (703) 305–9300, by fax at (703) 305–8885 or by mail marked to her attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

The United States has been involved in an effort to reduce the formal requirements associated with patent applications and patents in the different countries of the world. A committee of experts, meeting under the auspices of the World Intellectual Property Organization (WIPO), continues to develop treaty articles and rules which attempt to minimize the formal requirements associated with patent applications and patents. Upon conclusion, these treaty articles and rules will simplify the formal obligations and reduce the associated costs for patent applicants and owners of patents in obtaining and preserving their rights for inventions in many countries of the world. The next (5th) committee of experts meeting will take place at WIPO in December of 1997. It is likely that two additional such meetings will take place in 1998. The issue of when a Diplomatic Conference will be convened to conclude these negotiations will be discussed in a March 1998 meeting at WIPO. WIPO has suggested that a 1999 Diplomatic Conference may be possible.

The United States Patent and Trademark Office (USPTO), leading the negotiations for the United States, is interested in obtaining comprehensive comments to assess continued support for the effort. Prior to each of the previous meetings of the committee of experts, the USPTO informally solicited and received comments on the then-current drafts of the treaty articles, rules and notes. In light of the impending conclusion of this effort, the USPTO desires to ensure that the text of the treaty is disseminated as widely as possible and the opportunity to provide comments is correspondingly comprehensive.

Written comments may be offered on any aspect of the draft treaty articles, rules or notes or expected implementation in the United States. Comments are also welcome on the following issues:

—The formalities/substantive distinction, discussed, specifically, with respect to Article 5, below;
—The subject matter appropriate for treaty articles versus that which should be relegated to rules; and
—Whether this effort should be concluded by a separate treaty or as a protocol to the Patent Cooperation Treaty.

2. Brief Summary of the Draft Treaty

The current text of the draft treaty includes 16 articles, 17 rules and associated notes. A brief summary of selected articles and, where significant, associated rules follows. To the extent that a given article is not summarized, it is considered to be self-explanatory. Insofar as this effort is focused upon and limited to formal matters associated with patent applications and patents, the USPTO expects that, upon implementation, changes to our patent law would be minimal. However, to the extent the need for any such change has been identified for a given draft article or rule, it is noted below. This discussion is intended, only, to highlight various articles and rules; it is not intended as a comprehensive treatment of the draft texts. The draft texts, identified in Part 3, below, should be consulted for a complete understanding of the effort that is under way.

Article 1—Abbreviated Expressions—This article provides definitions for terms used throughout the text of the draft articles and rules. For the most part, this article is self-explanatory. The USPTO has supported a broadening of the definition for the term "owner" to include owners of both applications and patents.

Article 2—Applications and Patents to Which the Treaty Applies—This article defines the scope of the treaty by virtue of the types of applications and patents that are intended to be encompassed by its terms.

Article 3—National Security—This article preserves the right of Contracting Parties to apply measures deemed necessary for the preservation of national security.

Article 4—Filing Date—This article is viewed by the USPTO as one of the more important features of this effort. It mandates that a Contracting Party must provide a filing date for an application as the date that the following elements are filed with its Office:

(i) An indication that submitted elements are intended to be an application;

(ii) Indications allowing the identity of the applicant or person submitting the application to be established or contacted;

(iii) A description; and

(iv) If the description is not in an accepted language, an indication that the application contains a description.

This filing date requirement is fairly minimal and would greatly simplify the conditions imposed upon the grant of dates to patent applications throughout the world. Note that this article would mandate the acceptance, for filing date purposes, of patent applications in any language, subject to the furnishing of later translations. The USPTO has supported this article, with the knowledge that our claim requirement in section 111(a) of title 35, United States Code, would have to be deleted. Note that such a requirement is not included for provisional applications filed under section 111(b) of title 35, United States Code. The remainder of the article and Rule 2 provide additional details concerning the grant of filing dates.

Article 5—Application—This article is another of the more important features of this effort. It mandates that no Contracting Party may impose any requirement relating to the form or contents of an application which is different from or additional to any requirement applicable under the Patent Cooperation Treaty (PCT) to an international application. In essence, this article states that if an applicant submits an application to a national office that complies with the requirements of the PCT, that national office can impose no different or additional requirements on that national application. Of course, Contracting Parties would be free to impose requirements that are more liberal, from an applicant's perspective, than the PCT. Of note, the International Bureau of WIPO has expressed the view that the incorporation of the "form or contents" requirements from the PCT into this article would mandate the application of the PCT unity of invention standard for all national applications. The USPTO has taken exception to this view insofar as unity of invention is considered to be a substantive matter that is outside the scope of this effort. This article also provides that the Regulations shall include requirements regarding the filing of applications in paper and electronic form.

Article 6—Validity of Patent; Revocation—This article mandates that once a patent has been granted, it may be revoked or invalidated on the ground of non-compliance with certain formal requirements enunciated in Article 5.

Article 7—Representation; Address for Service—This article addresses requirements regarding representation, address for service and powers of attorney. Importantly, the article provides that Contracting Parties may not mandate representation for, among other things, the filing of a translation, the furnishing of drawings or the payment of any fee.

Article 8—Signature; Article 9—Request for Recordal of Change in Name and Address; Article 10—Request for Recordal of Change in Ownership; Article 11—Request for Recordal of Licensing Agreement or Security Interest; and Article 12—Request for Correction of a Mistake. These provisions, and associated rules, are considered to be self-explanatory. It has been the position of the USPTO that much of the detail in these articles would be more appropriate for a rule insofar as including such a level of detail in treaty articles may render the result unnecessarily inflexible. (While this issue is highlighted here with respect to these enumerated articles, it may apply to the level of detail associated with other articles.)

Article 13—Extension of a Time Limit Fixed by the Office—This article, with Rule 14, mandates that the Offices of all Contracting Parties must provide for, at the least, a first extension for any time limit set by the Office.

Article 14—Further Processing; Restoration of Rights—This article mandates that all Contracting Parties must provide for the further processing of applications and the restoration of rights related to applications/patents where compliance with a requirement takes place outside of a time limit originally established by an Office. The article also provides for intervening rights under certain circumstances.

Article 15—Addition and Restoration of Priority Claim—This article provides for the late claiming of priority of an earlier application where a subsequent application is timely filed and for the delayed filing of the subsequent application. The United States currently permits late claiming of priority and supports the concept of accepting the delayed filing of the subsequent application. With regard to accepting the delayed filing of a subsequent application, an amendment to section 119 of title 35, United States Code, would be warranted.

Article 16—Regulations—This provision provides the basis for the draft rules that follow. As noted above, there are, currently, 17 draft rules that accompany the text of the treaty.

3. Text of the Draft Treaty, Rules and Notes

The text of the current draft of the patent law treaty, with associated rules and notes, is available via the USPTO's World Wide Web site at http://www.uspto.gov via a link to WIPO's World Wide Web site. The documents are PLT/CE/V/2 and PLT/CE/V/3.

Requests for paper copies of the text may be made in writing to Mrs. Lois E.

Boland at the above address or by telephone at (703) 305–9300.

Dated: October 15, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–27973 Filed 10–21–97; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 21, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 16, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Common Core of Data (CCD) Surveys.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 57
Burden Hours: 9,635
Abstract: The CCD Survey collects data annually from state education agencies about student enrollments, graduation, dropout; education staff; school and agency characteristics; and revenues and expenditures for public elementary and secondary education. The Department will use this information to provide an official listing of public elementary and secondary schools and education agencies in the United States; and provide basic information and descriptive statistics on public elementary and secondary schools and schooling, including school finance.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Applications for the Programs to Encourage Minority Students to Become Teachers.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 150
Burden Hours: 4,800
Abstract: This application is essential to conducting the competition for new awards in fiscal year 1998 for eligible institutions of higher education and state and local educational agencies for the Programs to Encourage Minority Students to Become Teachers.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure.
Frequency: On occasion.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 2,600,000
Burden Hours: 433,160
Abstract: This form is the means by which a Federal Direct Stafford/Ford and/or Federal Direct Unsubsidized Stafford/Ford Loan borrower promises to repay his or her loan.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Direct PLUS Loan Application and Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 210,000
Burden Hours: 105,000
Abstract: This form is the means by which a Federal Direct PLUS Loan borrower promises to repay his or her loan.

Office of Postsecondary Education

Type of Review: Revision.
Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.
Frequency: On occasion.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 52,500
Burden Hours: 26,250
Abstract: This form is the means by which an endorser for a Federal Direct PLUS Loan borrower with an adverse credit history applies for and promises to repay the Federal Direct PLUS loan if the borrower does not pay it.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Client Assistance Program (CAP) Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57
Burden Hours: 342

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services to any individual with a disability.

[FR Doc. 97–27889 Filed 10–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of committee teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days' notice because of the need to accommodate the schedules of the members.

DATE: October 29, 1997.

TIME: 4–6 p.m.

LOCATION: 80 F St., NW, Room 100, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Executive Committee will approve for publication on behalf of the Board Standards for the Conduct and Evaluation of Research: Assessing Performance on Contracts, Grants, and Cooperative Agreements; and discuss possible research topics for FY 99. A final agenda will be available from the Board office on October 22. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: October 16, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–27934 Filed 10–21–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–158 and EA–160]

Applications to Export Electric Energy; Williams Energy Services and Rochester Gas and Electric

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of applications.

SUMMARY: Williams Energy Services Company, a power marketer, and Rochester Gas and Electric, a public utility, have submitted applications to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 21, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Canada, pursuant to section 202(e) of the FPA:

Applicant	Application date	Docket No.
Williams Energy Services Company (WESCO)	10/1/97	EA–158
Rochester Gas and Electric Corporation (RG&E)	10/10/97	EA–160

WESCO, a power marketing company, does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. WESCO proposes to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S. RG&E is a regulated public utility serving customers in and around Rochester, New York. RG&E proposes to transmit to Canada electric energy that is excess to its system or purchased from electric utilities or other suppliers within the U.S.

The applicants would arrange for the exported energy to be trahsmitted to Canada over the international facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in these applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters.

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the

FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on WESCO's request to export to Canada should be clearly marked with Docket EA–158. Additional copies are to be filed directly with Michael E. Small and Davis S. Berman, Wright & Talisman, P.C., 1200 G Street, NW, Suite 800, Washington, DC 20005. Comments on RG&E's request to export to Canada should be clearly marked with Docket EA-160. Additional copies are to be filed directly with Elizabeth W. Whittle, Nixon, Hargrave, Devans & Doyle LLP, Suite 700, One Thomas Circle, Washington, DC 20005–5802 and Gerard C. Walter, Director of Generation Marketing, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on October 16, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–27950 Filed 10–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance for Cooperative Automotive Research for Advanced Technologies (CARAT) Program Solicitation No. DE–PS02–98EE50493

AGENCY: Chicago Operations Office, (DOE).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy (DOE) invites applications for federal assistance for research on the Cooperative Automotive Research for Advanced Technologies (CARAT) Program. This program is a set aside for small businesses and higher eduction institutions. The CARAT Program is for research and development (R&D) in the following areas: vehicle systems, advanced gas turbines, fuel cells, batteries flywheel energy storage, compression ignition direct injection (CIDI), and alternative fuels.

DATES: Applications are to be received no later than February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Tanga Baylor, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, Telephone No. (630) 252–2214, FAX No. (630) 252–5045, Internet—Tanga.Baylor@CH.DOE.Gov

SUPPLEMENTARY INFORMATION: There are 18 topics for which the DOE invites Financial Assistance Applications: Reduction of Thermal Load in Passenger Compartments; Reduction of Energy Consumption of Power Accessories; Low Cost, Compact, High Efficiency, Traction Motor for Electric Vehicles/ Hybrid Electric Vehicles; Advanced Water-Gas Shift Catalysts; Fuel Processing for Fuel Cell Systems; Advanced Membranes and Membrane-Electrode Assemblies; Low Cost CO and Hydrogen Gas Sensors; Simulation of Fuel Cell Performance; Simple Particulate Emissions Measuring System; Variable Valve Timing Device for High Speed CIDI Engine; Measurement System for Mass Flow Rate of Oxygen and Hydrocarbons of an Engine Intake; Novel Fuel Injection System with Flexible Rate Control; Novel, Improved Desulfurization Process for Diesel Fuel; Device for Monitoring Natural Gas Vehicle (NGV) Storage Cylinders; Computer Model for Simulation of Battery Systems; Development of Novel Battery System(s); Light Weight, Low Cost, Flywheel Containment System; Improved or Alternative concept for Advanced Electrochemical Capacitor.

The solicitation will be available on the INTERNET to view and download at http://www.ch.doe.gov/business/ACQ.htm (It is critical that ACQ be in uppercase and all others are lower case). A limited number of printed copies will be available at the Customers' Coordination Meeting (CCM) the week of October 27, 1997 in Detroit, Michigan, otherwise printed copies will not be available from this office, copies must be downloaded from the INTERNET. For information on the CCM meeting contact: Conference Management Associates, Inc. 1401 Spring Lake Drive, Haymarket, VA 20169–1008, FAX (703) 754–4261.

Issued in Chicago, Illinois on September 26, 1997.

John D. Greenwood,

Manager, Acquisition and Assistance Group, Contracting Officer.

[FR Doc. 97–27949 Filed 10–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Thursday, November 6, 1997, 8:30 a.m.–4:00 p.m.

ADDRESSES: ANA Hotel, Ballroom I, 2401 M Street, NW, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Thursday, November 6, 1997

8:30–8:45 AM Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman.

8:45–9:45 AM Briefing: Reliability Council Progress in Addressing Key Issues—David Nevius, Vice President, NERC.

9:45–10:00 AM Break.

10:00–11:30 AM Working Session: Discussion of a Draft Position Paper on a Self-Regulating Reliability Organization.

11:30–12:00 PM Public Comment Period.

12:00–1:15 PM Lunch.

1:15–2:30 PM Working Session: Discussion of Draft Outline of Technology Issues Affecting Reliability.

2:30–3:45 PM Panel Discussion: The Role of ISOs in Maintaining Reliability.

3:45–4:00 PM Public Comment Period.

4:00 PM Adjourn.

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on October 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–27959 Filed 10–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–11–000]

Algonquin Gas Transmission Company; Notice of Request Under Blanket Authorization

October 16, 1997.

Take notice that on October 7, 1997, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas, 77056–5310, filed in the above docket, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations, for authorization to construct a delivery point in Rochester, Plymouth County, Massachusetts, so that Algonquin may provide natural gas deliveries to Colonial Gas Company, (Colonial), a local distribution company and existing customer, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Algonquin proposes to construct and install a 4-inch tap valve on Algonquin's G–8 Lateral at an existing 20-inch loop, at approximate mile Post 13.05 in Rochester, Plymouth County, Massachusetts. In addition to the facilities described above, Algonquin will install, or cause to be installed, a 4-inch turbine meter run and associated valving, approximately 100 feet of 4-inch pipeline which will extend from the Meter Station to the Tap and electronic gas measurement equipment.

Colonial will install or cause to be installed boilers, heat exchanger, 2-inch regulator runs, odorant injection equipment, and facilities to house and support Algonquin's meter and EGM equipment.

Algonquin states that the transportation service will be rendered within Colonial's existing maximum daily transportation quantities pursuant to Colonial's existing firm service agreements and Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.

Colonial will reimburse Algonquin 100 percent of the costs and expenses that Algonquin will incur for installing the facilities. Such costs and expenses are estimated to be approximately $182,350 excluding an allowance for federal income taxes. Algonquin states that the installation of the delivery point will have no effect on Algonquin's peak day or annual deliveries. Algonquin submits that its proposal will be accomplished without detriment or disadvantage to Algonquin's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27905 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–178–001 Docket No. OA96–167–001]

Cambridge Electric Light Company; Commonwealth Electric Company; Notice of Filing

October 16, 1997.

Take notice that, on August 15, 1997, Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) submitted for filing revised tariff sheets and customer indices to implement changes to their respective open access transmission tariffs, as required by the Commission's order issued July 31, 1997 in Allegheny Power Systems, Inc., 80 FERC ¶ 61,143. The instant filings are requested to be effective as of July 9, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214. All such motions or protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27918 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–15–004]

Central Louisiana Electric Company, Inc.; Notice of Filing

October 16, 1997.

Take notice that on August 15, 1997, Central Louisiana Electric Company, Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regualtory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27917 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–16–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 16, 1997.

Take notice that on October 9, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP98–16–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by retirement approximately 15.6 miles of 6- and 8-inch pipeline located in McKean County, Pennsylvania, under its blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to abandon its lateral transmission Line 10262 in its entirety (15.6 miles) in McKean County, Pennsylvania. Columbia explains the pipeline is in a deteriorating condition and the abandonment will avoid annual operation and maintenance expenses as well as the cost of pipeline replacement. Columbia states that it has no points of delivery from Line 10262. Columbia relates that its 8-inch Line 4226 shares a right-of-way with Line 10262, and therefore, Columbia asserts it will be able to continue to provide reliable service in that area.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27908 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4110–000]

The Detroit Edison Company; Notice of Filing

October 8, 1997.

Take notice that on September 24, 1997, The Detroit Edison Company filed an amendment to its filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 22, 1997. Protests will be considered by the Comission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27915 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4116–001]

Inventory Management and Distribution Company, Inc.; Notice of Filing

October 16, 1997.

Take notice that on October 7, 1997, Inventory Management and Distribution Company, Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27913 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–46–002]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1997.

Take notice that on October 10, 1997, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, with the following tariff sheets to be effective October 1, 1997:

Second Substitute Fourth Revised Sheet No. 4

Second Substitute Fourth Revised Sheet No. 5

Kentucky West states that the proposed tariff sheets are submitted in compliance with the "Order of the Director Accepting, Rejecting and Allowing Withdrawal of Tariff Sheets" issued by the Federal Energy Regulatory Commission ("Commission") on September 29, 1997 in Docket No. TM98–1–46–001. In the Order, the Commission accepted the tariff sheets effective October 1, 1997, subject to conditions.

Kentucky West states that the tariff sheets proposed herein remove the minor typographical changes which were not ACA related as required by the Commission.

Pursuant to Section 154.207 of the Commission's Regulations, Kentucky West requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27923 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–18–000]

Koch Gateway Pipeline Company, Notice of Request under Blanket Authorization

October 16, 1997.

Take notice that on October 9, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–18–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to establish three new delivery taps and to abandon eight delivery taps, located in St. Tammany Parish, Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kock Gateway proposes to install three new delivery taps and minor piping, located in St. Tammany Parish, Louisiana, to tie over certain taps to its adjacent pipeline facilities, Index 300, or to the facilities of a local distribution company, Entex, Inc. (Entex). Koch Gateway also proposes to abandon eight farm taps by plugging and removing all valves and above-ground facilities on its Index 276 facilities, also in St. Tammany Parish, Louisiana. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of Entex. Koch Gateway asserts service will be continued to the affected end-users through new taps on an adjacent Koch Gateway pipeline. Koch Gateway declares that Entex concurs with the proposed abandonment and tie-over measures.

Kock Gateway states that the purchaser of Index 276, Koch Pipeline, Inc., a subsidiary of Koch Industries, will reimburse them for the cost of the proposed construction and abandonment activities, estimated to be $44,644.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27909 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–176–005]

MIGC, Inc.; Notice of Compliance Filing

October 16, 1997.

Take notice that on October 10, 1997 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

NIGC states that the purpose of the filing is to comply with the Commission's June 10 Letter Order (as modified by a June 20 Errata to the Letter Order) directing MIGC to file to reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587–C.

MIGC states that copies of its filing are being mailed to its jurisdictional customers, all parties on the official service list in Docket No. RP97–176–000, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27921 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–2–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 1997.

Take notice that on October 10, 1997 National Fuel Gas Supply Corporation (National) tendered for filing to its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheets Nos. 434 and 435, proposed to become effective November 14, 1997.

National's proposed tariff sheets are filed to comply with the requirement in Section 250.16 of the Commission's Regulations (18 CFR Section 250.16) that pipelines which conduct transportation transactions with affiliated marketing or brokering entities must update and refile, to reflect changes, the tariff provisions required by that regulation.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27916 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–14–000]

Northern Natural Gas Company; Notice of Application

October 16, 1997.

Take notice that on October 9, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–14–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by sale to PG&E–TEX, L.P. (PG&E), certain compression, pipeline, treating, dehydration and delivery point facilities, with appurtenances, located in the State of Texas, and the services rendered thereby, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Northern proposes to convey to PG&E, facilities located in the Permian Area of West Texas, which consist of 250 miles of pipeline ranging from 6-inch to 24-inch in diameter, nine compressor units located at two compressor stations, treating and dehydration facilities, all delivery points located along the length of the pipelines to be abandoned, and all appurtenant facilities. Northern states that it will continue to transport natural gas that is received at the interconnections between Northern's facilities and what are proposed to be PG&E's facilities pursuant to any valid transportation service agreements. In addition, Northern states that PG&E intends to file a petition for declaratory order seeking a determination that the subject facilities, once conveyed to PG&E, are intrastate pipeline facilities exempt from the Commission's jurisdiction under Section 2(16) of the Natural Gas Policy Act of 1978 and/or gathering facilities exempt from Commission jurisdiction under Section 1(b) of the NGA.

It is stated that Northern currently maintains rate schedules in its FERC Gas Tariff, Original Volume No. 2 for certain individually certificated service agreements with receipt or delivery points on the subject facilities. Northern states that it is not currently providing service under these agreements but has not previously abandoned such agreements. Therefore, Northern states that it is requesting permission and approval to abandon service under Rate Schedules ES–1, T–31, X–62 and X–89.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27907 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–315–005]

Northwest Pipeline Corporation; Notice of Compliance Filing

October 16, 1997.

Take notice that on October 10, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1997:

First Revised Sheet No. 4
Substitute First Revised Sheet No. 232–H
Substitute First Revised Sheet No. 232–I
Substitute First Revised Sheet No. 232–J
Substitute Original Sheet No. 232–K

Northwest states that the purpose of this filing is to comply with the Commission's September 25, 1997 Order on Technical Conference and Accepting Compliance Filing Subject to Conditions in Docket Nos. RP97–315–000 and RP97–315–004 (80 FERC, Section 61,361) related to Northwest's proposed pooling service.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP97–315.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27922 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–591–000]

Oklahoma Gas and Electric Company; Notice of Filing

October 16, 1997.

Take notice that on July 30, 1997 and September 5, 1997, Oklahoma Gas and Electric Company, tendered for filing an amendment to its Open Access Transmission Tariff to conform the Tariff to the Offer of Settlement approved in Docket No. OA96–17–000.

Copies of this filing have been sent to the affected customers, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27920 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–24–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

October 16, 1997.

Take notice that on October 14, 1997, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–24–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct, own and operate seven new delivery points for the purpose of establishing interconnections with Panhandle Field Services Company (Field Services) in Hanford County, Texas and Texas County, Oklahoma, to provide start up gas for Field Services compression facilities, under blanket certificate issued in Docket No. CP83–83–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

At each delivery point, the proposed project will consist of (1) adding a side gate on Applicant's existing 4-inch, 6-inch, or 10-inch pipeline, (2) installing a 2-inch check valve and approximately 5 feet of 2-inch connecting pipeline, and (3) installing a 2-inch orifice meter run in order to provide start up gas for Field Services' compression facilities. Each new delivery tap will provide up to 20 Mcf per hour (0.48 Mcf per day) of natural gas at each of the seven locations.

The estimated cost to construct the proposed facilities is approximately $62,000 and will be 100% funded by Field Services. Applicant submits that the proposal herein will be accomplished without detriment or disadvantage to Applicant's other customers, that the total volumes delivered will not exceed the total volumes authorized prior to this request, and that the proposal is permitted by Applicant's tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27911 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See,* 22 FERC ¶62,043 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–22–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

October 16, 1997.

Take notice that on October 14, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–22–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new delivery point for City of Florence Natural Gas Department (Florence) located in Lauderdale County, Alabama, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct a new delivery point located on its system by Milepost 554–1+5.6 and Milepost 554–3+5.6 in Lauderdale County, Alabama, to provide delivery of up to

20,000 Dekatherms per day of natural gas to Florence pursuant to an existing firm transportation agreement and Tennessee's Rate Schedule FT–A. Tennessee states that it will install two six-inch hot taps, electronic gas measurement (EGM) equipment and inspect Florence's installation of six-inch interconnecting pipe, dual orifice measurement, and flow control equipment. Tennessee states that Florence will provide the meter site, all weather access road, electrical service, telephone service, site preparations and site improvements. Tennessee states that the measurement facilities will be located on a site adjacent to and along Tennessee's existing right-of-way. Tennessee states that it will own, operate and maintain the hot tap and EGM and will operate the measurement facilities. Tennessee states that Florence will own, operate and maintain the interconnecting pipe and flow control equipment and will own and maintain the measurement facilities. Tennessee states that Florence will reimburse Tennessee for the cost of this project which is approximately $106.278.

Tennessee states that the total quantities to be delivered for Florence will not exceed the total quantities authorized. Tennessee asserts that its tariff does not prohibit the addition of new delivery points, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery meter without detriment or disadvantage to any of Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27910 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–13–000]

Transwestern Pipeline Company; Notice of Application

October 16, 1997.

Take notice that on October 9, 1997, Transwestern Pipeline Company (Transwestern), having its main offices at 1400 Smith Street, Houston, TX 77002, filed in the above docket, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act seeking permission to abandon by sale to PG&E–TEX, L.P. (PG&E), its Gomez Lateral located in Ward and Pecos Counties, TX. The Gomez Lateral, consisting of approximately 33 miles of 20-inch diameter pipeline and other appurtenances, is to be sold to PG&E for $2,500,000.

Transwestern asserts that these facilities are no longer necessary for it to transport gas for its merchant function and that PG&E will assume all future service obligations, and operational and economic responsibilities attached to these facilities. Transwestern avers that; (1) upon approval of the sale of these facilities, and (2) PG&E receiving a declaratory order from the Commission finding that the subject facilities, once conveyed, are intrastate pipeline facilities, exempt from jurisdiction under Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA), PG&E will integrate the subject facilities into its intrastate pipeline system and be able to provide a similar transportation service to shippers requesting service on the Gomez Lateral.

Transwestern also states that the sale of the Gomez Lateral is contingent upon approval of Northern Natural Gas Company's request for abandonment by sale to PG&E, of certain facilities that are in close proximity to and interconnected with the Gomez Lateral, as filed in Docket No. CP98–14–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27906 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3561–001]

Virginia Electric & Power Company; Notice of Filing

October 16, 1997.

Take notice that on September 23, 1997, Virginia Electric & Power Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27912 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–203–001]

Western Resources Inc.; Notice of Filing

October 16, 1997.

Take notice that on August 15, 1997, Western Resources Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27919 Filed 10–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400117; FRL–5750–6]

Public Meetings on the Toxics Release Inventory Reporting Form

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA will hold approximately nine public meetings over the next year to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, Form R. The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. This notice announces three upcoming meetings. Additional meeting dates will be announced in future **Federal Register** notices.

DATES: The meetings will take place:

1. Thursday, November 13, 1997, 1 p.m. to 4 p.m., U.S. Environmental Protection Agency, East Tower, Rm. 542, 401 M St., SW., Washington, DC. Register to speak by 5 p.m., Friday, November 7, 1997.

2. Tuesday, November 18, 1997, 9 a.m. to 12 p.m., U.S. Environmental Protection Agency, Marianas Conference Room, 75 Hawthorne St., San Francisco, CA. Register to speak by 5 p.m., Thursday, November 13, 1997.

3. Thursday, November 20, 1997, 9 a.m. to 12 p.m., U.S. Environmental Protection Agency, Rm. 325 (3rd floor), 77 West Jackson Boulevard, Chicago, IL. Register to speak by 5 p.m., Friday, November 14, 1997.

ADDRESSES: All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460. Each comment must bear the docket control number "OPPTS–400117."

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Michelle Price, (Mail Stop 7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Telephone: (202) 260–3372; Fax number: (202) 401–8142; e-mail: price.michelle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA will hold approximately nine public meetings over the next year to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, Form R. The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. Topics for comment include the following: format of the Form R; nomenclature used in the Form R; opportunities for burden reduction in both the Form R and the Form A; additional clarification of the elements in the Form R; and EPA's presentation of the data in public information documents.

The sections of the Form R that EPA would like specific comment on are sections 5, 6 and 8. In section 5, there have been a number of issues raised over the years with regard to the definition of "release," particularly with respect to Class I underground injection wells and RCRA Subtitle C landfills. Several commenters believe that EPA's interpretation of the EPCRA definition of "release" will lead to the misperception that a reported EPCRA section 313 "release" necessarily results in an actual exposure of people or the environment to a toxic chemical. The Agency would like to hear suggestions on ways to collect and disseminate the data that are consistent with the Agency's interpretation of the EPCRA definition of "release" and would address the concerns raised regarding public misperception.

There have also been a number of issues raised with regard to the reporting of toxic chemicals in wastes in section 8 of the Form R. Section 8 collects information on waste managed at the facility whether or not the waste was generated at the reporting facility. Some individuals are concerned about public misperception of the data in section 8 because of the focus on the amount of waste managed at the facility, not waste generated. EPA would like comments on ways to change section 8 of the Form R which would continue to allow the user to assess wastes managed by the facility but would minimize the perception that the wastes reported in section 8 were generated by the reporting facility.

On any of the above issues, EPA would like to receive specific comments

from interested parties for changes, modifications, deletions, and/or additions of data elements to the Form R and the Form A.

Individuals wishing to attend these meetings must sign-up in advance in order to assure that all participants have an opportunity to speak. Depending on the number of individuals registered, oral presentations or statements will be limited to approximately 5 to 15 minutes. To register, contact Michelle Price at the number listed under "FOR FURTHER INFORMATION CONTACT." When registering, give your name, organization, postal (and electronic, if any) mailing address, telephone and fax numbers. If there is insufficient interest in any of the meetings, that meeting may be canceled. Individuals registered will be notified in the event a meeting is canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or accommodation reservations.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPPTS–400117" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–400117." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Community right-to-know.

Dated: October 17, 1997.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–27976 Filed 10–21–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority 5 CFR 1320, Comments Requested

October 16, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments December 22, 1997.

ADDRESSES: Direct all comments to Jerry Cowden, Federal Communications Commission, Room 240–B, 2000 M St., N.W., Washington, DC 20554 or via internet to jcowden@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection contact Jerry Cowden at 202–418–0447 or via internet at jcowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0346.
Title: 47 CFR 78.27 License Conditions.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 340.
Estimated Time Per Response: 0.167 hours (10 minutes).
Total Annual Burden to Respondents: We estimate that Cable Television Relay Service (CARS) licensees will, on an annual basis, file approximately 285 notifications and 55 requests for additional time to construct. The average burden for each filing is estimated to be 10 minutes (0.167). 340 filings × 0.167 hours = 57 hours.
Total Annual Cost to Respondents: There are no capital or start-up costs. Total operation and maintenance costs: the cost associated with postage and stationery for complying with the filing requirements is estimated to be $1 per response. 340 × $1 = $340.
Needs and Uses: 47 CFR 78.27 requires licensees of CARS stations to notify the Commission in writing when the station commences operation. It also requires a CARS licensee needing additional time to complete construction of the station to request an extension of time 30 days before the expiration of the one-year construction period. The information is filed with Commission staff as a means to provide accurate records of actual CARS channel usage for frequency coordination purposes.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–27941 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 16, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 21, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0626.
Title: Regulatory Treatment of Mobile Services.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 1,074.
Estimated Time Per Response: 1–10 hours.
Cost to Respondents: N/A.
Total Annual Burden: 6,673 hours.
Needs and Uses: The information requested provides the Commission with technical, operational and licensing data for private mobile radio service licensees that have been reclassified as commercial mobile radio service providers. This information is necessary to establish regulatory symmetry among similar mobile services.
OMB Approval Number: 3060–0761.
Title: Closed Captioning of Video Programming.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households; business or other for-profit.
Number of Respondents: 4,300.
Estimated Time Per Response: .5–5 hours.
Cost to Respondents: $42,100.
Total Annual Burden: 5,750 hours.
Needs and Uses: In this proceeding, the Commission adopted a regulatory scheme that is intended to maximize the amount of programming containing closed captioning with appropriate exemptions and reasonable timetables to take into account the relevant technical and cost issues involved. This action is taken pursuant to Section 305 of the Telecommunications Act of 1996, which added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended. The requirements set forth in Section 713 are intended to ensure that video programming is accessible to individuals with hearing disabilities through closed captioning, regardless of the delivery mechanism used to reach consumers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27940 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2235]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 17, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed November 6, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Concerning Maritime Communications (PR Docket No. 92–257).

Number of Petitions Filed: 1.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–27900 Filed 10–21–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011375–033.
Title: Trans-Atlantic Conference Agreement.
Parties:
Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR—Senator Lines
Pol-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.
Synopsis: The proposed modification deletes Hanjin Shipping Co., Ltd. as a party at midnight, December 31, 1997; updates and revises the currency adjustment factor guidelines for service contracts; continues individual service contracts for 1998 on a calendar year basis, except for seasonal and non-containerizable cargo which may commence and terminate as agreed; and deletes all current restrictions applicable to the operations in the trade of companies related to Agreement parties.

Agreement No.: 203–011590.
Title: Grupo Libra-Nacional/TNX Vessel Sharing Agreement.
Parties:
Compania Maritima Nacional
Transroll Navieras Express, Inc.
Synopsis: The proposed Agreement would permit the parties to charter or exchange space with one another, to coordinate their vessel schedules, to interchange equipment, and, on a non-binding basis, to agree on rates in the trade United States Atlantic, Puerto Rican, and Virgin Islands ports

and ports in Brazil, Argentina, Uruguay, and Paraguay. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: October 17, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–27968 Filed 10–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Stop Cargo, Inc., 8235 NW 56th Street, Miami, FL 33166, Officers: Michael A. Foreman, Jr., President, Marlene Castro, Vice President

Transports P. Fatton Inc., 149–23 182nd Street, Jamaica, NY 11413, Officer: Bruno Torre, Vice President

Scott Container Service, Inc., 9807 South Dearborn, Detroit, MI 48209, Officers: Charles H. Scott, President, Sheila Pullen, Vice President

Express International Incorporated, 2248 Cornell Drive, Flower Mound, TX 75028, Officers: Gary L. Elkins, President, Detra P. Elkins, Secretary

Arrisco International Inc., 1809 G Cross Beam Drive, Charlotte, NC 28217, Officers: Sam Arris, President, Sherry Jolley, Vice President

INBA International, Inc., 3600 S. State Road 7, Suite 347, Miramar, FL 33023, Officer: Erett B.P. Wallace, President

Dated: October 16, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–27886 Filed 10–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 A.M., October 20, 1997.

PLACE: 800 North Capitol Street, N.W., Room 1000, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28167 Filed 10–20–97; 2:38 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 14, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. North Shore Bancorp, Peabody, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of North Shore Bank, Peabody, Massachusetts, (a Co-operative Bank).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Effingham Bancshares, Inc., Springfield, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Effingham, Springfield, Georgia (in organization).

2. Covenant Bancgroup, Inc., Leeds, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Covenant Bank, Leeds, Alabama (in organization).

3. First State Financial Corporation, Sarasota, Florida; to become a bank holding company by acquiring 57.3 percent of the voting shares of First State Bank, Sarasota, Florida (formerly First State Bank of Sarasota).

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. States Financial Services Corporation, Hales Corners, Wisconsin; to acquire 100 percent of the voting shares of Richmond Bancorp, Inc., Gurnee, Illinois, and thereby indirectly acquire Richmond Bank, Richmond, Illinois.

In connection with this application, Applicant also has applied to acquire Richmond Financial Services, Inc., Richmond, Illinois, and thereby engage in discount brokerage, insurance agency activities in a town of less than 5,000, and management advisory services, pursuant to §§ 225.28(b)(7), (b)(11) and (b)(6)(iii) of the Board's Regulation Y, respectively.

Board of Governors of the Federal Reserve System, October 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–27899 Filed 10-21-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that

is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire Security First Network Bank, Atlanta, Georgia, and thereby indirectly acquire Solutions by Design, Inc. ("Solutions"), Atlanta, Georgia, and thereby engage in developing and providing data processing and data transmission services to financial institutions for use in providing products and services over the Internet, pursuant to §.225.28(b)(14) of the Board's Regulation Y. The acquisition will be accomplished through the merger of Solutions with and into Security First Technologies, Inc., Atlanta, Georgia, a wholly-owned subsidiary of Security First Network Bank.

Board of Governors of the Federal Reserve System, October 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–27898 Filed 10-21-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, October 27, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 6, 1997.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28072 Filed 10–17–97; 4:47 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 13⅞% for the quarter ended September 30, 1997. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 16, 1997.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 97–27887 Filed 10–21–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications(s) for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18 and 50 FR 216).

Applicant: American Museum of Natural History, New York, NY, USFWS PRT–831724 and NMFS 876–1402.

Permit Type: Import, Re-import, Export, and Re-export for Scientific Research.

Name and Number of Animals: All Cetacea, Pinnipedia, Sirenia, marine and sea otters; unspecified amount.

Summary of Activity to be Authorized: The applicant has requested a permit for the import, re-import, export and re-export of salvaged material from all species of Cetacea, Pinnipedia, Sirenia, marine and sea otters collected worldwide as well as for samples of biopsy tissue collected from living specimens for the purpose of scientific research. Samples are intended for disposition in the museum collection and for exchange with other scientific institutions.

Source of Marine Mammals: Salvage and authorized research as described above.

Period of Activity: Up to five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate.

The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: October 16, 1997.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

Dated: October 3, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Divison, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–27882 Filed 10–21–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geologial Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Portland and Masonry Cement.

OMB approval number: 1028–NEW (Current number 1032–0038).

Abstract: Respondents supply the U.S. Geological Survey with data on cement production, shipments, and capacity, as well as consumption of raw materials. This information will be published as an annual report for use by Government agencies, industry, and the general public.

Bureau form number: 6–1214–A.

Frequency: Annual.

Description of respondents: Commercial producers and importers of portland and masonry cement.

Annual Responses: 130.

Annual Burden hours: 650.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 97–27891 Filed 10–21–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–5440–A015; AZAR 035683]

Public Land Order No. 7292; Revocation of Secretarial Order Dated March 8, 1938; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order, in its entirety, as to the remaining 15 acres of public land withdrawn for use by the Federal Aviation Administration. The land is no longer needed for air navigation purposes. The revocation is needed to allow conveyance of the land to the city of Phoenix for airport purposes. The land is temporarily closed to surface entry and mining due to the pending conveyance. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Kershaw, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9235.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated March 8, 1938, which withdrew public land for Air Navigation Site No. 118, is hereby revoked in its entirety as to the following described land:

Gila and Salt River Meridian

T. 1 N., R. 4 E.,
Sec. 8, SW¼SW¼SW¼, and W½SE¼SW¼SW¼.

The area described contains 15 acres in Maricopa County.

2. The land described above is hereby made available for conveyance under Section 516 of the Airport and Airway Improvement Act of 1982, 49 U.S.C. 2215 (1994).

Dated: October 9, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–27892 Filed 10–21–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 11, 1997. Pursuant to §60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 6, 1997.

Paul Lusignan,

Acting Keeper of the National Register.

Florida

Dade County

Homestead Town Hall, (Homestead MPS), 43 N. Krome Ave., Homestead, 97001327.

Duval County

Atlantic National Bank Annex, (Downtown Jacksonville MPS), 118 W. Adams St., Jacksonville, 97001328.

Martin County

Martin County Court House, Old, 80 E. Ocean Blvd., Stuart, 97001329.

Georgia

Dodge County

Williamson Mausoleum at Orphans Cemetery, Orphans Cemetery Rd., jct. of US 23 and US 341, Eastman vicinity, 97001331.

Richmond County

Liberty Methodist Church, 2040 Liberty Church Rd., Hephzibah, 97001330.

Illinois

Champaign County

Bailey—Rugg Building, 219–225 N. Neil St., Champaign, 97001337.
Building at 201 North Market Street, 201 N. Market St., Champaign, 97001335.
Building at 203–205 North Market Street, 203–205 N. Market St., Champaign, 97001336.

Fulton County

Vermont Historic District, (Vermont, Illinois MPS), Roughly bounded by Second, Union, Fourth, and Liberty Sts., Vermont, 97001334.

Jo Daviess County

Apple River Fort Site, 0.25 mi. ESE of jct. of Mrytle and Illinois Sts., Elizabeth vicinity, 97001332.
White, W.E., Building, 100 N. Main St., Stockton, 97001339.

La Salle County

Armour's Warehouse, Jct. of William and Bridge Sts., Seneca, 97001333.

Livingston County

Standard Oil Gasoline Station, (Route 66 through Illinois MPS), 400 S. West St., Odell, 97001338.

KENTUCKY

Bourbon County

Snow Hill, 4100 Little Rock—Jackstown Rd., Little vicinity, 97001341.

Boyle County

Bower House, (Boyle MPS), KY 34, Parksville, 97001367.
Bright, T.B., House and Farmstead, (Boyle MPS), KY 34, 1 mi. E of Danville, Danville vicinity, 97001356.
Buster, Nimrod I., House and Farmstead, (Boyle MPS), 0.2 mi. E of Buster Rd., 0.1 mi. S of Mercer County Line, Danville vicinity, 97001359.
Caldwell, Charles W., House, (Boyle MPS), 0.2 mi N of KY 34, 0.6 mi. W of KY 127, Danville vicinity, 97001361.
Caldwell, W. Logan, Farmstead, (Boyle MPS), Irvine Rd., 0.4 mi. N of KY 34, Danville vicinity, 97001368.
Clifton Road Culvert, (Boyle MPS), Clifton Rd., 0.6 mi. N of KY 52, Clifton vicinity, 97001375.
Cutter, Henry, Houses, (Boyle MPS), 678 and 690 Shelby St., Junction City, 97001374.
Gentry House, (Boyle MPS), KY 150, 0.4 mi. S of KY 150 bypass, Danville, 97001370.
Granite Hill Farmstead, (Boyle MPS), 2570 Lancaster Rd., Danville vicinity, 97001355.
Grimes, Willis, House, (Boyle MPS), 8803 KY 34, Danville vicinity, 97001362.
Hutchings, A., House, (Boyle MPS), KY 52, 0.2 mi. W of jct. of KY 590 and KY 52, Danville vicinity, 97001353.
Isaacs House and Farmstead, (Boyle MPS), 1195 Rawlings Rd., Gravel Switch vicinity, 97001366.
Lazy Acres Farm, (Boyle MPS), 3910 Hustonville Rd., Danville vicinity, 97001372.
McFerran House, (Boyle MPS), US 127, 0.2 mi. S of KY 150, Danville, 97001360.
Mitchell, James P., House and Farmstead, (Boyle MPS), KY 34, 0.4 mi. E of jct. of KY 34 and KY 1856, Mitchellsburg vicinity, 97001349.
Moore, J.J., House, (Boyle MPS), Jct. of KY 34 and KY 1822, Parksville vicinity, 97001369.
Oldham, Mary Simpson, House, (Boyle MPS), 2907 Perryville Rd., Danville vicinity, 97001364.
Purdom—Lewis—Hutchison House, (Boyle MPS), Curtis Rd., jct of Curtis Rd. and N Rolling Fork R., Gravel Switch vicinity, 97001351.
Rosel Hotel, (Boyle MPS), Jct. of Shelby St. and White Oak Rd., Junction City vicinity, 97001371.
Salt River Road, (Boyle MPS), Along Salt River Rd., Danville vicinity, 97001350.
Spears—Craig House, (Boyle MPS), 0.1 mi. W. of KY 33, 0.6 mi. S of Spears Ln., Danville vicinity, 97001358.
Vanarsdale, J.S. and Nannie, House, (Boyle MPS), KY 52 in Atoka, Danville vicinity, 97001376.
Vermillion House and Farmstead, (Boyle MPS), 378 Salt River Rd., Danville vicinity, 97001373.
Wallace, J.S., House, (Boyle MPS), KY 34, 0.4 mi S of Mercer County Line, Danville vicinity, 97001357.
Wilson's Station, (Boyle MPS), 3750 Lebanon Rd., Danville vicinity, 97001363.
Worthington, Charles T., House, (Boyle MPS), 0.3 mi. W of Bluegrass Rd., 0.6 mi. N of Gentry Ln., Danville vicinity, 97001365.
Yeager, Samuel, House, (Boyle MPS), KY 590, 0.7 mi. S of jct. of KY 52 and KY 590, Danville vicinity, 97001352.

Breckinridge County

Irvington Historic District, Roughly bounded by CSX tracks, Third, Caroline and Walnut Sts., Irvington, 97001342.

Magoffin County

Salyersville Bank, Jct. of W. Maple and N. Church Sts., Salyersville, 97001340.

Nelson County

Mt. Broderick Pullman Lounge-Obs-Sleeping Car, 136 S. Main St., New Haven, 97001345.
Frankfort and Cincinnati Model 55 Rail Car, 136 S. Main St., New Haven, 97001344.
Louisville and Nashville Combine Car Number 665, 136 S. Main St., New Haven, 97001343.

Warren County

Horse Shoe Camp, (US 31W in Warren MPS), 8241 Louisville Rd., Bowling Green vicinity, 97001346.

MASSACHUSETTS

Suffolk County

Allston Congregational Church, 31–41 Quint Ave., Boston, 97001377.

MISSISSIPPI

Choctaw County

Weir, Col. John, House, 102 Ann St., Weir, 97001378.

Perry County

Mahned Bridge, Mahned Rd. over the Leaf R., New Augusta vicinity, 97001379.

MONTANA

Lewis and Clark County

Wolf Creek Hotel, Jct. of Main St. and Bissonnett St., Wolf Creek, 97001381.

Missoula County

Keith and Ross Block, (Missoula MPS), 403 N. Higgins Ave., Missoula, 97001382.

NEVADA

Churchill County

Fort Churchill and Sand Springs Toll Road, Address Restricted, Fallon vicinity, 97001383.

NEW MEXICO

Bernalillo County

Rte. 66, state maintained from Albuquerque to Rio Puerco, (Route 66 through New Mexico MPS), Rte. 66. West Central exit at I–40 to the Rio Puerco Bridge, Albuquerque vicinity, 97001396.

Cibola County

Rte 66, state maintained from McCartys to Grants, (Route 66 through New Mexico MPS), Rte 66, from E of McCartys to E of Grants, Grants vicinity, 97001398.
Rte. 66, state maintained from Milan to Continental Divide, (Route 66 through New Mexico MPS), Along Rte. 66, W of Milan to Continental Divide, Continental Divide, 97001394.

Mckinley County

Rte. 66, state maintained from Iyanbito to Rehobeth, (Route 66 through New Mexico MPS), Rte. 66, from Iyanbito Interchange at I–40 to State Police Stn. Rehobeth, Rehobeth, 97001397.

Quay County

Rte. 66, state maintained from Montoya to Cuervo, (Route 66 through New Mexico MPS), Along Rte. 66, from W of Montoya to Cuervo, Cuervo, 97001395.
Rte. 66, state maintained from San Jon to Tucumcari, (Route 66 through New Mexico MPS), Rte. 66, from E of San Jon to E of I–40 exit at Tucumcari, San Jon, 97001399.

NEW YORK

Genesee County

LeRoy House and Union Free School, 23 E. Main St., Leroy, 97001388.

Madison County

Smith, Gerrit, Estate, Jct. of Main and Nelson Sts., Peterboro, 97001386.

Onondaga County

Plymouth Congregational Church, 232 E. Onondaga St., Syracuse, 97001384.

Oswego County

Stillwater Bridge, Dam Rd. over Salmon R., Stillwater vicinity, 97001385.

Saratoga County

Saratoga Reformed Church, Old, Jct. of Burgoyne and Pearl Sts., Schuylerville, 97001387.

Tioga County

Wavely Junior and Senior High School, 443 Pennsylvania Ave., Waverly, 97001389.

SOUTH DAKOTA

Codington County

Citizens State Bank of Henry, Jct. of Main and 2nd Sts., Henry, 97001391.

Lawrence County

Toomey House, 1011 Main St., Spearfish, 97001390.

Roberts County

Stavig, Andrew and Mary, House, 112 First Ave. W, Sisseton, 97001392.

TEXAS

Dallas County

Highland Park Shopping Village, Jct. of Preston Rd. and Mockingbird Ln., Highland Park, 97001393.

VIRGINIA

Fauquier County

Burrland Farm Historic District, Burrland Ln., Middleburg vicinity, 97001406.
Number 18 School in Marshall, Jct. of VA 55 and VA 622, Marshall vicinity, 97001405.

Loudoun County

Red Fox Inn, 2 E. Washington St., Middleburg, 97001403.

Northumberland County

Academy, The, Jct. of Main St. and St. Stephen's Ln., Heathsville, 97001400.

Rockbridge County

Natural Bridge, Jct. of VA 11 and VA 130, Natural Bridge vicinity, 97001401.

Danville Independent City

Holbrook—Ross Street Historic District, Roughly bounded by Holbrook, Ross, Gay, and Maury Sts., Danville, 97001404.

Norfolk Independent City

Poplar Hall, 400 Stuart Cir., Norfolk, 97001402.

WASHINGTON

King County

Thornton, William Harper, House, (Bothel MPS), 17424 95th Ave, NE, Bothell, 97001408.

Lewis County

Chehalis Downtown Historic District, (Chehalis MPS), Roughly bounded by Park, and Front Sts., Washington and Cascade Aves., Chehalis, 97001407.

WEST VIRGINIA

Brooke County

Nicholls House and Woolen Mill Site, WV 67, Wellsburg-Bethany Pike, overlooking Buffalo Cr., Wellsburg, 97001416.

Cabell County

West Virginia Colored Children's Home, 3353 US 60, Huntington, 97001413.

Greenbrier County

Meadow River Lumber Building, US 219 S, State Fair of West Virginia, Fairlea, 97001411.

Kanawha County

Coal River Locks, Dams, and Log Booms Archeological District, Address Restricted, Alum Creek vicinity, 97001417.

Ohio County

La Bella Iron Works, Jct. of 31st and Wood Sts., Wheeling, 97001415.

Randolph County

Warfield—Dye House, 318 Bufalo St., Elkins, 97001412.

Upshur County

Fidler's Mill, Heaston Ridge Rd., Arlington, 97001414.

WISCONSIN

La Crosse County

Cass and King Street Residential Historic District, Roughly bounded by State, S. 21st, and Madison Sts., and West Ave. S, La Crosse, 97001410.

Waukesha County

Freewill Baptist Church, 19750 W. National Ave., New Berlin, 97001409.

[FR Doc. 97–27951 Filed 10–21–97; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA–763–766 (Final)]

Certain Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–763–766 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada, Germany, Trinidad and Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in petitions filed on February 26, 1997, by Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Texas, Inc., Beaumont, TX; and Northwestern Steel & Wire, Sterling, IL.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties should have filed an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the October 16, 1997, hearing date applicable to these investigations and to the related countervailing duty investigations on certain steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela (invs. Nos. 701–TA–368–371 (Final)). A party that filed a notice of appearance during the preliminary phase of the investigations need not have filed an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application was made no later than 21 days prior to the October 16, 1997, hearing date. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Written submissions.—On February 24, 1998, the Commission will make available to parties any supplementary information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 3, 1998. Final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules, except that the Commission has determined to waive the page limit and permit final comments not exceeding 25 pages. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 15, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27937 Filed 10–21–97; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–368–371 (Final)]

In the Matter of Certain Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of a respondent in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for October 16, 1997 *in camera*. *See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR § 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Thomas H. Fine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3092. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondents have justified the need for a closed session. A full discussion of information relating to the domestic industry's production levels and profitability, the occurrence of underselling and the effect and degree of domestic production outages can only occur if a portion of the hearing is held *in camera*. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation that discusses only the financial data submitted and information on bids for individual projects and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, Inv. Nos. 701–TA–368–371 (Final) may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: October 15, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27939 Filed 10–21–97; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–391]

In the Matter of Certain Toothbrushes and the Packaging Thereof; Notice of Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3096.

SUPPLEMENTARY INFORMATION: The authority for the Commission's

determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

The Commission instituted this investigation on November 22, 1996, based on a complaint filed by The Procter & Gamble Company (P&G) concerning allegations of unfair acts in violation of section 337 in the importation and sale of certain toothbrushes covered by U.S. Letters Patent Des. 328,392. The complaint, as amended, also alleged copyright infringement by certain respondents, but those allegations were subsequently withdrawn from the investigation.

The Commission found Shummi Enterprise Co., Ltd (Shummi) and Shumei Industrial Co., Ltd. (Shumei) in violation of section 337 and found Giftline International Corporation (Giftline) in default for failure to respond to the complaint and notice of investigation.

On July 2, 1997, the presiding administrative law judge (ALJ) issued a recommended determination (RD) on the issues of remedy and bonding for respondents Shummi and Shumei. The ALJ recommended a limited exclusion order and a bond in the amount of 100 percent of entered value during the 60-day Presidential review period.

On August 20, 1997, the Commission published a notice requesting written submissions on the issues of remedy, the public interest, and bonding. The Commission investigative attorney and complainant P&G filed submissions on these issues, essentially concurring with the ALJ's recommendations as to Shumei and Shummi and arguing for the same remedy and bond to apply to Giftline. No other submissions were filed.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing toothbrushes that are manufactured abroad by or on behalf of Shummi, Shumei, or Giftline. The Commission further determined that the public interest factors enumerated in subsection 337(d) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the articles in question.

Copies of the Commission's order, the public version of the Commission's opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: October 15, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–27938 Filed 10–21–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 6, 1997, Arenol Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 21, 1997.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 7, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–27894 Filed 10–21–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 10, 1997, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of tetrahydrocannabinols (7370) a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 22, 1997.

Dated: October 3, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–27895 Filed 10–21–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 4, 1997, Novartis Pharmaceuticals Corp., Attn: Compliance, East Hanover, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

The firm plans to manufacture the finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 22, 1997.

Dated: October 6, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–27896 Filed 10–21–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 10, 1997, Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of meperidine (9230) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 22, 1997.

Dated: October 3, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–27897 Filed 10–21–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Reopening and Extending the Time for Receipt of Nominations for Vacancies Until November 7, 1997

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire Friday, November 14, 1997. The groups or fields represented are as follows: employee organizations (multiemployer plans), investment counseling, actuarial counseling, employers and the general public (pensioners). In addition, this year nominations also are being sought for individuals interested in an appointment to fill one year of an unexpired three-year term of a council member who died while serving on the Council. That unexpired term calls for naming an employee organization (multiemployer) representative.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite N–5677, Washington, D.C. 20210. This notice is being issued to reopen and further extend the period in which recommendations can be delivered or mailed. The new date for receipt of recommendations is on or before November 7, 1997. Nominations for a particular category of membership should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination.

Signed at Washington, D.C., this 16 day of October, 1997.

Olena Berg,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 97–27958 Filed 10–21–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Studying the Merits of Defined Contribution vs. Defined Benefit Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group established to Study the Merits of Defined Contribution vs. Defined Benefit Plans With an Emphasis on Small Business Concerns will hold a public meeting on November 12, 1997 in Conference Center C–5521, Seminar Room 4, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210.

The purpose of the open meeting, which will run from 9:30 a.m. until approximately noon, is for Working Group members to finish its final report to the Council on the issue, particularly as to the formation of defined benefit plans for small businesses.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before October 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Studying the Merits of Defined Contribution vs. Defined Contribution Plans With an Emphasis on Small Business Concerns should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, time permitting, but an extended written statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, D.C. this 15th day of October, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–27954 Filed 10–21–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Employer Assets in ERISA Employer-Sponsored Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on November 12, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying Employer Assets in ERISA Employer-Sponsored Plans.

The purpose of the open meeting, which will run from 1:00 p.m. until approximately 3:30 p.m. in Conference Center C–5521, Seminar Room 4, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for Working Group members to finish their report to the Council on employer assets in ERISA employer assets in ERISA employer-sponsored plans.

Members of the public are encouraged to file a written statement pertaining to the working group's topic by submitting 20 copies on or before October 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Employer Assets in ERISA Employer-Sponsored Plans should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, time permitting, but an extended written statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 30, 1997, at the address indicated in this notice. Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, D.C. this 15 day of October, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–27955 Filed 10–21–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Soft Dollar Arrangements and Commission Recapture, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held November 13, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group formed to study Soft Dollar Arrangements and Commission Recapture.

The session will take place in Conference Center C–5521, Seminar Room 4, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to finish their final report to the Council.

Members of the public are encouraged to file a written statement pertaining to the specific topic by submitting 20 copies on or before October 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Soft Dollar Arrangements and Commission Recapture should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, time permitting, but an extended written statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, D.C. this 15th day of October, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–27956 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

100th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 100th public meeting will be held November 13, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans.

The session will take place in the Secretary's Conference Room S–2508, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 1:00 p.m. until approximately 2:30 p.m., is for working group chairs and vice chairs to present their groups' final reports and recommendations of the year to the full Council for its action on their findings and/or acceptance before the reports and recommendations are officially forwarded to the Secretary of Labor. The meeting also will provide the opportunity for an update on activities of the Pension and Welfare Benefits Administration by the Assistant Secretary of that organization and for a formal ceremony of appreciation for outgoing members of the Council.

Members of the public are encouraged to file a written statement pertaining to the Council's specific topics for the year by submitting 20 copies on or before October 30, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, time permitting, but an extended written statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, D.C. this 15th day of October, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–27957 Filed 10–21–97; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Energy Corporation (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specification Table 3.3–4, "Engineered Safety Features [ESF] Actuation System Instrument Trip Setpoints." Specifically, the amendments would support the replacement of the three safety-related wide range level instruments. The ESF trip setpoint for the refueling water automatic switch over to recirculation would be revised to account for the difference in instrument uncertainty associated with wide range level instruments and provide additional operator response time margin.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Probability

The FWST [Refueling Water Storage Tank] and its associated instrumentation are not considered accident initiators. The instrumentation change is from a narrow range type instrument to a wide range type instrument. A failure of either type of instrument could result in an undesired switch over or failure to switchover. However, the failure could not initiate any subsequent accident sequences.

Consequences

With the switchover to recirculation setpoint change, the system design will still provide enough injected water to ensure that the reactor remains shut down, as well as provide sufficient water depth within the containment sump to ensure adequate net positive suction head (NPSH) for the ECCS [emergency core cooling system] pumps and protect against vortexing. Also, adequate time is provided to ensure the completion of all operator actions necessary for switchover to cold leg recirculation prior to the loss of all usable FWST inventory and loss of suction to the ECCS pumps.

The change in the FWST LOW level setpoint reduces the FWST volume that is delivered to the primary system in the injection phase of a LOCA [loss-of-coolant accident]. Thus, this volume reduction affects the containment pressure response during a LOCA. A reanalysis of the containment pressure response using the NRC-approved methodology of DPC–NE–3004 demonstrates that the peak containment pressure remains below the design limit for the proposed FWST LOW level setpoint.

The LOCA blowdown, refill, and reflood phases of the analysis are not affected by the change in switchover setpoint. Therefore, the fuel clad integrity will not be impacted as a result of this change. The containment response was analyzed and found to be within acceptable limits. Therefore, the fission product barriers are unaffected by this change in setpoint.

The radiological calculations include assumptions regarding the start of ECCS recirculation which could be impacted by

this change. The impact of the setpoint changes is to shorten the time that is assumed for ECCS recirculation to begin. This would tend to increase the calculated dose from this potential leak path but the impact is so small that the currently reported results remained unchanged (calculation results are the same within roundoff, such that reported results do not change). The change does not significantly impact the radiological consequences of the design basis LOCA.

An analysis was performed at the FWST reduced borated water volume delivered to the primary system during a LOCA. The resulting primary system boron concentrations were compared to boron concentrations required to keep the core subcritical and found to be acceptable.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

Second Standard

The amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The failure modes of the new level transmitters remain the same. The instrumentation interacts with the same equipment and provides the same function. Therefore, failure of the new instrumentation [cannot] produce a new or different kind of accident previously evaluated. However, some failure modes will be more readily detectable because of the change to wide range instrumentation.

Third Standard

The amendment would not involve a significant reduction in a margin of safety.

The change to the FWST instrumentation does not involve a reduction in the margin of safety. Although increased instrument uncertainty is being introduced, the FWST low level setpoint is being adjusted to compensate for this change. The overall analysis results continue to be bounded such that there is no loss of suction from the FWST prior to ECCS pump switchover to the containment sump. There is adequate FWST inventory injected to maintain the reactor shutdown. There is sufficient water depth within the containment sump to satisfy NPSH and vortex concerns. In addition, the peak containment pressure remains below the design limit for the proposed FWST LOW level setpoint.

The rate of injection and back pressure of the FWST is not affected by the setpoint change. Analysis shows that the peak cladding temperature occurs prior to ECCS pump switchover to the containment sump, and thus is unaffected by this change.

Therefore, the new instrumentation and revised setpoints do not cause a reduction in the margin of safety associated with containment pressure or fuel cladding integrity.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 21, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina.

Dated at Rockville, Maryland, this 17th day of October 1997.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28005 Filed 10–21–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 (D.C. Cook), located in Berrien County, Michigan.

The proposed amendment would change the D.C. Cook technical specifications (TS) to delete the interlock which would close the residual heat removal (RHR) suction valves if the reactor coolant system (RCS) pressure were to increase to 600 psig while retaining the interlock which would prevent the suction valves from opening while the RCS pressure is above the RHR system design pressure. This change would maintain the interlock against opening to protect against an intersystem loss of coolant accident but would allow continued deactivation of the isolation valves when the RHR system is operating to assure RHR availability and provide low temperature overpressure protection (LTOP).

The licensee has requested that the proposed amendment be reviewed on an emergency basis. Section 50.91(a)(5) of Title 10 of Code the Code of Federal Regulations requires the licensee to explain the emergency and why the licensee cannot avoid it. The licensee's explanation is provided below:

On September 18, 1997, a letter was sent to the USNRC providing a discussion of the actions we are taking to address technical issues identified by the recently complete [concluded September 12, 1997] architect engineering (AE) team inspection. We are currently anticipating the commencement of startup activities on September 29, 1997, and respectfully request NRC review and approval of this change by that date.

We understand the impact of such an emergency request, and recognizing that the conditions and status of the Cook Nuclear Plant restart may change in the future, we intend to keep the commission informed, through our daily contact with our NRR project manager, as to the status of our restart schedule.

The situation described above occurred because, until recently, the need to meet the RHR suction valve surveillance requirement, in mode 4, simultaneously with the reactivity control specification and the LTOP administrative requirements, was not recognized. Investigation into the root cause of this oversight is still in progress.

The AE inspection team identified issues related to our configuration management, design and procedure control, and our understanding of the plant's design and licensing bases. With the insight gained from the inspectors' conclusions, we identified this particular issue on September 11, 1997. The need for a T/S [technical specification] change prior to restarting either of the units, became evident as a result of our investigation of this matter.

The licensee was unable to make a more timely application because it was not determined until the recent inspection (September 11, 1997) that the RHR suction valve surveillance requirement in Mode 4 needed to be met, simultaneously with the reactivity control specification and the LTOP administrative requirements. Due to changes in the anticipated restart schedule, emergency circumstances no longer exist. However, the NRC has determined that the licensee used its best efforts to make a timely application for the proposed changes and that, pursuant to 10 CFR 50.91(a)(6), exigent circumstances do exist and were not the result of any intentional delay on the part of the licensee. The Donald C. Cook Nuclear Plant, Units 1 and 2, cannot restart until the proposed amendments have been approved by the NRC.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means

that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change provides an alternative means of providing overpressurization protection for the RHR system, and thereby protection against potential intersystem LOCA. Operating procedure administrative requirements establish the necessary LTOP system configuration and ECCS equipment operability constraints for mode 4 operation. The LTOP system has been analyzed to show that, if operated per the existing operating procedure constraints, it will protect the RHR system during postulated overpressure conditions.

Criterion 2

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change involves a different response by the system to an overpressurization event, but we have shown by analysis that the alternative LTOP configuration is capable of providing equivalent protection to the original suction value auto-closure feature. The system remains protected from single failure to any of the available overpressure protection components. The change eliminates the potential for a single power supply or instrument failure isolating and damaging the RHR system while operating to remove decay heat in mode 4.

Criterion 3

This proposed change does not involve a significant reduction in a margin of safety. The change maintains an equivalent margin of safety against intersystem LOCA concerns. Operating with the suction valves blocked open and the overpressure protection of the LTOP system, the change also helps to ensure the availability of decay heat removal from the RCS during any potulated accident which would involve pressurization of the RCS. Operating with the original auto-closure isolation of the suction values would automatically cut off decay heat removal via the RHR system in any such postulated event if the RCS reached the auto-closure setpoint and the suction valves closed.

The change eliminates the potential for a power supply or instrument failure isolating and damaging the RHR system while in mode 4. The requested change maintains protection from inadvertently opening the RHR suction valves, thereby exposing the RHR system to high RCS system pressure, by maintaining the requirement for the open interlock in all modes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Gerald Charnoff, Esquire; Shaw, Pittman, Potts and Trowbridge; 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 1997, which is available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 16th day of October 1997.

For The Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28003 Filed 10–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 (D.C. Cook), located in Berrien County, Michigan.

The proposed amendment would change the D.C. Cook technical specifications (TS) to increase both the minimum required ice mass per ice basket and the total minimum required ice mass, and to change the bases of the TS. The change in the bases is considered to be an unreviewed safety question.

The licensee has requested that the proposed amendment be reviewed on an exigent basis. Section 50.91(a)(6)(vi) of Title 10 of the *Code of Federal Regulations* requires the licensee to explain the exigency and why the licensee cannot avoid it. The licensee's explanation is provided below:

During the recent architect engineer inspection conducted at Cook Nuclear Plant [concluded September 12, 1997], it was determined that, because of instrument uncertainties, the switchover to the recirculation mode might occur before a sufficient volume of RWST [refueling water storage tank] water had been injected into the containment. This, when considered with our lower containment design that allows some containment spray flow to become trapped in the dead ended annulus region, raised a concern as to whether the limiting vortexing height requirements for the RHR [residual heat removal] and CTS [containment spray] pumps could be met throughout the transient. As a result, evaluations for transient sump level for small break loss-of-coolant accident (SBLOCA) and large break loss-of-coolant accident were performed. This limiting evaluation is the SBLOCA, due to its lower RCS and accumulator mass release. A calculation performed for SBLOCA indicates that it is necessary to credit more of the available ice condenser ice mass than currently listed in the T/S [technical specifications].

The amount of ice presently taken credit for (per basket and total) in our current T/S minimum ice weights is less than what is needed to maintain the sump level above 602' 10". Based on a model test in 1997, water level of 602' 10" is sufficient to prevent pump vortexing at maximum safeguards flow. The proposed changes to the T/S will take credit for more of the available ice to provide reasonable assurance that sufficient water to maintain 602' 10" elevation is achieved.

On September 18, 1997, our submittal AEP:NRS:1260G1 was sent to the NRC, providing a discussion of the actions we are taking to address technical issues identified by the recently completed architect engineer team inspections. We are anticipating the commencement of startup activities in several weeks, and respectfully request the NRC's review and approval on an exigent basis.

The licensee was unable to make a more timely application because it was not determined until the recent inspection (September 1997) that the amount of ice in the current TS minimum ice weights is less than what is needed to maintain the sump level above 602' 10". The NRC has determined that the licensee used its best efforts to make a timely application for the proposed changes and that exigent circumstances do exist and were not the result of any intentional delay on the part of the licensee. The Donald C. Cook Nuclear Plants, Units 1 and 2, cannot restart until the proposed amendments have been approved by the NRC.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change increases the minimum ice weight requirements, ensuring that there will be sufficient water (i.e., a minimum sump level of 602' 10") in the recirculation sump from the time of switchover until an equilibrium level is reached. This will provide adequate sump level for the RHR [Residual Heat Removal] and CTS [Containment Spray] pumps to function properly, and provide sufficient flow to meet accident requirements.

Criterion 2

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change increases the required minimum amount of ice in the ice condenser. It does not alter any other physical characteristics of the ice baskets, nor does it change the ice condenser's function. No known failure mechanisms are introduced by this change.

Criterion 3

This proposed change does not involve a significant reduction in a margin of safety. The change increases the minimum heat absorbing capability of the ice condenser, and ensures that there will be sufficient quantity of melted ice to maintain the desired minimum sump level of 602' 10" from the time of switchover. This will provide an adequate sump level for the RHR and CTS pumps following switchover to the recirculation please.

The reduction in the allowance for ice sublimation does not significantly reduce the margin of safety. The original allowance was conservatively estimated to be ten times the design value. At the time this allowance was made, there was no data for determining the actual sublimation rate.

Data taken since 1984 has shown that the average measured sublimation rate is 2.31% per eighteen month cycle for unit 1, and 2.68% for unit 2. Both historic values are less than the 5% sublimation rate used in setting the T/S minimum ice weight. Based on this historical data, there is reasonable assurance that the analysis assumptions for available ice mass will be satisfied.

The revision to the T/S 3/4.5.5 basis provides clarification that water sources in addition to the water in the RWST are considered in determining the water inventory for the recirculation sump. This classification is consistent with FSAR appendix N, section 13.1 through section 13.25, question 23, and appendix Q, unit 2 question 212.29. The answers to these questions document that melted ice, RCS inventory, and RWST inventory were considered as contributing to the volume of water in the recirculation sump.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Gerald Charnoff, Esquire; Shaw, Pittman, Potts and Trowbridge; 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 1997, which is available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 16th day of October 1997.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV , Office of Nuclear Reactor Regulation.

[FR Doc. 97–28004 Filed 10–21–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company Callaway Plant, Unit 1; Post Operating License Antitrust Review Finding Of No Significant Changes

By letter dated February 23, 1996, as supplemented by letters dated April 24, 1996 and November 15, 1996, Union Electric Company (UEC), holder of the Operating License for the Callaway Nuclear Plant, requested NRC approval regarding a merger agreement with Central Illinois Public Service Company (CIPSCO), under which UEC would become a wholly-owned subsidiary of the newly formed Ameren Corporation, a registered public utility holding company. Presently, 50 percent of Ameren is owned by UEC, and 50 percent is owned by CIPSCO.

The staff has examined, from a competitive standpoint, events which have occurred since issuance of the Callaway, Unit 1 construction permit to UEC and the operating license. In addition, the staff has considered the structure of the electric utility industry in the State of Missouri, and the record and testimony developed in related proceedings at the Federal Energy Regulatory Commission (FERC).

The staff's analysis is as follows:

After the merger, UEC will continue to own and operate the Callaway Nuclear Plant. UEC will continue to be engaged principally in the generation, transmission, distribution and retail and wholesale sale of electricity and in the distribution and retail sale of natural gas in Missouri.

Based upon the information provided by the licensee, the proposed merger and restructuring will not adversely affect the operation of the Callaway facility nor the bulk power services market served by the Callaway facility. For the most part, the transmission systems of UEC and CIPSCO do not overlap, so the merger for the most part would not eliminate one independent and potentially competing transmission alternative. Also, the licensee has filed consolidated (one system) open access transmission tariffs, which make available all of the direct interconnections of both companies as receipt and delivery points. This has the potential to expand wholesale bulk power trading opportunities in the region. The single-system open access transmission tariffs should make entry by new non-utility generators easier than before the merger, which should increase competition for long term generating capacity.

Market forces resulting from deregulation of the electric utility industry appear to be the driving force for the proposed merger. In testimony before FERC, licensee representatives stated that the rationale for the merger was to reduce the combined operating costs of UEC and CIPSCO. Both companies have been aggressively pursuing cost reductions to remain competitive, and have reached the practical limits of that strategy. Without a fundamental change in their way of doing business, it would become increasingly difficult to continue reducing costs. By combining utility operations, both companies have an opportunity to achieve more cost efficiency than either company could achieve independently.

The staff recommends that the Director of the Office of Nuclear Reactor Regulation issue a no significant antitrust change finding in connection with UEC's request dated February 23, 1996, as supplemented by letters dated April 23, 1996, and November 15, 1996.

Based on the staff's analysis, it is my finding that the proposed

implementation of the merger agreement between UEC and CIPSCO, which provides for UEC to become a wholly-owned subsidiary of the newly formed Ameren Corporation, does not represent a "significant change."

Dated at Rockville, Maryland, this 16th day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97-28000 Filed 10-21-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

In the Matter of Union Electric Company (Callaway Plant, Unit 1); Order Approving Application Regarding the Corporate Merger Agreement Between Union Electric Company and Cipsco Incorporated To Form a Holding Company

I

Union Electric Company (UEC) is sole owner of Callaway Plant, Unit 1. UEC holds Facility Operating License No. NPF-30 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the Code of Federal Regulations on October 18, 1984. Under this license, UEC has the authority to own and operate Callaway Plant, Unit 1. Callaway Plant is located in Callaway County, Missouri.

II

By letter dated February 23, 1996, as supplemented by letters dated April 24, 1996, and November 15, 1996, UEC informed the Commission that it had entered into a merger agreement with CIPSCO Incorporated (CIPSCO) which would provide for UEC to become a wholly-owned operating company of Ameren Corporation (Ameren). Ameren was formed to implement the merger agreement, and is presently owned equally by UEC and CIPSCO. Under the merger agreement, current holders of UEC common stock and holders of CIPSCO common stock will become holders of common stock in Ameren. UEC requested, to the extent necessary, the Commission's approval, pursuant to 10 CFR 50.80. Notice of this application for approval was published in the **Federal Register** on June 10, 1996 (61 FR 29434), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on November 22, 1996 (61 FR 59469).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the letter of February 23, 1996, as supplemented by letters dated April 24, 1996, and November 15, 1996, and other information before the Commission, the NRC staff has determined that consummation of the merger agreement between UEC and CIPSCO, resulting in UEC becoming a wholly-owned subsidiary of a holding company, Ameren, will not affect the qualifications of UEC as holder of the license for Callaway Plant, and that the transfer of control of the license, to the extent effected by the consummation of the merger agreement between UEC and CIPSCO, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by the Safety Evaluation dated October 16, 1997.

III

Accordingly, pursuant to Section 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o) and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the Commission approves the application regarding the merger agreement between UEC and CIPSCO, under which Ameren will become the holding company of UEC, subject to the following: (1) UEC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from UEC to its proposed parent or to any other affiliated company, facilities or other assets for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of UEC's consolidated net utility plant, as recorded on UEC's books of account; and (2) should the merger agreement between UEC and CIPSCO not be implemented by September 30, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By November 21, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire/Thomas A. Baxter, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C. 20037, attorneys for UEC.

For further details with respect to this Order, see the application dated February 23, 1996, and supplemental letters dated April 24, 1996 and November 15, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 16th day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97-28001 Filed 10-21-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 29, 1997, through October 9, 1997. The last biweekly notice was published on October 8, 1997 (62 FR 52578).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the

Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: April 7, 1997, as supplemented on August 7, 1997.

Description of amendment request: The proposed amendment would revise the plants' technical specifications to permit replacement of the 125 volt dc Gould batteries with new C&D Charter Power Systems, Inc., batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The replacement C&D battery has been selected to meet or exceed the design, functional, and operational requirements of those of the present Gould battery, including crosstie load limitations. The C&D batteries are similar in design to the installed Gould batteries (e.g., electrolyte specific gravity and construction of the plates) except for capacity. The replacement C&D batteries have a significantly larger capacity than the Gould batteries, which can provide additional margin for future use. Also, the C&D batteries are qualified for a 20 year life and meet the latest applicable standards. The short circuit current provided by the C&D batteries is well within the interrupting capability of the existing DC system circuit breakers.

Additionally, the crosstie limit is increased to take advantage of the larger C&D battery capacity. The C&D batteries were sized based on having sufficient capacity to energize the design basis DC loads for an operating unit with the IEEE-485 design margin while maintaining the desired limited DC load of 200 amps for a shutdown unit. This proposed change allows use of the C&D batteries' larger capacity. The overall design, function, and operation of the DC system and equipment has not been altered by these changes. The proposed changes do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in UFSAR Chapter 15. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The replacement C&D batteries will provide the same functions as those of the installed Gould batteries and will be operated with the same types of operational controls. These limits include battery float terminal voltage, individual cell voltage and electrolyte specific gravity, and crosstie loading. Crosstie conditions are allowed under the present Technical Specifications. The crosstie limit is increased to take advantage of the larger C&D battery capacity. The remaining changes are administrative in nature or provide clarification to maintain consistency with other Technical Specifications.

The DC system and its equipment will continue to perform the same functions and be operated in the same fashion. The proposed change does not create any new or common failure modes. The proposed changes do not introduce any new accident initiators or precursors, or any new design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

C. The proposed change does not involve a significant reduction in a margin of safety.

The replacement C&D batteries will meet or exceed the design, functional, and qualification requirements [of] those of the installed Gould batteries. The proposed Technical Specification limitations for the C&D batteries are derived from the same methodology as the Gould batteries with applied margins in accordance with IEEE-485. Increasing the crosstie loading limit takes advantage of the larger C&D battery capacity with its increased design margin. The proposed change to the crosstie loading limit will continue to conservatively envelope the postulated design requirements. The remaining changes are administrative in nature or provide clarification to maintain consistency with other Technical Specifications.

The inherent design conservatism of the DC system and its equipment has not been altered. The DC system and its equipment will continue to be operated with the same degree of conservatism. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 30, 1997, as supplemented on September 25, 1997.

Description of amendment request: The proposed amendment would revise the plants' technical specifications to permit the licensee to take credit for soluble boron in spent fuel storage pool water to maintain an acceptable margin of subcriticality.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The following accidents have been specifically evaluated relative to the SFP [spent fuel pool]: fuel assembly drop, accidental misloading of spent fuel assemblies into the SFP racks, and loss of normal cooling.

There is no increase in the probability of a fuel assembly drop accident in the SFP when considering the presence of soluble boron in the SFP water for criticality control. The handling of the fuel assemblies in the SFP has previously been performed in borated water. The criticality analysis shows the consequences of a fuel assembly drop accident in the SFP are not affected when considering the presence of soluble boron.

There is no increase in the probability of the accidental misloading of spent fuel assemblies into the SFP racks when considering the presence of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled in accordance with approved fuel handling procedures and the spent fuel storage configuration limitations. Periodic surveillances of the SFP inventory (physical inventory and piece counts) are performed in accordance with station procedures. These surveillances ensure physical SFP inventory verification is performed at least once per year and in a timely manner upon completion of fuel movement in the SFP. The addition of credit for decay time in the spent fuel pool in determining allowable storage requirements is an extension of the reactivity equivalencing methodologies used for burnup credit in WCAP-14416-NP-A, "Westinghouse Spent Fuel Rack Criticality Analysis Methodology," Revision 1, November 1996.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the SFP racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate boron concentration. The proposed TS limitations and surveillance frequency will ensure that an adequate SFP boron concentration is maintained.

There is no increase in the probability of the loss of normal cooling to the SFP water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has previously been maintained in the SFP water. A loss of normal cooling to the SFP water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density which would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks. However, since the proposed change does not consider Boraflex to be present in the racks, and the SFP water has a high concentration of boron, a density decrease causes a positive reactivity addition. [The] consequences of this accident are bounded by the misloaded assembly analysis. Because adequate soluble boron will be maintained in the SFP water, the consequences of a loss of normal cooling to the SFP will not be increased.

The proposed 48 hour surveillance frequency will be used to verify the boron concentration is within the initial assumptions of the criticality analysis. The current frequency of 24 hours was based on the sampling frequency for reactor coolant system (RCS) shutdown margin in Mode 5. A dilution of the SFP to a k_{eff} greater than 0.95 would take a much longer time than an RCS dilution resulting in loss of shutdown margin. This is due to the larger SFP volume compared to the RCS volume, and the turnover rate of water in the SFP is much less due to the lack of large dilution sources for the SFP. The 48 hour sampling frequency is sufficient based on operating experience, and based on the fact that significant changes in the boron concentration in the spent SFP are difficult to produce without detection, due to the large inventory of water. Soluble boron concentration reduction requires the inflow and outflow of large volumes of water which are readily detected by SFP and fuel handling building sump high level alarms, flooding in the fuel handling building or by normal operator rounds through the SFP area (once every eight hours), allowing adequate time for operator intervention prior to exceeding a k_{eff} of 0.95. Therefore, consequences of an accident previously evaluated are not increased by the change in surveillance frequency.

The format revisions to Specification 5.6.1.1 and reference to the report containing the specific NRC-approved criticality methodology in Specification 6.9.1.10 are administrative in nature and will not result in an increase in the probability or consequences of an accident previously evaluated.

Therefore, based on the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The results of criticality accident analyses in the SFP are discussed in the UFSAR [Updated Final Safety Analysis Report] and in Criticality Analysis Reports associated with previous licensing activities. Specific accidents considered include fuel assembly drop, accidental misloading of spent fuel assemblies into the SFP racks, and loss of normal cooling.

LCO 3.9.1, "BORON CONCENTRATION," contains limitations on the boron concentration in the filled portions of the reactor coolant system and the refueling canal during Mode 6. ComEd has maintained soluble boron in the SFP at all times and has imposed administrative limits on the SFP boron concentration, due in part to this requirement. LCO 3.9.11 establishes specific boron concentration requirements for the SFP water consistent with the results of the new criticality analysis based on the NRC-approved methodology of WCAP-14416-NP-A, "Westinghouse Spent Fuel Rack Criticality Analysis Methodology," Revision 1, November 1996. Credit is also taken for radioactive decay time of the spent fuel.

Since soluble boron has always been maintained in the SFP water and is currently controlled administratively, the implementation of this requirement will have little effect on normal pool operations and maintenance. The implementation of the proposed limitations on the SFP boron concentration will only result in a requirement to verify boron concentration of the SFP water every 48 hours rather than every 24 hours. Sampling every 48 hours is sufficient to verify the SFP boron concentration meets the assumptions of the criticality analysis.

Because soluble boron has always been present in the SFP and has been administratively controlled, a dilution of the SFP soluble boron has always been a possibility. As shown in the SFP dilution evaluation performed for Byron and Braidwood, a dilution of the SFP which could increase the rack k_{eff} to greater than 0.95 (i.e., which could reduce the required margin to criticality) is not a credible event.

Therefore, the implementation of the proposed limitations on the SFP boron concentration and surveillance frequency will not result in the possibility of a new kind of accident.

The proposed change to Specification 5.6.1.1 identifies the requirements for the spent fuel rack storage configurations. The proposed changes relate to the criteria for determining the storage configuration. Since the proposed SFP storage configuration limitations will be similar to those currently in the Byron and Braidwood TS, these limitations will not have any significant effect on normal SFP operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the SFP loading configuration meets specified requirements.

The format revisions to Specification 5.6.1.1 and reference to the report containing the specific NRC-approved criticality methodology in Specification 6.9.1.10 are administrative in nature and will not create the possibility of a new [or] different kind of accident.

As discussed above, there is no significant change in plant configuration or equipment and the proposed changes will not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. These limits are based on a plant specific criticality analysis performed in accordance with the NRC-approved Westinghouse spent fuel rack criticality analysis methodology (WCAP-14416-NP-A). Credit is also taken for radioactive decay time of the spent fuel.

Soluble boron credit provides significant negative reactivity in the SFP such that the k_{eff} is maintained less than or equal to 0.95. The proposed surveillance frequency will be used to verify the boron concentration is within the initial assumptions of the criticality analysis. A storage configuration has also been defined, with a 95-percent probability at a 95-percent confidence level, that ensures the spent fuel rack k_{eff} will be less than 1.0 with no credit for soluble boron or Boraflex panels in the racks. In addition to soluble boron credit, credit is taken for fuel assembly burnup, decay time, and IFBAs [Integral Fuel Burnable Absorber] when determining assembly storage requirements.

The loss of substantial amounts of soluble boron from the SFP which could lead to exceeding a k_{eff} of 0.95 has been evaluated and shown not to be credible. These evaluations show that the dilution of the SFP boron concentration from 2000 ppm to 550 ppm is not credible and that the spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water.

The format revisions to Specification 5.6.1.1 and reference to the report containing the specific NRC-approved criticality methodology in Specification 8.9.1.10 are administrative in nature and will not result in a significant reduction in the plant's margin of safety.

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 12, 1997

Description of amendment request: The proposed amendments would remove a Technical Specification surveillance requirement to verify that sediment deposition within the lake screenhouse is not greater than one foot in thickness. Control of sediment accumulation in the lake screenhouse would be accomplished through the Service Water Performance Monitoring Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously identified because:

Surveillance's [sic] to fully verify [that] the Ultimate Heat Sink contains enough water to perform its design function will continue. All cleanliness issues associated with ensuring operability of Core Standby Cooling System - Equipment Cooling Water System (CSCS-ECWS) equipment will be performed under the Service Water Performance Monitoring Program, which meets GL 89-13 [≥Service Water System Problems Affecting Safety-Related Equipment≥] recommended actions. By performing these inspections per GL 89-13, LaSalle will ensure that there is no build up of sediment, which could hinder or impede the design operation of any safety or non-safety related equipment which takes a suction from the service water tunnel. Based on the nature of sediment, where it collects, and system design, the CSCS-ECWS will be available if called upon or started to respond in case of an accident for equipment cooling and long term cooling.

At no time, during approximately fourteen years of LaSalle operation, has sediment built up or accumulated either in front of the inlet to the CSCS cooling water screen bypass supply line or the six 36-inch normal tunnel supply lines in such a manner that the flow of water through these lines could have been reduced or blocked. Instead, loose sediment collects in quiescent areas near the traveling screens, the north end of the Service Water Tunnel, under the outlets of the 36-inch normal tunnel supply lines in the service water tunnel, and downstream of the butterfly isolation valve in the 54 inch CSCS cooling water screen bypass supply line. The sediment that collects in the service water tunnel does not build up in a manner such that CSCS-ECWS, non-essential station service water, or fire pump suctions from the tunnel are affected, based on inspections since 1992.

The CSCS equipment cooling bypass valve, OE12-F300, is the manual butterfly valve in the CSCS cooling water screen bypass supply line. The bypass valve is being added to the ASME Section XI Inservice Testing Program to cycle the valve quarterly. This valve cycling will help maintain sediment level in the bypass line at a low level due to flow through the line while the valve is not fully closed and thus assure the bypass line remains available. The flow is created due to the differential pressure across the circulating water traveling screens with circulating water pumps in operation.

Therefore, neither essential nor non-essential service water will be lost due to sediment. Neither the probability nor the consequences of an accident are increased by the deletion of SR 4.7.1.3.c.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Inspections for sedimentation will continue to be required by LaSalle's Service Water System Performance Monitoring Program per GL 89-13, to ensure continued operability of Core Standby Cooling System-Equipment Cooling Water System (CSCS-ECWS). The Ultimate Heat Sink operability requires assurance of a specific volume of water to provide cooling for at least 30 days for long term cooling following an accident. The public will be protected by the safety analysis in place by the fact that the safety and non-safety related equipment which take a suction from the service water tunnel will not be impaired by sediment. Therefore, there will be no possibility of a new or different kind of accident from any accident previously evaluated.

3) involve a significant reduction in the margin of safety because:

The Ultimate Heat Sink continues to be demonstrated Operable by verifying a sufficient volume of water per TS SR 4.7.1.3.a and 4.7.1.3.b. Equipment operability will still be required per Technical Specifications 3/4.7.1.1 and 3/4.7.1.2 for the CSCS-ECWS systems. Sedimentation in the lake screenhouse is a maintenance/cleanliness issue addressed by the LaSalle Service Water Performance Monitoring Program. The program ensures equipment operability by both inspection for and removal of sedimentation and chemical control with a biocide to limit the growth of biological material and silt dispersant to help keep silt in the flow stream from coagulating. Therefore, there is minimal or no reduction in the margin of safety due to the deletion of this surveillance requirement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 29, 1997 (NRC-97-0089)

Description of amendment request: The proposed amendment would relocate the requirements for selected instrumentation and the associated Bases from the technical specifications (TS) to the updated final safety analysis report. The affected instrumentation is seismic monitoring (TS 3.7.2), meteorological monitoring (TS 3.7.3), the traversing in-core probe system (TS 3.7.7), the chlorine detection system (TS 3.7.8), and the loose parts detection system (TS 3.7.10). Changes to the TS index and list of tables were also requested to reflect the relocation of these TS and associated Bases. NRC Generic Letter 95-10, "Relocation of Selected Technical Specification Requirements Related to Instrumentation," dated December 15, 1995, provided information concerning relocation of the requirements for these instruments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would relocate TS 3/4.3.7.2 - Seismic Monitoring Instrumentation, TS 3/4. 3.7.3 - Meteorological Monitoring Instrumentation, TS 3/4.3.7.7 - Traversing In-Core Probe System, TS 3/4.3.7.8 - Chlorine Detection System, and TS 3/4.3.7.10 - Loose-Part Detection System and their associated Bases to the Fermi 2 Updated Final Safety Analysis Report (UFSAR). They would also delete the special reporting requirements from the aforementioned TS which contain such requirements. The proposed changes would revise the TS Index and List of Tables to reflect the relocation of these TS and associated Bases. The relocated TS changes would be controlled in accordance with the requirements of 10 CFR 50.59.

The proposed changes affect TS that do not meet the NRC's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" or 10 CFR 50.36(c)(2)(ii) criteria for inclusion in TS. These TS relocations are consistent with NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4," Revision 1, April 1995. Furthermore, these five TS are specifically identified in NRC Generic Letter 95-10, "Relocation of Selected Technical Specifications Requirements Related to Instrumentation," dated December 15, 1995, as suitable for relocation to licensee-controlled documents.

The Special Report requirements of TS 3/4.3.7.2, TS 3/4.3.7.3, and TS 3/4.3.7.10 would be deleted as part of their relocation to the UFSAR. The NRC reporting criteria of 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Reactors," and 10 CFR 50.73, "Licensee Event Report Systems" provide appropriate requirements for reporting degraded and non-conforming conditions to the NRC.

These proposed TS changes do not involve a significant increase in the probability of an accident previously evaluated because no changes are being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

These proposed TS changes do not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident sequences or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not change the way in which the plant is operated and no new or different failure modes have been defined for any plant system or component. No limiting single failure has been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. The changes do not involve a significant reduction in the margin of safety.

The proposed changes involve instrumentation and systems which are not inputs in the calculation of any safety margin with regard to Technical Specification Safety Limits, Limiting Safety System Settings, Limiting Control Settings or Limiting Conditions for Operation, or other previously defined margins for any structure, system, or component.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: John N. Hannon

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: September 11, 1997

Description of amendment request: The proposed amendments would relocate the reactor trip system and engineered safety feature actuation system response times from technical specification (TS) tables 3.3-2 and 3.3-5 to Section 3 of the licensee's Licensing Requirements Manual (LRM) in accordance with the guidance provided in NRC Generic Letter 93-08. Subsequent changes to the LRM would be controlled in accordance with the requirements of 10 CFR 50.59. The proposed amendments would also make several editorial changes in TSs 3.3.1.1 and 3.3.1.2, as well as making conforming changes to the Bases for these TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment relocates the instrument response time limits for the reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) from the technical specifications to the Licensing Requirements Manual (LRM). The Core Operating Limits Report (COLR) and containment penetrations table (containment isolation valves) are controlled and maintained in the LRM. The LRM was developed to control and maintain those items removed from the technical specifications. The proposed amendment conforms to the guidance given in Enclosures 1 and 2 of Generic Letter 93-08. Neither the response time limits nor the surveillance requirements for performing response time testing will be altered by this submittal. The overall RTS and ESFAS functional capabilities will not be changed and assurance that action requirements of the protective and engineered safety features systems are completed within the time limits assumed in the accident analyses is unaffected by the proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment will not change the physical plant or the modes of plant operation defined in the operating license. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The measurement of instrumentation response times at the frequencies specified in the technical specification provides assurance that actions associated with the protective and engineered safety features systems are accomplished within the time limits assumed in the accident analyses. The response time limits, and the measurement frequencies remain unchanged by the proposed amendment. The proposed changes do not alter the basis for any other technical specification that is related to the establishment of or maintenance of a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts &

Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 18, 1997

Description of amendment request: The amendment would decrease the safety limit for the minimum critical power ratio (MCPR) from 1.12 to 1.11 for two recirculation loop operation and from 1.14 to 1.12 for single recirculation loop operation in Technical Specification (TS) 2.1.1.2. Because the proposed amendment is for Cycle 10 operation, the amendment would also revise the footnotes to TSs 2.1.1.2 and 5.6.5 to state that the MCPR values and the items 19 and 20 are "applicable only for Cycle 10 operation." Cycle 10 operation is after the next (i.e., 9th) refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The Minimum Critical Power Ratio (MCPR) safety limit is defined in the Bases to Technical Specification [TS] 2.1.1 as that limit which "ensures that during normal operation and during Anticipated Operational Occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling." The MCPR safety limit is re-evaluated for each reload and, for GGNS [Grand Gulf Nuclear Station, Unit 1] Cycle 10, the analyses have concluded that a two-loop MCPR safety limit of 1.11 based on the application of GE's [General Electric Company's] cycle-specific MCPR safety limit methodology is necessary to ensure that this acceptance criterion is satisfied. For single-loop operation, a MCPR safety limit of 1.12 based on GE's cycle-specific MCPR safety limit methodology was determined to be necessary. Core MCPR operating limits are developed to support the Technical Specification [TS] 3.2 requirements and ensure these safety limits are maintained in the event of the worst case transient. Since the MCPR safety limit will be maintained at all times, operation under the proposed changes will ensure [that] at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, these changes to the [MCPR] safety limit do not affect the probability or consequences of an accident [previously evaluated].

GE's GESTAR-II approved methodology will continue to be implemented and has no effect on the probability or consequences of any accidents previously evaluated. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis [for GGNS]. The design of the GE11 fuel bundles[, to be added to the core to replace Siemens fuel bundles,] is such that the bundles are not likely to be mis-oriented or mis-located and the normal administrative controls will be in effect for assuring proper orientation and location. Therefore, the probability of a fuel loading error is not increased. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 [10 CFR Part 100] limits. Therefore, the probability or consequences of accidents previously evaluated are unchanged.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The GE 11 fuel to be [added to the core and] used in Cycle 10 [operation] is of a design compatible with fuel present in the core and used in the [current 9th] cycle. [The current core is a mixture of GE11 and Siemens fuel bundles. The addition of GE11 to the core for the 9th cycle is addressed in Amendment 131 to the license dated November 21, 1996.] Therefore, the GE11 fuel will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications.

The[y] introduce revised MCPR safety limits that have been proven to be acceptable for Cycle 10 operation. Compliance with the applicable criterion for incipient boiling transition continues to be ensured. The proposed MCPR safety limits do not result in the creation of any new precursors to an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The MCPR safety limits have been evaluated in accordance with GE's current cycle-specific methodology to ensure that during normal operation and during AOOs, at least 99.9% of the fuel rods in the core are not expected to experience transition boiling. Unless otherwise approved, GGNS will implement only the NRC-approved revisions to GE's GESTAR methodology. This GE methodology is similar to those SPC [(Siemens Power Corporation)] reports current listed in TS 5.6.5 and it will be applied in a similar, conservative fashion. [TS 5.6.5, Core Operating Limits Report, lists the analytical methods which are approved by NRC and are used to determine the core operating limits for the GGNS core, including the MCPR.] One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current [GGNS] licensing basis. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 limits. [The proposed changes are to maintain the margin of safety for transition boiling in the core.] On this basis, the implementation of this GE methodology does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502.

NRC Project Director: James W. Clifford, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 25, 1997

Description of amendment request: The proposed change modifies Limiting Condition for Operation (LCO) 3.6.1.2 (Containment Leakage), the associated Action, and Surveillance Requirement (SR) 4.6.1.2 in Technical Specification (TS) for Waterford Steam Electric Station, Unit 3 (Waterford 3). The air lock door seal leakage rate acceptance criteria in TS 6.15 is being changed from 0.01La to 0.005La. TS 6.15 is also being modified to make the terms used in the Containment Leakage Rate Testing Program consistent with terms used in the TS. This change corrects an error that inadvertently decreased the allowed outage time from 24 hours to 1 hour when the containment purge valve or containment air lock leakage rates are not within limits. This error was made in the Waterford 3 TS change request that was approved in Amendment 124 for Waterford 3 on April 10, 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change adds the specific type of containment leakage to the Limiting Condition for Operation (LCO), Action, and Surveillance Requirement (SR) in the Containment Leakage Technical Specification (TS) which results in increasing the allowed outage time from 1 hour to 24 hours when the containment purge valve or containment air lock leakage rates are not within limits. The propcsed change revises the air lock door seal leakage rate acceptance criteria. Also, the proposed change revises the Actions in the Containment Leakage TS to be consistent with the Applicability, and revises terms in the Containment Section and Administrative Controls Section of the TS to be consistent with the Containment Leakage Rate Testing Program. This change will not affect the probability of an accident. The containment purge valve and air lock leakage rates are not an initiator of any analyzed event. This change corrects two errors that were made in the Waterford 3 10CFR50 Appendix J, Option B, TS change request that was approved in TS Amendment 124. The first error inadvertently decreased the allowed outage time from 24 hours to 1 hour when either the containment purge valve or containment air lock leakage rate acceptance criteria is not met. The second error inadvertently increased the acceptance criteria for the air lock door seal leakage. The revised air lock door seal leakage rate acceptance criteria was never used at Waterford 3. This change also administratively changes the Containment Leakage TS Action and terms in the TS for consistency.

The proposed change will not affect the consequences of an accident. The amount of leakage from the containment purge valve and from the containment air lock will still be included in the overall combined containment leak rate. Neither the overall containment leakage rate limit nor the Action required to be taken if the overall containment leakage rate were exceeded is being changed. The Containment Leakage TS Action will be consistent with the Applicability and TS 3.0.4 will prohibit entry into Mode 4 (RCS [Reactor Coolant System] temperature ≤ 200°F), unless the overall containment leakage rate is within limit. The revised air lock acceptance criteria was never used. Waterford 3 will continue using the more restrictive acceptance criteria which is controlled administratively. This proposed change does not affect the mitigation capabilities of any component or system, nor does it affect the assumptions relative to the mitigation of accidents or transients.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

The proposed change adds the specific type of containment leakage to the LCO, Action, and SR in the Containment Leakage TS. This results in increasing the allowed outage time from 1 hour to 24 hours when the containment purge valve or containment air lock leakage rates are not within limits. The proposed change revises the air lock door seal leakage rate acceptance criteria. Also, the proposed change revises the Actions in the Containment Leakage TS to be consistent with the Applicability, and revises terms in the Containment Section and Administrative Controls Section of the TS to be consistent with the Containment Leakage Rate Testing Program. Neither the design nor configuration of the plant, or how the plant is operated is being changed due to the addition of the specific types of leakage from the Containment Leakage Rate Testing Program, corrections made to the air lock door seal leakage rate acceptance criteria, or the changes made to make the TS consistent. There has been no physical change to plant systems, structures, or components nor will these changes reduce the ability of any of the safety-related equipment required to mitigate anticipated operational occurrences or accidents. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change adds the specific type of containment leakage to the LCO, Action, and SR in the Containment Leakage TS. This results in increasing the allowed outage time from 1 hour to 24 hours when the containment purge valve or containment air lock leakage rates are not within limits. The proposed change revises the air lock door seal leakage rate acceptance criteria. Also, the proposed change revises the Actions in the Containment Leakage TS to be consistent with the Applicability, and revises terms in the Containment Section and Administrative Controls Section of the TS to be consistent with the Containment Leakage Rate Testing Program. The proposed revision to the Action and making the containment leakage rate terms consistent are administrative changes that have no technical impact on the TS.

The pre-amendment 124 Waterford 3 TS and NUREG-1432 allowed entry into specific Actions with allowed outage times greater than 1 hour (24 hours) when the air lock and purge valve leakage rate acceptance criteria could not be met. This change restores this allowed outage time which was inadvertently changed due to an error in the TS change request. The increased allowed outage time may prevent an unnecessary plant shutdown which is a plant transient. Plant shutdowns produce thermal stress on components in the Reactor Coolant System and the potential for a plant upset that could challenge safety systems. This change decreases the possibility of a plant shutdown by replacing the 1 hour allowed outage time with a 24 hour allowed outage time when the containment purge valve or containment air lock leakage is not within limits. Also, the overall containment leakage rate limits are not being changed and are required to be maintained.

The revision to the air lock door seal acceptance criteria is a more restrictive change to correct an error made by Waterford 3 in the TS change request approved in Amendment 124. The less restrictive acceptance criteria was never used; Waterford 3 continued testing to the more restrictive acceptance criteria.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: James W. Clifford, Acting

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: October 1, 1997

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Crystal River Nuclear Electric Generating Plant Unit 3 (CR-3). The proposed TS change would add a new TS section, 5.6.2.10.4.c. The new section will provide growth monitoring criteria for the first span section of tubes in the "B" Once-Through Steam Generator (OTSG) with pit-like intergranular attack (IGA) indications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The purpose of OTSG tube inspection is to identify tubes that have a higher potential for in service failure due to degradation that results in a reduced ability to withstand normal and upset operating conditions. The formal incorporation of specific indication growth monitoring and repair criteria is consistent with this purpose. Therefore, the probability of an accident previously evaluated has not been increased.

Chapter 14 of the CR-3 Final Safety Analysis Report (FSAR) provides an analysis to assess the consequences of a steam generator tube rupture event, including the complete severance of a steam generator tube. This analyses concluded that CR-3 was sufficiently designed to ensure that in the event of a steam generator tube rupture, the radiological doses would not exceed the allowable limits prescribed by 10 CFR 100. Neither would this result in additional tube failures and further degradation of the

integrity of the reactor coolant pressure boundary. The proposed changes do not alter this analysis in any fashion. Therefore, the consequences of an accident have not been increased.

Criterion 2

Does not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

This change does not alter the design or operation of the OTSGs. The incorporation of the proposed requirements is more conservative than the existing ITS requirements. Neither the type of inspection of OTSG tubes nor the process for performing inspections will be changed by this amendment. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Does Not Involve a Significant Reduction in the Margin of Safety as defined in the Bases for any Technical Specifications.

The previously performed analyses on the effects of OTSG tube failures, as reported in the CR-3 FSAR, have demonstrated that onsite and offsite consequences are within allowable limits. The proposed change incorporates more conservative growth monitoring and operational assessment criteria for the "B" OTSG first-span pit-like IGA indications. This change does not result in a significant reduction in the margin of safety as defined in the Bases for any Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC - A5A, P. O. Box 14042, St. Petersburg, Florida 33733-4042

NRC Project Director: Frederick J. Hebdon

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 26, 1997

Description of amendment request: The proposed amendment would separate the requirements for Control Room Air Conditioning from Control Room Makeup Air and Filtration as presently contained in Technical Specification 3.7.6, "Control Room Emergency Makeup Air and Filtration," and its associated BASES. Technical Specification 3.7.6 now requires that each subsystem of Control Room Emergency Makeup Air and Filtration include an OPERABLE emergency filtration unit and air conditioning unit. The proposed amendment would separate the requirements based on system function. The proposed amendment also would increase the allowed outage time for the air conditioning portion of the Control Room Air Conditioning Subsystem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The proposed changes have no impact on the probability of an accident because the control room ventilation systems are support systems which have a role in the detection and mitigation of accidents but do not contribute to the initiation of any accident previously evaluated. Reorganizing the Technical Specifications by function is merely an administrative change and the change has no impact on the course of any accidents previously evaluated since there is no change in the functions provided by the subsystems.

Increasing the allowed outage time to 30 days from 7 days for the cooling of recirculated air while one train is inoperable does not affect the availability of the second train of air conditioning or the actions required if both trains of air conditioning become unavailable. Thus, the consequences accidents previously evaluated are not increased.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the function of any facility structure, system or component, nor do they affect the manner by which the facility is operated. The proposed changes do not introduce any new failure modes.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the function of any facility structure, system or component, nor do they affect the manner by which the facility is operated. Increasing the allowed outage time for the cooling of recirculated air while one train is inoperable represents an increase in the probability that the air conditioning functions could be unavailable. However, the increase does not affect the availability of the second train of air conditioning or the actions required should both trains of air conditioning become unavailable.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141-0270

NRC Project Director: Ronald B. Eaton, Acting

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: September 26, 1997

Description of amendment requests: The proposed amendments would revise Technical Specification (TS) 3.4.B, "Auxiliary Feedwater System," to provide specific guidance for conducting post-maintenance operational testing of the turbine-driven auxiliary feedwater (TDAFW) pump and associated system valves to meet operability and limiting conditions for operation during unit startup. An additional change is proposed to revise Table TS.3.5.2B to permit during Mode 2 the bypassing of the auto start feature of the auxiliary feedwater (AFW) pumps that results from the trip of both main feedwater pumps when the feedwater pumps are not required to be operated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since none of the proposed changes involve a physical change to the plant, the mechanisms that could cause a Loss of Normal Feedwater have not changed. The probability that a Loss of Normal Feedwater will occur is not altered.

This change still requires that the motor driven AFW Pump and associated system valves are operable during Startup Operations. Analysis of the Loss of Normal Feedwater transient shows that a single AFW Pump provides sufficient AFW flow to prevent any adverse conditions in the core. The condition of an inoperable TDAFW Pump is already permitted during power operations where the consequences of the event would be more severe than during startup. Since there are no consequences from the Loss of Normal Feedwater event at power, the consequences during startup would still be none, but the margins would be larger because; (1) the amount of residual heat generated is less because reactor power at the start of the event is less and (2) the power history is lower resulting in less decay heat.

Thus, these changes do not involve an increase in the probability or consequences of an accident previously analyzed.

2. The proposed amendment(s) will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated because the proposed changes do not introduce a new mode of operation or testing, or make physical changes to the plant.

The proposed changes do not alter the design, function, operation, or testing of any plant component, therefore the possibility of a new or different kind of accident from those previously analyzed would not be created by these changes to Technical Specifications.

3. The proposed amendment(s) will not involve a significant reduction in the margin of safety.

Margins previously established for the Loss of Normal Feedwater event, were analyzed for different initial conditions. The Loss of Normal Feedwater event was analyzed for Power Operations. This analysis determined that no adverse conditions would occur in the core. Since there are no consequences from the Loss of Normal Feedwater event at power, the consequences during startup would still be none but the margins would be greater because; (1) the amount of residual heat generated is less because reactor power at the start of the event is less and (2) the power history is lower causing less decay heat.

Therefore, the proposed change does not result in a significant reduction in the margin of safety currently established.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 3, 1997

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to revise the number of hours

operating personnel can work in a normal shift. The proposed amendment also contains some administrative changes to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Establishing operating personnel work hours at, "an 8 to 12 hour day, nominal 40 hour week," allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. Overtime remains controlled by site administrative procedures in accordance with NRC Policy Statement on working hours (Generic Letter 82-12). If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. No physical plant modifications are involved and none of the precursors of previously evaluated accidents are affected. Therefore, this change will not involve a significant increase in the probability or consequence of an accident previously evaluated.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82-12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

A. Establishing operating personnel work hours at, "an 8 to 12 hour day, nominal 40 hour week," allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. Overtime remains controlled by site administrative procedures in accordance with NRC Policy Statement on working hours (Generic Letter 82-12). No physical modification of the plant is involved. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82-12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

A. Establishing operating personnel work hours at, "an 8 to 12 hour day, nominal 40 hour week," allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12) and is consistent with the Standard Technical Specifications. The proposed change involves no physical modification of the plant, or alterations to any accident or transient analysis. There is no Basis to section 6 of the Technical Specifications, and the changes are administrative in nature. Therefore, the change does not involve any significant reduction in a margin of safety.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82-12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 8, 1997

Description of amendment request: The proposed amendment would revise the f delta I function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

No. The revision to the negative [f delta I] penalty does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. This revision does not directly initiate an accident. The consequences of accidents previously evaluated in the FSAR are unaffected by this proposed change because no change to any equipment response or accident mitigation scenario has resulted. There are no additional challenges to fission product barrier integrity.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

No. The revision to the negative [f delta I] penalty does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change. The proposed Technical Specification revision does not challenge the performance or integrity of any safety related systems. Therefore, the possibility of a new or different kind of accident is not created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

No. The proposed change to the Technical Specification does not involve a significant reduction in a margin of safety. The margin of safety associated with the acceptance criteria for any accident is unchanged.

The revision to the negative [f delta I] penalty will have no affect on the availability, operability or performance of the safety related systems and components and does not affect the plant Technical Specification requirements. The revision to the negative [f delta I] penalty does require a change to the Technical Specifications but does not prevent inspections or surveillances required by the Technical Specifications.

In addition, the revision to the [f delta I] parameters is based upon the revised boron dilution rate used to analyze the boron dilution transient. Indian Point 3 procedures require the placement of one PW [primary water makeup] pump control switch in the pull-out position, thus ensuring that only one PW pump is operating.

The Bases of the Technical Specifications are founded in part on the ability of the regulatory criteria being satisfied assuming the limiting conditions for operation for various systems. Conformance to the regulatory criteria for operation with the revision to the negative [f delta I] penalty is demonstrated and the regulatory limits are not exceeded. Therefore, the margin of safety as defined in the Technical Specifications is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, New York 10019

NRC Project Director: S. Singh Bajwa, Director

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 29, 1997

Description of amendment request: The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) to change the Allowable Value for high steam flow input into limiting condition for operation (LCO) Table 3.3.2-1, Function 4.d.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. An increase in the high steam flow Allowable Value for LCO Table 3.3.2-1, Function 4.d does not increase the probability of any analyzed accident nor does it increase the likelihood of an inadvertent main steam isolation. This function is not explicitly credited in the accident analyses. Also, there are three coincident parameters which must be reached in order for this function to cause a main steam line isolation. It has been demonstrated that the change to the high steam flow parameter does not delay the time at which this isolation signal would be reached for any analyzed accident since the steam flow value is reached much earlier in the accident scenario than the other parameters. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes do not directly affect any analyzed accident analysis. The new isolation times will not be affected for analyzed accidents. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: S. Singh Bajwa, Director

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 26, 1997

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.6.1.3, "Containment Systems - Containment Air Locks," TS Bases 3/4.6.1.3, "Containment Systems - Containment Air Locks," and TS Bases 3/4.9.4, "Refueling Operations - Containment Penetrations." The containment air lock Limiting Condition for Operation and Surveillance Requirements would be modified, and the associated bases would be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because accident initiators, conditions, or assumptions are not affected by the proposed changes, which clarify the Technical Specification (TS) Limiting Condition for Operation (LCO) for the containment air locks, extend the test frequency for the containment air lock interlock mechanisms, and modify guidelines relative to the routing of hoses and cables through the containment air lock during core alterations or during movement of irradiated fuel within the containment.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term, containment isolation, or allowable releases. The proposed changes do not affect the allowable containment leakage rates presently specified in the Technical Specifications.

The proposed change to Surveillance Requirement (SR) 4.6.1.3.c to increase the surveillance interval for the air lock interlock mechanism to "at least once per REFUELING INTERVAL" is justified due to the purely mechanical nature of the interlock mechanism, and given that the interlock mechanism is not normally challenged when the air lock door is used for entry and exit since administrative controls require strict adherence to single door opening. Operating experience shows that the interlock mechanisms are very reliable. Further, the proposed change will allow performance of the surveillance under the conditions that apply during a plant outage, which is preferable to performance, in part, with the plant at power, as is currently necessitated by the present six month interval surveillance requirement. Although an interlock mechanism failure would not affect air lock sealing capabilities and would therefore not directly affect containment integrity, performance of the surveillance with the plant at power, when containment integrity is required, carries with it the potential for loss of containment integrity, should the interlock fail during testing and allow both doors to be opened simultaneously. The proposed TS change may result in an increased probability that due to the increased [decreased] test frequency, an inoperable interlock mechanism could go undetected for a longer length of time. However, in the unlikely event that as a containment entry is being made, abnormal radiation levels inside containment occur, any increase in consequences due to a radioactive release as a result of an inadvertent opening of both air lock doors (as could be allowed by a failed interlock mechanism and assuming violation of administrative controls) is counter-balanced by the decreased likelihood of similar events occurring when the interlock mechanism is tested at power under the current, more frequent, test requirement.

The proposed change to TS Bases 3/4.9.4 to add flexibility in routing cable and hoses through the containment personnel air lock will not affect the requirement to maintain at least one containment personnel air lock door capable of being closed. The analysis results for a fuel handling accident inside containment, as presented in Section 15.4.7.3 of the DBNPS Updated Safety Analysis Report (USAR), are well within the 10 CFR 100 guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results. Under the proposed change, in the event of a fuel handling accident, release of radioactive material will continue to be minimized since at least one personnel air lock door will remain capable of being closed.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not involve a change to the plant design or operation and, therefore, will not introduce any new or different failure modes or initiators.

3. Not involve a significant reduction in a margin of safety.

The proposed TS change to SR 4.6.1.3.c to increase the surveillance interval for the air lock interlock mechanism will have no adverse effect on plant safety based on its good historical surveillance and maintenance data, and the reduction in testing at power which will occur.

The analysis results for a fuel handling accident inside containment, as presented in the D

Basis for proposed no significant hazards guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results. Therefore, the proposed change to TS Bases 3/4.9.4 to add flexibility in routing cable and hoses through the containment personnel air lock will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 11, 1996

Description of amendment request: The proposed ammendment would revise the Vermont Yankee Technical Specifications (TSs) regarding the amount of foam concentrate required to support operability of the Recirculation Motor Generator (M. G.) Set Foam System as stated in TS 3.13.G.1 and 3.13.G.2. In both instances, the required amount of foam concentrate would be increased from 100 to 150 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The changes proposed herein affect only the amount of foam concentrate inventory required to support the operability of the Recirculation M. G. Set Foam System and therefore does not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

These changes involve the upgrade of an existing system using standard fire protection components to provide the level of protection originally required. An evaluation has been completed to ensure that the enhanced spray pattern and increased volume of spray does not impact any equipment not previously evaluated and does not create any threat of flooding to equipment. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety:

These changes do not affect any equipment involved in potential initiating events or safety limits. Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee—s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037-1128

NRC Project Director: Ronald B. Eaton, Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 2, 1997

Description of amendment request: This license amendment request proposes to revise Technical Specification 3.7.1.2, Auxiliary Feedwater System, and associated Bases, to add requirements for the essential service water (ESW) flowpaths to the turbine-driven auxiliary feedwater pump (TDAFWP) and other changes consistent with the technical specification conversion application previously submitted. The proposed revisions would (a) provide an action and allowed outage time (AOT) for inoperability of one of the redundant ESW flowpaths to the TDAFWP, and (b) incorporate an action and AOT for inoperability of one of the redundant steam flowpaths to the TDAFWP turbine and other changes to make the auxiliary feedwater system limiting condition for operation (LCO) and actions consistent with those previously submitted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

ESW Flow Path Required Actions

This change would provide a 7-day AOT for the ESW supply flow paths to the TDAFWP. This would replace administrative controls that imposed a 72-hour AOT on ESW flow paths to the TDAFWP.

The proposed change does not result in any hardware changes or changes to operating methodologies. This revision does not affect an accident initiator of any analyzed accident since the TDAFWP ESW supply only provides flow to equipment required to mitigate the consequences of an accident. The revision recognizes that the TDAFWP would remain available in most cases for accident mitigation because of the low probability of an accident and subsequent equipment failure requiring the use of the inoperable ESW supply for the TDAFWP. Changing the AOT from 3 days to 7 days would have a negligible effect on this small probability. Loss of the AFW function would also require the failure of the MDAFWPs [motor-driven auxiliary feedwater pumps]. In addition, the CST [condensate storage tank] would be OPERABLE in accordance with LCO 3.7.1.3 and would be available for use by the TDAFWP for all events except those external hazards that represent a hazard to the integrity of the tank itself.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Steam Supply Flow Path Required Actions

This change would provide a 7-day AOT for the steam supply flow paths to the TDAFWP. This would replace an administrative control that required the TDAFWP to be declared inoperable without applying an AOT. The proposed change does not result in any hardware changes or changes to operating methodologies. This revision does not affect an accident initiator of any analyzed accident since the TDAFWP steam supply only provides power to equipment required to mitigate the consequences of an accident. The revision recognizes the low probability of an accident requiring the use of the inoperable steam supply for the TDAFWP coincident with the failure of the MDAFWPs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. Use of "Trains" Instead of "Pumps and Associated Flow Paths" and Removal of Unnecessary Details

This change is partially administrative and partially a movement of provisions not required to be in the technical specifications to other controlled documents. The administrative change does not impact initiators of analyzed events or equipment assumed in the mitigation of accidents or transient events. The details moved from the technical specification would be located in the Bases of the technical specification. Since any changes to the Bases will be evaluated per the requirements of 10 CFR 50.59, proper controls are in place to adequately limit the probability or consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. Twelve Hours to HOT SHUTDOWN

This change would allow an additional 6 hours to achieve HOT SHUTDOWN for the AFW System. The proposed change does not alter the plant configuration or operation or function of any safety system. Consequently, the change does not increase the probability of an accident as defined in accident analysis. The proposed change permits a longer time to cooldown to RHR [residual heat removal] entry conditions; however, this would not affect the consequences of any postulated accidents and is appropriate due to the need to avoid any transients while cooling down with a potentially degraded AFW System.

Therefore, the proposed change would have no significant effect on the probability or consequences of any previously analyzed accidents.

5. Additional AOT of 10 Days from Discovery of Failure to Meet the LCO

The proposed change imposes more stringent requirements than contained in current technical specification. The more stringent requirements are imposed to ensure that the OPERABILITY requirements for the AFW System are maintained consistent with the safety analysis and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

6. Suspension of LCO 3.0.3

The proposed change involves clarifying the technical specification. The proposed revision involves no technical changes to the current technical specification. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accidents or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1.ESW Flow Path Required Actions

The proposed change to add a 7-day AOT for the ESW supply flow paths does not require physical alteration to any plant system or change the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. Steam Supply Flow Path Required Actions

The proposed change to add a 7-day AOT for the steam supply flow paths does not require physical alteration to any plant system or change the method by which any safety-related system performs it function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Use of "Trains" Instead of "Pumps and Associated Flow Paths" and Moving of Unnecessary Details

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in controlling parameters. The proposed change will not impose any different requirements and adequate control of the information moved to the Bases will be maintained. The proposed change will not impose any different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

4. Twelve Hours to HOT SHUTDOWN

The proposed change does not require physical alteration to any plant system or change the method by which any safety-related system performs its function. As discussed above, the change does allow additional time to complete transfer from the SG [steam generator] as the method for heat removal to the RHR System, but does not alter the basic methodology.

Therefore, the proposed change would not create the possibility of a new or different kind of accident.

5. Additional AOT of 10 Days from Discovery of Failure to Meet the LCO

The proposed change does not involve a physical alterstion of the plant (no new or different type of equipment will be installed) or changes in controlling parameters. The proposed change does impose different (more restrictive) requirements. However, these changes remain consistent with assumptions made in the safety analysis regarding system OPERABILITY. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

6. Suspension of LCO 3.0.3

The proposed change clarifies an implied requirement from current technical specifications and does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in controlling parameters. The proposed change will not impose any different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

1. ESW Flow Path Required Actions

The proposed change to add a 7-day AOT for the ESW flow paths does not change any accident analysis assumptions, initial conditions or results. Consequently, it does not have an effect on margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

2. Steam Supply Flow Path Required Actions

The proposed change to add a 7-day AOT for the steam supply flow paths does not change any accident analysis assumptions, initial conditions or results. Consequently, it does not have an effect on margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

3. Use of "Trains" Instead of "Pumps and Associated Flow Paths" and Removal of Unnecessary Details

The proposed change will not reduce a margin of safety because it has no impact on the design basis or safety analysis. In addition, the requirements to be transposed from the technical specification to the Bases are the same as the current technical specification. Since any future changes to these requirements in the Bases will be evaluated per the requirements of 10 CFR 50.59, proper controls are in place to maintain an appropriate margin of safety. Therefore, the changes do not involve a significant reduction in a margin of safety.

4. Twelve Hours to HOT SHUTDOWN

The proposed change does not alter the basic regulatory requirements or change any accident analysis assumptions, initial conditions or results.

Therefore, the proposed change would have no significant adverse effect on margins of safety.

5. Additional AOT of 10 Days from Discovery of Failure to Meet the LCO

The imposition of more stringent requirements on AOT would increase the margin of plant safety by providing additional requirements to maintain AFW System OPERABILITY.

The change is consistent with the safety analysis and licensing basis. Therefore, this change does not involve a reduction in a margin of safety.

6. Suspension of LCO 3.0.3

The proposed change will not reduce a margin of safety because it has no impact on the design basis or safety analysis. This change is administrative in nature. As such, no question of safety is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: September 5, 1997 (Accession No. 9709100106)

Description of amendment request: The proposed technical specification (TS) changes are needed to permit removal of spent nuclear fuel from the Spent Fuel Pit storage racks into a combined storage/shipping cask and to enable handling of the cask components and other hardware by the Yard Area Crane. Specific TS changes are needed for minimum water coverage over spent fuel, shielding for personnel exposure, increased loads carried over the fuel, addition of restrictions for load paths over spent fuel and changes to the appropriate TS bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The changes provide for an alternate method of providing protection of the spent fuel and spent fuel pit (SFP) from heavy loads that must be transported over the SFP. The method chosen, that is, providing a single-failure-proof overhead crane, is considered an acceptable method as stated in Regulatory Guide 1.13, "Spent Fuel Storage Facility Design Basis," and NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants." The Defueled Technical Specification 3.1.2 requirement for five (5) feet of water above the top of the fuel assemblies for fuel traveling in the SFP is provided for personnel protection (ALARA). This protection is provided by the shielding afforded by the shipping and/or transfer cask system. The cask handling crane will comply with the single-failure-proof crane design requirements of NUREG-0554, "Single Failure-Proof Cranes for Nuclear Power Plants," and meet the criteria specified in NUREG-0612. In addition, design controls and administrative controls will be maintained to prevent handling of the shipping and/or transfer cask over spent fuel in the SFP. As such, these changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. NUREG-0612, Section 5, provides direction for providing an adequate level of defense-in-depth for handling of heavy loads near spent fuel and safe shutdown systems. The single-failure-proof overhead crane design is presented as an acceptable method of providing the proper margin of safety for handling of heavy loads. By upgrading the cask handling crane to a single-failure-proof design and meeting the requirements presented in Sections 5.1.1 and 5.1.6 of NUREG-0612 (for safe load path, procedures, crane operator training and qualification, special lifting devices, lifting devices that are not specially designed, and crane inspection, testing, and maintenance) a sufficient level of defense-in-depth is provided to ensure that a load drop is not a credible event. As such, there is no increase in the probability or consequence of an accident previously evaluated as a result of the heavy load changes. A fuel handling incident is a currently analyzed event; dropping of a fuel assembly over the spent fuel within the transfer cask is similar to dropping of a fuel assembly over spent fuel in the SFP. The design basis fuel handling event analysis bounds these events, so there is no increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The defense-in-depth philosophy provided by the single-failure-proof crane load handling sysem design, and compliance with the requirements specified in Sections 5.1.1 and 5.1.6 of NUREG-0612 provide assurance that for a credible single failure of the crane load handling system, the system will still be able to perform its safety function. This provides assurance that a load drop accident is not a credible event. As such, no new or different kind of accident will be created from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed changes implement the guidelines of NUREG-0612 and Regulatory Guide 1.13. YAEC is implementing an acceptable alternate method of ensuring the safe handling of heavy loads

over the SFP. This method provides a defense-in-depth approach for handling of heavy loads over the SFP and maintains the margin of safety consistent with that of the current requirements. Further protection is provided by the prohibition of these additional heavy loads from travel over the spent fuel assemblies in the SFP racks. The use of a single-failure-proof crane and associaed lifting devices provide an increased margin of safety that ensure that a load drop event is not credible and is considered an adequate alternate for the additional area added to the safe load path. The use of a limit switch to prevent movement of the prohibited cask handling crane loads from movement beyond the safe load path, provides an additional margin of safety, that was previously provided by the steel framing at the southern edge of the SFP superstructure roof opening. The single-failure-proof crane and defense-in-depth design ensure that a load drop is not a credible event, assuring that the margin of safety is not reduced.

Based on the above considerations, it is concluded that there is reasonable assurance that the operation of Yankee Nuclear Power Station consisent with the proposed changes will not endanger the health and safety of the public.

The proposed change has been reviewed by the Plant Operations Review Committee and the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 12, 1997

Brief description of amendment: The proposed amendment involves a revision to the Emergency Diesel Generator protective relaying scheme at CR3, as described in the Final Safety Analysis Report Chapter 8.

Date of publication of individual notice in the **Federal Register:** September 30, 1997 (62 FR 51165).

Expiration date of individual notice: October 30, 1997

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: March 24, 1995, as supplemented by letters dated September 10, 1995, and March 22, 1996.

Brief description of amendment: The amendment would change the technical specifications (TS) to (1) reflect the applicable portions of NUREG-1432, "Standard Technical Specifications Combustion Engineering Plants," (2) implement the recommendations of Generic Letter (GL) 93-05, "Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Plant Operation," and (3) implement the recommendations of GL 94-01, "Removal of Accelerated Testing and Specific Reporting Requirements for Emergency Diesel Generators." The purpose of the proposed amendment is to increase emergency diesel generator (EDG) reliability by reducing stresses on EDG caused by unnecessary testing. The associated Bases are also updated.

Date of issuance: October 6, 1997

Effective date: October 6, 1997, to be implemented within 120 days of date of issuance.

Amendment Nos.: Unit 1 - 114; Unit 2 - 107; Unit 3 - 86

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29870) The September 10, 1995, and March 22, 1996, supplemental letters provided additional clarifying information and did not change the original no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 28, 1996, as supplemented November 20, 1996, and July 31, 1997.

Brief description of amendments: The amendments reduce the moderator temperature coefficient limit shown on Technical Specification Figure 3.1.1-1. This proposed change is necessary to support changes in the safety analyses made to accommodate a larger number of plugged steam generator tubes for future operating cycles.

Date of issuance: October 2, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 222 and 198

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Registe for amendment: February 21, 1997**

Brief description of amendment: This amendment adds a specific time limit to Technical Specification Table 3.3-3 to place an inoperable refueling water storage tank level channel in a bypassed condition.

Date of issuance: September 30, 1997

Effective date: September 30, 1997

Amendment No.: 74

Facility Operating License No. NPF-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 17225) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 1, 1997

Brief description of amendments: The amendments revise Technical Specification Table 3.3.7.1-1, "Radiation Monitoring Instrumentation," to require two channels to be operable per trip system as opposed to two per intake. This change reflects a modification to the design of the instrumentation logic to satisfy single failure requirements. The amendments also revise the associated action statement to clarify system logic wording.

Date of issuance: October 9, 1997

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 121 and 106

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45455). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 1, 1997

Brief description of amendments: The amendments clarify the load value for the emergency diesel generator to be equal to or greater than the largest single load and revise the frequency and voltage requirements during the performance of the test.

Date of issuance: October 7, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 178 and 176

Facility Operating License Nos. DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33121). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Consumers Energy Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 10, 1996, as supplemented February 20, 1997

Brief description of amendment: The amendment revises the Technical Specifications for the containment emergency escape air lock test requirements. Concurrently, the Commission has also granted an exemption to certain requirements of 10 CFR Part 50, Appendix J, relating to the testing of the emergency escape air lock, to the extent that leakage rate testing is not necessary after opening the emergency escape air lock doors for post-test restoration or seal adjustment.

Date of issuance: September 30, 1997

Effective date: September 30, 1997

Amendment No.: 177

Facility Operating License No. DPR-20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1997 (62 FR 8795) The February 20, 1997, letter provided clarifying information within the scope of the original application and did not change the NRC staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423 Consumers Energy Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 6, 1995, as supplemented October 18 1996, January 10 and June 27, 1997

Brief description of amendment: The amendment deletes crane operation and movement of heavy loads requirements and their bases from the technical specifications. The requirements have been incorporated into the Palisades Operating Requirements Manual (ORM). The ORM has been incorporated by reference into the Palisades Final Safety Analysis Report, assuring that future changes to the crane and heavy loads requirements will be subject to the provisions of 10 CFR 50.59.

Date of issuance: October 2, 1997

Effective date: October 2, 1997

Amendment No.: 178

Facility Operating License No. DPR-20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1996 (61 FR 37298) The October 18, 1996, January 10 and June 27, 1997, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 5, 1997 (NRC-97-0107)

Description of amendment request: The amendment revises the Technical Specifications by adding a special test exception to allow reactor coolant temperatures up to 212 degrees Fahrenheit during hydrostatic or inservice leak testing while in Operational Condition 4 without entering Operational Condition 3. The amendment also makes related changes to the Index, Table 1.2, "Operational Conditions," and the Bases to incorporate the reference to the proposed special test exception. Date of issuance: September 30, 1997

Effective date: September 30, 1997, with full implementation within 45 days

Amendment No.: 114

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications and Bases.

Date of initial notice in **Federal Register:** September 30, 1997 (62 FR The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Michigan, and final determination of no significant hazards considerations are contained in a Safety Evaluation dated September 30, 1997 No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Energy Corporation, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: May 8, 1997, as supplemented by letter dated September 10, 1997

Brief description of amendment: The amendment revises Section 3/4.1.2 of the Technical Specifications to permit a one-time natural circulation test during Mode 3.

Date of issuance: October 9, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment No.: 162

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30631) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1997. No significant hazards consideration comments received: NoLocal Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1997, as supplemented August 15, 1997

Brief description of amendment: The amendment revises the Technical Specifications to increase the two recirculation loop Minimum Critical Power Ratio (MCPR) safety limit to 1.13 and the single recirculation loop MCPR safety limit to 1.14.

Date of issuance: October 8, 1997

Effective date: October 8, 1997

Amendment No.: 99

Facility Operating License No. NPF-47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45456) The August 15, 1997, submittal provided clarifying information that did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: August 1, 1997

Brief description of amendment: Revises the Technical Specifications (TS) to extend the surveillance interval for the Engineered Safety Features Actuation System to a refueling interval on a staggered test basis.

Date of Issuance: October 2, 1997

Effective Date: October 2, 1997

Amendment No.: 90

Facility Operating License No. NPF-16: Amendment revised the TS.

Date of Initial notice in **Federal Register:** August 27, 1997 (62 FR 45457) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981-5596

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1 (TMI-1), Dauphin County, Pennsylvania

Date of application for amendment: August 14, 1997, as supplemented September 9, 19, and 24, 1997

Brief description of amendment: The amendment revises the TMI-1 Technical Specifications which decreases the maximum allowable dose equivalent iodine-131 limit in the reactor primary coolant from 1.0 uCi/gm to 0.35 uCi/gm.

Date of Issuance: October 2, 1997

Effective Date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 204

Facility Operating License No. NPF-50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45459) The supplemental letters did not affect the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 10, 1997

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by relocating the TS surveillance requirement for attaining a negative pressure in the enclosure building, addressing operability, deleting the definition for enclosure building integrity, modifying enclosure building access opening requirements, and making editorial changes for clarification and consistency. The TS Bases are also updated to reflect the proposed changes including the need to maintain the integrity of the enclosure building and to support previously approved laboratory testing requirements for charcoal filter sample testing.

Date of issuance: September 30, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 208

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1997 (62 FR 24987) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 18, 1997

Brief description of amendment: The amendment adds a new Technical Specification and associated Bases to address the operability of the steam generator atmospheric relief bypass valves.

Date of issuance: October 2, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 151

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: January 17, 1995, as supplemented by letters dated March 30, 1995, July 2, 1996, February 28, 1997, and September 22, 1997

Brief description of amendment: The amendment revised the technical specifications to support the replacement of the Source Range and Intermediate Range Monitors with the Wide Range Neutron Monitoring System.

Date of issuance: September 30, 1997

Effective date: As of its date of issuance and is to be implemented upon completion of Unit 3 Modification P00271.

Amendment No.: 224

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (62 FR 29885) The March 30, 1995, July 2, 1996, February 28, 1997, and September 22, 1997, supplemental letters did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 14, 1997

Brief description of amendment: The amendment revises Appendix A, Section 6 of the James A. FitzPatrick Technical Specifications. These changes will enable the Safety Review Committee to review rather than audit plant staff performance by deleting the plant staff performance audit requirements from Section 6.5.2.9.b and incorporating a plant staff performance review requirement in Section 6.5.2.8. Additionally, this amendment application replaces the position title of Vice President Regulatory Affairs and Special Projects with Director Regulatory Affairs and Special Projects.

Date of issuance: October 3, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 240

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43374) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: June 19, 1997, as supplemented by letters dated July 30 and 31, 1997

Brief description of amendment: This amendment changes TS 4.1.3.1.2, "Control Rod Operability;" TS 3.1.3.6, "Control Rod Drive Coupling;" TS 3.1.3.7, "Control Rod Position Indication;" TS 3.1.4.1, "Rod Worth Minimizer;" TS 3/4.1.4.2, "Rod Sequence Control System;" TS 3/4.10.2, "Special Test Exceptions - Rod Sequence Control System;" the Bases for TS 2.2.1.2, "Average Power Range Monitor;" the Bases for TS 3/4.1.4, "Control Rod Program Controls;" and the Bases for TS 3/4.10.2, "Rod Sequence Control System." The changes eliminate the Rod Sequence Control System (RSCS) Limiting Condition for Operation and Surveillance Requirements from the TSs and reduce the Rod Worth Minimizer low power setpoint to 10% from 20%. Changes to other sections of the TSs delete reference to the RSCS from the TSs and incorporate additional requirements necessary to support the elimination of the RSCS.

Date of issuance: September 30, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 105

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications and the License.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45462) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 28, 1997

Brief description of amendments: The amendments revise the Technical Specifications to clarify that testing of

each shared emergency diesel generator (EDG), 1-2A and 1C, to comply with surveillance requirement 4.8.1.1.2.e is only required once per 5 years on a per EDG basis, not on a per unit basis.

Date of issuance: October 1, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 129, 122

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33135) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 1997. No significant hazards consideration comments received: No.Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: May 9, 1997, as supplemented September 19, 1997

Brief description of amendment: The amendment revises the minimum critical power ratio safety limits for a mixed core of GE9B/GE12/GE13 fuel for Cycle 18 operation.

Date of issuance: October 8, 1997

Effective date: Prior to the restart from the Hatch Unit 1 outage currently scheduled to begin October 1997.

Amendment No.: 209

Facility Operating License No. DPR-57: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40857) The September 19, 1997, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 1997. No significant hazards consideration comments received: No.Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: May 9, 1997, as supplemented September 3, 1997

Brief description of amendments: The amendments revise the applicability requirements for the Rod Block Monitor (RBM) to require that the RBM be operable whenever reactor thermal power is greater than or equal to 29 percent of rated thermal power.

Date of issuance: October 8, 1997

Effective date: As of the date of issuance to be implemented prior to Unit 1 startup from the fall 1997 refueling outage for Unit 1; and implemented within 30 days from issuance for Unit 2.

Amendment Nos.: 210, 151

Facility Operating License Nos. DPR-57 and NPF-5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40857) The September 3, 1997, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 8, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 21, 1996, as supplemented by letters dated March 17, March 27, April 3, and July 15, 1997 (TS 96-07)

Brief description of amendments: The amendments change the Technical Specifications (TS) by revising the as-found setpoint tolerance band for the pressurizer Code safety relief valves and the main steam Code safety relief valves from plus or minus one percent to plus or minus three percent.

Date of issuance: September 29, 1997

Effective date: September 29, 1997

Amendment Nos.: 229 (Unit 1), 220 (Unit 2)

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise TS.

Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52969) The March 17, March 27, April 3, and July 15, 1997, letters provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library 1001 Broad Street, Chattanooga, Tennessee 37402

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: August 14, 1997 (TSCR 199)

Brief description of amendments: The amendments revise TS 15.4.2.B. "In-Service Inspection and Testing of Safety Class Components Other than Steam Generator Tubes," to modify item 2 by deleting the reference to TS 15.4.4 and referencing the Containment Leakage Rate Testing Program; TS 15.6.12.A.1, "Containment Leakage Rate Testing Program," to eliminate the one-time requirement for Unit 2 Type A testing since the testing has been completed; and TS Bases 15.4.4 to delete the specific bases for containment purge valve testing and to delete a reference that is no longer used. Date of issuance: September 29, 1997, with full implementation within 45 days

Amendment Nos.: 181 and 185

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45466) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 29, 1997

Brief description of amendment: The amendment changes the wording of Action Statement 5a to Technical Specification Table 3.3-1, "Reactor Trip System Instrumentation." This action statement prescribes a set of actions to be accomplished when a source range neutron detector is inoperable with the plant shutdown. The proposed wording change will clarify the times and order in which these actions are to be performed.

Date of issuance: September 29, 1997

Effective date: September 29, 1997, to be implemented within 30 days from the date of issuance.

Amendment No.: 111

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1997 (62 FR 45467) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 6, 1997

Brief description of amendment: This amendment allows the testing of certain contacts in the emergency diesel generator load sequencer to be done with the unit at power (Mode 1) and provides an additional 24 hours to the time allowed by TS 4.0.3 to complete the testing.

Date of issuance: October 7, 1997

Effective date: October 7, 1997

Amendment No.: 112

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (62 FR 49261 dated September 19, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 20, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 7, 1997.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 15th day of October 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting DirectorDivision of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97-27877 Filed 10-21-97; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[NUREG–1569]

Draft Standard Review Plan For In Situ Uranium Extraction License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments on a Draft Standard Review Plan for *in Situ* Uranium Extraction License Applications (NUREG–1569) from interested parties. A NRC source and byproduct material license is required under the provisions of Title 10 of the Code of Federal Regulations, Part 40 (10 CFR Part 40), Domestic Licensing of Source Material, to recover uranium by *in situ* leach uranium extraction mining techniques (*in situ* leaching). An applicant for a new operating license, or for the renewal or amendment of an existing license, is required to provide detailed information on the facilities, equipment, and procedures to be used, and if appropriate, an environmental report that discusses the effect of proposed operations on public health and safety and on the environment. This information is used by Nuclear Regulatory Commission staff to determine whether the proposed activities will be protective of public health and safety and be environmentally acceptable. The purpose of this standard review plan is to provide NRC staff with specific guidance on the review of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR. The review plan is also intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The draft was developed using input from (1) staff review precedents; (2) staff inspection experiences; (3) public meetings with industry; and (4) experience from the State of Texas, which is an agreement state for uranium recovery and has 15 licensed *in situ* leach operations.

Opportunity to Comment: Interested parties are invited to comment on the review plan. Interested parties are also asked to comment on the level and extent that staff could rely on technical reviews performed by non-agreement states in areas where the NRC and the State have concurrent regulatory authority. These areas include land application, nonradiological soil cleanup, upper control limit, and groundwater restoration reviews. A final review plan will be prepared after the NRC staff has evaluated public comments received on the draft review plan.

DATES: Written comments must be received prior to December 8, 1997.

ADDRESSES: Comments on the draft review plan should be sent to the Chief, Rules and Directives, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

AVAILABILITY: A copy of the Draft Standard Review Plan (NUREG–1569) may be obtained by writing to the Printing and Graphics Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 14th day of October 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 97–28002 Filed 10–21–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Applications, Hearings, Determinations, Etc. Tivoli Industries, Inc.

October 16, 1997.

Issuer Delisting; Notice of Application to Withdraw from Listing and

Registration; (Tivoli Industries, Inc., Common Stock, $.001 Par Value; Redeemable Class A Warrants to Purchase $.001 Par Value Common Stock, expiring Sept. 21, 1997; Redeemable Class B Warrants to Purchase $.001 Par Value Common Stock, expiring Sept. 21, 1997) File No. 1–13338.

Tivoli Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company's Securities have been listed for trading on both the BSE and Nasdaq Small Cap Stock Market since September 21, 1994.

The Company has complied with the rules of BSE by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Securities from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Securities on the NASDAQ SmallCap Stock Market and the BSE. The Company does not see any particular advantage in the dual trading of its Securities and believes that dual listing would fragment the market for its securities.

By letter dated September 23, 1997, the BSE has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the BSE.

Any interested person may, on or before November 6, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–27901 Filed 10–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 39235; File No. SR–CTA/CQ–97–2]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Second Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and First Charges Amendment to the Restated Consolidated Quotation Plan

October 14, 1997.

Pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on September 26, 1997, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants") filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan. The amendments (a) establish a new Network A fee (*i.e.*, one cent per "quote packet") for interrogation services that vendors offer on a pay-for-use basis, (b) eliminate the Network A Class F and Class H program classification charges, (c) reclassify the Network A Class G program classification charge and (d) raise the monthly Network A fee applicable to nonprofessional subscribers from $4.25 to $5.25. In addition, the amendment to the CTA Plan raises the monthly connection fee for delivery of the ticker signal by means of AT&T from $200 to $250.

Pursuant to Rule 11Aa3–2(c)(3)(i), the CTA and CQ Participants have designated the amendments as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants, which renders the amendments effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2

The purpose of the amendments is to allow the Participants under the Plans that make Network A last sale information and quotation information available ("the Network A Participants") to establish a new and additional pricing alternative for vendors of, and subscribers to, certain Network A market data interrogation services. That pricing alternative has proved popular and successful in the context of a pilot program. In addition, the amendments eliminate two categories of program classification fees, reclassify a third category of program classification fee and increase the monthly nonprofessional subscriber fee by $1. The amendment to the CTA Plan also increases the monthly connection fee that applies for delivery of the ticker signal by AT&T by $50.

1. Usage-Based Charge

a. *One Cent Per Quote.* The Network A Participants propose to establish a fee of one cent for each real-time "quote packet" that vendors disseminate to subscribers on a pay-for-use basis during the hours that the Network A Participants are open for trading (a "per-quote charge"). For the purposes of this charge, a "quote packet" refers to a group of one or more data elements relating to the same issue. Last sale price, bid, offer, transaction size, quotation size, opening price, high price, low price, trading volume and net change in price are all examples of data elements that might be part of the same "quote packet," either individually or in combination. An index value qualifies as a "quote packet" in and of itself.

In order to take advantage of the per-quote charge, a vendor must document in its Exhibit A that it has the ability to measure accurately the number of quote packets and must have the ability to report aggregate quote packet quantities to the Network A Participants on a monthly basis.

The Network A Participants will impose the per-quote charge only on the dissemination of the real-time market data. Vendors may provide delayed data services in the same manner as they do today.

The per-quote charge is payable on a monthly basis and is payable by the vendor providing the service, rather than the vendor's subscribers. It represents a new and additional alternative to existing rates. That is, vendors may elect to continue to offer monthly display device services subject to the current rates for per-device services (rather than the newly established per-quote charge) and also may elect, either in addition or as a substitute, to disseminate data pursuant to the per-quote charge.

[1] 15 U.S.C. § 78s(b)(1).

The Network A Participants anticipate that the nonprofessional subscriber community will be more likely to embrace the per-quote charge than the professional subscriber community. In fact, making market data more readily available to individual investors is one of the primary motivations for establishing the per-quote charge. However, the Network A Participants will not require vendors charging on a per-quote basis to differentiate between professional and nonprofessional subscribers.

Contractually, the Network A Participants intend to require vendors (A) to incorporate into their agreements with subscribers the form of addendum to vendor-subscriber agreements that the Participants have adopted or (B) to incorporate substantively similar provisions to those found in that addendum into the vendors' agreements with subscribers, rather than to have each subscriber sign the consolidated Network A subscriber agreement. (The Network A Participants will review and pass upon the adequacy of those "incorporating agreements.")

b. *The Pilot Programs.* Since 1991, the Network A Participants have conducted a pilot program pursuant to which they have allowed vendors of PC dial-up and paging services to pay for those services based on the quantity of quote packets disseminated. The pilot fee was one-half cent per quote packet and was assessed for quote packets disseminated during the period from market open to market open. Thirteen vendors participated in the pilot program. The terms of the program prohibited those vendors from providing delayed data services during the hours that the Participants were open for trading.

CTA's experience with the pilot demonstrated two things. First, it demonstrated that demand for usage-based pricing is considerable. (As noted above, the per-quote pilot program has grown to include thirteen vendor organizations. The aggregate number of quote packets disseminated has increased substantially each year.) The Participants welcome that demand because it suggests that usage-based services will promote an important goal of the Participants and of the national market system that Congress established when it passed the 1975 Amendments to the Act: the widespread dissemination of real-time market data.

Second, it made clear that vendors prefer to have the flexibility of providing delayed data services pursuant to the delayed data fee schedule at the same time as they are providing real-time usage-based services. (Approximately six vendors that elected not to participate in the pilot program have indicated that they have an interest in providing services pursuant to per-quote charges once the Network A Participants allow them to continue to provide their delayed data services.) Initially, it was hoped that the inexpensive rate for the receipt of real-time data pursuant to the pilot program would cause vendors to feel comfortable in substituting one-half cent per quote real-time services for delayed services, thereby allowing us to promote the use of real-time data instead of delayed data. However, the vendors expressed a different view. The inability to provide delayed data services alongside a usage-based service under the pilot program discouraged many potential pilot program participants, including all of the major traditional market data vendors, from taking part in the pilot program.

To accommodate the preference for providing real-time usage-based services and delayed data services at the same time, the Network A Participants propose to set the per-quote charge at one cent per quote packet (as opposed to one-half cent per-quote packet which has applied during the pilot program), to impose the per-quote charge only on real-time market data and to allow vendors to provide delayed data services in the same way as they do today.

Given the success of the pilot programs and the market demand for per-quote charges, the Network A Participants are hereby looking to accommodate the vendor community by making it possible for all vendors to meter market data on a per-quote basis. The Network A Participants note that the Commission has approved an identical one-cent-per-quote usage-based fee for the Nasdaq Stock Market, Inc.

2. Program Classification Charges

The amendments eliminate the Class F and Class H program classification charges and reclassify Class G as a component of display device charges.

a. *Class F.* The Class F charges of $250 per month for last sale price information and $250 per month for quotation information permit vendors of delayed market data services to provide a real-time price in order to allow their subscribers to verify the market price of a security before entering an automated order for that security through a personal computer. The introduction of usage-based services eliminates the need for that charge. At one cent per quote, a vendor's customers could check the market prior to entering orders 50,000 times per month before the vendor would reach the fee equivalent of the Class F charges.

b. *Class G.* Program classification G imposes display device fees on automated telephone voice response services, based upon the concept of device equivalents. That is, the charge is set at the device fee that would apply for a number of devices equal to the maximum number of inquiries to which the vendor's automated voice response service can respond simultaneously. The Network A Participants propose to recharacterize the Class G charge as a device fee, rather than a separate program classification charge. They will simply apply device fees to automated telephone voice response services based on device equivalents, just as today. The amount of the charge remains unchanged.

c. *Class H.* The Class H charge applies to automated printer report services. Historically, only one vendor has ever provided such a service and it ceased providing that service some years ago. The absence of demand for this type of service eliminates the need for the Class H computer program classification charge.

3. Nonprofessional Subscriber Charge

The Network A Participants established a separate category of fees (one fee for Network A last sale prices and a separate fee for Network A quotes) for nonprofessional subscribers in 1983. In October 1986, the Network A Participants consolidated fees for Network A last sale prices and quotes and reduced nonprofessional subscriber Network A fees from $7.50 per month for Network A last sale prices and $6.00 per month for Network A quotes to a consolidated rate of $4.00 per month for both Network A prices and quotes. In 1991, the Network A Participants increased the consolidated nonprofessional subscriber rate to $4.25 per month. Those rates have not increased since. The Network A Participants believe that the introduction of a per-quote charge to facilitate the provision of usage-based services presents a meaningful alternative pricing mechanism for nonprofessional subscribers and believes that the $1.00 increase is justified. Therefore, the Network A Participants propose to increase the consolidated Network A nonprofessional monthly rate from $4.25 to $5.25 per month.

4. Ticker Charge

Under the CTA Plan, the Network A Participants impose a charge that is designed to recover the ticker network expense that common carrier AT&T

imposes on the Network A Participants for the delivery of the ticker signal to ticker customers in the United States. The proposed increase is designed to offset increases in those expenses that AT&T has recently imposed on the Network A Participants.

The present per connection charge for AT&T's delivery of the ticker signal was set at $200 on July 1, 1996. Since then, Network A has absorbed increases in AT&T common carrier costs and the Network A Participants have determined to pass those increased costs along to customers. The increase applies only to leased line service in the continental United States (except downtown New York City). Rates for customers receiving service in New York City south of Chambers Street or by means of satellite remain unchanged, as common carrier rates for those services are not affected by the recent rate increases.

The number of Network A ticker connections has declined from a peak of 6,200 in 1982 to a current level of 1,076. Further declines are predicted and the long-term viability of this service is questionable. The Network A Participants have determined to continue to offer the low speed ticker service, but not to subsidize the product, and to periodically review market demand for the service.

* * * * *

This amendment furthers the national market system objectives regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Network A Participants approved the per-quote service at their August 6, 1997 meeting and shortly thereafter, began the process of notifying those vendors that participate in the one-half-cent-per-quote pilot program that: (a) The Network A Participants have determined to terminate the one-half-cent-per-quote pilot program, and (b) those vendors may convert to the one-cent-per-quote model upon the satisfactory completion of the necessary contract work. That will allow the pilot program participants to continue to provide their services pursuant to usage-based fees in an uninterrupted manner or to elect to terminate the provision of services pursuant to usage-based fees. In addition, upon filing the amendments with the Commission, the Network A Participants will again notify those vendors, this time to require the pilot program participants to either convert to the cent-per-quote service within 30 days from the date of the filing or terminate the distribution of market data on a per-quote basis.

The Network A Participants have also begun the process of notifying those vendors that do not participate in the pilot program but that have expressed an interest in the proposed per-quote service that they may commence to provide the proposed service upon the completion of an appropriate contract. Hereafter, the Network A Participants will assist any additional vendors that express interest in the per-quote service. For the purpose of educating the investment community about the per-quote service, the Network A Participants have prepared a "Fact Sheet," a copy of which is included for the Commission's information.

Upon filing the amendments with the Commission, the Network A Participants will notify organizations that are subject to the Class F program classification charges of the elimination of those charges, will notify distributors of services to nonprofessional subscribers of the increase in the non-professional subscriber fee, and will notify recipients of the ticker signal from AT&T of the increase in the ticker connection fee.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The Participants believe the proposed amendments will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Under Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants must execute a written amendment to the Plan before an amendment to that Plan can become effective.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A).

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (Solely in its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated this proposal as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants which under Section 11Aa3–2(c)(3)(i) of the Act renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendments by Commission order pursuant to Section 11Aa3–2(c)(3)(iii), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27902 Filed 10–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 20, 1997.

A closed meeting will be held on Tuesday, October 21, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designees, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 21, 1997, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At time, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 15, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–28129 Filed 10–20–97; 11:46 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39211; File No. SR–Amex–97–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc., to Establish Hedge Exemptions From Narrow-Based and Broad-Based Index Options Position and Exercise Limits

October 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On August 18, 1997, the Amex submitted to the Commission an amendment to the proposal.[3] The Amex also submitted a letter regarding certain aspects of its proposal.[4] This order approves the Amex's proposal, as amended, and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend (1) Amex Rule 904C to establish hedge exemptions from narrow-based and broad-based index option position limits, and (2) Amex Rule 905C to establish corresponding exemptions from index option exercise limits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, position and exercise limits for index options are the same for all investors, regardless of whether the investor holds a portfolio of stocks which could hedge an index options position. The Exchange now proposes to adopt a hedge exemption from narrow-based and broad-based index options position and exercise limits. The Exchange believes that such an exemption is necessary to meet the needs of investors who use index options for investment and hedging purposes.

According to the Exchange, on various occasions during the last few months, member firms have, on behalf of managers of large portfolios, such as pension and insurance funds, indicated that the current position limits for index options have restricted the use of such options in hedging stock portfolios. Many institutional investors and portfolio managers invest in portfolios of stocks which could be readily hedged with Exchange traded index options. Current position and exercise limits, however, hamper their ability to fully utilize index options to hedge their positions. According to the Exchange, the proposed hedge exemptions from index option position and exercise limits should increase the depth and liquidity of index options markets and allow more effective hedging by investors without increasing the potential for market disruption. The exemptions are similar to exemptions previously approved by the Commission for the Philadelphia Stock Exchange, Inc. ("Phlx").[5]

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Claire McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 18, 1997 ("Amendment No. 1").

[4] See letter from Claire McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated September 18, 1997.

[5] See Securities Exchange Act Release Nos. 36858 (February 16, 1996), 61 FR 7295 (February 27, 1996)

Continued

Index option positions hedged in accordance with the proposal would be entitled to exceed existing position and exercise limits by up to two times above and in addition to the current limits.[6]

In order to qualify for an exemption, each option position must be hedged by a position in at least: (1) with respect to narrow-based index options, 75% of the number of component stocks or securities readily convertible into component stocks underlying the index; or (2) with respect to broad-based index options, 20 stocks or securities readily convertible into stocks in four industry groups represented in the index, of which no one component stock accounts for more than 15% of the value of the portfolio hedging the index option position.

In addition, the value of the option position may not exceed the value of the underlying portfolio employed as the hedge. The value of the underlying portfolio is determined as follows: (1) the total market value of the net stock position; less (2) the value of (a) any offsetting calls and puts in the respective index option; and (b) any offsetting positions in related stock index futures or options; and (c) any economically equivalent positions.

The stock portfolio employed as the hedge must be established prior to the index option positions and the options positions must be carried in an account with an Exchange member. Also, securities used to secure an index hedge exemption may not also be used to hedge other option positions.

Exercise limits under the proposal will continue to correspond to position limits, so that investors may exercise up to the number of contracts set forth as the position limit, as well as those contracts exempted by this proposal, during five consecutive business days.

The Amex proposes to exempt positions in index options in a manner which balances the hedging needs of index options investors with the Exchange's obligation to maintain a fair and orderly market. The Amex believes that a hedge exemption of up to two times above the current limit or index options would considerably enhance the attractiveness of these products for institutional investors, who would, in turn, trade more of the products in a hedged manner and thereby provide stabilizing liquidity in both the index options and the underlying securities.

The Exchange also believes that the proposed index option hedge exemptions should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. The proposal incorporates several safeguards the Amex will employ to monitor the use of the exemptions. Specifically, prior Exchange approval on the appropriate form designated by the Exchange is required, which should ensure that the hedges are appropriate for the position being taken and are in compliance with Amex rules, including those governing the composition and dollar value of the underlying stock portfolio. The Exchange may grant an exemption for less than the maximum of two times above the existing limit. The hedge exemption form must be kept current, with information updated as warranted. Any information concerning the dollar value and composition of the stock portfolio,[7] or its equivalent, the current hedged and aggregate options positions, and any stock index futures positions must be promptly provided to the Exchange.

In addition, the exemption requires that both the options and stock positions be initiated and liquidated in an orderly manner. An account in which the exempt option positions are held must liquidate any options prior to or contemporaneously with a decrease in the hedged value of the underlying portfolio to the extent the dollar value of such options would otherwise be excessive under the rule. Also, initiating or liquidating positions should not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes or with a view toward taking advantage of any differential price between a group of securities and an overlying stock position.

The Amex's surveillance procedures are designed to detect as well as to deter manipulation and market disruptions. In particular, the Exchange will monitor trading activity in Amex traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation, as well as review such trading to ensure that the closing of positions subject to the exemptions are conducted in a fair and orderly manner. This means that a reduction of the option positions must occur at or before the corresponding reduction in the stock portfolio positions, thereby helping to ensure that the stock transactions are not used to impact the market so as to benefit the option positions. Furthermore, the Exchange must be notified in writing for approval prior to liquidating or initiating any such position as well as of any material change in the portfolio or futures positions which materially effects the unhedged value of the qualified portfolio.[8] On a daily basis, the Exchange will also monitor each option contract to ensure that it is hedged by the equivalent dollar amount of component securities.

If any member or member organization that maintains an index option position in such member's or member organization's own account or in a customer account has reason to believe that such position is in excess of the applicable limit, then it must promptly take action necessary to bring the position into compliance pursuant to Amex Rule 904C, Commentary .01(f).[9]

Lastly, violation of any of the provisions of the index options hedge exemption, absent reasonable justification or excuse, will result in withdrawal of the hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

(approval order relating to industry index option hedge exemption) (File No. SR–Phlx–95–45); 37320 (June 18, 1996) 61 FR 32878 (June 25, 1996) (approval order relating to market index option hedge exemption) (File No. SR–Phlx–96–07).

[6] The Commission notes that the hedge exemptions are in addition to any other exemptions available under the Exchange's rules.

[7] The Exchange notes that as the dollar value of the hedging portfolio fluctuates, the number of exempt contracts may need to be adjusted.

[8] *See* Amendment No. 1, *supra* note 3.

[9] The Commission notes that under Exchange Rule 904(a), member organizations are prohibited from effecting opening transactions in option contracts on behalf of a customer where the transaction would cause the customer account to be in violation of the position limits set forth under Rule 904. Rule 904C incorporates Rule 904 by reference; therefore, the Commission believes that, under Exchange rules, failure to reduce a limit in a customer account in accordance with Amex Rule 904C, Commentary .01(f) would be considered a violation by the member firm carrying the customer account. *See* Amex Rules 904 and 904C.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for review at least five business days prior to the filing date; and (4) does not become operative for 30 days from August 18, 1997, [10] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal qualifies as a "noncontroversial filing" in that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate for the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–97–27 and should be submitted by November 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27903 Filed 10–21–97; 8:45 am]

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[10] Because the Exchange filed Amendment No. 1 subsequent to the original filing date, the 30-day period commences on the filing date of Amendment No. 1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39240; File No. SR–CBOE–97–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Routing of Firm and Broker-Dealer Orders to the Par Workstations in the DJX Trading Crowd

October 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 3, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") will enable its order routing system ("ORS") to route broker-dealer and firm orders to the trading crowd for options based on the Dow Jones Industrial Average ("DJX").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 30, 1997, the Securities and Exchange Commission ("SEC" or "Commission") approved a proposed rule change of the CBOE which sought permanent approval of a pilot program concerning certain enhancements to the Exchange's electronic order routing system.[3]

The changes instituted in the pilot program, now approved on a permanent basis, included the electronic routing and processing of contingency and discretionary orders,[4] the recognition by ORS of firm and broker-dealer orders, the routing of firm and broker-dealer orders to the Public Automated Routing ("PAR") system workstations in the OEX crowd, and the execution of certain contingency orders on the Exchange's Retail Automatic Execution System. In addition, the Exchange enabled the system to route firm and broker-dealer orders electronically to the PAR workstations in the trading crowd for options on the Standard & Poor's 100 Index ("OEX"), but not to PAR stations in any other trading crowd. The Exchange has now enabled its systems to route firm and broker-dealer orders electronically to the PAR stations in the trading crowd for DJX, which is scheduled to commence trading on the Exchange on October 6, 1997. The Exchange intends to study further whether it should enable the system to route such orders to equity and SPX crowds at some future date. All other enhancements to the ORS which were recently approved by the Commission will apply equally to trading in DJX as

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] The text of the proposed rule change is available at the Office of the Secretary, CBOE and in the Public Reference Room at the Commission.

[3] SR–CBOE–97–22, approved in Securities Exchange Act Release No. 38702 (May 30, 1997), 62 FR 31184 (June 6, 1997).

[4] The systems enhancements specifically have allowed for the routing of the following types of contingency and discretionary orders: All or None orders (AON), Immediate or Cancel orders (IOC), Fill or Kill orders (FOK), Minimum Quantity orders (MIN), Stop orders (STP), Stop Loss orders (STP LOSS), Opening Only orders (OPG), Market on Close Orders (MOC), Closing Only orders (CLO), Market if Touched orders (MIT), Not held orders (NH), and With Discretion orders. Due to systems and administrative limitations, ORS has continued to be unavailable for stop limit orders as well as spreads, straddles, combos, and other multi-part orders.

they do at all other trading crowds on the floor.

The Exchange believes the proposed system change is consistent with and furthers the objectives of Section 6(b)(5)[5] of the Act in that it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change has been designated by the Exchange as a policy effecting a change in an existing order-entry system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 196–4(e)(2)[7] thereunder. At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–54 and should be submitted by November 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27904 Filed 10–21–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. § 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2622]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The guest speaker at the meeting will be Ms. Nancy Wong, Commissioner of the President's Commission on Critical Infrastructure Protection (PCCIP). She will speak on the telecommunications aspects of the PCCIP's mission.

In addition, the purpose of this meeting will be to hear reports from the working groups on various issues that chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, November 13, 1997, from 9:30 a.m.–12:30 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, N.W., Washington, D.C. 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385.

Dated: October 10, 1997.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 97–27893 Filed 10–21–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Privacy Act of 1974: Notice To Add Two Systems of Records

AGENCY: Department of Transportation, Operating Administrations.

ACTION: Notice to add two systems of records.

SUMMARY: The Department of Transportation is proposing to add two systems of records notices to its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Crystal Bush, Office of the Chief Information Officer, Department of Transportation, Washington, DC 20590, Telephone (202) 366–9713, Fax (202) 366–7066, Internet address crystal.bush@ost.dot.gov.

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available through the Government Printing Office.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on October 6, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records.

SECURITY CLASSIFICATION:

Unclassified sensitive.

SYSTEM LOCATION:

Saint Lawrence Seaway Development Corporation, Office of Finance, PO Box 520, 180 Andrews Street, Massena, N.Y. 13662–0520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, and travel vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301, 44 U.S.C. Section. 3101, 33 U.S.C. Section 984(a)(4).

PURPOSE(S):

This system integrates leave, payroll, work measurement, and travel voucher records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Payroll and voucher disbursement: GAO audits.

2. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

3. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

4. To Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

5. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to 'consumer reporting agencies' (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, diskettes, microfilm cassettes and supporting documents.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to appropriate supervisor, his/her immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Accounting Office and National Archives and Records Administration requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Finance, Saint Lawrence Seaway Development Corporation, PO Box 520, 180 Andrews Street, Massena, N.Y. 13662–0520.

NOTIFICATION PROCEDURE:

Individuals may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

Individuals may gain access to his/her records by submitting a written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these records should be directed to the system manager.

RECORD SOURCE CATEGORIES:

Information contained in this system would come from Saint Lawrence Seaway Development Corporation records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 851

SYSTEM NAME:

Administration and Compliance Tracking in an Integrated Office Network.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

U.S. Department of Transportation, Federal Aviation Administration (FAA), Office of Aviation Medicine, Drug Abatement Division, 800 Independence Avenue, SW., Washington, DC 20591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medical review officers, company anti-drug program managers, other contact names, and individuals who call the FAA to self-disclose who are directly involved in the implementation and maintenance of drug and alcohol testing programs in conjunction with the aviation industry.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name(s), company and office telephone numbers of program managers who are in charge of the everyday operation of drug and alcohol testing programs for aviation companies, other persons who are contacts for facilities directly involved in drug and alcohol testing for the aviation industry, medical review officers (physicians) who review test results for the aviation companies, and individuals with company name and telephone numbers who call the FAA to self-disclose non-compliance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, Title V); 49 CFR part 40; 14 CFR part 61, et al.

PURPOSE(S):

To support the information resource, reporting and archival needs of the Drug Abatement Division. An automated system is needed to provide the FAA with an information system that will operate with greater accuracy, efficiency and effectiveness. This system will:

1. Provide management with easy access to accurate information concerning status and contents of aviation industry drug and alcohol testing program plans;

2. Provide capability for trend analyses and predictions;

3. Provide readily accessible tracking information;

4. Establish data links among correspondence files, enforcement files and plan files to enable inspectors, managers and administrators to rapidly access accurate, timely information;

5. Support management's reporting and accountability requirements; and

6. Provide data and information for program planning and analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records would be maintained in an automated information system.

RETRIEVABILITY:

These records would be retrieved by the name of an individual or by a unique case file identifier.

SAFEGUARDS:

Access to and use of these records would be limited to those persons whose official duties require such access. Computer processing of information would be conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

These records will be retained in accordance with the records retention established in the current version of FAA Order 1350.15, Records Organization, Transfer, and Destruction Standards.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Drug Abatement Division, AAM–800, Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system of records contains a record pertaining to him or her by addressing a written request to the System Manager identified above. The request should include enough information to allow for accurate identification of the record. For example, full name, company and company address, and any available information regarding the type of record involved should be provided.

RECORD ACCESS PROCEDURES:

Individuals who would wish to gain access to such systems of records would contact the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals who would desire to contest information about themselves contained in this system of records would contact or address their inquiries to the Administrator or his delegate at 800 Independence Avenue, SW., Washington, DC 20591.

RECORD SOURCE CATEGORIES:

Information contained in this system would come from FAA records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 15, 1997.

Michael P. Huerta,

Acting Chief Information Officer, Department of Transportation.

[FR Doc. 97–27964 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fresno Yosemite International Airport, Fresno, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA to rule and invites public comment on the application to impose and use the revenue from a PFC at Fresno Yosemite International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 21, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terry O. Cooper, Director of Transportation, city of Fresno, at the following address: 2401 N. Ashley Way, Fresno, CA 93727–1504. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Fresno under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fresno Yosemite International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 3, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Fresno was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 2, 1998. The following is a brief overview of the impose and use application number 97–02–C–00–FAT.

Level of proposed PFC: $3.00.

Proposed charge effective date: February 1, 1998.

Proposed charge expiration date: May 1, 2028.

Total estimated PFC revenue: $58,910,388.

Brief description of proposed impose and use projects: Baggage Claim Expansion, Terminal Lobby and Ticket Counter Areas, Exterior Improvements (Terminal Entryway Reconfiguration), Concourse Expansion, Building Utility Systems, Entrance Road Construction, Storm Water Retention Basin Expansion and Improvement, Ramp Reconstruction/Taxiway Relocation (Taxiway "A"), Additional Portland Cement Concrete Parking Stands, Terminal Ramp Drainage and Oil-Water Separator Improvements, and Terminal Ramp Pavement Markings and Reconstruction of Concourse Ramp Sections.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Fresno.

Issued in Hawthrone, California, on October 9, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–27963 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, Florida and Use the Revenue at Orlando International Airport, Orlando, Florida and Orlando Executive Airport, Orlando, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Orlando International Airport and use the revenue at Orlando International Airport and Orlando Executive Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158.

DATES: Comments must be received on or before November 21, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert B. Bullock, Executive Director of the Greater Orlando Aviation Authority at the following address: Greater Orlando Aviation Authority, Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827–4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Project Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822–5024, 407–812–6331, Extension 24. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Orlando International Airport and use the revenue at Orlando International Airport and Orlando Executive Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 14, 1997, the FAA determined that the application to impose a PFC at Orlando International Airport and use the revenue at Orlando International Airport and Orlando Executive Airport submitted by Greater Orlando Aviation Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1998.

The following is a brief overview of PFC Application No. 98–05–C–00–MCO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: February 1, 2005.

Total estimated PFC revenue: $231,750,000.

Brief description of proposed project(s):

Projects at Orlando International Airport: Replace Four Additional High Mast Light Poles; North Cross Field Taxiway Construction; Upgrade Aircraft Rescue and Fire Fighting Vehicle CRASH–84 and Replace Aircraft Rescue and Fire Fighting Vehicle CRASH–82; Loop Road Taper Improvements; Air Aide 2—Final Design and Construction

Projects at Orlando Executive Airport: West Quadrant Improvements (Phase III C); Construct Taxiway C–2 and Fillet Joiner; Rehabilitate North West Quadrant Ramp; Parallel Taxiway West of Runway 13/31; Replace Direct Buried Airfield Lights; Rehabilitate Runway 13/31 and Pave Taxiways Shoulders

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority.

Issued in Orlando, Florida on October 14, 1997.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office Southern Region.

[FR Doc. 97–27962 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of Amercia; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Wednesday, November 19, 1997. The following designations are made for each item: (A) Is an "action" item; (I) is an "information item;" and (D) is a "discussion" item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Antitrust Compliance and Conflict of Interest (A); (3) Approval of Last Meeting's Minutes (A); (4) Federal Report(I&D); (5) President's Report; (6) National ITS Research Agenda (I/A); (7) ATIS Business Models Workshop Report; (8) Professional Capacity Building Update (I); (9) FCC Frequency Petition Update (I); (10) ITS World Congress Report (I&D); (11) ITS America 8th Annual Meeting Update (I/D); (12) Roundtable Discussion of Committee and Task Force Activities (I&D); (13) Other Business.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Wednesday, November 19, 1997, from 8:00 a.m. to noon.

ADDRESSES: Memorial Student Center, Building 65, Room 201, Texas A&M University, College Station, Texas.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW.,

Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by FAX at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 17, 1997.

Jeff Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 97–28040 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 3021]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 BMW R1100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1997 BMW R1100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1997 BMW R1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 21, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1997 BMW R1100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1997 BMW R1100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1997 BMW R1100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1997 BMW R1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1997 BMW R1100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR part 565 will be affixed to non-U.S. certified 1994–1997 BMW R1100 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 16, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–27965 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33480]

Charles Barenfanger—Continuance in Control Exemption—Effingham Railroad Company

Charles Barenfanger (applicant) has filed a verified notice of exemption to continue in control of Effingham Railroad Company (ERRC), upon its becoming a Class III rail carrier.

Although applicant does not indicate an expected consummation date, it is noted that the transaction could not be consummated before October 7, 1997, the effective date of this exemption.

This transaction is related to STB Finance Docket No. 33468, *Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation*, wherein ERRC seeks to operate over a certain rail line owned by the Agracel Corporation, in Effingham, IL.

Applicant controls one existing Class III railroad, Illinois Western Railroad Company (IWRC), operating in Greenville, IL.

Applicant states that: (i) The rail line to be operated by ERRC does not connect with IWRC; (ii) the transaction is not part of a series of anticipated transactions that would connect ERRC with IWRC; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33480, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Decided: October 14, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27969 Filed 10–21–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33468]

Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation

Effingham Railroad Company (ERRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 206.05 feet[1] of railroad line owned by the Agracel Corporation (Agracel), located in a new industrial park in Effingham, IL. ERRC states that it is a substitute operator for Consolidated Rail Corporation, the previous operator of the line, and that it will operate the line under lease or operating agreement with Agracel after the transaction is completed.

This transaction is related to STB Finance Docket No. 33480, *Charles Barenfanger—Continuance in Control Exemption—Effingham Railroad Company*, wherein Charles Barenfanger has filed a verified notice of exemption to continue in control of ERRC, upon its becoming a Class III rail carrier.

The exemption became effective on September 25, 1997, but, because the related notice in the control proceeding was not filed simultaneously, the earliest date the transaction could be lawfully consummated was October 7, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.[2] The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33468, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Decided: October 14, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27970 Filed 10–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] In an attachment to the verified notice, the length of the line is stated as approximately 206.8 feet, but all other references in this and related proceedings consistently specify the length as approximately 206.05 feet.

[2] On September 22, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board, filed a petition to stay the operation of the notice of exemption, as well as to reject or revoke the notice. By decision served September 24, 1997, in this matter, the petition for stay was denied. A subsequent decision will be issued by the Board on the request to reject or to revoke the exemption.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, (DOT).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Wednesday, November 12, 1997, 10:00 a.m. to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 10234–38 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to November 10. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on October 16, 1997.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 97–27961 Filed 10–21–97; 8:45 am]

BILLING CODE 4910–FE–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on October 22 in Room 600, 301 4th Street, SW., Washington, DC, from 8:30 a.m. to 10:30 a.m.

At 8:30 a.m. the Commission will hold a panel discussion on *Fulbright at 50*. The panelists are Ambassador Julia Chang Bloch, President, U.S.-Japan Foundation, Member, Steering Committee; and Mr. Michael Schneider, Executive Director, Steering Committee. At 9:30 a.m. the Commission will hold a panel discussion on international exchanges. The panelists are Dr. Dan E. Davidson, Chair, Alliance for International Educational and Cultural Exchanges, CEO, ACTR/ACCELS; Mr. William Reese, President, Partners of the Americas; and Mr. Michael McCarry, Executive Director, Alliance for International Educational and Cultural Exchanges.

FOR FURTHER INFORMATION CONTACT:

Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: October 15, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–27888 Filed 10–21–97; 8:45 am]

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Wednesday
October 22, 1997

Part II

Environmental Protection Agency

40 CFR Part 64, et al.
Compliance Assurance Monitoring; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64, 70, and 71

[IL–64–2–5807; FRL–5908–6]

RIN 2060–AD18

Compliance Assurance Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Final rule revisions.

SUMMARY: Pursuant to requirements concerning enhanced monitoring and compliance certification under the Clean Air Act (the Act), EPA is promulgating new regulations and revised regulations to implement compliance assurance monitoring (CAM) for major stationary sources of air pollution that are required to obtain operating permits under title V of the Act. Subject to certain exemptions, the new regulations require owners or operators of such sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements under the Act. Monitoring will focus on emissions units that rely on pollution control device equipment to achieve compliance with applicable standards. The regulations also provide procedures for coordinating these new requirements with EPA's operating permits program regulations. Revisions to the operating permits program regulations clarify the relationship between the 64 requirements and periodic monitoring and compliance certification requirements. The rulemaking is estimated to improve compliance with existing regulations which will potentially reduce the need for further regulation to achieve clean air goals at a cost significantly less than that of the 1993 proposed rule.

DATES: The effective date of this rule is November 21, 1997.

ADDRESSES: *Docket.* Supporting information used in developing the regulations is contained in Docket No. A–91–52. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at: EPA Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, at (919) 541–1058.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Background and Summary of the Rulemaking
A. Statutory Authority
B. Rulemaking History
C. Overview of the CAM Approach
D. Benefits of a CAM Approach and Potential Control Costs
E. The Relationship of Part 64 to Credible Evidence and Enforcement Issues
II. Detailed Discussion of Regulatory Provisions
A. Section 64.1—Definitions
B. Section 64.2—Applicability
C. Section 64.3—Monitoring Design Criteria
D. Section 64.4—Submittal Requirements
E. Section 64.5—Deadlines for Submittals
F. Section 64.6—Approval of Monitoring
G. Section 64.7—Operation of Approved Monitoring
H. Section 64.8—Quality Improvement Plans (QIPs)
I. Section 64.9—Reporting and Recordkeeping Provisions
J. Section 64.10—Savings Provisions
K. Revisions to 40 CFR Part 70 and Part 71
III. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Unfunded Mandates Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Submission to Congress and the General Accounting Office

The first section of this preamble provides an introduction to the principles underlying EPA's CAM approach, the benefits of the part 64 rulemaking, and background on the statutory provisions and key issues involved with developing the rule. This section also summarizes the public's participation in the development of the rulemaking. The second section of the preamble presents a more detailed summary of the regulations. This section includes a description of the provisions and the basic purpose of each provision. This section also describes the Agency's response to the comments received on the original proposal, as supplemented by additional comments during subsequent periods in which public input was requested and obtained. The preamble describes how the final rule has been changed from the proposal in response to the input received. The final section of the preamble addresses administrative requirements for Federal regulatory actions.

The preamble includes many citations which refer the reader to more detailed discussions of a topic or to the origin of certain requirements. These citation sections generally will not be followed by their source, such as "of this preamble" or "of the Act." Rather, the reader can recognize the origins of the sections by their nature: sections of the preamble begin with a Roman numeral; sections of the regulations in 40 CFR part 64 range from §§ 64.1 to 64.11; sections of the regulations in 40 CFR part 70 range from §§ 70.1 to 70.11; sections of other existing EPA regulations are preceded by 40 CFR; and sections of the Act are referenced by a three-digit number, such as 114 or 504.

This preamble often refers to "State" or "permitting authority." The reader should assume that where the preamble refers to a "State", such term also includes local air pollution agencies, Indian tribes, and territories of the United States to the extent they are or will be the permitting authority for their area, or have been or will be delegated permitting responsibilities under the Act. In addition, the term "permitting authority" would also include EPA to the extent EPA is the permitting authority of record.

Finally, this preamble often refers to 40 CFR part 70, the regulations promulgated July 21, 1992, implementing the operating permits program under title V of the Act (57 FR 32250). The EPA has proposed revisions to those regulations on August 29, 1994 (59 FR 44460), and August 31, 1995 (60 FR 45530). Those regulations, including the proposed revisions, provide requirements applicable to federally-approved, State-administered operating permits programs. Where a State fails to submit an approvable program or to adequately administer and enforce an approved program, EPA will have to promulgate, administer and enforce a Federal program for title V permits in that State. The reader should assume that where the preamble refers to 40 CFR part 70, such term may also refer to an EPA-administered (Federal) operating permits program, which EPA has promulgated under 40 CFR part 71 (see July 1, 1996, 61 FR 34202).

I. Background and Summary of the Rulemaking

A. Statutory Authority

The part 64 regulations respond to the statutory mandate in the Clean Air Act Amendments of 1990. The 1990 Amendments contain several provisions directing the Agency to require owners or operators to conduct monitoring and to make compliance certifications. These provisions are set forth in both title V (operating permits provisions) and title VII (enforcement provisions) of the 1990 Amendments.

Title V directs the Agency to implement monitoring and compliance certification requirements through the operating permits program. Section 503(b)(2) requires at least annual certifications of compliance with permit requirements and prompt reporting of deviations from permit requirements. Section 504(a) mandates that owners or operators submit to the permitting authority the results of any required monitoring at least every six months. This section also requires permits to include "such other conditions as are necessary to assure compliance with applicable requirements" of the Act. Section 504(b) of the Act also allows the Agency to prescribe, by rule, methods and procedures for determining compliance, and states that continuous emission monitoring systems need not be required if other methods or procedures provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions."

Title VII of the 1990 Amendments added a new section 114(a)(3) that requires EPA to promulgate rules on enhanced monitoring and compliance certifications. This paragraph provides, in part:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require.

The 1990 Amendments also revised section 114(a)(1) of the Act to provide additional authority concerning monitoring, reporting, and recordkeeping requirements. As amended, that section provides the Administrator with the authority to require any owner or operator of a source:

> On a one-time, periodic or continuous basis to—
> (A) Establish and maintain such records;
> (B) Make such reports;
> (C) Install, use, and maintain such monitoring equipment;
> (D) Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);
> (E) Keep records on control equipment parameters, production variables, or other indirect data when direct monitoring of emissions is impractical;
> (F) Submit compliance certifications in accordance with section 114(a)(3); and
> (G) Provide such other information as the Administrator may reasonably require.

B. Rulemaking History

The EPA has acted to implement the statutory provisions discussed above in two separate ways. First, the part 70 operating permits program includes basic monitoring and compliance certification requirements. Section 70.6(a)(3)(i) requires that permits include all existing monitoring and testing requirements set forth in applicable requirements. In many cases, the monitoring requirements in the underlying regulations will suffice for assessing compliance. However, if particular applicable requirements do not include periodic testing or monitoring, then § 70.6(a)(3)(i)(B) requires the permit to include "periodic monitoring" to fill that gap. Section 70.6(c)(5)(iii) requires the submittal of compliance certifications no less frequently than annually, and generally incorporates the language on compliance certifications included in section 114(a)(3) of the Act.

To implement the statutory requirement for enhanced monitoring, EPA has developed through this rulemaking a general monitoring rule in 40 CFR part 64 to be implemented through the part 70 operating permits program. The Agency first provided notice in the **Federal Register** of an opportunity for public review and comment on this concept in August 1991 (see 56 FR 37700). A public information document was made available, a public meeting was held, and written comments were received after the meeting. A subsequent public meeting was held in August 1993, and a proposed rule was published on October 22, 1993 (58 FR 54648). This proposed rule is referred to as the "1993 EM proposal" throughout the remainder of this preamble.

The Agency received approximately 2000 comment letters during the public comment period. These letters contained several thousand individual comments on more than 500 major and minor issue topics. Because of some of the complex and difficult issues raised, the Agency held a series of stakeholder meetings in the fall of 1994, released draft sections of a possible final rule, and then officially reopened the public comment period on specific issues on December 28, 1994 (59 FR 66844). An additional stakeholder meeting was held near the close of that reopened comment period, and more than 200 additional comment letters were received.

In April 1995, EPA decided to shift the emphasis of part 64. The Agency issued a press release in early April 1995 that indicated EPA's intent to hold a public meeting to discuss the potential changes to the proposed enhanced monitoring rule, and then contacted various stakeholder groups so that they would have the opportunity to participate. A formal notice of the meeting was also published in the **Federal Register** on May 26, 1995 (60 FR 27943). Approximately 200 people attended the meeting on May 31, 1995, and many additional people attended the follow-up meetings held in June 1995 in Washington, DC, Cincinnati, Austin, and Portland, Oregon. The Agency then drafted a preamble and rule for public discussion and comment, and held another public meeting in September 1995. (See 60 FR 48679, September 20, 1995, for the formal **Federal Register** notice of that meeting and request for comment.) Approximately 150 people attended that meeting, and EPA received more than 60 written comment letters on the draft rule package. The Agency subsequently issued a draft final part 64 and discussion document in August 1996 (see 61 FR 41991, August 13, 1996) and held another public meeting in September 1996. The 1995 and 1996 draft rules are referred to as the "1995 part 64 Draft" and "1996 part 64 Draft," respectively, throughout the remainder of this preamble. Approximately 200 people attended and 120 written comment letters were submitted during the comment period. The Agency also has held numerous informal stakeholder discussions with interested parties to discuss the CAM approach, and received additional written comments during the period since April 1995. (See the items in sections II–D, II–E, IV–D, IV–E, IV–F, VI–D, VI–E, and VI–F of Docket A–91–52 for a complete record of written comments submitted by stakeholders, and discussions between EPA and interested parties concerning the rulemaking.)

This preamble addresses the changes to part 64 that have been made in response to the significant public comment received during the course of the rulemaking. The focus is on documenting the changes made in response to the comments received on the formal 1993 proposed rule, as well as specific changes made in response to comments received on the draft rule materials made available in 1995 and 1996. The Agency has also prepared a detailed, three–part Response to Comments Document which includes a response to all material comments on

the rule. See Docket Items A–91–52–VII–C–1 through VII–C–3.

C. Overview of the CAM Approach

1. General Approach

The CAM approach as defined in part 64 is intended to address the requirement in title VII of the 1990 Amendments that EPA promulgate enhanced monitoring and compliance certification requirements for major sources, and the related requirement in title V that operating permits include monitoring, compliance certification, reporting and recordkeeping provisions to assure compliance. The EPA has long recognized that obtaining ongoing compliance is a two-step process. First, the Agency must determine whether properly designed control measures—including, as applicable, control devices, process modifications, operating limitations or other control measures—are installed or otherwise employed, and that those control measures are proven to be capable of achieving applicable requirements. In the past, this step has been addressed through new source review permitting, initial stack testing, compliance inspections and similar mechanisms. The title V permit application and review process, including the applicant's initial compliance certification and compliance plan obligations, will add another tool for assuring that source owners or operators have adopted the proper control measures for achieving compliance. The second step is to monitor to determine that the source continues to meet applicable requirements. An important aspect of this second step is to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements. The Agency believes that monitoring, reporting, recordkeeping and ongoing or recurring compliance certification requirements under title VII should be designed so that owners or operators carry out this second step in assuring ongoing compliance.

There are two basic approaches to assuring that control measures taken by the owner or operator to achieve compliance are properly operated and maintained so that the owner or operator continues to achieve compliance with applicable requirements. One method is to establish monitoring as a method for directly determining continuous compliance with applicable requirements. The Agency has adopted this approach in some rulemakings and, as discussed below, is committed to following this approach whenever appropriate in future rulemakings. Another approach is to establish monitoring for the purpose of: (1) Documenting continued operation of the control measures within ranges of specified indicators of performance (such as emissions, control device parameters and process parameters) that are designed to provide a reasonable assurance of compliance with applicable requirements; (2) indicating any excursions from these ranges; and (3) responding to the data so that excursions are corrected. The part 64 published today adopts this second approach as an appropriate approach to enhancing monitoring in the context of title V permitting for significant emission units that use control devices to achieve compliance with emission limits. For units not covered by part 64, a similar but less detailed approach is provided for in the monitoring and related recordkeeping and reporting provisions of part 70 (see § 70.6(a)(3)).

The rule defines "control devices" to mean equipment that removes pollutants or transforms pollutants to passive emissions (see § 64.1), as opposed to other control measures, such as process modifications, material substitution, and other control options. For significant units that use control devices to achieve compliance, the owner or operator will have to develop and propose, through the part 70 permit process, monitoring that meets specified criteria for selecting appropriate indicators of control performance, establishing ranges for those indicators, and for responding to any excursions from those ranges. The final rule also includes performance and operating criteria that must be achieved, as well as documentation requirements for the monitoring proposed by the owner or operator.

The final element of part 64 is the concept of a quality improvement plan (QIP). Under the final rule, a QIP may be required where the owner or operator has failed to satisfy the general duty to properly operate and maintain an emissions unit (including the applicable control device) or the owner or operator has evidence of a failure to comply with an applicable requirement, as determined through part 64 monitoring data and/or other appropriate information (such as inspections). The rule allows for the permit to establish a "bright line" test for implementing a QIP, but does not require such a test.

The QIP would include both an initial "problem investigation" phase and a "corrective action" phase. The rule provides for the QIP mechanism so that permitting authorities have a specific regulatory tool to address situations in which an owner or operator operates in a manner that involves excursions followed by ineffective actions to bring the monitored indicators back into the acceptable ranges established in the permit. Thus, the QIP will help assure that the owner or operator pays attention to the data and, if necessary, improves performance to the point where ongoing compliance with applicable requirements is reasonably assured. See Section II.H. for further discussion of QIP issues.

2. Implementation through Permits

a. *Burdens to the Permitting Process.* Many commenters, including State and local agencies, industry, and environmental groups raised concerns in their comments that the part 64 process of selecting the appropriate monitoring for a particular source would overburden the permitting process and lead to poor implementation. The Agency is very sensitive to these concerns; however, the Agency continues to believe that, consistent with the preamble to the 1993 EM proposal, the permit implementation approach provides the greatest amount of flexibility to the regulated community and States while at the same time ensuring that enhanced monitoring will be implemented for all major sources in a reasonably expeditious time frame. In addition, the Agency has taken several significant steps in the final rule to reduce the potential burden to the permitting process, including the actions discussed below.

i. *Applicability.* The focus of applicability on those pollutant-specific emissions units that rely on control devices to achieve compliance has reduced the estimated number of units that will be subject to part 64 and also has reduced the variety of emissions unit types that will be affected by part 64. This reduction in the volume and breadth of units covered by part 64 will reduce the overall burdens on the permit process.

ii. *Extended Implementation Period.* As discussed in Section II.E., the final rule provides for a new extended implementation schedule. Only those units which are major units based on their potential to emit will be subject to part 64 requirements prior to the renewal of an initial part 64 permit. In addition, in many cases, implementation will not be required for these large units until permit renewal. For the smaller units covered by part 64, implementation will not occur until

permit renewal. This extended implementation schedule will relieve much of the burden on source owners or operators to develop and prepare proposed monitoring during the initial part 70 permitting process and will similarly relieve the burdens of the approval process on permitting authorities.

iii. *Guidance Development Process.* The Agency is committed to developing non-prescriptive examples of the types of monitoring that can be used to satisfy part 64 for various types of control devices and emissions units. The guidance development process will provide an opportunity for source owners or operators and other interested parties to submit suggestions, review drafts and generally clarify the part 64 requirements. The Agency emphasizes that the development of example monitoring approaches is intended to assist both regulated industry and permitting authorities to streamline permit review in those instances where a source owner or operator proposes monitoring based on one of the examples. These examples should not be considered as an implied limitation on the owner or operator's ability to propose a different approach that the owner or operator can demonstrate satisfies the part 64 requirements or on the permitting authority's authority to require additional monitoring.

iv. *General Clarifications.* Finally, the potential implementation burdens have been reduced by adopting many general clarifications in the final rule. For instance, the final rule clearly states that emissions units that are not subject to applicable requirements are not required to conduct part 64 monitoring. A second example is the streamlined performance and operating design criteria in the final rule, which are substantially less complex and burdensome than the comparable requirements in the appendices to the 1993 EM proposal.

b. *Creation of New Substantive Standards.* Many commenters argued that the requirements in part 64 were inconsistent with EPA's stated position that the part 70 operating permits program was intended solely to collect existing requirements in one document, without creating new substantive obligations for source owners or operators. The Agency disagrees with these arguments. As mentioned in section I.A., the part 64 regulations respond to the statutory mandate in the Clean Air Act Amendments of 1990 and the part 70 regulations implement title V of the Clean Air Act Amendments of 1990, which directs the Agency to implement monitoring and compliance certification requirements through the operating permits program. The part 64 requirements are independently applicable, substantive requirements that an owner or operator must achieve. The fundamental requirements of part 64 are to: (a) Monitor compliance in a manner that is sufficient to yield data that provide a reasonable assurance of compliance and allow an owner or operator to make an informed certification of compliance; (b) take necessary corrective actions in response to the monitoring data; (c) report on the results of such monitoring; and (d) maintain records of such monitoring. None of these fundamental obligations under part 64 will be added as part of a part 70 permit independently of part 64. What will be added as part of the permit process are the particulars as to how a specific source owner or operator will satisfy these general part 64 requirements. This type of regulatory structure is entirely consistent with the purpose of a permit process which is to specify how general obligations will be achieved in particular circumstances.

c. *Consistency of Implementation.* Implementation of part 64 through the part 70 permits program means that part 64 will be implemented on a case-by-case basis. Many industry and State and local agencies supported EPA's proposal to allow for a flexible implementation approach that allows for adopting monitoring that is most appropriate to a particular emission unit's circumstances. However, many industry, environmental and State and local agency commenters also raised concerns that the case-by-case implementation process in part 64 may not be implemented in a reasonably consistent manner by different permitting authorities.

The EPA acknowledges the potential significance of these concerns; however, EPA believes that they have been overstated by the commenters. As discussed in Section II. below, EPA has taken steps to minimize potential inconsistencies by simplifying and clarifying the final rule. Also, EPA must weigh these concerns against the significant policy concerns that would exist if the Agency attempted to develop specific enhanced monitoring requirements for each NSPS and NESHAP standard, as well as the burdens on States to revisit each SIP regulation, as well as individual State preconstruction and operating permits. The administrative burdens associated with that approach would severely hinder the effective and timely implementation of enhanced monitoring for most sources for many years. In addition, such an approach fails to acknowledge the new benefits of the operating permits program to tailor general requirements in a manner that is most appropriate to the circumstances at a particular source. For these reasons, EPA believes that the benefits of the permit implementation approach far outweigh the concerns over consistency in implementation.

d. *Programmatic Options.* Some stakeholders have suggested alternative means of implementing part 64 requirements. One alternative suggested was to allow a State the option of implementing part 64 monitoring requirements through programmatic rule changes instead of implementing CAM through source-specific part 64 requirements. One potential method for allowing this option is to exempt from part 64 monitoring any emissions units for which a State has developed requirements specifically designed to satisfy part 64 in a rule that has been submitted and approved as part of the SIP. Another would be to delay implementation of part 64 to provide an opportunity for a State to devise a competitive monitoring program for submittal to and approval by EPA.

The final rule will allow states to implement CAM through rulemaking pertaining to categories of sources. The EPA encourages States to consider adding monitoring requirements to existing and new rules that are consistent with part 64 requirements. In this manner, the burdens associated with source-specific monitoring development could be reduced. To provide an incentive for this type of rule, the final rule includes a provision (see § 64.4(b)) that allows the owner or operator to rely upon this type of programmatic rule as the primary documentation of the appropriateness of its monitoring. This approach would reduce the number of case-by-case reviews necessary to implement part 64.

On the other hand, EPA does not agree with commenters who suggest that states that choose to use programmatic rulemaking should be allowed to apply different criteria in determining monitoring and to have additional time to implement such an approach. The EPA believes monitoring decisions should be made on the same basis whether done on a programmatic or case-by-case basis. Second, EPA questions both the need for a substantial delay for programmatic rulemaking and whether the purported advantages of a programmatic approach justify any substantial delay. The final part 64 does not include an option for permitting authorities to delay implementation of part 64 through use of a programmatic approach.

Because of the implementation schedule for part 64 (see Section II.E.), owners or operators will not have to implement part 64 for many emissions units until renewal of initial part 70 permits. These include both large units that are at sources which have already received or are in the process of receiving part 70 permits, and smaller units for which the rule explicitly delays implementation until permit renewal. This schedule provides substantial time for States to adopt SIP regulations, as discussed above, that are consistent with part 64, especially for smaller units that could most benefit from generic monitoring requirements that could be developed through programmatic SIP rule changes.

3. Limited Purpose of Part 64

Part 64 is intended to provide a reasonable means of supplementing existing regulatory provisions that are not consistent with the statutory requirements of titles V and VII of the 1990 Amendments to the Act. The EPA believes that the CAM approach is a reasonable approach commensurate with this role. The Agency does not believe that existing monitoring requirements that are more rigorous than part 64 should be reduced or that monitoring imposed in future regulatory actions necessarily should be guided by part 64.

If existing requirements are more rigorous than part 64, those requirements should continue to exist unaffected by part 64. This point is made explicitly in several instances in the final rule. In addition, EPA is committed to developing new emission standards subsequent to the 1990 Amendments with methods specified for directly determining continuous compliance whenever possible, taking into account technical and economic feasibility, and other pertinent factors. In recognition of this EPA commitment, the rule exempts New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that are proposed after the 1990 Amendments to the Act from part 64 requirements. The Agency believes that States should approach their regulatory actions from the same perspective and thus the Agency does not believe that part 64 will have a significant impact on requirements imposed subsequent to the 1990 Amendments.

Comments on the 1996 part 64 Draft received from environmental, public health and labor organizations emphasized the public's right to information about air pollution from major stationary sources. These commenters argued that the CAM approach provides insufficient information about actual emissions and thus will frustrate the public's right to know about actual emissions from a source. Their comments also asserted that source owners should not be allowed to use information gathered under the CAM approach, including information on pollution control operations and practices, to certify compliance with applicable standards.

The Agency responded to those comments (see letter from Mary Nichols to various environmental and other organizations dated December 19, 1996, docket item A–91–52–VI–C–18) and summarizes its response here. The Agency agrees with incorporating direct emissions and compliance monitoring where the technology is available and feasible, and promoting public disclosure of air pollution emissions information. On the other hand, the Agency does not believe that such a broad, expensive, and technically complex objective can be accomplished through a single rulemaking at this time. Not only would trying to impose such monitoring requirements across the board in the short term be technically unrealistic, doing so would put in jeopardy the possibility of advancing monitoring of existing emissions sources through part 70 operating permits program already in progress.

The Agency notes that current requirements for submission of emission statements prepared by owners of industrial air pollution sources continues independent of part 64 (such as statements required under section 182(a)(3) of the Act) and such statements will be based on the most currently available information, including new monitoring data produced under part 64.

As described above, the Agency firmly believes that continued proper operation and maintenance of process operations and air pollution controls demonstrated capable of achieving applicable standards is vital to ongoing compliance. By providing the necessary data and requiring appropriate corrective action, part 64 will result in owners and operators being more conscientious in the attention paid to the operation and maintenance of air pollution control equipment and practices than has been the case in the past. This approach has proven effective in reducing air pollution emissions and improving compliance performance in the implementation of many existing regulations with similar requirements. See further discussion on the use of part 64 data for purposes of part 70 compliance certifications in Section I.C.5., below.

4. Relationship to Part 70 Monitoring

Part 70 currently requires all title V operating permits to include monitoring to assure compliance with the permit. This includes all existing monitoring requirements as well as additional monitoring (generally referred to as "periodic monitoring") if current requirements fail to specify appropriate monitoring. As noted in the 1993 EM proposal, because part 64 contains applicable monitoring requirements sufficient to demonstrate compliance with applicable emission limitations or standards, the part 70 periodic monitoring requirements will not apply to the emissions units and applicable requirements covered by part 64. This conclusion is equally applicable under the final part 64 rule. However, during the course of the rulemaking, two other issues have been raised that concern the relationship of the final part 64 rule to the existing part 70 periodic monitoring requirements: (1) The extent to which periodic monitoring should be relied on as "enhanced monitoring" and (2) timing concerns where periodic monitoring may be required prior to implementation of part 64.

With respect to relying on part 70 periodic monitoring as "enhanced monitoring" for at least some units, EPA suggested this option in both the 1993 EM proposal and the December 1994 notice reopening the comment period on that proposal (see 58 FR 54648, 54653 and 59 FR 66844, 66849). Industry commenters generally supported this option; although, many suggested that EPA rely completely on periodic monitoring as "enhanced monitoring." Some environmental groups, however, argued against this option. They asserted further that EPA's part 64 applicability provisions would not meet the statutory requirement that all major stationary sources conduct enhanced monitoring. The EPA considered including in part 64 requirements analogous to the existing part 70 provisions (see subpart C of part 64 in the 1996 part 64 Draft). This approach would clearly indicate EPA's position that the part 70 monitoring requirements including periodic monitoring if necessary, constitute the appropriate "enhanced monitoring" for units not covered by part 64. However, in the final rule, EPA has determined to rely on the position originally discussed in the 1993 EM proposal that existing monitoring when supplemented as necessary by periodic monitoring is sufficiently enhanced for emissions units not subject to part 64. The Agency

decided not to pursue the Subpart C option included in the 1996 part 64 Draft based on the comments received (see Section II.B., below) and also because of concerns about disrupting the ongoing implementation of part 70.

Because of the delays in finalizing part 64 and the delayed implementation schedule included in the final rule (see Section II.E., below), many part 70 permits will address periodic monitoring issues prior to implementation of part 64. To address concerns about the potential duplication and disruption that this situation could cause, EPA has taken certain steps. First, the "Subpart C" option has been rejected and the existing part 70 monitoring, including periodic monitoring, requirements will continue to apply. Because the majority of emissions units do not use control devices, this decision will result in part 64 creating no duplication or disruption for the majority of emissions units. As discussed in the Regulatory Impact Analysis (RIA) for this rulemaking, EPA estimates that the final part 64 rule will affect less than 27,000 emissions units, while an additional 54,000 units that could have been affected by subpart C will remain affected by part 70 monitoring requirements.

Second, for units with control devices, EPA has adopted a phased implementation schedule under which part 64 will apply only to the largest units prior to the first renewal of a part 70 permit. To the extent part 64 and periodic monitoring may have some overlap for these largest units, any overlap should be minimal because these units are most likely to have existing monitoring that would make the periodic monitoring provisions in part 70 unnecessary. For the smaller units that will not be required to implement part 64 until part 70 permit renewal, the periodic monitoring provisions of part 70 may apply. While there may be some concern that this will result in installation of monitoring that could later be found inappropriate for part 64, EPA does not believe this would generally be the case. In many instances, such periodic monitoring would likely serve as the basis, in whole or in part, for compliance with part 64. For instance, a source owner or operator may conduct intermittent monitoring of visible emissions or certain parameters to satisfy part 70 periodic monitoring. To the extent successful, the experience with that monitoring could be used to justify its use under part 64. At the least, the experience gained under periodic monitoring could be used to develop data to support proposed part 64 monitoring at permit renewal. Such data could be used, for example, to justify appropriate indicator ranges, quality assurance procedures, monitoring frequency and similar part 64 requirements. Just as importantly, the continued presence of part 70 monitoring requirements during the initial permit term is essential to provide the minimum level of assurance that a source remains in compliance with a part 70 permit as required under title V of the Act. Thus, EPA rejects the position suggested by some commenters that it should immediately suspend the part 70 periodic monitoring requirements pending implementation of part 64.

5. Relationship to part 70 Compliance Certifications

In developing an implementation approach in the 1993 EM proposal, EPA indicated that owners or operators must rely on methods for determining continuous compliance to submit a certification of whether compliance is continuous or intermittent. Many industry representatives and State and local agencies objected to the burdens associated with the 1993 proposal. A large part of those burdens would have occurred as a result of having to develop monitoring that could produce data of sufficient reliability to make determinations of continuous compliance with a degree of representativeness, accuracy, precision, and reliability equivalent to that provided by conducting the test method established for a particular requirement. In response to those concerns, the Agency opted to pursue the CAM approach which provides a reasonable assurance of compliance through monitoring of control operations. The EPA believes that the CAM approach does enhance existing monitoring requirements and provides sufficient information for an owner or operator to reach a conclusion about the compliance status of the owner or operator's source that is adequate to satisfy the compliance certification obligations in the Act. Such monitoring also provides data sufficient for EPA, permitting authorities, and the public to evaluate a source's compliance and to take appropriate action where potential compliance problems are discovered.

The part 64 rulemaking also clarifies the Agency's interpretation of the phrase "continuous or intermittent" as used in section 114(a)(3) of the Act. The 1993 EM proposal interpreted the requirement that source owners or operators certify "whether compliance is continuous or intermittent" to require monitoring sufficient to determine if compliance was continuous. (58 FR 54654, 54658) Thus the term "continuous" was read as meaning that compliance was achieved during all averaging periods for a standard and "intermittent" was read generally as meaning that one or more deviations occurred during the certification period. (58 FR 54665). This proposed interpretation was consistent with the Agency's position in the preamble to proposed part 70 as well (see 56 FR 21737, May 10, 1991 ("The compliance certification must document * * * whether compliance was continuous or intermittent (i.e., whether there were periods of noncompliance).").

The Agency reconsidered this interpretation in reopening the public comment period on the 1993 EM proposal and noted that "intermittent" could mean either that noncompliance had occurred or that the owner or operator has data sufficient to certify compliance only on an intermittent basis. (See 59 FR 66848, col. 2 ("nothing in section 114(a)(3) dictates that all source owners or operators must certify to being in either continuous compliance or else be considered in noncompliance; source owners or operators may also certify to being in compliance as demonstrated on an intermittent basis.")). The EPA believes that the statutory interpretation discussed in the preamble to the 1993 EM proposal and this alternative interpretation are both reasonable, and that EPA has discretion to clarify the meaning of this statutory provision given the ambiguity in the legislation. As outlined below, today's rulemaking (see the revisions to § 70.6(c)(5)) is derived from the interpretation contained in the December 1994 notice reopening the comment period on the 1993 EM proposal.

6. Consistency with Regulatory Reinvention Efforts

The approach in this rule lays out broad principles and performance criteria for appropriate monitoring, but does not mandate the use of a particular technology. The proposal is intended to reflect the principles articulated in President Clinton's and Vice President Gore's March 16, 1995 report, "Reinventing Environmental Regulation." That report established as goals for environmental regulation building partnerships between EPA and State and local agencies, minimizing costs, providing flexibility in implementing programs, tailoring solutions to the problem, and shifting responsibilities to State and local agencies. The Agency believes that part 64 meets the goals of the report.

This approach also is consistent with President Clinton's regulatory reform initiatives and EPA's Common Sense Initiative in that it focuses on steps to prevent pollution rather than to impose unnecessary command and control regulations on regulated sources. The approach is based on the assumption that pollution control is an integral part of doing business and that owners or operators should pay attention to their pollution control operations with the same care they do their product operations. The CAM approach emphasizes the role of the owner or operator in developing a plan to achieve this goal for specific circumstances.

D. Benefits of a CAM Approach and Potential Control Costs

The EPA believes that monitoring under part 64 can in some situations, reduce operating costs. For example, monitoring data can be used to increase combustion efficiency in an industrial boiler or to increase capture and reuse of solvents at a coating plant. A 1990 study by the General Accounting Office entitled "Air Pollution: Improvements Needed in Detecting and Preventing Violations" (see docket item A–91–52–VI–I–12) noted several instances in which companies have achieved such operating cost reductions. The CAM approach also alerts owners or operators that potential control device problems may exist. The owner or operator can use this information to target control devices for routine maintenance and repair, and reduce the potential for costly breakdowns. While benefits may occur to some facilities as the result of better awareness of equipment operation, changes in equipment operation are not required by part 64.

Part 64 does not itself have emissions reductions benefits, EPA does expect, however, that some sources may have to reduce emissions in order to comply with their underlying emissions standards in response to monitoring under part 64. EPA expects that some emissions reductions may result from sources having to reduce emissions overall, and/or to respond to periods of excess emissions more quickly, thus reducing their frequency and duration. EPA has not estimated the emissions reductions that may result from this; EPA believes these reductions and any associated health and welfare benefits are not attributable to part 64—but to the underlying emissions standards.

The Agency believes that there is adequate evidence that monitoring control performance will assure continuing compliance with applicable requirements. Studies conducted by the Agency have shown that control device operation and maintenance problems are a significant factor in creating excess emissions (see docket items II–A–22 and VI–A–2). In addition, these studies have documented that assumptions about compliance status are often inaccurate when detailed inspections of control devices are conducted (see, for example, docket item VI–A–2). Moreover, information included in the Regulatory Impact Analyses (RIA) documents that, based on data sheets compiled for all major sources by State agency inspectors in fifteen States, approximately 20 percent of all major sources have significant compliance problems and there is a significant corollary between the adequacy of a source's operation and maintenance procedures and compliance risk.

There will be real costs associated with measures sources may take to reduce emissions in order to comply with their underlying emissions standards in response to monitoring under part 64. Costs as well as emissions reductions benefits will result from sources having to reduce emissions overall, and/or to respond to periods of excess emissions more quickly, thus reducing their frequency and duration. Such costs would be due to increase expenditures for operation and maintenance and capital equipment. The EPA has not estimated the cost associated with emissions reductions that may result; EPA believes such costs are not attributable to part 64—but to the underlying emissions standard.

E. The Relationship of Part 64 to Credible Evidence and Enforcement Issues

1. General CAM Enforcement Policy

As a general matter, the Agency expects that source owners or operators will be in compliance with all applicable emission requirements if they conform to the requirements of part 64. Further, the Agency expects that there will be relatively limited information available to override the information provided by the owner or operator on an emissions unit's compliance status beyond that provided through monitoring that satisfies part 64 or part 70. However, neither these expectations nor complete compliance with part 64 will prohibit the Agency from undertaking enforcement investigations when appropriate under the circumstances, such as when information indicates there are conditions that may threaten or result in harm to public health or the environment, indicates a pattern of noncompliance, indicates serious misconduct, or presents other circumstances warranting enforcement.

2. The Credible Evidence Revisions to 40 CFR parts 51, 52, 60, and 61 ("The CE Revisions")

See the CE Revisions as published in the **Federal Register** on February 24, 1997 (62 FR 8314) for discussion of that rulemaking history. During the many public comment periods for the CE Revisions and the CAM proposal, the Agency received numerous comments stating that the two rules are inextricably connected, impact each other, and should be proposed together in order for meaningful public comment from interested stakeholders. The Agency reviewed these comments but decided to proceed with the CE rulemaking separately from this rulemaking for several reasons. First, the Agency believes that there was sufficient opportunity for all interested parties to comment on any perceived relationship or any substantive issues regarding the proposed credible evidence revisions and the CAM proposal before the promulgation of the CE Revisions in February, 1997. The Agency released a public draft of the CAM approach in September, 1995, and then conducted a public meeting in April, 1996, on the credible evidence revisions. The Agency also accepted public comments on the credible evidence rulemaking and the CAM proposals between September, 1995, and the promulgation of the CE Revisions. Thus, all interested parties had the opportunity to comment on the two rulemakings and the Agency received numerous comments on this topic before the CE Revisions were promulgated. In addition, there was also ample opportunity for public comment on any perceived relationship after promulgation of the CE Revisions and before the finalization of part 64. The Agency released a public draft of the CAM approach in August, 1996, and held a public meeting regarding the 1996 part 64 Draft. The Agency also reopened the comment period on part 64 on April 25, 1997, (62 FR 20147) to allow for comments on the relationship between part 64 and the CE Revisions. See the Response to Comments Document (Part III) at section 14 for the Agency's response to these comments. Thus, all interested parties had the opportunity to comment on the relationship between part 64 and the CE Revisions before each of these rulemakings was promulgated.

Second, the Agency decided to promulgate the CE Revisions separate from part 64 because the two programs are different in scope. The CE Revisions

are not limited to part 64 data or information collected pursuant to a part 70 permit generally. Other types of CE could include information from monitoring that is not required by regulation (such as monitoring conducted pursuant to a consent agreement or a specific section 114 request) or information from inspections by the permitting authority. In addition, the CE Revisions affect all sources regulated by 40 CFR parts 51, 52, 60, and 61, not just sources who will be covered by part 64. Thus, although sources covered by this rulemaking are regulated under the provisions amended by the CE Revisions, both the sources covered by this rulemaking and the data generated by this rulemaking are subsets of the sources and potential credible evidence addressed in the CE Revisions. Therefore, it was appropriate for the Agency to promulgate these two rulemakings separately. See 63 FR 8314 for a discussion of the scope of the CE Revisions.

Even though the CE Revisions and part 64 rulemakings are distinct regulatory actions, there are complementary aspects to the two rules. As noted above, consistent with the existing provisions of part 70, the CE revisions reiterate that data other than compliance test data can be used as a basis for title V compliance certifications. Most importantly, the CE rulemaking affects the potential consequences of identifying deviations, exceedances or excursions in a compliance certification based on data, such as part 64 data, that are from sources other than the compliance or reference test method. The CE revisions clarify the authority to rely on these data to prove that a source is in compliance or that a violation has occurred.

Finally, the CE Revisions and this rulemaking did not need to be promulgated together because these regulations have different statutory bases. The Agency promulgated the CE Revisions based primarily on section 113(a) of the Act, which authorizes the Agency to bring an administrative, civil or criminal action "on the basis of any information available to the Administrator." See 62 FR at 8320–23. The part 64 regulations, however, respond to the statutory mandates of the CAA Amendments of 1990, including but not limited to section 114(a)(3).

3. Potential Enforcement Consequences Related to CAM and CE

As a general matter, the Agency notes that it intends to apply its current enforcement policies in instances where the Agency believes, based on a review of CAM data, that a source has violated underlying emission limits. During the public comment period, commenters raised several issues about the relationship between the proposed part 64 monitoring information, the CE Revisions, and enforcement of violations of the Act. The following discussion generally addresses those concerns. See section 14.2 (Part III) of the Response to Comments Document (A–91–53–VII–C–3) for responses to specific issues raised.

First, these commenters suggested that compliance with indicator ranges under part 64 should act as a shield to enforcement actions. The Agency disagrees. Complete compliance with an approved part 64 monitoring plan does not shield a source from enforcement actions for violations of applicable requirements of the Act if other credible evidence proves violations of applicable emission limitations or standards. The Agency expects that a unit that is operating within appropriately established indicator ranges as part of approved monitoring will, in fact, be in compliance with its applicable limits. Part 64 does not prohibit the Agency, however, from undertaking enforcement where appropriate (such as cases where the part 64 indicator ranges may have been set improperly and other data such as information collected during an inspection provides clear evidence that enforcement is warranted).

Similarly, several commenters stated that if a source owner or operator identified excursions or exceedances of the applicable indicator ranges and conducted a prompt correction, with or without a QIP, then there should be a shield from enforcement for any potential violation of an underlying emissions limitation. This is also incorrect. If a source owner or operator identifies one or more excursions or exceedances of its indicator ranges established under part 64, prompt correction of the condition does not establish a shield. At the same time, the CAM excursions do not necessarily give rise to liability under part 64 or the Act (unless an excursion is specifically made an enforceable permit term). The Agency understands that many sources operate well within permitted limits over a range of process and pollution control device operating parameters. Depending on the nature of pollution control devices installed and the specific compliance strategy adopted by the source or the permitting authority, part 64 indicator ranges may be established that generally represent emission levels significantly below the applicable underlying emission limit. For this reason, and because the Agency anticipates a wide variance in CAM indicator range setting practices, the Agency intends to draw no firm inferences as to whether excursions from CAM parameter levels warrant enforcement of underlying emission levels without further investigation into the particular circumstances at the source. Thus, although staying within appropriately established indicator ranges gives a reasonable assurance of compliance, excursions from indicator ranges do not necessarily indicate noncompliance. The Agency may investigate such excursions for possible violations based on the general enforcement criteria identified above. A proper and prompt correction of the problem causing the excursion or exceedance, with or without a QIP, will factor into the Agency's decision on whether to investigate a source for potential violations but does not shield the source from an enforcement action by the Agency.

Second, several comments have stated that the use of CAM monitoring data as credible evidence to demonstrate the existence of a violation would increase the stringency of many standards. Although it is correct that the Agency, as well as states, public citizens, and sources, could potentially use CAM monitoring data as credible evidence of either compliance or noncompliance with an emission standard, the evidence could only be used if, as stated in the CE Revisions, the information is relevant to whether the source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed. The CE Revisions and the use of CAM data as potential credible evidence do not change the stringency of any emission standard for the reasons set forth in the preamble to the CE Revisions. See 63 FR 8314.

Finally, it has been suggested during the part 64 and credible evidence rulemakings that a Title V permit may be written to limit the types of evidence used to prove violations of emissions standards. As mentioned in the CE Revisions, even if a Title V permit specifies that certain monitoring, CAM or other monitoring, be performed and that this monitoring is the sole or exclusive means of establishing compliance or non-compliance, EPA views such provisions as null and void. Such an attempt to eliminate the possible use of credible evidence other than the monitoring specified in a Title V permit is antithetical to the credible evidence rule and to section 113(e)(1). If such a provision is nonetheless included in a permit, the permit should

be vetoed to avoid any ambiguity. If the provision is not vetoed, the provision is without meaning, as it is *ultra vires*, that is, beyond the authority of the permit writer to limit what evidence may be used to prove violations, just as if a permit writer were to attempt to write in a provision that a source may not be assessed a penalty of $25,000 per day of violation for each violation. Evidence that is permitted by statute to be used for enforcement purposes, fines that may be levied, and any other statutory provisions, may not be altered by a permit.

II. Detailed Discussion of Regulatory Provisions

A. Section 64.1—Definitions

Section 64.1 defines most of the key terms and phrases used in part 64. Certain definitions which were contained in § 64.2 of the 1993 EM proposal have been deleted from the final rule, while other definitions from the proposed rule have been considerably revised. In addition, a number of new definitions have been added to the final rule. The Agency believes these deletions, revisions, and additions accomplish the following goals: They reflect changes to the objectives and substantive provisions of part 64; they respond to concerns and comments made about the definitions in the 1993 EM proposal; and they bring part 64 more closely into accord with the regulatory language of part 70. The final definitions also reflect changes made in response to comments received on the 1995 and 1996 part 64 Drafts. These are discussed below.

1. Definitions Deleted from the Final Rule

The revisions to the substantive provisions of part 64 in the final rule have necessitated the deletion of certain definitions set forth in § 64.2 of the 1993 EM proposal. In some instances, these definitions have been superseded by new terminology relating to the same or similar concepts. In other cases, the deleted definitions related to matters which are inapplicable to the final rule. The eliminated definitions are as follows:

a. *Continuous Compliance and Intermittent Compliance.* The 1993 EM proposal would have required the use of data from an enhanced monitoring protocol to determine and certify whether an affected source or emissions unit complied with applicable emission limitations or standards and whether such compliance was "continuous" or "intermittent." Section 64.2 of the 1993 EM proposal defined the term "continuous compliance" as requiring the attainment of quality-assured data from an enhanced monitoring protocol for all required periods, the demonstration by such data that an owner or operator has complied with the applicable emission limitation or standard during all monitored periods, and a demonstration of compliance by any other data collected for the purpose of determining compliance during the monitored periods if such other data were collected. The 1993 EM proposal stated that a source or emissions unit was in "intermittent compliance" if, during the reporting period, either the data availability requirement was not satisfied because insufficient data was obtained from the enhanced monitoring protocol, or the owner or operator violated the applicable emission limitation or standard because a deviation occurred during a period for which no federally-approved or federally-promulgated excused period applied.

Many commenters objected to these definitions for various reasons, including a contention that EPA had merged the concept of achieving continuous compliance with the concept of demonstrating compliance. The definitions of continuous compliance and intermittent compliance in the proposed rule were also closely tied to the Agency's interpretation of section 114(a)(3) of the Act under the 1993 EM proposal. Section 114(a)(3) directs the Administrator to require certification of "whether compliance is continuous or intermittent." Under the 1993 EM proposal, this language was interpreted as requiring a certification that compliance was achieved during all averaging periods for a standard, and "intermittent" meant that one or more unexcused deviations occurred during the certification period. This interpretation was also the subject of much public comment. As described in greater detail above, the Agency has responded to these comments by adopting an alternative interpretation of section 114(a)(3). The Agency has therefore deleted the EM proposed definitions of continuous and intermittent compliance from the final rule. (See Section II.K.2. for additional discussion of the interpretation of compliance certifications.)

b. *Deviation.* The proposed rule stated that a "deviation" included any condition determined by enhanced monitoring or other collected data which identifies that an emissions unit has failed to meet an applicable emission limitation or standard. This definition included any conditions that either violated an applicable emission limitation or standard or would have violated such limitation or standard but for a federally-promulgated exemption.

A number of commenters raised concerns about the proposed definition of deviation. Some argued that the proposed definition was too closely tied to the violation of an emission limitation or standard. These commenters requested clarification that a deviation is not necessarily a violation of an emission limitation or standard. Other commenters objected to portions of the definition which would have allowed a deviation to be based on "data collected that can be used to certify compliance," such as the data obtained through a voluntary audit. These commenters argued that such a definition created a disincentive for owners and operators to engage in certain types of self-monitoring.

The final rule does not refer to "deviations" in part 64 and thus does not include a definition of "deviation." The 1996 part 64 Draft did contain a revised definition of "deviation" to be included in the part 71 provisions covering the federal operating permits program. This definition would have clarified that a deviation is not always a violation and that types of events that were to be considered deviations included "exceedances" and "excursions" as defined under part 64. The state operating permit programs authorized by part 70 of this chapter allow permitting authorities to define the term "deviation" in the context of their individual programs. The 1996 part 64 Draft did not include a definition of "deviation" to be included in part 70 because the Agency did not want to restrict the power of permitting authorities to define this term.

Public comments on the 1996 part 64 Draft pointed out that there are permitting authorities which define a "deviation" as a violation of the underlying emission limitation or standard. The provisions in the 1996 part 64 Draft which stated that exceedances and excursions are to be considered deviations without necessarily being violations arguably conflict with those definitions of "deviation." In response to these concerns, the Agency has eliminated all references to "deviations" from part 64.

c. *Other Deleted Definitions.* The proposed rule contained a definition for "established monitoring." This definition applied to certain types of monitoring methodologies which had been demonstrated to be a feasible means of assessing compliance with emissions limitations or standards. The concept of "established monitoring" was used in the monitoring selection process under the 1993 EM proposal. As discussed below in Section II.D., these provisions have been eliminated in part 64. Because the concept of "established monitoring" serves no function in the final rule, this definition has been deleted.

The proposed rule defined "fugitive emissions" as those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. This definition was necessary because § 64.4(d) of the proposed rule would have established separate monitoring protocol requirements for fugitive emissions monitoring. As discussed below in Section II.B., fugitive emissions are not subject to any specific part 64 monitoring requirements. The Agency has therefore deleted this definition from the final rule.

Section 64.4(c) of the 1993 EM proposal established certain requirements for owners or operators who sought to use the monitoring of process or control device parameters as part of an enhanced monitoring protocol. In certain instances, the proposed rule required the establishment of a "demonstrated compliance parameter level" (DCPL) to determine which levels of the parameter being monitored correlated with a demonstration of compliance with the applicable emission limitation or standard. Under the requirements in the final rule, the Agency has modified its approach to parameter monitoring (see Section II.C. for a more detailed discussion). Accordingly, the definition of "demonstrated compliance parameter level" or DCPL has been deleted from the final rule.

Both the terms "enhanced monitoring" and "enhanced monitoring protocol" have been eliminated in the final rule. The 1993 EM proposal defined "enhanced monitoring" as the methodology used by an owner or operator to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness in order to determine if compliance is continuous during a reporting period. An "enhanced monitoring protocol" was defined as the monitoring methodology and all installation, equipment, performance, operation, and quality assurance requirements applicable to that methodology. The final part 64 establishes monitoring performance criteria in the body of the rule rather than in a definition; thus, the definitions of "enhanced monitoring" and "enhanced monitoring protocol" have been deleted. The 1996 part 64 Draft included a related concept, the "compliance assurance monitoring (CAM) plan," which distinguished monitoring for units with control devices subject to subpart B of that draft rule and monitoring for other units under subpart C of that draft rule. Because the final rule does not include subpart C, this term is not used in the final rule.

"Responsible official" was defined under the 1993 EM proposal as having the same meaning as provided under § 70.2. This term was used in § 64.5(c) of the 1993 EM proposal, which required that the personal certification of a responsible official be included in each enhanced monitoring report. In response to a number of objections to this requirement, the Agency has not included a part 64 report signature requirement in the final part 64 rule but generally relies on part 70 reporting procedures. Thus, there is no need to define "responsible official" in part 64. It should be noted that § 70.5(d) outlines the responsible official's duties with respect to submitting reports, including part 64 reports.

2. Revised Definitions

There are a number of definitions that were in the 1993 EM proposal that have been revised in the final rule. Some of these revisions are relatively minor, such as technical revisions designed to reflect changes to the substantive provisions of part 64 or to more closely parallel the definitions found in part 70. Other revisions are intended to address more significant concerns with the proposed definitions. The revised definitions are as follows:

a. *Emission Limitation or Standard and Applicable Requirement.* The 1993 EM proposal defined an "emission limitation or standard" as any federally enforceable emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. This term is actually a hybrid of several terms used under the Act. The proposed definition stated that an emission limitation or standard may be expressed as a specific quantity, rate or concentration of emissions; as the relationship of controlled to uncontrolled emissions (e.g., control efficiency); as a work practice; as a process or control device parameter; or as another form of design, equipment, operational, or operation and maintenance requirement.

Section 64.2 of the 1993 EM proposal also defined an "applicable emission limitation or standard" as any emission limitation or standard subject to the requirements of part 64 including: (1) An emission limitation or standard applicable to a regulated hazardous air pollutant under 40 CFR part 61; or (2) an emission limitation or standard applicable to a regulated air pollutant other than a hazardous air pollutant under section 112 of the Act, for which the source is classified as a major source.

The definition of "applicable emission limitation or standard" was closely tied to the applicability provisions of the 1993 EM proposal. For example, the separate treatment of hazardous air pollutant emissions limitations or standards in the definition followed the proposed rule's separate applicability provisions for hazardous air pollutants. Those applicability provisions have been significantly revised in part 64. Commenters raised concerns that the meaning of the term "applicable emission limitation or standard" was unclear. The Agency agrees that the proposed definitions of "applicable emission limitation or standard" and "emission limitation or standard" could be confusing, especially when interpreted in conjunction with the pre-existing definition of "applicable requirement" in part 70. The final rule replaces the term "applicable emission limitation or standard" with the term "applicable requirement." Part 64 states that "applicable requirement" shall have the same meaning as provided under part 70. The Agency made this change in the final rule to avoid any potential confusion and to bring part 64 into closer agreement with the definitions of part 70.

Part 64 retains the basic definition of "emission limitation or standard" with several revisions. Several commenters requested clarification on the meaning of "federally enforceable" in this definition. The final rule eliminates the phrase "federally enforceable" in the definition and defines an emission limitation or standard as "any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation * * *" This adjustment reflects the addition of the term "applicable requirement" in the final rule. The term "applicable requirement" is used in part 70 permitting to refer to the standards, requirements, terms, and conditions that are contained in the part 70 permit as federally-enforceable requirements. Thus, the reference to "federally enforceable" was eliminated because, through the permitting process, all "applicable requirements" become federally enforceable.

Additional language in the part 64 definition of "emission limitation or standard" clarifies that, for purposes of part 64, the definition of "emission limitation or standard" does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, or to conduct monitoring, submit reports or keep records. As noted below (see detailed discussion of § 64.2), requirements of this type generally apply to an entire facility. The Agency has specifically excluded such requirements so that otherwise unregulated emissions units are not inappropriately subject to part 64 monitoring requirements.

A number of commenters requested that EPA further narrow the definition of emission limitation or standard so that it would not apply to work practice, design or similar types of requirements. The commenters argued that part 64 monitoring for these types of standards did not make sense and would be redundant. The Agency disagrees to the extent that a control device is used to achieve compliance with these types of standards. As discussed in Section II.B., the final rule applies only to pollutant-specific emissions units which achieve compliance by using a control device. The monitoring is designed to document that the control device is properly operated and maintained. Many work practice, design or similar standards will not apply to these types of units (i.e., with control devices), which addresses many of the commenters' concerns. For units that are subject to such requirements and that do use a control device (see, e.g., 40 CFR 60.692–5, which imposes a "design" standard that certain emissions be controlled by a control device with 95 percent design efficiency), the nature of the standard is immaterial to the assessment of whether the control device is properly operated and maintained. The Agency notes that in the example, the NSPS requires the owner or operator to monitor the control device to assure proper operation and maintenance (see § 60.695). Part 64 will act in a similar manner.

b. *Part 70/Part 71 Permit.* The term "permit" as defined in the 1993 EM proposal meant any applicable permit issued, renewed, amended, revised, or modified under part C or D of title I of the Act, or title V of the Act. Under the 1993 EM proposal, part 64 would have been implemented through both the part 70 operating permits program and the preconstruction permits programs developed under parts C and D of title I of the Act. Public commenters raised a variety of objections and concerns to this proposed implementation structure. The Agency has responded to these comments in part by limiting part 64 implementation under part 64 to permits covered by title V of the Act.

To reflect this change in the implementation approach, the Agency has replaced the proposed definition of "permit" with a definition for a "part 70 or 71 permit." Section 64.1 of the final rule states that "part 70 or 71 permit" shall have the same meaning as provided under part 70 (or part 71) of this chapter. The Agency believes this definition is consistent with the goal of bringing part 64 definitions into closer agreement with their part 70 (or part 71) counterparts.

The Agency has also added a related definition in part 64. The definition of a "part 70 or 71 permit application" includes any application that is submitted by an owner or operator in order to obtain a part 70 or 71 permit, including any supplement to a previously submitted application. The Agency believes the addition of this definition is necessary because the implementation provisions set forth in § 64.3 of part 64 are connected to the submission of a part 70 or 71 permit application.

c. *Major Source.* The 1993 EM proposal defined the term "major source" as including any major source meeting the definition in § 70.2, excluding any hazardous air pollutant (HAP) source included in paragraph (1) of that definition. One commenter requested clarification of why this definition excluded major HAP sources included in the major source definition of part 70. The form of the proposed definition was necessary because the 1993 EM proposal treated HAP requirements separately from other requirements. For HAP requirements, the 1993 EM proposal would have applied to any source required to obtain a part 70 operating permit or a preconstruction permit under part C or D of title I of the Act and not just to "major sources." As discussed below, the applicability provisions of part 64 have been substantially modified in the final rule such that there are no separate applicability provisions for HAP requirements (see Section II.B.). In the final rule, the definition of "major source" has been revised to reflect these changes. Part 64 simply states that "major source" shall have the same meaning as provided in part 70.

The U.S. Small Business Administration (SBA) submitted for discussion at the September 10, 1996 meeting a proposal to retain, in part 64, EPA's current practice of excluding from major source status those sources whose actual emissions are less than 50 percent of the major source threshold. SBA apparently was referring to EPA's policy issued in January 1995 to establish a two-year (extended until July 31, 1998) transition policy that guides EPA in applying the definition of "major source" in part 70. Because part 64 relies on part 70's definition of "major source," SBA's concern is met. As long as that policy remains in effect, it will be relevant to determining applicability under part 64. *See also National Mining Association* versus *U.S. EPA*, 59 F.3d 1351 (D.C. Cir. 1995).

d. Other Part 70 Related Definitions. Section 64.2 of the proposed rule contained a definition for "potential to emit" which tracked the language of the part 70 definition of "potential to emit" with technical edits to reflect the 1993 EM proposal's focus on emissions units as opposed to the focus on major sources in part 70. The text of the proposed rule did not make it clear, however, that part 70 was the source for the proposed definition. Under part 64, "potential to emit" is explicitly defined as having "the same meaning as provided under part 70 of this chapter, provided that it shall be applied with respect to an 'emissions unit' as defined under this part in addition to a 'stationary source' as provided under part 70 of this chapter." Although the text of the definition has been changed, the meaning of "potential to emit" in the final rule is effectively the same as in the proposed rule. The Agency made these revisions to clarify the connection of this term with the definitions of part 70.

The 1993 EM proposal defined "emissions unit" as any part or activity of a source that emits or has the potential to emit any regulated air pollutant for which an emission limitation or standard had been established. This definition was a modification of the definition of "emissions unit" set forth in part 70. The Agency received a variety of public comments on this definition. One commenter recommended using the part 70 definition of "emissions unit" in part 64. Several other commenters expressed concern over the use of the phrase "any part or activity" in the definition, stating that the definition was not clear as to whether an emissions unit is a single piece of equipment or a group of multiple units located together within a source. In response to these comments, the definition of "emissions unit" has been revised in the final rule to have the same meaning as provided under part 70. This approach clarifies potential ambiguity in the definition by relying on the established part 70 definition of the term and brings part 64 into closer agreement with the provisions of the operating permits program thorough which part 64 will be implemented.

The 1993 EM proposal contained a definition of "permitting authority" which tracked the language of the part 70 definition of "permitting authority" with technical edits to reflect the proposed EM rule's implementation through both title V permitting programs and title I preconstruction permit programs. The text of the proposed rule did not make it clear, however, that part 70 was the source for the proposed definition. In addition, the final rule is not implemented through title I preconstruction permits. The Agency has therefore revised the definition of "permitting authority" to have expressly the same meaning as provided under part 70.

3. Definitions Added in the Final Rule

Many of the definitions in § 64.1 of the final rule have been added to reflect changes in the substantive requirements of part 64 monitoring under part 64. These definitions are generally addressed in the detailed discussion of the appropriate substantive sections of the final rule. The following discussion provides a brief overview of some key terms added to the definitions section of the final rule.

The Agency has added definitions for the terms "monitoring" and "data" to the final rule. The rule defines "monitoring" as any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. The rule also includes a non-exclusive list of data collection techniques which may be considered appropriate monitoring under part 64. This list is similar to the list included in § 64.6 of the 1993 EM proposal with minor changes in response to comments on that section. "Data" is defined as the results of any type of monitoring or compliance determination method. Some commenters had raised concerns that the use of the term "data" in the substantive provisions of proposed part 64 reflected a bias toward instrumental monitoring methods. The Agency believes that by adding these two definitions, the final rule reflects the Agency's intent that a wide variety of information and means of collecting information potentially can be used to satisfy the requirements of part 64.

Definitions for the terms "exceedance" and "excursion" have been added to the final rule. These terms are closely related. Section 64.1 defines an "exceedance" as a condition detected by monitoring which provides data in terms of an emission limitation or standard and which indicates that emissions or opacity are greater than that limitation or standard, consistent with the applicable averaging period. An "excursion" is defined as a departure from an indicator range established as part of part 64 monitoring, also as consistent with the applicable averaging period. As discussed above, the 1996 part 64 Draft would have stated that an exceedance or excursion would be considered a deviation in the part 70 compliance certification. This statement has been removed in response to comments that such conditions should not necessarily constitute deviations, especially since some permitting authorities equate a deviation with a violation. See Section II.K.2. of this preamble for additional discussion on the status of excursions for a part 70 compliance certification. The 1996 part 64 Draft also omitted reference to the applicable averaging period. That omission has been corrected in the final rule.

The final definition added to the final rule describes the meaning of a "predictive emissions monitoring system (PEMS)." Several commenters to the 1993 EM proposal suggested that a definition for this term should be added to part 64. The Agency agrees with this suggestion and has included an appropriate definition in § 64.1 of the final rule. This definition is included in the final part 64 rule because § 64.3(c) sets forth special criteria for the use of predictive monitoring systems when employed to fulfill part 64 monitoring requirements. The same section also provides special criteria for the use of continuous emission or opacity monitoring systems. Because these latter types of systems are well understood, no explicit definition was considered necessary for purposes of part 64.

B. Section 64.2—Applicability

1. Overview

The applicability provisions in § 64.2 reflect EPA's decision to focus part 64 requirements on units that use control devices to achieve compliance. The types of emission exceedance problems that can arise from poor operation and maintenance of a control device can be severe and represent a significant compliance concern. Moreover, although units with control devices represent a smaller percentage of the overall number of emissions units than other units, these controlled units represent a disproportionate share of the overall potential emissions from all emissions units. By concentrating the requirements of part 64 on these units with control devices, the Agency has focused the rule on units that represent a significant portion of the overall potential emissions regulated under the Act and that are generally most likely to raise compliance concerns.

The Agency notes that the term "pollutant-specific emissions unit," defined in § 64.1, is used in part 64 to clarify that applicability is determined with respect to each pollutant at an emissions unit separately. For example, a coal-fired boiler emitting through a single stack could constitute several pollutant-specific emissions units, such as for particulate matter, SO_2, NO_x, and CO. This term is used throughout the remainder of this document where appropriate.

2. Significant Changes in the Applicability Threshold and Related Definitions

Section 64.2(a) of the final rule requires the owner or operator to apply part 64 to significant pollutant-specific emissions units that use control devices to achieve compliance at major sources subject to part 70 permit requirements. The issues raised with respect to applicability during the development of the rule are described below.

a. *Applicability Options Presented in the 1993 EM Proposal.* The preamble to the 1993 EM proposal solicited comments on five options for determining which emissions units would be subject to enhanced monitoring requirements under part 64. These options set the threshold for applicability based on each unit's potential to emit the regulated air pollutant(s) for which a stationary source is classified as a major source. Option 1 set no percentage threshold, making all units with applicable requirements for the pollutant for which a source is major subject to part 64 monitoring. Options 2, 3, 4, and 5 would have made part 64 applicable to all units that have the potential to emit pollutants in an amount equal to or greater than 10, 30, 50, and 100 percent of the applicable major source definition, respectively. The 1993 EM proposal incorporated Option 3, setting the threshold at 30 percent. Under the proposed rule, the source of an air pollutant which is defined as being major at 100 tons per year would be required to conduct enhanced monitoring at all emissions units within its facility that had the potential to emit 30 tons or more of the pollutant per year.

Applicability under the 1993 EM proposal was based on an emission unit's "potential to emit." The proposal defined this term as an emission unit's maximum capacity to emit a regulated air pollutant under the unit's physical and operational design, taking into account such operating restrictions and control equipment as constitute federally-enforceable limitations. As noted above, the 1993 EM proposal also would have applied only to the pollutants for which a source is major. The 1993 EM proposal solicited comment on the applicability approach in the proposed rule, and specifically noted that one other option would be to use uncontrolled emissions rather than potential to emit to determine part 64 applicability. The Agency noted that such an approach arguably would better address the units with the greatest environmental risk. This request for comment was accompanied by an assertion that in a monitoring rule such as part 64, it may be appropriate to use a different definition of potential to emit than EPA has used for other purposes.

b. *Final Part 64 Applicability Provisions.* In response to the many comments received on the 1993 EM proposal, the Agency modified part 64 to bring about the CAM approach including a somewhat different approach to applicability. The Agency received numerous public comments on the applicability provisions of the 1993 EM proposal. Relatively few commenters supported the Option 3 (30 percent) threshold. Many of the comments critical of Option 3 argued that the benefits of increased pollutant monitoring obtained by covering additional emissions units at the 30 percent threshold was far outweighed by the additional costs and burdens of implementation at that threshold. Most industry and many State and local commenters supported Option 5 or a higher threshold. Many of the commenters also recommended that EPA exempt various types of units, especially uncontrolled units that are subject to design, work practice, or similar operational restrictions. In addition, a number of commenters suggested alternative approaches to determining the applicability threshold of part 64. Industry commenters generally favored the focus of the 1993 EM proposal on the pollutants for which a source is a major, while environmental groups opposed that approach.

The final part 64 retains the basic concept of an applicability threshold as contained in the 1993 EM proposal, but also narrows the focus so that part 64 applies only to those pollutant-specific emissions units that use a control device to achieve compliance with an applicable emission limitation or standard. In addition, units using control devices must have potential pre-control device emissions equal to or greater than 100 percent of the applicable major source definition to be subject to part 64. Since part 64 applies its size threshold only to the proportionally small number of emissions units that use control devices, the number of units required to meet part 64 monitoring requirements is lower than would have been subject to the 1993 EM proposal. The final RIA estimates that part 64 will affect fewer than 27,000 units as compared to the over 35,000 units which EPA had estimated would be affected under the 1993 EM proposal.

For part 64 to apply, § 64.2(a) specifies that a pollutant-specific emissions unit must meet the following three criteria: (1) The unit must be subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate of that pollutant); (2) the unit must use a control device to achieve compliance with an emission limitation or standard; and (3) the unit must have "potential pre-control device emissions" in the amount, in tons per year, required to classify the unit as a major source under part 70.

i. *Emission Limitation or Standard Criterion.* For the first criterion, the Agency notes that part 64 applies only if an applicable emission limitation or standard applies because the purpose of part 64 is to provide a reasonable assurance of compliance with such requirements. Numerous comments on the 1993 EM proposal supported EPA's position that part 64 should apply only if an underlying applicable emission limitation or standard applies, but many commenters suggested that the final rule should contain explicit language concerning the necessity for an underlying standard to trigger part 64 applicability. The commenters believed inclusion of such language was critical because a part 70 operating permit will be required to include units without applicable requirements, and part 70 permits will be required for sources without any applicable requirements (so-called "hollow permits"). Their concern was that part 64 could be interpreted as applying to units and sources of this type and that determining compliance with the rule under such an interpretation would be exceedingly difficult. The Agency agrees that the rule should clearly state that part 64 applies only where a federally enforceable emission limitation or standard applies and thus has added this first criterion to the applicability determination. The Agency also notes that the applicability provisions in part 64 include a "surrogate" of a regulated air pollutant to address situations in which the emission limitation or standard is expressed in terms of a pollutant (or other surrogate) that is different from the regulated air pollutant that is being controlled. A common example would be emission limits expressed in terms of particulate matter and opacity rather than PM–10. Another example would be an emission limit expressed as a control device operating requirement rather than in terms of the applicable regulated air pollutant.

ii. *Control Devices Criterion.* Second, the final rule applies only to pollutant-specific emissions units that rely on a control device to achieve compliance. The final rule provides a definition of "control device" that reflects the focus of part 64 on those types of control devices that are usually considered as "add-on controls." This definition does not encompass all conceivable control approaches but rather those types of control devices that may be prone to upset and malfunction, and that are most likely to benefit from monitoring of critical parameters to assure that they continue to function properly. In addition, a regulatory obligation to monitor control devices is appropriate because these devices generally are not an inherent part of the source's process and may not be watched as closely as devices that have a direct bearing on the efficiency or productivity of the source.

The control device definition is based on similar definitions in State regulations (see, e.g., North Carolina Administrative Code, title 15A, chapter 2, subchapter 2D, section .0101 (definition of "control device"); Texas Administrative Code, title 30, section 101.1 (definition of "control device"). The definition is in contrast to broader definitions of "control device," "air cleaning equipment," "control measure," or similar terms included in some States' regulations (see, e.g., Codes, Rules, and Regulations of the State of New York, title 6, chapter III, section 200.1 (definition of "air cleaning device" or "control equipment")). These broader definitions often include any method, process or equipment which removes, reduces or renders less noxious air contaminants released to the ambient air. Those types of controls could include material substitution, process modification, operating restrictions and similar types of controls. The definition in part 64 relies on the narrow interpretation of a control device that focuses on control equipment that removes or destroys air pollutants.

Certain NSPS and NESHAP regulations also have targeted definitions of "control device" or "add-on control device" that apply to the specific type of affected facility covered by the applicable NSPS or NESHAP subpart (see, e.g., 40 CFR 60.581, 60.670, 60.691, 60.731, 61.171, 61.241, 63.161, 63.561, and 63.702). The part 64 control device definition generally is consistent with these prior Agency definitions, but without language targeted to a particular affected facility type.

The Agency notes that EPA's Aerometric Information Retrieval System (AIRS) contains a list of various air pollution control equipment codes that address a wide variety of possible control methods, processes and equipment; this list includes both active control devices and other types of controls. In conjunction with the release of the 1996 part 64 Draft, the Agency placed in the docket (item VI–I–3) a document that reflects EPA's position on which of those equipment codes refer to a "control device" as defined in the 1996 part 64 Draft and which refer to other types of controls. The Agency continues to believe that this document provides an appropriate list of the types of equipment which may constitute control devices.

For the final part 64 rule, the control device definition has been revised in response to public comments. In the discussion document accompanying the 1996 part 64 Draft, the Agency solicited comment on the appropriateness of the definition of control device and received numerous comments and requests for additional clarifications. Generally, commenters felt that the control device definition in the 1996 part 64 Draft was overly broad and that additional language was needed to clarify that EPA does not intend the rule to apply to inherent process equipment such as certain types of recovery devices.

The final rule defines a control device as "equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere." Thus, the Agency has specifically excluded inherent process equipment from the control device definition in the final rule. The EPA suggested in the discussion document accompanying the 1996 part 64 Draft a list of three criteria that would be used to distinguish inherent process equipment from control devices:

(1) Is the primary purpose of the equipment to control air pollution?

(2) Where the equipment is recovering product, how do the cost savings from the product recovery compare to the cost of the equipment?

(3) Would the equipment be installed if no air quality regulations are in place? (See letter from David Solomon, EPA, to Timothy J. Mohin, Intel Government Affairs, dated November 27, 1995. Included in the docket as Item VI–C–14.)

The Agency received a number of comments on these criteria, some of which supported including the criteria in the rule and others of which suggested other approaches. Based on the comments received, the final rule defines "inherent process equipment" as "equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations." If equipment must be operated at an efficiency higher than that achieved during normal process operations in order to comply with applicable requirements, that equipment will not qualify as inherent process equipment. In addition, the control device definition has been revised to include a list of several control techniques that do not constitute "control devices" as defined in part 64.

Finally, the definition also makes clear that part 64 does not override definitions in underlying requirements that may provide that certain equipment is not to be considered a control device for pollutant-specific emissions units affected by that regulation. Although not subject to part 64, an example of this type of provision is § 63.111 in subpart G to 40 CFR part 63 (NESHAP requirements for Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater). The definition in that section states that recovery devices used in conjunction with process vents and primary condensers used in conjunction with a steam stripper do not constitute "control devices." Certain commenters asserted that part 64 should not override these types of existing rules and EPA agrees. The Agency notes, however, that if an emissions unit is regulated for another pollutant, and the control device also is used to comply with a limit that applies to that second pollutant, the equipment will be considered a "control device" for the second pollutant unless the standards for the second pollutant also explicitly establish that the equipment is not a control device.

The final rule also includes a definition of a "capture system" because the rule requires, where applicable, monitoring of a capture system associated with a control device. The monitoring requirements for control devices extend to capture systems as well because they are essential to assuring that the overall emission reduction goals associated with the control device are achieved. See Section II.C., below. The Agency notes that duct work, ventilation fans and similar equipment are not considered to be a capture system if the equipment is used to vent emissions from a source to the atmosphere without being processed through a control device. For instance, roof vents that remove air pollutants from inside a building but do not transport the pollutants to a control device to reduce or destroy emissions would not be subject to the rule.

The Agency notes that some commenters, especially environmental and other public interest organizations, opposed limiting the applicability of part 64 to emissions units that rely on control devices. They argued that other significant emissions units with other types of control measures, such as low NO_X burners or similar combustion modification controls, should be subject to part 64 requirements.

Low NO_X burner technology and certain other types of combustion control measures are not included in the definition of "control device" in the final rule. For most large emissions units that employ such measures, such as utility boilers, separate applicable requirements already require the use of CEMS or similar monitoring for such units. Under part 70, that monitoring will have to be included in the permit and considered in certifying compliance with applicable requirements. Some types of combustion units (e.g., package boilers) that may use low NO_X burner technology do not use the same types of technology used by utility and large industrial boilers. The technology used for many units with automatic combustion control does not provide significant operational flexibility that could afford the owner or operator with an opportunity or incentive to manipulate NO_X control levels. (See docket item A–91–52–VI–A–9) For these types of units, the recordkeeping of regular inspection and maintenance of the low NO_X burners (e.g., annular flow ratio adjustment settings, burner replacement, portable instrument readings, etc.) in combination with periodic checks of emission levels with appropriate test methods, as necessary, are very likely sufficient to ensure that the unit is being operated in a manner

consistent with good air pollution control practices and that the low NO_X technology continues to reduce emissions at least to the level of the standard. The general monitoring requirements in part 70 are adequate to assure that this type of appropriate monitoring is employed.

For these reasons, EPA believes that monitoring for this control technology is best addressed through part 70 periodic monitoring requirements and not through expansion of part 64 to units with these types of control measures. Of course, if there are particular units which raise a significant continuous compliance concern, such as units with an historically poor compliance history, the permitting authority can require more detailed monitoring under the general part 70 monitoring provisions given that the permit must include appropriate monitoring for assuring compliance with the permit. In those cases, permitting authorities may want to consider elements of part 64 as potentially appropriate, but they would not be bound to satisfy each element of part 64.

iii. *Potential Pre-control Device Emissions Criterion.* Finally, for the third criterion for applicability, § 64.2(a) relies on the concept of "potential pre-control device emissions." This term has the same meaning as "potential to emit," except that any emission reductions achieved by the control device are not taken into account, even if the owner or operator generally is allowed to do so under the regulatory definition of "potential to emit."

The Agency first notes that numerous commenters expressed objections to the 1993 EM proposal's definition of potential to emit, believing the definition resulted in unrealistically high emissions numbers. The EPA notes that, contrary to beliefs expressed in many of those comments, that definition does take into account enforceable operating hour restrictions, throughput restrictions, control system efficiency factors, and similar enforceable restrictions. The Agency also points out that the same definition has been used in the part 70 operating permits program as well as the part 63 NESHAP general provisions.

The Agency also notes that the majority of commenters did favor the use of potential to emit over uncontrolled emissions because the latter approach would not take into account any emissions reductions achieved through any means. However, the 1993 EM proposal noted that EPA was considering basing applicability on uncontrolled emissions and the potential pre-control emissions approach was suggested subsequently by State and local agencies (see docket items VI–D–42 and 49) during further consideration of part 64 options. As noted in the discussion document accompanying the 1996 part 64 Draft, the Agency agrees with this approach and believes that excluding the assumed efficiency of the control device from the calculation of potential to emit for purposes of part 64 applicability provides an appropriate means of distinguishing between units based on environmental significance. It allows the Agency to distinguish between units based on their true size and based on the degree of control required to achieve compliance. The Agency notes that this approach does take into account all federally-enforceable emissions reductions except for those resulting from control devices (e.g., emission reductions that occur as a result of operating hour or throughput restrictions would be taken into account in determining potential pre-control device emissions).

Many commenters objected to the reliance on potential pre-control device emissions, primarily because the use of the potential pre-control device emissions threshold would result in too many units being subject to the rule. Some commenters noted that the 1993 EM proposal similarly had requested comment on the use of uncontrolled emissions, and that the comments strongly objected to that idea.

The Agency first notes that, contrary to some commenters' assertions, EPA estimates that the final rule will apply to fewer units than the 1993 EM proposal because the final rule only applies to the proportionally small number of emissions units that use equipment meeting the "control device" definition. The final RIA estimates that fewer than 27,000 pollutant-specific emissions units will be subject to part 64, whereas the 30 percent option in the 1993 EM proposal would have covered over 35,000 such units. The EPA has also delayed implementation for those units subject to the rule that have the "potential to emit" (post-control device) less than the major source threshold. This delayed implementation will reduce the burdens of part 64 on the initial round of part 70 permitting. The Agency feels that these changes should alleviate the commenters' concerns and that further reductions in the number of units to which the rule applies are not appropriate.

The CAM approach is necessarily concerned with significant, controlled units even if the potential to emit after the control device is low. The reason for covering these units is two-fold. First, part 64 monitoring will be designed to detect long-term under-performance of control devices that periodic evaluations such as stack tests may be unable to document. For example, a unit may have the potential to emit 20 tons per year after a control device which is required to operate with a 99 percent control efficiency. The pre-control device potential to emit for that unit is 2,000 tons per year; if the required control device efficiency is 99.9 percent, that figure increases to 20,000 tons per year. If the long-term actual control performance of that device decreases to 95 percent, the actual emissions could increase to 100 or 1000 tons per year, respectively. Part 64 is aimed first at addressing this type of long-term, significant loss of control efficiency that can occur without complete failure of a control device. The second type of problem is short-term complete loss of control. As indicated in some of the comments, for many types of control devices this type of problem could be detected after the fact with monitoring less detailed than part 64. However, the goal of air pollution control is to prevent these types of problems before they occur, if possible, at a reasonable cost. The EPA believes that part 64 in many instances can be designed to provide early indications of control equipment problems that could be addressed prior to such catastrophic failures. For these reasons, EPA believes that the use of pre-control device potential to emit is a rational basis on which to evaluate whether specific units should be subject to part 64.

Some comments on the 1996 part 64 Draft also objected to the potential pre-control device emissions threshold based on the argument that the creation of a new size calculation that source owners or operators must perform to determine applicability will cause confusion and result in additional burdens. The Agency disagrees since owners will simply need to remove the design efficiency of the control device from the calculation of the applicable unit's potential to emit. Potential pre-control emissions will otherwise be calculated in exactly the same way as potential to emit. The two figures will both factor in enforceable operational restrictions, so only the effect of the control device's efficiency, a factor which has to be quantified for determining the standard meaning of "potential to emit," will be treated differently.

Commenters also noted that part 64 would expand the 1993 EM proposal by not limiting applicability to those pollutants for which the source is major. The final rule does limit applicability to the pollutants for which a pollutant-specific emissions unit would be major except for the emissions reductions assumed to occur as a result of a control device. As explained above, EPA believes that the focus of the rule on the potential to emit of units prior to a control device is an appropriate screening tool to determine which units should be monitored under part 64. For that reason, the focus of the 1993 EM proposal on major pollutants only would be inappropriate. In addition, as some commenters pointed out in response to the proposed rule, the Agency typically does not focus on only the major pollutants even where applicability of a program is focused solely on whether a source is a major source.

Finally, EPA believes it would be irrational to continue to focus solely on the pollutants for which a source is major when the Agency is focusing on units that have installed control devices. For instance, a source could be "major" for NO_X with no NO_X control devices (and even no NO_X requirements in an attainment area) but have a unit with the potential to emit 20 tons of particulate matter after a control device that has a rated removal efficiency of 99.9 percent. The post-control particulate potential to emit from this particular emissions unit would be less than the major source threshold of 100 tons/year; however, the precontrol potential to emit of 20,000 tons/year of particulate matter emissions would be greater than the 100 tons/year major source threshold. As noted in the example discussed above, small decreases in efficiency of that control device could lead to actual emission increases significantly above the major source threshold. Thus, while the source in this example may not have the potential to emit particulate matter (taking into account the control device) in amounts sufficient for the source to be classified as a major source for particulate matter, the pollutant-specific emissions unit for particulate matter, not for NO_X, in this example is clearly one which the Agency believes should be subject to part 64.

Other commenters questioned whether the applicability provisions were self-implementing. They argued that unit-by-unit negative declarations would be highly burdensome. The Agency agrees and part 64 does not require that owners or operators justify in a permit application why part 64 is not applicable, or that owners or operators apply for exemptions. However, the Agency notes that the permitting authority can request further explanation as to how a source owner or operator determined that part 64 did or did not apply for any pollutant-specific emissions unit for which there may be an issue about applicability. In addition, an owner or operator that wishes to take advantage of the exemption for certain municipally-owned utility units will have to provide the documentation required to satisfy that exemption (see the following discussion of this exemption).

3. Development of the Exemption Provisions

Part 64 exempts owners or operators with respect to certain emission limitations or standards for which the underlying requirements already establish adequate monitoring for the emission limits being monitored, and with respect to certain municipally-owned utility units.

a. *Exemptions in the 1993 EM proposal.* The 1993 EM proposal established exemptions for the following types of emission limits:

—Emission limitations or standards under the NESHAP program (pursuant to section 112 of the Act), except for standards established in part 61. This exemption reflected the Agency's intent that the provisions of part 63, the MACT standards, will include appropriate enhanced monitoring provisions pursuant to the authority in section 114(a)(3) of the Act.

—Stratospheric ozone protection requirements under title VI of the Act. The type of requirements that apply under that program are significantly different than typical emission limitations or standards, and the appropriate monitoring for such requirements will be handled under regulations implementing those requirements. The exemption is unchanged from the proposed rule but for a technical correction (substituting title VI of the Act for the original reference to section 603).

—Acid Rain Program emission limits under title IV of the Act. The Acid Rain monitoring requirements under 40 CFR part 75 already establish all appropriate compliance assurance monitoring for such requirements. The exemption is unchanged from the proposed rule but for a technical correction (to include emission limits applicable to opt-in units under section 410 of the Act).

—NESHAP standards for asbestos demolition and renovation projects. These sources are exempt under part 70 and are not required to obtain operating permits.

—NSPS standards for residential wood heaters. These sources are also exempt under part 70 and are not required to obtain operating permits.

b. *Exemptions in the Final Rule.* Issues raised by comments on the 1993 EM proposal prompted EPA to include certain additional exemption provisions in the final part 64 rule. The exemptions that were changed or added are:

—Emission limitations or standards under the NSPS program that are proposed after November 15, 1990. This expands on the proposed rule, which provided for only the NESHAP exemption. Commenters suggested that EPA exempt all NSPS, arguing that existing NSPS contain enhanced monitoring requirements. The EPA disagrees that this is the case for all NSPS. Existing monitoring of covered units and sources under some NSPS may be sufficient to meet part 64 requirements; however, the question of sufficiency of any particular monitoring requirement from a non-exempt standard will have to be determined in accordance with the requirements of part 64. Future federal rulemakings, including NSPS rulemakings, will satisfy the monitoring requirements of titles V and VII of the 1990 Amendments (see preamble to 40 CFR part 70, 57 FR 32278, July 21, 1992). The EPA intends to focus on including methods for directly determining continuous compliance in these new federal rulemakings where such methods are feasible. Only where such approaches are not feasible would the Agency consider using an approach similar to the CAM approach in such requirements. Since there will be no gaps in their monitoring provisions, EPA exempts future NSPS as well as NESHAP standards. The Agency notes that this exemption does not apply to State emission limits or standards developed under section 111(d) of the Act.

—Emission limits that apply solely under an emissions trading program approved or promulgated by EPA and emission cap requirements that meet the requirements of § 70.4(b)(12) or § 71.6(a)(13)(iii) are exempt from part 64. This exemption was developed in response to comments received on a provision in the 1993 EM proposal which made certain "group[s] of emissions units at a major source" subject to enhanced monitoring requirements. The 1993 EM proposal's preamble suggested that this provision applied to emissions units involved in some form of "bubbling" or trading plan within a single facility as well as to fugitive emission points for which compliance is evaluated on a process-wide or facility-wide basis.

The EPA received many comments on the 1993 EM proposal that opposed applying enhanced monitoring to

groups of emissions units. Several industry commenters believed that applying part 64 to groups of emissions units would be too inclusive and would apply enhanced monitoring requirements to emissions units that otherwise would fall below the applicability threshold. Other commenters predicted that applying enhanced monitoring to groups of emissions units would discourage source owners or operators from participating in emissions trading, aggregating, or similar programs. Some industry representatives and State and local agencies also recommended providing an exemption in part 64 for source owners or operators who participate in programs such as RECLAIM in California's South Coast Air Quality Management District.

The final part 64 rule addresses these concerns in a number of ways. First, both emission limits that apply solely under an emissions trading program approved or promulgated by EPA and emission caps that meet the requirements of § 70.4(b)(12) or § 71.6(a)(13)(iii) are explicitly exempt from part 64 under § 64.2(b)(1)(iv) and (v). By their nature, these types of standards require methods to confirm trades or to calculate overall compliance with the cap, taking into account the contribution of emissions from all covered units. These types of emission limits also often cover all emissions units at a facility, including those with extremely low amounts of emissions, those without control devices, and those that are not subject to other applicable requirements. Because of the need to consider the interrelationships among units covered by this type of requirement, the type of monitoring in part 64 would not be appropriate. Instead, the Agency believes that the existing requirements for monitoring compliance with such standards should be followed.

For instance, the requirements for statutory economic incentive programs (40 CFR 51.490—.494) specify the quantification methods that must be included as part of any SIP economic incentive program developed pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. In addition, EPA has proposed revisions to § 70.4(b)(12) to clarify that emission caps must include "replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable." (59 FR 44460, August 29, 1994). These provisions highlight the need to include as part of any emission trading or cap requirement the appropriate methods for quantifying emissions and assuring that the trade or cap limitation is enforceable. The Agency believes that the imposition of part 64 on these types of standards would not provide any additional benefit.

In addition, other groups of emissions units are generally not subject to monitoring requirements under part 64. Part 64 requirements apply only to individual pollutant-specific emissions units that use a control device to achieve compliance and whose pre-control device emissions of an applicable pollutant are equal to or greater than the amount needed for a unit to be classified as a major source. Groups of emissions units are not aggregated for this determination, so such groups would not be subject to part 64. In addition, fugitive emissions are generally not controlled through the use of control devices, so there is no need for special applicability or monitoring provisions for fugitive emission sources.

—Emission limitations or standards for which a part 70 permit already includes monitoring that is used as a continuous compliance determination method. In these instances, there generally is no need to require any additional compliance assurance monitoring for that emission limitation or standard. There is one exception to using this exemption. In some instances a continuous compliance determination method may be contingent upon an assumed control device efficiency factor. For example, a VOC coating source that includes add-on control equipment that destroys VOC emissions may use an assumed control device efficiency factor for the control equipment together with coating records to calculate compliance with an NSPS requirement. In this example, a monthly calculation generally is made using coating records and an assumed destruction efficiency factor that is based on the last control system performance test. In this example, § 64.2(b)(1)(vi) does not allow the exemption from part 64 because the owner or operator must assure proper operation and maintenance of the control device for the destruction efficiency factor to remain valid. The Agency notes that this position is consistent with the NSPS, which generally require monitoring of the control equipment in addition to the monthly compliance calculation in this type of example. The Agency notes that the monitoring under part 64 does not have to be included or otherwise affect the existing continuous compliance determination method. In the coating example, direct compliance will still be calculated based on the approved continuous compliance method. Part 64 monitoring will be used to document that the control device continues to operate properly and to indicate the need to reestablish the destruction efficiency factor through a control device performance test.

This exemption also raises a question about what constitutes a "continuous compliance determination method." Section 64.1 defines this type of method as a means established in an applicable requirement or a part 70 permit for determining compliance on a continuous basis, consistent with the averaging period for the applicable requirement. The EPA has prepared initial guidance that includes some example of this type of monitoring. (See docket item A–91–52–VI–A–8 for a draft of this guidance.)

The Agency notes that if emission limitations or standards other than the exempt emission limits described above apply to the same pollutant-specific emissions unit, the owner or operator would still be subject to part 64 for that pollutant-specific emissions unit and may have to upgrade the existing monitoring or add other types of monitoring. The Agency believes that for many situations in which both exempt and non-exempt emission limits apply to a particular pollutant-specific emissions unit, the monitoring for the exempt limit may be adequate to satisfy part 64 for the other non-exempt emission limit(s). Section 64.4(b)(4) of the rule recognizes this possibility and allows the owner or operator to meet the obligation to explain the appropriateness of its proposed monitoring by stating that it is proposing monitoring for non-exempt limits that is based on the monitoring conducted for certain types of exempt emission limits.

Examples of situations that may involve both exempt and non-exempt limits for the same pollutant-specific emissions unit include the following. One example would be a pollutant-specific emissions unit that is subject to both a particulate matter limit and enforceable conditions to operate a control device within certain parameters. In this example, if compliance with the parameter conditions is determined by a continuous compliance determination method, that monitoring could be used to provide a reasonable assurance of compliance with the particulate matter limit, provided that the monitoring included all necessary parameters to satisfy § 64.3(a). In contrast, another example of multiple emission limitations or standards could be an emissions unit that is subject to a short term emission rate limit and an annual throughput limit that has a means for determining compliance with total annual throughput. In this example, demonstrating compliance with the annual throughput limit is unlikely to assure that a control device used to comply with the short term limit continues to perform properly, and the owner or operator may have to use different or supplemental monitoring to satisfy part 64.

As noted above, emission limits established under the Acid Rain Program are exempt from part 64. The Agency expects that the part 75 monitoring required for Acid Rain sources likely will generate the data necessary to comply with part 64 as applied to other standards applicable to the same unit. However, because part 64 requires that CEMS data be reported in terms of the applicable emission limit, the owner or operator may face some additional requirements in order to generate the data in terms of the other non-Acid Rain emission limits that apply (such as a lb/mmBtu SO_2 standard).

—Two exemptions provided for in the 1993 EM proposal have been eliminated in part 64. The 1993 EM proposal included exemptions for NESHAP standards for asbestos demolition and renovation projects and NSPS standards for residential wood heaters. These source categories are exempt under part 70 and are not required to obtain operating permits. Since part 64 explicitly applies only to sources required to obtain a part 70 permit, separate exemptions for these source categories are unnecessary in the final rule.

—In addition to exempting certain emission limitations or standards, the 1996 part 64 Draft also introduced an exemption for small municipal utility emissions units in response to the large number of comments received on this issue during the extended comment period on the 1993 EM proposal (over 80 municipal power utilities submitted comments on this issue). The exemption applies to small (under 25 megawatts) existing municipal utility emissions units that are exempt from the Acid Rain Program and that supply power for sale only in peak demand or emergency situations. As commenters pointed out, these units have historically low usage rates, but, because of their nature, owners or operators cannot accept enforceable restrictions on the operation of these units for any particular year without violating their contractual obligations. Thus, these units usually have extremely high potential to emit values in comparison to actual emissions. In addition, the Agency notes that these units often are owned and operated by small municipal authorities and that the actual emissions from these units are minimal in many cases. The Agency therefore believes that a limited exemption for these units is appropriate.

To qualify for the exemption, the owners or operators of these units must include in their part 70 permit applications documentation showing that the unit is exempt from all of the monitoring requirements in 40 CFR part 75, and showing that the emissions unit is operated only to provide electricity during peaking hours or emergencies. This documentation should consist of historical operating data and contractual information.

The owner or operator must also demonstrate that the emissions unit has low annual average emissions. The rule requires the owner or operator to document that average annual emissions over the last 3 calendar years of operation are less than 50 percent of the amount required to classify the unit as a major source. If less than 3 years of historical data are available, the owner or operator can use such shorter time period that is available as the appropriate look back period.

The Agency chose the 3-year period to be consistent with the time frame used under the Acid Rain Program to define a peaking unit (see § 72.2). The 3-year period used under the CAM approach recognizes the similar circumstances presented by these small municipal power sources. The use of a 50 percent threshold is consistent with EPA's January 1995 potential to emit transition policy setting forth EPA guidance under which sources that have actual emissions well below title V applicability thresholds may avoid title V permitting by documenting those low actual emissions (see docket item A–91–52–VI–I–5 for a copy of this policy). If actual emissions exceed that 50 percent value, then the policy requires a source to obtain an enforceable restriction to reduce its potential to emit below the title V applicability threshold. The Agency believes that the principle behind that policy is equally applicable for purposes of this part 64 exemption. Based on the information supplied in comments submitted by the affected municipal utility companies, EPA believes that the vast majority of the emissions units under 25 megawatts operated at these sources will qualify for this exemption.

In response to the 1996 part 64 Draft, the Agency again received many comments that argued for expansion of the municipal utility exemption to other units which have low actual emissions. For example, the U.S. Small Business Administration submitted for discussion at the September 10, 1996, meeting a proposal (SBA proposal) to exclude entirely from part 64 any unit with emissions between 50 percent and 90 percent of the major source threshold so that the resources that would otherwise be spent on implementing part 64 for those sources could be saved; further, the SBA comments included a recommendation that EPA give partial credit for emission control measures rather than determining applicability based on total potential pre-control device emissions. The SBA proposal stated that this would eliminate possibly thousands of sources that do not need to be covered by part 64 since the reasonable assurance can be obtained through the facilities' own records. A number of commenters specifically expressed their support for the SBA proposal and others stated generally that they were in favor of such an exemption, arguing that any unit that can demonstrate a history of limited usage and an expectation of continued limited usage should be exempted.

The EPA disagrees with the concept of using actual emissions as the overall basis for part 64 applicability or as the basis for expanding significantly the municipal utility exemption. First, actual emissions can vary with changes in production. More importantly, for units with control devices, calculations of actual emissions necessarily rely on assumptions about on-going performance that part 64 is intended to verify. Further, to assure that units remain under the major source threshold is not the goal of part 64, but, instead, the goal of part 64 is to assure that sources meet all applicable requirements. Finally, because the types of sources to which commenters referred are unlikely to meet the control device applicability criterion of the final rule, the Agency feels even more strongly that the final rule will not subject small units to inappropriate monitoring. The Agency notes, however, that such units will remain subject to the monitoring requirements in part 70, and may have to adopt new or modified monitoring to comply with those requirements, even though part 64 does not apply.

4. Hazardous Air Pollutant Requirements

Under the 1993 EM proposal, part 64 would have applied to all emission limitations or standards established under 40 CFR part 61 at any source that is required to obtain an operating permit under part 70. The proposed rule contained an exemption, retained in

modified form in the final part 64 rule, for all hazardous air pollutant emissions standards promulgated pursuant to section 112 of the Clean Air Act except for those standards established in part 61 prior to the 1990 Amendments to the Act.

After receiving substantial public comment on the applicability of part 64 to hazardous air pollutants, the Agency has significantly modified its approach to HAPs under part 64. Hazardous air pollutant sources are no longer a separate category subject to a different applicability test. Instead, hazardous air pollutant emissions limitations and standards are treated the same as those for criteria air pollutants. Thus, a hazardous air pollutant-specific emissions unit is subject to part 64 only if it meets the applicability criteria set forth in § 64.2(a).

This approach is consistent with the Agency's overall goal of streamlining part 64. The EPA believes the final part 64, in conjunction with other regulatory provisions, provides for sufficient monitoring of hazardous air pollutant sources to both satisfy the statutory enhanced monitoring mandate and to meet the special concerns associated with regulating pollutants of this type. In addition, units and sources which do not meet the part 64 applicability threshold will still be subject to part 61 compliance monitoring and, if applicable, part 70 monitoring. For those units, EPA considers such monitoring sufficient to address the special concerns of regulating hazardous air pollutants.

With respect to emissions units subject to new hazardous air pollutant standards under amended section 112 of the Act, EPA will include appropriate monitoring requirements as part of those new hazardous air pollutant standards. Since part 64 monitoring for these standards would be needlessly duplicative, such standards are covered by the exemption in § 64.2(b)(1)(i). This approach is consistent with EPA's statement in the July 21, 1992 preamble to 40 CFR part 70 that all future rulemakings will have no gap in their monitoring provisions (see 57 FR 32278).

C. Section 64.3—Monitoring Design Criteria

Section 64.3 contains the design criteria for satisfying part 64. The selection and design of monitoring have undergone revision in the final rule. Some of these revisions were necessary to conform these provisions to applicability and implementation requirements under the final rule. Others have been made in response to public comments on the monitoring design and selection requirements in the 1993 proposed EM rule and subsequent drafts of part 64. These revisions reflect both the objective of providing a reasonable assurance of compliance with applicable requirements at lower cost than the 1993 proposed EM rule and the Agency's goal of developing a more simplified structure for part 64. The following section describes the specific revisions to these provisions and the Agency's rationale for making these changes.

1. General Criteria

a. *Overview.* The general purpose of the monitoring required by part 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit. A basic assumption of EPA air pollution control rulemaking, at least under technology-based programs such as the NSPS program, is that an emission limit should be established at a point where a well operated and maintained source can achieve the limit under all expected operating conditions using control equipment that has been shown through a performance test to be capable of achieving the emission limit. This demonstration through a performance test is conducted under conditions specified by the applicable rule or, if not specified, generally under conditions representative of maximum emission potential under anticipated operating conditions (generally, but not always, at full load). Logically, therefore, once an owner or operator has shown that the installed control equipment can comply with an emission limit, there will be a reasonable assurance of ongoing compliance with the emission limit as long as the emissions unit is operated under the conditions anticipated and the control equipment is operated and maintained properly. This logical assumption is the basis of EPA standard-setting under the NSPS program and serves as the model for the CAM approach as well.

For example, under 40 CFR part 60, subpart NN, Phosphate Rock Plants, the standard for particulate matter is determined through Method 5 testing. The final preamble noted that certain commenters believed that the particulate emission limits "were too stringent to be achieved on a continuous basis." Upon review of the information, EPA revised the standard because its evaluation "indicated that the proposed emission limits . . . could not be achieved continuously under all operating conditions which are likely to occur." 47 FR 16584 (April 16, 1982). EPA then stated that "(a)s required by the Clean Air Act, the promulgated . . . emission limits are based on the performance of the best available control equipment on the worst case uncontrolled emission levels. The best control systems have been demonstrated to be continuously effective. Therefore, there should be no problems achieving the standards if the control equipment is properly maintained and operated." Id. at 16585. This example documents the close nexus of first demonstrating through a performance test that the installed control equipment is capable of achieving the standard on a continuous basis and then properly operating and maintaining that equipment so as to provide a reasonable assurance of continuous compliance with the standard.

In EPA's Response to Remand in *Portland Cement Association* v. *Ruckelshaus* (see docket item A–91–52–VI–I–11), EPA further emphasized, in its discussion on opacity, the important relationship between proper operation and maintenance and attainment of the standards. The Agency stated, "[T]he opacity standards and maintenance requirements were both promulgated, and work in tandem to guarantee that proper maintenance and operation of pollution control equipment, the sine qua non of continuous compliance with emission limits, can in fact be required an l monitored." (Response to Remand, p. 37.) EPA discussed the fact that opacity standards provide enforcement agencies with a convenient indicator of whether pollution control devices are being properly operated and maintained, and therefore whether the standards are being met. (Response to Remand, p. 27–28.)

These examples point to the underlying assumption that there is a reasonable assurance of compliance with emission limits so long as the emission unit is operated under the conditions anticipated and the control equipment that has been proven capable of complying continues to be operated and maintained properly. In most cases, this relationship can be shown to exist through the performance testing without additional site-specific correlation of operational indicators with actual emission values. The monitoring design criteria in § 64.3(a) build on this fundamental premise of the regulatory structure.

Thus, § 64.3(a) states that units with control devices must meet certain general monitoring design criteria in order to provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit. These criteria mandate the monitoring of one or more indicators of the performance of the applicable control device, associated capture system, and/or any processes significant to achieving compliance. The owner or operator shall establish appropriate ranges or designated conditions for the selected indicators such that operating within the established ranges will provide a reasonable assurance of compliance for the anticipated range of operating conditions. The requirement to establish an indicator range provides the objective screening measure to indicate proper operation and maintenance of the emissions unit and the control technology, i.e., operation and maintenance such that there is a reasonable assurance of compliance with emission limitations or standards. Monitoring based on indicator ranges that establish expected operating conditions and the proper functioning of control technology should take into account reasonably anticipated operating conditions and the process and pollution control device parameters that significantly affect emission control performance. The Agency notes that monitoring which fails to take into account significant process or control device parameters is unlikely to provide the reasonable assurance of compliance with emissions limitations or standards. The Agency does not expect that such parameters would normally include records of regular maintenance practices (e.g., periodic inspection and replacement of parts); these records may or may not be addressed in separate permit conditions relative to part 70 requirements. The Agency also emphasizes that a failure to stay within the indicator range does not automatically indicate a failure to satisfy applicable requirements. The failure to stay within an indicator range (over the appropriate averaging period, as discussed below) does indicate the need for the owner or operator to evaluate and determine whether corrective action is necessary to return operations within design parameters, and to act upon that determination as appropriate.

The use of operational data collected during performance testing is a key element in establishing indicator ranges; however, other relevant information in establishing indicator ranges would be engineering assessments, historical data, and vendor data. Indicator ranges do not need to be correlated across the whole range of potential emissions. Criteria developed in the design of the control equipment for the emissions unit may be used in establishing operating indicator ranges. For example, the engineering specifications for a venturi scrubber installed to control particulate emissions from an affected unit may include design operational ranges for liquid flow rate and pressure drop across the venturi. Assume for this simplified example that the scrubber design conditions are intended to achieve the desired emission reduction for uncontrolled pollutant rates that correspond to 120 percent of the affected unit's process design rate. The results of a performance test during which the scrubber is operated within these design conditions and the process is operated at conditions representative of high load (near 100 percent of process design rate) would be used to confirm that operating within the design conditions, the design ranges for the liquid flow rate in conjunction with the pressure drop across the venturi, achieves the emission reduction desired and provides a reasonable assurance of compliance across the anticipated range of process conditions for ongoing operation.

Review of historical monitoring data may also be used in defining an indicator range that provides a reasonable assurance of compliance with emission limits. Consider the example of a process dryer equipped with a low-energy wet scrubber for particulate matter control. The scrubber exhaust gas temperature is indicative of adequate water flow (as a result of the heat exchange between the dryer effluent stream and the scrubber water). However, since the inlet scrubber water temperature is affected by ambient temperature, the resulting scrubber outlet temperature will be affected by ambient conditions. Since the scrubber outlet temperature will vary somewhat as a result of ambient temperature, it makes sense to consider historical data from different seasons of the year when establishing the indicator range (maximum allowable exhaust temperature). In other words, if the performance test were conducted in the spring, one should also consider the historical data from the summer months (when the exhaust temperature would be expected to be slightly higher) when establishing the indicator range.

b. *Possible Monitoring Methods.* Section 64.4(a)(2) of the 1993 proposed EM rule stated that an enhanced monitoring protocol could include existing, modified, or new monitoring systems. It also contained a list of possible monitoring methods which could satisfy the rule. The basic elements of this subsection have been moved in the final rule to the definition of "monitoring" in § 64.1. The Agency has made several technical changes to the list of monitoring methodologies in response to comments received. See Section II.A. and the Response to Comments Document for further discussion.

c. *Indicator Ranges or Designated Conditions.* Sections 64.3(a)(2) and (3) of the final rule require the owner or operator of an affected pollutant-specific emissions unit to establish ranges or designated conditions of the indicators to be monitored. These ranges (e.g., minimum to maximum parameter value) or conditions (e.g., specific fuel or raw material type or control device adjustment) must be established at a level where the monitoring can assess whether there is a reasonable assurance of compliance with applicable requirements.

The addition of indicator range requirements to the general monitoring design criteria serves the objectives of part 64 and provides the permitting authority and the owner or operator of an affected source with information about the operation and maintenance of control measures in order to address any problems with that operation and maintenance before an emissions unit fails to comply with applicable requirements. An excursion from an indicator range or designated condition indicates a potential problem in the operation and maintenance of the control device and a possible exception to compliance with applicable requirements. The excursion signals, at a minimum, that the owner or operator should take appropriate corrective action to return operations within the established ranges. However, an excursion from an indicator range does not necessarily constitute a failure to comply with the underlying emissions limitation or standard. See Section II.D. below for further discussion on the degree of documentation required to establish indicator ranges under the final rule.

Sections 64.3(a)(3)(i)-(iv) state that ranges may be set as follows: established as a single maximum or minimum value if appropriate or at different levels that vary depending on alternative operating conditions; expressed as a function of process variables; expressed as maintaining the applicable parameter in a particular operational status; or expressed as interdependent between more than one indicator. These sections also provide examples of how such different forms of ranges might be employed. The description of what type of indicators and indicator ranges may

be employed under part 64 is designed to have a great deal of flexibility. This allows owners or operators to develop indicators and ranges that are most appropriate for their affected emissions units, so long as the basic design criteria of part 64 are met. The Agency is also developing guidance materials that will provide more specific examples of the various forms indicator ranges may take.

d. *Control Device Bypass.* Another monitor design requirement in the final rule addresses the possibility of control device bypass. Section 64.3(a)(2) requires that the monitoring be designed to detect any bypass of a control device or capture system, if such bypass can occur based on the design of the pollutant-specific emissions unit. The Agency believes this requirement is necessary under the CAM approach. Only pollutant-specific emissions units which use control devices to achieve regulatory compliance are subject to part 64. Part 64 monitoring generally will consist of monitoring parameters critical to the operation of those control devices. The monitoring will not be able to provide a reasonable assurance of compliance with applicable requirements if air pollutant emissions are potentially circumventing the control devices and/or capture systems being monitored. The Agency has therefore added this requirement to ensure that no emissions are bypassing the control device or capture system.

The Agency notes that certain comments on the 1996 part 64 Draft objected to this requirement. One objection was that it could be read to require monitoring of "bypass" that involves routine recycling of vent streams to a process where the control device is used as a backup in case such process recycling cannot occur. The final rule adds the phrase "to the atmosphere" to clarify that only bypasses which result in discharge to the atmosphere require monitoring. Another concern was that whether bypass monitoring should be required is often negotiated as part of underlying rulemakings and this requirement could undo agreements reached on those underlying rules. The Agency has added a provision to clarify that bypass monitoring is not required if an underlying rule specifically provides that it is not required for certain operations or units. Finally, a concern was raised that certain underlying rules provide for design features that obviate the need for monitoring (such as the use of locking car seals). The final rule requires bypass monitoring only if the bypass can occur based on the unit's design. Where features such as locking car seals are used, the design of the unit effectively prevents bypass and thus monitoring would not be required.

e. *Process and Capture System Monitoring.* Commenters on the 1996 part 64 Draft also objected to the requirement that the monitoring include process monitoring if necessary to assure proper operation and maintenance of the control device. The final rule retains this requirement, but the language has been rephrased to clarify that process monitoring must be conducted only as necessary to document that the control equipment is being operated properly. The simplest example would be throughput monitoring to assure that the design capacity of the control equipment is not exceeded. The Agency believes that this type of monitoring is essential to assuring that the control equipment is used in accordance with its design and in a manner that will provide a reasonable assurance of compliance.

Similarly, some commenters objected to the monitoring of capture systems. The Agency believes that this monitoring is essential for the same reasons as bypass and process monitoring may be critical to assuring proper operation and maintenance of control equipment and providing a reasonable assurance of compliance with emission limits. If emissions are not properly captured, those emissions will be released uncontrolled. That result likely would constitute a significant compliance problem even if the control equipment itself was being operated and maintained properly. It is essential that the emissions which a control device is supposed to be controlling are in fact sent to the device for control. Thus the Agency believes that assuring that the capture system is properly operated and maintained is also essential.

f. *Fugitive Emissions Monitoring.* Under the 1993 EM proposal, fugitive emission points for which compliance is evaluated on a process-wide or facility-wide basis were potentially subject to part 64 enhanced monitoring requirements. Section 64.4(d) of the proposed rule would have established enhanced monitoring protocol requirements for such fugitive emissions points. Many commenters raised objections to these provisions, arguing that § 64.4(d) required either burdensome monitoring of emissions from each fugitive emissions point or the use of costly monitoring devices to monitor fugitive emissions. The Agency does not necessarily agree with these comments, noting that proposed § 64.4(d) was intended to allow for cost-effective multi-point monitoring at affected fugitive emissions sources. The final rule, however, applies only to those emissions units for which emissions are vented to a control device. By definition, fugitive emissions are those emissions which cannot reasonably be vented through a stack, chimney, vent, or similar opening and thus will not be subject to part 64. Since there is no need for detailed fugitive emissions monitoring requirements under the final rule, the provisions in proposed § 64.4(d) have been eliminated.

2. Performance and Operating Criteria

The final part 64, like the 1993 EM proposal, requires that part 64 monitoring be subject to minimum performance specifications, quality assurance and control requirements, monitoring frequency requirements, and data availability requirements. These requirements assure that the data generated by the monitoring under part 64 present valid and sufficient information on the actual conditions being monitored. The final rule includes a series of performance and operating design criteria in §§ 64.3(b) through (d). The Agency received substantial public comment on the performance and operating criteria of the 1993 EM proposal, which were contained in a series of four appendices. Many commenters raised concerns that the organization of the appendices was confusing. A number of commenters suggested that the appendices required certain monitoring options to achieve inapplicable specifications or did not provide adequate guidance on the requirements for non-instrumental monitoring options. Commenters also raised a number of concerns specific to individual requirements. Finally, a great many commenters argued that the reliance on detailed specifications in the appendices which focused on the use of certain monitoring methodologies, such as CEMS, precluded the use of more cost-effective alternative methodologies, creating a strong bias for the use of continuous emission monitoring methodologies.

The Agency agrees with a number of those comments and has substantially revised the performance and operating criteria in the final rule to address the concerns they raised. Overall, these requirements have been greatly streamlined and simplified. There are no appendices to the final rule delineating more detailed performance and operating criteria. To assure consistency with existing monitoring programs, the performance criteria in the final rule also reflect other federal monitoring requirements, such as the NSPS general provisions in 40 CFR part 60 and the NESHAP general provisions in 40 CFR part 63. The following discussion addresses each of the key performance and operating criteria in the final rule.

a. *Data Representativeness.* Section 64.3(b)(1) of the final rule requires that the monitoring proposed by the owner or operator include location and installation specifications (if applicable) that allow for the obtaining of data which are representative of the emissions or parameters being monitored. Although this provision describes no specific tests for monitoring plan acceptability, it does establish an objective duty to insure that the data collected are representative of the operations being monitored. This provision is similar to the analogous requirements included in appendix B of the 1993 EM proposal. It is also analogous to the general monitoring provisions applicable to all monitoring under the NSPS program in § 60.13. The Agency has added the phrase "if applicable" to clarify that noninstrumental monitoring approaches may not require location or installation specifications.

The 1993 EM proposal would have required owners or operators to "[s]atisfy applicable performance, equipment, installation and calibration gas specifications in accordance with the specifications and procedures provided in appendices A and B of this part." The appendices then required all enhanced monitoring protocols to satisfy generally applicable performance specifications including relative accuracy requirements; maximum levels of calibration error; measurement span requirements; response time requirements; measurement technique procedures; and requirements for equipment design, installation, and location. Many commenters observed that the high level of specificity required in the proposed appendices would limit the types of monitoring protocols that could be approved, while many other commenters argued that the performance and operating requirements were too subjective when applied in the context of demonstrating compliance with the 1993 EM proposed rule's general monitoring requirements. The Agency believes that such detailed requirements are unnecessary for the type of monitoring that is required to satisfy the final rule, but does believe that the general obligation to assure that representative data are obtained is necessary in part 64 just as it is in other programs such as NSPS.

b. *Verification of Operational Status.* Section 64.3(b)(2) requires verification procedures to confirm the initial operational status of new or modified monitoring equipment. These requirements specify that the owner or operator must consider manufacturer requirements or recommendations for installation, calibration and start-up operation. Owners or operators must provide documentation where the manufacturer's procedures are not followed. The Agency notes that under the NSPS program such manufacturer requirements and recommendations must be followed. However, because of the breadth of part 64 applicability, the Agency believes that the more flexible language in § 64.3(b)(2) is appropriate, especially given that the submittal requirements in § 64.4 will require that the owner or operator document the changes it proposes.

Some comments on the 1996 part 64 Draft stated that the requirements to verify operational status were overly burdensome given that many units will rely on existing monitoring to satisfy part 64. The final rule clarifies that verification of operational status is required only for units with new or modified monitoring.

c. *Quality Assurance and Control.* Section 64.3(b)(3) of the final rule requires quality assurance and control practices which are "adequate to ensure the continuing validity of the data." This language ensures that monitoring under part 64 will have to include adequate procedures to document that the monitoring remains operational and can provide suitable readings for the purpose of measuring changes in control performance. Satisfying this general design criterion should not be confused with the detailed quality assurance provisions required for monitors that are used to determine direct emission limit compliance, such as appendix F to part 60. The 1993 EM proposal generally would have required compliance with appendix F for CEMS or comparable quality assurance requirements for other monitoring approaches. Numerous commenters expressed concerns about the burdens of quality assurance under the proposed EM rule. They pointed out several instances in the proposed appendices that appeared to establish presumptions of daily calibrations for all types of enhanced monitoring protocols or appeared to require overly frequent reverification of parametric correlations.

In contrast, the focus of the final rule's quality assurance requirements is on the minimum degree of ongoing quality checks that are necessary to rely on the data for purposes of indicating whether the unit remains in compliance and whether corrective action is necessary. The Agency recognizes that many types of monitoring which satisfy the final rule will not be based on the type of sophisticated equipment that is prone to calibration drift and loss of data quality over time, and the revised quality assurance provisions of the final rule reflect this understanding. The required level of quality assurance differs from certain existing quality assurance procedures such as appendix F of 40 CFR part 60 for a CEMS. With respect to a CEMS, the general requirements for assuring ongoing data quality that are contained in 40 CFR 60.13 and the performance specifications in appendix B of part 60 (such as zero and span checks) provide adequate quality control checks for the purpose of using the CEMS to indicate control performance for providing assurance of compliance. This approach of requiring only limited quality assurance is followed under the NSPS where a CEMS is not used as the compliance test method for direct continuous compliance monitoring. For types of monitoring other than CEMS, ongoing quality control measures must be adequate to ensure that the monitoring remains operational and can provide readings suitable for the purpose of measuring changes in control performance that indicate possible exceptions to compliance. An example of this type of requirement is the quarterly recalibration requirement in § 60.683(c) for wet scrubber parameter monitoring at wool fiberglass insulation manufacturing plants.

Again, the final § 64.3(b) directs owners or operators to consider manufacturer requirements or recommendations in developing quality assurance practices, and § 64.4 requires the owner or operator to document any changes in recommended quality assurance practices. The permitting authority and others can then evaluate the proposed procedures during the permitting process.

d. *Frequency of Monitoring.* Section 64.3(b)(4) of the final rule establishes the general criteria for monitoring frequency, data collection procedures (such as manual log entry, strip chart, or computerized collection procedures), and data averaging periods, if applicable to the proposed monitoring. The final rule requires that the monitoring frequency (including associated averaging periods) be designed to obtain data at such intervals that are, at a minimum, commensurate with the time period over which an excursion from an indicator range is likely to be observed based on the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system).

In addition, the final rule specifies minimum data collection frequency for pollutant-specific emissions units in accordance with their potential to emit. For "large" pollutant-specific emissions units (i.e., those units with the potential to emit the applicable pollutant emitted in an amount equivalent to or in excess of the amount established for classification as a major source), the monitoring frequency generally must satisfy a design criterion of four or more data values equally spaced over each hour of operation. This minimum data collection frequency is consistent with the frequency established by the Agency for continuous monitoring systems. Note that a permitting authority may reduce this minimum data collection frequency upon submission and approval of a request prepared by the owner or operator, and the rule provides a non-exclusive list of situations in which less frequent monitoring of certain parameters may be warranted. Other pollutant-specific emissions units are subject to a less frequent data collection requirement but some data must be collected for every unit subject to this rule at least once per day. The final rule thus sets a monitoring frequency standard appropriate to the focus on detecting changes in control device performance which could indicate possible noncompliance and for which corrective action is appropriate.

For example, many types of control devices are subject to rapid changes in performance and thus the frequency design criterion could result in frequent, near continuous collection of parametric data that are subsequently averaged over an appropriate period of time. Many NSPS subparts require continuous parametric control device data, which are then averaged over an appropriate interval (often consistent with the required minimum time for conducting a compliance test). Recent NESHAP have required control device parameter monitoring for direct compliance purposes. In these instances, a daily average of continuous data (i.e., data recorded at least every 15 minutes) is often used (see, e.g., § 63.152(b)(2)). For some control devices, the intervals between data collection points may be increased. The Agency is in the process of developing guidance for part 64 implementation, including example monitoring approaches. The guidance will indicate how the frequency of monitoring, data collection procedures, and averaging of data points can vary based on the type of emissions unit and the control device involved.

e. *Data Availability.* The 1996 part 64 Draft rule included a presumptive minimum data availability of 90 percent for the averaging periods in a reporting period. The final rule does not include such a presumptive requirement opting instead for affording the source owner or operator and the permitting authority flexibility in establishing appropriate site-specific conditions. Further, the final rule maintains the general duty requirement in § 64.7 that the owner or operator shall maintain and operate the monitoring at all times the pollutant-specific emissions unit is operating except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (such as calibration checks and (if applicable) required zero and span adjustments). This section of the final rule also requires that the owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. Under the savings provisions of § 64.10 of the final rule, source owners or operators must satisfy any existing data availability requirement established for monitoring associated with a particular emission limitation or standard.

The 1993 EM proposal would have required that an enhanced monitoring protocol satisfy any minimum data availability requirement that is applicable to the monitoring under a separate applicable emission limitation or standard pursuant to part 60 or 61 of this chapter. Where no existing data availability requirement would have applied, the proposed rule would have required the enhanced monitoring protocol to satisfy a data availability requirement that reflected obtaining quality-assured data for all emissions unit operating time periods excluding a fixed percentage of operating time that the owner or operator justified to the permitting authority as necessary to conduct quality assurance procedures. The preamble to the proposed rule stated that the only acceptable downtime under this requirement would be the time necessary to perform quality assurance testing and routine maintenance. The primary concern expressed in public comments on the data availability requirement was that the default requirement failed to take into account the likelihood that some repairs of instrumental components would be necessary even if the owner or operator performed all routine maintenance as appropriate. The Agency believes that the general duty requirement in the final rule effectively addresses the commenters' concerns, while still assuring that the owner or operator is responsible for collecting data at all required intervals, except where downtime is necessary to conduct required quality assurance or to respond to malfunctions that could not reasonably have been prevented.

A number of comments on the 1996 part 64 Draft objected to the 90 percent data availability presumption. Many pointed to a number of applicable requirements in which EPA has used 75 percent as the required minimum data availability. Others argued that EPA failed to present any data to document the reasonableness of the presumption. The Agency agrees with some of the commenters that a presumptive minimum data availability requirement may not be not generally applicable; although, the general obligations to operate the monitoring at all times with only specific exception periods and to collect and use all the data for reporting purposes are universal. The final rule reflects this position and allows the source owner or operator and the permitting authority the flexibility to specify a separate minimum data availability if justified or required under a separate rule.

3. Special Considerations for CEMS, COMS and PEMS

One method of assessing control performance is to calculate emission (or opacity) rates directly in order to track trends in emissions (or opacity) that document decreased control effectiveness. This type of monitoring could include a continuous emission or opacity monitoring system (CEMS or COMS) or a predictive emission monitoring system (PEMS) in which various process and control parameters are evaluated to predict emissions. (Where this type of monitoring is specified by the applicable standard to be used to determine compliance with an emission standard or limitation on a continuous basis, the requirements of part 64 do not apply to that emission standard or limitation. *See* § 64.2(b)(1)(vi).)

The EPA believes that these types of monitoring are preferable from a technical and policy perspective as a means of assuring compliance with applicable requirements because they can provide data directly in terms of the applicable emission limitation or standard. Therefore, where such systems are already required, § 64.3(d)(1) mandates that the design of the monitoring under part 64 incorporate such systems. This means that source owners and or operators whose emission units have had CEMS, COMS, and/or PEMS imposed by underlying regulations, emissions trading programs, judicial settlements, or through other circumstances must use those CEMS, COMS, and/or PEMS when complying with part 64 for those emissions units. Even where the use of such monitoring is not mandated, the use of any of these types of systems in accordance with general monitoring requirements and performance specifications (or comparable permitting authority requirements if there are no requirements specified for a particular system) will be sufficient for a CEMS, COMS or PEMS to satisfy generally the design criteria in § 64.3(a) and (b).

One exception to this general rule is that if a COMS is used as a control performance indicator, and both a particulate matter and opacity standard apply, the monitoring will have to include an indicator range satisfying § 64.3(a)(2) and (3). Comments received in response to the 1996 part 64 Draft included the suggestion that COMS not be subject to the requirement to establish indicator ranges. The Agency has decided to retain this requirement. A CEMS or PEMS will provide data in terms of the applicable pollutant and therefore the process of identifying and reporting exceedances serves the same purpose as an indicator range. For assuring compliance with an opacity standard, a COMS also achieves this objective. However, depending on the type of control equipment being used and the design of an emissions unit (especially stack diameter), opacity standards are often established at a level which represents a likely significant exceedance of the particulate matter standard. In those circumstances, an opacity level below a required opacity standard would be more appropriate as a CAM indicator. Therefore, the use of a COMS may require an appropriate indicator range to be established that is different than the applicable opacity standard. The Agency notes that the averaging period for such an indicator range would not necessarily have to be consistent with the typical averaging time of an opacity standard (i.e., six minutes).

The final special design criterion for a CEMS, COMS or PEMS is to design the system to allow for reporting of exceedances. Again, in many cases, the reporting requirements for exceedances (or excess emissions) will already be established in existing requirements. However, in some cases the owner or operator, prior to implementing part 64, will not have continuous monitoring associated with an applicable emission limit, and the underlying regulation may not specify an appropriate time period for averaging data to report excess emissions. For example, this situation could arise in the example provided above for a part 75 Acid Rain CEMS being used to monitor compliance with a SIP limit. In this circumstance, the owner or operator will have to design the system to include an appropriate period for defining exceedances consistent with the emission limitation or standard. If the underlying applicable requirement does not require use of a specific averaging period, the averaging period should be designed using the same criteria as used for other part 64 monitoring under § 64.3(b)(4).

There was a concern about a perceived bias towards continuous emission monitoring methodologies in many public comments on the monitoring design and selection provisions of the 1993 EM proposal. In addition, many comments supported the notion that existing monitoring should be used wherever possible to reduce the burdens of part 64. Section 64.3(d) addresses both of these comment areas. It emphasizes the use of existing monitoring where that monitoring on its face is able to meet the part 64 design criteria, but it clarifies that the rule does not mandate the use of CEMS in situations where such monitoring is not already required. See also Section II.D. below which discusses in further detail the potential use of existing monitoring to satisfy part 64.

Stakeholders commented that the 1996 part 64 Draft rule did not address procedures for approving alternatives to CEMS or COMS as per the procedures specified in the general provisions of 40 CFR parts 60, 61, and 63. The Agency already has procedures for documenting, reviewing, and approving alternatives to performance test methods and monitoring procedures. Part 64 need not address these procedures. The Agency recommends that source owners or operators wishing to pursue alternatives to CEMS or COMS follow existing alternative methods processes.

4. Monitor Failures

Section 64.4(g) of the 1993 EM proposal would have provided a defense to violations of the data availability requirement where an interruption of the normal operation of an enhanced monitoring protocol was the result of a monitor failure or malfunction. This section would have operated in conjunction with proposed § 64.5(e) to establish general notification and corrective action requirements in response to monitor failures and malfunctions. The proposed rule would have provided a defense to data availability violations where the following criteria were met: The monitoring failure was the result of a sudden and unforeseeable malfunction; the monitoring systems and procedures had been properly operated and maintained prior to and up to the time of the malfunction; and the owner or operator took all reasonable steps to minimize the period the monitoring system was inoperative.

This section has been eliminated in the final rule. The Agency does not believe that there is a need for a data availability violation defense in part 64. The final rule does not require that the permit establish a specific data availability requirement. Rather, the owner or operator is under a general duty to operate the monitoring at all required intervals whenever the emissions unit is operating. The only exception to this duty is if the inoperation of the monitoring is caused by a monitor malfunction, associated repairs or required quality assurance or control activities. Monitor malfunctions are limited to those breakdowns which occur as a result of a sudden, infrequent, and not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not considered malfunctions. This approach is similar to the malfunction defense included in the proposed rule, but does not entail the elaborate procedural elements of the proposed rule. To the extent a particular data availability requirement cannot be achieved for reasons that are no fault of the owner or operator, EPA believes that the proper use of oversight discretion can account for those situations.

D. Section 64.4—Submittal Requirements

Section 64.4 of the final rule outlines what information the owner or operator must submit with a part 70 permit application to propose the monitoring approach selected by the owner or operator. The required information has two basic components: general information necessary to justify the appropriateness of the proposed monitoring; and information to justify the appropriateness of the indicator ranges to be used for reporting exceedances or excursions.

1. General Information on the Proposed Monitoring

Section 64.4(a) first requires that the owner or operator identify the basic monitoring approach and indicator ranges that will form the primary elements of the monitoring, as well as the key performance and operating specifications needed to meet the design criteria in § 64.3. In submitting proposed indicator ranges, the owner or

operator can either submit the actual proposed ranges or the methodology that will be followed to establish the indicator ranges.

Section 64.4(b) then requires that the owner or operator submit relevant information to justify the proposed monitoring approach. The justification can rely on any available information, including appropriate reference materials and guidance documents. If an existing requirement already establishes monitoring for the pollutant-specific emissions unit, the justification can rely in part on that existing requirement. For certain types of monitoring, no extensive justification should be necessary because the final rule creates a rebuttable presumption that the monitoring satisfies part 64. When an owner or operator relies on one of these monitoring approaches, all that initially should be necessary is an explanation of why the monitoring is applicable to the unit in question. These types of monitoring include CEMS, COMS, or PEMS; excepted or alternative monitoring approaches allowed under part 75; and continuous compliance determination monitoring or monitoring for post-11/90 NSPS and NESHAP requirements that are exempt under § 64.2(b) but that may be applicable to the control equipment for other non-exempt emissions limitations at the same emissions unit. The reason for this presumption is similar to the reason for excepting from part 64 units that have such monitoring as their compliance determination method. The rule also notes that presumptively acceptable or required monitoring approaches established by rule by a State to achieve compliance with part 64 are deemed presumptively acceptable. This last option is included to promote the adoption of State programmatic rules designed to detail presumptively appropriate part 64 monitoring.

Finally, consistent with *Panhandle Producers & Royalty Owners Ass'n* v. *Economic Regulatory Administration*, 822 F.2d 1105 (D.C. Cir. 1987), the rule includes as presumptively acceptable monitoring, monitoring that is so designated by EPA through guidance documents. Such presumptively acceptable monitoring identified by EPA in guidance may also serve as models for permitting authorities to consider in programmatic rulemaking. Generally, EPA intends to issue such guidance only after providing notice and seeking comment on such monitoring. After considering comments received on the monitoring requirements for flares in 40 CFR 60.18, EPA is designating, at this time, that monitoring as presumptively acceptable. This designation is being made in recognition that some published monitoring practices or protocols provide sufficient design and monitoring performance specifications to satisfy CAM requirements while not fully satisfying the part 64 definition for a continuous compliance determination method. Some presumptively monitoring protocols may include procedures for calculating compliance with applicable emission limitations or standards but have some portions subject to CAM requirements (e.g., monitoring to indicate a reasonable assurance that control device efficiency is maintained at an assumed level) as indicated in § 64.2(b)(1)(vi) of the rule.

Reliance on presumptively acceptable monitoring will relieve owners and operators of the initial burden of justifying that the monitoring selected satisfies part 64. However, this presumption of acceptability is rebuttable, and, if information or evidence rebutting the presumption is brought forward, the owner or operator must bear the burden of justifying that the proposed monitoring complies with part 64. Final decisions as to the acceptability of monitoring rest with the informed discretion of the permitting authority, subject to permit review by EPA under 40 CFR 70.8, taking into account any appropriate presumption and all other relevant information and data.

Finally, § 64.4(b) requires the owner or operator to identify and explain any changes in manufacturer recommendations or requirements applicable to installation, verification and quality assurance of the monitoring. As explained above, the § 64.3(b) design criteria allow for these differences even though EPA generally requires the owner or operator to comply with such provisions. This documentation requirement is important to allow an appropriate evaluation of the reasons for changing these manufacturer specifications.

These submittal requirements streamline the similar requirements in the 1993 EM proposal. First, § 64.7 of the proposed rule would have required that a permit application incorporate a proposed enhanced monitoring protocol for every applicable emission limitation or standard at each emissions unit subject to the proposed rule. This protocol would have had to contain information about and supporting documentation for a number of elements, including proposed performance specifications, quality assurance procedures, test plans for conducting performance verification tests, and a list of all technologically feasible monitoring methodologies which could have been employed in the proposed protocol. Owners or operators of affected emissions units would have also been required to identify new technologically feasible monitoring methodologies when submitting a permit renewal application. Second, § 64.4(e)(3) of the proposed rule also covered permit application submittal requirements. That section would have required the owner or operator of an affected emissions unit to submit as part of a permit application all of the descriptions, explanations, justifications, and supporting data necessary to justify that a proposed enhanced monitoring protocol could satisfy the requirements of the proposed rule. This section explicitly placed the burden of proof on the owner or operator proposing an enhanced monitoring protocol to show that the protocol met the rule's requirements.

A number of commenters raised concerns about these permit application requirements. Some argued that the specific information requested, such as information pertaining to a parametric relationship, may not be available prior to installation of control technology and permit issuance. Others contended that the requirements to include information on all technologically feasible monitoring methodologies was an illustration of a perceived bias towards the use of costly continuous emission monitoring methods under the 1993 EM proposal. In response to some of these concerns and in furtherance of the goal of providing a reasonable assurance of compliance with applicable requirements, the Agency has replaced these detailed permit application requirements with the provisions described above in the final rule.

Third, many industry commenters opposed the enhanced monitoring protocol selection and proposal requirements in § 64.4(f) of the 1993 EM proposal. The proposal would have established a procedure for the selection of enhanced monitoring protocols that required owners or operators to justify the use of a proposed enhanced monitoring protocol over other available monitoring methodologies. Under this proposed procedure, owners or operators were first directed to consider "established monitoring," defined as monitoring that had been previously demonstrated as a feasible means of assessing compliance at a specific emissions unit. An owner or operator could propose to use the "best established monitoring." The determination of which established monitoring methodology was "best" was intended to be an evaluation of what type of monitoring was most appropriate to determine continuous compliance at a specific emissions unit. If no "established" monitoring methodology could satisfy the performance and operating requirements of the proposed rule, owners or operators could propose additions or modifications to an established form of monitoring. If no established monitoring methodology applied, or if the owner or operator considered the established monitoring inappropriate, then an alternative monitoring could be proposed. In these circumstances, the proposed rule required the owner or operator to identify all monitoring methodologies that were technologically feasible for the particular emissions unit, selecting from that list the "best" methodology for that unit based on a site-specific assessment.

Commenters argued that the requirement to select "best monitoring" would impose a "top-down" selection process with a bias towards selection of a CEMS or similar monitoring system. Several commenters contended that the legislative history of section 114(a)(3) did not support a requirement that the approved enhanced monitoring protocol be the "best" available. Industry commenters also stated that requiring an owner or operator who proposed alternative monitoring to list all technologically feasible monitoring methodologies would impose unnecessary costs and burdens. Most of those opposing the selection provisions suggested that the rule should allow the owner or operator to propose any monitoring that met the basic requirements of the rule. In the alternative, many commenters suggested making cost an explicit criterion in the monitoring selection process.

Under the CAM approach, the owner or operator may propose any monitoring that can meet the design criteria in § 64.3 of the final rule. Thus, the comments regarding whether 1993 EM proposal imposed a top-down selection hierarchy are no longer relevant.

In response to the 1996 draft part 64, some commenters objected to the need to submit a rationale or justification for the proposed monitoring. The Agency disagrees. This information will be necessary for the permitting authority, the public, and EPA to judge the appropriateness of the proposed monitoring for satisfying the design criteria in § 64.3. In addition, this requirement builds on similar regulatory precedents in the NSPS and NESHAP programs. Under those programs, EPA has routinely required the owner or operator to submit a proposed monitoring approach and supporting rationale where the owner or operator intends to use a control device for which the underlying standard does not contain specific monitoring procedures. (See, e.g., 40 CFR 60.473(c), 60.544(b), 60.563(e), 60.613(e) and 60.663(e).)

Commenters on the 1996 part 64 Draft also raised concerns that the rule did not contain any provisions promoting the use of existing monitoring to satisfy part 64. Clearly, many existing monitoring requirements include some degree of monitoring that is used to indicate compliance through documenting important operating variables. As such, these requirements are generally consistent with the CAM approach. Thus, §§ 64.3(b) and 64.4(b) specifically allow for the owner or operator to design and justify proposed part 64 monitoring applying or building on existing applicable requirements. The rule uses the phrase "in part" because there is no assurance that the existing monitoring necessarily satisfies all of the part 64 design criteria. As described above, for certain monitoring that the Agency believes already meets the part 64 design criteria categorically, the owner or operator is likely to be able to rely completely on those regulatory precedents to justify the monitoring proposed to satisfy part 64. The Agency believes these provisions adequately provide for the consideration of existing monitoring and build upon the "established monitoring" concept in the 1993 EM proposal without the cumbersome selection process hurdles included in that proposal.

Industry commenters on the 1996 part 64 Draft proposed that the cost of monitoring that will provide a reasonable assurance of compliance be considered in light of the reliability of the pollution control technology, the margin of compliance demonstrated for the emissions unit, the emissions variability, and the reliability of the monitoring. State and local agency commenters noted that a demonstration of a credible relationship between parameter monitoring and actual emissions was primary in determining a reasonable assurance of compliance. These agency commenters also listed reliability of monitoring, margin of compliance, and potential emissions variability as elements to consider in such a demonstration. The Agency agrees that part 64 should enable the owner or operator and the permitting authority to consider these factors in developing and approving monitoring in a manner that both allows flexibility in design and provides a reasonable assurance of compliance. As noted above, the rule specifically allows for the use and augmentation of existing monitoring in lieu of developing and installing completely new monitoring approaches. Further, §§ 64.3(c) and 64.6(a) of the final rule reference the evaluation factors mentioned by both groups of commenters to apply in developing and reviewing monitoring to meet part 64 requirements. The Agency believes that in this manner, the owner or operator and the permitting authority can agree on cost-effective monitoring that results in the reasonable assurance of compliance required by part 64.

2. Documentation and Justification for Indicator Ranges

Section 64.4(c) of the final rule requires that an owner or operator propose indicator ranges supported by data obtained during the conduct of the applicable compliance or performance testing at the pollutant-specific emissions unit and supplemented, as necessary, by engineering assessments and manufacturer's recommendations. An owner or operator can satisfy this requirement with existing compliance test method data, if applicable. The use of existing data is limited to circumstances in which no changes have occurred since the data were obtained that could significantly affect the conditions for which the indicator ranges were established since the performance testing was conducted. Such significant changes include, but are not limited to, an increase in process capacity, a modification to the control system operating conditions, or a change in fuel or raw material type or chemical content. Because of the assurances provided through representative performance testing in conjunction with documentation provided by the use of engineering and other information, the final rule also explicitly states that testing over the entire indicator range or range of potential emissions is not required.

If site-specific compliance testing method data are unavailable, § 64.4(c) gives an owner or operator two options. Indicator ranges can be based on testing to be conducted pursuant to a test plan and schedule for obtaining the necessary data. An owner or operator may also choose to rely on other forms of data to establish the proper indicator ranges. However, if the owner or operator proposes to rely on engineering assessments and other data without conducting site-specific compliance method testing, § 64.4(c)(2) requires submission of documentation to demonstrate that factors applicable to the owner or operator's specific circumstances make compliance method testing unnecessary. Section 64.6(b) gives the permitting authority the discretion to require compliance

method testing where necessary to confirm the ability of the monitoring to provide data that are sufficient to satisfy part 64.

These provisions are similar to but are less prescriptive than the comparable provisions in the 1993 EM proposal as well as less contingent upon a statistical correlation between operational parameters and emission levels. Section 64.4(f) of the 1993 EM proposal would have operated with proposed § 64.4(b)(2) and appendix C to describe all requirements related to performance verification testing under the 1993 EM proposal. Section 64.4(b)(2) of the EM proposal established a duty under the proposed rule's general performance and operating criteria to conduct applicable performance verification test procedures in accordance with appendix C. Appendix C of the proposal contained specifications on the procedures to be used by an owner or operator for validating the representativeness of a monitoring protocol and the performance verification procedures for continuous monitoring systems. Section 64.4(f) would have required owners to submit with a permit application a test schedule and test plan that described the procedures, reference methods, test preparations, locations and other pertinent information for all required performance verification tests.

Section 64.4(b)(2) would have required an owner or operator who sought to include process or control device parameter monitoring in an enhanced monitoring protocol to conduct verification testing in accordance with appendix C. Section 7 of proposed appendix C described the required procedures for testing the correlation between the parameter(s) to be monitored and the applicable emission limitations or standards. Section 64.4(f)(1) of the proposed EM rule stated that a test plan for parameter monitoring correlation tests must describe any significant process or control device parameters not included in the proposed enhanced monitoring protocol and must demonstrate that excluding such parameters will not adversely affect the validity of the correlation. This section also would have required the owner or operator proposing the use of parameter monitoring to demonstrate the validity of the parameter correlation over the potential range of facility operations.

Industry commenters had a number of objections to and suggestions for improvement of the proposed rule's performance verification testing requirements and related permit application requirements. To reduce costs, some commenters suggested that performance verification tests should not need to be conducted under part 64 where adequate prior tests have been conducted pursuant to another applicable requirement. The Agency agrees and has adopted this approach in the final rule. A number of commenters expressed concerns about the level of detail which had to be included in the monitoring verification test plan. The EPA believes that the documentation provisions of the final rule will generally not require the same level of detail that would have been required under the proposed rule. Several commenters objected to the requirement to account in detail for all potentially significant parameters when documenting parameter range correlation testing. The Agency has not included a similar explicit requirement in the final rule's documentation and testing requirements for the establishment of indicator ranges. The Agency does note that an indicator range which fails to take into account significant control device parameters is unlikely to provide the reasonable assurance of compliance with emission limitations or standards required by § 64.3(a).

Finally, a number of commenters who supported the availability of parameter monitoring under the proposed rule stated that the correlation testing requirements would be difficult and expensive to meet and would discourage source owners or operators from using parameter monitoring. In addition, in response to the 1996 part 64 Draft, a number of commenters opposed the requirement to establish indicator ranges by conducting performance or compliance testing. They asserted that this either was an improper attempt to revive the correlation requirements in the 1993 EM proposal, or unnecessary to establish the appropriate range for most parameters.

As discussed above in Section II.C., the CAM approach builds on the premise that if an emissions unit is proven to be capable of achieving compliance as documented by a compliance or performance test and is thereafter operated under the conditions anticipated and if the control equipment is properly operated and maintained, then there will be a reasonable assurance that the emissions unit will remain in compliance. In most cases, this relationship can be shown to exist through results from the performance testing without additional site-specific correlation of operational indicators with actual emission values. The CAM approach builds on this fundamental premise of the regulatory structure.

However, as raised in the *Portland Cement* Response to Remand discussed in Section II.C., one difficult element of using "proper operation and maintenance" as a regulatory tool is the potential difficulty in determining whether proper operation and maintenance has in fact occurred. Thus, a critical issue that the CAM approach must address is establishing appropriate objective indicators of whether a source is "properly operated and maintained." In developing the final rule, EPA looked to past regulatory experience in developing a balanced approach to establishing indicator ranges and using the monitoring to assure compliance performance.

In proposing the operation and maintenance requirements in 40 CFR 60.11(d), EPA required that owners or operators maintain and operate their facilities "in a manner consistent with operations during the most recent performance test indicating compliance." 38 FR 10821, May 2, 1973. The obvious rationale behind this original language was that if the source was in compliance during the test, and it continued to operate its equipment as it was operated during the test, there was a reasonable assurance that the source would remain in compliance. This language, however, was revised when the rule was promulgated on October 15, 1973. In the preamble to the promulgated rule, EPA explained that the language was changed because of comments which questioned "whether it would be possible or wise to require that all of the operating conditions that happened to exist during the most recent performance test be continually maintained." 38 FR 28565. The EPA therefore revised § 60.11(d) to require that source owners or operators operate and maintain their pollution control devices "in a manner consistent with good air pollution control practices for minimizing emissions." Id.

This regulatory history argues against a strict requirement that part 64 require indicator ranges to be related exactly to the operating conditions that existed during a performance test. However, in many NSPS subparts, and more recently in MACT standards, EPA generally has required that operation and maintenance indicators be established during an initial performance test, with some allowance for adjusting the indicator values observed during the test. For instance, where a thermal incinerator is used to comply with a VOC emission limit, the NSPS subparts usually require the owner or operator to establish a baseline temperature value as an indication of whether the incinerator is properly operated and

maintained. The baseline temperature value is established at a value 50 degrees Fahrenheit below the average temperature recorded during the most recent performance test (see, e.g., 40 CFR 60.615(c)(1).) In recent MACT examples, EPA has required the indicator ranges to be established during performance testing, but with an allowance to supplement the performance test data with engineering assessments; in addition, the MACT requirements often state that testing across the full range of operating conditions is not required where the indicator range is subject to review and approval. (See, e.g., 40 CFR 63.654(f)(3)(ii)(A) and 63.1334(c).)

Based on these NSPS and MACT examples, the presumptive approach for establishing indicator ranges in part 64 is to establish the ranges in the context of performance testing. To assure that conditions represented by performance testing are also generally representative of anticipated operating conditions, a performance test should be conducted under conditions specified by the applicable rule or, if not specified, generally under conditions representative of maximum emission potential under anticipated operating conditions. In addition, the rule allows for adjusting the baseline values recorded during a performance test to account for the inappropriateness of requiring that indicator conditions stay exactly the same as during a test. The use of operational data collected during performance testing is a key element in establishing indicator ranges; however, other relevant information in establishing indicator ranges would be engineering assessments, historical data, and vendor data. Indicator ranges do not need to be correlated across the whole range of potential emissions.

Finally, because the emissions units subject to part 64 will not necessarily be undergoing performance testing absent part 64 (unlike the comparable units subject to initial compliance testing under the NSPS and MACT programs), the rule does not require establishment of indicator ranges during compliance or performance testing but rather presumes the appropriateness of doing so. The Agency believes that this approach makes part 64 consistent with underlying regulations but with appropriate alternatives that reflect the different universe of emissions units subject to part 64.

E. Section 64.5—Deadlines for Submittal

The final rule establishes two alternative schedules for implementing part 64 depending on the size of the pollutant-specific emissions unit involved. Under § 64.5(a), "large" pollutant-specific emissions units are subject to the shortest implementation timetable. "Large" units are those that have the potential to emit (after controls) the applicable pollutant at or above the major source threshold. If the owner or operator has not submitted the permit application for the applicable source prior to April 20, 1998, the owner or operator must submit proposed part 64 monitoring in the next part 70 permit application. If a permit application has been submitted by the rule's effective date, but the permitting authority has not yet determined by that date that the application is complete, the owner or operator will have to supplement the application with the relevant information required under part 64. If the application has already been found complete, then the part 64 information will generally not have to be submitted until the next permit renewal application. In the interim, the monitoring requirements adopted by permitting authorities in response to the requirements in part 70 will continue to apply.

There are two circumstances where information must be submitted prior to the next permit renewal application. First, if the owner or operator submits an application for a significant permit modification after April 20, 1998, the owner or operator must submit the appropriate part 64 information for any pollutant-specific emissions unit(s) covered by the modification. This requirement will assure that significant permit revisions affecting particular emissions units are not considered in a piecemeal fashion and that part 64 is implemented as quickly as reasonably practicable. In response to comments on the 1996 part 64 Draft, the Agency has limited this provision to only significant permit revisions so that part 64 requirements will not impede permit revisions made under expedited permit revision processes, such as administrative amendments, notice only changes, or de minimis permit revision procedures that are under consideration by the Agency. Second, if the permit application has been found complete but the permit has not issued, and the owner or operator proposes to revise the application to include a change of a type that would have been subject to the significant permit revision process, had the permit been issued, then the owner or operator must include part 64 required information for the pollutant-specific emissions unit(s) identified in the application revision. This circumstance triggers part 64 implementation because this type of permit application revision would require a second completeness determination by the permitting authority, and the implementation provision of § 64.5(a)(1)(ii) would be applicable.

Also in response to comments, the final rule does not include a provision in the 1996 part 64 Draft that would have required implementation prior to permit renewal for certain permit applications being processed under a part 70 transition plan for initial permit issuance. The Agency believes that this provision unnecessarily complicates the part 64 implementation process. The Agency also notes that the current part 70 monitoring provisions will continue to apply in the interim if part 64 is not implemented until permit renewal.

For the remaining smaller pollutant-specific emissions units, part 64 implementation is delayed until permit renewal. This approach was suggested in many comments as one way to reduce the implementation burdens of the rule. Such an approach will also allow permitting authorities and owners or operators to gain experience with implementing part 64 for the largest emissions units before having to address the more numerous, but in terms of overall site emissions, less significant, smaller units. As noted above, permitting authorities can use the delay in implementation to develop programmatic requirements that can be relied on in proposing and approving part 64 monitoring; this approach will be of the most benefit for the smaller emissions units that can use these generic requirements to reduce the burdens of part 64.

The phased-in implementation approach embodied in the final part 64 rule is a departure from the implementation schedule in the 1993 EM proposal. The effective date of the proposed rule was to be 30 days after publication of the final rule in the **Federal Register**. The proposed rule did not specify how operating permits issued prior to the rule's effective date would be treated. The preamble to the proposed rule suggested that these situations would be covered by 40 CFR 70.7(f)(1)(i). Section 70.7(f)(1)(i) requires that an operating permit be reopened to address an applicable requirement which becomes applicable during the permit term if the permit has a remaining term of three or more years. Thus, under the proposed rule, the owner or operator of any facility with an operating permit that had a remaining term of three or more years after the effective date of part 64 would have been required to reopen the permit and

provide the required part 64 information.

The Agency considered relying on this part 70 provision to set the implementation schedule for the rule, but chose to adopt the phased-in approach described above. Thus, the provisions in § 64.5(a) supersede the language of § 70.7(f)(1)(i). The part 70 approach would have required that a great many operating permits be reopened as soon as the rule became effective, while the phased-in approach initially focuses on new permit applications. The former is therefore more likely to cause initial burdens and delays in the permitting program. The Agency believes that the extended implementation timetable resulting from the phased-in approach is better suited to facilitating implementation through the operating permits program. In the December 1994 notice reopening the 1993 EM proposal for comment, EPA discussed the possibility of using a phased-in implementation approach as well as a "hammer" provision, which would have required enhanced monitoring to be implemented by all affected sources by January 1, 2000. Multiple commenters expressed concerns that an absolute deadline of this type would cause systemic logjams and delays in the operating permits program because it could require numerous permit revisions or reopenings outside of the normal permit renewal process.

In lieu of a "hammer" provision and to clarify that the monitoring requirements of part 70 apply irrespective of the part 64 requirements, the Agency has added explicit language to the rule stating that prior to approval and operation of part 64 monitoring, part 70 monitoring requirements apply. These part 70 monitoring requirements continue to apply even after approval and operation of part 64 monitoring; however, because part 64 contains applicable monitoring requirements sufficient to demonstrate compliance with applicable emission limitations or standards, the part 64 monitoring requirements can serve in the place of part 70 monitoring requirements.

F. Section 64.6—Approval of Monitoring

Consistent with the part 64 implementation approach, § 64.6 requires the permitting authority to approve or disapprove the monitoring proposed by the owner or operator. The following discussion highlights the key elements of this section and the key issues raised during development of the rule.

1. Approval and Permit Incorporation

If the monitoring is approved, the permitting authority must act in accordance with § 70.6(a)(3) to include appropriate permit terms that reflect the part 64 monitoring requirements. The requirements that must be reflected in the permit are: the monitoring approach (including the basic method, appropriate performance specifications, and required quality assurance checks), any specific data availability requirements, the indicator range(s), and a general statement that the owner or operator will conduct the monitoring, submit reports, maintain records, and, if applicable, identify any QIP obligations, all as required by §§ 64.7 through 64.9.

It is important to note that the rule provides for two different options for incorporating indicator range(s) in the permit. First, the actual range can be included (such as maintaining temperature of an incinerator at or above a specific number). Second, the permit can include a statement that describes how the indicator range will be established (such as "The incinerator will be maintained at a temperature at or above a temperature which is 50 degrees Fahrenheit lower than the baseline temperature recorded during the most recent performance test."). This latter type of condition would allow for reestablishment of the indicator range without the need for a permit modification. Several commenters raised concerns that there would be a need for changes to indicator ranges, especially near the beginning of the program, and that requiring permit modifications for all such changes would be burdensome and unwieldy. The Agency agrees and believes this latter option addresses the commenters' concerns while still providing adequate public comment and review on the establishment of indicator ranges at specific sources. If this type of approach is used, the permit would also need to specify how the permitting authority will be notified of the currently applicable indicator range(s).

These provisions are generally the same as required in § 64.8 of the 1993 EM proposal, although the requirements have been modified to reflect the changes in the design criteria for the monitoring required by part 64. The 1995 and 1996 part 64 Drafts included more elaborate conditions than are included in the final rule, including certain enforceability components that the Agency does not believe are necessary for effective implementation of part 64. These deleted components include provisions in the 1996 part 64 Draft that would have enabled a permitting authority to establish an indicator range as an enforceable condition and that would have established a second QIP during a permit term as a permit violation.

Whether the failure to meet an indicator range is an enforceable violation will be a matter of examining the relevant underlying applicable requirements, as well as the ability of the permitting authority to establish that type of requirement as a federally-enforceable element of a permit pursuant to approved SIP authority or as a State-only requirement pursuant to State law. As described above, for purposes of part 64, § 64.6 clarifies that the indicator ranges or the means by which they are to be established are to be included in the permit to indicate when an owner or operator is required to report excursions or exceedances. In addition, it should be noted that § 64.7 establishes the independent obligation for the owner or operator to take appropriate corrective action in response to excursions or exceedances that occur.

The Agency also decided to delete the draft requirement that a second QIP during a permit term constitutes a violation. This provision was widely criticized by both industry and State commenters. The Agency had specifically noted in the discussion accompanying the 1996 part 64 Draft that it was concerned that this approach may not be appropriate. As discussed in Sections II.G. and H., the final rule, consistent with the precedent of 40 CFR 60.11(d), provides for the general use of part 64 data and other information to document that the owner or operator has failed to operate and maintain an emission unit properly and provides for the QIP mechanism as one option for addressing situations in which such a failure has occurred. In that respect, any time a QIP is required there will be an underlying finding that the owner or operator has failed to take appropriate action and may be subject to enforcement for that violation. Thus, there is no need for the final rule to include separate enforcement consequences related to multiple QIPs.

The Agency notes that many commenters on the 1996 part 64 Draft suggested that the rule would impose too many permit requirements and that the permit should merely state that compliance with part 64 is required and that the owner or operator will take appropriate action in response to the data. Commenters pointed to the requirements for startup, shutdown, malfunction plans (SSMPs) under part 63 and section 112(r) risk management plans (RMPs) required under part 68 as examples of this approach to referencing

applicable requirements in a part 70 permit.

The Agency disagrees with the approach suggested and the use of the SSMP and RMP examples cited in the comments. The two examples both involve plans which an owner or operator is required to develop in accordance with general criteria but which are not subject to approval, although there are provisions which allow EPA or the permitting authority to require changes in the plans under certain conditions. (See 40 CFR 63.6(e)(3) and 68.220.) The Agency notes that it proposed this concept to implementing part 64 in the 1995 part 64 Draft but that numerous commenters opposed this approach because there would be no final approval process for the monitoring. (See § 64.3(c) of the 1995 part 64 Draft and the comments in, for example, VI√D–38 and 45). Many commenters then seemed to request that EPA use the SSMP or RMP approach after reviewing the 1996 part 64 Draft.

After evaluating all of the comments, the Agency believes that part 64 monitoring should be incorporated into permits in the same fashion as all other required monitoring. The following discussion provides a list of the various components of the basic monitoring approach that need to be incorporated in the permit. To provide a practical example of what the "basic monitoring approach" entails, the following example is based on the use of incineration to control TRS emissions from certain affected facilities at kraft pulp mills (see 40 CFR 60.280 et seq.); the example is intended to indicate the level of detail required, and not necessarily the appropriateness of the example monitoring for satisfying part 64: "Company A will monitor the combustion temperature in the incinerator at the point of incineration of the effluent gases. Combustion temperature will be recorded continuously during all periods of incinerator operation using a strip chart recorder. Company A will use a 5-minute rolling average of combustion temperatures to determine whether an excursion from (combustion temperature limit or range) has occurred. The thermocouple used to determine the temperature will be accurate to within 1 percent of the temperature being measured. Company A will conduct daily operational checks of the thermocouple, strip chart recorder, and the temperature recording process system. Company A will conduct an annual accuracy check of the temperature measurement and recording system." This example mirrors the basic monitoring information required under the relevant portions of subpart BB. Another example that might apply in other cases could include a permit condition which: (1) Identifies the pollutant-specific emissions unit, (2) states that the owner or operator will install, operate, maintain and reduce data from a CEMS for that pollutant in accordance with both the general provisions in 40 CFR 60.13 and the applicable performance specifications in appendix B to 40 CFR part 60; and (3) specifies the appropriate period for averaging data to determine if an exceedance occurs. That type of permit condition would address the components of the basic monitoring approach identified above.

As noted in the above examples, there is no substantive difference for how an owner or operator will be required to address existing monitoring in a permit versus part 64 monitoring. For the one element of the monitoring (indicator ranges) which the owner or operator is most likely to need to adjust, especially at the beginning of the program, the final rule includes the option discussed earlier that can provide the necessary flexibility to adjust indicator ranges without the need for a permit revision. Thus, EPA believes that the level of detail required in the permit is appropriate and consistent with the level of detail originally included in the 1993 EM proposal and required for existing monitoring.

2. Approval Prior to Installation and/or Verification

A number of those commenting on the 1993 EM proposal expressed concerns about the costs of installing equipment and performing testing for proposed monitoring prior to approval in the permit. The Agency understands that an owner or operator may be unwilling to proceed with such installation, testing, or other monitor verification activities until after the proposed approach to complying with part 64 is approved. Under the final rule, these activities may be completed after approval of the monitoring. The owner or operator must propose a schedule for making the monitoring operational as expeditiously as practicable after approval (see § 64.4(e)) and then the permit must include an enforceable schedule with milestones that reflect the approved schedule. The schedule must provide for the monitoring being fully operational as expeditiously as practicable, but in no event more than 180 days from the date of issuance of the final permit. The general requirements in § 64.7 to operate the monitoring in accordance with part 64 will not apply until the final verification is complete.

3. Conditional Approval of the Monitoring

Under § 64.6(b), the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part, and to confirm the appropriateness of an indicator range(s) or designated condition(s) proposed to satisfy the design criteria in the rule. Such conditional approval should also be consistent with the requirement in the rule that monitoring be designed, installed, and begin operation within 180 days of permit approval.

4. Disapproval of the Monitoring

If a permitting authority determines that the monitoring proposed by an owner or operator fails to satisfy part 64, the permit must include monitoring that at a minimum meets the monitoring provisions in part 70. Moreover, § 64.6(e)(2) requires the permitting authority to impose a compliance plan requirement in the permit which directs the owner or operator to repropose monitoring in accordance with §§ 64.3 and 64.4 within no more than 180 days after disapproval. Under § 64.6(e)(3), the owner or operator will be in noncompliance with part 64 if: (1) The owner or operator fails to submit monitoring within the required compliance schedule; or (2) the permitting authority disapproves the monitoring submitted, subject to the owner or operator's right to appeal any such disapproval. Note that the decision to disapprove the initially proposed monitoring would also constitute final agency action for purposes of appeal.

This disapproval process was implied but not explicitly addressed in the 1993 EM proposal or the subsequent drafts of part 64. However, comments on these earlier versions of the rule did raise concerns about when an owner or operator could appeal a decision as to the monitoring and whether a permitting authority could insert in the permit the monitoring which the permitting authority believes should be used. The Agency believes that in most cases, the permit process provides ample opportunity for the permitting authority and the owner or operator to confer about the appropriate monitoring to satisfy part 64 and agree upon an approach, with public and EPA review,

without having to reach the point of disapproving the monitoring in the final permit action. Nevertheless, the Agency also believes that the final rule should clarify how a monitoring disapproval will be handled.

The Agency notes further that, unlike the procedures for most applicable requirements, the part 70 permit process will be used as the process for approving the specific monitoring that is used to satisfy part 64. In that respect, the part 70 process will be essential to assuring adequate public, permitting authority, and, as necessary, EPA input on part 64 monitoring. The Agency believes that the approval/disapproval procedures in the final rule highlight this important aspect of part 64 and will provide for adequate public and EPA review of the monitoring used to satisfy part 64.

5. Permit Shield

The Agency notes that, after approval of the part 64 monitoring in a permit, the permit shield provisions in part 70 may extend to the part 64 monitoring approved in the permit. A significant area of comment on the 1993 proposed EM rule was the effect of implementing part 64 on these permit shield provisions. Some commenters were concerned that the linking of part 64 and the permitting process would hamper the timely processing of permits, and in some cases, result in the loss of the permit application shield. The Agency has addressed these concerns in the changes to the implementation schedule of the final rule. Other commenters suggested that the non-specific nature of part 64 monitoring requirements could lead to a situation where the permit shield could be lost even if the monitoring was originally developed in good faith and was approved by the permitting authority. These commenters argued that if such monitoring is later determined to be inadequate by the permitting authority or the owner or operator, there should be a process for correcting the monitoring without finding the owner or operator in violation of the general part 64 substantive requirements.

EPA believes that, if a permitting authority extends the permit shield to the monitoring requirements included in an operating permit, the owner or operator will be shielded from any retrospective action based on a claim that the monitoring approved in the permit fails to satisfy part 64 requirements. This protection is only available so long as the owner or operator conducts the monitoring in accordance with the permit. Also, the shield will not prevent the permitting authority or the EPA from reopening the permit if, after approval, the permitting authority or the Agency finds cause to reopen the permit based on a deficiency in the approved monitoring.

Where an owner or operator discovers that the originally approved monitoring is inadequate, the final rule does require the owner or operator to correct the defect in the monitoring expeditiously. Section 64.7(e) requires an owner or operator to promptly notify the permitting authority and submit a proposed modification to the source's part 70 permit under at least two circumstances. First, if the owner or operator documents that a violation of an emission limitation or standard occurs but the part 64 monitoring failed to indicate an excursion or exceedance for the same period, there will be a need to address that type of deficiency. Second, if the results of performance or compliance testing document a need to modify the approved indicator ranges, that type of correction will also be required. The appropriate permit modifications may include monitoring additional parameters, increasing monitoring frequency, reestablishing indicator ranges, or other changes appropriate for the circumstances.

G. Section 64.7—Operation of Approved Monitoring

1. General Conduct of Monitoring

As soon as the permitting authority has approved the operating permit, § 64.7(a) requires the owner or operator of an affected source to begin conducting monitoring of the source in accordance with the permit. If the permit includes a scheduled date for the completion of testing, installation, and final verification of the approved monitoring pursuant to § 64.6(d), then the owner or operator is not required to begin conducting monitoring until that completion date. This provision does not excuse the owner or operator from complying with monitoring required under separate authority if the monitoring being used to comply with part 64 is also required under that separate authority.

Section 64.7(b) requires an owner or operator to properly maintain the approved monitoring. The provision states that the maintenance and operation obligations include an obligation to maintain necessary parts for routine repairs of the monitoring equipment.

Under § 64.7(c), the monitoring must be conducted continuously or shall collect data at all required intervals during emissions unit operating periods unless the monitoring cannot be conducted because of monitor malfunctions, associated repairs or required quality assurance or control activities (including, as applicable, calibration checks and zero and span adjustments). Data collected during such periods is not to be used for purposes of part 64, including data averages and calculations, or fulfilling a data availability requirement. Data recorded during all other periods is to be used in assessing the operation of the control device and associated capture system.

The Agency notes that the requirements in §§ 64.7(b) and (c) are generally consistent with monitoring requirements promulgated under the NSPS program (see 40 CFR 60.13(e)) and the new NESHAP program (see 40 CFR 63.8(c)(1) and (4)). The obligation to keep parts necessary for routine repairs is based on a similar requirement in § 63.8(c)(1). The requirement that part 64 monitoring be operational during emissions unit operation except during monitor malfunctions and similar events is consistent with § 60.13(e) and § 63.8(c)(4). It is important to note that this provision does not excuse a failure to comply with a data availability requirement. Even if a data availability requirement is met, this provision requires an owner or operator to continue operating the monitoring unless it is technically infeasible to do so.

The Agency believes that these general operating requirements were implicit in the 1993 EM proposal, including proposed § 64.4(b)(4) which required the owner or operator to obtain quality-assured data from the monitoring sufficient to satisfy minimum data availability requirements. However, EPA notes that in comments on the subsequent drafts of part 64, certain commenters objected to these types of provisions, and specifically requested that the rule exempt the source owner or operator from having to conduct monitoring during periods when the source is not required to comply with the underlying standard (such as startup and shutdown conditions). The Agency disagrees with these comments, and notes that existing general monitoring requirements under NSPS and NESHAP do not provide for that type of exception to monitoring. In fact, EPA has previously rejected the idea of exempting sources from monitoring during startup and shutdown conditions in other rulemakings. (See, e.g., *Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards*, EPA–450/3–82–001b, June 1990, pp. 2–37 and 2–38. For a copy of this document, see EPA Air Docket A–81–22–V–B–1.) Although compliance with emission limitations may be exempted in some circumstances during conditions such as startup and shutdown, an owner or operator still is required to operate and maintain a source in accordance with good air pollution control practices for minimizing emissions during such periods. The monitoring under part 64 is essential to evaluate the extent to which this duty is fulfilled. Therefore, to clarify the intent of part 64 and assure that it is implemented consistently with other EPA monitoring programs, the final rule includes these general operating requirements in §§ 64.7(b) and (c).

2. Corrective Action Obligations

Section 64.7(d) of the final rule requires that, upon detecting an excursion or exceedance, the owner or operator will restore the pollutant-specific emissions unit to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. This requires minimizing periods of startup, shutdown or malfunction, and taking corrective action to restore normal operation and prevent recurrence of the problem that led to the excursion or exceedance except where the excursion or exceedance was related to an excused startup or shutdown condition. Corrective action may include inspection and evaluation where operations returned to normal without operator action, or any appropriate follow up activities, including shutting down a pollutant-specific emissions unit until necessary repairs are completed, to return the operation to within the indicator range or below the applicable emission limitation or standard, as applicable. Consistent with existing general duty provisions such as § 60.11(d), determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on available information, including monitoring data. A related provision found at § 64.8(a) of the final rule provides that a source owner or operator can be required to implement a quality improvement plan (QIP) after a determination by the permitting authority or the Administrator that the source owner has failed to conduct proper operation and maintenance as documented through part 64 monitoring and other available information (see Section II.H.).

Because the Agency's emphasis for part 64 monitoring shifted away from the direct compliance determination requirements of the 1993 EM proposal to the CAM approach, the Agency believes it is critical to underscore the need to maintain operation within the established indicator ranges. Therefore, the rule includes the requirement to take prompt and effective corrective action when the monitored indicators of compliance show that there may be a problem. Requiring that owners and operators are attentive and respond to the data gathered by part 64 monitoring has always been central to the CAM approach. Certain comments received on the 1996 part 64 Draft questioned the appropriateness of the corrective action provisions with some commenters finding the requirements unnecessary and others alleging that they were inadequate. The Agency reiterates its belief that part 64 monitoring can provide a reasonable assurance of compliance with applicable requirements. This is consistent with the approach suggested by many commenters throughout the development of part 64; however, because the data will not necessarily allow a direct determination of compliance, the Agency believes that it is essential to the CAM goal of ongoing compliance operation that part 64 require that owners or operators respond to the data so that any problems indicated by the monitoring are corrected as soon as possible. Without this corrective action obligation, owners or operators might tend to ignore excursions because such excursions may not necessarily allow a determination of a violation. Thus, EPA believes that the corrective action component of part 64 is critical to assuring that the information from the enhanced monitoring required by part 64 is heeded by owners or operators.

As described in the discussion accompanying the 1996 part 64 Draft, the Agency did consider requiring owners or operators to specify maximum periods for conducting various types of corrective action, but stakeholders raised concerns that it would be extremely difficult to establish the appropriate time frames for every possible contingency (see, e.g., docket items VI–D–45, p. 12; VI–E–9, p. 5–6). The Agency continues to agree that it would be difficult to establish appropriate time frames for all corrective action scenarios and therefore has adopted the general obligation requirement in the final rule. The Agency also believes, however, that as situations develop at a particular facility it may be possible in subsequent rounds of permitting to provide specific timetables for certain high priority concerns if a permitting authority desires to make this requirement more specific. In addition, if an existing site-specific plan, such as a malfunction abatement plan, already establishes required time frames for certain types of excursions, the owner or operator or the permitting authority could incorporate those specific time frames into the permit.

The obligation to correct excursions as expeditiously as practicable is the enforceable component associated with establishing an indicator range under part 64. Part 64 does not establish that an excursion from an indicator range constitutes an independent violation by itself. The 1996 part 64 Draft did provide that the permit may specify that an excursion could be considered a failure to satisfy an applicable permit term or condition in various situations. First, if existing requirements already require the owner or operator to comply with the indicator ranges, the 1996 Draft indicated that the ranges would be enforceable requirements. Second, the 1996 Draft indicated that an owner or operator could propose this approach. Finally, the 1996 Draft stated that, if consistent with existing authority, the permitting authority could specify in the permit that excursions from the indicator ranges will be considered enforceable permit deviations. In comments submitted during the development of the rule, State and local agency organizations stated their support for including control device performance indicator ranges as enforceable permit requirements even if such indicator ranges are not used directly to determine compliance or noncompliance with applicable emission limitations or standards. (See, for example, docket item VI–D–49 and IV–D–274). However, numerous industry commenters opposed the provisions in the 1996 part 64 Draft which addressed this issue.

The Agency has considered all of the relevant comments and has determined that part 64 need not address this issue. First, if an underlying requirement makes an indicator range enforceable, then that will have to be addressed in the permit under the existing requirements in part 70. Second, a source owner can always propose to make the indicator range enforceable and part 64 need not address this possibility. Third, if a State agency has independent authority to make indicator ranges enforceable, that can be done irrespective of the authority provided in part 64. Finally, as discussed in Section

I.E., the CE revisions clarify that an excursion from an indicator range in some circumstances may be sufficiently probative of compliance that it could be used to document a violation of an underlying requirement. Based on these considerations, the final rule simply requires the permit to establish an indicator range, and then imposes the obligation to take appropriate corrective action in response to an excursion and to report the excursion in applicable periodic reports and compliance certifications.

3. Monitoring Revisions

Section 64.3(d) of the 1993 EM proposal would have required a significant permit modification pursuant to § 70.7 whenever a change was made to an enhanced monitoring protocol or whenever a pollutant-specific emissions unit was modified in such a way as to make an existing protocol no longer appropriate. A great number of industry commenters objected to the permit modification provisions in the proposed rule. The vast majority objected to the scope of this provision, under which any change to an enhanced monitoring protocol triggered a requirement to obtain a significant permit modification. A number of commenters noted that the proposed rule would require significant permit modifications for changes that would not have triggered such a requirement under part 70 itself.

The Agency agrees with those commenters that believe the part 70 procedures generally should be relied on for determining when and what type of a permit change is required for different types of monitoring modifications. In keeping with this approach, EPA has removed the permit modification provisions from the final rule. Instead, the Agency intends that permit revisions involving part 64 requirements be made pursuant to part 70 permit revision procedures. The EPA has proposed revisions to part 70 in order to streamline the existing permit modification procedures (see 59 FR 44460, August 29, 1994, and 60 FR 45530, August 23, 1995). The preamble to those proposed revisions discusses what types of permit revisions would be appropriate for different types of monitoring changes. The EPA intends to promulgate permit revision procedures based on the proposed part 70 revisions that will clarify when and how a change in monitoring will trigger the need to modify the underlying operating permit.

As noted in the discussion of the permit shield above, § 64.7(e) does require an owner or operator to follow permit modification procedures upon discovery of deficiencies in approved part 64 monitoring. In addition, the part 70 procedures will apply if the owner or operator wants to change certain aspects of its approved monitoring, or if the owner or operator intends to make certain types of emissions unit modifications that could trigger the need for a permit revision to address part 64 requirements. For instance, if an owner or operator switched from a pollution prevention method of controlling emissions to a control device within the definition of part 64, that change could impose the part 64 monitoring requirements for a unit which had been subject only to part 70 monitoring before the change. In such a case, the revised part 70 procedures would require the owner or operator to submit a request for a part 70 permit modification which includes proposed part 64 monitoring and required supporting documentation.

H. Section 64.8—Quality Improvement Plans (QIPs)

Requirements for responding to the monitoring data if potential control problems are detected have been included in the final rule. Requiring that owners or operators are attentive to the data obtained by part 64 monitoring and take corrective action when problems are detected has always been part of the CAM approach. The discussions accompanying the 1995 and 1996 part 64 Drafts describe the CAM approach as promoting compliance by making the owner or operator pay attention and respond to the monitoring data. Because the approach of establishing indicator ranges and then imposing an obligation to respond to excursions could potentially allow owners or operators to comply with part 64 even though they may be in a near constant state of correcting excursions, the related concept of quality improvement plans (QIPs) was developed. This concept was designed to avoid perpetual corrective action which would frustrate the compliance promotion and compliance assurance goals of part 64.

1. QIPs in the 1995 Part 64 Draft

In the discussion accompanying the 1995 part 64 Draft, the requirements for responding to monitoring data were described as including: operating ranges for monitored parameters, time periods for corrective action in the event discrepancies from the established operating ranges occur, and a maximum number of discrepancies from the established operating ranges to occur in a reporting period. The 1995 part 64 Draft provided that source owners could establish this maximum number of discrepancies as a not-to-exceed limit or as a requirement that, initially, triggers implementation of a QIP. The QIP option would require evaluation of why the maximum number of discrepancies was exceeded. Based on that evaluation, the QIP would require the owner or operator to take steps to improve control performance including improved preventive maintenance procedures, process operation changes, control system improvements or similar actions.

The QIP option was described as a means of allowing an owner or operator to establish site-specific maximum discrepancy numbers without facing automatic enforcement exposure for failure to comply with those numbers during the early stages of part 64 applicability/implementation, while at the same time assuring that a large number of discrepancies would trigger additional steps to decrease the incidence of reduced control performance. In addition, the 1995 part 64 Draft contained limits to guard against the use of an ineffective QIP. Owners or operators would be allowed to exceed the maximum number of corrective actions trigger twice during a permit term. A third or subsequent exceedance of the trigger would have been treated as a failure to comply with the requirements of part 64 as well as still requiring a QIP to improve control performance. These situations potentially would have also required the QIP to be revised to more adequately serve its purpose of improved control performance.

The discussion accompanying the 1995 part 64 Draft noted that the provisions on the length of corrective action periods and the maximum number of corrective action periods per reporting period provided significant flexibility and solicited comment on whether the final rule should establish additional objective criteria such as a maximum length for corrective actions or a limit on the number of corrective actions permitted.

The Agency received a number of comments on the QIP concept after releasing the 1995 part 64 Draft. A number of industry commenters supported the QIP concept but raised concerns about the provisions limiting the number of allowable QIPs and about the specificity of certain requirements.

2. QIPs in the 1996 Part 64 Draft

In the 1996 part 64 Draft the owner or operator was required to implement a QIP if the duration of excursions occurring in any reporting period exceeded a set percentage of the operating time for the pollutant-specific emissions unit over that reporting period, or if the number of excursions exceeded a set percentage of the monitored averaging periods during the applicable reporting period. If the approved monitoring involved the use of a CEMS or PEMS, then the appropriate trigger for a QIP would be exceedances instead of excursions.

The appropriate percentage was to be set in the context of the permitting process. The permitting authority was to take into account all relevant factors, but the percentage of operating time was not to exceed 5 percent. The Agency solicited comment on whether that was an appropriate percentage and information that could support another percentage limit. An exception was provided in the 1996 part 64 Draft for circumstances in which specific applicable requirements established a higher percentage. Finally, the draft rule stated that the permit must include a condition that in the event that either percent trigger was exceeded, the owner or operator would develop and implement a QIP that met specific criteria.

Like the 1995 part 64 Draft, the 1996 part 64 Draft described two basic parts of a QIP. The first part would consist of evaluation procedures to determine the cause of the excessive number of excursions (or exceedances, if applicable). Based on that evaluation, the owner or operator would develop the second part of the QIP. The second part would detail the steps the owner or operator would take to improve the quality of control performance, and the schedule for taking those steps. Again, depending on the nature of the problem, the appropriate steps could include improved preventive maintenance procedures, process operation changes, control system improvements or similar types of steps. In conjunction with those procedures, the QIP also might include improved monitoring procedures.

The discussion accompanying the 1996 part 64 Draft described these requirements as assuring that the monitoring conducted under part 64 would result in owners or operators taking the necessary steps to prevent pollution through reasonable optimization of control performance. The Agency stated in that discussion and the draft itself that compliance with a QIP is not a substitute for compliance with underlying applicable requirements, including general duties to operate and maintain facilities in accordance with good air pollution control practices, and the 1996 part 64 Draft also required the owner or operator to report as a deviation any period during which a QIP is being implemented.

Again the Agency expressed concern about owners or operators performing repeated QIPs, and the 1996 part 64 Draft provided that the necessity to implement a second QIP for the same pollutant-specific emissions unit during the same permit term would constitute a specific permit term violation. The Agency acknowledged that an enforceable permit condition placing a limit on the number of QIPs might be perceived as an unnecessary restriction on the operation of highly efficient and well-operated control measures. The EPA noted that a high level of excursions could result from tightly set indicator ranges that are not at all indicative of potential excess emissions, and that the "second QIP as a violation" approach could inappropriately put an owner or operator in violation under such circumstances.

The Agency then noted that the second QIP as a deviation approach might encourage source owners to set unrepresentatively broad indicator ranges and thereby avoid excursions. The Agency sought comment on other means to encourage the setting of the indicator ranges in a manner consistent with the best level of emissions control that can be achieved. As one possible alternative, EPA suggested that instead of a permit violation associated with the need to implement a second QIP the final rule could instead require that the second QIP be implemented only through a permitting authority approval process. Such a plan could also include restricted process operations until completion of the approved QIP. The agency also suggested as a second possible alternative that the time period for limiting the owner or operator to one QIP could be reduced from the 5-year permit term to 3 years or other appropriate period.

In addition, the 1996 part 64 Draft contained a number of other QIP-related requirements. First, it required the owner or operator to notify the permitting authority within 2 days after determining that a QIP is necessary. Second, the QIP would not become part of the permit and would not require permitting authority approval. Third, the QIP was to be implemented as soon as practicable, and completed within 180 days from the date notice of the QIP was given to the permitting authority. Exceptions to the 180-day limit were to be granted only after the owner or operator obtained a site-specific resolution and affirmative approval from the permitting authority or, if necessary, the EPA of a plan to complete the improvement activities. An approved extension could include an enforceable, site-specific schedule with milestones and completion dates.

The 1996 part 64 Draft also required the owner or operator to report on the activities taken in conjunction with a QIP. QIP activities would be summarized in the semiannual report covering the period in which the QIP began, and in any subsequent semiannual reports covering periods during which the QIP continued. In addition, the owner or operator was required to maintain a copy of the QIP and records of QIP implementation activities for a period of five years in accordance with part 64 recordkeeping provisions.

Finally, a QIP could lead to changes in previously approved monitoring or other changes at the source that require a permit revision. Therefore, the 1996 part 64 Draft required the owner or operator to submit a proposed revision to the approved monitoring in these circumstances. Even if such changes did not require a permit revision, a source owner or operator who intended to retain the previously approved monitoring was required to reestablish the rationale that justified the monitoring.

3. QIPs in the Final Rule

In response to comments received on the 1995 and 1996 part 64 Drafts, § 64.8 of the final rule reflects a number of significant changes to the QIP requirements.

A number of commenters challenged the 5 percent QIP trigger in the 1996 part 64 Draft and some questioned whether a single percentage threshold was appropriate regardless of exactly where the threshold was set. Section 64.8(a) of the final rule provides that a QIP trigger may be set in the permit but does not require it. Where such a trigger is used, a level of 5 percent is suggested as a potentially appropriate threshold. The final rule also provides that a QIP can be required after a determination by the permitting authority or the Administrator that an owner or operator has failed to conduct proper operation and maintenance as documented through part 64 monitoring and other available information. In this respect, the QIP provisions are analogous to existing corrective action remedies available to address compliance problems.

Commenters also argued that the 180-day limit for completion of a QIP that was included in the 1996 draft part 64 was not reasonable, with various commenters arguing for more or less time. Some commenters also noted that QIPs that lead to the need for a permit modification would be particularly

problematic in terms of meeting a specific deadline. Section 64.8(c) of the final rule requires owners or operators to complete any QIP as expeditiously as practicable and to notify the permitting authority if they determine that a QIP will take longer than 180 days rather than establishing a specific amount of time within which the QIP must be completed.

Many commenters objected to the requirement that a second QIP within a permit term be treated as a violation. A number of commenters pointed out that a subsequent QIP might be completely unrelated to the first QIP, that more room for error should be allowed in the early stages of part 64 applicability/implementation, and that the existence of such penalties would frustrate the goals of part 64 by discouraging source owners from setting indicator ranges at levels that would provide early warning of problems. Commenters also noted generally in other comments on part 64 that the Agency should consider the part 63 startup, shutdown, malfunction plan (SSMP) requirements as an appropriate precedent for implementing part 64. Based on EPA's consideration of the comments, EPA has deleted the concept that a second QIP during a permit term is a violation. Instead, the final rule allows permitting authorities to use recurring problems as an indication that a QIP should be required in order to bring about improvements in control device operation and maintenance. In addition, the final rule provides that the permitting authority or the Administrator may follow up on QIPs and make changes to the plan if the QIP has not addressed the problem adequately. This latter requirement is analogous to the comparable procedures for requiring changes to SSMPs pursuant to § 63.6(e)(3).

Other changes made in response to comments received on the 1996 part 64 Draft include deleting the requirement that source owners notify the permitting authority within two days of the need to implement a QIP, the requirement that periods during which an owner or operator is implementing a QIP be reported as deviations in monitoring reports and compliance certifications, and the requirement to report test method results after QIP implementation. The Agency does not believe that these draft requirements are necessary, especially given that under the final rule, QIPs generally will be implemented only after a determination that an owner or operator has failed to meet a general duty to properly operate and maintain a source.

Some commenters objected to the requirement that owners or operators state that a QIP has reduced the likelihood of similar problems occurring in the future. The Agency believes that this type of information is appropriate, but has changed the final rule so that rather than a certification-style requirement, the owner or operator is required to submit documentation that the QIP has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring. This provision will provide the permitting authority with the information necessary to gauge the completion of a QIP and whether follow-up is necessary.

Commenters on the 1996 part 64 Draft also requested that an owner or operator be allowed to implement a QIP that involves only monitoring changes. The Agency notes that the final rule, like the 1996 part 64 Draft, does not provide for QIPs that address monitoring only. This type of change should not be made through a QIP. By its nature, a QIP focuses on situations where the owner or operator has failed to meet its obligation to properly operate and maintain a source. The QIP requirements in the final rule clarify this approach and no longer mandate that a QIP be implemented solely because a set duration of excursions or exceedances occurs. A source owner who needs to change approved part 64 monitoring can address any monitoring problems directly through the appropriate permit modification process. For indicator range changes, the final rule allows owners or operators to avoid the need for a permit modification by specifying in the permit the method by which such ranges will be established rather than the actual ranges. See Section II.F. for further discussion of that issue.

I. Section 64.9—Reporting and Recordkeeping Provisions

Part 64 generally relies on the requirements for reporting, compliance certification, and recordkeeping already established in part 70. Beyond general compliance with the part 70 requirements, § 64.9(a)(2) clarifies that part 70 reports that involve part 64 monitoring data must identify summary data on the number, duration and cause of: excursions from indicator ranges; emission limit exceedances; any corrective actions taken; and monitor downtime incidents other than those associated with daily calibration checks. If applicable, the report must also document QIP implementation and completion activities. See Section II.H. for further discussion of this QIP reporting provision.

The Agency believes that the additional information that is required to be reported under part 64 is consistent with streamlined reporting requirements under other monitoring programs (such as NSPS reporting under 40 CFR 60.7(d)). The Agency also believes that this information is necessary to allow permitting authorities to use part 64 data to track overall control performance and assure that owners or operators are operating part 64 monitoring appropriately and responding appropriately to excursions from established indicator ranges.

The recordkeeping requirements similarly require the owner or operator to maintain records in conformance with part 70. The provisions clarify what part 64 records need to be maintained and the acceptable formats for recordkeeping.

The Agency solicited and received comments on several aspects of the reporting and recordkeeping requirements that were included in the 1993 EM proposal. Those requirements, comments and the changes made by EPA in response to the comments are described below.

1. Commencement of Reporting Duty

Under the 1993 EM proposal, affected owners or operators were required to submit "enhanced monitoring reports." These enhanced monitoring reports would have fulfilled essentially the same function as the part 70 reports required by § 70.6(a)(3)(iii)(A), providing permitting authorities with more regular data on monitoring compliance than is required under other provisions. The 1993 EM proposal required submission of these reports "[o]n and after the effective date of this part * * *." Commenters were concerned that this language could be interpreted to require reporting prior to approval of a monitoring plan. They contended that it would be difficult, if not impossible, to fulfill the reporting requirement without knowledge of what monitoring would ultimately be required. The Agency agrees with these concerns. The final part 64 rule clarifies that the obligation to begin reporting does not commence until the specified date by which the owner or operator must begin monitoring under part 64.

2. Reporting Frequency

The 1993 EM proposal also required quarterly submission of the above-mentioned enhanced monitoring report for each enhanced monitoring protocol. Many commenters argued that quarterly reporting would be too costly and/or burdensome. The quarterly reporting requirement is eliminated in the final rule. By explicitly relying on part 70 reporting requirements, the Agency has adopted a requirement that reports be submitted at least semiannually. The EPA believes that the minimum part 70 reporting frequency is sufficient to meet the goals of compliance assurance monitoring without imposing undue costs or burdens on affected sources. The Agency also notes that the 1993 EM proposal justified quarterly reporting in part on the similar provision that existed at that time in part 60 for quarterly reporting of direct compliance data. The Agency has since modified part 60 reporting provisions and no longer requires quarterly reporting where the source remains in compliance. (See § 60.7(e) added at 59 FR 12417, March 16, 1994.) The Agency also notes that part 70 authorizes permitting authorities to require more frequent reporting of monitoring data, when appropriate.

A related provision in the 1993 EM proposal required that each enhanced monitoring report be postmarked no later than thirty days after the last day of the reporting period. A number of commenters objected to this due date provision, arguing that thirty days was insufficient time to analyze and verify the necessary data and to then assemble a report reflecting that data, especially where such data is received from independent laboratories. Although the Agency believes that thirty days is generally sufficient time to compile the reports required under the revised part 64, the due date provision has been eliminated. Instead, by relying on the reporting requirements of part 70, the Agency requires "prompt" submission of monitoring reports as defined by the permitting authority.

3. Report Signature Requirement

The 1993 EM proposal required that certification by a responsible official be included in each enhanced monitoring report. Under this requirement the official had to certify by his or her signature that he or she had personally examined the information contained in the report and its attachments, that the statements and information were true to the best of his or her knowledge and belief, and that he or she was aware of the penalties (including the possibility of fine or imprisonment) that could accrue for submitting false statements and information or omitting required statements and information. A number of commenters were concerned that the requirement that an official personally examine all information in the report and its attachments was impractical, given the amount of data that would have to be examined and the responsible official's probable lack of expertise in the specific areas of the documents. Commenters also expressed concerns that the penalty language of the proposed rule imposed liability on the responsible official instead of the persons who might be responsible for violations, or on the company itself.

The EPA has eliminated the proposed report signature requirement in the final rule. Instead, part 64 reporting will be subject to the same certification requirements as required for all reports submitted under § 70.5(d). The Agency believes the use of the part 70 signature requirements is appropriate given the general reliance on part 70 reporting requirements in part 64.

4. Confidentiality of Report Information

The 1993 EM proposal explicitly provided that an owner or operator could assert a confidentiality claim for information reported under part 64 to the extent such information was entitled to protection under section 114(c) of the Act. This provision received a generally favorable response from industry commenters, some of whom proposed that the confidentiality provisions be expanded. This provision is not included in § 64.9 of the final rule. As noted above, part 64 reporting is governed by part 70. Information submitted under part 70 reporting requirements is already subject to confidentiality protection pursuant to § 70.4(b)(3)(viii), as well as section 503(e) of the Act. Any such information accompanied by a claim of confidentiality will be treated in accordance with the regulations of 40 CFR part 2. The Agency believes that the inclusion of confidentiality provisions in part 64 is unnecessary due to the applicability of the protections contained in part 70.

5. Recordkeeping Requirements

Section 64.9(b)(1) requires owners and operators of affected sources to comply with the recordkeeping obligations set forth in § 70.6(a)(3)(ii). Part 70 requires that records of the required monitoring including the following information be maintained for a period of at least five years: The date, place, and time of sampling or measurements; the date(s) analyses were performed; the company or entity that performed the analyses; the analytical techniques or methods used; the results of such analyses; and the operating conditions as existing at the time of sampling or measurement. Section 64.9(b) clarifies that for purposes of part 64, the records to be maintained include: Monitoring data, monitor performance data, corrective actions taken, the written quality improvement plan and related implementation activities, and other supporting information required to be maintained under part 64. The Agency notes that the part 64 requirement to keep these records is not a separate recordkeeping requirement. The Agency believes all of these records are already required to be maintained under the general part 70 provisions, but includes these specific types of records in the final rule to clarify the general part 70 language.

Recordkeeping requirements under the final rule are not significantly different from those in the 1993 EM proposal. Although the 1993 EM proposal did not explicitly refer to part 70 recordkeeping provisions, its requirements were essentially a restatement of part 70 requirements in an enhanced monitoring context. Owners or operators would have been required to maintain the same general information required by part 70 for the same minimum period of five years. The preamble to the 1993 EM proposal did state that the requirements were "consistent with the minimum recordkeeping provisions in 40 CFR 70.6(a)(3)."

Both the requirements of the 1993 EM proposal and the currently applicable part 70 provisions require the maintenance of records for a period of at least five years from the date of the monitoring sample, measurement, report or application. A number of commenters expressed objections to the five year data retention period, arguing that the burden of retaining records for such an extended period was excessive. Among the proposed alternatives were a 3-year data retention period, consistent with the Acid Rain Program, or a shorter period for records covering periods for which there were no deviations. The EPA had included the 5-year period in the 1993 EM proposal to be consistent with the minimum requirements of § 70.6. The Agency continues to believe that this period is appropriate, as part 70 has established the 5-year retention period as the standard even where less than five years is required in underlying rules. For example, part 70 has changed the record retention time for NSPS and similar provisions, establishing the 5-year period for such provisions. By explicitly relying on part 70 recordkeeping requirements, the Agency has further affirmed the appropriateness of employing the 5-year period for part 64 records.

Section 64.6(b) of the 1993 EM proposal stated that records had to be available for inspection at the site of an affected source or at a different site approved by the permitting authority. In

addition, the proposed rule required that such records be maintained so as to permit prompt submittal if requested by EPA or the permitting authority. A number of commenters on the 1993 EM proposal and the 1996 part 64 Draft recommended that owners or operators should be free to decide where facility records would be kept, arguing that permitting authority approval should not be required since most facilities cannot handle the storage of the data required by the rule. Because the final rule relies directly on the reporting and recordkeeping requirements of part 70, the requirement that source owners get permitting authority approval for off-site storage of part 64 records has been deleted.

The recordkeeping provisions of the 1993 EM proposal did not specifically address the form in which records must be maintained. Several commenters supported the idea of storing data in a non-paper media such as microfiche or a form of electronic data storage. They contended that such storage methods would reduce the costs and burdens associated with storing records for the minimum 5-year period. The Agency agrees with these comments and encourages the use of alternative recordkeeping, provided appropriate safeguards are adopted to insure the integrity and accessibility of the data over time. Section 64.9(b)(2) of the final rule therefore explicitly allows the maintenance of records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, so long as the data are readily available for inspection and review and the alternative format does not conflict with other applicable recordkeeping provisions. This approach is consistent with recent general recordkeeping provisions, such as the NESHAP general provisions in 40 CFR 63.10(b).

J. Section 64.10—Savings Provisions

Because part 64 requirements may overlap with many other applicable requirements, § 64.10 of the final rule clarifies that nothing in part 64 is intended to excuse the owner or operator from applicable requirements under the Act (including emission limitations or standards as well as other monitoring requirements) or to restrict the authority of the EPA or the permitting authority to impose additional monitoring under the Act or State law, as applicable. For example, it would be possible for a source to be in compliance with its QIP, but out of compliance with an applicable emission limitation or standard. The owner of such a source could expect enforcement action for violation of the applicable emission limitation or standard, even though there may not be a violation of part 64. Simply put, adherence to a QIP does not insulate an owner or operator against enforcement action for violations of an underlying emission limitation or standard. This section also clarifies that the requirements may not be used to justify the imposition of less stringent monitoring under other programs than would otherwise be required under those programs. For instance, in acting on a new source review permit under title I of the Act, the part 64 requirements may not be used to judge the adequacy of the monitoring in that permit; instead, the general procedures and practices under the title I permit program will be used.

The 1993 EM proposal contained specific savings provisions in the applicability section (then § 64.1) and the permit application section (then § 64.7). The applicability savings provision in proposed § 64.1(d) clarified that nothing in part 64 was intended to excuse owners or operators from other monitoring, recordkeeping and reporting requirements that apply pursuant to other provisions of the Act, or to restrict the authority of the Administrator or permitting authority to impose additional or more restrictive monitoring, recordkeeping or reporting requirements under other provisions of the Act. The permit application provision in proposed § 64.7(d) stated that owners or operators must still comply with all other permit application requirements and requirements established by federal regulations or by permitting authorities under federally-approved permit programs. These savings provisions are brought together in a single section of the final rule without significant changes from the original proposal.

Section 64.10 of the final rule also states that nothing in part 64 will interfere with the permitting authority's or EPA's ability to enforce against violations of applicable requirements under the Act or the authority of a citizen to enforce against violations pursuant to section 304. This savings provision was added to the final rule to clarify the Agency's position on the relationship of part 64 to certain enforcement issues. A number of commenters requested that EPA include a provision that would shield owners or operators who comply with part 64 from enforcement for violations of their emission limits. As discussed in Section I.E.3., the Agency disagrees with this concept. In cases where the part 64 data indicate noncompliance with emission limits, including exceedances, permitting authorities and the Agency will be able to take enforcement action. In other cases, where the part 64 monitoring indicates, but does not directly establish, the compliance status of a source, the reasonable assurance of compliance based on part 64 data does not prohibit the Agency from taking appropriate investigatory or enforcement steps when noncompliance is shown by other means. This same point was clarified in the discussions accompanying both the 1995 and 1996 part 64 Drafts.

K. Revisions to 40 CFR Part 70 and Part 71

The final rule includes revisions to parts 70 and 71 to clarify the relationship between part 64 and the operating permits program. These revisions are outlined below.

1. Monitoring Requirements

The revisions to part 70 allow for streamlining multiple monitoring requirements if the streamlined monitoring is able to assure compliance at least to the same extent as the applicable requirements not included as a result of the streamlining. The Agency notes that the language in these revisions is designed to be consistent with a discussion in section A.5. of White Paper 2 (See docket item VI–I–2) concerning the possibility of streamlining applicable monitoring and testing requirements ("§ 70.6(a)(3) appears to restrict streamlining by requiring that all "applicable" monitoring . . . requirements be placed in the permit. . . . The EPA intends to revise part 70 to reflect this understanding in a future rulemaking."). The Agency indicated in the 1996 part 64 Draft that it intended to fulfill its intent to modify part 70 as discussed in White Paper 2 by including the appropriate revisions to § 70.6(a)(3)(i) in conjunction with the part 64 rulemaking. Because the Agency received strong support for this proposed action and no negative comments, the Agency has proceeded to add this part 70 revision (and the corresponding revision to part 71) as part of this rulemaking.

2. Compliance Certification Requirements

To tailor compliance certification to the monitoring imposed by part 64, EPA has revised § 70.6(c)(5)(iii) (and § 71.6(c)(5)(iii)) so that a compliance certification includes the following elements.

First, the permit conditions being certified must be identified. Second, the method(s) and other information used to determine compliance status of each

term and condition must be identified. These method(s) will have to include at a minimum any testing and monitoring methods identified in § 70.6(a)(3) that were conducted during the relevant time period. In addition, if the owner or operator knows of other material information (i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status), that information must be identified and addressed in the compliance certification. This requirement merely emphasizes the general prohibition in section 113(c)(2) of the Act on knowingly making a false certification or omitting material information and the general criminal section on submitting false information to the government codified at 18 USC 1001. The revised part 70 provision does not impose a duty on the owner or operator to assess every possible piece of information that may have some undetermined bearing on compliance. The description of the methods relied on by the source owner also will have to indicate whether the methods provide continuous or intermittent data. In accordance with section 114 of the Act that specifies that the certification include whether compliance is continuous or intermittent, the Agency will interpret the compliance certification that is based on monitoring that provides intermittent data as compliance on an intermittent basis.

Third, the responsible official will have to certify compliance based on the results of the identified methods. The certification must state the compliance status with the part 70 permit, taking into account any deviations and noting as possible exceptions to compliance any deviations or excursions/exceedances as defined in part 64 or other underlying applicable requirements. Because "deviation" was defined under part 71 as originally promulgeted, the revisions to part 71 incorporate the concepts of excursion and exceedance into the § 71.6(a)(3) definition of "deviation." Therefore, unlike the part 70 revisions, the revised compliance certification provision in part 71 refers only to "deviations."

The owner or operator may include information in the certification to document that compliance was achieved during any periods in which a possible exception is noted (such as information that an excursion or exceedance occurred during a period of startup or shutdown for which compliance with an emission limitation or standards was excused). The requirement to take into account deviations, excursions, and exceedances together with the requirement to identify whether the method used provides continuous or intermittent data ensures that the compliance certification will show whether compliance is continuous or intermittent. For example, a compliance certification based on a method providing intermittent data or that notes any deviations or certain possible exceptions to compliance as a result of exceedances or excursions based on monitoring required by this rule will be interpreted as showing intermittent compliance. The Agency does not interpret a certification of intermittent compliance to necessarily mean that the responsible official is certifying that there are periods of noncompliance. Such a certification can mean that there are periods of time in which the source's compliance status is unknown. When a responsible official certifies compliance based on a method providing continuous data and no deviations, excursions, or exceedances have occurred (or all such occurrences have been adequately addressed by other information, as explained above), this will be interpreted as a certification of continuous compliance. These provisions implement the requirements in section 114(a)(3)(B), (C), and (D) that the certification include the methods used to determine the compliance status and whether compliance is continuous or intermittent.

The certification also will have to include any other facts required by the permitting authority. This requirement is already included in parts 70 and 71 as promulgated. Finally, the Agency notes that the rule allows the owner or operator to cross-reference the permit or previous reports to identify the various information elements required in a certification. This provision allows the actual certification to be a short, concise compliance statement that is not burdened by restating detailed information that has already been provided.

The goal of part 64 is to provide improved compliance data for significant emissions units at title V major sources. This improvement will in turn provide additional data for the owner or operator to rely on in certifying compliance. As discussed in Section I.C. above, EPA believes that the part 64 data will provide a reliable means for owners or operators to reach a conclusion about their compliance status. However, since the part 64 data will not necessarily always provide unequivocal proof of compliance or noncompliance (as a performance or compliance test method would), there will be excursions or exceedances identified through part 64 which raise questions about compliance status but may not confirm conclusively that a source is in noncompliance. The existence of these occurrences only indicates the need to review the compliance information provided in order to determine what, if any, compliance or enforcement actions may be warranted.

These changes to parts 70 and 71 have been developed based on the provisions included in the 1993 EM proposal, as supplemented by the December 1994 reopened comment period, as well as based on the 1995 and 1996 part 64 Drafts. The reporting requirements of the 1993 EM proposal would have required that a responsible official for an affected source use enhanced monitoring data as the basis for the required title V compliance certification. The 1993 EM proposal also required the use of any other data collected for the purpose of determining compliance during the monitoring period. These provisions were the subject of significant public comment. Some of these comments seemed to be based on the belief that the proposed rule created a separate compliance certification requirement. The EPA always intended for these provisions to operate within the title V compliance certification process, establishing additional requirements that units subject to part 64 had to meet in order to satisfy title V compliance certification requirements. To clarify this approach, the compliance certification provisions in the final rule were removed from part 64. Instead, § 70.6(c)(5)(iii) of part 70 (and the corresponding section in part 71) has been amended to reflect the requirements of compliance certification for those units subject to part 64.

In addition, as discussed above in Section I.C., EPA reopened the public comment period on the 1993 EM proposal and stated EPA's intent that it may reconsider how to interpret the meaning of "continuous or intermittent" in the context of certifying compliance. The revisions to parts 70 and 71 in today's rulemaking reflect the position taken by EPA in that December 1994 notice. Finally, the revisions reflect the position taken in the final part 64 rule that monitoring data that do not constitute formal performance or compliance test method data may still be used by the owner or operator to determine compliance status and to note any possible exceptions to compliance that are indicated by the monitoring. This interpretation is consistent with the existing part 70 which specifically references the fact that a certification must consider all of the relevant data

under § 70.6(a)(3), which includes non-test method monitoring data. Because of the possible misinterpretations of the existing language, EPA believes that clarifying the compliance certification requirements in conjunction with promulgating part 64 is appropriate.

III. Administrative Requirements

A. Docket

The EPA is relying on the procedural requirements of section 307(d) of the Act for the regulations. In accordance with those requirements, EPA has established docket A–91–52 for the regulations. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA assumes as the baseline for its analysis of part 64 that affected emissions sources are currently in compliance with their underlying emission standards 100 percent of the time. Thus, there are no emissions reductions benefits (and health and welfare benefits), nor costs for additional control technology, operation and maintenance, associated with part 64. EPA believes that some sources, in response to monitoring data gathered under part 64, may indeed have to make investments in control equipment technology, operation and maintenance to reduce emissions to comply with their underlying emissions standards; however, EPA believes these emission reductions benefits and costs are not attributable to part 64—but to the underlying emissions standards. As such, EPA has not estimated the benefits or costs that may result from such actions to reduce emissions.

EPA has estimated the cost of part 64 to include the cost of development and implementation of CAM plans, $50 million per year. ($1995). This includes the cost of determining the monitoring approach and implementing the approved design, including reporting, recordkeeping, and certification activities.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" due to its policy implications and was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. The Regulatory Impact Analysis (RIA) for this rulemaking is included in the docket.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency must prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely impacted by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this rule is not estimated to result in the expenditure by State, local, and tribal governments and the private sector, in aggregate, of over $100 million per year, EPA is not required under UMRA to develop a budgetary impact statement or to undertake the analysis under section 205. However, because certain options considered by EPA would have resulted in a total cost in excess of $100 million, EPA did prepare such statement and analysis and they are included as part of the Regulatory Impact Analysis, which is included in the docket.

To the extent governmental entities are affected by the rule as permitting authorities, the costs of the rule are offset or mitigated by receipt of title V permit fees, since the rule affects only title V sources. Part 70 requires sources of pollution to pay permit fees sufficient to offset the costs incurred by the permitting authority in managing its operating permits program. Since part 64 introduces additional requirements for permitting authorities, these incremental costs must be incorporated into the operating permit fee. Because Permitting Authority costs may be transferred to sources of pollution through the permit fee, the administrative and recordkeeping cost of this rulemaking to State, local, and tribal governments is, for practical purposes, zero. EPA has also concluded that, to the extent small governments are impacted by this regulation because they are major stationary sources, the impact will not be significant. *See* Section III.E. As a result, UMRA requirements do not apply to this rulemaking.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1663.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information is planned to be collected to fulfill requirements in both the title V operating permit program and part 64 programs. The operating permit program requires owners or operators of units that emit air pollutants to submit annual compliance certifications, to submit monitoring results at least semiannually, and to report deviations promptly. Part 64 requires monitoring for certain emissions units at major sources subject to the title V operating permits program. Therefore, the collection of information is mandated by the Act. Generally, emissions data cannot be considered confidential under the Act. However, to the extent allowable under the Act, the collection of information will be entitled to confidential treatment in accordance with EPA's procedures established in 40 CFR part 2.

The part 64 rulemaking requires monitoring, compliance certification, periodic reporting, and recordkeeping information collections by owners and operators of title V sources with controlled pollutant-specific emissions units that have a pre-control potential to emit major amounts of regulated air pollutants. Owners or operators of affected emissions units will use the information as the basis for the compliance certification required by the operating permit program, and as the basis for compliance assurance monitoring reports. Sources may also use the information to determine and maintain the efficiency of process or emissions control devices. Permitting authorities will use the information to determining acceptability of proposed compliance assurance monitoring, to assess compliance, to input into reports to other agencies, and, when necessary, in enforcement proceedings and Quality Improvement Plans (QIPs). The information may be used by other entities, including federal entities and citizens. EPA will use the information to perform activities such as providing oversight and guidance to State and local agencies, and to assess requests for alternative monitoring.

The implementation schedule for part 64 will phase-in implementation over a number of years, so that not all sources will have reporting and recordkeeping impacts in the first three years of implementation. The estimated annualized cost of CAM on a national level for the first three years of implementation is $7,891,000 (in 1995 dollars). The annual average total capital and operation and maintenance costs are estimated at $1,230,000 (in 1995 dollars) for the first three years of implementation. The annual average burden hours for the first three years of implementation are estimated at 147,560. The Agency estimated the incremental reporting burden for this collection to average 1 hour annually per response, and to require between 26 and 390 hours annually for recordkeeping per response. This includes time for conducting activities over and above the requirements of part 70 such as an accounting of the number, duration and cause of monitor downtime incidents and exceedances, a reporting of corrective actions, and keeping records of data used to document the adequacy of monitoring. Note that the average burden hours and costs represent those estimated for the first three years of the rule's implementation during which a relatively small percentage of the affected pollutant-specific emission units will be subject to part 64 requirements. More units will be affected per year in the six to eight years following the rule's publication and the reporting and recordkeeping burden will also increase. See the RIA for more discussion of the costs associated with years beyond the first three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested within November 21, 1997. Include the ICR number in any correspondence.

E. Regulatory Flexibility Act

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. A screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific monitoring and certification provisions. For small governmental entities that may own or operate affected sources, EPA determined that the most likely small government and organization sources affected by the rule are municipal power plants and hospitals. After analysis, EPA determined that, given the relatively low numbers of impacted sources(140 small government utilities and 70 small organizations (hospitals)), the low percentage of impacted sources out of the total number of similar sources (11—18 percent of small government utilities and 3 percent of hospitals), and the low cost impacts associated with CAM (assumed similar to the cost impact on small business as discussed below), there will not be a significant impact upon a substantial number of small governments and organizations. See Section V of the Regulatory Impact Analysis included in the docket. Nevertheless, in developing the rule, EPA did provide numerous opportunities for consultation with interested parties, including State, local, and tribal governments, at public conferences and meetings. The EPA evaluated the comments and concerns expressed, and the rule reflects, to the extent consistent with the Act, those comments and concerns. Most importantly, the Agency received comments from approximately 80 representatives of municipally-owned electric utilities that suggested exemptions for small municipal utility

units. In response, the rule includes an exemption for certain municipally-owned electric utility units that could be affected by the rule. These procedures ensured State and local governments an opportunity to give meaningful and timely input and obtain information, education and advice on compliance.

EPA estimates 4,957 small firms nationwide could be affected by CAM. A total of 40 affected small firms within this group could have a potential impact over one percent of average annual revenues. The ratio is 0.0087, or less than one percent, which represents the percent of small affected firms that may experience greater than a 1 percent (but less than a 3 percent) increase in costs due to CAM. EPA believes that these estimates of the number of firms affected and the level of cost impact are overstated due to several conservative assumptions in the analysis. These assumptions are described in Chapter 5 of the Regulatory Impact Analysis. Given the conservativeness of this assessment and the fact that 99 percent of the affected small businesses are expected to have impacts of less than 1 percent and no small business is likely to experience costs exceeding 3 percent, the EPA concludes that CAM will not have a significant economic impact on a substantial number of small businesses. In addition, EPA also notes that the use of general permits under title V and assistance through the small business assistance program provisions of title V will assist in reducing the impacts of the part 64 requirements on small businesses.

Accordingly, considering all of the above information, EPA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by U.S.C. 804(2).

List of Subjects

40 CFR Part 64

Environmental protection, Air pollution control, Monitoring, Operating permits, Reporting and recordkeeping requirements.

40 CFR Part 70

Air pollution control, Monitoring, Operating permits, Reporting and recordkeeping requirements.

40 CFR Part 71

Air pollution control, Monitoring, Operating permits, Reporting and recordkeeping requirements.

Dated: October 3, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. Part 64 is added to read as follows:

PART 64—COMPLIANCE ASSURANCE MONITORING

Sec.

64.1 Definitions.
64.2 Applicability.
64.3 Monitoring design criteria.
64.4 Submittal requirements.
64.5 Deadlines for submittals.
64.6 Approval of monitoring.
64.7 Operation of approved monitoring.
64.8 Quality improvement plan (QIP) requirements.
64.9 Reporting and recordkeeping requirements.
64.10 Savings provisions.

Authority: 42 U.S.C. 7414 and 7661–7661f.

§ 64.1 Definitions.

The following definitions apply to this part. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable provisions of the Act.

Act means the Clean Air Act, as amended by Pub.L. 101–549, 42 U.S.C. 7401, *et seq.*

Applicable requirement shall have the same meaning as provided under part 70 of this chapter.

Capture system means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

Continuous compliance determination method means a method, specified by the applicable standard or an applicable permit condition, which:

(1) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(2) Provides data either in units of the standard or correlated directly with the compliance limit.

Control device means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of this part, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of this part.

Data means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

Emission limitation or standard means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of this part, an emission limitation or standard shall not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

Emissions unit shall have the same meaning as provided under part 70 of this chapter.

Exceedance shall mean a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

Excursion shall mean a departure from an indicator range established for monitoring under this part, consistent with any averaging period specified for averaging the results of the monitoring.

Inherent process equipment means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this part, inherent process equipment is not considered a control device.

Major source shall have the same meaning as provided under part 70 or 71 of this chapter.

Monitoring means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). The conduct of compliance method tests, such as the procedures in appendix A to part 60 of this chapter, on a routine periodic basis may be considered monitoring (or as a supplement to other monitoring), provided that requirements to conduct such tests on a one-time basis or at such times as a regulatory authority may require on a non-regular basis are not considered monitoring requirements for purposes of this paragraph. Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

(1) Continuous emission or opacity monitoring systems.

(2) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(3) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(4) Maintenance and analysis of records of fuel or raw materials usage.

(5) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(6) Verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(7) Visible emission observations.

(8) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Part 70 or 71 permit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall also refer to a permit issued, renewed, amended, revised, or modified under any federal permit program promulgated under title V of the Act.

Part 70 or 71 permit application shall mean an application (including any supplement to a previously submitted application) that is submitted by the owner or operator in order to obtain a part 70 or 71 permit.

Permitting authority shall have the same meaning as provided under part 70 or 71 of this chapter.

Pollutant-specific emissions unit means an emissions unit considered separately with respect to each regulated air pollutant.

Potential to emit shall have the same meaning as provided under part 70 or 71 of this chapter, provided that it shall be applied with respect to an "emissions unit" as defined under this part in addition to a "stationary source" as provided under part 70 or 71 of this chapter.

Predictive emission monitoring system (PEMS) means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

Regulated air pollutant shall have the same meaning as provided under part 70 or 71 of this chapter.

§ 64.2 Applicability.

(a) *General applicability.* Except for backup utility units that are exempt under paragraph (b)(2) of this section, the requirements of this part shall apply to a pollutant-specific emissions unit at a major source that is required to obtain a part 70 or 71 permit if the unit satisfies all of the following criteria:

(1) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under paragraph (b)(1) of this section;

(2) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(3) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this paragraph, "potential pre-control device emissions" shall have the same meaning as "potential to emit," as defined in § 64.1, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) *Exemptions—.* (1) *Exempt emission limitations or standards.* The requirements of this part shall not apply to any of the following emission limitations or standards:

(i) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act.

(ii) Stratospheric ozone protection requirements under title VI of the Act.

(iii) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act.

(iv) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources.

(v) An emissions cap that meets the requirements specified in § 70.4(b)(12) or § 71.6(a)(13)(iii) of this chapter.

(vi) Emission limitations or standards for which a part 70 or 71 permit specifies a continuous compliance determination method, as defined in § 64.1. The exemption provided in this paragraph (b)(1)(vi) shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, this part would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).

(2) *Exemption for backup utility power emissions units.* The requirements of this part shall not apply to a utility unit, as defined in § 72.2 of this chapter, that is municipally-owned if the owner or operator provides documentation in a part 70 or 71 permit application that:

(i) The utility unit is exempt from all monitoring requirements in part 75 (including the appendices thereto) of this chapter;

(ii) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the part 70 or 71 permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(iii) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

§ 64.3 Monitoring design criteria.

(a) *General criteria.* To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring under this part shall meet the following general criteria:

(1) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy paragraph (a)(2) of this section, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.

(2) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges shall be established in accordance with the design and performance requirements in this section and documented in accordance with the requirements in § 64.4. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.

(3) The design of indicator ranges or designated conditions may be:

(i) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or at multiple levels that are relevant to distinctly different operating conditions (e.g., high versus low load levels).

(ii) Expressed as a function of process variables (e.g., an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber).

(iii) Expressed as maintaining the applicable parameter in a particular operational status or designated condition (e.g., position of a damper controlling gas flow to the atmosphere through a by-pass duct).

(iv) Established as interdependent between more than one indicator.

(b) *Performance criteria.* The owner or operator shall design the monitoring to meet the following performance criteria:

(1) Specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable).

(2) For new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under this part as specified in § 64.7(a). The owner or operator shall consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation.

(3) Quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator shall consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices.

(4) Specifications for the frequency of conducting the monitoring, the data collection procedures that will be used (e.g., computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred.

(i) At a minimum, the owner or operator shall design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such intervals shall be commensurate with the time period over which a change in control device performance that would require actions by owner or operator to return operations within normal ranges or designated conditions is likely to be observed.

(ii) For all pollutant-specific emissions units with the potential to emit, calculated *including* the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator shall collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with paragraph (b)(4)(i) of this section. The permitting authority may approve a reduced data collection frequency, if appropriate, based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular pollutant-specific emissions unit (e.g., integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor).

(iii) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in paragraph (b)(4)(ii) of this section but the monitoring shall include some data collection at least once per 24-hour period (e.g., a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).

(c) *Evaluation factors.* In designing monitoring to meet the requirements in paragraphs (a) and (b) of this section, the owner or operator shall take into account site-specific factors including the applicability of existing monitoring equipment and procedures, the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

(d) *Special criteria for the use of continuous emission, opacity or predictive monitoring systems.* (1) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of this part.

(2) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in paragraphs (a) and (b) of this section, provided that a COMS may be subject to the criteria for establishing indicator ranges under paragraph (a) of this section:

(i) Section 51.214 and appendix P of part 51 of this chapter;

(ii) Section 60.13 and appendix B of part 60 of this chapter;

(iii) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of part 63 of this chapter;

(iv) Part 75 of this chapter;

(v) Subpart H and appendix IX of part 266 of this chapter; or

(vi) If an applicable requirement does not otherwise require compliance with the requirements listed in the preceding paragraphs (d)(2)(i) through (v) of this section, comparable requirements and specifications established by the permitting authority.

(3) The owner or operator shall design the monitoring system subject to this paragraph (d) to:

(i) Allow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in (b)(4) of this section shall apply; and

(ii) Provide an indicator range consistent with paragraph (a) of this section for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in paragraph (a) of this section after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

§ 64.4 Submittal requirements.

(a) The owner or operator shall submit to the permitting authority monitoring that satisfies the design requirements in § 64.3. The submission shall include the following information:

(1) The indicators to be monitored to satisfy §§ 64.3(a)(1)–(2);

(2) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions shall be established;

(3) The performance criteria for the monitoring to satisfy § 64.3(b); and

(4) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to § 64.3(d).

(b) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy § 64.3(b)(2) or (3) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or permitting authority publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the assumption. Presumptively acceptable monitoring includes:

(1) Presumptively acceptable or required monitoring approaches, established by the permitting authority in a rule that constitutes part of the applicable implementation plan required pursuant to title I of the Act, that are designed to achieve compliance with this part for particular pollutant-specific emissions units;

(2) Continuous emission, opacity or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications as specified in § 64.3(d);

(3) Excepted or alternative monitoring methods allowed or approved pursuant to part 75 of this chapter;

(4) Monitoring included for standards exempt from this part pursuant to § 64.2(b)(1)(i) or (vi) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit; and

(5) Presumptively acceptable monitoring identified in guidance by EPA. Such guidance will address the requirements under §§ 64.4(a), (b), and (c) to the extent practicable.

(c)(1) Except as provided in paragraph (d) of this section, the owner or operator shall submit control device (and process

and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally shall be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented, if desired, by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions.

(2) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant change in the control system performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests were conducted.

(d) If existing data from unit-specific compliance or performance testing specified in paragraph (c) of this section are not available, the owner or operator:

(1) Shall submit a test plan and schedule for obtaining such data in accordance with paragraph (e) of this section; or

(2) May submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, provided that the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in § 64.3(a).

(e) If the monitoring submitted by the owner or operator requires installation, testing, or other necessary activities prior to use of the monitoring for purposes of this part, the owner or operator shall include an implementation plan and schedule for installing, testing and performing any other appropriate activities prior to use of the monitoring. The implementation plan and schedule shall provide for use of the monitoring as expeditiously as practicable after approval of the monitoring in the part 70 or 71 permit pursuant to § 64.6, but in no case shall the schedule for completing installation and beginning operation of the monitoring exceed 180 days after approval of the permit.

(f) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit separate monitoring for each pollutant-specific emissions unit.

(g) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with § 64.3(a) rather than submit a separate description of monitoring for each control device.

§ 64.5 Deadlines for submittals.

(a) *Large pollutant-specific emissions units.* For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in § 64.1) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under § 64.4 at the following times:

(1) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial part 70 or 71 permit if, by that date, the application either:

(i) Has not been filed; or

(ii) Has not yet been determined to be complete by the permitting authority.

(2) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under part 70 or 71 of this chapter, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(3) The owner or operator shall submit any information not submitted under the deadlines set forth in paragraphs (a)(1) and (2) of this section as part of the application for the renewal of a part 70 or 71 permit.

(b) *Other pollutant-specific emissions units.* For all other pollutant-specific emissions units subject to this part and not subject to § 64.5(a), the owner or operator shall submit the information required under § 64.4 as part of an application for a renewal of a part 70 or 71 permit.

(c) The effective date for the requirement to submit information under § 64.4 shall be as specified pursuant to paragraphs (a)–(b) of this section and a permit reopening to require the submittal of information under this section shall not be required pursuant to § 70.7(f)(1)(i) of this chapter, provided, however, that, if a part 70 or 71 permit is reopened for cause by EPA or the permitting authority pursuant to § 70.7(f)(1)(iii) or (iv), or § 71.7(f) or (g), the applicable agency may require the submittal of information under this section for those pollutant-specific emissions units that are subject to this part and that are affected by the permit reopening.

(d) Prior to approval of monitoring that satisfies this part, the owner or operator is subject to the requirements of § 70.6(a)(3)(i)(B).

§ 64.6 Approval of monitoring.

(a) Based on an application that includes the information submitted in accordance with § 64.5, the permitting authority shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in § 64.3.

(b) In approving monitoring under this section, the permitting authority may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the monitoring to provide data that are sufficient to satisfy the requirements of this part and to confirm the appropriateness of an indicator range(s) or designated condition(s) proposed to satisfy § 64.3(a)(2) and (3) and consistent with the schedule in § 64.4(e).

(c) If the permitting authority approves the proposed monitoring, the permitting authority shall establish one or more permit terms or conditions that specify the required monitoring in accordance with § 70.6(a)(3)(i) of this chapter. At a minimum, the permit shall specify:

(1) The approved monitoring approach that includes all of the following:

(i) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(ii) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(iii) The performance requirements established to satisfy § 64.3(b) or (d), as applicable.

(2) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under §§ 64.7 and 64.8 of this part. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the permitting authority upon any establishment or reestablishment of the value.

(3) The obligation to conduct the monitoring and fulfill the other obligations specified in §§ 64.7 through 64.9 of this part.

(4) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(d) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the part 70 or 71 permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in § 64.4(e).

(e) If the permitting authority disapproves the proposed monitoring, the following applies:

(1) The draft or final permit shall include, at a minimum, monitoring that satisfies the requirements of § 70.6(a)(3)(i)(B);

(2) The permitting authority shall include in the draft or final permit a compliance schedule for the source owner to submit monitoring that satisfies §§ 64.3 and 64.4, but in no case shall the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and

(3) If the source owner or operator does not submit the monitoring in accordance with the compliance schedule as required in paragraph (e)(2) of this section or if the permitting authority disapproves the monitoring submitted, the source owner or operator shall be deemed not in compliance with part 64, unless the source owner or operator successfully challenges the disapproval.

§ 64.7 Operation of approved monitoring.

(a) *Commencement of operation.* The owner or operator shall conduct the monitoring required under this part upon issuance of a part 70 or 71 permit that includes such monitoring, or by such later date specified in the permit pursuant to § 64.6(d).

(b) *Proper maintenance.* At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) *Continued operation.* Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this part, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(d) *Response to excursions or exceedances.* (1) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(2) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(e) *Documentation of need for improved monitoring.* After approval of monitoring under this part, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the permitting authority and, if necessary, submit a proposed modification to the part 70 or 71 permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

§ 64.8 Quality improvement plan (QIP) requirements.

(a) Based on the results of a determination made under § 64.7(d)(2), the Administrator or the permitting authority may require the owner or operator to develop and implement a QIP. Consistent with § 64.6(c)(3), the part 70 or 71 permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(b) Elements of a QIP:

(1) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(2) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for conducting one or more of the following actions, as appropriate:

(i) Improved preventive maintenance practices.

(ii) Process operation changes.

(iii) Appropriate improvements to control methods.

(iv) Other steps appropriate to correct control performance.

(v) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (b)(2)(i) through (iv) of this section).

(c) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the permitting authority if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(d) Following implementation of a QIP, upon any subsequent determination pursuant to § 64.7(d)(2) the Administrator or the permitting authority may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(1) Failed to address the cause of the control device performance problems; or

(2) Failed to provide adequate procedures for correcting control device performance problems as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(e) Implementation of a QIP shall not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act.

§ 64.9 Reporting and recordkeeping requirements.

(a) *General reporting requirements.* (1) On and after the date specified in § 64.7(a) by which the owner or operator must use monitoring that meets the requirements of this part, the owner or operator shall submit monitoring reports to the permitting authority in accordance with § 70.6(a)(3)(iii) of this chapter.

(2) A report for monitoring under this part shall include, at a minimum, the information required under § 70.6(a)(3)(iii) of this chapter and the following information, as applicable:

(i) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

(ii) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

(iii) A description of the actions taken to implement a QIP during the reporting period as specified in § 64.8. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

(b) *General recordkeeping requirements.* (1) The owner or operator shall comply with the recordkeeping requirements specified in § 70.6(a)(3)(ii) of this chapter. The owner or operator shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan required pursuant to § 64.8 and any activities undertaken to implement a quality improvement plan, and other supporting information required to be maintained under this part (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

(2) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, provided that the use of such alternative media allows for expeditious inspection and review, and does not conflict with other applicable recordkeeping requirements.

§ 64.10 Savings provisions.

(a) Nothing in this part shall:

(1) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. The requirements of this part shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. The purpose of this part is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part.

(2) Restrict or abrogate the authority of the Administrator or the permitting authority to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the Act, including but not limited to sections 114(a)(1) and 504(b), or state law, as applicable.

(3) Restrict or abrogate the authority of the Administrator or permitting authority to take any enforcement action under the Act for any violation of an applicable requirement or of any person to take action under section 304 of the Act.

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 70.6 is amended by revising paragraphs (a)(3)(i)(A) and (c)(5)(iii) and (c)(5)(iv), and by removing (c)(5)(v) to read as follows:

§ 70.6 Permit content.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

* * * * *

(c) * * *

(5) * * *

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

(D) Such other facts as the permitting authority may require to determine the compliance status of the source.

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

* * * * *

PART 71—FEDERAL OPERATING PERMITS PROGRAMS

1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 71.6 is amended by revising paragraphs (a)(3)(i)(A), (a)(3)(iii)(C), (c)(5)(iii) and (c)(5)(iv), and by removing (c)(5)(v) to read as follows:

§ 71.6 Permit content.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

* * * * *

(iii) * * *

(C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A deviation can be determined by observation or through review of data obtained from any testing, monitoring, or recordkeeping established in accordance with paragraphs (a)(3)(i) and (a)(3)(ii) of this section. For a situation lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(*1*) A situation where emissions exceed an emission limitation or standard;

(*2*) A situation where process or emissions control device parameter values indicate that an emission limitation or standard has not been met;

(*3*) A situation in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit;

(*4*) A situation in which an exceedance or an excursion, as defined in part 64 of this chapter, occurs.

* * * * *

(c) * * *

(5) * * *

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

(D) Such other facts as the permitting authority may require to determine the compliance status of the source.

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

* * * * *

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Part III

Environmental Protection Agency

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH–FRL–5912–3]

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed modification of NPDES general permits; notice of interpretation.

SUMMARY: Today's action proposes clarification of an interpretation of the technology-based effluent limitations applicable to point sources of "mine drainage" at ore mining and dressing operations, which was contained in a recently-issued NPDES general permit for storm water associated with industrial activity. With this notice, EPA intends to provide a more definitive interpretation of the applicability of those recently-issued general permits, specifically, as they apply to certain storm water discharges at ore mining and dressing operations. To incorporate today's proposed interpretation, EPA only proposes to modify the NPDES general permits issued by EPA Regions 1, 6, 9 and 10 because the Agency does not anticipate that the mining-related storm water discharges at issue occur in the other States where EPA is the NPDES permit issuance authority. The Agency, however, would take final action to modify the general permits applicable in the other States where EPA issues permits if public comments demonstrate the need to do so.

DATES: Comments on today's proposed interpretation and proposed modification must be received or post-marked by midnight no later than December 8, 1997.

ADDRESSES: Send written comments to: W–97–13, Comment Clerk, Water Docket (MC–4101), U.S. EPA, 401 M Street, SW, Washington, DC 20460. Please submit the original and three copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–97–13. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for this action has been established under docket number W–97–13, and includes supporting documentation as well as printed paper versions of elctronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, Room M2616, U.S. EPA, 401 M Street SW, Washington, DC 20460. For access to docket materials, please call 202–260–3027 to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information, contact Gary Hudiburgh, Office of Wastewater Management, Office of Water at (202) 260–4926 or the appropriate EPA Regional Office. For EPA Region 1, covering discharges in the State of Maine and Federal Indian reservations in Maine, in the Commonwealth of Massachusetts and Federal Indian reservations in Massachusetts, in the State of New Hampshire and Federal Indian reservations in New Hampshire, as well as Federal Indian reservations in the States of Vermont, Connecticut, and Rhode Island, and Federal facilities in Vermont, contact Thelma Hamilton at (617) 565–3569. For EPA Region 6, covering discharges in the State of Texas and Federal Indian reservations in Texas, in the State of New Mexico and Federal Indian reservations in New Mexico (except Navajo Reservation lands, which are covered by EPA Region 9 and Ute Reservation lands, which are covered by EPA Region 8 and were not covered by the Multi-Sector General Permit), as well as Federal Indian reservations in Oklahoma and Louisiana, contact Fred Humke at (214) 665–7503. For EPA Region 9, covering the State of Arizona and Federal Indian reservations in Arizona, and Federal Indian reservations in California and Nevada, as well as the Duck Valley, Fort McDermitt, Goshute Reservations and Navajo Reservations, each of which cross State boundaries, contact Eugene Bromley at (415) 744–1906. For EPA Region 10, covering the State of Alaska and Federal Indian reservations in Alaska, the State of Idaho and Federal Indian reservations in Idaho (except the Duck Valley Reservation, which is covered by EPA Region 9), Federal Indian reservations in Washington and Oregon (except the Fort McDermitt Reservation, which is covered by EPA Region 9), as well as Federal facilities in Washington, contact Steven Bubnick at (206) 553–5171.

SUPPLEMENTARY INFORMATION:

Authority

EPA issues NPDES permits under the authority of CWA section 402, 33 U.S.C. section 1342. Today's proposed modification would be based on an interpretation of rules published under the authority of CWA sections 301, 304, and 501(a), 33 U.S.C. sections 1311, 1314, and 1361(a). Today's action would modify a table that was initially published in conjunction with NPDES permits for storm water associated with industrial activity issued pursuant to CWA section 402, 33 U.S.C. section 1342.

In today's notice, EPA announces and invites public comment on its interpretation of the technology-based effluent limitations applicable to point sources of "mine drainage" at ore mining and dressing operations under the Clean Water Act ("CWA"). 33 U.S.C. 1251 *et seq.* This interpretation updates and replaces an earlier interpretation published in the fact sheet for the final National Pollutant Discharge Elimination System ("NPDES") Storm Water Multi-Sector General Permit for Industrial Activities at 60 FR 50804 (Sept. 29, 1995)("Multi-Sector Permit"). The interpretation in today's notice supplements EPA's interpretation in Table G–4 of the Multi-Sector Permit regarding the applicability of the "mine drainage" provisions of regulations found at 40 CFR part 440. 60 FR at 50897.

EPA has reviewed the administrative record supporting the Part 440 regulations, as well as Agency statements made during the course of litigation over those regulations, and is revising Table G–4 accordingly. In litigation challenging the Multi-Sector Permit, *National Mining Association* v. *EPA*, No. 95–3519 (8th Cir.), the National Mining Association (NMA) has argued that the regulatory interpretation contained in Table G–4 was overly expansive and not supported by appropriate economic and technological evaluation. To support its argument, NMA cited Agency statements made during the course of litigation approximately twenty years earlier. These statements were not raised and presented to the Agency during the public comment period of the permit. In response to NMA's arguments in the current litigation, EPA has re-evaluated the underlying record supporting the Part 440 regulations and is supplementing its interpretation of the "mine drainage" provisions contained in Table G–4. Today's action supersedes the Agency interpretation contained in the Fact Sheet to the Multi-Sector Permit, as original issued.

Upon review of those documents, the Agency believes the documents (including judicial caselaw) speak for themselves. Therefore, the Agency is proposing to withdraw portions of the Table that discuss applicability of the part 440 regulations—i.e., those portions of the Table that do not specify applicability of the Multi-Sector permit. By today's action, EPA also proposes a slight expansion of the applicability of the Multi-Sector permit (consistent with the interpretation in today's notice) and, therefore, invites public comment.

The interpretation in today's notice provides clarification regarding the scope of the effluent guidelines initially promulgated in 1978. As explained more fully below, however, the Agency's communication of its 1978 intention was not fully clarified through publication in the **Federal Register** or other readily available documents. In addition to 1978 preamble statements in the **Federal Register** explaining the scope of the effluent guidelines, the Agency prepared other documents explaining the guideline's scope that were not published in the **Federal Register**. These other documents (including parts of the administrative record, the denial of an administrative petition for reconsideration, the Agency's litigation brief, and a guidance document for permit writers) contain statements about the applicability of the guidelines that NMA argued were inconsistent with Table G–4. Today's notice proposes to modify Table G–4 consistent with those statements and now would only address applicability of the Multi-Sector Permits.

I. Effluent Guidelines for Ore Dressing and Mining Point Source Category

A. Background

Congress enacted the Clean Water Act to establish a comprehensive program to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" through the reduction, and eventual elimination, of the discharge of pollutants into those waters. CWA Section 101(a); 33 U.S.C. 1251(a). To achieve its objective, the CWA provides for a permit program to control "point source" pollution. The CWA point source permitting program is known as the National Pollutant Discharge Elimination System ("NPDES"), under which EPA or authorized States issue permits for point source discharges. Except in accordance with an NPDES permit, a point source discharge of a pollutant is unlawful. CWA Section 301(a); 33 U.S.C. 1311(a). All NPDES permits must, at a minimum, contain technology-based effluent limitations established in effluent guidelines or standards or, if no such guidelines have been established, limitations derived on the basis of best professional judgment.

Individual NPDES permits contain substantive restrictions, called "effluent limitations," which are aimed at controlling the level of pollutants in point source discharges. CWA 402(a); 33 U.S.C. 1342(a). Effluent limitations may be "technology-based" or "water quality-based."[1] For some industrial point source categories, EPA has published technology-based effluent limitations that apply on a nationwide basis, pursuant to CWA Sections 304(b) and 306(b)(1)(B); 33 U.S.C. 1314(b) and 1316(b)(1)(B).[2] These limitations are called national effluent limitations guidelines or standards. EPA has published best practicable control technology currently available ("BPT"), best conventional pollutant control technology ("BCT"), best available technology economically achievable ("BAT") effluent guidelines, and new source performance standards ("NSPS") for point sources in over fifty different industrial categories. Among the effluent guidelines and standards which EPA has established are those applicable to the ore mining and dressing industry. These guidelines are known as the "Effluent Guidelines for the Ore Mining and Dressing Point Source Category" (hereinafter referred to as the "Guidelines"). The Guidelines are published at 40 CFR part 440.

EPA first published the Guidelines on an interim final basis on November 6, 1975. 40 FR 51722. On July 11, 1978, after substantially expanding the data base supporting the Guidelines, and after considering comments submitted since initial promulgation, EPA republished the Guidelines in modified form. 43 FR 29771 (July 11, 1978). Both the initial and republished Guidelines established BPT effluent limitations for discharges for ore mining and dressing operations.

[1] Water quality based effluent limitations are included in permits when necessary to assure compliance with water quality standards.

[2] If no such guidelines have been established, technology-based limits are developed on a case-by-case basis based on the best professional judgment of the permit writer.

B. Storm Water Regulation Under the Guidelines[3]

The Guidelines establish industry-wide effluent limitations for two types of mine discharges: (1) Mill discharges and (2) mine drainage. "Mine drainage" means "any water drained, pumped, or siphoned from a mine." 40 CFR 440.132(h). A "mine," in turn, is defined as:

an active mining area, including all land and property placed under, or above the surface of such land, used in or resulting from the work of extracting metal ore or minerals from their natural deposits by any means or method, including secondary recovery of metal ore from refuse or other storage piles, wastes, or rock dumps and mine tailings derived from the mining, cleaning, or concentration of metal ores.

40 CFR 440.132(g) (emphasis added). An "active mining area," in turn, is defined as:

a place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

40 CFR 440.132(a).

In statements in the administrative record supporting the Guidelines, EPA indicated an intent to include a broad range of discharges within the scope of the Guidelines. The 1975 Preamble to the Interim Final Guidelines expressly indicated that the Guidelines definition of the term "mine" was intended to be sufficiently broad "to cover all point source pollution resulting from all the activities related to the operation of the mine including drainage tunnels, haul roads, storage piles, etc." 40 FR 51727. Consistent with this, in the 1978 Development Document (prepared by EPA before the Guidelines were republished in 1978), EPA stated that:

A mine is an area of land upon which or under which minerals or metal ores are extracted from natural deposits in the earth by any means or methods. A mine includes the total area upon which such activities occur or where such activities disturb the natural land surface. A mine shall also include land affected by such ancillary operations which disturb the natural land surface, and any adjacent land the use of which is incidental to such activities; all lands affected by the construction of new roads or the improvements or use of existing roads to gain access to the site of such

[3] The definitions of and discussion of these terms in this notice are within the use of these terms under the NPDES program and the Clean Water Act. These definitions are not specifically applicable to the use of these terms under other federal environmental laws, including under the Resources Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* (RCRA) and its implementing regulations.

activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, drainage tunnels, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culmbanks, tailings, holes or depressions, repair areas, storage areas and other areas upon which are site structures, facilities, or other property or materials resulting from or incident to such activities.

1978 Development Document at 146.

1. Petition for Reconsideration

After EPA promulgated the Guidelines on July 11, 1978, a number of mining companies filed petitions for judicial review challenging the Guidelines. (The judicial challenges are discussed below.) During the pendency of its judicial challenge, one of those companies, Kennecott Copper Corporation ("Kennecott") filed an administrative petition with EPA (dated September 26, 1978) requesting that the Agency reconsider and clarify the Guidelines. Kennecott amended its petition on November 9, 1978. Kennecott identified five areas of alleged deficiencies and concerns with the Guidelines. One of these issues related to the storm water runoff provisions of the Guidelines.

Kennecott objected to the storm water runoff provisions, which it argued were overly vague and capable of being interpreted in a manner that would violate applicable law. Among other things, Kennecott was particularly concerned about applicability of the Guidelines to what it referred to as "non-process" areas at mining operations. Kennecott further argued that the Guidelines, if applied in the manner suggested by Kennecott, would entail exorbitant costs not considered during the rulemaking. Kennecott presented EPA with cost estimates that Kennecott believed it would have to incur to comply with the Guidelines. Kennecott estimated costs to control storm water drainage flows from what Kennecott referred to as the "process" and "non-process" areas at two Kennecott mining operations, the Ray Mine and the Chino Mine. As discussed more fully below, the Agency's decision on Kennecott's petition is at the core of the NMA litigation over the Multi-Sector Permit.

In partial response to the Kennecott petition, EPA published a notice in the **Federal Register** that clarified the scope of the Guidelines' applicability to storm water runoff. 44 FR 7953–7954 (Feb. 8, 1979). That notice of clarification explained that the Guidelines applied only to point sources in the active mining area. The Notice clarified EPA's interpretation that the "mine drainage" provisions applied to "water which contacts an active mining area and flows into a point source." *Id.* EPA further explained that mining operations are not required to "collect and contain diffuse storm [water] runoff which would not otherwise be collected in or does not otherwise drain into a point source." *Id.* at 7954. In other words, diffuse storm water (from an active mining area) that was collected or contained in, or that naturally flowed into, a point source was subject to the Guidelines. Other storm water drainage flows were not subject to the Guidelines.

EPA denied Kennecott's petition on February 21, 1979. In doing so, EPA relied in part on the notice of clarification. The decision on the reconsideration petition discussed the applicability of the Guidelines to Kennecott's Ray Mine. For storm water drainage flows from what Kennecott called "non-process" areas at the Ray Mine, EPA concluded that Kennecott would incur no additional costs. Kennecott had, for the purposes of its petition, defined "non-process" area to mean "overburden dumps, material too low in mineral content even to leach, and exposed benches at the mine." Citing to the notice of clarification, EPA concluded that the definition of "mine drainage" did not include diffuse storm water runoff from overburden dumps and material too low in mineral content to leach. As that notice of clarification explained, "[a]ll water which contacts an 'active mining area * * *' and either does not flow, or is not channeled by the operator, to a point source, is considered runoff, and it is not the regulations' intent to require the mine operator to collect and treat such runoff." 44 FR at 7954. On the matter of storm water contacting the exposed benches, EPA could not determine whether such discharges would constitute point source discharges and thus, concluded that the issue would best be addressed by the permitting authority in the context of a permit proceeding.

After comprehensive review of these documents, there are several matters that are clear. EPA did not grant any portion of Kennecott's petition for reconsideration. In fact, EPA denied the petition and in so doing the Agency rejected Kennecott's cost estimates for what Kennecott called "non-process" areas because, based on the Ray Mine data submitted by Kennecott, EPA found that the Ray Mine would incur no costs with respect to runoff from those areas. Therefore, the Agency did not adopt or incorporate Kennecott's proposed distinction between "process" and "non-process" areas at mine sites. This conclusion alone, however, does not fully resolve all possible questions about applicability of the guidelines.

In responding to the portions of Kennecott's petition related to the Ray Mine, the Agency did not explain why the diffuse storm water runoff from "overburden dumps and material which is too low [] to leach and other areas of the Ray Mine property where work or other activity related to the the [sic] extraction, removal or recovery of of [sic] metal ore is not being conducted" was not subject to the Guidelines. These Agency statements merely repeated phraseology used in Kennecott's petition. Upon review of these statements, as well as re-review of Kennecott's original administrative petition, the Agency cannot determine with certainty, for example, whether the statement means that runoff was not subject to the Guidelines (1) because it was "diffuse" (i.e., nonpoint source), (2) because the drainage was already being contained at Ray Mine, (3) because the overburden at Ray Mine was outside of Ray Mine's active mining area, (4) because no activity related to the extraction, removal or recovery of metal ore was currently (or recently) being conducted at the Ray Mine site at that time as identified by Kennecott in its petition for reconsideration. The statements certainly, however, do not indicate that water which contacts overburden dumps in active mining areas is not subject to the Guidelines nor does any other subsequent Agency statement vacillate on this question. Runoff from overburden dumps within the active mining area is mine drainage subject to Guidelines.

2. Judicial Challenge

The Guidelines rule was ultimately upheld by the U.S. Court of Appeals for the Tenth Circuit. *Kennecott Copper Corp.* v. *EPA*, 612 F.2d 1232 (10th Cir. 1979). In affirming the Guidelines, the Tenth Circuit relied on the language of the Notice of Clarification and considered moot the Petitioner's challenges to storm water runoff provisions, which were based on the argument that the Guidelines were overbroad and included "nonpoint" as well as "point sources." *Kennecott Copper Corp.*, 612 F.2d at 1242. The court further found that "* * * EPA is entirely within its authority in regulating [discharges of] storm runoff that falls within [the definition of] a 'point source.'" *Id.* at 1243. Additionally, the court reasoned that the determination of whether a particular discharge constitutes a point source is best made in the context of permit proceedings, guided by the broad definition of "point source" provided in the CWA.[4] The Court recognized that it is "unrealistic, if not altogether impossible" to provide an "absolute and unequivocal" definition of "point source" and rule of applicability, further supporting case-by-case or site-specific determinations on applicability of the Guidelines.

Congress has purposefully phrased this definition broadly. This is as it should be given its contemplated applicability to literally thousands of pollution sources. To cast such definitions in absolute, unequivocal terms would be unrealistic, if not altogether impossible. As we observed in *American Petroleum Institute*, 540 F.2d at 1032: "On the road to attainment of the no discharge objective some flexibility is needed."

612 F.2d at 1243.

The court did not say anything further in response to Kennecott's arguments complaining that the Guidelines would improperly regulate nonpoint source discharges at mine sites. The court did not rely on or cite to any other references in the administrative record before it. In response to any remaining arguments before it, the court simply noted that "careful examination of petitioner's remaining arguments has persuaded us that they are without merit." *Id.* at 1243. Thus, the court either summarily rejected Kennecott's arguments that the guidelines were vague and overbroad, or affirmatively upheld the regulations against Kennecott's challenges based on reasons explained in the decision.[5]

While, over the course of the intervening years, the federal courts have refined their interpretations of "point source," EPA's conclusions about point sources at mining operations has remained constant. In upholding the Guidelines in *Kennecott Copper Corp.*, the Tenth Circuit specifically cited to one of the seminal cases upon which courts rely for the proposition that the term "point source" should be interpreted broadly, *United States* v. *Earth Sciences, Inc.*, 599 F.2d 368 (10th Cir. 1979). 612 F.2d at 1241, 1243. In the *Earth Sciences* case, the Tenth Circuit concluded that uncollected surface runoff was a point source, specifically, groundwater seeps from under a combination of sumps, ditches, hoses, and pumps in a closed "heap leach" gold mining operation. *Earth Sciences*, 599 F.2d at 374. Therefore, the court recognized that even seemingly "uncollected runoff" from point sources were and could be regulated under the CWA and subject to the Guidelines limitations.

3. Subsequent Agency Action

Apart from the Agency statements made during the course of the *Kennecott Copper Corp.* litigation, EPA staff has not been able to locate evidence of subsequent Agency action referring to those statements. In an undated guidance package (circa early 1980's) prepared by EPA Headquarters for EPA and State NPDES permit writers, the Agency interpreted the term "active mining area" broadly to exclude only areas unaffected by mining or milling. The document also identified parts of the "active mining area" to include the excavations of deep mines and surface mines; leach areas; refuse, middling, and tailings areas; tailings ponds, holding and settling basins; and other ancillary areas to a mine or mill. Additionally, that document also explains that an "active mining area" can include mine areas where there is actually no extraction, removal, or recovery of metal ore, including where mine drainage is removed from a deep mine to protect present and future working areas, pumping out and rehabilitation of a closed mine prior to reentry, and pumping of an adjacent mine to protect present and future workings in an active mining area. This document suggests that contemporaneous Agency intent was to include certain areas, such as waste rock piles, within the scope of the active mining area.

Since that time, EPA and authorized NPDES States have issued permits to a significant number of ore mining and dressing operations. No party has ever identified or presented any of the Agency litigation statements from the *Kennecott Copper Corp.* case as evidence that the Agency does not interpret the term "mine drainage" very broadly.

A subsequent judicial case, which EPA cited in the 1990 storm water regulations, further clarifies that storm water associated with industrial activity at mining sites may result in point source discharges. See *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir. 1980); 55 FR at 47997. In that case, the court determined that whether a point source discharge was present due to rainfall causing sediment basin overflow and erosion of piles of discarded material, even without direct action by coal miners, was a question of fact. 620 F.2d at 45. The ultimate question was whether the discharge is from a "discernible, confined, discrete conveyance," whether by gravitational or non-gravitational means. *Id.* It was irrelevant that operators did not construct the conveyances, so long as those conveyances were reasonably likely to be the means by which pollutants were ultimately deposited into a navigable body of water. *Id.* Conveyances of pollution formed either as a result of natural erosion or by material means may fit the statutory definition of point source. *Id.*

II. NPDES Storm Water General Multi-Sector Permit for Industrial Activities

A. Background

In 1987, Congress amended the CWA by adding, among other things, several provisions concerning the control of point source discharges composed entirely of storm water. In the 1987 amendments, Congress directed EPA to publish permit application regulations for "discharges of storm water associated with industrial activity." CWA section 402(p)(4)(A), 33 U.S.C. 1342(p)(4)(A). On November 16, 1990, EPA published those regulations. In doing so, EPA defined "storm water" as storm water runoff, snow melt runoff, and surface runoff and drainage. It also defined "[s]torm water discharge associated with industrial activity" to mean the discharge of pollutants from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. See 40 CFR 122.26(b)(14). Included among these discharges were discharges from conveyances at mining facilities. 40 CFR 122.26(b)(14)(iii). Upon challenge, this part of the regulations was upheld by the U.S. Court of Appeals for the Ninth Circuit. *American Mining Congress* v. *EPA*, 965 F.2d 759 (9th Cir. 1992) (regulations upheld against industry challenge that the rules, among other things, imposed retroactive liability for storm water discharges from existing mine sites). The issues in that case are related to, but different from, the issues addressed in today's action. That case involved inactive mines; today's action involves active mining operations.

The NPDES regulations for storm water describe three mechanisms by which dischargers of storm water

[4] "Point source" is defined at Clean Water Act § 502(14) to mean "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. *See also* 40 CFR 122.2.

[5] In litigation over the Multi-Sector Permit, NMA now suggests that the 10th Circuit relied on the Agency statements concerning the status of storm water drainage flows at the Ray Mine to uphold the Guidelines and that the Agency cannot now conclude that the court independently found the storm water runoff provisions of the Guidelines acceptable. EPA disagrees. The court's decision never cites or discusses any of these statements.

associated with industrial activity could apply for permits. 40 CFR 122.26(c)(1). First, dischargers can apply for "individual permits." Second (prior to 1992), dischargers could apply for permits through a "group application." Third, dischargers can apply for coverage under an "EPA promulgated storm water general permit." Dischargers from numerous industries applied for permits through the group application process. Among them were dischargers from the ore mining and dressing industry.

On March 10, 1993, EPA accepted group applications from ore mining and dressing industry applicants and began processing those group applications. On November 19, 1993, EPA proposed to issue a single "general" permit (for each State where EPA issues permits) based on all of the group applications accepted and received from group applicants in various covered industries. 58 FR 61146, 61236–61251 (November 19, 1993). EPA issued that set of general permits on September 29, 1995, and took subsequent action concerning these general permits on February 9, 1996, February 20, 1996 and September 24, 1996. These general permits are entitled the NPDES Storm Water Multi-Sector General Permits for Industrial Activities (hereinafter referred to in the singular as the "Multi-Sector Permit"). The Multi-Sector Permit applies in most States, Territories, and Indian Country where EPA administers the NPDES permitting program.

The Multi-Sector Permit contains requirements that are specifically tailored to the types of industrial activity occurring at facilities represented by various industry groups applicants. Unlike much of the Ore Mining and Dressing Guidelines, the Multi-Sector Permit incorporates narrative effluent limitations for storm water discharges. These narrative effluent limitations are referred to as "best management practices" ("BMPs"). BMPs are designed to represent the pollution reductions achievable through application of BAT and BCT. Permits include BMPs to control or abate the discharge of pollutants when, for example, numeric effluent limitations are infeasible. 40 CFR 122.44(k).

B. Multi-Sector Permit Coverage of Mining Activity

By its terms, the Multi-Sector Permit provides authorization for some storm water discharges from ore (metal) mining and dressing facilities. Authorization is limited, however, to storm water discharges from or off of: topsoil piles; offsite haul/access roads outside the active mining area; onsite haul roads if not constructed of waste rock or spent ore (except if mine drainage is used for dust control); runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; concentration buildings, if no contact with material piles; mill sites, if no contact with material piles; chemical storage areas; docking facilities, if no excessive contact with waste product; explosive storage areas; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds.

The Multi-Sector Permit covers discharges composed of entirely storm water flows, as well as certain allowable non-storm water discharges. 60 FR at 51114; Part III.A. The Multi-Sector Permit does not authorize point source dry weather discharges, such as from mine adits, tunnels, or contaminated springs or seeps, which are not storm water. *Id.*; Part III.A.2.a.; 60 FR at 51155. Note that such dry weather discharges are not affected by today's clarification.

Under the Multi-Sector Permit at Part I.B.3.g., permit coverage is available for storm water discharges covered by some, but not all, of the various effluent guidelines that address storm water, including, for example, some of the storm water discharges under the Mineral Mining and Processing Guidelines at 40 CFR part 436. 60 FR at 51112. The Multi-Sector Permit does not, however, cover storm water discharges from point sources that are subject to the Ore Mining and Dressing Guidelines. 60 FR at 51155; Part XI.G.1.a.

Table G–4 of the Multi-Sector Permit, entitled "Applicability of 40 CFR Part 440 Effluent Limitations Guidelines to Storm Water," identifies various discharge sources associated with ore mining and dressing operations. The Table then indicated EPA's view concerning standards of regulatory control for those discharges. The different standards of regulatory control include: "mine drainage" effluent limitations guidelines, found in the Guidelines; "mill discharge process water" effluent limitations guidelines, also found in the Guidelines; "storm water," which could, for example, be found in the Multi-Sector Permit; and "unclassified," indicating discharges not regulated under the Guidelines or the Multi-Sector Permit.

As EPA said in adopting the Multi-Sector Permit: "Table G–4 clarifies the applicability of the Effluent Limitations Guidelines found in 40 CFR part 440. *This Table does not expand or redefine these Effluent Limitations Guidelines.*" 60 FR at 50897 (emphasis added). EPAs intent in publishing Table G–4, therefore, was merely to reiterate the interpretation that EPA issued when it promulgated the Guidelines.

III. Legal Challenge Concerning Table G–4

On October 10, 1995, the National Mining Association (hereinafter referred to as "NMA" or the "Petitioners") petitioned the U.S. Court of Appeals for the Eighth Circuit for judicial review of the Multi-Sector Permit. Specifically, Petitioners challenged EPAs determination that storm water runoff from a number of ancillary mine sources identified in Table G–4 of the Multi-Sector Permit would constitute sources of "mine drainage" under the Guidelines. The particular mining activities of concern include overburden piles, haul roads made of overburden and other ancillary mine areas that fall within the Guidelines definition of "mine drainage," or drainage from the active "mining area." As noted above, EPA excluded storm water runoff from these sources from coverage under the Multi-Sector Permit. The Petitioners contended that this determination reflects a new, more expansive interpretation of the Guidelines.

NMA presented documents from the prior *Kennecott* litigation, namely: EPAs 1979 decision responding to Kennecott's petition for reconsideration of the Guidelines; a letter of EPA counsel which was attached to a decision responding to the Kennecott petition for reconsideration of the Guidelines; and a brief that EPA filed before the Tenth Circuit. NMA cited these documents to support its argument that EPA's interpretation prior to publishing the Multi-Sector Permit was that "overburden" ("waste rock/overburden piles") would be outside the scope of the Guidelines. NMA asserted that certain entries in Table G–4 were incorrect to the extent that the table categorically identified discharges from overburden-related sources as covered by the Guidelines. NMA argued that, based on EPA statements made during the course of the *Kennecott* litigation, *no* overburden-related areas are covered by the Guidelines.

EPA has reviewed the Agency statements made during the 1979 litigation challenging the Guidelines rulemaking. While disagreeing with NMAs categorical conclusion that no overburden-related areas are covered by the Guidelines, EPA believes the earlier Agency statements reflect an EPA interpretation that storm water discharges from "waste rock/overburden piles" would be subject to the Guidelines only if the "waste rock/overburden piles" are within the "active mining area" and the resulting storm water flows drain into a point source. This may include, but would not be limited to, such flows that combine with either process waters (i.e., mill drainage) or other mine drainage. This clarification was not obvious from the face of Table G–4 as presented in the Multi-Sector Permit.

NMAs challenge to the Multi-Sector Permit is currently under the advisement of the Eighth Circuit. Both parties have submitted briefs. A coalition of citizens interest groups, the Western Mining Action Project and Sierra Club Legal Defense Fund, also filed an *amicus curiae* brief with the Court. On March 10, 1997, the Eighth Circuit heard oral argument in *National Mining Association* v. *EPA*, No. 95–3519. At that time, counsel for EPA represented to the court that EPA intended to prepare a clarification of the Agencys interpretation of the technology-based effluent limitations applicable to point source discharges from various areas at ore mining and dressing operations. Todays notice provides that clarification and would revise the Table so that it reflects only sources to which the Permit would apply.

IV. Interpretation

Upon fuller review of the underlying record, EPA now believes that, in 1978–79, the Agency did not consider certain point source discharges of storm water associated with "waste rock and overburden" to be subject to the Ore Mining and Dressing Guidelines. Specifically, EPA did not conduct a complete economic and technological assessment of diverting drainage flows from "waste rock or overburden" outside the active mining area into the active mining area. Therefore, the Agency did not consider such discharges to be sources of mine drainage. First, discharges from "waste rock/overburden piles" would be outside the scope of the Guidelines if they consist "entirely of diffuse runoff which contacts overburden piles, which did not either normally flow to, or by design drain to a point source." Such diffuse runoff would not even be subject to the NPDES permit program if it was not added to waters of the United States through a discrete, confined, discernable conveyance. *See* 44 FR 7953 (Feb. 8, 1979). Second, such discharges would be outside the scope of the Guidelines if storm water runoff from overburden-related sources was not within the "active mine area." In light of the above, EPA believes that, to the extent that a reader could misinterpret the Table as categorically including all "waste rock/overburden" sources to be within the "active mining area," Table G–4 did not accurately reflect the scope of the applicability of the Guidelines.

Todays action does not change in any way EPAs interpretation of the coverage of the Guidelines set forth in the 1979 Notice of Clarification, which provides that the Guidelines "are not intended to require the operator to collect and contain diffuse storm water runoff which would not otherwise be collected in or does not otherwise drain into a point source." Todays notice articulates the 1979 interpretation to the fact situation contained in Table G–4 of the Multi-Sector Permit.

Discharges from overburden-related sources that are outside of the "active mining area" are not covered by the Guidelines. Like all "point source" discharges, however, these discharges require NPDES permit authorization to be in compliance with the CWA. If these discharges are entirely composed of storm water (and are not covered by the Guidelines), then they may be authorized under an EPA general permit for storm water (if it otherwise meets the eligibility provisions), or an individual permit with BPJ-based controls, which may include either numeric limitations and/or narrative limitations (in the form of BMPs).

Discharges from haul roads constructed of waste rock or spent ore are subject to the Guidelines only if the haul roads so constructed are within the "active mining area" and the resulting storm water flows drain into a point source. Such discharges would be outside the scope of the Guidelines if they are outside the "active mining area." Point source discharges consisting entirely of storm water from haul road-related sources outside the active mining area would be addressed in the same manner as "waste rock and overburden" outside the active mining area (see above). As noted above, such discharges would be outside the scope of the NPDES program if they consist entirely of diffuse runoff which does not flow to a point source.

Though EPA notes that overburden piles (thus, runoff from overburden) are sometimes outside the "active mining area," NPDES permit coverage is still required when such flows are channeled or drain to a point source. Under todays clarification, determinations about whether numeric effluent limitations similar to those in the Ore Mining and Dressing Guidelines should apply to discharges from overburden piles and haul roads outside the active mining area are ones to be made on a site-by-site basis based on the "best professional judgment" of the permit writer (according to regulations at 40 CFR § 125.3(d)). Such permits might include effluent limitations similar to the effluent limitations for "mine drainage" under the Guidelines. If determined feasible, EPA acknowledges that compliance with such limits may necessitate diversion of flows from such sources into the active mining area for treatment. EPA provides additional guidance below.

V. Guidance to Permit Applicants and Permit Writers

Based on the foregoing discussion, EPA is proposing Table G–4 in a revised form today. In its earlier form, Table G-4 could have been misinterpreted. Consistent with earlier EPA statements made in the preamble to the Guidelines, the Development Document, the Notice of Clarification and other documents discussed above, the Table G–4 references to discharges from "waste rock/overburden" and "onsite haul roads constructed of waste rock or spent ore" at active ore mining and dressing sites are hereby modified. The Agency does not consider those discharges to be subject to the Guidelines on a categorical basis unless they are within the "active mining area" and the resulting storm water flows drain into a point source. Although not compelled by the Guidelines, numeric effluent limitations may be appropriate for these discharges (i.e., point source drainage from outside the active mining area) if the permit writer so determines on a BPJ basis or if the discharge would cause or contribute to a violation of water quality standards.

The Agency still presumes that "active mining area" should be interpreted as broadly as the plain language of the regulations suggests; however, application of the definition may vary from mine to mine. As the Tenth Circuit recognized in the *Kennecott Corp.* case, "to cast such definitions in absolute, unequivocal terms would be unrealistic, if not altogether impossible." 612 F.2d at 1243. The regulations define "active mining area" as "a place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun." 40 CFR 440.132(a). The Agency continues to reject any distinction between "process" and "nonprocess" areas at mining operations to determine the nature and

scope of the active mining area. Many areas that some might consider to be "nonprocess" areas do constitute part of the active mining area provided that work or other activity related to extraction, removal, or recovery of metal ore *is being* conducted (until the mining operation finishes recontouring and begins reclamation).

Today's proposed interpretation and guidance describe a distinct class of discharges that was not distinct from the face of Table G–4 when the Agency published the Multi-Sector Permit. Specifically, today's proposed interpretation identifies some discharges that could have been interpreted to be "mine drainage" under the plain language of the Guidelines and, therefore, within the applicability of the Guidelines and ineligible for coverage under the ore mining and dressing portion of the Multi-Sector General Permit (and under Table G–4) even though the Agency did not evaluate the technological feasibility and cost impacts of diverting drainage from those sources into the active mining area when it developed the Ore Mining and Dressing Guidelines. Based on today's proposed clarification, such an interpretation would be inaccurate because EPA did not require diversion of flows from outside the active mining area into the active mining area for treatment. For this distinct and limited class of discharges described by today's notice, i.e., those overburden/waste rock sources outside the active mining area, authorization under an EPA general permit for storm water may be available.

Note that the permit applicant bears the initial responsibility to determine whether its discharges are eligible for coverage under an EPA-issued general permit. Discharges of "mine drainage" from the "active mining area" are not eligible for authorization under either the NPDES Baseline General permit or the Multi-Sector Permit because such discharges are subject to the Guidelines. For this reason, EPA encourages permit applicants to contact the NPDES permit issuance authority if there is any doubt regarding the nature and scope of the "active mining area" at the site of their operations. In many cases, modifications to individual permits may be more appropriate for longer-term authorization of the storm discharges in question. Of course, as indicated in the Table, there may be other such point sources of drainage from within the active mining area that would not be "mine drainage." Such discharges may be appropriately regulated under EPA general permits for storm water.

EPA also recommends that permit applicants contact the relevant NPDES authority for assistance in determining the appropriate permitting vehicle to address the class of discharges described in today's notice. Individual permits provide the opportunity to tailor controls appropriate for the discharge, for example, through the use of best professional judgment (BPJ) according to 40 CFR 125.3(d) or analogous State law, and where necessary to assure compliance with water quality standards. If the NPDES permitting authority has data, for example, which indicate that discharges outside the active mining area only present pollution concerns associated with solids (e.g., settleable solids or total suspended solids), the permit requirements for those discharges may be limited to controlling those solids. However, if discharges contain heavy metals, the permitting authority, using BPJ, should establish appropriate technology-based metals effluent limitations. Further, if the permitting authority has data to indicate a reasonable potential to cause or contribute to an excursion of water quality standards for other pollutants, including pH and/or heavy metals, then the permit must include those more stringent requirements to assure compliance with water quality standards. EPA recommends ongoing monitoring for both pH and metals because the complex geochemistry at many mine sites presents difficulty in predicting the quality of storm water into the future.

In cases where there is a dry weather discharge outside the scope of the Guidelines, EPA strongly recommends that the permitting authority issue an individual NPDES permit using BPJ to establish appropriate technology-based limits or more stringent limitations necessary to assure compliance with water quality standards. The permitting authority should consider the degree of pollutant discharges (especially, whether the discharge contains heavy metal pollutants) and must consider the impact on the receiving water when establishing appropriate water quality-based controls on the discharge.

Finally, the Agency cautions that today's interpretation should not be read as a license for mine operators to convert point source discharges into "nonpoint" sources in order to avoid regulation under the NPDES permit program. If a mining operation has a discernable, confined, discrete conveyance, any attempt to avoid regulation by intentional "diffusion" of that waste water stream, for example by spraying it over a hill side or inserting diffusing devices at the ends of drainage culverts, would still constitute a point source discharge if the waste water ultimately enters waters of the United States (as opposed to appropriate land application of such waste waters). While such diffusion may beneficially reduce the potential for erosion and instream sedimentation, it would not eliminate the need for treatment where necessary, for example, where the discharge contains metals contributing to a violation of State water quality standards.

VI. Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the Agency takes the position that NPDES general permits are not "rules" or "regulations" subject to the rulemaking requirements of Administrative Procedure Act section 553, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Agency has determined that the permit modification being published today is not subject to the Regulatory Flexibility Act ("RFA"), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA only applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") or any other statute. Today's permit modification is not subject to notice and comment requirements under the APA or any other statute because the APA defines "rules" in a manner that excludes permits. See APA section 551 (4), (6), and (8).

APA section 553 does not require public notice and opportunity for comment for interpretative rules or general statements of policy. In addition to proposing modification of the general permit, today's action repeats an interpretation of existing regulations promulgated almost twenty years ago. The action would impose no new or additional requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

For reasons explained in the discussion regarding the Regulatory Flexibility Act, the UMRA only applies to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. Today's permit modification is not subject to notice and comment requirements under the APA or any other statute because the APA defines "rules" in a manner that excludes permits. See APA section 551 (4), (6), and (8).

Today's proposed permit modification contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Today's proposed modification merely announces an Agency interpretation of existing regulations. EPA has determined that this permit modification does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, today's proposed permit modification is not subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because today's proposed modification is based on an interpretation of existing regulations and because EPA anticipates that extremely few, if any, small governments operate mining operations, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Paperwork Reduction Act

The proposed permit modification contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Signed this 26th day of September, 1997.
Patricia L. Meany,
Acting Regional Administrator, Region 1.

Signed this 26th day of September, 1997.
Jerry Clifford,
Acting Regional Administrator, Region 6.

Signed this 25th day of September, 1997.
Deborah Jordan,
Acting Regional Administrator, Region 9.

Signed this 25th day of September, 1997.
Philip S. Millam,
Acting Regional Administrator, Region 10.

1. For the reasons set forth in this preamble, the table published on September 29, 1995, at 60 FR 50897 would be modified to read as follows:

TABLE G–4.—APPLICABILITY OF THE MULTI-SECTOR GENERAL PERMIT TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES

Discharge/source of discharge	Note/comment
Piles (seepage and/or runoff):	
Waste rock/overburden	If not in active mining area and composed entirely of storm water. See Note below.
Topsoil	
Roads constructed of waste rock or spent ore:	
Onsite haul roads	If not in active mining area and composed entirely of storm water. See Note below.
Offsite haul/access roads	If outside of the active mining area.
Roads not constructed of waste rock or spent ore:	
Onsite haul roads	Except if "mine drainage" is used for dust control.
Offsite haul/access roads	
Milling/concentrating:	
Runoff from tailings dams/dikes when constructed of waste rock/tailings.	Except if process fluids are present and only if not in active mining area and composed entirely of storm water. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock/tailings.	Except if process fluids are present.
Concentration building	If storm water only and no contact with piles.
Mill site	If storm water only and no contact with piles.
Ancillary areas:	
Office/administrative building and housing	If mixed with storm water from the industrial area.
Chemical storage area	
Docking facility	Except if excessive contact with waste product that would otherwise constitute "mine drainage."
Explosive storage	
Fuel storage (oil tanks/coal piles)	
Vehicle/equipment maintenance area/building	
Parking areas	But coverage unnecessary if only employee and visitor-type parking.

TABLE G–4.—APPLICABILITY OF THE MULTI-SECTOR GENERAL PERMIT TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES—Continued

Discharge/source of discharge	Note/comment
Power plant	
Truck wash area	Except when excessive contact with waste product that would otherwise constitute "mine drainage."
Reclamation-related areas:	
Any disturbed area (unreclaimed)	Only if not in active mining area.
Reclaimed areas released from reclamation bonds prior to Dec. 17, 1990	
Partially/inadequately reclaimed areas or areas not released from reclamation bond	

Storm water runoff from these sources are subject to the NPDES program for storm water unless mixed with discharges subject to the 440 CFR Part 440 that are not regulated by another permit prior to mixing. Non-storm water discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440.

Note: Discharges from overburden/waste rock and overburden/waste rock-related areas are subject to 40 CFR part 440 if the source of the drainage flows is within the "active mining area" and the resulting storm water flows drain to a point source. For such sources outside the active mining area, coverage under this permit would be available if the discharge is composed entirely of storm water and not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit. Permit applicants bear the initial responsibility for determining the applicable technology-based standard for such discharges. EPA recommends that permit applicants contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the "active mining area" on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

2. The third sentence in the first paragraph in permit eligibility provision for Storm Water Discharges Associated with Industrial Activity from Metal Mining (Ore Mining and Dressing), Section XI.G.1. (introductory language), previously published on September 29, 1995, at 60 FR 51155, would be modified and a fourth and fifth sentence would be added to read as follows:

1. Discharges Covered Under This Section

* * * All storm water discharges from inactive metal mining facilities and storm water discharges from the following areas of active, and temporarily inactive, metal mining facilities are the only discharges covered by this permit: waste rock/overburden piles outside the active mining area; topsoil piles; offsite haul/access roads if outside of the active mining area; haul/access roads constructed of waste rock/overburden if outside of the active mining area; onsite haul/access roads not constructed of waste rock/overburden/ spent ore except if mine water is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings and no process fluids are present if outside the active mining area; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility except if excessive contact with waste product; explosive storage; fuel storage; vehicle/equipment maintenance area/ building; parking areas (if necessary); power plant; truck wash areas except when excessive contact with waste product; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bond. Note: Discharges from overburden/waste rock and overburden/ waste rock-related areas are subject to 40 CFR part 440 if the source of the drainage flows is within the "active mining area" and the resulting storm water flows drain to a point source. For such sources outside the active mining area, coverage under this permit would be available if the discharge is composed entirely of storm water and not subject to 40 CFR part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit.

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Wednesday
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Part IV

Department of Commerce

International Trade Administration

Countervailing Duty Determinations; Trinidad and Tobago, et al.; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–803]

Suspension of Countervailing Duty Investigation: Steel Wire Rod From Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the countervailing duty investigation involving steel wire rod from Trinidad and Tobago. The basis for the suspension is an agreement between the Department and the Government of Trinidad and Tobago (GOTT) wherein the GOTT has agreed not to provide any new or additional export or import substitution subsidies on the subject merchandise and has agreed to restrict the volume of direct or indirect exports to the United States of steel wire rod products from all Trinidad and Tobago producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Donna Kinsella, Office of Antidumping/Countervailing Duty Enforcement, Group III, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1131 or 4093.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1997, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, (the Act), as amended, to determine whether manufacturers, producers, or exporters of steel wire rod from Trinidad and Tobago receive subsidies (62 FR 13866). On April 30, 1997, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination. On May 2, 1997, we postponed the preliminary determination until no later than July 28, 1997 (62 FR 25172, May 8, 1997).

On July 28, 1997, the Department preliminarily determined that countervailable subsidies are being provided to Caribbean Ispat Limited (CIL) (62 FR 41927, August 4, 1997). Between August 18 and 26, 1997, the Department verified the questionnaire responses of the GOTT and CIL in Trinidad and Tobago.

The Department and the GOTT initialed a proposed agreement suspending this investigation on September 16, 1997. Interested parties were informed that the Department intended to finalize the agreement on October 14, 1997, and were invited to provide written comments on the agreement. No comments were filed by interested parties.

The Department and the GOTT signed the final suspension agreement on October 14, 1997.

Scope of Suspension Agreement

The products covered by this suspension of investigation are set forth in section II of Appendix 1 to this notice.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered their positions with respect to the proposed suspension agreement. In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 704(c)(4) of the Act. (*See* October 14, 1997, Extraordinary Circumstances Memorandum to Robert S. LaRussa.)

The suspension agreement provides that: (1) The GOTT will not provide any new or additional export or import substitution subsidies on the subject merchandise; and (2) the GOTT will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Trinidad and Tobago producers/exporters.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 704(d) of the Act. (*See* October 14, 1997, Public Interest Memorandum to Robert S. LaRussa.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 704(c) of the Act have been met. The terms and conditions of the suspension agreement, signed October 14, 1997, are set forth in Appendix I to this notice.

The suspension of liquidation ordered in the final affirmative determination in this case shall continue in effect, subject to section 704(h)(3) of the Act. Section 704(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of these imports and, thus, the Department is adjusting the security required from producers and/or exporters to zero.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we are continuing the investigation in accordance with section 704(g) of the Act. We will notify the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*see* section 704(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force (*see* section 704(f)(3)(B) of the Act).

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Countervailing Duty Investigation on Steel Wire Rod From Trinidad and Tobago

For the purpose of encouraging free and fair trade in steel wire rod, establishing more normal market relations, and eliminating injury to the domestic industry, the United States Department of Commerce ("the Department") and the Government of Trinidad and Tobago enter into this suspension agreement ("the Agreement").

Pursuant to this Agreement, the Government of Trinidad and Tobago agrees not to provide any new or additional export subsidies on the subject merchandise. The Government of Trinidad and Tobago also will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Trinidad and Tobago producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Sections 704 (b) and (c) of the Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1671c (b) and (c)), the Department shall suspend its countervailing duty investigation with respect to steel wire rod produced in Trinidad and Tobago, subject to the terms and provisions set forth below.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Date of Export" for imports of subject merchandise into the United States shall be considered the date the Export License was issued.

B. "Party to the Proceeding" means any interested party, within the meaning of Section 355.2(l) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. "Indirect Exports" means arrangements as defined in Section IV.E of this Agreement and exports from Trinidad and Tobago through one or more third countries, whether or not such exports are further processed, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Trinidad and Tobago producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. "Export License" is the document which serves as both an export license and a certificate of origin. An Export License must accompany all shipments of subject merchandise from Trinidad and Tobago to the United States, and must contain all of the information enumerated in the Appendix (U.S. sales), except Date of Entry information and Final Destination.

F. "Relevant Period" for the export limit of this Agreement means the period October 1 through September 30.

G. "For Consumption" means all subject merchandise sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

H. "End-User" means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes the subject merchandise as defined in Section I.G.

II. Product Coverage

The products covered by this Agreement ("subject merchandise") are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this Agreement:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products subject to this Agreement are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

III. Non-Provision of Export Subsidies

A. The Government of Trinidad and Tobago certifies that all exports of the subject merchandise to the United States made on or after the effective date of this Agreement will not receive or benefit from any export or import substitution subsidies, other than export allowances under Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, whereby companies in Trinidad and Tobago with export sales may deduct an export allowance in calculating their corporate income tax.

B. The Government of Trinidad and Tobago recognizes that the provision of any export or import substitution subsidies on the production or shipment of the subject merchandise exported directly or indirectly from Trinidad and Tobago to the United States, other than that export subsidy specifically provided for in Section III.A., may result in termination of this Agreement and resumption of the investigation pursuant to the provisions of section 704(i) of the Act. Export or import substitution subsidies include those that have been determined to be export or import substitution subsidies in the preliminary determination in the countervailing duty investigation underlying this Agreement (unless the investigation is continued and a contrary decision is reached in the final determination), in any final U.S. countervailing duty investigation of a Trinidad and Tobago product, or in any final review of a Trinidad and Tobago product under section 751 of the Act, and include subsidies which may apply to other products or exports to other destinations to the extent that such subsidies cannot be segregated as applying solely to such other products or exports. For purposes of this Agreement, relief from corporation tax pursuant to the Fiscal Incentives Act, Chapter 85:01, shall not be considered an export or import substitution subsidy, so long as: (1) Such relief is in lieu of the tax benefit currently conferred by the export allowance under Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, as of August 1, 1997; (2) such relief does not exceed the amount of benefit that would have been received for the same year under the export allowance program provided for in Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, as of August 1, 1997; and (3) there is no determination by the World Trade Organization that either the Fiscal Incentives Act or, as appropriate, the Corporation Tax Act is inconsistent with the development needs of Trinidad and Tobago pursuant to Article 27 of the Agreement on Subsidies and Countervailing Measures ("the SCM").

C. The Government of Trinidad and Tobago shall notify the Department in writing of any new benefit which is, or which the Government of Trinidad and Tobago has reason to know would be, an export or import substitution subsidy on shipments of the subject merchandise exported, directly or indirectly, from Trinidad and Tobago to the United States, including subsidies which may apply to both the subject merchandise and other products or exports to other destinations, to the extent such benefits cannot be segregated as applying solely to such other products or exports.

D. At such time as Trinidad and Tobago reaches export competitiveness with respect to products covered by this Agreement, as defined by Article 27.6 of the SCM, the export subsidy specifically provided for in Section III.A shall be

eliminated in accordance with Article 27.5 of the SCM.

IV. Export Limit

A. The export limit for subject merchandise in each Relevant Period shall be 148,000 short tons. The export limit for each Relevant Period shall be allocated in semi-annual quota allocation periods (October–March, April–September). No more than 60% of the export limit for any Relevant Period can be allocated in any given semi-annual quota allocation period. Deductions from the export limit shall be made based on the "Date of Export," as defined in Section I.

B. On or after the effective date of this Agreement, the Government of Trinidad and Tobago will restrict the volume of direct or indirect exports of subject merchandise to the United States, and the transfer or withdrawal from inventory of subject merchandise (consistent with the provisions of Section IV.D), in accordance with the export limit then in effect.

C. An export shipment to the United States may not be made for more than the entire amount of quota allocated for that semi-annual quota allocation period. Any amount exported to the United States during a semi-annual quota allocation period shall not, however, when cumulated with all prior exports to the United States within the same Relevant Period, exceed the annual quota for that Relevant Period.

D. Any inventories of subject merchandise currently held in the United States by a Trinidad and Tobago entity and imported into the United States between May 6, 1997, and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by the Government of Trinidad and Tobago. Any such transfers or withdrawals from inventory shall be deducted from the export limit in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report specifying the original date of export, the date of entry into the United States, the identity of the original exporter and importer, the customer, a complete description of the product (including lot numbers and other available identifying documentation), and the quantity expressed in short tons.

3. In the event that there is a surge of sales of subject merchandise from such inventory, the Department will decrease the export limit to take into account such sales.

E. Any arrangement involving the exchange, sale, or delivery of steel wire rod products, as described in Section II, from Trinidad and Tobago, to the degree it results in the sale or delivery in the United States of steel wire rod products, as described in Section II, from a country other than Trinidad and Tobago, is subject to the requirements of Section V and will be counted toward the available quota. Any such transaction that does not comply with the requirements of Section V will be deducted from the available quota pursuant to Section VII.

F. Where subject merchandise is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, the available quota shall be increased by the number of short tons re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

G. Export Licenses for a given Relevant Period may not be issued after September 30, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such "carried-over" quota shall be counted against the export limit applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limit for a subsequent Relevant Period may be issued as early as August 1 of the preceding Relevant Period. Such "carried-back" quota shall be counted against the export limit applicable to the following Relevant Period.

H. For the first 90 days after the effective date of this Agreement, subject merchandise shall be admitted into the United States with an "Export License/ Certificate of Origin (Temporary Papers)."

The volume of any such imports will be deducted from the export limit applicable to the first Relevant Period. A full reporting of any such imports, which must correspond to the United States sales information detailed in the Appendix, must be submitted to the Department no later than 30 days after the conclusion of the 90 day period. This data must be sorted on the basis of date of export.

V. Export License

A. The Government of Trinidad and Tobago will restrict the volume of direct or indirect exports of subject merchandise to the United States by means of semi-annual quota allocations and Export Licenses. Export Licenses shall be issued by the Government of Trinidad and Tobago for all direct or indirect exports of subject merchandise to the United States in accordance with the export limit in Section IV.

B. Thirty days following the semi-annual allocation of quota rights for any Relevant Period, the Government of Trinidad and Tobago shall provide to the Department a report identifying each quota recipient and the volume of quota which each recipient has been accorded ("report of quota allocation results").

C. Before it issues an Export License, the Government of Trinidad and Tobago will ensure that neither the annual quota for the Relevant Period nor the semi-annual quota allocation is exceeded.

D. The Government of Trinidad and Tobago shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the export limit and Export Licenses. The Government of Trinidad and Tobago will inform the Department of any violations concerning the export limit and/or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform the Government of Trinidad and Tobago of violations concerning the export limit and/or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, will be endorsed against the export limit for the Relevant Periods, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must be issued no earlier than one month before the day, month, and year on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export.

G. On or after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of subject merchandise into the United States. The United States will prohibit the entry of any subject merchandise not accompanied by an Export License.

VI. Implementation

A. Export Subsidies

The Government of Trinidad and Tobago shall certify to the Department within 15 days after the first day of each three-month period, beginning on January 15, 1998, whether it continues to be in compliance with the agreement by providing that all exports of the subject merchandise to the United States will not receive or benefit from any export or import substitution subsidies, except that export subsidy which is specifically provided for in Section III.A. Failure to supply such information or certification in a timely fashion may result in the immediate resumption of the investigation or issuance of a countervailing duty order.

B. Export Limit

In order to effectively restrict the volume of exports of subject merchandise to the United States, the Government of Trinidad and Tobago agrees to implement the following procedures:

1. Establish an Export License program for all exports of subject merchandise to, or destined directly or indirectly for consumption in, the United States, no later than 90 days after the effective date of this Agreement.

2. Ensure compliance by any official Trinidad and Tobago institution, chamber, or other entities authorized by the Government of Trinidad and Tobago, all producers, exporters, brokers, and traders of the subject merchandise, and their affiliated parties, with all procedures established in order to effectuate this Agreement.

3. Collect information from all Trinidad and Tobago producers, exporters, brokers, and traders of the subject merchandise, and their affiliated parties, on the sale of the subject merchandise, and report such information pursuant to Section VIII of this Agreement.

4. Prohibit, by resolution, decree, legislation or equivalent Government action, direct and indirect exports to the United States of subject merchandise except with an Export License issued pursuant to Section V.A. and impose strict sanctions, such as penalties or prohibition from participation in the export limit allowed by the Agreement, in the event that any Trinidad and Tobago or Trinidad and Tobago-affiliated party does not comply in full with all the terms of the Agreement.

VII. Anticircumvention

A. The Government of Trinidad and Tobago will take all appropriate measures under Trinidad and Tobago law to prevent circumvention of this Agreement. It shall promptly conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a timely manner (normally within 45 days). The Government of Trinidad and Tobago shall notify the Department of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, the Government of Trinidad and Tobago shall share with the Department all facts known to the Government of Trinidad and Tobago regarding its inquiries, its analysis of such facts and the results of such inquiries. The Government of Trinidad and Tobago will require all Trinidad and Tobago exporters of steel wire rod products, as described in Section II, to include a provision in their contracts for sales to countries other than the United States that the steel wire rod sold through such contracts cannot be re-exported, transhipped or swapped to the United States, or otherwise used to circumvent the export limit of this Agreement. The Government of Trinidad and Tobago will also establish appropriate mechanisms to enforce this requirement.

B. If, in an inquiry pursuant to paragraph A, the Government of Trinidad and Tobago determines that a Trinidad and Tobago company has participated in a transaction that resulted in circumvention of the export limit of this Agreement, then the Government of Trinidad and Tobago shall impose penalties on such company including, but not limited to, denial of access to the steel wire rod quota. Additionally, the Government of Trinidad and Tobago shall deduct an amount of steel wire rod equivalent to the amount involved in such circumvention from the available quota and shall immediately notify the Department of the amount deducted. If sufficient quota is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

C. If the Government of Trinidad and Tobago determines that a company from a third country has circumvented the Agreement and the signatories agree that no Trinidad and Tobago entity participated in or had knowledge of such activities, then the signatories shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as the Government of Trinidad and Tobago prohibiting sales of Trinidad and Tobago steel wire rod to the company responsible or reducing steel wire rod exports to the country in question. If the signatories are unable to reach mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of steel wire rod involved in such circumvention from the available quota, taking into account all relevant factors. Before taking such action, the Department will notify the Government of Trinidad and Tobago of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of Trinidad and Tobago ten days in which to comment.

D. If the Department determines that a Trinidad and Tobago entity participated in circumvention, the signatories shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the signatories are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of steel wire rod involved in such circumvention from the available quota or instructing the U.S. Customs Service to deny entry to any subject merchandise sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify the Government of Trinidad and Tobago of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of Trinidad and Tobago ten days in which to comment.

E. The Department shall direct the U.S. Customs Service to require all importers of steel wire rod, as described in Section II, into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the steel wire rod being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limit established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to the U.S. Customs Service or the Department of Justice for further action.

F. The Department will take the following factors into account in distinguishing normal steel wire rod market arrangements, swaps, or other exchanges from arrangements which would result in the circumvention of the export limit established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limit established by this Agreement;
2. Existence of any arrangement as defined in Section IV.E that was not reported to the Department pursuant to Section VIII.A;
3. Existence and function of any subsidiaries or affiliates of the parties involved;
4. Existence and function of any historical and/or traditional trading patterns among the parties involved;
5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel wire rod facilities;
6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;
7. Sequence and timing of the arrangements; and
8. Any other information relevant to the transaction or circumstances.

G. "Swaps" include, but are not limited to:

Ownership swaps-involve the exchange of ownership of any type of steel wire rod product(s), without physical transfer. These may include exchange of ownership of steel wire rod products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of steel wire rod products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps-involve the exchange of indicia of national origin of steel wire rod products, without any exchange of ownership.

Displacement swaps-involve the sale or delivery of any type of steel wire rod product(s) from Trinidad and Tobago to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced steel wire rod products of any type, regardless of the sequence of the transaction.

H. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

The Government of Trinidad and Tobago will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department of Commerce shall provide semi-annual reports to the Government of Trinidad and Tobago indicating the volume of imports of the subject merchandise to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. The Government of Trinidad and Tobago shall immediately provide copies of any resolution, decree, legislation, or equivalent Government action governing any changes in the export allowance provisions of Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act as soon as such changes occur. The Government of Trinidad and Tobago also shall immediately notify and provide copies to the Department of any resolution, decree, legislation or equivalent Government action governing any other export or import substitution subsidy which is issued, altered or amended in any way as to be applicable or available to producers/exporters of the subject merchandise to the United States.

B. The Government of Trinidad and Tobago shall notify the Department if any exporters of the subject merchandise transship the subject merchandise through third countries to the United States. The Government of Trinidad and Tobago also shall notify the Department if any exporter applies for or receives, directly or indirectly, the benefits of any export or import substitution subsidy program, other than that which is specifically excepted in Section III.A., regarding the export of the subject merchandise.

C. Beginning on the effective date of this Agreement, the Government of Trinidad and Tobago shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix. All such information will be provided to the Department by May 1 of each year for exports during the period from October 1 of the previous year through March 31. In addition, such information will be provided to the Department by November 1 for exports from April 1 through September 30, or within 90 days of a request made by the Department. Such information will be subject to the verification provision identified in Section VIII.G of this Agreement. The Government of Trinidad and Tobago agrees to allow sales of subject merchandise only by those producers and through those brokers and trading companies which permit full reporting and verification of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of sales by HTS category to each third country will be provided to the Department by May 1 of each year for exports during the period from October 1 of the previous year through March 31. In addition, such quantity and value information will be provided to the Department by November 1 for exports from April 1 through September 30.

Transaction specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that the transaction specific data is not necessary for a given period, it will notify the Government of Trinidad and Tobago at least 90 days before the reporting deadline that transaction specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, the Government of Trinidad and Tobago will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

D. Both governments recognize that the effective monitoring of this Agreement may require that Trinidad and Tobago provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement.

E. The Department shall provide notice to the Government of Trinidad and Tobago of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

F. Other sources for monitoring. The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward a Countervailing Duty Report of Importations for entries of the subject merchandise during the period this Agreement is in effect.

G. Verification. The Government of Trinidad and Tobago will permit full verification of all information related to the administration of this Agreement, including verification of Trinidad and Tobago producer and any brokers/trading companies utilized in making sales/shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that Trinidad and Tobago is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VIII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

The Government of Trinidad and Tobago and the Department shall hold consultations regarding matters concerning the implementation, operation and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either the Government of Trinidad and Tobago or the Department.

XI. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission in accordance with Section 355.19 of the Department's Regulations.

The Government of Trinidad and Tobago and the Department will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Imports in excess of the export limit set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of Section 704 (b) or (c) of the Act where such imports are minimal in volume, are the result of technical shipping circumstances, and are applied against the export limit of the following year.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide the Government of Trinidad and Tobago 20 days within which to provide comments. The Department will make a determination within 30 days.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under Section 704(i) of the Act and Section 355.19 of the Department's Regulations.

XII. Duration

Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than October 14, 2002.

The Government of Trinidad and Tobago may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of the Government of Trinidad and Tobago, the provisions of Section 704(i) of the Act shall apply.

XIII. Other Provisions

A. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will completely eliminate injury to the domestic industry producing the like product by imports of the merchandise subject to this Agreement.

B. In entering into this Agreement, the Government of Trinidad and Tobago does not admit that any programs alleged or investigated constitute countervailable benefits under the Act, or that sales of the subject merchandise have materially injured, or threatened material injury to, an industry or industries in the United States.

C. For all purposes hereunder, the Department and the signatory Government shall be represented by, and all communications and notices shall be given and addressed to:

Department of Commerce, U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Government of Trinidad and Tobago, Ministry of Trade and Industry, Level 15, Riverside Plaza, No. 2 Besson Street, Port-of-Spain, Trinidad and Tobago, West Indies.

XIV. Effective Date

The effective date of this Agreement is the date of its publication in the **Federal Register**.

Dated: October 14, 1997.
For Government of Trinidad and Tobago.

Mervyn Assam,
Minister of Trade and Industry.
For U.S. Department of Commerce.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

Appendix

In accordance with the established format, the Government of Trinidad and Tobago shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

The Government of Trinidad and Tobago will collect and maintain sales data to the United States, in the home market, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

The Government of Trinidad and Tobago will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

Report of Inventories

Report, by location, the inventories held by Trinidad and Tobago producers/exporters in the United States and imported into the United States between the period beginning May 6, 1997, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure and in short tons.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the merchandise.
4. Export License Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.

6. Date of Original Export: Date the Export License/certificate of origin is issued.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

United States Sales

The Government of Trinidad and Tobago will provide all Export Licenses, which shall contain the following information with the exception of item #9, date of entry, and item #16, final destination.

1. Export License/Certificate of Origin Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.
3. Quantity: Indicate in original units of measure and in short tons.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate currency used/per original unit of measure.
6. Date of Sale: The date all terms of order are confirmed.
7. Sales Order Number(s): Indicate the specification number/order number relating to each sale and/or shipment.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company/Broker: Name and address of any trading company involved in the sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Trinidad and Tobago producer/exporter.
13. Customer Affiliation: Indicate whether the customer is affiliated or unaffiliated to the Trinidad and Tobago exporter.
14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Quota Remaining: Indicate the remaining quota available to the individual exporter during the Relevant Period.
16. Final Destination: Name and address of the end-user for consumption in the United States.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

Mill Certification

The Government of Trinidad and Tobago shall ensure that all shipments of subject merchandise exported to the United States pursuant to this Agreement shall be accompanied by a copy of the original mill certification.

Sales Other Than United States

Pursuant to Section VIII, paragraph A, the Government of Trinidad and Tobago will provide country-specific sales volume and value information for all sales of steel wire rod products, as described in Section II, in the home market and to third countries.

1. Quantity: Indicate in original units of measure sold and/or entered and in metric tons.
2. F.O.B. Sales Value: Indicate currency used.
3. Date of Sale: The date all terms of order are confirmed.
4. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, specification/grade under which sold, and other available information.
5. Sales Order Number(s): Indicate the specification number/order number relating to each sale and/or shipment.
6. Date of Export (if third country): Date of shipment from Trinidad and Tobago.
7. Date of Entry (if third country): Date the merchandise entered the third country or the date a book transfer took place.
8. Importer of Record (if third country): Name and address.
9. Customer: Name and address of the first party purchasing from the Trinidad and Tobago producer/exporter.
10. Customer Affiliation: Indicate whether the customer is affiliated or unaffiliated.
11. Final Destination: Name and address of the end-user for consumption in the United States.
12. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–307–814]

Suspension of Countervailing Duty Investigation: Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the countervailing duty investigation involving steel wire rod from Venezuela. The basis for the suspension is an agreement between the Department and the Government of Venezuela (GOV) wherein the GOV has agreed not to provide any export subsidies or import substitution subsidies on the subject merchandise and has agreed to restrict the volume of direct or indirect exports to the United States of subject merchandise from all Venezuelan producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Donna Kinsella, Office of Antidumping/Countervailing Duty Enforcement, Group III, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1997, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, (the Act), as amended, to determine whether manufacturers, producers, or exporters of steel wire rod from Venezuela receive subsidies (62 FR 13866). On April 30, 1997, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination. On May 2, 1997, we postponed the preliminary determination until no later than July 28, 1997 (62 FR 25172, May 8, 1997).

On July 28, 1997, the Department preliminarily determined that countervailable subsidies are being provided to CVG-Siderurgica del Orinoco (62 FR 41927, August 4, 1997). From August 27 through September 8, 1997, the Department verified the questionnaire responses of the GOV and SIDOR in Venezuela.

The Department and the GOV initialed a proposed agreement suspending this investigation on September 12, 1997. Interested parties were informed that the Department intended to finalize the agreement on October 14, 1997, and were invited to provide written comments on the agreement. Comments were timely filed by the GOV on October 3, 1997.

The Department and the GOV signed the final suspension agreement on October 14, 1997.

Scope of Suspension Agreement

The products covered by this suspension of investigation are set forth in section II of the Appendix to this notice.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. (*See* October 14, 1997, Memorandum to the File Re: Analysis of Comments Submitted by Interested Parties, which is a public document on file in the Central Records Unit in room B–099 of the main Commerce building.) In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 704(c)(4) of the Act. (*See* October 14, 1997, Extraordinary Circumstances Memorandum to Robert S. LaRussa, which is a public document on file in the Central Records Unit in room B–099 of the main Commerce building.)

The suspension agreement provides that: (1) The GOV will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Venezuelan producers/exporters; and (2) the GOV will not provide any export subsidies or import substitution subsidies on the subject merchandise.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 704(d) of the Act. (*See* October 14, 1997, Public Interest Memorandum to Robert S. LaRussa, which is a public document on file in the Central Records Unit in room B–099 of the main Commerce building.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 704(c) of the Act have been met. The terms and conditions of the suspension agreement, signed October 14, 1997, are set forth in the Appendix to this notice.

The suspension of liquidation ordered in the final affirmative determination in this case shall continue in effect, subject to section 704(h)(3) of the Act. Section 704(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from producers and/or exporters to zero.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we are continuing the investigation in accordance with section 704(g) of the Act. We will notify the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*see* section 704(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force (*see* section 704(f)(3)(B) of the Act).

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Countervailing Duty Investigation on Steel Wire Rod From Venezuela

For the purpose of encouraging free and fair trade in steel wire rod, establishing more normal market relations, and eliminating injury to the domestic industry, the United States Department of Commerce ("the Department") and the Government of Venezuela enter into this suspension agreement ("the Agreement").

Pursuant to this Agreement, the Government of Venezuela agrees not to provide any export subsidies on the subject merchandise. The Government of Venezuela also will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Venezuela producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Sections 704 (b) and (c) of the Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1671c (b) and (c)), the Department shall suspend its countervailing duty investigation with respect to steel wire rod produced in Venezuela, subject to the terms and provisions set forth below.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Date of Export" for imports of subject merchandise into the United States shall be considered the date the Export License was issued.

B. "Party to the Proceeding" means any interested party, within the meaning of Section 355.2(l) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. "Indirect Exports" means arrangements as defined in Section IV.E of this Agreement and exports from Venezuela through one or more third countries, whether or not such exports are further processed whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Venezuela producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. "Export License" is the document which serves as both an export license and a certificate of origin. An Export License must accompany all shipments of subject merchandise from Venezuela to the United States, and must contain all of the information enumerated in the Appendix (U.S. sales), except Date of Entry information and Final Destination.

F. "Relevant Period" for the export limit of this Agreement means the period October 1 through September 30.

"For Consumption" means all subject merchandise sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

"End-User" means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes the subject merchandise as defined in I (G).

II. Product Coverage

The products covered by this Agreement ("subject merchandise") are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this Agreement:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization

of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products subject to this Agreement are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

III. Non-Provision of Export Subsidies

A. The Government of Venezuela certifies that all exports of the subject merchandise to the United States made on or after the effective date of this Agreement are not and will not be eligible for any export or import substitution subsidies.

B. The Government of Venezuela recognizes that the provision of export or import substitution subsidies on the production or shipment of the subject merchandise exported directly or indirectly from Venezuela to the United States may result in termination of this Agreement and resumption of the investigation pursuant to the provisions of section 704(i) of the Act. Export and import substitution subsidies include those subsidies that have been determined to be export or import substitution subsidies in the preliminary determination in the countervailing duty investigation underlying this agreement (unless the investigation is continued and a contrary decision is reached in the final determination), in any final U.S. countervailing duty investigation of a Venezuela product, or in any final review of a Venezuela product under section 751 of the Act, and include subsidies which may apply to other products or exports to other destinations to the extent that such subsidies cannot be segregated as applying solely to such other products or exports.

C. The Government of Venezuela shall notify the Department in writing of any new benefit which is, or which Venezuela has reason to know would be, an export or import substitution subsidy on shipments of the subject merchandise exported, directly or indirectly, from Venezuela to the United States, including subsidies which may apply to both the subject merchandise and other products or exports to other destinations, to the extent such benefits cannot be segregated as applying solely to such other products or exports.

IV. Export Limit

A. The export limit for subject merchandise in each Relevant Period shall be 60,000 short tons. The export limit for each Relevant Period shall be allocated in semi-annual quota allocation periods (October–March, April–September). No more than 60% of the export limit for any Relevant Period can be allocated in any given semi-annual quota allocation period. Deductions from the export limit shall be made based on the "Date of Export," as defined in Section I.

B. On or after the effective date of this Agreement, the Government of Venezuela will restrict the volume of direct or indirect exports of subject merchandise to the United States, and the transfer or withdrawal from inventory of subject merchandise (consistent with the provisions of Section IV.D), in accordance with the export limit then in effect.

C. An export shipment to the United States may not be made for more than the entire amount of quota allocated for that semi-annual quota allocation period. Any amount exported to the United States during a semi-annual quota allocation period shall not, however, when cumulated with all prior exports to the United States within the same Relevant Period, exceed the annual quota for that Relevant Period.

D. Any inventories of subject merchandise produced by a Venezuela entity, currently held in the United States by a Venezuela entity, and imported into the United States between May 6, 1997 and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by the Government of Venezuela. Any such transfers or withdrawals from inventory shall be deducted from the export limit in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report specifying the original date of export, the date of entry into the United States, the identity of the original exporter and importer, the customer, a complete description of the product (including lot numbers and other available identifying documentation), and the quantity expressed in pounds.

3. In the event that there is a surge of sales of subject merchandise from such inventory, the Department will decrease the export limit to take into account such sales.

E. Any arrangement involving the exchange, sale, or delivery of steel wire rod products, as described in Section II, from Venezuela, to the degree it results in the sale or delivery in the United States of steel wire rod products, as described in Section II, from a country other than Venezuela, is subject to the requirements of Section V and will be counted toward the available quota. Any such transaction that does not comply with the requirements of Section V will be deducted from the available quota pursuant to Section VII.

F. Where subject merchandise is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, the available quota shall be increased by the amount of pounds re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

G. Export Licenses for a given Relevant Period may not be issued after September 30, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such "carried-over" quota shall be counted against the export limit applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limit for a subsequent Relevant Period may be issued as early as August 1 of the preceding Relevant Period. Such "carried-back" quota shall be counted against the export limit applicable to the following Relevant Period.

H. For the first 90 days after the effective date of this Agreement, subject merchandise shall be admitted into the United States with an "Export License/ Certificate of Origin (Temporary Papers)."

The volume of any such imports will be deducted from the export limit applicable to the first Relevant Period. A full reporting of any such imports, which must correspond to the United States sales information detailed in the Appendix, must be submitted to the Department no later than 30 days after the conclusion of the 90 day period. This data must be sorted on the basis of date of export.

V. Export License

A. The Government of Venezuela will restrict the volume of direct or indirect exports of subject merchandise to the United States by means of semi-annual quota allocations and Export Licenses. Export Licenses shall be issued by the Government of Venezuela for all direct or indirect exports of subject merchandise to the United States in accordance with the export limit in Section IV.

B. Thirty days following the semi-annual allocation of quota rights for any Relevant Period, the Government of Venezuela shall provide to the Department a report identifying each quota recipient and the volume of quota which each recipient has been accorded ("report of quota allocation results").

C. Before it issues an Export License, the Government of Venezuela will ensure that neither the annual quota for the Relevant Period nor the semi-annual quota allocation is exceeded.

D. The Government of Venezuela shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the export limit and Export Licenses. The Government of Venezuela will inform the Department of any violations concerning the export limit and/or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform the Government of Venezuela of violations concerning the export limit and/or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, will be endorsed against the export limit for the Relevant Periods, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must be issued no earlier than one month before the day, month, and year on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export. Export Licenses must contain an English language translation.

G. On or after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of subject merchandise into the United States. The United States will prohibit the entry of any subject merchandise not accompanied by an Export License.

VI. Implementation

A. Export Subsidies

The Government of Venezuela shall certify to the Department, in accordance with the reporting schedule in Section VIII.C., whether it continues to be in compliance with the Agreement by providing that all exports of the subject merchandise to the United States are not and will not be eligible for any export subsidies, as provided in Section III.A. Failure to supply such information or certification in a timely fashion may result in the immediate resumption of the investigation or issuance of a countervailing duty order.

B. Export Limit

In order to effectively restrict the volume of exports of subject merchandise to the United States, the Government of Venezuela agrees to implement the following procedures:

1. Establish an Export License program for all exports of subject merchandise to, or destined directly or indirectly for consumption in, the United States, no later than 90 days after the effective date of this Agreement.

2. Ensure compliance by any official Venezuela institution, chamber, or other entities authorized by the Government of Venezuela, all producers, exporters, brokers, and traders of the subject merchandise, and their affiliated parties, with all procedures established in order to effectuate this Agreement.

3. Collect information from all Venezuela producers, exporters, brokers, and traders of the subject merchandise, and their affiliated parties, on the sale of the subject merchandise, and report such information pursuant to Section VIII of this Agreement.

4. Prohibit, by resolution, decree, legislation or equivalent Government action, direct and indirect exports to the United States of subject merchandise except with an Export License issued pursuant to Section V.A. and impose strict sanctions, such as penalties or prohibition from participation in the export limit allowed by the Agreement, in the event that any Venezuela or Venezuela-affiliated party does not comply in full with all the terms of the Agreement.

VII. Anticircumvention

A. The Government of Venezuela will take all appropriate measures under Venezuela law to prevent circumvention of this Agreement. It shall promptly conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a timely manner (normally within 45 days). The Government of Venezuela shall notify the Department of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, the Government of Venezuela shall share with the Department all facts known to the Government of Venezuela regarding its inquiries, its analysis of such facts and the results of such inquiries. The Government of Venezuela will require all Venezuela exporters of steel wire rod products, as described in Section II, to include a provision in their contracts for sales to countries other than the United States that the steel wire rod sold through such contracts cannot be re-exported, transhipped or swapped to the United States, or otherwise used to circumvent the export limit of this Agreement. The Government of Venezuela will also establish appropriate mechanisms to enforce this requirement.

B. If, in an inquiry pursuant to paragraph A, the Government of Venezuela determines that a Venezuela company has participated in a transaction that resulted in circumvention of the export limit of this Agreement, then the Government of Venezuela shall impose penalties on such company including, but not limited to, denial of access to the steel wire rod quota. Additionally, the Government of Venezuela shall deduct an amount of steel wire rod equivalent to the amount involved in such circumvention from the available quota and shall immediately notify the Department of the amount deducted. If sufficient quota is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

C. If the Government of Venezuela determines that a company from a third country has circumvented the Agreement and the signatories agree that no Venezuela entity participated in or had knowledge of such activities, then the signatories shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as the Government of Venezuela prohibiting sales of Venezuela steel wire rod to the company responsible or reducing steel wire rod exports to the country in question. If the signatories are unable to reach mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of steel wire rod involved in such circumvention from

the available quota, taking into account all relevant factors. Before taking such action, the Department will notify the Government of Venezuela of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of Venezuela ten days in which to comment.

D. If the Department determines that a Venezuela entity participated in circumvention, the signatories shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the signatories are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of steel wire rod involved in such circumvention from the available quota or instructing the U.S. Customs Service to deny entry to any subject merchandise sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify the Government of Venezuela of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of Venezuela ten days in which to comment.

E. The Department shall direct the U.S. Customs Service to require all importers of steel wire rod, as described in Section II, into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the steel wire rod being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limit established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to the U.S. Customs Service or the Department of Justice for further action.

F. Given the fungibility of the world steel wire rod market, the Department will take the following factors into account in distinguishing normal steel wire rod market arrangements, swaps, or other exchanges from arrangements which would result in the circumvention of the export limit established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limit established by this Agreement;

2. Existence of any arrangement as defined in Section IV.E that was not reported to the Department pursuant to Section VIII.A;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel wire rod facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

G. "Swaps" include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of steel wire rod product(s) without physical transfer. These may include exchange of ownership of steel wire rod products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of steel wire rod products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of steel wire rod products without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of steel wire rod product(s) from Venezuela to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced steel wire rod products of any type, regardless of the sequence of the transaction.

H. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

The Government of Venezuela will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department of Commerce shall provide semi-annual reports to the Government of Venezuela indicating the volume of imports of the subject merchandise to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. The Government of Venezuela shall immediately notify and provide copies to the Department of any resolution, decree, legislation or equivalent Government action governing any export or import substitution subsidy which is issued, altered or amended in any way as to be applicable or available to producers/exporters of the subject merchandise to the United States.

B. The Government of Venezuela shall notify the Department if any exporters of the subject merchandise transship the subject merchandise through third countries. The Government of Venezuela also shall notify the Department if any exporter applies for or receives, directly or indirectly, the benefits of any export or import substitution subsidy.

C. Beginning on the effective date of this Agreement, the Government of Venezuela shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix. All such information will be provided to the Department by May 1 of each year for exports during the period from October 1 of the previous year through March 31. In addition, such information will be provided to the Department by November 1 for exports from April 1 through September 30, or within 90 days of a request made by the Department. Such information will be subject to the verification provision identified in Section VIII.G of this Agreement. The Government of Venezuela agrees to allow sales of subject merchandise only by those producers and through those brokers and trading companies which permit full reporting and verification of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of sales by HTS category to each third country will be provided to the Department by May 1 of each year for exports during the period from October 1 of the previous year through March 31. In addition, such quantity and value information will be provided to the Department by November 1 for exports from April 1 through September 30.

Transaction specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that the transaction specific data is not necessary for a given period, it will notify the Government of Venezuela at least 90 days before the reporting deadline that transaction specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, the Government of Venezuela will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

D. Both governments recognize that the effective monitoring of this Agreement may require that Venezuela provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement.

E. The Department shall provide notice to the Government of Venezuela of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

F. Other sources for monitoring. The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward a Countervailing Duty Report of Importations for entries of the subject merchandise during the period this Agreement is in effect.

G. Verification. The Government of Venezuela will permit full verification of all information related to the administration of this Agreement, including verification of the Venezuela producer and any brokers/trading companies utilized in making sales/shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that Venezuela is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VIII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

The Government of Venezuela and the Department shall hold consultations regarding matters concerning the implementation, operation and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either the Government of Venezuela or the Department.

XI. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission in accordance with Section 355.19 of the Department's Regulations.

The Government of Venezuela and the Department will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Imports in excess of the export limit set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of Section 704 (b) or (c) of the Act where such imports are minimal in volume, are the result of technical shipping circumstances, and are applied against the export limit of the following year.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide the Government of Venezuela 20 days within which to provide comments. The Department will make a determination within 30 days.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under Section 704(i) of the Act and Section 355.19 of the Department's Regulations.

XII. Duration

Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than October 14, 2002.

The Government of Venezuela may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of the Government of Venezuela, the provisions of Section 704(i) of the Act shall apply.

XIII. Other Provisions

A. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will completely eliminate injury to the domestic industry producing the like product by imports of the merchandise subject to this Agreement.

B. The English language version of this Agreement shall be controlling.

C. For all purposes hereunder, the Department and the signatory Government shall be represented by, and all communications and notices shall be given and addressed to:

Department of Commerce, U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Government of Venezuela, Ministerio de Industria y Comerio, Dirección General Sectorial de Comercio Exterior, Av. Libertador—Centro Comercial Los Cedros, Urbanización La Florida, Caracas, Venezuela

XIV. Effective Date

The effective date of this Agreement is the date of its publication in the **Federal Register**.

For Government of Venezuela.

Dated: October 14, 1997.

Alejandro J. Perera,

DCM & Charge D'Affairs of Venezuelan Embassy.

For U.S. Department of Commerce.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix

In accordance with the established format, the Government of Venezuela shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

The Government of Venezuela will collect and maintain sales data to the United States, in the home market, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

The Government of Venezuela will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

Report of Inventories

Report, by location, the inventories held by Venezuela producers/exporters in the United States and imported into the United States between the period beginning May 6, 1997, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure and in pounds.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the merchandise.
4. Export License Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the Export License/certificate of origin is issued.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

United States Sales

The Government of Venezuela will provide all Export Licenses, which shall contain the following information with the exception of item #9, date of entry, and item #16, final destination.

1. Export License/Certificate of Origin Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.
3. Quantity: Indicate in original units of measure and in pounds.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate currency used/per original unit of measure.
6. Date of Sale: The date all terms of order are confirmed.
7. Sales Order Number(s): Indicate the specification number/order number relating to each sale and/or shipment.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company/Broker: Name and address of any trading company involved in the sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Venezuela producer/exporter.
13. Customer Affiliation: Indicate whether the customer is affiliated or unaffiliated to the Venezuela exporter.
14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Quota Remaining: Indicate the remaining quota available to the individual exporter during the Relevant Period.
16. Final Destination: Name and address of the end-user for consumption in the United States.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

Mill Certification

The Government of Venezuela shall ensure that all shipments of subject merchandise exported to the United States pursuant to this Agreement shall be accompanied by a copy of the original mill certification.

Sales Other Than United States

Pursuant to Section VIII, paragraph C, the Government of Venezuela will provide country-specific sales volume and value information for all sales of steel wire rod products, as described in Section II, in the home market and to third countries.

1. Quantity: Indicate in original units of measure sold and/or entered and in metric tons.
2. F.O.B. Sales Value: Indicate currency used.
3. Date of Sale: The date all terms of order are confirmed.
4. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, specification/grade under which sold, and other available information.
5. Sales Order Number(s): Indicate the specification number/order number relating to each sale and/or shipment.
6. Date of Export (if third country): Date of shipment from Venezuela.
7. Date of Entry (if third country): Date the merchandise entered the third country or the date a book transfer took place.
8. Importer of Record (if third country): Name and address.
9. Customer: Name and address of the first party purchasing from the Venezuela producer/exporter.
10. Customer Affiliation: Indicate whether the customer is affiliated or unaffiliated.
11. Final Destination: Name and address of the end-user for consumption.
12. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–827]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Office of Antidumping/Countervailing Duty Enforcement, Group III, Office IX, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3434, or 482–0165, respectively.

Final Determination

The Department of Commerce (the "Department") determines that countervailable subsidies were provided to Sidbec-Dosco (Ispat) Inc., a producer and exporter of steel wire rod from Canada. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since our preliminary determination on July 28, 1997 (62 FR 41933–39, August 4, 1997) ("*Preliminary Determination*"), the following events have occurred:

Verification: In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

We conducted verification in Canada of the questionnaire responses of the Government of Canada ("GOC"), the Government of Quebec ("GOQ"), the Government of Ontario ("GOO"), Sidbec-Dosco (Ispat) Inc. ("SDI"), Sidbec (Sidbec was incorrectly referred to as "Sidbec, Inc." in the preliminary determination), Ivaco, Inc. (Ivaco), Stelco, Inc. (Stelco), Bank of Canada, The Bank of Nova Scotia, and the Canadian Steel Trades and Employment Congress (CSTEC) from September 2 through September 11, 1997.

Argument: Petitioners and respondents filed case and rebuttal briefs on September 22 and September 25, 1997, respectively. A public hearing was held on September 29, 1997.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. These products are commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. These products are commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of wire rod from Canada materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Canada of the subject merchandise (62 FR 23485).

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the "petitioners"), six U.S. producers of wire rod.

Corporate History

Sidbec was established by the GOQ in 1964. In 1968, Sidbec acquired Dominion Steel and Coal Corporation Limited, a steel producer, and later changed the name to Sidbec-Dosco, Inc. The GOQ owned 100 percent of Sidbec's stock, and Sidbec owned 100 percent of Sidbec-Dosco, Inc.'s stock, until privatization in 1994.

In 1976, Sidbec, British Steel Corporation (International), and Quebec Cartier Mining Company entered into a joint venture to mine and produce iron ore concentrates and iron oxide pellets. The company they formed was Sidbec-Normines Inc. (Sidbec-Normines), of which Sidbec owned 50.1%. These mining activities were shut down in 1984.

Before its privatization, Sidbec-Dosco, Inc. operated steel making facilities in Contrecoeur, Montreal and Longueuil, Quebec. Until 1987, all of the facilities at Longueuil and a good portion of the facilities in Contrecoeur were owned by Sidbec and leased to Sidbec-Dosco, Inc. In 1987, Sidbec reorganized in order to consolidate all steel-related assets under its wholly-owned subsidiary, Sidbec-Dosco, Inc. Sidbec itself became a holding company.

On August 17, 1994, Sidbec-Dosco, Inc. was sold to Beheer-en Beleggingsmaatschappij Brohenco B.V. (Brohenco), which is wholly-owned by Ispat-Mexicana, S.A. de C.V. (Ispat Mexicana). It became known as Sidbec-Dosco (Ispat) Inc.

Sidbec, the holding company, continues to be 100% owned by the GOQ.

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets, in determining the allocation period for nonrecurring subsidies. *See* General Issues Appendix ("GIA") appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226; July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the "Court") ruled against the allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc.* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for the purposes of this final determination, the Department has calculated a company-specific AUL.

Based on information provided by Sidbec and SDI regarding depreciable assets, the Department has determined the appropriate company-specific allocation period. Due to the proprietary nature of data from SDI, we are unable to provide the specific AUL for Sidbec/SDI for the public file. The calculation of this AUL is on the official file in the Central Records Unit, Room B–099 of the Department of Commerce (*see Memorandum to the File: Calculation of AUL Period*, dated October 14, 1997).

Because we have determined that Ivaco and Stelco did not receive any non-recurring subsidies during the POI,

we have not calculated an AUL for either company.

Equityworthiness: In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in the world for the product under consideration.

For a more detailed discussion of the Department's equityworthiness methodology, *see* GIA (58 FR at 37239 and 37244).

Petitioners alleged that Sidbec and Sidbec-Dosco, Inc. (SDI's predecessor) were unequityworthy for the period 1982 through 1992. Petitioners alleged that any equity infusions received during those years would have been inconsistent with the usual investment practices of private investors and therefore conferred a countervailable benefit within the meaning of section 771(5)(E)(i) of the Act. In the preliminary determination, we determined Sidbec to be unequityworthy from 1982 to 1992 (*see Preliminary Determination* at 62 FR 41933).

In this investigation, both the GOQ and SDI have submitted arguments regarding Sidbec's equityworthyness at the time of the 1988 debt-to-equity conversion, and whether the Department considered the appropriate company (Sidbec versus Sidbec-Dosco, Inc.) when it made its preliminary equityworthiness determination.

Throughout the period 1982 to 1985, Sidbec reported substantial losses. Although Sidbec reported a profit in 1986 and 1987, the profits were not of such a magnitude to offset the substantial losses suffered from 1982 through 1985. Additionally, return on equity was either negative or not meaningful (due to a negative equity balance) in every year from 1984 through 1987. Moreover, for the years 1984 through 1987 Sidbec had a negative debt-to-equity ratio, which indicated that the company's liabilities exceeded the company's assets. Therefore, based on an analysis of Sidbec's data, we have determined that Sidbec was unequityworthy at the time of the 1988 debt-to-equity conversion (*see* Comments 8–10 below). The Department has not rendered a final determination on other years in the AUL period, because for this final determination we find only one potentially countervailable equity event, the 1988 debt-to-equity conversion.

Equity Methodology: In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists, *i.e.*, the price of publicly traded shares of the company's stock or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the GIA 58 FR 37239–44. Following this methodology, equity infusions made into an unequityworthy firm are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department normally evaluates financial data for three years prior to each year at issue to determine whether or not a firm is creditworthy. The Department considers the following factors, among others:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts;
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and
3. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals.

For a more detailed discussion of the Department's creditworhiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) ("*Certain Steel Products from France*"), and Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993).

Petitioners alleged that Sidbec and Sidbec-Dosco, Inc. were uncreditworthy from 1977 through 1993. We first initiated an investigation of Sidbec-Dosco, Inc.'s creditworthiness for the years 1982 and 1984 through 1988. Then, on July 1, 1997, we initiated an investigation of Sidbec's creditworthiness for the period 1984 through 1993. In the preliminary determination, we determined Sidbec to be uncreditworthy from 1982 to 1992 (*see Preliminary Determination*, 62 FR at 41935).

In its case brief, SDI submitted arguments regarding Sidbec's creditworthiness from 1982 to 1992, and whether the Department considered the appropriate company (Sidbec versus Sidbec-Dosco, Inc.) when it made its preliminary creditworthiness determination (*see* Comment 14 below).

To determine the creditworthiness of Sidbec during the years 1983 (the year of the first countervailable subsidy in the AUL period) through 1992 (the year of the last alleged subsidy in the AUL period), we have evaluated certain liquidity and debt ratios, *i.e.*, quick, current, times interest earned, and debt-to-equity, on a consolidated basis. For the period 1980 through 1985, the company consistently incurred substantial losses. Despite the fact that Sidbec reported a profit from 1986 through 1990, the company was still thinly capitalized and had a high debt-to-equity ratio during this time. Additionally, the interest coverage ratio was negative for the years 1991 and 1992 and the liquidity ratios (*i.e.*, quick and current ratio) indicated that the company may have had difficulty in meeting its short-term obligations. Consequently, based on our analysis of Sidbec's data, we have determined that Sidbec was uncreditworthy for the years 1983 through 1992.

Discount Rates: Respondents did not provide company-specific information relevant to the appropriate discount rates to be used in calculating the countervailable benefit for non-recurring grants and equity infusions in this investigation. For the preliminary determination, we used the long-term government bond rate in Canada published in the *International Monetary Fund (IMF) International Financial Statistics Yearbook* as the discount rate, plus a risk premium (because we had determined Sidbec to be uncreditworthy), for each year in which there was a non-recurring countervailable subsidy. For the final determination, because we now have verified long-term corporate rates for the AUL period (*i.e.*, loans or bonds) from the Bank of Canada, we have used these rates as the discount rate, plus a risk premium (because we have continued to determine Sidbec to be uncreditworthy), for each year in which there was a non-recurring countervailable subsidy, *i.e.*, 1983 through 1992.

Privatization/Restructuring Methodology: In the GIA, we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a government-owned company. Under this methodology, we calculate the amount of prior subsidies that passed through to the purchaser.

In the specific context of a restructuring, as here, where Sidbec sold Sidbec-Dosco, Inc. to Ispat Mexicana's subsidiary Brohenco, we performed the calculation for restructuring as set forth in the GIA, 58 FR at 37269, to derive the amount of prior subsidies that passed through to SDI.

In the current investigation, we have analyzed the privatization of Sidbec-Dosco, Inc. in the year 1994. We have followed the methodology in the GIA, described above, to calculate the amount of prior subsidies that passed through to SDI.

Based upon our analysis of the petition, the responses to our questionnaires, and verification, we determine the following:

I. Programs Determined To Be Countervailable

A. 1988 Debt-to-Equity Conversion

Petitioners alleged that Sidbec-Dosco, Inc. received a debt-to-equity conversion from either the GOC or the GOQ in 1988 based on Sidbec-Dosco, Inc."s 1988 Annual Report. SDI reported that a portion of Sidbec's debt (owed to the GOQ) was converted into Sidbec capital stock in 1988. According to SDI, the debt consisted of four loans provided to Sidbec by the GOQ during the period 1982–1985, plus accrued interest. SDI explained that, every two years, the GOQ extended the maturity date for these loans for another two years. According to the GOQ, it converted four of Sidbec's debt instruments into equity in Sidbec in 1988 in order to improve Sidbec-Dosco, Inc."s economic profile, for the purpose of making it more attractive for privatization, partnership, or investment. In the GOQ Act which authorized this debt conversion, Sidbec was authorized to acquire, as it later did, an equivalent amount in shares of Sidbec-Dosco, Inc.

We have concluded that, consistent with our equity methodology, benefits to Sidbec occurred at the point when the debt instruments (*i.e.*, loans) were converted to capital stock given that, as discussed above, we have determined that Sidbec was unequityworthy in 1988. *See, e.g., Certain Steel Products from France*, 58 FR at 37306–7, 37312. We consider the conversion of debt to capital stock in 1988 to constitute an equity infusion inconsistent with the usual investment practice of private investors within the meaning of section 771(5)(E)(i) of the Act.

When receipt of benefits under a program is not contingent upon exportation, the Department must determine whether the program is specific to an enterprise or industry, or group of enterprises or industries. Under the specificity analysis, the Department examines both whether a government program is limited by law to a specific enterprise or industry, or group thereof (*i.e., de jure* specificity), and whether the government program is in fact limited to a specific enterprise or industry, or group thereof (*i.e., de facto* specificity) (*see* Section 771(5A)(D) of the Act). We determine the 1988 debt-to-equity conversion to be specific, because it was provided only to one enterprise, Sidbec, and was not part of a broader program.

For these reasons, we determine that the 1988 debt-to-equity conversion constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

Consistent with the equity methodology, we followed our standard declining balance grant methodology for allocating the benefits from the equity infusion represented by the debt-to-equity conversion. We then reduced the benefit stream by applying the privatization calculation described in the Restructuring section of the GIA (58 FR at 37269). We divided the benefit by SDI total sales. On this basis, we calculated an estimated net subsidy for this program of 0.92 percent *ad valorem* for SDI.

B. 1983–1992 Grants

Sidbec received grants from the GOQ from 1983 to 1992 to compensate for expenses it incurred to finance Sidbec-Normines and its discontinued operations. Certain of these grants were provided by the GOQ to Sidbec with regard to the payment of interest on six different loans, the first of which was taken out in 1983. The GOQ was the guarantor of these loans. These grants were made in each year from 1983 to 1992. In addition, other grants were provided by the GOQ to Sidbec with regard to the payment of the principal on the same six loans during each year from 1984 to 1992. In the preliminary determination, the Department noted that these payments appeared in Sidbec's Consolidated Contributed Surplus and treated them as equity infusions from the GOQ. However, at verification the Department discovered that these payments were not equity but grants. The receipt of these grants occurred as follows: (1) Sidbec paid the interest and principal, as it came due, on loans that were taken out to finance Sidbec-Normines and its discontinued mining operations; (2) Sidbec then issued statements to the GOQ for these amounts; and (3) the GOQ, after obtaining the necessary budgetary authority, issued checks to Sidbec to cover these expenses. According to the GOQ, to process a request for these funds, approval was needed from four agencies (*i.e.*, the Quebec Ministry of Industry and Commerce, the Treasury Board, the National Assembly and the Executive Counsel). Once the approval process was completed, the GOQ issued a decree providing funding to Sidbec. *See* July 3, 1997 GOQ response, Exhibit H. In some years, the GOQ-approved grants did not cover all of the principal and interest due and paid by Sidbec (because of differing fiscal years for Sidbec and the GOQ), and Sidbec's financial statements recorded "grants receivable", based on management's "estimate" that the GOQ would reimburse Sidbec; the financial statements also explained how it would be handled "[i]f the Government was to decide to pay a smaller amount" than recorded in the "grants receivable" account. Nevertheless, over time, the GOQ did provide grants to Sidbec covering, in full, all principal and interest payments due on the six loans.

We have determined that the GOQ funds provided to Sidbec to finance Sidbec-Normines and its discontinued

mining operations were in the form of grants (see Comment 6). Based on our analysis of the record and the comments received from interested parties (in Comments 3, 4, 5, and 7), we determine that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act and are non-recurring in nature. We also have determined that they are specific within the meaning of section 771(5A)(D) of the Act because they were provided only to one enterprise, Sidbec, and were not part of a broader program.

To calculate the countervailable subsidy, we followed our standard declining balance grant methodology, as discussed above. We reduced the benefit stream by applying the privatization calculation described in the Restructuring section of the GIA (58 FR at 37269).

We divided the benefit attributable to the POI by SDI total sales during the same period. On this basis, we determine the countervailable subsidy for this program to be 8.03 percent *ad valorem* for SDI.

II. Programs Determined To Be Not Countervailable

A. Canadian Steel Trade Employment Congress Skill Training Program

The GOC, through the Human Resources Development Canada (HRDC), and provincial regional governments provide financial support to private sector-led human resource projects through the Sectoral Partnerships Initiative (SPI). The GOC stated that SPI has been active in over eighty Canadian industrial sectors, including steel through the Canada Steel Trades and Employment Congress (CSTEC). CSTEC's activities are divided into two types of assistance: 1) worker adjustment assistance, for unemployed steel workers; and 2) skills training assistance, for currently employed workers.

With regard to the worker adjustment assistance, funds flowing from HRDC do not go to the companies, but rather to unemployed workers in the form of assistance for retraining costs or income support. We have determined that these funds are not countervailable because the companies are not relieved of any obligations.

As discussed below (*see* Comment 18), based on the record, we have determined that funds received by SDI, Stelco and Ivaco from CSTEC for training purposes did not provide countervailable benefits during the POI, because these SPI benefits, which constitute a domestic subsidy, were not specific to the Canadian steel industry.

B. 1987 Grant to Sidbec-Dosco, Inc.

Petitioners alleged that in 1987, Sidbec-Dosco, Inc. received a grant from the GOQ. SDI stated that the GOQ did not provide a contribution to Sidbec-Dosco, Inc. in 1987. At verification, we found no evidence that the GOQ provided a grant to Sidbec-Dosco, Inc. in 1987. In 1987, Sidbec underwent a reorganization in order to consolidate all steel-related assets under Sidbec-Dosco, Inc. The Department discovered that this transaction involved an intracompany reorganization, and that this arrangement was exclusively between Sidbec and Sidbec-Dosco, Inc. Therefore, we have determined that no countervailable benefits were conferred.

C. 1987 Debt-to-Equity Conversion

Petitioners alleged that, in 1987, Sidbec-Dosco, Inc. received an equity infusion from either the GOC or GOQ. Specifically, petitioners stated that Sidbec (which was wholly-owned by the GOQ) converted loans to Sidbec-Dosco, Inc. into Sidbec-Dosco, Inc. shares. Both the GOC and the GOQ stated that they did not participate in a debt-to-equity conversion involving either Sidbec or Sidbec-Dosco, Inc. in 1987. We found no evidence at verification that the GOQ provided an infusion of equity, either through a debt-to-equity conversion or otherwise, to Sidbec-Dosco, Inc. in 1987. Furthermore, as with the alleged 1987 grant, we found that the basis for petitioners' allegation in fact involved a transfer of assets associated with the intracompany reorganization. Therefore, we have determined that no countervailable benefits were conferred.

D. Contributed Surplus

On July 1, 1997, we initiated an investigation on petitioners' allegation that C$51.7 million in contributed surplus constituted a countervailable subsidy. SDI reported that this contributed surplus was related to a capital expenditure program for fixed assets, and all of the assistance was received prior to 1980, which is outside the AUL period being used for Sidbec in this investigation. Additionally, the GOQ stated that Sidbec received these funds (which originated from both from the GOQ and the GOC) prior to the AUL period. At verification, we reviewed documentation which indicated that Sidbec received this C$51.7 million contributed surplus prior to the AUL period. Therefore, based on record information, we have determined that these funds did not provide countervailable benefits during the POI.

E. Payments Against Accumulated Grants Receivable

On July 1, 1997, we initiated an investigation on petitioners' allegation that C$43.8 million in payments against accumulated grants receivable in 1988 constituted a countervailable subsidy. SDI reported that these grants receivable are included in the amounts of the 1983–1992 grants discussed above that went to the discontinued mining operations of Sidbec-Normines. At verification of the GOQ, we confirmed that all GOQ payments made to Sidbec between 1983 and 1993 are accounted for by the 1983–1992 grants discussed above (*see* Comment 11 below). Therefore, based on record information, we have determined that no additional countervailable benefits were provided.

F. 1982 Assistance to Sidbec-Dosco, Inc.

Petitioners alleged that in 1982, Sidbec-Dosco, Inc. received an infusion of emergency funds, either in the form of a grant or an equity infusion, from the GOQ. At verification, we gathered additional information on the alleged 1982 assistance to Sidbec-Dosco, Inc. Record evidence indicates that the GOQ did not provide any governmental assistance to either Sidbec or Sidbec-Dosco, Inc. in 1982 (*see, e.g.*, Government of Quebec Verification report).

G. 1980 and 1981 Grants

On July 25, 1997, petitioners' alleged that through a review of Sidbec's 1980 through 1982 financial statements indicated that the GOQ provided grants to Sidbec in 1980 and 1981. At verification, we gathered information on the alleged grants to Sidbec. Record evidence indicates that the GOQ did not provide any grants to Sidbec in 1980 or 1981 (*see, e.g.*, Government of Quebec Verification report).

III. Programs Determined To Be Not Used

A. Industrial Development of Quebec

The Industrial Development of Quebec (IDQ) is a law administered by the Societe de Developpement Industriel du Quebec (SDIQ), a GOQ agency that funds a wide range of industrial development projects in many industrial sectors. Under Article 2(a) of the IDQ, SDIQ provided funding to help companies utilize modern technologies in order to "increase efficiency and exploit the natural resources of Quebec" (*see* GOQ July 3, 1997 response at page 12). In 1982, the GOQ rescinded the applicable law authorizing SDIQ to provide these grants.

The Department verified that Ivaco received grants in 1984 and 1985 which had been authorized prior to the program's rescission in 1982. With respect to these grants, we analyzed the total amount of funding Ivaco received in each year, and we have determined that the benefits Ivaco received under this program for each year constituted a *de minimis* portion (*i.e.*, less than 0.5 percent) of total sales value, and therefore should be expensed in each year they were received. Therefore, because the grants provided under this program were expensed in the year of receipt, we have determined that no countervailable benefits were bestowed on Ivaco during the POI.

Interested Party Comments

Comment 1: Respondent SDI maintains that the Department's determination to treat Sidbec, Sidbec-Dosco, Inc., and Sidbec-Normines as one entity in the preliminary determination in part because they prepared consolidated financial statements is legally insufficient. First, SDI claims that, after cessation of Sidbec-Normines' operations in 1984, in accordance with GAAP, Sidbec-Normines' financial results were not consolidated with those of Sidbec or Sidbec-Dosco, Inc. Thus, concludes SDI, the Department's decision to treat Sidbec-Normines as being the same as Sidbec was based on an incorrect premise: for only two of the years in which the Department found subsidies were Sidbec-Normines' financial results consolidated with the other two companies.

SDI contends that the facts in *Certain Steel Products from France*, cited by the Department in the preliminary determination, "are clearly and sharply distinguishable from those here." Specifically, SDI asserts that, in *Certain Steel Products from France*, the collapsed parties, Usinor and Sacilor, each produced the subject merchandise, each received subsidies whose benefits were still countervailable in the period of investigation, and merged together before the investigation was initiated. SDI also cites *Ferrosilicon from Venezuela*, 58 FR 27539, 27542 (May 10, 1993), in which the Department treated a parent corporation and its subsidiary as two distinct entities, as supporting the principle of "choos(ing) substance over form" in terms of addressing the treatment of distinct corporate entities. By relying only on GAAP, SDI maintains that the Department failed to examine whether Sidbec-Dosco, Inc. in fact benefitted from the subsidies at issue. SDI also argues that this approach conflicts with Department practice. Citing *Prestressed Concrete Wire from France*, 47 FR 47031, 47036 (Oct. 22, 1982), SDI states that the Department noted that: "(i)t cannot be concluded solely from the consolidation of financial statements that the subsidiaries or the parent are not operating independently."

Petitioners argue that respondents misread the preliminary determination by describing the Department's decision to treat Sidbec, Sidbec-Dosco, Inc., and Sidbec-Normines as a single entity as based on the fact that their financial statements are consolidated. According to petitioners, the Department collapsed the analysis of these three entities, not merely because of their financial statements, but also because of the close relationship of these entities as well as their common goal of creating a fully integrated steel company in Quebec.

Petitioners believe that the close relationship between Sidbec and Sidbec-Dosco, Inc. renders them indistinguishable for the purposes of weighing subsidy benefits. Petitioners argue that Sidbec was a crown corporation established to create an integrated steel facility in Quebec. Petitioners assert that, pursuant to that mission, it acquired Sidbec-Dosco, Inc. Petitioners also state that Sidbec founded Sidbec-Normines, in which it held a majority interest for the express purpose of supplying pelletized iron to Sidbec-Dosco, Inc. Petitioners claim that throughout the period of subsidies, Sidbec, Sidbec-Dosco, Inc. and Sidbec-Normines shared the same identity of interest: the production of steel from iron ore mined in Quebec. Petitioners conclude that the Department should not permit a result allowing Sidbec-Dosco to circumvent the countervailing duty law because the subsidies were formally bestowed on Sidbec.

Petitioners also have noted that in *Certain Steel from Germany*, the Department found that subsidies from the parent, DHS, passed through to its newly acquired subsidiary, Dillinger, even though the forgiven debt was incurred with respect to sales of another DHS subsidiary, Saarstahl. Thus, according to petitioners, attribution of subsidies from a parent to its subsidiaries may be entirely appropriate even in situations involving no production of subject merchandise.

Finally, petitioners have argued that, even if the Department chooses not to treat Sidbec, Sidbec-Dosco, Inc. and Sidbec-Normines as a single entity, it must allocate benefits to Sidbec, and through Sidbec to Sidbec-Dosco, Inc. Petitioners agree with SDI that, "in determining whether a benefit is found for the subject merchandise, the Department normally must examine the recipient of the subsidy." Petitioners point to the 1997 Proposed Rules, which state as a general rule that the Department will normally attribute a subsidy received by a corporation to the products produced by that corporation and that if the corporation is a holding company, subsidies will normally be attributed to the consolidated sales of the holding company.

Department's Position: In the preliminary determination, the Department stated: "Because Sidbec, Inc.'s financial statements were consolidated including both its mining and steel manufacturing activities, and because the alleged subsidies under investigation were granted through Sidbec, Inc., we are treating Sidbec, Inc., Sidbec-Dosco, Inc. and Sidbec-Normines as one entity for the purposes of determining benefits to the subject merchandise from alleged subsidies." *Preliminary Determination*, 62 FR at 41934. This statement needs clarification.

There are two ways in which the Department, in applying the countervailing duty law, treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy. First, the Department "generally allocate[s] subsidies received by parents over sales of their entire group of companies." *GIA*, 58 FR at 37262. One example of this practice is *Final Affirmative Countervailing Duty Determination; Certain Hot-rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (Jan. 27, 1993) ("*France Bismuth*"), where the "Department allocated subsidies to all French subsidiaries of the parent company, a French holding company, which was the recipient of the subsidies." *GIA*, 58 FR at 37262. Second, the Department has found that a subsidy provided to one company can bestow a countervailable benefit on another company in the same corporate family. As we explained in *Final Affirmative Countervailing Duty Determination; Certain Pasta from Italy*, 61 FR 30288, 30290, 30308 (June 14, 1996) ("*Pasta from Italy*"), in certain situations, the Department will treat two (or more) affiliated companies as a single entity, so that a subsidy to either company is deemed a subsidy to the other company and allocated over the combined sales of the two companies. Thus, in *Pasta from Italy*, the Department treated two affiliated companies as a single entity because they were sufficiently related to each other, *i.e.*, one company owned 20 percent or more of the other company, and both companies produced the

subject merchandise. The Department also treated two affiliated companies related by 20 percent or more ownership as a single entity where one company, a service company, did not produce the subject merchandise but nevertheless was "deeply involved in the operations of" the other company, which did produce the subject merchandise. *Id.* at 30290. *See also GIA*, 58 FR at 37262 (discussing *Armco, Inc.* v. *United States*, 733 F. Supp. 1514 (CIT, 1990), where the court "endorsed countervailing the parent company for subsidies received by the subsidiary because both were part of the same business enterprise, and the parent exercised control over its subsidiary").

In this investigation, from the beginning of the AUL period until 1984, when Sidbec-Normines' mining operations were shut down, Sidbec was the parent of both Sidbec-Dosco, Inc. and Sidbec-Normines, owning 100 percent of Sidbec-Dosco, Inc. and 50.1 percent of Sidbec-Normines, as well as 100 percent ownership of two other relatively less significant companies—Sidbec-Feruni, Inc. (steel scrap) and Sidbec International Inc. (sales of iron ore). In addition, Sidbec's financial statements included both Sidbec-Dosco, Inc. and Sidbec-Normines among the consolidated companies. Consistent with our past practice, therefore, we have treated any untied subsidy received by the parent, Sidbec, during this period as benefitting all of the companies in the Sidbec group, including Sidbec-Dosco, Inc. and Sidbec-Normines. We note that we also would treat Sidbec and Sidbec-Dosco, Inc. as a single entity during this period (and, in fact, continuing until 1967, at which time the Sidbec group was reorganized and Sidbec became a holding company and Sidbec-Dosco, Inc. assumed responsibility for all steel wire rod production), with the result that any untied subsidies received by either Sidbec or Sidbec-Dosco, Inc. during this period would be allocated to the sales of both companies. In this regard, both Sidbec and Sidbec-Dosco, Inc. were producers of the subject merchandise, Sidbec owned 100 percent of Sidbec-Dosco, Inc. and their steel wire rod operations were intertwined. Nevertheless, we need not reach that issue, given that Sidbec was the only entity that received subsidies during the entire AUL period, and these subsidies already are attributable to all of the members of the Sidbec group, including Sidbec-Dosco, Inc., under our normal practice when dealing with subsidies to the head of a consolidated group, as exemplified by *France Bismuth*.

From 1984, when Sidbec-Normines' mining operations were shut down, until 1987, the relationship between Sidbec and Sidbec-Dosco, Inc. did not materially change. Consequently, our practice dictates that we attribute any untied subsidies received by Sidbec during this period to the Sidbec group, which continues to include Sidbec and Sidbec-Dosco, Inc., but no longer Sidbec-Normines, whose production had ceased.

In 1987, the Sidbec group was reorganized, Sidbec became a holding company, and Sidbec-Dosco, Inc. took over all steel wire rod production for the Sidbec group. From 1987 until the privatization of Sidbec-Dosco, Inc. in 1994, we still must attribute any untied subsidies received by Sidbec—now a holding company, like Usinor Sacilor in *France Bismuth*—to the Sidbec group, which included Sidbec-Dosco, Inc.

Finally, from the privatization of Sidbec-Dosco, Inc. in 1994 through the POI, our practice dictates that we treat all of the subsidies previously received by Sidbec during the AUL period and attributable to Sidbec-Dosco, Inc. as passing to SDI, subject to and in accordance with the Department's privatization and, if relevant, tying methodologies (*see* Comment 13). In this regard, at the time of privatization and, indeed, since 1987, when Sidbec transferred all of its steel wire rod assets to Sidbec-Dosco, Inc., all of the subsidies previously provided to Sidbec resided with Sidbec-Dosco, Inc., with the exception of the small portion of those subsidies allocable to Sidbec's steel scrap subsidiary.

With respect to respondents' comments, first we note that it is not material whether Sidbec-Normines' financial results were included in Sidbec's consolidated financial statements after the closing of Sidbec-Normines' mining operations in 1984. It is only material that Sidbec-Normines was part of the Sidbec group until its mining operations were shut down in 1984. The post-1984 grants provided to Sidbec related to the closure of Sidbec-Normines' mining operations and are attributable to the remaining production of the Sidbec group, which is the steel wire rod production of Sidbec (until 1967) and Sidbec-Dosco, Inc. Meanwhile, the pre-1984 grants provided to Sidbec, even if considered tied to Sidbec-Normines' iron ore production, similarly are attributable to the remaining production of the Sidbec group (*see* Comment 3).

We do not agree with respondents that *Ferrosilicon from Venezuela* is relevant to the Department's determination. There, the Department was addressing the issue of whether two companies, FESILVEN and CVG, should be treated as a single entity, so that a subsidy to either company would be deemed a subsidy to the other and allocated over the combined sales of the two companies, as in *Pasta from Italy*. The Department explained why it refused to treat the two companies as a single entity as follows: "While CVG does have extensive control over FESILVEN, FESILVEN has other shareholders. Moreover, CVG is merely a holding company with ownership interest in other companies producing other products. Therefore, we do not see an identity of interests sufficient to warrant treating CVG and FESILVEN as a single company." 58 FR at 27542. In this case, the issue is what production benefits from the subsidy to Sidbec once Sidbec-Normines ceased production. As explained above, the Department is following the precedent, exemplified by *France Bismuth*, pursuant to which it is the Department's practice to allocate subsidies received by a parent over sales of its entire group of companies.

Respondent SDI's reliance on *Prestressed Concrete Wire from France* also is misplaced. There, the Department was addressing whether subsidies provided to an input supplier, Usinor, had been passed on to the producer of the finished product, CCG, which was a wholly owned subsidiary of Usinor. The Department held that the mere fact that CCG was consolidated on Usinor's financial statement was not enough to serve as a basis for concluding that the price charged by Usinor to CCG for the input was not at arm's length. Indeed, the Department ultimately held that the price was at arm's length after reviewing both Usinor's and CCG's dealings with unrelated companies. In contrast, the issue in this case is not whether the government has provided a subsidized input. Rather, the issue is whether subsidies provided to Sidbec should be atttributed to all of the Sidbec group's sales. Consequently, *Prestressed Concrete Wire from France* is not relevant here.

We also do not agree with respondent SDI's construction of the Department's final determination in *Certain Steel Products from France*. SDI misunderstands both the facts of that case and the Department's determination. There, contrary to respondent SDI's statements, Usinor and Sacilor were not producers of the subject merchandise; rather, each of them was a parent of a large group of consolidated companies, among which were producers of the subject merchandise and producers of other

products. During the middle of the AUL period, in 1986, Usinor and Sacilor were merged and Usinor Sacilor emerged as a parent, holding company for the companies that previously had been part of the Usinor group and the Sacilor group. In addressing the subsidies provided by the French government to Usinor and Sacilor and, after 1986, to Usinor Sacilor, the Department followed its precedent in *France Bismuth*, where the Department six months earlier had faced the same consolidated groups of companies, the same subsidies and the same POI. Thus, the Department attributed subsidies provided to Usinor and Sacilor prior to the creation of Usinor Sacilor in 1986 to their respective groups of companies, and these subsidies together with all subsidies bestowed after 1986 were attributed to the Usinor Sacilor group (exclusive of Usinor Sacilor's foreign producing subsidiaries because, as in *France Bismuth*, the Department had found the subsidies at issue to be tied to French production). Consequently, the Department's approach in the final determination here—to allocate untied subsidies received by Sidbec, the parent, over sales of its entire group of companies—is entirely consistent with *Certain Steel Products from France*.

Comment 2: Respondents GOQ and SDI contend that the Department's treatment of Sidbec-Normines as being at one with Sidbec and Sidbec-Dosco, Inc. is in error because Sidbec-Normines was a joint venture, distinct from both Sidbec and Sidbec-Dosco, Inc. According to respondent SDI, even though Sidbec-Normines was included in Sidbec's consolidated financial statements up until 1984 the results of Sidbec-Normines were treated separately from those of Sidbec-Dosco, Inc. or other Sidbec-related companies. Additionally, the GOQ notes (citing *Ferrosilicon From Venezuela*, 58 FR 27539, 27541 (May 10, 1993), which was sustained in *Aimcor v. United States*, 871 F. Supp. 447, 450 (CIT 1994)) that, where the Department has found the presence of other shareholders (as in the case of Sidbec-Normines), it has declined to treat related companies as a single entity.

Respondent SDI adds that the Department's determination to treat Sidbec, Sidbec-Dosco, Inc. and Sidbec-Normines as one entity in the preliminary determination in part because subsidies were granted to a parent corporation provides insufficient grounds for countervailing the product of a subsidiary. Citing *Aimcor v. United States*, 871 F. Supp. 447, 452 (CIT 1994), construing *Armco Inc. v. United States*, 733 F. Supp. 1514, 1516 (CIT 1990), SDI notes that the Court stated that the Department must "examine simply more than the corporate structure in deciding whether a countervailable benefit has been bestowed."

Petitioners argue that the existence of Sidbec-Normines as a joint venture does not alter the Department's approach, in applying the countervailing duty law, of treating the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy. Petitioners cite to *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6237, 6240 (Jan. 27, 1993), as a case in which the Department noted that "the subsidies provided to a company presumably are utilized to finance operations and investments in the entire company, including productive units that are subsequently sold or spun off into joint ventures."

While petitioners acknowledge that there are decisions where the Department has treated parent and subsidiary corporations as distinct entities for purposes of subsidy analysis (*e.g., Ferrosilicon from Venezuela* and *Brass Sheet and Strip from France*), petitioners believe that there are more important precedents for this case. For example, petitioners assert that *Certain Steel Products from Belgium* holds that corporate formalities or maneuvering will not be permitted to subvert the purposes of the statute. Additionally, petitioners maintain that this approach was specifically endorsed by the court in *Armco, Inc.* v. *United States*, 733 F. Supp. 1514, 1524 (CIT 1990), which held that the Department "must beware of permitting statutorily proscribed bounties that are avowedly of a countervailable nature to escape countervailing duties merely because of intra-corporate machinations."

Department's Position: The parties' arguments address the propriety of the Department treating Sidbec, Sidbec-Dosco, Inc., and Sidbec-Normines as a single entity, as in the *Pasta from Italy* line of precedent. Moreover, the Department is following its past practice of attributing untied subsidies received by a parent company to all of the companies in the parent's consolidated group. *See* also response to Comment 5.

Comment 3: Addressing the 1983–1992 grants, respondent SDI argues that, in order for the Department to find a countervailable benefit within the meaning of the statute (section 701(a)(1) of the Act), two conditions must be met: (1) a countervailable subsidy has been bestowed, directly or indirectly; and (2) the countervailable subsidy has been bestowed upon the manufacture, production or export of subject merchandise. SDI claims that, in the instant case, the Department failed to make this examination, and instead assumed without inquiry that the manufacturer of the subject merchandise received a benefit from subsidies given to its parent. Further, SDI claims that the Department has made this examination in other cases, such as *Carbon Steel Structural Shapes from Luxembourg*, 47 FR 39364, 39365 (Sept. 7, 1982) and *Brass Sheet and Strip from France*, 52 FR 1218 (Jan. 12, 1987).

Petitioners argue that Sidbec and Sidbec-Dosco, Inc. were closely intertwined, and thus the Department was correct to consider subsidies provided to the parent as benefitting the subsidiary. Petitioners argue that Sidbec was not just a holding company, noting that, until 1987, Sidbec itself owned all of the steel making facilities at Longueuil, Quebec, and a significant portion of the facilities in Contrecoeur. Sidbec, in turn, leased these facilities to Sidbec-Dosco Inc., which operated them together with its own plants as a single unit. Petitioners claim that this is evidence that there was a closely aligned identity of interests which existed between Sidbec and its subsidiary. Therefore, according to petitioners, any payments to Sidbec must have benefitted those productive facilities, the only ones Sidbec owned.

Moreover, petitioners assert that, because Sidbec-Normines was formed to supply pelletized iron ore for Sidbec-Dosco's steelmaking facilities, and because the only use of pelletized iron ore is to make steel, the establishment of Sidbec-Normines was part of the overall mission to give Sidbec "integrated production from mining through semi-fabricated product stages."

Department's Position: We disagree with respondent SDI. We concluded in the preliminary determination that (1) a countervailable subsidy has been bestowed, directly or indirectly, and (2) the countervailable subsidy had been bestowed upon the manufacture, production or export of subject merchandise. We make the same conclusions here in the final determination, with the clarification made above in Comment 1 regarding the attribution of subsidies within the Sidbec group.

With respect to whether a countervailable subsidy had been bestowed, directly or indirectly, we have concluded that the 1983–92 grants were provided directly to Sidbec and that they were specific and non-recurring in nature.

With respect to whether the countervailable subsidy had been bestowed upon the manufacture, production, or export of subject merchandise, we have followed our past practice, as described in the GIA, and treated the 1983–92 grants, which were designed to offset Sidbec's losses relating to Sidbec-Normines and its discontinued mining operations, as benefitting the steel wire rod production of Sidbec and Sidbec-Dosco, Inc. and, ultimately, SDI.

Specifically, while the grants provided in 1983 and 1984 before Sidbec-Normines' mining operations were tied to Sidbec-Normines' iron ore production (*see* response to Comment 5), these subsidies became attributable to the remaining production of the Sidbec group once the shutdown of Sidbec-Normines' mining operations occurred. The Department explained this approach in the GIA as follows:

> The Department maintains its position that subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company. The rationale underlying this position is that once inefficient facilities are closed, the company can dedicate its resources to production at its remaining facilities. Thus, subsidies do not diminish or disappear upon the closure of certain facilities but rather are spread throughout, and benefit, the remainder of the company's operations.

GIA, 58 FR at 37269. Thus, for example, in *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Spain*, 58 FR 37374 (July 9, 1993) (*"Certain Steel Products from Spain"*), the Department faced a situation where AHM had received subsidies benefitting both its hot-rolled steel and cold-rolled steel operations and subsequently closed down its hot-rolled steel operations. The Department allocated the portion of the subsidies previously attributed to the hot-rolled steel operations to AHM's cold-rolled steel subsidiary, SIDMED. *See GIA*, 58 FR at 37269; *Certain Steel Products from Spain*, 58 FR at 37374–5, 37379.

Meanwhile, the grants provided in the years subsequent to the shutdown of Sidbec-Normines' mining operations in 1984 plainly reflect payments to effect that shutdown and, therefore, benefit the remaining production of the Sidbec group. According to the GIA, which describes the Department's practice in this area:

> The closing of plants result[s] in the increased efficiency of the company as a whole. In turn, the increased efficiency makes the company more competitive. It necessarily follows that closure subsidies benefit a company's remaining production beyond the year of receipt. The basis for finding funds for government-directed plant closure countervailable is that these funds relieve the company of the costs it would have incurred in closing down the plant. Therefore, because the company has been relieved of a cost, the funds benefit the company as a whole, and the appropriate denominator for calculating the benefit of such funds would be total sales of all products.

GIA, 58 FR at 37270 (citing *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (CIT 1985)). The Department applied this approach in *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Italy*, 58 FR 37327 (July 9, 1993) (*"Certain Steel Products from Italy"*), where the head of the Falck group received subsidies to close down certain steel facilities. *See GIA*, 58 FR at 37270.

Thus, consistent with its past practice, the Department finds that grants provided both before and after the closure of Sidbec-Normines' mining operations in 1984 benefit the Sidbec group's remaining production as of 1985 onward, including the production of the subject merchandise, steel wire rod.

Comment 4: SDI contends that the Department's reliance on certain language from the GIA, 58 FR at 37269, pertaining to spreading benefits throughout the remainder of the company's operations, is misplaced. Specifically, SDI argues that the GIA language applies to closed facilities within the same corporation. The GOQ adds that, in *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (CIT 1985) (which the Department incorporated into its remarks involving plant closure in the GIA in order to indicate judicial support for the Department's position), unlike the situation with Sidbec, the discontinued facilities had produced the subject merchandise, not some other merchandise, and were part of the respondent company, not a distinct corporation.

SDI also asserts that the rationale expressed in the language quoted by the Department from the GIA also applies to subsidies "previously received." With regard to funds received following closure of Sidbec-Normines, SDI concludes that the language is inapposite. Instead, SDI believes that the relevant language from the GIA would be that language dealing with payments for the actual closure of a facility within a company. And, in this respect, because the entire operation of Sidbec-Normines was shut down, there was no remaining enterprise to benefit from the restructuring. Moreover, there is nothing on the record to support a conclusion that the closure increased the competitiveness or efficiency of Sidbec-Dosco.

Department's Position: We disagree with respondent SDI that the GIA's rationale for countervailing subsidies received prior to a plant closure and the GIA's rationale for countervailing subsidies to effect the closing down of a plant apply only to situations where the closed plant was part of the same individual company as the remaining production which is deemed to be benefitted. Although the language to which respondent SDI cites in the GIA only references "a company," the GIA's statements are equally applicable under the circumstances here, where the Department is dealing with a consolidated group of companies (the Sidbec group). Specifically, it is appropriate to allocate the subsidies at issue to the remaining production of the consolidated group in this case given that the closed plant (the Sidbec-Normines mining operations) had been operated by a subsidiary (Sidbec-Normines) whose only production of any type came from the closed plant, and the parent of the consolidated group (Sidbec) is the group's shareholder in the subsidiary and has financed and is obligated to pay the debts of the subsidiary. Plainly, the subsidies at issue allow Sidbec "to dedicate its resources to production at its remaining facilities." *GIA*, 58 FR at 37269. As the Department explained in the GIA, "subsidies do not diminish or disappear upon the closure of certain facilities." *Id.* Moreover, in the scenario here, it is plain that Sidbec, the parent, is being relieved of "the costs it would have incurred in closing down the plant," *id.*, so that its remaining production (including steel wire rod) undeniably benefitted from the subsidies which it received.

We note, as well, that in one of the *Certain Steel Products* cases, the Department dealt with subsidy funds provided to a parent company for the closing of one of its subsidiaries' facilities. In that case, *Certain Steel Products from the United Kingdom*, the Department, on remand from the Court of International Trade, had to determine how to treat, *inter alia*, 1984/85 equity infusions provided to British Steel Corporation ("BSC") for the purpose of paying for the closure of facilities which, as here, were dedicated to the production of non-subject merchandise. Indeed, the facilities were the very same facilities at issue in this case, the Sidbec-Normines mining operations, as BSC's subsidiary, British Steel Corporation (International) ("BSCI"), held an ownership interest in Sidbec-Normines. The Department treated the equity infusions as benefitting the worldwide consolidated sales of the BSC (actually, its successor, British Steel plc) group, *see* Final Results of Redetermination Pursuant to Court Remand on General Issue of Sales Denominator, in *British Steel plc* v. *United States*, Consol. Ct. No. 93–09–00550–CVD (CIT), dated June 23, 1995, and the court upheld this treatment, *see British Steel plc* v. *United States*, 929 F. Supp. 426, 457–58 (CIT 1996).

Similarly, we disagree with respondent GOQ's argument that the rationales in the GIA are limited to the situation where the closed plant produced the subject merchandise. Indeed, the GIA addresses situations where the closed plant produced non-subject merchandise, both in the context of subsidies received prior to a plant closure (*Certain Steel Products from Spain*) and in the context of subsidies to effect the closing down of a plant (*Certain Steel Products from Italy*). *See GIA*, 58 FR at 37269, 37270.

Comment 5: Respondents GOQ and SDI assert that evidence on the record shows that the countervailed funds were all (with the exception of the 1988 debt-to-equity conversion) specifically tied to Sidbec's mining operations. SDI argues that the Department fully verified that Sidbec repaid loans provided to refinance part of the debt of Sidbec's mining operations using funds provided by the GOQ.

Respondents SDI, the GOQ, and the GOC contend that the Department has departed from past practice, precedent, its Proposed Rules, and the Agreement on Subsidies and Countervailing Measures of the World Trade Organization (SCM Agreement) by countervailing subsidies tied to the mining operations. First, SDI and the GOQ argue that it is the Department's longstanding practice (as reflected in both the 1989 Proposed Rules and the 1997 Proposed Rules) that, if the Department determines that a countervailable benefit is tied to a product other than the merchandise, it will not find a countervailable subsidy on the merchandise. SDI and the GOQ cite, *inter alia*, *Certain Iron-Metal Castings From India*, 62 FR 32297, 32302 (June 13, 1997), *Certain Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201, 5211 (Feb. 4, 1997), and *Pasta From Italy*, 61 FR 30288, 30303 (June 14, 1996), as examples of the Department's "tied benefits" practice. Thus, argues SDI and the GOQ, to find a countervailable subsidy to Sidbec-Dosco (through which Quebec's obligations to Sidbec-Normines, as a separately incorporated joint venture, could not possibly flow) from subsidies given by the GOQ for purposes related to Sidbec-Normines would be in contravention of the Department's past practice relating to tied subsidies. The GOQ and the GOC add that the SCM Agreement does not permit the attribution to output by one company of countervailable benefits directed to, and received by, a separate corporate entity engaged in the production of a completely different product. SDI further argues that this is true where the subsidy is channeled through a parent company acting "merely as a conduit" for subsidies to a subsidiary corporation.

SDI also maintains that, because the subsidies benefitted the mining operations (regardless of whether they were provided before or after closure of the mining facility) then they cannot be held to benefit the downstream product except through an upstream subsidy analysis.

Petitioners assert that both the intended use and the likely effect of these subsidies was to benefit Sidbec, not Sidbec-Normines. Petitioners point to *Industrial Nitrocellulose From France* as illustrating that the Department's inquiry attempts to determine the ultimate destination or likely beneficiary of the subsidy, in large part by considering the government's intent in bestowing the subsidy. Petitioners claim that, applying these principles, the GOQ's subsidies are clearly not tied to Sidbec-Normines. Petitioners note that the ultimate destination and likely beneficiary of these subsidies was Sidbec, since the nature of these benefits was to provide loan forgiveness to Sidbec. Furthermore, petitioners argue that if Sidbec did pay the loan principal directly to Sidbec-Normines, the ultimate beneficiary of such forgiveness was not Sidbec-Normines, which had received the loans and was shutting down its operations, but Sidbec, which would remain in existence and was otherwise liable for repayment of the loans.

Petitioners add that an analysis focusing on the intended use of the subsidies yields the same result: namely, that Sidbec was the intended user, since the GOQ's specific intent in bestowing the subsidy was to relieve Sidbec of its loan guarantee obligations.

Finally, petitioners stress that the Department's approach to tied subsidies, like its approach to the relationship of the various Sidbec corporate entities, must be reasonable. Petitioners cite *Industrial Nitrocellulose from France*, noting that the Department analyzed the legislative history of the tied subsidies provision and concluded that "the single most important principle that both committees stressed here was that the Department should reasonably allocate subsidies to the products that they benefit * * * The main issue * * * is not whether we have considered the intent or the effect, but whether we have appropriately and reasonably allocated the benefits."

Department's Position: We disagree with respondents. While Sidbec-Normines' mining operations were still in existence, it is true that the 1983 and 1984 grants would affect only iron ore. However, these grants could only be considered to be tied to iron ore up to 1984—the year Sidbec-Normines ceased production. Once the company no longer produced iron ore, the remaining benefits from these grants—we allocate grants over a period of time equal to a company's AUL—could only be attributed to the remaining production of the Sidbec group, which consists of steel products, including wire rod. Grants made to Sidbec after the closure of Sidbec-Normines' mining operations cannot be tied to non-existent production, *i.e.*, iron ore. Rather, the Department's practice, as described in the GIA, is to treat these "closure subsidies {as} benefit{ting} a company's remaining production." *GIA*, 58 FR at 37270.

We also disagree with respondent SDI's argument that the 1983–92 grants cannot be attributed to Sidbec's steel wire rod production without an upstream subsidy analysis under section 701(e) of the Act, 19 U.S.C. § 1671(e). Given that Sidbec-Normines' mining operations were shut down in the 1984 during Sidbec's AUL period, the upstream subsidy provision is no longer germane. As the Department made clear in the GIA, closure payments for plants producing subject and non-subject merchandise alike are countervailable. *GIA*, 58 FR at 37270.

Comment 6: The GOQ argues that the financial assistance referred to by the Department as "1982–92 Equity Infusions" in fact were grants representing principal payments made by the GOQ on certain loans taken out by Sidbec in connection with its investment in Sidbec-Normines. According to the GOQ, this financial assistance was no different from the interest payments that the GOQ made on these same loans which the Department correctly treated as grants. Specifically, the GOQ argues that nothing was given in return for the funds, nor was anything expected or intended. The GOQ contends that, according to Departmental practice, all of the monies should be characterized as

grants. The GOQ further asserts that the Department verified that all the financial assistance given by the GOQ to Sidbec were grants.

SDI argues that the Department's conclusion that, because certain funds received by Sidbec were included in its financial statements under "contributed surplus" they were equity infusions, is not supported by precedent or accounting principles. SDI states that the funds referred to by the Department as "1982–92 Equity Infusions" were contributed for the express purpose of paying Sidbec obligations incurred in connection with its investment in Sidbec-Normines, and did not result in the receipt of shares by the investor.

Petitioners argue that the GOQ's payments of contributed surplus are equity infusions because they are additions to shareholder's equity and increase the value of total shareholders' equity in the company. Petitioners contend that the intent to increase the company's equity value is indeed significant. Petitioners argue that by infusing funds into Sidbec's equity account, the GOQ increased the likelihood that equity would reach positive levels, thus allowing the GOQ to recover previously granted funds.

Department's Position: We agree with the GOQ and SDI. The line item "Contribution by the gouvernement de la province de Quebec for Discontinued Mining Operation" appearing in Sidbec's Consolidated Contributed Surplus refers not to equity payments, but to grants, and these payments by the GOQ in fact took the form of grants (*see* GOQ Verification Exhibits G–14 through G–16).

The Department distinguishes grants from equity and debt by following its stated methodology as outlined in the GIA (*see* GIA, 58 FR at 37254). The Department defines grants as funds provided without expectation of a: (1) repayment of the grant amount; (2) payment of any kind stemming directly from the receipt of the grant (including interest or claims on profits of the firm (*i.e.*, dividends) with the exception of offsets as defined in the 1989 Proposed Regulations Section 355.46); or (3) claim on any funds in case of company liquidation.

At verification, the Department discovered that the GOQ funds provided to Sidbec related to principal payments due under loans that Sidbec had taken out, and which were guaranteed by Sidbec's shareholder, the GOQ (*see* Verification Exhibit G–8), relating to Sidbec-Normines and its discontinued mining operations. Although the GOQ as a guarantor had the right to seek reimbursement from Sidbec for the funds which it advanced, the Department has found that the GOQ provided these funds to Sidbec without a repayment obligation, and without compensation in the form of shares. In this regard, the Decrees authorizing the GOQ to provide these funds indicate that these funds were provided as direct subsidies to service the debt on loans taken out to finance Sidbec's mining obligations, and that the GOQ did not receive anything from Sidbec in return. Additionally, we confirmed at verification that the GOQ neither received new shares nor had its existing shares in Sidbec revalued as a result of its payments (*see, e.g.*, Decree 374–91, Exhibit 15 of the GOQ Verification Report). Thus, the Department concludes that these funds were provided to Sidbec in the form of grants, and that the investor did not expect a reasonable return on the investment (*i.e.*, the funds were a simple gift).

Comment 7: The GOQ argues that all of the money countervailed in the Department's preliminary determination originated from the GOQ's decision to enter a joint mining venture (*i.e.*, Sidbec-Normines) with Quebec Cartier Mining Company (QCMC) and the British Steel Corporation (International). The GOQ notes that it chose to assume the joint venture's obligations to private investors, and opted to fulfill these obligations by directing funds through Sidbec. The GOQ maintains that it financed these obligations to Sidbec-Normines through a series of loans, which it obligated itself to pay through guarantees, and that the loans (to which the GOQ was a party) were made through private banks. Furthermore, the GOQ and SDI argue that the GOQ assumed responsibility for repayment of these loans (*i.e.*, principal and interest).

On this basis, the GOQ argues that the grants provided to Sidbec for payment of the mining debts, *i.e.*, 1983–1992 grants, were recurring because they were automatically provided (as they were guaranteed) on a yearly (principal) or monthly (interest) basis. As recurring grants, the GOQ and GOC assert that it is the Department's practice to allocate (expense) a recurring grant to the year in which the subsidy is received. According to the GOQ, all funds at issue were provided in the form of recurring grants, and none of those funds was received in the POI. Thus, the GOQ concludes that none of the money provided to Sidbec should be allocated to the POI, and none of the infusions can be considered countervailable.

SDI asserts that the provision of funds pursuant to the mining operations was a commitment made by the GOQ to make full and prompt payment of all Sidbec obligations under the mining venture. Therefore, when the GOQ undertook the obligation, it made a commitment to pay, on a recurring basis, the principal and interest on loans incurred by Sidbec pursuant to its mining venture. SDI argues that these were not "exceptional" grants because the recipient (Sidbec) could expect to receive them each year.

SDI states that Sidbec's financial statements show the recurring nature of these payments. Additionally, SDI argues that the loan agreements pertaining to the countervailed monies had fixed and predetermined dates upon which the interest payments were due. Moreover, since the GOQ was a party to the loans, the government could anticipate when the interest was payable. Therefore, the funding Sidbec received to pay the accumulated interest was regular and predictable, establishing the recurring nature of these payments.

Petitioners argue that if the Department decides that the GOQ's coverage of Sidbec's payments of principal are not equity but grants, then the Department should follow its practice and determine these payments as nonrecurring (*see* GIA 58 FR at 37226). Petitioners argue that all government subsidies to Sidbec were non-recurring because they required government approval and authorization on each individual expenditure prior to the distribution of the funds.

Petitioners state that the approval process was extensive and exacting because each year, prior to issuing the grant, the GOQ had to seek budgetary authority. Additionally, the grant had to be approved at several stages of review, approval and regulation. Further, petitioners argue that the grant process was filled with inconsistencies concerning the use of discretion, since the GOQ sometimes failed to pay the full amount of interest incurred by Sidbec which lead to the entry of "grants receivable" in Sidbec's financial statements. Therefore, petitioners contend that this variability is inconsistent with the regularity and predictability necessary for a non-recurring grant. Petitioners also maintain that a consideration in deciding whether a program is recurring or non-recurring is "whether there is reason to believe that the program will not continue into the future." In applying this criterion, according to petitioners, the Department in *Final Countervailing Duty Determination Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6237, 6242 (January 27, 1993) (*U.K. Bismuth*), deemed equity

infusions to be non-recurring even though the equity capital was received every fiscal year for eight years. The Department stated in *U.K. Bismuth* that the recipient "had reason to believe that the program would not continue once the company reached viability." Petitioners similarly contend that, in this case, Sidbec had reason to believe that the equity infusions would not continue indefinitely.

Lastly, petitioners assert that, although Sidbec made a profit in 1989, the GOQ continued to pay the company principal and interest costs, and did not seek to require Sidbec's repayment of these funds. According to petitioners, this indicates that these payments were discretionary, and therefore were non-recurring.

Department's Position: We disagree with respondents GOC, GOQ and SDI. The 1983–92 grants were non-recurring in nature.

The Department's policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grants were received (*see GIA*, 58 FR at 37226). We consider grants to be non-recurring when "the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period, and/or the provision of funds by the government must be approved every year." *Id.* (quoting *France Bismuth*, 58 FR at 6722). If any of these questions are answered in the affirmative, the Departments considers the benefits to be non-recurring.*Id.* Examples of types of grants which the Department normally has considered non-recurring are: equity infusions, research and development grants, grants for loss coverage, grants for the purchase of fixed assets, debt forgiveness, and assumption of debt (including payments of principal and interest). *See id.* The grants at issue fall into this category, although that fact alone is not determinative of the recurring/non-recurring question.

The Department has stated that "the element of 'government approval' relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic" (*see id.*) At verification, the Department discovered that for each year of grants issued to cover Sidbec-Normines debt, the GOQ had to engage in a multi-layered process seeking budgetary authority (in the form of Decrees) prior to issuance of the funds in the form of Decrees (*see* verification Exhibits G–13 through G–16). Therefore, the Department concludes that government approval was necessary prior to the receipt of each individual grant.

The Department also concludes that the record evidence does not indicate that Sidbec could expect to receive benefits on an ongoing basis. Although Sidbec may have had expected that payment from the GOQ would continue so long as Sidbec was unprofitable, given that the GOQ was the guarantor on the underlying loans, Sidbec could not expect that payments from the GOQ in the years when Sidbec was unprofitable would be outright grants rather than payments for which the GOQ would later exercise its right as guarantor to seek reimbursement from Sidbec, the guarantee. Moreover, Sidbec could not expect that the GOQ would make payments, whether or not outright grants, in years when Sidbec was profitable (even though the GOQ in fact did do so).

Other facts in the record also support this conclusion. For example, in its financial statements for certain years, Sidbec recorded "grants receivable," based on management's "estimate" that the GOQ would reimburse Sidbec; however, the financial statements also explained how reimbursement would be handled "[i]f the GOQ was to decide to pay a smaller amount" than recorded in the "grants receivable" account (*see, e.g.*, Note 3 of Exhibit 14 of SDI's May 27, 1997 questionnaire response). Again, this indicates the uncertainty associated with the GOQ's payments.

Two similar cases include *U.K. Bismuth*, which petitioners have cited and discussed, and the *Certain Steel Products from Mexico* final determination addressed in the GIA. In *Certain Steel Products from Mexico*, the respondent had argued that the subsidies at issue—equity infusions—were recurring because they "were regularly and routinely approved by the legislature" and the "infusions were provided for nine consecutive years." *GIA*, 58 FR at 37228. The petitioners, meanwhile, pointed out the requirement for "specific government authorization" and that the "infusions were made on a case-by-case basis depending on the financial need of the company." *Id.* The Department found the subsidies to be non-recurring because the benefits were exceptional, had to be "separately approved or authorized by" the Mexican government and the respondent could not expect to receive the benefits on an ongoing basis. *Id.*

Lastly, we note that the Department cannot determine that these payments were unexceptional simply because the payments spanned several years. Such a broad approach, of course, would lead to the illogical conclusion that any multi-year distribution of payments makes a subsidy program "recurring".

Comment 8: Respondent SDI argues that the Department applied its equityworthiness test to the wrong company. Specifically, SDI contends that the Department should examine the financial status of Sidbec-Dosco, Inc., not Sidbec. Respondent SDI argues that the GOQ's 1988 debt-to-equity conversion in Sidbec was authorized for the purpose of investing in Sidbec-Dosco, Inc. SDI stated that the legislation explains that the object of the law is to "acquire shares of the capital stock of Sidbec-Dosco, Inc." Therefore, SDI maintains that while the conduit of these funds was Sidbec, the actual beneficiary of the equity infusion was Sidbec-Dosco, Inc. and, accordingly, the equityworthiness of Sidbec-Dosco, Inc. alone should be at issue in this determination. SDI asserts that, in *Final Affirmative Countervailing Duty Determination; Brass Sheet and Strip from France*, 52 FR 1218, (Jan. 12, 1987) ("*Brass Sheet and Strip from France*"), the Department properly examined a corporate structure similar to the one in this investigation. SDI states that in *Brass Sheet and Strip from France*, the parent company, Pechiney, was a holding company 85 percent-owned by the Government of France, and Pechiney in turn owned virtually all the stock of the subject manufacturer. SDI points and that the Department examined the equityworthiness of Pechiney's subsidiary, not Pechiney, the parent. According to SDI, as in Pechiney's case, in the instant investigation a reasonable private investor would have examined the financial indicators of the subsidiary, Sidbec-Dosco, Inc., not its parent, Sidbec.

SDI also argues that *Preliminary Affirmative Countervailing Duty Determination Oil Country Tubular Goods from Austria*, 60 FR 4600, 4601 (Jan. 24, 1995) ("*OCTG from Austria*") stands for the proposition that, only where the Department cannot use or is not provided with the relevant information, will it resort to use of the parent's financial indicators, rather than those of the subsidiary, the equity

recipient. SDI concludes that in this case, the Department had the relevant information (*i.e.*, Sidbec-Dosco, Inc's financial statements).

SDI argues, moreover, that the financial statements of Sidbec-Dosco, Inc. demonstrate a reasonably healthy company, and that market studies forecast a healthy steel industry into which a reasonable private investor could have expected a reasonable return.

Petitioners argue that the Department should reject SDI's claim that the Department should evaluate financial indicators for Sidbec-Dosco, Inc. rather than Sidbec because it is inconsistent with both the corporate structure of Sidbec and the normal behavior of a reasonable investor. Petitioners contend that, until the reorganization, Sidbec directly owned steel facilities whose operations functioned as one unit with those of Sidbec-Dosco, Inc. Thus, petitioners conclude that any financial problems of Sidbec would limit its ability to fund Sidbec-Dosco, Inc. Petitioners assert that the case on which SDI principally relies (*Brass Sheet and Strip from France*) is not on point because the parent's consolidated financial data contained information on "numerous" other subsidiaries producing non-subject merchandise.

Petitioners also argue that, even if the Department relied on Sidbec-Dosco Inc.'s financial indicators rather than the consolidated financial statements of Sidbec, Sidbec-Dosco, Inc. would still be unequityworthy in 1988. Petitioners contended that Sidbec-Dosco Inc.'s financial indicators do not support a conclusion that a reasonable private investor would have expected a reasonable rate of return from an investment in Sidbec-Dosco, Inc. in the years 1985, 1986, 1987, and 1988 because these financial indicators do not point to a healthy company. Therefore, petitioners state that using Sidbec-Dosco, Inc.'s financial indicators would not change the results of the analysis.

Department's Position: We disagree with SDI's claim that the Department should evaluate financial indicators for Sidbec-Dosco, Inc. rather than Sidbec for the three-year period dictated by our equityworthiness methodology, *i.e.*, 1985–1987. As stated in Comment 1, the Department would have treated Sidbec and Sidbec-Dosco, Inc. as a single entity up through 1987. During that time period, the steel operations of Sidbec and Sidbec-Dosco, Inc. were intertwined and any reasonable investor would have looked to the financial indicators of the parent, Sidbec, as a gauge for how Sidbec (up until at least the end of 1987, when it transferred its steel assets to Sidbec-Dosco, Inc. and became a holding company) and Sidbec-Dosco, Inc. would perform. It was the steel assets of both companies which had just begun to reside in Sidbec-Dosco, Inc. in 1988, when the debt-to-equity conversion at issue took place. A private investor would not have confined its evaluation to Sidbec-Dosco, Inc.'s performance in 1985–1987, as that would only provide a partial picture of the steel operations of Sidbec-Dosco, Inc. in 1988. These circumstances are quite distinct from these addressed in *Brass Sheet and Strip from France* and *OCTG from Austria*. Thus, for the final determination, the Department has evaluated the financial indicators of Sidbec, rather than Sidbec-Dosco, Inc., to make its equityworthiness determination regarding the 1988 debt-to-equity conversion.

Comment 9: With respect to the GOQ's 1988 debt-to-equity conversion, the GOQ asserts that the Department must measure the GOQ's action against the standard of a reasonable private investor faced with the same choices as the GOQ under the same circumstances, in determining whether this transaction constituted a countervailable event. The GOQ argues that its decision to convert this debt-to-equity in 1988 satisfies this standard and therefore cannot constitute a countervailable event.

Moreover, the GOQ notes that the Department's standard equityworthiness methodology was formulated for equity infusions, and is not designed to analyze debt-to-equity conversions. According to the GOQ, no money changed hands.

In any event, respondent GOQ also argues that the record shows that Sidbec was equityworthy at the time of the debt-to-equity conversion. The GOQ suggests that *Final Affirmative Countervailing Duty Determination; Steel Wire Rod From Trinidad and Tobago*, 49 FR 480, 483 (Jan. 4, 1984), supports the argument that it is commercially reasonable to rely on contemporaneous studies. For this case, the GOQ claims that it acted as a private investor, relying on three internal studies that all concluded that a debt-to-equity conversion was the best option for the GOQ in order to maximize its long-term return on its investment in Sidbec. The GOQ asserts that the Department's practice in determining the reasonableness of a government action is to examine the information available to that government at the time of a debt-to-equity conversion. The GOQ maintains that the trends for both Sidbec's financial performance and that of the steel industry had been very positive for more than three years by the end of 1988, when the GOQ made its final decision to convert some of Sidbec's existing debt into equity.

Petitioners argue that the Department does not differentiate between equity infusions and conversions when making an equityworthiness determination.

Petitioners also argue that any improvements registered in Sidbec-Dosco, Inc.'s financial statements or forecasts for the overall Canadian steel market for 1987 to 1988 could not offset the magnitude of Sidbec's previous losses. Petitioners contend that, even if Sidbec's financial performance improved, the Department generally does not consider "a couple of years" of improved performance as warranting a finding of equityworthiness when a firm has been found unequityworthy for a number of years. Additionally, petitioners assert that information on future prospects is only one factor to consider, and the Department generally places "greater reliance on past indicators as they are known with certainty and provide a clear track record of the company's performance, unlike studies of future expected performance which necessarily involve assumptions and speculation." (*GIA*, 58 FR at 37244).

Department's Position: We disagree with the GOQ that the Department should employ an analysis different from its standard equityworthiness methodology in determining the countervailability of the debt-to-equity conversion. What the GOQ proposes is essentially an inside investor standard. In past practice, however, the Department has rejected the insider investor arguments which have been forwarded by the GOQ in this case. The Department has stated that "it is essential to recognize that the Department must render its equityworthiness determination on the basis of objective and verifiable evidence. The argument that an inside investor may have a greater appreciation of the workings of the firm does not provide the Department with a reliable means of distinguishing between those inside investor motivations that may be commercially based and those that are not" (*see* GIA, 58 FR 37250). Further, the Department has stated that "a determination of equityworthiness cannot be measured by, nor equated with, the decision of a creditor exchanging its debt for an equity position in a company in order to improve its chances for recouping money already loaned to that enterprise. Nor can it be based on whether an optimal debt to equity ratio can be achieved through the conversion of debt. These may both be important commercial considerations, but they are considerations that relate to interests distinct from the viability of any given investment. The Department is fundamentally concerned with whether it would have been reasonable for a private investor to invest money in the company in question. Such an examination must take place each time an investment occurs, whether it is an investment with 'new' money or a conversion of previous debt to equity. However, the proper focus of the Department's analysis is whether the individual investment, taken alone, made sound commercial sense" (*see* GIA, 58 FR 37250). Therefore, the Department determines that its equityworthiness analysis is appropriate.

We also disagree with the GOQ's argument that a debt-to-equity conversion should not be treated as an equity infusion because no new money was provided by the GOQ. We reject this argument because of the principle laid down in the GIA, quoted immediately above, and our past practice, as evidenced by cases such as *France Bismuth*, 58 FR at 6227–28, and *Certain Steel Products from France*, 58 FR at 37312, 37313, where we treated debt-to-equity conversions as equity infusions.

Finally, we disagree with the GOQ that Sidbec was equityworthy at the time of the 1988 debt-to-equity conversion. As we have discussed above (*see* Equityworthiness Section of this Notice), the factors which the Department examines when making an equityworthiness determination showed Sidbec to be unequityworthy.

We also note that at verification, GOQ officials stated that in the mid-1980s, Sidbec was not attractive to investors, because even though it showed some "minor" profits, the profits were not sufficient to attract a private investor. *See* Government of Quebec Verification Report. Therefore, by the GOQ's own admission, it performed this conversion because no private investor would provide the capital.

Further, the ultimate aim of the studies commissioned by the GOQ was the privatization of Sidbec-Dosco, Inc. The GOQ stated in its July 3, 1997 questionnaire response that a GOQ memorandum noted that "a debt-to-equity conversion offered the greatest potential return to the GOQ." Specifically, the report concluded that, "as a result of the contemplated debt-to-equity conversion, Sidbec would have a capital structure comparable to other integrated steel companies. Therefore, the report concluded that the debt-to-equity conversion would make the company much more marketable should the government wish to sell it, or shares in it, in the future." These statements lead the Department to the conclusion that this debt-to-equity conversion was undertaken for the purpose of relieving Sidbec of debt to make the company attractive to private investors. It also leads us to the conclusion that normal commercial considerations would not have led a private investor to make an equity infusion when the GOQ did.

The Department is not aware of any record information suggesting that the marginally improved health of the Canadian steel market and the worldwide steel industry generally in the mid-1980s could offset the poor financial condition of Sidbec. As we explained in our preliminary determination, "throughout the period 1982 to 1985, Sidbec reported substantial losses. Although Sidbec reported a profit in 1986 and 1987, this profit trend was not of such a magnitude to offset the substantial losses suffered from 1982 through 1985." Similarly, the marginally improved health of the steel market in recent years was not significant enough to change the prior assessment of Sidbec's health.

Comment 10: SDI argues that the Department erred in its preliminary determination of Sidbec's equityworthiness because the Department allegedly analyzed the entire 1982–92 period in determining whether the 1988 debt-to-equity conversion was a countervailable action. Instead, SDI argues, the Department should have limited its equityworthiness analysis to 1988 (the time the equity infusion was made) and the three years preceding the investment, as well as the future prospects of the company and the industry as a whole. Respondent SDI indicated that both the Department's practice and Proposed Rules dictate that equityworthiness can only be established by examining financial performance prior to and at the time of the equity infusion occurs; later performance is irrelevant in determining whether a "reasonable private investor" would have invested at the time.

Petitioners argue that the Department properly applied its standard equityworthiness methodology in its preliminary determination. Petitioners point out that the Department analyzed Sidbec's financial performance indicators for the entire period from 1982 through 1992 because the allegations concerning equity infusions and the debt-to-equity conversion covered this entire period.

Department's Position: Petitioners are correct in interpreting the results of the Department's equityworthiness analysis. We did not use later performance in evaluating the 1988 debt-to-equity conversion or any of the equity infusions (which we have decided in this final determination actually are grants) made in the years 1983 through 1992. Rather, for each equity transaction, we followed our standard equityworthiness methodology, as set forth above in our equityworthiness section of this notice, and analyzed current and past financial indicators reaching back three years and future prospects as of the time of the equity transaction.

Comment 11: Petitioners argue that the Department failed to countervail benefits from payments to Sidbec, authorized by the GOQ, against accumulated grants receivable. Specifically, petitioners assert that while some of the grants receivable covered by a 1988 payment were countervailed in previous years, the Department must countervail that portion of the grants receivable which was not covered by the payment. Petitioners speculate that the Department did not countervail these payments in the preliminary determination in order to avoid double counting. However, petitioners argue that, because Sidbec's financial statements "clearly distinguish" government grants from grants receivable, countervailing grants receivable would not result in double counting. Petitioners recommend that the Department countervail the total payment against grants receivable in 1988, while subtracting the value of grants receivable in 1987 and 1988 from the 1987 and 1988 grant amounts countervailed in the preliminary determination. Petitioners state that the Department should follow this methodology because the grants receivable can only have conveyed a countervailable benefit in the year when they were received.

Respondents GOQ and SDI claim that the payments against accumulated grants receivable cannot be countervailed because the funds are tied to interest due on an instrument taken by Sidbec to pay for costs of Normines' mining operations and therefore has no relationship to the subject merchandise (*see* Comment 5 for a discussion of funds granted pertaining to mining operations). The respondents also argue that the Department already accounted for this sum in the preliminary determination. According to the respondents the Department verified the source of the money in question, and

traced it back to monies already accounted for in the preliminary determination. Additionally, respondent SDI argues that, by definition, "grants receivable" have not yet been received, and therefore cannot be countervailed in the years in which they are recorded as "grants receivable." Finally, the GOQ suggests that, in the alternative, the Department could do what petitioners have asked. The GOQ argues that, should the Department decide to accept petitioners' argument, the end result, using petitioners' suggested method to avoid double counting, would be a net reduction in the margin.

Department's Position: We believe that the focus of our effort to calculate the countervailable subsidy should be twofold. First, we need to ensure that grants receivable (which eventually may become grants received) are not improperly included in the countervailing duty margin. A grant receivable is not a subsidy; only a grant is. Second, we need to ensure that all countervailable subsidies have been captured by our methodology. In order to achieve these goals with respect to GOQ grants to Sidbec, the Department reconciled payments to Sidbec as recorded in the GOQ's public accounts to amounts received per Sidbec's accounting records. In doing so, the Department confirmed that all GOQ payments made between 1983 and March 31, 1993 (the end of the GOQ's 1992 fiscal year) were accounted for in the Department's preliminary determination. *See* Sidbec Verification Report, Exhibit 7. Therefore, the Department finds that no adjustments are necessary in the final determination.

Comment 12: Respondent SDI argues that the purchase price for Sidbec-Dosco, Inc. used by the Department in the preliminary determination did not reflect the true purchase price. SDI states that the purchase price used by the Department represented the cash payment by the buyer; however, it grossly understated the actual purchase price because it failed to take into account the additional consideration paid by the buyer for the shares of Sidbec-Dosco, Inc. The specific nature of the additional consideration is proprietary.

The petitioners did not comment on respondent SDI's argument.

Department's Position: We disagree with SDI. SDI does not cite any past Departmental practice where the Department has included in its purchase price calculation the additional consideration to which SDI refers, nor does any sound financial analysis support SDI's approach (*see Memorandum to the File, Final Analysis Memorandum for the Investigation of Steel Wire Rod from Canada*).

We note that although Article 6.1 of the Stock Purchase Agreement provided for the buyer to assume other obligations in the purchase of Sidbec-Dosco, Inc., Articles 3.1 and 3.2 of the Stock Purchase Agreement specifically outline the actual purchase price that Ispat Mexicana , through its subsidiary, Brohenco, paid for Sidbec-Dosco, Inc. Nowhere in Articles 3.1 and 3.2 is reference made to other obligations being included in the purchase price of Sidbec-Dosco, Inc. Additionally, the record includes clear statements from both SDI and the GOQ in their questionnaire responses indicating the amount of money that Ispat Mexicana paid for outstanding shares of Sidbec-Dosco, Inc. (*see* SDI May 27, 1997 questionnaire response and GOQ July 3, 1997 questionnaire response). This amount does not include the additional consideration to which SDI now refers. Furthermore, at verification, SDI officials specifically stated that the official price at which Ispat Mexicana purchased Sidbec-Dosco, Inc. from Sidbec was the price that agreed with the amount in the questionnaire responses (*see* SDI verification report, Sept. 17, 1997). We also reviewed documents at verification showing the Department this same purchase price. Moreover, at Sidbec, we verified the price that Ispat Mexicana paid for Sidbec-Dosco, Inc. and that this price agreed with the questionnaire responses (*see* Sidbec verification report, Sept. 17, 1997). Furthermore, at Sidbec, we examined sale documentation and found that the purchase price in this documentation agreed with the purchase price in the responses (*see* Exhibit S–1).

Therefore, for the final determination, the Department will continue to use the purchase price from the preliminary determination.

Comment 13: SDI asserts that any possible countervailable subsidies were extinguished by privatization. SDI argues that the privatization methodology used in the preliminary determination is incorrect for the following reasons: (1) The accepted practice in virtually every part of the world for valuing a company for purposes of acquisition is to look at the discounted stream, or present value, of future earnings; (2) the forecasted earnings are calculated by excluding any interest payments, and any income or expenses which do not impact on cash flow, such as depreciation; and (3) the forecasted tax burden is also calculated and subtracted from the pre-tax earnings. SDI contends that after calculating the future earnings, the earnings are discounted using the relevant cost of capital (to the purchaser) and then summed, and that this sum represents the value of the company as if all the financing were share capital. Also, if there are loans or other debts outstanding, these liabilities are subtracted from the sum of discounted future values in order to arrive at the net (unleveraged) value of the company. SDI points out that grants taken by the company effectively decrease the amount of the loans that the company would otherwise have to take to finance the given level of investment, and the value of the company increases by the amount of the grants and this, in turn, increases the amount that the purchaser is willing to pay for the company. Moreover, SDI points out that if the operations are not financed completely by loans, but are financed in part by grants and equity infusions, the value of the company is reduced only by the amount of the loans, not the grants and equity infusions, when calculating the present value of future earnings. SDI argues that Ispat Mexicana's purchase of Sidbec-Dosco, Inc. paid back the grants dollar for dollar. Therefore, SDI argued that the subsidies that Sidbec-Dosco, Inc. received prior to privatization are extinguished at the point of privatization.

The GOC asserts that it has concerns with the Department's privatization methodology. The GOC contends that it was advised that the sale of Sidbec-Dosco, Inc. was an arm's length transaction and fully reflected the market value of the company's assets. Therefore, the Department should conclude that any alleged subsidies were extinguished at privatization.

Department's Position: We disagree with both the GOC and SDI.

In deciding how to treat non-recurring subsidies after a privatization, the Department has followed the methodology which was discussed in the "Restructuring" section of the GIA, 58 FR at 37266–69. There we stated that "subsidies were not extinguished when a productive unit was sold. Instead, some portion of prior subsidies received 'by the seller "travel (with the productive unit) to its new home":

> The Department determines that a company's sales of a "business" or "productive unit" does not alter the effect of previously bestowed subsidies. The Department does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit.

Id. At 37268 (quoting *U.K. Bismuth*). We then described the calculation that we would use to measure the portion of the subsidies which passed through. This calculation takes into account the sale price for the productive unit and calls for an allocation of previously bestowed subsidies between the buyer and seller. *See id.* at 37269.

Consistent with this approach, we treated a portion of the subsidies received by Sidbec as passing through to SDI. We calculated the allocated amounts pursuant to the formula developed in the Restructuring section of the GIA, 58 FR at 37269.

As to the argument that an arm's length transaction, at fair market value, extinguishes prior subsidies, the decision of the United States Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) ("*Saarstahl*"), is controlling. There, the Federal Circuit found that an arm's length transaction, at fair market value, does not automatically extinguish subsidies previously bestowed on a government-owned company, given that the countervailing duty statute does not require the Department to find that the buyer—here, Ispat Mexicana—has a competitive benefit resulting from those subsidies. The Federal Circuit indicated that the Department can impose countervailing duties upon the buyer once it finds (1) a subsidy with regard to the production of the subject merchandise, and (2) injury to the domestic industry by reason of imports of that merchandise. *See id.* at 1542–43. These prerequisites have been met in this final determination.

The Department continues to believe that its approach with regard to privatization is reasonable, and this approach has received support from the Federal Circuit, as indicated above. Therefore, for the final determination, the Department has continued to follow that approach in addressing the restructuring at issue.

Comment 14: SDI argues that the Department's finding that Sidbec was uncreditworthy in its preliminary determination is not supported by evidence on the record. SDI contends that the Department did not consider evidence of comparable long-term commercial financing received by Sidbec when making its funding. SDI argues that it provided the Department with evidence of commercial debt obtained contemporaneously with the receipt of government grants. SDI maintains that Sidbec entered into a long-term capital lease obligation and the terms of the lease stated that Sidbec would pay the rent. SDI argues that the lease was not guaranteed by the government; hence, the lease constituted comparable long-term financing obtained through private commercial sources.

SDI further argues that the Department should have considered the creditworthiness of Sidbec-Dosco, Inc., the producer of the subject merchandise, and not Sidbec. SDI stated that in (*LHF from Canada*), the Department examined the creditworthiness of two related companies "directly engaged in the production of LHF," and not the creditworthiness of the entire consolidated group. SDI noted that the Department should have made a similar determination in this case. Additionally, SDI states that Sidbec-Dosco Inc.'s financial ratios indicates that it was creditworthy during in the years prior to the 1988 debt-to-equity conversion, and that the Department erred in using Sidbec's financial ratios when determining creditworthiness. Finally, SDI asserts that the Department failed to consider record evidence showing that Sidbec-Dosco, Inc. received comparable long-term financing from commercial sources during the AUL from 1985–1988.

SDI asserts that the above errors resulted in the Department adding a risk premium to the discount rate. Citing the 1997 Proposed Rules, 62 FR at 8829–30, SDI argues that the risk premium is greater than the benchmark of 4.3 percent that the Department proposes as "a more accurate measure of risk involved in lending to firms with little or no access to commercial bank loans" that captures "more precisely the speculative nature of loans to uncreditworthy companies and the premium they would have to pay the lender to assume that risk." Therefore, the Department's use of a risk premium is not legally correct.

Petitioners argue that the Department should reject SDI's argument that the Department should base its creditworthiness analysis on Sidbec-Dosco, Inc., and not Sidbec, financial ratios because of the nature of Sidbec's corporate relationship with Sidbec-Dosco, Inc. Petitioners state that this analysis is accurate because no reasonable creditor would lend to Sidbec-Dosco, Inc. without evaluating the financial condition of Sidbec. However, petitioners assert that if the Department does consider Sidbec-Dosco Inc.'s financial ratios, Sidbec-Dosco, Inc. still had a high debt-to-equity ratio and ultra-low quick ratio and thus would not be attractive to a commercial lender.

Petitioners contend that Sidbec's lease obligation is not proof of creditworthiness. Petitioners note that in the preliminary determination for *Steel Wire Rod From Germany*, the Department found that respondent Ispat Hamburger Stahlwerke was uncreditworthy in 1994 even though it had long-term lease agreements. Therefore, the Department should disregard the evidence of Sidbec's long-term lease.

Petitioners state that they agree with SDI in its suggestion that the Department use the new uncreditworthiness calculation from the proposed countervailing duty regulations in this review. However, petitioners contend that the Department should use the entire methodology, including the formula in Section 351.504(a)(3)(iii). Petitioners note that while it may not be appropriate to apply the new regulations to all of these investigations, it believes it is entirely correct when petitioners and the respondent agree that it would yield to a more accurate measure.

Department's Position: The creditworthiness analysis that the Department performed in its preliminary determination (and subsequently in this final determination) is consistent with our decision (*see* Comment 1) to analyze the subsidies at issue as benefitting the consolidated group of the parent/holding company, Sidbec. Therefore, for the final determination, we have limited our analysis to Sidbec. *See, e.g., Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy*, 60 FR 3199 (June 19, 1995).

Since the Department has limited its analysis of creditworthiness to Sidbec, we feel that it is not appropriate to address the Sidbec-Dosco, Inc.'s long-term commercial loans in this final determination. We also note that, in any event, SDI did not provide complete data regarding these borrowings.

Additionally, we disagree with SDI that Sidbec's long-term capital lease is comparable long-term commercial financing. The lease that SDI points to is a capital lease, which is secured by a first-rank specific charge (*see* Exhibit 13, Note 8 of SDI's May 27, 1997 questionnaire response), which is not unlike a typical mortgage. In this case, the lessor has first lien rights on the capital equipment should the lessee, Sidbec, be in default. On this basis, the Department distinguishes this capital lease from a typical long-term

commercial loan, which is not secured in this way. The Department therefore does not consider Sidbec's lease to be comparable long-term commercial financing. Lastly, the Department has determined that the use of a risk premium is appropriate and legally correct in this case because the Department continues to operate under its existing practice rather than the 1997 Proposed Rules.

Comment 15: Respondent SDI contends that the Department erred in calculating the *ad valorem* countervailing duty rate by using an FOB sales value as the denominator in its formula. SDI cites the GIA (58 FR at 37237) as supporting the concept of using respondents' sales value as recorded in their financial statements and accounts as the denominator when calculating the *ad valorem* subsidy rate. SDI notes that, in contrast, Commerce in this case has used an estimated FOB factory sales value for domestic sales, and an estimated FOB port sales value for export sales, even though Sidbec-Dosco (Ispat) maintains its sales records and reports sales figures in its financial statements on a delivered price basis.

Petitioners did not comment on this argument.

Department's Position: The Department acknowledges that, in the GIA, it stated that it would be "more appropriate to use respondents' sales value as recorded in their financial statement and accounts in the denominator when calculating the ad valorem subsidy rate." GIA, 58 FR at 37237. However, an adjustment (a ratio of invoice value of exports to the United States to the FOB value of exports to the United States) was still necessary under the GIA methodology to ensure that Customs would collect the correct amount of subsidy based on an FOB invoice price of the imported merchandise. In the 1997 Proposed Rules, the Department noted that the methodology discussed in the GIA had not proven useful, because so few companies had the data in the form necessary to calculate the ratio. While SDI maintains that it does possess the necessary information, it is also true that, so long as the estimates used to calculate the FOB value are reasonable, there should be no net effect on the calculated margin. The Department verified SDI's estimated freight calculations, and found them to be reasonable. *See* SDI Verification Report. Therefore, for the purposes of calculating a final margin, we have made no adjustments.

Comment 16: The GOQ supports the Department's preliminary determination not to countervail benefits received through the Canadian Steel Trades and Employment Congress (CSTEC), but argues that the Department should acknowledge that benefits under the Sectoral Partnerships Initiative (of which CSTEC is a part) are generally available to Canadian industry, and that only "additional training" qualifies for government funding through CSTEC. The GOQ also notes that petitioners made no claim in their subsidy submission that CSTEC programs constituted a subsidy to Canadian employers, nor did they request that CSTEC be included in the calculation of a Canadian countervailing duty margin.

Petitioners did not comment on this argument.

Department's Position: At verification of the response of the Government of Canada and CSTEC, the Department reviewed documentation supporting record evidence that benefits under the Sectoral Partnerships Initiative, of which CSTEC is a part, are not *de jure* specific to the Canadian steel industry, as is discussed above in Part II. *See Government of Canada Verification Report*, page 4; *Canada Steel Trades and Employment Congress Verification Report*, page 1. *See* also GOC July 2, 1997 Supplemental Questionnaire response, exhibit 4 (*Sectoral Activities Update Report; Spring 1996*, which shows that over 50 separately classified industrial sectors were included in SPI). Additionally, there is no record evidence suggesting that the administration of SPI vis-a-vis the steel industry would lead the Department to determine that SPI is *de facto* specific with respect to the steel industry. Therefore, benefits received under this program are not countervailable.

Comment 17: Respondent GOQ states that in the Department's preliminary determination it concluded that funding by the Societe de Developpement Industriel du Quebec (SDIQ) did not confer a countervailable subsidy during the POI. Respondent notes that verification confirmed that no SDIQ benefits were received by steel wire rod producers or sellers during the POI, and that SDIQ monies received by a steel company prior to the POI constituted a *de minimis* portion of total sales value in those years. Moreover, the GOQ argues that the verified record demonstrates that SDIQ monies received by the respondent companies could not possibly be countervailed in that the monies were not specific to the steel wire rod industry because SDIQ provided benefits to over 1,100 companies. The GOQ contends that while there were many users, from a wide variety of industries, no steel producer was a dominant user, and steel did not receive a disproportionate share. Therefore, SDIQ was not specific.

The petitioners did not comment on this argument.

Department's Position: We agree with the GOQ that respondent Ivaco was the only steel wire rod producer to receive any benefits from SDIQ during the AUL period. As we explained above (*see* Part III), Ivaco received *de minimis* benefits in two years prior to the POI, and we therefore expensed them in the years of receipt. As a result, we did not countervail any benefits under this program.

Comment 18: Respondent SDI states the Department did not correctly sum its depreciation expense that it used to calculate its AUL. SDI notes that the Department's AUL calculation only summed nine years of depreciation expense as opposed to ten years, and therefore, the Department should correct the summing of its depreciation expense in its final determination.

The petitioners did not comment on this argument.

Department's Position: We agree with respondent SDI. In the preliminary determination, the Department incorrectly calculated SDI's depreciation expense that it used to calculate SDI's AUL. The Department has recalculated SDI's depreciation expense by summing the appropriate number of years (*i.e.*, ten). This recalculation has changed the length of the AUL period (*see* Memorandum to the File, Final Analysis Memorandum in the Investigation of Steel Wire Rod from Canada).

Comment 19: Respondent GOQ states that petitioner alleged that Sidbec's 1982 financial statements indicated that Sidbec received C$51.7 million contributed surplus from the GOQ and the GOC. The GOQ notes that the Department verified that this contributed surplus represents funds provided to Sidbec before the AUL period. Therefore, the GOQ maintains that these funds are not relevant to the investigation.

Petitioners did not comment on this argument.

Department's Position: We agree with respondent GOQ. Although Sidbec's 1980 consolidated financial statement indicated that Sidbec did receive a C$51.7 million contributed surplus, the Department verified that Sidbec received this C$51.7 million contributed surplus from 1977 to 1979 (*See* Sidbec Verification Exhibit S–4). Consequently, these funds were provided outside of the Department's calculated AUL period for SDI.

Comment 20: Petitioners state that a review of Sidbec's 1980 through 1982 financial statements indicates that the GOQ provided grants to Sidbec in 1980 and 1981. Petitioners state that the 1980 financial statement described these grants as "an amount that the government has consented to pay to the company to finance specific investment projects" and Sidbec officials stated at verification that Sidbec had received these amounts (*see* Sidbec's Verification report). Therefore, petitioners argue that Sidbec received grants from the GOQ. Lastly, petitioners state although the regulatory time limit for alleging new subsidies has passed, if the Department does not include these subsidies it will reward Sidbec's refusal to provide the Department with requested information.

The GOQ states that the amounts of funding are not grants, but are payments for equity purchased in 1979. The GOQ argues that the Department verified the funding to be grants provided in 1980 and 1981, and were the last of two installment payments on equity that the GOQ purchased from Sidbec in 1979. The GOQ notes that it passed legislation which allowed it to purchase shares of Sidbec stock in 1979, that legislation permitted the GOQ to pay for those shares in installments over three years, and Sidbec's 1980 balance sheet confirms that the shares were issued prior to 1979. Furthermore, the GOQ argues that the date of issuance of the shares, not the dates on which the purchase price was fully paid, establishes as a matter of law the date on which an equity infusion is made. The GOQ asserts that the shares were issued in 1979.

Additionally, respondent SDI notes that Sidbec's financial statements for 1980 and 1981 do not provide a basis for countervailing these amounts. According to SDI, states that there is no evidence on the record to indicate that Sidbec-Dosco, Inc. received any funding in either 1980 or 1981.

Lastly, both the GOQ and SDI state that these equity infusions were outside of the Department's calculated AUL period.

Department's Position: We disagree with petitioners. At verification of Sidbec, officials informed the Department that Sidbec did receive equity infusions from the GOQ from 1979 through 1981. *See* Sidbec Verification Report, dated September 17, 1997. Therefore, we determine that no countervailable benefits were conferred through this program.

Comment 21: Respondent GOQ notes that petitioners alleged that in 1987 Sidbec-Dosco received a grant from the GOQ. The GOQ states that the Department verified that no such program existed and that Sidbec-Dosco never received any money from the GOQ during 1987 or any other year during the AUL.

The petitioners did not comment on this argument.

Department's Position: We agree with respondent GOQ. At verification, we found no evidence that the GOQ provided a grant to Sidbec-Dosco, Inc. in 1987. Sidbec underwent a reorganization in 1987 in order to consolidate all steel-related assets under Sidbec-Dosco, Inc., and all assets previously belonging to Sidbec had been leased to Sidbec-Dosco, Inc. We discovered that this transaction reflected an intracomapany reorganization, and that this arrangement was exclusively between Sidbec and Sidbec-Dosco, Inc. and was designed to effect the reorganization. *See* GOQ and Sidbec-Dosco (Ispat) Verification Reports, dated Sept. 17, 1997. Therefore, we determine that no countervailable benefits were conferred through this program.

Comment 22: Respondent GOQ states that petitioners alleged that in 1987 Sidbec-Dosco, Inc. received an equity infusion (*i.e.*, a debt-to-equity conversion) from either the GOQ or the GOC. Respondent argues that the Department concluded in its preliminary determination that no countervailable benefits were provided under this program. The GOQ notes that the Department verified that the GOQ made no equity infusions into Sidbec-Dosco, Inc. or Sidbec in 1987.

The petitioners did not comment on this argument.

Department's Position: We agree with respondent GOQ. At verification, we found no evidence that the GOQ provided an equity infusion (*i.e.*, a debt-to-equity conversion) to Sidbec-Dosco, Inc. in 1987. We discovered that this transaction reflected an intracompany reorganization. *See* GOQ and Sidbec-Dosco (Ispat) Verification Reports, dated Sept. 17, 1997. Therefore, we determine that no countervailable benefits were conferred through this program.

Comment 23: Respondent GOQ asserts that the Department concluded in its preliminary determination that neither Sidbec nor Sidbec-Dosco, Inc. received any equity infusions in 1982. However, the Department noted that it was uncertain as to whether any grants were provided to either of these companies in 1982. The GOQ states that the record now shows that neither Sidbec nor Sidbec-Dosco, Inc. received any countervailable assistance in 1982, whether in the form of grants or equity.

The petitioners did not comment on this argument.

Department's Position: We agree with the GOQ. At verification, we found no evidence that the GOQ provided any form of governmental assistance to either Sidbec or Sidbec-Dosco, Inc. in 1982. *See* the GOQ and Sidbec-Dosco (Ispat) Verification Reports, dated Sept. 17, 1997. Therefore, we determine that no countervailable benefits were conferred through this program.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

To calculate the all others rate, we weight-average all individual company rates which are positive by each company's exports of the subject merchandise to the United States. In this case, because Stelco and Ivaco's rates are zero, we are using SDI's rate as the All Others rate.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rod from Canada, except those of Ivaco and Stelco, which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. Because there is no estimated net subsidy for Ivaco and Stelco, they are exempt from the suspension of liquidation. This suspension will remain in effect until further notice.

Manufacturers/exporters	Ad valorem rate (percent)
Sidbec-Dosco (Ispat) Inc.	8.95
Ivaco, Inc.	0
Stelco, Inc.	0
All Others	8.95

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for AD/CVD Enforcement, Group III, Import Administration.

If the ITC determines that material injury, or threat of material injury, does

not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on steel wire rod from Canada.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27986 Filed 10–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–823]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Daniel Lessard, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087 or 482–1778, respectively.

Final Determination

The Department determines that countervailable subsidies are being provided to Saarstahl AG ("Saarstahl") and Ispat Hamburger Stahlwerke GmbH ("IHSW"), producers and exporters of steel wire rod from Germany. We also determine that Walzdraht Hochfeld GmbH ("WHG") and Brandenburger Elektrostahlwerke GmbH ("BES") received *de minimis* subsidies.

Case History

Since the publication of the preliminary affirmative determination ("*Preliminary Determination*") in the **Federal Register**, 62 FR 41945 (August 4, 1997), the following events have occurred.

Verification of the responses of the Government of the Federal Republic of Germany ("GOG"), the Government of the Free and Hanseatic City of Hamburg ("GOH"), the Government of Saarland ("GOS"), the European Union ("EU"), Saarstahl, IHSW, WHG, and BES was conducted between August 20 and September 5, 1997.

Petitioners and respondents filed case and rebuttal briefs on September 19, 1997, and September 23, 1997, respectively. The hearing was held on September 24, 1997. Per the Department's request, post-hearing submissions were received from parties.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.00 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire ("petitioners"), six U.S. producers of wire rod.

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period: Since benefits from nonrecurring subsidies are not confined to a single period of time, the Department must determine a reasonable period over which to allocate such benefits. In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets to determine the allocation period for nonrecurring subsidies (*see* General Issues Appendix appended to *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993) ("*GIA*")). However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) ("*British Steel*"), the U.S. Court of International Trade (the "Court") ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life ("AUL") of renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for the purposes of this determination, the Department has calculated a company-specific AUL for IHSW. However, we did not rely on Saarstahl or BES's company-specific AULs for purposes of this final determination because the calculations were significantly distorted by the asset valuation methodologies employed by the companies in 1989 and 1992, respectively. This issue is addressed with respect to Saarstahl in Comment 11, below.

Based on information provided by IHSW regarding the company's depreciable assets, the Department has determined that the appropriate allocation period for IHSW is 10 years. With respect Saarstahl and BES, we based the companies' AUL on the depreciation schedule in Germany for Technical Machinery and Equipment (*i.e.*, 11 years). The calculation of an allocation period for WHG was unnecessary.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness methodology, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) or *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

Petitioners have alleged that Saarstahl was uncreditworthy in 1989 and between 1993 and 1996. They further allege that HSW and IHSW were uncreditworthy in 1984 and 1994, respectively.

Because neither company received long-term financing in the relevant years, we examined other factors to determine the firms' creditworthiness. In making our determinations, we examined Saarstahl's and IHSW's current, quick, and interest/debt coverage ratios in addition to their net profit/loss for the three preceding years. Both Saarstahl and IHSW experienced operating losses in those years (except 1988 for Saarstahl), and the financial ratios demonstrate that both companies were in poor financial health. The current ratio (current assets divided by current liabilities) measures the margin of safety available to cover any drop in the value of current assets, while the quick ratio (current assets excluding inventory and prepaids divided by current liabilities) shows the company's ability to pay its short-term liabilities. For both companies, these ratios were very small, demonstrating the companies' difficulty in meeting their short-term liabilities and interest expenses. Furthermore, the interest/debt coverage ratios (net income plus interest expense plus taxes divided by interest expense) highlighted the firms' inability to meet existing interest obligations. We determine that Saarstahl was uncreditworthy in 1989 and IHSW was uncreditworthy in 1994.

Because Saarstahl did not receive any countervailable benefits in the form of loans, loan guarantees, or nonrecurring grants from the GOG or the GOS following its 1993 bankruptcy, we do not reach the question of Saarstahl's creditworthiness for this period. Moreover, because IHSW's allocation period is ten years, we are not examining subsidies received prior to 1987. Therefore, we do not need to analyze HSW's creditworthiness for that period.

Discount Rates: Information on the record indicates that German banks set interest rates for long-term, fixed rate commercial loans in reference to the yield earned on government bonds to which they normally add a margin, or spread, depending upon the borrower's creditworthiness. Because Saarstahl, IHSW, and BES did not provide company-specific discount rates, we used the German government bond rate plus a spread of 1.75 and 1.5 percent as the discount rate for Saarstahl in 1989 and IHSW in 1994, respectively. This rate represents the highest long-term interest rate which we could locate. As the discount rate for BES in 1994, we used the German government bond rate plus a spread of 1.15 percent (*i.e.*, the average of the spread between 0.8 and 1.5) because BES was not found to be uncreditworthy. We added a risk premium, as described in section 355.44(b)(6)(D)(iv) of the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23374 (May 31, 1989) ("*Proposed Regulations*"), to establish the uncreditworthy discount rate for Saarstahl in 1989 and IHSW in 1994.

Privatization: In the *GIA*, we applied a new methodology with respect to the treatment of subsidies recestived prior to the sale of a company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (*i.e.*, in this case 1986 for Saarstahl and 1987 for IHSW) and ending one year prior to the privatization.

For Saarstahl, we modified this methodology pursuant to the *Remand Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany*, p. 4–5 (October 12, 1993). Specifically, we calculated the ratios in question by including in the calculation the assistance that Saarstahl received prior to privatization in the year the assistance was received. We did so even though we do not consider this prior assistance, at the time it was received, to be nonrecurring in nature and, thus, allocable over time. We followed a similar approach with respect to assistance received by IHSW in 1993.

We then take the simple average of the ratios of subsidies to net worth. This simple average of the ratios serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then

apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

In the current investigation, we are analyzing: (1) the privatization of Saarstahl in 1989 and subsequent spin-off in 1994 and (2) the privatization of IHSW in 1994. For BES we find it unnecessary to conduct a spin-off calculation because its potentially countervailable subsidies were received after BES was spun off.

Based upon our analysis of the petition, the responses to our questionnaires and the information reviewed at verification, we determine the following:

I. Programs Determined to Be Countervailable

A. Saarstahl

1. Forgiveness of Saarstahl's Debt in 1989

During the period 1978 to 1989, Saarstahl and its predecessor companies received massive amounts of assistance from the GOS and GOG. Repayment of these funds eventually became contingent upon Saarstahl returning to profitability and earning a profit above and beyond the losses accumulated after 1978. This contingent repayment obligation was known as a Rückzahlungsverpflichtung ("RZV").

In 1989, the GOS reached an agreement with Usinor-Sacilor to combine Saarstahl with AD der Dillinger Huttenwerke ("Dillinger") under a holding company, DHS-Dillinger Hutte Saarstahl AG ("DHS"). Pursuant to the combination agreement and as a condition for sale, in 1989 the GOG and GOS entered into a debt forgiveness contract (Entschuldungsvertrag, or "EV") which effectively forgave all the outstanding repayment obligations owed by Saarstahl to the two Governments (*i.e.*, a total of DM 3.945 billion in debt was forgiven). The EV specified, however, that if Saarstahl went bankrupt, the GOG and GOS claims could be revived, but their claims would be subordinated to those of all other creditors.

After several years of unprofitable operation, Saarstahl filed for bankruptcy in 1993 under the German Bankruptcy Regulations (Konkursordnung). In 1994, the GOS bought Saarstahl back from Usinor Sacilor for DM 1. At the time of its bankruptcy, Saarstahl's liabilities exceeded its assets by a factor of four, not including its liabilities to the GOG and GOS. Both Governments filed claims against the Saarstahl bankruptcy estate based on the RZV debt that was conditionally forgiven in 1989. These EV-related claims were rejected by the bankruptcy trustee as invalid in 1995 on the grounds that they were so subordinated that the GOG and GOS would never be repaid. The GOG and GOS chose not to appeal the rejection of their bankruptcy claims, on the grounds that the subordination of their claims made the likelihood of recovery very small, and not worth the high cost of litigating the matter.

In the *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany*, 58 FR 6233, 6234 (January 27, 1993) ("*Lead and Bismuth*") and the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Germany*, 58 FR 37315 (July 9, 1993) ("*Certain Steel*"), we found that Saarstahl's RZVs and similar related debt were forgiven by the 1989 EV, thus conferring a countervailable benefit on Saarstahl as of 1989. Respondents have argued that the attempt to revive the RZVs by the GOG and GOS disqualifies the signing of the 1989 EV as the countervailable event. However, as noted above, the EV-related bankruptcy claims of the GOG and GOS were rejected as invalid by the bankruptcy trustee. Thus, the 1993 bankruptcy proceeding left completely undisturbed the provisions of the 1989 EV agreement. Respondents further argue that the RZVs were worthless at the time of the EV. However, this argument was rejected in *Lead and Bismuth* at 6237, *Certain Steel* at 37323 and the attendant litigation (*see Saarstahl AG v. United States*, 967 F. Supp. 1311 (CIT 1997), and *British Steel plc v. United States*, 936 F. Supp. 1053, 1069–70 (CIT 1996).

Therefore, we determine that the debt forgiveness constitutes a financial contribution in 1989 within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOG and GOS providing a benefit in the amount of the debt forgiveness, DM 3.945 billion. Because it was a one time event, we consider it to be a nonrecurring grant. Additionally, we analyzed whether the debt forgiveness provided to Saarstahl was specific "in law or in fact," within the meaning of section 771(5A) of the Act. Consistent with *Lead and Bismuth* at 6233 and *Certain Steel* at 37315, we find that the debt forgiveness provided to Saarstahl was limited to a specific enterprise or industry because it was provided to one company.

To calculate the countervailable subsidy, we used our standard declining balance grant methodology. The amount of the subsidy allocated to the POI was adjusted in accordance with our privatization methodology (described above) to reflect the privatization of Saarstahl in 1989 and the spin-off of Saarstahl from DHS 1994. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 16.62 percent *ad valorem* for Saarstahl.

2. Assurance of Liquidity Provided to Private Banks by the GOS

Toward the end of 1985, the GOS presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive loans in the amount of DM 350 million. In a February 20, 1986 letter from the banks to the GOS, the banks agreed to forgive DM 217.33 million of debt owed to them by Saarstahl (DM 216.82 of which was forgiven in 1989), if the GOG and GOS fulfilled certain prerequisites. Two of the prerequisites were that the Governments forgive all debt owed to them by Saarstahl and that the GOS secure the future liquidity of Saarstahl. In an April 4, 1986 letter from the Governor of Saarland responding to the banks, the GOS agreed to forgive all debts owed to it by Saarstahl and to secure the liquidity of Saarstahl as it had in the past.

We determine that in assuring the future liquidity of Saarstahl the GOS provided a financial contribution to Saarstahl. Specifically, this assurance granted a "potential direct transfer of funds" within the meaning of section 771(5). By assuring the future liquidity of Saarstahl, the GOS effectively guaranteed that Saarstahl would have the funds to satisfy its future obligations, which included the outstanding debt owed to the banks. This assurance was consistent with the GOS's long history of supporting Saarstahl. We also determine that the assurance was provided to a specific enterprise or industry, Saarstahl.

While the GOS's assurance of future liquidity resembled a loan guarantee, it differed in certain important aspects from loan guarantees typically examined by the Department. First, the GOS did not promise to take responsibility for payment of the debt owed to the banks if Saarstahl failed to perform. Rather, the GOS reached an agreement with the private banks whereby the GOS would maintain Saarstahl's liquidity (*i.e.*, Saarstahl's ability to service its outstanding debts). Additionally, other characteristics of a typical loan guarantee which potentially confer a benefit were not manifested in the liquidity assurance (*e.g.*, lower borrowing costs in the form of fees and/or reduced interest rates). Because there is no information on the record of this investigation indicating that the liquidity assurance resulted in more favorable terms on the remaining loans, we do not find additional countervailable benefits conferred by this assurance. Rather, the consequence of the assurance was that Saarstahl received partial debt forgiveness from the banks. Because of this, we are not using our normal methodology with respect to loan guarantees. Instead, we are calculating the benefit conferred by the liquidity assurance as the amount of debt forgiven. (We note however, that the assurance of future liquidity could have led to a finding of additional countervailable benefits, if it had resulted in lowering Saarstahl's borrowing costs on the unforgiven portion of the company's debt.)

To calculate the countervailable subsidy, we followed the methodology described in the *Forgiveness of Saarstahl's Debt in 1989* section, above. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.91 percent *ad valorem* for Saarstahl.

3. ECSC Redeployment Aid Under Article 56(2)(b)

Under Article 56(2)(b) of the European Coal and Steel Community ("ECSC") Treaty, persons employed in the iron, steel, and coal industries who lose their jobs may receive assistance for social adjustment. This assistance is provided to workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country make an equivalent contribution. Payments were made to Saarstahl, on behalf of its workers, under Article 56(2)(b).

Since the ECSC portion of payments under this program comes from the operational budget, which is funded by levies on the companies, we determine that this portion (*i.e.*, 50 percent of the amount received) is not countervailable. However, with respect to the portion funded by the GOG, we must decide whether the government payments have relieved Saarstahl of an obligation it would otherwise have.

In Germany, benefits for workers who retire or are laid off are subject to negotiations between labor and management. Those negotiations result in a social plan for each company. Following the policy explained in the Prepension Programs section of the GIA at 37257, we have determined that Saarstahl and its workers were aware when they negotiated their social plans that the German government would pay a portion of the costs. Therefore, unless it can be specifically documented that benefits under this program did not lower a company's social plan obligations, we have determined that one half of the amount paid by the government constitutes a countervailable subsidy.

We consider the benefits provided under this program to be recurring because a company can expect to receive the benefits on an ongoing basis. Therefore, we limited our analysis to funds received in the POI, 1996. In the case of Saarstahl, funds received by the company during the POI relate to five social plans, the last of which relates to Saarstahl's 1993 bankruptcy. We verified that this bankruptcy social plan provides the maximum allowable benefits to workers under German bankruptcy law; therefore, we determine that the knowledge of ECSC 56(2)(b) benefits did not affect the company's social plan obligations. Consequently, GOG payments that relate to this social plan are not countervailable. For the payments made pursuant to the pre-bankruptcy social plans, we first calculated the GOG portion of assistance by taking 50 percent of the funds received by Saarstahl in 1996. As noted above, half of this amount is countervailable. We divided this amount by Saarstahl's total sales during the POI. On this basis, we determine the net subsidy to Saarstahl for this program to be 0.14 percent *ad valorem*.

B. IHSW

1994 IHSW Debt Forgiveness

In 1984, Hamburgische Landesbank Girozentrale ("HLB"), a bank wholly owned by the GOH, provided HSW with a line of credit in the amount of DM 130 million. The line of credit was granted for a period of one year and was renewed every year until 1994. Pursuant to a Kreditauftrag between the GOH and HLB, in the event that HSW failed to service this debt, the GOH was obligated to compensate the HLB for 60 percent of the credit line (*i.e.*, DM 78 million). In 1992 and 1993, HSW suffered significant losses, and the HLB refused to extend the credit line. At that point, the GOH assumed responsibility for the total amount loaned to HSW under the line of credit pursuant to an agreement between the GOH and HLB that extended the Kreditauftrag. At the beginning of 1994, the line of credit totaled approximately DM 174 million (*see* Comment 12 below).

In 1994, HSW was sold to Venuda Investments B.V. ("Venuda"), IHSW's parent company. At the time of privatization, the line of credit totaled DM 154 million. Under the terms of the sale, Venuda paid DM 10 million for HSW. With respect to the line of credit, DM 154 million of the total was sold to Venuda for approximately DM 60 million according to a formula based on the net current asset value of HSW in 1994 (*i.e.*, the difference between current assets and liabilities (less the debt owed to HLB)). Although the sale of HSW was structured to have two components, the sale of shares for DM 10 million and the sale of debt for approximately DM 60 million, we have treated this as a single transaction and we consider the payments made by Venuda to represent the price paid for HSW (*see* Comment 13 below).

Based on our view of the sale of HSW, *i.e.*, that the proceeds from both the share and debt purchase comprise the sale price, we determine that in the year that HSW was sold the DM 154 million owed by HSW under the line of credit was forgiven. This debt forgiveness constitutes a financial contribution in the form of a direct transfer of funds from the GOH providing a benefit in the amount of DM 154 million in 1994. While the Department will not consider a loan provided by a government-owned bank to be a loan provided by the government, *per se*, the actions taken by the GOH during the period 1984 through 1994 regarding the provision of the credit line clearly demonstrate that although the debt was owed to HLB, HLB was acting on behalf of the GOH in this instance (*see* Comment 16 below). Moreover, we analyzed whether the program is specific "in law or in fact," within the meaning of section 771(5)(A) of the Act. Since the debt forgiveness was only provided to one company, we determine that it is limited to a specific enterprise.

To calculate the countervailable subsidy, we used our standard grant methodology. The amount of the subsidy allocated to the POI was adjusted in accordance with our privatization methodology (described above) to reflect the privatization of IHSW in 1994. We then divided the portion of the benefit attributable to the POI by the total sales of IHSW during the same period. On this basis, we determine the countervailable subsidy

for this program to be 5.61 percent *ad valorem* for IHSW.

II. Programs Determined to Be Not Countervailable

A. IHSW

Provision of Land Lease

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service "* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Particular problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to the leasing of land, some of the options may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has leased the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same market factors that a private lessor would use in determining whether to lease land to a company.

Pursuant to a 1986 lease agreement between HSW and the GOH, IHSW leases land located in the port of Hamburg from the GOH. The GOH owns approximately one-third of the commercial and industrial land in the port area and leases that land under approximately 450 different lease agreements. The GOH lease rates in the port area are established by the GOH Finance Deputation, an administrative authority established by the City Parliament of Hamburg consisting of government officials and civic members. The Finance Deputation sets the lease rates according to such factors as: (1) market value of property, (2) potential for use and facilities available in specific areas, (3) rentals for comparable areas being used, and (4) terms and conditions being paid in other Northern ports.

The GOH uses a standard lease for all enterprises in the port area. The lease has four rate categories which are based on the location of the property and other attributes (*e.g.*, land-locked, direct water access, railway access). Thus, IHSW's lease contains the same terms as all other similar lease agreements signed with enterprises in the port area.

We verified that there are a very large number of enterprises currently leasing land in the port from the GOH. These enterprises cover a wide variety of industries, such as container storage and shipping, oil tanks and refineries, shipyards, car importers, and coffee and grain mills and storage facilities. There are no special provisions made for different industries.

Because IHSW pays a standard rate charged by the GOH to all enterprises leasing land similar to IHSW's and because these prices are set in reference to market conditions, we determine that IHSW's lease rate is not countervailable.

Adequacy of remuneration is a new statutory provision which replaced "preferentiality" as the standard for determining whether the government's provision of a good or service constitutes a countervailable subsidy. The Department has had no experience administering section 771(5)(E) and Congress has provided no guidance as to how the Department should interpret this provision. This case and the other concurrent wire rod cases, mark the first instances in which we are applying the new standard. We anticipate that our policy in this area will continue to be refined as we address similar issues in the future.

B. BES

FRG Backing of THA Loan Guarantees

The German Democratic Republic ("GDR") created the Treuhandanstalt ("THA") via the Trusteeship Act of June 17, 1990. THA became the owner and administrator of all non-private GDR enterprises. THA's long-term goal was to privatize these enterprises. Following the monetary union of the Federal Republic of Germany ("FRG") and the GDR on July 1, 1990, THA issued a global loan guarantee to ensure the liquidity of GDR enterprises. THA guarantees were available to all GDR enterprises in need of them and were backed up by the FRG's commitment to fund THA's activities, pursuant to Article 17 of the *Treaty Between the Federal Republic of Germany and the German Democratic Republic Establishing a Monetary, Economic and Social Union* effective July 1, 1990.

Since THA had no independent sources of funds and the GDR economy was in disarray, the THA loan guarantees standing alone would have been worthless and, as such, would not have motivated private banks to lend to GDR enterprises. Rather, it was the secondary backing of the guarantees by the FRG that led private banks to lend to GDR enterprises. It follows that any financial benefit to GDR enterprises in the form of guaranteed loans flowed from the provision of the FRG guarantee.

BES's predecessor, Stahl- und Walzwerk Brandenburg ("SWB") took out three THA-guaranteed loans before unification and one shortly after unification. A little over a year after unification, THA assumed SWB's guaranteed loans.

Prior to German Unification on October 3, 1990, the GDR was recognized by the United States as a sovereign country—separate from the FRG. Therefore, any provision of assistance by the FRG to former GDR enterprises is transnational assistance—assistance not provided by the government having jurisdiction over the enterprises. The preamble to the *Proposed Regulations* summarizes our practice with respect to transnational assistance:

> Occasionally, the Department has encountered programs which are funded through foreign aid, either on a bilateral or multilateral basis. In such instances, the Department (and Treasury before it) has determined such programs to be noncountervailable, to the extent that funds for the program are not provided by the government of the country in question.

Section 355.44(o)(1) of the *Proposed Regulations* elaborates on the above:

> [A] countervailable benefit does not exist to the extent the Secretary determines that funding for a benefit is provided by a government other than the government of the country in which the merchandise is produced or from which the merchandise is exported, or by an international lending or development institution.

Based on the foregoing, we find that the secondary backing by the FRG of THA loan guarantees on borrowings prior to Unification is transnational assistance and, therefore, not countervailable. Moreover, when THA assumed the debt it was merely fulfilling the obligations it had taken on as guarantor prior to Unification. Since the guarantees upon which THA acted were non-countervailable in nature, the subsequent debt assumption did not give rise to a countervailable benefit.

As noted above, SWB took one loan under the THA global guarantee after Unification. However, even if we were to treat the entire amount of the loan principal as a grant, the amount of the benefit would be expensed in the year of receipt, which was prior to the POI. Since there is no benefit allocable to the POI, we have not analyzed whether FRG backing of THA loan guarantees post-Unification gives rise to a countervailable subsidy.

III. Programs Determined to Be Not Used

Based on the information provided in the responses and the results of verification, we determine that the following programs were not used:

A. Saarstahl

Saarstahl's Bankruptcy Social Plan

In 1993, Saarstahl negotiated a new social plan in accordance with German bankruptcy law. This new plan provided two and one-half months salary to laid-off workers, the maximum allowable benefit under bankruptcy law. To ensure that laid-off workers did not have to wait for the bankruptcy proceeding to be settled before receiving their money, the GOS purchased the workers' claims against Saarstahl, paid off the workers and then filed a claim under its own name against Saarstahl in the bankruptcy proceeding. The claim filed by the GOS was in the same amount as a claim filed directly by the workers would have been and was accepted by the bankruptcy court in its full amount. Therefore, the potential liability against Saarstahl in respect of social plan benefits was unchanged by virtue of the GOS filing the claim instead of the workers. Since the action by the GOS in pre-paying the bankruptcy social plan benefits did not alter Saarstahl's potential liabilities under bankruptcy, the GOS has not assumed a legal obligation of Saarstahl. As a result, GOS payments to workers under Saarstahl's bankruptcy social plan do not confer a countervailable benefit.

B. IHSW

1984 Equity Infusion

In 1984, HSW emerged from bankruptcy proceedings and was taken over by a limited partnership called Protei Produktionsbeteiligungen GmbH & Co. KG ("Protei"). The vast majority of the equity Protei invested in the new HSW was provided via a DM 20 million loan by HLB. This DM 20 million financing was provided to HLB by the GOH. HSW used this capital to purchase the assets and business of Old HSW from its receiver.

According to the terms of the contract which provided these funds, repayment became due from the profits of Protei which, in turn, were derived from HSW's profits. The contract also provided that Protei could not liquidate HSW without the approval of HLB, and HLB reserved rights regarding the appointment of management and members of the supervisory committee. Between 1987 and 1988, DM 2.8 million in "principal" payments and DM 2.7 million in "interest" were paid by HSW, leaving an unpaid balance of DM 17.2 million.

We have determined that the DM 20 million "loan" to Protei should be treated as equity received in 1984 in light of the terms of the financing. Although the money was given in the form of a loan to Protei, the circumstances of the loan indicate that the funds were more in the nature of equity.

First, as noted above, payments on the loan were contingent on HSW being profitable: so, if the company never became profitable, there was no obligation for the loan to be repaid. Second, under the terms of the loan, Protei relinquished pro rata its share of profits from HSW based on the ratio between the DM 20 million loan and the total share capital of HSW. Hence, HLB's share of any future profits generated by HSW would be calculated as if the loan were paid-in capital. Third, although the loan was made to Protei, the particular structure of the partnership suggests that Protei served as a mechanism for the GOH to invest in HSW. Fourth, as noted above, the lender, HLB, imposed numerous conditions on Protei which served to insert HLB into important ownership/management decisions affecting HSW. Finally, when this loan was examined by the Commission of the European Communities (the "Commission") to determine whether it constituted state aid, the Commission determined that the loan should be considered as risk capital. Among the data developed by the Commission was a statement by the GOG that the GOH "was exposed to financial risk fully comparable to the risk a shareholder injecting risk capital has to bear without becoming owner of the company." (The Commission's decision is printed in the *Official Journal of the European Communities*, No L 78, Vol 39, March 28, 1996, at pp. 31 ff.) While the Commission's characterization of this loan as equity is not dispositive, their reasoning in this instance is consistent with our analysis.

Given our determination that the DM 20 million financing in 1984 should be treated as equity and in light of HSW's AUL of 10 years, this 1984 equity infusion would not give rise to benefits in the POI even if the infusion were a countervailable subsidy. Therefore, we are treating this equity as well as two other programs as "not used":

1. *1984 Steel Investment Allowance Grant*
2. *1984 Federal Ministry for Research and Technology (BMFT) Grant*

We have determined that subsidies received by IHSW under the following programs were also not used because they were repaid prior to the POI:

3. *Structural Improvement Assistance Grant*
4. *Loan Guarantee to HSW*

C. BES

Special Depreciation

The special depreciation program described in Section 4 of the Assisted Areas Act is the current manifestation of a 1990 GDR directive that allowed investors to claim special depreciation at an accelerated rate. This program was implemented in tandem with the Investment Allowance Act by the GDR to provide investment incentives to help enterprises in the former GDR (New States) transition into a market-based economy. After Unification, FRG lawmakers included an amended special depreciation provision, along with the Investment Allowance Act, in the June 24, 1991 Tax Modification Law (StAendG 1991). A 1996 FRG law forbids the special depreciation provision from being extended beyond the end of 1998.

The GOG has claimed that this program is not countervailable because it is a "green light subsidy." We have not determined whether, in fact, this program meets the green light criteria within the meaning of section 771(5B)(C), of the Act, because any benefit would arise at the time of filing a tax return. Because BES did not file a tax return during the POI, we are treating this program as not used.

IV. Other BES Programs Examined

BES received assistance under two other programs for which the GOG has requested green light treatment: (1) Investment Grants Under the Regional Economies Act and (2) Investment Allowance Act Grants. BES received

grants under these programs in the years 1994 through 1996. However, regardless of whether we found the program to be countervailable, the combined net subsidy to BES does not rise above the *de minimis level*. Accordingly, we do not consider it necessary to address the issue of whether these programs are non-actionable as regional green light subsidies.

Interested Party Comments

Saarstahl

Comment 1: Effect of Bankruptcy on Saarstahl's 1989 Debt Forgiveness: Saarstahl argues that because the GOG and the GOS filed claims against it in the German bankruptcy court with respect to the RZVs, the 1989 debt forgiveness should be disregarded. Specifically, Saarstahl contends that the GOG and GOS did not forego revenue due to them under the RZVs in 1989, because the debts were revived in 1993. Moreover, when the bankruptcy claims were rejected from 1993 through 1996, Saarstahl's debt was forgiven under the non-specific German bankruptcy law and not under a specific relief action take by the Governments. Saarstahl claims that the Department may not disregard the revival of the Governments' rights to repayment just because the claim was later rejected by the bankruptcy trustees.

Petitioners state that the bankruptcy was an irrelevant subsequent event that does not affect the benefit stream from the countervailable 1989 forgiveness. Petitioners argue that the RZVs were not eliminated or restructured by the bankruptcy proceeding because the claims themselves were invalid. The revival contingency contained in the EV with respect to bankruptcy, according to petitioners, was structured in such a way as to make it meaningless. Because the claims were to be subordinated below all others, the EV made it impossible to collect on the RZVs. Thus, the EV effectively forgave the RZVs in 1989 because the revival contingency was structured not to be a real contingency at all.

Department's Position: We have continued to treat Saarstahl's RZVs and similar government debt as having been forgiven by the 1989 EV. We believe that the information in this case clearly supports this position. First, in its questionnaire response of June 30, 1997, Saarstahl states that if bankruptcy is initiated on grounds of insolvency, then subordinated claims do not have any asset value and, thus, cannot be considered a valid bankruptcy claim. Hence, as noted by petitioners, the revival contingency contained in the EV was structured in such a way as to make its possible application meaningless.

Second, Usinor Sacilor required that the RZVs be forgiven by the GOG and GOS prior to the combination of Saarstahl and Dillinger. This clear precondition to the combination of the two companies, which was accepted and fulfilled by the two Governments, demonstrates that from a commercial actor's perspective, the RVZs were a real liability. Moreover, the fact that Usinor Sacilor accepted the EV as the legal instrument by which Saarstahl's RZV debt was forgiven demonstrates the validity of the debt forgiveness element of the EV from a commercial perspective. Finally, information obtained at verification indicates that the GOG realized, prior to the filing of its claims, that the bankruptcy proceeding would not result in the reinstatement of the RZV debt obligation. Indeed, the GOG actions appeared to be largely perfunctory in nature reflecting other concerns, none of which included the realistic expectation that the claims would be recognized by the bankruptcy court (*see* GOG verification report at page 12). Therefore, we conclude that the debt obligations contained in the RZVs were relieved in 1989 and that the bankruptcy proceedings had no meaningful impact on the 1989 debt forgiveness agreement.

Comment 2: The Nature and Timing of Saarstahl's Subsidies: Saarstahl states that the Department erred by not allocating any portion of the assistance received by Saarstahl to the company's production in the years 1978 to 1988. Saarstahl asserts that the government assistance was a subsidy when it was first received because it did not comport with commercial considerations. In Saarstahl's view, the Department cannot delay the countervailable event until 1989 (when the debt forgiveness was agreed to), but rather must countervail the subsidies when they were first received.

Petitioners note that the Department has rejected most of these allocation arguments in the past, with the approval of the CIT. Petitioners argue that the Department should use the same analysis of the 1989 EV debt forgiveness as reflected in *Lead and Bismuth, Certain Steel*, and the *Preliminary Determination*. For petitioners, a contingent liability is different from the benefits allocated or capped by the Department's grant allocation formula. The recipient is able to use the full value of the subsidy upon receipt, but must repay all or part of the payment if the contingency occurs. Because of this repayment obligation, the face value of the contingent obligation is only treated as a benefit when forgiven, as occurred in 1989.

Department's Position: We verified that prior to 1989 Saarstahl did have a financial obligation to repay the RZVs. If the Department had examined Saarstahl's RZVs prior to 1989, it would have countervailed them as contingent liabilities and calculated the benefit by treating the outstanding face amount as an interest-free loan. This is consistent with the Department's long-standing policy with respect to contingent liabilities (*see e.g., Certain Steel from Sweden*, 58 FR 37385, 37388 (July 9, 1993)). Upon the forgiveness of such contingent liabilities, it is the Department's policy to treat the amount forgiven as a grant in the year of forgiveness (*see e.g., Certain Steel from Sweden* at 37392). We are not persuaded by Saarstahl that we should not apply our traditional methodology to the facts of this case.

Comment 3: RZVs as Equity: Saarstahl claims that the Department's decision to treat the 1989 forgiveness as the countervailable event rather than the receipt of the funds in 1978–1988 is inconsistent with the Department's treatment in this case of government assistance made to the owners of HSW. Saarstahl states that in the preliminary determination the Department treated a DM 20 million government loan to HSW as equity received in 1984. Saarstahl quotes the Department as saying, "if the company never became profitable, there was no obligation for the loan to be repaid." (*Preliminary Determination* at 41950). Saarstahl states that the same situation is true for the monies received by Saarstahl; the economic effect of the RZVs was no different than equity. Saarstahl argues that the subsidies should be treated as equity capital because they served to offset massive losses that threatened the company's solvency. For Saarstahl, the equity capital nature of the assistance is even more clear in light of the fact that the GOG and GOS held a majority interest in Saarstahl during some of the time when the RZVs were in effect. Saarstahl asks that the Department treat the contingently repayable loans given to both Saarstahl and HSW in the same manner.

Petitioners state that the methodology used for IHSW's DM 20 million capital replacing loan is not an appropriate comparison to Saarstahl's situation. Petitioners argue that the forgiveness of the credit line in 1994 is a more appropriate comparison. While the credit line was first granted in 1984, petitioners note that the Department did not treat the principal as a benefit until

the loan was forgiven in 1994. Based on this comparison, petitioners find a consistent treatment of the two companies. Petitioners counter the RZVs-as-equity argument by referring to the hybrid instruments analysis from the GIA. Petitioners note that the hybrid instruments analysis' first test defines an instrument as debt if a repayment obligation exists when the payment is provided. Thus for petitioners, because the RZVs had a repayment obligation they cannot be treated as equity.

Department's Position: The terms of the assistance given to both IHSW and Saarstahl differ. Of particular note are the managerial and ownership rights conferred upon IHSW at the time the financing was provided. The terms of the RZVs did not confer similar rights to the GOS or GOG. While the GOS and GOG did become Saarstahl's majority shareholder in 1986, this was after an overwhelming majority of assistance had been disbursed and after all dispensation agreements had been put in place. While it is true that repayment in both agreements was contingent upon profitability, this contingency alone is not enough to transform a debt instrument to equity. As noted above in the program description, the repayment contingency for IHSW was just one of many terms that lead us to determine the assistance was equity.

Comment 4: Forgiveness of Saarstahl's Debt by the Private Banks; Saarstahl contends that the Department should treat the private bank loan forgiveness as non-countervailable. Saarstahl notes that for assistance to constitute a countervailable subsidy it must be provided, directly or indirectly, by a government or other public entity. According to Saarstahl, when the private banks forgave debt owed to them by Saarstahl the banks acted in their own economic self-interests and their actions cannot be attributed to the GOG and GOS.

Saarstahl notes that one of the lead negotiators on behalf of the banks confirmed at verification that the decision to forgive a portion of their loans to SVK was based entirely upon commercial considerations. The bank representative stated that the statement made by the GOS regarding the assurance of SVK's future liquidity had no effect upon the banks' decision to forgive the debt.

Saarstahl adds that if the Department were to treat the private bank loan forgiveness as a countervailable subsidy, the economic benefit accrued to SVK in 1986, not 1989. Saarstahl claims that while the bank loans were not legally forgiven until 1989, the banks treated the loans as if they were forgiven on January 1, 1986, as evidenced by the fact that they did not require SVK to make any principal or interest payments with respect to the portion of debt being forgiven after that date.

Petitioners argue that the evidence demonstrates that the assurance of liquidity played a crucial role with respect to the debt forgiveness by the private banks. Petitioners note that in the banks' February 20, 1986 letter to the GOS, the banks clearly set forth as a prerequisite for their debt forgiveness that the GOS secure the liquidity of Saarstahl. Petitioners state that in its April 4, 1986 response to that letter, the GOS stated that it would, as in the past, secure the liquidity of Saarstahl. Petitioners further note that the Department has already determined that the banks acted on the GOS's assurance of liquidity and that this determination was sustained by the CIT.

Department's Position: We agree with petitioners. The exchange of letters between the GOS and the banks demonstrates that the banks agreed to forgive a portion of SVK's (Saarstahl's predecessor) debt only on the condition that the GOS guarantee the liquidity of the company. In fact, the banks referred to the liquidity assurance as a "prerequisite" for their action. While the banks may have been acting in their own economic self-interests when they forgave the debt, the GOS's liquidity guarantee was a factor that made the debt forgiveness more commercially reasonable because the banks were assured that the GOS would maintain SVK's ability to service its remaining debts. Thus, the liquidity assurance provided the incentive necessary to ensure the banks' debt forgiveness.

With respect to the statements made by one of the banks' negotiators at verification, we have weighed the negotiator's claims against the written correspondence exchanged between the banks and the GOS. We have accorded greater weight to the written correspondence because it was contemporaneous with the events in question and reflects the position of all of the lenders as opposed to the views of a single official from a single bank.

Lastly, although SVK was not required to make principal or interest payments with respect to the portion of debt forgiven after January 1986, the loans were still recognized by the company as liabilities until they were forgiven in 1989. In accordance with the Department's standard practice for calculating the benefit from debt forgiveness, the benefit does not accrue to the company until the debt is actually forgiven. While Saarstahl may have enjoyed a benefit from not paying interest and principal as of 1986, the banks' decision not to collect interest and principal during that period represented a moratorium on debt payments until the forgiveness occurred in 1989.

Comment 5: Effect of Saarstahl Privatization; Saarstahl states that Congress revised the definition of subsidy, bringing countervailing duty law in accordance with the Uruguay Round, to say that a subsidy would only exist if a financial contribution is given to a person and that person thereby receives a countervailable benefit. With respect to this definition, Saarstahl argues that neither it, nor its parent company, DHS, received any countervailable benefit from the aid given to SVK (Saarstahl's predecessor company). Saarstahl notes that the government assistance to SVK was provided prior to privatization and that the buyers of SVK made a fair market payment in an arm's length transaction. Saarstahl further argues that the price paid for SVK constituted adequate remuneration and, thus, did not result in a subsidy being received. Hence Saarstahl concludes, assistance received by SVK prior to privatization should not be countervailed with respect to Saarstahl.

Petitioners cite the decision of the Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States*, (78 F.3d 1539, 1544 (Fed. Cir. 1996)) to counter respondent's argument. Petitioners claim that the issue is whether the subsidies paid to Saarstahl survived the privatization and that the Department's decision in its preliminary determination, that the subsidies did survive the privatization, is in accordance with the deference given to the Department by the courts in such matters.

Department's Position: Section 771(5)(F) of the Act makes clear that the sale of a company at arm's length does not automatically extinguish prior subsidies. As we stated in the *Final Affirmative Countervailing Duty Determination; Certain Pasta from Italy Pasta* 61 FR 30287, 30289 (June 14, 1996), the methodology applied by the Department in *Certain Steel* is consistent with the new law. In this investigation we have applied this methodology to the sale of Saarstahl to DHS and to the sale of Saarstahl to the GOS.

Comment 6: Treatment of 1989 Repayment Amount; Petitioners argue that because the GOS repurchased Saarstahl in 1994, the repayment of subsidies that occurred in 1989 with the privatization should be reversed. Petitioners argue that the Department

should add the subsidy repayment back to Saarstahl's total benefit. Petitioners cite *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 20238 (May 6, 1996) (*"UK Lead and Bismuth"*) to support their argument. Petitioners claim that in that case, the Department decided to aggregate the benefits of a company and its previously spun-off subsidiary when the two were reunited. Petitioners state that the Department should follow the same methodology here because the GOS's purchase of Saarstahl in 1994 placed the company in the same position it occupied prior to the 1989 privatization. Petitioners fear that if the Department does not aggregate the subsidies, it will establish a precedent whereby governments can eliminate subsidies by privatizing an entity and then reacquiring it and, thus, avoid the application of the countervailing duty statute.

Saarstahl argues that the GOS's purchase of it in 1994 did not reverse the 1989 privatization and corresponding subsidy repayment. When Saarstahl was privatized in 1989, the GOS received stock in Saarstahl's holding company, DHS. The GOS still holds stock in DHS and, thus, it has retained the repayment received in the privatization transaction.

Department's Position: Petitioners' citing of *UK Lead and Bismuth* is misplaced. With respect to the "spin-off" and "spin-in" issues in *UK Lead and Bismuth*, the Department faced an issue of allocation of prior subsidies between business entities, not the repayment of prior subsidies to a government. In *UK Lead and Bismuth*, a subsidiary of one company was spun off, taking a portion of the benefit of subsidies with it. There is no repayment of subsidies under our methodology in such a transaction, but rather an allocation of the benefit from prior subsidies between a productive unit and a corporate entity. When the productive unit was reunited with the parent company, the formerly apportioned subsidies were reunited as well. The privatization and corresponding repayment to the GOS with respect to Saarstahl does not involve an issue of allocation. When the GOS privatized Saarstahl in 1989 it received stock in DHS, which represents partial repayment and, therefore, extinguishment of prior subsidies. Thus, we are not adding back the amount considered to be repaid in 1989.

Comment 7: Creditworthiness of Saarstahl in 1989; Saarstahl argues that the Department should consider financial information pertaining to 1989 when evaluating the creditworthiness of the firm in that year. Specifically, Saarstahl is interested in the Department taking into account the effects of privatization on its financial health and its increase in net worth.

Petitioners state that a creditworthy analysis does consider a company's future prospects, but only in the form of market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the loan agreement. The information present with respect to the privatization of Saarstahl is not sufficient for either the Department, or a commercial lender, to determine a company's creditworthiness.

Department's Position: While a company's future financial prospects can be a factor in a creditworthiness determination, we do not have on record any market studies, country or industry economic forecasts or any other information regarding the company's prospects after privatization. Although we do have an excerpt from an asset appraisal, the purpose of this appraisal was to value the assets of Dillinger and Saarstahl prior to their combination. The appraisal does not meaningfully address the future financial prospects of either Saarstahl or DHS.

Furthermore, the mere fact that the net worth of the company rose after privatization does not make the company creditworthy. Standing alone it does not provide sufficient evidence that Saarstahl was creditworthy, especially in light of the company's poor economic performance in previous years.

Comment 8: Maximum Spread on Commercial Financing: Saarstahl argues that the Department should use a spread of 1.75 percentage points above the yield on government bonds as opposed to a spread of two to construct the uncreditworthy discount rate. The 1.75 point spread is based on the Department's conversation with a German private bank official, as outlined in the Department's GOS verification report.

Petitioners state that the Department should reject any request to lower the discount rate. However, if the Department does use the information provided by the private bank, it should still add a risk premium.

Department's Position: In its May 27, 1997 response, Saarstahl reported that German banks base interest rates for long-term commercial loans on the government bonds yield, adding a spread of zero to two percent to account for the creditworthiness of the borrower. The bank representative we spoke to at verification confirmed this mechanism, but noted that in the years prior to 1990, the spread was from 0.8 to 1.75 percent. When determining a discount rate for uncreditworthy firms, the Department will use the highest long-term commercial loan rate commonly available and then add a risk premium in order to reflect the inability of a company to obtain commercial credit. In this case then, we are using the yield on government bonds, and adding the 1.75 percentage least-creditworthy margin and a risk premium.

Comment 9: Purchase Price for Saarstahl: Petitioners argue that the creation of DHS was a merger of Saarstahl and Dillinger. Each owner contributed its company and in return got an amount of shares in DHS that reflected the value of its contribution. Petitioners note that the GOS contributed shares and cash in the creation of DHS and received back shares worth an equal amount. Because of this, petitioners argue that the GOS did not receive any compensation in the 1989 transaction. Instead, it held on to what it already had and then bought a greater share of DHS. Based on this, petitioners see the real purchase price for Saarstahl as zero with the result that there should be no repayment of subsidies.

Saarstahl argues that the Department did not overstate its purchase price. Rather the Department properly established the price for the GOS's interest in Saarstahl as the appraised value of the DHS stock that it received in exchange for its cash and share contribution. Saarstahl states that it is the nature of any commercial transaction to give up a valuable in return for another valuable of equal or greater value. In this instance, the GOS gave stock and cash and in return received DHS stock. Thus, the value of the DHS stock was an appropriate mechanism to establish the purchase price.

Department's Position: We agree with Saarstahl. With the privatization of Saarstahl in 1989, the GOS did not retain what it already had (shares in Saarstahl) and then buy a little more (shares in DHS). The GOS held a majority interest in Saarstahl before the privatization and after the privatization held a minority share in DHS. While there is no denying that Saarstahl was a part of DHS, the GOS's interest in the company had changed. The value of DHS was determined by an independent auditor and the GOS's share in this company reflects the value it received and thus the value it paid for the company. Thus, the transaction serves as the basis for calculating the purchase price of Saarstahl.

Comment 10: Penalizing Saarstahl Under Countervailing Duty Law and VRA. Saarstahl argues that because its exports were limited under a voluntary restraint agreement ("VRA") from November 1, 1982, to March 31, 1992, the Department's actions in this case are unjust. According to Saarstahl, under the VRA, the United States did not initiate any antidumping or countervailing duty investigations during the period of the agreement. Saarstahl argues that going after such subsidies now penalizes Saarstahl after already facing export restrictions.

Petitioners state that Saarstahl received benefits from 1976 to 1989 in the form of interest-free contingent liabilities and these benefits were not countervailed by the Department, regardless of the export restraints. Petitioners find the Department's treatment of the RZVs as contingent obligations, which were forgiven in 1989, to be reasonable.

Department's Position: The VRA agreements neither permitted the provision of countervailable subsidies during the time in which the agreements were in effect, nor provided recipients of countervailable subsidies immunity from the imposition of countervailing duties after their expiration.

Comment 11: Asset Revaluations and Extraordinary Depreciation in Saarstahl's AUL: Petitioners contend that Saarstahl's changes to its fixed asset valuation and depreciation practices in 1989 and 1993 distort the AUL calculation. With respect to the 1989 privatization, petitioners argue that the new owner valued the transferred assets at their net book value (*i.e.*, the gross value minus accumulated depreciation). The company then treated the 1989 net value as the gross value in subsequent years. Petitioners argue that consistent with its position in the *Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation, British Steel plc v. United States*, Consol. Ct. No. 93–09–00550–CVD at 48 (June 30, 1995) (*"British Steel Remand"*), the Department should reject net book values in the AUL calculation because their use results in a calculation of the average remaining life of the assets, not the average useful life.

With respect to the extraordinary depreciation claimed by Saarstahl in 1993, petitioners note that the Department has stated in the *Notice of Proposed Rulemaking and Request for Public Comment*, 62 FR 8818, 8828 (February 26, 1997) that it may be necessary to make normalizing adjustments for factors that may distort the AUL calculation. The Department goes on to list extraordinary write-downs, as one situation that would require such an adjustment.

Further, petitioners dispute Saarstahl's claim that the value of the transferred assets should be viewed as the cost of acquiring those assets and, hence, treated as the gross book value of those assets after privatization. First, petitioners contend that the value of the assets transferred to Saarstahl from DHS (*i.e.*, at net book value) differed from the value of the same assets in the context of the privatization (*i.e.*, at "modified book value"). Second, petitioners claim that the transfer of assets in this privatization was in the nature of a corporate restructuring and that the Department has determined that such restructuring does not constitute a "sale." Lastly, petitioners contend that Saarstahl's compliance with Generally Accepted Accounting Principles should not affect the determination as to whether the company's AUL is valid. Because the calculation yields the average remaining useful life of the assets rather than an average useful life, it is distortive.

Saarstahl contends that the additional depreciation expenses taken by the company in 1989 and 1993 did not distort the AUL because these adjustments were necessary to bring the asset values reported in the company's financial records in line with the actual economic value of those assets. Citing the *British Steel Remand*, respondent claims that the Department routinely includes extraordinary depreciation expenses in its calculation of AUL because the inclusion of such expenses results in a calculation that better approximates a company's actual experience.

Saarstahl disagrees with petitioners' claim that the company used net book values in its AUL calculation. Instead, with the privatization in 1989, it used the cost of acquisition for the assets. In Saarstahl's view, this accounting treatment comports with the economic and commercial realities of the transfer. Saarstahl further argues that the 1989 privatization was not simply an internal corporate transfer as alleged by petitioners. In this privatization, the productive assets were transferred to a new owner.

Saarstahl adds that while the asset values listed in Saarstahl's balance sheet are different from those in the appraisal report related to the privatization transaction, this is explained by the fact that the values listed in the appraisal report and in the companies' financial statements were prepared for different purposes and include different items. Saarstahl notes, however, that these differences in no way led to an artificial suppression of Saarstahl's AUL. To the contrary, the amount recorded in the company's financial statements is actually higher than that suggested in the appraisal report.

Department's Position: We agree with petitioners' argument that Saarstahl's AUL calculation is distorted. In particular, given the change in the gross book value of Saarstahl's assets, the methodology employed in our preliminary determination yields what is essentially a mixture of the average useful life of the assets and the average remaining useful life in 1989. This is evident when we compare the AUL amounts calculated on an annual basis for years prior to 1989 and the amounts after the privatization and before Saarstahl's bankruptcy in 1993. This change in the gross book value had a significant impact upon the cumulative AUL calculated by the Department over a ten-year period (*i.e.*, 1987 through 1996). In this case, the impact was significant enough that the AUL could not be calculated from Saarstahl's own records. Thus, to approximate Saarstahl's AUL, we have used the depreciation schedule in Germany.

IHSW

Comment 12: Forgiveness of the DM 154 million Credit Line Owed to HLB by HSW: IHSW contends that the Department erred in preliminarily determining that the alleged forgiveness of the DM 154 million credit line owed to HLB by HSW constituted a countervailable subsidy. IHSW asserts that, pursuant to section 355.44(b)(9) of the *Proposed Regulations*, the Department will not consider a loan provided by a government-owned bank, *per se*, to be a loan from the government unless the government-owned bank: (1) Provided the loan at the direction of the government or with funds provided by the government, and (2) the terms of the loan were inconsistent with commercial considerations. IHSW argues that the HLB made prudent business decisions when it increased the credit line at the end of 1992 and 1993, because if the line of credit had not been extended, the company would have gone bankrupt, and the HLB's claims would have been worthless. Thus, according to IHSW, the increases were based on legitimate business considerations and were not at the direction of the GOH. With respect to the second factor considered by the Department, IHSW contends that the line of credit contained commercial loan terms (*e.g.*, interest rate, security) which were not inconsistent with commercial considerations.

Petitioners claim that IHSW's justification, or lack of justification, for

extension of the line of credit is by no means dispositive of whether the subsequent forgiveness of the debt under the line of credit was countervailable. Nonetheless, petitioners provide several arguments as to why the HLB acted under GOH compulsion and not in a commercially reasonable manner when it initially provided and subsequently increased the credit line to HSW. First, petitioners note that at the time of Old HSW's bankruptcy in 1983, the company owed DM 181 million to the GOH and the HLB. Petitioners argue that, given the history between HSW and the HLB as of 1984, it is completely illogical to suggest that a lender, after losing a significant amount of money on a debtor, would respond by loaning more funds to the same bad debtor.

Second, petitioners note that the line of credit was extended to HSW by the HLB pursuant to a 1984 *Kreditauftrag*, according to which the GOH was to compensate the HLB for 60 percent of the line of credit if HSW failed to service its debt. Petitioners state that GOH officials confirmed at verification that the *Kreditauftrag* was an exceptional occurrence.

Third, petitioners note that HSW's financial condition deteriorated in 1992 and 1993. Citing the EU decision concerning state aid granted by the GOH to HSW, petitioners contend that at the end of 1993 the HLB refused to prolong the credit line. At that point, according to petitioners, the GOH was forced to provide a *Kreditauftrag* covering 100 percent of the line of credit. Petitioners argue that the GOH's willingness to give a blanket guarantee to a company whose situation was steadily worsening eliminated any pretense that the extension of the line of credit was commercially reasonable.

Fourth, petitioners note that the EU concluded that "no private investor, in the situation prevailing in December 1993, would have been prepared to inject new risk capital * * * {T}he behaviour of the {the city of Hamburg} could not be deemed to be behaviour of a normal investor in a market economy." Petitioners assert that the law on *kapitalersetzende Darlehen* ("KSD's"), a legal term that translates as "capital-replacing loans," buttresses this conclusion. KSD's are treated as risk capital and are only repaid in insolvency proceedings if all other creditors receive full compensation. By the end of 1993, it was recognized that loans from the HLB or GOH would be subordinated to the claims of all other creditors in the case of bankruptcy. Thus, petitioners argue that no reasonable lender or investor would put further money in the company knowing that it would go to the pockets of other lenders who were less subordinated.

Lastly, petitioners contend that because the GOH refused to provide the Department with a report that explained the rationale for extending the line of credit, the Department should make an adverse inference that the HLB indeed refused to extend the line of credit and that it was acting under government compulsion. Petitioners add, however, that even without the use of adverse inferences, the evidence on the record shows that the HLB agreed to extend the credit line only if the GOH assumed full responsibility for the line of credit.

Department's Position: While we agree with IHSW's assertion that the Department will not consider a loan provided by a government-owned bank, *per se*, to be a loan from the government, the history of interaction among the GOH, the HLB, and HSW demonstrates that the HLB did not act in a commercially reasonable manner, but rather at the direction of the GOH, when it provided and subsequently extended the line of credit to HSW. Moreover, the credit line ceased to be consistent with commercial considerations when the HLB refused to extend the credit line in 1993.

The history of interaction among the GOH, HLB, and HSW demonstrates that the line of credit was clearly a loan provided at the direction of the GOH. In 1983, at the time of HSW's insolvency, the HLB held 49 percent of the company's shares and had claims totaling DM 181 million (DM 129 million of the claims was covered by the GOH). Also at that time, the bankruptcy trustee determined under German law that the funds loaned by the HLB did not qualify as claims against the insolvent estate because they were considered KSD's. Since the GOH (which had guaranteed a portion of the loans provided by the HLB) and the HLB had no chance of recovering their money if HSW was liquidated in insolvency, they jointly decided to restructure HSW to continue operations under a new company.

Also in 1984, the GOH provided HSW with DM 20 million in equity, through the HLB and Protei, so that the company could continue operations. This contribution contained strict contractual obligations, such that the EU determined that HSW was now a *de facto* public steel company. The EU noted that the "entire contractual situation created in 1984 provided for the control of (GOH), through HLB, over HSW."

It is against this background that the HLB opened a revolving credit line in the amount of DM 130 million in favor of HSW. However, even at that early date the HLB required that the GOH provide a guarantee (Kreditauftrag) for 60 percent of the credit line. In 1993, when the HLB refused to extend the credit line, the GOH was forced to provide an additional Kreditauftrag covering 100 percent of the credit line.

With respect to whether the loan was consistent with commercial considerations, the GOG, in response to the EC's investigation, indicated that the GOH and the HLB were aware that, in the event of HSW's bankruptcy, they would receive repayment from HSW only in a subordinated position in view of recent KSD precedent. Moreover, the HLB was not willing to extend the credit line absent the additional Kreditauftrag from the GOH covering 100 percent of the credit line. At that point, the provision of the credit line ceased to be consistent with commercial considerations. Rather, the HLB, acting as a reasonable commercial actor, refused to extend the line of credit, and the GOH was forced to accept full economic risk connected with the line of credit.

Comment 13: Line of Credit Purchased for Full Commercial Value: IHSW asserts that the line of credit was purchased from HLB by Venuda for commercial value in an arm's length transaction. Moreover, IHSW contends that the purchase of the loan was a separate and distinct transaction from the purchase of HSW's shares. Therefore, according to IHSW, there was no loan forgiveness and no countervailable benefit arising from Venuda's purchase of the loan. IHSW further claims that numerous forms of consideration given by Venuda for the assignment of the loan, and the fact that HSW may have been on the verge of bankruptcy, clearly show that Venuda purchased the loan in an arm's length transaction for commercial consideration. IHSW adds that numerous other factors (*e.g.*, restrictions from the GOH and lack of property ownership) further reduce the value of the company's assets significantly below the purchase price paid by Venuda. Thus, IHSW argues there was no loan forgiveness in the sale of HSW, and IHSW did not receive a financial contribution. IHSW adds that, even if the purchase of the line of credit is considered to be a part of the purchase of HSW, this would not change the fact that the loan to HSW was not forgiven because HLB received full commercial value for the loan.

IHSW further argues that if the credit line purchase by Venuda is viewed as a "forgiveness," then the Department should credit all payments and obligations assumed by IHSW pursuant to the loan purchase agreement against any alleged or implied benefit. IHSW adds that, at the very least, the DM 60 million paid by Venuda to HLB for the loan must be recognized as a repayment of part of the loan and any possible countervailable benefit curtailed by that amount.

Petitioners assert that the purchase of HSW's shares and the purchase of the credit line were clearly part of a single agreement by Venuda to purchase all of the government's interest in HSW, and cannot be separated. Petitioners note that during verification IHSW officials admitted that the purchase price of HSW included the approximately DM 60 million paid for the HLB loan. Petitioners add that large transactions, such as the sale of HSW, typically are complex and involve multiple parties and agreements. Thus, according to petitioners, treating the two transactions as the purchase price paid for HSW is consistent with commercial reality.

Petitioners further argue that IHSW's post-purchase investments and commitments do not constitute part of the purchase price. Petitioners contend that the payment for any good, service, or asset is the amount that is exchanged between the buyer and seller in exchange for the good, service, or asset. Petitioners assert that the only exchange between the buyer and seller in this case is the DM 10 million and DM 60 million that was paid to purchase the company. Petitioners add that IHSW's subsequent investments in the company, whether or not required by the purchase agreement, do not go to the seller. Therefore, according to petitioners, these payments do not warrant treatment as part of the purchase price for HSW or as a repayment of subsidies.

With respect to IHSW's claim that HSW owned too few of its assets and was encumbered with too many restrictions from the GOH to warrant the purchase price paid by Venuda, petitioners contend that there is absolutely no evidence that would permit the Department to evaluate IHSW's claim. Therefore, according to petitioners, IHSW's argument must fail.

Department's Position: We continue to view Venuda's purchase of HSW's loan and HSW's shares as a single transaction. At verification, IHSW officials explained that the purchase price paid for HSW's shares (*i.e.*, the DM 10 million) represented their valuation of HSW's non-current assets taking into consideration HSW's negative equity position, the company's remaining liabilities, and the obligations that the company was required to fulfill pursuant to various articles in the loan purchase agreement between HLB and Venuda. The DM 60 million payment represented Venuda's valuation and payment for HSW's net current assets at December 31, 1994 (*i.e.*, the difference between current assets and liabilities (less the debt owed to HLB)).

These verified facts demonstrate that it was not the HLB debt that was purchased for commercial value in an arm's length transaction—it was the company. Venuda valued and purchased a company that was free of all HLB debt. While part of the purchase price was structured to resemble a debt purchase, Venuda paid DM 60 million to purchase HSW's net current assets. Thus, forgiveness of the debt owed to HLB occurred separate and apart from the purchase of the company. Moreover, the debt forgiveness constitutes a financial contribution to HSW.

We also disagree with IHSW's argument that the Department should credit the post-purchase investments and commitments against any benefit from the alleged debt forgiveness. At verification, officials explained that the DM 10 million paid for the shares of HSW incorporated their valuation of HSW's remaining assets taking into consideration, *inter alia*, the obligations in question. Thus, the obligations in question related to the purchase of the company and not to the loan. Additionally, because we have determined that the debt forgiveness occurred separate from the sale of the company, the post-purchase investments and commitments do not affect the amount of debt forgiven.

Comment 14: The Loan Payments to a Related Party: IHSW contends that, in fact, the liability for the "forgiven" loan is still outstanding and payments on that loan are currently being made by IHSW's sister company, DSG, to an affiliated company, Picaro Limited. Thus, according to IHSW, inasmuch as the loan continues to be paid at the full amount there is no loan forgiveness and no countervailable benefit.

Petitioners argue that a loan cannot be said to have been repaid by the device of simply shifting funds around within a group of related companies. Petitioners add that the verification shows that the loan "repayment" actually returns to IHSW in the form of a shareholder contribution from Venuda.

Department's Position: The company under investigation, IHSW, does not carry the loan liability to Picaro Limited on its books. The debt in question is recorded in the books of an affiliated company, DSG. Thus, from the perspective of IHSW, the loan has been totally forgiven. The company is under no obligation to make payments on the loan—all loan payments are made by DSG.

Furthermore, we agree with petitioners that this loan cannot be considered outstanding with payments still occurring simply by shifting the liabilities within a group of related companies. Even if we were to examine this issue at the larger, corporate level, the loan payments are being made by DSG, a company which has no income other than the lease payments it receives from IHSW. These lease payments, which then become loan payments from DSG, are eventually reinvested into IHSW as shareholder contributions. Thus, even at this level of analysis the subject merchandise still benefits from the loan forgiveness because any payments that are made against the loan are reinvested to benefit production.

Comment 15: IHSW's AUL calculation: Petitioners contend that there is an error in IHSW's AUL calculation because the ending gross book value of productive assets in 1995 does not match the beginning gross book value in 1996. Petitioners argue that absent a change in methodology at the end of 1995, which IHSW has not reported, the closing asset value for one year should equal the opening asset value for the next.

IHSW asserts that its AUL calculation was correct and based on verified facts. IHSW notes that, as set forth in the 1996 annual audit reports for IHSW and HSW/DSG, a transfer of assets and liabilities occurred between DSG and IHSW. Moreover, respondents claims that the 1996 beginning gross book value was examined by the Department at verification in DSG's 1996 development of fixed assets.

Department's Position: We agree with IHSW that there is not an error in the company's AUL calculation. As noted by respondent, there was a transfer of assets between IHSW and HSW/DSG at the beginning of 1996. The transfer is documented on the record of this investigation (*see e.g.*, IHSW supplemental questionnaire response, July 3, 1997).

Comment 16: F.O.B. Sales Value: IHSW contends that basing the *ad valorem* subsidy rate calculation on an F.O.B. sales value is not in accordance with the universal commercial fact that freight costs, if born by the foreign producer, are included in the value of the merchandise supposedly benefitting from a subsidy or grant. IHSW further disputes the Department's rationale for this policy, *i.e.*, that customs valuation is performed on an F.O.B. basis. According to IHSW, most countries use

C.I.F. as the basis for customs valuation. Finally, respondent argues that the customs treatment has no relationship to the fact that the value of commercial transactions is the sum of all those factors embodied in the sale and evidenced by the sales price.

Petitioners contend that IHSW's argument that the denominator in the *ad valorem* calculation should be based on the C.I.F. value or "sale price" is mathematically invalid. Petitioners note that the Department allocates the countervailing duty margin over the customs value of sales because the U.S. Customs Service ("U.S. Customs") will later multiply the resulting margin by the customs value to determine the total duty per entry. Petitioners assert that if the denominator uses any other measure of value, the duty calculation will be incorrect.

Department's Position: We agree with petitioners. Pursuant to section 402(2)(A) of the Act, U.S. Customs is directed to exclude from the customs value any expenses incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States. Thus, the Department requests sales data on an F.O.B basis so that the Department and Customs are consistent in the calculation and assessment of countervailing duties, respectively. *BES*

Comment 17: Countervailability of Pre-Unification Assistance to the New States: The GOG argues that loan guarantees issued by THA prior to Unification are not countervailable because they were available to all THA companies and hence, not specific to SWB. Both the GOG and BES point out that these guarantees were transnational in nature and are, therefore, not subject to the countervailing duty law (*see Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1987)).

Petitioners argue that because the GDR eventually became part of the unified Germany and the ultimate beneficiary (*i.e.*, SWB/BES) likewise became a citizen of the same, any assistance provided to SWB/BES was not transnational in nature. In particular, petitioners point out that at the time that assistance was granted to SWB, both the FRG and the GDR had taken major steps in the direction of unification.

Department's Position: We agree with the GOG and BES that any financial benefit, received directly by SWB and/or indirectly by BES, through secondary FRG loan guarantees issued prior to Unification is not countervailable (*see* the section on FRG Backing of THA Loan Guarantees under Programs Determined Not To Be Countervailable above). As previously discussed, the GDR and the FRG were separate sovereign countries prior to Unification; therefore, the provision of FRG backing of THA loan guarantees to GDR enterprises constituted transnational assistance, notwithstanding the steps already taken toward Unification. That the two countries eventually were joined is not relevant because our analysis is focused on the nature of the benefit at the time it was bestowed.

Comment 18: Non-Use of Special Depreciation by BES: Petitioners acknowledge that the Department's normal practice is to recognize tax benefits when tax returns are filed. According to petitioners, this practice is justified in the context of recurring tax benefits (*see Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil*, 51 FR 40837, 40841 (November 10, 1986)). Petitioners argue, however, that the Department should deviate from this practice here since BES did not file a tax return during the POI. By allowing BES to record no benefits in one year and then benefits from two tax years in another would result in changing two recurring benefits into a single nonrecurring benefit in the year of filing. In order to ensure continued treatment of Special Depreciation as a recurring benefit, petitioners argue that the Department should countervail the amount of Special Depreciation recorded in BES's books, regardless of the date of filing.

BES and the GOG argue that since BES did not file a tax return during the POI, it did not receive a financial benefit in the form of Special Depreciation.

Department's Position: We agree that with BES and the GOG that BES did not receive a financial benefit from Special Depreciation during the POI. This program provides a tax benefit. Therefore, under the Department's current practice, any financial contribution arising from Special Depreciation is realized when the "cash flow" effect occurs, *i.e.*, when the tax return is filed (*see Proposed Regulations*). In past cases where respondents did not file tax returns during the period in question, or had an operating loss or were otherwise unable to benefit from a tax concession, the Department has not altered its methodology to compensate for any unevenness of benefits over time (*see e.g., Certain Steel* at 37315 and *Ferrochrome From South Africa: Preliminary Results of the 1992 Review*, 61 FR 65546, 65547 (December 13, 1996)). A major reason for waiting until the tax return is filed is that only then can we be certain of the level of the benefit. In this case, we found at verification that BES did not file a tax return during the POI; accordingly, BES did not receive a benefit from the Special Depreciation program during the POI.

Comment 19: Other Arguments Regarding Countervailability: Interested parties made other arguments regarding the countervailability of assistance to BES. These arguments are now moot since we have found benefits pertaining to the FRG backing of THA loan guarantees to be not countervailable, special depreciation to be not used, and benefits from all other programs to be *de minimis*, assuming, *arguendo*, they are countervailable.

Comment 20: Improper Inclusion of BES: BES alleges that the Department did not have authority to initiate an investigation against it because petitioners did not allege that BES was receiving any countervailable subsidies and did not provide evidence of regional assistance programs targeted at the New States.

Department's position: The statute does not require company-specific allegations to initiate an investigation. A petitioner must only allege that the government of a country is providing countervailable subsidies with respect to the manufacture, production or export of a class or kind of merchandise imported or sold for exportation into the United States, and that such subsidies are causing injury to the U.S. industry. *See* section 701(a) and 702(a)(b)(1) of the Tariff Act. The petition met these requirements.

If sufficient allegations are made, the Department initiates a proceeding to determine whether the government of the country in question is providing subsidies to the subject industry. As an initial matter, the Department asks a petitioner to identify all the manufacturers or exporters of the subject merchandise. Normally, the Department sends all identified companies questionnaires, in addition to sending a complete set of questionnaires to the government involved. The Act requires the Department to attempt to determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. *See* section 777(e)(1). There is no authority to exclude a respondent from an investigation except through the determination that the company had an *ad valorem* subsidy rate of zero or *de minimis*. *See* 19 CFR Section 355.14.

Suspension of Liquidation: In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States. The all-others rate does not include zero or *de minimis* rates.

In accordance with section 703(d)(5) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire rod from Germany, except those of BES and WHG, which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company	Ad valorem rate
Saarstahl	17.67
IHSW	5.61
All others	11.08

Since the estimated net subsidy rate for BES and WHG is *de minimis*, these companies are not subject to the suspension of liquidation and will be excluded from any countervailing duty order.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Acting Deputy Assistant Secretary for AD/CVD Enforcement, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on steel wire rod from Germany.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27985 Filed 10–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–803]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Hansen, Vincent Kane, or Sally Hastings, Office of Antidumping/Countervailing Duty Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1276, 482–2815, or 482–3464, respectively.

Final Determination

The Department of Commerce ("the Department") determines that countervailable subsidies are being provided to Caribbean Ispat Limited ("CIL"), a producer and exporter of steel wire rod from Trinidad and Tobago. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Case History

Since our preliminary determination on July 28, 1997 (62 FR 41927, August 4, 1997), the following events have occurred:

We conducted verification in Trinidad and Tobago of the questionnaire responses of the Government of Trinidad and Tobago ("GOTT") and of CIL, from August 18 through August 26, 1997. Petitioners and respondents filed case and rebuttal briefs on September 12 and September 17, 1997, respectively. A public hearing was held on September 19, 1997. On September 16, 1997, the GOTT and the U.S. Government initialed a proposed suspension agreement, whereby the GOTT agreed not to provide any new or additional export subsidies on the subject merchandise and to restrict the volume of direct and indirect exports of subject merchandise to the United States. On October 14, 1997, the U.S. Government and the GOTT signed a suspension agreement (*see, Notice of Suspension of Countervailing Duty Investigation: Steel Wire Rod from Trinidad and Tobago* which is being published concurrently with this notice). Based on a request from petitioners on October 14, 1997, the Department and the International Trade Commission ("ITC") are continuing this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by

weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act"). All references to the Department's regulations at 19 CFR 355.34 refer to the edition of the Department's regulations published April 1, 1997.

Injury Test

Because Trinidad and Tobago is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of wire rod from Trinidad and Tobago materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Trinidad and Tobago of the subject merchandise (62 FR 23485).

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service ("IRS") on the industry-specific average useful life of assets in determining the allocation period for nonrecurring subsidies. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993) ("*General Issues Appendix*"). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) ("*British Steel*"), the U.S. Court of International Trade (the "Court") ruled against this methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for purposes of this determination, the Department has calculated a company-specific AUL. Based on information provided by respondents, the Department has determined that the appropriate allocation period for CIL is 15 years.

Equityworthiness: In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;

2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;

3. Rates of return on equity in the three years prior to the government equity infusion;

4. Equity investment in the firm by private investors; and

5. Prospects in world markets for the product under consideration.

In start-up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from those used in the analysis of an established enterprise.

For a more detailed discussion of the Department's equityworthiness criteria see the *General Issues Appendix* at 37244 and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) ("*Steel from France*").

In our preliminary determination, we determined that the Iron and Steel Company of Trinidad and Tobago ("ISCOTT") was unequityworthy for the period 1986–1994. Additional information and documents gathered at verification have given us cause to review our preliminary determination. As discussed below, we determine that ISCOTT was unequityworthy from June 13, 1984 to December 31, 1991. For a discussion of this determination, see the section of this notice on "Equity Infusions."

Equity Methodology: In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. (*See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain*, 58 FR 37374, 37376 (July 9, 1993).)

In this investigation, where a market benchmark does not exist, the Department is following the methodology described in the *General Issues Appendix* at 37239. Under this methodology, equity infusions made into an unequityworthy firm are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts;

2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

In start-up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from those used in the analysis of an established enterprise. For a more detailed discussion of the Department's creditworthiness criteria, see, *e.g., Steel from France* at 37304, and *Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393, 37395 (July 9, 1993) ("*Certain Steel from the U.K.*").

In our preliminary determination, we determined that ISCOTT was uncreditworthy for the period 1986–1994. Additional information and documents gathered at verification have given us cause to review our preliminary determination. As discussed below, we determine that ISCOTT was uncreditworthy during the period June 13, 1984 to December 31, 1994. ISCOTT did not show a profit for any year during this period and continued to rely upon support from the GOTT to meet fixed payments. The company's gross profit ratio was consistently negative in each of the years in which it had sales. Additionally, the company's operating profit (net income before depreciation, amortization, interest and financing charges) was consistently negative. The firm continued to show an operating loss in each year it was in production, and was never able to cover its variable costs.

Regarding the period prior to June 13, 1984, and after December 31, 1994, we did not examine ISCOTT's creditworthiness because ISCOTT did not receive any countervailable loans, equity infusions, or nonrecurring grants during those periods.

Discount Rates: We have calculated the long-term uncreditworthy discount rates for the period 1984 through 1994, to be used in calculating the countervailable benefit from nonrecurring grants and equity infusions, using the same methodology described in our preliminary determination. Specifically, consistent with our practice (described in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357, 18358 (April 18, 1994) ("*GOES*")), we took the highest prime term loan rate available in Trinidad and Tobago in each year as listed in the *Central Bank of Trinidad and Tobago: Handbook of Key Economic Statistics* and added to this a risk premium of 12% of the median prime lending rate.

Privatization Methodology: In the *General Issues Appendix* at 37259, we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a company (privatization).

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (in this case 1982 for CIL) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

In the current investigation, we are analyzing the privatization of ISCOTT in 1994.

Based upon our analysis of the petition and responses to our questionnaires, we determine the following:

I. Programs Determined To Be Countervailable

A. Export Allowance Under Act No. 14

Under the provisions of Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, companies in Trinidad and Tobago with export sales may deduct an export allowance in calculating their corporate income tax. The allowance is equal to the ratio of export sales over total sales multiplied by net income. Export sales to certain Caricom countries are not eligible for the export allowance and are excluded from the amount of export sales for purposes of calculating the export allowance.

A countervailable subsidy exists within the meaning of section 771(5) of the Act where there is a financial contribution from the government which confers a benefit and is specific within the meaning of section 771(5A) of the Act.

We have determined that the export allowance is a countervailable subsidy within the meaning of section 771(5) of the Act. The export allowance provides a financial contribution because in granting it the GOTT forgoes revenue that it is otherwise due. The export allowance is specific, under section 771(5A)(B), because its receipt is contingent upon export performance.

We verified that CIL made a deduction for the export allowance on its 1995 income tax return, which was filed during the POI. Because the export allowance is claimed and realized on an annual basis in the course of filing the corporate income tax return, we have determined that the benefit from this program is recurring. To calculate the countervailable subsidy from the export allowance, we divided CIL's tax savings during the POI by the total value of its export sales which were eligible for the export allowance during the POI. On this basis, we determine the countervailable subsidy from this program to be 3.72 percent *ad valorem*.

B. Equity Infusions

In 1978, ISCOTT and the GOTT entered into a Completion and Cash Deficiency Agreement ("CCDA") with several private commercial banks in order to obtain a part of the financing needed for construction of ISCOTT's plant. Under the terms of the CCDA, the GOTT was obligated to provide certain equity financing toward completion of construction of ISCOTT's plant, to cover loan payments to the extent not paid by ISCOTT, and to provide cash as necessary to enable ISCOTT to meet its current liabilities.

In *Carbon Steel Wire Rod from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 480 (January 4, 1984) (*"Wire Rod I"*), the Department determined that payments or advances made by the GOTT to ISCOTT during its start-up years were not countervailable. In making this determination, the Department took into consideration the fact that it is not unusual for a large, capital intensive project to have losses during the start-up years, the fact that several independent studies forecast a favorable outcome for ISCOTT, and the fact that ISCOTT enjoyed several important natural advantages. On these bases, advances to ISCOTT through April of 1983, the end of the original POI, were found to be not countervailable.

Given the Department's decision in *Wire Rod I* that the GOTT's initial decision to invest in ISCOTT and its additional investments through the first quarter of 1983 were consistent with commercial considerations, the issue presented in this investigation is whether and at what point the GOTT ceased to behave as a reasonable private investor. During the period from 1983 to 1989, a period of continuing losses, ISCOTT and the GOTT commissioned several studies to determine the financially preferable course of action for the company. The information contained in these studies is business proprietary, and is discussed further in a memorandum dated October 14, 1997, from Team to Richard W. Moreland, Acting Deputy Assistant Secretary for AD/CVD Enforcement (*"Equity Memorandum"*), a public version of which is available in the public file for this investigation located in the Central Records Unit, Department of Commerce, HCHB Room B–099 ("Public File"). Based on information contained in the studies and our review of the results of ISCOTT's operations over the period under consideration, we determine that the GOTT's investments made after June 13, 1984, were no longer consistent with the practice of a reasonable private investor. ISCOTT continued to be unable to cover its variable costs, yet the GOTT continued to provide funding to ISCOTT. Despite ISCOTT's continued losses and no reason to believe that under the conditions in place at that time there was any hope of improvement, the GOTT did not make further investment contingent upon actions that would have been required by a reasonable private investor.

In 1988, P.T. Ispat Indo ("Ispat"), a company affiliated with CIL, came forward and expressed an interest in leasing the plant. On April 8, 1989, the GOTT and Ispat reached agreement on a 10-year lease agreement with an option for Ispat to purchase the assets after five years. The first few years of the lease were marked by the GOTT learning to assume the role of a lessor and the management of CIL working to become familiar with the operations of ISCOTT and to develop relations with the former ISCOTT employees. Our review of internal documents, financial projections and historical financial data indicate that after December 31, 1991, the operations of the ISCOTT plant under CIL and ISCOTT's financial condition improved such that we determine that investments in ISCOTT after this date were consistent with the practice of a reasonable private investor. *See, Equity Memorandum* for further discussion of the information used in making this determination.

We have determined that the GOTT equity infusions into ISCOTT during the period from June 13, 1984 through December 31, 1991 constitute countervailable subsidies in accordance with section 771(5) of the Act. We determine that these equity infusions confer a benefit under 771(5)(E)(i) of the Act because these investments were not consistent with the usual investment practice of private investors. Also, they are specific within the meaning of section 771(5A) because they were limited to one company, ISCOTT.

To calculate the benefit, we followed the "Equity Methodology" described above. The benefit allocated to the POI was adjusted according to the "Privatization Methodology" described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we calculated a countervailable subsidy rate of 11.12 percent *ad valorem*.

C. Benefits Associated With the 1994 Sale of ISCOTT's Assets to CIL

In December 1994, CIL, the company created by Ispat to lease and operate the plant, exercised the purchase option in the plant lease and purchased the assets of ISCOTT. After the sale of its assets, ISCOTT was nothing but a shell company with liabilities exceeding its assets. CIL, on the other hand, had purchased most of ISCOTT's assets without being burdened by ISCOTT's liabilities.

The liabilities remaining with ISCOTT after the sale of productive assets to CIL had to be repaid, assumed, or forgiven. In 1995, the National Gas Company of Trinidad and Tobago Limited ("NGC"), which was owned by the GOTT, and the National Energy Corporation of Trinidad and Tobago Limited ("NEC"), a wholly owned subsidiary of NGC, wrote off loans owed to them by ISCOTT totaling TT $77,225,775. Similarly, Trinidad and Tobago National Oil Company Limited ("TRINTOC"), also owned by the GOTT, wrote off debts owed by ISCOTT totaling TT $10,492,830 as bad debt. While no specific government act eliminated this debt, CIL (and consequently the subject merchandise) received a benefit as a result of this debt being left behind in ISCOTT.

We have determined that this debt forgiveness constitutes a countervailable subsidy in accordance with section 771(5) of the Act because it represents a direct transfer of funds. Also, it is specific within the meaning of section 771(5A) because it was limited to one company.

In this case, to calculate the benefit during the POI, we used our standard grant methodology and applied an uncreditworthy discount rate. The debt outstanding after the December 1994 sale of assets to CIL (adjusted as described below) was treated as grants received at the time of the sale of the assets.

After the 1994 sale of assets, certain non-operating assets (*e.g.*, cash and accounts receivable) remained with ISCOTT. These assets were used to fund repayment of ISCOTT's remaining accounts payable. In order to account for the fact that certain assets, including cash, were left behind in ISCOTT, we have subtracted this amount from the liabilities outstanding after the 1994 sale of assets.

The benefit allocated to the POI was adjusted according to the "Privatization Methodology" described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we determine the net subsidy to be 1.17 percent *ad valorem*.

D. Provision of Electricity

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service

> * * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Particular problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In this situation, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to electricity, some of the options may be to examine whether the government has followed a consistent rate making policy, whether it has covered its costs, whether it has earned a reasonable rate of return in setting its rates, and/or whether it applied market principles in determining its rates. Such an approach is warranted where it is only the government that provides electricity within a country or where electricity cannot be sold across service jurisdictions within a country and there are divergent consumption and generation patterns within the service jurisdictions.

The Trinidad and Tobago Electric Commission ("TTEC"), which is wholly-owned by the GOTT, is the sole supplier of electric power in Trinidad and Tobago. For billing purposes, TTEC classifies electricity consumers into one of the following categories: residential, commercial, industrial, and street lighting. Industrial users are further classified into one of four categories depending on the voltage at which they take power and the size of the load taken. CIL is the sole user in the very large load category taking its power at 132 kV for loads over 25,000 KVA. Other large industrial users take power at 33 kV, 66 kV or 132 kV at loads from 230 Volts up to 25,000 KVA.

TTEC's rates and tariffs for the sale of electricity are set by the Public Utilities Commission ("PUC"), an independent authority. In setting electricity rates, the PUC takes into account cost of service studies done by TTEC. These studies are submitted to the PUC, where they are reviewed by teams of economists, statisticians, and auditors. Public hearings are held and views expressed orally and in writing. After considering all of the views and studies submitted, the PUC issues detailed orders with the new rates and explanations of how they were calculated. In establishing these rates, the PUC is required by section 32 of its regulations to ensure that the new rates will cover costs and expenses and allow for a return.

The electricity rates in effect during the POI were based on cost of service studies for 1987 and 1991. Based on these studies and staff audit reports, the PUC in 1992 issued Order Number 80 with the new electricity rates and a lengthy explanation of the bases for these rates. The order allowed for a specified return to TTEC on its sales of electricity. In 1993 and 1994, the first two years following the order, TTEC was profitable for the first time in years. However, TTEC had large losses in 1995 and losses in 1996 of about half the 1995 losses.

As noted above, TTEC is the only supplier in Trinidad and Tobago of electricity. Consequently, there are no competitively-set, private benchmark prices in Trinidad and Tobago to use in determining whether TTEC is receiving adequate remuneration within the meaning of section 771(5)(E) of the Act. Lacking such benchmarks, the only bases we have for determining what constitutes adequate remuneration are TTEC's costs and revenues.

Despite PUC's mandate to set rates that will cover the costs of providing electricity plus an adequate return, past history indicates that this directive has seldom been met. In addition, evidence in the cost of service studies, including the most recent cost of service study prepared in 1997, indicates that TTEC did not receive adequate remuneration on its sales of electricity to CIL. This evidence is proprietary and is discussed in the October 14, 1997 proprietary memorandum entitled *Adequate Remuneration for Electricity*. Consequently, we determine that the GOTT is bestowing a benefit on CIL through TTEC's provision of electricity. We further determine that this benefit is specific because CIL is the only user in its customer category and, hence, the only company paying fees and tariffs at that rate.

Adequacy of remuneration is a new statutory provision which replaced "preferentiality" as the standard for determining whether the government's provision of a good or service constitutes a countervailable subsidy. The Department has had no experience administering section 771(5)(E) and Congress has provided no guidance as to how the Department should interpret this provision. This case and the other concurrent wire rod cases, mark the first instances in which we are applying the new standard. We anticipate that our policy in this area will continue to be refined as we address similar issues in the future.

We calculated the benefit for electricity by comparing CIL's actual electricity rate in 1996 with the rate that would have yielded an adequate return to TTEC, as calculated in its 1996 cost of service study. (We used the cost of service study to calculate the benefit as there was no suitable market-based benchmarks for electricity in Trinidad and Tobago.) We divided the total shortfall based on CIL's POI electricity consumption by CIL's total sales of all products during the POI. On this basis, we calculated a countervailable subsidy rate of 1.46 percent *ad valorem*.

II. Programs Determined to Be Not Countervailable

A. Import Duty Concessions under Section 56 of the Customs Act

Section 56 of the Customs Act of 1983 provides for full or partial relief from import duties on certain machinery, equipment, and raw materials used in an approved industry. The approved industries that may benefit from this relief are listed in the Third Schedule to Section 56. In all, 76 industries are eligible to qualify for relief under Section 56.

Companies in these industries that are seeking import duty concessions apply by letter to the Tourism and Industries Development Company, which reviews the application and forwards it with a recommendation to the Ministry of Trade and Industry. If the Ministry of Trade and Industry approves the application, the applicant receives a Duty Relief License, which specifies the particular items for which import duty concessions have been authorized. CIL received import duty exemptions under Section 56 of the Customs Act during the POI.

In its June 30, 1997, supplemental response, the GOTT provided a breakdown by industry of the number of licenses issued during the first six months of the POI. During the POI, the Ministry of Trade and Industry issued a large number of licenses to a wide cross-section of industries. Some of the licenses were new issuances and others were renewals of licenses previously issued. The breakdown of licenses by industry indicated that the recipients of the exemption were not limited to a specific industry or group of industries. The breakdown also indicated that the steel industry was not a predominant user of the subsidy nor did it receive a disproportionate share of benefits under this program. For these reasons, we determine that import duty concessions under Section 56 of the Customs Act are not limited to a specific industry or group of industries and, hence, are not countervailable.

B. Point Lisas Industrial Estate Lease

As noted above in the *Provision of Electricity* section of this notice, particular problems can arise in applying the standard for adequate remuneration when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. With respect to the leasing of land, some of the options to consider in determining whether the good has been provided for less than adequate remuneration may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return, and/or whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has provided (leased) the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same market factors that a private lessor would use in setting lease rates for a tenant.

The Point Lisas Industrial Port Development Company ("PLIPDECO") owns and operates Point Lisas Industrial Estate. Prior to 1994, PLIPDECO was 98 percent government-owned. Since then, PLIPDECO's issued share capital has been held 43 percent by the government, eight percent by Caroni Limited, a wholly-owned government entity, and 49 percent by 2,500 individual and corporate shareholders whose shares are publicly traded on the Trinidad and Tobago Stock Exchange. We were unable to find any privately-owned industrial estates in Trinidad and Tobago to provide competitively-set, private, benchmark rates to determine the adequacy of PLIPDECO's lease rates.

ISCOTT, the predecessor company to CIL, entered into a 30-year lease contract for a site at Point Lisas in 1983, retroactive to 1978. The 1983 lease rate was revised in 1988. In 1989, the site was subleased to CIL at the revised rental fee. In 1994, ISCOTT and PLIPDECO signed a novation of the lease whereby ISCOTT's name was replaced on the lease by CIL's. During the POI, CIL paid the 1988 revised rental fee for the site.

Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia*, confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good or service provided in the country of exportation.

In establishing lease rates for sites in the industrial estate, PLIPDECO uses a standard schedule of lease rates as a starting point for negotiating with prospective tenants. The standard lease rates reflect PLIPDECO's evaluation of the market value of land in the estate. Individual rates are negotiated based on a variety of factors, such as the size of the lot, the type of lease, the type of business, the attractiveness of the tenant, and the date on which the lease contract was signed. Because rates are negotiated individually with each tenant, the rate paid by CIL (and other tenants) is specific.

The site leased by ISCOTT in 1983 and now occupied by CIL is the largest site in the Point Lisas Industrial Estate with an overall area that is considerably more than double the size of the next largest site. After CIL's site and the next largest, the size of the remaining sites drops significantly. At verification, we examined leases of other sites in the estate and found only one site with a 30-year lease that was signed contemporaneously with CIL's lease. The remaining leases examined had terms of 99 years, or 30-year leases that were signed much later than CIL's. The method of calculating the lease rate on a 99-year lease is fundamentally different from the calculation on a 30-year lease, because tenants with 99-year leases effectively purchased the land at the start of the lease, making only token annual lease payments thereafter.

Tenants with 30-year leases make substantial annual lease payments throughout the lease but no large initial payment. Therefore, we decided not to compare a 99-year lease rate to CIL's 30-year lease rate. Eliminating the 99-year leases left only one lease with a site that was somewhat comparable in size to CIL's site. CIL's lease fee per square meter was in line with the lease fee for the next most comparable site.

Aside from the lease contract on the next most comparable site, we have no other readily available benchmark or guideline to determine whether the lease rate paid by CIL provides adequate remuneration to PLIPDECO. The standard lease cannot serve as an appropriate benchmark because it is used as the starting point for negotiations. All of the leases examined at verification had rates below the standard rate. Aside from the next largest site, the leases for other sites in the estate were also found to be unsuitable. The disparity in both the sizes of these leases and the years in which they were signed when compared with CIL's site and lease rendered their use inappropriate. Further, we found no privately owned industrial estates in Trinidad and Tobago. Therefore, in addition to a direct comparison of CIL's lease rate with that of the next most similar site, we also considered other factors in determining whether PLIPDECO received adequate remuneration.

PLIPDECO considered ISCOTT to be the anchor tenant in the estate because it was the first company to locate in the estate, and because of its size and its role as the first steel producer in Trinidad and Tobago. Further, ISCOTT's annual lease payments provided a considerable cash flow to PLIPDECO, especially in the early years of the estate when PLIPDECO was in need of funds for continued development. In addition, ISCOTT was expected to draw other companies into the estate. As we found at verification, PLIPDECO's expectations that ISCOTT would draw other companies into the estate were, in fact, realized. Although a precise dollar value cannot be placed on these factors, PLIPDECO took them into consideration when establishing ISCOTT's lease rate. That PLIPDECO took these factors into consideration is an indication that its negotiations were intended to assure adequate remuneration on its lease to CIL.

During the years for which we have information, 1992 through 1995, PLIPDECO has been consistently profitable. In addition, PLIPDECO's successful public stock offering of 49 percent of its shares in 1994 demonstrates that investors viewed the company as a good investment.

All of these facts support our determination that PLIPDECO is a company that has succeeded in achieving adequate remuneration in its dealings with CIL and with other tenants in the estate. Therefore, we determine that CIL's lease rates have provided adequate remuneration for its site in the Point Lisas Industrial Estate.

C. Provision of Natural Gas

As noted above in the *Provision of Electricity* section of this notice, particular problems can arise in applying the standard for adequate remuneration when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. With respect to the provision of natural gas, some of the options may be to examine whether the government has covered its costs, whether it has earned a reasonable rate of return, and/or whether it applied market principles in determining its prices. In the instant case, we have found no alternative market reference prices to use in determining whether the government has provided natural gas for less than adequate remuneration. As such, we have examined whether the government earned a reasonable rate of return and whether the government applied market principles in determining its prices.

NGC is the sole supplier of natural gas to industrial and commercial users in Trinidad and Tobago. NGC provides gas pursuant to individual contracts with each of its customers. Natural gas prices to small consumers are fixed prices with an annual escalator. Prices to large consumers are negotiated individually based on annual volume, contract duration, payment terms, use made of the gas, any take or pay requirement in the contract, NGC's liability for damages, and whether new pipeline is required. Prices must be approved by NGC's Board of Directors. Although NGC is 100 percent government-owned, the GOTT indicates that none of the current members of the board is a government official nor do any government laws or regulations regulate the pricing of natural gas.

The price paid by CIL for natural gas during the POI was established in a January 1, 1989 contract between ISCOTT and NGC that ISCOTT assigned to CIL on April 28, 1989. Average price data submitted by the GOTT for large industrial users of natural gas indicate that the price paid by CIL during the POI was in line with the average price paid by large industrial users overall.

At verification, NGC officials explained that the company operates on a strictly commercial basis, purchasing natural gas at the lowest prices it can negotiate and selling and distributing the gas at prices that assure the company's profitability. The years for which we have information on NGC's profitability, 1992 to 1995, demonstrate that the company has been consistently profitable.

Clearly, in its contract negotiations and its overall operations, NGC has demonstrated that it realizes an adequate return on its sales and distribution of natural gas to CIL and its other customers. For this reason, we have determined that the prices paid by CIL, which are in line with those paid by other large consumers, provide adequate remuneration to NGC for the natural gas supplied to CIL. Therefore, we have determined that NGC's provision of natural gas to CIL is not a countervailable subsidy under section 771(5) of the Act.

IV. Programs Determined To Be Not Used

A. Export Promotion Allowance

B. Corporate Tax Exemption

V. Program Determined Not To Exist

A. Loan Guarantee From the Trinidad and Tobago Electricity Commission

By 1988, ISCOTT had accumulated TT $19,086,000 in unpaid electricity bills owed to TTEC. To manage this debt, TTEC obtained a loan from the Royal Bank of Trinidad and Tobago which enabled TTEC to more readily carry the receivable due from ISCOTT. By 1991, ISCOTT extinguished its debt to TTEC.

At no time during this period did TTEC provide a guarantee to ISCOTT which enabled ISCOTT to secure a loan to settle the outstanding balance on its account. The financing obtained by TTEC from the Royal Bank benefitted TTEC rather than ISCOTT because it allowed TTEC to have immediate use of funds that otherwise would not have been available to it. On this basis, we determine that TTEC did not provide a loan guarantee to ISCOTT for purposes of securing a loan to settle the outstanding balance owed to TTEC. Therefore, we determine that this program did not exist.

Interested Party Comments

Comment 1: Treatment of shareholder advances: Petitioners claim that GOTT advances to ISCOTT should be treated as grants rather than as equity. In petitioners' view, these advances had none of the characteristics of debt or equity, such as provisions for repayment, dividends, or any additional claim on funds in the event of liquidation. Petitioners cite to *Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*"Leaded Bar from France"*), where the Department treated shareholder advances as grants because no shares were distributed when the advances were made, despite the fact that shares were issued at a later date. Petitioners point out that the GOTT received no shares at the time of its advances to ISCOTT.

Respondents claim that the advances should be treated as equity. Respondents note that ISCOTT's annual reports consistently state that it was the practice for advances to be capitalized as equity, and that in fact, ISCOTT issued shares for nearly all advances through 1987. In addition, according to respondents, the CCDA states that pending the issuance of any shares, any payment from the GOTT shall constitute paid-up share capital. Respondents further note that *Wire Rod I*, the Department characterized GOTT funding as equity contributions. Respondents cite to *Certain Steel from the U.K.* at 37395, where the Department stated that despite the fact that the U.K. government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC under Section 18(1) since it already owned 100 percent of the company, such advances to BSC were treated as equity.

Department's Position: We agree with respondents and have continued to treat advances from the GOTT as equity at the time of receipt. In *Certain Steel from the U.K.*, as in this case, requests for funding from the government were examined on a case-by-case basis. This treatment is consistent with our treatment of advances in *Wire Rod I* and our preliminary determination in this proceeding. Further, similar to *Certain Steel from the U.K.*, ISCOTT issued additional shares to the GOTT on several occasions to reduce the balance of the shareholder advances, whereas in *Leaded Bar from France* there was no understanding that shareholder advances were to be converted to equity, and conversion occurred only as part of a government-sponsored debt restructuring.

Comment 2: Equityworthiness: Petitioners claim that if the Department treats the stockholder advances as equity, ISCOTT's financial statements and information gathered at verification demonstrate that ISCOTT was unequityworthy after March 1983, and the Department should view the provision of equity as inconsistent with the practice of a reasonable private investor. Petitioners note that ISCOTT had losses in every year from 1982 through 1994. Petitioners argue that ISCOTT's inability to cover its variable costs while operating the steel plant demonstrates that the company should have been shut down. Petitioners urge the Department to follow its practice of placing greater reliance on past indicators rather than on flawed studies projecting dubious future expectations, which respondents have pointed to as evidence of ISCOTT's equityworthiness. Petitioners cite to the 1983 *Report of the Committee Appointed by Cabinet to Consider the Future of ISCOTT* (*"Committee Report"*), where under any of the options considered, ISCOTT was projected to show a loss, as further evidence that ISCOTT was unequityworthy.

Respondents claim that the financial ratios in this case must be interpreted in the context of a start-up enterprise.

Respondents contend that a venture capitalist would recognize that a start-up enterprise will incur losses for several years. Second, respondents point out that while the *Committee Report* cited by petitioners predicted an overall loss over the next five years, the trend was decidedly positive, with increasing profits projected for the last two years included in the study, 1986 and 1987.

Department's Position: We agree with petitioners, in part. At some point, a reasonable private investor would have come to question ISCOTT's continued inability to achieve forecasted operating results, and would have made future funding contingent on timely, fundamental changes in the company's operations, shutting down the plant, or privatizing ISCOTT. As discussed above in the *Equity Infusions* section of this notice, we are including advances from the GOTT to ISCOTT during the period June 13, 1984 through December 31, 1991, in our calculation of CIL's countervailable subsidy rate.

Comment 3: Loan guarantees under the CCDA: Respondents claim that the GOTT's principal and interest payments on ISCOTT's behalf made pursuant to loan guarantees under the CCDA are not countervailable. In the 1984 final, the Department found that the GOTT's loan guarantees under the CCDA were on terms consistent with commercial considerations. Therefore, payments which the GOTT made on these loans pursuant to the guarantees should also be considered consistent with commercial considerations. In *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986), the Department determined that funding in 1983 made pursuant to a prior agreement, which was on terms consistent with commercial considerations, was not countervailable, even though funds provided pursuant to a new investment decision in 1983 were countervailable because the company was no longer equityworthy. Similarly, in *Final Affirmative Countervailing Duty Determination: Certain Corrosion resistant Carbon Steel Flat Products from New Zealand*, 58 FR 37366, 37368 (July 9, 1993), the Department confirmed that a government's payment of loans under a guarantee agreement is not countervailable if the underlying guarantee was commercially reasonable.

Respondents also seek to clarify that even if the GOTT had liquidated ISCOTT, the GOTT could not have avoided its payment obligations. As of 1983, all funding under the loans covered by the CCDA had been drawn down, and were subject to guarantees by the GOTT.

Petitioners argue that when the Department determined in 1984 that the GOTT's decision to enter into the CCDA was rational, it was not at that time determining that any and all future payments under the CCDA would necessarily be consistent with the private investor standard. Petitioners contend that if the GOTT had acted as a reasonable private investor, it would have shut ISCOTT down and stopped the financial hemorrhaging. Instead, petitioners argue, both ISCOTT and the GOTT were too preoccupied with non-commercial considerations to consider the reasonable course of action.

Department's Position: We disagree with respondents that the GOTT was inexorably committed to make continued payments on ISCOTT's behalf as a result of the loan guarantees contained in the CCDA. Had the GOTT's actions been consistent with those of a reasonable private investor, as a controlling shareholder in ISCOTT, the GOTT would have sought to minimize losses. Shutting down the plant would have been less expensive than continuing to operate the plant in such a manner that no projection was ever achieved and variable costs were never covered by revenues. The GOTT constructed the ISCOTT plant because it had studies indicating the plant was a viable investment. When CIL leased the ISCOTT plant, it demonstrated that ISCOTT was viable. The GOTT could have pursued less costly alternatives than continued funding of ISCOTT's operations with no requirement that timely and demonstrable actions, including consideration of shutting down the plant, be taken to reduce or eliminate the amount needed to fulfill all of its obligations under the CCDA.

Comment 4: Countervailability of cash deficiency payments under the CCDA: Respondents claim that the CCDA imposed a further legal obligation on the GOTT that was distinct from its commitment to meet ISCOTT's CCDA debt service obligations. Specifically, the CCDA required the GOTT to provide funds to ISCOTT to cover any other cash deficiency, such as an operating loss. Respondents argue that both external and internal studies demonstrate that GOTT's decisions to cover these cash deficiencies were consistent with those of a reasonable private investor.

Petitioners reply that the Department's prior determination that the GOTT's decision to enter into the CCDA was rational has no bearing on whether or not subsequent decisions to fund money-losing operations was rational. Petitioners contend that the rationality of guarantee payments must be evaluated anew each time, and that the GOTT should have realized that shutting down the ISCOTT plant would have been the least cost available alternative.

Department's Position: We agree with petitioners that our 1984 decision regarding the CCDA did not give the GOTT license to provide continued funding to ISCOTT immune from potential countervailability under U.S. law. A reasonable private investor acting on a guarantee would pursue the least-cost alternative, and would ensure that the amount of funding under such a guarantee is truly necessary. We are not persuaded that the GOTT's actions were consistent with those of a reasonable private investor, as discussed above in the *Equity Infusions* section of this notice.

Comment 5: Post-lease funding of ISCOTT: Respondents claim that after ISCOTT's assets were leased to CIL in May 1989, any funds provided to ISCOTT by the GOTT did not provide a subsidy to CIL's 1996 production. Respondents note that CIL has always been a separate and distinct company, with no ownership interest in, or other affiliation with, ISCOTT. Therefore, according to respondents, there is no basis for attribution of ISCOTT's subsidies to CIL. Respondents note that as discussed in *Final Affirmative Countervailing Duty Determination; Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6237 (January 27, 1993) (*"Leaded Bar from the U.K."*), the Department did not attribute any subsidies received by BSC after it had spun off its Special Steels Division into a joint venture, United Engineering Steels Limited ("UES"). In that case the Department did not attribute any subsidies received by BSC after the spin off to the joint venture, stating that there was "no evidence of any mechanisms for passing through subsidies from British Steel plc to UES (*e.g.*, cash infusions) after the formation of the joint venture. Therefore we determine that any benefits received by BSC after the formation of the joint venture do not pass through to UES." Respondents contend that, similarly, in this case there is no evidence that subsidies received by ISCOTT after CIL took control of the steel-making facilities continued to benefit CIL.

Respondents further contend that any past subsidies found to have been received by ISCOTT cannot be found to have conferred a benefit on CIL's production of wire rod in 1996, as required by section 771(5)(E) of the Act. Respondent's argue that CIL never received any of the advances provided to ISCOTT, and note that CIL remained a completely separate company from ISCOTT after purchasing ISCOTT's plant in an arm's length transaction. Respondents argue that the Department did not articulate how CIL received a benefit from financial contributions to ISCOTT, as required by the Subsidies and Countervailing Measures Agreement.

Petitioners claim that the Department has consistently found that past subsidies are not extinguished by an arm's length sale of a company that had received the subsidies. Petitioners cite to *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, (November 14, 1996) (*"Leaded Bar from the U.K. Review"*), where the Department found that a portion of the subsidies traveled with BSC's Special Steel Business assets when, in 1986, the government-owned BSC exchanged its Special Steels Business for shares in UES. Petitioners note that in *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, (June 14, 1996) (*"Pasta from Italy"*), the Department made a similar finding. Petitioners contend that in these cases, the Department views subsidy payments to a company as a benefit to the entire company and all of its productive assets, and, for this reason, the sale of the company or a part of it does not extinguish the prior subsidies. Section 771(5)(F) of the Act makes it very clear that the Department has the discretion to find prior subsidies countervailable despite an arm's length sale of company or assets.

Department's Position: We disagree with respondents, and have allocated a portion of the nonrecurring subsidies received by ISCOTT prior to the sale of the steel plant to CIL. In *Leaded Bar from the U.K.*, the Department found that subsidies received by BSC after the spin-off did not pass through to UES. We note that in this case the sale of ISCOTT's assets to CIL occurred after the lease period, providing a mechanism for pass-through of subsidies received by ISCOTT to CIL. Consistent with the Department's past practice in *Pasta from Italy* and several pre-URAA cases, we determine that a portion of the subsidies received by ISCOTT, including subsidies received during the lease period, traveled with the assets sold to CIL.

Comment 6: Repayment of subsidies upon sale of assets: Petitioners claim that the sale of ISCOTT's assets at a fair value did not offset the distortion caused by the GOTT's original bestowal of subsidies. Moreover, according to petitioners, the countervailing duty statute establishes a presumption that a change in ownership of the productive assets of a foreign enterprise does not render past countervailable subsidies non-countervailable. Petitioners contend that once subsidies are allocated to a productive unit, they should travel with that unit upon sale or privatization. Therefore, petitioners argue that the Department should not recognize a partial repayment of the subsidy benefit stream at the time ISCOTT assets were sold.

Department's position: We disagree with petitioners and have continued to allocate a portion of the sales price of ISCOTT's assets to the previously bestowed subsidies. This is consistent with the URAA and the Department's past practice (*see, e.g., Leaded Bar from the U.K. Review*). Section 771(5)(F) of the Act reads:

> Change in Ownership.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The language of section 771(5)(F) of the Act purposely leaves discretion to the Department with regard to the impact of a change in ownership on the countervailability of past subsidies. Rather than mandating that a subsidy automatically transfer with a productive unit that is sold, as petitioners argue, the language in the statute clearly gives the Department flexibility in this area. Specifically, the Department is left with the discretion to determine, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. Moreover, the SAA states that "Commerce retain[s] the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies* * *" SAA at 928.

In this case, we have determined that when ISCOTT's assets were sold, a portion of the sales price reflected past subsidies. To account for that, we treated a portion of the sales price as repaying those past subsidies to the GOTT.

Comment 7: Calculation of amount of subsidies remaining with the seller of a productive unit: Respondents argue that the Department's methodology for calculating the amount of subsidies that pass through in a change of ownership transaction is inconsistent with the rest of the Department's practice with regard to nonrecurring subsidies because the Department does not provide for any amortization when calculating the percentage of the purchase price that is attributable to past subsidies. Respondents claim that if the Department continues to conclude that subsidies may survive privatization, it must revise its methodology for calculating the percentage of the purchase price that is attributed to previously bestowed subsidies to take into account the fact that subsidies received prior to privatization must be amortized from the time of receipt until the time of privatization. Respondents propose that the Department determine the amount of the purchase price attributable to previously bestowed subsidies as the ratio of the amount of subsidies remaining in the company to the company's net worth at the time of privatization.

Petitioners claim the ratio calculated under the Department's current methodology, commonly referred to as "gamma," is intended to measure the share of the purchase price attributable to past subsidies, not the value of past subsidies at the time of privatization. Petitioners argue that the methodology proposed by respondents will yield anomalous results. Petitioners claim that the sale of a thinly-capitalized, heavily-subsidized company would result in 100 percent of the purchase price being allocated to previously bestowed subsidies, while all of the assets of the company benefitted from the past subsidies. According to petitioners, a similarly situated company with equity financing instead of debt would have a small amount of the purchase price allocated to previously bestowed subsidies using respondents' proposed methodology.

Department's position: In accordance with our past practice and policy, we have continued to calculate the portion of the purchase price attributable to past subsidies using historical subsidy and net worth data (*see, e.g., General Issues Appendix* at 37263). Because this methodology relies on several years' data, as opposed to data from just a single year, it offers a more reliable representation of the contribution that subsidies have made to the net worth of the productive unit being sold. We take into account the amortization of previously bestowed subsidies in our pass-through calculation as we apply gamma to the amount of the remaining, unamortized countervailable subsidy benefits to calculate the amount that remains with the seller.

Comment 8: Benefits associated with the 1994 sale of ISCOTT's assets to CIL: Respondents claim that the write-off of

ISCOTT's debts after the sale of the plant to CIL is not a countervailable subsidy to CIL. Typically, companies acquiring the assets of other companies do not also acquire the debt of these companies. In contrast, when companies acquire the stock of other companies, they would normally be expected to assume the debt of the acquired company. Respondents argue that the Department incorrectly relied on *GOES* as precedent, because the circumstances in that case were very different from the circumstances in the case of ISCOTT. Respondents note that in *GOES*, the Government of Italy liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. Respondents argue that the movement of assets and liabilities between two government-owned companies, as was the case in *GOES*, is very different from the arm's length nature of the sale of ISCOTT's assets to CIL. Respondents claim that the purchase price paid in an arm's length transaction, such as the sale of ISCOTT's assets to CIL, reflects the fact that the purchaser is not also assuming the liabilities of the seller.

Petitioners claim that the Department has precedent for its decision to countervail loans to ISCOTT, which were not transferred to CIL when CIL purchased ISCOTT's assets. Petitioners note that in *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37221 (July 9, 1993), the Department found that losses incurred by a government-owned steelmaker, which were not transferred to new companies upon their purchase of the steelmaker's assets, conferred a subsidy to the new companies. *Department's Position:* We have continued to treat the amount of ISCOTT's remaining liabilities in excess of the amount of remaining assets after the sale of ISCOTT's assets to CIL as a subsidy to ISCOTT at the time of the sale. In *Leaded Bar from the U.K.*, we explained why we allocate subsidies to productive units, stating:

> In the end, a "bubble" of subsidies would remain with a virtually empty corporate shell which would not be affected by any countervailing duties because it did not produce or export the countervailed merchandise to the United States.

Here, the "empty corporate shell" was ISCOTT, with no productive operations, no source of future earnings, and debts exceeding its assets. Under such circumstances, it was inevitable that ISCOTT would be unable to pay the balance owing on the notes payable, and, in fact, the notes were forgiven by the lenders in 1995. When a government funds an entity through loans which are later forgiven, the Department includes in its calculation of the countervailing duty rate for that entity an amount for debt forgiveness. In this situation, we determine that the debt forgiveness, which for all intents and purposes occurred at the time of the sale of ISCOTT's assets, is a countervailable subsidy.

While the purchase price may have been lower if CIL had assumed the responsibility for the notes payable in the purchase transaction, the result would be that less of any pre-existing subsidies would be repaid.

Comment 9: Calculation of net present value of unamortized subsidies: Petitioners claim that the Department appears to have improperly discounted the 1994 subsidy amount in calculating the net present value of subsidies to which the gamma calculation is applied.

Respondents claim that because the Department begins allocating subsidies in the year of receipt, the net present value amount for the 1994 subsidies should reflect one year of amortization.

Department's Position: We agree with petitioners that our preliminary calculation of the net present value of previously bestowed subsidies was not consistent with the Department's past practice in this regard, and we have corrected this error in our final calculations.

Comment 10: Amortization of nonrecurring subsidies: Respondents claim that in amortizing advances to ISCOTT, the Department began amortizing in the year after the year of receipt, without allocating any amount to the year of receipt.

Department's Position: We agree with respondents and have corrected our calculations.

Comment 11: Adequacy of remuneration for electricity: Respondents claim that CIL does not benefit from the provision of electricity for less than adequate remuneration because Section 32 of the PUC's regulations requires the Commission to set rates that will cover costs and earn a reasonable profit. In 1992, when setting the electricity rates in effect during the POI, the PUC set rates for each customer class based on cost of service studies for 1987 and 1991. These rates were calculated to cover costs and expenses plus yield a reasonable return. In addition, they were published rates that applied to all customers within each of the rate classes.

Further, respondents argue that the electricity rates set by the PUC in 1992 provided adequate remuneration because the PUC made upward adjustments to the rates that had been proposed by TTEC. For example, the PUC adopted a flat rate structure rather than the declining block structure. As high volume users, CIL and other large industrial users paid more under the flat rate structure than they would have under the declining block structure. The declining block structure would have allowed for a rate reduction as usage increased over the billing period.

Petitioners claim that TTEC did not receive adequate remuneration during the POI, nor did it receive an adequate return in two of the four preceding years, despite the assertions by PUC and TTEC officials that the utility is expected to cover costs and expenses and show a return. Further, TTEC intends to file a cost of service study based on 1996 operating costs and request a rate increase. Petitioners argue that this demonstrates that TTEC's current revenues are not adequate to cover costs. Petitioners urge the Department to calculate CIL's benefit from its electricity rates as a recurring grant valued as the difference between CIL's payment at the current rate and the amount it would pay if it were in the next largest rate class on which a profit was realized.

Department's Position: We agree with petitioners that CIL's rate did not provide adequate remuneration. Although the PUC's regulations may require it to set rates that cover costs plus a return, history demonstrates that the PUC has seldom achieved this. The rates in place in the year preceding the POI and during the POI resulted in losses for TTEC. Although a different rate structure such as declining block rates might have led to other results, particularly for CIL, we have no basis to depart from the structure that was actually adopted by the PUC.

We disagree, however, with the calculation methodology proposed by petitioners. Instead, we have relied upon the most recent cost of service study by TTEC which establishes a rate for CIL that will cover the cost of supplying electricity to CIL plus a reasonable return. This provides a better measure of adequate remuneration for a very large customer like CIL than applying the rate for smaller customers, as proposed by petitioners.

Comment 12: Adequacy of remuneration for lease: Petitioners claim that CIL's lease rate is less than the standard lease rate. In *Wire Rod I* (at 482), the Department found this lease rate to result in a subsidy of 2.246 percent. Further, the record in this investigation has information on only four other leases. This limited information does not allow for a meaningful comparison with the lease rate paid by CIL. Even these four leases, however, suggest that CIL's lease does not provide adequate remuneration. For these reasons, CIL's lease rate should be found countervailable.

Respondents maintain that the rate CIL pays for its 105.7 hectares provides adequate remuneration to PLIPDECO. At verification, the Department attempted to find a suitable benchmark for CIL's lease and found only two companies with 30-year leases on sites of 10 hectares or more. Other companies with sites of 10 hectares or more had 99-year leases. These 99-year leases are structured much differently and cannot be compared to a 30-year lease. Of the two sites with 30-year leases, the first was the second largest site in the estate, and the lease for the property was signed at about the same time as CIL's. The second was a small site with a lease signed years after CIL's lease. Comparing the most comparable lease to CIL's reveals that CIL was paying a higher rate.

Department's Position: PLIPDECO officials informed us at verification that the standard lease rate is used as a starting point for negotiation and indicated that only very small sites would pay this rate. The lease rates of the four leases examined during verification were all less than the standard rate. Therefore, we concluded that the standard rate was not used as the lease rate in all cases and was not an appropriate benchmark for CIL's lease rate.

Moreover, neither the GOTT nor PLIPDECO limited the verification team's access to leases during verification. The team selected the leases to be reviewed on the basis of their similarity to CIL's lease. First, the team selected leases with sites of 10 hectares or more. Of these, only two had leases with the same 30-year term as CIL's. The others were 99-year leases. The team then selected two leases with sites of less than 10 hectares to review the lease terms on these smaller sites. Because CIL's site was 105.7 hectares, the team did not make further selections from the leases with sites under 10 hectares.

Although we did find that the 1983 lease conferred a subsidy in *Wire Rod I*, we note that CIL's lease rate increased significantly in 1988. In addition, the Department used the standard lease rate as its benchmark in *Wire Rod I*. However, as discussed above, our review in this proceeding showed that several leases had rates below the standard rate. Therefore, we have concluded that the standard rate is not an appropriate benchmark.

Comment 13: Export allowance program: Respondents argue that in computing the subsidy attributable to the export allowance program ("EAP") for the POI, the Department should use CIL's income tax return for fiscal year 1996 rather than CIL's 1995 income tax return. In respondents' view, this would be consistent with the Department's established cash flow methodology as described in the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23384 (May 31, 1989) ("*1989 Proposed Regulations*") at section 355.48(a). Under that policy, the Department will ordinarily deem a countervailable benefit to be received at the time that there is a cash flow effect on the firm receiving the benefit. Respondents assert that CIL experienced the cash flow effect of the EAP throughout 1996, when CIL paid its quarterly installments of the Business Levy.

Respondents also argue that use of the 1995 tax return distorts the countervailable subsidy by attributing to CIL the export allowance benefit earned in 1995, when both exports and total sales were greater than in 1996. Respondents contend that the Department's regulations give it the discretion to use the 1996 tax return and that the Department should use that discretion to avoid this distortion.

Petitioners agree with the Department's approach used in the preliminary determination and urge the Department to continue using the benefits reported in the 1995 tax return which was filed during the POI in calculating the amount of benefit received by CIL. Petitioners state that this approach is consistent with the Department's prior determinations and policy as well as section 351.508(2)(b) of the *Proposed Countervailing Duty Regulations*, 62 FR 8818, 8880 (February 26, 1997) ("*1997 Proposed Regulations*"). Petitioners also cite section 355.48(b)(4) of the *1989 Proposed Regulations*, which states that in the case of a direct tax benefit a firm can normally calculate the amount of the benefit when the firm files its tax return. Petitioners argue that CIL realized the benefit on October 29, 1996, the date when it filed its 1995 tax return, and that CIL did not realize benefits on its 1996 exports until it filed its 1996 tax return on August 25, 1997, after the POI. Petitioners dismiss respondents' arguments about cash flow methodology and estimated tax payment as meritless. Petitioners assert that CIL only claimed benefits from the export allowance when it filed its corporate tax return. Moreover, petitioners state that the filing of the formal income tax return is the earliest date upon which the Department can determine whether the EAP had been used.

Department's Position: We agree with petitioners that CIL received the benefit of the tax savings attributable to the EAP when it filed its corporate tax return. Consequently, we have continued to value this benefit based on the tax return filed during the POI.

In Trinidad and Tobago, a company pays either the corporation tax or Business Levy, whichever is higher. The corporation tax is calculated on the company's profits, and the Business Levy is calculated as a straight percentage of gross sales or receipts.

The Department's long-established practice in treating income tax benefits has been to recognize the benefit of income tax programs at the time the income tax return is actually filed, usually in the year following the tax year for which the benefit is claimed (*see, e.g., Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil*, 51 FR 21961, 21967 (June 17, 1986)). It is at that time that the recipient normally realizes a difference in cash flow between the income tax paid with the benefit of the program and the tax that would have been paid absent the program. Even when companies make estimated quarterly income tax payments during the tax year, the Department has delayed recognition of the benefit until the tax return is filed and the amount of the benefit is definitively established.

In this case, CIL acknowledges that the 1996 EAP was not claimed until it filed its 1996 tax return in 1997. Nevertheless, CIL claims that because of the export allowance, it does not pay the corporate income tax. Instead, because it must pay the higher of the Business Levy or the corporate income tax, CIL typically pays the Business Levy. Moreover, because CIL makes quarterly deposits of its estimated Business Levy, the company claims the cash flow effect of the EAP occurs when these quarterly deposits are made.

Although we agree that CIL has typically paid the Business Levy rather than the corporate income tax as a result of the EAP, we do not agree that this should lead us to countervail the benefits arising from the EAP as if they were connected with the Business Levy.

First, CIL will only be certain that it will pay the Business Levy when the income tax is computed and the export allowance is claimed. Second, the amount of the benefit is not calculable prior to the filing of the corporate tax

return. An income tax benefit can potentially have numerous cash flow effects. The Department's practice is to single out the cash flow effect most directly associated with the tax benefit; in this case, the actual savings which arise when the taxes are due.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which in the Public File for this investigation.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an *ad valorem* subsidy rate of 17.47 percent for CIL, the one company under investigation. We are also applying CIL's rate to any companies not investigated or any new companies exporting the subject merchandise.

We have concluded a suspension agreement with the GOTT which eliminates the injurious effects of imports from Trinidad and Tobago (*see, Notice of Suspension of Investigation: Steel Wire Rod from Trinidad and Tobago* being published concurrently with this notice). As indicated in the notice announcing the suspension agreement, pursuant to section 704(h)(3) of the Act, we are directing the U.S. Customs Service to continue suspension of liquidation. This suspension will terminate 20 days after publication of the suspension agreement or, if a review is requested pursuant to section 704(h)(1) of the Act, at the completion of that review. Pursuant to section 704(f)(2)(B) of the Act, however, we are not applying the final determination rate to entries of subject merchandise from Trinidad and Tobago; rather, we have adjusted the rate to zero to reflect the effect of the agreement.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Acting Deputy Assistant Secretary for AD/CVD Enforcement, Import Administration.

If the ITC's injury determination is negative, the suspension agreement will have no force or effect, this investigation will be terminated, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(A) of the Act). If the ITC's injury determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(B) of the Act). This notice is issued pursuant to section 704(g) of the Act.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27984 Filed 10–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–307–814]

Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, Robert Copyak, or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to CVG-Siderurgica del Orinoco (SIDOR), the producer and exporter of steel wire rod from Venezuela. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Case History

Since our preliminary determination on July 28, 1997 (62 FR 41439, August 4, 1997), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from August 27, 1997 through September 9, 1997. Petitioners and SIDOR (respondent) filed case briefs on September 23, 1997, and rebuttal briefs on September 26, 1997. A public hearing was held on October 1, 1997.

On September 12, 1997, the GOV and the U.S. Government initialed a proposed suspension agreement. On October 14, 1997, the U.S. Government and the GOV signed a suspension agreement (*see Notice of Suspension of Countervailing Duty Investigation: Steel Wire Rod from Venezuela*) which is being published concurrently with this notice in the **Federal Register**. On October 14, 1997, the petitioners also requested that the Department and the International Trade Commission ("ITC") continue this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Venezuela is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of steel wire rod from Venezuela materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination, finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Venezuela of the subject merchandise (62 FR 23485).

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See General Issues Appendix (GIA)*, appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993). However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for the purposes of this final determination, the Department has calculated a company-specific AUL. Based on information provided by SIDOR regarding the company's depreciable assets, the Department has determined that the appropriate allocation period for SIDOR is 20 years.

Equityworthiness: In analyzing whether a company is equityworthy, the Department considers whether or not that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, *see* the *GIA*, 58 FR at 37244.

Petitioners alleged that SIDOR was unequityworthy from 1977 through 1992. (As explained below, while the GOV's conversion of SIDOR's external debt into equity was made effective in October 1992, we consider 1991 to be the relevant year to examine the company's equityworthiness. Therefore, throughout this notice, we will refer to the transaction as the "1991 debt-to-equity conversion.") On this basis, petitioners claim that any equity infusions into SIDOR by the GOV from 1977 through 1990, and the 1991 decision to convert SIDOR's external debt into equity were inconsistent with the usual investment practices of private investors. In addition, we examined whether land transferred from CVG to SIDOR in 1993 and 1994 to cancel unpaid capital subscriptions was inconsistent with the usual investment practices of private investors.

1. 1977 through 1990 Equity Infusions

On March 18, 1997, we initiated an investigation of SIDOR's equityworthiness for the years 1977 through 1990. *See* Memorandum dated March 18, 1997, from The Team to Jeffrey P. Bialos, Re: Initiation of Countervailing Duty Investigation: Steel Wire Rod from Venezuela (*Initiation Memo*), (on file in the public record of the Central Records Unit of the Department of Commerce, Room B–099). In past investigations, the Department preliminarily determined that SIDOR was equityworthy in 1977, and unequityworthy for the years 1978 through 1984. *See Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From Venezuela*, 50 FR 28234, 28237 (July 11, 1985) (*1985 Wire Rod from Venezuela*), and *Preliminary Affirmative Countervailing Duty Determination; Certain Steel Products From Venezuela*, 50 FR 11227, 11230 (March 20, 1985) (*Steel Products from Venezuela*). The

Department also previously initiated an investigation of SIDOR's equityworthiness for the period 1985 through 1990. *See Initiation Memo*, and *Final Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Pipe from Venezuela*, 57 FR 42964 (September 17, 1992) (*Non-Alloy Pipe from Venezuela*). Although we previously found SIDOR to be equityworthy in 1977, that decision was a preliminary finding. *See* the Memorandum, dated October 15, 1991, to Eric I. Garfinkel, Re: Initiation of Countervailing Duty Investigation: Circular Welded Non-Alloy Steel Pipe From Venezuela, *appended to* the *Initiation Memo*. As such, we concluded that this preliminary finding warranted reinitiating.

In this investigation, SIDOR did not provide any new information regarding the company's financial position for the years 1977 through 1990. Because no information has been presented in this investigation that calls into question the Department's prior determinations that the company was unequityworthy for the years 1978 through 1990, we continue to find that the GOV equity investments made in those years were inconsistent with the usual investment practices of private investors. Moreover, with respect to the 1977 equity infusion, neither party has provided any information beyond what the Department examined in the prior proceeding in which we preliminarily found the company to be equityworthy for that year (*see Steel Products from Venezuela*). Therefore, because no new information has been submitted in this proceeding to indicate that our prior preliminary decision in *Steel Products from Venezuela* was incorrect, we find that it is appropriate to follow that earlier determination, and determine SIDOR to be equityworthy in 1977.

2. 1991 GOV Debt-to-Equity Conversion

We also initiated an investigation of SIDOR's equityworthiness with respect to the conversion of SIDOR's external debt into equity, which was approved by the Venezuelan Congress on May 18, 1993. *See Initiation Memo*. The transaction was made retroactive to October 28, 1992, and is reflected in SIDOR's 1992 financial statements. However, in the questionnaire responses, the GOV stated that the decision to convert 60 percent of SIDOR's external debt into equity was reached in October 1991, and that the terms of the transaction did not change by the time the transaction was approved by the Venezuelan Congress in 1993. Therefore, we consider 1991 to be the relevant year for purposes of determining whether the conversion of SIDOR's external debt into equity was consistent with the usual investment practices of private investors.

In our preliminary determination, we found SIDOR to be equityworthy in 1991. Therefore, we determined that the GOV's decision to capitalize SIDOR's external debt in 1991 was consistent with the usual investment practices of private investors. *See Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Venezuela*, 62 FR 41939, 41941 (August 4, 1997) (*Preliminary Determination*). In reaching our preliminary finding, we evaluated SIDOR's financial ratios for the three years prior to 1991. We also took into account respondent's claim that a major restructuring process, begun in 1989 and aimed at improving SIDOR's profitability and international competitiveness, had significantly improved the company's financial position by 1991. *See Preliminary Determination*, 62 FR at 41941. However, we also stated that additional issues must be examined before reaching a final determination with respect to the conversion of SIDOR's debt into equity. We have reexamined our preliminary finding that SIDOR was equityworthy in 1991, and, taking into account our findings at verification, and the financial results in light of high inflation, we now determine that SIDOR was not equityworthy in 1991.

In reaching our decision, we considered the specific investment factors relied upon by Venezuelan commercial bankers to evaluate the financial condition of potential customers. The bankers stated that in a high inflationary economy where financial statements are not adjusted to reflect the impact of high inflation, potential customers are evaluated not only on the basis of their financial ratios. Rather, a number of additional aspects of a company's operations are also taken into account, including: (1) a company's ability to generate real, inflation-adjusted revenue growth and cash flow, (2) the reputation of the company, and (3) the company's competitiveness. In analyzing these factors, the bankers stressed that a key issue for investors is whether a company has successfully survived the crises of the economy, including inflation, over the last years. *See* the September 19, 1997, Memorandum to Barbara E. Tillman Re: Meetings with Commercial and Investment Banks in the Countervailing Duty Investigation of Steel Wire Rod from Venezuela (*Memo Re: Meetings with Commercial Bankers*) at 2–6 (on file in the public record of the Central Records Unit of the Department of Commerce, Room B–099). Accordingly, in evaluating SIDOR's equityworthiness in 1991, we have expanded our standard analysis to consider these additional factors.

As petitioners correctly point out, the bankers indicated that SIDOR did not represent a sound investment during the early 1990s. Furthermore, in one banker's view, no private investor would have provided SIDOR with U.S. $1.0 billion in 1991. Respondent attempts to discount these statements by arguing that the bankers also concluded that an inside investor "may well have made such an investment." *Memo Re: Meetings with Commercial Bankers* at 6. This argument is not persuasive. The Department has never distinguished between "inside" and "outside" investors. In the *GIA*, we stated "it would be inappropriate, if not impossible, to fashion a unique inside investor standard as a variation of the Department's reasonable private investor standard," because "the Department must render its equityworthiness determinations on the basis of objective and verifiable evidence." 58 FR at 37249, 37250.

Furthermore, SIDOR's competitive position was not favorable in 1991. SIDOR's restructuring efforts were insufficient to justify the conversion of almost U.S. $1.0 billion of the company's external debt. As one banker noted, "[t]he government is not able to make the difficult restructuring changes to SIDOR. . . to make [the company a] competitive entity." *Memo Re: Meetings with Commercial Bankers* at 7. Our own evaluation of the restructuring process, discussed below, reaches the same conclusion. In light of the information gathered at verification, respondent's assertion that the bankers thought SIDOR's long-term prospects justified the debt restructuring is not convincing.

An analysis of SIDOR's inflation adjusted revenue growth for 1988 through 1991, also an important investment criterion, shows that SIDOR's revenue growth was not keeping pace with inflation in 1988 and 1989. While real revenue growth was 9.44 percent in 1990, in the preceding two years it was negative 13.38 percent and negative 5.15 percent, respectively. *See* the October 14, 1997, Memorandum for the File, Re: Calculations for the Final Affirmative Countervailing Duty Determination: Wire Rod From Venezuela (POI 1996) (*Final Calculations Memo*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099).

In our preliminary finding, we noted that inflation was an important issue

that we would examine prior to reaching the final decision with respect to the 1991 transaction. Venezuelan commercial bankers discounted the importance of an analysis of certain financial ratios because the impact of inflation on historical financial statements is not very well understood. *See Memo Re: Meetings with Commercial Bankers* at 3. However, there are certain areas of the financials which can be analyzed in real terms and adjusting these for inflation results in a less favorable picture of the company's earnings. For example, because sales revenues are recorded during the fiscal periods and reflect the effects of inflation, the costs related to these sales may be understated as the value of inventory used for these sales may have been produced and recorded prior to the sale. Adjusting "costs of goods sold" to reflect the erosion of currency values shows that real costs would increase resulting in a lower net profit or higher net loss. If such an adjustment is made to SIDOR's cost of goods sold, the company's net profit margin deteriorates significantly: the positive nominal profit margin of 0.06 percent in 1988 and 3.31 percent in 1989 become negative 6.67 percent and negative 11.92 percent, respectively. The nominal profit margin for 1990 worsens from negative 5.42 percent to negative 11.77 percent. *See Final Calculation Memo* at 22. With a negative real profit margin in each of these years, SIDOR's return on equity similarly turns negative from 1988 through 1990.

In their case brief, petitioners constructed an inflation-adjusted return on equity (ROE) for SIDOR by comparing the company's nominal ROE with the rate of inflation in that year. According to this analysis, with annual inflation rates of over 30 percent, no well-run private company would be found equityworthy in Venezuela. This is an unreasonable conclusion. As noted above, we calculated an adjusted profit margin for SIDOR, based on an adjustment of the company's cost of goods sold. This is a reasonable adjustment to the company's financial results to account for high inflation during the 1988 through 1990 period.

Nevertheless, we recognize that the rate of return from a company during years of high inflation would require the company to earn very high returns, and investors would consider whether the investment would ultimately yield a real rate of return. An analysis of SIDOR's financial ratios clearly indicates that the company's rate of return, in nominal terms, was very low, or negative. In the context of the high rates of inflation during these years, the company's rate of return was very poor, and yields an unfavorable future financial outlook.

Respondent has argued that SIDOR was worth more than its nominal book value because the historical financial statements understated the value of the company's assets, and because a company's fixed assets maintain their value and increase in nominal value with inflation. *See* Respondent's September 26, 1997, rebuttal brief. While we acknowledge that this may be the case, this increase in the nominal value of the company's real assets is not compelling for determining that SIDOR was eqnityworthy during these years. An investor is investing in an on-going operation, and the important factor is the efficient operation of the assets in order to yield a return on those assets. As we noted in the *GIA*, a reasonable investor's decision to invest in an operating steel company such as SIDOR would be based on many factors, not just the level of nominal value of the underlying assets. *See* 58 FR at 37247. The value of the corporation's underlying assets is more important when a company is terminating and liquidating. This is not the primary consideration of an equity investor. In any case, respondent has failed to quantify this argument in any meaningful way. Only in 1994 did SIDOR begin to apply inflation adjustments to the historical figures in its financial statements, and the company has admitted that "there is no accurate way to retroactively adjust [unadjusted statements] for inflation." SIDOR's July 3, 1997, questionnaire response at 10 (on file in the Central Records Unit of the Department of Commerce, Room B–099).

Another important factor during the 1988–1991 period is that little private investment was actually taking place in Venezuela. Rather, given the economic instability in the country, as evidenced by rising interest rates and steady currency devaluations, private money was in fact fleeing the country for alternative foreign currency-denominated investments. *See Memo Re: Meetings with Commercial Bankers* at 1–2. There were few exchange controls at the time, and currency was easily invested in foreign currency-denominated assets. While it is certainly true that some private investment was taking place in Venezuela during the early 1990s, SIDOR would have been an unlikely recipient of such funds, and certainly not in the magnitude of the GOV's 1991 debt conversion.

In preliminarily finding SIDOR equityworthy, we relied upon respondent's claim that the company's restructuring process, starting in 1989, had significantly improved SIDOR's competitiveness. At verification, officials from the Ministry of Finance (Hacienda) and SIDOR again stated that the restructuring process greatly improved the company's financial health and placed SIDOR on the path to becoming an internationally competitive steel company. *See* the September 19, 1997, Memorandum to Barbara E. Tillman Re: Verification of Information Provided in the SIDOR Questionnaire Responses (SIDOR VR) at 3–9, and the September 20, 1997, Memorandum to Barbara E. Tillman Re: Verification of the Government of Venezuela Questionnaire Responses (GOV VR) at 3–6 (public versions on file in the Central Records Unit of the Department of Commerce, Room B–099). Respondent also claims that the GOV's decision to convert U.S. $1.0 billion of SIDOR's external debt into equity was in large part due to the company's commitment to meet specific short- and long-term goals, and the projections of the company's financial position if it met these goals. While we acknowledge that SIDOR may have made some progress as a result of the restructuring process, we do not agree that these changes provide a basis for finding that SIDOR was equityworthy in 1991. In the *GIA*, we stated that any projections of future earnings based on restructuring plans would have to be reconciled with an analysis of past performance. 58 FR at 37245. As we will show, the projections do not provide a sufficient basis to overcome SIDOR's past performance and the company's poor reputation. Rather, but for the debt capitalization by the GOV, SIDOR's cash flow would have become so unstable that the company would have been unviable. *See* SIDOR VR at 8.

At verification, SIDOR officials explained that the 1989 restructuring process was aimed at making the company more competitive internationally and returning it to profitability. To achieve this, SIDOR intended to measure and improve several key indicators of the company's performance, including:

(1) work force productivity, as measured by tons of steel produced per worker per year;
(2) debt to equity ratio;
(3) unit cost of production and sales;
(4) the timing of deliveries; and
(5) the ratio between inventories and sales, taking into account net sales.

See SIDOR VR at 4. SIDOR also started a cost reduction program and determined that the company's product mix had to be reduced by specializing in the more profitable flat products. To

become more competitive, SIDOR also reduced its work force. According to SIDOR, by 1991, the company had greatly improved all of the indicators and had released 3000 workers. An additional program to improve SIDOR's performance was initiated in 1991, as part of the debt restructuring that was agreed upon in principal in that year. Unlike the 1989 restructuring program, under this program, SIDOR made specific commitments to the GOV, and agreed to reach these performance targets by 1993. The targets included (1) an 11.0 percent reduction in per unit production costs; (2) an increase in labor productivity as measured by tons of liquid steel production per man year; (3) a reduction of inventories to 25 percent; and (4) an increase in sales volume to 2,400,000 tons per year, and capacity utilization of over 80 percent. *See* SIDOR VR at 8. According to SIDOR officials, if these targets were reached by that time, SIDOR would become competitive globally. *Id.*

However, we disagree with these arguments. It may be true that SIDOR's inability to meet its commitments to the GOV was, as respondent claims, compounded by the difficulties in the Venezuelan economy. However, petitioners correctly note that not all of the performance targets were linked directly to the success of Venezuela's economy or to worsening inflation. *See* SIDOR VR at 8. Moreover, as the bankers noted, a key factor in determining a company's potential was its ability to perform adequately *in spite of* the worsening economic conditions.

In conjunction with GOV's 1991 agreement to capitalize 60 percent of the company's external debt, although SIDOR prepared a report containing certain financial projections for the Economic Council of the Presidential Cabinet, there were no independent evaluations of this potential investment. *See* SIDOR VR at Exhibit 21 (Public Document). In analyzing SIDOR's potential, the report details a plan of action to improve the company's competitiveness. However, the report includes scant projections of the company's projected financial performance, such as profitability, and other financial indicators—important information that a private investor would consider. Rather, the report's focus is on SIDOR's projected cash flow, with and without the capitalization of 60 percent of the company's external debt. The report acknowledges that "[d]espite implementing a cost reduction program * * * the high debt burden impedes SIDOR from accomplishing its modernization plans {and the capitalization of 60 percent of SIDOR's external debt} is the minimum required to guarantee the continued operation of the firm." *Id.* Moreover, respondent acknowledges that the economic indicators used in the projections "had proved to be too optimistic." Respondent's September 26, 1997, Rebuttal Brief at 17. Accordingly, the company's own projections and statements indicate that, absent the debt capitalization, SIDOR's cash flow would be insufficient for the company to meet its debt obligations, and the company would become unviable.

We analyzed similar circumstances in *Certain Steel From Mexico* which involved AHMSA, a Mexican steel producer. In that case, it appeared that the financial projections were done to show that the government of Mexico's assumption of AHMSA's debt could achieve a level of cash flow to prevent the company from defaulting on its loans. Our conclusion in that case is the same we have reached here: "the focus of the analysis was not to demonstrate to a reasonable investor that [the company] was a good investment." *GIA*, 58 FR at 37245. Rather, in this case, the focus of SIDOR's report for the Economic Council of the Presidential Cabinet was to show that SIDOR would have been unable to continue operations without the capitalization of 60 percent of the company's external debt. Again, our evaluation of AHMSA's projections in *Certain Steel From Mexico*, are also appropriate in this case. At that time, we stated that the reasonable investor would weigh a company's past performance "far more than a financial projection done by the company itself in an attempt to garner more financial aid from the {government}." *GIA*, 58 FR at 37245.

The analysis above makes clear that SIDOR was not an equityworthy company in 1991. Accordingly, we determine that the 1991 conversion of SIDOR's external debt into equity was not consistent with the usual investment practices of private investors.

3. 1993 and 1994 CVG Land Transfers to SIDOR

In the *Preliminary Determination*, we found that in 1993 and 1994, CVG transferred land to SIDOR to cancel unpaid capital subscriptions. We also found that SIDOR was equityworthy in each of these years. *See Preliminary Determination*, 62 FR at 41941. For many of the same reasons outlined above, we have reevaluated our preliminary determination that SIDOR was equityworthy in these years. For example, SIDOR's real revenue growth from 1991 to 1993 was negative 16.97 percent, negative 8.73 percent, and negative 22.48 percent, respectively. We have also calculated SIDOR's cost of sales, adjusted for the rate of inflation, in each year from 1990 through 1993. This adjustment yields negative profit margins in each of the three years preceding the 1993 and 1994 land transfers, except 1991. However, even in that year, the adjusted return was very small, 0.18 percent. *See Final Calculation Memo* at 22. In each year that SIDOR experienced a loss after adjusting for inflation, the company's return on equity would also be negative, meaning that SIDOR was not able to generate a real return on investment in those years. Accordingly, we now determine that SIDOR was unequityworthy in 1993 and 1994.

Equity Methodology: In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain*, 58 FR 37374, 37376 (July 9, 1993).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *GIA*, 58 FR at 37239. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.

2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.

3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g.*, Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France, 58 FR 37304 (July 9, 1993); and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

Petitioners have alleged that SIDOR was uncreditworthy in each of the years the company received GOV equity infusions, *i.e.*, 1977 through 1992 (with the exception of 1988). In *Non-Alloy Pipe from Venezuela*, the Department initiated an examination of SIDOR's creditworthiness for the years 1985 through 1990. *See* 57 FR at 42964. For all other years, the Department initiated an examination of SIDOR's creditworthiness based upon an analysis of SIDOR's cash flow and financial ratios. *See Creditworthy/Equityworthy Memo*. As outlined above under the "Equityworthiness" section, for all the years except 1989 through 1992, SIDOR did not submit financial data beyond what was examined in the initiation stage, stating that such information was inaccessible. Therefore, because SIDOR has not provided any information that undermines the Department's initiation analysis, we determine that SIDOR was uncreditworthy from 1978 through 1987 and from 1989 through 1990.

We also now consider SIDOR to be uncreditworthy in 1991, the year of the GOV's decision to convert 60 percent of SIDOR's external debt into equity. The company's financial picture in the three years prior to 1991 was erratic. As outlined under the equityworthiness section above, in 1991, SIDOR's real revenue growth was negative in 1988 and 1989, and, after making an adjustment for inflation, the company's profit margin was negative in each of the three years preceding 1991. According to Venezuelan commercial bankers, this is a key factor in evaluating a company's ability to meet its debt obligation. *See Memo Re: Meetings with Commercial Bankers* at 3. While the bankers also stated that they would lend to Venezuelan companies with a debt-to-equity ratio of up to 300 percent, they further indicated that a key factor would be whether the company had survived the crises of the economy. This cannot be said of SIDOR. The company's own projections at the time made clear that without the GOV's conversion of SIDOR's external debt, the company would not have been able to meet its debt obligations. *See* SIDOR VR at Exhibit 21 and the "Equityworthiness" discussion above.

We have also determined that SIDOR was unequityworthy in 1993 and 1994. Therefore, we have also examined the company's financial statements over the period 1990 through 1993, to analyze SIDOR's ability to obtain commercial financing at commonly available interest rates. For the three years after 1991, SIDOR's liquidity improved significantly, with current assets exceeding current liabilities by over two to one. In addition, SIDOR's ability to service its long-term debt also improved, and the cash flow to debt ratio increased to over 14 percent in 1992 and 1993. While SIDOR's financial picture remained weak during the period 1990 through 1993, the lessened debt burden and improved liquidity indicate that SIDOR would have been able to obtain commercial financing at commonly available interest rates in 1993 and 1994. Therefore, we determine SIDOR to be creditworthy in each of these years.

Discount Rates: For uncreditworthy companies, our practice is to use as the discount rate the highest long-term fixed interest rate commonly available to firms in the country plus an amount equal to 12 percent of the prime rate. Because we were unable to locate a prime rate in Venezuela, we added 12 percent to the discount rate. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products From Brazil*, 58 FR 37295, 37298 (July 9, 1993) (*Brazil Steel*), *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy*, 59 FR 18357, 18358 (April 18, 1994). (*GOES*).

In the *Preliminary Determination*, we calculated the benefit from non-recurring countervailable subsidies received by SIDOR through 1987 by using as the discount rate the long-term corporate bond rates in Venezuela, published by Morgan Guaranty Trust Company in *World Financial Markets*. *See* 62 FR at 41942. For the period after 1987, we used as the discount rate the average short-term interest rate, because the long-term corporate bond rates were not available after 1987, and because the primary mechanism for obtaining long-term domestic currency financing in Venezuela has been through short-term, roll-over, loans.

Based on our findings at verification, we now determine that it is not appropriate to use long-term corporate bond rates as the discount rate. Central Bank of Venezuela officials stated at verification that "[c]ommercial banks in Venezuela have never given long-term loans. The general practice is to give one-year loans at a short-term rate and roll it over each year with a new short-term rate." *GOV VR* at 3.

In the *Preliminary Determination*, we also stated that it was appropriate to adjust the discount rate to take into account inflation because Venezuela has experienced intermittent periods of high inflation over the past twenty years, and because SIDOR has adjusted its financial statements to take into account the effects of inflation since 1994. *See Preliminary Determination*, 62 FR at 41942. We have modified our approach for this final determination and no longer consider it appropriate to make such an adjustment to the short-term discount rate. In addition, we now determine that, in calculating the benefit from non-recurring subsidies, it is appropriate to account for inflation only for the period 1987 through 1996. Therefore, for the years 1978 through 1986, we are using, as the discount rate, the short-term bolivar interest rates described above. As noted above, these rates represent the primary mechanism for obtaining long-term domestic currency financing in Venezuela.

We have determined that the most reasonable way to account for inflation for the is to convert the equity infusions into U.S. dollars, and to then apply, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Venezuela for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Brazil Steel*. *See* 58 FR at 37298. The changes to our calculation methodology are discussed more fully below under the *GOV Equity Infusions into SIDOR and Interested Party Comment* sections of the notice. Because we determine SIDOR to be uncreditworthy for the years 1978 through 1991 (except 1988), we added to the discount rates a risk premium equal to 12 percent of the discount rate in each of those years.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Determined To Be Countervailable

A. GOV Equity Infusions into SIDOR

SIDOR received GOV equity infusions in every year from 1977 through 1991, except 1988. SIDOR is a 100-percent government-owned company. Its parent company is Corporacion Venezolana de Guayana (CVG), a holding company owned by the GOV charged with promoting industrial development in the Guayana Region. The majority of the equity infusions were made by the Fondo de Inversiones de Venezuela (FIV), a GOV investment fund. The remaining funds were provided by the Hacienda, primarily as interest payments on loans. According to the response of the GOV, the government equity infusions into SIDOR were provided pursuant to special laws adopted with respect to government-approved expansion projects of SIDOR. Thus, these equity infusions were specific under section 771(5A)(D) of the Act.

The first law, published in the Gaceta Oficial No. 30,587 on January 2, 1975, authorized SIDOR's 1974–79 "Plan IV" expansion. This expansion was aimed at increasing SIDOR's steel production by 3.6 million tons as well as increasing the company's rolling capacity for flat and non-flat products. The government equity infusions under Plan IV were not disbursed in the amounts or at the time originally projected in this plan. However, the amounts received by SIDOR were recorded in the company's annual financial statements in the year they were received. Equity funds also were provided to SIDOR in accordance with a 1987 law passed by the Venezuelan Congress. This law was published in the Gaceta Oficial No. 33,771 on December 21, 1987. The FIV received both preferred and common shares for these equity investments into SIDOR.

As noted above, funds were also provided to SIDOR by the Hacienda. Funds provided by the Hacienda between 1977 and 1981 were authorized under Article 11 of a 1976 Special Law for Public Credit and were also made pursuant to a June 26, 1977, agreement between the Hacienda, FIV, CVG and SIDOR. Under this agreement, the Hacienda agreed to pay SIDOR's interest on loans from the FIV in return for shares in the company. Equity payments made between 1984 and 1986 were provided pursuant to government Decree 390 of December 1984, authorizing the Hacienda to help SIDOR service its foreign debt. Finally, a 1987 loan from the Hacienda to SIDOR was converted into equity, but recorded as an advance for future capital increase.

SIDOR records all Hacienda equity funds in the years the funds were received. However, the capital investments appeared in SIDOR's annual financial statements as "Advances for Future Capital Increase." In 1989, all advances were converted into shares issued to Hacienda, the delay stemming from a disagreement between the Hacienda and CVG as to who should take ownership of the shares. The issue was resolved in 1989, and on the same day the shares were issued to Hacienda, they were transferred to CVG, SIDOR's parent company. We have treated these Hacienda funds as capital investments in each year in which they were received by SIDOR.

According to the agreement under which the Hacienda funds were provided, the funds are to be treated as capital infusions.

In 1991, following several years of restructuring by SIDOR, the GOV agreed to convert 60 percent of SIDOR's debt and the interest accrued on the debt into equity which was converted into shares provided to Hacienda. This debt related to SIDOR's pre-1986 foreign currency loans that had been restructured in accordance with government Decree 1261 of November 15, 1990. As a result of this conversion, the Hacienda now holds 39.68 percent of SIDOR's shares. As of December 31, 1996, the remaining 60.32 percent were held by SIDOR's parent company, CVG.

In 1993 and 1994, also in connection with SIDOR's Plan IV expansion project, CVG transferred some of the land on which the company constructed the Plan IV expansion. The land was used as payment for unpaid capital subscriptions from CVG. At the time, CVG purchased only about half of the 1,860,000 shares in SIDOR it had subscribed to. We consider the land transfers to be capital investments in each year in which they were received by SIDOR.

We determine that the equity infusions into SIDOR in the years 1978 through 1987, 1989 through 1991, 1993 and 1994 confer a benefit under section 771(5)(E)(i) of the Act because the GOV investments were not consistent with the usual investment practice of private investors. *See* the discussion on "Equityworthiness" above. Also, these equity infusions are specific within the meaning of section 771(5A)(D) because they were limited to one company.

As explained in the "Subsidies Valuation Information" section, we have treated equity infusions in unequityworthy companies as grants given in the year the capital was received. We have further determined these infusions to be non-recurring subsidies. Therefore, we have allocated the benefits over 20 years.

Venezuela experienced periods of high inflation during the period 1978 through 1996 (the rates ranged from 7 percent to 103 percent). In the *Preliminary Determination*, we found that it was appropriate to take into account the effects of inflation to accurately value the benefit from GOV equity infusions. *See* 62 FR at 41943. We did this by adjusting the principal component of the benefit by the inflation index, using the year of receipt as the reference year to measure inflation. We also adjusted the interest component by adding the rate of inflation in each year to the discount rate.

Based on our verification and comments from interested parties, we find that the methodology used in the preliminary determination to account for inflation should be changed. First, prior to 1987, inflation was relatively low and, as such, we do not consider it appropriate to adjust for inflation prior to 1987. In 1987, inflation increased to 40 percent and thereafter remained consistently high, reaching 103 percent in 1996. The period after 1986, therefore, can clearly be distinguished from the prior years as marked by consistently high inflation. Accordingly, when calculating the benefit to SIDOR during the POI from the GOV equity infusions, we adjusted the nominal values of the equity infusions to account for inflation from 1987 through 1996. *See* the *Interested Party Comment* section of this notice for a more detailed discussion of this adjustment.

As we noted under the "Discount Rate" section above, in calculating the benefit from equity infusions received prior to 1987, we have used the short-term bolivar interest rates. For the period 1987 through 1996, we have accounted for inflation in our benefit calculation by converting the equity infusions into U.S. dollars after 1986. This conforms with our past practice and with business practices in Venezuela. *See Brazil Steel*, 58 FR at 37298. For example, a principle source of funding for capital investment in Venezuela was "overseas foreign currency-denominated financing." *See Memo Re: Meetings with Commercial Bankers* at 2. Also, SIDOR's long-term loans were denominated in foreign currency. Accordingly, for equity infusions received prior to 1987, we converted the remaining face value of the grant in 1987 into U.S. dollars using the bolivar/dollar exchange rate prevailing in that year. For the remaining allocation period, we then applied the long-term U.S. dollar interest rate described in the "Discount Rate" section of this notice. For equity infusions received after 1986, we converted the infusion into U.S. dollars at the exchange rate in effect on the day the infusion was received by SIDOR. The discount rate used was the same described above.

To calculate the total benefit from the infusions to SIDOR, we summed the benefit allocated to the POI from each equity infusion. After converting the benefit from U.S. dollars into bolivars, we then divided that total benefit by SIDOR's total sales of all products during the POI. On this basis, we determine the net subsidy for this program to be 23.61 percent *ad valorem* for SIDOR.

B. Dividend Advances From the Hacienda

Between 1977 and 1981, pursuant to a June 26, 1977, agreement among the Hacienda, FIV, CVG and SIDOR, the Hacienda paid dividends on behalf of SIDOR on the preferred shares held by FIV. These were recorded in SIDOR's accounting records as "Dividend Advances." These dividend advances are still reported in SIDOR's 1996 financial statement. According to the 1996 financial statement, the final treatment of these dividend advances has not been decided. Because the payment by the Hacienda of dividends on behalf of SIDOR is based on an agreement signed by the Hacienda, FIV, CVG and SIDOR, the payment of dividends by the Hacienda, a government agency, is limited to one company, SIDOR, and is, thus, specific under section 771(5A)(D) of the Act. To determine whether a benefit has been provided, the Department must determine whether SIDOR was obligated to pay dividends to FIV on the preferred shares. If the Hacienda relieved SIDOR of a payment obligation, then the payment of dividends by the Hacienda on behalf of SIDOR constitutes a countervailable subsidy.

According to its supplemental questionnaire response, SIDOR had fiscal losses in the years the dividend payments were made. Therefore, SIDOR stated that it was not obligated to pay any dividends. To determine whether SIDOR was obligated to pay the dividends to FIV on the preferred shares, we examined the 1977 agreement among the Hacienda, FIV, CVG and SIDOR. We verified that under this agreement, the preferred shares yielded a fixed yearly dividend equivalent to seven percent of their nominal value. Therefore, SIDOR was obligated to pay fixed yearly dividends to FIV. Because the payment of dividends by the Hacienda to FIV relieved SIDOR of a financial obligation, we determine that the outstanding balance of the "Dividend Advances" constitutes a benefit under section 771(5)(E) of the Act.

In order to calculate the benefit from this program, we treated the dividend advances as interest-free short-term loans because the advances appear to be liabilities of SIDOR. The 1977 agreement under which these dividends were paid does not state that these are capital infusions into SIDOR by the Hacienda. In addition, neither the GOV or SIDOR has treated these dividend advances as capital infusions. Thus, it appears, that SIDOR is still liable for repayment of the dividend advances.

To calculate the benefit in the POI, we took the amount of the dividend advances reported in SIDOR's 1996 financial statement and calculated the amount of interest the company would have paid in 1996 if it had received an interest-free loan equal to the amount of the dividend advances. We used as our benchmark interest rate the annual average short-term interest rate reported by the GOV in its supplemental response. We used this as the benchmark because we verified that SIDOR did not have short-term bolivar lending during the period of investigation. The calculated interest savings was then divided by SIDOR's total sales in the POI. On this basis, we determine the net subsidy for this program to be 0.08 percent *ad valorem* for SIDOR.

II. Programs Determined To Be Not Countervailable

A. GOV Loan to SIDOR in 1990

We initiated an investigation of this program based upon petitioners' allegation that the GOV replaced a $1,507 million commercial loan to SIDOR with a 15-year loan from the government. We verified that this 1990 GOV loan to SIDOR was part of a debt restructuring program which was examined and found not countervailable in the *Final Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela; and Countervailing Duty Order for Ferrosilicon From Venezuela*, 58 FR 27539 (May 10, 1993). Because petitioners have provided no new information or evidence of changed circumstances to warrant a reconsideration of that determination, we continue to find this GOV debt restructuring program, under which this 1990 loan was received, not countervailable.

B. Government Provision of Electricity

Electricity is provided to SIDOR by EDELCA, a government-owned utility company. Both SIDOR and EDELCA are part of the CVG Group. EDELCA is the largest utility company in Venezuela and generates 70 percent of the electricity consumed in Venezuela. Electricity rates between EDELCA and its industrial customers are not regulated. Tariff rates are set by EDELCA for a one-year period corresponding to the calendar year.

Almost all of EDELCA's clients are industrial customers or other utility companies in Venezuela. The rates between EDELCA and the other utility companies are regulated by the Regulatory Commission of Electric Energy (RCEE), while the rates charged by EDELCA to its industrial clients are not regulated. In 1990, EDELCA began using dollar per-unit rates rather than bolivar per-unit rates for its industrial rates in order to protect its tariff structure against the effects of inflation. In that year, EDELCA also changed its rate structure to one based upon its costs plus a return on its capital. To calculate its costs, EDELCA divided capital costs by capacity and factored in general operating costs, transmission costs, administrative costs, and a ten percent return on capital. To calculate its base industrial tariff rate, it then determined how much higher a price the company would need to charge in order to generate enough income to service its debt and maintain a profit. This base rate then served as the basis for the industrial rates set in subsequent years. Because this base rate was calculated in dollars, it has generally been increased in each subsequent year by the U.S. Consumer Price Index.

EDELCA makes small adjustments to this base rate to take into account different transmission and transformation costs for its customers. We verified that certain industrial clients with higher transmission costs due to the distance from the generation site paid slightly more than the basic rate in order to account for EDELCA's increased cost of transmission. In addition, some other industrial clients, such as SIDOR, maintained their own substations and transformers. These customers received a slightly lower rate.

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service "* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods

being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Particular problems can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In this situation, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to electricity, some of the options may be to examine whether the government has followed a consistent rate-making policy, whether it has covered its costs, whether it has earned a reasonable rate of return in setting its rates, and/or whether it applied market principles in determining its rates. Such an approach is warranted where it is only the government that provides electricity within a country or where electricity cannot be sold across service jurisdictions within a country and there are divergent consumption and generation patterns within the service jurisdictions.

In the instant case, we verified that during the period of investigation EDELCA set its industrial rates, including the rate charged to SIDOR, based upon market principles, including adjusting its standard industrial rate for differences in transmission and transformation costs and for level of consumption. In addition, we note that EDELCA's rate making policy incorporates a return on its costs and that the return earned by EDELCA on it sales to SIDOR was higher than the average return of its industrial clients. We verified that EDELCA's pricing policies with respect to SIDOR and its industrial customers are consistent with the pricing policies of private utility companies in Venezuela. Therefore, we find that the rates charged by EDELCA to SIDOR are not countervailable under section 771(5)(E) of the Act.

Adequacy of remuneration is a new statutory provision which replaced "preferentiality" as the standard for determining whether the government's provision of a good or service constitutes a countervailable subsidy. The Department has had no experience administering section 771(5)(E) and Congress has provided no guidance as to how the Department should interpret this provision. This case and the other concurrent wire rod cases mark the first instances in which we are applying the new standard. We anticipate that our policy in this area will continue to be refined as we address similar issues in the future.

III. Programs Determined To Be Not Used

A. Government Guarantees of SIDOR's Private Debt in 1987 and 1988

In 1987 and 1988, the GOV guaranteed loans provided to SIDOR by Credito Italiano and Kreditanstalt Fuer Wiederaufbau (KfW), respectively. Both of these loans were Deutschmark-denominated loans linked to the London Interbank Offering Rate (LIBOR).

We verified that the 1987 and 1988 loans were specifically applied for and authorized as part of a program to finance the expansion of SIDOR's pipe mill. The approval documents specify that the loans were for the expansion of SIDOR's pipe mill, in particular for purchasing equipment. These were authorized under the December 10, 1987, "Law for the Contracting and Financing of the First Stage of the Project to Expand and Modernize SIDOR's Pipe Mill." Because we verified that the KfW and Credito Italiano loans were tied to financing the expansion of SIDOR's pipe mill, we determine that the loans and the government guarantees of the loans are tied to non-subject merchandise and, thus, do not provide a benefit to wire rod. Therefore, we determine that the GOV loan guarantees did not confer countervailable benefits on the production and/or exportation of subject merchandise, and that this program was not used during the POI.

B. Government Provision of Iron Ore

Iron ore is a bulky, low-priced commodity that is traded on the international market and is used in the production of steel. Petitioners alleged that Ferrominera, a government-owned company, provided iron ore to SIDOR for less than adequate remuneration. SIDOR and Ferrominera are two of the 37 companies which comprise the CVG Group, a holding company owned by the GOV. SIDOR purchases all of its iron ore from Ferrominera. Ferrominera is the only producer of iron ore in Venezuela, and 99 percent of its domestic sales are to the steel industry.

As explained in our preliminary determination, SIDOR and Ferrominera maintain two separate contracts—one for the supply of iron ore and one for its transportation. SIDOR and Ferrominera have a multi-year supply contract under which Ferrominera sets SIDOR's iron ore prices on an annual basis. The unit price (*i.e.*, the price per "metric ton natural iron unit") is set in U.S. dollars, and the terms of sale are FOB, place of loading. When Ferrominera announced a new price for 1996, SIDOR objected and tried to renegotiate the price. Because of this objection, Ferrominera did not apply the new price. After negotiations failed, SIDOR and Ferrominera entered into arbitration conducted by the CVG Group.

For the preliminary determination, we calculated a program rate by comparing the price of iron ore that Ferrominera charged SIDOR during 1996 with a benchmark price constructed from published price information on the record. However, at verification we learned that the CVG arbitration decision was not made until March 1997; thus the price that SIDOR had to pay for the iron ore was not finally set until after our period of investigation. Because the 1996 price of iron ore was not finalized until after the period of investigation and final payment was not made by SIDOR until July 1997, we consider it inappropriate to assess the countervailability of Ferrominera's provision of iron ore to SIDOR for purposes of this final determination.

We have taken this approach in light of our practice to countervail subsidies based on the timing of the receipt of the subsidy. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288 (June 14, 1996), and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey: Final Results of Countervailing Duty Administrative Reviews*, 62 FR 43984 (August 18, 1997). Because the final price for the iron ore was not set and paid until 1997, the receipt of any potential benefit under this program is 1997, which is outside the period of investigation. Moreover, because the standard for adequate remuneration specifies that transportation is one of the factors to consider in determining whether the provision of a good is for less than adequate remuneration, we do not consider it appropriate in this case to analyze the transportation services for the delivery of iron ore separately from the pricing contract of such ore.

Therefore, the issue of whether iron ore is provided to SIDOR for less than adequate remuneration will be examined in an administrative review conducted under section 751 of the Act, if a countervailing duty order is issued.

We note that the interested parties submitted comments on whether iron ore was provided to SIDOR for less than adequate remuneration. These comments dealt with the methodology which should be employed in analyzing whether iron ore was provided for less than adequate remuneration. Because we are not making a determination with respect to the countervailability of this program, and because none of the comments were related to the issue of the timing of the potential benefit, it is not necessary to address the comments submitted by the interested parties for purposes of this final determination.

C. Preferential Tax Incentives Under Decree 1477

Petitioners alleged that Decree 1477 provides partial or total income tax exemptions and other tax credits to companies in disadvantaged regions, including Bolivar, where SIDOR is located. According to petitioners, companies that relocated or commenced an expansion after March 23, 1976, qualify for tax incentives. We verified that SIDOR never applied for or received benefits under this program. Therefore, we determine that this program was not used by SIDOR during the POI.

IV. Program Determined To Be Terminated

Special Permissive Regulations for Exporters (REFE)

The REFE program was enacted September 9, 1994, to enable companies and individuals to access foreign currency more easily. Prior to 1994, companies and individuals were not allowed to maintain foreign currency accounts. Rather, they had to make specific requests for access to foreign currency from the Office of Technical Exchange Administration (OTAC, Officina Technica de Administration de Combina). In 1994, Venezuela endured a banking crisis. In response to this crisis, the GOV halted all exchange of bolivars for foreign currency, leaving companies and individuals with virtually no access to foreign currency. During July and August, 1994, companies in Venezuela were unable to service foreign currency-denominated debt. In response to this situation, the GOV initiated the REFE program. The REFE program allowed companies and individuals to use directly their foreign currency receipts. Under the program, a company could maintain a foreign account with which it could directly service its foreign currency debts or directly pay for imported inputs.

We verified that on April 17, 1996, the GOV terminated the REFE program with the enactment of Decree 1,292, which established the free convertibility of currency in Venezuela and removed the exchange control regulations then in place. With the establishment of the free convertibility of currency, we also determine that there are no residual benefits from the REFE program. Thus, we determine that the REFE program is terminated.

Interested Party Comment

Comments not already addressed in the "Subsidies Valuation" and program sections above, are addressed separately below:

Comment: Issues regarding the equity methodology. Both petitioners and respondent argue that the methodology the Department used in the preliminary determination to calculate the benefit arising from equity infusions into SIDOR incorrectly accounts for inflation. Petitioners' position is that the Department should not have used variable short-term interest rates as discount rates. Rather, they argue that the Department should account for inflation by dollarizing (i.e., converting the grant amount into dollars and using a discount rate denominated in dollars) for both the amounts of the subsidies and the interest rates used to allocate them across time. They contend that, at a minimum, the Department should dollarize the period 1987 to 1998.

Respondent argues that, contrary to prior practice, the Department adjusted the benefit derived from the allocated principal for periods which were not consistently hyperinflationary. They argue that hyperinflation is defined as 50 percent inflation or higher, and that therefore the Department's methodology should include inflation adjustments only for the period 1994–1996. Second, they argue that, in adjusting the interest benefit derived from the outstanding balance of the equity infusion, the Department double-counted the effects of inflation by combining the benchmark rate from the year of receipt of the equity infusion and the inflation rate for 1996. Finally, they contend that, in calculating the risk premium for an uncreditworthy company, the Department used an incorrect basis in certain years which overstated the risk premium. They propose that national average short-term interest rates should be used to calculate the risk premium for all years in which countervailable equity infusions were received.

Department's position: As outlined above, for this final determination, we have altered our methodology for calculating the benefit to SIDOR from GOV equity infusions. Some of the modifications to the calculation methodology reflect our agreement with arguments made by both respondent and petitioners. For example, we agree with respondent that it is not appropriate to account for inflation over the entire allocation period. Also, we accept petitioners argument that, to capture the impact of inflation on the nominal benefit to SIDOR in the years 1987 through 1996, it is appropriate to convert the subsidy amounts into U.S. dollars. Additional changes, in particular the use of short-term discount rates through 1986 and U.S. dollar discount rates from 1987 through 1996, reflect our findings at verification and the practices in Venezuelan financial markets.

During the period 1978 through 1986, the annual inflation rates in Venezuela ranged from 7 to 21 percent. In 1987, however, the annual inflation rate increased to 41 percent. Since then, it has not fallen below 30 percent and has reached levels as high as 100 percent by 1996. The period after 1986, therefore, can clearly be distinguished from the prior years, because the latter period was marked by consistently high and rising inflation.

According to respondent, inflation in Venezuela only reached "hyperinflationary" levels from 1994 to 1996, when the rates ranged between 57 and 103 percent. Therefore, respondent argues that in calculating the benefit from GOV equity infusions, inflation should be taken into account only during the period 1994 through 1996. In support of this, respondent cites certain steel products from Mexico, where the Department found that Mexico was hyperinflationary from 1983 through 1988, when inflation ranged between 57 and 131 percent. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products From Mexico*, 58 FR 37352, 37355 (July 9, 1993). We did not account for inflation in that case when the rate was between 19 and 29 percent. Accordingly, respondent implies that the methodology used in *Steel From Mexico* stands for the proposition that the Department only takes into account inflation during periods in which annual inflation is 50 percent or higher.

We disagree with respondent's interpretation of the approach used in that case. In *Steel From Mexico*, we did not specify that an economy must reach

a certain level of annual inflation before we will account for inflation in the benefit calculation. Adopting a threshold would miss the point of adjusting for inflation. Rather, in *Steel From Mexico*, our concern was how to treat a period of high inflation that was in the middle of the allocation stream and clearly anomalous with respect to the periods before and after. As respondent noted, the inflation rate in Mexico dropped from 114 percent in 1988 to 20 percent in 1989, bringing to an end the period of anomalous rates. In contrast, inflation in Venezuela has been consistently high from 1987 onwards, reaching 81 percent in 1989, and topping 100 percent in 1996, the POI. At no time after 1987 did inflation return to the lower levels experienced during the period prior to 1986. Petitioners correctly note that, during periods of consistently high inflation, as experienced by Venezuela after 1986, the nominal value of a company's non-monetary assets increases with inflation. Therefore, untied subsidies that are allocated over time and which benefit a company's productive activities also increase in real terms because of inflation. Adjusting for inflation during anomalous periods of high inflation merely recognizes this fact, and the adjustment takes into account the value, in real terms, of the subsidy. With respect to this, the methodology used in the *Preliminary Determination* to calculate the interest component of the benefit, was incorrect. In particular, we incorrectly added the rate of inflation to the discount rate. This approach treats inflation as a benefit in each year. However, as explained above, inflation increases the real value of non-monetary assets, such as machinery, over time, and is not a benefit in each year. In any case, we have modified our approach by converting the equity infusions into dollars after 1986, so that an adjustment to the interest component is no longer necessary.

As explained in the "GOV Equity Infusions into SIDOR" section above, we determine that, for periods of high inflation in Venezuela (*i.e.*, 1987 through the POI) it is appropriate to convert non-recurring subsidies into dollars. This approach is consistent with the Department's past practice, in particular when no appropriate long-term domestic discount rate exists for use in our grant calculation. Further, as petitioners correctly note, this approach conforms with SIDOR's actual business practices and commercial practices in Venezuela. *See Memo Re: Meetings with Commercial Bankers* at 2.

Respondent argues that inflation was not a constant phenomenon in Venezuela. For this reason, respondent claims that other cases in which the Department adopted a dollarization methodology, such as *Brazil Steel*, are not relevant because, in that case, inflation was consistently above 350 percent. We disagree with respondent because, once again, the issue is not whether annual inflation reaches a certain threshold level in a country. Rather, as noted above, adjusting the benefit for inflation merely accounts for the fact that, when inflation is consistently high, the value of non-monetary assets increases, and the value of the subsidy that benefits the non-monetary assets also increases. By converting the subsidy into dollars at the beginning of a high inflation period and later converting the benefit allocable to the POI back into domestic currency at the exchange rate prevailing in the POI, we are taking into account that increase in the real value of the subsidy.

Respondent claims that the risk premium used by the Department for the 1978 through 1986 period is overstated, and that the Department should use the short-term interest rates, with a risk premium, to calculate the benefit. Because we are now using the rate advocated by respondent for the 1978 through 1986 period, the issue is now moot.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we have calculated a subsidy rate for SIDOR, the one company under investigation. This subsidy rate is 23.69 percent *ad valorem*. This rate would also be applicable to any companies not investigated or any new companies exporting the subject merchandise.

We have concluded a suspension agreement with the Government of Venezuela which eliminates the injurious effects of imports from Venezuela (see, *Notice of Suspension of Investigation: Steel Wire Rod from Venezuela* being published concurrently with this notice). As indicated in the notice announcing the suspension agreement, pursuant to section 704(h)(3) of the Act, we are directing the U.S. Customs Service to continue suspension of liquidation. This suspension will terminate 20 days after publication of the suspension agreement or, if a review is requested pursuant to section 704(h)(1) of the Act, at the completion of that review. Pursuant to section 704(f)(2)(B) of the Act, however, we are not applying the final determination rate to entries of subject merchandise from Venezuela; rather, we have adjusted the rate to zero to reflect the effect of the agreement.

We will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC's injury determination is negative, the suspension agreement will have no force or effect, this investigation will be terminated, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(A) of the Act). If the ITC's injury determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(B) of the Act).

This notice is issued pursuant to section 704(g) of the Act.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27983 Filed 10–21–97; 8:45 am]

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federal register

Wednesday
October 22, 1997

Part V

Department of Education

34 CFR Parts 300, 301, and 303

Assistance to States for the Education of Children With Disabilities, Preschool Grants for Children With Disabilities, and Early Intervention Program for Infants and Toddlers With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300, 301 and 303

RIN 1820–AB40

Assistance to States for the Education of Children With Disabilities, Preschool Grants for Children With Disabilities, and Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Assistance to States for Education of Children with Disabilities program, the Preschool Grants for Children with Disabilities program, and the Early Intervention Program for Infants and Toddlers with Disabilities. These amendments are needed to implement changes recently enacted by the Individuals with Disabilities Education Act Amendments of 1997.

DATES: Comments must be received by the Department on or before January 20, 1998.

The Department plans to hold public meetings in conjunction with this NPRM. The dates and times of the meetings are in the section titled *Public Meetings* under Invitation to Comment elsewhere in this preamble.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3090, Mary E. Switzer Building, 330 C Street., SW., Washington, DC 20202. Comments may also be sent through the Internet to: comment@ed.gov

You must include the term "Assistance for Education" in the subject line of your electronic message.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the ADDRESSES section.

The Department plans to hold public meetings in conjunction with this NPRM. The locations of the meetings are in the section titled *Public Meetings* under Invitation to Comment elsewhere in this preamble.

FOR FURTHER INFORMATION CONTACT: Thomas Irvin (202) 205–8969 or JoLeta Reynolds (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mimcy, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3090, Mary E. Switzer Building, 300 C St., SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Public Meetings

In a notice published in the **Federal Register** on September 17, 1997 (62 FR 48923–48925), the Department announced public meetings to obtain public comment on the statutory requirements of the IDEA Amendments of 1997. The Department will use those public meeting dates and times for public comment on this NPRM.

Individuals who wish to make a statement at any of the meetings are encouraged to do so. Time allotted for each individual to testify will be limited and will depend on the number of speakers wishing to testify at each session. It is likely that each participant choosing to comment will be limited to four minutes. Persons interested in making oral public comment will be able to sign-up to make a statement on the day of the meeting at the Department's public meeting on-site registration desk on a first-come-first served basis. If no time slots remain, then the Department will reserve a limited amount of additional time at the end of each hearing to accommodate those individuals. (Every effort will be made to have ample time to hear all individuals who wish to make a statement.) For individuals who want to speak at the public meeting, registration will begin at 1:00 p.m., in all cities except Washington, DC where it will begin at 12:00 Noon, in each hotel or public building at the registration table outside the room where the public meeting will be held. The dates, times, and locations of the meetings are as follows:

October 23, 1997—2:00 p.m.–7:00 p.m.

Region I—Logan Ramada Hotel, 75 Service Road, Logan International Airport, Boston, MA 02128

October 27, 1997—2:00 p.m.–7:00 p.m.

Region IV—Radisson Hotel Atlanta, 165 Courtland and International Blvd., Atlanta, GA 30303

October 28, 1997—2:00 p.m.–7:00 p.m.

Region VI—Radisson Hotel Dallas, 1893 West Mockingbird Lane, Dallas, TX 75235

November 4, 1997—1:00 p.m.–5:00 p.m.

Department of Education, Government Service Administration (GSA), 7th and D Streets, S.W. (Auditorium), Washington, D.C. 20407

November 18, 1997—2:00 p.m.–7:00 p.m.

Region VIII—Four Points, 3535 Quebec Street, Denver, CO 80207

November 21, 1997—2:00 p.m.–7:00 p.m.

Region IX—Holiday Inn Select/ Chinatown, 750 Kearny Street, San Francisco, CA 94108

November 24, 1997—2:00 p.m.–7:00 p.m.

Region V—Sheraton North Shore, 933 Skokie Boulevard, Northbrook, IL 60062

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should consult the notice mentioned in this document for the person to contact at least two weeks before the scheduled meeting date to ensure that accommodations requested will be available. Although the Department will attempt to meet a request received after that date, the requested accommodation may not be available because of insufficient time to arrange it.

Background

On June 4, 1997, the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 were enacted into law as Pub. L. 105–17.

The statute passed by Congress and signed by the President reauthorizes and makes significant changes to IDEA to better accomplish the following purposes: (1) Ensure that all children with disabilities have available a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; (2) ensure that the rights of children with disabilities and parents of those children are protected; (3) assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; (4) assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families; (5) ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and (6) assess, and ensure the effectiveness of, efforts to educate children with disabilities.

On June 27, 1997, the Secretary published a notice in the **Federal Register** requesting from the public advice and recommendations on regulatory issues under the IDEA Amendments of 1997. As of the end of August, 1997, 334 comments were received in response to the Notice, including letters from parents and public and private agency personnel, and from parent-advocate and professional organizations. The comments addressed each major provision of the IDEA Amendments of 1997 (such as the new funding provisions, discipline procedures, provisions relating to evaluation of children, individualized education programs, participation of private school children with disabilities, methods of ensuring services from noneducational agencies, and changes in the procedural safeguards). All of these comments were reviewed and considered in developing this Notice of Proposed Rulemaking. The Secretary appreciates the thoughtful attention of the commenters in responding to the June 27th notice.

Proposed Regulatory Changes

The IDEA Amendments of 1997 significantly updated the Assistance to States program under Part B of the Act, as in effect before June 4, 1997. The changes made by those Amendments call for corresponding updates to virtually all of the current regulations under this part, as well as new regulatory provisions to incorporate new statutory requirements such as those relating to performance goals and indicators, procedural safeguards notice, mediation, and discipline.

In addition to incorporating new requirements from the Act, some new provisions and notes are proposed to assist in clarifying the new statutory requirements, or providing guidance with respect to implementing those requirements. Finally, some changes are needed to incorporate longstanding interpretations of the Act that have been addressed in nonregulatory guidance in the past, or to ensure a more meaningful implementation of the Act and its regulations for children with disabilities, parents and public agencies.

To accommodate the reader in understanding these proposed changes, the Secretary has elected to publish the full text of the regulations, as they would be when amended, rather than simply publish an amendatory document that shows only the changes proposed to current regulations. Although this approach increases the length of this NPRM, it provides a more meaningful way for parents, agency officials, and the general public to review the changes within the context of the existing regulations.

The following summary of the proposed regulatory changes describes how the Secretary would incorporate the statutory changes of the IDEA Amendments of 1997 into the applicable subparts of the Department's regulations for the Assistance to States program (34 CFR part 300) and Preschool Grants program (34 CFR part 301) for children with disabilities, along with conforming changes to the Early Intervention program for Infants and Toddlers with Disabilities (34 part 303). The Department plans to publish additional technical amendments to Part 303 at a later date. Those amendments will revise the Part 303 regulations consistent with the changes made by the IDEA Amendments of 1997. This summary identifies changes that are statutory and describes any regulations that the Secretary is proposing in this NPRM to implement these statutory provisions.

Commenters are requested to direct their comments to issues that can be changed through regulation and not to statutory requirements. Commenters also are reminded that, under section 607(b) of the IDEA, the Secretary is not authorized to make regulatory changes to lessen the protections for children with disabilities in the IDEA regulations that were in effect on July 20, 1983, absent statutory changes indicating a Congressional intent to lessen those protections.

Throughout this preamble, issues that the Secretary is proposing to regulate on are introduced by phrases such as, "The Secretary proposes * * *" or "In this proposed section, the Secretary proposes * * *". Commenters are asked to focus their comments on these parts of the proposed regulation.

Appendix C to the current regulations (Interpretation of IEP program requirements) would be updated and revised consistent with the changes made by the IDEA Amendments of 1997 and these proposed regulations. Revised Appendix C is presented as Appendix C to this NPRM.

To aid readers in referring between this NPRM and current regulations, a distribution table for the part 300 regulations is presented in Appendix D to these proposed regulations. That table identifies each current regulatory section and the comparable proposed regulatory section, if any.

These proposed regulations would implement the new statutory changes relating to the three formula grant programs in the IDEA: (1) the Assistance to States for the Education of Children with Disabilities Program under Part B of the Act (34 CFR part 300); (2) the Preschool Grants Program under section 619 of the Act (34 CFR part 301); and (3) the Early Intervention Program for Infants and Toddlers with Disabilities under Part H of the Act (to be renamed part C on July 1, 1998) (34 CFR part 303).

1. Part 300—Assistance to States for the Education of Children With Disabilities

The new statutory amendments to the IDEA, while retaining (and strengthening) the basic rights and protections included in the Act since 1975, also have redirected the focus of the law as in effect before June 4, 1997, to heighten attention to improving results for children with disabilities. This shift in focus was necessary in order to make needed improvements in the Part B program, based on 20 years of experience and research in the education of children with disabilities. The amendments to the Part B program were the result of over three years of intensive work by stakeholders from all realms of life and at all governmental levels, who have a vested interest in the education of children with disabilities.

Background and Need for Improvements

Before enactment of the 1975 amendments to the IDEA (then known as the Education of the Handicapped Act (EHA)), approximately one million children with disabilities were excluded entirely from the public education system, and more than half of all children with disabilities in the United States did not receive appropriate educational services that would enable them to enjoy full equality of opportunity. The 1975 amendments to the EHA—the Education for All Handicapped Children Act (Pub. L. 94–142)—directly addressed the problems that existed at that time by establishing the right to education for all children with disabilities.

As a result of the Pub. L. 94–142 Amendments to the IDEA, significant progress has been made in addressing the problems that existed in 1975. Today, every State in the nation has laws in effect ensuring the provision of a free appropriate public education (FAPE) to all children with disabilities. The number of young adults with disabilities enrolled in post-secondary education has tripled, and the unemployment rate for individuals with disabilities in their twenties is almost half that of their older counterparts.

Despite the progress that has been made since 1975, the promise of the law has not been fulfilled for many children covered by the Act. Too many students with disabilities are failing courses and dropping out of school. Almost twice as many students with disabilities drop out as compared to students without disabilities. And, when students with disabilities drop out of school, they are less likely to ever return to school and are more likely to be unemployed or have problems with the law. Further, almost half of the students with disabilities do not participate in statewide assessments, and, therefore, schools are not held accountable for results. Students from minority backgrounds continue to be placed disproportionately in separate special education settings.

Over 20 years of experience and research in implementing Part B of the IDEA has demonstrated that the education of children with disabilities can be made more effective by—

(1) Having high expectations of these children and ensuring their access to the general curriculum to the maximum extent possible;

(2) Strengthening the role of parents and fostering partnerships between parents and schools;

(3) Aligning the Part B program with State and local improvement efforts so that students with disabilities can benefit from them;

(4) Providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs;

(5) Focusing resources on teaching and learning, while reducing paperwork and requirements that do not assist in improving educational results; and

(6) Supporting high-quality, intensive professional development for all personnel who work with disabled children to ensure that they have the skills and knowledge necessary to effectively assist these children to be prepared for employment and independent living.

The IDEA Amendments of 1997 are designed to make improvements in the Part B program that address many of the factors based on experience and research that are identified in the preceding paragraphs. A description of some of these improvements is included in the following paragraphs, together with an identification of where the statutory provisions have been incorporated into these proposed regulations:

Improving Results for Children With Disabilities

The focus of the changes in the new amendments is directed at improving results for children with disabilities—by promoting early identification and early provision of services, and ensuring the access of these children to the general curriculum and general educational reforms. The amendments include a number of provisions to address this goal.

A. Early Identification and Provision of Services

The Early Intervention Program for Infants and Toddlers with disabilities and the Preschool Grants program have demonstrated the importance of early intervention. Children who receive services at an early age are often better able to learn once they reach school age. In addition, research on school-aged children who are experiencing significant reading or behavior problems has shown that the common practice of waiting until the third or fourth grade to refer those children to special education only increases these problems. Appropriate interventions need to happen as early as possible in a child's life, when it is clear that the child needs help, and at a time, developmentally, when the child could profit most from receiving services.

The IDEA Amendments of 1997 include provisions that encourage States to reach out to young children who are experiencing learning problems, and allow States and local school districts to utilize "developmental delay" eligibility criteria as an alternative to specific disability categories through age 9. Implemented properly, this provision will allow children to receive earlier and more appropriate interventions.

The amendments also allow for more flexible use of IDEA-funded staff who work in general education classrooms or other education-related settings so that they can work with both children who have disabilities and others who may need their help. These provisions are included in §§ 300.7 and 300.235 of this NPRM.

B. IEPs That Focus on Improving Results Through the General Curriculum

The new amendments enhance the participation of disabled children in the general curriculum through improvements to the IEP by—(1) Relating a child's education to what nondisabled children are receiving; (2) providing for the participation of regular education teachers in developing, reviewing, and revising the IEP; and (3) requiring that the IEP team consider the specific needs of each child, as appropriate, such as the need for behavior interventions and assistive technology. These provisions are included in §§ 300.344, and 300.346–300.347 of these proposed regulations.

C. Education With Nondisabled Children

Research data show that for most students with disabilities integration into general education programs with nondisabled children is often associated with improved results, higher levels of employment and independent living. The data also show that if disabled students are simply placed in general education classrooms without necessary supports and modifications they are more likely to drop out of school than their nondisabled peers. The new amendments address this issue by requiring that the IEP include: (1) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class; and (2) a statement of the specific special education and related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of program modifications or supports for school personnel that will be provided for the child. These provisions are incorporated in § 300.347 of these proposed regulations.

D. Higher Expectations for Disabled Students and Agency Accountability

A critical element in improving educational results for disabled children is promoting high expectations for them commensurate with their particular needs, and ensuring meaningful and effective access to the general curriculum. Data and experience show that when schools have high expectations for these children, ensure their access to the general curriculum, whenever appropriate, and provide them the necessary supports and accommodations, many can achieve to higher standards, and all can achieve more than society has historically expected.

Despite the current knowledge base in this regard, the education system often fails to promote such high expectations or to establish meaningful education goals, and about half of all disabled children are excluded from State and district-wide assessments.

The new amendments specifically address these concerns by requiring (1) the development of State performance goals for children with disabilities that must address certain key indicators of the success of educational efforts for these children—including, at a minimum, performance on assessments, dropout rates, and graduation rates, and regular reports to the public on progress toward meeting the goals; (2) that children with disabilities be included in general State and district-wide assessments, with appropriate accommodations, if necessary, and (3) that schools report to parents on the progress of their disabled child as often as such reports are provided to parents of nondisabled children. These provisions are included in §§ 300.137–300.138 and 300.347 of the proposed regulations.

The IDEA Amendments of 1997 also contemplate that State performance goals and indicators will have a crucial role in determining personnel training and development needs, and offer additional funding, through the State Improvement Program authorized under Part D of the Act, to help States meet their goals for children with disabilities. These provisions are addressed in §§ 300.380–300.382. Additionally, States are encouraged to offer funding to school districts to foster capacity building and systemic improvement activities, as addressed in proposed §§ 300.622–300.624. School districts are also authorized to establish school-based improvement programs, as described in §§ 300.234 and 300.245–300.250.

E. Strengthening the Role of Parents and Fostering Partnerships Between Parents and Schools

In order to achieve better results for children with disabilities, it is critical to strengthen the role of parents, and to provide a means for parents and school staff to work together in a constructive manner. The IDEA Amendments of 1997 include several provisions aimed at promoting the involvement of parents, including providing that they: (1) Have an opportunity to participate in meetings with respect to the identification, evaluation, or educational placement of their child or the provision of FAPE to the child; (2) are included in any group that makes decisions on the educational placement of their child; and (3) receive regular reports on their child's progress (by such means as report cards) as often as reports are provided to parents of nondisabled children.

The amendments also require that, at a minimum, parents be offered mediation as a voluntary option whenever a hearing is requested to resolve a dispute between the parents and the agency about any matters specified in the preceding paragraph. These provisions are included in §§ 300.347, 300.501, and 300.506 of this NPRM.

F. Reducing Unnecessary Paperwork and Other Burdens

The IDEA Amendments of 1997 include several provisions that reduce unnecessary paperwork, and direct resources to teaching and learning. For example, the amendments permit initial evaluations and reevaluations to be based on existing evaluation data and reports, and do not require that eligibility be re-established when a triennial evaluation is conducted if the IEP team agrees that the child continues to have a disability. The amendments also eliminate unnecessary paperwork requirements that discourage the use of IDEA funds for teachers who work in regular classrooms, while ensuring that the needs of students with disabilities are met. These provisions are included under §§ 300.234 and 300.533 of this NPRM.

In addition, these amendments permit States and local educational agencies to establish eligibility only once by providing policies and procedures to demonstrate that the eligibility conditions under part B are met. Thereafter, only amendments to those policies and procedures necessitated by identified compliance problems or changes in the law would be required. These provisions are included under §§ 300.110–300.111 and 300.180–300.181.

Subpart A—General

Purposes, Applicability, and Regulations That Apply to This Program

Proposed § 300.1 would retain the statement of the purposes of this part in the existing regulations, except for conforming those purposes to the new statutory changes. Consistent with section 601(d)(1)(A) of the Act, the purpose in proposed § 300.1(a) (relating to ensuring that all children with disabilities have available to them a free appropriate public education designed to meet their unique needs) would be amended to add "and to prepare them for employment and independent living." This change represents a significant shift in the emphasis of the Assistance to States program—to an outcome oriented approach that focuses on better results for children with disabilities rather than on simply ensuring their access to education.

Consistent with section 601(d)(1)(C) of the Act, the purpose in § 300.1(c) (relating to assisting States and localities to provide for the education of children with disabilities) would be amended by adding "educational service agencies" and "Federal agencies" to the list of entities that would be assisted under this part.

A note would be added following proposed § 300.1 that emphasizes the importance of independent living in promoting the integration and full inclusion of individuals with disabilities into the mainstream of American society, consistent with the new statutory purpose under § 300.1(a) (relating to employment and independent living). The note describes the philosophy of independent living

contained in Section 701 of the Rehabilitation Act of 1973.

Proposed § 300.2 (relating to the applicability of these regulations to State, local, and private agencies) would maintain the current regulatory provisions of this section, except for the following changes to conform the section to the new statutory provisions: First, paragraph (b) would be amended to eliminate the reference to State plans. The newly revised Act (Section 612(a)) no longer requires States to submit State plans. (See Subpart B, "State Eligibility—General," for discussion of the statutory elimination of State plan requirements). Second, consistent with new statutory provisions relating to children with disabilities who are incarcerated, paragraph (b)(4) of § 300.2 would be amended to replace the term "State correctional facilities" with the term "State and local juvenile and adult correctional facilities".

Proposed § 300.3 would update the list of regulations that apply to this program. Under proposed paragraph (a) of this section, the regulations in 34 CFR part 76 (State Administered Programs) would continue to apply to the Part B program, except for the following sections:

Sections 76.125–76.137 (relating to "Consolidated Grant Applications for Insular Areas") no longer apply. A new statutory provision in section 611(b)(4) of the Act expressly prohibits the consolidation of Part B grants provided to the outlying areas (defined in § 300.718) or to the "freely associated States" (defined in section 611(b)(6) of the Act).

Sections 76.650–76.662 (relating to "Participation of Children Enrolled in Private Schools") would no longer apply because the applicable provisions of these regulations, that have applied to the Part B program for many years, would be incorporated into Subpart D of this part ("Children in Private Schools"), and specifically under the provisions relating to "Children with Disabilities Enrolled by their Parents in Private Schools" (§§ 300.450–300.462).

All other regulations identified in § 300.3 of the existing regulations for this part would be retained under proposed § 300.3, except for 34 CFR part 86 ("Drug-Free Schools and Campuses") because those regulations are no longer applicable to State administered programs, and now apply only to institutions of higher education.

Definitions

The proposed regulations under this part would retain the scheme used in the current regulations relating to defining terms that are used in this part—that is, Subpart A would include definitions of all terms that are used in two or more subparts of the regulations, whereas any term that would be used in only a single section or subpart would only be listed in Subpart A, together with a reference to the specific section in which the term is defined. The list of these terms would be included in an introductory note (Note 1) immediately following the heading "Definitions", and would be updated, as follows:

Two terms would be deleted from the list in Note 1 ("first priority children" (§ 300.320(a)), and "second priority children" (§ 300.320(b)). Statutory provisions regarding priorities in the use of funds were deleted by the IDEA Amendments of 1997.

The term "individualized education program" (or "IEP") that appears in the list in Note 1 of the existing regulations, would be moved to proposed § 300.14, and would be defined along with the other terms of general applicability that are included under Subpart A.

Several terms that were added by the IDEA Amendments of 1997, but are not terms of general applicability, would be added to the list in Note 1. Following is a list showing each new term and the statutory and regulatory citations for that term:

- Base year (Relates to the new funding formula) (Section 611(e)(2)(A); § 300.707).
- Controlled substance (Relates to the discipline provisions) (Section 615(k)(10)(A); § 300.520).
- Excess costs (The term was defined in prior law, but the statutory definition was not included in the current regulations. The definition of the term, as updated by the IDEA Amendments of 1997, would be incorporated into these regulations (Section 602(7); § 300.284).
- Freely associated States (Relates to the Pacific Basin entities that are eligible for assistance under this part) (Section 611(b)(6); § 300.722).
- Indian; Indian Tribe (Relates to the eligibility of the Secretary of the Interior to receive amounts under this part) (Sections 602(9) and 602(10); § 300.264).
- Outlying area (Relates to grant requirements under this part) (Section 602.18; § 300.718).
- Substantial evidence (Relates to discipline provisions) (Section 615(k)(10)(C); § 300.521).
- Weapon (Relates to discipline provisions) (Section 615(k)(10)(D); § 300.520).

The following terms are not defined in the Act, but the Secretary proposes to add them to the list in Note 1 in order to provide additional clarification to certain provisions that would be added:

- Comparable in quality (A definition of this term would be added to § 300.455 to clarify what services must be provided by an LEA to children with disabilities who are enrolled by their parents in religiously affiliated or other private schools).
- Extended school year services (A definition of this term would be added to a new provision under proposed § 300.309 that would require each public agency to consider extended school year services on a case by case basis in ensuring that a free appropriate public education (FAPE) is available to each child with a disability. The definition would clarify that the meaning of the term "extended school year services" applies to providing services during the summer months. (A description of this provision is included under Subpart C, § 300.309, in this preamble).
- Meetings (A definition of this term would be added to § 300.501, relating to participation of parents in meetings about their child on matters covered under this part).
- Financial Costs (A definition of this term is included in proposed § 300.142(e) on use of private insurance proceeds).

A second note (Note 2) following the heading "Definitions" would maintain the note from the current regulations that lists abbreviations of certain terms that would be used throughout the regulations, but would update that list, as follows: The terms "Comprehensive system of personnel development" ("CSPD") and "individualized family service plan" ("IFSP") would be added; and, consistent with a statutory change (section 602(4)), the term "educational service agency" ("ESA") would replace the term "intermediate educational unit" ("IEU").

Proposed § 300.4 (Definition of "Act") would delete the obsolete reference to the Education of the Handicapped Act from the current regulatory definition of this term.

Proposed §§ 300.5 and 300.6 (Definitions of "assistive technology device" and "assistive technology service") would retain the current regulatory definitions of those terms, with the exception of a minor technical change for consistency in using the singular "child with a disability." The note following the definitions of those terms in the existing regulations (that states that the definitions are substantively identical to the definitions of those terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988) would be retained in abbreviated form.

Proposed § 300.7 would make the following changes to the current regulatory definition of "children with disabilities": The term would be restated in the singular ("Child with a disability"), and the definition itself would also be restated in singular rather than plural terms. This change is made because it more appropriately comports with the individualized focus of Part B of the Act. Paragraph (a)(1) of this section would be revised, consistent with section 602(3)(A)(i) of the Act, to clarify that the term "serious emotional disturbance" will hereinafter be referred to as "emotional disturbance". A corresponding change would be made in the definitions of the individual disability categories under proposed paragraph (b), by changing the term "serious emotional disturbance" to "emotional disturbance" and moving the definition of that term from paragraph (b)(9) to paragraph (b)(4).

Consistent with section 602(3)(B) of the Act, proposed § 300.7(a)(2) (relating to a State's discretion to use the term "developmental delay" for children aged 3 through 5) would be revised, as follows: The age range for using that term would be extended from ages 3 through 5 to ages 3 through 9; and the decision to use the term "developmental delay" would be at the discretion of both the State and the local educational agency (LEA). The State's definition of the category may be different under Parts B and H (to become Part C on July 1, 1998).

Note 1 following § 300.7 of the current regulations (relating to children with autism) would be added without change to proposed § 300.7, and four new notes would be added to that section, as follows:

Note 2 would address the statutory change under paragraph (a)(2) of this section relating to use of the term "developmental delay". The note would clarify that (1) if a State adopts the term for children aged 3 through 9, or a subset of that age range, LEAs that elect to use the term must conform to the State's definition; (2) LEAs could not otherwise use "developmental delay" as a basis for establishing a child's eligibility under this part; and (3) even if a State adopts the term, the State may not require an LEA to use it. This clarification is necessary to avoid confusion and potential compliance problems in implementing this new statutory provision, and to otherwise facilitate its implementation.

Note 3 would further address the use of the term "developmental delay" by including a statement from the House Committee Report that emphasizes the value of using "developmental delay" in establishing eligibility for young children in order to prevent locking the child into an eligibility category that may be inappropriate or incorrect during a period when it is often difficult to determine the precise nature of the disability.

Note 4 would describe congressional intent in changing the term "serious emotional disturbance" to "emotional disturbance". The note would include a statement from the House Committee Report that explains that the statutory change (1) is intended to have no substantive or legal significance, and (2) is intended strictly to eliminate the pejorative connotation of the term "serious." The Report further makes clear that this statutory revision does not change the meaning of the definition of "serious emotional disturbance" that is included in the existing regulations for this part.

Note 5 would address the conditions under which a child with attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) is eligible under Part B of the Act. The note clarifies that some children with ADD or ADHD who are eligible under this part meet the criteria for "other health impairments" if (1) the ADD or ADHD is determined to be a chronic health problem that results in limited alertness that adversely affects educational performance, and (2) special education and related services are needed because of the ADD or ADHD. (The note clarifies that the term "limited alertness" includes a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.)

The note further clarifies that (1) some children with ADD or ADHD may be eligible for services under other disability categories in § 300.7(b) if they meet the applicable criteria for those disabilities, and (2) if those children are not eligible under this part, the requirements of section 504 of the Rehabilitation Act of 1973 and its implementing regulations may still be applicable.

Proposed § 300.8 would add a definition of "day" to clarify that unless otherwise indicated, the term "day" means calendar day. Although the Department has traditionally interpreted "day" to mean calendar day, the term has never been defined in the regulations. It is important to include such a definition in these proposed regulations because under the new statutory provisions added by the IDEA Amendments of 1997, the term is applied differently under certain provisions, including the use of "school days"; "business days"; and "business days (including any holidays that fall on business days)."

Proposed § 300.9 would add the definition of "educational service agency" that appears in section 602(4) of the Act. That term was added by the IDEA Amendments of 1997 to replace the term "intermediate educational unit" that was used in prior law and in the current regulations.

Proposed § 300.10 would add the definition of "equipment" that appears in section 602(6) of the Act. That definition is substantively identical to the definition of "equipment" in prior law. However, that definition is not included in the current regulations. The Secretary believes that, for the regulations to be most useful to parents, school officials, and members of the general public, the regulations should contain all applicable statutory provisions in one document, rather than simply referencing definitions or other provisions that are contained in other regulations. With very few exceptions, these proposed regulations have been developed to include all applicable provisions of the Act.

Proposed § 300.11 would incorporate the existing regulatory definition of the term "free appropriate public education," except that the reference to the IEP requirements in paragraph (d) of that section would change from §§ 300.340–300.350 to §§ 300.340–300.351, to conform to a proposed change made in those requirements.

The Secretary proposes to add in proposed § 300.12 a definition of "general curriculum" to clarify that, for purposes of this part, there is a single curriculum that applies to all children within the jurisdiction of the public agency, including nondisabled children and children with disabilities. The purpose of adding this definition is to eliminate (or significantly reduce) the possibility of misinterpreting the new requirements in the Act relating to the participation of children with disabilities in the general curriculum. Some commenters on the June 27, 1997 **Federal Register** notice have expressed concern that a public agency could assume that there is a "general curriculum" for nondisabled and another "general curriculum" for certain categories of children with disabilities. If the requirements of this part were implemented based on that assumption this would seriously limit the possibility of accomplishing the purposes of Part B of the Act that are set out in the IDEA Amendments of 1997.

A note would be added following this section to clarify that the term "general curriculum" relates to the content of the

curriculum and not to the setting in which it is used. The note further clarifies that the general curriculum could be used in any educational setting along a continuum of alternative placements, as long as the setting is consistent with the least restrictive environment provisions of § 300.550–300.553 and is applicable to an individual child with a disability. A number of comments were received requesting clarification relating to this matter.

Proposed § 300.13 would retain the current regulatory definition of the term "include".

Proposed § 300.14 would include a definition of the term "individualized education program" (IEP). Because the term "IEP" has traditionally been defined under § 300.340 (an introductory section to the IEP requirements of §§ 300.340–300.350) the definition in proposed § 300.14 would simply reference the definition in § 300.340.

Proposed § 300.15 would add a definition of "individualized education program team" (or "IEP team"). The definition states that the term "IEP team" means a group of individuals described in § 300.344 that is responsible for developing, reviewing and revising an IEP for a child with a disability. Because the term "IEP team" is used throughout these regulations, it is important to include a definition of that term in Subpart A. However, to preserve the structural integrity of the current regulatory provisions on IEPs in §§ 300.340–300.350, the substantive definition of "IEP team", which conforms to the statutory definition under section 614(d)(1)(B), would be included in § 300.344.

Proposed § 300.16 would add a definition of "individualized family service plan" (or "IFSP"), because that term is used in several subparts within these regulations. The definition of the term would be a reference to 34 CFR 303.340(b).

Proposed § 300.17 would incorporate the statutory definition of "local education agency" from section 602(15) of the Act. This definition, which updates the prior statutory definition of "LEA" to conform to the definition of that term in the Improving America's Schools Act, would replace the current regulatory definition of "LEA."

A note would be added following proposed § 300.17 to clarify that a public charter school is eligible to receive funds under Part B of the Act if it meets the definition of "LEA." The note further clarifies that if a public charter school receives Part B funds it must comply with the requirements that apply to LEAs. Because of the widespread interest in establishing charter schools as a major part of educational reform, this clarification is necessary in order to ensure that, to the extent applicable, these schools are in full compliance with the requirements of this part.

Proposed § 300.18 would incorporate the statutory definition of "native language" from section 602(16) of the Act. The new definition is substantively similar to the current regulatory definition of "native language." The note following the current regulatory definition of "native language" would be retained, unchanged, except for clarifying that the term "native language" is also used in the procedural safeguards notice under proposed § 300.504(c). (The procedural safeguards notice is a new statutory provision that was added by section 614(d) of the Act.)

Proposed § 300.19 would incorporate the current regulatory definition of "parent" (under a new paragraph (a)). A proposed new paragraph (b) would be added to address questions raised by public agencies and other agencies representing children with disabilities about whether foster parents, who have a long-term relationship with a disabled child, could serve as the child's parent, in lieu of requiring the appointment of a surrogate parent to represent the child.

Proposed paragraph (b) of this section would permit State law to provide that a foster parent qualifies as a parent under Part B of the Act if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law, and if the foster parent (1) has an ongoing, long-term parental relationship with the child; (2) is willing to participate in making educational decisions in the child's behalf; and (3) has no interest that would conflict with the interest of the child.

The note following the current regulatory definition of "parent" (relating to other persons, such as a grandparent, who may act as a parent) would also be incorporated into these proposed regulations. The note would be revised to add conforming language about a foster parent, as described in paragraph (b) of this section.

Proposed § 300.20 would retain the current regulatory definition of "public agency," but would revise that definition to replace the term "IEUs" with the term "ESAs."

Proposed § 300.21 would incorporate without change the current regulatory definition of the term "qualified."

Proposed § 300.22 would retain the current regulatory definition of "related services," except for making the following changes: In proposed paragraph (a), the term "speech pathology and audiology" would be replaced by the term "speech-language pathology and audiology services," and the term "orientation and mobility services" would be added to the list of related services. These changes would be made to conform to a statutory change in section 602(22) of the Act.

Proposed § 300.22(b) would be amended to add a definition of the term "orientation and mobility services" identified in paragraph (a) of this section. The definition (included as a new paragraph (b)(6)) states that the term "orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community.

In proposed § 300.22(b)(9) (relating to psychological services) and (b)(13) (relating to social work services in schools) the definitions of those terms would be amended to add a reference to assisting in developing positive behavioral intervention strategies to the list of functions performed by these related services providers. These providers could be helpful in ensuring effective implementation of the new statutory provision in section 614(d)(3)(B) (proposed § 300.346) that requires that the IEP team, in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions.

In proposed § 300.22(b)(14), the current regulatory definition of the term "speech-pathology" would be retained, but the term would be changed to "speech-language pathology services," to conform to the statutory change identified in paragraph (a) of this section.

The note following the current regulatory definition of "related services" would be retained as Note 1 following proposed § 300.22, except for the following changes: The list of other related services in the first paragraph of that note would be amended (1) by adding other important services, including travel training, nutrition services, and independent living services, and (2) to clarify that the services would be provided if necessary for the child to receive FAPE.

Several notes would also be added to proposed § 300.22, as follows:

Note 2 would acknowledge the critical importance of orientation and mobility services for children who are blind or have visual impairments, and point out that there are children with other disabilities who may also need to be taught the skills they need to navigate their environments (e.g., travel-training). The note includes a statement from the House Committee report on Pub. L. 105–17 that emphasizes the importance of travel training for certain children with disabilities.

Note 3 would clarify that, with respect to various related services defined in this section, nothing would prohibit the use of paraprofessionals to assist in the provision of those services if doing so is consistent with the personnel standards requirements of proposed § 300.136(f).

Note 4 would explain that (1) most children with disabilities should receive the same transportation services as non-disabled children, and (2) for some disabled children, integrated transportation may be achieved by providing needed accommodations such as lifts and other adaptations on regular school transportation vehicles.

Proposed § 300.23 would incorporate the statutory definition of "secondary school" from section 602(23) of the Act. This definition updates the prior statutory definition of "secondary school" to conform to the definition of that term in the Improving America's Schools Act. The term "secondary school" is not defined in the current regulations.

Proposed § 300.24 would retain the current regulatory definition of "special education," except for the following changes:

In § 300.24(a)(2), the term "speech pathology" would be changed to "speech-language pathology services," to conform to the terms used in section 602(22) of the Act.

Under a new § 300.24(b)(3), a definition of "specially designed instruction" would be added to clarify that the term means adapting the content, methodology, or delivery of instruction to (1) address the unique needs of an eligible child under this part that result from the child's disability, and (2) ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. Although the term is a key component in the definition of "special education" in both prior law and the current Act, it has never been defined. With the shift in emphasis of the Part B program toward greater participation of children with disabilities in the general curriculum, this definition should facilitate implementation of the program.

Proposed § 300.24(b)(4) would replace the outdated definition of "vocational education" in the current regulations with a new definition that states that the term "vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

The note following the definition of "special education" in the current regulations would be retained under proposed § 300.24, but would be revised to clarify that a related services provider may be a provider of specially designed instruction if, under State law, the person is qualified to provide that instruction.

Proposed § 300.25 would incorporate the statutory definition of "State" from section 602(27) of the Act to mean each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. This definition updates the prior statutory definition of "State." The term is not defined in the current regulations.

Proposed § 300.26 would incorporate the definition of "supplementary aids and services" from section 602(29) of the Act. Although the term was included in prior law, it was not defined until the enactment of the IDEA Amendments of 1997. The term is defined as aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the LRE provisions in §§ 300.550–300.556.

Proposed § 300.27 would retain the current regulatory definition of "transition services," except for the following changes: The organizational structure of the definition has been changed to conform to the definition of the term in section 602(30) of the Act. The new definition simply describes what the term means, but does not attempt to regulate under the definition. The current regulatory definition uses the regulatory term "must" in defining what services must be provided. Consistent with the new statutory definition, the term "related services" is added as one of the services or activities covered by the term.

Proposed § 300.28 would add a list of terms found in the part B regulations that are defined in the Education Department General Administrative Regulations (EDGAR).

Subpart B—State and Local Eligibility

State Eligibility—General

Under the prior statute, States were required both to meet certain eligibility requirements and to submit State plans to the Department, and were subject to periodic resubmission requirements. The newly revised Act replaces that scheme with an eligibility determination based on a demonstration satisfactory to the Secretary that the State has in effect policies and procedures to ensure that it meets each of a list of conditions. (Section 612(a)). A State that already has on file with the Secretary policies and procedures demonstrating that it meets any of these requirements will be considered to have met that requirement for the purpose of receiving a grant under Part B of the Act. (Section 612(c)(1)). A technical change will be made to Part 76 with the publication of the final regulations to reflect the substitution of this demonstration of State eligibility for State plans.

Under section 612(c) (2) and (3), the policies and procedures submitted by a State remain in effect until a State submits modifications that the State decides are necessary or until the Secretary requires modifications based on changes to the Act or its implementing regulations, new interpretations by a Federal court or the State's highest court, or an official finding of noncompliance with Federal law or regulations. The provisions regarding State eligibility apply to modifications in the same manner and to the same extent as they do to a State's original policies and procedures.

Section 612(d) specifies that if the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination, and that the Secretary shall not make a final determination that a State is not eligible until providing the State reasonable notice and an opportunity for a hearing. These provisions are incorporated in the proposed regulations in §§ 300.110–300.113.

State Eligibility—Specific Conditions

The statutory eligibility conditions that must be addressed by each State in order to receive a grant under Part B of the Act are contained in proposed §§ 300.121–300.156. The IDEA Amendments of 1997 made a number of changes to the eligibility conditions and State plan requirements previously contained in the Act. These proposed regulations incorporate these statutory changes, with appropriate modifications described below, into the regulations

regarding State plan contents. Some changes of a technical nature have been made to preexisting regulatory provisions in order to reflect the fact that States now demonstrate eligibility, rather than submit State plans, as was the case under the prior law. In addition, some reordering and reorganization of current regulatory provisions is done for the sake of coherence.

Proposed § 300.121 would add to the current § 300.121 the new statutory provision, under section 612(a)(1)(A), that the right to a free appropriate public education (FAPE) extends to children with disabilities who have been suspended or expelled from school. The issue of what the right to FAPE means for children who have been suspended or expelled from school has been the subject of numerous comments to the Department in response to the June 27, 1997 notice, many of which raise this issue in the context of lengthy discussions about all of the provisions in the Act concerning discipline for children with disabilities. Proposed § 300.121(c) reflects the Secretary's interpretation that the IDEA Amendments of 1997 take a balanced approach to the issue of discipline for students with disabilities that reflect both the need to protect the rights of children with disabilities to appropriate educational services and the need of schools to be able to ensure that all children, including children with disabilities, have safe schools and orderly learning environments. The positions taken in these proposed regulations on the issue of continued services for children with disabilities who have been properly suspended or expelled and on the other disciplinary provisions of the Act (see proposed §§ 300.520–300.529) reflect this need for a balanced, fair interpretation of these new statutory provisions.

With regard to the issue of the provision of FAPE for children with disabilities who have been suspended or expelled, the Secretary believes that the statute struck a balance between the longstanding interpretation of the Department that schools are not required by the Act to provide services to children with disabilities who are suspended for ten school days or less, and the desire to ensure that children with disabilities not be removed from education for prolonged amounts of time in any school year.

In proposed § 300.121(c)(1), the Secretary proposes to define children with disabilities who have been suspended or expelled from school for purposes of this section to mean children with disabilities who have been removed from their current educational placement for more than 10 school days in a given school year.

In proposed § 300.121(c)(2), the Secretary proposes to clarify that the right to FAPE under these circumstances begins on the eleventh school day from the date of the child's removal from the current educational placement. For example, if a child with a disability who has not previously been suspended in the school year receives a three week suspension, services must be provided by the eleventh school day of that suspension. If a child with a disability who has received two five school day suspensions in the fall term is suspended again in the spring of that school year, services must be provided from the first day of the third suspension.

A second issue regarding the statutory right to FAPE for children with disabilities who have been suspended or expelled is how to reconcile the right to FAPE with the statutory recognition, in sections 612(a)(1)(A) and 615(k)(5)(A), that children with disabilities properly could be subjected to the same disciplinary measures applied to nondisabled children if their behavior was not a manifestation of their disability. The Secretary proposes in § 300.121(c)(2) to address this question by requiring that in providing FAPE to children with disabilities who have been suspended or expelled, a public agency shall meet the requirements for interim alternative educational settings under section 615(k)(3) of the Act. The Secretary believes requiring that education for children who have been suspended or expelled meets the standards in section 615(k)(3) allows accommodation of both the statutory obligation to provide FAPE to these children and recognizes in section 615(k)(5) that, through an appropriate suspension or expulsion, school districts can legitimately remove children from their current educational placement. Under proposed § 300.622, States may elect to use funds available for capacity building and improvement activities to support public agency services to children who have been suspended or expelled.

Two notes would also be added to proposed § 300.121. The first would be added to reflect the Department's longstanding interpretative position that the obligation to make FAPE available to children 3 through 21 begins on each child's third birthday, and an IEP or IFSP must be in effect by that date that specifies the special education and related services that must be provided, consistent with proposed § 300.342, including extended school year services, if appropriate. For children receiving early intervention services under Part C of the Act and who will be participating in a preschool program under Part B of the Act, the transition requirements of proposed § 300.132 would apply.

The second note to follow proposed § 300.121 would recognize that, under the statute, school districts are not relieved of their obligations to provide appropriate special education and related services to individual disabled students who need them even though the students are advancing grade to grade, and that decisions about eligibility under Part B of the Act for these students must be determined on an individual basis.

Proposed § 300.122 revises the current § 300.122 to eliminate an obsolete provision about the provision of FAPE to children with disabilities before September 1, 1980, and incorporates the new statutory limitation to the obligation to make FAPE available to certain individuals in adult correctional facilities. Section 612(a)(1)(B)(ii) provides that the obligation to make FAPE available to all children with disabilities does not apply to individuals aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability or did not have an IEP under Part B of the Act. This provision, with minor modifications for clarity, would be reflected in proposed § 300.122(a)(2). A note, Note 2, would be added following § 300.122 quoting the House Committee Report explaining the statutory change.

The Secretary also proposes to amend § 300.122 to make clear that the right to FAPE does not apply to children with disabilities who have graduated from high school with a regular high school diploma. This reflects the Secretary's understanding that the right to FAPE is ended either by a student successfully finishing a regular secondary education program or reaching an age between 18 and 21 at which, under State law, the right to FAPE has ended. In addition, the changes made by the IDEA Amendments of 1997, particularly as they relate to the content of children's IEPs in section 614(d) of the Act, reinforce the Secretary's belief that FAPE is closely related to enabling children with disabilities to progress in the same general curriculum that is provided nondisabled children. The Secretary also believes that it is important to clarify that the right to FAPE is not ended if a student with disabilities is awarded some other certificate of completion or attendance instead of a regular high school diploma. This change should not be interpreted as prohibiting the use of Part B funds to provide services to a student with disabilities who has already achieved a regular high school diploma, but who still is in the State's mandated age range if an LEA or SEA wishes to do so.

Note 1 following proposed § 300.122 would explain that graduation is a change of placement under Part B and, as such, would require prior written notice to the parents, and student if appropriate. The note would also explain that under § 300.534(c) a reevaluation is required before graduation. The note would further explain that other documents, such as certificates of attendance or other certificates granted instead of a regular high school diploma, would not end a student's entitlement to FAPE.

Proposed §§ 300.123–300.124 include, with only minor changes reflecting the new State eligibility scheme of the statute, the current regulatory provisions concerning State policies and procedures relating to the full educational opportunity goal and the full educational opportunity timetable. Current regulatory provisions concerning the full educational opportunity goal regarding facilities, personnel, and services, and priorities would be eliminated as these provisions were removed from the statute by the IDEA Amendments Act of 1997. Section 612(a)(2) of the Act requires each State to have established a full educational opportunity goal and timetable.

Proposed § 300.125 incorporates the current regulatory provision, revised as discussed, concerning child find obligations (identification, location, and evaluation of children with disabilities) with the new statutory provision that this obligation includes children with disabilities attending private schools, in accordance with section 612(a)(3)(A) of the Act. The requirement in the current regulation to provide yearly information about child find activities would be eliminated in light of the fact that periodic State plans are no longer required by statute. The provisions requiring data on and the method for determining which children are not receiving special education and related services also would be removed from the regulation, reflecting statutory changes. A new § 300.125(c) would be added that includes the construction clause of section 612(a)(3)(B). That clause clarifies that nothing in the Act requires that children be classified by their disability so long as each child who has a disability and, by reason thereof, needs special education and related services, is regarded as a child with a disability under Part B of the Act. The notes following the current regulatory provision regarding child find would be retained, but shortened and updated as appropriate. Two additional notes would be added to reflect longstanding policy positions of the Department. A new Note 2 would recognize that the services and placement needed by each child with a disability must be based on the child's unique needs and may not be determined or limited based on the child's disability category.

Note 3, which is largely retained from the current regulations, explains the important relationship between child find activities under this part and child find activities under Part 303 for children with disabilities from birth through age 2. The Secretary believes that developing effective child find activities for this age population will provide significant benefits not just for very young children with disabilities but also for schools and other public agencies that may find their responsibilities easier because of early attention to these children's needs.

A Note 4 following this section would reflect that each State's child find obligation under the statute includes highly mobile children, such as migrant and homeless children.

Proposed § 300.126 incorporates the evaluation procedures from sections 612(a)(7) and 612(a)(6)(B), by cross-referencing the provisions of proposed §§ 300.530–300.536, which include all of the statutory evaluation provisions of sections 612(a)(6)(B) and 614(a)–(c) and related evaluation procedures from current regulations. This provision would replace the current regulatory section on State procedures on protection in evaluation procedures.

Proposed § 300.127 includes, with only minor changes reflecting the new statutory State eligibility scheme, the provisions of the current regulation concerning State policies and procedures on the confidentiality of personally identifiable information. This provision reflects section 612(a)(8) of the Act. The note following this section would be updated to reflect current information about the regulations implementing the Family Educational Rights and Privacy Act.

Proposed § 300.128 is the same as the current regulatory provision concerning individualized education programs (IEPs), except as revised to reflect the new statutory State eligibility scheme and the requirements of section 612(a)(4) of the Act.

Proposed § 300.129 incorporates the current regulatory provision concerning procedural safeguards, as revised as discussed, and the statutory provision, in section 612(a)(6)(A), that children and their parents are afforded the procedural safeguards required by section 615.

Proposed § 300.130 would remove from the existing regulatory provision regarding least restrictive environment (LRE) the data collection requirements, and make other conforming revisions, as discussed, in light of the new State eligibility structure of the Act, consistent with section 612(a)(5)(A). (Data on LRE would still be collected under section 618(a)(1)(A) (iii) and (iv) of the Act.) Additionally, the following new statutory requirements regarding a State's funding formula are added as proposed § 300.130(b): (1) if a State uses a funding mechanism to distribute State funds on the basis of the type of setting in which a child is served, the funding mechanism may not result in placements that violate the LRE requirements; and (2) if the State does not have policies and procedures to ensure compliance with this new requirement, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate LRE. A note would also be added to this provision quoting language from the House Committee Report recognizing that this statutory addition does not eliminate the need for a continuum of alternative placements that is designed to meet the unique needs of each child with a disability.

Proposed § 300.132 adds to the existing regulatory provision concerning the transition of individuals from Part H (to be renamed part C on July 1, 1998) to Part B the new statutory language (from section 612(a)(9)) concerning "effective" transitions, and the provision that LEAs will participate in transition planning conferences arranged by the designated lead agency under Part H (to be renamed Part C).

Proposed § 300.133 updates the existing regulatory provision concerning children in private schools to reflect the new statutory structure, and the changes made in subpart D of this proposed regulation, consistent with section 612(a)(10) of the Act.

Proposed § 300.135 reflects the new statutory requirements concerning a comprehensive system of personnel development (CSPD). Section 612(a)(14)

provides that a State's CSPD must meet the requirements for a State improvement plan relating to personnel development. A note following this section would quote the House Committee Report to the effect that the State's CSPD must include procedures for acquiring and disseminating significant knowledge and for adopting appropriate promising practices, materials, and technology. The note would also explain that a State could use the information provided to meet the State eligibility requirement under Part B of the Act as a part of a State improvement program plan under Part D of the Act.

Proposed § 300.136 reflects the existing regulatory provision on personnel standards, revised as discussed, and the requirements of section 612(a)(15) of the Act. A new paragraph (f) adds the new statutory provision from section 612(a)(15)(B)(iii) that allows paraprofessionals and assistants who are appropriately trained and supervised, under State law, regulations or policy to be used to assist in the provision of services under Part B of the Act. Also added is the new provision, from section 612(a)(15)(C), that a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services, including, in a geographic area where there is a shortage of those personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meeting State standards within three years. This provision would be incorporated in § 300.136(g). A note following this section would be added explaining that a State may exercise the option in paragraph (g) even though the State has reached its established date for retraining or hiring of personnel to meet appropriate professional requirements under paragraph (c) of this section so as to avoid any unwarranted confusion on this issue. Another note would be added to clarify that if a State has only one entry level degree requirement for a specific profession or discipline, it is not precluded by § 300.136(b)(1) from modifying that standard if necessary to ensure the provision of FAPE to all children with disabilities in the State.

Proposed § 300.137 would add to the regulation the new statutory provision of section 612(a)(16) concerning performance goals and indicators. Basically, this provision requires that States have goals for the performance of children with disabilities, and indicators of progress that at a minimum address the performance of children with disabilities on assessments, drop-out rates, and graduation rates. The provision also requires reporting every two years to the Secretary and the public on the progress of the State, and revisions to a State's improvement plan under Part D of the Act as needed to improve performance, if the State receives a grant under that authority. The current regulatory provision concerning procedures for evaluation of the effectiveness of programs would be removed, reflecting a statutory change.

Proposed § 300.138 would add the new requirement of section 612(a)(17)(A) concerning inclusion of children with disabilities in general State and district-wide assessments, including conducting alternative assessments not later than July 1, 2000 for children who cannot participate in State and district-wide assessment programs. A note following this section would explain that only a small number of children with disabilities should need alternative assessments. The provision of section 612(a)(17)(B) concerning reports related to these assessments are contained in proposed § 300.139.

The Secretary proposes to interpret the statutory requirements to make clear that whenever the SEA reports to the public on student performance on wide-scale assessments, the reports must include aggregated results of all children, including children with disabilities, as well as disaggregated data on the performance of children with disabilities. The Secretary believes that the IDEA Amendments of 1997 were designed to foster consideration of children with disabilities as a part of the student population as a whole. It would not be in keeping with that focus if, in reporting assessment data, results for children with disabilities were not included in reports on the student population as a whole. A note following this section would explain that States would not be precluded from also reporting data in a way that would, for example, allow them to continue trend analysis of student performance, if children with disabilities had not been included in those analyses in the past.

Proposed § 300.141 incorporates the current regulatory provision, revised as discussed, concerning SEA responsibility for all educational programs, consistent with the requirement in section 612(a)(11) of the Act.

Proposed § 300.142 would replace the current regulatory provision concerning interagency agreements with the requirements of section 612(a)(12) regarding methods of ensuring services. This provision requires that the Chief Executive Officer or designee in each State ensure that an interagency agreement or some other mechanism for interagency coordination is in effect between noneducational agencies that are obligated under other law to provide or pay for services that are considered special education or related services under Part B of the Act and the SEA to ensure that those services are provided. In addition to the statutory requirements, a paragraph (e) would reflect the Department's interpretation that it would violate the statutory obligation to provide free services if a public agency required a parent to use private insurance proceeds to pay for services required under the Act. The Department has long taken the position that Part B of the Act and section 504 of the Rehabilitation Act prohibit a public agency from requiring parents to use insurance proceeds to pay for the services that must be provided to an eligible child under the FAPE requirements of those statutes, if they would incur a financial cost to secure those services. (See Notice of Interpretation published on December 30, 1980 (45 FR 66390)). This paragraph also would include a definition of the term "financial cost," so that both parents and school districts will have a common understanding of the term. This definition reflects the Department's longstanding interpretation of the statutory obligation to provide services at no cost as applied to parents' private insurance. A note following this section would explain how this paragraph applies if a family is covered by both private insurance and Medicaid.

The Secretary believes that the same basic principle, that services be available at no cost to parents, would be equally applicable to parents whose children are eligible for public insurance, but that there is no current need to regulate on the public insurance issue because there is no risk of financial loss to parents under current public insurance programs such as Medicaid. The Secretary invites comment on whether a policy on public insurance similar to the proposed section regarding private insurance should be added to the final regulation.

The Secretary also proposes to add a new paragraph (f) to specify that proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR 80.25. That section imposes limitations on how program income can be treated by grantees that would lead to States returning reimbursements from public and private insurance to the Federal government or requiring that the funds be used under this part, which could discourage States and school districts from using all the resources available in paying for these services. Given the current small percentage that Federal funds under this part are to total funding for services under this part, and the fact that children with disabilities are guaranteed services under this part, the Secretary believes that States and school districts should be given some flexibility in how they use and account for funds received as reimbursements from other sources. A note would be added after this section explaining the consequences, under the Maintenance of Effort (MOE) requirements, of various State and local choices in accounting for these funds.

Two other notes would also be added following proposed § 300.142. One would quote the House Committee Report relating to the methods of insuring services provision. The other would explain that if a public agency cannot get parent consent to use public or private insurance for a service, the agency may use funds under Part B of the Act for that service. In addition, the note would explain that to avoid financial cost to parents who otherwise would consent to the use of private insurance, the public agency may use funds under this part to pay the costs of accessing the insurance, such as deductible or co-pay amounts.

Proposed § 300.143 incorporates, with revisions as described, the existing regulatory provision concerning State procedures for informing each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

Proposed § 300.144 would retain, with revisions as described, the existing regulatory provisions concerning State procedures that the SEA does not make a final determination regarding an LEA's eligibility for assistance under Part B without first giving reasonable notice and an opportunity for a hearing (consistent with section 612(a)(13)). The Secretary also proposes to retain as proposed § 300.145 the existing regulatory provision regarding recovery of funds for misclassified children. The statutory provision regarding recovery of funds for misclassified children was removed by the IDEA Amendments of 1997. In light of the fact that funds under section 611 of the Act will continue to be distributed based on a child count until some time in the future, however, the Secretary believes that prudent administration of Federal funds dictates that States continue to recover funds allocated among districts on the basis of incorrect child counts. The Secretary does not believe that this requirement will impose additional burden on States as all States already have these procedures. When the funding formula changes to the permanent formula under proposed § 300.706, this provision will be removed.

Proposed § 300.146 would add the new requirement of section 612(a)(22) regarding SEA examination of data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among State agencies and LEAs in the State and as compared to the rates for nondisabled children. As provided in the statute, if discrepancies are occurring, the SEA reviews and, if appropriate, revises its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards.

Proposed § 300.147 adds the new statutory requirements of section 612(b) concerning information that is required if an SEA is providing direct services. The Secretary interprets the statutory provision regarding requirements that must be met by an SEA as not including requirements relating to certain use of funds provisions, reflecting the different rules for SEA and LEA use of Part B funds. This regulation would replace the current regulatory provision on SEA provision of direct services.

Proposed § 300.148 adds the new statutory requirement of section 612(a)(20) concerning public participation in the adoption of any policies and procedures needed to comply with Part B of the Act. The proposed regulation would apply the procedures for public participation regarding State plans in the current regulations, with appropriate revisions as described, to the adoption of State policies and procedures in the future. Those procedures are in this NPRM in proposed §§ 300.280–300.284. The Secretary believes that these procedures are necessary to ensure that there is an adequate opportunity for public participation in the development of State policies and procedures related to the provision of special education and related services to children with disabilities. In addition, the Secretary does not see any indication in the IDEA Amendments of 1997 of an intention by Congress to lessen requirements concerning public participation in the development of State policies and procedures. The existing regulatory provision concerning consultation would be deleted, reflecting a statutory change. The existing regulatory provision concerning other Federal programs also would be deleted, in accordance with statutory changes.

Proposed § 300.150 incorporates the statutory requirement of section 612(a)(21)(A) that the State establish and maintain an advisory panel to provide guidance with respect to special education and related services for children with disabilities in the State.

Proposed § 300.152 incorporates the existing regulatory provision, and a note concerning commingling of Part B funds with State funds, with appropriate revisions, reflecting the requirements of section 612(a)(18)(B).

Proposed § 300.153 maintains the existing regulatory provision, regarding State-level nonsupplanting, appropriately revised, consistent with section 612(a)(18)(C). The note in the existing regulatory provision on nonsupplanting would be removed as it would be confusing in light of the new statutory State-level maintenance of effort requirement addressed in proposed § 300.154.

Proposed § 300.154 reflects the new statutory requirement of section 612(a)(19) which prohibits the State from reducing the amount of State financial support for special education and related services below the level of that support for the preceding fiscal year. If the State does reduce State support, the Secretary is directed to reduce funds to the State in the subsequent year by an amount equal to the amount by which the State failed to meet the requirement. The statute also provides that waivers are possible under certain described circumstances, and, if granted, in the year following the waiver the State must meet the level of support it had provided in the year before the waiver.

Proposed §§ 300.155 and 300.156 would simplify, in light of statutory changes, the provision in current regulations regarding policies and procedures for use of Part B funds, and annual descriptions of the use of Part B funds. Proposed § 30.156(b) would incorporate the longstanding Department practice of permitting a State to submit a letter instead of filing a new report when the State's use of funds that are retained by the State has not changed from the prior report submitted.

LEA and State Agency Eligibility—General

Similar to the State eligibility scheme as described, under section 613(a) LEAs and State agencies now also must demonstrate eligibility. Section 613(b)

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specifies that if an LEA or State agency has policies and procedures on file with the State that meet a requirement of the new Act, the SEA shall consider the LEA or State agency to have met that requirement. Policies and procedures remain in effect until modified as the LEA or State agency decides necessary, or until required by the SEA because of changes to the Act or its implementing regulations, a new interpretation of the Act by Federal or State courts, or an official finding of noncompliance with Federal or State law or regulations. A provision would be added to clarify that the same rules apply to modifications to LEA or State agency policies and procedures as apply to the original ones consistent with the statutory provision regarding State eligibility. These provisions are in proposed §§ 300.180–300.182.

The excess costs provisions in the current regulations would be condensed and streamlined in these proposed regulations in §§ 300.184–300.185.

Proposed §§ 300.190 and 300.192 reflect the new statutory requirements of section 613(e) concerning joint establishment of eligibility and requirements for education service agencies (formerly intermediate educational units). These provisions eliminate the $7,500 minimum grant requirement of prior law and add an explicit prohibition on an SEA from requiring a charter school that is an LEA to jointly establish eligibility unless the SEA is explicitly permitted to do so under State law.

Proposed § 300.194 reflects the new statutory provision in section 613(i) concerning State agency eligibility. The Secretary proposes, in these regulations, to require that these agencies meet all the conditions of Subpart B of these proposed regulations that apply to LEAs, in keeping with the authorization in section 613(i)(2).

Proposed § 300.196 reflects the statutory provision of section 613(c) that if the SEA determines that an LEA or State agency is not eligible, the SEA notifies the LEA or State agency of that determination, and provides the LEA or State agency with reasonable notice and an opportunity for a hearing.

Proposed § 300.197 adds the statutory requirements concerning SEA actions if an LEA is failing to comply with the requirements of Part B.

LEA Eligibility—Specific Conditions

In accordance with the statutory changes in section 613(a), proposed § 300.220 simplifies the basic eligibility conditions for LEAs. This provision would replace most of the current regulations concerning the content of LEA applications. Under these proposed regulations LEAs must have in effect policies, procedures, and programs that are consistent with State policies and procedures required to demonstrate State eligibility.

With regard to implementation of the State's comprehensive system of personnel development, proposed § 300.221 reflects the requirement in section 613(a)(3) that the LEA demonstrate that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with State requirements, and that to the extent the LEA determines appropriate, it contributes to and uses the CSPD established by the State.

Proposed § 300.230 reflects the statutory provision of section 613(a)(2)(A) that funds under Part B of the Act must be used in accord with the requirements of Part B, may only be used for the excess costs of providing special education and related services to children with disabilities, and must supplement and not supplant other State, local and Federal funds.

Proposed § 300.231 reflects the new statutory provision that LEAs not reduce the level of expenditure of LEA funds.

Proposed § 300.232 incorporates new statutory exceptions to the local maintenance of effort (MOE) requirement. With regard to the exception relating to the voluntary departure or departure for just cause of special education personnel, the Secretary in these proposed regulations proposes to clarify that the exception only applies if personnel departing are replaced by qualified, lower-salaried personnel. This limitation would not permit a public agency to meet the MOE requirement by removing personnel and failing to replace them. The Secretary does not believe that the statutory provision was intended to permit a reduction in expenditures through attrition unless one of the other exceptions also applied. Other statutory exceptions added include exceptions covering a decrease in enrollment of children with disabilities; the termination of an obligation of the agency to pay for an exceptionally costly program, as determined by the SEA, because the child has left the agency, has reached the age at which the agency no longer has an obligation, or the child no longer needs special education; and the termination of costly expenditures for long-term purchases. A note following this section would quote from the House Committee Report on the issue of exceptions to maintenance of effort for voluntary departure of special education personnel, which provides the basis for the clarification of this exception.

Proposed § 300.233 reflects the new statutory provision in section 613(a)(2)(C) that in years when the Federal appropriation under section 611 is more than $4,100,000,000 an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B that exceed the amount it received under Part B in the prior year. Under certain circumstances, an SEA may be authorized under State law to prevent an LEA from exercising this authority.

Proposed § 300.234 incorporates a new statutory provision concerning use of Part B funds in schoolwide project schools under section 1114 of the Elementary and Secondary Education Act of 1965. The amount of Part B funds that may be used in a schoolwide project is limited, by statute, to the amount arrived at by multiplying the per child amount the LEA receives under Part B by the number of children with disabilities participating in the schoolwide project school. The Secretary interprets the statutory provision regarding use of funds to require that these funds may be used without regard to the excess costs requirement, and that in calculating supplement, not supplant and maintenance of effort under Part B, these funds be considered as Federal Part B funds. An explicit statement that except as to the flexibility granted concerning how the Part B funds are used, all other requirements of Part B must be met by an LEA using Part B funds in a schoolwide project school would also be added. This reflects the Secretary's interpretation that this provision cannot be used as a basis for not providing services to children with disabilities in accordance with the other requirements of the Act. A note following this section would caution that children in schoolwide project schools must still receive services in accordance with a properly developed IEP and must still be afforded all of the rights and services guaranteed to children with disabilities under the Act.

Proposed § 300.235 incorporates the provisions of section 613(a)(4) regarding permissive use of Part B funds for special education and related services and supplementary aids and services provided to a child with disabilities that also benefit other children and to develop and implement a coordinated services system. The provision would make clear that an LEA will not be found to violate the commingling, excess costs, supplement not supplant, or maintenance of effort requirements based on its use of funds in accordance with this provision.

Proposed §§ 300.240–300.250 reflect the new statutory provisions of section 613(a) (5), (6) and (7), (f) and (g) related to treatment of charter schools and their students, information for the SEA to carry out its duties under Part B, public availability of documents related to LEA eligibility, coordinated services systems, and school-based improvement plans. A note following proposed § 300.241 would explain that the provisions of the Part 300 regulations that apply to public schools also apply to children in public charter schools and that children with disabilities in charter schools retain all their rights under these regulations.

Secretary of the Interior—Eligibility

Proposed §§ 300.260—300.267 incorporate the revised statutory provisions concerning the payment to the Secretary of the Interior into the existing regulations on this topic. In proposed § 300.260 references to State eligibility requirements would be updated to reflect the new State eligibility requirements of the Act. In proposed § 300.262 the amount the Secretary of the Interior may use of the payment for administrative costs would be changed to 5 percent of its payment or $500,000 whichever is greater, reflecting the increase in the minimum for State administration in section 611. Provisions in the statute regarding a plan for coordination of services for all Indian children residing on reservations covered by Part B (section 611(i)(4)), definitions of the terms "Indian" and "Indian tribe" (section 602 (9) and (10)), and provisions regarding the establishment of an advisory board and reports by that board (sections 611(i) (5) and (6)(A)) would also be added.

Public Participation

Proposed §§ 300.280–300.284 incorporate the existing regulatory provisions concerning public participation, revised to reflect the statutory changes from State plans to State eligibility demonstrations. The Secretary believes that these provisions remain necessary to ensure adequate public participation in the development of State policies and procedures regarding the provision of special education and related services to children with disabilities under Part B of the Act, and sees nothing in the changes in the IDEA Amendments of 1997 that indicates a Congressional intent to reduce these requirements.

Subpart C—Services

Free Appropriate Public Education

Proposed § 300.300 is essentially the same as in the current regulation, with minor changes to update and accommodate new statutory provisions. Proposed §§ 300.301–300.308 also are restatements of the current regulatory provisions at these sections.

Reflecting the Secretary's long standing interpretation of the obligation to make FAPE available based on individual needs, a new § 300.309 would be added to address extended school year services. This provision would require that each public agency ensure that extended school year services are available to each child with a disability to the extent necessary to ensure that a free appropriate public education is available to the child, based on an individual determination of the child's needs by the child's IEP team. The term "extended school year services" is defined to be special education and related services that are provided to a child with a disability beyond the normal school year, in accordance with the child's IEP, at no cost to the child's parents, and that meet the standards of the SEA. A note following this section would explain that agencies may not limit extended school year services only to children with particular categories of disability or unilaterally limit the duration of services. The note would also explain that nothing in Part B requires that every child with a disability is entitled to, or must receive, extended school year services. A second note would explain that States may establish standards for decisions regarding which children should receive extended school year services and provides examples of acceptable factors that may be considered. These changes reflect the Secretary's policy guidance over the years on this topic, which itself has been informed by a number of Federal court decisions over the last twenty years under Part B of the Act. The Secretary believes that the changes are necessary to ensure that children with disabilities who need extended school year services have appropriate access to those services, and that those services are a part of FAPE.

Proposed § 300.311 reflects new statutory provisions in sections 612(a)(1)(B) and 614(d)(6) concerning students with disabilities who are in adult correctional facilities. Paragraph (a) would specify that the obligation to make FAPE available to all children with disabilities does not apply to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability and did not have an IEP under Part B. This language is taken from the statute, with minor changes for the sake of clarity. Paragraph (b) would provide that certain requirements of Part B do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons: the provisions relating to participation of children with disabilities in general assessments, and the provisions relating to transition planning and transition services for students whose eligibility under Part B will end, because of their age, before they will be released from prison. The Secretary interprets the provision concerning transition services to require consideration of the student's sentence and eligibility for early release because the required determination must happen before the student actually is released from prison. Reflecting statutory requirements, paragraph (c) would specify that the IEP team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

Evaluations and Reevaluations

Proposed §§ 300.320 and 300.321 would be added to reflect the basic statutory requirements concerning evaluations and reevaluations contained in section 614 (a) and (b) of the Act. Evaluations and reevaluations would be addressed in greater detail in the discussion of proposed §§ 300.530–300.536.

Individualized Education Programs

Proposed § 300.340 would restate the current regulatory definitions of "IEP" and "participating agency."

Proposed § 300.341 would restate the current regulatory provision concerning the SEA responsibility for development and implementation of IEPs, with one minor wording change. Throughout these proposed regulations, the Secretary proposes to use the term "religiously-affiliated" rather than the term "parochial" as the former is more inclusive and accurately reflects the type of schools described. These proposed regulations distinguish between children placed in private schools by public agencies and those

placed in private schools by their parents. Proposed §§ 300.401 and 300.402 address children placed by public agencies in private schools. Proposed § 300.403 concerns placement in private schools when the provision of FAPE is at issue. Proposed §§ 300.450–300.462 concern children placed by their parents in private schools.

Proposed § 300.342 (a) and (b) would restate, with minor nonsubstantive changes, the current regulatory provisions regarding when IEPs must be in effect. A new paragraph (c) would be added regarding the use of IFSPs for children aged 3 through 5 as provided for in the statute at section 614(d)(2)(B), and reflecting the Secretary's interpretation that this provision permits, if State policy provides and the public agency and parent agree, the use of an IFSP that meets the content requirements of section 636(d) of the Act in place of a document meeting the IEP content requirements of section 614(d) of the Act, for children aged 3 through 5. With regard to the requirement for agreement by the parents to using an IFSP instead of an IEP, the Secretary proposes to require written informed consent that is based on an explanation of the differences between an IFSP and an IEP in light of the importance of the IEP as the statutory vehicle for ensuring the provision of FAPE to children with disabilities. For most children who are five-years old, and for many 3- and 4-year olds as well, the use of an IEP that must be tied to the general curriculum provided to nondisabled age peers, is encouraged.

The Secretary proposes to add a new paragraph (d) to this section representing the Secretary's understanding of section 201(a)(2)(C) of Pub. L. 105–17 that IEPs that meet the requirements of section 614(d) (1)–(5) must be in effect as of July 1, 1998. Delaying implementation of these provisions beyond that date would be inconsistent with the right of children with disabilities to an IEP that meets the new requirements as of July 1, 1998. The note following this section from current regulations would be retained with minor changes, and a new note added to clarify that the provisions of section 614(d)(6) of the Act, relating to services to children with disabilities in adult prisons, took effect on June 4, 1997.

Proposed § 300.343(a) restates the current regulatory provision concerning the general standard for conducting IEP meetings. In paragraph (b) of this section, the Secretary would add a new provision on timelines for IEPs that would require that an offer of services based on an IEP must be made within a reasonable period of time from a public agency's receipt of parent consent to an initial evaluation reflecting the Department's longstanding interpretation of the requirements of the statute. A note following this section would be added to explain that for most children it would be reasonable to expect that a public agency would offer services based on an IEP within 60 days of receipt of parent consent for initial evaluation. The Secretary proposes this reasonable time standard in light of the importance of appropriate educational services for children with disabilities to enable them to receive FAPE and the frequent long delays observed between referral for special education evaluation and actual provision of services. Paragraph (b) would retain the current regulatory timeline of 30 days from the determination that the child is a child with a disability to an IEP meeting. A new paragraph (c) would also be added to this section that revises the current regulatory provision concerning review of IEPs to reflect new statutory requirements in section 614(d)(4). The note following this section in current regulations would be deleted as unnecessary and confusing in light of changes proposed to the regulation.

Proposed § 300.344 would revise the current regulatory provision concerning IEP team membership to reflect the requirements of section 614(d)(1)(B). Under this provision the IEP team includes the parents of the child with a disability; at least one regular education teacher (if the child is, or may be, participating in regular education); at least one special education teacher or, if appropriate, at least one special education provider of the child; a representative of the LEA who meets certain specified requirements; an individual who can interpret the instructional implications of evaluation results; at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel; and, if appropriate, the child.

The Secretary proposes to expand the current regulatory provision requiring the agency to invite students to participate in IEP meetings if the meeting will include consideration of the statement of needed transition services to also include meetings that will include consideration of transition service needs, in accordance with § 300.347(b)(1) and note 5 following that section. This reflects the Department's longstanding regulatory position that a student with a disability be involved in the development of an IEP if transition services are being considered. The current regulatory provision regarding taking other steps to ensure consideration of the student's preferences and interest if the student does not attend the IEP meeting would be maintained. This section also would maintain the current regulatory provisions concerning inviting representatives of any other agency that is likely to be responsible for providing or paying for transition services, including taking other steps to obtain participation if a representative invited to a meeting does not attend.

Note 1 following this section would be revised in light of the statutory changes. It would also explain that an LEA may designate one or more regular education teachers of the child to attend the IEP meeting, if the child has more than one. It would further state that if all of the child's teachers are not participating in the IEP meeting, LEAs are encouraged to seek input from teachers who will not be attending, and should ensure that teachers who do not attend the IEP meeting are informed about the results of the meeting, including receiving a copy of the IEP. Finally, the note would explain that LEAs are encouraged, in the case of a child whose behavior impedes the learning of the child or others, to have a person knowledgeable about positive behavior strategies at the meeting. Note 2 following this section in the current regulations would be removed.

Proposed § 300.345 largely would maintain the current regulatory provision concerning parent participation in IEP meetings based on the statutory requirements at section 614(d)(1)(B). It would be revised only by adding to the parent notification provisions that for students of any age, if a purpose of the IEP meeting is either the development of a statement of transition service needs or consideration of needed transition services, the agency's notice to the parent must indicate that purpose, and that the agency must invite the student to attend. This change merely modifies the current regulation to accommodate the new statutory provision requiring a statement of transition service needs for students beginning no later than age 14 contained in proposed § 300.347.

Proposed § 300.346 would add a new provision to the regulations based on the requirements of section 614(d)(3) concerning development of the IEP. That section requires that in developing each child's IEP the IEP team consider the strengths of the child and the concerns of the parents for enhancing the education of their child and the results of the initial or most recent evaluation of the child. That section requires that the IEP team also consider a number of special factors that may apply to individual children. For example, if a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior. These statutory requirements are included in proposed § 300.346(a). Proposed § 300.346(b) would clarify that IEP teams consider these factors in review and revision of IEPs as well as in their initial development. A paragraph (c) also would be added to clarify that if in considering a factor, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP. It would be an anomalous result if an IEP team determined that a service or device was needed to address one of the statutory special factors, and that service or device were not included in the child's IEP.

Paragraph (d) of this proposed section would add the statutory requirements of section 614(d) (3)(C) and (4)(B) which specify that the regular education teacher, to the extent appropriate, must participate in the development, review, and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel. Paragraph (e) of this section would incorporate the new statutory provision of section 614(e) which specifies that IEP teams are not required to include information under one component of a child's IEP that is already included under another. Three notes would also be added following this section. The first would recognize the importance of the consideration of the special factors in development of a child's IEP. As appropriate, consideration of these factors must include a review of valid evaluation data and the observed needs of the child resulting from the evaluation process. The second note would acknowledge the statement in the House Committee Report regarding Pub. L. No. 105–17 that states that for children who are deaf or hard of hearing the IEP team should implement the special consideration provision in a manner consistent with the "Deaf Students Education Services" policy guidance from the Department. The third note would explain how the considerations addressed in this section affect the development of an IEP for a child who is limited-English proficient. This is one of several notes addressing the responsibility of public agencies to effectively meet the needs of children with limited English proficiency who have a disability or are suspected of having a disability. The Secretary requests public comment on whether additional clarification would be useful.

Proposed § 300.347 would replace the current regulatory provision on the contents of IEPs with the new statutory requirements from section 614(d)(1)(A) regarding the contents of an IEP. In addition, proposed § 300.347 would maintain the current regulatory provision regarding transition services on a student's IEP which states that if the IEP team determines that services are not needed in one or more of certain of the areas specified in the definition of transition services, the IEP team must include a statement to that effect and the basis upon which the determination was made. In addition, the Secretary would add, as paragraph (d), a statement that special rules concerning the content of IEPs apply for children with disabilities who are in adult prisons, consistent with section 614(d)(6) of the Act. The notes following the current regulatory provision on IEP contents would be shortened and condensed into one note regarding transition services. Notes would be added following this section explaining several issues raised by the new provisions on IEP contents—the emphasis on the general curriculum, the focus of the IEP on enabling children with disabilities to access the general curriculum, the relationship of teaching and related service methodologies or approaches and the content of the IEP, the new reporting to parents requirement and the new statement of transition service needs. A final note would explain that it would not be a violation of Part B of the Act for a public agency to begin planning for transition service needs for students younger than age 14 and transition services for students younger than age 16.

Proposed § 300.348 would maintain the current regulatory provision concerning agency responsibility for transition services, consistent with section 614 (d)(5) and (d)(1)(A)(vii). Current regulatory provisions concerning private school placements by public agencies and children with disabilities in private schools would be retained as proposed §§ 300.349 and 300.350, with minor wording changes. These sections reflect the Secretary's interpretation of how public agencies meet their responsibilities regarding conducting IEP meetings under section 614(d)(1)(B) in light of the requirements of section 612(a)(10) (A) and (B) regarding providing services to children with disabilities in private schools. The current regulatory provision concerning IEP accountability would also be maintained as proposed § 300.351. The Secretary believes that this provision continues to represent the appropriate interpretation of the statutory provisions concerning IEPs. However, the note following this section has been revised in light of the heightened focus in the IDEA Amendments of 1997 on providing children with disabilities the instruction, services and modifications that will enable them to achieve a high standards.

Direct Services by the SEA

Proposed § 300.360(a) would replace the current regulatory provision describing the SEA's use of funds, that otherwise would have gone to an LEA, to provide direct services, with the new statutory requirements on this issue. Paragraphs (b) and (c) would be maintained from the current regulations, reflecting the Secretary's continuing interpretation of how SEAs implement direct services. The note following this section would be retained, with material deleted that has been rendered obsolete by the new statute. Proposed § 300.361 would be retained from the current regulations, consistent with the requirements of section 613(h)(2) of the Act.

Section 611(f)(3) authorizes several new uses of money that the State may retain at the State level, including to establish and implement the mediation process; to assist LEAs in meeting personnel shortages; to develop a State Improvement Plan under subpart 1 of Part D of the Act; to carry out activities at the State and local levels to meet performance goals and to support implementation of the State Improvement Plan; to supplement other amounts used to develop and implement a Statewide coordinated services system (but not more than one percent of the grant under section 611 of the Act); and for capacity building and system improvement subgrants to LEAs. The current regulatory provision would be expanded by adding these new statutory provisions as § 300.370(a)(3)–(8). Proposed § 300.370(a) (1) and (2) reflect statutory provisions that were in the prior law and are retained in section 611(f)(3). The provision in the current regulations concerning State matching would be deleted, reflecting the deletion of this requirement from the statute.

Proposed § 300.372 would replace the current regulatory provision regarding the applicability of the nonsupplanting provision to funds that the State uses with the new requirements from section 611(f)(1)(C) that the SEA may use funds retained without regard to the prohibition on commingling and the prohibition on supplanting other funds.

Comprehensive System of Personnel Development

The regulatory provisions in proposed §§ 300.380–300.382 would be revised to reflect new statutory requirements concerning a State's comprehensive system of personnel development (CSPD). Proposed § 300.380 would require that each State's CSPD be consistent with Part B of the Act and the CSPD provision of Part H (to be renamed Part C); be designed to ensure an adequate supply of qualified special education, regular education and related services personnel; be updated at least every five years; and meet the requirements of §§ 300.381–300.382, which contain the provisions of section 653 (b)(2)(D) and (c)(3)(D), as required by section 612(a)(14). Because the statute makes the CSPD the same as the personnel sections of a State Improvement Plan, the Secretary proposes to add a provision to make clear that a State with a State Improvement grant would be considered to have met the requirements of this section.

Proposed § 300.381 would require a State to include an analysis of State and local needs for professional development of personnel to serve children with disabilities that must include at least certain minimum specified information. Proposed § 300.382 would require States to describe the strategies in a number of specified areas that they will use to address the needs identified under proposed § 300.381, including identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities.

Subpart D—Children in Private Schools

Children With Disabilities in Private Schools Placed or Referred by Public Agencies

Sections 300.400–300.402 of these proposed rules would incorporate the existing rules regarding children with disabilities placed in private schools by public agencies and children with disabilities placed in private schools by their parents. These proposed rules reflect the unchanged statutory provision in section 612(a)(10)(B) that children with disabilities placed in or referred to private schools or facilities by an SEA or LEA must be provided special education and related services (1) in accordance with an IEP, and (2) at no cost to their parents. Section 612(a)(10)(B) further requires that the SEA must ensure that the private facilities meet State standards and that children placed in those facilities have the same rights they would have if served by a public educational agency. The IDEA Amendments of 1997 added new requirements concerning children placed by their parents in private schools. Section 612(a)(10)(C)(i) provides that an LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the LEA made FAPE available to the child and the parents elected to place the child in the private school. Parent reimbursement is subject to certain requirements described in the next paragraph of this preamble. This provision would be reflected in proposed § 300.403(a). Proposed § 300.403(b) would be retained from the current regulations to clarify that due process procedures can be used to resolve disagreements about the provision of FAPE and financial responsibility of the public agency.

Section 612(a)(10)(C)(ii) describes the circumstances under which a parent may seek reimbursement from a public agency for a private school placement. This provision states that a court or a hearing officer may require the public agency to reimburse parents for the cost of a private school placement if the court or hearing officer finds that the public agency had not made FAPE available to the child in a timely manner. It also states that reimbursement may be reduced or denied if (1) at the child's most recent IEP meeting the parents did not inform the IEP team that they were rejecting the public agency's proposed placement, including stating their concerns and their intent to enroll their child in a private school at public expense; (2) ten (10) business days (including holidays that occur on a business day) prior to the removal of the child from public school, the parents did not give written notice that they were rejecting the public agency proposal and their intent to enroll their child in a private school at public expense; (3) prior to the parents' removal of the child from a public school, the public agency notified the parents, through the prior written notice required under section 615(b)(7) of the Act, of its intention to evaluate the child, but the parents did not make the child available for evaluation; or (4) upon a judicial finding of unreasonableness regarding the actions of the parents. Reimbursement may not be reduced or denied for failure to provide that notice if: (1) The parent is illiterate and cannot write in English; (2) compliance with an evaluation would likely result in physical or serious emotional harm to the child; (3) the school prevented the parent from providing the notice; or (4) the parents had not received notice, pursuant to section 615 of the Act, of the notice requirement. These provisions would be incorporated in the proposed regulations at § 300.403(c)–(e).

Children With Disabilities Enrolled by their Parents in Private Schools

Proposed § 300.450 would retain the current regulatory definition of "private school children with disabilities."

Section 612(a)(10)(A) of the Act provides that to the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for these children special education and related services, by spending a proportionate amount of the Federal funds available under Part B of the Act on services for these children. Those services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law. The statute also requires that the SEA's and LEA's child find activities apply to children with disabilities who are placed by their parents in private, including parochial, schools.

Proposed §§ 300.451–300.462 would incorporate these statutory requirements, and appropriate provisions from existing regulatory requirements (from 34 CFR 76.650–76.662) regarding the participation of private school students with disabilities. The term "religiously-affiliated" would be used instead of the statutory term "parochial" as the Secretary assumes that all religious schools were intended by Congress to be included, not just those organized on a parish basis. The child find obligation from the statute is reflected in proposed § 300.451. Proposed § 300.452 describes the basic statutory obligation to provide special education and related services to private school children with disabilities and says that obligation is met by meeting the requirements of §§ 300.453–300.462. In § 300.453, the Secretary interprets the statutory limitation on the amount of funds that LEAs must spend on providing special education and related services to private school children with disabilities as the same proportion of the LEA's total subgrant under sections 611 and 619 of the Act as the number of private school children with disabilities aged 3 through 21 and 3 through 5, respectively, is to the total numbers of children with disabilities in its jurisdiction in each of those age ranges. A note would be added after this section to clarify that SEAs and LEAs are not prohibited from providing more services to private school children with disabilities than is required under the Act.

Proposed § 300.454(a) specifies that no individual private school child with a disability has a right to receive some or all of the special education and related services the child would receive if enrolled in a public school. This provision reflects the Secretary's longstanding regulatory interpretation of the statutory limitations on the obligation to provide services to private school children with disabilities, which now specifically reference the limited amount of funds that LEAs must spend on these services. LEAs should have the authority to decide, after consultation with representatives of private school children with disabilities, how best to provide services to this population. Proposed § 300.454 (b)–(e) specifies that LEAs make decisions about which children to serve and what services to be provided to private school children with disabilities, and how those services will be provided and evaluated after timely and meaningful consultation with appropriate representatives of private school children with disabilities that gives those representatives a genuine opportunity to express their views on these subjects. These rules are similar to requirements governing how decisions are made about services provided to private school children under Title I of the Elementary and Secondary Education Act, and are based on the consultation provisions in 34 CFR 76.652 that have applied to services to private school children with disabilities under the Act for many years.

Proposed § 300.455 specifies that services provided to private school children with disabilities must be comparable in quality to services provided to children with disabilities enrolled in public schools and provides a definition of "comparable in quality." This proposed section also specifies that the IEPs developed for these children must address the services that the LEA has determined that it will provide to the child, in light of the services that the LEA has determined, through the consultation process, that it will make available to private school children with disabilities. (The proposed regulations will maintain the current regulatory provision at § 300.341(b)(2) requiring that IEPs be developed for children enrolled in private schools and receiving special education and related services from a public agency.)

Proposed § 300.456(a) would incorporate the statutory provision that services may be provided on-site at the child's private school, to the extent consistent with law. The term "religiously-affiliated" is used instead of the statutory term, "parochial." A note would be included after this section that recognizes that under recent decisions of the U.S. Supreme Court, LEAs may provide special education and related services on-site at religiously-affiliated private schools in a manner that does not violate the Establishment Clause of the First Amendment to the U.S. Constitution.

Proposed § 300.456(b) would specify that transportation to a site other than the child's private school must be provided if necessary for the child to benefit from or participate in the other services offered, based on the Secretary's longstanding position that all children with disabilities must be provided transportation to and from other services provided under the Act, if that transportation is necessary to enable them to benefit from those other services. Paragraph (b)(2) of this section would clarify that the cost of that transportation may be included in calculating whether the LEA has met the requirement of § 300.453. A second note following this section would explain that transportation is not required between the student's home and the private school, but only between the site of the services, if other than the private school, and the student's private school or the student's home, depending on the time of the services.

In proposed § 300.457(a), the Secretary interprets the statutory provision regarding services to private school children with disabilities to mean that the due process procedures of the Act do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.452–300.462, including the provision of services indicated on the child's IEP. This provision is based on the statutory scheme, which does not include any individual right to services for private school students placed by their parents. Proposed § 300.457(b) would clarify that complaints that an SEA or LEA has failed to meet the requirements of §§ 300.451–300.462 may be filed under the State complaint procedures addressed in this NPRM at §§ 300.660–300.662.

Proposed §§ 300.458–300.462 would incorporate, with only minor changes that are not intended to be substantive, the requirements from 34 CFR §§ 76.657–76.662 that have applied to the Part B program of the Act for many years. The Secretary believes that these provisions are necessary to ensure that funds under Part B of the Act are not used to benefit private schools or in ways that could raise questions of inappropriate assistance to religion.

Proposed §§ 300.480–300.487 would repeat, with only minor nonsubstantive changes, the bypass provisions from the current regulations. The bypass provisions in section 612(f) are unchanged from prior law.

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

Proposed § 300.500 would combine in one section two current regulatory provisions that establish the general responsibility of SEAs for establishing and implementing procedural safeguards and define "consent," "evaluation," and "personally identifiable." The provision in proposed § 300.500(a) regarding the general responsibility of SEAs would be updated to include all the procedural safeguards in the proposed regulations, consistent with the requirements of section 615(a) of the Act. Similarly, the definition of "evaluation" in proposed § 300.500(b)(2) would be updated to refer to all of the evaluation procedures in Subpart E of the proposed regulation, which are based on the statutory provisions of sections 612(a)(6)(B) and 614 (a)–(c). A new note following this section would be added to clarify that a parent's revocation of consent is not retroactive in effect. For example, if a parent grants consent for an evaluation, and after the evaluation is completed the parent revokes consent for the evaluation, the IEP team would still be able to consider that evaluation in making decisions about the child's program and placement.

Based on the requirements of section 615(b)(1), proposed § 300.501(a) would be revised to address the parents' opportunity to inspect and review all educational records, as in the current regulation, and the new statutory

requirements that parents be given an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. In paragraph (b) of this section the Secretary proposes that the statutory obligation to afford parents the opportunity to participate in meetings means that parents must be given notice of the meeting, including the purpose, time and location, and who will be in attendance, early enough so that they have an opportunity to attend, because these requirements seem essential to giving parents an opportunity to participate in these meetings. In paragraph (b)(2), the Secretary proposes to define "meeting" to make clear that only certain conversations about providing educational services to a child are covered, to eliminate potential confusion about the scope of this requirement. Paragraph (c) of this section would incorporate the requirement of section 614(f) that public agencies ensure that parents are members of any group that makes decisions on the educational placement of their child. The Secretary proposes in this paragraph to require that public agencies use procedures like those required for parent involvement in IEP team meetings, to ensure that parents are members of the group that makes decisions on the educational placement of their child, including notice of the meeting as described, using other methods to involve parents in the meeting when parents cannot be physically present, maintaining a record of attempts to ensure the participation of the parents, and taking steps to ensure that parents are able to understand and participate in the meetings. The Secretary would adopt this position as necessary to ensure that parents participate in these meetings, as required by section 614(f), and as these procedures have been used for many years by all public agencies regarding parent participation in IEP meetings. In many, if not most instances, placement decisions will be made as a part of IEP meetings, as is already the case in many jurisdictions.

Proposed § 300.502 (a), (c), and (d) would contain, with minor modifications, the current regulatory provisions setting out the general requirements regarding independent educational evaluations, parent-initiated evaluations, and requests for evaluations by hearing officers, consistent with the statutory provision of section 615(b)(1). Proposed paragraph (b) would restate the current regulatory provision concerning the parent's right to evaluation at public expense to make clear that if a parent requests an independent educational evaluation, the agency, without unnecessary delay, must either initiate a due process hearing to show that its evaluation is appropriate, or insure that an independent educational evaluation is provided at public expense, reflecting the Secretary's interpretation that a public agency must take action to respond to a parent's request for an independent educational evaluation, and may not just refuse to respond. Paragraph (e) of this proposed section would restate, with modifications, the current regulatory provision concerning agency criteria for evaluations. The Secretary proposes to add a new paragraph (e)(2) to clarify that other than the agency's criteria for an agency-initiated evaluation, the public agency may not impose conditions or timelines on a parent's right to obtain an independent educational evaluation at public expense. This proposal reflects the Department's analysis of the statutory provision that an independent educational evaluation must be available if the parent objects to an evaluation that a school district is using. A note following this section would explain that a public agency may not impose conditions on obtaining an independent educational evaluation other than the agency criteria for the agency's own evaluations, but must either timely provide the independent educational evaluation at public expense or initiate a due process hearing. A second note would be added to encourage public agencies to make information about the agency's criteria for evaluations known to the public, so that parents who disagree with an agency evaluation will know what standards an independent evaluation should meet. A third note would explain how agency criteria apply to an independent educational evaluation.

Proposed § 300.503(a)(1) would repeat, unchanged, the current regulatory provision concerning the basic obligation to provide prior written notice, based on the statutory requirements for prior notice. Proposed paragraph (a)(2) would be added to clarify that an agency may provide the prior written notice at the same time that it requests parent consent, if an action proposed by a public agency requires parent consent and prior written notice, reflecting the Secretary's interpretation that these activities are closely related. The new statutory requirements concerning the content of prior written notice from section 615(c) would be addressed in proposed § 300.503(b) (1) through (7). These new content requirements are different from, and would replace, the provision in current regulations on the content of prior written notice. The Secretary proposes to add to this paragraph a requirement that the prior written notice include a statement informing parents about the State complaint procedures, including a description of how to file a complaint and the timelines under those procedures. The Secretary believes that insuring that parents know about these procedures, which are an alternative mechanism to due process, should help, in conjunction with the new statutory provisions regarding mediation that are also contained in these proposed regulations, to reduce the number of disagreements between parents and school districts that go to due process. Based on the requirement of section 615(b) (3) and (4) of the Act, paragraph (c) of proposed § 300.503 would maintain the provision from current regulations concerning providing this notice in language understandable to the general public and in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Proposed § 300.504 would contain the new statutory provisions concerning procedural safeguards notice, including in paragraph (a) when that notice must be provided, and in paragraph (b) what content it must include, as provided in section 615(d) of the Act. Paragraph (c) of this section would address the statutory requirements, also from section 615(d), that this notice be in language understandable to the general public and in the native language or other mode of communication used by the parent unless clearly not feasible to do so, in the same way as similar requirements would be treated regarding prior written notice.

Changes were made in how the statute addresses parent consent (in sections 614 (a)(1)(C) and (c)(3)), and so the existing regulatory provision would be revised in the following ways at proposed § 300.505. Paragraph (a) would be revised in recognition of the new statutory provision concerning parent consent for reevaluations. The Secretary proposes to read this provision to require parent consent before conducting a new test as a part of a reevaluation. The statute now discusses evaluation and reevaluation as including reviewing existing data and, if appropriate, conducting new assessments or tests when new information is needed. The Secretary does not believe that in adding a parent right to consent to reevaluations that Congress intended to require school personnel to obtain parent consent before reviewing existing data about a child. Therefore, the proposed regulation would make clear that as to reevaluations, parent consent is needed only before conducting a new test as part of that reevaluation. Paragraph (b) of this section would reflect the statutory requirement of section 641(a)(1)(C)(ii) regarding parent refusals to consent.

Paragraph (c)(1) of this proposed section would reflect the statutory requirement of section 614(c)(3) of the Act that parent consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the parent fails to respond. In paragraph (c)(2) of this section the Secretary proposes to describe the demonstration of "reasonable measures" as procedures consistent with those required to demonstrate attempts to involve a parent in an IEP meeting. Those procedures, which are unchanged from the current regulations, would be in proposed § 300.345(d) (1) and (2). Proposed paragraphs (d) and (e) of this section would restate current regulatory provisions concerning additional State consent requirements and a limitation on using parent consent for a Part B service or activity as a condition on other benefits to the parent or child. Note 1 following the consent provision in the current regulations would be removed as unnecessary. Note 2 from current regulations would be shortened and revised consistent with the proposed regulatory changes and renumbered as Note 1. Note 3 in current regulations would be renumbered as Note 2 and a new Note 3 would be added addressing agency choices when a parent refuses to consent to a reevaluation.

Proposed § 300.506 would reflect the new statutory provisions of section 615(e) of the Act concerning mediation in paragraphs (a), (b), and (d)(1), which set forth the general responsibility to establish and implement mediation procedures, specific requirements regarding the mediation process, and the statutory provision concerning requiring parents who elect not to use mediation to meet with a disinterested party who would explain the benefits of mediation and encourage its use. In paragraph (c) the Secretary proposes to clarify the requirement that mediation be conducted by an impartial mediator by specifying that a mediator may not be an employee of an LEA or State agency acting as an LEA or an SEA that is providing direct services to the child who is the subject of the mediation and must not have a personal or professional conflict of interest. This position reflects the explanation of this statutory provision in congressional committees' reports. Given Congress' interest in encouraging the use of mediation, it is unlikely that it would have considered any person not meeting basic standards of impartiality to be an acceptable mediator. The Secretary believes that these standards will encourage the use of mediation by ensuring parties to a dispute the availability of an objective third party to mediate disputes. The Secretary proposes to add, in paragraph (d)(2), a clarification that a public agency may not deny or delay a parent's right to a due process hearing based on a parent's failure to participate in the meeting described in proposed paragraph (d)(1). This proposal is made in recognition of the statutory provision of section 615(e)(2)(A)(ii) which provides that the mediation process not be used to deny or delay a parent's right to due process. A note following this section would quote language from the House Committee Report, noting the Committee's intention that if a mediator is not selected at random from the list maintained by the SEA, both the parents and the agency must be involved in selecting the mediator and in agreement about the selection. A second note would note the discussion of House Committee Report's the confidentiality provisions regarding mediation.

Proposed § 300.507(a)(1) would set out the general provision, from section 615(b)(6) of the Act, regarding the right of parents and public agencies to initiate a due process hearing on any matter relating to the identification, evaluation, educational placement or provision of FAPE to a child. In paragraph (a)(2), the Secretary would interpret the requirement of section 615(e)(1) that mediation be available whenever a hearing is requested, as requiring that parents be notified of the availability of mediation whenever a due process hearing is initiated. Paragraph (a)(3) would restate the requirement from the current regulations that the public agency inform the parent of free or low-cost legal and other relevant services if the parents request it, and whenever a due process hearing is initiated. Paragraph (b) of this proposed section would reflect the statutory requirement of section 615(f)(1) of the Act that the hearing be conducted by the SEA or public agency directly responsible for the education of the child. Paragraph (c) of this proposed section would reflect the new statutory requirements of section 615(b) (7) and (8) concerning the notice that a parent is required to provide to a public agency in a request for a due process hearing, and the model form that must be developed by the SEA to assist parents in filing a request for due process that includes the information required in proposed paragraphs (c) (1) and (2). In paragraph (c)(4) the Secretary proposes to clarify that failure to provide the notice specified in paragraphs (c) (1) and (2) cannot be used to deny or delay a parent's right to a due process hearing, as the Secretary believes that Congress did not intend that failure of a parent to provide this notice would prevent them from using procedures necessary to protect their child's right to FAPE. A note following this section would be added to clarify that a public agency may not deny a parent's request for due process, even if it believes that the issues raised are not new, and that this determination must be made by a hearing officer. A second note would quote the House Committee Report noting that a consequence of failure to provide this notice may be a possible reduction in attorneys' fees, noting that the provision is designed to encourage early resolution of disputes and foster partnerships between parents and school districts.

Proposed § 300.508 would maintain the current regulatory requirements concerning impartial hearing officers, consistent with the requirement of section 615(f)(3).

Proposed § 300.509 would add, to existing regulatory provisions concerning rights of all parties to a due process hearing, the new statutory requirement of section 615(f)(2) of the Act regarding disclosure, at least 5 business days prior to a hearing, of all evaluations and recommendations based on those evaluations that have been completed by that date and that a party intends to introduce at the hearing. This provision would be in addition to the existing regulatory requirement of disclosure of any evidence to be introduced at the hearing at least 5 days before the hearing. The provisions from current regulations concerning the parties' rights to obtain a verbatim record of the hearing and the findings of fact and decisions of the hearing officer would be modified consistent with statutory changes in section 615(h) (3) and (4) of the Act, which give parents the right to choose either a written or electronic version of these documents. Paragraph (c)(1) of this proposed section would maintain the existing regulatory provision concerning parents' rights to have the child who is the subject of the hearing present, and to open the hearing to the public. Paragraph (c)(2) would specify that the record of the hearing and the findings of fact and decisions of

hearings must be provided to parents at no cost. This reflects the Department's longstanding interpretation that parents must have access to copies of records of hearings and findings of fact and decisions at no cost so that the right to appeal due process hearing decisions in order to protect their child's right to FAPE is not foreclosed. Proposed paragraph (d) of this section would maintain the current regulatory provision requiring public agencies, after deleting personally identifiable information, to transmit findings and decisions of due process hearings to the State advisory panel and make them available to the public, consistent with section 615(h)(4).

Proposed § 300.510(a) maintains, with minor changes, the current regulatory provision regarding finality of decisions, consistent with section 615(i)(1)(A). Proposed § 300.510 (b), (c), and (d), reflecting the statutory requirements, maintain current regulatory provisions concerning the State level review procedure, including the reviewing official's duties; the responsibility, after deleting personally identifiable information, to make findings and decisions in reviews available to the public and transmit them to the State advisory panel; and finality of review decisions. The notes following the provision on these subjects in current regulations would be retained.

Proposed §§ 300.511 and 300.512(a) would maintain the current regulatory provisions concerning the timelines for due process hearings and State review proceedings and the right of an aggrieved party to bring a civil action. Proposed § 300.512 (b) and (c) would add the statutory requirements of section 615 (i)(2) and (i)(3)(A) of the Act regarding the duties of the court in reviewing a due process decision or State level review and the jurisdiction of the Federal district courts. Proposed § 300.511(d) would add to the regulation the statutory rule of construction of section 615(l) of the Act regarding the applicability of other laws such as the Constitution, the Americans with Disabilities Act of 1990, and title V of the Rehabilitation Act of 1973, to actions seeking relief that is also available under section 615 of the Act.

Proposed § 300.513(a) would maintain the current regulatory provision concerning attorneys' fees, reflecting the requirements of section 615(i)(3)(B)–(G). The Secretary proposes to add a new paragraph (b) to specify that funds provided under Part B of the Act may not be used to pay attorneys' fees awarded under the Act. The Secretary does not believe that funds awarded under the Act for special education and related services should be used to pay attorneys' fees because it would divert limited Federal resources from direct services. A note would be added following this section to explain that States may permit hearing officers to award attorneys' fees to prevailing parents.

Proposed § 300.514(a) would revise the current regulation consistent with the new statutory provision in section 615(j), which adds, as an explicit exception to the "pendency" provision, the provisions of section 615(k)(7) of the Act. Proposed paragraph (b) of this section would retain the current regulatory provision concerning due process complaints involving an initial admission to public school. The Secretary proposes to add a new paragraph (c) to clarify that if a hearing officer in a due process hearing or a review official in a State level review agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and local agency and the parents for purposes of determining the child's current placement during subsequent appeals. The pendency provision is designed as a protection to be used by parents of children with disabilities when there is a dispute between the parents and school district about the identification, evaluation, or placement of the child, or about any matter related to the provision of a free appropriate public education to the child. When parents are in agreement with the decision reached in a due process hearing or appeal, the pendency provision should not be invoked to prevent the implementation of that decision. The note from current regulations concerning children who are endangering themselves or others would be retained.

Proposed § 300.515 would maintain, without change, the current regulatory provisions concerning surrogate parents, consistent with the provisions of section 615(b)(2) of the Act.

Proposed § 300.517 would add the new statutory provision regarding transfer of parent rights at the age of majority from section 615(m) of the Act. The Secretary would interpret this to clarify that whenever an agency transfers rights the agency must notify both the individual and the parents of the transfer, consistent with basic standards of due process. With regard to the permissive transfer of rights to individuals who are in correctional institutions, the reference to Federal correctional facilities would be removed, as States do not have an obligation to provide special education and related services under the Act to individuals in Federal facilities. Minor changes for the sake of clarity, that are not intended to affect the substance, would be made to the provision in paragraph (b) regarding a "special rule."

Discipline Procedures

Proposed § 300.520 would incorporate the provisions of section 615(k)(1) of the Act regarding the ability of school personnel to remove a child with a disability from his or her current placement for not more than 10 school days, and the ability of school personnel to place a child with a disability in an interim alternative educational setting for not more than 45 days, if the child carries a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school or a school function. These provisions would be incorporated in paragraph (a) of this proposed section.

Section 615(k)(1) also requires an IEP meeting to review a child's behavioral intervention plan or to develop an assessment plan to address that behavior. The Secretary proposes to adopt these requirements in paragraph (b) with the following clarifications: (1) The statute's provision that the IEP team meeting occur within 10 days of taking a disciplinary action would specify that this meeting occur within 10 business days of the disciplinary action rather than 10 calendar days; and (2) if the child does not have a behavioral intervention plan, the purpose of the IEP meeting is to develop an assessment plan and appropriate behavioral interventions to address that behavior. The Secretary believes that the business day interpretation would allow school personnel an adequate amount of time to convene the meeting, while ensuring that it occur within the window of time during which a child may be removed from the regular placement under proposed § 300.520(a)(1). The Secretary believes that the purpose of the IEP meeting should be not just development of an assessment plan, but also development of appropriate behavioral interventions so that some behavioral interventions can be instituted without delay. The Secretary also proposes to specify, in paragraph (c), that if a child with a disability is removed from his or her current educational placement for 10 school days or less in a given school year, and no further removal or disciplinary action is contemplated, the IEP team review of the child's behavioral interventions, or need for them, need not be conducted. In light of the legislative history of the IDEA Amendments of 1997, the Secretary does not believe that these procedures were contemplated if children with disabilities would only be out of their regular educational placements for short periods of time in a given school year, that is, for less than 10 school days in a school year.

Paragraph (d) of proposed § 300.520 would incorporate the statutory definitions of "controlled substance," "illegal drug," and "weapon" from section 615(k)(10) (A), (B), and (D) of the Act. A note following this section would explain the Department's longstanding interpretation that removing a child from his or her current educational placement for no more than 10 school days does not constitute a change in placement under the Part B regulations. However, a series of short-term suspensions totaling more than 10 days could amount to a change of placement based on the circumstances of the individual case. A second note following this section would encourage public agencies whenever removing a child with disabilities from the regular placement to review as soon as possible the circumstances surrounding the child's removal and consider whether the child was receiving services in accordance with the child's IEP and whether the child's behavior could be addressed through minor classroom or program adjustments or whether the child's IEP team should be reconvened to address changes in that document.

Proposed § 300.521 reflects the provisions of section 615(k)(2) of the Act regarding the authority of a hearing officer to place a child with a disability in an interim alternative educational setting for not more than 45 days if the hearing officer determines that the public agency has demonstrated by substantial evidence that maintaining the child in the child's current educational placement is likely to result in injury to the child or to others, and considers the appropriateness of the child's current placement, whether the agency has made reasonable efforts to minimize the risk of harm, including the use of supplementary aids and services, and then determines that the interim alternative educational setting meets certain requirements. The Secretary is proposing to clarify how this determination is made by specifying that the determination is made by a hearing officer in an expedited due process hearing. The Secretary believes that a due process hearing was contemplated by Congress in view of the requirement that the agency demonstrate the likely risk of harm by "substantial evidence", which is defined at section 615(k)(10) as beyond a preponderance of the evidence. Paragraph (e) of this section would include the statutory definition of this term.

Proposed § 300.522 would incorporate the section 615(k)(3) requirements that the alternative educational setting be determined by the IEP team and that it be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP, and include services and modifications designed to address the behavior, so that it does not recur. This statutory language would be interpreted only as necessary to make clear that, consistent with proposed §§ 300.520 and 300.121, these requirements would have to be met if a child is removed from his or her current educational placement for more than 10 school days in a school year.

Proposed § 300.523 would reflect the provisions of section 615(k)(4) concerning when and how a manifestation determination review is conducted with the following modifications: (1) a paragraph (b) would include the Secretary's proposal that if a child with disabilities is removed from the child's current educational placement for 10 school days or less in a given school year, and no further disciplinary action is contemplated, the manifestation review need not be conducted; (2) a paragraph (e) would clarify that if the IEP team determines that any of the standards described in the statute are not met, the team must consider the child's behavior to be a manifestation of the child's disability; and (3) a paragraph (f) would make clear that the manifestation review may be conducted at the same meeting in which the behavioral review of proposed § 300.520(b) is done. The interpretation in paragraph (e) on how the manifestation determination is made, using on the standards described in the statute, is based on the explanation of this decision process in the congressional committee reports. A note following this section would quote the language of the House Committee Report on how the manifestation determination is made. A second note would explain that if the decision is that the behavior is a manifestation of the child's disability, the LEA must take steps to remedy any deficiencies found during that review in the child's IEP or placement or in their implementation. Often these steps will enable a child whose behavior is a manifestation of his or her disability to return to the child's current educational placement before the expiration of the 45-day period.

Proposed § 300.524 (a) and (b) would reflect the provisions of section 615(k)(5) regarding behavior that is not a manifestation of a child's disability. Proposed paragraph (c) would clarify that the requirements of the "pendency" provision apply if a parent requests a hearing to appeal a decision that a child's behavior is not a manifestation of the child's disability. Section 615(j) of the Act provides that the only exceptions to the "pendency" rule are those specified in section 615(k)(7) of the Act, which concerns placement during parent appeals of 45-day interim alternative educational placements. A note following this section would further explain this issue.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability, including disciplining children with disabilities for behavior that is a manifestation of their disability. For example, disciplining a child with a seizure disorder for behavior that results from that disability would violate Section 504. The Secretary invites comment on whether further clarification of this point should be provided in these regulations.

Proposed § 300.525 would reflect the requirements of section 615(k)(6) regarding parent appeals of manifestation determinations or any decision regarding placement, including the requirement for an expedited hearing, and the standards used by the hearing officer in reviewing these decisions.

Proposed § 300.526 would adopt the requirements of section 615(k)(7) involving placement if a parent requests a hearing to challenge the interim alternative educational setting or the manifestation determination, including the requirement that the child remain in the interim alternative educational setting until the decision of the hearing officer or the expiration of the 45-day period, whichever comes first, the requirement that an LEA may request an expedited due process hearing to seek to demonstrate to the hearing officer that it would be dangerous to return the child to his of her current educational placement, and the standards that the hearing officer uses in reaching a decision. Proposed paragraph (c)(3) would clarify that these placements would be for a duration of not more than 45 days, as the 45-day limit is one of the standards in section 615(k)(2) referred to in section 615(k)(7)(C). A note following this section would explain that if the LEA maintains that the child is still dangerous at the

expiration of the 45 days and the issue has not been resolved through due process, the LEA could seek a subsequent expedited hearing on the issue of dangerousness.

Proposed § 300.527 would incorporate the statutory requirements of section 615(k)(8) regarding the application of these rules to children not yet determined eligible for special education and related services, with certain clarifications. Paragraph (b)(1) would clarify that oral communication from the child's parents would constitute a basis for knowledge only if the parent is illiterate in English or has a disability that prevents a written statement. Proposed paragraphs (c)(2)(ii) and (iii) would clarify that if the parents have requested an evaluation, the child remains in the educational placement determined by school authorities until the evaluation is completed, and that if the result of the evaluation is that the child is a child with a disability, the agency must provide special education and related services in accordance with the provisions of Part B, including the requirements of proposed §§ 300.520–300.529 and section 612(a)(1)(A) of the Act.

In proposed § 300.528, the Secretary proposes to specify what an expedited due process hearing must entail, including time frames and hearing procedures, the qualifications of hearing officers, and appeal rights. These provisions are based on the Secretary's belief that all expedited hearings under these discipline procedures should result in decisions within a very short period of time in order to protect the interests of both schools and children with disabilities, and that a 10-business-day limit would allow these hearings to result in decisions before the expiration of a potential 10-school-day removal of a child from the regular placement. The Secretary believes that requiring that due process hearing officers under these procedures meet the same requirements that apply to hearing officers under other due process procedures under the Act and that the hearings meet the same basic standards that apply to other due process hearings will ensure that these proceeding meet basic standards of due process, and are perceived as fair, while allowing some flexibility by allowing States to adjust their own procedural rules to accommodate these very swift hearings.

Proposed § 300.529 incorporates the provisions of section 615(k)(9) of the Act regarding reporting crimes committed by a child with a disability to appropriate authorities and transmitting copies of the special education and disciplinary records of the child to the authorities to whom the agency reports the crime.

Procedures for Evaluation and Determinations of Eligibility

Proposed § 300.530 would reflect section 612(a)(7), which gives general responsibility to the SEA to ensure that each public agency establishes and implements evaluation procedures that meet the requirements of the Act. Proposed § 300.531 incorporates the requirement of section 614(a)(1) that each public agency conduct a full and complete initial evaluation before initiating the provision of special education and related services to a child with a disability. Proposed § 300.532 incorporates the requirements of section 614(b) (2) and (3) and section 612(a)(6)(B) with the requirements of current regulations that a variety of assessment tools and strategies must be used to gather information about the child; that evaluation materials include those tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient; and that tests must be selected and administered so as to best insure that the test results accurately reflect the child's aptitude or achievement level or whatever the test purports to measure, rather than the child's impaired sensory, manual, or speaking skills. Three notes following proposed § 300.532 would explain how a public agency meets its obligation to properly evaluate a child who is limited English proficient and suspected of having a disability.

Proposed § 300.533 would reflect the provisions of section 614(c) (1), (2), and (4) of the Act regarding review of existing evaluation data and determinations of whether more data is needed. Proposed § 300.534 would incorporate the requirements of section 614 (b) (4) and (5) and (c)(5) of the Act regarding determinations of eligibility.

Proposed § 300.535 would maintain from the current regulations the procedures for determining eligibility.

Proposed § 300.536 would reflect the statutory provisions of section 614(a)(2) concerning reevaluation and the existing regulatory provision regarding review of IEPs, with minor modifications.

Additional Procedures for Evaluating Children with Specific Learning Disabilities

Proposed § 300.540 would be changed from the current regulation only as necessary to reflect the new requirements as described, concerning the composition of the teams of individuals who make determinations about eligibility. Proposed §§ 300.541 and 300.542, regarding the criteria for determining the existence of a specific learning disability and observation of a child suspected of having a specific learning disability, would be unchanged from current regulations. Proposed § 300.543, concerning the written report, would be changed from current regulations only to make clear that for a child suspected of having a specific learning disability, this report satisfies the requirement for documentation of the determination of eligibility as described with reference to proposed § 300.534(a).

The Secretary intends to review carefully over the next several years the additional procedures for evaluating children suspected of having a specific learning disability contained in proposed §§ 300.540–300.543 in light of research, expert opinion and practical knowledge of identifying children with a specific learning disability with the purpose of considering whether legislative proposals should be advanced for revising these procedures.

Least Restrictive Environment

Proposed §§ 300.550–300.556 are taken from current regulations, with the exceptions noted. These provisions interpret the statutory provision regarding placement in the least restrictive environment in Section 612(a)(5)(A), which is substantively the same as prior law. A minor change to proposed § 300.550(a) would be made to reflect the new organization of the statute around State eligibility requirements, and a conforming change to the note following proposed § 300.552 to update a reference to another section of this regulation. A note following proposed § 300.551 would be added explaining that home instruction is generally only appropriate for children who are medically fragile and those who are unable to participate with nondisabled children in any activities. Section 300.552 from current regulations would be revised to incorporate the provisions of current regulations in § 300.533(a) (3) and (4) regarding how the placement decision is made. A note following this section would be added to explain that the group of persons making the placement decision may also serve as the child's IEP team, as long as all appropriate IEP team members are included. Another note would be added suggesting that if IEP teams appropriately consider and include in IEPs positive behavioral interventions and supplementary aids and services many children who would otherwise be disruptive will be able to participate in regular education classrooms.

Confidentiality of Information

With the following exceptions, proposed §§ 300.560–300.575 and § 300.577 retain the provisions of current regulations on confidentiality of information, with only very minor, nonsubstantive changes. These provisions interpret the statutory provision regarding confidentiality in sections 612(a)(8) and 617(c). A new note would be added as Note 2 following proposed § 300.574 explaining the relationship between these procedures and the new requirements concerning transfer of rights to students at the age of majority, as discussed under proposed § 300.517. A new regulation would be added (proposed § 300.576) reflecting the statutory authority from section 613(j) of the Act for SEAs to require LEAs to include in records of a child with a disability a statement of current or previous disciplinary action, and transmit that statement to the same extent that disciplinary information is included in, and transmitted with, records of nondisabled children, including a description of information relevant to the discipline. The statute also requires that if a State adopts such a policy and the child transfers from one school to another, any transmission of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action taken against the child.

Department Procedures

Proposed §§ 300.580–300.586 largely restate existing regulatory provisions concerning Department procedures for State plan disapproval as Department procedures for determinations of State ineligibility, in light of the restructuring of the Act to eliminate the State plan. Reflecting the requirement in section 612(d) of the Act, a new proposed § 300.580 would state that if the Secretary determines a State is eligible to receive a grant, the Secretary notifies the State.

A new § 300.587 would be added to incorporate the statutory provisions of section 616(a) of the Act regarding enforcement by the Department if a SEA or LEA fails to comply with Part B of the Act or its regulations. This section would incorporate the types of enforcement actions available to the Department—withholding payments in whole or in part, and referral to the Department of Justice, mentioned in section 616(a), and taking any other enforcement action authorized by law, such as other actions authorized under 20 U.S.C. 1234. The Secretary proposes to regulate to clarify the type of notice and hearing provided before withholding and referral for enforcement action because the type of hearing appropriate before announcement of an enforcement action that itself involves an adversarial hearing logically will be different than the adversarial hearing before a withholding or eligibility decision. Proposed paragraph (e) of this section would address enforcement in situations in which a State has assigned responsibility for children with disabilities who are convicted as adults under State law and incarcerated in adult prisons to an agency other than the SEA.

In proposed § 300.589, the Secretary proposes to revise the current regulatory provision regarding the statutory requirement in section 612(a)(18)(C) permitting a waiver, in whole or in part, of the supplement, not supplant rule for use of funds provided under Part B if the State demonstrates by clear and convincing evidence that all children with disabilities in the State have FAPE available to them, and the Secretary concurs with the evidence provided by the State. Section 612(a)(19)(C)(ii) now also provides that the Secretary may waive the new maintenance of State financial support requirement of section 612(a)(19)(A) if the Secretary determines that the State meets the standard described in section 612(a)(18)(C). Section 612(a)(19)(E) directs the Secretary to issue proposed regulations establishing procedures, including objective criteria and consideration of the results of compliance reviews of the State conducted by the Department, within 6 months of the enactment of the IDEA Amendments of 1997 (or December 4, 1997) and final regulations on this topic within one year of enactment (or June 4, 1998). The Secretary proposes to implement these requirements by providing that a State wishing to request a waiver must submit: (1) an assurance that FAPE is and will remain available to all children with disabilities in the State; (2) the evidence that the State wishes the Secretary to consider that details the basis on which the State has concluded that FAPE is available to all children with disabilities in the State and State procedures regarding child find, monitoring, State complaint handling and due process hearings; (3) a summary of all State and Federal monitoring reports and hearing decisions for the prior three years that include any finding that FAPE was not available and evidence that FAPE is now available to all children addressed in those reports and decisions; and (4) evidence that the State in reaching its conclusion that FAPE is available to all children with disabilities in the State consulted with interested organizations and parents in the State and a summary of that input. If the Secretary determines that the State has made a prima facie showing that FAPE is available to all children with disabilities in the State, the Secretary conducts a public hearing on whether FAPE is and will be available to all children with disabilities in the State. If the Secretary concludes that the evidence clearly and convincingly demonstrates that FAPE is and will be available to all children with disabilities in the State, the Secretary provides a waiver for a one-year period. The Secretary also proposes that a State use these same procedures to obtain a waiver in subsequent years. The Secretary believes that these procedures would appropriately allow States to demonstrate that all children with disabilities in the State are, and will be, appropriately served so that a waiver could be granted without violating the rights of children with disabilities.

Subpart F—State Administration

General

Proposed § 300.600 (a) through (c) would retain, with minor nonsubstantive changes, the provisions of current regulations concerning SEA responsibility for all educational programs for children with disabilities in the State, consistent with section 612(a)(11). Paragraph (d) of this section would add the new provision from section 612(a)(11)(C) of the Act which permits the Governor (or other authorized individual under State law), consistent with State law, to assign to another public agency of the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons. The note following this section in current regulations would be maintained.

Proposed § 300.601 would retain, with only minor, nonsubstantive revisions, the current regulation specifying that Part B of the Act not be construed to permit a State to reduce medical and other assistance available to children with disabilities or alter the eligibility of a child with a disability to receive services that are also part of FAPE, based on the statutory provision at section 612(e).

Proposed § 300.602 would reflect the new statutory cap on the amount of funds that States can retain for administration and other State-level activities. Section 611(f)(1) provides that each year the Secretary will determine and report to each State an amount that is 25 percent of the amount the State received under section 611 for fiscal year 1997 cumulatively adjusted annually by the lesser of the percentage increase of the State's allocation from the prior year's allocation or the rate of inflation, which will be the maximum amount that the State can retain for these purposes.

Use of Funds

Section 611(f)(2) specifies that a State can use for State administration of the Part B program, including section 619, not more than twenty percent of the amount that the State may retain, or $500,000 adjusted cumulatively for inflation, whichever is greater, and that each outlying area can retain $35,000 for that purpose. This provision is reflected in proposed § 300.620.

Proposed § 300.621 would maintain the requirements of current regulations on the allowable uses of funds retained by the State for State administration, reflecting the Secretary's interpretation of section 611(f)(2) of the Act. The Secretary believes that these provisions adequately address the statutory purpose of these funds while giving States reasonable flexibility in how they use these funds.

Section 611(f)(4) of the Act creates a new category of subgrants that SEAs, under certain circumstances, will make to LEAs for capacity building and improvement.

Proposed § 300.622 would reflect this new authority, including the statutorily prescribed purposes of these subgrants to LEAs.

Proposed § 300.623 would describe the amount reserved for capacity-building and improvement subgrants to LEAs, consistent with the requirement of section 611(f)(4)(B) of the Act. A note would be added following this section that would explain that the amount of funds available for these capacity-building and improvement subgrants to LEAs will vary year to year, and that in each year following a year in which these subgrants are made, these funds become part of the required flow-through subgrants to all LEAs.

In proposed § 300.624, the Secretary proposes to provide clear authority for States to establish priorities to award capacity building and improvement subgrants competitively or on a targeted basis because the Secretary believes that this flexibility is necessary to enable States to design these subgrants to suit State needs. A note following this provision would recognize that the purpose of these subgrants is to address particular needs that are not readily addressed through formula assistance, and that SEAs can use these subgrants to promote innovation, capacity building, and systemic improvement.

State Advisory Panel

Proposed § 300.650 would retain the provisions of current regulation concerning establishment of State advisory panels, consistent with section 612(a)(21)(A) of the Act. A note would be added to follow this section making clear that the State advisory panel advises the State regarding the education of all children with disabilities in the State, including in situations where the State has divided State responsibility for eligible children with disabilities who have been convicted as adults and are incarcerated in adult prisons.

Proposed § 300.651 would reflect the new statutory membership requirements for the State advisory panel, as provided in section 612(a)(21) (B) and (C), including a new statutory requirement that a majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.

Proposed § 300.652 would reflect the duties of the advisory panel, as specified in section 612(a)(21)(D) of the Act.

Proposed § 300.653 would maintain from the current regulations the advisory panel procedures, representing the Secretary's interpretation of reasonable rules for the operations of an advisory panel under the Act.

State Complaint Procedures

The current Part 300 regulations establish a State complaint mechanism that individuals, organizations, and other interested parties can use to bring to the SEA's attention, for resolution, allegations that a public agency is violating a requirement of Part B or its implementing regulations. The Secretary views these State complaint procedures as an important, less costly, less time consuming, and less formal alternative to due process hearings and other dispute resolution mechanisms through which disagreements under Part B and its regulations may be resolved. Proposed §§ 300.660–300.662 would retain these State complaint procedures with the changes described.

The Secretary proposes in proposed § 300.660(b) to revise the current regulation to require that States widely disseminate to parents and others information about the State's complaint procedures. The Secretary intends, through this requirement, in conjunction with the provision in proposed § 300.503(b)(8) that would require that prior written notice to parents of children with disabilities include a description of the State complaint procedures and how to file a complaint, to ensure that persons interested in special education in a State know that there are alternatives to resorting to due process hearings that can be used to resolve disputes. A new note would be added following this section that would explain that in resolving an alleged denial of FAPE, an SEA may award compensatory education if appropriate.

Proposed § 300.661 would retain from current regulation the minimum State complaint procedures in current regulations, with one exception. In this proposed regulation the Secretary proposes to delete the provision regarding Secretarial review. This change reflects a recommendation of the Department's Inspector General in his report of August, 1997 on the utility and efficiency of the Secretarial review process under the IDEA. In that report the Inspector General noted that in the Secretarial review process the Department's limited resources for implementation of the IDEA are being diverted to an activity that is providing minimal benefits to children with disabilities or to the program. The Secretary expects that removing the Secretarial review provision will allow the Department to spend more of its time and attention on evaluating States' systems for ensuring compliance with program requirements, which will have benefit for all parties interested in special education.

Two new notes would be added following proposed § 300.661. The first would clarify that if a complaint is received that raises an issue that is also the subject of a due process hearing, or multiple issues, some of which are also the subject of a due process hearing, the SEA must set aside the issues in due process until the end of the hearing, but resolve the remaining issues in the complaint within the 60-day complaint time line. The second proposed note would explain that if an issue raised in a complaint previously had been the subject of a due process hearing, the hearing decision would be binding, and the SEA would satisfy its obligation under these procedures by informing the complainant that the hearing decision is binding as to that issue. The note would also explain that the SEA would have to resolve an alleged failure to implement a due process hearing decision.

The Secretary proposes in proposed § 300.662 to maintain the provisions of current regulation regarding filing a complaint, and add a new paragraph (c) that would specify that complaints must be received within one year of the alleged violation, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the SEA. The Secretary believes that SEAs should not be required in the future to use their resources to resolve complaints that do not involve issues that are relevant to the current operation of the State's special education program and that do not involve the possibility of educational remedy for particular children. A note following this section would be added to explain that SEAs must resolve complaints that meet the complaint requirements, even if filed by an organization or individual from another State.

Subpart C—Allocation of Funds; Reports

Allocations

Proposed § 300.700 would adopt the special definition of "State" from section 611(h)(2) of the Act with regard to distribution of funds provided under section 611 of the Act.

Proposed § 300.701 would describe the purpose of the grants under section 611 of the Act and the maximum amount of those grants, as provided in section 611(a) of the Act.

Proposed § 300.702 would incorporate the statutory definition of "average per-pupil expenditure in public elementary and secondary schools in the United States" from section 611(h)(1) of the Act.

The IDEA Amendments of 1997 create a new formula for distribution of funds under section 611 of the Act that is first applied when the appropriation for section 611 of the Act is more than a certain trigger amount—$4,924,672,200. Until that time, funds under section 611 will continue to be distributed based on the formula under section 611 before enactment of the IDEA Amendments of 1997, with certain minor changes stipulated in the statute.

Proposed § 300.703(a) would incorporate the general order of distribution of funds, consistent with section 611(d)(1) of the Act, which applies to both the interim and new formula distribution.

Proposed § 300.703(b) would incorporate the interim formula for distribution among States, including the new statutory provision permitting States to count the number of children receiving special education and related services as of the last Friday in October or December 1, at the State's discretion, as specified in section 611(d)(2) of the Act.

Proposed § 300.706 reflects the section 611(e) (1) and (2) requirements for when the permanent formula takes effect, and calculation of the "base year" amount for purposes of that new formula.

Proposed § 300.707 would include the requirements of the new formula from section 611(e)(3) of the Act, which specifies that funds in excess of those distributed to a State in the base year are allocated 85 percent on relative population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE and 15 percent on the basis of relative populations of children of those ages who are living in poverty, based on the most recent data available and satisfactory to the Secretary.

Proposed § 300.708 would specify the statutory floors and a cap in the size of any State's increased allocation, as provided in section 611(e)(3) (B) and (C) of the Act. The requirements of section 611(e)(4), regarding what happens if the section 611 appropriation decreases, would be incorporated in proposed § 300.709.

Proposed § 300.710 would retain, with minor modifications, the provisions of current regulations regarding allocations to a State in which a bypass is implemented for private school children with disabilities, consistent with section 612(f)(2) of the Act.

Under section 611(g) of the Act, States will use a mechanism for distributing the formula subgrant funds to LEAs that parallels the distribution among States. This will include an interim formula, based on the formula in the Act prior to the enactment of the IDEA Amendments of 1997, and, after the 611 appropriation is greater than $4,924,674,200, a new permanent procedure that, like the one at the State level, allocates new funds 85 percent based on the relative numbers of children enrolled in public and private elementary and secondary schools in the agency's jurisdiction, and 15 percent in accordance with the relative numbers of children living in poverty, as determined by the SEA.

Proposed § 300.711 would reflect the requirement of section 611(g)(1) that funds not retained at the State level for State administration and other State purposes, or distributed to LEAs as capacity building and improvement subgrants, must be distributed to LEAs and State agencies under the statutory formula that applies in that year. Proposed § 300.712 would set forth the statutory interim formula and permanent procedure for distribution of funds to LEAs and State agencies, reflecting section 611(g)(2) of the Act. A note following this section would explain that States should use the best data that is available to them on enrollment in public and private schools, and that States have discretion in determining what data to use regarding children living in poverty, and suggests some options for poverty data. Proposed § 300.713 would reflect the statutory requirements of section 611(g)(3) concerning treatment of former Chapter 1 State agencies in the distribution of funds. The Secretary proposes minor adjustments to make the count date for children in these agencies compatible with the count date used by the State for LEA reporting because requiring a different count date in a State that chooses to count in LEAs on the last Friday in October could result in double counting.

Proposed § 300.714 would retain with minor nonsubstantive changes the current regulatory provision concerning reallocation of LEA funds to other LEAs. This provision reflects the requirements of section 611(g)(4) of the Act.

Proposed §§ 300.715 and 300.716 reflect the statutory provisions of sections 611(c) and 611(i) (1) (A) and (B) and (3) regarding payments to the Secretary of the Interior for the education of Indian children and for Indian children aged 3 through 5. The new statutory provisions concerning grants to the outlying areas and freely associated States of section 611(b) would be incorporated in proposed §§ 300.717 through 300.722.

Reports

Proposed §§ 300.750 through 300.754 would retain, from the current regulation, the provisions concerning report requirements for the annual report of children served, the information required in the report, certification, criteria for counting children, and other responsibilities of the SEA regarding these reports. These provisions are consistent with the statutory requirement in section 611(d) that directs that funds appropriated for section 611 of the Act continue to be allocated based on a child count as in effect before enactment of the IDEA Amendments of 1997 for some time into the future. Minor changes would be

made to reflect the fact that a child count for distribution of funds will not be required under the permanent funding formula, and to reflect the new State option on when the count will be conducted. A reference to the old Chapter 1 handicapped program would be eliminated, as that program no longer exists.

Proposed § 300.755 would incorporate the new statutory requirements regarding State collection and examination of data to determine if significant disproportionality based on race is occurring in the State regarding the identification and placement of children with disabilities.

Proposed § 300.756 would reflect new rules specified in section 605 of the Act regarding use of funds provided under Part B of the Act for the acquisition of equipment or construction.

2. Part 301—Preschool Grants for Children With Disabilities

Subpart A—General

Proposed § 301.1 in the proposed regulations would conform the regulatory purpose for the Preschool Grants for Children with Disabilities Program with the provisions of section 619(a) of the Act, to provide grants to States to assist them in providing special education and related services to children with disabilities aged three through five years, and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year.

Proposed § 301.4 would list regulations found in parts other than Part 301 that also apply to the Preschool Grants program. The proposed regulations would be consistent with the existing regulations, with three exceptions. First, the proposed regulations would specify that the provisions of 34 CFR 76.125–76.137 do not apply to the program, consistent with the requirements of section 611(b)(4) providing that consolidation of grants is no longer possible for the outlying areas. Second, the proposed regulations would specify that the requirements of 34 CFR 76.650–76.662 do not apply, in light of the changes proposed under Part 300 regarding the provision of services to children placed by their parents in private schools. Third, the reference to Part 86 would be removed, as that part no longer applies to SEAs and LEAs.

Proposed § 301.5 would specify the definitions that apply to certain terms used in Part 301. The section would be unchanged from the existing regulations, with the following exceptions: Consistent with the IDEA Amendments of 1997, proposed § 301.5(a) would replace the term "intermediate educational unit" with "educational service agency," and proposed § 301.5(c) would add a definition of "State" and delete definitions of "comprehensive service delivery system" and "excess appropriation."

Subpart B—State Eligibility for a Grant

Proposed § 301.10 would be conformed with section 619(b) of the Act, and provide that a State is eligible to receive a grant under the program if the State is eligible under 34 CFR Part 300 and the State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of FAPE to all children with disabilities aged three through five years in accordance with the requirements of 34 CFR Part 300, and for any two-year-old children who are provided services by the State or by an LEA. Proposed § 301.12 would restate the current regulation concerning sanctions if a State does not make FAPE available to all preschool children with disabilities to conform to the changes made by the IDEA Amendments of 1997 and other law.

Subpart C—Allocation of Funds to States

Proposed § 301.20 would be conformed with section 619(c)(1) of the Act, and provide that, after reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary will allocate the remaining amount among the States in accordance with §§ 301.21–301.23.

Proposed § 301.21 would incorporate the requirements of section 619(c)(2)(A) of the Act which sets forth the basis on which, subject to certain limitations (described in this NPRM under § 301.22), allocations to States under the Preschool Grants program would be calculated if the amount available to States were equal to or greater than the amount allocated to States for the preceding fiscal year. Consistent with this statutory provision, proposed § 301.21(a) would provide that, except as provided in § 301.22, the Secretary will first allocate to each State the amount it received for fiscal year 1997, and then allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5 and allocate 15 percent of those remaining funds to States on the basis of their relative populations of all children aged 3 through 5 who are living in poverty. Also reflecting the statutory requirements, proposed § 301.21(b) would further provide that in making these calculations, the Secretary will use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

Consistent with section 619(c)(2)(B) of the Act, proposed § 301.22 (a) and (b) would set forth floors and caps for calculating the allocations to States under the Preschool Grants program in fiscal years in which the amount available to States under § 301.20 were equal to or greater than the amount allocated to States for the preceding fiscal year. Proposed § 301.22(c) would also be conformed to section 619(c)(2)(C) of the Act and provide for ratable reductions if available funds are insufficient to make allocations to the States consistent with the provisions of § 301.22 (a) and (b).

Proposed § 301.23 would, consistent with the requirements of section 619(c)(3) of the Act, set forth the basis on which allocations to States under the Preschool Grants program would be calculated if the amount available to States under § 301.20 were less than the amount allocated to States for the preceding fiscal year. Proposed § 301.23(a) would provide that if the amount available for allocations were greater than the amount allocated to the States for fiscal year 1997, each State would be allocated the sum of the amount it received for fiscal year 1997 plus an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all of those increases for all States. Proposed § 301.23(b) would provide that if the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State would be allocated the amount it received for that year, ratably reduced, if necessary.

Consistent with section 619(d) of the Act, proposed § 301.24 would provide that for each fiscal year a State may retain for administration and other State-level activities, in accordance with §§ 301.25 and 301.26, not more, as calculated by the Secretary, than 25 percent of the amount the State received under the section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—(1) the percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or (2) the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Consistent with section 619(e) of the Act, proposed § 301.25 would provide that a State may use not more than 20 percent of the maximum amount it may retain under § 301.24 for any fiscal year for (a) administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities); or for the administration of Part C of the Act, or both, if the SEA is the lead agency for the State under that part.

Consistent with section 619(f) of the Act, proposed § 301.26 would provide that a State must use any funds that it retains under § 301.24 and does not use for administration under § 301.25 for any of the following: (1) support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5; (2) direct services for children eligible for services under section 619 of the Act; (3) developing a State improvement plan under subpart 1 of part D of the Act; (4) activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of part D of the Act if the State receives funds under that subpart; or (5) supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year. A note following this section would provide an example of an authorized use of these funds.

Subpart D—Allocation of Funds to Local Educational Agencies

Proposed § 301.30 would provide that a State must distribute any funds that it does not retain under § 301.24 to LEAs that have established their eligibility under section 613 of the Act, consistent with the requirements of section 619(g)(1) of the Act.

Proposed § 301.31 would, in conformity with section 619(g)(1), set forth the basis on which a State must distribute the funds described in § 301.30 to LEAs that have established their eligibility under section 613 of the Act. Proposed § 301.31(a) would require that the State first award to each of those agencies the amount it would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect. Proposed § 301.31(b) would further require that, after making the base payment allocations required by § 301.28(a), the State allocate 85 percent of any remaining funds to each LEA on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction, and 15 percent of those remaining funds in accordance with their relative numbers of children living in poverty, as determined by the SEA. A note following this section would explain that States should use the best data that is available to them on enrollment in public and private schools, and that States have discretion in determining what data to use regarding children living in poverty, and proposes some options for poverty data.

Proposed § 301.32(a) would, in conformity with section 619(g)(2) of the Act, provide that: (a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that the LEA does not need in order to provide FAPE to other LEAs that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

Proposed § 301.32(b) would provide that if a State provides services to preschool children with disabilities because some or all LEAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs to provide special education and related services to children with disabilities aged 3 through 5 years, and to two-year-old children with disabilities, residing in the areas served by those LEAs and ESAs.

3. Part 303—Early Intervention Program for Infants and Toddlers With Disabilities

A few changes would be made to the Part 303 regulations to conform to similar changes proposed for the Part 300 regulations. As indicated, other changes to incorporate statutory changes made by the IDEA Amendments of 1997 with regard to the Early Intervention Program for Infants and Toddlers with Disabilities will be made at a later date as technical changes.

In § 303.18, the Secretary proposes to add a new paragraph (b) specifying that a State may provide that a foster parent qualifies as a parent under Part 303 if certain specified standards are met. The note following this section would be revised, consistent with the change to the regulation. These changes would be consistent with changes proposed in proposed § 300.19.

In § 303.403, the Secretary proposes to add a new subparagraph (b)(4) to provide that prior notice to parents under this part includes information about the State complaint procedures required by §§ 303.510—303.512, including how to file a complaint and the timelines under the State complaint procedures. This change would conform to proposed § 300.503, concerning the content of prior notice under Part 300. The Secretary believes that if parents know about these procedures, they may use them as an alternative to the more costly and formal mechanisms of due process and mediation.

In § 303.510, the Secretary proposes to amend paragraph (b) to specify that the lead agency's State complaint procedures must include procedures for widely disseminating to parents and others the State's complaint procedures. The Secretary intends, through this requirement and the change proposed in § 303.403, to insure that persons interested in early intervention services for infants and toddlers with disabilities in the State know that there are alternatives to resorting to due process hearings that can be used to resolve disputes. A note would be added following this section to explain that in resolving a complaint alleging a failure to provide services in accordance with an IFSP, a lead agency may award compensatory services as a remedy. These changes would be consistent with changes proposed to § 300.660.

In § 303.511, the Secretary proposes to add a new paragraph (c) that would specify that complaints must be received by the public agency within one year of the alleged violation, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. The Secretary believes that public agencies should not be required in the future to use their resources to resolve complaints that do not involve issues that are relevant to the current operation of the State's program and that do not involve the possibility of remedy for particular

children. A note would be added following this section to explain that the lead agency must resolve any complaint that meets the requirements of this section, even if it has been filed by an organization or individual from another State. These changes would conform to changes in proposed § 300.662.

In § 303.512, the Secretary proposes to delete the provision from the current regulation regarding Secretarial review. This change reflects a recommendation of the Department's Inspector General in his report of August 1997 on the utility and efficiency of the Secretarial review process under the IDEA. In that report, the Inspector General noted that the Secretarial review process is diverting the Department's limited resources to an activity that is providing minimal benefits to children with disabilities and the program. The Secretary expects that removing the Secretarial review provision will allow the Department to spend more of its time and attention on evaluating States' systems for ensuring compliance with program requirements, which will have benefit for all parties interested in these programs. Two notes would be added following this section. Note 1 would clarify that if a complaint raises an issue that is also the subject of a due process hearing, or multiple issues, some of which are also the subject of a due process hearing, the State must set aside the issues in due process until the end of the hearing, but resolve the remaining issues in the complaint within the 60-day complaint timeline. Note 2 would explain that if an issue raised in a complaint previously had been the subject of a due process hearing, the hearing decision would be binding, and the State would satisfy its obligation under these procedures by informing the complainant that the hearing decision is binding as to that issue. The note would also explain that the State would have to resolve an alleged failure to implement a due process hearing decision. These changes would conform to changes in proposed § 300.661.

In § 303.520, a new paragraph (d) would be added that would provide that a lead agency may not require parents, if they would incur a financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible child under this part. The Department recognizes the important policy underlying this program that requires States to use all available sources of funding for providing services. Therefore, this new provision would permit States to require families to use private insurance if the families would incur no financial cost. Proposed paragraph (d) would incorporate the Department's interpretation that requiring parents to use their private insurance if that would result in a financial cost to the family is not compatible with the statutory requirement that early intervention services be at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees. It would also identify what is meant by the term "financial cost." A note would be added following this section to explain how this applies if families are covered by both private insurance and Medicaid.

As noted in the section of this preamble discussing the Part 300 regulations, the Secretary believes that the same basic principle would be equally applicable to parents who are eligible for public insurance, but that there is no current need to regulate on the public insurance issue because there is no risk of financial loss to parents under current public insurance programs such as Medicaid. The Secretary invites comment on whether a policy on public insurance similar to the proposed section on private insurance should be added to the final regulation. A second note would be added to explain that if a State cannot get parent consent to use public or private insurance for a service, the agency may use funds under this part to pay for that service. In addition, the note would explain that to avoid financial cost to parents who otherwise would consent to the use of private insurance, the lead agency may use funds under this part to pay the costs of accessing the insurance, such as deductible or co-pay amounts.

In addition, the Secretary proposes to add a new paragraph (e) to specify that proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR § 80.25. That section imposes limitations on how program income can be spent that could lead to States returning reimbursements from public and private insurance to the Federal government or requiring those funds be used under this part, which could discourage States from using all the resources available in paying for services under this part. Given the current small percentage that Federal funds under this part are of total funding for this program, and the fact that eligible infants and toddlers with disabilities are guaranteed services under this part, the Secretary believes that States should be given some flexibility in how they use and account for funds received as reimbursements from other sources. A note would be added after this section explaining the consequences, under the nonsupplanting requirement, of various State choices in accounting for these funds. These changes would be similar to provisions in proposed § 300.142.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the following National Education Goals:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

These proposed regulations implement changes made to the Individuals with Disabilities Education Act by the IDEA Amendments of 1997 and make other changes determined by the Secretary as necessary for administering this program effectively and efficiently.

The IDEA Amendments of 1997 made a number of significant changes to the law. While retaining the basic rights and protections that have been in the law since 1975, the amendments strengthened the focus of the law on improving results for children with disabilities. The amendments accomplished this through changes that promote the early identification of and provision of services to children with disabilities, the development of individualized education programs that enhance the participation of children with disabilities in the general curriculum, the education of children with disabilities with nondisabled children, higher expectations for children with disabilities and accountability for their educational results, the involvement of parents in their children's education, and reducing unnecessary paperwork and other burdens to better direct resources to improved teaching and learning.

All of these objectives are reflected in the proposed regulations, which largely reflect the changes to the statute made by IDEA Amendments of 1997.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

This is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and an economic analysis was conducted consistent with section 6(a)(3)(C) of the Executive Order. Due to the lack of data, the Secretary particularly request public comments to assist in determining whether these regulations are economically significant under the Executive Order.

Summary of Potential Benefits and Costs

Benefits and Costs of Statutory Changes: For the information of readers, the following is an analysis of the costs and benefits of the most significant statutory changes made by IDEA Amendments of 1997 that are incorporated into the IDEA regulations. Based on this analysis, the Secretary has concluded that the statutory changes included in this regulation will not, in total, impose significant costs in any one year, and may result in savings to State and local educational agencies. An analysis of specific provisions follows:

Participation in Assessments

Proposed § 300.138 incorporates statutory requirements relating to the inclusion of children with disabilities in general State and district-wide assessments and the conduct of alternate assessments for children who cannot be appropriately included in general assessments.

Although children with disabilities have not been routinely included in State and district-wide assessments, the requirement to include children with disabilities in assessment programs in which they can be appropriately included, with or without accommodations, does not constitute a change in Federal law. Because the Secretary regards this statutory change as a clarification, not a change, in the law, no cost impact is assigned to this requirement, which is incorporated in § 300.138(a) requiring the participation of children with disabilities in general assessments.

However, States were not previously required to conduct alternate assessments for children who could not participate in the general assessments. The statutory requirement to develop and conduct alternate assessments beginning July 1, 2000, therefore, imposes a new cost for States and districts.

The impact of this change will depend on the extent to which States and districts administer general assessments, the number of children who cannot appropriately participate in those assessments, the cost of developing and administering alternate assessments, and the extent to which children with disabilities are already participating in alternate assessments.

In analyzing the impact of this requirement, the Secretary assumes that alternate tests would be administered to children with disabilities on roughly the same schedule as general assessments. This schedule will vary considerably from State to State and within States, depending on their assessment policy. In most States, this kind of testing does not begin before the third grade. In many States and districts, general assessments are not administered to children in all grades, but rather at key transition points (typically grades 4, 8, and 11).

The extent to which States and districts will need to provide for alternate assessments will also vary depending on how the general assessments are structured. Based on the experience of States that have implemented alternate assessments for children with disabilities, the Secretary estimates that about one to two percent of the children in any age cohort will be taking alternate assessments.

Based on this information, the Secretary predicts that about 18 to 36 million of the children who are expected to be enrolled in public schools in school year 2000–2001 will be candidates for general assessments. Of these, the Secretary estimates that approximately 200,000 to 700,000 will be children with disabilities who may require alternate assessments.

The costs of developing and administering these assessments are also difficult to gauge. In its report *Educating One and All*, the National Research Council states that the estimated costs of performance-based assessments programs range from less than $2 per child to over $100 per student tested. The State of Maryland has reported start-up costs of $191 per child for testing a child with a disability and $31 per child for the ongoing costs of administering an alternate assessment.

The cost impact of requiring alternate assessments will be reduced to the extent that children with disabilities are already participating in alternate assessments. Many children with disabilities are already being assessed outside the regular assessment program in order to determine their progress in meeting the objectives in their IEPs. In many cases, these assessments might be adequate to meet the new statutory requirement.

Based on all of this information, the Secretary has concluded that the cost impact of this statutory change is not likely to be significant, and will be

justified by the benefits of including all children in accountability systems.

Incidental Benefits

The change made by section 613(a)(4) of the IDEA, incorporated in proposed § 300.235, generates savings by reducing the time that would have been spent by special education personnel on maintaining records on how their time is allocated in regular classrooms among children with and without disabilities.

To calculate the impact of this change, one needs to estimate the number of special education personnel who will be providing services to children with and without disabilities in regular classrooms and the amount and value of time that would have been required to document their allocation of time between disabled and nondisabled children.

Based on State-reported data on placement, it appears that about 4 million children will spend part of their day in a regular classroom this school year. It is difficult to predict the extent to which these children will be receiving services in the regular classroom from a special education teacher or related services provider. However, the Secretary believes that this statutory change will not only eliminate unnecessary paperwork in situations in which special education personnel have been working in the regular classroom and documenting their allocation of time, but will encourage the provision of special education services in the regular classroom—a change that will benefit children with disabilities.

Individualized Education Programs

The proposed regulations incorporate a number of statutory changes in section 614(d) that relate to the IEP process and the content of the IEP. With the exception of one requirement (the requirement to include a regular education teacher in IEP meetings), the Secretary has determined that, on balance, these changes will not increase the cost of developing IEPs. Moreover, all the changes will produce significant benefits for children and families. Key changes include:

Clarifying that the team must consider a number of special factors to the extent they are applicable to the individual child. The Secretary does not regard the statutory changes that are incorporated in § 300.346 as imposing a new burden on school districts because the factors that are listed should have been considered, as appropriate, under the IDEA before the enactment of IDEA Amendments of 1997. These include: behavioral interventions for a child whose behavior impedes learning, language needs for a child with limited English proficiency, Braille for a blind or visually impaired child, the communication needs of the child, and the child's need for assistive technology.

Strengthening the focus of the IEP on access to the general curriculum in statements about the child's levels of performance and services to be provided. The Secretary does not regard the statutory changes that are incorporated in § 300.347 relating to the general curriculum as burdensome because the changes merely refocus the content of statements that were already required to be included in the IEP on enabling the child to be involved in and progress in the general curriculum.

Requiring an explanation of the extent to which a child will not be participating with nondisabled children. This statutory requirement, which is incorporated in § 300.347(a)(4), does not impose a burden because it replaces the requirement for a statement of the extent to which the child will be able to participate in regular educational programs.

Requiring the IEP to include a statement of any needed modifications to enable a child to participate in an assessment, and, in cases in which a child will not be participating in a State or districtwide assessment, to include a statement regarding why the assessment is not appropriate and how the child will be assessed. The Secretary does not believe the inclusion of these statements, required statute and incorporated in § 300.447(a)(5), will be unduly burdensome. Many school districts already include statements in the IEP regarding assessments, including information about needed accommodations.

Allowing the IEP team to establish benchmarks rather than short-term objectives in each child's IEP. There is considerable variation across States, districts, schools, and children in the amount of time spent on developing and describing short-term objectives in each child's IEP. While it would be difficult to estimate the impact of this statutory change, contained in § 300.347(a)(2), it clearly affords schools greater flexibility and an opportunity to reduce paperwork in those cases in which the team has previously included unnecessarily detailed curriculum objectives in the IEP document.

Prior to the enactment of the IDEA Amendments of 1997, IDEA required the participation of the "child's teacher," typically read as the child's special education teacher, but it did not explicitly require a regular education teacher. The IDEA Amendments of 1997, incorporated in § 300.344(a)(2) of this proposed regulation require the participation of the child's special education teacher and a regular education teacher if the child is or may be participating in the regular education classroom.

The impact of this change will be determined by the number of children with disabilities who are or who may be participating in the regular classroom in a given year, the number and length of IEP meetings, the opportunity cost of the regular education teacher's participation, and the extent to which regular education teachers are already attending IEP meetings.

State-reported data for school year 1994–95 indicates that about 3.8 million children with disabilities aged 3 through 21 spend at least 40 percent of their day in a regular classroom (children reported as placed in regular classes and resource rooms). The participation of the regular education teacher would be required for all of these children since these children are spending at least part of their day in the regular classroom.

State data also show that an additional 1.2 million children were served in separate classrooms. A regular education teacher's participation will clearly be required for those children in separate classes who are spending part of their school day in regular classes (less than 40 percent of their day). Other children may be participating with nondisabled children in some activities in the same building. While a child's individual needs and prospects will determine whether a regular education teacher would need to attend a child's IEP meeting in those cases, the Secretary believes that some proportion of these children are children for whom participation in regular classrooms is a possibility, therefore requiring the participating of a regular education teacher.

Although the prior statute did not require the participation of a regular education teacher, it is not uncommon for States or school districts to require a child's regular education teacher to attend IEP meetings.

Based on all of this information, the Secretary estimates that the participation of a regular education teacher may be required in an additional 3.7 to 5.2 million IEP meetings in the next school year.

While the opportunity costs of including a regular education teacher in these meetings will be significant because of the number of meetings involved, the Secretary believes these costs will be more than justified by the benefits to be realized by teachers, schools, children, and families. Involving the regular education teacher in the development of the IEP will not only provide the regular education teacher with needed information about the child's disability, performance, and educational needs, but will help ensure that a child receives the supports the child needs in the regular classroom, including services and modifications that will enable the child to progress in the general curriculum.

Parentally-Placed Students in Private Schools

This statutory change, which is incorporated in § 300.453, would require school districts to spend a proportionate amount of the funds received under Part B of the IDEA on services to children with disabilities who are enrolled by their parents in private elementary and secondary schools.

The change does not have an impact on most States because the statute does not represent a change in the Department's interpretation of the law as it was in effect prior to the enactment of IDEA Amendments of 1997. However, prior to the change in the law in three Federal circuits, the courts concluded that school districts generally were responsible for paying for the total costs of special education and related services needed by students with disabilities who have been parentally placed in private schools. Therefore, this change does produce potential savings for school districts in those 12 States affected by these court decisions. The States are: Colorado, Connecticut, Kansas, Louisiana, Mississippi, New Mexico, New York, Oklahoma, Texas, Utah, Vermont, and Wyoming.

To determine the impact of the change, one needs to estimate the number of parentally placed children with disabilities that LEAs would have been required to serve, but for this change. Using private school enrollment data for school year 1993–94 and projected growth rates, the Secretary estimates that approximately 1.2 million students will be enrolled in private schools in these 12 States in this school year.

There is no reliable data on the number of children with disabilities who are parentally placed in private schools. However, if one assumes that children with disabilities are found in private schools in the same proportion as they are found in public schools in these States, or at least in the same proportion that children with speech impairments and learning disabilities are found in public schools, one would estimate that there are between 60,000 and 89,000 children with disabilities who are parentally placed in private schools.

If one assumes that, on average, the cost of providing a free appropriate education to these students would be approximately equal to the average excess costs for educating students with disabilities—$6,797 per child for school year 1997–98, the costs of providing FAPE to these children would be significant.

Under the statutory change, public schools would still be required to provide services to parentally-placed children in an amount proportionate to their share of the total population of children with disabilities. Therefore, in estimating the impact of this statutory change, one needs to subtract the cost of the public school obligation from the total projected savings. This amount will vary with the proportion of children attending private schools and the size of the Federal appropriation. While the precise amount of this obligation is indeterminate, the Secretary has concluded that the total net savings to the public sector attributable to the change in the law for these 12 States will be very significant.

Mediation

Proposed § 300.506 reflects the new statutory provisions in section 615(e) of the IDEA, which require States to establish and implement mediation procedures that would make mediation available to the parties whenever a due process hearing is requested. The Act specifies how mediation is to be conducted.

The impact of this change will depend on the following factors: the number of due process hearings that will be requested, the extent to which the parties to those hearings will agree to participate in mediation, the cost of mediation, the extent to which mediation would have been used in the absence of this requirement to resolve complaints, and the extent to which mediation obviates the need for a due process hearing.

Data for previous years suggests one can expect about one complaint for every 1000 children served or about 5,800 requests for due process hearings during the next year. This projection probably overstates the number of complaints because it does not take into account the effect of IDEA Amendments of 1997, which, on balance, can be expected to result in better implementation of the law and higher parental satisfaction with the quality of services and compliance with the IDEA.

Many of these complaints would have been resolved through mediation even without the statutory change. Over 39 States had mediation systems in place prior to the enactment of IDEA Amendments of 1997. Data for 1992 indicate that, on average, States with mediation systems held mediations in about 60 percent of the cases in which hearings were requested. Nevertheless, the Secretary expects the number of mediations to increase even in States that already have mediation systems. Although most States report using mediation as a method of resolving disputes, there have been considerable differences in its implementation and use. In general, the extent to which mediation has been used in States probably depends on the extent to which parents and others were informed of its availability and possible benefits in resolving their complaints and the extent to which the mediator was perceived as a neutral third-party. The Secretary believes that the changes made by IDEA Amendments of 1997 will eliminate some of the differences in State mediation systems that have accounted for its variable use and effectiveness.

The benefits of making mediation more widely available are expected to be substantial, especially in relation to the costs. States with well-established mediation systems conduct considerably fewer due process hearings. For example, in California hearings were held in only 5 and 7 percent of the cases in which they were requested in 1994 and 1995, respectively. The average mediation appears to cost between $350 and $1,000, while a due process hearing can cost tens of thousands of dollars. Based on the experience that many different States have had with mediation, the Secretary estimates that hundreds of additional complaints will be resolved through mediation. The benefits to school districts and benefits to families are expected to be substantial.

Discipline

The proposed regulations (§§ 300.121, 300.122, 300.520, and 300.521) incorporate a number of significant changes to the IDEA that relate to the procedures for disciplining children with disabilities.

Some of the key changes contained in section 615(k) afford school districts additional tools for responding to serious behavioral problems, and in that regard, do not impose any burdens on schools or districts.

The statutory change reflected in proposed § 300.520 would give school officials the authority to remove children who engaged in misconduct involving weapons or illegal drugs.

Under prior law, school officials had the authority to remove children who brought guns, but could not remove children who engaged in misconduct involving other weapons or illegal drugs over the objection of their parents unless they prevailed in a due process proceeding or obtained a temporary restraining order from a court. The statutory change reflected in proposed § 300.521 would give school officials the option of seeking relief from a hearing officer rather than a court in the case of a child the school is seeking to remove because the child poses a risk of injury to the child or others. In both cases, the child would continue to receive services in an alternative educational setting that is required to meet certain standards. It is difficult to assess the impact of either of these statutory changes on schools because there is virtually no information available on the extent to which parents disagree with districts that propose to remove these children. This new authority would only be used in those cases. Nevertheless, the Secretary believes the benefits of this authority to be substantial insofar as the changes help schools provide for a safe environment for all children, while ensuring that any children with disabilities who are moved to an alternative setting continue to receive the services they need.

The statutory change reflected in proposed § 300.520(b) will require school officials to convene the IEP team in cases in which removal for more than 10 school days is contemplated to develop an assessment plan and behavioral interventions (or to review the child's behavioral intervention plan if there is one). These would include all cases in which a school is proposing to suspend a child for more than 10 days in a given year or to expel a child.

Because of the dearth of data on the number and length of suspensions, it is difficult to estimate the impact of this change. However, based on data collected by the Office for Civil Rights on the number of children suspended each year, the Secretary estimates about 300,000 children with disabilities will be suspended for at least one school day this year. Based on an analysis of data from selected States, the Secretary estimates that this review may have to be conducted for only a portion of these children since most of the children who are suspended receive only short-term suspensions. Although there will be a cost associated with convening the IEP team, in many cases, this review will be conducted at the same time as the required manifestation determination and much of the information needed for that determination could be used in conducting this review. Moreover, the benefits of this review are expected to be substantial. The Secretary believes that the development and implementation of appropriate behavioral interventions for children with disabilities will reduce the need for disciplinary actions and all the concomitant costs.

The requirement in section 612(a)(1)(A), incorporated in proposed § 300.121, that all children aged 3 through 21 must have made available to them a free appropriate public education, including children who have been suspended or expelled from school, does not represent a change in the law as the law was interpreted by the Department prior to the enactment of the IDEA Amendments of 1997. It clarifies the Department's long-standing position that the IDEA requires the continuation of special education and related services even to children who have been expelled from school for conduct that has been determined not to be a manifestation of their disability.

However, this statutory change does represent a change in the law in two circuits in which Federal Circuit courts disagreed with the Department's interpretation of the law—the 4th and 7th Circuits. The affected States are: Virginia, Maryland, North Carolina, South Carolina, West Virginia, Illinois, Indiana, and Wisconsin.

To assess the impact of this change, one needs to estimate the extent to which students would have been excluded from education, but for this change in the statute, and the cost of providing the required services to these students during the period they are expected to be excluded from their regular school due to a long-term suspension or expulsion.

There is a paucity of data available on disciplinary actions, and very little for the States in the 4th and 7th circuits. Using data collected by the Office for Civil Rights for school year 1994, the Secretary estimates that approximately 60,000 students aged 6 through 21 will be suspended during this school year. But to determine the impact of the prohibition on ceasing services in these States, one needs to know the number of suspensions each student received and their duration—information that is not provided by OCR data. However, more detailed data compiled by a few States would suggest that a relatively small percentage of students who are suspended receive suspensions of greater than 10 days at a time and a much smaller number of students are expelled.

No information is available on the cost of providing services in an alternative setting for a student who has been suspended temporarily or expelled from school. However, it is reasonable to assume that the cost probably would be no greater than the average daily *total* costs of serving children with disabilities and no less than the cost of providing instruction in a Home or Hospital setting, or between $29 and $70 per day.

While this statutory change will have a cost impact on the States in the fourth and seventh circuits, the Secretary believes the costs for these States will be justified by the benefits of continuing educational services for children who are the least likely to succeed without the help they need.

The statutory change reflected in proposed § 300.122 could generate potential savings for all States by removing the obligation to provide educational services to individuals 18 years old or older who were incarcerated in adult prisons and who were not previously identified as disabled. We have no information on the number of prisoners with disabilities who were not previously identified.

Triennial Evaluation

The existing regulations require a school district to conduct an evaluation of each child served under the IDEA every three years to determine, among other things, whether the child is still eligible for special education. The IDEA Amendments of 1997 change this requirement to reduce unnecessary testing and therefore reduce costs. Specifically, section 614(c) of the IDEA, incorporated in proposed § 300.533, allows the evaluation team to dispense with tests to determine the child's continued eligibility if the team concludes this information is not needed. However, these tests must be conducted if the parents so request.

The savings resulting from this change will depend on the following factors: the number of children for whom an evaluation is conducted each year to comply with the requirement for a triennial evaluation, the cost of the evaluation, and an estimate of the extent to which testing will be reduced because it is determined by the IEP team to be unnecessary and is not requested by the parents.

Based on an analysis of State-reported data, the Secretary estimates that approximately 1.4 million children will be eligible for triennial evaluations in school year 1997–98 or roughly 25 percent of the children to be served.

The IDEA Amendments of 1997 make it clear that districts no longer need to conduct testing to determine whether a child still has a disability, if the evaluation team determines this information is not needed and the parent agrees. However, while the regulation permits the team to dispense with unneeded testing to determine whether the child still has a disability, the team still has an obligation to meet to review any existing evaluation data and to identify what additional data are needed to determine whether the child is still eligible for special education and related services, the present levels of performance of the child, and whether any modifications in the services are needed. In view of these requirements, the Secretary assumes that there will be some cost associated with conducting the triennial evaluation even in those cases in which both the team and the parents agree to dispense with testing. The Secretary estimates that the elimination of unnecessary testing could reduce the personnel costs by as much as 25 to 75 percent. While there is no national data on the average cost of conducting a triennial evaluation under the current regulations, the Secretary believes that a triennial evaluation has typically required the participation of several professionals for several hours and has cost as much as $1000.

If one assumes, for purposes of this analysis, that savings are achievable in roughly half of the triennial evaluations that will be conducted and that elimination of unnecessary testing could reduce personnel costs by at least 25 percent, one would project substantial savings for LEAs that are attributable to this change.

Benefits and Costs of Proposed Non-statutory Regulatory Changes: The following is an analysis of the benefits and costs of the nonstatutory proposed regulatory changes that includes consideration of the special effects these proposals may have for small entities.

The proposed regulations primarily affect State and local educational agencies, which are responsible for carrying out the requirements of Part B of the IDEA as a condition of receiving Federal financial assistance under that Act. Some of the proposed changes also affect children attending private schools and consequently indirectly affect private schools.

For purposes of this analysis as it relates to small entities, the Secretary has focused on local educational agencies because these proposed regulations most directly affect local school districts. The Secretary proposes to use a definition of small school district developed by the National Center for Education Statistics for purposes of its recent publication, "Characteristics of Small and Rural School Districts." In that publication, NCES defines a small district as "one having fewer students in membership than the sum of (a) 25 students per grade in the elementary grades it offers (usually K–8) and (b) 100 students per grade in the secondary grades it offers (usually 9–12)". Using this definition, approximately 34 percent of the Nation's school districts would be considered small and serve about 2.5 percent of the Nation's students. NCES reports that approximately 12 percent of these students have IEPs.

Both small and large districts will experience economic impacts from this proposed rule. Little data are available that would permit a separate analysis of how the proposed changes affect small districts in particular. Therefore, the Secretary specifically invites comments on the differential effects of the proposed regulations on small districts.

For purposes of this analysis, the Secretary assumes that the effect of the proposed regulations on small entities would be roughly proportional to the number of children with disabilities served by those districts.

For school year 1997–98, we estimate that approximately 50 million children will be enrolled in public elementary and secondary schools. Using the NCES definition and assuming all districts grew at the same rate between school year 1993–94 and 1997–98, the Secretary estimates that approximately 1.25 million children are enrolled in small districts. Applying the NCES estimate of 12 percent, we estimate that these districts serve approximately 150,000 children with disabilities of the 5.806 million children with disabilities served nationwide.

There are many changes in the proposed regulations that are expected to result in economic impacts—both positive and negative. For purposes of this analysis, we estimated the impact of those non-statutory changes that were not required by changes that were made in the statute by the IDEA amendments.

The following is a summary of the estimated economic and non-economic impact of the key changes in this proposed regulation:

Section 300.12—Definition of "General Curriculum"—This proposed regulation does not limit flexibility or impose any burden. Its inclusion helps to clarify what is intended by this term.

Sections 300.19(b) and 303.18(b)—Definition of "Parent"—Proposed paragraph (b), which defines the circumstances under which a State may treat a foster parent as a parent for purposes of IDEA, does not impose any burden on State or local agencies. The proposed definition is intended to promote the appropriate involvement of foster parents consistent with the best interests of the child by ensuring that those who best know the child are involved in decisions about the child's education. To the extent there is any economic impact of this proposal, it should reduce costs on States and local agencies that they would otherwise incur for training and appointing surrogate parents for children whose educational interests under this proposal could appropriately be represented by their foster parents.

Section 300.24(b)(3)—Definition of "Specially-designed instruction"—Proposed paragraph (b)(3) defines "specially-designed instruction" in order to give more definition to the term "special education," which is defined in this section as "specially-designed instruction." The definition is intended to clarify that the purpose of adapting the content, methodology or delivery of instruction is to address the child's unique needs and to ensure access to the general curriculum. This provision increases the potential of children with disabilities to participate more effectively in the general curriculum.

Section 300.121—Continuation of Services—Proposed section 300.121 would add the statutory provision that the right to a free appropriate public education extends to children with disabilities who have been suspended or expelled from school. Proposed paragraph (c)(1) would define children who have been suspended or expelled from school to mean children who have been removed from their current educational placement for more than 10 school days in a given school year. Proposed paragraph (c) would clarify that in providing FAPE to these children an agency shall meet the requirements provided in the statute for interim alternative educational settings for children removed for possessing weapons or drugs or if they are likely to injure themselves or others if they remain in their current placement.

In determining whether and how to regulate on this issue, the Secretary considered the impact of various alternatives on small and large school districts and children with disabilities and their families, and tried to strike an appropriate balance between the educational needs of students and the burden on schools.

Many of the comments received in response to the Department's notice published in July expressed concern that the statute may be read to require school districts to continue to provide services to a child who has been suspended regardless of the duration of the suspension. School districts argue

that if the statute is interpreted to require these services, this will impose a significant burden on schools and interfere with their ability to ensure a safe and orderly environment for all children.

Some will argue that the statute could and should be read to give schools the flexibility they had under IDEA before it was amended not to provide services to children suspended for fewer than 10 school days at a time, regardless of the cumulative effect, as long as there is no pattern of exclusion that warrants treating an accumulation that exceeds 10 school days as a change in placement.

While it is difficult to quantify the cost of requiring schools to provide services to all children who are suspended for one or more school days, the Secretary agrees that the burden for schools districts could be substantial. Based on data collected by the Office for Civil Rights for school year 1992 and data on the number of children who are currently being served under the IDEA, the Secretary estimates that approximately 300,000 children with disabilities will be suspended for at least one school day during the next school year. Many of these children will be suspended on more than one occasion for one or more days. Because of the differences among the children who are expected to be suspended and the range of their service needs, the costs of and the burden associated with providing individualized services in an alternative setting to every child who is suspended for one or more school days could be substantial, especially for small districts, who are expected to suspend about 8,000 children with disabilities during this school year.

At the same time, the Secretary is concerned about the adverse educational impact on a child who has been suspended for more than a few days and on more than one occasion. In balancing these concerns, the Secretary proposes an alternative that takes into account both impacts. Schools will be relieved of the potential obligation to provide services for a significant population of children who are briefly suspended a few times during the course of the school year, and required to anticipate possible service needs of children with chronic or more serious behavioral problems who are repeatedly excluded from school.

Section 300.122(a)(3)—Exception to right to FAPE (Graduation)—Proposed paragraph (a)(3) provides that a student's right to FAPE ends when the student has graduated with a regular high school diploma, but not if the student graduates with some other certificate, such as a certificate of attendance, or a certificate of completion. Given the importance of a regular high school diploma for a student's post-school experiences, including work and further education, the Secretary believes that there is a significant benefit to children protected by the Act to make clear that the expectation for children with disabilities is the same as for nondisabled children. The impact of this proposal, however, is difficult to assess. Many States, including most of those that report a high number of children with disabilities leaving school with a certificate of completion or some other certificate that is not a regular high school diploma, indicate that students with disabilities have the right to continue to work to earn a regular high school diploma after receiving that certificate. Little information is available to evaluate how many students who now can return to school after receiving some other certificate of completion do so, or how many would return to school under this proposal, although several State directors of special education indicated that relatively few students who now can return, do so. The Secretary anticipates that there may be some small impact on small districts, but does not expect it to be substantial, because of the likely small number of students who would return and could not do so now.

Section 300.139—Reporting on Assessments—Proposed 300.139 would require SEA reports on wide-scale assessments to include children with disabilities in aggregated results for all children to better ensure accountability for results for all children. This proposed regulation is expected to have a minimal impact on the cost of reporting assessment results. It could increase the number of data elements reported depending on whether States continue to report trend data for a student population that does not include children with disabilities to the extent required by section 300.138. There will be no impact on small (or large) school districts since this requirement applies to reports that are prepared by the State educational agency.

Sections 300.142(f) and 303.520(e)—Program Income—These provisions would specify that proceeds from public and private insurance will not be treated by the Department as "program income" under other regulations that limit how program income can be used. Therefore, this proposal increases flexibility for State and local agencies in using the proceeds from insurance.

Section 300.156(b)—Annual Description of Part B Set-aside Funds—Proposed paragraph (b) provides that if a State's plans for the use of its State level or State agency funds do not differ from those for the prior year the State may submit a letter to that effect instead of submitting a description of how the funds would be used. The effect of this proposed regulation is inconsequential because it implements the Department's long-standing interpretation that a letter is sufficient in this case.

Section 300.232(a)—Exception to the LEA Maintenance of Effort—Proposed paragraph (a) makes it clear that an LEA may only reduce expenditures associated with departing personnel if those personnel are replaced by qualified, lower-salaried personnel. Congress made its intent clear in this regard in the Committee Report, which is quoted, in part, in a Note following this proposed regulation. Allowing LEAs to reduce their expenditures by not replacing departing personnel would violate congressional intent and diminish special education services in those districts.

Section 300.342(c)—Use of IFSP—Proposed paragraph (c) would require school districts to obtain written informed consent from parents before using an IFSP instead of an IEP, which is based on an explanation of the differences between the two documents. The proposed regulation would impose a cost burden on districts in those States that elect to allow parents to opt for the use of an IFSP instead of an IEP. However, once a form is developed that explains the differences between an IFSP and an IEP, the cost of providing this form to parents and obtaining written consent are probably minimal, and are justified by the benefits of ensuring that parents understand the role of the IEP in providing access to the general education curriculum.

Section 300.342(d)—Effective Date of IEP Requirements—Proposed paragraph (d) would provide that IEPs are to meet the requirements of the statute by July 1, 1998, which is the statutory effective date for the new IEP requirements. Given the potential benefits to families and schools of complying with these requirements, the Secretary believes that implementation of these requirements should not depend on parents exercising their rights or vary within and across districts and States. The impact of this proposal is difficult to estimate because the cost of complying includes both the one-time cost of providing all affected parties with the information, training, and materials needed to implement the new requirements appropriately and the

annual costs of complying with new IEP requirements such as including the regular education teacher on the IEP team. The impact of these costs on State and local agencies is increased the sooner these costs are incurred.

The Secretary anticipates some impact on small districts, but does not expect it to be substantial because of the number of children involved—about 150,000 children with disabilities in total.

Section 300.344(b)—Including the Child in the IEP Meeting—Proposed paragraph (b) would require the school to invite students to participate in IEP meetings if the meeting will include consideration of transition services needs or transition services. The effect of this provision is to give 14- and 15-year-olds, and in some cases, younger students the opportunity to participate. The existing regulations have required schools to invite students to meetings in which transition services were to be discussed. These would include all students aged 16 years and older, and in some cases, younger students. The law has also given other children when appropriate the opportunity to participate in the IEP meeting. Therefore, in some cases, 14- and 15-year-olds may be already participating. The Secretary believes that the costs of notifying students about a meeting or trying to ensure that the students' interests and preferences are accommodated are more than justified by the benefits of including students in a discussion of their own transition needs, including their planned course of study in secondary school.

Section 300.501(b)—Parental Access to Meetings—Proposed paragraph (b) of section 300.501 would define when and how to provide notice to parents of meetings in which they are entitled to participate. It would further define what is meant by the term "meeting." The Secretary believes these proposed regulations impose the minimal requirements necessary to implement the statute. The language in paragraph (b)(1) helps to clarify what is required to provide parents with a meaningful opportunity to attend meetings while the language in (b)(2) is designed to reduce unnecessary burden by clarifying what constitutes a "meeting."

Section 300.501(c)—Placement Meetings—Paragraph (c) of 300.501 specifies that the procedures used to be to meet the new statutory requirement of parental involvement in placement decisions. It provides that the procedures used for parental involvement in IEP meetings also be used for placement meetings. These include specific requirements relating to notice, methods for involving parents in the meeting, and recordkeeping of attempts to ensure their participation. Because in many cases placement decisions will be made as part of IEP meetings, as is already the case in most jurisdictions, the Secretary believes the impact of this proposed regulation will be minimal. In those cases in which placement meetings are conducted separately from the IEP meetings, the Secretary believes the benefits of making substantial efforts to secure the involvement of parents and provide for their meaningful participation in any meeting to discuss their child's placement more than justify the costs.

Section 300.502(b) and (c)—Right to an Independent Evaluation—Proposed paragraph (b) would clarify language from the current regulations that make it clear that if a parent requests an independent educational evaluation (IEE), the agency must either initiate a due process hearing to show that its evaluation is appropriate or provide for an IEE at public expense. The Secretary interprets the provision permitting parents to request an IEE to require the agency to take action. This requirement at most represents a small burden for school districts because if the agency did not take action, parents would be free to request due process to compel action.

Proposed paragraph (c) provides that a public agency may not impose conditions or timelines related to obtaining an independent evaluation. The Secretary believes that this requirement, which arguably limits the flexibility of school districts, is critical to ensuring that school districts do not find ways to circumvent the right provided by the IDEA to parents to obtain an independent evaluation.

Sections 300.503(b)(8) and 303.403(b)(4)—Notice to Parents Regarding Complaint Procedures—These provisions require that the required prior written notice to parents include information about how to file a complaint under State complaint procedures. Because districts are already required to provide a written notice to parents, the Secretary estimates that the additional cost of adding this information will be one-time and minimal. The burden on small districts could be minimized if each SEA were to provide its LEAs with appropriate language describing the State procedures for inclusion in the parental notices. Making parents award of a low cost and less adversarial mechanism that they can use to resolve disputes with school districts should result in cost savings and more cooperative relationships between parents and districts.

Section 300.505 (a)(1)(iii) and (c)(2)—Parental Consent for Reevaluation—Proposed paragraph (a)(1)(iii) would clarify that the new statutory right of parents to consent to a reevaluation of their child means parental consent prior to the administration of any test that is needed as a part of a reevaluation. The Secretary does not believe that the intent of this change was to require school districts to obtain parental consent before reviewing existing data about the child and the child's performance, an activity that school districts, as a matter of good practice, should be engaged in on an on-going basis. That interpretation would impose a significant burden on school districts with little discernable benefit to the children served under these regulations.

Proposed paragraph (c)(2) would use the procedures that are in current regulations dealing with inviting parents to IEP meetings as a basis for defining what it means to undertake "reasonable measures" in obtaining parental consent. The intent of the proposal is to meaningfully operationalize the statutory right of parents to consent to a reevaluation of their child. Given the importance of parental involvement in all parts of the process, the Secretary believes that any burden imposed by the proposed recordkeeping requirements is justified by the benefits of securing parental consent to the reevaluation.

Section 300.506(c)—Impartial Mediation—Proposed paragraph (c) would interpret the statutory requirement that mediation be conducted by an impartial mediator to mean that a mediator may not be an employee of an LEA or a State agency that is providing direct services to the child and must not have a personal or professional conflict of interest. The Secretary believes that, by definition, parents would not regard an employee of the other party to the dispute to be impartial or a person who has a personal or professional conflict of interest. The Secretary believes providing for impartiality would help promote the use of mediation, which is voluntary, and improve its overall effectiveness in resolving disagreements. The impact of disallowing these individuals from serving as mediators is not likely to have a significant impact on States, given current practices. Many States contract with private organizations to conduct their mediations. Others use employees of the State educational agency, which, in most cases, is not the agency providing direct services. Given

the significant benefits to children, families, and school districts of expeditiously resolving disagreements without resort to litigation, the Secretary concluded that benefits of this proposal easily justify any cost or inconvenience to States.

Section 300.506(d)(2)—Failure to Participate in Meeting—Proposed paragraph (d)(2) would specify that a parent's failure to participate in a meeting at which a disinterested person explains the benefits of and encourages the use of mediation could not be used as a reason to deny or delay the parent's right to a due process hearing. This change is not likely to limit the benefits to school districts of mediation as the Secretary believes that it is extremely unlikely that parents who are unwilling to participate in such a meeting with a disinterested person would be willing to engage in the voluntary mediation provided for in the statute.

Section 300.507(c)(4)—Failure to Provide Notice—Proposed paragraph (c)(4) makes it clear that failure by parents to provide the notice required by the statute cannot be used by a school district to delay or deny the parents' right to due process. This proposed regulation would eliminate the possibility that public agencies will delay a due process hearing pending receipt of a notice that they deem to be acceptable. This regulation does not impose any cost on school districts and would help ensure that parents are afforded appropriate and timely access to due process.

Section 300.513(b)—Attorneys' Fees—Proposed paragraph (b) would provide that funds provided under Part B of IDEA could not be used to pay attorneys' fees. This proposal does not increase the burden on school districts or otherwise substantially affect the ability of school districts to pay attorneys' fees that are awarded under the Act or to pay for their own attorneys. It merely establishes that attorneys' fees must be paid by a source of funding other than Part B based on the Department's position that limited Federal resources not be used for these costs. The Secretary does not expect this proposal to have a cost impact on small (or large) districts because all districts have non-Federal sources of funding that are significantly greater than the funding provided under IDEA. Currently, funds provided to States under the IDEA represent about eight percent of special education expenditures.

Section 300.514(c)—Hearing Officer Decisions—Proposed 300.514(c) would clarify that if a hearing officer in a due process hearing or a review official in a State level review agrees with the parents that a change in placement is appropriate, the child's placement must be treated in accordance with that agreement. It is difficult to assess the impact of this proposal because the statutory language is ambiguous. If paragraph (c) were not included in the regulation. In some cases, parents can be expected to successfully argue, as they have in the past, that the hearing officer's decision to change the placement of a child be implemented. In other cases, as was the case in *Board of Education Sacramento Unified School District* v. *Holland* (9th Cir., 1994), a change to the placement initially sought by the parents and approved by the hearing officer may not occur until all appeals have been exhausted. The cost impact of this proposal is also indeterminate because in some cases implementation of the hearing officer's decision will result in moving children to more costly placements and, in other cases, to less costly placements. In either case, the Secretary concluded that the benefits to the child of securing an appropriate placement justify any potential increase in costs or other burdens to the school district.

The Secretary estimates that the effect of this proposal on small districts will be minimal. The Secretary estimates that no more than 2000 due process hearings will be conducted during the next school year, of which only a small proportion are expected to involve small districts (fewer than 60). Not all of these will involve disputes about placement and the hearing officer or State review official can be expected to agree with the parents in only a portion of the cases.

Section 300.520 (b) and (c)—Behavioral Interventions—Proposed paragraph (b) of this section would specify that the IEP team meeting to consider behavioral interventions occur within 10 business days of the behavior that leads to discipline rather than 10 calendar days, and would clarify that, if the child does not have a behavior intervention plan, the purpose of the meeting is to develop an assessment plan and appropriate behavioral interventions to address that behavior. In proposing the business day alternative, the Secretary determined that it would minimize the burden on school districts and would not have a significant impact on children with disabilities, in light of other regulatory proposals in the discipline area. The change to clarify that the IEP meeting develop appropriate behavioral interventions to address the child's behavior may impose some additional burden on school districts, but the Secretary determined that burden was justified by the benefit to the child, the child's teacher, and the educational process as a whole if appropriate behavioral intervention strategies are implemented without delay to address the behavior that led to discipline.

Proposed paragraph (c) of section 300.520 makes it clear that if a child is removed from his or her current placement for 10 school days or fewer in a given year, the school is not required to convene the IEP team to develop an assessment plan and behavioral interventions. (A school would be required to do so if a child were suspended for more than 10 school days in a given school year.) In determining whether to regulate on this issue, the Secretary considered the potential benefits of providing behavioral interventions to children who need them and the impact on school districts of convening the IEP team to develop behavioral interventions if children are suspended.

Based on consideration of the costs and benefits to children and schools, the Secretary concluded that the IEP team should not be required to meet and develop or review behavioral interventions for a child unless the child was engaged in repeated or significant misconduct. The Secretary determined that the costs and burden of convening the team the first time a child is suspended outweigh any potential benefits to the child if the child is receiving a short-term suspension for an infraction. However, the Secretary also considered the significant benefits that early intervention can produce for students and schools by effectively addressing behavioral problems. The Secretary concluded that if a child is engaged in behavior that warrants removal for more than 10 school days in a given year, intervention is in order.

The Secretary believes that this proposal may reduce costs for school districts because, in the absence of a regulation on this issue, the statute will be read by some to require that the IEP team be convened to develop an assessment plan the first time a child is suspended, regardless of the duration of the suspension or the child's disciplinary record. Alternatively, the statute could be read, in the absence of regulation, to require the IEP team to be convened only for suspensions that exceed 10 school days at a time.

Little data are available that would permit the Secretary to assess the economic impact of this proposal on school districts or the number of children who will benefit. Based on data collected by the Office for Civil Rights, the Secretary estimates that approximately 300,000 children with disabilities will be suspended during the next school year for at least one school day. Based on an analysis of State-reported data from selected States, we estimate that most of the children who are suspended receive only short-term suspensions, but we have no information on the length or frequency of individual suspensions.

Section 300.521—Due Process Hearing for Removal—Proposed 300.521 specifies that a hearing officer is to make the determination authorized by section 615(k)(2) of the IDEA (regarding whether a child's current educational placement is substantially likely to result in injury to self or others) in a due process hearing.

The Secretary concluded that a hearing that meets the requirement for a due process hearing is the most appropriate forum for expeditiously and fairly determining whether the district has demonstrated by substantial evidence (defined by statute as "beyond a preponderance of the evidence") that maintaining the current placement is substantially likely to result in injury and to consider the appropriateness of the child's current placement and the efforts of the district to minimize the risk of harm.

The Secretary believes that the cost impact of this proposed regulation on large and small districts will be minimal because of the limited number of cases in which school districts and parents will disagree about the proposed removal of a dangerous child. (If the parents agree to removing a child, a school district may do so without the approval of a hearing officer.) In those few cases in which there is disagreement, the Secretary believes that the benefits of conducting a due process hearing justify the costs.

Section 300.523—Manifestation Determination—Proposed paragraph (b) would make it clear that if a child was removed for 10 or fewer school days in a given school year, and no further disciplinary action is contemplated, the school is not required to conduct a manifestation review. As was the case in considering section 300.520(c), the Secretary considered the potential benefits to the child and impact on districts of convening the IEP team if children are suspended.

The Secretary similarly concluded that the IEP team should not be required to meet and determine whether the child's behavior was a manifestation of the disability unless the child was engaged in repeated or significant misconduct. The cost of convening the team, whether to develop a behavioral assessment or to conduct a manifestation review, outweigh the potential benefits to a child who has been briefly suspended a few times. However, in proposing this regulation, the Secretary also considered the adverse impact on the child if the child is repeatedly suspended without any effort to determine whether the child should be punished for his or her behavior. One of the primary purposes of the manifestation review is to determine whether the child's disability has impaired his or her ability to understand the impact and consequences of his or her behavior and whether the child's disability has impaired the child's ability to control the behavior subject to discipline. Conducting this review, along with the behavioral assessment, will help ensure that the district responds appropriately to the child's behavior.

The Secretary believes that this proposal may reduce costs for school districts to the extent the statute is being read by some to require a manifestation review every time a child is suspended. Alternatively, this proposal may limit flexibility to the extent the statute could be read not to require a review for any single suspension that is fewer than 10 school days.

Section 300.528—Procedures for an Expedited Due Process Hearing—Proposed 300.528 defines what an expedited due process hearing to remove a dangerous child must entail. As discussed, the Secretary does not believe the requirement for the hearing officer to conduct a due process hearing to have a substantial cost impact because of the small number of cases involved. In proposing this regulation, the Secretary attempted to provide some flexibility to the States in establishing timelines and procedures in order to accommodate the interests of school officials in obtaining an expeditious decision. However, the Secretary has little basis for projecting the cost of hearings conducted in accordance with the proposed regulations in comparison to other appropriate procedures.

Section 300.587—Procedures for Enforcement—This proposal would clarify the types of notice and hearing that the Department would provide before taking an enforcement action under Part B of the IDEA. Providing clarity about the applicable procedures for the various types of enforcement actions will benefit potential subjects of enforcement actions and the Department by ensuring that time and resources are not spent on unnecessary disputes about procedures or needless process.

Section 300.589—Waiver Procedures—This proposal describes the procedures to be used by the Secretary in considering a request from an SEA of a waiver of the supplement, not supplant and maintenance of effort requirements in IDEA. This proposed regulation does not impose any cost on local school districts. The proposed procedures will affect any State requesting a waiver under Part B. While the Secretary believes the benefits of the proposed process to children with disabilities justify any possible cost or burden for State educational agencies, the Secretary welcomes public comment on the impact of this proposal and alternative ways for the Secretary to implement these statutory provisions.

Section 300.624—Capacity-building Subgrants—This proposal would make it clear that States could establish priorities in awarding these subgrants. This proposal, which provides permissive authority to be used at the discretion of each State, clarifies the intent of the statutory change and imposes no burden on State agencies. Allowing States to use these funds to foster State-specific improvements should lead to improving educational results for children with disabilities.

Sections 300.660(b) and 303.510(b)—Information about State Complaint Procedures—Proposed paragraph (b) would require States to widely disseminate their complaint procedures. While this proposed requirement would increase costs for those State educational agencies that have not established procedures for widely disseminating this information, the Secretary could have prescribed specific mechanisms for this dissemination but chooses not to, in order to give SEAs flexibility in determining how to accomplish this. The requirement would not have any direct impact on small districts and would benefit parents who believe that a public agency is violating a requirement of these regulations, by providing them the information they would need to get an official resolution of their issue without having to resort to a more formal, and generally more costly, dispute resolution mechanism.

Sections 300.661 and 303.512—Secretarial Review—This proposal would delete the provision providing for Secretarial review of complaints filed under State complaint procedures. The effect of this proposal on small (and large) districts would be inconsequential because of the small number of requests for these reviews. This proposal was developed in recognition of the report of the Department's Inspector General of August 1997, that noted that this procedure provides very limited benefits to children with disabilities or

to the IDEA programs and involves a considerable expenditure of the resources of the Office of Special Education Programs and other offices of the Department. The Inspector General's report concluded that greater benefit to the programs and individuals covered by the IDEA would be achieved if the Department eliminated the Secretarial review process and focused on improving State procedures for resolving complaints and implementing the IDEA programs. This change, and the changes proposed in §§ 300.660(b) and 300.503(b)(8) and §§ 303.510(b) and 303.403(b)(4) that would require greater public notice about the State complaint procedures, would implement those recommendations.

Sections 300.662 and 303.511—State Reviews—This proposal would relieve States of the requirement to review complaints about violations that occurred more than three years before the complaint. This proposed limitation on the age of the complaints is expected to reduce the cost to SEAs of investigating and reviewing complaints. There is no reason to believe this proposal would adversely affect small districts. There is also no reason to expect that this proposal would have a significant negative impact on individuals or entities submitting complaints under these procedures as it is unlikely that complaints alleging a violation that occurred more than three years in the past and that do not allege a continuing violation or request compensatory services would result in an outcome that puts the protected individuals under these regulations in a better position than they would have been in if no complaint had been filed. On the other hand, allowing States to focus their complaint resolution procedures on issues that are relevant to the current operation of the State's special education program may serve to improve services for these children.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interfere with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 300.2 *Applicability to State, local, and private agencies.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 300.110, 300.121, 300.123–300.130, 300.133, 300.135–300.137, 300.141–300.145, 300.155–300.156, 300.180, 300.192, 300.220–300.221, 300.240, 300.280–300.281, 300.284, 300.341, 300.343, 300.345, 300.347, 300.380–300.382, 300.402, 300.482–300.483, 300.503–300.504, 300.506, 300.508, 300.510–300.511, 300.532, 300.535, 300.543, 300.561–300.563, 300.565, 300.569, 300.571–300.572, 300.574–300.575, 300.589, 300.600, 300.653, 300.660–300.662, 300.750–300.751, 300.754, 303.403, 303.510–303.512, and 303.520 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Assistance for Education of All Children with Disabilities: Complaint Procedures, §§ 300.600–300.662 and 303.510–303.512. Each SEA is required to adopt written procedures for resolving any complaint that meets the requirements in these proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 10 hours to issue a written decision to a complaint. There is an estimated average annual total of 1079 complaints submitted for processing. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 10,790 hours.

Collection of Information: Assistance for Education of All Children with Disabilities: State Eligibility, §§ 300.110, 300.121, 300.123–300.130, 300.133, 300.135–300.137, 300.141–300.145, 300.155–300.156, 300.280–300.281, 300.284, 300.380–300.382, 300.402, 300.482–300.483, 300.510–300.511, 300.589, 300.600, 300.653, 303.403, and 303.520. Each State must have on file with the Secretary policies and procedures to demonstrate to the satisfaction of the Secretary that the State meets the specified conditions for assistance under this part. In the past, States were required to submit State plans every three years with one-third of the entities submitting plans to the Secretary each year. With the new statute, States will no longer be required to submit State plans. Rather, the policies and procedures currently approved by, and on file with, the Secretary that are not inconsistent with the IDEA Amendments of 1997 will remain in effect unless amended.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 30 hours for each response for 58 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 1740 hours.

Collection of Information: Assistance for Education of All Children with Disabilities: LEA Eligibility, §§ 300.180, 300.192, 300.220–300.221, 300.240, 300.341, 300.343, 300.345, 300.347, 500.503–300.504, 300.532, 300.535, 300.543, 300.561–300.563, 300.565, 300.569, 300.571–300.572, and 300.574–300.575. Each local educational agency (LEA) and each State agency must have on file with the State educational agency (SEA) information to demonstrate that the agency meets the specified requirements for assistance under this part. In the past, each LEA was required to submit a periodic application to the SEA in order to establish its eligibility for assistance under this part. Under the new statutory changes, LEAs are no longer required to submit such applications. Rather, the policies and procedures currently approved by, and on file with, the SEA that are not inconsistent with the IDEA Amendments of 1997 will remain in effect unless amended.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 2 hours for each response for 15,376 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 30,752 hours. The Secretary invites comment on the estimated time it wills take for LEAs to meet this reporting and recordkeeping requirement.

Collection of Information: Assistance for Education of All Children with Disabilities: List of Hearing Officers and Mediators, §§ 300.506 and 300.508. Each State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Each public agency must, also, keep a list of the persons who serve as hearing officers.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 25 hours for each response for 58 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 3050 hours.

Collection of Information: Assistance for Education of All Children with Disabilities: Report of Children and Youth with Disabilities Receiving Special Education, §§ 300.750–300.751, and 300.754. Each SEA must submit an annual report of children served.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 262 hours for each response for 58 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 15,196 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Anyone may also view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://gcs.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 301

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

34 CFR Part 303

Education of individuals with disabilities, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: 84.027 Assistance for the Education of All Children with Disabilities, 84.173 Preschool Grants for Children with Disabilities, and 84.181 Early Intervention Program for Infants and Toddlers with Disabilities)

Dated: October 6, 1997.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising parts 300, 301, and 303 as follows:

1. Part 300 is revised to read as follows:

PART 300—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

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Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

Subpart A—General

Purposes, Applicability, and Regulations That Apply to This Program

§ 300.1 Purposes.

The purposes of this part are—

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess, and ensure the effectiveness of, efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400 note)

Note: With respect to paragraph (a) of this section (related to preparing children with disabilities for employment and independent living, section 701 of the Rehabilitation Act of 1973 describes the philosophy of independent living as including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society.

§ 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act.

(b) *Public agencies within the State.* The provisions of this part apply to all political subdivisions of the State that are involved in the education of children with disabilities. These political subdivisions include—

(1) The State educational agency;

(2) LEAs and educational service agencies;

(3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for students with deafness or students with blindness); and

(4) State and local juvenile and adult correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities

(1) Referred to or placed in private schools and facilities by that public agency, or

(2) Placed in private schools by their parents under the provisions of § 300.403(c).

(Authority: 20 U.S.C. 1412)

Note: The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 300.3 Regulations that apply.

The following regulations apply to this program:

(a) 34 CFR part 76 (State-Administered Programs) except for §§ 76.125–76.137 and 76.650–76.662.

(b) 34 CFR part 77 (Definitions).

(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(e) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(f) 34 CFR part 82 (New Restrictions on Lobbying).

(g) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(h) The regulations in this part—34 CFR part 300 (Assistance for Education of Children with Disabilities).

(Authority: 20 U.S.C. 1221e–3(a)(1))

Definitions

Note 1: Definitions of terms that are used throughout these regulations are included in this Subpart. Other terms are defined in the specific subparts in which they are used. A list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 300.136(a)(1))
Average per-pupil expenditure in public elementary and secondary schools in the United States (§ 300.702)
Base year (§ 300.706(b)(1))
Comparable quality (§ 300.455(c))
Consent (§ 300.500(b)(1))
Controlled Substance (§ 300.520(d)(1))
Destruction (§ 300.560)
Direct services (§ 300.370(b)(1))
Education records (§ 300.560)
Evaluation (§ 300.500(b)(2))
Excess costs (§ 300.184(b))
Extended school year services (§ 300.309(b))
Financial costs (§ 300.142(e)(2))
Freely associated States (§ 300.722)
Highest requirements in the State applicable to a specific profession or discipline (§ 300.136(a)(2))
Illegal drug (§ 300.520(d)(2))
Independent educational evaluation (§ 300.503(a)(3)(i))
Indian (§ 300.264(a))
Indian tribe (§ 300.264(b))
Outlying area (§ 300.718)
Participating agency, as used in the IEP requirements in §§ 300.347 and 300.348 (§ 300.340(b))
Participating agency, as used in the confidentiality requirements in §§ 300.560–300.578(§ 300.340(b))
Party or parties (§ 300.583(a))
Personally identifiable (§ 300.500(b)(3))
Private school children with disabilities (§ 300.450)
Profession or discipline (§ 300.136(a)(3))
Public expense (§ 300.502(a)(3)(ii))
Revoke consent at any time (§ 300.500 note)
State, special definition (§ 300.700)
State-approved or recognized certification, licensing, registration, or other comparable requirements (§ 300.136(a)(4))
Substantial evidence (§ 300.521(e))
Support services (§ 300.370(b)(2))
Weapon (§ 300.520(d)(3))

Note 2: The following abbreviations for selected terms are used throughout these regulations: "CSPD" means "comprehensive system of personnel development."
"ESA" means "education service agency."
"FAPE" means "free appropriate public education."
"IDEA" means "Individuals with Disabilities Education Act."
"IEP" means "individualized education program."
"IFSP" means "individualized family service plan."
"LEA" means "Local educational agency."
"LRE" means "least restrictive environment."
"SEA" means "State educational agency."

Each abbreviation is used interchangeably with its nonabbreviated term.

§ 300.4 Act.

As used in this part, *Act* means the Individuals with Disabilities Education Act, as amended (IDEA).

(Authority: 20 U.S.C. 1400(a))

§ 300.5 Assistive technology device.

As used in this part, *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

(Authority: 20 U.S.C. 1401(1))

§ 300.6 Assistive technology service.

As used in this part, *Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

Note: The Act's definitions of "Assistive technology device" and "Assistive technology service" are substantially identical to the definitions of these terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

§ 300.7 Child with a disability.

(a) (1) As used in this part, the term *child with a disability* means a child evaluated in accordance with §§ 300.530–300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or a multiple disability, and who because of that impairment needs special education and related services.

(2) The term *child with a disability* for children aged 3 through 9 may include a child—

(i) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development;

(ii) Who, for that reason, needs special education and related services; and

(iii) If the State adopts the term for children of this age range (or a subset of that range) and the LEA chooses to use the term.

(b) The terms used in this definition are defined as follows:

(1) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) *Emotional disturbance* is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) *Mental retardation* means significantly subaverage general intellectual funotioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) *Multiple disability* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia,

epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(10) *Specific learning disability* is defined as follows:

(i) *General.* The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(Ii) *Disorders not included.* The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3) (A) and (B); 1401(26))

Note 1: If a child manifests characteristics of the disability category "autism" after age 3, that child still could be diagnosed as having "autism" if the criteria in paragraph (b)(1) of this section are satisfied.

Note 2: As used in paragraph (a)(2) of this section, the phrase "at the discretion of the State and LEA" means that if the State adopts the term "developmental delay" for children aged 3 through 9, or for a subset of that age range (e.g., children aged 3 through 5, etc.), LEAs that choose to use "developmental delay," rather than identify these children as being in a particular disability category, must conform to the State's definition of the term. However, a State may not require an LEA to use "developmental delay" for this age range. LEAs in a State that does not adopt the term "developmental delay" for children in this age range, or for a sub-set of this age range, cannot independently use "developmental delay" as a basis for establishing a child's eligibility.

Note 3: With respect to paragraph (a)(2) of this section (relating to "developmental delay"), the House Committee Report on Pub. L. 105–17 includes the following statement:

The Committee believes that, in the early years of a child's development, it is often difficult to determine the precise nature of the disability. Use of "developmental delay" as part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals of children with disabilities to special education. (H. Rep. No. 105–95, p. 86 (1997))

Note 4: With respect to paragraph (b)(4) of this section (relating to using the term "emotional disturbance" instead of "serious emotional disturbance"), the House Committee Report on Pub. L. 105–17 includes the following statement:

The committee wants to make clear that changing the terminology from "serious emotional disturbance" to "serious emotional disturbance (hereinafter referred to as 'emotional disturbance')" in the definition of a "child with a disability" is intended to have no substantive or legal significance. It is intended strictly to eliminate the pejorative connotation of the term "serious." It should in no circumstances be construed to change the existing meaning of the term under 34 CFR 300.7(b)(9) as promulgated September 29, 1992 (H. Rep. No. 105–95, p. 86 (1997))

Note 5: A child with attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) may be eligible under Part B of the Act if the child's condition meets one of the disability categories described in § 300.7, and because of that disability the child needs special education and related services. Some children with ADD or ADHD who are eligible under Part B of the Act meet the criteria for "other health impairments" (see paragraph (b)(9) of this section). Those children would be classified as eligible for services under the "other health impairments" category if (1) the ADD or ADHD is determined to be a chronic health problem that results in limited alertness, that adversely affects educational performance, and (2) special education and related services are needed because of the ADD or ADHD. The term "limited alertness" includes a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

Other children with ADD or ADHD may be eligible under Part B of the Act because they satisfy the criteria applicable to other disability categories in § 300.7(b). For example, children with ADD or ADHD would be eligible for services under the "specific learning disability category" if they meet the criteria in paragraph (b)(10) of this section, or under the "emotional disturbance" category if they meet the criteria in paragraph (b)(4). Even if a child with ADD or ADHD is found to be not eligible for services under Part B of the Act, the requirements of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 CFR Part 104 may still be applicable.

§ 300.8 Day.

As used in this part, the term *day* means calendar day unless otherwise indicated as school day or business day.

(Authority: 20 U.S.C. 1221e–3)

§ 300.9 Educational service agency.

As used in this part, the term *educational service agency*—

(a) Means a regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 1401(4))

§ 300.10 Equipment.

As used in this part, the term *equipment* means—

(a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(6))

§ 300.11 Free appropriate public education.

As used in this part, the term *free appropriate public education* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340–300.351.

(Authority: 20 U.S.C. 1401(8))

§ 300.12 General curriculum.

As used in this part, the term *general curriculum* means the curriculum adopted by an LEA, schools within the LEA, or where applicable, the SEA for all children from preschool through secondary school.

(Authority: 20 U.S.C. 1401)

Note: The term "general curriculum", as defined in this section, relates to the content of the curriculum and not to the setting in which it is used. Thus, to the extent applicable to an individual child with a disability and consistent with the LRE provisions under §§ 300.500—300.553, the general curriculum could be used in any educational environment along a continuum of alternative placements described under § 300.551.

§ 300.13 Include.

As used in this part, the term *include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e–3)

§ 300.14 Individualized education program.

As used in this part, the term *individualized education program or IEP* has the meaning given the term in § 300.340.

(Authority: 20 U.S.C. 1401(11))

§ 300.15 Individualized education program team.

As used in this part, the term *individualized education program team* or *IEP team* means a group of individuals described in § 300.344 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1221e–3)

Note: The IEP team may also serve as the placement team.

§ 300.16 Individualized family service plan.

As used in this part, the term *individualized family service plan* or *IFSP* has the meaning given the term in 34 CFR 303.340(b).

(Authority: 20 U.S.C. 1401(12))

§ 300.17 Local educational agency.

(a) As used in this part, the term *local educational agency* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(b) The term includes—

(1) An educational service agency, as defined in § 300.9; and

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(c) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under this Act with the smallest student population, except that the school may not be subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs.

(Authority: 20 U.S.C. 1401(15))

Note: A public charter school that meets the definition of "LEA" is eligible to receive Part B funds as an LEA. If a public charter school receives Part B funds it must comply with the requirements of this part that apply to LEAs.

§ 300.18 Native language.

As used in this part, the term *native language*, if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child.

(Authority: 20 U.S.C. 1401(16))

Note: The term "native language" is used in the prior notice; procedural safeguards notice, and evaluation sections: § 300.503(c), § 300.504(c) and § 300.532(a)(2). In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

§ 300.19 Parent.

(a) As used in this part, the term *parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 300.515. The term does not include the State if the child is a ward of the State.

(b) State law may provide that a foster parent qualifies as a parent under Part B of the Act if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law;

(2) The foster parent has an ongoing, long-term parental relationship with the child;

(3) The foster parent is willing to participate in making educational decisions in the child's behalf; and

(4) The foster parent has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19))

Note: The term "parent" is defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare, and at the discretion of the State, a foster parent who meets the requirements in paragraph (b) of this section.

§ 300.20 Public agency.

As used in this part, the term *public agency* includes the SEA, LEAs, ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412 (a)(1)(A), (a)(11))

§ 300.21 Qualified.

As used in this part, the term *qualified* means that a person has met SEA-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1221e–3)

§ 300.22 Related services.

(a) As used in this part, the term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early

identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) *Occupational therapy* includes —

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) *Orientation and mobility services* means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including —

(i) Teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);

(ii) Teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) Teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and

(iv) Other concepts, techniques, and tools, as determined appropriate.

(7) *Parent counseling and training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(8) *Physical therapy* means services provided by a qualified physical therapist.

(9) *Psychological services* includes —

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(10) *Recreation* includes —

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(11) *Rehabilitation counseling services means* services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) *School health services* means services provided by a qualified school nurse or other qualified person.

(13) *Social work services in schools* includes —

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(22))

Note 1: All related services may not be required for each individual child. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy, travel training, nutrition services, and independent living services), if they are required to assist a child with a disability to benefit from special education in order for the child to receive FAPE.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under Part B of the Act may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

Note 2: While "orientation and mobility services" was added to the list of examples of related services in recognition of its critical importance to children who are blind or have visual impairments, children with other disabilities may also need to be taught the skills they need to navigate their environments (e.g. "travel training"). The House Committee Report on Public Law 105–17 states:

* * *it is important to keep in mind that children with other disabilities may also need instruction in traveling around their school, or to and from school. A high school aged child with a mental disability, for example, might need to be taught how to get from class to class so that he can participate in his inclusive program. The addition of orientation and mobility services to the list of identified related services is not intended to result in the denial of appropriate services for children with disabilities who do not have visual impairments or blindness. (H. Rep. No. 105–95, p.86 (1997))

In addition, travel training is important to enable students to attain systematic orientation to and safe movement within their environment in school, home, at work, and in the community.

Note 3: With respect to paragraph (b) of this section, nothing in this part prohibits the use of paraprofessionals to assist in the provision of services described under this section, if doing so is consistent with § 300.136(f).

Note 4: It should be assumed that most children with disabilities receive the same transportation services as nondisabled children. For some children with disabilities, integrated transportation may be achieved by providing needed accommodations such as lifts and other equipment adaptations on regular school transportation vehicles.

§ 300.23 Secondary school.

As used in this part, the term *secondary school* means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(23))

§ 300.24 Special education.

(a) (1) As used in this part, the term *special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes speech-language pathology services, or any other related service, if the service consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education* is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(3) *Specially-designed instruction* means adapting content, methodology or delivery of instruction—

(i) To address the unique needs of an eligible child under this part that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(25))

Note: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under Part B of the Act unless he or she needs special education. (See the definition of child with a disability in § 300.7). The definition of related services (§ 300.22) also depends on this definition, since to be a related service, a service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act. A related services provider may be a provider of specially-designed instruction if under State law the person is qualified to provide such instruction.

§ 300.25 State.

As used in this part, the term *State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(27))

§ 300.26 Supplementary aids and services.

As used in this part, the term *supplementary aids and services* means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.550–300.556.

(Authority: 20 U.S.C. 1401(29))

§ 300.27 Transition services.

As used in this part, *transition services* means a coordinated set of activities for a student with a disability that—

(a) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes—

(1) Instruction;

(2) Related services;

(3) Community experiences;

(4) The development of employment and other post-school adult living objectives; and

(5) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(Authority: 20 U.S.C. 1401(30))

Note: Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities in paragraph (c) of this section is not intended to be exhaustive.

§ 300.28 Definitions in EDGAR.

The following terms used in this part are defined in 34 CFR 77.1:

Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Project
Secretary
Subgrant

(Authority: 20 U.S.C. 1221e–3(a)(1))

Subpart B—State and Local Eligibility—General State Eligibility—General

§ 300.110 Condition of assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the conditions in §§ 300.121–300.156.

(Authority: 20 U.S.C. 1412(a))

§ 300.111 Exception for prior State policies and procedures on file with the Secretary.

If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of § 300.110, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(Authority: 20 U.S.C. 1412(c)(1))

§ 300.112 Amendments to State policies and procedures.

(a) *Modifications made by a State.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State decides are necessary.

(2) The provisions of this subpart apply to a modification to a State's policies and procedures in the same manner and to the same extent that they apply to the State's original policies and procedures.

(b) *Modifications required by the Secretary.* The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of this Act or regulations by a Federal court or a State's highest court; or

(3) There is an official finding of noncompliance with Federal law or regulations.

(Authority: 20 U.S.C. 1412(c) (2) and (3))

§ 300.113 Approval by the Secretary.

(a) *General.* If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(b) *Notice and hearing before determining a State is not eligible.* The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until after providing the State reasonable notice and an opportunity for a hearing in accordance with the procedures in §§ 300.581–300.587.

(Authority: 20 U.S.C. 1412(d))

§§ 300.114–300.120 [Reserved]

State Eligibility—Specific Conditions

§ 300.121 Free appropriate public education.

(a) *General.* Each State must have on file with the Secretary information that shows that, subject to § 300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.

(b) *Required information.* The information described in paragraph (a) of this section must—

(1) Include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the State's policy relating to FAPE; and

(2) Show that the policy—

(i) Applies to all public agencies in the State; and

(ii) Applies to all children with disabilities, including children who have been suspended or expelled from school.

(c) *FAPE for children suspended or expelled from school.*

(1) For the purposes of this section, the term "children with disabilities who have been suspended or expelled from school" means children with disabilities who have been removed from their current educational placement for more than 10 school days in a given school year.

(2) The right to FAPE for children with disabilities who have been suspended or expelled from school begins on the eleventh school day in a school year that they are removed from their current educational placement.

(3) In providing FAPE to children with disabilities who have been suspended or expelled from school, a public agency shall meet the requirements of § 300.522.

(Authority: 20 U.S.C. 1412(a)(1))

Note 1: With respect to paragraph (a) of this section, a public agency's obligation to make FAPE available to each eligible child means that the obligation begins no later than the child's third birthday. Thus, an IEP or an IFSP must be in effect for the child by that date, in accordance with § 300.342. The IEP would specify the special education and related services that are needed in order to ensure that the child receives FAPE, including any extended school year services, if appropriate. If a child who is receiving early intervention services under Part C of the Act will be participating in a preschool program under Part B of the Act, the transition requirements of § 300.132 would apply.

Note 2: School districts are not relieved of their obligation to provide appropriate special education and related services to individual disabled students who need them even though they are advancing from grade to grade. The decision whether a student with a disability who is advancing from grade to grade is eligible for services under this part must be determined on an individual basis by the child's IEP team.

§ 300.122 Exception to FAPE for certain ages.

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to—

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in one or more of those age groups;

(2) Students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(i) Were not actually identified as being a child with a disability under § 300.7; and

(ii) Did not have an IEP under Part B of the Act.

(3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(b) *Documents relating to exceptions.* The State must have on file with the Secretary—

(1)(i) Information that describes in detail the extent that the exception in paragraph (a)(1) of this section applies to the State; and

(ii) A copy of each State law, court order, and other documents that provide a basis for the exception; and

(2) With respect to paragraph (a)(2) of this section, a copy of the State law that excludes from service under Part B of the Act certain students who are incarcerated in an adult correctional facility.

(Authority: 20 U.S.C. 1412(a)(1)(B))

Note 1: Under paragraph (a)(3) of this section, a student's eligibility for FAPE ceases upon graduation from high school with a regular high school diploma. Under Part B of the Act, graduation is considered to be a change in placement, and would require that prior written notice, in accordance with § 300.503, be given to the parents and the student, if appropriate. The notice would inform the parents and the student of this fact and of their right to challenge the student's pending graduation (through the due process procedures in § 300.507), if they believe that the student has not met the requirements for graduation with a regular high school diploma. Since graduation changes a student's eligibility status, a reevaluation would be required under § 300.534(c).

In a small number of cases, a school district may be awarding a special certificate to some children with disabilities. If a high school awards a student with a disability certificate of attendance or other certificate of graduation instead of a regular high school diploma, the student would still be entitled to FAPE until the student reaches the age at which eligibility ceases under the age requirements within the State or has earned a regular high school diploma.

Note 2: With respect to paragraph (a)(2) of this section, (relating to certain students with disabilities in adult prisons), the House Committee Report on Pub. L. 105–17 includes the following statement:

The bill provides that a State may also opt not to serve individuals who, in the educational placement prior to their incarceration in adult correctional facilities, were not actually identified as a child with a disability under section 602(3) or did not have an IEP under Part B of the Act. The Committee means to * * * make clear that services need not be provided to all children who were at one time determined to be eligible under Part B of the Act. The Committee does not intend to permit the exclusion from services under part B of children who had been identified as children with disabilities and had received services under an IEP, but who had left school prior to their incarceration. In other words, if a child had an IEP in his or her last educational placement, the child has an IEP for purposes of this provision. The Committee added language to make clear that children with disabilities aged 18 through 21, who did not have an IEP in their last educational setting but who had actually been identified should not be excluded from services.(H. Rep. No. 105–95, p. 91 (1997))

§ 300.123 Full educational opportunity goal.

The State must have on file with the Secretary detailed policies and procedures through which the State has established a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(a)(2))

§ 300.124 FEOG—timetable.

The State must have on file with the Secretary a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(a)(2))

§ 300.125 Child find.

(a) *General requirement.* The State must have in effect policies and procedures to ensure that—

(1) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Documents relating to child find.* The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including—

(1) The name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(4) A description of the method the State uses to determine which children are currently receiving special education and related services.

(c) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in § 300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1412 (a)(3) (A) and (B))

Note 1: Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.577.

Note 2: The services and placement needed by each child with a disability to receive FAPE must be based upon the child's unique needs and may not be determined or limited based upon a category of disability.

Note 3: Under both Parts B and C of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part C lead agency's participation must, under paragraph (b)(2) of this section, be provided. With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a)(1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

Note 4: Each State has an obligation to ensure that State and local child find responsibilities under Part B of the Act extend to highly mobile children (such as migrant and homeless children).

§ 300.126 Procedures for evaluation and determination of eligibility.

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.530–300.536 are met.

(Authority: 20 U.S.C. 1412(a) (6)(B), (7))

§ 300.127 Confidentiality of personally identifiable information.

(a) The State must have on file in detail the policies and procedures that the State has undertaken in order to ensure the protection of the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act.

(b) The Secretary uses the criteria in §§ 300.560–300.577 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(8))

Note: The regulations implementing the Family Educational Rights and Privacy Act are in 34 CFR Part 99. Those regulations are incorporated in §§ 300.560–300.577.

§ 300.128 Individualized education programs.

(a) *General.* The State must have on file with the Secretary information that shows that an IEP, or IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.340–300.351.

(b) *Required information.* The information described in paragraph (a) of this section must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those programs.

(Authority: 20 U.S.C. 1412(a)(4))

§ 300.129 Procedural safeguards.

(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of §§ 300.500–300.529 are met.

(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A))

§ 300.130 Least restrictive environment.

(a) *General.* The State must have on file with the Secretary procedures that ensure that the requirements of §§ 300.550–300.556 are met.

(b) *Additional requirement.*

(1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section.

(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

Note: With respect to the LRE requirement of this section, and the continuum of alternative educational placements described in § 300.551, the House Committee Report on Pub. L. 105–17 states:

The committee supports the longstanding policy of a continuum of alternative placements designed to meet the unique needs of each child with a disability. Placement options available include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. For disabled children placed in regular classes, supplementary aids and services and resource room services or itinerant instruction must also be offered as needed. (H. Rep. 105–95, p. 91 (1997))

§ 300.131 [Reserved]

§ 300.132 Transition of children from Part C to preschool programs.

The State must have on file with the Secretary policies and procedures to ensure that—

(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.342(c) and section 636(d) of the Act, an IFSP, has been developed and must be implemented for the child; and

(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

§ 300.133 Private schools.

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§ 300.400–300.403 and §§ 300.450–300.462 are met.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.134 [Reserved]

§ 300.135 Comprehensive system of personnel development.

(a) *General.* The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that —

(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and

(2) Meets the requirements for a State improvement plan relating to personnel development in section 653 (b)(2)(B) and (c)(3)(D) of the Act.

(b) *Information.* The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1412(a)(14))

Note: With respect to meeting the CSPD requirement of this section, the House Committee Report on Pub. L. 105–17 states:

Section 612, as [in] current law, requires that a State have in effect a Comprehensive System of Personnel Development (CSPD) that is designed to ensure an adequate supply of qualified personnel, including the establishment of procedures for acquiring and disseminating significant knowledge derived from educational research and for adopting, where appropriate, promising practices, materials, and technology. (H. Rep. 105–95, p. 93 (1997))

States will be able to use the information provided to meet the requirement in § 300.135(a)(2) as a part of their State Improvement Plan under section 653 of the Act, if they choose to do so.

§ 300.136 Personnel standards.

(a) As used in this part —

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2);

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) *Profession or discipline* means a specific occupational category that —

(i) Provides special education and related services to children with disabilities under Part B of the Act;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision; and

(4) *State-approved or -recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) (1) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d) (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public.

(e) In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with disabilities must be considered.

(f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.

(g) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years.

(Authority: 20 U.S.C. 1412(a)(15))

Note 1: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and related services under Part B of the Act. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under Part B of the Act. In some instances, States are required under paragraph (c) of this section to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the SEA that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under Part B of the Act to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

Note 2: A State may exercise the option under paragraph (g) of this section even though the State has reached its established date, under paragraph (c) of this section, for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State. As a practical matter, it is essential that a State have a mechanism for serving students if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline. A State that continues to have shortages of personnel meeting appropriate professional requirements in the State must address those shortages in its comprehensive system of personnel development under § 300.135.

Note 3: If a State has established only one entry-level academic degree for employment of personnel in a specific profession, modification of that standard as necessary to ensure the provision of FAPE to all children in the State would not violate the provisions of § 300.136(b) and (c).

§ 300.137 Performance goals and indicators.

The State must have on file with the Secretary information to demonstrate that the State—

(a) Has established goals for the performance of children with disabilities in the State that—

(1) Will promote the purposes of this part, as stated in § 300.1; and

(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State;

(b) Has established performance indicators that the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(c) Every two years, will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section; and

(d) Based on its assessment of that progress, will revise its State improvement plan under subpart 1 of Part D of the Act as may be needed to improve its performance, if the State receives assistance under that subpart.

(Authority: 20 U.S.C. 1412(a)(16))

§ 300.138 Participation in assessments.

The State must have on file with the Secretary information to demonstrate that—

(a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations if necessary;

(b) As appropriate, the State or LEA—

(1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;

(2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and

(3) Beginning not later than July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1412(a)(17)(A))

Note: With respect to paragraph (b) of this section, it is assumed that only a small percentage of children with disabilities will need alternative assessments.

§ 300.139 Reports relating to assessments.

(a) *General.* In implementing the requirements of § 300.138, the SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

(1) The number of children with disabilities participating—

(i) In regular assessments; and

(ii) The number of those children participating in alternate assessments.

(2) The performance results of the children described in paragraph (a)(1) of this section—

(i) On regular assessments (beginning not later than July 1, 1998); and

(ii) On alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

(b) *Combined reports.* Reports to the public under paragraph (a) of this section must include—

(1) Aggregated data that include the performance of children with disabilities together with all other children; and

(2) Disaggregated data on the performance of children with disabilities.

(c) *Disaggregation of data.* Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated—

(1) For assessments conducted after July 1, 1998; and

(2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998.

(Authority: 20 U.S.C. 612(a)(17)(B))

Note: Paragraph (b) of this section requires a public agency to report aggregated data that include children with disabilities. However, a public agency is not precluded from also analyzing and reporting data in other ways (such as, maintaining a trendline that was established prior to including children with disabilities in those assessments).

§ 300.140 [Reserved]

§ 300.141 SEA responsibility for general supervision.

(a) The State must have on file with the Secretary information that shows that the requirements of § 300.600 are met.

(b) The information described under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.142 Methods of ensuring services.

(a) *Establishing responsibility for services.* The Chief Executive Officer or designee of that officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE is provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) *Agency financial responsibility.* An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) *Conditions and terms of reimbursement.* The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) *Interagency disputes.* Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) *Coordination of services procedures.* Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.*

(1) *General.* If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.22 relating to related services, § 300.26 relating to supplementary aids and services, and § 300.27 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(2) *Reimbursement for services by noneducational public agency.* If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.

(c) *Special rule.* The requirements of paragraph (a) of this section may be met through—

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.

(d) *Information.* The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.

(e) *Children with disabilities who are covered by private insurance.*

(1) A public agency may not require parents of children with disabilities, if they would incur a financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible child under this part.

(2) For the purposes of this section, the term *financial costs* includes—

(i) An out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;

(ii) A decrease in available lifetime coverage or any other benefit under an insurance policy; and

(iii) An increase in premiums or the discontinuation of the policy.

(f) *Proceeds from public or private insurance.* Proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR 80.25.

(Authority: 20 U.S.C. 1412(a)(12) (A), (B), and (C); 1401(8))

Note 1: The House Committee Report on Pub. L. 105–17 related to methods of ensuring services states:

A provision is added to the Act to strengthen the obligation to ensure that all services necessary to ensure a free appropriate public education are provided through the coordination of public educational and non-educational programs. This subsection is meant to reinforce two important principles: (1) That the State agency or LEA responsible for developing a child's IEP can look to noneducational agencies such as Medicaid to provide those services they (the non-educational agencies) are otherwise responsible for; and (2) that the State agency or LEA remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.

The Committee places particular emphasis in the bill on the relationship between schools and the State Medicaid Agency in order to clarify that health services provided to children with disabilities who are Medicaid-eligible and meet the standards applicable to Medicaid, are not disqualified for reimbursement by Medicaid agencies because they are provided services in a school context in accordance with the child's IEP. (H. Rep. 105-95, p. 92 (1997))

Note 2: The intent of paragraph (e) of this section is to make clear that services required under Part B of the Act must be provided at no cost to the child's parents, whether they have public or private insurance. The Department, in a Notice of Interpretation published Dec. 30, 1980 at 45 FR 86390 noted that both Part B of the Act and Section 504 of the Rehabilitation Act of 1973 prohibit a public agency from requiring parents, where they would incur a financial cost, to use insurance proceeds to pay for services that are required to be provided to a child with a disability under the FAPE requirements of those statutes. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary. For example, a family could not be required to access private insurance that is required to enable a child to receive Medicaid services, where that insurance use results in financial costs to the family.

Note 3: If the public agency cannot get parent consent to use private insurance, the public agency may use funds under this part to pay for the service. In addition, in order to avoid financial costs to parents who otherwise would consent to use private insurance, the public agency may use funds under this part to pay the costs of accessing the insurance, e.g., deductible or co-pay amounts.

Note 4: Paragraph (f) clarifies that, if a public agency receives funds from public or private insurance for services under this part, the public agency is not required to return those funds to the Department or to dedicate those funds for use in this program, although a public agency retains the option of using those funds in this program. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§ 300.154 and 300.231. This is because the expenditure that is reimbursed is considered to be an expenditure of funds from the source that provides the reimbursement.

§ 300.143 SEA implementation of safeguards.

The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to § 300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

§ 300.144 Hearing relating to LEA eligibility.

The State must have on file with the Secretary procedures to ensure that the SEA does not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Authority: 20 U.S.C. 1412(a)(13))

§ 300.145 Recovery of funds for misclassified children.

The State must have on file with the Secretary policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611 (a) or (d) of the Act.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 300.146 Suspension and expulsion rates.

The State must have on file with the Secretary information to demonstrate that the following requirements are met:

(a) *General.* The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within the agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 612(a)(22))

§ 300.147 Additional information if SEA provides direct services.

(a) If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—

(1) Shall comply with any additional requirements of §§ 300.220–300.230(a) and 300.234–300.250 as if the agency were an LEA; and

(2) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to § 300.184 (relating to excess costs).

(b) The SEA must have on file with the Secretary information to demonstrate that it meets the requirements of paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1412(b))

§ 300.148 Public participation.

(a) The State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities consistent with §§ 300.280–300.284.

(b) The State must have on file with the Secretary information to demonstrate that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1412(a)(20))

§ 300.149 [Reserved]

§ 300.150 State advisory panel.

The State must have on file with the Secretary information to demonstrate that the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State in accordance with the requirements of §§ 300.650–300.653.

(Authority: 20 U.S.C. 1412(a)(21)(A))

§ 300.151 [Reserved]

§ 300.152 Prohibition against commingling.

The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1412(a)(18)(B))

Note: This assurance is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds. Separate bank accounts are not required. [See 34 CFR 76.702 (Fiscal control and fund accounting procedures).]

§ 300.153 State-level nonsupplanting.

(a) *General.* (1) Except as provided in § 300.230, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds.

(2) The State must have on file with the Secretary information to demonstrate to the satisfaction of the Secretary that the requirements of paragraph (a)(1) of this section are met.

(b) *Waiver.* If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (a) of this section if the Secretary concurs with the evidence provided by the State under § 300.589.

(Authority: 20 U.S.C. 1412(a)(18)(c))

§ 300.154 Maintenance of State financial support.

(a) *General.* The State must have on file with the Secretary information to demonstrate that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) *Reduction of funds for failure to maintain support.* The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 612(a)(19))

§ 300.155 Policies and procedures for use of Part B funds.

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

§ 300.156 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained under § 300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§ 300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§ 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

LEA and State Agency Eligibility—General

§ 300.180 Condition of assistance.

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§ 300.220–300.250.

(Authority: 20 U.S.C. 1413(a))

§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.

If an LEA or State agency described in § 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

(Authority: 20 U.S.C. 1413(b)(1))

§ 300.182 Amendments to LEA policies and procedures.

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

§ 300.183 [Reserved]

§ 300.184 Excess cost requirement.

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.

(b) *Definition.* As used in this part, the term *excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—

(1) Amounts received—

(i) Under Part B of the Act;

(ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Under Part A of title VII of that Act; and

(2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.

(c) *Limitation on use of Part B funds.* (1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.

(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))

§ 300.185 Meeting the excess cost requirement.

(a)(1) *General.* An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in § 300.184(b). This amount may not include capital outlay or debt service.

(b) *Joint establishment of eligibility.* If two or more LEAs jointly establish eligibility in accordance with § 300.190, the minimum average amount is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A))

Note: The excess cost requirement means that the LEA must spend a certain minimum amount for the education of its children with disabilities before Part B funds are used. This ensures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district in elementary or secondary school as the case may be.

Excess costs are those costs of special education and related services that exceed the minimum amount. Therefore, if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs.

§§ 300.186–300.189 [Reserved]

§ 300.190 Joint establishment of eligibility.

(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e) (1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.190–300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by § 300.130.

(Authority: 20 U.S.C. 1413(e) (3), and (4))

§ 300.193 [Reserved]

§ 300.194 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §§ 300.711–300.714 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(i))

§ 300.195 [Reserved]

§ 300.196 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.197 LEA and State agency compliance.

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§ 300.220–300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.507–300.528 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

LEA Eligibility—Specific Conditions

§ 300.220 Consistency with State policies.

(a) *General.* The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.121–300.156.

(b) *Policies on file with SEA.* The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.221 LEA and State agency implementation of CSPD.

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§ 300.380–300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under § 300.135.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.222–300.229 [Reserved]

§ 300.230 Use of amounts.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§ 300.184–300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.231 Maintenance of effort.

(a) *General.* Except as provided in § 300.232 and § 300.233, funds provided to the LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.232 Exception to maintenance of effort.

An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to—

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;

(b) A decrease in the enrollment of children with disabilities;

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education; or

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(Authority: 20 U.S.C. 1413(a)(2)(B))

Note: With respect to the voluntary departure of special education personnel described in paragraph (a) of this section, the House Committee Report on Pub. L. 105–17 (1) clarifies that the intended focus of this exception is on special education personnel who are paid at or near the top of the salary schedule, and (2) sets out guidelines under which this exception may be invoked by an LEA:

This exception is included in recognition that, in some situations, when higher-salaried personnel depart from their positions in special education, they are replaced by qualified, lower-salaried staff. In such situations, as long as certain safeguards are in effect, the LEA should not be required to maintain the level of the higher-salaried personnel. In order for the LEA to invoke this exception, the agency must ensure that such voluntary retirement or resignation and replacement are in full conformity with existing school board policies in the agency, with the applicable collective bargaining agreement in effect at that time, and with applicable State statutes. (H. Rep. 105–95, p. 96 (1997))

§ 300.233 Treatment of federal funds in certain fiscal years.

(a)(1) Subject to paragraphs (a)(2) and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceeds $4,100,000,000, an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the Act that exceeds the amount it received under Part B of the Act for the previous fiscal year.

(2) The requirements of §§ 300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.

(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.

(Authority: 20 U.S.C. 1413(a)(2)(C))

§ 300.234 Schoolwide programs under title I of the ESEA.

(a) An LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any program may not exceed—

(1)(i) The amount received by the LEA under Part B for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) The funds described in paragraph (a) of this section may be used without regard to the requirements of § 300.230(a).

(c) The funds described in paragraph (a) of this section must be considered as Federal Part B funds for purposes of the calculations required by §§ 300.230 (b) and (c).

(d) Except as provided in paragraphs (b) and (c) of this section, all other requirements of Part B must be met by an LEA using Part B funds in accordance with paragraph (a) of this section.

Note: Although IDEA funds may be combined in a schoolwide project, and thus used for services that are not special education and related services, all other requirements of the IDEA must still be met for children with disabilities in schoolwide project schools that combine IDEA funds in a schoolwide project. Thus, children with disabilities in schoolwide project schools must still receive services in accordance with a properly developed IEP and must still be afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

(Authority: 20 U.S.C. 1413(a)(2)(D))

§ 300.235 Permissive use of funds.

(a) *General.* Subject to paragraph (b) of this section, funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) *Integrated and coordinated services system.* To develop and implement a fully integrated and coordinated services system in accordance with § 300.244.

(b) *Application for certain use of funds.* An LEA does not violate §§ 300.152, 300.230, and 300.231 based on its use of funds provided under Part B of the Act in accordance with paragraphs (a)(1) and (a)(2) of this section.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.236–300.239 [Reserved]

§ 300.240 Information for SEA.

(a) The LEA shall provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(b) The LEA must have on file with the SEA an assurance satisfactory to the SEA that the LEA will comply with the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(6))

§ 300.241 Treatment of charter schools and their students.

The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will—

(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.

(Authority: 20 U.S.C. 1413(a)(5))

Note: The provisions of this part that apply to other public schools also apply to public charter schools. Therefore, children with disabilities who attend public charter schools and their parents retain all rights under this part. With respect to this provision, the House Committee Report on Pub. L. 105–17 states:

"The Committee expects that charter schools will be in full compliance with Part B." (H. Rep. 105–95, p. 97 (1997))

§ 300.242 Public information.

The LEA must have on file with the SEA information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

§ 300.243 [Reserved]

§ 300.244 Coordinated services system.

(a) *General.* An LEA may not use more than 5 percent of the amount the agency receives under Part B of the Act for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

(b) *Activities.* In implementing a coordinated services system under this section, an LEA may carry out activities that include—

(1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(2) Service coordination and case management that facilitate the linkage of IEPs under Part B of the Act and IFSPs under Part C of the Act with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

(3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the Act; and

(4) Interagency personnel development for individuals working on coordinated services.

(c) *Coordination with certain projects under Elementary and Secondary Education Act of 1965.* If an LEA is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under Part B of the Act in the same schools, the agency shall use the amounts under §§ 300.244 in accordance with the requirements of that title.

(Authority: 20 U.S.C. 1413(f))

§ 300.245 School-based improvement plan.

(a) *General.* Each LEA may, in accordance with paragraph (b) of this section, use funds made available under Part B of the Act to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) of the Act and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with § 300.235 (a) and (b) in that public school.

(b) *Authority.*

(1) *General.* A SEA may grant authority to an LEA to permit a public school described in § 300.245 (through a school-based standing panel established under § 300.247(b)) to design, implement, and evaluate a school-based improvement plan described in § 300.245 for a period not to exceed 3 years.

(2) *Responsibility of LEA.* If a SEA grants the authority described in paragraph (b)(1) of this section, an LEA that is granted this authority must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section.

(Authority: 20 U.S.C. 1413 (g)(1) and (g)(2)).

§ 300.246 Plan requirements.

A school-based improvement plan described in § 300.245 must—

(a) Be designed to be consistent with the purposes described in section 651(b) of the Act and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with § 300.235 (a) and (b), who attend the school for which the plan is designed and implemented;

(b) Be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with § 300.247(b);

(c) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and

(d) Ensure that all children with disabilities receive the services described in their IEPs.

(Authority: 20 U.S.C. 1413(g)(3))

§ 300.247 Responsibilities of the LEA.

An LEA that is granted authority under § 300.245(b) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

(a) Select each school under the jurisdiction of the agency that is eligible to design, implement, and evaluate the plan;

(b) Require each school selected under paragraph (a) of this section, in accordance with criteria established by the LEA under paragraph (c) of this section, to establish a school-based standing panel to carry out the duties described in § 300.246(b);

(c) Establish—

(1) Criteria that must be used by the LEA in the selection of an eligible school under paragraph (a) of this section;

(2) Criteria that must be used by a public school selected under paragraph (a) of this section in the establishment of a school-based standing panel to carry out the duties described in

§ 300.246(b) and that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

(i) Parents of children with disabilities who attend a public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

(ii) Special education and general education teachers of public schools;

(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and

(iv) Related services providers who are responsible for providing services to the children with disabilities who attend those public schools; and

(3) Criteria that must be used by the LEA with respect to the distribution of funds under Part B of the Act to carry out this section;

(d) Disseminate the criteria established under paragraph (c) of this section to local school district personnel and local parent organizations within the jurisdiction of the LEA;

(e) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner and accompanied by the information, that the LEA shall reasonably require; and

(f) Establish procedures for approval by the LEA of a school-based improvement plan designed under Part B of the Act.

(Authority: 20 U.S.C. 1413(g)(4))

§ 300.248 Limitation.

A school-based improvement plan described in § 300.245(a) may be submitted to an LEA for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan.

(Authority: 20 U.S.C. 1413(g)(5))

§ 300.249 Additional requirements.

(a) *Parental involvement.* In carrying out the requirements of §§ 300.245–300.250, an LEA shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, if appropriate, implementation of school-based improvement plans in accordance with this section.

(b) *Plan approval.* An LEA may approve a school-based improvement plan of a public school within the jurisdiction of the agency for a period of 3 years, if—

(1) The approval is consistent with the policies, procedures, and practices established by the LEA and in accordance with §§ 300.245–300.250; and

(2) A majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.

(Authority: 20 U.S.C. 1413(g)(6))

§ 300.250 Extension of plan.

If a public school within the jurisdiction of an LEA meets the applicable requirements and criteria described in §§ 300.246 and 300.247 at the expiration of the 3-year approval period described § 300.249(b), the agency may approve a school-based improvement plan of the school for an additional 3-year period.

(Authority: 20 U.S.C. 1413(g)(7))

Secretary of the Interior— Eligibility

§ 300.260 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under § 300.715 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—

(a) Meets the requirements of section 612(a)(1), (3)–(9), (10) (B), (C), (11)–(12), (14)–(17), (20), (21) and (22) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a) (1), (2)(A)(i), (6) and (7) of the Act;

(d) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)–(c) of this section;

(e) Includes a description of how the Secretary of the Interior will coordinate the provision of services under Part B of the Act with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(f) Includes an assurance that there are public hearings, adequate notice of the hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in paragraph (a) of this section;

(g) Includes an assurance that the Secretary of the Interior will provide the information that the Secretary may require to comply with section 618 of the Act, including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed;

(h) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (the agreement must provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (if appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program).

(i) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. Section 616(a) of the Act applies to the information described in this section.

(Authority: 20 U.S.C. 1411(i)(2))

§ 300.261 Public participation.

In fulfilling the requirements of § 300.260 the Secretary of the Interior shall provide for public participation consistent with §§ 300.280–300.284.

(Authority: 20 U.S.C. 1411(i))

§ 300.262 Use of Part B funds.

(a) The Department of the Interior may use five percent of its payment under § 300.715 in any fiscal year, or $500,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(b) Payments to the Secretary of the Interior under § 300.716 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(i))

§ 300.263 Plan for coordination of services.

(a) The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under Part B of the Act.

(b) The plan must provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies.

(c) In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties.

(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.

(e) The plan also must be distributed upon request to States, State and LEAs, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(Authority: 20 U.S.C. 1411(i)(4))

§ 300.264 Definitions.

(a) *Indian.* As used in this part, the term *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe.* As used in this part, the term *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(Authority: 20 U.S.C. 1401(9) and (10))

§ 300.265 Establishment of advisory board.

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior shall establish, not later than December 4, 1997 under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of the children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 of the Act in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior.

(b) The advisory board shall—

(1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in section 611(i) of the Act;

(3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under § 300.260(g).

(Authority: 20 U.S.C. 1411(i)(5))

§ 300.266 Annual reports.

The advisory board established under § 300.265 shall prepare and submit to the Secretary of the Interior and to the Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(Authority: 20 U.S.C. 1411(i)(6)(A))

§ 300.267 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§ 300.301–300.303, 300.305–300.309, 300.340–300.348, 300.351, 300.360–300.382, 300.400–300.402, 300.500–300.586, 300.600–300.621, and 300.660–300.662.

(Authority: 20 U.S.C. 1411(i)(2)(A))

Public Participation

§ 300.280 Public hearings before adopting State policies and procedures.

Prior to its adoption of State policies and procedures related to this part, the SEA shall—

(a) Make the policies and procedures available to the general public;

(b) Hold public hearings; and

(c) Provide an opportunity for comment by the general public on the policies and procedures.

(Authority: 20 U.S.C. 1412(a)(20))

§ 300.281 Notice.

(a) The SEA shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about—

(1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;

(2) The availability of the State policies and procedures;

(3) The date, time, and location of each public hearing;

(4) The procedures for submitting written comments about the policies and procedures; and

(5) The timetable for submitting the policies and procedures to the Secretary for approval.

(c) The notice must be published or announced—

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(a)(20))

§ 300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(a)(20))

§ 300.283 Review of public comments before adopting policies and procedures.

Before adopting the policies and procedures, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in those policies and procedures.

(Authority: 20 U.S.C. 1412(a)(20))

§ 300.284 Publication and availability of approved policies and procedures.

After the Secretary approves a State's policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

(Authority: 20 U.S.C. 1412(a)(20))

Subpart C—Services

Free Appropriate Public Education.

§ 300.300 Provision of FAPE.

(a) *General.* Subject to paragraphs (b) and (c) of this section and § 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.

(b) *Exception for age ranges 3–5 and 18–21.* (1) This paragraph provides the rules for applying the requirements in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20 and 21 within the State:

(2) If State law or a court order requires the State to provide education

for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(3) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(4) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(5) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(6) A State is not required to make FAPE available to a child with a disability in one of these age groups if—

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) *Children aged 3 through 21 on Indian reservations.* With the exception of children identified in § 300.715(b) and (c), the SEA shall ensure that all of the requirements of Part B are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1412(a)(1), 1411(i)(1)(C), S. Rep. No. 94–168, p. 19 (1975))

Note 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities.

Note 2: In order to be in compliance with § 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State.

Note 3: Under the Act, the age range for the child find requirement (birth through 21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services, especially in any case in which infants and toddlers with disabilities are not participating in the early intervention program under Part C of the Act. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children. (See note 3 following § 300.125 regarding the relationship between the child find requirements under Part B of the Act and those under Part C of the Act.)

§ 300.301 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(Authority: 20 U.S.C. 1401(8), 1412(a)(1))

§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

§ 300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(Authority: 20 U.S.C. 1412(a)(1))

Note: The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services. H. R. Rep. No. 95–381, p. 67 (1977)

§ 300.304 Full educational opportunity goal.

Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(Authority: 20 U.S.C. 1412(a)(2))

Note: In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under Part B of the Act. This point is addressed in the following statements from the Senate Report on Pub. L. 94–142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that LEAs include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges LEAs to include museums in programs for the handicapped funded under this Act. (S. Rep. No. 94–168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

Note: The list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1412(a)(25), 1412(a)(5)(A))

Note: The Report of the House of Representatives on Public Law 94–142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

* * * * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child. (H.R. Rep. No. 94–332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5–300.6, are made available to a child with a disability if required as a part of the child's—

(a) Special education under § 300.24;

(b) Related services under § 300.22; or

(c) Supplementary aids and services under §§ 300.26 and 300.550(b)(2).

(Authority: 20 U.S.C. 1412(a)(12)(B)(i))

§ 300.309 Extended school year services.

(a) *General.* (1) Subject to paragraph (a)(2) of this section, each public agency shall ensure that extended school year services are available to each child with a disability to the extent necessary to ensure that FAPE is available to the child.

(2) The determination of whether a child with a disability needs extended school year services must be made on an individual basis by the child's IEP team, in accordance with §§ 300.340–300.351.

(b) *Definition.* As used in this section, the term *extended school year services* means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Authority: 20 U.S.C. 1412(a)(1))

Note 1: In implementing the requirements of this section, an LEA may not limit extended school year services to particular categories of disability or unilaterally limit the duration of services. Imposing those limitations would violate the individually-oriented focus of Part B of the Act. However, with respect to paragraph (b) of this section, nothing in this part requires that every child with a disability is entitled to, or must receive, extended school year services.

Note 2: States may establish standards for use in determining on an individual basis, whether a child with a disability needs extended school year services so long as those standards are not inconsistent with the requirements of Part B of the Act. Factors that States may wish to consider include: likelihood of regression, slow recoupment, and predictive data based on the opinion of professionals.

§ 300.310 [Reserved]

§ 300.311 FAPE requirements for students with disabilities in adult prisons.

(a) *Exception to FAPE for certain students.* The obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(1) Were not actually identified as being a child with a disability under § 300.7; and

(2) Did not have an IEP under Part B of the Act.

(b) *Requirements that do not apply.* The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(1) The requirements contained in § 300.138 and § 300.347(a)(5)(i) (relating to participation of children with disabilities in general assessments).

(2) The requirements in § 300.347(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(c) *Modifications of IEP or placement.* (1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements of §§ 300.340(a), 300.347(a) relating to IEPs, and 300.550(b) relating to LRE, do not apply with respect to the modifications described in paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1414(d)(6))

Evaluations and Reevaluations

§ 300.320 Initial evaluations.

(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—

(1) To determine if the child is a "child with a disability" under § 300.7; and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that—

(1) The evaluation is conducted in accordance with the procedures described in §§ 300.530—300.535; and

(2) The results of the evaluation are used by the child's IEP team in meeting the requirements of §§ 300.340—300.351.

(Authority: 20 U.S.C. 1414 (a) and (b))

§ 300.321 Reevaluations.

Each public agency shall ensure that—

(a) A reevaluation of each child with a disability is conducted in accordance with the requirements of §§ 300.530—330.536; and

(b) The results of any reevaluations are used by the child's IEP team under §§ 300.340–300.350 in reviewing and, as appropriate, revising the child's IEP.

(Authority: 20 U.S.C. 1414(a)(2))

§ 300.322–300.324 [Reserved]

Individualized Education Programs

§ 300.340 Definitions.

(a) As used in this part, the term *individualized education program* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.341–300.351.

(b) As used in §§ 300.347 and 300.348, *participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(11))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each child with a disability served by that agency.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a religiously-affiliated school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412(a)(4), (a) (10) (A) and (B))

Note: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract, or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

§ 300.342 When IEPs must be in effect.

(a) At the beginning of each school year, each LEA, SEA, or other State agency, shall have in effect, for each child with a disability within its jurisdiction, an individualized education program, as defined in § 300.340.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings described under § 300.343.

(c)(1) In the case of a child with a disability aged 3 through 5 (or, at the discretion of the SEA a 2-year-old child with a disability who will turn age 3 during the school year), an IFSP that contains the material described in section 636 of the Act, and that is developed in accordance with §§ 300.340–300.346 and 300.349–300.351, may serve as the IEP of the child if using that plan as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(d)(1) All IEPs in effect on July 1, 1998 must meet the requirements of §§ 300.340–300.351.

(2) The provisions of §§ 300.340—300.350 that were in effect on June 3, 1997 remain in effect until July 1, 1998.

(Authority: 20 U.S.C. 1414(d)(2) (A) and (B), Pub. L. 105–17, sec. 201(a)(1)(C))

Note 1: It is expected that the IEP of a child with a disability will be implemented immediately following the meetings under § 300.343. Exceptions to this would be if (1) the meetings occur during the summer or a vacation period, unless the child requires services during that period, or (2) there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

Note 2: Certain requirements regarding IEPs for students who are incarcerated in adult prisons apply as of June 4, 1997.

Note 3: At the time that a child with a disability moves from an early intervention program under Part C of the Act to a preschool program under this part, the parent, if the agency agrees, has the option, under paragraph (c) of this section, to allow the child to continue receiving early intervention services under an IFSP, or to begin receiving special education and related services in accordance with an IEP. Because of the importance of the IEP as the statutory vehicle for ensuring FAPE to a child with a disability, paragraph (c)(2) of this section provides that the parents' agreement to use an IFSP for the child instead of an IEP requires written informed consent by the parents that is based on an explanation of the differences between an IFSP and an IEP.

§ 300.343 IEP meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an IFSP described in section 636 of the Act for each child with a disability, aged 3 through 5).

(b) *Timelines.* (1) Each public agency shall ensure that an offer of services in accordance with an IEP is made to parents within a reasonable period of time from the agency's receipt of parent consent to an initial evaluation.

(2) In meeting the timeline in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services.

(c) *Review and revision of IEP.* Each public agency shall ensure that the IEP team—

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address—

(i) Any lack of expected progress toward the annual goals described in § 300.347(a), and in the general curriculum, if appropriate;

(ii) The results of any reevaluation conducted under this section;

(iii) Information about the child provided to, or by, the parents, as described in § 300.533(a)(1);

(iv) The child's anticipated needs; or

(v) Other matters.

(Authority: 20 U.S.C. 1414(d)(3))

Note: For most children, it would be reasonable to expect that a public agency offer services in accordance with an IEP within 60 days of receipt of parent consent to initial evaluation.

§ 300.344 IEP team.

(a) *General.* The public agency shall ensure that the IEP team for each child with a disability includes—

(1) The parents of the child;

(2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) At least one special education teacher, or if appropriate, at least one special education provider of the child;

(4) A representative of the LEA who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general curriculum; and

(iii) Is knowledgeable about the availability of resources of the LEA;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a) (2) through (6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) If appropriate, the child.

(b) *Transition services participants.* (1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age if a purpose of the meeting will be the consideration of the statement of transition services needs or statement of needed transition services for the student under § 300.347(b)(1).

(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

(3)(i) In implementing the requirements of paragraph (b)(1) of this section, the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1414(d)(1)(B))

Note: The regular education teacher participating in a child's IEP meeting should be the teacher who is, or may be, responsible for implementing the IEP, so that the teacher can participate in discussions about how best to teach the child.

If the child has more than one teacher, the LEA may designate which teacher or teachers will participate. In a situation in which all of the child's teachers do not participate in the IEP meeting, the LEA is encouraged to seek input from teachers who will not be attending, and should ensure that any teacher not attending the meeting is informed about the results of the meeting (including receiving a copy of the IEP). In the case of a child whose behavior impedes the learning of the child or others, the LEA is encouraged to have a person knowledgeable about positive behavior strategies at the IEP meeting.

Similarly, the special education teacher or provider participating in a child's IEP meeting should be the person who is, or will be, responsible for implementing the IEP. If, for example, the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance.

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in § 300.347(b)(1)(i); and

(ii) Indicate that the agency will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must—

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in § 300.347(b)(1)(ii);

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting consistent with § 300.344(a)(6). As indicated in paragraph (d) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Development, review, and revision of IEP.

(a) *Development of IEP.*

(1) *General.* In developing each child's IEP, the IEP team, shall consider—

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child; and

(ii) The results of the initial or most recent evaluation of the child.

(2) *Consideration of special factors.* The IEP team also shall—

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as these needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and

communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.

(b) *Review and Revision of IEP.* In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(c) *Statement in IEP.* If, in considering the special factors described in paragraph (a) (1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(d) *Requirement with respect to regular education teacher.* The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in—

(1) The determination of appropriate positive behavioral interventions and strategies for the child; and

(2) The determination of supplementary aids and services, program modifications, and supports for school personnel, consistent with § 300.347(a)(3).

(e) *Construction.* Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414 (d) (3) and (4)(B) and (e))

Note 1: The requirements of paragraph (a)(2) of this section (relating to consideration of special factors) were added by Pub. L. 105–17. These considerations are essential in assisting the IEP team to develop meaningful goals and other components of a child's IEP, if the considerations point to factors that could impede learning. The results of considering these special factors must, if appropriate, be reflected in the IEP goals, services, and provider responsibilities. As appropriate, consideration of these factors must include a review of valid evaluation data and the observed needs of the child resulting from the evaluation process.

Note 2: With respect to paragraph (a)(2)(iv) of this section (relating to special considerations for a child who is deaf or hard of hearing), the House Committee Report on Pub. L. 105–17 states that the IEP team should implement the provision in a manner consistent with the policy guidance entitled "Deaf Students Education Services," published in the **Federal Register** (57 FR 49274, October 30, 1992) by the Department (H. Rep. No. 105–95, p–104 (1997))

Note 3: In developing an IEP for a child with limited English proficiency (LEP), the IEP team must consider how the child's level of English language proficiency affects special education and related services that the child needs in order to receive FAPE. Under Title VI of the Civil Rights Act of 1964, school districts are required to provide LEP students with alternative language services to enable the student to acquire proficiency in English and to provide the student with meaningful access to the content of the educational curriculum that is available to all students, including special education and related services. A LEP student with a disability may require special education and related services for those aspects of the educational program which address the development of English language skills and other aspects of the student's educational program. For a LEP student with a disability, under paragraph (c) of this section, the IEP must address whether the special education and related services that the child needs will be provided in a language other than English.

§ 300.347 Content of IEP.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance, including—

(i) How the child's disability affects the child's involvement and progress in the general curriculum; or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(ii) Meeting each of the child's other educational needs that result from the child's disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;

(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—

(A) Why that assessment is not appropriate for the child; and

(B) How the child will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of—

(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(A) Their child's progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(b) *Transition services.* (1) The IEP must include—

(i) For each student beginning at age 14 and younger if appropriate, and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and

(ii) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.27(c)(1) through (c)(4), the IEP must include a statement to that effect and the basis upon which the determination was made.

(c) *Transfer of rights.* Beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with § 300.517.

(d) *Students with disabilities convicted as adults and incarcerated in adult prisons.* Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in § 300.311(b) and (c).

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))

Note 1: Although the statute does not mandate transition services for all students below the age of 16, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16.

Note 2: The IEP provisions added by Pub. L. 105–17 are intended to provide greater access by children with disabilities to the general curriculum and to educational reforms, as an effective means of ensuring better results for these children in preparing them for employment and independent living.

With respect to increased emphasis on the general curriculum, the House Committee Report on Pub. L. 105–17 includes the following statement:

The Committee wishes to emphasize that, once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it. (H. Rep. No. 105–95, p-99 (1997))

Note 3: With respect to the impact on States and LEAs in implementing the new IEP provisions relating to accessing the general curriculum, the House Committee Report on Pub. L. 105–17 includes the following statement:

The new emphasis on participation in the general education curriculum is not intended by the Committee to result in major expansions in the size of the IEP of dozens of pages of detailed goals and benchmarks or objectives in every curricular content standard skill. The new focus is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for the appropriate participation in particular areas of the curriculum due to the nature of the disability.

Note 4: With respect to paragraph (a) of this section, the House Committee Report on Pub. L. 105–17 includes the following statement:

The Committee intends that, while teaching and related services methodologies or approaches are an appropriate topic for discussion and consideration by the IEP team during IEP development or annual review, they are not expected to be written into the IEP. Furthermore, the Committee does not intend that changing particular methods or approaches necessitates an additional meeting of the IEP team.

Specific day to day adjustments in instructional methods and approaches that are made by either a regular or special education teacher to assist a disabled child to achieve his or her annual goals would not normally require action by the child's IEP team. However, if changes are contemplated in the child's measurable annual goals, benchmarks, or short-term objectives, or in any of the services or program modifications, or other components described in the child's IEP, the LEA must ensure that the child's IEP team is reconvened in a timely manner to address those changes. (H. Rep. No. 105–95, pp-100–101 (1997))

Note 5: The provision in paragraph (a)(7)(ii) of this section concerning regularly informing parents of their child's progress toward annual goals and the extent to which this progress is sufficient to enable the child to achieve the goals by the end of the year is intended to be in addition to, rather than in place of, regular reporting to the parents (as for nondisabled children) of the child's progress in subjects or curricular areas for which the child is not receiving special education.

Note 6: With respect to paragraph (b)(1) of this section (relating to transition service needs beginning at age 14), the House Committee report on Pub. L. 105–17 includes the following statement:

The purpose of this requirement is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. This provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities beginning no later than age sixteen receive transition services, including instruction, community experiences, the development of employment and other post-school objectives, and, when appropriate, independent living skills and functional vocational evaluation. For example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation. (H. Rep. No. 105–95, p. 101 (1997))

Note 7: Each State must, at a minimum, ensure compliance with the transition services requirements in paragraph (b) of this section. However, it would not be a violation of this part for a public agency to begin planning for transition services needs and needed transition services for students younger than age 14 and age 16, respectively.

§ 300.348 Agency responsibilities for transition services.

(a) If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with § 300.347(b)(1)(ii), the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))

§ 300.349 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.347.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.350 Children with disabilities in religiously-affiliated or other private schools.

If a child with a disability is enrolled in a religiously-affiliated or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.347; and

(b) Ensure that a representative of the religiously-affiliated or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.351 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

(Authority: 20 U.S.C. 1414(d)); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Note: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives or benchmarks listed in the IEP. Part B is premised on children receiving the instruction, services and modifications that they need to enable them to make progress in their education. Further, the section does not limit a parent's right to complain and ask for revisions of the child's IEP, or to invoke due process procedures (§ 300.507), if the parent feels that these efforts are not being made. This section does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school or agency performance.

Direct Service by the SEA

§ 300.360 Use of LEA allocation for direct services.

(a) *General.* An SEA shall use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—

(1) Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;

(2) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(3) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(4) Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.

(b) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements of §§ 300.184 and 300.185 do not apply to the SEA.

(Authority: 20 U.S.C. 1413(h)(1))

Note: The SEA, as a recipient of Part B funds, is responsible for ensuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If an LEA elects not to apply for its Part B allotment, the State would be required to use those funds to ensure that FAPE is made available to children residing in the area served by that local agency. However, if the local allotment is not sufficient for this purpose, additional State or local funds would have to be expended in order to ensure that FAPE and the other requirements of the Act are met.

Moreover, if the LEA is the recipient of any other Federal funds, it would have to be in compliance with 34 CFR 104.31–104.39 of the regulations implementing Section 504 of the Rehabilitation Act of 1973. It should be noted that the term "FAPE" has different meanings under Part B and Section 504. For example, under Part B, FAPE is a statutory term that requires special education and related services to be provided in accordance with an IEP. However, under Section 504, each recipient must provide an education that includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *". (34 CFR 104.33(b)). Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the FAPE requirement under section 504.

§ 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate (including regional and State centers). However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

(Authority: 20 U.S.C. 1413(h)(2))

§§ 300.362–300.369 [Reserved]

§ 300.370 Use of State agency allocations.

(a) Each State shall use any funds it retains under § 300.602 and does not use for administration under § 300.620 for any of the following:

(1) Support and direct services, including technical assistance and personnel development and training.

(2) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

(3) To establish and implement the mediation process required by § 300.506, including providing for the costs of mediators and support personnel.

(4) To assist LEAs in meeting personnel shortages.

(5) To develop a State Improvement Plan under subpart 1 of Part D of the Act.

(6) Activities at the State and local levels to meet the performance goals established by the State under § 300.137 and to support implementation of the State Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(7) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 611 of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act.

(8) For subgrants to LEAs for the purposes described in § 300.622.

(b) For the purposes of paragraph (a) of this section—

(1) *Direct services* means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) *Support services* includes implementing the comprehensive system of personnel development under §§ 300.380–300.382, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411(f)(3))

§ 300.371 [Reserved]

§ 300.372 Applicability of nonsupplanting requirement.

A State may use funds it retains under § 300.602 without regard to—

(a) The prohibition on commingling of funds in § 300.152; and

(b) The prohibition on supplanting other funds in § 300.153.

(Authority: 20 U.S.C. 1411(f)(1)(C))

Comprehensive System of Personnel Development

§ 300.380 General.

(a) Each State shall develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;

(2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;

(3) Meets the requirements of §§ 300.381 and 300.382; and

(4) Is updated at least every five years.

(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(14))

§ 300.381 Adequate supply of qualified personnel.

Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

(a) The number of personnel providing special education and related services; and

(b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

(Authority: 20 U.S.C. 1453(b)(2)(B))

§ 300.382 Improvement strategies.

Each State must describe the strategies the State will use to address the needs identified under § 300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how—

(a) The State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;

(b) The State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(c) The State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(d) The State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(e) The State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;

(f) The State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(g) The State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;

(h) The State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;

(i) The plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(j) The State will provide for the joint training of parents and special education, related services, and general education personnel.

(Authority: 20 U.S.C. 1453 (c)(3)(D))

§ 300.383—300.387 [Reserved]

Subpart D—Children in Private Schools.

Children With Disabilities in Private Schools Placed or Referred by Public Agencies

§ 300.400 Applicability of §§ 300.400—300.402.

Sections §§ 300.401—300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.401 Responsibility of SEA.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.340—300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.402 Implementation by SEA.

In implementing § 300.401, the SEA shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.403 Placement of children by parents if FAPE is at issue.

(a) *General.* Subject to § 300.451, this part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made

FAPE available to the child and the parents elected to place the child in a private school or facility.

(b) *Disagreements about FAPE.* Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.515.

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment.

(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(10)(C))

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.450 Definition of "private school children with disabilities."

As used in this part, *private school children with disabilities* means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.451 Child find for private school children with disabilities.

Each public agency must locate, identify and evaluate all private school children, including religiously-affiliated school children, who have disabilities residing in the jurisdiction of the agency in accordance with §§ 300.125 and 300.220.

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

§ 300.452 Basic requirement—services.

To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§ 300.453–300.462.

(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

§ 300.453 Expenditures.

To meet the requirement of § 300.452, each LEA must spend on providing special education and related services to private school children with disabilities—

(a) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under sections 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and

(b) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(Authority: 20 U.S.C. 1412(a)(10)(A))

Note: SEAs and LEAs are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

§ 300.454 Services determined.

(a) *No individual right to special education and related services.* No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities under §§ 300.452–300.462, must be made in accordance with paragraphs (b), (c) and (d) of this section.

(b) *Consultation with representatives of private school children with disabilities.* Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under § 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—

(1) Which children will receive services under § 300.452;

(2) What services will be provided;

(3) How the services will be provided; and

(4) How the services provided will be evaluated.

(c) *Genuine opportunity.* Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(d) *Timing.* The consultation required by paragraph (b) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§ 300.452–300.462.

(e) *Decisions.* The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.455 Services provided.

(a) *Comparable services.* The services provided private school children with disabilities must be comparable in quality to services provided to children with disabilities enrolled in public schools.

(b) *Services provided in accordance with an IEP.* The IEP for each private school child with a disability who receives services under § 300.452 must address the services that the LEA has determined that it will provide the child in light of the services that the LEA has determined, through the process described in §§ 300.453–300.454, it will make available to private school children with disabilities.

(c) *Definition.* As used in this section, *comparable in quality*—

(1) Means that services provided private school children with disabilities must be provided by similarly qualified personnel;

(2) Does not require the same amount of service for private school children with disabilities as for children with disabilities in public schools; and

(3) Does not require that any particular child receive service or receive the same amount of service the child would receive in a public school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.456 Location of services.

(a) *On-site.* Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religiously-affiliated school, to the extent consistent with law.

(b) *Transportation.* (1) Transportation of private school children with disabilities to a site other than a child's private school must be provided if necessary for a child to benefit from or participate in the other services offered.

(2) The cost of that transportation may be included in calculating whether the LEA has met the requirement of § 300.453.

(Authority: 20 U.S.C. 1412(a)(10)(A))

Note 1: The decisions of the Supreme Court in *Zobrest v. Catalina Foothills School Dist.* (1993) and *Agostini v. Felton* (1997) make clear that LEAs may provide special education and related services on-site at religiously-affiliated private schools in a manner that does not violate the Establishment Clause of the First Amendment to the U. S. Constitution.

Note 2: With regard to transportation services, school districts are not required to provide transportation from the student's home to the private school, but only to the site where the services are offered, and either return the student to the private school or to the student's home, depending on the timing of the services.

§ 300.457 Complaints.

(a) *Due process inapplicable.* The procedures in §§ 300.504–300.515 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.452–300.462, including the provision of services indicated on the child's IEP.

(b) *State complaints.* Complaints that an SEA or LEA has failed to meet requirements of §§ 300.451–300.462 may be filed under the procedures in §§ 300.660–300.662.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.458 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.459 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA shall use funds provided under Part B of the Act to meet the special educational needs of students enrolled in private schools, but not for—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.460 Use of public school personnel.

An LEA may use funds available under sections 611 and 619 of the Act to make public personnel available in other than public facilities—

(a) To the extent necessary to provide services under §§ 300.450–300.462 for private school children with disabilities; and

(b) If those services are not normally provided by the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.461 Use of private school personnel.

An LEA may use funds available under sections 611 or 619 of the Act to pay for the services of an employee of a private school if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.462 Requirements concerning property, equipment and supplies for the benefit of private school children with disabilities.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A))

Procedures for By-Pass

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act, as required by section 612(a)(10)(A) of the Act and by §§ 300.452–300.462.

(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§ 300.452–300.462 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1412(f)(1))

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law that results in the need for a by-pass;

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under Part B of the Act for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1412(f)(2))

Due Process Procedures

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3)(A))

§ 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.486 Filing requirements.

(a) Any written submission under §§ 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.487 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B)–(D) of the Act.

(Authority: 20 U.S.C. 1412(f)(3)(B)–(D))

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

§ 300.500 General responsibility of public agencies; definitions.

(a) *Responsibility of SEA and other public agencies.* Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500–§ 300.529.

(b) *Definitions of "consent," "evaluation," and "personally identifiable."* As used in this part—

(1) *Consent* means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(2) *Evaluation* means procedures used in accordance with §§ 300.530–300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class; and

(3) *Personally identifiable* means that information includes—

(i) The name of the child, the child's parent, or other family member;

(ii) The address of the child;

(iii) A personal identifier, such as the child's social security number or student number; or

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

Note: With respect to paragraph (b)(1)(iii) of this section, the parent's ability to revoke consent, if invoked, is not retroactive, *i.e.*, it does not negate an action that has occurred after the consent was given and before it was revoked.

§ 300.501 Opportunity to examine records; parent participation in meetings.

(a) *General.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.562–300.569, an opportunity to—

(1) Inspect and review all education records with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child; and

(2) Participate in all meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(b) *Parent participation in meetings.* (1) Each public agency shall provide notice consistent with § 300.345 (a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.

(2) For purposes of this section, the term "meetings" means a prearranged event in which public agency personnel come together at the same time and place to discuss any matter described in paragraph (a)(2) of this section relating to an individual child with a disability. The term does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. The term also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) *Parent involvement in placement decisions.* (1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in § 300.345 (a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of § 300.345(d).

(5) The public agency shall take whatever action is necessary to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

(Authority: 20 U.S.C. 1414(f), 1415(b)(1))

§ 300.502 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing under § 300.507 to show that its evaluation is appropriate, or insure an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing under § 300.507 that the evaluation obtained by the parent did not meet agency criteria. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1))

Note 1: If a parent requests an independent educational evaluation at public expense, there is no requirement under Part B of the Act that the parent specify areas of disagreement with the public agency's evaluation as a prior condition to obtaining

the independent educational evaluation. Thus, unless a public agency chooses to initiate a due process hearing in accordance with paragraph (b) of this section, the agency must respond to the parent's request by insuring an independent educational evaluation is provided at public expense in a timely manner. A public agency may not impose conditions on obtaining an independent educational evaluation, other than the agency criteria described in paragraph (e) of this section.

Note 2: This section requires public agencies to provide parents with information on how and where an independent educational evaluation of their child at public expense can be obtained. Public agencies are encouraged to make this information widely available to parents in a manner that is readily understandable to the general public so that if parents disagree with an agency evaluation they will have access to the criteria the agency will apply to an IEE.

A public agency may not require that evaluations obtained by parents meet all agency criteria, if doing so would be inconsistent with the parents' right to an IEE. For example, the agency could not require a parent to meet a criterion that required the IEE to be conducted by an agency employee.

§ 300.503 Prior notice by the public agency; content of notice.

(a) *Notice.* (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under § 300.505, the agency may give notice at the same time it requests parent consent.

(b) *Content of notice.* The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the agency's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part; and

(8) A statement informing the parents about the State complaint procedures under §§ 300.660–300.662, including a description of how to file a complaint and the timelines under those procedures.

(c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415 (b) (3), (4) and (c), 1414(b)(1))

§ 300.504 Procedural safeguards notice.

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child; and

(4) Upon receipt of a request for due process under § 300.507.

(b) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§ 300.403, 300.500–300.529, and 300.560–300.577 relating to—

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) Opportunity to present complaints;

(6) The child's placement during pendency of due process proceedings;

(7) Procedures for students who are subject to placement in an interim alternative educational setting;

(8) Requirements for unilateral placement by parents of children in private schools at public expense;

(9) Mediation;

(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in that State);

(12) Civil actions; and

(13) Attorneys' fees.

(c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(d))

§ 300.505 Parental consent.

(a)(1) Parental consent must be obtained before—

(i) Conducting an initial evaluation;

(ii) Initial provision of special education and related services to a child with a disability in a program providing special education and related services; and

(iii) Except as provided in paragraph (c) of this section, before conducting any new test as a part of a reevaluation of an eligible child under Part B of the Act.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(b) *Refusal.* If the parents of the child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§ 300.507–300.509, or the mediation procedures under § 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) *Failure to respond to request for reevaluation.*

(1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in §§ 300.345(d).

(d) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(e) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(b)(3); 1414 (a)(1)(C) and (c)(3))

Note 1: Paragraph (b) of this section means that if the parents of a child with a disability refuse consent for an initial evaluation or any reevaluation, and the agency wishes to pursue the evaluation or reevaluation, it may do so by using the due process or mediation procedures under Part B of the Act unless doing so would be inconsistent with State law relating to parent consent. For example, if State law provides that parents' right to consent to an initial evaluation cannot be overridden, the agency under Part B would not be able to take any action regarding that initial evaluation once parents had refused consent. If State law provided a mechanism different than due process or mediation under Part B as the means to override a parent refusal of consent, the agency would use that State mechanism if it wished to pursue the evaluation.

Note 2: If a State adopts a consent requirement in addition to those described in paragraph (a) of this section and consent is refused, paragraph (e) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (d) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

Note 3: If parents refuse consent to a reevaluation that the agency needs to provide appropriate services to the child consistent with § 300.536, the agency must either take appropriate measures, consistent with paragraph (b) of this section to override the parents' refusal of consent, or, if State law prohibits override of parent consent for reevaluation, the agency may cease providing services to the child under Part B of the Act.

§ 300.506 Mediation.

(a) *General.* Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 300.503(a)(1) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under §§ 300.507 or 300.520–300.528.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under § 300.506, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Impartiality of mediator.* An individual who serves as a mediator under this part—

(1) May not be an employee of—

(i) Any LEA or any State agency described under § 300.194; or

(ii) An SEA that is providing direct services to a child who is the subject of the mediation process; and

(2) Must not have a personal or professional conflict of interest.

(d) *Meeting to encourage mediation.* (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A public agency may not deny or delay a parent's right to a due process hearing under § 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1415(e))

Note 1: With respect to paragraph (b)(2) of this section, the House Committee Report on Pub. L. 105–17 includes the following statement:

"* * * the bill provides that the State shall maintain a list of individuals who are qualified mediators. The Committee intends that whenever such a mediator is not selected on a random basis from that list, both the parents and the agency are involved in selecting the mediator, and are in agreement with the individual who is selected. (H. Rep. No. 105–95, p. 106 (1997))

Note 2: With regard to the provision in paragraph (b)(6) that mediation discussions must be confidential and may not be used in any subsequent due process hearings or civil proceedings, the House Committee Report on Pub. L. 105–17 notes that "nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties." (H. Rep. No. 105–95, p. 107 (1997)). The Report also includes an example of a confidentiality pledge, which makes clear that the intent of this provision is to protect discussions that occur in the mediation process from use in subsequent due process hearings and civil proceedings under the Act, and not to exempt from discovery, because it was disclosed during mediation, information that otherwise would be subject to discovery.

§ 300.507 Impartial due process hearing; parent notice; disclosure.

(a) *General.* (1) A parent or a public agency may initiate a hearing on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) When a hearing is initiated under paragraph (a)(1) of this section, the public agency shall inform the parents of the availability of mediation described in § 300.506.

(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(i) The parent requests the information; or

(ii) The parent or the agency initiates a hearing under this section.

(b) *Agency responsible for conducting hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) *Parent notice to the public agency.*

(1) *General.* The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.

(2) *Content of parent notice.* The notice required in paragraph (c)(1) of this section must include—

(i) The name of the child;

(ii) The address of the residence of the child;

(iii) The name of the school the child is attending;

(iv) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) *Model form to assist parents.* Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.

(4) *Right to due process hearing.* A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section.

(Authority: 20 U.S.C. 1415(b)(5), (b)(6), (b)(7), (b)(8), (e)(1) and (f)(1))

Note 1: Part B of the Act and the regulations under Part B of the Act do not provide any authority for a public agency to deny a parent's request for an impartial due process hearing, even if the agency believes that the parent's issues are not new. Thus, the determination of whether or not a parent's request for a hearing is based on new issues can only be made by an impartial hearing officer.

Note 2: The House Committee Report on Pub. L. 105–17 notes that attorneys' fees to prevailing parents may be reduced if the attorney representing the parents did not provide the public agency with specific information about the child and the basis of the dispute described in paragraphs (c)(1) and (2) of this section. With respect to the intent of the new notice provision, the House report includes the following statement:

* * * The Committee believes that the addition of this provision will facilitate an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process and instead foster a partnership to resolve problems. (H. Rep. 105–95, p. 105 (1997))

§ 300.508 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1415(f)(3))

§ 300.509 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 or 300.520—300.528, or an appeal conducted pursuant to § 300.510, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information requirement.* (1) At least 5 business days prior to a hearing conducted pursuant to § 300.507(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* (1) Parents involved in hearings must be given the right to—

(i) Have the child who is the subject of the hearing present; and

(ii) Open the hearing to the public.

(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(2)and (h))

§ 300.510 Finality of decision; appeal; impartial review.

(a) *Finality of decision.* A decision made in a hearing conducted pursuant to §§ 300.507 or 300.520—300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.512.

(Authority: 20 U.S.C. 1415(i)(1)(A))

(b) *Appeal of decisions; impartial review.*

(1) *General.* If the hearing required by § 300.507 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) *SEA responsibility for review.* If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.508 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of written findings and the decision to the parties.

(c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(g); H. R. Rep. No. 94—664, at p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.509 relating to hearings also apply.

§ 300.511 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.512 Civil action.

(a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 or 300.520–300.528 who does not have the right to an appeal under § 300.510(b)(2), and any party aggrieved by the findings and decision under § 300.510(e), has the right to bring a civil action with respect to the complaint presented pursuant to § 300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Shall receive the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(d) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415 (i)(2), (i)(3)(A), and 1415(l))

§ 300.513 Attorneys' fees.

(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b) Funds under Part B of the Act may not be used to pay attorney's fees.

(Authority: 20 U.S.C. 1415(i)(3)(B))

Note: There is nothing in this part that prohibits a State from enacting a law that permits hearing officers to award attorneys' fees to parents who are prevailing parties under Part B of the Act.

§ 300.514 Child's status during proceedings.

(a) Except as provided in § 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing or a review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

Note: This section does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.515 Surrogate parents.

(a) *General.* Each public agency shall ensure that the rights of a child are protected if—

(1) No parent (as defined in § 300.19) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.*

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no interest that conflicts with the interest of the child he or she represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under

paragraphs (c) and (d)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(2))

§ 300.516 [Reserved]

§ 300.517 Transfer of parental rights at age of majority.

(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child; and

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State, or local correctional institution.

(3) Whenever a State transfers rights under this part pursuant to paragraph (a) (1) or (2), the agency shall notify the individual and the parents of the transfer of rights.

(b) *Special rule.* If, under State law, a child with a disability, described in paragraph (a) of this section, is determined not to have the ability to provide informed consent with respect to the educational program of the student, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.

(Authority: 20 U.S.C. 1415(m))

Discipline Procedures

§ 300.520 Authority of school personnel.

(a) School personnel may order—

(1) The removal of a child with a disability from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension without the provision of educational services, for not more than 10 school days (to the extent the alternatives would be applied to children without disabilities); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if—

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or.

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b) Except as provided in paragraph (c) of this section, either before or not later than 10 business days after taking the action described in paragraph (a) of this section—

(1) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the suspension described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan and appropriate behavioral interventions to address that behavior; or

(2) If the child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior.

(c) If the child with a disability is removed from the child's current educational placement for 10 school days or fewer under paragraph (a)(1) of this section in a given school year, and no further removal or disciplinary action is contemplated, the activities in paragraph (b) of this section need not be conducted.

(d) For purposes of this section, the following definitions apply:

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug*—

(i) Means a controlled substance; but

(ii) Does not include such a substance that is legally possessed or used under the supervision or a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k) (1), (10))

Note 1: Removing a child with disabilities from the child's current educational placement for not more than 10 school days does not constitute a change of placement under the Part B regulation. A series of removals from a child's current educational placement in a school year each of which is less than 10 school days but cumulate to more than 10 school days in a school year may constitute a change in placement, if, in any given case, factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another, lead to the conclusion that the child has been excluded from the current placement to such an extent that there has been a change of placement.

Note 2: Although paragraph (c) of this section provides that public agencies need not conduct the review described in paragraph (b) if a child is removed from the regular placement for 10 school days or fewer and no further removal or disciplinary action is contemplated, public agencies are strongly encouraged to review as soon as possible the circumstances surrounding the behavior that led to the child's removal and consider whether the child was being provided services in accordance with the IEP, and whether the behavior could be addressed through minor classroom or program adjustments or whether the child's IEP team should be reconvened to address possible changes in that document.

§ 300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing—

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting meets the requirements of § 300.522.

(e) As used in this section, the term *substantial evidence* means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k) (2), (10))

§ 300.522 Determination of setting.

(a) *General.* The alternative educational setting referred to in §§ 300.520 and 300.521 must be determined by the IEP team.

(b) *Additional requirements.* Any interim alternative educational setting in which a child is placed under § 300.520 or 300.521 must—

(1) Be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications designed to address the behavior described in § 300.520 or 300.521, or any other behavior that results in the child being removed from the child's current educational placement for more than 10 school days in a school year, so that it does not recur.

(Authority: 20 U.S.C. 1415(k)(3))

§ 300.523 Manifestation determination review.

(a) *General.* If an action is contemplated as described in § 300.520 or 300.521, or if an action involving a removal of a child from the child's current educational placement for more than 10 school days in a given school year is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and of all procedural safeguards accorded under this section; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) *Exception.* If, under § 300.520(a)(1), the child with disabilities is removed from the child's current educational placement for 10 school days or fewer in a given school year, and no further disciplinary action is contemplated, the review in paragraph (a) of this section need not be conducted.

(c) *Individuals to carry out review.* A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel.

(d) *Conduct of review.* In carrying out a review described in paragraph (a) of this section, the IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team—

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determines that—

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(e) *Decision.* If the IEP team determines that any of the standards in (d)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(f) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under § 300.520(b).

(Authority: 20 U.S.C. 1415(k)(4))

Note 1: The House Committee Report on Pub. L. No 105–17 states that the determination described in § 300.523(c)(2):

. . . recognizes that where there is a relationship between a child's behavior and a failure to provide or implement an IEP or placement, the IEP team must conclude that the behavior was a manifestation of the child's disability. Similarly, where the IEP team determines that an appropriate placement and IEP were provided, the IEP team must then determine that the remaining two standards have been satisfied. This section is not intended to require an IEP team to find that a child's behavior was a manifestation of a child's disability based on a technical violation of the IEP or placement requirements that are unrelated to the educational/behavior needs of the child. (House Rep. No. 105–95, pp. 110–111)

Note 2: If the result of the manifestation determination is that the behavior is a manifestation of the child's disability, the LEA must take immediate steps to remedy any deficiencies found in the child's IEP or placement, or their implementation. For a child who has been placed in a 45-day placement under § 300.520(a)(2) or 300.521 and for whom the child's behavior subject to discipline is a manifestation of the child's disability, these remedies often should enable the child to return to the child's current educational placement before the expiration of the 45-day period.

§ 300.524 Determination that behavior was not manifestation of disability.

(a) *General.* If the result of the review described in § 300.523 is a determination, consistent with § 300.523(e), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1) of the Act.

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Section 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in § 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

Note: The provision in paragraph (c) of this section means that during the pendency of any administrative or judicial proceeding to challenge a determination that the child's behavior is not a manifestation of the child's disability, the child remains in the child's current educational placement or the child's placement under § 300.526, whichever applies.

§ 300.525 Parent appeal.

(a) *General.*

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in this section if requested by a parent.

(b) *Review of decision.*

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of § 300.523(e).

(2) In reviewing a decision under § 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in § 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

§ 300.526 Placement during appeals.

(a) *General.* If a parent requests a hearing regarding a disciplinary action

described in § 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(b) *Current placement.* If a child is placed in an interim alternative educational setting pursuant to—§ 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) *Expedited hearing.*

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in § 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(Authority: 20 U.S.C. 1415(k)(7))

Note: An LEA may seek subsequent expedited hearings under paragraph (c)(1) of this section if, at the expiration of the time period of the placement ordered under paragraph (c) of this section, the LEA maintains that the child is still dangerous and the issue has not been resolved through due process.

§ 300.527 Protections for children not yet eligible for special education and related services.

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§ 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* An LEA must be deemed to have knowledge that a child is a child with a disability if—

(1) The parent of the child has expressed concern in writing (or orally if the parent is illiterate in English or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services;

(3) The parent of the child has requested an evaluation of the child pursuant to §§ 300.530–300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel of the agency.

(c) *Conditions that apply if no basis of knowledge.*

(1) *General.* If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraph (b) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (c)(2) of this section.

(2) *Limitations.*

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§ 300.520–300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

§ 300.528 Expedited due process hearings.

(a) Expedited due process hearings under §§ 300.521–300.526 must—

(1) Result in a decision within 10 business days of the request for the hearing, unless the parents and school officials otherwise agree;

(2) Meet the requirements of § 300.508, except that a State may provide that the time periods identified in § 300.509(a)(3) and § 300.509(b) for purposes of expedited due process hearings under §§ 300.521–300.526 are not less than two business days; and

(3) Be conducted by a due process hearing officer who satisfies the requirements of § 300.508.

(b) A State may establish different procedural rules for expedited hearings under §§ 300.521–300.526 than it has established for due process hearings under § 300.507.

(c) The decisions on expedited due process hearings are appealable under a State's normal due process appeal procedures.

(Authority: 20 U.S.C. 1415(k)(2), (6), (7))

§ 300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(Authority: 20 U.S.C. 1415(k)(9))

Procedures for Evaluation and Determination of Eligibility

§ 300.530 General.

Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.530–300.536.

(Authority: 20 U.S.C. 1414(b)(3); 1412(a)(7))

§ 300.531 Initial evaluation.

Each public agency shall conduct a full and individual initial evaluation, in accordance with §§ 300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.532 Evaluation procedures.

Each public agency shall ensure, at a minimum, that—

(a) Tests and other evaluation materials used to assess a child under Part B of the Act—

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, that may assist in determining—

(1) Whether the child is a child with a disability under § 300.7; and

(2) The content of the child's IEP, including information related to enabling the child—

(i) To be involved in and progress in the general curriculum; or

(ii) For a preschool child, to participate in appropriate activities.

(c) Any standardized tests that are given to a child—

(i) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;

(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(h) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(i) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(Authority: 20 U.S.C. 1414 (a)(6)(B), (b) (2) and (3))

Note 1: Under Title VI of the Civil Rights Act of 1964, in order to properly evaluate a child who may be limited English proficient, the public agency must first determine the child's proficiency in English and the child's native language. Under Title VI, an accurate assessment of the child's language proficiency must include objective assessment of reading, writing, speaking, and understanding. Under this section and § 300.534(b), information about the child's language proficiency must be considered in determining how to conduct the evaluation of the child to prevent misclassification. Under both Title VI and Part B of the Act, the public agency has a responsibility to ensure that children with limited English proficiency are not evaluated on the basis of criteria that essentially measure English language skills.

Note 2: In some situations, there may be no one on the staff of a public agency who is able to administer a test or other evaluation in a child's native language, as required under paragraph (a)(2) of this section, but an appropriate individual is available in the surrounding area. Ways that a public agency can identify an individual in the surrounding area who is able to administer a test or other evaluation in the child's native language include contacting neighboring school districts, local universities, and professional organizations. For LEP students, in situations where it is clearly not feasible to provide and administer tests in the child's native language or mode of communication, the public agency still needs to obtain and consider accurate and reliable information that will enable the agency to make an informed decision as to whether the child has a disability and the effects of the disability on the child's educational needs.

Note 3: If an assessment is not conducted under standard conditions, information about the extent to which the assessment varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, needs to be included in the evaluation report. This information is needed so that the team of qualified professionals can evaluate the effects of these variances on the validity and reliability of the information reported and to determine whether additional assessments are needed.

§ 300.533 Determination of needed evaluation data.

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a team that includes the individuals required by § 300.344, and other qualified professionals, as appropriate, shall—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) Whether the child has a particular category of disability, as described in § 300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) The present levels of performance and educational needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(b) *Need for additional data.* The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.

(c) *Requirements if additional data are not needed.* (1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents—

(i) Of that determination and the reasons for it; and

(ii) Of the right of the parents to request an assessment to determine whether the child continues to be a child with a disability.

(2) The public agency is not required to conduct the assessment described in paragraph (c)(1)(ii) of this section unless requested to do so by the child's parents.

(Authority: 20 U.S.C. 1414(c)(1), (2) and (4))

Note: The requirement in paragraph (a) of this section and § 300.534(a)(1) that review of evaluation data and eligibility decisions be made by groups that include "qualified professionals," is intended to ensure that the teams making these determinations include individuals with the knowledge and skills necessary to interpret the evaluation data and make an informed determination as to whether the child is a child with a disability under § 300.7, and to determine whether the child needs special education and related services. The composition of the team will

vary depending upon the nature of the child's suspected disability and other relevant factors. For example, if a student is suspected of having a learning disability, a professional whose sole expertise is visual impairments would be an inappropriate choice. If a student is limited English proficient, it will be important to include a person on the team of qualified professionals who is knowledgeable about the identification, assessment, and education of limited English proficient students.

§ 300.534 Determination of eligibility

(a) Upon completing the administration of tests and other evaluation materials—

(1) A team of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in § 300.7; and

(2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(b) A child may not be determined to be a child with a disability if the determinant factor for that determination is—

(1) Lack of instruction in reading or math; or

(2) Limited English proficiency.

(c) A public agency must evaluate a child with a disability in accordance with §§ 300.532 and 300.533 before determining that the child is no longer a child with a disability.

(Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))

§ 300.535 Procedures for determining eligibility and placement.

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.7, and the educational needs of the child, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))

Note: Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in determining whether a child is a child with a disability, as defined in § 300.7. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making these determinations. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 300.536 Reevaluation.

Each public agency shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340–300.350; and

(b) That a reevaluation of each child, in accordance with §§ 300.530(b), 300.532, and 300.533, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

(Authority: 20 U.S.C. 1414(a)(2))

Additional Procedures for Evaluating Children With Specific Learning Disabilities

§ 300.540 Additional team members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.7, must be made by the child's parents and a team of qualified professionals which must include—

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading comprehension.

(vi) Mathematics calculation.

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

§ 300.543 Written report.

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by § 300.534(a)(2), must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

Least Restrictive Environment

§ 300.550 General.

(a) A State shall demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the requirements of §§ 300.550–300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))

Note: Home instruction is usually appropriate for only a limited number of children, such as children who are medically fragile and are not able to participate in a school setting with other children.

§ 300.552 Placements.

In determining the educational placement of a child with a disability, each public agency shall ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.550–300.554;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; and

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(a)(5))

Note 1: With respect to paragraph (a)(1) of this section, nothing in this part would prohibit a public agency from allowing the group of persons that makes the placement decision also to serve as the child's IEP team, so long as all individuals described in § 300.344 are included.

Note 2: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are not disabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate those programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340–300.351 and §§ 300.550–300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home, and this issue may be raised by the parent under the due process provisions of this subpart.

Note 3: If IEP teams appropriately consider positive behavioral interventions and supplementary aids and services and if necessary include those services in IEPs, many children who otherwise would be disruptive will be able to participate in regular education classrooms.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(a)(5))

Note: Section 300.553 is taken from a requirement in the regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 regulations includes the following statement: "[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(a)(5))

Note: The requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA

must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))

Confidentiality of Information

§ 300.560 Definitions.

As used in §§ 300.560–300.577—

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e–3, 1412(a)(8), 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.127, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.570 Hearing procedures.

A hearing held under § 300.568 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.127 and 34 CFR part 99.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

Note: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

§ 300.574 Children's rights.

The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

Note 1: Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

Note 2: If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.517, the rights regarding educational records in §§ 300.562–300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

§ 300.575 Enforcement.

The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.576 Disciplinary information.

(a) The State may require that a LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(j))

§ 300.577 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (the Privacy Act of 1974), the Secretary applies the requirements of 5 U.S.C. 552a (b)(1)–(2), (4)–(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)–(10); (h); (m); and (n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

Department Procedures

§ 300.580 Determination by the Secretary that a State is eligible.

If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. (1412(d))

§ 300.581 Notice and hearing before determining that a State is not eligible.

(a) *General.* (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.

(b) *Content of notice.* In the written notice described in paragraph (a)(2) of this section, the Secretary—

(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of the proposed final determination that the State is not eligible; and

(4) Provides information about the procedures followed for a hearing.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.582 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.583 Hearing procedures.

(a) As used in §§ 300.581–300.586 the term *party* or *parties* means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.584 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.581.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.585 Filing requirements.

(a) Any written submission under §§ 300.581–300.585 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(c))

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that action, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that action. A copy of the petition must be forthwith transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(Authority: 20 U.S.C. 1416(b))

§ 300.587 Enforcement.

(a) *General.* The Secretary initiates an action described in paragraph (b) of this section if the Secretary finds—

(1) That there has been a failure by the State to comply substantially with any provision of Part B of the Act, this part, or 34 CFR part 301; or

(2) That there is a failure to comply with any condition of an LEA's or SEA's eligibility under Part B of the Act, this part or 34 CFR part 301, including the terms of any agreement to achieve compliance with Part B of the Act, this part, or Part 301 within the timelines specified in the agreement.

(b) *Types of action.* The Secretary, after notifying the SEA (and any LEA or State agency affected by a failure described in paragraph (a)(2) of this section)—

(1) Withholds in whole or in part any further payments to the State under Part B of the Act;

(2) Refers the matter to the Department of Justice for enforcement; or

(3) Takes any other enforcement action authorized by law.

(c) *Nature of withholding.* (1) If the Secretary determines that it is appropriate to withhold further payments under paragraph (b)(1) of this section, the Secretary may determine that the withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the SEA shall not make further payments under Part B of the Act to specified LEA or State agencies affected by the failure.

(2) Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of Part B of the Act, this part, or 34 CFR part 301, as specified in paragraph (a) of this section, payments to the State under Part B of the Act are withheld in whole or in part, or payments by the SEA under Part B of the Act are limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be.

(3) Any SEA, LEA, or other State agency that has received notice under paragraph (a) of this section shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of that agency.

(4) Before withholding under paragraph (b)(1) of this section, the Secretary provides notice and a hearing pursuant to the procedures in §§ 300.581–300.586.

(d) *Referral for appropriate enforcement.* (1) Before the Secretary makes a referral under paragraph (b)(2) of this section for enforcement, or takes any other enforcement action authorized by law under paragraph (b)(3), the Secretary provides the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) The hearing described in paragraph (d)(1)(ii) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make such a referral for enforcement.

(e) *Divided State agency responsibility.* For purposes of this part, if responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to § 300.600(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act or this part are related to a failure by the public agency, the Secretary takes one of the enforcement actions described in paragraph (b) of this section to ensure compliance with Part B of the Act and this part, except—

(1) Any reduction or withholding of payments to the State under paragraph (b)(1) of this section is proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) Any withholding of funds under paragraph (e)(1) of this section is limited to the specific agency responsible for the failure to comply with Part B of the Act or this part.

(Authority: 20 U.S.C. 1416)

Note: Other enforcement actions authorized by law include issuance of a complaint to compel compliance through a cease and desist order under 20 U.S.C. 1234e and entering into a compliance agreement to bring a recipient into compliance under 20 U.S.C. 1234f.

§§ 300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§ 300.232–300.235, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under § 300.602 without regard to the prohibition on supplanting other funds (See § 300.372).

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under § 300.153 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—

(A) The State's procedures under § 300.125 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State's complaint procedures under §§ 300.660–300.662; and

(D) The State's hearing procedures under §§ 300.507–300.511 and 300.520–300.528;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§ 300.660–300.662) and hearing decisions (see §§ 300.507–300.511 and 300.520–300.528), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under § 300.650, the State's Parent Training and Information Center or Centers, the State's Protection and Advocacy organization, and other organizations representing the interests of children with disabilities and their parents, and a summary of the input of these organizations.

(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(19)(A) and § 300.154(a) if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g)(1) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Authority: 20 U.S.C. 1412(a)(18)(C), (19)(C)(ii) and (E))

Subpart F—State Administration; General

§ 300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law), may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Authority: 20 U.S.C. 1412(a)(11))

Note: The requirement in § 300.600(a) reflects the desire of the Congress for a central point of responsibility and accountability in the education of children with disabilities within each State. With respect to SEA responsibility, the Senate Report on Pub. L. 94–142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the SEA shall be the responsible agency * * *.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. In many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (S. Rep. No. 94–168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options that may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning SEA standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's office issues an administrative directive establishing the SEA responsibility.

(3) State law, regulation, or policy designates the SEA as responsible for establishing standards for all educational programs for individuals with disabilities, and includes responsibility for monitoring.

(4) State law mandates that the SEA is responsible for all educational programs.

§ 300.601 Relation of Part B to other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

(Authority: 20 U.S.C. 1412(e))

§ 300.602 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration in accordance with §§ 300.620 and 300.621 and other State-level activities in accordance with § 300.370.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 611 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(1)(A) and (B))

Use of Funds

§ 300.620 Use of funds for State administration.

(a) For the purpose of administering Part B of the Act, including section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities)—

(1) Each State may use not more than twenty percent of the maximum amount it may retain under § 300.602(a) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(2) Each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or $35,000, whichever is greater.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1411(f)(2))

§ 300.621 Allowable costs.

(a) The SEA may use funds under § 300.620 for—

(1) Administration of State activities under Part B of the Act and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of Part B of the Act;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

(Authority: 20 U.S.C. 1411(f)(2))

§ 300.622 Subgrants to LEAs for capacity-building and improvement.

In any fiscal year in which the percentage increase in the State's allocation under 611 of the Act exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under 611 of the Act, the amount described in § 300.623 to make subgrants to LEAs, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(a) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

(b) Addressing needs or carrying out improvement strategies identified in the

State's Improvement Plan under subpart 1 of Part D of the Act.

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

(d) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families.

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(Authority: 20 U.S.C. 1411(f)(4)(A))

§ 300.623 Amount required for subgrants to LEAs.

For each fiscal year, the amount referred to in § 300.622 is—

(a) The maximum amount the State was allowed to retain under § 300.602(a) for the prior fiscal year, or, for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under section 611; multiplied by

(b) The difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(4)(B))

Note: The amount required for these subgrants will vary from year to year and is determined by the size of the increase in the State's allocation. Funds used for the required subgrants to LEAs in one year become part of the required flow-through to LEAs under § 300.712 in the next year. In those years in which the State's allocation does not increase over the prior year by at least the rate of inflation, the required set-aside for these grants will be zero. However, States may always use, at their discretion, funds reserved for State-level activities under § 300.602 for these subgrants.

§ 300.624 State discretion in awarding subgrants.

The State may establish priorities in awarding subgrants under § 300.622 to LEAs competitively or on a targeted basis.

(Authority: 20 U.S.C. 1411(f)(4)(B))

Note: The purpose of these subgrants, as distinguished from the formula subgrants to LEAs, is to provide funding that the SEA can direct to address particular needs not readily addressed through formula assistance to school districts such as funding for services to children who have been suspended or expelled. The SEA can also use these funds to promote innovation, capacity-building, and systemic changes that are needed to improve educational results.

State Advisory Panel

§ 300.650 Establishment of advisory panels.

(a) Each State shall establish and maintain, in accordance with §§ 300.650—300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§ 300.650—300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1412(a)(21)(A))

Note: The advisory panel required by §§ 300.650—300.653 must advise the State regarding the education of all children with disabilities in the State. This includes advising the State on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with § 300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA.

§ 300.651 Membership.

(a) *General.* The membership of the State advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including—

(1) Parents of children with disabilities;

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials;

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(10) Representatives from the State juvenile and adult corrections agencies.

(b) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§ 300.652 Advisory panel functions.

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(D))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1412(a)(21))

State Complaint Procedures

§ 300.660 Adoption of State complaint procedures.

Each SEA shall adopt written procedures for—

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and

(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(b) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 300.660—300.662.

(Authority: 20 U.S.C. 2831(a))

Note: In resolving a complaint alleging failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, may award compensatory services as a remedy for the denial of FAPE.

§ 300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(Authority: 20 U.S.C. 2831(a))

Note 1: If a written complaint is received that is also the subject of a due process hearing under § 300.507, or contains multiple issues, of which one or more may be part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar-day timeline using the complaint procedures described in this section.

Note 2: If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding, and the SEA would inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process decision, however, would have to be resolved by the SEA.

§ 300.662 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.660–300.661.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and

(2) The facts on which the statement is based.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under § 300.660(a).

(Authority: 20 U.S.C. 2831(a))

Note: The SEA must resolve any complaint that meets the requirements of this section, even if the complaint is filed by an organization or individual from another State.

Subpart G—Allocation of Funds; Reports Allocations

§ 300.700 Special definition of the term "State".

For the purposes of §§ 300.701, 300.703–300.714, the term *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1411(h)(2))

§ 300.701 Grants to States.

(a) *Purpose of grants.* The Secretary makes grants to States and the outlying areas and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.

(b) *Maximum amounts.* The maximum amount of the grant a State may receive under section 611 of the Act for any fiscal year is—

(1) The number of children with disabilities in the State who are receiving special education and related services—

(i) Aged 3 through 5 if the State is eligible for a grant under section 619 of the Act; and

(ii) Aged 6 through 21; multiplied by—

(2) Forty (40) percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a))

§ 300.702 Definition.

For the purposes of this section the term *average per-pupil expenditure in public elementary and secondary schools in the United States* means—

(a) Without regard to the source of funds—

(1) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

(2) Any direct expenditures by the State for the operation of those agencies; divided by

(b) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(h)(1))

§ 300.703 Allocations to States.

(a) *General.* After reserving funds for studies and evaluations under section 674(e) of the Act, and for payments to the outlying areas and the Secretary of the Interior under §§ 300.717–300.722 and 300.715, the Secretary allocates the remaining amount among the States in accordance with paragraph (b) of this section and §§ 300.704–300.705 or 300.706–300.709.

(b) *Interim formula.* Except as provided in §§ 300.706–300.709, the Secretary allocates the amount described in paragraph (a) of this section among the States in accordance with section 611(a)(3), (4), (5) and (b)(1), (2) and (3) of the Act, as in effect prior to June 4, 1997, except that the determination of the number of children with disabilities receiving special education and related services under section 611(a)(3) of the Act (as then in effect) may be calculated as of December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated.

(Authority: 20 U.S.C. 1411(d))

§§ 300.704–300.705 [Reserved]

§ 300.706 Permanent formula.

(a) *Establishment of base year.* The Secretary allocates the amount described in § 300.703(a) among the States in accordance with §§ 300.706–300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than $4,924,672,200.

(b) *Use of base year.*

(1) *Definition.* As used in this section, the term *base year* means the fiscal year preceding the first fiscal year in which this section applies.

(2) *Special rule for use of base year amount.* If a State received any funds under this section for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under §§ 300.707–300.709, by subtracting the amount allocated to the State for the base year on the basis of those children.

(Authority: 20 U.S.C. 1411(e)(1) and (2))

§ 300.707 Increase in funds.

If the amount available for allocations to States under § 300.706 is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 300.708, the Secretary—

(1) Allocates to each State the amount it received for the base year;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1411(e)(3))

§ 300.708 Limitation.

(a) Notwithstanding § 300.707, allocations under this section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for the base year; and

(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 300.707 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocations to States under § 300.307 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1411(e)(3)(B) and (C))

§ 300.709 Decrease in funds.

If the amount available for allocations to States under § 300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of—

(1) The amount it received for the base year; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State is allocated the amount it received for the base year.

(2) If the amount available is insufficient to make the allocations described in paragraph (b)(1) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(e)(4))

§ 300.710 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700—300.709 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451—300.487, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1412(f)(2))

§ 300.711 Subgrants to LEAs.

Each State that receives a grant under section 611 of the Act for any fiscal year shall distribute in accordance with § 300.712 any funds it does not retain under § 300.602 and is not required to distribute under §§ 300.622 and 300.623 to LEAs in the State that have established their eligibility under section 613 of the Act, and to State agencies that received funds under section 614A(a) of the Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613 of the Act, for use in accordance with Part B of the Act.

(Authority: 20 U.S.C. 1411(g)(1))

§ 300.712 Allocations to LEAs.

(a) *Interim procedure.* For each fiscal year for which funds are allocated to States under § 300.703(b) each State shall allocate funds under § 300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.

(b) *Permanent procedure.* For each fiscal year for which funds are allocated to States under §§ 300.706–300.709, each State shall allocate funds under § 300.711 as follows:

(1) *Base payments.* The State first shall award each agency described in § 300.711 the amount that agency would have received under this section for the base year, as defined in § 300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section § 300.703(b).

(2) *Allocation of remaining funds.* The State then shall—

(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(Authority: 20 U.S.C. 1411(g)(2))

Note: In distributing funds under paragraph (b)(2)(i) of this section, States should use the best data that are available to them on enrollment in public and private schools. If data on enrollment in private schools are not available, States or LEAs are not expected to initiate new data collections to obtain these data. However, States are encouraged to try to obtain enrollment data from private, nonprofit schools that want their students to participate in the program.

In distributing funds under paragraph (b)(2)(ii) of this section, States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

§ 300.713 Former Chapter 1 State agencies.

(a) To the extent necessary, the State—

(1) Shall use funds that are available under § 300.602(a) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994) receives, from the combination of funds under § 300.602(a) and funds provided under § 300.711, an amount equal to—

(i) The number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, subject to the limitation in paragraph (b) of this section; multiplied by

(ii) The per-child amount provided under such subpart for fiscal year 1994; and

(2) May use those funds to ensure that each LEA that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under § 300.602(a) and funds provided under § 300.711, an amount for each child, aged 3 through 21 to whom the agency was providing special education and related services on December 1, or, at the State's discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(b) The number of children counted under paragraph (a)(1)(i) of this section may not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994).

(Authority: 20 U.S.C. 1411(g)(3))

§ 300.714 Reallocation of LEA funds.

If a SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

(Authority: 20 U.S.C. 1411(g)(4))

§ 300.715 Payments to the Secretary of the Interior for the education of Indian children.

(a) *Reserved amounts for Secretary of Interior.* From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with this section.

(b) *Provision of amounts for assistance.* The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under paragraph (a) of this section for that fiscal year.

(c) *Calculation of number of children.* In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (BIA) schools and that are required by the States in which these schools are located to attain or maintain State accreditation, and which schools have this accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school may count those children for the purpose of distribution of the funds provided under this section to the Secretary of the Interior.

(d) *Responsibility for meeting the requirements of Part B.* The Secretary of the Interior shall meet all of the requirements of Part B of the Act for the children described in paragraph (b) of this section, in accordance with § 300.260.

(Authority: 20 U.S.C. 1411(c); 1411(i)(1) (A) and (B))

§ 300.716 Payments for education and services for Indian children with disabilities aged 3 through 5.

(a) *General.* With funds appropriated under 611(j) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under § 300.715(a).

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) *Submission of information.* To receive a payment under this section, the tribe or tribal organization shall submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) *Use of funds.* (1) The funds received by a tribe or tribal organization must be used to assist in child find screening and other procedures for the

early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) *Biennial report.* To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary required under section 611(i). The Secretary may require any additional information from the Secretary of the Interior.

(f) *Prohibitions.* None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(i)(3))

§ 300.717 Outlying areas and freely associated States.

From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves not more than one percent, which must be used—

(a) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(b) For fiscal years 1998 through 2001, to carry out the competition described in § 300.719, except that the amount reserved to carry out that competition may not exceed the amount reserved for fiscal year 1996 for the competition under Part B of the Act described under the heading "SPECIAL EDUCATION" in Public Law 104–134.

(Authority: 20 U.S.C. 1411(b)(1))

§ 300.718 Outlying area—definition.

As used in this part, the term *outlying area* means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1402(18))

§ 300.719 Limitation for freely associated States.

(a) *Competitive grants.* The Secretary uses funds described in § 300.717(b) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

(b) *Award basis.* The Secretary awards grants under paragraph (a) of this section on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations must be made by experts in the field of special education and related services.

(c) *Assistance requirements.* Any freely associated State that wishes to receive funds under Part B of the Act shall include, in its application for assistance—

(1) Information demonstrating that it will meet all conditions that apply to States under this part;

(2) An assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(3) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(4) Such other information and assurances as the Secretary may require.

(d) *Termination of eligibility.* Notwithstanding any other provision of law, the freely associated States may not receive any funds under Part B of the Act for any program year that begins after September 30, 2001.

(e) *Administrative costs.* The Secretary may provide not more than five percent of the amount reserved for grants under this section to pay the administrative costs of the Pacific Region Educational Laboratory under paragraph (b) of this section.

(f) *Eligibility for award.* An outlying area is not eligible for a competitive award under § 300.719 unless it receives assistance under § 300.717(a).

(Authority: 20 U.S.C. 1411(b)(2) and (3))

§ 300.720 Special rule.

The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to those areas or to the freely associated States under Part B of the Act.

(Authority: 20 U.S.C. 1411(b)(4))

§ 300.721 [Reserved]

§ 300.722 Definition.

As used in this part, the term *freely associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(Authority: 20 U.S.C. 1411(b)(6))

Reports

§ 300.750 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

Note: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act prior to the Individuals with Disabilities Education Act Amendments of 1997 limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 13 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

§ 300.751 Annual report of children served—information required in the report.

(a) For any year before the total appropriation for section 611 of the Act first exceeds $4,924,672,200, the SEA shall include in its report a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1, or at the State's discretion on the last Friday in October, of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of "children with disabilities" in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1, or, at the State's discretion, the last Friday in October.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education; or

(4) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.184(c)(2).

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

Note 1: Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

Note 2: Both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations in which special education would be clearly separate from regular education—generally, if speech services are the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 612(a)(10)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.754 Annual report of children served—other responsibilities of the State education agency.

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

Note: States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

§ 300.755 Disproportionality.

(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and

(2) The placement in particular educational settings of these children.

(b) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1418(c))

§ 300.756 Acquisition of equipment; construction or alteration of facilities.

(a) *General.* If the Secretary determines that a program authorized under Part B of the Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) *Compliance with certain regulations.* Any construction of new facilities or alteration of existing

facilities paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities"); or

(2) Appendix A of part 101–19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

(Authority: 20 U.S.C. 1405)

Appendices A and B to Part 300 [Reserved]

2. Part 301 is revised to read as follows:

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

301.1 Purpose of the Preschool Grants for Children With Disabilities Program.
301.2–301.3 [Reserved]
301.4 Applicable regulations.
301.5 Applicable definitions.
301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Subpart B—State Eligibility for a Grant.

301.10 Eligibility of a State to receive a grant.
301.11 [Reserved]
301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

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301.20 Allocations to States.
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301.26 Use of State agency allocations.

Subpart D—Allocations of Funds to Local Educational Agencies.

301.30 Subgrants to local educational agencies.
301.31 Allocations to local educational agencies.
301.32 Reallocation of local educational agency funds.

Authority: 20 U.S.C. 1419, unless otherwise noted.

Subpart A—General

§ 301.1 Purpose of the Preschool Grants for Children With Disabilities Program.

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

(a) To children with disabilities aged three through five years; and

(b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

§§ 301.2–301.3 [Reserved]

§ 301.4 Applicable regulations.

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

(1) Part 76 (State-Administered Programs) except §§ 76.125–76.137 and 76.650—76.662;

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provision Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying); and

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

§ 301.5 Applicable definitions.

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act: Educational service agency Local educational agency State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act, as amended.

Part B child count means the child count required by section 611(d)(2) of the Act.

Preschool means the age range of 3 through 5 years.

State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1402, 1419)

§ 301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Part C of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(h))

Subpart B—State Eligibility for a Grant

§ 301.10 Eligibility of a State to receive a grant.

A State is eligible to receive a grant if—

(a) The State is eligible under 34 CFR part 300; and

(b) The State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of a free appropriate public education—

(1) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(2) For any two-year-old children, provided services by the SEA or by an LEA or ESA under section 301.1.

(Authority: 20 U.S.C. 1419 (a), (b))

§ 301.11 [Reserved]

§ 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

If a State does not meet the requirements in section 619(b) of the Act—

(a) The State is not eligible for a grant under the Preschool Grant program;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years; and

(c) No SEA, LEA, ESA, or other public institution or agency within the State is eligible for a grant under Subpart 2 of part D of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1411(d)(2) and (e)(2)(B); 1419(b); 1461(j))

Subpart C—Allocation of Funds to States

§ 301.20 Allocations to States.

After reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary allocates the remaining amount among the States in accordance with §§ 301.21–301.23.

(Authority: 20 U.S.C. 1419(c)(1))

§ 301.21 Increase in funds.

If the amount available for allocation to States under § 301.20 is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 301.22, the Secretary—

(1) Allocates to each State the amount it received for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§ 301.22 Limitation.

(a) Notwithstanding § 301.21, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act exceeds the amount appropriated under section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 301.21 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocation to States under § 301.21 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, the Secretary ratably reduces those allocations, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))

§ 301.23 Decrease in funds.

If the amount available for allocations to States under § 301.20 is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount it received for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to the amount allocated to the States for fiscal year 1997, each State is allocated the amount it received for that year.

(2) If the amount available is less than the amount allocated to States for fiscal year 1997, the Secretary allocates amounts equal to the allocations for fiscal year 1997, ratably reduced.

(Authority: 20 U.S.C. 1419(c)(3))

§ 301.24 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 301.25 and 301.26.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419 (d))

§ 301.25 Use of funds for State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), each State may use not more than twenty percent of the maximum amount it may retain under § 301.24 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1419(e))

§ 301.26 Use of State agency allocations.

Each State shall use any funds it retains under § 301.24 and does not use for administration under § 301.25 for any of the following:

(a) Support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

(b) Direct services for children eligible for services under section 619 of the Act.

(c) Developing a State improvement plan under subpart 1 of Part D of the Act.

(d) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(e) Supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(Authority: 20 U.S.C. 1419(f))

Note: The Individual with Disabilities Education Act Amendments of 1997 made a number of changes to the Act designed to encourage better coordination of services among programs, including flexibility for States to use State administration funds under section 619(e) to coordinate activities with other programs that provide services to children with disabilities and to fund administrative costs related to part C. Consistent with the intent of these provisions, an example of an authorized activity under paragraph (a) would be to plan

and develop a statewide comprehensive delivery system for children with disabilities aged birth through five.

Subpart D—Allocation of funds to local educational agencies.

§ 301.30 Subgrants to local educational agencies.

Each State that receives a grant under section 619 of the Act for any fiscal year shall distribute any funds it does not retain under § 301.24 to local educational agencies in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.31 Allocations to local educational agencies.

(a) *Base payments.* The State shall first award each agency described in § 301.27 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(b) *Allocation of remaining funds.* After making allocations under paragraph (a) of this section, the State shall—

(1) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(Authority: 20 U.S.C. 1419(g)(1))

Note: In distributing funds under paragraph (b)(1) of this section, States should use the best data that is available to them on enrollment in public and private schools. If data on enrollment in private schools is not available, States or LEAs are not expected to initiate new data collections to obtain this data. However, States are encouraged to try to obtain enrollment data from private schools that want their students to participate in the program.

In distributing funds under paragraph (b)(2) of this section, States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

§ 301.32 Reallocation of LEA funds.

(a) If a SEA determines that an LEA is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

(b) If a State provides services to preschool children with disabilities because some or all LEAs and ESAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or ESAs to provide special education and related services to children with disabilities aged 3 through 5 years, and to two-year-old children with disabilities receiving services consistent with § 301.1 who are residing in the area served by those LEAs and ESAs.

(Authority 20 U.S.C. 1414(d), 1419(g)(2))

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

3. The authority citation for part 303 is revised to read as follows:

Authority: 20 U.S.C. 1431–1445, unless otherwise noted.

4. Section 303.18 is revised to read as follows:

§ 303.18 Parent.

(a) As used in this part, "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.406. The term does not include the State if the child is a ward of the State.

(b) State law may provide that a foster parent qualifies as a parent under this part if—

(1) The natural parents' authority to make early intervention or educational decisions on the child's behalf has been relinquished under State law;

(2) The foster parent has an ongoing, long-term parental relationship with the child;

(3) The foster parent is willing to participate in making early intervention or educational decisions on the child's behalf; and

(4) The foster parent has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1436)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare, and, at the discretion of the State, a foster parent meeting the requirements of paragraph (b) of this section. The definition in this section is identical to the definition used in the regulations under Part B of the Act (34 CFR 300.19).

5. Section 303.403 is amended by removing the word "and" at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding, in its place, "; and"; by adding a new paragraph (b)(4); and by revising the citation of authority to read as follows:

§ 303.403 Prior notice; native language.

* * * * *

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

* * * * *

(4) The State complaint procedures under §§ 303.510–512, including a description of how to file a complaint and the timelines under those procedures.

(Authority: 20 U.S.C. 1439(a)(6) and (7))

6. Section 303.510 is amended by revising paragraph (b); redesignating the existing note as Note 1; adding a new Note 2; and revising the citation of authority to read as follows:

§ 303.510 Adopting complaint procedures.

* * * * *

(b) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510 through 303.512.

(Authority: 20 U.S.C. 1435(a)(10))

Note 1: Because of the interagency nature of Part C of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part C funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. The lead agency must provide for the filing of a complaint with the lead agency and, at the lead agency's discretion, with a public agency subject to a right of appeal to the lead agency.

Note 2: In resolving a complaint alleging failure to provide services in the IFSP, a lead agency, pursuant to its general supervisory authority under this part, may award compensatory services as a remedy.

7. Section 303.511 is amended by adding a new paragraph (c) and a note; and revising the citation of authority to read as follows:

§ 303.511 An organization or individual may file a complaint.

* * * * *

(c) The alleged violation must have occurred not more than one year prior to the date that the complaint is received by the public agency unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the public agency.

(Authority: 20 U.S.C. 1435(a)(10))

Note: The lead agency must resolve any complaint that meets the requirements of this section, even if the complaint is filed by an organization or individual from another State.

8. Section 303.512 is revised by removing paragraph (d), revising the citation of authority, and adding two notes following the revised citation of authority to read as follows:

§ 303.512 Minimum State complaint procedures.

* * * * *

(Authority: 20 U.S.C. 1435(a)(10))

Note 1: If a written complaint is received that is also the subject of a due process hearing under § 303.420, or contains multiple issues, of which one or more may be part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in this section.

Note 2: If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding, and the lead agency would inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process decision, however, would have to be resolved by the lead agency.

9. Section 303.520 is amended by adding new paragraphs (d) and (e) and three notes; and revising the citation of authority to read as follows:

§ 303.520 Policies related to payment for services.

* * * * *

(d) *Infants and toddlers with disabilities who are covered by private insurance.*

(1) A lead agency may not require parents of infants and toddlers with disabilities, if they would incur a financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible infant or toddler under this part.

(2) For the purposes of this section, the term "financial costs" includes—

(i) An out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;

(ii) A decrease in available lifetime coverage or any other benefit under an insurance policy; and

(iii) An increase in premiums or the discontinuation of the policy.

(e) *Proceeds from public or private insurance.* Proceeds from public or private insurance may not be treated as program income for purposes of 34 CFR 80.25.

(Authority: 20 U.S.C. 1435(a)(10); 1432(4)(B))

Note 1: Under paragraph (d), States are prohibited from requiring that families use private insurance as a condition of receiving services under this part, if that use results in financial cost to the family. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary. For example, a family could not be required to access private insurance that is required to enable a child to receive Medicaid services, if that insurance use results in financial costs to the family.

Note 2: If the State cannot get parental consent to use private insurance, the State may use funds under this part to pay for the service. In addition, in order to avoid financial cost to parents who would otherwise consent to use of private insurance, the lead agency may use funds under this part to pay the costs of accessing the insurance; e.g., deductible or co-pay amounts.

Note 3: Paragraph (e) clarifies that, if a State receives funds from public or private insurance for services under this part, the State is not required to return those funds to the Department or to dedicate those funds for use in this program, although a State retains the option of using those funds in this program. If a State spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the nonsupplanting provision in § 303.124. This is because the expenditure that is reimbursed is considered to be an expenditure of funds from the source that provides the reimbursement.

Appendix C to Part 300—Notice of Interpretation

Authority: Individuals with Disabilities Education Act (20 U.S.C. 1401, *et seq.*), unless otherwise noted.

Interpretation of Individualized Education Program (IEP) Requirements of the Individuals with Disabilities Education Act (IDEA)

The IEP requirements of the IDEA emphasize the importance of each child with a disability's involvement and progress in the general curriculum; of the involvement of parents and students, together with regular and special education personnel in making individualized decisions to support each child's educational success; and of preparing students with disabilities for employment and other post-school experiences. This Appendix provides guidance regarding Part B IEP requirements, especially as they relate to these core concepts, as well as other issues regarding the development and content of IEPs.

I. Involvement and Progress in the General Curriculum

In enacting the IDEA Amendments of 1997, the Congress found that:

* * * research, demonstration, and practice (over the past 20 years) in special education and related disciplines have demonstrated that an effective educational system now and in the future must—(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals. [§ 651(a)(6)(A) of the Act.]

Accordingly, the evaluation and IEP provisions of Part B place great emphasis on the involvement and progress of children with disabilities in the general curriculum. While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA's strong preference that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services.

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

Present Levels of Educational Performance

Section 300.347(a)(1) requires that the IEP for each child with a disability include "* * * a statement of the child's present levels of educational performance, including—(i) *How the child's disability affects the child's involvement and progress in the general curriculum;* or (ii) *for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities* * * *" (Italics added.) ("Appropriate activities" in this context refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.)

Measurable Annual Goals, Including Benchmarks or Short-term Objectives

Measurable annual goals, including benchmarks or short-term objectives, are instrumental to the strategic planning process used to develop and implement the IEP for each child with a disability. Once the IEP team has developed measurable annual goals for a child, the team can (1) develop strategies that will be most effective in realizing those goals and (2) develop measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable families, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the child's instructional needs.

Part B's strong emphasis on linking the educational program of children with disabilities to the general curriculum is reflected in § 300.347(a)(2), which requires that the IEP include:

a statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) *meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum;* and (ii) meeting each of the child's other educational needs that result from the child's disability. [Italics added.]

Special Education and Related Services and Supplementary Aids and Services

The requirements regarding services provided to address a child's present levels of educational performance and to make progress toward the identified goals reinforce the emphasis on progress in the general curriculum, as well as maximizing the extent to which children with disabilities are educated with nondisabled children. Section 300.347(a)(3) requires that the IEP include:

a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—(i) To advance appropriately toward attaining the annual goals; (ii) *to be involved and progress in the general curriculum* • • • and to participate in extracurricular and other nonacademic activities; and (iii) *to be educated and participate with other children with disabilities and nondisabled children in (extracurricular and other nonacademic activities)* • • • [Italics added.]

Extent to Which Child Will Participate With Nondisabled Children

Section 300.347(a)(4) requires that each child's IEP include "• • • an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in (extracurricular and other nonacademic] activities) • • •" This is consistent with the least restrictive environment provisions at §§ 300.550–300.553, which include requirements that:

(1) Each child with a disability be educated with nondisabled children to the maximum extent appropriate (§ 300.550(b)(1));

(2) Each child with a disability be removed from the regular educational environment only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§ 300.550(b)(1)); and

(3) To the maximum extent appropriate to the child's needs, each child with a disability participate with nondisabled children in nonacademic and extracurricular services and activities (§ 300.553).

Participation in State or Districtwide Assessments of Student Achievement

Consistent with § 300.138(a), which sets forth a presumption that children with disabilities will be included in general State- and district-wide assessment programs, and provided with appropriate accommodations if necessary, § 300.347(a)(5) requires that the IEP for each student with a disability include: (i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and (ii) if the IEP Team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—(A) Why that assessment is not appropriate for the child; and (B) How the child will be assessed.

Regular Education Teacher Participation in the Development, Review, and Revision of IEPs

Very often, regular education teachers play a central role in the education of children with disabilities (House Report No. 105–95, p. 103 (1997)) and have important expertise regarding the general curriculum and the general education environment. Further, especially with the emphasis on involvement and progress in the general curriculum added by the IDEA Amendments of 1997, regular education teachers have an increasingly critical role in implementing, together with special education and related services personnel, the program of FAPE for most children with disabilities, as described in their IEPs. Accordingly, the IDEA Amendments of 1997 added a requirement that each child's IEP team must include at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment (see § 300.344(a)(2)). (See also §§ 300.346(d) on the role of a regular education teacher in the development, review and revision of IEPs.)

2. Must a child's IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child's disability and the setting in which the child is educated?

Yes. The IEP for all children with disabilities must address how the child will be involved and progress in the general curriculum, as described. The Part B regulations recognize that some children with disabilities will have some educational needs that result from their disabilities that cannot be fully met by involvement and progress in the general curriculum; accordingly, § 300.347(a)(2) requires that each child's IEP include:

a statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; *and (ii) meeting each of the child's other educational needs that result from the child's disability.* [Italics added.]

Thus, the IEP team for each child with a disability must make an individualized determination regarding how the child will participate in the general curriculum, and what, if any, educational needs that will not be met through involvement in the general curriculum should be addressed in the IEP. This includes children who are educated in separate classrooms or schools.

3. What must public agencies do to meet the requirements at §§ 300.344(a)(2) and 300.346(d), regarding the participation of a "regular education teacher" in the development and review of the IEP, for children aged 3 through 5 who are receiving preschool special education services?

If a public agency provides "regular education" preschool services to non-disabled children, then the requirements of §§ 300.344(a)(2) and 300.346(d) apply as they do in the case of older children with disabilities. If a public agency makes kindergarten available to nondisabled children, then a regular education kindergarten teacher could appropriately be the regular education teacher who would participate in an IEP meeting for a kindergarten-aged child who is, or may be, participating in the regular education environment. If a public agency does not provide regular preschool education services to nondisabled children, the agency would designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.

4. Must the measurable annual goals in a child's IEP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?

Section 300.347(a)(2) requires that each child's IEP include a ".• • • statement of measurable annual goals, including benchmarks or short-term objectives, *related to—(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum;* and (ii) meeting each of the child's other educational needs that result from the child's disability• • • •" (Italics added). Thus, a public agency is not required to include in an IEP annuals goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum.

II. Involvement of Parents and Students

One of the key purposes of the IDEA Amendments of 1997 is to "Expand and promote opportunities for parents, special education, related services, regular education, and early intervention service providers, and other personnel to work in new partnerships at both the State and local levels (House Report 105–95, p. 82 (1997)). Indeed, the Committee viewed the Amendments as an opportunity to "[strengthen] the role of parents." (House Report 105–95, p-82 (1997).) Accordingly, the Amendments require that parents have "an opportunity • • • to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child" (§ 300.501). Parents must now be part of the teams that determine what additional data are needed as part of an evaluation of their child (§ 300.533(a)(1)); their child's eligibility (§ 300.534(a)(1)); and the educational placement of their child (§ 300.501(c)). Parents' concerns, and information that they provide regarding their children, must be considered in developing and reviewing their children's IEPs (§§ 300.343(c)(iii) and 300.346 (a)(1)(i) and (b)).

As explained, the requirements for keeping parents informed about the educational progress of their children, particularly as it relates to their progress in the general curriculum, have been strengthened (§ 300.347(a)(7)).

The IDEA Amendments of 1997 and the 1990 amendments have both included provisions which greatly strengthen involvement of students with disabilities in decisions regarding their own futures, to facilitate movement from school to post-school activities. The IDEA Amendments of 1990 included provisions regarding transition services, which require: (a) A coordinated set of activities within an outcome-oriented process to facilitate movement from school to post-school activities; (b) that the transition services provided to each student be "• • • based on the individual student's needs, taking into account the student's preferences and interests" (§ 300.27(b)), (c) that the public agency invite a student with a disability to any IEP meetings for which a purpose is the consideration of transition services (§ 300.344(b)(1)), and that, if "• • • the student does not attend, the public agency • • • take other steps to ensure that the student's preferences and interests are considered (§ 300.344(b)(2)). States may now transfer most parent rights under Part B to the student when the student reaches the age of majority under State law (§ 300.517), and beginning at least one year before a student reaches the age of majority under State law, the IEP must include a statement that the student has been informed of any rights that will transfer to him or her upon reaching the age of majority (§ 300.347(c)).

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information about their child's abilities, interests, performance, and history, (2) participate in the discussion about the child's need for special education and related services and supplementary aids and services, and (2) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As noted, Part B specifically provides that parents have the right to:

(a) Participate in meetings about their child's identification, evaluation, educational program (including IEP meetings), and educational placement (§§ 300.344(a)(1) and 300.517);

(b) Be part of the teams that determine what additional data are needed as part of an evaluation of their child (§ 300.533(a)(1)), and determine their child's eligibility (§ 300.534(a)(1)) and educational placement (§ 300.501(c));

(c) Have their concerns and information that they provide regarding their child considered in developing and reviewing their child's IEPs (§§ 300.343(c)(iii) and 300.346 (a)(1)(i) and (b)); and

(d) Be regularly informed (by such means as periodic report cards), as specified in their child's IEP, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals in the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year (§ 300.347(a)(7)).

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when no parent (as defined at § 300.19) is known, the agency, after reasonable efforts, cannot locate the child's parents, or the child is a ward of the State under the laws of the State. A surrogate parent has all of the rights and responsibilities of a parent under Part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) examine the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.515, Surrogate parents.)

6. What are the Part B requirements regarding the participation of a child or youth with a disability in an IEP meeting?

If a purpose of an IEP meeting will be the consideration of needed transition services, the public agency must invite the student and, as part of notification to the parent of the IEP meeting, inform the parents that the agency will invite the student to the IEP meeting. If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. Section § 300.517 permits States to transfer procedural rights under Part B from the parents to students with disabilities who reach the age of majority under State law, but who have not been determined to be incompetent under State law. If procedural rights under Part B are, consistent with State law and § 300.517, transferred from the parents to the student, the public agency would be required to ensure that the student has the right to participate in IEP meetings set forth for parents in § 300.345. However, at the discretion of the student or the public agency, the parents also could attend IEP meetings as "individuals who have knowledge or special expertise regarding the child • • •" (see § 300.344(a)(6)).

In other circumstances, the child may attend "if appropriate." (§ 300.344(a)(7)) Generally, a child with a disability should attend the IEP meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP or (2) directly beneficial to the child or both. The agency should inform the parents before each IEP meeting—as part of notification under § 300.345(a)(1)—that they may invite their child to participate.

7. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), italics added.) In addition, if a purpose of the IEP meeting is the consideration of transition services for a student, the notice must also inform the parents that the agency is inviting the student, and identify any other agency that will be invited to send a representative. The public agency should also inform the parents of their right to invite to the meeting "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate • • •" (§ 300.344(a)(6)). It is also appropriate for the agency to ask the parents what if any individuals they will to bring to the meeting.

8. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. It is recommended that public agencies provide parents with a copy of the IEP within a reasonable time following the IEP meeting, or inform them at the IEP meeting of their right to request and receive a copy.

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the child's needs and appropriate goals, the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and districtwide assessments, and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are to be equal partners with school personnel in making these decisions, and the IEP team must consider parents' concerns and information that they provide regarding their child in developing and reviewing IEPs (§§ 300.343(c)(iii) and 300.346(a)(1) and (b)).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. If it is not possible to reach consensus in an IEP meeting, the public agency must provide the parents with

prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program and placement, and the parents have the right to seek resolution of any disagreements through mediation or other informal means, or by initiating an impartial due process hearing. Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing.

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?

Yes, the Part B statute and regulations include a number of provisions to help ensure that parents are involved in decisions regarding, and informed about, their child's educational progress, including the child's progress in the general curriculum. First, the parents will be informed regarding their child's present levels of educational performance through the development of the IEP. Section 300.347(a)(1) requires that each IEP include:

* * * a statement of the child's present levels of educational performance, including—(i) How the child's disability affects the child's involvement and progress in the general curriculum; or (ii) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities * * *

Further, § 300.347(a)(7) sets forth requirements for regularly informing parents about their child's educational progress. That section requires that the IEP include:

* * * a statement of—(i) How the child's progress toward the annual goals * * * will be measured; and (ii) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents of nondisabled children are informed, of—(A) Their child's progress toward the annual goals * * * ; and (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Finally, the parents will, as part of the IEP team, participate, at least once every 12 months, in a review of their child's educational progress. Part B requires that a public agency initiate and conduct a meeting, at which the IEP team:

* * * (1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP as appropriate to address—(i) Any lack of expected progress toward the annual goals * * * and in the general curriculum, if appropriate; (ii) The results of any reevaluation * * * ; (iii) Information about the child provided to, or by, the parents * * * ; (iv) The child's anticipated needs; or (v) Other matters.

III. Preparing Students With Disabilities for Employment and Other Post-School Experiences

One of the primary purposes of the IDEA is to "* * * ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living * * *" (§ 300.1(a)).

Similarly, one of the key purposes of the IDEA Amendments of 1997 was to "promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment." (House Report No. 105–95, p. 82 (1997).) Thus, throughout their preschool, elementary, and secondary education, the IEP for each child with a disability must, to the extent appropriate for the individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living.

Although preparation for adult life is, as explained, a key component of a free appropriate public education throughout a child's educational experiences, Part B sets forth specific requirements for transition from secondary education to post-school activities, which must be implemented no later than age 14 and 16, respectively, which require an intensified focus on that preparation as students with disabilities begin and prepare to complete their secondary education.

11. What must the IEP team do to meet the requirements that the IEP include "a statement of * * * transition service needs" beginning at age 14 (§ 300.347(b)(1)(i)), and a statement of needed transition services" no later than age 16 (§ 300.347(b)(1)(ii))?

Section 300.347(b)(1) requires that, beginning no later than age 14, each student's IEP include specific transition-related content, and, beginning no later than age 16, a statement of needed transition services:

Beginning at age 14, each student's IEP must include "* * * a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program)" (§ 300.347(b)(1)(i)).

No later than age 16 (and younger, if determined appropriate by the IEP Team), each student's IEP must include "a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages * * *" (§ 300.347(b)(1)(ii)).

The House Report on the IDEA Amendments of 1997 makes clear that the requirement added to the statute in 1997 that beginning at age 14, or younger if appropriate, the IEP include "a statement of the transition service needs" is "* * * designed to augment, and not replace," the separate, preexisting requirement that the IEP include, "* * * beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services * * *" (House Report No. 105–95, p. 102 (1997).) As clarified by the Report, "The purpose of [the requirement in § 300.347(b)(1)(i)] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school." (House Report No. 105–95, pp. 101–102 (1997).) The report further explains that "[F]or example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation." (House Report No. 105–95, p–102 (1997).) Thus, beginning at age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life. The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition service needs connected to technology course work, while another student's statement of transition needs could describe why public bus transportation training is important for future independence in the community. Though the focus of the transition planning process may shift as the student approaches graduation, the IEP team must discuss specific areas beginning at the age of 14 years and review these areas annually.

This requirement is distinct from the requirement, at § 300.347(b)(1)(ii), that the IEP include:

* * * beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

The term "transition services" is defined at § 300.27 to mean:

* * * a coordinated set of activities for a student with a disability that—(a) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (b) Is based on the individual student's needs, taking into account the student's preferences and interests; and (c) Includes—(1) Instruction; (2) Related services; (3) Community experiences; (4) The development of employment and other post-school adult living objectives; and (5) If appropriate, acquisition of daily living skills and functional vocational evaluation. (Section § 300.347(b)(2) provides, however, that, "If the IEP team determines that services are not needed in one or more of the areas specified in § 300.27((c)(1) through (4), the IEP must include a statement to that effect and the basis upon which the determination was made.)

Thus, while § 300.347(b)(1)(i) requires that the IEP team begin by age 14 to address the student's need for instruction that will assist the student to *prepare* for transition, § 300.347(b)(2)(ii) requires that by age 16 the IEP include a "coordinated set of activities * * *, designed within an outcome-oriented process, that promotes movement from school to post-school activities. * * *" Section 300.344(b)(3) further requires that, in implementing § 300.347(b)(2)(ii), public agencies invite (in addition to required participants for all IEP meetings), must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Thus, § 300.346(a)(7)(ii) requires a broader focus on coordination of services across, and linkages between, agencies beyond the SEA and LEA.

12. Must the IEP for each student with a disability, beginning no later than age 16, include all "needed transition services," as identified by the IEP team and consistent with the definition at § 300.27, even if an agency other than the public agency will provide those services? What is the public agency's responsibility if another agency fails to provide agreed-upon transition services?

Section 300.347(b)(1)(ii) requires that the IEP for each child with a disability, beginning no later than age 16, or younger if determined appropriate by the IEP team, include all "needed transition services," as identified by the IEP team and consistent with the definition at § 300.27, regardless of whether the public agency or some other agency will provide those services. Section 300.346(b)(1)(ii) specifically requires that the statement of needed transition services include, "* * * if appropriate, a statement of the interagency responsibilities or any needed linkages."

Further, the need to include in the IEP transition services to be provided by agencies other than the public agency is contemplated by § 300.348(a), which specifies what the public agency must do if another agency participating in the development of the statement of needed transition services fails to provide a needed transition service that it agreed to provide:

If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

This requirement is consistent with the public agency's ultimate responsibility to ensure that FAPE is available to each eligible child with a disability (see § 300.300). That responsibility includes the planning and coordination of transition services through the IEP. This inter-agency planning and coordination may be supported through a variety of mechanisms, including memoranda of understanding, interagency agreements, assignment of a transition coordinator to work with other participating agencies, or the establishment of guidelines to work with other agencies identified as potential service providers. If an agreed-upon service by another agency is not provided, the public agency responsible for the student must exercise alternative strategies to meet the student's needs. This requires that the public agency provide the services, or convene an IEP meeting as soon as possible to identify alternative strategies to meet the needs of the transition services needs of the student, and to revise the IEP accordingly. Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified need appropriately, or a combination of these strategies. As emphasized by § 300.348(b), however:

Nothing in [Part B] relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

However, the fact that an agency other than the LEA does not fulfill its responsibility does not relieve the LEA of its responsibility to ensure that FAPE is available to each student with a disability.

Note: See also § 300.142(b)(2), which requires that if an agency other than the LEA fails to provide or pay for a special education or related service (which could include a transition service), the LEA must provide or pay for the service, and may then claim reimbursement from the agency that failed to provide or pay for the service.

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child's need for transition services will be considered?

Section 300.344(c)(ii) requires that, "In implementing the requirements of (§ 300.347(b)(1)(ii) requiring a statement of needed transition services), the public agency shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services." To meet this requirement, the public agency must establish and implement appropriate procedures to ensure that it identifies all agencies that are "likely to be responsible for providing or paying for transition services" for each student addressed by § 300.347(b)(1)(ii), and invites each of those agencies to the IEP meeting. If, during the course of an IEP meeting, the team identifies additional agencies that are "likely to be responsible for providing or paying for transition services" for the student, the public agency must determine whether it is necessary to invite those agencies to an additional IEP meeting in order to develop an appropriate statement of needed transition services for the student.

IV. Other Questions Regarding the Development and Content of IEPS

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

Section 300.342(b)(1) requires that an IEP be "*in effect* before special education and related services are provided to a child." (Italics added.) The appropriate placement for a particular child with a disability cannot be determined until after decisions have been made about the child's needs and the services that the public agency will provide to meet those needs. These decisions must be made at the IEP meeting, and it would not be permissible first to place the child and then develop the IEP. Therefore, the IEP must be developed before placement. This requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to assist a public agency in determining the appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an *interim* IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph c.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation, finalizing the IEP, and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer as to which public agency has direct responsibility for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA will vary from State to State, depending upon State law, policy, or practice. The SEA is ultimately responsible for ensuring that all Part B requirements, including the IEP requirements, are met for eligible children within the State, including those children served by a public agency other than an LEA. (See § 300.600 regarding the SEA's general supervisory responsibility for all education programs for children with disabilities, with one exception. The Governor (or another individual pursuant to State law) may, consistent with State law, assign to any public agency in the State the responsibility of ensuring that Part B requirements are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which State or local agency is responsible for educating the child. (The only exception to this responsibility is that, as noted, the SEA is not responsible for ensuring that FAPE is made available to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons, if the State has assigned that responsibility to a public agency other than the SEA.) Although the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency

agreements), the SEA must ensure that no eligible child with a disability is denied FAPE due to jurisdictional disputes among agencies.

When an LEA is responsible for the education of a child with a disability, the LEA remains responsible for developing the child's IEP, regardless of the public or private school setting into which it places the child.

16. For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?

Regardless of the reason for the placement, the "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

If a child with a disability changes school districts in the same State, the State and its public agencies have an ongoing responsibility to ensure that the child receives FAPE, and the new public agency is responsible for ensuring that the child receives special education and related services in conformity with an IEP. The new public agency must ensure that the child has an IEP in effect before the agency can provide special education and related services. The new public agency may meet this responsibility by either adopting the IEP the former public agency developed for the child or by developing a new IEP for the child. Before the child's IEP is finalized, the new public agency may provide interim services agreed upon by both the parents and the new public agency. If the parents and the new public agency are unable to agree on an interim IEP and placement, the new public agency must implement the old IEP to the extent possible until a new IEP is developed and implemented.

In general, while the new public agency must conduct an IEP meeting, it would not be necessary if: (1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new public agency determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the new public agency or the parent believes that it is not appropriate, the new public agency must conduct an IEP meeting within a short time after the child enrolls in the new public agency (normally, within one week).

18. What timelines apply to the development and implementation of an initial IEP for a child with a disability?

Section 300.343(b) requires a public agency to: (1) Ensure that an offer of services in accordance with an IEP is made to parents within a reasonable period of time from the agency's receipt of parent consent to an initial evaluation; and (2) in meeting that timeline, conduct a meeting to develop the IEP within 30-calendar days of a determination that the child needs special education and related services. Section 300.342(b)(2) requires that an IEP be implemented as soon as possible following the meeting in which the IEP is developed.

19. Must a public agency hold separate meetings to determine a child's eligibility for special education and related services, develop the child's IEP, and determine the child's placement, or may the agency meet all of these requirements in a single meeting?

A public agency may, after a child is determined by "a team of qualified professionals and the parent" (see § 300.534(a)(1)) to be a child with a disability who needs special education services, continue in the same meeting to develop an IEP for the child and to determine the child's placement. However, the public agency must ensure that it: (1) Meets all of the Part B requirements regarding meetings to develop IEPs, including providing appropriate notification to the parents, consistent with the requirements of § 300.345, and including the required team participants, consistent with the requirements of § 300.344; and (2) the requirements of § 300.533 regarding eligibility decisions.

20. How frequently must a public agency conduct meetings to review, and if appropriate revise, the IEP for each child with a disability?

A public agency must initiate and conduct meetings periodically, but at least once every twelve months, to determine whether the annual goals for the child are being achieved, and to revise the IEP as appropriate to address: (a) Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; (b) the results of any reevaluation; (c) information about the child provided to, or by, the parents; (d) the child's anticipated needs; or (e) other matters (§ 300.343(c)).

A public agency must also ensure that an IEP is in effect for each child at the beginning of each school year (§ 300.342(a)). It may conduct IEP meetings at any time during the year. However, if the agency conducts the IEP meeting prior to the beginning of the next school year, it must ensure that the IEP contains the necessary special education and related services and supplementary aids and services to ensure that the student's IEP can be appropriately implemented during the next school year. Otherwise, it would be necessary for the public agency to conduct another IEP meeting.

Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. If a child's teachers feels that the child's placement or IEP services are not appropriate to the child, the teachers should follow agency procedures with respect to (1) calling or meeting with the parents or (2) requesting the agency to hold another IEP meeting to review the child's IEP. The legislative history of Public Law 94–142 makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford)).

In general, if either a parent or a public agency believes that a required component of the student's IEP should be changed, the public agency must conduct an IEP meeting if it believes that the question of whether the student's IEP needs to be revised to ensure the provision of FAPE to the student is a matter that must be considered by the IEP team. If a parent requests an IEP meeting because the parent believes that a change in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

21. May IEP meetings be audio or video-tape-recorded?

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a public agency has a policy prohibiting the use of these devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. Any recording of an IEP meeting that is maintained by the public agency is an "education record," within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and Part B (§§ 300.560–300.575).

Parents wishing to use audio or video recording devices at IEP meetings should consult State or local policies for further guidance.

22. Who can serve as the representative of the public agency at an IEP meeting?

The IEP team must include a representative of the local educational agency who: (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the local educational agency (§ 300.344(a)(4)). Each State or local agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets these requirements. It is, however, important that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

Note: IEP meetings for continuing placements may in some instances be more routine than those for initial placements, and, thus, may not require the participation of a key administrator.

23. For a child with a disability being considered for initial placement in special education, which teacher or teachers should attend the IEP meeting?

A child's IEP team must include at least one of the student's regular education teachers (if the child is, or may be participating in the regular education environment) and at least one special education teacher, or, if appropriate, at least one of the child's special education providers (§ 300.344(a)(2) and (3)). Each IEP must include a statement of present levels of educational performance, including a statement of how the child's disability affects the child's involvement and progress in the general curriculum (§ 300.347(a)(1)). The regular education teacher is a required participant on the IEP team of a child who is, or may be, participating in the regular educational environment, regardless of the extent of that participation.

The child's special education teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) another special education provider such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

Note: Sometimes more than one meeting is necessary in order to finalize a child's IEP. In this process, if the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. If this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

24. If a child with a disability attends several regular classes, must all of the child's regular education teachers attend the IEP meeting?

No. The IEP team need not include more than one regular education teacher of the child. If the participation of more than one regular education teacher is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of enhancing the child's participation in the general curriculum), it would be appropriate for them to attend the meeting.

25. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under § 300.344(a)(3) to ensure that the IEP team includes "at least one special education teacher, or, if appropriate, at least one special education provider of the child" by including a speech-language pathologist in the IEP team?

Yes, if speech is considered special education under State standards. As with other children with disabilities, the IEP team must also include at least one of the child's *regular education* teachers if the child is, or may be, participating in the regular education environment.

26. Do public agencies and parents have the option of bringing any individual of their choice to a student's IEP meeting? Would it be permissible for other individuals to attend IEP meetings at the discretion of the parents or the agency?

The IEP team may, at the discretion of the parent or the agency, include "other individuals *who have knowledge or special expertise regarding the child* * * *" (§ 300.344(a)(6), italics added). This is a change from prior law, which had provided, without qualification, that parents or agencies could bring other individuals to IEP meetings at the discretion of the parents or agency. However, the legislative history of Public Law 94–142 made it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).)

Part B does not provide for the participation of individuals such as representatives of teacher organizations or attorneys at IEP meetings. For example, since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, and generally would not possess knowledge or expertise regarding the child, it generally would be inappropriate for such an official to attend an IEP meeting. While either the parent or public agency may consider inviting their attorneys to an IEP meeting, parents and public agencies need to ensure that their attorneys possess knowledge and expertise regarding the child to warrant their participation. However, the participation of attorneys at IEP meetings should be discouraged if their participation would have the potential for creating an adversarial atmosphere which would not necessarily be in the best interests of the child. Further, as provided in Section 615(i)(3)(D)(ii) of the Act, "Attorneys" fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation * * * conducted prior to the [request for a due process hearing]."

27. Must related services personnel attend IEP meetings?

Although Part B does not expressly require that the IEP team include related services personnel as part of the IEP team (§ 300.344(a)), it is appropriate for those persons to be included if a particular related service is to be discussed as part of the IEP meeting. Section 300.344(a)(6) provides that the IEP team also includes "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, *including related services personnel as appropriate* * * *." (Italics added.)

Further, § 300.344(a)(3) requires that the IEP team for each child with a disability include "at least one special education teacher, or, if appropriate, at least one special education provider of the child * * *" This requirement can be met by the participation of either (1) a special education teacher of the child, or (2) another special education provider such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

If a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. As explained in the House Report on the IDEA Amendments of 1997, "Related services personnel should be included on the team when a particular related service will be discussed at the request of the child's parents or the school." (House Report 105–95, p. 103 (1997).) For example, if the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, special transportation services, school social work services, school health services, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. This written recommendation could be a part of the evaluation report.

28. Must the public agency ensure that all services specified in a child's IEP are provided?

Yes. The public agency must ensure that all services set forth in the child's IEP are provided, consistent with the child's needs as identified in the IEP. It may provide each of those services directly, through its own staff resources; indirectly, by contracting with another public or private agency; or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)), but the services must be at no cost to the parents, and the public agency remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets the student's needs as specified in the IEP. The SEA and responsible public agency may not allow the failure of another agency to provide services described in the child's IEP to deny or delay the provision of FAPE to a child.

29. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

No. Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. Agencies that use this approach must ensure that there is a full discussion with the parents of the child's needs and the services to be provided to meet those needs before the child's IEP is finalized.

30. Must a public agency include transportation in a child's IEP as a related service?

A public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. (This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or daycare services.) In determining whether to include transportation in a child's IEP, the IEP team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children. The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost to the parents, and that the child's IEP describes the transportation arrangement.

Even if a child's IEP team determines that the child does not require transportation as a related service, Section 504 of the Rehabilitation Act of 1973 requires that the child receive the same transportation provided to nondisabled children. If a public agency transports nondisabled children, it must transport disabled children under the same terms and conditions. However, if a child's IEP team determines that a student does not need transportation as a related service, and the public agency transports only those children whose IEPs specify transportation as a related service, and does not transport nondisabled children, the public agency would not be required to provide transportation to a disabled child.

31. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in § 300.16?

The Note following § 300.16 clarifies that "[T]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services * * *), if they are required to assist a child with a disability to benefit from special education." This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination.

32. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]

[Note: Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
		Subpart A—General
		Purpose Applicability, and Regulations That Apply to This Program
300.1	300.1	Purpose.
300.2	300.2	Applicability to State, local, and private agencies.
300.3	300.3	Regulations that apply.
		Definitions
300.4	300.4	Act.
300.5	300.5	Assistive technology device.
300.6	300.6	Assistive technology service.
300.7	300.7	Children with disabilities. (Retitled "Child with a disability.")
300.8	300.11	Free appropriate public education.
300.9	300.13	Include.
300.10	300.9	Intermediate educational unit. (Replaced by new definition from Pub. L. 105–17, entitled, "Educational service agency.")
300.11	300.17	Local educational agency.
300.12	300.18	Native language.
300.13	300.19	Parent.
300.14	300.20	Public agency.
300.15	300.21	Qualified.
300.16	300.22	Related service.
300.17	300.24	Special education.
300.18	300.27	Transition services.
		Subpart B—State Plans and [LEA] Applications (Retitled "State and Local Eligibility")
		State Plans—General (Retitled "State Eligibility—General")
300.110	300.110	Condition of assistance.
300.111		Contents of plans.
		State Plans—Contents (Retitled "State Eligibility—Specific Conditions")
300.121	300.121	Right to a free appropriate public education. (Retitled "Free appropriate public education" (FAPE).
300.122	300.122	Timelines and ages for free appropriate public education. (Retitled "Exception to FAPE for certain ages.")
300.123	300.123	Full educational opportunity goal (FEOG).
300.124		[Reserved].
300.125	300.124	FEOG—Timetable.
300.126		FEOG—Facilities, personnel, and services.
300.127		Priorities.
300.128	300.125	Identification, location, and evaluation of children with disabilities.
300.129	300.127	(Retitled "child find.") Confidentiality of personally identifiable information.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]—Continued

[Note: Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.130	300.128	Individualized education programs.
300.131	300.129	Procedural safeguards.
300.132	300.130	Least restrictive environment.
300.133	300.126	Protection in evaluation procedures. (Retitled "Procedures for evaluation and determination of eligibility.")
300.134	300.141	Responsibility of [SEA] for all educational programs. (Retitled "SEA Responsibility for general supervision.")
300.135		[Reserved].
300.136	300.143	Implementation procedures—SEA. (Retitled "SEA implementation of procedural safeguards.")
300.137	300.148	Procedures for consulation. (Retitled "Public participation.")
300.138	300.151	Other Federal programs.
300.139	300.135	Comprehensive system of personnel development.
300.140	300.133	Private schools.
300.141	300.145	Recovery of funds for misclassified children.
300.142–143		[Reserved].
300.144	300.144	Hearing on application. (Retitled "Hearings relating to LEA eligibility.")
300.145	300.152	Prohibition of commingling.
300.146	300.137	Annual evaluation. (Replaced by new section from P.L. 105–17, entitled, "Performance goals and Indicators.")
300.147	300.150	State advisory panel.
300.148	300.155	Policies and procedures for use of Part B funds.
300.149	300.156	Description of use of Part B funds. (Retitled "Annual description of use of Part B funds.")
300.150	300.153	State-level nonsupplanting.
300.151	300.147	Additional information if [SEA] provides direct services.
300.152	300.142	Interagency agreements. (Retitled "Methods of ensuring services.")
300.153	300.136	Personnel standards.
300.154	300.132	Transition of individuals from Part H to Part B. (Retitled "Transition of children from Part C to preschool programs.")
		LEA Applications—General (Retitled "LEA Eligibility—General")
300.180	300.180	Submission of application. (Retitled "Condition of assistance.")
300.181		[Reserved].
300.182	300.184	The excess cost requirement. (Retitled "Excess cost requirement.")
300.183	300.185	Meeting the excess cost requirement.
300.184		Excess costs—computation of minimum amount.
300.185		Computation of excess costs—consolidated application.
300.186		Excess costs—limitation on use of Part B funds.
300.187–189	300.186–189	[Reserved].
300.190	300.190	Consolidated applications. (Retitled "Joint establishment of eligibility.")
300.191	300.191	[Reserved].
300.192	300.192	State regulation of consolidated applications. (Retitled "Requirements for establishing eligibility.")
300.193	300.197	SEA approval; disapproval. (Retitled "LEA and State agency compliance.")
300.194	300.197	Withholding. (Retitled "LEA and State agency compliance.")
		LEA Applications—Contents (Retitled "LEA Eligibility—Specific Conditions")
300.220	300.220	Child identification. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.221	300.220	Confidentiality of personally identifiable information. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.222	300.220	Full educational opportunity goal—timetable. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.223		Facilities, personnel, and services.
300.224	300.221	Personnel development.
300.225		Priorities.
300.226		Parent involvement.
300.227	300.220	Participation in regular education programs. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.228		[Reserved].
300.229	300.230	Excess cost. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Use of amounts.")
300.230	300.230	Nonsupplanting. (Amended by P.L. 105–17, and incorporated into a new requirement, entitled, "Use of amounts.")
300.231		Comparable services.
300.232–234		[Reserved].
300.235	300.220	[IEPs]. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]—Continued

[**Note:** Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.236		[Reserved].
300.237	300.220	Procedural safeguards. (Incorporated into a new requirement added by P.L. 105–17, entitled, "Consistency with State policies.")
300.238		Use of Part B funds.
300.239		[Reserved].
300.240	300.240	Other requirements. (Comparable to a provision added by P.L. 105–17, entitled, "Information for SEA.")
		Application From Secretary of the Interior (Retitled "Secretary of the Interior—Eligibility")
300.260	300.260	Submission of application; approval. (Retitled, "Submission of information.")
300.261	300.261	Public participation.
300.262	300.262	Use of Part B funds.
300.263	300.267	Applicable regulations.
		Public Participation
300.280	300.280	Public hearings before adopting a State plan. (Retitled "Public hearings before adopting State policies and procedures.")
300.281	300.281	Notice.
300.282	300.282	Opportunity to participate; comment period.
300.283	300.283	Review of public comments before adopting plan. (Retitled "Review public comments before adopting policies and procedures.")
300.284	300.284	Publication and availability of approved plan. (Retitled "Publication and availability of approved policies and procedures.")
		Subpart C—Services
		Free Appropriate Public Education
300.300	300.300	Timelines for [FAPE]. (Retitled "Provision of FAPE.")
300.301	300.301	FAPE—methods and payments.
300.302	300.302	Residential placement.
300.303	300.303	Proper functioning of hearing aids.
300.304	300.304	Full educational opportunity goal.
300.305	300.305	Program options.
300.306	300.306	Nonacademic services.
300.307	300.307	Physical education.
300.308	300.308	Assistive technology.
		Priorities in the Use of Part B Funds
300.320		Definitions of "first priority children" and "second priority children."
300.321		Priorities.
300.322		[Reserved].
300.323		Services to other children.
300.324		Application of local educational agency to use funds for the second priority.
		Individualized Education Programs
300.340	300.340	Definitions.
300.341	300.341	State educational agency responsibility.
300.342	300.342	When individualized education programs must be in effect.
300.343	300.343	Meetings.
300.344	300.344	Participants in meetings. (Retitled "IEP Team.")
300.345	300.345	Parent participant.
300.346	300.347	Content of individualized education program.
300.347	300.348	Agency responsibilities for transition services.
300.348	300.349	Private school placements by public agencies.
300.349	300.350	Children with disabilities in perochial or other private schools. (Retitled "Children with disabilities in religious affiliated or other private schools.")
300.350	300.351	Individualized education program—accountability.
		oi0Direct Service by the Sea
300.360	300.360	Use of [LEA] allocation for direct services.
300.361	300.361	Nature and location of services.
300.370	300.370	Use of State agency allocations.
300.371		State matching.
300.372	300.372	Applicability of nonsupplanting requirement.
		oi0Comprehensive System of Personnel Development
300.380	300.380	General.
300.381	300.381	Adequate supply of qualified personnel.
300.382		Personnel preparation and continuing education.
300.383		Data system on personnel and personnel development.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]—Continued

[**Note:** Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.384–387	300.383–387	[Reserved].
		Subpart D—Private Schools
		Children with Disabilities in Private Schools Placed or Referred by Public Agencies
300.400	300.400	Applicability of Secs. 300.400–300.402.
300.401	300.401	Responsibility of State educational agency.
300.402	300.402	Implementation by State educational agency.
300.403	300.403	Placement of children by parents.
		Children With Disabilities Enrolled by Their Parents in Private Schools
300.450	300.450	Definition of "private school children with disabilities."
300.451	300.452	[SEA] responsibility. (Retired "Basic requirement-services").
300.452	300.453	[LEA] responsibility. (Revised based on P.L. 105–17, and retitled "Expenditures.")
		Procedures for By-Pass
300.480	300.480	By-pass—general.
300.481	300.481	Provisions for services under a by-pass.
300.482	300.482	Notice of intent to implement a by-pass.
300.483	300.483	Request to show cause.
300.484	300.484	Show cause hearing.
300.485	300.485	Decision.
300.486	300.486	Filing requirements.
300.487	300.487	Judicial review.
		Subpart E—Procedural Safeguards
		Due Process Procedures for Parents and Children
300.500	3300.500	Definitions of "consent", "evaluation", and "personally identifiable". (Combined §§ 300.500 and 300.501; and retitled "General responsibility of public agencies; definitions.")
300.501	300.500	General responsibility of public agencies. (Combined §§ 300.500 and 300.501, and retitled "General responsibility of public agencies; definitions.")
300.502	300.501	Opportunity to examine records.
300.503	300.502	Independent educational evaluation.
300.504	300.503	Prior notice; parent consent. (Retitled "Prior notice by the public agency; content of notice.")
300.505	300.503	Content of notice. (Retitled "Prior notice by the public agency; content of notice.")
300.506	300.507	Impartial due process hearing. (Retitled "Impartial due process hearing; parent notice; disclosure.")
300.507	300.508	Impartial hearing officer.
300.508	300.509	Hearing rights.
300.509	300.510	Hearing decision; appeal. (Combined §§ 300.509 and 300.510, and retitled "Finality of decision; appeal; impartial review.")
300.510	300.510	Administrative appeal; impartial review. (Combined §§ 300.509 and 300.510, and retitled "Finality of decision; appeal; impartial review.")
300.511	300.512	Civil action.
300.512	300.511	Timeless and convenience of hearings and reviews.
300.513	300.514	Child's status during proceedings.
300.514	300.515	Surrogate parents.
300.515	300.513	Attorneys' fees.
		Protection in Evaluation Procedures (Retitled "Procedures for Evaluation and Determination of Eligibility")
300.530	300.530	General.
300.531	300.531	Preplacement evaluation. (Retitled "Initial evaluation.")
300.532	300.532	Evaluation procedures.
300.533	300.534–35	Placement procedures. (Replaced by § 300.534 ("Determination of eligibility") and § 300.535 ("Procedures for determining eligibility.")
300.534	300.536	Reevaluation.
		Additional Procedures for Evaluating Children With Specific Learning Disabilities
300.540	300.540	Additional team members.
300.541	300.541	Criteria for determining the existence of a specific learning disability.
300.542	300.542	Observation.
300.543	300.543	Written report.
		Least Restrictive Environment
300.550	300.550	General.
300.551	300.551	Continuum of alternative placements.
300.552	300.552	Placements.
300.553	300.553	Nonacademic settings.
300.554	300.554	Children in public or private institutions.

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]—Continued

[Note: Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.555	300.555	Technical assistance and training activities.
300.556	300.556	Monitoring activities.
		Confidentially of Information
300.560	300.560	Definitions.
300.561	300.561	Notice to parents.
300.562	300.562	Access rights.
300.563	300.563	Record of access.
300.564	300.564	Records on more than one child.
300.565	300.565	List of types and location of information.
300.566	300.566	Fees.
300.567	300.567	Amendment of records at parent's request.
300.568	300.568	Opportunity for a hearing.
300.569	300.569	Result of hearing.
300.570	300.570	Hearing procedures.
300.571	300.571	Consent.
300.572	300.572	Safeguards.
300.573	300.573	Destruction of information.
300.574	300.574	Children's rights.
300.575	300.575	Enforcement.
300.576	300.577	Department. (Retitled "Department use of personally identifiable information.")
		Department Procedures
300.580		[Reserved].
300.581	300.581	Disapproval of a State plan. (Combined §§ 300.581 and 300.582, and retitled "Notice and hearing before determining that a State is not eligible.")
300.582	300.581	Content of notice. (Combined §§ 300.581 and 300.582, and retitled "Notice and hearing before determining that a State is not eligible.")
300.583	300.582	Hearing Official or Panel.
300.584	300.583	Hearing procedures.
300.585	300.584	Initial decision; final decision.
300.586	300.585	Filing requirements.
300.587	300.586	Judicial review.
300.588		[Reserved].
300.589	300.589	Waiver of requirement regarding supplementing and supplanting with Part B funds.
		Subpart F—State Administration
		General
300.600	300.600	Responsibility for all educational programs.
300.601	300.601	Relation of Part B to other Federal programs.
		Use of Funds
300.620	300.620	Federal funds for State administration. (Retitled "Use of funds for State administration.")
300.621	300.621	Allowable costs.
		State Advisory Panel
300.650	300.650	Establishment (Retitled "Establishment of advisory panels.")
300.6651	300.651	Membership.
300.652	300.652	Advisory panel functions.
300.653	300.653	Advisory panel procedures.
		State Complaint Procedures
300.660	300.660	Adoption of State complaint procedures.
300.661	300.661	Minimum State complaint procedures.
300.662	300.662	Filing a complaint.
		Subpart G—Allocation of Funds; Reports
		Allocations
300.700	300.700	Special definition of the term State.
300.701	300.701	State entitlement; formula. (Retitled "Grants to States.")
300.702	300.704	[Reserved].
300.703	300.705	[Reserved].
300.704	300.708	Hold harmless provision. (Comparable, in part, to § 300.708 ("Limitations").
300.705	300.710	Allocation for State in which by-pass is implemented for private school children with disabilities.
300.706	300.703	Within-State distribution: Fiscal Year 1979 and after. (Comparable, in part, to § 300.703 ("Allocations to States."), which sets out the formula added by Public Law 105–17).
300.707	300.711–712	Local educational agency entitlement; formula. (Retitled "Subgrants to local educational agencies") (Retitled "Allocation to local educational agencies.")

APPENDIX—DISTRIBUTION TABLE SHOWING EACH CURRENT REGULATORY SECTION AND THE CORRESPONDING PROPOSED REGULATORY SECTION [1]—Continued

[Note: Appendix will not be codified in the Code of Federal Regulations]

Current regulatory section current section No.	Comparable proposed regulatory section proposed section No.	Subpart and section title
300.708	300.714	Reallocation of [LEA] funds.
300.709	300.715	Payments to the Secretary of the Interior for the education of Indian children.
300.710	300.716	Payments to the Secretary of the Interior for Indian tribes or tribal organizations. (Retitled "Payments for education and services for Indian children with disabilities aged 3 through 5.")
300.711	300.716	Entitlements to jurisdictions. (Replaced by §§ 300.717 ("Outlying areas and freely associated States.") and 300.718 ("Outlying area—definition.")
		Reports
300.750	300.750	Annual report of children served—report requirement.
300.751	300.751	Annual report of children served—information required in the report.
300.752	300.752	Annual report of children served—certification.
300.753	300.753	Annual report of children served—criteria for counting children.
300.754	300.754	Annual report of children served—other responsibilities of [SEA].

[1] The purpose of this table is to assist each reader to find where a given section number in the current regulations is located in this NPRM. The table does *not* include (1) any new regulatory provisions that have been added as a result of the IDEA Amendments of 1997, or (2) any other new area on which the Secretary is proposing to regulate.

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federal register

Wednesday
October 22, 1997

Part VI

The President

Presidential Determination No. 98–1—Presidential Determination on the Proposed Agreement for Cooperation Between the Government of the United States of America and the Swiss Federal Council Concerning Peaceful Uses of Nuclear Energy

Federal Register
Vol. 62, No. 204
Wednesday, October 22, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–1 of October 8, 1997

Presidential Determination on the Proposed Agreement for Cooperation Between the Government of the United States of America and the Swiss Federal Council Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Swiss Federal Council Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 8, 1997.

[FR Doc. 97–28213
Filed 10–21–97; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Chapter II

Use of Direct Final Rulemaking

AGENCY: Food and Consumer Service, USDA.

ACTION: Policy statement.

SUMMARY: The Food and Consumer Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notices of intent to submit adverse comments are postmarked within the comment period, the revisions made by the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: In the interest of implementing needed changes in program administrative procedures in a more expeditious manner, the Food and Consumer Service (FCS) plans to improve the efficiency of its regulatory procedures by employing the rulemaking technique known as "direct final rulemaking" to promulgate some of its rules.

The Direct Final Rule Process

Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments may be published as direct final rules. The direct final rules will specify a comment period of at least 30 days. Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notices of intent to submit adverse comments are postmarked within the comment period, the revisions made by the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**. In instances in which a waiting period other than 60 days is established, the effective date will be specified in the rule.

"Adverse comments" means comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published would obviously not be considered adverse. Neither would a comment suggesting that requirements in the rule should, or should not, be employed by FCS in other programs or situations outside the scope of the direct final rule.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), this procedure gives the public general notice of FCS' intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if FCS receives neither written adverse comments nor written notices of intent to submit adverse comments that are postmarked within the comment period, the rule will, in most instances, be effective 60 days from the date the direct final rule is published in the **Federal Register**.

If FCS receives timely adverse comments or notices of intent to submit such comments, a notice of withdrawal of the direct final rule will be published in the **Federal Register** and a proposed rule will be published establishing a comment period for the rulemaking action. Following the close of the comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, absent timely adverse comments or notices to submit such comments, the rule will, in most instances, become effective 60 days following the rule's publication. However, FCS will publish a notice in the **Federal Register** indicating that no adverse comments were received on the direct final rule, and confirming that it is effective on the date indicated in the direct final rule.

In some instances, FCS may choose to publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same provisions contained in the direct final rule. In such instances, if timely written adverse comments or written notices of intent to submit adverse comments are received in response to the direct final rule, the direct final rule will be withdrawn and the comments received will be addressed, along with comments received in response to the proposed rule, in a subsequent final rule.

Determining When To Use Direct Final Rulemaking

Not all FCS rules are good candidates for direct final rulemaking. Many FCS rules address more complex issues for which the public may have a variety of opinions to offer on the need for the rule, or alternative methods for achieving the intended results. In these cases, FCS plans to continue to publish a proposed rule, and establish a comment period to allow submission of comments, followed by a final rule addressing the comments.

FCS plans to use direct final rulemaking on a case-by-case basis when we do not anticipate adverse comments. The decision to use direct final rulemaking for a rule would be based on our experience with similar rules. If similar rules were published in the past as proposals that did not elicit adverse comments, we would consider publishing such rules in the future as direct final rules.

Dated: October 15, 1997.
Yvette S. Jackson,
Acting Administrator, Food and Consumer Service.
[FR Doc. 97–28062 Filed 10–22–97; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 247

RIN 0584–AC60

Commodity Supplemental Food Program—Caseload Assignment

AGENCY: Food and Consumer Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends provisions of the Commodity Supplemental Food Program Regulations to provide for the allocation of a single caseload to State agencies each year, instead of the allocation of two separate caseloads, one for women, infants, and children, and one for the elderly. This rule will permit State agencies, and the local agencies with which they have signed agreements, to utilize this single caseload to serve low-income women, infants, and children and elderly populations as needed, provided they give priority in service to women, infants, and children over the elderly. This rule will also streamline and simplify program management at the State and local level.

DATES: This rule will become effective on December 8, 1997, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before November 24, 1997. If adverse comments within the scope of this rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

ADDRESSES: Comments should be sent to Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, VA 22302–1594. Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. While procedures in this rulemaking will affect State and local agencies that administer the Commodity Supplemental Food Program, any economic effect will not be significant.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or lease burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing recordkeeping and reporting requirements for 7 CFR part 247, which were approved by OMB under control number 0584–0293, will not change as a result of this final rule.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

The primary purpose of the Commodity Supplemental Food Program (CSFP) is to provide nutritious commodities and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children up to the age of six, to help meet their dietary needs at a critical life stage of growth and development. This has been the program's basic goal since the initiation of a "supplemental food program" for pregnant and breastfeeding women and infants in 1968, utilizing funds appropriated for child feeding programs, and its subsequent designation as the "Commodity Supplemental Food Program" in the Food and Agriculture Act of 1977 (Pub. L. 95–113), which added sections 4 and 5 to the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93–86). However, legislation expanded the eligible population in 1981 and 1982 to include elderly persons under a pilot project. With the passage of the Food Security Act of 1985 (Pub. L. 99–198) authority to provide program benefits to the low-income elderly was extended to all State agencies that had resources remaining after providing benefits to all eligible applicant women, infants, and children. Thus, while women, infants, and children retained priority in service, the elderly were established as a second eligible population group in the program. This requirement is found in section 5(g) of the Agriculture and Consumer Protection Act of 1983 (7U.S.C. 612c note).

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) also provides benefits (in the form of food vouchers) to pregnant, breastfeeding, and postpartum women, infants and children, with modest differences in categorical eligibility requirements from CSFP. In WIC, women are eligible up to six months postpartum, compared to 12 months in CSFP; and children are eligible up to five years of age in WIC, and up to six years in CSFP. WIC participation increased significantly during the period 1988–1996, from 3.6 million to approximately 7.2 million—an average increase of 450,000 per year. The increased scope of the WIC Program contributed to a decline in participation of women, infants, and children in CSFP, as persons eligible for both programs may only participate in one of them. From 1993 to 1996, participation of women, infants, and children in CSFP declined by 40 percent, while elderly participation in that period increased by 35.4 percent. By fiscal year 1996, elderly participation in CSFP averaged 219,281 per month, or 61.5 percent of total program participation.

Resources are allocated to participating State agencies in CSFP in the form of caseload, which is the monthly average number of participants a State agency is authorized to serve over a specified 12-month period (the caseload cycle). State agencies' caseload allocations each year are based on program participation from the previous year, and requests to expand the program. In implementing the authority to serve elderly pursuant to the Food Security Act of 1985, the Department provided, through program regulations, for the assignment of an elderly caseload to State agencies, separate from the assignment of the women, infants, and children caseload. While State agencies may not serve more elderly persons than their assigned elderly caseload level, they may request a conversion of caseload slots for women, infants, and children that are unutilized during the caseload cycle to service for the elderly, if State agencies have more elderly applicants seeking program benefits. As evidence that the conversion request will not restrict the participation of women, infants and children, State agencies may include evidence of outreach efforts conducted by the State and/or local agency to promote and facilitate service to eligible women, infants, and children in the service area. To further ensure that this priority group is adequately served, current regulations do not permit submission of caseload conversion requests until 90 days after the assignment of caseload.

Allocation of separate caseloads for the two population groups served in CSFP, and the caseload conversion requirement, serve the purpose of protecting program resources for women, infants, and children, while allowing unused resources to be redirected for use by the elderly. However, with the decline in participation of women, infants, and children, and the increased participation of the elderly in CSFP, the caseload restrictions, and caseload conversion requirement, have become obstacles to the efficient use of program resources to serve States' needy populations. Until caseload conversion requests can be made, and acted upon, caseload slots allocated to State agencies for women, infants, and children may remain unused. State and local agencies need more flexibility in caseload management to allow them to fill caseload slots throughout the caseload cycle.

In order to provide State agencies with greater flexibility in caseload management, this direct final rule amends regulatory requirements in part 247 to assign participating State agencies a single caseload, instead of separate women-infants-children, and elderly, caseloads. Local agencies within States may serve women, infants, and children, and the elderly, on a first-come, first-served basis, up to the single caseload limit assigned to them by the State agency, but must continue to meet the priority requirements in § 247.7(b)(2)—i.e., if eligible women, infants, and children are waiting to be served, the next available caseload slots must be utilized to serve them.

The Department will continue to transform all funds available for CSFP commodity purchases each year into caseload, and to allocate all available caseload among the State agencies. Procedures for establishing total available caseload are not governed by legislation or regulations and will be modified only to the minor extent necessary to reflect the shift from two caseloads to one. In accordance with sections 5(a) and (1) of the Agriculture and Consumer Protection Act of 1973, the Department will make 20 percent of the annual appropriation and 20 percent of any unspent food funds carried over from the previous year available to State agencies in the form of administrative funds. The Department will convert remaining funds to caseload based on estimates of the percentage of total participation to be accounted for by each subgroup—e.g., pregnant and breastfeeding women, the elderly—and projections of the average cost of foods to be taken by participants in each subgroup. These data will be used to compute a single, blended average cost of food per participant per year, and that cost will be divided into available food funds to yield total CSFP caseload.

The amendments to the regulatory requirements addressing caseload assignment and the State plan of operation are discussed in more detail below. The Department invites comments only on the regulatory amendments in this rulemaking, which establish a single caseload for the program, and not on any other sections of program regulations. The Department considers the regulatory amendments in this direct final rule to be noncontroversial and unlikely to elicit adverse comments. In order for the Department to issue CSFP caseload by the December 1, 1997 deadline, as required by § 247.10(a), this rule will be effective on December 8, 1997, rather than on a date conforming with the 60-day time period generally provided to effectuate direct final rules.

Caseload Assignment

Section 247.10 of the current regulations describes the procedures for assigning caseload to State agencies each year, the procedures and restrictions for requesting caseload conversion, and the use of elderly caseload to serve women, infants, and children. The transition to a single caseload assignment in this final rule requires the revision of paragraph (a)(2) of this section, which addresses the specific order and manner in which caseload assignments are made, and the removal of paragraphs (a)(3), (a)(4), and (a)(5) of this section, which address caseload conversion—not necessary in a single caseload system—and the use of elderly caseload slots. As part of the amendment of paragraph (a)(2), the method for assigning caseload to State agencies requesting expansion of service to women, infants, and children is revised. The present assignment of expansion caseload to State agencies based on their capacity to serve their categorically eligible women, infants, and children in WIC and CSFP is overly complicated, and no longer necessary, as the expansion of the WIC Program has resulted in a much more extensive coverage of the target population. Furthermore, reliable data on this capacity are no longer available. Hence, the Department is revising this method to bring it into conformance with the means of addressing expansion requests for the elderly.

Additionally, all references to caseload cycles beginning on specific dates are removed, since these cycles have long since passed.

In assigning caseload, the Department will continue to attach a higher priority to requests to expand service for women, infants, and children over requests to expand service for the elderly. Although State agencies will always be allocated caseload that is not designated for use by a particular population group, if they request expansion caseload to serve additional women, infants, and children, they will be expected to promote and facilitate use of such caseload for the intended purpose, for example, by assigning the caseload to areas where women, infants, and children are underserved by the WIC Program, and by intensifying outreach efforts to this population group in areas where the additional caseload is assigned. In States which currently do not operate the program, requests for initiation of program service to women, infants, and children will likewise be considered ahead of requests to initiate service to the elderly.

Below, the primary features of each of the steps in the current order of caseload assignment, as delineated in § 247.10(a)(2), are described, together with any changes that this rulemaking makes to that step. As at present, caseload assignment will proceed through as many of the steps in the process as available resources permit.

Under paragraph (a)(2)(i), State agencies receive caseload for the three elderly pilot projects in Detroit, New Orleans, and Des Moines, equal to December 1985 levels. This remains unchanged.

Under paragraph (a)(2)(ii), currently participating State agencies receive caseload, first for women, infants, and children, and then for elderly persons, based on participation in one of three time periods in the previous year, but not to exceed the caseload allocations for each of these two groups in the preceding caseload cycle. This step is revised to assign to currently participating State agencies a single caseload based on total participation of women, infants, and children, and the elderly in one of the three time periods in the previous year, but not to exceed total caseload assigned to State agencies in the preceding caseload cycle. As at present, State agencies entering their second caseload cycle of program service will receive caseload equal to the level assigned for their first cycle of program service, and not in accordance with first-year participation levels. However, the distinction between women, infants, and children, and elderly caseload will cease to be made.

Under paragraph (a)(2)(iii), requests from currently participating State agencies for expansion caseload for women, infants, and children are considered. As delineated in paragraph (a)(2)(iii)(A), a State's participation level for this group must equal 90 percent of assigned caseload for any of three time periods in the previous year in order for the State to be considered for expansion caseload. If the State meets this criterion, expansion caseload is assigned based on the State's capacity to serve its categorically eligible women, infants, and children in WIC and CSFP, and in an amount that will increase the number of this population served in the State to a specific level, as delineated in paragraphs (a)(2)(iii) (B) and (C). First, this rulemaking revises paragraph (iii) to add a new sentence stating that expansion requests to increase service to women, infants, and children will receive priority over expansion requests to increase service to the elderly, in accordance with program priorities established in § 247.7(b)(2). Second, a revised § 247.10(a)(2)(iii)(A) addresses expansion requests for either women, infants, and children, or the elderly, utilizing the 90 percent participation requirement for both populations together. Finally, paragraph (a)(2)(iii)(B) is revised to address expansion requests for service to women, infants, and children in the same manner as presently utilized for fulfilling expansion requests for the elderly: i.e., each State agency requesting expansion caseload for women, infants, and children will receive an equal share of the available caseload, or the amount that FCS determines the State agency needs and can effectively manage, whichever is less. A new paragraph (a)(2)(iii)(C) addresses the distribution of caseload for expanded service to the elderly, which is unchanged from the present procedure, as currently described in paragraph (a)(2)(iv)(B).

Under paragraph (a)(2)(iv), requests from currently participating State agencies to initiate or expand service to the elderly are considered. As delineated in paragraph (a)(2)(iv)(A), a State's participation level for this group must equal 90 percent of assigned caseload for any of three time periods in the previous year, in order to be considered for expansion caseload. If State agencies meet this criterion, expansion caseload is assigned in equal amounts to State agencies, or in amounts that FCS determines that State agencies need and can effectively manage, whichever is less, as delineated in paragraph (a)(2)(iv)(B). Paragraph (a)(2)(iv)(C) states that, if State agencies' shares exceed their approved requests, the excess amount is redistributed among State agencies whose allocations did not meet their approved requests. This rulemaking removes paragraph (a)(2)(iv), since the revised paragraph (a)(2)(iii) establishes uniform procedures which cover expansion requests for the elderly, as well as women, infants, and children.

Under paragraph (a)(2)(v), requests from State agencies to initiate service to women, infants, and children (i.e., those States not presently participating in CSFP), are considered, and caseload assigned. Paragraph (a)(2)(v)(A) utilizes the same means of determining a State agencies' capacity to serve its potentially eligible women, infants, and children, and for assigning caseload based on this determination, as described in paragraphs (a)(2)(iii) (B) and (C). State agencies may not request to serve the elderly in their initial year of service; if they wish to serve the elderly, they must wait for the following caseload cycle, as described in paragraph (a)(4) of this section, which, as previously mentioned, is removed. This rulemaking redesignates paragraph (a)(2)(v) as (a)(2)(iv), and revises it to address requests to initiate service to elderly persons, as well as women, infants, and children. A new sentence is added stating that requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly, in accordance with program priorities established in § 247.7(b)(2). Section 247.10(a)(2)(v)(A) is revised to utilize the same means of caseload assignment described above in revised paragraphs (a)(2)(iii) (B) and (C).

Subparagraph (B) is removed. State agencies are no longer restricted to serving only women, infants, and children in their first year of operations.

Section 247.24, which refers to temporary caseload assignment procedures that were applied to a previous caseload cycle, is removed, as these procedures are no longer relevant.

State Plan of Operation

In accordance with § 247.5, before the beginning of the fiscal year, State agencies submit to FCS a plan describing the means by which the program will be operated and administered. Included in the information that State agencies must submit, which is detailed in this section, are caseload conversion requests, plans for caseload utilization, outreach activities, and documentation of data supporting requests to serve the elderly. Revisions to the regulatory requirements for the submission of this information in the State plan are described below.

Currently, under § 247.5, State agency requests to convert unfilled women, infants, and children caseload slots to serve the elderly are made during the fiscal year as an amendment to the State plan, and must include documentation supporting the need for elderly service in the proposed service area, and assurances that caseload conversion may be accomplished without restricting service to women, infants, and children in the service area. The assignment of a single caseload to State agencies, in this rule, makes caseload conversion, and the attendant documentation, unnecessary. Hence, language in the introductory text of § 247.5, and paragraph (a)(16) of that section addressing caseload conversion, its timing, scope, and attendant documentation, are removed.

Section 247.5(a)(4), which addresses a description of plans for conducting outreach to reach maximum caseload, is amended to define the objective of outreach activities as ensuring that women, infants, children, and elderly persons are aware of program benefits, without the present language referring to reaching maximum caseload. Since, by this rulemaking, caseload may be utilized to serve either population group, it is important to specify the two population groups that should be targeted in outreach activities. In addition, although reaching maximum caseload is an objective that this rulemaking is designed to help State agencies achieve, it is not a regulatory requirement, as current language implies.

Section 247.5(a)(15) currently requires that State agencies wishing to serve the elderly provide documentation, as part of the State plan, describing the extent of need for elderly service in the proposed service area. Since this rule is intended to provide State agencies with the flexibility to utilize a single assigned caseload to serve their needy elderly without the need to request caseload conversion or provide attendant documentation, this section is amended to require such documentation only of State agencies wishing to initiate service to the elderly, or requesting expansion caseload to serve the elderly. Additionally, paragraph (a)(15)(i) is revised to remove the requirement that demographic statistics be included as part of the supporting documentation. Lastly, the language in paragraph (a)(15)(ii) concerning descriptions of how a State agency will meet the needs of homebound elderly is clarified, without changing its meaning.

List of Subjects in 7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

Accordingly, 7 CFR Part 247 is amended as follows.

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. The authority citation for part 247 is revised to read as follows:

Authority: Sec. 5, Pub.L. 93–86, 87 Stat. 249, as added by sec. 1304(b)(2), Pub.L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub.L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub.L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub.L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1582, Pub.L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub.L. 100–202; sec. 1771(a), Pub.L 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub.L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note).

2. In § 247.5:

a. The fifth, sixth, and seventh sentences of the introductory text of paragraph (a) are removed;

b. Paragraphs (a)(4) and (a)(15) are revised;

c. Paragraph (a)(16) is removed.

The revisions read as follows:

§ 247.5 State agency plan of program operation and administration.

(a) * * *

(4) A description of any plans for conducting outreach to ensure that all women, infants, and children, and elderly persons are aware of program benefits.

* * * * *

(15) If a State agency wishes to initiate service to the elderly, or request expansion caseload to serve the elderly, a description of plans for providing program benefits to elderly persons within the State during the caseload cycle. Such description shall include—

(i) An identification of the elderly population to be served, including documentation of the extent of need in the proposed service area; and

(ii) A description of the means by which the State agency will meet the needs of the homebound elderly.

* * * * *

3. In § 247.10:

a. Paragraph (a)(2) is revised;

b. Paragraphs (a)(3), (a)(4), and (a)(5) are removed.

The revision reads as follows:

§ 247.10. Caseload assignment and administrative funding.

(a) * * *

(2) To the extent that funds are available, FCS shall assign caseload to State agencies in the following order.

(i) State agencies for the three elderly feeding projects in Detroit, New Orleans, and Des Moines shall be assigned caseload equal to the level of participation for each project in December 1985.

(ii) Currently participating State agencies, except those entering their second cycle of program service, shall receive caseload in amounts equal to the greatest of their total participation of women, infants, and children, and elderly persons (except for caseload equal to the December 1985 level of participation at the three elderly feeding projects) during September, or monthly average participation for the period July through September, or for the prior fiscal year; provided, however, that a State agency shall not receive caseload under this paragraph in excess of caseload assigned for the preceding caseload cycle. State agencies entering their second caseload cycle of program service shall receive caseload equal to the caseload level assigned for their first cycle of program service.

(iii) Requests from currently participating State agencies to expand service to women, infants, and children, and the elderly, shall be addressed in the following manner. Expansion requests to increase service to women, infants, and children shall receive priority over expansion requests to increase service to the elderly.

(A) State agencies shall be eligible to receive expansion caseload only if, during the preceding September, the period July through September, or the prior fiscal year, their monthly average participation equaled at least 90 percent of their assigned caseload level for the preceding caseload cycle.

(B) State agencies requesting expansion caseload to increase service to women, infants, and children shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(C) State agencies requesting expansion caseload to increase service to the elderly shall be assigned the lesser of an equal share of available caseload or the amount of expansion caseload FCS has determined that the State agency needs and can effectively manage. If any State agencies' shares exceed their approved requests, the

excess caseload shall be divided equally among State agencies whose approved requests exceed their shares.

(iv) Requests from State agencies to initiate program service for women, infants, and children, and the elderly shall be addressed in the following manner. Requests to initiate service to women, infants, and children shall receive priority over requests to initiate service to the elderly.

(A) State agencies with approved State plans incorporating requests for program initiation to provide service to women, infants, and children shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(B) of this section.

(B) State agencies with approved State plans incorporating requests for program initiation to provide service to the elderly shall be assigned caseload in the same manner described in paragraph (a)(2)(iii)(C) of this section.

* * * * *

§ 247.24 [Removed]

4. Section 247.24 is removed.

Dated: October 15, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–28060 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–1 IFR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate and Establishment of Late Payment and Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses incurred by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930. This rule also establishes an interest rate and late payment charge on delinquent assessments owed by handlers under the tart cherry marketing order. The Board is responsible for local administration of the marketing order. Authorization to assess tart cherry handlers will enable the Board to incur expenses that are reasonable and necessary to administer the program. The interest rate and late payment charges will contribute to the efficient operation of the program by ensuring adequate funds are available to cover budgeted expenses incurred under the marketing order. The 1997–98 fiscal period covers the period July 1, through June 30.

DATES: Effective on October 24, 1997. Comments received by December 22, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, and Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The tart cherry marketing order in section 930.31 provides that one of the duties of the Board is to submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period. The recommendations concerning the proposed assessment rate are discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

At its meeting on January 8 and 9, 1997, the Board unanimously recommended expenditures of $650,000, and an assessment rate of $0.0025 per pound of tart cherries handled during the 1997–1998 crop year and subsequent crop years. The recommended expenditure figure covers expenses for the 1997–98 fiscal period, as well as expenses incurred in connection with the start-up of the program beginning on January 1, 1997, when the first public meeting of the newly formed Board took place. The tart cherry marketing order became effective on September 25, 1996. The Department has approved the Board's 1997–98 budget of expenses. Until assessment income is available, the Board may obtain funds through a lending institution to fund Board operations.

The Board will begin to assess handlers as soon as possible after the effective date of this interim final rule, and all assessments will be due to the Board office by November 30, 1997, for this season only. Future assessment payments will be due to the Board office by October 1. Major expenditures recommended by the Board for the 1997–98 fiscal period, ending June 30, 1998, and expenditures for the prior six months, are $25,000 for interest, $175,000 for Board meeting expenses, $150,000 for salaries, $100,000 for administration, and $200,000 for compliance. For the six month period from January 1, 1997, through June 30, 1997, the expenses were $59,000.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of tart cherries. Tart cherry shipments for the 1997–98 crop year were estimated at 260 million pounds and were projected to provide $650,000 in assessment income which, along with interest income, should have been adequate to cover budgeted expenses. At this time, actual production figures are available. Crop production for the 1997–98 season is now projected at 278,989,653 pounds. Assessment income, based on this crop, will be adequate to cover this year's expenses, even with the reduced assessment rate for juice, juice concentrate and puree. Funds in any reserve will be kept within the current approximately one year's operational expenses permitted by the order.

This interim final rule establishes an interest rate of 12 percent per annum and a late payment charge equal to 10 percent of the unpaid balance of the assessment amount due. The interest rate will be applied to any assessment not paid within 30 days of the October 1 due date. However, the October 1 date will be extended to November 30, 1997, for the 1997–98 crop year only. The late payment fee on the unpaid assessment balance by a handler will be assessed 90 days after the October 31 due date for this season and October 1 for future seasons.

Section 930.41(a) of the marketing order provides for the payment by handlers of a pro-rata share of the cost of administering the program under the order. The payment is in the form of a uniform assessment rate applied to each handler's cherry acquisitions. In addition, section 930.41(f) provides that assessments will be calculated on the basis of pounds handled provided that the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

Section 930.41 also provides that if a handler does not pay an assessment within the time prescribed by the Board, the assessment may be subject to an interest or late payment charge, or both.

A new section 930.141, specifies that assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the Board. The Board requires that all assessments be paid by October 1 of each crop year. However, assessments will be due on November 30, 1997, for the 1997–98 season only. The October 1 date specified herein will apply to all future seasons.

Assessments are the main source of funds to pay Board expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the Board. Authority was placed in the order to levy interest and late payment charges on delinquent assessments. The interest rate and late payment charges in this interim final rule are similar to those established under other marketing orders. To attempt to collect delinquent assessments, the Board will incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the Board.

Handlers will have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler will be credited upon receipt in the Board office.

Interest and late payment charges will provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program.

In its deliberations, the Board discussed lower rates when recommending the interest rate and late payment charge but decided that prompt payment of assessments by handlers was crucial to the operation of the program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

A proposed rule concerning this action was issued by the Department on June 27, 1997, and published in the Federal Register on Thursday, July 3, 1997 (62 FR 36020). The rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period, which ended on August 4, 1997, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. The commenters, representing a tart cherry grower—handler, and an industry organization, opposed the proposed rule.

The first commenter urged the Department to reject the proposed rule because the commenter is concerned that the Board may be improperly constituted at this time and unable to administer any program under 7 CFR part 930 in a legitimate manner. The commenter stated that some of the Board members' participation in certain sales constituencies, should be addressed. The commenter further stated that no decision recommended to the Secretary by the Board should be finalized or be allowed to be imposed upon the industry in an interim final fashion.

The Board was properly nominated in accordance with Department procedures, and selected on December 20, 1996. The Board recommended an assessment rate and late payment and interest charge at its January 1997 meeting. At that time, one of the sales constituencies in question had not yet been established. Concerns which have been raised about the constituency and questions about the eligibility of certain members to serve on the Board are currently under review by the Department.

The second commenter raised eight issues in his comment. First, the commenter stated that the public and the industry cannot respond effectively to the proposed assessment without knowing how the money will be used, and that it is impossible to determine, for example, whether the money will be spent in conformity with the marketing order. The commenter also stated that the fact that the proposed assessment rate is formulated and discussed at a public meeting and that affected persons have an opportunity to participate and provide input is irrelevant.

The proposed rule contained a description of the major expenditures recommended by the Board which is repeated here. The Board's recommendation regarding such expenditures are subject to approval by the Department. Furthermore, the Department has oversight responsibility over marketing order committees to ensure that marketing order funds,

collected through handler assessments, are spent in accordance with order provisions. The public is provided the opportunity to comment on whether the assessment rate is at an appropriate level to fund the activities of the Board. In addition, since all meetings are opened to the public, interested persons can raise concerns and such concerns can be discussed in an open forum. This allows another opportunity for public input in this rulemaking procedure.

Second, while recognizing that the assessment is subject to legal challenge and judicial review, it is the commenters view that, under the regulations, handlers should receive a refund if their challenge is successful. The commenter asked that the proposal be modified to provide for such refund and to ban interest and late payments (which the commenter called a "tax") while a good faith legal challenge is pending.

The Act provides that handlers regulated by marketing orders pay their pro-rata share of expenses, as the Secretary may find are reasonable and likely to be incurred during a specified period for the maintaining and functioning of the marketing order. It does not impose any requirements concerning refunds. Furthermore, late charges and interest payments are not a tax and are common in many of USDA's commodity programs.

Commenter's third point in opposition to the rule was that it cannot be made retroactive to cherries already received by handlers. The assessments imposed by the rule are consistent with provisions of the order which provide for the payment of assessments on cherries handled during a specified fiscal period to cover costs of administering the program. The order further provides that, in the event it is found that an increase in the assessment rate is needed to cover expenses, such increase would apply to all cherries handled during the period. Therefore, retroactivity is not at issue in this rulemaking.

The fourth issue raised by the commenter stated that the Department has not published sufficient rules and regulations designed to implement this new marketing order. Therefore, the industry cannot judge whether or not the program is being administered in accordance with the order so that it should be supported with assessments. It was also the commenter's view that there was ample time to develop regulations through notice and comment rulemaking and therefore interim final rules should not be used.

The Board has worked diligently in discussing and formulating rules and regulations to implement authorities under this new marketing order. It met January, February, March, June and September of 1997, and recommended rulemaking actions at various meetings. However, since this is a new program, these recommendations needed to be discussed at more than one meeting, and in some instances, modified. Therefore, there was not as much time as the commenter suggests to develop and publish the various rules necessary to administer the program.

The fifth issue raised by the commenter concerns the make-up of the Board. The commenter states that most Board members have become disqualified because of their membership in two cooperatives, and that no corrective action has been taken to resolve this matter.

The Department is aware of this issue and it is currently under review. As soon as such review is completed, the Department will take any action which is deemed necessary.

The sixth issue raised by the commenter stated that the proposal provides for assessments that will continue from season to season. The commenter stated that this is improper especially since this is a new program. The industry may not wish to fund succeeding years' budgets at this level, especially if volume controls are not used, or may wish to delete certain budget items in their entirety.

As previously stated in the proposed rule, this assessment rate established by this interim final rule will continue in effect until the Board recommends a change to the assessment rate or the Department sees a need for such a change. If volume regulations are not implemented during a crop year, the Board would be asked to consider the impact of that on its budget and whether a decrease in the assessment rate is warranted. The Department would then issue a proposed rule recommending establishment of a new assessment rate for the tart cherry industry.

Seventh, the commenter stated that the proposal improperly assumes that the Secretary will impose volume control, and includes at least $200,000 to fund such program. No such decision has been made. The commenter further states that no proposed rule regarding volume regulation has ever been placed in the **Federal Register**. The commenter asserted that the proposed assessment should be reduced to reflect the lack of any volume control during the 1997–98 season.

The Board formulated its budget in January 1997 and allocated funds for compliance if volume regulation were recommended and imposed. In the absence of volume control, appropriate adjustments can be made to the budget.

Finally, the commenter stated that the 12 percent interest rate and 10 percent late payment penalty are excessive and unreasonable. At most, the interest charged should not exceed the marginal rate charged to the Board for any actual borrowings needed to meet current needs. The commenter further stated that the final rule should include a grace period for handlers who are in good faith experiencing financial difficulty. In addition, handlers should not have to pay assessments until cherries are sold.

As previously stated, the Board reviewed the interest rate and late payment charge and decided that it had to be large enough to be a penalty and to encourage handlers to pay their assessments on time. The rates established are similar to those established under other marketing orders. Handlers will have until October 1 to pay their assessments which is adequate time for handlers to plan for such payment. Since handlers are assessed uniformly, the due date should be uniform across the industry. The Board cannot wait for payment of assessments while handlers are selling their cherries at various times.

Accordingly, no changes will be made to the proposed rule, based on the comments received. However, the Department is issuing this interim final rule to provide an additional opportunity for the public to comment on the modification discussed below.

The order provides that when an assessment rate based on the number of pounds of cherries handled is established it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order promulgation record indicates that proponents testified that high value products such as frozen, canned, or dried cherries would be assessed one rate while cherries used to make low value products such as juice, juice concentrate or puree would be assessed at one half that rate. Since the $0.0025/pound assessment proposed by the Board does not reflect such differences in product value, the rule, as previously proposed, will be modified and the $0.0025/pound assessment rate will be applicable to cherries used in products other than juice, juice concentrate, or puree. The USDA is modifying this action to reflect the intent of the order by setting a rate of $0.0125 per pound for cherries used in juice, juice concentrate or puree. This rate is based on the evidence presented by the proponents of the order. Interested persons will have the opportunity to comment on this modified rule. If it is determined the assessment rates do not generate sufficient funds to cover expenses, the order authorizes the Secretary to increase the rate any time during or after the fiscal period. The Department and the Board will continue to study this matter to see if any other products should have different assessment rates.

Data from the National Agricultural Statistics Service (NASS) states that for 1996, utilization for juice, wine or brined uses was 8.0 million pounds for all districts covered under the marketing order. The total processed amount for tart cherries for the 1996 crop year was 256.1 million pounds. Juice, wine, or brined represents about 3 percent of the total processed crop. Data for this season is not available at this time. However, based on the data from the previous season, it seems that juice, juice concentrate and puree is a very small percentage of the crop. Therefore, the modification discussed above should have an insignificant effect on the monies collected for assessments this season. As previously discussed the Board could recommend an increase in the assessment rate if such rate does not generate the funds needed for this season.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,220 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule establishes an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses of the Board at $0.0025 per pound of tart cherries used in the production of tart cherry products other than juice, juice concentrate and puree, and $0.0125 per pound for juice, juice concentrate and puree. The Board unanimously recommended expenditures of $650,000 for expenses incurred during the 1997–98 fiscal period as well as for those incurred during the start-up period beginning January 1, 1997. From January 1, 1997, through June 30, 1997, the expenses for this six month period was $59,000. The expenses for the 1997–98 fiscal period are projected at $591,000. Tart cherry shipments for the year were estimated at 260 million pounds, which would have provided $650,000 in assessment income (260,000,000 pounds at $0.0025 per pound) and would have been adequate to cover this year's expenses. At this time, actual production figures are available. Crop production for the 1997–98 season is 278,989,653 pounds, which, even with the reduced assessment rate for juice, juice concentrate, and puree, will provide adequate assessment income to cover this year's expenses. Funds in any reserve will be kept within the maximum permitted under the order.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of the program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Major expenditures recommended for the 18-month period ending in June 30, 1998, include $25,000 for interest, $175,000 for Board meeting expenses, $150,000 for salaries, $200,000 for program compliance. The $200,000 for compliance was deemed necessary in the event volume control regulations are implemented during the 1997–98 season. The Board discussed setting an assessment rate that would allow for sufficient operation of a volume control program for the upcoming season. With regards to alternatives, this rate may be adjusted by the Secretary, if necessary. Accordingly, the Department believes that since the assessments are necessary to make funds available to cover the initial costs of implementing the new order, including operation of a volume control program for the upcoming season, if implemented, the assessment rate will be as recommended by the Board, and modified by the Department.

This action will not impose any additional reporting or recordkeeping on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The new forms for the operation of the order have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177.

The interest and late payment charges were also discussed at a public meeting. The Board believes the interest charge is a reasonable rate. The late payment fee is high enough to discourage late payments and encourage the timely payment of assessments by handlers.

This interim final rule provides incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program.

Handlers who do not pay their assessments on time will be able to reap the benefits of Board programs at the expense of others. In addition, they will be able to utilize funds for their own use that will otherwise be paid to the Board to finance Board programs. In effect, this will provide handlers with an interest free loan.

Implementing interest and late payment charges will provide an incentive for handlers to pay assessments on time, which will improve compliance with the order. It will minimize actions taken against handlers who fail to pay assessments on time through administrative remedies or the Federal courts. These remedies, currently the only recourse against handlers who fail to pay assessments, can be costly and time consuming. This interim final rule will remove any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

While this interim final rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

This interim final rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As

with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 8 and 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this final rule on small businesses, and none were received.

The assessment rate, interest rate and late payment charge established in this interim final rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rate, interest rate and late payment charge will be effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment and interest rates and late payment charge. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment or interest rates or late payment charge is needed. Further rulemaking would be undertaken as necessary. The Board's 1997–98 budget has already been approved by the Department to allow the Board to expend funds that they have borrowed. Budgets for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning parts of this action was issued by the Department on June 27, 1997, and published in the **Federal Register** on July 3, 1997 (62 FR 36020). Copies of the proposed rule were also mailed or sent via facsimile to all tart cherry handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This interim final rule invites comments on an assessment rate and establishment of late payment and interest charges on delinquent assessments. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers have received and are still receiving 1997–98 crop cherries from growers, the fiscal period began July 1, and the assessment rate applies to all cherries received during the 1997–98 and subsequent fiscal periods; (2) the Board has been operating using borrowed funds and needs revenue to repay such funds and to continue administering the program; and (3) handlers are aware of this rule, which was recommended at a public meeting.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Administrative Rules and Regulations and a new section 930.141 are added to read as follows:

Subpart—Administrative Rules and Regulations

§ 930.141 Delinquent assessments.

(a) Pursuant to § 930.41, the Board shall impose an interest charge on any handler whose assessment payment has not been received within 30 days from the due date of October 1 of each crop year. The interest rate shall be a rate of one percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30-day payment period. In addition to the interest charge, the Board shall impose a late payment charge on any handler whose payment charge has not been received within 90 days from the due date of October 1. The late payment charge shall be 10 percent of the unpaid balance.

(b) *Due date for the 1997–98 fiscal period.* For the 1997–98 fiscal period, the due date for assessments shall be November 30, 1997. Any interest charge for late assessment payments shall be accrued 30 days after the November 30 due date and any late fee shall be accrued 90 days after the November 30 due date.

3. A new subpart—assessment rates and a new section 930.200 are added to read as follows:

Subpart—Assessment Rates

§ 930.200 Handler assessment rate.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.0025 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.0125 per pound.

Dated: October 17, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–28130 Filed 10–20–97; 2:01 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF25

Amendment to the Production Flexibility Contract Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the production flexibility contract regulations found at 7 CFR part 1412. The amendments add a final date for producers to designate payment shares and provide supporting documentation to be eligible to earn contract payments in a fiscal year when payment shares have not been designated in such fiscal year; change the dates by which a producer or owner must inform county committee of changes in interest; add a final date for producers to request advance payments; clarify cash lease provisions; change the provisions for determining whether a lease is a cash lease or a share lease with respect to combination leases; and change the date by which all landowners, tenants, and sharecroppers failing to reach an agreement regarding the division of contract payments for a fiscal year must execute a contract to be eligible to receive the contract payment for that fiscal year.

DATES: *Effective Date:* October 23, 1997. Comments on this rule must be received on or before November 24, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Scotty M. Abbott, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone 202–720–5422, Internet address: Sabbott@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Section 161(d) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7281) indicates that the Secretary is to issue regulations without respect to the notice and comment provisions of 5 U.S.C. 553 and other statutory and regulatory requirements. However, the Commodity Credit Corporation is requesting comments on the amendments to the regulations. Accordingly, this interim final rule is effective upon publication in the **Federal Register**, with 30 days for the submission of comments.

Environmental Evaluation

An Environmental Evaluation with respect to the proposed rule has been completed. It has been determined that this action will not have significant adverse effects on environmental factors such as wildlife habitat, water quality, air quality, land use, or appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1412 set forth in this rule were previously approved under OMB Control Number 0560–0025. An information collection notice was published in the **Federal Register** (62 FR 27216) on May 19, 1997. No comments were received regarding this notice. A revised information collection package has been submitted to OMB.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of Changes

This rule amends the production flexibility contract regulations as follows:

Section 1412.201 Production flexibility contract.

This rule adds a final date for producers to designate payment shares and provide supporting documentation to be eligible to earn contract payments in a given fiscal year when payment shares have not been designated in such fiscal year. All producers sharing in the contract payment on a farm, whose payment shares have not been designated for such fiscal year must sign a new contract designating payment shares, and provide supporting documentation no later than August 1 of such fiscal year to be eligible to earn a contract payment in such fiscal year.

Section 1412.207 Succession-in-interest to a production flexibility contract.

This rule changes the dates a producer or owner must inform the county committee of changes in interest. A producer or owner must inform the county committee of changes in interest by August 1 of the fiscal year in which the change is made if producers on the contract remain the same but payment shares change; or no later than August 1 of such fiscal year, if a new producer is being added to the contract.

Section 1412.302 Contract payment provisions.

This rule adds a final date to request advance payments for fiscal year 1998, and each subsequent fiscal year. To receive the advance payment for fiscal year 1998, and each subsequent fiscal year, all producers sharing in the contract payment on the farm must, no later than 15 days prior to the final date to issue the advance payment:

(1) Sign the contract designating payment shares and provide supporting documentation, if applicable; and

(2) Request the advance payment.

Section 1412.303 Sharing of contract payments.

This rule clarifies that a lease is a cash lease, if the lessor receives only a guaranteed sum certain cash payment, or fixed quantity of the crop. This rule also changes provisions with respect to combination leases. Combination leases are leases that contain provisions for both a guaranteed amount such as a fixed dollar amount, or quantity and a share of a crop or crop proceeds. Combination leases include those leases that provide for the greater of a guaranteed amount, or share of the crop or crop proceeds. The amendment provides that all combination leases shall be considered share leases for fiscal year 1998, and later fiscal years.

Section 1412.304 Provisions relating to tenants and sharecroppers.

This rule changes the date by which all landowners, tenants and sharecroppers failing to reach an agreement regarding the division of contract payments for a fiscal year, must execute a contract to be eligible to receive the contract payment for such fiscal year. If the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment, have executed a contract no later than August 1 of that fiscal year, and subsequently agree to the division of contract payment.

List of Subjects in 7 CFR Part 1412

Contract acreage, Contract payments, Production flexibility contract, Succession-in-interest.

Accordingly, 7 CFR part 1412 is amended as follows:

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 7201 *et seq.*; and 15 U.S.C. 714b and 714c.

2. Section 1412.201 is amended by adding paragraph (c) to read as follows:

§ 1412.201 Production flexibility contract.

* * * * *

(c) All producers sharing in the contract payments on a farm whose payment shares have not been desighated for a fiscal year, must sign the contract designating payment shares and provide supporting documentation as specified in parts 1400, 1405, and 12 of this title, no later than August 1 of the fiscal year to be eligible to earn a contract payment in that fiscal year. If all producers have not signed the contract by this deadline; no producers on the contract will be eligible for a payment for that farm for that fiscal year.

3. Section 1412.207 paragraph (d) is revised to read as follows:

§ 1412.207 Succession-in-interest to a production flexibility contract.

* * * * *

(d) A producer or owner must inform the county committee of changes in interest not later than:

(1) August 1 of the fiscal year in which the change occurs, if producers on the contract remain the same, but payment shares change; or

(2) August 1 of the fiscal year in which the change occurs , if a new producer is being added to the contract.

* * * * *

4. Section 1412.302 paragraph (b) is revised to read as follows:

§ 1412.302 Contract payment provisions.

* * * * *

(b) At the option of the producer, for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be paid on December 15 or January 15, as requested by the producer. To receive the advance payment the producers on the farm must be in compliance with all requirements of the contract at the time of the advance payment. For fiscal year 1998 and each subsequent fiscal year, all producers sharing in the contract payment on the farm must, no later than 15 days prior to the final date to issue the advance payment sign the contract designating payment shares and provide supporting documentation as specified in parts 1400, 1405, and 12 of this title, if applicable; and request the advance payment. If all producers on the farm have not signed the contract designating payment shares, according to this paragraph, then no producers will be eligible for an advance payment for that farm for that fiscal year.

* * * * *

5. Section 1412.303 is amended by removing paragraph (a)(6) and revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 1412.303 Sharing of contract payments.

(a) * * *

(2) A lease will be considered a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

* * * * *

(4) A lease shall be considered a share lease if the lease provides for both a guaranteed amount such as a fixed dollar amount or quantity and a share of a crop or crop proceeds, including leases which provide for the greater of a guaranteed amount or share of the crop or crop proceeds.

* * * * *

6. Section 1412.304 paragraph (b) is revised to read as follows:

§ 1412.304 Provisions relating to tenants and sharecropper.

* * * * *

(b) Notwithstanding the provisions set forth at § 1412.302(c), if the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment, have executed a contract not later than August 1 of the applicable fiscal year and subsequently agree to the division of contract payment.

Signed at Washington, DC, on October 15, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–28009 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[EOIR No. 119 I; A.G. ORDER No. 2120–97]

RIN 1125–AA20

Executive Office for Immigration Review; Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the date by which aliens must file and pay for their applications for adjustment of status pursuant to section 245(i) of the Immigration and Nationality act. Such applications are adjudicated by the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Courts, or the Immigration and Naturalization Service. This rule also clarifies the procedure for paying for such adjustment applications when filed in conjunction with motions to reopen or reconsider.

DATES: *Effective Date:* This rule is effective October 23, 1997.

Comment Date: Written comments must be received on or before December 22, 1997.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: On August 26, 1994, Congress enacted the Department of Commerce, Justice, State, and the Judiciary and Related agencies Appropriations Act of 1995, Pub. L. 103–317. Section 506(b) of this law added a new section 245(i) to the Immigration and Nationality Act (the Act) which allows certain persons already in the United States to adjust status, despite the provisions of section 245 (a) and (c) of the Act, upon payment of a fee in addition to the base filing fee for an adjustment of status application.

On July 23, 1997, the Immigration and Naturalization Service (Service) published an interim rule with request for comments (62 FR 39417) concerning adjustment of status applications filed pursuant to section 245(i) of the Act. The supplementary information to the interim rule reiterated that the provisions of section 245(i) apply only to applications filed on or after October 1, 1994, and before October 1, 1997. *See* section 506(c) of Pub. L. 103–317. However, timely filed applications may still be adjudicated after September 30, 1997. On September 30, 1997, the Executive Office for Immigration Review published a similar rule (62 FR 50999) that enabled the Executive Office for Immigration Review to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

This program was due to terminate on October 1, 1997. However, on September 30, 1997, Congress extended the program until October 23, 1997. This interim rule reflects that applications filed subsequent to October 1, 1994, and prior to October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i) of the Act, will be adjudicated to completion by an officer of the service or EOIR.

This interim rule makes it clear that the Service and EOIR may consider a motion to reopen or reconsider an application for adjustment of status on the basis of section 245(i) of the Act if the applicant submitted a copy of the application for adjustment of status, a copy of Supplement A to Form I–485, and any other required documentation on or after October 1, 1994, and before October 23, 1997, or any other such date as Congress may determine in an extension of section 245(i) of the Act. However, in order to receive the benefit of a motion to reopen or reconsider that has been granted, the applicant must have remitted to the Immigration and Naturalization Service any additional sum required by section 245(i) (the additional sum is currently $1,000) before October 23, 1997, or any other such date as Congress may determine in an extension of this provision. This procedure is different from the procedures previously in effect for filing motions to reopen or reconsider with EOIR and which continue to apply to all other motions filed with EOIR. Those individuals who have properly filed motions to reopen or reconsider in order to apply for adjustment of status under section 245(i) but who have not yet paid the required fee, or those individuals whose motions have been granted in the past but who have not yet paid the required fee, must now pay that fee with the Immigration and Naturalization Service before October 23, 1997 or any other such date as Congress may determine in an extension of this provision.

The implementation of this rule as an interim rule, with immediate effect, and with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553b (B) and (d)(3). Immediate implementation of this rule will ensure that all applicants for adjustment of status under section 245(i) are aware of the extended application period and the revised procedures for paying the application fee when submitting a motion to reopen or reconsider.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only those aliens who are applying to adjust their status under section 245(i) of the Immigration and Nationality Act. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988, Civil Justice Reform

The rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1255; 8 CFR part 2.

2. In § 245.10, paragraphs (c), (d), and (f) are revised to read as set forth below:

3. In § 245.10, paragraph (e) is amended in the last sentence by removing the reference to "October 1, 1997" and replacing it with "October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i)".

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

* * * * *

(c) *Application period.* The Service or the Executive Office for Immigration Review may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i). If an alien attempts to file an adjustment of status application under the provisions of section 245(i) outside

of this time period, the Service will accept the application and base filing fee, as set forth in § 103.7(b)(1) of this chapter, return the additional sum of $1,000 to the alien, and either the Service or the Executive Office for Immigration Review will adjudicate the application pursuant to section 245(a) of the Act. If the alien, in such a case, is not eligible for adjustment of status, either the Service will issue a written notice advising the alien of the denial of the application for adjustment of status, or the Executive Office for Immigration Review will deny the application for adjustment of status.

(d) *Adjustment application filed on or after October 1, 1994, dated before October 23, 1997 or any other such date as Congress may determine in an extension of this provision, without Supplement A to Form I–485 and additional sum.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed in accordance with § 103.2 of this chapter on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i) of the Act, in order to request consideration under the provisions of section 245(i), if it appears that the alien is not otherwise ineligible for adjustment of status. If the application for adjustment of status is pending before the Service, the Service shall notify the applicant in writing of the Service's intent to deny the adjustment of status application, and any other requests for benefits that derive from the adjustment application, unless Supplement A to Form I–485 and any required additional sum is filed within 30 days of the date of the notice. If the application for adjustment of status is pending before the Executive Office for Immigration Review, the Executive Office for Immigration Review will deny the application and permit the applicant to file a motion to reopen in accordance with §§ 3.2(c) and 3.23 of this chapter along with proof of payment to the Immigration and Naturalization Service of the additional sum within 30 days of the denial.

* * * * *

(f) *Completion of processing of pending applications.* (1) An application for adjustment of status filed on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i) of the Act, shall be adjudicated to completion by an officer of the Service or by the Executive Office for Immigration Review, regardless of whether the final decision is made after the termination of this program. The provisions of paragraph (d) of this section regarding amended applications shall apply to all such applications. The Service or the Executive Office for Immigration Review may consider a motion to open or reconsider an application for adjustment of status on the basis of section 245(i) if the applicant submitted a copy of the application for adjustment of status, a copy of Supplement A to Form I–485, and any other required documentation on or after October 1, 1994, and before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i). However, in order to receive the benefit of a motion to reopen or reconsider that has been granted, the applicant must have remitted to the Immigration and Naturalization Service before October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i), any additional sum required by section 245(i). Even if a motion to reopen or reconsider is granted, failure to pay the additional sum to the Immigration and Naturalization Service before October 23, 1997 or any other such date as Congress may determine in an extension of 245(i) will result in the ultimate denial of the application for adjustment of status.

(2) Any application for adjustment of status submitted pursuant to section 245(i) and considered in deportation or removal proceedings must be filed between October 1, 1994, and October 23, 1997 or any other such date as Congress may determine in an extension of section 245(i).

* * * * *

Dated: October 16, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–28147 Filed 10–20–97; 4:16 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–80–AD; Amendment 39–10174; AD 97–22–03]

RIN 2120–AA64

Airworthiness Directives; Extra Flugzeugbau, GmbH. Model EA–300/200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Extra Flugzeugbau, GmbH. (Extra) Model EA–300/200 airplanes. This action requires installing a seat belt safety cover. A recent report of an Extra Model EA–300/200 airplane seat belt falling into the rear rudder pedal controls, interfering with the rudder pedals, and causing loss of directional control prompted this action. The action specified by this AD is intended to prevent a loss of directional control caused by seat belt interference with the rear rudder pedal controls, which could cause loss of control of the airplane.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–80–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Extra Flugzeugbau, GmbH, Schwarze Heide 21, 46569 Hunxe, Germany; telephone 49–2858–9137–0; facsimile 49–2858–9137–30. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–80–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Project Officer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–3962; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition could exist on Extra Model EA–300/200 airplanes. The LBA advises that the pilot's seat belt may fall into the rear rudder pedal controls, hampering rudder control and possibly causing loss of directional control. This occurred on one of the affected airplanes in Germany.

Relevant Service Information

Extra has issued Service Bulletin (SB) No. 300–1–97, Issue B, dated June 11, 1997, which specifies procedures for installing a seat belt safety cover. The LBA classified this service bulletin as mandatory and issued AD No. 97–203, dated July 3, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above including that received from the LBA, the FAA has determined that AD action should be taken in order to prevent loss of directional control caused by seat belt interference with the rear rudder pedal controls, which could cause possible loss of control of the airplane.

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Extra Model EA–300/200 airplanes of the same type design that are registered for operation in the United States, this AD requires installing a seat belt safety cover (Extra part number (P/N) 77205.1 and P/N 77205.2 or FAA-approved equivalent part). This action is to be done in accordance with the instructions in Extra SB No. 300–1–97, Issue B, dated June 11, 1997.

Determination of the Effective Date of the AD

Since a situation exists (loss of directional control) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–80–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–03 Extra Flugzeugbau GMBH: Amendment 39–10174; Docket No. 97–CE–80–AD.

Applicability: Model EA–300/200 airplanes (serial numbers 01 through 15), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 5 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of directional control caused by seat belt interference with the rear rudder pedal controls, accomplish the following:

(a) Install a seat belt safety cover (Extra part number 77205.1 and 77205.2 or FAA-approved equivalent part) in accordance with the INSTRUCTIONS in Extra Flugzeugbau GmbH. Service Bulletin (SB) No. 300–1–97, Issue B, dated June 11, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished provided the airplane is flown single seated with the front seat belts properly stowed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service,

1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The installation required by this AD shall be done in accordance with Extra Flugzeugbau, GmbH. EA–300 Service Bulletin No. 300–1–97, Issue B, dated June 11, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Flugzeugbau, GmbH., Schwarze Heide 21, 46569 Hünxe, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10174) becomes effective on November 24, 1997.

Issued in Kansas City, Missouri, on October 16, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27933 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–CE–18–AD; Amendment 39–10172; AD 84–23–06 R1]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. Models BN–2, BN–2A, BN–2B, BN–2T, and BN–2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises airworthiness directive (AD) 84–23–06, which currently requires repetitively inspecting the upper mounting brackets, bolts, and bushings on wing mounted engines for cracks, wear, and insufficient fit on certain Pilatus Britten-Norman Ltd. (Pilatus) Models BN–2, BN–2A, BN–2B, BN–2T, and BN–2A MK. 111 series airplanes, and replacing any cracked, worn, or ill-fitting part. This action retains the same action required in AD 84–23–06, except the action is only applicable to the BN–2A MK. 111 series airplanes. This action is the result of a terminating modification, now available to the Pilatus Models BN–2, BN–2A, BN–2B, BN–2T airplanes, which removes them from the applicability of AD 84–23–06. The actions specified by this AD are intended to prevent failure of the upper mounting brackets on wing mounted engines, which could possibly cause structural failure of the airplane.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–19–83–872511; facsimile 44–19–83–873246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 84–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus BN–2, BN–2A, BN–2B, BN–2T, and BN–2A MK. 111 series was published in the **Federal Register** on March 10, 1997 (62 FR 10756). The proposed AD would revise AD 84–23–06 by deleting the Pilatus BN–2, BN–2A, BN–2B, BN–2T series airplanes from the AD, and by retaining the following for the Pilatus BN–2A MK. 111 series airplanes:

(1) Visually inspecting the upper engine mounting bracket lugs for cracks extending radially from the bolt holes in the doubler;

(2) Inspecting for elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion;

(3) Inspecting the bolts for correct bearing length, and loose and fretted bushings; and

(4) Correcting any discrepancies found.

Accomplishment of this action will be in accordance with Pilatus Britten-Norman Ltd. Service Bulletin (SB) BN–2/SB.61, Issue 5, dated December 9, 1981, which is also referenced in the Notice of Proposed Rulemaking (NPRM) Docket 96–CE–17–AD for a terminating action applicable to the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action and the average labor rate is approximately $60 an hour. There are no parts required for the initial inspection. Based on these figures, the total cost impact for the initial inspection of this AD on U.S. operators is estimated to be $1,080 or $120 per airplane. This figure is based on the initial inspection cost and does not include workhours for repetitive inspections because the FAA does not have the information to determine the number of repetitive inspections that would be incurred over the life of the airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 84–23–06, Amendment 39–4942, (49 FR 43621, October 31, 1984), and adding a new AD to read as follows:

84–23–06 R1. Pilatus Britten-Norman LTD.: Amendment 39–10172; Docket No. 84–CE–18–AD; Revises AD 84–23–06, Amendment 39–4942.

Applicability: BN–2A MK. 111 Series Airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

Compliance: Required initially upon the accumulation of 500 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 84–23–06), and thereafter at intervals not to exceed 500 hours TIS.

To prevent failure of the upper mounting brackets on both wing mounted engines, which could possibly cause structural failure of the airplane, accomplish the following:

(a) Visually inspect the following areas in accordance with paragraphs 1 through 6 of the "Inspection" section of the Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981:

(1) The upper engine to wing mounting brackets for:

(i) Minimum lug bolt hole-to-edge distance, elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion;

(ii) The bolts for correct bearing length; and

(iii) Loose and fretted bushings.

(2) Prior to further flight, correct defects in accordance with the following:

(i) If the lug bolt hole-to-edge distance is less than the specified minimum (0.2625-inches), correct in accordance with paragraph 3 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(ii) If the bolt holes are elongated, or if any bushings are loose or fretted, modify and correct in accordance with paragraph 4 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iii) If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective) in accordance with paragraph 1 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iv) If any lug is distorted or delaminated, replace the deficient part in accordance with paragraphs 1 and 2 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(v) If any inspected part is corroded or flaking, replace the part in accordance paragraph 1 with the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981; and

(vi) If any of the bolts are of incorrect length or damaged, replace with new units of the correct length in accordance with paragraphs 1 and 2 of the "Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(b) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow for accomplishing these inspections concurrent with the other scheduled maintenance of the airplane.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspections, modifications, and replacements, required by this AD shall be done in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.61, Issue: 5, Date: December 9, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–10172) becomes effective on November 24, 1997.

Issued in Kansas City, Missouri, on October 16, 1997.

Mary Ellen A. Schutt,

Acting Manger, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27931 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–23]

Amendment of Class E Airspace; Flagstaff, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Flagstaff, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 has made this action necessary. The intended effect of this action is to provide adequate additional controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Flagstaff Pulliam Airport, Flagstaff, AZ.

EFFECTIVE DATE: 0901 UTC January 01, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace areas at Flagstaff, AZ (62 FR 42955). The development of a GPS SIAP at Flagstaff Pulliam Airport has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the GPS RWY 3 SIAP to Flagstaff Pulliam Airport, Flagstaff, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations are published in paragraphs 6004 and 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace areas at Flagstaff, AZ. The development of a GPS SIAP at Flagstaff Pulliam Airport has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the GPS RWY 3 SIAP at Flagstaff Pulliam Airport, Flagstaff, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AWP AZ E4 Flagstaff, AZ [Revised]

Flagstaff Pulliam Airport, AZ.
(Lat. 35°08'18" N, long. 111°40'16" W)
Flagstaff VOR/DME
(Lat. 35°08'50" N, long. 111°40'27" W)

That airspace extending upward from the surface beginning where a line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 057° radial intercepts the 6.1-mile radius of the Flagstaff Pulliam Airport, thence clockwise to intercept a line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 218° radial, thence northeastbound on a line 1.8 miles west of and parallel to the Flagstaff VOR/DME 218° radial to intercept the 3-mile arc of the Flagstaff Pulliam Airport clockwise to intercept the line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 057° radial and thence to the point of beginning and within 1.8 miles each side of the Flagstaff VOR/DME 127° radial, extending from the 6.1-mile radius to 8.6 miles southeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Flagstaff, AZ [Revised]

Flagstaff Pulliam Airport, AZ
(Lat. 35°08'18" N, long. 111°40'16" W)
Flagstaff VOR/DME
(Lat. 35°08'50" N, long. 111°40'27" W)

That airspace extending upward from 700 feet above the surface within a 3.6-mile radius of the Flagstaff Pulliam Airport and within a 10-mile radius of the Flagstaff VOR beginning at a line 1.8-miles northwest of parallel to the Flagstaff VOR 043° radial extending clockwise to a point beginning at lat. 34°59'23" N, long. 111°36'35" W; to lat. 34°44'00" N, long. 111°50'00" W; to lat. 34°45'00" N, long. 112°01'00" W; to lat. 34°54'00" N, long. 112°05'00" W; to lat. 35°08'00" N, long. 111°52'00" W, thence eastbound along the Flagstaff VOR 265° radial to intercept the 3.6-mile radius of the Flagstaff Pulliam Airport, thence clockwise to the point of beginning. That airspace extending upward from 1,200 feet above the surface within 8.3 miles each side of the Flagstaff VOR 127° and 307° radials, extending from 7 miles northwest to 16.5 miles southeast of the Flagstaff VOR and that airspace bounded by a line beginning at lat. 35°13'32" N, long. 111°04'31" W; to lat. 35°17'17" N, long. 111°02'35" W; to lat. 35°22'00" N, long. 111°16'43" W; to lat. 35°24'00" N, long. 111°28'16" W; to lat. 35°18'00" N, long. 111°25'33" W, thence clockwise via a 10-mile radius of the Flagstaff VOR to lat. 35°16'34" N, long. 111°32'42" W; to lat. 35°19'58" N, long. 111°24'10" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 35°02'56" N, long. 111°20'38" W; to lat. 35°02'00" N, long. 111°15'00" W; to lat. 35°00'56" N, long. 111°22'28" W, thence to the point of beginning, excluding the Sedona, AZ, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on October 16, 1997.

Thomas L. Parks,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 97–28103 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Selegiline Hydrochloride Tablets; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 27, 1997 (62 FR 34631). The document amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Deprenyl Animal Health, Inc. The NADA provides for oral use of selegiline hydrochloride tables for dogs for the control of clinical signs associated with uncomplicated pituitary-dependent hyperadrenocorticism. The approved use in dogs was inadvertently omitted from the document. This document corrects that error.

EFFECTIVE DATE: June 27, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

In FR Doc. 97–16791, appearing on page 34631 in the **Federal Register** of Friday, June 27, 1997, the following corrections are made:

1. On page 34631, in the first column, in the heading "*Tablet*" is corrected to read "*Tablets*".

§ 520.2098 [Corrected]

2. On page 34632, in the first column, in § 520.2098 *Selegiline hydrochloride tablets*, in paragraph (d), the heading "(d) *Conditions of use—*" is corrected to read "(d) *Conditions of use—Dogs—*"; and in paragraph (d)(2), in the 4th line, "hyperadrenocorticism." is corrected to read "hyperadrenocorticism in dogs."

Dated: September 8, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–28017 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

New Animal Drugs and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) and three abbreviated new animal drug applications (ANADA's) from Wade-Jones Co., Inc., and its manufacturing subsidiary Arkansas Micro Specialties, Inc., to Alpharma Inc. The agency is also correcting a final rule that appeared in the **Federal Register** of June 20, 1996 (61 FR 31398).

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Wade-Jones Co., Inc., 409 North Bloomington, Lowell, AR 72745, and its manufacturing subsidiary Arkansas Micro Specialties, Inc., P.O. Box 308, Highway 71 North, Lowell, AR 72745, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's and ANADA's to Alpharma Inc., One Executive Dr., Fort Lee, NJ 07024.

NADA/ANADA	Ingredient
065–140	Tetracycline Hcl Soluble Powder
140–443	Hygromycin B Type A Medicated Articles
140–578	Tetracycline Hcl Soluble Powder
200–122	Penicillin G Potassium Soluble Powder
200–130	Neomycin Sulfate Soluble Powder
200–233	Lincomycin Hcl Soluble Powder

The agency is amending parts 510, 520, and 558 (21 CFR parts 510, 520 and 558) to reflect the change of sponsor. The agency is amending § 510.600(c)(1) and (c)(2) to remove the sponsor name for Wade-Jones Co., Inc., and Arkansas Micro Specialties, Inc., because the firm no longer is the holder of any approved NADA's.

The agency is also correcting a final rule that appeared in the **Federal Register** of June 20, 1996 (61 FR 31398). This document amended the animal drug regulations to reflect approval of a supplemental NADA filed by The Upjohn Co., and two supplemental ANADA's, one filed by Pfizer, Inc., and the other filed by Rhone Merieux, Inc, respectively. In § 520.1484(c)(3), the drug labeler code (047864) for Wade-Jones Co., Inc., was inadvertently omitted from the document. After that document published, Wade-Jones Co., Inc., transferred ownership of and all rights and interest to Alpharma Inc. Accordingly, this document adds a drug labeler code for Alpharma Inc. and, thereby, corrects the error in the final rule (61 FR 31398).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Arkansas Micro Specialties, Inc."and "Wade-Jones" and in the table in paragraph (c)(2) by removing the entries "047863" and "047864".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1484 [Amended]

4. Section 520.1484 *Neomycin sulfate soluble powder* is amended in paragraph (b) by removing "047864" and adding in its place "046573" and in paragraph (c)(3) by revising the words in the last sentence "for sponsors 000009, 000069, 050604" to read as "for sponsors 000009, 000069, 046573, 050604".

§ 520.1696b [Amended]

5. Section 520.1696b *Penicillin G potassium in drinking water* is amended in paragraph (b) by removing "047864, and" and adding in its place "046573,".

§ 520.2345d [Amended]

6. Section 520.2345d *Tetracycline hydrochloride soluble powder* is amended in paragraphs (a)(1), (d)(1)(iii), and (d)(2)(iii) by removing "047864", and adding in its place "046573" and in paragraph (a)(4) by removing "047863" and adding in its place "046573".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.274 [Amended]

8. Section 558.274 *Hygromycin B* is amended in paragraph (a)(8) by removing "047863" and in the table in paragraphs (c)(1)(i) and (c)(1)(ii), under the "sponsor" column, by removing "047863" and numerically adding "046573".

Dated: September 9, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–28011 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 524, 556, and 558

Animal Drugs, Feeds, and Related Products; Famphur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to specify the tolerance for residues of famphur in cattle products. The residue tolerances were originally issued in FDA's regulations under tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities, and subsequently moved to the Environmental Protection Agency's (EPA's) regulations for residues of pesticides. Subsequent FDA new animal drug approvals with the same tolerances, instead of stating the tolerances, cross-referenced EPA's regulations. This action is being taken because EPA has removed the tolerance from its regulations.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: FDA has several approved new animal drug applications (NADA's) providing for use of various famphur products. Three NADA's sponsored by Mallinckrodt Veterinary, Inc., Mundelein, IL 60060, are:

NADA 34–266: Famix Famphur Type A article (for Type C cattle feed).

NADA 34–697: Warbex Famphur Cattle Pour-On/Bo-Anna Famphur Cattle Insecticide.

NADA 139–858: Tramisol-X-Tra (Famphur/Levamisole) Cattle Anthelmintic and Ectoparasite Paste.

One NADA sponsored by PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044, is:

NADA 43–215: Purina Grub-Kill (Famphur).

Tolerances for residues of famphur including its oxygen analog in or on the raw agricultural commodities meat, fat, and meat byproducts of cattle had been established under 21 CFR 120.233 (33 FR 2935, February 14, 1968). Those provisions were subsequently transferred to EPA and redesignated as 40 CFR 180.233 (36 FR 424, January 13, 1971, interim rule; and 36 FR 22369 at 22564, November 25, 1971, final rule) at 0.1 part per million. FDA, in its approvals of famphur as a new animal drug, established the same tolerance for residues of the drug. Instead of specifying the tolerance in the regulations reflecting the new animal drug approvals, the regulations cross-referenced to 40 CFR 180.233. EPA has revoked the tolerance for residues of famphur in or on certain raw agricultural commodities because the pesticide no longer was covered by EPA's food use registrations (59 FR 17754, April 14, 1994, proposed rule; and 60 FR 49798, September 27, 1995, final rule). Because EPA has removed 40 CFR 180.233, FDA is amending its regulations in 21 CFR 556.273 to establish the tolerances for residues of famphur including its oxygen analog.

In addition, the tolerance citations in 21 CFR 520.1242g(e), 524.900(e), and 558.254(c) are amended to replace the cross-reference to 40 CFR 180.233 with a reference to the residue tolerance specified in 21 CFR part 556.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 556

Animal drugs, Food, Residues.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 524, 556, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1242g [Amended]

2. Section 520.1242g *Levamisole resinate and famphur paste* is amended in paragraph (e) by removing "40 CFR 180.233 (under the chemical name)" and adding in its place "§ 556.273 of this chapter."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.900 [Amended]

4. Section 524.900 *Famphur* is amended in paragraph (e) by removing "40 CFR 180.233 under the chemical name" and adding in its place "§ 556.273 of this chapter."

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

5. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

6. Section 556.273 is added to subpart B to read as follows:

§ 556.273 Famphur.

Tolerances are established for residues of famphur including its oxygen analog in or on meat, fat, or meat byproducts of cattle at 0.1 part per million.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.254 [Amended]

8. Section 558.254 *Famphur* is amended in paragraph (c) by removing "40 CFR 180.233" and adding in its place "§ 556.273 of this chapter."

Dated: September 9, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–28016 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Miconazole Nitrate Lotion and Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of miconazole nitrate lotion and spray as topical antifungal agents to treat certain infections of dogs and cats.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767, filed ANADA 200–196, which provides for use of miconazole nitrate lotion 1 percent and miconazole nitrate spray 1 percent as antifungal agents for topical treatment of infections in dogs and cats caused by *Microsporum canis, M. gypseum*, and *Trichophyton mentogrophytes*.

Med-Pharmex's ANADA 200–196 is approved as a generic copy of Mallinckrodt Veterinary's Conofite® miconazole nitrate 1 percent lotion and spray, NADA 95–184. ANADA 200–196 is approved as of August 4, 1997, and the regulations are amended in 21 CFR 524.1443(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1443 is amended by revising paragraph (b) to read as follows:

§ 524.1443 Miconazole nitrate cream; miconazole nitrate lotion; miconazole nitrate spray.

* * * * *

(b) *Sponsor.* See No. 011716 in § 510.600(c) of this chapter for use of cream, lotion, and spray; see No. 051259 in § 510.600(c) of this chapter for use of lotion and spray.

* * * * *

Dated: September 10, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–28014 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a hybrid abbreviated new animal drug application (ANADA) filed by ALPHARMA, Inc. The hybrid ANADA provides for the use of bacitracin zinc Type A medicated articles to make Type C medicated feeds for cattle, broiler chickens, turkeys, pheasants, growing quail, and growing and finishing swine, for increased rate of weight gain and improved feed efficiency, and for laying chickens for improved feed efficiency and increased egg production.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: ALPHARMA, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of hybrid ANADA 200–223 that provides for use of bacitracin zinc Type A medicated articles (bacitracin zinc equivalent to 50 grams (g) of bacitracin per pound) to make Type C medicated feeds for cattle when fed at 35 to 70 milligrams per head per day, for growing broiler chickens, turkeys, and pheasants fed at 4 to 50 g per ton (g/t), for growing quail up to 5 weeks of age fed at 5 to 20 g/t, for growing and finishing swine fed at 10 to 50 g/t, for increased rate of weight gain and improved feed efficiency, and for laying chickens fed at 10 to 25 g/t for improved

feed efficiency and increased egg production.

The data submitted in support of this hybrid ANADA satisfy the requirements of section 512(b)(1) and (b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(1) and (b)(2)) and the regulations in 21 CFR part 514. The hybrid ANADA has been defined in the Center's Seventh Generic Animal Drug Policy letter dated March 20, 1991. The hybrid ANADA relies on the approval of a listed (pioneer) animal drug and contains additional data needed to support the change in the generic product. The hybrid ANADA is thus relying on the approval of the listed animal drug to the extent that such reliance is allowed under section 512(n) of the act, to establish the safety and effectiveness of the underlying animal drug. An application that relies in part on the approval of a listed animal drug for this purpose is considered an application described in section 512(b)(2) of the act.

ALPHARMA, Inc.'s, hybrid ANADA 200–223 for bacitracin zinc is approved as a generic copy of Hoffmann-LaRoche's NADA 46–920. The hybrid ANADA is approved as of August 20, 1997, and the regulations are amended in 21 CFR 558.78 by revising paragraph (a)(1) to indicate additional approvals and in paragraph (d)(1) by removing the footnote to the table to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.78 is amended by revising paragraph (a), and in paragraph (d)(1) by removing the footnote to the table to read as follows:

§ 558.78 Bacitracin zinc.

(a) *Approvals.* To sponsors listed in § 510.600(c) of this chapter for use as in paragraph (d) of this section as follows:

(1) To 046573: 50 grams per pound as in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), and (d)(2) of this section.

(2) To 000004: 10, 25, 40, and 50 grams per pound as in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(v), (d)(1)(vi), (d)(2), and (d)(3) of this section.

(3) To 000010: 5 and 50 grams per pound as in paragraph (d)(1)(i) of this section.

* * * * *

Dated: September 19, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–28015 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Governing Debt-Collection Procedures for Administrative Offset and Federal Income Tax Refund Offset

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97–365) amended the Federal Claims Collection Act of 1966 to authorize the federal government to employ various debt collection techniques commonly available to the private sector, including administrative offset and Federal income tax refund offset. In 1992 the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992 which requires federal agencies to participate in the Internal Revenue Service (IRS) income tax refund offset program for the collection of delinquent debts by offset from a federal income tax refund that may be due the delinquent debtor. This final rule establishes the procedures which the Board will follow in utilizing the debt collection procedures authorized by the above legislation.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365) amended the Federal Claims Collection Act of 1966 to authorize the Federal Government to employ various debt collection techniques commonly available to the private sector, including administrative offset and Federal income tax refund offset. In 1992 the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992 which requires federal agencies to participate in the Internal Revenue Service (IRS) income tax refund offset program in which federal agencies refer delinquent debt to the IRS for collection by offset from a federal income tax refund that may be due the delinquent debtor. On July 24, 1996, the National Labor Relations Board (Board) implemented interim regulations, set forth as new Subparts U (administrative offset), and V (Federal income tax refund offset), to part 102 of the Board's Rules and Regulations, Series 8, (published at 61 FR 38371 and 61 FR 38373, respectively), to enable the Board to utilize these debt collection procedures that have proven to be cost effective mechanisms for collection of delinquent debt.

These final rules establish the current interim rules as the means by which the Board will pursue debt collection permitted under the above statutes, with one minor change involving the clarification of a phrase appearing in § 102.160 of Subpart U, as discussed below.

When the Board published the interim rules on July 24, 1996, it determined that, because these rules merely implement a definite statutory scheme and its concomitant regulations, and relate to Agency procedure and practice, public comment on the rules was unnecessary. Nevertheless, the Board undertook to consider any public comments submitted to it on or before September 29, 1996, before issuing any final rules. The Board did receive comments from one organization which raised questions falling broadly within two categories: (1) Whether the regulations were needed, and (2) whether the application of the regulations was appropriate. We consider these comments seriatim.

Questions Regarding the Need for the Regulations

The organization questioned why these procedures are necessary and being implemented now, and why they single out federal contractors. In brief, the regulations regarding administrative offset procedures implement a statutory scheme that specifically addresses collections of delinquent debt from federal contractors, a decision made in the enabling legislation, not by the Board in these regulations. Moreover, while these procedures doubtless could have been implemented earlier, that is no reason not to implement them now that the Board has become aware of their utility. As Justice Frankfurter once observed in a different context: "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee* v. *Union Planters Bank*, 335 U.S. 595, 600 (1949) (dissenting opinion).

The organization questioned whether the Board would be required to follow the provisions of Executive Order 12866 before implementing these regulations, specifically, the principles of regulation set forth in Section 1(b) of that Executive Order. However, independent regulatory agencies are specifically excluded from coverage of Section 1. Further, even assuming the NLRB is covered by Section 1, these regulations are consistent with the regulatory principles set forth in that section since they implement a statutory scheme already found desirable by Congress.

The organization inquired whether the Board had given any consideration to how the new regulations will benefit the Board. As noted in the Supplementary Information section accompanying publication of the interim rules, 61 FR 38368, the Board is entitled to utilize these offset provisions because debts owed pursuant to Board orders are in fact debts owed to the United States, the Board being the public agent chosen by Congress to vindicate the public policies embodied in the National Labor Relations Act.

Finally, the organization expressed the opinion that, before these regulations could be put into effect, the Federal Acquisition Regulations and Defense Acquisition Regulations should be amended. However, amending these regulations is not something within the purview of the Board and, therefore, no reason not to proceed with appropriate debt collection methods that have been entrusted to the Board.

Questions Regarding the Application of the Regulations

The organization notes that the regulations provide that the Agency "may give due consideration to the debtor's financial condition * * *," § 102.160(c), and questions whether this consideration should be mandated. Specifically, the organization proposes that, at a minimum, the regulations mandate consideration of a debtor's financial condition, mandate that the negative impact on the debtor be minimized, and require notification to the debtor to solicit information on its financial viability if offset should occur.

In fact, the regulations already provide that the Agency "shall send written notice to the debtor," § 102.161(b), and that this notice shall notify the debtor of the "opportunity to enter into a written agreement with the Agency to repay the debt." § 102.161(b)(7). Moreover, the "Agency shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the Agency * * *." § 102.163(a).

These mandatory provisions provide more than ample opportunity for the debtor to raise, and the Agency to consider, the debtor's financial condition, as well as the impact of any administrative offset, prior to initiating an administrative offset. Providing further mandates with respect to the Agency's obligation to consider the debtor's financial condition could mire the Agency in disputes with the debtor over whether a particular repayment plan is adequate, thereby risking nonfulfillment of the Agency's responsibility to vindicate the policies embodied in the National Labor Relations Act.

The organization questioned whether the regulations should address more specifically when administrative offset will be used. However, the head of the Agency already is required by 31 U.S.C. 3711 to attempt to collect delinquent claims, and our regulations specifically provide that "Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a)." § 102.160(d). Finally, a claim "will not be referred for tax refund offset where administrative offset potential is found to exist." § 102.173(c).

The organization argues that the regulations should specifically mandate consideration of the effect of administrative offset on any third-party contractors whose work depends on performance by the debtor. We are not aware of any requirement that the Agency take this factor into consideration. However, as a matter of sound practice, if such information is presented to the Board it will, as with any relevent information, be duly considered.

The organization objects to the provision in § 102.164(c) that allows the Agency to "effect an administrative offset * * * prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the Agency's ability to collect the debt." Specifically, the organization proposes that the rules should specify the circumstances in which this procedure is permitted and require identification of alternative sources of funds which should be pursued before due process procedures are suspended. We conclude that it would be impossible to enumerate all of the circumstances in which this procedure might be triggered. However, by way of example, it could be triggered if a debtor were winding down its business, was coming to the last payment on its last contract, and if the Agency did not prevent those funds from being disbursed, it might never be able to collect the debt. Even in such situations, however, the debtor is not without recourse. For, this is akin to seeking a protective order, a proceeding in which the debtor will have recourse to administrative or judicial review. Thus, although funds might be temporarily frozen, the debtor ultimately will receive full due process before the funds are finally taken.

Finally, the organization questioned whether the Regulatory Flexibility Act requires an impact analysis or a flexibility analysis. However, for the reasons set forth in the publication of the interim rules, and again below, we are persuaded that the Regulatory Flexibility Act does not apply here.

Notwithstanding all of the foregoing, the Board has determined that one minor change in the regulations is appropriate to clarify the meaning of a phrase appearing in § 102.160 of Subpart U. Thus, in § 102.160(c), the phrase "an available source of funds" is changed to read "another readily available source of funds." In all other respects, the final rules that the Board now publishes are the same as the interim rules presently outstanding.

Executive Order 12866

As noted above, the regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, these rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely set forth procedures to be followed by the Agency in attempting to collect outstanding debts.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely implement a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service, and the Treasury Department, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

To enable the Agency to collect delinquent debts by way of administrative offset and Federal income tax refund offset, the Board amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Subparts U and V to part 102 are revised to read as follows:

Subpart U—Debt-Collection Procedures by Administrative Offset

Sec.

102.156 Administrative offset; purpose and scope.
102.157 Definitions.
102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.
102.159 Exclusions.
102.160 Agency responsibilities.
102.161 Notification
102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.
102.163 Opportunity for repayment.
102.164 Review of the obligation.
102.165 Cost shifting.
102.166 Additional administrative collection action.
102.167 Prior provision of rights with respect to debt.

§ 102.156 Administrative offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed to implement the administrative offset procedures set forth in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716.

§ 102.157 Definitions.

(a) The term *administrative offset* means the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person.

(b) The term *debtor* is any person against whom the Board has a claim.

(c) The term *person* does not include any agency of the United States, or any state or local government.

(d) The terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

(e) A debt is considered *delinquent* if it has not been paid by the date specified in the Agency's initial demand letter (§ 102.161), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Agency.

§ 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.

Unless otherwise prohibited by law, the Agency may request that monies due and payable to a debtor by another Federal agency be administratively offset in order to collect debts owed the Agency by the debtor. In requesting an administrative offset, the Agency will provide the other Federal agency holding funds of the debtor with written certification stating:

(a) That the debtor owes the Board a debt (including the amount of debt); and

(b) That the Agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

§ 102.159 Exclusions.

(a) (1) The Agency is not authorized by the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) When a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

(2) No claim that has been outstanding for more than 10 years after the Board's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts until within 10 years of the initiation of the collection action. A determination of when the debt first accrued should be made according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415. Unless otherwise provided by contract or law, debts or payments owed the Board which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or Board regulations established pursuant to such other statutory authority.

(b) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 102.160 Agency responsibilities.

(a) The Agency shall provide appropriate written or other guidance to

Agency officials in carrying out this subpart, including the issuance of guidelines and instructions, which may be deemed appropriate. The Agency shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

(b) Before collecting a claim by means of administrative offset, the Agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Agency's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. The Agency shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether administrative offset will further and protect the best interests of the United States Government. In appropriate circumstances, the Agency may give due consideration to the debtor's financial condition, and it is not expected that administrative offset will be used in every available instance, particularly where there is another readily available source of funds. The Agency may also consider whether administrative offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a).

§ 102.161 Notification.

(a) The Agency shall send a written demand to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In the demand letter, the Agency shall provide the name of an Agency employee who can provide a full explanation of the claim. When the Agency deems it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions.

(b) In accordance with guidelines established by the Agency, the Agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the Board's claim;

(2) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand delivered);

(3) Of the Agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(4) That the Agency intends to collect, as appropriate, interest, penalties, administrative costs and attorneys fees;

(5) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy Agency records with respect to the claim and to dispute any information in the Agency's records concerning the claim;

(6) Of the debtor's right to administrative appeal or review within the Agency concerning the Agency's claim and how such review shall be obtained;

(7) Of the debtor's opportunity to enter into a written agreement with the Agency to repay the debt; and

(8) Of the date on which, or after which, an administrative offset will begin.

§ 102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.

Following receipt of the demand letter specified in § 102.161, and in conformity with Agency guidelines governing such requests, the debtor may request to examine and copy publicly available records pertaining to the debt, and may request a full explanation of the Agency's claim.

§ 102.163 Opportunity for repayment.

(a) The Agency shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the Agency and is in a written form signed by such debtor. The Agency may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) The Agency has discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of administrative offset.

§ 102.164 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the Agency of the determination concerning the existence or amount of the debt as set forth in the notice. In cases where the amount of the debt has been fully liquidated, the review is limited to ensuring that the liquidated amount is correctly represented in the notice.

(b) The debtor seeking review shall make the request in writing to the Agency, not more than 15 days from the date the demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the Agency's information relating to the debt is not accurate, timely, relevant or complete, the debtor shall provide information or documentation to support this allegation.

(c) The Agency may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the Agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Administrative offset effected prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by administrative offset, but later found not owed to the Agency, will be promptly refunded.

(d) Upon completion of the review, the Agency's reviewing official shall transmit to the debtor the Agency's decision. If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in information to the extent such information differs from that provided in the initial notification to the debtor under 102.161.

(e) Nothing in this subpart shall preclude the Agency from sua sponte reviewing the obligation of the debtor, including a reconsideration of the Agency's determination concerning the debt, and the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

§ 102.165 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for administrative offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.166 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the Agency from utilizing any other administrative or legal remedy which may be available.

§ 102.167 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided for under some other statutory or regulatory authority, the Agency is not required to

duplicate those efforts before effecting administrative offset.

Subpart V—Debt Collection Procedures by Federal Income Tax Refund Offset

102.168 Federal income tax refund offset; purpose and scope.
102.169 Definitions.
102.170 Agency referral to IRS for tax referral effect; Agency responsibilities.
102.171 Cost shifting.
102.172 Minimum referral amount.
102.173 Relation to other collection efforts.
102.174 Debtor notification.
102.175 Agency review of the obligation.
102.176 Prior provision of rights with respect to debt.

§ 102.168 Federal income tax refund offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed in order to implement the federal income tax refund offset procedures set forth in 26 U.S.C. 6402(d) of the Internal Revenue Code (Code), 31 U.S.C. 3720A, and 301.6402–6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.6402–6). This statute and the implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402–6 authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Agency by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he or she may otherwise be entitled.

§ 102.169 Definitions.

(a) *Tax refund offset* refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.

(b) *Past-due legally enforceable debt* is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency (unless reduced to judgment), and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.

(c) *Individual* refers to a taxpayer identified by a social security number (SSN).

(d) *Business entity* refers to an entity identified by an employer identification number (EIN).

(e) *Taxpayer mailing address* refers to the debtor's current mailing address as obtained from IRS.

(f) *Memorandum of understanding* refers to the agreement between the Agency and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

§ 102.170 Agency referral to IRS for tax referral effect; Agency responsibilities.

(a) As authorized and required by law, the Agency may refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer. By the date and in the manner prescribed by the IRS, the Agency may refer for tax refund offset past-due legally enforceable debts. Such referrals shall include the following information:

(1) Whether the debtor is an individual or a business entity;

(2) The name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;

(3) The amount of the debt;

(4) A designation that the Agency is referring the debt and (as appropriate) Agency account identifiers.

(b) The Agency will ensure the confidentiality of taxpayer information as required by IRS in its Tax Information Security Guidelines.

(c) As necessary, the Agency will submit updated information at the times and in the manner prescribed by IRS to reflect changes in the status of debts or debtors referred for tax refund offset.

(d) Amounts erroneously offset will be refunded by the Agency or IRS in accordance with the Memorandum of Understanding.

§ 102.171 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.172 Minimum referral amount.

The minimum amount of a debt otherwise eligible for Agency referral to the IRS is $25 for individual debtors and $100 for business debtors. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties, administrative cost charges, and attorney fees.

§ 102.173 Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy to be utilized consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the Agency's overall requirements for delinquent debt collection.

(b) As appropriate, debts of an individual debtor of $100 or more will be reported to a consumer or commercial credit reporting agency before referral for tax refund offset.

(c) Debts owed by individuals will be screened for administrative offset potential using the most current information reasonably available to the Agency, and will not be referred for tax refund offset where administrative offset potential is found to exist.

§ 102.174 Debtor notification.

(a) The Agency shall send appropriate written demand to the debtor in terms which inform the debtor of the consequences of failure to repay debts or claims owed the Board.

(b) Before the Agency refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:

(1) The debt is past-due;

(2) Unless the debt is repaid or a satisfactory repayment agreement is established within 60 days thereafter, the debt will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and

(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable, and the Agency will consider this evidence in a review of its determination that the debt is past due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Agency will make a reasonable attempt to notify the debtor by using the most recent address information available to the Agency or obtained from the IRS, unless written notification to the Agency is received from the debtor stating that notices from the Agency are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Agency, be incorporated into demand letters required by paragraph (a) of this section.

§ 102.175 Agency review of the obligation.

(a) The Agency official responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by § 102.174 and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to request a review of any unresolved dispute.

(b) The debtor will be granted 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the Agency official responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

§ 102.176 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, including administrative offset procedures set forth in Subpart U, the Agency is not required to duplicate those efforts before referring a debt for tax refund offset.

By Direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 97–28092 Filed 10–22–97; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 05–97–076]

RIN 2115–AA98

Delaware River Safety Zone and Anchorage Regulations

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers has begun dredging parts of the Delaware River including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the Mantua Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel *Essex* that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

EFFECTIVE DATES: Paragraph (b)(11) in 33 CFR 110.157 is effective from October 2, 1997 until 6 a.m. on December 20, 1997. Section 165.T05–076 is effective from October 2, 1997 until 6 a.m. on December 20, 1997.

FOR FURTHER INFORMATION CONTACT: LT S.A. Budka, Project Officer, U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA 19147–4395, Phone: (215) 271–4889.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b)(3) and 5 U.S.C. 553(d), a Notice of Proposed Rule Making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was informed by U.S. Army Corps of Engineers, Philadelphia District on September 26, 1997 that dredging operations would commence on October 2, 1997. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners from potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging was conducted in 1995 and 1996. This period of dredging began October 2, 1997 and is anticipated to end on December 20, 1997.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7, reducing available anchorage space by approximately one half. Vessels will continue to be allowed to anchor in available parts of Anchorage 7 during the dredging operations; however, permission to anchor must be obtained from the Captain of the Port, who will identify those parts of Anchorage 7 that are expected to be available.

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a moving safety zone around the dredging vessel *Essex*. The safety zone will ensure that mariners remain a safe distance from the dredging equipment that could potentially be dangerous.

Discussion of the Regulation

Section 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a temporary paragraph 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Marcus Hook Anchorage (Anchorage 7) must obtain permission from the Captain of the Port, Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first serve" basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek, because they are the closest anchorages to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent a vessel from swinging into the channel if necessary.

The Coast Guard is also establishing a moving safety zone within a 150 yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel *Essex*. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel are required to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation requires certain vessels to have at least one tug alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that are anchored in Anchorages 6 and 9. Vessels anchoring in Anchorage 7 are not required to have assist tugs alongside. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are typically not required to have tugs alongside. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside. The Captain of the Port, Philadelphia will direct anchoring of vessels so as not to significantly impede traffic flow in the vicinity of the dredging operations.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, the Coast Guard amends 33 CFR 110 and 33 CFR 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.157, a new temporary paragraph (b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) In addition to the requirements and restrictions of paragraph (b)(2), the provisions of this paragraph apply to the anchorages in paragraphs (a)(7), (a)(8), and (a)(10).

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours on advance of arrival. Permission to anchor will be granted on a "first-come, first-serve" basis. The Captain of the Port will allow only one vessel at a time to anchor in Anchorage 7 and will direct the vessel to a location in which the vessel may anchor. No vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section:

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, PA at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug(s) required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Definitions: Captain of the Port or COTP* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

(iv) *Effective Dates:* This paragraph is effective from October 2, 1997 until 6 a.m. on December 20, 1997.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. A new Section 165.T05–076 is added to read as follows:

§ 165.T05–076 Safety Zone: Delaware River, Marcus Hook Range Ship channel.

(a) *Location:* The following area is a safety zone: All waters within a 150 yard radius of the dredging vessel *Essex* operating in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(b) *Effective Dates:* This regulation is effective from October 2, 1997 until 6 a.m. on December 20, 1997.

(c) *Regulations:* The following regulations shall apply within the safety zone.

(1) In accordance with the general regulations in Section 165.23, entry into this safety zone is prohibited unless authorized by the Captain of the Port. The general requirements of sections 165.23 also apply to this regulation.

(i) Vessels transiting the Marcus Hook Range Ship Channel shall divert from the main ship channel through Anchorage 7, remain at least 150 yards from the dredging operations, and operate at a minimum safety speed necessary to maintain steerageway and reduce wake.

(2) The operator of any vessel in the safety zone shall proceed as directed by the Captain of the Port.

(3) The Coast Guard vessel enforcing the safety zone may be contacted on channel 13 and 16 VHF–FM. The Captain of the Port, Philadelphia may be contacted at telephone number (215) 271–4940.

(d) *Definitions: Captain of the Port or COTP* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

Dated: October 1, 1997.

Roger T. Rufe,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 97–28101 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI86

Board of Veterans' Appeals: Rules of Practice—Death of Appellant During Pendency of Appeal

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board)—part of the Department of Veterans Affairs (VA)—relating to circumstances which arise when an appellant dies while an appeal is pending before the Board. These amendments provide that when an appellant dies while an appeal is pending, the appeal will be dismissed, and eliminate a provision which permitted a deceased appellant's representative to continue to act with respect to any appeal pending upon the death of the appellant. These changes are necessary because of a ruling made by the United States Court of Veterans Appeals.

DATES: Effective Date: These changes are effective June 13, 1997, the date of the court decision which requires the changes.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits.

Death of appellant during pendency of appeal. Previously, Rule 1302 (38 CFR 20.1302) provided that, when an appeal is pending before the Board at the time of the appellant's death, the Board could complete its action on the issues properly before it without application from the survivors. In *Smith (Irma)* v. *Brown*, No. 95–898 (Vet. App. June 13, 1997), the U.S. Court of Veterans Appeals ruled that this regulation is invalid because, pursuant to its ruling in *Landicho* v. *Brown*, 7 Vet. App. 42, 47 (1994), a pending claim for compensation benefits under chapter 11 of title 38, United States Code, does not survive the claimant's death. Thus, when an appellant dies prior to the promulgation of the Board's decision with regard to a compensation claim, the Board no longer has jurisdiction of the appeal, and the appeal must be dismissed.

While it is clear that Rule 1302 is no longer applicable to claims for disability compensation, we have concluded that, for purposes of that rule, there is no meaningful distinction between disability compensation and other claims which might come before the Board.

The Court's ruling in *Landicho* that compensation claims do not survive the claimant was based in part upon the fact that payments of disability compensation cease the last day of the month before the veteran's death. 38 U.S.C. 5112(b)(1). We note that the same statute applies to payments of pension (38 U.S.C. ch. 15) and dependency and indemnity compensation (38 U.S.C. ch. 13) in the case of a payee. Similarly, 38 U.S.C. 5113(a) provides that, in the case of educational benefits (38 U.S.C. ch. 30, 31, 32, 34 and 35 and 10 U.S.C. ch. 106), effective dates—including discontinuances based on a payee's death—are to correspond, to the extent feasible, to those for disability compensation.

The court in *Landicho* also found that Congress established a procedure, under the "accrued benefits" provisions of 38 U.S.C. 5121, for a qualified survivor to carry on, to a limited extent, a deceased veteran's disability compensation claim by submitting an application for accrued benefits within one year after the veterans' death. *Landicho*, 7 Vet. App. at 47. Similarly, we note that the law provides these same "accrued benefit" rights to the same qualified survivors of all payees who die entitled to periodic benefits which remain unpaid.

Finally, we note the general rule that a cause of action created by statute generally does not survive unless its survival is specifically provided for in the statute itself or in another statute. 1 Am. Jur. 2d *Abatement, Survival and Revival* § 62 (1994). There is no survival statute other than section 5121 for any veterans' benefit which would come before the Board.

In sum, we can find no meaningful distinction between claims for disability compensation and claims for other benefits which would reach the Board with respect to survivability. Accordingly, we have amended Rule 1302 to provide that an appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed.

Continuation of representation following death of a claimant or appellant. Previously, Rule 611 (38 CFR 20.611) provided in part that an appellant's representative may continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans' Appeals. In *Smith (Irma)* v. *Brown*, the Court of Veterans Appeals ruled that this portion of Rule 611 is invalid because a pending compensation claim does not survive the claimant's death and the Board has no jurisdiction to decide a defunct claim.

While the Court's ruling—as with its ruling with respect to Rule 1302—is technically limited to claims for disability compensation, we conclude, for the reasons stated above, that the ruling should apply to all matters which come before the Board. Accordingly, we have amended Rule 611 to delete the invalid sentence.

We have also modified the "authority" citations in each rule to include a reference to the court decision. 38 U.S.C. 501(b).

This final rule concerns an interpretive rule and also concerns agency policy, procedure or practice. Consequently, pursuant to 5 U.S.C. 553, the final rule is exempt from notice and comment requirements.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only claims processing by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. In addition, since no notice of proposed rule making is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: October 8, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

Subpart G—Representation

2. In subpart G, § 20.611 is revised to read as follows:

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5902–5904)

Subpart N—Miscellaneous

3. In subpart N, § 20.1302 is revised to read as follows:

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed.

(Authority: 38 U.S.C. 7104(a))

[FR Doc. 97–28059 Filed 10–22–97; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[MN54–01–7279a; FRL–5913–3]

Approval and Promulgation of Implementation Plan: Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves Minnesota's 1993 periodic carbon monoxide (CO) emission inventory. The inventory was submitted by the State of Minnesota to satisfy a Federal requirement that those States containing CO nonattainment areas (NAA's) classified moderate and serious submit a revised emission inventory (i.e., from the 1990 base year inventory) at the end of each 3 year period thereafter, until the area is redesignated to attainment. It is an inventory of actual CO season emissions from all sources, in accordance with EPA guidance.

The geographic area covered in the 1993 periodic CO emission inventory includes counties of the Twin Cities seven county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), and Wright County. The rationale for this approval is set forth in this final rule; additional information is available at the address indicated below in the supporting Technical Support Document (TSD). Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this action; if adverse comments are received, EPA will withdraw the direct final rulemaking and address the comments received in a new final rule; otherwise no further rulemaking will occur on this action.

DATES: This final rule will be effective Decmeber 22, 1997 unless substantive adverse comments not previously addressed by the State or USEPA are received by Novmeber 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments may be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the material submitted by the Minnesota Pollution Control Agency may be examined during normal business hours at the same location.

FOR FURTHER INFORMATION CONTACT: Charles Hatten at (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Background

Under the Clean Air Act as amended (including the 1990 Amendments)(the Act), States have the responsibility to inventory emissions contributing to the National Ambient Air Quality Standards nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The Act required States with moderate and serious CO nonattainment areas to initially submit a base year CO inventory that represented actual emissions during the peak CO season by November 15, 1992. This base year inventory was for calendar year 1990. Moderate and serious CO nonattainment areas were also required to submit a revised emissions inventory periodically. The submittal of the first periodic emissions inventory is required no later than September 30, 1995, and every 3 years thereafter until the area is redesignated to attainment. The 1990 base year inventory is the primary inventory from which the periodic inventories are derived. Further information on these inventories and their purpose can be found in the document "Emission inventory Requirements for Carbon Monoxide State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, March 1991.

The air quality planning requirements for CO nonattainment areas are set out in section 187 of Title I of Clean Air Act (the Act). Under section 187(a)(5) of the Act, for those States containing areas designated nonattainment for CO, and classified moderate or serious, a revised emission inventory (i.e., from the 1990 base year inventory) must be submitted at the end of each 3 year period thereafter, until the area is redesignated to attainment. The State's submittal must include a comprehensive, accurate, and current inventory of actual CO season emissions from all sources. Stationary point, area, and on-road and off-road mobile sources are to be included in the inventory. This first periodic inventory is for calendar year 1993. The periodic inventory is to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peaks CO air quality concentrations occur. For many, but not all areas of the country, the peak CO season will be in the winter-time months. For areas where winter is the peak CO season, the 1993 periodic inventory will include the winter months that begin in 1992 and extend into 1993 (e.g., December 1992 through January-February 1993). Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(C) of the Act (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C) if a submittal does not meet the completeness criteria, "the State shall be treated as not having made the submission." Under section 179(a)(1) and 110(c)(1), a finding by EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan.

Review of State 1993 CO Periodic Emission Inventory (PEI)

I. Procedural Background

The approach to developing the 1993 PEI should be to require a rigorous

inventory, similar to that for the 1990 base year emission inventory, that would be suitable for regulatory purposes; i.e., milestone compliance demonstration or maintenance plan tracking. However, if EPA determines that the 1993 PEI will not be used to support a regulatory purpose, a less rigorous approach may be appropriate.[1] After a preliminary review of the May 25, 1995, draft submittal of the 1993 PEI, EPA notified the State of Minnesota Pollution Control Agency (MPCA) in a letter with its determination that the inventory was being prepared in accordance with EPA guidance, and recommended that the MPCA complete the quality assurance checks on the draft inventory. EPA also recognized at this time a less rigorous approach to developing the 1993 CO PEI would satisfy the requirements of section 187(a)(5) of the Act, since it would not have any impact for regulatory purposes.

The final 1993 CO PEI was submitted on September 28, 1995, from the MPCA to EPA. The EPA reviewed the inventory and is satisfied that all Agency guidance requirements have been met.

The 1993 CO PEI inventory contained summary tables for stationary point and area sources, and mobile source (both on-road and nonroad) CO emissions in tons per year and pounds per winter day. A detailed breakdown of these source categories, for the Twin Cities seven county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), by county, and Wright County is given in summary tables 1.4.1, 1.4.2, 1.4.3, and 1.4.4. Summary tables 1.4.5, 1.4.6, 1.4.7, and 1.4.8 for the 1993 PEI provide CO emissions in the Twin Cities seven county metropolitan area, by county and Wright County; seven and eight county totals *as a percent of total CO emissions* in tons per year and pounds per winter day, by major source category.

The plan submittal also included a comparison of the 1993 PEI and the 1990 base year inventory for stationary point and area sources, and mobile source (both on-road and nonroad) CO emissions in tons per year and pounds per winter day. A detailed breakdown of these source categories, for the Twin Cities seven county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), by county, and Wright County is given in summary tables 1.4.9, 1.4.10, 1.4.11, and 1.4.12. Summary tables 1.4.13, 1.4.14, 1.4.15, and 1.4.16 provide a comparison of the 1993 PEI and the 1990 base year inventory CO in the Twin Cities seven county metropolitan area, by county and Wright county; seven and eight county totals emissions *as a percent of total CO emissions* in tons per year and pounds per winter day, by major source category are also provided.

The CO nonattainment boundaries for these areas are described in 56 FR 56694 (November 6, 1991), and classified as moderate. The geographic area covered is classified as a moderate CO nonattainment area because the area has a design value of 11.40 parts per million.

II. Final Rulemaking Action

EPA is approving the Minnesota's 1993 CO periodic emission inventory as meeting the requirements of section 187(a)(5) of the Act as a revision to the CO state implementation plan for all areas designated as nonattainment, classified moderate and serious. These areas included the counties of the Twin Cities seven county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), and Wright County.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve this part 52 action should adverse or critical comments be filed. This action will be effective December 22, 1997 unless, by November 24, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 22, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrators under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the Act does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more

[1] Reference the September 30, 1994, memorandum from David Mobley, "1993 Periodic Emission Inventory Guidance," it presented suggestions on the guidance preparation of the 1993 periodic emission inventory and reporting requirements.

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in this **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and record-keeping requirements.

Dated: October 9, 1997.

David A. Ullrich,

Acting Regional Administrator.

Parts 52 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1237 is amended by adding paragraph (b) to read as follows:

§ 52.1237 Control strategy: Carbon monoxide.

* * * * *

(b) Approval—The 1993 carbon monoxide periodic emission inventory requirement of section 187(a)(5) of the Clean Air Act, as amended in 1990, has been satisfied for the following areas: the counties of the Twin cities seven county Metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington), and Wright.

[FR Doc. 97–28138 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 016–1016; FRL–5912–6]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on a proposed rulemaking published July 29, 1996 (61 FR 39375). This final action includes provisions related to open burning, new source review requirements in nonattainment areas, and test method and definition updates.

DATES: This rule is effective on November 24, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: During the public comment period of the proposed rulemaking published July 29, 1996 (61 FR 39375), and closing August 28, 1996, the EPA did not receive any comments. However, a notice reopening the public comment period was published on September 17, 1996 (61 FR 48873), requested by interested persons who desired more time to address the construction permit exemption provisions contained in the original July 29, 1996, proposed rulemaking. During the reopened public comment period, the EPA received one comment from the state of Iowa. The nature of this comment was to request an additional revision to the State Implementation Plan (SIP) concerning the construction permit exemptions. In correspondence dated September 27, 1996, the Director of the Iowa Department of Natural Resources, Larry J. Wilson, requested a revision to the SIP that would allow retroactive application of the construction permit exemptions proposed for approval in the July 29, 1996, notice.

After careful analysis, the EPA has elected to address approval of the minor source construction permit exemptions and the request for retroactive approval in a separate rulemaking at a later date. The EPA has analyzed this rule to determine that it has no impact on the other rule revisions that were proposed for approval in the July 29, 1996, proposal. Therefore, the EPA can take action on the other rule revisions at this time, and take a separate action on the exemption rule.

In this final rulemaking, the EPA is approving those portions of the original proposal that include amendments to the Iowa open burning rule, a permit by rule provision for spray booths, revisions to Iowa's major new source permit rule for nonattainment areas, a revised definition of "volatile organic compounds," and updates to Iowa's compliance sampling test methods. The EPA's rationale for approval of these revisions is contained in the July 29, 1996, notice previously described, and no comments were received on the proposed approval of these revisions.

Furthermore, the EPA has determined that the permit by rule for spray booths contained in IAC 567–22.8(1) meets the requirements regarding limitations on potential to emit (PTE) under section 112(l). Therefore, insofar as the rule applies to hazardous air pollutants, it is approved under section 112(l) as well as section 110 of the Act. The EPA is also approving IAC rule 567–22.3(6) which limits PTE for new sources under section 112(l).

I. Final Action

The EPA is taking final action on the revisions described in the July 29, 1996, proposed rulemaking regarding the permit by rule provision for spray booths, open burning, new source review requirements in nonattainment areas, and definition and test method updates.

The permit by rule for spray booths is approved under both section 110 for criteria pollutants as well as under section 112(l) as it relates to hazardous air pollutants. The EPA is also approving the IAC rule 567–22.3(6) which limits PTE for new sources under 112(l).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

C. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 1997.

Dennis Grams, P.E.,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(64) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(64) In correspondence dated February 16, 1996, February 19, 1996, and February 27, 1996, the Director of the Iowa Department of Natural Resources (IDNR) submitted revisions to the State Implementation Plan concerning open burning, new source review (NSR) requirements for nonattainment areas, test method and definition updates.

(i) Incorporation by reference.

(A) "Iowa Administrative Code," section 567–22.8(1), effective July 12, 1995, containing a permit by rule for spray booths.

(B) "Iowa Administrative Code," sections 567–23.2(3); 23.2(4), effective April 19, 1995, addressing open burning.

(C) "Iowa Administrative Code," sections 567–22.5 (2)–(6), (8)–(10), effective March 20, 1996. These rules address NSR requirements in nonattainment areas.

(D) "Iowa Administrative Code," sections 567–20.2; 22.4(1); and 25.1(9), effective July 12, 1995. These rules address test method and definition updates.

(E) "Iowa Administrative Code," section 567–31.1, effective February 22, 1995. This rule addresses permit requirements relating to nonattainment areas.

(ii) Additional material.

(A) Letter dated July 11, 1997, from Pete Hamlin, IDNR, to Wayne Leidwanger, EPA, requesting approval under 112(l).

[FR Doc. 97–28144 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY95–9722a; IN82a–1; FRL–5901–2]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Kentucky; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is extending the attainment date for the Louisville interstate moderate ozone nonattainment area from November 15, 1996, to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, USEPA is revising the table in the Code of Federal Regulations concerning ozone attainment dates in this area. In this action, USEPA is approving the States' request through a "direct final" rulemaking; the rationale for this

approval is set forth. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting written comment on this action; if adverse written comments are received, USEPA will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this attainment date extension request.

DATES: This action is effective December 22, 1997 unless substantive written adverse comments not previously addressed by the State or USEPA are received by November 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments may be mailed to Joey LeVasseur at the USEPA Region 4 address listed below or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below. Copies of the material submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) may be examined during normal business hours at the following locations:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Copies of the materials submitted by the Indiana Department of Environmental Management (IDEM) may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at (404) 562–9035 or Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the Louisville Moderate Ozone Nonattainment Area

On January 8, 1996, KNREPC requested a one-year attainment date extension for the Kentucky portion of the Louisville moderate ozone nonattainment area which consists of Jefferson, Bullitt, and Oldham Counties in Kentucky. Similarly, on November 15, 1996, Indiana requested a one-year attainment date extension for the Indiana portion of the Louisville moderate ozone nonattainment area which consists of Clark and Floyd Counties. Since this area is classified as a moderate ozone nonattainment area, the statutory ozone attainment date prescribed by section 181(a) of the Clean Air Act (CAA) is November 15, 1996. The State submittals request that the attainment date be extended to November 15, 1997.

CAA Requirements and USEPA Actions Concerning Designation and Classification

Section 107(d)(4) of the CAA requires the States and USEPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) requires that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality. In a series of **Federal Register** documents, USEPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the CAA. The Louisville ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (November 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

CAA Requirements Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas had attained the NAAQS. For ozone, USEPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the most recent three-year period. See General Preamble, 57 FR 13506. In the case of moderate ozone nonattainment areas, the three-year period is 1994–1996.

A review of the actual ambient air quality ozone data from the USEPA Aerometric Information Retrieval System (AIRS) shows that five air quality monitors located in the Louisville ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three year period from 1994 to 1996. The exceedances at the Clark County, Indiana, monitor averaged more than 1.0 over the three year period, which constitutes a violation of the ozone NAAQS for the Louisville area during this three-year period. Thus, the area did not meet the November 15, 1996 attainment date. (See Table 1.)

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE LOUISVILLE AREA 1994 TO 1996

Site	County/State	Year	Exceedances measured	Expected exceedances
Charlestown	Clark, IN	1994	3	3.0
Charlestown	Clark, IN	1995	2	2.1
Charlestown	Clark, IN	1996	0	0.0
New Albany	Floyd, IN	[1] 1994		
New Albany	Floyd, IN	1995	1	1.0
New Albany	Floyd, IN	1996	1	1.0
Shepherdsville	Bullitt, KY	1994	0	0.0
Shepherdsville	Bullitt, KY	1995	0	0.0
Shepherdsville	Bullitt, KY	1996	0	0.0
Bates Elementary	Jefferson, KY	1994	0	0.0
Bates Elementary	Jefferson, KY	1995	1	1.0
Bates Elementary	Jefferson, KY	1996	0	0.0
Watson Lane	Jefferson, KY	1994	1	1.0
Watson Lane	Jefferson, KY	1995	1	1.0
Watson Lane	Jefferson, KY	1996	1	1.0
WLKY TV	Jefferson, KY	1994	0	0.0
WLKY TV	Jefferson, KY	1995	0	0.0

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE LOUISVILLE AREA 1994 TO 1996—Continued

Site	County/State	Year	Exceedances measured	Expected exceedances
WLKY TV	Jefferson, KY	1996	1	1.1
Buckner	Oldham, KY	1994	0	0.0
Buckner	Oldham, KY	1995	0	0.0
Buckner	Oldham, KY	1996	0	0.0

[1] The New Albany ozone monitor began operation in 1977, but stopped collecting ozone data in 1980. Ozone monitoring at this site resumed on April 1, 1995.

CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next higher classification. However, CAA section 181(a)(5) provides an exemption from this reclassification requirement. Under this exemption, USEPA may grant up to two, one-year extensions of the attainment date under specified conditions:

Section 181(a)(5) states that upon application by any State, the Administrator may extend (the attainment date) for one additional year (referred to as the "Extension Year") if:

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) No more than one exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

The USEPA interprets this provision to authorize the granting of a one-year extension upon request by a State, under the following minimum conditions.

(1) The State has complied with or is taking significant steps to comply with all requirements and commitments in the USEPA approved ozone State Implementation Plan (SIP) for the area, and

(2) The area has no more than one measured exceedance of the ozone NAAQS at each monitor in the area during the year that includes the attainment date (or the subsequent year, if a second one-year extension is being requested).

Compliance With State Implementation Plans

Indiana and Kentucky have complied with the CAA SIP revision requirements for moderate ozone nonattainment areas. Both States certified they are implementing their ozone SIPs for the Louisville area. Therefore, the implementation plan criterion for the attainment date extension is satisfied. All of the states' SIP submittals may be examined during regular business hours at the EPA Regional offices listed above in the addresses section of this notice.

Compliance With Air Quality Monitoring Criteria

In the extension requests, Kentucky and Indiana indicated that no monitor in the Louisville area had more than one exceedance each during 1996. The 1996 monitoring data has been quality controlled and quality assured, as has the data for 1994 and 1995. These data are summarized in Table 1. Three of the seven ozone monitors in the Louisville area recorded one exceedance each during 1996, but none recorded more than one exceedance in 1996. This satisfies the air quality data criterion for the attainment date extension.

USEPA has reviewed the States' formal extension requests, and has determined that the requirements for a one-year extension of the attainment date have been fulfilled. USEPA is therefore approving the Kentucky and Indiana attainment date extension requests for the Louisville ozone nonattainment area. As a result, the Kentucky Control Strategy for Ozone which is codified at 40 CFR 52.930 and the Indiana Control Strategy for Photochemical Oxidants (hydrocarbons) which is codified at 40 CFR 52.777 are being amended to record these attainment date extensions. The chart in 40 CFR 81.318 entitled "Kentucky-Ozone" is being modified to reflect USEPA's approval of Kentucky's attainment date extension request. The chart in 40 CFR 81.315 entitled "Indiana-Ozone" is also being modified to reflect USEPA's approval of Indiana's attainment date extension request.

Final Action

USEPA is approving the attainment date extension requests submitted by Kentucky and Indiana to extend the Louisville moderate ozone nonattainment area attainment date from November 15, 1996 to November 15, 1997 without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve this part 52 and part 81 action should written adverse or critical comments be filed. This action will be effective December 22, 1997 unless, by November 24, 1997 written adverse or critical comments are received.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All written public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 22, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographic area and does not impose any regulatory requirements on sources. USEPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 20, 1997.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: August 19, 1997.

Michelle D. Jordan,

Acting Regional Administrator, Region 5.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding paragraph (e) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(e) Kentucky's November 15, 1996, request for a one-year attainment date extension for the Kentucky portion of the Louisville moderate ozone nonattainment area which consists of Jefferson County and parts of Bullitt and Oldham Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

Subpart P—Indiana

3. Section 52.777 is amended by adding paragraph (q) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(q) Indiana's November 15, 1996, request for a one-year attainment date extension for the Indiana portion of the Louisville moderate ozone nonattainment area which consists of Clark and Floyd Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.318, the "Kentucky—Ozone" table is amended by revising the entry for the "Louisville Area" and adding footnote 2 to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
. . .	. . .	. . .	. . .	. . .
Louisville Area:				
Bullitt County (part): The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.	Nonattainment		Moderate.[2]	
Jefferson County	Nonattainment		Moderate.[2]	
Oldham County (part): The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road and Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of	Nonattainment		Moderate.[2]	

KENTUCKY-OZONE—CONTINUED

Designated area	Designation Date[1]	Designation Type	Classification Date[1]	Classification Type
KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the northbound lane of Interstate 71 until inter-secting with the North Fork of Currys Fork; proceeding south-southwest beyond the con-fluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.		Nonattainment		Moderate.[2]

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

3. In § 81.315, the "Indiana—Ozone" table is amended by revising the entry for the "Louisville Area" and adding footnote 2 to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA-OZONE

Designated area	Designation Date[1]	Designation Type	Classification Date[1]	Classification Type
Louisville Area:				
Clark County	Nonattainment	Moderate[2]		
Floyd County	Nonattainment	Moderate[2]		

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

[FR Doc. 97–28141 Filed 10–22–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–65912–5]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the LaGrand Sanitary Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the LaGrand Sanitary Landfill Superfund Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that all appropriate Fund-financed response actions under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253 (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Alexandria Public Library, Seventh and Fillmore, Alexandria, MN 56308. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: LaGrand Sanitary landfill Superfund Site located in Douglas County, Minnesota. A notice of intent to delete for this site was published September 5, 1997 (62 FR 46938). The closing date for comments on the Notice of Intent to Delete was October 4, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 9, 1997.

David Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "LaGrande Sanitary Landfill, LaGrand Township, Minnesota".

[FR Doc. 97–27847 Filed 10–22–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 92–237, CC Docket No. 95–155; FCC 97–372]

Administration of the North American Numbering Plan; Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On October 9, 1997, the Commission released a Third Report and Order in CC Docket No. 92–237 adopting various measures related to numbering administration for telecommunications service and to billing and collection to support numbering administration activities. The Third Report and Order is intended to ensure the impartial allocation and administration of numbering resources. The Commission also released a Third Report and Order in CC Docket No. 95–155 adopting measures related to numbering administration for toll free numbers. The Third Report and Order is intended to ensure the impartial allocation and administration of toll free numbering resources.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Marian Gordon or Erin Duffy, Network Services Division, Common Carrier Bureau, (202) 418–2320.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Third Report and Order in CC Docket No. 92–237, In the Matter of Administration of the North American Numbering Plan, FCC 97–372, adopted October 9, 1997, and released October 9, 1997. The Commission concurrently released a Third Report and Order in CC Docket No. 95–155, In the Matter of Toll Free Service Access Codes. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

1. In the *Third Report and Order* in CC Docket No. 92–237, the Commission takes several actions to ensure the impartial administration and allocation of numbering resources. The Commission accepts the recommendation of the North American Numbering Council (NANC) and selects Lockheed IMS as the North American Numbering Plan Administrator (NANPA). The Commission accepts the NANC's recommendation and selects the National Exchange Carriers Association (NECA) as the NANPA Billing and Collection Agent (B&C Agent), subject to a specific neutrality cure. The Commission accepts NANC's proposed rules for governance of the NANPA and the B&C Agent, with minor modifications. In order to provide solutions to numbering disputes when time is critical, the Commission streamlines its administrative processes of review of NANC's initial resolution of numbering disputes.

2. The Commission imposes two conditions, recommended by the NANC, that Lockheed must follow. First, Lockheed must perform the numbering administration functions currently performed by Bellcore, and the central office code administration functions currently performed by the eleven central office code administrators, at the price agreed to at the time of its selection. The new NANPA may request from the NANC, with approval by the Commission, an adjustment in this price if the actual number of central office code assignments made per year, the number of area codes requiring relief per year, or the number of area code relief meetings per area code exceeds 120% of Lockheed's stated assumptions at the time of its selection. Second, Lockheed must make available any and all intellectual property and associated hardware resulting from its activities as numbering administrator including, but not limited to, systems and the data contained therein, software, interface specifications and supporting documentation, and make such property available to whomever the NANC directs free of charge.

3. In the *Third Report and Order* in CC Docket No. 95–155, the Commission takes action to ensure the impartial administration and allocation of toll free numbering resources. The Commission concludes that toll free numbering administration, as currently structured, is inconsistent with section 251(e) of the Communications Act. The Commission directs the NANC to examine the issue of toll free numbering administration and make a recommendation to the Commission regarding what entity would be an appropriate administrator for the toll free database within 120 days of the effective date of the NANP Order.

4. It is ordered, pursuant to Sections 1, 4(i), 201–205, 218, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i),

201–205, 218, and 251, that the Third Report and Order in CC Docket No. 92–237 and the Third Report and Order in CC Docket No. 95–155 are hereby adopted.

5. It is further ordered that all policies, rules, and requirements of this document are effective on November 24, 1997.

List of Subjects 47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 52—NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 271 and 332 unless otherwise noted.

2. Amend § 52.7 to revise paragraph (b) and adding paragraph (f) to read as follows:

§ 52.7 Definitions.

* * * * *

(b) *Area code relief.* The term "area code relief" refers to the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and a new area code is introduced. Area code relief includes planning for area code "jeopardy," which is a situation where central office codes may become exhausted before an area code relief plan can be implemented.

* * * * *

(f) *Billing and Collection Agent.* The term "Billing & Collection Agent" ("B&C Agent") refers to the entity responsible for the collection of funds to support numbering administration for telecommunications services from the United States telecommunications industry and NANP member countries.

3. Amend § 52.11 to revise paragraphs (c) and (g) and to add paragraphs (h) and (i) to read as follows:

§ 52.11 North American Numbering Council.

* * * * *

(c) Initially resolving disputes, through consensus, that foster efficient and impartial number administration in the United States by adopting and utilizing dispute resolution procedures that provide disputants, regulators, and the public notice of the matters at issue, a reasonable opportunity to make oral and written presentations, a reasoned recommended solution, and a written report summarizing the recommendation and the reasons therefore;

* * * * *

(g) Carrying out this part as directed by the Commission;

(h) Monitoring the performance of the NANPA and the B&C Agent on at least an annual basis; and

(i) Implementing, at the direction of the Commission, any action necessary to correct identified problems with the performance of the NANPA and the B&C Agent, as deemed necessary.

4. Add § 52.12 to Subpart B to read as follows:

§ 52.12 North American Numbering Plan Administrator and B&C Agent.

The North American Numbering Plan Administrator ("NANPA") and the associated "B&C Agent" will conduct their respective operations in accordance with this section. The NANPA and the B&C Agent will conduct their respective operations with oversight from the Federal Communications Commission (the "Commission") and with recommendations from the North American Numbering Council ("NANC").

(a)(1) *Neutrality.* The NANPA and the B&C Agent shall be non-governmental entities that are impartial and not aligned with any particular telecommunication industry segment. Accordingly, while conducting their respective operations under this section, the NANPA and B&C Agent shall ensure that they comply with the following neutrality criteria:

(i) The NANPA and B&C Agent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996. "Affiliate" is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly—

(A) An equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10%) percent or more of the total outstanding equity interests in the other person, or

(B) The power to vote ten (10%) percent or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person, or

(C) The power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest) of such other person, by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise;

(ii) The NANPA and B&C Agent, and any affiliate thereof, may not issue a majority of its debt to, nor may it derive a majority of its revenues from, any telecommunications service provider. "Majority" shall mean greater than 50 percent, and "debt" shall mean stocks, bonds, securities, notes, loans or any other instrument of indebtedness; and

(iii) Notwithstanding the neutrality criteria set forth in paragraphs (a)(1) (i) and (ii) of this section, the NANPA and B&C Agent may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities. NANC may conduct an evaluation to determine whether the NANPA and B&C Agent meet the undue influence criterion.

(2) Any subcontractor that performs—

(i) NANP administration and central office code administration, or

(ii) Billing and Collection functions, for the NANPA or for the B&C Agent must also meet the neutrality criteria described in paragraph (a)(1).

(b) *Term of administration.* The NANPA shall provide numbering administration, including central office code administration, for the United States portion of the North American Numbering Plan ("NANP") for an initial period of five (5) years. At any time prior to the termination of the initial or subsequent term of administration, such term may be renewed for up to five (5) years with the approval of the Commission and the agreement of the NANPA. The B&C Agent shall provide billing and collection functions for an initial period of five (5) years. At any time prior to the termination of the initial or subsequent term of administration, such term may be renewed for up to five (5) years with the approval of the Commission and the agreement of the B&C Agent.

(c) *Changes to regulations, rules, guidelines or directives.* In the event that regulatory authorities or industry groups (including, for example, the Industry Numbering Committee—INC, or its successor) issue rules, requirements, guidelines or policy directives which may affect the functions performed by the NANPA and the B&C Agent, the NANPA and the B&C Agent shall, within 10 business days from the date of official notice of such rules, requirements, guidelines or policy directives, assess the impact on its operations and advise the Commission of any changes required. NANPA and the B&C Agent shall provide written explanation why such changes are required. To the extent the Commission deems such changes are necessary, the Commission will recommend to the NANP member countries appropriate cost recovery adjustments, if necessary.

(d) *Performance review process.* NANPA and the B&C Agent shall develop and implement an internal, documented performance monitoring mechanism and shall provide such performance review on request of the Commission on at least an annual basis. The annual assessment process will not preclude telecommunications industry participants from identifying performance problems to the NANPA, the B&C Agent and the NANC as they occur, and from seeking expeditious resolution. If performance problems are identified by a telecommunications industry participant, the NANC, B&C Agent or NANPA shall investigate and report within 10 business days of notice to the participant of corrective action, if any, taken or to be taken. The NANPA, B&C Agent or NANC (as appropriate) shall be permitted reasonable time to take corrective action, including the necessity of obtaining the required consent of the Commission.

(e) *Termination.* If the Commission determines at any time that the NANPA or the B&C Agent fails to comply with the neutrality criteria set forth in paragraph (a) of this section or substantially or materially defaults in the performance of its obligations, the Commission shall advise immediately the NANPA or the B&C Agent of said failure or default, request immediate corrective action, and permit the NANPA or B&C Agent reasonable time to correct such failure or default. If the NANPA or B&C Agent is unwilling or unable to take corrective action, the Commission may, in a manner consistent with the requirements of the Administrative Procedure Act and the Communications Act of 1934, as amended, take any action that it deems appropriate, including termination of the NANPA's or B&C Agent's term of administration.

(f) *Required and optional enterprise services.* Enterprise Services, which are services beyond those described in § 52.13 that may be provided by the new NANPA for specified fees, may be offered with prior approval of the Commission.

(1) *Required Enterprise Services.* At the request of a code holder, the NANPA shall, in accordance with industry standards and for reasonable fees, enter certain routing and rating information, into the industry-approved database(s) for dissemination of such information. This task shall include reviewing the information and assisting in its preparation.

(2) *Optional Enterprise Services.* The NANPA may, subject to prior approval and for reasonable fees, offer "Optional Enterprise Services" which are any services not described elsewhere in this section.

(3) *Annual report.* NANPA shall identify and record all direct costs associated with providing Enterprise Services separately from the costs associated with the non-enterprise NANPA functions. The NANPA shall submit an annual report to the NANC summarizing the revenues and costs for providing each Enterprise Service. NANPA shall be audited by an independent auditor after the first year of operations and every two years thereafter, and submit the report to the Commission for appropriate review and action.

5. Amend § 52.13 to revise paragraph (b) and to add paragraphs (c), (d), (e) (f) and (g) to read as follows:

§ 52.13 North American Numbering Plan Administrator.

* * * * *

(b) The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall support the industry's efforts to accommodate current and future numbering needs. It shall perform additional functions, including but not limited to:

(1) Ensuring the efficient and effective administration and assignment of numbering resources by performing day-to-day number resource assignment and administrative activities;

(2) Planning for the long-term need for NANP resources to ensure the continued viability of the NANP by implementing a plan for number resource administration that uses effective forecasting and management skills in order to make the industry aware of the availability of numbering resources and to meet the current and future needs of the industry;

(3) Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and orders, and the guidelines of other appropriate policy-making authorities, all of which may be modified by industry fora or other appropriate authority;

(4) Providing management supervision for all of the services it provides, including responsibility for achieving performance measures established by the NANC and the INC in industry guidelines;

(5) Participating in the NANC annual performance review as described in §§ 52.11 and 52.12;

(6) Establishing and maintaining relationships with current governmental and regulatory bodies, and their successors, including the United States Federal Communications Commission, Industry Canada, the Canadian Radio-television and Telecommunications Commission, and other United States, Canadian, and Caribbean numbering authorities and regulatory agencies, and addressing policy directives from these bodies;

(7) Cooperating with and actively participating in numbering standards bodies and industry fora, such as INC and, upon request, the Canadian Steering Committee on Numbering (CSCN);

(8) Representing the NANP to national and international numbering bodies;

(9) Developing and maintaining communications channels with other countries who also participate in the NANP to ensure that numbering needs of all countries served by the NANP are met;

(10) Attending United States Study Group A meetings and maintaining a working knowledge of Study Group 2 International Telecommunications Union activities on behalf of the United States telecommunications industry;

(11) Reviewing requests for all numbering resources to implement new applications and services and making assignments in accordance with industry-developed resource planning and assignment guidelines;

(12) Referring requests for particular numbering resources to the appropriate industry body where guidelines do not exist for those resources;

(13) Participating in industry activities to determine whether, when new telecommunications services requiring numbers are proposed, NANP numbers are appropriate and what level

of resource is required (e.g. line numbers, central office codes, NPA codes);

(14) Maintaining necessary administrative staff to handle the legal, financial, technical, staffing, industry, and regulatory issues relevant to the management of all numbering resources, as well as maintaining the necessary equipment, facilities, and proper billing arrangements associated with day-to-day management of all numbering resources;

(15) Managing the NANP in accordance with published guidelines adopted in conjunction with the industry and the appropriate NANP member countries' governing agencies, and referring issues to the appropriate industry body for resolution when they have not been addressed by the industry;

(16) Responding to requests from the industry and from regulators for information about the NANP and its administration, as the primary repository for numbering information in the industry;

(17) Providing upon request information regarding how to obtain current documents related to NANP administration;

(18) Providing assistance to users of numbering resources and suggesting numbering administration options, when possible, that will optimize number resource utilization;

(19) Coordinating its numbering resource activities with the Canadian Number Administrator and other NANP member countries' administrators to ensure efficient and effective management of NANP numbering resources; and

(20) Determining the final allocation methodology for sharing costs between NANP countries.

(c) In performing the functions outlined in paragraph (b) of this section, the NANPA shall:

(1) Ensure that the interests of all NANP member countries are considered;

(2) Assess fairly requests for assignments of NANP numbering resources and ensure the assignment of numbering resources to appropriate service providers;

(3) Develop, operate and maintain the computer hardware, software (database) and mechanized systems required to perform the NANPA and central office (CO) Code Administration functions;

(4) Manage projects such as Numbering Plan Area (NPA) relief (area code relief) planning and the Central Office Code Utilization Survey (COCUS);

(5) Facilitate NPA relief planning meetings;

(6) Participate in appropriate industry activities;

(7) Manage proprietary data and competitively sensitive information and maintain the confidentiality thereof;

(8) Act as an information resource for the industry concerning all aspects of numbering (i.e., knowledge and experience in numbering resource issues, International Telecommunications Union (ITU) Recommendation E.164, the North American Numbering Plan (NANP), NANP Administration, INC, NANP area country regulatory issues affecting numbering, number resource assignment guidelines, central office code administration, relief planning, international numbering issues, etc.); and

(9) Ensure that any action taken with respect to number administration is consistent with this part.

(d) The NANPA and, to the extent applicable, the B&C Agent, shall administer numbering resources in an efficient and non-discriminatory manner, in accordance with Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to administration and assignment of numbering resources, including, but not limited to:

(1) Numbering Plan Area (NPA) codes,

(2) Central Office codes for the 809 area,

(3) International Inbound NPA 456 NXX codes,

(4) (NPA) 500 NXX codes,

(5) (NPA) 900 NXX codes,

(8) N11 Service codes,

(7) 855–XXXX line numbers,

(8) 555–XXXX line numbers,

(9) Carrier Identification Codes,

(10) Vertical Service Codes,

(11) ANI Information Integer (II) Digit Pairs,

(12) Non Dialable Toll Points, and

(13) New numbering resources as may be defined.

(e) *Relationships with other NANP member countries' administrators and authorities.* The NANPA shall address policy directives from other NANP member countries' governmental and regulatory authorities and coordinate its activities with other NANP member countries' administrators, if any, to ensure efficient and effective management of NANP resources.

(f) *Transition plan.* The NANPA shall implement a transition plan, subject to Commission approval, leading to its assumption of NANPA functions within 90 days of the effective date of a Commission order announcing the selection of the NANPA.

(g) *Transfer of intellectual property.* The new NANPA must make available any and all intellectual property and associated hardware resulting from its activities as numbering administrator including, but not limited to, systems and the data contained therein, software, interface specifications and supporting documentation and make such property available to whomever NANC directs free of charge. The new NANPA must specify any intellectual property it proposes to exclude from the provisions of this paragraph based on the existence of such property prior to its selection as NANPA.

6. Amend § 52.15 to add paragraphs (d) and (e) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(d) *Central Office (CO) Code Administration functional requirements.* The NANPA shall manage the United States CO code numbering resource, including CO code request processing, NPA code relief and jeopardy planning, and industry notification functions. The NANPA shall perform its CO Code Administration functions in accordance with the published industry numbering resource administration guidelines and Commission orders and regulations at 47 CFR chapter I. Subject to the approval of the Commission, the NANPA shall develop a transition plan to transfer CO code assignment from the current administrators to itself and shall submit this plan to the Commission within 90 days of the effective date of a Commission order announcing the selection of the NANPA. The NANPA shall complete the transfer of CO code assignment functions from existing administrators to itself no more than 18 months after the NANPA has assumed all of said administrators' current NANPA function.

(e) The new NANPA shall perform the numbering administration functions currently performed by Bellcore, and the CO code administration functions currently performed by the eleven CO code administrators, at the price agreed to at the time of its selection. The new NANPA may request from NANC, with subsequent approval by the Commission, an adjustment in this price if the actual number of CO Code assignments made per year, the number of NPAs requiring relief per year or the number of NPA relief meetings per NPA exceeds 120% of the NANPA's stated assumptions for the tasks at the time of its selection.

7. Add § 52.16 to Subpart B to read as follows:

52.16 Billing and Collection Agent.

The B&C Agent shall:

(a) Calculate, assess, bill and collect payments for numbering administration functions and distribute funds to NANPA on a monthly basis;

(b) Design a standard Reporting Worksheet to collect information for assessment calculations from carriers and distribute it to carriers and other NANP nations; this worksheet must be submitted to the Commission for its review and approved by OMB prior to its use by the B&C Agent.

(c) Keep confidential all data obtained from carriers and not disclose such data in company-specific form unless authorized by the Commission. The B&C Agent shall use such data only for calculating, collecting and verifying payments;

(d) Develop procedures to monitor industry compliance with reporting requirements and propose specific procedures to address reporting failures and late payments;

(e) File annual reports with the appropriate regulatory authorities of the NANP member countries as requested; and

(f) Obtain an audit from an independent auditor after the first year of operations and annually thereafter, which shall evaluate the validity of calculated payments. The B&C Agent shall submit the audit report to the Commission for appropriate review and action.

[FR Doc. 97–27946 Filed 10–22–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 205
Thursday, October 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing; Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advanced notice of proposed rulemaking on Dairy Tariff-Rate Import Quota Licensing; Correction.

SUMMARY: This is a correction to a notice published in the **Federal Register** on October 15, 1997, which requested public comments on possible options for the implementation of the Dairy Tariff-Rate Import Quota Licensing regulation's requirement to permanently reduce historical licenses based on surrender. The options include the possible recision, suspension, or delay of this requirement.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, S.W., Stop 1021, Washington, D.C. 20250–1021 or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Correction

In the October 15, 1997 issue of the **Federal Register**, page 53581, column 1, Paragraph D, "Eliminate the five-year rule, while retaining the three-year rule" is corrected by revising the third sentence to read as follows:

"Per the three-year rule, a licensee could surrender more than 50 percent of a historical license amount for two years of the three year period without penalty and not be subjected to license reduction."

Signed at Washington, D.C. on October 16, 1997.

Timothy J. Galvin,

Acting Administrator.

[FR Doc. 97–28023 Filed 10–22–97; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–20]

Proposed Amendment of Class E Airspace; Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Covington, KY. A Global Positioning System (GPS) Runway (RWY) 24 Standard Instrument Approach Procedure (SIAP) has been developed for Cincinnati-Blue Ash Airport. As a result, additional controlled airspace extending upward from 700 feet above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Cincinnati-Blue Ash Airport.

DATES: Comments must be received on or before November 24, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Covington, KY. A GPS RWY 24 SIAP has been developed for Cincinnati-Blue Ash Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Cincinnati-Blue Ash Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Covington, KY [Revised]

Covington, Cincinnati/Northern Kentucky International Airport KY
(lat. 39°02'30" N, long. 84°39'38" W)
Cincinnati Municipal Airport-Lunken Field
(lat. 39°09'33" N, long. 84°25'08" W)
Cincinnati NDB
(lat. 39°09'33" N, long 84°20'32" W)
Clermont Country Airport, Batavia, OH
(lat. 39°04'42" N, long. 84°12'38" W)
Cincinnati-Blue Ash Airport, OH
(lat. 39°14'48" N, long. 84°23'21" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cincinnati/Northern Kentucky International Airport, and within a 10.5-mile radius of Cincinnati Airport-Lunken Filed and within 2.6 miles each side of the 044° bearing from Cincinnati NDB and extending from the 10.5-mile radius to 7.4 miles northeast of the NDB, and within a 6.8-mile radius of Clermont County Airport, Batavia, OH, and within a 6.3-mile radius of Cincinnati-Blue Ash Airport, OH.

* * * * *

Issued in College Park, Georgia, on September 4, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–28102 Filed 10–22–97; 8:45 am]
BILLING CODE 4910–13–M

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Notice of Proposed Amendments to Rules of Practice and Procedure

AGENCY: United States International Trade Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The United States International Trade Commission (the Commission) proposes to amend its Rules of Practice and Procedure concerning antidumping and countervailing duty investigations and reviews in 19 CFR parts 201 and 207. The proposed amendments will establish procedures for five-year reviews of antidumping and countervailing duty orders and suspension agreements that the Commission will begin to conduct in 1998 pursuant to the provisions of section 751(c) of the Tariff Act of 1930, as amended (the Act).

DATES: To be assured of consideration, written comments must be received not later than December 22, 1997. Rebuttal comments must be received not later than January 21, 1998.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission (telephone: 202–205–3087, e-mail: mbernstein@usitc.gov), or Vera A. Libeau, Office of Investigations, U.S. International Trade Commission (telephone 202–205–3176, e-mail: vlibeau@usitc.gov). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The Uruguay Round Agreements Act (URAA) fundamentally revised the Act by requiring that antidumping and countervailing duty orders and suspension agreements be revoked after five years unless revocation would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Commission the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspension agreement, is likely to lead to the continuation or recurrence of material injury. The URAA requires that the Department of Commerce (Commerce) begin initiating five-year reviews in July 1998, that all five-year reviews of "transition orders"—those antidumping and countervailing duty orders and suspension agreements in effect on January 1, 1995, when the United States acceded to the Uruguay Round Agreements—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that Commerce initiate a five-year review of each order or agreement that is not a "transition order" no later than 30 days before the fifth anniversary of publication of the order or agreement in the **Federal Register**.

This notice proposes new procedures for five-year reviews. As described below, some of the proposed procedures will be reflected in changes to the Commission's Rules of Practice and Procedure. Other proposed procedures, such as scheduling, relate to internal agency practices and do not require regulations. Nevertheless, this notice describes several of these proposals and invites public comment on all proposed regulations and procedures.

The Commission has determined that these proposed regulations do not meet the criteria described in section 3(f) of the Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory

action for purposes of the EO. The Regulatory Flexibility Act (5 U.S.C. 601 note) is inapplicable to this rulemaking, because it is not one for which a Notice of Proposed Rulemaking (NOPR) is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish an NOPR, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

The draft notice of institution reproduced at Annex A to this Notice constitutes an information collection request subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. After consultation with the Office of Management and Budget (OMB), the Commission believes that the contemplated collection of information pursuant to the draft notice of institution is encompassed within a clearance OMB has given the Commission under the Paperwork Reduction Act to collect information for antidumping and countervailing duty investigations and reviews, including those undertaken pursuant to section 751 of the Act. This clearance has been assigned OMB Control Number 3117–0016.

Request for Comment

The Commission solicits comments pertaining to its proposals concerning five-year reviews. The Commission will conduct a two-step comment process. Initial comments should be received by the Commission Secretary not later than December 22, 1997. Rebuttals to the initial comments may also be filed. Any rebuttal comments should be received by the Commission Secretary not later than January 21, 1998. All comments will be available for public inspection in the Commission's Public Docket Room between the hours of 8:45 am and 5:15 pm, Monday through Friday (except Federal Holidays).

Commenters are invited to address several distinct matters in their comments and rebuttal comments. The Commission requests that, to facilitate its review, commenters organize their comments as follows:

Section I of the comments should address the proposed amendments to the part 201 and 207 regulations presented in this notice.

Section II of the comments should address proposed procedures for five-year reviews that the Commission has discussed in this notice, but has not incorporated into the proposed amendments to the part 201 and part 207 regulations. These would include, for example, comments on the format or specific questions of the sample notice of institution appearing as Annex A to this notice, or comments on the proposed schedule appearing as Annex B to this notice.

Section III of the comments should address any other issues commenters may desire to raise pertaining to five-year reviews. The regulations proposed below solely concern the procedures that the Commission intends to use in conducting five-year reviews. The proposed regulations do not address what methodology the Commission, or individual Commissioners, may use to determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Nor do the proposed regulations address how the Commission, or individual Commissioners, will analyze the various factors specified in section 752(a) of the Act in making determinations in five-year reviews.

Although the Commission does not intend to issue regulations pertaining to methodological or analytical issues in five-year reviews, many private practitioners may desire the opportunity to address the Commission about such issues before the reviews begin. The Commission therefore invites persons to file comments on such issues in conjunction with their comments on the procedural matters discussed in this NOPR.

Hearing

The Commission also intends to hold a public hearing at which interested persons will be invited to present their views regarding the procedural matters discussed in this NOPR as well as methodological and analytical issues relating to five-year reviews. The Commission will issue a notice in advance of the hearing setting forth the date of the hearing and the procedures that will be followed at the hearing. The hearing will be held after the submission of the rebuttal comments.

Overview of the Proposed Regulations

The Commission is proposing to promulgate a series of new regulations, to be codified in Subpart F of Part 207, establishing procedures for five-year reviews. Several of the proposed regulations closely resemble current regulations in Subpart C of Part 207 concerning final phase antidumping and countervailing duty investigations. Others establish new procedures that address unique aspects of the five-year review mechanism created by the URAA.

The statute requires Commerce to initiate all five-year reviews automatically. As part of the initiation, Commerce and the Commission are authorized to request that interested parties submit certain information needed to conduct the review. Accordingly, one of the proposed regulations describes the information that the Commission will request from interested parties upon initiation of the review. Each interested party will be requested to state its willingness to participate in the review, and describe the likely effects of revocation of the order or termination of the suspended investigation under review. In addition, the Commission will request that each interested party provide other information or industry data, including a statement concerning conditions of competition in the pertinent domestic industry, a listing of U.S. producers of the domestic like product and importers and foreign producers of the subject merchandise, and certain quantitative data concerning its operations. All interested parties will be requested to furnish this information to the Commission within 30 days. (Interested parties that desire to participate as parties in the Commission review must also file entries of appearance with the Commission within 21 days.) These provisions will aid the Commission in ascertaining whether interested parties have sufficient willingness to participate in a five-year review. They will also provide the Commission with record information for use in an expedited determination, if appropriate.

Section 751(c)(3)(B) of the Act authorizes the Commission to make an expedited determination without further investigation when interested party responses to the notice of initiation are inadequate. Interested parties that have entered appearances in the review and have responded to the notice of institution and other parties that have entered appearances in the review will be permitted to file a brief submission concerning whether an expedited determination is appropriate based on the adequacy of interested party responses to the notice of institution.

The Commission will consider these comments and the responses to the notice of institution and determine whether the review should be expedited approximately 95 days after publication of the notice of institution. Should the Commission determine to expedite the review, interested parties that have entered appearances in the review and have responded adequately to the notice of institution and other parties that have entered appearances in the review will be provided the opportunity to submit comments concerning the merits of the review before the Commission's determination on the merits. The record evidence in the expedited review will be limited to that already available to the Commission.

Should the Commission determine not to expedite the review, the review will proceed in a manner closely resembling a final phase antidumping or countervailing duty investigation. Several of the proposed regulations apply existing procedures to five-year reviews. For example, parties that have entered appearances in the review will have the opportunity to submit written comments on draft questionnaires. They will receive prehearing and final reports from the Commission staff, and will have the opportunity to present testimony at a hearing before the Commission and to file prehearing and posthearing briefs and final comments.

Section-by-Section Analysis of the Proposed Regulations

Section 201.11

Section 201.11 concerns the filing of entries of appearance in Commission investigations and reviews. The Commission is proposing to add new paragraphs (b)(4) and (b)(5) to this section to govern the filing of entries of appearance in five-year reviews. Under proposed section 201.11(b)(4), a party will have 21 days from publication of the Commission's notice of institution of five-year review to file an entry of appearance.

If the Commission determines not to expedite the review, it will issue a notice of scheduling approximately 95 days after institution of the review. (See proposed section 207.62.) Under proposed section 201.11(b)(5), a party will have an additional 45 days after publication of this notice to file an entry of appearance.

Section 207.3

Section 207.3(b) requires parties to provide hand or overnight service of, *inter alia*, prehearing briefs, hearing testimony, and posthearing briefs filed in antidumping and countervailing duty investigations. The proposed amendment adds cross-references to several of the new provisions in Subpart F to existing requirements regarding service.

Section 207.45

Section 207.45 concerns changed circumstances reviews pursuant to section 751(b) of the Act. The proposed amendment changes the statutory cross-reference in section 207.45(a) so it specifically cites section 751(b). No substantive change is intended.

Section 207.46

Section 207.46 is an interim regulation that establishes procedures for investigations under section 753 of the Act, which concerns countervailing duty orders issued under former section 303 of the Act without an injury determination by the Commission.[1] The proposed regulation contains three changes from the interim regulation. First, in the caption for subsection 207.46(g) and in the first sentence of section 207.46(g)(1), the word "expedited" has been deleted to avoid any confusion between simultaneous reviews conducted pursuant to section 753(e) of the Act and five-year reviews that are expedited pursuant to section 751(c)(3)(B) of the Act. Second, the second sentence of section 207.46(g)(1) has been deleted as unnecessary. This sentence requires that requests for simultaneous five-year reviews under section 753(e) of the Act contain a statement why revocation of the order to be reviewed would lead to continuation or recurrence of material injury. Should a simultaneous five-year review be conducted, a similar statement will be requested in the notice of institution. Third, the final sentence in section 207.46(g)(2) has been amended to refer to the new Subpart F governing five-year reviews.

Section 207.60

Proposed section 207.60 defines certain terms used in Subpart F of Part 207 concerning five-year reviews. The first three definitions, "five-year review," "expedited determination," and "notice of institution," are proposed to promote economy of wording. "Five-year review" is a five-year review investigation conducted under section 751(c) of the Act. "Expedited determination" is a determination made under section 751(c)(3)(B) of the Act. "Notice of institution" is the notice of institution of five-year review that the Commission will publish in the **Federal Register** upon initiation of a review. The remaining three terms, "domestic like product," "domestic industry," and "subject merchandise," are terms commonly used in antidumping and countervailing duty proceedings, and are based on sections 771(10), 771(4)(A), and 771(25) of the Act, respectively.

Section 207.61

When Commerce initiates a five-year review, the Commission will publish a notice of institution of five-year review in the **Federal Register** informing interested parties and other persons of their opportunity to provide information to the Commission. Proposed section 207.61 describes what interested parties will be requested to submit to the Commission in response to the notice of institution.

Each interested party (as that term is defined in section 771(9) of the Act) may respond to the notice of institution whether or not it entered an appearance in the Commission review proceedings. If interested parties do not file adequate responses, however, the Commission may determine not to conduct a full review investigation, but instead may issue an expedited determination based on the facts available pursuant to section 751(c)(3)(B) of the Act. The Commission's evaluation of adequacy is described below in the discussion of proposed section 207.62.

Proposed § 207.61(a) states that responses to the notice of institution must be submitted to the Commission no later than 30 days after publication of the notice in the **Federal Register**. The Commission believes that 30 days will be ample time for interested parties to submit the requested information, particularly since the Commission will provide public notice (through this rulemaking and other actions) of the type of information that will be requested in five-year reviews well in advance of the actual institution of any five-year reviews. Moreover, the Commission intends that it will jointly prepare with Commerce a final schedule of all transition reviews, which will be published in the **Federal Register** before the initiation of the first review. This notice will provide interested parties with sufficient advance notice of scheduling of all transition reviews to enable them to know approximately when such information will be due before publication of the actual notice of institution. This notice will also be mailed to the embassy in Washington, D.C. of each country that will be a

[1] Section 207.46 became effective on January 1, 1995, together with several other interim regulations that were designed to conform the Commission's Rules of Practice and Procedure to the URAA pending adoption of final regulations. *See* 60 Fed. Reg. 18 (Jan. 3, 1995). When the Commission proposed adopting its other interim regulations as final regulations, it did not do so with respect to section 207.46, because it perceived section 207.46 to relate to the general question of five-year reviews and stated that "the Commission is not prepared to address the question of "sunset" reviews at this time." 60 Fed. Reg. 51748, 51753 (Oct. 3, 1995). Now that the Commission is establishing procedures for five-year reviews, it believes that proposing to adopt section 207.46 as a final regulation is appropriate. (The Commission contemplates that it will be conducting investigations under section 753, pursuant to pending requests, during 1997-98. Additionally, there is a theoretical possibility that future requests for section 753 investigations may be filed if additional countries become Subsidies Agreement countries.)

subject country in any five-year review. Persons who are not interested parties will also be provided an opportunity to respond under proposed § 207.61(e), as discussed below.

Proposed paragraphs (b) and (c) describe what interested parties will be requested to submit to the Commission in response to the notice of institution. Sections 751(c)(2)(A), (B), and (C) of the Act expressly direct the Commission and Commerce to request interested parties to submit: (1) A statement expressing their willingness to participate in the review by providing information requested by the agencies, (2) a statement regarding the likely effects of revocation of the order or termination of the suspension agreement under review, and (3) such other information or industry data as the agencies may specify. The URAA's legislative history specifically contemplates that the Commission may seek detailed quantitative data from interested parties upon initiation of a five-year review, such as "certain key data regarding sales, prices, imports, and market conditions."[2]

The Commission has two reasons for requesting the submission of certain information and quantitative data from interested parties upon initiation of a five-year review. First, the Commission must determine whether there is sufficient willingness among interested parties to participate in the review and adequate indication that parties will submit requested information throughout the proceeding. The Commission could not effectively ascertain whether such willingness exists—and whether any future investigative efforts are likely to be fruitful—if interested parties were permitted merely to submit *pro forma* statements of intent to participate. When such willingness does not exist or is limited, an expedited review will be more efficient for both the parties and the Commission than conducting a full review.

Second, the responses to the notice of institution will provide the Commission with information for the record it can use in making a determination, particularly an expedited determination pursuant to section 751(c)(3)(B) of the Act. Section 752(a) of the Act requires the Commission to consider a number of factors when it makes its determination, including an expedited determination, in a five-year review. Additionally, the Commission's expedited determinations are subject to review by U.S. courts, NAFTA Chapter 19 panels, and/or the WTO Dispute Settlement Body.

As a practical matter, the Commission's sole opportunity in expedited reviews to obtain information that will enhance its ability to reach a defensible determination—beyond what is available from the original record—is to request such information in the notice of institution. Thus, because of the possibility of an expedited determination in any five-year review, there is a certain amount of information gathering at the initiation stage that is simply unavoidable and any resulting burden on interested parties is inherent in the statutory scheme. Moreover, the information to be submitted is the same type of information that the Commission necessarily would seek at some point in the review. At most, therefore, the proposed regulations request interested parties to submit information earlier in the review process. The Commission nevertheless solicits comments addressing what amount and type of information should be requested in the notice of institution that will enable the Commission to assess the willingness of interested parties to participate in a full five-year review and to make an expedited determination when such a determination is appropriate, while minimizing burdens on interested parties.

Interested party responses to the notice of institution will be in two parts. One part will be filed with the Secretary. The other will be submitted to the Office of Investigations. The Commission believes that such a bifurcated filing process will reduce the burdens to interested parties in submitting business proprietary information (BPI), because, as explained below, the parties need not justify proprietary treatment for information they will submit to the Office of Investigations or prepare and file a public version of this submission. The evaluation of whether the response of an individual interested party is adequate will be based on that party's response to both parts of the notice.

The first part of the response, which proposed section 207.61(b) addresses, will be filed with the Secretary pursuant to the requirements of Commission rules 201.8 and 207.3. This submission will include the material specified in section 751(c)(2)(A) and (B) of the Act: a statement that the submitter is willing to participate in the review by providing requested information and a statement regarding the likely effects of revocation of the order or termination of the suspended investigation. These requirements are set forth in proposed sections 207.61(b)(1) and (b)(2). The submission will also provide identifying information: the submitter's name, address, telephone number, facsimile number, electronic mail address and (if applicable) World Wide Web site address, and a statement indicating whether it is a producer of the domestic like product, a U.S. importer of subject merchandise, a foreign producer or exporter of subject merchandise, or another type of interested party.

Interested parties will also be asked to list all known and currently operating U.S. producers of the domestic like product, all known and currently operating U.S. importers of subject merchandise, and all known and currently operating producers of the subject merchandise in each subject country that currently export or have exported subject merchandise to the United States or to any other country during the period specified in the notice of institution. This material will aid the Commission in determining the adequacy of interested party responses to the notice of institution. Interested parties will be required only to furnish information in their possession to compile these lists. If this information is not in the interested party's possession, however, it must expressly so indicate in its response to the Commission pursuant to proposed section 207.61(d).

Additionally, each interested party will be provided the option of stating whether it agrees with the definitions of the domestic like product and domestic industry that the Commission adopted in its original investigation(s). Interested parties that respond that they disagree with an original definition will be requested to explain why and to provide an alternative definition. This information will assist the Commission to ascertain the like product and domestic industry issues that may arise in each review, and the extent and nature of any future investigative activity it may conduct.

The second part of the response to the notice of institution, which proposed section 207.61(c) addresses, will be a submission to the Commission's Office of Investigations. Domestic producers, foreign producers of subject merchandise, and U.S. importers of subject merchandise will be requested to furnish certain quantitative data to the Office of Investigations concerning their operations. Each domestic producer will be asked to provide information about the domestic like product(s) defined by the Commission in the original investigation(s) giving rise to the review, including information on capacity, production, commercial shipments, inventories, employment, financial performance, and prices. Each importer of subject merchandise will be asked to provide information about its import volumes, commercial shipments, inventories, and prices for the subject merchandise. Each foreign producer of subject merchandise will be asked to provide information about its capacity, production, home market shipments, export shipments, and inventories of the subject merchandise. The Commission will request each party to submit actual data for the most recently completed calendar year, and projections for the succeeding calendar year (which will generally be the calendar year in which the notice of institution is published) in accordance with generally accepted accounting principles. The notice of institution for each review will specify the particular data that interested parties are to furnish.

Each interested party will also be requested to provide certain narrative information to the Office of Investigations. First, each interested party will be requested to identify significant changes in the supply of and demand for the domestic like product that have occurred since the order(s) or agreement(s) under review became effective. This will provide the Commission with information concerning conditions of competition that it can use in making a determination. Additionally, interested parties in grouped reviews involving multiple subject countries will be asked to explain the extent to which the domestic like product competes or is likely to compete with subject merchandise from each subject country, and the degree to which merchandise from each subject country competes or is likely to compete with merchandise from each other subject country. This will provide the Commission with information pertinent to its determination on cumulation.

Finally, under proposed section 207.61(c)(2), interested parties will be free to furnish any other information or data relevant to the Commission's determination. For example, interested parties may desire to provide information not specifically requested in the notice of institution pertinent to one or more of the factors that the Commission is to consider under section 752(a) of the Act in rendering a determination in a five-year review. Interested parties may also desire to indicate which domestic producers are related parties under section 771(4)(B) of the Act.

Any submission that interested parties make pursuant to section 207.61(c) will be submitted to the Office of Investigations and will not be subject to the filing requirements of section 201.8. Instead, only a single copy of the submission need be filed with the Office of Investigations. The Commission contemplates that substantially all of the information contained in this submission will be business proprietary. Consequently, the Commission will automatically accord such submissions proprietary treatment, except to the extent the information is otherwise publicly available. A submitter need not submit the justification for proprietary treatment or public versions of the submissions that would otherwise be required by Commission rules 201.6 or 201.8. This procedure will accord the same treatment to these submissions that has long been accorded to questionnaires submitted to the Office of Investigations in Commission investigations. Pursuant to Commission rule 207.3(b), interested parties that entered appearances in the review must serve the public version of the submission described in section 207.61(b) on all other parties to the review and the proprietary versions of both parts of their response to the notice of institution (i.e., the submissions described in both sections 207.61(b) and 207.61(c)) on all representatives on the Administrative Protective Order (APO) service list.

A sample notice of institution appears at Annex A to this notice. The Commission contemplates that interested parties will be able to obtain forms, whose use will be optional, to respond to the notice of institution in a specific review from the Office of Investigations or the Commission's World Wide Web site.

Proposed section 207.61(d) addresses situations in which an interested party cannot furnish the information requested in the notice of institution in the form or manner requested. In such instances, the interested party should explain in its response why it is unable to comply and indicate alternative forms in which it can provide such information. This section is intended to apply the provisions of section 782(c)(1) of the Act in the context of responses to notices of institution.

Pursuant to section 782(b) of the Act and Commission rule 207.3(a), any person that submits information in response to the notice of institution or that makes a submission pursuant to section 207.61(e) must certify that the information is accurate and complete to the best of its knowledge. The Commission contemplates that the standard forms it will make available for responses to the notice of institution will contain specific language, such as that currently used in questionnaires in antidumping and countervailing duty investigations, for the required certification. Interested parties must certify both parts of their responses (i.e., the submissions described in section 207.61(b) and section 207.61(c)).

Each individual interested party response to the notice of institution will be reviewed for completeness by Commission staff immediately upon its receipt. Commission staff will attempt to notify each interested party of any deficiencies in its response, will state the nature of the deficiency and will, to the extent practicable, provide it with a brief period of time (approximately 5–10 days) in which to remedy or explain the deficiency. The Commission will not collect or accept any additional information or conduct other investigative activity thereafter unless it decides to proceed to a full review. This notification procedure is intended to apply the provisions of section 782(d) of the Act in the context of responses to notices of institution.

The Act provides the Commission with several potential courses of action when interested parties fail to provide responses to the notice of institution or provide responses that are deficient. Under section 782(d) of the Act, when a person fails to respond in a satisfactory or timely manner to a request to remedy or explain a deficiency in a submission, the Commission may disregard all or part of the submission. Under section 776(b) of the Act, when an interested party fails to cooperate by not acting to the best of its ability to comply with a Commission request for information, the Commission may take an adverse inference against the party in reaching a determination. Consequently, when an interested party neither provides the information requested in the notice of institution nor provides an acceptable explanation of its inability to provide such information, the Commission may take an adverse inference against that party in reaching any determination in a five-year review, including an expedited determination.

Proposed section 207.61(e) provides an opportunity for those persons that are not interested parties as defined by the Act (such as industrial users, and, if merchandise under investigation is sold at the retail level, representative consumer groups) to submit information they consider relevant to the Commission's five-year review. Such information must be filed with the Commission Secretary in accordance with the provisions of section 201.8 within the 30-day period applicable to interested party responses to the notice of institution.

[2] URAA Statement of Administrative Action (SAA), H.R. Rep. 316, 103d Cong., 2d Sess., vol. 1 at 879 (1994).

Section 207.62

Section 751(c)(3)(B) of the Act permits the Commission to make expedited determinations in five-year reviews when "interested parties provide inadequate responses to a notice of initiation." Proposed section 207.62 describes the procedures for issuing expedited determinations under section 751(c)(3)(B).

Proposed section 207.62(a) authorizes certain parties to file brief comments to the Commission within a time specified in the notice of institution, which will generally be no later than 60 days after publication of the notice. Parties authorized to file comments are: (1) Interested parties that have entered appearances in the review and have responded to the notice of institution; and (2) all parties that have entered appearances in the review that are not interested parties. The sole issue these comments may address is whether an expedited determination under section 751(c)(3)(B) of the Act is appropriate. These comments may not include any new factual information (such as supplementation of the response to the notice of institution) and will be limited to five pages.

Representatives of interested parties that have entered into a Commission APO will have access to other parties' proprietary responses to the notice of institution well before these comments are due. Under section 207.3(b), responses to the notice of institution submitted by parties that have entered appearances in the investigation must be served on all other parties on the service list. The Commission will release under APO responses to the notice of institution filed by interested parties that have not entered appearances in the investigation approximately two weeks before the section 207.62(a) comments are due. At approximately the same time, the Commission intends to release confidential versions of the Commission's opinion(s) in the original investigation and staff reports and non-privileged memoranda prepared in connection with that investigation (where available) to representatives under the APO. Public versions of these documents (where available) will also be released. The Commission will also release official import statistics and estimates of domestic and foreign industry production compiled by Commission staff, where such information is available.

After all comments are received, the Commission will determine whether interested party responses are adequate. The SAA provides that the purpose of the expedited review mechanism is to promote administrative efficiency by eliminating needless reviews. The SAA also states that the determination of adequacy is committed to the Commission's (and, separately, Commerce's) discretion. [3]

Responses will be evaluated for adequacy on both an individual and an aggregate basis. In assessing the adequacy of responses in the aggregate, the Commission will consider only those responses that individually are considered adequate. The Commission will separately determine the adequacy of response (in the aggregate) of: (1) Interested parties described in sections 771(9)(C), (D), (E), (F), and (G) of the Act (a group that consists of, inter alia, U.S. producers of the domestic like product and labor unions or groups of workers which are representative of an industry producing the domestic like product; this group will be referred to as "domestic producers/unions"), and (2) interested parties described in sections 771(9)(A) and (B) of the Act (a group that consists of, inter alia, U.S. importers and foreign exporters or producers of subject merchandise and subject country governments; this group will be referred to as "foreign producers/importers").

The Commission will make the determination of adequacy on a case-by-case basis taking several factors into account. One factor that the Commission will consider in determining adequacy is the responding parties' likely share of domestic production (for domestic producers/unions) or of subject imports or production of the subject merchandise (for foreign producers/importers). The Commission does not intend to apply strict numerical tests to determine adequacy of interested party responses. Nevertheless, to provide some guidance to interested parties, the Commission can tentatively identify certain circumstances in which it will consider that response rates are sufficiently high or low to provide a strong indication that interested party responses are either adequate or inadequate. Specifically, responses from parties accounting for more than 50 percent of domestic production will normally be considered to be a strong indication of an adequate response from domestic producers/unions. Responses from parties accounting for more than 50 percent of subject imports or production of subject merchandise will normally be considered to be a strong indication of an adequate response from foreign producers/importers. Consequently, a sufficient response by either U.S. importers or foreign producers of the subject merchandise may constitute an adequate response from foreign producers/importers. By contrast, responses accounting for less than 25 percent of domestic production, on the one hand, or subject imports or production of subject merchandise, on the other, will normally be considered to be a strong indication of inadequate responses by domestic producers/unions and foreign producers/importers, respectively.

The Commission will not rely solely on numerical tests and will take other factors into account in determining whether interested party responses are adequate. For example, a response rate that may seem to be inadequate for a highly concentrated industry may be adequate for a highly fragmented industry.

Additional factors that the Commission intends to consider include the structure of the pertinent domestic industry and industry producing the subject merchandise, the potential of particular foreign producers to export to the United States, the extent to which subject imports are effectively excluded from the U.S. market by the order or suspension agreement under review, and, for domestic producers/unions, the prevalence of related party producers. The Commission invites parties to comment on the appropriateness of relying on these factors to determine whether interested party responses are adequate, and whether there are additional or different factors that the Commission should consider in making such a determination. The Commission also invites parties to comment on the appropriateness of making expedited determinations in grouped reviews involving subject merchandise from several countries, if responses from the foreign producers/importers are adequate with respect to some of the subject countries within the group but inadequate with respect to others.

Pursuant to proposed section 207.62(b), if the Commission determines that interested party responses are adequate, it will conduct a full five-year review. In such cases, the Commission will publish its schedule of the remaining procedures in the **Federal Register**. (A sample schedule appears as Annex B to this notice.) Under proposed section 201.11(b)(5), parties will have 45 days after publication of this **Federal Register** notice to file additional entries of appearance and APO applications.

By contrast, proposed section 207.62(c) describes procedures that apply when the Commission concludes that interested party responses are inadequate and an expedited determination is appropriate. In such circumstances, the Secretary will notify all parties that submitted timely entries of appearance in the Commission review that the Commission has decided to make an expedited determination. The notice will invite interested parties that responded adequately to the notice of institution and all parties that are not interested parties to submit comments on the merits of the review by a specific deadline (which will generally be approximately 30–35 days from issuance of the notice). Other persons who are not interested parties will have the opportunity to submit a brief written statement on the merits of the review by the same deadline.

The comments to be filed under proposed section 207.62(c), which will satisfy the requirements of section 782(g) of the Act, give parties their sole opportunity to submit comments to the Commission on the merits of an expedited determination. These comments may not contain new factual information and may not exceed 25 pages. Consistent with Commission practice under section 207.30(b), comments containing new factual information will be accepted into the record, but new factual information and arguments based on that new factual information will be disregarded. Any compilations by the Commission of information collected and not previously released to representatives under APO will be released under APO approximately 20 days before these comments are due. The information released will include a staff report that will compile information obtained in response to the notice of institution as well as official import statistics, and, where available, estimates of domestic and foreign industry production compiled by the Commission staff. A public version of the staff report will also be released.

Proposed section 207.62(d) allows the Commission to delegate to a senior member of the staff, such as the Director of Operations or the Director of Investigations, authority to make decisions concerning whether interested party responses to the notice of institution are adequate or inadequate. Initially, the Commission will itself make all such decisions. Should the Commission decide to delegate decisionmaking authority concerning whether interested party responses are inadequate, it will retain sole authority to issue the expedited determination in any particular review.

Section 207.63

Proposed section 207.63 concerns circulation of draft questionnaires in five-year reviews. As stated in proposed section 207.63(a), when the Commission does not issue an expedited determination in a five-year review, it will circulate draft questionnaires to the parties that have entered appearances in the review. The Commission anticipates sending questionnaires to U.S. producers of the domestic like product, foreign producers of subject merchandise, U.S. importers of subject merchandise, and U.S. purchasers. Questionnaires will commonly seek data in more detail (particularly with respect to financial performance and pricing), for additional periods of time, and, when warranted, for additional products than will the notice of institution. The Commission anticipates that draft questionnaires will be circulated to the parties to the review approximately 150 days after initiation. The Commission invites comment on the content and format of questionnaires in five-year reviews.

Parties that desire to comment on the draft questionnaires may submit written comments to the Commission, as indicated by proposed section 207.63(b). The Commission anticipates that such comments will be due approximately 30 days after circulation of the draft questionnaires.

Proposed section 207.63(b) requires each party to present all data collection requests in its questionnaire comments. The Commission will disregard any subsequent arguments that are premised on the collection of new data if the data collection request was not asserted in the questionnaire comments. Thus, if the draft questionnaires in a review propose collecting data for only one product, and a party believes that data should be collected for two products, it must request data collection for two products, and provide a legal basis for its request, in its comments on the questionnaire. It may not request collection of such data for the first time, for example, in its prehearing brief or at the hearing.

The Commission believes this procedure is necessary to focus its data collection efforts. In original antidumping and countervailing duty investigations, the Commission has found issuing supplemental questionnaires in the late stages of an investigation to be impractical because of time and staffing constraints. These problems will be exacerbated in five-year reviews. Therefore, any data collected in a five-year review must be collected pursuant to the notice of institution and in the questionnaires. It is imperative that the Commission be apprised of all data collection issues before questionnaires are issued. The Commission believes that this procedure will impose no hardship on representatives of interested parties who have entered an APO, who will have the benefit of pertinent portions of the record of the original investigation, as well as access under APO to all information collected in response to the notice of institution, before they are to file comments on the questionnaires. This material should allow interested party representatives ample time to determine what information they believe the Commission should seek and consider. Likewise, parties to the review that are not interested parties will have ample notification and access to the public record to provide an informed basis for comment.

Section 207.64

Proposed section 207.64 concerns staff reports in five-year reviews. It tracks current section 207.22 concerning staff reports in final phase antidumping and countervailing duty investigations.

Section 207.65

Proposed section 207.65 concerns prehearing briefs. It is adapted from current section 207.23. In a five-year review, every party to the review is to submit a prehearing brief on the date specified in the scheduling notice.

Section 207.66

Proposed section 207.66 concerns hearings in five-year reviews. The Commission will conduct a hearing in each five-year review in which it does not render an expedited determination. Hearing procedures will conform to those established in current section 207.24 concerning final phase antidumping and countervailing duty investigations.

Section 207.67

Proposed section 207.67 concerns posthearing briefs and statements. It is based on current sections 207.25 and 207.26.

Section 207.68

Proposed section 207.68 concerns final comments on information in five-year reviews. It is based on the final comment procedure in section 207.30 currently used in final phase antidumping and countervailing duty investigations.

The procedures in section 207.68 will be used in five-year reviews where the determination is not expedited. In five-year reviews where the determination is

[3] SAA at 880.

expedited, the final comment procedure is specified in proposed section 207.62(c).

Section 207.69

Proposed section 207.69 requires the Commission to publish and serve its determinations in five-year reviews. It tracks current section 207.29.

List of Subjects

19 CFR Part 201

Administrative practice and procedure, Investigations, Imports.

19 CFR Part 207

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

For the reasons stated in the preamble, 19 CFR parts 201 and 207 are proposed to be amended as set forth below:

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and § 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. New paragraphs (b)(4) and (b)(5) are added to § 201.11 to read as follows:

§ 201.11 Appearance in an investigation as a party.

* * * * *

(b) *Time for filing.* * * *

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the **Federal Register** of the notice of institution described in § 207.60(c).

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter for a period of 45 days after publication in the **Federal Register** of the notice specified under § 207.62(b).

* * * * *

PART 207—[AMENDED]

3. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

4. Paragraph (b) of § 207.3 is revised to read as follows:

§ 207.3 Service, filing, and certification of documents

* * * * *

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67 shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

* * * * *

5. Paragraph (a) of § 207.45 is revised to read as follows:

§ 207.45 Investigation to review outstanding determination

(a) *Request for review.* Any person may file with the Commission a request for the institution of a review investigation under section 751(b) of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

* * * * *

6. Paragraph (g) of § 207.46 is revised to read as follows:

§ 207.46 Investigations concerning certain countervailing duty orders.

* * * * *

(g) *Request for simultaneous section 751(c) review.* (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority a review under section 751(c) of the Act of a countervailing or antidumping duty order involving the same or comparable subject merchandise.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. Any such consolidated review shall be conducted under the applicable procedures set forth in subparts A and F of this part.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

7. A new subpart F is added to read as follows:

Subpart F—Five-Year Reviews

207.60 Definitions.
207.61 Responses to notice of institution.
207.62 Adequacy of responses to notice of institution.
207.63 Circulation of draft questionnaires.
207.64 Staff reports.
207.65 Prehearing briefs.
207.66 Hearing.
207.67 Posthearing briefs and statements.
207.68 Final comments on information.
207.69 Publication of determinations.

§ 207.60 Definitions.

For purposes of this subpart:

(a) The term *five-year review* means a five-year review investigation conducted pursuant to section 751(c) of the Act.

(b) The term *expedited determination* means a determination issued by the Commission pursuant to section 751(c)(3)(B) of the Act.

(c) The term *notice of institution* shall refer to the notice of institution of five-year review that the Commission shall publish in the **Federal Register** requesting that interested parties provide information to the Commission upon initiation of a five-year review.

(d) The term *domestic like product* means a product produced in the United States which is like, or in the absence of like, most similar in characteristics and uses with, the articles subject to a five-year review.

(e) The term *domestic industry* means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

(f) The term *subject merchandise* means the class or kind of merchandise that is within the scope of the five-year review.

§ 207.61 Responses to notice of institution.

(a) *When information must be filed.* Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the **Federal Register**.

(b) *Information to be filed with the Secretary.* The notice of institution shall direct each interested party to make a filing pursuant to §§ 201.8 and 207.3 of this chapter containing the following:

(1) A statement expressing its willingness to participate in the review by providing information requested by the Commission;

(2) A statement regarding the likely effects of revocation of the order(s) or termination of the suspended investigation(s) under review;

(3) Other information requested in the notice of institution.

(c) *Information to be submitted to the Office of Investigations.* The notice of institution shall further direct each interested party to submit the following material to the Commission's Office of Investigations:

(1) Such information or industry data as the Commission may specify in the notice of institution;

(2) Any other information or data the party considers relevant to the Commission's determination.

(d) *When requested information cannot be supplied.* Any interested party that cannot furnish the information requested by the notice of institution shall explain in its response(s) why it is unable to provide the information and indicate alternative forms in which it can provide equivalent information.

(e) *Submissions by persons other than interested parties.* Any person who is not an interested party may submit to the Commission, in a filing satisfying the requirements of § 201.8 of this title, information relevant to the Commission's review no later than 30 days after publication of the notice of institution in the **Federal Register**.

§ 207.62 Adequacy of responses to notice of institution.

(a) *Comments to the Commission.* (1) Comments to the Commission concerning whether the Commission should make an expedited determination in that review may be submitted by:

(i) Any interested party that is a party to the investigation and that has responded to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the investigation.

(2) Comments shall be submitted within the time specified in the notice of institution. Comments shall not exceed five (5) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches. Comments containing new factual information shall be disregarded.

(b) *Determination that responses are adequate.* If the Commission concludes that interested parties' responses to the notice of institution are adequate, investigative activities pertaining to that review will continue. The Commission will publish in the **Federal Register** a notice of scheduling pertaining to subsequent procedures in the review.

(c) *Determination that responses are inadequate.* (1) If the Commission concludes that interested parties' responses to the notice of institution are inadequate, it may decide to issue an expedited determination. In that event, the Commission shall direct the Secretary to issue a notice stating that the Commission has decided to make an expedited determination and inviting those parties to the review described in paragraph (c)(2) of this section to file written comments with the Secretary on what determination the Commission should reach in the review. The date on which such comments must be filed will be specified in the notice to be issued by the Secretary. Comments shall not exceed twenty-five (25) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ × 11 inches. Comments containing new factual information shall be disregarded.

(2) The following parties may file the comments described in paragraph (c)(1) of this section:

(i) Any interested party that is a party to the investigation and that has filed an adequate response to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the investigation.

(3) Any person who is neither a party to the investigation nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review within the time specified for the filing of written comments.

(d) *Delegation of responsibilities.* Notwithstanding any other provision of this part, the Commission may delegate its responsibilities pursuant to this section to a member of the Commission staff.

§ 207.63 Circulation of draft questionnaires.

(a) In each five-year review in which the Commission has not issued an expedited determination, the Director shall circulate draft questionnaires to the parties for comment.

(b) Any party desiring to comment on the draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new data must be presented at this time. The Commission will disregard subsequent arguments that are premised on requests for collection of new data if such requests were not included in the comments on the draft questionnaires.

§ 207.64 Staff reports.

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the five-year review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

§ 207.66 Hearing.

(a) *In general.* The Commission shall hold a hearing in each five-year review in which it does not make an expedited determination. The date of the hearing

shall be specified in the scheduling notice.

(b) *Procedures.* Hearing procedures in five-year reviews will conform to those for final phase antidumping and countervailing duty investigations set forth in § 207.24.

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½ × 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

(b) *Statements from nonparties.* Any person other than a party may submit a brief written statement of information pertinent to the review within the time specified for the filing of posthearing briefs.

§ 207.68 Final comments on information.

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on stationery measuring 8½ × 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

§ 207.69 Publication of determinations.

Whenever the Commission makes a determination concluding a five-year review, the Secretary shall serve copies of the determination and, when applicable, the nonbusiness proprietary version of the final staff report on all parties to the review, and on the administering authority. The Secretary shall publish notice of such determination in the **Federal Register**.

By order of the Commission.

Issued: October 20, 1997.

Donna R. Koehnke,

Secretary.

Note: The following annexes would not appear in the Code of Federal Regulations.

Annex A—Notice of Institution of Five-Year Review

Definitions

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review. In this review, the Department of Commerce has defined the *Subject Merchandise* as **DEFINE**.

(2) The *Subject Country* in this review is **COUNTRY**.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics or uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as **DEFINE. One Commissioner/certain Commissioners defined the *Domestic Like Product* differently.**

(4) The *Domestic Industry* is the producers as a whole of a *Domestic Like Product*, or those producers whose collective output of a *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of **DEFINE.**

(5) The *Order Date* is the date that the **countervailing duty order/antidumping duty order/suspension agreement** under review became effective. In this review, the *Order Date* is **DATE.**

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Certification

In accordance with Commission rule 207.3, any person submitting information to the Commission in connection with this investigation must certify that the information is accurate and complete to the best of the submitter's knowledge. This certification must be included in both the information to be submitted to the Commission's Secretary and the information to be submitted to the Commission's Office of Investigations specified below. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Information to be Submitted to the Secretary

Responses filed with the Secretary must conform with the provisions of section 201.8 of the Commission's rules. If business proprietary treatment is desired for portions of a response, submitters must follow the requirements set forth in sections 201.6, 207.3, and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the investigation you do not need to serve your response). Any interested party that cannot furnish the information requested should explain why it is unable to do so and indicate alternative forms in which it can provide equivalent information. **(Added if more than one country is involved)** If you are a domestic producer, import/export *Subject Merchandise* from more than one *Subject Country*, or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*.

The response to the Secretary should include:

(1) The name and address of your firm (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm is a U.S. producer of the *Domestic Like Product*, a U.S. importer of the *Subject Merchandise*, a foreign producer/exporter of the *Subject Merchandise*, or another interested party (including an explanation).

(3) A statement indicating whether your firm is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the **revocation of the countervailing duty order/antidumping duty order/termination of the suspension agreement** on the *Domestic Industry* in general and/or your firm specifically.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*.

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in **COUNTRY** that currently export or have exported *Subject Merchandise* to the United States or other countries since **(YEAR OF PETITION)**.

(7) **(OPTIONAL)** A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Information To Be Submitted to the Office of Investigations

Responses filed with the Office of Investigations will be treated as business proprietary unless the information is otherwise publicly available and should be submitted to **INVESTIGATOR**, Office of Investigations, U.S. International Trade Commission, Room 615, 500 E Street, SW, Washington, DC 20436. Only one copy of the response needs to be submitted to the Office of Investigations, but each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the BPI service list), and a certificate of service must accompany the document (if you are not a party to the investigation you do not need to serve your response). Any interested party that cannot furnish the information requested should explain why it is unable to do so and indicate alternative forms in which it can provide equivalent information. **(Added if more than one country is involved)** If you are a domestic producer, import/export *Subject Merchandise* from more than one *Subject Country*, or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*.

The response to the Office of Investigations should include:

(1) The name and address of your firm (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) If your firm is a U.S. producer of **PRODUCT**, provide the following information on your firm's operations on that product during calendar year **PRECEDING YEAR** and your projections, in accordance with Generally Accepted Accounting Principles (GAAP), for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) Annual production capacity (*quantity*) (report the practical capacity of your plant(s) using the machinery and equipment in place at the end of the year and specify that the capacity reported is based on operating ____ hours per week, ____ weeks per year);

(b) end-of-year inventories (*quantity*);

(c) production (*quantity*) (including, if known, an estimate of the percentage of total U.S. production of **PRODUCT** accounted for by your firm's production in **PRECEDING YEAR**);

(d) the *quantity* and *value* of U.S. commercial shipments of product produced in your U.S. plant(s);

(e) the *quantity* of product produced in your U.S. plant(s) that you consumed internally or transferred within your company;

(f) the *quantity* and *value* of exports of product produced in your U.S. plant(s);

(g) the average number of production workers;

(h) your firm's net sales and operating income or (loss); and

(i) average prices for **SPECIFIC PRODUCT**.

(3) If your firm is a U.S. importer of the *Subject Merchandise*, provide the following information on your firm's operations on that product **FOR EACH COUNTRY SUBJECT TO THIS REVIEW INVESTIGATION** during calendar year **PRECEDING YEAR** and your projections, in accordance with GAAP, for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) The *quantity* and *value* of U.S. imports (including, if known, an estimate of the percentage of total U.S. imports of **PRODUCT** from **COUNTRY** accounted for by your firm's imports in **PRECEDING YEAR**);

(b) end-of-year inventories (*quantity*);

(c) the *quantity* and *value* of U.S. commercial shipments of imported product; and

(d) average prices for **SPECIFIC PRODUCT**.

(4) If your firm is a producer of the *Subject Merchandise* in **COUNTRY**, provide the following information on your firm's operations on that product during calendar year **PRECEDING YEAR** and your projections, in accordance with GAAP, for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) Annual production capacity (*quantity*) (report the practical capacity of your plant(s) using the machinery and equipment in place at the end of the year and specify that the capacity reported is based on operating ____ hours per week, ____ weeks per year);

(b) end-of-year inventories (*quantity*);

(c) production (*quantity*) (including, if known, an estimate of the percentage of total production of **PRODUCT** in **COUNTRY** accounted for by your firm's production in **PRECEDING YEAR**);

(d) the *quantity* and *value* of home market shipments of product produced in your plant(s) (including any internal consumption and company transfers);

(e) the *quantity* and *value* of your firm's exports to the United States of product produced in your plant(s) (including, if known, an estimate of the percentage of total exports to the United States of **PRODUCT** from **COUNTRY** accounted for by your firm's exports in **PRECEDING YEAR**); and

(f) the *quantity* and *value* of your firm's exports to all other countries of product produced in your plant(s).

(5) Identify any significant changes in the supply of and demand for the *Domestic Like Product* that have occurred in the United States since the *Order Date*. Address changes in factors such as technology; production methods; the availability and price of major production inputs; consumption patterns; new alternative products that compete for sales; availability of imports from nonsubject countries; the degree of interchangeability between the *Domestic Like Product*, *Subject Merchandise*, and nonsubject imports; and demand for U.S. products in export markets.

(6) **(Asked in reviews involving multiple subject countries)** Explain (a) whether the *Domestic Like Product and Subject Merchandise* from each *Subject Country* compete or are likely to compete with each other in the United States and (b) whether *Subject Merchandise* from each individual *Subject Country* competes or is likely to

compete in the United States with *Subject Merchandise* from each other *Subject Country*. In determining whether (likely) competition exists between two products, you may consider such factors as (i) the degree of (likely) fungibility between the products, (ii) whether the products are (likely to be) sold in the same geographic markets in the United States, (iii) whether the products are (likely to be) sold in common channels of distribution, and (iv) whether the products are (likely to be) sold in the U.S. market simultaneously.

(7) (OPTIONAL) Provide any other information or data that you consider relevant to the Commission's determination.

Annex B—Proposed Schedule for Sunset Reviews[1]

Action/Event	Day
Notice of Institution (Published in the FEDERAL REGISTER)	0
Entries of Appearance/APO Applications Due	21
Responses to Notice of Institution Due	30
Comments on Appropriateness of Expedited Review Due	60
Notice of Inadequacy/Expedited Review or Adequacy/Full Review	95

[1] The Commission may extend its deadline by up to 90 days in all transition reviews and other extraordinarily complicated cases.

INADEQUATE RESPONSES/EXPEDITED REVIEW

Action/Event	Day
Staff Report/Data Compilation to Commission and Parties	110
Commerce Expedited Determination (If Issued)	120
Written Submission on Merits ("Final Comments") by Parties Due	130
Commission Vote	140
Commission Determination and Views to Commerce	150

ADEQUATE RESPONSES/FULL REVIEW

Action/Event	Day
New Entries of Appearance/APO Applications Due	140
Draft Questionnaires to Parties for Comment	150
Written Comments on Draft Questionnaires Due (Final Opportunity for Parties to Raise Issues Affecting Data Collection)	180
Questionnaire Mail Date	225
Commerce Subsidy/Dumping Determination	240
Questionnaire Return Date	265
Prehearing Report to Commission and Parties	299
Prehearing Briefs Due	305
Hearing	313
Posthearing Briefs Due	320
Staff Report to Commission and Parties	330

ADEQUATE RESPONSES/FULL REVIEW—Continued

Action/Event	Day
Final Comments Due	340
Commission Vote	348
Commission Determination and Views to Commerce	360

[FR Doc. 97–28257 Filed 10–22–97; 8:45 am]
BILLING CODE 7020–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN 3220–AB27

Eligibility for an Annuity

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend its regulation under the Railroad Retirement Act concerning when a child of a railroad employee is considered a full-time elementary or secondary student. The proposed changes reflect the current trend in most States and jurisdictions to recognize home schooling and independent study programs as comparable to traditional education.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(d)(4) of the Railroad Retirement Act (45 U.S.C. 231a(d)(4)) provides, in pertinent part, that an annuity is payable to a child of a deceased employee until such child attains age 18 or 19 if such child is in full-time attendance at an elementary or secondary school. Section 2(d)(4) of the Act incorporates the provisions of section 202(d)(7) of the Social Security Act (42 U.S.C. 402(d)(7)), which defines the terms full-time elementary or secondary student. Section 202(d)(7) of the Social Security Act in turn provides that a full-time elementary or a secondary student is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of the Social Security Administration (by regulations prescribed by the Commissioner).

Before July 24, 1996, section 404.367 of the Social Security Administration's regulations under the Social Security Act (20 CFR 404.367) defined a full-time student as an individual enrolled in an educational institution including public, private, and religious schools. The Social Security Administration's previous policy, as reflected in its regulation, was aligned with the traditional definition of educational programs. However, recently most States and other jurisdictions have broadened the definition of education programs to include home schooling and independent study programs. Because of this trend, the Social Security Administration revised section 404.367 to include such types of schooling in the definition of elementary and secondary schools. *See*, 61 FR 38363 (1996). The Board, therefore, proposes to revise its regulations to include students enrolled in home schooling or independent study programs authorized by a State or other jurisdiction within the definition of a full-time elementary or secondary school student.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

1. The authority citation for part 216 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 216.74 is revised to read as follows:

§ 216.74 When a child is a full-time elementary or secondary school student.

(a) A child is a full-time elementary or secondary school student if he or she meets all of the following conditions:

(1) The child is in full-time attendance at an elementary or secondary school; or

(2) The child is instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the child resides; or

(3) The child is in an independent study elementary or a secondary-education program administered by the local school, district, or jurisdiction, which is in accordance with the law of the State or other jurisdiction in which he or she resides.

(b) The child is in full-time attendance in a day or evening non-correspondence course of at least 13 weeks duration and he or she is carrying a subject load that is considered full-time for day students under the institution's standards and practices. If he or she is in a home schooling program as described in paragraph (a)(2) of this section, he or she must be carrying a subject load that is considered full-time for day students under the standards and practices set by the State or other jurisdiction in which the student resides.

(c) To be considered in full-time attendance, scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c)(1) and (c)(2) of this section applies. If the student is in an independent study program as described in paragraph (a)(3) of this section, the number of hours spent in school attendance is determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. The student may still be considered in full-time attendance if the scheduled rate of attendance is below 20 hours per week if the Board finds that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is the student's only reasonable alternative; or

(2) The student's medical condition prevents him or her from having scheduled attendance of at least 20 hours per week. To prove that the student's medical condition prevents him or her from scheduling 20 hours per week, the Board may request that the student provide appropriate medical evidence or a statement from the school.

(d) An individual is not a full-time student if, while attending an elementary or secondary school, he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a fulltime student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980.

(e) A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is a full-time elementary or secondary student, as defined in paragraph (a) of this section, will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of:

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

Dated: October 14, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–28063 Filed 10–22–97; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Workshop on the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of workshop.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, is implementing the requirements of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The purpose of this notice is to inform the public of a public workshop session.

DATES: The workshop will begin on Wednesday, November 5, 1997, from 1 p.m. to 5 p.m., Mountain time; and continues on Thursday, November 6, 1997, from 8:30 a.m. to 4 p.m., Mountain time.

ADDRESSES: The workshop will be held in the Building 85 Auditorium at the Denver Federal Center, Denver, Colorado. Mail comments to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225; or e-mail David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432; Fax (303) 231–3385; e-mail: David__Guzy@mms.gov.; or contact Mike Miller, at (303) 231–3413; e-mail: Mike__Miller@mms.gov.

MMS will send a detailed agenda for the meeting via facsimile on or before October 30, 1997, to the State and industry working group members listed below. This group originally met with us in October 1996, and members of this working group agreed to make sure those stakeholders whom they represent are appropriately represented at scheduled meetings.

American Petroleum Institute

Richard McPike, Fina Oil, P.O. Box 2159, Dallas, TX 75221, (214) 750–2820, Fax: (214) 750–2987

Backup: David Deal, 1220 L Street, N.W., Washington, DC 20005, (202) 682–8261, Fax: (202) 682–8033

Council of Petroleum Accountants Societies

John Clark, Conoco, P.O. Box 1267, Ponca City, OK 74602–1267, (405) 767–5044, Fax: (405) 767–3686

Domestic Petroleum Council

Becky McGee, Oryx Energy Company, 13155 Noel Road, Dallas, TX 75240, (972) 715–3198, Fax: (972) 715–8810

Independent Petroleum Association of America

Ben Dillon, 1101 16th Street, N.W., Washington, DC 20036, (202) 857–4722, Fax: (202) 857–4799

Independent Petroleum Association of Mountain States

Carla Wilson, 518 17th Street, Denver, CO 80202–4167, (303) 623–0987, Fax: (303) 893–0709

Mid-Continent Oil & Gas Association

Patty Patten, OXY USA, Inc., 110 W. 7th Street, Tulsa, OK 74137, (918) 561–3703, Fax: (918) 561–4364

Backup: Patricia Dunmire Bragg, Gardere & Wynne, L.L.P., 100 West Fifth Street, 200 Oneck Plaza, Tulsa, OK 74103–4240, (918) 699–2920, Fax: (918) 699–2929

Natural Gas Supply Association

George Butler, Chevron, P.O. Box 3725, Houston, TX 77213–3725, (713) 754–7809, Fax: (713) 754–3366

Rocky Mountain Oil & Gas Association

Mary Stonecipher, Amoco Corporation, P.O. Box 591, Tulsa, OK 74102, (918) 581–4354, Fax: (918) 581–4526

Backup: Cliff Dodge, 1775 Sherman Street, Suite 2501, Denver, CO 80203, (303) 860–0099, Fax: (303) 860–0310

Backup: Wayne Pachall, Texaco, Inc., P.O. Box 4325, Houston, TX 77210, (713) 752–7412, Fax: (713) 752–4660

Royalty Policy Committee

David Blackmon, Burlington Resources, 801 Cherry, Suite 700, Fort Worth, TX 76102, (817) 347–2354, Fax: (817) 347–2877

State and Tribal Royalty Audit Committee

George Staigle, North Dakota State Auditor's Office, Royalty Audit Section, P.O. Box 3009, Bismark, ND 58502–3009, (701) 250–4682, Fax: (701) 250–4686

Western Governors' Association

Paul Kruse, State of Wyoming, Herschler Building, 3 West, 121 West 25th Street, Cheyenne, WY 82002–0600, (307) 777–7331, Fax: (307) 777–5400

Western States Land Commissioners Association

Roger Melson, Oklahoma Commissioners of the Land Office, P.O. Box 26910, Oklahoma City, OK 26910, Phone: (405) 271–1000, Fax: (405) 271–2500.

SUPPLEMENTARY INFORMATION: President Clinton signed the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) on August 13, 1996, to improve the management of royalties from Federal oil and gas leases. This is the first major legislation affecting royalty management since the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) was passed in January 1983.

In our **Federal Register** Notice dated October 30, 1996 (61 FR 55941), MMS listed key issues involved in implementing RSFA. This workshop will focus on some of those key issues. Potential discussion topics include:

Interest on Overpayments

- Accepting Interest Payments and Reporting from "Designees" on Underpayments.
- Reporting and Paying Interest on Overpayments.

Assessing for Chronic Erroneous Reporting Takes/Entitlements

- Marginal Properties exception to RSFA entitlements reporting requirements.
- Reporting requirements on takes/entitlement basis.

Marginal Properties

- Providing Accounting, Reporting, and Auditing Relief for Marginal Properties.
- Allowing for Prepayments of Future Revenue Streams.

For each of these issues, MMS plans to describe work to date including any decision reached. MMS will also discuss the status of regulations, systems changes, and process implementation for each of these key issues. We will also focus on aspects of these key issues where we believe State and industry feedback is needed before we go further in implementation.

In order to accomplish a broad based fact finding on how the requirements of RSFA affect our customers and stakeholders, comments from the public are encouraged on any issue related to implementing RSFA. In addition to attendance at this workshop, comments can be made in writing and sent directly to MMS using instructions in the **ADDRESSES** part of this notice.

Dated: October 16, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–28088 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Public Meeting on Proposed Rule; Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop and reopening of comment period.

SUMMARY: The Minerals Management Service (MMS) has reopened the public comment period under a proposed rule published in the **Federal Register** on January 24, 1997 (62 FR 3742), amending the royalty valuation regulations for crude oil produced from Federal leases. In the July 3, 1997, **Federal Register** (62 FR 36030), we published a supplementary notice of proposed rulemaking. We received a variety of comments on the proposed and supplementary proposed rules. In the September 22, 1997, **Federal Register** (62 FR 49460), we published a summary of these comments, outlined alternatives for proceeding with further rulemaking, and requested public comment on those or other suggested alternatives. MMS now extends the comment period to November 5, 1997.

MMS will hold a public workshop to discuss alternatives for proceeding with the rulemaking. The purpose of this workshop is to obtain comments on the alternatives described in the September 22, 1997, **Federal Register** notice, or any new alternatives or modifications to the proposed alternatives for MMS's consideration. We are not requesting comments on the original proposed rule or the supplemental proposed rule, nor on the summary of comments outlined in the September 22, 1997, **Federal Register** notice. Interested parties are invited to attend and participate in this workshop.

DATES: The public workshop will be held from 9 a.m. until 1 p.m. on October 27, 1997, Eastern time. MMS must receive comments on or before November 5, 1997.

ADDRESSES: The workshop will be held at the Main Interior Building, Large Buffet Room, in the Cafeteria, Basement Floor, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–3512. Mail written comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; or e:Mail to David_Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax number (303) 231–3385, e-Mail David_Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: MMS held public workshops and meetings in the oil producing areas of the U.S. where the issues and alternatives about oil valuation have been discussed. Participants at these earlier workshops and meetings requested more time to submit comments. Also, we received requests to hold an additional workshop in the Washington, D.C. area. Accordingly, a workshop is now scheduled for October 27 in Washington, D.C. The public is invited, without advance registration, to further discuss the alternatives. We encourage members of the public to participate in a discussion of the alternatives. For building security measures, each person will be required to present a picture identification to gain entry to the workshop. In order to allow for sufficient time to comment on the proposed alternatives, the comment period is extended to November 5, 1997.

Dated October 17, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–28087 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Subchapters S

[CGD 97–066]

Federal Requirements for Education in Recreational Boating Safety

AGENCY: Coast Guard, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Coast Guard seeks comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for recreational boaters to take courses in boating safety. It will consider all comments and will consult with the National Boating Safety Advisory Council (NBSAC) in determining how best to reduce the number of deaths among boaters caused by a lack of boating safety training.

DATES: Comments must reach the Coast Guard on or before February 2, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–066] U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Moore, Project Manager, Office of Boating Safety, Program Development and Implementation Division (202) 267–0577. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Through its Recreational Boating Safety Program, the Coast Guard tries to reduce the number of recreational boating accidents. Although recreational use of water has caused fewer and fewer deaths over the last 20 years, these accidents still cause more deaths than any other transportation related activity except use of roads. These accidents caused 830 deaths in 1995. Eighty-nine percent of fatalities, in accidents involving operators whose level of education the Coast Guard could ascertain, occurred on vessels whose operators had no boating safety education. Most fatal boating accidents were due to hazardous waters, weather, operators' inattention, operators' inexperience, excessive speed, behavior of passenger and water-skiers, and overloading. Current nationally recognized courses in boating safety address these conditions.

Each year the Coast Guard sponsors a national safe boating campaign based on educational methods aimed at encouraging boaters to take courses in boating safety. Such nonregulatory methods of modifying behavior may not by themselves be fully successful. However, the Coast Guard knows from data on boating accidents that State efforts, based on regulatory methods aimed at boating safety education, have been extremely successful.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to participate in boating safety education. In particular, the Coast Guard encourages you to answer the specific questions which it developed in consultation with members of NBSAC at the meeting in April, 1997. The Coast Guard also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the National Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for boating safety education.

Please include your name and address, identify this notice [CGD 97–066] and the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

A. Recreational Boating by Commenter

1. How much risk do you believe recreational boating involves?

2. Do you agree with the following statement: If I went recreational boating, I would feel safe because I knew the basic rules of the road (navigational rules) pertaining to the waters I would be using?

3. Would a requirement for taking a course in boating safety likely affect your participation in recreational boating and how would it affect it?

4. Recreational boating varies widely depending on the interest of the individual boater. He or she may own, rent, or be a passenger on a boat; the boat may be powered by hand, sail, or motor; and the reason for boating may be relaxation, transportation, competition, or excitement. Please tell us something about your boating, including how often you go boating, what kind of boating you do, and the kind of water on which you go boating.

5. Please tell us about your experience with recreational boating safety education to this date.

B. Mandatory Recreational Boating-Safety Education

1. Several States have imposed various requirements for recreational boating safety education—by children under 12 years of age, aboard personal watercraft, and so on. What Federal requirements, if any, should the Coast Guard propose for taking courses in boating safety that would ensure uniformity around the country? Should the Coast Guard propose Federal requirements for children, for specific waterways, for personal watercraft, or for any other appropriate category of boaters or boating?

2. What Federal requirements, if any, for taking a course in boating safety should the Coast Guard propose because of higher fatalities in one or more categories of boater, boating, or conditions?

3. What Federal requirements, if any, for taking a course in boating safety should the Coast Guard propose because of higher fatalities involving one or more sizes or kinds of recreational vessels?

4. Statistics for 1995 indicate that there were 66 fatalities for youths under 17 years of age while engaged in recreational boating. What Federal requirements, if any, for taking courses in boating safety should the Coast Guard propose because of higher fatalities corresponding to the ages of the victims?

5. A survey of States' boating laws conducted in 1996 by NASBLA revealed that 20 States impose mandatory boating safety education on youths of various ages. What Federal requirements, if any, should the Coast Guard propose for youths of certain ages to take courses in boating safety before operating vessels?

6. If you know of an instance where a person did not take a course in boating

safety, but where the person or you later wished that person had taken one, please describe the instance.

7. If you know of instances where safety may make taking a course in boating safety unacceptable or undesirable, please describe them.

8. Are your aware of the intended uses and limits of the various kinds of courses in boating safety (classroom, home study, computer) and kinds of evaluations (proctored exams, non-proctored ones) approved by the Coast Guard?

9. What Federal requirements, if any, should the Coast Guard propose for boaters engaged in any particular activities to take courses in boating safety under any conditions?

10. Describe any other boaters, boating, or conditions on whose members the Coast Guard should propose Federal requirements to take courses in boating safety.

C. General

1. What benefits (in terms of personal safety or other terms) do you think would accrue from Federal requirements to take courses in boating safety? What cost (in terms of money, paperwork, inconvenience, or other terms) would accrue from such requirements? Would the cost outweigh the benefits?

2. Please describe any nonregulatory ways to reduce the number of recreational boating deaths due to a lack of boating safety training, at lower costs or with less burden than Federal requirements would entail.

3. Is there any other information you feel may help the Coast Guard reduce the number of deaths due to recreational boating with lower cost to, or lesser burden on, the Coast Guard itself, the States, and, most of all, boaters?

The Coast Guard will summarize all comments it receives during the comment period in response to this notice, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in April 1998. It will itself consider all relevant comments in the formulation of any regulatory and nonregulatory measures that may follow from this notice.

Dated: October 17, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–28100 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI87

Board of Veterans' Appeals: Rules of Practice—Continuation of Representation Following Death of a Claimant or Appellant

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Rules of Practice of the Board of Veterans' Appeals (Board) to eliminate a rule which automatically assigns a deceased appellant's representative to the appellant's survivor. This change is necessary because of a court ruling which eliminates the need for such a provision.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI87." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits.

Currently, Rule 611 (38 CFR 20.611) provides that a person or organization properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. This provision was deemed necessary to ensure continuity of representation, since Rule 1302 (38 CFR 20.1302) previously provided that, when an appeal is pending before the Board at the time of the appellant's death, the Board could complete its action on the issues properly before it without application from the survivors. In *Smith (Irma)* v. *Brown*, No. 95–898 (Vet. App. June 13, 1997), the U.S. Court of Veterans Appeals ruled that former Rule 1302 is invalid because, pursuant to the court's ruling in *Landicho* v. *Brown*, 7 Vet. App. 42, 47 (1994), a pending claim for compensation benefits under chapter 11 of title 38, United States Code, does not survive the claimant's death. Thus, when an appellant dies prior to the promulgation of the Board's decision with regard to a compensation claim, the Board no longer has jurisdiction of the appeal, and the appeal must be dismissed. Rule 1302 has been amended to provide that an appeal pending when the veteran dies will be dismissed. Similarly, Rule 611 was amended to eliminate a provision permitting a deceased appellant's representative to continue to act with respect to any appeal pending upon the death of the appellant.

Because there is no longer any need to provide for continuous representation, we propose to eliminate Rule 611.

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: October 8, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

Subpart G—Representation

§ 20.611 [Removed]

2. In subpart G, § 20.611 is removed and reserved.

[FR Doc. 97–28058 Filed 10–22–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–5913–4]

Review of National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of review.

SUMMARY: This document describes EPA's plans and schedule for the next periodic review of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM). This review will take into account newly emerging research on the effects of airborne particles on human health and the environment. This new information will be integrated with that developed during the most recent review of the PM criteria and standards completed in July 1997. The schedule for this review is consistent with the requirements of the Clean Air Act (Act) for periodic review of the criteria and standards, including review by the Clean Air Scientific Advisory Committee (CASAC), and the Presidential Memorandum for the Administrator of the EPA published on July 18, 1997 (62 FR 38421) on the implementation of revised NAAQS for ozone and PM, which called for completion of this PM review by July 2002.

DATES: The target dates for major milestones in the PM NAAQS review are contained in a chart in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Lester Grant, National Center for Environmental Assessment (MD–52), with regard to the air quality criteria document, or Dr. Karen Martin, Office of Air Quality Planning and Standards (MD–15), with regard to review of the standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4173 for Dr. Grant and (919) 541–5274 for Dr. Martin; e-mail: grant.lester@epamail.epa.gov and martin.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1997 the EPA published a final rule revising the NAAQS for PM (62 FR 38652). On the same day, EPA also published a final rule revising the NAAQS for ozone (62 FR 38856). A Presidential Memorandum (62 FR 38421, July 18, 1997) was also published outlining the Administration's goals for implementing the revised PM and ozone NAAQS. The Memorandum directed the Agency to provide to CASAC within 90 days and to publish a notice outlining its schedule for the next periodic review of PM and to complete the next review, including review by CASAC, within 5 years after issuance of the revised standards. Such a schedule would ensure that EPA's review of the emerging scientific information, which forms the criteria upon which the standards are based, and of the standards themselves will have been completed prior to any areas being designated as "nonattainment" under the recently established standards for fine particles (i.e., $PM_{2.5}$ standards)[1] and prior to the imposition of any new controls related to the revised standards. To facilitate timely scientific research within this review period, EPA is initiating certain activities immediately, as noted below in the discussion of the PM research program.

Review Plans and Schedule

The EPA's plans to review the criteria and standards for PM are outlined in the table below, together with target dates for key milestones. As with all NAAQS reviews, the purpose is to update the criteria and to determine whether it is appropriate to revise the standards in light of new scientific and technical information. Although the EPA concluded in its recent final rule on the PM standards (62 FR 38652, July 18, 1997) that the current scientific knowledge provides a strong basis for the revised PM standards, including the establishment of $PM_{2.5}$ standards, there remain scientific uncertainties associated with the health effects of PM and with the means of reducing such effects. Recognizing the importance of developing a better understanding of the effects of fine particles on human health, including their causes and mechanisms, as well as the species and sources of $PM_{2.5}$, the EPA will continue to sponsor research to address these uncertainties.

The Presidential Memorandum also directed EPA and other relevant Federal agencies to develop and implement a greatly expanded, coordinated research plan. These PM research plans are outlined in the following section.

As with other NAAQS reviews, a rigorous assessment of relevant scientific information will be presented in a Criteria Document (CD) prepared by EPA's National Center for Environmental Assessment. The development of the CD will involve substantial external peer review through public workshops involving the scientific community at large and through iterative reviews of successive drafts by CASAC and the public. The final CD will reflect input received through these reviews and will serve to evaluate and integrate this scientific information to ensure that the review of the standards is based on sound science. The schedule for this review will allow for consideration of relevant new peer-reviewed scientific studies published or accepted for publication from mid-1996 (when the last CD was completed) through mid-2000.

The EPA's Office of Air Quality Planning and Standards will also prepare a Staff Paper (SP) for the Administrator, drawing on information in the CD. The SP will evaluate the policy implications of the key studies and scientific information contained in the CD and identify critical elements that EPA staff believes should be considered in reviewing the standards. The SP is intended to bridge the gap between the scientific review in the CD and the public health and welfare policy judgments required of the Administrator in reviewing the PM NAAQS. For that purpose, the SP will present technical analyses, including air quality analyses and a quantitative health risk assessment, and other factors relevant to the evaluation of the PM NAAQS, as well as staff conclusions and recommendations of options for the Administrator's consideration. The SP will also be reviewed by CASAC and the public, and the final SP will reflect the input received through these reviews.

[1] $PM_{2.5}$ refers to particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

MAJOR MILESTONES IN PM NAAQS REVIEW

Major milestones	Target dates
PM NAAQS Review Plan to CASAC	October 1997.
Prepare CD Development Plan	November 1997 to January 1998.
CASAC meeting on CD Development Plan	March 1998.
Prepare Workshop Drafts of CD Chapters	April to December 1998.
Peer Review Workshops	February/March 1999.
Prepare External Review Draft CD	March to July 1999.
Draft CD to CASAC	July/August 1999.
Public Comment Period on Draft CD	August to October 1999.
CASAC meeting on Draft CD	October/November 1999.
Prepare Revised CD and Draft SP	November 1999 to February 2000.
Revised CD and Draft SP to CASAC	March 2000.
Public Comment Period on Revised CD and Draft SP	March to May 2000.
CASAC meeting on Revised CD and Draft SP	May/June 2000.
Prepare Revised SP and Final Revisions to CD	May to August 2000.
Revised SP to CASAC; Complete Final CD	September 2000.
Public Comment Period on Revised SP	September to November 2000.
CASAC meeting on Revised SP	November/December 2000.
Complete Final SP and Develop Proposal Package	December 2000 to April 2001.
OMB/Interagency Review of Proposal Package (90 days)	May to July 2001.
Publish Proposal in FEDERAL REGISTER	August 2001.
Public Comment Period on Proposal (90 days)	September to November 2001.
CASAC meeting on Proposal	November 2001.
Review Public/CASAC Comments and Develop Promulgation Package	December 2001 to April 2002.
OMB/Interagency Review of Promulgation Package (60 days)	May to June 2002.
Final Promulgation Package Signed by Administrator	July 2002.

PM Research Program

The EPA is broadening its ongoing PM research activities by developing, in partnership with other Federal agencies, a coordinated interagency PM research program. This interagency program will contribute to expanding scientific knowledge of PM health effects, as well as developing improved monitoring methods and cost-effective mitigation strategies. The interagency effort will also promote further coordination with other research organizations including state-, local-, nonprofit-, and industry-sponsored research groups. Beginning this fall, public participation will also be encouraged through workshops and review of program documentation. Workshops and the availability of relevant documentation will be announced in the **Federal Register**.

To aid identification of needed research efforts, EPA is revising a document, *Research Needs for Particulate Matter*, in response to comments received from CASAC on an earlier draft document. This document will identify research needed to improve scientific information supporting future health risk assessment and review of the PM NAAQS. The document will provide a useful framework for coordination among Federal agencies and other research organizations. A complementary document, *Particulate Matter Research Program Strategy*, which will identify the areas of emphasis for EPA's research program, is also being revised in response to CASAC review. The EPA's research emphasis includes studies to improve understanding of the formation and composition of fine PM, the characteristics or components of PM that are responsible for its health effects, and the mechanisms by which these effects are produced, as well as improved measurements and estimation of population exposures to PM. These EPA research efforts include epidemiology, clinical studies, in vivo and in vitro toxicology, atmospheric sciences including monitoring and modeling studies, development of data on emissions of fine particles from stationary and mobile sources, and identification and evaluation of risk management options. The results from these efforts, as well as related efforts by other Federal agencies and the general scientific community, will advance the scientific and technical bases for future decisions on the PM NAAQS and for the implementation of PM monitoring and control efforts.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: October 17, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–28143 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[Docket No. AD–FRL–5912–4]

Regional Haze Regulations Notice of Proposed Rulemaking

AGENCY: U.S. Environmental Protection Agency (US EPA).

ACTION: Reopening of public comment period.

SUMMARY: The EPA is announcing the reopening of the public comment period on the proposed regional haze regulations published on July 31, 1997 (62 FR 41138) to accept comments until December 5, 1997.

DATES: Written comments must be received on or before December 5, 1997.

ADDRESSES: Submit comments on the proposed action, in duplicate if possible, to: Office of Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–38, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, phone (202–260–7548), fax (202–260–4400). Comments can also be submitted by electronic mail to the following address: A-and-R-Docket@epamail.epa.gov. The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Polkowsky (telephone (919) 541–5532) or Mr. Richard Damberg (telephone 919–541–5592), U.S. EPA, Visibility and Ecosystems Protection Group (MD–15), Research Triangle Park, NC 27707.

SUPPLEMENTARY INFORMATION: Proposed revisions to the existing visibility regulations (40 CFR part 51.300–51.307) to address regional haze were published on July 31, 1997 and originally provided that the comment period would close on October 20, 1997. In writing and at the September 18, 1997 public hearing in Denver, Colorado, a number of commenters requested an extension of the public comment period for the proposed regional haze regulations. In response to these requests, and in order to provide the public more time to better understand and formulate comment on these proposed regulations, EPA is therefore reopening the public comment period on these proposed revisions to 40 CFR part 51.

Dated: October 10, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–27858 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[MN54–01–7279b; FRL–5913–2]

Approval and Promulgation of Implementation Plan; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes full approval of Minnesota's 1993 carbon monoxide (CO) emission inventory. The inventory was submitted by the State of Minnesota to satisfy a certain Federal requirement that those States containing CO nonattainment areas (NAA's) classified moderate and serious to submit a revised emission inventory (i.e., from the 1990 base year inventory) at the end of each 3 year period thereafter, until the area is redesignated to attainment, of actual CO season emissions from all sources in accordance with EPA guidance. In the final rules section of this **Federal Register**, the EPA is approving these actions as a direct final rule without prior proposal because EPA views these actions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives substantive adverse comments which have not already been responded to, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received on or before November 24, 1997.

ADDRESSES: Comments may be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the material submitted by the Minnesota Pollution Control Agency may be examined during normal business hours at the same location.

FOR FURTHER INFORMATION CONTACT: Charles Hatten at (312) 886–6031.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 9, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–28140 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY95–9722b; IN82b–1; FRL–5901–3]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Kentucky; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is proposing to extend the attainment date for the Louisville interstate moderate ozone nonattainment area from November 15, 1996, to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. In the final rules section of this **Federal Register**, the USEPA is approving these actions as a direct final rule without prior proposal because USEPA views these actions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives substantive adverse comments which have not already been responded to, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received on or before November 24, 1997.

ADDRESSES: Comments may be mailed to Joseph M. LeVasseur at the USEPA Region 4 address listed below or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below. Copies of the material submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) may be examined during normal business hours at the following locations:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Copies of the materials submitted by the Indiana Department of Environmental Management (IDEM) may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036 or Joseph M. LeVasseur at (404) 562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: August 20, 1997.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: August 19, 1997.

Michelle D. Jordan,

Acting Regional Administrator, Region 5.

[FR Doc. 97–28142 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–151; DA 97–2181]

Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Cable Services Bureau, released an *Order* which granted the Motion for Extension of Time filed by the United States Telephone Association ("USTA") and the Carolina Power & Light Company, Delmarva Power & Light Company, Atlantic City Electric Company, Entergy Services, Florida Power Corporation, Pacific Gas and Electric Power Company, Potomac Electric Power Company, Public Service Company of Colorado, Southern Company, Georgia Power, Alabama Power, Gulf Power, Mississippi Power, Savannah Electric, Tampa Electric Company and Virginia Power, including North Carolina Power (collectively, "Electric Utilities") in *Implementation of Section 703 (e) of the Telecommunications Act of 1996, Amendment of Rules and Policies Governing Pole Attachments (Notice of Proposed Rulemaking*". The Bureau found that good cause existed to grant a one week extension of time from October 14, 1997 to October 21, 1997. This extension of time is granted in order to facilitate the development of a complete record in this proceeding.

DATES: Reply comments are now due on or before October 21, 1997.[1]

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION, CONTACT: Elizabeth Beaty, Cable Services Bureau, (202) 418–2294, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Cable Services Bureau's *Order*, CS Docket No. 97–151, DA 97–2181, adopted October 9, 1997 and released October 10, 1997, in *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of Rules and Policies Governing Pole Attachments*, 62 FR 43963 (August 18, 1997). The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036. For copies in alternative formats, such as braille, audio cassette, or large print, please contact Sheila Ray at International Transcription Service.

[1] This document was received by the Office of the Federal Register on October 20, 1997.

Synopsis of the Order

1. On August 12, 1997, the Commission commenced a rulemaking proceeding to seek comment on the implementation of a methodology to ensure just, reasonable, and nondiscriminatory maximum pole attachment rates for telecommunications carriers. Comments were due September 26, 1997, and reply comments were due October 14, 1997.

2. On October 6, 1997, the United States Telephone Association ("USTA") and the Carolina Power & Light Company, Delmarva Power & Light Company, Atlantic City Electric Company, Entergy Services, Florida Power Corporation, Pacific Gas and Electric Power Company, Potomac Electric Power Company, Public Service Company of Colorado, Southern Company, Georgia Power, Alabama Power, Gulf Power, Mississippi Power, Savannah Electric, Tampa Electric Company and Virginia Power, including North Carolina Power (collectively, "Electric Utilities") filed a Motion for Extension of Time ("Motion") to file reply comments. USTA and the Electric Utilities request that the Commission grant a two week extension of time to file reply comments, from October 14, 1997 to October 28, 1997. The USTA and Electric Utilities request an extension of time because, in addition to the complex and new issues raised by implementation of section 703(e) of the Telecommunications Act of 1996, they allege that the issues raised in the initial comments in this proceeding are prolific and contain complex administrative and technical issues. They contend that granting an extension of time will allow the parties to confer with one another and allow representatives of the local exchange carrier and electric utility industries time to collaborate on issues that they may have in common.

3. It is the policy of the Commission that extensions of time are not routinely granted. In order to facilitate development of a complete record in this proceeding, we find that good cause exists to grant an extension of time. However, because the Telecommunications Act of 1996 has mandated that the Commission prescribe and implement the new telecommunications rate methodology within specified deadlines, we find that a two week extension of time is not possible. Therefore, we will grant a one week extension of time in which to file reply comments. Thus, reply comments will now be due on October 21, 1997.

Ordering Clauses

4. Accordingly, *it is ordered*, pursuant to §§ 0.321 and 1.46 of the Commission's rules, 47 CFR 0.321 and 1.46, that the Motion for Extension of Time filed by the United States Telephone Association and the Carolina Power & Light Company, Delmarva Power & Light Company, Atlantic City Electric Company, Entergy Services, Florida Power Corporation, Pacific Gas and Electric Power Company, Potomac Electric Power Company, Public Service Company of Colorado, Southern Company, Georgia Power, Alabama Power, Gulf Power, Mississippi Power, Savannah Electric, Tampa Electric Company and Virginia Power, including North Carolina Power is *granted*.

5. *It is further ordered* that all interested parties may file reply comments on the matters discussed in the Commission's *Notice of Proposed Rulemaking* by October 21, 1997.

Federal Communications Commission.

Meredith J. Jones,

Chief, Cable Services Bureau.

[FR Doc. 97–28091 Filed 10–22–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 216, 223, 229, 231, 232, and 238

[FRA Docket No. PCSS–1, Notice No. 3]

RIN 2130–AA95

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; date and location of public hearing.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 23, 1997 (62 FR 49728), FRA proposed a rule establishing comprehensive safety standards for railroad passenger equipment. In that notice, FRA announced that it would schedule a public hearing to allow interested parties the opportunity to comment on issues addressed in the NPRM.

DATES: *Public Hearing:* The date of the public hearing is Friday, November 21, 1997 at 9:00 a.m. in Washington, D.C. Any person wishing to participate in the hearing should notify the Docket Clerk by telephone (202–632–3198) or by mail at the address provided below at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Washington, D.C. 20590.

(2) *Public Hearing:* The public hearing will be held in the Federal Aviation Administration (FAA) Auditorium, Third Floor, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Acting Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3362); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. (telephone: 202–632–3186); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3167).

Issued in Washington, D.C., on October 20, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–28148 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 971009242–7242–01; I.D. 091997B]

RIN 0648–AJ14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would replace the current commercial red snapper endorsement and trip limit system with a system comprised of two classes of transferrable red snapper licenses and trip limits; starting in 1998, split the red snapper commercial fishing season into two time periods, the first commencing February 1 with two-thirds of the annual quota available and the second commencing on September 1 with the remainder of the annual quota available; open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month during the commercial season; prohibit the possession of reef fish in excess of the bag limit on a vessel that has on board, or is tending, a trap other than a fish, stone crab, or spiny lobster trap; increase the minimum size limit for vermilion snapper; close the commercial fishery for greater amberjack each year during March through May; remove sea basses, grunts, and porgies from the FMP; and remove certain species from the aggregate bag limit for reef fish. In addition, NMFS proposes to exclude certain species from the prohibition on their harvest using powerheads in the stressed area. The intended effects of this rule are to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: Written comments must be received on or before December 8, 1997.

ADDRESSES: Comments on the proposed rule or on the initial regulatory flexibility analysis (IRFA) must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 15, which includes an environmental assessment, a regulatory impact review (RIR), and an IRFA, and for copies of a minority report submitted by two members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL, 33619, phone: 813–228–2815; Fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Red Snapper Licenses and Trip Limits

The current commercial red snapper endorsement and trip limit system would be replaced with a "two-tier" license system consisting of Class 1 licenses, holders of which would be restricted to a red snapper trip limit of 2,000 lb (907 kg), and Class 2 licenses, holders of which would be restricted to a red snapper trip limit of 200 lb (91 kg). A Class 1 license would be issued for the vessel specified by the holder of a red snapper endorsement on March 1, 1997, and to a historical captain. The determination of status as a historical captain would be based on information collected under Amendment 9 to the FMP. The definition of historical captain in this proposed rule is unchanged from that published in the final rule to implement Amendment 9 (59 FR 39301, August 2, 1994).

A Class 2 license would be issued for a vessel specified by an owner or operator whose earned income qualified for a Gulf reef fish permit that was valid on March 1, 1997, and whose vessel had recorded a red snapper landing during the period January 1, 1990, through February 28, 1997. Eligibility for a Class 2 license would be based on information collected under Amendment 9 on red snapper landings in the 1990–1992 period. Red snapper landings for the

period January 1, 1993, through February 28, 1997, would be based solely on fishing vessel logbooks received by the Science and Research Director, Southeast Fisheries Science Center, NMFS, not later than March 31, 1997. To establish eligibility for an initial Class 2 license, a vessel's record of red snapper landings may be transferred to the current owner of a reef fish permitted vessel. The specific circumstances for such transfers are designed to protect the reasonable and legitimate rights of owners.

The Regional Administrator, Southeast Region, NMFS (Regional Administrator), would notify each owner of a vessel that had a valid Gulf reef fish permit on March 1, 1997, each operator whose earned income qualified for a valid permit on that date, and each potential historical captain of his or her eligibility for a Class 1 or Class 2 red snapper license. Initial determinations of eligibility would be based on NMFS' records of red snapper endorsements, red snapper landings during the period from January 1, 1990, through February 28, 1997, and applications for historical captain status under Amendment 9 to the FMP. An owner, operator, or potential historical captain who concurs with NMFS' initial determination of eligibility would not need to take further action; if he or she is determined to be eligible, an appropriate license would be issued not later than January 28, 1998.

A person initially determined by the Regional Administrator to be ineligible for historical captain status or a Class 2 red snapper license may appeal that decision to either the Regional Administrator or an ad hoc appeals committee, consisting of the principal state officials who are members of the Council, or their designees. The Regional Administrator and the appeals committee would be empowered only to deliberate whether the eligibility criteria were applied correctly in the appellant's case. In making that determination, the Regional Administrator or the appeals committee members would consider only disputed calculations and determinations based on the documentation provided, including transfers of landings records. Neither the appeals committee nor the Regional Administrator would be empowered to consider whether a person should have been eligible for historical captain status or a Class 2 license because of hardship or other factors.

Amendment 15 would allow transfer of red snapper licenses to permitted reef fish vessels without restriction. This would encourage flexibility in participation in the fishery.

Changes to Timing of Red Snapper Commercial Harvest

Amendment 15 and the proposed rule would split the red snapper commercial fishing season into two time periods starting in 1998, the first commencing February 1 with two-thirds of the annual quota available, and the second commencing on September 1 with the remainder of the annual quota available. This measure is intended to enhance planning of fishing activities by ensuring sufficient advance notification of each year's opening dates. A split commercial harvest period has been implemented in recent years by regulatory amendment.

Amendment 15 and the proposed rule would open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month, during the commercial red snapper season. The Council proposed, and NMFS approved, a regulatory amendment that included a similar measure starting September 2, 1997, for the remainder of the 1997 commercial season (62 FR 46677, September 4, 1997). Allowing commercial harvest only during the first 15 days of each month would help extend the length of the fishing season. This extension of the fishing season may reduce ex-vessel prices. Any reduction in revenues would be offset, to some degree, by reduced costs for vessel/gear maintenance and repair (due to preventive maintenance during closed periods) and associated increases in efficiency of fishing operations. However, the 15-day harvest period followed by a 15-day closure could result in a series of mini-derbies as fishermen compete to get their share of the commercial quota.

Monitoring and enforcement costs would increase as a function of the number of 15-day periods the fishery is open. However, closing the commercial red snapper fishery for the rest of the month after the 15-day harvest period should allow fishermen time to perform preventive maintenance and minor repairs before the fishery opens the following month. This should improve safety and avoid the higher repair costs that can occur when normal, preventive maintenance is postponed.

Restriction on Possession of Reef Fish Harvested in Traps Other Than Fish Traps

Current regulations do not limit the amount of reef fish that may be harvested in traps other than fish traps, provided the vessel has a reef fish permit. This creates a loophole for directed harvest of reef fish by other trap gear, including blue crab traps. Anecdotal information indicates that some persons are using blue crab traps to target reef fish in the EEZ off the Big Bend area of Florida. It is believed that these persons do not possess fish trap endorsements and, in some cases, commercial reef fish vessel permits.

To address this loophole, Amendment 15 and the proposed rule would restrict the possession of reef fish on a vessel that has on board, or is tending, a trap other than a stone crab, spiny lobster, or permitted reef fish trap, to the bag limits. The measure should enhance enforcement by discouraging directed harvest of reef fish by fishermen allegedly fishing blue crab traps. Blue crabs are seldom found in the EEZ off Florida, and rarely in commercial quantities.

Increase in the Minimum Size Limit for Vermilion Snapper

Amendment 15 and the proposed rule would extend indefinitely the 10–inch (25.4–cm) minimum size limit established by temporary interim rule (62 FR 47765, September 11, 1997). That temporary interim rule, which expires on March 11, 1997, increased the minimum size limit from 8 inches (20.3 cm) pending the development, approval, and implementation of Amendment 15. Because the interim rule has already appropriately modified the regulatory text for the 10–inch (25.4–cm) minimum size limit, the proposed rule would not modify the regulatory text.

The minimum size limit increase from 8 inches (20.3 cm) to 10 inches (25.4 cm) responds to the 1996 vermilion snapper stock assessment, a 1997 Addendum to that assessment, and Reef Fish Stock Assessment Panel (SAP) Reports. In those documents, fishery scientists concluded that the vermilion snapper resource, while not currently overfished, is undergoing overfishing based on decreasing trends in overall catch, mean size of individual fish, catch-per-unit-effort, and estimated numbers of age–1 fish in the population. The intent of the increase in the minimum size limit is to help mitigate the need for more restrictive vermilion snapper management measures in the future (e.g., quotas, additional increases in minimum size, and reductions in bag limits). A 10–inch minimum size limit reduces fishing mortality, increases the vermilion snapper spawning potential ratio (SPR), and thereby improves the status of the resource.

The Council recognized that, if the declining trends continue, additional regulatory action will be needed to prevent vermilion snapper from becoming overfished. The Council has requested that a stock assessment on vermilion snapper be completed by the Southeast Fisheries Science Center (SEFSC) in 1998 to allow development of appropriate management actions. Such actions would be accomplished under the FMP's framework procedure, or by an additional FMP amendment.

Seasonal Closure of the Commercial Fishery for Greater Amberjack

NMFS prepared a stock assessment that indicated greater amberjack is relatively healthy (i.e., the SPR was estimated at 43 percent in 1994, well above the overfished threshold). However, given the uncertainty associated with the assessment, and based on recent data showing declines in effort, average size, and landings of greater amberjack, the Council and the Reef Fish Stock Assessment Panel determined that the stock assessment was too optimistic. In response to that information, the Council proposed in Amendment 12, and NMFS implemented, a reduction in the greater amberjack recreational bag limit from three fish to one fish (61 FR 65983, December 16, 1996).

The Council believes a seasonal closure of commercial harvest of greater amberjack is necessary to reduce fishing mortality; ensure that commercial effort does not negate stock rebuilding resulting from the recent bag limit reduction; and provide more equitable sharing of the burden of stock rebuilding between the recreational and commercial sectors. Accordingly, Amendment 15 and the proposed rule would close the commercial fishery during March, April, and May of each year. This measure was found by the SEFSC to be based on the best available scientific information.

Removal of Sea Basses, Grunts, and Porgies From the FMP

Amendment 15 and the proposed rule would remove sea basses, grunts, and porgies from the FMP. Removal of these species was proposed by the Council in response to public testimony that severe, adverse economic effects resulted from Amendment 12's inclusion of sea basses, grunts, and porgies in the 20–fish aggregate bag limit for species for which there is no other bag limit. Public testimony was primarily from headboat operators who indicated that many of their repeat customers had typically harvested these species (primarily grunts) in excess of the 20–fish aggregate bag limit.

Sea basses, grunts, and porgies are harvested predominantly off Florida. The Council determined that if these species were removed from the FMP, they could be effectively managed by Florida without conservation risk. The Council representative from the Florida Marine Fisheries Commission (FMFC) stated that the FMFC has scheduled public hearings on potential management measures for these species.

Since Amendment 15 does not include a delegation of management authority to Florida, although such a delegation can be authorized under Section 306(a)(3)(B) of the Magnuson-Stevens Act, Florida would not be empowered to regulate a person aboard a vessel registered in another state, unless that vessel landed fish in Florida. However, landings of these species are insignificant outside Florida, and, given their relatively low value, the economic incentive for out of state vessels to harvest these species off Florida but land the catch in another state is minimal. Proposal of this measure also is consistent with the President's Regulatory Reinvention Initiative of March 4, 1995, that directs Federal agencies, among several things, to consider eliminating Federal regulations where the states can assume the necessary regulatory function.

Removal of Species From the Aggregate Bag Limit for Reef Fish

The regulations implementing Amendment 12 to the FMP established a 20–fish aggregate bag limit for species of reef fish not otherwise subject to a bag limit. In Amendment 12, the Council intended that the aggregate bag limit apply only to species in the "management unit" of the FMP. However, 11 species that are in the FMP, but are not in the "management unit," were inadvertently included in the aggregate bag limit.

The Council concluded that the unintended inclusion of these 11 species in the aggregate bag limit resulted in an unnecessary burden on recreational fishermen, who use some of them (primarily pinfish and sand perch) as bait. Accordingly, Amendment 15 and the proposed rule would exclude these species from the aggregate bag limit. Seven of the 11 species are sea basses, grunts, and porgies. If, as discussed above, sea basses, grunts, and porgies are removed from the FMP, these seven species would be automatically excluded from the aggregate bag limit. The remaining four species—sand perch, dwarf sand perch, hogfish, and queen triggerfish—would be excluded from the aggregate bag limit by this action.

Availability of and Comments on Amendment 15

Additional background and rationale for the measures discussed above are contained in Amendment 15, the availability of which was announced in the **Federal Register** on September 26, 1997 (62 FR 50553). Written comments on Amendment 15 are solicited and must be received by November 25, 1997. Comments that are received by November 25, 1997, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 15 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Change Proposed by NMFS

NMFS proposes to exempt four species from the prohibition on their being taken by use of a powerhead in the stressed area, the near-shore portion of the Gulf of Mexico EEZ where the majority of fishing for reef fish occurs. Appendix B, Table 2 of 50 CFR part 622 sets forth the coordinates of the stressed area. As discussed above, there are 11 species in the FMP that are not in the management unit. If Amendment 15's proposal to remove sea basses, grunts, and porgies from the FMP is approved, only sand perch, dwarf sand perch, hogfish, and queen triggerfish would remain in the FMP but not in the management unit.

Commencing with the original regulations implementing the FMP (49 FR 39548, October 9, 1984), the use of a powerhead in the stressed area to take reef fish species in the FMP management unit has been prohibited. Such prohibition did not apply to species in the FMP but not in the management unit. No other management measures distinguished between reef fish species in the management unit and those not in the management unit. By interim final and final rules (61 FR 34930, July 3, 1996, and 61 FR 47821, September 11, 1996), NMFS consolidated 11 CFR parts covering most of the fisheries conducted in the Southeast Region, NMFS, into 50 CFR part 622. In the process of that consolidation, the prohibition on the taking of reef fish species in the stressed area with a powerhead was expanded erroneously to include species in the FMP but not in the management unit. Accordingly, to conform to the intent of the Council regarding species for which

a powerhead may not be used in the stressed area, NMFS proposes to exempt sand perch, dwarf sand perch, hogfish, and queen triggerfish from that prohibition. However, if Amendment 15's proposed removal from the FMP of sea basses, grunts, and porgies is not approved, NMFS would remove all 11 species currently in the FMP but not in the management unit from the powerhead prohibition.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 15.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS has concluded that Amendment 15, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. The IRFA is summarized as follows.

The Council intends that the proposed management measures will: Increase the stability of the commercial red snapper fishery in terms of fishing patterns and markets, while also reducing harvesting capacity; promote flexibility for and safety of commercial red snapper fishermen in their fishing operations; provide for cost-effective and enforceable management of the reef fish fishery by removing certain species from the FMP and restricting use of certain non-fish traps to catch reef fish; reduce fishing mortality of vermilion snapper, which is in danger of becoming overfished, and greater amberjack, which appears to be declining in abundance; and limit the application of the 20–fish aggregate bag limit to species listed in the FMP management unit, thereby relieving recreational fishermen of an unnecessary burden. The Magnuson-Stevens Act provides the legal basis for the rule.

Amendment 15 would affect all of the 1,424 commercial reef fish harvesting firms and 930 for-hire vessels (838 charter vessels and 92 headboats) operating in the Gulf of Mexico. These commercial and recreational entities are considered small business entities for the purposes of the Regulatory Flexibility Act, because their annual gross revenues are less than $3 million and $5 million, respectively. Therefore, a substantial number of small entities are expected to be affected for purposes of the Regulatory Flexibility Act.

The commercial red snapper license and trip limit system is expected to include practically all current participants in the commercial red snapper fishery. Based on historical landings, the potential change in the distribution of revenues could be higher than 5 percent relative to the 1996 share for an unknown number of these vessels. The provisions of Amendment 15 regarding commercial red snapper fishing seasons have potential impacts on revenues. These impacts have been determined to reduce ex-vessel revenues by an unknown amount.

The potential reduction in revenues due to the non-fish trap harvest provision is unknown. The proposed increase in minimum size limit for vermilion snapper would reduce commercial ex-vessel revenues by less than 5 percent, since landings reductions have been estimated to be only about 1.6 percent. On the other hand, the minimum size limit increase would reduce recreational landings by about 23 percent, primarily in the for-hire sector. The proposed removal of species from the FMP and 20–fish aggregate bag limit are not expected to reduce revenues.

Revenue reduction from the proposed spawning season closure for greater amberjack could be as high as 22 percent. While amberjack revenues account for only 4.7 percent of commercial reef fish revenues, a revenue reduction of 22 percent for those fishermen who target amberjack would be significant.

The total public burden to comply with the provisions of Amendment 15 has been estimated at $35,000 annually—an insignificant portion of the total industry costs. However, entry costs by new red snapper fishery participants could account for more than 5 percent of total operating costs. As a result, annual compliance costs (e.g., annualized capital, operating, reporting) could increase total costs of production for some small entities by more than 5 percent.

The IRFA also discusses information available regarding the ability of small business fishing firms to finance items such as a switch to new gear. Available information, however, is not sufficient to estimate whether capital costs of compliance represent a significant portion of capital available to small entities.

It is unknown whether this proposed rule is likely to result in 2 percent of the small entities affected being forced to cease business operations. The adoption of a license limitation system would preclude some vessels from re-entering the commercial red snapper fishery without leasing or buying licenses, but those vessels could still harvest other reef fish if they possess valid commercial reef fish permits. The vermilion snapper minimum size limit and spawning season closure for greater amberjack would reduce revenues of some vessels, but the affected entities are not expected to cease operation.

No duplicative, overlapping, or conflicting Federal rules have been identified. The reporting, recordkeeping, and other compliance requirements of the proposed rule are not materially different from the current practice, with the possible exception of license renewal. No additional professional skills are required to comply with the proposed rule.

The Council considered several types of alternatives designed to meet the FMP objectives. With respect to the license limitation program, the status quo (i.e., continuation of the current endorsement system) is not considered a viable alternative since it provides little opportunity for new entities to enter the fishery. Some unknown amount of revenue could be forgone by adopting the proposed split monthly harvest period alternative. Other specific alternatives were considered, but are generally found to be more costly to the fishery participants.

Regarding vermilion snapper minimum size limits, under the status quo (i.e., an 8–inch (20.3–cm) size limit after expiration of the interim rule) the status of the stocks would deteriorate, which could have potentially significant adverse short-term impacts on the stock and the industry over the long-run. The other rejected vermilion snapper management alternative was a 12–inch (30.5–cm) minimum size limit. This rejected alternative could effect an immediate and substantial revenue reduction on both the commercial vessels and for-hire vessels by potentially causing a loss of as much as 25 percent and 69 percent in landings, respectively.

Regarding the spawning season closure for greater amberjack, both rejected alternatives would have less adverse short-term impacts on fishing participants. However, the proposed spawning season closure responds to landings information indicating a declining status of the stock; therefore, the proposed spawning season closure could prevent potential long-term negative impacts associated with the two rejected alternatives.

The alternatives proposed in the remainder of Amendment 15, compared to the corresponding rejected alternatives, were generally shown to better address problems in the fishery. A copy of the IRFA is available from the Council (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains two new, one-time collection-of-information requirements subject to the PRA—namely, the submission of copies of agreements whereby a vessel's record of landings was not transferred when the vessel was sold and the submission of appeals of the Regional Administrator's initial determination of eligibility for historical captain status or a Class 2 red snapper license. These collection-of-information requirements have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated at 15 and 45 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collections of information, to NMFS and OMB (see **ADDRESSES**).

This rule would continue in effect the collection-of-information requirement associated with the transfer or renewal of commercial red snapper endorsements, which would be applied to commercial red snapper licenses under Amendment 15. This collection of information was previously approved by OMB under OMB control number 0648–0205.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 17, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (a) introductory text, paragraph (a)(2) heading, and paragraphs (a)(2)(ix), (d), (g), (i) through (l), and (p) are revised to read as follows:

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid permits, licenses, and endorsements are required as follows:

* * * * *

(2) *Commercial vessel permits, licenses, and endorsements.*

* * * * *

(ix) *Gulf red snapper.* For a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued to retain red snapper under the trip limits specified in § 622.44(e)(1) or (2), a Class 1 or Class 2 Gulf red snapper license must have been issued to the vessel and must be on board. See paragraph (p) of this section regarding initial issue of red snapper licenses.

* * * * *

(d) *Fees.* A fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for transfer or replacement, or request for fish trap/sea bass pot identification tags.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, paragraph (n) of this section for a fish trap endorsement, or paragraph (p) of this section for a red snapper license. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for such permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

* * * * *

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at 15 CFR part 904, subpart D.

(k) *Alteration.* A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application.

* * * * *

(p) *Gulf red snapper licenses*—(1) *Class 1 licenses.* To be eligible for the 2,000–lb (907–kg) trip limit for Gulf red snapper specified in § 622.44(e)(1), a vessel must have been issued both a valid commercial vessel permit for Gulf reef fish and a valid Class 1 Gulf red snapper license, and such permit and license must be on board.

(2) *Class 2 licenses.* To be eligible for the 200–lb (91–kg) trip limit for Gulf red snapper specified in § 622.44(e)(2), a vessel must have been issued both a

valid commercial vessel permit for Gulf reef fish and a valid Class 2 Gulf red snapper license, and such permit and license must be on board.

(3) *Operator restriction.* An initial Gulf red snapper license that is issued for a vessel based on the qualification of an operator or historical captain is valid only when that operator or historical captain is the operator of the vessel. When applicable, this operator restriction is shown on the license.

(4) *Transfer of Gulf red snapper licenses.* A red snapper license may be transferred to a vessel owner independently of a commercial vessel permit for Gulf reef fish by completing the transfer information on the reverse of the license and returning it to the RD.

(5) *Initial issue of Gulf red snapper licenses*—(i) *Class 1 licenses.* (A) An initial Class 1 license is issued for the vessel specified by the holder of a valid red snapper endorsement on March 1, 1997, and to a historical captain. In the event of death or disability of such holder between March 1, 1997, and the date Class 1 licenses are issued, the Class 1 license is issued for the vessel specified by the person to whom the red snapper endorsement was transferred.

(B) Status as a historical captain is based on information collected under Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). A historical captain is an operator who—

(*1*) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control;

(*2*) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992;

(*3*) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and

(*4*) Landed red snapper prior to November 7, 1989.

(ii) *Class 2 licenses.* (A) An initial Class 2 license is issued for the vessel specified by an owner or operator whose income qualified for a commercial vessel permit for reef fish that was valid on March 1, 1997, and such owner or operator was the person whose earned income qualified for a commercial vessel permit for reef fish that had a landing of red snapper during the period from January 1, 1990, through February 28, 1997.

(B) For the purpose of paragraph (p)(5)(ii)(A) of this section, landings of red snapper are as recorded in the information collected under Amendment 9 to the FMP for the period 1990 through 1992 and in fishing vessel logbooks, as required under § 622.5(a)(1)(ii), received by the SRD not later than March 31, 1997, for the period from January 1, 1993, through February 28, 1997.

(C) A vessel's red snapper landings record during the period from January 1, 1990, through February 28, 1997, is retained by the owner at the time of the landings if he or she transferred the permit to another vessel owned by him or her. When a vessel has had a change of ownership and concurrent transfer of its permit, the vessel's red snapper landings record is credited to the owner of that vessel on March 1, 1997, unless there is a legally binding agreement under which a previous owner retained the landings record. An owner who claims such retention of a landings record must submit a copy of the agreement to the RD postmarked or hand delivered not later than January 6, 1998.

(6) *Implementation procedures*—(i) *Initial notification.* The RD will notify each owner of a vessel that had a valid permit for Gulf reef fish on March 1, 1997, each operator whose earned income qualified for a valid permit on that date, and each potential historical captain of his or her eligibility for a Class 1 or Class 2 red snapper license. Initial determinations of eligibility will be based on NMFS' records of red snapper endorsements, red snapper landings during the period from January 1, 1990, through February 28, 1997, and applications for historical captain status under Amendment 9 to the FMP. An owner, operator, or potential historical captain who concurs with NMFS' initial determination of eligibility need take no further action—if determined to be eligible, an appropriate license will be issued not later than January 23, 1998.

(ii) *Appeals.* (A) An appeal of the RD's initial decision regarding eligibility for historical captain status or for a Class 2 red snapper license may be submitted for reconsideration solely by the RD or to an ad hoc appeals committee consisting of the principal state officials who are members of the GMFMC, or their designees.

(B) The RD and the appeals committee are empowered only to deliberate whether the eligibility criteria in paragraph (p)(5) of this section were applied correctly in the appellant's case. In making that determination, the RD or the appeals committee members will consider only disputed calculations and determinations, including disputed transfers of landings records, based on the documentation provided. Neither the appeals committee nor the RD is empowered to consider whether a person should have been eligible for historical captain status or a Class 2 license because of hardship or other factors.

(C) A written request for consideration of an appeal must be submitted to the RD postmarked or hand delivered not later than January 13, 1998, and must provide written documentation supporting the basis for the appeal. An appellant may also make a personal appearance before the appeals committee. If consideration by the appeals committee is requested, such request constitutes the appellant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) for the RD to make available to the appeals committee members such confidential catch and other records as are pertinent to the matter being appealed.

(D) The appeals committee will meet only once to consider appeals submitted within the time period specified in paragraph (p)(6)(iii)(C) of this section. Members of the appeals committee will provide their individual recommendations for each appeal referred to the committee to the RD. Members of the appeals committee may comment upon whether the eligibility criteria were correctly applied in each case, based solely on the available record, including documentation submitted by the appellant. The RD will decide the appeal based on the initial eligibility criteria in paragraph (p)(5) of this section and the available record, including documentation submitted by the appellant and, if the appeal is considered by the appeals committee, the recommendations and comments from members of the appeals committee. The RD will notify the appellant of the decision and the reason therefore, in writing, normally within 15 days of receiving the recommendations of the appeals committee members. The RD's decision will constitute the final administrative action by NMFS on an appeal.

3. In § 622.7, paragraphs (a) through (c) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under § 622.4 or § 622.17 without such permit, license, or endorsement.

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), or (p) or § 622.17.

(c) Fail to display a permit, license, or endorsement, as specified in § 622.4(i) or § 622.17(g).

* * * * *

4. In § 622.34, a sentence is added at the end of paragraph (g)(1) and paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph (g)(1) do not apply to the following species: dwarf sand perch, hogfish, queen triggerfish, and sand perch.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1).

5. In § 622.36, the introductory text and paragraphs (a), (b), and (c) are redesignated as paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(3), respectively, and paragraph (a) is added to read as follows:

§ 622.36 Seasonal harvest limitations.

(a) During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such greater amberjack were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(i) and (b)(2), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.45(c)(1).

* * * * *

6. In § 622.39, paragraph (a)(2) introductory text is republished, paragraph (a)(2)(iv) is added, and paragraph (b)(1)(v) is revised to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

* * * * *

(iv) When the vessel has on board or is tending any trap other than a fish trap authorized under § 622.40(a)(2), a stone crab trap, or a spiny lobster trap.

(b) * * *

(1) * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (iv) of this section and excluding dwarf sand perch, hogfish, queen triggerfish, and sand perch—20.

* * * * *

7. In § 622.42, paragraph (a)(1)(i) is revised to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned as follows:

(A) 3.06 million lb (1.39 million kg) available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on September 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

* * * * *

8. In § 622.44, paragraph (e) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(e) *Gulf red snapper.* (1) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 1 red snapper license is 2,000 lb (907 kg), round or eviscerated weight.

(2) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 2 red snapper license is 200 lb (91 kg), round or eviscerated weight.

(3) The trip limit for red snapper in or from the Gulf for any other vessel for which a commercial permit for Gulf reef fish has been issued is zero.

(4) As a condition of a commercial vessel permit for Gulf reef fish, as required under § 622.4(a)(2)(v), without regard to where red snapper are harvested or possessed, a vessel that has been issued such permit—

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraphs (e)(1) through (3) of this section.

(ii) May not transfer or receive at sea red snapper in or from the Gulf.

* * * * *

Appendix A to Part 622 [Amended]

9. In Table 3 of appendix A to part 622, the family Haemulidae—Grunts and the three species and scientific names thereunder are removed; under the family Serranidae, the species Bank sea bass, Rock sea bass, and Black sea bass and their scientific names are removed and the family name "Serranidae—Sea Basses and Groupers" is revised to read "Serranidae—Groupers"; and the family Sparidae—Porgies and the six species and scientific names thereunder are removed.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 101497F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, November 5, 1997, at 10 a.m., and on Thursday, November 6, 1997, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME; telephone (207) 775–2311. Requests for special accommodations should be addressed to the New England Fishery Management

Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, November 5, 1997

After introductions, the Council meeting will begin with a presentation on a Council plan to address Sustainable Fisheries Act requirements and the 13 overfished stocks recently identified in the NMFS report entitled "Status of Fisheries of the United States." The Habitat Committee will review its discussions about the Council's essential fish habitat (EFH) amendment process and habitat requirements for fishery management plans (FMPs). Following a mid-day break, the Whiting Committee will provide an update on progress to develop a whiting amendment to the Northeast Multispecies FMP and, if necessary, will seek approval of this ongoing process. The Groundfish Committee will recommend initial action on a framework adjustment to the Northeast Multispecies FMP to establish an exempted gillnet fishery for dogfish in the area of Nantucket Shoals and waters east of Cape Cod. The Groundfish Committee will also recommend initial action on a second framework adjustment to shorten the duration of the Cultivator Shoal and Small Mesh Area 2 exempted fisheries. There will be a discussion and possible action on other items including (a) options for regulating trawl ground gear, particularly "street sweepers"; (b) a strategy to address overfished groundfish stocks listed in the above-mentioned NMFS report; (c) options to allow scalloping in groundfish closed areas; and (d) halibut management. The Mid-Atlantic Plans Committee will review its recommendations to the Mid-Atlantic Fishery Management Council concerning the management of mahogany quahogs in the Gulf of Maine. The Chairman of the Council's Lobster Committee will discuss the Atlantic States Marine Fisheries Commission's (ASMFC's) response to the Council about options for meeting the Federal mandate to develop a plan to end overfishing and to rebuild the lobster resource. There may be a decision on future Council involvement, including consideration of ASMFC's revised draft plan and possible Council development of a new amendment by October 1998.

Thursday, November 6, 1997

The Council may consider and approve monkfish management measures for inclusion in Amendment 9 to the Northeast Multispecies FMP. There may also be a request to the Secretary of Commerce to implement interim management measures for the monkfish fishery. The Sea Scallop Committee will provide an update on the Amendment 7 (consolidation of days-at-sea and closed area management) public hearings. There will be a presentation on the results of the 1997 NMFS sea scallop survey followed by possible action to adjust days-at-sea allocations for 1998. The Council will review and approve objectives and discuss potential management alternatives for the Herring Fishery Management Plan. After the mid-day break, NMFS staff will report on an experiment to evaluate vessel-monitoring system effectiveness. The Professional Standards and Practices Committee will recommend Council approval of standards for participation in experimental and exempted fisheries and mechanisms to establish an industry-funded fisheries observer program. The Enforcement Committee Report will include recommendations on the implementation and the use of vessel monitoring systems. Following this discussion, there will be reports from the Council Chairman, Executive Director, NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the ASMFC. The meeting will adjourn after the conclusion of any other outstanding business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-27967 Filed 10-22-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 100397C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a series of public hearings on a proposed Amendment 13 to its Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP). The amendment proposes alternative management objectives for Oregon coastal natural coho.

DATES: The Council will hold hearings on Monday, October 27, 1997 at 7 p.m. and Tuesday, October 28, 1997 at 7 p.m. and will consider the amendment during its meeting Tuesday, November 4, 1997. Written comments must be received by the Council no later than noon, October 29, 1997, to assure time for processing and distribution before final consideration of the amendment by the Council.

ADDRESSES: The Monday, October 27 hearing will be held at the Red Lion Inn, Pacific Room, 400 Industry, Astoria, OR; telephone (503) 325-7373. The Tuesday, October 28 hearing will be held at the Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR; telephone (541) 756-3191. The Council will meet Tuesday, November 4 at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, OR. Send written comments to: Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator, Pacific Fishery Management Council, at (503) 326-6352.

SUPPLEMENTARY INFORMATION: The Council requests public comments on "Draft Amendment 13 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California." Amendment 13 proposes alternative management objectives for Oregon coastal natural coho that are complementary to the Oregon Coastal Salmon Restoration Initiative developed to assure protection of this stock without listing under the Endangered Species Act. The amendment document contains a brief description of the proposed amendment along with a draft environmental assessment, regulatory impact review/initial regulatory flexibility analysis, statement of consistency with coastal zone management programs, and review of other applicable law which could be affected by the amendment.

Copies of the amendment are available from the Council office. Those wishing to submit oral or written testimony may do so at the hearings, or in writing (See **ADDRESSES**). Written comments addressed to the Council office should be received no later than noon, October 29, 1997, to assure time for processing and distribution before final consideration of the amendment by the Council.

The public may also provide oral and written comments on the amendment during the Council session on Tuesday, November 4 in Portland (See **ADDRESSES**).

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326-6352 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-28133 Filed 10-22-97; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 62, No. 205
Thursday, October 23, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics

Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the third of eight planned meetings. The meeting is scheduled to be held at the Presidio of San Francisco Military Reserve, San Francisco, California, beginning at 1 p.m. on December 2 and concluding at 5 p.m. on Thursday, December 4. The meeting will be a review of progress of the Task Force and will devote 1 day to a discussion regarding Federal, state and private roles in agricultural research. Anticipated is a tour of the Western Region Nutrition Laboratory and presentations by Agricultural Research Service, Forest Service, and university officials.

Times and Dates: December 2, 1997, 1 p.m.–5 p.m.; December 3, 1997, 8 a.m.–5 p.m.; and December 4, 1997, 8 a.m.–5 p.m.

Place: Presidio of San Francisco Military Reserve, San Francisco, CA 94133.

Type of Meeting: Open to the Public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 212–W, Jamie L. Whitten Building, USDA, 1400 Independence Avenue, S.W., Washington, D.C. 20250. Telephone (202) 720–3803.

Done at Washington, D.C., this 7th day of October 1997.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 97–28008 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Great Lakes IPM, Inc., of Vestaburg, Michigan, an exclusive license to U.S. Patent 5,607,670, issued March 4, 1997, entitled "Sex Attractant for the Cranberry Fruitworm." Notice of Availability was published in the **Federal Register** on December 14, 1995.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC—West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Great Lakes IPM, Inc., has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–28007 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of Coupon Issuance and Commodity Distribution for Disaster Relief

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved for the Food Stamp Program and the Food Distribution Program.

DATES: Comments on this notice must be received by December 22, 1997 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Data Base Monitoring Branch, Program Information Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of Coupon Issuance and Commodity Distribution for Disaster Relief

OMB Number: 0584–0037.

Expiration Date: December 30, 1997

Type of Request: Extension of a currently approved collection

Abstract: Food Distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–l); Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by Sections 412 and 413 of the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in 7 CFR part 250. In accordance with Section 250.43(f), distributing agencies shall provide a summary report to the agency within 45 days following termination of the disaster assistance.

Respondents: State agencies that administer USDA disaster relief activities.

Number of Respondents: 55.

Estimated Number of Responses per Respondent: The number of responses is estimated to be 1.82 responses per State agency per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 25 minutes per respondent for each submission.

Estimated Total Annual Burden on Respondents: 97 hours.

Dated: October 12, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–28131 Filed 10–22–97; 8:45 am]

BILLING CODE 3410–30–U

ARMS AND DISARMAMENT AGENCY

The Director's Advisory Committee; Notice of Closed Meetings

October 17, 1997.

In accordance with the Federal Advisory Committee Act, Public Law No. 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App. 2 510(a)(1) (1996)), the U.S. Arms Control and Disarmament Agency (ACDA) announces the following Advisory Committee meetings:

Name: The Director's Advisory, Committee (DirAC).

Dates: October 27 and 28, 1997; December 11 and 12, 1997.

Time: 8:30 a.m.

Place: For the October meeting: Sandia National Laboratory, Albuquerque, NM.

For the December meeting: State Department Building, 320 21st Street, N.W., Room 4930, Washington, D.C.

Type of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Director's Advisory Committee, Room 5844, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory: To advise the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meeting: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding agreements including the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. All meetings will be held in Executive Session.

Reason for Closing: The DirAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meetings: The closing of the meetings is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated October 16, 1997 made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act Pub. L. No. 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App. 2 510(a)(1) 1996).

Notice: This notice is being published less than 15 days before the first meeting, in order to enable more committee members to attend.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 97–28191 Filed 10–20–97; 4:16 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–832]

Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request from one manufacturer/exporter, Taiyuan Heavy Machinery Import and Export Corporation, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order of Pure Magnesium from the People's Republic of China. The review covers the period May 1, 1996, through October 31, 1996.

We have preliminarily determined that U.S. sales have been made below the normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between Export Price ("EP") and NV.,

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 353 (April 1997). Where appropriate, references are made to the Department's final regulations, codified at 19 CFR 351 (62 FR 27296), as a statement of current departmental practice.

Background

On November 3, 1997, the Department of Commerce ("the Department") received a request from Taiyuan Heavy Machinery Import and Export Corporation ("Taiyuan") for a new shipper review pursuant to section

751(a)(2)(B) of the Act and section 19 CFR 353.22(h) of the Department's regulations.

Section 751(a)(2) of the Act and section 19 CFR 353.22(h) of the Department's regulations govern determinations of antidumping duties for new shippers. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value investigation (the "POI") and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer. The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; and (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI (19 CFR 353.22(h)(2)).

Taiyuan's request was accompanied by information and certifications establishing the effective date on which it first shipped and entered pure magnesium. Taiyuan also has no affiliated companies and therefore is not affiliated with any person or corporation which exported pure magnesium from the People's Republic of China ("PRC") during the POI. Based on the above information, the Department initiated this new shipper review of Taiyuan (Notice of Initiation of New Shipper Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China (61 FR 69067 December 31, 1996)). The Department is now conducting this review in accordance with section 751 of the Act and section 19 CFR 353.22.

Taiyuan submitted responses to the Department's antidumping questionnaire and the Department attempted to verify this information at the facilities of Taiyuan and its supplier in May 1997.

Scope of Review

The product covered by this review is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium (that meets as specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content or less than 50% by weight), an remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) and amplified in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) ("Silicon Carbide"). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondent can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. De Jure Control

Taiyuan has placed on the administrative record documents to demonstrate absence of de jure control; the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988, (the Industrial Enterprises Law), and the 1992 regulations that supplemented it, "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" (Business Operation Provisions). We have analyzed these laws in previous cases and have found them to sufficiently establish an absence of de jure control of companies "owned by the whole people," such as Taiyuan. (See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China ("Furfuryl Alcohol") 60 FR 22544 (May 8, 1995)). The Industrial Enterprises Law provides that enterprises owned by "the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Business Operation Provisions confer upon state-owned enterprises the responsibility for making investment decisions, the right to dispose of retained capital and assets, and the authority to form joint ventures and to merge with other enterprises. Taiyuan also states that pure magnesium does not appear on any government lists regarding export

provisions or export licensing, and that no quotas are imposed on pure magnesium. In sum, in prior cases, the Department examined both the Industrial Enterprises Law and the Business Operations Provisions, and found that they establish an absence of de jure control. We have no new information in this proceedings which would cause us to reconsider this determination with regard to Taiyuan.

2. De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the EPs are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide and Furfuryl Alcohol).

Taiyuan asserted the following: (1) It establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. During verification proceedings, Department officials viewed such evidence as sales documents that showed Taiyuan sales prices were negotiated solely by Taiyuan and its customer. In addition, the Department generally noted no significant indication of government involvement in Taiyuan's business operations. Taiyuan officials are appointed by a bureau of the provincial government, not the central government and there are no other known exporters under the control of the provincial government. Sales documents reviewed indicated that Taiyuan sales prices were negotiated solely by Taiyuan and its customer. In addition, the Department reviewed sales payments, bank statements and accounting documentation that provided evidence that Taiyuan received payment in U.S. dollars, which was deposited into its bank account after being converted to RMB (*see* Taiyuan Sales Verification Report at pg 7). This information, taken in its entirety, supports a finding that there is de facto an absence of governmental control of export functions. Consequently, we have preliminarily determined that Taiyuan has met the criteria for the application of separate rates (see Notice of Final Determination at Less Than Fair Value: Persulfates from the Peoples Republic of China, 62 FR 27222, May 19, 1997).

Fair Value Comparisons

To determine whether sales of the subject merchandise by Taiyuan to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below.

Export Price and Constructed Export Price

The Department used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the PRC exporter to unrelated parties in the United States prior to importation into the United States and the constructed EP methodology was not warranted based on the facts of record.

We calculated EP based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, loading, and port handling expenses, valued in a surrogate country. To value freight, we used Indonesia freight rates from a 1991 cable from the U.S. Embassy in Jakarta (*see* Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC, 56 FR 66831, December 26, 1991). We selected India as the primary surrogate country for reasons explained in the "Normal Value" section below.

Normal Value

In every case conducted by the Department involving the PRC, the PRC has been treated as an non-market economy ("NME") country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to non-market economy countries. In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. We first determined that India, Pakistan, Egypt, Sri Lanka and Indonesia are each at a level of economic development comparable to the PRC in terms of per capita gross national product ("GNP"), the growth rate in per capita income, and the national distribution of labor. However, none of the countries are significant producers of the subject merchandise. Accordingly, we considered whether any of the potential surrogates produce comparable merchandise. As stated in previous cases, the material inputs used to produce magnesium and aluminum are different. However, according to both U.S. Bureau of Mines and Department of Commerce experts, both (1) are light metals in terms of molecular weight; (2) are produced using an electrolytic process, and (3) share some common end uses (e.g., dye casting) (see Notice of Final Determination: Pure and Alloy Magnesium from the Peoples Republic of China (60 FR 16437,16440, March 30, 1995) ("the PRC Magnesium Investigation")). Therefore, in this administrative review, we have determined that aluminum constitutes comparable merchandise in the context of surrogate selection.

The Department has determined that Indonesia and India are the countries most comparable to the PRC in terms of overall economic development and both are significant producers of comparable merchandise (aluminum) (see the PRC Magnesium Investigation). We have selected India as a reasonable surrogate country because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

Petitioner and respondent submitted publicly available information on surrogate values for the Department's consideration. The factors used to produce pure magnesium include materials, labor, and energy. To calculate NV, the reported factor quantities were multiplied by the appropriate surrogate values from India for the different inputs. To value each factor of production, we used, where possible, publicly available information. We have preliminarily accepted Taiyuan's reporting of its suppliers' factors of production based on its entire fiscal year rather than the POR because POR production was limited. For purposes of calculating NV, we valued reported PRC factors of production (adjusted based on verification findings) as follows, in accordance with section 773(c) of the Act:

The factors of production for which we used surrogate values included: raw materials, packing materials, labor, diesel fuel, electricity, truck freight, factory overhead, selling, general and administrative and profit we used

public information from various sources. *See* October 16, 1997, Calculation Memorandum for details. Reported raw materials include: ferrosilicon, dolomite, calcinate dolomite, flux (powder), flux (lump), sulphuric acid, fluorite powder, sulphur powder, and barium chloride. Reported packing materials include: wooden crates, plastic bags, and steel straps.

With regard to labor, the Department has concluded that, while wages and per-capita GNP are positively correlated, there is a great variation in the wage rates of the market economy countries that the Department treats as being economically comparable. As a practical matter, this means that the result of an NME case can vary widely depending on which of several economically comparable countries is selected as the surrogate. In order to eliminate the variability of wage rates in countries with similar per capita GNPs, we used a regression-based wage rate.

See October 16, 1997, Calculation Memorandum for details of valuation of factors of Production.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the respondent's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification findings are outlined in the verification report.

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 353.60 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 1996, through October 31, 1996:

Manufacturer/producer/exporter	Percent margin
Taiyuan Heavy Machinery Import and Export Corporation	83.92

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held at the earliest convenience of the parties but not later than 34 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 20 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 27 days after the date of publication. The Department will issue the final results of this new shipper administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 90 days of issuance of these preliminary results. Upon completion of this new shipper review, the Department will issue appraisement instructions directly to the Customs Service. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Furthermore, upon completion of this review, the posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's interim regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

The following deposit requirements will be effective upon publication of the final results of this new shipper antidumping duty administrative review for all shipments of pure magnesium from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this new shipper administrative review; (2) the cash deposit rate for all other PRC exporters will continue to be 108.26 percent, the PRC-wide rate established in the LTFV and (3) the cash deposit rate for non-PRC exporters of subject merchandise will be the rate applicable to the PRC supplier of that exporter. investigation.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.36 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and Section 19 CFR 353.22(h) 1996.

Dated: October 16, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28154 Filed 10–22–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–507]

Malleable Cast Iron Pipe Fittings From Taiwan: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On June 19, 1997 the Department of Commerce initiated an administrative review of the antidumping duty order on malleable cast iron pipe fittings from Taiwan for De Ho Metal Industrial Co., Ltd., of Taiwan, a manufacturer of malleable cast iron pipe fittings. This administrative review was requested by Amco Metal Industrial Corp., an importer of the subject merchandise, and is for the period covering May 1, 1996 through April 30, 1997. The Department of Commerce is terminating the review after receiving from Amco Metal Industrial Corp. a withdrawal of its request for a review.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Manning or James Terpstra, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3936 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations as codified at 19 CFR 353 (1997).

Background

On May 1, 1997, Amco Metal Industrial Corp. (Amco), requested on behalf of De Ho Metal Industrial Co., Ltd. (De Ho Metal) that the Department conduct an administrative review of the subject merchandise exported by De Ho Metal from Taiwan for the period May 1, 1996 through April 30, 1997.

On June 19, 1997, the Department published in the **Federal Register** (62 FR 33394) a notice of initiation of administrative review with respect to De Ho Metal for the period May 1, 1996 through April 30, 1997. On September 16, 1997, Amco requested that it be allowed to withdraw its request for a review and that the review be terminated.

Pursuant to 19 CFR 353.22(a)(5), the Department may allow a party that requests an administrative review to withdraw such request no later than 90 days after the date of publication of the notice of initiation of the requested review. Because Amco's request for termination was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are terminating this review for De Ho Metal. See Certain Welded Stainless Steel Pipe from Korea, Termination of Antidumping Duty Administration Review, 62 FR 47460, (September 9, 1997). We will issue appropriate appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: October 10, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 97–28153 Filed 10–22–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101697C]

Marine Mammals; Public Display Permit (PHF# 852–1356)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of withdrawal.

SUMMARY: Notice is hereby given that the Dallas World Aquarium, 1801 North Griffin, Dallas, TX 75202, has withdrawn its application to import Amazon River dolphin (*Inia geoffrensis*), for purposes of public display.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9731 Executive Center Drive North, St. Petersburg, FL 33702 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Ann Hochman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On Thursday, August 14, 1997, notice was published in the **Federal Register** (62 FR 433516) that an application had been filed by the Dallas World Aquarium. A public display permit was requested to import four Amazon River dolphins (*Inia geoffrensis*) from Valencia, Venezuela. The applicant was issued a collection license from the Venezuelan Service Agency PROFAUNA and the dolphins were to be collected from the Apure River near San Fernando, Venezuela.

In its October 7, 1997, letter of withdrawal, The Dallas World Aquarium stated it would not capture any wild dolphins in Venezuela and would surrender its collection license to PROFAUNA.

Dated: October 16, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28134 Filed 10–22–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 20, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

At the request of the Government of Bangladesh, a previous increase for special shift to Category 634 from Category 334 is being reduced.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996; and 62 FR 53319, published on October 14, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 23, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334	125,822 dozen.
634	552,364 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–28173 Filed 10–20–97; 3:26 pm]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

October 20, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 22, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	5,673,333 square meters.
314	54,554,996 square meters.
334/335	247,089 dozen.
350/650	127,267 dozen.
443	97,513 numbers.
445/446	64,769 dozen.
448	24,016 dozen.
645/646	829,657 dozen.
Group II Subgroup 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	3,442,498 square meters equivalent.
In Group II subgroup 435	54,037 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–28172 Filed 10–20–97; 3:28 pm]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"Federal Register" Citation of Previous Announcement: [insert FR citation].

Previously Announced Time and Date of Meeting: 10:00 a.m., October 22, 1997.

Changes in Meeting: The meeting concerning the FY 1998 Operating Plan has been canceled and rescheduled for October 29, 1997.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 21, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–28289 Filed 10–21–97; 3:19 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission; Washington, DC 20207.

Time and Date: Wednesday, October 29, 1997. 10:00 a.m.

Location: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

Status: Open to the Public.

Matters to be Considered:

FY 1998 Operating Plan: The staff will brief the Commission and the Commission will consider issues related to the Commission's Operating Plan for Fiscal Year 1998.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 21, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–28290 Filed 10–21–97; 3:19 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Department of Defense Security Agreement, Appendage to the Security Agreement, Certificate Pertaining to Foreign Interests; DD Form 441, 441–1, 441s (SF X322); OMB Number 0704–0194.

Type of Request: Reinstatement.

Number of Respondents: 6,225.

Responses per Respondents: 1.

Annual Responses: 6,225.

Average Burden per Response: 36 minutes.

Annual Burden Hours: 3,735.

Needs and Uses: The execution of DD Forms 441, 441–1, and 441S (to become a Standard Form) is a factor in making a determination as to whether a contractor is eligible to have a facility security clearance. It is also the legal basis for imposing security requirements on eligible contractors. These requirements are necessary to preserve and maintain the security of the United States through the establishment of standards to prevent the improper disclosure of classified information. Executive Order 12829 stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require access to classified information and for determining eligibility for access to classified information. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5220.22–M, "National Industrial Security Program (NISP). DD Form 441, "Department of Defense Security Agreement," is the initial contract between industry and the government. This legally binding document details the responsibility of both parties and obligates the contractor to fulfill the requirements outlined in DoD 5220.22–M. The DD Form 441–1, "Appendage to the Department of Defense Agreement," is used to extend the agreement to separately located branches and offices of the contractor. DD Form 441S (to become SF X322), "Certificate Pertaining to Foreign Interests," must be submitted to provide certification regarding elements of Foreign Ownership, Control, and Influence (FOCI).

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 17, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–28098 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Environmental Response Task Force (DERTF)

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security.

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations on environmental response actions at military installations being closed or realigned. This meeting is a follow-up to the June 17–19, 1997 meeting. The DERTF will discuss issues related to natural and cultural resources at BRAC installations, optimization of long-term operation and maintenance of cleanup remedies, information management for BRAC properties, Superfund reform, other matters related to cleanup at closing military installations, and the DERTF's 1998 Report to Congress. The DERTF will also be briefed on the cleanup program at Williams Air Force Base, Arizona. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the DERTF should contact Shah Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public witnesses. Written statements must be received by the close of business, December 19, 1997, at the Office of the Under Secretary of Defense (Environmental Security).

DATES: January 27, 1998; 9:30 a.m. to 8 p.m.; January 28, 1998; 9 a.m. to 4:30 p.m.; January 29, 1998; 9 a.m. to 3:30 p.m.

PUBLIC COMMENT PERIOD: A public comment period is scheduled for January 27, 1998, from 7:00 p.m. to 8:00 p.m., at the Arizona State University—East Campus in Mesa, Arizona.

ADDRESS OF MEETING SITE: The business meeting will be held in the Embassy Suites Hotel, 1515 N. 44th Street, Phoenix, AZ 85008.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400; telephone (703) 697–7475; e-mail choudhsa@acq.osd.mil.

Dated: October 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–28094 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

Dates: 23 and 24 October 1997 (800 a.m. to 1600 p.m.).

Addresses: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

For Further Information Contact: Maj Michael WE. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

Supplementary Information: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: October 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–28093 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

Dates: November 4–5, 1997 (8 a.m. to 5 p.m.).

Addresses: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

For Further Information Contact: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

Supplementary Information: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I); Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: October 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–28096 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

Dates: November 3, 1997 (1 p.m. to 5 p.m).

Addresses: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

For Further Information Contact: Maj Michael W. Lamb, USAF, Executive Secretariat , DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328, (202) 231–4930.

Supplementary Information: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters

Dated: October 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–28097 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary for agenda for the meeting of the National Defense Panel on October 27 and 28, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, October 27 and 28, 1997 in order for the Panel to discuss classified material.

DATES: October 27 and 28, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0900–1700 on October 27. The Panel will hear the NDP staff presentations on Status Updates of Issue Reviews and Report Status on Projects at the Crystal Mall 3 office. During the closed session on October 28 from 1300–1500, the National Defense Panel staff will meet with the Defense Reform Task Force at the Crystal Mall 3 office. The remainder of the Panel's time will be used to discuss the NDP staff presentations on various future strategies, desired capabilities, and developing force elements.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This Notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting, as a result of a delay in processing with OSD due to the federal holiday on October 13th.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: October 17, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 97–28095 Filed 10–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Notice of a Computer Matching Program Between the Small Business Administration and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Small Business

Administration (SBA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between SBA and DoD that their records are being matched by computer. The record subjects are SBA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by SBA so as to permit SBA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective November 24, 1997 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and SBA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that SBA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between SBA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Deputy Director, Office of Borrower and Lending Service, Small Business Administration, 409 Third Street, SW, Suite 8300, Washington, DC 20416. Telephone 202–205–6481.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on October 7, 1997 to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated Febaruary 8, 1996 (61 FR 6435, February 20, 1996). The matching program is subject to review by OMB and Congress and shall not become effective until that review period of 40 days has elapsed.

Dated: October 14, 1997

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE SMALL BUSINESS ADMINISTRATION AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating Agencies:* Participants in this computer matching program are the Small Business Administration (SBA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SBA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, SBA will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who owe delinquent debts to the Federal Government under certain programs administered by SBA. SBA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the SBA of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 5 U.S.C. 5514, as amended, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(l) of Executive Order 12731; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); [Note: Insert Agency's CFR citation implementing 5 U.S.C. 5514(b)(1).]

D. *Records to be matched:* The systems of records described below ontain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

The SBA will use personal data from the Privacy Act record system identified as SBA 075, entitled, 'Loan Case File', last published in the **Federal Register** at 56 FR 8022 on February 26, 1991.

DMDC will use personal data from the record systems identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 61 FR 32779, June 25, 1996.

Sections 5 and 10 of the Debt Collection Act of 1982 (Public Law 97–365) authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the

Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition.

E. *Description of Computer Matching Program:* SBA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs SBA administers. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the SBA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to SBA. SBA is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with SBA's source file and for resolving any discrepancies or inconsistencies on an individual basis. SBA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file tape provided by SBA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for eah debtor on approximately 10,000 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide non-postal Federal civilian records of current and retired Federal employees.

F. *Inclusive dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between SBA and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public coments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 97–27643 Filed 10–22–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

Dates and Times:

Monday, November 17, 1997:
- 5:00 p.m.–6:30 p.m. (Issues-based Subcommittee Meetings)
- 6:30 p.m.–7:00 p.m. (Public Comment Session)
- 7:00 p.m.–9:00 p.m. (Special Meeting of the Full Board)

Tuesday, November 18, 1997: 8:30 a.m.–4:00 p.m.

Addresses:

The November 17, 1997, meetings will be held at:
- The First Baptist Church, 1803 Allen Street, Barnwell, South Carolina.

The November 18, 1997, meeting will be held at:
- Barnwell County State Park, Route 2, Highway 3, Blackville, South Carolina.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, November 17, 1997

5:00 p.m. Issues-based subcommittee meetings
6:30 p.m. Public comment session (5-minute rule)
7:00 p.m. Special Meeting of Full Board (vote on draft motions presented in Sept.)
8:00 p.m. Adjourn

Tuesday, November 18 1997

8:30 a.m.
- Approval of minutes, agency updates (~15 minutes)
- Public comment session (5-minute rule) (~10 minutes)
- Nuclear materials management subcommittee (~1 hour 30 minutes)
- Administrative subcommittee report (~45 minutes)
- -Includes by-laws amendments proposal
- Risk management & future use subcommittee report (~30 minutes)
- Public comment session (5-minute rule) (~10 minutes)

12:00 p.m.
- Lunch

1:00 p.m.
- Public comment session (5-minute rule) (~10 minutes)
- Environmental restoration and waste management subcommittee report (~1 hour 30 minutes)
- Budget subcommittee report (~15 minutes)
- SSAB Chair trip report (~15 minutes)
- Facilitator update (~15 minutes)
- Public comment session (5-minute rule) (~10 minutes)

4:00 p.m. Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meetings on Monday, November 17, 1997, and Tuesday, November 18, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on October 17, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28155 Filed 10–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Electric and Magnetic Fields Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Thursday, November 13, 1997: 1:30 p.m.–4:45 p.m.; Friday, November 14, 1997: 9:00 a.m.–12:45 p.m.

ADDRESS: Maritime Museum, 1306 N. Harbor Drive, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Dr. Imre Gyuk, EMF Program Manager, EE–14, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1482.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The National Electric and Magnetic Fields Advisory Committee (NEMFAC) advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields (EMF) research and public information dissemination (RAPID) program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, Pub. L. No.102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

Tentative Agenda

Thursday, November 13, 1997

1:30 p.m Welcome and opening remarks
1:45 p.m. RAPID program budget status
2:00 p.m. National Cancer Institute childhood leukemia study and NIEHS meta-analysis
2:45 p.m. Status of RAPID health research
3:15 p.m. Break
3:40 p.m. Health research, continued
4:10 p.m. Discussion
4:45 p.m. Adjourn

Friday, November 14, 1997

9:00 a.m. Status of RAPID engineering research
9:20 a.m. Status of RAPID communication activities
9:35 a.m. Progress on science symposia and workshop
10:05 a.m. Break
10:45 a.m. NEMFAC business
11:45 a.m. Open time for public comments
12:45 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Gyuk at the address or telephone number listed above in the **FOR FURTHER INFORMATION CONTACT** section. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes: A transcript and minutes of this meeting will be available for public review and copying at the Department of Energy, Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on October 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28156 Filed 10–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Upper Grande Ronde Supplementation Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's proposal to construct acclimation ponds for the Grande Ronde River spring chinook in floodplain and wetlands located in Union and Wallowa Counties, Oregon. A total of three acclimation sites would be developed in the Upper Grande River, the Lostine River and Catherine Creek tributaries within the Grande Ronde Subbasin of the Snake River Drainage in northeastern Oregon. It is the intent of the BPA, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Oregon Department of Fish and Wildlife, and the National Marine Fisheries Service to prevent the extinction and restore the population of the spring chinook within the tributaries.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and would perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATE: Comments are due to the address below no later than November 7, 1997.

ADDRESS: Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION, CONTACT: Kenneth C. Kirkman, EC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5557, fax number 503–230–4089.

SUPPLEMENTARY INFORMATION: The juvenile spring chinook captive broodstock acclimation facilities most likely would be located on floodplains and/or wetlands because they need to be

constructed close to the stream or river banks to be able to utilize the rivers for a source of flow through water. The acclimation ponds will be constructed of metal and some earth work, cutting and filling, will be required; maybe a total of 140 cubic yards. The acclimation facilities are located at the following sites: (1) the Lostine River at T1S, R43E, Section 27 (Lostine, OR quad); (2) the Catherine Creek at the T5S, R 41E, Section 21 (Medical Springs, OR quad); and (3) the Upper Grande Ronde at T6S, R 36E, Section 5 (Limber Jim Creek, OR quad).

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on October 15, 1997.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 97–28157 Filed 10–22–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

SUPPLEMENTARY INFORMATION:

The energy information collections submitted to OMB for review were:

1. EIA–23, 23P, and 64A, "Oil and Gas Reserves System Surveys."

2. Energy Information Administration; 1905–0057; Extension with changes; Mandatory.

3. EIA's Oil and Gas Reserves System Surveys collect data used to estimate reserves of crude oil, natural gas, and natural gas liquids, and to determine the status and approximate levels of production. Data are published and are used by public and private analysts. Respondents are operators of oil wells, natural gas wells, and natural gas processing plants.

EIA proposes no substantive revision to the current forms. However, the original **Federal Register** notice did request comments on substantive changes to the Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves." As a result of comments received and discussions with members of various trade associations it was decided to delay the implementation of the originally proposed changes until all the government organizations involved had the opportunity to revise their own programs, so that all Government agencies would have consistent definitions in place before EIA changed its reserves definitions and data collection process.

4. Business or other for-profit.

5. 107,084 hours (16.360 hours x 0.802 responses per year x 8161 respondents).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., October 17, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–28159 Filed 10–22–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–158–001]

Baltimore Gas and Electric Company; Notice of Filing

October 17, 1997.

Take notice that on August 15, 1997, Baltimore Gas and Electric Company (BGE) submitted a compliance filing in accordance with the requirements of FERC's July 31, 1997 Order in Allegheny Power System, Inc., et al., 80 FERC ¶61,143 (1997). Included in the filing is a revised Schedule 9, Real Power Losses, of BGE's Open Access Transmission Tariff, designated as FERC Electric Tariff, Original Volume No. 4.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28049 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–97–002]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 17, 1997.

Take notice on October 14, 1997, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute Seventh Revised Sheet No. 5, with an effective date of October 1, 1997.

Chandeleur states that the filing is being made to correct its September 12, 1997 filing. Chandeleur states that it is replacing one of the two maximum rate columns with the appropriate minimum rate column consistent with the effective Sixth Revised Sheet No. 5.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28108 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–15–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 17, 1997.

Take notice that on October 9, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in the above docket, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations, and Columbia's authorization in Docket No. CP83–76–000, for authorization to construct and operate the facilities necessary to establish ten additional points of delivery to existing customers for firm transportation service, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate new points of delivery to Columbia Gas of Ohio (COH) in Medina County, Ohio; Lorain County, Ohio; and Richland County, Ohio, which will involve construction of interconnecting facilities located between Columbia's existing right-of-way to provide the service. COH will install a meter within Columbia's existing right-of-way to provide this service.

Columbia also proposes to construct and operate new points of delivery to Mountaineer Gas Company (MGC) in Marshall County, West Virginia; Kanawah County, West Virginia; Roane County, West Virginia; Mercer County, West Virginia; Clay County, West Virginia (two points of delivery); and in Upshur County, West Virginia, which will involve the construction of interconnecting facilities located on Columbia's existing right-of-way to provide this service. MGC will install a meter within Columbia's existing right-of-way to provide this service.

Columbia states that neither COH nor MGC have requested an increase in their peak day entitlements in conjunction with this request for these new points of delivery. Therefore, there is no impact of Columbia's peak day obligation to its other customers as a result of the establishment of the proposed new facilities.

Columbia states that the interconnecting facilities for each new point of delivery vary according to conditions encountered at each location; however, because the proposed points of delivery to COH and MGC relate to routine residential taps, the following facilities are representative of what will be installed at each location: a 4-inch by 1-inch tap saddle (depending on the size of the pipeline for each requested point); a 1-inch valve, nipple, and less than 20 feet of pipe on Columbia's existing right-of-way. Columbia indicates that COH and MGC will set the meter and regulator at each location.

Columbia states that the quantities to be provided through the new points of delivery will be within Columbia's authorized level of services. Therefore, there is no impact on its existing design day and annual obligations to the Customers as a result of the construction and operation of the new points of delivery for firm transportation service.

Columbia further states that it will comply with the environmental requirements of Section 157.206(d) of the Commission's regulations prior to the construction and operation of the proposed facilities.

Columbia estimated that the cost to install the new taps to be approximately $150 per tap and will be treated as an O&M expense.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28035 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–65–001]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

October 17, 1997.

Take notice that on October 14, 1997, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Substitute First Revised Sheet No. 2, the following revised tariff sheet, to be effective September 28, 1997:

Substitute First Revised Sheet No. 2

KNI states that the above referenced tariff sheet is being filed to correct a deletion of reference to the state of Nebraska within its Preliminary Statement. The reference to the state of Nebraska was in the Original Sheet No. 2 and should not have been taken out of the Preliminary Statement. KNI has submitted Substituted First Revised Sheet No. 2 to reinstate the include of the state of Nebraska as a place of doing business.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28043 Filed 10–22–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–4–00]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

October 17, 1997.

Take notice that on October 14, 1997, K N Gas Transmission Company (KNI) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective November 14, 1997:

Third Revised Volume No. 1–B

First Revised Sheet No. 55

First Revised Volume No. 1–D

First Revised Sheet No. 48

KNI states that these tariff sheets are being filed pursuant to Section 154.204 of the Commission's regulations. KNI is submitting for filing and acceptance the above revised tariff sheet(s) and other information as required by the Commission's Orders issued on December 24, 1996 and August 6, 1997, in Docket No. MG96–13– et. al.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. All such protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding, must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28047 Filed 10–22–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–3–000]

K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

October 17, 1997.

Take notice that on October 14, 1997, K N Wattenberg Transmission L.L.C. (K N Wattenberg) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 63, to be effective November 14, 1997.

K N Wattenberg states that these tariff sheets are being filed pursuant to section 154.204 of the Commission's regulations. K N Wattenberg is submitting for filing and acceptance the above revised tariff sheet(s) and other information as required by the Commission's Orders issued on December 24, 1996 and September 15, 1997, in Docket No. MG96–14 et. al.

K N Wattenberg states that copies of the filing were served upon K N Wattenberg's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. All such protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28046 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–17–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 17, 1997.

Take notice that on October 9, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–17–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for approval to abandon three delivery taps and establish two new delivery taps, under the blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of Louisiana Gas Service Company (LGS) a local distribution Company, in St. Tammany Parish, Louisiana. Service will be continued to the affected end-users through new taps on an adjacent Koch Gateway pipeline. Koch Gateway asserts that LGC concurs with the proposed abandonment and tie-over measures.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28036 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–19–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 17, 1997.

Take notice that on October 9, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–19–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for approval to abandon three delivery taps and establish new delivery taps, under the blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of Entex, Inc. (Entex) a local distribution Company, in St. Tammany Parish, Louisiana. Koch Gateway asserts that Entex concurs with the proposed abandonment and tie-over measures.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28037 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–003]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Ocotober 17, 1997.

Take notice that on October 14, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective December 1, 1997:

2nd Sub Third Revised Sheet No. 1501
Fourth Revised Sheet No. 1807

Koch states that it is submitting the above listed tariff sheets to correct certain omissions from the May 30, 1997, filing in this proceeding. Specifically, Koch states that it has revised Sections 8.3 and 11.4(c)(4) of the General Terms and Conditions to reflect the correct procedures applicable under zone based rates.

Koch states that it has served copies of the instant filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28053 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–1–000]

National Fuel Gas Supply Corporation; Notice of Filing

October 17, 1997.

Take notice that on October 10, 1997, National Fuel Gas Supply Corporation (National) filed revised standards of conduct under Order Nos. 497 *et al.*[1] and Order No. 566.[2]

National further states that copies of this filing were served upon its customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. All such motions to intervene or protest should be filed on or before November 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28045 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994), Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–20–000]

Natural Gas Pipeline Company of America; Notice of Application

October 17, 1997.

Take notice that on October 10, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148–5072, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of its Buffalo Wallow Residue Lateral (Residue Lateral) and the related gathering facilities known as Gageby Creek, Washita Creek and Buffalo Wallow laterals (Gathering Facilities),[1] which consist of certificated and non-certificated facilities located in Hemphill and Wheeler Counties, Texas, by sale to American Processing, L.P. (American), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural is also requesting a determination that such facilities will be exempt from the Commission's jurisdiction following their transfer to American. Natural notes that American is not an affiliate. Natural states that the approximately 49 miles of pipe being sold varies in diameter from 3 to 16 inches. According to Natural, approximately 39 miles of this pipe has been certificated, while the remainder is not certificated. Natural notes that there is one non-certificated field booster station also being sold. Natural contends that American purchased the processing plant form Natural pursuant to a Purchase and Sale Agreement dated December 30, 1996 (Agreement). According to Natural, the Agreement also provides for the sale and transfer of the Residue Lateral and the Gathering Facilities to American.

Natural states that the Buffalo Wallow and Gageby Creek laterals operate at approximately 350 psig. Gas from these laterals is compressed by Booster Station 91 prior to being processed at Purification Plant No. 163 (PP163), which is the processing plant that Natural sold to American on December 30, 1996.[2] Gas from the Washita Creek lateral enters PP163 downstream of Booster Station 91 and, therefore, must operate at approximately 680 psig. The Residue Lateral operates at approximately 650 psig and free-flows into Natural's Oklahoma Extension in Wheeler County, Texas, which is a part of Natural's Amarillo Mainline System.

Natural notes that pursuant to prior rate cases filings, the Residue Lateral and the Gathering Facilities have been classified for rate purposes as transmission facilities, and Natural charges no separate gathering rate for services provided by means of the facilities. Therefore, Natural claims that there is no requirement to make an NGA Section 4 filing for "termination of services." Natural notes that the purchase price for all of the facilities is $4,000,000. American paid a total of $3,200,000 to Natural on December 30, 1996. The remaining $800,000 will be paid to Natural when ownership of the Residue Lateral and the Gathering Facilities is transferred to American. According to Natural, the net book value of the certificated facilities was approximately $362,574 as of September 1, 1997.

Any person desiring to be heard or to make a protest with reference to said application should, on or before November 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28107 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

[1] The Residue Lateral is located downstream of a processing plant owned by American, while the Gathering Facilities are located upstream of the processing plant.

[2] Natural contends that such plants are non-jurisdictional, and this plant was never certificated.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3401–001]

Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); Notice of Filing

October 17, 1997.

Take notice that on August 27, 1997, Northern States Power Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28042 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP90–2158–004]

Northwest Pipeline Corporation; Notice of Application To Amend Order

October 17, 1997.

Take notice that on October 10, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–2158–004, an application under Sections 7 (b) and (c) of the Natural Gas Act to amend its existing certificate and abandonment authorizations to grant a three-year extension beyond the currently authorized April 30, 1998 expiration date, until April 30, 2001, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest requests authorization for:

(1) A limited-term, partial abandonment of Northwest's Rate Schedule SGS–1 storage service for The Washington Water Power Company (Water Power), corresponding to a limited-term release of the Jackson Prairie storage capacity by Water Power to Cascade Natural Gas Corporation (Cascade); and

(2) A limited-term certificate of public convenience and necessity, with pregranted abandonment, authorizing Northwest to provide additional Rate Schedule SGS–1 storage service for Cascade in place of the temporarily abandoned SGS–1 service for Water Power.

Northwest states that under an agreement dated July 23, 1990 and amended April 28, 1995 (Release Agreement), Water Power released 480,000 Dth of storage capacity, 15,000 Dth per day of firm deliverability and 5,533 Dth per day of best-efforts deliverability to Cascade for a limited term expiring April 30, 1998. Northwest further states that consistent with the release, Northwest was authorized to correspondingly reduce its existing Rate Schedule SGS–1 storage service obligations to Water Power and to provide replacement Rate Schedule SGS–1 storage service to Cascade for a limited term expiring on April 30, 1998.

Northwest explains that Water Power and Cascade have agreed to extend the storage release for an additional three years pursuant to a July 30, 1997 amendment to the Release Agreement. Northwest states that superseding Rate Schedule SGS–1 storage service agreements have been executed with both Water Power and Cascade to reflect this three-year extension.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28034 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–55–001]

Questar Pipeline Company; Notice of Tariff Filing

October 17, 1997.

Take notice that on October 14, 1997, Questar Pipeline Company, (Questar) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Eighth Revised Sheet No. 5A and Substitute Sixth Revised Sheet No. 6A, to be effective October 1, 1997.

Questar states that these tariff sheets are filed in compliance with the September 29, 1997, Order of the Director Accepting, Rejecting and Allowing Withdrawal of Tariff Sheets, in Docket No. TM98–1–55.

Questar states further that copies of this filing were served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28057 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–411–003]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

October 17, 1997.

Take notice that on October 14, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets set forth on Appendix A to the filing.

Sea Robin has requested to place the tariff sheets into effect August 4, 1997.

On July 1, 1997, Sea Robin submitted a filing with the Commission in the above-captioned docket to create a new rate schedule on Sea Robin's system to provide a new, flexible firm service for any eligible shipper. Such new, firm service, Rate Schedule FTS–2, provides firm transportation at a volumetric rate provided that shippers maintain a throughput level of 80% of Maximum Daily Quantity (MDQ). In the Commission's "Order Accepting and Suspending Tariff Sheets Subject to Conditions" dated July 31, 1997, the Commission accepted Sea Robin's filing subject to certain conditions. Sea Robin made a compliance filing with the Commission on August 15, 1997. By Order dated September 26, 1997, the Commission accepted Sea Robin's compliance filing but required Sea Robin to place the tariff sheets into effect on August 4, 1997. This is the date Sea Robin filed a motion with the Commission to place the sheets into effect.

In addition, the Commission required Sea Robin to clarify the following to its tariff language in its new Rate Schedule FTS–2:

(i) That the priorities of service are the same for FTS shippers and FTS–2 shippers (Sheet No. 118);

(ii) To eliminate reference to the words "at minimum" when evaluating requests under Rate Schedule FTS–2 to determine net present value, if necessary, to allocate capacity (Sheet No. 130o);

(iii) To include references to Rate Schedule FTS–2 in order to incorporate the rate schedule into the General Terms and Conditions of the Tariff (Sheet Nos. 30a, 32 and 33).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28054 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–182–008]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 17, 1997.

Take notice that on October 14, 1997, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's letter order issued on June 24, 1997, in this docket, to become effective on November 1, 1997, except as otherwise noted:

Second Revised Sheet No. 13
Fourth Revised Sheet No. 15
First Revised Sheet No. 15a
Fourth Revised Sheet No. 16
Seventh Revised Sheet No. 32
Fifth Revised Sheet No. 33
Second Revised Sheet No. 45
Third Revised Sheet No. 46
Second Revised Sheet No. 98 (Effective August 1, 1997)
Third Revised Sheet No. 98
Original Sheet No. 98a

On June 24, 1997, the Commission issued an unpublished letter order conditionally approving South Georgia's tariff filing made in this proceeding on May 1, 1997, to comply with Order No. 587–C in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said order. The letter order required South Georgia to make minor modifications to its May 1 filing and to submit in October 1997 actual tariff sheets to implement the GISB standards effective November 1, 1997. Accordingly, South Georgia submits the above-listed Tariff sheets to comply with this order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28052 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–137–010]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

October 17, 1997.

Take notice that on October 14, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's letter order issued on June 24, 1997, in this docket, to become effective on November 1, 1997:

Fourth Revised Sheet No. 42
First Revised Sheet No. 53b
Third Revised Sheet No. 62
Third Revised Sheet No. 71
Fourth Revised Sheet No. 86
Second Revised Sheet No. 96
Fifth Revised Sheet No. 98
Original Sheet No. 98a
Sixth Revised Sheet No. 124
Fifth Revised Sheet No. 126
Second Revised Sheet No. 212h
Original Sheet No. 212i
Fifth Revised Sheet No. 236
Fifth Revised Sheet No. 237
Third Revised Sheet No. 249

On June 24, 1997, the Commission issued an unpublished letter order conditionally approving Southern's tariff filing made in this proceeding on May 1, 1997, to comply with Order No. 587–C in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said order. The letter order required Southern to make minor modifications to its May 1 filing and to submit in October 1997 actual tariff sheets to implement the GISB standards effective November 1, 1997. Accordingly, Southern submits the above-listed Tariff sheets to comply with this order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28051 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN97–2–001]

Tennessee Gas Pipeline Company; Notice of Refund Report

October 17, 1997.

Take notice that on October 3, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a refund report pursuant to a Stipulation and Consent Agreement approved by the Commission's August 7, 1997, order in Docket No. IN97–2–000.

Tennessee states that on September 2, 1997, it made refunds of $85,899 to ten shippers or their successors to resolve an investigation into the discounts Tennessee gave to its marketing affiliates. On September 12, 1997, Tennessee notified Enforcement Staff that the refund check of $3,968 for GasMark Ltd. was returned to Tennessee. Tennessee stated that it attempted to effectuate the refund to GasMark Ltd. Liquidating Trust, Inc., a trust that was established to liquidate the companies assets, but the Trust is no longer in operation.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28044 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–16–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 17, 1997.

Take notice that on October 14, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 1997:

Second Revised Sheet No. 95B
Second Revised Sheet No. 96
Second Revised Sheet No. 106
Fifth Revised Sheet No. 204
First Revised Sheet No. 361

Tennessee states that it is submitting these revised tariff sheets in order to effectuate changes to its tariff that would (i) tailor Tennessee's Maximum Allowed Volume (MAV) tariff provisions to provide for a more targeted approach to implementation of Unauthorized Overrun charges; (ii) allow for a greater tolerance for small volume customers who have minimal operational impact on Tennessee's system; (iii) increase the penalties to be assessed for MAV unauthorized overruns and for failure to comply with Operational Flow Orders (OFOs); and (iv) modify certain tariff provisions relating to firm and interruptible storage service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28056 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–25–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

October 17, 1997.

Take notice that on October 14, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, in Docket No. CP98–25–000, filed a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, own and operate a new point of delivery (Hershey Mills) in Chester County, Pennsylvania, under the authorization issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and install one 8-inch tap on Texas Eastern's existing Line No. 1–H, at approximate Mile Post 10.07, so that Texas Eastern may provide natural gas deliveries to PECO Energy Company (PECO), an existing Texas Eastern customer. The proposed facilities will consist of an 8–inch tap valve, two 8-inch check valves and approximately 40 feet of 8-inch piping (Tap). Texas Eastern states that it will own, operate and maintain the Tap.

It is stated that PECO will construct and own the related meter station consisting of dual 8-inch turbine meters, dual 4-inch regulators, heat exchangers, odorant facilities and EGM (Meter Station). Texas Eastern states that it will operate and maintain the Meter Station.

Texas Eastern states that PECO will reimburse it for 100 percent of the costs and expenses that Texas Eastern will incur for installing the Tap. Such costs and expenses are estimated to be approximately $94,000.

The proposed facilities will allow Texas Eastern to deliver up to 45 MMcf/d to PECO at Hershey Mills under Texas Eastern's existing open access service agreements with PECO on file as part of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern contends that its tariff does not prohibit the addition of this facility. Texas Eastern further states that the addition of the delivery point will have no effect on its peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Texas Eastern states that the Hershey Mills delivery point proposed herein is currently part of the Joint Stipulation and Agreement in Docket Nos. RP96–265, *et al.* (Settlement) and proposed to be constructed in Docket No. CP97–276–000. Texas Eastern contends that it makes this filing at the request of PECO, one of the parties to receive service under the Settlement, so that PECO may utilize the Hershey Mills delivery point this winter heating season. It is stated that the design of the Hershey Mills delivery point proposed herein is the

same as proposed in the settlement. In addition, it is stated that the costs for the Hershey Mills delivery point are included in the cost of the facilities proposed in the Settlement. Texas Eastern states that PECO will reimburse Texas Eastern for 100 percent of the costs of the Hershey Mills delivery point through the Settlement rate once authorized. However, in the event that the Settlement does not become effective under its terms, Texas Eastern states that PECO will reimburse Texas Eastern directly for the costs of the Hershey Mills delivery point. Notwithstanding that the Hershey Mills delivery point proposed herein is part of the Settlement, Texas Eastern states that this filing does not amend, modify, alter or otherwise affect or disturb the terms and conditions of the Settlement as filed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28039 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–490–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

October 17, 1997.

Take notice that on October 14, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 112 and Original Sheet No. 112A, to be effective October 1, 1997.

Trailblazer states that the purpose of this filing is to comply with the Commission's order issued September 29, 1997 in Docket No. RP97–490–000, which required Trailblazer to clarify that when a constraint occurs on a secondary path, shippers utilizing within-the-primary-path secondary service shall have priority over shippers utilizing outside-the-primary-path secondary service.

Trailblazer states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties on the official service list in Docket No. RP97–490–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28055 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–21–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

October 17, 1997.

Take notice that on October 10, 1997, Transcontinental Gas Pipe Line Corporation (Transco). P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP98–021–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct, own and operate a new sales tap and for BASF Corporation (BASF), a manufacturer of chemicals and related products, under the blanket certificate issued in Docket No CP82–426–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to install a 4-inch valve tap assembly, a meter station with a three-inch meter run and other appurtenant facilities at or near milepost 1157.89 on Transco's mainline in Anderson County, South Carolina. According to Transco, BASF proposes to construct or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco and to move the gas to BASF's plant facilities. BASF will receive up to 4,000 Dth from Transco on a capacity release, secondary firm or interruptible basis at the new sales tap. BASF will use the gas as fuel for its plant. Transco states that BASF is not currently a transportation customer of Transco. According to Transco, BASF is currently being served by Piedmont Natural Gas Company, a local distribution company. Transco will provide transportation service to BASF pursuant to its Rate Schedules FT, FT–R or IT and Part 284(G) of the Commission's Regulations.

Transco asserts that the addition of the sales tap will have no significant impact on Transco's peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff. Transco estimates that the total costs of the proposed facilities to be approximately $221,000, which BASF will use Transco to be reimbursed for all costs associated with the proposed facilities. Transco claims that it will obtain the required environmental clearances prior to the commencement of construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28038 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–92–001]

Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

October 17, 1997.

On October 28, 1997, beginning at 2:00 p.m., the Office of Pipeline Regulation (OPR) staff will conduct a site inspection of the onshore facilities of Transcontinental Gas Pipe Line Corporation's Mobile Bay Lateral Extension and Expansion Project in Mobile County, Alabama. The first proposed facility to be visited will be compressor station 83, near the city of Citronelle. In the morning of the following day we will see the Coden area facilities.

All parties may attend. Those planning to attend must provide their own transportation and should meet the staff at the JR Food Mart in Citronelle at the intersection of Jefferies Highway (Route 96) and US 45.

For further information, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–28041 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–126–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

October 17, 1997.

Take notice that on October 15, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub First Revised Sheet No. 5, to become effective October 1, 1997.

Tuscarora states that the filing is being made in compliance with the Commission's Order dated September 29, 1997. Tuscarora asserts that the purpose of this filing is to eliminate the volumetric charge for capacity release from the IT rate sheet.

Tuscarora states that copies of this filing were mailed to all parties on the service list, customers of Tuscarora and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28109 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP90–1849–006]

The Washington Water Power Company; Notice of Application To Amend Order

October 17, 1997.

Take notice that on October 10, 1997, The Washington Water Power Company (Water Power), East 1411 Mission Avenue, Spokane, Washington 99202, filed in Docket No. CP90–1849–006, an application under Section 7 of the Natural Gas Act to amend its existing certificate to allow for the continuation, for a limited term, of the release of a portion of its Jackson Prairie Underground Storage Project deliverability and capacity to Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Water Power states that it first entered into an Agreement dated July 23, 1990, entitled "Release of Jackson Prairie Storage Capacity" (Release Agreement) which called for the release by Water Power to Cascade of 150,000 therms per day of firm deliverability, 55,328 therms per day of best efforts deliverability, and 4,800,000 therms of seasonal capacity, for a five-year term ending on April 30, 1995. Water Power further states that the Commission issued an order on November 23, 1990, providing the necessary certificate and abandonment authority to Water Power and Northwest Pipeline Corporation, in order to effectuate the original release to Cascade (53 FERC ¶ 61,238).

Water Power explains that Water Power and Cascade sought to continue the release of the deliverability and capacity for an additional limited term expiring on April 30, 1998, with pregranted abandonment (First Amendment to the Release Agreement), with the same terms and conditions as were previously approved by the Commission. On October 16, 1995, the Commission issued an order in Docket No. CP90–1849–003 (73 FERC ¶ 61,080) amending the certificate to continue the release for a limited term.

Water Power states that Water Power and Cascade, by means of a Second Amendment to the Release Agreement, have elected to again continue the release of the deliverability and capacity for an additional three-year term expiring on April 30, 2001, with pregranted abandonment, with the same terms and conditions as were previously approved by the Commission. Water Power further states that this application simply seeks an amended certificate authority to allow this three-year extension to occur.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Water Power to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28033 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–79–001]

Wisconsin Public Service Corporation; Notice of Filing

October 17, 1997.

Take notice that on August 15, 1997 Wisconsin Public Service Corporation tendered for filing revised indices of its service agreements under its open access transmission tariff pursuant to the Commission's order in Allegheny Power System, Inc., 80 FERC ¶ 61,143 (1997).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28048 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–3–000, et al.]

Black Hills Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 16, 1997.

Take notice that the following filings have been made with the Commission:

1. Black Hills Corporation

[Docket No. EC98–3–000]

Take notice that on October 9, 1997, Black Hills Corporation, which operates its electric utility under the assumed name of Black Hills Power and Light Company (BHC), pursuant to Section 203(a) of the Federal Power Act, 16 U.S.C. 824b, tendered for filing an application for an order authorizing BHC (I) to sell an undivided interest in the Yellow Creek-to-Osage 230 kV Addition (approximately 43.18 miles of 230 kV electric transmission line located in Lawrence County, South Dakota, referred to herein as the 230 kV Addition) to Basin Electric Power Cooperative (BEPC), a rural electric generation and transmission cooperative; and (ii) to sell an undivided interest in the Spearfish-to-Yellow Creek 69 kV Underbuild (approximately 5.7 miles of 69 kV electric transmission line underbuild located in Lawrence County, South Dakota, referred to herein as the 69 kV Underbuild) to Black Hills Electric Cooperative, Inc. (BHEC), and Butte Electric Power Cooperative, Inc. (BEC), both rural electric distribution cooperatives. The 230 kV Addition and the 69 kV Underbuild are new additions to BHC's 230 kV and 69 kV transmission systems which are used by BHC, BEPC, BHEC and BEC to serve their respective customers in the transmission area consisting of the Black Hills area of western South Dakota, the northeastern area of Wyoming and a small area in southeastern Montana.

BHC has requested that further notice be waived and the application be expedited.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company, LG&E Energy Marketing Inc., and Kentucky Utilities Company

[Docket Nos. EC98–2–000 and ER98–111–000]

Take notice that on October 9, 1997, Louisville Gas and Electric Company (LG&E) and LG&E Energy Marketing Inc. (LEM), on behalf of themselves and their non-utility parent holding company, LG&E Energy Corp. (LEC), and Kentucky Utilities Company (KU), on behalf of itself and its non-utility parent holding company, KU Energy Corporation (KEC) (LG&E, LEM and KU, being hereinafter referred to collectively as the Applicants), tendered for filing pursuant to Section 203 of the Federal Power Act (the FPA), 16 U.S.C. 824b, Part 33 of the Commission's Regulations, 18 CFR Part 33, and 18 CFR 2.26, an Application for an order approving the proposed merger of LG&E's non-utility holding company parent, LEC, with KU's non-utility holding company parent, KEC, and any consequent transfer of control over KU, LG&E, and LEM resulting from such merger.

Applicants state that pursuant to an Agreement and Plan of Merger dated as of May 20, 1997, KEC will merge into LEC, with LEC surviving the merger and KEC ceasing to exist. After consummation of the merger, KU will become, and LG&E and LEM will remain, wholly-owned subsidiaries of LEC. The merger will result in no sale, assignment, pledge, or transfer of LG&E's or LEM's public utility assets or franchises. Subject to Commission approval, at the time of the merger KU and LG&E will enter into: (1) A Power Supply System Agreement pursuant to which they will jointly dispatch their power supply resources, jointly plan for new generation, and establish the terms for intercompany exchanges of capacity and energy, and (2) a Transmission Coordination Agreement pursuant to which they will plan and operate their combined transmission facilities as a single integrated system. Simultaneous with this filing, the Applicants also filed with the Commission, pursuant to Section 205 of the FPA, a single system Open Access Transmission Tariff.

The Applicants state that they have submitted the information required by Part 33 of the Commission's Regulations, and by the Commission's Merger Policy Statement (Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement, Order No. 592, 61 FR 68,595 (1996), to be codified at 18 CFR 2.26), in support of the Application. The Applicants also represent that, as required by 18 CFR 33.6, copies of the Application and related testimony and exhibits have been served on each of the wholesale sales and firm transmission customers of LG&E and KU, and on the Kentucky Public Service Commission, the Virginia State Corporation Commission, and the Tennessee Regulatory Authority.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. EG98–3–000]

On October 8, 1997, Brooklyn Navy Yard Cogeneration Partners, L.P., 366 Madison Avenue, Suite 1103, New York, New York 10017, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged directly and exclusively in owning and operating an eligible facility in Brooklyn, New York. The facility consists of a 315 MW (net) topping-cycle cogeneration facility fueled primarily by natural gas. The facility includes such interconnection components as are necessary to interconnect the facility with the facilities of the applicant's wholesale customers. Applicant has previously been found to be an exempt wholesale generator. This filing requests a new determination of status, in light of applicant's intent to sell a small amount of the output of its facility to a power marketer for resale to applicant's steam host.

Comment date: November 7, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Toledo Edison Company

[Docket No. ER97–1517–000]

Take notice that on October 9, 1997, Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2970–001]

Take notice that on October 8, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing with the Commission, its Refund Report made in compliance with the Commission's Order issued September 8, 1997 in the above referenced docket.

Con Edison states that on October 7, 1997, a refund was sent to Valero Power Services Company. The refund included interest up, but not including, July 15, 1997 in accordance with the Order and Section 35.19A of the Commission's Regulations.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER97–3055–001]

Take notice that on August 1, 1997, Pennsylvania Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Corporation

[Docket No. ER97–4501–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on October 10, 1997, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a withdrawal of its request for a December 1, 1983, effective date for an amendment (the Amendment) to a power purchase agreement (PPA) between NYSEG and the Power Authority of the State of New York (NYPA) filed on August 19, 1997 in Docket No. ER97–4501–000. The Amendment effects a revision to Article 6 of the PPA, whereby bills will be rendered on or before the fifteenth day of the next succeeding month, and the payment due date shall be either (a) ten days after NYPA's receipt of the bill, or (b) the first banking day following the nineteenth of the month, whichever is later.

NYSEG hereby requests that the Amendment be given an effective date of October 20, 1997, which is sixty (60) days after the Amendment's August 19th filing date.

NYSEG has served copies of the filing upon the New York State Public Service Commission and the Power Authority of the State of New York.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Columbus Southern Power Company

[Docket No. ER97–4685–000]

Take notice that on September 19, 1997, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Letter Agreement dated August 6, 1997, between CSP, Buckeye Power, Inc. (Buckeye), and South Central Power Cooperative (SCP). SCP is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

SCP has requested CSP provide a new delivery point pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP states that copies of its filing were served upon the South Central Power Cooperative, Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER97–4727–000]

Take notice that on September 22, 1997, the New England Power Pool tendered for filing two Service Agreements for Through or Out Service or Other Point-to-Point Transmission Service pursuant to the provisions of the NEPOOL Open Access Transmission Tariff.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER97–4756–000]

Take notice that on September 25, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for three new customers, NYSEG-New York State Electric & Gas Corporation, Proliance Energy, LLC and Southern Energy Trading and Marketing, Inc.

CILCO requested an effective date of September 15, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER97–4757–000]

Take notice that on September 25, 1997, New York State Electric & Gas Corporation ("NYSEG"), filed Service Agreements between NYSEG and Entergy Power Marketing Corporation and ProMark Energy, Inc. ("Customers"). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of September 26, 1997 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER97–4758–000]

Take notice that on September 26, 1997, Duke Power, a division of Duke Energy Corporation ("Duke"), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Duke Energy Trading & Marketing, LLC, dated as of August 28, 1997 (firm point-to-point transmission service); between Duke and NP Energy, Inc., dated as of August 28, 1997 (non-firm point-to-point transmission service); and between Duke and Oglethorpe Power Corporation, dated as of August 29, 1997 (non-firm transmission service). Duke requests that the TSAs be made effective as rate schedules as of August 29, 1997.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER97–4759–000]

Take notice that on September 26, 1997, Duke Power, a division of Duke Energy Corporation ("Duke"), tendered for filing Market Rate Service Agreements (the "MRSAs") between Duke and Delhi Energy Services, Inc., dated as of August 14, 1997, and between Duke and Western Resources, Inc., dated as of August 28, 1997. As of the September 1, 1997, the parties had not engaged in any transactions under the MRSAs. Duke requests that the MRSAs be made effective as of September 1, 1997.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER97–4760–000]

Take notice that on September 25, 1997, Southern California Edison Company (Edison), tendered for filing a Memorandum of Understanding and revised transmission system capacity tables dated April 14, 1997, which affect or relate to the Mutual Assistance Transmission Agreement (MATA) between San Diego Gas & Electric Company (SDG&E), Arizona Public Service Company (APS), Imperial Irrigation District (IID), and Edison. Included in the filing were Certificates of Concurrence from SDG&E and APS.

Edison requests waiver of the Commission's 60-day notice requirement and an effective date of April 15, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER97–4761–000]

Take notice that on September 25, 1997, Niagara Mohawk Power Corporation ("NMPC"), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Cinergy Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.). This Transmission Service Agreement specifies that Cinergy Operating Companies has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Cinergy Operating Companies to enter into separately scheduled transactions under which NMPC will provide transmission service for Cinergy Operating Companies as the parties may mutually agree.

NMPC requests an effective date of September 19, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Cinergy Operating Companies.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER97–4762–000]

Take notice that on September 25, 1997, Wisconsin Electric Power Company ("Wisconsin Electric"), tendered for filing Transmission Service Agreements between itself and Southern Energy Trading and Marketing, Inc. ("Southern"). The Transmission Service Agreements allow Southern to receive short term firm and non-firm transmission services under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission acceptance in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on Southern, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. New Century Services, Inc.

[Docket No. ER97–4763–000]

Take notice that on September 26, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Williams Energy Services Company.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER97–4764–000]

Take notice that on September 26, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Company) filed two (2) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: (I) AIG Trading Corporation; and (ii) Consumers Energy Company and the Detroit Edison Company. Southern Company states that the service agreements will enable it to engage in short-term market-based rate transactions with these entities.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER97–4765–000]

Take notice that on September 26, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing e prime, USGen Power Services, L.P., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon e prime, USGen Power Services, L.P., and the Public Utilities Commission of Ohio.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER97–4766–000]

Take notice that on September 26, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Cinergy Services, Inc., for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER97–4767–000]

Take notice that on September 26, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Energy Company

[Docket No. ER97–4768–000]

Take Notice that on September 26, 1997, Consumers Energy Company (Consumers), tendered for filing four service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Tariff filed on December 31, 1996, by consumers and The Detroit Edison Company (Detroit Edison). The four transmission customers are WPS Energy Services, Inc., NP Energy Inc., New York State Electric & Gas Corporation and Public Service Electric and Gas Company.

A copy of the filing was served on the Michigan Public Service Commission, Detroit Edison and the four transmission customers.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER97–4769–000]

Take notice that on September 22, 1997 and September 23, 1997, Virginia Electric and Power Company tendered for filing amendments to its FERC Electric Tariff, First Revised Volume No. 4, to preclude sales of electric energy and/or capacity for delivery to loads within its service territory. Virginia Power has requested waiver of notice to allow this amendment to become effective as of August 31, 1997.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER97–4770–000]

Take notice that on September 29, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) ("OVEC") tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated September 11, 1997 (the "Service Agreement") between Public Service Electric and Gas Company ("PSE&G") and OVEC. OVEC proposes an effective date of September 11, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to PSE&G.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

Copies of this filing were served upon New Jersey Board of Public Utilities and PSE&G.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Pennsylvania Power & Light Company

[Docket No. ER97–4771–000]

Take notice that on September 29, 1997, Pennsylvania Power & Light Company ("PP&L"), filed a Service Agreement dated September 18, 1997 with Old Dominion Electric Cooperative (ODEC) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds ODEC as an eligible customer under the Tariff. On October 3, 1997, PP&L also filed a Service Agreement dated September 18, 1997 with Old Dominion Electric Cooperative (ODEC) under PP&L's FERC Electric Tariff, Original Volume No. 5.

PP&L requests an effective date of September 29, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ODEC and to the Pennsylvania Public Utility Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Pennsylvania Power & Light Company

[Docket No. ER97–4772–000]

Take Notice that on September 29, 1997, Pennsylvania Power & Light Company ("PP&L"), filed a Service Agreement dated May 27, 1997 with Entergy (Entergy) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Entergy as an eligible customer under the Tariff.

PP&L requests an effective date of September 29, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Entergy and to the Pennsylvania Public Utility Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Carolina Power & Light Company

[Docket No. ER97–4773–000]

Take notice that on September 29, 1997, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service executed between CP&L and Carolina Power & Light Company—Merchant Operations. Service provided to Merchant Operations will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power Corporation

[Docket No. ER97–4774–000]

Take notice that on September 29, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement between The Energy Authority, Inc. and Florida Power for service under Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective September 25, 1997.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Central Hudson Gas and Electric Corporation

[Docket No. ER97–4775–000]

Take notice that on September 29, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and New Energy Ventures, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. ER97–4776–000]

Take notice that on September 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1997 between Cinergy, CG&E, PSI and Michigan South Central Power Agency (MSCPA).

The Interchange Agreement provides for the following service between Cinergy and MSCPA:

1. Exhibit A—Power Sales by MSCPA
2. Exhibit B—Power Sales by Cinergy

Cinergy and MSCPA have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Michigan South Central Power Agency, Michigan Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER97–4777–000]

Take notice that on September 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and USGen Power Services, L.P. (USGen).

Cinergy and USGen are requesting an effective date of September 1, 1997.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc., The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER98–3–000]

Take notice that on October 1, 1997, Cinergy Services, Inc. (Cinergy), on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed a Firm Power Purchase Agreement with Indianapolis Power & Light Company (IPL).

A copy of this filing has been served upon IPL and the Indiana Utility Regulatory Commission.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Enron Power Marketing Inc.

[Docket No. ER98–33–000]

Take notice that on October 3, 1997, Enron Power Marketing Inc. (EPMI), submitted a Rate Schedule for Sale, Assignment, or Transfer of Transmission Rights (Rate Schedule). The Rate Schedule will allow EPMI to resell transmission rights in accordance with Order Nos. 888 and 888–A.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. PJM Interconnection, L.L.C.

[Docket No. ER98–41–000]

Take notice that on October 6, 1997, PJM Interconnection, L.L.C. (PJM), tendered for filing executed Service Agreements For Network Integration Transmission Service for the Pennsylvania Retail Electric Competition Pilot for Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, and PP&L, Inc.

Copies of this filing were served upon Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, PP&L, Inc., and the Pennsylvania Public Utility Commission.

PJM requests an effective date of November 1, 1997, for the service agreements.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28111 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4750–000, et al.]

Northern Indiana Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

October 15, 1997.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER97–4750–000]

Take notice that on September 25, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and ProLiance Energy, LLC.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to ProLiance Energy, LLC, pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of September 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER97–4740–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Florida Power Corporation.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER97–4741–000]

Take notice that on September 25, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Southern Company Services, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Southern Company Services, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of September 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER97–4742–000]

Take notice that on September 25, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Public Service Electric and Gas Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Public Service Electric and Gas Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of September 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER97–4743–000]

Take notice that on September 25, 1997, Northern Indiana Public Services Company (Northern), filed a Service Agreement pursuant to its Power Sales Tariff with Madison Gas and Electric Company.

Copies of this filing have been sent to Madison Gas and Electric Company, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER97–4744–000]

Take notice that on September 25, 1997, Northern Indiana Public Services Company (Northern), filed a Service Agreement pursuant to its Power Sales Tariff with Southern Company Services, Inc.

Copies of this filing have been sent to Southern Company Services, Inc., to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Great Bay Power Corporation

[Docket No. ER97–4746–000]

Take notice that on September 25, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Tractebel Energy Marketing, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective September 15, 1997.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–4747–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Oklahoma Gas and Electric Company.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–4748–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Western Farmers Electric Cooperative.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER97–4749–000]

Take notice that on September 25, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and AIG Trading Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to AIG Trading Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of September 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory

Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER97–4751–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Oklahoma Gas and Electric Company.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER97–4752–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Florida Power Corporation.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER97–4753–000]

Take notice that on September 25, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and e prime, Inc.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Co.

[Docket No. ER97–4754–000]

Take notice that on September 25, 1997, The Dayton Power and Light Company (Dayton), submitted a service agreement establishing Dayton as a customer under the terms of Santee Cooper's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Santee Cooper and the Public Utilities Commission of Ohio.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER97–4755–000]

Take notice that on September 25, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service and a Form of Service Agreement for Firm Point-to-Point Transmission Service establishing Virginia Power as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of September 9, 1997, and, accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Lyon Rural Electric Cooperative

[Docket No. ER97–4813–000]

Take notice that on September 30, 1997, Lyon Rural Electric Cooperative (Lyon) submitted for filing its Amended Agreement for Purchase of Power and Maintenance of System Between Lyon Rural Electric Cooperative and Town of Larchwood, Iowa (Agreement) pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and § 35.12 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR 35.12. Lyon's filing is available for public inspection at its offices in Rock Rapids, Iowa.

Lyon requests that the Commission accept the Agreement with an effective date of November 20, 1997.

Comment date: October 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Edison Sault Electric Company

[Docket No. ES97–47–000]

Take notice that on September 30, 1997, Edison Sault Electric Company (Edison Sault) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue (i) not more than $10 million of unsecured short-term notes during the period January 1, 1998 through December 31, 2000, and (ii) not more than $4 million of unsecured debt under a loan agreement, with a final maturity date not later than December 31, 1999.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28110 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–4–000, et al.]

SEMASS Partnership, et al.; Electric Rate and Corporate Regulation Filings

October 17, 1997.

Take notice that the following filings have been made with the Commission:

1. SEMASS Partnership, American Ref-Fuel Company of SEMASS, L.P., Air Products Ref-Fuel of SEMASS, Inc., Air Products Ref-Fuel Operations of SEMASS, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE of SEMASS, LLC, Duke/UAE Operations of SEMASS, LLC

[Docket No. EC98–4–000]

Take notice that SEMASS Partnership, Air Products Ref-Fuel of SEMASS, Inc., Air Products Ref-Fuel Operations of SEMASS, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE Operations of SEMASS, LLC, Duke/UAE SEMASS, LLC, and American Ref-Fuel Company of SEMASS, L.P. on October 14, 1997 tendered for filing a request that the Commission approve a disposition of facilities under Section 203 of the Federal Power Act in connection with a proposed sale of the indirect interests held in SEMASS by Air Products Ref-Fuel of SEMASS, Inc. and Air Products Ref-Fuel Operations of SEMASS, Inc.

Comment date: November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. American Ref-fuel Company of Hempstead, Air Products Ref-fuel of Hempstead, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE Hempstead LLC

[Docket No. EC98–5–000]

Take notice that American Ref-fuel Company of Hempstead, Air Products Ref-fuel of Hempstead, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE Hempstead LLC on October 14, 1997 tendered for filing a request that the Commission approve a disposition of facilities under Section 203 of the Federal Power Act in connection with a proposed sale of the interest held in American Ref-fuel Company of Hempstead by Air Products Ref-fuel of Hempstead, Inc. to Duke/UAE Hempstead LLC.

Comment date: November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. American Ref-fuel Company of Essex County, Air Products Ref-fuel of Essex County, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE Essex LLC

[Docket No. EC98–6–000]

Take notice that American Ref-fuel Company of Essex County, Air Products Ref-fuel of Essex Conny, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE Essex LLC, on October 14, 1997, tendered for filing a request that the Commission approve a disposition of facilities under Section 203 of the Federal Power Act in connection with a proposed sale of the interest held in American Ref-fuel Company of Essex County by Air Products Ref-fuel of Essex County, Inc. to Duke/UAE Essex LLC.

Comment date: November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER97–4778–000]

Take notice that on September 29, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an Agreement for the Sale and Purchase of Firm Capacity and Associated Energy Between Idaho Power Company and Oregon Trail Electric Consumers Cooperative, Inc.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–4779–000]

Take notice that on September 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Northeast Utilities Service Company (NU).

Cinergy and NU are requesting an effective date of September 30, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER97–4780–000]

Take notice that on September 29, 1997, The Detroit Edison Company ("Detroit Edison"), tendered for filing Service Agreements for wholesale power sales transactions (the "Service Agreements") under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the "WPS–2 Tariff"), between Detroit Edison and Aquila Power Corporation, dated as of September 4, 1997; between Detroit Edison and Market Responsive Energy, Inc., dated as of September 4, 1997; between Detroit Edison and NorAm Energy Services, Inc., dated as of September 4, 1997; and between Detroit Edison and PacifiCorp Power Marketing, Inc., dated as of September 8, 1997. Detroit Edison requests that the Service Agreements with Aquila Power Corporation, Market Responsive Energy, Inc., and NorAm Energy Services, Inc., be made effective as of September 4, 1997. Detroit Edison requests that the Service Agreement with PacifiCorp Power Marketing, Inc., be made effective as of September 8, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket No. ER97–4781–000]

Take notice that on September 29, 1997, The Detroit Edison Company ("Detroit Edison"), tendered for filing Service Agreements for wholesale power sales transactions (the "Service Agreements") under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the "WPS–1 Tariff"), between Detroit Edison and Aquila Power Corporation, dated as of September 4, 1997, and between Detroit Edison and Market Responsive Energy, Inc., dated as of September 4, 1997. Detroit Edison requests that the Service Agreements be made effective as of September 4, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER97–4782–000]

Take notice that on September 29, 1997, Niagara Mohawk Power Corporation ("NMPC"), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Entergy Power Marketing Corp. This Transmission Service Agreement specifies that Entergy Power Marketing Corp. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Entergy Power Marketing Corp. to enter into separately scheduled transactions under which NMPC will provide transmission service for Entergy Power Marketing Corp. as the parties may mutually agree.

NMPC requests an effective date of September 24, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Entergy Power Marketing Corp.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER97–4783–000]

Take notice that on September 26, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a letter to Lois Cashell requesting an extension of deadline regarding the Agreement for Supply of Power to the City of Weiser, Idaho between Idaho Power Company and the City of Weiser, Idaho.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER97–4784–000]

Take notice that on September 26, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Firm Point-to-Point Transmission Service and Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing New York State Electric & Gas Corporation as a point-to-

point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of September 9, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Company

[Docket No. ER97–4785–000]

Take notice that on September 26, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Second Amendment to the Agreement for the Sale and Purchase of Capacity and Energy Between Idaho Power Company and Oregon Trail Electric Consumers Cooperative, Inc.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (Allegheny Power)

[Docket No. ER97–4786–000]

Take notice that on September 25, 1997, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a revision of Attachment, Methodology to Access Available Transmission Capability for Allegheny Power's Open Access Transmission Tariff to add additional language as requested by Staff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all affected parties.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. High Island Marketing, Inc.

[Docket No. ER97–4787–000]

Take notice that on September 29, 1997, High Island Marketing, Inc. ("High Island") applied to the Commission for acceptance of High Island Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

High Island intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket No. ER97–4788–000]

Take notice that on September 29, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements and Certificates of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Cook Inlet Energy Supply, LP and Utah Municipal Power Agency. WWP requests waiver of the prior notice requirement and requests an effective date of September 1, 1997.

Also tendered for filing are Certificates of Concurrence for E Prime, Inc. and Tractebel Energy Marketing, Inc. for which Service Agreements were filed January 14, 1997 and February 26, 1997, respectively.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER97–4789–000]

Take notice that on September 29, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Granite City Steel, Division of National Steel Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 20, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER97–4790–000]

Take notice that on September 29, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Caterpillar Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 19, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Texas Utilities Electric Company

[Docket No. ER97–4791–000]

Take notice that on September 29, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA) with Tenaska Power Services Company for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Tenaska Power Services Company, as well as the Public Utility Commission of Texas.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Fall River Rural Electric Cooperative, Inc.

[Docket No. ES98–1–000]

Take notice that on October 8, 1997, Fall River Rural Electric Cooperative, Inc. (Fall River) filed an application pursuant to section 204 of the Federal Power Act for authorization to issue a promissory note in the amount of $11,735,000 to National Rural Utilities Cooperative Finance Corporation.

Comment date: November 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Lyon Rural Electric Cooperative

[Docket No. OA97–723–000]

Take notice that on September 30, 1997, Lyon Rural Electric Cooperative (Lyon) filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. Lyon's filing is available for public inspection at its offices in Rock Rapids, Iowa.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28113 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2663–004]

Minnesota Power & Light Company; Notice of Availability of Draft Environmental Assessment

October 17, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Pillager Hydroelectric Project, located on the Crow Wing River in Cass and Morrison Counties, Minnesota, and has prepared a Draft Environmental Assessment (DEA) for the project.

Copies of the DEA are available for inspection at the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. For further information, contact Chris Metcalf at (202) 219–2810.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28050 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–1–000]

Symposium on Process and Reform: Public Access to Information and Electronic Filings; Notice of Conference

October 17, 1997.

Take notice that the Chairman of the Federal Energy Regulatory Commission will host a round table forum on Friday, November 7, 1997, at 9:00 a.m., 888 First Street, N.E., Washington, D.C. 20426 in the Commission meeting room. All interested persons are invited to attend.

This forum is the first in a series of symposia on reform of regulatory processes at the Commission. It is designed to solicit proposals, strategies, and views from regulated industry, its customers, state regulators, and other interested persons that will assist the Commission in carrying out its mission in an environment increasingly characterized by competition, new entrants, market dynamics, and increased regulatory workload.

The agenda for this forum is divided between (1) public access to information and (2) standards for electronic filings. The Commission will, as time permits, also solicit comments on the tracking, processing, and retention of documents on electronic media within the Commission. The forum will first analyze FERC's website, how FERC might develop its internet capabilities, and how FERC can improve both the content and search capabilities of its public databases. The second half of the discussion will focus on the development and use of electronic filing, including how other governmental agencies employ this device. The Chairman is interested in hearing how the Commission might streamline the regulatory filing process, address access and format requirements and what the public and regulated industry believes they need with regard to electronic filings at FERC.

A more detailed agenda will be published in the near future, including a list of primary discussants selected by the Chairman to lead the discussion. Written comments are welcome at any time and should reference the above-captioned proceeding. For additional information, please contact Kathleen Sherman by telephone at 202–219–2834 or by electronic mail at "kathleen.sherman@ferc.fed.us." If there is sufficient interest from those outside the Washington, D.C. metropolitan area, the Capitol Connection may broadcast the Symposium on Process and Reform via satellite for a fee. If there is interest in the Washington, D.C. area for this program, please call Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) no later than October 31, 1997. In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28112 Filed 10–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Cases Filed With the Office of Hearings and Appeals; Week of July 14 Through July 18, 1997

During the Week of July 14 through July 18, 1997, the appeals, and applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: October 14, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of July 14 through July 18, 1997]

July 14, 1997	Charles L. Wilkinson, III, Augusta, GA 30907.	VFA–0312	Appeal of an information request denial. If granted: The June 11, 1997 Freedom of Information Request Denial issued by Savannah River Operations Office would be rescinded, and Charles L. Wilkinson, III would receive access to certain DOE information.
July 14, 1997	Janice C. Curry Gaithersburg, MD	VFA–0313	Appeal of an information request denial. If granted: The June, 1997 Freedom of Information Request Denial issued by the Office of Environmental Management would be rescinded, and Janice C. Curry would receive access to certain DOE information.
July 14, 1997	Patriot Petroleum, Inc. Newburyport, MA.	VEE–0045	Exception to the reporting requirements. If granted: Patriot Petroleum, Inc., would not be required to file Form EIA 782B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
July 14, 1997	Public Service Electric & Gas Co. Newark, NJ.	VEE–0044	Exception to the Reporting Newark, NJ requirements. If granted: Electric utilities are required to submit information on form EIA–860, Annual Electric Generator Report. The Energy Information Administration customarily releases to the public information that is submitted on this form, and it denied Public service Electric & Gas Company's request to maintain confidentiality of some of that information (retirement date, heat rate, and summer and winter capability). The firm alleges that the release of this information would harm its competitive position, and has sought review of EIA's determination that this information should be released to the public. If granted, the EIA would be required to keep the information confidential.
July 14, 1997	Timothy E. Barton Miamitown, OH	VWA–0017	Request for Hearing under DOE Contractor Employee Protection Program. If granted: Timothy E. Barton would receive restitution under 10 C.F.R., part 708 for alleged reprisals taken against him by management officials of the R.E. Schweitzer Co. as a consequence of his having disclosed safety/health concerns to the DOE.
July 16, 1997	Personnel Security Hearing	VSO–0165	Request for hearing under 10 C.F.R., part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R., part 710.
July 18, 1997	Chamberlain Oil Co., Inc. Clontarf, MN	VEE–0046	Exception to the Reporting Requirements. If granted: Chamberlain Oil Co, Inc. would not be required to file Form EIA–782B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
July 18, 1997	Personnel Security Hearing	VSO–0166	Request for hearing under 10 C.F.R., part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R., part 710.
July 18, 1997	W. L. McCullough Oak Ridge, TN	VFA–0314	Appeal of an information request denial. If granted: W. L. McCullough would receive a response to his Freedom of Information request from the Oak Ridge Operations Office and access to certain DOE information.

[FR Doc. 97–28158 Filed 10–22–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5912–9]

Agency Information Collection Activities Under OMB Review; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 40 CFR part 63 Subpart N—Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, OMB Control Number 2060–0327, expiring 12/31/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 24, 1997.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1611.03.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (OMB Control No.2060–0327; EPA ICR No 1611.03), expiring 12/31/97. This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that Hazardous Air Pollutants (HAP) emissions from chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of affected hard and decorative chromium electroplating and chromium anodizing operations must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and provide reports of excess emissions. They must also develop startup, shutdown, malfunction plans and develop an operation and maintenance plan for their control system. Affected facilities also must provide notification of compliance status and report monitoring exceedances.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1997 and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operators of Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

Estimated Number of Respondents: 948.

Frequency of Response: 2.

Estimated Number of Responses: 1896.

Estimated Total Annual Hour Burden: 516,166 person hours.

Estimated Total Annualized Cost Burden: $75,300,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1611.03 and OMB Control No. 2060–0327 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 17, 1997.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–28137 Filed 10–22–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5913–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Ethylene Oxide Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Ethylene Oxide Sterilization and Fumigation Operations, OMB Control Number 2060–0283, expiration date December 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet from http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1666.03.

SUPPLEMENTARY INFORMATION:

Title: NESHAP Subpart O: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Ethylene Oxide Sterilization and Fumigation Operations (OMB Control No. 2060–0283; EPA ICR No. 1666.03) expiring 12/31/97. This is a request for extension of a currently approved collection.

Abstract: The Agency is required under section 112(d) of the Clean Air Act, as amended, to regulate emissions of hazardous air pollutants listed in section 112(b).

In the Administrator's judgement, ethylene oxide (EO) emitted from commercial EO sterilization and fumigation operations causes, or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, the NESHAP for EO emissions have been developed for this source category.

Certain records and reports are necessary to enable the Administrator to: (1) identify new, modified, reconstructed, and existing sources subject to the standards and (2) ensure that the standards, which are based on maximum achievable control technology (MACT) and generally available control technology (GACT), are being achieved.

The NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations were promulgated on December 6, 1994. These standards apply to new and existing commercial EO sterilization and fumigation facilities that use air pollution control devices that are in operation after promulgation of the NESHAP.

Owners or operators of the affected facilities described must submit one-time reports of start of construction, anticipated or actual startup dates, and physical or operation changes to existing facilities. In addition, owners or operators of existing commercial EO sterilization and fumigation operations will submit one-time reports of actual annual EO use. Owners or operators of new commercial EO sterilization and fumigation operations will submit one-time reports of estimated annual EO use.

Reports of initial emissions testing are necessary to determine that the applicable emission limit is being met. The owner or operator of a commercial EO sterilization and fumigation operation that uses an air pollution control device to meet the emission limit is required to maintain records of the site-specific monitoring parameters as well as daily and monthly inspections of the control device.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/18/97 (62 FR 33068); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information; and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial Ethylene Oxide Sterilization and Fumigation Operations.

Estimated Number of Respondents: 98.

Frequency of Response: Daily, Monthly, and Semi-annually.

Estimated Total Annual Hour Burden: 7,328 hours.

Estimated Total Annualized Cost Burden: $228,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1666.03 and OMB Control No. 2060–0283 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 17, 1997.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–28139 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5912–8]

Public Meetings Regarding Environmental Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing a series of public meetings to solicit information from stakeholders regarding their use of, and access to, environmental information and data.

DATES: EPA is scheduling up to twenty public meetings during October 1997 through December 1997. Specific dates and cities are listed in the tentative schedule under Supplementary Information below. Requests to attend the meetings and/or provide oral comments at the meetings must be received at least 7 days prior to the scheduled meetings. The final times and precise locations of the meetings will be available to interested persons from the EPA contact person, upon request, two weeks prior to each meeting.

ADDRESSES: Requests to attend the meetings and/or to provide oral comments should be made to Ms. Lisa M. Hunter; Center for Environmental Information and Statistics (MC: 2164); Office of Policy, Planning and Evaluation; U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC; 20460; (202) 260–4744.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hunter, EPA Headquarters, (202) 260–4744, or e-mail, hunter.lisa@epamial.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is undertaking a variety of customer survey efforts to learn how Agency stakeholders use and access environmental information and data. One of these efforts will consist of a series of twenty meetings throughout the country to better understand the views of particular individuals and groups that typically use environmental information. Each discussion session will focus on a particular stakeholder group or user's environmental information needs. The public is invited to attend these meetings as observers and/or to provide comment during a public comment period at the end of each meeting. The tentative schedule for the public meetings—including potential dates, cites,and intended stakeholder groups—is as follows:

1. October 23, 1997, Philadelphia, Pennsylvania, African American Community
2. October 23, 1997, Atlanta, Georgia, Groups Concerned with Water Quality
3. October 28, 1997, New York, New York, Environmental Organizations
4. October 30, 1997, Boston, Massachusetts, State Monitoring Agencies
5. October 30, 1997, Arlington, Texas, Public Health Community
6. November 4, 1997, Philadelphia, Pennsylvania, Researchers/Academic Groups
7. November 6, 1997, Kansas City, Kansas, Agricultural Community
8. November 6, 1997, Cleveland, Ohio, Manufacturers/Process Industries
9. November 12, 1997, Denver, Colorado, Manufacturers/Process Industries
10. November 12, 1997, Atlanta, Georgia, Groups Concerned with Air Quality
11. November 13, 1997, San Juan, Puerto Rico, Community/Regional Representatives
12. November 13, 1997, Fort Collins, Colorado, Agricultural Community
13. November 18, 1997, New Hampshire, Environmental Organizations
14. November 18, 1997, Seattle, Washington, Businesses
15. November 20, 1997, Albuquerque, New Mexico, Regional Tribes
16. November 20, 1997, St. Louis, Missouri, Public Health Community
17. December 2, 1997, Olympia, Washington, Regional Tribes
18. December 3, 1997, San Francisco, California, Community/Regional Representatives
19. December 4, 1997, Los Angeles, California, Local Ethnic Groups

Art Koines,

Deputy Director, Office of Strategic Planning and Environmental Data, Office of Policy, Planning and Evaluation.

[FR Doc. 97–28136 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5913–5]

Science Advisory Board; Notification of Public Advisory Committee Meetings; November 18–20, 1997

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) and its Uncertainty in Radiogenic Risk Subcommittee (URRS) of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Radiation Advisory Committee (RAC)

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public meeting on Tuesday and Wednesday, November 18 and 19, 1997. The meeting will convene both days at 9:00 a.m. in the Ramada Hotel, 901 N. Fairfax Street, Old Town Alexandria, Virginia 22314 (tel. 703–683–6000) and adjourn no later than 5:30 pm each day.

At this meeting, the RAC will briefly discuss projects that are planned to be reviewed in Fiscal Year (FY) 1998, as well as conduct an advisory of the Agency's Environmental Radiation Ambient Monitoring System (ERAMS), and a consultation on disposal of Federal low activity radioactive wastes. In addition to the projects that are currently under review by the RAC, the likely FY 1998 projects to be briefly discussed for planning purposes include a proposed consultation on the methodology for identifying high radon geographic areas, a discussion on the Biological Effects of Ionizing Radiation (BEIR) VI, an advisory on a white paper regarding estimating cancer risks for indoor radon as a basis for establishing cancer risks for radon, a revised radon risk assessment (which looks at the National Academy of Sciences recommendations for a model coming out of the final peer reviews), a consultation on the revised diffuse Naturally-Occurring Radioactive Material (NORM) draft scoping document being prepared by the Office of Radiation and Indoor Air (ORIA) staff, and a courtesy briefing on the Multi-Agency Radiation Laboratory Analytical Procedures (MARLAP) manual, which is under development. Other topics may be discussed as time permits.

At this meeting, the RAC will review the draft document entitled "Reconfiguration Design of the Environmental Radiation Ambient Monitoring System," October 1997. The charge questions which focus on the technical issues pertinent to the ERAMS advisory are as follows: a) Will the proposed reconfiguration of the current ERAMS system enable it to meet the system's two basic objectives more effectively and efficiently as described in the attached document?; b) Are the criteria used for matrix selection, determination of sampling locations and sampling frequency and other network features appropriate given the reconfigured ERAMS stated mission and objectives? Are there other criteria that should be considered?; and c) Will the proposed changes to the system's current data dissemination and data evaluation practices increase the data's usefulness to governmental agencies, the scientific community and the public? Are there any other interpretation issues and/or practices that should be addressed?

2. Uncertainty in Radiogenic Risk Subcommittee

The Uncertainty in Radiogenic Risk Subcommittee (URRS) of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet Thursday, November 20, 1997 from 9:00 a.m. to no later than 4:00 p.m. at the Ramada Hotel, 901 N. Fairfax Street, Old Town Alexandria, Virginia 22314 (tel. 703–683–6000).

At this meeting, the RAC's URRS will review the draft document entitled "Uncertainty Analysis for Estimating Radiogenic Cancer Risks," October, 1997. The charge questions pertaining to the review on uncertainty analysis for estimating radiogenic cancer risks are as follows: (a) Are the relevant major sources of uncertainties addressed?; (b) Is the overall approach to quantifying and combining uncertainties appropriate?, and (c) Are the mathematical functions used to characterize the various sources of uncertainty reasonable, in view of available scientific information?

For Further Information—Any member of the public wishing further information concerning the meeting, such as copies of the proposed meeting agenda, or who wish to submit comments should contact Mrs. Diana L. Pozun at Tel. (202) 260–8432; FAX (202) 260–7118, or via the Internet at: pozun.diana@epamail.epa.gov. Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. K. Jack Kooyoomjian in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, November 12, 1997 in order to be included on the Agenda. Public comments will be normally limited to five minutes per speaker or organization. The request should identify the name of the individual who

will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, easel, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Further information pertaining to the meeting may be obtained directly from Dr. K. Jack Kooyoomjian, Designated Federal Official for the Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–2560; fax (202)–260–7118; or via E-mail at: kooyoomjian.jack@epamail.epa.gov.

For questions pertaining to the review of uncertainty analysis for estimating radiogenic cancer risks, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC, please contact Dr. Jerome S. Puskin, (6602J), ORIA/EPA at (202) 233–9212. To discuss any other aspects of this review or any supporting or background information, please contact Mr. Brian Littleton, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, tel. (202) 233–9216; fax (202) 233–9651; or E-mail: littleton.brian@epamail.epa.gov. After November 1, 1997 please call Mr. Littleton at (202) 564–9216.

For questions pertaining to the ERAMS advisory review, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC, please contact LT. Rhonda Cook, US Public Health Service (PHS)/EPA at (334) 270–3413. The SAB's RAC conducted an earlier advisory on ERAMS on July 13 and 14, 1995 and produced an SAB advisory (EPA–SAB–RAC–ADV–96–003, April 5, 1996). For copies of this earlier SAB report, please contact the SAB's Committee Evaluation Support Staff (CESS) at (202) 260–8414; FAX (202) 260–7118. For additional information or to discuss technical aspects of any of the other ORIA agenda topics, or any supporting or background information, please contact Mr. Brian Littleton, (6601J), Office of Radiation and Indoor Air (ORIA), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, tel. (202) 233–9216; fax (202) 233–9651; or E-mail: littleton.brian@epamail.epa.gov. After November 1, 1997 please call Mr. Littleton at (202) 564–9216.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1996 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Dated: October 17, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–28145 Filed 10–22–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 17, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 24, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 239.

Estimated Time Per Response: 12,685 hours per recordkeeper/response.

Cost to Respondents: N/A.

Total Annual Burden: 3,028,768 hours.

Needs and Uses: The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulated telecommunications operations of less than $100 million are designated as Class B companies and are subject to a less detailed accounting system than those designated as Class A companies. Part 32 imposes essentially recordkeeping requirements. The reporting requirements contained in the rulepart are sporadic or initiated by the carriers. Part 32 has been revised. For example, in the Report and Order in CC Docket 95–60, the Commission raised the expense limit in Section 32.2000(a)(4) from $500 to $200, with one exception related to personal computers recorded in Account 2121, General purpose computers. This will reduce the Continuing Property Records required to be maintained by the carriers. By eliminating the requirement for detailed property records for certain items costing less than the new $2,000 threshold amount, the Commission has provided the carriers with substantial relief from the administrative cost previously proposed. Also, in the Report and Order, the Commission adopted a five-year amortization period during which incumbent local exchange carriers (ILECs) may recover the undepreciated portion of embedded assets affected by this rule change. The parties comments and replies were carefully considered in the formulation of the final rule.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–28089 Filed 10–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2147]

800 MHz Specialized Mobile Radio Service; Minimum Opening Bid Requirements for Auction of 525 Licenses in Upper 10 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this Order, the Commission establishes minimum opening bid requirements for the auction of 525 licenses in the upper 10 MHz of the 800 MHz Specialized Mobile Radio Service ("SMR") set to begin October 28, 1997. This Order effectuates directives of the Balanced Budget Act of 1997. Accordingly, the Commission adopts minimum opening bids subject to reduction; sets minimum opening bids equal to the established upfront payments; and declines to adopt caps on minimum opening bids.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: D. Anthony Mastando or Alice Elder at 202–418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of an Order adopted October 6, 1997, and released October 6, 1997. The text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800.

Synopsis of the Order

Background

1. The recently enacted Balanced Budget Act of 1997 directs the Commission to prescribe methods by which to establish reasonable reserve prices or minimum opening bids for licenses subject to auction, unless the Commission determines that such reserve prices or minimum opening bids are not in the public interest. The Commission recently announced the auction of 525 licenses in the upper 10 MHz of the 800 MHz SMR set to begin October 28, 1997. On September 5, 1997, the Commission sought comment by Public Notice regarding the establishment of reserve prices or minimum opening bids, 62 FR 49241 (September 19, 1997). The Commission received six sets of comments.

2. In the September 5th Public Notice, the Commission proposed that the licenses in the 800 MHz auction not be sold for less than the amount of the upfront payment specified for the licenses in the Public Notice released August 6, 1997, 62 FR 49228 (September 19, 1997). The Commission requested comment on whether the amount of the upfront payments should be considered reserve prices or minimum opening bids for this auction. Commenters were asked to address whether reserve prices or minimum opening bids should be capped to ensure that bidding is not deterred on high valuation markets. Assuming reserve prices were implemented, commenters were also asked to address whether these prices should be published.

3. On September 12, 1997, the Personal Communication Industry Association ("PCIA"), Nextel, the American Mobile Telecommunications Association ("AMTA") Tel/Logic, Pass Word, Inc. ("Pass Word") and Motorola submitted comments in response to the Public Notice. All commenting parties specifically opposed the establishment of reserve prices and more generally opposed minimum opening bids.

4. Commenters assert that minimum opening bids and reserve prices are inconsistent with the notion that market forces should determine the value of auctioned spectrum and are therefore contrary to the public interest. They believe that bidders—not the Commission—are in the best position to assess the value of the spectrum. Nextel posits that the spectrum's value should be determined by bidders' evaluations of each license on the basis of incumbency, not by what the Commission sees as the overall market for 800 MHz SMR spectrum.

5. AMTA contends that overvalued spectrum and, concomitantly, high reserve prices will preclude small businesses from participation in the auction. Pass Word cautions that reserve prices either will reduce small business participation or result in unsound economic decisions leading to a scenario similar to the one facing the Commission and the defaulting C-Block PCS winners. Nextel believes that a reserve price is justified where spectrum is plentiful and the price is therefore depressed, but that this is not true of the heavily encumbered 800 MHz spectrum. The variation in incumbent systems, according to Motorola, makes impossible the development of an arbitrary price floor with sufficient flexibility. Tel/Logic notes that neither the Commission nor bidders should be able to project demand or prices.

6. PCIA considers minimum bids to be "inappropriate" because incumbent licensees will be forced to pay substantial fees for spectrum on which they already have operating systems and for which there may be no competing bidders. Pass Word also believes that minimum opening bids are inappropriate and that the spectrum will be fairly valued by the bidders because, unlike the Wireless Communications Service auction, spectrum, technology and equipment usage is well-defined for 800 MHz SMR systems and potential bidders have received adequate notice of this auction.

7. Were the Commission to establish minimum opening bids, AMTA maintains that the Commission should reserve the right to lower them in the event it has overestimated the licenses' value. Tel/Logic adds that minimum opening bids should not be linked to upfront payment levels because the two are based on different policy objectives and, therefore, should be determined separately in order to maintain Commission policy and auction administration flexibility. It contends that the upfront payment amount is set in order to encourage the participation of smaller entities and to discourage frivolous bidders, whereas a minimum opening bid should be established in order to avoid selling licenses below value. Pass Word urges the Commission

to find that setting an opening bid equal to the upfront payment is not in the public interest. Nextel supports the use of a cap on minimum opening bids and contends that a cap of $50,000 would be appropriate because a higher cap would deter broad participation in the auction.

8. Pass Word claims that a fair auction, one without minimum opening bids or reserve prices, may be the last chance for small businesses in this market to survive, particularly in the face of Nextel's accumulation of frequencies.

Discussion

9. The Commission establishes minimum opening bids that are subject to reduction, and sets the initial amounts at the upfront payment levels specified in our Public Notice released August 6, 1997. The Commission notes that Congress has rejected the notion that minimum opening bids or reserve prices are inherently contrary to the public interest, as some commenters suggest. Moreover, the Commission rejects commenters' assertions that minimum opening bids disserve the public interest in this instance. The Commission agrees, however, that the market ultimately should determine the value of this spectrum. Indeed, due to the high level of incumbency of the 800 MHz spectrum, market valuation models are complex and may be subject to a higher degree of uncertainty than those for less encumbered spectrum. Therefore, the Commission adopts reducible minimum opening bids initially set equal to the amounts of the upfront payments for this auction.

10. The statutory mandate that the Commission prescribe methods by which to establish a reserve price or a minimum opening bid, absent a finding that they are not in the public interest, creates a presumption that reserve prices or minimum bids are required. The Commission does not find circumstances here that convinces it that establishing minimum open bids for this auction is contrary to the public interest objectives embodied in Section 309(j) of the Communications Act of 1934, as amended. These objectives include: fostering the rapid development and deployment of new technologies, products, and services; promoting competition by avoiding excessive concentration and disseminating licenses among a wide variety of applicants; recovering for the public a portion of the value of the spectrum resource and avoidance of unjust enrichment; fostering efficient use of the electromagnetic spectrum; and scheduling auctions so that potential bidders have adequate time to develop business plans and assess the market. The Commission believes the reserve price and minimum opening bid provision is intended to prevent licenses from being assigned via auction at nominal amounts. Such low prices might result, for example, from insufficient competition in the auction, which in turn might be due to the inability of potential bidders to assess the market adequately or develop business plans. Thus, the provision permits the Commission to withhold those licenses so that they may be offered again in the future to be acquired by licensees under circumstances that will more effectively benefit the public.

11. The Commission concludes that setting initial minimum opening bids equal to the amount of upfront payments will best further the objectives of its auction authority here. Because the reserve price and minimum opening bid provision is not a requirement to *maximize* the revenue earned in future auctions, but rather a protection against assigning licenses at unacceptably low prices and in noncompetitive markets, the Commission must balance this revenue raising objective against its other public interest objectives when selecting the exact level of the minimum bids. No formula exists to accomplish this balancing, and the Commission must inevitably rely on qualitative judgment.

12. In arriving at its decision here to set minimum opening bids equal to the amounts of upfront payments established for this auction, the Commission finds that establishing minimum opening bids in excess of these amounts may threaten the goals of wide and robust bidder participation. Further, as long as the amounts are not so high as to deter bidders from participation, the particular initial values are not critical because the Commission has chosen to construe them as minimum opening bids, which may be reduced at its discretion. Conversely, setting the initial minimum opening bid below the upfront payments may threaten the Commission's revenue protection obligation, to recover for the public a portion of the value of the public spectrum resource, without materially enhancing its other auction objectives. The Commission notes that its minimum opening bids effectively function as reserve prices unless or until it decides to lower them in any particular instance to spur bidding. In this regard, the Commission's approach is consistent with its treatment of minimum accepted bids where the Commission reduces prices in cases where there is a withdrawal and no subsequent bidding on a market.

13. Minimum opening bids that are subject to reduction will enable the Commission to react to market conditions as bidding unfolds. Thus, reducible minimum opening bids will allay concerns about artificially inflated spectrum values and their effect on bidders, small or otherwise. In addition, as a procedural mechanism, minimum opening bids facilitate the expeditious conduct of an auction by starting the bidding at an amount compatible with the objectives discussed in paragraph 11, above. Consequently, the Commission determines that establishing minimum opening bids initially set equal to the amounts of the upfront payments to be in the public interest.

14. The Commission rejects placing a cap on the amount of minimum opening bids. The absence of caps should not, as some commenters caution, significantly decrease bidder participation because minimum opening bids can be lowered if necessary. Further, any cap levels would be arbitrary and constitute an unfair benefit to those bidding for licenses serving densely populated areas, which may be viewed as more valuable.

15. Finally, the Commission finds that retaining authority to lower minimum opening bids, as suggested by commenters, serves the public interest and thus renders the imposition of reserve prices unnecessary for this auction. Reducible minimum opening bids better enable us to meet our revenue objectives while minimizing the possibility of retaining unsold licenses. Under a reserve price scenario the Commission would lack the flexibility to reduce acceptable bids if it were to have seriously misjudged market conditions by overestimating the value of these licenses.

16. *Regulatory Flexibility Act Certification.* As discussed above, in this Order the Commission sets the minimum opening bids for the auction of licenses in the upper 10 MHz band of the 800 MHz SMR service, subject to reduction but initially equal to the amount of the up-front payments. As such, there is no change in the economic status quo for bidders in this auction. Therefore, the Commission believes that this action will not have a significant economic impact on a substantial number of small entities, and consequently no further regulatory flexibility analysis is required, 5 U.S.C. § 605(b). The Commission will send a copy of this certification, along with the Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Aministration, 5 U.S.C. § 605(b).

17. *Effective Date.* As noted in this Order, the minimum opening bids adopted herein effectuate the recently-enacted Balanced Budget Act of 1997. In addition, the 800 MHz SMR auction is scheduled to begin very shortly, on October 28, 1997. The Commission therefore finds, for good cause, that the minimum opening bids adopted herein should be made effective upon publication in the **Federal Register**, 5 U.S.C. § 553(d)(3).

18. Accordingly, *It Is Ordered* that, under the authority contained in Sections 0.131(c), 0.331 and 1.2104 of the Commission's Rules, 47 CFR §§ 0.131(c), 0.331, and 1.2104, and pursuant to the authority of Sections 4(i), 303(r), 309(j), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 332(a), minimum opening bids subject to reduction are established for this auction as specified in this Order.

19. *It Is Further Ordered* that the amount of the minimum opening bid for each auctionable license is set equal to the amount of the respective upfront payment for each license specified in this Order.

Federal Communications Commission.

Daniel Phythyon,

Chief, Wireless Telecommunications Bureau.

Note: This attachment will not be published in the Code of Federal Regulations

Attachment

800 MHz Minimum Opening Bids

EA	Block	Name	Minimum opening bid
E001	A	Bangor, ME	$2,666
E001	B	Bangor, ME	7,998
E001	C	Bangor, ME	15,995
E002	A	Portland, ME	3,474
E002	B	Portland, ME	10,422
E002	C	Portland, ME	20,844
E003	A	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH–RI–VT	37,226
E003	B	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH–RI–VT	111,676
E003	C	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH–RI–VT	223,351
E004	A	Burlington, VT–NY	2,842
E004	B	Burlington, VT–NY	8,526
E004	C	Burlington, VT–NY	17,052
E005	A	Albany-Schenectady-Troy, NY	5,736
E005	B	Albany-Schenectady-Troy, NY	17,208
E005	C	Albany-Schenectady-Troy, NY	34,415
E006	A	Syracuse, NY–PA	9,674
E006	B	Syracuse, NY–PA	29,020
E006	C	Syracuse, NY–PA	58,039
E007	A	Rochester, NY–PA	7,290
E007	B	Rochester, NY–PA	21,868
E007	C	Rochester, NY–PA	43,736
E008	A	Buffalo-Niagara Falls, NY–PA	7,649
E008	B	Buffalo-Niagara Falls, NY–PA	22,947
E008	C	Buffalo-Niagara Falls, NY–PA	45,893
E009	A	State College, PA	3,995
E009	B	State College, PA	11,983
E009	C	State College, PA	23,965
E010	A	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	119,596
E010	B	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	358,786
E010	C	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	717,571
E011	A	Harrisburg-Lebanon-Carlisle, PA	5,133
E011	B	Harrisburg-Lebanon-Carlisle, PA	15,397
E011	C	Harrisburg-Lebanon-Carlisle, PA	30,794
E012	A	Philadelphia-Wilmington-Atl. City, PA–NJ–DE–MD	34,580
E012	B	Philadelphia-Wilmington-Atl. City, PA–NJ–DE–MD	103,738
E012	C	Philadelphia-Wilmington-Atl. City, PA–NJ–DE–MD	207,476
E013	A	Washington-Baltimore, DC–MD–VA–WV–PA	37,274
E013	B	Washington-Baltimore, DC–MD–VA–WV–PA	111,820
E013	C	Washington-Baltimore, DC–MD–VA–WV–PA	223,639
E014	A	Salisbury, MD–DE–VA	2,500
E014	B	Salisbury, MD–DE–VA	4,362
E014	C	Salisbury, MD–DE–VA	8,724
E015	A	Richmond-Petersburg, VA	6,239
E015	B	Richmond-Petersburg, VA	18,715
E015	C	Richmond-Petersburg, VA	37,429
E016	A	Staunton, VA–WV	2,500
E016	B	Staunton, VA–WV	4,525
E016	C	Staunton, VA–WV	9,049
E017	A	Roanoke, VA–NC–WV	3,802
E017	B	Roanoke, VA–NC–WV	11,406
E017	C	Roanoke, VA–NC–WV	22,812
E018	A	Greensboro-Winston-Salem-High Point, NC–VA	8,022

EA	Block	Name	Minimum opening bid
E018	B	Greensboro-Winston-Salem-High Point, NC–VA	24,065
E018	C	Greensboro-Winston-Salem-High Point, NC–VA	48,130
E019	A	Raleigh-Durham-Chapel Hill, NC	7,062
E019	B	Raleigh-Durham-Chapel Hill, NC	21,185
E019	C	Raleigh-Durham-Chapel Hill, NC	42,370
E020	A	Norfolk-Virginia Beach-Newport News, VA–NC	7,941
E020	B	Norfolk-Virginia Beach-Newport News, VA–NC	23,823
E020	C	Norfolk-Virginia Beach-Newport News, VA–NC	47,646
E021	A	Greenville, NC	3,718
E021	B	Greenville, NC	11,152
E021	C	Greenville, NC	22,303
E022	A	Fayetteville, NC	2,500
E022	B	Fayetteville, NC	6,976
E022	C	Fayetteville, NC	13,951
E023	A	Charlotte-Gastonia-Rock Hill, NC–SC	8,133
E023	B	Charlotte-Gastonia-Rock Hill, NC–SC	24,398
E023	C	Charlotte-Gastonia-Rock Hill, NC–SC	48,796
E024	A	Columbia, SC	4,080
E024	B	Columbia, SC	12,238
E024	C	Columbia, SC	24,476
E025	A	Wilmington, NC–SC	3,581
E025	B	Wilmington, NC–SC	10,742
E025	C	Wilmington, NC–SC	21,483
E026	A	Charleston-North Charleston, SC	2,707
E026	B	Charleston-North Charleston, SC	8,119
E026	C	Charleston-North Charleston, SC	16,238
E027	A	Augusta-Aiken, GA–SC	2,685
E027	B	Augusta-Aiken, GA–SC	8,053
E027	C	Augusta-Aiken, GA–SC	16,105
E028	A	Savannah, GA–SC	2,754
E028	B	Savannah, GA–SC	8,260
E028	C	Savannah, GA–SC	16,519
E029	A	Jacksonville, FL–GA	7,790
E029	B	Jacksonville, FL–GA	23,369
E029	C	Jacksonville, FL–GA	46,738
E030	A	Orlando, FL	14,183
E030	B	Orlando, FL	42,548
E030	C	Orlando, FL	85,095
E031	A	Miami-Fort Lauderdale, FL	22,692
E031	B	Miami-Fort Lauderdale, FL	68,076
E031	C	Miami-Fort Lauderdale, FL	136,152
E032	A	Fort Myers-Cape Coral, FL	2,500
E032	B	Fort Myers-Cape Coral, FL	7,309
E032	C	Fort Myers-Cape Coral, FL	14,617
E033	A	Sarasota-Bradenton, FL	3,122
E033	B	Sarasota-Bradenton, FL	9,365
E033	C	Sarasota-Bradenton, FL	18,730
E034	A	Tampa-St. Petersburg-Clearwater, FL	10,340
E034	B	Tampa-St. Petersburg-Clearwater, FL	31,020
E034	C	Tampa-St. Petersburg-Clearwater, FL	62,039
E035	A	Tallahassee, FL–GA	3,051
E035	B	Tallahassee, FL–GA	9,152
E035	C	Tallahassee, FL–GA	18,304
E036	A	Dothan, AL–FL–GA	2,500
E036	B	Dothan, AL–FL–GA	4,606
E036	C	Dothan, AL–FL–GA	9,211
E037	A	Albany, GA	2,500
E037	B	Albany, GA	6,231
E037	C	Albany, GA	12,461
E038	A	Macon, GA	3,432
E038	B	Macon, GA	10,296
E038	C	Macon, GA	20,591
E039	A	Columbus, GA–AL	2,500
E039	B	Columbus, GA–AL	6,744
E039	C	Columbus, GA–AL	13,488
E040	A	Atlanta, GA–AL–NC	20,339
E040	B	Atlanta, GA–AL–NC	61,016
E040	C	Atlanta, GA–AL–NC	122,032
E041	A	Greenville-Spartanburg-Anderson, SC–NC	5,416
E041	B	Greenville-Spartanburg-Anderson, SC–NC	16,248
E041	C	Greenville-Spartanburg-Anderson, SC–NC	32,496
E042	A	Asheville, NC	2,500
E042	B	Asheville, NC	5,575

EA	Block	Name	Minimum opening bid
E042	C	Asheville, NC	11,150
E043	A	Chattanooga, TN–GA	3,178
E043	B	Chattanooga, TN–GA	9,534
E043	C	Chattanooga, TN–GA	19,067
E044	A	Knoxville, TN	4,202
E044	B	Knoxville, TN	12,606
E044	C	Knoxville, TN	25,212
E045	A	Johnson City-Kingsport-Bristol, TN–VA	2,622
E045	B	Johnson City-Kingsport-Bristol, TN–VA	7,865
E045	C	Johnson City-Kingsport-Bristol, TN–VA	15,729
E046	A	Hickory-Morganton, NC–TN	2,500
E046	B	Hickory-Morganton, NC–TN	6,687
E046	C	Hickory-Morganton, NC–TN	13,373
E047	A	Lexington, KY–TN–VA–WV	8,657
E047	B	Lexington, KY–TN–VA–WV	25,970
E047	C	Lexington, KY–TN–VA–WV	51,940
E048	A	Charleston, WV-KY-OH	5,981
E048	B	Charleston, WV-KY-OH	17,941
E048	C	Charleston, WV-KY-OH	35,882
E049	A	Cincinnati-Hamilton, OH–KY–IN	10,018
E049	B	Cincinnati-Hamilton, OH–KY–IN	30,053
E049	C	Cincinnati-Hamilton, OH–KY–IN	60,105
E050	A	Dayton-Springfield, OH	5,630
E050	B	Dayton-Springfield, OH	16,890
E050	C	Dayton-Springfield, OH	33,779
E051	A	Columbus, OH	10,504
E051	B	Columbus, OH	31,510
E051	C	Columbus, OH	63,019
E052	A	Wheeling, WV–OH	2,500
E052	B	Wheeling, WV–OH	5,196
E052	C	Wheeling, WV–OH	10,392
E053	A	Pittsburgh, PA–WV	15,016
E053	B	Pittsburgh, PA–WV	45,048
E053	C	Pittsburgh, PA–WV	90,096
E054	A	Erie, PA	2,564
E054	B	Erie, PA	7,691
E054	C	Erie, PA	15,381
E055	A	Cleveland-Akron, OH–PA	22,824
E055	B	Cleveland-Akron, OH–PA	68,470
E055	C	Cleveland-Akron, OH–PA	136,940
E056	A	Toledo, OH	6,394
E056	B	Toledo, OH	19,181
E056	C	Toledo, OH	38,362
E057	A	Detroit-Ann Arbor-Flint, MI	33,135
E057	B	Detroit-Ann Arbor-Flint, MI	99,404
E057	C	Detroit-Ann Arbor-Flint, MI	198,808
E058	A	Northern Michigan, MI	2,500
E058	B	Northern Michigan, MI	3,451
E058	C	Northern Michigan, MI	6,902
E059	A	Green Bay, WI–MI	3,123
E059	B	Green Bay, WI–MI	9,369
E059	C	Green Bay, WI–MI	18,738
E060	A	Appleton-Oshkosh-Neenah, WI	2,500
E060	B	Appleton-Oshkosh-Neenah, WI	5,710
E060	C	Appleton-Oshkosh-Neenah, WI	11,419
E061	A	Traverse City, MI	2,500
E061	B	Traverse City, MI	3,581
E061	C	Traverse City, MI	7,162
E062	A	Grand Rapids-Muskegon-Holland, MI	8,335
E062	B	Grand Rapids-Muskegon-Holland, MI	25,005
E062	C	Grand Rapids-Muskegon-Holland, MI	50,009
E063	A	Milwaukee-Racine, WI	10,598
E063	B	Milwaukee-Racine, WI	31,794
E063	C	Milwaukee-Racine, WI	63,587
E064	A	Chicago-Gary-Kenosha, IL–IN–WI	46,590
E064	B	Chicago-Gary-Kenosha, IL–IN—WI	139,770
E064	C	Chicago-Gary-Kenosha, IL–IN–WI	279,539
E065	A	Elkhart-Goshen, IN–MI	4,322
E065	B	Elkhart-Goshen, IN–MI	12,964
E065	C	Elkhart-Goshen, IN–MI	25,927
E066	A	Fort Wayne, IN	3,333
E066	B	Fort Wayne, IN	9,997
E066	C	Fort Wayne, IN	19,993

EA	Block	Name	Minimum opening bid
E067	A	Indianapolis, IN–IL	13,766
E067	B	Indianapolis, IN–IL	41,298
E067	C	Indianapolis, IN–IL	82,596
E068	A	Champaign-Urbana, IL	3,118
E068	B	Champaign-Urbana, IL	9,354
E068	C	Champaign-Urbana, IL	18,707
E069	A	Evansville-Henderson, IN–KY–IL	4,129
E069	B	Evansville-Henderson, IN–KY–IL	12,385
E069	C	Evansville-Henderson, IN–KY–IL	24,770
E070	A	Louisville, KY–IN	6,456
E070	B	Louisville, KY–IN	19,368
E070	C	Louisville, KY–IN	38,736
E071	A	Nashville, TN–KY	10,012
E071	B	Nashville, TN–KY	30,035
E071	C	Nashville, TN–KY	60,069
E072	A	Paducah, KY–IL	2,500
E072	B	Paducah, KY–IL	3,168
E072	C	Paducah, KY–IL	6,336
E073	A	Memphis, TN–AR–MS–KY	8,440
E073	B	Memphis, TN–AR–MS–KY	25,318
E073	C	Memphis, TN–AR–MS–KY	50,635
E074	A	Huntsville, AL–TN	4,426
E074	B	Huntsville, AL–TN	13,276
E074	C	Huntsville, AL–TN	26,551
E075	A	Tupelo, MS–AL–TN	2,887
E075	B	Tupelo, MS–AL–TN	8,659
E075	C	Tupelo, MS–AL–TN	17,318
E076	A	Greenville, MS	2,500
E076	B	Greenville, MS	3,859
E076	C	Greenville, MS	7,718
E077	A	Jackson, MS–AL–LA	6,644
E077	B	Jackson, MS–AL–LA	19,930
E077	C	Jackson, MS–AL–LA	39,860
E078	A	Birmingham, AL	7,253
E078	B	Birmingham, AL	21,757
E078	C	Birmingham, AL	43,514
E079	A	Montgomery, AL	2,500
E079	B	Montgomery, AL	6,604
E079	C	Montgomery, AL	13,207
E080	A	Mobile, AL	3,040
E080	B	Mobile, AL	9,120
E080	C	Mobile, AL	18,239
E081	A	Pensacola, FL	2,580
E081	B	Pensacola, FL	7,740
E081	C	Pensacola, FL	15,479
E082	A	Biloxi-Gulfport-Pascagoula, MS	2,500
E082	B	Biloxi-Gulfport-Pascagoula, MS	5,097
E082	C	Biloxi-Gulfport-Pascagoula, MS	10,194
E083	A	New Orleans, LA–MS	8,179
E083	B	New Orleans, LA–MS	24,536
E083	C	New Orleans, LA–MS	49,072
E084	A	Baton Rouge, LA–MS	3,282
E084	B	Baton Rouge, LA–MS	9,845
E084	C	Baton Rouge, LA–MS	19,689
E085	A	Lafayette, LA	2,774
E085	B	Lafayette, LA	8,320
E085	C	Lafayette, LA	16,640
E086	A	Lake Charles, LA	2,617
E086	B	Lake Charles, LA	7,850
E086	C	Lake Charles, LA	15,699
E087	A	Beaumont-Port Arthur, TX	2,500
E087	B	Beaumont-Port Arthur, TX	6,339
E087	C	Beaumont-Port Arthur, TX	12,677
E088	A	Shreveport-Bossier City, LA–AR	2,777
E088	B	Shreveport-Bossier City, LA–AR	8,331
E088	C	Shreveport-Bossier City, LA–AR	16,662
E089	A	Monroe, LA	2,500
E089	B	Monroe, LA	4,904
E089	C	Monroe, LA	9,807
E090	A	Little Rock-North Little Rock, AR	7,236
E090	B	Little Rock-North Little Rock, AR	21,707
E090	C	Little Rock-North Little Rock, AR	43,413
E091	A	Fort Smith, AR–OK	2,500

EA	Block	Name	Minimum opening bid
E091	B	Fort Smith, AR–OK	4,292
E091	C	Fort Smith, AR–OK	8,584
E092	A	Fayetteville-Springdale-Rogers, AR–MO–OK	2,500
E092	B	Fayetteville-Springdale-Rogers, AR–MO–OK	4,290
E092	C	Fayetteville-Springdale-Rogers, AR–MO–OK	8,579
E093	A	Joplin, MO–KS–OK	2,500
E093	B	Joplin, MO–KS–OK	3,506
E093	C	Joplin, MO–KS–OK	7,012
E094	A	Springfield, MO	3,563
E094	B	Springfield, MO	10,687
E094	C	Springfield, MO	21,373
E095	A	Jonesboro, AR–MO	2,500
E095	B	Jonesboro, AR–MO	4,352
E095	C	Jonesboro, AR–MO	8,704
E096	A	St. Louis, MO–IL	17,015
E096	B	St. Louis, MO–IL	51,043
E096	C	St. Louis, MO–IL	102,085
E097	A	Springfield, IL–MO	2,500
E097	B	Springfield, IL–MO	7,496
E097	C	Springfield, IL–MO	14,991
E098	A	Columbia, MO	2,500
E098	B	Columbia, MO	4,824
E098	C	Columbia, MO	9,647
E099	A	Kansas City, MO–KS	11,125
E099	B	Kansas City, MO–KS	33,374
E099	C	Kansas City, MO–KS	66,748
E100	A	Des Moines, IA–IL–MO	8,024
E100	B	Des Moines, IA–IL–MO	24,070
E100	C	Des Moines, IA–IL–MO	48,139
E101	A	Peoria-Pekin, IL	2,619
E101	B	Peoria-Pekin, IL	7,856
E101	C	Peoria-Pekin, IL	15,712
E102	A	Davenport-Moline-Rock Island, IA–IL	2,742
E102	B	Davenport-Moline-Rock Island, IA–IL	8,224
E102	C	Davenport-Moline-Rock Island, IA–IL	16,448
E103	A	Cedar Rapids, IA	2,500
E103	B	Cedar Rapids, IA	5,116
E103	C	Cedar Rapids, IA	10,231
E104	A	Madison, WI–IA–IL	4,187
E104	B	Madison, WI–IA–IL	12,559
E104	C	Madison, WI–IA–IL	25,117
E105	A	La Crosse, WI–MN	2,500
E105	B	La Crosse, WI–MN	3,308
E105	C	La Crosse, WI–MN	6,616
E106	A	Rochester, MN–IA–WI	2,500
E106	B	Rochester, MN–IA–WI	4,383
E106	C	Rochester, MN–IA–WI	8,766
E107	A	Minneapolis-St. Paul, MN–WI–IA	19,728
E107	B	Minneapolis-St. Paul, MN–WI–IA	59,182
E107	C	Minneapolis-St. Paul, MN–WI–IA	118,364
E108	A	Wausau, WI	2,500
E108	B	Wausau, WI	6,773
E108	C	Wausau, WI	13,546
E109	A	Duluth-Superior, MN–WI	2,500
E109	B	Duluth-Superior, MN–WI	5,111
E109	C	Duluth-Superior, MN–WI	10,221
E110	A	Grand Forks, ND–MN	2,500
E110	B	Grand Forks, ND–MN	3,613
E110	C	Grand Forks, ND–MN	7,225
E111	A	Minot, ND	2,500
E111	B	Minot, ND	2,500
E111	C	Minot, ND	3,482
E112	A	Bismarck, ND–MT–SD	2,500
E112	B	Bismarck, ND–MT–SD	2,584
E112	C	Bismarck, ND–MT–SD	5,167
E113	A	Fargo-Moorhead, ND–MN	2,500
E113	B	Fargo-Moorhead, ND–MN	5,216
E113	C	Fargo-Moorhead, ND–MN	10,431
E114	A	Aberdeen, SD	2,500
E114	B	Aberdeen, SD	2,500
E114	C	Aberdeen, SD	2,541
E115	A	Rapid City, SD–MT–ND–NE	2,500
E115	B	Rapid City, SD–MT–ND–NE	2,997

EA	Block	Name	Minimum opening bid
E115	C	Rapid City, SD–MT–ND–NE	5,994
E116	A	Sioux Falls, SD–IA–MN–NE	2,500
E116	B	Sioux Falls, SD–IA–MN–NE	7,175
E116	C	Sioux Falls, SD–IA–MN–NE	14,350
E117	A	Sioux City, IA–NE–SD	2,500
E117	B	Sioux City, IA–NE–SD	3,593
E117	C	Sioux City, IA–NE–SD	7,186
E118	A	Omaha, NE–IA–MO	4,795
E118	B	Omaha, NE–IA–MO	14,383
E118	C	Omaha, NE–IA–MO	28,765
E119	A	Lincoln, NE	2,500
E119	B	Lincoln, NE	5,126
E119	C	Lincoln, NE	10,251
E120	A	Grand Island, NE	2,500
E120	B	Grand Island, NE	4,163
E120	C	Grand Island, NE	8,326
E121	A	North Platte, NE–CO	2,500
E121	B	North Platte, NE–CO	2,500
E121	C	North Platte, NE–CO	2,500
E122	A	Wichita, KS–OK	5,472
E122	B	Wichita, KS–OK	16,414
E122	C	Wichita, KS–OK	32,827
E123	A	Topeka, KS	2,500
E123	B	Topeka, KS	6,672
E123	C	Topeka, KS	13,344
E124	A	Tulsa, OK–KS	6,299
E124	B	Tulsa, OK–KS	18,895
E124	C	Tulsa, OK–KS	37,790
E125	A	Oklahoma City, OK	7,754
E125	B	Oklahoma City, OK	23,261
E125	C	Oklahoma City, OK	46,522
E126	A	Western Oklahoma, OK	2,500
E126	B	Western Oklahoma, OK	2,500
E126	C	Western Oklahoma, OK	4,346
E127	A	Dallas-Fort Worth, TX–AR–OK	30,904
E127	B	Dallas-Fort Worth, TX–AR–OK	92,712
E127	C	Dallas-Fort Worth, TX–AR–OK	185,424
E128	A	Abilene, TX	2,500
E128	B	Abilene, TX	3,202
E128	C	Abilene, TX	6,403
E129	A	San Angelo, TX	2,500
E129	B	San Angelo, TX	2,837
E129	C	San Angelo, TX	5,673
E130	A	Austin-San Marcos, TX	4,612
E130	B	Austin-San Marcos, TX	13,835
E130	C	Austin-San Marcos, TX	27,670
E131	A	Houston-Galveston-Brazoria, TX	22,839
E131	B	Houston-Galveston-Brazoria, TX	68,516
E131	C	Houston-Galveston-Brazoria, TX	137,031
E132	A	Corpus Christi, TX	2,505
E132	B	Corpus Christi, TX	7,513
E132	C	Corpus Christi, TX	15,025
E133	A	McAllen-Edinburg-Mission, TX	3,510
E133	B	McAllen-Edinburg-Mission, TX	10,529
E133	C	McAllen-Edinburg-Mission, TX	21,057
E134	A	San Antonio, TX	8,710
E134	B	San Antonio, TX	26,130
E134	C	San Antonio, TX	52,260
E135	A	Odessa-Midland, TX	2,500
E135	B	Odessa-Midland, TX	5,738
E135	C	Odessa-Midland, TX	11,476
E136	A	Hobbs, NM–TX	2,500
E136	B	Hobbs, NM–TX	2,777
E136	C	Hobbs, NM–TX	5,554
E137	A	Lubbock, TX	2,500
E137	B	Lubbock, TX	5,357
E137	C	Lubbock, TX	10,713
E138	A	Amarillo, TX–NM	2,500
E138	B	Amarillo, TX–NM	6,724
E138	C	Amarillo, TX–NM	13,448
E139	A	Santa Fe, NM	2,500
E139	B	Santa Fe, NM	3,131
E139	C	Santa Fe, NM	6,261

EA	Block	Name	Minimum opening bid
E140	A	Pueblo, CO–NM	2,500
E140	B	Pueblo, CO–NM	3,707
E140	C	Pueblo, CO–NM	7,414
E141	A	Denver-Boulder-Greeley, CO–KS–NE	15,156
E141	B	Denver-Boulder-Greeley, CO–KS–NE	45,468
E141	C	Denver-Boulder-Greeley, CO–KS–NE	90,935
E142	A	Scottsbluff, NE–WY	2,500
E142	B	Scottsbluff, NE–WY	2,500
E142	C	Scottsbluff, NE–WY	2,760
E143	A	Casper, WY–ID–UT	2,500
E143	B	Casper, WY–ID–UT	5,732
E143	C	Casper, WY–ID–UT	11,463
E144	A	Billings, MT–WY	2,500
E144	B	Billings, MT–WY	5,438
E144	C	Billings, MT–WY	10,876
E145	A	Great Falls, MT	2,500
E145	B	Great Falls, MT	2,500
E145	C	Great Falls, MT	4,899
E146	A	Missoula, MT	2,500
E146	B	Missoula, MT	5,010
E146	C	Missoula, MT	10,020
E147	A	Spokane, WA–ID	3,460
E147	B	Spokane, WA–ID	10,378
E147	C	Spokane, WA–ID	20,755
E148	A	Idaho Falls, ID–WY	2,500
E148	B	Idaho Falls, ID–WY	3,951
E148	C	Idaho Falls, ID–WY	7,902
E149	A	Twin Falls, ID	2,500
E149	B	Twin Falls, ID	2,500
E149	C	Twin Falls, ID	4,105
E150	A	Boise City, ID–OR	2,500
E150	B	Boise City, ID–OR	6,124
E150	C	Boise City, ID–OR	12,248
E151	A	Reno, NV–CA	2,556
E151	B	Reno, NV–CA	7,666
E151	C	Reno, NV–CA	15,331
E152	A	Salt Lake City-Ogden, UT–ID	8,180
E152	B	Salt Lake City-Ogden, UT–ID	24,540
E152	C	Salt Lake City-Ogden, UT–ID	49,080
E153	A	Las Vegas, NV–AZ–UT	4,719
E153	B	Las Vegas, NV–AZ–UT	14,156
E153	C	Las Vegas, NV–AZ–UT	28,312
E154	A	Flagstaff, AZ–UT	2,500
E154	B	Flagstaff, AZ–UT	4,497
E154	C	Flagstaff, AZ–UT	8,993
E155	A	Farmington, NM–CO	2,500
E155	B	Farmington, NM–CO	2,500
E155	C	Farmington, NM–CO	4,505
E156	A	Albuquerque, NM–AZ	3,815
E156	B	Albuquerque, NM–AZ	11,443
E156	C	Albuquerque, NM–AZ	22,885
E157	A	El Paso, TX–NM	4,038
E157	B	El Paso, TX–NM	12,113
E157	C	El Paso, TX–NM	24,226
E158	A	Phoenix-Mesa, AZ–NM	11,826
E158	B	Phoenix-Mesa, AZ–NM	35,476
E158	C	Phoenix-Mesa, AZ–NM	70,951
E159	A	Tucson, AZ	3,971
E159	B	Tucson, AZ	11,913
E159	C	Tucson, AZ	23,826
E160	A	Los Angeles-Riverside-Orange County, CA–AZ	79,460
E160	B	Los Angeles-Riverside-Orange County, CA–AZ	238,378
E160	C	Los Angeles-Riverside-Orange County, CA–AZ	476,755
E161	A	San Diego, CA	12,491
E161	B	San Diego, CA	37,471
E161	C	San Diego, CA	74,941
E162	A	Fresno, CA	5,845
E162	B	Fresno, CA	17,535
E162	C	Fresno, CA	35,070
E163	A	San Francisco-Oakland-San Jose, CA	40,166
E163	B	San Francisco-Oakland-San Jose, CA	120,498
E163	C	San Francisco-Oakland-San Jose, CA	240,995
E164	A	Sacramento-Yolo, CA	9,678

EA	Block	Name	Minimum opening bid
E164	B	Sacramento-Yolo, CA	29,033
E164	C	Sacramento-Yolo, CA	58,065
E165	A	Redding, CA–OR	2,500
E165	B	Redding, CA–OR	4,614
E165	C	Redding, CA–OR	9,228
E166	A	Eugene-Springfield, OR–CA	3,449
E166	B	Eugene-Springfield, OR–CA	10,345
E166	C	Eugene-Springfield, OR–CA	20,690
E167	A	Portland-Salem, OR–WA	11,551
E167	B	Portland-Salem, OR–WA	34,651
E167	C	Portland-Salem, OR–WA	69,302
E168	A	Pendleton, OR–WA	2,500
E168	B	Pendleton, OR–WA	2,642
E168	C	Pendleton, OR–WA	5,284
E169	A	Richland-Kennewick-Pasco, WA	2,729
E169	B	Richland-Kennewick-Pasco, WA	8,187
E169	C	Richland-Kennewick-Pasco, WA	16,373
E170	A	Seattle-Tacoma-Bremerton, WA	17,226
E170	B	Seattle-Tacoma-Bremerton, WA	51,676
E170	C	Seattle-Tacoma-Bremerton, WA	103,352
E171	A	Anchorage, AK	2,751
E171	B	Anchorage, AK	8,251
E171	C	Anchorage, AK	16,502
E172	A	Honolulu, HI	5,542
E172	B	Honolulu, HI	16,624
E172	C	Honolulu, HI	33,247
E173	A	Guam & Northern Mariana Isl.	2,500
E173	B	Guam & Northern Mariana Isl.	2,648
E173	C	Guam & Northern Mariana Isl.	5,295
E174	A	Puerto Rico & Virgin Isl.	18,120
E174	B	Puerto Rico & Virgin Isl.	54,358
E174	C	Puerto Rico & Virgin Isl.	108,716
E175	A	American Samoa	2,500
E175	B	American Samoa	2,500
E175	C	American Samoa	2,500

[FR Doc. 97–28161 Filed 10–22–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date and Time: Tuesday, October 28, 1997 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Maters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Thursday, October 30, 1997, at 10:00 a.m.

Place: 999 E Street, N.W. Washington, D.C. (ninth floor)

Status: This meeting will be open to the public.

Items to be discussed:

Correction and Approval of Minutes.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–28299 Filed 10–21–95; 3:19 pm]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–18]

APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011588; Order To Show Cause

Introduction

This proceeding is instituted pursuant to sections 10(c) (6) and 11 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1709(c)(6) and 1710. The APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011588 ("the Agreement"), an agreement for the reciprocal chartering of space aboard vessels operated in the U.S. foreign trades by the agreement members, appears to reserve for one member of the Agreement the carriage of cargo offered by shippers subject to U.S. cargo preference laws.

Under section 10(c)(6) of the 1984 Act, 46 U.S.C. app. § 1709(c)(6), it is unlawful for any conference or group of two or more common carriers to allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as otherwise required by the law of the United States or the importing or exporting country. * * *

It appears that the Agreement on its face presents a violation of section 10(c)(6). Therefore, pursuant to section 11 of the 1984 Act, the parties to the Agreement are ordered to show cause why the Agreement should not be found to be in violation of the 1984 Act and should not be disapproved, canceled or modified accordingly.

Background

The Agreement, entered into by the parties on August 29, 1997, was filed with the Federal Maritime Commission ("Commission" or "FMC") on September 2, 1997, pursuant to section 5 of the 1984 Act, 46 U.S.C. app.

§ 1704,[1] and became effective on October 17, 1997.[2] This Agreement authorizes the parties to charter space on each other's vessels on a reciprocal basis and to agree on sailing schedules, service frequency and port calls in the trades between ports and points in the U.S. served via U.S. Pacific Coast ports and ports and points in the Far East. The Agreement provides for reciprocal sale, exchange or use of up to an annualized average of 500 TEUs of space per week by Hyundai Merchant Marine, Ltd. ("Hyundai") on vessels operated by American President Lines, Ltd. ("APL"), Mitsui O.S.K. Line, Ltd. ("MOL"), and Orient Overseas Container Line, Inc. ("OOCL") and for use by APL, MOL and OOCL of an equal amount of space on Hyundai vessels operating in the trade.[3] The parties may also agree on feeder operations, addition or withdrawal of capacity, and the number, type and size of vessels they will use in the trade. No party may charter or sub-charter space aboard another party's vessel to a third-party carrier without the consent of the party operating the vessel.[4]

The Agreement provides, *inter alia*, at Article 5.1, that:

> [n]othing in this Agreement shall be construed as granting a right on the part of any other party to carry aboard the vessels of American President Lines, Ltd. cargoes shipped from or to the U.S. Department of Defense or Agriculture, or any subsidiary agencies thereof, or any other agency of the U.S. Government whose shipments are subject to cargo preference laws of the United States to the extent requiring and reserved for transportation aboard U.S.-flag vessels.[5]

In response to an inquiry from the Commission's staff concerning this provision, a letter of March 11, 1997 from the Secretary, Maritime Administration, Department of Transportation ("MarAd") to APL Vice President Michael Murphy was provided by filing counsel for the Agreement parties. This letter states that APL's request is granted for a waiver under section 804(b) of the Merchant Marine Act, 1936 ("1936 Act") for APL to own, operate or charter up to 18 foreign-flag vessels in line haul service between U.S. and foreign ports for the remaining term of APL's Operating Differential Subsidy Agreement ("ODSA"), Contract MA/MSB–417, through December 31, 1997 and for the full term of each of APL's nine operating agreements under the Maritime Security Program ("MSP"), Contract Nos. MA/MSP–1 through MA/MSP–9. MarAd imposed five conditions on the waiver, which "will terminate in the event any of the conditions are not fulfilled," including condition D:

> No space on APL's U.S.-flag vessels that are subject to space sharing agreements with any foreign operator shall be utilized for the carriage of cargo reserved for U.S.-flag vessels under any statute, resolution or regulation unless such cargo is carried pursuant to bills of lading or contracts of carriage issued to, or entered into with, the shipper of such cargo by or for a citizen of the United States.

Discussion

In *Military Sealift Command* v. *Sea-Land Service, Inc.*, F.M.C. _____, 27 S.R.R. 874 (1996) ("*MSC*"), the Commission determined that a provision whose effect appears identical to that of Article 5.1 of the Agreement constituted an allocation of shippers prohibited under section 10(c)(6).[6] The vessel sharing agreements ("VSAs") among Sea-Land Service, Inc. ("Sea-Land") and three foreign-flag carriers (P&O Containers Limited ("P&O"), Nedlloyd Lijnen, B.V. ("Nedlloyd"), and Compania Trasatlantica Espanola, S.A. ("CTE")) involved in *MSC* provided for the use of 12 U.S.-flag vessels owned by Sea-Land to be operated on behalf of all of the parties to the agreements, and to replace all U.S.-flag and foreign-flag vessels previously operated by the parties in the covered trade. By chartering space on a U.S.-flag vessel, P&O, Nedlloyd and CTE gained eligibility to submit bids for military and other government preference cargoes reserved to U.S.-flag vessels. However, P&O and Nedlloyd agreed in Article 5(i) of Agreement No. 203–11171, that they would not use any vessels or space chartered from Sea-Land for carriage of government preference cargo. CTE was subsequently added to the VSA, subject to the same condition. Upon complaint filed by the Military Sealift Command, Department of the Navy, a shipper of U.S. preference cargo, the Commission determined that the provision constituted an allocation of shippers prohibited by the first clause of section 10(c)(6).

However, the Commission further determined that the provision was not unlawful because it was required by an order of MarAd which constituted "law of the United States" within the meaning of the "except" clause of section 10(c)(6). The VSAs required the approval of the Secretary of Transportation for the charter or transfer of a U.S.-flag vessel to a non-citizen under section 9 of the Shipping Act, 1916 ("1916 Act").[7] Section 41 gives the Secretary broad power to prescribe conditions—violations of which are crimes punishable by fines, imprisonment and vessel forfeiture—on transactions covered by section 9. The Secretary has delegated to the Maritime Administrator authority to carry out sections 9 and 41 of the 1916 Act. 49 CFR 166(a).

MarAd conditioned its approval of Sea-Land's charters of its U.S.-flag vessels and vessel space to foreign-flag carrier members of the agreements on the exclusion of the foreign-flag participants from use of the vessels to carry U.S. preference cargo.[8] MarAd acted under section 9 on each individual charter of a U.S.-flag vessel and incorporated conditions requiring restriction of U.S. preference cargo to the U.S.-flag carrier member of the agreements in each of the "charter orders" approving the arrangement, as required by section 41. The Commission specifically found that the conditional

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[1] Section 5 provides, in relevant part, that "[a] true copy of every agreement [with respect to activities subject to the Act as described in section 4] * * * shall be filed with the Commission * * *." Notice of the filing of the Agreement was published in the **Federal Register** on September 15, 1997, 62 *Fed. Reg.* 48287 (September 15, 1997).

[2] Section 6(c), 46 U.S.C. app. § 1705, provides, *inter alia*, that "[u]nless rejected by the Commission * * *, agreements * * * shall become effective * * * on the 45th day after filing, or on the 30th day after notice of the filing is published in the **Federal Register**, whichever day is later * * *."

[3] APL, MOL and OOCL, parties to the APL/MOL/OOCL Asia-Atlantic Alliance Agreement (Agreement No. 203–011467) and the APL/MOL/OOCL Asia-Pacific Agreement (Agreement No. 203–011468) under which they reciprocally charter space and offer global service, are collectively known as the "Global Alliance."

[4] The parties have denominated the period from the Agreement's effective date to December 31, 1997 as "the Initial Period," and provided for continuation of the Agreement by year-to-year renewals after that date.

[5] The Agreement further provides that

> If the second sentence of this Section 5.1 with respect to U.S. preference cargoes shall be determined to violate U.S. law by a court of competent jurisdiction and any stay upon the order of such court giving effect to such determination arising by reason of an appeal of such order shall have ceased to be effective, then the second sentence * * * shall be deemed severed * * *.

[6] The Commission's decision in MSC is presently subject to review in the U.S. Court of Appeals for the D.C. Circuit.

[7] Section 9(c) provides that, with certain exceptions not relevant here, that "a person may not, without the approval of the Secretary of Transportation—(1) Sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel * * * owned by a citizen of the United States * * *."

46 U.S.C. app. § 808(c).

[8] Like Article 5(i) of Agreement No. 203–011171, the MarAd condition required that none of the vessel space chartered to non U.S.-citizen parties to the agreement "shall be utilized for the carriage of cargo reserved for United States-flag vessels * * * unless such cargo is carried pursuant to bills of lading or contracts of carriage issued [by], or entered into with, * * * a citizen of the United States * * *," in other words, Sea-Land.

charter orders issued by MarAd pursuant to sections 9 and 41 of the 1916 Act had the force and effect of law because they were compulsory and the statute provided criminal penalties for noncompliance. 27 S.R.R. at 889.

The Agreement presently before us provides for the chartering of space by non-U.S. citizen carriers on vessels operated by APL, some of which are U.S.-flag vessels, as well as the chartering of space by APL on foreign-flag vessels operated by other members of the Agreement. The Agreement parties do not represent that APL sought MarAd approval pursuant to section 9 for use of its U.S.-flag vessels in operations under the Agreement. The March 11, 1997 MarAd letter grants authority to APL only under section 804(b) of the 1936 Act, and does not refer to sections 9 and 41 of the 1916 Act or MarAd authority under those provisions.[9] Thus, this case apparently does not involve the 1916 Act authority exercised by MarAd with respect to the space charter agreements at issue in MSC.[10]

APL presently operates U.S.-flag vessels under operating-differential subsidy ("ODS") contracts with MarAd pursuant to Title VI and sections 801 and 804 of the 1936 Act, 46 U.S.C. app. § 1171 *et seq.* and §§ 1211 and 1222.[11] The terms of the subsidy contract between the United States and the operator of the U.S.-flag vessels are specified by the statute, under section 603, 46 U.S.C. app. § 1173. The 1936 Act provides that certain breaches of the contract will result in termination of the contract and loss of the subsidy. *See*, e.g., section 608, 46 U.S.C. app. § 1178 (sale or assignment of the contract without the Secretary's approval).

Section 804(a) provides that it is "unlawful for any contractor receiving an operating-differential subsidy under title VI * * * to own, charter, * * * or operate any foreign-flag vessel which competes with any American flag service" on a route deemed essential by the Secretary, except as provided in section 804(b). Section 804(b), 46 U.S.C. app. § 1222(b), authorizes the Secretary to waive the prohibition for a specific period of time "[u]nder special circumstances and for good cause shown * * *."[12] The March 11, 1997 MarAd letter states that the waiver granted "is subject to the * * * conditions and will terminate in the event any of the conditions are not fulfilled * * *."

On October 8, 1996, the 1936 Act was substantially amended by passage of the Military Security Act of 1996, Pub. L. 104–239, 110 Stat. 3118. Those amendments denominated the existing provisions of Title VI providing for ODS and ODS contracts as "part A" and created the Military Security Fleet Program, denominated "part B," 46 U.S.C. app. § 1187, *et seq.* Section 1187a provides, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement governed by the section's provisions with the Secretary of Transportation.[13] The operating agreements thus called for will be one-year, renewable contracts. Subsection (c) provides that "[a] contractor of a vessel included in an operating agreement under this part may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under" certain sections of the 1936 Act dealing with record keeping, equitable distribution of contracts among U.S. ports, and discrimination. 46 U.S.C. app. 1187a(c). As MarAd noted in promulgating its final regulations for the MSP, "[u]nlike the operating differential subsidy * * * program, the MSP has few restrictions on vessels operating in the U.S.-foreign commerce * * *." 62 FR 37733 (July 15, 1997).

Section 804 was substantially amended as well. Section 804(a) continues to apply to "any contractor receiving an operating-differential subsidy under subchapter VI * * *" 46 U.S.C. app. § 122(a). However, a new subsection 804(f) provides that nothing in section 804(a) will preclude a contractor receiving assistance under subchapter A or B from "entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels * * *." 46 U.S.C. app. § 1221(f)(5).[14] It thus does not appear to be necessary for a U.S.-flag carrier with an MSP operating agreement to seek a waiver under section 804(b) in order to participate in a space charter or vessel sharing agreement.

APL's existing ODS contracts will expire on December 31, 1997. APL entered into operating agreements with MarAd for nine vessels on January 21, 1997. On January 17, 1997, APL filed a request with MarAd for a waiver under section 804(b) of the 1936 Act for operation of up to 18 foreign-flag vessels. Notice of its filing was published January 29, 1997. 62 FR 4377 (January 29, 1997). The March 11, 1997 MarAd letter granted APL's request. The waiver provides that APL may "own, operate or charter" up to 18 foreign-flag vessels. APL's request and MarAd's action preceded the Agreement by some seven months and five months respectively. Neither appears to have been undertaken in contemplation of the Agreement.

Under the provisions of the 1936 Act, as amended by the Maritime Security Act of 1996, no recourse to the Maritime Administration appears to be required for APL's participation in the Agreement, particularly with respect to the Agreement's operation after the Initial Period.[15] The Commission must, as it noted in *MSC*, "[u]nder ordinary circumstances, * * * consider the text and any relevant analyses of the proffered law [said to create an exception to the prohibition of section 10(c)(6)], and render a conclusion as to whether the law commanded the actions that otherwise might fall within section 10(c)(6)'s prohibition clause."

In correspondence with the Commission's staff and counsel during FMC review of the Agreement, APL suggests that the March 11, 1997 MarAd letter should be considered "law of the United States" within the meaning of

[9] MarAd has apparently dispensed with individualized approvals of charters of U.S.-flag vessels like those at issue in *MSC*. *See* 46 C.F.R. § 221.13(a)(1) (except as limited by provisions not relevant here, MarAd "hereby grants the approval required by [section 9(c) of the 1916 Act] for the * * * Charter * * * to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States * * *.").

[10] APL participated in the Commission's proceeding in *MSC* as an intervenor, representing that its interests could be substantially affected by the Commission's decision of the allocation issue because it was a participant in space charter agreements having similar cargo preference provisions. APL acknowledged, however, that the basis for the MarAd orders which allegedly required such provisions was not the same as that which required the provision in the VSAs challenged in that complaint proceeding.

[11] Section 603, 46 U.S.C. app. § 1173(a), provides that, upon approval of an application for ODS under section 601, the Secretary of Transportation may enter into a contract with the applicant "subject to such reasonable terms and conditions * * * as the Secretary * * * shall require to effectuate the purposes and policy * * * of the Act.

[12] The March 11, 1997 MarAd letter states that the Administrator has found "special circumstances" and "good cause" for granting the waiver.

[13] The section permits the Secretary to enter into operating agreements for vessels which continue to operate under ODS contracts subject to part A.

[14] The new section 804(f) was made effective as to carriers with existing ODS contracts on the date on which such a contractor entered into an MSP contract with MarAd. 46 U.S.C.A. app. § 1222, Historical and Statutory Notes.

[15] In view of the brevity of the Initial Period during which APL's operations under the Agreement will be subject to its ODS contract, we will not address, or require the parties to address, the issues of whether conditions imposed on a section 804 waiver are part of the terms of the ODS contract; whether violation of a conditional waiver constitutes a breach of the contract; and whether the sanctions specified for breach of the contract constitute "law of the United States" within the meaning of the except clause.

the "except clause" of section 10(c)(6). The Commission in *MSC* indicated that it is not the FMC's role to decide on the validity of a MarAd order. *MSC*, 27 S.R.R. at 888. However, the Commission's inquiry in *MSC* included the threshold conclusion that MarAd action under the 1916 Act was a necessary prerequisite for the existence of the agreements at issue: the U.S.-flag vessels could not be chartered to the foreign carrier agreement parties without MarAd approval. 27 S.R.R. at 876. No party contended otherwise. Here, no similar nexus between the Agreement and the statutory authority of the Maritime Administrator invoked by APL is evident.[16] Thus, inasmuch as the FMC's determination must be based on the statutory provisions relied on, and the terms of MSP operating agreements or other forms of action by MarAd, we would find it particularly helpful to have MarAd participate as *amicus curiae* in the Commission's proceeding and will order the Secretary to invite that participation.

Now therefore, it is ordered That pursuant to section 11 of the Shipping Act of 1984, American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., Orient Overseas Container Line, Inc. and Hyundai Merchant Marine, Ltd. show cause why they should not be found to have violated section 10(c)(6) of the Shipping Act of 1984 by prohibiting specific carriers that are parties to the agreement from soliciting cargo from a particular shipper or shippers;

It is further ordered that American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., Orient Overseas Container Line, Inc. and Hyundai Merchant Marine, Ltd. show cause why an order should not be issued disapproving, canceling or modifying the APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011588;

It is further ordered That this proceeding is limited to the submission of affidavits of facts and memoranda of law;

It is further ordered That the Secretary by letter inquire whether the Maritime Administration, Department of Transportation wishes to participate *amicus curiae* in this proceeding. The Commission would welcome such participation;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered That American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., Orient Overseas Container Line, Inc. and Hyundai Merchant Marine, Ltd. are named Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of Respondents no later than December 2, 1997;

It is further ordered That the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than January 2, 1998;

It is further ordered That rebuttal affidavits and memoranda of law shall be filed by Respondents and intervenors in support no later than January 20, 1998;

It is further ordered That, should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case. Any request for oral argument shall be filed no later than January 20, 1998;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.61, the final decision of the Commission in this proceeding shall be issued by April 20, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28068 Filed 10–22–97; 8:45 am]

BILLING CODE 6730–01–M

[16] In initiating this proceeding, we do not undertake to review the actions of the Maritime Administrator under his statutory authority. Our administration of the 1984 Act, however, requires that we determine whether an agreement filed pursuant to the 1984 Act requires action by the Administrator under a statute which authorizes him to command carrier obedience to orders cognizable as "law of the United States," and whether the Administrator has required the action specifically taken by the parties in this instance.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-27510) published on pages 54113-54114 of the issue for Friday, October 17, 1997.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wendell A. Jacobson, Fountain Green, Utah, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wendell A., and Melba B. Jacobson, Fountain Green, Utah; to acquire additional voting shares of Bank of Ephraim, Ephraim, Utah.

Comments on this application must be received by October 30, 1997.

Board of Governors of the Federal Reserve System, October 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28073 Filed 10–22–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Johnson International, Inc., Racine, Wisconsin; to acquire 100 percent of the voting shares of The Bank of Fort Atkinson, Fort Atkinson, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Community First National Bank, Globe, Arizona.

Board of Governors of the Federal Reserve System, October 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-28074 Filed 10-22-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO-98-02]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Evaluation of Educational Brochures on Opportunistic Infections Affecting People with HIV/AIDS—New—The National Center for HIV, STD and TB Prevention, Division of HIV/AIDS Prevention, Intervention Research and Support proposes to conduct research to assure that intended audiences (persons living with HIV/AIDS) find the brochures clear, informative and useful. Specifically, the research will examine perceptions of the appearance, quality, value, readability, and clarity of the information provided. Attention will be focused on identifying information, language and/or formatting issues which are confusing or unclear. Further, although the intended audience of the brochure series is all persons living with HIV/AIDS, we propose to use the limited resources available to target those who are lower income. This is warranted given their often more restricted access to reliable information sources, making the brochures a more valuable resource for them. In addition, the correlations between low socio-economic status (SES) and low literacy warrant attention to assuring the readability and comprehension of the materials among this group.

The information generated from this research will enable NCHSTP to tailor materials to the needs, wants and preferences of individuals living with HIV/AIDS. Additionally, the center is committed to developing a standardized process for including such audience testing in subsequent materials development projects. The proposed process will provide the foundation for establishing a standardized process for such assessment. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Individuals infected with HIV/AIDS	550	1	0.5	275
Total				275

Dated: October 17, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-28086 Filed 10-22-97; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The Office of Child Support Enforcement OCSE-156 Child Support Enforcement Program Quarterly Data Report and OCSE-158 Child Support Enforcement Annual Data Summary Report.

OMB No.: 0970-0057.

Description: The information obtained from these forms will be used to report Child Support Enforcement activities to the Congress as required by law, to complete performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluation State Child Support Enforcement programs. These two information collections will be replaced by the OCSE-157 October 1, 1998.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-156	54	4	3.7	799.2
OCSE-158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-28126 Filed 10-22-97; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The OCSE-157 Child Support Enforcement Annual Data Report.

OMB No.: 0970-0057.

Description: The information obtained from this form will be used to report Child Support Enforcement activities to the Congress as required by law, to complete performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support Enforcement programs. As of October 1, 1998 this information collection will replace the OCSE-156 and OCSE-158.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-157	54	1	4.0	216

Estimated Total Annual Burden Hours: 216.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–28127 Filed 10–22–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Proposed Program Priorities—ACF/ACYF/RHYP 98–1]

Runaway and Homeless Youth Program: Fiscal Year (FY) 1998 Proposed Program Priorities

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice of request for public comments on proposed Fiscal Year 1998 Runaway and Homeless Youth (RHY) Program Priorities for the Basic Center Program for Runaway and Homeless Youth; the Street Outreach Program for Runaway, Homeless and Street Youth; and the Transitional Living Program for Older Homeless Youth.

The Runaway and Homeless Youth Act requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the Act. The public is urged to provide comments in response to this notice. Suggestions and recommendations will be taken into consideration in development of final priorities. The actual solicitations for grant applications will be published later during Fiscal Year 1998 in the **Federal Register**. No applications for funding should be submitted at this time.

DATES: Closing date for submission of public comments is December 8, 1997.

ADDRESSES: Comments should be sent to: James A. Harrell, Deputy Commissioner, Administration on Children, Youth and Families, Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Anita Wright, Youth Development Program Specialist, (202) 205–8030.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families announces that public comments are being requested on proposed program priorities for Fiscal Year 1998 for the following programs:

The Runaway and Homeless Youth Basic Center Grant Program (BCP), which provides financial assistance to local agencies to develop and strengthen services to meet the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

The Street Outreach Program for Runaway, Homeless and Street Youth, which provides street-based outreach and education, including treatment, counseling, and information and referral services for runaway, homeless, and street youth who have been subjected to or are at risk of experiencing sexual abuse.

The Transitional Living Program for Older Homeless Youth (TLP), which supports local agencies which provide long term shelter, life-skill training and support services to homeless youth to assist them in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Central to all FYSB programs and activities is a priority that services be delivered through a comprehensive youth development approach. A developmental perspective views adolescence as the passage from the dependence of the child to the independence and self-sufficiency of the adult. The various emotional, intellectual, social and physical changes during this passage are natural, healthy responses to the challenges and opportunities of growing up.

The tasks of youth services providers are seen, thus, not as correcting the problems of troubled youth, but rather as providing for the successive developmental needs of maturing individuals: The psychological need to develop a clear self-identity; the sociological need to be an effective and contributing member of the community; the economic need to prepare for and enter into a career; and the familial needs for sharing, for trusting, for giving and receiving love and commitment. This developmental approach is fundamental to all FYSB programs and activities.

Financial assistance for programs and support efforts discussed below is contingent upon the availability of funds.

a. Basic Center Program Grants

Approximately 65 percent of the Basic Center grants awarded will be non-competing continuation grants and approximately 35 percent will be competitive new awards in Fiscal Year 1998.

Eligible applicants for new awards are current grantees with project periods ending in Fiscal Year 1998 and otherwise eligible applicants who are not current grantees. The applications will be reviewed by State, and awards will be made during the last quarter of Fiscal Year 1998 (July–September 1998).

b. Transitional Living Program Grants

All potential Fiscal Year 1998 TLP funds will be awarded in the form of continuation grants and as new grants to applicants who competed successfully during Fiscal Year 1997.

It is anticipated that all Fiscal Year 1999 funds will be used to award non-competitive continuation grants. No TLP funds are expected to be available in Fiscal Year 1999 to fund new-start applications. Therefore, there will be no solicitation for competitive new-start TLP applications in Fiscal Year 1998.

c. Street Outreach for Runaway, Homeless and Street Youth

Fiscal Year 1998 funds will be used to award new grants to eligible applicants and non-competitive continuation awards to eligible grantees.

d. Support Services for Runaway and Homeless Youth Programs

(1) National Communications System

In Fiscal Year 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. Non-competitive continuation funding will be awarded to the grantee in Fiscal Year 1998. The five-year project period will end in Fiscal Year 1999.

(2) Training and Technical Assistance

Part D, Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations receiving service grants under the Act in order to strengthen programs and enhance the knowledge and skills of youth workers.

The Family and Youth Services Bureau funds ten Cooperative Agreements, one in each Federal Region, to provide T&TA to agencies funded by FYSB. Each Cooperative Agreement is based on the characteristics and different T&TA needs in the respective Region and has a five-year project period that will end in Fiscal Year 1999. Non-competitive continuation funding will be awarded to the ten T&TA grantees in Fiscal Year 1998.

(3) National Clearinghouse on Runaway and Homeless Youth

In Fiscal Year 1997, the Family and Youth Services Bureau awarded a five year contract to support a National Clearinghouse on Youth and Families (NCFY). The purpose of the Clearinghouse is to disseminate information to professionals and agencies involved in youth development efforts and/or the delivery of direct services to runaway, homeless and at-risk youth. The Clearinghouse collects, maintains and disseminates reports and other materials, identifies areas in which new or additional information is needed, and develops documents and materials relevant to FYSB's mission and the needs of the field. Non-competitive continuation funding will be awarded to the Clearinghouse in Fiscal Year 1998.

(4) Runaway and Homeless Youth Management Information System (RHYMIS)

In Fiscal Year 1997, the Family and Youth Services Bureau awarded a three year contract for continued development and implementation of the Runaway and Homeless Youth Management Information System (RHYMIS) for FYSB programs. The data generated by the system are used to produce reports and information regarding FYSB's programs, including information for required reports to Congress. In Fiscal Year 1998 this effort will receive non-competitive continuation funding.

(5) Monitoring Support for FYSB Programs

The Family and Youth Services Bureau uses a comprehensive monitoring instrument and site visit protocols, including a peer-review component for monitoring runaway and homeless youth programs. In Fiscal Year 1997, the Family and Youth Services Bureau awarded a three year contract to provide logistical support for peer review monitoring. In Fiscal Year 1998, this contract will receive non-competitive continuation funding.

6. Conference Logistics and Management Support Contract

In Fiscal Year 1995, the Family and Youth Services Bureau awarded a twelve-month contract, with two option years, for logistics and management support. The purpose of the contract is to promote FYSB's comprehensive youth development message by making the arrangements necessary to assemble FYSB's grantees, youth development experts and other youth service providers at meetings, conferences, workshops and forums. In Fiscal Year 1998, the second year option will be funded to continue this effort.

7. Research Demonstration and Management Initiatives

Section 315 of the Act authorizes the Department to award funds to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities identify emerging issues and develop and test models which address such issues.

During Fiscal Year 1998, the Family and Youth Services Bureau will continue to:

Support a youth development approach to the provision of services, both from theoretical and practical perspectives;

Pursue the development of youth development performance based indicators and outcome measures as a method of evaluating the effectiveness of youth services;

Explore the potential for successful collaborations among federal government agencies, state governments and local community based youth services organizations, including the funding of possible pilot demonstration efforts;

Continue to work in partnership with Regional Offices around the review and assessment of grant applications and the development and implementation of FYSB program efforts, and

Continue to make sure that funding for programs will occur in a timely manner by publishing this Notice, as well as the final priorities in the **Federal Register**, as early in the Fiscal Year as possible.

We welcome specific comments and suggestions on these proposed program priorities.

(*Catalog of Federal Domestic Assistance* Number 93.623, Runaway and Homeless Youth Program; Number 93.657, Transitional Living Program for Homeless Youth; and Number 93.557, Street Outreach for Runaway and Homeless Youth.)

Dated: October 15, 1997.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 97–28025 Filed 10–22–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0399]

Helen A. Ballack Co. et al.; Withdrawal of Approval of 61 New Drug Applications, 8 Abbreviated Antibiotic Applications, and 36 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 25, 1997 (62 FR 50387). The document announced the withdrawal of approval of 61 new drug applications (NDA's), 8 abbreviated antibiotic applications (AADA's), and 36 abbreviated new drug applications (ANDA's). The document inadvertently withdrew approval of NDA 19–339 for Heparin Sodium in 5% Dextrose Injection in CR3 Flexible Container held by Abbott Laboratories, D–389 Bldg. AP30, 200 Abbott Park Rd., Abbott Park, IL 60064–3537. This document confirms that approval of NDA 19–339 is still in effect, and that the withdrawal of approval of the NDA was in error.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 97–25369, appearing at page 50387 in the **Federal Register** of Thursday, September 25, 1997, the following correction is made: On page 50388, in the table, the entry for NDA 19–339 is removed.

Dated: October 9, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–28012 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control And Prevention) of the Statement of Organization, Functions, and

Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 46751, dated September 4, 1997) is amended to reflect a change in the official administrative code for the Office of Communication, Centers for Disease Control And Prevention, as published at 62 FR 29142, dated May 29, 1997.

Section C–B, Organization and Functions, is hereby amended as follows:

Following the title for the *Office of Communication*, change the official standard administrative code designation from (CA3) to (CAA).

Following the title for the *Office of the Director, Office of Communication*, change the official standard administrative code designation from (CA31) to (CAA1).

Following the title for the *Division of Health Communication, Office of Communication*, change the official standard administrative code designation from (CA32) to (CAA2).

Following the title for the *Division of Media Relations, Office of Communication*, change the official standard administrative code designation from (CA33) to (CAA3).

Dated: October 7, 1997.

David Satcher,

Director.

[FR Doc. 97–28083 Filed 10–22–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in November, 1997.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA fiscal year 1998 budget and reauthorization; women in senior level positions at SAMHSA; gender issues in SAMHSA's managed care activities; FY 98 Knowledge Development and Application Grants; and future women's policy and program directions at SAMHSA. Public comments are welcome. Please communicate with the individual listed as Contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela M. Perry, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): November 17–18, 1997.

Place: Versailles I Room, Holiday Inn Hotel—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: November 17: 9:00 a.m. to 5:00 p.m. November 18: 8:30 a.m. to 12:00 p.m.

Contact: Pamela M. Perry, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated: October 17, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–28013 Filed 10-22-97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Extension of Listing Priority Guidance for Fiscal Year 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces an extension of the fiscal year (FY) 1997 guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The FY 1997 guidance will remain in effect until the FY 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published in the **Federal Register**.

ADDRESSES: Questions concerning this notice should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mail Stop 452 ARLSQ, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species (see **ADDRESSES** section) (telephone 703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098), that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Act. The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different listing actions such as preliminary determinations, proposed listings, and final listings.

The enactment of Pub. L. 104–6 in April, 1995, rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of FY 1995. Pub. L. 104–6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down. The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 species. The extremely limited funding available to the Service for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service faced the considerable task of allocating the available resources to the significant backlog of listing activities. The Service published Final Listing Priority Guidance for FY 1997 on December 5, 1996 (61 FR 64475). The Listing Priority Guidance system employed 4 tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the processing of emergency listings for species facing a significant risk to their well-being, remains the Service's highest priority. The processing of final decisions on pending proposed listings is assigned to Tier 2. Tier 3 includes resolving the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations, and processing of reclassifications, which provide little or no additional conservation benefit to listed species, are assigned lowest priority (Tier 4).

While operating the listing program under the Final FY 1997 Listing Priority Guidance, the Service focused its resources on issuing final determinations (Tier 2 listing activities). After April 1, 1997, the Service began implementing a more balanced listing program and began processing more Tier 3 listing actions. The continuing (though reduced) backlog and funding limitations underscore the need to maintain program-wide biologically sound priorities to guide the allocation of limited resources.

Extension of Listing Priority Guidance for Fiscal Year 1997

The Department of the Interior has not yet received a FY 1998 appropriation. Under the current continuing resolution, the Service continues to operate at FY 1997 funding levels. Until the FY 1998 appropriation is enacted, the funding level for the endangered species listing activity remains unknown, and issuance of FY 1998 listing priority guidance remains premature. Therefore, until the Department of the Interior's 1998 appropriation becomes law and final Listing Priority Guidance for FY 1998 is published in the **Federal Register**, the Service will continue to follow the FY 1997 guidance, issued on December 5, 1996. The Service will announce new proposed guidance as promptly as possible after the FY 1998 appropriations bill for the Department of the Interior is approved and becomes law.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: October 17, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–28171 Filed 10–20–97; 3:26 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement in Anticipation of Receiving a Permit Application to Incidentally Take Threatened and Endangered Species in Association With the Kern County Valley Floor Habitat Conservation Plan for Kern County, California

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to hold a public scoping meeting.

SUMMARY: The Fish and Wildlife Service has under consideration for approval the draft Kern County Valley Floor Habitat Conservation Plan (Plan) submitted by Kern County, California. This 30-year Plan, developed by Kern County and six other participating agencies, is expected to accompany a future application to the Service for a permit under Section 10(a) of the Endangered Species Act that would authorize incidental take of listed species. In addition, it is expected the applicants will request implementing agreements. It is anticipated that the implementing agreements will include provisions for species that may be listed in the future. In response to the proposed Plan, the Service intends to prepare a joint Environmental Impact Statement/Environmental Impact Report pursuant to the National Environmental Policy Act and the California Environmental Quality Act. The Plan covers about 3,110 square miles of land with major uses including natural open space, oil and gas production, farming, ranching, agricultural water conveyance and storage, urban development and other activities. The Plan addresses various sensitive plant and animal species and their habitats. The Plan creates a framework for the issuance of permits and other authorizations under the Federal and California Endangered Species Acts.

This notice describes the proposed action and possible alternatives, notifies the public of a scoping meeting, invites public participation in the scoping process for preparing the joint Environmental Impact Statement/Report, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action and the joint Environmental Impact Statement/Report may be directed.

DATES: A public scoping meeting will be held at 1:00 p.m. on November 4, 1997, at the Kern County Public Services Building, 2700 M Street, First Floor Conference Room, Bakersfield, California. Oral comments will be received during the scoping meeting. Written comments are encouraged and should be received on or before November 21, 1997, at the address below.

ADDRESSES: Information, comments, or questions related to preparation of the joint Environmental Impact Statement/Report and the National Environmental Policy Act process should be submitted to Mr. Steve Strait, Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, California 93301, telephone (805) 862–8600. Written comments also may be sent by facsimile to telephone (805) 862–8601.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cross, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821, telephone (916) 979–2725. Documents also will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above noted Kern County Planning Department office.

SUPPLEMENTARY INFORMATION:

Background

The Plan area, generally described as the San Joaquin Valley floor, is bounded by Kern County and San Luis Obispo County boundaries to the west, Kings and Tulare counties to the north, and the 2,000-foot elevation contour to the east and south. The Plan generally does not address Metropolitan Bakersfield with the exception of oil and agricultural activities, or several smaller areas that are covered under separate conservation planning efforts.

The Plan addresses 32 species, including 18 animals and 14 plants identified as species of concern. Of the wildlife species, five receive particular attention due to their distribution within the Plan area. They are: the blunt-nosed leopard lizard (*Gambelia silas*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat

(*Dipodomys ingens*), and San Joaquin kit fox (*Vulpes macrotis mutica*); all of these, with the exception of the squirrel, are listed as endangered under the Federal Endangered Species Act. The plant species of concern are generally concentrated in a limited number of locations such as existing refuges and reserves, the southeastern portion near Wheeler Ridge, and several locations in the lower foothills in the eastern portion of the Plan area. The Plan provides long-term protection of identified species while allowing for the economic growth of the county. The Plan has seven major components: (1) Habitat zones; (2) compensation framework; (3) direct fee payment option; (4) take-avoidance measures; (5) safety nets; (6) industry/agency conservation strategies; and (7) direct negotiation option.

The Plan area is divided into three "Habitat Zones" with lands categorized based on habitat value with a corresponding conservation priority. The Red Zones are areas of highest quality habitat for species of concern, especially for Federal and State listed threatened and endangered wildlife species. A number of rare plant occurrences also are found in these zones. The Green Zones provide the second highest habitat quality and generally include areas around the western, southern, and eastern edges of the Plan. White Zones comprise about 55 percent of the total Plan area, including 121,219 acres of natural, less valuable habitat, and occur throughout the central and eastern portions of the Plan area. The habitat zones serve as the basis for the Compensation Framework.

The Compensation Framework encourages conservation of high-quality habitat and creates a system of conservation credits based on habitat quality. This component of the Plan is a pay-as-you-go mitigation approach. Compensation will be provided in specified ratios to address the actual take of species habitat. However, up-front compensation is specified for the oil and agricultural conservation strategies.

Direct Fee Payment is an option provided to project proponents involving payment of fee based on conservation credits.

Take-avoidance Measures are included in the Plan to reduce the likelihood and magnitude of direct loss of the five wildlife species noted above.

Safety Nets are part of the Rare Plant Conservation Strategy designed to protect specific plant species with localized and restricted distributions.

Industry/Agency Conservation Strategies address the potential for incidental take of species of concern that may occur with certain activities associated with major land uses in the Plan area (e.g., oil and gas, agriculture, water conveyance systems, ranching, and urban development).

The Direct Negotiation Option allows a project proponent to address the issue of Federal and California Endangered Species Act compliance with the Service and California Department of Fish and Game, respectively, independently of other Plan provisions.

The joint Environmental Impact Statement/Report will consider the proposed action (issuance of a Section 10(a) Endangered Species Act permit for the Plan) and a reasonable range of alternatives derived from conservation and compensation approaches considered during formulation of the Plan:

Alternative 1—No Action. This alternative assumes compliance with the Federal and California Endangered Species Acts on a project-by-project basis.

Alternative 2—Initial Compensation. This alternative would establish compensation and take-avoidance formulas applicable to all permitted activities allowed in each of the three habitat zones. Development projects in each zone would be required to provide compensation, and in some cases identify and secure options to purchase suitable habitat land for which conservation credits would be received. The supplementary credits could be banked and sold to other developers needing habitat conservation credits.

Alternative 3—Protect and Release. This alternative incorporates a release ratio limit of one acre of development for every nine acres of permanently protected land in the Red Zones only. It also requires a compensation ratio unique to each of the three zones for habitat disturbance.

Alternative 4—Habitat Transaction Method. This alternative would assign a relative conservation credit value per acre within each habitat zone. A compensation ratio of not more than 3:1, based on conservation credits, would be used to determine compensatory requirements. Credits would be generated by the permanent preservation of habitat, restoration, granting of conservation easements, and other measures. The value of the credits and the amount of required compensation would be based on the conservation value of the land preserved and developed, respectively.

Environmental review of the Plan will be conducted in accordance with the requirements of National Environmental Policy Act, as amended (42 U.S.C. 4321 *et. seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint Environmental Impact Statement/Report.

Comments and participation in the scoping process are solicited. The primary purpose of the scoping process is to identify rather than debate any significant issues related to the proposed action. Interested persons are encouraged to attend the public scoping meeting to identify and discuss issues and alternatives that should be addressed in the joint Environmental Impact Statement/Report. The proposed agenda for this facilitated meeting includes a summary of the proposed action; status of the threats to subject species; and tentative issues, concerns, opportunities, and alternatives. Additional public meetings will be conducted on later dates to provide more opportunities to comment on the draft Environmental Impact Statement/Report.

Dated: October 15, 1997.

Don Weathers,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–28085 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4641–MIB, 1849 C Street, NW, Washington, DC 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published in November 13, 1996 (61 FR 58211), to include name changes or corrections. There have been no new tribal entities added to the list. The listed entities are acknowledged to have the immunities and privileges available to federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have, however, continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Indian Tribal Entities Within The Contiguous 48 States Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Bear River Band of the Rohnerville Rancheria of California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Indians, Oklahoma
Delaware Tribe of Western Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe, Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
La Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Nation of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine

Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians, Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe)
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington

Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government) Native Village of Atka
Asa'carsarmiut Tribe (formerly Native Village of Mountain Village)
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow Inupiat Traditional Government (formerly Native Village of Barrow)
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Kluckwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuatbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clark's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
New Koliganek Village Council (formerly Koliganek Village)
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council (formerly Mentasta Lake Village)
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village

Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
St. George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
St .Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Native Village of Toksook Bay
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalangin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Dated: October 9, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–28018 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–069–1640–00]

Emergency Closure of Selected Public Lands, San Bernardino County, CA

AGENCY: Bureau of Land Management, California Desert District, Needles Field Office; Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Needles Field office, is serving notice of an Emergency Closure of Public Roads in the area of the Ivanpah Dry Lake, San Bernardino County, California.

FOR FURTHER INFORMATION CONTACT: William Wiley, Needles Field office (BLM), 101 West Spikes Road, Needles, CA 92363, (760)326–7000 or John Key, California Desert District Office (BLM), 6221 Box Springs Blvd, Riverside, CA 92507, (909)697–4335.

SUPPLEMENTARY INFORMATION: Under the provisions of 43 CFR 8364.1; 43 CFR 8341.2(a) and 43 CFR 9268.3(d), notice is given of an Emergency Closure of Public Lands at Ivanpah Dry Lake, located in San Bernardino County, California. The locations are as follows: Township 16 north, Range 15 east, Sections 7, 18, 20, 29, and 32; Township 16 North, Range 14 East, Sections 1 and 12. The closure specifically pertains to the emergency closure of a non-county road running north from the junction of Ivanpah Road and Nipton Road to the junction of Yates Well Road and Highway I–15 to all unauthorized vehicles. The closure is in effect from midnight, October 14, 1997 to midnight, December 1, 1997.

This temporary closure is for the protection of the Desert Tortoise, which is listed as "threatened" by the United States Fish and Wildlife Service. Only those individuals conducting official or authorized activities on behalf of the federal government, the State of California, the County of San Bernardino or Molycorp, Inc. are allowed, subject to special use conditions and stipulations, to travel in motorized vehicles upon this road.

Molly S. Brady,

Field Manager, Needles Field Office.

[FR Doc. 97–28128 Filed 10–22–97; 8:45 am]

BILLING CODE 4130–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–024–5440–A015; AZA 25918; AZA 17969; AZA 18069.]

Public Land Orders: Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On August 29, 1991, the Federal Aviation Administration (FAA) determined the following-described public land is reasonably necessary for airport purposes and requested the Bureau of Land Management (BLM) convey the land to the city of Phoenix (Phoenix) for addition to Phoenix Sky Harbor International Airport:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.,
Sec. 8, S½ SW¼, SW¼SE¼.
Containing 120 acres.

The land is located immediately east of the clear zone of the north runway in a high-level noise area. Phoenix intends

to control the land to maintain a clear runway approach and to provide proper land use compatible with the clear zone and high-level noise area. No development of the land is planned.

The above-described land was classified suitable for state selection, exchange, and recreation and public purposes (R&PP) under Public Land Order 6468, dated September 26, 1983. Notices of realty action dated July 30, 1984 (AZA 17969), October 25, 1984 (AZA 17969), and June 26, 1989 (AZA 18069), also classified the land suitable for R&PP purposes. These classifications are no longer appropriate and are hereby terminated.

Secretarial Order 118, which affects 15 acres in the S½SW¼ of sec. 8 will be revoked before the transfer takes place.

BLM has notified the FAA that conveyance of the land to Phoenix is not inconsistent with the needs of the Department of the Interior and that BLM proposes to convey title to Phoenix under section 516 of the Airport and Airway Improvement Act of September 3, 1982, 49 U.S.C. 2215 (the Airport and Airway Improvement Act).

Conveyance of the land will be subject to the following terms and conditions:

1. A right-of-way for ditches or canals will be reserved to the United States;
2. All minerals shall be reserved to the United States;
3. Right-of-way AZA 29509 will be reserved to the United States for low-level windshear alert system and access road;
4. Right-of-way AZA 8636 issued to city of Tempe for industrial sewer purposes;
5. Right-of-way AZA 8887 issued to the Flood Control District of Maricopa County for flood control structure purposes;
6. Right-of-way AZA 9271 issued to U.S. West Communications for telephone line purposes;
7. Right-of-way AZA 23567 issued to Arizona Department of Transportation for highway and drainage easement purposes;
8. Right-of-way AZAR 33748 issued to Phoenix for sewer pipeline purposes;
9. Right-of-way AZAR 35921 issued to Southwest Gas Corp. for gas pipeline purposes.

A complete list of the terms and covenants requested by the FAA Administrator and those required for the protection of the Department of the Interior is available for review by interested persons at the Arizona State Office at the address listed below.

In accordance with the regulations at 43 CFR 2091.3–1, the filing of a request for airport conveyance under the Airport and Airway Improvement Act segregates that land from the date of filing to the extent that it will not be subject to appropriation under the public land laws, including the mining laws.

DATES: Comments regarding the proposed conveyance may be submitted on or before December 8, 1997.

ADDRESSES: Comments may be submitted to the State Director, Arizona State Office, Bureau of Land Management, 222 N. Central Ave., Phoenix, AZ 85004–2203.

FOR FURTHER INFORMATION CONTACT: Carol Kershaw, (601) 417–9235.

Dated: October 10, 1997.

Dorie D. Morrison,

Acting Supervisor, Lands and Minerals Operations.

[FR Doc. 97–28069 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01; NMNM96510]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to the City of Las Cruces under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). The City of Las Cruces proposes to use the land for a city park.

T. 22 S., R. 2 E., NMPM,
Sec. 28, a part of lot 19.
Containing 11.70 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must by submitted on or before December 29, 1997.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick at the address above or at (505) 525–4454.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing right documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United states, together with the right to prospect for, mine and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before December 29, 1997, interested persons may submit comments regarding the proposed lease/conveyance or classification to the land the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a city park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a city park.

Dated: October 17, 1997.

Marvin M. James,

Acting District Manager.

[FR Doc. 97–28084 Filed 10–22–97; 8:45 am]

BILLING CODE 4310–VC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Minerals Management Advisory Board; Outer Continental Shelf (OCS); Scientific Committee (SC); Announcement of Plenary Session

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in plenary session on Wednesday, November 5, and on Thursday, November 6, and will meet in subcommittee meetings also on Thursday, November 6, 1997, at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia 20170, telephone (703) 478–2900.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS' OCS Environmental Studies Program (ESP) as related to information needed for informed OCS decisionmaking.

Below is a schedule of meetings that will occur.

The Committee will meet in plenary session on Wednesday, November 5, from 8:30 a.m. to 5:15 p.m. Discussion will focus on:

- Deepwater Issues.
- Year of the Ocean Update.
- Overview of the MMS Strategic Studies Plan.

The SC will meet in subcommittees on Thursday, November 6, from 8:30 a.m. to 5 p.m. to review regional and headquarter's strategic plans. Another plenary session is scheduled for Thursday, November 6, from 1:30 p.m. to 5 p.m., and discussion will focus on Committee Business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below. Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1717, and by electronic mail at Ken/Turgeon@SMTP.MMS.GOV.

Dated: October 20, 1997.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 97–28132 Filed 10–22–97; 8:45 am]

BILLING CODE 4043–MR–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights, Certification of the State of Florida Accessibility Code Under the Americans With Disabilities Act

AGENCY: Deparment of Justice.

ACTION: Notice of preliminary determination of equivalency and certification hearings.

SUMMARY: The Department of Justice (Department) has determined that the Florida Americans with Disabilities Accessibility Implementation Act, Florida Statutes §§ 553.501–553.514, as implemented by the Florida Accessibility Code for Building Construction (together, the "Florida law"), meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Florida law meets or exceeds the requirements of the ADA. The Department will hold informal hearings on the proposed certification in Washington, DC and Orlando, Florida.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 22, 1997. The hearing in Washington, DC is scheduled for Monday, December 22, 1997, at 2:00 p.m., Eastern Time. The hearing in Orlando, Florida is scheduled for Friday, December 19, 1997, at 2:00 p.m., Eastern Time.

ADDRESSES: Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the Florida law should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738

The hearings will be held at:
Washington, DC: Disability Rights Section, 1425 New York Avenue, NW., Suite 4039, Washington, DC
Orlando, Florida: City Commission Chambers, Orlando City Hall, 400 South Orange Avenue, Orlando, Florida.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD). Copies of the Florida law and supporting materials may be inspected by appointment at 1425 New York Avenue, NW., Suite 4039, Washington, DC by calling Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. § 12188(b)(1)(A)(ii); 28 CFR § 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated February 2, 1994, the Florida Department of Community Affairs requested that the Department of Justice (Department) certify that the Florida Americans with Disabilities Accessibility Implementation Act, Florida Statutes §§ 553.501–553.514, as implemented by the Florida Accessibility Code for Building Construction (together, the "Florida law"), meets or exceed the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Florida law and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated September 30, 1997, the Department notified the Florida Department of Community Affairs of its preliminary determination of equivalency.

Effect of Certification

The certification determination will be limited to the version of the Florida law that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does

certification apply to accessibility requirements that are addressed by the Florida law that are not addressed by the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the Florida law. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Florida law for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Procedure

The Department will hold informal hearings in Washington, DC and Orlando, Florida to provide an opportunity for interested persons, including individuals with disabilities, to express their views respect to the preliminary determination of equivalency of the Florida law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The hearing sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: October 16, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–28211 Filed 10–21–97; 9:30 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights; Certification of the State of Florida Accessibility Code Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of hearings.

SUMMARY: The Department of Justice will hold informal hearings on the proposed certification that the Florida Americans with Disabilities Accessibility Implementation Act, Florida Statutes §§ 553.501–553.514, as implemented by the Florida Accessibility Code of Building Construction, meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, D.C. and Orlando, Florida.

DATES: The hearing in Washington, D.C. is scheduled for Monday, December 22, 1997, at 2:00 p.m., Eastern Time. The hearing in Orlando, Florida is scheduled for Friday, December 19, 1997, at 2:00 p.m., Eastern Time.

ADDRESSES: The hearings will be held at:

Washington, D.C.: Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

Orlando, Florida: City Commission Chambers, Orlando City Hall, 400 South Orange Avenue, Orlando, Florida.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Department of Justice (Department) is publishing a notice in the **Federal Register** announcing that it had preliminarily determined that the Florida Americans with Disabilities Accessibility Implementation Act, Florida Statutes §§ 553.301–553.514, as implemented by the Florida Accessibility Code of Building Construction (together, the Florida law), meets or exceeds the new construction and alterations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Florida law and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Orlando, Florida.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Florida law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: October 16, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–28212 Filed 10–21–97; 9:30 am]

BILLING CODE 4410–13–M

NATIONAL CREDIT UNION ADMINISTRATION

Information Collection; Comment Request for Re-Clearance

DATES: October 23, 1997.

The National Credit Union Administration (NCUA) intends to submit the following public information collection requests to the Office of Management and Budget (OMB) for review and re-clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. Public comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Office, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection requests should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

National Credit Union Administration

OMB Number: 3133–0024.
Form Number: None.
Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.
Title: Mergers of Federally Insured Credit Unions.
Description: Part 708b of NCUA's regulations sets forth the procedures for credit union mergers.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 200.
Estimated Burden Hours Per Response: 15.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 3,000.
Estimated Total Annual Cost: $44,640.

OMB Number: 3133–0035.
Form Number: None.
Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.
Title: Trustees and Custodians of Pension Plans.
Description: A federal credit union acting as trustee for a retirement plan must maintain individual records for each participant and provide each participant with notice of the insurance status of their account.
Respondents: Federal Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 3,877.
Estimated Burden Hours Per Response: 1.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 193,850.
Estimated Total Annual Cost: $2,884,488.
OMB Number: 3133–0101.
Form Number: None.
Type of Review: Reinstatement, with change, of a previous collection for which approval has expired.
Title: Written Loan Policies—701.21(h)(2)(i).
Description: The general purpose of the requirement is to ensure that loans are made, documented and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund. Respondents are federally insured credit unions making business loans as defined in the regulation.
Respondents: Federally insured Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 50.
Estimated Burden Hours Per Response: 2.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost: Minimal.

By the National Credit Union Administration Board on October 16, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–28079 Filed 10–22–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change In Subject of Meeting

The National Credit Union Administration Board determined that its business requires the deletion of one item from the previously announced closed meeting (**Federal Register**, 62 FR 54481, October 20, 1997) scheduled for Wednesday, October 22, 1997.

2. One (1) Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5) and (8).

The Board voted unanimously that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously announced items were:

1. Two (2) Administrative Actions under Sections 125, 205, and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).

3. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6312.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–28218 Filed 10–21–97; 9:57 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Submission for OMB Review; Comment Request

October 10, 1997.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library services (IMLS), has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

DATES: Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, on or before November 24, 1997.

ADDRESSES: A copy of the final National Leadership Grant program guidelines is available from: Discretionary Programs, Office of Library Services, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, room 802, Washington, DC 20506, Tel: 202/606–5227, fax: 202/606–1077, or from: e-mail: imlsinfo@imls.fed.us web:www.imls.fed.us/.

FOR FURTHER INFORMATION CONTACT: Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner, (202) 606–4648. Individuals who use a telecommunications device for the deaf (TTY/TDD) MAY CALL (202) 606–8636.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Institute of Museum and Library Services solicits comments concerning a new program, National Leadership Grants, authorized by the Museum and Library Services Act of 1996, Title VII of the Departments Labor, Health and Human Services, Education and Related Agencies Appropriations Act, as enacted by Sec. 101(e) of Divisions A. Pub. L. 104–208, enacted September 30, 1996. IMLS issued, on June 17, 1997, a request for comments on draft guidelines.

1. Background

The Museum and Library Services Act of 1996 describes National Leadership Grants or Contracts in Sec. 262. The statute directs the Director to establish and carry out a new program awarding national leadership grants or contracts to enhance the quality of library services nationwide and to provide coordination between libraries and museums.

Such grants or contracts shall be used for activities that may include—

(1) Education and training of persons in library and information science, particularly in areas of new technology and other critical needs, including graduate fellowships, traineeships, institutes, or other programs;

(2) Research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and

efficient use of new technologies, and dissemination of information derived from such projects;

(3) Preservation or digitization of library materials and resources, giving priority to projects emphasizing coordination, avoidance of duplication, and access by researchers beyond the institution or library entity undertaking the project; and

(4) Model programs demonstrating cooperative efforts between libraries and museums.

The statute further authorizes the Director to carry out these activities by awarding grants to, or entering into contract, on a competitive basis with, libraries, agencies, institutions of higher education, or museums, where appropriate.

The Institute began the process of developing these guidelines in March 1997 by convening a group of renowned museum and library professionals, together with several National Commission for Libraries and Information Science Commissioners and Members of the National Museum Services Board, for two days of discussion. On the first day they heard from panels representing museums, libraries, other funders and Federal policy makers. On the second day they discussed what they had heard and what issues they see as most important for the Institute to address in the coming years.

Drawing from these discussions, agency staff drafted guidelines for these projects which were reviewed at the first joint meeting of the National Museum Services Board and the National Commission for Libraries and Information Science on May 8, 1997. The Institute received policy advice from these advisory bodies and used this to further revise the draft guidelines.

Comments submitted in response to this notice will be used by the agency in further developing its National Leadership Grants guidelines and in the request for the Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

2. Response to Comments

A. General

IMLS received a number of comments in response to the June 17, 1997, request for comment. IMLS appreciates the interest of the museum and library communities and their time and effort in providing their views. Commenters comprised individuals expressing their own opinions and officers and staff of professional organizations representing their members. Taken as a whole, IMLS believes the comments received are reasonably representative of the opinions of the library and museum communities which IMLS was created to serve. All of the comments have been carefully studied by IMLS, and they will inform the development of final program guidelines.

In general, commenters expressed broad support for the purposes of the National Leadership Grant program. Specific suggestions for improvement or for clarification fall within these categories:

—Definition of eligible applicants
—Eligibility for specific type projects
—Distribution of funding within project types
—Qualifications of reviewers
—Technical clarification of procedural issues of program management

B. Definition of Eligible Applicants

Commenters asked for clarification on or posited a case for certain types of libraries where either they were unclear as to their eligibility or believed they were excluded. These types of libraries were special libraries, archives, private libraries, library consortia, libraries within larger organizations, and private libraries. The IMLS position is that all of these libraries and library consortia, as well as those specifically named in section 213(2), are capable of carrying out projects such as those identified in section 262(a), and therefore, are eligible for National Leadership Grant support. Notwithstanding, only private libraries having not-for-profit status from the Internal Revenue Service may receive support; private for-profit libraries may not receive support.

Some commenters stated that graduate schools offering degrees in library and information sciences should be eligible. IMLS concurs that these graduate schools are an appropriate provider of education and training projects. They are eligible as units within institutions of higher education.

Some commenters questioned whether museum agencies could apply for and receive support within the program as an individual applicant. The IMLS intention is to encourage museums to form cooperative model projects with libraries when requesting support under the National Leadership Grant program. A museum as an individual entity, as part of a museum consortium or as an agency for museum services, therefore, may only apply as part of a partnership with a library. Any other applicant may apply individually or in a partnership.

C. Eligibility for Specific Type Projects

Museums may apply for support only if the project includes a library partner. A partnership that includes at least one museum and one library may propose, apply for and receive support for any type of activity that would meet the objectives of the National Leadership Grant program. Other eligible applicants may apply for any type activity individually for any type of activity that would meet the objectives of the National Leadership Grant program. Collaborative projects between libraries and museums must include at least one library and one museum and may include other types of partners.

D. Distribution of Funding Within Project Types

Several commenters expressed the opinion that as there were four clear project types, funding from the Library Services and Technology Act would be fairly distributed if no more than one-fourth went to model collaborative projects for libraries and museums. Pending availability of appropriated funds for National Leadership Grants under LSTA, IMLS will award one quarter of funds for collaborative projects between libraries and museums.

E. Qualifications of Reviewers

Some commenters express views that only library reviewers were appropriate for some types of project, while both library and museum professionals were appropriate for collaborative library museum projects. IMLS concurs and intends that appropriate professionals from the field will be included as reviewers depending on the nature of the project and partnership. Additional technical expertise may also be part of the review and decision-making process.

F. Technical Clarification of Procedural Issues of Program Management

A number of commenters identified unclear wording in the guidelines and provided suggestions for editing the guidelines that will enable IMLS to clarify the instructions. No single technical issue elicited significant numbers of comments, however, taken as a whole they will be useful to improve the quality of the guidelines. IMLS appreciates the level of attention to detail these commenters provided.

Agency: Institute of Museum and Library Services.
Title: National Leadership Grants.
OMB Number: N/A.
Agency Number: 3136.
Frequency: One time.

Affected Public: Not-for-profit institutions.
Estimated Time Per Respondent: 40 hours.
Total Burden Hours: 1200.
Total Annualized capital/startup costs: 0.
Total annual costs (operation/maintaining systems or purchasing services): 0.
Description: National Leadership Grant are being developed to carry out a new program awarding grants or contracts to enhance the quality of library services nationwide and to provide coordination between libraries and museums.

Diane B. Frankel,
Director.

[FR Doc. 97–28070 Filed 10–22–97; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for Mayors' Institute on City Design

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to manage, through a full time director, a partnership of national organizations, government agencies, and universities to support the continuing activities of the "Mayors' Institute on City Design." Eligibility to apply is limited to 501(c)(3) organizations with a national constituency, a significant physical presence in the Washington, DC metropolitan area, and a mission that includes education and advocacy regarding policies and practices affecting the design of American cities. The Mayor's Institute is a series of forums dedicated to the improvement of the design of American cities. The Institute's activities include two semi-annual conferences (institutes), alumni programs, coordination of the activities of four annual regional institutes, and maintenance of records and archives. The initial period of the Cooperative Agreement will be one year with potential renewal. Funding is limited to $400,000 for the first year. Those interested in receiving the Solicitation package should reference Program Solicitation PS 98–01 in their written request. Requests must be accompanied by two (2) self-addressed labels. verbal requests for the Solicitations will not be honored.

DATES: Program Solicitations PS 98–01 is scheduled for release approximately November 7, 1997 with proposals due December 8, 1997.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Grants & Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 [202/682–5482].

William I. Hummel,
Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 97–28071 Filed 10–22–97; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 132nd Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 7, 1997 from 9:00 a.m. to 4:00 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The meeting will be open to the public on a space available basis. Topics for discussion will include: A report on American Canvas, Congressional update, budget update, application review, Guidelines (FY 99 Grants to Organizations and FY 99 Literature Fellowships), a briefing on the White House Millennium Initiative, a briefing on the FY 99 budget request, an update on the Endowment's FY 1997–2002 Strategic Plan, and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss nonpublic commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested person may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: October 17, 1997.

Kathy Plowitz-Worden,
Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 97–28075 Filed 10–22–97; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Multidisciplinary Section (Planning & Stabilization category) to the National Council on the Arts will be held on November 13–14, 1997. The Panel will meet from 8:30 a.m. to 5:45 p.m. on November 13 and from 8:30 a.m. to 5:00 p.m. on November 14 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on November 14, will be open to the public for a policy discussion of guidelines, planning, field needs and trends and Leadership Initiatives.

The remaining portions of this meeting, from 8:30 a.m. to 5:45 p.m. on November 13 and from 8:30 a.m. to 1:30 p.m. and from 2:30 p.m. to 5:00 p.m. on November 14, are the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the

Panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–28076 Filed 10–22–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section B (Creation & Presentation category) to the National Council on the Arts will be held on November 17–21, 1997. The panel will meet from 9:30 a.m. to 6:00 p.m. on November 17–19; from 10:00 a.m. to 6:00 p.m. on November 20; and from 9:30 a.m. to 5:30 p.m. on November 21, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on Thursday, November 20, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on November 17–19, form 12:00 p.m. to 6:00 p.m. on November 20, and from 9:30 a.m. to 5:30 p.m. on November 21, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–28077 Filed 10–22–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts Section B (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on November 12–14, 1997. The panel will meet from 9 a.m. to 7 p.m. on November 12, from 9 a.m. to 5:30 p.m. on November 13, and from 9 a.m. to 3 p.m. on November 14 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 4 p.m. to 5:30 p.m. on Thursday, November 13, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9 a.m. to 7 p.m. on November 12, from 9 a.m. to 4 p.m. on November 13, and from 9 a.m. to 3 p.m. on November 14, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: October 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–28078 Filed 10–22–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: November 13, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b)(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28121 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: November 12–14, 1997; 8:00am—6:00pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 380 and 530 Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4210 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28114 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (#1215).

Date and Time: November 10–12, 1997, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Lee Makowski and Arthur Kowalsky, Program Directors, Biological Instrumentation and Instrument Development, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrument Development for Biological Research (IDBR) proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28117 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: November 11 and November 12, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 580, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28119 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: November 14–15, 1997, 9 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Rooms 310–380, Arlington, VA 22230.

Contact: Dr. Daniel H. Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

Name: Advisory Panel for Decision and Management Sciences (#1759).

Date and Time: December 6–7, 1997, 9 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Rooms 970, Arlington, VA 22230.

Contact: Dr. Jonathan Leland, Program Director for DRMS, Division of Social, Behavioral and Economic Research, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closings: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information individuals associated with the proposals. These matters are exempt under 5 U.S.C.

552b(c) of the Government in the Sunshine act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28120 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research #1203.

Date & Time: November 12, 1997, 8:00 a.m.–5:00 p.m.

Place: Rooms 770, 920, 970, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. H. Hollis Wickman, Program Director, Division of Materials Research, Room, 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 703–306–1816.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Condensed Matter Physics CAREER proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28118 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: November 13–14, 1997; 9:00 a.m. to 5:00 p.m.

Place: Room 680, 4201 Wilson Boulevard., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Platt, Program Director, Sensory Systems, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: November 14; 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. Closed Session: November 13; 9:00 a.m. to 5:00 p.m.; November 14, 9:00 a.m. to 11:00 a.m., and 12:00 p.m. to 5:00 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28115 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and Time: November 24–25, 1997; 8:30 a.m. to 5:00 p.m..

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Micheal Ledbetter, Program Director, Arctic System Science, Office of Polar Programs, Room 740, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic System Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28116 Filed 10–22–97; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Self-Employment and Substantial Service Questionnaire; OMB 3220–0138

Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. A disability applicant must give up all railroad work, but does not have to relinquish rights to return to railroad work until he or she attains age 65, or, if earlier, a spouse annuity or supplemental annuity becomes payable. Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a "Last Pre-Retirement Nonrailroad Employer" (LPE). LPE is the last person, company or institution with whom an employee or spouse applicant's last railroad employment and before their annuity beginning date. However, section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from a "LPE" employer.

The RRB utilizes Form AA–4, *Self-Employment* and Substantial Service Questionnaire to *obtain information needed to determine if the applicant's work is LPE, railroad service or self-employment.* If the work is self-employment, the questionnaire identifies any months in which the applicant did not perform substantial service. One response is requested of each respondent. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits.

The RRB proposes to revise Form AA–4 to add language required by the Paperwork Reduction Act of 1995. Minor nonburden impacting changes are also proposed. The completion time for the AA–4 is estimated at between 40 and 70 minutes. The RRB estimates that approximately 1,500 AA–4's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–28066 Filed 10–22–97; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Lag Service Reports.

(2) *Form(s) submitted:* AA–12, G–88A.

(3) *OMB Number:* 3220–0005.

(4) *Expiration date of current OMB clearance:* 12/31/97.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 1,200.

(8) *Total annual responses:* 1,200.

(9) *Total annual reporting hours:* 120.

(10) *Collection description:* The report obtains the current service and compensation of an employee not yet reported to the Railroad Retirement Board. This lag information is used to determine eligibility for and amount of annuity applied for and to pay benefits due on a deceased employee's earnings.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–28064 Filed 10–22–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 30d–1, SEC File No. 270–21; OMB Control No. 3235–0025

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 30d–1, under the Investment Company Act of 1940, "Reports to Stockholders of Management Companies" prescribes the minimum content of reports to shareholders that every registered investment company must send at least semi-annually, containing the information specified by the statute or its equivalent as the Commission may determine to be in the interest of the investors. The reports are required in order to inform current shareholders of the status of the company. The rule requires approximately 602 hours annually for each of the 3,850 respondents equalling 2,317,700 total annual burden hours.

Rule 30d–1 does not involve any recordkeeping requirements. Providing the information required by rule 30d–1 is mandatory and the information provided will not be kept confidential.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28031 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22858; 812–10700]

Goldman Sachs & Co., et al.; Notice of Application

Ocotber 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under (a) sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 17(a) of the Act; (b) section 6(c) of the Act requesting an exemption from section 17(e) of the Act and rule 17e–1 under the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) and rule 10f–3 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit registered investment companies that have one or more investment advisers, and for which Goldman, Sachs & Co. or an affiliate ("Goldman") acts as an investment adviser, to engage in certain principal and brokerage transactions and to purchase securities in certain underwritings. The transactions would be between the investment companies, or the portions of the investment companies' portfolios, that are not advised by Goldman, and Goldman or a member of an underwriting syndicate in which Goldman is a participant.

APPLICANTS: Goldman, Sachs & Co., Goldman Sachs Asset Management International ("GSAMI"), and Goldman Sachs Fund Management, L.P. ("GSFM"); and The Diversified Investors Fund Group, Diversified Investors Portfolios, EAI Select Managers Equity Fund, The Managers Funds, and The Hirtle Callaghan Trust (collectively, the "Funds").

FILING DATE: The application was filed on June 10, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Goldman Sachs & Co., 85 Broad Street, New York, New York, 10004.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr. Senior Counsel, at (202) 942–0533, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Mangement).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Goldman, Sachs & Co., is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Goldman, Sachs & Co. and entities controlling, controlled by or under common control with Goldman, Sachs & Co. (collectively, "Goldman Sachs") constitute one of the largest dealers in fixed income, money market and equity securities.

2. GSAMI and GSFM are under common control with Goldman, Sachs & Co. and are registered as investment advisers under the Advisers Act. Goldman Sachs Asset Management ("GSAM") is an operating division of Goldman, Sachs & Co., and Liberty Investment Management ("Liberty") is an operating division of GSAM. GSAMI, GSFM, GSAM, and Liberty are and act as investment advisers to one or more registered investment companies or series of registered investment companies ("Portfolios"). GSAMI, GSFM, GSAM and Liberty, and any other entities controlling, controlled by, or under common control with a Goldman Sachs entity and that are engaged in providing advisory services are collectively referred to as the "Goldman Advisers."

3. Applicants request that the relief apply to any registered investment company or Portfolio for which a Goldman Adviser currently or in the future acts as investment adviser.[1] Applicants also request relief for any broker-dealer controlling, controlled by, or under common control with Goldman, Sachs & Co. (collectively with Goldman, Sachs & Co., "Affiliated Broker-Dealers").

4. The EAI Select Managers Equity Fund, The Managers Funds, The Diversified Investors Fund Group, and The Hirtle Callaghan Trust are registered open-end management investment companies organized as Massachusetts business trusts or, in the case of The Hirtle Callaghan Trust, as a Delaware business trust. Evaluation Associates Capital Markets, Inc. serves as the investment adviser to the only Portfolio of the EAI Select Managers Equity Fund. The Managers Funds, L.P. serves as investment adviser to each of the ten Portfolios of The Managers Funds. The Diversified Investors Fund Group has thirteen Portfolios, all of the assets of which are invested in a corresponding series of the Diversified Investors Portfolios, a registered investment company. Diversified Investment Advisors, Inc. is the investment adviser of each of the Portfolios of Diversified Investors Portfolios. The Hirtle Callaghan Trust currently consists of five portfolios each of which is advised by one or more independent investment advisers.

5. Liberty or GSAM acts as investment adviser to a portion of one or more Portfolios of the EAI Select Managers Equity Fund, The Manager Funds, the Diversified Investors Portfolios, and The Hirtle Callaghan Trust. In each case, the other portions are advised by investment advisers that are not affiliated persons, or affiliated persons of an affiliated person, of Goldman Sachs (each, an "Unaffiliated Adviser," and each portion, an "Unaffiliated Portion").[2] No Goldman Sachs entity (other than a Goldman Adviser) is an affiliated person, or an affiliated person of an affiliated person, of an investment adviser to a Portfolio of an unaffiliated Fund.

6. Certain investment companies use a multi-manager structure ("Multi-Managed Portfolios")[3] in which separate investment advisers ("Subadvisers") are used to manage discrete portions of the Portfolio.[4] Each Subadviser acts as if it were managing a separate investment company. The Subadvisers do not collaborate, and each is responsible for making independent investment and brokerage allocation decisions for its portion based on its own research and analysis. The Subadvisers do not receive information about investment or brokerage allocation decisions of another portion of the Portfolio before they are implemented. Each Subadviser is compensated for advisory services based only on a percentage of the value of assets allocated to it. GSAM, Liberty or other Goldman Advisers act or may act as Subadvisers to registered investment companies. Applicants state that Goldman Sachs does not and will not control the Portfolio for which a Goldman Adviser acts as Subadviser.

7. Applicants request relief to permit (1) Unaffiliated Portions to engage in principal transactions with Affiliated Broker-Dealers and to purchase securities in an underwriting in which an Affiliated Broker-Dealer acts as a principal underwriter, (2) Unaffiliated Portfolios to engage in brokerage transactions with Goldman, Sachs & Co., and Unaffiliated Portions to engage in

[1] Any registered investment company that currently intends to rely on the order is named as an applicant. Any other existing or future registered investment company that relies on the order will comply with the terms and conditions of the application.

[2] Portfolios for which no Goldman Adviser serves as investment adviser are referred to as "Unaffiliated Portfolios," and Funds whose only affiliation with Goldman Sachs is that a Goldman Adviser serves as investment adviser are referred to as "Unaffiliated Funds."

[3] For purposes of this notice, a Multi-Managed Portfolio is a registered investment company or a Portfolio advised by a Goldman Adviser and at least one Unaffiliated Adviser.

[4] The term "Subadvisers" includes investment advisers that manage discrete portions of Multi-Managed Portfolios whether or not the Portfolios have a primary adviser that is responsible for the overall investment performance of the fund and monitoring the Subadvisers. In addition, the term "Subadvisers" includes a primary adviser to the extent the primary adviser is responsible for a portion of a Multi-Managed Portfolio.

brokerage transactions with Affiliated Broker-Dealers, when Goldman, Sachs & Co. or the Affiliated Broker-Dealer acts as broker in the ordinary course of business without complying with subsections (b) and (c) of rule 17e–1, and (3) portions of Portfolios advised by a Goldman Adviser ("Affiliated Portions") to purchase securities in an underwriting without aggregating that portion's purchase with purchases of Unaffiliated Portions as required by rule 10f–3(b)(7).

Applicants' Legal Analysis

A. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person, or an affiliated person of an affiliated person, of the company. Sections 2(a)(3) (C) and (E) of the Act define an "affiliated person" of another person to be any person controlling, controlled by, or under control with the person, and any investment adviser of an investment company, respectively. Applicants believe that any Goldman Adviser acting as a Subadviser of a Multi-Managed Portfolio would be an affiliated person of that Portfolio, and each Affiliated Broker-Dealer would be an affiliated person of the Goldman Adviser. As a result, applicants believe that any principal transaction between an Unaffiliated Portion and an Affiliated Broker-Dealer would be prohibited by section 17(a).

2. Applicants request relief from section 17(a) to exempt principal transactions entered into in the ordinary course of business between the Unaffiliated Portion and an Affiliated Broker-Dealer. Applicants state that the relief would apply only to transactions prohibited by section 17(a) solely because a Goldman Adviser is an affiliated person of the Portfolio under section 2(a)(3)(E).

3. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. For the reasons stated below, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to influence an investment company from using that influence to the person's own pecuniary advantage. Applicants assert that Unaffiliated Advisers will be solely responsible for making investment decisions, and that they therefore will have no incentive to cause Unaffiliated Portions to engage in transactions with Affiliated Broker-Dealers. Applicants state that, because the Unaffiliated Adviser will have no conflict of interest in deciding whether to execute a principal transaction with an Affiliated Broker-Dealer on behalf of an Unaffiliated Portion, there will be no danger of overreaching on the part of any person concerned with the transaction. Applicants argue that the pecuniary interests of the particular Unaffiliated Adviser are directly aligned with those of the Unaffiliated Portion it manages. Applicants contend that the Unaffiliated Adviser's interests are served only to the extent that the assets of the Unaffiliated Portion are increased as a result of the transaction, which also benefits the Fund.

5. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolio, inasmuch as each Unaffiliated Adviser is required to manage the Unaffiliated Portion of the Multi-Managed Portfolio in accordance with the investment objectives and related investment policies of the Portfolio as described in its registration statement. Applicants also argue that permitting the transactions will be consistent with the general purposes of the Act and in the public interest, because the ability to engage in the transactions will increase the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Section 17(e) and Rule 17e–1

1. Section 17(e)(2) of the Act prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1(a) provides that brokerage compensation paid pursuant to the rule must be reasonable and fair compared with compensation paid in comparable transactions. Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt procedures regarding brokerage compensation paid pursuant to the rule and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. Applicants believe that Affiliated Broker-Dealers are affiliated persons of an affiliated person of the Unaffiliated Portions for the reasons discussed above. Applicants also believe that Goldman, Sachs & Co. is an affiliated person of an affiliated person of the Unaffiliated Portfolios because (a) the Affiliated Portfolios are affiliated persons of Unaffiliated Portfolios because they are under common control, and (b) Goldman, Sachs & Co., is an investment adviser to the Affiliated Portfolios because GSAM and Liberty are divisions of Goldman, Sachs & Co. and not separate legal entities.

3. Applicants request relief under section 6(c) for an exemption from the provisions of section 17(e) Act and rule 17e–1 to the extent necessary to permit Unaffiliated Portfolios to pay brokerage compensation to Goldman, Sachs & Co., and Unaffiliated Portions to pay brokerage compensation to Affiliated Broker-Dealers, when Goldman, Sachs & Co. or the Affiliated Broker-Dealer, respectively, acts as broker in the ordinary course of business without complying with the requirements of rule 17e–1(b) and (c). Applicants state that the relief would apply only to transactions prohibited by section 17(e) solely because a Goldman Adviser is an affiliated person of the Portfolio under section 2(a)(3)(E).

4. Applicants believe that the proposed brokerage transactions meet the standards of section 6(c) of the Act for the same reasons that the proposed principal transactions satisfy the standards. In addition, applicants state the brokerage transactions will comply with the rule 17e–1(a) requirement that the brokerage compensation be fair and reasonable compared with comparable transactions. Applicants also note that the Unaffiliated Advisers will be subject to a fiduciary duty to obtain best execution for the Fund. Applicants believe that compliance with the procedural and recordkeeping requirements of rule 17e–1(b) and (c)

would be unduly burdensome and unnecessary in view of the lack of any conflict of interest.

C. Section 10(f) and Rule 10f–3

1. Section 10(f) of the Act prohibits a registered investment company from purchasing securities in an underwriting in which certain affiliates, including the company's investment adviser, act as principal underwriter. Section 10(f) also provides that the SEC may exempt by rule or order any transaction from section 10(f) to the extent that the exemption is consistent with the protection of investors.

2. Applicants state that a Goldman Adviser that acts as a Subadviser to a Portfolio is an investment adviser to the entire Portfolio. Applicant therefore believes that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Broker-Dealer would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit Unaffiliated Portions to purchase securities in the ordinary course of business during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer. Applicants request relief only to the extent that section 10(f) applies because a Goldman Adviser is an investment adviser to the Portfolio.

4. Applicants believe that the proposed transactions meet the standards set forth in section 10(f). Applicants state that section 10(f) was adopted in response to concerns about investment bankers "dumping" otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate itself, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of Multi-Managed Portfolios because, as discussed above, the Unaffiliated Advisers will not have an incentive to purchase the securities to benefit an Affiliated Broker-Dealer. While the Funds could effect the relevant underwriting purchases by complying with rule 10f–3, applicants assert that to do so would be impracticable. Applicants believe that, to comply with rule 10f–3, the Subadvisers would have to coordinate purchases in underwritings, thus undermining their independence and interfering with the operation of the Funds.

5. Rule 10f–3 exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Rule 10f–3(b)(7) generally requires that the amount of securities of any class of an issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, not exceed 25% of the principal amount of the offering.

6. Applicants believe rule 10f–3(b)(7) requires aggregation of the purchases of all Affiliated and Unaffiliated Portions of a Multi-Managed Portfolio. Applicants request an exemption under section 10(f) to the extent necessary to permit Affiliated Portions to purchase securities in an underwriting without aggregating that Portion's purchase with purchases of Unaffiliated Portions. Applicants request relief only to the extent that section 10(f) applies because a Goldman Adviser is an investment adviser to the Portfolio.

7. The aggregation requirement of rule 10f–3(b)(7) is intended to ensure that a significant portion of an underwriting is purchased by persons other than a single fund complex under common management. Applicants contend that aggregating the purchases would serve no purpose because any common purchases would be mere coincidence, and not the result of a decision by a single Subadviser, because there is no collaboration among Subadvisers.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by a Goldman Adviser and at least one Unaffiliated Adviser and will be operated consistent with the manner described in Section I.G. of the application.

2. Neither the Goldman Adviser (except of virtue of serving as Subadviser) nor the Affiliated Broker-Dealer will be an affiliated person or a second-tier affiliated or any Unaffiliated Adviser or any officer, trustee or employee of the Unaffiliated Fund engaging in the transaction.

3. No Goldman Adviser will directly or indirectly consult with any Unaffiliated Adviser concerning allocation of principal or brokerage transactions.

4. No Goldman Adviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28124 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Tower Tech, Inc., Common Stock, $.001 Par Value) File No. 1–12556

October 17, 1997.

Tower Tech Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has maintained listing of its Security on the BSE and on the Nasdaq Small Cap System since the Company became subject to the reporting requirements of the Act on November 30, 1993. Substantially all of the trading volume in the Security takes place on Nasdaq and the benefits to Security holders of dual-listing and qualification are outweighed by the costs of maintaining the dual-listing and qualification.

The Company has complied with the BSE's delisting requirements by notifying the BSE of its intent to delist the Security and providing all requested supporting documentation. By letter dated October 8, 1997, the BSE has informed the Company that it has no objection to the withdrawal of the Security from listing on the Exchange.

The Security will continue to be qualified for trading on the Nasdaq Small Cap Market following its delisting from the BSE.

Any interested person may, on or before November 7, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–28028 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (UNC Incorporated, 9⅛% Senior Notes Due July 15, 2003, Issued Pursuant to the Indenture Dated as of July 15, 1993) File No. 1–7795

October 17, 1997.

UNC Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration of the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security was issued pursuant to the Indenture, dated as of July 15, 1993, as amended (the "Indenture") between the Company and the Chase Manhattan Bank, as successor Trustee ("Trustee") and were sold pursuant to a registration statement filed with the Commission and declared effective July 22, 1993. The Security is registered pursuant to Section 12(d) of the Act and listed for trading on the NYSE.

As a result of the Merger, on September 18, 1997. Standard & Poor's Rating Group raised its rating of the Security to AAA. On September 30, 1997, the Company completed a debt tender and consent solicitation for all of the issued and outstanding Security. Through the debt tender, the Company purchased $87,952,000 to the $100,000,000 aggregate principal amount of the Security outstanding. After the debt tender, there remained issued and outstanding $11,900,000 aggregate principal amount of the Notes held of record by 11 persons, including the Depository Trust Company (DTC). Through DTC, there are approximately 37 holders. Pursuant to the terms of the Indenture, the Company will commence a Change in Control offer for the remaining Notes at a price of 101% of par plus accrued and unpaid interest. Since the price is below the price offered in the recent offer, the Company does not anticipate that any of the remaining holders will tender into the Change in Control offer. Therefore, the Company intends to redeem the outstanding Security on June 15, 1998, the earliest possible redemption date pursuant to the Indenture.

The Company believes that its application to withdraw the Security from listing and registration on the NYSE should be granted for, among others, the following reasons:

(a) The small principal amount of the Security outstanding. Only $11,900,000 aggregate principal amount of the Security remains issued and outstanding.

(b) The Security is held by small number of holders.

(c) The Security is the Company's only listed security.

(d) The costs of satisfying the Company's reporting obligations under the Act. The Company represents that it is no longer subject to the report requirements of the Act for any other Securities. Furthermore, as a result of the consent solicitation, the Company is no longer obligated under the terms of the Indenture to file reports with the Commission. As a consequence the Company will not be required to incur the costs of preparing separate annual and periodic reports. The Company represents that it is not obligated under the Indenture or any other document to maintain the listing or registration of the Security on the NYSE or on any other national securities exchange.

The Company notified the NYSE on September 29, 1997 that it was requesting delisting of the Security and the NYSE raised no objection to such delisting.

Any interested person may, on or before November 7, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–28029 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39244; File No. SR–CBOE–97–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Listing and Trading of Options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes

October 15, 1997.

I. Introduction

On June 4, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to list and trade options on two mutual fund indexes designed by Lipper Analytical Services, Inc. in conjunction with Salomon Brothers Inc.

Notice of the proposal was published for comment and appeared in the **Federal Register** on June 17, 1997.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The Exchange is proposing to list and trade cash-settled, European-style options on two mutual fund indexes designed by Lipper Analytical Services, Inc. ("Lipper Analytical" or LAS©),[4] in conjunction with Salomon Brothers Inc.—the Lipper Analytical/Salomon Brothers Growth Fund Index ("Growth Fund Index") and the Lipper Analytical/Salomon Brothers Growth & Income Fund Index ("Growth & Income Fund Index").

A. Index Design

The Indexes are composed of the 30 largest U.S. funds in each investment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38730 (June 10, 1997), 62 FR 32846.

[4] Lipper Analytical is a major provider of mutual fund information and currently calculates approximately 100 other mutual fund indexes designed to track specific investment objectives.

objective (*i.e.*, Growth or Growth & Income), based on their total net assets as of the close on the last trading day of December. The Indexes include only those funds that report net asset values ("NAV") through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq"). Some mutual funds are composed of more than one class which have different fees and expenses. If there is more than one class of a specific mutual fund, only the class with the highest total net assets will be included. As of December 31, 1996, the Growth Fund Index had total net assets ("TNA") of $218.6 billion, an average TNA per component of $7.3 billion and a median TNA per component of $4.2 billion. The TNAs ranged from $2.5 billion to $54.0 billion. As of the same date, the Growth & Income Fund Index had a TNA of $241.2 billion, an average TNA per component of $8.0 billion and a median TNA per component of $5.0 billion. The TNAs ranged from $2.5 billion to $30.9 billion.

Lipper Analytical determines the investment objective of each fund by reviewing both the language in the prospectus and the fund's investment characteristics as shown in the Lipper-Equity Analysis Report on the Weighted Average Holdings of Large Investment Companies. A Growth Fund is described as a fund that normally invests in companies whose long-term earnings are expected to grow significantly faster than earnings of the stocks represented in the major unmanaged stock indexes. A Growth & Income Fund is described as a fund that combines a growth of earnings orientation and an income requirement for level and/or rising dividends.

B. Calculation

The Indexes are equal-dollar weighted and re-balanced quarterly after the close on expiration Fridays in March, June, September, and December. The Index value is calculated in essentially the same manner as other equal-dollar weighted indexes. The total number of shares for each component is calculated by dividing $1,000 by the closing NAV, adjusted for distributions, of the component on the re-balancing date and rounding to two decimal places. The share amount is held constant throughout the quarter. The Indexes are calculated by summing the product of the current NAV adjusted for distributions and the share amount for each component and then dividing by the index divisor. The divisors were calculated to produce a value of 150.00 for the Growth Fund Index and 250.00 for the Growth and Income Fund Index as of December 31, 1996, the base date. The Indexes are calculated once per day as soon as the NAVs for each of the components are available.[5] The Index values will be disseminated by CBOE through the facilities of the Options Price Reporting Authority ("OPRA") prior to the opening on the next business day.

Lipper has informed the Exchange that it has not had any difficulty in obtaining net asset values for the funds in the Indexes. The funds comprising the Indexes are among the largest funds in existence. In the unlikely event that any of these funds do not comply with Rule 22c–1 under the Investment Company Act of 1940, which requires daily computation of a fund's current net asset value, the Exchange would follow the same procedure it uses for dissemination of standard indexes when a component price is unavailable; it will use the last available price.[6]

C. Maintenance

Lipper Analytical has the sole responsibility of maintaining the Indexes. Salomon Brothers acted as an adviser to provide technical support, including advice on index design and the methodology of index construction.[7] Lipper Analytical reviews the components annually after the close on the last trading day of December to include the thirty largest funds by total net assets. Any component changes resulting from the annual review will be announced by LAS and CBOE at least two weeks prior to implementation which will occur after the close on expiration in March. The index calculation reflects reinvestment of all distributions of component funds. Generally, there will be no need for any other adjustments intra-quarter.

D. Index Option Trading

The proposed options on the Indexes will be cash-settled, European-style options.[8] Standard options trading hours for broad-based index options (8:30 a.m. to 3:15 p.m. Chicago time) will apply to the contracts. The multiplier for each Index will be 100. The Exchange intends to list up to three near-term months plus up to 3 months on a quarterly cycle. The Exchange proposes to base trading in options on the Lipper Analytical Indexes on the full-value of each Index. Further, the exchange also may list full-value long-term index option series ("LEAPS"®), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

E. Exercise and Settlement

Options on the Indexes will settle based on the closing NAVs of the component funds two business days prior to expiration. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be two business days (ordinarily a Thursday) preceding the expiration date. The settlement value (which is the same as Thursday's closing value) will be disseminated prior to the opening on Friday.

F. Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to mutual fund index options. Index option contracts based on the Lipper Analytical Indexes will be subject to a position limit and exercise limit of 75,000 contracts, with no more than 50,000 contracts in the nearest expiration month. Ten reduced-value options will equal one full-value contract for such purposes. The Exchange believes that the proposed position limits are reasonable and appropriate for this product, and are consistent with the position and exercise limits that apply to other index options.

The Exchange is proposing to amend Rule 24.9 Interpretation and Policy .01(a) to include 2½ point strike price intervals for mutual fund indexes with strike prices less than $200. Broad-based margins will apply to mutual fund index options. CBOE is also amending Rule 24.1(e) to reflect the fact that mutual funds can underlie indexes. CBOE is also proposing to amend Exchange Rule 24.14 in order to include specific reference to Lipper Analytical Services as entitled to the benefit of the disclaimer of liability in respect of the Indexes.

Exchange rules applicable to options on both Indexes will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspension,[9] and margin treatment.[10]

G. Surveillance

As with any other option product, the CBOE will closely monitor activity in these options and therefore, should be able to identify any potentially unusual activity in the options. It should be noted that with respect to the component funds that comprise the Indexes, trading in the funds themselves has no effect on the value of the Indexes. Instead, the value of the Indexes depends entirely on the net asset values of the component funds, which in turn depends on the values of the stocks held in the portfolios of the various funds. The Exchange believes that the concerns with manipulative activity are not as great with respect to options on these Indexes as they are on stock index options. First, the Indexes are equal-dollar weighted, thus no single component dominates the Index. Therefore any person attempting to manipulate the Indexes would have to manipulate the NAVs of a majority of the Index components. Second, in order to manipulate the NAVs of the component funds, a person would have to have knowledge of the component securities held by the funds. This information is not disseminated to the public until after the fact (generally only quarterly);[11] thus the Exchange believes that it would be difficult for any individual to know, with any degree of certainty, the components of enough of the funds to make any manipulative efforts worthwhile. The CBOE also states that if it became necessary, the CBOE could examine the activity in the underlying stocks being held by various funds if it detects unusual activity in the Index options.

H. Capacity

CBOE has the necessary systems capacity to support new series that would result from the introduction of the Lipper Analytical/Salomon Brothers Index options. CBOE has also been informed that OPRA has the capacity to support such new series.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] Specifically, the Commission finds that the trading of options based on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes, including full-value and reduced-value LEAPS, will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with some of the largest U.S. mutual funds holding securities representing the growth and growth & income portion of the U.S. equity market.[13]

The Commission believes that the Indexes are broad-based, and the proposed options are designed to reduce the potential for manipulation, and is consistent with the CBOE's obligation to promote investor protection.[14] Moreover, the Commission believes, for the reasons discussed below, that the CBOE has adequately addressed issues related to customer protection, index design, surveillance, and market impact of options based on the Lipper Analytical/Salomon Brothers Growth and Growth & Income fund Indexes.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act for the CBOE to designate the Indexes as broad-based. Specifically, the Commission believes the Indexes, representing the growth and growth & income portion of the U.S. equity market, are broad-based for the following reasons. First, the indexes each consist of the 30 largest U.S. funds in each investment objective, based on their total net assets as of the close on the last trading day of December. The Indexes include only those funds that report net asset values ("NAV") through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq"). Second, the total net assets of the mutual funds comprising the Indexes are very large. As of December 31, 1996, the Growth Fund Index had total net assets ("TNA") of $218.6 billion, an average TNA per component of $7.3 billion and a median TNA per component of $4.2 billion. The TNAs ranged from $2.5 billion to $54.0 billion. As of the same date, the Growth & Income Fund Index had a TNA of $241.2 billion, an average TNA per component of $8.0 billion and median TNA per component of $5.0 billion. The TNAs ranged from $2.5 billion to $30.9 billion. Third, no one particular mutual fund or group of mutual funds dominates the weight of the Index. As noted above, each Index value is calculated using an equal-dollar weighting methodology. Specifically,

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[5] The Exchange represents that Index values are updated only at the close of trading each day because that is the only time when the fund net asset values comprising the Indexes are determined and disseminated. The Exchange believes that this should not pose an obstacle to options trading, any more than it prevents investors from entering intra-day orders to purchase or redeem shares of the funds themselves at closing net asset values that are unknown at the time the orders are entered.

[6] The Commission notes that pursuant to Article XVII, Section 4 of the OCC by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR–OCC–95–19).

[7] Because Salomon's only role is to continue to provide technical support on such things as index design and the index construction methodology, and is not involved in any way with the ongoing maintenance of the Indexes, it is not necessary to erect informational barriers at Salomon with regard to the Indexes at this time. The Commission notes, however, that should Salomon's role change so that it is involved, whether through consultation or directly, in any maintenance of the Indexes, it may need to erect an informational barrier between personnel having access to information and Salomon's sales and trading personnel concerning changes and adjustments to the Indexes. Accordingly, should Salomon become involved in any maintenance of the Indexes, the CBOE should contact the Commission's Division of Market Regulation immediately to determine if CBOE may continue to list and trade options overlying the Indexes until such informational barriers are in place.

[8] A European-style option can be exercised only during a specified period before the option expires.

[9] *See* CBOE Rule 24.7

[10] *See* CBOE Rule 24.11

[11] Section 13(f) of the Act requires institutional investment managers to file reports with the Commission, generally quarterly, that disclose each equity security held on the last day of the reporting period by accounts with respect to which the institutional investment manager exercises investment discretion, the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. 15 U.S.C. 78m(f).

[12] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] Pursuant to Section 6(b)(5) of the Act, the commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] The CBOE is a member of the Intermarket Surveillance Group ("ISG") which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD") the NYSE; the Pacific Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

each component will account for approximately 3.33% of its respective Index, and the Exchange will re-balance to equal-dollar weighting quarterly. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund indexes (including full-value and reduced value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers;[15] (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on both Indexes will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes.

C. Surveillance

The Commission believes that is important to ensure the availability of information necessary to detect and deter potential manipulation and other trading abuses, thereby making the mutual fund index product less likely to be manipulated. Further, the Commission believes that an exchange proposing to list a mutual fund index derivative where the mutual fund components themselves are not traded in the secondary market, must have in place appropriate surveillance procedures for the derivative product and the markets trading the underlying securities that comprise the mutual fund components. In this regard, the Commission notes that the CBOE will closely monitor activity in these options and should be able to identify any potentially unusual activity in the options. Moreover, the CBOE represents that if it became necessary, the CBOE could examine the activity in the underlying stocks if it detects unusual activity in the Index options. The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value Index LEAPS less susceptible to manipulation.

D. Market Impact

The Commission believes that the listing and trading of Growth and Growth & Income Fund Index options on the CBOE will not adversely impact the securities markets in the United States.[16] First, the Commission notes that the Indexes are broad-based and diversified and include component mutual funds that comprise the 30 largest U.S. funds in each investment objective. Second, the 75,000 contract position and exercise limit, with no more than 50,000 contracts in the nearest expiration month, will serve to minimize potential manipulation and other market impact concerns. Third, the risk to investors of contra-party non-performance will be minimized because the Index options, and full-value and reduced-value LEAPS, will be issued and guaranteed by The Options Clearing Corporation, similar to all other standardized options traded in the United States.

E. Index Calculation and Dissemination

As discussed above, the CBOE is proposing to update the Indexes' values at the close of trading each day when the net asset values of the component funds of the Indexes are determined and disseminated. The result of this is that the disseminated value during the trading day is based on the prior day net asset value established at the prior day close.

Generally, the Commission believes that continually updated index values on a real-time basis are essential to the trading of any index product. The Commission has only allowed exceptions to this for certain indexes composed of foreign securities where the primary market for the component securities are closed during the U.S. trading hours for the overlying options and thus the value of the components are generally not changing during the U.S. trading day. In contrast, in the case of the Growth Fund Index and the Growth Fund Index, the Index values are based on closing NAVs, even though the component funds' portfolio securities are themselves trading during the same trading hours as the Index options thereby causing the value of the portfolio to fluctuate throughout the trading day.

Nevertheless, the Commission has determined to allow the CBOE to trade options overlying the Indexes using the Indexes' values established at the prior day close because only the fund manager will have knowledge of the funds' portfolio securities and their values on a regular basis throughout the trading day. Information regarding the component funds' portfolios will only be generally available to the public on a quarterly basis as required under Section 13(f) of the Act and all investors should have equal access to this information when it is disseminated.[17] Further, CBOE surveillance should also help to detect and deter manipulation through the misuse of such intra-day information available only to the component fund managers. Finally, there are other widely published resources and indexes available that track growth and growth & income stocks which investors may use to determine an indicative value for the Growth and the Growth & Income Fund Indexes.[18]

IV. Conclusion

Based upon the aforementioned factors, the Commission finds that the proposed changes relating to the listing and trading of Growth and Growth & Income Fund Index options are consistent with the requirements of Section 6(b)(5) and the rules and regulations thereunder. The initiation of Growth and Growth & Income Fund Index options trading, however, is conditioned upon the issuance of an order approving an ODD Supplement, pursuant to Rule 9b–1 of the Act.

[15] The Commission notes that in order to promote investor protection and to ensure adequate disclosure in connection with Mutual Fund Index options, the rules pertaining to standardized options and the requirements of Exchange Act Rule 9b–1 will apply to trading in Growth and Growth & Income Fund Index Options. The Commission believes it is important to provide investors with information regarding the rights and characteristics of these options. In this regard, Growth and Growth & Income Fund Index options investors will receive a special supplement to The Options Clearing Corporation's ("OCC") Options Disclosure Document ("ODD Supplement") explaining in detail the risks and characteristics of Packaged Spreads. In reviewing any disclosure materials submitted, the Commission intends to assure that the materials specifically describe the risks and characteristics associated with trading Mutual Fund Index Options. The CBOE's trading of Growth and Growth & Income Fund Index options is expressly contingent upon the Commission's approval of such an ODD supplement.

[16] In addition, the CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options and LEAPS based on both Indexes.

[17] *See supra* note 11.

[18] If any one of these factors were not present, the Commission may have determined it was not appropriate to allow the product to trade without real-time dissemination of Index values.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–CBOE–97–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28027 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39245; File No. SR–CSE–97–09]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Increasing Net Capital Requirements

October 16, 1997.

On July 30, 1997, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase net capital requirements for members and Designated Dealers.

I. Introduction

The proposed rule change was published for comment in Securities Exchange Act Release No. 38956 (August 21, 1997), 62 FR 45893 (August 29, 1997). No comments were received on the proposal.

II. Description of the proposals

Exchange Article II, Section 5.1 presently requires a minimum net capital level on non-specialist Exchange members equal to the greater of the net capital level required by Commission Rule 15c3–1 [3] or $25,000. The Exchange proposes to amend this rule to increase that requirement from $25,000 to $250,000. As previously required, members would still be subject to any higher net capital requirements imposed by Commission Rule 15c3–1.[4]

The Exchange also proposes to amend Exchange Rule 11.9(a). That rule currently requires Designated Dealers to maintain net capital of at least the greater of $100,000 or the amount required under Commission Rule 15c3–1. The Exchange proposes to amend this rule to increase the Exchange requirement from $100,000 to $500,000. Again, members would still be subject to any higher net capital requirement imposed by Commission Rule 15c3–1.[5]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11(b) of the Act.[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[7] The Commission also believes that the proposal is consistent with Section 11(b) of the Act,[8] and Rule 11b–1 [9] thereunder, which allows securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. The proposal is consistent with Rule 11b–(a)(2)(i) [10] which requires that the rules of a national securities exchange which permit a member to register as a specialist and to act as a dealer include, among other things, adequate minimum capital requirements in view of the markets for securities on such exchange.

The Commission finds that the rule change will help ensure greater financial stability of the Exchange's members by requiring those members to maintain higher capital levels. The Commission examined this issue when it revised Rule 15c3–1 in 1992.[11] In proposing to raise the minimum net capital requirements under Commission rules, the Commission noted that under Rule 15c3–1 customers are placed at risk by brokers that do not receive or hold customer securities because such brokers have indirect access to customer funds and securities, and can direct the movement of such assets by placing orders with clearing firms. Customers are often unaware of or unable to distinguish between introducing brokers and clearing firms, and tend to rely heavily upon the representations of brokers of introducing firms. Higher net capital requirements will help ensure the financial integrity of such introducing firms and thereby help to protect investors.[12] The Commission concurs with the Exchange that better capitalized introducing firms are less likely to become insolvent and in the event that an introducing firm does become insolvent, higher net capital levels would help increase the changes that the firm can quickly find a purchaser of its assets and minimize the impact of such a failure on the investing public.[13] Finally, the Commission has previously stated its belief that raising minimum net capital levels will further the antifraud provisions of the federal securities laws.[14] The Exchange noted that member firms have access to customer securities and funds either directly, as a clearing firm, or indirectly, as an introducing firm that places orders with a clearing firm on behalf of its customers. In either case, firms can convert those assets to their own benefit. A firm with sufficient net capital may be less likely to attempt to convert funds in this manner.

The Commission also believes that it is important that Designated Dealers are adequately prepared to provide depth and liquidity to the Exchange's markets in times of market stress or volatility. The Commission agrees with the Exchange that the growth in the U.S. capital markets generally, and in the CSE's market in particular, has created market conditions which have created a need for greater capital levels on the CSE. The Commission finds that the increased net capital requirement for Designated Dealers will better protect the integrity and quality of the Exchange's market.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CSE–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28030 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. § 78f(b); 15 U.S.C. § 78k(b).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[8] 15 U.S.C. § 78k(b).

[9] 17 CFR 240.11b–1.

[10] 17 CFR 240.11b–1(a)(2)(i).

[11] Securities Exchange Act Rel. No. 31512 (Nov. 24, 1992), 57 FR 57027 (Dec. 2, 1992).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 15 U.S.C. § 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39251; File No. SR–MSRB–97–06]

October 16, 1997.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business, Consultants, and Recordkeeping

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 30, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–97–6). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to rule G–37, on political contributions and prohibitions on municipal securities business, rule G–38, on consultants, and rule G–8, on recordkeeping (hereafter referred to as the "proposed rule change"). The proposed rule change addresses the definitions of municipal finance professional and executive officer, and when Form G–37/G–38 is due to be filed with the Board.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the past year, the Board has received questions regarding certain technical aspects of rules G–37, G–38 and G–8. Specifically, these questions have been concerned with the definitions of municipal finance professional and executive officer, and when Form G–37/G–38 is due to be filed with the Board. The proposed rule change addresses these areas within the rules.

Definitions of Municipal Finance Professional and Executive Officer

The Board believes that some dealers are improperly classifying, for rule G–37 purposes, certain individuals within their firms as executive officers when these individuals actually meet the definition of municipal finance professionals and should be classified as such. Contributions by executive officers must be recorded and reported but, unlike certain contributions by municipal finance professionals, would not cause a prohibition on municipal securities business. The definition of executive officer makes clear that municipal finance professionals cannot also be executive officers. To further underscore this point, the proposed rule change revises the name of the category of individuals currently referred to as "executive officers" to "non-MFP executive officers." This change in name should help dealers avoid any misunderstandings that a person who functions as a municipal finance professional cannot be classified, for purposes of rule G–37, as an executive officer.

Due Date for Form G–37/G–38 to be Filed With the Board

Rules G–37 and G–38 state that Form G–37/G–38 must be submitted to the Board "within thirty (30) calendar days after the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31)." Because of the inconsistency in the language for those months with 31 days, the proposed rule change revises the rule language to require that the forms be sent "by the last day of the month following the end of each calendar quarter." The forms do not have to be received by the Board by the last day of the month following the end of each calendar quarter, but the proposed rule change requires that dealers must have the forms on their way to the Board by the last day of the month following the end of each calendar quarter in order to be in compliance with the delivery requirements of the rules.

The proposed rule change also contains non-substantive, technical rule language changes to make similar requirements consistent throughout the rules.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[2] of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty (30) days from the date of its filing on September 30, 1997, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition, and because it makes technical clarifying changes to existing Board rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears

[2] 15 U.S.C. § 78o–4(b)(2)(C).

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–6 and should be submitted by November 13, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28123 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39250; File No. SR–NASD–97–75]

October 16, 1997.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD Regulation, Inc. Public Disclosure Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 14, 1997, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,[2] which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing a rule change to amend Conduct Rule 2280 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to postpone the effective date from September 10, 1997, to January 1, 1998. The text of Rule 2280 is not changed.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in the Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 11, 1997, NASD Regulation proposed Rule 2280, "Investor Education and Protection," which requires certain NASD members to provide customers with specified disclosures regarding NASD Regulation's Public Disclosure Program in writing not less than once every calendar year. NASD Regulation filed Amendment No. 1 on July 31, 1997. The SEC approved Rule 2280 on September 10, 1997, therefore, the rule was effective on that date. Rule 2280 contemplates that the specified disclosures concerning the Public Disclosure Program will be made through customer account statements or in another type of publication at least once each calendar year. The proposed rule change is necessary to provide members with sufficient time to comply with the Rule.

Members generally send account statements to customers on a monthly basis if there is account activity, or on a quarterly basis if there is none. Rule 2280, with its current effective date of September 10, 1997, is draconian in that it would leave members with very little time in which to modify their account statement production processes to include the disclosures required under Rule 2280. Members would have only a few weeks to comply with a Rule that envisioned a compliance period of up to one year. Many members have already earmarked their account statements for the remainder of the calendar year with pertinent year-end information, such as tax-related notices, and in many cases there may not be sufficient space to include these additional disclosures without incurring substantial costs. Additionally, for members with customers with inactive accounts, a separate mailing would be required because year-end or fourth-quarter account statements would not comply with Rule 2280 since such notices would not be sent until early 1998.

The Commission's Order approving Rule 2280 noted that the Rule was amended to address concerns that compliance with Rule 2280 would impose "significant costs" on firms that normally do not carry customer accounts and hold customer funds or securities. The case for postponing the effective date of Rule 2280 is even more compelling. In the absence of a postponement of the effective date, many members would be required to create an entirely separate mailing to customers to provide the disclosures required under Rule 2280. The cost of such a mailing would be very significant and would be inconsistent with the objective of Rule 2280, which is to allow members to provide the specified disclosures in a cost-effective manner.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[3] in that postponing the effective date of Rule 2280 does not diminish the rule's effectiveness in protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 15 U.S.C. 78o–3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4[4] thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commissions' Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–97–75 and should be submitted by November 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28122 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39248; File No. SR–NASD–97–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to SelectNet Fees

October 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 14, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD, through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") is herewith filing a proposed rule change to temporarily abate 50% of the fee currently charged under NASD Rule 7010(l) for the execution of a transaction in SelectNet from $2.50 per side to $1.25 per side effective October 1, 1997 through December 31, 1997. If no further action is taken, Nasdaq will revert to assessing SelectNet fees at the present level of $2.50 per side on January 1, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to temporarily abate 50% of the fee currently charged under NASD Rule 7010(l) for the execution of a transaction in SelectNet from $2.50 per side to $1.25 per side effective October 1, 1997 through December 31, 1997. The proposed rule change constitutes only a temporary abatement in the fee Nasdaq collects.

Nasdaq believes that the recent volume increases in the market generally and SelectNet usage in particular justify a temporary abatement of fees to SelectNet users. Specifically, SelectNet transaction volume is at an historic high. In August 1997, more than 75,000 daily executions took place in SelectNet. This represents an almost fourfold increase in volume from average daily activity recorded in 1996.

The growth in SelectNet usage can be attributed to a number of factors, most notably the introduction of the SEC Order Execution Rules ("Order Execution Rules") in January of this year.[2] Nasdaq used the SelectNet system to create the linkage with each electronic communication network ("ECN") anticipated by the Order Execution Rules. Accordingly, SelectNet has become the chosen means of accessing orders displayed in the Nasdaq quote montage by eligible ECNs such as Instinet. Growth in SelectNet utilization closely tracks expansion in the number of Nasdaq stocks covered by the Order Execution Rules. The speed and volatility of today's markets, software enhancements and a heightened awareness of trading obligations by market participants also has contributed to growth in SelectNet activity as well as an increase in SelectNet revenues. Accordingly, Nasdaq believes that a temporary abatement of these fees for SelectNet users is appropriate.

Nasdaq believes that a temporary fee abatement is preferable to a permanent fee reduction due to both the uncertain future of SelectNet as a service offered by Nasdaq and the significant amount of network capacity consumed by SelectNet Message traffic. If no further action is taken, Nasdaq will revert to assessing SelectNet fees at the present rate of $2.50 per side on January 1, 1998.

Nasdaq believes that the proposed rule change is consistent with Section

[2] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

15A(b)(5)[3] of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, Nasdaq believes that the proposed temporary fee abatement is appropriate in light of both the recent growth in SelectNet activity as well as uncertainty regarding future usage levels.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and subparagraph (e) of Rule 19b–4[5] thereunder because the proposal establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–97–74 and should be submitted by November 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28125 Filed 10–22–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78o–3(b)(5).

[4] 15 U.S.C. § 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California, dated September 2, 1997, the United States Small Business Administration hereby revokes the license of ABC Capital Corporation, a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5352 issued to ABC Capital Corporation on January 9, 1985 and said license is hereby declared null and void as of October 6, 1997.

Dated: October 6, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–28024 Filed 10–22–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Inspector General

[Public Notice 2617]

State Department Performance Review Board Members (Office of Inspector General)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Office of Inspector General of the Department of State has appointed the following individuals to its Performance Review Board register.

Regina Brown, Deputy Assistant Secretary of African Affairs, Department of State

Donald Mancuso, Assistant Inspector General for Investigations, Department of Defense

Michael G. Sullivan, Assistant Inspector General for Auditing, Department of Veterans Affairs

Harvey Thorp, Assistant Inspector General for Audit, Office of Personnel Management

Dated: October 9, 1997.

Mark Johnson,

Deputy Inspector General.

[FR Doc. 97–28032 Filed 10–22–97; 8:45 am]

BILLING CODE 4710–42–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Reinstatement Without Change of a Previously Approved Collection for Which Approval Has Expired

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by December 22, 1997.

ADDRESSES: Comments should be sent to the Deputy Assistant General Counsel for Regulation and Enforcement, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Ashby, Office of the Secretary, Office of Assistant General Counsel for Regulation and Enforcement, Department of Transportation, at the address above. Telephone: (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Title: Report of DBE Awards and Commitments.

OMB Control Number: 2106–0031.

Expiration Date: (Not Applicable).

Type of Request: Extension for and revision to a currently approved information collection.

Abstract: 49 CFR Part 23 establishes requirements for the Department of

Transportation (DOT) so as to comply with the mandates of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 (Pub. L. 102–240, December 18, 1991). 49 CFR Part 23.49(a) requires that DOT and its Operating Administrations develop a recordkeeping system to monitor, assess and identify contract awards and progress in achieving DBE subcontract goals. In addition, Public Law 102–240 section 1003(b) requires that each state annually survey and compile a list of small business concerns and the location of such concerns, and notify the Secretary of Transportation of the percentage of such concerns controlled by women and by socially and economically disadvantaged individuals other than women. If these reporting requirements were not available, firms controlled by minorities would not achieve the fullest possible participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The informational request consists of 17 data items on one page and one attachment, to be completed on an annual, semi-annual or quarterly basis. It is the overall long range objective of DOT to permit all DOT recipients to report on a yearly basis depending upon their past experience in meeting their goals.

Respondents: DOT financially-assisted state and local transportation agencies.

Estimated Number of Respondents: 1,057.

Average Annual Burden per Respondent: 1 hour.

Estimated Total Burden on Respondents: 20,824 hours (Including 19,026 hours for recordkeeping).

This information collection is available for inspection at the Office of Assistant General Counsel for Regulation and Enforcement (C–50), Office of the General Counsel, DOT, at the address above. Copies of 49 CFR Part 23 can be obtained from Mr. Robert C. Ashby at the address and telephone number shown above.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on October 17, 1997.

Neil R. Eisner,

Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 97–28105 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–62–W

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on August 12, 1997 [62 FR 43193–43195].

DATES: Comments must be submitted on or before November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, (202) 267–2326, Department of Transportation, 2100 Second Street, SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

Title: Shipping Articles.

OMB No.: 2115–0015.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Merchant Mariners.

Abstract: This collection of information requires merchant mariners to complete form CG–705A Shipping Articles before entering the service of a shipping company.

Need: 46 U.S.C. 10302, 10303, 13304, 10307 and 10103, requires a master of a vessel to have each crew member make a shipping article agreement in writing before proceeding on a voyage.

Estimated Annual Burden Hours: 18,000 hours.

Number of Respondents: 900.

Title: Barge Fleeting Facility Records.

OMB No. 2115–0092.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Persons in charge of barge fleeting families.

Abstract: This collection of information requires the person in charge of a barge fleeting facility to keep records of the twice daily inspections of the barge mooring and movements of barges and hazardous cargo in and out of the facility.

Need: Title 33 CFR 165.803(l), is designed to prevent barges from breaking away from a fleeting facility and drifting downstream out of control in very congested areas.

Estimated Annual Burden Hours: 19,162 hours.

Number of Respondents: 70.

Title: Various Forms and Posting Requirements Under Title 46, CFR Concerning Vessel Inspections.

OMB No. 2115–0133.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Owners, operators, agents or masters of certain inspected vessels.

Abstract: This requires owners, operators, agents or masters of certain inspected vessels to obtain and/or post various forms as part of the Coast Guard's Commercial Vessels Safety Program.

Need: Under 46 U.S.C. 2113, 3301, 3304–3714, the U.S. Coast Guard is responsible for ensuring the proper administration of the Coast Guard Commercial Vessel Safety Program.

Estimated Annual Burden Hours: 3,130 hours.

Number of Respondents: 12,159.

Title: Plan Approval and Records for Tank, Passenger, Cargo & Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical Schools, Oceanographic Vessels & Electrical Engineering.

OMB No. 2115–0505.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Shipyard, designer or manufacturer of certain vessels.

Abstract: This collection of information requires the shipyard, designer or manufacturer for the construction of vessels to submit plans, technical information, and operating manuals to the U.S. Coast Guard.

Need: Under 46 U.S.C. 3301 and 3306, the U.S. Coast Guard is responsible for enforcing regulations promoting the safety of life and property in marine transportation. This information is used by the U.S. Coast Guard to ensure that a vessel meets the applicable construction, arrangement and equipment standards.

Estimated Annual Burden Hours: 7,545 hours.

Number of Respondents: 146.

Title: Liquefied Natural Gas and Liquefied Hazard Gas Waterfront Facilities.

OMB No.: 2115–0552.

Type of Request: Reinstatement, without change, of a previously approved collection which approval has expired.

Affected Public: Operators or Owners of waterfront facilities that transfer LNG and LHG.

Abstract: The collection of information requires owners or operators of waterfront facilities that handle liquefied hazardous gas (LHG) or liquefied natural gas (LNG) to: (a) Provide the Coast Guard with a letter of intent when a facility transfers the gases in bulk; (b) request permission to use an alternative procedure that provide at least the same degree of safety as the regulations; (c) develop and submit to the Coast Guard two copies of the facilities operations manual and emergency manual; (d) certify in writing that each person in charge of shoreside transfer operations is qualified; (e) complete, with the person in charge of vessel transfer operations, a Declaration of Inspection; (f) test and inspect the transfer system to ensure the system will not fail and release hazardous gases; and, (g) provide for the right to appeal the action in these regulations.

Need: 33 CFR Part 127, Subparts A and C, gives Coast Guard the authority to publish regulations that provide safety standards for the design, construction, equipment, operations, maintenance, personnel training, and fire protection at waterfront facilities handling liquefied natural and hazardous gases.

Estimated Annual Burden Hours: 3,261 hours.

Number of Respondents: 173.

Title: 33 CFR Subchapter P-Ports and Waterways Safety.

OMB No.: 2115–0540.

Type of Request: Reinstatement, without change, of a previously approved collection which approval has expired.

Affected Public: Master, owner or agents of a vessel.

Abstract: This collection of information allows the master, owner or agent of a vessel affected by these regulations to request to the Coast Guard, deviation from navigation safety equipment requirements to the extent that there is no reduction in safety.

Need: Title 33 CFR, Subchapter P, allows any person directly affected by these regulations to request a deviation from any of the requirements as long as the level of safety is not reduced.

Estimated Annual Burden Hours: 600 hours.

Number of Respondents: 400.

Title: 46 CFR Subchapter S—Subdivision and Stability.

OMB No.: 2115–0589.

Type of Request: Reinstatement, without change, of a previously approved collection which approval has expired.

Affected Public: Owners or operators of inspected vessels.

Abstract: This collection of information requires owners or operators of inspected vessels to submit plans and information concerning stability to the U.S. Coast Guard to ensure that applicable stability standards are met.

Need: Title 46 U.S.C. 3306, directs the Coast Guard to make appropriate regulations, including standards for vessel stability. This information is used by the U.S. Coast Guard to ensure that a vessel meets the applicable stability standards.

Estimated Annual Burden Hours: 19,693 hours.

Number of Respondents: 644.

Title: Hopper Dredge Working Freeboard; Loadline and Stability.

OMB No.: 2115–0565.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Owners or operators of self-propelled hopper dredges.

Abstract: This collection of information provides a mechanism for owners and operators of self-propelled hopper dredges to request a working freeboard.

Need: Title 46 U.S.C. 3703 requires the U.S. Coast Guard to prescribe regulations necessary for navigation and vessels safety. These requirements ensure that self-propelled hopper dredges meet certain structural and stability standards.

Estimated Annual Burden Hours: 50 hours.

Number of Respondents: 10.

Title: Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports, 46 CFR 91.27–13.

OMB No.: 2115–0571.

Type of Request: Extension of a Currently Approved Collection.

Affected Public: Owners or operators of offshore supply vessels operating in foreign ports.

Abstract: This collection of information provides a mechanism for owners and operators of Offshore Supply Vessels (OSV) based overseas to submit certified examination reports and statements to the U.S. Coast Guard as an alternative to Coast Guard reinspection.

Need: Title 46 U.S.C. 3308 gives Coast Guard the authority to examine each vessel subject to inspection at proper times to ensure continued compliance with applicable laws and regulations. This requirement allows the U.S. Coast Guard to ensure that applicable OSV are in compliance.

Estimated Annual Burden Hours: 572 hours.

Number of Respondents: 10.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 16, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–28104 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 1997, there were 13 applications approved. Additionally, 14 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals

and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Valdosta-Lowndes County Airport Authority, Valdosta, Georgia.
Application Number: 97–03–C–00–VLD.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $47,250.
Earliest Charge Effective Date: October 1, 1999.
Estimated Charge Expiration Date: October 1, 2000.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use: Aircraft rescue and firefighting (ARFF) Vehicle. Replace Taxiway a lights.
Brief Description of Project Withdrawn: New terminal building construction.
Determination: This project was withdrawn by the public agency in its letter to the FAA dated July 8, 1997.
Decision Date: September 3, 1997.
FOR FURTHER INFORMATION CONTACT: Tracie L. Dominy, Atlanta Airports District Office, (404) 305–7148.

Public Agency: Monroe County Board of County Commissioners, Key West, Florida.
Application Number: 97–03–C–00–EYW.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $1,860,000.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: December 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved For Collection And Use: Construct remote auto parking lot. Acquire property, runway 27 runway protection zone (RPZ).
Acquire 1,500 gallon ARFF truck.
Construct new ARFF building.
Rehabilitate and reconfigure commercial aircraft parking apron.
Rehabilitate and reconfigure general aviation parking apron.
Update Part 150 study.
Rehabilitate or replace rotating beacon tower.
Brief Description of Projects Disapproved: Acquire property, runway 9 RPZ and extended runway safety area.
Determination: Disapproved. The public agency has applied to obtain this land through a no-cost transfer under the Base Realignment and Closure (BRAC) program. Therefore, PFC revenue may not be needed to acquire the property and, thus, this project is being disapproved at this time. However, if the public agency does not obtain the property through the BRAC program, it may reapply for PFC's to acquire the property.
East Martello property, environmental enhancement of runway safety area for runway 9.
Determination: Disapproved. The FAA has determined that the environmental enhancement of the east Martello property is the responsibility of the United States Navy, who currently owns the property. Therefore, this project is disapproved for PFC funding.
Decision Date: September 9, 1997.
FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Orlando Airports District Office, (407) 812–6331.

Public Agency: Erie Municipal Airport Authority, Erie, Pennsylvania.
Application Number: 97–02–C–00–ERI.
Application Type: Impose and use a PFC.
PFC Level: $3.00:
Total PFC Revenue Approved In This Decision: $1,252,427.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: May 1, 2001.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, The FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Erie Municipal Airport.
Brief Description of Projects Approved for Collection and Use:
Install glycol recovery system.
Refurbish snow plow.
Upgrade pavement condition sensor.
Install security gate and upgrade security system.
Acquire easement.
Expand and rehabilitate terminal baggage area.
Rehabilitate ramp (Phase II).
Purchase snow removal tractor.
Replace airfield lighting emergency generator and regulator.
Rehabilitate maintenance building.
Rehabilitate jetway.
Airfield signange.
PFC administration.
Decision Date: September 10, 1997.
FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Harrisburg Airports District Office, (717) 730–2831.

Public Agency: Metropolitan Knoxville Airport Authority, Knoxville, Tennessee.
Application Number: 97–05–C–00–TYS.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $1,751,812.
Earliest Charge Effective Date: June 1, 1998.
Estimated Charge Expiration Date: May 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: Nonscheduled air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at McGhee Tyson Airport.
Brief Description of Projects Approved for Collection and Use: Taxiway B reconstruction. Emergency generator.
Brief Description of Project Approved in Part for Collection and Use: Administration of PFC program.
Determination: Partially approved. The public agency only submitted supporting documentation for a portion of the $25,000 requested. The detailed estimate of expenses determined by the FAA to be eligible was $11,812. The balance of the requested amount was not supported; therefore, it is not eligible.
Decision Date: September 11, 1997.
FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, (901) 544–3495, extension 19.

Public Agency: Pellston Regional Airport of Emmet County, Pellston Michigan.
Application Number: 97–06–C–00–PLN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $52,000.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: August 1, 1998.
Class of Air Carriers Not Required To Collect PFC's: Part 135 operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Pellston Regional Airport.
Brief Description of Project Approved for Collection and Use: Rehabilitate runway 5/23.
Decision Date: September 11, 1997.
FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (313) 487–7281.

Public Agency: County of Outagamie, Appleton, Wisconsin.
Application Number: 97–02–C–00–ATW.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $656,250.
Earliest Charge Effective Date: October 1, 1997.
Estimated Charge Expiration Date: January 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved for Collection and Use: Baggage claim expansion.
Decision Date: September 11, 1997.
FOR FURTHER INFORMATION CONTACT: Sandra Depottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: County of Monroe, Rochester, New York.
Application Number: 97–01–C–00–ROC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $10,050,000.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: April 1, 2001.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Taxiway C rehabilitation and widening.
Terminal apron improvements.
Snow removal equipment.
Snow removal equipment storage building.
Decision Date: September 18, 1997.
FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: Grand Rapids-Itasca County Airport Commission, Grand rapids, Minnesota.
Application Number: 97–01–C–00–GPZ.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,297,059.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: May 1, 2031.
Class Of Air Carriers Not Require To Collect PFC's: Air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements to Grand Rapids-Itasca County Airport.
Brief Description Of Projects Approved For Collection And Use:
Instrument landing system installation.
Land acquisition and easement purchase.
Deer fence.
Airfield guidance signs.
Pavement rehabilitation and crack restructuring.
New passenger terminal building.
Aircraft apron.
Auto parking lot.
Entrance roadway.
PFC application.
PFC administration.
Decision Date: September 19, 1997.
FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Library: Mobile Airport Authority, Mobile, Alabama.
Application Number: 97–01–C–00–MOB.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $1,300,000.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: June 1, 1999.
Class Of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators that file FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mobile Regional Airport.
Brief Description Of Projects Approved For Collection And Use: Ramp expansion. Acquire ARFF vehicle.
Brief Description Of Project Disapproved: Land acquisition.
Determination: Disapproved. On the basis of information contained in the public agency's application, the FAA has determined that this project does not meet of the ojectives in § 158.15(a). In addition, the FAA has determined that the project is not eligible under Airport Improvement Program (AIP) criteria in accordance with paragraph 603(b) of FAA Order 5100.38A, AIP Handbook (October 24, 1989), nor PFC eligible in accordance with § 158.15(b). In its application, the public agency claims that the property proposed for acquisition in this project is needed for construction of a proposed parallel runway. However, based on information contained in the application, the FAA has concluded that the land is not needed for construction of the proposed runway and would only be needed to mitigate future noise impacts resulting from a future runway. The FAA's Record of Approval for the Noise Compatibility Program (NCP) states that the acquisition of the Pleasant View Baptist Church and other "long-term measures" are approved subject to the construction of the new runway and re-evaluation of the NCP. To date, the runway has not been constructed. The FAA's Record of Approval of the NCP also states that the Church would be acquired or relocated "if it is determined that the congregation will be significantly reduced when the neighborhood is acquired or relocated." To date, this determination has not been made. The FAA has also concluded that acquisition of this property is not justified to mitigate noise impacts resulting from aircraft operations on the existing runways. Therefore, the FAA has disapproved this project at this time. This decision does not preclude the public agency from reapplying for PFC collection and use in the future if the public agency is able to provide adequate justification for the purchase of the property.
Decision Date: September 25, 1997.
FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 965–4628.

Public Agency: Indian Wells Valley Airport District, Inyokern, California.
Application Number: 97–03–C–00–IYK.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $253,000.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: March 1, 2003.
Class Of Air Carrier Not Required To Collect PFC's: Small certificated air taxi carriers not providing scheduled service to Inyokern Airport (IYK).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at IYK.

Brief Description of Project Approved for Use Only: Overlay taxiways.

Brief Description of Project Approved For Collection And Use: Construct fire station.

Brief Description Of Project Approved For Collection Only: Widen runway 2/20 from 75 feet to 100 feet.

Decision Date: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: City of Abilene, Texas.

Application Number: 97–01–C–00–ABI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: 1,210,647.

Earliest Charge Effective Date: January 1, 1998.

Estimated Charge Expiration Date: September 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use:

Apron reconstruction.
Overlay access road.
Install perimeter fencing (Phase I).
Emergency generator.
Install elevator.
Airport entrance signage.
Install precision approach path indicators, runway 17L.
Overlay and mark runway 17L/35R.
Airfield guidance sign system.
Overlay taxiway D.
Groove runway 17L/35R.
Rehabilitate runway 17R/35L and taxiway C lighting.
Security fencing (Phase 2).
Overlay runway 4/22 and pavement emulsion seal on taxiways A, T, S, B, Q, and apron.
Security fencing (Phase 3).
Terminal renovation and expansion.
PFC administrative costs.

Decision Date: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Johnstown-Cambria County Airport Authority, Johnstown, Pennsylvania.

Application Number: 97–03–C–00–JST.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $233,333.

Earliest Charge Effective Date: December 1, 1997.

Estimated Charge Expiration Date: November 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Johnstown-Cambria Airport.

Brief Description of Project Approved For Collection and Use: Terminal building renovation.

Brief Description of Project Withdraw: Perimeter security fence.

Determination: This project was withdrawn from the PFC application by the public agency by letter dated September 16, 1997.

Decision Date: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph Carter, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Reading Regional Airport Authority, Reading, Pennsylvania.

Application Number: 97–02–U–00–RDG.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used In This Decision: $300,000.

Charge Effective Date: December 1, 1994.

Estimated Charge Expiration Date: August 1, 1998.

Class Of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description Of Project Approved For Use: Construct terminal access road, Phase 2.

Decision Date: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Harrisburg Airports District Office, (717) 782–4548.

Amendments to PFC Approvals

Amendment No., city, state	Amendment approved date	Orignial approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–C–01–ERI, Erie, PA	07/07/94	$1,997.885	$1,854,570	06/01/97	06/01/97
95–01–C–01–LEB, Lebanon, NH	05/23/97	449,256	556.515	07/01/98	10/01/99
92–01–C–03–PNS, Pensacola, FL	06/15/97	9,839,900	8,270,500	03/01/01	12/01/99
95–03–C–01–PNS, Pensacola, FL	06/15/97	2,536,000	1,860,000	03/01/01	12/01/99
92–01–C–02–ERI, Erie, PA	07/22/97	1,854,570	1,906,163	06/01/97	06/01/97
94–01–C–01–RDG, Reading, PA	08/07/97	600,750	480,000	08/01/98	08/01/98
92–01–C–01–PIB, Laurel-Hattiesburg, MS	08/22/97	119,153	152,639	01/01/98	12/01/98
92–01–1–02–VLD, Valdosta, GA	08/28/97	307,746	408,996	10/01/97	10/01/99
97–02–U–01–VLD, Valdosta, GA	08/28/97	NA	NA	10/01/97	10/01/99
93–01–C–02–CRP, Corpus Christi, TX	09/05/97	5,566,940	6,337,528	01/01/98	05/01/98
93–01–C–03–RHI, Rhinelander, WI	09/19/97	188,951	198,951	10/01/00	01/01/01
95–02–U–01–RHI, Rhinelander, WI	09/19/97	NA	NA	10/01/00	01/01/01
92–01–C–03–MCO, Orlando, FL	09/23/97	46,752,627	36,171,833	03/01/98	06/01/98
95–03–C–01–MCO, Orlando, FL	09/23/97	19,138,741	21,527,408	03/01/98	06/01/98

Issued in Washington, DC, on October 16, 1997.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 97–28162 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–071; Notice 1]

New Flyer of America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

New Flyer of America of Crookston, Minnesota, has determined that 115 buses fail to comply with 49 CFR 571.217, Federal Motor Vehicle Safety Standard (FMVSS) No. 217, "Bus Emergency Exits and Window Retention and Release," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." New Flyer has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

FMVSS No. 217, Paragraph S5.2.2.1 requires that buses provide emergency exit area, in total square centimeters, of at least 432 times the number of designated seating positions. It requires that 40 percent of the emergency exit be distributed on each side of the bus. It also limits the amount of area to 3,458 square centimeters that can be credited for an emergency exit.

During the 1995–1997 model year, New Flyer produced 115 transit buses, models D35LF (Diesel 35 ft Low Floor) and C35LF (CNG 35 ft Low Floor) which do not comply with FMVSS No. 217. The subject transit buses have only one emergency exit on the right side of the bus instead of two, as required by the standard.

New Flyer supports its application for inconsequential noncompliance with the following:

The buses exceed the exit area requirements on all sides. The left side has two exit windows for a total of 25,000 square centimeters or 4.67 times the required area. The right side has one exit window with 12,500 square centimeters of exit area or 2.33 times the required area. The standard does not allow any one exit to claim more than 3,458 square centimeters. Therefore, the right side of the bus does not have the required number of emergency exits although it exceeds the required area. Each bus has two roof exits, where the standard only requires one roof exit. Overall, the buses have 3.28 times the required exit area.

Retrofitting these buses to comply with the standard would require modifying and retesting the existing exit door or replacing the right side window with an emergency exit window, which is not possible because the wheel housing limits accessibility. The seating position relative to the window allows for easy exit; but if the window was accidentally opened, there is potential for someone to fall out. Modifying the exit door to conform to the release force requirements is a possible solution, but would require redesigning the door. Considering the bus already has 3.28 times the required exit area, modifying the buses to include an additional exit would not add to motor vehicle safety.

New Flyer does not believe that the buses are a safety hazard since the bus has excessive accessible emergency exit area. These buses are operated by transit authorities with trained professional drivers; none are operated by the general public. New Flyer has a close relationship with the operators of the buses and is continuously informed of any problems or concerns, and has never had an incident or complaint involving the number or location of emergency exits.

Interested persons are invited to submit written data, views, and arguments on the application of New Flyer described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 24, 1997.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 17, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–28106 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. 97–062–N01]

Traffic Safety Programs—Office of Research and Traffic Records; Strategic Plan for Behavioral Research in Traffic Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA); Transportation.

ACTION: Request for comments on strategic issues and research requirements to support research planning.

SUMMARY: NHTSA's Office of Research and Traffic Records, Research and Evaluation Division (ORTR/RED) is engaged in the process of planning its research programs for fiscal years 1998 through 2002. In conformance with the Government Performance and Results Act of 1993 (P.L. 103–62), ORTR/RED is seeking public comment on the draft strategic plan presented in this notice. These comments will be used to help form a strategic implementation plan to direct the division's research program during the next five years.

DATES: Written comments will be accepted through November 30, 1997.

ADDRESSES: Please direct all written comments to the National Highway Traffic Safety Administration, Docket Section, Room 5111, Docket # 97–062–N01, 400 Seventh Street, S.W., Washington, DC 20590. (Docket hours are from 9:30 am to 4:00 pm.) Comments submitted to the docket will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jesse Blatt, Office of Research and Traffic Records (NTS–30), Room 6240, 400 Seventh Street, S.W., Washington, DC 20590. (Telephone 202–366–5588 or Email at jblatt@nhtsa.dot.gov)

SUPPLEMENTARY INFORMATION: More than 3 million persons were reported injured and over 40 thousand persons died in motor vehicle crashes in 1996 (Traffic Safety Facts: 1996, National Center for Statistics and Analysis). While a small proportion of the crashes causing these injuries and fatalities were attributed to vehicle and roadway problems, the vast majority were caused by human

performance problems. Within the National Highway Traffic Safety Administration (NHTSA), the Office of Research and Traffic Records, Research Evaluation Division (ORTR/RED) conducts research on human behaviors that can bring about improvements in traffic safety. The research is conducted in support of traffic safety programs directed at reducing the incidence and consequences of motor-vehicle crashes.

ORTR/RED is responsible for research in the following program areas: Impaired Driving; Occupant Protection; Speeding and Unsafe Driving Actions; Older Drivers; and Pedestrians, Bicyclists, and Motorcyclists. In addition, ORTR/RED efforts address Novice Driver Education, Emergency Medical Services, evaluation of the Safe Communities program, and the use of emerging safety and enforcement technologies.

ORTR/RED is reexamining its research strategies in accordance with the Government Performance and Results Act, or GPRA, of 1993 (P.L. 103–62). The Act requires the establishment of a program mission, assessment of external needs, development of specific strategic objectives and accompanying performance measures, and the use of actual performance results to redirect subsequent planning efforts. In response to these requirements, ORTR/RED is requesting public comment on its Draft Strategic Plan.

The Draft Strategic Plan is intended to guide behavioral traffic safety research efforts from FY 1998 through FY 2002. It is heavily influenced by the needs and outcomes identified as part of ongoing budget planning processes. Input received as a result of this notice will be used to reassess currently identified needs and projects for fiscal years 1998 and 1999 and to further define the needs and outcomes for fiscal years 2000 through 2002.

Electronic Access

This document is posted on NHTSA's site on the world-wide web (http://www.nhtsa.dot.gov). To access it from NHTSA's home page , select "People," then "Injury Prevention," then "Research and Evaluation." To go directly to the appropriate page, enter: http://www.nhtsa.dot.gov/people/injury/research/. Then select "Draft Strategic Plan for Behavioral Research."

Comments Requested

The purpose of this notice is to provide an opportunity for the public and other interested parties to review and comment on ORTR/RED's assessment of each program area, the strategic objectives which are identified, and the activities or outcomes that ORTR/RED intends to pursue. Reviewers are invited to comment on program areas or issues that are not addressed, recommend priorities, or provide rationales for alternative approaches. Comments must be submitted in writing. Respondents are requested to identify the program or program area towards which their comments are directed.

The Office of Research and Traffic Records, Research and Evaluation Division (ORTR/RED) will review comments received in response to this notice and the draft plan described herein. These comments will be considered as part of the development of a five-year strategic implementation plan for the period between 1998 and 2002. The final plan will include a section summarizing the comments received in response to this notice and in response to other inputs.

Organization of the Draft Plan

The Draft Strategic Plan consists of two parts. Appendix A provides a brief discussion of the most significant human performance problem areas identified by the agency, followed by the mission and strategic objectives of the Office of Research and Traffic Records, Research Evaluation Division (ORTR/RED). Within each objective, the anticipated outcomes from the research effort during the period from 1998 to 2002 are summarized by program area. Appendix B presents a more detailed discussion of the agency's understanding of the problems, its current research and evaluation efforts, and strategic issues for research in each program area. The following Table of Contents provides an overview of the plan and supporting documentation.

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Issued on: October 17, 1997.

James L. Nichols,

Director, Office of Research & Traffic Records, National Highway Traffic Safety Administration.

Appendix A—Draft Strategic Plan for Behavioral Research in Traffic Safety

Background

More than 3,000,000 persons were reported injured and over 40,000 persons died in motor vehicle crashes in 1996 (Traffic Safety Facts: 1996, National Center for Statistics and Analysis). While a small proportion of the crashes causing these injuries and fatalities can be attributed to vehicle and roadway problems, the vast majority are caused by human performance problems. Despite impressive reductions over the past two decades, the annual traffic-related fatalities and injuries are increasing slightly since reaching a low in 1992. An increase in travel has contributed to the fatality rates, expressed as number of fatalities per 100 million vehicle miles traveled, remaining at approximately 1.7 during this period.

In developing a response to this challenge of improving human performance, NHTSA focuses its traffic safety efforts on the most significant causes or problems contributing to fatality-and injury-causing crashes. ORTR/RED conducts behavioral research in the following areas: Impaired Driving; Occupant Protection; Speeding and Unsafe Driving Actions; Older Drivers; and Pedestrian, Bicyclists, and Motorcyclists; Novice Driver Education, Emergency Medical Services, Safe Communities, and Technology Applications. A brief description of the extent of these problems is provided here. A more detailed discussion can be found in Appendix B

Impaired Driving. In 1996, alcohol was cited as a contributing factor in crashes leading to approximately 17,000 traffic fatalities, and over 1,000,000 injuries. In addition, there has been an increase in alcohol-related fatalities by approximately 4 percent between 1994 and 1996. Driving while impaired by drugs other than alcohol may also constitute a significant highway safety problem, although it appears to be much smaller than the alcohol-related problem.

Occupant Protection. The national average safety-belt usage rate has hovered at about 68 percent for several years, despite widespread educational efforts. However, belt use by people involved in potentially fatal crashes is much lower, at about 50 percent. The need to use child safety seats appears to be more widely accepted, with usage rates currently ranging between 60 and 90 percent, depending on the age of the child. Investigations of recent air bag related injuries and fatalities to young children and short-statured adults has reemphasized the need to increase proper safety belt and child safety seat use, particularly for all children under 12.

Speeding and Unsafe Driving Actions. Many crashes are attributable to unsafe driving behaviors such as following too closely, inattention, speeding, and aggressive driving. In 1996, speed was a factor in over 13,000 fatalities. Many states repealed speed limit laws based on the national maximum speed limit, and now average speed limits are higher. Aggressive driving actions—such as excess speed, running red lights, and disregard of traffic signs and signals—have a high likelihood of causing crashes.

Older Drivers. People over 70 years of age represented 13 percent of all fatalities and are slightly over-represented in crashes, when compared to the general population of drivers. As the proportion of older drivers increases over the next few years, over-involvement of this population group in fatalities and injuries could become a more significant problem.

Pedestrians, Bicyclists, and Motorcyclists. About 30,000 pedestrian crashes involving young people occur annually. Older persons are significantly over involved in pedestrian fatalities. Alcohol and environmental factors are also significant components of the pedestrian crash problem. In large urban areas, nearly half of all those killed in motor vehicle crashes are pedestrians. There has been little or no change in bicyclist fatalities, which are reported as 630 in 1995, and injuries during the past few years. Currently, bicyclist helmet use laws include requirements for children only, even though one-half of the annual fatalities occur to people of age 21 years or older. Motorcyclists are about 16 times as likely as vehicle occupants to die in a crash, and about 4 times as likely to be injured. In 1996, 43 percent of the approximately 2,200 fatally injured motorcyclists were not wearing helmets at the time of the crash. These motorcyclists tended to have high intoxication rates as well.

Novice Driver Education. Young drivers between the ages of 16 and 20 experience the highest fatality and injury rates per capita. At the request of Congress, NHTSA submitted a program in 1994 to improve novice driver education that has two-stages of education that would parallel stages of a graduated licensing system.

Emergency Medical Services. Emergency Medical Services (EMS) differs from the other program areas receiving research attention in that it is entirely focused on post-crash rather than pre-crash events. Gaps in our knowledge of effective out-of-hospital care, due to the absence of well-defined, uniform, and complete data, impeded efforts to define the extent to which the post-crash environment contributes to injuries and fatalities.

Safe Communities. Safe Communities is a recent initiative intended to bring together citizens and a wide range of community institutions—such as law enforcement, hospitals, managed care facilities, emergency medical services, schools, insurance companies, other public and private businesses and local governments—to work on solving local traffic safety problems within the broader context of meeting the injury control challenge. Knowledge gained from successes and setbacks will provide guidance to expansion of this effort.

Technology Applications. Future increases in vehicle travel and risks of crashes are anticipated, even as fewer resources are being allocated to traffic-law enforcement. Emerging technologies—such as "smart card" drivers licenses that prevent fraudulent ID, ignition interlock devices, electronic monitoring wristbands, and electronic vehicle and driver identification systems—offer the promise to improve the effectiveness and efficiency of safety and enforcement programs. Adaptations of emerging electronics and communications technologies, as part of the Intelligent Transportation Systems (ITS) program, could have significant potential to aid emergency rescue services, crash investigations, traffic law enforcement, and other traffic safety efforts.

Traffic Safety Programs at NHTSA

The National Highway Traffic Safety Administration (NHTSA) is one of seven operating administrations of the U.S. Department of Transportation. Oversight of highway travel is split between the Federal Highway Administration (FHWA) and NHTSA. NHTSA's responsibilities focus on safety issues of motor vehicles and non-commercial roadway users.

NHTSA's mission is to save lives, prevent injuries and reduce traffic-related health care and other economic costs. The agency develops, promotes and implements effective educational, engineering, and enforcement programs toward ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. This is accomplished through research, demonstration, and evaluation; setting and enforcing safety performance standards for motor vehicles and items of motor vehicle equipment; consumer outreach activities, and awarding grants to state and local governments for implementation of safety programs. The complex relationship between a motor vehicle and its driver is of major interest. Factors influencing this relationship include the driver's physical and mental abilities and driving experience, the nature of driving, the responsiveness of the motor vehicle to the driver's demands, and environmental conditions.

NHTSA employs two major approaches to improving highway safety. One approach focuses on motor vehicles and investigates methods to make them safer, in terms of improving vehicles' characteristics that both reduce their likelihood to be involved in crashes and increase their capabilities to protect occupants from crash forces. The other addresses the behavior of roadway users—drivers, bicyclists, motorcyclists, pedestrians. Approaches may be direct, by influencing the users themselves, or indirect, by influencing intermediary change agents—friends and family members, educators, police, judges, legislators, licensing officials, emergency medical service and health care practitioners—who may exert influence over certain groups of roadway users.

The responsibility within NHTSA for improving safety-related behaviors lies within the Associate Administrator for Traffic Safety Programs (TSP). TSP's Mission is to: (1) Lead the national traffic safety effort, including emergency medical services; (2) save lives and reduce injury through behavioral research, demonstration, and evaluation; and (3) develop safety programs and strategies for use by public and private organizations. Program areas include impaired driving, occupant protection, traffic law enforcement, speed and other unsafe driving actions, motorcyclists, bicyclists, pedestrians, older drivers, driver education and licensing, and emergency medical services. Traffic Safety Programs (TSP) comprises three offices: the Office of Traffic Injury Control Programs (OTICP), the Office of Communications and Outreach (OCO), and the Office of Research and Traffic Records (ORTR).

Within the Office of Research and Traffic Records, the Research and Evaluation Division (ORTR/RED) conducts research in each of the program areas listed above to specify traffic-safety problems that can be addressed through behavioral approaches; identify populations in need of intervention; and determine appropriate legislative, enforcement, adjudicative, and educational countermeasure approaches for those problems. In addition to developing and testing the effectiveness of new countermeasures, ORTR/RED also evaluates the implementation of existing traffic safety programs in actual practice, thus establishing a foundation for broader adoption of effective programs. Information developed by ORTR/RED is integrated into traffic safety programs administered by other offices of TSP and the Office of State and Community Services for use by community, state, and national organizations and distributed through other NHTSA offices.

1ORTR/RED must strike a balance between these activities in order to meet the shorter term needs of other offices and still conduct problem identification and countermeasure development activities which have a longer time horizon associated with achieving an outcome. Programs in the field now are based on past research efforts; current research establishes a foundation for programs in the future. A major challenge to Traffic Safety Programs is to align the activities in all three offices to be most effective in meeting overall agency objectives, which are to reduce traffic-related fatalities and injuries. ORTR/RED sets priorities and apportions its work among the competing interests through the budget process and internal decision making. The Strategic Plan exercise is an effort to further improve the alignment and outcomes of ORTR/RED programs and resources.

Summary of the 1998 ORTR/RED Strategic Plan

ORTR/RED Vision and Mission

Vision Statement: Lead the nation, department, and agency with high quality research and evaluation in traffic safety issues, conducted in a professional environment, and responsive to the input and needs of the public and the traffic safety community.

Mission Statement: Plan and conduct a national research program to identify and analyze road user problems; develop and test scientifically sound programs; and evaluate traffic safety programs of significant potential.

Strategic Objectives

Problem Analysis: anticipate and understand the nature and magnitude of various aspects of the highway crash problem and monitor trends and public perceptions in the various program areas.

Countermeasure Development: develop program actions (e.g., legislation, enforcement, sanctions, incentives, technology applications, public information and education, emergency medical care) to reduce the number of crashes and severity and crash consequences; and determine the effectiveness of these countermeasures in improving behaviors that lead to reducing crashes, deaths, or injuries.

Program Evaluation: determine whether existing countermeasure programs should be continued, expanded, modified, or discontinued.

Key Considerations in the Development of Strategic Objectives

This Draft Strategic Plan is consistent with the 1997 Department of Transportation Draft Strategic Plan entitled "A Visionary and Vigilant Department of Transportation Leading the Way to Transportation Excellence in the 21st Century." The Department's plan outlined five strategic goals:

- Safety: Promote the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage;
- Mobility: Shape America's future by ensuring a transportation system that is accessible, seamless and efficient, and offers flexibility of choices;
- Economic Growth and Trade: Advance America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation;
- Human and Natural Environment: Protect and enhance communities and the natural environment affected by transportation; and
- National Security: Advance the nation's vital security interests in support of national strategies such as the National Security Strategy and National Drug Control Strategy by ensuring that the transportation system is secure and available for defense mobility, that our borders are safe from illegal intrusion, and by promoting worldwide economic growth and stability.

The ORTR/RED Draft Strategic Plan directly supports the first two of these departmental goals—safety and mobility—through research, development, and evaluation and indirectly supports the remaining goals through anticipated reductions in the number and severity of crashes and their attendant personal, economic, societal and environmental effects.

Prior to the development of the Departmental Strategic Plan, NHTSA published a long term strategic plan and a five year (1995–99) Strategic Execution Plan (SEP). The NHTSA Strategic Plan presents 11 goals is support of three strategies: Provide Leadership and Set an Agenda; Support Research and Apply the Results to Education, Engineering, and Enforcement to Reduce Road Casualties and Costs; and Transform NHTSA Through Continuous Improvement. The ORTR/RED Behavioral Research Strategic Plan is consistent with the objectives outlined in goals 5 and 6 of the SEP, which focus on research and the application of the results to crash avoidance challenges.

NHTSA was a pilot agency under GPRA from 1994 to 1996. The Act requires federal agencies to plan around outcomes, rather than outputs, and measure performance. The agency has stratified its performance measures into three levels: overall outcomes; intermediate outcomes; and program outputs. NHTSA's overall outcome goals are to reduce fatalities and injuries per 100 million vehicle miles traveled; and to reduce fatalities and injuries per 100,000 resident population. The agency has stated intermediate outcome goals for key behavioral patterns, such as seat belt use and impaired driving. For example, the goal for seat belt usage is to increase use rates to 85 percent by 2000 and 90 percent by 2005. The agency has committed to reduce the number of alcohol-related traffic fatalities to 11,000 in 2005 from 17,126 in 1996. These and other traffic safety goals are restated in NHTSA planning documents that have been published since the Strategic Execution Plan, such as the Presidential Initiative for Increasing Seat Belt Use Nationwide, EMS Agenda for the Future, GPRA Performance Plans; and annual Budget submissions to Congress. Achieving these goals helps the agency to achieve its overall outcome goals. The agency measures program outputs to ensure that products help to achieve the intermediate outcome goals, that will, in turn, achieve the overall outcome goals. The ORTR/RED plan describes how behavioral research will help the agency achieve its stated goals and anticipate future needs of the agency and the Department of Transportation.

Approach to Meeting the Strategic Objectives

Before undertaking any problem analysis or countermeasure development effort, ORTR/RED considers, at least implicitly, several general issues. Although these issues are described as "either-or" alternatives, they overlap to a certain extent, depending on the problem and the countermeasures under consideration.

- Involved Population versus Change Agents. Historically, countermeasure research efforts have focused on the individuals engaged in problem behaviors (e.g., drinking drivers, safety belt non-users, motorcyclists who do not wear helmets). An alternative approach is to target research on intermediary change agents (e.g., police officers, legislators, community traffic safety officials) to obtain their support and action (e.g., to support legislation, provide political permission for enforcement of traffic safety laws).
- Gradual Improvement versus Major Advancement. For the most part, agency research and development has fashioned continuous and gradual improvements to existing programs and activities. However, experience has shown that some of the most profound and dramatic advances in traffic safety have resulted from innovative (and often controversial) programs that have resulted in significant media attention and public awareness (e.g., enactment of Minimum Drinking Age (21) Laws, passage of child passenger safety laws).
- People versus Equipment and Technology. Except for supporting technological innovation in the early years of alcohol-impaired driving research, ORTR/RED's attention to technology has been limited. There is currently increased interest in developing technological solutions to behavioral problems that have resisted change (e.g., automated speed enforcement, detection and ticketing of red-light runners, impaired driver detection and interlocks, repeated warnings of safety-belt non-use in vehicles) or that would improve the efficiencies or lower the costs of current programs.

The interaction of these strategic countermeasure-development issues and the needs of problem analysis resulted in the following questions that ORTR/RED staff used to assess the status of each traffic safety program area during the development of this plan:

1. What is the current status of problem assessment in this area? Do we have a good understanding of the magnitude and characteristics of the problem? Where are the gaps in our knowledge?
2. Is there a need for continuous tracking or monitoring to support internal and external decision making about this program area? What kind of monitoring is needed?
3. Do we know enough about the people whose behavior we wish to modify? How much do we need to know to effect the desired changes?
4. Are our research products and information designed for and reaching appropriate decision makers or intermediaries? What kinds of research are needed to improve the effectiveness or distribution of such products and information?
5. Are there operational countermeasures that need to be evaluated to support decision making regarding continued or wider implementation?
6. Are there operational countermeasure approaches where incremental improvements in effectiveness or efficiency could be made? What kind of research and development activity is needed?
7. Are there innovative or controversial approaches that have the potential for major gains? Are there new technologies that could be applied to make significant gains? What kind of research and development activity is needed?
8. Are there countermeasures that now appear impractical because of a lack (or shift) of change agent interest or support? What kind of research and development activity is implied?
9. In general, is public interest and support for this area sufficient to effect change? If not, what kind of research and development activity is needed?

The answers to these questions provided the raw materials from which the plan was developed, and emphasized the division of behavioral research efforts into three distinct categories: Problem Analysis, Countermeasure Development and Test, and Program Evaluation.

Strategic Objective: Problem Analysis

Identify opportunities to intervene in unsafe behaviors by analyzing traffic safety problems and monitoring changes in public knowledge, attitudes, and practices regarding highway safety issues. These efforts may identify individuals whose behavior threatens their own or the public's safety, or situations that predispose or precipitate unsafe actions.

The outcome objectives listed under each program area represent the critical problem assessment factors for that area. Such factors include: (1) Specifying quantitative relationships; (2) identifying particular groups that are over-represented in crashes or fatalities, or that have a direct influence on those groups; (3) establishing the predisposing or precipitating situations or events leading to crashes; (4) defining factors that impede or facilitate implementation of traffic-safety programs; (5) determining the feasibility of implementing potential changes in programs or establishing new ones; and (6) identifying critical trends or deficiencies in public knowledge, attitudes, and practices.

Success in achieving this strategic objective will be measured by progress in accomplishing the following outcome objectives:

Impaired Driving

- Verify the relationship between blood alcohol concentration (BAC) and crash risk for low BACs.
- Establish the degree of public support for different types and levels of legislative and enforcement efforts to reduce alcohol-impaired driving.
- Further define the degree to which drugs other than alcohol contribute to traffic crashes.
- Acquire more detailed information regarding the driver characteristics and situations that lead to drinking and driving.
- Monitor levels of public disapproval of drinking and driving and their acceptance of legislation, enforcement, sanctioning, and other actions to prevent drinking and driving.

Occupant Protection

- Identify factors that impede communities from adopting highly visible traffic law enforcement efforts (e.g., Selective Traffic Enforcement Programs) to increase the use of safety belts.
- Determine the potential impact of incentive and reward programs for different target audiences (e.g., belt users, police groups or community groups) for increasing belt use.
- Monitor public knowledge, attitudes, and practices regarding the use of safety belts, child safety seats, and air bags, as well as support for stronger laws, enforcement, and sanctions.
- Determine characteristics of safety belt users, part-time users, and non-users, especially among drivers who are most at risk of being involved in a fatal or serious injury crash.
- Acquire information from users of child safety seats regarding the reasons for misuse of safety seats and premature graduation of toddlers from safety seats to vehicle safety belts.

Speeding and Unsafe Driving Actions

- Define the relationships among speed, driver characteristics, roadway conditions, situational factors, and crash rates.
- Identify unsafe behaviors and drivers most likely to be involved in crashes.
- Define "aggressive" driving and determine its incidence and relation to crash causation.
- Determine the extent to which drivers who speed are over involved in crashes.
- Determine situations and conditions under which the public and the enforcement community would accept automated enforcement efforts and describe the legislative and administrative actions necessary to implement automated enforcement procedures.

Older Drivers

- Identify factors responsible for increased crash rates (per mile) of older drivers and determine the extent to which these factors account for the higher fatality rates of older drivers.
- Determine the likelihood that older drivers would purchase vehicles that offer vehicle modifications for improved crash protection for older occupants.
- Explore the acceptability of various in-vehicle technologies designed to extend mobility by providing assistance in compensating for disabling conditions.

Pedestrians, Bicyclists, and Motorcyclists

- Develop measures of pedestrian and bicyclist crash exposure and determine trends in exposure.
- Assess the attitudes of pedestrians, cyclists, and drivers toward each other; their awareness of high crash-risk situations and ways to avoid them; their knowledge or the laws, signals, and signage; and their walking, riding, and driving experiences.
- Identify and assess materials and procedures for increasing conspicuity of pedestrians and cyclists.
- Review federal, state, and local ordinances pertaining to the interactions of drivers, pedestrians, and bicyclists; examine the practices of these road users that lead to crashes; and assess the need for model legislation and traffic enforcement efforts.
- Monitor helmet usage rates in states with laws, including age specific laws, and those without laws.
- Analyze motorcycle crash data to classify crash types.

Novice Driver Education

- Determine the consequences, including costs and hardships, on novice drivers and their families of requiring a two-staged driver education as part of a graduated licensing system.
- Determine the impact of various options for paying for driver education and licensing, including the option of requiring license applicants to pay some or all of the cost.
- Identify and assess alternative systems for implementing two-staged driver education and determine the costs and benefits of each alternative.
- Determine the extent to which novice drivers over the age of 25 would benefit from graduated licensing and determine any special training needs they present.
- Examine and determine the appropriate role of the Federal government in developing a model driver education program for use by others in training novice drivers.
- Obtain input from partners regarding the education of novice drivers to develop consensus regarding the basic training content required for novice drivers.

Emergency Medical Services (EMS)

- Determine the factors contributing to higher mortality rates for persons who die in motor vehicle crashes in rural areas.
- Identify the barriers to collection of reliable and relevant data in the current EMS data collection system, and identify the barriers to linking EMS data with other databases.
- Examine the potential for and public acceptability of using EMS personnel as injury-prevention trainers or spokespersons at the community level.
- Examine the potential consequences of increased enrollment in managed-care health plans, and their requirements (e.g., for approvals prior to the delivery of services) on the provision of emergency medical services to the public.
- Develop a well defined, long term research plan for EMS, based on participation of relevant partners.

Safe Communities

- Determine the feasibility and utility of including rehabilitation records on drug- or alcohol-impaired drivers in linkages with other Safe Communities data.

Technology Applications

- Conduct an inventory of existing and planned Intelligent Transportation System (ITS) products, determine which products have potential for traffic-safety applications, assess the degree to which candidate products would require modification, and describe the adaptations necessary.
- Identify relevant factors that affect costs of production, deployment, operations, training, and maintenance of various technological safety applications; determine how best to foster the integration of technologies and the sharing of common hardware or systems.
- Identify institutional partners and barriers to full acceptance and implementation of traffic safety-related technologies; define the nature and extent of public concerns and resistance to using technology to improve traffic safety; and identify effective strategies for allaying public fears and for gaining support for technological solutions to traffic-safety problems.

Strategic Objective: Countermeasure Development

Develop and test methods to intervene with problem individuals or to aid those in a position to modify problem situations. These efforts may address individuals or situations needing attention either directly, through information and education, or indirectly, through legislation, enforcement, and adjudication.

The outcome objectives listed under each program area specify one or more critical products that are needed to address an

identified safety problem. These products involve activities (e.g., research, development, and testing) that result in materials or procedures to accomplish one or more of the following: assessment, education, information, motivation, training, and instruction. In addition, some outcome objectives produce materials documenting strategies, technology applications, and model programs or legislation.

Success in achieving this strategic objective will be measured by progress in accomplishing the following outcome objectives:

Impaired Driving

- Develop and test better methods for detecting impaired drivers on the roadways.
- Develop and test improvements to enforcement procedures that make alcohol impaired driving arrests less cumbersome and that improve the efficiency of conducting sobriety checkpoints.
- Develop and test countermeasures for reducing the recidivism of repeat DWI offenders and those who drive with a suspended license.
- Validate a problem-driver screening instrument for use in field sobriety testing situations.
- Develop model specifications for alcohol test devices.
- Develop and test procedures to detect problem drinkers at their first alcohol-related offense.
- Develop and test countermeasures for various target groups (e.g., youthful drinkers, servers, companions, police officers, etc.), based on more detailed information regarding the interaction of driver characteristics and the situations that lead to drinking and driving.
- Develop and test strategies to counter decreasing interest and support among legislators, police, and other public officials for efforts to reduce alcohol-impaired driving.
- Develop and test methods for extending the effectiveness of ignition interlocks for convicted DWI offenders beyond the period during which such devices are installed on the offenders vehicle.

Occupant Protection

- Develop and test materials and procedures specifically designed for part-time users to increase their perceptions of risk in those situations in which they currently do not buckle up.
- Develop and test improved methods for disseminating the results of occupant-protection research to program developers to ensure effective targeting and up-to-date materials.
- Develop and test more effective materials for convincing police officials and lawmakers that good laws and well-publicized enforcement have great potential to increase safety belt and child seat usage and thus to prevent deaths and injuries.
- Develop and test various technological approaches to increase belt use.

Speeding and Unsafe Driving Actions

- Develop and test materials and procedures to reduce the tendency (or ability) of drivers to endanger themselves and others by driving aggressively.
- Develop and test materials and procedures to increase the acceptance of automated law enforcement by the public and the law enforcement community.
- Develop and test materials to educate drivers and the general public about the impact of speed on crashes and resulting deaths and injuries.

Older Drivers

- Develop and test guidelines and procedures for training driver licensing personnel how to evaluate the safe driving abilities of older persons applying for licensing or license renewal.
- Develop and test guidelines and procedures for assisting older drivers to make a smooth transition from driving to other ways to meet their transportation needs.
- Develop and test guidelines for medical personnel and social service personnel to help older drivers regulate their driving.
- Establish the potential for licensing personnel to judge older drivers' ability to drive, based on an assessment of their skills, capabilities and training needs.
- Identify and evaluate alternative federal, state, and local roles and actions to assist older drivers in meeting both safety and mobility needs; assess the costs and benefits of these alternatives.

Pedestrians, Bicyclists, and Motorcyclists

- Develop and test procedures for reducing the occurrence of pedestrian crashes among major identified target groups (e.g., young children, alcohol-impaired adults, elderly) in large cities.
- Field test software that permits communities to identify the extent of their pedestrian and bicyclist crash problems and suggests appropriate countermeasures to address them.
- Develop and test materials and procedures to educate drivers and the general public about the seriousness of the pedestrian and bicyclist crash problem and how they can prevent becoming involved in such crashes.
- Develop refined countermeasures for reducing the ocurrences of crashes involving bicyclists.
- Develop and test elementary school curriculum materials that provide information and resources to improve pedestrian and bicyclist safety for school-aged children.
- Develop and test countermeasures for reducing the incidence of operating a motorcycle while impaired by alcohol or other drugs.

Novice Driver Education

- Develop and test materials and procedures to increase the involvement of parents and other edults in the process of providing effective and safe driving practice for novice drivers.

Emergency Medical Services

- Develop and test materials and procedures for training rural EMS personnel in providing appropriate care and clinical interventions to victims of motor vehicle crashes.
- Develop and test countermeasures to prevent mortality in rural motor-vehicle crashes.

Technology Applications

- Develop and test strategies to incorporate emerging technologies in behavioral aspects of traffic safety.
- Develop and test strategies for allaying public and institutional fears of technological solutions to traffic-safety problems and for gaining support for prudent applications of technology.

Strategic Objective: Program Evaluation

Ensure that programs implemented by states and communities to combat traffic safety problems are effective in achieving their intended purpose. Evaluation may address program implementation procedures, outcomes, or both.

The outcome objectives listed under each program area focus on determining the effectiveness of a program in terms of specified dependent variables. Some are designed to identify the operational characteristics of effective programs. Final reports on completed evaluations provide information to aid the expansion of effective countermeasure programs by states and communities and other organizational entities. They also help to establish useful boundaries for adaptations of programs to local needs.

Success in achieving this strategic objective will be measured by progress in accomplishing the following outcome objectives:

Impaired Driving

- Evaluate the effectiveness of the Section 410 Alcohol Incentive Grant Program in reducing alcohol-related fatalities in the states.
- Evaluate the effectiveness of programs with major potential to reduce alcohol impaired driving, such as frequent and widespread sobriety checkpoints, administrative and judicial license and vehicle sanctions (including ignition interlocks), zero BAC tolerance laws for youth, and .08 BAC laws for adult drivers.
- Evaluate the effectiveness of various alternative transportation programs in reducing the incidence of impaired driving.

Occupant Protection

- Evaluate the effectiveness of state legislative changes that provide for standard (primary) enforcement of safety belt usage laws, penalty points for violators, or higher fines.
- Evaluate the effectiveness of materials, incentive programs, and strategies on increasing safety-belt usage of part-time users.
- Evaluate the effectiveness of the President's Initiative to Increase Safety Belt Usage.

Speeding and Unsafe Driving Actions

- Evaluate the effectiveness of automated enforcement programs such as photo radar for speeding and red-light running.
- Evaluate the effectiveness of enforcement (and other) programs that target situations where speeding is most likely to lead to crash involvement.

Older Drivers

- Evaluate model driver licensing programs that restrict or deny licensing for those older drivers who do not appropriately restrict their driving.
- Evaluate model medical and social-service programs that are designed to help older people make appropriate decisions about driving and maintaining their mobility.

Pedestrians, Bicyclists, and Motorcyclists

- Evaluate the effectiveness of NHTSA-developed school-bus safety training program that has been adopted and distributed by the National Safety Council.
- Evaluate the effectiveness of a comprehensive pedestrian countermeasures program, adapted for use in large urban settings.
- Determine the costs of motorcycle helmet law repeal, relative to changes in injuries, fatalities and medical care expenditures.
- Evaluate the effectiveness of programs designed to reduce the incidence of impaired motorcycle operation.

Novice Driver Education

- Evaluate the effectiveness of a two-stage driver education relative to citations and crashes, controlling for the influence of graduated licensing on these outcomes.

Emergency Medical Services (EMS)

- Evaluate locally implemented procedures to reduce rural preventable mortality.
- Using outcome measures determined by current research, evaluate the effectiveness of EMS pre-hospital interventions on health outcomes.
- Determine the efficacy of training methods, retention periods, and the need to provide training in new clinical practices for EMS personnel.

Safe Communities

- Determine the characteristics of Safe Communities that are thriving and those that have faltered, where they are similar, and where they are different.
- Study Safe Communities programs to determine the processes involved in establishing strong coalitions among partners, and the mechanisms that enable, facilitate, and strengthen the formation of such inter-organizational ties.
- Determine how each partner organization's objectives contribute toward the perpetuation of the Safe Communities coalition, how organizations' objectives interact, and what steps are necessary to counter the forces that contribute to a program's demise; identify the short- and long-term successes of the Safe Communities program for each of the constituent groups in the coalition.

Technology Applications

- Evaluate the effectiveness of various technologies to detect drivers with suspended licenses.
- Evaluate the effectiveness of various technologies that may help increase safety-belt usage.
- Evaluate the effectiveness of various technologies with potential for reducing unsafe driving acts.

Appendix B—Program Area Summaries

Following are summaries of each program area, including a description of the program area, past and current research in the area, and some of the highest priority issues needing attention. Comments are invited on strategic issues, objectives, or outcomes, as well as on any other aspect of these summaries.

Impaired Driving

Background

In 1996, alcohol was involved in approximately 17,000 traffic fatalities, and over 1,000,000 injuries. Arrests for Driving Under the Influence (DUI) or Driving While Impaired (DWI) have reached a plateau at about 1.4 million arrests annually, after reaching a high of 1.8 million in the late 1980s. Substantial progress has been made in reducing alcohol related crashes over the past decade. From 1986 to 1996, alcohol related fatalities fell from about 52 percent to 41 percent of total traffic fatalities. The actual number of alcohol-related fatalities dropped from 24,000 to 17,000 over that period. Countermeasures found to contribute to these reductions include legislation increasing the drinking age and decreasing legal blood alcohol concentration (BAC) limits, highly visible enforcement, and swift and certain license sanctions. Increased awareness of the drinking and driving problem and its gradual social unacceptability have also helped reduce the problem.

Driving while impaired by drugs other than alcohol may also constitute a significant highway safety problem, although it appears to be much smaller than the alcohol-related problem. One of the most representative studies in this area, a study of 2,000 fatally injured drivers in 1990, showed that 18 percent involved other drugs, either alone or in combination with alcohol.

What We Have Learned

Research has shown that driving performance can be impaired at low alcohol levels and that the risk of crashing increases significantly after just one or two drinks. It has also been shown that many drugs other than alcohol can also impair driving. Marijuana poses significant potential for driving related problems.

Two high risk drinking and driving target groups have been identified: young drivers and repeat offenders. Drivers between 15 and 24 years of age comprise less than 14 percent of the population but they are involved in 27 percent of alcohol-related fatalities. Repeat offenders account for about a third of all drivers arrested for DWI. Safe-ride and designated driver programs provide alternatives to drinking and driving, but they are not widely used. Some studies have shown that they can be used inappropriately.

Research has shown that highly visible law enforcement efforts, such as sobriety checkpoints, can have a general deterrent effect on drinking and driving. Jail time for DWI has been shown to have limited effectiveness, usually reducing drinking and driving only during the time the violator spends in jail. Research on both electronic monitoring and intensive-supervision probation has demonstrated reduced DWI recidivism among program participants. Countermeasure research also led to the development of validated DWI detection cues and a standardized field sobriety test (SFST) for use in determining whether drivers are above .10 percent BAC. These tools have contributed significantly to DWI enforcement.

ORTR/RED evaluations have documented the effectiveness of various legislative actions such as: Minimum Drinking Age 21 laws, Zero Tolerance laws for youth, .08 BAC laws for adults, and Administrative License Revocation. In addition, Oregon and Washington enacted laws allowing police to seize the registration of motorists driving on a suspended licenses and to affix an identifying ("zebra") tag over the vehicle sticker. The law was shown to be effective in Oregon but not in Washington.

Current Research and Evaluation

Currently ORTR/RED is analyzing results of a survey of close relatives of alcohol-related fatal crash victims to refine target group descriptions. Projects are underway to examine how alcohol affects the driving behavior of various age, gender, and drinker-type groups, and to re-examine the relative crash risk among drivers at various levels of alcohol concentration. Additionally, ORTR/RED administers a biennial national survey to track the nature and severity of alcohol-related issues.

Other research efforts include: development of new enforcement and adjudication programs to deter alcohol impaired driving; examination of new technologies for identifying driving-while-suspended (DWS) offenders and improving DWI enforcement; assessment of enforcement system loopholes; examination of DWI detection cues and the SFST at lower BACs; and development of improved techniques for conducting sobriety checkpoints.

Evaluation efforts focus on vehicle-impoundment, -immobilization, and -forfeiture laws for repeat DWI and DWS offenders and other key legislative changes in various states, such as lowering the BAC limit to .08 for adults.

Current drug-focused research includes a survey to determine the nature and severity of the effects of drugs on driving, a study examining drug involvement in serious non-fatal crashes; and an on-the-road study of the combined effects of alcohol and marijuana.

Strategic Issues for Research on Impaired Driving

- The relationship between blood alcohol concentration (BAC) and crash risk was established nearly 40 years ago. More sophisticated research design and alcohol measurement procedures are available today. In addition, the trend toward lower BAC limits necessitates refined data on the relationship of BAC and crash risk at these lower levels.
- Persistent drinking drivers are often not identified until after they have been involved in multiple crashes. Intervention programs would be more effective in reducing crash involvement if these drinkers could be identified at their first alcohol-related offense.
- More than 30 states have enacted laws permitting the use of ignition-interlock devices for drivers convicted on DWI offenses. Research suggests that offenders

who have interlocks installed recidivate less often than those who do not, but the effects do not appear to continue after the devices have been removed. For this approach to be more widely implemented, judges need a better measure of its effectiveness and information about how to make the effects more durable.

• Many legislators are reluctant to pass stronger laws, and police are often reluctant to enforce strong laws. Clear and strong evidence of the types and levels of interventions that the public is willing to support, would aid legislative and enforcement efforts.

• Identification of population subgroups that are over-involved in impaired driving helps to make countermeasures more efficient, when deployed. However, developing countermeasures tailored for specific target populations requires detailed information about the groups and the interaction of driver characteristics and the situations that lead to drinking and driving. The availability of such information would help determine the nature of effective countermeasures and procedures for various groups including drinkers, servers, companions, legislators, police officers, and judges.

• Communities typically demand evidence that countermeasure programs are effective and can be implemented with available resources before they will adopt them. Current candidates for evaluation include highly visible roadside sobriety checkpoints, administrative and judicial license and vehicle sanctions, zero BAC tolerance laws for youth, and .08 BAC laws for adult drivers.

• Over the past 20 years, volumes of laws have been enacted, arrests of alcohol-impaired drivers have increased in numbers, sanctions have been imposed with greater consistency, and the public norm has been increasingly one of non-acceptance of driving while impaired by alcohol. However, the current level of public support may not be adequate for implementation of new and potentially more effective countermeasures. In addition, support for intensified efforts to reduce alcohol-impaired driving may be lower among legislators and other public officials. The pressures of crime prevention have eroded support for traffic enforcement, and there are indications that, after nearly 20 years of focus, many legislators and police officials are "burned out."

• Different studies have produced widely varying estimates of the degree to which drugs other than alcohol contribute to traffic crashes and fatalities. Studies of traffic-law offenders and those non-fatally injured in crashes have generally produced higher estimates than have studies of fatally injured crash victims. More accurate and timely data would be helpful in making decisions about resource allocations in this area.

Occupant Protection

Background

The installation of safety belts has been required on passenger cars since the 1960s. Despite reasonably widespread educational efforts, however, the use of these safety devices remained quite low (i.e., less than 15 percent) until 1984, when states began to pass laws requiring vehicle occupants to use safety belts. Following the passage of such laws, most states experienced dramatic increases in safety belt use (e.g., 20–40 percentage points). Belt use is now mandated in 49 states and the District of Columbia, but only 13 states and the District of Columbia allow police to stop a vehicle solely on the basis of observing a safety belt violation (i.e., standard enforcement). Most states require that another law violation must first be observed (i.e., secondary enforcement) before safety belt law violators can be stopped and issued a citation. Under these conditions, national safety belt use has reached a plateau of about 68 percent. President Clinton has established a Presidential Initiative to Increase Safety Belt Usage, setting a goal of 90 percent belt use by the year 2005.

The need to use child safety seats appears to be more widely accepted than the need to use safety belts. The first law requiring children to be in safety seats was passed in 1978 in Tennessee. By 1985, all 50 states and the District of Columbia had passed child passenger laws. Statewide reported usage rates currently range between 60 and 90 percent, depending on the age of the child. Most safety seats, however, are used improperly to some degree or another. Much remains to be done to determine the consequences of the various kinds of misuse and to develop programs to decrease such misuse. Investigations of air bags causing injuries and fatalities to young children and adults of short stature has reemphasized the need to get young children into safety seats, to get parents to install child seats in the back seat, and to put all children under 12 in the back seat.

What We Have Learned

Belt use remains low among various groups, such as young males and rural road users, and the overall rate of increase in belt use is flattening out. Much non-use of safety belts can be attributed to part-time belt users: people who use belts only on some trips or only on certain portions of trips. The main reasons part-time belt users offer for non-use are that, in their view, some trips entail an extremely low crash risk and some, usually because of relatively low speeds, entail a very low risk of serious injury. An estimated 5–10 percent of the population totally resists using safety belts under any condition. They often claim that safety belts are too uncomfortable, possibly dangerous, and that they don't like being told what to do.

Standard (primary) enforcement can have a major impact on belt use. Belt use increases of about 15 percentage points have been observed in states following a switch from a secondary enforcement law to a standard enforcement law. It also appears possible, however, to realize substantial gains in states with secondary enforcement laws. Michigan, Pennsylvania, and Washington, for example, are secondary law states and each reports safety belt use rates greater than 70 percent.

Child safety seat use is currently estimated to be 88 percent for infants and 61 percent for toddlers. Use declines sharply with age of child, although it is not clear if children are prematurely moved out of a child seat to make room for a younger sibling, if parents think their children no longer need the protection, or for some other reason. In a recent study, misuse of child safety seats included the following errors (and frequency of observation): no locking clip used on belts with sliding latch plate (72 percent); no chest clip (59 percent); inappropriate use of harness strap use (46 percent) or vehicle safety belt (17 percent); seat placed in wrong direction (10 percent); and inappropriate harness connection (3 percent).

Current Research and Evaluation

Current research in the area of occupant protection is focused on efforts to increase belt use by part-time users, and to gather data on teenagers and other high-risk, low-usage groups to aid in developing programs to increase their belt use. Projects are also underway to develop guidelines for matching safety education strategies to youth characteristics, to develop strategies for encouraging states to upgrade from secondary to standard enforcement of belt use laws, and to increase belt law enforcement levels. Some useful data regarding these matters will come from analyses of findings from the second biennial national survey of occupant protection issues to be completed in 1997.

Strategic Issues for Research on Occupant Protection

• Highly publicized waves of intense belt-law enforcement (Selective Traffic Enforcement Programs or STEPs) have been successful in raising belt use levels but several factors appear to impede communities from effectively adopting these procedures. Minimum enforcement levels, characteristics of public information messages, need for police training, and use of overtime or regular time are among issues needing further attention.

• Incentive programs have not been seriously investigated since before occupant protection laws became commonplace. While these programs historically provided rewards for belt use, they could be applied to intermediary groups to reward efforts to get others to buckle up. The potential of incentives in conjunction with sanctions appears to be significant but not well documented.

• Most observed non-use of safety belts is due to part-time users who have judged their driving situation to have a low risk of resulting in a crash, an injury or a citation for non-use of a safety belt. Getting part-time users to buckle up will require an increase in their perception of risk in the situations they now believe to be low risk. However, beliefs concerning risk of injury appear to be highly resistant to change.

• There are several ongoing efforts to monitor changes in safety belt use (e.g., state surveys, NHTSA's National Occupant Protection Use Survey [NOPUS], and the Fatality Analysis Reporting System [FARS]) and changes in public knowledge, attitudes, and opinions (e.g., biennial National Occupant Protection Survey). These efforts will be useful in evaluating the President's Initiative to Increase Safety Belt Usage and the Air Bag Safety Campaign.

• Knowledge of the characteristics of safety belt users, part-time users, and non-users is modest. Youth have very low usage rates, as do impaired drivers and violators of other laws. Usage is lower in rural areas (other than interstate highways) and among drivers of pickup trucks, sport-utility vehicles, and full-sized vans. Public education programs require more detailed knowledge to direct appropriate messages to specific groups using the most efficient communications medium.

• Correcting misuse of safety seats, including premature graduation from safety seats to safety belts, requires a different approach than does promoting safety seat use among non-users. Accordingly, child safety seat programs require more knowledge of the characteristics of users, part-time users, and non-users of safety seats and their respective motivations for use, misuse, or non-use.

• Results of current research tend not to diffuse into new occupant protection programs quickly or completely. Consequently, programs do not target materials to appropriate groups and messages may be ineffective for groups that are targeted.

• In spite of the interest in and support for stronger actions to increase safety belt and child seat usage expressed in most public opinion surveys, the public fails to perceive the risks and costs of not buckling up. State legislators and local police officials fail to be convinced of the potential of safety restraints to prevent death and injury and of the potential for good laws and highly visible enforcement to increase belt usage.

• It has been about 20 years since safety-belt/ignition interlocks were ruled out as a technique for ensuring belt use. Improvements in technology, on-board computers, and wide acceptance of belt-use requirements provide a new environment in which to reexamine technological approaches to increasing belt use levels. "Smart" belt-use reminders and interlocks with other automobile features are now possible, but have not been tested with drivers.

Speeding and Unsafe Driving Actions

Background

Research has indicated that most crashes are attributable to human performance (e.g., following too closely, inattention, speeding, "aggressive" driving). However, progress in developing countermeasures to reduce the incidence of unsafe driving behaviors has been limited. Two reasons for this limited progress are the difficulty of measuring the incidence of unsafe driving acts (UDAs), and a poor understanding of the circumstances under which various UDAs are most likely to lead to crashes.

One of the most frequently cited UDAs involves speeding. This specific behavior and its effect on crash frequency remains highly controversial. Speeding can be defined in at least two ways: (1) exceeding the posted speed limit; and (2) driving too fast for conditions. Speed affects both crash worthiness and crash avoidance. It is clear that speeding increases the severity of crashes, since the energy released in a crash increases by the square of vehicle velocity. It has also been demonstrated that increasing speed reduces a driver's ability to steer safely around curves or objects in the roadway, extends the distance necessary to stop a vehicle, and thus increases the distance a vehicle travels while the driver reacts to a dangerous situation. According to police crash reports, approximately one third of all fatal crashes involve speeding as a primary cause. While this kind of information may provide a rough estimate of the incidence of speeding in fatal crashes, it does not provide sufficient insight into the causal relationship between travel speed and crash involvement. All things considered, we still have inadequate information relating to the extent to which speed contributes to crash causation and the conditions under which speeding most often results in a crash.

There are a variety of other UDAs that have a high likelihood of causing crashes. They include: running red lights and stop signs, following too closely, passing improperly, weaving through traffic, etc. Recently, the term "aggressive driving" has been used to refer to a number of unsafe driving actions that are accompanied by an apparent aggression exhibited by one driver toward another.

What We Have Learned

Crash study work has shown unequivocally that most crashes are attributable to human performance problems including improper lookout, speeding, inattention, improper evasive actions, and distractions. In terms of speed, we know that slower speeds are accompanied by fewer and less severe crashes, but the exact nature of this relationship needs further documentation. We also know that higher levels of speed variance on roadways has been shown to be associated with increased crash risk.

We do know that, among drivers involved in fatal crashes, younger drivers of either sex are more likely to have been speeding than older drivers. Males, at any age, are more likely than females to have been speeding. There also appears to be a strong positive correlation between speed and alcohol involvement in fatal crashes. Drivers at high BACs are more likely to have been speeding than those at lower BACs. With regard to roadway type, 43 percent of crashes reported to have involved speeding occur on non-interstate roads with a speed limit of 55 mph. Forty-five percent occur on roads with speed limits of 50 mph and below. Only 12 percent of fatalities involving speeding occur on interstate highways.

Research suggests that the perceived probability of getting caught is more important than perceived severity of fine in controlling speeding behavior. As in other areas of traffic law enforcement, it appears that enforcement of speed limits must be accompanied by publicity if general deterrence of speeding is to occur. The importance of perceived risk of getting caught, along with decreased resources for traffic law enforcement, have led some officials to view the use of automated speed enforcement as a desirable alternative. Currently, however, public support for automated speed enforcement appears to be limited.

Current Research and Evaluation

The agency is currently conducting three separate research projects dealing with speeding and unsafe driving: (1) A survey of public attitudes and behaviors toward speeding and other unsafe driving actions; (2) a crash investigation study to examine the role of unsafe actions in crashes; and (3) a review and analysis of existing data to suggest guidelines for setting speed limits. The survey of public attitudes regarding speeding and other UDAs will assess views toward enforcement, motivations for speeding, anticipated consequences, and the acceptability of various measures to reduce unsafe driving behaviors. The crash investigation effort involves a clinical case study approach in which a sample of crashes will be reconstructed with a focus on identifying the specific behaviors that lead to the crash. The objective of the speed limits study is to develop data-based guidelines for setting speed limits. This study is co-sponsored by NHTSA, the Federal Highway Administration and the Centers for Disease Control, and is being performed by the Transportation Research Board.

One problem that current studies do not address is the absence of research that estimates the level of crash risk associated with speed levels, under differing traffic and environmental conditions. To address this issue, an epidemiological study is being developed in which the travel speeds of crash-involved vehicles will be compared with travel speeds of matched non-crash involved vehicles. An additional study is being initiated in October of 1997 to test the feasibility of equipping a fleet of vehicles with speed and position recorders to determine the crash-involvement rates of drivers with differing speeding habits.

Strategic Issues for Research on Speeding and Unsafe Driving Actions

• The nature of the relationships among speed, driver characteristics, roadway conditions, situational factors, and crash rates is currently unknown. Without such knowledge, speed limits are set using somewhat arbitrary standards, and are often viewed negatively by the driving public. In order to develop effective countermeasures, the complex relationship between speed and crashes must be much better understood and documented.

• After the relationship between speed and crashes is more clearly defined, drivers and members of the general public need to be made aware of the conditions under which speed leads to crashes.

• When large numbers of drivers ignore posted speed limits, it is difficult to identify drivers who are most likely to be involved in crashes. Appropriate target-group identifiers might be more related to overall driving habits than to events identified in single episodes. Searching for characteristics of at-risk drivers will require in-depth studies of driver behavior.

• "Aggressive driving" implies a social-interactive component to the commission of unsafe driving actions. However, there is no common definition of aggressive driving. Without a definition, it is difficult to determine the incidence of such a phenomenon and how it is related to crash causation.

• Automated enforcement of speed and other UDAs are not widely accepted by la-

enforcement agencies or the general public. Acceptance may be facilitated by implementation and evaluation of such technology where compliance with speed limits is critical or where offenses are least tolerable to the public (e.g., red-light running or speeding near schools or hospitals).

Older Drivers

Background

NHTSA first developed a plan to address the combined safety and mobility needs of older drivers in 1988. This plan was developed in response to the Transportation Research Board's publication, Transportation in an Aging Society. The plan was last revised in 1993, at the request of Congress. People over 70 currently comprise 9 percent of the population and 13 percent of fatalities. Although older drivers are highly over-represented in crashes per miles traveled, they are only slightly over-represented in fatal crashes per licensed driver. However, demographic trends project that the proportion of older drivers on the road will increase from the current 9 percent to over 14 percent within the next 25 years. Primarily because of increased frailty, the ratio of fatalities to injuries for drivers over age 80 is 4 to 6 times that of crash-involved drivers between 20 and 60. Thus, as the numbers of older drivers on the road increase, it is inevitable that more will be killed in crashes, unless special efforts are made to improve their safety.

What We Have Learned

The majority of older drivers do *not* constitute a major safety problem. Research has indicated that most older drivers adjust their driving practices to compensate for declining capabilities. They reduce or stop driving after dark or in bad weather and avoid rush hours, high speed roads and unfamiliar routes. Men appear to be somewhat more reluctant than women to stop driving and consequently are at a higher risk of crashing than women of comparable age. Conditions such as memory loss, glaucoma, and antidepressant use appear to be related to increased crash risk.

Some older persons are not aware of their changing conditions; most notably, those with cognitive disorders, such as Alzheimer's disease, and certain visual problems. These drivers may not self regulate and, as a result, pose an increased risk of crash involvement. Such individuals may require outside intervention to remove them from traffic. Unfortunately, research suggests that most family members, social service agencies, and health care professionals are either not sufficiently aware or choose not to provide assistance in making driving-related decisions to those who need it. For a variety of reasons, many appear hesitant to get involved with this issue.

Those elderly drivers who remain a problem are not easily detected with standard licensing procedures. Further, there is some doubt as to whether most licensing staff have the skills necessary to detect these problem drivers, even with training and state-of-the art testing techniques. Diagnostic tests currently in use have not been shown to be effective in identifying those older drivers who are at increased crash risk, but some recently developed tests of "speed of attention" and "visual perception" may have such potential.

One factor that must be considered with regard to interventions is the fact that elderly people who give up driving often lose mobility. For many, the automobile is their primary mode of transportation and acceptable alternatives are simply not available. Decreased mobility is frequently followed by decreased quality of life as elderly people are cut off from the social events, family visits, medical attention, and opportunities for worship that are critical in maintaining their sense of well being.

Current Research and Evaluation

Several long-term efforts are now approaching conclusion. These developmental projects include: (1) Procedures to help elderly drivers make better decisions about adapting their driving to accommodate their changing abilities; (2) procedures for family members, friends, social service agencies, physicians, and other health-care providers to recognize when an older person needs to adjust his or her driving to adapt to functional limitations; (3) procedures for driver licensing agencies to restrict or deny licensing for those who do not appropriately restrict their driving; and (4) model programs for medical and social-service agencies to help older people to make appropriate decisions about driving while maintaining their mobility. Current efforts also include a survey to determine societal perceptions and willingness to assist older drivers to better regulate their driving, and a field test of special licensing requirements for older drivers.

Strategic Issues for Research on Older Drivers

- Older drivers have higher fatality rates, per-mile driven, than do average-age drivers. Two factors that contribute to this measure of increased risk include: (1) the fact that elderly drivers travel fewer miles on interstate highways and other major roadways; and (2) the fact that elderly drivers are more fragile than younger drivers. Roadways most often used by elderly drivers, while involving lower speeds, often have more opportunities for vehicle-to-vehicle conflict. Thus, elderly drivers are exposed to more potential crash situations per mile than is the average driver. Because of their fragility, an elderly person involved in a crash is more likely to be seriously injured or killed than is a younger person. Other factors, such as the types of crashes older drivers are involved in, are also likely to be important and the development of effective countermeasures will require a better understanding of these factors.
- Some state licensing officials have suggested establishing a "graduated" licensing system for older drivers, whereby driving would be systematically restricted to certain driving situations based on reduced abilities. Such a system would entail some expense and it would depend upon accurate and validated testing procedures that are not yet available. Also, it must be remembered that most older drivers appear to impose restrictions on themselves. Development and evaluation of such a model graduated licensing programs could provide important information with regard to the potential for widespread adoption of such programs.
- There is some disagreement as to whether licensing personnel can accurately assess an older driver's ability to drive. It may be that individuals with more specialized training and experience will be required. Research is needed to determine if licensing personnel are able to take on this role and, if so, what kinds of selection procedures and training will be required.
- It is likely that more older persons will drive longer in the future than they do now, further increasing their exposure to crashes, injuries, and fatalities. While NHTSA's responsibilities for increasing safety are clearly defined, its role in extending mobility is not. Additional information (e.g., determining the extent to which loss of driving contributes to risk of death or injury as a pedestrian) is needed to clarify the level of effort the agency should place on developing programs to foster safe mobility for older people by helping them continue to drive or by helping them make the transition to other modes of transportation.
- One of the most significant reasons for elderly drivers' over-involvement in fatal crashes is the inability of their bodies to absorb crash forces. What would be a survivable crash for a younger person is often a fatal crash for an older person. Current occupant-protection standards do not specifically address the frailty of older occupants. More information is needed to establish the feasibility of improving the protection of older people when they are in a crash.
- Some of the causes of older-driver crashes could conceivably be corrected using new vehicle technology. Although adaptive devices have a long history of permitting people to overcome various handicaps, older persons are among the last to adapt to new technology. Additional research in this area could provide useful information regarding the acceptability of technology-based innovations designed to help older, functionally less able people continue to drive.

Pedestrians, Bicyclists, and Motorcyclists

Background

Over the past 25 years, NHTSA has made substantial progress in improving the safety of pedestrians and bicyclists, particularly in understanding factors leading to pedestrian and bicyclist crashes. Pedestrian crashes involving young people aged 5–12 have declined by about 25 percent since this training and public education work began. However, pedestrian crashes involving young people remains a severe problem with about 30,000 such crashes occurring annually. Older persons also pose a significant over involvement in pedestrian crashes. While they constitute only 13 percent of the total population, they are involved in about 23 percent of pedestrian crash fatalities.

Another significant component of the pedestrian crash problem involves alcohol. Research has shown that about half of all fatal adult pedestrian crashes involve either an intoxicated pedestrian (31 percent of cases), or an intoxicated driver (14 percent of cases). Finally, the pedestrian crash problem is especially severe in several large urban areas where nearly half of all those killed in motor vehicle crashes are pedestrians.

While the pedestrian (and bicyclist) crash problems remain serious, the public's attention is not as strongly focused on these issues as it is on other areas, such as impaired driving, aggressive driving, etc. In addition, shifts in traffic safety priorities in the early 1980s resulted in a reduced emphasis of pedestrian and bicyclist issues. In spite of these obstacles, a number of prototype public information and education products have been developed, tested and found to be effective.

What We Have Learned

Crash investigation studies have shown that most crashes involving pedestrians or bicyclists and motor vehicles can be categorized into a few major types based on a combination of behavioral errors and environmental conditions. Research has shown that training and public education programs focused on these main crash types can reduce the incidence of young pedestrian crashes (age 5–12) by as much as 25 percent. Past research indicates that there is more than a 500 percent increase in crash risk for pedestrians at BACs of .15 percent or above. Other studies have determined that Native Americans, male Hispanics, and African-Americans over the age of 25 are over-represented in alcohol-related pedestrian crashes. Alcohol is also a major factor in both bicyclist and motorcyclist crashes, with 25 and 30 percent of such fatalities, respectively, involving BACs over .10 percent.

In 1996, 2160 motorcyclists were killed and an additional 56,000 were injured in traffic crashes. Since 1986 the fatality rate per hundred million vehicle miles traveled decreased dramatically: from 48.6 in 1986 to 22.7 in 1995. Per vehicle mile traveled in 1995, mototcyclists were about 16 times as likely as passenger car occupants to die in a motor vehicle crash and about 4 times as likely to be injured. In 1996, there were 1,048 two-vehicle crashes involving a motorcycle and another vehicle. In 35% of these crashes the other vehicle was turning left while the motorcycle was going straight, passing or overtaking the vehicle. Crash statistics show that helmets are about 29 percent effective in preventing crash fatalities and 67 percent effective in preventing serious injury. Also, we know that states which have enacted mandatory helmet laws for all riders experience almost 100 percent helmet use; however, in states without such laws, helmet use ranges from 34 percent to 50 percent. Motorcycle operators involved in fatal crashes in 1996 had higher intoxication rates than any other type of motor-vehicle driver. In 1996, 31 percent of all fatally injured motorcycle operators were intoxicated and another 11.5 percent had positive BACs between .01–.09. As one way of countering this problem, NHTSA research developed a set of DWI motorcyclist cues (e.g., drifting during turn or curve, trouble with dismount, weaving) that have been found to be predictive of impaired motorcyclist operation. Information about these cues have been widely distributed to police agencies throughout the country.

Current Research and Evaluation

Current research is focused on development and testing countermeasures to reduce pedestrian crashes involving children, alcohol-impaired adults, and elderly persons; investigating the effect of vehicle speed on pedestrian crashes; and developing a catalogue of available measures to reduce bicyclist crashes. Periodic surveys are also being conducted to determine the nature and extent of the public's view of the pedestrian and bicyclist crash problem. In the motorcycle area, efforts are being focused on evaluating the impact of repealing motorcycle helmet laws in various states, on the effectiveness of various means for increasing the visibility of motorcyclists; and on developing and evaluating effective training and licensing programs for novice motorcyclists.

Strategic Issues for Research on Pedestrians, Bicyclists, and Motorcyclists

- Over the past 10 years, fatal crashes have declined substantially for both pedestrians and bicyclists. In order to determine the causes for this decline, we must find a way to measure the magnitude and trends in the exposure of pedestrians and bicyclists to crash situations.
- Most pedestrian crashes occur in urban settings. In some cities, half or more of those killed in motor-vehicle related crashes are pedestrians. Thus, to be effective, existing countermeasures must be adapted to meet the unique demands of the large-city environment. Although existing countermeasures have been tested individually, they have not been tested in combination, in a big-city environment.
- Nearly all of NHTSA's research on pedestrian and cyclist crashes with motor vehicles has emphasized the role of the pedestrian or the bicyclist, rather than the driver of the car or truck. In order to develop more effective comprehensive programs for pedestrians and cyclists, more information is needed regarding driver awareness of these road users and of how they interact.
- In many cities, especially in the eastern portion of the United States, drivers do not yield to pedestrians, as required by law. Past research has found that drivers making a right-turn-on-red maneuver often do not fully stop their vehicles nor adequately search for pedestrians. An assessment of driver compliance with existing laws and ordinances is necessary before a review of current laws governing pedestrians, bicyclists, and drivers can determine whether existing laws should be modified or new model legislation should be drafted.
- NHTSA has developed training materials for a number of professional groups to alert them to the safety problems of pedestrians and bicyclists and how to address them. These groups include police, traffic engineers, city planners, and highway safety specialists. Another important group for which materials need to be produced are elementary school teachers.
- The lack of visibility, including nighttime conspicuity, remains a substantial problem contributing to motor vehicle crashes with pedestrians and bicyclists. More information is needed on the requisite materials and devices that should be worn or used by pedestrians and bicyclists in order to make these road users more visible to traffic.
- Research is underway to catalogue current countermeasures available to address bicyclist safety This effort is intended to identify those areas in need of additional development.
- The Federal Highway Administration is developing a prototype software package to permit communities to assess their unique pedestrian and bicyclist safety problems. Before this software can be widely distributed, it must be tested under real-world conditions.
- A joint effort with the Federal Highway Administration resulted in a pedestrian and bicyclist safety training program for traffic safety professionals. Research to improve awareness levels of public and highway safety professionals has evolved into coalition called the "Partnership for a Walkable America." One of the objectives of this group is to stimulate research to help the general public understand the seriousness of the pedestrian and bicyclist crash problems.
- NHTSA recently developed an extensive program to address school-bus safety issues. This program was adopted by the National Safety Council and has been widely distributed. While the program was tested during its development, it has not yet been evaluated as implemented by local communities.
- In nearly every state with a law requiring motorcyclists to wear helmets, there are efforts to repeal that law. Most of the states that repealed their motorcycle helmet laws in the 1970s and 1980s reinstated them a few years later. However, new efforts are currently underway in most states to repeal these laws. State legislatures change with time, and many current lawmakers, who may not be aware of past history and demonstrated effectiveness of these laws, may be convinced to vote for repeal. Supporters of helmet laws need up-to-date factual information about the increased injury severity, increased fatalities, and increased medical costs that inevitably result from rescinding motorcycle helmet laws.
- Many crashes involving motorcyclists result for drivers who "looked but did not see" the cyclist. Past efforts at increasing the conspicuity of motorcyclists resulted in the practice of riding with headlights "on" at all times, including daylight hours. Research attention must be refocused on developing more effective means for making motorcyclists visible to car and truck drivers and on developing and testing more effective training and licensing programs for novice riders.
- The most recent systematic analysis of motorcycle crashes was done nearly 20 years ago. During this time, motorcycle designs have changed dramatically, favoring sleeker and faster bikes with lower profiles, urban areas have expanded while roadways have deteriorated, and riding practices have adapted to these changes. These events have an unknown effect on motorcycle crashes and, consequently, the program actions needed to counteract them.

Novice Driver Education

Background

NHTSA was substantially involved in novice driver education research from the late 1960s through the early 1980s. However, the agency reduced efforts in this area after a major demonstration program showed no long-term crash or violation reductions resulting from what was then a state-of-the-art novice driver education and training program. In 1994, Congress requested recommendations from NHTSA on ways to improve novice driver education and the agency developed and submitted to Congress a "Research Agenda For an Improved Novice Driver Education Program." This report reviewed the history of driver education (including, but not limited to NHTSA's research and demonstration efforts), suggested reasons why novice driver education may not be as effective as it could be, and suggested that an improved driver education program should be developed as an integral part of a graduated driver licensing system. The report also provided a summary of research, development, and evaluation activities that could be used to restructure and improve the impact of novice driver education. The proposed program would have two-stages of education that would parallel stages of a graduated licensing system. It would include parent participation, and it would incorporate the use of electronic simulation to provide risk-management training.

What We Have Learned

Driving is a complex task that requires many hours of practice to reach proficiency in all situations. Much of the time the driving task is non-demanding in nature and the basics of vehicle control that are learned in a brief training program generally provide the skills necessary to drive safely in non-demanding situations. However these short courses do not provide the adequate training to meet the occasional, but critical, situations where the driving task becomes very demanding. Clearly, advanced risk-management skills cannot be learned in a short time, nor can they be learned before the basics of vehicle handling are mastered. This suggests the need to separate the teaching of the two kinds of skills into two separate learning situations. Since an additional learning requirement would require strong motivation to get novice drivers involved, it is logical to tie this two-stage driver education approach to the attainment of the drivers' license. Graduated licensing programs provide the structure in which two-stage driver education could be most effective.

Current Research and Evaluation

Current research is focused on developing and pilot testing materials for use in a two-staged driver education training program. Materials include curriculum modules covering essential perceptual and cognitive training as well as materials to guide parental involvement in providing appropriate experience and modeling proper driving behaviors. Current research is also examining interactive electronic media for use in learning and practicing advanced, risk-management skills. Evaluations of graduated driver licensing systems are being conducted in Michigan and in North Carolina. Michigan's system includes a two-stage driver education program with parent participation.

Strategic Issues for Research on Novice Driver Education

- In view of the finding that conventional driver education has little impact in terms of reducing novice driver crashes and violations, any new program approach must show that it has the potential to reduce the number, frequency, or severity of crashes of novice drivers. Since research on two-stage driver education could be confounded by the independent effects of graduated licensing, efforts must be made to control for such effects.
- The success of the two-staged driver education program depends in large part on the novice driver obtaining a significant amount of driving experience under low-threat conditions before he or she moves on to the second stage of training. Graduated-licensing systems attempt to use parents (or other significant adults) to provide this initial experience, but it is not known to what extent parents and other adults will actually participate or what kinds of situations will maximize such participation.
- The two-stage driver education program is designed to be an integral part of a graduated driver licensing system. The intent is to use the prospect of full licensure to provide the motivation to novice drivers to fully participation in the program. However, it may be that mandating such training will impose significant hardships on some individuals. The ramifications of requiring the driver education as a part of graduated driver licensing versus providing it as an optional component need to be explored.
- If a more difficult licensing exam is given as an exit (final) exam, most state licensing authorities could not assume the additional costs. Alternative approaches include having states charge applicants for this test or having training facilities provide this testing service for the licensing agency. Additional information about the potential consequences of these alternatives is needed to provide guidance to the states.
- When public school systems discontinue driver education programs, aspiring novice drivers are faced with the requirement of obtaining training though commercial agencies. A two-stage education program would place even more demands on already burdened school systems. Most foreign countries require that novice drivers take formalized training and pay for it themselves. The ramifications of adopting such a system for this country are currently unknown.
- With increased immigration, there is an increase in older novice drivers. While these older drivers do not show the age-related judgement errors associated with young novice drivers, they still have a higher level of crashes than experienced drivers of their own age. Since these drivers are older, often are less fluent in English, and may have learned to drive in another country, the extent to which they would benefit from a graduated driver licensing and education program oriented to younger, English-speaking novice drivers is not clear.
- Additional information is needed regarding the appropriate role for the Federal government to assume in developing and promoting a novice driver education program for use by states and communities.
- Developers of any complex program such as this, must solicit and consider the viewpoints of partners. A variety of mechanisms and approaches (e.g., consensus workshops) exist to meet these needs. More information about the views and preferences of various partners will be necessary to gain agreement on issues such as the basic training content needed for novice drivers and the development of model education and training programs that meet the needs of the various organizations involved.

Emergency Medical Services (EMS)

Background

EMS differs from the other program areas receiving research attention in that it is entirely focused on post-crash rather than pre-crash events. Much of what is known regarding emergency out-of-hospital medical care stems from clinical studies of stabilized patients in treatment settings. This knowledge is not always applicable to the pre-hospital setting, where EMS is provided to injured, medically-unstable patients in the field. Consequently, there are gaps in our knowledge of effective out-of-hospital care. A key impediment to research on EMS is the absence of a well defined, uniform, and complete data system to track performance of EMS systems at local and the national levels. This lack of data makes it difficult to set a strategy for EMS research.

What We Have Learned

EMS research conducted by NHTSA has focused primarily on the high mortality rate found in rural settings. Results from studies in three states indicate that from 12 percent to 29 percent of deaths from highway trauma in rural settings could be prevented by changes in patient care.

Current Research and Evaluation

Current research projects are developing appropriate outcome measures for measuring EMS effectiveness and are evaluating recommendations for reducing preventable deaths in rural traffic crashes. These recommendations resulted from an earlier study of rural preventable mortality.

Strategic Issues for Research on Emergency Medical Services

- Data provide the foundation for all research efforts but there are significant barriers to collecting relevant and accurate EMS data. Either the data do not exist, are not collected in a reliable fashion, or cannot be linked with other data sets to allow tracking of patient outcomes. The integration of information systems is not possible with most of the EMS data that is currently collected.
- The effectiveness of many EMS interventions currently being delivered by pre-hospital personnel is not adequately documented. Virtually no clinical research has been conducted with injured patients in the pre-hospital setting. Such research is needed to ascertain the effectiveness of current EMS practices on patient outcomes, including reduction in the classic "6D's" (i.e., death, disease, disability, discomfort, destitution, and dissatisfaction).
- Retrospective analysis of EMS treatment of crash victims in rural settings revealed that errors or omissions in care were involved in nearly 30 percent of fatalities. Conclusions from these studies suggest a need to improve training in specific clinical interventions by EMS personnel, particularly in rural settings.
- EMS personnel in most states are trained and periodically re-trained using NHTSA's pre-hospital curricula or similar programs. Little is known about retention periods for the material learned, need for skills updating, best methods for training, and related professional development and certification issues. Research into these areas will be needed to make improvements in NHTSA's curriculum.
- There are many reasons to use pre-hospital personnel to teach injury prevention at the community level. Some of the most obvious include: (1) The positive status and acceptance of these providers among the general population; (2) the public's willingness to accept an injury prevention message from pre-hospital providers; (3) availability of EMS providers, when they are not engaged in EMS activity; and (4) the potential cost savings that could result by preventing injuries. However, it is not clear when or where these people are effectively utilized for this purpose. Such knowledge could enhance injury-prevention activities.
- Accessibility and availability of emergency care to all is a basic EMS principle. However, enrollment in managed care plans is growing at phenomenal rates and most plans require additional levels of review before authorization and payment for EMS services is made. These additional requirements may consume precious time in emergency situations that can literally mean the difference between life and death. Research into the effects of these review requirements on EMS outcomes is needed.
- A comprehensive, well defined, national research plan that could be embraced by the many partners in the EMS community is needed. Such a plan would involve researchers and organizations in both the public and private sectors. NHTSA could provide the leadership for the development of such a plan.

Safe Communities

Background

Safe Communities is a program area managed jointly under NHTSA's Associate Administrations for State and Community Services and Traffic Safety Programs. Safe Communities bring together citizens and a wide range of local agencies and businesses, such as law enforcement, hospitals, managed care facilities, emergency medical services, schools, insurance companies, other public and private businesses and local governments. These organizations then appoint members to work on solving local traffic safety (and other injury causing) problems. Program offices within the agency (e.g., State and Community Services and Traffic Safety Programs' Office of Communications and Outreach) provide the day-to-day management of the Safe Communities Program. The Office of Research and Traffic Records, Research and Evaluation Division (ORTR/RED) provides technical expertise on matters relating to evaluation for this key program area.

The Safe Communities program is similar to the Corridor/Community Traffic Safety Programs (C/CTSP). However, the Safe Communities program uses a "bottom-up," data-based approach to identify and address key injury problems. Additionally, this program includes an expanded base of partners than the C/CTSPs. In addition to the traffic law enforcement, highway safety offices, and emergency medical services groups, a Safe Community includes citizens, business, and other health care providers such as hospitals, managed care facilities, and rehabilitation centers. Presently there are over 300 community-based, locally-supported Safe Communities in various stages of development.

Four key components of a Safe Communities program are: (1) Injury data analysis and (where possible) database linkages; (2) expanded partnerships, especially with health care providers and business; (3) citizen involvement and input; and (4) an integrated and comprehensive injury control system.

What We Have Learned

The safe communities program is a new initiative. Evaluation results and lessons learned will be published in forthcoming annual reports on the program.

Current Research and Evaluation

As of September of 1997, NHTSA has selected two communities to serve as model demonstration sites for the Safe Communities program. They are Dallas, Texas and Greenville, North Carolina. ORTR/RED is currently providing technical evaluation expertise to these two model Safe Community sites. It is anticipated that this service will be extended to two additional model sites that are to be selected in the near future.

Strategic Issues for Research on Safe Communities

- Success in disseminating safety programs to new communities depends in large part on having evidence of success. Accordingly, it is desirable to obtain information about which Safe Communities are thriving and which are faltering and what characteristics the stronger programs have in common. Knowledge regarding these factors and any identified deficiencies in weaker programs will permit intelligent revisions in these programs to maximize success.
- Currently, linkages between crash records and rehabilitation records are usually limited to physical therapy, occupational therapy, and recreational therapy. Information on the feasibility including and linking additional information (e.g., information regarding referral to alcohol or drug rehabilitation programs) would be extremely useful to program managers.
- A Safe Community is a coalition of medical, enforcement, educational, business, and civic groups in a community. Such a coalition must include close ties, communication, and cooperation among member groups. Additional research is needed to define the mechanisms that enable, facilitate, and strengthen the formation of such inter-organizational ties. In order to facilitate the perpetuation of Safe Communities, information is needed regarding the objectives of the various members, how they interact, and how to counter the forces that contribute to a program's disintegration.
- Program evaluation provides the evidence that newly developing Safe Communities need to survive. Information on both short-term and long-term successes is needed, along with a better understanding of which outcomes are most important to each of the participating members of a safe community.

Technology Applications

Background

The traffic safety community is anticipating future increases in vehicle travel and risks of crashes, with no such increases in funding for safety programs. Police agencies, under pressure to fight serious crime with reduced budgets, are allocating fewer resources to traffic-law enforcement—even though well-publicized traffic-law enforcement is the proven key to compliance with safety-based laws. With the easiest gains already made, safety experts will now have to address populations and problems that have historically been most difficult to change (e.g., chronic offenders, risk-takers, rural residents).

In order to improve the effectiveness and efficiency of safety and enforcement programs, ORTR/RED plans to extend its exploration of emerging technologies. Since the early 1980s, the agency has evaluated equipment such as alcohol breath-test sensors and laser speed-measuring devices. More recently, evaluations have focused on newer technologies such as "smart card" drivers licenses that prevent fraudulent ID, ignition interlock devices, electronic monitoring wristbands (worn by drivers with suspended licenses) to ensure court-imposed driving restrictions, and electronic vehicle and driver identification systems. ORTR/RED is also monitoring technology developments such as portable computers to assist police when entering crash or ticket citation data, cellular telephones for rescue calls, automated crash-notification systems, and photographic systems to automate ticketing for red-light running.

In recent years, electronics and communication technologies have been developed to improve highways and vehicles. Government agencies and the private sector have allocated significant resources to develop an "Intelligent Transportation Systems" (ITS). Their efforts have focused on commercially appealing applications such as congestion relief, navigation information, electronic toll collection, and onboard "Mayday" communication systems for personal security.

Adaptations of these emerging technologies could have significant potential to aid emergency rescue services, crash

investigations, traffic law enforcement, and other traffic safety efforts. However, many traffic-safety priorities, such as increasing safety belt use and reducing impaired or aggressive driving, might involve vehicle or driver-license technologies requiring public investment, vehicle regulations, or court-imposed use—a contrasting paradigm from the current ITS "free-market" perspective where motorists pay for high-tech services.

What We Have Learned

Applied technology provides demonstrated benefits in safer driving behaviors and reduced crashes. For example, speed enforcement using photo radar reduced injury crashes by 20 percent on Norway's rural roads, and Australia's metropolitan roads saw 20–49 percent reductions in crash severity. At one busy intersection in Maryland, red-light running was reduced by 27 percent, by using an automatic system just to mail warnings to violators. Elsewhere, the risk of alcohol traffic violations by repeat offenders was curtailed by as much as 65 percent in the first year, while their vehicles were equipped with alcohol breath testing equipment and ignition interlocks.

Notwithstanding these possible benefits, the traffic safety community in the U.S. has been reluctant to adopt technology applications. Initial experiences with automated speed enforcement and safety-belt interlocks have generated political opposition. However, increasing public concerns with aggressive driving and red-light running may create a climate of greater acceptance for carefully selected demonstration projects. Widespread public acceptance of traffic safety technologies will depend on the degree to which motorists are convinced that these applications improve traffic safety, are affordable, reliable, fairly generate ticket revenues, deal with laws or matters that are respected by the public, and provide sufficient privacy protection. To help alleviate the public's fears about potential privacy intrusions and abuses by "Big Brother," public information addressing technology design and program management must accompany the introduction of new technology.

Current Research and Evaluation

One project tested a laboratory prototype instrument that uses an infrared laser beam to detect alcohol vapor within the passenger compartment of the vehicle. The instrument is intended for use at checkpoints, stop signs and other traffic environments to screen vehicles for potentially impaired drivers. Another project is developing a system of sensors for use at checkpoints that detect vehicle maneuvers associated with impaired driving. If tests are positive, the system will be field tested in a subsequent study to assess its ability to improve police detection of drinking drivers at checkpoints.

Strategic Issues for Research on Technology Applications

- The ways in which ITS technology could be employed in the service of improving traffic safety are currently not known. Undoubtedly, some systems could be applied to traffic enforcement as currently designed (e.g., traffic observation systems could record data on law-breakers, speed monitoring devices could help enforce speed limits). Other components would need modification or adaptation to be used for traffic safety purposes. And there may exist traffic safety applications for which existing products cannot be modified to fit and will require new developmental efforts. Providing the traffic safety community with improved knowledge of the technological products that exist or are in development would help foster demand for and permit assessments of how the various technologies must be adapted in order to be applied to traffic-safety applications.
- Traffic-safety technologies face a number of practical concerns with which other ITS systems may not have to deal. In addition to being able to withstand crash forces, safety-oriented products must also resist tampering, jamming, counterfeiting, and other problems. Research is needed to identify factors that will influence production and deployment of technological devices and to define system characteristics that will minimize costs of production, deployment, operations, training, and maintenance and will foster the integration of technologies through sharing common hardware or systems.
- Development and deployment of traffic-safety technologies will require increased political support, executive leadership, institutional reforms, legislation, or regulations. Acceptance of these technologies by the traffic safety community will also require considerable attention to various critical concerns (e.g., privacy protection, "ticketing by mail," and other institutional/legal barriers). Identification of the institutional partners and the barriers to full acceptance and implementation of traffic-safety technologies will permit the development of strategies and action plans to assist states and communities to make necessary accommodations for emerging technologies.
- The ultimate success of efforts to employ new technologies to improve traffic safety will depend on the acceptance and support of the public. Successful applications will require proactive dialog with members of the public to overcome their many valid concerns and reservations. Accordingly, research is needed to define the nature and extent of the public's concerns and to develop technical, legal, and administrative strategies to gain public support for technological solutions to traffic-safety problems.

Program Evaluation

Background

ORTR/RED routinely conducts evaluations in the areas of legislative changes, enforcement programs, and educational programs. ORTR/RED has conducted more than 200 program evaluations. Evaluations are conducted on agency-developed countermeasure programs and on selected programs that are implemented at the state level or local level, independent of the agency. For example, ORTR/RED initiated and evaluated a program in Baltimore, Maryland to determine the effect of various NHTSA-developed countermeasures to the alcohol-related pedestrian crash problem. ORTR/RED also evaluated the impact of California's upgrade of its safety belt use law to allow for primary (standard) enforcement procedures, and an evaluation was recently conducted of Maryland's "zero tolerance" BAC law for underage drivers.

What We Have Learned

Evaluations provide evidence of impact for several legislative, enforcement, education, and other countermeasure programs. As a result of past evaluations, the impact of several important programs has been documented to provided guidance and support for future federal, state, and local efforts. Some of the completed evaluations have documented the impact of programs such as: sobriety checkpoints and saturation patrols for impaired drivers, impoundment and forfeiture laws for repeat offenders, license plate sticker laws, minimum drinking age (21) laws, lower BAC limits for youth, .08 BAC levels for adults, drug evaluation and classification (DEC) procedures, passive alcohol sensors, alternative ride programs, safety belt laws, primary enforcement provisions of safety belt laws, child passenger safety laws, occupant protection strategies for rural areas, special traffic enforcement programs (STEP) for safety belt laws, enforcement and education efforts to increase toddler restraint use, motorcycle helmet laws (and repeals), motorcycle rider education and training programs, driver education and training programs, pedestrian programs for young children (including elementary school bus riders), publicizing insurance sanctions, speed enforcement programs using radar and laser devices, municipal speed enforcement programs, emergency medical services training, self-sustaining traffic safety programs, etc.

Evaluation efforts span all of the program areas. However, there are constraints involving limited staff and monetary resources. One of the key issues that needs to be addressed in the strategic plan is the practical matter of deciding which evaluations to perform and what level of resources needs to be available for quick turnaround evaluations of unexpected events (e.g. legislation) occurring in the states.

Current Research and Evaluation

Recently completed evaluations have demonstrated that: upgrading a secondary-enforcement safety-belt law to standard enforcement leads to an increase in belt use rates of about 15–19 percentage points; routine traffic enforcement reduces crime rates, both through police presence and by apprehending suspects for whom warrants have been issued; and youth peer-to-peer groups positively can affect attitudes and behaviors of teens regarding drinking and driving.

Current evaluations include: a national evaluation of Selective Traffic Enforcement Programs (STEPs) in 20 states; a national evaluation of child safety seat distribution programs; an evaluation of the repeal of the motorcycle helmet laws in Arkansas and Texas; an evaluation of why alcohol-related fatalities declined substantially more in 5 states than the rest of the nation; an evaluation of the crash problem on the Capital Beltway, and an evaluation of the effects of the Section 410 Alcohol Incentive Grant Program.

Strategic Issues for Evaluation

- Determining which programs and types of countermeasures to evaluate is a question of setting priorities. Current suggestions for evaluation projects include examining the relative effectiveness of general deterrent legislation (e.g., .08 BAC limits) and specific deterrent legislation (e.g., vehicle impoundment for repeat DWI offenses) on the incidence of alcohol-related crashes.
- Another need is to evaluate the effect of driver license points as a sanction for safety belt use law violations.
- ORTR/RED's ability to offer program evaluation support to individual states and communities is limited. There are usually more programs in need of evaluation than ORTR/RED has capability to serve. One possible method to expand the number of evaluations that can be conducted would be to help develop the capacities of the states to perform evaluations.

[FR Doc. 97–28163 Filed 10–22–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33472]

Fun Trains, Inc.—Operation Exemption—Lines of CSX Transportation, Inc. and the Florida Department of Transportation

Fun Trains, Inc. (Fun Trains), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150, Subpart D—*Exempt Transactions* to operate an excursion rail passenger service pursuant to trackage rights granted by CSX Transportation, Inc. (CSXT) and the Florida Department of Transportation (FDOT) over approximately 241 miles of their lines of railroad between MP 1034 at Hialeah, FL, and MP 793.5 at Poinciana, FL. The transaction was scheduled to be consummated on October 1, 1997.

On October 31, 1996, and January 6, 1997, Fun Trains and its corporate parent, First American Railways, Inc. (First American), entered into an agreement with CSXT entitled "Trackage Rights Agreement" and an agreement with FDOT entitled "Operating Agreement" (collectively, the Agreements). Pursuant to the Agreements, CSXT and FDOT will grant Fun Trains exclusive overhead trackage rights over their rail properties to operate a privately funded excursion passenger train to be known as the "*Florida Fun Train*." The Agreements are for a 5-year term with an option to renew for another 5-year term, subject to Amtrak's right to operate intercity rail passenger service, the rights of publicly funded government agencies (or their agents) to run passenger service, the rights of others to operate high speed passenger service, and CSXT's right to run freight service over these lines. Amtrak will supply locomotives and crews. First American and Fun Trains will jointly and severally assume the obligations established under the Agreements.

Fun Trains will provide a one-way and a round-trip entertainment service between Hollywood and the Poinciana, FL areas, offering deluxe coach accommodations, food and beverage service, and on-board entertainment. No service will be provided to intermediate points in competition with the service presently provided by Amtrak or Tri-County Commuter Rail Authority and no joint ticketing arrangements will be available.[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33472, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, Suite 420, 1920 "N" Street, N.W., Washington, DC 20036.

Decided: October 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–27972 Filed 10–22–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Concurrently, Fun Trains filed a Motion to Dismiss for Lack of Jurisdiction, asserting that the proposed service is outside the Board's jurisdiction as a wholly intrastate excursion rail passenger service. The entire Board will address the jurisdictional issue raised by the motion to dismiss in a subsequent decision.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–52–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–52–93 (TD 8659), Gasoline and Diesel Fuel Excise Tax; Registration Requirements (§§ 48.4082–2, 48.4101–1, 48.4101–2, 48.6427–8, and 48.6427–9).

DATES: Written comments should be received on or before December 22, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Gasoline and Diesel Fuel Excise Tax; Registration Requirements.

OMB Number: 1545–1418.

Regulation Project Number: PS–52–93.

Abstract: This regulation relates to the taxes on gasoline and diesel fuel and affects certain blenders, enterers, industrial users, refiners, terminal operators, throughputtere, and certain persons that sell, buy, or use diesel fuel for a nontaxable use. The regulation provides guidance on registration, notification, and recordkeeping requirements which enable the IRS and taxpayers to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and state, local or tribal governments.

Estimated Number of Respondents: 322,550.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 36,885.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–28164 Filed 10–22–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP)

NOTICE—Revised Request for Proposals (RFP). This notice amends the RFP published on October 2, 1997, providing for assistance awards by the Office of Academic Programs of the United States Information Agency to support free trade and market economies, and/or the environment and sustainable development. The RFP is amended to include Israel as an eligible country for proposed bilateral and trilateral projects. The RFP's closing date remains January 16, 1998. Potential applicants should refer to the RFP published on October 2, 1997 for full details about applying for assistance awards under this RFP.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via Internet to: affiliat@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To download a solicitation package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via fax on demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify "College and University Affiliations Program Officer" on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: October 15, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–28067 Filed 10–22–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Freedom Support Act Junior Faculty Development Program

ACTION: Request for proposals.

SUMMARY: The Academic Exchanges Division, European Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer a comprehensive faculty and curriculum development program for 82 young faculty from Russia, Ukraine and Kazakhstan who will be affiliated at accredited colleges and universities throughout the United States in the following fields: business administration, economics, educational administration, environmental studies, journalism, law, library science, political science, psychology, public policy, public administration, sociology, architecture and urban planning, cultural anthropology, history, linguistics, philosophy, literature, and American studies.

It is the intent of USIA to provide participants with high quality programs designed to meet their specific academic and professional needs, within the parameters of the JFDP, and to promote long-term sustained interaction between and among participants, U.S. faculty and their home and host institutions.

USIA anticipates awarding one grant for this program. Should an applicant organization prefer to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals for joint program management, but the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number

All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/AEE–98–04*.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on *Thursday, January 8, 1998*. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin in March 1998.

FOR FURTHER INFORMATION CONTACT: The Academic Exchanges Division, European Branch, E/AEE, Room 248, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Telephone: (202) 205–0525, Fax: (202) 260–7985, E-mail: treed@usia.gov, to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer *Jill Jarvi* on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and *nine* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEE–98–04*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Freedom Support Act Junior Faculty Development Program will provide a one-year, non-degree program of guided research, curriculum development, course auditing, course instruction and practical internships for approximately 47 Russian, 25 Ukrainian and 10 Kazakh young faculty. All participants are expected to be placed at U.S. host institutions under the mentorship of American faculty members in their respective academic disciplines. The Junior Faculty Development Program (JFDP) is intended to provide opportunities for young faculty with great potential as scholars and instructors in their disciplines to: (1) upgrade their knowledge of the subjects they teach; (2) acquire new teaching skills and methodologies; (3) produce new curricula; and (4) develop professional contacts and initiate institutional linkages for their home institutions.

The selected organization will administer the U.S. components of the Junior Faculty Development Program (JFDP). Overseas components, such as recruitment and selection of JFDP participants, will be facilitated in Russia by the Moscow Fulbright Representative Office, in Ukraine by USIS Kyiv's Exchanges Office and in Kazakhstan by USIS Almaty.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Drafts of all printed materials developed for this program should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA requests that it receive the copyright use and be allowed to distribute the material as it sees fit.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Awards may not exceed *$2,133,000*. Administrative and indirect cost should not exceed 20% of the total grant award. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) General Program Costs.
(2) Participant Costs.
(3) Administrative Costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipts of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Eastern Europe and NIS Affairs and USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Proposals should exhibit, originality, substance, precision, innovation, and relevance to Agency mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Follow-on and Alumni Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

6. *Project Evaluation:* Proposals should include a plan to evaluate the program's success, both during the after the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Option for Renewals

Subject to the availability of funding for FY 1999 and FY 2000, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: October 15, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–28065 Filed 10–22–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 62, No. 205
Thursday, October 23, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-148-005]

U-T Offshore System; Notice of Proposed Changes In FERC Gas Tariff

Correction

In notice document 97–27191 appearing on page 53616, in the issue of Wednesday, October 15, 1997, make the following correction:

On page 53616, in the second column, the Docket No. should be as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD-043-FOR]

Maryland Regulatory Program

Correction

In proposed rule document 97–24986, appearing on page 49183, in the issue of Friday, September 19, 1997, make the following correction:

On page 49183, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the 11th line, "rescue" should read "recuse".

BILLING CODE 1505-01-D

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federal register

Thursday
October 23, 1997

Part II

Department of Housing and Urban Development

24 CFR Part 3500, et al.
Strengthening the Role of Fathers in Public Housing Families; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 960, 964, 984, and 990

[Docket No. FR–4087–A–03]

RIN 2577–AB68

Strengthening the Role of Fathers in Public Housing Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Advance notice of proposed rulemaking; Notice of withdrawal.

SUMMARY: The Department published an Advance Notice of Proposed Rulemaking (ANPRM) on the subject of "Strengthening the Role of Fathers in Public Housing Families" on July 30, 1996 (61 FR 39812), with a 45-day comment period. The ANPRM invited public comments on measures, practices, and authorizations to local public housing agencies in support of efforts to encourage absentee parents, especially but not necessarily limited to absentee fathers, to play a more responsible social and economic role in the lives of families in PHA-owned or assisted developments. Upon review of comments received in response to that ANPRM, the Department has determined that it is unnecessary to go forward with a regulatory change at this point, but that the purposes described in the ANPRM and in this Notice would be best served by proceeding with the development of less formal guidance material, described below.

DATES: The ANPRM on the subject of "Strengthening the Role of Fathers in Public Housing Families," published on July 30, 1996 at 61 FR 39812 is withdrawn as of October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Richard A. Trebelhorn, Technical Assistance and Planning Division, HUD, Room 4236, 451 Seventh Street SW, Washington, DC 20410–5000, telephone (202) 708–3642 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Department published an Advance Notice of Proposed Rulemaking (ANPRM) on the subject of "Strengthening the Role of Fathers in Public Housing Families" on July 30, 1996 (61 FR 39812), with a 45-day comment period. HUD received comments from 32 entities, most of which were State or local housing agencies, and the substance of those comments is summarized below. In addition to comments received in response to the ANPRM, HUD convened a roundtable discussion on this subject in early September 1996, in which knowledgeable housing professionals and academics shared their thinking on measures that would encourage more responsible roles for fathers, and that would facilitate reuniting public housing families.

The comments on the ANPRM and comments and observations from the roundtable generally suggest that a formal rulemaking might be unnecessary, and in the absence of a compelling need for regulatory action, the Department has determined not to proceed with publication of a Proposed Rule at this time. Therefore, consistent with the majority of the comments on the ANPRM and the draft proposed rule, and with the recommendations of the roundtable, HUD will sponsor development of a "best practices" guidebook or source book for use in local fatherhood initiatives. HUD, or a contractor under HUD supervision, will visit a substantial number of sites—probably 12 to 15 locations beginning with and in addition to the known programs in Baltimore and Hartford—to gather information on best practices, procedures, attributes, and similar program elements or components of local programs compatible with the Department's goal of strengthening the role of fathers in public housing families.

Based on information gathered in the course of the site visits, information developed from the roundtable and comments on the ANPRM, and any other information that becomes available, HUD will develop a guidebook or source book of materials for PHA managers planning a fatherhood initiative. The materials in this guide or source book will emphasize "how- to" information on program modules or components that can be replicated, as opposed to narrative descriptions or case studies; case studies are expected to be used for illustrative purposes, but are not to be the principal focus of the research project or the resulting guide or source book.

Using inputs from the roundtable and the best practices study, HUD will use contracted resources to develop an Implementation Guide and a training package for use by PHAs electing to develop and implement a "fatherhood initiative."

The Guide would be a compendium of current thinking, reflecting but not duplicating the best practices material referenced above, that would be useful to housing authorities in initiating a local program to encourage or facilitate fathers' playing a more positive and responsible role in public housing families and communities. The training and implementation component is expected to include a short video to introduce HUD's interest in strengthening the role of fathers in public housing families, suitable for use with tenant groups and HUD field office staff as well as PHA personnel. It will also include detailed lesson plans and training materials for program managers at the PHA and project-site levels.

II. HUD Responses to Public Comments on the ANPRM

In drafting the Advance Notice of Proposed Rulemaking, HUD assumed an initial goal of reuniting families and bringing absent fathers back into their children's homes. Responses to the ANPRM and explicit comments in HUD's roundtable suggest that the ANPRM blurred necessary distinctions among several important goals. These include, at least, (1) facilitating the return of absentee fathers to their families; (2) encouraging men who are living intermittently or clandestinely with their public housing families to come forward and assert a responsible social and financial role; (3) assuring that estranged parents accept financial responsibility for their children in public housing; and (4) making it possible for absentee fathers to connect or re-connect with their children in public housing communities.

By subsuming these (and probably other) reasonable goals under a general statement of support for "re-uniting families," the ANPRM assumed an active PHA role in areas and issues that generally are beyond the authority and the capacity of local housing agencies. HUD recognizes that the program outlined in the ANPRM required considerable refinement. The Department recognizes that many of the activities that would go into a local program for strengthening the role of fathers and encouraging fathers to play responsible roles in their children's growth and development fall more appropriately within the capacity and responsibility of social service agencies outside the housing authority.

Therefore, any further initiative in this area—including the proposed best practices guide and implementation package—will necessarily place less emphasis on a presumed role for a housing authority. This Notice identifies

PHA actions or activities already authorized in statute and/or regulation that can be employed to further the goals described in the ANPRM. The proposed best practices guidebook will address additional measures that can be undertaken by a PHA and/or another service agency or contractor, and the implications of such measures for PHA management, including financial management.

The ANPRM invited comments on several specific items, and most respondents commented on most of those elements. Those comments are summarized, under the subject area heading of the ANPRM that is addressed by the comment, as follows:

1. To the extent that it may be necessary to encourage responsible behavior by an absent parent, HAs would be encouraged, but not necessarily required, to:

a. Provide a priority for transfer among HA properties;

Summary: The vast majority of respondents pointed out that PHAs already have the latitude to permit, authorize, or require transfers among their properties, and that such policies are spelled out in tenant selection and assignment plans; no further regulation should be necessary.

Response: HUD accepts these comments, and acknowledges that transfer policies are best left to local decision-making. HUD will continue to examine the desirability or practicality of including in a transfer policy explicit recognition of requested transfers that would result in a family's better access to day care, or more convenient access to employment or job training, especially in cases involving a returning parent.

b. Offer a priority for a Section 8 certificate or voucher (consistent with the principles of the Family Unification program);

Summary: Most respondents were opposed to Federal preferences in any guise, including this one. Several comments suggested that a preference, especially a new preference, was unfair to applicants already on waiting lists, some for several years. Other comments made the point that offering public housing residents a priority for Section 8 placement creates vacancies in public housing.

Response: HUD accepts these criticisms, and does not plan to emphasize use of tenant selection preferences to further the goals described in the ANPRM.

c. Exempt from rent determinations the incremental income of the returning parent for a period of up to three years without adverse effect on the HA's eligibility for operating subsidy under the PFS.

Summary: Income disregards, rent forgiveness, and rent credits elicited more comment than almost any other part of the ANPRM. Only two respondents—both state housing agencies—opposed incentives of this kind, and several respondents recommended expansion of PHAs' latitude to disregard incremental income from a new job, income from a second job or second wage-earner (whether a new family member or not), or any earned income.

Response: Under section 402 of the 1996 Continuing Resolution, PHAs are permitted to adopt optional earned income deductions in determining adjusted income (but are not eligible for commensurate increases in eligibility for operating subsidy); this provision was extended in section 201 of the Department's 1997 Appropriations Act and is in effect at least through September 30, 1997 pending additional legislation.

In addition, the Department's recently-published Optional Earned Income Exclusions Final Rule, published May 5, 1997 (62 FR 24334), permits PHAs to adopt an exclusion for earned income; PFS Operating Subsidy will not increase to cover rental income reductions resulting from such exclusions, but will allow a PHA that achieves net increases in rents from earned income to maintain eligibility for subsidy up to an amount equal to the PFS operating subsidy shortfall (see also the Interim Rule on Performance Funding System—Incentives, published in the **Federal Register** on September 30, 1996 61 FR 51178).

2. To obtain any benefits or incentives offered by an HA program, a returning parent would be required to enter into a formal agreement or contract, binding him or her to comply with the requirements of the HA lease and to make and honor commitments to family members and to the HA community. HUD requested public comments on the nature of such an agreement, and on the range of obligations that could reasonably be demanded of a returning parent. Should HUD create a model form of agreement for this purpose? Are there certain minimum requirements that HUD could itemize, and permit HAs to make additions to reflect local interests? Or should HAs be given maximum latitude to develop their own standards and agreements?

Summary: Responses to this item were nearly as varied as comments on income disregards, ranging from specific recommendations for contract language, to suggestions that all the requirements for positive parental behavior are already written into marriage vows and lawful marriage ought to be a major goal of fatherhood initiatives.

Response: HUD's first conclusion is that the ANPRM was too narrowly focused to have introduced this subject as a contract between the PHA and a returning parent/father. As was correctly pointed out in the comments, the PHA already has a lease with the subject family, and if a returning father joins that household, he becomes subject to that lease. If there is another agreement, securing additional rights or privileges beyond those of the leasehold, that agreement would be between the program participant—the returning parent, presumably—and the service agency managing the fatherhood program. That service agency may or may not be a PHA; experiences related at HUD's roundtable suggested that in many cases, if not most often, the service agency would not be a PHA, but a wholly separate community services entity whose clientele could include PHA families but would not be limited to PHA families. The substance and the enforcement of any such additional agreement, and the range of benefits secured by the agreement—employment, employment counseling, job training, behavior counseling—would be entirely between the signatories; neither HUD nor the PHA need necessarily be involved in that agreement.

HUD anticipates that the "best practices" study will develop a variety of agreements and components of agreements from which service providers, including any PHAs that elect to manage their own fatherhood initiative, can develop agreements suited to their specific situations.

A second major observation is that, particularly in the context of returning parents and re-uniting families, agreements between the absentee parent and the service agency are necessarily secondary to an agreement between the public housing leaseholder and the absentee parent. If the parent or grandparent is living in public housing with the children, then as a practical matter, that person will exert far more influence and control than the PHA or the service agency over the terms under which the absentee parent establishes or re-establishes a relationship with the children.

This observation also responds to several comments to the effect that restoring an absent parent to a household is not necessarily a good idea; sometimes the best resolution is for the absentee to remain absent. HUD's goal in fostering local fatherhood

initiatives is to facilitate plans that will enable absentee parents, especially fathers, to establish or re-establish positive social and/or economic links with their children, but HUD also recognizes that any such links must be mutually agreeable to the absentee and the custodial parent.

Summary: There were specific comments to the effect that HUD and/or the PHAs should encourage, or even require, lawful marriages as part of this effort.

Response: The policies and authorizations incident to this initiative are intended to facilitate the establishment or re establishment of positive social and economic links between absentee parents and their children in public housing communities; any explicit prescription concerning linkages or relationships among adult residents is beyond the scope of HUD rulemaking.

3. HUD's position is that participants must be subject to admissions screening, to assure the rest of the community that the new or re-joining family member would not constitute any special threat to the peace and quiet of the neighborhood.

Summary: Respondents were nearly unanimous in favor of rigorous screening of all applicants, including persons joining or re-joining resident families.

Response: HUD will instruct developers of subsequent guidance material to make explicit that housing authorities have the right to review and to reject persons proposing to join (or re-join) resident families, irrespective of the applicant's relationship to the resident family or of any prior leasehold interest enjoyed by that person: if someone has left the household, return is not necessarily automatic.

Summary: Several comments suggested that there was an apparent conflict between the "one-strike" provisions of section 9 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, approved March 28, 1996) (the "Extension Act") and outreach efforts to engage absentee parents in public housing communities.

Response: HUD has reviewed those comments and the cited statute, and is of the opinion that there is no conflict between this initiative and the Extension Act. Section 16(e)(2) of the Extension Act sets forth several exceptions to the Extension Act's rule that Public Housing authorities must deny assistance to persons who have a pattern of use of a controlled substance or a pattern of abuse of alcohol that interferes with the health, safety, or right to peaceful enjoyment of the premises by others. The Extension Act states that in determining whether to deny occupancy or assistance, a housing authority may consider whether an individual:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and is no longer engaging in the use of a controlled substance or abuse of alcohol (as applicable); or

(B) Has otherwise been rehabilitated successfully and is no longer engaging in the use of a controlled substance or abuse of alcohol (as applicable); or

(C) Is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

For purposes of screening tenants who would join or re-join public housing resident households, the PHA should take into consideration an applicant's participation in a Fatherhood Initiative. Where that services or counseling program includes a substance abuse counseling component, the housing authority may, but is not required to, accept that as compliance with the rehabilitation provisions of the one-strike limitations in section 16(e)(2), and permit an exemption from the prohibitions of sections 6(r) and 16(e)(1) of the United States Housing Act of 1937 (1937 Act).

In addition to screening for admission or re-admission to residency in a public housing community, the issue of screening for acceptance into an employment, job training, or other social service program was subsumed in the ANPRM's reference to "screening." In response to comments on the ANPRM and information shared at the roundtable, the Department recognizes that criteria for participation in a services program are not necessarily the same as tenant selection criteria. HUD anticipates that the best practices study will include a variety of selection factors and screening techniques from which service providers, including any PHAs that elect to manage their own fatherhood initiative, can develop procedures suited to their specific situations.

4. Returning parents, or a parent newly accepting a responsible role in a family, would be required to participate in a parenting and/or counseling program. To the extent that some returning parents may have been involved in domestic violence or abuse, such counseling or training must have been completed before admission or re-admission to the HA housing. Parenting training or counseling would be allowable budget costs for the HA.

Summary: Respondents were generally in favor of parent training and counseling, and not necessarily limited to new or returning parents, but several PHAs objected to the suggestion that such services could be operated or financed by the housing authority.

Response: HUD's response is to remind all concerned that certain PHA-provided tenant services and management of external services are already allowable costs under PFS procedures, at least to the extent that such services are part of an approved Family Self Sufficiency plan under section 23 of the 1937 Act.

Where participation in a parenting class, anti-abuse counseling, or any other sort of behavior counseling is a component of a non-PHA service agency's program, the PHA has the latitude to accept or reject an applicant for admission (or re-admission) to public housing, irrespective of the applicant's participation in the training or counseling program, in accordance with the PHA's tenant selection and screening policies or procedures.

5. The Hartford Family Reunification model includes an explicit requirement that returning parents be and remain free of substance abuse, including provisions for pre-admission testing and subsequent random testing for substance abuse. Testing is at the expense of the housing authority. HUD is interested in public comments on such drug abstinence and drug testing requirements and policies.

Summary: As stated in the ANPRM, the discussion of drug abstinence and drug testing unfortunately blurs the distinction between public housing residency versus participation in employment, training, and services programs. Responding housing authorities were nearly unanimous in opposition to substance abuse testing requirements for returning fathers (although a few comments were positive toward universal substance abuse testing). Negative comments cited issues of discrimination against a particular segment of PHAs' clientele, the inappropriateness of PHAs' involvement in medical processes, PHAs' lack of capacity to manage or operate a substance abuse testing or identification program, and the costs of such an undertaking.

Response: Where a service provider operates a fatherhood initiative that includes a substance abuse testing component, existing regulations authorize PHAs to take into account the results of testing for controlled substances in screening potential residents, including parents seeking to re-establish residency with their families.

PHAs can also condition continued rent abatement or income disregard benefits on a resident's successful participation in an employment, training, or services program, including success in abstinence from controlled substances where that abstinence is a condition of the program.

Dated: October 17, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–28080 Filed 10–22–97; 8:45 am]

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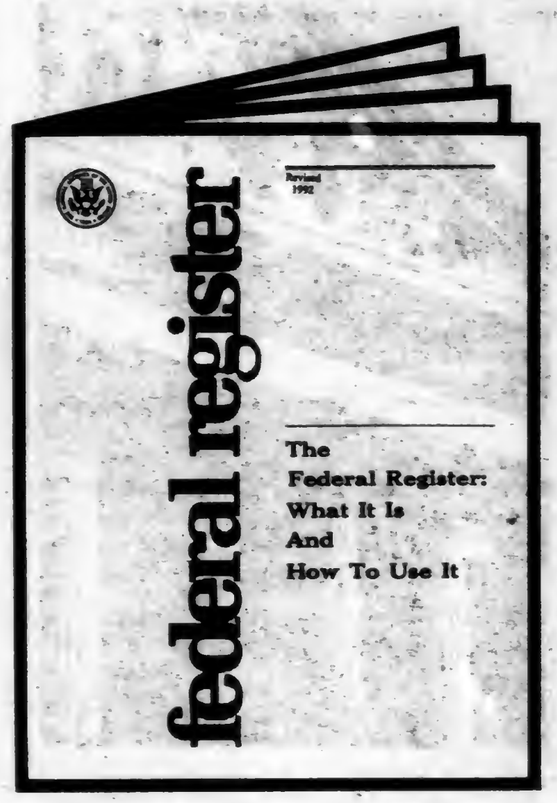
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Presidential Documents

Title 3—

The President

Executive Order 13065 of October 22, 1997

Further Amendment to Executive Order 13038 Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add up to three more members to the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, it is hereby ordered that the second sentence of section 1 of Executive Order 13038, as amended by section 5 of Executive Order 13062, is further amended by deleting "not more than 22" and inserting "up to 25" in lieu thereof. Further, the words "or Co-Chairs" shall be added after the word "Chair" in the fourth sentence of section 1 of the order.

William J. Clinton

THE WHITE HOUSE,
October 22, 1997.

[FR Doc. 97-28427
Filed 10-23-97; 8:45 am]
Billing code 3195-01-P

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Rules and Regulations

Federal Register
Vol. 62, No. 206
Friday, October 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 95N–0245, 95N–0282, and 95N–0347]

RIN 0910–AA59

Food Labeling; Nutrient Content Claims: Definition for "High Potency" and Definitions of "Antioxidant" for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of September 23, 1997 (62 FR 49868). The document amended the agency regulations to: Define the term "high potency" as a nutrient content claim; define nutrient content claims using the term "antioxidant" (e.g., "good source of antioxidants," "high in antioxidants," "more antioxidants"); and to correct an omission pertaining to the use of "sugar free" claims on dietary supplements. The document was published with an incorrect RIN number. This document corrects that error.

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

In FR Doc. 97–24732, appearing on page 49868 in the **Federal Register** of Tuesday, September 23, 1997, the following correction is made:

1. On page 49868, in the first column, in the heading, "RIN 0905–AD96" is corrected to read "RIN 0910–AA59".

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28224 Filed 10–23–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 181

RIN 1076–AD62

Indian Highway Safety Program Competitive Grant Selection Criteria

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to federally recognized tribes on an annual basis for the purpose of financing tribal highway safety projects designed to reduce the incidence of traffic accidents within Indian country. Due to the limited funding available for the Indian Highway Safety Program, the BIA will review and select from proposed tribal projects on a competitive basis. This final rule addresses the selection criteria.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Jaynes, Chief, BIA Division of Safety Management, (505) 248–5060.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rule for comment on May 16, 1997 (62 FR 27000). No written comments were received. Accordingly, the proposed rule is published as the final rule without changes.

This rule is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has certified to the Office of Management and Budget (OMB) that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule is not a significant rule under Executive Order 12866 and does not require approval by the OMB. This rule does not constitute a major Federal action significantly affecting the human environment and, therefore, no detailed statement is needed under the National Environmental Policy Act of 1969. Furthermore, this rule does not have significant takings implications in accordance with Executive Order 12630, does not have significant Federalism effects, and does not have a significant economic impact of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

Under 23 U.S.C. 402, the Department of Transportation (DOT) funds both the DOT State Highway Safety Program and the BIA Indian Highway Safety Program. The information contained in each grant application under both programs is identical. The Indian Highway Safety Program competitive grant application solicits only the information DOT requires for its State Highway Safety Program and uses it for substantially the same purpose of awarding Highway Safety Program funds to applicants. OMB has reviewed and approved the information collection requirements for the DOT State Highway Safety Program. No additional OMB authorization is needed.

List of Subjects in 25 CFR Part 181

Indians, Highways and roads, Highway safety.

For the reasons set forth in the preamble, a new part 181 is added to subchapter H of title 25 of the Code of Federal Regulations as follows.

PART 181—INDIAN HIGHWAY SAFETY PROGRAM

Sec.
181.1 Purpose.
181.2 Definitions.
181.3 Am I eligible to receive a program grant?
181.4 How do I obtain an application?
181.5 How are applications ranked?
181.6 How are applicants informed of the results?
181.7 Appeals.

Authority: 23 U.S.C. 402; 25 U.S.C. 13.

§ 181.1 Purpose.

This part will assist the BIA Indian Highway Safety Program Administrator to disperse funds DOT/NHTSA has made available. The funds assist selected tribes with their proposed Highway Safety Projects. These projects are designed to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services.

§ 181.2 Definitions.

Appeal means a written request for review of an action or the inaction of an official of the BIA that is claimed to adversely affect the interested party making the request.

Applicant means an individual or persons on whose behalf an application for assistance and/or services has been made under this part.

Application means the process through which a request is made for assistance or services.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct, or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Recipient means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

§ 181.3 Am I eligible to receive a program grant?

The Indian Highway Safety Program grant is available to any federally recognized tribe. Because of the limited financial resources available for the program, the Bureau of Indian Affairs (BIA) is unable to award grants to all applicants. Furthermore, some grant recipients may only be awarded a grant to fund certain aspects of their proposed tribal projects.

§ 181.4 How do I obtain an application?

BIA mails grant application packages for a given fiscal year to all federally recognized tribes by the end of February of the preceding fiscal year. Additional application packages are available from the Program Administrator, Indian Highway Safety Program, P.O. Box 2003, Albuquerque, New Mexico 87103. Each application package contains the necessary information concerning the application process, including format, content, and filing requirements.

§ 181.5 How are applications ranked?

BIA ranks each timely filed application by assigning points based upon four factors.

(a) *Factor No. 1—Magnitude of the problem* (Up to 50 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether a highway safety problem exists.

(2) Whether the problem is significant.

(3) Whether the proposed tribal project will contribute to resolution of the identified highway safety problem.

(4) The number of traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(5) The number of alcohol-related traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(6) The number of reported traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(7) The number of reported alcohol-related traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(b) *Factor No. 2—Countermeasure selection* (Up to 40 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the countermeasures selected are the most effective for the identified highway safety problem.

(2) Whether the countermeasures selected are cost effective.

(3) Whether the applicant's objectives are realistic and attainable.

(4) Whether the applicant's objectives are time framed and, if so, whether the time frames are realistic and attainable.

(c) *Factor No. 3—Tribal Leadership and Community Support* (Up to 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the applicant proposes using tribal resources in the project.

(2) Whether the appropriate tribal governing body supports the proposal plan, as evidenced by a tribal resolution or otherwise.

(3) Whether the community supports the proposal plan, as evidenced by letters or otherwise.

(d) *Factor No. 4—Past Performance* (+ or −10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Financial and programmatic reporting requirements.

(2) Project accomplishments.

§ 181.6 How are applicants informed of the results?

BIA will send a letter to all applicants notifying them of their selection or non-selection for participation in the Indian Highway Safety Program for the upcoming fiscal year. BIA will explain to each applicant not selected for participation the reason(s) for non-selection.

§ 181.7 Appeals.

You may appeal actions taken by BIA officials under this part by following the procedures in 25 CFR part 2.

Dated: October 9, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–28010 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Regulations Implementing the Freedom of Information Act

AGENCY: Federal Mine Safety and Health Review Commission (Commission).

ACTION: Final rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission is revising its regulations implementing the Freedom of Information Act (FOIA), to reflect recent changes to the FOIA as a result of the Electronic Freedom of Information Act Amendments of 1996. This revision also implements certain changes in the manner in which FOIA requests are processed by the Commission, and in the rates charged to certain categories of requesters for time spent by Commission employees searching for and reviewing documents.

DATES: This rule is effective October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington DC 20006–3867, telephone (202) 653–5610, FAX (202) 653–5030; or Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington DC 20006–3867, telephone (202) 653–5625, FAX (202) 653–5030.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. 104–231, 110 Stat. 3048 (1996), which amends the FOIA, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty days and specifies the circumstances in which an agency may extend the time within which it will respond to a FOIA request, and enables a requester to request "expedited processing" of a FOIA request where he can demonstrate a "compelling need" for the information requested. EFOIA also contains provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of "electronic reading rooms."

The Commission issues amendments to its regulations implementing the Freedom of Information Act, 29 CFR part 2702, in order to comply with EFOIA. In addition, the Commission is making some minor adjustments in its procedures for responding to FOIA requests and in the fees charged to certain categories of requesters for time spent by Commission employees searching for and reviewing documents responsive to requests.

II. Analysis of the Regulations

Section 2702.1 Purpose and Scope

The Commission is adding new language to this section to refer to EFOIA. In addition, the Commission is adding new language to indicate that additional guidance on obtaining information from the Commission can be found in the document entitled "Reference Guide for Obtaining Information from the Federal Mine Safety and Health Review Commission," and that this document is available upon request from the Commission.

Section 2702.2 Location of Offices

This section has been modified to provide updated information concerning the addresses of the Commission's headquarters and regional offices, and to include a new address for the Commission's regional office in Denver, Colorado.

Section 2702.3 Requests for Information

Paragraph (a) contains language from the previous § 2702.3 regarding the procedure for submitting a FOIA request to the Commission. Paragraph (a) also contains new language directing requesters to describe the record requested to the fullest extent possible and specify the preferred form or format of the response, including an electronic format. In addition, paragraph (a) contains language indicating the Commission will accommodate requesters as to the form or format requested if the record is readily reproducible in that form or format, and that the Commission will respond in the most accessible form or format if the requester does not specify the preferred form or format of the response.

Paragraph (b) contains language derived from the previous section § 2702.3 concerning determinations by the Commission whether to respond to a FOIA request and appeals of adverse determinations. The language in previous paragraph (b) has been modified to indicate that where it is not possible to obtain the consent of a majority of the Commissioners to the initial determination made by the Executive Director as the result of a tie vote, the recommendation of the Executive Director would control and be deemed to be approved by the Commission. In addition, the language of paragraph (b) has been modified to indicate that the time periods for making the initial determination whether to comply with a request, and for appealing from an adverse determination, have been extended from 10 to 20 working days.

Paragraph (c) contains new language, based on provisions of EFOIA, providing that the Commission may propose extending the 20-day time period for responding to a FOIA request for up to 10 additional days in the case of "unusual circumstances." Paragraph (c) defines "unusual circumstances" that may justify such a delay as:

(i) The need to search for and collect requested records from other facilities separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

Paragraph (c) also contains language providing that when the Commission determines it cannot make a response determination within an additional 10 working day period, it will notify the requester and provide him with an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Paragraph (c) further provides that a refusal by a requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether "exceptional circumstances" exist for purposes of paragraph (d) of § 2702.3, described below. In addition, paragraph (c) contains new language providing that, whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the "unusual circumstances" specified in the paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph, but that multiple requests involving unrelated matters will not be aggregated.

Paragraph (d) contains new language providing that if the Commission is unable to comply with the extended time limit for responding to a request set forth in paragraph (c) of § 2702.3, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. Paragraph (d) further states that, for the purposes set forth herein, "exceptional circumstances" do not include a delay that results from a predictable workload of requests, unless the Commission demonstrates reasonable progress in reducing its backlog of pending requests. Paragraph (d) also provides that refusal by a requester to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) shall be considered as a factor in determining whether exceptional circumstances exist.

Paragraph (e) contains new language, based upon a provision of EFOIA, authorizing a person requesting records from the Commission to request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. A "compelling need" is defined in paragraph (e) to mean:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

Paragraph (e) further provides that a person making a request for expedited processing shall make a showing of compelling need by means of a statement certified by that person to be true and correct to the best of his knowledge and belief. In addition, paragraph (e) provides that the Commission will provide notice to a requester of its determination whether to grant expedited processing in response to a requester's claim of compelling need within 10 calendar days after receipt of the request. Paragraph (e) also provides that the Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing, and will process the request as soon as practicable once a determination has been made to grant expedited processing.

Paragraph (f) contains new language, based upon a provision of EFOIA, providing that when the Commission denies a request for records, in whole or in part, it will make a reasonable effort to estimate the volume of the records denied and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

Paragraph (g) contains new language providing that the Commission will provide any reasonably segregable portion of a record to the person requesting it after the deletion of any exempt portions of the record. Paragraph (g) also contains language, based upon a provision of EFOIA, providing that the Commission will indicate the amount of information deleted on the released portion of the record, at the place in the record the deletion is made, if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

Section 2702.4 Materials Available

The language of previous § 2702.4 has been modified to indicate the availability of the Commission's reference guide for requesting records or publicly available information from the Commission, and to make other minor clarifying changes in the description of the materials available from the Commission.

Section 2702.5 Fee Applicable—Categories of Requesters

The language of § 2702.5 has been revised slightly to clarify the circumstances under which a series of FOIA requests from a requester, or a group of requesters acting in concert, will be aggregated for the purpose of assessing fees.

Section 2702.6 Fee Schedule

Paragraph (a) has been revised to reflect adjustments in the fees charged to certain categories of requesters for time spent by Commission employees in searching for information and records. The fees have been raised from $10 to $15 per hour for clerical time, and from $20 to $30 per hour for professional time.

Paragraph (b) has been revised slightly, primarily to reflect an adjustment in the fee charged to certain categories of requesters for the initial examination by the Commission's Executive Director of documents located in response to a request to determine if they may be withheld from disclosure. This fee has been raised from $30 to $45 per hour.

Language has been added to paragraph (c) to indicate that the fee charged for copying computer tapes or discs, photographs, and other nonstandard documents will be the actual direct cost incurred by the Commission.

Section 2702.7 No Fees; Waiver or Reduction of Fees

The language of § 2702.7 is essentially unchanged. Minor, non-substantive revisions have been made to the language of paragraph (b).

Matters of Regulatory Procedure

E.O. 12866, Regulatory Planning and Review

The Commission has determined that these revised rules are not subject to Office of Management and Budget review because they do not constitute "significant regulatory action" within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–611) that these rules will not have a substantial economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these revised rules do not contain any information collection requirements or recordkeeping requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2702

Administrative practice and procedure, Freedom of information.

For the reasons set out in the preamble, 29 CFR 2702 is amended as follows:

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 2704 is revised to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 801 et seq.); 5 U.S.C. 552; Pub. L. 104–231, October 2, 1996, 110 Stat. 3048.

2. Section 2702.1 is revised to read as follows:

§ 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission) is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of these rules is to estsblish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104–231, 110 Stat. 3048; to provide guidance for those seeking to obtain information from the Commission; and to make all designated information readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled "Reference Guide for Obtaining Information from the Federal Mine Safety and Health Review Commission," which is available upon request from the Commission. The scope of these rules may be limited to requests for information that is not presently the subject of litigation before the Commission and that is not otherwise governed by the Commission's Procedural Rules at 29 CFR part 2700.

3. Section 2702.2 is revised to read as follows:

§ 2702.2 Location of offices.

The Commission maintains its central office at 1730 K Street NW., 6th Floor, Washington DC 20006–3867. It has two regional offices for Administrative Law Judges, one at Skyline Towers No. 2, Tenth Floor, 5203 Leesburg Pike, Falls Church, Virginia 22041–3474, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204–3582.

4. Section 2702.3 is revised to read as follows:

§ 2702.3 Requests for information.

(a) All requests for information should be in writing and should be mailed or delivered to Executive Director, Federal Mine Safety and Health Review Commission, 6th Floor, 1730 K Street NW., Washington, DC 20006–3867. The words "Freedom of Information Act Request" should be printed on the face of the envelope. Requests for information shall describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) A determination whether to comply with the request will be made by the Executive Director, with the consent of a majority of the Commissioners. In the event of a tie vote of the Commissioners regarding the Executive Director's determination whether to comply with a request, the Executive Director's recommendation will be deemed approved by the Commission. Except in unusual circumstances, as described in paragraph (c) of this section the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days. Determination of appeals will be made by the Chairman within 20 working days after receipt. If the records to be disclosed are not provided with the initial letter setting forth the determination as to the request, the records will be sent as soon as possible thereafter.

(c)(1) In unusual circumstances as described in this paragraph, when additional time is needed to respond to the initial request, the Commission shall acknowledge the request in writing within the 20-day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in paragraph (d) of this section. With respect to a request for which a written notice has extended the time limit by 10 additional working days, and the Commission determines that it cannot make a response determination within that additional 10 working day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of paragraph (d) of this section. For purposes of this paragraph, "unusual circumstances" that may justify a delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

(2)Whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(d) In the event that the Commission is unable to comply with the time limits for responding to a request specified in paragraphs (a) and (c) of this section, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. For purposes of this paragraph, "exceptional circumstances" do not include a delay that results from a predictable workload of requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) of this section shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this paragraph.

(e)(1) A person requesting records from the Commission pursuant to this section may request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. For purposes of this paragraph a compelling need means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(2) A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his knowledge and belief. Notice of the determination whether to grant expedited processing in response to a requester's claim of compelling need shall be provided to the person making the request within 10 calendar days after receipt of the request. The Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(f) In denying a request for records, in whole or in part, the Commission shall make a reasonable effort to estimate the volume of the records denied, and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

(g) Any reasonably segregable portion of a record shall be provided to the person requesting it after the deletion of any exempt portions of the record. The amount of information deleted shall be

indicated on the released portion of the record, at the place in the record the deletion is made if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

5. Section 2702.4 is revised to read as follows:

§ 2702.4 Materials available.

Materials which may be made promptly available from the Commission include, but are not limited to:

(a) A guide for requesting records or publicly available information from the Commission;

(b) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(c) Indices providing identifying information to the public as to the opinions described in the preceding paragraph which may be relied upon, used, or cited as precedent;

(d) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**.

6. Section 2702.5(e) is revised to read as follows:

§ 2702.5 Fees applicable—categories of requesters.

* * * * *

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

7. In Section 2702.6 the first sentence of paragraph (a) and paragraphs (b) and (c) are revised to read as follows:

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be $15 per hour for clerical time and $30 per hour for professional time. * * *

(b) *Review fee.* The review fee shall be charged for the initial examination by the Executive Director of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See § 2702.3. The review fee is $45 per hour.

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½" x 14" shall be $.15 per copy per page. Any private section services required will be assessed at the charge to the Commission. The fee for copying computer tapes or discs, photographs, and other nonstandard documents will be the actual direct cost incurred by the Commission. If duplication charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

8. Section 2702.7(b) is revised to read as follows:

§ 2702.7 No fees; waiver or reduction of fees.

* * * * *

(b) Documents shall be furnished without any charge, or at a charge reduced below the fees otherwise applicable, if disclosure of the information is determined to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

Issued this 15th day of October, 1997 at Washington, D.C.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 97–28206 Filed 10–23–97; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–7202a; FRL–5902–2]

Approval and Promulgation of Implementation Plans; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions consist of 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring System (PAMS) network.

The inventories were submitted by Connecticut to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The ozone emission inventories submitted by Connecticut are for the State's portion of the New York, New Jersey, Connecticut severe area, and the greater Hartford serious area. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulations. The intended effect of this action is to approve as a revision to the Connecticut SIP the state's 1990 base year ozone emission inventories, and to approve the PAMS network into the State's SIP.

DATES: This action is effective on December 23, 1997 unless EPA receives adverse or critical comments by November 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Connecticut Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, CT 06106–1630. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: Connecticut submitted its 1990 base year emission inventories of ozone precursors to the EPA on January 13, 1994, as a revision to the State's SIP. Revisions to the inventories were received on February 3, 1994, and February 16, 1995. Connecticut submitted a SIP revision establishing a PAMS network into the State's overall ambient air quality monitoring network on March 2, 1995. This notice is divided into four parts:

I. Background Information
II. Analysis of State Submission
III. Final Action
IV. Administrative Requirements

I. Background Information

1. Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented

that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compound (VOC) emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions, non-reactive VOC emissions that do not form ozone, and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this action EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)).

2. PAMS Network

On March 2, 1995, the Connecticut Department of Environmental Protection (DEP) submitted to the EPA a SIP revision incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the CAA and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, NO_x, and VOCs no later than 18 months after the date of the enactment of the Act. These rules will provide a mechanism for obtaining more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as serious, severe, or extreme.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On October 14, 1993, the Connecticut DEP submitted a draft PAMS network plan. The EPA reviewed the submittal and informed the State it was approvable and met the requirements of section 58.40(a) via a letter dated July 21, 1994. On March 2, 1995, Connecticut submitted a formal amendment to the SIP regarding PAMS Air Quality Monitoring. A letter finding the submittal complete was sent to the State on April 24, 1995. Since network descriptions may change annually, they are not part of the SIP as recommended by the document, "Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58" (EPA–450/4–78–038, OAQPS, November 1979).

Ambient air quality monitoring network descriptions undergo annual system reviews as required by 40 CFR section 58.20(d). The review covers the SLAMS, National Air Monitoring Station (NAMS) and PAMS networks. In addition, 40 CFR section 58.25 pertaining to SLAMS, section 58.36 pertaining to NAMS, and section 58.48 pertaining to PAMS each require that any changes to the network description as identified during the annual review must be approved by EPA.

The Connecticut PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and to comply with the PAMS regulations, codified at 40 CFR part 58. The Connecticut DEP held a public hearing on the PAMS SIP revision on January 7, 1994.

II. Analysis of State Submission

1. Emission Inventory

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a "de minimis" exception to the public hearing requirement for minor changes. EPA defines "de minimis" for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such "de minimis" changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[2] Section 110(a)(2) of the Act similarly

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992.

provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

On January 13, 1994, Connecticut submitted to the EPA as a SIP revision the 1990 base year inventories for its two ozone nonattainment areas. Prior to the State's submittal of final inventories, the State had submitted draft inventories to EPA for review during July, August, and October 1992. EPA reviewed the draft inventories and sent comments to the state by letter dated November 20, 1992. Revised inventories were submitted to EPA in January and May of 1993 which addressed many of EPA's comments. The State held a public hearing on the inventory on July 20, 1993. EPA reviewed the May submittal and provided comments to the State through the hearing process by letter dated August 30, 1993. These comments included comments developed by an EPA contractor's review of the Connecticut inventories. The contractor's comments are summarized within a report dated April 18, 1993. Connecticut submitted its final 1990 base year emission inventories as revisions to the State's SIP on January 13, 1994. Additional revisions were submitted on February 3, 1994, and February 16, 1995.

The EPA Region I Office has compared the final Connecticut inventories with the deficiencies noted in the various comment letters and concluded that the State has adequately addressed the issues presented in the comment letters.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182(a)(1) (see 57 FR 13565–13566 (April 16, 1992)). The EPA is approving the Connecticut ozone base year emission inventories based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventories are acceptable or should be disapproved.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.
8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources," U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.
9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.
10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in "Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in EPA memoranda noted in the margin. [3]

The emission inventories prepared by Connecticut for its two, serious ozone nonattainment areas meet each of Level III's ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Connecticut 1990 base year inventory, which is available to the public as part of the docket supporting this action.

2. PAMS Network

The Connecticut PAMS SIP revision will provide the State with the authority to establish and operate the PAMS sites, will secure State funds for PAMS, and will provide the EPA with the authority to enforce the implementation of PAMS, since its implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR Part 58, and are included in "Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58" (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled, "Final Boilerplate Language for the PAMS SIP Submittal," the CAA, and the General Preamble.

The September 2, 1993, Helms memorandum stipulates that the PAMS SIP, at a minimum, must:

1. Provide for monitoring of criteria pollutants, such as ozone and nitrogen dioxide and non-criteria pollutants, such as nitrogen oxides, speciated VOCs, including carbonyls, as well as meteorological parameters;
2. Provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;
3. Make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network;
4. Provide a statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA.

The Connecticut PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its NAMS monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR part 58.

The Connecticut PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR part 58, Appendix A. The State's SIP revision also assures EPA that the PAMS monitors will meet monitoring methodology requirements contained in 40 CFR part 58, Appendix C. Lastly, the State's SIP revision requires that the Connecticut PAMS network will be phased in over a period of five years as required in 40 CFR 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region I Office as outlined under the **ADDRESSES** section of this **Federal Register** document. The Connecticut PAMS SIP submittal is also available for viewing at the Connecticut State Office as outlined under the **ADDRESSES** section of this **Federal Register** document.

[3] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, "Final Emission Inventory Level III-Acceptance Criteria," October 7, 1992; and memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993.

III. Final Action

1. Emission Inventory

Connecticut has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC [4]

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	59.42	8.67	43.83	20.95	54.41	187.28
Hartford	178.05	33.74	127.12	78.44	383.39	800.74

[4] Note that these VOC inventory numbers include emissions of perchloroethylene. EPA has determined that perchloroethylene is photochemically non-reactive and does not significantly contribute to ozone production. Therefore, these inventory numbers have been adjusted to remove emissions of this compound in the proposed conditional approval of Connecticut's 15 percent plans published elsewhere in today's FEDERAL REGISTER.

NO_x

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	2.73	43.72	55.73	15.73	NA	117.91
Hartford	8.07	87.31	175.56	82.61	NA	353.55

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	3.51	13.09	356.87	165.52	NA	538.99
Hartford	10.90	20.30	1,032.9	530.41	NA	1,594.51

Connecticut has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the Connecticut portion of the NY–NJ–CT severe area and the Hartford serious ozone nonattainment area. The inventories are complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is approving the SIP 1990 base year ozone emission inventories submitted by Connecticut for the state's portion of the NY–NJ–CT severe area and the Hartford serious nonattainment area as meeting the requirements of section 182(a)(1) of the CAA.

2. PAMS Network

In today's action, the EPA is fully approving the revision to the Connecticut ozone SIP for PAMS.

The EPA is publishing these actions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve these SIP revisions and is soliciting public comment on them. This action will be effective December 23, 1997 unless, by November 24, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final actions. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 23, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be

considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 19, 1997.

John P. DeVillars,

Regional Administrator, Region I.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(74) to read as follows:

* * * * *

§ 52. 370 Identification of plan.

(c) * * *

(74) A revision to the Connecticut SIP regarding ozone monitoring. Connecticut will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. Connecticut's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) PAMS SIP Commitment Narrative, which incorporates PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS).

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated March 2, 1995 submitting a revision to the Connecticut State Implementation Plan.

3. Section 52.384 is added to read as follows:

§ 52.384 Emission inventories.

(a) The Governor's designee for the State of Connecticut submitted the 1990 base year emission inventories for the Connecticut portion of the New York-New Jersey-Connecticut severe ozone nonattainment area and the Hartford serious ozone nonattainment area on January 13, 1994 as revisions to the State's Implementation Plan (SIP). Revisions to the inventories were submitted on February 3, 1994 and February 16, 1995. The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas.

(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) Taken together, the Connecticut portion of the New York-New Jersey-Connecticut severe nonattainment area and the Hartford serious nonattainment area encompass the entire geographic area of the State.

[FR Doc. 97–27855 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY22–1–163, FRL–5913–7]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by New York. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the counties of the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island), and Westchester Counties. The intended effect of this action is to give interim approval to the State's proposed enhanced I/M program for an interim period to last 18 months. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway System Designation Act.

EFFECTIVE DATE: This rule will be effective November 24, 1997.

ADDRESSES: Copies of the State's submittal are available at the following addresses for inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 1996, (61 FR 60242) EPA proposed conditional interim approval of New York's enhanced I/M program. New York submitted revisions to the existing program on March 27, 1996 to satisfy applicable requirements of the Clean Air Act (CAA) and the National Highway System Designation Act of 1995 (NHSDA).

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of the 18-month period and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith estimate to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes that Congress intended for these programs to start-up as soon as possible, which EPA had believed should have been on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of these programs.

Since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that "as soon as practicable" is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998. In recognizing this later start date, EPA considered a number of issues related to the start of this program. Specifically:

- **Emission Credits**

Most I/M programs currently planned are requiring biennial inspections, however, New York will require annual inspections. As a result, New York will complete one full cycle of inspections, as will other states with biennial programs, by November 1999. This will allow New York to achieve all of the I/M program related emission reduction credits claimed in the 15 percent plan and the 9 percent rate-of-progress (ROP) plan. New York submitted these plans on September 4, 1997. EPA will take action on the State's 15 percent and 9 percent ROP plans at a later date.

- **Revisions to the Test Procedure and Equipment Specifications**

On December 17, 1996, New York held a kickoff meeting with test equipment vendors and potential bidders to discuss the State's requirements regarding time of delivery and adherence to the State's standard of performance. As a result, the State asked that by April 1, 1997 vendors express their interest in providing such test equipment prior to the November 15, 1997 program start date required by EPA. None of the vendors expressed such interest, and in fact considered the schedule time-constrained and unfeasible. This forced the State to reevaluate its overall program development plans and ultimately led New York to abandon its requirement for vendors to adhere to a standard of performance for the test equipment.

- **Potential Benefits to Other States**

The State has developed a new transient test procedure that provides mass emission measurement results (similar to IM240) with less expensive analyzer equipment generally associated with Acceleration Simulation Mode (ASM) testing. Development of this new test procedure has taken considerable time and effort on the part of New York. A mass emissions transient test (METT), like the one developed by New York, captures overall vehicle emissions during a simulated trip while an ASM test uses one constant speed and load. As a result, the "NYTEST" procedure has the potential for significant cost savings and may provide other states with another viable transient test procedure.

- **Network Size**

New York anticipates that 2,500 to 3,000 test-and-repair stations will need to be retrofitted to accommodate testing of the downstate vehicle fleet, which is approximately five million vehicles. Given that other states have begun program implementation and are further along in this process, New York will need to compete for similar equipment from a very limited number of sources. As a result, the magnitude of this program will require a longer phase-in period to ensure that sufficient stations are properly equipped prior to program start up.

If New York fails to start its program according to the schedule described in this notice, the interim approval granted under the provisions of the NHSDA, which allows the State to take full credit

for the I/M program in its 15 percent plan for the interim period, will convert to a disapproval after a finding letter is sent to the State by EPA. As a result, New York would be required to include additional provisions in its SIP to provide the necessary emission credit reductions. Because the start date is not being imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), the failure to start the program by this date will not convert the SIP approval to a disapproval automatically. EPA is imposing the start date under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion; therefore, the approval will be converted to a disapproval only upon EPA's notification of the State by letter.

The program evaluation to be used by the State during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed a program evaluation process which includes both qualitative and quantitative measures and has been deemed acceptable by EPA. Due to the September 19, 1997 proposed I/M Rule revisions (62 FR 49184), the long-term program evaluation requirement has been proposed to be delayed for one year and will allow for equivalent test methodology.

As per the NHSDA requirements, this interim rulemaking will expire on May 24, 1999. A full approval of New York's final I/M SIP revision, which will include the State's program evaluation and final adopted State regulations, is still necessary under sections 110, 182, 184 and 187 of the CAA. After EPA reviews the State's submitted program evaluation and final regulations, final rulemaking on New York's SIP revision will occur.

Specific requirements of the New York enhanced I/M SIP and the rationale for EPA's proposed action are explained in the November 27, 1996 notice and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the federal comment period for the notice of proposed rulemaking, published in the November 27, 1996 **Federal Register**, and provides EPA's responses to those comments. Comments were received from the State of New York and Environmental Advocates. Copies of the original comment letters, along with EPA's summary and response to comments, are available at EPA's Region II office at the address listed in the **ADDRESSES** section of this document.

Comment: Implementation Date

New York commented that EPA's action establishing November 15, 1997, as the implementation date is inconsistent with the provisions of the NHSDA. New York believes that states should be given 12 months from the publication of this document to begin implementing the new program.

Response to Comment

As stated earlier in this notice, the NHSDA is clear that the interim approval shall last for only 18 months and that the program evaluation is due to EPA at the end of that period. EPA believes that Congress intended for these programs to be implemented as soon as possible, and had determined that this should have been on or before November 15, 1997 so that six months or more of program data could be obtained for program evaluation. However, since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that "as soon as practicable" is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998.

Comment: Definition of "Program Implementation"

New York's comment expresses concern that EPA has defined program implementation to mean that the program is completely implemented in all areas. New York believes EPA must adjust this definition to ensure that sufficient test data is collected for the program evaluation and allow analyzer manufacturers sufficient time to produce and supply the necessary equipment.

Response to Comment

EPA defines program "start-up" as a fully operational program that has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of the State's required areas. This definition allows for the collection of sufficient test data for program implementation as well as any retooling requirements. Therefore, no change in this definition is warranted.

Comment: Orange County

Environmental Advocates commented that New York's program does not meet the applicability requirements of the federal I/M regulation because the State failed to include southern Orange County as part of the area to be covered by the enhanced I/M program.

Response to Comment

It is true that New York has not yet submitted to EPA an I/M plan that addresses southern Orange County. However, after considering a number of factors unique to the implementation of an I/M program in southern Orange County, EPA sees no reason to disapprove the current submission for the rest of the New York metropolitan area. Such action would delay implementation of the plan submitted thus far which covers the vast majority of the vehicles in the New York metropolitan area. These factors are listed below:

- **County-Wide Implementation**

Implementation of an I/M program is more feasible on a county-wide basis. Southern Orange County is anomalous in the New York-Northern New Jersey-Long Island Area Air Quality Control Region (AQCR), since its severe nonattainment designation applies only to a portion of a county. Therefore, implementation of an I/M program in such an area must account for a number of impracticalities such as: identification of subject vehicles by home or business address, and enforcement against vehicle cross registration outside the program area.

- **Existing Network**

At present, Orange County is not covered by an I/M program. Southern Orange County was designated as severe nonattainment for ozone in 1992. Since an I/M program will eventually be required in all of Orange County, EPA will act on the plan to be submitted by the State for this county at a later date.

- **Population Size**

Southern Orange County covers only about one third of the County and represents less than one percent of the total population of New York's portion of the New York-Northern New Jersey-Long Island AQCR.

When considered as a whole, EPA believes that these factors and common sense support its decision to approve New York's submittal which covers the remainder of New York's portion of the AQCR. The Agency will take action on this issue and complete the necessary applicability analysis when New York submits its I/M plan for Orange County and the rest of the upstate region. EPA believes that the rejection of New York's entire plan now on the basis that a minute portion of the relevant area is excluded would not advance the goals of this program. In fact, EPA believes that such inflexibility would be counterproductive at this juncture.

As previously stated, this unique circumstance results from the nature of I/M implementation itself and Orange County's dual nonattainment designation. Other SIP requirements applicable to southern Orange County as part of the New York City AQCR are not susceptible to the same analysis because the Act does not suggest a similar sensitivity to population density as is appropriate in administering the I/M program applicable to individual vehicle owners.

III. Supplemental State Submittals

Under the terms of EPA's November 27, 1996 proposed conditional interim approval notice, the State was required to make commitments within 30 days to correct three major deficiencies with the I/M program SIP by dates certain. On December 24, 1996, New York submitted such a letter to EPA from David Sterman, Deputy Commissioner of the New York Department of Environmental Conservation. The contents of this letter and subsequent correspondence are discussed below.

A. Consumer Price Index Adjustment of the $450 Repair Cost Waiver

States are required annually to adjust the $450 repair cost waiver by the Consumer Price Index (CPI). By January 1, 2000, the adjustment is to be made retroactive to 1989. Deputy Commissioner Sterman's December 24, 1996, letter indicated that the State will adjust the repair cost waiver by the CPI as required by federal law. Additionally, the letter indicates that the State will make the adjustment back to 1989. Therefore, the State has met this condition.

B. Enhanced I/M Performance Standard Modeling

States are required to submit modeling demonstrating that the proposed I/M program will achieve the required emission reductions by the relevant dates and meet the relevant I/M performance standard. On September 4 and 16, 1997, New York submitted modeling results and assumptions showing that its program meets EPA's high enhanced performance standard. New York assumed use of the NYTEST, a test method based on RG240 for which no final emission reduction credits have been developed. (See the following discussion about equipment specifications for further details.) Based on available data at the time of this notice, EPA has concluded that there is sufficient evidence to support New York's claim that this test deserves emission reduction credit about half way between a 2-mode ASM test and an IM240 test. EPA is also planning to further evaluate this test procedure along with others to determine the adequate level of credit it deserves, but expects that the test will meet the level claimed by New York. The modeling results submitted by the State on September 4, 1997, and subsequent demonstration submitted on September 16, 1997, show that the proposed I/M program meets the high enhanced performance standard. As a result, the State has met this condition.

C. Test Procedures, Standards and Equipment

States are required to submit written test procedures, pass/fail standards, and equipment specifications. These are to be established and followed for each model year and vehicle type included in the I/M program. New York's I/M program will use a mass emissions transient test (METT), known as NYTEST, which is based on EPA's description of Repair Grade 240-second METT. The State submitted information to support its assertion that the proposed program would achieve reductions estimated to be half way between a 2-mode ASM test, and EPA's IM240 test. As required in the November 27, 1996 **Federal Register** notice, New York submitted I/M program test procedures, standards, and equipment specifications on January 31, 1997. Due to revisions made since then, New York submitted the revised test procedures, standards, and equipment specifications on September 16, 1997. Therefore, this condition has been met.

IV. De minimus Conditions

EPA is taking final interim approval action upon the New York I/M SIP, under section 110 of the CAA. As discussed in detail later in this document approval is being granted on an interim basis for an 18-month period under the authority of the NHSDA.

The State must correct six minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period:

(1) New York must submit quality control measures in accordance with the requirements set forth in 40 CFR part 51.359.

(2) New York must complete the development of the inspector training and certification program.

(3) New York must finalize plans for its data collection system.

(4) New York must complete the public information program, including the repair station report card.

(5) New York must commit to perform on-road testing in accordance with the requirements set forth in section 51.371 of the federal I/M regulation.

(6) New York must complete the development of the quality assurance program.

V. Further Requirements for I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the NHSDA. At the end of this period, the approval of the emission reduction credits will lapse. At that time, EPA must take final rulemaking action upon the State's SIP under the authority of section 110 of the CAA. Final approval of New York's I/M program emission reduction credits will be granted based upon the following criteria:

(1) The State has complied with all the conditions of its commitment to EPA;

(2) EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program;

(3) Final program regulations are submitted to EPA; and

(4) The State's I/M program meets all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the November 27, 1996 proposal (61 FR 60242) as minor for purposes of interim approval.

VI. Final Rulemaking Action

EPA is granting interim approval of New York's revised enhanced I/M program based primarily upon its decentralized program effectiveness claims. The approval will cover a period of 18 months, allowing the State to demonstrate "actual" effectiveness of its program. It must be noted that actual effectiveness findings will not affect this approval, but may affect the emission reduction credits granted.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitments, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 1997.

Jeanne M. Fox,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart HH—New York

2. Section 52.1683 is amended by adding paragraphs (c), (d), and (e) to read as follows:

* * * * *

(c) The State of New York's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on September 16, 1997, and September 17, 1997, is approved with an interim period to last 18 months. If New York fails to start its program by November 15, 1998, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to take full credit in its 15 percent plan for all of the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA.

(d) The State must correct six minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. The minor deficiencies are listed in EPA's interim final rulemaking on New York's motor vehicle inspection and maintenance program published on October 24, 1997. Although satisfaction of these deficiencies does not affect the interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period.

(e) EPA is also approving this SIP revision under Section 110(k) for its strengthening effect on the plan.

[FR Doc. 97–28273 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5813–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by General Motors Corporation (GM) to exclude (or "delist") certain solid wastes from the lists of hazardous wastes contained in subpart D of part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies only to the wastewater treatment plant (WWTP) sludge generated at GM's Orion Assembly Center in Lake Orion, Michigan. Today's action excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill, but imposes testing conditions to ensure that the future-generated waste remains qualified for this exclusion.

EFFECTIVE DATE: October 24, 1997.

ADDRESSES: The regulatory docket for this final rule which contains the complete petition and supporting documents is located at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Steven Pak at (312) 886–4446 for appointments. The public may copy material from the regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this rule, contact Steven Pak at the address above or at (312) 886–4446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under sections 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in subpart D of part 261. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273; and section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, where there is reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

On January 12, 1996, GM petitioned EPA to exclude from hazardous waste control the WWTP sludge generated at its Orion Assembly Center. After evaluating the petition, on April 18, 1997, EPA proposed to exclude GM's waste from the lists of hazardous wastes in subpart D of part 261 (see 62 FR 19087). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant GM's petition.

II. Disposition of Delisting Petition

General Motors Corporation, Orion Assembly Center, 4555 Giddings Road, Lake Orion, Michigan 48361–1001

A. Proposed Exclusion

GM petitioned EPA to exclude an annual volume of 1,500 cubic yards of WWTP filter press sludge from the list of hazardous wastes contained in section 261.31, and subsequently provided additional information to complete its petition. The WWTP sludge is listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see Appendix VII of part 261).

In support of its petition, GM submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, reactivity, and toxicity; (2) total constituent and Extraction Procedure for Oily Wastes (OWEP, SW–846 Method 1330) analyses for the eight toxicity characteristic metals listed in section 261.24, plus antimony, beryllium, cobalt, copper, hexavalent chromium, nickel, tin, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for 163 volatile and semi-volatile organic compounds; (4) total constituent and TCLP analyses for total sulfide, total cyanide, and complexed cyanide; and (5) total constituent analysis for oil and grease, total organic carbon, and percent solids.

EPA evaluated the information and analytical data provided by GM and tentatively determined that GM had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (62 FR 19087; April 18, 1997) for a detailed explanation of EPA's evaluation.

B. Response to Comments

EPA received public comment on the April 18, 1997, proposal from one interested party, the Ecology Center.

Comment: The commenter states that due to the levels of metals and organic compounds in the petitioned waste, land disposal cannot be regarded as long-term protection of human health and the environment since the metals will remain forever and all landfills will eventually leak. The commenter cites a General Accounting Office report and stresses that serious problems, such as groundwater contamination, are encountered in a large number of "state-of-the-art" hazardous waste landfills.

Response: EPA has assumed that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for GM's WWTP sludge. The impacts of this scenario were predicted with EPA's Composite Model for Landfills (EPACML) which was developed by EPA to predict the transport of hazardous constituents through soil and ground water from a waste management unit to a receptor well serving as a drinking-water source. EPA stated in the final toxicity characteristic (TC) rule that the EPACML and the toxicity characteristic leaching procedure (TCLP) would be used for the delisting program in the future (see 55 FR 11833; March 29, 1990). The method EPA uses to apply the EPACML to delisting yields conservative yet reasonable estimations of contaminant fate and transport (56 FR 32993; July 18, 1991). One of the assumptions EPA used in applying the EPACML is that any liner beneath the landfill would eventually fail. Another assumption is that the landfill is an infinite source of hazardous constituents, whereas the levels of constituents emanating from a landfill may actually decrease over time. In addition, the model ignores certain attenuative mechanisms in the subsoils that in reality would tend to reduce the levels of constituents. Thus, EPA has modeled the WWTP sludge under a worst-case scenario of a "leaking" Subtitle D landfill and has determined that the levels of inorganic and organic constituents at a hypothetical drinking

water well are below health-based levels of concern.

Comment: The commenter states that while GM's WWTP sludge appears to pass the TCLP procedure, Subtitle D landfills generate unspecified quantities of organic acids and compounds some of which may lead to increased metal solubilities due to complexation reactions. The commenter concludes that laboratory procedures cannot be relied upon to represent real-world conditions.

Response: While no laboratory test is universally appropriate in all circumstances, EPA does not agree with the commenter that no laboratory procedure can be relied upon to represent "real-world" conditions. The TCLP was designed, through extensive research and field studies, to simulate the leaching of both inorganic and organic compounds under the acidic conditions expected in actively decomposing municipal landfills. The specific environment modeled by the TCLP is disposal of industrial waste with municipal waste in a Subtitle D landfill. EPA believes that this co-disposal represents a reasonable worst-case management scenario. EPA also believes that the extraction fluids employed in the TCLP procedure are more aggressive than the organic acids generated from municipal wastes and that the TCLP is reasonably accurate in addressing the mobility of metals and other constituents. See 51 FR 21653, June 13, 1986, for further discussion of the TCLP. EPA is not aware of any factors that question the appropriateness of the TCLP for GM's petitioned waste.

Comment: The commenter states that because of the metal content of the WWTP sludge and other metal bearing wastes generated by the automotive and related industries, land disposal results in a loss of valuable and non-renewable resources. The commenter identifies several commercially available metal recovery technologies used by the metal finishing industry and summarizes the advantages of metal recovery over conventional treatment and disposal. The commenter recommends that GM conduct an economic and technical feasibility study using the methodology of total cost accounting.

Response: One of the objectives of RCRA is to conserve valuable material and energy resources by minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment. However, RCRA's general objectives do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Having fully considered all of the relevant factors, EPA has determined that GM's petitioned waste does not meet the criteria for being considered a hazardous waste. RCRA's objective of resource recovery does not require, and indeed does not authorize, EPA to forego or reverse this determination.

Similarly, the national policy under the Pollution Prevention Act (PPA) establishes a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain materials that EPA finds to be non-hazardous on the lists of hazardous wastes simply because there exists an ability to perform resource recovery on these materials.

EPA has no authority to retain GM's petitioned waste as a listed hazardous waste simply because doing so would effectively promote reclamation over disposal. There is no question that waste minimization and resource recovery are desirable and are being encouraged by the EPA. EPA remains fully committed, in its waste programs and elsewhere, to promoting pollution prevention objectives. While EPA cannot require GM to evaluate the feasibility of metals recovery as the commenter recommends, EPA does encourage GM to consider the request.

C. Changes to Proposed Verification Testing Conditions

In the proposed rulemaking, EPA included delisting levels for 14 constituents that would be protective of human health and the environment and that the TCLP/OWEP extract of the petitioned waste could not exceed. However, the proposed levels of 180 mg/l for barium and 9 mg/l for chromium are greater than the hazardous waste toxicity characteristic (TC) levels of 100.0 mg/l and 5.0 mg/l respectively (see section 261.24). Today's rule lowers the proposed delisting levels for barium and chromium to levels below the TC levels to ensure that the petitioned waste, even though otherwise protective of human health and the environment, remains below the TC levels.

Paragraph 1 in Table 1 of Appendix IX to part 261 now reads "1. Verification Testing: GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 90: Arsenic—4.5; Cobalt—189.; Copper—126.; Nickel—63.; Vanadium—18.; Zinc—900.; 1,2-Dichloroethane—0.45; Ethylbenzene—63.; 4-Methylphenol—16.2; Naphthalene—90.; Phenol—1800.; and Xylene—900. The constituent concentrations must also be less than the following levels (mg/l) which are the toxicity characteristic levels: Barium—100.0; and Chromium (total)—5.0."

D. Final Agency Decision

For the reasons stated in both the proposal and this rule, EPA's conclusion is that GM's petitioned waste may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge generated at a maximum rate of 1,500 tons per year (or 1,500 cubic yards per year) at GM's Orion Assembly Center. This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 are satisfied.

Although management of the waste covered by this exclusion is removed from Subtitle C jurisdiction, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal and/or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (non-RCRA) regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States.

IV. Effective Date

This rule is effective October 24, 1997. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 6, 1997.

Norman R. Niedergang,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
General Motors Corporation	Lake Orion, Michigan	Wastewater treatment plant (WWTP) sludge from the chemical conversion coating (phosphate coating) of aluminum (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 1,500 tons per year (or 1,500 cubic yards per year), after October 24, 1997 and disposed of in a Subtitle D landfill.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		1. *Verification Testing:* GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 90: Arsenic—4.5; Cobalt—189; Copper—126; Nickel—63; Vanadium—18; Zinc—900; 1,2-Dichloroethane—0.45; Ethylbenzene—63; 4-Methylphenol—16.2; Naphthalene—90; Phenol—1800; and Xylene—900. The constituent concentrations must also be less than the following levels (mg/l) which are the toxicity characteristic levels: Barium—100.0; and Chromium (total)—5.0. 2. *Changes in Operating Conditions:* If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may handle the WWTP filter press sludge generated from the new process under this exclusion after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced. 3. *Data Submittals:* The data obtained through annual verification testing or paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(i)(12).

[FR Doc. 97–28274 Filed 10–23–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 97–342]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband Personal Communications Services (PCS) C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission adopts disaggregation, amnesty, and prepayment options designed to assist C block licensees experiencing financial difficulties. These options will allow C block licensees to build systems or surrender spectrum to the Commission for reauction. The Commission's objectives in this proceeding are to ensure that the C block licensees have opportunities to provide service to the public while maintaining the fairness and integrity of the Commission's auctions program.

EFFECTIVE DATE: The effective date of the rule changes herein is December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

FOR FURTHER INFORMATION CONTACT: Jerome Fowlkes or Sandra Danner, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Second Report and Order* in WT Docket No. 97–82, adopted on September 25, 1997 and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800. The complete *Second Report and Order* also is available on the Commission's Internet home page (http://www.fcc.gov).

Summary of Action

I. Background

1. In the *Competitive Bidding Fifth Report and Order*, the Commission established a variety of incentives to encourage small businesses to participate in the auction of C block 30 MHz and F block 10 MHz broadband PCS licenses. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (July 22, 1994) (*Competitive Bidding Fifth Report and Order*). Provisions to promote participation by small businesses in broadband PCS included limiting eligibility in the initial C and F block auctions to entrepreneurs and small businesses, offering varying bidding credits, and offering installment payment plans. The installment payment plan for C block permitted licensees that qualified as small businesses to pay 90% of the bid price over a period of ten years, with interest only paid for the first six years and interest and principal for the remaining four. *See* 47 CFR § 24.711(b)(3). In addition, there were other installment payment options available for bidders qualifying as entrepreneurs. *See* 47 CFR §§ 24.711(b)(1)–(3). All bidders in the C block auction, however, qualified as small businesses. Installment payments for small business F block licensees were limited to 80% of the bid price over ten years, and payments consist of interest only for the first two years, then interest and principal for the remaining eight years. *See* 47 CFR § 24.716(b)(3). Entrepreneurs were also eligible for less favorable installment payment terms. *See* 47 CFR §§ 24.711(b)(1)–(2).

2. On May 6, 1996 and July 16, 1996, the Commission concluded its broadband PCS C block auctions. Ninety bidders (including the C block reauction winners) won 493 C block licenses. The broadband PCS D, E, and F block auction concluded on January 14, 1997, and 88 bidders won 491 F block licenses. Net high bids received for C block 30 MHz licenses, including C block reauction bids, totalled approximately $10.2 billion; net high bids received for F block 10 MHz licenses totalled $642.3 million.

3. While many C block licenses were purchased for prices below or comparable to those for the A or B blocks, a handful of large bidders bid extremely high prices per pop for major markets, even adjusted for the value of the government financing we provide. The aggregate results of the C block auction, when measured in average price per pop paid, are markedly higher than the other PCS bands, even after adjusting for financing, and even though many individual small licensees bid prices comparable to those paid for the A and B block PCS licenses.

4. When formulating its original auction rules in 1994, the Commission considered the possibility of debt restructuring and observed that it would follow current procedures under the existing debt collection rules and procedures. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, 59 FR 22980 (May 4, 1994) (*Competitive Bidding Second Report and Order*).

5. The *Notice of Proposed Rulemaking* to revise the part 1 auction rules sought comment on several topics related to auction installment debt. *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*). The Commission sought comment on imposing late payment fees on installment payments; the default provisions of § 1.2104(g) in the event of installment payment defaults; and revised procedures for granting grace period requests.

6. On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their installment payment obligations, and because of other debt collection issues, the Wireless Telecommunications Bureau (Bureau) suspended the deadline for payment of installment payments for all C block licensees. On April 28, 1997, the Bureau extended the suspension to F block licensees.

7. On June 30, 1997, the Bureau conducted a public forum in Washington, D.C. ("FCC Public Forum") to discuss broadband PCS C and F block installment payment issues, including the alternative financing arrangements proposed in connection with the Public Notices issued on June 2, 1997. An FCC Task Force also was established which included representatives from the Bureau, the Office of Plans and Policy, the Office of General Counsel, and the Office of Communications Business Opportunities. This Task Force was charged with evaluating proposals for alternative financing arrangements submitted by PCS C and F block licensees and recommending to the Commission how to respond to those proposals. Both before and after the FCC Public Forum, numerous comments, reply comments, and *ex parte* letters and presentations were submitted to the Commission as part of this proceeding. The Commission thus has before it a wide range of proposals from entrepreneur block licensees, financial institutions and investors, equipment vendors, and other interested parties.

II. Second Report and Order

8. The Commission requires C and F block licensees to resume their Note payments on March 31, 1998. They will also be required to pay on that date one-eighth of the Suspension Interest, and thereafter, pay one-eighth of the Suspension Interest with each regular installment payment made until the Suspension Interest is paid in full. "Suspension Interest" is the entire amount of the unpaid simple interest that was accrued at the rate set forth in each licensee's Note(s) during the period beginning with the date on which each license was conditionally granted through and including March 31, 1998 ("Suspension Period"). After March 31, 1998, payment due dates will conform to those indicated in the Notes executed by the licensees. C block licensees will be entitled to elect to continue making payments under their original C block Notes. In addition, the Commission adopts three options relating to the rules governing installment payments for the C block. These are designed to help to resolve the financing issues facing C block licensees and restore certainty to the marketplace, while at the same time helping the Commission meet its statutorily mandated public interest considerations set forth under Section 309(j) of the Communications Act.

9. These goals will also be furthered by generally applying the same rules regarding eligibility that were used in the C block auction to the reauction of C block licenses. *See* 47 CFR § 24.709. All applicants for the reauction meeting the current definition of "entrepreneur" will be eligible to bid in the reauction. The Commission will also allow all entities that were eligible for and participated in the original C block auction to bid in the reauction. Further, with the exception of incumbent licensees who choose to disaggregate portions of spectrum they currently hold, and those licensees who surrender licenses under the prepayment option, all C block licensees who return licenses to the Commission will be eligible to bid on all markets in the reauction.

A. Resumption of Payments

10. Effective March 31, 1998, the Commission rescinds the Order and Public Notice suspending payments for the C and F block licenses and reinstates the installment payment plans for all C and F block licensees. The Commission directs that all payments due and owing on and after March 31, 1998 be made in accordance with the terms of each licensee's Note, associated Security Agreement, and the Commission Orders and regulations. All Suspension Interest will become due and payable over a two-year period and all Commission rules regarding installment payments and defaults for the broadband PCS C and F blocks will remain in effect. Any C or F block licensee that fails to remit the payment due on March 31, 1998, and remains delinquent for more than 60 days (*i.e.*, fails to make the March 31, 1998, payment on or before May 30, 1998), will be in default on its license. *See* 47 CFR § 1.2110(e)(4)(i). The 60-day period is an exception to the existing rules that provide for an automatic 90-day non-default period. Given the one year suspension, the Commission believes that providing a shorter automatic grace period is justified.

11. Any licensee that continues under its original Note(s), will be required to pay on March 31, 1998, one-eighth of the Suspension Interest; thereafter, regular payments will become due and payable in accordance with the provisions of the licensee's original Note. The Commission concludes that it

could place a significant burden on licensees to require payment of the entire amount of the Suspension Interest on March 31, 1998. Therefore, the Commission requires that broadband PCS C and F block licensees submit one-eighth of the Suspension Interest on March 31, 1998, and one-eighth of the Suspension Interest with each regular installment payment made thereafter until the Suspension Interest is paid in full. After March 31, 1998, payment due dates will conform to those indicated in the Note(s) executed by the licensees. While the first regular installment payment next made after March 31, 1998, will be pro-rated to account for the resumption of payments on March 31, 1998, all regular installment payments thereafter will be in the amounts shown on the amortization schedule attached to and made a part of each Note, as amended, plus the applicable payments of Suspension Interest. For example, for those licensees granted in September, 1996 whose regular installments occur on March 31, June 30, September 30, and December 31 of each year, the next regular payment due after March 31, 1998, will be due on June 30, 1998, and will include the amount of interest accrued from April 1, 1998, through and including June 30, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on September 30, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from July 1, 1998, through and including September 30, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on each and every December 31, March 31, June 30, and September 30 thereafter until the Note is paid in full. For these licensees, the payment due on December 31, 1999, will be the last payment due that includes any amortized Suspension Interest. All payments after that date will continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee. All installment payments previously made by licensees who elect one of the three options will be applied in accordance with the provisions set forth under the discussion of each option below.

12. The Commission delegates to the Bureau authority to set forth all procedures for implementing the resumption of payments.

13. Broadband PCS C block licensees choosing to surrender their licenses pursuant to the amnesty option described below and those surrendering licenses that are not prepaid pursuant to the prepayment option described below will be required to return to the Commission each original Note and Security Agreement for cancellation by the Commission. The Commission will not entertain any requests for an extension of the March 31, 1998 deadline beyond the automatic 60-day non-default period discussed above. The licensees have already been afforded a significant period to licensees during which payments were not required. Therefore, the Commission intends to deny any requests for a grace period beyond the automatic 60-day non-default period adopted herein, including any requests made pursuant to § 1.2110 of the Commission's rules. *See* 47 CFR § 1.2110(e)(4)(ii).

14. C block licensees may resume payments under their current Note or elect one of the three options described below.

B. Disaggregation of Spectrum for Reauction

15. Under the disaggregation option adopted today by the Commission, any C block licensee may disaggregate a portion of its spectrum from each of its licenses and surrender it to the Commission for reauction. The licensee must disaggregate 15 MHz of spectrum it holds across all Basic Trading Areas (BTAs) in an Major Trading Area (MTA). These provisions prevent licensees from selectively surrendering spectrum for which they may believe they paid too much, or otherwise discarding spectrum in markets that may be more difficult to serve (commonly referred to as "cherry-picking" of licenses or spectrum). The Commission limits the ability of licensees to selectively disaggregate spectrum within an MTA also to facilitate attempts by new bidders to aggregate spectrum and initiate service. Because the Commission is allowing disaggregation on an MTA-by-MTA basis, special exemptions for built-out systems, such as the one adopted under the amnesty option discussed below, are unnecessary. In cases where a licensee has built-out a BTA, it can choose either to retain all 30 MHz in each of the BTAs it has licenses for in an MTA, or it can operate its built-out system with 15 MHz. The Commission believes that this flexibility mitigates the need for a build-out exception for this option.

16. Licensees electing this option will be required to return half of their spectrum at 1895–1902.5 MHz paired with 1975–1982.5 MHz, which is spectrum contiguous to the PCS F block. The surrender of spectrum adjacent to the F block will provide sufficient contiguous spectrum for both the incumbent and new licensees to offer competitive PCS services.

17. Under the disaggregation option, the Commission will reduce the amount of the debt owed by an amount equal to the *pro rata* portion of the spectrum returned to the Commission, *i.e.*, by 50%, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards. The Commission will retain the *pro rata* portion of the down payments applicable to the spectrum. The following illustrates how this proposal would operate in practice:

Company X holds a 30 MHz license in a BTA market; paid the Commission $100,000 in its down payment; and owes the Commission $900,000 on a net bid of $1,000,000. Company X could disaggregate 15 MHz and surrender it to the Commission for reauction, and the Commission would retain $50,000 of the down payment. In return, the Commission would reduce the licensee's obligation to the government to $450,000.

The face amount of the licensee's Note will be adjusted to reflect the new principal, and the Note will then be amortized from the original date of execution to calculate the payments at the new face amount of the Note. All installment payments made as of March 31, 1997 (including any payments due prior to and on March 31, 1997) will be applied to reduce the amount of the Suspension Interest calculated on the new principal balance to be made in eight equal payments beginning March 31, 1998.

18. Where applicable, the existing disaggregation rules will govern this option. *See* 47 CFR § 24.714. However, the broadband disaggregation rules were not designed for the surrender of spectrum to the Commission. Thus, existing rule provisions on designated entity transfer restrictions, unjust enrichment, installment payments, abbreviated license terms and construction requirements, restrictions on the amount of spectrum that can be disaggregated, and similar rules will not apply to disaggregation to the Commission authorized by this option. In order to take advantage of the disaggregation option, licensees will be required to make an election consistent with the procedures specified in this *Second Report and Order*.

19. In order to avoid unjust enrichment, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from bidding in the subsequent reauction for spectrum the incumbent licensee has disaggregated. However, they will be permitted to acquire spectrum for any BTA for which the incumbent licensee has not disaggregated spectrum. The Commission does not believe that it would be fair for these entities to benefit from a reauction after taking advantage of the disaggregation option. To ensure further against unjust enrichment, these entities will also be barred from reacquiring the spectrum they have surrendered to the Commission through a secondary market transaction for a period of two years from the start of a reauction.

20. The Commission believes that the disaggregation option set forth above is consistent with the goals in this proceeding and serves the public interest. First, this option preserves the credibility and integrity of the Commission's rules. The relief provided is another means of making more efficient use of the spectrum. It does not provide a windfall or unfair advantage to the C block licensees availing themselves of the disaggregation option. The disaggregating licensee continues to pay for spectrum at its net high bid price, and the Commission receives full payment for the spectrum retained by the licensee. In addition, the Commission will retain 50% of the down payment consistent with the amount of spectrum being surrendered to the Commission. Moreover, disaggregation with a *pro rata* adjustment in debt is consistent with the Commission's rules with regard to private party disaggregation.

21. Second, the disaggregation option is fair and equitable to all interested parties. Losing bidders and other eligible parties will have an opportunity to bid on the disaggregated spectrum in the reauction. Also, by limiting disaggregation of spectrum to 15 MHz blocks on a BTA within an MTA basis, the Commission increases the likelihood that the licenses available for reauction will be in quantities and geographic clusters that are commercially viable. In addition, by providing this limited opportunity to "pick and choose" which licenses to disaggregate, and not requiring the surrender of all 30 MHz of the spectrum it holds in an MTA, this option is fair to those who have built-out some of their markets. This option does not materially alter the competitive landscape for commercial mobile radio services. Given the current state of the market and the Commission's existing rules, it is reasonable to expect that some C block spectrum will be transferred to competitors through reauction or private sale. The Commission's action here facilitate this process, by reducing the amount of spectrum that would otherwise be marketed in a piecemeal fashion. Moreover, as noted above, other parties will have an opportunity to bid on this spectrum in the reauction and, because of the spectrum's proximity to the F block, the spectrum may be particularly attractive to prospective licensees.

22. Third, the disaggregation option is consistent with the Section 309(j) obligation for the Commission to promote opportunities for designated entities, including small businesses. This option should assist current C block licensees in moving forward with the deployment of their service offerings. Disaggregation will also provide opportunities for other small businesses to enter the PCS market in the future. Finally, by requiring C block licensees to disaggregate the 15 MHz of spectrum adjacent to the F block, the Commission provides opportunities for existing F block licensees to aggregate spectrum in a manner that could benefit their planned or prospective service offerings.

C. Surrender Licenses for Reauction (Amnesty)

23. The Commission concludes that it serves the public interest to adopt an amnesty option that permits any C block licensee to surrender all of its licenses in exchange for relief from its outstanding debt and waive any applicable default payments, subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards. The Commission adopts the amnesty option for purposes of speeding use of the C block spectrum to provide services to the American public. The surrender of licenses under this option will provide qualified parties with an opportunity to obtain C block licenses at the market value of the licenses prevailing at the time of the reauction. The amnesty option adopted today is equitable to all parties because, while amnesty relieves a licensee from further debt obligations and any applicable default payments, a coordinated surrender of licenses facilitates expeditious reauctioning of the spectrum and will provide new market opportunities for all eligible entities. In addition, rapid reauction of those licenses surrendered will also comply with the Congressional directive that we promote competition and participation in the telecommunications industry by small businesses.

24. A C block licensee must make the amnesty election in accordance with the procedures set forth below in this *Second Report and Order*. The Commission will reauction those licenses surrendered on an expedited basis under the reauction rules discussed in the *Further Notice of Proposed Rulemaking* adopted with this *Second Report and Order*. Licensees electing the amnesty option will be eligible to bid for any and all licenses at the reauction.

25. Licensees electing the amnesty option will not have their down payment returned. This will discourage speculation and ensure that all bidders, new entrants as well as existing licensees, participate in the reauction without undue advantage. Retention of the down payments—10% of the bid price for most licensees—is consistent with the Commission's previous decisions and actions affecting C block bidders. The Commission has retained any payments made by those C block bidders who have failed to make their first or second down payments. In forgiving the outstanding debt the Commission affords significant relief to the licensees by allowing them to avoid anticipated defaults. In addition, these licensees will not be deemed in default or delinquent in meeting government debt obligations. Nor will they be subject to any applicable default payments or in violation of any Commission rules or license conditions.

26. Subject to one exception identified below, licensees choosing to take advantage of the amnesty option will be required to surrender all of their licenses to the Commission. The requirement that all licenses be surrendered precludes licensees from "cherry picking." The simultaneous multiple-round auction design enables bidders to place bids on many licenses at once and to aggregate desired licenses in a manner that facilitates workable business plans. If licensees could "cherry pick" which licenses to surrender, the interdependency of the licenses would be harmed. Licenses surrendered pursuant to such a "cherry picking" scheme might lack the potential for beneficial aggregation within MTAs, and therefore would likely be less valuable to potential bidders and impair business plans of new investors.

27. As an exception to the all-or-nothing requirement, licensees that have met or exceeded the five year build-out requirements by September 25, 1997, the date of adoption of this *Second Report and Order*, will not be required to surrender licenses for built-out markets. In addition, these licensees will be permitted to retain those BTA licenses in which such build-out has occurred. However, licensees availing themselves of this exception may not pick and choose BTAs within an MTA but will be required, instead, to keep all of the other BTAs in the MTA in which the build-out requirement has been met

and to pay for those licenses under the terms of their Notes. The build-out exception facilitates the achievement of the statutory goal set forth in Section 309(j) that it encourages the rapid provision of service to the public, and responds to the needs of licensees that have already commenced operations or have otherwise invested significantly in certain of their C block licenses. The Commission has an interest in minimizing the competitive impact of the changes that it makes to the auction rules, consistent with its broader policy objectives. The exception adopted today is one method by which the Commission can ensure that the menu of options available to the C block is fair to those licensees that have rapidly built-out their markets and initiated provision of competitive service.

28. Some licensees made their installment payments (*i.e.*, installments due on that date, and amounts due on December 31, 1996, but not paid until March 31, 1997, based on the automatic 90-day non-default rule) after the suspension. In addition, prior to the suspension of payments, many C block licensees made their regularly scheduled installment payments. Due to the actions taken in this *Second Report and Order*, it would be unjust and inequitable for C block licensees to be treated differently merely because some C block licensees made prior payments while others did not. Consequently, the Wireless Telecommunications Bureau is directed to refund any installment payments made (whether due on or before March 31, 1997) on any license that is surrendered pursuant to this *Second Report and Order*. In addition, the Commission will forgive payment of any due, but unpaid, installment payments for any surrendered license. For licensees exercising the build-out exception and retaining certain licenses, all previously made installment payments will be applied first to reduce the Suspension Interest applicable to those licenses, and any amounts remaining will be refunded.

D. Prepayment

29. Under the prepayment option the Commission adopts, any C block licensee may prepay selective licenses subject to the restrictions described in this *Second Report and Order*. All licenses that are not prepaid in accordance with this option must be surrendered to the Commission in exchange for a forgiveness of the corresponding debt and any penalties. A licensee selecting this option may apply 70% of the total of all down payments it made on the licenses that it elects to surrender to the Commission ("Available Down Payments"), to a prepayment of the Notes for as many of its licenses it wishes to keep. For example, if a licensee held two licenses with net high bids of $100 and $200, then the total down payments would equal $30 ($10 + $20). If the licensee elected to keep the $200 license, the licensee would have $7 ($10 x 70 percent) of its down payment from the $100 license to apply towards the prepayment of the $200 license's Note. If, on the other hand, the licensee elected to prepay the $100 license, then the licensee would have $14 ($20 x 70 percent) of its down payment from the $200 license to apply towards the prepayment of the $100 license's Note. The remaining down payments not applied to prepayment will be retained by the Commission.

30. Additionally, an incumbent may use any "new money" to prepay as many of its own licenses as it desires. Any installment payments previously made by the licensee for all its licenses will be added to the Available Down Payments to increase the funds available to prepay its Notes. Interest accrued from the date of the conditional license grant through the Election Date will be forgiven. For purposes of this option, the down payment associated with licenses that are transferred as of the Election Date to subsidiaries or affiliates will be considered transferred with the licenses and the corresponding debt. For example, if ABC Company paid $100,000 each for two licenses and submitted $10,000 in down payments for each license, the total down payments submitted by ABC Company would be $20,000. However, if ABC had subsequently transferred one of its licenses to XYZ Company, a wholly-owned subsidiary, ABC Company would not have any additional money available to purchase its license, and XYZ Company would not have any additional money available to purchase its license. This option, however, is not intended to prohibit additional license transfers consistent with existing Commission rules.

31. The Commission believes that this prepayment option fairly balances competing interests, while maintaining the fairness and integrity of our rules and auctions. The Commission notes that 30% of the down payments is equal to 3% of the net high bids and is consistent with the approach adopted previously for down payments. Under the Commission's existing rules, an applicant is subject to a 3% payment if it fails to make the required down payment. *See* 47 CFR §§ 1.2104(g)(2), 24.704(a)(2). The Commission believes it to be most fair to apply this provision to those licensees who seek the relief provided by this option. If licensees were able to use all of their down payment, they would recoup in full what they paid, and there would be no deterrent effect against bidding excessively in the auction or otherwise gaming the process. Thus, in the next auction to which default payments apply, these rules could be ignored with impunity. Such a result would severely harm the Commission's market-based auction program. It would make it impossible to impose the charges already imposed in past cases, including in C block cases. Further, permitting C block licensees access to the down payments they previously made for licenses they no longer wish to retain is a substantial benefit and fair to these licensees. To allow them to use 100% of those funds would be unfair to other C block licensees who choose to continue to pay under their existing obligations, and to bidders who were unsuccessful in the auction.

32. The Commission declines to discount the Notes. The Commission believes it is fair to other bidders and to the credibility and integrity of the rules for the prepayment to be in the amount of the outstanding debt for the net high bid. In other words, licensees should pay what they bid. To offer deep discounts off the amount of the debt is outside normal commercial practices and otherwise appears to be a "bail-out" of C block licensees who have encountered financial difficulties long after the auction was completed and the financial commitments were made. Debt paid off in advance of the maturity date allows the debtor to reap the benefit of not incurring additional interest due on the principal amount owed. To discount the amount of the principal would unfairly permit a windfall to the licensee electing this option. The Commission is cognizant of the financial difficulties for some C block licensees, but is also mindful of a duty to the other C block licensees who are successfully meeting their obligations and continuing build-out efforts for wireless services. Therefore, the Commission believes that it strikes the proper balance by allowing a licensee the benefit of prepaying its debt obligations, thereby reducing the amount of interest that would be payable over the full term of the Note, while avoiding fundamental changes to our rules that unfairly harm other licensees who followed the rules and who continue to meet their payment obligations.

33. Under this prepayment option, an incumbent must prepay all of the BTA licenses in a particular MTA and cannot arbitrarily select individual BTA licenses in a given MTA to prepay while surrendering other licenses in that MTA, with one exception. The Commission concludes that while a licensee must prepay the debt on all of the BTAs for which it holds licenses in an MTA, a licensee may not have sufficient funds available to it to prepay all of its Notes for the BTA licenses in a given MTA. Therefore, any licensee that has enough funds on hand to prepay one or more BTAs within an MTA, but not enough for the entire MTA, must prepay all of those BTAs within that MTA that it can afford. The Commission concludes that a requirement that all licenses in a given MTA be prepaid precludes licensees from "cherry picking." The simultaneous multiple-round auction design discussed in the *Further Notice of Proposed Rulemaking* enables bidders to place bids on many licenses at once. If licensees were permitted to "cherry pick" which licenses in an MTA to prepay and which to surrender under this option, the interdependency of the licenses would be threatened. Licenses surrendered pursuant to such a "cherry picking" scheme would lack the potential for aggregation, and consequently would hold much less value to other bidders in the subsequent reauction.

34. The Commission declines to provide an exception for markets in which the five-year build-out requirement has been met as provided under the amnesty option. Under the prepayment option, licensees have the flexibility to select which markets they will retain subject to the restrictions in this *Second Report and Order*. For this reason, licensees have the option of selecting and prepaying for licenses where they have invested capital to meet the build-out requirements and not prepaying in an MTA where they have not. The Commission believes that this flexibility, compared to the all or nothing approach of simple amnesty, mitigates the need for this exception.

35. Finally, for a period of two years from the start date of the reauction, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from reacquiring the licenses surrendered pursuant to this option either through a reauction or any other secondary market transaction. The Commission does not believe that it would be fair to other licensees and bidders for these licensees to benefit from a reauction of those licenses after taking advantage of this option. Furthermore, the Commission does not believe that this option should provide opportunities for licensees to "selectively" reduce their license obligations by surrendering a license in hopes of re-obtaining it in a reauction at a lower price.

E. Election Procedures

36. The Commission concludes that a licensee electing to continue under its existing installment payment plan or electing one of the options set forth in this *Second Report and Order*, must file a written notice of such election with the Wireless Telecommunications Bureau on or before the Election Date ("Election Notice"). The "Election Date" is January 15, 1998. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice). The Wireless Telecommunications Bureau will provide more information concerning filing procedures in a subsequent public notice.

37. The Commission requires that those licensees electing (i) to continue making payments under their original C block Notes, (ii) the disaggregation option, or (iii) the amnesty option who elect to take advantage of the build-out exception and retain certain of their licenses make the appropriate payment by March 31, 1998 (or by the end of the 60-day grace period allowed), and execute any necessary financing documents pursuant to appropriate requirements and time frames established by the Bureau in order to continue to be eligible under the option chosen.

38. *Continuation Under Existing Note(s).* Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice of such election.

39. *Disaggregation.* For licensees electing the disaggregation option, the Election Notice must include (i) a list of all licenses being disaggregated, (ii) the original of all licenses being disaggregated, and (iii) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission. Upon acceptance of the Election Notice, the disaggregated spectrum will be deemed returned to the Commission.

40. *Amnesty.* For licensees electing the amnesty option, the Election Notice must include (i) a list of all licenses being surrendered, (ii) if applicable, a statement indicating that it intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information concerning build-out pursuant to the Commission's rules, (iii) the original of all licenses being surrendered, and (iv) all originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission. Those licensees electing to proceed under the build-out exception will be required to adhere to the specific obligations set forth in their Notes and Security Agreements, as modified for those licenses not being surrendered to the Commission.

41. *Prepayment.* For licensees electing the prepayment option, the Election Notice must include (i) a list of all licenses being prepaid, (ii) a payment in the amount of any additional "new money" a licensee desires to apply to the prepayment of its licenses, (iii) the original of all licenses not being prepaid in accordance with this option, and (iv) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission. Notes which are prepaid will be marked "Paid-In-Full" and returned to the licensee.

42. The Commission further concludes that any C block licensee that (i) fails to elect one of the options set forth in this *Second Report and Order* on or before the Election Date, or (ii) fails to elect on or before the Election Date to continue making payments under its original C block Note(s), or (iii) fails to fully and timely execute and deliver to the Commission (or its agent) any required financing documents within the period of time specified by the Bureau, will not be afforded the opportunity granted to licensees who do make a timely election to repay the Suspension Interest over a period of eight equal payments. In such event, the licensee will be required, on or before March 31, 1998, to make all payments that would have been due under its Note(s) but for the effect of the *Suspension Order*. For example, a licensee whose regular installment due date was March 31, 1997, who did not make payment on that date because of the *Suspension Order*, will owe on March 31, 1998, all payments that were due and payable earlier, but unpaid due to the *Suspension Order*, in addition to the regularly scheduled March 31, 1998, payment.

F. Cross Defaults

43. The Commission will not pursue cross default remedies against C block licensees who default on installment payments with regard to other licenses in the C or F blocks. For example, if a

licensee defaults on a C block license and that licensee holds other C block licenses on which it is making its payments, the Commission will not declare it to be in default on its debt associated with the other C block licenses. Similarly, if a licensee defaults on a C block license, and also holds F block licenses on which it is making its payments, the Commission will not declare it to be in default on its F block debt.

44. This decision is warranted in light of the efforts to provide current C block licensees who are experiencing financing difficulties with options for meeting their financial obligations to the Commission. This decision does not affect the Commission's policy with regard to defaults on first or second down payments. The Commission emphasizes that this decision only addresses the context of a licensee's default on an installment payment for a C block license upon other licenses held by that licensee in the C or F blocks. The Commission defers to completion of the *Part 1 Rulemaking* a decision on whether to amend more comprehensively the policy of cross defaults. The Commission also emphasizes that existing installment payment default rules and license conditions will continue to apply for those particular licenses in default after March 31, 1998. Accordingly, upon default, a license will automatically cancel and the Commission will initiate debt collection procedures against the licensee and accountable affiliates. *See* 47 CFR § 1.2110(e)(4)(iii).

III. Conclusion

45. In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband PCS C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission also adopt options designed to assist C block licensees that are experiencing financial difficulties to build systems that will promote competition, or to surrender spectrum to the Commission for reauction. These options include disaggregation, amnesty, and prepayment. These provisions will create opportunities for C block licensees to provide service to the public while maintaining the fairness and integrity of our auctions program.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*) in WT Docket No. 97–82. The Commission sought written public comment on the proposals in the *Part 1 Proceeding*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

Need for, and Objectives of, this Action

47. This *Second Report and Order* is designed to assist C block broadband personal communications services (PCS) licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goals of ensuring the rapid provision of PCS service to the public.

Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

48. There were no comments filed in response to the IRFA; however, in this proceeding we have considered the economic impact on small businesses of the rules adopted herein.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

49. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. *See* 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *See* 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. *See* 5 U.S.C. § 601(3). Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. § 632.

50. This *Second Report and Order* applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years. *See* 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this FRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities.

Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements

51. A licensee electing one of the options set forth in the Order must file a written notice of such election (the "Election Notice") with the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division no later than the Election Date. The "Election Date" is January 15, 1998. Those licensees electing either (1) to continue making payments under their original C block Notes; (2) the disaggregation option; or (3) the amnesty option but elect to take advantage of the build-out exception and retain certain of their licenses, will be required to execute and submit a modification of their Notes, Security Agreements, Uniform Commercial Code ("UCC") Financing Statements and any other related documents securing their Notes within the time frame established by the Bureau.

52. *Continuation under Existing Note(s).* Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice.

53. *Disaggregation.* For licensees electing the disaggregation option, the Election Notice must include the following: (1) A list of all licenses being disaggregated; (2) the original of all licenses being disaggregated; and (3) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission.

54. *Amnesty.* For licensees electing the amnesty option, the Election Notice must include the following: (1) A list of all licenses being surrendered; (2) if applicable, a statement indicating that the licensee intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information concerning build-out; (3) the original of all licenses being surrendered; and (4) originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission.

55. *Prepayment.* For licensees electing the prepayment option, the Election Notice must include the following: (1) A list of all licenses being prepaid; (2) a payment in the amount of any additional "new money" as a licensee desires to apply to the prepayment of its licenses; (3) the original of all licenses not being prepaid in accordance with this option; and (4) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

56. The Commission believes that it is in the public interest to adopt these provisions to facilitate use of C block licenses without further regulatory or marketplace delay. The menu approach adopted in this *Second Report and Order* is intended to provide options to facilitate the rapid introduction of service to the public, while recognizing that ultimately the decisions concerning competition and services appropriately are marketplace decisions and should not be determined by government intervention. This decision is intended to be fair to current C block licensees (including small entities), to bidders who were not successful in their attempts to obtain licenses in this spectrum, and to the public desiring new and innovative competitive services. These options minimize the potential significant economic impact on small entities because they meet the unique circumstances facing the C block licensees and permit these small entities to choose one of three alternative solutions to reduce their debt to the Commission. All of the entities affected by this *Second Report and Order* are small entities, and the intent of this *Second Report and Order* is to alleviate, to some extent, the financial difficulties faced by these small entities. These options are relatively straightforward, achieve a degree of fairness to all parties, including losing bidders in the C block auction, continue to promote competition and participation by smaller businesses in providing broadband PCS service, and avoid solutions that merely prolong uncertainty.

57. The Commission received numerous comments and *ex parte* comments that addressed these issues at great length. The majority of commenters favor some type of relief, including debt restructuring, spectrum disaggregation, or a penalty-free license surrender (*i.e.*, amnesty) followed by a reauction. Other commenters express disapproval of any relief, and urge the Commission to strictly enforce its rules. The Commission believes that there may be a need for some measure of relief for these small entities in addition to the suspension of payments previously granted. The Commission believes that the options adopted in this *Second Report and Order* are relatively straightforward and achieve a degree of fairness to all parties, including small entities. Finally, the Commission rejects any proposal of a deferral of payments on the grounds that such proposal would be unfair to unsuccessful bidders who may have withdrawn from the C block when prices became too high.

58. Among other goals, Section 309(j) directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. *See* 47 U.S.C. § 309(j)(3)(B). At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. *See* 47 U.S.C. §§ 309(j)(3)(A), (C). in assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission believes that those goals are best met by promoting efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

Report to Congress

59. The Commission shall send a copy of the *Second Report and Order*, including the Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). A copy of the *Second Report and Order* and this Final Regulatory Flexibility Analysis will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act

60. This *Second Report and Order* contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 1, 1997. OMB comments are due December 1, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments by the public on the modified information collections in this *Second Report and Order* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *Second Report and Order* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees

Type of Review: New Collection.

Respondents

Number of Respondents: The Commission estimates that up to 90 respondents will take the opportunity to elect one of the options in the *Second Report and Order.*

Estimated Time Per Response: The Commission estimates the total burden under the disaggregation and amnesty options would be 4.0 hours per

respondent, a total hour burden of 360 hours, which is the highest estimate and assumes that all 90 potential respondents elect either the disaggregation or amnesty options. The Commission believes that the actual total hour burden will be less than 360 hours. The Commission is of the opinion that the respondents will prepare the submission with in-house staff, such as in-house counsel or the equivalent, in lieu of outside contractors. At the equivalent of the GS 15 hourly rate, $41.24, the total burden would be $41.24 times 360 hours = $14,846.40.

Estimate of total cost burden to respondents: The Commission estimates that there will be no additional cost burden to respondents.

Cost to the Federal Government

GS 7 Legal Instrument Examiners at $14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 90 submissions = $632.70
GS 7 Clerical at $14.06 per hour to process refunds for approximately 1.0 hour per submission, times 90 submissions = $1,265.40
GS 12 Engineers to review the documentation at $24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = $1,122.75
GS 12 Engineers to review technical analysis at $24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = $1,122.75
GS 12 Attorneys to review the financial documentation at $24.95 per hour, for approximately 2.0 hours per submission, times 90 submissions = $4,491.00
GS 15 Financial Analysts or Accountants to review the documentation, accounting analysis, and revised payment schedules and to oversee the repayment process at $41.24 per hour, for approximately 2.0 hours per submission, times 90 submissions = $7,423.20
Total = $16,057.80.

C. Authority

61. The above action is authorized under the Communications Act of 1934, §§ 4(i), 5(b), 5(c)(1), 303(r), and 309(j) as amended.

D. Ordering Clauses

62. Accordingly, *it is ordered that*, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Second Report and Order* is hereby *adopted*, and §§ 1.2110 and 24.709 of the Commission's rules are amended as set forth below, effective December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

63. *It is further ordered that* the Wireless Telecommunications Bureau's *Suspension Order* dated March 31, 1997, suspending the installment payment obligations for Personal Communications Services (PCS) C block licensees, and the subsequent Public Notice dated April 28, 1997, suspending those obligations for PCS F block licensees are rescinded, effective March 31, 1998, and installment payments for C and F block PCS licensees are reinstated as of that date.

64. *It is further ordered that* on or before January 15, 1998, the Election Date, all C block broadband PCS licensees must elect either (1) to continue making payments under their original C block Notes, or (2) one of the options set forth in Section IV of this *Second Report and Order*. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice).

65. *It is further ordered that* the Secretary shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

66. *It is further ordered that*, pursuant to 47 U.S.C. § 155(c) and 47 CFR § 0.331, the Chief of the Wireless Telecommunications Bureau *Is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Parts 1 and 24 of Chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 1.2110 is amended by revising paragraph (e)(4)(i) to read as follows.

§ 1.2110 Designated entities.

* * * * *

(e) * * *

(4) * * *

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default, except that broadband PCS frequency block C licensees making the March 31, 1998, interest payment pursuant to their elections under the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97–82 (released October 16, 1997), shall be in default if they are more than sixty (60) days delinquent on such payment. (The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.)

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PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.709 is amended by adding paragraph (b)(9) to read as follows.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

* * * * *

(b) * * *

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the first auction for frequency block C, which began on December 18, 1995, will be eligible to bid in a reauction of licenses for frequency block C conducted after March 31, 1998.

(ii) The following restrictions will apply for any reauction of frequency block C licenses conducted after March 31, 1998:

(A) Applicants that elected to disaggregate 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in subsection IV.B., Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97–82 (released October 16, 1997), will not be eligible to apply for such disaggregated licenses until 2 years from the start of the reauction of those licenses. The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

(B) Applicants that surrendered any of their frequency block C licenses as provided in subsection IV.D. (the "prepayment option") Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97–82 (released October 16, 1997), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses.

(C) For purposes of this paragraph, *applicant* shall mean the applicant and its affiliates and any present or former qualifying member of a control group and their affiliates.

* * * * *

[FR Doc. 97–28221 Filed 10–23–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–291]

RIN 9000–AA02

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.
ACTION: Final rule.

SUMMARY: The purpose of this amendment is to alter the order of Secretarial succession for the Department to reflect that the Federal Aviation Administrator now serves a statutory term of office.

DATES: The effective date of this amendment is October 24, 1997.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Office of the General Counsel, Department of Transportation, Washington, DC (202) 366–4710.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth: The Deputy Secretary, General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Saint Lawrence Seaway Development Corporation Administrator, and Assistant Secretary for Administration, in that order. The Saint Lawrence Seaway Development Corporation Administrator is included in the order of succession because that official has a statutory term of office, and therefore is more likely to be in office during a Presidential transition, when someone of that rank must act as Secretary. With the recent appointment of the first Federal Aviation Administrator to serve a statutory term of office (five years—see 49 USC 106(b), as amended by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305, Section 201, August 23, 1994), that official is also more likely to be in office during a Presidential transition, and is being substituted for the Saint Lawrence Seaway Development Corporation Administrator. This amendment reflects this change in the order of Secretarial Succession.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 USC 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 USC 553(d)(2) as a change in internal policy.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 49 USC 322; Public Law 101–522, 28 USC 2672, 31 USC 3711 (a)(2).

2. In § 1.26, paragraph (a) introductory text is republished and paragraph (a)(8) is revised to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

* * * * *

(8) Federal Aviation Administrator.

* * * * *

Issued in Washington, DC, on October 15, 1997.

Rodney E. Slater,
Secretary of Transportation.

[FR Doc. 97–27960 Filed 10–23–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970710171–7240–02; I.D. 041097A]

RIN 0648–AJ63

Atlantic Swordfish Fishery; Annual Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to: establish the U.S. swordfish quota for the North Atlantic Ocean at 2,464 metric tons (mt) dressed weight (dw) for 1997, at 2,398.6 mt dw for 1998, and at 2,333.2 mt dw for 1999, with one half of each year's longline/harpoon subquota allocated to each of two semiannual fishing seasons (June 1 through November 30 and December 1 through May 31); define the South Atlantic swordfish stock and set a 188 mt dw quota for that stock for 1997, with one-half allocated to each of the two semiannual fishing seasons; and implement the same management measures for the South Atlantic swordfish stock as are currently in place for the North Atlantic stock.

DATES: All provisions of this final rule are effective October 21, 1997, except for the amendments to §§ 630.4(a), 630.7(c), (bb) and (cc), and 630.23(a) and (b) and the revision to § 630.21 which are effective November 20, 1997.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this

action may be obtained from Rebecca Lent, Chief, Highly Migratory Species (HMS) Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347, fax: 301–713–1917; or Buck Sutter, 813–570–5447, fax: 813–570–5364.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background information about the need for revisions to Atlantic swordfish fishery regulations was provided in the proposed rule (62 FR 40039, July 25, 1997) and is not repeated here.

Management Measures

These regulatory changes implement ICCAT recommendations and further the management objectives for the domestic swordfish fisheries:

North Atlantic Quota

NMFS implements ICCAT's 1996 recommendation of a North Atlantic U.S. swordfish quota of 2,464 mt dw for 1997, 2,398.6 mt dw for 1998 and 2,333.2 mt dw for 1999. Each year's quota is divided between a directed fishery quota and an incidental quota. The incidental quota is needed to allow for landings of swordfish taken incidentally during closure of the directed longline swordfish fishery in the North Atlantic and for swordfish taken incidental to other fisheries.

Under existing regulations, up to 15 swordfish can be possessed if taken incidentally when fishing with longline gear for other pelagic fish species. The increases of the incidental quota from 254 mt dw for 1996 to 300 mt dw for each of the years 1997, 1998, and 1999 are made to meet expected incidental harvest levels during directed fishery closures. The 300 mt yearly level is based on the average daily landings noted during previous closures and an anticipated 100 days of closure of the directed fishery each fishing year. The increased incidental catch reserve should ensure that the total ICCAT quota is not exceeded.

The directed fishery annual quota is subdivided into a drift gillnet quota and a longline/harpoon quota. A Biological Opinion (BO) resulting from a consultation conducted under section 7 of the Endangered Species Act (ESA) concluded that the drift gillnet fishery should not operate during the period November 1 through July 31 to avoid jeopardizing the continued existence of the North Atlantic right whale. In accordance with that opinion, a single season quota has been established for the driftnet segment of the directed swordfish fishery. This rule addresses only the quota; NMFS is addressing the operation of the drift gillnet fishery in other rulemakings.

The directed longline/harpoon fishery quota is divided equally into two semiannual quotas, one from June 1 through November 30 and the other from December 1 through May 31. Allocations by gear types are in the same proportions as those previously established for 1994 through 1996. The quotas and subquotas are summarized in Table 1.

Following a closure of the directed fishery, any overharvest or underharvest will be added to, or subtracted from, the incidental catch reserve of 300 mt dw for that year. Any cumulative overharvest/underharvest occurring during any year will then be subtracted from/added to the following year's North Atlantic swordfish quota, per the ICCAT recommendations.

TABLE 1.—NORTH ATLANTIC SWORDFISH ALLOCATIONS (IN MT DW)

	1996	1997	1998	1999
ICCAT Recommended Quota	2,625	2,464	2,398.6	2,333.2
Incidental Catch Quota	254	300	300	300
Directed Fishery Quota (Total—Incidental)	2,371	2,164	2,098.6	2,033.2
Annual Driftnet Quota	47.0	42.8	41.6	40.2
Semiannual Longline and Harpoon Quota	1,162	1,060.6	1,028.5	996.5
Discards Adjustment	342	.....	.....	.....
Landing Quota (Total—Discards)	2,283	2,464	2,398.6	2,333.2

Definition of South Atlantic Swordfish Stock

In this final rule, NMFS defines the South Atlantic swordfish stock to include all swordfish in the Atlantic Ocean south of 5° N. lat., which is consistent with ICCAT's delineation of the northern and southern swordfish stocks.

South Atlantic Quota

NMFS establishes a U.S. swordfish quota of 188 mt dw for 1997 for the South Atlantic, consistent with ICCAT recommendations. This directed fishery quota is further divided into two equal semiannual quotas of 94 mt dw, one for the period June 1 through November 30, and the other for the period December 1 through May 31. Following a closure of the directed longline fishery in the South Atlantic Ocean, no incidental harvest is allowed.

Permits, Reporting and Observers

A uniform system of swordfish management measures is instituted for all U.S.-flagged vessels operating throughout the Atlantic Ocean. The same general swordfish management measures currently in place for vessels operating in the North Atlantic Ocean are extended to vessels operating in the South Atlantic Ocean: Vessel permits, logbook reporting, observer coverage, and other, related management measures (50 CFR part 630).

NMFS is currently considering Amendment 1 to the Fishery Management Plan for Atlantic Swordfish, which would establish a limited access system for vessels fishing in the North Atlantic. If Amendment 1 is adopted, NMFS will issue regulations to implement it. Proposed regulations to do so were published in the **Federal Register** on February 26, 1997 (62 FR 8672). If Amendment 1 is approved and implemented, swordfish permits for the South Atlantic stock will be limited to those who qualify for a directed permit under Amendment 1.

Gear and Incidental Catch Restrictions

NMFS prohibits the use of any gear other than longline to fish for swordfish in the South Atlantic management area. Further, no incidental swordfish catch allowance is established for any gear in the South Atlantic Ocean.

North and South Atlantic Management Summary

(1) Swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, can be sold only to a dealer (defined at 50 CFR 630.2) holding a valid annual dealer permit (50 CFR 630.4).

(2) Vessel permits are required for all vessels fishing for, or incidentally taking, swordfish in the North or South Atlantic Ocean.

(3) Vessel owners fishing for, harvesting or possessing swordfish in the North Atlantic must comply with all record keeping and reporting requirements set forth in 50 CFR 630.5 (daily logbooks and tally sheets), and, if selected, participate in the observer program as required under 50 CFR 603.10. When the swordfish fishery is closed in the North Atlantic, swordfish can only be landed or possessed if taken incidentally to other fisheries, subject to authorized catch limits, and sold only to dealers holding a valid dealer permit. Swordfish directly or incidentally harvested or possessed from the North Atlantic cannot be sold, traded or bartered outside of the North Atlantic management unit at any time.

(4) Swordfish harvested from the South Atlantic stock and offloaded north of 5° North latitude can be sold only to a dealer holding a permit issued under 50 CFR 630.4. It is not required that swordfish harvested from the South Atlantic stock be sold to dealers holding a permit issued under 50 CFR 630.4 if offloaded at a port south of 5° North latitude.

(5) All permitted vessels harvesting or possessing swordfish from the South Atlantic must comply with all recordkeeping and reporting requirements set forth at 50 CFR 630.5, including ensuring that copies of offloading tally sheets are submitted. During a closure of the South Atlantic swordfish fishery, swordfish cannot be possessed on board a U.S.-flagged vessel operating in the South Atlantic Ocean.

(6) All regulations that apply to the North Atlantic swordfish fishery apply to the South Atlantic fishery, other than the requirement for sale of swordfish to a permitted dealer if the fish are offloaded south of 5° North latitude. These include the prohibition on at-sea transfer and harvest limitations such as minimum size, vessel trip limits, and carcass condition requirements.

Comments and Responses

Comment: Rhode Island commented that the proposed rule was not consistent with the Rhode Island Coastal Management Program (CMP) policy to promote conservation of the resource and the policy to preserve the coastal resources through long-range planning and management designed to produce the maximum benefit for society. They stated that to be consistent, NMFS must modify the proposed rule that initiates the process of rebuilding the swordfish fishery and reduce bycatch of protected species.

Response: The Secretary of Commerce (Secretary) manages the swordfish fishery under the authority of the ATCA and the Magnuson-Stevens Act. The ATCA requires the Secretary to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT. Further, the ATCA prohibits the Secretary from issuing any regulation that has the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of ICCAT. This rule establishes the quota recommended by ICCAT, and for this reason NMFS concludes that consistency with Rhode Island CMP was achieved to the maximum extent practicable. NMFS is exploring other management actions to protect Atlantic swordfish, such as time/area closures to minimize bycatch of juvenile swordfish. Concerning bycatch of protected species, NMFS has closed the drift gillnet fishery until November 26, 1997, under an emergency rule (62 FR 30775, June 5, 1997), until a preferred option to avoid the likelihood of jeopardy to the continued existence of the North Atlantic right whale is identified and implemented.

North Atlantic Quota

Comment: Allocations from ICCAT for member countries are given in whole weight (ww). The formulation used to convert ww to dw, the U.S. industry weight standard, in the proposed rule was incorrect.

Response: NMFS has corrected this conversion factor in this final rule.

Comment: Application of the ICCAT recommendation to subtract or add cumulative overharvest or underharvest to the following fishing year applies only to the North Atlantic swordfish fishery.

Response: NMFS agrees and has clarified this provision of the regulations in the final rule.

Comment: Criteria need to be developed to ensure that vessels in the North Atlantic are not making short-term directed fishing trips targeting the incidental trip limit during closure of the directed fishery.

Response: NMFS agrees that this issue warrants further consideration. NMFS will discuss development of an effective management strategy including incidental catch requirements with the HMS and Pelagic Longline Line Advisory Panels recently established under the Magnuson-Stevens Act.

South Atlantic Quota

Comment: NMFS received a comment that the U.S. 1997 allocation for the South Atlantic was insufficient based on landings by U.S.-flagged vessels below 5° N latitude during 1993 and 1994.

Response: In the proposed rule, NMFS requested submission of catch and landing records from the South Atlantic by U.S.-flagged vessels to more accurately ascertain historical harvest levels during 1993 and 1994, the years ICCAT used to set harvest allocations for participating countries. Although NMFS has received several comments indicating that harvests exceeded 188 mt dw during 1993 and 1994, data received to date are inconclusive. NMFS will continue to consider documents submitted, to update data where possible for South Atlantic landings, and to make this information available to ICCAT in order to revise, if appropriate, the U.S. allocation to reflect actual participation in the South Atlantic swordfish fishery.

NMFS notes that in November 1997, ICCAT will consider modifications to the South Atlantic quotas and may adopt a modified quota scheme for future years.

Comment: One comment stated that the fishing year for the South Atlantic swordfish fishery should begin January 1 and that two semiannual periods are not necessary.

Response: NMFS responds that, to be consistent with the North Atlantic, the South Atlantic fishery will remain with two semiannual periods beginning December 1 and June 1. As NMFS continues to monitor this fishery, other management scenarios might be considered.

Comment: Several comments were received regarding the proposed waiver of the dealer permit requirement for the South Atlantic swordfish fishery. Commenters suggested that dealer permits be a requirement to purchase, barter, or trade any swordfish harvested

by a U.S.-flagged vessel, regardless where fish are landed in the Atlantic.

Response: NMFS disagrees because requiring U.S.-flagged vessels to sell only to permitted dealers in the South Atlantic could impose U.S. regulations on non-U.S. citizens or could increase costs to vessels by imposing delays in offloading. However, the swordfish regulations require vessels offloading in the South Atlantic ocean to attach to the reports submitted to NMFS all copies of their tally sheets received from foreign dealers. This requirement will help ensure that the agency receives appropriate information.

Comment: A comment was received stating a need to clarify permitting and reporting requirements.

Response: NMFS has restructured the final rule to summarize recordkeeping and reporting requirements for the North and South Atlantic. Overall permitting requirements are currently under consideration and will be restated when a final rule is issued concerning limited access in the swordfish fishery.

Comment: Several responses were received regarding options for providing an offloading window. Commenters were in general agreement that an offloading window would prevent or reduce market gluts and product handling problems associated with previous closures of the swordfish directed fishery. Several time frames were suggested for this window, ranging from 7 days to unlimited offloading time, as long as the vessel remains in port after the closure date.

Response: NMFS agrees that an expanded time frame to offload fish following a closure of the directed swordfish fishery could facilitate product handling and improve marketing opportunities, but the large number of vessels and potential offloading ports renders an offloading window difficult to enforce. Pending the analysis of costs and benefits to the public, these enforcement concerns could be addressed by strict documentation requirements; however, such new information collections cannot be immediately implemented since OMB review and approval under the Paperwork Reduction Act (PRA) is needed. Such review and approval requires considerable time to obtain. Other possible options to minimize the burden to the Government and to the public of monitoring a delayed offloading are: Vessel monitoring systems, hailing requirements prior to landing, third party observers for offloading, or designated offloading ports for those vessels that will not be offloading prior to the effective date of the closure. NMFS will discuss specifics of possible future offloading strategies with the HMS and Pelagic Longline Advisory Panels.

Comment: Commenters indicated that a system should be developed to certify that distressed vessels are in fact distressed and not trying to avoid the closure date.

Response: To ensure equitable enforcement of the closure, regulations require that all vessels return to port by the announced date of closure of the directed fishery. As is the case in any situation involving safety at sea, vessels in distress should notify the U.S. Coast Guard of the vessel's location, seaworthiness, and anticipated time of arrival in port.

Comment: Several commenters stated a need for more conservative landing quotas and stronger conservation measures to rebuild the swordfish stocks.

Response: This Atlantic swordfish rule is issued under the authority of ATCA, which requires the Secretary to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT. The final rule implements ICCAT quota and management recommendations relative to North and South Atlantic swordfish stocks; therefore, it is subject to ATCA restrictions that prohibit the implementation of regulations that have the effect of increasing or decreasing the ICCAT-recommended quota. NMFS recognizes that further management actions are needed for Atlantic swordfish and has undertaken the following activities: An Advance Notice of Proposed Rulemaking regarding options for banning the sale of Atlantic swordfish below the minimum size (33 lb or 15 kg dw); an analysis of management options, such as time-area closures, to minimize bycatch of juvenile swordfish; development of a rebuilding schedule, as required by the Magnuson-Stevens Act, if swordfish are identified as overfished; and establishment of an HMS Advisory Panel that will assist in the development of any future Fishery Management Plans (FMPs) or FMP amendments.

Changes From the Proposed Rule

Based on comments received on the proposed rule, reanalysis of data and/or requirements of the ESA, the following changes, besides editorial changes, were made to the proposed rule:

(1) Atlantic swordfish quotas are increased relative to the proposed rule based on recalculating the conversion of ICCAT allocations, which are stated in ww, to U.S. industry standards which are stated in dw, and,

(2) A single season quota has been established for the driftnet segment of the directed swordfish fishery.

Classification

This final rule is published under the authority of ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and for the domestic management of the Atlantic swordfish fishery.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Because discards are no longer subtracted, the landings quotas for 1997–99 actually increase relative to 1996. Establishment of a South Atlantic management unit and quota reflects recent participation levels and is not overly restrictive. These measures will not have a significant economic impact on a substantial number of small entities. No comments were received that changed the basis for the original certification. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. This rule imposes new collection-of-information requirements beyond those already approved by OMB. Namely, NMFS is extending the logbook reporting, permitting and observer notification requirements for the North Atlantic swordfish fishery to cover swordfish fishing activities in the South Atlantic.

The regulations require revised reporting and participation in observer programs by vessels already permitted to fish in the North Atlantic and new reporting by those vessels not currently permitted because they fish only in the South Atlantic. The public reporting burden for this collection of information is estimated to average 15 minutes per response for logbooks, 20 minutes for an initial vessel permit application and 2 minutes per vessel for observer notification. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These new requirements were approved by OMB under OMB control numbers 0648–0016 (Federal Fisheries Logbooks) and 0648–0205 (Permitting Requirements and Observer Notification). Send comments regarding these information collection requirements to OMB (see **ADDRESSES**).

NMFS reinitiated formal consultation for all HMS commercial fisheries on September 25, 1996, under section 7 of the ESA. The BO resulting from this consultation was issued on May 29, 1997. It concluded that continued operation of the longline component of the swordfish fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. The BO also concluded that the swordfish drift gillnet fishery segment of the Atlantic pelagic fishery is likely to jeopardize the continued existence of the right whale.

Two alternatives that would avoid the likelihood of jeopardy were set forth in the BO, although NMFS had not identified a preferred alternative at that time. Therefore, NMFS extended the emergency closure of the drift gillnet segment of the swordfish fishery until a preferred option is identified and implemented (62 FR 30775, June 5, 1997). On August 29, 1997, an amendment to the BO was issued, which identified a new reasonable and prudent alternative including time/area closures and 100-percent observer coverage. Pending implementation of a modification to the emergency closure, if such is warranted by the preferred option when identified, NMFS has taken action in this final rule to establish a single season quota for the driftnet swordfish fishery.

Other than the amendments to 50 CFR 630.4, 630.7, 630.21 and 630.23, which extend requirements to the South Atlantic swordfish stock, NMFS has determined that there is good cause to waive the 30-day delay in effective date normally required by section 553(d) of the Administrative Procedures Act. The relevant sections define terms, establish quotas, and grant administrative authority for certain actions. None of these sections impose any compliance obligation on any affected person and consequently do not require time to come into compliance.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 21, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.1, paragraph (b) is revised to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(b) This part governs the conservation and management of the North Atlantic and South Atlantic swordfish stocks.

* * * * *

3. In § 630.2, the definitions of "Dealer" and "North Atlantic swordfish stock" are revised and a new definition for the "South Atlantic swordfish stock" is added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Dealer means the person who first receives from a fishing vessel, by way of purchase, barter, or trade, swordfish harvested from the Atlantic Ocean.

* * * * *

North Atlantic swordfish stock means those swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.

* * * * *

South Atlantic swordfish stock means those swordfish in the Atlantic Ocean, south of 5° N. lat.

* * * * *

4. In § 630.4, paragraph (a) is revised to read as follows:

§ 630.4 Permits and fees.

(a) *Applicability*—(1) *Annual vessel permit.* The owner of a vessel of the United States that fishes for or possesses swordfish from the north or south Atlantic swordfish stocks, or takes such swordfish as incidental catch, regardless of whether retained, must have been issued a valid swordfish vessel permit under paragraph (e) of this section unless such vessel fishes exclusively in the recreational fishery and/or fishes exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handline gear on board.

(2) *Annual dealer permit.* A dealer in the United States who first receives from a vessel of the United States swordfish harvested from the north or south Atlantic swordfish stocks must have been issued a valid dealer permit under paragraph (e) of this section.

* * * * *

5. Section 630.7 is amended by revising paragraph (c) and by adding new paragraphs (bb) and (cc) to read as follows:

§ 630.7 Prohibitions.

* * * * *

(c) Sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the North Atlantic Ocean north of 5° N. latitude, including the Gulf of Mexico and Caribbean Sea, to a dealer without a valid dealer permit issued under § 630.4(e).

* * * * *

(bb) Fish for swordfish from the south Atlantic swordfish stock using any gear other than pelagic longline, or possess swordfish while carrying drift gillnet gear on board south of 5° N. latitude.

(cc) Fish for, or retain, a swordfish from the south Atlantic swordfish stock or to sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the Atlantic Ocean south of 5° N. latitude during a closure of the South Atlantic swordfish fishery under § 630.25(a)(1).

6. Section 630.21 is revised to read as follows:

§ 630.21 Restrictions on transfer, offloading, and sale.

(a) A swordfish harvested from the north or south Atlantic swordfish stocks may not be transferred at sea, regardless of where the transfer takes place or where the swordfish was harvested.

(b) A swordfish harvested from the north Atlantic Swordfish stock may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a swordfish vessel permit under § 630.4(e), except if the swordfish is off-loaded in Puerto Rico or the U.S. Virgin Islands from a non-permitted vessel that fished exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the U.S. Virgin Islands with only handline gear on board.

(c) A swordfish harvested from the south Atlantic swordfish stock, may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel

that has been issued a vessel permit under § 630.4(e).

(d) A swordfish harvested from the north Atlantic swordfish stock may be initially purchased, traded, or bartered or attempted to be purchased, traded, or bartered only by a dealer with a valid dealer permit issued under § 630.4(e).

(e) A swordfish harvested from the north Atlantic swordfish stock by persons aboard a vessel in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

7. In § 630.23, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 630.23 Harvest limitations.

(a) *Minimum size.* The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the north or south Atlantic swordfish stocks is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight. * * *

(b) *Carcass condition.* A swordfish possessed on board a fishing vessel of the United States in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, must be in whole or dressed form, and a swordfish landed from a fishing vessel of the United States in an Atlantic coastal port, including the Gulf of Mexico or Caribbean Sea, must be maintained in whole or dressed form through offloading, except such swordfish as are damaged by shark bites. * * *

* * * * *

8. In § 630.24, paragraph (a) is amended by designating the text after the paragraph heading as paragraph (a)(1), paragraphs (a)(2) and (b)(5) are added, and paragraphs (b)(1) through (b)(3), (c), (d)(4), and (e) are revised to read as follows:

§ 630.24 Quotas.

(a) *Applicability.* (1) * * *

(2) A swordfish harvested from the south Atlantic swordfish stock by a vessel subject to the jurisdiction of the United States is counted against the directed-fishery quota for the south Atlantic.

(b) *Directed-fishery quotas.* (1) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1997, through May 31, 1998, is 2,164 mt dw, of which 2,121.2 mt dw is allocated for the longline/harpoon fishery and of which 42.8 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,060.6 mt dw, one for the period June 1 through November 30, 1997, and the other for the period December 1, 1997, through May 31, 1998.

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 2,098.6 mt dw, of which 2,057 mt dw is allocated for the longline/harpoon fishery and of which 41.6 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,028.5 mt dw, one for the period June 1 through November 30, 1998, and the other for the period December 1, 1998, through May 31, 1999.

(3) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw, of which 1,993 mt dw is allocated for the longline/harpoon fishery and of which 40.2 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 996.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

* * * * *

(5) The annual directed fishery quota for the south Atlantic swordfish stock for the period June 1, 1997, through May 31, 1998, is 188 mt dw and is divided into two equal semiannual quotas of 94 mt dw, one for period June 1 through November 30, 1997, and the other for the period December 1, 1997, through May 31, 1998.

(c) *Incidental catch quota.* The annual bycatch quota for the north Atlantic swordfish stock is 300 mt dw; no incidental harvest is authorized for the south Atlantic swordfish stock.

(d) * * *

(4) Total landings above or below the specific north Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota. Any adjustments to the 12-month directed-fishery quota will then be apportioned equally between the period June 1 through November 30 and the period December 1 through May 31.

* * * * *

(e) NMFS may adjust the December 1 through May 31 semiannual directed-fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery and gear quotas are not exceeded.

* * * * *

9. In § 630.25, the section heading, paragraphs (a)(1) and the first sentence of paragraph (b) are revised to read as follows:

§ 630.25 Closures and incidental limits.

(a) *Notification of a closure.* (1) When a directed-fishery annual, semiannual, or gear quota specified in § 630.24 is reached, or is projected to be reached, NMFS will publish notification in the **Federal Register** closing the entire directed fishery for fish from the North Atlantic swordfish stock, the South Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. The effective date of such notification will be at least 14 days after the date such notification is filed at the Office of the Federal Register. The closure will remain in effect until an additional directed-fishery or gear quota becomes available.

* * * * *

(b) *Special set-aside for harpoon gear.* The procedures of paragraph (a)(1) of this section notwithstanding, during the period June 1 through November 30, swordfish not exceeding 9,752 kg dw, may be set aside for the harpoon segment of the North Atlantic swordfish fishery. * * *

* * * * *

[FR Doc. 97-28277 Filed 10-21-97; 3:50 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346-7035-02; I.D. 102097C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 1997, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the State of New York that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours, October 24, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Management Specialist, (978) 281-9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (March 7, 1997, 62 FR 10473). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,680 lb (385,408 kg).

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1996, a total of 940,313 lb (426,519 kg) were landed in New York. The amount allocated for New York landings in 1996 was 844,976 lb (383,275 kg), creating a 95,337 lb (43,244 kg) overage that was deducted from the amount allocated for landings in that state during 1997 (March 7, 1997, 62 FR 10473 and July 15, 1997, 62 FR 37741). The resulting quota for New York is 754,343 lb (342,164 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of New York has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the state's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, October 24, 1997, further landings of summer flounder in New York by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the date above, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12286.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-28259 Filed 10-21-97; 3:18 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 62, No. 206

Friday, October 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) PW100 series turboprop engines. This proposal would require removal of the existing fuel manifold tubes, lock plates, and preformed packing; installation of improved fuel manifold transfer tubes, improved lock plates, and improved preformed packing; and, after installation, the performance of a leak check. This proposal is prompted by reports of engine fuel leaks which resulted in either inflight engine shutdowns or fire warnings. The actions specified by the proposed AD are intended to prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings.

DATES: Comments must be received by December 23, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, *Attention:* Rules Docket No. 97-ANE–33-AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov".

Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7133, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE–33-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-33-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Pratt & Whitney Canada (PWC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series turboprop engines. Transport Canada advises that they have received reports of several incidents of PW100 series engine fuel leaks which resulted in either inflight shutdowns or fire warnings. The investigation showed that most of these fuel leaks occurred shortly after fuel manifold maintenance actions, and that they were caused by an incorrect installation and the quality of o-ring seals installed. The manufacturer has determined that the current transfer tube lock plates installed in accordance with PWC Service Bulletin (SB) No. 21077, Revision 7, dated October 10, 1996, are sensitive to installation errors and can be bent out of position. This condition, if not corrected, can result in engine fuel leaks, which can result in inflight engine shutdowns or fire warnings.

Pratt & Whitney Canada has issued SB No. 21516, dated August 14, 1997, and SB No. 21549, dated September 18, 1997, which introduces new fuel manifold transfer tubes and new fuel manifold drain transfer tubes. Pratt & Whitney Canada has also issued SB No. 21373, Revision 3, dated October 11, 1996, which introduces a new lock plate to accommodate the fuel manifold transfer tubes to prevent the incorrect installation and hold the transfer tubes in position. In addition, PWC has issued SB No. 21364, Revision 1, dated April 28, 1995, that address the o-ring quality control problem by introducing a preformed packing with a better quality control during manufacturing process. Transport Canada classified these SBs as mandatory and issued AD CF–96-22, dated November 19, 1996, in order to assure the airworthiness of these engines in Canada.

These engine models are manufactured in Canada and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require removal of the existing fuel manifold tubes, lock plates, and performed packing and installation of improved fuel manifold transfer tubes, lock plates, and preformed packing, at the earliest of the following: (1) the next time, after the effective date of this AD, that the engine or module is at a maintenance base that can do the modifications specified, regardless of the scheduled maintenance action or reason for engine removal; (2) or at the next fuel nozzle change; or (3) prior to November 30, 1998. This calendar end-date was determined based upon risk assessment. After installation, but prior to further flight, this AD requires performing a leak check. The actions would be required to be accomplished in accordance with the SBs described previously.

The FAA estimates that 1,216 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would not take any additional work hours per engine to accomplish the proposed actions, as the actions may be performed during regularly scheduled maintenance or overhaul. Required parts would cost approximately $370 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $449,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 97-ANE–33-AD.

Applicability: Pratt & Whitney Canada (PWC) PW118, W118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, W121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series engines installed on but not limited to Dornier 328, Fokker 50, Jetstream ATP, ATR42, ATR42–500, ATR72, Embraer EMB–120, Canadair CL215T, CL415, and DeHavilland Dash-8–100/-200/-300/-315.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings, accomplish the following:

(a) Remove the existing fuel manifold tubes, lock plates, and performed packing and replace with the improved fuel manifold transfer tubes and fuel manifold drain transfer tubes in accordance with the applicable PWC Service Bulletins (SB) No. 21516, dated August 14, 1997, and SB No. 21549, dated September 18, 1997, and SB No. 21077, Revision 7, dated October 10, 1996; and the improved lock plates in accordance with PWC SB No. 21373, Revision 3, dated October 11, 1996, using the improved preformed packing in accordance with PWC SB No. 21364, Revision 1, dated April 28, 1995, as follows, whichever occurs first following the effective date of this AD:

(1) At the next engine removal, regardless of cause; or

(2) At the next fuel nozzle change; or

(3) Prior to November 30, 1998.

(b) After the installation of the improved fuel manifold tubes and lockplates, but prior to further flight, perform a leak check in accordance with the applicable maintenance manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 17, 1997.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–28217 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

RIN 1029–AB89

Enhancing Abandoned Mine Lands AML, Reclamation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intent to develop a rule that would increase the amount of reclamation of abandoned mine lands being accomplished under Title IV of the Surface Mining Control and Reclamation Act of 1977. OSM is seeking to involve the public in the development of the proposed rule by making an early draft available for review and written comment.

DATES: *Written comments:* OSM will accept written comments until 5:00 p.m. Eastern Time on November 24, 1997.

Public meetings: OSM plans to hold meetings with interested persons at appropriate locations to discuss this proposal. A schedule for these meetings will be published in the **Federal Register** on or about October 31, 1997.

ADDRESSES: *Written comments:* Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 117, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Electronic Mail: You may send comments through the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

Telefax: Copies of the early draft may be obtained from FAX ON DEMAND by calling 202–219–1703 and following the instructions on the recorded announcement.

FOR FURTHER INFORMATION CONTACT: D.J. Growitz, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; telephone (202) 208–2634. E-mail: dgrowitz@osmre.gov.

SUPPLEMENTARY INFORMATION: OSM is seeking to increase reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Abandoned Mine Land (AML) fund does not contain, and is never expected to contain, enough money to reclaim all the known AML problems and sites. Under current OSM regulations, AML-funded reclamation that includes the extraction of incidental coal must be at least 50 percent funded by the AML agency. OSM is considering a proposal that envisions reclamation projects that will require less than 50 percent government funding because reclamation contracts would be partially funded by the recovery and sale of the incidental coal. OSM will need to amend the current definition of government-financed construction to eliminate the 50 percent funding requirement for AML projects.

OSM believes that there would be adequate assurances to protect the environment in the AML program as described in 30 CFR Subchapter R. Those regulations, which set forth the criteria for an AML program, require adherence to all applicable State and Federal laws, require programs to follow proper financial policies and procedures, and require that AML contracts be issued under and monitored in accordance with state law.

OSM is considering proposing a rule which will establish special requirements when the AML agency contracts for reclamation projects with less than 50 percent government financing to ensure that the provision is not misused, that necessary protections are in place for citizens and landowners, and that acceptable environmental restoration occurs. The AML agency would consult with the Title V regulatory authority to assess whether proposed project sites are appropriate for AML reclamation activity based on the economical and technical feasibility of mining those sites under a Title V permit. The consultation would also include consideration of whether existing environmental problems at the AML site might be impacted by nearby mining activities. If the site is determined to be appropriate for Title IV reclamation activities, the AML agency would be required to: (1) determine site characteristics for Acid Mine Drainage and other existing environmental problems; (2) require the projects be carried out in accordance with time-tested AML regulations and procedures; (3) provide for site specific reclamation requirements, including performance bonds, when appropriate and in accordance with state procedures; (4) delineate any coal or coal waste material that would need to be extracted in order to accomplish the reclamation; and (5) require the AML contractor to provide consent documents that authorize coal extraction and document the disposition of the coal and associated revenues for use by the AML authority in determining financial conditions of the contract. If the AML authority determines that coal extraction is not incidental to the reclamation project, the project would be subject to all the regulatory requirements of Title V.

The proposed rule, when developed, will be published in the **Federal Register** for public comment in accordance with the requirements of the Administrative Procedure Act, and public hearings will be held on request.

Dated: October 4, 1997.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 97–28321 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–130]

Captain of the Port Boston; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Captain of the Port Boston (COTP Boston) will hold a meeting to discuss modifying the existing regulation for the waters of the Chelsea River, Boston, Inner Harbor, in order to encourage the use of double hull tankships. This meeting is open to the public. Proposed amendments may increase the size of tankships permitted to transit through his regulated waterway provided enhanced safety systems are in place. Proposed amendments should be based on a performance standard consistently applied to all tankships transiting through the Chelsea Street Bridge.

DATES: The meeting will be held on November 4, 1997 from 9 a.m. to 12 p.m. Written material and requests to make oral presentations should reach the COTP Boston on or before October 27, 1997.

ADDRESSES: Comments should be mailed to Captain of the Port Boston, Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. Comments may also be hand-delivered to the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Michael H. Day, Coast Guard Marine Safety Office Boston, MA; telephone (617) 223–3000.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Request for Comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific Notice of Meeting (CGD01–97–080) and the specific issue to which each comment applies, and gives reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" × 11" unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard has also scheduled a public hearing on November 4,1 997, at 9 a.m., to receive oral presentations. The public meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Company, 427 Commercial St., Boston, MA.

Background

The Chelesa Street Bridge is a bascule-type bridge owned by the City of Boston and originally constructed in 1939. It spans the Chelsea River providing a means for vehicles to travel between Chelsea, MA and East Boston, MA. Several petroleum-product transfer facilities are located on the Chelsea River, upstream and downstream of the Chelsea Street Bridge. Transit of tankships through the bridge is necessary to access the facilities upstream of the bridge. The narrow bridge-span opening creates a very difficult passage through the bridge for larger vessels. Adding to the difficulty are the close proximity of neighboring shore structures and, at times, vessels moored at facilities adjacent to the bridge.

In 1986, the bridge and its fendering system were in a dilapidated condition, which further complicated vessel transits. Additionally, the Northeast Petroleum Terminal (locally referred to as the Jenny Dock) and the Mobil Oil Terminal were located downstream of the bridge on the north and south bank of the river respectively. If one or more vessels were moored at either of those facilities, the already short and narrow approach to the bridge was further restricted, thus reducing the maneuverability space of vessels during the approach and transit through the bridge. Meetings between the Coast Guard, marine operators, and pilots indicated that restrictions on length and width of particular vessel traffic were necessary to achieve an acceptable level of safety for navigating this difficult area. Additionally, with the double hull requirements set forth in the Oil Pollution Act of 1990 (OPA–90), several tanker designs keeping the present cargo capacities while meeting the requirements of OPA–90 will create a tanker with a beam up to 92 feet.

Agenda of Meeting

Due to the above mentioned concerns, the Coast Guard seeks comments on the following specific items.

Existing Safety Zone Regulations

On June 27, 1986, (51 FR 23415) the Coast Guard promulgated the safety zone regulations published in 33 CFR 165.120. These regulations extend over the waters of the Chelsea River for 100 yards upstream and downstream of the bridge, restrict water traffic transiting the Chelsea Street Bridge and implement vessel operational constraints. The Coast Guard justified these restrictions and constraints by citing more than 75 bridge allisions and other incidents involving vessels transiting the Chelsea Street Bridge during the period from 1978 through 1985.

Vessel Size Restrictions

Currently, only vessels meeting certain draft and physical dimensions (overall length and overall width) are allowed to enter the safety zone. No vessel greater than 661 feet in length, or greater than 90.5 feet in beam, may transit the safety zone. No vessel greater than 630.5 feet in length, or 85.5 feet or greater in beam, may transit the safety zone between sunset and sunrise. No tankship greater than 550.5 feet in length may transit the safety zone with a draft less than 18 feet forward and 24 feet aft. Current regulations authorize the restrictions to be relaxed with specific approval from the Captain of the Port.

Extending the Width of Tankers Permitted Through the Bridge

While focusing on the physical dimensions of tank vessels transiting the Chelsea River, the current regulation does not address added or redundant systems aboard these vessels which may be used to enhance port and vessel safety and minimize potential pollution incidents. A slightly wider or longer double-hulled tankship with enhanced operational system transiting the Chelsea River may, in fact, have a margin of safety greater than the currently used smaller, less equipped tankships due to the former's improved maneuvering, handling, and safety characteristics.

Maneuvering

These enhanced systems may include: redundant power systems, redundant propulsion, controllable pitch propellers, improved steering capabilities, bow thrusters and other safety systems.

Procedural

All sessions are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify Lt. Michael H. Day no later than October 27, 1997. Written material for distribution at the meeting should reach the COTP Boston no later than October 27, 1997. If a person submitting material would like copies distributed in advance of the meeting, that person should submit 25 copies to the COTP Boston no later than October 27, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact COTP Boston as soon as possible.

Dated: September 30, 1997.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 97–28287 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Naval Station Annapolis, Maryland

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to establish a new restricted area in the waters of the small boat basin off the Severn River, in Annapolis, Maryland to prohibit public entry into the area. The restricted area is needed for the security of U.S. navy facilities and watercraft and navigational safety for U.S. Naval Academy training vessels in that area. The water area in the small boat basin has always been closed to the public, however, as a result of the closure of the adjacent Naval Surface Warfare Center and the planned future public ownership of that facility, the water may become accessible by the public.

DATES: Comments must be submitted on or before November 24, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Headquarters Regulatory Branch, at (202) 761–1783, or Mr. Steve

Elinsky, Corps Baltimore District, at (410) 962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR part 334 by adding a new § 334.155 which establishes a naval restricted area at the Naval Station Annapolis small boat basin, off the Severn River at Annapolis, Maryland. The Commanding Officer of the Naval Station Annapolis, has requested that the Corps establish the restricted area for reasons of security and navigational safety. The small boat basin plays an integral role in the training of midshipmen of the U.S. Naval Academy. The basin is used continuously by the Naval Academy as a training area for maneuvering and seamanship exercises. Over the past 40 years, the small boat basin has been surrounded by restricted U.S. Navy property of the Naval Station Annapolis and the Naval Surface Warfare Center (NSWC), and accordingly, access to the basin was limited to Naval personnel. In 1995, the Congress approved the Department of Defense Base Realignment and Closure Commission's recommendation to close the NSWC at that location. The NSWC property is slated to become the property of Anne Arundel County and presumably that area and the shoreline of the basin could become accessible to the public. Public access to the basin from the NSWC property by non-U.S. Navy/Department of Defense personnel would pose an unacceptable security risk to the Naval Station. Navigational safety would also be a problem if non-Naval vessels are allowed to operate in the basin and because 260 feet of the NSWC seawall is located at the entrance to the basin, which is only 170 feet wide, any mooring by vessels along the seawall would further restrict the entrance and present a hazard to boats entering and leaving the basin. In addition to the publication of this proposed rule, the Baltimore District Engineer is soliciting public comment on these proposed changes to the restricted area rules by distribution of a public notice to all known interested parties.

Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

D. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

For the reasons set out in the preamble, we propose to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Add new § 334.155 to read as follows:

§ 334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.

(a) *The area.* The waters within the Naval Station Annapolis small boat basin and adjacent waters of the Severn River enclosed by a line beginning at the southeast corner of the U.S. Navy Marine Engineering Laboratory; thence to latitude 38°58'56.5", longitude 76°28'11.5"; thence to latitude 38°58'50.5", longitude 76°27'52"; thence to the southeast corner of the Naval Station's seawall.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, in Annapolis, Maryland, and such agencies as he/she may designate.

Dated: October 20, 1997.

Approved.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–28196 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–7202b; FRL–5902–3]

Approval and Promulgation of Implementation Plans; Conditional Approval of Implementation Plans; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing action on State Implementation Plan (SIP) revisions submitted by the State of Connecticut. The EPA is proposing approval of Connecticut's 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring Stations (PAMS) network, as revisions to the Connecticut SIP for ozone. The EPA proposes a conditional approval of SIP revisions submitted by the State of Connecticut to meet the 15 Percent Rate of Progress (ROP) Plan requirements of the Clean Air Act (CAA). A conditional approval is also proposed for the Connecticut contingency plan.

The inventory was submitted by Connecticut to satisfy a CAA requirement that those States containing ozone nonattainment areas (NAAs) classified as marginal to extreme submit inventories of actual ozone season emissions from all sources in accordance with EPA guidance. The PAMS SIP revision was submitted to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network by November 15, 1993. The 15 percent ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce volatile organic compound (VOC) emissions 15 percent by 1996 when compared to a 1990 baseline.

In the final rules section of today's **Federal Register**, the EPA is approving the Connecticut 1990 base year inventories, and the establishment of a PAMS network as a direct final rule without prior proposal, because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for each approval is set forth in the direct final rule. A direct final rule is not being published for the Connecticut 15 percent ROP and contingency plans. If no adverse comments are received on the direct final rule, no further activity is contemplated in relation to this proposed rule for these revisions. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Public comments on this document are requested and will be considered before taking final action on this SIP revision. Comments on this proposed action must be postmarked by November 24, 1997.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Connecticut Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, Connecticut, 06106–1630. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: For supplementary information regarding the Connecticut 1990 base year emission inventories, and establishment of a PAMS network, see the information provided in the direct final action of the same title which is located in the rules section of the **Federal Register**.

Background

Section 182(b)(1) of the CAA as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules (so called "RACT fix-ups) as these programs were required prior to 1990.

In addition, sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures be included in the plan revision to be implemented if the area misses an ozone SIP milestone, or fails to attain the standard by the date required by the CAA.

There are two nonattainment areas in Connecticut, one classified as a serious area, the other as a severe area. Connecticut is, therefore subject to the 15 percent ROP requirements. The areas are referred to as the Greater Hartford serious ozone nonattainment area (the "Hartford area"), and the Connecticut portion of the New York, New Jersey, Connecticut severe area (the "NY–NJ–CT area"), which is a multi-state ozone nonattainment area. Connecticut did not enter into an agreement with New York and New Jersey to do a multi-state 15 percent plan, and therefore submitted a plan to reduce emissions only in the Connecticut portion of this area. EPA is taking action today only on the Connecticut portion of NY–NJ–CT 15 percent plan.

Connecticut submitted final 15 percent ROP plans to EPA on January 14, 1994. The plans, however, did not contain adopted rules for all of the VOC control measures listed within, and so they were deemed incomplete by EPA by letter dated January 26, 1994. During 1994, Connecticut submitted the adopted rules necessary for its 15 percent ROP plan. Revised 15 percent ROP and contingency plans were submitted on July 5, 1994 and December 30, 1994. By letter dated January 26, 1995, EPA notified Connecticut that the 15 percent ROP plans had been found complete, thereby stopping a sanctions clock which had been started on January 26, 1994 due to the lack of complete 15 percent plans from the state.

The EPA has analyzed Connecticut's submittal and believes that the 15 percent ROP and contingency plans can be given conditional approval because the State correctly determined the required level of emission reductions, and the plans would strengthen the SIP by achieving reductions in VOC and Nitrogen Oxide (NO_x) emissions. These plans, however, reference an enhanced automobile inspection and maintenance program which the State no longer intends to implement. By letter dated August 22, 1997 the Connecticut DEP committed to submittal of revised 15 percent ROP and contingency plans, and a revised I/M program, by April 1, 1998, that would reflect emission reduction credit appropriate for the type of automobile I/M program that the State will implement. Additionally, the letter contains a commitment to initiate testing of motor vehicles by January 1, 1998. Based on these commitments, the EPA is proposing a conditional approval of the plans. For a complete discussion of EPA's analysis of the Connecticut 15 Percent ROP and Contingency plans, please refer to the Technical Support Document for this action which is available as part of the docket supporting this action. A summary of the EPA's findings follows.

Emission Inventory

The base from which States determine the required reductions in the 15 Percent Plan is the 1990 emission inventory. The EPA is approving the Connecticut 1990 emission inventories with a direct final action in the rules section of today's **Federal Register**. The inventory approved by the EPA exactly matches the one used in the 15 Percent ROP plan calculations, with one minor exception of less than ½ ton per summer day (tpsd) out of a total anthropogenic emission estimate of 416.9 tpsd for this area. EPA deems this discrepancy inconsequential.

Calculation of Target Level Emissions

Connecticut subtracted the non-creditable reductions from the Federal Motor Vehicle Control Program (FMVCP) from the 1990 inventory, and accurately adjusted the inventory to account for the reid vapor pressure (RVP) of gasoline sold in the state in 1990. These modifications result in the 1990 adjusted inventory.

The total emission reduction required to meet the 15 percent ROP Plan requirements equals the sum of the following items: 15 percent of the adjusted inventory, reductions that occur from noncreditable programs such as the FMVCP and RVP programs as required prior to 1990, reductions needed to offset any growth in emissions that takes place between 1990 and 1996, and reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes these calculations for the two ozone nonattainment areas within the state:

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS

[Tons/day]

	NY–NJ–CT	Hartford
1990 anthropogenic emission inventory [1]	131.7	414.2
1990 adjusted inventory [2]	121.8	389.3
15 percent of adjusted inventory	18.3	58.4
Noncreditable reductions	9.9	24.9
1996 target	103.5	330.9
1996 [3] projected, uncontrolled emissions	129.6	415.7
Required reduction [4]	26.1	84.8

[1] Manmade emissions only. Perchloroethylene emissions excluded due to negligible photochemical reactivity.
[2] Adjusted inventory subtracts non-creditable FMVCP and RACT reductions from the anthropogenic inventory.
[3] 1996 emissions for on-road mobile sources were calculated using an emission factor that reflected the level of control achieved by the FMVCP in 1996.
[4] Required Reductions were obtained by subtracting 1996 target from the 1996 projected uncontrolled inventory.

Measures Achieving the Projected Reductions

Connecticut has provided plans to achieve the reductions required for the two ozone nonattainment areas within the state. The following is a description of each control measure Connecticut used to achieve emission reduction credit within its 15 percent ROP plans. The EPA agrees with the emission reductions projected in the State submittals except where noted in the text and in Table 2 under the heading "Noncreditable Reductions."

A. Point Source Controls

Non-CTG Sources

Connecticut has claimed 3.1 tpsd in emission reduction credit from the implementation of VOC RACT on stationary sources. The reductions are claimed from facilities subject to the State's non-CTG RACT rule. The State's rule has been submitted to EPA, but has not as of yet been approved by EPA into the State's SIP. EPA intends to take final action on the State's rule by the time final action are issued for the State's 15 percent plans. The State's 15 percent plans included documentation for the level of emission reduction credit claimed. The emission reductions claimed by the State are approvable.

Gasoline Loading Racks, Rule Effectiveness Improvement

The Connecticut DEP plans on undertaking a rule effectiveness improvement program to improve compliance with a regulation on gasoline loading racks. The State's SIP outlines the manner in which Connecticut intends to improve compliance with this rule, including conducting 3 unannounced inspections at each of the 14 facilities in the state over a 24 month period. Additionally, the State submitted a rule effectiveness improvements protocol to EPA which outlines the manner in which the State will verify that these emission reductions have occurred. At the conclusion of the State's rule effectiveness program, a report documenting the results of the effort will be submitted to the EPA. The State anticipates achieving a 3.6 tpsd emission reduction statewide for this source category due to the rule effectiveness improvement program, and due to the effect that the sale of reformulated gasoline in the State will have on gasoline loading rack emissions.

B. Area Source Controls

Vehicle Refueling (Stage II)

Connecticut has adopted and submitted to EPA a Stage II vehicle refueling regulation. EPA approved the rule into the State's SIP on December 17, 1993 (58 FR 65930). Connecticut calculated 1996 vehicle refueling emissions and underground tank breathing emissions jointly, and determined that a 15.6 tpsd emission reduction would occur from these emission sources. Emissions from underground tanks will be reduced due to the sale of reformulated gasoline in the State.

Automobile Refinishing

On November 29, 1994, EPA issued a final guidance memorandum that allowed States to assume a 37% control level for this source category without adopting a State rule due to a pending National rule. The State correctly applied this guidance and determined that emissions will be reduced 7.4 tpsd statewide due to implementation of the federal rule.

Architectural Coatings

In a memo dated March 22, 1995, EPA provided guidance on the expected reductions from a pending national rulemaking on AIM coatings. The memo projects that emissions would be reduced by 20% for both architectural coatings and industrial maintenance coatings. The State correctly applied this guidance and determined that emissions will be reduced 6.5 tpsd statewide due to implementation of the federal rule.

Cutback Asphalt, Increased Rule Effectiveness

The December 30, 1994 revision to the Connecticut 15 percent ROP plans included a plan to increase the rule effectiveness of the State's cutback asphalt regulations, such that a total of 15.3 tpsd in emission reductions would be achieved. The State's SIP outlines the manner in which Connecticut intends to improve compliance with this rule, including notifying all towns in the State of their responsibilities pursuant to the rule, and requiring all towns to annually report their cutback asphalt usage. The State submitted a rule effectiveness improvements protocol to EPA which outlines the manner in which the State will verify that these emission reductions have occurred. At the conclusion of the State's rule effectiveness program, a report documenting the results of the effort will be submitted to the EPA. The emission reductions claimed by the State are approvable.

Effect of Reformulated Gasoline on Remaining Gasoline Marketing Operations

Reformulated gasoline will be required to be sold in Connecticut in 1996. This fuel has a lower volatility than conventional gasoline, and therefore produces less evaporative emissions than conventional gasoline. Appendix C of Connecticut's 15 percent plan outlines the effect that the sale of "Class C" reformulated gasoline will have on emissions in 1996 from the gasoline distribution network. The State estimated the emission reduction expected from the source categories where this reduction was not previously quantified, such as bulk gasoline storage tanks, barges, gasoline trucks in transit, and Stage I tank filling operations. The net result was a 1.0 tpsd emission reduction statewide. The projected emission reductions are approvable.

C. On-Road Mobile Source Controls

Vehicle Inspection and Maintenance

The 15 percent ROP plans relied on an enhanced vehicle I/M program that was developed by Connecticut and submitted to EPA on May 13, 1994. In light of the recent I/M flexibility policy issued by EPA, Connecticut has indicated an interest in re-evaluating their enhanced I/M program to take advantage of the I/M flexibility. However, Connecticut has not yet submitted a revised I/M program design to EPA. By letter dated August 22, 1997, Connecticut committed to submitting a revised I/M program to EPA by April 1, 1998, revised 15 percent and contingency plans reflecting the credit from the revised I/M program by April 1, 1998, and importantly, the State committed to begin testing motor vehicles by January 1, 1998. Since the enhanced I/M program described within the 15 percent plan submitted to EPA on December 30, 1994 will not be implemented, EPA cannot fully approve the emission reductions from this program. However, based on the commitments contained within the State's August 22, 1997 letter, EPA proposes to conditionally approve the Connecticut 15 percent ROP and contingency plans.

Section 182(b)(1) of the CAA requires that States containing ozone nonattainment areas classified as moderate or above prepare plans that provide for a 15 percent VOC emission reduction by November 15, 1996. Most of the 15 percent SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

In September, 1995, the EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within EPA's revised I/M rule, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15 percent VOC emission reduction required under CAA section 182(b)(1), and the recent regulatory changes regarding enhanced I/M programs, the EPA recognized that it is no longer possible for many States to achieve the portion of the 15 percent reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15 percent plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will propose approval of 15 percent SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15 percent SIP measures, will achieve the 15 percent level as soon after November 15, 1996 as practicable. To make this "as soon as practicable" determination, the EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. The EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions.

In the case of the NY–NJ–CT area and the Hartford area, Connecticut has committed to submittal of 15 percent SIPs that would achieve the amount of reductions needed from I/M by November, 1999. The EPA proposes to determine that these SIP revisions contain all measures, including automobile I/M, that achieve the required reductions as soon as practicable.

The EPA has examined other potentially available SIP measures to determine if they are practicable for the two Connecticut ozone nonattainment areas, and if they would meaningfully accelerate the date by which these areas reach the 15 percent level of reductions. The EPA proposes to determine that these SIPs contain the appropriate measures. The rationale for this determination is outlined within the technical support document available in the docket for this action. In summary, several area source measures exist which could conceivably be implemented prior to November 1999. However, these measures would not achieve the same level of emission reductions expected from Connecticut's I/M program, and additionally, would not meaningfully accelerate the achievement of the required reductions.

Reformulated Gasoline (RFG)

Section 211(k) of the Clean Air Act requires that after January 1, 1995, in the nine areas of the country with the worst air quality, only reformulated gasoline be sold or dispensed. Portions of the State of Connecticut are covered by this requirement. On October 28, 1991, Connecticut submitted a letter from their Governor requesting that the portions of the State not specifically required by the CAA to use reformulated gasoline "opt into" the reformulated fuels program. This request was published in the **Federal Register** on December 23, 1991, 56 FR 66444. Connecticut correctly used the MOBILE5a model to calculate the emission reductions due to the implementation of the reformulated gasoline program.

Tier I Federal Motor Vehicle Control Program

The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR

25724, June 5, 1991). Since the standards were adopted after the Clean Air Act amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. Connecticut correctly calculated these reductions using the MOBILE5a model.

Employee Commute Option

Connecticut has adopted legislation requiring employers in the State's severe nonattainment area with 100 or more employees implement measures to increase average passenger occupancy by 25%. The EPA has not approved this program into the State's SIP. A discussion with staff from the CT–DEP indicates that this program is not being implemented. The State included the effect of this program in the MOBILE modeling runs done to estimate emission reductions in the severe area. This resulted in the State assuming 0.4 tpsd in emission reduction credit which will not occur in the Connecticut portion of the NY–NJ–CT area due to the failure to implement this program.

D. Non-Road Mobile Source Controls

Use of Reformulated Gasoline in Non-road Engines

On August 18, 1993, EPA's Office of Mobile Sources issued a guidance memorandum regarding the VOC emission reduction benefits for non-road equipment in a nonattainment area that uses Federal Phase I RFG. Connecticut has correctly used the guidance to compute that VOC emissions will be reduced 0.6 tpsd in the severe area, and 2.4 tpsd in the serious area.

Table 2 summarizes the creditable and noncreditable emission reductions contained within the Connecticut 15 percent ROP plans:

TABLE 2.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: CONNECTICUT OZONE NONATTAINMENT AREAS

[Tons/day]

	NY–NJ–CT	Hartford
Required reduction	26.1	84.8
Creditable reductions:		
Non-CTG RACT	0.9	2.2
Gasoline Loading Racks	0.7	2.9
Stage II + Tank Breathing	3.9	11.7
Auto Refinishing	2.0	5.4
AIM Coatings	1.6	4.9
Cutback Asphalt (RE imp.)	3.8	11.5
Reform, other gas market	0.2	0.8
On-road mobile strategies (I/M, Reform, Tier I)	16.1	46.1
Reform, Off-road	0.6	2.4
Total	29.8	87.9
Noncreditable reductions:		
Employee commute option	0.4	
Surplus	3.7	3.1

Contingency Measures

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to sections 172(c)(9) and 182(c)(9) of the CAA, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date. The General Preamble to Title I, (57 FR 13498 (April 16, 1992)) states that the contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. The EPA interprets this provision of the CAA to require States with moderate and above ozone nonattainment areas to submit sufficient contingency measures so that upon implementation of such measures, additional emission reductions of three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified (57 FR at 13511). States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Analysis of Contingency Measures

Surplus Emission Reduction From 15 Percent Plan

Connecticut's contingency plan included emission reduction credits that were considered surplus reductions from the state's 15 percent ROP plans. A 4.0 tpsd surplus was identified for the NY–NJ–CT area, and a 3.1 tpsd surplus for the Hartford area. EPA notes that due to the lack of implementation of the employee commute program in the NY–NJ–CT area, the adjusted surplus is 3.7 tpsd for that area. This equals the contingency obligation for this area, and so no additional reductions are needed for the NY–NJ–CT area.

NO_X Contingency Measures for Serious Area

The State determined that the serious area would need to achieve additional emission reductions beyond those generated by the 15 percent plan surplus for this area. The State chose to meet the remainder of this requirement using NO_X emission reductions, which is allowed pursuant to guidance issued by EPA on August 23, 1993. The state correctly determined that a 2.2 percent reduction of the adjusted NO_X inventory (321.5 tpsd) would be required to fulfill the emission reduction obligations for the serious area. (The adjusted NO_X inventory is so named because pre-1990 emission reductions from the FMVCP are subtracted to derive the "adjusted" NO_X inventory). This yields a 7.1 tpsd NO_X emission reduction obligation.

Connecticut chose to meet the NO_X contingency measure obligation using a portion of the emission reductions achieved by its NO_X RACT rule. Connecticut has submitted a NO_X RACT rule to the EPA. EPA intends to approve the State's rule prior to or concurrent with final approval of the State's 15 percent and contingency plans. The State's NO_X RACT rule is more stringent than required by the CAA. The State performed an analysis to determine the quantity of emission reductions generated by the rule which are beyond the reductions required by the CAA. The results of the analysis were included with the State's submittal, and indicate that 6.3 tpsd surplus credit will be generated in the severe area, and 3.4 tpsd surplus credit in the serious area.

As stated above, Connecticut needs to identify 7.1 tpsd in NO_X emission reduction credits to fulfill the contingency measure obligation for the serious area. Only 3.4 tpsd are identified from the State's analysis of surplus NO_X credits. However, since the State's NO_X RACT rule contains a Statewide NO_X cap provision, which allows sources from the serious area to over-control and trade emission reduction credits to facilities in the severe area (and vice versa), the State will use a portion of the credit generated in the severe area to meet the remainder (3.7 tpsd) of the serious area's contingency obligation.[5]

Table 3 summarizes the creditable emission reductions contained within the State's contingency plans:

TABLE 3.—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: CONNECTICUT NONATTAINMENT AREAS

[Tons/day]

	NJ–NJ–CT	Hartford
Required contingency	3.7 (VOC)	3.1 (VOC) 7.1 (NO_X)
Creditable contingency reductions:		
Excess from 15 percent plans (VOC)	3.7	3.1
Beyond CAA NO_X RACT		7.1

Transportation Conformity Budgets

In recognition of the proposed approval of the 15 percent ROP plans, EPA also proposes approval of motor vehicle emission budgets for VOCs and NO_X. Final approval of the 15 percent plan will eliminate the need for the transportation conformity emission reduction tests, which are the build/no build test and the less than 1990 emissions test, for these pollutants.

A control strategy SIP is required to establish a motor vehicle emission budget which places a cap on emissions that cannot be exceeded by predicted highway and transit vehicle emissions. The Connecticut DEP did not provide a break down of the 1996 projected inventory denoting transit emissions as an individual category. Therefore EPA is proposing to utilize the on-road mobile emissions provided in the SIP submittal as the motor vehicle emission budget for transportation conformity purposes. The 1996 projected on-road mobile emission estimates contained within the State's 15 percent plans are shown in the following table:

TABLE 4.—1996 MOTOR VEHICLE EMISSION BUDGETS

	NY–NJ–CT area	Hartford area
VOC	23.2	71.1
NO_X	39.4	126.3

EPA recommends that the DEP submit a specific motor vehicle emission budget for conformity purposes that includes both the highway and transit components. If such a submittal is made, EPA will address the revised motor vehicle budget within the final rulemaking on Connecticut's 15 percent plan.

EPA notes that the DEP derived these emission values using the assumption that the State's motor vehicle I/M program will achieve emission reductions equivalent to the reductions achievable from an enhanced I/M program. As stated elsewhere in this notice, EPA is aware that Connecticut no longer intends to implement an enhanced I/M program, but rather will implement an "ASM 25/25" type program beginning on January 1, 1998. The DEP has committed to submittal of a revised 15 percent plan which contains emission estimates reflective of the State's ASM 25/25 motor vehicle emission testing program. If the revised 15 percent plans are found to contain adequate motor vehicle emission budgets, those budgets will supersede the budgets proposed for approval in today's notice. Additionally, the budgets will be adjusted if the State's evaluation of the emission reductions obtained from its I/M program reveal that the projected benefits were inaccurate.

Proposed Action

The EPA has evaluated these submittals for consistency with the CAA, EPA regulations, and EPA policy. The Connecticut 15 Percent ROP plans will achieve enough reductions to meet the 15 percent ROP requirements of section 182(b)(1) of the CAA. In addition, the Connecticut contingency plans will achieve enough emission reductions to meet the three percent reduction requirement under sections 172(c)(9) and 182(c)(9) of the CAA. However, the ability of these plans to achieve the indicated quantity of emission reductions depends in large part on the successful implementation of an automobile emission testing program. By letter dated August 22, 1997, Connecticut indicated that the I/M 240 program described within the December 30, 1994 15 percent plans would not be implemented, and that an ASM 25/25 type program would be implemented in its place beginning on January 1, 1998. The letter states that a preliminary analysis performed by the DEP indicates that Connecticut can meet its emission reduction requirements for 15 percent and contingency plan purposes based on a January 1, 1998 start date for the ASM 25/25 I/M program. The letter also committed to submittal of a revised 15 percent and contingency demonstration, and submittal of a revised I/M program, by April 1, 1998. Based on these commitments, the EPA is proposing

[5] The NY–NJ–CT severe area is also upwind from the Hartford serious area, so these NO_X reductions will contribute to air quality improvement in the serious area. Any NO_X reduction the State uses in its contingency demonstration would no longer be available for use as a trade or other purposes under the CAA.

conditional interim approval of the Connecticut 15 percent and contingency plans as a revision to the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this action.

EPA is proposing to grant conditional approval of the Connecticut 15 percent and contingency plans. The outstanding issues with these SIP revisions are as follows:

1. By January 1, 1998, Connecticut must begin testing motor vehicles using the ASM 25/25 program which is described within the State's August 22, 1997 letter.

2. By April 1, 1998, Connecticut must submit revised 15 percent and contingency plans as revisions to the State's SIP which show that the emission reductions from the ASM 25/25 automobile emission testing program, when coupled with emission reductions from other measures, will meet the emission reduction goals of these requirements.

3. By April 1, 1998, Connecticut must submit a revised I/M program as a revision to the State's SIP.[6]

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitments in a final rulemaking action, the State must meet its commitments as described in the preceding paragraph. If the State fails to do so, this action will become a limited approval, limited disapproval at the time of the State's failure to meet one of the conditions listed above. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Connecticut SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a limited approval, limited disapproval. If the State meets its commitments within the applicable time frames, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the Connecticut 15 percent and contingency plans. If EPA disapproves the Connecticut I/M program, the 15 percent and contingency plans will receive limited approvals, limited disapprovals at that time. If EPA approves the Connecticut I/M program, the 15 percent and contingency plans will be fully approved in their entirety and replace the conditionally approved program in the SIP.

If EPA determines that it must issue a limited disapproval rather than a final conditional approval, or if the conditional approval is later converted to a limited approval, limited disapproval, such action will trigger EPA's authority to impose sanctions under section 179(a) of the CAA at the time EPA issues the final limited approval, limited disapproval or on the date that Connecticut fails to meet a commitment. In the latter case, EPA will notify Connecticut by letter that the conditional approval has been converted to a limited approval, limited disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on Connecticut's failure to meet a commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the actions proposed in this notice do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

[6] Any conditions, such as a program evaluation, that EPA attaches to its approval of the revised I/M program may effectively also become conditions on the continuing validity of Connecticut's 15 percent plans, because the I/M program represents a major portion of CT's 15 percent reductions.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Nitrogen Oxides, Ozone, Volatile organic compounds.

Dated: September 19, 1997.

John P. DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 97–27856 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 97–342]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Further Notice of Proposed Rule Making* the Commission proposes auction rules and procedures for the reauction of licenses surrendered to the Commission pursuant to the Commission's decision in the *Second Report and Order* in Docket 97–82, FCC 97–342 (released October 16, 1997). These proposed rules are necessary to ensure that any licenses surrendered to the Commission can be awarded to parties who are capable of providing service to the public as rapidly as possible. The intended effect of this action is to seek comment on proposed rules and procedures for the reauction of all surrendered C block licenses.

DATES: Comments are due on or before November 13, 1997. Reply comments are due on or before November 24, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rule Making* in WT Docket No. 97–82, adopted on September 25, 1997, and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *Further Notice of Proposed Rule Making* also is available on the Commission's Internet home page (http://www.fcc.gov).

SUMMARY OF ACTION:

I. Background

1. On September 25, 1997, the Federal Communications Commission (Commission) adopted a *Further Notice of Proposed Rule Making* seeking comment on proposed changes to its C block rules to govern the reauction of any licenses or spectrum surrendered pursuant to the provisions adopted in the *Second Report and Order*. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order*, WT Docket No. 97–82, FCC 97–342 (released October 16, 1997) ("*Second Report and Order*").

II. Further Notice of Proposed Rule Making

2. In the *Further Notice of Proposed Rule Making*, the Commission proposes to reauction all licenses and spectrum surrendered to the Commission under the *Second Report and Order*. The Commission believes that a reauction of licenses surrendered to the Commission will assure rapid provision of service to the public. A reauction also will ensure that these licenses are available to all applicants in a rapid and fair fashion. A simultaneous reauction of all the licenses turned in to the Commission will benefit all bidders because they will be able to bid for a number of licenses in a single reauction, instead of a series of piecemeal auctions after defaults and revocations, in which opportunities for aggregation might be less favorable.

A. Licenses to be Reauctioned

3. The Commission proposes that the reauction include the following licenses: (1) All licenses representing the disaggregated spectrum surrendered to the Commission under the disaggregation option; (2) all licenses surrendered to the Commission on or before January 15, 1998, by incumbent licensees who choose to take advantage of the Commission's prepayment or amnesty options; and (3) all PCS C block licenses currently held by the Commission as a result of previous defaults. By including all available licenses in the reauction, the Commission can efficiently and fairly speed service to the public. In addition, offering all available licenses will allow for the most efficient aggregation of licenses. The Commission seeks comment on this proposal.

B. Eligibility for Participation

4. As the Commission stated in the *Second Report and Order*, all entrepreneurs, all entities that applied for the original C block auction, and all current C block licensees with exceptions, are eligible to bid in the reauction. The Commission seeks comment on whether it should restrict participation in the reauction to entities that have not defaulted on any FCC payments. *See* 47 U.S.C. 309(j)(5). Should the Commission presume that an entity's prior default on payments for an FCC license or authorization makes that entity not financially or otherwise fit to acquire a reauctioned C block license? Alternatively, the Commission could review financial qualifications through several other means. For instance, the Commission could allow such entity to participate in an auction, but if the applicant is a winning bidder, set for expedited hearing the financial qualifications of the bidder, and allow the applicant to rebut a presumption that it is not financially qualified. *See* 47 CFR 24.832(e), 1.2108(d)(3). Another alternative would be to request that the entity submit more detailed financial information at the application stage, or require that the entity submit a higher upfront payment amount (*e.g.*, a 50% upfront payment requirement) to participate in the reauction. With regard to C block licensees who elect the disaggregation, amnesty, or prepayment options adopted in the *Second Report and Order*, the Commission observes that by making such election and related payments they are not in default on their C block licenses and, thus, would not be restricted from participation in the reauction (except as otherwise set forth in the *Second Report and Order*).

C. Reauction Procedures

5. The Commission proposes below auction design and application procedures for the reauction of C block licenses.

1. Competitive Bidding Design

6. The Commission proposes that all licenses and spectrum surrendered be awarded by means of a simultaneous multiple-round electronic auction. The Commission bases this proposal on its desire to quickly auction available licenses and thereby to promote the most efficient assignment of the spectrum. Consistent with the Commission's normal practice, the specific procedural requirements of the auction would be set out by public notice prior to the auction. In general,

the Commission has indicated that the auction procedures chosen for each service should be those that will best promote the policy objectives identified by Congress. The Commission further concluded in Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 59 FR 22980 (May 4, 1994) ("*Competitive Bidding Second Report and Order*") that in most cases the goals set forth in Section 309(j) will be best achieved by designing auctions that award authorizations to the parties that value them most highly. As the Commission explained, such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

7. Also, multiple-round bidding during the auction will provide more information to bidders about the value of licenses than single round bidding. With better information, bidders have less incentive to shade their bids downward in order to avoid the "winner's curse," that is, the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned. Finally, multiple-round bidding is likely to be fairer than single-round bidding. Every bidder has the opportunity to win if it is willing to pay the most for it. Thus, the Commission tentatively concludes that multiple-round bidding would be the best method of auctioning all available licenses and the Commission seeks comment on this tentative conclusion.

8. The Commission also tentatively concludes that all surrendered C block licenses should be awarded in a single simultaneous multiple-round auction. A single simultaneous auction will facilitate any aggregation strategies that bidders may have, and it would provide the most information to bidders about license values at a time that they can best put that information to use. The Commission seeks comment on this tentative conclusion.

9. Finally, if the Commission adopts simultaneous multiple-round bidding as its method of auctioning all available licenses, the Commission tentatively concludes that bidding should be allowed only by electronic means, rather than by telephone. Given the Commission's desire to conduct the reauction quickly, as well as recent improvements in the Commission's electronic bidding software, the Commission tentatively concludes that telephonic bidding should be permitted only in exceptional circumstances, to be determined by the Wireless Telecommunications Bureau ("Bureau") in each instance.

2. Bidding Procedures

10. Subject to the exceptions discussed below, which are designed to speed the reauction process, the Commission tentatively concludes that the reauction should be conducted in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, 47 CFR part 1, subpart Q, as revised (the Commission initiated a proceeding last February to revise its part 1 rules; *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97–82, 62 FR 13540 (March 21, 1997) ("*Part 1 Proceeding*"), and substantially consistent with the auctions that have been employed in other wireless services. The Commission also proposes to use its part 24 rules, 47 CFR part 24, applicable to the C block to the extent that such rules do not conflict with the Commission's part 1 rules or rules specifically adopted in the *Second Report and Order* for the reauction of C block licenses. Specifically, except as set forth herein, the Commission proposes to apply the part 1 rules regarding competitive bidding mechanisms (47 CFR § 1.2104); bidding application and certification procedures and prohibition of collusion (47 CFR § 1.2105); submission of upfront payment, down payment and filing of long-form applications (47 CFR §§ 1.2106, 1.2107); procedures for filing long form applications (47 CFR § 1.2108); and procedures regarding license grant, denial and default (47 CFR § 1.2109). The Commission seeks comment on this proposal.

11. *Activity Rules.* The Commission tentatively concludes that, as it has done in other simultaneous multiple-round auctions, it will conduct the reauction in three stages. Three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. However, because the Commission believes that efficiently assigning these licenses for rapid service to the public and increased competition in the CMRS marketplace requires a swift reauction of the licenses, the Commission proposes to use high activity requirements in the reauction. In recent auctions, for example, the Commission has required bidders to be active on 80% of their eligible licenses in Stage I, 90% in Stage II, and 98% in Stage III. The Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, to require the Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses. The Commission seeks comment on these proposals and tentative conclusions.

12. *Reserve Price, Minimum Opening Bid, and Minimum Bid Increments.* Section 1.2104 of the Commission's rules provides that the Commission may establish reserve prices or suggested minimum opening bids. *See* 47 CFR § 1.2104. The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) (to be codified at 47 U.S.C. § 309(j)(4)(F)) ("Balanced Budget Act") directed the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid will be established, unless the Commission determines that a reserve price or a minimum opening bid is not in the public interest. This legislative directive establishes a presumption in favor of reserve prices or minimum opening bids in the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Customarily, an auctioneer has the discretion to lower a minimum opening bid in the course of the auction. A minimum opening bid in the C block reauction, more than a reserve price, will help make certain that the public is fairly compensated for spectrum surrendered to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission seeks comment on this proposal. The Commission also seeks comment on the methodology to be used to establish minimum opening bids and what factors the Commission should consider in doing so. The Commission proposes minimum opening bids for each market equal to 10% of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses. The Commission also asks that commenters address whether the amount of the minimum opening bid should be capped to ensure that bidding is not deterred on high valuation markets, in particular. Finally, if commenters believe that a minimum opening bid equal to 10% of the high bid in the original C block auction will result in substantial unsold licenses, or is not a reasonable amount, they should explain why this is so, and comment on the desirability of a higher or lower minimum opening bid.

3. Procedural and Payment Issues

13. *Pre-Auction Application Procedures.* Auction applicants are required to file a short-form application, FCC Form 175, prior to the start of each auction. Although the Commission previously has allowed both electronic and manual filing of such applications, the Commission tentatively concludes that it should require electronic filing of all short-form applications for the reauction. The Commission believes that electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission also believes that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making*. The Commission have developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. This software helps applicants ensure the accuracy of their applications as they are filling them out, and assists them in avoiding errors and omissions. In addition, by shortening the time required for the Commission to process applications before the auction, electronic filing will increase the lead time available to applicants to pursue business plans and arrange necessary financing before the short-form deadline. The Commission's experiences from recent auctions show that bidders are confident that the electronic filing system is reliable. For example, in the broadband PCS D, E, and F block auction, 94% of the qualified bidders filed their short-form applications electronically. In the recently completed Wireless Communications Services ("WCS") auction, all winning bidders filed their long-form applications electronically. In addition, the Commission notes that in the *Part 1 Proceeding*, the Commission tentatively concluded that §§ 1.2105(a) and 1.2107(c) of its rules should be amended to require electronic filing of all short-form and long-form applications. *See* 47 CFR §§ 1.2105(a) and 1.2107(c). The Commission seeks comment on this tentative conclusion.

14. *Upfront Payment.* The Commission's part 1 rules, 47 CFR Part 1, require the submission of an upfront payment as a prerequisite to participation in spectrum auctions. The Commission proposes to set the amount of the upfront payment for the reauction at $.06 per MHz per pop. The Commission adopted the same upfront payment amount for its most recent broadband PCS auction, the D, E, and F block auction, in which all applicants for all blocks made a $.06 per MHz per pop upfront payment. In the *Competitive Bidding Second Report and Order*, the Commission indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population (or "pops") covered by the license or licenses for which parties intend to bid. The Commission reasoned that this method of determining the required upfront payment would enable prospective bidders to tailor their upfront payment to their bidding strategies. At the same time, however, the Commission noted that determining an appropriate upfront payment involved balancing the goal of encouraging bidders to submit serious, qualified bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. The Commission concluded that the best approach would be to maintain the flexibility to determine the amount of the upfront payment on an auction-by-auction basis because this balancing may yield different results depending upon the particular licenses being auctioned. In light of the its desire that only serious, qualified applicants participate in the reauction, the Commission's proposal of a $.06 per MHz per pop is appropriate. The Commission seeks comment on this proposal. The Commission also seeks comment on alternative methods of establishing an upfront payment, and in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned.

15. *Down Payment and Full Payment.* Consistent with the procedures used in prior auctions, the Commission tentatively concludes that every winning bidder in an auction should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20% of its winning bid within 10 business days after the issuance of a public notice announcing the winning bidder for the license. *See* 47 CFR § 1.2107(b). The Commission seeks comment on this tentative conclusion.

16. If a winning bidder makes its down payment in a timely manner, the Commission proposes that it file an FCC Form 600 long-form application and follow the long-form application procedures in § 1.2107 of the Commission's rules. *See* 47 CFR § 1.2107. *See also*, 47 CFR § 24.707. After reviewing the winning bidder's long-form application, and after verifying receipt of the winning bidder's 20% down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. The Commission notes that the Balanced Budget Act of 1997 authorizes the Commission to establish a shortened period for the filing of petitions to deny. In light of this authority, as well as the Commission's desire to conclude the reauction process as quickly as possible, the Commission proposes that parties then have 15 days following public notice that an application was accepted for filing to file a petition to deny. If, pursuant to Section 309(d) of the Communications Act, as amended, 47 U.S.C. § 309(j), the Commission dismisses or denies any and all petitions to deny, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have 10 business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, the Commission would assess a default payment as discussed below. The Commission seeks comment on these proposals.

17. *Amendments and Modifications of Applications.* To encourage maximum bidder participation, the Commission proposes to allow applicants to amend or modify their short-form applications as provided in § 1.2105. *See* 47 CFR § 1.2105. In the broadband PCS context, the Commission modified its rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fourth Memorandum Opinion and Order*, 59 FR 24947 (October 24, 1994). The Commission proposes to adopt the same exception to our rule prohibiting major amendments in the reauction. The Commission seeks comment on these proposals.

18. *Bid Withdrawal, Default and Disqualification.* The Commission tentatively concludes that the withdrawal, default, and disqualification rules for the reauction should be based upon the procedures established in the Commission's general competitive bidding rules. With regard to bids that are submitted in error, the Commission proposes to apply the guidelines that the Commission has fashioned to provide for relief from the

bid withdrawal payment requirements under certain circumstances. The Commission seeks comment on this approach.

4. Anti-Collusion Rules

19. In the *Competitive Bidding Second Report and Order*, the Commission adopted rules to prevent collusion in connection with competitive bidding, explaining that these rules, which are codified at 47 CFR § 1.2105, would enhance the competitiveness of both the auction process and the post-auction market structure. The Commission proposes to apply these same rules to the reauction of licenses surrendered to the Commission. The Commission seeks comment on this proposal.

5. Designated Entity Provisions

20. The Commission proposes to provide small business bidders in the C block reauction with a two tiered bidding credit, which will provide a greater discount to very small businesses. In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25% of its winning bid. For the reauction, however, the Commission tentatively concludes that it should offer tiered bidding credits, as the Commission did for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define a second tier of small business, which the Commission will refer to as "very small businesses," as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more that $15 million for the preceding three years. Creation of this subcategory of small business enables the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum surrendered by C block licensees. Thus, the Commission proposes a 35% bidding credit for very small businesses and a 25% bidding credit for small businesses. The Commission seeks comment on these proposals and tentative conclusions.

21. The Commission also tentatively conclude that an installment payment program will not be offered in the reauction. The Commission has conducted several auctions without installment payments. The Commission must balance competing objectives in 47 U.S.C. § 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt ensures greater financial accountability from applicants. Thus, the Commission tentatively concludes that it should not extend installment payments to winners in the reauction, given the incentives to entrepreneurs established through the various proposals discussed above. The Commission seeks comment on these tentative conclusions.

III. Procedural Matters

A. Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the *Further Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice of Proposed Rule Making*. The Commission will send a copy of the *Further Notice of Proposed Rule Making*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

23. This *Further Notice of Proposed Rule Making* is being initiated to secure comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block. Among other goals, Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission is seeking comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block.

2. Legal Basis

24. This action is taken pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309 (j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by its rules. *See* 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the Commission's rules. 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. § 632.

26. The rule changes proposed in the *Further Notice of Proposed Rule Making* will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding C block and F block broadband PCS licenses who choose to participate and other small businesses who may acquire licenses through reauction. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years. *See* 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities. In addition to the 178 current small business licensees who may participate at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction, and thus be affected by these rules.

27. In addition, the Commission proposes to provide small business bidders in the C block reauction with bidding credits, and to that end proposes a two tiered bidding credit which will provide a greater discount to "very small businesses." In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25 percent of its winning bid. For the reauction, the Commission proposes tiered bidding credits, as were offered for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define the second tier of very small business as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more that $15 million for the preceding three years. Creation of this subcategory of small business will enable the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum returned by C block licensees. Thus, the Commission proposes a 35 percent bidding credit for very small businesses and a 25 percent bidding credit for small businesses.

28. To assist the Commission analyzing the total number of affected small entities, commenters are requested to provide information regarding how many total broadband PCS small business entities would be affected by the rules proposed in this *Further Notice of Proposed Rule Making*. In particular, the Commission seeks estimates of how many broadband PCS entities, existing and potential, will be considered small businesses or very small businesses.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

29. There are no additional reporting, recordkeeping, or other compliance requirements as a result of the *Further Notice of Proposed Rule Making*.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The Commission proposes to apply the same rules that were used in the C block auction to the reauction of C block licenses, with some modifications designed to encourage participation by small businesses while at the same time helping to ensure the best use of the spectrum through the competitive bidding process. The Commission proposes to conduct the C block reauction in three stages. Having three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. The Commission proposes to use high activity requirements in the reauction. In addition, the Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, require the Wireless Telecommunications Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses.

31. The Commission proposes to establish a minimum opening bid for the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. A minimum opening bid in the C block reauction will help ensure that the public is fairly compensated for licenses returned to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission proposes minimum opening bids for each market equal to ten percent of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses.

32. The Commission proposes to require electronic filing of all short-form applications for the reauction. Electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission believes that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making*.

33. The Commission proposes to set the amount of the upfront payment for the reauction at $.06 per megahertz per population ("MHz per pop").

34. The Commission proposes that parties have fifteen (15) days to file a petition to deny following public notice that an application was accepted for filing. If, pursuant to Section 309(d) of the Communications Act, the petitions to deny are dismissed or denied, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have ten (10) business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, a default payment would be assessed.

35. Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. *See* 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission believes these provisions in the *Further Notice of Proposed Rule Making* help meet those goals and promote efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

6. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

None.

B. Paperwork Reduction Act Analysis

36. This *Further Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this *Further Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other

comments on this *Further Notice of Proposed Rule Making;* OMB comments are due 60 days from date of publication of this *Further Notice of Proposed Rule Making* in the **Federal Register.** Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates

Written comments by the public on the proposed or modified information collections in this *Further Notice of Proposed Rule Making* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

Address

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Further Information

For additional information concerning the information collections contained in this *Further Notice of Proposed Rule Making* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Proposed or Modified Collection.

Respondents: The Commission estimates that no more than 255 respondents (i.e., previous C block bidders) will participate in this information collection. The Commission estimates that this information collection, that eligibility is based on previous participation in a C block auction and the bidder identification number from the previous auction, will take 0.5 hours to complete. In addition, the Commission proposes that C block reauction applicants submit more detailed financial information, if necessary. The Commission estimates that this information collection will take 1.0 hours to complete. The Commission estimates that the total burden will be 1.5 hours per respondent or 377.5 total hours.

Estimate of total cost burden to respondents: The Commission estimates that there will be no additional cost burden to respondents.

The cost to the Federal Government is estimated to be:

GS 7 Legal Instrument Examiners at $14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 255 submissions = $1,581.75

GS 12 Attorneys to review the financial documentation at $24.95 per hour, for approximately 2.0 hours per submission, times 255 submissions = $11,227.50

Total = $12,809.25

C. Ex Parte Presentations

The *Further Notice of Proposed Rule Making* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

D. Comments

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 13, 1997, and reply comments on or before November 24, 1997. In addition, a courtesy copy should be delivered to Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28222 Filed 10–23–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–96–1472; Notice 97–10]

RIN 2105–AC60

Privacy Act; Implementation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Vessel Information System. Public comment is invited.

DATES: Comments are due November 24, 1997.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket OST–96–1472, Department of Transportation, C–55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 9 AM to 5 PM ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard's Vessel Information System (VIS) would collect manage the data needed to provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels, and deter vessel theft and fraud. Establishment of VIS is required by statute. 46 U.S.C. 12501–07.

Because of the capability to retrieve information by the names or other unique identifiers of individuals, VIS is subject to the Privacy Act, which would impose many restrictions on the use and dissemination of information in the system. However, because VIS would be used for law enforcement purposes, it may be exempted from some of these restrictions.

Privacy Act Exemption

Under subsection (k) of the Privacy Act (5 U.S.C. 552a(k)), qualifying records may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject; in subsection (d) to grant to a record subject access to information maintained on him/her under the Act; in subsection (e)(1) to maintain only such information as is relevant and necessary to accomplish a purpose of the agency under statute or Executive Order; in subsection (e)(4)(G), (H), and (I) to advise record subjects of the agency procedures to request if a system of records contains records pertaining to them, how they can gain access to such records and contest their content, and the categories of sources of such records; and in subsection (f) to establish rules governing the procedures above.

Under Subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within Subsection (j)(2), may be exempted from these provisions, and DOT proposes to exempt VIS accordingly; however, if an individual would be denied any right, privilege, or benefit to which he/she would otherwise be entitled by Federal law, of for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Analysis of Regulatory Impacts

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

Accordingly, DOT proposes to amend 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 would continue to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

2. Part II.A of the Appendix would be amended by republishing the introductory text and adding a new paragraph 15, to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific exemptions.

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2):

* * * * *

15. Vessel Information System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 590). The purpose of this exemption is to prevent persons who are the subjects of criminal investigations from learning too early in the investigative process that they are subjects, what information there is in Coast Guard files that indicates that they may have committed unlawful conduct, and who provided such information.

* * * * *

Issued in Washington, DC, on October 15, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–27974 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE42

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Topeka Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Topeka shiner (*Notropis topeka*) as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Topeka shiner is a small fish presently known from small tributary streams in the Kansas and Neosho river basins in Kansas; the Missouri, Grand, Lamine, Chariton, and Des Moines river basins in Missouri; the North Raccoon River basin in Iowa; the James and Vermillion river watersheds in South Dakota; and, the Rock River watershed in Minnesota. The Topeka shiner is threatened by habitat destruction, degradation, modification, and fragmentation resulting from siltation, reduced water quality, tributary impoundment, stream channelization, and stream dewatering. The species is also impacted by introduced predaceous fishes. This proposal, if made final, will implement Federal protection provided by the Act for *Notropis topeka*. A determination of critical habitat is neither beneficial nor prudent.

DATES: Comments from all interested parties must be received by December 23, 1997. Public hearing requests must be received by December 8, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Field Supervisor, Ecological Services Field Office, 315 Houston Street, Suite E, Manhattan, Kansas 66502. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William H. Gill, Field Supervisor, or Vernon M. Tabor, Fish and Wildlife Biologist, at the above address (913/539–3474).

SUPPLEMENTARY INFORMATION:

Background

The Topeka shiner was first described by C.H. Gilbert in 1884, using specimens captured from Shunganunga Creek, Shawnee County, Kansas (Gilbert 1884). The Topeka shiner is a small, stout minnow, not exceeding 75 millimeters (mm) (3 inches (in)) in total length. The head is short with a small, moderately oblique mouth. The eye diameter is equal to or slightly longer than the snout. The dorsal fin is large, with the height more than one half the predorsal length of the fish, originating over the leading edge of the pectoral fins. Dorsal and pelvic fins each contain 8 rays. The anal and pectoral fins contain 7 and 13 rays respectively, and there are 32 to 37 lateral line scales. Dorsally the body is olivaceous (olive-green), with a distinct dark stripe preceding the dorsal fin. A dusky stripe is exhibited along the entire longitudinal length of the lateral line. The scales above this line are darkly outlined with pigment, appearing cross-hatched. Below the lateral line the body lacks pigment, appearing silvery-white. A distinct chevron-like spot exists at the base of the caudal fin (Cross 1967; Pflieger 1975; Service 1993).

The Topeka shiner is characteristic of small, low order (headwater), prairie streams with high water quality and cool temperatures. These streams generally exhibit perennial flow, however, some approach intermittency during summer. At times when surface flow ceases, pool levels and cool water temperatures are maintained by percolation through the streambed, spring flow and/or groundwater seepage. The predominant substrate types within these streams are clean gravel, cobble and sand. However, bedrock and clay hardpan overlain by a thin layer of silt are not uncommon (Minckley and Cross 1959). Topeka shiners most often occur in pool and run areas of streams, seldom being found in riffles. They are pelagic (living in open water) in nature, occurring in mid-water and surface areas, and are primarily considered a schooling fish. Occasionally, individuals of this species have been found in larger streams, downstream of known populations, presumably as migrants (Cross 1967; Pflieger 1975; Tabor *in litt.* 1992a).

Data regarding the food habits and reproduction of Topeka shiners are limited and detailed reports have not been published. However, Pflieger (Missouri Department of Conservation, *in litt.* 1992) reports the species as a nektonic (swimming independently of currents) insectivore. In a graduate research report, Kerns (University of Kansas, *in litt.* 1983) states that the species is primarily a diurnal or daytime feeder on insects, with chironomids (midges), other dipterans (true flies), and ephemeropterans (mayflies), making up the bulk of the diet. However, the microcrustaceans cladocera and copapoda (zooplanktons) also contribute significantly to the species' diet. The Topeka shiner is reported to spawn in pool habitats, over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*Lepomis humilis*) nests, from late May through July in Missouri and Kansas (Pflieger 1975; Kerns *in litt.* 1983). Males of the species are reported to establish small territories near these nests. Pflieger (*in litt.* 1992) states that the Topeka shiner is an obligate spawner on silt-free sunfish nests, while Cross (University of Kansas, pers. comm. 1992) states that it is unlikely that the species is solely reproductively dependent on sunfish, and suggests that the species also utilizes other silt-free substrates as spawning sites. Data concerning exact spawning behavior, larval stages, and subsequent development is lacking. Maximum known longevity for the Topeka shiner is three years, however, only a very small percent of each year class attains the third summer. Young-of-the-year attain total lengths of 20 mm to 40 mm (.78 to 1.6 in) age 1 fish 35 mm to 55 mm (1.4 to 2.2 in), and age 2 fish 47 mm to 65 mm (1.8 to 2.5 in) (Cross and Collins 1975; Pflieger 1975).

Historically, the Topeka shiner was widespread and abundant throughout low order tributary streams of the central prairie regions of the United States. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. Stream basins within the range historically occupied by Topeka shiners include the Des Moines, Raccoon, Boone, Missouri, Big Sioux, Cedar, Shell Rock, Rock, and Iowa basins in Iowa; the Arkansas, Kansas, Big Blue, Saline, Solomon, Republican, Smoky Hill, Wakarusa, Cottonwood, and Blue basins in Kansas; the Des Moines, Cedar, and Rock basins in Minnesota; the Missouri, Grand, Lamine, Chariton, Des Moines, Loutre, Middle, Hundred and Two, and Blue basins in Missouri; the Big Blue, Elkhorn, Missouri, and lower Loup basins in Nebraska; the Big Sioux, Vermillion, and James basins in South Dakota. The number of known occurrences of Topeka shiners has been reduced by approximately 80 percent, with approximately 50 percent of this decline occurring within the last 25 years. The species now primarily exists as isolated and fragmented populations.

Recent fish surveys were conducted across the Topeka shiner's range. In Missouri, 42 of the 72 sites historically supporting Topeka shiners were resurveyed in 1992. The species was collected at 8 of the 42 surveyed locales (Pflieger, *in litt.* 1992). In 1995, the remaining 30 historical sites not surveyed in 1992 and an additional 64 locales, thought to have potential to support the species, were sampled. Topeka shiners were found at 6 of the 30 remaining historical locations and at 6 of the 64 additional sites sampled. In total, recent sampling in Missouri identified Topeka shiners at 14 of 72 (19 percent) historic localities, and at 20 of 136 (15 percent) total sites sampled (Gelwicks and Bruenderman 1996). Gelwicks and Bruenderman (1996) also note that the species has apparently experienced substantial declines in abundance in the remaining extant populations in Missouri, with the exception of Moniteau Creek.

In Iowa, 24 locales within 4 drainages were sampled in 1994 at or near sites from which the species was reported extant during surveys conducted between 1975 and 1985. The Topeka shiner was captured at 3 of 24 sites, with these 3 captures occurring in the North Raccoon River basin (Tabor, U.S. Fish and Wildlife Service, *in litt.* 1994). Menzel (*in litt.* 1996) reports 6 collections of the species in 1994 and 1995, also from the same drainage.

In Kansas, 128 sites at or near historic collection localities for the Topeka shiner were sampled in 1991 and 1992, The species was collected at 22 of 128 (17 percent) sites sampled (Tabor, *in litt.* 1992a; Tabor, *in litt.* 1992b). Extensive stream surveys completed in 1995 and 1996 identified 10 new localities for Topeka shiners and reconfirmed the species in a historic locale where it was believed extirpated (Mammoliti, *in litt.* 1996).

In South Dakota, the species was recently captured in low numbers from one stream in the James River basin and four streams in the Vermillion River basin. (Braaten, South Dakota State University, *in litt.* 1991; Schumacher, South Dakota State University, *in litt.* 1991).

In Minnesota, 14 streams in the area likely to be occupied by Topeka shiners were surveyed over the past 10 years. The species was collected from 5 of 9 (56 percent) streams with historic occurrences, and was not found in the 5 streams with no historic occurrences. These locales are all in the Rock River drainage (Baker, *in litt.* 1996).

In Nebraska, the species was assumed extirpated from all historic locales. However, in 1989 the species was discovered in the upper Loup River drainage, outside its former known range, where two specimens were collected (Michl and Peters 1993). In 1996, a single specimen was collected from a stream in the Elkhorn River basin, within the species' historic range (Nebraska Game and Parks Commission, *in litt.* 1997). In Nebraska, this was the first collection of a Topeka shiner within the known historic range since 1940. It is presently considered extant at these two localities (Cunningham, University of Nebraska—Omaha, pers. comm. 1996).

The Topeka shiner began to decline throughout the central and western portions of the Kansas River basin in the early 1900's. Cross and Moss (1987) report the species present at sites in the Smoky Hill and Solomon River watersheds in 1887, but by the next documented fish surveys in 1935, the Topeka shiner was absent. The Topeka shiner was extirpated from the Wakarusa River watershed during the 1970's (Cross, University of Kansas, pers. comm. 1995). The species disappeared from the Big Blue River watershed (Kansas River basin) in Nebraska after 1940 (Clausen, Nebraska Game and Parks Commission, *in litt.* 1992). The last record of the Topeka shiner from the Arkansas River basin, excluding the Neosho River watershed, was 1891 near Wichita, Kansas (Cross and Moss 1987). In Iowa, the species was extirpated from all Missouri River tributaries except the Rock River watershed prior to 1945. It was also eliminated from the Cedar and Shell Rock River watersheds prior to 1945. Since 1945, the Topeka shiner has subsequently been extirpated from the Boone, Iowa, and Des Moines drainages, with the exception of the North Raccoon River watershed (Harlan and Speaker 1951; Harlan and Speaker 1987; Menzel, Iowa State University, *in litt.* 1980; Dowell, University of Northern Iowa, *in litt.* 1980; Tabor *in litt.* 1994). In Missouri, since 1940 the species has been apparently extirpated from many of the tributaries to the Missouri River where it formerly occurred, including Perche Creek, Petite Saline Creek, Tavern Creek, Auxvasse Creek, Middle River, Moreau River, Splice Creek, Slate Creek, Crooked River, Fishing River, Shoal Creek, Hundred and Two River, and Blue River watersheds.

Previous Federal Action

The Topeka shiner first received listing consideration when the species was included in the Animal Candidate Review for Listing as Endangered or Threatened Species, as a category 2 candidate species, published in the **Federal Register** (56 FR 58816) on November 21, 1991. In 1991, the Service's Kansas Field Office began a status review of the Topeka shiner, including information gathered from stream sampling and requests from knowledgeable individuals and agencies. Included were State fish and wildlife conservation agencies, State health and pollution control agencies, colleges and universities, and other Service offices. The Service subsequently prepared a status report on this species dated February 16, 1993 (Service 1993). In the November 15, 1994, Animal Candidate Review for Listing as Endangered or Threatened Species, published in the **Federal Register** (59 FR 58999), the Topeka shiner was reclassified as a category 1 candidate species. Category 1 candidates comprised taxa for which the Service had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. The Service has since discontinued the category designations for candidates and has established a new policy on the definition of candidate species (formerly category 1 candidates). In the February 28, 1996, Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species, published in the **Federal Register** (61 FR 7596), the Topeka shiner was reclassified as a candidate species. Candidate species are those species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list as endangered or threatened species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal "List of Endangered and Threatened Wildlife and Plants." A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Topeka shiner (*Notropis topeka*) throughout the species range are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Once abundant and widely distributed throughout the central Great Plains and western tallgrass prairie regions, the Topeka shiner now inhabits less than 10 percent of its original geographic range. The action most likely impacting the species to the greatest degree in the past is sedimentation and eutrophication resulting from intensive agricultural development. Most populations of Topeka shiners occurring west of the Flint Hills region of Kansas are believed to have been extirpated prior to 1935 (Cross and Moss 1987). Minckley and Cross (1959) report that watersheds with high levels of cultivation, and subsequent siltation, and domestic pollution are unsuitable for the species. These streams often cease to flow and become warm and muddy during the summer months. Cross (1970) indicates that some of the areas where depletion of the species has occurred also coincide with areas having poor aquifers. Pflieger (1975) reports that increased siltation as a result of intensive cultivation may have reduced the amount of Topeka shiner habitat in Missouri. Pflieger (*in litt.* 1991) also reports that a known population of the species in Boone County, Missouri was extirpated between 1970 and 1976, presumably due to increased turbidity and nutrient enrichment resulting from urbanization and highway construction. Feedlot operations on or near streams are also known to impact prairie fishes due to organic input resulting in eutrophication (Cross and Braasch 1968).

The species was historically known from open pools of small prairie streams with cool, clear water. Many streams of this nature reportedly existed throughout the geographic range of the Topeka shiner "prior to the plowing of the prairie sod" (Cross 1967). These conditions continue to exist in many of the streams in the Flint Hills region of Kansas, primarily due to shallow, rocky soils with numerous limestone exposures which prevent cultivation. This is in contrast to the perturbation of the natural fish faunas and their associated habitats in prairie areas more suitable to intensive rowcrop agriculture, which is characteristic of the vast majority of the natural range of the species (Menzel et al. 1984). Menzel et al. (1984) also notes accelerated rates of soil erosion and instream deposition of fluvium (deposits caused by the action of flowing water) throughout many former prairie streams in Iowa,

encompassed by the former range of the species. Today, outside the Flint Hills region of Kansas, only a few, small isolated areas not severely impacted, or impacted to an extent within the tolerance of the species, continue to exist.

Mainstem reservoir development, tributary impoundment, and channelization have also impacted the species in some areas. Populations located within small tributary streams upstream from both mainstem and tributary impoundments attempt to utilize these water bodies as refuges from drying streams during periods of drought. During this time, the populations are subject to predation by larger predatory fish inhabiting the impounded water bodies. In unaltered systems, fish move downstream during drought to find suitable habitat. Deacon (1961) reports fishes characteristic of the small and mid-sized tributaries of the Neosho and Marais des Cygnes rivers' watersheds occurred in the mainstems following several years of protracted drought in the mid-1950's. Tributary dams also serve to block migration of fishes upstream following drought, effectively prohibiting recolonization of upstream reaches.

Several recently extant populations have been extirpated from tributaries to Tuttle Creek and Clinton reservoirs, both mainstem impoundments in the Kansas River basin of eastern Kansas. The species continues to exist in two tributaries to Tuttle Creek Reservoir; however, during sampling on one of these streams in 1994 only a single Topeka shiner was captured. All populations within the Wakarusa River watershed (Clinton Reservoir) are believed extirpated. Clinton Reservoir's completion coincided with large scale development of tributary impoundments throughout the Wakarusa's upper basin which may have compounded impacts to the species. Layher (1993) reports the extirpation of Topeka shiners from a stream following construction of a single tributary impoundment in Chase County, Kansas. Layher reported that the species had disappeared both upstream and downstream of the dam site, and noted significant habitat changes below the impoundment. Pflieger (*in litt.* 1992) reports that an abundant population of the species in Missouri was extirpated following construction of an impoundment. This population, located downstream from the dam site, was not present when revisited several years after construction. The habitat had changed from clear rocky pools, to pools filled with gravel, layered over by silt and choked with filamentous algae. Pflieger further reports that "the SCS (Soil Conservation Service) reservoir has profoundly altered the hydrology and biota of this stream by eliminating the scouring floods that formerly created pool habitat and maintained the rocky, silt-free substrate." During 1994 sampling efforts in southeast Iowa, a stream with recent records of the species was found to have been impacted by the construction of multiple impoundments throughout its upper reaches and tributaries. No Topeka shiners were captured (Tabor *in litt.* 1994). Impoundment of prairie streams has also resulted in the documented extirpation of other prairie stream minnow species (Winston et al. 1991).

In Kansas, substantial tributary impoundment is occurring throughout the Flint Hills region, threatening Topeka shiners in these locales. As of 1993, 46 tributary impoundments had been completed in or near habitat for the Topeka shiner in the Cottonwood River basin, with an additional 115 planned for construction (Service *in litt.* 1993). Presently in the Mill Creek watershed, the largest remaining complex of habitat for the species, 16 dams have been completed, with an additional 48 planned (Hund, Mill Creek Watershed District, pers. comm. 1997; State Conservation Commission of Kansas, *in litt.* 1992). Dam construction is also a threat to the species throughout the rest of the species' range, but to a lower degree due to less immediate and intensive development.

Stream channelization has also occurred throughout much of the Topeka shiner's range. Channelization negatively impacts many aquatic species, including the Topeka shiner, by eliminating and degrading instream habitat types, altering the natural hydrography (physical characteristics of surface waters), and by changing water quality (Simpson et al. 1982). Intensive channelization of low order streams throughout the species' Iowa and Minnesota range is suspect in the species' drastic decline in these areas. Menzel (*in litt.* 1980) reports the extirpation of Topeka shiners from previous collection sites following stream channelization projects in Iowa. During 1994 status surveys across this portion of the range, most streams were found to have been severely altered from natural conditions (Tabor *in litt.* 1994). Changes included elimination of pool habitats, instream debris, and woody riparian vegetation. Water velocities were consistently high throughout the channel and deep silt was the dominant substrate. It is suspected that the Topeka shiner is an obligate spawner on sunfish (*Lepomis* spp.) nests (Pflieger *in litt.* 1992) or other silt-free substrates, but no sunfish were captured, nor suitable sunfish spawning habitat observed in these channelized streams. At Iowa sites where Topeka shiners were captured, streams were not intensively channelized and many natural conditions persisted.

Intensive land-use practices, dewatering of streams, and continuing tributary impoundment and channelization represent the greatest existing threats to the Topeka shiner. Grazing of riparian zones and the removal of riparian vegetation to increase tillable acreage greatly diminish a watershed's ability to filter sediments, organic wastes and other impurities from the stream system (Manci 1989). Irrigation draw-down of groundwater levels affect surface and subsurface flows which can impact the species. At present, both Federal and State planning for development of watershed impoundments and channelization continue in areas with populations of Topeka shiners. Several impoundments are planned for construction on streams with abundant numbers of the species. Portions of these stream reaches will be inundated by the permanent pools of the reservoirs, imperiling the species' future existence in these localities. Prior to the planning of the impoundments, these populations of Topeka shiners were considered to be the most stable range-wide, due to their occurrence in watersheds dominated by high quality prairie with generally very good grazing management and land stewardship.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Some collecting of Topeka shiners by individuals for use as bait fish and display in home aquaria does occur. However, overutilization is not thought to currently contribute to the decline of the Topeka shiner.

C. Disease or predation. There have been no studies conducted on the impacts of disease or predation upon the Topeka shiner; therefore, the significance of such threats to the species is presently unknown. Disease is not likely to be a significant threat except under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality, such as low dissolved oxygen or elevated nutrient levels. During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites, bacteria, and viral agents are generally the most common causes of mortality. Lesions caused by injuries, bacterial infections, and parasites often become the sites of secondary fungal infections. However, Topeka shiners captured from a Missouri stream in 1996 were discovered to be afflicted with scoliosis, a condition of deformity affecting the vertebrae. Scoliosis can result from contact with environmental contaminants, or severely reduced genetic variability resulting from geographic isolation. No causal factor for this occurrence has been identified.

The green sunfish (*Lepomis cyanellus*) is the most common predator typical of Topeka shiner habitat throughout its range. The spotted bass (*Micropterus punctulatus*) and largemouth bass (*M. salmoides*) are also naturally occurring predators of the Topeka shiner in portions of its range but to a much lower degree due to minimal habitat overlap. These bass species typically occur in only the downstream extremes of Topeka shiner habitat. The construction of impoundments on streams with Topeka shiners and the subsequent introduction of piscivorous (fish eating) fish species not typically found in headwater habitats, such as largemouth bass, crappie (*Pomoxis* spp.), white bass (*Morone chrysops*), northern pike (*Esox lucius*), and channel catfish (*Ictalurus punctatus*), may affect the species during drought or periods of low flows when Topeka shiners seek refuge in the impoundments or permanent stream pools now occupied by these introduced fishes. The most common fishes captured in streams directly upstream and downstream of tributary impoundments in Kansas are largemouth bass, crappie, and bluegill (*Lepomis macrochirus*), and these species are often captured to the exclusion of cyprinids, including Topeka shiner (Mammoliti, Kansas Department of Wildlife and Parks, pers. comm., 1997). Tabor (*in litt.* 1994) captured only largemouth bass from a stream segmented by numerous dams in Iowa. A cooperative report completed by the Soil Conservation Service and Kansas Department of Health and Environment (1981) on the effects of watershed impoundments on Kansas streams states that predacious game fishes increased in abundance, and several minnow species, including the Topeka shiner, decreased in abundance upstream and downstream from dam sites following impoundment. While the extent of predation is undocumented, known populations have apparently been extirpated in the time period immediately following impoundment of several low order streams (Layher 1993; Pflieger, *in litt.* 1992; Tabor, *in litt.* 1992b). Topeka shiners were also reportedly extirpated from a small impoundment previously lacking largemouth bass, following stocking of largemouth bass (Prophet et al. 1981). Extirpation of the Topeka shiner from small, direct tributary streams to large mainstem impoundments has also been documented. These extirpations presumably occurred in part due to predation by introduced piscivorous fishes during drought and low flow periods when Topeka shiners seek refuge in permanent water downstream from their typical headwater habitats (Service 1993).

D. The inadequacy of existing regulatory mechanisms. In Kansas, the Topeka shiner is listed as "species in need of conservation," under the Kansas Nongame and Endangered Species Conservation Act of 1975. This status prohibits the direct taking of specimens but does not protect habitat or give opportunity to review actions or projects which may affect the species in Kansas. Under Missouri law, the species is listed as endangered. This status prohibits direct taking of specimens and provides a limited review process to suggest remediation for actions potentially impacting the species' habitat. Minnesota, Nebraska, and South Dakota consider it a species of concern, with no legal protection. In Iowa, the species has no legal status.

At present, only Missouri provides statutory protection for both the species and its habitat. No significant protections exist for the Topeka shiner and its habitat in the other states encompassing its range. Listing under the Act would provide significant protection against taking of the species, ensure coordinated review of Federal actions which may affect its habitat, and encourage proactive management throughout its range.

E. Other natural and manmade factors affecting its continued existence. In the species' Missouri range, possible interspecific competition between the Topeka shiner and the introduced blackstripe topminnow (*Fundulus notatus*) has been suggested (Pflieger, *in litt.* 1992). The absence of the Topeka shiner from suitable habitat, with blackstripe topminnow present, has also been observed in Kansas (Mammoliti, pers. comm. 1997). Both species are nektonic insectivores utilizing similar pool habitat. At present, the extent of possible competition between these species is undocumented. In degraded or suboptimal habitat conditions where Topeka shiners persist, competition by species more tolerant to these conditions, such as red shiner (*Cyprinella lutrensis*), may negatively affect the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Topeka shiner as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the Topeka shiner because of its significantly reduced range, including the apparent extirpation of the species throughout most of its historic range. Threatened status does not appear appropriate considering the extent of the species' population decline and the vulnerability of the remaining populations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic areas occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Topeka shiner at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or

carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been significantly diminished by reducing the value to the species' designated critical habitat. Thus, actions satisfying the standard for adverse modification also jeopardize the continued existence of the species concerned.

Many activities that pose threats to the continued existence of the Topeka shiner are funded, permitted, or carried out by Federal agencies (e.g., channelization, impoundment, dredge and fill, and other stream and wetland modification projects). Programs that result in these activities in Topeka shiner habitat are most often regulated by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Natural Resources Conservation Service, under a variety of authorities, and are thus subject to section 7 consultation under the Act. In areas where suitable habitat exists within the historical range of the Topeka shiner, but the species is not present, the section 7 process would still allow for the jeopardy threshold to be reached. Considerations in such cases would include, but not be restricted to, proximity to extant populations and areas essential for the recovery of the species. As explained above, designation of critical habitat would not provide any additional protection to the species beyond those already provided by listing the species.

Other State or private actions resulting in "take" of Topeka shiners would be prohibited by section 9 of the Act, and remediation of those potential threats would not be significantly advanced by designation of critical habitat.

Recovery activities to assist landowners in maintaining or improving the habitat quality of their streams or otherwise addressing known threats to Topeka shiners would not benefit from a designation of critical habitat. However, such conservation and recovery actions could be significantly impaired by public apprehension or misunderstanding of a critical habitat designation.

Intentional taking of the Topeka shiner is not known to be a problem. The Topeka shiner is found in very specialized, easily accessible and identifiable habitat characterized by small volumes of flow. It is possible that a local population could be intentionally eliminated. Publication of maps providing its precise locations and descriptions of critical habitat, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threat to the species, increase the difficulties of enforcement, and could further contribute to the decline of the Topeka shiner.

In light of the above, the Service concludes that designation of critical habitat would not be beneficial to the species and could increase the degree of threat to the species from taking. Therefore, designation of critical habitat for the Topeka shiner is neither beneficial nor prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the Topeka shiner, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Corps of Engineers throughout the species' range in the administration of Section 404 of the Clean Water Act. The U.S. Environmental Protection Agency will consider the Topeka shiner in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration, will consider the effects of bridge and road construction at locations where known habitat may be impacted. The U.S. Department of Agriculture, Natural Resources Conservation Service and Farm Service Agency, will need to consider the effects of structures and channelization projects installed under the Watershed Protection and Flood Prevention Act, (16 U.S.C. 1001–1009, Chapter 18; Pub.L. 83–566, August 4, 1954, c 656, § 1, 68 Stat. 666; as amended), "Farm Bill" programs, and other activities which may impact water quality, quantity, or timing of flows. The Federal Energy Regulatory Commission will consider potential impacts to the Topeka shiner and its habitat resulting from gas pipeline construction over streams and from hydroelectric development.

Private actions, that are not federally funded or permitted, undertaken within or near habitat occupied by Topeka shiners, would not be subject to the regulations as stated above in section 7 of the Act. Some examples of private actions not subject to section 7 consultation include, but are not limited to: farming and ranching practices, construction of private stock watering ponds on normally dry channels, and fuelwood harvest. However, private actions that result in "take" of Topeka shiners, as discussed below, would be prohibited by section 9 of the Act.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any species that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236–8189) or fax (303/236–0027).

It is the policy of the Service to identify, to the extent known at the time a species is listed, specified activities that will and will not be considered likely to result in violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on ongoing and likely activities within a species' range. The Service believes the actions listed below would not result in a violation of section 9.

(1) Grazing within watersheds at levels consistent with the long term management of the range or prairie ecosystem, thus precluding water quality and stream habitat degradation, except where the Service has determined that such activity would negatively impact the species;

(2) Cropping within stream corridors where stable riparian vegetation buffers exist, with the buffers serving as filtering mechanisms for non-point source runoff, decreasing sediment, nutrient, and pesticide input into streams, except where the Service has determined that such activity would negatively impact the species;

(3) Construction of small stock watering ponds in upland areas on normally dry drainage; and

(4) Prescribed burns at levels consistent with the long-term management of the range or prairie ecosystem, except where the Service has determined that such activity would negatively impact the species.

The Service believes that the actions listed below may result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting or handling of the species;

(2) Destruction or alteration of the species' habitat (i.e., actions that change water quality, quantity, and/or timing of flows; dredging or other physical modifications that impact instream habitat;

(3) The introduction of nonnative species;

(4) Use of fertilizers or pesticides inconsistent with approved labeling and application procedures; and

(5) Contamination of soil, streams, or groundwater by spills, discharges, or dumping of chemicals, silt, or other pollutants.

Questions regarding whether a specified activity will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Manhattan, Kansas Field office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor, Manhattan, Kansas (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determination

The Service has examined the regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Manhattan, Kansas Field Office (See **ADDRESSES** section).

Author

The primary author of this proposed rule is Vernon M. Tabor, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 1201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Shiner, Topeka	*Notropis Topeka*	U.S.A. (KS, IA, MN, MO, E, SD).	Entire	E		NA	NA
*	*	*	*	*	*		*

Dated: October 2, 1997

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–28231 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 206

Friday, October 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to revise the information collection currently approved for a form used in support of the FSA Farm Loan Program (FLP). The form has been amended to adapt it for additional uses in the servicing of loans, resulting in its name being changed and an increase in burden hours.

DATES: Comments on this notice must be received on or before November 24, 1997 to be assured consideration.

ADDITIONAL INFORMATION: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20013–0523; telephone (202) 690–4012; electronic mail: pelder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Form FSA 440–32, "Verification of Debts and Assets".

OMB Control Number: 0560–0166.

Expiration Date of Approval: September 30, 1999.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information obtained on this form is necessary to ensure the accuracy of information obtained in connection with applications for FSA direct loan assistance. It is used to verify debt information provided by applicants in order to determine their suitability for an Operating Loan, Farm Ownership Loan or Emergency Loan. Additionally, the form has been revised to allow its use by the Agency to verify assets of borrowers that have requested settlement of their debts through cancellation, adjustment or compromise.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 17,335.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 13,001.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20013–0523. Copies of the information collection may be obtained from Phillip Elder at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in this notice between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on this notice.

Signed in Washington, D.C., on October 16, 1997.

Bruce Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–28198 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Multi-Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Tahoe National Forest, has changed the proposed action for this EIS. The new proposal includes only timber harvest, road construction, road decommissioning, and fuel treatment. The design of the new proposal incorporates and addresses all issues previously identified. The Forest Service now anticipates issuing a Draft EIS in the last quarter of Calendar Year 1997, and filing a Final EIS in the first quarter of Calendar Year 1998.

DATE: Comments concerning the scope of the analysis should be received by November 15, 1997.

ADDRESSES: Send written comments to John Bradford, EIS Team Leader, Foresthill Ranger District, 22830 Foresthill Road, Foresthill, CA 95631.

FOR FURTHER INFORMATION CONTACT: John Bradford, EIS Team Leader, Foresthill Ranger District, 916–478–6254.

SUPPLEMENTARY INFORMATION: On June 2, 1997 a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** (Vol. 62, No. 105, Pages 29706–29707).

Dated: October 16, 1997.

John H. Skinner,

Forest Supervisor.

[FR Doc. 97–28207 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: November 19–20, 1997.

Place: Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

Time: 8:00 a.m.–12:00 p.m. on November 19 and 20, 1997.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of GIPSA's financial status, strategic plan, and moisture meter implementation plan.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: October 20, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–28232 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–EN–P

ARMS CONTROL AND DISARMAMENT AGENCY

Determination to Close Meetings of the Director's Advisory Committee

The Director's Advisory Committee (DirAC) will hold meetings in Albuquerque, New Mexico on October 27 and 28, 1997, and in Washington, DC, on December 11 and 12, 1997.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App 2 510(a)(1) (1996)), it has been determined that discussions during the meetings are likely to disclose matters covered under 5 U.S.C. 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958, 60 FR 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App 2 510(a)(1) (1996)), I have determined that, because of the need to protect the secrecy of such national security matters, the meetings should be closed to the public.

This notice is being published less than 15 days before the first meeting day, in order to enable more Committee members to attend.

John D. Holum,

Director.

[FR Doc. 97–28190 Filed 10–23–97; 8:45 am]

BILLING CODE 6820–32–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 24, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pen, Metal Barrel & Refills

7520–01–445–7221
7520–01–445–7226
7520–01–445–7230
7520–01–445–7237
7510–01–446–4835
7510–01–446–4845
7510–01–446–4846
7510–01–446–4850
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Pad, Floor Polishing

7910–01–363–6975
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Janitorial/Custodial

USARC
Middletown, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

Paul J. Sutcovoy, USARC
Waterbury, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

Libby USARC
New Haven, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

USARC
Springfield, Massachusetts
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

USARC
Westover, Massachusetts
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

U.S. Marine Corps Base
Buildings 2042, 2048, 2082, 3078, 3092, 3093 & 3094
Quantico, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia

Janitorial/Custodial

U.S. Forest Service Building
Elkins, West Virginia
NPA: Buckhannon-Upshur Work Adjustment Center
Buckhannon, West Virginia

Janitorial/Custodial

Federal Building and Courthouse
300 Virginia Street
Charleston, West Virginia
NPA: Shawnee Hills Community Mental Health/Mental Retardation Center, Inc., Charleston, West Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28283 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 24, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

Federal Building 1301 Clay Street
Oakland, California
NPA: Calidad Industries, Inc., Oakland, California

Mailroom Operation

Department of the Interior
Washington, DC
NPA: Anchor Mental Health Association, Washington, DC.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28284 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 24, 1997

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 29, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 F.R. 45792) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for Luke Air Force Base, Arizona)

Office and Miscellaneous Supplies (Requirements for the White Sands Missile Range, White Sands, New Mexico)

Office and Miscellaneous Supplies (Requirements for Randolph Air Force Base, Texas)

Magnetic Shopping List
M.R. 822

Service

Grounds Maintenance, U.S. Post Office, Rancho Bernardo Station, 16960 Bernardo Center Drive, San Diego, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28285 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of President's Export Council Subcommittee on Export Administration (PECSEA) will be held October 29, 1997, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

William V. Skidmore,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–28226 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–841]

Notice of Antidumping Duty Order in the Antidumping Investigation of Vector Supercomputers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton at (202) 482–1777 or Sunkyu Kim at (202) 482–2613, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA).

Scope of Order

The scope of this order consists of all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software, shipped to fulfill the requirements of a contract entered into on or after October 16, 1997, for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

In general, the vector supercomputers imported from Japan, whether assembled or unassembled, covered by this order are classifiable under heading 8471 of the Harmonized Tariff Schedules of the United States ("HTS"). Merchandise properly classified under HTS numbers 8471.10 and 8471.30, however, is excluded from the scope of this order. Although, these references to the HTS are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

On October 15, 1997, Fujitsu Limited and Fujitsu America, Inc., respondents in the antidumping proceeding, requested that the Department adjust the scope of this order to provide that it applied to entries pursuant to a contract entered into on or after the publication of the final affirmative determination of the U.S. International Trade Commission in the **Federal Register**. On October 16, 1997, Cray Research, Inc., the petitioner in the proceeding, wrote the Department to acquiesce in Fujitsu's request. Therefore, the Department has amended the scope language to clarify that merchandise imported pursuant to contracts for vector supercomputer systems entered into prior to October 16, 1997, are outside the scope of this order. Petitioner also requested clarification as to whether the exercise of an option in a contract entered into prior to October 16, 1997, constitutes a new contract entered into on the day the option is exercised. Should the petitioner bring the exercise of such an option to the Department's attention in the form of a request for a ruling on the scope of this order pursuant to 19 CFR 351.225(c), the Department will either issue a final ruling under paragraph (d) of that section or will initiate a scope inquiry under paragraph (e).

Antidumping Duty Order

On October 7, 1997, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of vector supercomputers from Japan threaten material injury to the U.S. industry. The ITC did not determine that but for the suspension of liquidation of entries of vector supercomputers from Japan, the domestic industry would have been materially injured. Accordingly, the Department will direct United States Customs officers to terminate suspension of liquidation and release any cash deposit, bond or other security for vector supercomputers from Japan on shipments entered, or withdrawn from warehouse, for consumption prior to October 16, 1997, the date of the publication of the ITC's final determination in the **Federal Register**. Effective on the publication date of this notice in the **Federal Register**, the U.S. Customs Service must require the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage rate
Fujitsu Ltd.	173.08
NEC Corp.	454.00
All Others	313.54

This notice constitutes the antidumping duty order with respect to vector supercomputers from Japan, pursuant to section 736 (a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736 (a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: October 20, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28308 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Discuss an Opportunity to Join a Cooperative Research and Development Consortium on Flammability of Polymer Nanocomposites

AGENCY: National Institute of Standards and Technology; Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on November 21, 1997 to discuss the possibility of setting up a cooperative research consortium on Polymer Nanocomposite Flammability technology. The Consortium is dedicated to further research on the basic science of the technology as applied to specific applications.

DATES: The meeting will be held on Friday November 21, 1997 from 10:00 a.m. to 2:00 p.m., Room B245, Building 224, at NIST in Gaithersburg, MD. Interested parties should contact NIST to confirm their attendance at the address, telephone number or FAX number shown below no later than November 14, 1997.

ADDRESSES: The meeting will be held at 10:00 a.m., Room B245, Building 224, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Gilman, Building 224, Room B256, National Institute of Standards and Technology, Gaithersburg, MD. 20899. Telephone: 301–975–6573; FAX: 301–975–4052; e-mail: jeffrey.gilman@nist.gov.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide "personnel, service, facilities, equipment or other resources with or without reimbursement (but not funds to non-federal parties)"—to the cooperative research program.

The meeting will be held on Friday November 21, 1997 from 10:00 a.m. to 2:00 p.m., Room B245, Building 224, at NIST in Gaithersburg, MD, for interested parties. The meeting will discuss the possible formation of a research consortium including NIST and manufacturing industry to conduct research in this area.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

Dated: October 16, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–28230 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101597B]

International Whaling Commission: Final Environmental Assessment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of the Final Environmental Assessment (EA) on Makah Whaling.

SUMMARY: The Makah Tribe (Tribe) has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. NOAA prepared a draft EA that weighed the impacts of supporting the Makah interest in whaling and considered alternatives to concurrence. Comments were solicited from the public. NOAA, having first considered the public's comments, has concluded that there will be no significant effect on the human environment.

ADDRESSES: Copies of the final EA may be obtained from the Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910. Phone: (301) 713–2322.

SUPPLEMENTARY INFORMATION: The Tribe has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. Within the U.S. Government, whaling is managed by the Department of Commerce, which must therefore consider whether to support the Makah interest in continuing its tradition of whaling. This EA weighs the impacts of supporting the Makah interest in whaling and considers alternatives to concurrence. The EA analyzes alternatives, including the proposed action. The alternatives are (1) support the Tribe's decision to whale after receiving approval from the International Whaling Commission (IWC) [proposed action]; (2) delay consideration of support until the 5 year monitoring program of the eastern Pacific stock of gray whales is complete; (3) persuade the Tribe to engage in alternative activities, such as ecotourism instead of whaling; and (4) take no action. NMFS published a draft EA on August 22, 1997, and solicited comments from the public. The public comment period ended on September 22, 1997. The final EA incorporates comments from the public and concludes that the proposed action will have no significant effect on the human environment.

Dated: October 20, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-28214 Filed 10-23-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100797C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1095).

SUMMARY: Notice is hereby given that the U.S. Bureau of Reclamation at Denver, CO (USBR) has applied in due form for a permit that would authorize a take of a threatened species for scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before November 24, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Protected Resources Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division, Portland.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Protected Resources Division, (503-230-5400).

SUPPLEMENTARY INFORMATION: USBR requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

USBR (1095) requests a 1-year permit for a take of juvenile, threatened, Southern Oregon/Northern California coast coho salmon (*Oncorhynchus kisutch*) associated with research designed to collect data on seasonal fish distribution and abundance, particularly during spring and late summer, in Bear Creek and its principal tributaries, Little Butte Creek and its tributaries, and Big Butte Creek in southwest Oregon. The information is needed to support management decisions associated with a water conservation feasibility study in the Rogue River Basin, authorized by the U.S. Congress and the Oregon Water Resources Congress. The purpose of the feasibility study is to support a proposal to implement habitat enhancement activities designed in part to increase instream flows, improve the reliability and efficiency of existing water supplies, improve water quality and environmental values, and conserve water. Data to analyze the potential impacts of proposed activities on salmonid distribution and abundance are inadequate, as are the fisheries data needed to develop and compare alternatives. ESA-listed juvenile fish are proposed to be captured by electrofishing, handled (identified, measured, weighed, and scanned for injuries or diseases), allowed to recover, and released. An indirect mortality of ESA-listed juvenile fish associated with the research is also requested.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 9, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-28215 Filed 10-23-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of request to modify scientific research permit 1051.

SUMMARY: Notice is hereby given that Jorgen Skjeveland, of the Maryland Fisheries Resource Office of the U.S. Fish and Wildlife Service has applied in due form for a modification to Permit 1051 to take listed species for the purpose of scientific research, subject to certain conditions set forth in the permit.

DATES: Written comments or requests for a public hearing on this request must be received on or before November 24, 1997.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910-3226 (301-713-1401); or

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298 (508-281-9250).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301-713-1401).

SUPPLEMENTARY INFORMATION: On May 29, 1997, Mr. Jorgen Skjeveland was issued Permit 1051 take shortnose sturgeon (*Acipensery brevirostrumy*) for scientific research activities, subject to certain conditions set forth therein, as authorized under the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The applicant has requested authorization to increase the take of shortnose sturgeon in Chesapeake Bay from 25 to 30; as well as adding the Delaware River and Bay system to his permit and to take 30 fish in the same manner described in Permit 1051. In addition, the applicant has requested the permission to determine the genetic relationship between the Chesapeake and Delaware Bay sturgeons and determine if there is migration through the Chesapeake and Delaware (D and C) Canal.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 15, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-28216 Filed 10-23-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1057, permit 1058, and modification 4 to permit 823.

SUMMARY: Notice is hereby given that NMFS has issued a permit to the Umpqua National Forest of the U.S. Forest Service at Idleyld Park, OR (USFS), a permit to the Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service at Ahsahka, ID (FWS), and a modification to a permit to the Idaho Department of Fish and Game at Boise, ID (IDFG) that authorize takes of Endangered Species Act-listed anadromous fish species for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

FOR FURTHER INFORMATION CONTACT: Robert Koch, Protected Resources Division, (503-230-5400).

SUPPLEMENTARY INFORMATION: The permits and the modification to a permit were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-222).

Notice was published on July 3, 1997 (62 FR 36049) that an application had been filed by USFS for a scientific research permit. Permit 1057 was issued to USFS on August 22, 1997. Permit 1057 authorizes USFS an annual take of adult and juvenile, endangered, Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) associated with research designed to determine whether the fish is present in the Fish Creek watershed of the upper North Umpqua River in southwest Oregon. The primary reason for determining the presence/absence of resident cutthroat trout in the Fish Creek Basin is to clarify the degree of impact that projected timber harvests in the basin would have on ESA-listed cutthroat trout. The research also has significance in ongoing discussions on whether fish passage facilities should be constructed at Soda Springs Dam. Permit 1057 expires on December 31, 1998.

Notice was published on July 30, 1997 (62 FR 40802) that an application had been filed by FWS for a scientific research permit. Permit 1058 was issued to FWS on September 5, 1997. Permit 1058 authorizes FWS an annual take of adult, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with research designed to monitor and evaluate adult returns of hatchery-origin fall chinook salmon released as juveniles above Lower Granite Dam on the Snake River in the Pacific Northwest. Information on ESA-listed, natural-origin fish is needed to assess the impacts of fish management actions (e.g., hatchery supplementation), as well as other human activities (e.g., regulated river flows), on wild fish populations. Permit 1058 expires on December 31, 2001.

Modification 4 to permit 823 was issued to IDFG on August 29, 1997. Permit 823 authorizes IDFG annual takes of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with scientific research activities in Idaho. For modification 4, IDFG is authorized an increase in the annual lethal take of ESA-listed juvenile sockeye salmon associated with monitoring research at Alturas Lake. In July 1997, IDFG released approximately 22,000 juvenile sockeye salmon from their captive broodstock program into Alturas Lake, as authorized by modification 8 to permit 795 (62 FR 29331, May 30, 1997). The Alturas Lake *O. nerka* population structure must be monitored to build trend data by time, essential for the development of future release plans. The lake will be sampled by midwater trawl surveys. Trawl captures, and subsequent tissue and stomach analyses, will contribute to the understanding of population make-up (genetic origin), growth, diet, and population age structure. Modification 4 is valid for the duration of permit 823. Permit 823 expires on November 30, 1997.

Issuance of the permits and the modification to a permit, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: October 15, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-28260 Filed 10-23-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Tuesday, November 25, 1997, from 8:30 a.m. to 12:30 p.m., and from 1:30 p.m. to 4:00 p.m. The session from 8:30 a.m. to 12:30 p.m., will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 8:30 a.m. and end at 12:30 p.m. on November 25, 1997. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on November 25, 1997, at 8:30 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1:30 p.m. to 4:00 p.m. on November 25, 1997. Approximately thirty minutes will be set aside on November 25, 1997, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: October 20, 1997.

Donald R. Johnson,

Director.

[FR Doc. 97–28220 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–04–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Friday, October 31, 1997, from 9:30 a.m. to 12:30 p.m.

PLACE: The meeting will be held at the Union Planter's Bank, 900 S. Gay Street, 24th floor, Knoxville, Tennessee.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to review reports from Committees of the Board regarding Corporation activities, deliberate and decide on the Corporation's annual plan, and review the status of various Corporation initiatives.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue, NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799)).

Dated: October 22, 1997.

Stewart Davis,

Acting General Counsel.

[FR Doc. 97–28432 Filed 10–22–97; 3:23 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Armored Security Vehicle (ASV)

AGENCY: U.S. Army Tank-automotive and Armaments Command, Army, DOD.

ACTION: Notice of Intent.

SUMMARY: The Program Manager, Light Tactical Vehicles (PM LTV) has prepared a Life-Cycle Environmental Assessment (LCEA) which examines the potential impacts to the natural and human environment from the life cycle activities of the Armored Security Vehicle (ASV). Based on the LCEA, PM LTV has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Army is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to, U.S. Army Tank-automotive and Armaments Command (TACOM), ATTN: AMSTA–DSA–LT (ASV), Warren, MI 48397–5000.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ASV Life-Cycle Environmental Assessment contact Mr. Anthony Shaw, Weapon System Manager (810) 574–8654.

SUPPLEMENTARY INFORMATION:

a. Proposed Action

This LCEA examines the potential impacts to the natural and human environment from the procurement of the ASV to satisfy the Army's need for survivability in a Military Police (MP) mobile platform. The ASV will be used by MP three-man teams in highly exposed threat environments. Current funding is available to procure up to 195 vehicles.

b. Environmental Impacts

The ASV life-cycle includes the transport of vehicles to test sites, testing, vehicle production, deployment and operation of production vehicles and their eventual demilitarization. Potential environmental impacts of these life-cycle stages may include Air Quality, Noise, Water, Soil and Groundwater, Hazardous Materials and Hazardous Wastes, and Flora, Fauna and Threatened or Endangered Species at each of these life-cycle phases.

c. Additional Findings

Impacts from the proposed action would be minimal and not significant for the following reasons:

(1) The ASV will be used in its intended environment. This intended environment includes vehicle production and some testing at the Contractor's facility, and the remainder of life-cycle activities at Army installations and facilities.

(2) The ASV is very similar to vehicles produced commercially and vehicles already in the Army inventory. It is being produced in low to moderate quantities and will not significantly increase the vehicle population at Army installations and facilities.

(3) The overall environmental risk associated with the ASV is very low. It does not introduce any new technologies or processes. Vehicle life cycle activities do not introduce any potential environmental impacts that are not already currently mitigated by Army policy and procedures.

(4) The ASV Project Manager has ensured that the Contractor producing the vehicle is environmentally compliant, has no permit violations, and has commercial practices for Hazardous Material Management and Pollution Prevention in production of the ASV.

(5) The ASV Product Manager recognizes that Army installations and facilities have environmental plans and measures in place to address vehicle life cycle activities very similar to that of the ASV to prevent, mitigate and remediate environmental damage caused by vehicle operation. Vehicle operations at these Army installations and facilities are in conjunction with normal activities that are already addressed in their site specific environmental impact statements.

d. Determination

It is therefore concluded that this program:

(1) Is not a major federal action significantly affecting the quality of human environment.

(2) Will not have a significant impact on the environment.

(3) Is not likely to be environmentally controversial.

(4) Will not likely result in litigation based on environmental quality issues.

(5) Does not require an Environmental Impact Statement (EIS).

Gregory B. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–28281 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1630, Thursday and Friday, December 11–12, 1997. The purpose of the meeting is to address pending Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, and to conduct an executive working session. The meeting location will be at the Walter Reed Army Institute Research (WRAIR), Washington, D.C. The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Vicky Fogelman, AFEB Executive Secretary, Army Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 693, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–28282 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Deepening of the Brunswick Harbor Navigation Project, Glynn County, Georgia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A feasibility study is underway which considers alternatives of a 2, 4, or 6 foot deepening of the navigation channel from the inner harbor to the ocean.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Ms. Ana Vergara, (912) 652–5837, U.S. Corps of Engineers, Savannah District, P.O. Box 889, Savannah, Georgia 31402–0889.

SUPPLEMENTARY INFORMATION:

1. Current Project Description. The Brunswick Harbor Navigation Project is located in the southeastern section of Glynn County, Georgia, adjacent to the City of Brunswick. The harbor is approximately 80 highway miles south of Savannah, Georgia, and 70 miles north of Jacksonville, Florida. The authorized project consists of approximately 30 miles of channels at various depths and widths which include the following segments: 32 feet deep and 500 feet wide across the outer bar; 30 feet deep and 400 feet wide through St. Simons Sound, Brunswick River, and East River; 30 feet deep and 300 feet wide in Turtle River to mile 12.76; 30 feet and 400 feet wide, and 7000 feet long in South Brunswick River above the Georgia Port Authority bulk terminal dock; 27 feet deep and 350 feet wide in East River from Second Avenue to the confluence with Academy Creek; 24 feet deep and 150 feet wide in Academy Creek; 20 feet deep and 150 feet wide in Back River; and 10 feet deep and 80 feet wide in Terry Creek. The project has three authorized turning basins. Annual maintenance of the project requires dredging and disposal of approximately 1.8 million cubic yards of material.

2. Proposed Action. The alternatives being considered are 2, 4, or 6 foot deepening of the navigation channel from the inner harbor (approximately from Station 12+000 at the East River Upper Range and Station 45+500 at the Turtle River Lower Range), across the bar channel to the ocean. The proposed plan would include: widening the channel from 200 feet to 400 feet at the Sidney Lanier Bridge; widening Lower Turtle Range from 350 feet to 400 feet; improving the Lower Turtle River turning basin; constructing a new turning basin in Upper East River, dike raising the Andrews Island confined disposal facility to +35 feet mlw; placing material dredged from the inner/upper harbor into the confined disposal facility; place material dredged from the Bar Channel into the existing Ocean Disposal Site and using dredged material from two ranges for the construction of a submerged berm in the nearshore area off the northern end of Jekyll Island. Overdepth and advanced maintenance requirements in the navigation channel will be analyzed as part of the feasibility study. Any proposed modification of this proposed plan will be addressed, as appropriate, during preparation of the Environmental Impact Statement.

3. Alternatives. The proposed study includes the following alternatives:

a. No Action/Maintenance of status quo.

b. Improvement of existing navigation facilities, with alternatives addressed in 2-foot increments to a maximum of 6 feet.

4. Study Description. This study will include an analysis of potential impacts on endangered species, fisheries, birds, marine mammals, water quality, historic properties, etc., resulting from the various alternatives. This study is being conducted by the U.S. Army Corps of Engineers.

5. Scoping Process: Federal, State, and local officials; conservation groups; and interested businesses, groups, and individuals are invited to comment on the proposed project. Comments received as result of this notice will be used to assist in identifying potential impacts to the quality of the environment. This study is a continuation of a harbor deepening study initiated in 1963 that considered project depths of 2, 4, 6, and 8 feet. Formal coordination with State and Federal Agencies was conducted at that time. On May 4, 1995 a Public Information Meeting was held at Brunswick to identify issues and concerns from the public about the proposed Brunswick Harbor Deepening Project.

6. Address for Comments: Written comments may be forwarded to: District Engineer, U.S. Army Corps of Engineers (Attention: Ms. Ana Vergara, PD–E), P.O. Box 889, Savannah, Georgia 31402–0889. Comments should be received within 30 days of the publication of this notice in the **Federal Register** to ensure timely consideration.

7. Availability of the DEIS. The Draft Environmental Impact Statement is expected to be available to the public in December 1997.

M.J. Yuschishin,

Chief, Planning Division.

[FR Doc. 97–28278 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–HP–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meeting of the United States Naval Academy Board of Visitors

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on October 30, 1997, at the Senate Russell Office Building, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Under Secretary of the Navy has determined in writing that the special committee meeting shall be closed to the public because the meeting will be concerned with matters as outlined in section 552(b) (2), (5), (6), (7) and (9) of Title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated October 14, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–28210 Filed 10–23–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–15–000]

Natural Gas Pipeline Company of America; Notice of Section 4 Filing

October 20, 1997.

Take notice that on October 15, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which Natural provides on uncertificated and certificated gathering facilities known as the Wise County Gathering Systems in Wise, Jack, Parker, Palo Pinto and Dento Counties, Texas. Natural states that it will sell the entire gathering system to Mitchell Gas Services, Inc, a non-affiliate. Natural further states that no contracts for transportation service with Natural will be terminated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under § 154.210 of the Commission's Regulations, all such motions or protests should be filed on or before October 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28228 Filed 10–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–7–000 and 001; ER96–677–000 and 001; ER96–679–000 and 001; and EL98–1–000]

Union Electric Company and Central Illinois Public Service Company; Notice of Initiation of Proceeding and Refund Effective Date

October 20, 1997.

Take notice that on October 15, 1997, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–1–000 under Section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–1–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 97–28204 Filed 10–23–97; 8:45]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–765–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for The Proposed Wisconsin Loop Expansion Project and Request for Comments on Environmental Issues

October 20, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of constructing and operating about 11.4 miles of 30-inch-diameter pipeline loop proposed in the Wisconsin Loop Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

ANR Pipeline Company (ANR) wants to expand the capacity of its facilities in Wisconsin to transport an additional 116 million cubic feet per day of natural gas to shippers in the Chicago hub markets. ANR seeks authority to:

- Construct and operate 11.4 miles of 30-inch-diameter pipeline loop on its existing Wisconsin mainline in Waukesha County, Wisconsin;
- Relocate an existing pig receiver from ANR's existing mainline station No. 10 to a parcel of land adjacent to ANR's existing mainline station No. 12 in Waukesha County, Wisconsin;
- Construct a valve station at milepost 7.70 along the proposed 30-inch-diameter pipeline loop; and
- Construct a new meter station (Somers Meter Station) at milepost 13.14 along ANR's existing Racine lateral in Kenosha County, Wisconsin.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

ANR proposes to use a construction right-of-way width of 75 feet. ANR would construct about 1.2 miles of the loop adjacent to its existing 18-inch-diameter mainline and 20-inch-diameter loop, and the remaining 10.2 miles of pipeline would deviate from these existing facilities. Construction of the proposed pipeline loop facilities would require about 123.96 acres of land. Following construction, ANR would maintain about 54.02 acres as new aboveground facility sites. The remaining 69.94 acres of land would be restored and allowed to revert to its former use.

In addition, constructing the proposed Somers Meter Station would permanently impact 0.52 acres of land and temporarily impact 0.26 acres of land; relocating the pig receiver would permanently require 0.19 acres of land and temporarily impact 0.04 acres of land; and constructing the proposed valve station would permanently require 0.2 acres of land.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Public safety.
- Land use.
- Cultural resources.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- The proposed pipeline right-of-way would cross about 1.2 miles of residential areas; a total of six residences are within 50 feet of the proposed construction work area.
- The proposed project would cross about 19,680 linear feet of wetlands, and temporarily impact about 34.80 acres of wetlands.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP97–765–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 18, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding is October 20, 1997. Parties seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28203 Filed 10–23–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 13, 1997 Through October 17, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970401, FINAL EIS, FHW, CA, US 101 Realignment Construction, near Cushing Creek from Mile Post 20.3 to 22.3 South of Crescent City, Funding and COE Permits, Del Norte County, CA, Due: November 24, 1997, Contact: John R. Schultz, (916) 551–1314.

EIS No. 970402, FINAL SUPPLEMENT, EPA, TX, Oak Hill Surface Lignite Mine (formerly known as the Martin Lake D Area Mine) Expansion Project into the DIII Area, Modification/ Reissuance of a New Source NPDES Permit, Rusk County, TX, Due: November 24, 1997, Contact: Robert D. Lawrence, (214) 665–2258.

EIS No. 970403, FINAL EIS, USN, WA, Puget Sound Naval Station, Sand Point, Disposal and Reuse, Implementation, King County, WA,

Due: November 24, 1997, Contact: Chingmin Cher, (703) 604–1268.

EIS No. 970404, SECOND FINAL SUPPLE, DOE, CA, Petroleum Production at Maximum Efficient Rate, Updated Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called "Elk Hills") Amendment for Kern County General Plan, Elk Hills, Kern County, CA, Due: November 24, 1997, Contact: Anthony J. Como, (202) 586–5935.

Dated: October 21, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–28233 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 13, 1997 Through October 17, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–L65287–OR Rating EC2, Little River (DEMO) Demonstration of Ecosystem Management Options Timber Sale, Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas County, OR.

Summary: EPA expressed environmental concerns with potential impacts of proposed harvest activities within riparian reserves.

ERP No. D–BLM–K65198–00 Rating EC2, Rangeland Health Standards and Guidelines for Livestock Grazing on Public Rangelands in California and Northwestern Nevada, CA and NV.

Summary: EPA expressed environmental concerns due to the high percentage of habitats in a functional-at-risk and non-functional condition. EPA strongly recommended the Final EIS provide an expanded and more detailed description of implementation, monitoring cumulative impacts, and adaptive management measure and tools.

ERP No. D–FHW–D40290–MD Rating EO2, US 113 Planning Study, Transportation Improvement from south of Snow Hill, Maryland to Delaware State Line, Funding and COE Section 404 Permit, Worcester County, MD.

Summary: EPA expressed environmental objections to the potential impacts to upland forest habitat; stream channels; palustrine forested wetland; and historic and cultural resources.

ERP No. D–FTA–K54021–CA Rating EC2, Caltrain San Francisco Downtown Extension Project, Fourth and Townsend Streets in San Francisco to a proposed terminal at a site of the present Transbay Terminal in Downtown San Francisco, Funding, Approvals and Permits, San Francisco, San Mateo, and Santa Clara Counties, CA.

Summary: EPA raised environmental concerns with the proposed parking development aspect of FTA's Caltrain Downtown Extension Project DEIS.

Final EISs

ERP No. F–AFS–C65002–PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR.

Summary: Based on EPA review of the Final EIS. EPA does not object to the proposed action.

ERP No. F1–FHW–K40202–CA, CA–58—Mojave Freeway Project, Construction from 0.1 mile east of the Cache Creek Bridge to 5.0 miles east of the town of Mojave, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Kern County, CA.

Summary: EPA's previous objections to the DEIS was satisfactorily addressed in FEIS. EPA asked that the mitigation measures referenced for adoption in the DEIS and FEIS be noted as commitments in the Tier I Record of Decision.

Dated: October 21, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–28234 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5913–6]

Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for November 18–19, 1997. Also, the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in November, 1997. The dates of these Work Group meetings are summarized below. Further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The Coordinating Committee meeting on November 18–19, 1997 will be held at the Red Lion Hotel, 2525 West Loop South, Houston, Texas, 77027. The telephone number for the Red Lion Hotel is (713) 961–3000. The Red Lion Hotel requests that reservations be made by October 27, 1997 for those staying at the hotel for the meeting. The locations of the Work Group meetings are summarized below. Further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn or ttnwww.rtpnc.epa.gov

FTP: ttnftp.rtpnc.epa.gov

When accessing the WWW site, select Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held November 18–19, 1997 at the Red Lion Hotel, 2525 West Loop South, Houston, Texas, from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their progress, testing needs and prioritization issues, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work group	Date	Location
Incinerators	October 28, 1997	RTP, NC.
	November 20, 1997	Houston, TX.
	February 26, 1997	Greensboro, NC
IC Engines	October 30, 1997	Chicago, IL.
	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Boilers	October 30, 1997	RTP, NC.
	November 20, 1997	Houston, TX.
	January 13, 1998	Atlanta, GA.
	February 26, 1998	Greensboro, NC.
	March 24, 1998	New Orleans, LA.
Stationary Combustion Turbines	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Process Heaters	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Testing and Monitoring Protocol	November 21, 1997	Houston, TX.
	February 27, 1998	Greensboro, NC.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the ICCR Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in November, will be February 24–25, 1998 in Greensboro, North Carolina.

Dated: October 17, 1997.

Richard D. Wilson,

Acting Assistant Administrator.

[FR Doc. 97–28275 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 9:30 a.m.—October 21, 1997.

PLACE: 800 North Capitol Street, N.W.—Room 1000, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28325 Filed 10–21–97; 4:40 pm]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m.—October 22, 1997.

PLACE: 800 North Capitol Street, NW., Room 1000, Washington, DC.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28431 Filed 10–22–97; 3:06 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Charles W. Ekstrum, Philip, South Dakota, and Morris W. Jones, Jerry P. Jones, Ralph D. Jones, and Thomas B. Jones, all of Midland, South Dakota, acting in concert; to acquire additional voting shares of Philip Bancorporation, Inc., Philip, South Dakota, and thereby indirectly acqtire First National Bank in Philip, Philip, South Dakota.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28266 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. MBNA Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBNA Bank America Bank (Delaware), Wilmington, Delaware.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of West Coast Bank, Sarasota, Florida.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Verona Bancshares, Limited, Verona, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Verona, Verona, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Southern Missouri Bancshares, Inc., Marshfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Missouri Bank (in organization), Marshfield, Missouri.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Light Bancshares Corporation, Liberal, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Community Bank, Liberal, Kansas.

Board of Governors of the Federal Reserve System, October 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28169 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Gulf Coast Bancorp, Inc., Port Charlotte, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Coast Community Bank, N.A., Port Charlotte, Florida (in organization).

2. Skylake Bankshares, Inc., North Miami Beach, Florida; to merge with Kislak Financial Corporation, Miami Lakes, Florida, and thereby indirectly acquire Kislak National Bank, North Miami, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. MNB Bancshares, Inc., Manhattan, Kansas; to acquire 100 percent of the voting shares of Freedom Bancshares, Inc., Osage City, Kansas, and thereby indirectly acquire Citizens State Bank, Osage City, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Wills Point Financial Corporation, Wills Point, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Wills Point, Wills Point, Texas.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Pedcor Bancorp, Indianapolis, Indiana; to become a bank holding company by acquiring 80.9 percent of the voting shares of International City Bank, N.A., Long Beach, California.

2. Zions Bancorporation, Salt Lake City, Utah; to merge with Vectra Bancorporation, Denver, Colorado, and thereby indirectly acquire Vectra Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28267 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Central Bancshares, Inc., Lexington, Kentucky; to acquire Central Bank, F.S.B., Nicholasville, Kentucky (in formation), and thereby engage through a *de novo* federal-chartered savings bank, in permissible savings and loan association activities, pursuant to § 225.28 (b)(4) of the Board's Regulation Y.

2. Star Bank Corporation, Cincinnati, Ohio; to acquire Great Financial Corporation, Louisville, Kentucky, and thereby indirectly acquire Great Financial Bank, F.S.B, Louisville, Kentucky, and thereby engage in permissible savings and loan association activities, pursuant to § 225.28 (b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28168 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan & Incorporated, New York, New York; to acquire American Century Companies, Inc., Kansas City, Missouri, and thereby engage in providing investment or financial advice, pursuant to § 225.28(b)(6) of the Board's Regulation Y; securities brokerage services, pursuant to 225.28(b)(7); and providing certain administrative services, *see, Bankers Trust New York Corporation*, 83 Fed. Res. Bull. 780 (1997); and *Commerzbank A.G.*, 83 Fed. Res. Bull. 678 (1997); *Commersbank AG*, June 16, 1997; *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996); *Dresdner Bank AG*, 82 Fed. Res. Bull. 676 (1996); *Barclays Bank PLC*, 82 Fed. Res. Bull. 158 (1996); *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993). With respect to mutual fund transfer agency services, *see* 12 C.F.R. § 225.15(i).

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire Wheat First Butcher Singer, Inc., Richmond, Virginia, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open end investment companies, *see, J.P. Morgan & Co., Inc., et al.*, 75 Fed. Res. Bull. 192 (1989) (1989 Order)); underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), alone and in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a "riskless principal" to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y; in acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 and the rules of the Securities and Exchange Commission, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y; in acting as a futures commission merchant for unaffiliated persons in the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad, pursuant to § 225.28(b)(7)(iv) of the Board's Regulation Y; and in engaging as principal in foreign exchange, forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets other than bank-ineligible securities, pursuant to § 225.28(b)(8) of the Board's Regulation Y, and engaging in these activities with respect to bank-ineligible securities pursuant to the 1989 Order.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28268 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, October 29, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28363 Filed 10–22–97; 11:12 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
MMI Companies, Inc., Unionamerica Holdings plc (a British company), Unionamerica Holdings plc (a British company)	97–3208	9/15/97
CSG Systems International, Inc., Tele-Communications, Inc., TCI SUMMITrak of Texas, Inc	97–3247	9/15/97
Indianapolis Life Insurance Company, SunAmerica, Inc., John Alden Life Insurance Company of New York	97–3285	9/15/97
Siemens Aktiengesellschaft (a German company), Elektrowatt Aktiengesellschaft (a Swiss company), Elektrowatt Aktiengesellschaft (a Swiss company)	97–3349	9/15/97
Allen K. Breed and Johnnie Cordell Breed, AlliedSignal, Inc., AlliedSignal, Inc	97–3352	9/15/97
VS&A Communications Partners II, L.P., Multi-Local Media Information Group, Inc., (MLM): Multi-Local Media Corp, Yellow Book Co., Inc	97–3354	9/15/97
C.D. Smith Drug Company, Gimbel Investor Group, L.P., G.D. Holdings of Delaware, Inc	97–3361	9/15/97
Marsh & McLennan Companies, Inc., Gerald J. Sullivan, G.J. Sullivan Co., Inc	97–3381	9/15/97
Maritrans, Inc., Sun Company, Inc., Philadelphia Sun Shipping Co., Inc.; New York Sun	97–3388	9/15/97
Marathon Fund Limited Partnership III, Reilly Investors, L.P., The Reilly Corp	97–3389	9/15/97
Norton McNaughton, Inc., Miss Erika, Inc., Miss Erika, Inc	97–3415	9/15/97
Intellicell Corporation, Thomas Bommarito, Pacific Unplugged Communications, Inc	97–3416	9/15/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
MBNA Corporation, FMR Corporation, Fidelity Trust Company	97–3437	9/15/97
Henry Schein, Inc., Sullivan Dental Products, Inc., Sullivan Dental Products, Inc	97–3246	9/16/97
Johnson & Johnson, Gynecare, Inc., Gynecare, Inc	97–3284	9/16/97
Affiliated Mangers Group, Inc., Irwin Lieber, GeoCapital Corporation	97–3394	9/16/97
Key Energy Group, Inc., George E. Coleman, Coleman Oil & Gas Co.; Big A Well Service Co.; Sunco	97–3402	9/16/97
Household International, Inc., AAC Consumer Finance Corporation, AAC Consumer Finance Corporation	97–3410	9/16/97
Bacou SA, Biosystems, Inc., Biosystems, Inc	97–3412	9/16/97
Coltec Industries, Inc., Dana Corporation, Boston Flat Rubber Products Business	97–3288	9/17/97
Ontario Teachers' Pension Plan Board, XTRA Corporation, XTRA Corporation	97–3340	9/17/97
HealthSouth Corporation, ASC Network Corporation, ASC Network Corporation	97–3413	9/17/97
BASF Aktiengesellschaft, PPG Industries, Inc., PPG Industries, Inc	97–3372	9/18/97
CUC International Inc., John H. and Louise T. Blouin MacBain (Husband and Wife), Hebdo Mag International Inc	97–3392	9/18/97
CUC International Inc., Torstar Corporation (a Canadian corporation), Hebdo Mag International Inc	97–3396	9/18/97
US West, Inc., GTE Corporation, GTE Wireless of the Pacific Inc	97–3286	9/19/97
Merrill Lynch Capital Appreciation Partnership [*] con't, JP Foodservice, Inc., JP Foodservice, Inc	97–3306	9/19/97
Merrill Lynch & Co., Inc., JP Foodservice, Inc., JP Foodservice, Inc	97–3307	9/19/97
Merrill Lynch Capital Appreciation Partnership [*] con't, JP Foodservice, Inc., JP Foodservice, Inc	97–3308	9/19/97
Sid R. Bass, Human Genome Sciences, Inc., Human Genome Sciences, Inc	97–3319	9/19/97
Longhorn Partners Pipeline, L.P., Exxon Corporation, Exxon Pipeline Company	97–3327	9/19/97
UPM-Kymmene Oy, Daubert Industries, Inc., Daubert Industries, Inc	97–3358	9/19/97
Harleysville Mutual Insurance Company, Minnesota Mutual Life Insurance Company, Minnesota Fire & Casualty Company	97–3373	9/19/97
Robert and Alicia Kunisch, CUC International Inc., CUC International Inc	97–3400	9/19/97
Christel DeHaan, CUC International, Inc., CUC International, Inc	97–3401	09/19/97
O. Bruton Smith, Ken Marks, Jr., Ken Marks Ford, Inc	97–3405	09/19/97
O. Bruton Smith, Nelson E. Bowers, II, European Motors of Nashville, LLC; Cleveland Village	97–3414	09/19/97
VS&A Communications Partners II, L.P., T/SF Communications Corporation, T/SF Communications Corporation	97–3418	09/19/97
O. Bruton Smith, John T. Lupton Trust, European Motors of Nashville, LLC; Cleveland Village	97–3419	09/19/97
Talton Holdings, Inc., Communications Central, Inc., InVision Telecommunications, Inc	97–3420	09/19/97
Anheuser-Busch Companies, Inc., Leonard E. Williams, Way-Nan, Inc	97–3421	09/19/97
Alternative Living Services, Inc., Sterling House Corporation, Sterling House Corporation	97–3446	09/19/97
ING Groep N.V., Furman Selz Gamma Corp., Furman Selz Holdings LLC, Furman Selz Proprietary, Inc	97–3449	09/19/97
FS Equity Partners III, L.P., FIPAR S.A., Lil' Champ Food Stores, Inc	97–3450	09/19/97
Genuine Parts Company, Mr. William D. Pardoe, Utah Bearing & Fabrication, Inc.; Colorado Bearings and	97–3452	09/19/97
SAFECO Corporation, Washington Mutual, Inc., WM Life Insurance Company	97–3459	09/19/97
Allstate Corporation (The), Ze'ev Drori, Clifford Electronics, Inc.; Avital Technologies, Inc	97–3460	09/19/97
J. R. Simplot Company, Jacklin Seed Company, Jacklin Seed Company	97–3461	09/19/97
American Mutual Holding Company, Delta Life Corporation, Delta Life Corporation	97–3463	09/19/97
ING Groep, N.V., Equitable of Iowa Companies, Equitable of Iowa Companies	97–3465	09/19/97
Budget Group, Inc., Budget Rent A Car of St. Louis, Inc., Budget Rent A Car of St. Louis, Inc	97–3466	09/19/97
USFreightways Corporation, Seko Worldwide, Inc., Seko Worldwide, Inc	97–3470	09/19/97
United Auto Group, Inc., R. Lynn Alexander, Lynn Alexander, Inc., Jo-Vena Automative, Inc., and	97–3473	09/19/97
True North Communications Inc., Bozell, Jacobs, Kenyon & Eckhardt, Inc., Bozell, Jacobs, Kenyon & Eckhardt, Inc	97–3479	09/19/97
Charles D. Peebler, Jr., True North Communications Inc., True North Communications Inc	97–3480	09/19/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., LIN Television Corporation, LIN Television Corporation	97–3482	09/19/97
A.H. Belo Corporation, The Edward W. Scripps Trust, The E.W. Scripps Company	97–3487	09/19/97
Fleet Financial Group, Inc., Aerobics, Inc., Aerobics, Inc	97–3491	09/19/97
Fleet Financial Group, Inc., Arnold Sheikowitz, Legacy International of New York, Inc	97–3493	09/19/97
Fleet Financial Group, Inc., Jeffrey Sheikowitz, Legacy International of New York, Inc	97–3494	09/19/97
MicroAge, Inc., Clark I. Buch, Cass Marketing Services, Inc	97–3495	09/19/97
Coltec Industries, Inc., Equilease Holding Corp., Marine & Petroleum Mfg. Co., Inc	97–3502	09/19/97
Metals USA, Inc., Jeffreys Steel Company, Inc., Jeffreys Steel Company, Inc	97–3518	09/19/97
Metals USA, Inc., William J. Targett, Meier Metal Servicecenters, Inc	97–3519	09/19/97
Metals USA, Inc., Barry Harvey, Harvey Titanium, Ltd	97–3520	09/19/97
Barry Harvey, Metals USA, Inc., Metals USA, Inc	97–3521	09/19/97
Manufacturers' Services Limited, Lockheed Martin Corporation, Lockheed Commercial Electronics Company	97–3356	09/22/97
Emco Limited, Yehuda Mendelson, Pro-Fit Piping Components, Inc	97–3368	09/22/97
Gary W. Rust, TCW Special Placements Fund II, USMedia Group, Inc	97–3375	09/22/97
Promodes S.A., Casino Guichard Perrachon, Casino Guichard Perrachon	97–3439	09/22/97
Sisters of the Sorrowful Mother Generalate, Inc., Rhinelander Medical Center, S.C., Rhinelander Medical Center, S.C	97–3445	09/22/97
James R. Leininger, Thomas R. Reilly, Sea Rich Seafoods, Inc	97–3498	09/22/97
Automatic Data Processing, Inc., Marsh & McLennan Companies, Inc., William M. Mercer, Incorporated and William M. Mercer	97–3506	09/22/97
Mr. Thomas J. Holt, Sr., Bankers Trust New York Corporation, NPR Holding Corporation	97–3508	09/22/97
Equity Corporation International, Service Corporation International, SCI Alabama Funeral Services, Inc., SCI Louisiana	97–3513	09/22/97
Beckman Instruments, Inc., Coulter Family Limited Partnership, Coulter Corporation	97–3464	09/23/97
George Soros, R&B Falcon Corporation, R&B Falcon Corporation	97–3514	09/23/97
IBP, Inc., Winchester Food Processing, Inc., Winchester Food Processing, Inc	97–3338	09/24/97
Maytag Corporation, Metropolitan Life Insurance Company, Blodgett Holdings, Inc	97–3483	09/24/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NovaCare, Inc., Liberty Mutual Insurance Company, Atlantic Health Group, Inc	97-3524	09/24/97
Capstone Pharmacy Services, Inc., Harry Tractman, Med-Tec Pharmaceutical Services, Inc	97-3293	09/25/97
Republic Industries, Inc., Roger Dean, Dennis Fronrath Chev., Inc. & Fronrath Dean Fronrath	97-3377	09/25/97
Republic Industries, Inc., Bradley W. Kenyon, Kenyon Dodge, Inc	97-3378	09/25/97
K N Energy, Inc., Interenergy Corporation, Interenergy Corporation	97-3504	09/25/97
AmeriKing, Inc., James E. Green, B&J Restaurants, Inc	97-3316	09/26/97
The Finova Group Inc., R.J. Brandes, Belgravia Capital Corporation	97-3428	09/26/97
R.J. Brandes, The Finova Group Inc., The Finova Group Inc	97-3429	09/26/97
ISE Labs, Inc., Alphatec Electronics Public Co., Ltd., a Thai company, Alphatec USA, Inc. & Digital Testing Services, Inc	97-3438	09/26/97
Source Media, Inc., Brite Voice Systems, Inc., Brite Voice Systems, Inc	97-3441	09/26/97
ADC Telecommunications, Inc., NewNet, Inc., NewNet, Inc	97-3467	09/26/97
General Electric Company, Trans Leasing International, Inc., Trans Leasing International, Inc	97-3478	09/26/97
Newcourt Credit Group Inc., James M. Oberman, Lease Finance Group	97-3496	09/26/97
Newcourt Credit Group, Inc., James R. Brandt, Lease Finance Group	97-3497	09/26/97
Calpine Corporation, Brooklyn Union Gas Company (The), Gas Energy Inc. and Gas Energy Cogeneration Inc	97-3499	09/26/97
Thomas H. Lee Equity Fund III, L.P., The Learning Company, Inc., The Learning Company, Inc	97-3500	09/26/97
Steven A. and Linda Webster (Husband and Wife), R&B Falcon Corporation, R&B Falcon Corporation	97-3515	09/26/97
The News Corporation Limited, The Los Angeles Dodgers, Inc., The Los Angeles Dodgers, Inc	97-3522	09/26/97
O. Bruton Smith, Richard Dyer, Dyer & Dyer, Inc	97-3525	09/26/97
Richard Colburn, Daniel R. Boling, Daley Corporation	97-3528	09/26/97
The United Company, The Roof Center, Inc., The Roof Center, Inc	97-3531	09/26/97
Lehman Brothers Capital Partners I, SunSource, Inc., SunSource, Inc	97-3537	09/26/97
Heating Oil Partners, L.P., Petroleum Heat and Power Co., Inc., Ocennet Fuel Oil Corp	97-3538	09/26/97
Mellon Bank Corporation, Steven Wallace, Trustee/Steven Wallace Living Trust, Pacific Brokerage Services	97-3540	09/26/97
J. Kirk Hvide, Kinsman Lines, Inc., Kinsman Lines, Inc	97-3541	09/26/97
Performance Food Group Company, A.F.I. Food Service Distributors, Inc., A.F.I. Food Service Distributors, Inc	97-3542	09/26/97
Airgas, Inc., Industrial Gas Products and Supply, Inc., Industrial Gas Products and Supply, Inc	97-3548	09/26/97
Robert J. Higgins, Strawberries Inc., a debtor in possession, Strawberries Inc., a debtor in possession	97-3548	09/26/97
Center Street Capital Partners, LP, M.D. Mitchella, Carrier-Bock Company	97-3551	09/26/97
Michael J. Dressell, Quality Dining, Inc., Bruegger's Corporation	97-3556	09/26/97
Ripplewood Partners, L.P., Ripplewood Interim Partners, L.P., Edwards Holding Corp	97-3557	09/26/97
Ripplewood Interim Partners, L.P., Ripplewood Partners, L.P., Heidi's Holding Corp., GCI Holdings Corp	97-3558	09/26/97
Fenway partners Capital Fund, L.P., Aldik Artificial Flower Co., Inc., Aldik Artificial Flower Co., Inc	97-3568	09/26/97
Group Maintenance America Corp., MacDonald-Miller Industries, Inc., MacDonald-Miller Industries, Inc	97-3578	09/26/97
Group Maintenance America Corp., Ronald D. Bryant, Masters, Inc	97-3579	09/26/97
Union Camp Corporation, Greater New York Box Co., Inc., Greater New York Box Co., Inc	97-3594	09/26/97
Cytec Industries Inc., Equilease Holding Corporation, Fiberite Holdings, Inc.; Fiberite, Inc	97-3309	09/29/97
Questor Partners Fund, L.P., Avnet, Inc., Channel Master Division	97-3553	09/29/97
Community Newspaper Holdings, Inc., Thomas G. Cousins, Southern Crescent Newspapers, LP	97-3567	09/29/97
CACI International Inc., Infonet Services Corporation, Government Systems, Inc.	97-3569	09/29/97
Philip E. Kamins, Allied Products Corporation, Coz Plastics division	97-3580	09/29/97
Japan Energy Corporation, Japan Energy Corporation, Encore Computer Corporation	97-3588	09/29/97
Stonington Capital Appreciation 1994 Fund, L.P., Merisel, Inc., Merisel, Inc	97-3593	09/29/97
Catholic Health Initiatives, Southern Health Care of Tennessee, Inc., Southern Health Care of Tennessee, Inc	97-3395	09/30/97
United States Fidelity and Guaranty Company, Titan Holdings, Inc.; Titan Holdings, Inc	97-3397	09/30/97
Ingersoll-Rand Company, Westinghouse Electric Company, Thermo King Corporation	97-3443	09/30/97
Robert F.X. Sillerman, Sinclair Broadcast Group, Inc., Sinclair Radio of Nashville, Inc	97-3529	09/30/97
Reliance Steel & Aluminum Company, Walter C. Goldstein, Service Steel Aerospace Corporation	97-3545	09/30/97
Crown Pacific Partners, L.P., David R. and Kay E. Syre, Trillium Corporation	97-3576	09/30/97
Insignia Financial Group, Inc., Realty One, Inc., Realty One, Inc	97-3581	09/30/97
Bayard Drilling Technologies, Inc., Charles E. Davidson, Bonray Drilling Company	97-3604	09/30/97
Charles E. Davidson, Bayard Drilling Technologies, Inc., Bayard Drilling Technologies, Inc	97-3605	09/30/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97-28223 Filed 10-23-97; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090-0252).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090-0252, Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practical opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts.

DATES: December 23, 1997.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th and F Streets, NW, Washington, DC 20405.

Annual Reporting Burden:

Respondents: 1350; annual responses: 1; average hours per response: 12; burden hours: 16,200.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501-1224.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th and F Streets NW, Washington, DC 20405, or by telephoning (202) 501-3822, or by faxing your request to (202) 501-3341.

Dated: October 15, 1997.

Edward C. Loeb,

Acting Deputy Association Administrator, Office of Acquisition Policy.

[FR Doc. 97-28236 Filed 10-23-97; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Occupational Exposure to Inorganic Lead: Request for Comments and Information; Republication

This notice is being republished because the μ symbol was missing throughout the original document published in the **Federal Register** on October 7, 1997 (62 FR 52343).

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for comments and information relevant to occupational exposure to inorganic lead.

SUMMARY: NIOSH is reviewing its recommendations contained in the document *Criteria for a Recommended Standard....Occupational Exposure to Inorganic Lead, Revised Criteria—1978* [NIOSH 1978]. The evaluation of recent literature indicates that the NIOSH recommended exposure limit (REL) of 100 μg/m³ as an 8-hour time-weighted average (TWA) in that document does not sufficiently protect workers from the adverse effects of exposure to inorganic lead. NIOSH is requesting comments and information relevant to the evaluation of the potential health risks associated with occupational exposure to inorganic lead, as well as case reports or other data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA permissible exposure limit (PEL) of 50 μg/m³ as an 8-hour TWA and any information pertinent to evaluating the technical feasibility of establishing a more protective REL for inorganic lead. NIOSH is also soliciting information on worker blood lead levels (BLLs) including data on methodologies used in measuring BLLs in the workplace and information that can be used for comparing airborne inorganic lead concentrations to observed BLLs.

NIOSH intends to analyze the feasibility of developing preventive measures including an REL that would provide better protection for workers. In the interim, NIOSH plans to adopt the more protective current OSHA PEL as its REL.

DATES: Written comments to this notice should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C-34, Cincinnati, Ohio 45226, on or before December 23, 1997. Comments may also be faxed to Diane Manning at (513) 533-8285 or submitted by email to dmm2@cdc.gov as WordPerfect 6.0/6.1 files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Dr. Henryka Nagy, NIOSH, CDC, 4676 Columbia Parkway, M/S C-32, Cincinnati, Ohio 45226, telephone (513) 533-8369.

SUPPLEMENTARY INFORMATION: NIOSH has conducted a literature review of the health effects data on inorganic lead exposure and finds evidence that some adverse effects on the adult reproductive, cardiovascular, and hematologic systems, and on the development of children of exposed workers can occur at BLLs as low as 10 μg/dl with no apparent threshold. At BLLs below 40 μg/dl, many of the health effects associated with lead exposure would not necessarily be evident by routine physical examinations, but represent early stages in a continuum of disease development. The risk of developing adverse health effects appears to increase as BLLs rise above 40 μg/dl.

In the NIOSH 1978 criteria document entitled *Occupational Exposure to Inorganic Lead* [NIOSH 1978], NIOSH recommended that exposure to inorganic lead be limited to 100 μg/m³ as an 8-hour TWA. This exposure limit was expected to maintain BLLs below 60 μg/dl and to prevent clinical health effects to the hematologic system, the central and peripheral nervous systems, the reproductive system, and the kidneys. NIOSH also expressed concern about possible health effects that may occur below 60 μg/dl: "In adhering to the 60 μg/dl figure, NIOSH has not relinquished its concerns for possible effects that may occur below 60 μg/dl. Adherence to this 60 μg/dl figure should not be interpreted as a firm NIOSH opposition to establishing a lower blood lead standard. In fact, NIOSH endorses a lower blood lead standard as a future goal to provide greater assurance of safety."

In 1978, the Occupational Safety and Health Administration (OSHA) promulgated an occupational inorganic lead standard for general industry that incorporates a PEL of 50 μg/m³ which is intended to maintain worker BLLs below 40 μg/dl. OSHA also included provisions for reducing the PEL for work shifts that exceed 8 hours, medical monitoring of workers exposed to airborne inorganic lead concentrations at or above the action level of 30 μg/m³, and medical removal of workers with BLLs greater than 50 μg/dl. Workers are permitted to return to jobs involving inorganic lead exposure only after their BLLs have declined to 40 μg/dl.

OSHA concluded in 1978 that a PEL of 50 μg/m³ represented the lowest level for which there was evidence of feasibility in most industries. OSHA also acknowledged that, based on the scientific data, the PEL of 50 μg/m³ did not provide protection from all adverse health effects of inorganic lead toxicity because the hematologic system, the nervous system, the kidneys, and the fetus can be adversely affected by exposures to inorganic lead resulting in BLLs below 40 μg/dl [43 FR 52952, November 14, 1978]. In May 1993, OSHA published the Interim Final Lead in Construction Standard [58 FR 26590, May 4, 1993]. This standard extended the general industry standard for inorganic lead to include workers in the construction industry. No additional analysis of the health data was performed by OSHA in adopting this standard for the construction industry.

NIOSH seeks to obtain materials, including reports and research findings, to evaluate the health risks of occupational exposure to inorganic lead. Examples of requested information include, but are not limited to, the following:

1. Occupational (environmental) exposure data.

2. Data on the effectiveness of engineering controls, work practices,

training, personal protective equipment and other activities used to limit workers' exposure.

3. Identification of industries or occupations where intermittent or low concentrations of inorganic lead may occur.

4. Descriptions of work practices and engineering controls used to reduce workplace exposure.

5. Case reports or other health data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA PEL and any information pertinent to evaluating the feasibility of establishing a more protective exposure limit. Case reports and health data should be submitted without personal identifiers.

6. Information regarding methods for BLL determination that could be used routinely in the workplace (e.g., determination of BLLs using portable equipment). NIOSH is evaluating whether the routine biological monitoring of inorganic lead exposed workers (through BLLs) may be a more appropriate measure than airborne concentrations for estimating the potential for developing adverse health effects.

This information will be used by NIOSH to determine the need for developing new recommendations for lowering the occupational exposure to inorganic lead and improving strategies for monitoring inorganic lead exposure.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

References

43 FR 52952, November 14, 1978. Chapter XVII—Occupational Safety and Health Administration, Department of Labor; Part 1910—Occupational safety and health standards: occupational exposure to lead.

58 FR 26590, May 4, 1993. Occupational Safety and Health Administration: lead exposure in construction; interim final rule. (To be codified at 29 CFR 1926.)

NIOSH [1978]. Criteria for a recommended standard * * * occupational exposure to inorganic lead, revised criteria. Rockville, MD: U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 78–158.

Dated: October 20, 1997.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28219 Filed 10–23–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0424]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a proposed revision of the form for the collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a revised, harmonized transmittal form, "Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use" (Form FDA 2253). This revised and harmonized form will be used for the submission of advertisements and promotional labeling for prescription drugs, antibiotics, and biological products that are regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit written comments on the collection of information by December 23, 1997.

ADDRESSES:

CDER Information: Submit written requests for single copies of the revised, harmonized transmittal form, Form FDA 2253, to the Drug Information Branch (HFD–210), Division of Communications Management, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1012. Send one self-addressed adhesive label to assist that office in processing your requests. The form may also be obtained by calling the CDER Fax-on-Demand System at 1–800–342–2722 or 1–301–827–0577.

CBER Information: Submit written requests for single copies of the revised, harmonized transmittal form, Form FDA 2253, to the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The form may also be obtained by calling the CBER Voice Information System at 1–800–835–4709.

Submit written comments on the revised, harmonized transmittal form, Form FDA 2253, and its proposed use in collection of information, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the revised, harmonized transmittal form, Form FDA 2253, and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use (Form FDA 2253)

Under § 314.81(b)(3)(i) (21 CFR 314.81(b)(3)(i)), sponsors of approved applications for marketed prescription drugs and antibiotic drugs for human use are required to submit specimens of promotional labeling and advertisements at the time of initial dissemination of the labeling and at the time of initial publication of the advertisement. Each submission is required to be accompanied by a completed transmittal Form FDA 2253 (Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use). Statutory authority for the collection of this information is provided by sections 505(a), (b), (j), and (k), 507(g), and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), (b), (j), and (k), 357(g), and 371(a)).

Similarly, under § 601.12(f)(4) (21 CFR 601.12(f)(4)) (62 FR 39890, July 24, 1997; effective October 7, 1997), manufacturers of licensed biological products are required to submit specimens of advertising and promotional labeling to FDA in accordance with § 314.81(b)(3)(i). Statutory authority for the collection of this information is provided by section 351 of the Public Health Service Act (42 U.S.C. 262), which gives FDA the responsibility to prescribe standards designed to ensure the safety, purity, potency, and effectiveness of biological products. In furtherance of this responsibility, FDA regulates advertising and labeling for biological products. Currently, specimens of advertising and promotional labeling are submitted to FDA with Form FDA 2567, a two-part transmittal form that is also used to transmit other forms of labeling (e.g., circulars, package labels, and container labels) for FDA review when a firm is requesting premarket approval of a product or proposing changes to product carton or container labeling.

FDA is revising Form FDA 2253 to enable it to be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The proposed revised form has the following major changes:

1. The revised, harmonized form will be used by sponsors of approved applications for marketed prescription drugs and antibiotic drugs regulated by CDER who must submit specimens of advertisements and promotional labeling to the agency, and may be used by manufacturers of licensed biological products regulated by CBER who submit draft and/or final copies of promotional labeling and advertisements to the agency. Revising and harmonizing Form FDA 2253 will eliminate the need for sponsors to use two different forms to transmit similar materials for submission to the agency; however, manufacturers of biological products may continue to use Form FDA 2567 to transmit advertisements and promotional labeling if they wish. The other uses of Form FDA 2567 will remain unchanged.

2. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (e.g., consumers, professionals, news services); and helps ensure that the submission is complete.

3. Currently, when more than one prescription drug product is promoted in the promotional labeling or in an advertisement, sponsors submit specimens of the promotional labeling or advertisement to the approved application for each product promoted in the promotional labeling or advertisement. The revised form provides for sponsors to submit specimens of multi-product promotional labeling and advertisements to only two files; to the approved product application most frequently promoted, and to a company name file. This multi-product submission should cross-reference the other approved applications. The agency anticipates that the proposed revised form and revised submission procedures will save sponsors time and money by eliminating the need for making multiple submissions and for maintaining dual inventories of both forms and multiple processing capabilities.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Form	No. of Respondents	Total Annual Responses	Hours per Response	Total Estimated Hours
FDA 2253	612	12,379	2	24,758

There are no capital costs or operating and maintenance costs associated with this collection of information.

In FY 95, CDER received 10,879 submissions of advertising and promotional labeling under Form FDA 2253 from an estimated 512 manufacturers. In the same period of time, CBER received 1,034 submissions from 57 manufacturers that could have made use of revised Form FDA 2253. Prior to October 7, 1997, the submission of advertising and promotional labeling to CBER using Form FDA 2567 was a voluntary procedure. Under § 601.12(f)(4) (62 FR 39890), manufacturers of licensed biological products are required to submit specimens of advertising and promotional labeling to FDA in accordance with § 314.81(b)(3)(i). FDA estimates that under the new regulation, CBER will receive over 1,500 submissions from approximately 100 manufacturers that may use the revised Form FDA 2253. Thus, FDA estimates that there may be 12,379 submissions of advertising and promotional labeling to FDA under revised Form FDA 2253. Based on contacts with industry representatives, FDA estimates that 2 hours would be required for an industry regulatory affairs specialist to fill out the proposed form, collate the documentation, and send the submission to CDER or CBER. Manufacturers of biological products may use the revised Form FDA 2253 or may continue to use Form FDA 2567 for the submission of advertisements and promotional labeling to CBER.

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28225 Filed 10–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Grassroots Regulatory Partnership Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Nashville District Office and New Orleans District Office), in conjunction with the Health Industry Manufacturers Association (HIMA) is announcing the following workshop: Grassroots Regulatory Partnership Workshop. The topic to be discussed is FDA regulatory requirements for the medical device industry. The purpose of the workshop is to promote open dialogue between FDA and the medical device industry on quality system regulations and medical device reporting requirements.

Date and Time: The workshop will be held on Tuesday, December 16, 1997, from 8:30 a.m. to 5 p.m, and on Wednesday, December 17, 1997, from 8 a.m. to 3 p.m.

Location: The meeting will be held at the Holiday Inn Select–Vanderbilt, 2613 West End Ave., Nashville, TN 37203, 1–800–633–4427.

Contact: Rebecca K. Keenan, Food and Drug Administration (HFR–SE–350), Nashville District Office, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5380, ext. 145, FAX 615–781–5391.

Registration: Fax registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by November 20, 1997. There is no registration fee for this workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Rebecca K. Keenan at least 7 days in advance.

SUPPLEMENTARY INFORMATION: In 1995 President Clinton directed the heads of all Federal regulatory agencies to carry out a four step regulatory reinvention initiative. The basic idea of the President's initiative was to replace adversarial approaches with a partnership approach based on clear goals and cooperation. The President specifically directed top management from regulatory agencies to hold "grassroots" workshops with regulated industry, and this workshop is designed to meet that requirement.

Priority will be given to those businesses located in the Nashville and New Orleans Districts, which include the States of: Alabama, Louisiana, Mississippi, and Tennessee. Companies located outside of these States may register to attend the workshop and will be accepted if space is available.

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28170 Filed 10–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 17, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–28208 Filed 10–23–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth a proposed policy statement, in the form of non-binding guidelines, to be used by the OIG in assessing whether to impose a permissive exclusion in accordance with section 1128(b)(7) of the Social Security Act. These guidelines identify specific factors with regard to whether an individual's or entity's continued participation in the Medicare and other Federal and State health care programs will pose a risk to the programs or program beneficiaries, and explain how these factors would be used by the OIG to assess a permissive exclusion decision.

COMMENT PERIOD: Parties interested in commenting on these guidelines may submit their written comments to the address provided below by no later than 5 p.m. on November 24, 1997. Comments will be available for public inspection beginning on [14 days after date of publication in the **Federal Register**] in Room 5518 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

ADDRESSES: Please mail or deliver any written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–821–N, Room 5246, Cohen Building 330 Independence Avenue, S.W., Washington, D.C. 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–821–N.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Purpose and Rationale

Internal guidelines have been developed by the OIG to provide specific criteria on which it will base its decision as to whether to seek the imposition of a permissive exclusion against a health care provider in accordance with section 1128(b)(7) of the Social Security Act (the Act).

Section 1128(b)(7) of the Act authorizes the Secretary, and by delegation the Inspector General, to exclude a provider from Medicare and the other Federal and State health care programs for engaging in conduct described in sections 1128A and 1128B of the Act. These provisions establish administrative and criminal sanctions, respectively, against individuals and entities that (1) submit, or cause to be submitted, false or fraudulent claims to Medicare and the Federal and State health care programs; or (2) offer, pay, solicit or receive remuneration in return for the referral of business reimbursed by Medicare or Medicaid, a violation of the Medicare and Medicaid anti-kickback statute. Exclusions in accordance with section 1128(b)(7) of the Act, based on such conduct, are permissive in nature. Respondents in these administrative exclusion proceedings have the right to a hearing before a Department of Health and Human Services administrative law judge prior to the imposition of an exclusion.

We believe these criteria will serve a number of useful purposes by (1) allowing for the more effective development of OIG investigations and investigative plans; (2) establishing an objective basis for the OIG's permissive exclusion decisions, and evaluating a provider's trustworthiness to continue to conduct business with the Medicare and other Federal and State health care programs; and (3) positively influencing providers' future behavior through the development of corporate integrity programs and other conduct contemplated by the exclusion criteria.

Structure of Permissive Exclusion Criteria

The exclusion criteria are organized into four general categories of factors bearing on the trustworthiness of a provider that has allegedly engaged in health care fraud and abuse—

- The first category addresses the circumstances and seriousness of the underlying misconduct. The factors to be considered are historical in nature and rely on past misconduct as an indicator of the defendant's propensity for future abuse of the programs.
- The second category considers the defendant's response to the allegations or determination of wrongdoing. These factors indicate whether the defendant is willing to affirmatively modify his or her conduct, make injured parties whole, and otherwise acknowledge and remedy past wrongdoing.
- The third category identifies various other factors relevant to assessing the likelihood of a future violation of the law. The implementation of an adequate corporate integrity program is a key consideration.
- The fourth category relates to the defendant's financial ability to provide quality health care services.

These exclusion criteria will merely serve as internal agency guidelines that may be subject to further modification at any time. They are not intended to limit the OIG's discretionary authority to exclude individuals or entities that pose a risk to Medicare and other Federal and State health care programs or program beneficiaries, nor do they create any rights or privileges in favor of any party. Further, these criteria do not supplant or modify in any way the OIG regulations, codified at 42 CFR part 1001, governing program exclusions.

The factors listed in the guidelines are derived from two principle sources—the regulations governing exclusions under sections 1128(b)(7) and 1128A of the Act (42 CFR parts 1001 and 1003), and the decisions of the Departmental Appeals Board (DAB) in exclusion matters. The factors derived from DAB decisions reflect the analysis of the remedial purpose of program exclusion.

II. Proposed Criteria To Implement the OIG'S Permissive Exclusion Authority Under Section 1128(b)(7)

The following criteria may be used to determine whether or not it is appropriate to impose a permissive exclusion in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a-7(b)(7)). These criteria are informal and non-binding, and may be used as a guide to assist the OIG in determining in which cases an exclusion should be imposed. The presence or absence of any or all of the factors that appear below does not constitute the sole grounds for determining whether exclusion is appropriate. There is a favorable presumption that a period of exclusion should be imposed against an individual or entity that has defrauded Medicare or other Federal and State health care programs.

A. The Circumstances of the Misconduct and Seriousness of the Offense

1. Was a criminal sanction imposed? The amount of any criminal fine or penalty imposed, and the length of any period of incarceration that is ordered, is evidence of the seriousness of the statutory misconduct, and may have an impact on the exclusion determination.

2. Was there evidence of (i) physical or mental harm to patients or (ii) financial harm to the Medicare or any of the other Federal and State health care programs? If financial loss to the programs occurred, what was the extent of such loss? Exclusion may be appropriate not only in cases where actual harm is present, but potential harm as well.

3. Is the misconduct an isolated incident or a continuous pattern of wrongdoing over a significant period of time? Is there evidence that the defendant knew his or her conduct was prohibited? Has the defendant had the same or previous problems with the OIG, the Health Care Financing Administration (HCFA), the carrier or intermediary, or the State? What was the nature of these problems?

4. Was the defendant's involvement in the misconduct active or passive? Was the defendant aware of the misconduct when it was occurring? Did the defendant play a role in the misconduct?

B. Defendant's Response to Allegations/Determination of Unlawful Conduct

1. What was the defendant's response to any actual or potential legal violations or harm to the programs or

their beneficiaries? Was the response appropriate and credible?

2. Did the defendant cooperate with investigators and prosecutors, and timely respond to lawful requests for documents and the provision of evidence regarding the involvement of other individuals in a particular scheme, thereby demonstrating trustworthiness?

3. Has the defendant made or agreed to make full restitution to the Federal and/or state health care programs, thereby demonstrating present responsibility and willingness to conform to applicable laws, regulations and program requirements?

4. Has the defendant paid or agreed to pay all criminal, civil, and administrative fines, penalties, and assessments resulting from the improper activity?

5. Has the defendant taken steps to undo the questionable conduct or mitigate the ill effects of the misconduct, e.g., appropriate disciplinary action against the individuals responsible for the activity that constitutes cause for exclusion, or other corrective action?

6. Has the defendant acknowledged its wrongdoing and change its behavior, thereby demonstrating future trustworthiness?

C. Likelihood that Offense or Some Similar Abuse Will Occur Again

1. Was the misconduct the result of a unique circumstance not likely to recur? Is there minimal risk of repeat conduct?

2. Have prior and subsequent conduct been exemplary or improper?

3. What prior measures had been taken to ensure compliance with the law? Can the defendant demonstrate that it had an effective compliance plan in place when the activities that constitute cause for exclusion occurred?

A. Did the defendant make any efforts to contact the OIG, HCFA, or its contractors to determine whether its conduct complied with the law and applicable program requirements? Were any contacts documented?

B. Did the defendant bring the activity in question to the attention of the appropriate Government officials prior to any Government action, e.g., was there any voluntary disclosure regarding the alleged wrongful conduct?

C. Did the defendant have effective standards of conduct and internal control systems in place at the time of the wrongful activity, e.g., was there a corporate compliance program in place? If there was an existing corporate compliance plan:

(i) How long had the compliance plan been in effect?

(ii) What problems had been identified as a result of the compliance plan?

(iii) Were any overpayments or systemic changes made if problems were identified?

(iv) Were appropriate staff sufficiently trained in applicable policies and procedures pertaining to Medicare and other Federal and State health care programs?

(v) Was there a corporate compliance officer and an effective corporate compliance committee in place (if appropriate to the size of the company)?

(vi) Were regular audits undertaken at the time of the unlawful activity?

4. What measures have been taken, or will be taken, to ensure compliance with the law? Has the defendant agreed to implement adequate compliance measures, including institution of a corporate integrity plan?

D. Financial Responsibility

If permitted to continue program participation, is the defendant able to operate without a real threat of bankruptcy and without a real threat to its ability to provide quality health care items or services?

Dated: October 14, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–28202 Filed 10–23–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting.

Name of SEP: Community Clinical Oncology Program.

Date: November 17–18, 1997.

Time: 8:30 a.m. to Adjournment.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636B, 6130 Executive Boulevard, MSC 74, Bethesda, MD 20892–7407; Telephone: 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28183 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee G—Education.

Date: November 18–19, 1997.

Time: 8 a.m. to Adjournment.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Susan B. Spring, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 643C, Bethesda, Md 20892–7403; Telephone: 301–402–0996.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28185 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee F—Manpower and Training.

Date: November 12–14, 1997.

Time: November 12—6:30 p.m. to Recess; November 13 and 14—8 a.m. to Adjournment.

Place: The Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 611A, Bethesda, MD 20892–7403, Telephone: 301–496–7978.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28188 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: AIDS—Oncology Clinical Sciences Development Program.

Date: November 6, 1997.

Time: 8:30 a.m. to 5 p.m.

Place: Executive Plaza North, Room 640, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 622B, Bethesda, MD 20892–7405; Telephone: 301/496–7575.

Purpose/Agenda: To review and evaluate responses to a Request for Application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Springfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28187 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Name of Subcommittee: Subcommittee H–Clinical Groups.

Date: December 9–10, 1997.

Time: 8 a.m. to Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., North, Room 611C, Bethesda, MD 20892–7403; Telephone: 301/496–7721.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28186 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the Board of Scientific Counselors, National Cancer Institute.

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meeting.

A portion of the meetings will be closed to the public in accordance with the provision set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual programs and projects. These discussions will include consideration of personnel

qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the committee members, upon request.

Committee Name: Board of Scientific Counselors, National Cancer Institute Subcommittee B—Basic Sciences.
Date: November 3–4, 1997.
Place: November 3, Double Tree Hotel, Parklawn Room, 1750 Rockville Pike, Rockville, MD 20852; November 4, National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 8, Bethesda, MD 20892.
Open: November 3—7:30 p.m. to 8:00 p.m.
Agenda: Presentation regarding the Intramural Review Office.
Closed: November 3—8:00 p.m. to 9:30 p.m.; November 4—8:30 a.m. to Adjournment.
Agenda: To discuss administrative confidential matters and site visit reports pertaining to laboratories in the Division of Basic Sciences.
Contact Person: Florence E. Farber, Ph. D., Executive Secretary, Executive Plaza North, Rm. 601, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410, Telephone: 301–496–2378.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural review cycle.

Committee Name: Board of Scientific Counselors, National Cancer Institute Subcommittee A—Clinical Sciences and Epidemiology.
Date: November 18, 1997.
Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 8, Bethesda, MD 20892.
Open: 4:00 p.m. to 4:30 p.m.
Agenda: Presentation regarding the Intramural Review Office.
Closed: 8:30 a.m. to 4:00 p.m.; 4:30 to Adjournment.
Agenda: To discuss administrative confidential matters pertaining to the Division of Clinical Sciences and the Division of Cancer Epidemiology and Genetics.
Contact Person: Judy Mietz, Ph.D., Executive Secretary, Executive Plaza North, Rm. 601, 6130 Executive Blvd., MSC 7410 Bethesda, MD 20892–7410, Telephone: 301–496–2378.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28194 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.
Date: December 4, 1997.
Time: 8 a.m.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Dr. Jeffrey H. Hurst, Scientific Review Administrator, NHLBI/Review Branch, 6701 Rockledge Drive, Rm. 7208, Bethesda, Maryland 20892, (301) 435–0303.
Purpose/Agenda: To review and evaluate program project grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28192 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: December 1, 1997.
Time: 8 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate two grant applications.
Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: December 8, 1997.
Time: 9 a.m.
Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate one grant application.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28189 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Centers for AIDS Research (CFAR).
Date: November 12–14, 1997.
Time: 8:30 a.m. to Adjournment.
Place: Bethesda Ramada Hotel and Conference Center, Ambassador II, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate grant proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 92.856, Microbiology and Infections Diseases Research, National Institutes of Health)

Dated: October 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28193 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–5 (C2 B).
Date: October 28, 1997.
Time: 2 p.m.
Place: Room 6a5–37E, Natcher Building, NIH (Telephone Conference Call).
Contact Person: Dr. Francisco O. Calvo, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6a5–37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28195 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 5, 1997.
Time: 7:30 p.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–2116.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 6–7, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1148.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 10, 1997.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 13, 1997.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.
Name of SEP: Multidisciplinary Sciences.
Date: November 20, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 21, 1997.

Time: 9 a.m.

Place: American Inn, Bethesda, Maryland.

Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Multidisciplinary Sciences.

Date: November 23–25, 1997.

Time: 7 p.m.

Place: Hyatt Newporter, Newport Beach, CA.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Clinical Sciences.

Date: February 9–11, 1998.

Time: 8 a.m.

Place: Ana Hotel, Washington, DC.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4116, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Clinical Sciences.

Date: February 23–25, 1998.

Time: 8 a.m.

Place: Ana Hotel, Washington, DC.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4116, Bethesda, Maryland 20892, (301) 435–1713.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: November 7, 1997.

Time: 9 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Behavioral and Neurosciences.

Date: November 21, 1997.

Time: 8:30 a.m.

Place: Marriott Hotel, Bethesda, Maryland.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Chemistry and Related Sciences.

Date: November 21, 1997.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28184 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4299–N–01]

Announcement of Funding Award—Fiscal Year 1997, Lead-Based Paint Hazard Control, Tides Foundation

AGENCY: Office of the Secretary—Office of Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102 (a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Tides Foundation. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Dolline Hatchett, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 114. Hearing-or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Lead-Based Paint Hazard Control grant for the Tides Foundation was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $334,950 to the Tides Foundation which will be used to provide financial support and technical assistance to support education and outreach efforts by parent groups and other community-based organizations to protect children from being lead poisoned.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows: Tides Foundation, P. O. Box 29907, San Francisco, CA 94129–0907. Amount of Grant: $334,950.

Dated: October 17, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–28227 Filed 10–23–97; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 16, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–27930 Filed 10–23–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for Approval of Tungsten-Polymer Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that Federal Cartridge Company (Federal) of Anoka, Minnesota, has applied for approval of tungsten-polymer shot as nontoxic for waterfowl hunting in the United States.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. Currently, only bismuth-tin and steel shot are approved by the Service as nontoxic. Tungsten-iron shot has received temporary conditional approval for the 1997–98 hunting season. The Service believes approval for other suitable candidate shot materials as nontoxic is feasible.

Federal submits their application for approval of tungsten-polymer shot as nontoxic pursuant to 50 CFR 20.134, Migratory Bird Hunting: Nontoxic Shot. The Service believes the candidate material shows promise and will consider the application.

Federal's candidate shot is made by physically mixing tungsten and polymer (Nylon 6), then melting the nylon. Cooling causes the nylon to cross-link and bind the mixture into a permanent shape. Shot made from this material has a density of approximately 11.2 gm/cc or approximately 100 percent the density of lead. The shot will contain nominally 95.5 percent by weight of tungsten and 4.5 percent by weight of polymer. An electronic device designed to distinguish between shotshells containing different shot materials will register tungsten-polymer shells as a nontoxic shotshell similar to bismuth shells.

Federal's application includes a description of the new shot, a toxicological report on the tungsten-polymer shot, and a 30-day test to assess the toxicity of this shot in game-farm mallards (Tier 1). The toxicological report incorporates toxicity information - a synopsis of acute and chronic toxicity data for mammals and birds, acute effects, potential for environmental concern, toxicity to aquatic and terrestrial invertebrates, amphibians, and reptiles; and information on environmental fate and transport - shot and/or shot coating alteration, environmental half-life, and environmental concentration. The toxicity study revealed no adverse effects when mallards were dosed with 8 BB size tungsten-polymer shot and monitored over a 30-day period.

The Service has requested the applicant submit the Tier 2 test plan for review. Once the Service approves the plan the applicant will conduct testing and submit an analysis of the results. After reviewing the results, the Service will either approve the shot as nontoxic or request further testing. The applicant plans to concurrently test this candidate shot with the temporarily approved tungsten-iron shot.

References

Barr Engineering Company. 1997. Toxicology Report on New Shot. 24 pp.

Bursien, S.J., M.E. Kelly, D.C. Powell, and R.J. Aulerich. 1996. Thirty-Day Dosing Test to Assess the Toxicity of Tungsten-Polymer Shot in Game-Farm Mallards. 1996. Report to Federal Cartridge Co. 78 pp.

Authorship

The primary author of this notice of application is Carol Anderson, Office of Migratory Bird Management.

Dated: October 16, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–28199 Filed 10–23–97; 8:45 am]

Billing Code 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 83859]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Offering by Sealed Bid MTM 83859—Spring Creek Coal Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Big Horn County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Spring Creek Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11:00 a.m., November 13, 1997, in the Conference Room, Side A, on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59101. Sealed bids clearly marked "Sealed Bid for MTM 83859 Coal Sale—Not to be opened before 11:00 a.m., Thursday, November 13, 1997", must be submitted on or before 10:00 a.m., November 13, 1997, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800.

SUPPLEMENTARY INFORMATION: An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The coal resource to be offered consists of all recoverable reserves in the following-described lands:

T. 8 S., R. 39 E., P.M.M.,
Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26: S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½S½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, NE¼NE¼NE¼SE¼.
T. 8 S., R. 40 E., P.M.M.,
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.

Containing 320.00 acres, Big Horn County, Montana.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be 3 hand-

delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after 10:00 a.m., Thursday, November 13, 1997, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

If identical high bids are received, the tieing high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile MTM 83859 is also available for public inspection at the Montana State Office.

FOR FURTHER INFORMATION CONTACT: Bettie Schaff, Land Law Examiner or Edward Hughes, Coal Coordinator at (406) 255–2832 or 255–2830, respectively.

Dated: October 14, 1997.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 97–28209 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00; GP8–0019]

Call for Nominations for Oregon State Agency Representative on the Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for an employee of an Oregon State agency which deals with natural resources for the Southeast Oregon Resource Advisory Council, established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the BLM and Forest Service on management of public lands. Public nominations will be received through November 28, 1997.

The Council, which was established in August, 1995, is made up of 15 members. The State Agency employee has resigned from the Council, and we are seeking nominees to replace this position for the balance of the term through August of 1999.

The Council, which covers southeastern Oregon, has identified a broad spectrum of resource-related issues that they will work on with the BLM and the Forest Service. In addition, the Council will continue to advise the BLM and Forest Service regarding standards for rangeland health and guidelines for grazing management, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

This council is authorized under the Federal Land Policy and Management Act (FLPMA), which directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council membership must be balanced and representative of the various interests concerned with the management of public lands.

These include three categories: Category One: holders of federal grazing permits, representatives of energy and mining development, timber industry, transportation or rights-of-way, off-road vehicle use and developed recreation.

Category Two: Representatives of environmental and resource conservation organizations, dispersed recreation, archeological and historic interests, and wild horse and burro groups.

Category Three: Representatives of State and local government, Native American tribes, academicians involved in natural sciences, employees of State agencies responsible for the management of natural resources, land, or water, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Oregon. The Southeast Oregon Council covers southeastern Oregon. A nomination form may be obtained from the Vale District, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918 or by calling (541) 473–3144. Nominations must be received by November 28, 1997.

Nominees will be evaluated based on their experience in working for the state of Oregon in a natural resource capacity and their knowledge of the geographic area covered by the Council. Nominees must also have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The BLM Oregon/Washington State Director, the Forest Service Regional Forester, and the Oregon Governor's Office will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council. This nomination period will also be announced through press releases issued by the BLM Oregon/Washington State Office. Nominations for Resource Advisory Councils should be sent to: Ed Singleton, Bureau of Land Management, Vale District Manager, 100 Oregon Street, Vale, OR, 97918.

DATES: All nominations must be received by the BLM Vale District on or before November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541–473–6218).

Edwin J. Singleton,

District Manager.

[FR Doc. 97–28201 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1430–01; AZA 30069, AZA 30123, AZA 22763]

Arizona: Notice of Realty Action: Noncompetitive Sales of Public Lands in Yuma County, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of July 8, 1997, concerning lands found suitable for noncompetitive sale to three separate parties. The document did not contain a Bureau of Land Management case file number and the holder's name for one of the proposed sale parties.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Lucas Lucero at (520) 317–3215.

Correction

In the **Federal Register** issue of July 8, 1997, in FR Doc. 97–17681, on page 36571, in the second column, after the first paragraph, insert the following: AZA 22763—Timothy Conovaloff.

Dated: October 14, 1997.

Gail Acheson,

Field Manager.

[FR Doc. 97–28200 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Emergency extension of existing collection; Petition to remove the conditions on residence.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This information collection was previously published in the **Federal Register** on July 17, 1997 at 62 FR 38323, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional "thirty days" until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 5307, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–751. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Aliens granted conditional residence through marriage to a United States citizen or permanent resident use this information collection to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 126,889 respondents at 80 minutes or (1.33) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 171,422 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28293 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Petition for Amerasians, widow or special immigrant.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This proposed information collection was previously published in the **Federal Register** on July 30, 1997 at 62 FR 40841, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional "thirty days" until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice

Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted via facsimile to 202–305–0143.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Amerasians, Widow or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 respondents at two (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28294 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency extension of existing collection; Application for replacement naturalization/citizenship document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This proposed information collection was previously published in the **Federal Register** on July 17, 1997 at 62 FR 38325, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional "thirty days" until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 5307, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to apply for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate, or to apply for a special certificate of naturalization recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 18,000 respondents at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,488 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28295 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a United States Penitentiary Near Scranton, Pennsylvania

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new United States Penitentiary (USP) is needed in its system.

The Bureau of Prisons proposes to construct and operate a high security United States Penitentiary, with an adjacent minimum security satellite camp, in the greater Lackawanna County, Pennsylvania area. The main high security facility would be designed to have a rated capacity of approximately 1,000 inmates, and the minimum security component approximately 150–300. The Bureau of Prisons is proposing to build the facility near Scranton, Pennsylvania. Several sites are currently under consideration. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives: In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facilities will be fully and thoroughly examined.

Scoping Process: Several informal public meetings have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Monday, October 27, 1997, at Valley View High School, Columbus Drive, Archbald, Pennsylvania. The meeting will be well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, ddorworth@BOP.gov.

Dated: October 8, 1997.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 97–27507 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

October 20, 1997.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506]. OMB approval has been requested by October 27, 1997. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley, at (202) 219–5095 ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Semi-annual (report submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 130 (estimated).

Total Responses: 520.

Estimated Time Per Respondent: 15 hours.

Total Burden Hours: 7,800.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR is associated with the issuance of program regulations to implement the Indian and Native American Welfare-to-Work (INA W2W) program. The ICR associated with these regulations concerns the submission of program and financial reports by Federally-recognized tribes and Alaska Native entities (or consortia thereof) awarded grants under the INA

W2W program. These reports will document employment activity conducted by INA W2W grantees who provide employment services to adult recipients of benefits under the Temporary Assistance for Needy Families (TANF) program, established by Pub. L. 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the "Welfare Reform Act"). Information submitted on these reports will be utilized by the Department to evaluate the success of individual INA W2W programs and to provide data for reports to Congress and the White House on the success of the overall INA W2W program. These regulations are being published in Interim Final form to comply with the requirements of section 412(a)(3)(C)(iii) of the Social Security Act, as amended by section 5001(c) of Pub. L. 105–33 (the Balanced Budget Act of 1997). This emergency clearance is necessary to enable the Department to implement the INA W2W program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal year 1998) as possible. Also, quick implementation of the INA W2W program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Pub. L. 104–193 (the "Welfare Reform Act").

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–28240 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Worker Profiling and Re-Employment Service Reports.

OMB Number: 102–0353 (extension).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 15 minutes (each form).

Total Burden Hours: 105.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Worker Profiling and Re-Employment Services Reports provide information about unemployment compensation claimants who are identified as likely to exhaust their benefits. Reports identify the services provided to those individuals and check for subsequent earnings.

Agency: Employment and Training Administration.

Title: Domestic Agricultural In-Season Wage Report.

OMB Number: 1205–0017 (extension).

Frequency: One-time.

Affected Public: Individuals or households; Business or other for-profit; Farms; Federal Government.

Form	Respondents	Average time per response
ETA 232	6	11 hours.
ETA 232A	38,775	15 minutes.

Total Burden Hours: 8,528.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Customer Satisfaction Survey.

OMB Number: 1205–0000 (new).

Frequency: One-time.

Affected Public: Individuals or households; State, Local or Tribal Government.

Activity	Respondents	Average time per response
Data Collection	16	80 hours.
Interview	3,000	15 minutes.

Total Burden Hours: 2,030.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The survey will attempt to gauge the level of satisfaction by claimants with the Unemployment Insurance Service. Through a telephone survey of a nationally representative sample of claimants, satisfaction will be measured in such areas as: initial claims processing, weeks claimed, processing, appeals, and referrals.

Agency: Employment and Training Administration.

Title: State Job Training Plans Under Title II and Title II of the Job Training Partnership Act (JTPA) and Wagner Peyser "Governor's Coordination and Special Services Plan" (GCSSP).

OMB Number: 1205–0336 (reinstatement).

Frequency: Biennially.

Affected Public: State, Local and Tribal governments.

Number of Respondents: 59.

Estimated Time Per Respondent: 50.

Total Burden Hours: 2,950.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The GCSSP, as required by section 121(a) of JTPA, will provide the Department a general description of each State's plans for the operation of the JTPA program and its utilization of its JTPA resources. The Title III Biennial Plan is required by section 311.

Agency: Employment and Training Administration.

Title: State Job Training.

OMB Number: 1205–0329 (reinstatement).

Frequency: Biennially.

Affected Public: State, Local and Tribal Government.

Number of Respondents: 15.

Estimated Time Per Respondent: 10 hours.

Total Burden Hours: 150.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The State Job Training Plan, required by JTPA for those States with one statewide JTPA program, will provide information on the activities to be conducted and participants to be served by the State under JTPA.

Agency: Bureau of Labor Statistics.

Title: February 1998 CPS Displaced Worker and Job Tenure Supplement.

OMB Number: 1220–0104 (reinstatement).

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 48,000.

Estimated Time per Respondent: 8 minutes.

Total Burden Hours: 6,400.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information collected will evaluate the size and characteristics of the population affected by job displacement and hence, the needs and scope of job training programs serving adult displaced workers. These data also will measure the severity of the displacement problem, and assess employment stability.

Agency: Bureau of Labor Statistics.

Title: Research on the Feasibility of Collecting Occupational Wage Data by Union Status.

OMB Number: 1220–0000 (new).

Activity	Total number of respondents	Affected public	Frequency	Annual respondents	Average time per response	Total burden hours
Case Study	2,500	Business and other for profit.	Once FY98	1,725	10 minutes	288
Survey Form Test BLS–2877 000–US; BLS–2877 715 Test1 BLS–2877 715 Test 2.	9,000	Business and other for profit; Not-for profit institution.	Once FY98/FY99	7,000	1 hour	7,000
RAS BLS–2877 715–RAS	2,500	do	Once FY98/FY99	2,250	30 minutes	1,125
Totals	14,000			10,975		8,413
Two Year Average	7,000			5,488		4,207

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: BLS intends to conduct research into the availability and collect ability of information on union/nonunion status of employees of establishments in the construction industries. BLS also plans to conduct a Response Analysis Survey to determine the impact of collecting this information on the OES survey.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–28255 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Officer of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions Instituted on 10/06/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,863	Batesville Casket (Wrks)	Campbellsville, KY	09/22/97	Caskets.
33,864	Sweetheart Cup (IBEW)	Springfield, MO	09/22/97	Paper Cups.
33,865	Dlubak Corp (Wrks)	Freeport, PA	09/21/97	Aluminum Frames & Window Glass.
33,866	Faribault Woolen Mill Co (Wrks)	Faribault, MN	09/16/97	Wool & Acrylic Blankets, Throws, Scarfs.
33,867	Reliable Battery, LLC (Wrks)	San Antonio, TX	09/19/97	Automobile Batteries.
33,868	About Sportswear (Wrks)	New York, NY	09/18/97	Ladies' Pants, Jackets, Shirts, Blouses.
33,869	Ace Metal Fabricators (IBT)	Bronx, NY	09/22/97	Alarm Boxes, Door Covers, Brackets.
33,870	Solvay Animal Health, Inc (Wrks)	Mendota Heights, MN	08/28/97	Research for Animal Health Products.
33,871	Philips Lighting (IBEW)	Little Rock, AR	09/22/97	Incandescent Lighting.
33,872	Franklin Furniture Corp (Wrks)	Greeneville, TN	09/22/97	Wooden Chairs, Tables, Buffet & Hutches.
33,873	F.W. Woolworth (Wrks)	Berwyn, IL	09/23/97	Retail Store.
33,874	Altec Lansing Technologie (Wrks)	Milford, PA	09/22/97	CD-Rom, Assembling operations.
33,875	Visy Paper Co (Wrks)	Menominee, MI	09/21/97	Recycled Brown Paper.
33,876	JanSport (Wrks)	Burlington, WA	09/22/97	Daypacks/Backpacks, Duffle Bags.
33,877	Electrohome, Inc (Comp)	Carthage, MO	09/30/97	Monitors & PC Boards.
33,878	Cabot Oil and Gas Corp (Comp)	Carlton, PA	09/23/97	Gas.
33,879	Cygne Design (Comp)	New York, NY	09/23/97	Ladies' & Men's Apparel—Design, Samples.

[FR Doc. 97–28253 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,742]

Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 7, 1997, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,742. The denial notice was signed on September 4, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51151).

The petitioner presents new evidence regarding customer imports of leaf springs.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28248 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,670]

Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine; Including Leased Workers of Northeast Laboratories, Winslow, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1997, applicable to all workers of Kimberly-Clark Corporation, Winslow Plant located in Winslow, Maine. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Northeast Laboratories, Winslow, Maine were engaged in employment related to performing environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine. Worker separations occurred at Northeast Laboratories as a result of worker separations at Kimberly-Clark Corporation.

Based on these findings, the Department is amending the certification to include workers of Northeast Laboratories, Winslow, Maine leased to Kimberly-Clark Corporation, Winslow, Maine.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports.

The amended notice applicable to TA–W–33,670 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced at the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine who became totally or partially separated from employment on or after June 23, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28244 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,732]

Paragon Electric Company, Two Rivers, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1997 in response to a worker petition which was filed on July 30, 1997 on behalf of workers at Paragon Electric Company of Two Rivers, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 7th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28249 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,867]

Reliable Battery, LLC, San Antonio, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1997, in response to be worker petition which was filed on October 6, 1997, on behalf of workers at Reliable Battery, LLC, San Antonio, Texas.

A certification applicable to the petitioning group of workers, employed at Standard Industries, Inc., San Antonio, Texas, was issued on June 26, 1997, and is currently in effect (TA–W–33,524). That certification is being amended to take account of a change in the name of the firm to Reliable Battery, LLC, and to include workers employed in the Distribution Center/Warehouse. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 8th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28247 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 3, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions Instituted on 09/29/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,847	Simpson Industries (Co.)	Gladwin, MI	09/16/97	Isolators & Dampers for Chrysler.
33,848	CPC International, Inc (Co.)	Jersey City, NJ	07/29/97	Dried Pasta.
33,849	California Curves, Inc (Wkrs)	Temecula, CA	09/11/97	Wooden Projection Screen TV Cabinets.
33,850	Todd Uniform, Inc (Wkrs)	Bernice, LA	09/19/97	Knit Shirts, T–Shirts.
33,851	Fidelity Tire Mfg Co (USWA)	Natchez, MS	09/17/97	Tires—Passenger & Truck.
33,852	Kirsch, Inc. (Wkrs)	Sturgis, MI	09/08/97	Drapery Hardware.
33,853	Ponderosa Manufacturing (Co.)	Chattanooga, TN	09/04/97	Men's & Boys' Boxer Shorts.
33,854	CAE ScreenPlates (Co.)	Glens Falls, NY	09/16/97	Stainless Steel Plate, Cylinders, Basket.
33,855	Nukote International (Wkrs)	Franklin, TN	09/15/97	Printing & Film Cartridges.
33,856	Echo Bay Mines (Wkrs)	Englewood, CO	09/16/97	Gold Ore Mining.
33,857	Hopeland Mfg Co., Inc (Co.)	Hopeland, PA	09/12/97	Ladies' & Girls' Sportswear.
33,858	Reed Manufacturing Co (Wkrs)	Walnut, MS	09/11/97	Denim Jeans Shorts and Casual Pants.
33,859	This and That, Inc (Wkrs)	Elizabethville, PA	09/08/97	Children's Sportswear.
33,860	Pride Manufacturing (Wkrs)	Guilford, ME	09/15/97	Wood Products: Dowels, Cigar Tips.
33,861	Posey Manufacturing (Wkrs)	Hoquiam, WA	09/02/97	Piano Parts.
33,862	Great American Products (Wkrs)	Broadview, IL	09/11/97	Belt Buckles.

[FR Doc. 97–28252 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,722]

The Solid Surface Craftsman, Schenectady, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1997 in response to a worker petition which was filed on July 25, 1997 on behalf of workers at The Solid Surface Craftsman, Schenectady, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28243 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,524]

Standard Industries, Inc. (Currently Known as Reliable Battery, LLC), San Antonio, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on July 26, 1997, applicable to workers of Standaard Industries, Inc., San Antonio, Texas. Workers at this facility are engaged in employment related to the production of automotive batteries.

The certification notice was published in the **Federal Register** on July 18, 1997 (62 FR 38,584).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that the subject firm has changed its name to Reliable Battery, LLC. The Department is amending the certification to reflect this matter and is including workers of the Distribution Center and Warehouse at the same site.

The intent of the Department's certification is to include all workers of Standard Industries, Inc., San Antonio, Texas, who were adversely affected by imports.

The amended notice applicable to TA–W–33,524 is hereby issued as follows:

All workers of Standard Industries, Inc., currently known as Reliable Battery, LLC, San Antonio, Texas, and including the Distribution Center/Warehouse, who became totally or partially separated from employment on or after May 12, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. the 3rd day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28250 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement of the Job Training Partnership Act (JTPA) Title III Biennial State Plan. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 23, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Zenowia Choma, Office of Worker Retraining and Adjustment Programs, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue NW, Washington, DC 20210, 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of the information in the JTPA Title III Biennial State Plan is necessary in order to satisfy the requirements of the provisions of the Job Training Partnership Act (JTPA), as amended. The provisions require that States must submit a biennial plan in order to receive Title III funds.

II. Current Actions

This is a request for OMB approval of the reinstatement of a collection of information previously approved by OMB. The reinstatement will allow the Department to receive a general description of each State's plans for the operation of the Title III program and its utilization of JTPA funds for the next two years.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: JTPA Title III Biennial State Plan.

OMB Number: 1205–0273.

Affected Public: States, the District of Columbia and the Commonwealth of Puerto Rico.

Total Respondents: 52.

Frequency: Biennial.

Average Time per Response: 20 hours.

Estimated Total Burden Hours: 1040.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 20, 1997.

Peter E. Rell,

Acting Administrator, Office of Work-Based Learning, Employment and Training Administration.

[FR Doc. 97–28256 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01808]

Berg Electronics, Inc., Lee's Summit, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on July 9, 1997, in response to a petition filed on behalf of workers at Berg Electronics, Inc., Lee's Summit, Missouri.

The petitioning group of workers are covered under an existing NAFTA–TAA certification (NAFTA–01092). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28254 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01806]

Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 7, 1997, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance, applicable to petition number NAFTA–01866. The denial notice was signed on September 4, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51152).

The petitioner presents new evidence regarding customer imports of leaf springs.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28246 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01801]

Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine; Including Leased Workers of Northeast Laboratories, Winslow, Maine; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 27, 1997, applicable to all workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine.

The notice was published in the **Federal Register** on September 30, 1997 (62 FR 32376).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Northeast Laboratories, Winslow, Maine were engaged in employment related to performing environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine. Worker separations occurred at Northeast Laboratories as a result of worker separations at Kimberly-Clark Corporation.

Based on these findings, the Department is amending the certification to include workers of Northeast Laboratories, Winslow, Maine leased to Kimberly-Clark Corporation, Winslow, Maine.

The intent of the Department's certification is to include all workers of Kimberly-Clark adversely affected by imports.

The amended notice applicable to NAFTA–01801 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine who became totally or partially separated from employment on of after July 7, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28245 Filed 10–23–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01405]

McDonnell Douglas, Long Beach, California; Notice of Negative Determination on Reconsideration

On May 22, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner, United Automobile, Aerospace & Agricultural Implement Workers of America, Local 148, presented evidence that the Department's investigation was incomplete. The notice was published in the **Federal Register** on June 10, 1997 (62 FR 31629).

The petitioner asserts that McDonnell Douglas used contract workers from Mexico and Canada to produce certain components of both commercial and military aircraft, which adversely affected employment for at least two bargaining unit classifications.

The Department initially denied NAFTA–TAA to the McDonnell Douglas

worker group because criterion (1) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, was not met. The level of employment at the subject firm increased during the time period relevant to the investigation.

Findings on reconsideration show that since the NAFTA petition was filed on behalf of workers producing commercial aircraft, the Department's investigation was not limited to individual worker groups within the Long Beach production facility, but instead, covered all workers at McDonnell Douglas producing commercial aircraft.

Other findings on reconsideration reveal that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met for the McDonnell Douglas workers. There were no company or customer imports of commercial aircraft, nor was there a shift in the production of commercial aircraft from Long Beach to Mexico or Canada.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance and NAFTA–TAA for workers and former workers of McDonnell Douglas, Long Beach, California.

Signed at Washington, D.C., this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28242 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01849]

Paragon Electric Company, Two Rivers, Wisconsin; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 1, 1997 in response to a petition filed on behalf of workers at Paragon Electric Company in Two Rivers, Wisconsin.

The petitioning organization requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 7th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28251 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collections: (1) Application for a Farm Labor Contractor or a Farm Labor Contractor Employee Certificate of Registration, Form WH–530. Copies of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 23, 1997. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Margaret Sherrill at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 101(a) of the Migrant and Seasonal Agricultural Protection Act (MSPA) provides that no person shall engage in farm labor contracting activity unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities (i.e., recruiting, soliciting, hiring, employing, furnishing transportation, or transporting any migrant or seasonal agricultural worker, with respect to migrant agricultural workers, providing housing) such worker is authorized to perform. Sections 101(b) of the MSPA provides that a farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities (i.e., recruiting, soliciting, hiring, employing, furnishing transportation, or transporting any migrant or seasonal agricultural worker) unless such individual has a certificate of registration or a certificate of registration as an employee of a farm labor contractor employer, which authorizes the activity for which such individual is hired, employed, or used. Form WH–530 is used by the Farm Labor Contractor applicants to obtain authorization to engage in farm labor contracting activities under MSPA and by Farm Labor Contractor Employee applicants to be hired, employed, or used by a farm labor contractor to perform farm labor contracting activities under MSPA. The completed form must be subscribed and sworn to before a person authorized to administer oaths.

Current Actions: The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of MSPA to file a written application with the Secretary containing certain specified information concerning farm labor activities. This information is essential to enable the Administrator, Wage and Hour Division to carry out the statutory obligation under MSPA to determine that an applicant has met all requirements of the Act to be hired, employed, used by a specific farm labor contractor to recruit, solicit, hire, employ, furnish transportation or transport any migrant or seasonal agricultural worker.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

OMB Number: 15–0037 and 1215–0038.

Agency Numbers: WH–530.

Affected Public: Individuals of households; business or other for-profit; farms.

Total Respondents: 7,500.

Frequency: Biennially.

Total Responses: 7,500.

Average Time Per Response for Reporting: 30 minutes.

Estimated Total Burden Hours: 3,750.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $1,560.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request Seasonal; they will also become a matter of public record.

Dated: October 2, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–28258 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determinations Decisions

the number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
- PA970025 (Feb. 14, 1997)
- PA970030 (Feb. 14, 1997)
- PA970052 (Feb. 14, 1997)
- PA970060 (Feb. 14, 1997)
- PA970063 (Feb. 14, 1997)

Volume III

None

Volume IV

Illinois
- IL970001 (Feb. 14, 1997)
- IL970002 (Feb. 14, 1997)
- IL970007 (Feb. 14, 1997)
- IL970010 (Feb. 14, 1997)
- IL970011 (Feb. 14, 1997)
- IL970015 (Feb. 14, 1997)
- IL970016 (Feb. 14, 1997)
- IL970017 (Feb. 14, 1997)
- IL970038 (Feb. 14, 1997)
- IL970049 (Feb. 14, 1997)
- IL970053 (Feb. 14, 1997)
- IL970055 (Feb. 14, 1997)
- IL970065 (Feb. 14, 1997)
- IL970070 (Feb. 14, 1997)

Michigan
- MI970001 (Feb. 14, 1997)
- MI970002 (Feb. 14, 1997)
- MI970003 (Feb. 14, 1997)
- MI970005 (Feb. 14, 1997)
- MI970007 (Feb. 14, 1997)
- MI970012 (Feb. 14, 1997)
- MI970030 (Feb. 14, 1997)
- MI970031 (Feb. 14, 1997)
- MI970034 (Feb. 14, 1997)
- MI970046 (Feb. 14, 1997)
- MI970047 (Feb. 14, 1997)
- MI970049 (Feb. 14, 1997)
- MI970062 (Feb. 14, 1997)
- MI970066 (Feb. 14, 1997)
- MI970067 (Feb. 14, 1997)

MI970068 (Feb. 14, 1997)
MI970069 (Feb. 14, 1997)
MI970070 (Feb. 14, 1997)
MI970071 (Feb. 14, 1997)
MI970072 (Feb. 14, 1997)
MI970073 (Feb. 14, 1997)
MI970074 (Feb. 14, 1997)
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MI970079 (Feb. 14, 1997)
MI970080 (Feb. 14, 1997)
MI970082 (Feb. 14, 1997)
MI970083 (Feb. 14, 1997)
MI970084 (Feb. 14, 1997)
MI970085 (Feb. 14, 1997)
MI970086 (Feb. 14, 1997)

Volume V

Texas
TX970006 (Feb. 14, 1997)

Volume VI

None

Volume VII

California
CA970049 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
CA970054 (Feb. 14, 1997)
CA970061 (Feb. 14, 1997)
CA970064 (Feb. 14, 1997)
CA970065 (Feb. 14, 1997)
CA970066 (Feb. 14, 1997)
CA970067 (Feb. 14, 1997)
CA970069 (Feb. 14, 1997)
CA970070 (Feb. 14, 1997)
CA970075 (Feb. 14, 1997)
CA970076 (Feb. 14, 1997)
CA970077 (Feb. 14, 1997)
CA970078 (Feb. 14, 1997)
CA970079 (Feb. 14, 1997)
CA970080 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 17th day of October 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–27952 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of availability.

SUMMARY: The Federal Mine Safety and Health Review Commission is notifying interested parties that its strategic plan for the fiscal years 1997–2002 is available to the public. The plan, prepared in accordance with the Government Performance and Results Act of 1993, defines the Commission's goals, specific objectives, time frames and methods for achieving goals at both the trial and appellate level.

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency concerned solely with the adjudication of disputes and the determination of appropriate penalty amounts under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 *et seq.*

ADDRESSES: Copies of the plan may be obtained upon request to the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Suite 6000, Washington, D.C. 20006, fax: (202) 653–5030, E-mail: Info@FMSHRC.gov., phone: (202) 653–5625, or (202) 708–9300 for TDD Relay.

Dated: October 15, 1997.

Mary Lu Jordan,

Chairman.

[FR Doc. 97–28205 Filed 10–23–97; 8:45 am]

BILLING CODE 6735–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 8, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301)713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–97–1). Blueprints and other records relating to meat and poultry facilities.
2. Department of Labor, Employee Standards Administration (N1–448–97–1). Complaint review files relating to agency operations and practices.
3. Department of Transportation, Federal Railroad Administration (N1–399–97–1). National Freight Assistance grant and loan case files.
4. Board of Governors of the Federal Reserve System (N1–82–97–1). Records recording employee leave information.
5. Central Intelligence Agency (N1–263–97–3). Cover files.

Dated: October 15, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–28272 Filed 10–23–97; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the addition of one item to the previously announced closed meeting (**Federal Register**, 62 FR 54481, October 20, 1997) scheduled for Wednesday, October 22, 1997.

3. Two (2) Personnel Actions. Closed pursuant to exemptions (6) and (9)(B).

The Board voted unanimously that agency business requires that this item be added to the closed agenda and that no earlier announcement of this change was possible.

The previously announced items were:

1. Two (2) Administrative Actions under Sections 125, 205, and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
3. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–28322 Filed 10–21–97; 4:40 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: November 12–14, 1997, 8:00 am–5:00 pm.

Place: National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Ms. Lynn Preston, Deputy Division Director Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (4) and (6) of the Government in the Sunshine Act.

Dated: October 21, 1997

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28292 Filed 10–23–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27–member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to approximately 3:30 p.m. on Friday, November 14, 1997 in Hall B (first floor) at the INFOMART located at 1950 Stemmons Freeway, Dallas, Texas 75207.

AGENDA: The agenda for the Board Meeting will include: an update from the Board's committees; reports from national and state representatives from industry, government, and the education community; and a progress report from the Convening Body Representatives.

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 3:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Manager of Program Operations at (202) 254–8628.

Signed at Washington, D.C., this 17th day of October, 1997.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–28241 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Gulf States and Cajun Electric Power Cooperative; Notice of Consideration of Approval of Transfer of License and Issuance of Conforming License Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–47 to the extent now held by Cajun Electric Power Cooperative, Inc. (Cajun) to Entergy Gulf States, Inc. (EGSI, the licensee) with respect to River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana, and issuance of conforming amendments under 10 CFR 50.90.

RBS presently is jointly owned by EGSI (70%) and Cajun (30%) with EGSI authorized to act as agent for Cajun. Entergy Operations, Inc. (EOI), a non-owner of the facility, is licensed to have exclusive responsibility and control over the operation and maintenance of the facility. Cajun is proposing to transfer its 30% minority ownership interest to EGSI, resulting in EGSI becoming the sole owner of RBS. The license would be amended to reflect the transfer of ownership.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission. If the Commission determines that approval should be given, it will issue an order setting forth its consent to the transfer.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), Cajun, with the consent and endorsement of EGSI, has provided their analysis of the issue of no significant hazards consideration, which is presented below:

Applying the three standards set forth in 10 CFR [Section] 50.92, the proposed change to the Operating License involves no significant hazards consideration:

1. The proposed change will not involve an increase in the probability or consequences of any accident previously evaluated. As a result of the proposed license amendment, there will be no physical change to the River Bend facility, and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the River Bend Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. The employees of EOI presently engaged in operation of River Bend and organization structure of EOI and EGSI will be unaffected by the proposed amendment. Therefore, personnel qualifications will remain unchanged.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment will have no effect on the physical configuration of River Bend or the manner in which it will operate. The plant design and design basis will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operations, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for River Bend are not affected by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the foregoing analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 24, 1997, Cajun may file a request for a hearing with respect to issuance of an order regarding the proposed transfer of the license to the extent now held by Cajun to EGSI and issuance of the conforming amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mary A. Murphy, LeBoeuf, Lamb, Green, & MacRae, L.L.P., 1875 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20009, attorney for Cajun.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 15, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 21st, day of October 1997.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28264 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–20, issued to Consumers Energy Company, (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Consumers Energy from the requirements of 10 CFR 70.24(a), which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate

responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated July 2, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24(a) is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Palisades Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at Palisades, as identified in the TS and the Final Safety Analysis Report (FSAR). Palisades TS section 5.4.1, "New Fuel Storage," states that the center-to-center spacing in the new fuel storage array is sufficient so that K_{eff} will not exceed 0.95 where fuel rods of the maximum allowable enrichment are in place and optimum moderation is assumed.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TS, design controls (including geometric spacing of fuel assembly storage spaces), and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Palisades Nuclear Generating Plant" dated June 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on September 18, 1997, the staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 2, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this day of October 1997.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28263 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Integrated Review of the NRC Assessment Processes for Operating Commercial Nuclear Reactors; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff is holding a meeting to provide brief overviews of their planned Integrated Review of the NRC Assessment Process for Operating Commercial Nuclear Reactors, planned improvements to the current Senior Management Meeting (SMM) process, and to provide members of the public, including Nuclear Energy Institute (NEI) and Union of Concerned Scientists (UCS) representatives, an opportunity to provide early input and comments on these efforts. The meeting is open to the public and all interested parties may attend and provide comments.

DATES: November 6, 1997, from 9:30 a.m. to 12:00 p.m.

ADDRESSES: Nuclear Regulatory Commission, One White Flint North, Room 6–B11, 11555 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: David Louis Gamberoni, Mail Stop O–12–E4, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–1144; Internet: DLG2@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC has initiated a comprehensive review of its processes for assessing the safety performance of operating commercial nuclear power plants. These processes include plant performance reviews, Systematic Assessments of Licensee Performance (SALP), and Senior Management Meetings. The review is described in SECY–97–122, "Integrated Review of the NRC Assessment Process for Operating Commercial Nuclear Reactors." In addition, the NRC has initiated improvement actions for the current Senior Management Meeting process. A meeting is being held with members of the public (including NEI and UCS) to seek comments on these efforts. A preliminary agenda for the meeting is as follows:

1. Integrated Review of Assessment Process, presented by NRC
2. SMM Improvements Actions, presented by NRC
3. Comment period

Attendees are requested to notify David Louis Gamberoni at (301) 415–1144 of their planned attendance if special services are necessary.

The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 20th day of October, 1997.

For the Nuclear Regulatory Commission.

Richard W. Borchardt,

Chief, Inspection Program Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28261 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on November 13–14, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 13, 1997—8:30 a.m. until the conclusion of business
Friday, November 14, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the proposed final Standard Review Plan (SRP) sections and associated Regulatory Guides for risk-informed, performance-based regulation. If needed, the Subcommittee may also continue its review of the matter included in the Staff Requirements Memorandum dated May 27, 1997, regarding the use of uncertainty versus point values in the PRA-related regulatory decisionmaking process. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 20, 1997.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 97–28265 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company, Big Rock Point Nuclear Plant; Notice of Public Meeting

The NRC will conduct a public meeting in the Charlevoix Township Hall (Stroud Hall), 12491 Waller Road, Charlevoix, Michigan, on November 13, 1997, to discuss Consumers Energy plans to immediately dismantle and decontaminate the Big Rock Point (BRP) nuclear plant, Charlevoix, Michigan. The meeting will begin at 6:30 p.m and be chaired by Mr. Philip Johnson, Chairman, Charlevoix County Board of Commissioners. This meeting will include a short presentation by the NRC staff on the decommissioning process, and a presentation by Consumers Energy on changes to their planned decommissioning activities. There will be an opportunity for members of the public to make comments and question the NRC staff and/or Consumers Energy representatives. This public meeting will be transcribed.

On September 19, 1997, Consumers Energy provided revision 1 to their Post-Shutdown Decommissioning Activities Report (PSDAR) to the NRC staff. This revision (NUDOCS microfiche accession number 9709240373) describes the licensee's plans to forego the 27-year long-term storage (SAFSTOR) decommissioning option (as described in BRP decommissioning Plan/PSDAR, NUDOCS microfiche accession number 9506210181) in lieu of plans to immediately dismantle and decontaminate (DECON) BRP. The previous public meetings, held on May 11, 1995, and March 4, 1997, discussed Consumer Energy plans to place the power plant in SAFSTOR following permanent plant shutdown and described, in brief, the possibility that they may elect DECON, if a low-level radioactive waste depository were available. However, the NRC staff believes that neither meeting provided specific information or opportunity for the public to ask questions or make comments on the Consumers Energy decision to immediately dismantle and decontaminate the BRP plant.

The BRP PSDAR is available for public inspection at the BRP local public document room (LPDR), located at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770, and at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, 20037.

For more information, contact Mr. Paul W. Harris, Project Manger, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001, telephone number at (301) 415–1169.

Dated at Rockville, Maryland, this 17th day of October 1997.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 97–28262 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, November 3, 1997; 8:30 a.m., Tuesday, November 4, 1997.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: November 3 (Closed); November 4 (Open).

MATTERS TO BE CONSIDERED:

Monday, November 3–1:00 p.m. (Closed)

1. FY 1997 EVA Performance Awards.
2. Compensation issues.

Tuesday, November 4–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 6–7, 1997.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Fiscal Year 1998 Financing Plan.
5. Capital Investments.
   a. Associate Office Infrastructure, Phase 2.
   b. Church Street Station, New York, Renovation Project, Phase 2.
6. Tentative Agenda for the December 8–9, 1997, meeting in Costa Mesa, California.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–28433 Filed 10–22–97; 3:29 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22861; 812–10656]

Emerald Funds; Notice of Application

October 20, 1997.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant Emerald Funds (the "Trust") seeks an order to permit an in-kind redemption of Trust shares held by an affiliated person of the Trust.

FILING DATES: The application was filed on May 12, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 14, 1997 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 3435 Stelzer Road, Columbus, Ohio 43219–3035.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust, an open-end management investment company organized as a Massachusetts business trust, currently offers fourteen portfolios, including the Equity Fund and the Small Capitalization Fund (collectively, the "Funds"). The board of trustees of the Trust (the "Board") is comprised of six trustees, three of whom are not "interested persons" (as defined in section 2(a)(19) of the Act) (the "Independent Trustees") of the Trust. Barnett Capital Advisors, Inc. ("Barnett") is the Trust's investment adviser. Each of the Funds seeks long-term capital appreciation by investing primarily in common stocks.

2. The Retirement Plan and Trust of Barnett Banks, Inc., and its Affiliates (the "Affiliated Shareholder") is a qualified retirement plan and trust maintained by Barnett Banks, Inc. and its affiliates. Barnett Bank N.A., a wholly-owned subsidiary of Barnett Banks, Inc., serves as trustee of the Affiliated Shareholder. Assets of the Affiliated Shareholder are held in several investment accounts, each with a separate investment objective. As of April 1, 1997, two of the accounts of the Affiliated Shareholder (the "Accounts") owned beneficially 12.9% of the outstanding shares of the Equity Fund and 32.4% of the outstanding shares of the Small Capitalization Fund.

3. Barnett Bank N.A., acting pursuant to its fiduciary obligations under the Employee Retirement Income Security Act of 1974, as amended, has concluded that the shares of the Funds owned by the Affiliated Shareholder should be redeemed and the proceeds placed in the Accounts, which thereafter will be separately managed by Barnett. Consequently, the Affiliated Shareholder, on behalf of the Accounts, has advised the Trust that it expects to redeem all of its shares of the Funds and reinvest the proceeds in the Accounts.

4. The Funds' prospectus and statement of additional information provide that shares may be redeemed at the net asset value per share next determined after receipt of a proper redemption request. If, however, the Board determines that conditions exist which make payment of redemption proceeds wholly in cash unwise or undesirable, the Funds may satisfy all or part of a redemption request by delivering readily marketable portfolio securities to a redeeming shareholder. The Board, including all of the Independent Trustees, has determined that it would be in the best interests of the Funds and their shareholders to redeem the shares of the Affiliated Shareholder in-kind as described below.

5. Applicant proposes to redeem the shares of the Affiliated Shareholder in the form of a *pro rata* distribution of each portfolio security held by the Funds after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership.

6. Securities to be distributed to the Affiliated Shareholder through the in-kind redemption will be further limited to securities which are traded on a public securities market or for which quoted bid prices are available. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Funds will distribute cash in lieu of securities held in their portfolios not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits affiliated persons of a registered investment company from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning 5% or more of the outstanding voting securities of the other person. The Affiliated Shareholder is an affiliated person of each Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of each Fund's shares. In addition, the Affiliated Shareholder may be deemed to be an affiliated person of each Fund under section 2(a)(3)(C) of the Act because the Affiliated Shareholder and the Funds may be deemed to be under the common control of Barnett Bank, N.A., which serves as trustee of the Affiliated Shareholder and whose wholly-owned subsidiary serves as investment adviser of the Funds. Finally, the Affiliated Shareholder may be deemed to be an affiliated person of the Small Capitalization Fund under section 2(a)(3)(C) of the Act because it owns beneficially in excess of 25% of the outstanding shares of that Fund. To the extent that the proposed in-kind redemptions would be considered to involve the "purchase" of portfolio securities (of which the Funds are not the issuer) by the Affiliated Shareholder, the proposed in-kind redemptions would be prohibited by section 17(a)(2) of the Act.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant submits that the terms of the proposed in-kind redemption by the Affiliated Shareholder meet the standards set forth in section 17(b). Applicant believes that the terms of the proposed in-kind redemption do not involve overreaching on the part of any person and are reasonable and fair to the Funds, their shareholders and the Affiliated Shareholder. The Affiliated Shareholder will have no choice as to the type of consideration to be received in connection with its redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. In addition, the Funds will use an objective, verifiable standard to value any security to be distributed pursuant to the proposed in-kind redemption. In addition, the proposed in-kind redemption is consistent with the investment policies of the Funds, as set forth in their prospectus, which expressly discloses the Funds' ability to redeem shares in-kind. Finally, applicant believes that the proposed in-kind redemption is consistent with the general purposes of the Act to protect shareholders of the investment companies from self-dealing on the part of investment company affiliates to the detriment of other shareholders because the Affiliated Shareholder would not receive any advantage not available to other shareholders if the proposed in-kind redemption is permitted.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Funds distributed to the Affiliated Shareholder pursuant to the redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Funds on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Funds' assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Funds will distribute cash in lieu of securities held in their portfolios not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to an Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Funds' net asset values, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked prices (or, if no asked price is available, the last quoted bid price).

4. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28237 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22859; File No. 812–10736]

Integrity Life Insurance Company, et al.; Notice of Application

October 17, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of shares of certain registered management investment companies ("Current Portfolios") with shares of other registered management investment companies ("Substitute Portfolios"). Applicants also seek an order pursuant to Section 17(b) of the 1940 Act to permit Applicants to carry out the above-referenced substitution (the "Substitution") by redeeming shares of the Current Portfolios in-kind, and using the redemption proceeds to purchase shares of the Substitute Portfolios, and to permit Applicants to combine certain subaccounts holding shares of the same Substitute Portfolio after the Substitution.

APPLICANTS: Integrity Life Insurance Company ("Integrity"), Integrity Life Insurance Company Separate Account II ("Integrity Separate Account"), National Integrity Life Insurance Company ("National Integrity," together with Integrity, the "Companies") and National Integrity Life Insurance Company Separate Account II ("National Integrity Separate Account," together with Integrity Separate Account, the "Separate Accounts").

FILING DATE: The application was filed on July 23, 1997, and amended and restated on October 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 515 West Market Street, Louisville, Kentucky 40202–3319.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Integrity, a stock life insurance company, is authorized to sell life insurance and annuities in 45 states and the District of Columbia. Integrity is the sponsor and depositor of the Integrity Separate Account.

2. National Integrity, a stock life insurance company, is authorized to sell life insurance and annuities in 8 states and the District of Columbia. National Integrity is the sponsor and depositor of the National Integrity Separate Account.

3. Both Integrity and National Integrity are wholly owned subsidiaries of ARM Financial Group, Inc. ("ARM"). Approximately 53% of the outstanding shares of ARM's common stock is owned by private equity funds sponsored by Morgan Stanley, Dean Witter, Discover & Co.

4. The Integrity Separate Account was established by Integrity Life Insurance Company pursuant to the insurance laws of Arizona, and was redomesticated under the insurance laws of Ohio, to fund variable unity contracts. Integrity Separate Account is registered under the 1940 Act as a unit investment trust.

5. The National Integrity Separate Account was established by National Integrity Life Insurance Company pursuant to the insurance laws of New York, to fund variable annuity contracts (collectively with the variable annuity contracts referred to above, the "Contracts"). National Integrity Separate Account is registered under the 1940 Act as a unit investment trust.

6. Each Separate Account consists of ten investment divisions, each of which invests its assets in the shares of one of ten designated investment portfolios (each a "Portfolio" and collectively, the "Portfolios") of The Legends Fund, Inc. ("Legends Fund"), a registered open-end management investment company. There are currently ten different Portfolios offered as investment options under the Contracts. The investment adviser for each Portfolios is ARM Capital Advisors, Inc.

7. Due to higher relative expenses and/or the poor performance of the Current Portfolios, Applicants are proposing the following substitutions:

Current portfolio	Substitute portfolio
1. Morgan Stanley Asian Growth (Asian Growth")	Morgan Stanley Asian Equity ("Asian Equity").
2. Morgan Stanley Worldwide High Income ("Worldwide High Income")	Morgan Stanley Emerging Markets Debt ("Emerging Markets").
3. Renaissance Balanced	Janus Aspen Series Balanced ("Janus Balanced").
4. Nicholas-Applegate Balanced	Janus Aspen Series Balanced ("Janus Balanced").
5. Pinnacle Fixed Income ("Fixed Income")	JPM Bond.
6. ARM Capital Advisors Money Market ("ARM Money Market")	Janus Aspen Series Money Market ("Janus Money Market").

8. For each substitution, the Applicants have concluded that the investment objectives of the Substitute Portfolios are the same as or substantially similar to those of the Current Portfolios, and, therefore, sufficiently consistent so as to ensure that the investment objectives and expectations of the contractowners will be met.

9. Applicants state that the Contracts give the Companies the right to add to or remove investment divisions, combine two or more divisions, or substitute one or more underlying mutual funds or portfolios for others in which one or more investment divisions are invested. These contractual provisions have also been disclosed in the prospectuses or statement of additional information relating to the Contracts.

10. Applicants represent that the proposed Substitution will be effected by redeeming shares of the Current Portfolios on an in-kind basis at net asset value and using the proceeds to purchase shares of the Substitute Portfolios at net asset value on the same date. Net asset value will be calculated in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder. All contract values will remain unchanged and fully invested and the Substitution will not result in any change in the dollar value of any contractowner's investment in his or her contract.

11. Applicants represent that each Substitute Portfolio's investment adviser will review the in-kind redemption to assure that the assets are suitable for the Substitute Portfolio. The assets will be valued based on the normal valuation procedures of the redeeming and purchasing Portfolios.

12. Applicants state that after the Substitution is completed, there will be two investment divisions holding shares of the same Substitute Portfolio. Applicants intend to combine those two investment divisions into a single investment division by transferring shares from one investment division to the other. The transfer will be done at net asset value on the same date as the Substitution so that there is no financial impact to any contractowner.

13. Applicants represent that a preliminary notice advising affected contractowners of the proposed Substitution was mailed on September 19, 1997. The notice described the reasons for engaging in the Substitution and referred contractowners to the prospectus supplement adding the Substitute Portfolios to the investment options underlying the Separate Accounts.

14. Prospectus supplements for each of the Companies were filed with the Commission on September 12, 1997 and amended on September 22 and 26, 1997. The prospectus supplements provide complete information on each new Portfolio including its investment objectives and policies, its investment adviser and applicable fees and expenses. The supplement states that contractowners can reallocate contract values from the Portfolios to be replaced and the proposed Substitute Portfolios to other Portfolios available under the Contract, without imposition of any transfer charge or limitation. No. such transfers from the date of initial notice, through a date thirty days following the Substitution will count against the number of free transfers permitted in a year. The supplement was mailed to contractowners of Integrity on October 1–2, 1997, and is expected to be mailed to contractowners of National Integrity on October 31, 1997.

15. Amendments to the prospectuses for the Contracts reflecting the proposed Substitution were filed with the Commission on September 5, 1997. The Applicants represent that within five days after the Substitution, the companies will send to affected contractowners written confirmation that the Substitution has occurred, identifying the Portfolios that were substituted and disclosing the Substitute Portfolios.

16. Applicants represent that the Companies will pay all expenses and transaction costs of the Substitution. Affected contractowners will not incur any fees or charges as a result of the Substitution, nor will the rights or obligations of the Companies under the Contracts be altered in any way. The proposed Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the proposed Substitution than before the proposed Substitution.

17. Applicants state that their request satisfies the requirements of Section 26(b) of the 1940 Act because: (i) The proposed Substitutions involve Portfolios with the same or substantially similar investment objectives; and (ii) after the Substitution, contractowners will be invested in Portfolios whose performance has been better on an historical basis or whose performance should be identical because the new Portfolios will have the same investment adviser and investment objectives, but whose net performance should be better as a result of lower Portfolio expenses due to lower management fees, lower total expenses, greater combined assets, and, therefore, greater economies of scale.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the Substitution. Section 26(b) of the 1940 Act also provides that the Commission will approve such Substitution if the evidence establishes that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms, and conditions of the proposed Substitutions are consistent with the protection of investors and the purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent Applicants represent that a substitution is an appropriate solution to the unfavorable performance, on a relative basis, and/or higher relative expenses of the Portfolios to be eliminated. Applicants anticipate that the Substitute Portfolios will better serve contractowners interests because their performance has been significantly better than the performance of the Portfolios to be eliminated and/or their expenses have been or can be expected to be significantly lower, as applicable.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

1. The Substitute Portfolios have objectives, policies and restrictions the same as or substantially similar to the objectives, policies and restrictions the Portfolios being replaced so as to continue fulfilling contractowners' objectives and expectations.

2. The costs of the Substitution will be borne by Integrity and National Integrity and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

3. The Substitution will, in all cases, be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's account value.

4. The proposed Substitution will not cause the contract fees and charges currently being paid by existing contractowners to be greater after the proposed Substitution than before the proposed Substitution.

5. The contractowners have been given notice of the Substitution and will have the opportunity to reallocate contract values among the available Portfolios without the imposition of any transfer charge or limitation, nor will any such transfers from the date of the initial notice, through a date 30 days following the Substitution count against the number of free transfers permitted in a year.

6. Within five days after the Substitution, the Companies will send to contractowners written notice that the Substitution has occurred, identifying the Portfolios that were substituted and disclosing the Substitute Portfolios.

7. The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of the Companies.

8. The Substitution will in no way alter the tax benefits to contractowners. Counsel for the Companies has advised that the Substitution will not give rise to any tax consequences to the contractowners.

4. Section 17(a) (1) and (2) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to or purchasing any security

or other property from such registered investment company.

5. Applicants state that the redemptions and purchases in-kin involve the purchase of property from the Current Portfolios by the Separate Accounts, affiliated persons of those Portfolios, and the sale of property to the Substitute Portfolios by the Separate Accounts, which may be considered affiliates of the Substitute Portfolios. Similarly, by combining two investment divisions holding shares of the same Substitute Portfolios into a single investment division, the Companies, each being the depositor for and therefore each an affiliated person of the respective Separate Account, could be said to be transferring property of one investment division to another investment division. This transfer of property could be said to involve purchase and sale transactions between the investment divisions such that an affiliated person (the "first investment division") of an investment division (the "second investment division") could be said to be selling its shares of a Portfolio to the second investment division in return for units of the second investment division, which are immediately credited to the accounts of the contractowners participating in the first investment division. Conversely, the second investment division could be said to be purchasing from the first investment division shares of a Portfolio owned by the first investment division.

6. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases and the merger of investment divisions from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants assert that the terms of the in-kind redemptions and purchases are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interests of contractowners will not be diluted. The in-kind redemptions and purchases will be done at values consistent with the policies of both the Current Portfolios and Substitute Portfolios. The investment advisers will review the asset transfers to assure that the assets meet the objectives and policies of the Substitute Portfolios and that they are valued under the appropriate valuation procedures of the Current and Substitute Portfolios.

8. Applicants represent that the merger of investment divisions is intended to reduce administrative costs and thereby benefit contractowners with assets in those investment divisions. The purchase and sale transactions described in the application will be effected based on the net asset value of the shares held in the investment divisions and the value of the units of the investment division involved. Therefore, there will be no change in the value to any contractowner.

Conclusion

Applicants assert that, for the reasons summarized above, the requested orders approving the Substitution and related transactions involving in-kind redemptions and the merger of certain investment divisions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28176 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22860; International Series Rel No. 1105; 812–10552]

Old Mutual South Africa Equity Trust, et al.; Notice of Application

October 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to permit a non-registered investment company to sell certain securities to a registered investment company.

APPLICANTS: Old Mutual South Africa Equity Trust (the "Trust") and Old Mutual Global Assets Fund Limited (the "Global Fund").

FILING DATES: The application was filed on March 7, 1997, and amended on August 28, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 61 Front Street, Hamilton, Bermuda, Attention: Melanie Saunders.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 fifth Street, NW., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a trust under Massachusetts law and registered under the Act. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the "JSE") Actuaries All Share Index through investment in equity securities of South African issuers that are listed on a securities exchange. Beneficial interests in the Trust are issued solely in a private placement transactions to investment companies, common or commingled trust funds, or similar entities that are "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, as well as to certain investment funds organized outside the United States. As of August 12, 1997, 91.96% of the voting securities of the Trust was owned by Old Mutual Fund Holdings (Bermuda) Limited ("Old Mutual Fund Holdings"), a wholly-owned subsidiary of the South African Mutual Life Assurance Society ("Old Mutual").

2. The Global Fund is a fund organized under the laws of Bermuda that invests in a portfolio of South African and international securities. Old Mutual Fund Holdings is the sole shareholder of the Global Fund. The Trust and the Global Fund are managed by Old Mutual Asset Managers (Bermuda) Limited, a wholly-owned subsidiary of Old Mutual.

3. Persetel Holdings Limited ("Persetel") is a South African corporation. Its ordinary shares are listed on the JSE. In December of 1996 Persetel conducted a private placement of 70.5 million of its ordinary shares for the purpose of financing an acquisition. On January 15, 1997 (the "Trade Date"), the Global Fund subscribed for a total of 2,000,000 ordinary shares of Persetel (the "Persetel Shares") at U.S. $6.23 per share, which represented a 10% discount from the Persetel Shares' market price on the Trade Date. On February 3, 1997 (the "Settlement Date"), the Global Fund purchased the Persetel Shares at U.S. $6.40, which represented a 14.67% discount from the market price (the "February Price"). Applicants have stated that it is common practice in the South African equity markets for shares to be offered to large institutional investors at a discount to the market price.

4. Applicants propose that the Global Fund sell the Persetel Shares to the Trust. The purchase price to be paid by the Trust will be the February Price plus carrying costs relating to the investment (the "Purchase Price"). These carrying costs will reimburse the Global Fund for its estimated cost of funds (the overnight LIBOR plus 0.5%) from the Settlement Date through the date on which the Trust purchases the Persetel Shares (the "Trust Purchase Date").

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, acting as principal, knowingly to sell or purchase securities to or from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. The Trust and the Global Fund are controlled by Old Mutual. The Trust and the Global Fund also share a common investment adviser. Thus, the Trust and the Global Fund are "affiliated persons" within the meaning of section 2(a)(3) of the Act. As a result, a sale of securities by the Global Fund to the Trust is prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that the trustees of the Trust and the Adviser have reviewed the proposed investment in detail, taking into consideration and nature of the investment, the fairness of the Purchase Price, and each of the factors set forth in Section 17(b) of the Act. On February 14, 1997, the board of trustees of the Trust, including a majority of the independent trustees of the Trust, including a majority of the independent trustees, approved the Trust's purchase of the Persetel Shares.

5. In evaluating the terms of the proposed transaction, the trustees of the Trust also considered the fact that the Purchase Price will include reimbursement of an affiliated person (*i.e.*, the Global Fund) for its carrying costs from the Settlement Date through the Trust Purchase Date. Applicants state that the trustees of the Trust believe that it is fair for the Trust to reimburse the Global Fund for these amounts if it proceeds with the proposed transaction because the Trust will receive the benefit of the discounted price paid by the Global Fund for the Persetel Shares and any appreciation in the value of the Persetel Shares from the Settlement Date through the Trust Purchase Date. Applicants represent that, if the Purchase Price exceeds the current market price of the Persetel Shares on the Trust Purchase Date, the Trust will cancel the proposed transaction and not purchase the Persetel Shares from the Global Fund.

6. Applicants state that the proposed transaction would comply with the requirements of rule 17a–7,[1] except that the Purchase Price will be below market price and the Trust and the Global Fund are not affiliated persons solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28177 Filed 11–23–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–7 permits certain purchase and sale transactions between an investment company and certain of its affiliated persons provided that certain conditions are met, including that the transaction be effected at the current market price of the security.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26765]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 17, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

West Texas Utilities Company

[70–8057]

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, a wholly owned electric public-utility subsidiary company of Central and South West

Corporation, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated October 7, 1992 (HCAR No. 25649) ("Order"), WTU was authorized, among other things, to issue and sell up to an aggregate principal amount of $150 million of First Mortgage Bonds ("Bonds"), in one or more series, from time to time through December 31, 1994. WTU was authorized to use the proceeds from the sale of Bonds (1) to redeem all or a portion of its then outstanding $75 million, 8⅞% First Mortgage Bonds, Series N, due May 1, 2016 ("Series N Bonds"), (2) to purchase, through a tender offer, all or a portion of its then outstanding $65 million, 9¼% first mortgage bonds, Series O, due December 1, 2019 ("Series O Bonds"), and (3) to repay outstanding short-term borrowings or for other general corporate purposes. In October 1992, WTU issued $75 million of Bonds pursuant to the Order. The net proceeds from the sale of the Bonds were used to redeem the Series N Bonds.

By order dated December 19, 1994 (HCAR No. 26194) ("First Supplemental Order"), the Commission extended from December 31, 1994 to December 31, 1996, the authorization to issue and sell the remaining $75 million of Bonds.

In March 1995, WTU issued $40 million of Bonds pursuant to the Order and the First Supplemental Order. The newt proceeds were used to repay a portion of WTU's short-term debt and to reimburse WTU's treasury for reacquiring approximately $10 million of its Series O Bonds.

By order dated July 26, 1995 (HCAR No. 26340) ("Second Supplemental Order"), the Commission granted WTU authority to issue and sell, through December 31, 1997, up to an additional $95 million of first mortgage bonds which, together with the remaining $35 million authorized to be issued and sold pursuant to the Order and the First Supplemental Order, would authorize WTU to issue and sell up to an additional aggregate principal amount of $130 million of first mortgage bonds (collectively, "New Bonds"), which may have maturities not less than two nor more than 40 years.

As stated in the Second Supplemental Order, the proceeds from the sale of the New Bonds will be used to (1) redeem all or a portion of WTU's outstanding $55.203 million, Series O Bonds and/or (2) to repay a portion of WTU's short-term debt, to provide working capital and for other general corporate purposes.

WTU now proposes that the Commission extend its authority to issue the New Bonds, pursuant to the terms and conditions set forth in the Order, the First Supplemental Order and the Second Supplemental Order, through December 31, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28175 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39253; File No. SR–Amex–97–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Rule 120 (Units of Trading)

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 1, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 120 to provide for a unit of trading in bonds other than $1,000 in par value. The text of the proposed rule change is available at the Office of the Secretary, the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Amex Rule 120 provides for a unit of trading in bonds of $1,000 in par value, except for U.S. Government issues, for which the unit of trading is the minimum denomination in which such securities are issued. Rule 120 also provides that a unit of trading in stocks is 100 shares, unless the Exchange fixes a lesser amount.

There are instances where bond issuers and broker-dealers underwriting bond issuances desire an exchange-listing of bonds with a unit of trading greater than $1,000 in par value. For example, an issuer or underwriter may prefer a unit of trading of $100,000 or $250,000 in par value per trading unit in specific cases. Such issuances, which currently trade on the New York Stock Exchange, can be expected to appeal primarily to institutional investors and to trade infrequently.

The Amex believes it is appropriate and competitively desirable to clarify its authority to allow listing and trading of such issues. Rule 120, therefore, is proposed to be amended in a manner similar to NYSE Rule 55 to specifically provide that a unit of trading of other than $1,000 in par value may be designated by the Exchange for specific issues of bonds denominated in U.S. dollars for foreign currencies.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[2] in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. For the foregoing reasons and because the Exchange provided at least five business days notice to the Commission of its intent to file this proposed rule change, the rule filing will become operative as a "non-controversial" rule change pursuant to Rule 19b–4(e)(6) under the Act.[3]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to the file number in the caption above and should be submitted by November 14, 1997.

[3] 17 CFR 240.19b–4(e)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28181 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39249; File No. SR–CHX–97–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Exchange's BEST Rule

October 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 37(a) of Article XX of the Exchange's Rules to clarify that the Exchange's BEST Rule guarantee is limited to both the size and price associated with the best bid and offer.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's BEST Rule (Article XX, Rule 37) to clarify an ambiguity concerning the application of the BEST Rule. Currently, the Exchange's BEST Rule states that, subject to certain exceptions, all agency market orders are guaranteed an execution on the basis of the ITS BBO[2] for Dual Trading System issues and the NBBO[3] for Nasdaq/NM issues.

Each best bid and offer, including the ITS BBO and NBBO, contains two components—price and size. Because the BEST Rule requires a specialist to guarantee an execution on the basis of the best bid or offer, the Exchange has consistently interpreted this guarantee as applying to both the size and price associated with that best bid or offer. In this rule change, the Exchange proposes to add the words "size and price associated with" to the beginning of the BEST Rule to clarify that the BEST Rule guarantee is limited to both the size and price associated with the best bid and offer.

This change is consistent with the Exchange's existing MAX Rule (Article XX, Rule 37(b)(11)) which states that "notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order."

2. Statutory Basis

The Exchange represents that proposed rule change is consistent with Section 6(b)(5)[4] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] The ITS BBO is the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia exchanges or the Intermarket Trading System/Computer Assisted Execution System, as appropriate.

[3] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[4] 15 U.S.C. § 78f(b)(5).

any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission an any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–20 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28178 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39252; File No. SR–CHX–97–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Adoption of Rules Governing Market-at-the-Close Orders

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article XX, Rule 44 to the Exchange's Rules relating to market-at-the-close orders.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange has no rules regarding market-at-the-close ("MOC") orders. The Exchange therefore wishes to add specific rules governing MOC orders to formalize the procedures for such orders and to delineate the rights and obligations of Exchange members and customers with regard to such orders.

The Exchange proposes to adopt procedures that are essentially identical to those used by the New York Stock Exchange ("NYSE"). The proposed r4ule is intended to ensure that orders sent to the Exchange will receive treatment similar to orders sent to the NYSE.

The proposed rule change provides definitions for all relevant terms. "Market-at-the-Close Order" or "MOC order" means a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as canceled. "Expiration Day" means the last trading day before the one day a month that standardized contracts in derivative products (such as stock index futures, stock index options, and options on stock index futures) expire. "Quarterly Index Expiration Day" means the last trading day of each calendar quarter when quarterly index expiration ("QIX") options expire. "Pilot Stocks" means those stocks contained on the list published from time to time by the primary market for such stocks.

Certain limitations will apply to MOC orders on Expiration Fridays and Quarterly Index Expiration Days. In general, no such MOC order may be entered after 2:40 p.m., Central Time, in any stock. Floor brokers representing such orders must indicate their MOC interest to the specialist by 2:40 p.m. After 2:40 p.m., MOC orders may generally be entered to offset published imbalances. However, the liquidation of positions relating to a strategy involving any stock index options, using MOC orders entered after 2:40 p.m., is not permitted, even if such orders might offset published imbalances. No MOC order in any stock may be canceled or reduced in size after 2:40 p.m. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:40 p.m.

For MOC orders on Expiration Fridays and Quarterly Index Expiration Days, as soon as practicable after 2:40 p.m., notice will be published by the Exchange of any MOC order imbalance of 50,000 shares or more in the Pilot Stocks,[2] stocks being added to or dropped from an index, and, upon the request of a specialist, any other stock with the approval of a floor official.

Other proposed rules apply to MOC orders on Non-Expiration Days. No such MOC order may be entered after 2:50 p.m., Central Time, in any stock, except to offset a published order imbalance. Floor brokers representing such orders must indicate their MOC interest to the specialist by 2:50 p.m. No MOC order in any stock may be canceled or reduced in size after 2:50 p.m. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:50 p.m.

For MOC orders on Non-Expiration Days, as soon as practicable after 2:50 p.m., notice will be published by the Exchange of any MOC order imbalance of 50,000 shares or more in the Pilot Stocks,[2] stocks being added to or dropped from an index, and, upon the request of a specialist, any other stock with the approval of a floor official.

A specialist will only be obligated to accept and guarantee execution of those MOC orders that are of a size and type that a specialist would otherwise be required to accept and guarantee execution of, if the orders did not have a market-at-the-close designation.

The proposed rule change provides that a specialist shall execute MOC orders in a stock in a specified manner. Where there is an imbalance between the buy and sell MOC orders, the specialist shall, at the close of the Primary Trading Session on that day, execute the imbalance for its own account at the closing price on the primary market of the stock. The specialist shall then stop the remaining buy and sell orders against each other and pair them off at the closing price on the primary market of the stock. The "pair off" transaction shall be reported to the consolidated last sale reporting system as "stopped stock." Where the aggregate size of the buy MOC orders equals the aggregate size of the sell MOC orders, the buy orders and sell orders shall be stopped against each other and paired off at the closing price on the primary market of the stock. The transaction shall be reported to the consolidated last sale reporting system as "stopped stock."

Proprietary orders represented pursuant to Section 11(a)(1)(G)[4] of the Act (i.e., "G" orders) must be announced as such and yield priority, parity and precedence to any order which is for the account of a person who is not a member, member organization or associated person thereof. Market orders to sell short at-the-close represented as "G" orders must yield priority, parity and precedence to limit orders not represented pursuant to Section 11(a)(1)(G) of the Act. For example, in executing paired-off MOC orders, a "G" order to sell short at-the-market would yield to sell orders limited at the closing price that are not represented as "G" orders. This will be the policy even if the "G" order to sell short at-the-market theoretically could have been executed at a better price (and still satisfy the "short sale" rule in terms of a "plus" or "zero plus" tick) had there not been a pair-off on the transaction. This would not be applicable if the order was a market order to sell "long" or a market order to buy.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)[5] of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–19 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28179 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39257; File No. SR–CHX–97–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Execution of Stopped Orders Under the Enhanced SuperMAX Program

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. § 78s(b)(1).

[2] The Exchange will publish notice only of those MOC order imbalances that occur on the facilities of the Exchange. Telephone conversation between David T. Rusoff, Attorney, Foley and Lardner, and Michael L. Loftus, Attorney, Division of Market Regulation, SEC (October 16, 1997).

[3] *Id.*

[4] 15 U.S.C. § 78k(a)(1)(G).

[5] 15 U.S.C. § 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 37(e) of Article XX relating to the execution of stopped orders under the CHX's Enhanced SuperMAX program. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under the rule.[4]

On September 16, 1997, the CHX proposed changes to the Enhanced SuperMAX program.[5] For technological reasons, the CHX has decided not to implement those changes at this time. Instead, the CHX will continue to operate the Enhanced SuperMAX program, as that program existed prior to the September 1997 proposed changes.

As a result, as is currently the case, under the Enhanced SuperMAX program, certain orders will be "stopped" at the ITS BBO (as that term is defined in Article XX, Rule 37 of the CHX rules) and will be executed with reference to the next primary market sale. The Enhanced SuperMAX program will continue to include a time-out feature whereby if there are no executions in the primary market after the order has been stopped for a designated time period, the order will be executed at the stopped price at the end of such period. Such period, known as a time-out period, will continue to: (1) Be pre-selected by a specialist on a stock-by-stock basis based on the size of the order; (2) be able to be changed by a specialist no more frequently than once a month; and (3) last no less than 30 seconds.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(e)(6)[8] thereunder because it: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) was provided by the Exchange to the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. A proposed rule change filed under Rule 19b–4(e) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds good cause to accelerate the thirty day period for the proposed rule change to become operative prior to the thirtieth day after the date of the filing, October 15, 1997. The Commission notes that due to technological obstacles, the Exchange currently is unable to implement the changes to its Enhanced SuperMAX program envisioned in its September filing, which became effective upon filing. The Commission further notes that acceleration will allow the Exchange to continue to enforce its rules relating to the treatment of stopped orders under the Enhanced SuperMAX program, as such rules existed prior to the September filing. For the foregoing reasons, the proposed rule change will become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–97–27 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

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[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (order approving File No. SR–CHX–95–08).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 39162 (September 30, 1997), 62 FR 52367 (October 7, 1997) (File No. SR–CHX–97–23).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(30)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–28180 Filed 10–23–97; 8:45 am]
BILLING CODE 8010–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39259; File No. SR–CHX–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Exchange's Automated Execution System

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to amend Rule 37(b)(6) of Article XX of the Exchange's Rules, relating to the Exchange's automated execution system, the "MAX System." The modification provides for a fifteen second delay before a MAX execution except where the spread between the ITS Best Bid and ITS Best Offer is equal to the minimum price variation in the relevant issue.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XX, Rule 37(b)(6) currently provides that, when using the Exchange's MAX System in the execution of Dual Trading System issues, there will generally be a fifteen second delay between the time a market order is entered into MAX and the time it is automatically executed. This delay allows opportunity for price improvement. However, Rule 37(b)(6) also currently provides that where the spread between the ITS Best Bid and ITS Best Offer is ⅛ point, on order will immediately be executed (because of the lack of opportunity for price improvement).

Certain Dual Trading System issues have recently begun trading in minimum variations less than ⅛ point (e.g., 1/16 point). In recognition of this change, the proposed rule change provides for a fifteen second delay before a MAX execution except where the spread between the ITS Best Bid and ITS Best Offer is equal to the minimum variation in the relevant issue. The Exchange believes this modification will allow customers the maximum opportunity for price improvement.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)[2] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–22 and should be submitted by November 21, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[3] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5)[4] of the Act because it will facilitate transactions in securities by providing investors with the opportunity for price improvement, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market.

The proposed rule change modifies the Exchange's rule relating to its MAX System so that automatic execution is delayed to provide the opportunity for price improvement in stocks trading in minimum increments of less than ⅛. This modification comports with the movement towards smaller trading and quotation increments for equity securities traded on securities exchanges.[5] Furthermore, it establishes

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[1] 15 U.S.C. § 78s(b)(1).

[2] 15 U.S.C. § 78f(b)(5).

[3] 15 U.S.C. § 78f.

[4] 15 U.S.C. § 78f(b)(5).

[5] Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an AMEX proposal to reduce the minimum trading variation from ⅛ to 1/16); 38744

Continued

equal price improvement opportunities for all investors and removes the mechanism that currently deprives those investors who trade securities priced in less than ⅛ increments from potentially obtaining a better price. In addition, the language of the modification obviates the need for similar technical rule adjustments in the future as the minimum trading and quoting increments are further reduced.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the AMEX and NYSE recently reduced the minimum trading and quotation variations for securities traded through their facilities. As a result, equity securities that previously traded in minimum variations of ⅛ now trade in minimum variations of $\frac{1}{16}$. It is important, therefore, that the Rules of the MAX system be conformed to allow customers the maximum opportunity for price improvement in the MAX System as soon as possible.

It is therefore ordered, pursuant to Section 19(b)(2)[6] of the Act, that the proposed rule change, SR–CHX–97–22, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28238 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39254; File No. SR–Phlx–97–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing to Amend its Foreign Currency Option Trading Hours Respecting Customized Foreign Currency Options

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 7, 1997, the Philadelphia Stock Exchange Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act")[2] proposes to cease trading for expiring customized currency options at 8:10 a.m. eastern time on business days in which the Foreign Currency Floor of the Exchange opens for trading at 8:00 a.m. eastern time. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Foreign Currency floor is open from 2:30 a.m. eastern time to 2:30 p.m. eastern time every business day. However, the Exchange may open the foreign currency floor at 8:00 a.m. on some business days, usually on business days following a holiday.[3] The Exchange modified the trading hours for all customized options such that an all expiring customized option contract cease trading at 8:00 a.m. and expires at 10:15 a.m. eastern time.[4] However, this practice prevents the holder of an expiring customized currency option to offset an expiring position on days in which trading begins at 8:00 a.m. on the Foreign Currency floor. Therefore, the Exchange proposes to cease trading in expiring customized contracts at 8:10 a.m. on business days in which the Exchange opens at 8:00 a.m. and thereby provides a 10 minute window for a participant to offset an expiring option. The Phlx will provide notification of the change in trading hours for these expiring options by means of memoranda to the membership.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a free and open market by providing the participants with the ability to offset their position prior to expiration on those business days in which the Foreign Currency floor opens at 8:00 a.m. eastern time.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received at the time of the filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. For the foregoing reasons and because the Exchange provided at least five business days notice to the Commission of its intent to file this proposed rule change, the rule filing will become operative as a "non-controversial" rule change pursuant to Rule 19b–4(e)(6) under the Act.[5]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

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(June 18, 1997), 62 FR 34334 (June 25, 1997) (approving a NYSE proposal to reduce the minimum trading variation from ⅛ to $\frac{1}{16}$).

[6] 15 U.S.C. § 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On the day following an Exchange holiday such as the Friday following Thanksgiving or the day after Christmas day, trading commences at 8:00 a.m. rather than 2:30 a.m.

[4] *See* Securities Exchange Act Release No. 37732 (September 26, 1996). The proposed rule change adjusted the trading hours for all customized options such that all customized options would cease trading on expiration day at 8:00 a.m. eastern time and would expire at 10:15 a.m. eastern time.

[5] 17 CFR 240.19b–4(e)(6).

Commission that such action is necessary or appropriate in the public interest for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office at the PHLX. All submissions should refer to File No. SR–PHLX–97–47, and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28174 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39258; File No. SR–PHLX–97–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Exchange Rules to Comply With Recent Modifications to the By-Laws of the Exchange

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 24, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rules 500 and 960.9 to comply with recent modifications made to the By-Laws of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received regulatory approval to revise the governance structure of the Exchange.[2] As part of the restructuring, revisions were made to the By-Laws and Articles of Incorporation of the Exchange. In its proposed rule change, the Exchange seeks to make corresponding revisions to two of its rules, Rule 500 and Rule 960.9, to conform to the new By-Laws where necessary. The proposed amendments would modify rules that concern the structure and procedures of two of the Exchange's standing committees, the Allocation, Evaluation and Securities Committee ("AES Committee") and the Business Conduct Committee ("BC Committee").

Rule 500 (Allocation, Evaluation and Securities Committee)

The Exchange proposes to revise Rule 500 to specify the revised composition of the AES Committee. Under the prior version of By-Law Article X, Section 10–7, the AES Committee was composed of five core members and twenty members of an allocation panel. Under revised By-Law Article X, Section 10–7, there may only be nine members on the Committee. Of those nine members, some will be core members who serve three year terms while others will be annual members who may serve up to three consecutive one year terms. Revised By-Law Article X, Section 10–7 refers to Exchange Rule 500 for the number and categories of persons eligible to serve as core members and annual members. Because Rule 500 currently provides that there will be five core members and twenty panel members, it must be modified to comply with the terms of revised By-Law Article X, Section 10–7 which provides for a total of nine members on the AES Committee. The Exchange proposes to maintain the same number of core members, five, and the same selection categories for core members: (i) three persons who conduct a public securities business; (ii) one person who is active on the equity trading floor as a specialist or floor broker; and (iii) one person who is active on the options trading floor as a specialist, registered options trader or floor broker. Rule 500 would be amended to require that of the four annual members: (i) one be active on the equity trading floor as a specialist or floor broker; (ii) one be active on the equity options trading floor as a registered options trader; (iii) one be a public Governor; and (iv) one be a non-industry Governor.

Rule 960.9 (Business Conduct Committee)

The Exchange proposes to amend Rule 960.9 by revising the provisions that set forth the appeal procedure for decisions rendered by the Business Conduct Committee. Under revised By-Law Article X, Section 10–11, appeals from the Business Conduct Committee will now go directly to the Board of Governors rather than the Disciplinary Review Committee.[3] Accordingly, Rule 960.9 is being amended to provide that a Respondent who wishes to appeal a decision of the Business Conduct Committee must now comply with the appeal procedures set forth in By-Law Article XI, Section 11–1 which governs appeals from all committees of the Board.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 38960 (Aug. 22, 1997), 62 FR 45904 (Aug. 29, 1997).

[3] As part of its revised governance structure, the Exchange eliminated the Disciplinary Review Committee. *Id.*

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6[4] of the Act, in general, and furthers the objectives of Section 6(b)(1)[5] of the Act, in particular, in that the streamlining of the Exchange's committee structure will enable the Exchange to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and constitutes a stated policy and practice of the Exchange with respect to the administration of the Exchange's By-Laws and, therefore, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (e) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–97–40 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28239 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Application for a Social Security Card—0960–0066. The information collected on Form SS–5 by the Social Security Administration (SSA) is used to assign a Social Security Number and issue a card. The Social Security Number is used by SSA to keep an accurate record of each individual's earnings for the payment of benefits and for administrative purposes as an identifier for health-maintenance and income-maintenance programs, such as the Retirement, Survivors and Disability Insurance Programs, the Supplemental Security Income (SSI) Program and other programs administered by the Federal government including Black Lung, Medicare and veterans compensation and pension programs. The Social Security Number is also used by the Internal Revenue Service as a taxpayer identification number for those individuals who are eligible to be assigned a Social Security Number. The respondents are applicants for a Social Security Card.

Number of Respondents: 16 million.
Frequency of Response: 1.
Average Burden Per Response: 8½ minutes—9 minutes.
Estimated Annual Burden: 2,275,000 hours.

2. Request to Resolve Questionable Quarters of Coverage (SSA–512); Request for Quarters of Coverage History Based on Relationship (SSA–513)—0960–0575. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying quarters of coverage (QCs) for Social Security purposes can generally receive State benefits. QCs can also be allocated to a spouse and/or to a child under age 18, if needed to obtain 40 qualifying QCs for the alien. Form SSA–512 is used by the States to request clarification from SSA on questionable QCs. Form SSA–513 is used by States to request QC information for an alien's spouse or parent in cases where the spouse or parent does not sign a consent form giving permission to access his/her social security records. The respondents are State agencies which require QC information in order to determine eligibility for benefits.

	SSA–512	SSA–513
Number of Responses	200,000	350,000.
Frequency of Response	1	1.
Average Burden Per Response	2 minutes	2 minutes.
Estimated Annual Burden	6,667 hours	11,667 hours.

[4] 15 U.S.C. § 78f.
[5] 15 U.S.C. § 78f(b)(1).
[6] 15 U.S.C. § 78s(b)(3)(A).
[7] 17 CFR 240.19b–4(e).
[8] 17 CFR 200.30–3(a)(12).

3. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information collected on form SSA–3881 is used by SSA to evaluate disability in children who apply for SSI payments. The respondents are individuals who apply for SSI benefits for a disabled child.

Number of Respondents: 978,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 489,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address:

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Beneficiary Recontact Report—0960–0536. SSA uses Form SSA–1587–OCR—SM to ensure that eligibility for benefits continues after entitlement is established for children ages 15 thru 17. Studies show that children who marry fail to report the marriage (which is a terminating event). SSA asks children ages 15, 16 and 17 information about marital status to detect overpayments and to avoid continuing payments to those no longer entitled. The respondents are applicants for Old Age, Survivors and Disability Insurance benefits, who are ages 15 thru 17.

Number of Respondents: 835,492.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 41,775 hours.

2. Waiver of Right to Appear, Disability Hearing—0960–0534. Form SSA–773–U4 is used by claimants to request waiver of their right to appear at a disability hearing. The information collected will be used to document that claimants understand their right to appear and the effects of their decision to waive that right. The respondents are claimants who (under Title II & XVI of the Social Security Act) wish to waive their right to appear at a disability hearing.

Number of Respondents: 194.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 48 hours.

3. Railroad Employment Questionnaire—0960–0078. Form SSA–671 is used to secure sufficient information for required coordination with the Railroad Retirement Board for Social Security claims processing. The form is completed whenever claimants indicate that they have been employed in the railroad industry. The respondents are retired employees of the railroad industry or their dependents.

Number of Respondents: 125,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes..
Estimated Annual Burden: 10,417 hours.

4. Employment Relationship Questionnaire—0960–0040. Form SSA–7160 covers all possible employment situations, and is used by SSA to determine an individual's work status. The information is required to maintain accurate earnings records for workers under the Social Security system. The respondents are applicants for Social Security benefits.

Number of Respondents: 47,500.
Frequency of Response: 1.
Average Burden Per Response: 25 minutes.
Estimated Annual Burden: 19,792 hours.

5. Questionnaire About Employment or Self-Employment Outside the United States—0960–0050. The information on Form SSA–7163 is needed to determine whether work performed outside the United States by beneficiaries is cause for deductions from their monthly benefits; to determine whether the foreign work test or the regular work test is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries who live and work outside the United States.

Number of Respondents: 20,000.
Frequency of Response: 1.
Average Burden Per Response: 12 minutes.
Estimated Annual Burden: 4,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: October 16, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–28099 Filed 10–23–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD01–97–079]

Captain of the Port Boston; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Captain of the Port Boston (COTP Boston) will hold a meeting to discuss various issues relating to anchored barges carrying oil or hazardous materials in bulk without an attending tug. This meeting is open to the public.

DATES: The meeting will be held on December 4, 1997 from 9:00 a.m. to 12:00 p.m. Written materials and requests to make oral presentations should reach the COTP Boston on or before November 20, 2997.

ADDRESSES: The meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Command, 427 Commercial St., Boston, MA. Written material and requests to make oral presentations should be sent to Captain of the Port Boston, Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. Comments may also be hand-delivered to the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Michael H. Day, Coast Guard Marine Safety Office Boston, MA; telephone (617) 223–3000.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Request for comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific Notice of Meeting (CGD01–97–079) and the specific issue to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½"x11" unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard has scheduled a public meeting on December 4, 1997, at 9 a.m., to receive oral presentations. The public meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Command, 427 Commercial St., Boston, MA.

Background

Barges carrying oil or hazardous materials in bulk are periodically anchored in the waters of the COTP Boston zone without an attending tugboat. Depending on the weather and anchor holding conditions, a tank barge is vulnerable to grounding in the event that its anchor begins to drag or the anchor chain breaks. Early detection of a failed or dragging anchor and the quick response of a tugboat are essential in preventing barges from grounding.

This Notice of Meeting is intended to address these concerns about public safety and the environment associated with this practice of leaving anchored barges unattended.

Agenda of Meeting

Currently, there is no federal regulation that requires barges carrying oil or hazardous materials in bulk to be manned while left unattended at anchor. The Coast Guard seeks comments on methods and practices currently used for determining the position of a barge and providing tug assistance. Additionally, the Coast Guard seeks comments on means of improving current safety practices including the use of new technologies, manning requirements, and tug assistance.

Procedural

All sessions are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify LT Michael H. Day no later than November 20, 1997. Written material for distribution at the meeting should reach the COTP Boston no later than November 20, 1997. If a person submitting material would like copies distributed in advance of the meeting, that person should submit 25 copies to the COTP Boston no later than November 20, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact COTP Boston as soon as possible.

Dated: September 30, 1997.

J.L. Grenier,

Captain of the Port, Boston.

[FR Doc. 97–28288 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. 97–048; Notice 2 97–051; Notice 2 97–052; Notice 2 97–053; Notice 2]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective October 24, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 20, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex—A—Nonconforming Motor Vehicles Decided To Be Eligible For Importation

1. Docket No. 97–048
   - Nonconforming Vehicles: 1990–1994, 1996, and 1997 Saab 900 SE
   - Substantially similar U.S.-certified vehicles: 1990–1994, 1996, and 1997 Saab 900 SE
   - Notice of Petition published at: 62 FR 42157 (August 5, 1997)
   - Vehicle Eligibility Number: VSP–219
2. Docket No. 97–051
   - Nonconforming Vehicles: 1987–1997 Kawasaki ZX400 Motorcycles
   - Substantially similar U.S.-certified vehicles: 1987–1997 Kawasaki ZX600 Motorcycles
   - Notice of Petition published at: 62 FR 43425 (August 13, 1997)
   - Vehicle Eligibility Number: VSP–222
3. Docket No. 97–052
   - Nonconforming Vehicles: 1996–1997 Ducati 748 Biposto Motorcycles
   - Substantially similar U.S.-certified vehicles: 1996–1997 Ducati 916 Biposto Motorcycles
   - Notice of Petition published at: 62 FR 43770 (August 15, 1997)
   - Vehicle Eligibility Number: VSP–220
4. Docket No. 97–053
   - Nonconforming Vehicles: 1992, 1994–1997 BMW 750iL
   - Substantially similar U.S.-certified vehicles: 1992, 1994–1997 BMW 750iL
   - Notice of Petition published at: 62 FR 43771 (August 15, 1997)
   - Vehicle Eligibility Number: VSP–221.

[FR Doc. 97–28279 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Saab

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On June 20, 1997, Saab Cars, USA, Inc. (Saab) filed a petition with the National Highway Traffic Safety Administration (NHTSA) asking for a second modification to an agency-approved exemption from the vehicle theft prevention standard for its 900 car line. NHTSA is granting Saab's petition for modification of its exemption from the parts-marking requirements of the vehicle theft prevention standard for its model year (MY) 1999 900 car line because it has determined, based on substantial evidence, that the antitheft device described in Saab's petition to be placed on the car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of the 1999 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On July 26, 1993, NHTSA published in the **Federal Register** a notice granting a petition from Saab for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Saab 900 car line beginning with MY 1994 (See 58 FR 39853). By letters dated September 8 and 12, 1994, Saab petitioned for the first modification to its device. The agency determined that the proposed changes made on Saab 900's antitheft device for MY 1995 were de minimis changes and did not require it to submit a petition to modify its exemption pursuant to 49 CFR Part 543.9(c)(2).

On June 20, 1997, Saab submitted a second petition for modification of its previously approved antitheft system for MY 1999. According to the petition, Saab will begin MY 1999 production of the 900 car line in February 1998. This notice responds to that petition.

Saab's submission is a complete petition, as required by 49 CFR Part 543.9(d), in that it meets the general requirements contained in 49 CFR Part 543.5 and the specific content requirements of 49 CFR Part 543.6. Saab's petition also provided a detailed description of the identity, design and location of the components of the antitheft system, including diagrams of the components and their location in the vehicle beginning with the 1999 model year. On August 20, 1997, the agency contacted Saab by telephone and obtained additional information which clarified the nature of the changes to its antitheft system for the 900 car line for MY 1999.

In its MY 1999 petition, Saab stated that for its MY 1999 car line, the driver/operator will be able to arm the system, activate the central-locking feature and monitor the protected areas of the vehicle from unauthorized tampering either by using the remote transmitter or locking the driver's or passenger's door with the correct ignition key. This is a change from the previously approved system, in which only the remote transmitter had the capability to arm and disarm the system and only the ignition key could activate the central-locking feature.

In addition, Saab stated that for MY 1999, the remote transmitter will not arm or disarm the starter immobilization feature of the system. The only way to activate and deactivate that feature will be by using the correct ignition key containing a radio signal transponder. In the previously approved system, the starter immobilization feature as well as the ignition and fuel immobilization features could be armed and disarmed by using the remote transmitter.

The petition also states that the MY 1999 Saab 900 car line will incorporate a battery backup for the alarm siren, "free wheeling" door lock cylinders, a tilt sensor which will detect possible theft of the vehicle by means of a flatbed or tow truck removal, and a panic function feature.

Saab also stated that for MY 1999, the electronic components in the 900 car line will use more advanced technology between various vehicle systems, including but not limited to the engine management system and the on-board diagnostic requirements. Beginning with MY 1999, the 900 car line will incorporate a new advanced communications architecture, "CAN–BUS". The "CAN–BUS" architecture will improve the speed and reliability of the electronic communications between vehicle systems, and allow improvements in the standard antitheft system.

However, Saab noted that the use of the "CAN-BUS" architecture means that it will not be able to use the fuel and ignition immobilization features of its antitheft system in all of the vehicles for the 900 car line in the 1999 model year. These features will be present only in those vehicles that are equipped with a turbo-charged engine; they will not be present in the vehicles with the 2.3 liter

engine. Saab stated that those vehicles that are equipped with a 2.3 liter engine will not incorporate the fuel and ignition immobilizer feature until MY 2000.

In order to ensure the reliability and durability of the device, Saab stated that it conducted tests of the antitheft device which far exceeds the previous testing program that was used to validate the reliability and durability of the 1995 through 1998 vehicles.

Saab believes that the antitheft system proposed for installation on its 900 line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of Part 541. It believes that the antitheft system for model years 1999 and later will provide essentially the same functions and features as found on today's 1995 through 1998 system. Therefore, Saab believes that the modified system will provide at least the same level of theft prevention over parts marking. Saab supports its belief that its proposed system will be no less effective than the MY 1995 through 1998's system by comparing its MY 1995 preliminary theft rate of 1.3973 for the 900 line with the median theft rate of 3.5826 indicating that the agency's theft data supports its belief.

Saab also submitted information from the Highway Loss Data Institute (HLDI), which reported a comparison of the number of claims per thousand insured vehicles per year. HLDI's September 1996 insurance theft report indicated a theft index of 15 for the 1994 through 1995 Saab 900 line. This was the second lowest figure for all large, midsize, and small cars listed. The HLDI theft report published in September 1997 indicated a theft index of 13, a reduction from the previous year's index. HLDI reported that the antitheft device installed on the Saab 9^5 car line and sold in Sweden, has been awarded the highest-ever security ratings (96.7 % security rating) given by Thatcham, the motor vehicle insurance industry's research centre.

The agency has evaluated Saab's MY 1999 petition for modification of the exemption for the 900 car line from the parts-marking requirements of 49 CFR Part 541, and has decided to grant it. It has determined that the system is likely to be as effective as parts marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR Part 543. The ability to arm the system using either the ignition key or a remote transmitter means that arming the system does not require any additional action by the driver, which means that the system is more likely to be armed. The ability to use the key or the remote to activate and deactivate the starter immobilizer improves the level of convenience for the driver/operator to arm and disarm the modified system over the present system. Other improvements include the addition of a battery backup for the alarm siren, "free wheeling" door lock cylinders, a tilt sensor that will detect attempts to steal the vehicle by means of flatbed or tow truck, and a panic function feature.

In its petition, Saab also states that for MY 1999, not all of the vehicles in the 900 car line will have the fuel and ignition immobilizer features as part of the antitheft system. One prerequisite to qualifying for an exemption under Part 543 is that the antitheft device must be installed as standard equipment on all vehicles on a model line. 49 U.S.C. Section 33106(b). Therefore, in evaluating whether a system qualifies for an exemption, the agency may consider only those features that are standard across the car line; and may not consider features that are only present on some vehicles in the line.

Accordingly, for the purpose of evaluating whether the system installed on the Saab 900 line for MY 1999 qualifies for an exemption under Part 543, the agency cannot consider the fuel and ignition interrupt features to be part of the system. Since these features are present on the current system on the Saab 900, this means that the agency must treat the MY 1999 system as though these features are no longer included.

The absence of these features diminishes the level of theft protection somewhat from that provided by the MY 1995 system because the fuel and ignition immobilizer will not be standard equipment on the car line. The agency believes, however, that the decrease is not substantial and that even without this feature, the system as described in Saab's petition for modification will provide a level of theft protection equivalent to parts marking.

The agency notes that Saab has stated in its petition that it plans to install the fuel and ignition immobilizer features in all vehicles in the 900 car line beginning with MY 2000. If Saab does in fact decide to add these features as standard equipment on the 900 line, it must file either a new petition for modification of the exemption or a request for de minimis treatment for the system that incorporates these features.

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 21, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–28291 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 34 (Amendment No. 9)]

Middlewest Motor Freight Bureau, Inc.

AGENCY: Surface Transportation Board; DOT.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board is seeking comments from interested persons on the application filed by the Middlewest Motor Freight Bureau, Inc. (MWB) for approval of amendments to its by-laws. The proposed amendments are described below.

DATES: Comments are due by November 24, 1997.

ADDRESSES: Send an original and 10 copies of pleadings to Section 5a Application No. 34 (Amendment No. 9) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. Also send one copy to MWB's representative: Bryce Rea, Jr., 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: MWB is seeking Surface Transportation Board approval of several minor amendments to its by-laws. MWB states that the amendments would reduce the number of directors and quorum requirements for meetings of the board of directors (the Board) of MWB, reduce the size of the nominating committee for the Board, revise titles of officers, authorize the Board to fill vacancies on the Board, allow for greater flexibility in scheduling and holding Board meetings, and eliminate territorial classifications for the Board or for directors.

MWB proposes to change the titles of Board members as follows: "Executive Vice President" would be changed to "President", "President" would be changed to "Chairman of the Board", and "Vice President" would be changed to "Vice Chairman of the Board."

MWB also proposes to delete from §§ 6.4, 6.5 and 6.6 provisions which were added to implement a merger with the Central States Motor Freight Bureau, Inc. (CSB) that was authorized in *Middlewest Freight Bureau, Inc., and Central States Motor Freight Bureau, Inc—Merger Agreement*, Section 5a Application No. 34 (ICC served July 9, 1993).

Section 6.3 would be amended to reduce the membership of the Board from 27 directors to 18 directors and to eliminate territorial classifications which apportioned seats on the Board and certain Board committees according to the territories comprising the expanded MWB territory, viz., Southwestern Territory, Middlewest Territory, and Central States Territory. MWB states that these classifications are no longer necessary. Language would also be eliminated which governed the election of the first Board after the merger with CSB.

A new Section 6.4 would be added which would stagger the terms of directors so that one-third are elected each year. Section 6.5 would be amended to reduce the nominating committee from 9 directors to 4 directors. A provision would be added to Section 6.6 authorizing the Board to fill vacancies if an insufficient number of directors are elected. Section 6.9 would be amended to authorize the Board to fill vacancies resulting from death, resignation, inability to serve, or expulsion.

Section 8.1 would be amended to delete the requirement for quarterly Board meetings. MWB states that regularly scheduled Board meetings are no longer necessary. Section 12.1 would be amended to authorize the Board to call and hold meetings when needed. Section 12.3 would be amended to authorize Board meetings by telephone conference call and to permit fax or telephone notices of emergency Board meetings. Section 12.4 would be amended to reduce the quorum requirement for Board meetings from 10 to 7.

MWB states that the amendments do not relate to and are not affected by territorial expansion and do not involve or affect MWB's collective ratemaking activities.[1] MWB states that the Board has no ratemaking authority, as that authority remains vested in the General Rate Committee. MWB states that these proposed amendments do not change the composition of the General Rate Committee or any of its functions.

We seek comment on whether these proposed amendments meet the criteria of 49 U.S.C. 13703(a)(2). Comments on these proposed amendments should be filed in this docket.

Copies of the application and the amendments are available for inspection and copying at the Office of the Secretary, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423 and from applicant's counsel.

Decided: October 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28149 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] MWB has other amendments to its Agreement pending before the Board in Section 5a Application No. 34 (Amendment No. 8), *Middlewest Motor Freight Bureau, Inc.*, which seeks territorial expansion of its collective ratemaking agreement. This request is being considered in Section 5a Application No. 118 (Amendment No. 1), *et al., EC-MAC Motor Carriers Service Association, Inc., et al.*

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33485]

St. Lawrence & Atlantic Railroad Co.—Lease and Operation Exemption—Berlin Mills Railway, Inc.

St. Lawrence & Atlantic Railroad Company (SL&A), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate rail lines owned by Berlin Mills Railway, Inc., in Coos County, NH, as follows: (1) Approximately 5.5 route miles between milepost 154.6 at Berlin and milepost 149.1 at Gorham; and (2) approximately 0.5 route miles of rail line (which does not have salient milepost designations) in the vicinity of Berlin. The total distance of the rail lines to be leased by SL&A is approximately 6.0 route miles. The transaction was expected to be consummated soon after October 9, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33485, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001 and served on: Kevin M. Sheys and Edward J. Fishman, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

[FR Doc. 97–28150 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33484]

St. Lawrence & Atlantic Railroad Co.—Acquisition and Operation Exemption—New Hampshire & Vermont Railroad Co.

St. Lawrence & Atlantic Railroad Company (SL&A), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 1 route mile of rail line owned by New Hampshire & Vermont Railroad Co., in the vicinity of Groveton, in Coos County, NH. The transaction was expected to be consummated soon after October 9, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33484, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001 and served on: Kevin M. Sheys and Edward J. Fishman, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28151 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 553X)]

CSX Transportation, Inc.—Abandonment Exemption—In Harlan County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 2.14-mile portion of its Lick Branch between milepost MP–250.9 and milepost MP–251.18 at Cato, and its Crummies Creek Branch between milepost MQ–251.18 at Cato and milepost MQ–253.04, at Crummies, in Harlan County, KY. The line traverses United States Postal Service Zip Codes 40815 and 40821.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 23, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 3, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 13, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CXS Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 29, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28152 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, October 29, 1997.

PLACES: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: October 22, 1997.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 97–28426 Filed 10–22–97; 2:25 pm]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 24, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0098."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Survivors' and Dependents' Educational Assistance (Under Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 is used as a procedural requirement for applicant's to apply to the VA for benefits. VA uses the information collected on the application to determine a veteran's or serviceperson's son, daughter, spouse or surviving spouse entitlement to Dependents' Educational Assistance, (DEA) under Chapter 35, Title 38, U.S.C. The information is only collected when claimant requests DEA benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 30, 1996 at page 68819–68820.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,700 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once, initial application.

Estimated Number of Respondents: 17,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0098" in any correspondence.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28197 Filed 10–23–97; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 62, No. 206
Friday, October 24, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1427-93]

RIN 1115-AC51

Nonimmigrant Classes; Treaty Aliens; E Classification

Correction

In rule document 97–22314 beginning on page 48138, in the issue of Friday, September 12, 1997, make the following corrections:

1. On page 48138, in the 2nd column, in the 11th line from the bottom; in the 3rd column, in the 4th line; in the 7th line; in the 10th line; in the 1st full paragraph, in the 16th line; and in the 1st full paragraph, in the 2nd line from the bottom, "nonimmigrnat" should read "nonimmigrant".

2. On page 48138, in the 3rd column, in the 2nd full paragraph, in the 6th line; and in the 12th line from the bottom, "congress" should read "Congress".

3. On page 48139, in the first column, in the fifth line from the bottom, after "become" insert "so".

4. On the same page, in the third column, in the eighth line from the bottom, after "at" insert "§ 214.2(e)(4)."and in the lines three through seven from the bottom, the heading and note are corrected to read:

Nonimmigrant intent, 8 CFR 214.2(e)(5)

Note: This does not correspond with 22 CFR 41.51(e), Representative of Foreign Information Media.

5. On page 48140, in the 3rd column, in the 1st full paragraph, in the 11th line, "the" should read "this".

6. On page 41843, in the 2nd column, in the 12th line from the bottom at the end of that line, insert a period.

7. On page 48145, in the first column, in the first full paragraph, in the seventh line; and in the sixth line from the bottom, "Untied" should read "United".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97-ACE-11]

Amendment to Class E Airspace, Lee's Summit, MO

Correction

§ 71.1 [Corrected]

In rule document 97-27366 beginning on page 53740, in the issue of Thursday, October 16, 1997, make the following correction:

Appearing on page 53741, in the second column, under the heading **ACE MO E5 Lee's Summit, MO [Revised]**, in the second line, "(lat. 38°37′35″ N., long. 94°22′18″ W.)" should read "(lat. 38°57′35″ N.,long. 94°22′18°″ W.)"

BILLING CODE 1505-01-D

federal register

Friday
October 24, 1997

Part II

Environmental Protection Agency

40 CFR Part 9, et al.

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

[FRL–5908–5]

RIN 2060–AF43

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act) authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On January 11 and March 23, 1993, the Agency promulgated final rules governing permitting, the allowance system, continuous emissions monitoring, excess emissions, and appeal procedures. On December 27, 1996, the Agency published proposed revisions to those rules, most of which revisions are addressed in today's final rule.

After considering its experience in applying the Acid Rain Program rules since 1993, the Agency believes that the permitting, excess emissions, and appeal procedures rules (as well as minor aspects of the monitoring rule) can be streamlined and improved in order to reduce the burden on utilities, State and local permitting authorities, and EPA. Today's final rule revisions streamline the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions.

In addition, EPA is revising the sulfur dioxide allowances for one unit. Each allowance authorizes the emission of one ton of sulfur dioxide. Under the Acid Rain Program, utility units (i.e., fossil fuel-fired boilers or turbines) are allocated annual allowances and must not emit sulfur dioxide in excess of the amount authorized by the allowances that they hold. Today's final rule revises one unit's allowances pursuant to a settlement agreement. In a future final action, EPA will act on the other allowance revisions that were set forth in the December 27, 1996 proposed rule.

EFFECTIVE DATE: November 24, 1997.

ADDRESSES: Docket No. A–95–56, containing the information used to develop the final rule, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding federal holidays, at EPA's Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Additional information concerning the original rules and today's final revisions is found in Docket Nos. A–90–38 (permits), A–91–43 and A–92–06 (allowances), A–90–51 (continuous emissions monitoring), A–91–68 (excess emissions), A–91–69 (general), and A–93–15 (appeals). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233–9151 (U.S. Environmental Protection Agency, 401 M Street, SW, Acid Rain Division (6204J), Washington, DC 20460); or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Organization. The information in this preamble is organized as follows:

I. General
II. Part 72: Applicability of and Exemptions From Acid Rain Program
A. Applicability
B. Exemptions
1. New Units Exemption
2. Retired Units Exemption
3. Industrial Utility-Units Exemption
III. Part 72: Interaction of Acid Rain Permitting and Title V
A. Relationship Between Acid Rain Rules and Parts 70 and 71
B. State Authority to Administer and Enforce Acid Rain Permits
C. Required Elements for State Acid Rain Program
IV. Part 72: Miscellaneous Permitting Matters
A. Definitions
B. Designated Representative
C. Compliance Plans
D. Federal Permit Issuance
E. Permit Revision
F. Reduced Utilization Accounting
V. Part 73: Allowances
A. Allowance Tables
B. Small Diesel Refinery Provisions
VI. Part 75: Monitoring of Units Burning Digester or Landfill Gas
VII. Part 77: Excess Emissions
VIII. Part 78: Administrative Appeals
IX. Administrative Requirements
A. Executive Order 12866
B. Unfunded Mandates Act
C. Paperwork Reduction Act
D. Regulatory Flexibility
E. Submission to Congress and the General Accounting Office
F. Miscellaneous

I. General

A significant number of the revisions in the December 27, 1996 proposal did not receive any comment. Most of the proposed revisions, including all on which comment was received, are discussed in this preamble. Unless otherwise stated below, revisions are adopted in today's final rule for the reasons discussed in the proposal.

II. Part 72: Applicability of and Exemptions From Acid Rain Program

A. Applicability

The proposal included two types of revisions of the existing rule. First, the definition of "power purchase commitment" was revised to extend to three years the period by which a letter of intent must have resulted in execution of a power sales agreement. Second, minor revisions were made to the procedure for petitioning for a determination by the Administrator on the applicability of the Acid Rain Program to a unit. Supportive comment was received on the first revisions, and no comment was received on the second. The revisions are therefore adopted in today's rule.

B. Exemptions

1. New Units Exemption

Section 72.7 of the existing rule provides an exemption from most Acid Rain Program requirements for new units that serve generators with a total capacity of 25 MWe or less and that combust clean fuels. The proposal made several types of revisions in order to streamline the new units exemption. With the changes discussed below,[1] revisions are adopted in today's rule for the reasons discussed here and in the proposal.

First, the requirement for the combustion of clean fuels at the unit was revised in the proposal. While the existing rule requires that only fuel with a sulfur content 0.05 percent or less by weight be combusted, the proposal stated that the unit must burn gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight. Commenters supported the revisions and explained that the existing rule was unduly restrictive. These revisions are adopted in today's rule.

The proposal also set forth revised procedures for determining annual average sulfur content by weight for gaseous and nongaseous fuel. The proposal eliminated provisions mandating the use of listed methods for measuring sulfur content but included provisions concerning the required frequency of sampling. The proposal provided explicitly that the owners and operators of the unit bear the burden of proving compliance with the sulfur content requirement. Commenters supported these revisions but suggested that EPA state that any "recognized industry standard such as an ASTM method would be acceptable." Commenters also urged that the rule state that a unit that burns only diesel fuel meeting the requirements of diesel fuel for motor vehicles be assumed to meet the limits on sulfur content of fuel.

The proposed revisions are adopted in today's rule. Under the final rule, since methods for measuring sulfur content are not specified, the Agency will evaluate on a case-by-case basis the information provided by the owners and operators of a unit on sulfur content. In order to ensure that owners and operators understand that they must use a reasonable method to determine sulfur content, the final rule adopts language from section 412 concerning emission monitoring and states that the method of determining sulfur content must provide information that is reasonably precise, reliable, accessible, and timely. EPA anticipates that owners and operators will meet their burden of proof by using a method that is generally recognized in the industry (such as the applicable ASTM method set forth in the existing rule), is applicable to the unit, and is consistent with the other provisions (e.g., sampling frequency requirements) of today's rule.

Further, EPA recognizes that diesel fuel for motor vehicles is required under § 80.29 to have a sulfur content of 0.05% by weight. Commenters have suggested that such diesel fuel should be assumed to meet the sulfur content limit without any testing. One commenter stated that the testing by the unit owner was burdensome and duplicative of testing by the fuel supplier.

However, not all diesel fuel is required to meet the sulfur content limit; only diesel fuel for use in motor vehicles must meet the limit under § 80.29. 40 CFR 80.29(a)(1)(i). A significant amount of diesel fuel is produced for other uses (e.g., as fuel for electric generation by utilities) has a higher sulfur content than mandated for diesel fuel for motor vehicles. *Petroleum Supply Annual 1996*, Vol. 1 at 51, Table 17 (Energy Information Administration, June 1997) (indicating that about 37% of 1996 U.S. distillate production (which is primarily diesel fuel as defined in § 72.2) had a sulfur content above 0.05% by weight).[2] Moreover, the higher-sulfur diesel fuel is used by many utility units that combust diesel fuel. For example, during 1996 and the first half of 1997, diesel fuel with a sulfur content of 0.05% or less by weight accounted for only about 13% of the total heat input for affected units that used diesel fuel and were required to report the sulfur content of their fuel to EPA. Most of the diesel fuel used had a much higher sulfur content; diesel fuel with more than twice the sulfur content (i.e., over 0.10% sulfur by weight) accounted for about 81% of such total heat input.[3]

In contrast, virtually all commercially available natural gas in the U.S. has sulfur content at or below 0.05% by weight. Because of the toxic effects of hydrogen sulfide and its corrosive effect on pipeline and customer equipment, pipelines generally provide pipeline transportation or distribution service only for natural gas with a very low hydrogen sulfide content (e.g., 0.25 to 0.30 grain per 100 standard cubic feet), which results in total sulfur content far below 0.05% by weight. *See, e.g.*, H. Dale Beggs, *Gas Production Operations* at 204–5, 209–11, and 227 (1984); and 49 CFR 192.475(c) (provision, in U.S. Department of Transportation minimum safety standards for natural gas pipelines, limiting the hydrogen sulfide content of gas "stored in pipe-type or bottle-type holders" to 0.25 grain per 100 standard cubic feet).

Since diesel fuel is widely available that does not meet the sulfur content limit, diesel fuel must be treated like any other fuel that is combusted at an exempt new unit and that could potentially exceed the limit. The owners and operators of the unit combusting the fuel must demonstrate that the limit is being met using the results of reliable testing methods consistent with the sampling and other requirements of today's rule. Of course, under today's rule, the owners and operators are not required to conduct the testing themselves. EPA will consider testing by fuel suppliers in determining whether the owners and operators have met their burden of proof.

Second, the proposal streamlined the procedure for obtaining a new units exemption and reduced the burden imposed by the procedure on owners and operators and permitting authorities. The existing rule required owners and operators of a unit to submit an application and for permitting authorities to provide notice and opportunity for comment before issuing an exemption. The proposal made the obtaining of an exemption largely automatic so long as the capacity, annual fuel use, and recordkeeping requirements are met. Under the proposal, owners and operators of a unit meeting these requirements must submit a statement to the permitting authority (and, if EPA is not the permitting authority, to EPA) that the unit meets, and will continue to meet, the requirements for the exemption. The proposal states that a new units exemption is effective on January 1 of the first full calendar year for which the unit meets the exemption requirements and that the statement must be submitted by December 31 of such year. In short, where the end-of-year submission deadline and other requirements for an exemption are met, the exemption will cover the entire year in which the submission was made. The

[1] In addition, today's rule adds language clarifying that the requirement that a unit serve one or more generators with total nameplate capacity of 25 MWe or less during the period of the exemption does not apply to the time before the unit commenced commercial operation. Today's rule also adds language, under "Special Provisions", to reiterate the fact (reflected in § 72.7(a)) that an exempt unit must continue to meet the requirements (e.g., the sulfur content limits for its fuels) throughout the duration of the exemption. Another addition in today's rule is language clarifying that when the exemption is lost, the unit must comply with Acid Rain permitting and monitoring requirements, starting after the loss of the exemption (e.g., starting on the first date on which the unit is no longer exempt). Similar language is added to the retired units and industrial utility-units exemption provisions.

[2] Relatively little distillate fuel oil is imported into the U.S., and most of it has a sulfur content exceeding 0.05%. *Id.* at 55, Table 20.

[3] *Report to Docket: Diesel Fuel Use of Units Required to Use Fuel Sampling Under part 75, appendix D* (September 16, 1997).

proposed revisions are adopted in today's rule.

The proposal established some additional procedures for the relatively few new units that were allocated allowances.[4] The owners and operators of such units must submit a statement (similar to the one for units without allocations) stating that the owners and operators are surrendering the allowances, and proceeds from the auction of allowances, starting with the first year for which the unit is exempt. Under the proposal, the exemption for a unit allocated allowances is effective on January 1 of the first year for which the Administrator actually deducts the full allowance allocation and actually receives the full amount of auction proceeds. Commenters contended that this "unfairly" makes the exemption contingent on an event (i.e., the deduction of allowances) beyond the control of the owners and operators. Allegedly, the exemption should be contingent only on submission of the statement surrendering allowances and proceeds.

EPA notes that the only issue is the date on which the exemption becomes final. Once the Administrator actually makes the necessary allowance deductions and receives the proceeds, the exemption runs starting from January 1 of the year for which the unit meets the requirements (e.g., fuel sulfur limits and allowance and proceeds surrender) for this exemption. The difficulty with making the exemption effective when the surrender statement is submitted is that there is no guarantee that the unit's allowance account actually has sufficient allowances to deduct or that the proceeds are actually available to and received by the Administrator.

In order to ensure that the actual deduction of allowances in the unit's Allowance Tracking System account is not unduly delayed, the final rule requires that, within 5 business days of receiving the owners' and operators' surrender statement, the Administrator either makes the allowance deductions or notifies the owners and operators that there are insufficient allowances for the deductions. This is the same period of time in which, under §§ 73.52 and 73.53, the Administrator must act on an allowance transfer request. The approach adopted in today's rule accommodates both the concern that the necessary number of allowances actually be available for deduction before the exemption is effective and the concern that the effectiveness of the exemption not be unnecessarily delayed.

Finally, the proposal provided that a unit with a new units exemption is not an "affected unit" and so does not need an operating permit under part 70 or 71 unless such a permit is required because non-title IV, federal requirements applicable to the unit. *See* 61 FR 68343. However, for the case where, because of non-title IV requirements, the source at which the unit is located has or must have an operating permit, the proposal did not exclude the new units exemption from the general requirement to incorporate applicable federal requirements in the operating permit. *See* 42 U.S.C. 7661a(b)(5)(A) and 7661c(a). The final rule adopts the proposed provision and makes it clear that if, because of non-title IV requirements, an operating permit is issued to the source, the new units exemption must be reflected in that operating permit. In particular, after the actions necessary for the new units exemption to take effect have been completed (e.g., the receipt by the permitting authority of a statement of exemption by the owners and operators of the unit and the notification by the Administrator that he or she has deducted any allowances, and received any allowance proceeds, required to be surrendered), the permitting authority must add the provisions and ongoing requirements of the exemption to any operating permit that covers the source at which the unit is located. Consistent with the elimination of the requirement for notice and comment on a new unit's exemption, the addition of the exemption to the permit is an administrative amendment. A written new units exemption issued under the existing rule prior to revision by today's rule must similarly be added to any operating permit.

Under this approach, the exemption alone will not result in issuance of an operating permit, but, if an operating permit would be issued for the source in any event, that operating permit will include the ongoing requirements imposed on the unit under the exemption. This approach reasonably implements the concept that an operating permit should include the applicable federal requirements for a source. For the same reasons, analogous provisions are included in today's rule with regard to the retired units exemption and the industrial-utility units exemption.

2. Retired Units Exemption

Section 72.8 of the existing rule provides an exemption from Acid Rain Program requirements for retired units. The proposal made several types of revisions in order to streamline this retired units exemption. First, while the existing rule required owners and operators of a unit to submit an application for the exemption and for permitting authorities to provide public notice and opportunity for comment before issuing a final exemption, the proposal made the obtaining of an exemption largely automatic so long as the unit is permanently retired. Second, the proposal clarified that the exemption applies to most Acid Rain Program requirements.

No comments were received on these proposed revisions. In order to make it clear that only Phase I or Phase II units, and not opt-in units under part 74, are eligible for the retired units exemption, today's rule states that the exemption applies to "any affected unit (except for an opt-in source)". This exclusion of opt-in sources is consistent with the existing provisions of part 74 that impose separate requirements with regard to permanent shutdown of opt-in sources. *See, e.g.*, 40 CFR 74.46. In addition, to provide flexibility where a retired unit has no allowance allocations and has not selected a designated representative, the final rule allows a certifying official to submit notice of the exemption to the permitting authority. For the reasons discussed here and in the proposal, the revisions, as modified, are adopted in today's rule.

3. Industrial Utility-Units Exemption

Scope of Exemption. In the proposal EPA established a new exemption for certain industrial units that generate only incidental amounts of electricity for sale. As explained in detail in the preamble of the proposal, "utility units" (the entities subject to the Acid Rain SO_2 emission limitation and other requirements of the Acid Rain Program) include, with certain exceptions, any unit serving a generator that produced electricity for sale any time starting in 1985. With certain exceptions (e.g., for cogenerators), an industrial unit serving a generator that produced any amount of electricity for sale (referred to hereinafter as simply an "industrial utility-unit")[5] is an affected unit under the Acid Rain Program regardless of the amount of the sale relative to the total generation by the generator and whether or not the sale is to the general public or to a public utility for resale to the public. Moreover, the requirement to hold allowances to cover SO_2 emissions and to meet any applicable NO_x emission limitation under the Acid Rain Program applies to all emissions from the unit, not simply the portion that might be attributed to generation of the electricity sold.

Despite the applicability of the requirement to hold allowances, EPA has not allocated allowances to industrial utility-units that might have qualified for allowance allocations under section 405 of the Act, including some units whose owners submitted timely comments relating to allowance allocations. On March 23, 1993, EPA issued notices stating that such industrial utility-units would not be included in the National Allowance Database, on which allowance allocations are based, because EPA "believe[d]" that the units were not affected units. 58 FR 15720, 15727 (1993). On the same date, EPA also issued a final allowance allocation list that allocated allowances only to units then "believed" to be affected units. 58 FR 15634, 15641 (1993). EPA stated that no allowances would be allocated to units that were subsequently determined to be, or that subsequently became, affected units. *Id.*

In light of these circumstances, EPA proposed a limited exemption from the Acid Rain Program for industrial utility-units that served, any time starting in 1985, a generator that produced electricity for sale. First, the industrial utility-unit must have no owner or operator of which the principal business is electricity sale, transmission, or distribution or that is a public utility subject to State or local utility regulation.[6] Such unit must not be a cogeneration unit since cogeneration units already are covered by an express exemption in the title IV. Further, on or before March 23, 1993, the owners or operators of the unit must have entered into an interconnection agreement (and any related power purchase agreement) with a public utility requiring that the generator served by the unit produce electricity for sale only for incidental sales of electricity to that public utility. Moreover, in 1985 and any year thereafter, the generator served by the unit must have actually produced only incidental electricity sales for the utility, as required under the interconnection agreement and any related power purchase agreement. Incidental sales were defined as sales not exceeding the lesser of 10 percent of the generating output capacity of the generator or 10 percent of the actual annual electric output of the generator.

The proposal established a petition and notice-and-comment procedure for owners or operators to apply for the exemption and for the Agency to review and approve or disapprove the exemption. If, after approval of the exemption, any of the conditions for obtaining the exemption are no longer met, the exemption terminates automatically. The proposal, as changed below, is adopted for the reasons discussed here and in the proposal.[7]

All parties commenting on the new industrial utility-units exemption supported the concept of such an exemption. However, these commenters objected to various, specific provisions. First, commenters claimed that EPA should "totally" exempt industrial utility-units without regard to the amount of electricity sold by an industrial utility-unit and/or without regard to whether the unit was contractually obligated to sell electricity on or before March 23, 1993. Allegedly, industrial utility-units not qualifying for the exemption will incur significant costs "not related" to the objectives of title IV. It was argued that if industrial utility-units that cannot meet the criteria of the rule are not exempt, "agreements" providing for sales by industrial utility-units to utilities may be "discontinued", forcing utilities to "look elsewhere for their emergency and backup power needs." It was also argued that the costs of complying with the Acid Rain Program "will exceed the benefits of the limited reductions to be achieved by the regulations" since the estimated amount of SO_2 emissions is small relative to the annual 8.95 million ton cap for utility units. Since industrial utility-units are allegedly subject to the nationwide cap of 5.60 million tons on total annual SO_2 emissions by "industrial sources", regulation of industrial utility-units under the existing Acid Rain regulations was claimed to be unnecessary.

However, EPA begins with the fact, undisputed by any commenter, that Congress included non-cogeneration industrial utility-units in the Acid Rain Program and thus under the annual 8.95 million ton cap for SO_2 emissions and under applicable NO_x emission limitations. *See* 61 FR 68344. Further, although the preamble of the proposal stated that industrial utility-units are also under the 5.60 million ton cap for "industrial sources" under section 406(b) of the Clean Air Act Amendments of 1990, EPA now believes, on further consideration, that industrial utility-units (which served, any time starting in 1985, a generator that produced electricity for sale) are not covered by the latter cap.

Section 406(b) of the Clean Air Act Amendments of 1990 states that if SO_2 emissions from "industrial sources * * * may reasonably be expected to reach levels greater than 5.60 million tons per year," the Administrator may take actions "to ensure that such emission do not exceed" the cap. 42 U.S.C. 7651 note. From section 406(a), it is clear that the definition of "industrial source" in section 402 of the Clean Air Act applies. Under section 402, an "industrial source" is:

> a unit that does not serve a generator that produces electricity, a "nonutility unit" as defined in this section, or a process source. as defined in section 410(e). 42 U.S.C. 7651a(24)

As discussed above, an industrial utility-unit is a unit that is not owned or operated by a utility but that served, anytime starting in 1985, a generator that produced electricity for sale and therefore is a utility unit under section 402(17). Such a unit does not fall within any of the three groups of units that are defined as "industrial sources".[8] Consequently, the units that are under consideration in this rulemaking for

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[4] While the proposal referred to allowances allocated under Table 2 or 3 of subpart B of part 73, today's rule simply refers to allowances allocated under that subpart. Under part 73 as currently organized, all allocations to new units are included in the tables. Since in the future EPA may reorganize the allowance allocation information that is currently presented in two separate tables, today's rule adopts a more general reference to new-unit allowance allocations.

[5] The proposal referred to these units as simply "industrial units". In order to minimize confusion between these units and industrial boilers not used in generation of electricity for sale, and because generation of electricity for sale makes industrial units "utility units" under title IV, the final rule refers to the units as "industrial utility-units".

[6] In order to prevent the requirement from being circumvented through the position of the owner or operator in the corporate structure, the proposal stated that no owner or operator, subsidiary or affiliate or parent company of the owner or operator, or combination thereof could have such a principal business. Consistent with this approach, the final rule also applies this to any division of the owner or operator.

[7] In the proposal, EPA relied on the *Report For Docket: Industrial Units* (October 31, 1996). In the report, EPA estimated the number of industrial utility-units in the U.S. that may quality for an industrial utility-units exemption under § 72.14 and their total annual SO_2 and NO_x emissions. One commenter asserted that the report overestimated the emissions for two units owned by the commenter. Assuming the accuracy of the commenter's emission estimates, the total annual SO_2 and NO_x emissions estimates for industrial utility-units are reduced by about 10%, i.e., to about 41,000 tons of SO_2 and 17,000 tons of NO_x. This is not a significant change and does not affect EPA's determinations concerning the industrial utility-units exemption.

[8] Section 406(a) also states that "industrial sources" include units subject to section 405(g)(6), i.e., certain qualifying facilities and independent power production facilities that are exempt from title IV. The reference in section 406(b) to units "subject to section 405(g)(5)" is an inadvertent error that should be read as citing section 405(g)(6). *See National Annual Industrial Sulfur Dioxide Emission Trends 1995–2015*, EPA–454–R–95–001, at ES–2 (EPA 1995). Industrial utility-units are not exempt under section 405(g)(6).

inclusion in the industrial utility-units exemption are not covered by the 5.60 million ton cap. Contrary to commenters, the Clean Air Act Amendments of 1990 do not give EPA the "option" of regulating industrial utility-units under section 406. In contrast, Congress exempted certain cogeneration facilities from the Acid Rain Program (e.g., the 8.95-million-ton cap) and included them in the 5.60-million-ton cap. Under section 402(17)(C) and (25), exempt cogeneration facilities are excluded from the definition of "utility unit" and so are "nonutility" units covered by the "industrial source" cap.

This reinforces the conclusion that industrial utility-units are intended to be covered by the Acid Rain Program and leads to the conclusion that a blanket exemption for all industrial utility-units is inconsistent with the overall regulatory scheme under title IV.[9] Exempting all industrial utility-units, without regard to the amount of their electricity sales or to when the sales became contractually obligated, would result in a potentially increasing group of existing and future units that would generate electricity for sale but would be outside both the utility unit and the "industrial source" caps. Particularly since the ongoing changes in the structure of the electric industry make it difficult to predict how many industrial utility-units there may be in the future and how they may be used, EPA rejects such an open-ended exemption from both caps.[10] Moreover, commenters supporting a blanket exemption ignore the fact that the Acid Rain Program is aimed at reducing both SO_2 emissions and NO_X emissions. To the extent that existing coal-fired industrial utility-units are Group 1 (i.e., dry bottom wall-fired or tangentially fired) or Group 2 (i.e., cell burner, cyclone, wet bottom, or vertically fired) boilers, exempting them removes the applicability of the Group 1 or Group 2 NO_X emission limits, which in some cases may be the only NO_X limits for these boilers under the Act.

EPA also rejects, as unsupported and speculative, the claim that subjecting industrial utility-units to Acid Rain Program requirements will make interconnection agreements and related power sales agreements between such units and utilities economically prohibitive. EPA agrees that industrial companies may have more difficulty than utilities (at least under the current scheme of utility rate regulation) in passing through the costs of the Acid Rain Program. However, that is a far cry from concluding that electricity sales by existing industrial utility-units would cease or that no new industrial utility-units would contract to make such sales.

EPA therefore maintains that, if there is to be any exemption for industrial utility-units, the exemption must be strictly limited in order to resolve the specific problem set forth in the preamble of the proposal. That problem is that some industrial utility-units have only incidental activities (i.e., electricity sales) bringing the entire operation of the unit under the Acid Rain Program and that these units likely qualified for, but were not allocated, allowances. Strictly limiting the exemption to address this problem will minimize the potential environmental impact of this resolution on SO_2 and NO_X emissions and will better harmonize the exemption with the basic regulatory scheme under title IV. In fact, without the specific limits on the exemption set forth in today's rule based on the magnitude of electricity sales and the time period when electricity sales first became contractually required, EPA would reconsider whether any exemption for industrial utility-units should be established.

As an alternative to a blanket exemption for industrial utility-units, one commenter suggested modifying the definition of "incidental sales of electricity" so that units selling up to one-third (rather than up to 10 percent, as under the proposal) of their electric generation to utilities could qualify as exempt industrial utility-units. Allegedly, limiting sales to up to one-third of annual electric generation would be consistent with the statutory exemption for cogeneration facilities. Under section 402(17)(C) and § 72.6(b)(4), a cogeneration facility that supplies to a utility, on an annual basis, an amount of electricity not exceeding one-third of its potential electrical output capacity or 219,000 MWe-hrs is an unaffected unit and is not subject to the Acid Rain Program. The commenter supported limiting industrial utility-units to annual electricity sales equal to the lesser of one-third of capacity or one-third of actual generation.

Reflecting that the rationales for the industrial utility-units exemption and the statutory cogeneration facility exemption are not identical, today's rule does not make the requirements for the two types of exemptions identical. On one hand, the cogeneration facility exemption reflects Congressional intent, manifest in section 402(17)(C) of the Act, that certain cogeneration facilities be entirely exempt from the Acid Rain Program whether or not they had contracted before enactment of title IV to provide electricity at a fixed price. Presumably, this is because, by using the same steam both for electric generation and industrial purposes, cogeneration facilities are inherently more efficient than other units that generate electricity. *See* 40 CFR 72.2 (defining "cogeneration unit" as unit producing electricity and useful thermal energy "through sequential use of energy"). On the other hand, the industrial utility-units exemption addresses the category of industrial utility-units, which were intended by Congress to be subject to the Acid Rain Program but, with regard to certain individual units, were not allocated allowances for which they likely qualified. They lack the sequential use of energy that makes cogeneration facilities inherently more efficient. As discussed above, EPA maintains that the industrial utility-units exemption should, under these circumstances, be more narrowly drawn than the provisions for exempting cogeneration facilities. Consequently, EPA disagrees with the approach of using the limit on electricity sales by exempt cogeneration facilities in setting the limit on electricity sales by exempt industrial utility-units.

In the proposal, the industrial utility-units exemption is limited to units that were contractually obligated as of March 23, 1993 to make only incidental sales of electricity to utilities. The proposal defines "incidental sales" as sales not exceeding 10 percent of either nameplate capacity or total actual generation because that level seemed to be consistent with the general level of historical electricity sales by the type of unit intended to be covered by the exemption. This approach limits the exemption by restricting both the number of units covered by the exemption and the amount of electricity sales to historical levels and does not allow expansion beyond those levels. None of the commenting owners of units potentially qualifying for the industrial utility-units exemption claimed that they had actually made, in any past year, electricity sales in excess

[9] EPA rejects as speculative and irrelevant the commenter's suggestion that title IV may be amended in a way that would require non-exempt industrial utility-units to make additional, "prohibitively expensive" reductions.

[10] Even if the "total" exemption were limited to the specific possible industrial utility-units identified thus far by EPA (*see Report to Docket: Industrial Units* (October 31, 1996)), the amount of generation and emissions covered by a "total" exemption could increase in the future. Moreover, the commenters suggested no basis for limiting a "total" exemption to those tentatively identified industrial utility-units if other units are subsequently found to meet the "total"-exemption criteria.

of the 10 percent limit or that the 10 percent limit is unrepresentative of historical levels. EPA maintains that it is appropriate to impose on the industrial utility-units exemption a limit reflecting historical levels and that, on their face, electricity sales as high as one-third of total generation cannot be regarded as simply incidental to the operation of the unit involved. For these reasons, while choosing a 10-percent level as the cutoff point for "incidental sales"—like choosing any specific cutoff point—is to some extent arbitrary, EPA maintains that the chosen level is reasonable. Today's rule, like the proposal, defines "incidental electricity sales" as an amount of electricity sales that does not exceed the smaller of 10 percent of the nameplate capacity of the generator served by the unit times 8,760 hours per year or 10 percent of the actual annual electric output of that generator.

Today's rule also continues to impose the incidental-electricity-sales limit on sales starting in 1985 and continues to require that the contractual obligation to make such sales must have been in place on March 23, 1993. One commenter objected to having "two different deadlines" and argued that only sales starting in 1993 should have to meet the incidental-electricity-sales limit. EPA rejects this approach.

Under the industrial utility-units exemption, EPA considers the electricity sales of the unit starting in 1985 because that is analogous to the approach taken by Congress in section 402(17) in determining what units are utility units that are subject to the Acid Rain Program. With certain exceptions, any unit that at any time starting in 1985 or thereafter serves a generator that produces electricity for sale is a "utility unit" subject to the Acid Rain Program. 42 U.S.C. 7651a(17)(A). In crafting the industrial utility-units exemption, EPA reasonably takes a parallel approach of considering actual sales starting in 1985. Actual sales before 1985 will not be considered. EPA sees no basis for the commenter's suggestion of ignoring any non-incidental electricity sales from 1985 to 1993. In essence, EPA is requiring that, in order to be exempt, a unit must have maintained its character as an industrial utility-unit making only incidental sales throughout the period generally used to determine applicability of the Acid Rain Program.

The rationale for the "second deadline" in the industrial utility-units exemption—i.e., the requirement that there be, as of March 23, 1993, a contractual obligation to make incidental electricity sales—is set forth in detail in the proposal and is adopted here. 61 FR 68346. This requirement also makes it likely that the unit was either (i) in commercial operation as of November 15, 1990 or (ii) was under construction by December 31, 1990 and therefore qualified for, but was not allocated, allowances in Phase II. *See* 42 U.S.C. 7651d(a)–(f) and (h)–(i) (allowances for existing units) and (g) (allowances for units under construction and operating by specified deadlines).

Termination of exemption. Under the proposal, a unit's industrial utility-units exemption terminates automatically once any of the original requirements for granting the exemption are no longer met. Commenters raised concern that the proposal terminates the exemption if the contractual agreement that requires incidental electricity sales by the unit, and on which the granting of the exemption was originally based, expires or is amended. A particular agreement may have a termination date even though the parties intend for the relationship to continue. Further, an agreement may be modified directly or through replacement by a new agreement, e.g., in order to change the names of the parties or the electricity prices. According to commenters, the exemption should not be terminated so long as there is not an obligation to sell more than an incidental amount of electricity.

EPA understands the concern that replacement of the interconnection agreement on which an exemption is based (or of the power purchase agreement related to the interconnection agreement) by a follow-on agreement that continues to require the same amount of electricity sales should not result in termination of the exemption. EPA also recognizes a similar concern with regard to amendment of the interconnection agreement or power purchase agreement. On one hand, the rule should provide for some flexibility allowing agreements to be modified or replaced so long as the underlying electricity sales obligation of the industrial utility-unit is not altered in a way that undermines the original basis for the unit's exemption. On the other hand, EPA is concerned that this flexibility should not have the effect of allowing expansion of the unit's exemption beyond its original scope. For example, just as a unit that as of March 23, 1993 did not serve a generator required to produce electricity for sale and that begins after that date to be involved in electricity sales is not exempt, an exempt unit should not be able to expand its involvement in electricity sales after March 23, 1993 and retain the exemption. Finally, EPA believes it must consider that future modifications or replacements of agreements will be taking place in the context of restructuring of the electric industry, where utilities may be restructured and renamed.

In order to meet all of these concerns, today's rule provides that, in applying the automatic-termination provisions of the exemption, the interconnection agreement (and related power purchase agreement) and any successor agreement will be considered. For example, the proposal stated that if the interconnection agreement on which the exemption is based expires or terminates and the generator served by the unit continues to produce electricity for sale, the exemption for the unit terminates. Under today's rule, if that interconnection agreement is replaced or supplemented by a "successor agreement", the expiration or termination of the original agreement will not cause termination of the exemption. Today's rule defines "successor agreement" in a way that is aimed, on one hand, at requiring the unit to continue to meet the basic requirements for the exemption and taking account of future electric industry restructuring and, on the other hand, at preventing this flexibility from being used to expand beyond the original scope of the exemption when it was approved.

A "successor agreement" is defined as an agreement that modifies, replaces, or supersedes the interconnection agreement or related power purchase agreement on which the exemption was originally based. Further, a "successor agreement" must be between owners and operators of the unit and another party (which may be the same party as in the original agreement) that (i) is principally in the electric utility business or is a public utility subject to State or local jurisdiction and (ii) is obligated to sell electricity to the owners and operators of the unit. In addition, the "successor agreement" must require the generator served by the unit to produce electricity for sale only for incidental electricity sales to that party. Finally, the total amount of electricity that the generator served by the unit is required to produce for sale under all such contracts that are in effect (i.e., the interconnection agreement, related power purchase agreement, and any successor agreement) must not exceed the amount that such generator was required to produce for sale under the original interconnection agreement and related power purchase agreement on which the exemption was initially based.

Procedural and other issues. Under the proposal, a unit seeking an

industrial utility-units exemption must submit a petition to the local permitting authority. The processing of the petition is similar to that for an Acid Rain permit. However, once an exemption is approved, it has no uniform, fixed term and continues in effect unless and until it is automatically terminated. Commenters claimed that the process of petitioning for the exemption would be burdensome. They noted that the proposal removed the requirements to apply for the new units or retired units exemption and argued that the industrial utility-units exemption should similarly be made "self-executing".

When the new units and retired units exemptions were first adopted by rule, the regulations required submission of petitions for the exemptions, processing by the permitting authority using the permit notice-and-comment procedures, and renewal every five years. The December 27, 1996 proposal and today's rule make those exemptions self-executing for the most part. With some exceptions, owners and operators of units meeting the fairly straightforward requirements of the new units or retired units exemptions need only notify the permitting authority and EPA of their qualification for the exemption.

In the case of the industrial utility-units exemption, EPA has decided that it is necessary to require the submission of a petition and processing by the permitting authority. This is a newly established exemption, with which the Agency has had no experience. Moreover, in determining whether to establish the exemption, EPA has found it difficult to obtain information on which units might qualify. *See Report to Docket: Industrial Units* (October 31, 1996). In addition, determination of whether a unit qualifies for the exemption is not as straightforward as the determination of qualification for the new units or retired units exemption. Qualification for an industrial utility-units exemption depends, in part, on interpretation of interconnection and power purchase agreements. Further, particularly in light of other provisions of today's rule that streamline the permit processing procedures and thus also apply to processing of a petition for industrial utility-units exemption, EPA maintains that the petition and review requirements for the exemption are not unduly burdensome on either the unit owners and operators or the permitting authorities. Today's rule requires a one-time review process in that once approved, the exemption continues in effect without the need for renewal.

One final issue raised by a commenter (Zinc Corporation of America) is whether industrial utility-units that do not qualify for an industrial utility-units exemption should be allocated allowances. Allegedly, such units qualify for allowances but were not allocated any due to EPA's "oversight in allowance allocation".

The difficulty with this argument is that it ignores the fact that EPA has previously specified deadlines by which parties claiming that an erroneous failure to allocate allowances to a unit were required to submit such claims and necessary supporting information to EPA. As explained in the proposal (61 FR 68345), EPA issued in July 1992 the Adjunct Data File listing units of "nontraditional utilities". 57 FR 30034, 30040 (July 7, 1992). EPA indicated that the units might or might not be affected units and that, in any event, it lacked sufficient information on which to base any allowance allocation. *Id.* Further, EPA gave notice that if the data necessary for allowance allocation was not provided by September 8, 1992 for "a unit that may be affected now or in the future", the unit would not be allocated allowances. *Id.* Moreover, believing that it had corrected all timely identified errors in the data and resulting allocations, EPA stated in the March 23, 1993 notice on final allowance allocations that no allowances will be allocated to any affected unit that was not allocated allowances in that notice. 58 FR 15634, 15641 (March 23, 1993).

Neither Zinc Corporation of America nor the predecessor-owner (St. Joe Minerals Corporation) of the units now owned by Zinc Corporation of America submitted any data or any objection to the lack of allowance allocations for the units. The only companies that have units identified by EPA as potentially industrial utility-units and that submitted any comments concerning allowance allocations were LTV Steel Mining Company and Ford Motor Company. Both companies claimed that their units were not affected units, and neither has ever objected to the lack of allowance allocations.

Thus, there is no basis for allocating allowances now or in the future to industrial utility-units, as suggested by the commenter, if EPA ultimately determines that any such units do not qualify for the industrial utility-units exemption.[11] Such units are treated like any other unit that has not been allocated allowances and becomes an affected unit after that date: No allowances will be allocated. EPA's approach of declining to allocate allowances when the deadline for submission of information for allowance allocation is missed has been upheld by the courts. *Texas Municipal Power Agency* v. *EPA*, 89 F.3d 858. 872–73 (1996).

III. Part 72: Interaction of Acid Rain Permitting and Title V

A. Relationship Between Acid Rain Rules and Parts 70 and 71

The proposal attempted to clarify the extent to which the Acid Rain rules apply in lieu of provisions of parts 70 and 71, which address permitting by State permitting authorities and by the Administrator under title V of the Act. No comments were received on these revisions. The revisions are adopted in today's rule with some changes. The language in several sections of the proposal stating that the Acid Rain rules "supersede" provisions of parts 70 or 71 is removed from the final rule because of concern that such language might cause confusion as to whether parts 70 and 71 remain in effect at all.

Instead, today's § 72.60 clarifies that part 72 governs, notwithstanding the requirements of part 71, and the list of specific procedural matters that part 72 governs is clarified and augmented so that the list includes all matters covered by subparts C, D, E, F, and H of part 72.[12] The list of specific matters to which part 71 still applies is also clarified. Further, today's § 72.70 retains the language in the existing rule stating that subpart G governs to the extent that the subpart is "inconsistent" with part 70. Upon reconsideration of the language, EPA concludes that this existing language is reasonably clear, particularly with the revisions in § 72.72 reducing the number of differences between subpart G and part 70. EPA also notes that the existing language avoids any potential confusion about the overall effectiveness of part 70.

B. State Authority to Administer and Enforce Acid Rain Permits

Under the proposal, a State becomes responsible for administering and enforcing Acid Rain permits for affected sources if the State has an operating permits program approved under part 70 and to the extent the State Acid Rain regulations are accepted by the Administrator. The proposal also established a procedure for withdrawal of the Acid Rain Program from a State where the Administrator determines that the State is not adequately administering or enforcing the program.

Today's rule adopts the revisions, with several changes. Under the proposal, the Administrator accepts all or a portion of State Acid Rain regulations through issuance of a notice in the **Federal Register**. Particularly since the State regulations will then become part of the State title V operating permits program, EPA believes that notice and opportunity for public comment should be provided before the Administrator issues a final acceptance or rejection of all or a portion of the State regulations. This approach is consistent with the requirement in part 70 that notice and opportunity for public comment be provided on the Administrator's approval or disapproval of a State operating permits program under title V. *See* 40 CFR 70.4(e). Today's rule includes language that imposes a notice-and-comment requirement but is flexible enough to allow use of a direct final procedure under which, for example, the proposed and final acceptance of State regulations are issued in simultaneous notices and the acceptance becomes automatically final if no significant, adverse comments are timely submitted.

Further, the proposal revised the provision concerning the date by which a State permitting authority must reopen Phase II Acid rain permits to add Acid Rain NO_X requirements. The existing provision requires the permits to be reopened by January 1, 1999 but is unclear as to whether this is the deadline for completion, or simply commencement, of the reopening procedure. In order to clarify the provision and ensure that State permitting authorities have sufficient time to process the permits, the proposal stated that the reopening must be completed by July 1, 1999.

Commenters objected to the July 1, 1999 completion deadline on the ground that utilities need more than 6 months to plan for compliance with the NO_X terms of their Acid Rain permits. No comment was received supporting the Agency's concern that State permitting authorities might need additional time beyond January 1, 1999 to complete the reopening of the permit. Further, as discussed elsewhere in this preamble, today's rule includes provisions that enable State permitting authorities to expedite permit processing, e.g., the provisions for elimination of newspaper notice and for use of direct proposed procedures. By further example, today's rule provides that any EPA-approved early election plan that has not been terminated must be added to the Phase II permit through an administrative amendment, rather than through a notice-and-comment procedure. This reflects the fact that § 76.8, governing early election plans, requires a State permitting authority to approve, as part of the Phase II permit, any ongoing early election plans previously approved by EPA. These streamlining provisions will reduce the administrative burden on the State permitting authorities.

Consequently, today's rule retains the January 1, 1999 deadline and makes it clear that the reopening of the permit to add NO_X requirements must be completed by that deadline. By its terms, the January 1, 1999 deadline for adding the NO_X provisions only applies to the extent that the provisions were included in a timely, complete permit application concerning NO_X emissions. EPA notes that, under § 76.9(b)(2), such permit application must be submitted by January 1, 1998 and that, where the State permitting authority with jurisdiction over the unit has responsibility for issuing Acid Rain permits covering NO_X, the submission should be made to that State permitting authority.

Finally, language is added (e.g., to § 72.73(b)(1) and § 72.74(a)) to make it clear that the State permitting authority issues Acid Rain permits to the extent that it has State Acid Rain regulations, accepted by EPA, that apply to the sources involved and to the Acid Rain requirements involved. For example, if accepted State Acid Rain regulations include the Acid Rain emissions limitation for SO_2 but not the emissions limitations for NO_X by the applicable deadline under § 72.73, EPA has the flexibility to determine whether the State permitting authority will be responsible for issuing Acid Rain permits covering both SO_2 requirements under part 72 and NO_X requirements under part 76.

C. Required Elements for State Acid Rain Program

The existing rule set forth the criteria for approval of a State operating permit program under title V and acceptance of the State Acid Rain regulations. The proposal eliminated or modified several of the criteria in the existing rule because EPA believed that they were unnecessary or redundant. Comments were received on only three of these revisions. With the changes discussed below, all the revisions are adopted in today's rule for the reasons discussed here and in the proposal.

First, the existing rule required State permitting authorities to give written notice of draft permits to specified persons and also to provide notice in a newspaper or State publication. The proposal gave State permitting authorities the option of foregoing newspaper or State publication notice of draft permits that require only that a unit meet the standard SO_2 or NO_X emission limitations, a NO_X averaging plan, or a NO_X early election plan. Commenters supported this revision, which is adopted in today's rule.

Second, the proposal gave State permitting authorities the option of using what was referred to as a "direct final" procedure for issuing Acid Rain permits. Under the procedure, a State permitting authority issues simultaneously a draft permit and a proposed permit. If no significant, adverse comments are received, the proposed permit is deemed to be issued and, after the period for review by the Administrator, the State permitting authority issues the final permit. Commenters supported this option and urged that EPA clarify that it applies to permit revisions as well as permit issuance. EPA notes that the procedure is misnamed in the proposal in that the permit that is issued in the absence of significant, adverse comment is a "proposed permit" that is still subject to the Administrator's review. Consequently, today's rule refers to this option as the "direct proposed" procedure and adopts the provision.[13]

With regard to the use of the direct proposed procedure for permit revisions, EPA notes that § 72.81(c)(2) in the proposal and in today's rule states that, with certain exceptions not relevant here, permit modifications must be treated as permit applications. Consistent with § 72.81(c)(2), the procedures for permit issuance (including, e.g., the direct proposed procedure) apply to permit modifications. Similarly, permit issuance procedures apply to permit reopenings. Because the other types of permit revisions, i.e., fast-track

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[11] EPA stresses that it has made no determination at this time on the qualification of these companies' units for the industrial utility-units exemption and will await submission of the necessary applications before making any determination. None of the companies that commented stated that it could not meet the proposed exemption requirements.

[12] For similar reasons, the same general approach is used in § 72.80, which states that subpart H, rather than part 70 or 71, governs revisions of Acid Rain permit provisions.

[13] Today's rule also removes language in § 72.72(b)(1)(iv) stating that after the comment period on a draft permit, the State permitting authority will issue or deny a proposed permit. Some State permitting authorities have provided, with EPA's concurrence, that the comment period on the draft permit and EPA's review of the permit run concurrently so long as no adverse comment is received and no change is made in the draft permit. The language in § 72.72 is removed in order to allow State permitting authorities to take this approach, which reduces the length of the permitting process, for Acid Rain permits.

modifications and administrative permit amendments, have their own procedures set forth in the proposal and today's rule, the direct proposed procedure does not apply to such revisions.

Third, the proposal eliminated a provision in the existing rule limiting the filing of State administrative or judicial appeals of an Acid Rain permit to no more than 90 days from the issuance of the permit. As a result, part 70, which imposes no limit on State administrative appeals and limits judicial appeals to no more than 90 days from permit issuance, would govern appeals of Acid Rain permits. 40 CFR 70.4(b)(3)(xii); *see also* 59 FR 44460, 44516 (August 29, 1994) (proposing to allow States to provide up to 125 days for judicial appeals).

Commenters objected to the removal of any limit on the periods for State administrative appeals, and for judicial appeals, under part 72. The commenters contended that, in the absence of a limit in part 72 (or in part 70) on administrative appeals, owners and operators "would never be able to know whether their permits would be subject to challenge". However, the commenters ignored the fact that, in imposing no federally mandated limit on State administrative appeals, part 72 leaves the matter to the States, which are highly likely to impose such limits in the interests of finality and administrative efficiency. EPA is not aware of any State operating permit programs that, to the extent they provided for administrative appeal, failed to set a time limit on the filing of administrative appeals. In short, the question here is not whether to have any limit but rather whether to leave the matter for the States or impose a federally mandated limit. EPA maintains that it is preferable to allow each State flexibility to craft time limits for Acid Rain appeals. Under this approach, each State can set a single time limit appropriate for and applicable to all administrative appeals—and also one for all judicial appeals—of the entire title V operating permit, rather than having one set of time limits for an Acid Rain permit and another set of time limits for the remaining portions of the operating permit.

The commenters contended that the Acid Rain permits are a "stand-alone portion" of the operating permit and so it would not be confusing to have a different deadline for appealing the Acid Rain portion and appealing the rest of the operating permit. EPA disagrees. Although the Acid Rain permit is a separate portion of the operating permit, State permitting authorities are likely, as a matter of efficiency, to conduct notice and comment and other permitting procedures for the rest of the operating permit at one time and to issue a single, all inclusive operating permit, particularly since the Acid Rain permit is likely to comprise a relatively small part of the entire title V operating permit. In fact, in response to State concern over how to coordinate the processing of the Acid Rain permit and the operating permit, EPA has issued guidance on alternative approaches for achieving coordination. *See Guidance on Coordinating Title IV/Title V Permitting Schedules* (March 15, 1994). EPA believes that having a single administrative appeal deadline and a single judicial appeal deadline for the entire operating permit is simpler and less likely to result in inadvertent failure to meet the applicable filing deadline.

The commenters also alleged that the Acid Rain portion incorporates new compliance obligations while the remainder of the operating permit merely restates existing obligations. This, of course, depends on the timing of the issuance of the operating permit. State permitting authorities are allowed to phase in the issuance of operating permits and new obligations may arise before issuance of, and therefore may be included in, a given operating permit. Moreover, to the extent this distinction applies, it is likely to apply only for the initial Phase II Acid Rain permit; in most cases, a subsequent Acid Rain permit will restate the obligations (e.g., the requirement to hold sufficient allowances to cover SO_2 emissions) already in the initial Acid Rain permit.

EPA concludes that, with regard to the question of limiting State administrative and judicial appeals, the Acid Rain portions of operating permits should not be treated any differently than the remaining portions of operating permits. The provision in the proposal is adopted in today's rule.

In the proposal EPA noted that many States have already adopted Acid Rain rules based on the existing rule. EPA stated that it expected that, if rule revisions are adopted in final, States will incorporate the revisions within 2 years after the promulgation of the final rule. No comment was received on this approach, and EPA continues to believe that this is a reasonable time frame. To the extent a State permitting authority fails to incorporate the revisions in a timely manner, EPA will consider whether the State is adequately administering and enforcing the Acid Rain Program and may take action under § 72.74 of today's rule to administer all or a part of the Acid Rain Program for sources located in the State.

IV. Part 72: Miscellaneous Permitting Matters

A. Definitions

The proposal modified or eliminated several definitions. Only one of the changes (i.e., the revised definition of "submit or serve" to eliminate the requirement for use of certified mail) received comment and that comment was supportive. The definition revisions, as modified below, are adopted in today's rule.[14]

B. Designated Representative

The proposal included two types of revisions concerning designated representatives. First, the procedures for selecting or changing the designated representative or an alternate were simplified and made less burdensome. Commenters supported the revisions, which are adopted in today's final rule.

Second, the proposal provided the option of selecting two alternate designated representatives for an affected source in certain limited circumstances. The proposal was aimed at providing flexibility for sources with units located in more than one State that are in a NO_X averaging plan under § 76.11 and that are subject to two levels of management, one at the subsidiary operating company and one at the parent company. In particular, as requested by a commenter, the proposal allowed a multi-state utility holding company with a NO_X averaging plan covering units in two or more States to designate for sources with units in the plan a single designated representative at the holding company level and two alternates, one at the management level and one at the operations level of the operating company. Commenters supported the additional flexibility but suggested certain changes to the proposal.[15]

[14] One of the proposed definitions, "State", is modified in today's rule. The proposed definition removed language, stating that "State" has its conventional meaning where it is clear "from the context", and listed one specific instance where the conventional meaning would apply. Because there are several contexts in which the conventional meaning applies, today's rule retains the formulation in the existing rule. Thus, for example, in § 72.40(b)(2) the term "State" has its broader meaning (which includes the jurisdiction of any non-federal permitting authority) while in § 72.22(e)(1)(i) "State" has its conventional meaning.

[15] One commenter suggested that there is no basis for the requirement in § 76.11 that units in a NO_X averaging plan have the same designated representative. This suggestion is outside the scope of the rulemaking. While it is unclear whether the commenter intended to raise that issue here, EPA did not propose, and is not considering here, such a change in § 76.11.

The commenter that originally requested this type of provision in the proposal expressed concern that the references in the proposal to a holding company with multiple subsidiaries may become obsolete in light of future restructuring of the electric industry. For example, a holding company with subsidiaries operating generation facilities may be restructured to include all generation facilities in a single subsidiary. This commenter also was concerned that the proposal limited the option of having two alternates to cases where the NO_X averaging plan covered all units operated by the subsidiaries. If any units are covered by early election plans or have alternative emission limitations and so are outside the NO_X averaging plan, the proposal would not apply. Other commenters echoed these concerns but suggested that EPA allow any source to have two alternates, regardless of whether the source has units that are in a NO_X averaging plan or are subject to management at both the subsidiary and parent company levels.

While retaining the general rule that a source must have one designated representative and may have one alternate, EPA proposed allowing two alternates in limited circumstances where it was shown that such flexibility might be needed. The proposed provision, as modified in today's rule, covers the only specific circumstance for which a need for multiple alternates has been explained by commenters, i.e., where units are in different States but in the same NO_X averaging plan and are subject to both subsidiary and parent company management. While commenters make a general suggestion that having two alternates gives greater assurance that a "point of contact" for a source will be available "at all times", the commenters do not claim that having one alternate has generally been insufficient or point to any other specific circumstances where two alternates are needed. EPA therefore declines to expand the provision any further.

For the reasons discussed here and in the proposal, today's rule adopts the proposed provision, with changes to meet other concerns stated by commenters. First, the provision expressly covers a unit whose utility system is the subsidiary of a company (not necessarily a "holding company"). Second, the provision will cover cases where the units in the NO_X averaging plan are operated by a single subsidiary or by two or more subsidiaries. Each unit must be in a utility-system subsidiary of a company, but they may be in the same such subsidiary. Third, the NO_X averaging plan need not include all units operated by subsidiaries of the company; instead the plan must simply cover two or more units in more than one State.

C. Compliance Plans

The proposal revised the provisions concerning the submission of substitution plans and reduced utilization plans in order to clarify the deadlines and the procedures to be used. No comments were received, and the revisions are adopted in today's rule.

The proposal also revised the procedures for review of failed repowering projects. No comments were received on the revisions, which are adopted in today's rule.

Finally, the proposal revised the deadline for activating conditional repowering extension plans from December 31, 1997 to July 1, 1997. No comments were received. However, today's rule is being published after July 1, 1997, and EPA has decided not to revise the activation deadline retroactively.

D. Federal Permit Issuance

The proposal made several revisions to the federal permit issuance procedures. For example, the period after which an Acid Rain permit application received by EPA is deemed to be complete was lengthened from 30 days to 60 days. This was done in order to be consistent with part 71, under which the period applicable to operating permit applications is 60 days. Commenters objected that this prolongs the "period of uncertainty" over the completeness of the Acid Rain application and stated that Acid Rain permitting "generally proceeds along a separate track" from other title V permitting. However, the commenters' assumption that the Acid Rain portion of the operating permit is processed separately from the rest of the operating permit is not necessarily correct. If the State permitting authority is generally responsible for issuing title V operating permits but, because its Acid Rain rules are not fully approved, EPA issues the Acid Rain permits, then the Acid Rain permits may be processed separately. In cases where EPA is responsible for issuing entire title V operating permits (including the title IV portion), the title IV and title V procedures may be coordinated as a matter of efficiency, particularly if EPA delegates the title IV and title V permitting to the State. *See* 40 CFR 71.10 (delegation of permitting under title I); and 72.74(a)(2) of today's rule (delegation of permitting under title IV). A single completeness review (as well as a single notice and comment procedure) may be conducted for the entire operating permit. EPA maintains that the ability to coordinate Acid Rain permitting and title V permitting and to realize potential efficiencies is enhanced by minimizing the differences between Acid Rain permitting and title V permitting.

Moreover, the Acid Rain portion of the operating permit is generally relatively small compared to the entire title V permit application. It is therefore logical to make the completeness review period for the title IV permit conform to the 60-day period for title V permits, rather than to shorten the title V completeness review period to 30 days. While the period during which owners and operators are uncertain about the completeness of Acid Rain permit applications will be lengthened for 30 days, EPA maintains that the advantage of a consistent completeness review period outweighs the relatively minor, additional uncertainty.

Further, the proposed rule altered the provision concerning the time period within which a designated representative must respond to a request for supplemental information by the Administrator. While the existing rule set an automatic 30-day period for responding and allowed the Administrator to lengthen the response period, the proposal stated that a reasonable period would be set on a case-by-case basis by the Administrator. A commenter objected on the ground that it is unlikely that a period less than 30 days would be reasonable and that it would generally be in the interest of a designated representative to respond expeditiously. However, the commenter ignores the fact that there can be significant, but readily remedied gaps or errors in the information submitted to EPA in a permit application. Setting a minimum response period of 30 days is likely to lengthen unnecessarily the permitting process. In addition, while the Agency could treat applications with such errors as incomplete and avoid the minimum 30-day response period, EPA maintains that it is preferable to have the flexibility to set a reasonable, short response period. This flexible approach both promotes orderly and expeditious processing of permits and protects the designated representative from unreasonable requests. This is also preferable to the commenter's approach of assuming that designated representatives will necessarily respond expeditiously and in a time frame that meets the Agency's schedule for permit processing.

E. Permit Revision

The proposal made several changes to the permit revision procedures. Changes concerning permit reopenings received no comment and are adopted in the final rule; changes concerning fast-track amendments and administrative amendments are adopted as discussed below.

With regard to fast-track modifications, the proposal lengthened the period within which a State permitting authority must act on a fast-track modification of a permit from 30 to 60 days after the end of the public comment period. Commenters objected claiming that there is no evidence that State permitting authorities need more time and that the revisions entitled to fast-track modification required little exercise of administrative discretion and are unlikely to receive public comment.

EPA notes that, while a NO_x averaging plan or plan change may require little administrative discretion and elicit little comment, the processing of other types of revisions (e.g., changes to repowering plans or thermal energy plans) is more likely to involve discretion or public comment. Further, the processing of Acid Rain permits and permit revisions represents a very small portion of the operating permit processing required of State permitting authorities under title V. Reflecting the significant burden of operating permit processing, part 70 allows State permitting authorities to take up to 18 months from receipt of a complete permit application to issue an operating permit and a similar period to make significant modifications to an existing operating permit. 40 CFR 70.7(a)(2) and (e)(4)(ii). By comparison, a 90-day period (i.e., the 30-day comment period and 60 days after the end of the period) for completing a fast-track modification is certainly expedited. EPA maintains that, in light of the permitting burden faced by State permitting authorities, it is preferable to set a more realistic, and yet still expedited, deadline for action by State permitting authorities.

With regard to administrative amendments, the proposal set forth the amendment procedures in detail, rather than citing the procedures in part 70. Further, the period for action on one administrative amendment, an alternative emission limitation (AEL) demonstration period, was lengthened from 30 days to 60 days after receipt of an AEL demonstration period petition determined by the permitting authority to meet all the requirements of § 76.10. No comments were made on these revisions, which are adopted in today's rule.

In addition, the administrative amendment procedures were changed to allow a permitting authority to correct minor errors in a permit on its own motion. Noting that the proposed provision was not explicitly limited to "minor" errors, commenters argued that notice should be given to the designated representative before even minor changes are made to the permit. In response to these concerns, today's rule explicitly limits administrative permit amendments on the motion of the permitting authority to corrections of typographical errors or similarly noncontroversial changes (e.g., adding a new units or retired units exemption for which the requirements were previously met). Moreover, the rule requires that a permitting authority provide at least 30 days' notice to the designated representative of the source involved before making, on its own motion, any administrative permit amendments. This approach will enable the permitting authority to correct minor errors with minimal delay while providing the designated representative the opportunity to commment.

In order to make the reopening provision consistent with the provision allowing a permitting authority to make administrative amendments on its own motion, language is added to § 72.85. This language makes it clear that administrative amendment procedures, rather than reopening procedures, may be used for typographical or similar errors.

F. Reduced Utilization Accounting

The proposal made several changes in the reduced utilization accounting provisions. Most of the changes received no comment or only favorable comment and are adopted in today's rule. Commenters objected to one change: The provision that, in accounting for the effect of heat rate improvements on a Phase I unit's utilization, credit for such improvements must be limited to the net effect of the improvements on the unit's heat rate. According to the commenters, if a unit's heat rate (i.e., Btu/Kwh) since the 1985–1987 base period deteriorates (i.e., increases) and measures are taken that offset that deterioration, the entire effect of the heat rate improvements should be included in accounting for reduced utilization. The commenters alleged that the statutory reduced utilization provision in section 408(c)(1)(B) of the Act establishes a "baseline" heat input, not a "baseline" heat rate.

In asserting that there is no connection between utilization in the base period and heat input in the base period, the commenters ignore the basic purpose of accounting for reduced utilization and heat rate improvements. The purpose of the reduced utilization provisions is to ensure that any increased emissions resulting from reducing utilization of, and shifting generation from, Phase I units to units compensating for the reduced utilization "are accounted for in the allowance system." 56 FR 63002, 63019 (December 3, 1991). Reduced utilization "as a result of * * * improved unit efficiency programs" need not be accounted for through allowance surrender because these programs "cause decreases in utilization without any shifts of generation to unaffected units." 56 FR 63021. To the extent utilization (i.e., total annual heat input in mmBtus) at a Phase I unit is reduced below the baseline level because that unit has improved its heat rate after 1987 *over the level reflected in the baseline utilization*, there is no increase in SO_2 emissions and allowances need not be surrendered. In this case, the Phase I unit is using less fuel because it can produce a kilowatthour of electricity with less fuel and thus less SO_2 emissions.

However, if the Phase I unit's heat rate deteriorates from the level reflected in the unit's baseline utilization and heat rate improvement measures are instituted after 1987 that bring heat rate back to the level reflected in the baseline utilization, then the unit is using the same amount of fuel to produce a kilowatthour of electricity. In the latter case, the heat rate improvements made after 1987 do not account for the use of less fuel at the Phase I unit. Just as heat rate improvements made before 1987 and reflected in baseline utilization cannot account for utilization below baseline, heat rate improvements made after 1987 that simply restore the heat rate to the level reflected in the baseline cannot account for reduced utilization. *See* 61 FR 68354. The same logic applies if a Phase I unit is attempting to account for its reduced utilization through heat rate improvements at another unit that simply restore the latter unit's heat rate to the 1987 level.

Thus, contrary to the commenters' assertions, EPA did not simply "assume" that limiting heat rate improvement to net improvement since 1987 is warranted. On the contrary, EPA explained, albeit in less detail than in today's rule, the basis for the limitation. *Id.* Moreover, the limitation is consistent with long-standing explanations of the purpose of reduced utilization accounting, as discussed above, and with other, regulatory provisions governing such accounting. In particular, limiting heat rate improvement to net improvement since 1987 is analogous to the approach taken in the existing rule concerning sulfur-free generation, which is not at issue here. Only the net increase in current generation at a sulfur-free generator (i.e., the increase in current generation over the sulfur-free generator's average 1985–1987 annual generation), not the increase from one year to the next, is used to account for reduced utilization. *See* 40 CFR 72.91(a)(3)(iii); and 58 FR 3590, 3606–7 (January 11, 1993).[16] The commenters' approach is therefore rejected as inconsistent with the entire thrust of reduced utilization accounting, and the proposed provision is adopted in today's rule.

V. Part 73: Allowances

A. Allowance Tables

In the proposal, EPA proposed a number of changes in unadjusted allowances and in the units and allowance figures listed in Tables 2 and 3 of § 73.10, reflecting those allowance changes. For purposes of the proposal, EPA was able to list the changes in the rule without reprinting Tables 2 and 3. However, consistent with the requirements of the **Federal Register** concerning finalization of multiple changes to regulatory tables and in the interest of facilitating public understanding of the final changes, EPA concludes that the changes should be finalized through republication of information in the tables. Further, section 403(a) of the Act requires the Administrator to issue prior to June 1, 1998 a revision of the final allowance allocations primarily to account for allocations for repowered units under section 409. That revision will necessitate recalculation of all units' allowance allocations and so must also be implemented through republication of information in Tables 2 and 3. In order to avoid the confusion likely to result from, and the large expense associated with, multiple republications of information in the tables, EPA has decided not to finalize at this time the allowance revisions in the December 27, 1996 rule. Instead, EPA intends to propose in the near future the revisions associated with the June 1, 1998 allocations and to coordinate finalization of both the allowance revisions in the December 27, 1996 proposal and that future proposal.

The only exception to this approach is the allowance changes for Central Louisiana Electric Company's Rodemacher unit 2. In the December 27, 1996 proposal, the allowances for Rodemacher unit 2 were changed to 20,774 unadjusted allowances. Under a settlement of litigation concerning Rodemacher unit 2's allowance allocation, the Administrator agreed to sign a final rule adopting the revision to the unit's allowances by October 1997. Consistent with that settlement, the proposed unadjusted allowances for Rodemacher unit 2 are adopted in today's rule. This single change can be made without republishing the allowance tables.

B. Small Diesel Refinery Provisions

The proposal made certain revisions to the provisions to small refinery allowance allocations. No comment was received, and the revisions are adopted in today's rule.

VI. Part 75: Monitoring of Units Burning Digester or Landfill Gas

In the proposal, EPA requested comment on monitoring requirements for units burning digester or landfill gas. No comments were received. EPA intends to consider this matter in future proceedings.

VII. Part 77: Excess Emissions

The proposal made changes to part 77 concerning immediate deduction of allowances to offset excess emissions, the deadline for paying excess emissions penalties, and excess NO_x emissions under a NO_x averaging plan. The changes received no comment or only favorable comment and are adopted in the final rule.

VIII. Part 78: Administrative Appeals

The proposal made changes to part 78 to clarify that an administrative appeal is a prerequisite for judicial review of decisions of the Administrator under the Acid Rain Program and to ensure that the requirement for exhaustion of administrative remedies is consistent with the Supreme Court's decision in *Darby* v. *Cisneros*, 509 U.S. 137 (1993). On September 24, 1993, the Agency originally proposed to add language stating explicitly that administrative appeal is a prerequisite for judicial review. 58 FR 50088, 50104 (1993). Certain commenters stated, in response to the September 24, 1993 proposal, that, in light of the alleged potential for "disruptive effects" resulting from an administrative exhaustion requirement, the Agency should solicit additional comment on the effect of *Darby* on part 78. EPA therefore did not finalize the September 24, 1993 proposal. Instead, EPA provided further opportunity for comment by publishing the December 27, 1996 proposal, which included both the changes explicitly requiring exhaustion of administrative remedies and some additional changes to conform with *Darby*. In its comments on the December 27, 1996 proposed rule, the same commenters submitted further comments. In their second set of comments, the commenters failed to go beyond their generalized claim of "disruptive effects". Rather than providing any specific claims or examples of when administrative appeal of a particular type of Administrator's decision would be "disruptive" to the Acid Rain Program or to affected sources' compliance efforts, the commenters simply expressed general concern that EPA "failed to consider" unspecified "disruptive" effects.

In the September 24, 1993 and December 27, 1996 proposals, EPA set forth both the basis for requiring exhaustion of administrative remedies and provisions addressing concerns over delay pending completion of administrative review. Requiring exhaustion of administrative remedies promotes efficient use of administrative and judicial resources in that it "allows the Agency to review * * * decisions for correctness before having to defend (them) * * * in Federal court." 58 FR 50104 (quoting the original proposed appeals procedures at 56 FR 63002, 63033 (December 3, 1991)). Decisions that a petitioner shows are erroneous can be reversed or corrected without resource-intensive litigation before the federal courts and decisions that a petitioner shows are insufficiently explained can be reexamined and either reversed or better explained. The overall effect is to increase the likelihood of sound decision-making and reduce the need for recourse to the courts.[17]

[16] While EPA uses 1985–1987 average sulfur-free generation as the bench mark for limiting the use of sulfur-free generation in reduced utilization accounting, the proposal and today's rule use 1987 heat rate as the bench mark for limiting the use of unit efficiency improvements. This is because annual generation was more likely to vary during 1985–1987 than was a unit's annual heat rate and the use of the 1987 heat rate, which captures any efficiency improvement measures instituted before 1988, is less burdensome for utilities and EPA to determine than the average 1985–1987 heat rate.

[17] EPA maintains that, contrary to commenters' assertion, the provision in section 307(b)(1) of the Clean Air Act on motions for reconsideration is irrelevant to the question of administrative appeals and is not properly interpreted as evidencing "hostility" to the exhaustion requirement involved here. Section 307(b)(1) involves judicial appeals and the effect of agency reconsideration of a final action on such appeals. To the extent section 307(b)(1) addresses reconsideration of a final rule, the section is irrelevant to this case, which concerns administrative appeals of individual, adjudicative decisions. To the extent the section addresses reconsideration of an adjudicative decision, the section is still irrelevant here. Reconsideration

Continued

Further, while nothing in the record indicates that delay pending administrative appeal of Acid Rain Program decisions (during which appeal the decisions will not be operative) will likely have "significant, adverse consequences", the December 27, 1993 proposal took reasonable account of the general possibility of such consequences pending appeal.[18] 61 FR 68365. Despite two opportunities to provide information on the alleged, potential, adverse effect of the exhaustion requirement, the commenters originally objecting to the requirement were apparently unable to identify any specific circumstances in the Acid Rain Program under which significant, adverse consequences would result from the requirement, much less provide any information on the likelihood of such circumstances arising. No such circumstances have been identified to EPA, and EPA is not aware of any, particularly in light of the ability of the Agency, under the proposal and today's rule, to expedite administrative appeals. EPA therefore rejects the commenters' claim concerning "disruptive effects" of the exhaustion requirement as speculative and unsupported.

Moreover, the Agency's general approach under the regulatory statutes that it administers is to require exhaustion of administrative remedies prior to judicial review. *See, e.g.*, 40 CFR 71.11(l)(4) (administrative appeal of final permit decision under title V of Clean Air Act); 40 CFR 124.19(f)(1) (administrative appeal of final permit decision under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA), Prevention of Significant Deterioration (PSD) program in the Clean Air Act, or Underground Injection Control (UCI) program in the Safe Drinking Water Act); and 40 CFR 124.60(g) (administrative appeal of final permit decision under National Pollutant Discharge Elimination System (NPDES)). Today's rule is consistent with that general approach.

Nevertheless, the Agency crafted the proposed rule for Acid Rain Program appeals to provide for flexibility to minimize delay, particularly if future cases arise where delay will have a significant, adverse effect. Specifically, the proposal revised the existing rule to allow the Administrator, the Environmental Appeals Board, or the Presiding Officer (as appropriate) to set different, reasonable time periods (which could be shorter or longer than in the existing rule) for administrative-appeal-related filing by parties. For example, the 30-day period within which motions to intervene in part 78 appeals may be filed was changed to allow a different period to be set. As explained in the proposal, this approach gives the Agency "the ability to accelerate the appeals proceeding where delay due to the pending appeal will have significant, adverse consequences." 61 FR 68365. The commenters argued that the Agency might not always "share an affected source's interest in avoiding" such adverse consequences. However, the Agency's approach of allowing adjustment of the time periods gives the Agency the authority to accommodate the need for expeditious administrative appeal and gives the affected source the opportunity to show that expedition is necessary. Particularly in cases where such a showing is made, the Agency intends to make reasonable efforts to minimize the delay caused by the appeal. The Agency maintains that this approach reasonably balances, on one hand, the important role of the exhaustion requirement and, on the other, the commenter's generalized concern that appeals not cause undue delay.

The commenters failed to recommend any other approach but merely stated that the Agency had not considered limiting the applicability of the exhaustion requirement, foregoing the exhaustion requirement, or setting tighter time limits on procedural steps. However, in explaining the need for the exhaustion requirement (*see* 56 FR 63033, 58 FR 50104, and 61 FR 68365), the Agency rejected the notion of limiting or foregoing the requirement. Further, recognizing that the major purpose of providing flexibility in the time periods for filings is to expedite administrative appeals, EPA is modifying the proposal to provide that, with a few exceptions discussed below, the time periods involved may be shortened, but not lengthened.

One of the more important exceptions to that approach is the period for filing of administrative appeals.[19] Commenters raised concern that an Administrator's decision under the Acid Rain Program would remain "in limbo" during a period of uncertain duration for the filing of an administrative appeal. Today's rule reduces the standard period for appeal to 30 days from issuance of the Administrator's decision and establishes that as a fixed period that cannot be changed on a case-by-case basis. The Agency is concerned that a period shorter than 30 days would not provide enough time for preparation of a petition that fully addresses the issues on appeal, as required under § 78.3(c). *See, e.g.*, 40 CFR 78.3(c)(1) and (3) (requiring a list of material issues and a clear and concise brief supporting the petition). This standard appeal period is consistent with the 30-day time period for administrative appeal of other actions of the Administrator under the Clean Air Act and other statutes administered by EPA. *See, e.g.*, 40 CFR 71.11(l)(1) (administrative appeal of final permit decision under title V); 40 CFR 124.19(a) (administrative appeal of final permit decision under RCRA, PSD program, or UIC program); and 40 CFR 124.91(a)(1) (administrative appeal of final permit decision under NPDES). The reduced time period for filing appeals reduces the period of uncertainty on the status of the decision while still providing a reasonable opportunity for administrative appeal.[20]

From the time a decision is issued until the expiration of the appeal period, there is necessarily some uncertainty about the status of the decision: the parties will not know for certain whether the decision will be final until the expiration of the appeal period. However, this uncertainty is tempered by the fact, admitted by the commenters, that the vast majority of decisions under the Acid Rain Program have not been, and probably will not be, appealed. Further, the limitations on the presenting of new evidence and on the raising of new issues during an administrative appeal of a decision for which there was an opportunity to comment will encourage parties interested in a decision to submit comments. As a result, parties' positions will probably be known when the decision is issued and the likelihood of appeal can then be evaluated.

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provides a second opportunity for agency review of an adjudicative decision, for which an opportunity for administrative review was already provided. In contrast, the issue here is whether there should be an *initial* opportunity for EPA to review its decisions on Acid Rain matters before the decisions may be appealed to the courts.

[18] EPA did not "acknowledge" that there would be cases of "significant, adverse consequences" due to delay pending appeal or that any such cases would be likely to occur. Instead, EPA provided procedures that could address such cases (regardless of their likelihood) *if* they arose.

[19] A minor exception under today's rule is the period for curing defects in filings, which remains as 7 days subject to shortening or lengthening at the discretion of the Environmental Appeals Board or the Presiding Officer. This will minimize the likelihood of a filing being permanently excluded for purely technical reasons. The Agency is confident that flexibility concerning this limited type of procedural deadline can be implemented in a way that will not result in unnecessary delay of proceedings.

[20] For similar reasons, the period for appealing a proposed decision of a Presiding Officer to the Environmental Appeals Board is fixed at 30 days under § 78.20(a).

The commenters also suggested that a decision should be considered operative during the period between the date the decision is issued and the expiration of the appeal period (i.e., 30 days under today's rule) unless and until a petition for administrative appeal is filed with the Environmental Appeals Board. Prior to today's rule revisions, part 78 provided that a decision was operative from the date of issuance and throughout the administrative appeal period, except to the extent the decision was stayed by the Environmental Appeals Board or the Presiding Officer designated by the Board. 40 CFR 78.7(a). While today's rule makes a decision inoperative once a timely petition for administrative appeal is filed, the status of the decision prior to appeal or the running of the period for filing an appeal is unchanged. The decision itself (e.g., the approval or denial of an Acid Rain permit or permit revision or of a petition under part 75) may specify the date on which the decision is effective. Unless the decision itself specifies an effective date that is different than the date on which the decision is actually issued, the decision is operative on the issuance date unless and until the filing of a timely petition for administrative appeal in accordance with part 78. For example, with regard to a decision concerning the transfer of allowances to or from an Allowance Tracking System Account, the requirement in the existing rule that the Administrator implement, within 5 business days of receipt, an allowance transfer request that he or she determines to be properly submitted (40 CFR 73.52 and 73.53) is unchanged in the December 27, 1996 proposal and today's rule. In principle, if the transfer were appealed under part 78, the Administrator could take action to render the transfer inoperative pending appeal. However, appeal in such circumstances is highly unlikely since an allowance transfer must be authorized by the designated representative of the party transferring the allowances. *See* 42 U.S.C. 7651b(b).

For the reasons discussed here and in the September 24, 1993 and December 27, 1996 proposals, the December 27, 1996 revisions are adopted as modified above.

IX. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small govenments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

For the reasons discussed in detail here and in the proposal (61 FR 68340), the final rule has the net effect of reducing the burden of parts 72, 77, and 78 of the Acid Rain regulations on regulated entities (including both investor-owned and municipal utilities) and on State permitting authorities (which may include State, local, and tribal governments). For example, the final rule reduces the burden of obtaining or providing new units and retired units exemptions from the Acid Rain Program and of issuing Acid Rain permits.

The final revisions to part 73 also do not have a significant, adverse effect on regulated entities (including small entities) and have no effect on State permitting authorities. The final rule increases the annual unadjusted basic allowances for one unit by 2,312 allowances. In a future action, the Agency will act on the other allowance revisions in the proposal. Sections 403(a) and 405(a)(3) of the Act set a nationwide cap on annual allowance allocations. Because of the requirement to adhere to the cap, the increase of allowances under this final rule (if not offset by the other allowance revisions when they are finalized) would eventually necessitate an equal decrease in the total annual allocations of all other units. The small decrease (i.e., 2,312 allowances out of an annual

nationwide cap of about 8.95 million allowances or about 0.026 percent) would be spread among all other units, and so the effect on any one unit would be insignificant. Moreover, EPA is not, in today's rule, adjusting the allocations of the other units to account for this small allowance increase.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0258.

The only additional information required by this collection of information is data concerning industrial utility-units that exercise the option of applying for the industrial utility-units exemption established by today's rule. If granted, the industrial utility-units exemption exempts the unit from most requirements of the Acid Rain Program, e.g., allowance, monitoring, and annual compliance requirements. The requirements from which qualified industrial utility-units will be exempt are significantly more burdensome than the information collection requirements for obtaining the exemption.[21] An industrial utility-unit seeking the exemption must meet the information collection requirements, which involve submission of information that is necessary, and will be used, for determining whether the unit qualifies and will continue to qualify for the exemption.

The additional information collection increases the estimated burden, as compared to the burden under the existing rule, by an average of 24 hours per response for an estimated 15 one-time responses. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

D. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires federal agencies to consider potential impacts of its regulations on small entities. Under 5 U.S.C. 604(a), an agency issuing a notice of final rulemaking under section 553 of the Administrative Procedure Act, must prepare and make available for public comment a final regulatory flexibility analysis. Such an analysis is not required if the head of an agency determines, under 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities.

In the preamble of the January 11, 1993 rule, the Administrator certified that the rule, including the provisions revised by today's rule, would not have a significant, adverse impact on small entities. 58 FR 3649. Today's final revisions are not significant enough to change the overall economic impact addressed in the January 11, 1993 preamble. Moreover, as discussed in this preamble, today's rule has the net effect of reducing the burden of the Acid Rain regulations on regulated entities, including small entities. For example, the rule makes it less burdensome to obtain new units and retired units exemptions from the Acid Rain Program. Further, the rule increases the allowances for one unit, which increase will have an insignificant effect on other units' allowance allocations.

For the reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will not have a significant, economic impact on a substantial number of small entities.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Miscellaneous

In accordance with section 117 of the Act, issuance of this final rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Continuous emissions monitors, Electric utilities, Intergovernmental relations, Nitrogen oxides, Penalties, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 6, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. Section 9.1 is amended by adding to the table under Permits Regulation in the column "40 CFR Citation", after the entry for "72.7–72.10", the entry "72.14" and adding to the table, as the corresponding entry in the column "OMB Control No.", the entry "2060–0258".

[21] Because the information collection burden on industrial utility-units in the absence of this new exemption was not included in the ICR for the existing rule, the effect of removing such burden through the new exemption is not included in the ICR for today's rule. Consequently, the ICR for today's rule shows an increase in burden even though exempt industrial utility-units will actually experience a significant net reduction in the burden imposed on them by the Acid Rain Program. In addition, as discussed in this preamble, today's rule includes other revisions that will reduce somewhat the burden of the program on units that are not exempt. Because the burden reduction for non-exempt units is small relative to the total burden of the program, the reduction is not reflected in the ICR for today's rule.

PART 72—[AMENDED]

3. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.1 [Amended]

4. Section 72.1 is amended by removing from paragraph (b) the words "part 70" and adding, in their place, the words "parts 70 and 71".

5. Section 72.2 is amended by: removing the definition for "Dispatch system"; adding in alphabetical order the definitions for "Affected States" and "Eligible Indian tribe"; and revising paragraphs (1)(i) and (2) of the definition for "Acid Rain emissions limitation", the definition for "Acid Rain permit or permit", paragraph (2) of the definition of "Coal-fired", the definitions for "Customer" and "Permitting authority" and "Phase I unit", paragraph (3) of the definition of "Power purchase commitment", and the definitions for "Submit or serve" and "State" and "State operating permits program" to read as follows:

§ 72.2 Definitions.

* * * * *

Acid Rain emissions limitation means:

(1) * * *

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1), (a)(3), and (h) of the Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

* * * * *

(2) For purposes of nitrogen oxides emissions, the applicable limitation under part 76 of this chapter.

* * * * *

Acid Rain permit or permit means the legally binding written document or portion of such document, including any permit revisions, that is issued by a permitting authority under this part and specifies the Acid Rain Program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source or the affected unit.

* * * * *

Affected States means any affected States as defined in part 71 of this chapter.

* * * * *

Coal-fired means * * *

(2) For all other purposes under the Acid Rain Program, except for purposes of applying part 76 of this chapter, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); *provided* that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL".

* * * * *

Customer means a purchaser of electricity not for the purposes of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

* * * * *

Eligible Indian tribe means any eligible Indian tribe as defined in part 71 of this chapter.

* * * * *

Permitting authority means either:

(1) When the Administrator is responsible for administering Acid Rain permits under subpart G of this part, the Administrator or a delegatee agency authorized by the Administrator; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to administer Acid Rain permits under subpart G of this part and part 70 of this chapter.

* * * * *

Phase I unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I; or any unit exempt under § 72.8 that, but for such exemption, would be subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I.

* * * * *

Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

* * * * *

(3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993 or, where the letter of intent does not specify a time frame, a power sale agreement applicable to the source is executed on or before November 15, 1993; or

* * * * *

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other equivalent means of dispatch, or transmission, and delivery. Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

* * * * *

State means one of the 48 contiguous States and the District of Columbia, any non-federal authorities in or including such States or the District of Columbia (including local agencies, interstate associations, and State-wide agencies), and any eligible Indian tribe in an area in such State or the District of Columbia. The term "State" shall have its conventional meaning where such meaning is clear from the context.

State operating permit program means an operating permit program that the Administrator has approved under part 70 of this chapter.

* * * * *

6. Section 72.6 is amended by adding paragraph (b)(9) and revising paragraphs (c)(1) and (2) to read as follows:

§ 72.6 Applicability.

* * * * *

(b) * * *

(9) A unit for which an exemption under § 72.7, § 72.8, or § 72.14 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of § 72.7, § 72.8, or § 72.14, as applicable to the exemption.

(c) A certifying official of an owner or operator of any unit may petition the Administrator for a determination of applicability under this section.

(1) *Petition Content.* The petition shall be in writing and include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statement set forth at § 72.21(b)(2). Within 10 business days of receipt of any written determination by the Administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition may be submitted to the Administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit.

* * * * *

7. Section 72.7 is revised to read as follows:

§ 72.7 New units exemption.

(a) *Applicability.* This section applies to any new utility unit that has not previously lost an exemption under paragraph (f)(4) of this section and that, in each year starting with the first year for which the unit is to be exempt under this section:

(1) Serves during the entire year (except for any period before the unit commenced commercial operation) one or more generators with total nameplate capacity of 25 MWe or less;

(2) Burns fuel that does not include any coal or coal-derived fuel (except coal-derived gaseous fuel with a total sulfur content no greater than natural gas); and

(3) Burns gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section) and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section).

(b)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is not allocated any allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13.

(2) The exemption under paragraph (b)(1) of this section shall be effective on January 1 of the first full calendar year for which the unit meets the requirements of paragraph (a) of this section. By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall be submitted to permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement, which shall be in a format prescribed by the Administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state thet the owners and operators of the unit will comply with paragraph (f) of this section.

(3) After receipt of the statement under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (b)(1), (d), and (f) of this section.

(c)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is allocated one or more allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13, if each of the following requirements are met:

(i) The designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit submits to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a statement (in a format prescribed by the Administrator) that:

(A) Identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight;

(B) States that the owners and operators of the unit will comply with paragraph (f) of this section;

(C) Surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for the first year that the unit is to be exempt under this section and for each subsequent year; and

(D) Surrenders any proceeds for allowances under paragraph (c)(1)(i)(C) or this section withheld from the unit under § 73.10 of this chapter. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator.

(ii) The Administrator deducts from the unit's Allowance Tracking System account allowances under paragraph (c)(1)(i)(C) of this section and receives proceeds under paragraph (c)(1)(i)(D) of this section. Within 5 business days of receiving a statement in accordance with paragraph (c)(1)(i) of this section, the Administrator shall either deduct the allowances under paragraph (c)(1)(i)(C) of this section or notify the owners and operators that there are insufficient allowances to make such deductions. Upon completion of such deductions and receipt of such proceeds, the Administrator will close the unit's Allowance Tracking System account and notify the designated representative (or certifying official) and, if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit, the permitting authority.

(2) The exemption under paragraph (c)(1) of this section shall be effective on January 1 of the first full calendar year for which the requirements of paragraphs (a) and (c)(1) of this section are met. After notification by the Administrator under the third sentence of paragraph (c)(1)(ii) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (c)(1), (d), and (f) of this section.

(d) Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05 percent by weight or less shall be determined as follows using a method of determining sulfur content that provides information with reasonable precision, reliability, accessibility, and timeliness:

(1) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;

(2) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:

$$\%S_{annual} = \frac{\sum_{n=1}^{last} \%S_n V_n d_n}{\sum_{n=1}^{last} V_n d_n}$$

Where:

$\%S_{annual}$=annual average sulfur content of the fuel burned during the year by the unit, as a percentage by weight;

$\%S_n$=sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight;

V_n=volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet;

d_n=density of the nth sample of the fuel delivered during the year to the unit, in lb per standard cubic foot; and

n=each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.

(3) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in paragraph (d)(2) of this section. In lieu of the factor, volume times density ($V_n d_n$), in the equation, the factor, mass (M_n), may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit of which the nth sample is taken, in lb; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in lb.

(e)(1) A utility unit that was issued a written exemption under this section and that meets the requirements of paragraph (a) of this section shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13 and shall be subject to the requirements of paragraphs (a), (d), (e)(2), and (f) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (e)(1) and paragraphs (a), (d), (e)(2), and (f) of this section.

(2) If a utility unit under paragraph (e)(1) of this section is allocated one or more allowances under subpart B of part 73 of this chapter, the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement (in a format prescribed by the Administrator) meeting the requirements of paragraph (c)(1)(i)(C) and (D) of this section. The statement shall be submitted by June 31, 1998 and, if the Administrator is not the permitting authority, a copy shall be submitted to the Administrator.

(f) Special Provisions. (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall:

(i) Comply with the requirements of paragraph (a) of this section for all periods for which the unit is exempt under this section; and

(ii) Comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority.

(i) Such records shall include, for each delivery of fuel to the unit or for fuel delivered to the unit continuously by pipeline, the type of fuel, the sulfur content, and the sulfur content of each sample taken.

(ii) The owners and operators bear the burden of proof that the requirements of paragraph (a) of this section are met.

(4) Loss of exemption. (i) On the earliest of the following dates, a unit exempt under paragraphs (b), (c), or (e) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe;

(B) The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with a total sulfur content no greater than natural gas; or

(C) January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section) or for nongaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section).

(ii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

8. Section 72.8 is revised to read as follows:

§ 72.8 Retired units exemption.

(a) This section applies to any affected unit (except for an opt-in source) that is permanently retired.

(b)(1) Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective on January 1 of the first full calendar year during which that the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subpart B of this part), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (b)(1) and (d) of this section.

(c) A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter,

and shall be subject to the requirements of paragraph (d) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (c) and paragraph (d) of this section.

(d) Special Provisions. (1) A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of part 73 of this chapter. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of this part 72 and an annual certification report in accordance with §§ 72.90 through 72.92 and is subject to §§ 72.95 and 72.96.

(2) A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete Acid Rain permit application under § 72.31 for the unit not less than 24 months prior to the later of January 1, 2000 or the date on which the unit is first to resume operation.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption. (i) On the earlier of the following dates, a unit exempt under paragraph (b) or (c) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or

(B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.

(ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

§ 72.9 [Amended]

9. Section 72.9 is amended by:

a. Removing from paragraphs (b)(1) and (2) the words "and section 407 of the Act and regulations implementing section 407 of the Act";

b. Removing from paragraph (b)(3) the words "and regulations implementing section 407 of the Act";

c. Removing from paragraph (c)(6) the words "the written exemption under §§ 72.7 and 72.8" and adding in their place, the words "an exemption under §§ 72.7, 72.8, or 72.14";

d. Removing from paragraph (f)(1)(ii) the punctuation "." and adding in its place the words "; *provided* that to the extent that part 75 provides for a 3-year period for recordkeeping, the 3-year period shall apply.";

e. Removing from paragraph (g)(1) the words "a written exemption under § 72.7 or § 72.8" and adding, in their place, the words "an exemption under §§ 72.7, 72.8, or 72.14";

f. Removing from paragraph (g)(6) the words "part 76 of this chapter" and adding, in their place, the words "§ 76.11 of this chapter; and

g. Removing from paragraph (h) introductory text the words "a written exemption under §§ 72.7 or 72.8" and adding, in their place, the words "an exemption under §§ 72.7, 72.8, or 72.14".

§ 72.13 [Amended]

10. Section 72.13 is amended by:

a. Removing paragraphs (a)(1), (a)(5), (a)(6), (a)(7), (a)(9), and (a)(10);

b. Redesignating paragraph (a)(2) as paragraph (a)(1);

c. Redesignating paragraph (a)(3) as paragraph (a)(2);

d. Redesignating paragraph (a)(4) as paragraph (a)(3); and

e. Redesignating paragraph (a)(8) as paragraph (a)(4).

11. Section 72.14 is added to read as follows:

§ 72.14 Industrial utility-units exemption.

(a) *Applicability.* This section applies to any non-cogeneration, utility unit that has not previously lost an exemption under paragraph (d)(4) of this section and that meets the following criteria:

(1) Starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section and thereafter, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(2) On or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement and any related power purchase agreement with a person whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority, requiring the generator or generators served by the unit to produce electricity for sale only for incidental electricity sales to such person;

(3) The unit served or serves one or more generators that, in 1985 or any year thereafter, actually produced electricity for sale only for incidental electricity sales required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section; and

(4) Incidental electricity sales, under this section, are total annual sales of electricity produced by a generator that do not exceed 10 percent of the nameplate capacity of that generator times 8,760 hours per year and do not exceed 10 percent of the actual annual electric output of that generator.

(b) *Petition for exemption.* The designated representative (authorized in accordance with subpart B of this part) of a unit under paragraph (a) of this section may submit to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a complete petition for an exemption for the unit from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13. If the Administrator is not the permitting authority, a copy of the petition shall be submitted to the Administrator. A complete petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) A statement that the unit is not a cogeneration unit;

(3) A list of the current owners and operators of the unit and any other owners and operators of the unit, starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section, and a statement that, starting on that date, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(4) A summary of the terms of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section, including the date on which the agreement was signed, the amount of electricity that may be required to be produced for sale by each generator served by the unit, and the provisions for expiration or termination of the agreement;

(5) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

(6) The nameplate capacity of each generator served by the unit;

(7) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section;

(8) A statement that each generator served by the unit actually produced electricity for sale only for incidental electricity sales (in accordance with paragraph (a)(4) of this section) required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section; and

(9) The special provisions of paragraph (d) of this section.

(c) *Permitting Authority's Action.* (1) (i) For any unit meeting the requirements of paragraphs (a) and (b) of this section, the permitting authority shall issue an exemption from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6 and §§ 72.10 through 72.13.

(ii) If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of paragraph (a) of this section are met, the permitting authority shall deny an exemption under this section.

(2) In issuing or denying an exemption under paragraph (c)(1) of this section, the permitting authority shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying draft, proposed (if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit), and final Acid Rain permits.

(3) An exemption issued under paragraph (c)(1)(i) of this section shall become effective on January 1 of the first full year the unit meets the requirements of paragraph (a) of this section.

(4) An exemption issued under paragraph (c)(1)(i) of this section shall be effective until the date on which the unit loses the exemption under paragraph (d)(4) of this section.

(5) After issuance of the exemption under paragraphs (c)(1) and (2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (c)(1)(i) and (d) of this section.

(d) *Special Provisions.* (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The owners and operators bear the burden of proof that the requirements of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. Such records shall include the following information:

(i) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

(ii) The nameplate capacity of each generator served by the unit; and

(iii) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section.

(4) Loss of exemption. (i) On the earliest of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The first date on which there is an owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof, whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority.

(B) If any generator served by the unit actually produces any electricity for sale other than for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section, then the day after the date on which such electricity is sold.

(C) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or any

related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale is not required under that interconnection agreement or related power purchase agreement or successor agreement or where such sale will result in total sales for a calendar year exceeding 10 percent of the nameplate capacity of that generator times 8,769 hours per year, then the day after the date on which such sale is made.

(D) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale results in total sales for a calendar year exceeding 10 percent of the actual electric output of the generator for that year, then January 1 of the year after such year.

(E) If the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section expires or is terminated, no successor agreement under paragraph (d)(4)(ii) of this section is in effect, and any generator served by the unit actually produces any electricity for sale, then the day after the date on which such electricity is sold.

(ii) A "successor agreement" is an agreement that:

(A) Modifies, replaces or supersedes the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section;

(B) Is between the owners and operators of the unit and a person that is contractually obligated to sell electricity to the owners and operators of the unit and either whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority; and

(C) Requires the generator served by the unit to produce electricity for sale to the person under paragraph (d)(4)(ii)(B) of this section and only for incidental electricity sales, such that the total amount of electricity that such generator is required to produce for sale under the interconnection agreement or related power purchase agreement (to the extent they are still in effect) and the successor agreement shall not exceed the total amount of electricity that such generator was required to produce for sale under the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section.

(iii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iv) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

12. Section 72.22 is amended by adding paragraph (e) to read as follows:

§ 72.22 Alternate designated representative.

* * * * *

(e)(1) Notwithstanding paragraph (a) of this section, the certification of representation may designate two alternate designated representatives for a unit if:

(i) The unit and at least one other unit, which are located in two or more of the contiguous 48 States or the District of Columbia, each have a utility system that is a subsidiary of the same company; and

(ii) The designated representative for the units under paragraph (e)(1)(i) of this section submits a NO_X averaging plan under § 76.11 of this chapter that covers such units and is approved by the permitting authority, *provided* that the approved plan remains in effect.

(2) Except in this paragraph (e), whenever the term "alternate designated representative" is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e). Except in this section, § 72.23, and § 72.24, whenever the term "designated representative" is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e).

13. Section 72.24 is amended by revising paragraphs (a)(3), (5), (10), and (11) to read as follows:

§ 72.24 Certificate of representation.

(a) * * *

(3) A list of the owners and operators of the affected source and of each affected unit at the source.

* * * * *

(5) The following statement: "I certify that I have given notice of the agreement, selecting me as the 'designated representative' for the affected source and each affected unit at the source identified in this certificate of representation, in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice."

* * * * *

(10) If an alternate designated representative is authorized in the certificate of representation, the following statement: "The agreement by which I was selected as the alternate designated representative includes a procedure for the owners and operators of the source and affected units at the source to authorize the alternate designated representative to act in lieu of the designated representative."

(11) The signature of the designated representative and any alternate designated representative who is authorized in the certificate of representation and the date signed.

* * * * *

§ 72.25 [Amended]

14. Section 72.25 is amended by removing from paragraph (a) the words "submitted to" and adding, in their place, the words "received by".

15. Section 72.30 is amended by removing paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 72.30 Requirement to apply.

* * * * *

(e) Where two or more affected units are located at a source, the permitting authority may, in its sole discretion, allow the designated representative of the source to submit, under paragraph (a) or (c) of this section, two or more Acid Rain permit applications covering the units at the source, *provided* that each affected unit is covered by one and only one such application.

§ 72.31 [Amended]

16. Section 72.31 is amended by removing from paragraph (b) the words "Phase II unit" and adding in their place the words "affected unit (except for an opt-in source)".

17. Section 72.32 is amended by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 72.32 Permit application shield and binding effect of permit application.

* * * * *

(b) Prior to the date on which an Acid Rain permit is issued or denied, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(c) A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of an Acid Rain permit covering the units.

(d) If agency action concerning a permit is appealed under part 78 of this chapter, issuance or denial of the permit shall occur when the Administrator takes final agency action subject to judicial review.

18. Section 72.33 is amended by adding a sentence to the end of paragraph (b)(3) to read as follows:

§ 72.33 Identification of dispatch system.

* * * * *

(b) * * *

(3) * * * A designated representative may request, and the Administrator may grant at his or her discretion, an exemption allowing the submission of an identification of dispatch system after the otherwise applicable deadline for such submission.

* * * * *

§ 72.40 [Amended]

19. Section 72.40 is amended by:

a. Removing from paragraph (a)(2) the words "applicable limitation established by regulations implementing section 407 of the Act" and adding, in their place, the words "applicable emission limitation under §§ 76.5, 76.6, or 76.7 of this chapter";

b. Removing from paragraph (a)(2) the words "section 407 of the Act and the regulations implementing section 407" and adding, in their place, the words "part 78 of this chapter";

c. removing from paragraph (b)(1) the words "an NO_X averaging plan contained in part 76 of this chapter" and adding, in their place, the words "a NO_X averaging plan under § 76.11 of this chapter"; and

d. Removing from paragraphs (c) introductory text, (c)(1), and (d)(1) the words "regulations implementing section 407 of the Act" and adding, in their place, the words "part 76 of this chapter".

§ 72.41 [Amended]

20. Section 72.41 is amended by: removing from paragraph (b)(3) the words "90 days" and adding, in their place, the words "6 months (or 90 days if submitted in accordance with § 72.82)"; and removing from paragraph (e)(1)(ii) the words "section 407 of the Act and regulations implementing section 407 of the Act" and adding, in their place, the words "part 76 of this chapter".

§ 72.43 [Amended]

21. Section 72.43 is amended by: removing from paragraph (b)(2)(iii)(B) the words "under § 72.92" and adding, in their place, the words "under § 72.91(b)"; removing from paragraph (b)(4) the words "90 days" and adding, in their place, the words "6 months (or 90 days if submitted in accordance with § 72.82 or § 72.83)"; and removing from paragraph (f)(1)(i) the words "section 407 of the Act and regulations implementing section 407 of the Act" and adding, in their place, the words "part 76 of this chapter".

§ 72.44 [Amended]

22. Section 72.44 is amended by:

a. Removing from paragraphs (g)(1)(i) and (2) the words "proposed permit revision" and adding, in their place, the words "requested permit modification";

b. Adding between the first and second sentences of paragraphs (g)(1)(i) and (2) the words "If the Administrator is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator.";

c. Removing from paragraph (g)(2)(iii) the words "December 21" and adding, in their place, the words "December 31"; and

d. Removing from paragraph (h)(1)(ii) the words "section 407 of the Act and regulations implementing section 407 of the Act" and adding, in their place, the words "part 76 of this chapter".

§ 72.51 [Amended]

23. Section 72.51 is amended by: removing the words "parts 73, 75, 77, and 78 of this chapter, and regulations implementing section 407 of the Act" and adding, in their place, the words "parts 73, 74, 75, 76, 77, and 78 of this chapter"; and removing the words "of this part".

24. Section 72.60 is revised to read as follows:

§ 72.60 General.

(a) *Scope.* This subpart and parts 74, 76, and 78 of this chapter contain the procedures for federal issuance of Acid Rain permits for Phase I of the Acid Rain Program and Phase II for sources for which the Administrator is the permitting authority under § 72.74.

(1) Notwithstanding the provisions of part 71 of this chapter, the provisions of subparts C, D, E, F, and H of this part and of parts 74, 76, and 78 of this chapter shall govern the following requirements for Acid Rain permit applications and permits: submission, content, and effect of permit applications; content and requirements of compliance plans and compliance options; content of permits and permit shield; procedures for determining completeness of permit applications; issuance of draft permits; administrative record; public notice and comment and public hearings on draft permits; response to comments on draft permits; issuance and effectiveness of permits; permit revisions; and administrative appeal procedures. The provisions of part 71 of this chapter concerning Indian tribes, delegation of a part 71 program, affected State review of draft permits, and public petitions to reopen a permit for cause shall apply to Acid Rain permit applications and permits.

(2) The procedures in this subpart do not apply to the issuance of Acid Rain permits by State permitting authorities with operating permit programs approved under part 70 of this chapter, except as expressly provided in subpart G of this part.

(b) *Permit Decision Deadlines.* Except as provided in § 72.74(c)(1)(i), the Administrator will issue or deny an Acid Rain permit under § 72.69(a) within 6 months of receipt of a complete Acid Rain permit application submitted for a unit, in accordance with § 72.21, at the U.S. EPA Regional Office for the Region in which the source is located.

(c) *Use of Direct Final Procedures.* The Administrator may, in his or her discretion, issue, as single document, a draft Acid Rain permit in accordance with § 72.62 and an Acid Rain permit in final form and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with § 72.65. The Administrator may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, an Acid Rain permit or denial of an Acid Rain permit will be issued in accordance with § 72.69. Any notice provided under this paragraph (c) will include a description of the procedure in the prior sentence.

25. Section 72.61 is amended by revising paragraphs (a) and (b)(2)(i) and adding paragraph (b)(3) to read as follows:

§ 72.61 Completeness.

(a) *Determination of Completeness.* The Administrator will determine whether the Acid Rain permit application is complete within 60 days of receipt by the U.S. EPA Regional Office for the Region in which the source is located. The permit application shall be deemed to be complete if the Administrator fails to

notify the designated representative to the contrary within 60 days of receipt.

(b) * * *

(2)(i) Within a reasonable period determined by the Administrator, the designated representative shall submit the information required under paragraph (b)(1) of this section.

* * * * *

(3) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the Administrator.

26. Section 72.65 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(2) and by removing paragraph (b)(1)(iv) to read as follows:

§ 72.65 Public notice of opportunities of public comment.

* * * * *

(b) * * *

(1) * * *

(ii) The air pollution control agencies of affected States; and

(iii) Any interested person.

(2) Giving notice by publication in the **Federal Register** and in a newspaper of general circulation in the area where the source covered by the Acid Rain permit application is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the Administrator may, in his or her discretion, provide notice of the draft permit by **Federal Register** publication and may omit notice by newspaper or State publication.

* * * * *

27. Section 72.69 is amending by revising paragraph (a) to read as follows:

§ 72.69 Issuance and effective date of Acid Rain permits.

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on the air pollution control agencies of affected States and any interested person. The Administrator will also give notice in the **Federal Register**.

* * * * *

28. Section 72.70 is revised to read as follows:

§ 72.70 Relationship to title V operating permit program.

(a) *Scope.* This subpart sets forth criteria for approval of State operating permit programs and acceptance of State Acid Rain programs, the procedure for including State Acid Rain programs in a title V operating permit program, and the requirements with which State permitting authorities with accepted programs shall comply, and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit or for issuing exemptions under § 72.14. To the extent that this part or part 74, 76, or 78 of this chapter is inconsistent with the requirements of part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit.

29. Section 72.71 is revised to read as follows:

§ 72.71 Acceptance of State Acid Rain programs—general.

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§ 72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the **Federal Register**, all or a portion of such program to the extent that it meets the requirements of §§ 72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the **Federal Register**, all or a portion of such program despite the failure to meet requirements of §§ 72.72 and 72.73. On the later of the date of publication of such notice in the **Federal Register** or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program. Before accepting or rejecting all or a portion of a State Acid Rain Program, the Administrator will provide notice and opportunity for public comment on such acceptance or rejection.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

30. Section 72.72 is amended by:

a. Removing paragraphs (b)(1)(i)(C), (b)(1)(vii), (b)(1)(viii), (b)(1)(xi), (b)(1)(xiii), (b)(5)(vii), (b)(7), and (b)(8);

b. Removing the last sentence of paragraph (b)(5)(v);

c. Redesignating paragraphs (b)(1)(ix) and (x) as paragraphs (b)(1)(vii) and (viii) respectively;

d. Redesignating paragraph (b)(1)(xii) as paragraph (b)(1)(ix);

e. Redesignating paragraph (b)(1)(xiv) as paragraph (b)(1)(x);

f. Removing and reserving paragraph (b)(5)(ii); and

g. Revising the heading, the introductory text, and paragraphs (b) introductory text, (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(1)(vi), the first sentence of (b)(5)(i), (b)(5)(vi), and (b)(6) to read as follows:

§ 72.72 Criteria for State operating permit program.

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for nonacceptance or withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State operating permit program by the Administrator.

* * * * *

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is

otherwise included in the State operating permit program.

(1) * * *

(ii) *Draft Permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the State permitting authority may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.

(iv) *Proposed permit.* The State permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a proposed Acid Rain permit.

(v) *Direct proposed procedures.* The State permitting authority may, in its discretion, issue, as a single document, a draft Acid Rain permit in accordance with paragraph (b)(1)(ii) of this section and a proposed Acid Rain permit and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with paragraph (b)(1)(iii) of this section. The State permitting authority may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued in accordance with paragraph (b)(1)(iv) of this section. Any notice provided under this paragraph (b)(1)(v) shall include a description of the procedure in the prior sentence.

(vi) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit, the State permitting authority shall or, under part 70 of this chapter, the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter.

* * * * *

(5) * * * (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. * * *

* * * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(b)(6) of this chapter shall be ground for filing an appeal.

(6) *Industrial Utility-Units Exemption.* The State permitting authority shall act in accordance with § 72.14 on any petition for exemption from requirements of the Acid Rain Program.

31. Section 72.73 is revised to read as follows:

§ 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) A State, to the extent that it is responsible under paragraph (a) of this section as of December 31, 1997 (or such later date as the Administrator may establish) for administering and enforcing Acid Rain permits, shall:

(i) On or before December 31, 1997, issue an Acid Rain permit for Phase II covering the affected units (other than opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21.

(ii) On or before January 1, 1999, for each unit subject to an Acid Rain NO_X emissions limitation, amend the Acid Rain permit under § 72.83 and add any NO_X early election plan that was approved by the Administrator under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit and add any other Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, the first Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

32. Section 72.74 is revised to read as follows:

§ 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources to the extent that a State permitting authority is not responsible, as of January 1, 1997 or such later date as the Administrator may establish, for administering and enforcing Acid Rain permits for such sources under § 72.73(a).

(2) After and to the extent the State permitting authority becomes responsible for administering and enforcing Acid Rain permits under § 72.73(a), the Administrator will

suspend federal administration of Acid Rain permits for Phase II for sources and units to the extent that they are subject to the accepted State Acid Rain program, except as provided in paragraph (b)(4) of this section.

(b)(1) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units during any period that the Administrator is administering and enforcing an operating permit program under part 71 of this chapter for the geographic area in which the sources and units are located.

(2) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units otherwise subject to a State Acid Rain program under § 72.73(a) if:

(i) The Administrator determines that the State permitting authority is not adequately administering or enforcing all or a portion of the State Acid Rain program, notifies the State permitting authority of such determination and the reasons therefore, and publishes such notice in the **Federal Register**;

(ii) The State permitting authority fails either to correct the deficiencies within a reasonable period (established by the Administrator in the notice under paragraph (b)(2)(i) of this section) after issuance of the notice or to take significant action to assure adequate administration and enforcement of the program within a reasonable period (established by the Administrator in the notice) after issuance of the notice; and

(iii) The Administrator publishes in the **Federal Register** a notice that he or she will administer and enforce Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or a portion of the program. The effective date of such notice shall be a reasonable period (established by the Administrator in the notice) after the issuance of the notice.

(3) When the Administrator administers and enforces Acid Rain permits under paragraph (b)(1) or (b)(2) of this section, the Administrator will administer and enforce each Acid Rain permit issued under the State Acid Rain program or portion of the program until, and except to the extent that, the permit is replaced by a permit issued under this section. After the later of the date for publication of a notice in the **Federal Register** that the State operating permit program is currently approved by the Administrator or that the State Acid Rain program or portion of the program is currently accepted by the Administrator, the Administrator will suspend federal administration of Acid Rain permits effective in Phase II for sources and units to the extent that they are subject to the State Acid Rain program or portion of the program, except as provided in paragraph (b)(4) of this section.

(4) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits effective in Phase II under § 72.73(a), the Administrator will continue to administer and enforce each Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section until, and except to the extent that, the permit is replaced by a permit issued under the State Acid Rain program. The State permitting authority may replace an Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section by issuing a permit under the State Acid Rain program by the expiration of the permit under paragraph (a)(1), (b)(1), or (b)(2) of this section. The Administrator may retain jurisdiction over the Acid Rain permits issued under paragraph (a)(1), (b)(1), or (b)(2) of this section for which the administrative or judicial review process is not complete and will address such retention of jurisdiction in a notice in the **Federal Register**.

(c) *Permit Issuance Deadline.* (1)(i) On or before January 1, 1998, the Administrator will issue an Acid Rain permit for Phase II setting forth the Acid Rain Program sulfur dioxide requirements for each affected unit (other than opt-in sources) at a source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) of this section for administering and enforcing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21. The failure by the Administrator to issue a permit in accordance with this paragraph shall be grounds for the filing of an appeal under part 78 of this chapter.

(ii) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date. Each Acid Rain permit issued in accordance with paragraph (c)(1)(i) of this section shall take effect by the later of January 1, 2000 or, where a permit governs a unit under § 72.6(a)(3), the deadline for monitor certification under part 75 of this chapter.

(2) *Nitrogen Oxides.* Not later than 6 months following submission by the designated representative of an Acid Rain permit application for nitrogen oxides, the Administrator will amend under § 72.83 the Acid Rain permit and add any NO_x early election plan that was approved under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit for Phase II and add any other Acid Rain Program nitrogen oxides requirements for each affected source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) for issuing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(d) *Permit Issuance.* (1) The Administrator may utilize any or all of the provisions of subparts E and F of this part to administer Acid Rain permits as authorized under this section or may adopt by rulemaking portions of a State Acid Rain program in substitution of or in addition to provisions of subparts E and F of this part to administer such permits. The provisions of Acid Rain permits for Phase I or Phase II issued by the Administrator shall not be applicable requirements under part 70 of this chapter.

(2) The Administrator may delegate all or part of his or her responsibility, under this section, for administering and enforcing Phase II Acid Rain permits or opt-in permits to a State. Such delegation will be made consistent with the requirements of this part and the provisions governing delegation of a part 71 program under part 71 of this chapter.

33. Section 72.80 is amended by revising paragraphs (a), (b), (d), (e), (f), and (g) to read as follows:

§ 72.80 General.

(a) This subpart shall govern revisions to any Acid Rain permit issued by the Administrator and to the Acid Rain portion of any operating permit issued by a State permitting authority.

(b) Notwithstanding the operating permit revision procedures specified in parts 70 and 71 of this chapter, the provisions of this subpart shall govern revision of any Acid Rain Program permit provision.

* * * * *

(d) The terms of the Acid Rain permit shall apply while the permit revision is pending, except as provided in § 72.83 for administrative permit amendments.

(e) The standard requirements of § 72.9 shall not be modified or voided by a permit revision.

(f) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under subpart D of this part and parts 74 and 76 of this chapter.

(g) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the permitting authority.

* * * * *

34. Section 72.81 is amended by: removing from paragraph (c)(1)(ii) the words "and § 70.7(e)(4)(ii) of this chapter"; and revising paragraph (c)(2) to read as follows:

§ 72.81 Permit modifications.

* * * * *

(c) * * *

(2) For purposes of applying paragraph (c)(1) of this section, a requested permit modification shall be treated as a permit application, to the extent consistent with § 72.80(c) and (d).

35. Section 72.82 is amended by revising paragraphs (a) and (d) to read as follows:

§ 72.82 Fast-track modifications.

* * * * *

(a) If the Administrator is the permitting authority, the designated representative shall serve a copy of the fast-track modification on the Administrator and any person entitled to a written notice under § 72.65(b)(1)(ii) and (iii). If a State is the permitting authority, the designated representative shall serve such a copy on the Administrator, the permitting authority, and any person entitled to receive a written notice of a draft permit under the approved State operating permit program. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the sources are located or in a State publication designed to give general public notice.

* * * * *

(d) Within 30 days of the close of the public comment period if the Administrator is the permitting authority or within 90 days of the close of the public comment period if a State is the permitting authority, the permitting authority shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be subject to the same provisions for review by the Administrator and affected States as are applicable to a permit modification under § 72.81.

36. Section 72.83 is amended by: removing from paragraph (a)(10) the words "regulations implementing section 407 of the Act" and adding, in their place, the words "part 76 of this chapter"; and revising paragraphs (a)(12) and (b) and adding paragraphs (a)(13), (a)(14), (c), and (d) to read as follows:

§ 72.83 Administrative permit amendment.

(a) * * *

(12) The addition of a NO_x early election plan that was approved by the Administrator under § 76.8 of this chapter;

(13) The addition of an exemption for which the requirements have been met under § 72.7 or § 72.8 or which was approved by the permitting authority under § 72.14; and

(14) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (13) of this section.

(b)(1) The permitting authority will take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, *provided* that the requirements of paragraph (a) of this section are met.

(2) The permitting authority may, on its own motion, make an administrative permit amendment under paragraph (a)(3), (a)(4), (a)(12), or (a)(13) of this section at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

(c) The permitting authority will designate the permit revision under paragraph (b) of this section as having been made as an administrative permit amendment. Where a State is the permitting authority, the permitting authority shall submit the revised portion of the permit to the Administrator.

(d) An administrative amendment shall not be subject to the provisions for review by the Administrator and affected States applicable to a permit modification under § 72.81.

37. Section 72.85 is amended by revising paragraphs (a) and (c) to read as follows:

§ 72.85 Permit reopenings.

(a) The permitting authority shall reopen an Acid Rain permit for cause whenever:

(1) Any additional requirement under the Acid Rain Program becomes applicable to any affected unit governed by the permit;

(2) The permitting authority determines that the permit contains a material mistake or that an inaccurate statement was made in establishing the emissions standards or other terms or conditions of the permit, unless the mistake or statement is corrected in accordance with § 72.83; or

(3) The permitting authority determines that the permit must be revised or revoked to assure compliance with Acid Rain Program requirements.

* * * * *

(c) As provided in §§ 72.73(b)(1) and 72.74(c)(2), the permitting authority shall reopen an Acid Rain permit to incorporate nitrogen oxides requirements, consistent with part 76 of this chapter.

* * * * *

38. Section 72.91 is amended by:

a. Removing from paragraph (b)(1)(i) the words "improved unit measures" and adding, in their place, the words "improved unit efficiency measures";

b. Removing from paragraph (b)(1)(iii) introductory text, the words "all figures" and adding, in their place, the words "each figure";

c. Removing from paragraph (b)(1)(iii)(B) the words "measures, and" and adding, in their place, the words "measures, or";

d. Removing from paragraph (b)(1)(iii)(C) the words "measures." and adding, in their place, the words "measures, except measures relating to generation efficiency.";

e. Removing from paragraph (b)(3) the words "unit efficiency measures" and adding, in their place, the words "improved unit efficiency measures";

f. Removing from paragraph (b)(4) introductory text, the word "units's" and adding, in its place, the word "unit's";

g. Removing from the formula in paragraph (b)(4) introductory text, the word "hear" and adding, in its place, the word "heat";

h. Removing from paragraph (b)(4)(i) the word "units' " and adding, in its place, the word "unit's"; revising paragraphs (b)(5), (b)(6), and (b)(7); and

i. Adding paragraphs (b)(1)(iv) and (b)(4)(iv) to read as follows:

§ 72.91 Phase I unit adjusted utilization.

* * * * *

(b) * * *

(1) * * *

(iv) The sum of the verified reductions in a unit's heat input from all measures implemented at the unit to reduce the unit's heat rate (whether the measures are treated as supply-side measures or improved unit efficiency measures) shall not exceed the generation (in kwh) attributed to the unit for the calendar year times the difference between the unit's heat rate for 1987 and the unit's heat rate for the calendar year.

* * * * *

(4) * * *

(iv) The allowances credited shall not exceed the total number of allowances deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter.

(5) If the total, included in the confirmation report, of the amount of verified reduction in the unit's heat input for energy conservation and improved unit efficiency measures is less than the total estimated in the unit's annual compliance certification report for such measures for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the unit's compliance subaccount calculated in accordance with this paragraph (b)(5).

(i) If any allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter, then the number of allowances to be deducted under paragraph (b)(5) of this section equals the absolute value of the result of the formula for allowances credited under paragraph (b)(4) of this section (excluding paragraph (b)(4)(iv) of this section).

(ii) If no allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter:

(A) The designated representative shall recalculate the unit's adjusted utilization in accordance with paragraph (a) of this section, replacing the amounts for reduction from energy conservation and reduction from improved unit efficiency by the amount for verified heat input reduction. "Verified heat input reduction" is the total of the amounts of verified reduction in the unit's heat input (in mmBtu) from energy conservation and improved unit efficiency measures included in the confirmation report.

(B) After recalculating the adjusted utilization under paragraph (b)(5)(ii)(A) of this section for all Phase I units that are in the unit's dispatch system and to which paragraph (b)(5) of this section is applicable, the designated representative shall calculate the number of allowances to be surrendered in accordance with § 72.92(c)(2) using the recalculated adjusted utilizations of such Phase I units.

(C) The allowances to be deducted under paragraph (b)(5) of this section shall equal the amount under paragraph (b)(5)(ii)(B) of this section, *provided* that if the amount calculated under this paragraph (b)(5)(ii)(C) is equal to or less than zero, then the amount of allowances to be deducted is zero.

(6) The Administrator will determine the amount of allowances that would have been included in the unit's compliance subaccount and the amount of excess emissions of sulfur dioxide that would have resulted if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the unit's heat input from energy conservation and improved unit efficiency measures.

(7) The Administrator will determine whether the amount of excess emissions of sulfur dioxide under paragraph (b)(6) of this section differs from the amount of excess emissions determined under § 73.35(b) of this chapter based on the annual compliance certification report. If the amounts differ, the Administrator will determine: The number of allowances that should be deducted to offset any increase in excess emissions or returned to account for any decrease in excess emissions; and the amount of excess emissions penalty (excluding interest) that should be paid or returned to account for the change in excess emissions. The Administrator will deduct immediately from the unit's compliance subaccount the amount of allowances that he or she determines is necessary to offset any increase in excess emissions or will return immediately to the unit's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions. The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(b)(2) of this chapter and the return will be at the Administrator's discretion.

* * * * *

39. Section 72.95 is amended by revising the formula in the introductory text and adding paragraph (d) to read as follows:

§ 72.95 Allowance deduction formula.

* * * * *

Total allowances deducted = Tons emitted + Allowances surrendered for underutilization + Allowances deducted for Phase I extensions + Allowances deducted for substitution or compensating units

Where:

* * * * *

(d) "Allowances deducted for substitution or compensating units" is the total number of allowances calculated in accordance with the surrender requirements specified under § 72.41(d)(3) or (e)(1)(iii)(B) or § 72.43(d)(2).

Part 73—[AMENDED]

40. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

41. Section 73.10 is amended by revising the section heading and adding paragraph (b)(3) to read as follows:

§ 73.10 Initial allocations for phase I and phase II.

* * * * *

(b) * * *

(3) Notwithstanding the amounts in Table 2 of this section, the unadjusted basic allowances for years 2000–2009 and for years 2010 and thereafter for Louisiana, Rodemacher 2 are 20,774.

* * * * *

42. Section 73.90 is amended by: removing from the formula in paragraph (c)(3) the words "Total Allowances Requested" and adding, in their place, the words "35,000"; removing from the formula in paragraph (c)(3) the words "35,000" and adding, in their place, the words "Total Allowances Requested"; and revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 73.90 Allowance allocations for small diesel refineries.

(a) * * *

(1) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for the refinery;

(2) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for each refinery owned or controlled by the refiner that owns or controls the refinery seeking certification; and

(3) A letter certified by the certifying official that the submitted photocopies are exact duplicates of those forms filed with the Department of Energy for 1988 through 1990.

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$$\text{Refinery Allowances} = \text{the lesser of} \left[\frac{\text{Allowances Requested}}{\text{Total Allowances Requested}} \times 35{,}000 \text{ or } 1{,}500 \right]$$

BILLING CODE 6560–50–C

* * * * *

PART 74—[AMENDED]

43. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.2 [Amended]

44. Section 74.2 is amended by removing the words "a written exemption under § 72.7 or § 72.8 of this chapter" and adding, in their place, the words "an exemption under § 72.7, § 72.8 or § 72.14 of this chapter".

PART 75—[AMENDED]

45. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 75.67 [Amended]

46. Section 75.67 is amended by removing and reserving paragraph (a).

PART 77—[AMENDED]

47. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

48. Section 77.3 is amended by revising paragraphs (d)(3),(5), and (6) to read as follows:

§ 77.3 Offset plans for excess emissions of sulfur dioxide.

* * * * *

(d) * * *

(3) At the designated representative's option, the number of allowances to be deducted from the unit's Allowance Tracking System account to offset the excess emissions for the year for which the plan is submitted.

* * * * *

(5) A statement either that allowances to offset the excess emissions are to be deducted immediately from the unit's compliance subaccount or that they are to be deducted on a specified date in a subsequent year.

(6) If the proposed offset plan does not propose an immediate deduction of allowances under paragraph (d)(5) of this section, a demonstration that such a deduction will interfere with electric reliability.

49. Section 77.4 is amended by revising paragraphs (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (g)(2)(i)(C), the last two sentences of (k)(1), and (k)(2) to read as follows:

§ 77.4 Administrator's action on proposed offset plans.

* * * * *

(b) *Review of proposed offset plans.* (1) If the designated representative submits a complete proposed offset plan for immediate deduction, from the unit's compliance subaccount, of allowances required to offset excess emissions of sulfur dioxide, the Administrator will approve the proposed offset plan without further review and will serve written notice of any approval on the designated representative. The Administrator will also give notice of any approval in the **Federal Register**. The plans will be incorporated in the unit's Acid Rain permit in accordance with § 72.84 of this chapter (automatic permit amendment) and will not be subject to the requirements of paragraphs (d) through (k) of this section.

* * * * *

(c) * * *

(2)(i) The designated representative shall submit the information required under paragraph (c)(1) of this section within a reasonable period determined by the Administrator.

* * * * *

(f) * * *

(2) * * *

(i) The reasons, and supporting authority, for approval or disapproval of any proposed offset plan that does not require immediate deduction of allowances, including references to applicable statutory or regulatory provisions and to the administrative record; and

* * * * *

(g) * * *

(2) * * *

(i) * * *

(B) The air pollution control agencies of affected States; and

(C) Any interested person.

* * * * *

(k) * * *

(1) * * * The Administrator will serve a copy of any approved offset plan and the response to comments on the designated representative for the affected unit involved and serve written notice of the approval or disapproval of the offset plan on any persons who are entitled to written notice under paragraphs (g)(2)(i) (B) and (C) of this section or who submitted written or oral comments on the approval or disapproval of the draft offset plan. The Administrator will also give notice in the **Federal Register**.

(2) The Administrator will approve an offset plan requiring immediate deduction from the unit's compliance subaccount of all allowances necessary to offset the excess emissions except to the extent the designated representative of the unit demonstrates that such a deduction will interfere with electric reliability.

* * * * *

50. Section 77.6 is amended by revising paragraph (a) to read as follows:

§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a)(1) If excess emissions of sulfur dioxide or nitrogen oxide occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

(2) If one or more affected units governed by an approved NO_X averaging plan under § 76.11 of this chapter fail (after applying § 76.11(d)(1)(ii)(C) of this chapter) to meet their respective alternative contemporaneous emission limitations or annual heat input limits, then excess emissions of nitrogen oxides occur during the year at each such unit. The sum of the excess emissions of nitrogen oxides of such units shall equal the amount determined under § 76.13(b)

of this chapter. The owners and operators of such units shall pay an excess emissions penalty, as calculated under paragraph (b) of this section using the sum of the excess emissions of nitrogen oxides of such units.

(3) Except as otherwise provided in this paragraph (a)(3), payment under paragraphs (a) (1) or (2) of this section shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that the process of recordation set forth in § 73.34(a) of this chapter is completed or by July 1 of the year after the year in which the excess emissions occurred, whichever date is earlier. Payment under paragraph (a)(1) of this section for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that process set forth in § 72.91(b) of this chapter is completed.

* * * * *

PART 78—[AMENDED]

51. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

52. Section 78.1 is amended by revising paragraphs (a) and (b)(1)(v) to read as follows:

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, and 77 of this chapter; *provided* that matters listed § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed.

(2) Filing an appeal, and exhausting administrative remedies, under this part shall be a prerequisite to seeking judicial review. For purposes of judicial review, final agency action occurs only when a decision appealable under this part is issued and the procedures under this part for appealing the decision are exhausted.

(b) * * *

(1) * * *

(v) The issuance or denial of an exemption under § 72.14 of this chapter;

* * * * *

§ 78.3 [Amended]

53. Section 78.3 is amended by:

a. Removing from paragraph (b)(1) the words "60 days" and adding, in their place, the words "30 days";

b. Removing from paragraph (b)(1) the words "action." and adding, in their place, the words "action and shall not meet the prerequisite for judicial review under § 78.1(a)(2).";

c. Removing from paragraph (b)(3)(ii) the words "the persons entitled to written notice under § 72.65(b)(1) (ii), (iii), and (iv) of this chapter." and adding, in their place, the words "the air pollution control agencies of affected States and any interested person.";

d. Adding at the end of paragraph (c)(6) the word "and"; removing from paragraph (c)(7) the words "; and" and adding, in their place, the word ".";

e. Removing paragraph (c)(8);

f. Removing paragraph (d)(1); and

g. Redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3) respectively.

§ 78.4 [Amended]

54. Section 78.4 is amended by: removing from paragraph (c)(1) the words "7 days" and adding, in its place, the words "7 days (or other reasonable period established by the Environmental Appeals Board or Presiding Officer),"; and removing from paragraph (c)(1) the words "it, unless the Environmental Appeals Board or Presiding Officer authorizes a longer time based on good cause." and adding, in their place, the words "it.".

55. Section 78.5 is amended by removing from paragraph (a) the words "to submit a claim of error notification" and adding, in their place, the words "a claim of error notification was submitted".

§ 78.5 [Amended]

§ 78.7 [Removed and reserved]

8056. Section 78.7 is removed and reserved.

§ 78.11 [Amended]

57. Section 78.11 is amended by: removing from paragraph (a) the words "30 days" and adding, in their place, the words "30 days (or other shorter, reasonable period established by the Administrator when giving notice)".

§ 78.12 [Amended]

58. Section 78.12 is amended by: removing from paragraph (a)(2) the words "a written exemption under §§ 72.7 or 72.8" and adding, in their place, the words "an exemption under § 72.14".

§ 78.14 [Amended]

59. Section 78.14 is amended by: removing from paragraph (a), introductory text, the word "theses" and adding, in its place, the word "these"; removing from paragraph (a)(10) the words "15 days" and adding, in their place, the words "15 days (or other shorter, reasonable period established by the Presiding Officer)"; and removing from paragraph (c)(1) the words "Rule 408 of".

§ 78.15 [Amended]

60. Section 78.15 is amended by: removing from paragraph (c) the words "10 days" and adding, in their place, the words "10 days (or other shorter, reasonable period established by the Presiding Officer)"; and removing the last sentence from paragraph (c).

§ 78.16 [Amended]

61. Section 78.16 is amended by: removing from paragraphs (d)(1) and (d)(2) the words "7 days" and adding, in their place, the words "7 days (or other shorter, reasonable period established by the Presiding Officer)".

§ 78.17 [Amended]

62. Section 78.17 is amended by: removing the words "45 days" and adding, in their place, the words "45 days (or other shorter, reasonable period established by the Presiding Officer)"; and removing the words ", for good cause shown, may shorten or extend the time for filing and".

§ 78.18 [Amended]

63. Section 78.18 is amended by: removing from paragraph (b), introductory text, the words "30 days after service unless within that time:" and adding, in their place, the words "unless:".

§ 78.20 [Amended]

64. Section 78.20 is amended by: removing from paragraph (b) the words "30 days" and adding, in their place, the words "45 days (or other shorter, reasonable period established by the Environmental Appeals Board)".

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federal register

Friday
October 24, 1997

Part III

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Deposit Insurance Corporation
12 CFR Part 325

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 567

Risk Based Capital Requirements; Transfers of Small Business Loan Obligations With Recourse; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–17]

RIN 1557–AB14

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–97]

RIN 1550–AB11

Risk-Based Capital Requirements; Transfers of Small Business Loan Obligations With Recourse

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint final rule.

SUMMARY: The OCC, FDIC, and OTS (agencies) are issuing final rules on the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The rules address the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, and, consistent with the statutory purpose, are designed to facilitate such transfers.

DATES: The final rule is effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

OCC: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874-5210); or Tom Rollo, National Bank Examiner, Office of the Chief National Bank Examiner (202/874–5070), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Marc J. Goldstrom, Counsel, (202/898–8807), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: John F. Connolly, Senior Program Manager for Capital Policy (202/906–6465), Supervision; or Valerie J. Lithotomos, Counsel, Banking and Finance (202/906–6439), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The agencies are issuing final rules on the risk-based capital treatment of transfers of small business obligations with recourse as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 1835. The agencies had previously published interim rules implementing section 208 and at that time requested comment on the changes. 60 FR 47455 (OCC); 60 FR 45606 (FDIC); 60 FR 45618 (OTS). The OTS and OCC are now issuing final rules that are unchanged from their respective interim rules. The FDIC is issuing a final rule that is substantially the same as its interim rule.

Banks and thrifts typically transfer assets with recourse as part of securitization transactions. Sections 201 through 210 of the CDRI Act were intended to increase small business access to capital by removing impediments in existing law to the securitization of small business loans and leases.

Under the agencies' current risk-based capital standards, assets transferred with recourse are included in risk-weighted assets.[1] Section 208 prescribes modified risk-based capital requirements for transfers of small business loans or leases of personal property with recourse that are sales under generally accepted accounting principles (GAAP). This modified risk-based capital treatment permits a qualified insured depository institution to include in its risk-weighted assets, for the purposes of applicable capital standards and other capital measures, only the amount of the retained recourse multiplied by the appropriate risk-weight percentage. For example, if an institution sold a $1,000 pool of small business loans with recourse, but limited its recourse liability to the first $100 of loss on the pool, section 208 would limit the applicable capital charge to $8 (8 percent of the $100 of retained recourse).[2]

By contrast, the agencies' risk-based capital regulations generally require institutions to include in risk-weighted assets the full value of assets transferred with recourse multiplied by the appropriate risk-weight percentage. If that rule were applied to the foregoing example, the institution's capital charge would be 8 percent of the $1,000 pool of transferred assets resulting in an $80 capital charge, rather than the $8 capital charge under section 208.[3]

Section 208 limits the availability of the favorable treatment as follows:

(1) To apply section 208 to a transaction, an institution must be a "qualified insured depository institution" at the time of the sale with recourse. A qualified insured depository institution is one that is either well capitalized or, with the approval of its primary regulator, adequately capitalized (in either case, without regard to section 208). If an institution loses its "qualified" status, transactions completed while the institution was qualified will continue to receive the favorable capital treatment.

(2) The total outstanding amount of recourse retained by an institution with respect to transfers of small business loans and leases of personal property to which section 208 has been applied may not exceed 15 percent of the total risk-based capital of the institution, unless the institution's primary federal regulatory agency, by regulation or order, specifies a greater amount.

Comments

In response to the interim rule, the agencies received comments from one bank, three banking trade associations, one accountants' professional association, and one other trade association. All of the commenters supported the interim rule.

Section 208 requires the agencies to use the definition of "small business" established by the Small Business Administration (SBA) in 13 CFR part 121 pursuant to 15 U.S.C. 632 in determining which loans and leases are eligible for the special capital treatment. Two commenters observed that this definition is difficult to apply with certainty in the absence of voluminous information gathered from each loan applicant, and that collecting this information would be prohibitively expensive for the lender and the loan applicant. The commenters noted that, in extending small business leases, some institutions use computerized credit scoring that relies on sales and employment information available from published reports. This information does not exactly match the criteria in the SBA's definition. Because the transactions are typically very small, these commenters stated, the cost of obtaining the additional information required by the SBA's definition for each lease would effectively preclude use of section 208 to facilitate securitization of these leases.

The agencies have considered these comments and believe that section 208 and the agencies' regulations permit an institution to apply the section 208 capital treatment without incurring this additional cost. If the specific information required by the SBA definition is not readily available, an institution should use its best efforts to ensure that, based on other information that is available to the institution, the borrower would meet the SBA criteria for a small business. Additionally, an institution should not classify a borrower as a small business if the institution has access to readily available information that is not consistent with such a classification. If, during the course of an examination, it is determined that the information being used to evaluate whether a borrower is a small business is being used in a manner that is inconsistent with or that appears to circumvent the provisions of the actual SBA definition of a small business, the agencies may require appropriate adjustments to be made to the institution's regulatory capital calculations for those periods during which the SBA definition was not consistently applied.

Another commenter observed that the agencies did not state in the interim rules that the accounting principles for transfers of small business loans and leases with recourse in Consolidated Reports of Condition and Income (Call Reports) and Thrift Financial Reports should be governed by GAAP. All of the agencies intend to apply GAAP as required by section 208. No regulatory amendments will be necessary to implement this change. As of January 1997, all institutions generally must follow GAAP for financial reporting in their Call Reports and Thrift Financial Reports, including the reporting of transfers of small business loans with recourse in accordance with section 208.[4]

This commenter also noted that the interim rule requires an institution to hold capital against the entire face amount of recourse retained and also to establish a liability reserve for expected future losses associated with the recourse arrangements. The commenter stated that this requirement would result in an excessive capital requirement and that the retained recourse liability should be reduced by the amount of the reserve before calculating capital requirements.

The agencies have decided not to change the treatment in the interim rule. Section 208 specifically requires the treatment described in the interim rule. Also, as the FRB noted in its final rule implementing section 208, capital and the GAAP reserve serve different purposes. The GAAP reserve covers expected losses, while capital is maintained to absorb unexpected losses. 60 FR 45613 (August 31, 1995).

Three commenters suggested that the agencies make the risk-based capital treatment described in section 208 available for all sales of assets with recourse. One commenter noted that section 208(h) permits the agencies to adopt an alternative capital treatment that does not require more aggregate capital and reserves than the treatment described in section 208. This commenter urged the agencies to use this discretion to further reduce the capital requirement on transfers of small business obligations with recourse. The agencies are not undertaking that change now, but are continuing to review the risk-based capital requirements applicable to sales of assets with recourse. The agencies will consider the commenters' suggestions in the context of that review.

One commenter asked the agencies to confirm that an institution may apply the section 208 treatment to small business loans transferred with recourse after March 22, 1995, the statutory implementation date, even though the agencies' interim rules were published in August and September of 1995. Consistent with the guidance previously provided in the agencies' interim rules, the agencies will not object if an institution chooses to apply the provisions of the final rule to small business obligations that were transferred with recourse between March 22, 1995 and the effective date of the final rule, provided the institution would have been a qualifying institution under the provisions of the rule at the time of the transfer.

Under the statute, an adequately capitalized institution will be a "qualified institution" eligible to use the capital treatment for small business loans with the written permission of the responsible agency. One commenter to the OTS suggested that all adequately capitalized institutions should be permitted to use the section 208 capital treatment unless the agency determines that an individual minimum capital requirement or other action is necessary for safety and soundness purposes. The OTS generally intends to allow institutions to use the section 208 computational method if OTS determines institutions will have capital commensurate with their risk exposure.

One commenter thought that the OCC's treatment of low-level recourse transactions differed from that of the FDIC and FRB. Although this issue is not directly related to the final rule implementing section 208, the OCC wishes to clarify that its treatment of low-level recourse transactions is consistent with that of the FDIC and FRB. A low-level recourse transaction is a transaction in which the amount of retained recourse is less than the effective capital requirement on the underlying assets. As required by section 350 of the CDRI Act, 12 USC 4808, the OCC, FDIC, and FRB have adopted rules limiting the risk-based capital requirement for low-level recourse obligations to the bank's maximum contractual obligation under the recourse provision. (The OTS already had such a rule in place.[5]) In addition, the OCC, FRB, and FDIC, acting under the auspices of the Federal Financial Institutions Examination Council, have jointly issued Call Report instructions describing the regulatory reporting treatment applicable to low-level recourse transactions in the regulatory capital schedule. (See Call Report Instructions for Schedule RC–R—Regulatory Capital.)

The preamble to the OTS's interim rule on section 208 also addressed the implementation of section 350 and requested comments on the proper calculation of the risk-based capital ratio for low-level recourse exposures. The OTS received one comment on low-level recourse exposures, which supported the current OTS approach. However, because this issue was not

[1] If an institution's maximum contractual liability under a recourse obligation is less than the capital requirement for the credit risk exposure on the underlying assets, then, under the low-level recourse rule, the capital requirement for the recourse exposure is equal to the institution's maximum contractual liability.

[2] For purposes of determining the amount of risk-weighted assets for assets transferred with recourse that receive the preferential capital treatment under section 208, the recourse liability account established in accordance with GAAP would not be subtracted from the amount of the recourse obligation.

[3] Under the low-level recourse rule, if the institution had limited the recourse obligation to $60 on the loan pool, its capital charge would be $60.

[4] Because the Call Report instructions have been revised to conform with GAAP in the reporting treatment of all transfers of financial assets, including small business loans and leases transferred with recourse, the FDIC has decided that the interim rule amendment that added a new paragraph (e) to § 325.3 of the FDIC's leverage capital rule is now redundant. Therefore, the FDIC's final rule removes this paragraph.

[5] 12 CFR 567.6(a)(2)(i)(C).

raised in the FDIC and OCC interim rules implementing section 208, the OTS is not addressing the issue in this joint final rule. The OTS will consider this comment in reviewing its policy guidance and Thrift Financial Report instructions.

Prompt Corrective Action

Section 208(f) states that the capital of an insured depository institution shall be computed without regard to section 208 in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Section 38 addresses prompt corrective action.

The caption to section 208(f), "Prompt Corrective Action Not Affected," and the legislative history indicate that section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103–169, 103d Cong., 1st Sess. 38, 69 (1994). However, the statute does not include "well capitalized" in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on institutions that are less than adequately capitalized. Therefore, allowing an institution that is adequately capitalized without the section 208 treatment[6] to use section 208 for purposes of determining whether the institution is well capitalized generally would not affect the application of the prompt corrective action sanctions to the institution. Other statutes and regulations treat an institution more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting an institution to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating an institution as well capitalized rather than adequately capitalized. If an agency determines that an institution is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, section 38(g) (12 U.S.C. 1831o(g)) authorizes the agency (1) to reclassify a well capitalized institution as adequately capitalized and (2) to require an adequately capitalized institution (but not a well capitalized institution) to comply with certain prompt corrective action provisions as if the institution were undercapitalized. Because the text and legislative history of section 208 indicate that it was not intended to affect prompt corrective action, the agencies believe that section 208 does not affect the capital calculation for purposes of section 38(g) regardless of the institution's capital level.

Thus, an institution may use the capital treatment described in section 208 when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.[7] An institution may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.[8] The agencies will disregard the capital treatment described in section 208 for purposes of section 38(g).

Final Rules

The OCC is adopting its interim rule without change.

The OTS is also adopting its interim rule without change.

The FDIC is adopting its interim rule with one technical, non-substantive change: section 325.5(e) is being removed as redundant. Even though paragraph 6 of section II.B. of appendix A to part 325 is unchanged, it is being republished for the convenience of the reader.

Regulatory Flexibility Act

Each of the agencies certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is required by statute. The final rule authorizes an alternative method of calculating risk-based capital that permits institutions to hold less capital for certain recourse obligations. The final rule will benefit qualified institutions regardless of size. The final rule will not affect any institution's risk-based capital for prompt corrective action purposes.

Executive Order 12866

The OCC and OTS have determined that this final rule is not a significant regulatory action under Executive Order 12866. Under the final rule, some institutions' risk-based capital ratios may improve. This change will not have a material effect on the safety and soundness of affected institutions and will not affect their measured risk-based capital for prompt corrective action purposes.

Paperwork Reduction Act

The Agencies have determined that this final rule will not increase the regulatory paperwork of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the final rule authorizes an alternative method of calculating capital that permits institutions to elect to hold less capital for certain recourse obligations. Because the agencies have determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the agencies have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

[6] It is very unlikely but theoretically possible that an institution that is undercapitalized without section 208 would become well capitalized if it applied the treatment in section 208. Because section 208 was not intended to affect prompt corrective action, and because allowing an undercapitalized institution to become well capitalized would affect prompt corrective action, the agencies interpret section 208 not to allow an undercapitalized institution to use the capital treatment it describes to become well capitalized for purposes of prompt corrective action.

[7] An institution that is subject to a written agreement or capital directive as discussed in the agencies' prompt corrective action regulations would not be considered well capitalized.

[8] Under section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation and adequately capitalized using the other. In this situation, the institution would be considered well capitalized.

Office of the Comptroller of the Currency

12 CFR Chapter I

Issuance

For the reasons set out in the preamble, the interim rule amending 12 CFR part 3 which was published at 60 FR 47455 on September 13, 1995, (as corrected by the document published in the **Federal Register** at 60 FR 64115 on December 14, 1995) is adopted as a final rule without change.

Office of The Comptroller of the Currency.

Dated: September 12, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Issuance

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation adopts as final the interim rule amending 12 CFR part 325 which was published at 60 FR 45606 on August 31, 1995, with the following change:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831(o), 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831(n) note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

§ 325.3 [Amended]

2. In § 325.3 paragraph (e) is removed.

3. In appendix A to part 325, paragraph 6 of section II.B. is republished to read as follows:

Appendix—A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

B. * * *

6. *Small Business Loans and Leases on Personal Property Transferred with Recourse*—(a) Notwithstanding other provisions of this appendix A, a qualifying institution that has transferred small business loans and leases on personal property (small business obligations) with recourse shall include in risk-weighted assets only the amount of retained recourse, provided two conditions are met. First, the transaction must be treated as a sale under generally accepted accounting principles (GAAP) and, second, the qualifying institution must establish pursuant to GAAP a non-capital reserve sufficient to meet the institution's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632(a)) are eligible for this capital treatment.

(b) For purposes of this appendix A, a qualifying institution is a bank that is well capitalized. In addition, by order of the FDIC, a bank that is adequately capitalized may be deemed a qualifying institution. In determining whether a bank meets the qualifying institution criteria, the prompt corrective action well capitalized and adequately capitalized definitions set forth in § 325.103 shall be used, except that the bank's capital ratios must be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section II.B.6.(a) of this appendix A. The total outstanding amount of recourse retained by a qualifying institution on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the FDIC may approve a higher limit.

(c) If a bank ceases to be a qualifying institution or exceeds the 15 percent of capital limit under section II.B.6.(b) of this appendix A, the preferential capital treatment will continue to apply to any transfers of small business obligations with recourse that were consummated during the time the bank was a qualifying institution and did not exceed such limit.

(d) The risk-based capital ratios of a bank shall be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in paragraph (a) of this section for purposes of:

(i) Determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under the prompt corrective action capital category definitions specified in § 325.103; and

(ii) Applying the prompt corrective action reclassification provisions specified in § 325.103(d), regardless of the bank's capital level.

* * * * *

Federal Deposit Insurance Corporation.

By the order of the Board of Directors.

Dated at Washington, D.C. this 16th day of September 1997.

James D. LaPierre,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Issuance

Accordingly, the Office of Thrift Supervision hereby adopts as final the interim rule amending 12 CFR part 567 which was published at 60 FR 45618 on August 31, 1995, without change.

Office of Thrift Supervision.

By the Office of Thrift Supervision.

Dated: September 18, 1997.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–27749 Filed 10–23–97; 8:45 am]

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S. 1000/P.L. 105–63

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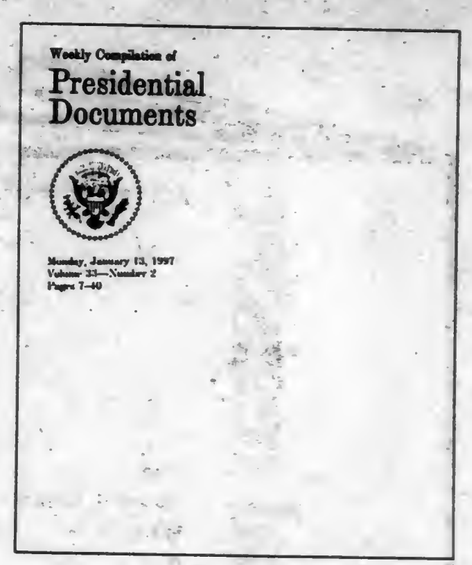
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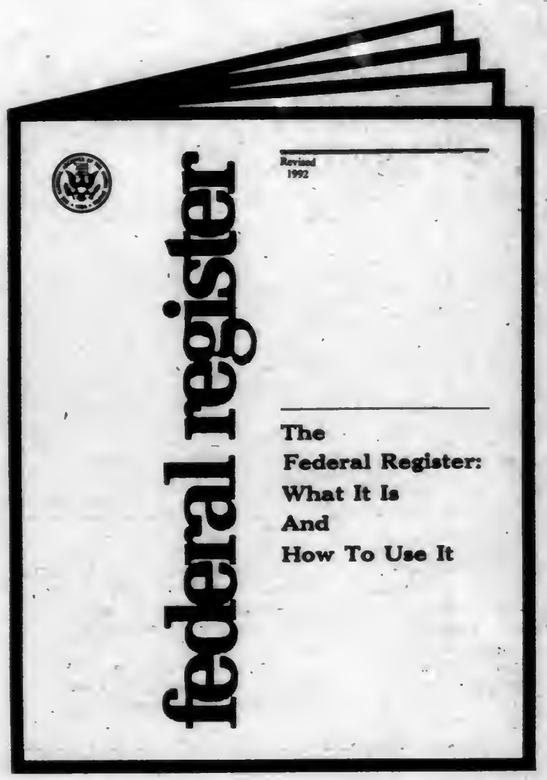
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Electronic Bulletin Board
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Rules and Regulations

Federal Register
Vol. 62, No. 207
Monday, October 27, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on July 28, 1997 (62 FR 40257), and became effective August 11, 1997. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Foreign List, which was last published on July 28, 1997 (62 FR 40257), and became effective August 11, 1997. A copy of the complete Foreign List is available from the Federal Reserve banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

ACCUMED INTERNATIONAL, INC.
Warrants (expire 10–14–97)
ALLIANCE GAMING CORPORATION
Series B, 15% non-voting senior specialty shares
AMERICAN SENSORS, INC.
No par common
APPLIED SCIENCE & TECHNOLOGY, INC.
Warrants (expire 11–10–98)
BARRY'S JEWELERS, INC.
No par common
Warrants (expire 07–01–2002)
CAMBEX CORPORATION
$.10 par common
CARNEGIE BANCORP (New Jersey)
Warrants (expire 08–18–97)

CHROMAVISION MEDICAL SYSTEMS, INC.
Rights (expire 08–05–97)
COM/TECH COMMUNICATIONS TECHNOLOGIES
$.0001 par common
COMMUNITY MEDICAL TRANSPORT, INC.
Warrants (expire 10–03–99)
CONSOLIDATED ECO-SYSTEMS, INC.
$.001 par common
CONTROL DATA SYSTEMS, INC.
$.01 par common
CRAIG CONSUMER ELECTRONICS, INC.
$.01 par common
DIVERSINET CORPORATION
No par common
DORSEY TRAILERS, INC.
$.01 par common
FIRST MERCHANTS ACCEPTANCE CORP.
$.01 par common
GANDALF TECHNOLOGIES, INC.
No par common
GARDNER DENVER MACHINERY, INC.
$.01 par common
GROSSMAN'S INC.
$.01 par common
HEALTH MANAGEMENT, INC.
$.03 par common
HOLLYWOOD PARK, INC.
Depositary shares
HOME STATE HOLDINGS, INC.
$.01 par common
HOMEOWNERS GROUP, INC.
$.01 par common
IBIS TECHNOLOGY CORPORATION
Warrants (expire 05–20–99)
INNODATA CORPORATION
Warrants (expire 08–09–97)
KOLL REAL ESTATE GROUP, INC.
Series A, $.01 par convertible preferred
MACHEEZMO MOUSE RESTAURANTS, INC.
No par common
MID-STATES PLC
American Depositary Receipts
MIDISOFT CORPORATION
No par common
OLD AMERICA STORES, INC.
$.01 par common
OMEGA ENVIRONMENTAL, INC.
$.0025 par common
PARADIGM TECHNOLOGY, INC.
$.01 par common
PEOPLE'S CHOICE TV CORP.
$.01 par common
PLAYNET TECHNOLOGIES, INC.
$.001 par common
RATTLESNAKE HOLDING COMPANY, INC.
$.001 par common
RENAISSANCE ENTERTAINMENT CORP.
Class A, warrants expire 01–27–2000)
Class B, warrants expire 01–27–2000)
RIVER OAKS FURNITURE, INC.
$.01 par common
SCORE BOARD, INC., THE
$.01 par common
SERAGEN, INC.
$.01 par common
SOLV-EX CORPORATION
$.01 par common
SPEC'S MUSIC, INC.
$.01 par common
STANDARD FINANCIAL, INC.
$.01 par common
STERLING FINANCIAL CORPORATION
Series A, $1.00 par cumulative convertible preferred
STRAWBRIDGE & CLOTHIER
Class A, $1.00 par common
SUPERIOR ENERGY SERVICES, INC.
Class B, warrants expire 12–08–2000)
TOTAL WORLD TELECOMMUNICATIONS, NC.
$.00001 par common
TRACK DATA CORPORATION
Warrants (expire 08–10–97)
UNIONBANCAL CORPORATION
Depositary shares
VECTRA TECHNOLOGIES, INC.
$.01 par common
WAVE SYSTEMS CORPORATION
Class A, $.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

ADVANCED LOGIC RESEARCH, INC.
$.01 par common
AMERICAN FEDERAL BANK, FSB (South Carolina)
$1.00 par common
AMERICAN FILTRONA CORPORATION
$1.00 par common
AMERICAN MEDSERVE CORPORATION
$.01 par common
AMRION INC.
$.0011 par common
APOGEE, INC.
$.01 par common
ARDEN INDUSTRIAL PRODUCTS, INC.
$.01 par common
ARGYLE TELEVISION, INC.
Class A, $.01 par common
AST RESEARCH, INC.
$.01 par common
ATWOOD OCEANICS, INC.
$1.00 par common
AURUM SOFTWARE, INC.
$.001 par common
BANKATLANTIC BANCORP, INC. (Florida)
Class A, $.01 par common
BANKERS CORPORATION (New Jersey)
$.01 par common
BASIC PETROLEUM INTERNATIONAL LIMIT
Ordinary Shares (BAH $3.00)
BIOPSYS MEDICAL, INC.
$.001 par common
BLYVOORUITZICHT GOLD MINING COMPANY
American Depositary Receipts
BNH BANCSHARES, INC. (Connecticut)
$1.00 par common
BUCYRUS INTERNATIONAL, INC.
$.01 par common
BUFFELSFONTEIN GOLD MINES, LTD.
American Depositary Receipts
CARDINAL BANCSHARES, INC.
No par common
CARDIOMETRICS, INC.
$.01 par common
CB BANCORP, INC. (Indiana)
$.01 par common
CHANCELLOR BROADCASTING COMPANY
Class A, $.01 par common
COLLECTIVE BANCORP, INC.
$.01 par common
COLONIAL GAS COMPANY
$5.00 par common
COMMUNITY BANKSHARES, INC.
$1.00 par common
CRA MANAGED CARE, INC.
$.01 par common
CROP GROWERS CORPORATION
$.01 par common
CRYENCO SCIENCES, INC.
Class A, $1.00 par common
CRYOLIFE, INC.
$.01 par common
CULLEN/FROST BANKERS, INC.
$5.00 par common
DAKA INTERNATIONAL, INC.
$.01 par common
DARLING INTERNATIONAL INC.
$.01 par common
DBT ONLINE, INC.
$.10 par common
DELAWARE OTSEGO CORPORATION
$.125 par common
DIGEX, INCORPORATED
$.01 par common
DRECO ENERGY SERVICES LTD.
Class A, no par common
DRILEX CORPORATION
$.01 par common
DURCO INTERNATIONAL, INC.
$1.25 par common
EMCARE HOLDINGS, INC.
$.01 par common
ENVIROTEST SYSTEMS, INC.
Class A, $.01 par common
FIRST CITIZENS FINANCIAL CORP.
$.01 par common
FIRST MICHIGAN BANK CORPORATION
$1.00 par common
FIRST PATROIT BANKSHARES CORP.
$2.50 par common
FORT HOWARD CORPORATION
$.01 par common
GIDDINGS & LEWIS, INC.
$.10 par common
GOLDEN POULTRY COMPANY, INC.
$1.00 par common
GREATER NEW YORK SAVINGS BANK
$1.00 par common

GREENWICH AIR SERVICES, INC.
Class A, $.01 par common
Class B, $.01 par common
HAVERFIELD CORPORATION
$.01 par common
HECHINGER COMPANY
Class A, $.10 par common
Class B, $.10 par common
5½% convertible subordinated debentures
HOSPITALITY WORLDWIDE SERVICES, INC.
$.01 par common
HUDSON CHARTERED BANCORP, INC.
$.80 par common
IMAGYN MEDICAL, INC.
$.01 par common
INBRAND CORPORATION
$.10 par common
INDIANA FEDERAL CORPORATION
$.01 par common
INDUS GROUP, INC., THE
$.001 par common
INTERACTIVE GROUP, INC.
$.001 par common
JSB FINANCIAL, INC.
$.01 par common
KRYSTAL COMPANY, THE
No par common
MAXIS, INC.
$.0001 par common
McFARLAND ENERGY, INC.
$1.00 par common
MEMTEC LIMITED
American Depositary Shares
MICRO BIO-MEDICS, INC.
$.03 par common
MOTIVEPOWER INDUSTRIES, INC.
$.01 par common
MS FINANCIAL, INC.
$.001 par common
NATIONAL SANITARY SUPPLY COMPANY
$1.00 par common
NELLCOR PURITAN BENNETT, INC.
$.001 par common
NETFRAME SYSTEMS INCORPORATED
$.001 par common
NUMAR CORPORATION
$.01 par common
OCTEL COMMUNICATIONS CORPORATION
$.01 par common
OCWEN FINANCIAL CORPORATION
$.01 par common
ONTRAK SYSTEMS, INC.
No par common
OUTDOOR SYSTEMS, INC.
$.01 par common
PALMER WIRELESS, INC.
Class A, $.01 par common
PENN VIRGINIA CORPORATION
$6.25 par common
PEOPLE'S SAVINGS FINANCIAL CORP.
$1.00 par common
PEOPLES HOLDING COMPANY, THE
$5.00 par common
PHYSICIAN CORPORATION OF AMERICA
$.01 par common
PLANET HOLLYWOOD INTERNAIONAL, INC.
Class A, $.01 par common
PORTSMOUTH BANKSHARES, INC.
$.10 par common
PRIDE INTERNATIONAL, INC.
No par common
PRIME RETAIL, INC.
$.01 par common
Series B, cumulative convertible preferred
PURE ATRIA CORPORATION
$.0001 par common
RAYMOND CORPORATION, THE
$1.50 par common
RCSB FINANCIAL, INC.
$1.00 par common
RENAISSANCE SOLUTIONS, INC.
$.001 par common
RIVERVIEW SAVINGS BANK, F.S.B.
$1.00 par common
ROYAL GRIP, INC.
$.001 par common
SECURITY CAPITAL CORPORATION
$1.00 par common
SEDA SPECIALTY PACKAGING CORP.
No par common
SERV-TECH, INC.
$.50 par common
SHARED MEDICAL SYSTEMS CORP.
$.01 par common
SIMPSON MANUFACTURING CO., INC.
No par common
SMT HEALTH SERVICES, INC.
$.01 par common
SOUTHWEST SECURITIES GROUP, INC.
$.10 par common
STRYKER CORPORATION
$.10 par common
SUBURBAN BANCORPORATION, INC.
$.01 par common
TALBERT MEDICAL MANAGEMENT HOLDINGS
$.01 par common
TELCO COMMUNICATIONS GROUP, INC.
No par common
TETRA TECHNOLOGIES, INC.
$.01 par common
THERAPEUTIC DISCOVERY CORPORATION
Class A, $.01 par common
TUBOSCOPE INC.
$.01 par common
U.S. BANCORP (Oregon)
$5.00 par common
Series A, 8c par cumulative preferred
UNITED CITIES GAS COMPANY
No par common
UNITED WASTE SYSTEMS, INC.
$.001 par common
VARSITY SPIRIT CORPORATION
$.01 par common
VERSA TECHNOLOGIES, INC.
$.01 par common
WATSON PHARMACEUTICALS, INC.
$.0033 par common
WINSTON HOTELS, INC.
$.01 par common
WINTON FINANCIAL CORPORATION
No par common

Additions to the List of Marginable OTC Stocks

@ENTERTAINMENT, INC.
$.01 par common
A.C. MOORE ARTS & CRAFTS, INC.
No par common
ADVANCED ELECTRONIC SUPPORT PRODUCTS, INC.
$.001 par common
ADVANTAGE LEARNING SYSTEMS, INC.
$.01 par common
AEHR TEST SYSTEMS
$.01 par common
AMERICAN BUSINESS INFORMATION, INC.
Class A, $.0025 par common
AMERICAN CAPITAL STRATEGIES, LTD.
$.01 par common
AMERICAN DENTAL TECHNOLOGIES, INC.
$.001 par common
APPLE SOUTH, INC.
Apple South Financing I
ASIA ELECTRONICS HOLDING CO., INC.
$.01 par common
AUTHENTIC SPECIALTY FOODS, INC.
$1.00 par common
AUTOCYTE, INC.
$.01 par common
BEI TECHNOLOGIES, INC.
$.001 par common
BELL CANADA INTERNATIONAL, INC.
No par common
BEST SOFTWARE, INC.
No par common
BIG DOG HOLDING, INC.
$.01 par common
BIORELIANCE CORPORATION
$.01 par common
BORON, LePORE & ASSOCIATES, INC.
$.01 par common
CABLE MICHIGAN, INC.
$1.00 par common
CARRIZO OIL & GAS, INC.
$.01 par common
CASMYN CORPORATION
$.04 par common
CASTLE DENTAL CENTERS, INC.
$.001 par common
CATALYTICA, INC.
Warrants
CHILDREN'S PLACE RETAIL STORES, INC., THE
$.10 par common
CITIZENS NATIONAL BANK OF TEXAS

$2.03 par common
CMP MEDIA, INC.
$.01 par common
COGNICASE, INC.
No par common
COMPASS PLASTICS & TECHNOLOGIES, INC.
$.0001 par common
COMPUTER MOTION, INC.
$.001 par common
CONCENTRIC NETWORK CORPORATION
$.001 par common
CONTINENTAL NATURAL GAS, INC.
$.01 par common
CORIXA CORPORATION
$.001 par common
CORPORATEFAMILY SOLUTIONS, INC.
No par common
CORSAIR COMMUNICATION, INC.
$.001 par common
CRESCENDO PHARMACEUTICALS CORPORATION
Class A, $.01 par common
CRESCENT OPERATING, INC.
$.01 par common
CTB INTERNATIONAL CORPORATION
$.01 par common
D&N FINANCIAL CORPORATION
Series A, non-cumulative exchangeable preferred
DENISON INTERNATIONAL PLC
American Depositary Shares
DIGITAL TRANSMISSION SYSTEMS, INC.
$.01 par common
EAGLE GEOPHYSICAL, INC.
$.01 par common
EASTBROKERS INTERNATIONAL INCORPORATED
$.05 par common
EDAP TMS S.A.
American Depositary Receipts
EDUTREK INTERNATIONAL, INC.
Class A, no par common
ENGEL GENERAL DEVELOPERS LTD.
Class A, ordinary shares (.1 LIS)
EXCELSIOR-HENDERSON MOTORCYCLE MANUFACTURING
$.01 par common
EXECUSTAY CORPORATION
$.01 par common
FARO TECHNOLOGIES, INC.
$.001 par common
FINE AIR SERVICES, INC.
$.01 par common
FIRST CARNEGIE DEPOSIT
$.10 par common
FIRST INTERNATIONAL BANCORP, INC. (Connecticut)
$.01 par common
FIRSTCITY FINANCIAL CORPORATION
Special preferred stock
FRESHSTART VENTURE CAPITAL
$.01 par common
FRIEDE GOLDMAN INTERNATIONAL, INC.
$.01 par common
GALILEO TECHNOLOGY, LTD.
Ordinary shares (NIS .01)
GENERAL BEARING CORPORATION
$.01 par common
GLOBECOMM SYSTEMS, INC.
$.001 par common
HACH COMPANY
Class A, $1.00 par common
HALL, KINION & ASSOCIATES, INC.
$.001 par common
HARVEST RESTAURANT GROUP, INC.
$.01 par common
HEARST-ARGYLE TELEVISION, INC.
Class A, $.01 par common
HYSEC, INC.
$.001 par common
IFS INTERNATIONAL, INC.
$.001 par common
Series A, preferred
Series A, warrants (expire 01–31–2002)
IL FORNAIO (AMERICA) CORPORATION
$.001 par common
INDUS INTERNATIONAL, INC.
$.001 par common
INFORMATION MANAGMENT ASSOCIATES, INC.
No par common
INNOVA CORPORATION
No par common
INSPIRE INSURANCE SOLUTIONS, INC.
$.01 par common
INTEGRAL SYSTEMS, INC.
$.01 par common
INTERNATIONAL TOTAL SERVICES, INC.
No par common
IONICA GROUP PLC
American Depositary Receipts
J.D. EDWARDS & COMPANY
$.001 par common
JEVIC TRANSPORTATION, INC.
No par common
JLM INDUSTRIES, INC.
$.01 par common
KENDLE INTERNATIONAL, INC.
No par common
KOFAX IMAGE PRODUCTS, INC.
$.001 par common
LAKELAND FINANCIAL CORPORATION
$.50 par common
No par cumulative trust preferred
LOGILITY, INC.
No par common
MACHEEZMO MOUSE RESTAURANTS, INC.
No par common
MARCAM SOLUTIONS, INC.
$.01 par common
MASON-DIXON BANCSHARES, INC.
Preferred securities liquidation amount $25
McMORAN OIL & GAS COMPANY
Rights (expire 11–13–97)
MEGABIOS CORPORATION
$.001 par common
MICROCELL TELECOMMUNICATIONS, INC.
Class B, no par common
MISONIX, INC.
$.01 par common
MODERN TIMES GROUP MTG AB
American Depositary Shares
MONARCH DENTAL CORPORATION
$.01 par common
NATIONAL RESEARCH CORPORATION
$.001 par common
NETWORK SOLUTIONS, INC.
Class A, $.001 par common
NEWCOM, INC.
$.001 par common
Warrants (expire 09–16–2002)
NEWSTAR RESOURCES, INC.
$.01 par common
NEXTLINK COMMUNICATIONS, INC.
Class A, $.02 par common
NORTHWAY FINANCIAL, INC.
$1.00 par common
NOVEL DENIM HOLDINGS, LTD.
Ordinary shares ($1.00 par value)
OBJECTIVE COMMUNICATIONS, INC.
$.01 par common
OCULAR SCIENCES, INC.
$.001 par common
OMEGA RESEARCH, INC.
$.01 par common
OMTOOL, LTD.
$.01 par common
OREGON TRAIL FINANCIAL CORPORATION
$.01 par common
ORTHALLIANCE, INC.
Class A, $.001 par common
OSI SYSTEMS, INC.
No par common
PACIFIC CREST CAPITAL, INC.
Trust preferred security
PEGASUS SYSTEMS, INC.
$.01 par common
PEOPLE'S PREFERRED CAPITAL CORPORATION
Series A, noncumulative exchangeable preferred
PERVASIVE SOFTWARE, INC.
$.001 par common
POSITRON FIBER SYSTEMS CORPORATION
No par common
POWER-ONE, INC.
$.001 par common
PRICESMART, INC.
$.0001 par common
PRIME BANCSHARES, INC.
$.25 par common
PRIMEENERGY CORPORATION
$.10 par common
PROBUSINESS SERVICES, INC.
$.001 par common
PROFILE TECHNOLOGIES, INC.
$.001 par common
PROGENITOR, INC.
$.001 par common
Warrants (expire 08–07–2002)
PROSOFT I-NET SOLUTIONS, INC.
$.001 par common
PULASKI SAVINGS BANK (New Jersey)
$.01 par common
QAD, INC.
$.001 par common
QUESTRON TECHNOLOGY, INC.
Series B, convertible preferred
RADCOM LTD.
Ordinary share ($.05 NIS)
RCN CORPORATION
$1.00 par common
RENEX CORPORATION
$.001 par common
REPUBLIC BANCSHARES, INC.
Cumulative Trust Preferred Securities Liquidation $10
RETROSPETTIVA, INC.
No par common
Warrants (expire 09–23–2002)
RIT TECHNOLOGIES, LTD.
Ordinary shares (.1 NIS)
RIVERVIEW SAVINGS BANK, F.S.B.
$.01 par common
ROYAL PRECISION, INC.
$.001 par common
RSL COMMUNICATIONS, LTD.
Class A, $.0045 par common
SCHEID VINEYARDS, INC.
Class A, $.001 par common
SCM MICROSYSTEMS, INC.
$.001 par common
SHORE BANK (Virginia)
$.33 par common
SIGNATURE EYEWEAR, INC.
$.001 par common
SINCLAIR BROADCAST GROUP, INC.
Series D, convertible exchangeable preferred
SLH CORPORATION
$.01 par common
SPR, INC.
$.01 par common
STAR BUFFET, INC.
$.001 par common
STARTEC GLOBAL COMMUNICATIONS CORPORATION
$.01 par common
STERIGENICS INTERNATIONAL, INC.
$.001 par common
SYNTEL, INC.
No par common
TAKE-TWO INTERACTIVE SOFT, INC.
$.01 par common
TELE-COMMUNICATIONS, INC.
TCI Ventures Group, Class A, $1.00 par common
TCI Ventures Group, Class B, $1.00 par common
THE A CONSULTING TEAM, INC.
$.01 par common
THINKING TOOLS, INC.
$.001 par common
TOTAL ENTERTAINMENT RESTAURANT CORPORATION
$.01 par common
TRACK 'N TRAIL
$.01 par common
TRAILER BRIDGE, INC.
$.01 par common
TRAVEL SERVICES INTERNATIONAL, INC.
$.01 par common
TRENDWEST RESORTS, INC.
No par common
TRIMERIS, INC.
$.001 par common
TURBODYNE TECHNOLOGIES, INC.
No par common
U.S. BANCORP (Minnesota)
Series A, preferred stock
U.S.A. FLORAL PRODUCTS, INC.
$.001 par common
UNIFAB INTERNATIONAL, INC.
$.01 par common
UNIQUE CASUAL RESTAURANTS, INC.
$.01 par common
VALLEY INDEPENDENT BANK
No par common
VESTCOM INTERNATIONAL, INC.
No par common
VIMRX PHARMACEUTICALS, INC.
Warrants (expire 06–20–2006)
VIRGINIA COMMERCE BANK
$5.00 par common
VISION TWENTY-ONE, INC.
$.001 par common
WARNER CHILCOTT, PLC
American Depositary Shares

Deletions From the Foreign Margin List

AUSTRIA

PERLMOOSER ZEMENTWERKE AG
Ordinary shares, par 100 Austrian schillings

BELGIUM

ALMANIJ-KREDIETBANK GROUP VVPR

CANADA

BRASCAN LIMITED
No par Class A common
COCA-COLA BEVERAGES LTD.
No par common
EDPER GROUP LIMITED
Class A, no par common
NATIONAL TRUSTCO INC.
No par common
TOTAL PETROLEUM (NORTH AMERICA) LTD.
No par common

FINLAND

MERITA LTD
B Shares, par 5 Finnish marks
RAISON TEHTAAT VAIH OS OY AB
K Series common, par 10 Finnish marks

FRANCE

GTM-ENTREPOSE SA
Ordinary shares, par 50 French francs
UNION FRANCAISE DE BANQUES LOCABAIL SA
Ordinary shares, par 100 French francs

ITALY

SASIB SPA
Non-convertible savings shares, par 1000 lira
STET SOC. FINANZIARIA TELEFONICA PA
Non-convertible savings shares, par 1000 lira
STET SOC. FINANZIARIA TELEFONICA PA
Ordinary shares, par 1000 lira

JAPAN

CALPIS FOOD INDUSTRY CO., LTD.
¥50 par common
MORINAGA AND COMPANY, LTD.
¥50 par common
NIPPON BEET SUGAR MANUFACTURING CO., LTD.
¥50 par common
SHOWA LINE, LTD.
¥50 par common
YUASA TRADING CO., LTD.
¥50 par common

MALAYSIA

BERJAYA INDUSTRIAL BERHAD
Ordinary shares, par 1 Malaysian ringgit

NORWAY

NYCOMED ASA
A Ordinary Common, par 4 Norwegian krone
NYCOMED ASA
B ordinary common, par 4 Norwegian krone
STOREBRAND AS
A ordinary common, par 5 Norwegian krone

SOUTH AFRICA

AMPLATS LTD.
Ordinary shares, par 1 South African rand
RUSTENBURG PLATINUM HOLDINGS LIMITED
Ordinary shares, par 0.10 South African rand

THAILAND

CMIC FINANCE & SECURITIES PUBLIC CO. LTD.
Ordinary shares, par 10 Thai baht
GENERAL FINANCE & SECURITIES PUBLIC CO. LTD.
Ordinary shares, par 10 Thai baht
WATTACHAK CO. LTD.
Ordinary shares, par 10 Thai baht

UNITED KINGDOM

AMSTRAD PLC
Ordinary shares, par 25 p
TR SMALLER COMPANIES INVESTMENT TRUST
Ordinary shares, par 25 p

Additions to the Foreign Margin List

CANADA

EDPER BRASCAN CORPORATION
Class A, no par common

FINLAND

MERITA LTD
A shares, par 5 Finnish marks
RAISON TEHTAAT VAIH OS OY AB
K shares common, par 10 Finnish marks

FRANCE

GROUPE GTM SA
Ordinary shares, par 50 French francs

JAPAN

CALPIS CO., LTD.
50 par common

MALAYSIA

REKAPACIFIC BERHAD
Ordinary shares, par 1 Malaysian ringgit

SOUTH AFRICA

ANGLO AMERICAN PLATINUM CORPORATION LIMITED
Ordinary shares, par 10 South African rand

UNITED KINGDOM

BILLITON PLC
Ordinary shares, par 50 p
HENDERSON SMALLER COMPANIES INVESTMENT TRUST
Ordinary shares, par 25 p
NYCOMED AMERSHAM INTERNATIONAL PLC
Ordinary shares, par 25 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), October 22, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–28421 Filed 10–24–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–17–AD; Amendment 39–10173; AD 97–22–02]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. Models BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Britten-Norman Ltd. (PBN) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. This action requires modifying the upper engine mounting brackets on the wing front spar as terminating action for the repetitive inspections that were required in AD 84–23–06. AD 84–23–06 is being revised in a separate action, deleting the Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes from its applicability. This AD is prompted by several reports of cracks in the upper engine mounting brackets and a new terminating action to eliminate the repetitive inspections for Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The actions specified by this AD are intended to prevent the failure of the upper engine mounting brackets on the wing mounted engines, which could possibly cause structural failure of the airplane.

DATES: Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–19–83–872511; facsimile 44–19–83–873246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes was published in the **Federal Register** on March 10, 1997 (62 FR 10754). The action proposed to require initially inspecting the upper engine mounting brackets on the wing mounted engines for:

(1) Cracks at the bolt-holes,
(2) Elongation of the bolt holes,
(3) Fretting within the holes,
(4) Cracks at the rivet holes,
(5) Distortion or delamination of the lugs, and that
(6) The bearings are the correct length and the bolts are not threadbound.

If there is no evidence of damage or defects similar to any of the above-mentioned items, the proposed AD would require repetitive inspections at regular intervals until the accumulation of 2,000 hours time-in-service after the effective date of the AD, at which time the AD would require accomplishing Pilatus Modification NB/M/1147.

If any damage or defects are found similar to any of the six items previously mentioned, this action would require immediately accomplishing Pilatus Modification NB/M/1147. This modification consists of replacing damaged brackets, bolts, and bushes with parts of an improved design. Accomplishing this modification is considered a terminating action to the repetitive inspections. Accomplishment of the AD would be in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.61, Issue 5, dated December 9, 1981.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Aging Aircraft Policy

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection.

For Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes, the manufacturer has incorporated a design change that would replace damaged bolts, brackets, and bushes with parts of improved design, which would terminate the repetitive inspections of the upper engine mounting brackets on the wing mounted engines required by AD 84–23–06. It is AD 84–23–06 that required the repetitive inspections on the Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes and the Pilatus BN–2A MK. 111 series airplanes. A separate action (Docket 84–CE–18–AD) is being published concurrently with this AD, and revises AD 84–23–06 so that the BN–2A MK.111 series airplanes will be the only airplanes to which AD 84–23–06 applies.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to modify the upper engine wing mounting brackets of the affected airplanes to eliminate the repetitive short-interval inspections, and to prevent failure of the upper engine wing mounting brackets on wing mounted engines, which could possibly cause structural failure of the airplane.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry will be affected by the AD, that it will take approximately 37 workhours per airplane to accomplish the initial inspection and modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $800 per airplane to accomplish the modification. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $338,240 or $3,020 per airplane. This figure is based on the initial inspection and modification only. It does not take into account the cost for the repetitive inspections that may be incurred over the life of the airplane until the modification is accomplished. The FAA has no way of determining how many owners/operators have accomplished the proposed action and, therefore assumes that none of the owners/operators of the affected airplanes have accomplished the proposed action.

The AD Action's Impact Utilizing the FAA's Aging Commuter Class Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that will be affected by this AD, the FAA has determined that approximately 18 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 82 percent are operated in other forms of air transportation such as air cargo and air taxi.

This AD allows 2,000 hours time-in-service (TIS) after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the modification within 10 to 20 calendar months after the effective date of the AD. For private owners, who typically operate between 100 to 200 hours TIS per year, this will allow 5 to 10 years before the modification will be mandatory.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–02 Pilatus Britten-Norman LTD.: Amendment 39–10173; Docket No. 96–CE–17–AD.

Applicability: Models BN–2 (serial numbers 1 through 2033), BN–2A and BN–2B (serial numbers 1 through 2116), and BN–2T (serial numbers 419, and 2030 through 2033) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 500 hours time-in-service (TIS) after the last inspection required by AD 84–23–06, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent failure of the upper mounting brackets on both wing mounted engines, which could cause structural failure of the airplane, accomplish the following:

(a) Inspect the upper mounting brackets, bolts, and bushes on both wing mounted engines in accordance with the "ACTION-Inspection" section in Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981, for:

(1) Cracks at the bolt holes,
(2) Elongation of the bolt holes,
(3) Fretting within the bolt holes,
(4) Cracks at the rivet holes,
(5) Distortion or delamination of the lugs, and

(6) Incorrect bearing length and threadbound bolts, b) If the inspection reveals any evidence of damage or defects similar to the items in paragraphs (a)(1) through (a)(6), prior to further flight, accomplish Pilatus Modification NB/M/1147 by replacing the brackets, bushes, and bolts with brackets, bushes, and bolts of improved design in accordance with paragraphs 1, 2, 3, and 5 of the "ACTION—Rectification/Modification" section in Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(c) If damage or defects are found on just one of the two brackets on each engine, then both brackets must be replaced, prior to further flight, in accordance with paragraph 1 of the "ACTION—Rectification/Modification" section in Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(d) If no damage or defects are found similar to the items in paragraphs (a)(1) through (a)(6) of this AD, continue to inspect at intervals not to exceed 500 hours TIS, until the accumulation of 2,000 hours TIS after the effective date of this AD, at which time Modification NB/M/1147 must be accomplished on both upper mounting brackets on both engines in accordance with paragraphs 1, 2, 3, and 5 of the "ACTION—Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(e) Accomplishing Modification NB/M/1147 in the "ACTION—Rectification/Modification" section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981, is considered terminating action to the repetitive inspections required in paragraph (d) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Small Airplane Directorate.

(h) The inspections and modifications required by this AD shall be done in accordance with Pilatus Britten-Norman Ltd. Service Bulletin No. BN–2/SB.61, Issue 5, dated December 9, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–10173) becomes effective on November 24, 1997.

Issued in Kansas City, Missouri, on October 16, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28082 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–17]

RIN 2120–AA66

Establishment of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Federal Airway 607 (V–607) between Mendocino, CA, and Arcata, CA. This airway is necessary to efficiently manage air traffic operations during those periods when nonradar procedures are in use.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish V–607 between Mendocino, CA, and Arcata, CA (62 FR 33579). This airway is necessary to efficiently manage air traffic operations during those periods when nonradar procedures are in use. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and a three degree radial change in the legal description from "Arcata, CA, 156° radial" to "Arcata, CA, 153° radial," this amendment is the same as that proposed in the notice.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes V–607 between Mendocino, CA, and Arcata, CA. This airway is necessary to efficiently manage air traffic operations during those periods when nonradar procedures are in use.

Approximately 25 to 30 air carrier and general aviation flights per day currently fly a direct route, which coincides with the airway. During nonradar operations, however, all north/south traffic is forced onto V–27 and over the Fortuna Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). This causes delays to, and conflicts with, departure aircraft that would not be necessary with the airway. Currently, the only alternative to V–27 is V–494; however, V–494 has a 13,000-foot mean sea level minimum en route altitude, and an over water segment which renders V–494 unsuitable for a large number of general aviation aircraft. Another problem arises whenever the Fortuna VORTAC is out of service since, at such times, both V–27 and V–494 cease to exist. This action will provide controllers and pilots with an alternative to V–27 and facilitate air traffic operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–607 [New]

From Mendocino, CA; INT Mendocino 346° and Arcata, CA, 153° radials; to Arcata.

* * * * *

Issued in Washington, DC, on October 6, 1997.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–28410 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 73

[Airspace Docket No. 97–ACE–6]

RIN 2120–AA66

Revocation of Restricted Area R–4501G; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R–4501G, Fort Leonard Wood, MO. The FAA is taking this action in response to a Department of Army (DOA) determination that this restricted airspace is no longer required to support the Department of Defense (DOD) mission. All other areas pertaining to R–4501 remain intact and are not affected by this action.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a recent review of special use airspace in the Fort Leonard Wood, MO, area, the DOA has determined that R–4501G is no longer required to meet the DOD mission, and requested that the FAA take action to revoke the restricted area. Additionally, the DOA advised that the other remaining subareas of the R–4501 complex are required to meet mission requirements and should remain intact.

The Rule

This amendment to 14 CFR part 73 revokes R–4501G, Fort Leonard Wood, MO. All other areas pertaining to R–4501 remain intact and are not affected by this action.

The FAA is revoking R–4501G in response to written notification from the using agency that the restricted area is no longer needed. As the solicitation of comments would only serve to delay the return of the airspace to public use without offering any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Section 73.45 of 14 CFR part 73 was republished in FAA Order 7400.8D, dated July 11, 1996.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action revokes special use airspace. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects on 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.45 [Amended]

2. § 73.45 is amended as follows:

* * * * *

R–4501G Fort Leonard Wood, MO [Removed]

* * * * *

Issued in Washington, DC, on October 6, 1997.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–28411 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 73

[Airspace Docket No. 97–ASW–10]

RIN 2120–AA66

Change Time of Designation for Restricted Areas R–5104A/B, and R–5105; Melrose, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the timeframe during which Restricted Area 5104A/B (R–5104A/B), and Restricted Area 5105 (R–5105), Melrose, NM, may be activated without prior issuance of a Notice to Airmen (NOTAM). This change, initiated by the U.S. Air Force, reflects the current scheduling of R–5104A/B, and R–5105. The boundaries, designated altitudes, or activities conducted within these restricted areas are not affected by this action.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a U.S. Air Force review of restricted area utilization and operational requirements at Melrose, NM, the U.S. Air Force has requested a reduction in the times of use for R–5104A/B, and R–5105.

The Rule

This amendment to 14 CFR part 73 reduces the time of designation for R–5104A/B, and R–5105 from the current "0800–2400 local time daily; other times by NOTAM," to "0800–2400 local time Monday–Friday; other times by NOTAM." The boundaries, designated altitudes, or activities conducted within these restricted areas are not affected by this action.

The FAA is taking this action in response to written notification from the using agency that a reduction in the times of use for the restricted areas is appropriate. As the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.51 of 14 CFR part 73 was republished in FAA Order 7400.8D, dated July 11, 1996.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the restricted area's time of designation. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.51 [Amended]

2. § 73.51 is amended as follows:

* * * * *

R–5104A Melrose, NM [Amended]

By removing the current "Time of designation: 0800–2400 local time daily; other times by NOTAM" and substituting "Time of designation: 0800–2400 local time Monday–Friday; other times by NOTAM."

R–5104B Melrose, NM [Amended]

By removing the current "Time of designation: 0800–2400 local time daily; other times by NOTAM" and substituting "Time of designation: 0800–2400 local time Monday–Friday; other times by NOTAM."

R–5105 Melrose, NM [Amended]

By removing the current "Time of designation: 0800–2400 local time daily; other times by NOTAM" and substituting "Time of designation: 0800–2400 local time Monday–Friday; other times by NOTAM."

* * * * *

Issued in Washington, DC, on October 10, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–28412 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29050; Amdt. No. 1831]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP as contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR).

The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redisignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 17, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

* * **Effective Jan 1, 1997*

Texarkana, AR, Texarkana Regional-Webb Field, NDB or GPS RWY 22, Amdt 11B CANCELLED
Texarkana, AR, Texarkana Regional-Webb Field, NDB RWY 22, Amdt 11B
Rensselaer, IN, Jasper County, NDB or GPS RWY 18, Amdt 3A CANCELLED
Rensselaer, IN, Jasper County, NDB RWY 18, Amdt 3A
Winchester, IN, Randolph County, NDB or GPS RWY 25, Amdt 4 CANCELLED
Winchester, IN, Randolph County, NDB RWY 25, Amdt 4
Chapel Hill, NC, Horace Williams, VOR/DME RNAV or GPS RWY 9, Orig CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RNAV RWY 9, Orig
London, OH, Madison County, NDB or GPS RWY 8, Amdt 7 CANCELLED
London, OH, Madison County, NDB RWY 8, Amdt 7
Cincinnati, OH, Cincinnati-Blue Ash, NDB or GPS RWY 24, Amdt 1A CANCELLED
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Amdt 1A
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, NDB or GPS RWY 25, Amdt 1 CANCELLED
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, NDB RWY 25, Amdt 1
Soldotna, AK, Soldotna, RNAV or GPS RWY 7, Amdt 3 CANCELLED
Soldotna, AK, Soldotna, VOR/DME RNAV or GPS RWY 7, Amdt 3
Soldotna, AK, Soldotna, RNAV RWY 25, Amdt 3 CANCELLED
Soldotna, AK, Soldotna, VOR/DME RNAV RWY 25, Amdt 3
Auburn, AL, Auburn-Opelika Robert G. Pitts, RNAV or GPS RWY 36, Amdt 3A CANCELLED
Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR/DME RNAV or GPS RWY 36, Amdt 3A
Mobile, AL, Mobile Downtown, RNAV or GPS RWY 36, Orig CANCELLED
Mobile, AL, Mobile Downtown, VOR/DME RNAV or GPS RWY 36, Orig
Montgomery, AL, Dannelly Field, RNAV or GPS RWY 3, Amdt 5A CANCELLED
Montgomery, AL, Dannelly Field, VOR/DME RNAV or GPS RWY 3, Amdt 5A
Crossett, AR, Z M Jack Stell Field, RNAV or GPS RWY 23, Orig A CANCELLED
Crossett, AR, Z M Jack Stell Field, VOR/DME RNAV or GPS RWY 23, Orig A
Window Rock, AZ, Window Rock, RNAV or GPS RWY 2, Amdt 1 CANCELLED
Window Rock, AZ, Window Rock, VOR/DME RNAV or GPS RWY 2, Amdt 1
Yuma, AZ, Yuma MCAS/Yuma Intl, RNAV or GPS RWY 21R, Amdt 3 CANCELLED
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV or GPS RWY 21R, Amdt 3
Eureka, CA, Murray Field, RNAV or GPS RWY 11, Amdt 5 CANCELLED
Eureka, CA, Murray Field, VOR/DME RNAV or GPS RWY 11, Amdt 5
Ukiah, CA, Ukiah Muni, RNAV or GPS–B, Amdt 4 CANCELLED
Ukiah, CA, Ukiah Muni, VOR/DME RNAV or GPS–B, Amdt 4
Vacaville, CA, Nut Tree, RNAV or GPS RWY 20, Amdt 1 CANCELLED
Vacaville, CA, Nut Tree, VOR/DME RNAV or GPS RWY 20, Amdt 1
Meeker, CO, Meeker, RNAV or GPS RWY 3, Orig CANCELLED
Meeker, CO, Meeker, VOR/DME RNAV or GPS RWY 3, Orig
Washington, DC, Washington National, RNAV–A Amdt 6 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV–A Amdt 6
Washington, DC, Washington National, RNAV or GPS RWY 3, Amdt 6 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV or GPS RWY 3, Amdt 6
Washington, DC, Washington National, RNAV or GPS RWY 33, Amdt 5 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV or GPS RWY 33, Amdt 5
Gainesville, FL, Gainesville Regional, RNAV or GPS RWY 28, Amdt 5 CANCELLED
Gainesville, FL, Gainesville Regional, VOR/DME RNAV or GPS RWY 28, Amdt 5
Kissimmee, FL, Kissimmee Muni, RNAV or GPS RWY 15, Amdt 5 CANCELLED

Kissimmee, FL, Kissimmee Muni, VOR/DME RNAV or GPS RWY 15, Amdt 5
Perry, FL, Perry-Foley, RNAV or GPS RWY 18, Amdt 1 CANCELLED
Perry, FL, Perry-Foley, VOR/DME RNAV or GPS RWY 18, Amdt 1
Punta Gorda, FL, Charlotte County, RNAV or GPS RWY 27, Orig CANCELLED
Punta Gorda, FL, Charlotte County, VOR/DME RNAV or GPS RWY 27, Orig
Athens, GA, Athens/Ben Epps, RNAV or GPS RWY 9, Amdt 1 CANCELLED
Athens, GA, Athens/Ben Epps, VOR/DME RNAV or GPS RWY 20, Amdt 2
Augusta, GA, Daniel Field, RNAV RWY 11, Amdt 5A CANCELLED
Augusta, GA, Daniel Field, VOR/DME RNAV RWY 11, Amdt 5A
Brunswick, GA, Glynco Jetport RNAV RWY 7, Amdt 6B CANCELLED
Brunswick, GA, Glynco Jetport VOR/DME RNAV RWY 7, Amdt 6B
Brunswick, GA, Glynco Jetport RNAV or GPS RWY 25, Amdt 6B CANCELLED
Brunswick, GA, Glynco Jetport VOR/DME RNAV GPS RWY 25, Amdt 6B
Cedartown, GA, Cornelius-Moore Field, RNAV or GPS RWY 10, Amdt 2A CANCELLED
Cedartown, GA, Cornelius-Moore Field, VOR/DME RNAV or GPS RWY 10, Amdt 2A
Cedartown, GA, Cornelius-Moore Field, RNAV or GPS RWY 28, Amdt 2 CANCELLED
Cedartown, GA, Cornelius-Moore Field, VOR/DME RNAV or GPS RWY 28, Amdt 2
Dublin, GA, W.H. "Bud" Barron, RNAV or GPS RWY 20, Amdt 2 CANCELLED
Dublin, GA, W.H. "Bud" Barron, VOR/DME RNAV or GPS RWY 20, Amdt 2
Eastman, GA, Heart of Georgia Regional, RNAV or GPS RWY 2, Amdt 2 CANCELLED
Eastman, GA, Heart of Georgia Regional, VOR/DME RNAV or GPS RWY 2, Amdt 2
La Grange, GA, Callaway, RNAV or GPS RWY 31, Amdt 3 CANCELLED
La Grange, GA, Callaway, VOR/DME RNAV or GPS RWY 31, Amdt 3
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 13, Amdt 8 CANCELLED
Cedar Rapids, IA, Cedar Rapids Muni, VOR/DME RNAV or GPS RWY 13, Amdt 8
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 31, Amdt 7 CANCELLED
Cedar Rapids, IA, Cedar Rapids Muni, VOR/DME RNAV or GPS RWY 31, Amdt 7
Forest City, IA, Forest City Muni, RNAV or GPS RWY 33, Orig-A CANCELLED
Forest City, IA, Forest City Muni, VOR/DME RNAV or GPS RWY 33, Orig-A
Fort Dodge, IA, Fort Dodge Regional, RNAV or GPS RWY 6, Amdt 6 CANCELLED
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV or GPS RWY 6, Amdt 6
Fort Dodge, IA, Fort Dodge Regional, RNAV or GPS RWY 24, Amdt 5A CANCELLED
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV or GPS RWY 24, Amdt 5A
Maquoketa, IA, Maquoketa Muni, RNAV or GPS RWY 33, Orig-A CANCELLED
Maquoketa, IA, Maquoketa Muni, VOR/DME RNAV or GPS RWY 33, Orig-A
Mason City, IA, Mason City Muni, RNAV or GPS RWY 30, Amdt 5 CANCELLED
Mason City, IA, Mason City Muni, VOR/DME RNAV or GPS RWY 30, Amdt 5
Muscatine, IA Muscatine Muni, RNAV RWY 23, Orig-A CANCELLED
Muscatine, IA Muscatine Muni, VOR/DME RNAV RWY 23, Orig-A
Oelwein, IA, Oelwein Muni, RNAV or GPS RWY 13, Amdt 2 CANCELLED
Oelwein, IA, Oelwein Muni, VOR/DME RNAV or GPS RWY 13, Amdt 2
Ottumwa, IA, Ottumwa Industrial, RNAV or GPS RWY 22, Amdt 3 CANCELLED
Ottumwa, IA, Ottumwa Industrial, VOR/DME RNAV or GPS RWY 22, Amdt 3
Burley, ID, Burley Muni, RNAV or GPS RWY 20, Amdt 2 CANCELLED
Burley, ID, Burley Muni, VOR/DME RNAV or GPS RWY 20, Amdt 2
Chicago/Waukegan, IL, Waukegan Regional, RNAV or GPS RWY 5, Amdt 1 CANCELLED
Chicago/Waukegan, IL, Waukegan Regional, VOR/DME RNAV or GPS RWY 5, Amdt 1
Danville, IL, Vermilion County, RNAV or GPS RWY 34, Admt 4 CANCELLED
Danville, IL, Vermilion County, VOR/DME RNAV or GPS RWY 34, Amdt 4
Joliet, IL, Joliet Park District, RNAV RWY 12, Amdt 12 CANCELLED
Joliet, IL, Joliet Park District, VOR/DME RNAV RWY 12, Amdt 12
Kankakee, IL, Greater Kankakee, RNAV RWY 22, Amdt 3 CANCELLED
Kankakee, IL, Greater Kankakee, VOR/DME RNAV RWY 22, Amdt 3
Moline, IL Quad-City, RNAV or GPS RWY 31, Amdt 9 CANCELLED
Moline, IL Quad-City, VOR/DME RNAV or GPS RWY 31, Amdt 9
Moline, IL Quad-City, VOR/DME RNAV or GPS RWY 31, Amdt 9 CANCELLED
Pekin, IL, Pekin Muni, RNAV or GPS RWY 9, Amdt 4 CANCELLED
Pekin, IL, Pekin Muni, VOR/DME RNAV or GPS RWY 9, Amdt 4
Peoria, IL, Greater Peoria Regional, RNAV or GPS RWY 4, Amdt 6 CANCELLED
Peoria, IL, Greater Peoria Regional, VOR/DME RNAV or GPS RWY 4, Amdt 6
Peoria, IL, Greater Peoria Regional, RNAV or GPS RWY 22, Amdt 6 CANCELLED
Peoria, IL, Greater Peoria Regional, VOR/DME RNAV or GPS RWY 22, Amdt 6
Quincy, IL, Quincy Muni-Baldwin Field, RNAV or GPS RWY 13, Amdt 4 CANCELLED
Quincy, IL, Quincy Muni-Baldwin Field, VOR/DME RNAV or GPS RWY 13, Amdt 4
Quincy, IL, Quincy Muni-Baldwin Field, RNAV or GPS RWY 31, Amdt 3 CANCELLED
Quincy, IL, Quincy Muni-Baldwin Field, VOR/DME RNAV or GPS RWY 31, Amdt 3
Elkhart, IN, Elkhart Muni, RNAV or GPS RWY 17, Amdt 3 CANCELLED
Elkhart, IN, Elkhart Muni, VOR/DME RNAV or GPS RWY 17, Amdt 3
Kentland, IN, Kentland Muni, RNAV or GPS RWY 27, Orig CANCELLED
Kentland, IN, Kentland Muni, VOR/DME RNAV or GPS RWY 27, Orig
La Porte, IN, La Porte Muni, RNAV or GPS RWY 20, Amdt 4 CANCELLED
La Porte, IN, La Porte Muni, VOR/DME RNAV or GPS RWY 20, Amdt 4
Valparaiso, IN, Porter County Muni, RNAV or GPS RWY 9, Amdt 2A CANCELLED
Valparaiso, IN, Porter County Muni, VOR/DME RNAV or GPS RWY 9, Amdt 2A
Topeka, KS, Forbes Field, RNAV RWY 13 Amdt 3A CANCELLED
Topeka, KS, Forbes Field, VOR/DME RNAV RWY 13 Amdt 3A
Topeka, KS, Philip Billard Muni, RNAV or GPS RWY 18, Amdt 6 CANCELLED
Topeka, KS, Philip Billard Muni, VOR/DME RNAV or GPS RWY 18, Amdt 6
Wichita, KS, Beech Factory, RNAV or GPS RWY 18, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or GPS RWY 18, Orig
Wichita, KS, Beech Factory, RNAV or GPS RWY 18, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or GPS RWY 18, Orig
Wichita, KS, Beech Factory, RNAV or GPS RWY 36, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or GPS RWY 36, Orig
Elizabethtown, KY, Addington Field, RNAV or GPS RWY 5, Amdt 2 CANCELLED
Elizabethtown, KY, Addington Field, VOR/DME RNAV or GPS RWY 5, Amdt 2
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 5, Amdt 3 CANCELLED
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV or GPS RWY 5, Amdt 3
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 23, Amdt 3A CANCELLED
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV or GPS RWY 23, Amdt 3A
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 22, Amdt 6A CANCELLED
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RNAV RWY 22, Amdt 6A
Salisbury, MD, Salisbury-Wicomico County Regional, RNAV or GPS RWY 5, Amdt 8A CANCELLED
Salisbury, MD, Salisbury-Wicomico County Regional, VOR/DME RNAV or GPS RWY 5, Amdt 8A
Salisbury, MD, Salisbury-Wicomico County Regional, RNAV or GPS RWY 23, Amdt 8A CANCELLED
Salisbury, MD, Salisbury-Wicomico County Regional, VOR/DME RNAV or GPS RWY 23, Amdt 8A
Ann Arbor, MI, Ann Arbor Muni, RNAV RWY 24, Amdt 6 CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR/DME RNAV RWY 24, Amdt 6
Menominee, MI, Menominee-Marinette Twin County, RNAV or GPS RWY 21, Amdt 1A CANCELLED
Menominee, MI, Menominee-Marinette Twin County, VOR/DME RNAV or GPS RWY 21, Amdt 1A
Menominee, MI, Menominee-Marinette Twin County, RNAV or GPS RWY 21, Amdt 1A CANCELLED
Menominee, MI, Menominee-Marinette Twin County, VOR/DME RNAV or GPS RWY 21, Amdt 1A
Minneapolis, MN, Anoka County-Blaine Arpt (James Field), RNAV or GPS RWY 17, Amdt 2A CANCELLED
Minneapolis, MN, Anoka County-Blaine Arpt (James Field), VOR/DME RNAV or GPS RWY 17, Amdt 2A
Redwood Falls, MN, Redwood Falls Muni, RNAV or GPS RWY 30, Orig CANCELLED

Redwood Falls, MN, Redwood Falls Muni, VOR/DME RNAV or GPS RWY 30, Orig
Ava, MO, Ava Bill Martin Memorial, RNAV or GPS RWY 31, Amdt 1 CANCELLED
Ava, MO, Ava Bill Martin Memorial, VOR/DME RNAV or GPS RWY 31, Amdt 1
Fulton, MO, Elton Hensley Memorial, RNAV or GPS RWY 5, Amdt 1 CANCELLED
Fulton, MO, Elton Hensley Memorial, VOR/DME RNAV or GPS RWY 5, Amdt 1
Malden, MO, Malden Muni, RNAV or GPS RWY 13, Orig CANCELLED
Malden, MO, Malden Muni, VOR/DME RNAV or GPS RWY 13, Orig
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 13, Amdt 1 CANCELLED
Moberly, MO, Omar N. Bradley, VOR/DME RNAV or GPS RWY 13, Amdt 1
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 31, Amdt 1 CANCELLED
Moberly, MO, Omar N. Bradley, VOR/DME RNAV or GPS RWY 31, Amdt 1
Monroe City, MO, Monroe City Regional, RNAV RWY 27 Orig-A CANCELLED
Monroe City, MO, Monroe City Regional, VOR/DME RNAV RWY 27 Orig-A
Neosho, MO, Neosho Memorial, RNAV or GPS RWY 19, Amdt 3 CANCELLED
Neosho, MO, Neosho Memorial, VOR/DME RNAV or GPS RWY 19, Amdt 3
Rolla/Vichy, MO, Rolla National, RNAV or GPS RWY 22, Amdt 2A CANCELLED
Rolla/Vichy, MO, Rolla National, VOR/DME RNAV or GPS RWY 22, Amdt 2A
St Joseph, MO, Rosecrans Memorial, RNAV or GPS RWY 17, Amdt 4 CANCELLED
St Joseph, MO, Rosecrans Memorial, VOR/DME RNAV or GPS RWY 17, Amdt 4
Springfield, MO, Springfield-Branson Regional, RNAV or GPS RWY 14, Amdt 4 CANCELLED
Springfield, MO, Springfield-Branson Regional, VOR/DME RNAV or GPS RWY 14, Amdt 4
Bay St Louis, MS, Stennis Intl, RNAV or GPS RWY 18, Amdt 2A CANCELLED
Bay St Louis, MS, Stennis Intl, VOR/DME RNAV or GPS RWY 18, Amdt 2A
Greenwood, MS, Greenwood-leflore, RNAV RWY 18, Amdt 6 CANCELLED
Greenwood, MS, Greenwood-leflore, VOR/DME RNAV RWY 18, Amdt 6
Greenwood, MS, Greenwood-leflore, RNAV or GPS RWY 36, Amdt. 3 CANCELLED
Greenwood, MS, Greenwood-leflore, VOR/DME RNAV or GPS RWY 36, Amdt 3
Jackson, MS, Hawkins Field, RNAV or GPS RWY 16, Amdt 4A CANCELLED
Jackson, MS, Hawkins Field, VOR/DME RNAV or GPS RWY 16, Amdt 4A
Jackson, MS, Hawkins Field, RNAV or GPS RWY 16, Amdt 4A CANCELLED
Jackson, MS, Hawkins Field, VOR/DME RNAV or GPS RWY 16, Amdt 4A
Mc Comb, MS, Mc Comb-Pike County-John E. Lewis Field, RNAV or GPS RWY 33, Amdt 6 CANCELLED
Mc Comb, MS, Mc Comb-Pike County-John E. Lewis Field, VOR/DME RNAV or GPS RWY 33, Amdt 6
Meridian, MS, Key Field, RNAV or GPS RWY 19, Amdt 3 CANCELLED
Meridian, MS, Key Field, VOR/DME RNAV or GPS RWY 19, Amdt 3
Oxford, MS, University-Oxford, RNAV or GPS RWY 9, Amdt 2 CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV or GPS RWY 9, Amdt 2
Oxford, MS, University-Oxford, RNAV or GPS RWY 27, Amdt 2 CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV or GPS RWY 27, Amdt 2
Starkville, MS, George M Bryan, RNAV or GPS RWY 36, Orig CANCELLED
Starkville, MS, George M Bryan, VOR/DME RNAV or GPS RWY 36, Orig
West Point, MS, McCharen Field, RNAV or GPS RWY 36, Amdt 3 CANCELLED
West Point, MS, McCharen Field, VOR/DME RNAV or GPS RWY 36, Amdt 3
Greenville, NC, Pitt-Greenville, RNAV or GPS RWY 25, Amdt 3 CANCELLED
Greenville, NC, Pitt-Greenville, VOR/DME RNAV or GPS RWY 25, Amdt 3
Southern Pines, NC, Moore County, RNAV or GPS RWY 23, Amdt 3 CANCELLED
Southern Pines, NC, Moore County, VOR/DME RNAV or GPS RWY 23, Amdt 3
Matawan, NJ, Marlboro, RNAV or GPS RWY 9, Amdt 1 CANCELLED
Matawan, NJ, Marlboro, VOR/DME RNAV or GPS RWY 9, Amdt 1
Somerville, NJ, Somerset, RNAV or GPS RWY 12, Amdt. 2 CANCELLED
Somerville, NJ, Somerset, VOR/DME RNAV or GPS RWY 12, Amdt. 2
Lovington, NM, Lea County-Zip Franklin Memorial, RNAV or GPS RWY 3, Orig CANCELLED
Lovington, NM, Lea County-Zip Franklin Memorial, VOR/DME RNAV or GPS RWY 3, Orig
Buffalo, NY, Greater Buffalo Intl, RNAV or GPS RWY 23, Orig CANCELLED
Buffalo, NY, Greater Buffalo Intl, VOR/DME RNAV or GPS RWY 23, Orig
Buffalo, NY, Greater Buffalo Intl, RNAV or GPS RWY 32, Amdt 5A CANCELLED
Buffalo, NY, Greater Buffalo Intl, VOR/DME RNAV or GPS RWY 32, Amdt 5A
Glens Falls, NY, Warren County, RNAV or GPS RWY 1, Amdt 2 CANCELLED
Glens Falls, NY, Warren County, VOR/DME RNAV or GPS RWY 1, Amdt 2
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 16, Amdt 2A CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 16, Amdt 2A
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 27, Amdt 1A CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 27, Amdt 1A
Olean, NY, Cattaraugus County-Olean, RNAV or GPS RWY 22, Amdt 4A CANCELLED,
Olean, NY, Cattaraugus County-Olean, VOR/DME RNAV or GPS RWY 22, Amdt 4A
Poughkeepsie, NY, Dutchess County, RNAV or GPS RWY 6, Amdt 5 CANCELLED
Poughkeepsie, NY, Dutchess County, VOR/DME RNAV or GPS RWY 6, Amdt 5
Elk City, OK, Elk City Muni, RNAV or GPS RWY 17, Amdt 2A CANCELLED
Elk City, OK, Elk City Muni, VOR/DME RNAV or GPS RWY 17, Amdt 2A
GROVE, OK, Grove Muni, RNAV RWY 18, Amdt 2 CANCELLED
GROVE, OK, Grove Muni, VOR/DME RNAV RWY 18, Amdt 2
Grove, OK, Grove Muni, RNAV or GPS RWY 36, Amdt 2 CANCELLED
Grove, OK, Grove Muni, VOR/DME RNAV or GPS RWY 36, Amdt 2
Norman, OK, University of Oklahoma Westhdimer Airpark, RNAV or GPS RWY 3, Orig A CANCELLED
Norman, OK, University of Oklahoma Westhdimer Airpark, VOR/DME RNAV or GPS RWY 3, Orig A
Butler, PA, Butler County/K W Scholter Field, RNAV or GPS RWY 26, Amdt 2 CANCELLED
Butler, PA, Butler County/K W Scholter Field, VOR/DME RNAV or GPS RWY 26, Amdt 2
Du Bois, PA, Du Bois-Jefferson County, RNAV or GPS RWY 7, Amdt 1 CANCELLED
Du Bois, PA, Du Bois-Jefferson County, VOR/DME RNAV or GPS RWY 7, Amdt 1
Latrobe, PA, Westmoreland County, RNAV RWY 5, Amdt 1 CANCELLED
Latrobe, PA, Westmoreland County, VOR/DME RNAV RWY 5, Amdt 1
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 15, Amdt 2 CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV or GPS RWY 15, Amdt 2
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 33, Amdt 4 CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV or GPS RWY 33, Amdt 4
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 17, Amdt 4 CANCELLED
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV or GPS RWY 17, Amdt 4
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 35, Amdt 3A CANCELLED
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 35, Amdt 3A
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV or GPS RWY 35, Amdt 3A
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 13, Amdt 7 CANCELLED
Reading, PA, Reading Regional/Carl A Spaatz Field, VOR/DME RNAV or GPS RWY 13, Amdt 7
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 18, Amdt 5 CANCELLED
Reading, PA, Reading Regional/Carl A Spaatz Field, VOR/DME RNAV or GPS RWY 18, Amdt 5
St. Marys, PA, St. Marys Muni, RNAV RWY 10, Amdt 5A CANCELLED
St Marys, PA, St. Marys Muni, VOR/DME RNAV RWY 10, Amdt 5A
St. Marys, PA, St. Marys Muni, RNAV RWY 28, Amdt 5 CANCELLED
St. Marys, PA, St. Marys Muni, VOR/DME RNAV RWY 28, Amdt 5
San Juan, PR, Luis Munoz Marin Intl, RNAV RWY 10, Amdt 7A
San Juan, PR, Luis Munoz Marin Intl, VOR/DME RNAV RWY 10, Amdt 7A
Charleston, SC, Charleston Executive, RNAV or GPS RWY 9, Amdt 5A CANCELLED
Charleston, SC, Charleston Executive, VOR/DME RNAV or GPS RWY 9, Amdt 5A
Columbia, SC, Columbia Metropolitan, RNAV or GPS RWY 5, Orig A CANCELLED
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV or GPS RWY 5, Orig A
Columbia, SC, Columbia Owens Downtown, RNAV or GPS RWY 31, Orig CANCELLED
Columbia, SC, Columbia Owens Downtown, VOR/DME RNAV or GPS RWY 31, Orig

Hilton Head Island, SC, Hilton Head, RNAV or GPS RWY 3, Amdt 4A CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV or GPS RWY 3, Amdt 4A
Hilton Head Island, SC, Hilton Head, RNAV or GPS RWY 21, Amdt 4B CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV or GPS RWY 21, Amdt 4B
Mount Pleasant, SC, East Cooper, RNAV or GPS RWY 17, Orig CANCELLED
Mount Pleasant, SC, East Cooper, VOR/DME RNAV or GPS RWY 17, Orig
Spartanburg, SC, Spartanburg Downtown Memorial, RNAV or GPS RWY 5, Amdt 6A CANCELLED
Spartanburg, SC, Spartanburg Downtown Memorial, VOR/DME RNAV or GPS RWY 5, Amdt 6A
Austin, TX, Lakeway Airpark, RNAV or GPS RWY 16, Amdt 1 CANCELLED
Austin, TX, Lakeway Airpark, VOR/DME RNAV or GPS RWY 16, Amdt 1
Brownsville, TX, South Padre Island Intl, RNAV or GPS RWY 17, Amdt 3 CANCELLED
Brownsville, TX, South Padre Island Intl, VOR/DME RNAV or GPS RWY 17, Amdt 3
Brownsville, TX, South Padre Island Intl, RNAV or GPS RWY 35, Amdt 3 CANCELLED
Brownsville, TX, South Padre Island Intl, VOR/DME RNAV or GPS RWY 35, Amdt 3
Giddings, TX, Giddings-Lee County, RNAV or GPS RWY 35, Orig CANCELLED
Giddings, TX, Giddings-Lee County, VOR/DME RNAV or GPS RWY 35, Orig
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 17R, Amdt 3 CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV or GPS RWY 17R, Amdt 3
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 35L, Amdt 3 CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV or GPS RWY 35L, Amdt 3
Houston, TX, Houston-Southwest, RNAV or GPS RWY 9, Amdt 1B CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 9, Amdt 1B
Houston, TX, Houston-Southwest, RNAV or GPS RWY 27, Amdt 2B CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 27 Amdt 2B
Houston, TX, West Houston, RNAV or GPS RWY 15, Amdt 2 CANCELLED
Houston, TX, West Houston, VOR/DME RNAV or GPS RWY 15, Amdt 2
Houston, TX, West Houston, RNAV or GPS RWY 33, Amdt 2 CANCELLED
Houston, TX, West Houston, VOR/DME RNAV or GPS RWY 33, Amdt 2
Junction, TX, Kimble County, RNAV or GPS RWY 17, Amdt 2 CANCELLED
Junction, TX, Kimble County, VOR/DME RNAV or GPS RWY 17, Amdt 2
Midland, TX, Midland Intl, RNAV or GPS RWY 16R, Amdt 2 CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV or GPS RWY 16R, Amdt 2
Midland, TX, Midland Intl, RNAV or GPS RWY 34L, Amdt 1 CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV or GPS RWY 34L, Amdt 1
Marshall, TX, Harrison County, RNAV or GPS RWY 33, Amdt 1B CANCELLED
Marshall, TX, Harrison County, VOR/DME RNAV or GPS RWY 33, Amdt 1B
Mineola/Quitman, TX, Mineola-Quitman, RNAV or GPS RWY 18, Amdt 1A CANCELLED
Mineola/Quitman, TX, Mineola-Quitman, VOR/DME RNAV or GPS RWY 18, Amdt 1A
Lewisburg, TN, Ellington, RNAV or GPS RWY 20, Orig CANCELLED
Lewisburg, TN, Ellington, VOR/DME RNAV or GPS RWY 20, Orig
Shelbyville, TN, Bomar Field-Shelbyville Muni, RNAV or GPS RWY 18, Amdt 3 CANCELLED
Shelbyville, TN, Bomar Field-Shelbyville Muni, VOR/DME RNAV or GPS RWY 18, Amdt 3
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, RNAV or GPS RWY 36, Amdt 4 CANCELLED
Tullahoma, TN Tullahoma Regional Arpt/Wm Northern Field, VOR/DME RNAV or GPS RWY 36, Amdt 4
Ogden, UT, Ogden-Hinckley, RNAV or GPS RWY 3, Orig CANCELLED
Ogden, UT, Ogden-Hinckley, VOR/DME RNAV or GPS RWY 3, Orig
Roosevelt, UT, Roosevelt Muni, RNAV or GPS RWY 25, Amdt 1A CANCELLED
Roosevelt, UT, Roosevelt Muni, VOR/DME RNAV or GPS RWY 25 Amdt 1A
Danville, VA, Danville Regional, RNAV or GPS RWY 20, Amdt 1 CANCELLED
Danville, VA, Danville Regional, VOR/DME RNAV or GPS RWY 20, Amdt 1
Norfolk, VA, Norfolk Intl, RNAV or GPS RWY 14, Amdt 4 CANCELLED
Norfolk, VA, Norfolk Intl, VOR/DME RNAV or GPS RWY 14, Amdt 4
Wise, VA, Lonesome Pine, RNAV or GPS RWY 24, Amdt 2 CANCELLED
Wise, VA, Lonesome Pine, VOR/DME RNAV or GPS RWY 24, Amdt 2
Quincy, WA, Quincy Muni, RNAV or GPS RWY 27, Orig CANCELLED
Quincy, WA, Quincy Muni, VOR/DME RNAV or GPS RWY 27, Orig
Spokane, WA, Spokane Intl, RNAV or GPS RWY 21, Orig CANCELLED
Spokane, WA, Spokane Intl, VOR/DME RNAV or GPS RWY 21, Orig
Lone Rock, WI, Tri-County Regional, RNAV or GPS RWY 27, Amdt 6 CANCELLED
Lone Rock, WI, Tri-County Regional, VOR/DME RNAV or GPS RWY 27, Amdt 6
Madison, WI, Morey, RNAV or GPS RWY 12, Amdt 3 CANCELLED
Madison, WI, Morey, VOR/DME RNAV or GPS RWY 12, Amdt 3
Portage, WI, Portage Muni, RNAV or GPS RWY 17, Amdt 3 CANCELLED
Portage, WI, Portage Muni, VOR/DME RNAV or GPS RWY 17, Amdt 3
West Bend, WI, West Bend Muni, RNAV or GPS RWY 13, Amdt 5 CANCELLED
West Bend, WI, West Bend Muni, VOR/DME RNAV or GPS RWY 13, Amdt 5

[FR Doc. 97–28416 Filed 10–24–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29048; Amdt. No. 1829]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase- Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 17, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 6, 1997*

West Palm Beach, FL, North Palm Beach County General Aviation, ILS RWY 8R, Orig
West Palm Beach, FL, Palm Beach Intl, ILS RWY 27R, Orig
Driggs, ID, Teton Peaks/Driggs Muni, GPS–A, Orig
Grand Rapids, MI, Kent County Intl, VOR–A, Orig, CANCELLED
Grand Rapids, MI, Kent County Intl, VOR–B, Orig, CANCELLED
Grand Rapids, MI, Kent County Intl, VOR RWY 17, Orig
Grand Rapids, MI, Kent County Intl, VOR RWY 35, Orig
Manchester, NH, Manchester, LOC RWY 17, Orig, CANCELLED
Manchester, NH, Manchester, ILD RWY 17, Orig
Spokane, WA, Spokane Intl, ILS RWY 3, Amdt 4

* * * *Effective December 4, 1997*

Harrison, AR, Boone County, LOC/DME RWY 36, Amdt 8, CANCELLED
Harrison, AR, Boone County, ILS/DME RWY 36, Orig
Rochester, IN, Fulton County, NDB RWY 29, Amdt 11
New Orleans, LA, New Orleans Intl (Moisant Field), LOC RWY 19, Orig
New Orleans, LA, New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt 14, CANCELLED
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, (Simultaneous Close Parallel) ILS PRM RWY 12L, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, (Simultaneous Close Parallel) ILS PRM RWY 12R, Orig
Savannah, TN, Savannah-Hardin County, NDB OR GPS RWY 18, Amdt 3A, CANCELLED
Tulsa, OK, Tulsa Intl, RADAR–1, Amdt 17
Petersburg, VA, Petersburg Muni, VOR OR GPS RWY 23, Amdt 4

* * * *Effective January 1, 1998*

Foley, AL, Foley Muni, GPS RWY 18, Orig
Hartselle, AL, Rountree Field, GPS RWY 36, Orig
Ozark, AL, Blackwell Field, GPS RWY 30, Orig
Palto Alto, CA, Palo Alto of Santa Clara Co, GPS RWY 30, Amdt 1
Boise, ID, Boise Air Terminal/Gowen Field, GPS RWY 28L, Orig
North Vernon, IN, North Vernon, GPS RWY 23, Orig
Beaver Island, MI, Beaver Island, NDB RWY 27, Orig
St. James MI, Beaver Island, NDB OR GPS RWY 27, Orig, CANCELLED
Ashtabula, OH, Ashtabula County, GPS RWY 8, Orig
Hot Springs, VA, Ingalls Field, GPS RWY 24, Orig

[FR Doc. 97–28414 Filed 10–24–97; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29049; Amdt. No. 1830]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 17, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/17/97	SD	Winner	Bob Wiley Field	7/6154	VOR or GPS–A, Amdt 6...
10/01/97	TN	Savannah	Savannah-Hardin County	7/6452	VOR/DME Rwy 18, Amdt 5B...
10/02/97	CA	Ramona	Ramona	7/6466	VOR/DME or GPS–A Amdt 1A...
10/02/97	MI	Cadillac	Wexford County	7/6483	NDB or GPS Rwy 7, Amdt 1...
10/02/97	PA	Franklin	Venango Regional	7/6468	ILS Rwy 20 Amdt 4...
10/03/97	VA	Blackstone	Blackstone AAF—Allen C. Perkinson Muni.	7/6490	NDB or GPS–A Amdt 10...
10/03/97	WV	Ravenswood	Jackson County	7/6489	VOR/DME or GPS Rwy 3, Amdt 2...
10/06/97	DE	Wilmington	New Castle County	7/6551	MLS Rwy 9 Orig...
10/06/97	DE	Wilmington	New Castle County	7/6553	VOR Rwy 9 Amdt 6...
10/06/97	ND	Hillsboro	Hillsboro Muni	7/6548	GPS Rwy 16, Orig...
10/06/97	ND	Hillsboro	Hillsboro Muni	7/6549	GPS Rwy 34, Orig...
10/06/97	ND	Minot	Minot Intl	7/6527	ILS Rwy 31, Amdt 8...
10/06/97	ND	Minot	Minot Intl	7/6528	VOR or GPS Rwy 31, Amdt 10...
10/06/97	OK	Goldsby	David Jay Perry	7/6537	VOR/DME Rwy 31, Orig...
10/06/97	OK	Oklahoma City	Sundance Airpark	7/6530	LOC Rwy 17, Orig...
10/06/97	OK	Oklahoma City	Will Rogers World	7/6532	ILS Rwy 35R, Amdt 8B...
10/06/97	OK	Oklahoma City	Will Rogers World	7/6534	LOC BC Rwy 35L, Amdt 10A...
10/06/97	OK	Oklahoma City	Will Rogers World	7/6535	ILS Rwy 17L, Orig-B...
10/06/97	OK	Oklahoma City	Will Rogers World	7/6536	NDB or GPS Rwy 35R, Amdt 5...
10/06/97	OK	Westheimer	University of Oklahoma	7/6538	NDB Rwy 3, Amdt 5A...
10/06/97	OK	Westheimer	University of Oklahoma	7/6539	RNAV or GPS Rwy 3, Orig-A...
10/06/97	TX	San Antonio	San Antonio Intl	7/6545	ILS Rwy 3, Amdt 17A...
10/06/97	TX	San Antonio	San Antonio Intl	7/6546	NDB or GPS Rwy 3, Amdt 37B...
10/06/97	UT	Logan	Logan-Cache	7/6543	VOR or GPS–A Amdt 6B...
10/06/97	VA	Richmond/Ashland	Hanover County Muni	7/6523	VOR Rwy 16 Orig-B...
10/08/97	GA	Waycross	Waycross-Ware County	7/6611	NDB Rwy 18 Orig-C...
10/08/97	GA	Waycross	Waycross-Ware County	7/6612	ILS Rwy 18 Orig-C...
10/08/97	GA	Waycross	Waycross-Ware County	7/6613	VOR or GPS–A Amdt 7B...
10/08/97	WI	Madison	Blackhawk Airfield	7/6605	VOR or GPS–A Orig...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6655	ILS Rwy 9L, Amdt 6...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6656	ILS Rwy 14L, Amdt 28A...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6631	ILS Rwy 32R, Amdt 21...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6632	ILS Rwy 32L, Amdt 1A...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6633	ILS Rwy 27R, Amdt 24...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6634	ILS Rwy 27L, Amdt 12...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6635	ILS Rwy 22R, Amdt 6A...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6636	ILS Rwy 22L, Amdt 4A...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6637	ILS Rwy 9R, Amdt 13...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6641	ILS Rwy 14R, Amdt 29A...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6643	NDB or GPS Rwy 14R, Amdt 21...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6644	NDB or GPS Rwy 14L, Amdt 22...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6645	VOR Rwy 22R, Amdt 8...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6646	LOC Rwy 4L, Amdt 18...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6657	NDB or GPS Rwy 9R, Amdt 16...
10/09/97	IL	Chicago	Chicago-O'Hare Intl	7/6658	NDB Rwy 27R, Amdt 22...
10/09/97	MO	Columbia	Columbia Regional	7/6669	ILS Rwy 2, Amdt 12B...
10/09/97	TX	Lubbock	Lubbock Intl	7/6649	LOC BC Rwy 35L, Amdt 17...
10/10/97	NY	Dunkirk	Chautauqua County/Dunkirk	7/6697	VOR or GPS Rwy 24 Amdt 6A...
10/10/97	NY	Dunkirk	Chautauqua County/Dunkirk	7/6699	VOR or GPS Rwy 6 Amdt 1A...
10/10/97	VT	Burlington	Burlington Intl	7/6677	NDB or GPS Rwy 15 Amdt 19...
10/14/97	IL	Chicago	Chicago-O'Hare Intl	7/6735	ILS Rwy 4R, Amdt 6B...
10/14/97	PA	Toughkenamon	New Garden	7/6729	VOR Rwy 24 Amdt 7...

[FR Doc. 97–28415 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191

[T.D. 97–82]

Technical Amendments to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the Federal Register which set forth various minor technical changes and corrections to the Customs Regulations. The correction involves the wording of the regulatory text contained in the amendatory instruction pertaining to § 11.9.

EFFECTIVE DATE: This correction is effective October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Regulations Branch, Office of Regulations and Rulings (202–927–2340).

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1997, Customs published in the Federal Register (62 FR 51766) as T.D. 97–82 a final rule document setting forth various minor technical changes and corrections to the Customs Regulations. The regulatory amendments included a change to paragraph (b) of § 11.9 (19 CFR 11.9). Although the Background portion of T.D. 97–82 correctly included the word "purchaser" in identifying the affected regulatory text, the amendatory instruction set forth later in the document inadvertently included the word "producer" as part of the amended regulatory text. This document sets forth a new amendatory instruction pertaining to § 11.9 to correct this error.

Correction to the Final Regulations

On page 51770, in the first column, the amendatory instruction for § 11.9 is corrected to read as follows:

2. In § 11.9, the first sentence of paragraph (b) is amended by removing the words "manufacturer or purchaser of" and adding, in their place, the words "manufacturer or purchaser or".

Dated: October 20, 1997.

Harold M. Singer,
Chief, Regulations Branch.

[FR Doc. 97–28300 Filed 10–24–97; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF–392]

RIN 1512–AA07

Mendocino Ridge Viticultural Area (95R–017P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.
ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area located within the boundaries of Mendocino County, California to be known as "Mendocino Ridge," under 27 CFR part 9. This viticultural area is the result of a petition submitted by Mr. Steve Alden on behalf of the Mendocino Ridge Quality Alliance. There are about 262,400 acres or approximately 410 square miles within the outer boundaries of the "Mendocino Ridge" viticultural area, but the actual viticultural area encompasses only the areas at or above 1200 feet in elevation. Because of the 1200 foot elevation, this viticultural area is unique from other coastal viticultural areas. Of the total 262,400 acres, less than one third, or 87,466 acres, lies above 1200 feet elevation. Of these 87,466 acres, approximately 1500 to 2000 acres or 2% of the narrow timber covered ridge-tops are suitable for grape production. There are approximately 75 acres of grapes currently growing within the boundaries of the viticultural area. The 75 acres of grapes are divided among six wineries.

EFFECTIVE DATE: December 26, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 [44 FR 56692] which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

Mr. Steve Alden of Alden Ranch Vineyards petitioned ATF on behalf of the Mendocino Ridge Quality Alliance for the establishment of a new viticultural area located within the boundaries of Mendocino County, California, to be known as "Mendocino Ridge." There are currently six producing vineyards in the "Mendocino Ridge" viticultural area.

Given the unusual nature of the area, ATF requested public comment in Notice No. 848 on specific questions regarding the supporting evidence. ATF pointed out that the viticultural area would include only the land above a certain elevation within the boundaries described. Thus, ATF wished to solicit public comment on the following questions about the geographic

distinctiveness of the non-contiguous areas in the petition:

1. Do the non-contiguous sites in the proposed viticultural area have such similar climate, soil, and other characteristics that they can be considered as a single or common grape growing region?

2. Is the actual land included within the proposed viticultural area at the 1200 foot (and above) elevation line reasonably distinguishable from the adjacent land that is not included?

3. Does the totality of the geographic evidence regarding the proposed viticultural area support the application of a reasonable proximity rule to exclude widely scattered but otherwise similar locations from being included within the proposed grape-growing region?

Comments

No comments were received in response to Notice No. 848.

Evidence That the Name of the Area Is Locally or Nationally Known

The name Mendocino Ridge has been chosen as the name of the viticultural area because the area is widely known by that name. Many books and magazines have historically referred to the viticultural area as the Mendocino Ridge. For example, in 1988 the winery, Kendall-Jackson, wrote:

> * * * the vines in the Mariah vineyard are subject to the same complicated climatic variables that have caused wine experts to hail the Mendocino Coastal Ridge as one of the world's greatest Zinfandel regions."

More recently, in an article published in the February 1994 issue of Gourmet Magazine, wine writer Gerald Asher wrote:

> In Mendocino there's an equally wide divide between the tense and concentrated Zinfandels produced from old vines planted by turn-of-the-century Italian immigrants *who settled the exposed, high ridges between Anderson Valley and the Pacific* and the subtly urbane wines from vineyards almost as old but planted in milder and better-protected sites around Ukiah and in the adjacent McDowell and Redwood valleys. (Emphasis added)

Gerald Asher further stated that:

> The revival of California Zinfandel as a serious varietal wine began with the rediscovery of forgotten patches of old vines such as those on the Mendocino Ridge, most of them tucked away among hillside orchards. Jed Steele started to make wine from old Mendocino Ridge Zinfandel vines at the Edmeades Vineyard & Winery in Anderson Valley in the early 1970's.

The six vineyards within the "Mendocino Ridge" viticultural area are known by locals and wine writers as the "Mendocino Ridge" vineyards. The area encompasses many named coastal ridges; *i.e.*, McGuire Ridge, Zeni Ridge, Phelps Ridge, Signal Ridge, Campbell Ridge, German Ridge, Hanes Ridge, Adams Ridge, Cliff Ridge, Greenwood Ridge, McAllister Ridge, Brandt Ridge, Lambert Ridge, Mariah Ridge, Fleming Ridge, Mikes Ridge, Yellow Hound Ridge, Johnny Woodin Ridge, Hog Ranch Ridge, Hog Pen Ridge, Steve's Ridge, Ponds Ridge, Brytan Ridge, and Pearly Ridge. The area also encompasses various "mountain peaks;" *i.e.*, Cold Spring Mountain, Lookout Mountain, Bald Hill Dry Bridge Mountain, Eureka Hill, Gualala Mountain, Red Rock Mountain, Snook Mountain and Rockpile Peak. These "mountain peaks" are generally no higher than points on the ridge. These ridges and peaks create the water shed for the Gualala River, Garcia River, Alder Creek, Elk Creek, Greenwood Creek, and the Navarro River. The "Mendocino Ridge" viticultural area encompasses only ridge-tops which reach an elevation of 1200 feet or higher in the Coastal Zone of southwestern Mendocino County. The boundary encompasses approximately 410 square miles or about 262,400 acres which was necessary to include the numerous ridge-tops comprising the grape growing areas. ATF is not aware of any grapes being grown at the lower elevations in the area below the 1200 foot coastal fog line.

Historical or Current Evidence That the Boundaries of the Viticultural Area are as Specified in the Petition

Many articles have been written in wine periodicals and books over the years about the unique and distinctive wines produced from grapes grown within the "Mendocino Ridge" viticultural area. For example, Making Sense of California Wine by Matt Kramer (1992, William Morrow and Co., N.Y.) states:

> There aren't many ridge vineyards but, as Spencer Tracy said in Pat and Mike, 'What's there is cherce.' Even more unexpected is the grape variety: Zinfandel. Such ridge vineyards as Ciapusci Vineyard, Mariah Vineyard, Zeni Vineyard, and DuPratt Vineyard create some of the greatest Zinfandels in California. *All are found between 1,400 feet and 2,400 feet in elevation.* Jed Steele, the former winemaker for Kendall-Jackson, sought out these grapes and demanded an audience for them. The winery continues to issue named-vineyard Zinfandels from several of these vineyards, all of them extraordinary. (*Id.* at 218, emphasis added).

The petitioner also cited from Coastal Ridge Zinfandel, by Jed Steele Ridge Review, Volume V, No. 1 (1995, The Ridgetimes Press, Mendocino, CA). On page 7 it states:

> That certain grape varieties, grown in specific geographical locations, produce distinctive wines that are sought after by appreciators of fine wine is a given phenomenon in the world of viticulture and enology. Illustrations of such situations are Pinot Noir when grown in Burgundy, the White Riesling when grown in the Mosel Valley of Germany, and the Cabernet Sauvignon when grown in the Rutherford-Oakville region of the Napa Valley. Zinfandel, when grown in the Coastal range of Mendocino County, roughly between the points where the Navarro River and Gualala River empty into the ocean, is in my mind such a classic match of grape variety with a particular climate, one that leads to the ultimate in winemaking fruit. (Emphasis added.)

The cultivation of vineyards in the Mendocino Ridge began with the first Italian settlers, who came to the area in the late 1800's to peel tan bark. These Italian immigrants brought with them their grapes of choice: Zinfandel, Alicante-Bouschet, Carignane, Muscat, Palomino, and Malvasia. At one time, before Prohibition, it has been estimated that Greenwood Ridge had some 250 acres of vineyards and Fish Rock Road had another 150 acres of vineyards. Italian immigrant families with names like Luccinetti, Pearli, Gianoli, Ciapusci, Soldani, and Zeni homesteaded and planted vines along Fish Rock Road as early as the 1860's. Other Italian immigrants with names like Frati, Tovani, Giusti, Pronsolino, and Giovanetti homesteaded along Greenwood Ridge around the same time. According to Matt Kramer in Making Sense of California Wine (1992):

> The planting of these higher-elevation vineyards is due entirely to an influx of Italian immigrants * * * in the 1890's * * * In Italy, as elsewhere in Europe, grapes were found to perform better on hillsides than on valley floors. Considering their grapes of choice—Zinfandel, Alicante-Bouschet, Carignan, Muscat, Palomino, and Malvasia—they were right. None of these sun-loving varieties could have prospered in the cool, frost-prone Anderson Valley floor. But once above the fog, the sunshine is uninterrupted. The ridge sites rarely see the spring frosts. (Id. at 218.)

Prohibition came and many of these vineyards were removed. Of these original vineyards planted by the Italian immigrants, three have survived and still produce award winning wines to this day. Both the Ciapusci and Zeni vineyards are still tended and owned by the original families on Fish Rock Road. On Greenwood Ridge Road, the DuPratt vineyard planted in 1916 is producing Zinfandel. In addition, the Zenis, Ciapuscis, and DuPratts all had wineries

at their vineyards. Part of the Ciapusci's winery is still standing and parts of an old wine press can be found at the DuPratt vineyard site. Tunnels used for storing wine can be found burrowed into the mountain at the Zeni Vineyard. Three other vineyards, Mariah Vineyards, Greenwood Ridge Vineyards, and Alden Ranch Vineyards, have been planted in the past 25 years.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Area From Surrounding Areas

The "Mendocino Ridge" viticultural area is shaped like a bulging triangle with its northern apex less than a mile wide at the mouth of the Navarro River. The southern base of the triangle is approximately 15 miles wide as it runs along the Mendocino/Sonoma County line. From north to south the area is 36 miles long. A small segment of the viticultural area overlaps the Anderson Valley viticultural area along its northeastern boundary. This segment has been included in the "Mendocino Ridge" viticultural area because it is climatically, geologically and enologically the same as the "Mendocino Ridge" area. Again, Matt Kramer in Making Sense of California Wine (1992) states on page 218:

> Actually, the Anderson Valley is more complicated yet. Everything so far described applies to what might be called Anderson Valley bas. There's also an Anderson Valley haut. The AVA really contains another, hidden appellation. Although not recognized as an AVA, it should be. This "hidden" appellation is the vineyards above the fog line, locally known as the "ridge vineyards." The name is apt: They are found on ridgelines above fourteen hundred feet in elevation. Technically, these vineyards are Anderson Valley AVA. In reality, they are their own world: more sun, no fog, yet subject to the cooling temperatures that come with higher elevation. (Emphasis added).

The grape growing region of the viticultural area encompasses the coastal ridge above the 1200 foot elevation entirely within the Coastal Zone in the southwest corner of Mendocino County, California. Less than one third of the entire area, or 87,466 acres, lies above 1200 feet elevation. Of these 87,466 acres, approximately 1500 to 2000 acres or 2% of the narrow timber covered ridge-tops are suitable for grape production. There are approximately 75 acres of grapes currently growing within the boundaries of the viticultural area. These 75 acres are located in isolated pockets carved out of dense redwood and douglas fir forest along the ridge-tops above the coastal fog line. Summer mornings are characterized by "lakes of fog" with the ridge-tops protruding like "small islands" soaking up the cool morning sun.

Topography

The "Mendocino Ridge" area is characterized by narrow irregular ridges that have a high elevation point of 2738 feet at Cold Spring Mountain. The side-slopes are steep and timber covered, with slopes often exceeding 70%, making these areas unplantable. Because of the steepness and narrowness of the ridge-tops, farmable acreage is at a premium. Rarely in the viticultural area, does a ridge-top vineyard exceed 30 acres in one continuous block.

The "Mendocino Ridge" terrain can be sharply contrasted with the surrounding areas. To the west is the Pacific Ocean. To the northeast is the valley lowlands of the Anderson Valley viticultural area. The grapes grown in this area are planted in the fertile alluvial soils along the Navarro River. To the southeast are the long, sloping hillsides of the Yorkville benchland area. Grapes grown in this area have been traditionally planted on the bottom lands and on the hillside benches to the east of Highway 128. To the south is the Sonoma/Mendocino County line and the Sonoma Coast viticultural area.

Soils

The soils are unique to this triangle of rugged, timber-covered ridge-top area and have been shown to be distinct from the surrounding area's soils. Climatically, this area sits entirely within the Coastal Zone and receives the cooling influences of the Pacific Ocean which surround these ridges and peaks with fog, making these ridges into what the petitioner calls "cool, sun-soaked islands in the sky." The "Mendocino Ridge" viticultural area also receives a significantly greater amount of annual rainfall than the surrounding areas.

The soils within the "Mendocino Ridge" viticultural area have been identified by the Soil Conservation Service in a National Cooperative Soil Survey, a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations and local agencies.

The area is dominated by timber type soils and is clearly separated from surrounding soils at the "Mendocino Ridge" boundary. To the west is the Pacific Ocean. To the northeast are the fertile alluvial valley soils of the Anderson Valley and to the southeast are the upland grass range soils of the Yorkville area. To the south is the county line and the Sonoma Coast Appellation.

Moreover, the "Mendocino Ridge" viticultural area is dominated by soils that fall into the general soil category of Ustic-isomesic type soils. These soils lie mainly between 500 feet and 2000 feet elevation within the zone of coastal influence. The soil does receive some moisture added by the tree canopy which causes water to precipitate from the fog. However, the fog influence is less pronounced at the upper elevations. It is less dense and does not blanket this zone as frequently as at the lower elevations. The soils are dry for part of the summer and there is little variation between summer and winter soil temperatures at 20 inches of depth. Redwood is the most reliable indicator of this zone. Redwood can often comprise 15 to 50 percent of the tree canopy with douglas fir, tanoak, and Pacific madrone being the other dominant species. The understory vegetation is often a dense thicket of California huckleberry and tanoak.

The specific soil types that dominate the "Mendocino Ridge" viticultural area are identified as follows:

1. Zeni

This soil is moderately deep and well-drained fine-loamy type soil. Typically, the loam surface layer is underlain by a loam subsoil. Soft sandstone is at a depth of 20 to 40 inches. Slopes range from 9 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.7.

2. Yellowhound

This soil is deep and well-drained. Typically, the gravelly loam surface is underlain by an extremely gravelly loam subsoil. Hard sandstone is at a depth of 40 to 60 inches. Slopes range from 9 to 100 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.8.

3. Ornbaun

This subsoil is deep and well-drained, with little or no seasonal fluctuation in soil temperature. Typically, the loam surface layer is underlain by a loam and clay loam subsoil. Soft sandstone is found underneath at a depth of 40 to 60 inches. This soil occurs on hilly and mountainous uplands with slopes of 9 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is not available.

4. Gube

This soil is moderately deep, well-drained soil formed in material weathered from sandstone. Gube soils are on mountains and have slopes of 30 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.4.

5. Fish Rock

This soil is a shallow, well-drained soil formed in material weathered from sandstone or mudstone. Fish Rock soils are on ridgetops and upper sideslopes of coastal hills and mountains and have slopes of 2 to 30 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 4.8.

6. Snook Series

This soil is a very shallow, somewhat excessively drained soil formed in material weathered from sandstone and shale. Snook soils are on mountains and have slopes of 30 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.6.

7. Kibesillah

This soil is moderately deep and well-drained and was formed in material weathered from sandstone. Kibesillah soils are on hills and mountains and have slopes of 9 to 100 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.5

The above soils contrast with the soils to the northeast and southeast of the "Mendocino Ridge" viticultural area. Along the northeast border of the "Mendocino Ridge" viticultural area are the deep alluvial soils of the Anderson Valley and Mendocino viticultural area bottom land. These fertile soils were identified by the USDA soil conservation service of the Mendocino County bottom lands completed in 1973. These soils are: CeB, Cole Clay Loam Wet; JaF, Jesephine Loam; TaC, Talmadge; Gravelly Sandy Loam; SeB, San Ysidro Loam; EdA, Esparto Silt Loam, Wet; PbC, Pinole Gravelly Loam; MdB, Maywood Sandy Loam, occasionally flooded, and; FcA, Fluvents, frequently flooded. Along the southeast border of the "Mendocino Ridge" viticultural area are the Xeric-mesic soils of the Yorkville corridor east of Highway 128 along the sweeping, grassy, oak studded slopes. These soils are grass, oak, and brush covered. The Yorkville soils are subject to little or no coastal influence, unlike the soils in the "Mendocino Ridge" viticultural area which are dominated by the coastal influence. Soils are usually dry from early June to October. The soil temperature at 20 inches in depth varies by more than 9 degrees between summer and winter unlike the Ustic-isomestic soils of the "Mendocino Ridge" viticultural area which do not vary. The vegetation types commonly found on Xeric-mesic soils are interior live oak, California black oak, Oregon white oak, Eastwood manzanita, toyon rose, bedstraw and annual bromes. The specific Xeric-mesic type soils of the Yorkville upland area contrast with the soils in the "Mendocino Ridge" viticultural area.

In summary, the soils of the "Mendocino Ridge" viticultural area are dominated by "timber" type soils with redwood, Douglas fir, tanoak, and Pacific madrone being the dominant vegetation. These soils are well drained and have little or no summer to winter soil temperature variations. In contrast, the soils of the surrounding areas are the deep alluvial Anderson Valley soils to the northeast and the upland rangeland soils of the Yorkville area to the southwest.

Climate

The "Mendocino Ridge" viticultural area lies entirely within the Coastal Climate Zone as defined by *The Climate Of Mendocino County*, a booklet published by the Mendocino County Farm and Home Advisors Office. The Coastal Climate Zone is cooled by the ocean influence of the Pacific. This Zone is continuous from north to south along the "Mendocino Ridge" viticultural area boundary and is commonly referred to as the redwood belt. The area is dominated by the influence of the Pacific Ocean at its western border throughout the year, unlike the area to the east of the "Mendocino Ridge" viticultural area which is within the Transitional Climate Zone. "Transitional" means the area's climate is subject to both the ocean's cooling influences and the warmth of the interior areas at different times of the year.

The "Mendocino Ridge" viticultural area is unique from other coastal viticultural areas because of its elevation of 1200 feet or higher. The elevation line being at approximately the fog line means that while the valleys may be full of coastal fog, the vineyards are fully exposed to the sun while receiving the cooling influences of the fog.

The "Mendocino Ridge" area has both a rainy and dry season of moderate temperature. The rainy season occurs from November through May. The average annual temperature for the area is about 53 degrees Fahrenheit, and the average annual precipitation is 75+ inches a year. Because of the area's coastal influence the average length of the growing season is from 275 to 300 days.

The climate in the adjacent growing regions is strikingly different. In the Yorkville Area, east of Highway 128, long, sweeping slopes lie within the Transitional Climatic Zone, receiving much more sun and inland weather influences. These inland weather influences mean the Yorkville area's average temperatures are cooler in the winter and hotter in the summer and the growing season is shorter, averaging between 250 and 275 days in length. The average annual precipitation is only 49.46 inches a year. Source: The Climate of Mendocino County, Mendocino County Farm and Home Advisors Office, page 10. With regard to Anderson Valley, it lies under the fog layer, receiving fewer sunlight hours than the "Mendocino Ridge," grape growing areas which are entirely above the fogline. The average annual precipitation is only 40.68 inches a year. Source: *The Climate of Mendocino County*, Mendocino County Farm and Home Advisors Office, page 10.

Boundaries

The boundary lines of the "Mendocino Ridge" viticultural area closely follow the line of Coastal Zone influence, above 1200 feet elevation in the southwest corner of Mendocino County, California. The boundaries of the area may be found on the following U.S. Department of Interior Geological Survey 15 minute series Quadrangle maps:

(1) Ornbaun Valley Quadrangle, California, 1960

(2) Navarro Quadrangle, California, 1961.

(3) Point Arena Quadrangle, California, 1960.

(4) Boonville Quadrangle, California, 1959.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps

consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.158 to read as follows:

* * * * *

§ 9.152 Mendocino Ridge.

(a) *Name.* The name of the viticultural area described in this section is "Mendocino Ridge."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Mendocino Ridge viticultural area are four 1:62,500 scale U.S.G.S. topographical maps. They are titled:

(1) Ornbaun Valley Quadrangle, California, 15 minute series topographic map, 1960.

(2) Navarro Quadrangle, California, 15 minute series topographic map, 1961.

(3) Point Arena Quadrangle, California, 15 minute series topographic map, 1960.

(4) Boonville Quadrangle, California, 15 minute series topographic map, 1959.

(c) *Boundary.* The Mendocino Ridge viticultural area is located within Mendocino County, California. Within the boundary description that follows, the viticultural area starts at the 1200 foot elevation (contour line) and encompasses all areas at or above the 1200 foot elevation line. The boundaries of the Mendocino Ridge viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning at the Mendocino/Sonoma County line at the mouth of the Gualala River, where the Gualala River empties into the Pacific Ocean, in section 27 of Township 11 North (T11N), Range 5 West (R5W), located in the southeastern portion of U.S.G.S. 15 minute series map, "Point Arena, California;"

(2) Then following the Mendocino/Sonoma County line eastward to the southeast corner of section 8 in T11N/R13W, on the U.S.G.S. 15 minute map, "Ornbaun Valley, California;"

(3) Then from the southeast corner of section 8 in T11N/R13W directly north approximately 3+ miles to the southwest corner of section 9 in T12N/R13W;

(4) Then proceeding in a straight line in a northwesterly direction to the southwestern corner of section 14 in T13N/R14W;

(5) Then directly north along the western line of section 14 in T13N/R14W to a point on the western line of section 14 approximately ¼ from the top where the Anderson Valley viticultural area boundary intersects the western line of section 14 in T13N/R14W;

(6) Then in a straight line, in a northwesterly direction, to the intersection of an unnamed creek and the south section line of section 14, T14N/R15W, on the U.S.G.S. 15 minute series map, "Boonville, California;"

(7) Then in a westerly direction along the south section lines of sections 14 and 15 in T14N/R15W to the southwest corner of section 15, T14N/R15W, on the U.S.G.S. 15 minute series map, "Navarro, California;"

(8) Then in a northerly direction along the western section lines of sections 15, 10, and 3 in T14N/R15W in a straight line to the intersection of the Navarro River on the western section line of section 3 in T14N/R15W;

(9) Then in a northwesterly direction along the Navarro River to the mouth of the river where it meets the Pacific Ocean in section 5 of T15N/R17W;

(10) Then in a southern direction along the Mendocino County coastline to the Mendocino/Sonoma County line to the beginning point at the mouth of the Gualala River in section 27 of T11N/R15W, on the U.S.G.S. 15 minute series map, "Point Arena, California."

Signed: September 3, 1997.

John W. Magaw,

Director.

Approved: September 24, 1997.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 97–28280 Filed 10–24–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 67

[DoD Instruction 1215.17]

Educational Requirements for Appointment of Reserve Component Officers to a Grade Above First Lieutenant or Lieutenant (Junior Grade)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Publishes DoD guidelines for implementing policy, assigns responsibilities, and prescribes procedures for identifying criteria for determining educational institutions which award baccalaureate degrees that satisfy the educational requirement of officers to a grade above First Lieutenant in the Army Reserve, Air Force Reserve, and Marine Corps Reserve, or Lieutenant (Junior Grade) in the Naval Reserve, or for officers to be federally recognized in a grade above First Lieutenant as a member of the Army National Guard or the Air National Guard.

EFFECTIVE DATE: This rule is effective October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Colonel Rowan W. Bronson, OASD/RA (M&P), (703) 693–7490.

SUPPLEMENTARY INFORMATION: It has been determined that this amendment is not a significant regulatory action. This final rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments of communities.

(2) Subject to the Regulatory Flexibility Act and does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

(3) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(4) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations or recipients thereof; or

(5) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act " (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on substantial numbers of small entities. The law identifies criteria for determining educational institutions which award baccalaureate degrees that satisfy the educational requirement for appointment of officers to a grade above First Lieutenant in the Army Reserve, Air Force Reserve, and Marine Corps Reserve, or Lieutenant (Junior Grade) in the Naval Reserve, or for officers to be federally recognized in a grade above First Lieutenant as a member of the Army National Guard or the Air National Guard.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this part does not impose any reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 67

Armed forces reserves, Education.

Accordingly, title 32 CFR part 67 is revised to read as follows:

PART 67—EDUCATIONAL REQUIREMENTS FOR APPOINTMENT OF RESERVE COMPONENT OFFICERS TO A GRADE ABOVE FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE)

Sec.

67.1 Purpose.
67.2 Applicability.
67.3 Definitions.
67.4 Policy.
67.5 Responsibilities.
67.6 Procedures.

Authority: 10 U.S.C. 12205.

§ 67.1 Purpose.

This part provides guidance for implementing policy, assigns responsibilities, and prescribes under 10 U.S.C. 12205 for identifying criteria for determining educational institutions that award baccalaureate degrees which satisfy the educational requirement for appointment of officers to a grade above First Lieutenant in the Army Reserve, Air Force Reserve, and Marine Corps Reserve, or Lieutenant (Junior Grade) in the Naval Reserve, or for officers to be federally recognized in a grade level above First Lieutenant as a member of the Army National Guard or Air National Guard.

§ 67.2 Applicability.

This part applies to the Office of the Secretary of Defense, and the Military Departments; the Chairman of the Joint Chiefs or Staff; and the Defense Agencies referred to collectively in this part as the "DoD Components"). The term "Military Departments," as used in this part, refers to the Departments of the Army, the Navy, and the Air Force. The term "Secretary concerned" refers to the Secretaries of the Military Departments. The term "Military Services" refers to the Army, the Navy, the Air Force, the Marine Corps. The term "Reserve components" refers to the Army Reserve, Army National Guard of the United States, Air Force Reserve, Air National Guard of the United States, Naval Reserve, Marine Corps Reserve.

§ 67.3 Definitions.

Accredited educational institution. An educational institution accredited by an agency recognized by the Secretary of Education.

Qualifying educational institution. An educational institution that is accredited, or an unaccredited educational institution that the Secretary of Defense designates pursuant to § 67.6(a) and § 67.6(b).

Unaccredited educational institution. An educational institution not accredited by an agency recognized by the Secretary of Education.

§ 67.4 Policy

(a) It is DoD policy under 10 U.S.C. 12205 to require Reserve component officers to have at least a baccalaureate degree from a qualifying educational institution before appointment to a grade above First Lieutenant in the Army Reserve, Air Force Reserve or Marine Corps Reserve, or Lieutenant (Junior Grade) in the Naval Reserve, or for officers to be federally recognized in a grade above First Lieutenant as a member of the Army National Guard or Air National Guard.

(b) Exempt from this policy is any officer who was:

(1) Appointed to or recognized in a higher grade for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) Appointed in the Naval Reserve or Marine Corps Reserve as a limited duty officer.

(3) Appointed in the Naval Reserve for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral program.

(4) Appointed to or recognized in a higher grade if appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognized in the grade of captain or major in the Alaska Army National Guard, who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road, and who is serving in a Scout unit or a Scout support unit.

(c) The Department of Defense will designate an unaccredited educational institution as a qualifying educational institution for the purpose of meeting this educational requirement if that institution meets the criteria established in this part.

§ 67.5 Responsibilities.

(a) The Assistant Secretary of Defense for Reserve Affairs, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Establish procedures by which an unaccredited educational institution can apply for DoD designation as a qualifying educational institution.

(2) Publish in the **Federal Register** DoD requirements and procedures for an unaccredited educational institution to apply for designation as a qualifying education institution.

(3) Annually, provide to the Secretaries of the Military Departments a list of those unaccredited educational institutions that have been approved by the Department of Defense as a qualifying educational institution. This list shall include the year or years for which unaccredited educational institutions are designed as qualifying educational institutions.

(b) The Secretaries of the Military Departments shall establish procedures to ensure that after September 30, 1995, those Reserve component officers selected for appointment to a grade above First Lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve, or Lieutenant (Junior Grade) in the Naval Reserve, or for officers to be federally recognized in a grade above First Lieutenant as a member of the Army National Guard or Air National Guard, who are required to hold a baccalaureate degree, were awarded a baccalaureate degree from a qualifying educational institution before appointment to the next higher grade. For a degree from an unaccredited educational institution that has been

recognized as qualifying educational institution by the Department of Defense to satisfy the educational requirements of 10 U.S.C. 12205, the degree must not have been awarded more than 8 years before the date the officer is to be appointed, or federally recognized, in the grade of Captain in the Army Reserve, Army National Guard, Air Force Reserve, Air National Guard, or Marine Corps Reserve, or in the grade of Lieutenant in the Naval Reserve.

§ 67.6 Procedures.

(a) An unaccredited educational institution may obtain designation as a qualifying educational institution for a specific Reserve component officer who graduated from that educational institution by providing certification from registrars at three accredited educational institutions that maintain ROTC programs that their educational institutions would accept at least 90 percent of the credit hours earned by that officer at the unaccredited educational institution, as of the year of graduation.

(b) For an unaccredited educational institution to be designated as a qualifying educational institution for a specific year, that educational institution must provide the Office of the Assistant Secretary of Defense for Reserve Affairs certification from the registrars at three different accredited educational institutions that maintain ROTC programs listing the major field(s) of study in which that educational institution would accept at least 90 percent of the credit hours earned by a student who was awarded a baccalaureate degree in that major field of study at the unaccredited educational institution.

(c) For an unaccredited educational institution to be considered for designation as a qualifying educational institution, the unaccredited educational institution must submit the required documentation no later than January 1 of the year for which the unaccredited educational institution seeks to be designated a qualifying educational institution.

(d) The required documentation must be sent to the following address: Office of the Assistant Secretary of Defense for Reserve Affairs, Attn: DASD (M&P), 1500 Defense Pentagon, Washington, DC 20301–1500.

(e) Applications containing the required documentation may also be submitted at any time from unaccredited educational institutions requesting designation as a qualifying educational institution for prior school years.

Dated: October 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–28355 Filed 10–24–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI79

Veterans and Reservists Education: Additional Educational Assistance While Serving in the Selected Reserve

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It makes changes concerning the amount of monthly educational assistance available to certain veterans and reservists training under the Montgomery GI Bill. These changes restate statutory requirements and set forth VA's statutory interpretations of a provision of the National Defense Authorization Act for Fiscal Year 1996. It also makes nonsubstantive changes by removing provisions that no longer apply and by clarifying provisions.

DATES: *Effective Date:* This final rule is effective October 27, 1997.

However, the changes in restatements of statute and in statutory interpretations will be applied retroactively from the effective dates of the statutory provisions. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document amends regulations concerning VA-administered educational assistance and educational benefits under the Montgomery GI Bill—Active Duty program (38 CFR part 21, subpart K) and the Montgomery GI Bill—Selected Reserve program (38 CFR part 21, subpart L).

The National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) provides that the rate of the educational assistance allowance may be increased by an amount not exceeding $350 per month for certain persons. To be eligible a person must qualify for educational assistance payable under the Montgomery GI Bill—Active Duty through at least three years active duty service and must also agree to serve at least 6 years in the Selected Reserve, or the person must qualify for educational assistance payable under the Montgomery GI Bill—Selected Reserve. Also, to be eligible the person must have a skill or specialty designated by the Secretary of the appropriate Department of the military as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, to retain personnel. Public Law 104–106 further provides that the actual amounts of increase shall be determined by the Secretary of Defense. This document amends §§ 21.7136 and 21.7137 for the Montgomery GI Bill—Active Duty and § 21.7636 for the Montgomery GI Bill—Selected Reserve to reflect these statutory amendments.

This document also amends §§ 21.7131 and 21.7631 concerning commencing dates to provide that the effective date for an increase will be the latest of: the date that would otherwise be used for such educational assistance; the first date on which the veteran or reservist is entitled to the increase as determined by the Secretary of the military department concerned; or February 10, 1996, the effective date of Public Law 104–106. This document further amends §§ 21.7135 and 21.7635 concerning discontinuance dates to add a provision stating that if the veteran or reservist loses entitlement to the increase, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the veteran or reservist is no longer entitled to the increase. In addition, this document makes amendments to §§ 21.7139 and 21.7639 to clarify that adjustments made for certain incarcerated persons and for failure to work sufficient hours of apprenticeship and other on-job training are applicable to such increases in payments, in the same manner as they are to other payments under the Montgomery GI Bill—Active Duty or the Montgomery GI Bill—Selected Reserve. These amendments, in our view, are required by statute.

The restatements of statute and statutory interpretations contained in this final rule will be applied retroactively from February 10, 1996, which is the effective date of the statutory provision.

Nonsubstantive changes also are made by removing provisions that no longer apply and by clarifying provisions.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule. The additional amount available to veterans and reservists is funded by DOD and the Coast Guard, but is administered by VA.

This final rule merely restates statutory provisions, sets forth statutory interpretations, and makes nonsubstantive changes by removing provisions that no longer apply and by clarifying provisions. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule affects individuals and does not affect small entities. Further, it merely restates statutory changes, sets forth statutory interpretations, and makes nonsubstantive changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for one of the two programs affected by this final rule is 64.120. This final rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 22, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: August 13, 1997.

Al H. Bemis,

Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel).

Approved: October 9, 1997.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21, subparts K and L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7131, paragraph (k) is added after the authority citation following paragraph (j), to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(k) *Increase ("kicker") due to service in the Selected Reserve.* If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance because he or she has met the requirements of § 21.7136(g) or § 21.7137(e), the effective date of that increase ("kicker") will be the latest of the following dates:

(1) The commencing date of the veteran's award as determined by paragraphs (a) through (j) of this section;

(2) The first date on which the veteran is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

3. In § 21.7135, paragraph (bb) is redesignated as paragraph (cc), and a new paragraph (bb) is added, to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(bb) *Reduction following loss of increase ("kicker") for Selected Reserve service.* If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in § 21.7136(g) or § 21.7137(e), due to service in the Selected Reserve, and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the veteran is no longer entitled to the increase ("kicker").

(Authority: 10 U.S.C. 16131)

4. In § 21.7136, paragraph (d) introductory text is amended by removing "paragraph (e)", and adding, in its place, "paragraphs (f) and (g)"; paragraph (e)(1) is amended by removing "(c)" and adding, in its place, "(d)" and by removing "(a) or (b)" and adding, in its place, "(b) or (c)"; and paragraph (e) introductory text is revised, and paragraph (g) is added after the authority citation following paragraph (f), to read as follows:

§ 21.7136 Rates for payment of basic educational assistance.

* * * * *

(e) *Less than one-half-time training and rates for servicemembers.* Except as provided in paragraph (g) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of:

* * * * *

(g) *Increase ("kicker") in basic educational assistance rates payable for service in the Selected Reserve.* (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase ("kicker") is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:

(i) Establishes eligibility for educational assistance under § 21.7042(a) or § 21.7045; and

(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned—

(i) Will, for such an increase ("kicker"), set an amount of the increase ("kicker") for full-time training, but the increase ("kicker") may not exceed $350 per month; and

(ii) May set the amount of the increase ("kicker") payable, for a veteran pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

5. In § 21.7137, paragraphs (e) and (f) are redesignated as paragraphs (f) and

(g), respectively; paragraph (b) introductory text is revised; and a new paragraph (e) is added, to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

* * * * *

(b) *Less than one-half-time training.* Except as provided in paragraphs (d) and (e) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

* * * * *

(e) *Increase ("kicker") in basic educational assistance rates for service in the Selected Reserve.* (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (a), (b), or (d) of this section, as appropriate. The increase ("kicker") is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:

(i) Establishes eligibility for educational assistance under § 21.7044(a); and

(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned—

(i) Will, for such an increase, set the amount of the increase ("kicker") payable for full-time training, but the increase ("kicker") may not exceed $350 per month;

(ii) May set the amount of the "kicker" payable, for a veteran pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (e)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

* * * * *

6. In § 21.7139, the introductory text is amended by removing "of this part"; paragraphs (a), (g), and (h) are removed; paragraphs (b), (c), (d), (e), (f), (i), and (j) are redesignated as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively; newly redesingated (g)(2) is redesingated as (g)(3); the authority citation for newly redesignated paragraph (b) is amended by removing "; Pub. L. 98–525"; the authority citation for newly redesignated paragraph (c) is amended by removing "; Pub. L. 98–525"; newly redesignated paragraph (d)(2)(iii) is amended by removing "of this part"; the authority citation for newly redesignated paragraph (d) is amended by removing "; Pub. L. 98–525"; newly redesignated paragraph (e)(2)(ii) is amended by removing "of this part" each time it appears and by removing "§ 21.7137(d)", and adding, in its place, "§ 21.7137(d) or (e)", newly redesignated paragraph (e)(2)(iii) is amended by removing "§ 21.7136(c)", and adding, in its place "§ 21.7136(d), (f), or (g)"; newly redesignated paragraph (e)(2)(iii) is amended by removing "of this part" each time it appears; newly redesignated paragraph (e)(3)(iii) is amended by removing "of this part" both times it appears; the authority citation for newly redesignated paragraph (e) is amended by removing "; Pub. L. 98–525"; newly redesignated paragraph (g)(3)(ii) is amended by removing "§ 21.4270(b)" and adding, in its place, "§ 21.4270(c)"; the section heading and newly redesignated paragraph (g)(1) are revised, and a new paragraph (g)(2) is added, to read as follows:

§ 21.7139 Conditions which result in reduced rates or no payment.

* * * * *

(g) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(3), and (d)(4), and 21.7137(a)(2) and (d)(2); and

(ii) Any increase ("kicker") set by the Secretary of the military department concerned as described in §§ 21.7136(g) and 21.7137(e).

(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

7. The authority citation for part 21, subpart L, continues to read as follows.

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

8. In § 21.7631, paragraph (h) is added after the authority citation following paragraph (g), to read as follows:

§ 21.7631 Commencing dates.

* * * * *

(h) *Increase ("kicker") in amount payable.* If a reservist is entitled to an increase ("kicker") in the monthly rate of educational assistance because he or she has met the requirements of § 21.7636(b), the effective date of that increase ("kicker") will be the latest of the following dates:

(1) The commencing date of the reservist's award as determined by paragraphs (a) through (g) of this section; or

(2) The first date on which the reservist is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

9. In § 21.7635, paragraph (x) is redesignated as paragraph (y); and a new paragraph (x) is added, to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(x) *Reduction following loss of increase ("kicker").* If a reservist is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in § 21.7636(b) and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the reservist is no longer entitled to the increase ("kicker").

(Authority: 10 U.S.C. 16131)

* * * * *

10. In § 21.7636, paragraph (b) is redesignated as paragraph (c); and a new paragraph (b) is added, to read as follows:

§ 21.7636 Rates of payment.

* * * * *

(b) *Increase ("kicker") in educational assistance rates.* (1) The Secretary of the military department concerned may increase the amount of educational assistance stated in paragraph (a) of this section that is payable to a reservist who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel.

(2) The Secretary of the military department concerned—

(i) Will set the amount of the increase ("kicker") for full-time training, but the increase ("kicker") may not exceed $350 per month; and

(ii) May set the amount of the increase ("kicker") payable, for a reservist pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (b)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(1))

* * * * *

11. In § 21.7639, paragraph (f)(2) is redesignated as paragraph (f)(3); paragraph (c)(2)(ii), the authority citation for paragraph (c), paragraph (f)(1), and the authority citation for paragraph (f) are revised; and a new paragraph (f)(2) is added, to read as follows:

§ 21.7639 Conditions which result in reduced rates or no payment.

* * * * *

(c) * * *

(2) * * *

(ii) The monthly rate as stated in § 21.7636(a) and any increase payable under § 21.7636(b).

* * * * *

(Authority: 10 U.S.C. 16131(i)(1), 16136(b); 38 U.S.C. 3482(g))

* * * * *

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any calendar month in which a reservist pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in § 21.7636(a)(2); and

(ii) Any increase set by the Secretary of the military department concerned as described in § 21.7636(b).

(2) In making the computations required by paragraph (f)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(Authority: 10 U.S.C. 2131(d)(2), 16131(i)(1); sec. 642 (b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

* * * * *

[FR Doc. 97–28364 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–7157a–FRL–5906–8]

Approval and Promulgation of Implementation Plans; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of the 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring System (PAMS) network.

The inventories were submitted by the State to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulation. The PAMS regulation required the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993. The intended effect of this action is to approve as a revision to the New Hampshire SIP the state's 1990 base year ozone emission inventories and PAMS network.

DATES: This action is effective on December 26, 1997 unless adverse or critical comments are received by November 26, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the New Hampshire Department of Environmental Services, Air Resources Division, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: New Hampshire submitted a SIP revision to the EPA consisting of 1990 base year emission inventories of ozone precursors on January 26, 1993. The State submitted a SIP revision establishing a PAMS network into the State's overall ambient air quality monitoring network on December 13, 1994. This notice is divided into four parts:

I. Background Information
II. Analysis of State Submission
III. Final Action
IV. Administrative Requirements

I. Background

1. Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale.

Those States containing ozone nonattainment areas classified as

marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). New Hampshire contains one marginal and two ozone nonattainment areas, and therefore is subject to this requirement. The inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C) if a submittal does not meet the completeness criteria, " the State shall be treated as not having made the submission." Under sections 179(a)(1) and 110(c)(1), a finding by EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan (FIP) processes (see David Mobley memorandum, November 12, 1992).[1]

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[2] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a "*de minimis*" exception to the public hearing requirement for minor changes. EPA defines "*de minimis*" for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such "de minimis" changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[3] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The inventory was submitted to the EPA as a SIP revision on January 26, 1993, by cover letter from the Governor's designee. New Hampshire re-submitted a final inventory to the EPA on February 8, 1994. New Hampshire submitted further revisions to the inventory on May 19, 1994, June 13, 1994, January 19, 1995, and August 29, 1996. New Hampshire held several public hearings on its 1990 base year emission inventories, the last of which occurred on August 2, 1996.

The EPA Region I Office has compared the final New Hampshire inventory with the deficiencies noted in the various comment letters and concluded that the State has adequately addressed the issues raised by the EPA.

2. PAMS Network

On December 13, 1994, the New Hampshire Department of Environmental Services (DES) submitted to the EPA a SIP revision incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the CAA and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_X), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. These rules will provide a mechanism for obtaining more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as serious, severe or extreme.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On December 13, 1994, the New Hampshire DES submitted a proposed PAMS network plan to the EPA that included a schedule for implementation. This submittal was reviewed and approved on April 10, 1995 by the EPA and was judged to satisfy the requirements of § 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the document, "Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58". However, the network description is negotiated and approved during the annual review as required by 40 CFR §§ 58.25 and 58.36, respectively, and the revision to be codified at 40 CFR § 58.46.

On April 19, 1994 and December 13, 1994, the New Hampshire DES submitted the PAMS SIP revision to the EPA. The EPA sent the State a letter on July 12, 1994 finding the submittal administratively complete.

The New Hampshire PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and affect compliance with the PAMS regulations, to be codified at 40 CFR part 58, as promulgated on February 12, 1993. The New Hampshire DES held a public hearing on the PAMS SIP revision on February 8, 1994.

II. Analysis of State Submission

1. Emission Inventory

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182 (a)(1) (see 57 FR 13565–13566, April 16, 1992). The EPA is approving the New Hampshire ozone base year emission inventory submitted to the EPA based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventory is acceptable or should be disapproved.

[1] Memorandum from J. David Mobley, Chief, Emission Inventory Branch, to Air Branch Chiefs, Region I–X, "Guidance on States" Failure to Submit Ozone and CO SIP Inventories," November 12, 1992.

[2] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992.

A. The Following Discussion Reviews the State Base Year SIP Inventory Approval Requirements

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.
8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources," U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.
9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.
10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emission Inventories", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions "1990 O3/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992[4] and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.[5]

New Hampshire's base year emission inventories meet each of these ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the New Hampshire 1990 base year inventories, which is available to the public as part of the docket supporting this action.

2. PAMS Network

The New Hampshire PAMS SIP revision will provide the State with the authority to establish and operate the PAMS sites, secure State funds for PAMS and provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR Part 58, "Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR part 58" (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled, "Final Boilerplate Language for the PAMS SIP Submittal", the CAA, and the General Preamble.

The September 2, 1993, Helms boilerplate memorandum stipulates that the PAMS SIP, at a minimum, must: provide for monitoring of criteria pollutants, such as ozone and nitrogen dioxide and non-criteria pollutants, such as nitrogen oxides, speciated VOCs, including carbonyls, as well as meteorological parameters; provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules; make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network; and provide a statement that SLAMS will employ Federal reference (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA which are not FRM or equivalent.

The New Hampshire PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its National Air Monitoring Stations (NAMS) monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR Part 58.

The New Hampshire PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR Part 58, Appendix A. The State also assures that the State's PAMS monitors will meet monitoring methodology requirements contained in 40 CFR Part 58, Appendix C. Lastly, the State assures that the New Hampshire PAMS network will be phased in over a period of five years as required in § 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region I Office as outlined under the "Addresses" section of this **Federal Register** document. The State's PAMS SIP submittal is also available for viewing at the New Hampshire State Office as outlined under the ADDRESSES section of this **Federal Register** document.

III. Final Action

1. Emission Inventory

New Hampshire has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

[4] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992.

[5] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993.

VOC

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Por-Dov-Roc	10.47	4.30	18.38	7.84	35.00	76.00
Bos-Law-Wor	17.37	6.73	27.13	4.65	36.05	91.93
Manchester	18.25	4.16	28.58	5.19	114.16	170.33

NO_X

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Por-Dov-Roc	2.71	23.12	18.96	1.93	NA	46.72
Bos-Law-Wor	4.56	0.85	26.38	1.95	NA	33.73
Manchester	4.83	73.43	33.70	2.37	NA	114.34

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Por-Dov-Roc	1.34	1.72	146.75	29.64	NA	179.44
Bos-Law-Wor	2.25	0.09	206.44	35.85	NA	244.63
Manchester	2.39	1.63	252.51	44.81	NA	301.35

New Hampshire has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the three nonattainment areas in the State. The inventory is complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD.

In today's final action, the EPA is fully approving the SIP 1990 base year ozone emission inventories submitted by New Hampshire to the EPA for the Portsmouth-Dover-Rochester serious nonattainment area, the New Hampshire portion of the Boston-Lawrence-Worcester serious nonattainment area, and the Manchester marginal nonattainment area as meeting the requirements of section 182(a)(1) of the CAA.

2. PAMS Network

In today's action, the EPA is fully approving the revision to the New Hampshire ozone SIP for PAMS.

The EPA is publishing these actions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve these SIP revisions and soliciting public comment on them. This action will be effective December 26, 1997 unless, by November 26, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that will withdraw the final actions. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 26, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 29, 1997.

John P. DeVillars,

Regional Administrator, Region I.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart EE—New Hampshire

2. Section 52.1533 is added to read as follows:

§ 52.1533 Emission inventories.

(a) The Governor's designee for the State of New Hampshire submitted a 1990 base year emission inventory for the entire state on January 26, 1993 as a revision to the State Implementation Plan (SIP). Subsequent revisions to the State's 1990 inventories were made, the last of which occurred on August 29, 1996. The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for the three nonattainment areas in the State. The three areas are the Portsmouth-Dover-Rochester serious area, the New Hampshire portion of the Boston-Lawrence-Worcester serious area, and the Manchester marginal area.

(b) The inventory is for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventory covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The Portsmouth-Dover-Rochester serious nonattainment area includes all of Strafford County and part of Rockingham County. The New Hampshire portion of the Boston-Lawrence-Worcester serious area includes portions of Hillsborough and Rockingham Counties. The Manchester marginal area contains all of Merrimack County and portions of Hillsborough and Rockingham Counties.

3. Section 52.1520 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1520 Identification of plan.

(c) * * *

(52) A revision to the New Hampshire SIP regarding ozone monitoring. The State of New Hampshire will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) State of New Hampshire Photochemical Assessment Monitoring Stations—Network Plan—Network Overview.

(ii) Additional material.

(A) NH–DES letter dated December 13, 1994, and signed by Thomas M. Noel, Acting Director, NH–DES.

[FR Doc. 97–28371 Filed 10–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[ET Docket No. 96–2; FCC 97–347]

Arecibo Coordination Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* establishes a Coordination Zone that covers the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rican Islands). The Coordination Zone requires applicants for new and modified radio facilities in various communications services within the Coordination Zone to provide notification of their proposed operations to the Arecibo Radio Astronomy Observatory (Observatory) near Arecibo,

Puerto Rico, and operated by Cornell University (Cornell), at the time their applications are submitted to the Commission. The Coordination Zone and notification procedures will enable the Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of problems through coordination between applicants and the Observatory.

EFFECTIVE DATE: December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 96-2, FCC 97-347, adopted September 26, 1997, and released October 15, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, N.W. Washington, D.C. 20036.

The establishment of the Coordination Zone was proposed in the Notice of Proposed Rule Making, 61 FR 10709, March 15, 1996.

Summary of the Report and Order

1. By this action, the Commission establishes a Coordination Zone that covers the Puerto Rican Islands. The Coordination Zone requires applicants for new and modified radio facilities in various communications services within the Coordination Zone to provide notification of their proposed operations to the Observatory at the time their applications are submitted to the Commission. The Observatory will have 20 days to file comments with the Commission regarding each application's potential for interference, and applicants will be responsible for making reasonable efforts to accommodate the interference concerns of the Observatory. The Coordination Zone and notification procedures will enable the Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of problems through coordination between applicants and the Observatory.

2. The Commission believes that the Observatory is a unique scientific tool, and finds that harmful interference to the Observatory's operations is a serious concern. We also agree with comments from Puerto Rican telecommunications service providers that their services are highly important and must be maintained. However, we note that we have a statutory obligation to prevent and resolve radio frequency interference through enforcement and effective spectrum management policies. Whenever possible, we attempt to streamline our processes and reduce the burden on licensees and license applicants, but in some instances a minimally increased burden must be imposed to allow the public the widest range of telecommunications benefits.

3. We agree with Cornell that sources of technical information currently available to the Observatory are insufficient. Further, the provision of technical information to the Observatory would be a minimal burden and could be done electronically at little or no cost to the applicant. We also agree with Cornell that the four-mile Commonwealth of Puerto Rico Protection Zone is inadequate to protect the Observatory's operations. Four miles is a relatively short range for many radio transmitters, and high power transmitters at a high elevation can interfere with the Observatory from a much greater distance. For similar reasons, we believe that a smaller Coordination Zone not encompassing the entirety of the Puerto Rican Islands would provide insufficient protection to the Observatory.

4. We disagree with comments from telecommunications providers who argue that the Coordination Zone will deprive the citizens of Puerto Rico of adequate radio service. We believe that if service providers and the Observatory work together, adequate service can be maintained without harming the operations of the Observatory. We also observe that adoption of a Coordination Zone would neither allocate additional spectrum for Radio Astronomy Service (RAS) use, nor provide the Observatory additional rights to spectrum allocated to other services. For that reason, we disagree with arguments that state that money expended by service providers to use frequencies in the Puerto Rican Islands is relevant to establishment of a Coordination Zone. Further, we disagree with comments that state that allowing the Observatory to challenge a license application would result in an illegal delegation of the Commission's authority to the Observatory to determine whether an application will be granted. We emphasize that while the Observatory may challenge an application, only the Commission can make the decision regarding the grant of that application.

5. Therefore, we are establishing a Coordination Zone that covers the Puerto Rican Islands. Within the Coordination Zone, applicants in affected services will be required to submit to the Observatory technical information about the proposed transmissions no later than the date the application is filed with the Commission. The technical submission must include: (1) proposed frequency and FCC Rule Part; (2) effective radiated power or effective isotropic radiated power; (3) antenna height; (4) antenna directivity and gain, if any; (5) geographic coordinates of the antenna (NAD-83 datum); and (6) type of emission; and (7) whether the proposed use is itinerant. To minimize the administrative burden on service applicants, we will permit this notification to be made either in writing or electronically. We believe that either notification method will help safeguard the Observatory's operations without diminishing the provision of important radio services to Puerto Rican citizens.

6. As stated in the *NPRM*, the sensitivity of the Observatory and the many types of services that could cause interference necessitates that we include in the Coordination Zone most services that operate on frequencies below 15 GHz. While we see no need to include frequencies above 15 GHz, which are not currently used or requested by the Observatory, harmonic and spurious emissions from different services are often spread across a wide range of spectrum below 15 GHz. Additionally, scientific exploration requires flexibility and the ability to passively utilize spectrum below 15 GHz that may not be allocated to the RAS.

7. With respect to Special Temporary Authorizations (STAs), we note that they are used in several services for a variety of purposes, and that some of these uses could cause substantial interference to the operations of the Observatory. We also find that it will be minimally burdensome in most instances for an STA applicant to provide technical information to the Observatory at the same time it files the STA request with the Commission. In the case of an emergency operation, the licensee will be permitted to notify the Observatory as soon as possible after beginning operation.

8. With respect to amateur radio operations, we are adopting our proposal to exclude from the Coordination Zone a large number of amateur stations. However, we agree with Cornell that new amateur beacon and repeater stations within 10 miles of the Observatory have a significant potential for interference—a greater potential than Civil Air Patrol repeaters or the Military Amateur Radio System service—and find that those amateur operations must be included in the Coordination Zone.

9. Accordingly, we are adopting our proposal that most applicants for part 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101 services within the Coordination Zone must notify the Observatory of their proposed operations. This requirement will not apply to applicants for services that operate on frequencies above 15 GHz, nor will it apply to applicants for mobile stations in land mobile radio services, temporary base or temporary fixed stations (other than short-term broadcast auxiliary operations), the Civil Air Patrol, new amateur stations (other than amateur beacon and repeater stations within 10 miles of the Observatory), mobile Earth terminals licensed under part 25, or stations aboard ships or aircraft. We emphasize again that we are not providing the Observatory additional rights to spectrum allocated to services, but that the high potential for interference from multiple services requires an inclusive Coordination Zone.

10. We acknowledge Cornell's concern that our proposed 20-day Observatory comment period is brief; however, we note that this same comment period is provided to the National Radio Astronomy Observatory (NRAO) and appears to have worked satisfactorily. Accordingly, we are adopting our proposal to permit the Observatory a 20-day comment period, commencing when the application is filed with us.

11. The Coordination Zone encompasses a large number of services, operating at differing powers and frequencies. Additionally, factors such as terrain and propagation characteristics further complicate interference evaluations. Therefore, we find that it would be extremely time-consuming and difficult for the Commission to establish interference standards that would apply to all service applicants. However, we concur with comments that state that interference guidelines could lessen coordination problems, and Cornell has proposed to develop such guidelines. While we are cognizant of the concerns of service providers regarding Cornell's objectivity in developing these guidelines, we believe that Cornell will have an incentive to cooperate with service providers. If Cornell develops unrealistically stringent guidelines, service providers would undoubtedly challenge them, resulting in a large administrative burden on Cornell. Further, under a guideline approach, the Commission would remain the sole entity that has the authority to rule on any service applications.

12. Accordingly, we are not establishing Commission interference standards, but are requiring that Cornell provide interference guidelines to service applicants so that applicants may consider protection to the Observatory in the early design phase of radio facilities. Cornell has stated that such guidelines can be made available to applicants in advance of application preparation. We believe that these guidelines will help ensure that coordination between applicants and the Observatory will proceed in a smooth manner, and as experience is gained by both applicants and Cornell, become routine.

13. The Commission also proposed requiring applicants to be responsible for making "reasonable efforts" to accommodate the interference concerns of the Observatory. We find that "reasonable efforts" will vary from case to case, depending on the degree of harm to the Observatory's operations and the extent of the change needed to prevent such harm. For example, if significant harm to the Observatory's operations could be avoided by a service applicant making a minor, low-cost change to its operations, making that change would be reasonable. On the other hand, if minor harm to the Observatory's operations could be avoided only by a service applicant making a major, high-cost change to its operations, making that change would be unreasonable. Nonetheless, to attempt to set forth a general definition of the term "reasonable efforts" would be extremely difficult, if not impossible. We find that use of this term in our rules without definition would not validate the Administrative Procedure Act. Further, we are encouraged that the Observatory has in the past successfully coordinated informally with many providers of Puerto Rican Island radio services, and believe that there is some understanding among service providers of what constitutes a "reasonable effort." We anticipate that future coordination will simply be on a more formal basis, and that the Observatory and service providers will come to mutually acceptable egreements in most cases.

14. To the extent that a service applicant and the Observatory agree that the applicant's proposed operations would cause harmful interference to the Observatory, the applicant may either pay to modify its own proposed operations or—with the consent of the Observatory—to upgrade the Observatory's facilities. Should a dispute arise between the Observatory and the applicant regarding whether the applicant has made a reasonable effort to avoid interference to the Observatory, the applicant may refuse to pay for any modifications or upgrades recommended by the Observatory and permit the Commission to resolve the dispute. To the extent that the Commission determines that reasonable efforts have been made by the applicant to protect the Observatory from interference, there will be no further obligation for the applicant to modify its proposed operations or to upgrade the Observatory's facilities. Consequently, if under those circumstances the Observatory believes that the applicant's proposed operations must be modified or its own facilities upgraded to protect the Observatory from interference, the Observatory will be required to pay for any such modification or upgrade.

15. We find that all modifications that have a potential to increase interference to the Observatory must be coordinated with the Observatory. However, we will rely on the engineering judgment of the service applicant to determine when a minor modification has the potential for increased interference. We believe this approach is preferable to requiring that all minor modifications be reported to the Observatory, because the latter approach could significantly increase the administrative burden on both the applicant and Cornell.

16. We have been streamlining our applications process for several commercial wireless radio services to reduce unnecessary paperwork and increase efficiency. For example, with respect to paging towers, cellular base stations, and PCS base stations, no individual station licenses are issued—rather, geographical licenses are issued to cover an entire area. Some commercial wireless entities argue that the Coordination Zone should not apply to these services, except to the extent that the Commission must be notified of their operations.

17. Although the Commission is streamlining the application process for commercial wireless services, we find no reason why transmitters in services in which individual licenses are not issued should not have to comply with the requirements of the Coordination Zone. Further, we note that operators in these services must comply with the notification requirements of the Radio Quiet Zone when new transmitters are introduced, and believe it will be minimally burdensome for them to notify the Observatory.

18. Accordingly, operators of transmitters in services in which no individual licenses are issued will be required to notify the Observatory at least 45 days prior to commencing operations of a new transmitter that may cause harmful interference to the operations of the Observatory. We will rely upon each operator to determine when a transmitter may pose an interference threat to the operations of the Observatory. As is the case with other services within the Coordination Zone, the Observatory will have 20 days to file comments with the Commission regarding any such transmitter.

19. We will permit part 90 service applicants to make their notifications to the Observatory through recognized frequency coordinators, while holding applicants responsible for making reasonable efforts to accommodate the interference concerns of the Observatory. We find that advance coordination with several parties, including the Observatory, is sufficient in cases in which no changes that could affect the operations of the Observatory are made to the application subsequent to such coordination. However, to the extent that such changes are made, the Observatory must be notified at the time the application is filed with the Commission. Our goal is to permit flexibility in coordination, while ensuring that the Observatory has adequate notice of applications that could affect its operations.

20. It is ordered, that parts 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101 are AMENDED. This action is authorized by Sections 4(i), 303(c), 303(f), 303(g), 303(r) and 309(j)(13) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 303(c), 303(f), 303(g), 303(r), and 309(j)(13).

Final Regulatory Flexibility Analysis

21. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *NPRM* in ET Docket No. 92–6.[1] The Commission sought written public comments on the proposals in the *NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[2]

Need for and Objective of the Rules

22. In this decision, the Commission establishes a Coordination Zone that covers the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rican Islands). The Arecibo Observatory is the largest and most sensitive radio astronomy facility in the world and the increasing number of communications services on Puerto Rico has cause increased interference problems for the Observatory. The Coordination Zone is needed to inform the Arecibo Observatory of future stations that may have a potential to interfere with the Observatory's operations and to encourage applicants for radio services to coordinate their operations with the Observatory to prevent interference problems.

Summary of Issues Raised by the Public Comments in Response to the IRFA

23. No comments were filed in direct response to the IRFA. In general comments to the *NPRM*, however, some parties raised concerns that establishment of a Coordination Zone might burden Commission licensees and license applicants, including some entities that may be small businesses. Specifically, some parties that would be affected by the Coordination Zone argue that it is an unnecessary burden that would delay the provision of communications services and increase the costs of establishing an operation with limited benefit to the Observatory. Some comments argue that this action would give the Observatory additional rights to spectrum not allocated to the Radio Astronomy Service and would delegate authority to the Observatory to determine whether a proposed station would cause interference and whether the application should be granted. However, the Commission has determined that providing the Observatory information regarding proposed facilities would be a minimal burden, and that the public benefit in protecting the Observatory's operations from harmful interference justifies any minimal burden that may be created. Further, an applicant may refuse to make modifications that it believes are unreasonable and permit the Commission to determine whether such modifications are necessary. If the Commission determines that an applicant has made a reasonable effort to address the interference concerns of the Observatory, the application may be granted even if the resultant operations cause interference to the Observatory.

Description and Estimate of Small Entities Subject to Which Rules Will Apply

24. The rules adopted in the *Report and Order* will apply to applicants for part 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 94, 95 and 97 services within the Coordination Zone, with the following exceptions: The rules will apply only to applicants for services that operate on frequencies under 15 GHz, and will not apply to applicants for mobile stations in land mobile radio services, temporary base or temporary fixed stations (other than short-term broadcast auxiliary operations), the Civil Air Patrol, new amateur stations (other than amateur beacon and repeater stations within 10 miles of the Observatory), mobile Earth terminals licensed under Part 25, or stations aboard ships or aircraft. The Commission has not developed a definition of small entities applicable to the services affected by this *Report and Order*. Therefore, the applicable definition of small entity is the one under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[3] We acknowledge the likelihood that under this definition the great majority of entities affected by the *Report and Order* are small entities; however, the number of such entities cannot be accurately estimated.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

25. The Coordination Zone will require applicants for new and modified radio facilities in various communications services within the affected areas to provide notification of their proposed operations to the Observatory, at the time their applications are submitted to the Commission. The Coordination Zone will facilitate advanced coordination between the Observatory and applicants for new services so that applicants can consider the protection of the Observatory when designing their system. Service applicants will be responsible for making reasonable efforts to accommodate the interference concerns of the Observatory and the Observatory will be permitted to file comments regarding an application up to 20 days after the application is filed with the Commission.

[1] 11 FCC Rcd 1716 (1996).

[2] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[3] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4899.

26. The Coordination Zone encompasses a large number of services, operating at differing powers and frequencies. Additionally, factors such as terrain and propagation characteristics further complicate interference evaluations. Therefore, we find that it would be extremely time-consuming and difficult for the Commission to establish interference standards that would apply to all service applicants. However, we concur with comments that state that interference guidelines could lessen coordination problems, and Cornell has proposed to develop such guidelines. While we are cognizant of the concerns of service providers regarding Cornell's objectivity in developing these guidelines, we believe that Cornell will have an incentive to cooperate with service providers. If Cornell develops unrealistically stringent guidelines, service providers would undoubtedly challenge them, resulting in a large administrative burden on Cornell. Further, under a guideline approach, the Commission would remain the sole entity that has the authority to delay any service applications, if we find that an applicant has not made reasonable efforts to avoid interference to the Observatory.

27. We are not establishing Commission interference standards, but are adopting SBE's alternative proposal that Cornell provide interference guidelines to service applicants so that applicants may consider protection to the Observatory in the early design phase of radio facilities. Cornell has stated that such guidelines can be made available to applicants in advance of application preparation. We believe that these guidelines will help ensure that coordination between applicants and the Observatory will proceed in a smooth manner, and as experience is gained by both applicants and Cornell, become routine.

Steps Taken to Minimize Significant Economic Impact on Small Entities Consistent with Stated Objectives

28. To the extent that a service applicant and the Observatory agree that the applicant's proposed operations would cause harmful interference to the Observatory, the applicant may either pay to modify its own proposed operations or—with the consent of the Observatory—to upgrade the Observatory's facilities. Should a dispute arise between the Observatory and the applicant regarding whether the applicant has made a reasonable effort to avoid interference to the Observatory, the applicant may refuse to pay for any modifications or upgrades recommended by the Observatory and permit the Commission to resolve the dispute. To the extent that the Commission determines that reasonable efforts have been made by the applicant to protect the Observatory from interference, there will be no further obligation for the applicant to modify its proposed operations or to upgrade the Observatory's facilities. Consequently, if under those circumstances the Observatory believes that the applicant's proposed operations must be modified or its own facilities upgraded to protect the Observatory from interference, the Observatory will be required to pay for any such modification or upgrade.

29. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

List of Subjects

47 CFR Part 5

Radio.

47 CFR Part 21

Communications common carriers, Radio.

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 23

Communications common carriers, Radio.

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 25

Communications common carriers, Radio.

47 CFR Part 26

General wireless communications service, Radio.

47 CFR Part 27

Wireless communications service, Radio.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 74

Radio broadcasting, Television broadcasting.

47 CFR Part 78

Cable television, Radio.

47 CFR Part 80

Marine safety, Radio.

47 CFR Part 87

Defense communications, Radio.

47 CFR Part 90

Land mobile, Radio.

47 CFR Part 95

Radio.

47 CFR Part 97

Civil defense, Radio.

47 CFR Part 101

Fixed microwave services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Parts 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101 are amended as follows:

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

1. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

2. Section 5.70 is added to read as follows:

§ 5.70 Notification to the Arecibo Observatory.

Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(a) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state

the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(b) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(c) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.113 is amended by revising the section heading and adding new paragraph (d) to read as follows:

§ 21.113 Quiet zones and Arecibo Coordination Zone.

* * * * *

(d) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.369 is amended by revising the section heading and adding new paragraph (d) to read as follows:

§ 22.369 Quiet zones and Arecibo Coordination Zone.

* * * * *

(d) *Arecibo, Puerto Rico.* The requirements of this paragraph are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference.

(1) Carriers planning to construct and operate a new Public Mobile Services station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques and Culebra or planning a modification of an existing authorization on these islands that would increase the likelihood of the authorized facility causing interference must notify, at least 20 days in advance, the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (d)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (d)(1) of this section was made. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated.

(3) If an objection to the planned operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

1. The authority citation for part 23 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. Section 23.20 is amended by adding paragraph (f) to read as follows:

§ 23.20 Assignment of frequencies.

* * * * *

(f) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. A new § 24.18 is added to read as follows:

§ 24.18 Notification to the Arecibo Observatory.

The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference.

Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques and Culebra or planning a modification of an existing authorization on these islands that would increase the likelihood of the authorized facility causing interference must notify, at least 20 days in advance of such operation, the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Licensees may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. If an objection to the planned operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.203(i) is added to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(i) Any applicant for a new permanent transmitting fixed earth station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of such station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

* * * * *

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 26 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. A new § 26.105 is added to read as follows:

§ 26.105 Notification to the Arecibo Observatory.

The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques and Culebra or planning a modification of an existing authorization on these islands that would increase the likelihood of the

authorized facility causing interference must notify, at least 20 days in advance of such operation, the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Licensees may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. If an objection to the planned operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

2. Section 27.62 is added to read as follows:

§ 27.62 Notification to the Arecibo Observatory.

The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques and Culebra or planning a modification of an existing authorization on these islands that would increase the likelihood of the authorized facility causing interference must notify, at least 20 days in advance of such operation, the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Licensees may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. If an objection to the planned operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.1030 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraph (a)(2) to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(a) * * *

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

2. A new § 74.24(j) is added to read as follows:

§ 74.24 Short-term operation.

* * * * *

(j)(1) This paragraph applies only to operations which will transmit on frequencies under 15 GHz. Prior to commencing short-term operation of a remote pickup broadcast station, a remote pickup automatic relay station, an aural broadcast STL station, an aural broadcast intercity relay station, a TV STL station, a TV intercity relay station, a TV translator relay station, a TV pickup station, or a TV microwave booster station within the 4-mile (6.4 kilometer) radius Commonwealth of Puerto Rico Protection Zone (centered on NAD–83 Geographical Coordinates North Latitude 18°20′38.28″, West Longitude 66°45′09.42″), an applicant must notify the Arecibo Observatory, located near Arecibo, Puerto Rico. Operations within the Puerto Rico Coordination Zone (*i.e.*, on the islands of Puerto Rico, Desecheo, Mona, Vieques, or Culebra), but outside the Protection Zone, whether short term or long term, shall provide notification to the Arecibo Observatory prior to commencing operation. Notification should be directed to the following: Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, Tel. (809) 878–2612, Fax (809) 878–1861, E-mail prcz@naic.edu.

(2) Notification of short-term operations may be provided by telephone, fax, or electronic mail. The notification for long-term operations shall be written or electronic, and shall set forth the technical parameters of the proposed station, including the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Observatory. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. After receipt of such applications in non-emergency situations, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted. In emergency situations in which prior notification or approval is not practicable, notification or approval must be accomplished as soon as possible after operations begin.

PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.19 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding new paragraph (c)(2) to read as follows:

§ 78.19 Interference.

* * * * *

(c) * * *

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the transmit antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective isotropic radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(iii) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. A new § 80.21(f) is added to read as follows:

§ 80.21 Supplemental information required.

* * * * *

(f) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.23 is amended by redesignating paragraph (a) as paragraph(a)(1) and adding new paragraph (a)(2) to read as follows:

§ 87.23 Supplemental information required.

(a) * * *

(2) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(iii) The provisions of this paragraph do not apply to Civil Air Patrol stations or to operations that transmit on frequencies above 15 GHz.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.129(e) is revised to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(e) Applicants proposing to construct a radio station in the vicinity of radio astronomy observatories in West Virginia; on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra; or in the vicinity of a radio receiving zone in Colorado must submit the statements prescribed by § 90.177.

* * * * *

3. Section 90.177 is amended by revising the introductory paragraph and adding new paragraph (f) to read as follows:

§ 90.177 Protection of certain radio receiving locations.

This section pertains to applications for new or modified authorizations in the vicinity of the National Radio Astronomy Observatory, Green Bank, Pocahontas County, WV; the Naval Radio Research Observatory, Sugar Grove, Pendleton County, WV; the Arecibo Observatory, which is part of the National Astronomy and Ionosphere Center, located near Arecibo, PR; the Table Mountain Radio Receiving Zone, Boulder County, CO.; the Federal Communications Commission monitoring stations; and other protected sites.

* * * * *

(f) Any applicant for a new permanent base or fixed station to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. A new § 95.42 is added to read as follows:

§ 95.42 Considerations in the Puerto Rico Coordination Zone.

Any applicant for a new base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(c) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

3. A new § 95.192(d) is added to read as follows:

§ 95.192 (FRS Rule 2) Authorized locations.

* * * * *

(d) Anyone intending to operate an FRS unit on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

4. A new § 95.206(c) is added to read as follows:

§ 95.206 (R/C Rule 6) Are there any special restrictions on the location of my R/C stations?

* * * * *

(c) Anyone intending to operate an R/C station on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

5. A new Section 95.405(d) is added to read as follows:

§ 95.405 (CB Rule 5) Where may I operate my CB station?

* * * * *

(d) Anyone intending to operate a CB station on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

6. A new § 95.840 is added to read as follows:

§ 95.840 Considerations in the Puerto Rico Coordination Zone.

Any applicant for a new IVDS system authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(a) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation

at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(b) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

7. A new § 95.1003(c) is added to read as follows:

§ 95.1003 Authorized locations.

* * * * *

(c) Anyone intending to operate an LPRS transmitter on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the transmitter. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. A new § 97.203(h) is added to read as follows:

§ 97.203 Beacon station.

* * * * *

(h) The provisions of this paragraph do not apply to beacons that transmit on the 1.2 cm or shorter wavelength bands. Before establishing an automatically controlled beacon within 16 km (10 miles) of the Arecibo Observatory or before changing the transmitting frequency, transmitter power, antenna height or directivity of an existing beacon, the station licensee must give written notification thereof to the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Licensees who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Licensees may wish to consult interference guidelines provided by Cornell University.

(2) If an objection to the proposed operation is received by the FCC from the Arecibo Observatory, Arecibo, Puerto Rico, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

3. A new § 97.205(h) is added to read as follows:

§ 97.205 Repeater station.

* * * * *

(h) The provisions of this paragraph do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands. Before establishing a repeater within 16 km (10 miles) of the Arecibo Observatory or before changing the transmitting frequency, transmitter power, antenna height or directivity of an existing repeater, the station licensee must give written notification thereof to the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Licensees who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Licensees may wish to consult interference guidelines provided by Cornell University.

(2) If an objection to the proposed operation is received by the FCC from the Arecibo Observatory, Arecibo, Puerto Rico, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303, unless otherwise noted.

2. Section 101.123 is amended by revising the section heading and adding new paragraph (d) to read as follows:

§ 101.123 Quiet zones and Arecibo Coordination Zone.

* * * * *

(d) Any applicant for a new permanent fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state

the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, effective radiated power, and whether the proposed use is itinerant. Generally, submission of the information in the technical portion of the FCC license application is adequate notification. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Arecibo Observatory.

(2) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. If the Commission determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

[FR Doc. 97–28296 Filed 10–24–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74, 78, and 101

[ET Docket No. 97–99; FCC 97–348]

Reallocation of 18/24 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order* amends the Commission's rules regarding Auxiliary Broadcast Services, Cable Television Relay Service, and Fixed Microwave Services to specify permanent coordination criteria between these services and Government operations in the 17.8–19.7 GHz band. This action is taken to advance, support, and accommodate the national defense.

EFFECTIVE DATE: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket 97–99, FCC 97–348, adopted September 26, 1997, and released October 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, D.C. 20036.

Summary of the Order

1. This proceeding was initiated pursuant to a request from the National Telecommunications and Information Administration (NTIA), on behalf of the Department of Defense, to protect Government Earth stations in the17.8–19.7 GHz band in the Washington, DC, and Denver, CO, areas in the interest of national security. In the original *Order* in this proceeding (Reallocation Order), 62 FR 24576, May 6, 1997, we amended our Table of Frequency Allocations and Part 101 of our rules to permit Fixed Service use of the 24.25–24.45 GHz and 25.05–25.25 GHz bands ("24 GHz band"). We took that action to facilitate relocation of the digital electronic message service ("DEMS") from the 18.82–18.92 GHz and 19.16–19.26 GHz bands ("18 GHz band") to the 24 GHz band.

2. NTIA also requested that we establish coordination zones for fixed service licensees located at 18 GHz. Specifically, to protect Government users, NTIA requested that we replace our interim coordination procedures for non-DEMS fixed services in the 18 GHz band with permanent coordination requirements. In the *Reallocation Order*, we stated that we would adopt rules consistent with the exclusion and coordination requirements requested by NTIA in a future Order. However, we found it necessary in the *Reallocation Order* to immediately modify the rules for low power operations at 18 GHz. Finally, we stated that pending adoption of a future Order consistent with NTIA's request, we would continue to protect Government operations at 18 GHz from other non-Government operations by using the interim procedures currently in place.

3. As requested by NTIA, we establish for the 17.8–19.7 GHz band permanent exclusion and coordination zones with regard to applicable Auxiliary Broadcast (Part 74), Cable Television Relay (Part 78), and Fixed Microwave (Part 101) operations in Washington, D.C. and Denver, Colorado. This action is necessary to minimize potential interference to Government operations. Our action herein will ensure that Government satellite Earth stations important to national security will operate without harmful interference being caused by non-Government operations.

4. We take this action to minimize the likelihood of interference to military communications. Accordingly, we find that notice and comment procedures are unnecessary and contrary to the public interest, and need not be followed prior to the adoption of these rules. See 5 U.S.C. § 553 (a)(1), (b)(3)(B); *Bendix Aviation Corp.* v. *F.C.C.*, 272 F.2d 533 (D.C. Cir. 1959), *cert. denied sub nom. Aeronautical Radio, Inc.* v. *U.S.*, 361 U.S. 965 (1960).

5. It is ordered, that parts 74, 78, and 101 of the Commission's Rules are amended. This action is authorized by Sections 4(i), 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 145(i), 303(c), 303(f), and 303(r).

List of Subjects

47 CFR Part 74

Communications equipment, Radio.

47 CFR Part 78

Cable television, Radio.

47 CFR Part 101

Fixed microwave services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Parts 74, 78, and 101 are amended as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

2. Section 74.32 is added to read as follows:

§ 74.32 Operation in the 17.8–19.7 GHz band.

(a) To minimize or avoid harmful interference to Government Satellite Earth Stations located in the Denver, Colorado and Washington, D.C. areas, any application for a new station license to operate in the 17.8–19.7 GHz band, or for modification of an existing station license in this band which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such

a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

Denver, CO Area

Rectangle 1:
41°30'00" N. Lat. on the north
103°10'00" W. Long. on the east
38°30'00" N. Lat. on the south
106°30'00" W. Long. on the west
Rectangle 2:
38°30'00" N. Lat. on the north
105°00'00" W. Long. on the east
37°30'00" N. Lat. on the south
105°50'00" W. Long. on the west
Rectangle 3:
40°08'00" N. Lat. on the north
107°00'00" W. Long. on the east
39°56'00" N. Lat. on the south
107°15'00" W. Long. on the west

Washington, D.C. Area

Rectangle
38°40'00" N. Lat. on the north
78°50'00" W. Long. on the east
38°10'00" N. Lat. on the south
79°20'00" W. Long. on the west

or

(b) Within a radius of 178 km of 38°48'00" N. Lat./76° 52'00" W. Long.

(c) In addition, no application seeking authority to operate in the 17.8–19.7 GHz band will be accepted for filing if the proposed station is located within 20 km of the following coordinates:

Denver, CO area: 39°43'00" N. Lat./ 104°46'00" W. Long.
Washington, DC area: 38°48'00" N. Lat. / 76°52'00" W. Long.

Note to § 74.32: The coordinates cited in this section are specified in terms of the "North American Datum of 1983 (NAD 83)" with an accuracy of ±30 meters with respect to the "National Special Reference System".

PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.19 is amended by adding paragraph (f) to read as follows:

§ 78.19 Interference.

* * * * *

(f) Protection to the Federal Government's receive earth station perations in the Denver, Colorado and Washington D.C. areas in the 17,800 to 19,700 MHz band.

(1) With the exception of applicants for a station authorization to operate within a 5 km radius of 39°40'23" N Lat. and 105°13'03" W Long (Morrison, CO), applicants will not be authorized to operate within a 50 km radius of 39°43'00 N Lat. and 104°46'00" W Long. (Denver, CO) and within a 50 km radius of 38°48'00" N Lat. and 76°52'00" W Long. (Washington, DC).

(2) To minimize or avoid harmful interference to Government Satellite Earth Stations located in the Denver, Colorado and Washington, D.C. areas, any application for a new station license to operate in the 17.8-19.7 GHz band, or for modification of an existing station license in this band which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

(i) A circular area within a 5 km radius of 39°40'23" N Lat. and 105°13'03" W Long. (Morrison, CO)

(ii) Within the rectangular areas defined as follows [vicinity of Denver, CO):

Rectangle 1:
414°30'00" N. Lat. on the north
103°10'00" W. Long. on the east
38°30'00" N. Lat. on the south
106°30'00" W. Long. on the west
Rectangle 2:
38°30'00" N. Lat. on the north
105°00'00" W. Long. on the east
37°30'00" N. Lat. on the south
105°50'00" W. Long. on the west
Rectangle 3:
40°08'00" N. Lat. on the north
107°00'00" W. Long. on the east
39°56'00" N. Lat. on the south
107°15'00" W. Long. on the west

(iii) Within the rectangle and circle areas as follows (vicinity of Washington, DC):

Rectangle
38°40'00" N. Lat. on the north
78°50'00" W. Long. on the east
38°10'00" N. Lat. on the south
79°20'00" W. Long. on the west or

or

(iv) Within a radius of 178 km of 38°48'00" N. Lat. / 76°52'00" W. Long.

Note to § 78.19: The coordinates cited in this section are specified in terms of the "North American Datum of 1983 (NAD 83)" with an accuracy of −30 meters with respect to the "National Special Reference System."

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303, unless otherwise noted.

2. Section 101.31 is amended by revising paragraph (b)(3) introductory text and paragraph (e)(1)(v) and adding paragraph (b)(6) to read as follows:

§ 101.31 Special temporary, temporary, and conditional authorizations.

* * * * *

(b) * * *

(3) Except for operations in the 17.8–19.7 GHz band, the licensee of stations which are authorized pursuant to the provisions of paragraph (b) of this section shall notify the Commission at least five (5) days prior to installation of the facilities stating:

* * * * *

(6) Operations in the 17.8–19.7 GHz band are prohibited in the areas defined in § 101.123(d)(2). Operations proposed in the areas defined in § 101.123(d)(1) may not commence without prior specific notification to, and authorization from, the Commission. Such notification will contain the information specified in paragraph (b)(3) of this section.

* * * * *

(e) * * *

(1) * * *

(v) The station site does not lie within 56.3 kilometers of any international border, within a radio "Quiet Zone" identified in § 101.123 or, if operated on frequencies in the 17.8–19.7 GHz band, within any of the areas identified in § 101.123(d);

* * * * *

3. Section 101.123 is amended by adding paragraph (d) to read as follows:

§ 101.123 Quiet zones.

* * * * *

(d)(1) To minimize or avoid harmful interference to Government Satellite Earth Stations located in the Denver, Colorado and Washington, D.C. areas, any application for a new station license to operate in the 17.8–19.7 GHz band (except for low power operations governed by § 101.147(r)(10)), or for modification of an existing station license in this band which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordianted with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

Denver, CO Area

Rectangle 1:
41°30'00" N. Lat. on the north
103°10'00" W. Long. on the east
38°30'00" N. Lat. on the south
106°30'00" W. Long. on the west
Rectangle 2:
38°30'00" N. Lat. on the north
105°00'00" W. Long. on the east
37°30'00" N. Lat. on the south
105°50'00" W. Long. on the west
Rectangle 3:
40°08'00" N. Lat. on the north
107°00'00" W. Long. on the east
39°56'00" N. Lat. on the south
107°15'00" W. Long. on the west

Washington, D.C. Area

Rectangle
38°40'00" N. Lat. on the north
78°50'00" W. Long. on the east
38°10'00" N. Lat. on the south
79°20'00" W. Long. on the west

or

(2) Within a radius of 178 km of 38°48'00" N. Lat./78°52'00" W. Long.

(3) In addition, no application seeking authority to operate in the 17.8–19.7 GHz band will be accepted for filing if the proposed station is located within 20 km (or within 55 km if the application is for an outdoor low power operation pursuant to § 101.147(r)(10)) of the following coordinated:

Denver, CO area: 39°43'00" N. Lat./ 104°46'00" W. Long.
Washington, DC area: 38°48'00" N. Lat./ 76°52'00" W. Long.

Note to § 101.123: The coordinates cited in this section are specified in terms of the "North American Datum of 1983 (NAD 83)" with an accuracy of ±30 meters with respect to the "National Special Reference System".

[FR Doc. 97–28297 Filed 10–24–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 101697B]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher/processors to vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI) and is reallocating Pacific cod from vessels using jig gear to vessels using hook-and-line or pot gear in the BSAI. These actions are necessary to allow the 1997 total allowable catch (TAC) of Pacific cod to be harvested. They are intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.) October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(5), the Pacific cod TAC for the BSAI was established as 270,000 metric tons (mt) by the Final 1997 Harvest Specifications for Groundfish for the BSAI (62 FR 7168, February 18, 1997). Of this amount, 5,400 mt was allocated to vessels using jig gear, 126,900 mt to vessels using trawl gear, and 137,700 mt to vessels using hook-and-line or pot gear. The amount of Pacific cod TAC allocated to trawl gear vessels was further allocated 50 percent to catcher vessels (63,450 mt) and 50 percent (63,450 mt) to catcher/processor vessels pursuant to § 679.20(a)(7)(i)(B).

Pursuant to § 679.20(a)(7)(ii)(A) NMFS made the projected unused amount of trawl catcher/processor Pacific cod (2,000 mt) available to the trawl catcher vessel sector. The trawl catcher vessel portion was increased to 65,450 mt (62 FR 51609, October 2, 1997).

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 10,000 (mt) of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A).

Therefore, in accordance with § 679.20(a)(7)(ii), NMFS apportions the projected unused amount, 10,000 mt of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear.

The Regional Administrator has determined that vessels using jig gear will not harvest 5,000 mt of Pacific cod by the end of the year. Therefore, in accordance with § 679.20(a)(7)(iii) NMFS is reallocating the unused amount of 5,000 mt of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear.

Classification

This action is taken under 50 CFR 679.20 and is exempt from OMB review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(b)(B) and (d)(3) of the Administrative Procedure Act and 50 CFR 679.20(b)(3)(iii)(A), that good cause exists for waiving the opportunity for public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 22, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28420 Filed 10–22–97; 2:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 207
Monday, October 27, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 757 series airplanes, that would have required the replacement of certain discrepant ram air turbine (RAT) deployment actuator assemblies that were shipped improperly. That proposal was prompted by reports of certain RAT actuators that failed to deploy upon command due to interference in the actuator locking mechanism caused by damage incurred during shipping of the actuators. This new action revises the proposed rule to require the use of an FAA-approved maintenance program in lieu of the use of shipping procedures prescribed in that proposal. Failure of the RAT to deploy, specifically during a dual engine failure, would result in loss of hydraulic power and would adversely affect the continued safe flight and landing of the airplane.

DATES: Comments must be received by November 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sheila I. Mariano, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 757 series airplanes was published in the **Federal Register** on August 6, 1996 (61 FR 40758). That NPRM would have required the replacement of certain discrepant ram air turbine (RAT) deployment actuator assemblies with units that have been modified (repaired and reidentified) and shipped in a specific fashion prior to installation. It also proposed to require that any RAT installed on an airplane in the future must have been modified and shipped properly prior to installation.

That NPRM was prompted by several reports indicating that certain RAT deployment actuators failed to deploy upon command due to interference in the actuator locking mechanism. The interference condition was caused by damage that had been incurred during shipping of the actuator assembly.

The actions specified by that NPRM were intended to ensure that the RAT is deployed when commanded to do so. Failure of the RAT to deploy, specifically during a dual engine failure, would result in loss of hydraulic power, which would adversely affect the continued safe flight and landing of the airplane.

Explanation of New Service Information

Since the issuance of that NPRM, the FAA has reviewed and approved two new Arkwin Industries service bulletins. (Arkwin Industries, Inc., is the manufacturer of the subject RAT deployment actuator assemblies.) These new service bulletins are essentially identical to the original issues, but contain certain changes regarding warranty, shipping, and price and availability information. Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 3, dated February 7, 1997, includes the warranty and shipping information for the RAT. Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 3, dated February 7, 1997, includes clarification of price and availability information.

Consideration of Comments Received

Since the issuance of that NPRM, the FAA has given due consideration to the comments received in response to the

NPRM. Certain of these comments and the information they provided have led the FAA to consider making certain significant changes to the proposal. These comments and the changes prompted by them are explained below:

Request to Require Revision of the Maintenance Program

Several commenters request that the proposal be revised to allow operators to change their FAA-approved maintenance program to incorporate the procedures specified in the proposal. These commenters express concern over the difficulty there will be in attempting to use standard recordkeeping procedures to show compliance with the proposed provisions that would mandate the use of a particular shipping container and shipping sleeve when transporting the actuator assemblies. The commenters also suggest that the personnel involved in shipping and receiving usually are not familiar with the stringent recordkeeping requirements imposed by the AD process; as a result, implementation of the proposed rule could prove costly and difficult. The commenters state that, while the proposed rule attempts to associate shipping requirements with the task of installing the modified RAT on the airplane, in actuality, the technician who signs the paperwork for installing the RAT cannot be held responsible for determining whether the RAT has been shipped in the proper container during the various stages of transport. Further, these commenters point out that airworthy parts are successfully shipped every day within every operator's FAA-approved maintenance program, so it is unnecessary to create and maintain a separate AD procedure specifically for shipping the subject actuator assembly.

The FAA partially concurs with the commenters' requests. The FAA acknowledges that, through the maintenance program, compliance with the required actions can be more easily demonstrated. Therefore, the FAA has changed the proposed AD to require that operators revise their FAA-approved maintenance program to include the use of the shipping container and shipping sleeve assembly specified in Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 3, dated February 7, 1997, whenever the deployment actuator of the RAT is removed from the airplane. This action is described in paragraph (a) of this AD.

However, the FAA does not concur that stringent recordkeeping requirements will prove costly and difficult. The FAA contends that by revising the maintenance program, the operators may choose how to track proper shipment of the RAT's. This may be demonstrated through the use of shipping tags, which the FAA contends would not cause an undue burden on the operators. In addition, the FAA does not concur with the commenter's statement that the technician who signs the paperwork for installing the RAT cannot be held responsible for determining whether proper shipping procedures were followed. The FAA finds that, through the maintenance program, an individual (e.g., technician or installer) may be designated to ensure that proper shipping procedures were used to prevent damage during shipment.

In addition, the FAA acknowledges the commenter's statement that within every operator's FAA-approved maintenance program, airworthy parts can be shipped successfully, so there is no reason to maintain a separate AD procedure for shipping the RAT actuator assemblies. However, in this case, there are no FAA requirements for shipping RAT actuators because the FAA did not foresee that the actuators would be susceptible to damage during shipment. In addition, the FAA finds that practices may vary among operators when shipping airworthy parts. Therefore, in order to minimize the probability of damage to the actuators, the FAA concludes that the requirements for shipping the actuators must be included in this AD and added to the operator's maintenance program.

Request to Exempt Certain Actuators

One commenter, a U.S. operator, requests that a stipulation be added to the proposal to "exempt" those actuators that have been modified and delivered directly from Boeing to operators as equipment on new airplanes. As an alternative to this suggestion, the commenter requests that the proposal include data from Boeing or Arkwin that indicate the serial numbers of actuators that meet the specifications of Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994. As justification for these requests, this commenter states that the majority of its RAT deployment actuator assemblies were received as on-aircraft equipment when the airplanes were delivered new from Boeing. All of these on-aircraft actuators have been modified, as indicated by the "B" suffix on the serial number; however, this operator has no way of knowing whether these specific actuators were shipped (prior to installation) in accordance with the Arkwin service bulletin.

The FAA partially concurs with the commenter's request. However, in responding to this commenter, the FAA finds that some clarification is necessary:

The commenter's justification suggests that modified actuators having a "B" suffix in the serial number should be exempt because they were delivered by the manufacturer as equipment on a new airplane. This justification assumes that the manufacturer shipped the actuator properly. While this may be true, the FAA considers that the identified problems will recur if the RAT is removed and shipped after delivery (i.e., as a replacement to another facility). Therefore, those operators that have received the modified "B" RAT as delivered on the airplane are "exempt" only if it can be verified that the RAT was not removed or shipped after delivery of the airplane.

As far as the commenter's request for the serial numbers of actuators that meet the specifications of Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, the FAA reiterates that all of the actuators—all serial numbers from 00001 and subsequent—are suspect if they have not been modified and/or have not been shipped properly. The FAA finds that the only way to know if a modified actuator is not susceptible to the failures (and thus "exempt" from the requirements of this AD) is to know that it has been shipped properly. Besides reviewing shipping records or tags, the only other way to determine this is to know whether the actuator had been removed from an airplane and then shipped.

In light of this comment, the FAA finds that it is appropriate to revise the proposal to require that operators first inspect the identification plate on the deployment actuator of the RAT to determine the actuator serial number. Certain actuators would be required to be removed and replaced immediately; namely:

1. Any actuator having Boeing part number (P/N) S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005) and a serial number of 00001 through 00631 inclusive, with no suffix letter "B"; or

2. Any actuator having Boeing P/N S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005) and a serial number of 00001 through 00631 inclusive, with a suffix letter "B"; or a serial number of 00632 or subsequent; and if that actuator had been removed previously from an airplane and shipped in the extended position.

No action would be required if the actuator has Boeing P/N S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), and has a serial number of 00001 through 00631 inclusive, with a suffix letter "B"; or has a serial number of 00632 or subsequent; and if it is determined that the actuator had not been removed previously from an airplane, or if the actuator had been removed and shipped in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2 or Revision 3.

Request to Allow In-House Modification

One operator requests that the proposal be revised to allow operators to modify the actuator assemblies in-house if they have the equipment to successfully modify and test the unit in a manner equivalent to that described in the referenced Arkwin service bulletin. This commenter points out that NOTE 2 of the proposal and the Arkwin service bulletins imply that only Arkwin can successfully accomplish this modification; however, the commenter maintains that this is not the case. Further, the commenter states that, if the unit is modified in-house, the safety concerns related to the problems of transporting of the units between Arkwin and its customers would be minimized.

The FAA concurs. The FAA acknowledges that Arkwin is not the only supplier that can modify and test the units. The proposal has been revised to indicate that the modification may be accomplished by Arkwin or any other FAA-approved facility.

Requests to Permit a Functional Test Only

Several commenters request that the proposal be revised to permit operators to perform only a functional test to verify deployment of the RAT in those cases where the RAT has not been removed, reworked, or subsequently shipped. These commenters state that they have been performing an on-wing functional check of the RAT at every scheduled "C" check, and have found no RAT that has failed to deploy. These commenters consider this type of functional test to be sufficient to verify proper operation of the RAT.

The FAA does not concur. The FAA does not consider that a functional test is sufficient to detect the type of latent failures caused by the damaged lock rods, pins, etc. Although failures have been discovered during functional testing of airplanes in production, there have been at least two in-service failures, which were not detected prior to delivery of the airplane. These problems were related to damage that was incurred during the shipping of the RAT to the aircraft manufacturer prior to delivery. The FAA has identified the RAT's that were not shipped correctly as those with serial numbers 00001 through 00631 inclusive; these actuators must be inspected. Those RAT's with serial numbers 00632 and subsequent that were delivered on the airplane must also be inspected if they have been removed or shipped after delivery of the airplane.

Requests To Extend Compliance Time

Several commenters request that the compliance time for replacing discrepant RAT deployment actuators be extended beyond the proposed 30 months. These commenters are concerned that an ample number of replacement actuators would not be available for the affected fleet. One commenter states that Arkwin has committed to a turnaround time of 30 days for modifying the actuators; however, this commenter, a U.S. operator, indicates that if it were required to replace all 31 of the actuators in its fleet, neither it nor Arkwin could meet the 30-month compliance deadline. Another commenter points out that if all of the 631 (non-modified) actuators needed to be replaced, Arkwin would have to process 21 units per month during the 30-month compliance time; however, the commenter states that representatives from Arkwin indicated that they "could not handle 21 units per month."

The FAA does not concur. The 30-month compliance time was determined after discussions with both Boeing and Arkwin. That compliance period takes into consideration not only the safety implications, but the availability of necessary parts to retrofit the U.S. fleet and the practical aspect of performing the required actions during an interval of regularly scheduled maintenance. The FAA has received no indication from Arkwin that an ample number of parts would not be available within the compliance time. In additon, as discussed previously, Arkwin is not the only supplier that can modify and test the units. In light of this, the FAA finds no technical reason for revising the 30-month compliance time.

Request for Redesign of the Actuator as Terminating Action

One commenter raises concerns about the design of the affected actuators, which apparently makes them particularly susceptible to the addressed problems. This commenter states that Boeing has agreed with the validity of this concern and has taken an action item to review the design of the entire actuator. This commenter requests that the proposal be revised to mandate repetitive deployment checks, until an improved actuator design is developed and a relevant service bulletin is issued. The commenter maintains that, until a modification solution is developed, deployment checks will offer an equivalent level of safety.

The FAA does not concur. While a design solution would be ideal, to date there has been no new design of the actuator developed. Further, the FAA finds that deployment checks alone would not adequately address the unsafe condition that prompted this AD action. Deployment checks will not detect damage to the lock rods, pins, etc., that could eventually prevent deployment of the RAT. The failure condition is not dynamic; it is gradual, and the deployment checks would not detect the degradation of the pins and rods until an actual failure occurred. The intent of this proposed AD is to detect and correct the failure conditions before the RAT actuator system is needed during flight.

Requests To Withdraw Proposal

Several commenters suggest that the issuance of the proposed AD is not warranted. Two commenters consider that the proposed requirements for using special shipping procedures are inappropriate for an AD. One commenter considers that its routine maintenance program of inspection and operational checks of the actuators at regular intervals is adequate for detecting and correcting the problems addressed by the proposed AD. Another commenter considers that no safety problem exists, because the failure of the RAT actuator to deploy was reviewed in accordance with § 25.1309 of the Federal Aviation Regulations (14 CFR 25.1309) and was demonstrated to be an extremely improbable event.

The FAA infers from these statements that the commenters request that the proposal be withdrawn. The FAA does not concur; nor does the FAA concur with the statement that use of an AD to address the problem is inappropriate. According to section 39.1 of the Federal Aviation Regulations (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. Regardless of the cause or the source of an unsafe condition, the FAA has the authority to issue an AD when it is found that an unsafe condition is likely to exist or develop on other products of the same type design.

Further, it is within the FAA's authority to issue AD's to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. The FAA may address such unsafe conditions by requiring specific steps to be taken or by requiring revisions to maintenance programs as a condition under which airplanes may continue to be operated. While the subject of this AD relates to a problem with the RAT actuator identified during regular maintenance procedures, the FAA points out that reports of this problem came from several different operators. From the data garnered from these reports, the FAA has identified the existence of an unsafe condition. As a result, the FAA is proposing to issue this AD to address the unsafe condition.

Since the root of the unsafe condition relates to damage incurred during the current shipping process, the FAA has determined that a requirement to add the use of the shipping container and sleeve in accordance with the maintenance program is appropriate.

Request To Clarify Part Numbers and Serial Numbers of Affected Actuators

One commenter requests that the proposal be revised to specify the correct Boeing part number of one of the affected RAT deployment actuators. This commenter points out that the actuator identified as "Boeing part number 1211233–4" should be "Boeing part number S271N102–4." This same commenter notes that the applicability statement of the proposed rule included the serial numbers for the actuators having part number S271N102–5, but it did not include the serial numbers for the other affected actuator.

The FAA concurs that some clarification is necessary on both points brought up by the commenter:

First, the FAA acknowledges that the correct Boeing part number of one of the affected actuators is "S271N102–4," and has corrected this number in the supplemental NPRM.

Second, the serial numbers listed in the applicability statement of the proposal as "00001 and subsequent" apply to both of the affected actuators (part numbers S271N102–4 and S271N102–5). The applicability statement of this supplemental NPRM has been revised to clarify this.

Request To Clarify Service Bulletin References

One commenter requests that the proposal be revised to specify the correct number of the Arkwin Industries service bulletin as "1211233–29–21–3." This commenter points out that several references to this service bulletin in the proposal indicated its number as "1211233–19–21–3."

The FAA acknowledges that because of a typographical error of the service bulletin number in the service bulletin, the number was incorrectly shown in several places in the proposal. This information has been corrected in this supplemental NPRM.

Request To Revise Cost Impact Information

One commenter requests that the cost impact information be expanded to include the costs incurred if the RAT actuator is shipped to Arkwin to be fixed. The commenter points out that the information presented in the preamble to the proposal appears to analyze the costs only for those cases where an operator itself fixes the actuator. This commenter asserts that, if the actuators are returned to Arkwin for modification, the airplane will need to have a replacement RAT actuator installed in the interim; this will increase the costs associated with the AD.

The FAA concurs that the cost information could be expanded to include other scenarios. Arkwin Industries has advised the FAA that the cost for returning the actuator to them for retrofit would be approximately $22.33 per actuator. The FAA has added this information to the cost impact information, below.

Conclusion

Since certain of the changes discussed previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 631 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 389 airplanes of U.S. registry would be affected by this AD.

The proposed revision to the FAA-approved maintenance program would take approximately 2 work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $120 per operator.

The proposed inspection and replacement of the RAT deployment actuator would take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Required replacement parts would cost approximately $4,832 per airplane. (If the unit is under warranty, the required parts would be provided by the actuator manufacturer at no cost to the operator. If the actuator is returned to the vendor for modification, the charge would be approximately $22.33 per actuator.) Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be between $240 and $5,072 per airplane.

The cost impact figures discussed above are based on the assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the proposed requirement to replace the RAT deployment actuator [paragraph (b)] has been accomplished previously on approximately 13 airplanes of U.S. registry. Therefore, the future cost impact of this proposed AD on U.S. operators is reduced by approximately $65,936.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Amendment 39– . Docket 96–NM–12–AD.

Applicability: Model 757 series airplanes; equipped with ram air turbine (RAT) deployment actuators having Boeing part number (P/N) S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), and having a serial number of 00001 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the actuators used to deploy the ram air turbine (RAT), accomplish the following:

(a) Within 120 days after the effective date of this AD, revise the FAA-approved maintenance program to require verification that the shipping container and shipping sleeve assembly, as specified in Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 3, dated February 7, 1997, was used in shipping the actuator to a location where it is to be installed.

Note 2: Once the maintenance program has been revised to include the procedures specified in this paragraph, operators are not required to subsequently record accomplishment each time that an actuator is shipped.

(b) Within 30 months after the effective date of this AD, inspect the identification plate on the deployment actuator of the RAT to determine the actuator serial numbers, in accordance with Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997.

(1) If the actuator bears Boeing part number (P/N) S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), and has a serial number of 00001 through 00631 inclusive (with no "B" suffix): Prior to further flight, remove the RAT deployment actuator and repair or replace it, in accordance with the Arkwin Industries service bulletins previously referenced in paragraph (b) of this AD or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997, recommends that the actuator unit be returned to Arkwin Industries for modification, since specialized equipment is needed to perform the rework of the unit. However, any FAA-approved facility may modify the unit, provided that it has the appropriate equipment to successfully modify and test the unit in accordance with a method approved by the Manager, Seattle ACO, or in accordance with the Arkwin Industries service bulletins referenced in paragraph (b) of this AD.

(2) Prior to further flight, remove the RAT deployment actuator and repair or replace it, in accordance with Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997, if the actuator:

(i) Has Boeing P/N S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005); and

(ii) Has a serial number of 00001 through 00631 inclusive, with a suffix letter "B;" or has a serial number of 00632 or subsequent; and

(iii) Has been removed previously from an airplane and shipped in the extended position and not in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997.

Note 4: Shipping records or tags may be reviewed to determine whether the actuator was shipped in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2 or Revision 3.

Note 5: Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2 or Revision 3, provide procedures for proper identification of the necessary reusable shipping container and shipping sleeve assembly that is to be used when transporting or shipping the RAT deployment actuator assembly. Use of this container and sleeve will prevent damage to the assembly during shipping.

(3) No further action is required by paragraph (b) of this AD, if the actuator:

(i) Has Boeing P/N S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005); and

(ii) Has a serial number of 00001 through 00631 inclusive, with a suffix letter "B;" or has a serial number of 00632 or subsequent; and

(iii) Has not been removed previously from an airplane, or has been removed and shipped in the extended position, in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997.

(c) As of 30 months after the effective date of this AD, no person shall install on any airplane a RAT deployment actuator assembly, having Boeing P/N S271N102–4 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), and having serial number 00001 and subsequent; unless the conditions, as specified in both paragraphs (c)(1) and (c)(2) of this AD apply:

(1) The actuator assembly has been modified (repaired and reidentified) in accordance with Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997; or the actuator is replaced with a new actuator from Arkwin Industries, Inc.; and

(2) Prior to installation, the actuator was shipped (i.e., to the place where installation is accomplished) in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994, or Revision 3, dated February 7, 1997.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 20, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28318 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–7157b; FRL–5906–9]

Approval and Promulgation of Implementation Plans; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing action on State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. The EPA is proposing approval of New Hampshire's 1990 base year ozone emission inventories, 15 Percent Rate of Progress (ROP) and Contingency plans, and establishment of a Photochemical Assessment Monitoring Stations (PAMS) network, as revisions to the New Hampshire SIP for ozone. The inventory was submitted by the State of New Hampshire to satisfy a CAA requirement that those States containing ozone nonattainment areas classified as marginal to extreme submit inventories of actual ozone season emissions from all sources in accordance with EPA guidance. The 15% ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce VOC emissions by 1996 when compared to a 1990 baseline. The PAMS SIP revision was submitted to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network by November 15, 1993.

In the final rules section of today's **Federal Register**, the EPA is approving the New Hampshire 1990 base year emission inventories and PAMS network as revisions to the New Hampshire SIP as a direct final rule without prior proposal, because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for each approval is set forth in the direct final rule. The EPA is not publishing a direct final rule for the New Hampshire 15 percent ROP and contingency plans. If no adverse comments are received on this direct final rule, no further activity is contemplated in relation to this proposed rule for these revisions. If EPA receives any material adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Public comments on this document are requested and will be considered before taking final action on this SIP revision. Comments on this proposed action must be post marked by November 26, 1997.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the New Hampshire Department of Environmental Services, Air Resources Division, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: For supplementary information regarding the New Hampshire 1990 base year emission inventories or establishment of a PAMS network, see the information provided in the direct final action of the same title which is located in the rules section of today's **Federal Register**.

This notice is divided into the following four parts:

I. Background
II. Analysis of State Submission
III. Proposed Action
IV. Administrative Requirements

I. Background

Section 182(b)(1) of the CAA as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide anthropogenic VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to basic Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

In addition, section 172(c)(9) and 182(c)(9) of the CAA requires that contingency measures be included in the plan revision to be implemented if an area misses an ozone SIP milestone, or fails to attain the standard by the date required by the CAA.

There are two serious ozone nonattainment areas in New Hampshire, and therefore the State is subject to the 15 Percent ROP requirements. The two areas are the Portsmouth-Dover-Rochester area, which includes all of Strafford County and portions of Rockingham County, and the New Hampshire portion of the Boston-Lawrence-Worcester area which includes portions of Hillsborough and Rockingham Counties. New Hampshire did not enter into an agreement with Massachusetts to do a multi-state 15 percent and contingency plan, and therefore submitted a plan to reduce emissions only in the New Hampshire portion of this area. EPA is taking action today only on the New Hampshire portion of the Boston-Lawrence-Worcester 15 percent plan.

New Hampshire submitted a 15% ROP plan for these two areas to the EPA on February 3, 1994, and revisions to the plan on May 16, 1994 and August 29, 1996. The state's submittal contained adopted rules for all of the VOC control measures identified within the plan.

II. Analysis of State Submission

The EPA has analyzed New Hampshire's submittal and believes that the proposed 15 Percent ROP and Contingency plans can be approved because they will strengthen the SIP by achieving reductions in VOC emissions, and because the State has correctly calculated its emission reduction obligations brought about by these requirements in accordance with the EPA's guidance. For a complete discussion of EPA's analysis of the New Hampshire 15 Percent ROP plan and Contingency Plan, please refer to the Technical Support Document for this action. A summary of the EPA's findings follows.

Emission Inventory

The base from which States determine the required reductions in the 15 Percent ROP and Contingency plans is the 1990 emission inventory. The EPA is approving the New Hampshire 1990 emission inventories in a direct final action included in the Rules section of today's **Federal Register**. The emission estimates used within the 15 Percent ROP calculations match those found in the State's 1990 base year emission inventories.

Calculation of Target Level Emissions

New Hampshire subtracted the non-creditable reductions from the FMVCP

from the 1990 inventory. No adjustment to the inventory to account for the RVP of gasoline sold in the state in 1990 was necessary. The modification to subtract non-creditable reductions from the FMVCP results in the 1990 adjusted inventory. The total emission reduction required to meet the 15 Percent ROP Plan requirements equals the sum of the following items: 15 percent of the adjusted inventory, reductions that occur from noncreditable programs such as the FMVCP program, reductions needed to offset any growth in emissions that takes place between 1990 and 1996, and reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes these calculations for the two serious ozone nonattainment areas in New Hampshire.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS (TONS/SUMMER DAY)

	Por-Dov-Roc	Bos-Law-Wor
1990 Anthropogenic Emission Inventory	41.0	55.9
1990 Adjusted Inventory	35.6	48.0
15% of Adjusted Inventory	5.3	7.2
Non-creditable Reductions	5.4	7.9
1996 Target	30.3	40.8
1996 [1] Projected, Uncontrolled Emissions	37.4	52.7
Required Reduction [2]	7.1	11.9

[1] 1996 emissions for on-road mobile sources were calculated using an emission factor that reflected the level of control achieved by the FMVCP in 1996.

[2] Required Reductions obtained by subtracting 1996 target from the 1996 projected uncontrolled inventory.

Measures Achieving the Projected Reductions

New Hampshire has provided a plan to achieve the emissions reductions required for the Portsmouth-Dover-Rochester nonattainment area and the New Hampshire portion of the Boston-Lawrence-Worcester nonattainment area. The EPA agrees with the emission reductions projected in the State submittals from the control measures identified within these plans. The following is a description of each control measure New Hampshire used to achieve emission reduction credit within its 15% ROP plans.

A. Point Source Emission Reductions

RACT Controls. New Hampshire projects that a 2.1 tons per summer day (tpsd) emission reduction will occur within the Por-Dov-Roc area, and a 2.6 tpsd emission reduction will occur within the Bos-Law-Wor area from the implementation of VOC Reasonably Available Control Technology (RACT) on point sources, and from plant shutdowns.

Section 182(b)(2)(B) of the CAA requires that moderate and above ozone nonattainment areas adopt rules to require RACT for all VOC sources in the area covered by any *Control Technique Guideline* (CTG) issued before the date of the enactment of the Clean Air Act amendments of 1990. New Hampshire imposed new RACT controls on facilities involved in the processes covered by a CTG to meet this requirement {these controls are referred to as "RACT Catchups"}.

New Hampshire submitted VOC RACT catch-up regulations to the EPA on December 21, 1992, and June 28, 1996. EPA has not acted on these rules, but intends to by the time final action is taken on the New Hampshire 15 percent plans. Emission reductions from these rules are creditable toward the ROP requirement. The State has documented the level of emission reductions claimed from point sources. The State's 15% ROP plans contain a discussion of the emission reductions expected from individual point sources, and a table which lists each point source in the State from which emission reductions are anticipated by 1996. While EPA agrees that these RACT rules achieves the level of emission reductions New Hampshire is claiming in its 15% plan, EPA is not making any finding in this proposal whether the rules are otherwise consistent with all CAA requirements.

Plant Closures: New Hampshire's 15% plan identifies facilities that will cease operations between 1990 and 1996. The State has used the emission reductions generated from these plant closures as part of its 15 percent ROP plans. The emission reductions generated from these plant closures cannot, therefore, be used for other purposes, such as to meet the emissions offset provisions of the new source review program or as a source of a tradeable emission commodity.

B. Area Source Controls

Stage I: Emissions from underground tank filling operations at gasoline service stations can be reduced by the use of a vapor balance system, which is termed Stage I vapor control. New Hampshire has adopted a Stage I gasoline vapor recovery regulation, and submitted the rule to the EPA as a SIP revision. EPA has not acted on this rule, but intends to by the time final action is taken on the New Hampshire 15 percent plans. The data used to derive the anticipated emission reduction from implementation of this rule are documented within the NH 15% ROP plans. The EPA agrees with the level of emission reductions projected by the State. While EPA agrees that the Stage I rule achieves the level of emission reductions New Hampshire is claiming in its 15% plan, EPA is not making any finding in this proposal whether the rule is otherwise consistent with all CAA requirements.

Underground Tank Breathing: New Hampshire's Stage I rule contains a requirement that a pressure vacuum (PV) valve be installed on vents located on underground tanks at service stations. The EPA agrees with the emission reductions claimed by the State due to this provision of the Stage I rule.

Stage II: New Hampshire has adopted an air pollution control rule that will limit VOC emissions from automobile refueling activity, commonly referred to as Stage II emissions. The rule was submitted to the EPA on December 21, 1992. EPA has not acted on this rule, but intends to by the time final action is taken on the New Hampshire 15 percent plans. The EPA agrees with the emission reduction credit claimed by the state due to the implementation of this program. While EPA agrees that the Stage II rule achieves the level of emission reductions New Hampshire is claiming in its 15% plan, EPA is not making any finding in this proposal whether the rule is otherwise consistent with all CAA requirements.

Surface Cleaning Controls: New Hampshire adopted a VOC RACT rule that controls emissions from open top and cold cleaning degreasing operations. The State determined that area source emissions would also be reduced by this rule, which is consistent with EPA guidance. The emission reductions claimed by the State from this rule are therefore creditable towards the 15% ROP plan.

Automobile Refinishing: On November 29, 1994, EPA issued a final guidance memorandum that allowed States to assume a 37 percent control level for this source category without adopting a State rule due to a pending National rule. New Hampshire used this guidance to determine the magnitude of emission reductions expected to occur within its two ozone nonattainment areas. The EPA agrees with the level of emission reductions projected by the State.

Commercial and Consumer Products: On June 22, 1995, EPA issued a final guidance memorandum that allowed States to assume a 0.8 pound per capita emission reduction for this source category without adopting a State rule

due to a pending National rule. New Hampshire used this guidance to determine the magnitude of emission reductions expected to occur within its two ozone nonattainment areas. The EPA agrees with the level of emission reductions projected by the State.

Architectural Coatings: In a memo dated March 22, 1995, EPA provided guidance on the expected reductions from a pending national rulemaking on AIM coatings. The memo projects that emissions would be reduced by 20 percent for both architectural coatings and industrial maintenance coatings. New Hampshire used this guidance to determine the magnitude of emission reductions expected to occur within its two ozone nonattainment areas. The EPA agrees with the level of emission reductions projected by the State.

(C) On-Road Mobile Source Controls

Reformulated Gasoline (RFG): Section 211(k) of the Clean Air Act requires that after January 1, 1995 in severe and above ozone nonattainment areas, only reformulated gasoline be sold or dispensed. This gasoline is reformulated to burn cleaner and produce fewer evaporative emissions. The state of New Hampshire contains two "serious" ozone nonattainment areas and one "marginal" area, and therefore is not required to sell reformulated fuels. However, on October 28, 1991 the State submitted a letter from the Governor requesting that New Hampshire participate in the reformulated fuels program. This request was published in the **Federal Register** on December 23, 1991, 56 FR 66444. The EPA agrees with the emission reductions calculated by the state due to the use of reformulated gasoline in on-road vehicles.

Tier I Federal Motor Vehicle Control Program (FMVCP): The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724, June 5, 1991). Since the standards were adopted after the CAA amendments of 1990, the resulting emission reductions are creditable toward the 15 percent emission reduction goal. The EPA agrees with the emission reductions calculated by New Hampshire due to the Tier I motor vehicle controls.

Non-road mobile source controls: As previously discussed, New Hampshire has opted in to the reformulated gasoline program. In addition to reducing VOC emissions from on-road motor vehicles, the sale of this gasoline will also reduce VOC emissions from non-road equipment. The EPA agrees with the emission reductions projected by New Hampshire to occur due to the sale of reformulated gasoline in the state.

Table 2 summarizes the emission reductions contained within the New Hampshire 15% ROP plan. New Hampshire allocated between the two nonattainment areas the anticipated reductions from control measures using the same methodology that determined the allocation of its 1990 base year inventory emissions.

TABLE 2.—SUMMARY OF EMISSION REDUCTIONS: NEW HAMPSHIRE SERIOUS OZONE NONATTAINMENT AREAS
(Tons/Day)

Nonattainment area	Por-Dov-Roc	Bos-Law-Wor
Required Reduction	7.10	11.90
Point Source Reductions	2.10	2.60
Stage I	1.25	2.09
Stage II	1.28	2.14
Underground Tank Breathing	0.11	0.18
Surface Cleaning	0.30	0.50
Auto Refinishing	0.41	0.69
Consumer & Com. Prod.	0.19	0.32
Architectural Coatings	0.38	0.63
Reform (On-road), Tier 1	2.60	3.90
Reform, Off-road	0.20	0.20
Total	8.82	13.25

Contingency Measures: Ozone nonattainment areas classified as moderate or above must submit to the EPA, pursuant to section 172(c)(9) and 182(c)(9) of the CAA, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. The EPA interprets this provision of the CAA to require States with moderate and above ozone nonattainment areas to submit sufficient contingency measures so that upon implementation of such measures, additional emission reductions of three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Surplus Emission Reduction from 15 Percent Plan: New Hampshire's 15 percent ROP plans achieve more emission reductions than required. This is illustrated within Table 2 above. New Hampshire's contingency obligations for its two ozone nonattainment areas are 1.1 tpsd for the Por-Dov-Roc area, and 1.4 tpsd for the New Hampshire portion of the Bos-Law-Wor area. The surplus credit generated by the control measures in the 15 Percent ROP plans is sufficient to accommodate the 3 percent emission reduction requirement for contingency plans for the State's two serious ozone nonattainment areas. EPA notes that the State's SIP indicates that a 0.1 tpsd surplus exists in the New Hampshire portion of the Bos-Law-Wor area after accounting for contingency reductions. However, the data presented in Table 2 indicates a minor shortfall of 0.05 exists after accounting for the 1.4 tpsd contingency obligation for this area. Given the large number of inventory and emission reduction calculations used to derive the data provided in Table 2, EPA considers the minor shortfall of 0.05 tpsd to be within an acceptable range of error. EPA proposes to determine that New Hampshire has met the contingency measure requirement for both of its nonattainment areas.

III. Proposed Action

The EPA has evaluated these submittals for consistency with the CAA, EPA regulations, and EPA policy. The New Hampshire 15 Percent ROP plans will achieve the required quantity of emission reductions to meet the 15 percent ROP requirements of section 182(b)(1) of the CAA. In addition, the New Hampshire contingency plan will achieve enough emission reductions to meet the three percent reduction requirement under 172(c)(9) and 182(c)(9) of the CAA. Therefore, the EPA is proposing approval of these plan revisions under Section 110(k)(3) and Part D.

Transportation Conformity Budgets

In recognition of the proposed approval of the 15 percent ROP plans, EPA also proposes approval of motor vehicle emission budgets for VOCs and NO_X. Final approval of the 15 percent plan will eliminate the need for the transportation conformity emission reduction tests, which are the build/no build test and the less than 1990 emissions test, for these pollutants.

A control strategy SIP is required to establish a motor vehicle emission budget which places a cap on emissions that cannot be exceeded by predicted

highway and transit vehicle emissions. EPA is proposing to utilize the on-road mobile emissions provided in the 15 percent plan SIP submittals as the motor vehicle emission budgets for transportation conformity purposes. The 1996 projected on-road mobile emission estimates contained within the State's 15 percent plans are shown in the following table:

TABLE 3.—1996 MOTOR VEHICLE EMISSION BUDGETS

	Por-Dov-Roc area	NH portion of Bos-Law-Wor area
VOC	12.1	18.0
NO_x	17.2	24.1

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671–q.

Dated: September 29, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–28370 Filed 10–24–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard revises the notice of proposed rulemaking (NPRM) published on June 19, 1996, proposing requirements for licensing mariners who operate towing vessels, inspected as well as uninspected. This supplemental notice of proposed rulemaking (SNPRM) addresses the numerous comments received in response to the NPRM. It should improve the clarify those requirement proposed in the NPRM.

DATES: Comments must reach the Coast Guard on or before February 24, 1998. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before December 26, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–055), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. You must also mail comments to collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of the docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Don Darcy, Office of Operating and Environmental Standards (G–MSO), (202) 267–0221.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–055) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no longer than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans to hold public meetings regarding this proposed rulemaking before the close of the comment period. It will hold these meetings for the purpose of receiving oral opinions and presentations on the proposed changes. It will announce the dates, times, and places of the public meetings in a late notice in the **Federal Register.** Persons may request additional public meetings by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why an additional public meeting would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public meeting at a time and place to be announced by a later notice in the **Federal Register.**

Background and Purpose

On June 19, 1996, the Coast Guard published an NPRM in the **Federal Register** (61 FR 31332). The NPRM proposed updates to the licensing, training, and qualifications of operators of towing vessels in order to reduce marine casualties. A more detailed treatment of the following matters appear in the preamble to the NPRM.

Development of the NPRM was an essential part of a comprehensive initiative undertaken by the Coast Guard to improve navigational safety for towing vessels. It followed a Coast Guard report directed by the Secretary of Transportation, entitled "Review of Marine Safety Issues Related to Uninspected Towing Vessels" ("the Review"), which identified improvement in licensing, training, and qualifications of operators of uninspected towing vessels (OUTVs) necessary to achieve improved safety.

As stated in the NPRM, the Secretary of Transportation initiated the Review after the allision in September, 1993, of a towing vessel and its barges with a railroad bridge near Mobile, Alabama ("Amtrak casualty"). The National Transportation Safety Board (NTSB) attributed this casualty, at least in part, to the Coast Guard's failure to establish higher standards for the licensing of inland operators of towing vessels. The Review, a previous study conducted by the Coast Guard entitled "Licensing 2000 and Beyond" ("Licensing 2000"), and other research concluded that the requirements for licensing all operators of towing vessels were outdated and needed improvement on the licensing, training, and qualifications of personnel.

In response to the Review, on March 2, 1994, the Coast Guard published a Notice of Public Meeting and Availability of Study that announced the availability of the Review and scheduled a meeting to seek public comment on its recommendations (59 FR 10031). The public meeting occurred on April 4, 1994, and was well attended by the public, representing a wide range of towing interests. Public comments, both oral and written, helped shape the NPRM.

Advisory committees that addressed the towing-safety initiative (the Review) included the Merchant Marine Personnel Advisory Committee (MERPAC) and the Towing Safety Advisory Committee (TSAC). These committees and several of their working groups created reports to address licensing and training. The NPRM drew on the reports, too.

Note, also, that many issues pertaining to licensing and training of matters come within the International Convention on Standards of Training, Certification and Watchkeeping for Seafearers, 1978 (STCW). An interim rule (62 FR 34506; June 26, 1997) carries this treaty into domestic effect. Consequently, mariners serving on seagoing towing vessels must meet the requirements of STCW on training, certification, and watchkeeping, as stated previously in the NPRM.

The Coast Guard received over 780 comment letters in response to the NPRM. Because of this response, the Coast Guard published a notice of intent (61 FR 66642; December 18, 1996) explaining that would modify the NPRM along lines urged by public comment and the advisory committees, and would publish the changes in an SNPRM. This would afford the public an opportunity to comment on the revisions before issuance of a final rule.

The regulatory language of this SNPRM combines text from the NPRM with text based on comments on the NPRM. The preamble of this SNPRM discusses only the new text.

In an effort to develop a more customer-oriented approach to drafting regulations, the Coast Guard will publish the final rule using "plain language" techniques. Clear, more readable regulations are important for the success of our government's reinvention initiative.

Discussion of Comments and Changes

Although the Coast Guard received comments from all geographic areas, most (75 percent) came from the Gulf and Western rivers. The comments addressed the following subjects: (1) Public meetings and extension of the comment period; (2) responsibilities of companies; (3) responsibilities of the masters; (4) a need for additional input from mariners; (5) overall cost and cost-benefit analysis; (6) completion of approved training courses; (7) approved training courses using check-ride assessments to demonstrate proficiency; (8) approved training courses using simulators to demonstrate proficiency; (9) designated examiners; (10) training-record books; (11) refresher courses; (12) title terminology; (13) licensing structure; (14) horsepower as a basis of authority; (15) route endorsements; (16) grandfathering of licenses; (17) special endorsements; and (18) other, general subject matter.

1. Public Meetings and Extension of the Comment Period

Of the 780 comments, 489 requested either additional public meetings or an extension of the comment period. Because many contained multiple suggestions for modifying the proposed requirements, the Coast Guard deemed it appropriate to incorporate any changes into an SNPRM. This would afford the public time to reflect upon the changes, rather than repeat itself on the NPRM. This SNPRM provides the public with an opportunity both to comment in writing and to participate in public meetings at times and places announced by later notices in the **Federal Register.**

2. Responsibilities of Companies

The Coast Guard received 48 comments suggesting that individual companies be held responsible, in addition to the mariners, for the safe operation of their towing vessels. The comments alleged that some companies use coercive tactics to force mariners to

operate vessels beyond normal safety limits so that products arrive at their destination on time; ultimately straining the mariners, the companies, and the industry.

The Coast Guard recognized in the NPRM that many companies have already demonstrated their commitments to safety by ongoing training and evaluating of their employees. Under the SNPRM, companies would share greater responsibility for training and qualification of mariners by establishing approved training courses, recommending designated examiners, and overseeing the completion of mariners' training-record books. This increase in responsibility is consistent with Licensing 2000 and with the TSAC Report, both of which urged increased responsibilities of companies and accountability for the competence and quality of mariners. The Coast Guard will not condone coercion directed at forcing mariners to operate towing vessels in an unsafe manner. Any unsafe operating conditions should be reported to the Coast Guard in reliance on 46 U.S.C. 2114.

3. Responsibilities of the Masters

The Coast Guard received 339 comments concerning masters' (captains') responsibilities. Many misinterpreted language in the NPRM to mean that the master would assume responsibility for the vessel and the actions of its crew at all times.

In the past, the Coast Guard held an operator of uninspected towing vessels (OUTV) responsible for the operation of the towing vessel only during his or her watch. However, business practices dictated—and the Coast Guard concluded—that one operator (the lead OUTV), usually referred to as the "front watch," should be designated as the captain, who would be responsible for the safe operation of the vessel at all times. Although the Coast Guard does consider the captain to be in control of the vessel's operations or management at all times, it does not consider him or her to be responsible for the misconduct or incompetence of the second officer, usually referred to as the "back watch," unless that officer was following directions issued by the captain. The NPRM did not, and this SNPRM does not, intend any change in this understanding.

4. A Need for Additional Input From Mariners

The Coast Guard received 188 comments expressing disapproval at its failure to involve mariners during the preliminary stages of this rulemaking. These comments encouraged the Coast Guard to avail itself of the knowledge and experiences of active mariners, to develop accurate and safe regulations. The Coast Guard always endeavors to involve all interested parties in the rulemaking process and encourages active mariners to participate in future public meetings, industry meetings, and the additional comment period that this SNPRM provides.

5. Overall Cost and Cost-Benefit Analysis

The Coast Guard received 359 comments on cost. Sixty (17 percent) opposed the cost-benefit analysis, stating that the dollar figures did not reflect current salaries or wages, accurate simulator and check-ride costs, or realistic designated-examiner fees. The remaining 299 (83 percent) made general statements about the excessive financial burden that the rule would place on small businesses and individual mariners. These comments argued that the industry is already heavily burdened with other licensing expenses, such as new radar requirements, renewal fees, medical examinations, and drug-screening examinations, and should not be financially responsible for additional licensing requirements. One comment even suggested that the Coast Guard should be held financially responsible for demonstration of proficiency.

The Coast Guard has evaluated the comments from the public and various recommendations from TSAC, all of which concern the cost-benefit analysis. The analysis within the SNPRM reflects editorial comments and current technical information that the Coast Guard has reviewed and applied to the regulatory assessment for the SNPRM.

6. Completion of Approved Training Courses

A few comments supported the idea of approved training courses as written, but most questioned including simulator training, check-ride assessments, and a practical demonstration of proficiency at the time of renewal. (Later sections discuss both simulator training and check-ride assessments). With regard to renewals, acting on a recommendation from TSAC the Coast Guard now proposes to let those mariners who have maintained recency of service and have not had their licenses revoked or suspended document their service and proficiency rater than undergo practical demonstrations of proficiency at license renewal. Proof acceptable for these mariners at license renewal includes evidence of the minimum required service in the form of a company-provided service letter and evidence of continued navigational proficiency in the form either of a letter or another document from the operator's employer or of an ongoing training-record book. In addition, all candidates for renewal of licenses as Masters of Towing Vessels will have to pass a rules-of-the-road exercise or refresher course. Accordingly, mariners who have not maintained recency of service, or who have been the subject of suspension or revocation proceedings, would have to demonstrate proficiency by check-ride assessment or simulator in order to renew their licenses.

7. Approved Training courses Using Check-Ride Assessments To Demonstrate Proficiency

Of the 254 comments received in response to the NPRM concerning this subject, 71 percent opposed the proposed requirement of a practical demonstration by a check-ride. Most of the 71 percent came from mariners who already have several years of experience in the towing industry and resent that, at the time of renewal, they may have to "prove" to someone that they are capable of handling towing vessels. Another 19 percent opposed the requirement of practical demonstration of proficiency by check-ride for experienced mariners, but supported it for mariners with little or no experience and for those with histories of poor seamanship. Others suggested that company letters declaring mariners' competence be acceptable as an alternative to the practical demonstration of proficiency by check-ride. Only 10 percent supported a practical demonstration of proficiency by check-ride as proposed. The Coast Guard now proposes that practical demonstrations of proficiency by check-ride be mandatory only for license-renewal applicants whose most recent licenses were suspended or revoked by administrative action on charges of incompetence. However, other applicants may still opt for the practical demonstrations in lieu of submitting properly maintained training-record books.

8. Approved Training Courses Using Simulators To Demonstrate Proficiency

The Coast Guard received 115 comments addressing simulator training. Of those, 86 percent opposed such training, for two reasons: (1) The excessive cost to companies as well as individual mariners; and (2) the inadequate number of simulators available to provide each mariner sufficient training time. In addition, 5 percent simply opposed such training for experienced mariners. However, these same comments supported it for mariners with little or no experience. Nine percent supported it with various modifications such as allowing mariners to use simulators for training though not for demonstrating proficiency. In this SNPRM, the Coast Guard still proposes to accept (not require) simulator training, as well as use of actual towing vessels, for demonstrating proficiency by check-ride.

9. Designated Examiners

Of the 130 comments on the proposed use of a designated examiner, only 10 percent opposed the idea. Once again, most of the 10 percent expressed resentment at having to potentially "prove" their abilities for license renewal to a designated examiner that may have less experience. However, while the comments opposed the use of a designated examiner for experienced mariners, they supported the idea for the monitoring of entry-level masters and mates.

In contrast, the remaining 90 percent generally supported application of the idea for all mariners. These supporting comments also raised several concerns and offered suggestions for modifying the designated-examiner proposal, most of which emphasized the need for Coast Guard control of the designated-examiner program. Of primary concern was assurance from the Coast Guard that companies and training institutions would in no way be involved in the selection of designated examiners. The comments argued that, by excluding companies and training institutions from this decision, the Coast Guard would reduce the potential for partiality and inconsistency throughout the towing industry. However, a few comments did request that the Coast Guard allow individual companies to designate their own examiners. A few comments recommended that the Coast Guard control the selection, training, and re-qualification of potential designated examiners. Others comments requested that the Coast Guard ensure that mariners designated as examiners be well-experienced, not just grandfathered, towing-vessel mariners with higher-level licenses and more experience than those of the mariners they are certifying. Last, some encouraged the Coast Guard to determine and clarify the criteria used for passing or failing a prospective mariner and the procedures for appealing a designated examiner's decision and urged the Coast Guard to negate the potential liability of the designated examiner—possibly by requiring two or more check-rides with different designated examiners.

An alternative demonstration of proficiency for renewal was recommended by TSAC and includes documentation in the form of a training-record book listing training, drills, experience during the license's validity, and any administrative action culminating in suspension or revocation against the license. The Coast Guard agrees with TSAC and has determined that there should be an alternative method for renewal. The Coast Guard also tasked TSAC with determining guidelines for pass-fail criteria, and TSAC has submitted acceptable ones, which this SNPRM draws on.

The SNPRM defines a designated examiner as a person trained or instructed in assessment techniques and otherwise qualified to evaluate whether a candidate for a license, document, or endorsement has achieved the level of competence necessary to hold the license, document, or endorsement. As in the NPRM, this person may be designated by the Coast Guard either directly or (within the context of a program of training or assessment approved by the Coast Guard) indirectly. A recently issued TSAC report recommended that a designated examiner administering a check-ride assessment evaluate a mariner's performance in six categories: (1) Vessel familiarity; (2) communications; (3) emergency procedures; (4) rules of the road; (5) piloting and navigation; and (6) maneuvering. Intervention by the vessel master or designated examiner, serious violation of a rule of the road, causing of a reportable marine incident, or failure by the operator to sufficiently demonstrate his or her proficiency in one or more of the six categories would be grounds for failure of a check-ride assessment. The operator would then have to wait at least 30 days before undergoing a re-evaluation. The Coast Guard is considering how to implement this TSAC recommendation, however, we have decided not to include it in this SNPRM.

10. Training-Record Book

Of the 27 comments on the proposed requirement of maintaining a training-record book, only 4 opposed the use of such a tool. These four argued that the vessel's daily radio log would provide sufficient evidence of a mariner's training and service, and that use of such a record book, if implemented, would cause a financial burden to the industry. In addition, two of the four suggested, as an alternative, that a letter of recommendation from two active masters under whom the mariner served and a letter from the company should be enough to prove training.

The remaining comments supported use of a training-record book, but offered suggestions for modifying it. These suggestions included the following: (1) Require mariners to maintain a daily logbook; (2) require owners to ensure that the logbook is accurate and up to date by using attached letters yearly or trip by trip; (3) place sole responsibility for the logbook's accuracy and content on the individual mariner; (4) standardize—or, at the very least, establish guidelines as to the minimum—information that the training-record book must contain to expedite review; and (5) develop a process that would allow electronic maintenance of records. The Coast Guard agrees with the 23 comments that recommend the training-record book as a valuable document to efficiently demonstrate experience in the covered subjects.

Because the towing industry is so diverse, a separate training-record book will have to be created for each segment of the industry, such as vessel assist, western rivers, coastal, and ocean towing. The Coast Guard anticipates that allowing completion of a training-record book for an STCW endorsement will allow a mariner to qualify for oceans and international service without additional training.

11. Refresher Courses

Of the 92 comments on refresher courses and rules-of-the-road testing, 39 percent opposed such courses; 4 comments specifically opposed such testing. In contrast, 56 comments supported some form of approved training relative to refresher courses or testing—31 wholly supported a refresher course, and 21 wholly supported rules-of-the-road testing. Of those in favor of testing or courses, many supported approved training and testing through various methods including open-book examinations, oral examinations, examination by mail, classroom training, and training based on degree of experience.

This SNPRM would allow four options to fulfill the requirements for demonstration of proficiency: (1) Complete an approved course using a simulator; (2) complete an approved course using a towing vessel; (3) complete a check-ride assessment with a designated examiner; or (4) submit documentation mentioned as an option to the completion of an approved training course. Additionally, it would let mariners complete refresher-training courses on rules of the road in place of exercises. The Coast Guard agrees with

TSAC's observation that a rules-of-the-road exercise or a refresher course can only improve safety throughout the industry. Consequently, the proposed requirement of rules-of-the-road knowledge for renewal persists in this rulemaking.

12.Title Terminology

The Coast Guard received 34 comments pertaining to the terms used for crewmembers on a towing vessel, 30 of which opposed replacing the terms "operator" and "second-class operator" with the terms "master" and "mate (pilot)". Their argument, similar to that embraced by TSAC, was that, throughout the history of inland towing, "mate" has never referred to a licensed officer; rather, it has referred to the chief unlicensed deck person, while "pilot" has referred to the licensed person that operates the vessel. This SNPRM would leave "pilot of towing vessels" available for use on Western rivers. The license requirements for mater of towing vessels and pilot of towing vessels remain identical. Again, this term in no way implies either the taking or passing of the first-class pilotage examination or the associated level of proficiency; it merely reflects the historical application of titles in the inland towing industry.

13. Licensing Structure

The Coast Guard received 58 comments regarding the proposed licensing structure. Of them, 52 percent opposed the new licensing structure, for the following reasons: (1) 48 months does not provide enough wheelhouse experience for an unlimited master's license; (2) implementing a third-level license will be costly to entry-level mariners as well as to companies (because, for example, some vessels do not have the spare room to allow another person on board); (3) the apprentice-mate level is unnecessary because mariners already receive hands-on training as seamen and most companies already have training programs in place; and (4) the structure would limit mariners to certain areas and vessels. Several comments opposed the idea of "direct supervision" during the training of an apprentice mate, explaining that standing watch alone is necessary at some point during the practice sessions. A separate comment stated that no standard time-limit for the training of apprentice mates should be preset since everyone learns at a different pace.

A total of 28 comments supported the proposed licensing structure, given its aim to increase experience and skill. However, some of these comments offered suggestions to change terminology (as noted above in category 12) and the amount of time a mariner is to serve as an apprentice mater before becoming a mate varying from 1 to 5 years. Other comments specifically recommended that the Coast Guard ensure that no current mariner-in-training be hastily granted a license as mate (pilot) to avoid the requirements of this rulemaking.

Under current rules, the OUTV license requires 3 years of total service. Under this SNPRM a Master of towing vessels would require 4 years of service, the same as Master: (1) Ocean and Near-coastal, 1600 GT; (2) Great Lakes or Inland, any GT; and (3) Uninspected fishing-industry vessels. The proposed licensing structure would require a mariner to gain wheelhouse training and experience before taking the exam for a license as apprentice mate or steersman of towing vessels. More training and experience in the wheelhouse and completion of the training-record book would then qualify him or her for a demonstration of proficiency with a designated examiner before issuance of a license as mate (pilot) of towing vessel. A license as mate (pilot) would qualify a mariner to stand the watch of the current second-class OUTV or "back watch," but would not authorize the person to serve as master.

14. Horsepower as a Basis of Authority

The Coast Guard received a total of 365 comments pertaining to the proposed 3000-horsepower breakpoint. Twelve percent of the 365 supported using a horsepower breakpoint to limit licenses—6 percent of which suggested variations to the NPRM such as applying it to entry-level mariners only and creating a third breakpoint.

Of the 365, 60 percent opposed any sort of horsepower breakpoint, primarily on the basis that it would limit employment for both mariners and companies by restricting mariners to vessels of particular horsepowers. Twenty-six percent of them objected to the breakpoint as written and requested that it be either removed or completely revised using a higher breakpoint; in contrast, only 2 percent of them stated that 3000 horsepower was too high and requested that it be either removed or completely revised using a lower breakpoint. Another twelve percent of the opposing comments specifically recommended that the Coast Guard remove any horsepower breakpoint as the qualifying criterion and use a ratio of the vessel's gross tonnage to the size of the vessel's tow. Many of them opposed the horsepower breakpoint arguing that small towing vessels require just as much handling responsibility as, and often more than, larger vessels since smaller vessels are limited in maneuvering capability. They argued that the size of the two—not the horsepower of the tug—determines the level of safety. Mariners also expressed concern that a breakpoint would let employers prevent less-experienced mariners from obtaining equal employment-opportunities.

In consideration of the comments received and TSAC's recommendation, the Coast Guard has decided to replace the horsepower breakpoint with proficiency as the basis of authority for the new licensing system. The TSAC working group pointed out that, while some level of horsepower had originally seemed a sound criterion for differentiation of licenses, no consensus had ever formed within the industry as to just what level was most appropriate for a breakpoint. Therefore, increased emphasis on the experience an applicant has on particular waters will replace any such breakpoint.

15. Route Endorsements

The Coast Guard received about 65 comments pertaining to route endorsements, 17 percent of which supported them as proposed and perceived geographical knowledge of the traveled area as a necessity. Some of these comments even suggested that the endorsements be more restrictive than proposed. Meanwhile, 74 percent of the comments opposed route endorsements. These comments maintained that, in some cases, a mariner may have to travel unlicensed on one route while trying to get to the route for which he or she holds a license (for example, mariners with licenses endorsed for Oceans already have to travel through Near-coastal waters to get to their regular routes). In addition, the comments argued that route endorsements would unnecessarily restrict mariners, ultimately limiting their employment—financially and professionally—within a company.

Other concerns expressed by the comments pertained to either specific route endorsements or procedures for obtaining endorsements. Several comments argued that Western rivers covers multiple routes and should therefore be eliminated from the proposed rule or modified to reflect specific routes. A separate comment recommended inclusion of the Mississippi in that for Western rivers, while others requested clarification of those for Rivers and Western rivers, and inclusion of the Gulf Intercoastal Waterways in that for either Near-coastal waters or the Great Lakes and inland waters. Comments also requested

the Coast Guard to allow use of an employment record or company document for proof of time and experience on a particular route.

Under this SNPRM, as under the NPRM, towing vessel-licenses would be issued for the following routes:

a. Oceans.
b. Near-coastal routes.
c. Great Lakes and inland routes.
d. Rivers.
e. Western rivers.
f. Restricted local areas designated by Officers in Charge, Marine Inspection (OCMIs).

The license of a master or mate (pilot) of towing vessels endorsed for Oceans would authorize service on Near-coastal routes, Great Lakes and inland routes, or Rivers upon 30 days of observation and training on the subordinate route. That of a master or mate (pilot) of towing vessels endorsed for Near-coastal routes would authorize service on Great Lakes and inland routes or Rivers upon 30 days of observation and training on the subordinate route.

On the Western rivers, the methods of towing, the aids to navigation, the operating methods, and the operating environment are unique. Therefore, not even the license of a master or mate (pilot) of towing vessels endorsed for Oceans, Near-coastal routes, Great Lakes and inland routes, or Rivers would authorize service on Western rivers. To get an endorsement for this service, an applicant would have to show 90 days of operation and training over a route on a Western river.

To get an endorsement for a new route, an applicant would have to pass an exam for the route and serve in the next lower grade for 90 days on the route sought. Afterwards the Coast Guard would remove the lower-grade restriction. For example, an applicant holding a license as master of towing vessels endorsed for Rivers, applying for the same license endorsed for a Near-coastal route, would have to pass an exam for this route and submit evidence of 90 days' experience as not a master but a mate on this route. Upon completion of the required sea service, the applicant could have his or her master's license endorsed for this route.

16. Grandfathering of Licenses

The Coast Guard received 56 comments pertaining to the licensing of experienced mariners, the majority of which (84 percent) wholly supported grandfathering holders of current licenses commensurate with experience. The remaining comments either opposed grandfathering or requested clarification on the criteria for grandfathering.

Mariners currently holding OUTV licenses could have them renewed as licenses for masters of towing vessels. These mariners therefore would be grandfathered in that they would have to meet only the renewal requirements contained in the proposed rule.

17. Special Endorsements

The Coast Guard received about 25 comments in response to its request for comments on the applicability of the proposed requirements, specifically the horsepower breakpoint on harbor-towing vessels and assist-towing vessels. Only 4 comments opposed a harbor endorsement, free of horsepower limitation, while 12 comments supported a harbor endorsement for the following reasons: (1) Harbor work requires flexibility; (2) harbor vessels do not face the same level of danger as do line boats; and, (3) without the endorsement, the proposed horsepower breakpoint would limit career advancement. A separate comment suggested that, since harbor-towing companies normally use their operators on all of their boats at one time or another, a harbor-vessel operator should have to demonstrate proficiency on the company-owned vessel with the highest horsepower.

Three comments supported a special endorsement for masters of assist-towing vessels on the basis that it would be difficult to obtain a master to undertake a ship assist without such endorsement. These comments also noted that assist-towing vessels have different demands from other towing vessels and need less damage control. Another comment suggested applying a horsepower limitation on an endorsement for assist-towing vessels if the mariner seeking it has experience only with such vessels. However, the same comment argued that those mariners with experience on vessels of greater horsepower should be permitted to operate these without limitation by a restrictive endorsement. Only three comments agreed that operators of assist-towing vessels of 26 feet or more in length that are hired for commercial use should be subjected to the same standards and testing as operators of other towing vessels.

TSAC voiced concern about the difficulties for mariners in the vessel assist segment of the industry to obtain training time for the apprentice mate (steersman) license. TSAC recommended that vessel assist applicants proceed to the mate (pilot) license by completing the written exam and demonstrating proficiency at the same time. **Note:** The mariner will also have to complete either the training-record book or an approved training course.

The SNPRM does not propose a horsepower breakpoint for towing-vessel licenses. Vessel assist licenses (not to be confused with licenses endorsed for Assistance-Towing) may go directly to mate of towing vessels without getting an apprentice mate (steersman) license but will be limited to the vessel assist portion of the industry.

The Coast Guard received four comments pertaining to other types of vessels used in the towing industry. One comment requested that oil-spill-response vessels be excluded from the proposed requirements because the requirements would create an unnecessary financial burden on the companies that operate these vessels without enhancing navigational safety. Two comments supported an endorsement for anchor-handling tug-supply (AHTS) vessels, which support the offshore industry, because barge towing is not a primary source of employment for these vessels. Another comment noted that the NPRM had not discussed passenger barges, but requested that they be exempt from this rulemaking. Passenger barges are inspected and certified by the Coast Guard and, by themselves, are not affected by this rulemaking. However, the means of propulsion (towing vessels) for the most part do not require inspection and certification, and are included in this rulemaking.

Oil-spill-response-vessels will not normally be exempt from the proposed licensing requirement; however, in emergencies such as a major oil spill, the local OCMI can temporarily exempt oil-spill-response-vessels for the duration of the emergency. AHTS vessels may already qualify for licensing exemptions, and no additional exemptions for this segment of the industry are being considered.

The Coast Guard notes that vessels engaged solely in assistance towing are covered by existing regulations and remain exempt from this rulemaking. It has proposed a definition of disabled vessel under § 10.103 to better define the assistance-towing industry and show that this proposed rule does not cover that industry.

The Coast Guard recognizes that—by employing similar terms, *Assistance towing* and *Vessel assist*, for dissimilar industries—it may be risking confusion. The Coast Guard invites your comments to avert any confusion.

18. Other, General Subject Matter

Several comments opposed the Coast Guard's attempt to further regulate the towing industry, an attempt based, they stated, on one mariner's incompetence resulting in the Amtrak casualty. Other comments (inconsistent with those) resented the application of blue-water rules to a brown-water industry. Remaining comments cited the Coast Guard's failure to properly and safely maintain waterways and regulate recreational and pleasure boats, rather than operators' errors, as the basis for problems in the towing industry. A number of these comments did not relate directly to the content of the proposed regulations. Illustrative of these were issues of the 12-hour work limit (2-watch system), the increased manning of towing vessels to include a licensed engineer, and the reason for improved aids to navigation. The Coast Guard has addressed and will address these issues and others in appropriate ways outside of this SNPRM.

The definitions of "Coast Guard-accepted," "designated examiner," "practical demonstration," "qualified instructor," and "standard of competence," proposed under § 10.103, and § 10.309, titled, "Coast Guard-accepted training other than approved courses", were published in the Coast Guard interim rule implementing the 1978 Standards of Training, Certification and Watchkeeping for Seafarers as amended in 1995 (62 FR 34506); and, therefore, they have been removed from this proposed rulemaking.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Evaluation follows:

Summary of Benefits

The principal benefits of this proposed rule would be to enhance the safety of navigation and reduce the risk of collisions, allisions, groundings, fatalities, and injuries in the towing industry. The training required by this rule has the particular potential to significantly decrease the number of fatalities and injuries in the industry. If this rule reduces the number of reportable marine casualties—whether they involve fatalities, injuries requiring professional medical treatment, or property damage costing in excess of $25,000—by 13 a year over the next 10 years, the benefits will exceed the costs. The effectiveness to this rulemaking cannot be accurately quantified because of the inability to measure the damage dollars based on human error alone. However, the baseline of preventing 3 deaths, which is 50% of the total fatalities which occurred in the past ten years from casualties that this rule should prevent, would be $8.1 million. Therefore, this alone will exceed the total cost of the rulemaking. The complex cumulative effect of human error makes it difficult to quantify the exact benefits of the proposed rule.

One way to reduce the risks associated with human error in operating towing vessels is to ensure that mariners maintain the highest practicable standards of training, certification, and competence. Although the Coast Guard recognizes that many prudent operators already practice proficient navigation, this rule would codify their skills, provide basic performance standards for demonstration of proficiency, and compel compliance for operators not conforming to sound practices of the majority of the industry. The rule is intended to accrue benefits from a reduction of towing-vessel accidents and injuries through an increased awareness of safe towing practices.

Summary of Costs

There are around 5,400 documented towing vessels in the United States. The impact on the operators of these vessels would be minimal because holders of current licenses would be grandfathered into licenses commensurate with their experience. Because these new licenses would be issued at the time of routine renewal, there would be no new users' fees for them. The proposed rule, however, would result in increased fees for new entrants into the industry.

Most changes to the proposed rule in this SNPRM either are editorial or update technical information to reflect comments to the NPRM. But there are certain ones that are substantive and will require different behavior by mariners. Responsive to comments from the public and TSAC, the Coast Guard would let those mariners who have maintained recency of service, and have not had administrative action against their license culminating in suspension or revocation, forgo any demonstration of proficiency for license renewal; rather, the Coast Guard would let them submit "information".

The Coast Guard estimates the annual costs of compliance—for new entrants into the industry—with the proposed rule at around $1,057,850. The 10-year present value of these costs, discounted at 7 percent back to 1996, would total $7,429,896.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule would place its primary economic burden on the mariners, not on their employers—who may, though they need not, assume responsibility for this burden. The Coast Guard expects that, of the employers who would assume this responsibility, few, if any, would be small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LCDR Don Darcy, Office of Operating and Environmental Standards (G–MSO), 202–267–0221.

Collection of Information

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

DOT No.: 2115.

OMB Control No.: 2115–0623.

Title: Licensing and Manning for Officers of Towing Vessels.

Summary of the Collection of Information: This proposed rule would require every mariner who seeks an original license as mate (pilot) of towing vessels or an endorsement for towing vessels to have a training-record book. It may also require a report on a final check-ride before a designated examiner.

Need for Information: The need for the collection of information is to ensure that the mariners' training information is available to assist in determining an individuals overall qualification to hold a Coast Guard issued merchant mariners license. These recordkeeping requirements are consistent with good commercial practices to the end of good seamanship for safe navigation. The following is a section-by-section explanation of them:

Proposed § 10.304(e) would require each applicant for a license as mate (pilot) of towing vessels, and each master or mate of self-propelled vessels of greater than 200 gross tons seeking an endorsement for towing vessels, to complete a training-record book.

Proposed § 10.463(h) would require a company to maintain evidence that every vessel it operates is under the direction and control of a licensed mariner with appropriate experience, including 30 days of observation and training on the intended route. The company could do this with copies of current licenses and voyage records that most companies already keep.

Proposed § 10.464(d)(2) would require masters of vessels of greater than 200 GT to maintain training-record books for license endorsements as masters of towing vessels. Collection of this information is necessary to ensure that the masters have completed the series of qualifications for licensing.

Proposed §§ 10.465(a)(2), (b)(2), (c)(2), and (d)(2) would each require a final check-ride before a designated examiner. They would then require the applicant to submit his or her completed training-record book to the Coast Guard Regional Examination Center. Collection of this information is necessary because it would raise the safety of towing by upgrading the evaluation process.

Proposed § 10.465(d)(2) would also require mates of self-propelled vessels of greater than 200 GT to maintain training-record books for license endorsements as mates (pilots) of towing vessels. Collection of this information is necessary to ensure that the mates have completed the series of qualification for licensing.

Proposed Use of Information: This information would warrant the mariner qualified to hold a license for the service in which he or she would engage.

Description of Respondents: Mariners licensed to operate towing vessels, prospective towing vessel officers, and companies employing these mariners.

Number of Respondents: 14,455 mariners of towing vessels and approximately 400 companies employing these mariners, during a 3-year period.

Frequency of Response: For 60 percent of the mariners, the frequency of response is estimated to be once over the initial three years. An estimated five percent of currently licensed mariners may complete a report on a final check-ride before a designated examiner every 5 years. Final check-ride before a designated examiner under proposed §§ 10.465 (a)(2), (b)(2), (c)(2), and (d)(2) would entail a one-time record after the mariner's training-record book had been completed. Approximately 400 companies would be required to maintain a license and voyage record file for each mariner to be revised upon the expansion of a mariner's route.

Burden of Response: Approximately 95 percent of current licensed towing vessel operators would have to perform an estimated 1.0 hour of management over a 3-year period to provide the Coast Guard updates of their licensing records. Approximately five percent of the currently licensed mariners may perform an estimated 0.5 hours of management time to comply with providing the Coast Guard the final check-ride. Approximately 1,560 entry mariners seeking a license to operate towing vessels would have to perform an estimated 1.0 hour of management time over a 3-year period to comply with providing the Coast Guard updates of their licensing records. Under proposed § 10.643(h), approximately 400 companies would have to maintain evidence that every vessel it operates is under the direction and control of a licensed mariner with appropriate experience. Each company would perform 0.25 hours of administrative time for each mariner to maintain these records. The estimated cost burden for information collection would be § 106,069.25 per year and $318,207.75 for the initial 3 years.

Estimated Total Annual Burden: During a 3-year period, the total reporting and recordkeeping burden would be 12,717.25 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to: (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under paragraph 2.B.2.e.(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule

is a matter of "training, qualifying, licensing and disciplining of maritime personnel" within the meaning of subparagraph 2.B2.e (34) of Commandant Instruction M16475.1B that clearly has no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. Review the authority citation for part 10 to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7302, 7502, 7505, and 7701; 49 CFR 1.45 and 1.46. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. To § 10.103, add definitions, in alphabetical order, to read as follows:

§ 10.103 Definitions of terms used in this part.

Apprentice mate (steersman) of towing vessels means a mariner qualified to perform watchkeeping on the bridge, aboard a towing vessel, while in training under the direct supervision of a licensed master or mate (pilot) of towing vessels.

* * * * *

Approved training means training that is approved by the Coast Guard or meets the requirements of § 10.309.

* * * * *

Disabled vessel means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or under way; but does not mean a barge or any other vessel not regularly operated under its own power.

* * * * *

Pilot of towing vessels means a qualified officer of towing vessels operating exclusively on inland routes.

* * * * *

Vessel Assist means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a ship with limited maneuverability.

* * * * *

§ 10.201 [Amended]

3. In § 10.201, in paragraph (f)(1), remove the words "second-class operator of uninspected towing vessel" and add, in their place, the words "mate (pilot) of towing vessels (19 years)"; and, in paragraph (f)(2), remove the words "designated duty engineer of vessels of not more than 1,000 horsepower, may be granted to an applicant who has reached the age of 18 years." and add, in their place, the words "designated duty engineer of vessels of not more than 1,000 horsepower, or apprentice mate (steersman) of towing vessels, may be granted to an applicant, otherwise qualified, who has reached the age of 18 years."

§ 10.203 [Amended]

4. In § 10.203, in Table 10.203, remove the word "Uninspected" from before the words "towing vessels" and capitalize the first letter in the word "towing" in column one; and remove the words "Operator: 21; 2/c operator: 19." from the license category that way just amended to read "Towing vessels" in column two and add, in their place, the words "Master of towing vessels: 21; mate (pilot) of towing vessels: 19; apprentice mate (steersman): 18".

§ 10.205 [Amended]

5. In § 10.205, in paragraph (f)(1), remove the words "operator of uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels"; and, in paragraph (g)(3), remove the words "All operators of uninspected towing vessels, oceans (domestic trade)" and add, in their place, the words "All licenses for master or mate (pilot), except apprentice mate (steersman), for towing vessels on Oceans".

6. In § 10.209, add paragraphs (c)(6) and (7) to read as follows:

§ 10.209 Requirements for renewal of licenses, certificates of registry, and STCW certificates and endorsements.

* * * * *

(c) * * *

(6) Except as provided by paragraph (c)(7) of this section, an applicant for renewal of a license as master or mate (pilot) of towing vessels shall submit satisfactory evidence, predating the application by not more than 1 year, of satisfying the requirements of paragraph (c)(1)(i) or (ii) of this section, or those of paragraph (c)(1)(iv) of this section except the exercise; and of—

(i) Either completing a practical demonstration of maneuvering and handling a towing vessel before a designated examiner or submitting documentation in the form of a training-record book listing training, drills, experience during the license's validity in which an operator's proficiency is assessed over time; and

(ii) Either passing a rules-of-the-road exercise or completing a refresher-training course.

(7) An applicant for renewal of a license as master or mate (pilot) of towing vessels whose most recent license was suspended or revoked by an administrative law judge for incompetence shall complete the practical demonstration rather than submit the training-record book under paragraph (c)(6)(i) of this section.

* * * * *

7. In § 10.304, redesignate paragraph (h) as (i), and add new paragraph (h) to read as follows:

§ 10.304 Substitution of training for required service, and use of training-record books.

* * * * *

(h) Each applicant for a license as mate (pilot) of towing vessels, and each master or mate of self-propelled vessels of greater than 200 gross tons seeking an endorsement for towing vessels, shall complete a training-record book that contains at least the following:

(1) Identification of the candidate, including full name, home address, photograph or photo-image, and personal signature.

(2) Objectives of the training and assessment.

(3) Tasks to be performed or skills to be demonstrated.

(4) Criteria to be used in determining that the tasks or skills have been performed properly.

(5) Places for a qualified instructor to indicate by his or her initials that the candidate has received training in the proper performance of the tasks or skills.

(6) A place for a qualified examiner to indicate by his or her initials that the candidate has successfully completed a practical demonstration and has proved competent in the task or skill under the criteria.

(7) Identification of each qualified instructor by full name, home address, employer, job title, ship name or business address, number of any Coast Guard license or document held, and personal signature.

(8) Identification of each designated examiner by full name, home address, employer, job title, ship name or business address, number of any Coast Guard license or document held, and personal signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

* * * * *

8. In § 10.403, revise the heading of the section and Figure 10.403 to read as follows:

§ 10.403 Structure of deck licenses.

* * * * *

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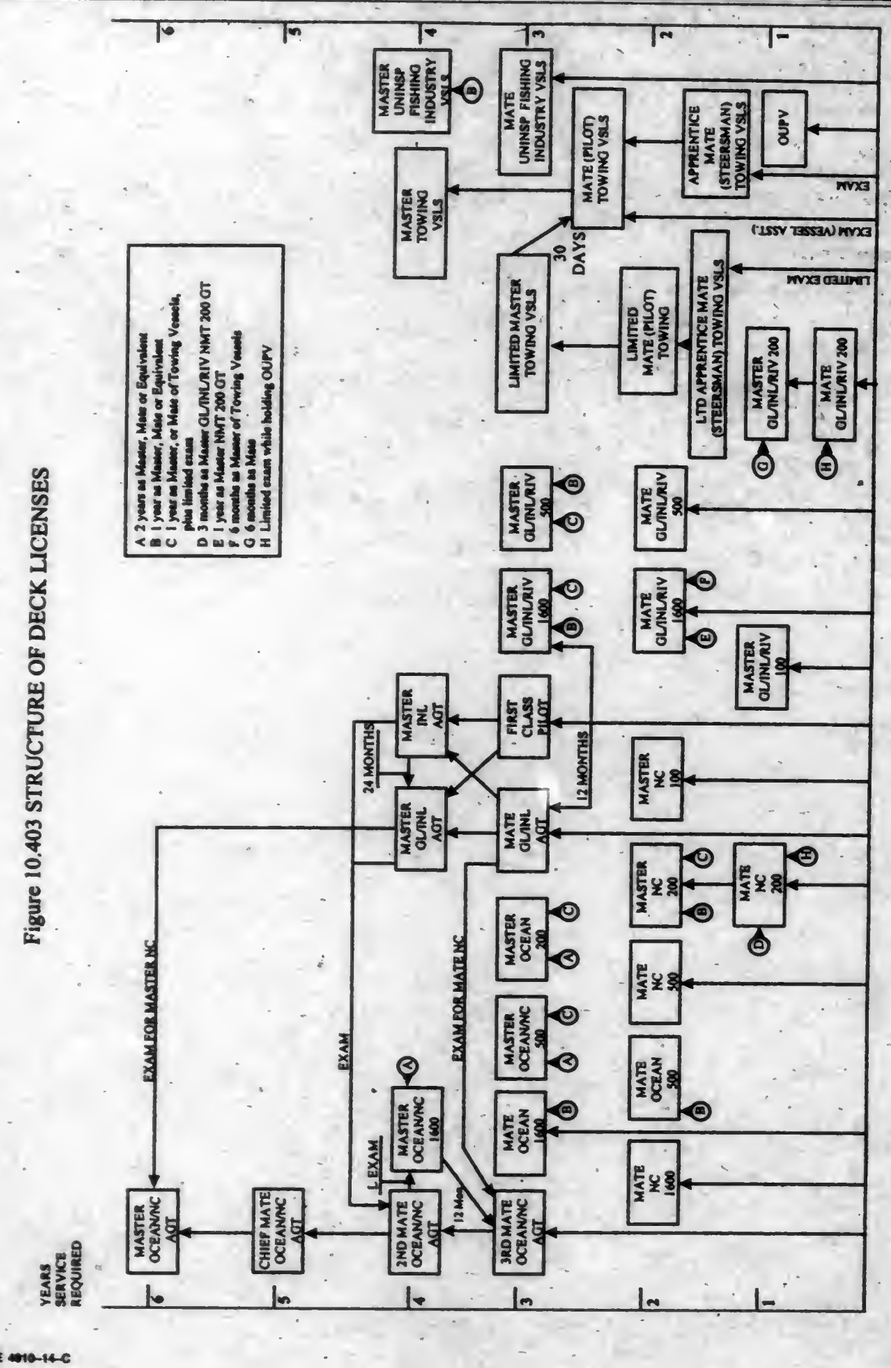


Figure 10.403 STRUCTURE OF DECK LICENSES

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§ 10.412 [Amended]

9. In § 10.412(a), remove the words "operator of uninspected towing vessels,".

§ 10.414 [Amended]

10. In § 10.414(a), remove the words "operator of uninspected towing vessels,".

11. In § 10.418, revise the heading and paragraph (b) to read as follows:

§ 10.418 Service for master of Ocean or Near-coastal steam or motor vessels of not more than 500 gross tons.

* * * * *

(b) The holder of a license as master or mate (pilot) of towing vessels authorizing service on Oceans or Near-coastal routes is eligible for a license as master of Ocean or Near-coastal steam or motor vessels of not more than 500 gross tons after both 1 year of service as master or mate of towing vessels on Oceans or Near-coastal routes and completion of a limited examination.

§ 10.420 [Amended]

12. In § 10.420, remove the words "operator of uninspected towing vessels,".

§ 10.424 [Amended]

13. In § 10.424(a)(2), remove the words "operator or second-class operator of ocean or near coastal uninspected towing vessels" and add, in their place, the words "master or mate of Ocean or Near-coastal towing vessels".

14. In § 10.426, revise the heading and paragraph (a)(2) to read as follows:

§ 10.426 Service for master of Near-coastal steam or motor vessel of not more than 200 gross tons.

(a) * * *

(2) One year of total service as licensed master or mate of towing vessels on Oceans or Near-coastal routes. Completion of a limited examination is also required.

* * * * *

§ 10.442 [Amended]

15. In § 10.442, paragraphs (a) and (b), remove the words "operator of uninspected towing vessels" from the two places where they occur and add, in their places, the words "master or mate (pilot) of towing vessels".

16. In § 10.446, revise the heading and paragraph (b) to read as follows:

§ 10.446 Service for master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

* * * * *

(b) The holder of a license as master or mate (pilot) of towing vessels is eligible for this license after completion of both 1 year of service as master or mate (pilot) of towing vessels and a limited examination specific to towing.

§ 10.452 [Amended]

17. In § 10.452(a), remove the words "operator or second-class operator of uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels".

§ 10.462 [Amended]

18. In § 10.462(c) introductory text, remove the words "operator of uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels".

19. Add § 10.463 to read as follows:

§ 10.463 General requirements for licenses for master, mate (pilot), and apprentice mate (steersman) of towing vessels.

(a) The Coast Guard issues licenses as master and mate (pilot) of towing vessels in the following categories:

(1) *Unlimited.* For this section, *unlimited* means a towing vessel of less than 200 gross tons not conducting *vessel assist.*

(2) *Vessel assist.*

(b) The Coast Guard restricts licenses as master and mate (pilot) of towing vessels for Oceans and Near-coastal routes by the gross tonnage of the towing vessels on which the experience was acquired—by 200, 500, and 1,600 gross tons, in accordance with §§ 10.424, 10.418, and 10.412, respectively.

(c) The Coast Guard endorses licenses as master, mate (pilot), and apprentice mate (steersman) of towing vessels for one or more of the following routes:

(1) Oceans.

(2) Near-coastal routes.

(3) Great Lakes and inland routes.

(4) Rivers.

(5) Western rivers.

(6) Restricted local areas designated by Officers in Charge, Marine Inspection.

(d) A license as master or mate of towing vessels endorsed for Oceans authorizes service on Oceans. This license also authorizes service on a subordinate route of Near-coastal, Great Lakes and inland, or Rivers (except Western rivers) upon completion of 30 days of observation and training on the specific subordinate route.

(e) A license as master or mate (pilot) of towing vessels endorsed for Near-coastal routes authorizes service on Near-coastal routes, Great Lakes and inland routes, and Rivers (except Western rivers) upon completion of 30 days of observation and training on each subordinate route.

(f) A license as master or mate (pilot) of towing vessels endorsed for Great Lakes and inland routes authorizes service on Great Lakes and inland routes and Rivers (except Western rivers) upon completion of 30 days of observation and training on the subordinate route.

(g) Before serving as master or mate (pilot) of towing vessels on Western rivers, the licensed mariner shall possess 90 days of observation and training and have his or her license endorsed for Western rivers.

(h) Each company must maintain evidence that every vessel it operates is under the direction and control of a licensed mariner with appropriate experience, including 30 days of observation and training on the intended route.

(i) For all inland routes, the license as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.

(j) For all inland routes, the license as steersman is equivalent to that as apprentice mate. All qualifications and equivalencies are the same.

20. Revise § 10.464 to read as follows:

§ 10.464 Licenses as masters of towing vessels.

(a) For a license as master of towing vessels (unlimited), an applicant shall—

(1) Have 48 months of total service including—

(i) Eighteen months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length while holding a license as mate (pilot) of towing vessels unlimited;

(ii) Twelve months of the 18 months, as mate (pilot) on towing vessels other than vessel assist; and

(iii) Three months of the 18 months on the particular route sought by the applicant; or

(2)(i) Have 12 months of service as mate (pilot) of towing vessels (unlimited) while holding a license as master of towing vessels (vessel assist) including 3 months of service on the particular route sought by the applicant;

(ii) Have completed the "unlimited" sections of the training-record book; and

(iii) Have passed an "unlimited" examination.

(b) For a license as master of towing vessels (vessel assist), an applicant shall—

(1) Have 48 months of total service including—

(i) Eighteen months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length while holding a license as mate (pilot) of towing vessels;

(ii) Twelve months of the 18 months, as mate (pilot) on towing vessels conducting vessel assist; and

(iii) Three months of the 18 months on the particular route sought by the applicant; or

(2) Have 12 months of service as mate (pilot) of towing vessels (vessel assist) while holding a license as limited master of towing vessels including 3 months of service on the particular route sought by the applicant.

(c) For a license as master of towing vessels (vessel assist) endorsed for a restricted local area, an applicant shall have 36 months of total service including—

(1) Twelve months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length as limited mate (pilot) of towing vessels; and

(2) Three months of service on the particular route sought by the applicant.

(d) The holder of a license as master of self-propelled vessels of greater than 200 gross tons and first-class pilots may obtain an endorsement for towing vessels (restricted to the service presented) if he or she—

(1) Has 30 days of training and observation on towing vessels on each of the routes for which the endorsement is sought;

(2) Submits evidence of assessment of practical demonstration of skills, in the form of a training-record book, described in § 10.304(e); and

(3) Passes an examination.

(e) The holder of a license as master of towing vessels may have a restricted endorsement, as mate (pilot) for a route not included in the current endorsements on which he or she has no operating experience, placed on his or her license after passing an examination for that route. Upon completion of 90 days of experience on that route, he or she may have the restricted endorsement removed.

21. Add § 10.465 to read as follows:

§ 10.465 Licenses as mates (pilots) of towing vessels.

(a) For a license as mate (pilot) of towing vessels (unlimited), an applicant shall—

(1) Have 30 months of total service including—

(i) Twelve months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length while holding a license as apprentice mate (steersman); and

(ii) Three months of the 12 months on the particular route sought by the applicant;

(2) Submit either—

(i) A certificate of completion from a Coast-Guard-approved course as specified in paragraph (f) of this section; or

(ii) Evidence of assessment of practical demonstration of skills, in the form of a training-record book in accordance with § 10.304(e); or

(iii) Evidence of 30 days of service observing and training on towing vessels other than vessel assist while holding a license as master of towing vessels (vessel assist) and pass a partial examination.

(b) For a license as mate (pilot) of towing vessels (vessel assist), an applicant shall—

(1) Have 30 months of total service including—

(i) Twelve months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length while holding a license as apprentice mate (steersman) of towing vessels; or

(ii) Thirty months of total service on vessel assist towing vessels and have passed an apprentice mate (pilot) examination;

(2) Have 3 months of the last 12 months of service on the particular route sought by the applicant; and

(3) Submit either—

(i) A certificate of completion from a Coast Guard-approved course as specified in paragraph (f) of this section;

(ii) Evidence of assessment of practical demonstration of skills, in the form of a training-record book in accordance with § 10.304(e); or

(iii) Evidence of 30 days of service observing and training on towing vessels while holding a limited license as master of towing vessels and pass a partial examination.

(c) For a license as mate (pilot) of towing vessels (vessel assist) endorsed for a restricted local area, an applicant shall—

(1) Have 24 months of total service including 6 months of service on deck of a towing vessel of 8 meters (at least 26 feet) or over in length as limited apprentice mate (steersman) of towing vessels; and

(2) Submit either—

(i) A certificate of completion from a Coast-Guard-approved course as specified in paragraph (f) of this section; or

(ii) Evidence of assessment of practical demonstration of skills, in the form of a training-record book in accordance with § 10.304(e).

(d) The holder of a license as mate of self-propelled vessels of greater than 200 gross tons may obtain an endorsement for towing vessels if he or she—

(1) Has 30 days of training and observation on towing vessels on each route for which the endorsement is requested;

(2) Submits evidence of assessment of practical demonstration of skills, in the form of a training-record book in accordance with § 10.304(e); and

(3) Passes an examination.

(e) The holder of a license as mate (pilot) of towing vessels may have a restricted endorsement, as apprentice mate (steersman) for a route not included in the current endorsements on which he or she has no operating experience, placed on his or her license after passing an examination for that route. Upon completion of 3 months of experience in that route, he or she may have the restricted endorsement removed.

(f) An accepted training course for mate (pilot) of towing vessels, whether unlimited or vessel assist, must include formal instruction and practical demonstration of proficiency either on board a towing vessel or at a shoreside training facility before a designated examiner, and must cover—

(1) Shipboard management and training;

(2) Seamanshp;

(3) Navigation;

(4) Watchkeeping;

(5) Radar;

(6) Meteorology;

(7) Maneuvering and handling of towing vessels;

(8) Engine-room basics; and

(9) Emergency procedures.

22. Redesignate § 10.466 as § 10.467 and add a new § 10.466 to read as follows:

§ 10.466 Service for apprentice mate (steersman) of towing vessels.

(a) For a license as apprentice mate (steersman) of towing vessels, an applicant shall—

(1) Have 18 months of service on deck including 12 months on towing vessels;

(2) Have 3 months of the 18 months on the particular route sought by the applicant; and

(3) Pass the examination specified in subpart I of this part.

(b) For a license as limited apprentice mate (steersman) of towing vessels, an applicant shall—

(1) Have 18 months of service on deck including 12 months on towing vessels;

(2) Have 3 months of the 18 months on the particular route sought by the applicant; and

(3) Pass the examination.

(c) The holder of a license as apprentice mate (steersman) of towing vessels may have a restricted endorsement, as limited apprentice mate (steersman) for a route not included in the current endorsements on which he or she has no operating experience, placed on his or her license

upon passing an examination for that route. Upon completion of 3 months of experience in that route, he or she may have the restricted endorsement removed.

23. In § 10.482, revise paragraph (a) to read as follows:

§ 10.482 Assistance towing.

(a) This section contains the requirements to qualify for an endorsement authorizing an applicant to engage in assistance towing. The endorsement applies to all licenses except those for master and mate (pilot) of towing vessels and those for master or mate authorizing service on inspected vessels over 200 gross tons. Holders of any of these licenses may engage in assistance towing within the scope of the licenses and without the endorsement.

* * * * *

§ 10.701 [Amended]

24. In § 10.701(a), remove the words "operator of uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels".

§ 10.703 [Amended]

25. In § 10.703(a), remove the words "operator of uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels".

§ 10.901 [Amended]

26. In § 10.901(b)(1), remove the words "uninspected towing vessels" and add, in their place, the words "master or mate (pilot) of towing vessels".

27. In § 10.903, revise paragraphs (a)(18) and (b)(4) to read as follows:

§ 10.903 Licenses requiring examinations.

(a) * * *

(18)(i) Apprentice mate (steersman) of towing vessels;

(ii) Mate (pilot) of towing vessels, vessel assist;

* * * * *

(b) * * *

(4) Master or mate (pilot) of towing vessels (endorsed for the same route).

28. In § 10.910, revise paragraphs 10 through 12 in Table 10.910–1 to read as follows:

§ 10.910 Subjects for deck licenses.

* * * * *

10. Apprentice mate, towing vessels, Oceans (domestic trade) and Near-coastal routes.

11. Apprentice mate (steersman), towing vessels, Great lakes and inland routes.

12. Steersman, towing vessels, Western rivers.

* * * * *

PART 15—MANNING REQUIREMENTS

29. Revise the authority citation for part 15 to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 50 U.S.C. 198; and 49 CFR 1.45 and 1.46.

§ 15.301 [Amended]

30. In § 15.301, remove paragraph (b)(6); and redesignate paragraphs (b)(7) through (10) as paragraphs (b)(6) through (9).

31. Revise section § 15.610 and its heading to read as follows:

§ 15.610 Masters and mates (pilots) of towing vessels.

Every towing vessel at least 8 meters (at least 26 feet) in length measured from end to end over the deck (excluding sheer), except a vessel described by the next sentence, must be under the direction and control of a person licensed as master or mate (pilot) of towing vessels or as master or mate of appropriate gross tonnage holding an endorsement of his or her license for towing vessels. This does not apply to any vessel engaged in assistance towing, or to any towing vessel of less than 200 gross tons engaged in the offshore mineral and oil industry if the vessel has sites or equipment of that industry as its place of departure or ultimate destination.

§ 15.705 [Amended]

32. In § 15.705(d), remove the words "individual operating an uninspected towing vessel" and add, in their place, the words "master or mate (pilot) operating a towing vessel"; and remove the words "individuals serving as operators of uninspected towing vessels" and add, in their place, the words "masters or mates (pilots) serving as operators of towing vessels".

33. In § 15.805, add paragraph (a)(5) to read as follows:

§ 15.805 Master.

(a) * * *

(5) Every towing vessel of 8 meters (at least 26 feet) or more in length.

* * * * *

34. In § 15.810, redesignate paragraphs (d) and (e) as (e) and (f); and add a new paragraph (d) to read as follows:

§ 15.810 Mates.

* * * * *

(d) Each person in charge of the navigation or maneuvering of a towing vessel of 8 meters (at least 26 feet) or more in length shall hold either a license authorizing service as mate of towing vessels—or, on inland routes, as pilot of towing vessels—or a license as master of appropriate gross tonnage according to the routes, endorsed for towing vessels.

* * * * *

35. Revise § 15.910 and its heading to read as follows:

§ 15.910 Towing vessels.

No person may serve as master or mate (pilot) of any towing vessel of 8 meters (at least 26 feet) or more in length unless he or she holds a license explicitly authorizing such service.

Dated: October 17, 1997.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–28409 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–68; RM–8999]

Radio Broadcasting Services; Hayfield, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: The Commission denies the petition for rule making filed by Vixon Valley Broadcasting proposing the allotment of Channel 263A to Hayfield, Virginia. See 62 FR 9409, March 3, 1997. The proposal is denied because Hayfield was found not to be a community for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–68, adopted September 24, 1997, and released October 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–28357 Filed 10–24–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–41, Notice 02]

RIN AG–38

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; reopening of comment period.

SUMMARY: This document reopens the comment period for a request for comments published December 13, 1996, regarding the potential value of several auxiliary signal lamps in addition to those required by Federal Motor Vehicle Safety Standard No. 108. One of the commenters provided NHTSA with a field study of the effectiveness of an "advance brake warning system" (ABWS), one of the auxiliary signal lamps on which comments were requested. NHTSA believes that this field study is a significant piece of evidence in reaching any decision about the merits of ABWS. However, this study only became available just before the comment period closed. Accordingly, the only commenters that addressed this field study were the two commenters who filed late comments, as well as the commenter that provided the field study.

The purpose of this document is to make the public aware of the field study and to invite comments and analysis of the field study. To facilitate such comments and analysis from the public, NHTSA is noting some questions and issues the agency has identified in its review and analysis of the field study. The comment period is reopened for an additional 30 days.

DATES: Comments must be received by NHTSA no later than November 26, 1997.

ADDRESSES: Comments should refer to Docket No. 96–41, Notice 2, and be submitted to: Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are 9:30 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: For technical issues: Richard Van Iderstine, Office of Crash Avoidance Standards, NPS–21, telephone (202) 366–5280, FAX (202) 366–4329.

For legal issues: Taylor Vinson, Office of Chief Counsel, NCC–20, telephone (202) 366-5263, FAX (202) 366–3820.

Both may be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Comments should be sent to the Docket Section at the address given above, not sent or FAXed to these people.

SUPPLEMENTARY INFORMATION: On December 13, 1996, at 61 FR 65510, NHTSA published a request for comments on whether NHTSA should permit several types of auxiliary signal lamps in addition to those required by Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment* (49 CFR 571.108). The agency noted in this request for comments that these lighting ideas had been submitted without any data showing that the concepts would produce real safety benefits on the public roads.

One of the signal lamp ideas on which the agency sought public comment was an Advance Brake Warning System (ABWS). At present, vehicles' stop lamps are activated when the driver applies the brakes. ABWS lights the stop lamps sooner in hard braking than in normal braking, with the intent of giving following drivers earlier warning. ABWS does this by activating the stop lamps when a driver rapidly removes his or her foot from the accelerator pedal, on the assumption that these rapid removals indicate an intention to apply the brakes.

The 90-day comment period in which the public was invited to respond to this request for comments closed on March 13, 1997. NHTSA has received 27 comments in response to this request for comments. In one of those comments, Baran Advanced Technology Ltd. (Baran), one of the companies seeking to market ABWS in the United States, provided NHTSA with a field study conducted in Israel of the crash experience of vehicles equipped with ABWS. Baran's comment is available to the public from NHTSA's public docket and has been filed as 96–041–N01–014. This field study differentiates ABWS from the other signal lamp ideas discussed in the request for comments, for which there are still no studies or other data suggesting their effectiveness.

This field study became available only during the last week of the 90-day comment period. Because of this, only three of the 27 comments addressed this Israeli field study—the commenter that submitted the study and two organizations that filed comments well after the comment closing date. Because this field study is important in evaluating the merits of ABWS, the agency wants to make the public aware of this field study and ask for public review and comment on the study to help NHTSA assess the merits of ABWS.

NHTSA has reviewed and analyzed the Israeli field study. The agency would like to summarize its understanding of the study and identify some areas in which public comment and additional information might be helpful. The field study of ABWS involved 764 Israeli government vehicles tracked over a two-year period. Half the vehicles were equipped with ABWS, the other half were not. The control group (those vehicles that did not have ABWS) were matched to the ABWS-equipped vehicles. That is, each vehicle in the control group was the same make, model, and model year as a vehicle in the ABWS group.

These 764 vehicles were in a total of 881 crashes, 78 of which were crashes in which the government vehicle was struck from the rear. Of these 78 rear-end crashes, 37 occurred in the vehicle fleet equipped with ABWS, while 41 crashes occurred in the control group. After adjusting for the distance driven by three particular vehicles, the study's authors concluded that the rear-end crash involvement rate of the ABWS equipped vehicles was 17.6 percent less than that of the control vehicles. In addition, these 78 crashes were then sorted into "relevant," defined in the report as "crashes in which the government vehicle was struck from behind while braking or immediately after braking," and "irrelevant," defined in the report as "crashes in which the government vehicle was already stopped for a while, or the driver reported that (s)he decelerated or braked gradually rather than abruptly, and/or the driver of the striking vehicle testified that he failed to pay attention to the stopping or stopped vehicle ahead." Of the 78 rear-end crashes, 26 were classified as "relevant" and the other 52 were deemed "irrelevant." The study concluded that the crash involvement rate of the ABWS-equipped vehicles in relevant rear end crashes was 64 percent less than that of the control group.

NHTSA has some concerns about how closely the ABWS group matched the control group. The Israeli study mentions that vehicle attributes (make, model, and year) were matched precisely in the ABWS group and the control group. However, no mention is made of important vehicle use patterns, such as the driving environment and the typical driver. It appears that vehicle use patterns were not considered, since no mention was made in the study of any correlation in these areas.

The report of the Israeli study also presents apparently conflicting data regarding one important matching vehicle attribute, the presence of a center high-mounted stop lamp (CHMSL). The report of the Israeli study states on page 11 that the CHMSL became mandatory in Israel "at the end of 1994, for all 1995 passenger vehicles" and that "94 of the 764 vehicles had CHMSL." However, on page 6, the report indicates that 153 vehicles were 1995 and 1996 model years. NHTSA would like to learn from the authors of the report how to explain this apparent inconsistency.

NHTSA also notes that the analysis of the results appears unusual. The data collected in the field study showed that there were 417 crashes for the ABWS-equipped vehicles and 464 crashes for the control group, or 9 percent fewer crashes for the ABWS group. This 9 percent reduction in crashes for the ABWS-equipped vehicles was found for:

- All crashes
- Rear-end crashes, and
- Crashes other than rear-end crashes

In other words, the ABWS-equipped vehicles in this field study were just as likely to avoid a frontal or side crash as they were to avoid a rear crash. Since ABWS would not be visible to the driver of the other vehicle in a frontal or side crash, there is no apparent reason to believe that ABWS would have any effect on those types of crashes. Thus, the data from this study do not appear to show any significant positive effect for ABWS. However, this simple analysis, which would be a conventional starting point for many analysts, was not reported in the study. NHTSA would like to learn why the authors of the report on the Israeli field study did not include this analysis in the report. The agency is also interested in commenters' views on how much weight and significance should be given to the fact that the simplest use of the data does not indicate any significant effect for ABWS in rear-end crashes relative to all other types of crashes.

Before making its analyses of ABWS effectiveness, the study normalized the exposure of the ABWS-equipped vehicles and the control group of vehicles using just the total miles traveled and time in service of the vehicles that had experienced rear impacts. Again, the standard analytical approach is to normalize using the total travel of the subject groups (all ABWS-equipped vehicles and all the control group vehicles), which avoids introducing any biases in the results. The agency is concerned that normalizing only for vehicles in rear-end crashes may give an unwarranted increase in the observed effectiveness of ABWS. NHTSA would like to learn why the authors of the study chose not to use the standard approach and why they believe their alternative approach avoids any biases. In addition, the agency would like commenters' views on this technique.

Further, as noted in the study, there was a large difference in the "relevant" rear-end crashes for the two groups—18 relevant rear-end crashes for the control group, but only eight relevant rear-end crashes for the ABWS group. However, the total rear-end crashes reported were substantially identical—41 for the control group and 37 for the ABWS group. The difference of four crashes in this sample size is not statistically significant. Thus, one interpretation of the data is that ABWS shifts rear-end crashes from the relevant to the irrelevant classification without reducing significantly the number of rear-end crashes. NHTSA would like comments on the appropriate interpretation of the data.

As part of the public review of the Israeli field study, NHTSA would like to repeat its previous statements that there are positive benefits from the current standardization of vehicle signaling systems. The current signal from stop lamps is a uniform, unambiguous signal that the driver of the vehicle has applied the brakes. However, the agency has also indicated that it is conceptually possible that using a different action to activate stop lamps or having stop lamps send different signals might offer net safety gains. NHTSA will consider amending Federal Motor Vehicle Safety Standard No. 108 if it is shown that a change from the current standardized vehicle signaling systems would yield a net safety benefit. The agency would like commenters to address expressly whether the Israeli field study is sufficiently definitive about net positive safety effects of ABWS that permitting ABWS can be said to enhance safety even if it detracts from standardization of vehicle signaling systems.

On September 9, 1997, Baran also submitted an article published in the journal Human Factors that described a computer simulation study performed to test the effectiveness of ABWS devices. The principal author of this article is also the principal author of the report on the Israeli field study of ABWS. In addition, Baran stated that the Czech Republic now permits ABWS to be installed on vehicles operating in that country.

NHTSA is reopening the comment period for an additional 30 days. The agency would like commenters to focus on ABWS and the materials that were not available for comment during the previous comment period, most notably the Israeli field study of ABWS, but also the Human Factors article. It is not necessary for commenters to resubmit views and data provided in previous comments to Docket No. 96–41, Notice 1.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: October 22, 1997.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 97–28417 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Endangered Status for the Peninsular Ranges Population of Desert Bighorn Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for the proposed endangered status for the Peninsular Ranges population of desert bighorn sheep (*Ovis canadensis*). The comment period has been reopened to acquire additional information on the status, distribution, and management of bighorn sheep in the Peninsular Ranges of Baja California, Mexico.

DATES: The comment period closes November 12, 1997. Any comments received by the closing date will be considered by the Service.

ADDRESSES: Written comments, materials and data, and available reports and articles concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Sorensen, at the address listed above (telephone 760/431–9440, facsimile 760/431/9618).

SUPPLEMENTARY INFORMATION:

Background

The Peninsular Ranges population of the desert bighorn sheep occurs along the desert slopes of the Peninsular Ranges from the vicinity of Palm Springs, California, into northern Baja California, Mexico. Depressed recruitment, habitat loss and degradation, disease, loss of dispersal corridors, and random events (e.g., drought) affecting small populations threaten the desert bighorn sheep in the Peninsular Ranges.

On May 8 ,1992, the Service published a rule proposing endangered status for the Peninsular Ranges population of the desert bighorn sheep (57 FR 19837). The original comment period closed on November 4, 1992. The Service was unable to make a final listing determination regarding the bighorn sheep because of limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Pub. L. 104–6), which took effect on April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for the Peninsular Ranges population of desert bighorn sheep.

Due to government reorganization in Mexico, appropriate officials were apparently not made aware of the Service's proposed listing of the Peninsular bighorn sheep. As a result, no comments were received from the Mexican government during the initial comment period on the period rule nor during the subsequent two extended comment periods (62 FR 16518, April 7, 1997, and 62 FR 32733, June 17, 1997). Recently the Service became award of apparent Mexican interest in providing comment on the proposed rule. Therefore, to ensure that the final listing decision is based on the best available information, and abide by the requirement that foreign countries be involved regarding listing decisions that may affect conservation of species in their area, the comment period is being reopened.

Written comments may now be submitted until November 12, 1997, to the Service office in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 14, 1997.

Michael J. Spear,

Regional Director, Region 1.

[FR Doc. 97–28346 Filed 10–24–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970725179–7237–02; I.D. 071497A]

RIN 0648–AK33

Taking and Importing Marine Mammals; Taking Ringed Seals

Incidental to On-Ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment and information.

SUMMARY: NMFS has received an application for renewal of a small take exemption and implementing regulations from BP Exploration (Alaska) (BPXA), on behalf of itself and several other oil exploration companies, for a small take of marine mammals incidental to winter seismic operations in the Beaufort Sea, AK. As a result of that application, NMFS is proposing regulations that would renew an authorization for the incidental taking of a small number of marine mammals. In order to grant the exemption and issue the regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and the proposed regulations.

DATES: Comments and information must be postmarked no later than November 26, 1997.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and Environmental Assessment (EA) may be obtained by writing to the above address, or by telephoning one of the persons below (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. Specific regulations governing the taking of ringed seals incidental to on-ice seismic activity, which were published on January 13, 1993 (58 FR 4091), expire on December 31, 1997.

Summary of Request

On July 11, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA, on behalf of itself, ARCO Alaska, Inc., Northern Geophysical of America, Inc. and Western Geophysical Co. to renew the incidental take regulations found in 50 CFR part 216, subpart J (previously 50 CFR part 228, subpart B), that govern the taking of ringed seals (*Phoca hispida*) incidental to seismic activities on the ice, offshore Alaska, for a period of 5 years. The applicants state that these activities are not likely to result in physical injuries to, and/or death of, any individual seals. Because seals are expected to avoid the immediate area around seismic operations, they are not expected to be subject to potential hearing damage from exposure to underwater or in-air sounds from the operations. Any takings of ringed seals are anticipated to result from short-term disturbance by noise and physical activity associated with the seismic operations.

The scope of the petition is limited to pre-lease and post-lease seismic exploration activities in state waters and the Outer Continental Shelf in the Beaufort Sea, offshore Alaska, during the ice-covered seasons. Because a minimum of 3 to 4 ft (.9–1.2 m) of ice is required to safely support the weight of equipment, on-ice seismic operations are usually confined to the 5-month period between January through May. These seismic surveys will be conducted using two types of energy sources: (1) Vibroseis, which uses large trucks with vibrators mounted on them, that systematically put variable frequency energy into the earth and (2) waterguns or airguns carried by a sleigh or other vehicle. The vibroseis method is much more common. Over the next 5-year period, the applicants expect that on-ice seismic activity will cover approximately 22,500 line miles (mi)(3,610 kilometers (km)) or 4,500 line mi/yr (7,242 km/yr). This compares to 13,247 line mi (21,319 km) in the aggregate or 1,305 to 4,903 line mi/yr (2,100 to 7,891 km/yr), during the past 5-year period.

These regulations apply only to the incidental taking of ringed seals and bearded seals (*Erignathus barbatus*) by U.S. citizens engaged in seismic activities on the ice and associated activities in the Beaufort Sea from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point and only from January 1 through May 31 of any calendar year. However, because bearded seals are normally found in broken ice that is unsuitable for on-ice seismic operations, few, if any, bearded seals will be impacted, and only ringed seals are expected to be harassed incidental to the seismic surveys.

The incidental, but not intentional, taking of ringed and bearded seals by U.S. citizens holding a Letter of Authorization (LOA) is proposed to be permitted during the following: (1) On-ice geophysical seismic activities using two types of energy sources (i.e., vibroseis or waterguns or airguns), and (2) Operation of transportation and camp facilities associated with seismic activities. Oil drilling activities will not be covered under this regulation; such activities will need a separate authorization under either section 101(a)(5)(A) or 101(a)(5)(D) of the MMPA.

Comments and Responses

On August 8, 1997 (62 FR 42737), NMFS published an advance notice of proposed rulemaking on the application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations, if the application is accepted. Subsequent to the 30-day comment period on this notice, no comments were received.

Description of Seismic Activities

"Hardwater" marine geophysical surveys are conducted before and after oil and gas leases are issued to gather information about subsurface geology and are divided into two classes of surveys: deep seismic and shallow hazard. Deep seismic surveys generally map strata deep beneath the earth's surface (1,000 to 20,000 ft) (364–7,290 m) in search of typical gas and oil-bearing geologic formations. Shallow hazard surveys, also known as "site clearance" or "high resolution" surveys, are conducted to gather information on potential near-surface hazards (0 to 1,000 ft)(0–364 m) which could be encountered in exploratory drilling.

After leases are issued and drilling begins, seismic operations shift from broad reconnaissance surveys to a combination of shallow hazard surveys and more detailed exploratory work. Post-lease surveys are limited to specific geographic areas or tracts that are of interest. Because each tract is surveyed in greater detail, the line density could increase although the geographic boundaries of the surveyed area would be smaller. As each survey is limited to a particular tract or prospect, future survey activity is anticipated to be widely scattered.

Deep seismic and shallow hazard surveys use the "reflection" method of acquiring data. Information abut the earth's subsurface is gathered by measuring acoustic (sound or seismic) waves that are generated on or near the surface. The process involves using a controlled energy source to generate acoustic waves that travel through the earth (in this case, sea ice and water as well as geologic formations beneath the sea) and ground sensors to record the reflected energy transmitted back to the surface.

Several vehicles are normally involved in the vibroseis method of collecting data. One or two vehicles with survey crews move ahead of the operation to mark the energy input points. Bulldozers may move ahead of the crew to prepare pathways for the vehicles. Typically, an on-ice data-recording operation includes 4 to 5 vibrators, 4 to 5 cable and sensor carriers, one recording vehicle and one vibrator tender. A winter-run seismic exploration crew may include 40 to 60 people or up to 110 people if a 3–dimensional survey is involved.

Acquiring seismic data by using airguns or waterguns is similar to the vibroseis technique, but the sound source is compressed air or water rather than vibrations. A detailed description of the methodology for seismic data collection can be found in the BPXA application and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (*Balaena glacialis*), gray whales (*Eschrichtius robustus*), belukha (*Delphinapterus leucas*), ringed seals, spotted seals (*Phoca largha*), bearded seals, walrus (*Odobenus rosmarus*) and polar bears (*Ursus maritimus*). Descriptions on the biology and distribution of these species, and others, can be found in several documents (BPXA 1996, Lentfer 1988, MMS 1992, NMFS 1990 and 1996, Small and DeMaster 1995). The only marine mammal species under the jurisdiction of NMFS that are anticipated being potentially taken by harassment by this action are ringed seals and possibly a few bearded seals. A description on the biology, distribution, and abundance of ringed seals and bearded seals in Alaska can be found in BPXA's application. Information on ringed seals can also be found in NMFS' 1992 EA on this action. Please refer to these documents for information on this species. For information on polar bears, a species under the jurisdiction of the U.S. Fish and Wildlife Service, please refer to rulemaking actions by that agency (see for example, 58 FR 60402, November 16, 1993, and 60 FR 42805, August 17, 1995).

Potential Impact of On-Ice Seismic Activities on Ringed Seals

Aerial survey data collected from 1970 through 1987 indicate that ringed seal densities in the fast ice of the Beaufort Sea are highly variable among years and among different sections from Point Barrow to Barter Island. The highest observed overall average density of ringed seals in the fast ice of the Beaufort Sea in any year has been 3.6 seals/nmi^2. The reported inter-annual variability in overall average density during 1970–87 was 0.96 to 3.57 seals/nmi^2. Based on an estimated

displacement due to seismic activity of 0.6 ringed seals/nm², the maximum number of ringed seals that might be temporarily displaced annually in connection with 4,500 linear mi (3,913 linear nautical mi (nmi)) of seismic surveys, assuming a random distribution of seals, is 2,350 seals.

The impact of seismic activities would likely be confined to the immediate vicinity of operations. Scientists conducted a ground examination of ringed seals structures to determine their fate along seismic and control lines and found no significant overall difference. However, they reported a significant difference in the fates of structures in relation to distance from seismic lines (within 150 m (492 ft) of the shot line in comparison to greater distances). These investigators concluded that displacement in close proximity (within 150 m (492 ft)) to seismic lines does occur, but based on data from aerial surveys however, there has been no major displacement of seals away from on-ice seismic operations as currently conducted in the Beaufort Sea.

Additional factors reduce the probability of incidental take. Portions of many of the seismic lines are likely to be on ice over shallow water where ringed seals are either absent or present in low numbers. Other parts of lines are likely to be within 2 mi (3.2 km) of shore within favorable seal habitat, but where density of seals is lowest. Within optimum seal habitat farther from shore, the seismic operators avoid moderate and large pressure ridges because of concerns for safety and normal operational constraints. Also, a significant portion of the on-ice seismic lines and connecting ice roads is expected to be laid out and explored during January and February when many ringed seals are still transient.

These studies as well as subsequent observations, indicate that some individual ringed seals in the immediate area of operations could be temporarily displaced by on-ice seismic activities. However, given the wide distribution of ringed seals and the relatively low density of breeding seals in the Beaufort Sea, only small numbers of animals are expected to be encountered. Therefore, while impacts might be significant for individual animals (an abandoned pup, for example), impacts are expected to be negligible for the overall ringed seal population.

Potential Impact of On-Ice Seismic Activities on Habitat

Ringed seal habitat may be potentially affected by construction of ice roads and camps, and removal of ice and snow along survey lines, camps and roadways. Because the potential area affected represents only a small part of the Beaufort Sea, and because ringed seal habitat is restored annually, any impact would be localized and temporary. Habitat restoration is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment. Periodic storms are common in the Beaufort Sea region. Also, seismic crews do not place energy sources over observed ringed seal lairs, and they do not typically operate along pressure ridges where lairs are often located.

Because bearded seals are restricted to areas with cracks or other openings in the ice, and, because on-ice seismic operations must avoid these areas for safety reasons, few, if any, bearded seals will be impacted by seismic operations. Any exposure would be limited to short term and localized disturbance caused by noise with the possibility that an animal might dive into the water as a result of that disturbance.

Potential Impact of On-Ice Seismic Activities on Subsistence

On-ice seismic operations in the Beaufort Sea are not expected to have an impact on subsistence uses of ringed seals. Reasons include: (1) Subsistence harvests have declined over the past two decades as Eskimo lifestyles have changed and the MMPA prohibition on hunting marine mammals for purposes other than subsistence; (2) subsistence hunting for ringed seals is principally in regions north of Kuskokwim Bay in the Bering and Chukchi Seas, not the Beaufort Sea area; (3) seals are now hunted principally with rifles in leads or open water, not at breathing holes and lairs on the ice; and (4) areas where seismic operations are conducted are small in comparison to the Beaufort Sea subsistence hunting areas and displacement due to seismic activity is limited.

Additionally, because the applicants coordinate activities with the North Slope Borough and provide communities with information about the planned activities before initiating any on-ice seismic activities, impacts on subsistence needs are expected to be negligible.

Mitigation

All activities will be required to be conducted in a manner that minimizes adverse effects on ringed and bearded seals and their habitat. Activities must be conducted as far as practicable from any observed ringed seals or ringed seal lair. For example, no energy source may be placed over an observed ringed seal lair. Seismic crews will receive training so that they can recognize potential ringed seal liars and adjust their seismic operations accordingly.

Monitoring

The requirements for monitoring and reporting include designating a qualified individual under each operating LOA to observe and record the presence of ringed seals, bearded seals, and ringed seal lairs along shot lines and around camps.

Because there is no impact on subsistence hunting, independent peer review of the monitoring plan is not required.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

National Environmental Policy Act (NEPA)

In conjunction with a notice of proposed rulemaking on this issue on September 15, 1992 (57 FR 42538), NMFS released a draft EA that addressed the impacts on the human environment from regulations and the issuance of LOAs and the alternatives to that proposed action. As a result of the information provided in the EA, NOAA concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, on August 12, 1992, NMFS signed a Finding of No Significant Impact (FONSI) statement and thereby determined that an EIS was not warranted and therefore, none was prepared. Because the proposed action discussed in this document is not substantially different from the 1992 action, and because a reference search has indicated that no new scientific information has been developed in the past 5 years significant enough to warrant new NEPA documentation, NMFS does not intend to prepare a new EA. A copy of the 1992 EA and FONSI is available upon request (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act, because members of the industry requesting the authorizations are major energy exploration companies and their contractors, neither of which by definition are small businesses. Therefore, a regulatory flexibility analysis is not required.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection, which has an OMB control number of 0648–0151, has been submitted to OMB for review under section 3504(b) of the PRA. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 3 hours per response for requesting an authorization (as described in 50 CFR 216.104) and 30 hours per response for submitting reports, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including, through the use of automated collection techniques or other forms of information technology. Please send any comments to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Marine mammals, Reporting and recordkeeping requirements.

Dated: October 21, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart J is revised to read as follows:

Subpart J—Taking of Ringed and Bearded Seals Incidental to On-Ice Seismic Activities

Sec.
216.111 Specified activity and specified geographical region.
216.112 Effective dates.
216.113 Permissible methods.
216.114 Requirements for monitoring and reporting.

Subpart J—Taking of Ringed and Bearded Seals Incidental to On-Ice Seismic Activities

§ 216.111 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 216.112 Effective dates.

Regulations in this subpart are effective from January 1, 1998, through December 31, 2003.

§ 216.113 Permissible methods.

(a) The incidental, but not intentional, taking of ringed and bearded seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activities:

(1) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects.

(2) Operation of transportation and camp facilities associated with seismic activities.

(b) All activities identified in § 216.113(a) must be conducted in a manner that minimizes to the greatest extent practicable adverse effects on ringed and bearded seals and their habitat.

(c) All activities identified in § 216.113(a) must be conducted as far as practicable from any observed ringed or bearded seal or ringed seal lair. No energy source must be placed over an observed ringed seal lair, whether or not any seal is present.

§ 216.114 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, state, or local agency monitoring the impacts on ringed or bearded seals.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the presence of ringed or bearded seals and ringed seal lairs along shot lines and around camps, and the information required in

§ 216.114(c).

(c) An annual report must be submitted to the Assistant Administrator for Fisheries within 90 days after completing each year's activities and must include the following information:

(1) Location(s) of survey activities.

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location.

(3) Numbers of ringed seals, bearded seals, or other marine mammals observed, proximity to seismic or associated activities, and any seal reactions observed for each location.

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location.

(5) Other information as required in a Letter of Authorization.

[FR Doc. 97–28276 Filed 10–22–97; 4:15 pm]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 207
Monday, October 27, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Sunshine Act Meeting; Correction

Note: This document replaces the meeting notice at 62 FR 54603 (October 21, 1997).

TIME AND DATE: 2:00 p.m., November 3, 1997.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED

1. Approval of the Minutes of the Special Open Meeting of February 5, 1996.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
4. Resolution re: Amendment of Bylaws of the Commodity Credit Corporation.
5. Resolution re: Termination of Obsolete CCC Board Dockets.
6. Resolution re: Amendment of Dockets Requiring Only a Change in Nomenclature.
7. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1996.
8. Docket GCX–326 re: Market Access Program for Fiscal Year 1996 and Subsequent Years.
9. Docket CZ–266, Rev. 2, re: Operations Under Agricultural Trade Development and Assistance Act.
10. Docket CZ–332, Rev. 1, re: Food for Progress Program.
11. Docket CZ–161a, Rev. 8, re: Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against the Commodity Credit Corporation.
12. Docket GCZ–136 re: Policy with Respect to Establishment of Valuation Reserves Against Assets of the Commodity Credit Corporation.
13. Docket CZ–148, Rev. 4 re: Capital Fund Commitments and Control of Valuation Reserves Against Assets of the Commodity Credit Corporation.
14. Docket P–CON–96–02, re: Environmental Activities.
15. Docket P–CON–96–03, re: Delegating Authority for CCC Conservation Programs.

CONTACT PERSON FOR MORE INFORMATION: Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: October 21, 1997.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 97–28466 Filed 10–22–97; 4:57 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension of a currently approved information collection in support of the FSA Aerial Photography Program. The FSA Aerial Photography Field Office (APFO) uses the information from this form to collect the customer and photography information needed to produce and ship the various products ordered.

DATES: Comments must be received on or before December 26, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Linda McDonald, USDA, FSA, APFO, 2222 West 2300 South, Salt Lake City, Utah 84119–2020, telephone (801) 975–3500 Extension 235.

SUPPLEMENTARY INFORMATION:

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Expiration Date of Approval: October 31, 1997.

Type of Request: Extension of previously approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0176 as identified above, is needed to enable the Department of Agriculture to effectively administrate the Aerial Photography Program.

APFO has the authority to coordinate aerial photography and remote sensing programs and the aerial photography flying contract programs.

The film secured by FSA is public domain and reproductions are available at cost to any customer with a need. All receipts from the sale of aerial photography products and services are retained by FSA.

The FSA–441, Request for Aerial Photography, is the form FSA supplies to its customers when placing an order for aerial photography products and services.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 3.3 hours per response.

Respondents: Farmers, Ranchers and other USDA Customers who wish to purchase photography products and services.

Estimated Number of Respondents: 24,000.

Estimated Number of Responses per Respondents: 1.

Estimated Total Annual Burden Hours on Respondents: 8,000 hours.

Proposed topics for comment include but are not limited to: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, and to Linda McDonald, FSA, APFO, USDA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives in within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on October 19, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–28303 Filed 10–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–057N]

Notice of Change in Inspection Procedures; Adoption of a Hands-off Inspection Procedure for Lambs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In response to a request from the American Sheep Industry Association, the Food Safety and Inspection Service (FSIS) is changing its inspection procedures for lambs. Currently, inspectors palpate the carcasses of lambs for the purpose of detecting and removing carcasses with diseases such as Caseous lymphadenitis. Under the new procedure, there will be hands-off inspection of lambs in order to reduce the risk and hands-on inspection methods may spread or add microbial contamination to carcasses.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Thaler, Chief, Concepts & Design Branch, Inspection Methods Development Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, Department of Agriculture, Washington, DC 20250–3700; telephone, (202) 205–0005.

SUPPLEMENTARY INFORMATION:

Background

Traditionally, meat inspectors have palpated the carcasses of lambs as part of their post-mortem evaluation of these animals. The American Sheep Industry Association recommended that we end this practice for food safety reasons. The primary justification for this long-standing hands-on inspection procedure was to detect and remove carcasses with diseases such as Caseous lymphadenitis.

In determining the desirability of such a procedure for lambs, FSIS considered two questions: (1) Will diseased carcasses of parts be more likely to reach consumers in a hands-off system?; and (2) Are current hands-on inspection methods likely to be spreading or adding contamination to carcasses?

Comparing Hands-on and Hands-off Procedures

The first issue deals with the benefits of a hands-on system. What is the risk that a diseased carcass or diseased parts would be passed for food and reach the consumer if FSIS instituted a hands-off inspection procedure?

The second issue was to determine whether current inspection techniques used on lambs cause inspectors to spread or add contamination to carcasses. Although there is no data on this specific question, we believe that data from other food handling and health care industries indicate that the hands-on procedures could contaminate lamb carcasses or spread such contamination.

Caseous lymphadenitis is the primary disease detected by carcass palpation, and it is not a public health concern. In the United States, there are six plants that slaughter 80 percent of the lambs. From Fiscal Years 1987 to 1996, these six plants slaughtered 26,347,480 lambs and yearlings. (Present data do not distinguish between lambs and yearlings.) The plants condemned 1,203 animals in the same 10-year period for Caseous lymphadenitis, a 0.0046 percent condemnation rate. It is unknown how many carcasses were detected on post-mortem and trimmed, and then passed for food.

Seven of the diseases routinely present in lambs are of public health concern: Actinobacillosis, Campylobacteriosis, Contagious ecthyma, Echinococcosis, Leptospirosis, Salmonella dysentery, and Toxoplasmosis. However, none of them require carcass palpation for diagnosis.

The American Sheep Industry Association believes that hands-on inspection methods spread or add contamination to carcasses, including pathogenci microorganisms such as *Escherichia coli* 0157:H7 and *Salmonella*. The Agenc7y evaluated existing information to determine its adequacy and reviewed literature regarding the documented spread of contamination by hands in other industries. (See References at end of document.) Evidence from other food handling and health care industries supports these concerns. (Gould and Ream 1996; Wenzel and Pulverer 1995). FSIS accepts the documentation in allied fields, which argues that the palpation of lamb carcasses is inconsistent with our food safety philosophy that FSIS must return carcasses presented for inspection with unchanged or lower food safety risk factors.

Conclusion

The primary reason for carcass palpation in lambs is to detect Caseous lymphadenitis. This disease is not in public health concern and has an extremely low condemnation rate. Although it has not been proven directly that palpation by inspectors causes microbial contamination or actually spreads such contamination, compelling evidence from allied industries indicates that hands do spread or add microorganisms. The risk of contamination using a hands-on procedure exceeds the risk of diseased carcasses being missed using a hands-off procedure for lambs.

Therefore, FSIS is proceeding to adopt a hands-off inspection method for lambs. This process involves a number of steps, including consultation with employee organizations. FSIS intends to complete the process within the next 12 months.

FSIS will monitor condemnation rates in the six plants to identify the impact, if any, of the change. Further, the Agency intends to look at the implications of hands-of inspection procedures with regard to the production of all meat and poultry products.

Done at Washington, DC, on October 17, 1997.

Thomas J. Billy,

Administrator.

References

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[FR Doc. 97–28366 Filed 10–24–97; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement, Canal Hoya Timber Sale, Tongass National Forest, Stikine Area, Wrangell, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; revision.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft Environmental Impact Statement for the Canal Hoya Timber Sale located on the Stikine Area of the Tongass National Forest. This Notice of Intent revises the Notice of Intent published December 23, 1996 (page 67530) by describing changes to the purpose and need and the schedule for decision. A Draft Environmental Impact Statement is being prepared to respond to the new management direction and standards and guidelines of the Tongass National Forest Land and Resource Management Plan (Forest Plan) released in May 1997.

ADDRESSES: Written comments, suggestions or questions concerning the analysis and Environmental Impact Statement should be sent to Scott Posner, Canal Hoya Team Leader, Wrangell Ranger District, Stikine Area, Tongass National Forest, P.O. Box 51, Wrangell, Alaska, 99929, phone (907) 874–2323.

SUPPLEMENTARY INFORMATION: The Canal Hoya Study Area includes Value Comparison Unit 520 and 521 on the mainland in Southeast Alaska, approximately 30 miles southeast of Wrangell, Alaska.

The Tongass National Forest Land and Resource Management Plan of May 1997 provides the overall guidance (land use designations, goals, objectives, management prescriptions, standards and guidelines) to achieve the desired future condition for the area in which this project is proposed. This revised Forest Plan allocates portions of the study area to two management prescriptions; Timber Production and Modified Landscape. The new standards and guidelines in the revised Forest Plan provide increased protection for riparian areas, beach fringe, brown bear foraging areas and wetland soils, which affect the assumptions on which the purpose and need in the original Notice of Intent were based.

The purpose and need for the project is to respond to the goals and objectives identified by the Forest Plan for the timber resource and to move the Canal Hoya Study Area towards the desired future condition. The Forest Plan identified the following goals and objectives: (1) manage the timber resource for production of saw timber and other wood products from suitable timber lands made available for timber harvest, on an even-flow, long-term sustained yield basis and in an economically efficient manner (Revised Forest Plan page 2–4; (2) seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber, and the demand for the planning cycle (page 2–4); and 3) maintain and promote industrial wood production from suitable timber lands, providing a continuous supply of wood to meet society's needs (page 3–144). The Canal Hoya Timber Sale will be designed to produce desired resource values, products, and conditions in ways that also sustain the diversity and productivity of ecosystems (page 2–1).

The Canal Hoya Timber Sale is now expected to provide a range of volume to the timber industry from 10 to 17 million board feet. The range of alternatives to be considered in the Environmental Impact Statement will be determined during analysis and reflect issues raised during scoping.

The Proposed Action provides for: (1) construction of approximately 10 miles of specified road and additional temporary road; (2) harvest of approximately 750 acres of timber; and, (3) construction of a log transfer facility east of the Canal Creek estuary and another log transfer facility east of the Hoya Creek estuary. The log transfer facilities could use a floating, removable structure. This level of development would result in the harvest of approximately 14 million board feet of sawlog and utility timber volume.

A number of public comments have been received on this project. Based on comments from the public and other agencies during the scoping effort, the following significant issues have been identified. How will the design of the sale affect:

(1) Harvest economics?

(2) Scenic and tourism values?

(3) Bears that also use the Anan Wildlife Viewing Area?

(4) Wildlife habitat and species conservation?

(5) Freshwater and marine resources?

(6) Forest soils?

These issues were used to design alternatives to the proposed action and to identify the potential environmental effects of the proposed action and alternatives. The draft Environmental Impact Statement is scheduled for publication in January 1998 and the Final Environmental Impact Statement and Record of Decision is scheduled for publication in May 1998.

The Forest Service believes, at this stage, it is important to alert reviewers about several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, 1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022, 9th Cir. 1986; and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338, E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the draft Environmental Impact Statement 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

No other revisions are made to the original Notice of Intent published December 23, 1996.

Patricia A. Grantham,

Acting Forest Supervisor, Stikine Area.

[FR Doc. 97–28384 Filed 10–24–97; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Categorical Exclusion for Certain Ski Area Permit Actions

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed interim directive; request for public comment.

SUMMARY: The Forest Service proposes to issue an interim directive to guide its employees in complying with the National Environmental Policy Act when issuance of a ski area permit is a purely ministerial action and no changes are proposed in permitted activities or facilities. The intended effect is to implement a provision of the Omnibus Parks and Public Lands Act of 1996, which states that reissuance of a ski area permit for activities similar in nature and amount to the activities authorized under the previous permit shall not constitute a major Federal action. Public comment is invited and will be considered in adopting an interim directive.

DATES: Comments must be received in writing by December 26, 1997.

ADDRESSES: Send written comments to Director, Recreation, Heritage, and Wilderness Resources Staff (Mail Stop 1125), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Those who submit comments should be aware that all comments, including names and addresses when provided, are placed in the record and are available for public inspection. To facilitate entrance into the building, visitors are encouraged to call ahead (202–205–1706).

FOR FURTHER INFORMATION CONTACT: Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, 202–205–1399.

SUPPLEMENTARY INFORMATION: To reduce administrative costs, section 701(i) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497c) states that the reissuance of a ski area permit for activities similar in nature and amount to the activities provided under the previous permit shall not constitute a major Federal action for the purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*).

Agency direction regarding this provision is needed to guide Forest Service employees in complying with NEPA and the Omnibus Parks and Public Lands Management Act of 1996 when ski area permits are issued.

Section 701(i) of the 1996 act applies to issuance of permits for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (the Ski Area Permit Act) (16 U.S.C. 497b) for existing ski areas when permit issuance involves only administrative changes, such as issuance of a permit when no changes to the Master Development Plan and no new facilities or activities are authorized, to the following: (1) To a new owner of the ski area improvements; (2) to the existing owner upon expiration of the current permit; or (3) to a holder of a permit issued under the Term Permit and Organic Acts converting to a permit under the Ski Area Permit Act. The effect of section 701(i) is that an environmental impact statement is not required for issuance of permits under these circumstances.

The Forest Service currently authorizes ski areas on National Forest System lands through permit issuance under the Ski Area Permit Act. The permit provides the legal framework for the use and occupancy of National Forest System lands, including terms for renewal; conditions for issuance of a new permit in the event of sale of the ski area improvements to another owner; permit tenure; fee schedules and payment methods; accountability and reporting requirements; liability and bonding requirements; and any other customized terms and conditions needed to ensure consistency with applicable forest land and resource management plans or to meet the requirements of other applicable laws.

The Ski Area Permit Act, its implementing regulations at 36 CFR 251.56, and existing policy in Forest Service Manual (FSM) section 2721.56, and existing policy in Forest Service Manual (FSM) section 2721.61e provide that under ordinary circumstances ski area permits will be issued for a duration of 40 years unless specific situations, such as financial aspects of the transaction or the adequacy of the Master Development Plan, suggest a shorter duration.

The National Forest Management Act (NFMA) (16 U.S.C. 1600, 1604) requires that "resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." Ski area permits are subject to this requirement.

The forest planning process provides for public involvement in land allocation decisions, including those affecting ski areas. Where appropriate, forest land and resource management plans and associated environmental impact statements (EIS's) consider long-term consequences of allocating public lands for a ski resort and may establish standards and guidelines for lands allocated for ski area development. NFMA also requires revision of forest plans at least every 15 years.

To ensure that forest plans remain current, implementing regulations at 36 CFR 219.10(g) require (1) review of the conditions on the land covered by a forest plan every 5 years to determine whether conditions or public demands have changed significantly and (2) revision of the forest plans ordinarily every 10 years, and at least every 15 years.

A ski area Master Development Plan is required for all ski areas authorized under the Ski Area Permit Act. The Master Development Plan determines the boundaries of the ski area and appropriate development of the area, including facilities and activities, over time. All Master Development Plans require NEPA analysis, usually documented in an EIS, which includes consideration of the relatively permanent nature of ski areas and estimates of the reasonably foreseeable cumulative effects. Due to the long-term nature of Master Development Plans, much of the initial NEPA analysis is programmatic. Subsequent site-specific NEPA analysis is required for Master Development Plans for most ski areas prior to authorizing activities or changes to facilities or ski area operations. Master Development Plans must be reviewed periodically, approximately every 5 years, as required by the permit issued under the authority of the Ski Area Permit Act, to determine whether NEPA analysis is current or whether changing resource conditions or changes in management standards and guidelines may necessitate subsequent NEPA analysis and appropriate changes to ski area operations.

Operating Plans also are required by the Ski Area Permit Act for ski area permits. These plans, which govern ski area operations and maintenance, are updated annually. Operating Plans may identify proposed activities, such as significant hazard removal and erosion control, which may require additional NEPA analysis.

Requirements related to forest land and resource management plans, Master Development Plans, and activities proposed under Operating Plans that may have resource effects already provide for full NEPA analysis and periodic reviews for ski areas. Therefore, in reviewing the language and intent of the Omnibus Parks and Public Lands Act, which provides in section 701(i) that issuance of permits authorizing activities similar in nature and amount to activities authorized under the previous permit shall not

constitute a major Federal action for NEPA purposes, the agency has concluded that such strictly ministerial actions should be categorically excluded from documentation in either an EIS or an environmental assessment (EA) and should be added to the existing categorical exclusions already set out in Forest Service policy. Pursuant to Council on Environmental Quality regulations at 40 CFR parts 1500–1508, the Forest Service must give notice and opportunity to comment before adopting NEPA implementation procedures.

Accordingly, the agency is proposing to issue an interim directive to chapter 30 of the Environmental Policy and Procedures Handbook (FSH 1909.15) which addresses categorical exclusions. The handbook contains direction for Forest Service employees in meeting agency NEPA compliance obligations. Section 31.1b contains categorical exclusions established by the Chief. This section currently contains eight categories for routine administrative, maintenance, and other actions that normally do not individually or cumulatively have a significant effect on the quality of the human environment and, therefore, may be categorically excluded from documentation in an EIS or an EA unless scoping indicates extraordinary circumstances exist.

The agency is proposing to add the following category to section 31.1b for categorical exclusion:

9. Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 for an existing ski area in response to purely ministerial actions, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples of actions in this category include, but are not limited to:

a. Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the Master Development Plan, including no changes to the facilities or activities for that ski area.

b. Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the Master Development Plan, including changes to the facilities or activities.

c. Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the Master Development Plan.

Because the agency plans to propose additional revisions to this handbook within the next year, the agency has concluded that this new ski area permit categorical exclusion should be issued as an interim directive. Upon completion of other revisions to this handbook, this interim directive will be incorporated into an amendment at that time.

The proposed categorical exclusion would help expedite issuance of permits associated with sales of ski areas to new owners, which account for some 50 to 75 percent of all ski area permit issuances annually. Nationally, 15 to 30 permit issuances under the authority of the Ski Area Permit Act are completed each year. That number is expected to continue rising based on corporate restructuring and the continuing trend toward consolidation in the ski industry.

The proposed categorical exclusion also would facilitate conversion from permits that were issued under prior authorities to permits under the Ski Area Permit Act. It was the intent of the Ski Area Permit Act to convert permits issued under prior authority to the Ski Area Permit Act as rapidly as possible. The Ski Area Permit Act permit provides better environmental protection than previous authorities by requiring NEPA to be conducted, reviewed, and revised frequently as resource conditions and proposed changes to ski area operations warrant. The Ski Area Permit Act allows the Forest Service greater discretion to ensure that updates to operations occur under terms that require periodic review and NEPA analysis. By the end of 1997, the Forest Service anticipates that 75 to 80 percent of the 137 ski areas located on National Forest System lands will have permits issued under the Ski Area Permit Act. It is in the public interest to encourage the remaining 20 to 25 percent to convert as soon as possible to permits issued under the authority of the Ski Area Permit Act.

Environmental Impact

This proposed interim directive would establish a categorical exclusion for permit issuance under the authority of the Ski Area Permit Act that is a purely ministerial action. Programmatic and site-specific decisions and disclosure of environmental effects concerning ski area allocations, facilities, and activities are made in forest land and resource management plans, in ski area Master Development Plans, and in connection with activities proposed under Operating Plans that may have resource effects, with full public involvement and in compliance with NEPA procedures.

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this proposed interim directive would fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. Reviewers may submit comments on this determination along with comments on the proposed interim directive for consideration in the adoption of the proposed interim directive.

Controlling Paperwork Burdens on the Public

This proposed interim directive does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, would impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 would not apply.

Regulatory Impact

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant action subject to Office of Management and Budget (OMB) review. This action would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed interim directive is not subject to OMB review under Executive Order 12866.

Moreover, this proposed interim directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action would not have a significant economic impact on a substantial number of small entities as defined by that act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed interim directive on State, local, and tribal governments and the private sector. This proposed interim directive would not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

No Takings Implications

This proposed interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed interim directive would not pose the risk of a taking of Constitutionally protected private property. Executive Order 12630 would not apply to this proposed interim directive because it consists primarily of technical and administrative changes governing authorization of occupancy and use of National Forest System lands. Forest Service special use authorizations for ski areas do not grant any right, title, or interest in or to lands or resources held by the United States.

Civil Justice Reform Act

This proposed interim directive has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed interim directive were adopted, (1) all State and local laws and regulations that are in conflict with this proposed interim directive or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed interim directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Dated: October 1, 1997.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 97–28386 Filed 10–24–97; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold a town meeting on Thursday, November 13, 1997 in Louisville, Kentucky. The purpose of the meeting is to gather information from the public on general access and recreation access issues.

SCHEDULE: The schedule of events is as follows:

Thursday, November 13, 1997

9:30 AM—10:30 AM Opening Session
10:30 AM—10:45 AM Break
10:45 AM—12:30 PM Concurrent Sessions
- General Accessibility Issues
- Recreation Facilities

12:30 PM—1:45 PM Lunch (On your own)
1:45 PM—3:15 PM Concurrent Sessions
- General Accessibility Issues
- Recreation Facilities

3:15 PM—3:30 PM Break
3:30 PM—4:30 PM Wrap-up Session and Public Comment

ADDRESSES: The meetings will be held at: Hyatt Regency Hotel, 320 West Jefferson Street, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: The town meeting is open to the public.

All Access Board meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–28367 Filed 10–24–97; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 927]

Grant of Authority for Subzone Status; Hewlett-Packard Company (Computer and Related Electronic Products) Sacramento, California, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, for authority to establish special-purpose subzone status at the computer and electronic products manufacturing facilities of the Hewlett-Packard Company, located at sites in the Sacramento, California, area, was filed by the Board on March 10, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 14–97, 62 FR 12792, 3–18–97; amended, 8–25–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the computer and related electronic products manufacturing facilities of the Hewlett-Packard Company, located in the Sacramento, California, area (Subzone 143B), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 16th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 97–28312 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 928]

Expansion of Foreign-Trade Zone 182 Fort Wayne, Indiana, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Fort Wayne, Indiana, grantee of Foreign-Trade Zone 182, for authority to

expand FTZ 182-Site 3 in Fort Wayne and include an additional site in Huntington, Indiana, was filed by the Board on February 5, 1997 (FTZ Docket 6–97, 62 FR 7749, 2/20/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 182 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 14th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–28313 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 925]

Expansion of Foreign-Trade Zone 17 Kansas City, Kansas, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 17, Kansas City, Kansas, area, for authority to expand FTZ 17 to include two sites in Topeka, Kansas, was filed by the Board on July 24, 1996 (FTZ Docket 61–96, 61 FR 40396, 8/2/96);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 17 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 14th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–28310 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 926]

Grant of Authority For Subzone Status Pepsico of Puerto Rico, Inc. (Soft Drink Flavoring Concentrates) Cidra, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial and Farm Credit and Development Corporation for Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status for the soft drink flavoring concentrate manufacturing plant of PepsiCo of Puerto Rico, Inc., in Cidra, Puerto Rico, was filed by the Board on August 22, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 66–96, 61 FR 47870, 9–11–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the PepsiCo of Puerto Rico, Inc., plant in Cidra, Puerto Rico (Subzone 61J), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–28311 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea.

SUMMARY: On July 9, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The review covers the following seven manufacturers/exporters: Dongbu Steel Co., Ltd. (Dongbu), Korea Iron Steel Company (KISCO), Korea Steel Pipe Co., Ltd. (KSP), Pusan Steel Pipe Co., Ltd. (PSP), Dongkuk Steel Mill Co., Ltd. (DSM), Dong-Il Steel Mfg. Co., Ltd. (Dong-Il), and Union Steel Co., Ltd. (Union). The period of review (POR) is April 28, 1992, through October 31, 1993. We are also terminating the review for one company, Hyundai Pipe Co., Ltd., because the sole request for review of this company has been withdrawn in a timely manner.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, to the margin calculations. Therefore, the final results differ from the preliminary results. We have listed the final weighted-average dumping margins for the reviewed firms below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld, Mark Ross, Thomas Schauer, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Commerce Department's regulations are to the regulations as codified at 19 CFR part 353 (1997).

Background

On July 9, 1997, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea (62 FR 36761). We gave interested parties an opportunity to comment on our preliminary results. No interested party requested a hearing.

We are terminating the review with respect to Hyundai Pipe Co., Ltd. On March 16, 1994, the petitioners withdrew their request for review. No other interested party requested a review of this firm.

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Non-Shippers

DSM and Dong-Il responded that they had no shipments of the subject merchandise during the POR. We confirmed this information for both companies with the U.S. Customs Service. Therefore, we have terminated the review with respect to these companies.

Sales Below Cost in the Home Market

The Department performed a test to determine whether respondents sold pipe in the home market at prices below the cost of production (*see Preliminary Results of Antidumping Duty Administrative Review; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 62 FR 36761, 36763 (July 9, 1997) (*Korean Pipe Preliminary Results*)). As a result of that test, the Department disregarded sales below cost for Dongbu, KSP, PSP, and Union in its analysis for these final results.

Analysis of Comments Received

A. General Issues

Comment 1: Petitioners allege that the Department deducted home market commissions twice from home market price in calculating foreign market value.

PSP, KSP, and Dongbu assert that because they reported no commissions this issue is moot.

Department's Position: We agree with petitioners that we inadvertently deducted commissions twice from the home market price in the preliminary results. We changed the final results computer programs to correct this error. However, because no respondents reported home market commissions, this change does not affect the calculation of the dumping margins.

Comment 2: The petitioners contend that, in the less-than-fair-value (LTFV) investigation, the Department recognized that the conversion factors the respondents used to translate actual to theoretical weight were flawed due to wall build-up in the production process (citing *Final Determination of Sales at Less than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 57 FR 42942, 42945 (September 17, 1992) (*Korean Pipe LTFV Final*)). The petitioners contend that the Department used the conversion factors in the LTFV investigation because it could not find evidence that the wall build-up resulted in understated costs. In the instant review, the petitioners again argue that the Department should deny an adjustment to cost of production/constructed value (COP/CV) based on differences between actual and theoretical weight because (1) the respondents have not demonstrated the accuracy of this adjustment and (2) the conversion factors are not consistent with sales data in each response.

The petitioners maintain that the Department attempted to resolve this matter by requesting sample cost calculations on a length basis. However, the petitioners contend that the respondents have frustrated this review by reporting a calculated pipe length based on a theoretical-weight factor rather than on actual length. Petitioners further contend that, due to the spot-check nature of verifications, it is unlikely that the Department would find systematic understatement of costs. Contrary to the Department's statements in its notice of preliminary results that it has not found understated costs at

verification, the petitioners point to proprietary information the Department collected at verification that they contend proves that wall build-up does occur and, therefore, argue that the Department should not accept respondents' adjustment.

In addition, the petitioners contend that the data are inconsistent and unreliable. The petitioners assert that they conducted an analysis of the two weight bases (standard actual and theoretical) which respondents (other than KISCO) used to report home market sales and costs. According to petitioners, they used the standard actual weight, theoretical weight and reported length for each sale to calculate a conversion factor in their analysis. Petitioners conclude from their analysis of the data that the reported conversion factor differs from the calculated conversion factor for a significant number of sales and models. Moreover, the conversion factors respondents used to convert weight for COP and CV calculations differed from those conversion factors they used to report sales on a model-specific basis and, according to petitioners, the range of differences is great. Finally, petitioners note that some reported conversion factors used for both sales and costs fall outside industry specifications and, therefore, are inaccurate. Thus, notwithstanding their argument that respondents' failed to meet their burden of proof, petitioners conclude that the Department cannot rely on respondents' data.

The petitioners argue that it is the Department's long-standing practice that a party requesting an adjustment must prove its entitlement. Asserting that respondents have failed to properly justify this adjustment and have failed to respond properly to the Department's requests for information, petitioners contend that the Department should deny the adjustment as best information available (BIA) under section 776(c) of the Tariff Act.

KISCO, Union, Dongbu, PSP, and KSP disagree with the petitioners. Union maintains that the Department correctly converted its calculations to a theoretical basis. The other respondents claim that the Department should perform the same conversion in calculating CV and, in the case of Dongbu, KSP, and PSP, in performing the sales-below-cost test by using costs converted to a theoretical-weight basis. Respondents argue that the Department should use theoretical costs since the Department will compare these costs to sales reported on a theoretical-weight basis.

Respondents disagree with the petitioners' conclusion that the Department should not convert actual-weight-basis costs because respondents have failed to justify this adjustment. Respondents argue that they record U.S. sales, home market sales, and production costs on different quantitative bases. Respondents point to a March 18, 1994, letter to interested parties from the Division Director of the Department's Office of Antidumping Compliance that instructed respondents to report sales and costs on a theoretical-weight basis. Respondents argue that the theoretical-weight conversion factor is not an adjustment *per se*. Rather, they contend, it is merely an attempt to express production costs, U.S. sales, and home market sales on a consistent basis so that the Department can make an apples-to-apples comparison. Therefore, respondents assert, the burden of proof normally associated with, for example, a circumstance-of-sale adjustment is not applicable.

Dongbu, PSP, and KSP disagree with the petitioners' conclusion that their data are inaccurate. Respondents argue that the Department has verified that the record-keeping and methodologies respondents have used in recording and reporting costs were accurate and that petitioners have failed to point out any verification results that show otherwise. Moreover, respondents claim that the petitioners' analysis of conversion factors used in the sales and cost databases is flawed. Respondents maintain that, while they have reported the sales data on a standard-actual-weight basis, they have reported the costs on an actual-weight basis. Furthermore, respondents note that standard-actual weight varies from actual weight when input coil thicknesses vary and that the record demonstrates this fact. Moreover, respondents contend that the record does not support petitioners' assumption that respondents reported costs on a standard-actual-weight basis. Therefore, respondents conclude, any analysis of these two types of conversion factors would likely yield differences.

KISCO states that, although the petitioners characterize this as an issue common to all respondents, they failed to identify any errors in KISCO's reporting methodologies.

Department's Position: We disagree with the petitioners in part. The use of theoretical-weight-based sales prices and costs is not a price or cost adjustment *per se* but a conversion to a different basis that allows an apples-to-apples comparison. While respondents kept and reported their COP on an actual-weight basis, respondents made and reported their U.S. sales on a theoretical-weight basis. Therefore, a conversion is necessary to make equitable comparisons.

While petitioners contend that the conversion factors respondents used to translate actual weight to theoretical weight were flawed due to wall build-up in the production process, we have verified the cost data KSP, PSP, and Union submitted. We found that, with some minor exceptions we noted in the respective verification reports, these respondents' costs and conversion factors were reported properly. Our verifications generally demonstrated that these respondents captured and properly assigned all costs to the subject merchandise produced during the POR. Wall build-up would only have significance if respondents first calculated a per-metric-ton or per-kilogram cost for the steel inputs and then applied those costs to a theoretical or standard-actual weight of the pipe. In this instance, respondents assigned the cost of one entire coil input to all of the merchandise produced from that input, which is generally one type of pipe. Thus, because all costs were captured and because the methodologies respondents used to assign costs are consistent with the methodologies they used to record production (*i.e.*, actual weight), the possibility that wall buildup may occur is inconsequential. Finally, with the exception of the aberrant conversion factors noted below, we found at verification that respondents calculated the reported conversion factors properly by dividing the total actual weight of production of each model by the theoretical weight of that production.

We also agree with respondents that certain differences among the weight-conversion factors result when different coil-input thicknesses are used to make the same product. This is acceptable within industry standards so long as the ultimate product meets specification tolerances. Moreover, the petitioners' analysis is flawed because it compares standard-actual weight to theoretical weight. Respondents provided the conversion factors to convert their reported actual-weight-basis costs to theoretical weight (the basis of the United States prices (USPs)). The standard-actual weights that petitioners use in their analysis are not the actual weight but rather the standard weight respondents used in Korea, much as theoretical weight is a standard weight used in the United States. Therefore, some weight-conversion disparities are not unusual on a sale-by-sale or sale-to-

cost basis. However, we have conducted our own analysis of the reported conversion factors and agree with the petitioners that certain individual factors are aberrational.

Using the maximum industry-standard tolerance of wall thickness, we calculated the minimum conversion factor allowable in various grades of standard pipe. We found that respondents reported model-specific conversion factors that fall below this minimum. For more information, see the final results analysis memoranda, dated October 2, 1997. Because it is impossible to produce a pipe that is within the industry-standard tolerances yet has a conversion factor below this minimum, we consider certain reported conversion factors to be aberrational and unverifiable under 19 CFR 353.37(a)(2). As such, we have disregarded these aberrational factors and applied BIA in accordance with section 776(c) of the Tariff Act. As BIA, we examined the conversion factors each respondent reported for the 1992 and/or 1993 costs for the same model. If these factors were both below the minimum, as BIA we used the minimum possible conversion factor. If one factor was below and the other factor was above the minimum, as BIA we used the higher of the two.

Comment 3: Petitioners contend that, except for Union, all respondents paid duties on an actual-weight basis while they received duty drawback on a theoretical-weight basis. Petitioners assert that the duty drawback respondents received per unit of pipe therefore exceeds the duties they paid on the inputs for the pipe because the theoretical weight is greater than the actual weight. Citing section 772(d)(1)(B) of the Tariff Act, petitioners state the Department is to increase the USP on each sale by "the amount of import duties imposed by the country of exportation which have been rebated" on each of those sales. Citing *Avestra Sheffield Inc. et. al.* v. *United States*, 17 CIT 1212, 1216 (1993) (*Avestra Sheffield*), petitioners continue that the Department is not required to accept the full amount of the duty drawback respondents claimed (as it does not reflect the actual duties paid) even if it finds the two conditions of the duty-drawback test enumerated in *Far East Machinery Co.* v. *United States*, 699 F. Supp. 309, 312 (1988) (*Far East Machinery*) have been met (test set forth below). Thus, to ensure that the duty drawback reflects the duties paid on materials actually incorporated into the exported product, petitioners insist that the Department limit respondents' reported duty drawback by the amount of actual duties paid.

Dongbu, KSP, and PSP contend that the Department's long-standing practice has been to grant a full duty-drawback adjustment when (1) the import duty and the pertinent rebate are directly linked to, and dependent upon, one another, and (2) the company claiming the adjustment can demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product (citing *Far East Machinery* at 311). Dongbu, KSP, and PSP assert that they met both required conditions and are therefore entitled to their full duty-drawback claim.

Dongbu, KSP, and PSP further contend that, by arguing that respondents receive more duty drawback than duties paid, the petitioners are making a claim of subsidy. Citing *Far East Machinery*, respondents contend that the Department cannot address subsidy allegations in an antidumping proceeding.

Finally, Dongbu, KSP, and PSP argue that the petitioners are requesting a level of precision required neither by common sense nor by law and that only a reasonable, not an absolute, standard of precision is required. Respondents contend that the petitioners' reliance on *Avestra Sheffield* is misplaced because, respondents assert, that case required only that the foreign producer demonstrate that it has imported a sufficient amount of raw materials to account for the drawback received upon exportation to satisfy the second condition.

KISCO argues that petitioners did not identify any evidence in the record that supports this assertion with respect to its duty-drawback claim. KISCO further contends that the Department's verification directly contradicts the petitioners' assertion, in which the Department determined that KISCO paid the duties for which KISCO received duty drawback and that KISCO accurately quantified duty drawback in its response.

Department's Position: We agree with petitioners in part. Section 772(d)(1)(B) of the Tariff Act directs us to add to USP "the amount of any *import duties* imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States' (emphasis provided). Thus, the plain language of the statute directs us to add to USP the amount of import duties paid and rebated. That is, we are not to add the *rebate* but rather the *duties* that have been rebated. Therefore, if the rebate received is greater than the duties paid, we are to increase USP only by the amount of the actual duties paid.

While it is true that the Court of Appeals for the Federal Circuit (CAFC) ruled in *Far East Machinery* that, if petitioners "are arguing impliedly that the * * * export rebate system * * * results in excessive rebates because of lack of adequate controls, such an allegation is properly made in the context of a countervailing duty case, not the present antidumping suit," the CAFC continued in its decision to state "[n]onetheless, ITA is not limited to accepting the full value of the "rebate" as an adjustment * * * even if there is some linkage and even if the requisite import duties were paid on suitable goods. That is, in deciding what the proper adjustment should be when the linkage is broad-based ITA may make its own determination as to how much of the rebate reflects actual cost elements of the product under investigation, that is, how much actually represents drawback." See Far East Machinery at 313–14. Thus, even if a respondent meets both parts of the duty-drawback test set forth in *Far East Machinery*, which all respondents in this case did, we are only required to adjust the USP for the amount of drawback applicable to the inputs actually used, whereas respondents received revenue pursuant to a drawback claim based on theoretical weight, which, because it exceeds the actual weight of the merchandise, includes an amount of drawback not attributable to the actual input or duties paid on that input. The second part of the test entitles respondents to a "duty drawback adjustment to U.S. price [up to] the amount of import duty actually paid." *See Far East Machinery* at 312.

We examined the record and determined that petitioners' comment applies only to duty drawback received under the "fixed-rate" duty drawback provision and not an "individual-transaction" duty-drawback provision. We found that, when respondents received duty drawback under the individual-transaction duty-drawback provision, companies received duty drawback based on the duties actually paid on the input of the exported product. In the fixed-rate duty-drawback provision of Korean law, companies merely needed to demonstrate that they had sufficient imports of the input to cover the exports of the finished merchandise and that they paid duties on the imports of the input. Respondents were not required to demonstrate to the Korean government that the amount of the drawback claim did not exceed the amount of duties paid. We also found that companies

receiving duty drawback under the fixed-rate provision paid duties on the basis of the actual weight of inputs imported but received drawback on the basis of the theoretical weight of merchandise exported to the United States. Because theoretical weight is generally greater than actual weight, fixed-rate drawback calculated on a theoretical-weight basis is greater than that calculated on an actual-weight basis. Therefore, we conclude that the reported duty drawback of respondents who received the drawback under the fixed-rate provision exceeds the duties actually paid. Furthermore, we note that respondents did not dispute the fact that they received duty drawback in excess of the duties they paid on imports but, rather, disputed whether this fact is relevant.

We also disagree with respondents' argument that the petitioners are requesting a level of precision that neither common sense nor law requires. While it is true that we require a reasonable, rather than an absolute, standard of precision, the result in this case is a reasonable and logical one, as has also been demonstrated by the interpretation of this provision of the Tariff Act by the Court of International Trade (CIT) in various cases. *See Far East Machinery, Avesta Sheffield*, and *Carlisle Tire & Rubber Co.* v. *United States*, 657 F. Supp. 1287 (March 16, 1987).

Finally, we agree with KISCO that it did not receive duty drawback in the manner that petitioners describe. KISCO received duty drawback under the individual-transaction provision. Thus, the petitioners' comment is not applicable to KISCO.

Accordingly, where respondents reported that they received duty drawback under the fixed-rate provision, we adjusted the drawback claim to reflect the amount of duty drawback actually paid by multiplying the reported duty drawback by the factor converting theoretical weight to actual weight. Because KSP and PSP received drawback under the fixed-rate provision for the entire POR, we made this adjustment for all sales. *See* KSP's April 7, 1994, submission at page 55 and PSP's April 11, 1994, submission at page 64. Because Dongbu received drawback under the fixed-rate provision prior to April 1993, we made this adjustment for all of Dongbu's sales made prior to April 1993 and have not adjusted the drawback that Dongbu reported for sales made as of April 1993. *See* verification report for Dongbu dated March 18, 1997, at page 8. Because KISCO and Union did not receive duty drawback under the fixed-rate provision, no adjustment to these companies' reported duty drawback was necessary.

Comment 4: The petitioners argue that the Department should treat indirect purchase price (IPP) sales which Union, KISCO, PSP, KSP, and Dongbu made as exporter's sales price (ESP) sales. The petitioners assert that the Department uses four criteria to test when a sale can be classified as purchase price: (1) The sale transaction must occur prior to importation; (2) the merchandise in question is shipped directly from the manufacturer to the unrelated buyer without being introduced into the inventory of the related selling agent; (3) the transaction represents a customary commercial channel for sales of this merchandise between the parties involved; and (4) the related agent in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. Petitioners assert that respondents have not met two of these criteria and, therefore, their sales to U.S. affiliates do not qualify as purchase price transactions.

First, the petitioners contend that, generally, the U.S. subsidiaries of the respondents take title to the merchandise in Korea through a bill of lading and relinquish title when the merchandise clears the U.S. Customs Service. Thus, the petitioners argue, the merchandise enters the affiliate's inventory and, therefore, the transactions do not meet the second criterion.

Second, the petitioners allege that the affiliates act as more than just a processor of documents. With slight variations in each company's factual situation, petitioners argue generally that the affiliates purchase the merchandise from the manufacturers and obtain a letter of credit to pay the manufacturers. Thus, the petitioners conclude, the affiliates incur carrying costs until they receive payment from the U.S. customers. Petitioners also contend that the affiliates incur the obligation to pay U.S. Customs duties, marine insurance, and U.S. brokerage and handling expenses and they carry accounts receivables on their books until their U.S. customers settle their accounts. Therefore, the petitioners contend, the affiliates incur the risk of extending credit to their U.S. customers and bear the expenses of carrying accounts receivables. The petitioners argue that these circumstances lead to the conclusion that the affiliates perform substantive functions beyond the simple "processing of documents" criteria outlined in the Department's purchase price test.

Dongbu, Union, PSP, and KSP argue that the sales-related activities mentioned by the petitioners, such as incurring expenses, taking physical and legal ownership, and obtaining and extending credit, ring hollow when compared with the record evidence and Departmental and judicial precedents. Moreover, the respondents argue that the petitioners fail to provide a citation to support their position that carrying merchandise in a merchandise-in-transit account equals physical possession or holding merchandise in inventory.

Respondents, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews (Carbon Steel from Korea)*, 61 FR 18547, 18562 (April 26, 1996), argue that, even assuming that legal control of the merchandise temporarily passes to the U.S. affiliate to facilitate transportation, this constitutes a routine selling function because the sale occurs prior to importation, thus satisfying one of the Department's four factors to meet purchase price status. Respondents also argue that the factual situation regarding the relationships and selling activities of the respondents' affiliates are nearly identical to those in *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews (Carbon Steel from Korea II)*, 62 FR 18404, 18423 (April 15, 1997), and in fact involved two of the same companies. In that case, respondents contend, the Department classified these sales as purchase price sales.

Respondents also refer to recent judicial precedents on this subject. For example, respondents point out that the CIT has upheld the classification of sales as purchase price sales in circumstances where the related U.S. company undertook activities similar to, or even more extensive than, those in this instance (citing, *e.g., Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–1380 (CIT 1993), *E.I. du Pont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237, 1248–50 (CIT 1993), and *Zenith Electronics Corp.* v. *United States*, Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT) (*Zenith*)).

KISCO asserts that the record does not support petitioners' points. KISCO claims that the Department's verification report confirms that KISCO's exported merchandise is shipped directly to the unrelated U.S. customer without entering the inventory of its U.S. affiliate, Dongkuk International Inc. (DKA). Moreover, KISCO claims that DKA is merely a processor of sales documents. KISCO concludes that sending invoices, receiving payment, and arranging for U.S. Customs Service clearance are precisely the types of activities routinely performed by U.S. affiliates in IPP situations.

Department's Position: We disagree with petitioners that we should treat the sales made through the U.S. affiliates and claimed as IPP sales as ESP sales. Whenever companies make sales prior to the date of importation through an affiliated sales entity in the United States, we classify these sales as purchase price sales if the following considerations apply: (1) The manufacturer shipped the subject merchandise directly to an unrelated buyer without the merchandise being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyer is the customary channel of the sales transaction between the parties involved; and (3) the related selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. *See, e.g., Final Determination of Sales at Less than Fair Value; Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68868 (December 29, 1993), and *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343, 50344 (September 27, 1993).

The Department first developed this test in response to the CIT's decision in *PQ Corporation* v. *United States*, 652 F. Supp. 724, 733–35 (CIT 1987). The test is used to classify transactions involving exporters and their U.S. affiliates, and the Department has routinely applied this test in its determinations. *See, e.g., Zenith*.

Petitioners do not dispute that the companies made the sales prior to exportation. Nor do the petitioners dispute that this is a customary channel of distribution. Therefore, the precondition that these sales are made prior to importation and one of the three considerations for classifying the sales as purchase price sales are not at issue. Thus, we must only determine whether respondents shipped the merchandise directly to the unaffiliated U.S. customer without entering merchandise into the affiliate's inventory and whether the affiliate acted as more than a processor of documents and a communications link.

We agree with respondents that the merchandise does not enter the inventory of the U.S. affiliate. The terms of sale for these transactions are ex-dock, duty-paid. In these circumstances, respondents transfer the merchandise to the unaffiliated U.S. customer immediately after clearing U.S. Customs. Although the affiliate may temporarily take title to the merchandise, this amounts to a simple accounting entry. The existence of a "merchandise-in-transit" account in the affiliates" accounting records does not indicate that the merchandise enters the affiliates' inventory.

We also agree with respondents that neither the nature nor the scope of their affiliates' selling activities in the United States exceed those types of activities that one would expect an exporter to undertake in connection with IPP sales. Based on the respondents' narrative explanation of the sales process and our verification of the U.S. sales, we conclude that the respondents' U.S. affiliates did not control the sales-negotiation process or perform other significant selling functions; rather, they acted as a communication link passing on the sales documents from the parent to the U.S. unaffiliated customer. The types of activities which the petitioners allege constitute an active role do not constitute substantial selling activities. The U.S. affiliate's role is to function as a processor of paperwork, not perform significant selling functions. *See Carbon Steel from Korea*. Therefore, as in many similar instances, we consider these sales to be purchase price transactions.

Comment 5: Petitioners allege that respondents in this proceeding directly paid or reimbursed antidumping duties within the meaning of § 353.26 (a) of the Department's regulations. To account for reimbursement, petitioners assert that, in calculating assessment and duty deposit rates for the final results, the Department must deduct from USP the amount of antidumping duties determined to be due on sales made through respondents' affiliated importers.

In support of their reimbursement allegations, petitioners cite to sales-process and terms-of-sale descriptions on the record in this review. Petitioners assert that these descriptions imply that respondents control both the prices their affiliated importers paid and the prices their affiliated importers charge to unrelated U.S. customers. Petitioners contend that this price control and the existence of "duty paid" terms of sale allow the affiliated importers to compensate for the duties by charging higher prices and, therefore, constitute evidence of reimbursement of antidumping in accordance with § 353.26(a)(1)(ii) of the Department's regulations.

Petitioners make additional claims in support of the reimbursement allegations against PSP, KSP, and Union. For PSP, petitioners claim that a "contingent liability for antidumping duty deposits" listed on the company's 1992 financial statement is evidence of reimbursement. Petitioners acknowledge that the charge was reversed in the subsequent year but contend that PSP did not conclusively establish that it did not continue to be liable for the antidumping duties. For KSP, petitioners assert that, because its affiliated importer went bankrupt, KSP will bear any duties the affiliate owes above the amount of antidumping duty deposited. Petitioners contend that this would constitute direct payment of antidumping duties in accordance with § 353.26(a)(1)(i) of the Department's regulations.

Petitioners also contend that the Department should collapse KSP and PSP with their affiliated importers in accordance with certain collapsing factors outlined by the Department in *Certain Cold-Rolled Carbon Steel Flat Products From Korea; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 65284 (December 19, 1995) (*Steel from Korea 1993/94 Review Preliminary Results*). Citing to record evidence, petitioners contend that two of the collapsing factors outlined by the Department in *Steel from Korea 1993/94 Review Preliminary Results* apply to PSP and KSP and their affiliated importers in this review. According to petitioners, the two collapsing factors are (1) the level of common ownership and (2) intertwined company operations (*e.g.*, sharing of sales information, involvement in production and pricing decisions, sharing of facilities or employees, and transactions between companies). Petitioners assert that, once the Department collapses the parties, it must make a finding of reimbursement, reasoning that in a collapsing situation payment of antidumping duties by the affiliated importer are essentially the same as payment by respondents.

As additional support for a finding of reimbursement against Union, petitioners claim that in examining this respondent in the LTFV investigation of another proceeding the Department found that Union's affiliated importer's role in paying antidumping duty deposits is a relocation of routine selling functions from Korea to the United States. Petitioners claim that such a scenario amounts to reimbursement.

Petitioners conclude with a suggestion of how the Department should apply the reimbursement regulation after making a determination of reimbursement under § 353.26(a) of the Department's regulations. Citing

Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 4408, 4411 (February 6, 1996) (*Korean TVS*), petitioners claim that in practice the Department has not always applied the adjustment for reimbursement in accordance with § 353.26(a) of the Department's regulations. In calculating assessment and duty deposit rates for the final results of this administrative review, petitioners request that the Department deduct from USP the amount of antidumping duties determined to be due on sales through respondents' affiliated importers.

Respondents claim that petitioners failed to cite any specific evidence to show that foreign producers have determined to pay the dumping duties of their affiliated importers or that the importers will avoid such payment. Respondents rely on *Torrington Co.* v. *United States*, 881 F. Supp. 622, 631–32 (CIT 1995), as support for the premise that affirmative evidence of record is required to establish reimbursement. Respondents assert that a mere allegation does not rise to the enumerated standard and note that they are not aware of any Departmental findings of reimbursement absent specific evidence of payment of duties (or agreement to pay) on behalf of the importer.

Regarding petitioners' assertion that foreign producers reimbursed affiliated importers for antidumping duties by manipulating the prices charged, respondents contend that the Department has consistently recognized that the existence of such pricing is not evidence of reimbursement, even in situations where the transfer prices between the affiliated parties are so low that they are below cost. Among other court decisions, respondents cite *Torrington Co.* v. *United States*, 960 F. Supp. 339, 342 (CIT 1997), and *INA Walzlager Schaeffler KG* v. *United States*, 957 F. Supp. 251, 269–270 (CIT 1997), in support of this argument.

Next, respondents address petitioners' assertion that the Department should find reimbursement by collapsing the foreign producers with their affiliated importers. Respondents claim that collapsing is irrelevant to the issue of reimbursement. Citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37023 (July 10, 1997) (*Pipe from Mexico*), and *Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 2706, 2708 (January 23, 1992), respondents request that the Department continue its practice of treating the foreign producers and their affiliated importers as separate entities for purposes of examining reimbursement.

KSP contends that, contrary to petitioners' claim, the bankruptcy of its affiliated importer does not constitute evidence of reimbursement. KSP notes that the affiliated importer is the importer of record and paid the estimated antidumping deposit for entries subject to review and asserts that, if additional duties are due, U.S. Customs will request payment from the affiliated importer. KSP claims that it is uncertain whether it is under any legal obligation to pay assessments for its affiliated importer and contends that petitioners' claims to the contrary are pure conjecture.

PSP contends that the antidumping duties listed as contingent liabilities on its 1992 financial statements do not support a finding of reimbursement. Citing to the Department's Cost Verification Report, PSP notes that it mistakenly listed the contingent liability on the 1992 financial statements and that it corrected the error in the subsequent year. Since the contingent liability was reversed, PSP contends that there is nothing on the record showing that it is liable for the payment of antidumping duties.

Department's Position: We agree with respondents. Section 353.26 of our regulations requires that, in calculating USP, we deduct the amount of any antidumping duty that the producer or exporter directly paid on behalf of or reimbursed to the importer. The court has ruled that this regulation requires "evidence beyond mere allegation that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer, or reimbursed the U.S. importer for its payment of the antidumping duty." *Federal-Mogul Corp.*, 918 F. Supp. at 393 (citing *Torrington Co.* v. *United States*, 881 F. Supp. 622, 631 (CIT 1995)). In *Korean TVs*, the Department specifically stated that it would not presume reimbursement between affiliated parties absent specific evidence that the exporter will pay or reimburse the antidumping duties due. During this review, the Department found neither evidence of an agreement between respondents and their affiliated importers for reimbursement of antidumping duties nor evidence of actual reimbursement of these duties between the two affiliated parties.

Petitioners are correct that PSP had a contingent liability for antidumping duties on its 1992 financial statement. However, we found no evidence that this account was in any way related to the reimbursement of antidumping duties. Furthermore, as noted by respondents, we verified that the entry was an error and that the company corrected the mistake by reversing the entry in the subsequent year.

We have disregarded the allegation of reimbursement based on the claim that KSP will pay duties owed above the amount posted by its bankrupt affiliated importer. First, based upon these final results, KSP's duty assessments will be significantly lower than the amount deposited. Even if the assessment had been higher in the final results, our regulations characterize reimbursement as duties "paid directly on behalf of the importer." We have found no legal authority that would substantiate petitioners' claim that the U.S. Customs Service can pursue the foreign parent for the satisfaction of the bankrupt importer's antidumping duties. Furthermore, petitioners have not cited to a specific example in which the U.S. Customs Service was authorized or obligated to collect duties from the foreign parent of an importer. There is no evidence on the record indicating that the foreign parent is legally obligated to take on the bankrupt importer's duty liabilities. Thus, the petitioners' claim that reimbursement occurs under the current facts has no merit.

Respondents are also correct in stating that collapsing them with their affiliated importers for the purposes of reimbursement, as petitioners advocate, is contrary to our practice. As we have noted before, while we sometimes treat affiliated parties as a single entity for purposes of the margin calculation, we treat such parties as separate entities when examining the question of reimbursement. *See, e.g., Pipe from Mexico* at 37023.

For the forgoing reasons, we do not find reimbursement of antidumping duties within the meaning of § 353.26(a) of our regulations. However, as a further measure to account for reimbursement, § 353.26(b) of our regulations requires that importers provide the U.S. Customs Service a certificate of non-reimbursement before liquidation of entries. If they do not file that certificate, we will presume that reimbursement took place and instruct the U.S. Customs Service to double the antidumping duties due.

Comment 6: Petitioners note that the Department found at the cost verifications of KSP and PSP that these companies had calculated their selling, general and administrative expense (SG&A) factors and interest expense factors using a cost-of-goods-sold denominator that includes packing expenses. They further note that the cost of manufacturing (COM) respondents used to calculate SG&A and interest expenses does not include packing. Petitioners contend that KSP and PSP have therefore understated their SG&A and interest expenses, and they assert that both Dongbu and Union duplicated this inconsistency. Petitioners argue that the Department should recalculate SG&A and interest expense by multiplying the factor by the sum of reported home market packing expenses and the submitted COM.

KSP, PSP, Dongbu, and Union argue that an adjustment to the reported expense is not warranted. Respondents assert that they followed the Department's standard practice, which, according to respondents, is to calculate these factors by dividing the expenses by the cost of goods sold from the financial statements. Respondents also allege that the Department never informed them that it required a change to the methodology, and they claim that they only learned of this possible change upon receiving the verification reports. Therefore, respondents contend, there is no compelling reason to adjust the data when complete data may or may not be available to make the adjustment. They also contend that if the Department adjusted these factors it would be a minimal adjustment.

Department's Position: We agree with petitioners. While we typically prefer that respondents calculate the SG&A and interest expense factors using data contained in the financial statements, they should have calculated the factor on the same cost basis as the COM to which they applied the factor. As noted by petitioners, respondents' methodology for calculating the factors understates the reported SG&A and interest expenses. To correct this problem, we have added packing expenses to the reported COM for all companies to recalculate SG&A and interest expenses. This ensures that the factors, and the COM to which we apply them, are comparable and corrects the under-reporting of SG&A and interest expenses.

Comment 7: KSP, PSP, Dongbu, and Union assert that the Department inadvertently double-counted selling expenses in the cost test. Respondents note that the Department deducted selling expenses from the home market prices it used in the cost test but then included the expenses in the COP it used in the cost test. Respondents contend that this error can be corrected by not including selling expenses in the COP used in the cost test.

Department's Position: We agree with respondents that we made an error with regard to the home market selling expenses in the cost test. We did not, however, correct the error as respondents suggested but, rather, corrected the error by not deducting selling expenses from the home market prices we used in the cost test. Our correction effectively achieves the same result as the correction respondents suggest by ensuring that we have included and excluded the same expenses in the prices to which we compare the COP.

Comment 8: Respondents claim that the preliminary results of review contained the wrong scope description. Respondents assert that the scope the Department used contains a substantive error in that it includes mechanical tubing, a product that neither the International Trade Commission's affirmative injury determination nor the scope of the antidumping duty order covers. Respondents request that, in the final results of review, the Department publish the scope language set forth in the antidumping duty order.

Petitioners agree that the Department should modify the scope description it published in the preliminary results to exclude mechanical tubing but contend that the scope description requires only a minor modification to achieve this. Petitioners also assert that the scope description should state clearly that standard pipe with mechanical type applications, such as fence tubing, is included in the order.

Department's Position: We agree with respondents and petitioners that the scope description we published in the preliminary results was incorrect. For the final results, we have adopted respondents' suggestion and revised the scope description so that it is consistent with the one published in the notice of antidumping duty order. *See Notice of Antidumping Duty Orders; Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453, 49454 (November 2, 1992). We did not adopt the petitioners' suggestion for correcting the error since the scope description published in the notice of antidumping duty order states clearly that standard pipe used for light load-bearing applications, such as fence tubing, is included in the antidumping duty order.

Comment 9: PSP and KSP contend that the Department miscalculated their ESP assessment rates by dividing total ESP dumping duties due by the entered value of all entries of subject merchandise made by their affiliated importers during the POR. Respondents contend that this methodology is distortive since the total quantity and entered value of all POR subject merchandise entries of their affiliated importers are different from the total quantity and entered value of subject sales used to determine the dumping duties due on ESP transactions. Citing *Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 34201, 34211 (June 25, 1997) (*CPTs from Japan*), respondents note that the Department's practice for the calculation of ESP assessment rates is to divide the total dumping duties due for ESP sales by the total entered value of the same ESP sales. To correct the error in the ESP assessment-rate calculation respondents suggest that the Department calculate an average entered value based on the total price and quantity of all POR subject entries made by their affiliated importers, multiply the average entered value by the quantity of reported ESP sales, and use the resulting total entered value for ESP sales as the denominator in the calculation of an ESP assessment rate.

Department's Position: In most cases, we calculate assessment rates on ESP sales by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66475 (December 17, 1996), and *CPTs from Japan* at 34211. In our questionnaire, we asked respondents to report the entered value of subject merchandise for their ESP sales. In response to our request, PSP and KSP explained that they could not provide this information since they were unable to tie entries to sales. As an alternative reporting methodology, respondents gave us the total quantity and value of all POR subject entries of their affiliated importers. In the preliminary results, we used this information to calculate assessment rates for ESP transactions. However, we have reconsidered our use of this data in calculating assessment rates for the final results.

For situations where the respondent does not know the entered value of the merchandise for ESP sales, it has been our practice to calculate either an approximate entered value or an average per-unit dollar amount of antidumping duty based on all sales examined during

the POR. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31694 (July 11, 1991). For the final results of this administrative review, we have adopted the latter approach for all transactions subject to review (*i.e.*, ESP, direct purchase price, and IPP) because this is a more precise calculation under the circumstances. We calculated a per-unit dollar amount of antidumping duty by dividing the total antidumping duties due for each importer/customer by the corresponding number of units we used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of merchandise on each of the importers'/customers' subject entries during the review period. This addresses respondents' concerns about the fact that the entered values do not correspond to the total entered value of sales we used to determine the dumping duties due.

Comment 10: Dongbu, PSP, KSP, and Union contend that the model-match hierarchy the Department used in the preliminary results improperly places wall thickness above surface finish (black or galvanized). Respondents argue that the Department's hierarchy defies commercial reality in that it assumes that a customer who is unable to obtain galvanized pipe of a particular wall thickness would find a black pipe of the same wall thickness to be more similar than a galvanized pipe of a different wall thickness. Respondents reason that a customer will only incur the significant additional costs associated with galvanized pipe if there is a sufficient need for the corrosion resistance afforded by the galvanization.

Department's Position: We disagree with respondents' contention that surface finish should be placed above wall thickness in the model-match hierarchy. We acknowledge that galvanization plays a significant role in the matching hierarchy, but we do not agree that it is more important than a dimensional characteristic such as wall thickness. After grade and nominal pipe size, wall thickness is the next most important criterion in the model match. Wall thickness is a significant factor of compatibility in pipe applications, especially when dealing with pipe of a small diameter. For the merchandise subject to this review, we consider surface finish to be less important than the dimensional characteristics because users of this merchandise can freely interchange black and galvanized products if the dimensional characteristics are the same. The significant difference between galvanized and black pipe is that the galvanized pipe will last longer in a corrosive environment.

In this administrative review, the matching hierarchy we applied is consistent with the one we applied in the LTFV investigation. *See Korean Pipe LTFV Final* at 42944. While the hierarchy the Department used in the LTFV investigation is not binding, respondents have not provided sufficient facts to warrant a change. Thus, lacking a compelling reason, we have not changed the matching criteria for the final results. Furthermore, with respect to our ranking of wall thickness above surface finish, adopting this position is in the interest of maintaining a stable and predictable approach to the antidumping duty margin calculations and is consistent with our position on the matching hierarchy for other proceedings involving steel pipe. *See, e.g.*, Appendix VI of the March 22, 1996, questionnaire for the 1994/1995 administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico or Appendix V of the questionnaire for the 1995/1996 administrative review of the antidumping duty order on certain welded carbon standard steel pipes and tubes from India.

B. Company-Specific Issues

KSP

Comment 1: Petitioners argue that the Department should ensure that in KSP's post-verification submission KSP made all corrections the Department identified in KSP's sales and cost verification reports.

KSP contends that it made all such corrections.

Department's Position: We have reviewed the revised computer tape submission which we requested that KSP submit and are satisfied that KSP made all the corrections we identified in our sales and cost verification reports regarding KSP.

Comment 2: Petitioners assert that the Department should reject KSP's U.S. and home market sales response because the information it reported, according to petitioners, is unreliable. Petitioners note that the Department found the following problems: the date of shipment for one U.S. sale and the date of payment for a number of U.S. sales were incorrect; KSP was unable to produce invoices for some transactions through KSP's U.S. affiliate; KSP could not produce its affiliate's bank statements demonstrating payment. Petitioners further observe that KSP's failure to report its home market sales net of returns and inclusion of returned goods in the home market sales database may cause distortion. For these reasons, petitioners contend that the Department should reject KSP's United States and home market sales responses and calculate KSP's margin using BIA.

KSP argues that the petitioners ignored a significant body of evidence on the record that confirms the accuracy of KSP's responses and relied on isolated issues that arose during the sales verification. With regard to the U.S. sales data to which petitioners refer, KSP contends that, while it was unable to present the documents the Department prefers to examine for some sales, the Department was able to verify the information using alternative methodologies. KSP also argues that petitioners exaggerate and highlight minor differences on reported sales dates and payment dates. With regard to the home market sales data to which petitioners refer, KSP argues that its methodology is reasonable and the effect that returned goods have on weighted-average prices would be inconsequential, given the relatively small quantity of returned goods to home market sales and the stability of home market prices during the POR. KSP concludes that, because it cooperated with all of the Department's requests for information and because its submissions were successfully verified, the application of BIA to KSP's U.S. sales would be inappropriate.

Department's Position: We agree with respondents. With regard to the dates of shipment and payment, we found that, of the discrepancies noted by petitioners, all, with one exception, would have been disadvantageous to KSP had we not found the discrepancies and allowed KSP to correct them. With regard to the fact that KSP was unable to produce certain documents we requested, we note that KSP was able to present other documentation that supported the data it reported in its response. We are reviewing a POR that ended in 1993. KSP's U.S. affiliate filed for bankruptcy proceedings in 1993 and no longer operates. It is appropriate to recognize the lapse of time since the POR ended and the fact that the U.S. affiliate is no longer in operation. In our view, KSP cooperated to the best of its ability, considering the circumstances. Due to the fact that we were able to tie the reported information back to other documentation and that, in our view, the errors to which petitioners refer are not nearly as grave as petitioners assert, we are satisfied with the accuracy of KSP's U.S. sales database.

With regard to home market sales returns, it is impossible to determine from the record whether any distortion exists or what effect this hypothetical distortion, if it exists, may have on the margin. As KSP notes, the quantity of returned goods was very small in proportion to the volume of home market sales, which would suggest that any distortion that may exist would have, at best, a minuscule effect on the margin. Therefore, we have used KSP's home market sales database because there is no record evidence that KSP's reporting methodology is distortive. To simply reject KSP's entire home market sales response because KSP was not able to match returns to sales would be, in our view, unwarranted and punitive, given the cooperation that KSP provided.

Comment 3: Petitioners argue that KSP's interest expense must be recalculated to exclude certain offsets for interest income because KSP could not demonstrate that the underlying investments were short-term in nature at verification.

KSP does not object to a modification of its interest expense factor to account for income that was not proven to be associated with short-term investments as long as the adjustment is limited to that income alone.

Department's Position: We agree with petitioners. Short-term-interest expense may only be offset by short-term-interest income. Because KSP could not demonstrate that the underlying investments were short-term in nature at verification, we have disallowed these items of interest income as an offset to interest expense and recalculated KSP's interest-expense factor accordingly.

Comment 4: KSP asserts that the Department improperly treated the schedule of ASTM pipe, *i.e.*, the wall thickness, as a grade specification in applying the model-match hierarchy. KSP asserts that the schedule of ASTM pipe represents wall thickness and argues that, since wall thickness is a distinct characteristic under the Department's physical-characteristics hierarchy, it should be disregarded in matching pipe by grade specification.

Department's Position: We agree with KSP. We have corrected this error for the final results.

Comment 5: KSP argues that the Department should disregard level of trade in making model matches for KSP because there is no evidence on the record indicating any correlation between prices or expenses and levels of trade in the home market in the case of KSP. KSP further notes that this issue was the subject of litigation in the LTFV investigation, where the CIT remanded the issue to the Department to conduct a correlation test to determine whether any correlation between prices or expenses and levels of trade existed. According to KSP, the Department found, after conducting this test, that no such correlation existed and recalculated KSP's margin without regard to level of trade. KSP also submitted an analysis of prices and selling expenses based on the home market sales data it previously submitted to demonstrate that there was no correlation in the current POR.

Petitioners contend that the Department should reject KSP's level-of-trade analysis because it is untimely and flawed, stating that its test data cannot be verified or carefully analyzed. Petitioners also contend that KSP's assertion that the results of the LTFV investigation compel the same result in this review is incorrect and assert that the Department's policy is to treat discernable levels of trade as separate unless a party provides evidence that there is not a significant correlation between prices and selling expenses on the one hand and levels of trade on the other.

Petitioners argue that the analysis KSP submitted in its case brief is flawed with regard to unit prices because it compares aggregate prices rather than monthly prices and, therefore, may be subject to other market factors, distorting the analysis. Petitioners further argue that the analysis is flawed with regard to selling expenses because the selling expenses KSP uses in its analysis were all allocated proportionally to all sales in the response regardless of level of trade.

Department's Position: We agree with petitioners in part and with KSP in part. Because petitioners are correct in arguing that each review stands alone, whatever factual pattern may have existed during the LTFV investigation does not pertain to our findings in this review. Therefore, to be consistent with the past practice of this case, we conducted a correlation test to determine whether there is a significant correlation between prices and levels of trade. In this test we compared home market prices net of movement and packing expenses by level of trade. We found that there is no significant correlation between prices and level of trade for KSP. For a more detailed discussion of our finding, *see* KSP's Final Results Analysis Memorandum, dated October 2, 1997. Furthermore, while it is true that we cannot conduct a study of the correlation of selling expenses because KSP allocated its indirect selling expenses proportionally to all sales, a study of selling expenses is moot because there is a lack of correlation between prices. Therefore, we conclude that matching KSP's sales by level of trade in this review is not appropriate and have modified KSP's margin calculation accordingly.

PSP

Comment 1: Petitioners argue that the Department should use BIA to calculate foreign inland freight, foreign brokerage, and wharfage on PSP's direct purchase price sales for which it did not report an adjustment before verification. Petitioners note that the Department found at verification that PSP failed to report these per-unit adjustments for many direct purchase price sales and corrected the error by providing average amounts based on purchase price sales on which it had previously reported the transaction-specific amounts. Petitioners contend that since PSP did not provide the information in a timely fashion the Department should reject the average adjustments and instead apply BIA. Petitioners suggest that the Department use as BIA the highest amount for any sale on which PSP reported adjustments on a transaction-specific basis.

PSP claims that the use of average amounts instead of transaction-specific amounts is reasonable and non-distortive because the differences between the average amounts and the amounts reported are insignificant. PSP contends that BIA is inappropriate since there is no evidence that it meant to exclude the transaction-specific adjustments or attempted to manipulate the data through the reporting of averages. PSP concludes that manipulation is not possible when the missing figures represent three minor adjustments on a relatively small number of sales and that the three charges are exactly the type of charges that are often reported as averages. PSP asserts, therefore, that the application of BIA would be inappropriate.

Department's Position: We have disregarded PSP's claim that the use of average amounts instead of transaction-specific amounts for the movement adjustments is reasonable and non-distortive because the company's claims are unsubstantiated and, despite its ability to provide actual transaction-specific expenses, PSP did not do so.

For the final results, we have disregarded the weighted-average per-unit adjustments PSP provided at verification. Instead, we made the adjustment based on partial BIA. Section 776(c) of the Tariff Act requires that we use BIA "whenever a party or any other person refuses or is unable to produce information requested in a

timely manner and in the form required, or otherwise significantly impedes an investigation." Despite PSP's claim to the contrary, we find there are a significant number of sales on which the firm did not provide the transaction-specific movement adjustments. Our examination of freight records at verification revealed that PSP could have provided transaction-specific amounts instead of averages. Since we are not satisfied that PSP reported the adjustments to the best of its ability, our application of partial BIA is warranted. In *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10907 (February 28, 1995), we applied partial BIA in similar situations.

Thus, for the direct purchase price sales where PSP did not report transaction-specific movement adjustments, as partial BIA we applied the highest amount for any purchase price sale on which PSP reported transaction-specific values for foreign inland freight, foreign brokerage, and wharfage. We note that, even in a partial BIA situation, BIA is intended to be adverse. This induces respondents to provide timely, complete, and accurate information. In this situation, we are making an adverse inference that the unreported adjustments would have been higher than the weighted-average movement adjustments PSP provided.

Comment 2: Citing PSP's sales verification report, petitioners contend that PSP misallocated adjustments for U.S. duties, U.S. brokerage, and U.S. handling charges since it incurred the charges based on product value but allocated the charges on a theoretical-weight basis. Petitioners assert that PSP's methodology results in distortions where an entry covers merchandise of varying values, *i.e.*, allocation by weight disregards the fact that some products are more expensive than others and, therefore, a weight-based allocation may assign lower charges than required. To correct this problem, the petitioners request that the Department multiply the entered value of the merchandise by the duty rate to determine U.S. duties and by the *ad valorem* charges for brokerage and handling to determine U.S. brokerage and U.S. handling.

PSP contends that petitioners misunderstand the methodology it used to calculate U.S. duties, U.S. brokerage, and U.S. handling and request that the Department dismiss the arguments. PSP explains that, for situations where an entry covered more than one type of merchandise, it employed a two-step allocation process to derive the reported per-metric-ton movement expenses. PSP explains that in the first step it allocated the total charge for an entry (which is based on an *ad valorem* duty rate and total value of all products on the entry) to individual products based on the cost-and-freight value of each individual product divided by the total value of all products on the entry. In the second step, PSP states, it calculated the reported per-metric-ton expense by dividing the value from the first step by the total weight of the individual product. PSP asserts that petitioners focused on the second step of the calculation mistakenly in reaching their assumption that the allocation methodology is based solely on weight and would result in distortions where the entry consists of merchandise that varies in value.

Department's Position: We agree with PSP. The description of the allocation methodology that the petitioners cite from our verification report only applies to situations where the entry covered a single type of merchandise. For entries covering more than one type of merchandise PSP employed a two-step allocation process. The first step in the allocation process assigns expenses to individual products based on value and, by that, avoids the distortions which petitioners allege.

Comment 3: PSP contends that the Department neglected to add duty drawback to its ESP sales.

Petitioners note that PSP paid the duties on an actual-weight basis and received drawback on a theoretical-weight basis. Citing to the arguments on this issue elsewhere, petitioners contend that if the Department grants PSP a drawback adjustment it must reduce the claimed adjustment by the amount of the conversion factor.

Department Position: We agree with PSP that we neglected to add duty drawback to its ESP sales. However, we also agree with petitioners that the claimed duty-drawback adjustment must be reduced by the amount of the conversion factor before adding the adjustment to USP (see our response to Comment 5 in the "General Issues" section of this notice for a complete summary of the interested parties' arguments and the Department's position on adjusting duty drawback). Accordingly, we added the duty drawback to USP up to the amount of the actual duty paid.

Comment 4: Petitioners assert that PSP did not follow the methodology the Department required for calculating factors to use to derive the per-unit general and administrative (G&A) expenses and interest expenses reported in the COP and CV datasets. Petitioners argue that, because PSP failed to report its data in the manner the Department requested, the Department should use the ten-percent statutory minimum for SG&A as BIA. Petitioners contend that, if the Department does not base PSP's SG&A on BIA, it must recalculate the G&A expense and interest expense factors using the methodology the Department identified in its November 8, 1996, supplemental questionnaire and based on a cost-of-goods-sold denominator that is exclusive of packing expenses and all non-operating incomes.

PSP contends that it calculated the factors for G&A expenses and interest expenses properly and requests that the Department use the values it reported for the final results. PSP claims that the Department's factor-calculation methodology double-counts G&A expenses associated with resales by its affiliates because it increases the total expense in the numerator to include the additional expenses associated with resales by PSP's affiliates but does not correspondingly increase the cost of sales in the denominator. PSP also asserts that the methodology it utilized is acceptable since it is consistent with methodology the Department accepted for POSCO in the LTFV investigations involving steel products from Korea. PSP also claims that the G&A expense factor is approximately the same regardless of the methodology employed.

Petitioners argue that PSP is incorrect about the Department's factor-calculation methodology double-counting G&A expenses associated with resales by its affiliates. Petitioners assert that the cost of sales in the denominator of the factor calculation does not need to include the cost of sales connected with the affiliates' resales of PSP's merchandise because PSP bore the cost of the sales, not the affiliates. Petitioners also contend that the methodology the Department applied to POSCO should be ignored and request that Department decide the methodology to apply based on the facts of the current review. Finally, petitioners assert that, if the G&A expense factors truly are similar regardless of the methodology employed, then PSP should have no objection to using the Department's methodology.

Department's Position: We agree with petitioners in part. As petitioners assert, the cost of sales in the denominator of the expense-factor calculations does not need to include the cost of sales connected with the affiliates' resales of PSP merchandise. This is because PSP bore the cost of the sales, not the affiliates. Our factor-calculation methodology therefore does not result in double-counting but, rather, results in a more reasonable estimate of PSP's per-unit G&A expenses and interest expenses for use in calculating COP than PSP's methodology. Thus, for the final results, we have recalculated the G&A expense and interest expense factors using the methodology we required in our November 8, 1996, supplemental questionnaire. We also adjusted the numerator in the factor calculation to account for the fact that the cost-of-goods-sold denominator includes packing expenses. *See* our response to Comment 6 in the "General Issues" section of this notice for a more detailed explanation of this adjustment. Contrary to petitioners' suggestion, we did not need to adjust the factor calculations for non-operating income since we verified that PSP properly excluded all such income. After making these adjustments, PSP's reported SG&A expenses are above the ten-percent statutory minimum and, therefore, we used the actual SG&A expenses for calculating CV.

Dongbu

Comment 1: Petitioners contend that the Department's failure to verify Dongbu's cost response violates the statute. Citing section 776(b) of the Tariff Act, petitioners claim that the statute requires the Department to verify Dongbu's cost response since it "relied upon" this information in calculating the margin. Petitioners claim that, since significant corrections were either presented to, or found by, the Department at the cost verifications of other respondents and at the sales verification of Dongbu, it is likely the same would have occurred if the Department verified Dongbu's cost submission. Finally, the petitioners cite their January 17, 1997, comments on Dongbu's COP and CV submission in support that "good cause" existed for a verification.

Dongbu asserts that in accordance with section 776(b)(3) of the Tariff Act the Department was under no legal obligation to verify any part of its submission. Citing *Timken Co.* v. *United States*, 852 F. Supp. 1122, 1130 (CIT 1994), Dongbu contends that the courts have interpreted the statutory provision as not requiring verification of a respondent during the first administrative review even if the respondent at issue was not subject to the original investigation. Dongbu notes that in this review the Department verified its sales data and contends that the results of that verification are a sufficient basis for concluding that its entire response is accurate and complete. Dongbu also contends that the result of its sales verification or cost verification of other respondents is irrelevant to a determination of whether its cost data are accurate.

Department's Position: We agree with Dongbu. For an administrative review, section 776(b)(3)(B) of the Tariff Act states that we will verify all information upon which we rely if "good cause" exists or we conducted no verification during the two immediately preceding reviews. Since this is the first administrative review, the latter requirement was not a consideration in deciding whether to verify Dongbu's cost data. We did however take into consideration whether "good cause" exists for the verification of this information. We took all of the petitioners' comments into consideration and, where we decided it was necessary, we requested or made corrections. Given the analysis we performed and our time, resources, and other constraints, we decided not to verify Dongbu's cost data. Furthermore, contrary to petitioners' assertion, we found no discrepancies at Dongbu's sales verification or the cost verifications of other respondents that suggest Dongbu's cost data is unreliable. Since we are satisfied with Dongbu's cost data, we find no "good cause" to require a cost verification and relied upon Dongbu's information for these final results.

Comment 2: Petitioners assert that the Department should recalculate the home market interest rate Dongbu used to impute credit expenses for its home market sales in order to account for short-term usance loans that relate to production. Petitioners argue that it is the Department's policy to treat all short-term loans as fungible for the calculation of a weighted-average short-term interest rate. Without evidence that the loans were not used to finance sales, petitioners contend that the Department must use the usance loans to recalculate Dongbu's home market short-term interest rate. However, petitioners assert that such a recalculation is not possible because Dongbu did not provide accurate information on the usance loans. Therefore, in recalculating the home market short-term interest rate for the final results, petitioners suggest that as BIA the Department weight-average the lowest reported usance-loan interest rate with the home market weighted-average short-term interest rate used for the preliminary results based on the ratio of Dongbu's usance loans to its total short-term borrowings.

Dongbu contends that the Department should not make the change petitioners request. Dongbu asserts that the Department verified its weighted-average short-term interest rate fully in this review. In addition, Dongbu asserts that the Department has accepted its methodology in the administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant steel from Korea. Dongbu argues that the Department should not account for the usance loans in the calculation of its home market weighted-average short-term interest rate because they relate specifically to the financing of raw-material purchases. Dongbu also argues that the petitioners' suggestion for adjusting the interest rate for usance loans based on BIA is unwarranted. Dongbu asserts, however, that if the Department applies this methodology, the Department should not use petitioners' data for weight-averaging the lowest reported usance loan with the borrowing rate used to impute credit expenses for the preliminary results. Dongbu contends that petitioners mistakenly weight-averaged the two rates using the ratio of the U.S. affiliate's, Dongbu Corporation's, usance loans to its total short-term borrowings instead of the ratio applicable to Dongbu Steel Co., Ltd. Dongbu therefore requests that if the Department weight-averages the two rates to account for usance loans it must use Dongbu Steel Co., Ltd."s borrowing experience as the basis of this calculation.

Department's Position: Dongbu calculated the home market weighted-average short-term interest rate to measure its cost of extending credit on home market sales when it sold merchandise on account. In calculating this rate, we agree with petitioners that Dongbu should have included its short-term usance loans. As petitioners assert, it is the Department's practice to treat short-term loans, or the cost of working capital, as fungible. *See, e.g., Ferrosilicon From Brazil; Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 43504, 43512 (August 14, 1997) (Department's practice recognizes the fungible nature of invested capital resources), and *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17160 (April 9, 1997) (the Department indiscriminately included all interest expenses incurred in acquiring debt in the calculation of production costs). While Dongbu obtained the usance loans to finance the purchase of raw materials used in production, these borrowings may have

relieved Dongbu of the need to borrow money to cover other operating costs. Therefore, we are concerned with all of Dongbu's home market loans that relate to short-term working capital. Thus, to measure Dongbu's cost of extending credit accurately, we must base the calculation on Dongbu's overall short-term borrowing experience, which includes usance loans.

For the final results, we recalculated Dongbu's home market weighted-average short-term interest rate to account for usance loans by applying an adjustment methodology similar to the one petitioners suggest. However, due to the reasons explained by Dongbu above, we did not use the same data as petitioners for performing this calculation. Instead, we took the simple average of the interest rates Dongbu reported for usance loans and weight-averaged this rate with the reported rate based on the ratio of Dongbu Steel Co., Ltd.'s usance loans to its total short-term borrowings. *See* Dongbu's Final Results Analysis Memorandum dated October 2, 1997, for a detailed illustration of this calculation. We used the new rate to recalculate imputed credit expenses for home market sales for these final results.

Comment 3: Dongbu contends that the Department made a clerical error that resulted in the comparison of home market prices expressed on an actual-weight basis to USPs expressed on a theoretical-weight basis. Dongbu requests that for the final results the Department use home market prices expressed on a theoretical-weight basis.

Petitioners request that the Department base Dongbu's price comparisons on the weight basis on which it made sales in each market. Petitioners assert that the home market theoretical-weight-based prices Dongbu reported are inaccurate because the conversion factors used to derive these prices from actual-weight-based prices are inaccurate and unverified. (*See* Comment 2 of the "General Issues" section for further details on petitioners' argument.)

Department Position: We agree with Dongbu. For the final results, we corrected the clerical error noted by Dongbu so that the home market prices in our price comparisons are expressed on a theoretical-weight basis.

Regarding petitioners' allegation of inaccuracies in the conversion factor used to derive home market prices, we find that this assertion is misplaced. Dongbu did not use conversion factors to derive the theoretical-weight-based prices it reported. To calculate the prices on a theoretical-weight basis Dongbu divided the total sales value of a transaction (the home market sales occurred on an actual-weight basis) by the theoretical weight of the transaction. *See* Dongbu's December 13, 1996, supplemental questionnaire response at page 18. Thus, petitioners' assertion is incorrect.

Union

Comment 1: The petitioners argue that the Department should apply adverse BIA to Union because the Department could not verify the accuracy of Union's COP and CV data, there is insufficient information on the record to correct these costs, and Union failed to cooperate to the best of its ability. Specifically, petitioners cite to the Department's finding at verification that Union's finished-goods inventory, which Union used to allocate certain sub-materials costs and fabrication costs, was a mixture of theoretical- and actual-weight-based values. This finding, petitioners allege, is contrary to Union's narrative response, citing Union Steel Manufacturing Co., Ltd.'s June 2, 1997, COP verification report at page 2. Moreover, the petitioners allege that Union refused to provide a breakout of the finished-goods inventory that would allow the Department to evaluate the extent of the inaccuracy.

For the preliminary results, the petitioners state, the Department attempted to correct this inaccuracy by converting the coil-input costs, but not the sub-materials costs or the fabrication costs, to a theoretical-weight basis. Petitioners allege that this approach is inadequate because all costs, which petitioners contend should include coil costs, are allocated based on the weights recorded in the finished-goods inventory. Therefore, petitioners argue, at a minimum the Department should treat coil costs the same as the fabrication and sub-materials costs. However, the petitioners also argue that merely disallowing the conversion of coil costs to a theoretical-weight basis is not enough because the mixed-weight system will skew the difference-in-merchandise (difmer) calculations.

Petitioners argue that, for matches of "similar" rather than "identical" merchandise, the Department will calculate the difmer on a different basis than the U.S. sale if it uses the mixed-weight system. Because Union refused to provide a report segregating the export and domestic sales quantities, petitioners allege that the Department cannot determine how much the difmer adjustment will be skewed. For this reason, petitioners contend that the Department cannot perform a difmer test nor is there sufficient data on the record to correct the amounts.

In conclusion, the petitioners state that the Department could not verify the accuracy of Union's cost data and Union refused to cooperate with the Department's request to investigate this error. Union, petitioners argue, should not be allowed to manipulate its margin by selectively providing information, citing, *e.g., Olympic Adhesives Inc.* v. *United States*, 899 F. 2d 1565, and *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp 341, 346 (CIT 1989), aff'd 899 F. 2d 1185 (CAFC 1990). For the foregoing reasons, petitioners conclude, the Department should base the final results on total and adverse BIA pursuant to sections 776(b) and (c) of the Tariff Act.

Union argues that the petitioners fail to cite any factual evidence that the cost-data error extended beyond the types of costs that the Department corrected at the preliminary results. Union argues that it was fully cooperative with the verification process, it conceded its error, and the Department correctly applied BIA to an appropriate part of its response. Union asserts that it is a well-established Departmental practice to apply a partial BIA only to that part of a response that is deemed deficient, citing *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 865 F. Supp. 857 (CIT 1994). Moreover, Union contends that the Department does not consider the level of cooperation when applying partial BIA, citing *National Steel Corporation* v. *United States*, 870 F. Supp. 1130, 1135 (CIT 1994). Thus, Union concludes, there is no factual or legal basis for the Department to resort to total BIA.

Department's Position: We agree with petitioners in part. We have reexamined the record and conclude that we should recalculate the difmer adjustment in the same manner as Union's other costs for these final results. *See* Union's Final Analysis Memorandum, dated October 2, 1997. However, we disagree that any additional effort to correct Union's data is necessary.

We disagree with the petitioners' conclusion that Union's response is unusable. We verified Union's home market and U.S. sales and found Union's reporting to be largely correct. In addition, we verified that Union's cost data was essentially correct with respect to hot-coil costs and to most other elements included in its COP. We determined that any errors we noted in the verification reports were limited, correctable, and did not apply to hot-coil costs.

We agree with the petitioners that information does not exist on the record

to enable us to correct Union's response. We also agree with the petitioners that Union was uncooperative regarding our request that Union provide a detailed breakout of its finished goods inventory. In correcting Union's sub-materials and fabrication costs, we used an adverse inference. Although Union could have provided data that would have enabled us to calculate a more accurate COP, the data would have lowered Union's weighted-average margin because any conversion to a theoretical-weight basis would result in a lower per-unit cost. Thus, by not converting these costs to a theoretical-weight basis, we applied an adverse inference, obviated the need for more accurate data, and responded appropriately to Union's limited failure to report accurate data.

Comment 2: The petitioners allege that, for proprietary reasons, the Department should consider Union and KISCO to be related firms and assign these firms a single weighted-average margin to prevent the possibility of manipulation of pricing and production decisions. Petitioners argue that, in determining whether to collapse related parties, the Department considers the following factors: (1) The level of common ownership; (2) the existence of interlocking boards of directors; (3) the existence of similar production facilities that would not require significant retooling; and (4) closely intertwined operations, citing *Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 60 FR 65284 (December 19, 1995). Petitioners allege that these conditions have been met.

Union and KISCO argue that the Department should reject petitioners' allegation as untimely and unsubstantial. Both firms note that the record facts have been available to petitioners as early as April 1994 and that the petitioners have had ample opportunity to raise this issue before the Department in a more timely manner. By raising this issue at the last possible moment, respondents assert that petitioners did not allow the Department sufficient time to focus on this issue and to take steps that would allow the Department to calculate a meaningful single weighted-average margin. For example, Union and KISCO note that, because the Department conducted a sales-below-cost investigation with respect to Union but not with respect to KISCO, the record does not contain KISCO's production-quantity data. Thus, both firms argue that the Department will be unable to weight-average difmer data. Union and KISCO also argue that the control numbers for each company are different, thereby forcing the Department to make various assumptions and hinder its ability to make correct product matches. Union contends that these problems will lead to distortive results and that the Department should reject petitioners' arguments on this ground alone.

Notwithstanding these logistical problems, Union argues that the facts on the record do not support a finding that Union and KISCO should be considered one entity. Union notes that the Department did conduct an inquiry into the relationship between Union and KISCO through a supplemental questionnaire and verification and that the Department did consider factors that it would have analyzed in a collapsing decision. However, Union observes, the Department did not collapse Union and KISCO in the preliminary results. Union asserts that it and KISCO do not have an interlocking board of directors. Moreover, Union contends the board members common to KISCO and Union through a third party are "non-standing" members and, thus, do not participate in the day-to-day operation and management of the companies. Union also argues that there is no record evidence that the two firms are closely intertwined. Union argues that, in the past, the Department has stated that this condition is the most important decision in its collapsing analysis, citing the January 18, 1994, memorandum from Joseph A. Spetrini to Susan G. Esserman on the record for the antidumping duty order on certain corrosion-resistant carbon steel flat products from Korea. Union indicates that petitioners' only evidence for such a conclusion is that Union sold a small amount of subject merchandise to KISCO and both companies exported subject merchandise through two affiliated parties. In contrast, Union claims that it and KISCO are competitors in both the domestic and U.S. markets and operate as separate and distinct entities. For the foregoing reasons, Union requests that the Department reject the petitioners' allegations as untimely and meritless.

KISCO argues that the petitioners' arguments are misguided and should be rejected. KISCO argues that at least two of the Department's four collapsing criteria it uses in collapsing decisions have not been met by the companies. First, KISCO asserts that there is no evidence that the two companies share sales information, make joint production or pricing decisions, or share facilities or employees. Second, KISCO asserts that there is no interlocking management.

KISCO also asserts that, by strategically withholding this collapsing argument until after the record was closed, KISCO was deprived of the opportunity to address these allegations in detail during verification or to otherwise develop a factual record that would serve to prove to the Department that it acts as an entirely independent entity.

Finally, KISCO notes that, because the Department did not collapse the companies at the preliminary results, KISCO will be denied an opportunity to comment on the Department's methodology used in calculating a consolidated dumping margin. For the reasons listed above, KISCO requests that the Department deny the petitioners' request to collapse.

Department's Position: We agree with petitioners. We have examined the relationship between Union and KISCO and have determined that there is a significant potential for price and cost manipulation. For these final results, we have calculated a weighted-average margin for this collapsed entity based on the costs and sales of Union and KISCO.

As we have noted before, "[i]t is the Department's long-standing practice to calculate a separate dumping margin for each manufacturer or exporter investigated." *Final Determinations of Sales at Less than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 37154, 37159 (July 9, 1993) (*LTFV Japanese Steel Final*). Because we calculate margins on a company-by-company basis, we must ensure that we review the entire producer or reseller, not merely a part of it. We review the entire entity due to our concerns regarding price and cost manipulation. Because of this concern, we examine the question of whether companies "constitute separate manufacturers or exporters for purposes of the dumping law." *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988). Where there is evidence indicating a significant potential for the manipulation of price and production, we will "collapse" related companies; that is, we will treat the companies as one entity for purposes of calculating the dumping margin. *See Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 (CIT May 25, 1993).

To determine whether to collapse companies, we make three inquiries. First, we examine whether the companies in question are related within the meaning of section 771(13) of the Tariff Act. *See Notice of Final*

Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination; Disposable Pocket Lighters From Thailand, 60 FR 14263, 14268 (March 16, 1995) (declining to collapse non-related companies). Second, we examine whether the companies in question have production facilities similar enough to enable the shifting of production from one company to another without significant retooling. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42511 to 42512 (August 16, 1995) (*Steel from Canada 1993/94 Preliminary Results of Review*). Third, we examine whether other evidence exists indicating a significant potential for the manipulation of price or production. The types of factors we examine to determine whether there is a significant potential for manipulation include the following: (1) The level of common ownership; (2) the existence of interlocking officers or directors (*e.g.*, whether managerial employees or board members of one company sit on the board of directors of the other related parties); and (3) the existence of intertwined operations.

Union and KISCO are related to each other within the meaning of section 771(13) of the Tariff Act. *See* Memorandum from Laurie Parkhill to Richard Moreland, dated October 2, 1997 (Collapsing Memorandum). Second, the two companies have similar production facilities. These companies produce a similar range of pipe sizes in a similar manner and, thus, the companies would not need to engage in major retooling to shift production. Third, other proprietary evidence indicates that there is a significant potential for price or cost manipulation among these companies. In general, this additional evidence of intertwined operations consists of proprietary information establishing the following: (1) The level of common ownership; (2) the existence of interlocking directors; (3) the shipment of subject merchandise through a common exporter to the United States; (4) a joint U.S. sales effort; (5) an intertwined marketing effort; (6) intertwined financial operations; and (7) inter-company transactions of the subject merchandise. *See* Collapsing Memorandum.

Our determination whether to collapse is based on the totality of the circumstances. *See Steel from Canada 1993/94 Preliminary Results of Review* at 42512. We do not use bright-line tests in making this finding. Rather, we weigh the evidence before us to discern whether the companies are, in fact, separate entities or whether they are sufficiently intertwined as to properly be treated as a single enterprise to prevent evasion of the antidumping order via price, cost, or production manipulation. Here we find that such potential for manipulation exists for the companies in question. Therefore, have collapsed Union and KISCO and treated them as one entity for purposes of these final results.

We disagree with respondents' argument that the petitioners' collapsing argument is untimely. In fact, the purpose of releasing preliminary results is to invite comment from interested parties (*see* § 353.38(c)(2) of our regulations). Petitioners' argument appropriately concerns how we applied the law to the facts of record for the preliminary results. We also disagree with respondents that they did not have the opportunity to establish a factual record on this matter. In January 1997, we issued a supplemental questionnaire to both Union and KISCO eliciting the kind of factual information that we consider in our collapsing analysis. Respondents were aware at that time that the Department was analyzing the affiliations among KISCO, Union, DSM, and DKI, and had previously collapsed Union and DKI in another proceeding. *See Steel from Korea 1993/94 Review Preliminary Results* at 65284. Respondents were also aware that the Department had "collapsed" DSM's, Union's, and DKI's financial expenses in *Steel from Korea 1993/94 Review Preliminary Results* because it had determined that Union, DSM, and DKI were not independent companies. We also reviewed the corporate relationships and related-party transactions at verification in this administrative review. *See* Union's verification report, dated March 20, 1997, at pages 2–3, and KISCO's verification report, dated March 18, 1997, at page 1. Thus, we did not deprive Union and KISCO of any opportunity to build a factual record supporting their claims of independence. Moreover, both firms had an opportunity to rebut petitioners' assertions after the preliminary results of review.

Respondents point to the logistical difficulties in combining their data. We recognize these potential problems and have considered respondents' concerns in calculating a single weighted-average margin. Specifically, we are not subjecting KISCO's home market sales to a below-cost-of-production examination. Instead, we have excluded Union's below-cost sales from Union's home market database before combining these sales with KISCO's home market sales. In addition, we have ignored the different control numbers each firm used. Instead, we have created a new and unique set of control numbers based on our model-matching criteria. In this way, we have avoided any logistical difficulties in combining the respondent's data. Therefore, for purposes of calculating margins, we have collapsed Union and KISCO and will apply the resulting single weighted-average margin to all subject merchandise produced by these firms and exported to the United States.

Comment 3: Petitioners assert that the Department should not allow dividend income, rental income, and the reversal allowance for investment securities income as offsets to SG&A because Union was not able to tie these items to its operations at verification. Petitioners further contend that the Department should exclude income for dross and scrap sales as offsets to SG&A because Union already accounted for these items in its reported COM.

Department's Position: We agree with the petitioners. However, we disallowed these offsets for the preliminary results and, therefore, no change is necessary.

KISCO

Comment 1: KISCO argues that the Department failed to make contemporaneous matches. KISCO requests that the Department correct this error by adjusting the product-matching concordance section of the program so that contemporaneous months are assigned the same value.

The petitioners agree that the Department should use a consistent system for determining dates throughout the margin programs.

Department's Position: We agree with both parties and have altered our program to match contemporaneous sales correctly.

Comment 2: KISCO argues that the Department did not read the home market packing costs from its data tape properly. KISCO requests that the Department reload the correct data or adjust the programming to account for the incorrect decimal placement.

The petitioners agree that the Department did not read the home market packing data correctly and request that the Department correct the error. In addition, petitioners request that the Department confirm that it transferred the other data fields correctly.

Department's Position: We have corrected this data error for the final results. We checked to confirm that there were no other errors in the reading of KISCO's data and found that the variable cost of manufacturing and the total cost of manufacturing reported in KISCO's U.S. sales data set were also misread. Therefore, we also have corrected these fields for the final results.

Comment 3: KISCO argues that the Department failed to adjust USP for the interest revenue it earned as a result of the charges its U.S. subsidiary made to late-paying customers. KISCO maintains that it is the Department's long-standing practice to offset interest income earned on sales of subject merchandise against imputed credit costs in calculating the credit expense adjustment to USP.

Department's Position: We agree with KISCO and have corrected our USP calculations to account for interest revenue.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period April 28, 1992, through October 31, 1993:

Company	Margin (percent)
Dongbu Steel Co., Ltd	1.71
Korea Iron & Steel Co., Ltd./Union Steel Co., Ltd	1.53
Korea Steel Pipe Co., Ltd	3.15
Pusan Steel Pipe Co., Ltd	6.00

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment value.

With respect to assessment for ESP, purchase price, and IPP transactions, for the reasons explained in the "General Issues" section of this notice, we calculated a per-unit dollar amount of dumping duty by dividing the total dumping duties due for each importer/customer by the corresponding number of units used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of merchandise on each of the importers'/customers' subject entries during the review period.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates outlined above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.80 percent, the "All Others" rate made effective by the amended final determination of the LTFV investigation published on November 3, 1995. *See Circular Welded Non-Alloy Steel Pipe from Korea; Notice of Final Court Decision and Amended Final Determination*, 60 FR 55833 (November 3, 1995).

This notice also serves as a reminder to importers of their responsibility under § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: October 20, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28408 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–403]

Oil Country Tubular Goods From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review

SUMMARY: On June 13, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1991 administrative review of the countervailing duty order on oil country tubular goods (OCTG) from Argentina. We have now completed this review and determine the total net subsidy to be 0.49 percent *ad valorem*, which is *de minimis*. For further information, see the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; *Telephone:* (202) 482–4149.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1997, the Department published in the **Federal Register** (62 FR 32307) the preliminary results of its 1991 administrative review of the countervailing duty order on OCTG from Argentina (49 FR 46564; November 27, 1984). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). This review involves one producer/exporter, Siderca, which accounts for all exports of the subject merchandise during the review period and 19 programs.

We invited interested parties to comment on the preliminary results. On July 14, 1997, a case brief was submitted by Siderca.

On August 1, 1997, the Department published in the **Federal Register** the final results of changed circumstances countervailing duty reviews covering the orders on leather, wool, oil country tubular goods, and cold-rolled steel from Argentina (*see Leather From*

Argentina, Wool From Argentina, Oil Country Tubular Goods From Argentina, and Carbon Steel Cold-Rolled Flat Products From Argentina; Final Results of Changed Circumstances Countervailing Duty Reviews (62 FR 41361)). In these changed circumstances reviews, the Department determined that, based upon the ruling of the U.S. Court of Appeals for the Federal Circuit in *Ceramica Regiomontana* v. *United States*, 64 F.3d 1579, 1582 (Fed. Cir. 1995), it does not have the authority to assess countervailing duties on entries of merchandise covered by this order occurring on or after September 20, 1991. As a result, the countervailing duty order on OCTG was revoked effective September 20, 1991. Therefore, the results of this administrative review will only apply to entries of the subject merchandise made between January 1, 1991 and September 19, 1991. (*See Final Results of Review* section of this notice).

Applicable Statute

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of Argentine oil country tubular goods. These products include finished and unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review period this merchandise was classifiable under item numbers 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, and 7306.90.10 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Because Siderca accounted for virtually all exports of OCTG from Argentina during the period of review, the subsidy calculated for Siderca constitutes the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Government Counterguarantees. In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. Accordingly, the net subsidy for this program is:

Manufacturer/exporter	Rate percent
Program Rate	0.05

2. Pre-shipment Export Financing. In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. Accordingly, the net subsidy for this program is:

Manufacturer/exporter	Rate percent
Program Rate	0.18

3. Rebate of Indirect Taxes (Reembolso/Reintegro). In the preliminary results, we found that there was no benefit from this program during the review period. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

B. New Program Found To Confer Subsidies Preferential Electricity Tariff Rates

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. Accordingly, the net subsidy for this program is:

Manufacturer/exporter	Rate percent
Program rate	0.26

II. Program Found Not To Confer Subsidies

In the preliminary results, we found the following program to be non-countervailable:

Preferential Natural Gas Tariffs

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Medium-And Long-Term Loans
2. Capital Grants
3. Income and Capital Tax Exemptions
4. Government Trade Promotion Programs
5. Exemption from Stamp Taxes Under Decree 186/74
6. Incentives for Trade (Stamp Tax Exemption Under Decree 716)
7. Incentive for Export
8. Export Financing Under OPRAC 1, Circular RF–21
9. Pre-Financing of Exports Under Circular RF–153
10. Loan Guarantees
11. Post-Export Financing Under OPRAC 1–9
12. Debt Forgiveness
13. Tax Deduction Under Decree 173/85

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

IV. Program Found Not To Exist

In the preliminary results, we found the following program not to exist:

Tax Concessions for the Steel Industry

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments Received

Comment

The respondent argues that, in calculating the allowable tax rebate under the Reembolso/Reintegro program, the Department failed to exclude the taxes on gas used in the direct reduction process. It claims that, while the Department correctly recognized in its preliminary determination and supporting documents that Siderca consumes gas at its production plant for general use in the plant and for use in the direct reduction of iron ore, the Commerce Department incorrectly excluded the taxes on the portion of the gas used for the direct reduction process. This, according to the respondent, is contrary to the Department's finding in the previous administrative reviews.

Department's Position

We determined that this program did not provide a countervailable benefit during this review period. Thus, the issue of whether the Department should exclude taxes on the portion of gas that Siderca used for the direct reduction process would have no impact on the Department's determination. As such, the issue is moot.

Final Results of Review

As discussed above in the **BACKGROUND** section , the Department has revoked this countervailing duty order on OCTG effective September 20, 1991. Therefore, the results of this administrative review will only apply to entries of the subject merchandise made between January 1, 1991 and September 19, 1991. Since the net subsidy of 0.49 percent *ad valorem* for this review is *de minimis* (*see* 19 CFR 355.7), the Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all entries of subject merchandise made between January 1, 1991 and September 19, 1991. Separate instructions regarding entries made on or after September 20, 1991 have already been sent to Customs. Because this countervailing duty order has been revoked, no further instructions will be sent to Customs regarding cash deposits.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 16, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28309 Filed 10–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to India

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice serves to inform the public of a Secretarial Business Development Mission to India, December 6–13, 1997, and the opportunity to apply for participation in the mission; sets forth objectives, procedures, and participation criteria for the mission; and requests applications.

DATES: Applications should be submitted to Cheryl Bruner by November 14, 1997, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. The mission is scheduled for: New Delhi, December 6–9; Calcutta, December 10, Chennai, December- 11; and Mumbai, December 12–13, 1997.

ADDRESSES: Request for and submission of applications—Applications are available from: Cheryl Bruner, Director of the Office of Business Liaison or Jennifer Johnson at (202) 482–1360 or via facsimile at (202) 482–4054. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the Project Officer noted above. Applications sent by facsimile must be immediately followed by submission of the original application to Ms. Bruner at the following address: Office of Business Liaison, Room 5062, U.S. Department of Commerce, 14th & Constitution, Ave., N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Cheryl Bruner or Jennifer Johnson at 202 482–1360. Information is also available via the International Trade Administration's (ITA) Internet home page at "http://www.ita.doc.gov/uscs/doctm".

SUPPLEMENTARY INFORMATION:

Trade Mission Description

Secretary of Commerce William M. Daley, will lead a business development trade mission to India, one of Asia's most significant emerging markets, to promote expanded trade opportunities, advocate U.S. business interests, advance significant commercial policy objectives, and support the efforts of the U.S.-India Commercial Alliance (USICA) and the U.S.-India Business Council. The Secretary's mission will include U.S. companies whose interests range from assessing the opportunities in the Indian market to expanding existing business relationships. With stops in New Delhi, Calcutta, Chennai, and Mumbai, the Secretary's mission will meet with government and business leaders in the dynamic commercial centers of four distinctly different regions of this large market.

The itinerary of the India Mission will be as follows:

December 5 (Fri.) Leave United States
December 6 (Sat.) Arrive New Delhi
December 7 (Sun.) New Delhi
December 8 (Mon.) New Delhi
December 9 (Tues) New Delhi
December 10 (Wed) New Delhi depart for Calcutta/Arrive Calcutta
December 11 (Thurs.) Depart Calcutta, Arrive Chennai
December 12 (Fri) Depart Chennai, Arrive Mumbai
December 13 (Sat) Depart Mumbai, return to USA
December 14 (Sun) Arrive USA

The goals for the Mission are:

- Reaffirm the U.S. Government's commitment and support for India's program of economic reform and heighten U.S. private sector participation in India's economic growth. Emphasize how India and the U.S. can benefit from continued liberalization and privatization in India, and convey in public and private sector fora during the mission's stay in the country the U.S. Government's interest in seeing that the reforms undertaken by the Indian Government proceed.
- Seek resolution of outstanding bilateral commercial issues and advocate U.S. interests regarding specific problems and opportunities. Key areas of focus: (1) Intellectual property rights; (2) banking and other financial services; (3) economic reforms; (4) power generation; and (5) broadcasting.

A full description of the mission is set forth in the Mission Statement, which is available from Cheryl Bruner, Director of the Office of Business Liaison, at the above address or at website.

Trade Mission Participation Criteria

The recruitment and selection of private sector participants in this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997. For the India business development mission, individuals must be at a level of executive seniority appropriate to the goals of the mission. Company participation will be determined on the basis of:

- Consistency of the company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business line to the plan for the mission;
- Past, present and prospective business activity in India; and
- Diversity of company size, type, location, demographics and traditional under-representation in business.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process. An interested party must fill out an application to be considered for participation in the mission.

Endorsements/Referrals

Third parties may nominate or endorse potential applicants, but companies that are nominated or endorsed must themselves submit an application to be eligible for consideration. Referrals from political organizations will not be considered.

Costs

The fees to participant in the mission have not yet been determined, and will be based on the number of participants. The fees will not cover travel or lodging expenses.

Authority: 15 U.S.C. 1512.

Robert Marro,

Regional Director, Office of Africa, Near East and South Asia, International Trade Administration, Department of Commerce.

[FR Doc. 97–28305 Filed 10–24–97; 8:45 am]

BILLING CODE 3510 FP–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102097A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its committees will convene public meetings.

DATES: The meetings will be held on November 10–13, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Holiday Inn Longboat Key, 4949 Gulf of Mexico Drive, Longboat Key (Sarasota), FL; telephone: 941–383–3771.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

November 12

8:30 a.m.—Convene.

8:45 a.m. - 9:00 a.m.—Appointment of Committees.

9:00 a.m. - 12:00 noon—Receive public testimony on a control date for dolphin/wahoo; interim/emergency action on red snapper size limits; and reef fish total allowable catch (TAC). During the meeting the Council will review stock assessments for red snapper and gag (grouper) and determine whether to specify or modify the TAC for these stocks for the 1998 fishing year. The Council will also consider whether to request by emergency rule that the minimum size limit for red snapper remain at 15 inches or be set at 14 inches. Without some action the minimum size limit will become 16 inches on January 1, 1998. The Council will also consider whether to specify a control date for the fisheries for dolphin (fish) and wahoo. If approved, the control date would notify commercial fishermen that if a limited access system is developed for these fisheries, persons that enter the fishery after that date may not be allowed to participate.

1:30 p.m. - 3:15 p.m.—Receive a report on a peer-group review of management of the red snapper fishery and the information used for management. This review was mandated by Congress through passage of the Sustainable Fisheries Act (SFA). In complying with this mandate, NMFS empaneled three groups of scientists from outside the Gulf region to conduct the peer-group review during July and August. The panels reviewed information provided by NMFS and by the commercial fishing industry related to: (1) the statistical information and analyses, (2) the economic information and analyses, and (3) management and science procedures and data, including stock assessments.

3:15 p.m. - 3:30 p.m.—Hear a status report on development of new bycatch reduction device (BRD) designs and a protocol for certifying BRDs for use in trawls.

3:30 p.m. - 4:00 p.m.—Receive a summary of the report by NMFS to Congress that identified overfished stocks in each region. For the Gulf, stocks that were identified include: red snapper, red drum, Gulf-group king Mackerel, jewfish, and Nassau grouper. The Council has previously prohibited any harvest or possession of red drum, jewfish, and Nassau grouper in Federal waters. NMFS will also discuss the new provisions of the SFA that will apply to restoration of these stocks. If only the impacts on fishing communities are taken into consideration TACs must be specified that will restore the stock to maximum sustainable yield (MSY) within 10 years. This consideration will likely require reducing TAC for some stocks.

4:00 p.m. - 5:30 p.m.—Receive a report of the Reef Fish Management Committee.

5:30 p.m.—CLOSED SESSION - Appointment of members to Reef Fish and Red Snapper Advisory Panels and chairs to the Louisiana/Mississippi Habitat Advisory Panel.

November 13

8:00 a.m. - 10:00 a.m.—Continue the report of the Reef Fish Management Committee.

10:00 a.m. - 2:00 p.m.—Receive a report of the Mackerel Management Committee

2:00 p.m. - 2:15 p.m.—Receive a report of the Migratory Species Management Committee.

2:15 p.m. - 2:30 p.m.–Receive a report of the Habitat Protection Management Committee.

2:30 p.m. - 2:45 p.m.—Receive a report of the Stone Crab Management Committee.

2:45 p.m. - 3:00 p.m.—Receive a report of the Administrative Policy Committee.

3:00 p.m. - 3:30 p.m.—Receive reports of the Highly Migratory Species Billfish Advisory Panel, Longline Advisory Panel, Tuna, Swordfish, and Shark Advisory Panel, and International Commission for the Conservation of Atlantic Tunas Advisory Committee.

3:30 p.m. - 3:45 p.m.—Receive a report on NMFS/Council Working Group meeting.

3:45 p.m. - 4:00 p.m.—Receive Enforcement Reports.

4:00 p.m. - 4:25 p.m.— Receive Director's Reports.

4:25 p.m. - 4:30 p.m.—Other business to be discussed.

November 10

9:30 a.m. - 5:00 p.m.—Convene the Reef Fish Management Committee to review stock assessments for red snapper and gag, biological information on gray triggerfish, and the recommendations of the scientific and statistical committee, stock assessment panel, socioeconomic panel, and advisory panels. The committee will develop their recommendations to the Council on TAC for red snapper and gag stocks. The committee will also select preferred alternatives for Draft Reef Fish Amendment 16 which will be presented at public hearings in February, 1998. This amendment contains alternatives for phasing out the fish trap fishery, removing some species from Federal management, instituting bag and size limits for certain species that will be compatible with the limits in Florida waters, and restrictions on harvest of speckled hind and warsaw grouper.

2:30 p.m. - 5:00 p.m.—Convene the Administrative Policy Committee to develop the functions or charges for three new ad hoc committees for marine reserves, vessel monitoring, and sustainable fisheries.

5:00 p.m. - 5:30 p.m.—Convene the Stone Crab Management Committee to consider a draft amendment that proposes to extend the moratorium on registration of commercial vessels by NMFS.

November 11

8:30 a.m. - 10:30 a.m.—Convene the Habitat Protection Committee consider action on a cooperative agreement related to completion of an amendment describing essential fish habitat and hear a status report on preparation of this amendment. They will also consider action on a proposed dredge-and-fill project in Louisiana and hear a report on a project to culture fish in cages on an oil platform off Texas.

10:30 a.m. - 12:00 noon—Convene the Migratory Species Committee to consider recommendations of the Billfish Advisory Panel on provisions for an amendment regulating the harvest of marlin and sailfish that will be implemented by NMFS next year.

1:00 p.m. - 5:30 p.m.—Convene the Mackerel Management Committee to select preferred alternatives for Draft Mackerel Amendment 9 that will be submitted to the South Atlantic Fishery Management Council for consideration. Public hearing on the amendment will be scheduled in February, 1998. Amendment 9 includes alternatives that would:

1. Possible changes to the fishing year for Gulf group king mackerel - currently July 1;

2. Possible prohibitions of sale of mackerel caught under the recreational allocation;

3. Provisions for mandatory reporting requirements for commercial and for-hire vessels;

4. Reallocations of TAC for the commercial fishery for Gulf group king mackerel in the Eastern Zone (Florida east coast and Florida west coast) - currently 50/50 split;

5. Reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors - currently 68 percent and 32 percent, respectively;

6. Additional subdivisions of the commercial, hook-and-line allocation of TAC for Gulf group king mackerel by area and/or season for both the Florida west coast and the Western Zone (Alabama through Texas);

7. Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone;

8. Further restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast;

9. Possible changes to the minimum size limit for Gulf group king mackerel (currently 20–inches fork length) and establishment of a maximum size limit or both a minimum and maximum, (i.e. a slot limit); and

10. Consideration of re-establishing an annual allocation of Gulf group Spanish mackerel for the purse seine fishery.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during these meetings: Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 3, 1997.

Dated: October 22, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28419 Filed 10–22–97; 2:14 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 21, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58043, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 29, 1997, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement concerning textile products from Taiwan:

Category	Twelve-month limit [1]
Sublevel in Group I	
363	12,867,364 numbers.
Sublevels in Group II	
239	5,826,685 kilograms.
331	375,506 dozen pairs.
336	120,893 dozen.
347/348	1,498,065 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [2].
352/652	3,177,334 dozen.
435	24,816 dozen.
442	44,539 dozen.
444	79,686 numbers.
631	5,308,574 dozen pairs.
642	854,140 dozen.
647/648	5,404,466 dozen of which not more than 5,141,289 dozen shall be in Categories 647–W/648–W [3].
Within Group II Subgroup	
342	212,224 dozen.
350/650	143,399 dozen.
351	343,539 dozen.
636	399,406 dozen.
651	507,947 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implemeniation of Textile Agreements.

[FR Doc. 97–28304 Filed 10–24–97; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, October 30, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Pubic.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: October 22, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–28485 Filed 10–23–97; 10:22 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–06]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–06, with attached transmittal, policy justification, and Certification Under Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: October 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

10 OCT 1997

In reply refer to:
I- 55508/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-06 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $62 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 56 million
Other	$ 6 million
TOTAL	$ 62 million

(iii) Description of Articles or Services Offered:
One hundred thirty-eight AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), 120 LAU-129A/A launchers, containers, spare and repair parts, and other related elements of logistics and program support.

(iv) Military Department: Air Force (YDV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Turkey has requested a possible sale of 138 AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), 120 LAU-129A/A launchers, containers, spare and repair parts, and other related elements of logistics and program support. The estimated cost is $62 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey while enhancing weapon system standardization and interoperability.

Turkey needs these missiles to augment its current AMRAAM air-to-air missile inventory and enhance the air defense capability of its F-16 aircraft. Turkey will have no difficulty absorbing these additional missiles into its armed forces.

These air-to-air missiles will be provided to Turkey in accordance with, and subject to the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be the Hughes Aircraft International Service Company, Tucson, Arizona, and the Raytheon Company, Bedford, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sections 1(a)(1) and 4(d)), I hereby certify that the furnishing to Turkey of 139 AMRAAM missiles and program support at an estimated cost of $62 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Strobe Talbott
Acting Secretary

[FR Doc. 97-28352 Filed 10-24-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-05]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-05, with attached transmittal, policy justification, Certification Under Section 620C(d) of the Foreign Assistance Act of 1961, and sensitivity of technology pages.

Dated: October 20, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 OCT 1997

In reply refer to:
I-04088/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-05, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $35 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

H. Dieh McKalip
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 98-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$32 million
Other	$ 3 million
TOTAL	$35 million

(iii) Description of Articles or Services Offered:
Twenty HARPOON missiles with missile containers.

(iv) Military Department: Navy (AEK)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 9 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - HARPOON Missiles

The Government of Greece has requested a possible sale of 20 HARPOON missiles with missile containers. The estimated cost is $35 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The HARPOON missiles will increase the military defensive posture of the Hellenic Navy as well as augment its current HARPOON inventory of surface deployed missiles. The missiles will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece will have no difficulty absorbing these additional HARPOON missiles into its armed forces.

The prime contractor will be the McDonnell Douglas Aerospace Company, St. Louis, Missouri. There is an offset agreement proposed to be entered into with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sec. 1(a)(1) and 4(d)), I hereby certify that the furnishing to Greece of AMRAAM and HARPOON missiles and program support at an estimated cost of $42 million and $30 million respectively, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Strobe Talbott
Acting Secretary

Transmittal No. 98-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON surface launch missile RGM-84G BLK 1G has the following classified components, including applicable technical and equipment documentation and manuals:

Guidance Section Components: Confidential

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97-28353 Filed 10-24-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified test of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-01, with attached transmittal and policy justification.

Dated: October 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

10 OCT 1997

In reply refer to:
I-54410/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-01 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Separate Cover:
Classified Annex

Transmittal No. 98-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 60 million
Other	$ 30 million
TOTAL	$ 90 million

(iii) Description of Articles or Services Offered:
One hundred fifty-nine AIM-120B Advanced Medium Range Air-to-Air Missiles, missile containers, spare and repair parts, support and test equipment, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (YGS)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See classified Annex attached.

(vii) Date Report Delivered to Congress: 10 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Korea has requested the possible sale of 159 AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $90 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Pacific region.

The proposed sale of these missiles will augment current procurement programs, provide an opportunity for Korea to strengthen its air-to-air defensive capability and enhance interoperability with U.S. forces. Korea, which already has AMRAAM in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Hughes Missile Systems Company, Tucson, Arizona and Raytheon Company, Bedford, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-28354 Filed 10-24-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense, Department of Defense Dependents Schools (DoDDS).

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a forthcoming semiannual public meeting of the Advisory Council on Dependents' Education (ACDE). The purpose of this meeting is to review the reports on topics which were raised at the May 1997 meeting. These topics include: Accountability Report, Minority Achievement, Minority Recruitment, Curriculum Issues, School to Work Transition, and School-Home Partnership Programs.

DATES: November 6, 1997, 8:30 a.m. to 5 p.m. and November 7, 1997, 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Office of the Secretary of Defense, Conference Room (Room 1E801), in the Pentagon.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Huffman, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, Virginia 22203-1635. Ms. Huffman can be reached at 703-696-4235, extension 1900.

SUPPLEMENTARY INFORMATION: Space constraints are such that anyone wishing to attend the meeting should contact Ms. Amy Huffman, above, to ensure that seating space is available. The Advisory Council on Dependents' Education is established under Title XIV, section 1411, of Public Law 95-561, Defense Dependents' Education Act of 1978, as amended (20 U.S.C. section 929). The purpose of the Council is to recommend to the Director, DoDDS, general policies for the operation of the DoDDS; to provide the Director, DoDDS, with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.

Dated: October 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-28351 Filed 10-24-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to Alter a Record System.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective without further notice on November 26, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 14, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(February 20, 1996, 61 FR 6354).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first paragraph, delete 'military hospitalization records' and replace with 'military hospitalization and medical treatment, immunization, and pharmaceutical dosage records;'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph 1.b. and replace with 'b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).'

Delete paragraph 4.b. and replace with 'b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a, to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.'

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

Add a new paragraph '21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted. **Note:** Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence and replace with 'Disposition pending.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location - W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator

Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of the active duty and veteran population. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted. **Note:** Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–28356 Filed 10–24–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 26, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 21, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 3,052.

Burden Hours: 4,120.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children and adult correctional institutions and (2) the October caseload of N or D children in local institutions. ED uses the data collected through this survey in the statutory formula to allocate Title I, Part A and Part D, Subpart 1 funds.

[FR Doc. 97–28324 Filed 10–24–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 26, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden, OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 21, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Application for Grants Under the Magnet Schools Assistance Program (MSAP).

Frequency: Triennially.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 180.

Burden Hours: 4,500.

Abstract: The application is used by local educational agencies to apply under the magnet schools program. The Department uses this information to make grant awards.

[FR Doc. 97–28323 Filed 10–24–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Graduate Assistance in Areas of National Need Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: This program provides fellowships through academic departments and programs of institutions of higher education to assist graduate students of superior ability who demonstrate financial need. The purpose of the program is to sustain and enhance the capacity for teaching and research in areas of national need.

Eligible Applicants: Academic departments and programs of institutions of higher education that meet the requirements in 34 CFR 648.2.

Deadline for Transmittal of Applications: January 5, 1998.

Deadline for Intergovernmental Review: March 5, 1998.

Applications Available: November 7, 1998.

Available Funds: $16,000,000.

Estimated Range of Awards: $122,251–$750,000.

Estimated Average Size of Awards: $243,000.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations in 34 CFR Part 648.

SUPPLEMENTARY INFORMATION:

Stipend Level: The Secretary has determined that the maximum fellowship stipend for academic year 1998–1999 is $15,000, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

Institutional Payment: The Secretary estimates that the institutional payment for academic year 1998–1999 will be $10,051, which represents a 3.3 percent adjustment of the academic year 1997–1998 payment based on the Department of Labor's projection in April 1997 of the Consumer Price Index (CPI) for 1997. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1997 of the CPI for 1998.

Priorities

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 648.33, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Applications that propose to provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Geoscience, Mathematics, and Physics.

Invitational Priority 1—

Within the absolute priority specified above, the Secretary is particularly interested in receiving applications from mathematics programs that train Ph.Ds in mathematics who will specialize in the teaching of mathematics, to students at the K–12 level.

Invitational Priority 2—

Within the absolute priority specified above, the Secretary is interested in receiving applications from biology, chemistry, and physics programs that train Ph.Ds who will specialize in the teaching of biology, chemistry or physics, to students at the K–12 level.

Invitational Priority 3—

Within the absolute priority specified above, the Secretary is interested in receiving applications from engineering programs that train Ph.Ds for careers in the fields of environmental/environmental health and robotic technology.

For Applications or Information Contact

Cosette H. Ryan, U.S. Department of Education, International Education and Graduate Program Service, 600 Independence Ave, S.W., Suite 600–B, Portals Building, Washington, D. C. 20202–5247. Telephone: (202) 260–3608. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1134l–1134q–1.

Dated: October 20, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–28425 Filed 10–24–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Hanford Site Solid (Radioactive and Hazardous) Waste Program; Environmental Impact Statement, Richland, WA

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) for the Solid Waste Program at the Hanford Site, and to conduct a public scoping process pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended

(42 U.S.C. 4321 *et seq.*). The Hanford Site Solid Waste Program manages several types of solid wastes at the Hanford Site, including low-level, mixed low-level, transuranic and mixed transuranic, and hazardous wastes, and contaminated equipment. Mixed wastes contain radioactive and hazardous components. Other solid waste types (i.e., municipal solid waste, high-level waste, remediation waste) and spent nuclear fuel are managed by other Hanford Site programs.

The Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS will evaluate the potential environmental impacts associated with ongoing activities of the Hanford Site Solid Waste Program, the implementation of programmatic decisions resulting from the Final Waste Management Programmatic Environmental Impact Statement (WM PEIS, DOE/EIS–0200–F), and reasonably foreseeable treatment, storage, and disposal facilities/activities. The EIS will evaluate alternatives for management of the Program's radioactive and hazardous wastes, including waste generated at the Hanford Site or received from offsite generators, during the same 20-year period evaluated by the WM PEIS. This EIS will comprehensively analyze impacts of the proposed action and reasonable alternatives, including potential cumulative impacts of other relevant past, present, and reasonably foreseeable activities. The EIS will be prepared in accordance with NEPA, the Council on Environmental Quality NEPA Regulations (40 CFR Parts 1500–1508), and the DOE NEPA Regulations (10 CFR Part 1021).

DOE invites individuals, organizations, and agencies to comment on issues to be considered, alternatives to be analyzed, and environmental impacts to be addressed in the Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS. Two public scoping meetings are scheduled during the public scoping period.

DATES: The public scoping period for the Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS begins with the publication of this notice and continues until December 11, 1997. DOE invites all interested parties to submit written comments or suggestions during the scoping period. Written comments must be postmarked by December 11, 1997 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

Oral and written comments will be received at public scoping meetings on the dates and at the locations given below:

1. November 12, 1997, 1:00–4:00 p.m. PST and 7:00–10:00 p.m. PST at Federal Building, 825 Jadwin, Richland, WA 99352
2. November 13, 1997, 7:00–10:00 p.m. PST at Vert Center, 500 S.W. Dorion, Pendleton, OR 97801

For further information see Public Scoping Meetings under **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Written comments on the scope of the Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS, requests to speak at the public meetings, and requests for copies of the Draft EIS should be directed to the DOE Document Manager listed below.

Ms. Allison Wright, Document Manager, Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS, U.S. Department of Energy, Richland Operations Office, MSIN S7–55, Post Office Box 550, Richland, Washington 99352, Telephone: (509) 373–7840, FAX: 509–372–1926, E-mail: solid_waste_eis_-_doe@rl.gov

FOR FURTHER INFORMATION CONTACT: For further information regarding waste managed by the Hanford Site Solid Waste Program, contact Allison Wright at the above address. For general information on the DOE NEPA process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–4600, or leave a message at 1–800–472–2756.

Copies of DOE documents referenced in this notice and related background information are available for inspection during normal business hours at the following locations:

- U.S. Department of Energy, Forrestal Building, Freedom of Information Reading Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586–6020.
- Richland Public Library, 955 Northgate Dr., Richland, WA 99352–3539, Telephone: (509) 943–7457.
- Foley Center Library, Gonzaga University, E. 502 Boone Avenue, Spokane, WA 99258, Telephone: (509) 328–4220, Ext. 3132.
- Branford Price Millar Library, Government Documents Section, Portland State University, 951 Southwest Hall, Portland, OR 97201, Telephone: (503) 725–4617.
- Suzzallo Library, Government Publications, University of Washington, Seattle, WA 98195, Telephone: (206) 543–9158.
- U.S. DOE Public Reading Room, Consolidated Information Center, Washington State University-Tri Cities Campus, 100 Sprout Road, Richland, WA 99352, Telephone: (509) 372–7443.

Additional information on DOE and Hanford Site NEPA activities and documents, and Hanford solid waste volume information, may also be obtained at the following addresses on the world-wide web:

- DOE NEPA Information—http://tis.eh.doe.gov/nepa/
- Hanford Information—http://www.hanford.gov/hanford.html
- Hanford Environmental Assessments—http://www.hanford.gov/hanford.html#ea
- Hanford Environmental Impact Statements—http://www.hanford.gov/hanford.html#eis
- Hanford Solid Waste Volumes—http://www.hanford.gov/docs/ep0918/index

SUPPLEMENTARY INFORMATION:

Background

The Hanford Site occupies approximately 560 square miles adjacent to the Columbia River, principally in Benton and Franklin Counties, Washington, extending approximately 25 miles north of Richland, Washington. The Hanford Site's missions have included processing nuclear materials in support of defense, research, and medical programs of the United States. The Hanford Site defense production facilities included nuclear fuel fabrication facilities, nuclear production reactors, separation facilities, product preparation facilities, research facilities, and waste management facilities. The Site's activities have generated a variety of radioactively contaminated equipment and radioactive and hazardous wastes that are managed under the Hanford Site Solid Waste Program. These wastes include low-level radioactive waste (LLW), mixed low-level radioactive waste (MLLW) (which contains both hazardous and radioactive constituents), transuranic and mixed transuranic (TRU) waste, and hazardous waste (HW). Other waste types and spent nuclear fuel are managed by other Hanford Site programs.

The Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS (hereafter referred to as the Solid Waste Program EIS) would facilitate accomplishment of the Program's mission, which is to:

- Manage wastes for which it is responsible in a safe and efficient manner in compliance with applicable Federal, State, and local laws, codes, standards, and requirements.
- Manage LLW, MLLW, TRU, and HW received from on-site and off-site generators, and legacy wastes associated with prior operations,
- Decontaminate equipment for reuse or disposal.

Waste management operations include receipt, storage, repackaging, treatment, and disposal or other disposition, such as reuse.

Regulatory and Programmatic Framework

The Atomic Energy Act (42 USC 2011 *et seq.*) requires DOE to manage the wastes that it generates. Wastes that have hazardous components are subject to the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.), the Toxic Substances Control Act and other applicable laws and regulations.

Tri-Party Agreement

The Hanford Federal Facility Agreement and Consent Order (referred to as the "Tri-Party Agreement") is an interagency agreement among DOE, the United States Environmental Protection Agency, and the Washington State Department of Ecology. The parties to this agreement have established milestones to bring DOE operating facilities into compliance with RCRA and to coordinate the cleanup of past Hanford disposal sites under the Comprehensive Environmental Response, Compensation, and Liability Act.

Waste Management Programmatic EIS

DOE is currently examining its complex-wide integrated waste management program and evaluating the suitability of existing and reasonably foreseeable future facilities in light of recent changes in the missions of DOE facilities. The Final WM PEIS was issued in May 1997. Alternatives evaluated in the WM PEIS for each type of waste include no action, decentralization, regionalization, and centralization of waste management functions at one or more DOE facilities. WM PEIS Records of Decision could transfer management responsibilities for some types of waste to or from the Hanford Site. In general, the alternatives analysis in the Solid Waste Program EIS will be consistent with the DOE complex-wide policies and practices that have been analyzed in the WM PEIS. The Solid Waste Program EIS will be coordinated with Records of Decision for the WM PEIS and other DOE EISs that affect waste management at the Hanford Site.

Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS

DOE is currently considering whether and, if so, how to begin disposal of TRU waste at the Waste Isolation Pilot Plant site near Carlsbad, New Mexico. The decisions to be based on the Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS (DOE/EIS–0026–S–2, issued in September 1997) are whether to dispose of TRU waste at the Waste Isolation Pilot Plant, the transportation method, the contents of the disposal inventory, and what level of treatment is required for disposal or storage (i.e., repackaging to meet planning-basis Waste Isolation Pilot Plant waste acceptance criteria, thermal treatment, or treatment by shred and grout). In the Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS, the Hanford Site is considered for treatment of TRU waste by any of the three methods and for storage of TRU waste (either without disposal at the Waste Isolation Pilot Plant or pending disposal). The analysis in the Solid Waste Program EIS of TRU waste management will be consistent with the forthcoming Record of Decision for the Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS.

Other Programmatic Decisions

The DOE Office of Environmental Management has proposed a strategic plan for accelerated cleanup by the year 2006 of most types of radioactive and hazardous wastes at DOE facilities. This "2006 Strategic Plan" (formerly the Ten-Year Plan) would reduce the cost and risks associated with managing radioactive and hazardous waste that currently exists at DOE facilities, and make resources available for other uses in the future. The goals of the 2006 Plan will be incorporated into the action alternatives evaluated for the Solid Waste Program EIS.

Waste Types To Be Addressed

The waste types to be addressed in the Solid Waste Program EIS are LLW, MLLW, TRU, HW. The EIS also will address management alternatives for contaminated equipment. The radioactive waste can be further defined as being contact-handled or remote-handled. Contact-handled waste containers produce radiation levels less than or equal to 200 mrem/hr at contact; remote-handled containers produce greater than 200 mrem/hr.

The management of high-level waste, most liquid wastes, spent nuclear fuel, naval reactor compartments, non-hazardous solid wastes and most remediation wastes are outside the scope of the Solid Waste Program EIS. Each of these materials has special physical or regulatory management requirements that are quite different from those that typically apply to wastes managed under the Solid Waste Program. Further, most of these other materials have been or are being addressed by separate NEPA reviews or other appropriate environmental review process, and impacts from managing these wastes will be included in analyses of cumulative impacts in the Solid Waste Program EIS.

Low-Level Radioactive Waste

Solid LLW includes operating and laboratory wastes (e.g., protective clothing, plastic sheeting, gloves, and analytical wastes), contaminated equipment, reactor and reactor fuel hardware, spent lithium-aluminum targets from which tritium has been extracted, and spent deionizer resin from reactor operations. The analytical laboratories, reactors, separations facilities, plutonium processing facilities, and waste management activities generated most of the LLW currently managed at Hanford. Analytical laboratory and research operations facility deactivation processes, waste management activities, and other on-site and off-site activities would likely continue to generate LLW wastes in the foreseeable future. The WM PEIS estimates that Hanford Site LLW, including waste generated during the next 20 years, would be about 89,000 m^3 (or 6% of the LLW in the DOE complex).

DOE needs to determine the treatment, storage and disposal activities required to properly manage solid LLW that currently exists or may exist at Hanford during the next 20 years. Currently, most of the LLW is certified, packaged to meet waste acceptance criteria, and placed in the Low Level Burial Grounds (LLBG). DOE needs to evaluate options for the disposal of such wastes, including expansion or reconfiguration and ultimate closure of the current LLBG. Small quantities of DOE-generated waste that cannot meet Hanford Site waste disposal criteria are currently stored at various facilities until methods are developed for their disposal. The Hanford Solid Waste Program classifies such wastes as "greater-than-Category-3 (GTC3)." DOE must evaluate alternatives for the management of Hanford's GTC3 wastes.

Mixed Low-Level Radioactive Waste

Hanford's MLLW was generated from reactor operations, chemical separation facilities, and laboratory operations, and consists of materials such as sludges, ashes, resins, paint wastes, soils, and contaminated equipment. Hazardous components may include lead and other heavy metals, solvents, paints, oils, other hazardous organic materials, or components that exhibit the RCRA characteristics of ignitability, corrosivity, toxicity, or reactivity. The WM PEIS estimates that the Hanford Site MLLW, including waste generated during the next 20 years, would be about 36,000 m^3 (or 16% of the MLLW in the DOE complex).

DOE needs to determine the storage, treatment and disposal activities required to properly manage solid MLLW that currently exists or may exist at the Hanford Site during the next 20 years. Currently, most MLLW at the Hanford Site is stored in the Central Waste Complex awaiting treatment before disposal.

A small amount of contact-handled MLLW is treated on-site by macroencapsulation or other processes. The remaining contact-handled MLLW requires treatment by other processes, either thermal or non-thermal, before disposal. To meet this need and ensure that DOE meets its commitments under the Tri-Party Agreement, the Hanford Solid Waste Program is pursuing two proposals as interim actions to this EIS. Each proposal involves a separate procurement of commercial treatment services for contact-handled MLLW—one for non-thermal treatment services and the other for thermal treatment services.

Under the Tri-Party Agreement, DOE is required to: 1) award a contract for stabilization of contact-handled MLLW by September 30, 1997 (target milestone M–19–01–T02; DOE has completed this milestone); 2) complete all NEPA requirements related to the commercial contract for stabilization of contact-handled MLLW by September 30, 1998 (target milestone M–19–01–T03); 3) initiate treatment of contact-handled MLLW by September 30, 1999 (milestone M–19–01); and 4) initiate thermal treatment of currently stored and newly generated contact-handled MLLW (at least 600 cubic meters will be treated by December 2005, milestone M–91–12).

DOE is preparing an environmental assessment (DOE/EA–1189) regarding its proposal to procure commercial non-thermal treatment services. Under the proposed action, DOE would transport up to 1860 cubic meters of contact-handled MLLW to a commercial vendor for treatment; the treated waste would be returned to the Hanford Site for disposal. The Hanford Solid Waste Program issued a Request for Proposals for non-thermal treatment services in April 1997. On September 5, 1997, after considering a comparative evaluation of the potential environmental impacts of the offerors' proposals in accordance with its NEPA regulations (10 CFR Part 1021.216), DOE selected a commercial vendor for further consideration of its proposal to provide such services at an existing non-DOE facility in Richland, Washington.

Regarding its proposal to procure commercial thermal treatment services for contact-handled MLLW, DOE issued a Request for Proposals for such services in April 1994. In November 1995, after considering a comparative evaluation of the potential environmental impacts of the offerors' proposals in accordance with its NEPA regulations (10 CFR Part 1021.216), DOE selected a vendor in Richland, Washington (same vendor as for non-thermal treatment) for further consideration of its proposal to provide such services. According to a draft EIS issued in September 1997 by the City of Richland (prepared under the State of Washington Environmental Policy Act to support the City's action regarding the siting, construction and operation of the vendor's proposed thermal treatment facility), the vendor plans to construct a new thermal treatment (gasification and vitrification technology) unit at its facility in Richland and market both thermal and non-thermal treatment services to both the Government and the private sector. DOE is preparing an environmental assessment (DOE/EA–1135) regarding DOE's proposed action, which is to transport up to 5,120 cubic meters of contact-handled MLLW that requires thermal treatment to the vendor's commercial treatment facility for thermal treatment and return the treated (vitrified) waste to the Hanford Site for disposal. DOE's MLLW would comprise about 25% of the capacity of the thermal treatment unit.

If DOE determines that an EIS is required for one or both of the interim actions described above, DOE would rely on the analyses in the Solid Waste Program EIS to support a decision on whether to proceed with one or both of the proposed interim actions. If DOE issues a finding of no significant impact for one or both of the proposed interim actions, DOE's NEPA review would be complete and DOE would evaluate the cumulative environmental impacts of the proposals in the Solid Waste Program EIS. DOE welcomes comments on this approach for fulfilling its environmental review responsibilities under NEPA for these proposals.

Treatment, storage and disposal options for the remainder of Hanford Site MLLW, which is predominantly remote-handled MLLW that cannot be treated or disposed of under existing or planned processes, will be addressed in the Solid Waste Program EIS.

The Hanford Solid Waste Program currently has two RCRA-compliant MLLW trenches that could be used to dispose of MLLW that meet RCRA land disposal restrictions. Additional MLLW disposal capacity is necessary to dispose of MLLW to be managed by the Hanford Site Solid Waste Program.

Transuranic and Mixed Transuranic Waste

Transuranic waste contains radioactive isotopes with atomic numbers greater than 92 (i.e., transuranic isotopes) and half-lives longer than 20 years at concentrations exceeding 100 nanocuries of alpha-emitting radionuclides per gram (mixed transuranic waste also contains hazardous constituents). TRU waste is generated as a result of similar activities to those that generated LLW and MLLW, as described above. The major difference is that TRU waste is contaminated with transuranic isotopes most often associated with plutonium handling facilities. The WM PEIS estimates that Hanford Site TRU waste, including waste generated during the next 20 years, would be about 52,000 m^3 (38% of the TRU waste in the DOE complex).

DOE needs to determine the retrieval, treatment, and storage activities required to properly manage solid TRU waste that currently exists or may exist during the next 20 years at the Hanford Site. Since 1970, DOE has segregated and retrievably stored TRU waste in trenches and caissons, and in above ground storage buildings at the Hanford Site (mainly in the Central Waste Complex and the Transuranic Storage and Assay Facility). DOE hopes to dispose of the existing inventory of TRU waste and anticipated future quantities of TRU waste at the proposed Waste Isolation Pilot Plant. Capabilities such as those provided by Hanford's Waste Receiving and Processing Facility would be needed to meet the Waste Isolation Pilot Plant planning-basis waste acceptance criteria. Alternatives for the treatment of remote-handled TRU have not been determined. Additionally, DOE needs to evaluate alternatives for the transition or reuse of certain existing facilities (e.g., the 221–T canyon) managed by the Hanford Site Solid Waste Program.

Hazardous Waste

HW is similar to MLLW except that HW is not radioactive. Hazardous components include materials such as lead and other heavy metals, solvents, paints, oils, other hazardous organic materials, or materials that exhibit RCRA characteristics of ignitability, corrosivity, toxicity, or reactivity. They are generated from activities such as facility operations, decontamination and decommissioning of facilities, environmental restoration, waste management, and vehicle maintenance. The WM PEIS estimates that Hanford Site HW, including waste generated during the next 20 years, would be about 6,100 m^3 (9% of the HW in the DOE complex).

DOE needs to determine the activities required to properly manage its existing and anticipated HW. Currently, non-wastewater HW is stored, packaged, and shipped to off-site commercial facilities for treatment and disposal. Based on the WM PEIS, DOE will decide the extent to which it should continue to rely on commercial facilities. The Solid Waste Program EIS will analyze alternatives for the management of Hanford's HW.

Contaminated Equipment

DOE activities have resulted in the contamination of equipment, sometimes to the extent that it is no longer suitable for use. Some of the equipment would potentially be useable if the radioactive and/or hazardous constituent contamination were removed or reduced to acceptable levels. In other cases, decontamination of the equipment may be desirable prior to disposal to minimize worker exposure or to reduce the volume of material that must be disposed of as LLW, HW, or MLLW.

DOE needs to determine the future storage and treatment activities required to properly manage Hanford's contaminated equipment and materials, including those that may be received by Hanford in the future from off-site facilities. Currently, decontamination services are provided at the 2706–T building and 221–T (T–Plant canyon) facilities at Hanford; however, additional services and methods may be desirable to recycle or reuse contaminated equipment and materials.

Preliminary Description of the Proposed Action and Alternatives

The preliminary proposed action and alternatives to the proposed action described below for each waste type are consistent with relevant EISs for other DOE sites, and encompass the range of reasonable waste management activities that could be undertaken at the Hanford Site to implement programmatic decisions that would be based on the WM PEIS. The quantities and characteristics of the wastes to be considered would be based on reasonable estimates of wastes from ongoing operations, Hanford's environmental restoration and decontamination and decommissioning operations, and wastes that Hanford might receive from off-site as a result of decisions based on the WM PEIS, decisions under the Federal Facility Compliance Act, or other reasonably foreseeable future programmatic decisions. The alternatives would be adjusted as necessary to conform to new decisions as they are made. The following descriptions indicate the general approach to development of these alternatives, and include examples of potential actions for each type of waste.

No Action Alternative

Under the no action alternative, DOE would continue ongoing waste management activities and implement those actions for which NEPA reviews have been completed and decisions made (the baseline for analytical purposes would be the time of issuance of the Draft EIS). The no action alternative will provide a baseline for comparison of the environmental impacts of the proposed action and its alternatives. The following are examples of activities that would be included in the no action alternative (listed by waste type).

LLW: Continued near term storage/disposal operations at the LLBG; indefinite storage of GTC3 waste; continued use of other existing waste management facilities (without expansion or reconfiguration) and off-site treatment technology; and limitations in the receipt of waste from off-site generators to current rates with a gradual reduction as capacity diminishes.

TRU: Indefinite storage of existing and newly generated TRU waste in the existing central facilities; no retrieval of existing TRU waste; no receipt of TRU waste from off-site generators; no treatment of TRU waste on-site; and no shipment to the Waste Isolation Pilot Plant for disposal.

MLLW: Continued indefinite storage operations at present centralized facilities, without expansion or closure of disposal facilities; indefinite storage at generator sites; and no new treatment processes initiated.

HW: Continued short-term storage of existing and newly-generated HW at generator sites with shipment off-site for treatment and disposal.

Contaminated Equipment: Continued use of 2706–T and 221–T facilities for current decontamination activities and minimal transition activities for future uses of T–Plant.

Proposed Action

This alternative is the Hanford Solid Waste Management Program long-term planning baseline. In general, it consists of a hybrid of actions from the other alternatives, with options for managing at the Hanford Site some radioactive and hazardous wastes from off-site facilities, including on-site and off-site treatment, storage, and disposal, depending upon the type of waste. The proposed action would implement programmatic decisions resulting from DOE's WM PEIS.

The proposed action includes Hanford solid waste management actions that are needed to comply with regulatory requirements, protect human health and the environment, and support Hanford Site missions. Before the implementation of some of the proposed actions, DOE may need to conduct further project-specific NEPA reviews tiered from this EIS.

LLW: Disposal of LLW in the LLBG, including the expansion, reconfiguration, and closure of burial grounds; development and use of new treatment technologies; receipt of waste from off-site generators or shipment of Hanford waste to other sites; and storage and disposal of GTC3 waste.

TRU: Retrieval and characterization of TRU waste from active LLBG trenches and caissons; storage at the Central Waste Complex; receipt of some TRU waste from off-site generators; treatment of contact-handled TRU waste in the Waste Receiving and Processing Facility or another qualified facility; development at Hanford of treatment technologies/facilities for remote-handled and other special TRU waste or shipment off-site for treatment; and shipment to the Waste Isolation Pilot Plant for disposal.

MLLW: Disposal of MLLW in existing RCRA-compliant trenches at the Hanford Site; expansion of Hanford's MLLW trenches; use of vendor treatment services or other treatment; development of new treatment technologies/facilities; receiving and managing MLLW from off-site generators; development and implementation of leachate treatment technologies; disposal of leachate; closure of MLLW trenches; and disposal at off-site facilities.

HW: Packaging and shipping HW to off-site treatment, storage, and disposal

facilities; and closing or transitioning for other use the Nonradioactive Dangerous Waste Storage Facility (this HW storage facility is currently in standby mode).

Contaminated Equipment: Continued decontamination activities at 2706–T and 221–T facilities; evaluation of other decontamination methods and technologies; and receiving equipment from other DOE sites for decontamination at Hanford.

Minimize Solid Waste Management at Hanford Alternative

This alternative would minimize the use of land and facilities at Hanford (i.e., maximize management of Hanford's solid radioactive and hazardous wastes at either commercial facilities or other DOE sites).

LLW: Disposal of existing LLW at LLBG; newly generated waste shipped off-site for treatment, storage, and disposal; no receipt of waste from off-site generators; GTC3 waste managed on-site for eventual off-site disposal; and closure of LLBG.

TRU: All retrievable TRU waste from the LLBG retrieved; and all newly generated and existing TRU waste packaged and shipped off-site for treatment and disposal.

MLLW: Storage of MLLW pending treatment; newly generated and existing MLLW shipped off-site for treatment and disposal; and no receipt of waste from off-site generators.

HW: Packaging and shipping HW to off-site treatment, storage, and disposal facilities; and the Nonradioactive Dangerous Waste Storage Facility transitioned to other uses.

Contaminated Equipment: Contaminated equipment shipped off-site for treatment and disposal; discontinue use of 221–T and 2706–T facilities for decontamination; and deactivate T-plant.

Maximize Solid Waste Management at Hanford Alternative

This alternative would maximize the use of Hanford Site land and facilities for management of solid radioactive and hazardous wastes. It would include management of wastes from other DOE facilities, consistent with alternatives in the WM PEIS under which the Hanford Site would serve as a regional or national management site for specific types of waste.

Under this alternative, the Hanford Site would manage more waste than under the proposed action, and DOE would improve or add to waste treatment, storage, and disposal facilities at the Hanford Site accordingly. This increase would be described and analyzed in terms of increases to the waste quantities used to evaluate the proposed action.

LLW: Treatment, consolidation and disposal of existing LLW and GTC3 on-site; acceptance of LLW from off-site generators for treatment, storage, and disposal at Hanford; expansion of treatment, storage and disposal facilities on-site as necessary with minimum use of off-site options; and closure of LLBG.

MLLW: Receipt of MLLW from off-site generators for treatment, storage, and disposal; development of new treatment technologies/facilities; minimized use of off-site options, maximized on-site treatment; disposal of leachate on-site; disposal of newly generated and existing MLLW on-site; expansion of existing MLLW disposal facilities and possible construction of new facilities as needed; and closure of MLLW trenches.

TRU: Retrieval and characterization of TRU waste from active LLBG trenches and caissons; storage at the Central Waste Complex; receipt of TRU waste from off-site generators (i.e., serve as primary regional/national treatment facility to prepare TRU waste for disposal at the Waste Isolation Pilot Plant); treatment of contact-handled TRU waste in the Waste Receiving and Processing Facility or another qualtfied facility; development at Hanford of technologies/facilities for the treatment of remote-handled and other special TRU waste; and shipment to the Waste Isolation Pilot Plant for disposal.

HW: Development and use of on-site treatment, storage, and disposal facilities; and receipt of HW from off-site generators for disposition.

Contaminated Equipment: Continued decontamination activities at 2706–T and 221–T facilities or at new facilities that would be constructed as needed; development of mobile or other decontamination methods and technologies; and receipt of equipment from off-site generators for decontamination at Hanford.

Relationship to Other Actions

Interim Actions

The following environmental assessments are currently being prepared for potential interim actions that DOE is considering during the preparation of this EIS:

- Off-Site Thermal Treatment of Low-level Mixed Waste, DOE/EA–1135.
- Solid Low-level Mixed Waste Non-Thermal Treatment, DOE/EA–1189.

Other Potentially-Related NEPA Documents in Preparation

The following DOE or other-agency NEPA documents in preparation may be related to the Hanford Site Solid Waste Program EIS:

- DOE/EIS–0222, Hanford Remedial Action EIS and Comprehensive Land Use Plan.
- DOE/EIS–0274, Disposal of S3G and D1G Prototype Reactor Plants EIS.
- DOE/EIS–0283, Surplus Plutonium Disposition EIS
- Commercial Low-Level Radioactive Waste Disposal Site (U.S. Ecology) on the Hanford Site (an EIS being prepared by the State of Washington Department of Ecology and Department of Health under the State of Washington Environmental Policy Act).
- Off-Site Thermal Treatment of Low-Level Mixed Waste, Richland Washington (an EIS being prepared by the City of Richland under the State of Washington Environmental Policy Act).

Existing Related NEPA Documentation

The following lists completed DOE or other-agency NEPA documents that are related to the Hanford Site Solid Waste Program EIS:

- ERDA–1538, EIS for Waste Management Operations, Hanford Reservation, Richland, Washington, U.S. Energy and Research Development Administration, Washington, D.C., 1975.
- DOE/EIS–0113, EIS for Disposal of Hanford High-Level, Transuranic, and Tank Wastes, December 1987. Record of Decision, 53 FR 12449, April 14, 1988.
- DOE/EIS–0119, Decommissioning of Eight Surplus Production Reactors at the Hanford Site EIS, Richland, Washington, December 1992. Record of Decision, 58 FR 48509, September 16, 1993.
- DOE/EIS–0189, Tank Waste Remediation System, Hanford Site EIS, August 1996. Record of Decision, 62 FR 8693, February 26, 1997.
- DOE/EIS–0200–F, Waste Management Programmatic EIS, May 1997.
- DOE/EIS–0026–S2, Waste Isolation Pilot Plant Supplemental EIS–II, September 1997.
- DOE/EIS–0245, Management of Spent Nuclear Fuel from the K Basins at the Hanford Site EIS, Richland, Washington, January 1996. Record of Decision, 61 FR 10736, March 15, 1996.
- DOE/EIS–0244, Plutonium Finishing Plant Stabilization EIS, Hanford Site, Richland, Washington, May 1996. Record of Decision, 61 FR 36352, July 10, 1996.
- Disposal of Decommissioned Defueled Naval Submarine Reactor Plants EIS (prepared by the Department of the Navy), May 1984. Record of Decision, 49 FR 47649, December 6, 1984.
- DOE/EIS–0259, Disposal of Decommissioned, Defueled Cruiser, Ohio and Los Angeles Class Naval Reactor Plants EIS, adopted by the U.S. Department of Energy, Washington, D.C., May 1996. Record of Decision, 61 FR 41596, August 9, 1996.
- DOE/EA–0981, Solid Waste Retrieval Complex, Enhanced Radioactive and Mixed Waste Storage Facility, Infrastructure Upgrades, and Central Waste Support Complex, Hanford Site, Richland Washington, Environmental Assessment, September 1995.
- DOE/EA–1203, Trench 33 Widening in Low Level Waste Burial Ground 218–W–5, Environmental Assessment, July 1997.
- DOE/EA–1211, Relocation and Storage of Isotopic Heat Sources (formerly DOE/EA-0982, Special Case Waste), Environmental Assessment, June 1997.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. The list is presented to facilitate comment on the scope of the EIS. It is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

- Effects on the public and on-site workers from releases of radiological and nonradiological materials during normal operations and reasonably foreseeable accidents.
- Long-term risks to human populations resulting from waste disposal.
- Effects on air and water quality from normal operations and reasonably foreseeable accidents.
- Cumulative effects, including impacts from other past, present, and reasonably foreseeable actions at the Hanford Site.
- Effects on endangered species, archaeological/cultural/historical sites, floodplains and wetlands, and priority habitat.
- Effects from transportation and from reasonably foreseeable transportation accidents.
- Socioeconomic impacts on surrounding communities.
- Disproportionately high and adverse effects on low-income and minority populations (Environmental Justice).
- Unavoidable adverse environmental effects.
- Short-term uses of the environment versus long-term productivity.
- Potential irretrievable and irreversible commitment of resources.
- The consumption of natural resources and energy, including water, natural gas, and electricity.
- Pollution prevention, waste minimization, and potential mitigative measures.

Development of the Hanford Site Solid Waste Program EIS

DOE will consider comments and suggestions received during the scoping period in its preparation of the draft EIS. On completing the draft EIS, DOE will announce its availability in the **Federal Register** and local media, and will again solicit public comments. DOE will consider comments on the draft EIS in its preparation of the final EIS. The preliminary schedule for issuance of the Hanford Site Solid Waste Program EIS is:

Availability of Draft EIS: Spring 1998.
Draft EIS Public Comment Period: Summer 1998.
Availability of Final EIS: Late 1998.
Record of Decision: Early 1999.

Public Scoping Meetings

DOE invites the public to attend scoping meetings at which comments may be presented on the scope of the EIS. Oral and written comments will be considered equally in preparation of the EIS. Oral and written comments will be received at public scoping meetings to be held on the dates and at the locations given below:

November 12, 1997—Meeting Times: 1:00 p.m.–4:00 p.m. PST and 7:00 p.m.–10:00 p.m. PST, Federal Building, 825 Jadwin, Richland, WA 99352

November 13, 1997—Meeting Time: 7:00 p.m.—10:00 p.m. PST, Vert Center, 500 S.W. Dorion, Pendleton, OR 97801

DOE staff will begin each scoping meeting with a short presentation on the EIS process, the Hanford Site Solid Waste Program, and the proposed action and alternatives. A brief informal question and answer session will follow. Individuals and organization and agency spokespersons will then be invited to present comments.

Requests to speak at the public meetings may be made in person at the meeting, by calling the DOE NEPA Document Manager by 3:00 p.m. PST the day before the meeting, or by writing to the DOE Document Manager (see **ADDRESSES**, above). Speakers will be heard on a first-come, first-served basis as time permits. Written comments also will be accepted at the meetings. Speakers are encouraged to provide written versions of their oral comments for the record.

The meetings will be conducted by a moderator. DOE staff and the moderator may ask speakers clarifying questions. Individuals requesting to speak on behalf of an organization must identify the organization. Each speaker will be allowed five minutes to present comments unless more time is available. Comments will be recorded by a court reporter and will become part of the scoping meeting record. DOE also will provide opportunities for separate informal discussions about the scope and content of the EIS, and will make subject matter experts available to answer questions.

Issued in Washington, DC this 21st day of October, 1997.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 97–28399 Filed 10–24–97; 8:45 am]

BILLING CODE 6450–01–P.

DEPARTMENT OF ENERGY

Chicago Operations Office; Office of Nuclear Energy, Science and Technology; Notice of Solicitation for Cooperative Agreement/Applications

AGENCY: Department of Energy (DOE).

ACTION: Notice of Solicitation.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to theDOE Financial Assistance Rules, intends to issue Solicitation No. DE–SC02–98NE21596, for Administrative and Management Services for the NuclearEngineering /Health Physics Fellowship & Scholarship Program on or about October 31, 997. This is a reissue to the notification previously published of the **Federal Register** on June 25, 1997.

DATES AND ADDRESSES: Applications submitted in response to this Notice should be received byDecember 4, 1997. To obtain a complete solicitation package, please contact Nadine S. Kijak, Chairperson, U.S. Department of Energy, Chicago Operations Office, Acquisition and Assistance Group, 9800 S. Cass Avenue, Argonne, IL 60439 Telephone 630/252–2508.

FOR FURTHER INFORMATION CONTACT: Nadine S. Kijak at 630/252–2508 or by fax at 630/252–2522.

SUPPLEMENTARY INFORMATION:

Program Title: Nuclear Engineering/ Health Physics Fellowship and Scholarship Program.

Solicitation Number: DE-SC02–98NE21596.

Citation of Authority: PL 95–91.

The U.S. Department of Energy (DOE), Office of Nuclear Energy, Science and Technology, supports graduate fellows and undergraduate scholars as a means

of encouraging students to pursue careers in nuclear-related fields. The DOE provides such support to ensure that an adequate supply of highly qualified, well-trained scientific and technical professionals are available to meet current and future research and development needs.

The DOE will solicit applications from nonprofit and not-for-profit organizations with university associations that are experienced in academic interactions and relationships. The applying organizations should have some knowledge and familiarity with the Department's nuclear engineering research and development interests and the historical relationship with the universities involved in nuclear science and engineering education. The successful applicant will be expected to: (1) Provide information and application material to all qualified individuals; (2) receive, review and evaluate candidate applications; (3) arrange for practicum work and study opportunities at selected laboratory facilities; (4) provide approved payments to students and universities; (5) hold periodic reviews of fellows' progress with advisors and university coordinators; (6) prepare and review program budgets; (7) prepare annual reports; and (8) provide program and manpower information to the public, to appropriate congressional offices and other interested parties.

We anticipate that the proposed financial assistance award will be a five-year effort. The estimated cost for the five year period is anticipated to be $4,000,000. One agreement will be awarded with five (5) one-year budget periods estimated to start on or about June 1, 1998. The successful recipient will advertise, evaluate and award DOE fellowships under the Nuclear Engineering/Health Physics Fellowship & Scholarship Program.

Complete solicitation packages will be available from DOE, hicago Operations Office as mentioned above. The complete solicitation package with information on application preparation, evaluation procedures and criteria, the extent of Government participation in the Cooperative Agreement to be awarded, and other required data will be available upon request during the time the Solicitation is open. All eligible sources may submit an application which will be considered. Applications must be submitted to the DOE-Chicago Operations Office no later than December 4, 1997.

Issued in Chicago, Illinois on October 15, 1997.

J.D. Greenwood,

Acquisition and Assistance, Group Manager.

[FR Doc. 97–28400 Filed 10–24–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–NOA–97–506]

Proposed Technical and Policy Analysis on Replacement Fuels and Alternative Fuel Vehicles

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of Energy is today publishing this notice of availability of a proposed analysis, as required by section 506 of the Energy Policy Act of 1992, on issues relating to replacement fuels and alternative fuel vehicles. The Department is requesting public comment on the proposed analysis prior to submission of the final report to the President and Congress. A short summary of the proposed analysis is included in this notice.

DATES: Written comments (5 copies) must be received by the Department by January 26, 1998.

ADDRESSES: Copies of the proposed Technical and Policy Analysis (which is approximately 75 pages long, single-spaced) may be obtained from the National Alternative Fuels Hotline, 9300 Lee Highway, Fairfax, Va. 22031–1207, (800) 423–1DOE, or electronically from the Office of Energy Efficiency and Renewable Energy's Transportation Technologies website at: http://www.ott.doe.gov, under the Rules and Legislation section (http://www.ott.doe.gov/office.rules.html).

Written comments (5 copies) are to be submitted to the U.S. Department of Energy, Office of Transportation Technologies, EE–34, Docket No. EE–NOA–97–506, 1000 Independence, Avenue S.W., Washington, D.C. 20585, telephone (202) 586–3012.

Commenters are requested to provide a supplemental electronic copy of comments (1 copy), if possible, to facilitate the posting of comments on the Department's website. These optional electronic versions of comments should be stored in common text or word processor formats, and saved on a pc-compatible 3.5" diskette and mailed to the address above; or emailed directly to afv-deployment @hq.doe.gov. Electronic versions are considered supplemental only—the Department is not able at this time to guarantee the inclusion in the docket of comments provided only in electronic format.

FOR FURTHER INFORMATION CONTACT: Mr. Paul McArdle, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–34), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, email: afv-deployment@hq.doe.gov, or phone (202) 586–9171.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Summary of Findings of Technical and Policy Analysis
III. Availability of Proposed Technical and Policy Analysis
IV. Public Comment Procedures

I. Purpose

Section 506(c) requires DOE to seek and consider public comments on the draft Technical and Policy Analysis on issues relating to replacement fuels and alternative fuel vehicles prior to its final transmission to the President and Congress. DOE may revise the Analysis prior to such final submission in light of comments received. DOE is also required by section 506(c) to preserve all comments received on the Analysis for use in required rulemaking proceedings under section 507, including rulemaking to consider alternative fuel vehicle acquisition requirements for private and municipal fleets. In addition, DOE is in the process of devising a Replacement Fuel Supply and Demand Program under section 502. Comments received on the proposed Technical and Policy Analysis could be very useful in designing this program.

II. Summary of Findings of Technical and Policy Analysis

Energy Security Concerns

The geopolitical context surrounding energy security has changed enormously since the oil shocks of the 1970s, with the end of the Cold War, the Organization of Petroleum Exporting Countries (OPEC) in disarray, and the cementing of U.S. security ties to the most important oil exporting nations. Unfortunately, these developments have engendered a complacency on the part of the American public not unlike that which preceded previous oil shocks. Historically, periods of low prices have been followed by steep price spikes, a pattern that could well be repeated in coming years.

In contrast to the current geo-strategic environment, economic realities and trends seem to be recreating many of the preconditions for a potential oil shock in the U.S. sometime in the future. Economic growth in the Pacific rim is giving rise to a growth in world oil demand which could well lead to a short-supply situation within the next five to ten years. The world's oil resources are as concentrated as ever in the OPEC nations, notably in the Persian Gulf. DOE's Energy Information Agency (EIA) projects that by 2010, OPEC's market share is likely to reach the levels of the 1970s, as its share of world exports grows from 41 percent in 1993 to 53 percent in 2010.

The costs to the U.S. economy from a future oil price shock could be enormous. Based on analyses of previous oil shocks, a number of recent studies have estimated the macroeconomic impacts as reducing U.S. economic activity by an average of over 2 percent per year for three to four years or more, which translates into GNP reductions in the range of six hundred billion dollars over three years, up to possibly $3 trillion over fifteen years if the lost economic growth were not subsequently made up.

Unlike other energy using sectors, which have introduced substitute fuels and fuel switching flexibility since the oil shocks of the 70s and 80s, the transportation sector remains overwhelmingly dependent on petroleum based fuels (approximately 97.5 percent of transportation energy coming from petroleum) and on technologies that provide virtually no flexibility. The transportation sector currently accounts for approximately two-thirds of all U.S. petroleum use and roughly one-fourth of total U.S. energy consumption.

Substitution of petroleum-based transportation fuels (gasoline and diesel) by non-petroleum-based fuels ("replacement fuels," including alternative fuels such as electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, and natural gas) could be a key means of reducing the vulnerability of the U.S. transportation sector to disruptions of petroleum supply. Centrally-fueled fleets are probably critical to the transportation sector's transition to alternative fuels and vehicles. Early introduction of alternative fuels in these fleets is more feasible since they generally refuel at a central facility and operate within a fuel tank's driving range of that central facility. Accordingly, fleets feature prominently in Title V of EPACT, which aims to displace substantial amounts of petroleum based motor fuel with alternative fuels.

Since EPACT was enacted in 1992, transportation petroleum consumption has risen from 10.3 million barrels per day to 10.7 million barrels per day in 1994. EIA projects this consumption to rise to 14.0 million barrels per day by 2010. U.S. dependence on imported petroleum has also grown since EPACT enactment. In 1992, 41 percent of total U.S. petroleum consumption was derived from foreign sources. By 1994, imports had increased to 45 percent. EIA projects U.S. petroleum import dependence to reach approximately 54 percent of consumption by 2000 and 57 percent of petroleum consumption by 2005.

In that dependence of U.S. autos and trucks on imported oil was one of the major driving forces behind Congressional passage of EPACT, the imperatives are even stronger now than at the time of passage.

Progress Toward Achieving the Goals Described in Sec. 502(b)(2)

Section 502(b)(2) of EPACT suggests tentative goals of displacing 10 percent of transportation fuel with replacement fuels by the year 2000 and displacing 30 percent by the year 2010. DOE is making steady progress in carrying out the provisions of EPACT Title V and related programs, which should yield measurable results in alternative fuel and AFV usage in the future. DOE supports and coordinates the Federal Fleet Program for acquisition of alternative fuel vehicles (AFVs), which had put over 25,000 AFVs into the federal fleet by the end of fiscal year 1996. DOE's Clean Cities Program promotes voluntary commitments and coordinated action by the key groups within participating city regions for installation of alternative fuel infrastructure and acquisition of vehicles. As of August 1997, 54 cities and over a thousand stakeholder organizations were participating. DOE is also carrying out the rulemaking and analytical activities prescribed by EPACT Title V, including its assessment of the technical and economic feasibility of reaching the 10 percent and 30 percent goals. The Research, Development and Demonstration program has been instrumental in fostering technology development in its two spheres, Advanced Vehicle Propulsion Technologies and Alternative Fuels Research and Demonstration. The latter is now turning its focus to alternative fuels infrastructure technology. DOE is also involved with the Environmental Protection Agency (EPA) in Clean Air Act programs that promote use of advanced technology vehicles, including alternative fuel vehicles, for use in ozone non-attainment areas. Many of the programs authorized by EPACT have not been in place long enough to allow a credible assessment of program impacts. The statutory requirement for this Technical and Policy Analysis actually precedes the start of implementation for some of the EPACT programs.

Actual and Potential Role of Replacement Fuels and AFVs in Reducing Oil Imports

While DOE modeling suggests that the potential use of replacement fuels in the U.S. is very high, by 1996 the transportation sector has barely scratched the surface of this potential. The actual use of replacement fuels in 1996 in the U.S. is estimated by EIA to be about 4.6 billion gallons gasoline equivalent (or 3.1 percent of total highway transportation fuel). Of this, 4.2 billion equivalent gallons was oxygenates blended into gasoline (2.9 percent of highway fuel) and 323 million equivalent gallons was alternative fuel use by AFVs (0.2 percent of highway fuel). The preliminary partial results of DOE's study of the feasibility of reaching the goals suggested by sec. 502(b) indicate that the potential use of replacement fuels sustainable by the market could be as high as 30 to 38 percent in 2010 under various scenarios and could ultimately be nearly double that.

In order to reach such levels of alternative fuel use, however, major transitional impediments would have to be overcome, including changes in relative fuel/vehicle prices to consumers. For example, the EPACT suggested goals of displacing 10 percent of transportation fuels in the year 2000 and 30 percent in the year 2010 would require that AFV sales—

- Grow to between 35 and 40 percent of total new light-duty vehicle sales by 1999 to meet the 2000 goal; and
- Stay in the range of 30 to 38 percent to build an AFV population sufficiently large to meet the 2010 goal.

Even to meet a 30 percent goal for year 2020, AFV growth would have to—

- Double every year between 1995 and 2000, going from approximately 30,000 to 500,000 sales per year;
- Increase by 50 percent per year to 4,000,000 in the period from 2001 through 2005; and
- Remain at a constant 32 percent of total light-duty vehicle (LDV) sales in the period of 2005 through 2010.

Under this scenario, the AFV population in 2020 (ten years later than

the EPACT 30 percent goal) would be large enough so that 30 percent of LDV motor fuel would be replacement fuel (alternative fuels plus oxygenates used in conventional vehicle fuel). This alternative scenario is believed to be more representative of new vehicle technology market introduction generally, than the growth paths necessary to meet the unmodified EPACT goals but would still be enormously ambitious.

Analysis indicates that currently authorized Federal, state and local AFV programs could displace approximately 220,000 barrels per day of motor fuel or roughly 3 percent of the LDV transportation fuel use projected by EIA for 2010, while replacement fuels in the form of oxygenates could contribute an additional 4.8–6.7 percent of LDV motor fuel during this period. The gap between these volumes and those necessary to reach or approach the EPACT sec. 502(b)(2)(B) goal of 30 percent fuel displacement by 2010 would have to be met by AFV use by motorists not covered by these programs, that is, largely by the general public.

Examination of international policy experience shows EPACT fleet programs to be a unique approach. Nonetheless, experience of other countries' programs does provide the following lessons:

- Spillover into voluntary use of alternative fuels and AFVs in non-mandated sectors is likely to be determined by the relative economic costs and benefits during each stage of the transition, including (at least for dedicated AFVs) some differential to compensate for future uncertainty and for the operational disadvantages of dedicated AFVs.
- Merely putting in place novel and limited infrastructure networks is likely to be insufficient in generating high levels of spillover to non-mandated motorists, even in conjunction with cognizance of societal benefits and potential future widespread availability.

Applying these lessons to the U.S. environment suggests that changes in the overall economics, access and convenience factors (or the perception of such imminent changes) will be necessary preconditions for AFV penetration in the general public. Such changes could occur in various ways, including policy induced changes, cyclical price swings or market disruptions.

Experience of other countries also suggests that the political will to support alternative fuel programs is greatest when oil prices are at peak levels. When incentives are most critical to sustaining alternative fuel momentum, at the low end of the oil price cycle, governments have often been least committed.

Actual and Potential Availability of Replacement Fuels and AFVs

Alternative fuel vehicle technologies are available for the principal alternative fuels believed most likely to play major parts in any transition to substantial alternative fuel use. Alcohol, liquefied petroleum gas (LPG), and natural gas vehicle technologies are sufficiently developed for such vehicles to be introduced into the market on large scales. Electric vehicle technology per se is also close to market-ready, but battery cost and range probably limit penetration to select market niches for the next five to ten years. Hybrid electric, fuel cell and hydrogen vehicle technologies are in various stages of development and could play significant roles in the future.

A number of types of vehicles are currently available for purchase from original equipment manufacturers (OEMs) by the public and fleets, but not the whole range of vehicles for each of the alternative fuels.

- Passenger cars are available for use with 85 percent alcohol/15 percent gasoline mixtures or any mixtures down to straight gasoline, at the same price as the same conventional model.
- A minivan will soon be available for 85 percent ethanol use.
- Pick-up trucks, vans and mini-vans are available from OEMs for CNG use. A full sized sedan is available for dedicated CNG operation and others may follow. Costs for dedicated CNG vehicles are generally $3000–$5000 more than conventional models.
- CNG vehicles (bi-fuel and dedicated) may also be obtained by conversions of conventional vehicles by many small conversion firms.
- Electric vehicles are now available, mostly sub-compact and small pickup models.

Although alternative fuel refueling sites have been proliferating in recent years, none of the alternative fuels are currently available at retail for vehicle refueling in adequate networks to support widespread use. Adequate refueling sites could be available as a transition proceeds but would involve additional capital costs.

All of the major alternative fuels are available at national and regional levels in volumes sufficient for transportation use at levels significantly greater than the current levels. While this available supply includes both domestic production and imports, domestic supply will be adequate to serve AFV needs for coming years. If alternative fuel use were to approach the levels suggested by the EPACT 30 percent goal, market pressures could change the split between domestic and import supply. Natural gas, ethanol and electricity have the greatest potential for domestic production to meet large-scale transportation use. LPG and methanol could be available in adequate quantities either domestically or internationally.

Key Issues and Perspectives

While available evidence indicates that substantial spillover from EPACT Title V programs into household AFV acquisitions is unlikely in the absence of some economic incentive to households to make the shift, such incentive might occur in any one of a number of ways. It would not necessarily have to represent a government incentive program.

An oil price rise could well cause dramatic changes in relative prices between gasoline and a number of alternative fuels, resulting in natural fuel-switching if the conditions enabling motorists to switch fuels are in place. Comparative historical movements in relative prices for alternative fuels and their feedstocks show clear divergences in price movements from crude oil and gasoline, particularly for electricity, ethanol and methanol. There is probably no way of reliably assessing the impact of a future oil price rise on the effectiveness of EPACT programs until such an event occurs. On the other hand, it does appear possible to infer from prior experience that a price spike is unlikely to result in major fuel switching in the transportation sector in the absence of certain preconditions relating to the availability of AFVs and alternative fuel infrastructure, which EPACT Title V begins to address. It should be noted that most of the fuel switching in Brazil and the Netherlands, the two countries where AFV programs have been most effective, occurred after an oil shock which had been preceded by more modest programs promoting the alternative fuel to which the country partly switched after the shock.

EPACT also provides incentives to restrain rising oil demand before it leads to a run-up in oil prices of the nature of those discussed above. EPACT programs could also reduce the likelihood or magnitude of a future oil shock in another way. One potential benefit of developing a fuel switching capability is the potential to alter the behavior of primary fuel suppliers. If viable competing fuels are available, the likelihood of a restriction of oil supplies could be diminished. EPACT has the potential to shorten the time lag between an oil price shock and the oil use reductions following it and to magnify such reductions in the key transportation sector, where reductions have been small compared to other sectors. The perceived potential of the U.S. to introduce alternatives in the event of an oil price increase, may dampen the price increase sought by oil-exporting countries in the event of a supply disruption.[1]

It is also possible that a well designed EPACT-initiated process of fuel switching could avoid or reduce the magnitude of problems such as inflation, involved with the relatively abrupt technological transitions in transportation that historically follow major oil shocks and which have also characterized historical fuel switches. Alternative fuel transportation systems could be more fully ripe for widespread deployment and the American public more amenable to fuel switching as a result of EPACT fleet programs and DOE RD&D programs.

Despite the many uncertainties, it preliminarily appears that the programs authorized by Congress in EPACT will fall substantially short of the year 2010 goal of 30 percent. DOE may need to modify that goal under EPACT sec. 504, possibly by rolling back the target dates. EPACT provides ample flexibility for DOE to so scale back the ambitious statutory goals rather than to adopt draconian policies. At the same time, DOE understands that many are concerned over what is perceived as EPACT's excessive reliance on mandates rather than economic incentives.

[1] While the U.S. share of world oil imports and its importance in the world oil market are likely to be less in the next century than in the 1970s and 80s, U.S. leadership in alternative transportation fuel policy and technology development could well catalyze similar developments in other importing countries.

III. Availability of Proposed Technical and Policy Analysis

The Technical and Policy Analysis required by EPACT Section 506 is available in a draft report for pubic review and comment. Copies of the draft analysis, written comments, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Ave., S.W., Washington, D.C. 20585, telephone 202–586–6020 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. The docket file material will be filed under "EE–NOA–97–506 ". An electronic version of the proposed Technical and Policy Analysis and electronically compatible portions of the docket material will be available from the Office of Transportation Technologies's website at: http://www.ott.doe.gov, under the Rules and Legislation section (http://www.ott.doe.gov/office.rules.html). Additional copies of the proposed Technical and Policy Analysis may be obtained from the National Alternative Fuels Hotline and Data Center, P.O. Box 12316, Arlington, Va. 22209, (800) 423–1DOE, (703) 528–3500 (local), Fax: (703) 528–1953.

IV. Public Comment Procedures

The Department of Energy encourages the maximum level of public participation in review and comment of the proposed Technical and Policy Analysis. The Department has established a comment period of 90 days following publication of this notice for persons to provide comment. The public comment period closes on January 26, 1998.

All public comments and other docket material will be available for review in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice. The docket material will be filed under "EE–NOA–97–506."

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Written comments (5 copies) should be labeled both on the envelope and on the documents, "Section 506 Technical and Policy Analysis (Docket No. EE–NOA–97–506)," and must be received by the date specified at the beginning of this notice. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE.

In addition, commenters are requested to provide a supplemental electronic copy of comments (1 copy), if possible, to facilitate the posting of comments on the Department's website. These optional electronic versions of comments should be stored in common text or word processor formats and saved on a pc-compatible 3.5" diskette and mailed to the address above, or emailed directly to afv-deployment @hq.doe.gov. Electronic versions are considered supplemental only—the Department is not able at this time to guarantee the inclusion in the docket of comments provided only in electronic format.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 3 copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Issued in Washington, DC, on September 2, 1997.

Brian T. Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 97–28401 Filed 10–24–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC97–185–000]

Aluminum Company of America; Notice of Filing

October 21, 1997.

Take notice that on September 25, 1997, Aluminum Company of America (Alcoa), filed a request on behalf of its wholly-owned subsidiaries Tapoco, Inc. (Tapoco) and Yadkin, Inc. (Yadkin), for approval of a change in the method of depreciating fixed assets. Specifically, Alcoa proposes to change from a composite depreciation method for fixed assets to a traditional straight-line depreciation method. The proposed change in depreciation method is for accounting purposes only, effective January 1, 1998.

Alcoa states that it is attempting to standardize and streamline its financial systems, which will include automating the fixed asset records of Tapoco, Inc. and Yadkin, Inc.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–28344 Filed 10–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–43–015]

ANR Pipeline Company; Notice of Motion To Place Rates Into Effect

October 21, 1997.

Take notice that on October 17, 1997, ANR Pipeline Company (ANR), tendered for filing a "Motion of ANR Pipeline Company for Expeditous Approval to Place Rates into Effect Pending Approval of Settlement, and Request for Shortened Response Time."

ANR states that the purpose of such motion is to obtain Commission approval to place lower rates into effect pending Commission action on a concurrently filed offer of settlement in the captioned proceeding, subject to certain conditions.

ANR states that copies of this filing have been mailed to all persons designated on the Restricted Service List, intervenors, affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. The notice period will be shortened so that all such protests must be filed on or before October 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28341 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–26–000]

CNG Transmission Corporation; Notice of Application

October 21, 1997.

Take notice that on October 14, 1997, CNG Transmission Corporation (CNGT), 445 West Main Street, P.O. Box 2450, Clarksburg, West Virginia 26302–2450, filed in Docket No. CP98–26–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place seven miles of 2-inch pipeline, known as Lines H–2 and D–10372, located in Marshall and Doddridge Counties, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNGT proposes to abandon in place approximately 35,721 feet of 2-inch pipeline known as H–2, located in Marshall County and 1,145 feet of 2-inch pipeline known as D–10372, located in Doddridge County, West Virginia, due to the age and condition of the lines. CNGT states that Hope Gas, Inc. has approximately fifteen residential customers on the lines whose service will be replaced by propane or other available utility service in accordance with the West Virginia Pubic Service Commission. CNGT declares the facilities need to be abandoned and are no longer economic to maintain for the few residential consumers located on former production properties that currently do not have production connected to the lines.

Any person desiring to be heard or to make any protest with reference to said Application should on or before November 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28331 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–213–000, et al. and CP96–550–000]

Columbia Gas Transmission Corporation, Texas Eastern Transmission Corporation; Notice of Site Visits

October 21, 1997.

The Office of Pipeline Regulation (OPR) will conduct site visits, with representatives of Columbia Gas Transmission Corporation and Texas Eastern Transmission Corporation, of the following portions of the Market Expansion Project on the dates indicated:

October 22, 1997—Coco A Storage Field facilities in Kanawha County, West Virginia

October 23, 1997—Line SM–123 in Mingo and Wyoming Counties, West Virginia

October 30–31, 1997—Windridge, Uniontown, and Bedford Discharge Replacement Projects in Greene, Somerset, and Fulton Counties, Pennsylvania, respectively

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28329 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–28–000]

Columbia Gulf Transmission Company; Notice of Application

October 21, 1997.

Take notice that on October 15, 1997, Columbia Gulf Transmission Company (Columbia), 2603 Augusta, Suite 125, Houston, Texas 7057–5637, filed an application pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and an order granting permission and approval to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Columbia seeks authorization for the construction and operation of one Solar Mars 100S turbine compressor unit and to abandon by replacement the existing Pratt and Whitney GG3 gas turbine compressor. The facilities proposed for replacement are part of Columbia's Hampshire Compressor Station located in Maury County, Tennessee. The proposed replacement is part of Columbia's ongoing program to replace its GG3 compressor units to ensure more efficient and reliable operation of its pipeline system. Columbia estimates the cost of construction at $11,500,000 and the accumulated Provision for Depreciation of Gas Utility Plant to be $1,767,566.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 12, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well a 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28333 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–17–000]

Dauphin Island Gathering Partners; Notice of Tariff Filing

October 21, 1997.

Take notice that on October 15, 1997, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets to be effective on the same date that DIGP's compliance tariff, filed on September 2, 1997 in Docket No. CP97–300–002, is permitted to become effective. The revised tariff sheets tendered by DIGP are listed on Appendix A to the filing.

DIGP states that the purpose of its filing is threefold: (i) compliance with Order No. 636–C, which requires any pipeline with a right-of-first refusal tariff provision containing a contract matching term cap longer than five years to revise its tariff; (ii) compliance with a Commission order issued on June 27, 1997, 79 FERC ¶ 61,391 (1997), requiring DIGP to file tariff sheets to implement the EDI/EDM requirements proposed by the Gas Industry Standards Board and adopted by the Commission in Order Nos. 587 et al.; and (iii) revisions to conform the tariff to the operating capabilities of the computer system to be used by DIGP, to more accurately reflect how the DIGP facilities will be operated on a daily basis and to provide the same level of flexibility that has been approved in other recently-issued Commission orders. The tariff sheet that reflects the first category of changes, compliance with Order No. 636–C, is Substitute Original Sheet No. 183, Section 18.4. The tariff sheets reflecting the second category of changes, compliance with the EDI/EDM requirements, are Substitute Original Sheet No. 169, Section 14.1 and Substitute Original Sheet No. 226. All of the remaining tariff sheets are intended to set forth the third category of changes.

DIGP further requests that the Commission waive sections 154.203(b) and 154.207 of the regulations to permit the filing of the tariff sheets and their

effectiveness in the manner more fully described in the filing.

DIGP states that copies of its filing are being served on parties on the Commission's official service list in Docket No. CP97–300–000 et al., the proceeding in the which DIGP initially received its certificate of public convenience and necessity.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426 in accordance with sections 385.214 and 385.211 of the Commission's rules and regulations.All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28343 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3057–000]

Florida Power Corporation; Notice of Filing

October 21, 1997.

Take notice that on September 26, 1997, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 31, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28336 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–33–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

October 21, 1997.

Take notice that on October 16, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–33–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new residential sales tap on its Line N–W4913 (S) in Mercer County, Pennsylvania, for the delivery of natural gas to National Fuel Gas Distribution Corporation (Distribution), under National Fuel's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National Fuel states that the estimated volumes to be delivered to Distribution would be approximately 150 Mcf on an annual basis.

National Fuel states further that the estimated cost to install the sales tap would be $1,500, for which National Fuel would be reimbursed by Distribution.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28334 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4468–000]

Puget Sound Energy, Inc., Notice of Filing

October 21, 1997.

Take notice that on July 10, 1997 and October 6, 1997, Puget Sound Energy, Inc., tendered for filing revisions to its open access transmission tariff Original Volume No. 7.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before October 31, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28335 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–23–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

October 21, 1997.

Take notice that on October 14, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–23–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Cheatham County, Tennessee, for Part 284 transportation services by Tennessee on behalf of State Industries, Inc. (State), under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install the delivery point facilities, which consist of 2 2-inch hot tap assemblies and electronic gas measurement equipment, and explains that State, an end-user, will install approximately 3,500 feet of interconnecting pipe and measuring facilities. It is asserted that the facilities will be used to deliver up to 3,000 Dt equivalent of natural gas on a peak day and 42,000 Dt equivalent on an annual basis to State on an interruptible basis under Tennessee's Rate Schedule IT. It is estimated that the facilities will cost approximately $80,600, for which Tennessee will be reimbursed by State.

It is stated that the proposal is not prohibited by Tennessee's existing tariff and that the quantities to be delivered to State will not exceed the total quantities authorized. It is further stated that Tennessee has sufficient capacity to make the accommodate the proposed changes without detriment or disadvantage to Tennessee's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28330 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–27–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanker Authorization

October 21, 1997.

Take notice that on October 15, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–27–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the natural Gas Act (18 CFR 157.205, 157.211) for authorization to own, operate and maintain a new point of delivery in Franklin County, Alabama, so that Texas Eastern may provide natural gas deliveries to Red Bay Water Works & Gas Board, (Red Bay), a municipality and existing Texas Eastern customer, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern states that its proposed point of delivery will utilize tap valves consisting of two 30-inch by 8-inch tees (Tap Valves) on Texas Eastern's existing 30-inch Line No. 10 and 30-inch Line No. 15 at approximate Mile Post 131.09 in Franklin County, Alabama. Texas Eastern states that in addition to the facilities described above, Red Bay will install, or cause to be installed, dual 3-inch meter runs (Meter Station), approximately 100 feet of 4-inch pipeline which will extend from the Meter Station to the Tap Valves, and electronic gas measurement equipment.

Texas Eastern states that Red Bay will reimburse Texas Eastern for 100% of the costs and expenses that Texas Eastern will incur for installing the facilities, which are estimated to approximately $41,850 including an allowance for federal income taxes.

Texas Eastern states that the transportation service will rendered pursuant to Texas Eastern's Rate Schedule SCT of Texas Eastern's FERC Gas Tariff, Volume No. 1, and that Texas Eastern's existing tariff does not prohibit the addition of this facility.

Texas Eastern states that the installation of the delivery point will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28332 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–543–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes In FERC Gas Tariff

October 21, 1997.

Take notice that on October 16, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing, with an effective date of November 1, 1997.

Transco states that the purpose of the instant filing is to supplement Transco's Annual Account No. 858 Transportation By Others (TMO) Cost Adjustment filing of September 30, 1997 (September 30 Filing) which incorrectly identified the ACA and GPS rates. In order to reflect the correct ACA and GPS rates, Transco is submitting substitute tariff sheets to replace the tariff sheets included in the September 30 Filing.

Transco states that copies of the instant filing are being mailed to its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28342 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application

October 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 2778–005.

c. *Date filed:* May 29, 1997.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Shoshone Falls.

f. *Location:* On the Snake River, at river mile 615 from the confluence with the Columbia River in Jerome and Twin Falls Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *FERC Contact:* Alan D. Mitchnick, (202) 219–2826.

j. *Deadline for filing interventions and protests:* December 18, 1997.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Brief Description of Project:* The existing project consists of: (1) a diversion dam consisting of four sections with a total length of 798.4 feet; (2) a reinforced concrete intake structure; (3) a 450-foot-long tunnel and 120-foot-long penstock; (4) a powerhouse containing three generating units with an installed nameplate capacity of 12.5 megawatts; (5) an 86-acre impoundment with a gross storage of 1,500 acre-feet at normal operating elevation; and (6) other appurtenances.

m. *This notice also consists of the following standard paragraphs:* B1, E.

n. Requests for additional studies have been filed in accordance with section 4.32(b)(7) of the Commission's regulations. These study requests will be addressed in any additional information request to be issued later in the licensing proceeding.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28337 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

October 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–2927–004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Aquamac Corporation.

e. *Name of Project:* Aquamac Hydro Project.

f. *Location:* On the Merrimack River in Essex County, near Lawrence, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gerald J. Griffin, Aquamac Corporation, 9 South Canal Street, Lawrence, MA 01842, (508) 686–0342.

i. *FERC Contact:* Mark Pawlowski (202) 219–2795.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) a trashrack structure; (2) manually operated headgate and penstock; (3) a single 250-kW generating unit; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 1,600 Mwh. All generated power is sold to the Merrimac Paper Company for its manufacturing processes.

l. With this notice, we are initiating consultation with the *MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28338 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

October 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–2928–004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Merrimac Paper Company, Inc.

e. *Name of Project:* Merrimac Hydro Project.

f. *Location:* On the Merrimack River in Essex County, near Lawrence, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Gerald J. Griffin, Aquamac Corporation, 9 South Canal Street, Lawrence, MA 01842, (508) 686–0342.

i. *FERC Contact:* Mark Pawlowski (202) 219–2795.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) a trashrack structure; (2) manually operated headgate and penstock; (3) three generating units for an installed total capacity of 1250–kW; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 7,300 Mwh. All generated power is used by the applicant for its paper manufacturing processes.

l. With this notice, we are initiating consultation with the *MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28339 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for Subsequent License

October 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for a Subsequent License.

b. *Project No.:* 2935.

c. *Date filed:* June 4, 1997.

d. *Submitted by:* GTXL, Inc., current licensee.

e. *Name of Project:* Enterprise Hydroelectric Project.

f. *Location:* On the Augusta Canal of the Savannah River, in the City of Augusta, Richmond County, Georgia.

g. *Filed Pursuant to:* 18 CFR Section 16.19 of the Commission's regulations.

h. *Effective date of current license:* October 1, 1951.

i. *Expiration date of current license:* September 30, 2001.

j. *The project consists of:* (1) intake works, including two diversion gates and trash racks; (2) two 300-foot-long, 8-foot-diameter penstocks; (3) a powerhouse containing two generating units with a combined total capacity of 1,200 kW; (4) an underground 350-foot-long, 12-foot-diameter tailrace; (5) an open 500-foot-long, 16-foot-wide tailrace; and (6) appurtenant facilities.

k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Regent Security, 2602 Commons Boulevard, Augusta, GA 30909, (706) 738–3113.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR Section 16.19 of the Commission's regulations, GTXL, Inc.'s notice of intent whether or not it intends to file an application for subsequent license was due by September 30, 1996. None was filed.

On May 22, 1997, the Commission issued a notice of GTXL Inc.'s failure to timely file a notice of intent to file a subsequent license application. Because GTXL, Inc. was granted a waiver of the regulations, this notice supersedes the prior notice.

n. Pursuant to 18 CFR Sections 16.9 and 16.20 each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 1999.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28340 Filed 10–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 22, 1997.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 29, 1997, 10:00 A.M.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note:**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO 684TH MEETING—OCTOBER 29, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2290, 011, SOUTHERN CALIFORNIA EDISON COMPANY
CAH–2.
DOCKET# P–2417, 019, NORTHERN STATES POWER COMPANY
CAH–3.
DOCKET# P–10395, 004, CITY OF AUGUSTA, KENTUCKY
OTHER#S P–10646, 002, CITY OF VANCEBURG, KENTUCKY
P–11053, 002, CITY OF HAMILTON, OHIO
CAH–4.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER97–3574, 000, NEW ENGLAND POWER POOL
OTHER#S ER97–4421, 000, NEW ENGLAND POWER POOL;
OA97–608, 000, NEW ENGLAND POWER POOL
CAE–2.
DOCKET# ER97–4547, 000, PUBLIC SERVICE COMPANY OF COLORADO
CAE–3.
OMITTED
CAE–4.
DOCKET# ER97–4168, 000, GRIFFIN ENERGY MARKETING, L.L.C.
CAE–5.
DOCKET# ER97–4586, 000, DE PERE ENERGY L.L.C.
CAE–6.
DOCKET# ER97–3359, 000, FLORIDA POWER & LIGHT COMPANY
CAE–7.
DOCKET# ER97–4447, 000, PJM INTERCONNECTION, L.L.C.
CAE–8.
DOCKET# ER97–4514, 000, TUCSON ELECTRIC POWER COMPANY
CAE–9.
DOCKET# ER97–4573, 000, FLORIDA POWER CORPORATION
CAE–10.
DOCKET# ER97–4143, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–11.
OMITTED
CAE–12.
DOCKET# ER96–333, 000, PORTLAND GENERAL ELECTRIC COMPANY
CAE–13.
DOCKET# ER97–2067, 000, BOSTON EDISON COMPANY
OTHER#S ER97–2262, 000, BOSTON EDISON COMPANY
CAE–14.
OMITTED
CAE–15.
DOCKET# ER96–2817, 002, MONTAUP ELECTRIC COMPANY
CAE–16.
DOCKET# ER97–3576, 001, SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–17.
DOCKET# NJ97–3, 001, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
CAE–18.
DOCKET# ER92–67, 007, WESTERN MASSACHUSETTS ELECTRIC COMPANY
CAE–19.
DOCKET# EC97–7, 001, ATLANTIC CITY ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY
CAE–20.
DOCKET# ER95–966, 001, WASHINGTON WATER POWER COMPANY
CAE–21.
DOCKET# EC97–5, 001, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, CLEVELAND ELECTRIC ILLUMINATING COMPANY AND TOLEDO EDISON COMPANY
OTHER#S ER97–412, 002, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, CLEVELAND ELECTRIC ILLUMINATING COMPANY AND TOLEDO EDISON COMPANY
ER97–413, 001, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, CLEVELAND ELECTRIC ILLUMINATING COMPANY AND TOLEDO EDISON COMPANY
CAE–22.
OMITTED
CAE–23.
DOCKET# NJ97–5, 000, HOOSIER ENERGY RURAL ELECTRIC COOPERATIVE
CAE–24.
DOCKET# ER97–4435, 000, IDAHO COUNTY LIGHT & POWER COOPERATIVE ASSOCIATION, INC.

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# GT97–68, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–2.
DOCKET# RP96–312, 006, TENNESSEE GAS PIPELINE COMPANY
CAG–3.
DOCKET# RP97–392, 001, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–4.
DOCKET# RP97–531, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–5.
DOCKET# RP98–13, 000, BOUNDARY GAS, INC.
CAG–6.
DOCKET# TM98–2–22, 000, CNG TRANSMISSION CORPORATION
OTHER#S RP97–212, 002, CNG TRANSMISSION CORPORATION
CAG–7.
DOCKET# RP97–407, 001, WILLIAMS NATURAL GAS COMPANY
CAG–8.
DOCKET# RP97–528, 000, NORAM GAS TRANSMISSION COMPANY
CAG–9.
DOCKET# RP97–536, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–10.
DOCKET# RP97–537, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–11.
DOCKET# RP97–539, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–12.
DOCKET# RP98–1, 000, TRANSWESTERN PIPELINE COMPANY
CAG–13.
DOCKET# RP98–2, 000, NORTHERN NATURAL GAS COMPANY
CAG–14.
DOCKET# RP98–3, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–15.
DOCKET# RP98–4, 000, NORTHERN NATURAL GAS COMPANY
CAG–16.
DOCKET# RP98–6, 000, TRUNKLINE GAS COMPANY
CAG–17.
DOCKET# RP98–7, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–18.
DOCKET# RP98–8, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–19.
DOCKET# RP98–9, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–20.
DOCKET# RP98–12, 000, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP89–183, 075, WILLIAMS NATURAL GAS COMPANY
CAG–21.
DOCKET# TM98–2–25, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–22.
DOCKET# PR97–11, 000, PANENERGY TEXAS INTRASTATE PIPELINE COMPANY
CAG–23.
DOCKET# PR97–12, 000, CRANBERRY PIPELINE CORPORATION
CAG–24.
DOCKET# PR96–12, 000, THE MONTANA POWER COMPANY
OTHER#S PR96–12, 001, THE MONTANA POWER COMPANY
CAG–25.
DOCKET# PR97–9, 000, AIM PIPELINE COMPANY
OTHER#S PR97–9, 001, AIM PIPELINE COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET# RP97–344, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–28.
DOCKET# RP97–465, 000, ANR PIPELINE COMPANY
CAG–29.
DOCKET# RP95–326, 010, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP95–242, 010, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–30.
DOCKET# RP96–320, 017, KOCH GATEWAY PIPELINE COMPANY
CAG–31.
DOCKET# RP97–20, 000, EL PASO NATURAL GAS COMPANY
OTHER#S RP97–20, 004, EL PASO NATURAL GAS COMPANY
RP97–20, 008, EL PASO NATURAL GAS COMPANY
RP97–194, 000, EL PASO NATURAL GAS COMPANY
RP97–194, 002, EL PASO NATURAL GAS COMPANY
RP97–397, 000, EL PASO NATURAL GAS COMPANY
CAG–32.
DOCKET# RP97–275, 005, NORTHERN NATURAL GAS COMPANY
OTHER#S RP97–275, 007, NORTHERN NATURAL GAS COMPANY
TM97–2–59, 003, NORTHERN NATURAL GAS COMPANY
TM97–2–59, 005, NORTHERN NATURAL GAS COMPANY
CAG–33.
DOCKET# RP97–541, 000, KN INTERSTATE GAS TRANSMISSION COMPANY
CAG–34.
DOCKET# TM98–2–28, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–35.
DOCKET# RP95–175, 000, MOJAVE PIPELINE COMPANY
OTHER#S RP96–67, 001, MOJAVE PIPELINE COMPANY
CAG–36.
DOCKET# RP92–18, 008, EL PASO NATURAL GAS COMPANY
OTHER#S RP91–26, 016, EL PASO NATURAL GAS COMPANY
RP91–162, 007, EL PASO NATURAL GAS COMPANY
CAG–37.
DOCKET# RP97–411, 002, SEA ROBIN PIPELINE COMPANY
CAG–38.
OMITTED
CAG–39.
DOCKET# RP95–167, 004, INDICATED SHIPPERS V. SEA ROBIN PIPELINE COMPANY
CAG–40.
OMITTED
CAG–41.
OMITTED
CAG–42.
DOCKET# CP96–178, 004, MARITIMES & NORTHEAST PIPELINE, L.L.C.
OTHER#S CP97–238, 001, MARITIMES & NORTHEAST PIPELINE, L.L.C. AND PORTLAND NATURAL GAS TRANSMISSION SYSTEM
CAG–43.
DOCKET# CP96–557, 001, GREEN CANYON GATHERING COMPANY
CAG–44.
DOCKET# CP96–641, 001, ANR PIPELINE COMPANY
CAG–45.
DOCKET# CP97–26, 000, TRUNKLINE LNG COMPANY
CAG–46.
DOCKET# CP97–256, 000, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–47.
DOCKET# CP97–533, 000, CHEVRON U.S.A. INC., VENICE GATHERING COMPANY, VENICE GATHERING SYSTEM, L.L.C. AND VENICE ENERGY SERVICES COMPANY
OTHER#S CP97–534, 000, CHEVRON U.S.A. INC., VENICE GATHERING COMPANY, VENICE GATHERING SYSTEM, L.L.C. AND VENICE ENERGY SERVICES COMPANY
CP97–535, 000, CHEVRON U.S.A. INC., VENICE GATHERING COMPANY, VENICE GATHERING SYSTEM, L.L.C. AND VENICE ENERGY SERVICES COMPANY
CAG–48.
DOCKET# CP97–693, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–49.
DOCKET# CP97–286, 000, TRANSWESTERN PIPELINE COMPANY
CAG–50.
DOCKET# CP94–751, 005, TRANSWESTERN PIPELINE COMPANY
CAG–51.
DOCKET# CP95–735, 000, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
OTHER#S CP95–735, 001, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
CAG–52.
DOCKET# CP97–641, 000, WESTERN GAS RESOURCES, INC.
OTHER#S CP97–609, 000, NORTHERN NATURAL GAS COMPANY
CAG–53.
DOCKET# CP97–92, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP97–92, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

HYDRO AGENDA

H–1.
DOCKET# EL95–35, 000, KOOTENAI ELECTRIC COOPERATIVE, INC. ET AL. V. PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, ORDER ON INITIAL DECISION.
H–2.
DOCKET# RM95–16, 000, REGULATIONS FOR THE LICENSING OF HYDROELECTRIC PROJECTS, FINAL RULE.

ELECTRIC AGENDA

E–1.
DOCKET# EC96–19, 001, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
OTHER#S EC96–19, 002, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
EC96–19, 003, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
EC96–19, 004, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
EC96–19, 005, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY

ER96–222, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 001, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 002, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 003, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 004, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 005, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 006, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
OA96–28, 000, PACIFIC GAS & ELECTRIC COMPANY
OA96–76, 000, SOUTHERN CALIFORNIA EDISON COMPANY
OA96–139, 000, SAN DIEGO GAS & ELECTRIC COMPANY
OA97–602, 000, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–604, 000, SOUTHERN CALIFORNIA EDISON COMPANY ORDER ON APPLICATIONS FOR AUTHORIZATIONS TO ESTABLISH AN INDEPENDENT SYSTEM OPERATOR AND POWER EXCHANGE.

E–2.
DOCKET# EC97–5, 000, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY ORDER ON PROPOSED MERGER.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
OMITTED

Lois D. Cashell,
Secretary.

[FR Doc. 97–28534 Filed 10–23–97; 2:12 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5913–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulations Governing Constructed or Reconstructed Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulations Governing Constructed or Reconstructed Major Sources (EPA ICR No. 1658.02). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1658.02.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Constructed or Reconstructed Major Sources; EPA ICR No. 1658.02. This is a new collection.

Abstract: Owners or operators of major sources of hazardous air pollutants (HAPs) who construct or reconstruct a source for which no maximum achievable control technology (MACT) standard has been set, must submit a one-time-only application to the permitting authority. No periodic reporting is required for this collection. Title V of the Clean Air Act (CCA) as amended in 1990 requires that MACT standards be met by constructed and reconstructed major sources of HAPs. This collection of information is mandatory under authority contained in section 112(g) of the CAA as amended in 1990 [42 U.S.C. 7401 (et. seq.) as amended by Pub. L. 101–549]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 1, 1994 in the proposed rule "Hazardous Air Pollutants: Proposed Regulations Governing Constructed, Reconstructed or Modified Major Sources' (59 FR 15504). A small number of comments were received concerning the ICR for the proposed rule. The comments fell into two general categories; estimated burden being too low and estimated number of sources being too low. Addressing these comments, EPA has made two significant changes to the rule. First, modified sources have been removed from the effected entities. Second the application process has been simplified by deleting the requirement that a detailed analytic determination of individual HAPs be conducted.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 150 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Major sources of HAPs for which a MACT standard has not been established.

Estimated Number of Respondents: 3,000.

Frequency of Response: Once per construction, reconstruction or modification.

Estimated Total Annual Hour Burden: 106,535 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1658.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

(Or E-Mail Farmer.Sandy@epamail.epa.gov)
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: October 17, 1997.

Richard Westlund,
Acting Director, Regulatory Information Division.

[FR Doc. 97–28369 Filed 10–24–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–2]

Motor Vehicles and Motor Vehicle Engines; Tampering Enforcement Policy for Alternative Fuel Aftermarket Conversions; Addendum to Mobile Source Enforcement Memorandum 1A

September 4, 1997.

A. Purpose. The purpose of this document is to clarify and revise the U.S. Environmental Protection Agency's (EPA's) "tampering" enforcement policy for motor vehicles and motor vehicle engines originally designed to operate on gasoline or diesel fuel and subsequently modified to operate exclusively or in conjunction with compressed natural gas (CNG) or liquified petroleum gas (LPG or propane), hereinafter referred to as "alternative fuels". The provisions of this Addendum shall apply to all persons subject to the tampering prohibition of Section 203(a) of the Act. For the purpose of this policy Addendum, the term *manufacturer* will apply to any person who designs, produces, and/or assembles components for converting vehicles or engines to operate on alternative fuels and is responsible for complying with all applicable requirements of this policy Addendum.

B. Background. EPA's policy is and has been that any alteration from an original configuration of a vehicle or engine as certified under Title II of the Act may constitute tampering under Section 203(a)(3). Routine maintenance and repair of vehicles and engines requires the use of replacement parts which may be non-original or "aftermarket" parts or systems. EPA's Office of Enforcement and General Counsel issued Mobile Source Enforcement Memorandum 1A (Memo 1A) on June 25, 1974 to provide guidance to covered parties regarding how the Agency intended to enforce the "tampering" prohibition under Section 203(a)(3) of the Clean Air Act (Act) with respect to maintenance and the use of aftermarket parts.

Memo 1A provides, in part, that the use of an aftermarket part, alteration or add-on part will not constitute tampering if the dealer has a "reasonable basis" to believe that such acts will not adversely affect emissions performance. It also provides specific procedures or options by which the dealer would have a "reasonable basis". One available procedure is emissions testing performed in accordance with "40 CFR 85" (subsequently revised and incorporated under 40 CFR Part 86) demonstrating compliance with emission standards for the useful life of the vehicle or engine. An alternate option is that "a Federal, state or local environmental control agency represents that a reasonable basis exists' based on testing done in accordance with procedures specified by that agency. Many vehicles converted from gasoline fueled to CNG or propane have relied on the second option utilizing procedures established by California or Colorado for demonstrating emissions compliance.

EPA has recently become aware of federal emission test data generated under a program conducted by the National Renewable Energy Laboratory (NREL) which indicate that a significant number of these vehicles modified to run on alternative fuels may be exceeding one or more applicable federal emission standards. The installers involved in the NREL program had attempted to comply with Memo 1A by using conversion systems certified by the state of California under the "California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels" (pre-1994 California Procedures). EPA has subsequently reviewed emission test data from other sources which generally substantiate the NREL results.

In response to concerns raised by these data, the Agency conducted a public stakeholders meeting on February 21, 1997, with representatives of the affected industries, regulatory agencies and interested fleet operators. The purpose of the meeting was to discuss these data and the causes of the emission failures as well as to explore all available options to identify and remedy the problems. Many reasons were provided for the emission problems, including inadequate initial testing, insufficient durability evaluations, overly broad vehicle application based on limited testing, inadequate systems/parts specifications, improper installation and fuel variability. The concerns of the affected industries and fleets subject to several alternative fuel statutory mandates were also discussed.

The most significant conclusion reached at that meeting, and from extensive data review and discussions subsequent to that meeting, was that the pre-1994 California and Colorado procedures as currently structured do not provide an adequate demonstration or assurance that a vehicle or engine modified to operate on an alternative fuel using an aftermarket conversion system will comply with the applicable emission standards for its useful life. As a result of the above and in light of the number of vehicles and engines that may be converted to alternative fuels in the near future, EPA believes it is appropriate to issue this Addendum to Memo 1A (this Addendum) to provide additional guidance to the regulated community, including manufacturers and installers of alternative fuel conversion systems.

C. Revised Policy. Effective immediately, EPA will no longer accept a representation based on the pre-1994 California Procedures for alternative fuel conversion systems or on the test procedures under Colorado Regulation No. 14 in effect prior to the date of this Addendum as a "reasonable basis" under paragraph 3(c) of Memo 1A. Consequently, any future installation of an alternative fuel conversion system, or the modification of any motor vehicle or motor vehicle engine in compliance with Title II of the Clean Air Act to operate exclusively or in part with an alternative fuel, or the causing thereof, may constitute tampering under Section 203(a) of the Act, where the installer or manufacturer has relied exclusively on a representation by Colorado or California, as described above, that a reasonable basis exists in accordance with paragraph 3(c) of Memo 1A. Effective immediately, the "reasonable basis" under paragraph 3 of Memo 1A that EPA agrees may be relied on by any person, including a manufacturer, installer or operator, when converting, or causing the conversion of, a motor vehicle or motor vehicle engine to operate on an alternative fuel is limited to one of the three options listed below.

1. A Federal Certificate under 40 CFR Part 86 demonstrating compliance with the applicable standards or under 40 CFR Part 88 demonstrating compliance with Clean Fuel Fleet standards for each engine family to be converted in accordance with 40 CFR Part 85, Subpart F; or

2. A Retrofit System Certification under the "California Certification and Installation Procedures For Alternative Fuel Retrofit Systems for Motor Vehicles Certified for 1994 and Subsequent Model Years" for a conversion system installed and tested under the above procedures on a vehicle or engine from a "50-state engine family" for use nationwide, or for a conversion system installed and tested under the above procedures on a vehicle or engine from a "California engine family" for use in California only; or

3. Until December 31, 1998, the use of an alternative fuel conversion system designed, tested and installed on a single engine family, or multiple engine families as provided under paragraph b.(4) below, if testing is completed by March 31, 1998, as follows:

a. With the alternative fuel conversion system installed on the certified engine family, the manufacturer shall perform, or cause the performance of, one federal emission test while operating with the alternative fuel and one test with the original certification fuel, if dual fuel operation is retained, in accordance with the applicable test procedures under 40 CFR Part 86 or Part 88 for that class and model year vehicle or engine. Prior to testing, the vehicle or engine shall be operated with the conversion system installed for at least the number of miles or hours equal to the service accumulation period needed to stabilize the emission control system specified by the original manufacturer in its certificate application submitted to EPA. EPA encourages manufacturers to conduct at least one baseline emission test with the certification fuel prior to conversion to ascertain that the vehicle or engine meets the applicable standards.

b. (1) With the application of an appropriate deterioration factor (DF) to the above test results, the vehicle or engine shall meet the applicable federal exhaust emission standards to which the vehicle or engine was originally certified. The DF shall be determined either based on full useful life durability testing, predictions based on engineering judgement for a similar light duty vehicle or heavy-duty engine with a similar emission control system using the same alternative fuel conversion system, or determined in accordance with the appropriate protocol contained in the "Dear Manufacturer" letter of September 27, 1995—Assigned Deterioration Factors for Gaseous-Fueled Vehicles and Engines, identified as CD–95–14. For heavy-duty engines with aftertreatment (such as a catalyst), the deteriorated emissions are calculated by multiplying the DF with the exhaust emission results. For heavy-duty engines without aftertreatment, the deteriorated emissions are calculated by *odding* the DF with the exhaust emission results. For a vehicle or engine converted and tested prior to accumulating 50% of its useful life, the manufacturer shall apply the full DF. For a vehicle or engine converted and tested subsequent to accumulating 50% of its full useful life, apply a DF that is the midway point between no DF and the full DF. For example, an additive DF of 1.0 may become 0.5 and a multiplicative DF of 2.0 may become 1.5. For a vehicle or engine converted and tested subsequent to accumulating its full useful life, apply no DF.

(2) For heavy-duty engines used in vehicles with a gross vehicle weight rating (GVWR) less than or equal to 10,000 lbs, the manufacturer may demonstrate compliance with the applicable light-duty truck standards in accordance with the preceding paragraph.

(3) In lieu of engine dynamometer testing for on-highway heavy duty vehicles with a GVWR less than or equal to 14,000 lbs, the manufacturer may conduct two or three emission tests as described below in accordance with the most current amendments to "California Exhaust Emissions Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles". These shall consist of one baseline test using the certification fuel prior to conversion, one test after conversion with the alternative fuel and one test after conversion with the certification fuel if the vehicle is intended to be dual fuel. The two tests after conversion shall not result in any exhaust emissions that exceed 1.10 times any of the baseline emission levels. In the case of pure CNG operation, the after conversion NMHC emissions shall not exceed 0.9 times the THC emissions before conversion. For heavy-duty vehicles operating on a mixture of CNG and either diesel fuel or gasoline, the conversion system manufacturer should contact EPA's Mobile Source Enforcement Branch to determine the appropriate ratio of NMHC emissions after conversion to THC emissions before conversion.

(4) With respect to light duty vehicles, light duty trucks, or heavy-duty engines meeting the requirements of paragraph (2) above, the above demonstration may be applied as a reasonable basis for up to a maximum of three additional light duty engine families to that tested, provided:

A. The results from testing done in accordance with the above procedures demonstrate compliance with low emission vehicle (LEV) or more stringent emission standards under 40 CFR 88.104,

B. The additional engine families have engine displacements equal to, or within 0.8 liters (50 CID) less than, the engine tested,

C. The additional engine families comprise vehicles equal to or less than the gross vehicle weight of the vehicles covered by the engine family tested, and

D. The additional engine families are equipped with the same catalytic converter type (i.e. beaded vs monolith, OC vs OC/RC) and the same primary emission control technology (eg. EGR, Air Injection, EFI vs carburetor, closed loop vs open loop) as the engine family tested.

(5) Option 3 of this policy is not available for conversion of California only engine families.

(6) An alternative fuel conversion system that degrades a closed loop feedback system to a continuous non-feedback open loop system is not allowed under this option.

(7) Compliance with this policy may be demonstrated based on existing data provided such data are the result of testing in accordance with the procedures and protocols specified herein.

(8) Demonstration with the Cold CO requirements under 40 CFR Part 86 Subpart C is not required under Option 3 of this policy.

(9) The Certification Short Test requirements under 40 CFR Part 88, Subpart O is not required under Option 3 of this policy.

(10) The evaporative emissions requirements under 40 CFR 86.094–8(b) and 86.094–9(b) are not required under Option 3 of this policy.

c. The manufacturer of the conversion system shall specify all part numbers/calibrations associated with that conversion system and provide all such information, specifications and installation requirements, including a permanent conversion system label which appropriately identifies the conversion system with reasonable specificity, with each system that is sold or provided for installation.

d. In order to demonstrate that it has a reasonable basis to believe that its conversion system will not adversely affect emissions over the useful life of the vehicle or engine, the conversion system manufacturer should retain records including but not limited to all emission test data, including test results, description of vehicles and/or engines modified, all maintenance and modifications performed, laboratory data sheets, identification of test laboratory, test dates, test personnel and test procedures followed, engine families tested, data to support additional engine family coverage, if applicable, VIN's, vehicle and engine mileage and/or age as applicable, fuel specifications, conversion system part numbers and calibrations, durability procedures followed including all durability data and all calculations and engineering analyses performed to determine compliance with the above requirements.

e. In order to meet the requirements of this policy, any installation of a conversion system designed and tested in accordance with the above shall be done in accordance with the applicable part numbers/calibrations installed on the vehicle or engine that was tested, completed in accordance with manufacturer's specifications and/or instructions and the conversion system label affixed to the vehicle or engine. The system shall only be installed on a vehicle or engine of the same engine family as that tested or as permitted under paragraph 3.b.(4) above.

f. In support of an appropriate installation, the installer should retain records of each vehicle or engine converted in accordance with the above, including the VIN, make and year of each vehicle or engine so modified, the name of the installer, the date of installation and a copy of the manufacturer's or marketer's/distributor's representation that the conversion system has been demonstrated on that engine family to meet the requirements of this policy.

g. In support of any marketer's or distributor's compliance with the requirements of this policy, such parties should retain records of each conversion system sold or distributed, copies of the representation from the manufacturer that the system meets this policy and records of sales to others including the name of the purchasers, part numbers, dates of sales and the numbers of systems sold.

h. Colorado has indicated that it will revise its administrative procedures under Colorado Regulation No. 14 to require that conversion system manufacturers conduct testing in accordance with option 3 of this Addendum in order to receive a Colorado Letter of Certification. Consequently, until December 31, 1998, EPA will not consider as tampering the sale and installation of a conversion system in Colorado pursuant to a Colorado Letter of Certification issued after the above-referenced administrative procedure revisions have been made by Colorado, provided testing in support of the Letter of Certification is done in accordance with option 3 of this Addendum and is completed by March 31, 1998.

D. Conclusion. EPA believes that the maximum degree of assurance that vehicles or engines modified to operate on alternative fuels will meet emissions standards throughout their useful life can only be achieved through full certification demonstration in accordance with 40 CFR Parts 86 or 88. However, the cost and time associated with such a demonstration may be prohibitive for some conversion system manufacturers in the short term and may not provide sufficient equipment for fleets currently subject to various alternative fuel mandates to comply with those mandates. In addition, EPA will be attempting to implement various procedures to streamline federal certification for alternative fuel vehicles and on-highway engines, but it is likely that implementation of those procedures will take some time. In the interim, the procedures and requirements outlined in option 3 above should allow alternative fuel conversion systems to be developed and evaluated more quickly and at less cost, while providing a reasonable assurance that emissions will not be deteriorated. After December 31, 1998, manufacturers, marketers and installers must utilize equipment which meets the requirements of option 1 or option 2 above to be covered by the non-tampering policy of Memo 1A.

EPA will be reviewing Memo 1A more thoroughly in the near future to determine if additional changes are required for other vehicle or engine modifications, parts or systems. Any questions regarding this interim policy should be directed to the Mobile Source Enforcement Branch at (202) 564–2255.

Bruce C. Buckheit,

Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–1]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of signing of OSi Project XL Final Project Agreement.

SUMMARY: EPA, the West Virginia Department of Environmental Protection, and OSi Specialties, Inc. (a subsidiary of Witco Corporation) signed a proposed Project XL Final Project Agreement (FPA) for OSi in Sistersville, West Virginia. The FPA is a voluntary agreement developed collaboratively by OSi, stakeholders, and state and federal regulators. The availability of the draft FPA and related documents was announced in the **Federal Register** on June 27, 1997 (FRL–5849–5). Project XL, announced in the **Federal Register** on May 23, 1995 (FRL–5197–9), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing a total of fifty projects undertaken in full partnership with the states.

Under the FPA, OSi will install an incinerator and route the process vents from its polyether methyl capper production unit to that incinerator for control of organic air emissions. OSi estimates this will reduce the facility's organic air emissions by about 309,000 pounds per year for substantially lower cost than compliance with regulations to be deferred under the Project. In addition, OSi will recover and reuse an estimated 500,000 pounds per year of methanol that would otherwise be disposed of through the facility's on-site wastewater treatment system and would divert about 50,000 pounds per year of organic air emissions from the wastewater treatment unit to the incinerator. This will result in a reduction in sludge generation from OSi's wastewater of 815,000 pounds per year. Lastly, OSi will conduct a waste minimization/pollution prevention (WMPP) study which is expected to result in additional reductions in waste generated at the facility. As an incentive for OSi to take these environmentally beneficial actions, EPA has agreed to propose for public comment and promulgate (subject to review of public comment) regulations deferring the application, to the facility's two hazardous waste surface impoundments, of subpart CC of 40 CFR parts 264 and 265 which was promulgated under the authority of the Resource Conservation and Recovery Act (RCRA subpart CC). Also, the West Virginia Department of Environmental Protection (WVDEP) has agreed to enter into a consent order with OSi to defer application of the state equivalent of RCRA subpart CC to the surface impoundments. Subsequently, WVDEP has agreed to propose and promulgate (subject to review of public comment and legislative approval) regulations incorporating EPA's deferral of RCRA subpart CC by reference. In addition, EPA has agreed to propose and

promulgate (subject to review of public comment) regulations deferring the application of proposed Clean Air Act subpart YYY volatile organic compound emission standards for OSi's wastewater collection and treatment system (40 CFR part 60, subpart YYY) (CAA subpart YYY) for each WMPP opportunity that the agency determines meets the criteria set forth in the FPA, if CAA subpart YYY applies to that activity. WVDEP has also agreed to enter into a consent order with OSi to defer application of CAA subpart YYY to the extent that it is directly enforceable by WVDEP. Subsequently, WVDEP has agreed to propose and promulgate (subject to review of public comment and legislative approval) regulations incorporating EPA's deferral of CAA subpart YYY by reference. The CAA subpart YYY relief involves a deferral of subpart YYY if OSi begins recovery of CAA subpart YYY substances as a result of its waste minimization efforts and if the final CAA subpart YYY regulations apply to such activities. This deferral would be granted only if there is no resulting emissions increase from the facility's wastewater system or if organic air emissions increases from all YYY deferrals do not exceed 15,000 pounds per year (about 5 percent of the Project's expected air emission reductions). These deferrals will last until the required compliance date of the national emission standards for hazardous air pollutants from miscellaneous organic processes (the "MON"). It is expected that the MON will require installation of process vent controls similar to the control for the polyether methyl capper unit process vent emissions to be implemented under the Project. As a result, the Project will be reevaluated at that time to determine whether additional environmental benefits provided by the Project warrant the continuation of the regulatory flexibility granted by the Project. If continuation is warranted, then the FPA and other appropriate documents (e.g., permits, regulations, orders, etc.) will be amended as necessary. If EPA or WVDEP does not determine that continuation of the Project is warranted, the Project will end on the required compliance date of the MON.

DATES: The FPA was signed on October 17, 1997.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Final Project Agreement or other information about the Project, contact: Cheryl Atkinson, U.S. EPA, Region III, 841 Chestnut Street (3HW70), Philadelphia, PA 19107, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 3134GY Mall (2129), Washington, DC 20460. Information on the Project is also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at both the local Sistersville library and EPA Region III in Philadelphia. Questions to EPA regarding the Project can be directed to Cheryl Atkinson at (215) 566–3392 or L. Nancy Birnbaum at (202) 260–2601. To be included on the OSi Project XL mailing list to receive information about future public meetings, XL progress reports and other mailings from OSi on the XL Project, contact: Okey Tucker, OSi Specialties, Inc., Witco Corporation OrganoSilicones Group, 1500 South State Route 2, Friendly, WV 26146. Mr. Tucker can also be reached by telephone at (304) 652–8131. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Emerging Sectors and Strategies Division; United States Environmental Protection Agency; 3202 Mail; 401 M Street, SW; Mail Code 2129; Washington, DC 20460. The telephone number for the Division is (202) 260–5754. The facsimile number is (202) 401–6637. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL" and via an automated fax-on-demand menu at (202) 260–8590.

Dated: October 15, 1997.

Nancy Birnbaum,

Acting Director, Emerging Sectors and Strategies Division.

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

October 20, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0789.

Title: Modified Alternative Plan, CC Docket No. 90–571, Order (1997 Suspension Order).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 36 respondents.

Estimated Time Per Response: 13 hours per response (avg.).

Frequency of Response: On occasion; one-time requirement.

Total Annual Burden: 468 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Title IV of the Americans with Disabilities Act of 1990 ("ADA") requires each common carrier providing voice transmission services to provide Telecommunications Relay Services ("TRS") throughout the area it serves to individuals with hearing and speech disabilities by 1993. The TRS enables customers with hearing or speech disabilities to use the telephone network in ways that are "functionally equivalent" to those used by customers using traditional telephone service. Under the Commission's rules, the TRS must be able to handle all calls normally provided by common carriers, unless those carriers demonstrate the infeasibility of doing so. The Commission has interpreted "all calls" to include coin sent-paid calls, which are calls made by depositing coins in a standard coin-operated public payphone. The Bureau has suspended enforcement of the requirement that carriers provide coin sent' paid calls through the TRS centers since 1993 based on common carriers' representations that it has been technically infeasible to provide the coin sent-paid service through the TRS centers ("coin sent-paid rule"). Since 1995, carriers have made payphones accessible to TRS users through an Alternative Plan ("Alternative Plan"). The Alternative Plan enables TRS users to make local relay calls for free and to make toll calls from payphones using calling or prepaid cards at or below the coin call rates. The Alternative Plan also requires carriers to educate TRS users about the alterative payment methods for the TRS users to make relay calls from payphones. In Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Order, (released 8/21/97), (1997 Suspension Order), the Common Carrier Bureau ("Bureau") suspended the enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one year until August 26, 1998 because the only technological solution that can provide the coin sent-paid calls through the TRS centers, coin signalling interface ("CSI"), has serious deficiencies and no new technological solution appears imminent. In the 1997 Suspension Order, the Bureau recommends that during the one year suspension, the Commission conduct a rulemaking on coin sent-paid issues to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. In addition, the Bureau directed the industry to continue to make payphones accessible to TRS users under the terms of the Alternative Plan, as set forth in Telecommunications Relay Services, and the ADA, Memorandum Opinion and Order, 10 FCC Rcd 10927 (1995) ("1995 Suspension Order"), and as modified by the 1997 Suspension Order. The 1997 Suspension Order modifies the Alternative by requiring industry to: (1) Send a consumer education letter to TRS centers (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4); (2) inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry booth will be located, and at what times the booth will be in operation (no. of respondents: 1; hour burden per respondent: 15 mins.; total annual burden: 1.5 hours); (3) publish an article in Consumer Action Network ("Can's") respective organizations' magazines or newsletters (no. of respondents: 1; hour burden per respondent: 8 hours; total annual hour burden: 8 hours); (4) send a letter directly to all CAN's members (no of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4 hours); (5) create laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones to be distributed to TRS users (no. of respondents: 30; hour burden per respondent: 15 hours; total annual hour burden: 450 hours); and (6) work jointly with affected communities to draft and submit a report within two months of the publication of a summary of the 1997 Suspension order in the **Federal Register** (no. of respondents: 1; hour burden per respondent: 7 hours; total annual hour burden: 7 hours). The Commission has imposed these third party disclosure requirements to educate TRS users abut their ability to make relay calls from payphones, the payment methods available and the rates for the payphone calls. The report will help the Commission assess the effectiveness of the current consumer education programs and determine whether further requirements to educate TRS users about their ability to make relay calls from payphones are warranted.

OMB Control No.: 3060–0330.

Title: Part 62—Applications to Hold Interlocking Directorates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 10.

Estimated Time Per Response: 2 hours per response (avg.).

Frequency of Response: On occasion.

Total Annual Burden: 20 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: The collection of information is authorized by 47 U.S.C. Section 212. Congress mandated information collection under 47 U.S.C. Section 212 to be conducted by the Federal Communications Commission to monitor the effect of interlocking directorates on the telecommunications industry and to ensure they will not have any anticompetitive impact. Information is used to ensure that the effect of interlocking directorates will not have an anticompetitive impact in the telecommunications industry.

OMB Control No.: 3060–0439.

Title: Regulations Concerning Indecent Communications by Telephone.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 10,200.

Estimated Time Per Response: .13 hours per response (avg.) (about 8 minutes).

Frequency of Response: On occasion.

Total Annual Burden: 1,632 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Section 223 of the Communications Act of 1934, as amended, 47 USC Section 223 imposes fines and penalties on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. The fines and penalties are applicable to those who use the telephone, or permit their telephone to be used, for obscene communications to any person and to those who use the telephone for indecent communications to persons under 18 years of age or to adults without their consent. Section 223 requires telephone companies, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. The rules and regulations establish defenses to prosecution where the defendant restricts access to the prohibited indecent communications to persons 18 years of age or older by complying with the Commission's procedures. Section 64.201 contains several information collection requirements: (1) a requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) a requirement that adult message service

providers notify their carriers to the nature of their programming; and (3) a requirement that a provider of adult message services request that their carriers identify it as such in bills to its subscribers. The information requirements are imposed on carriers, adult message service providers and those who solicit their services to ensure that minors are denied access to material deemed indecent.

OMB Control No.: 3060–0355.
Title: Rate of Return Reports, FCC Forms 492 and 492A.
Form No.: FCC Forms 492 and 492A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit.
Number of Respondents: 88.
Estimated Time Per Response: 8 hours per response (avg.).
Frequency of Response: Annual.
Total Annual Burden: 704 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Needs and Uses: Filing of FCC Form 492 and FCC Form 492A is required by Sections 1.795 and 65.600 of the FCC Rules and Section 219 of the Communications Act of 1934, as amended. Filing of the FCC Form 492 on an annual basis is required from each local exchange carriers or group of affiliated carriers which is not subject to Sections 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. The forms are necessary to enable the Commission to monitor the access tariffs and to enforce maximum rate of return prescriptions and price cap earnings levels. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

OMB Control No.: 3060–0422.
Title: Section 68.5, Waivers (Application for Waiver of Hearing Aid Compatibility Requirement).
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit.
Number of Respondents: 10.
Estimated Time Per Response: 3 hours per response (avg.).
Frequency of Response: On occasion.
Total Annual Burden: 30 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Needs and Uses: Section 710(b) of the Communications Act of 1934, as amended, requires that almost all telephones manufactured in or imported into this country after August 16, 1989 be hearing aid compatible. Refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications are exempt. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. Congress recognized, however, that there may be technological and/or economical reasons some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement for new telephone base on technological and economical grounds. Section 68.5 of the Commission's rules provides the criteria to be used to assess waivers. Applicants seeking waivers must submit sufficient information for the Commission to make an informed decision.

OMB Control No.: 3060–0173.
Title: Section 73.1207, Rebroadcasts.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit.
Number of Respondents: 1,012.
Estimated Time Per Response: 0.5 hours.
Frequency of Response: Recordkeeping requirement.
Total Annual Burden: 506 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Needs and Uses: Section 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. This written consent assures the Commission that prior authorization for retransmission of a program was obtained.

OMB Control No.: 3060–0493.
Title: Section 74.986, Involuntary ITFS Station Modifications.
Form No.: FCC Form 330.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit; state, local or tribal government.
Number of Respondents: 25.
Estimated Time Per Response: 5 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden).
Frequency of Response: On occasion.
Total Annual Burden: 25 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $14,375.
Needs and Uses: Section 74.986 requires that an application for involuntary modification of an ITFS station to be filed on FCC Form 330 (OMB Control No. 3060–0062) but need not fill out Section II (Legal Qualifications). The application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. The data is used by FCC staff to insure that proposals to modify facilities of ITFS licensees/permittees would provide comparable ITFS service and would otherwise serve the public interest in promoting the MMDS service.

OMB Control No.: 3060–0494.
Title: Section 74.990, Use of available instructional television fixed service frequencies by wireless cable entities.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit; state, local or tribal government.
Number of Respondents: 100.
Estimated Time Per Response: 0.33 hours–2 hours (These hours include the contracting hour cost to the respondents and the respondents hour burden.)
Frequency of Response: On occasion.
Total Annual Burden: 42 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $9,375.
Needs and Uses: Section 74.990(c) requires applicants to confirm their unopposed status after the period for filing competing applications and petitions to deny has passed. This confirmation is accomplished through the filing of a letter with the Commission. Section 74.990(d) requires a wireless cable applicant to show that there are no multipoint distribution service or multichannel multipoint distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. The data provided in the showing will be used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Control No.: 3060–0492.
Title: Section 74.992, Access to channels licensed to wireless cable entities.
Form No.: FCC Form 330.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for profit; state, local or tribal government.
Number of Respondents: 10.
Estimated Time Per Response: 3.5 hours (These hours include the contracting hour costs to the respondents and the respondents hour burden).
Frequency of Response: On occasion.
Total Annual Burden: 15 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $4,000.
Needs and Uses: Section 74.992 requires that requests by ITFS entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330 (OMB Control No. 3060–0062), Section I (Identity of Applicant, Requested Facilities), Section II (Legal Qualifications of Applicant), Section III (Financial Qualifications of Applicant) and Section IV (ITFS Service Proposal). The application must include a cover letter clearly indicating that the application is for ITFS access to a wireless cable entity's facilities on ITFS channels. Section 74.992(d) requires an ITFS user to provide a wireless cable licensee with its planned schedule of use four months in advance of accessing the channels. This notice is completed before the filing of the application and the burden is included with the application. The data is used by FCC staff to determine eligibility of an educational institution or entity demanding access for ITFS use on a wireless cable facility. The four month advance notice is used by the wireless cable licensee to allow it to move programming to other channels.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–28362 Filed 10–24–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 21, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0029.
Title: Application for TV Broadcast Station License.
Form Number: FCC Form 302–TV.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit; not-for-profit institutions.
Number of Respondents: 83.
Estimated Time Per Response: 18—25 hours (avg.).
Cost to Respondents: $207,309.
Total Annual Burden: 210 hours.
Needs and Uses: FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The Office of Management and Budget (OMB) approved a Notice of Proposed Rulemaking (NPRM) which proposed to eliminate the present requirement for a construction permit (FCC Forms 301/340) for a broadcast station in certain instances where the changed facilities would not have an adverse impact on other broadcast facilities or on the public. In these instances, the Commission would permit the broadcast licensee or permittee to make changes without prior authority from the Commission and file a license application (FCC Forms 302–AM/302–FM/302–TV) with specified exhibits to reflect the change afterwards.

On 8/14/97, the Commission adopted a Report and Order in MM Docket 96–58 which adopted these changes. Additionally, the Commission adopted revisions to the FCC Forms 302–FM and 302–TV. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC Form 302-TV.

The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have any impact on other stations and the public. Data is extracted from FCC Form 302–TV for inclusion in the license to operate the station.

OMB Control Number: 3060–0506.
Title: Application for FM Broadcast Station License.
Form Number: FCC Form 302–FM.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit; not-for-profit institutions.
Number of Respondents: 757.
Estimated Time Per Response: 3–25 hours (avg.).
Cost to Respondents: $597,600.
Total Annual Burden: 2,082 hours.
Needs and Uses: FCC Form 302–FM is used by licensees and permittees of FM broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The Office of Management and Budget (OMB) approved a Notice of Proposed Rulemaking (NPRM) which proposed to eliminate the present requirement for a construction permit (FCC Forms 301/340) for a broadcast station in certain instances where the changed facilities would not have an adverse impact on other broadcast facilities or on the public. In these instances, the Commission would permit the broadcast licensee or permittee to make changes without prior authority from the Commission and file a license application (FCC Forms 302–AM/302–FM/302–TV) with specified exhibits to reflect the change afterwards.

On 8/14/97, the Commission adopted a Report and Order in MM Docket 96–58 which adopted these changes. Additionally, the Commission adopted revisions to the FCC Forms 302–FM and 302–TV. Until such times as the forms

are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC Form 302–FM.

The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have any impact on other stations and the public. Data is extracted from FCC Form 302–FM for inclusion in the license to operate the station.

OMB Control Number: 3060–0171.

Title: Section 73.1125, Station main studio location.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 155.

Estimated Time Per Response: 0.5 hours (this hour is split between cost and burden, 15 minutes burden for the licensee and 30 minutes cost for a communications attorney).

Cost to Respondents: $22,800.

Total Annual Burden: 108 hours.

Needs and Uses: Section 73.1125 requires licensees of AM, FM or TV broadcasting stations to notify the FCC when stations relocated their main studios. This data is used by FCC staff to assure that stations are located within the principal community contours and serves to notify FCC of changes in mailing addresses. The data received as justification for waiver of Section 73.1125 will enable the FCC staff to determine whether the circumstances are sufficient to warrant waiver of the main studio rules.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28360 Filed 10–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–297; DA 97–2224]

Comment Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction: LMDS Auction Formula Proposed [Report No. AUC–17–B (Auction No. 17)]

AGENCY: Federal Communications Commission.

ACTION: Public notice seeking comment.

SUMMARY: The Commission is proposing a formula for calculating minimum opening bids in the auction of licenses for the Local Multipoint Distribution Service, Auction No. 17, and invites public comment on its proposal.

DATES: Comments are due November 5, 1997. Reply comments are due November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Brett Tarnutzer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This public notice was released on October 17, 1997, and is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, Fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Public Notice

Background

1. When FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that a reserve price or minimum bid is not in the public interest. Section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. 309(j)(4)(F). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104(c) and (d). Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. In a minimum opening bid scenario, the auctioneer generally has the discretion to lower it later in the auction.

2. The Wireless Telecommunications Bureau recently announced the auction of 986 licenses for the Local Multipoint Distribution Service ("LMDS"), which is to begin December 10, 1997. See *Public Notice*, "Auction of Local Multipoint Distribution Service: Auction Notice and Filing Requirements for 986 Basic Trading Area ("BTA") Licenses in the 28 GHz and 31 GHz Bands, Scheduled for December 10, 1997," DA 97–2081 (62 FR 53629, October 15, 1997).

Discussion

3. The Commission believes a minimum opening bid is more appropriate for the LMDS auction than a reserve price because firm reserve prices would not give the Commission flexibility to adjust to information learned during the auction and react to changing market conditions. Minimum bids, on the other hand, can serve the same revenue raising objective that reserve prices would serve, and in addition preserve for the Commission freedom to reduce the selected levels as the bidding unfolds. Further, a minimum opening bid will help to regulate the pace of the auction.

4. Specifically, the Commission proposes the following formula for calculating minimum opening bids in Auction No. 17:

Population of license area	A block min. opening bid (in dollars)	B block min. opening bid
Less than 100,000	0.75 x population	10% of A Block.
100,000–1,000,000	1.50 x population	10% of A Block.
More than 1,000,000	2.25 x population	10% of A Block.

5. If, however, commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest dictates having no minimum opening bid or reserve price.

6. Comments are due on or before November 5, 1997, and reply comments are due on or before November 10, 1997. To file formally, parties must submit an original and four copies to the Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28361 Filed 10–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 21, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0496.

Expiration Date: 10/31/2000.

Title: ARMIS Operating Data Report.

Form No.: FCC Report 43–08.

Respondents: Business or other for-profit.

Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. FCC Report 43–08, ARMIS Operating Data Report, is a report which consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability. Section 220 of the Communications Act of 1934, as amended, 47 USC 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 USC 219(b), authorizes the Commission by general or special orders to require any carriers subject to this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. Obligation to respond: mandatory.

OMB Control No.: 3060–0763.

Expiration Date: 10/31/2000.

Title: ARMIS Customer Satisfaction Report.

Form No.: FCC Report 43–06.

Respondents: Business or other for profit.

Estimated Annual Burden: 8 respondents; 900 hours per response (avg.); 7200 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. FCC Report 43–06, the Customer Satisfaction Report, formerly the Semi-Annual Service Quality Report, reflects the results of customer satisfaction surveys conducted by individual carriers from residential and business customers. Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes the Commission by general or special orders to require any carriers subject to this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. Obligation to respond: mandatory.

OMB Control No.: 3060–0298.

Expiration Date: 10/31/2000.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 2000 respondents; 4797 hours per response (avg.); 682,555 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $2,878,200.

Frequency of Response: On occasion.

Description: Sections 201, 202, 203, 204 and 205 of the Communications Act

of 1934, as amended, 47 U.S.C. Sections 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations for the services they provide. The schedules containing these charges, practices and regulations must be filed with the Commission which is required to determine whether such schedules are just, reasonable and not unduly discriminatory. Part 61 of the Commission's Rules establishes the procedures for filing tariffs which contain the charges, practices and regulations of the common carriers, supporting economic data and other related documents. The supporting data must also conform to other parts of the Rules such as Parts 36 and 69. Part 61 prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Tariffs that do not conform to Part 61 requirements may be rejected. In addition to tariffs filed with the Commission, carriers may be required to post their schedules or rates and regulations. See 47 CFR 61.72. The information collected through a carrier's tariff is used by the Commission to determine whether the services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28359 Filed 10–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Wednesday, October 29, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- The Federal Home Loan Bank of Seattle Pilot Project.
- Board Procedures for Processing FHLBanks Pilot Programs.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–28470 Filed 10–22–97; 5:11 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–008900–062

Title: The "8900" Lines Agreement

Parties:

A.P. Molle-Maersk Line
DSR Senator
The National Shipping Company of Saudi Arabia
P&O Nedlloyd Limited
Sea-Land Service, Inc.
United Arab Shipping Company (S.A.G.)

Synopsis: The proposed modification clarifies the quorum requirement; changes the voting requirements generally and for service contract amendments; and reduces the notice for independent action from ten to three days.

Agreement No.: 224–200563/006

Title: Port of Oakland/Trans Pacific Container Service Corporation Terminal Agreement

Parties:

City of Oakland ("Port")
Trans Pacific Container Service Corporation ("Trans Pacific")

Synopsis: The proposed modification of the basic agreement between the Port and Mitsui O.S.K. Lines, Ltd. (MOL), whereby the Port assigned MOL certain facilities at its Seventh Street Marine Terminal, extends the role of Trans Pacific as successor assignee and provides for primary and secondary use by participants in the global alliance.

Agreement No.: 224–200589–002

Title: The Jacksonville Port Authority/Green Cove Maritime Inc. Marine Terminal Agreement

Parties:

The Jacksonville Port Authority
Green Cove Maritime Inc.

Synopsis: The proposed modification increases all of the rates applicable to the Schedule of Fees and Charges as filed under the basic agreement.

Dated: October 21, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28314 Filed 10–24–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Raymond Donald Brown, and RDB Family Limited Partnership, both of North Augusta, South Carolina, Arthur Judson Gay, Jr., James Randal Hall, George Hull Inman, John Walter Lee, Alfred Montague Miller, Julian Wilcher Osbon, William George Hatcher, and Hugh Hamilton, Jr.; all of Augusta, Georgia; to collectively acquire additional voting shares of Pinnacle Bancshares, Inc., Thomson, Georgia, and thereby indirectly acquire McDuffie Bank & Trust Company, Thomson, Georgia.

Board of Governors of the Federal Reserve System, October 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28422 Filed 10–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Strasburg Bancorp, Inc., Strasburg, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Strasburg Savings, Strasburg, Ohio (in formation).

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Timberland Bancorp, Inc., Hoquiam, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Timberland Savings Bank, SSB, Hoquiam, Washington.

Board of Governors of the Federal Reserve System, October 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28423 Filed 10–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-27636) published on pages 54460 - 54461 of the issue for Monday, October 20, 1997.

Under the Federal Reserve Bank of Richmond heading, the entry for NationsBank Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina; to merge with Barnett Banks, Inc., Jacksonville, Florida, and thereby indirectly acquire Barnett Bank, National Association, Jacksonville, Florida, and Community Bank of the Islands, Sanibel, Florida.

In connection with this application, Applicants also have applied to acquire First of America Bank - Florida, FSB, Tampa, Florida, and thereby engage in traditional thrift activities, pursuant to § 225.28(b)(4) of the Board's Regulation Y; Barnett Community Development Corporation, Jacksonville, Florida, and thereby engage in investing in corporations or projects designed primarily to promote community welfare, pursuant to § 225.28(b)(12) of the Board's Regulation Y; EquiCredit Corporation, Jacksonville, Florida, and its direct and indirect subsidiaries, and thereby engage in the activities of originating home equity and purchase money loans, acquiring such loans originated from third parties, and securitizing such loans in the secondary market, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in acting as principal, agent, or broker for credit related insurance, pursuant to § 225.28(b)(11) of the Board's Regulation Y; Equity/Protect Reinsurance Company, Jacksonville, Florida, and thereby engage in the activities of reinsuring credit related insurance policies sold to EquiCredit Corporation customers, pursuant to § 225.28(b)(11) of the Board's Regulation Y; and Honor Technologies, Inc., Maitland, Florida, and thereby engage in operating an electronic funds transfer network and in data processing and management consulting activities, pursuant to §§ 225.28(b)(9) and (b)(14), respectively of the Board's Regulation Y.

In connection with this proposal, NationsBank has applied to acquire an option for 19.9 percent of Barnett's outstanding shares. Barnett also has applied to acquire an option for 10 percent of the shares of NationsBank Corporation and all of its bank and nonbanking subsidiaries. These options will expire upon consummation of the merger.

Comments on this application must be received by November 13, 1997.

Board of Governors of the Federal Reserve System, October 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28424 Filed 10–24–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0420]

Guidance for Industry on OTC Treatment of Hypercholesterolemia; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "OTC Treatment of Hypercholesterolemia." The guidance is intended to clarify the agency's current thinking on the treatment of hypercholesterolemia using over-the-counter (OTC) drug products. The agency's Center for Drug Evaluation and Research (CDER) believes that drugs for the treatment of hypercholesterolemia should not be sold OTC in the United States.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance "OTC Treatment of Hypercholesterolemia" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael Weintraub, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–827–2250.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "OTC Treatment of Hypercholesterolemia." Several sponsors have recently expressed interest in marketing cholesterol-lowering agents as OTC drug products. These requests have raised several regulatory policy and medical therapy issues.

This guidance document represents the agency's current thinking on OTC treatment of hypercholesterolemia. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain the guidance by using the World Wide Web (WWW). For WWW access, go to "http://www.fda.gov/cder/guidance/index.htm".

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28298 Filed 10–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Treatment Observation's Study

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: The Treatment Research Branch (TRB), intends to conduct the study for "Treatment Observation". The TRB is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 U.S.C. 288) as amended by the NIH Revitalization Act of 1993 (Pub. L. 103–43).

The information proposed for collection will be used by the NIAAA to observe group treatment at up to 20 treatment facilities. At each facility, directors will be asked to provide information about treatment practices and about the client population. At each facility at least seven members of the treatment staff will be asked to provide information about their treatment activities, personal experiences and training. At each facility eight treatment groups will be observed. The group leader will be asked to complete a questionnaire about the observed session and other client demographics. At least seven group members will also be asked to complete a questionnaire about the observed group session. The target population for the study is a group of outpatient public and private providers that will include group treatment as part of their overall plan of clinical therapeutics.

The specific aim of this study is the testing of instruments and methodologies for the systematic measurement of the content, process, and context of group treatment.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Facility Director—20	1	20	.75	15
Group Leader—160	1	160	.334	55
Treatment Staff—140	1	140	.334	48
Group Member—1120	1	1120	.334	381
Total Number of Respondents		1440		
Total Number of Responses		1440		
Total Hours		499		

REQUEST FOR COMMENTS: Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA. NIH, Willco Building 6000, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, 6000 Willco Building, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–0638.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 20, 1997.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 97–28382 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: November 3–4, 1997.
Time: 8:00 a.m.
Place: University Center Hotel, Gainesville, Florida.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Biological and Physiological Sciences.
Date: November 7, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4202, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: November 13, 1997.
Time: 10:00 a.m.
Place: Embassy Suites, Chevy Chase, MD.
Contact Person: Dr. Jerrold Fried, Scientific Review Administrator, 6701 Rockledge Drive, Room 4126, Bethesda, Maryland 20892, (301) 435–1777.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 13, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5110, Telephone Conference.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Biological and Physiological Sciences.
Date: November 17, 1997.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.
Date: November 24, 1997.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Clinical Sciences.
Date: November 26, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4126, Telephone Conference.
Contact Person: Dr. Jerrold Fried, Scientific Review Administrator, 6701 Rockledge Drive, Room 4126, Bethesda, Maryland 20892, (301) 435–1777.

Name of SEP: Chemistry and Related Sciences.
Date: December 2–4, 1997.
Time: 5:00 p.m.
Place: Holiday Inn-University Center, Philadelphia, PA.
Contact Person: Dr. Nancy Lamontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435–1726.

Name of SEP: Chemistry and Related Sciences.
Date: December 3, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 4168, Telephone Conference.
Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28379 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

The meeting will be open to the public to provide concept review of proposed contract solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: The Effects of Swimming Lessons on the Risk of Drowning (TELECONFERENCE).
Date: November 5, 1997.
Time: 2:00 p.m. (ET)—adjournment.
Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852.
Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1696.
Purpose/Agenda: To provide concept review of proposed contract solicitations.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28378 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–7 (J1).
Date: November 17–19, 1997.
Time: 7:30 p.m.
Place: The Quarterage Hotel, 560 Westport Road, Kansas City, MO 64111.
Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invitation of person privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases

and Nutrition and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28374 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–7 (J1).
Date: November 17–19, 1997.
Time: 7:30 PM.
Place: The Quarterage Hotel, 560 Westport Road, Kansas City, MO 64111.
Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28375 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–8 (J1).
Date: November 21, 1997.
Time: 2:00 pm.
Place: Room 6as–25N, Natcher Building, NIH (Telephone Conference Call).
Contact Person: Roberta Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the associations and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28376 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Rehabilitation Research Training Grants (TELECONFERENCE).
Date: November 17, 1997.
Time: 1:00 p.m. (ET)—adjournment.
Place: Division of Scientific Review, 6100 Executive Boulevard, Room 5E01, Rockville, Maryland 20852.
Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28377 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Synthetic, Anti-Complement Protein and Gene Useful in Transplant Therapeutics

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7 (a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive and world-wide license to practice the invention embodied in U.S. Patent Application Serial No. 07/906,983 (U.S. Patent No. 5,187,268, issued February 16, 1993) entitled "Gene Encoding an Anti-Complement Protein From Vaccinia" and U.S. Patent Application Serial No. 07/239,208 (U.S. Patent No. 5,157,110, issued October 20, 1992) entitled "Synthetic, Anti-Complement Protein" to Johns Hopkins University of Baltimore, Maryland. The patent rights in these inventions have been assigned to the United States of America.

It is anticipated that this license may be limited to the field of transplant therapeutics.

DATES: Only written comments and/or applications for a license which are received by NIH on or before December 26, 1997 will be considered.

ADDRESSES: Requests for a copy of these patents, inquiries, comments and other materials relating to the contemplated license should be directed to: Elaine F. Gese, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852; Telephone: (301) 496–7056, ext. 282; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: U.S. Patent No. 5,157,110 describes a synthetic protein which is capable of inhibiting the complement cascade by binding to the C4b component of complement, and thereby provides a method for controlling the complement cascade. U.S. Patent No. 5,187,268 describes the cloned gene encoding this protein. Complement inhibitors may be used in compositions to prevent complement mediated attack and injury to cells prior to or during transplantation, or to prevent transplant rejection. In addition, complement inhibitors may be used in developing products for allogeneic and xenogeneic transplantation.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 15, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–28381 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: IL–4 Pseudomonas Exotoxin Fusion Protein Therapeutics

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR § 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive world-wide license to practice the invention embodied in USPA SN 06/911,227 (U.S. Patent 4,892,827) entitled, "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects"; USPA SN 08/225,224 (U.S. Patent 5,635,599) entitled, "Circularly Permuted Ligands and Circularly Permuted Chimeric Molecules"; USPA SN 08/722,258 entitled, "Proteins Comprising Circularly Permuted Ligands"; and USPA SN 08/616,785 entitled, "Convection-Enhanced Drug Delivery", to Neurocrine Biosciences of San Diego, California. The patent rights in these inventions have been assigned to the United States of America.

The field of use would be limited to IL–4 pseudomonas exotoxin fusion protein therapeutics.

DATES: Only written comments and/or applications for a license which are received by NIH on or before January 26, 1998 will be considered.

ADDRESSES: Requests for copies of the subject issued patents and pending patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven Ferguson, Senior Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852. Telephone: (301) 496–7056, ext. 266; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the pending patent applications.

SUPPLEMENTARY INFORMATION: The present inventions relate to a fusion protein construct which is able to target malignant glial cells in the brain and potentially other malignant cells throughout the body which overexpress the IL–4 receptor protein. The construct has two parts; a targeting moiety and a toxin. The targeting moiety is the IL–4 cytokine while the toxin is a modified pseudomonas-exotoxin. The construct can be delivered to the brain using a convention-enhanced methodology to target and destroy cancerous cells.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S. 209 and 37 CFR § 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of the 35 U.S.C. 209 and 37 CFR § 404.7.

Applications for a license to the field of use described in this Notice will be treated as objections to the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 17, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–28380 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); Notice of Meeting To Discuss the Procedures and Activities of the National Toxicology Program (NTP) Center for the Evaluation of Alternative Toxicological Methods and the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)

SUMMARY: Pursuant to Public Law 103–43, notice is hereby given of a public meeting sponsored by the NIEHS and the NTP, U.S. Public Health Service, to discuss the planned procedures and activities of a new NTP Center for the Evaluation of Alternative Toxicological Methods and the ICCVAM, and to receive comments from invited participants and the public to assist with future activities and priorities.

The meeting will be held in the Conference Center, Building 101, South Campus, NIEHS, 111 Alexander Drive, Research Triangle Park, North Carolina 27709, on November 7, 1997, from 8:45 a.m. to 4:00 p.m.

Background Information: Public Law 103–43 directed the NIEHS to develop and validate alternative methods that

can reduce or eliminate the use of animals in acute or chronic toxicity testing, establish criteria for the validation and regulatory acceptance of alternative testing methods, and recommend a process through which scientifically validated alternative methods can be accepted for regulatory use. Criteria and processes for validation and regulatory acceptance were developed in conjunction with 14 other Federal agencies and programs with broad input and participation from the public. These are described in the document "Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the Ad—Hoc Interagency Coordinating Committee on the Validation of Alternative Methods," NIH Publication 97–3981, March 1997. The Report's recommendations include the establishment of an interagency coordinating committee whose functions would include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. In response to these recommendations, the NIEHS, in collaboration with 13 other Federal agencies and programs, recently established the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). The ICCVAM is composed of representatives from NTP Executive Committee agencies and several other federal regulatory and research agencies. The ICCVAM addresses toxicological test method issues that are common to multiple agencies without impinging on considerations unique to individual programs and agencies. Coordinated test method peer reviews are expected to facilitate the acceptance decision process, with final regulatory acceptance recognized as the purview of each Federal agency according to its regulatory mandates.

A NTP Center for the Evaluation of Alternative Toxicological Methods is being established to work with ICCVAM to carry out related activities and to implement the Report's recommendations. The Center proposal includes the opportunity for public-private partnerships to enhance the level and scope of the Center's activities. The planned procedures and activities of the Center and ICCVAM will be discussed at this meeting. NIEHS has invited knowledgeable individuals to participate in this meeting from a cross section of stakeholder organizations and institutions concerned with the development, validation, and use of alternative toxicological methods.

Tenetative Agenda: The NIEHS and Interagency Staff will present the proposed procedures and activities of the Center and the ICCVAM; opportunities for public-private partnerships in the development, validation, and review of alternative methods; and the role of the Advisory Committee on Alternative Toxicological Methods.

8:45 a.m. Welcome and Introduction
9:05 a.m. Procedures and Activities of the Center and ICCVAM
11:45 a.m. Public comment
12:00 p.m. Lunch Break
1:00 p.m. Partnership Opportunities
2:45 p.m. Discussion on the Role of the Advisory Committee
3:30 p.m. Public Comment
4:00 p.m. Adjourn

A description of the Center follows this announcement.

Public Participation: The entire meeting will be open to the public with attendance limited only by space available. Members of the public who wish to present oral statements should contact Dr. Larry Hart below by telephone, fax, or mail as soon as possible, but no later than October 31. Speakers will be assigned on a first come, first serve basis, and will be limited to five minutes in length to allow for a maximum number of presentations. Written comments accompanying the oral statements are encouraged and should be submitted in advance if possible by mail or fax to Dr. Hart, NIEHS, P.O. Box 12233, MD: A3–07, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971 or FAX (919) 541–0295. Persons needing special assistance, such as sign language interpretation or other special accommodations should contact Dr. Hart as soon as possible.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Co-Chair, ICCVAM, Environmental Toxicology Program, P.O. Box 12233, NIEHS, Research Triangle Part, North Carolina 27709, telephone (919) 541–7997, FAX (919) 541–0947. The NIH Publication 97–3981, Validation and Regulatory Acceptance of Toxicological Test Methods, a Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods, can be located on the internet at http://ntp-server.niehs.nih.gov/htdocs/ICCVAM/ICCVAM.html, or a copy may be requested from the NTP Liaison Office, P.O. Box 12233, MD A3–01, Research Triangle Park, NC, 27709, Fax 919–541–0295, tel 919–541–0530, or email: britton@niehs.nih.gov.

Attachment

Dated: October 20, 1997.

Kenneth Olden,

Director, National Toxicology Program.

[Revised 10–15–97 [1]]

NTP Center for the Evaluation of Alternative Toxicological Methods

Background/Need: Government, industry, and public interest groups have the responsibility to protect public health and the environment, and to prevent unnecessary exposure to hazards. In carrying out these responsibilities, scientists develop and adopt health and ecotoxicological testing methods to evaluate the potential adverse effects of chemicals or to demonstrate their safety. These methods are used to generate hazard identification and dose-response data to support health and environmental risk assessments for chemicals and products during their development, manufacture, distribution, use, and disposal.

Toxicological testing methods are being developed and revised by the public and private sector with increasing frequency to provide for improved assessment of toxicity, to evaluate toxicity endpoints not previously assessed, to incorporate advances in biotechnology and out understanding of toxic mechanisms at the molecular and cellular level, to provide for improved efficiency (less time and expense), and to replace, reduce, and refine animal use. Requirements for the use of new test methods to generate information for regulatory purposes are twofold. First, the method must meet the criteria for validation, i.e., there must be scientific evidence that the method is reliable and relevant for its proposed use. Second, the method must meet the criteria for acceptance, e.g., there must be a determination that the use of the method will fulfill a specific need for one or more federal agencies. Until now, there has been no established process for federal agencies to coordinate the review of proposed methods with other federal agencies that may find the method useful.

Participants at a recent National Toxicology Program (NTP) sponsored workshop [2] and an ad hoc interagency committee [3] recommended that an interagency coordinating committee be established whose functions would include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. The NIEHS, in collaboration with 13 other federal agencies and programs, has recently established a standing committee that will carry out these functions. Designated as the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), it is composed of representatives form the NTP Executive Committee agencies and several other federal regulatory and research agencies. The ICCVAM focuses on toxicological test method issues that are common to multiple agencies without impinging on considerations unique to individual programs and agencies. Final regulatory acceptance will be the purview of each Federal agency according to its regulatory mandates; however, the ICCVAM coordinated peer review should facilitate the acceptance decision process.

In order to implement the NTP workshop and ad hoc interagency committee recommendations, an NTP Center for the Evaluation of Alternative Toxicological Methods is being established to work with ICCVAM to carry out related activities. The Center includes the opportunity for public-private partnerships to enhance the level and scope of its activities. The Interagency Committee and Center initiatives implement Public Law 103–43 that directs NIEHS to develop a process to achieve regulatory acceptance of alternative test methods.

Goal: The goal of the Center and ICCVAM is to promote the scieitnifc validation and regulatory acceptance of new test methods that are more predictive of human and ecological effects than currently available methods.

Objective: To achieve this goal, the Center will collaborate with the ICCVAM to facilitate scientific peer review and interagency consideration of new test methods of multi-agency interest. Emphasis will be on methods with an appropriate biological basis for the species of concern that provide: improved toxicity characterization; savings in time and costs; and where possible, the refinement, reduction, and replacement of animal use.

Regulatory Impact/Benefits: The expected benefits of this initiative include:

- Increased efficiency and effectiveness of test method review;
- Elimination of duplicative efforts across regulatory agencies;
- Utilization of shared expertise across the Federal system;
- Optimal utilization of scientific expertise outside the Federal government;
- Decreased total transaction costs and time to evaluate new and revised test methods;
- Elimination of redundant testing;
- Increased likelihood that new test methods will meet the needs of agencies; and
- Increased harmonization of testing requirements across the federal government and internationally.

This program will benefit all parties by creating a forum to solicit expert input and provide communication during development, validation and review of proposed new test methods. Such methods, after acceptance by regulatory agencies, will provide for improved human health and ecological risk assessment and potential savings in time and costs. The program will also benefit animal welfare by the adoption of methods that refine, reduce, or replace the use of animals where scientifically feasible.

Structure/Function: The overall structure encompasses the ICCVAM, a Center Office, Peer Review and Expert Panels, and a Federal Advisory Committee.

The ICCVAM consists of representatives from federal regulatory and research agencies that generate or use information from toxicological test methods to support human health or environmental risk assessments. Members serve as points of contact and as sources to identify technical experts from their agencies to serve on specific topical workgroups. Committee activities may include the following, as appropriate:

- Evaluate the status of validation and make recommendations to agencies regarding the scientific usefulness of test methods and their potential applicability;
- Coordinate technical reviews of proposed new and revised test methods of interagency interest;
- Facilitate interagency communication and information sharing;
- Serve as an interagency resource and communication link with parties outside of the Federal government, including academic, other government, industry, and public interest groups;
- Assist agencies in assessing test method needs;
- Provide guidance to agencies and other stakeholders on criteria and processes for the development, validation and acceptance of tests;
- Promote awareness of accepted U.S. test methods; and
- Advocate harmonization of test methods nationally and internationally.

The Center Office is located at NIEHS and consists of 3–5 government professional and administrative staff augmented with appropriate contract support.[4] The Center will collaborate with the ICCVAM to carry out activities to accomplish the following:

- Communicate with interested stakeholders, and facilitate communication during the development and validation process with appropriate agencies; and
- Assess the completeness of submissions and determine if there are sufficient data for test methods to undergo independent public scientific peer review;
- Arrange for scientific peer reviews;
- Organize expert panels and/or workshops to assess the validation status of a method or group of methods;
- Provide recommendations and results to research and regulatory agencies;
- Prepare, publish, and distribute reports and information about new test methods.

Peer Review Panels will be asked to develop scientific consensus on the usefulness of test methods to generate information for specific human health and/or ecological risk assessment purposes. They will discuss the biological relevance of the new test to the toxicity of interest. They will address how and when the new test method can partially or fully replace existing methods or approaches. When appropriate, panels will be asked to identify whether additional validation studies are necessary to adequately evaluate a method, and to identify additional research to support the development of mechanism-based test methods.

It is anticipated that expert review panels will also be convened to evaluate the adequacy of current methods for assessing specific toxicities, to identify areas in need of improved or new methods, and to evaluate proposed validation studies. Agencies would use this information to establish priorities for appropriate research, development, and validation efforts in collaboration with interested parties.

Products of the review process will be published reports that present a comprehensive peer review of the data substantiating the validity of a new method. The ICCVAM will forward recommendations regarding the scientific validity and potential acceptability of test methods to agencies for consideration. Each Federal agency will then, according to its regulatory mandates, determine the regulatory acceptability of a method.

A Federal Advisory Committee on Alternative Toxicological Methods, composed of knowledgeable representatives from academia, industry, public interest/animal welfare organizations, federal and state government agencies, and the international community will review and provide advice on the activities and priorities of the Center, and advice on ways to foster partnership activities and interactions among all the stakeholders.

Funding: Activities of the Center will be funded by a pooling of financial resources from interested partners, which may include federal agencies, industry, and other parties. NIEHS will provide core funding and professional and administrative staff for the Center. Other agencies will provide appropriate representatives and expert staff for the ICCVAM and its associated activities, including appropriate agency liaisons for peer review activities.

Conflict of Interest Issues: Scientific peer review must be conducted by persons that are financially unencumbered with the outcome of the evaluation. All peer reviews will be required to comply with Federal government conflict of interest standards. Similarly, financial support of peer review activities must be free of any direct or apparent conflict of interest. To this end, funds to support Center activities will normally be deposited to the federal government and designated for the Center. NIEHS will disburse funds in accordance with federal regulations and guidelines.

[FR Doc. 97–28373 Filed 10–24–97; 8:45 am]

BILLING CODE 4140–01–M

[1] This proposal was originally discussed at an NIEHS/NTP Workshop on "Developing Partnerships for the Validation of New Approaches for Toxicological Evaluation," held July 22, 1996 at the NIEHS, Research Triangle Park, NC.

[2] Final Report: National Toxicology Program Workshop on Validation and Regulatory Acceptance of Alternative Toxicological Test Methods," March, 1996, National Institute of Environmental Health Sciences, Research Triangle Park, NC, USA.

[3] Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods," NIH Publication 97–3981, March 1997. National Institute of Environmental Health Sciences, Research Triangle Park, NC. USA.

[4] The project concept was peer reviewed and approved by the NTP Board of Scientific Counselors at their December 13, 1996 meeting.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–45]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: November 3, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20017.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C., telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the proposed "Housing Discrimination Information Form."

The Department will use the Housing Discrimination Information Form (revised Housing Discrimination Complaint Form (HUD–903)) for the collection of information from person(s) who wish to file a housing discrimination complaint. Subsequent information will be used for notifying persons against whom the complaint is filed as required by Section 810 [42 U.S.C. 3610] of the Fair Housing Act; and Part 103, Subpart B, of the implementing regulations, 24 CFR 14 et. al., Implementation of the Fair Housing Amendments Act of 1988; Final Rule.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by November 3, 1997.

(1) Title of the information collection proposal: Housing Discrimination Information Form.

(2) Summary of the collection of information: Each respondent (claimant) would be required to submit the following information:

1. Name, Address, Telephone Number, Other Person to Contact.
2. Name and address of the person(s) who the complaint is against.
3. Address or other identification of the housing involved.
4. Brief description of the alleged violation and prohibited bases of the complaint.
5. Date(s) of the alleged violation.

(3) Description of the need for the information and its proposed use:

The form is necessary for the collection of information from person(s) who wish to file a housing discrimination complaint under the Fair Housing Act. It will be used to contact complainants and for making preliminary assessments regarding HUD's jurisdiction over the complaint. Subsequent data will be furnished to person(s) against whom complaints are filed, as required by statute. The form provides information to make the public aware of their fair housing rights. The new form has been simplified. It is written in plain English; is user-friendly; takes less time to complete; and enhances the quality and clarify of information collected that is required to investigate alleged complaints of housing discrimination.

(4) Description of the likely respondents, and proposed frequency of the response to the collection of information:

Claimants who wish to file a complaint of housing discrimination.

The estimated number of respondents is 10,750. The proposed frequency of the response to the collection of information is one time.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 10,750.

Total burden hours: 3,583 (@ 20 minutes per response).

Total Estimated Burden Hours: 3,583.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 21, 1997.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 97–28388 Filed 10–24–97; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment, Receipt of Application for, and Intent To Issue, Incidental Take Permit for Development of Eight Residential Lots in Panguitch, Garfield County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application for, and intent to issue permit.

SUMMARY: Jose Noriega, Sam Zitting, and Phillip Finch have applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants have been assigned permit number PRT–835638. The requested permit, which is for a period of 20 years, would authorize incidental take of the threatened Utah Prairie Dog *(Cynomys parvidens)*. The proposed take would occur as a result of development of eight residential lots totaling 3.11 acres of privately-owned property located immediately south of Panguitch, Garfield County, Utah.

The Service has prepared the Environmental Assessment for issuance of the incidental take permit. The Applicants have prepared a habitat conservation plan as part of the incidental take permit application. A determination of whether jeopardy to the species will occur, or a Finding of No Significant Impact (FONSI), and/or issuance of the incidental take permit, will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10© of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application must be received on or before November 26, 1997.

ADDRESSES: Persons wishing to review the permit application may obtain a copy by writing to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115. Documents will be available for public inspection by written request, or by appointment only, during business hours (8:00 a.m. to 4:30 p.m.) at the above address.

Written data or comments concerning the permit application should be submitted to the Assistant Field Supervisor, Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** above). Please refer to permit number PRT–835638 in all correspondence regarding these documents.

FOR FURTHER INFORMATION CONTACT: Assistant Field Supervisor or Marilet A. Zablan, Wildlife Biologist, at the above U.S. Fish and Wildlife Service office in Salt Lake City, Utah (see **ADDRESSES** above) (telephone: (801) 524–5001, facsimile: (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of any threatened or endangered species, such as the threatened Utah Prairie Dog. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

Applicants

The Applicants plan to develop eight residential lots totaling 3.11 acres, located in section 32 in Township 34 South, Range 5 West, Salt Lake Base and Meridian, immediately south of Panguitch, Garfield County, Utah. Development is planned to include homes, garages, landscaping, streets, driveways, and installation of associated infrastructure such as natural gas, sewer, water, electrical power, and telephone service. The construction will impact 3.11 acres of Utah Prairie Dog habitat, and the Applicants foresee an incidental take of a maximum of 12 Utah Prairie Dogs through trapping and relocation and as a result of direct mortality during construction. The Applicants propose to compensate for this habitat loss by payment of $900 per acre for each acre developed, to be used for public land management actions for Utah Prairie Dog conservation and to implement recovery actions for conservation of the Utah Prairie Dog, through contribution to the Utah Prairie Dog Conservation Fund. Part or all of this mitigation fee may be paid for through Service-approved in-kind Utah Prairie Dog habitat improvement work by the Applicants.

A no-action alternative to the proposed action was considered, consisting of foregoing the development of the eight lots totaling 3.11 acres of Utah Prairie Dog habitat. The no-action alternative was rejected for reasons including loss of use of the private property, resulting in significant economic loss to the Applicants.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*).

Dated: October 20, 1997.

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, Colorado.

[FR Doc. 97–28348 Filed 10–24–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From South Dakota in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from South Dakota in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff and contract specialists in physical anthropology and archeology in consultation with representatives of the Three Affiliated Tribes of North Dakota.

During the early 1900s, human remains representing one individual were recovered after eroding out of a cutbank at the Peoria Bottom Village (39HU3), Hughes County, South Dakota by unknown person(s). In 1994, these human remains and geographic provenance information were discovered in the collections of SARC. No known individual was identified. No associated funerary objects are present.

Based on ceramics, the Peoria Bottom Village has been identified as an Extended Variant of the Coalescent Tradition occupied between 1550–1675 A.D.

In 1915, human remains representing one individual were excavated from the Leavenworth site (39CO9), Corson County, SD by W.H. Over of the University of South Dakota Museum. In 1976, these human remains were transferred to the SARC. No known individual was identified. The two associated funerary objects are metal projectile points embedded in the remains.

Based on the most likely burial location in the village cemetary, this individual has been determined to be Native American. The Leavenworth site is a well-documented Arikara village occupied between 1797–1832 A.D. based on historical documents (Lewis and Clark, 1804; Catlin, 1832; Maximilian, 1833) and material culture of the site.

In 1917 and 1920, human remains representing four individuals were excavated from the Mobridge Village site (39WW1), Walworth County, South Dakota by W.H. Over of the University of South Dakota Museum. In 1976, these human remains were transferred to the SARC. No known individuals were identified. The two associated funerary objects are an unmodified bird bone and one unmodified turtle scapula.

Based on ceramic types and earthlodge architecture, the Mobridge Village site has been identified as a postcontact Coalescent Tradition occupation (1675–1780 A.D.). Based on manner of interment, these individuals have been identified as Native American.

In 1917 or 1921, human remains representing one individual were excavated from the Cheyenne River Village (39ST1), Stanley County, South Dakota by W.H. Over of the University of South Dakota Museum. In 1987, the human remains and geographical provenance information were discovered in the collections of the SARC. No known individual was identified. No associated funerary objects are present.

Based on manner of interment, this individual has been determined to be Native American. The Cheyenne River Village has been identified as a multi-component site of the Extended Middle Missouri, Extended Coalescent, and Post-Contact Coalescent periods. The manner of interment of this individual is consistent with the Coalescent burial customs dating from 1550–1780 A.D.

In 1987, human remains representing one individual were found in SARC collections. No known individual was identified. No associated funerary objects are present.

There was no accompanying geographic or recovery information with this individual. The cranial morphology

of this individual is consistent with Arikara populations.

In 1990, human remains representing two individuals were recovered from site 39HK along the Bad River, Haakon County, South Dakota by hikers. No known individuals were identified. The five associated funerary objects are bone tool fragments.

The cranial morphology of the adult individual is consistent with Arikara populations.

In 1991, human remains representing one individual were recovered from site 39BK20, Scout Island, Brookings County, South Dakota following their discovery by hikers. No known individuals were identified. No associated funerary objects are present.

Based on ceramics, site 39BK20 has been identified as an occupation of the Initial Middle Missouri period (900–1400 A.D.). Although Initial Middle Missouri sites are most likely related to the Mandan, the craniometric morphology of this individual are consistent with known Arikara populations.

In 1992, human remains representing one individual were transferred to the SARC from the South Dakota School of Mines and Technology, Rapid City, SD. No known individual was identified. The three associated funerary objects are a ceramic rim sherd, a cobble, and a bear femur.

No additional collection information was available from the South Dakota School of Mines and Technology. The presence of this rim sherd indicates this burial dates from the Extended Variant of the Coalescent Tradition (1550–1675 A.D.).

During the early 1990s, human remains representing one individual were found at site 39HU, Hughes County, South Dakota by Fred Jennewein. In 1993, this individual was transferred to SARC. No known individual was identified. No associated funerary objects are present.

Cranial morphology and geographic location of this individual indicate a likely affiliation with the Arikara.

In 1994, human remains representing one individual were transferred to SARC from the Adams Museum, Deadwood, South Dakota. No known individual was identified. No associated funerary objects are present.

No museum records were found regarding provenance or acquisition of this individual. Craniometric morphology for this individual is consistent with Coalescent populations dating between 1400–1862 A.D.

Based on continuities of material culture, technology, and village sites as well as oral histories, the Coalescent tradition has been identified as Arikara in North and South Dakota from the late 1300s through the historic period. The present day Three Affiliated Tribes consist of the Arikara, the Mandan, and the Hidatsa.

In 1991, human remains representing eleven individuals were recovered from an eroding cutbank at site 39CA102, Campbell County, South Dakota by SARC personnel. No known individuals were identified. The 60 associated funerary objects include one projectile point, one biface, one celt, four modified stone flakes, seven unmodified stone flakes, six fire-cracked rocks, unmodified stones, four fossil fragments, one bone bead, one incomplete rodent skeleton, a wolf mandible and maxilla, and mammal bone fragments.

Based on cultural material recovered during a surface survey in 1986, site 39CA102 has been identified as a Plains Village Tradition occupation dating to 900–1700 A.D. Craniometric measurements of the single complete cranium are consistent with those of known Mandan populations.

In 1992, human remains representing one individual were recovered by the Pierre Police Department. Investigations revealed that the remains had been removed from their original location and recently reburied. In 1992, these remains were transferred to the SARC. No known individual was identified. No associated funerary objects are present.

The original burial location of this individual is unknown. Craniometric measurements of this individual are consistent with known Mandan populations.

In about 1992, human remains representing one individual from an unknown site in Walworth County, South Dakota were received by law enforcement officials from person(s) unknown. No known individual was identified. No associated funerary objects are present.

Craniometric measurements and morphology of this individual are consistent with those of known Mandan populations.

In 1992, human remains representing one individual were transferred to the SARC from the Office of the State Archeologist of Iowa. No known individual was identified. No associated funerary objects are present.

These human remains were found in the collections of the Iowa Masonic Library, Cedar Rapids, IA and transferred to the Office of the State Archeologist of Iowa. No documentation was discovered in the library's record concerning provenance or acquisition of this individual. Craniometric morphology of this individual are consistent with those of known Mandan populations.

In 1938, human remains representing one individual were removed from the Thomas Riggs site (39HU1) by person(s) unknown, who sent the remains to the Sioux City Public Museum, Sioux City, IA. In 1994, these human remains were found in the collections of the Sioux City Public Museum and transferred to the SARC. No known individual was identified. No associated funerary objects are present.

Based on radiocarbon samples, the Thomas Riggs site has been identified as an occupation dating to 1378–1524 A.D., and is affiliated with the Extended varient of the Middle Missouri Tradition based on cultural materials.

In 1986, human remains representing two individuals were recovered during construction activities at site 39HL4, Lake Poinsett, Hamlin County, South Dakota and donated to the SARC. No known individuals were identified. The 19 associated funerary objects include ceramic fragments, one bone tool handle, two modified freshwater shells (pendants?), one unmodified mollusk shell, and one clay pipe fragment.

Based on the type of ceramics found with the burials, these individuals have been determined to be Native American and date from the Great Oasis Aspect of the Terminal Woodland period (950–1120 A.D.).

In 1993, human remains representing one individual were transferred to SARC from the Dacotah Prairie Museum, Aberdeen, South Dakota. No known individual was identified. No associated funerary objects are present.

No museum records were found regarding provenance or acquisition of this individual. Craniometric measurements for this individual fall between known Mandan and Arikara populations.

In 1994, human remains representing one individual from the Twelve Mile Creek Village and Mounds (39HT1,3) were found in collections at the SARC. No known individual was identified. No associated funerary objects are present.

Between 1906 and 1940, several excavations of the Twelve Mile Creek Village and Mounds site recovered human remains, however, there is no intrasite provenance for this individual. Based on ceramics and radiocarbon samples, this site has been dated to the Lower James phase of the Middle Missouri Tradition (900–1350 A.D.).

In 1995, human remains representing one individual were recovered from site 39ST291, Stanley County, South Dakota by SARC personnel during a construction project. No known individual was identified. The two associated funerary objects are shell tinklers.

Craniometric measurements of this individual are consistent with those of known Mandan populations.

Based on continuities of material culture, architecture, and skeletal morphology, in addition to oral tradition and historical evidence, the cultural affiliation of the sites and individuals listed above can be affiliated with Mandan. This includes villages and sites determined to be affiliated with the Middle Missouri Tradition (encompassing the Initial, Extended, and Terminal variants). In 1870, the Mandan, Hidatsa, and Arikara tribes were moved to the Fort Berthold Indian Reservation in North Dakota and have since been known as the Three Affiliated Tribes.

Based on the above mentioned information, officials of the SARC have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 34 individuals of Native American ancestry. Officials of the SARC have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 93 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Three Affiliated Tribes of North Dakota.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Three Affiliated Tribes of North Dakota, and Standing Rock Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709–1257; telephone: (605) 394–1936, before November 26,, 1997. Repatriation of the human remains and associated funerary objects to the Three Affiliated Tribes of North Dakota may begin after that date if no additional claimants come forward.

Dated: October 21, 1997.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Assistant Manager, Archeology and Ethnography Program.

[FR Doc. 97–28389 Filed 10–24–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on July 24, 1997. The February 10, 1997, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, CO 80225–0007; telephone 303–236–1061, extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1997. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the July 24, 1997, **Federal Register** notice:

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

New contract actions: 28. Burley and Southwest IDs, Minidoka Project, Idaho: Warren Act contract with charge to allow for use of project facilities to convey non-district water to Southwest ID.

Modified contract actions: 4. Consolidated ID, Spokane Valley Project, Washington; Individual Contractors, Crooked River Project, Oregon; Lower Payette Ditch Company Ltd., Pioneer Ditch Company, Boise Project, Idaho; Tumalo ID, Crescent Lake Dam Project, Oregon; Monroe Creek ID, Mann Creek Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

23. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

Discontinued contract actions: 12. Willamette Basin water users, Willamette Basin Project, Oregon: One water service contract for the exchange of up to 112 acre-feet of water for diversion above project reservoirs.

Completed contract actions: 7. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet . Contract executed July 21, 1997.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

New contract actions: 29. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

30. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

Modified contract actions: 3. Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term and interim renewal water service contracts with contractors whose contracts expire between 1997 and 1998; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Pub. L. 102–575.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293-8536.

Contract actions modified: 1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

34. San Diego County Water Authority, San Diego, California, San Diego Project: Title transfer of the first and second barrels of the San Diego Aqueduct.

54. Arizona State Lands, BCP, Arizona: Water delivery contract for 1,400 acre-feet of Colorado River water for domestic use.

60. Arizona State Land Department, BCP, Arizona: Water delivery contract for delivery of up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation use.

Contract actions completed: 1. Sturges Farms, Inc., BCP, Arizona: Water delivery contract for 8,500 acre-feet of irrigation water.

56. City of Yuma, BCP, Arizona: Supplemental and amendatory water delivery contract to amend the city's 50,000 acre-feet of Colorado River water diversion entitlement to a 50,000 acre-feet consumptive use entitlement.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract actions: 1.(f) Harrison F. Russell and Patricia E. Russell; Aspinall Unit, CRSP; Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including home lawn and livestock watering (non-commercial).

25. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of non-project water in Joes Valley Reservoir and/or Huntington North Reservoir.

26. Town of Taos, San Juan-Chama Project, New Mexico: Contract to purchase water from Town of Taos to increase native flows in Rio Grande for benefit of the Silvery Minnow.

Completed contract actions: 19. Department of Energy, San Juan-Chama Project, New Mexico: Reassignment of rights under Contract No. 7–07–51–X0883 from the Department of Energy to the County of Los Alamos for 1,200 acre-feet of San Juan-Chama Project water to be used for municipal, commercial, residential, and scientific purposes

22. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for SOD modification of Lost Creek Dam. The estimated cost of the modification is $16,000,000 of which 15 percent must be repaid from both irrigation and M&I use.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247-7730.

New contract actions: 33. Fryingpan-Arkansas Project, Colorado: Repayment contract with Southeastern Colorado Water Conservancy District for repayment of cost of SOD modifications to Pueblo Dam.

Modified contract actions: 5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

15. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Draft basis of negotiation has been submitted to the Regional Office for review.

17. Canyon Ferry Unit, P-SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997. Basis of negotiation completed for renewal of existing contract for an additional 10 years. A temporary contract has been issued pending negotiation of the long-term contract for water service. A 10-year contract was signed on August 20, 1997.

20. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract will be issued pending negotiation of the long-term contract.

27. Lower Marias Unit, P-SMBP, Montana: Water service contract expires June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Basis of negotiation is in the process of being completed; existing contract was extended for 1 year pending negotiation of long-term contract.

32. Belle Fourche Unit, P-SMBP, South Dakota: Basis of negotiation has been approved for the negotiation of a long-term repayment contract deferring the Belle Fourche ID's 1997 construction payment and also reduction of the District's annual payment.

Completed contract actions: 17. Canyon Ferry Unit, P-SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997. Basis of negotiation completed for renewal of existing contract for an additional 10 years. A temporary contract has been issued pending negotiation of the long-term contract for water service. A 10-year contract was signed on August 20, 1997.

Dated: October 20, 1997.

Maryanne C. Bach,

Acting Deputy Director, Program Analysis Office.

[FR Doc. 97–28345 Filed 10–24–97; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 3, 1997 at 3:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–757 and 759 (Final) (Collated Roofing Nails from China and Taiwan)—briefing and vote.
5. Outstanding action jackets:

1. Document No. EC–97–014: Approval of final report in Inv. No. 332–375 (Dynamic Effects of Trade Liberalization: An Empirical Analysis).

2. Document No. GC–97–064: Approval of recommendation of request for oral argument on award of monetary sanctions; requests for leave to file additional briefs; and request to strike affidavit in Inv. No. 337–TA–370 (Certain Salinomycin Biomass and Preparations Containing Same).

3. Document No. GC–97–066: Approval of notice of proposed rulemaking on FOIA (Freedom of Information Act), Privacy Act, ethics, and notices.

4. Document No. ID–97–023: Approval of institution of a section 332 investigation concerning Macadamia Nuts: Economic and Competitive Conditions Affecting the U.S. Industry.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 23, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–28487 Filed 10–23–97; 11:05 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Advisory Council on Violence Against Women

AGENCIES: United States Department of Justice and United States Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Council on Violence Against Women, co-chaired by the Attorney General and Secretary of Health and Human Services, will meet November 14, 1997 in Room 800 of the United States Department of Health and Human Services, 200 Independence Avenue, NW, Washington, D.C. 20201. Scheduled to begin at 9:00 a.m. and adjourn at 5:00 p.m., the meeting will include opening remarks by the Attorney General and Secretary Shalala, committee meetings, and an afternoon plenary session.

Committee meetings and the plenary session will be open to the public on a space-available basis. Reservations are required and a photo ID will be requested for admittance. To reserve a space and advise of any special needs, interested persons should call the Department of Health and Human Services at the number listed below. Sign language interpreters will be provided. Anyone wishing to submit written questions to this session should notify the Department of Health and Human Services, Office of the Secretary by Tuesday, November 11, 1997. The notification may be delivered by mail, telegram, or facsimile or in person. It should contain the requestor's name and his or her corporate designation, consumer affiliation, or government designation along with a short statement describing the topic to be addressed. Interested parties are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to the Office of the

Secretary, United States Department of Health and Human Services, Room 615F, 200 Independence Avenue, NW, Washington, D.C. 20201, telephone (202) 690–8157, facsimile (202) 690–7595.

Bonnie J. Campbell,

Director, Violence Against Women Office, United States Department of Justice.

[FR Doc. 97–28316 Filed 10–24–97; 8:45 am]

BILLING CODE 4410–20–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675

Notice is hereby given that a proposed consent decree in *United States* v. *Four Winns, a division of Recreational Boat Group, L.P.*, Civil Action No. 1:97cv831, was lodged on October 6, 1997 with the United States District Court for the Western District of Michigan. The proposed consent decree resolves the United States' claims against the defendant for past costs incurred in connection with the Kysor Industrial Corporation Superfund Site and the Northernaire Plating Company Superfund Site located in Cadillac, Michigan, in return for a total payment of $150,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Decision, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Four Winns, a division of Recreational Boat Group, L.P.*, DOJ Ref. #90–11–2–837C.

The proposed consent decree may be examined at the office of the United States Attorney, 330 Ionia Avenue NW, Suite 501, Grand Rapids, Michigan 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–28315 Filed 10–24–97; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–156]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as mended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: November 12, 1997, 9:00 a.m. to 6:00 p.m.; and November 13, 1997, 9:00 a.m. to 6:00 p.m.

ADDRESSES: Air Transport Association, 1301 Pennsylvania Avenue, NW, Suite 1100, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–6654.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Update and Progress of Recommendations from September Meeting
—Resolution of Outstanding Issues and Items from September Meeting
—Short-Term and Long-Term Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 20, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–28302 Filed 10–24–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541

AGENCY: NATIONAL SCIENCE FOUNDATION.

ACTION: Notice of Permit applications received Under the Antarctic Conservation Act of 1978 (Pub.L. 95–541)

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 20, 1997. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant*
   Alexandra C. Brown, University of Colorado, INSTAAR, Campus Box 450, Boulder, Colorado 80309–0450, Boulder, Colorado 80309–0450

Permit Application No. 98–016

Activity for Which Permit Is Requested

Enter Site of Special Scientific Interest.

The applicant proposes to enter the Cape Royds Site of Special Scientific Interest for purposes of collecting soil samples to isolate and identify natural organic matter contained therein. A minimum amount of soil will be removed as close to the shoreline as possible (~1kg), thereby minimizing impact on the nesting colony. Laboratory analysis will be performed in the Crary Lab at McMurdo Station. In addition, a survey of Pony lake will be performed at different cross sections. Dissolved oxygen, conductivity, depth, light intensity, and pH will be measured. All water samples will be collected from the side of Pony Lake opposite of the penguin rookery.

Location: Cape Royds Site of Special Scientific Interest No. 1, Ross Island, Antarctica.

Dates: November 25, 1997 to January 20, 1998.

2. *Applicant*
   Philip R. Kyle, Department of Earth and Environmental Science, New Mexico Tech, Socorro, New Mexico, 87801

Permit Application No. 98–018

Activity for Which Permit Is Requested

Enter Site of Special Scientific Interest.

The applicant proposes to enter the Tramway Ridge, Site of Special Scientific Interest No. 11, on Mount Erebus to measure the temperature of the soil as a means of monitoring the volcanic activity of Mount Erebus. In addition, as the only area of soil on Mount Erebus, the applicant plans to measure the quantity of CO_2 in the soil and measure its flux into the atmosphere. This will provide information on the degassing behavior of the magmatic system underlying Mount Erebus.

Location: Tramway Ridge (SSSI #11), Mount Erebus, Ross Island, Antarctica.

Dates: December 1, 1997 to December 30, 1997.

3. *Applicant*
   Gary and Robert Miller, Biology Department, University of New Mexico, Albuquerque, NM 87131

Permit Application: 98–019

Activity for Which Permit Is Requested

Taking and Importing into the U.S.

The applicant proposes to collect blood samples (1.0–1.5 ml) from less than 200 adult penguins from each of the following species: *Pygoscelis adelie* (adelie), *Pygoscelis antarctica* (chinstrap) and *Pygoscelis papua* (gentoo). Blood will also be collected from about 20 *Eudyptes chrysolopha* (macroni). Tissue samples will be taken from the carcasses of chicks from the species listed above, including *Aptenodytes forsteri*. The samples will be used to analyze the phylogenetic relationships and the genetic variation of 2 major genera of penguins, the *Spheniscus* and *Pygoscelis* penguins. The Macaroni and Emperor samples will be used as outgroups to help elucidate the relationships of the other species. The applicant will study the major histocompatibility complex (MHC) genes from nuclear DNA and cytochrome b genes from mitochondrial DNA obtained from small tissue samples or whole blood samples. Molecular methods have the advantage of showing small intraspecific variations. This will enable the applicant to compare small genetic differences among populations to determine the distribution of genetic variation and predict the colonization history of populations.

The applicant will be traveling in the Antarctic Peninsula as a lecturer onboard a cruise ship and will visit many sites over the next two seasons. Sampling of breeding populations will take place on an opportunity basis and attempts will be made to collect 15 samples from each site. The blood and tissue samples will be returned to University of New Mexico for analysis.

Location: South Orkney Islands, South Shetland Islands, Antarctic Peninsula and East Antarctic Coastline.

Dates: November 15, 1997 to March 15, 1999.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 97–28383 Filed 10–24–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 5.44, "Perimeter Intrusion Alarm Systems," has been developed to provide guidance to licensees and applicants on selecting perimeter intrusion-detection alarm systems and their applications at nuclear power reactors, independent spent fuel storage installations, and certain special nuclear material processing facilities.

The NRC has verified with the Office of Management and Budget the determination that this regulatory guide is not a major rule.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, *Attention:* Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax at (301)415–5272. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 7th day of October 1997.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Director Office of Nuclear Regulatory Research.

[FR Doc. 97–28350 Filed 10–24–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 13e–3 and Schedule 13E–3, SEC File No. 270–1, OMB Control No. 3235–0007
Form S–8 SEC File No. 270–66 OMB Control No. 3235–0066
Regulations 14D and E and Schedules 14D–1 and 14D–9, SEC File No. 270–114, OMB Control No. 3235–0102

Notice of Exempt Preliminary Roll-Up Communication, SEC File No. 270–396, OMB Control No. 3235–0452
Industry Guides, SEC File No. 270–69, OMB Control No. 3235–0069

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 13e–3 and Schedule 13E–3 under the Securities Exchange Act of 1934 ("Exchange Act"), contains requirements regarding going private transactions by certain issuers or their affiliates. Issuers or affiliates engaging in a Rule 13e–3 transaction file a Schedule 13E–3 to disclose information to security holders about the transaction. Schedule 13E–3 results in an estimated total annual reporting burden of 30,996 hours.

Form S–8 is used by registrants to register employee benefit plan securities under the Securities Act of 1933 ("Securities Act"). The form provides information to the registrant's employees about the plan and registrant that enables them to make informed investment decisions. Form S–8 results in an estimated total annual reporting burden of 131,284 hours.

Regulation 14D applies to tender offers subject to Section 14(d)(1) of the Exchange Act, including, but not limited to any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E applies to any tender offer for securities other than exempted securities. Schedule 14D–1 contains disclosure about tender offers subject to Section 14(d)(1) of the Exchange Act. Schedule 14D–9 contains disclosure about solicitation/recommendation statements with respect to certain tender offers. The Regulations and Schedule result in an estimated total annual reporting burden of 129,656 hours.

A Notice of Exempt Preliminary Roll-Up Communication is required to be filed by a person making such a communication by Exchange Act Rules 14a–2(b)(4) and 14a–6(a). The Notice provides public information regarding ownership interests and any potential conflicts of interest. The Notice results in an estimated total annual reporting burden of 1 hour.

The Industry Guides provide guidelines for disclosure in documents submitted by registrants in specified industry groups such as oil and gas, insurance, and mining. They do not directly impose any reporting burden and therefore are assigned a total annual reporting burden of one reporting hour.

Written comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington DC 20549.

Dated: October 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28306 Filed 10–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22846; 812–10544]

Brantley Capital Corporation, et al.; Notice of Application

October 21, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 57(i) of the Investment Company Act of 1940 (the "Act"), and under rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: Applicants request an order to permit a business development company to co-invest with certain affiliates in portfolio companies.

APPLICANTS: Brantley Capital Corporation (the "Company"), Brantley Capital Management, LLC (the "Investment Adviser"), Brantley Venture Partners II, LP ("BVP II"), Brantley Venture Partners III, LP ("BVP III") (BVP II and BVP III, the "BVP entities"), and any entities currently or in the future advised by the Investment Adviser or by entities controlling, controlled by, or under common control with the Investment Adviser (together with the BVP entities, "Company Affiliates").[1]

FILING DATES: The application was filed on March 6, 1997 and amended on August 26, 1997, and on October 10, 1997. *Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 17, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 20600 Chagrin Blvd., Suite 1150, Cleveland, OH 44122.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser (202) 942–0562, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is a non-diversified closed-end investment company that has elected to be regulated as a business development company (a "BDC") under the Act.[2] The Company filed a registration statement on Form N–2 that became effective on November 26, 1996.

2. The Company was formed to invest primarily in the equity securities and equity-linked debt securities of private companies, and makes available significant managerial assistance to the issuers of such securities. The Company seeks to enable its stockholders to participate in investments not typically available to the public due to the private nature of a substantial majority of the Company's portfolio companies, the size of the financial commitment often required in order to participate in such investments, or the experience, skill and time commitment required to identify and take advantage of these investment opportunities.

3. At June 30, 1997, the Company had total assets valued at $40 million, which was primarily invested in short-term U.S. government securities pending investment in portfolio companies. The Company intends to invest a portion of its assets in equity securities of post-venture small-cap public companies. A post-venture company is a company that has received venture capital or private equity financing either (a) during the early stages of the company's business or the early stages of the development of a new product or service, or (b) as part of a restructuring or recapitalization of the company. The Company intends to limit its post-venture investments to companies which within the prior 10 years have received an investment of venture or private equity capital, have sold or distributed securities to venture or private equity capital investors, or have completed an initial public offering of equity securities.

4. The Company's investment objective is the realization of long-term capital appreciation in the value of its investments. In addition, whenever feasible in light of market conditions and the cash flow characteristics of the issuers of the securities in which it invests (collectively, the "portfolio companies"), the Company will seek to provide an element of current income primarily from interest, dividends and fees paid by its portfolio companies.

5. The BVP entities are venture capital limited partnerships not registered under the Act in reliance on sections 3(c)(1) and/or 3(c)(7) of the Act. The BVP entities, during the period from 1981 through 1996, in the aggregate have made investments in 32 small businesses, each with up to $20 million in annual revenue, either as part of early-stage financings, expansion financings, acquisition or buyout financings or special situations. The BVP entities generally have made venture capital investments similar to the investments to be made by the Company in private companies.

6. BVP II, a Delaware limited partnership, has committed capital of approximately $30 million from 14 limited partners representing primarily corporate and public pension funds which has been fully invested in 15 portfolio companies. Although its committed capital is fully invested, BVP II may elect to reinvest from time to time, rather than to distribute immediately, the cash proceeds from the harvest of existing investments prior to its scheduled final distribution in April 2000. The sole general partner of the controlling general partner and two other general partners of the Delaware limited partnership which is BVP II's managing general partner are executive officers of the Company and are principals of the Investment Adviser.

7. BVP III, a Delaware limited partnership, has committed capital of approximately $60 million from 16 limited partners representing primarily corporate and public pension funds. The committed capital currently is less than 40% invested in 9 portfolio companies. BVP III is not scheduled for final distribution until December 2003. The sole general partner of the controlling general partner and two other general partners of the Delaware limited partnership which is BVP III's managing general partner are executive officers of the Company and principals of the Investment Adviser.

8. The Investment Adviser is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940. The Investment Adviser was named originally as "Brantley Capital Management, Ltd.", and organized originally as a Delaware corporation on February 9, 1995. The Investment Adviser was reorganized as a Delaware limited liability company on November 25, 1996. The Investment Adviser is privately owned by its members, including certain executive officers of the Company who are principals of the Investment Adviser. The Investment Adviser currently provides investment advisory services solely to the Company. However, certain of the Investment Adviser's principals are also principals of several management companies organized as limited partnerships, each of which is the managing general partner in one of the BVP entities.

9. Applicants request an order under section 57(i) of the Act and under rule 17d–1 to permit the Company and Company Affiliates to co-invest in portfolio companies.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the SEC. Under section 57(b)(1) of the Act, persons who are affiliated persons of the directors or officers of a BDC within the meaning of section 2(a)(3)(C) of the Act are subject to section 57(a)(4). Under section 2(a)(3)(C), an affiliated person of another person includes any person directly or indirectly controlled by such other person.

2. Section 57(i) of the Act provides that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under sections 17(a) and 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. Rule 17d–1 under the Act generally prohibits affiliated persons of an investment company from entering into joint transactions with the company without prior SEC authorization. In passing upon applications under rule 17d–1(b), the SEC will consider whether the participation by the BDC in such joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that, because the BVP entities may be deemed to be under common control with the Investment Adviser through the common ownership of the BVP entities' respective managing general partners with the Investment Adviser and also through the common identity of certain principals of the BVP entities' managing general partners and the Investment Adviser, the BVP entities may be persons affiliated with the Company under section 57(b) of the Act and therefore may be prohibited by section 57(a)(4) of the Act and rule 17d–1 from participating in the proposed co-investment program without exemptive relief.

5. Applicants expect that co-investment in portfolio companies by the Company and Company Affiliates will increase favorable investment opportunities for the Company. Applicants state that an investment company that makes venture capital investments typically limits its participation in any one transaction to a specific dollar amount. Applicants state that, when the Investment identifies venture capital investment opportunities requiring larger capital commitments, it must seek the participation of other venture capital entities. Applicants believe that the availability of the Company Affiliates as investing partners of the Company may

[1] All existing entities that currently intend to rely on the order have been named as applicants, and any other existing or future entities that subsequently rely on the order will comply with the terms and conditions in the application.

[2] Section 2(a)(48) provides that a business development company is any closed-end company which is operated for the purpose of making investments in securities described in section 55(a) of the Act and makes available significant managerial assistance with respect to the issuers of these securities, and which elects BDC status under section 54(a).

alleviate that necessity in certain circumstances.

6. The Investment Adviser believes that it will be advantageous for the Company to co-invest with the investment objectives, policies, and restrictions of the Company. The Investment Adviser also believes that co-investment by the Company and the Company Affiliates will provide the opportunity for achieving greater diversification and exercising greater influence on the portfolio companies in which the Company and Company Affiliates co-invest.

7. Applicants submit that the formula for the allocation of co-investment opportunities among the Company on the one hand and the Company Affiliates on the other and the advance approvals of the required majority (within the meaning of section 57(o) of the Act) of directors of the Company, as provided in condition 1 below, will ensure that the Company will be treated fairly. Applicants also contend that the conditions to which the requested relief will be subject are designed to ensure that principals of the Investment Adviser would not be able to favor the Company Affiliates over the Company through the allocation of investment opportunities among them.

Applicants' Conditions

Applicants agree that the requested order shall be subject to the following conditions:

1. (a) To the extent that the Company is considering new investments, the Investment Adviser will review investment opportunities on behalf of the Company, including investments being considered on behalf of any Company Affiliate. The Investment Adviser will determine whether an investment being considered on behalf of a Company Affiliate ("Company Affiliate Investment") is eligible for investment by the Company.

(b) If the Investment Adviser deems a Company Affiliate Investment eligible for the Company (a "co-investment opportunity"), the Investment Adviser will determine what it considers to be an appropriate amount that the Company should invest. When the aggregate amount recommended for the Company and that sought by a Company Affiliate exceeds the amount of the co-investment opportunity, the amount invested by the Company shall be based on the ratio of the net assets of the Company to the aggregate net assets of the Company and the Company Affiliate seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b), the Investment Adviser will distribute written information concerning all co-investment opportunities to the Company's directors who are not "interested persons" as defined under section 2(a) (19) of the Act ("Independent Directors"). The information will include the amount the Company Affiliate proposes to invest.

(d) Information regarding the Investment Adviser's preliminary determinations will be reviewed by the Company's Independent Directors. The Company will co-invest with a Company Affiliate only if a required majority (as defined in section 57(o) of the Act) ("Required Majority") of the Company's Independent Directors conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Company and do not involve overreaching of the Company or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of shareholders of the Company and is consistent with the Company's investment objectives and policies as recited in filings made by the Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(iii) The investment by the Company Affiliate would not disadvantage the Company, and that participation by the Company would not be on a basis different from or less advantageous than that of the Company Affiliate; and

(iv) The proposed investment by the Company will not benefit the Investment Adviser or any affiliated entity thereof, other than the Company Affiliate making the coinvestment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Company has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Company will not make an investment for is portfolio if any Company Affiliate, the Investment for its portfolio if any Company Affiliate, the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition number 5.

3. For any purchase of securities by the Company in which a Company Affiliate is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration right shall be the same for the Company and the Company Affiliate.

4. If a Company Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Company, the Investment Adviser will notify the Company of the proposed disposition at the earliest practical time and the Company will be given the opportunity to participate in the disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Company Affiliate. The Investment Adviser will formulate a recommendation as to participation by the Company in the proposed disposition, and provide a written recommendation to the Company's Independent Directors. The Company will participate in the disposition to the extent that a Required Majority of its Independent Directors determine that it is in the Company's best interest. Each of the Company and the Company Affiliate will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Company Affiliate desires to make a "follow-on" investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Company or to exercise warrants or other rights to purchase securities of the issuer, the Investment Adviser will notify the Company of the proposed transaction at the earliest practical time. The Investment Adviser will formulate a recommendation as to the proposed participation by the Company in a follow-on investment and provide the recommendation to the Company's Independent Directors along with notice of the total amount of the follow-on investment. The Company's Independent Directors will make their own determination with respect to follow-on investment. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the Company's and the Company Affiliate's initial investments, the relative amount of investment by the Company Affiliate and the Company will be based on the ratio of the Company's remaining funds available for investment to the aggregate of the Company's and the Company Affiliate's remaining funds available for investment. The Company will participate in the investment to the extent that a Required Majority of its Independent Directors determine that it is in the Company's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions in the application.

6. The Company's Independent Directors will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions in the application were complied with.

7. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Company's Independent Directors under section 57(f).

8. No Independent Director of the Company will be a director or general partner of any Company Affiliate with which the Company co-invests.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28365 Filed 10–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39261; File No. SR–CBOE–97–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Relating to "Go Along" Orders

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issues a regulatory circular which would establish the representation of "go along" orders on the floor of the Exchange as a violation of just and equitable principles of trade pursuant to Exchange Rule 4.1. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to prohibit floor brokers from representing or executing "go along" orders (as further described below) on the floor of the Exchange. The representation or execution of such orders will be considered an act inconsistent with just and equitable principles of trade pursuant to Exchange Rule 4.1. The Exchange proposes to set forth the prohibition against the representation of "go along" orders in a regulatory circular describing the types of conduct which would be considered to be violative of just and equitable principles of trade.

Definition of "Go Along" Orders: Generally, a "go along" order, or a "not held with the crowd" order, is an order that instructs a floor broker to bid or offer (as appropriate for the type of order) at the price established by the other participants in the trading crowd. Generally, the customer will specify whether the order is to buy or sell, the number of contracts, the series, and the strike price. Typically, the floor broker will be instructed to buy when the majority of the of the market-makers participating on a trade are selling. These orders often are placed by market-making firms as a side business, by upstairs broker-dealers who want to participate in "market making," and by specialists on other exchanges. These orders are entered in both multiply-traded and singly listed option classes. As proposed, such an order would be prohibited even if the bid or offer does not match exactly the price established by the other participants in the trading crowd as long as the customer has given the broker discretion to determine what to bid or offer based upon the prices established by the other participants.

Rationale for the Prohibition Against "Go Along Orders": The Exchange believes that the continued representation of this class of orders on the floor of the Exchange poses a serious threat to the continued viability of the CBOE market-maker system, as explained below.

The execution of "go along" orders provides a disincentive to the transaction of a market-making business and thus, threatens the continued viability of the market-making system.

The CBOE believes its market-marker system has, since its inception, provided liquid, deep, fair, and reliable markets for hundreds of option classes in thousands of different series. These liquid markets are brought about through the efforts of numerous market-makers who are willing to take on various affirmative obligations in exchange for the opportunity to stand in a trading crowd and trade with and against other market participants. The various affirmative obligations are established by Exchange rules,[1] including Rule 8.7 which, among other things, requires market-makers to "engage * * * in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class." Rule 8.7.03 imposes distribution of activity requirements on market-makers. Rule 8.51 obligates market-makers to honor disseminated market quotes. In addition to being required to meet the above obligations, CBOE market-makers are subject to plenary oversight and regulation by the CBOE.[2] In short, the system of affirmative obligations and oversight embodied in CBOE Rules subjects market-makers to a great deal of responsibility, in order to assure the quality and liquidity of the CBOE markets.

The CBOE believes that "go along" orders interfere with this obligation-opportunity trade-off of Exchange market-making. Essentially, those

[1] Congress intended that exchanges have the primary responsibility for the formulation and enforcement of the regulation of exchange market making. See Report of the Senate Banking, Housing and Urban Affairs Committee, Senate Report No. 94–75, April 14, 1975, to accompany S. 249, at p. 15. Section 11(b) of the Exchange Act and Exchange Act Rule 11b–1 codify that policy. In fact, certain of the obligations imposed on CBOE market-makers by CBOE rules are mandated by Rule 11b–1.

[2] Exchange Act Rule 11b–1(a)(2)(v) requires to CBOE to have procedures "to provide for effective and systematic surveillance of the activities" of its market-makers.

market participants, generally professional traders, who enter "go-along" orders are attempting to realize the opportunity of market-making without accepting any of the obligations. In addition, by their nature, "go along" orders do not provide any incremental liquidity or price discovery because the market participant entering the "go along" order is merely trading at a price at which the market-makers were willing to trade. These market participants, as customers, however, are not obligated to fulfill any of the obligations of market-makers and their activity is typically not subject to Commission or Exchange oversight. These orders can be entered from off the floor of the exchange and can be canceled at the complete discretion of the customer. Therefore, these orders dilute the participation of those market-makers who do provide liquidity on a continual basis both in good times and in bad.

Likewise, common sense dictates these orders do not provide any price discovery. As explained further below, options are priced in an efficient market such as the CBOE by the skill of the individual market-makers and their ability to employ complex pricing models and strategies. "Go along" orders add nothing to this process, but simply piggyback on the expertise and experience of those participants who have taken on affirmative obligations and have put their capital at risk.

The potential danger of this type of activity and any other activity that provides a disincentive to market-making is that this activity could lead to an irremediable decline of CBOE's existing market-making system and the protections to public investors that that system provides. It is hard work for CBOE market-makers to stand in crowds and fulfill their numerous obligations under Exchange rules. The regulation to which market-makers are subject may be necessary, but it is burdensome. If the rules of the Exchange allow a trader to send such orders from off the floor whenever he wants and to be able to cancel the orders at will, without having an affirmative obligation to stand behind any quotes and without being subject to oversight, more and more market-makers may decide to engage in such activity and forgo the numerous risks involved in market-making.[3] The resultant decline in liquidity and capital would inevitably compromise the quality of CBOE's markets and harm the public. Ultimately, the proliferation of this type of activity could even threaten the viability of CBOE's markets. Ironically, these orders rely on the pricing efficiency of a market to be effective; yet, these orders interfere with that pricing efficiency.

Although a "go along" order may have some upper or lower limit price (but often it does not), the essence of a "go along" order is that it relies on the pricing of the market-makers in the crowd. A person entering a "go along" order, therefore, does not make any independent market judgment on the price of the option. It is the dependence upon the actions of the market-makers who establish the prices and provide liquidity that makes this type of order objectionable. Although market orders arguably also rely on the pricing of the market-makers, market orders do not provide a disincentive to market-making as "go along" orders do. Even if "go along" orders or similar orders were entered on the floor of the New York Stock Exchange or another stock exchange, the Exchange does not believe these orders would be as objectionable in the context of a stock exchange as they are on the CBOE options floor, because of the nature of the pricing of these difference securities. On any given market there is only one market (bid and offer) for a particular stock. The price is determined according to the fundamentals of the issuer and according to the principles of supply and demand for the shares of the stock. Conversely, for any given underlying stock, there may be markets for twenty or more different puts and calls. Because options are derivative securities, the markets on these puts and calls are affected by information about the markets for the underlying securities and related interests, but also by complex mathematical formulas and volatility assumptions. The pricing of options is a necessary and critical function performed by market-makers and because of the complexity involved and the individual assumptions required it is obviously a function for which market-makers take a proprietary interest. Therefore, the use of an order to replicate the actions of the market-makers and to dilute their participation in a trade provides a disincentive to a market-maker to meet his affirmative obligations and to develop pricing formulas and strategies.

The prohibition of these types of orders does not limit market accessibility.

The Exchange understands the Commission's concern with ensuring the accessibility of public markets to orders from all market participants. The proposed prohibition would not be a prohibition against any category of market participants but against a type of activity that threatens the system itself. The prohibition would not limit access to CBOE markets to any person who has access to the market currently; any participant who currently employs "go along" orders would be entitled to enter limit orders, market orders, and any number of contingency orders. By specifying that the broker representing the order should trade with the market-makers in the crowd, the order ensures that these orders will be inaccessible to those market-makers.

The restriction is also designed to assure equal regulation of and a fair competition among all persons making markets on the CBOE, thus serving these important purposes of the Act. Individuals sending these types of orders as a pattern of behavior are attempting to act as market-makers without fulfilling affirmative obligations. Any person who wishes to compete as a market-maker in CBOE securities can do so by becoming a CBOE member and subjecting himself to the same restrictions, obligations, and surveillance as every other CBOE market-maker. There is no burden on competition or unfair limit on market access to require all competitors to play by the same ground rules.

The CBOE believes that its market-marker system has served and continues to serve the public well by providing deep and liquid markets for hundreds of classes of options listed on the Exchange. As a result, the Exchange believes it is appropriate to prohibit activity that threatens this system without any resulting public benefit.

2. Statutory Basis

By prohibiting certain types of orders that interfere with the continued performance of the CBOE market-maker system and assuring equal regulation of and a fair competition among all persons making markets on the CBOE, CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[4] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

[3] Although these orders have been employed for years, the possibility that market-makers might decide to forgo market-making to trade from off of the floor is greater now than ever before. The Commission's approval of risk-based haircuts has reduced the traditional advantages market-makers have had in the area of capital charges and margin. In addition, the technological advancement of order delivery systems continues to erode the time and place priority that has been one of the inducements to accepting the risks of market-making.

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–50 and should be submitted by November 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28307 Filed 10–24–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2820]

Advisory Committee on International Law; Meeting Notice

A meeting of the Advisory Committee on International Law will take place on Monday, November 17, 1997, from 10:00 a.m. to approximately 4:00 p.m., as necessary, in Room 1406 of the United States Department of State, 2201 C Street, N.W., Washington, D.C. The meeting will be chaired by the Legal Adviser of the Department of State, David R. Andrews, and will be open to the public up to the capacity of the meeting room. The meeting will focus on developments involving the International Court of Justice and the International Law Commission, work on an International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and Rwanda, and other current developments.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by November 13, 1997, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government attendees. All attendees must use the "C" Street entrance. One of the following valid Ids will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

Dated: October 8, 1997.

John R. Crook,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee of International Law.

[FR Doc. 97–28387 Filed 10–24–97; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending October 17, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3007
Date Filed: October 14, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC12 Telex Mail Vote 892
Algeria-U.S. fares r1–5
Corrections—Telexes TE421/TE425
Intended effective date: November 1, 1997

Docket Number: OST–97–3008
Date Filed: October 14, 1997
Parties: Members of the International Air Transport Association
Subject:
COMP Mail Vote 893—Reso 011a
Scandinavia-Gdansk/Poznan/Szczecin mileage sectors
Intended Effective Date: November 1,1997

Docket Number: OST–97–3009
Date Filed: October 14, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC31 S/CIRC 0032 dated October 10, 1997
Circle Pacific Expedited Resos 002f (r1) & 073c (r2)
Tables—PTC31 S/CIRC Fares 0009 dated
October 10, 1997.
Intended effective date: expedited November 15, 1997

Paulette V. Twine,

Documentary Services

[FR Doc. 97–28326 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 17, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3004.
Date Filed: October 14, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 11, 1997.
Description: Application of Prestige Airways, Inc., formerly NavCom Aviation II, Inc. d/b/a Prestige Airways,

pursuant to Part 215 of the Economic Regulations, request that the Department register its new corporate name as PRESTIGE AIRWAYS, INC., reissue its Certificate in the name PRESTIGE AIRWAYS, INC., and grant such other relief that it may find to be in the public interest. It is further requested that the effective date for all such changes be October 1, 1997.

Docket Number: OST–97–3011.

Date Filed: October 14, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 11, 1997.

Description: Joint Application of American International Airways, Inc. and Kitty Hawk Aircargo, Inc., pursuant to 49 U.S.C., Section 41105 and Subpart Q, applies for approval of a de facto transfer of route authority for foreign air transportation held by AIA, to Kitty Hawk, Inc., ("KHI") the parent company of Kitty Hawk.

Docket Number: OST–97–3017.

Date Filed: October 15, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 12, 1997.

Description: Application of Sky King, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q, requesting authority to engage in interstate and foreign charter air transportation of persons and property (passenger and cargo).

Docket Number: OST–97–3020.

Date Filed: October 15, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 12, 1997.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. 41101, Part 210 of the Economic Regulations and Subpart Q of the Department's Regulations, applies for renewal of its Experimental Certificate of Public Convenience and Necessity for Route 246 authorizing service between the United States and the People's Republic of China (P.R.C) via Japan. This temporary experimental certificate is presently scheduled to expire on May 1, 1998.

Docket Number: OST–97–3022.

Date Filed: October 16, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 1997.

Description: Application of Servant Air, Inc., pursuant to 49 U.S.C., Section 41101, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate transportation of persons, property and mail.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–28327 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–53]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following Internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulation (14 CFR Part 11).

Issued in Washington, D.C., on October 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 21780.

Petitioner: Civil Air Patrol.

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought: To permit members of the CAP who are private pilots to continue to receive reimbursement for fuel, oil, and maintenance costs that are directly related to the performance of official CAP missions.

Docket No.: 28975.

Petitioner: AOG, Inc.

Sections of the FAR Affected: 14 CFR 145.37(b).

Description of Relief Sought: To permit AOG to perform maintenance on flexible and integral fuel cells at its customers' facilities and maintenance on flexible fuel cells at the petitioner's facility without providing suitable permanent housing for at least one of the heaviest aircraft for which it is rated.

Docket No.: 28905.

Petitioner: Petroleum helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought: To permit PHI to place two Bell 214ST helicopters (Registration Nos. N59805 and N59806, and Serial Nos. 28141 and 28140, respectively), and one Bell 412SP helicopter (Registration No. N142PH, Serial No. 33150), on PHI's Operations Specifications and to operate those aircraft in nonscheduled part 135 operations until August 18, 2001, without a digital flight data recorder installed in those aircraft.

Docket No.: 28855.

Petitioner: Offshore Logistics, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought: To permit Offshore to operate certain multiengine turbine-powered rotorcraft with a seating configuration of 10 to 19 seats, excluding any required crewmember seat, that was brought onto the U.S. register after, or was registered outside the United States and added to Offshore's Operations Specifications after, October 11, 1991, without an approved digital flight data recorder.

Dispositions of Petitions

Docket No.: 26939.

Petitioner: Northern Air Cargo, Inc.

Sections of the FAR Affected: 14 CFR 43.3(f), 43.7(e), and 121.379.

Description of Relief Sought/ Disposition: To Permit NAC to perform maintenance, preventive maintenance, major repairs, and alterations under the authority of its part 121 air carrier certificate on a Douglas DC–6B aircraft (Registration No. N7919C, Serial No. 43554) that has been dry leased to and is operated by Aero Petroleum Corporation, a 14 CFR part 91 operator. *Grant, September 15, 1997, Exemption No. 6678.*

Docket No.: 28962.

Petitioner: Bombardier Services Corporation West Virginia Air Center.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Bombardier to assign copies of its Inspection Procedures Manual (IPM) to key individuals within its departments and functionally place an adequate number of IPMs for all employees to access, rather than provide a copy of the IPM for each of its supervisory and inspection personnel. *Grant, September 17, 1997, Exemption No. 6677.*

Docket No.: 27674.

Petitioner: IBM Corporation Flight Operations.

Sections of the FAR Affected: 14 CFR 43.9(a), 43.11(a)(3), 91.407(a)(2), and 145.57(a).

Description of Relief Sought/ Disposition: To permit IBM Flight Operations to use computerized personal identification codes in lieu of the physical signatures required to issue an airworthiness release and/or approval for return to service for the aircraft operated by IBM Flight Operations and the aeronautical products that IBM Flight Operations maintains for its repair station customers. *Grant, September 25, 1997, Exemption No. 6176A.*

Docket No.: 28919.

Petitioner: Baldev. S. Bambhra.

Sections of the FAR Affected: 14 CFR 65.93.

Description of Relief Sought/ Disposition: To permit Mr. Bambhra to renew his inspection authorization even though he did not apply to an FAA Flight Standards District Office for renewal before the March 31, 1997, deadline required by CFR 14 part 65.93. *Denial, September 15, 1997, Exemption No. 6679.*

Docket No.: 28186.

Petitioner: MTU Maintenance GMBH.

Sections of the FAR Affected: 14 CFR 3(a)(1).

Description of Relief Sought/ Disposition: To permit MTU–H to develop and approve major repair data; as well as to inspect, repair, maintain, overhaul, and return to service aircraft engines, appliances, parts, and components for installation on any U.S. -registered aircraft. These functions would be performed without geographical limitations and in accordance with MTU–H's ratings. *Denial, September 24, 1997, Exemption No. 6683.*

Docket No.: 27601.

Petitioner: Cielos Del Sur S.A. D/B/A/ Astral Lineas Aereas.

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit Astral to substitute the calibration standards of the instituto Nacional de Tecnologia Industrial, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment. *Denial, October 6, 1997, Exemption No. 6690.*

[FR Doc. 97–28413 Filed 10–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Tariff Classification of Drilled Softwood Lumber

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Solicitation of comments regarding the commercial uses of wood studs with drilled holes.

SUMMARY: This notice advises the public that Customs is soliciting information about drilled softwood lumber studs that pertains to their classification under the Harmonized Tariff Schedule of the United States (HTSUS).

New York Ruling Letter (NY) B81564, dated February 18, 1997, addressed the classification of studs measuring 2' by 4', and 2' by 6', in lengths of 8 to 10 feet. These studs also featured two one-inch diameter holes drilled in the center of each board about 16 inches from the end. It was indicated that the holes served the purpose of allowing electrical wiring, cables or pipes to be run through the studs during wall construction. Pursuant to NY Ruling Letter B81564 the merchandise was classified in heading 4418, HTSUS, which provides for, among other things, builder's joinery and carpentry of wood.

Since the issuance of NY B81564 Customs' classification of drilled softwood lumber used for structural purposes has been called into question. Generally, it is alleged that Customs' decision could result in circumvention of the "1996 Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada" by shifting certain lumber from heading 4407, which is subject to the Agreement, to heading 4418, which is not subject to the Agreement. Among the questions are: (1) Whether the holes that are drilled into the studs actually serve a purpose and cause the studs to be suited to a particular use? (2) whether the drilling of the studs limits their application in construction? (3) whether there are other commercially recognized uses for drilled softwood lumber of heading 4418, HTSUS?

The purpose of this notice therefore, is to solicit information pertaining to the commercial uses of drilled softwood lumber which Customs has classified in heading 4418, HTSUS, which provides for, among other things, builder's joinery and carpentry of wood. This classification is based on the belief that the holes drilled into the wood suit it for certain structural purposes and disqualify it for others.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C., 20229. Comments submitted may be inspected at the Textile Classification Branch, Office of Regulations and Rulings, located at 1300 Pennsylvania Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 927–2380.

SUPPLEMENTARY INFORMATION:

Background

This notice advises interested parties that Customs is soliciting information about the commercial uses of drilled softwood lumber studs. A distinction between drilled lumber and rough or dressed lumber existed in the former Tariff Schedules of the United States (TSUS). This distinction has been carried over to the present Harmonized Tariff so that less processed wood appears at the beginning of Chapter 44, HTSUS, followed by more advanced wood in later headings within the same chapter. Thus, for example, heading

4407, HTSUS, is a general provision for wood that has not been processed in any way, other than provided for under that heading. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 4407, HTSUS, state in relevant part:

> The products of this heading may be planed (whether or not the angle formed by two adjacent sides is slightly rounded during the planing process), sanded, or end-jointed, e.g. finger-jointed (see the General Explanatory Note to this Chapter).

The EN continue to exclude from the heading "builders" joinery and carpentry" (heading 4418).

Heading 4418, HTSUS, provides for, among other things, builders' joinery and carpentry of wood. The EN to heading 4418 state, in part:

> This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.
>
> The term "joinery" applies more particularly to builders" fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "carpentry" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work * * *.

"Carpentry" is defined as:

> the art of shaping and assembling structural woodwork. Webster's Ninth New Collegiate Dictionary, 1991
>
> work which is performed by a craftsman in cutting, framing, and joining pieces of timber in the construction of ships, houses and other structures of a similar character. Architectural and Building Trades Dictionary, 1974

On February 18, 1997, Customs issued NY B81564 classifying drilled softwood studs used for structural purposes in heading 4418, HTSUS. Since the studs were understood to be used for structural purposes, the classification of that merchandise in heading 4418, HTSUS, was consistent with the reference made to "carpentry" in both the EN and a number of consulted lexicographic sources.

We are inviting comments regarding the role of the drilled holes and their function, that is, do the holes limit the use of drilled studs in construction relative to undrilled studs, thus warranting classification in heading 4418, HTSUS? Pending the comment period and the review of comments received in response to this notice no further rulings will be issued by Customs with respect to drilled softwood lumber. Additionally, until the resolution of this issue, we are restricting the determination in NY B81564 to the facts of that specific case, and as such, there should be no reliance by third parties on NY B81564 for prospective or future importations of drilled softwood lumber. Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Comments

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m at the Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington, D.C.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: September 24, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–28301 Filed 10–24–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–47, Form 941 Electronic Filing (ELF) Program.

DATES: Written comments should be received on or before December 26, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 941 Electronic Filing (ELF) Program.

OMB Number: 1545–1557.

Revenue Procedure Number: Revenue Procedure 97–47.

Abstract: Revenue Procedure 97–47 sets forth the requirements of the Form 941 Electronic Filing (ELF) Program, under which a taxpayer that is a Reporting Agent may electronically file Form 941, Employer's Quarterly Federal Tax Return.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 46 hours, 32 minutes.

Estimated Total Annual Burden Hours: 9,305.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–28404 Filed 10–24–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–236–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–236–81 (TD 8251), Credit for Increasing Research Activity (§ 1.41–8(d)).

DATES: Written comments should be received on or before December 26, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are a single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with for purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 63.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–28405 Filed 10–24–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–59–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–59–91 (TD 8674), Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule (§§ 1.1275–2, 1.1275–3, 1.1275–4, and 1.1275–6).

DATES: Written comments should be received on or before December 26, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

OMB Number: 1545–1450.

Regulation Project Number: FI–59–91.

Abstract: This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and state, local, or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-28406 Filed 10-24-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-248900-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-248900-96 (TD 8712), Definition of Private Activity Bonds (§§ 1.141-1, 1.141-12, 1.142-2, and 1.148-6).

DATES: Written comments should be received on or before December 26, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definition of Private Activity Bonds.

OMB Number: 1545-1451.

Regulation Project Number: REG-248900-96.

Abstract: Internal Revenue Code section 103 provides generally that interest on certain State or local bonds is excluded from gross income. However, under Code sections 103(b)(1) and 141, interest on private activity bonds (other than qualified bonds) is not excluded. This regulation provides rules, for purposes of Code section 141, to determine how bond proceeds are measured and used and how debt service for those bonds is paid or secured.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,100.

Estimated Time Per Respondent: 2 hours, 59 minutes.

Estimated Total Annual Burden Hours: 30,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97-28407 Filed 10-24-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Availability of Annual Report

Under section 10(d) of Pub. L. 92-462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Minority Veterans for Fiscal Year 1997 has been issued. The Report summarizes activities of the Committee on matters relative to the administration of benefits, medical care services, and outreach as it relates to minority group veterans by the Department. The Report discusses the Committee's visit to VA facilities in Hawaii and its visit to two Indian reservations in South Dakota. The report contains 63 recommendations to the Secretary. It is unavailable for public inspection at two locations:

Federal Document Section, Exchange and Gifts Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Center for Minority Veterans, VACO Suite 700, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: October 20, 1997.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97-28403 Filed 10-24-97; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0074]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine the applicant's eligibility to education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0074" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-8310 or FAX (202) 275-5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request for change of Program or Place of Training (Under Chapters 30 and 32, Title 38, U.S. Code; Section 903 of Pub. L. 96-342; or Chapter 1606, Title 10, U.S. Code).

OMB Control Number: 2900-0074.

Type of Review: Extension of a currently approved collection.

Abstract: The information on this form is necessary to determine eligibility for continued educational assistance for veterans, persons on active duty, and reservists who change their programs or places of training.

Affected Public: Individuals or households.

Estimated Annual Burden: 46,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Reporting on Occasion.

Estimated Number of Respondents: 138,000.

Dated: September 30, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst Information Management Service.

[FR Doc. 97-28394 Filed 10-24-97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0358]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to evaluate veterans' and other eligible person's suitability to change their program of education objectives.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0358" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-8310 or FAX (202) 273-5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22-8873.

OMB Control Number: 2900-0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions proscribed by Title 38 U.S.C. 3691. Before VA may

approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA records. VBA uses the information to ensure that programs are suitable to a claimant's aptitudes, interests, and abilities. Without the information, VA could not determine further entitlement to education benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: October 1, 1997.

By direction of the Secretary.

William T. Morgan,

Program Analyst.

[FR Doc. 97–28395 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Reinstatement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the verification of an existing VA benefit-related indebtedness of veteran home loan applicants.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0406" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Verification of VA Benefit-Related Indebtedness, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Since March of 1992, and a result of OMB's approval of VA's Debt Collection Plan, lenders authorized to make VA-guaranteed home or manufactured home loans on the automatic basis have been required to determine through VA Finance Officers whether any benefits-related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner.

Affected Public: Individual or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: October 1, 1997.

By direction of the Secretary.

William T. Morgan,

Program Analyst.

[FR Doc. 97–28396 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on a reporting requirement to identify persons authorized to certify reports to VA on behalf of an educational institution or job training establishment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0262" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Designation of Certifying Official, VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. VBA uses the information to ensure that VA educational benefits are not made improperly based on a report from someone other than a designated certifying official. Without the information, VA could improperly pay benefits.

Affected Public: Business or other for-profit, not for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

Dated: October 1, 1997.

By direction of the Secretary.

William T. Morgan,

Program Analyst.

[FR Doc. 97–28397 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This form is used to confirm the marital status and continued DIC eligibility of a surviving spouse beneficiary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0495" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Marital Status Questionnaire.

OMB Control Number: 2900–0495.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used to confirm the marital status and continued DIC eligibility of a surviving spouse beneficiary.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,875 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Reporting on Occasion.

Estimated Number of Respondents: 34,500.

Dated: September 30, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst, Information Management Service.

[FR Doc. 97–28398 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0455]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0455."

SUPPLEMENTARY INFORMATION:

Title: Equal Opportunity Compliance Review Report, VA Form 20–8734, and Supplement to Equal Opportunity Compliance Review Report, VA Form 20–8734a.

OMB Control Number: 2900–0455.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, delegated authority to the Attorney General to

coordinate the implementation and enforcement by Executive agencies of various equal opportunity laws. Government-wide guidelines issued by the U.S. Department of Justice (DOJ) in 28 CFR 42.406 instructs funding agencies to "provide for the collection of data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI." Executive, Order 12250 extended the delegation to cover Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, as amended.

VA's requirements to effectuate our external civil rights requirements are contained on 38 CFR, Part 18. These regulations, in part, provide that the responsible agency official or designee shall from time to time review the practices of recipients to determine whether they are complying with the equal opportunity provisions. VA Form 20–8734 is used to gather information from post-secondary proprietary schools below college level. The information is used to assure that VA Federally-funded programs are in compliance with equal opportunity laws. VA Form 20–8734a, is used to gather information from students and instructors at post-secondary proprietary schools below college level. The information is used to assure equal access and equal treatment to participants in VA Federally-funded programs.

Education Compliance Survey Specialists in VA field stations use VA Forms 20–8734 and 20–8734a during regular scheduled educational compliance survey visits, as well as during investigations of equal opportunity complaints, to identify areas which may indicate whether there is disparate treatment of members of protected groups. The information obtained on these forms is analyzed and maintained on file at the regional office. If this information were not collected, VA would be unable to carry out its civil rights enforcement responsibilities established in the DOJ's instructions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 18, 1997 at page 38607.

Affected Public: Business or other for-profit.

Estimated Annual Burden and Average Burden Per Respondent: Based on past experience, VBA estimates that 76 interviews will be conducted with recipients using VA Form 20–8734 at an average of 1 hour and 45 minutes per interview (133 hours). This includes one hour for an interview with the principal facility official, plus 45 minute for reviewing records and reports and touring the facility. It is also estimated that 76 interviews will be conducted with students using VA Form 20–8734a at an average of 30 minutes per interview (38 hours) and with instructors at an average of 30 minutes per interview (38 hours) with a total of 76 hours. Interviews are also conducted with 76 students without instructors at an average time of 30 minutes.

VBA estimates that it will take 1 hour to conduct an interview with the recipients (76 hours) and 30 minutes with the instructors (38 hours). The total number of hours for interviewing recipients and instructors are estimated at 114.

Frequency of Response: On occasion.

Estimated Number of Respondents: 228.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0455" in any correspondence.

Dated: September 30, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst, Information Management Service.

[FR Doc. 97–28390 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0465."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Student Verification of Enrollment, VA Forms 22–8979 and 22–8979–1. (NOTE: VA Forms 22–8979 and 22–8979–1 collect the same information. VA Form 22–8979 is electronically generated for monthly mailings while VA Form 22–8979–1 is printed and distributed to VA regional offices for individual use.)

OMB Control Number: 2900–0485.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree or in non-college degree programs. The information is used to determine the individual's continued entitlement to VA benefits.

VA is authorized to pay educational benefits to veterans and other eligible persons pursuing approved programs not leading to a standard college degree under Chapters 30, 32, and 35, Title 38, U.S.C.; Chapter 1606, Title 10, U.S.C.; and Section 903 of Public Law 96–342. VA Form 22–8979 serves as the form for reporting necessary certification of actual attendance and verification of the student's continued enrollment for claimant's pursuing non-college degree programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 13, 1997 at page 11948–11948.

Affected Public: Individuals or households.

Estimated Annual Burden: 189,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 324,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0465" in any correspondence.

Dated: October 1, 1997.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 97–28391 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0154."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Education Benefits, VA Form 22–1990.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses the information on the application to determine the applicant's eligibility to education benefits under Chapters 30 and 32, Title 38 U.S.C., Chapter 1606, Title 10 U.S.C., or Public Law 96–342, Section 903. In order to receive VA educational assistance allowance, veterans and members of the selected reserve must complete VA Form 22–1990, Application for Education Benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 1997 at page 32146–32147.

Affected Public: Individuals or households.

Estimated Annual Burden: 90,231 hours.

Estimated Average Burden Per Respondent: 35 minutes.

Frequency of Response: Once, initial application.

Estimated Number of Respondents: 154,682.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0154" in any correspondence.

Dated: October 1, 1997.

By direction of the Secretary.

William T. Morgan,

Program Analyst.

[FR Doc. 97–28392 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0101."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Eligibility Verification Reports.

a. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

b. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

d. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

f. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

j. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: These reports are used by VA regional offices to verify continued eligibility for pension and parents' Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These reports are also used for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or parents' DIC. It would be impossible to administer the pension and parents' DIC programs without the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 17, 1997 at pages 32856–32857.

Affected Public: Individuals or households.

Estimated Annual Burden: 354,725 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: On occasion.

Estimated Number of Respondents: 709,450.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0101" in any correspondence.

Dated: September 25, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–28393 Filed 10–24–97; 8:45 am]

BILLING CODE 8320–01–P

federal register

Monday
October 27, 1997

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 6, 24, 33, and 52
Federal Acquisition Regulation: Alternative Dispute Resolution, 1996; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 24, 33, and 52

[FAR Case 97–015]

RIN 9000–AH72

Federal Acquisition Regulation; Alternative Dispute Resolution—1996

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before December 26, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–015@gsa.gov.

Please cite FAR case 97–015 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 97–015.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR Parts 6, 24, 33, and 52 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition, revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act, allows for binding arbitration in certain circumstances, and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds guidance pertaining to, but does not significantly alter the procedures for, alternative dispute resolution. Alternative dispute resolution procedures allow voluntary resolution of issues in controversy without the need to resort to litigation. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, it does reduce the information collection requirements relating to certification of claims (OMB Control Number 9000–0135).

List of Subjects in 48 CFR Parts 6, 24, 33, and 52

Government procurement.

Dated: October 21, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 6, 24, 33, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 24, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

6.302–3 [Amended]

2. Section 6.302–3 is amended in paragraph (a)(2)(iii) by inserting "or neutral person" after the word "expert".

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION:

3. Section 24.202 is amended by adding paragraph (c) to read as follows:

24.202 Prohibitions.

* * * * *

(c) A dispute resolution communication that is between a neutral person and a party to alternative dispute resolution proceedings, and that may not be disclosed under 5 U.S.C. 574, is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

PART 33—PROTESTS, DISPUTES, AND APPEALS

4. Section 33.201 is amended by revising the definition "Alternative dispute resolution (ADR)" to read as follows:

33.201 Definitions.

* * * * *

Alternative dispute resolution (ADR) means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

* * * * *

33.204 [Amended]

5. Section 33.204 is amended in the fifth sentence by removing ", Public Law 100–522," and inserting in its place "(5 U.S.C. 571, *et seq.*),".

6. Section 33.207 is amended by revising paragraph (a) to read as follows:

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in 33.207(c) when submitting any claim exceeding $100,000.

* * * * *

7. Section 33.214 is amended in paragraph (a)(3) by inserting "and" after "litigation;" in (a)(4) by removing "; and" and inserting a period in its place; removing (a)(5); revising the first sentence of paragraph (b); and adding paragraphs (f) and (g) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. * * *

* * * * *

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233–1 is amended by revising the date of the clause and paragraphs (d)(2)(i) and (g) to read as follows:

52.233–1 Disputes.

* * * * *

DISPUTES (DATE)

* * * * *

(d)(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

* * * * *

[FR Doc. 97–28328 Filed 10–24–97; 8:45 am]

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federal register

Monday
October 27, 1997

Part III

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System
12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation
12 CFR Part 325

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 567

Risk Based Capital Standards: Unrealized Holding Gains on Certain Equity Securities; and Construction Loans on Presold Residential Properties, Junior Liens on 1- to 4-Family Residential Properties and Mutual Funds, and Leverage Capital Standards (Tier 1 Leverage Ratio); Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–18]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0982]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC11

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–109]

RIN 1550–AB11

Risk-Based Capital Standards; Unrealized Holding Gains on Certain Equity Securities

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to amend their respective risk-based capital standards for banks, bank holding companies and thrifts (institutions) with regard to the treatment of unrealized holding gains on certain equity securities. These gains are reported as a component of equity capital under U.S. generally accepted accounting principles (GAAP), but currently are not included in regulatory capital under the Agencies' capital standards. The proposal, if adopted as a final rule, would establish uniform interagency rules permitting institutions to include in supplementary (Tier 2) capital up to 45 percent of unrealized gains on certain available-for-sale equity securities. The Agencies' proposal is consistent with the prudential standards of the Basle Accord.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket No. 97–18, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C., 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

Board: Comments directed to the Board should refer to Docket No.R–0982 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FDIC: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202)898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97–109. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755, or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202/874–5070), Tom Rollo, National Bank Examiner (202/874–5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division.

Board: Roger Cole, Associate Director (202/452–2618); Norah Barger, Assistant Director (202/452–2402); or Barbara Bouchard, Senior Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202/898–8904); for legal issues, Jamey Basham, Counsel, Legal Division (202/898–7265).

OTS: John F. Connolly, Senior Program Manager for Capital Policy (202/906–6465); Michael D. Solomon, Senior Policy Advisor (202/906–5654), Supervision Policy; Karen Osterloh, Assistant Chief Counsel (202/906–6639), or Vern McKinley, Senior Attorney (202/906–6241), Regulations and Legislation Division, Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION: The Agencies' risk-based capital standards implementing the International Convergence of Capital Measurement and Capital Standards (the Basle Accord) [1] include definitions for core (Tier 1) capital and supplementary (Tier 2) capital.[2] Under the Agencies' capital standards, Tier 1 capital generally includes common stockholders' equity, noncumulative perpetual preferred stock, and minority interests in the equity accounts of consolidated subsidiaries.[3] The common stockholders' equity component is defined to include common stock; related surplus; and retained earnings (including capital reserves and adjustments for the cumulative effect of foreign currency translation); less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values. Net unrealized holding gains on such equity securities and net unrealized holding gains and losses on available-for-sale debt securities are not included in the Agencies' regulatory capital definition of common stockholders' equity.[4]

Tier 2 capital includes, subject to certain limitations and conditions, the allowance for loan and lease losses; cumulative perpetual preferred stock and related surplus; and certain other maturing or redeemable capital instruments. The Basle Accord also permits in Tier 2 capital up to 45 percent of the gross (i.e., pre-tax) unrealized gains on equity securities. The 55 percent discount is applied to the unrealized gains to reflect potential volatility of this form of unrealized capital, as well as tax liability charges that would be incurred if the unrealized gain were realized or otherwise taxed currently. When the Agencies implemented the Basle Accord by issuing their respective risk-based capital standards in 1989, they decided not to include such unrealized gains in Tier 2 capital.

The Agencies believe that it is appropriate to continue the existing regulatory capital treatment of unrealized gains and losses on available-for-sale debt securities and unrealized losses on available-for-sale equity securities. However, for institutions that have net unrealized holding gains on available-for-sale equity securities, the Agencies are considering whether it would be more reasonable, as well as more consistent with the Basle Accord, to include at least a portion of the unrealized gains on such securities in regulatory capital. Therefore, the Agencies have decided to issue, and request comment on, a proposed revision to the Agencies' rules.

Specifically, the Agencies are proposing to permit institutions that legally hold equity securities to include in Tier 2 capital up to 45 percent of the pretax net unrealized holding gains (that is, the excess amount, if any, of the fair value over historical cost as reported in the institution's most recent quarterly regulatory report)[5] on available-for-sale equity securities. The equity securities must be valued in accordance with GAAP and have readily determinable fair values[6] and institutions should be able to substantiate those values. In the event that an Agency determines that an institution's available-for-sale equity securities are not prudently valued, the institution may be precluded from including all or a portion of the eligible pretax net unrealized gains on those securities in Tier 2 capital. The proposed 55 percent discount is not required by GAAP, but is consistent with the Basle Accord.

The Agencies clarify that net unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but may be taken into account when assessing an institution's overall capital adequacy.

The Agencies request comment on all aspects of this proposal.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The proposed rule would permit institutions to include up to 45 percent of the pretax net unrealized holding gains on available-for-sale equity securities in Tier 2 capital. The effect of the proposed rule would be to increase immediately the amount of Tier 2 capital held by institutions, including small institutions, in proportion to the amount of their qualifying pretax net unrealized holding gains on such securities. Thereafter, the amount of Tier 2 capital will increase or decrease as the value of the equity securities changes. The Agencies have concluded that this proposal will not have a significant impact on the amount of total capital held by institutions, regardless of size.

Paperwork Reduction Act

The Agencies have determined that the proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have determined that the proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule would permit institutions to include up to 45 percent of holding gains on available-for-sale equity securities in Tier 2 capital under the Agencies' risk-based capital rules. The proposed rule would reduce regulatory burden by increasing the amount of supplementary capital held by certain institutions. The OCC and OTS have therefore determined that the effect of the proposed rule on the thrift and banking institutions as a whole will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and OTS have not

[1] The Basle Accord is a risk-based framework developed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Committee is comprised of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Refer to each Agency's risk-based capital standards for more detailed descriptions of core and supplementary capital.

[3] Bank holding companies may also include in Tier 1 capital limited amounts of cumulative perpetual preferred stock.

[4] For regulatory capital purposes, institutions record net unrealized gains or losses on available-for-sale securities (debt and equity) in accordance with Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (SFAS 115). Available-for-sale securities are all debt securities not held for trading that an institution does not have the positive intent and ability to hold until maturity and equity securities with readily determinable fair values not held for trading. Available-for-sale securities must be reported at fair value with unrealized gains or losses (i.e., the amount by which fair value exceeds or falls below amortized cost) reported, net of tax, directly in a separate component of common stockholders' equity.

[5] The Consolidated Report of Condition and Income for banks supervised by the OCC, the Board, or the FDIC; the Thrift Financial Report for thrift institutions supervised by the OTS; and the Y–9C Report for bank holding companies supervised by the Board.

[6] The Agencies intend to rely on the guidance set forth in SFAS 115 for purposes of determining whether equity securities have fair values that are "readily determinable." Under SFAS 115, the fair value of an equity security is readily determinable if sales prices or bid-and-ask quotations are currently available on a securities exchange registered with the Securities and Exchange Commission or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations system or by the National Quotations Bureau. Restricted stock does not meet this definition. The fair value of an equity security traded only in a foreign market is readily determinable if that foreign market is of a breadth and scope comparable to one of the U.S. markets referred to above. The fair value of an investment in a mutual fund is readily determinable if the fair value per share (unit) is determined and published and is the basis for current transactions.

prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR CHAPTER I

For the reasons set out in the joint preamble, appendix A to part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 2. is amended by adding a new paragraph (b)(5) including footnote 5 to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 2. Components of Capital.

* * * * *

(b) * * *

(5) Up to 45 percent of the pretax net unrealized holding gains (the excess, if any, of the fair value over historical cost) on available-for-sale equity securities with readily determinable fair values.[5] Unrealized gains (losses) on other types of assets, such as bank premises or available-for-sale debt securities, are not included in supplementary capital, but the OCC may take these unrealized gains (losses) into account as additional factors when assessing overall capital adequacy.

* * * * *

Dated: October 6, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, the introductory paragraphs in section II.A.2. are revised and footnote 8 is removed and reserved to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of a bank's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below).

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).

(iii) Hybrid capital instruments (as defined below) and mandatory convertible debt securities.

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

(v) Unrealized gains on equity securities (subject to limitations discussed in paragraph *II*.B.2.e. of this section).

The maximum amount of Tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section *II*.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

* * * * *

3. In appendix A to part 208, section *II*.A.2., paragraphs (d) and (e) are revised to read as follows:

* * * * *

II. * * *

A. * * *

2. * * *

(d) *Subordinated debt and intermediate term preferred stock.* i. The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section *II*.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

ii. Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplemental capital. (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing bank.)[12]

iii. In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to general creditors and claims of depositors. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt before the stated maturity, it must receive prior approval of the Federal Reserve.

(e) *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* i. Up to 45 percent of pretax net unrealized holding gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, the introductory paragraphs of section II.A.2. are revised and footnote 8 is removed and reserved to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of an institution's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below).

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).

(iii) Hybrid capital instruments (as defined below), perpetual debt and mandatory convertible debt securities.

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

(v) Unrealized gains on equity securities (subject to limitations discussed in paragraph II.B.2.(e) of this section).

The maximum amount of Tier 2 capital that may be included in an organization's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

The elements of supplementary capital are discussed in greater detail below.

* * * * *

3. In appendix A to part 225, section II.A.2., paragraphs (d) and (e) are revised to read as follows:

* * * * *

II. * * *

A. * * *

2. * * *

(d) *Subordinated debt and intermediate term preferred stock.* i. The aggregate amount of term subordinated debt (excluding mandatory convertible stock) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

ii. Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital.[12] (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.)[13]

iii. In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. Bank holding company debt must be subordinated in the right of payment to all senior indebtedness of the company.

(e) *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* i. Up to 45 percent of net unrealized holding gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the Federal Reserve may exclude all or a portion of these unrealized gains from Tier 2 capital if the Federal Reserve determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the Federal Reserve may take these unrealized gains (losses) into account as additional factors when assessing an institution's capital adequacy.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 21, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, the introductory paragraphs of section I.A.2. are revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

2. *Supplementary capital elements (Tier 2)* consist of:

—Allowance for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets;

—Cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least 20 years) and any related surplus;

—Perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative;

—Hybrid capital instruments, including mandatory convertible debt securities;

—Term subordinated debt and intermediate-term preferred stock (original average maturity of five years or more) and any related surplus; and

---

[5] The OCC reserves the authority to exclude all or a portion of unrealized gains from Tier 2 capital if the OCC determines that the equity securities are not prudently valued.

[12] As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

[12] Unsecured term debt issued by bank holding companies prior to March 12, 1988, and qualifying as secondary capital at the time of issuance continues to qualify as an element of supplementary capital under the risk-based framework, subject to the 50 percent of Tier 1 capital limitation. Bank holding company term debt issued on or after March 12, 1988, must be subordinated in order to qualify as capital.

[13] As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited life preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount (less redemptions) is excluded each year during the instrument's last five years before maturity. When the remaining maturity is less than one year, the instrument is excluded from Tier 2 capital.

—Net unrealized gains on equity securities (subject to limitations discussed in paragraph I.A.2.(f) of this section).

The maximum amount of Tier 2 capital that may be recognized for risk-based capital purposes is limited to 100 percent of Tier 1 capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

* * * * *

3. In appendix A to part 325, the last undesignated paragraph of section I.A.2., entitled "Discount of limited-life supplementary capital instruments" is designated as paragraph (e).

4. In appendix A to part 325, a new paragraph (f) is added to section I.A.2. to read as follows:

* * * * *

II. * * *

A. * * *

2. * * *

(f) *Unrealized gains on equity securities and unrealized gains (losses) on other assets.* Up to 45 percent of pretax net unrealized gains (that is, the excess, if any, of the fair value over amortized cost) on available-for-sale equity securities with readily determinable fair values may be included in supplementary capital. However, the FDIC may, on a case-by-case basis, exercise its discretion to exclude all or a portion of these unrealized gains from Tier 2 capital if the FDIC determines that the equity securities are not prudently valued. Unrealized gains (losses) on other types of assets, such as bank premises and available-for-sale debt securities, are not included in supplementary capital, but the FDIC may take these unrealized gains (losses) into account as additional factors when assessing a bank's overall capital adequacy.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of September 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

For the reasons set forth in the joint preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.5 is amended by adding a new paragraph (b)(5) to read as follows:

§ 567.5 Components of capital.

* * * * *

(b) * * *

(5) *Unrealized gains on equity securities.* Up to 45 percent of net, unrealized gains before income taxes, calculated as the amount, if any, by which fair value exceeds amortized cost on available-for-sale equity securities with readily determinable fair values, may be included in supplementary capital. The OTS may disallow such inclusion in the calculation of supplementary capital if the Office determines that the equity securities are not prudently valued.

* * * * *

Dated: September 30, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–28269 Filed 10–24–97; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–19]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0947]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB96

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–36]

RIN 1550–AA98

Risk-Based Capital Standards: Construction Loans on Presold Residential Properties; Junior Liens on 1- to 4-Family Residential Properties; and Mutual Funds and Leverage Capital Standards: Tier 1 Leverage Ratio

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to amend their respective risk-based capital standards and leverage capital standards for banks and thrifts. The proposal would represent a significant step in implementing section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, with regard to the Agencies' capital adequacy standards. (Section 303 requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies.) The effect of the proposal would be that the Agencies would have uniform risk-based capital treatments for construction loans on presold residential properties, real estate loans secured by junior liens on 1- to 4-family residential properties, and investments in mutual funds, as well as uniform and simplified minimum Tier 1 capital leverage standards.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket No: 97–19, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C., 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

Board: Comments directed to the Board should refer to Docket No. R–0947 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Federal Reserve's Rules Regarding Availability of Information.

FDIC: Written comments should be sent to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97–36. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202/874–5070), Tom Rollo, National Bank Examiner (202/874–5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division.

Board: Roger Cole, Associate Director (202/452–2618), Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Senior Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202/898–8904); for legal issues, Jamey Basham, Counsel, Legal Division (202/898–7265).

OTS: John F. Connolly, Senior Program Manager for Capital Policy, (202/ 906–6465), Michael D. Solomon, Senior Policy Advisor (202/906–5654), Supervision Policy; or Karen Osterloh, Assistant Chief Counsel, (202/906–6639), Regulations and Legislation Division, Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION: Section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) (Riegle Act) provides that the Agencies shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the Riegle Act requires the Agencies to review their own regulations and written policies and to streamline those regulations and policies where possible. To fulfill the section 303 mandate, the Agencies have been reviewing, on an interagency basis and internally, their capital standards to identify areas where they have substantively different capital treatments or where streamlining is appropriate. As a result of these reviews, the Agencies have identified inconsistencies in the risk-based capital treatment of certain types of transactions, in particular, construction loans on presold residential properties, loans secured by junior liens on 1-to 4-family residential properties, and investments in mutual funds.[1] The Agencies also believe that the minimum leverage capital standards could be streamlined and made uniform among the Agencies.

The Agencies are proposing various amendments to their risk-based capital and leverage standards to eliminate these differences and to streamline their rules.

Proposed Amendments

Construction Loans on Presold Residential Property

The Agencies all assign a qualifying loan to a builder to finance the construction of a presold 1-to 4-family residential property to the 50 percent risk weight category, provided the borrower has a substantial equity interest in the project, the property has been presold under a binding contract, the purchaser has a firm commitment for a permanent qualifying mortgage loan, and the purchaser has made a substantial earnest money deposit. Under the OCC and OTS rules, the construction loan may not receive a 50 percent risk weight unless, prior to the extension of credit to the builder, the property was sold to an individual who will occupy the residence upon completion of construction. Under the capital rules of the Board and the FDIC, however, such loans to builders for residential construction are eligible for a 50 percent risk weight once the property is sold, even if the sale occurs after the construction loan has been made.

The Agencies are proposing to eliminate this difference by permitting qualifying residential construction loans to become eligible for the 50 percent risk weight category at the time the property is sold, even if that sale occurs after the institution has made the loan to the builder. In this regard, the OCC and OTS are proposing revised regulatory language that would permit this treatment because construction loans for residences sold to individual purchasers are equally safe regardless of whether sold before or after the loan is made to the builder. The Board is proposing a revision to its regulatory language to conform its discussion of qualifying construction loans to builders to the language of the FDIC.

Junior Liens on 1- to 4-Family Residential Properties

The Agencies are not uniform in their risk-based capital treatment of real estate loans secured by junior liens on 1-to 4-family residential properties when the lending institution also holds the first lien and no other party holds an intervening lien. In such cases, the Board views both loans as a single extension of credit secured by a first lien held by the lending institution and, accordingly, assigns the combined loan amount to either the 50 percent or 100 percent risk weight category depending upon whether certain other criteria are met.

One criterion to qualify for a 50 percent risk weight is that the loan must be made in accordance with prudent underwriting standards, including an appropriate ratio of the current loan balance to the value of the property (the loan-to-value or LTV ratio).[2] When considering whether a loan is consistent with prudent underwriting standards, the Board evaluates the LTV ratio based on the combined loan amount. If the combined loan amount satisfies prudent underwriting standards, both the first and second lien are assigned to the 50 percent risk weight category. The FDIC

[1] The Agencies also identified inconsistencies in their treatment of transactions supported by qualifying collateral, which are addressed in a pending joint notice of proposed rulemaking, 61 FR 42565 (August 16, 1996).

[2] Other criteria include that the loan may not be 90 days or more past due or carried in nonaccrual status. The OTS rule also specifies that the documented LTV ratio may not exceed 80 percent of the securing real estate, unless the loan amount over the 80 percent LTV threshold is insured by qualifying private mortgage insurance.

also combines the first and second liens to determine the appropriateness of the LTV ratio, but it applies the risk weights differently than the Board. If the combined loan amount satisfies prudent underwriting standards, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent; otherwise, both liens are risk weighted at 100 percent. The OCC treats all first and junior liens separately, even if the lending institution holds both liens and no party holds an intervening lien. Qualifying first liens are risk weighted at 50 percent, and non-qualifying first liens and all junior liens are risk weighted at 100 percent. The OTS definition of qualifying mortgage in its capital rule parallels that of the OCC, but in response to specific inquiries, the OTS has interpreted this provision to treat first and second mortgage loans to a single individual with no intervening liens as a single extension of credit.

The Agencies have decided to propose adopting the OCC's capital treatment of junior liens as the uniform interagency approach because it is simple to implement and monitor, and it treats all junior liens consistently. Under this approach, all junior liens would be assigned to the 100 percent risk weight category. The Board and the FDIC are proposing conforming revisions to their risk-based capital standards. The OTS would revisit its policy interpretation of its current rule, which parallels the OCC's text.

Mutual Funds

The Board and FDIC generally assign all of an institution's investment in a mutual fund to the risk weight category appropriate to the highest risk weighted asset that a particular mutual fund is permitted to invest in pursuant to its prospectus. As a general rule, the OCC applies the same treatment, but permits, on a case-by-case basis, an institution's investment to be allocated on a pro-rata basis among risk weight categories based on the percentages of a portfolio authorized to be invested in assets in a particular risk weight category as set forth in the fund's prospectus. The OTS generally assigns all of an institution's investment in a mutual fund to the risk weight category applicable to the highest risk weighted asset that the fund actually holds at a particular time. The OTS, however, on a case-by-case basis, permits pro-rata allocation among risk weight categories based on the fund's actual holdings. All of the Agencies' rules provide that the minimum risk weight for investments in mutual funds is 20 percent.

The Agencies are proposing to achieve uniformity in the capital treatment of an institution's investments in mutual funds by generally assigning the institution's total investment to the risk category appropriate to the highest risk weighted asset the fund is permitted to hold in accordance with its stated investment limits set forth in the prospectus. The Agencies, however, are proposing to allow an institution, at its option, to assign the investment on a pro-rata basis to different risk weight categories according to the investment limits in the fund's prospectus, but in no case will indirect holdings through shares in a mutual fund be assigned to a risk weight less than 20 percent. For example, an institution's investment in a mutual fund that is authorized, in accordance with its prospectus, to invest up to 40 percent of its portfolio in corporate bonds and the remainder in U.S. government bonds, normally would be placed in the 100 percent risk-weight category. However, the institution could choose to place only 40 percent of its investment in the 100 percent risk weight category and the remainder in the 20 percent risk weight category. The proposed rules note that if a mutual fund is permitted to contain an insignificant quantity of highly liquid securities of superior quality that do not qualify for a preferential risk weight, such securities generally will be disregarded in determining the risk weight for the overall fund. The Agencies also emphasize that any activities which are speculative in nature or otherwise inconsistent with the preferential risk weighting assigned to the fund's assets could result in the mutual fund investment being assigned to the 100 percent risk category.

Tier 1 Leverage Ratio

The Agencies' Tier 1 leverage ratio (that is, the ratio of Tier 1 capital to total assets) is an indicator of an institution's capital adequacy and places a constraint on the degree to which an institution can leverage its equity capital base. The Board, FDIC, and OCC require the most highly-rated institutions—that is, those with, among other things, a composite 1 rating under the Uniform Financial Institutions Rating System (UFIRS)[3]—to meet a minimum leverage ratio of 3.0 percent. The minimum leverage ratio for other institutions is 3.0 percent "plus an additional cushion of at least 100 to 200 basis points."

All four Agencies' prompt corrective action (PCA) rules require institutions to satisfy a 4.0 percent leverage ratio (3.0 percent for institutions with a composite 1 rating under the UFIRS) to be considered "adequately capitalized." The OTS capital rule includes a 3.0 percent core (Tier 1) capital requirement,[4] but the 4.0 percent standard to be adequately capitalized under the Agencies' PCA rules has been the controlling thrift leverage standard.

The Agencies are proposing revisions to their leverage capital standards so that the most highly-rated institutions would be subject to a minimum 3.0 percent leverage ratio and all other institutions would be subject to a minimum 4.0 percent leverage ratio (the same standard used to be adequately capitalized under their PCA rules). This proposed change would simplify and streamline the Agencies' leverage rules.

In addition, it would make the OTS Tier 1 leverage standard consistent with the current standard to be "adequately capitalized" under all four agencies' PCA rules and with the other agencies' Tier 1 leverage standards. The OTS is also proposing to be consistent with the other three agencies by explicitly clarifying that the prescribed leverage standard is a minimum standard for financially strong institutions, that higher capital may be required if warranted, and that institutions should maintain capital levels consistent with their risk exposure.

The Agencies request comment on all aspects of this proposal. Comment is specifically requested on the proposed treatment of first and second mortgages, which places qualifying first mortgages on 1- to 4-family residential properties in the 50 percent risk-weight category and all second mortgages in the 100 percent risk-weight category. Please comment on whether the combined loan-to-value ratio of a first and second mortgage to the same borrower, or some other criteria, provides a sound basis for modifying the proposed capital treatment of such first and second mortgages. Comment is also specifically requested on the 20 percent minimum risk weight applied to banks' investments in mutual funds. In particular, commenters are encouraged to discuss whether 20 percent is too low or too high as a lower bound in light of mutual funds' various credit, operational, and legal risks, and where these risks lie.

[3] The UFIRS is used by supervisors to summarize their evaluations of the strength and soundness of financial institutions in a comprehensive and uniform manner.

[4] The OTS's core capital ratio is the OTS equivalent to the other agencies' Tier 1 leverage ratio. OTS is proposing to add definitions of Tier 1 capital and Tier 2 capital to clarify that these are equivalent to core and supplementary capital, respectively.

Regulatory Flexibility Act Analysis

OCC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The proposed rule would reduce regulatory burden by unifying the Agencies' risk-based capital treatment for presold construction loans, junior liens, and investments in mutual funds, and simplifying the Tier 1 leverage standards. The economic impact of this proposed rule on banks, regardless of size, is expected to be minimal.

Federal Reserve Board Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe this proposal would have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The effect of the proposal would be to reduce regulatory burden on depository institutions by unifying the Agencies' risk-based capital treatment for presold construction loans, junior liens, and investments in mutual funds, and simplifying the Tier 1 leverage standards. The economic impact of the proposed rule on institutions, regardless of size, is expected to be minimal.

FDIC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposal would not have a significant impact on a substantial number of small entities. The effect of the proposal would be to simplify depository institutions' capital calculations.

OTS Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The effect of the proposal would be to reduce regulatory burden on depository institutions by simplifying the treatment of junior liens, permitting institutions to risk weight holdings in a mutual fund on a pro rata basis, and making OTS' Tier 1 leverage ratio consistent with its current standard to be adequately capitalized under PCA. In addition, the proposal will eliminate various inconsistencies in the risk-based capital treatments applied by the Agencies.

Paperwork Reduction Act

The Agencies have determined that the proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule is limited to changing the risk weighting of presold residential construction loans, second liens, and mutual fund investments under the Agencies' risk-based capital rules. It also establishes a uniform, simplified leverage requirement for all institutions. In addition, with respect to the OCC, this proposal clarifies and makes uniform existing regulatory requirements for national banks. The OCC and OTS have therefore determined that the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR CHAPTER I

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In § 3.6, paragraph (c) is revised to read as follows:

§ 3.6 Minimum capital ratios.

* * * * *

(c) *Additional leverage ratio requirement.* An institution operating at or near the level in paragraph (b) of this section is expected to have well-diversified risks, including no undue interest rate risk exposure; excellent control systems; good earnings, high asset quality; high liquidity; and well managed on- and off-balance sheet activities; and in general be considered a strong banking organization, rated composite 1 under the Uniform Financial Institutions Rating System (CAMELS) rating system of banks. For all but the most highly-rated banks meeting the conditions set forth in this paragraph, the minimum Tier 1 leverage ratio is to be 4 percent. In all cases, banking institutions should hold capital commensurate with the level and nature of all risks.

3. In appendix A to part 3, section 3., the second undesignated paragraph and paragraph (a)(3)(iv) are revised to read as follows:

APPENDIX A TO PART 3—RISK BASED CAPITAL GUIDELINES

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

Some of the assets on a bank's balance sheet may represent an indirect holding of a pool of assets, *e.g.*, mutual funds, that encompass more than one risk weight within the pool. In those situations, the bank may assign the asset to the risk category applicable to the highest risk-weighted asset that pool is permitted to hold pursuant to its stated investment objectives in the fund's prospectus. Alternatively, the bank may assign the asset on a pro rata basis to different risk categories according to the investment limits in the fund's prospectus. In either case, the minimum risk weight that the bank may assign to such a pool is 20 percent. If, in order to maintain a necessary degree of liquidity, the fund is permitted to hold an insignificant amount of its investments in short-term, highly-liquid securities of superior credit quality (that do not qualify for a preferential risk weight), such securities generally will not be taken into account in determining the risk category into which the bank's holding in the overall pool should be assigned. The prudent use of hedging instruments by a mutual fund to reduce the risk of its assets will not increase the risk weighting of that fund above the 20 percent category. More detail on the treatment of mortgage-backed securities is provided in section 3(a)(3)(vi) of this appendix A.

(a) * * *

(3) * * *

(iv) Loans to residential real estate builders for one-to-four family residential property construction, if the bank obtains sufficient documentation demonstrating that the buyer of the home intends to purchase the home (*i.e.*, a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.*, a firm written commitment for permanent financing of the home upon completion), subject to the following additional criteria:

* * * * *

Dated: September 29, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, section *III.* A., footnote 21 is revised to read as follows:

APPENDIX A TO PART 208—CAPITAL ADEQUACY GUIDELINES FOR STATE MEMBER BANKS: RISK-BASED MEASURE

* * * * *

III. * * *

A. * * * [21]

* * * * *

3. In appendix A to part 208, section *III.*C.3. is amended by removing and reserving footnote 34 and by adding a new sentence to the end of the first paragraph of footnote 35 to read as follows:

* * * * *

III. * * *

C. * * *

3. * * * [35]

* * * * *

4. In appendix B to part 208, section II.a. is revised to read as follows:

APPENDIX B TO PART 208—CAPITAL ADEQUACY GUIDELINES FOR STATE MEMBER BANKS: TIER 1 LEVERAGE MEASURE

* * * * *

II. * * *

a. For a strong banking organization (rated composite 1 under the UFIRS rating system of banks) the minimum ratio of Tier 1 capital to total assets is 3.0 percent. Such institutions must not be anticipating or experiencing significant growth, and are expected to have well-diversified risk (including no undue interest rate risk exposure), excellent asset quality, high liquidity, good earnings, and in general to be considered a strong banking organization. For all other institutions, the minimum ratio is 4.0 percent. Higher capital ratios could be required if warranted by the particular circumstances or risk profiles of individual banks. In all cases, banking institutions should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 21, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Paragraph (b)(2) in § 325.3 is revised to read as follows:

§ 325.3 Minimum leverage capital requirement.

* * * * *

(b) * * *

(2) For all but the most highly-rated institutions meeting the conditions set forth in paragraph (b)(1) of this section, the minimum leverage capital requirement for a bank (or for an insured depository institution making an application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 4 percent.

* * * * *

3. In appendix A to part 325, section II.B., paragraph 1 is revised to read as follows:

APPENDIX A TO PART 325—STATEMENT OF POLICY ON RISK-BASED CAPITAL

* * * * *

II. * * *

B. * * *

1. *Indirect Holdings of Assets.* Some of the assets on a bank's balance sheet may represent an indirect holding of a pool of assets; for example, mutual funds. An investment in shares of a mutual fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, generally is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold in accordance with the stated investment objectives set forth in its prospectus. The bank may, at its option, assign the investment on a pro rata basis to different risk categories according to the investment limits in the fund's prospectus, but in no case will indirect holdings through shares in any mutual fund be assigned to a risk weight less than 20 percent. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities generally will be disregarded in determining the risk category into which the bank's holding in the overall fund should be assigned. The prudent use of hedging instruments by a mutual fund to reduce the risk of its assets will not increase the risk weighting of the mutual fund investment. For example, the use of hedging instruments by a mutual fund to reduce the interest rate risk of its government bond portfolio will not increase the risk weight of that fund above the 20 percent category. Nonetheless, if the fund engages in any activities that appear speculative in nature or has any other characteristics that are inconsistent with the preferential risk weighting assigned to the fund's assets, holdings in the fund will be assigned to the 100 percent risk category.

* * * * *

4. In appendix A to part 325, section II.C. is amended by removing and reserving footnote 26.

By order of the Board of Directors.

Dated at Washington, D.C. this 4th day of February 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

For the reasons set forth in the joint preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. In § 567.1, paragraph (jj)(1)(ii) is revised, and new paragraphs (mm) and (nn) are added to read as follows:

§ 567.1 Definitions.

* * * * *

(jj) *Qualifying residential construction loan.* (1) * * *

(ii) The residence being constructed must be a 1–4 family residence sold to a home purchaser;

* * * * *

(mm) *Tier 1 capital.* The term *Tier 1 capital* means core capital as computed in accordance with § 567.5(a) of this part.

(nn) *Tier 2 capital.* The term *Tier 2 capital* means supplementary capital as computed in accordance with § 567.5(b) of this part.

3. Section 567.2(a)(2)(ii) is revised to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(2) *Leverage ratio requirement.* * * *

(ii) A savings association must satisfy this requirement with core capital as defined in § 567.5(a) of this part.

* * * * *

4. Section 567.6(a)(1)(vi) is revised to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(vi) *Indirect ownership interests in pools of assets.* An asset representing an indirect holding of a pool of assets, *e.g.*, mutual funds, generally is assigned to the risk-weight category under this section based upon the risk weight that would be assigned to the assets in the portfolio of the pool. An investment in shares of a mutual fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk-weight categories, generally is assigned to the risk-weight category appropriate to the highest risk-weighted asset that the fund is permitted to hold in accordance with the investment objectives set forth in its prospectus. The savings association may, at its option, assign the investment on a pro-rata basis to different risk-weight categories according to the investment limits in the fund's prospectus. In no case will an indirect holding through shares in a mutual fund be assigned to the zero percent risk-weight category. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities generally will be disregarded in determining the risk-weight category into which the savings association's holding in the overall fund should be assigned. The prudent use of hedging instruments by a mutual fund to reduce the risk of its assets will not increase the risk weighting of the mutual fund investment. For example, the use of hedging instruments by a mutual fund to reduce the interest rate risk of its government bond portfolio will not increase the risk weight of that fund above the 20 percent category. Nonetheless, if the fund engages in any activities that appear speculative in nature or has any other characteristics that are inconsistent with the preferential risk-weighting assigned to the fund's assets, holdings in the fund will be assigned to the 100 percent risk-weight category.

* * * * *

5. Section 567.8 is revised to read as follows:

§ 567.8 Leverage ratio.

(a) The minimum leverage capital requirement for a savings association assigned a composite rating of 1, as defined in § 516.3(c) of this chapter, shall consist of a ratio of core capital to adjusted total assets of 3 percent. These generally are strong associations that are not anticipating or experiencing significant growth and have well-diversified risks, including no undue interest rate risk exposure, excellent asset quality, high liquidity, and good earnings.

(b) For all savings associations not meeting the conditions set forth in paragraph (a) of this section, the minimum leverage capital requirement shall consist of a ratio of core capital to adjusted total assets of 4 percent. Higher capital ratios may be required if warranted by the particular circumstances or risk profiles of an

[21] An investment in shares of a mutual fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, generally is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold in accordance with the stated investment objectives set forth in the prospectus. The bank may, at its option, assign the investment on a pro rata basis to different risk categories according to the investment limits in the fund's prospectus, but in no case will indirect holdings through shares in any mutual fund be assigned to a risk weight less than 20 percent. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities generally will be disregarded in determining the risk category into which the bank's holding in the overall fund should be assigned. The prudent use of hedging instruments by a mutual fund to reduce the risk of its assets will not increase the risk weighting of the mutual fund investment. For example, the use of hedging instruments by a mutual fund to reduce the interest rate risk of its government bond portfolio will not increase the risk weight of that fund above the 20 percent category. Nonetheless, if the fund engages in any activities that appear speculative in nature or has any other characteristics that are inconsistent with the preferential risk weighting assigned to the fund's assets, holdings in the fund will be assigned to the 100 percent risk category.

[35] * * * Such loans to builders will be considered prudently underwritten only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (i.e., has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (i.e., has a firm written commitment for permanent financing of the home upon completion).

individual savings association. In all cases, savings associations should hold capital commensurate with the level and nature of all risks, including the volume and severity of problems loans, to which they are exposed.

Dated: April 17, 1997.

The Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–28270 Filed 10–24–97; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0948]

Risk-Based Capital Standards: Construction Loans on Presold Residential Properties; Junior Liens on 1- to 4-Family Residential Properties; and Mutual Funds and Leverage Capital Standards: Tier 1 Leverage Ratio

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its risk-based capital guidelines for bank holding companies by revising the treatment for junior liens on 1- to 4-family residential properties and mutual funds and the language for construction loans on presold residential properties, and to simplify the leverage capital guidelines for bank holding companies. The proposal, which was developed on an interagency basis, would implement part of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, which requires the Federal banking agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies. The effect of the proposal would be that the bank holding company risk-based capital treatment for construction loans on presold residential properties, real estate loans secured by junior liens on 1- to 4-family residential properties, and investments in mutual funds would be consistent with the risk-based capital treatment of the other Federal banking and thrift regulatory agencies, and the bank holding company Tier 1 leverage standards would be simplified and revised to take into account the market risk capital rule.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Comments should refer to Docket No. R–0948 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Roger Cole, Associate Director (202/452–2618); Norah Barger, Assistant Director (202/452–2402); or Barbara Bouchard, Senior Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: The Federal Reserve, along with the other bank and thrift regulatory agencies (that is, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies)), issued a joint notice of proposed rulemaking, published elsewhere in today's **Federal Register**, under Docket No. R–0947. In that joint notice, the Agencies have proposed several amendments to their risk-based capital standards that would eliminate inconsistencies among the capital rules for banks and thrifts. In particular, the Agencies have proposed amendments to the risk-based capital treatment of construction loans on presold residential properties, loans secured by junior liens on 1- to 4-family residential property, and investments in mutual funds. The agencies also have proposed a streamlining revision to their leverage capital rules. The Federal Reserve, in this notice, is proposing conforming amendments to its risk-based capital guidelines for bank holding companies, as well as a streamlining revision to its leverage capital guidelines for such organizations, that takes into account the market risk capital rule (12 CFR part 225, appendix E).

Proposed Amendments to the Risk-Based Capital Guidelines

With regard to construction loans on presold residential properties, the Board is not proposing any substantive change to its rule, but is proposing a revision to the regulatory language to provide guidance on the characteristics of loans to builders that will be considered prudently underwritten. This change would conform the discussion of qualifying construction loans to builders to the existing language of the FDIC. For junior liens on 1-to 4-family properties, the Board is proposing to treat all first and second liens separately, even if the lending institution holds both liens and no party holds an intervening lien. Under the proposed treatment, qualifying first liens would be risk weighted at 50 percent, and non-qualifying first liens and all junior liens would be risk weighted at 100 percent. The Federal Reserve is proposing to retain its general treatment for investments in mutual funds, that is, generally assigning an institution's investment in a mutual fund to the highest risk-weight category applicable to any asset the fund is authorized to hold in accordance with its prospectus. The Federal Reserve is also proposing to allow an institution, at its option, to allocate its investment in a mutual fund among the risk-weight categories based on the maximum percentage of the mutual fund's portfolio that may consist of higher risk-weighted assets under its prospectus. These proposed revisions are consistent with the Federal Reserve's proposed amendments for state member banks that are set forth in the earlier referenced interagency notice of proposed rulemaking.

Proposed Amendment to the Tier 1 Leverage Guidelines

The Federal Reserve's capital adequacy guidelines for bank holding companies set forth the following minimum levels of Tier 1 capital to total assets (leverage ratio): a 3 percent minimum for organizations rated a composite 1 under the BOPEC [1] rating system for bank holding companies and a minimum of 3 percent plus 100 to 200 basis points for all other organizations. The Federal Reserve is proposing to amend its guidelines to set forth a minimum 3 percent leverage ratio for bank holding companies that are BOPEC 1-rated or have implemented the risk-based capital market risk measure set forth in the Board's capital adequacy guidelines (12 CFR part 225, appendix E). All other bank holding companies would be subject to a 4 percent minimum Tier 1 leverage ratio. Higher

[1] The BOPEC rating system is used by supervisors to summarize their evaluations of the strength and soundness of bank holding companies in a comprehensive and uniform manner.

capital ratios could be required if warranted by the particular circumstances or risk profiles of individual banking organizations. Institutions with supervisory, financial, or operational weaknesses would continue to be expected to operate well above minimum capital levels. Organizations experiencing or anticipating significant growth also would be expected to maintain capital ratios, including tangible capital positions, well above the minimum.

The Federal Reserve notes that this proposed amendment would lower the minimum Tier 1 leverage ratio for institutions that have implemented the market risk capital rule. While the Federal Reserve believes it is desirable for bank holding companies to maintain a minimum base of capital to total assets, it also recognizes that the leverage ratio can be an inexact measure of capital adequacy for many bank holding companies, particularly for very large organizations that have significant trading portfolios and are extensively engaged in fee-generating off-balance-sheet activity. Accordingly, in light of the revisions to the risk-based capital measure to capture market risk as well as credit risk, the Federal Reserve believes it is appropriate to lower the minimum Tier 1 leverage ratio to 3 percent for bank holding companies that have implemented the market risk rule.

The Federal Reserve requests comment on all aspects of this proposal. With regard to the proposed treatment for first and second liens, the Board notes that it continues to believe its current approach of merging first and second liens more appropriately reflects the risk of those transactions. This is because, in terms of an institution's collateral position, funds advanced on both the first and second note are effectively secured by a first lien and timely payment in accordance with the terms of both loans depends on the same borrower's financial ability to pay. Furthermore, the Board believes that merging these liens is consistent with general industry practice. Thus, the Board requests, in particular, comment on the proposed treatment for first and second liens.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe the proposed rule would have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, the proposed rule would not affect such companies. The effect of the proposed rule would be to reduce regulatory burden on bank holding companies by unifying the Agencies' risk-based capital treatment for presold construction loans, junior liens, and investments in mutual funds, and simplifying the Tier 1 leverage standards.

Paperwork Reduction Act

The Board has determined that the proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, part 225 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, section III.*A.*, footnote 24 is revised to read as follows:

APPENDIX A TO PART 225—CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: RISK-BASED MEASURE

* * * * *

III. * * *

A. * * * [24]

[24] An investment in shares of a mutual fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, generally is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold in accordance with the stated investment objectives as set forth in the prospectus. The organization may, at its option, assign the investment on a pro rata basis to different risk categories according to the investment limits in the fund's prospectus, but in no case will indirect holdings through shares in any mutual fund be assigned to a risk weight less than 20 percent. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities generally will be disregarded in determining the risk category into which the organization's holding in the overall fund should be assigned. The prudent use of hedging instruments by a mutual fund to reduce the risk of its assets will not increase the risk weighting of the mutual fund investment. For example, the use of hedging instruments by a mutual fund to reduce the interest rate risk of its government bond portfolio will not increase the risk weight of that fund above the 20 percent category. Nonetheless, if the fund engages in any activities that appear speculative in nature or has any other characteristics that are inconsistent with the preferential risk weighting assigned to the fund's assets, holdings in the fund will be assigned to the 100 percent risk category.

3. In appendix A to part 225, section III.*C.*3. is amended by removing and reserving footnote 37 and by adding a new sentence to the end of the footnote 38 to read as follows:

* * * * *

III. * * *

C. * * *

3. * * * [38] * * *

* * * * *

[38] * * * Such loans to builders will be considered prudently underwritten only if the bank holding company has obtained sufficient documentation that the buyer of the home intends to purchase the home (i.e., has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (i.e., has a firm written commitment for permanent financing of the home upon completion).

4. In appendix D to part 225, section II.a. is revised to read as follows:

APPENDIX D TO PART 225—CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: TIER 1 LEVERAGE MEASURE

* * * * * *

II. * * *

a. For a strong banking organization (rated composite 1 under the BOPEC rating system of bank holding companies or has implemented the Board's risk-based capital measure for market risk as set forth in appendices A and E of this part) the minimum ratio of Tier 1 capital to total assets is 3.0 percent. Such organizations must not be anticipating or experiencing significant growth, are expected to have well diversified risk (including no undue interest rate risk exposure), excellent asset quality, high liquidity, good earnings, and in general be considered a strong banking organization. In addition, organizations are expected to maintain capital ratios, including tangible capital positions, well above minimum levels. For all other bank holding companies, the minimum ratio is 4.0 percent. Higher capital ratios could be required if warranted by the particular circumstances or risk profiles of individual banking organizations. In all cases, bank holding companies should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 21, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97-28271 Filed 10-24-97; 8:45 am]
BILLING CODE 6210-01-P

federal register

Monday
October 27, 1997

Part IV

Department of Transportation

Federal Aviation Administration

49 CFR Part 187
Fees for Providing Production Certification-Related Services Outside the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28967; Amendment No. 187–10]

RIN 2120–AG14

Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes fees by voluntary agreement for production certification-related services pertaining to aeronautical products manufactured or assembled outside the United States. In addition, the document outlines the methodology for determining the fees, describes how and when the FAA will provide these services, and describes the method for payment of fees. This rule will allow the FAA to recover certain costs incurred in providing requested production certification-related services abroad and will help to ensure that such services are provided in a responsive and timely manner.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Ramona L. Johnson, Production and Airworthiness Certification Division, AIR–200, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–7145.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board (telephone: 202–512–1661).

Internet users may access the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must reference the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page http://www/faa.gov/avr/arm/sbrefa.htm, by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

Statement of Problem

Under Title 49 U.S.C. 44701, the FAA is responsible for the regulation and promotion of safety of flight. Title 49 U.S.C. 44704(b) authorizes the FAA Administrator to issue production certificates. Section 44704(b) provides, in part, that:

> The Administrator shall issue a production certificate authorizing the production of a duplicate of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing * * *.

The production certification-related services that the FAA provides to fulfill its statutory responsibilities may be generally described as follows:

1. Processing applications for the following: production under a type certificate only, production under an approved production inspection system, production under a production certificate or extension of a production certificate, production under a technical standard order authorization, and production under a parts manufacturer approval. The processing of applications includes a review of data, response to the applicant, and evaluation of the applicant's further responses as necessary.

2. Certificate management of the manufacturing facility quality assurance system.

3. Witnessing tests and performing conformity inspections of articles.

4. Managing designees.

5. Investigating incidents, accidents, allegations and other unusual circumstances.

These FAA services are provided to Production Approval Holders (PAH). A person who holds a parts manufacturer approval (PMA), a Technical Standard Order (TSO) authorization, or a production certificate (PC), or who holds a type certificate (TC) and produces under that TC, is referred to as a PAH. The regulatory services provided to a PAH include: initial PAH qualification, ongoing PAH and supplier surveillance, designee management, conformity inspections; as well as initial PAH qualification and ongoing surveillance for production certificate extensions outside the United States. The specialists who perform these functions on behalf of the FAA are Aviation Safety Inspectors, Aviation Safety Engineers, and Flight Test Pilots.

Currently, the FAA performs production certification-related services both domestically and internationally. It does not issue production approvals outside of the United States. However, in some situations, the FAA allows a PAH to use suppliers outside the United States if parts or sub-assemblies can be 100 percent inspected by the PAH upon their receipt in the United States or if parts or sub-assemblies are produced under a PAH's supplier control system that has been approved by the PAH and accepted by the FAA. Under certain circumstances, production outside the United States of complex parts, sub-assemblies, or products is approved by the FAA on a case-by-case basis.

PAHs who choose to perform manufacturing outside the United States receive significant and special benefits. These benefits often depend on whether the PAH can obtain FAA oversight at the manufacturing site when the PAH needs the service. Since it is FAA's responsibility to prescribe and enforce standards in the interest of safety for the design, materials, workmanship, construction, and performance of civil aeronautical products, the FAA's oversight of manufacturing facilities located outside the United States helps ensure safety and marketability.

The Need for Rulemaking

Globalization of the aircraft manufacturing industry increases the challenges to the FAA in carrying out its statutory mandate to ensure that safety and airworthiness standards for civil aircraft are being met during manufacture.

Limited resources make it difficult for the FAA to oversee these diverse and complex international ventures by PAHs when and where the services are needed. Congress recognized the impact of FAA's resource limitations in the Federal Aviation Administration Authorization Act of 1994, PL 103–305 (108 State. 1569). As stated in Conference, H.R. Rep. No. 103–677 on H.R. 2739:

> Safety regulatory efforts to keep pace with the trend of globalization can be hampered by resource constraints * * * the Aircraft Certification Service should be able to offset expenditures made in support of aircraft or airline safety regulatory programs of both U.S. and foreign owned companies outside the United States.

In addition, under Title V of the Independent Offices of Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, Congress authorized agencies such as the FAA to establish a fair and equitable system for recovering the cost for any service, such as the issuance of a certificate, that provides a special benefit to an individual beyond those that accrue to the general public. Title 31 U.S.C. 9701(a) provides, in part, as follows:

> It is the sense of the Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.
>
> Title 31 U.S.C. 9701(b) further provides:
>
> The head of each Federal agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies shall be as uniform as practicable. Each charge shall be—
>
> (1) fair; and
>
> (2) based on—
>
> (A) the costs to the Government;
>
> (B) the value of the service or thing to the recipient;
>
> (C) public policy or interest served; and
>
> (D) other relevant facts.

The Rule

This rule allows PAHs to enter into a voluntary agreement with the FAA for the provision of production certification-related services outside the United States on mutually agreed terms and conditions. This will be available to PAHs who elect to use organizations or facilities outside the United States to manufacture, assemble, or test aeronautical products after September 30, 1997.

An agreement for services between the PAHs and the FAA for production certification-related services for products manufactured, assembled, or tested outside the United States will allow the FAA to provide services upon request in a more responsive and timely manner than otherwise is available. By charging for its services outside the United States when needed by the PAHs, the FAA will be able to support the PAH's more complex manufacturing activities and provide acceptance of parts, sub-assemblies, and products that would otherwise need to be disassembled when received in the United States. Under this rule, when production certification-related services are requested and provided outside the United States, no duplication of FAA work or reinspection of parts in the United States is anticipated, except as otherwise required of domestic manufactured parts during the PAH receiving inspection process.

The rule simply makes oversight resources available in a more timely and effective fashion, permitting PAHs to pay for FAA oversight services.

Guidelines for Cost Recovery

The FAA developed this rule consistent with the IOAA and with the Office of Management and Budget's (OMB) Circular A–25, entitled "User Charges."

Fees under this rule may be assessed to PAHs who agree to pay for certain special benefits conferred by FAA's production certification-related services outside the United States. These special benefits will include, but are not limited to: (1) services rendered at the time and location requested by an applicant; (2) services for the issuance of a required production approval at the time and location requested by the applicant; and (3) services to assist an applicant or certificate holder in complying with its regulatory obligations at the time and location requested by the applicant.

The FAA has determined that all services associated with the issuance, amendment, or inspection of a production certificate or approval as detailed in this rule will be subject to cost recovery. All direct and indirect costs incurred by the FAA in providing the special benefits outside of the United States as detailed by this rule will be recovered. Each fee will not exceed the FAA's cost of providing the service to the recipient. Calculation of agency costs will be performed as accurately as is reasonable and practical, and will be based on the specific expenses identified to the smallest practical unit.

To determine the smallest practical unit for the various FAA services covered, a letter of application will be made by the PAH to the FAA requesting FAA production certification-related services outside the United States. The application procedure will apply to any PAH; i.e., holders or applicants for production under a type certificate only, under an approved production inspection system, under a production certificate or extension of a production certificate, under a technical standard order authorization, or under a parts manufacturer approval. Based on the details provided in the application, the FAA will estimate the cost and terms of providing the requested services to the PAH outside the United States and detail those costs to the applicant. If the applicant desires the services, the applicant will then request the provision of those services from the FAA. A written agreement between the applicant and the FAA will then be entered into if the PAH and the FAA can mutually agree to all terms.

Methodology for Fee Determination and Collection

Fee Determination

The FAA will recover the full cost associated with providing production certification-related services by agreement outside of the United States. Costs to be recovered include personnel compensation and benefits (PC&B), travel and transportation costs, and other agency costs.

PC&B: For the purpose of these computations, average PC&B rates for participating Aircraft Certification Service employees will be charged per each agreed activity. PC&B charges will reflect the actual hours spent participating in the activity as well as preparatory time, travel time, and the time spent on follow-up activities.

Travel and transportation costs: These charges will include all costs pertaining to domestic, local, and international transport of persons and equipment. These costs may include fares, vehicle rental fees, mileage payment, and any expenses related to transportation such as baggage transfer, insurance for equipment during transport, and communications. FAA personnel will adhere to all U.S. Government travel regulations.

Fees will be charged for lodging, meals, and incidental expenses in accordance with U.S. Government per diem rates, rules, and regulations. Incidental expenses include fees, tips, and other authorized expenses.

Other agency costs: Also included in these computations will be other direct costs; for example, all printing and reproduction services, supplies and materials purchased for the activity, conference room rental, and other activity-related expenses. An additional percentage charge, as established by the FAA in accordance with OMB Circular A–25, will be added to the total cost of this activity to compensate for agency overhead.

The Aircraft Certification Service of the FAA maintains a data system to which employees submit periodic records identifying the number of work hours used to provide service to customers. Travel vouchers are also submitted and audited. This data will be maintained for each applicant and project. The Aircraft Certification Service tracks work hour records quarterly to determine the costs associated with providing its services. This information will be used in assessing and adjusting fees. In this manner, the FAA will be able to assure applicants that they are paying only for expenses incurred in connection with services provided to that specific applicant.

Fee Collection

All charges will be estimated and agreed upon between the FAA and the applicant before the FAA provides services under the agreement.

Payment of estimated fees will be made to the FAA in advance for all production certification-related activities scheduled during the upcoming 12-month calendar period unless a shorter period is mutually agreeable between the PAH and the FAA. The amounts set forth in the cost estimate will be adjusted to recover the FAA's full costs. If costs are expected to exceed the estimate by more than 10 percent, notification will be made to the applicant as soon as possible. No services will be provided until the FAA receives the full estimated payment for the agreed to period. As activities are completed, the full costs of the activities will be charged against the advance account. Any remaining funds will either be returned or applied to future activities as requested by the applicant.

Payment for services rendered by the FAA will be in the form of a check, money order, draft, or wire transfer, and will be payable in U.S. currency to the FAA and drawn on a U.S. bank. Bank processing fees, when charged to the United States Government, will also be added to the fees charged to the applicants.

In any case where an applicant has failed to pay the agreed estimated fee for FAA services, the FAA may suspend or deny any application for service and may suspend or revoke any production-related approval granted.

In accordance with the agreement that will be signed by the FAA and the applicant (Appendix C(d)(3)), this arrangement may be terminated at any time by either party by providing 60 days written notice to the other party. Any such termination will allow the FAA an additional 120 days to close out its activities.

The FAA plans to issue an Advisory Circular further detailing the requirements of the application as well as providing other pertinent guidance and information.

Correction to Notice

In Notice No. 97–11, (62 FR 36008), the authority citation is revised to delete 49 U.S.C. 106(m) to properly reflect FAA's authority to enter into agreements. That authority is 49 U.S.C. 106(l)(6). This has been corrected in this rule.

In another correction, in Appendix C to part 187(c), Definitions, "Production approval holder" was listed as "U.S. production approval holder". This was an error and is revised. Also this has been corrected in the rule.

Finally, although used throughout the NPRM in discussing items to be inspected, the word "part" was inadvertently omitted from the definition of "Manufacturing facility" found in Appendix C (c). This has been corrected in the rule.

Discussion of Comments

The FAA considered a total of 242 comments on the proposed rule, of which 232 were identical or nearly identical. Of the total number of comments, 38 were received before the comment period closed on August 14, 1997, and 204 were received after the comment period closed. Comments were received from: the International Association of Machinists and Aerospace Workers (IAM) (one from the IAM President as well as 227 additional comments from its lodges and members), the Aerospace Industries Association of America (AIA) (two comments), the General Aviation Manufacturers Association (GAMA) and AIA (a joint comment); the NORDAM Group (submitted twice), the Timken Company, the Parker Hannifin Corporation, the Bureau Veritas of France, individuals (seven), and from a law firm. For the purposes of responding to the comments, the FAA has grouped together, for discussion, comments with essentially identical analyses. All comments received were carefully considered prior to the issuance of the final rule.

Several of the comments addressed multiple issues and some of the issues were addressed by many commenters. As a result, the FAA responses to the comments are organized, not by individual comment, but by the following general issues: employment issues, safety and quality issues, cost issues, and miscellaneous issues.

Employment Issues

IAM's President's comments, the local lodges' comments, and the members' comments opposed the proposal for similar reasons. They state that the proposal would facilitate the ability of PAHs to substitute products manufactured by facilities and suppliers located outside the United States for products manufactured in the United States. The result would be a loss of high pay, high skill production jobs in the United States.

The FAA disagrees with the analyses of these comments. The rule is designed to allow the FAA to provide special production certification-related services to PAHs and suppliers outside the United States when and where these services are needed and paid for by the PAH. The rule is not designed to, as claimed by the commenters, "expedite the manufacture of aerospace parts off shore." Nor do the commenters provide any data that this rule will specifically have the effects claimed.

For over 15 years, the FAA has performed production certification-related services both domestically and internationally for PAHs that have used facilities and suppliers located outside of the United States. The use of these facilities and suppliers has increased over time for several reasons; one reason is that customers outside the United States have purchased U.S. aerospace products on the condition that a share of the product be manufactured in their countries. These conditions are known as "offset" agreements. This rule takes no position on the use of offsets. However, the FAA is required by law to provide production certification-related services outside the United States to ensure that the product conforms to FAA's safety requirements. As seen in more detail in the International Trade Impact section of this Preamble and in the Final Regulatory Evaluation of the rule, the FAA recognizes that the indirect effect of this rule may increase the use of facilities and suppliers outside the United States. This increase may not be at the expense of production that would otherwise occur in the United States. As explained in the International statement and regulatory evaluation, it is anticipated that this rule may indirectly result in an overall increase in the production of U.S. aircraft due to expanded access to export markets.

The language of the final rule has been clarified in Appendix C, paragraph (d)(1) to reflect the voluntary nature of the agreement.

Safety Issues

IAM also states that the rule will increase the use of repair stations outside the United States. In conjunction with their contention that the FAA will not be able to monitor overseas facilities as effectively as it monitors facilities in the United States, IAM suggests the possibility of an increase in the use of "bogus" or unapproved parts into the aviation system. As a result, IAM contends that this rule will adversely effect air transportation safety.

The FAA disagrees with this comment. In order to maintain the level of safety required, the regulations specific to the manufacture of commercial products (aircraft, aircraft engines, or propellers) and parts thereof are contained in Title 14, Code of Federal Regulations (14 CFR) part 21 (part 21), Certification Procedures for Products and Parts. Products and parts manufactured anywhere in the world for use by U.S. manufacturers under part 21 must conform to an FAA-approved type design and be manufactured in accordance with an approved production certificate or parts manufacturing approval (PMA). The type design consists of drawings and specifications that define the configuration and design features of the product. An approved production certificate or PMA contains a manufacturer's quality/inspection control system that describes the methods, tests, and inspections necessary to ensure that each product or part produced conforms with the type design and is in a condition for safe operation.

This rule does not change the basic FAA approach to meeting its statutory responsibility. The FAA will continue to inspect parts manufactured in the United States and the FAA will continue, as resources allow, to inspect parts manufactured outside the United States by PAHs. If resources are insufficient, the FAA will continue to require that the parts be fully inspectable in the United States, or be inspected by appropriate civil aviation authorities (CAA). The rule adds the option of having the FAA perform safety assessments at non-U.S. facilities to confirm compliance with FAA regulations if the PAH desires to provide the financial resources and the FAA can accommodate the PAH's request. This rule will continue the FAA's past and current efforts to ensure both the safety of and the manufacture of aerospace products wherever those products are manufactured.

Also, the comments regarding the use of foreign repair stations, as well as repairs on products, are outside the scope of this rulemaking. The regulations for maintenance and repair are covered under 14 CFR part 43, Maintenance, Preventive Maintenance, Rebuilding, and Alteration, and part 187, Fees, Appendix A.

However, one possible byproduct of this rule is that it could result in a greater FAA presence outside the United States which could deter, rather than encourage, the manufacturer(s) of "bogus parts." Arguably, this could increase safety for not only U.S. aviation users, but all aviation users.

Parker Hannifin Corporation suggests that the FAA adopt the ISO 9000 quality system as the "worlds" quality system, thereby, eliminating the burden for the additional oversight needed to monitor these suppliers. The commenter asserts that safety would not be jeopardized, and the FAA could work with the "foreign aviation authorities" to monitor the suppliers.

The FAA disagrees with this comment. United States law requires the FAA to prescribe minimum performance standards for manufacturers. The ISO 9000 series of quality standards do not provide the same level of safety as the regulations promulgated by the FAA. Additionally, ISO 9000 is an industry developed quality standard subject to change in an unpredictable fashion outside the authority of the FAA. The FAA could not meet its statutory obligation through this standard and the commenter provided no data in support of its view that FAA's adoption of ISO 9000 in lieu of this and other existing rules could provide an equivalent level of safety.

The AIA and an individual commenter suggest that the FAA recognize that other CAAs could provide oversight and audits on behalf of the FAA. Then, "the requirement for the FAA to perform PAH certification services could be waived and this would be more cost effective. This solution should be allowed as mutually agreed to by the FAA and the PAH."

Also, Bureau Veritas of France (a private consulting firm) states that it wants to contract for inspection services with the FAA.

The FAA agrees in part with this comment. Where possible, the FAA has entered into bilateral airworthiness agreements with other CAAs to perform, as appropriate, inspection services. However, it is not currently possible to cover through bilateral agreements every needed service at every desired location. Also, as to the suggestion that a private company could provide these services, the FAA believes at this time the agency is best suited to perform these services for PAHs under U.S. law.

This rule allows for a voluntary agreement between the FAA and the PAH to cover production that cannot be inspected in the United States or through bilaterals by CAAs. This is an alternate method for the PAH to obtain the production certification-related services they need to comply with the regulations. Also, it should be noted most CAAs currently charge a fee for their services when inspecting on behalf of the FAA.

One individual commenter states that once the PAH has demonstrated a satisfactory quality assurance system and the systemic and periodic oversight in accordance with that system, the FAA could rely upon the PAH's evaluation (audit).

The FAA agrees in part with this comment. Once PAHs and suppliers have established and maintained an effective quality assurance system, surveillance could be reduced. However, the FAA is mandated by law to perform certain functions, including evaluations (auditing) and random inspections, to assure that PAHs remain in compliance with regulations. The rule allows for the FAA and the PAH to consider this type of situation in agreeing what inspection services outside the United States are needed to meet the goals of the PAH and the requirements of the FAA.

The AIA and GAMA state that this rule should only apply to "priority parts."

The FAA agrees with this comment. The FAA expects to continue to focus its resources on conducting surveillances at PAH and "priority part" supplier facilities, unless safety concerns (e.g., supplier control problems) mandate otherwise. However, the FAA will consider each situation on a case-by-case basis as each PAH requests services.

Various commenters express concerns over "a potential degradation in part quality and air safety brought about

through low cost labor acquired in foreign countries."

The FAA disagrees with this comment. In order to maintain the level of safety required, the FAA promulgates regulations specific to the manufacture of commercial products. Products and parts manufactured for use by U.S. manufacturers anywhere in the world must conform to the regulations by having an FAA-approved type design and be manufactured in accordance with an approved production certificate or PMA. This rule is not for the purpose of allowing PAHs to use low cost labor nor does the FAA believe that this rule could increase FAA inspection of parts outside the United States. In fact, it could increase the amount of parts manufactured overseas under direct and appropriate FAA inspection/surveillance resulting in enhanced safety.

Cost Issues

Parker Hannifin Corp., AIA, and GAMA are concerned that this rule "initiates double taxation." "We as taxpayers already pay for government employee compensation and administrative overhead expenses for services rendered", and "that services should be funded through general revenues."

The FAA disagrees with the comment. The FAA does not have the resources to provide full production certification-related services by agreement throughout the world. This rule affords the PAH an opportunity to expedite the receipt of the services where and when the PAH needs those services. This rule is a voluntary way for the FAA to provide services to the industry in a more responsive and timely manner using industry rather than taxpayer funds. But the FAA will continue to provide inspection services overseas as resources permit. In addition, the rule allows recipients of specific FAA services, rather than the general taxpayer, to pay for those specific services.

Also, AIA and GAMA believe that only marginal (direct) costs should be recovered.

The FAA disagrees with the comment. Pursuant to OMB Circular A–25, the FAA is directed to recover the full cost associated with providing production certification-related services outside the United States. Costs to be recovered include personnel compensation and benefits, travel and transportation costs, and other agency costs. Also, this practice is consistent with the fees charged by other Federal agencies for similar services.

The AIA and GAMA further state that for many industries, budgets are established based on a different calendar year than that of the government. They contend that this difference may create a difficulty for the PAHs budgeting for future FAA services.

The FAA agrees with this comment. The FAA has designed its procedures to accommodate differing accounting years between Government and industry. Applicants for these services can request and arrange for services on any mutually agreeable periodic basis.

The language of the final rule has been clarified in Appendix C, paragraph (f), to reflect this change.

The AIA and GAMA are concerned that "real time" business decisions would be constrained by the Federal budget process.

The FAA agrees in part with this comment. The FAA's goal is to provide a flexible alternative which can quickly respond to "real time" needs. However, there are limits to FAA's ability to respond to every situation immediately. Nevertheless, the rule allows the FAA greater flexibility to respond and, thereby, improve its coordination with business.

Several commenters express concern regarding how the FAA will manage the program under this rule.

The FAA is developing the necessary procedures to implement the rule that will provide requirements for PAHs application, FAA/industry memorandum of agreement, and accounting and reporting systems. Concurrent with publication of NPRM No. 97–11, the FAA has published a notice of availability of Proposed Advisory Circular 187–XX. The final advisory circular will be issued in the near future.

The AIA contends that a statement in the preamble is incorrect because some U.S. suppliers could lose business. The statement follows: "This proposed rule would not impose any additional costs on any members of society other than those requesting FAA production certification-related services for manufacturing outside the United States.

The FAA agrees with this comment to the extent that some U.S. suppliers could be adversely affected, but does not agree with the commenter that this effect will be substantial. The rule recognizes the long standing U.S. industry practice of conducting manufacturing outside the United States and, where possible, allows for FAA inspection services by agreement.

The Timken Company estimates that the proposed rule, if enacted, would cost his company $80,000 in the first year for no discernible benefit to his company.

The FAA cannot agree or disagree with this comment, as the commenter did not provide supporting data.

The AIA and GAMA state "that cost recovery charges should not be assessed at suppliers based on allegations, otherwise a PAH may suffer considerable expense because of unfounded allegations (perhaps by a competitor)."

The FAA disagrees with this comment. The FAA will not recover costs associated with special investigations (e.g., investigations resulting from accidents and incidents, suspected unapproved part). However, if safety concerns should arise (e.g., supplier control problems) which require changes to agreements, those agreements will be renegotiated or terminated.

Miscellaneous Issues

The IAM questions whether FAA resources would be stretched too thin to be effective and responsive under this rule.

The FAA disagrees with this comment. The FAA will increase its staffing levels to accommodate additional work load if voluntary agreements require such an increase. The final rule language has been clarified (Appendix C, paragraph (d)(3)) to state the FAA will provide services on request only when it can reasonably do so.

The AIA and GAMA suggest that "any foreign cost recovery scheme must apply only to new programs or supplier arrangements. Existing arrangements must be undisturbed by its implementation."

The FAA agrees in part with this comment. This rule does not require existing arrangements to be changed. However, if companies with existing international suppliers did not apply, they would have an economic advantage over new entrants in the international market place, thereby impeding international competitiveness. All PAHs have the option to voluntarily apply.

The AIA and GAMA recommend that a policy be established to preclude wasteful practices by FAA, such as: multiple visits to a single country/area by FAA personnel, multiple visits to a supplier by various FAA regions; increased audits of foreign suppliers over and above normal FAA surveillance, etc.

The FAA agrees with the comment. Future voluntary agreements will be incorporated into FAA planning to minimize inefficient practices.

The AIA and GAMA suggest that an appeal process be addressed as part of the rule when the FAA revokes an approval.

The FAA agrees with this comment. Title 14, CFR part 13 provides such an appeal process.

NORDAM Group expresses concern regarding FAA support to those PAHs who made a voluntary agreement to pay for "better services" versus those PAHs who did not.

The FAA disagrees with this comment. As stated previously, this rule provides the option to PAHs to obtain inspection services by agreement when the FAA does not have resources to perform these services. The FAA will continue to provide services when and where resources permit. The FAA will treat all requests in a fair manner, consistent with its responsibilities.

The language of the final rule has been clarified in Appendix C, paragraph (d)(1), to reflect that the agreement is an option available to a PAH who chooses to use suppliers located outside the U.S.

NORDAM Group asks: "if foreign-located sub-tier vendors (suppliers) are covered;" "if the rule will constitute a way around the Bilateral Aviation Safety Agreement (BASA) process;" and "does it make a difference where their PAH is located? (U.S. or foreign)."

The FAA responds to the comments with the following: any FAA-approved PAH who uses suppliers at any level outside the United States will have the option to request services under this rule. Also, this rule does not circumvent the BASA process. PAHs have the option to utilize suppliers in any other country. However, it is not assumed that the FAA can call upon another authority through the Bilateral Airworthiness Agreement (BAA) or BASA process to assist with its oversight responsibilities. While a BASA recognizes that a CAA has the capability and authority to perform reciprocal services, a CAA may not have sufficient staff and resources to support specific U.S. PAH activities. The FAA can only ask for the CAA's assistance, not guarantee it. If the PAH needs the FAA to perform services that a CAA cannot perform due to the lack of resources, time, experience, or authority (i.e., Aircraft Certification Service Evaluation Program (ACSEP)), routine evaluations and surveillance), a voluntary agreement may be needed. Also, as discussed in Advisory Circular, AC 21–20B, Supplier Surveillance Procedures, the CAA may charge the PAH or it's suppliers to perform services on behalf of the FAA. It does not matter where the PAH is located. Again, this option is available to any PAH who chooses to use suppliers located outside the U.S.

The AIA and GAMA state that if the PAH chooses to use a supplier in a non-bilateral country then the FAA should not charge the PAHs for the training provided to the other country's authority.

The FAA agrees with the comment. The training FAA may provide to another authority is not applicable to the cost of production certification-related services the FAA will provide.

An IAM Local, Air Transport District 143, has a concern that employees of a foreign aircraft manufacturer are not randomly tested for drugs and do not follow Occupation Safety Health Administration (OSHA) standards similar to those in the United States.

This comment does not address matters within the scope of this rule. Also, it should be noted that the FAA does not require aircraft manufacturing employees to be randomly tested for drugs in the United States.

NORDAM Group asks "will the foreign PAH's agreement to pay before the project begins, constitute a blank check and thus create an incentive for the FAA to maximize its revenues?"

The voluntary agreements between the PAH and FAA include a detailed schedule of services. This schedule will identify the types of specialists needed and the number of hours projected for work on each project. Payment to the FAA would only include funding for work agreed to in the schedule of services. The FAA will not collect any funds for which specific activities or work projects have not been identified.

The language of the final rule has been clarified in Appendix C, paragraph (e), to reflect that only actual FAA costs of providing the services will be charged. Also, the term "prepaid" has been replaced with "estimated" to better reflect the terms of the agreement.

The AIA and the law firm of Winthrop, Stimson, Putman, and Roberts both request an extension to the comment period in this rulemaking. Both state they need additional time for distribution of the NPRM to members for review, analysis, and return of comments.

The FAA did not approve this request. As noted above, the FAA has considered, to the extent practical, comments received prior to the issuance of the final rule. As over 200 comments were received and considered, it is clear most commenters had adequate time to submit comments and further delay was not in the public interest.

Meeting

At the request of the IAM, a meeting was held with OMB on October 20, 1997. The IAM representative stated that, while the aerospace industry was in a boom right now, the IAM was concerned about the future. The IAM foresaw a time when other countries would seek to expand their share of aerospace production. The IAM's concerns extend primarily to China, Japan, and third world countries. The IAM said that the NPRM states that the rulemaking facilitates manufacturing outside the United States, and urged that the government resist pressures to permit or encourage this practice.

The IAM representative also stated that it was currently possible to trace the materials and components of every aircraft part to "when it was born." The IAM representative expresses concern that this ability would be diminished with respect to parts manufactured outside the United States.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no comparable requirements applicable to this rule.

Paperwork Reduction Act

Information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0615.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs; (2) will not have a significant impact on a substantial number of small entities; and (3) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

As previously stated, the fee will be that amount necessary for the FAA to recover its full costs. The FAA has determined that an average hourly fee will be about $120. On that basis, the FAA calculates that the first year fees will total about $4.038 million (in 1997 dollars). Due to an anticipated increase in the number of requests for FAA production certification-related services outside the United States as the aerospace industry grows, these annual fees will increase to about $5.912 million (in 1997 dollars) in the fifth year, after which they would remain stable.

In addition, the FAA has determined that it will take an applicant 60 hours of legal, management, and engineering time for a PAH to complete the paperwork required for the first agreement. After that first year, it will take 20 hours of legal, management, and engineering time for a PAH to complete the paperwork for each succeeding agreement.

The primary benefit from this rule will be that it will allow the FAA to perform its safety inspection functions in a more efficient, cost-effective manner. The final rule allows the FAA to be more responsive to PAHs; thereby reducing the time between when the PAH requests the service and the time when the FAA provides it. This enhanced responsiveness will increase the integration of new and innovative safety technology developed outside the United States into aircraft and enhance the safety of the aircraft fleet. Further, although the rule's purpose is to facilitate safety inspections, not to promote production outside the United States, it will allow the FAA to fulfill its safety inspection functions for PAH offset agreements (where a certain percentage of the aircraft must be manufactured or assembled in the country). As a result, it will make the PAH more competitive in the global aviation market. Finally, it will require recipients of specific services from the FAA, rather than the general taxpayer, to pay for these services.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant (positive or negative) economic impact on a substantial number of small entities.

The rule will primarily affect PAHs that have facilities and suppliers located outside the United States. Although the rule may have an indirect adverse effect on some small U.S. suppliers, it may also have an indirect positive effect on other small U.S. suppliers. As a result, the FAA has determined that the rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Analysis

The growing globalization of aircraft manufacturing has increased competition among manufacturers. In order for PAHs to remain competitive, they need to have the flexibility to compete on an equal footing with their competitors located throughout the world. Further, many overseas purchasers of a PAH product often contractually require that some percentage of the product be produced in their own country.

The rule could affect international trade through: (1) the amount of the FAA fee; and (2) facilitating the use of facilities and suppliers outside the United States.

Charging a fee for the FAA's production certification-related services for facilities and suppliers outside the United States could slightly raise the costs of using them. One commenter stated that the rule would cost his company $80,000 per year for no gain in benefit. However, the rule will provide PAHs with more timely FAA provision of those services, thereby reducing the time to manufacture the product. Two commenters stated that the fees were needed to provide these necessary FAA services when they are needed. After careful review and evaluation, the FAA has determined that the amount of the fee will have only a minimal affect on a PAH's decision to use a facility or supplier located outside of the United States, and, therefore, have only a minimal affect on international trade.

With respect to the use of facilities and suppliers outside the United States, the rule will provide PAHs with more timely FAA provision of production certification-related services. This enhanced FAA responsiveness should reduce some of the production time lost as a result of these facilities and suppliers waiting for the FAA service. Consequently, the rule could increase the productivity of those facilities and suppliers and, thereby, could lower costs to the U.S. PAHs that use them.

An additional consideration is that many buyers outside the United States require offset agreements through which an aerospace product seller guarantees that a percentage of the product is built in that country. If the U.S. manufacturer cannot guarantee that percentage, then a non-U.S. manufacturer who can guarantee that percentage will have a competitive advantage in selling its product. The rule will also increase the productivity of these facilities and suppliers and, therefore, lower costs to the U.S. PAHs that use them.

The effects of the rule on international trade are difficult to predict and will also be influenced by FAA's implementation of the rule. For the most part, FAA intends to direct its certification activities, consistent with the practice of U.S. manufacturers, towards the use of existing, experienced aviation manufacturers as opposed to setting up new production facilities overseas. However, to perform its safety responsibilities, FAA must be able to effectively provide manufacturing oversight of these oversees manufacturers. To the extent that services are not provided because of FAA budgetary and administrative constraints, U.S. manufacturers and our country's competitive position will be harmed.

By providing these existing services in a more timely, effective fashion, FAA believes that the final rule will have the net effect of improving our international competitiveness while minimizing any adverse effects on domestic suppliers.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule does not contain any Federal intergovernmental or private sector mandate because all fees are entered into by voluntary agreement. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Conclusion

For the reasons discussed above, in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. However, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, of May 22, 1980. Also, this rule is considered significant and has been reviewed by OMB. Further, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 will not apply to this rule. A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 187

Administrative practice and procedures, Air transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 187 of Title 14, Code of Federal Regulations (14 CFR part 187) as follows:

PART 187—FEES

1. The authority citation for part 187 is revised to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 49 U.S.C. 106(l)(6), 40104–40105, 40109, 40113–40114, 44702.

2. Sections 187.15(a) and (b) are revised to read as follows:

§ 187.15 Payment of fees.

(a) The fees of this part are payable to the Federal Aviation Administration by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank prior to the provision of any service under this part.

(b) Applicants for the FAA services provided under this part shall pay any bank processing charges on fees collected under this part, when such charges are assessed on U.S. Government.

* * * * *

3. Section 187.17 is added to read as follows:

§ 187.17 Failure by applicant to pay prescribed fees.

If an applicant fails to pay fees agreed to under Appendix C of this part, the FAA may suspend or deny any application for service and may suspend or revoke any production certification-related approval granted.

4. Appendix C is added to read as follows:

Appendix C to Part 187—Fees for Production Certification-Related Services Performed Outside the United States

(a) *Purpose.* This appendix describes the methodology for the calculation of fees for production certification-related services outside the United States that are performed by the FAA.

(b) *Applicability.* This appendix applies to production approval holders who elect to use manufacturing facilities or supplier facilities located outside the United States to manufacture or assemble aeronautical products after September 30, 1997.

(c) *Definitions.* For the purpose of this appendix, the following definitions apply:

Manufacturing facility means a place where production of a complete aircraft, aircraft engine, propeller, part, component, or appliance is performed.

Production certification-related service means a service associated with initial production approval holder qualification; ongoing production approval holder and supplier surveillance; designee management; initial production approval holder qualification and ongoing surveillance for production certificate extensions outside the United States; conformity inspections; and witnessing of tests.

Supplier facility means a place where production of a part, component, or subassembly is performed for a production approval holder.

Production approval holder means a person who holds an FAA approval for production under type certificate only, an FAA approval for production under an approved production inspection system, a production certificate, a technical standard order authorization, or a parts manufacturer approval.

(d) Procedural requirements.

(1) Applicants may apply for FAA production certification-related services provided outside the United States by a letter of application to the FAA detailing when and where the particular services are required.

(2) The FAA will notify the applicant in writing of the estimated cost and schedule to provide the services.

(3) The applicant will review the estimated costs and schedule of services. If the applicant agrees with the estimated costs and schedule of services, the applicant will propose to the FAA that the services be provided. If the FAA agrees and can provide the services requested, a written agreement will be executed between the applicant and the FAA.

(4) The applicant must provide advance payment for each 12-month period of agreed FAA service unless a shorter period is agreed to between the Production Approval Holder and FAA.

(e) Fee determination.

(1) Fees for FAA production certification-related services will consist of: personnel compensation and benefit (PC&B) for each participating FAA employee, actual travel and transportation expenses incurred in providing the service, other agency costs and an overhead percentage.

(2) Fees will be determined on a case-by-case basis according to the following general formula:

$W_1H_1 + W_2H_2$ etc., + T + O

Where:

W_1H_1=hourly PC&B rate for employee 1, times estimated hours

W_2H_2=hourly PC&B rate for employee 2, etc., times estimated hours

T=estimated travel and transportation expenses

O=other agency costs related to each activity including overhead.

(3) In no event will the applicant be charged more than the actual FAA costs of providing production certification-related services.

(4) If the actual FAA costs vary from the estimated fees by more than 10 percent, written notice by the FAA will be given to the applicant as soon as possible.

(5) If FAA costs exceed the estimated fees, the applicant will be required to pay the difference prior to receiving further services. If the estimated fees exceed the FAA costs, the applicant may elect to apply the balance to future agreements or to receive a refund.

(f) Fees will be reviewed by the FAA periodically and adjusted either upward or downward in order to reflect the current costs of performing production certification-related services outside the United States.

(1) Notice of any change to the elements of the fee formula in this Appendix will be published in the **Federal Register.**

(2) Notice of any change to the methodology in this Appendix and other changes for the fees will be published in the **Federal Register.**

Issued in Washington, DC, on October 22, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–28467 Filed 10–23–97; 10:36am]

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Monday
October 27, 1997

Part V

Federal Emergency Management Agency

44 CFR Part 59, et al.
National Flood Insurance Program: Insurance Coverage and Rates, Criteria for Land Management, Use, Identification, and Mapping of Flood Control Restoration Zones; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 64, 65, 70, and 75

RIN 3067–AC17

National Flood Insurance Program: Insurance Coverage and Rates, Criteria for Land Management, Use, Identification, and Mapping of Flood Control Restoration Zones

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new flood insurance rate zone, known as the flood control restoration zone or Zone AR, to delineate special flood hazard areas on National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRMs). The rule's underlying statute stipulates that flood insurance be made available at premium rates appropriate to the temporary nature of flood hazards during the period when a flood protection system is being restored. The Zone AR designation is a means to recognize that a flood protection system is being restored to provide protection during the base flood event, and to reduce the flood insurance costs and elevation requirements for properties that will be exposed to an increased risk of flooding during the restoration period. In return for the availability of flood insurance this rule also establishes minimum flood plain management requirements and provides regulatory guidance for implementing statutory requirements.

EFFECTIVE DATE: This rule is effective November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Buckley, Hazard Identification and Risk Assessment Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION:

Rulemaking Chronology

Directed under § 928 of Pub. L. 102–550 to publish regulations on the newly authorized flood control restoration zone, FEMA published a proposed rule on April 1, 1994, 59 FR 15351. Based on comments on the proposed rule we made changes for the interim final rule. In order to meet the statutory 2-year deadline for publishing regulations, yet to give the public and interested parties another opportunity to comment on the changes we made, we published an interim final rule on October 25, 1994, 59 FR 53592, with a 45-day comment period. We extended that comment period 13 days to December 23, 1994 in order to permit additional comments and to hold a public meeting to receive oral comments to supplement the record. On December 19, 1994 we held a public meeting at FEMA headquarters in Washington, DC to hear from diverse interest groups, including several of whom participated by teleconference.

The interim final rule contains provisions to implement a new flood insurance rate zone, Zone AR, for areas designated as a flood control restoration zone on NFIP maps. It also establishes minimum flood plain management requirements and provides regulatory guidance for implementing statutory requirements of § 928 of Public Law 102–550, 42 U.S.C. 4014(f), including procedures for delineating flood control restoration zones on FIRMs.

We sent copies of the interim final rule to members of Congress and to chief executive officers of communities affected by the rule concurrently with our submission of the rule to the **Federal Register**. We met with House Banking Committee staff (Senate Banking Committee staff members were invited but were unable to attend) to discuss the provisions in the interim final rule.

At the request of a Member of Congress representing several Los Angeles County communities, FEMA and the U.S. Army Corps of Engineers participated in an informational public meeting in Bellflower, California on April 22, 1995 to discuss the restoration of the flood protection system along the Rio Hondo and Los Angeles Rivers. No substantive new issues or comments were raised at this meeting or otherwise affected the substance of the rule published today.

Scope of Public Participation

During the comment period provided for the interim final rule, we received 47 letters, each containing multiple comments about various issues in the interim final rule. Most of the letters represented the local interests of the Los Angeles and Sacramento area communities. Those submitting formal comments on the interim final rule included: one U.S. Senator, two members of the U.S. House of Representatives, community officials and representatives of local governments and community agencies, representatives of the local business community, and private citizens from the Los Angeles and Sacramento metropolitan areas, and state and national representatives of environmental and flood plain management associations.

Twenty-five individuals participated in the December 19, 1994 public meeting, including a U.S. Representative, several Congressional staff members, local government officials from Los Angeles, Sacramento, and Stockton, representatives of national environmental and flood plain management associations, staff of private lobbying firms representing communities in the Los Angeles and Sacramento areas, one individual representing a private citizen, and a private citizen/local activist. Participation in the December 19, 1994, meeting was also available through a telephone conferencing connection. Oral comments were recorded and a written transcript was sent to each of the meeting participants.

Overview of Comments

Comments on the interim final rule expressed support for the AR Zone as a means to accommodate community participation in the NFIP during the period required to restore an existing flood protection system. Several comments approved creation of uniform criteria applicable nationwide to communities affected by decertification of an existing flood protection system, and not limited to communities in the Sacramento and Los Angeles, California areas. Another noted that the interim final rule established a reasonable procedure for such communities, but recognized the potential damages to property and threat to life, particularly where flood depths are significant.

A number of comments indicated some misunderstanding of the NFIP, its statutory authority and how the Program is administered. Created by Congress in the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, the NFIP is a voluntary program that was designed to reduce the loss of life and property and rising Federal disaster relief costs caused by flooding. The NFIP makes federally backed flood insurance available for property owners located in participating communities. Before the Congress created the NFIP, flood insurance coverage was generally not available through private insurers among other things because of adverse selection and the high cost to identify flood risks. Under the NFIP the cost of flood losses is transferred from the general taxpayer to the flood plain occupant by requiring owners of flood plain properties to purchase flood insurance coverage when obtaining Federal or federally related financial assistance for construction or acquisition purposes. Today property owners in over 18,500 participating communities may purchase flood insurance.

A number of comments asked that FEMA withhold issuance of revised FIRMs identifying the increased flood hazard, or to issue maps showing the community as non-floodprone. Some comments questioned FEMA's mandate to identify flood hazards and questioned why FEMA needs to identify flood hazard areas. Several comments asked that FEMA withhold issuance of FIRMs for a community as long as progress is being made to restore flood protection.

The National Flood Insurance Act of 1968, as amended by Pub. L. 102–550, does not give FEMA authority to withhold publication of maps outright, or to withhold maps as long as communities are making progress toward restoration of the flood protection system. The legislation reduces flood insurance costs and elevation requirements, recognizes the added flood risk during the restoration period, and leaves intact the mapping requirements that have existed since 1968. The maps are required to identify and delineate the flood hazards, as well as to identify where flood insurance is or is not required. Withholding the maps would not be in the best interests of the residents of the community who need to be aware of the flood risk so that they can make informed decisions that will protect them and their property.

The 1968 Act requires that FEMA identify and map flood hazards nationwide and disseminate the information to local communities so that they and their residents can be aware of the flood risk and take steps to protect against future flood losses. During the last 25 years, FEMA has mapped over 165,000 square miles of floodprone areas nationwide.

In return for making flood insurance available, the community must commit to adopt and enforce NFIP flood plain management regulations to reduce the potential for future flood damages in the identified special flood hazard areas (SFHAs). Development in these areas is regulated by local flood plain ordinances that are designed to reduce future flood damages by requiring that new and substantially improved structures be protected to the base flood level at a minimum. Experience has proven these measures effective in reducing flood losses.

The NFIP's flood insurance and flood plain management requirements are based on flood insurance studies conducted under contract for FEMA by other Federal agencies and by private engineering firms that have a demonstrated expertise in hydrologic and hydraulic analyses of flood plains. From these studies, FIRMs are prepared that identify the areas of the community that will be inundated by the 1-percent annual chance flood, that is, the flood that has a 1 percent chance of being equalled or exceeded in any year. The 1-percent annual chance flood standard has been widely adopted by Federal, State and local agencies for design and regulatory purposes.

The 1-percent annual chance flood is sometimes called the 100-year flood or, as used in this rule, the "base flood". "Base flood" describes a flood of a particular magnitude, the 1-percent annual chance or 100-year flood. There is a 26-percent chance that a flood of this magnitude will occur at some point during the life of a 30-year mortgage.

A number of comments questioned the constitutionality of the flood insurance purchase requirement, while other comments expressed that it should be individual choice to buy flood insurance. Major flooding in the early 1970s prompted the Congress in 1973 to enact certain mandatory insurance purchase requirements that protect Federal financial interests in the flood plain. The mandatory flood insurance purchase requirements apply to mortgages and other financial assistance obtained from a Federal or federally regulated lender where the security for the loan is a building or manufactured housing located in a designated SFHA. Flood insurance must also be purchased by recipients of some types of flood-related disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Background on the Enactment of Zone AR Provisions

Several of those commenting indicated that they were not aware of the background that led Congress to authorize flood insurance availability for flood control restoration zones. FEMA contracts with other Federal agencies and private contractors periodically to restudy flood risks and revise flood maps when there is sufficient change in the flooding conditions to warrant such action. When the U.S. Army Corps of Engineers, for example, determines that a previously certified flood protection system, such as a levee, no longer provides protection during the base flood, under the National Flood Insurance Act FEMA must identify and map the resulting floodprone areas. Within these decertified areas, NFIP regulations require participating communities to enforce local flood plain management ordinances for elevating new construction and substantial improvements of existing buildings to the level of the base flood at a minimum in order to reduce or eliminate flood damages. These mandates are without regard to any actions being taken to restore a flood protection system.

Flood insurance premiums are calculated on the actual flood risk to the building or manufactured housing so that the cost of flood insurance for new construction placed below the base flood level will reflect the increased risk. In some cases, however, the community may be taking specific actions to restore protection to the base flood level so that the increased flood risk is considered to be a temporary situation that will be remedied when the system is fully restored.

In the 1980s the U.S. Army Corps of Engineers determined that the levee systems protecting certain parts of the Sacramento and Los Angeles areas no longer provided protection from the base flood, and decertified those systems. Under the National Flood Insurance Act FEMA remapped the areas no longer protected to the base flood level. The remapping showed large areas that would be subject to flooding from the base flood, with depths from 1–15 feet in the Los Angeles area, and as deep as 26 feet in parts of the Natomas area near Sacramento. Concern for the costs of new construction or substantial improvements to existing buildings, and concern for the cost of flood insurance required by law in these areas, caused communities and various interest groups to petition the Congress for relief while the levee systems were being restored.

To bolster the position of affected communities in the Los Angeles area, an economic study prepared at the University of Southern California (USC) in 1992 predicted major adverse economic impacts in the Los Angeles area if the NFIP flood insurance and flood plain management requirements were enforced after decertification of the levee systems on the Rio Hondo and Los Angeles Rivers. The findings of the USC study apparently were important influences in persuading the Congress to amend the National Flood Insurance Act of 1968 to assist communities, such as those in the Los Angeles and Sacramento areas, where an existing flood protection system no longer provides base flood protection but is being restored.

In October 1992 Congress enacted the Housing and Community Development Act of 1992, Public Law 102–550. Section 928 of Pub. L. 102–550, 42 U.S.C. 4014(f), created a Flood Control Restoration Zone (Zone AR) designation to meet the communities' concerns. The

Zone AR designation is a carefully crafted and balanced mechanism to recognize that a flood protection system is being restored to provide protection during the base flood event, and to reduce the flood insurance costs and elevation requirements while still providing some level of protection for properties that will be exposed to an increased risk of flooding during the restoration period. Within Zone AR, Congress reduced elevation requirements for new construction, eliminated elevation requirements for substantial improvements to existing structures, and capped the flood insurance rate for insuring such structures during the interim period when the flood protection system is being restored. By enacting § 928, Congress anticipated that the Federal government would accept some additional costs in the form of increased flood insurance liability and disaster assistance, and that communities would accept and enforce reduced flood plain management requirements in order to provide a minimal level of flood protection for new structures built while the flood protection system is being restored. In creating the Zone AR designation the Congress fully and significantly addressed the economic concerns addressed in the USC study, balancing those concerns against the national need to reduce the cost of Federal disaster assistance and to have those whose properties are at risk in the nation's flood plains bear a portion of that risk.

Issues Raised

Major issues were raised in the public comments about the definition of developed areas, the requirement to elevate or floodproof structures outside of the "developed" area to the base flood elevation, the federal funding requirement for the restoration project, the requirement that construction in "developed" areas be elevated to 3 feet above the highest adjacent grade, adherence to a maximum restoration period and the absence of a "hold harmless" provision for delays in achieving restoration within that time frame, and the requirement to submit information about the legal status of the project as part of the application and submittal requirements for AR Zone designation. These and other comments are addressed in the sections that follow.

Definition of "Developed Area"

Several comments were received in support of the definition of "developed area" in the interim final rule. There were also several comments that expressed concerns about how the definition is to be applied to vacant land and infill sites and on issues related to how "basic infrastructure" is defined and what public property and facilities can be included in a "developed area". Comments also recommended that the regulations be modified to include multiple parcels, tracts, or lots of less than 20 acres in "developed areas" under subsection (b) of the definition rather than a single parcel, tract, or lot.

Specific comments concerning the definition stated that the "developed area" is too restrictive if all vacant land and infill sites had to have been previously developed and that redevelopment of these sites has to be supported by the infrastructure in place. Related comments stated that the supplementary information in the interim final rule pertaining to the concepts of "infill" and "redevelopment" is inconsistent with Pub. L. 102–550 and industry-recognized definitions and practices related to "infill" and "redevelopment".

Concern was expressed that the terms, "infill" and "redevelopment", which are unrelated, are being used interchangeably and that both terms require the site to have been previously developed in order to qualify a property for inclusion in a "developed area". The comment noted that the Real Estate Glossary, published by Kenneth Leventhal & Company, Certified Public Accountants, defines "infill development" as "development of vacant, scattered sites in a developed section of a city". According to this definition, the comment stated, "infill" should not presume the existence of prior structural improvements to qualify the property to be included in a "developed area". It was recommended that the definition be clarified to allow all vacant sites of a city to be included in the "developed area", including sites in a natural and undisturbed state. It was also recommended that the "developed area" include vacant land that has been improperly subdivided and vacant land that consists of parcels and lots of inadequate size and irregular form.

For simplification and ease of administration at the local level, FEMA established a definition for "developed area" rather than require communities to identify individually single parcels or lots that meet a definition for "infill sites", "rehabilitation of existing structures", or "redevelopment of previously developed areas", terms used in Pub. L. 102–550. "Developed area", as defined in the final rule at 44 CFR 59.1 (a)–(c) encompasses the larger urbanized area as well as isolated developed subdivisions beyond the urban area. "Developed area" further encompasses "vested rights" interests by recognizing land that is planned, permitted, and where construction is underway. A community must adopt a map or legal description designating the "developed area" and submit this information as part of the Zone AR application process.

FEMA agrees that clarification is needed regarding the distinction between "infill sites" and "redevelopment", and with regard to whether vacant, undeveloped sites can be included in "developed areas" as set forth in the supplementary information to the interim final rule. We do not intend to imply that "infill sites" and "redevelopment" are synonymous nor that an "infill site" presumes the existence of prior structural improvements or previous development. "Infill sites" can include: (1) land that is undeveloped (either in a natural state or in agricultural production); (2) land that contains buildings that are underused, unused, or dilapidated; or (3) land that had been previously developed and is now in a nonbuilding use (e.g., a parking lot). Redevelopment is generally associated with rebuilding a site where a building or buildings are dilapidated or have been previously torn down.

Infill sites, including vacant, undeveloped land, can be included in a "developed area" as long as the site meets the criteria established under paragraph (b) of the definition of "developed area". The "infill site" must be contiguous on at least 3 or more sides by a "developed area" meeting the criteria of paragraph (a) of the definition. This is consistent with the supplementary information contained in the proposed rule that states that subsection (b) of the definition of the "developed area" addresses those urban fringe areas that, because of their relationship to surrounding developed areas, should be considered "infill site" areas. FEMA believes that with this clarification it is unnecessary to alter the regulations.

Older subdivisions that remain undeveloped because they contain lots that are considered nonconforming under local zoning, subdivision, or planning regulations are considered "infill sites" and would qualify for inclusion in a "developed area" in accordance with paragraph (b) of the definition. This type of subdivision may also qualify under paragraph (c) for "vested rights" if the subdivision has been replatted and development is underway in accordance with this paragraph.

A comment was made that the term "basic infrastructure" is not sufficiently defined. Another comment asked FEMA to clarify whether areas that require substantial upgrading of infrastructure are still considered "developed areas" if all other conditions are met. In order to sustain a primarily urbanized, built-up area in accordance with paragraph (a) of the definition of "developed area", a certain level of infrastructure would have to be in place. The term, "basic infrastructure", is used because the level of infrastructure needed to sustain any combination of industrial, residential, and commercial activities will vary from community to community.

Subsection (a)(1) of the definition of "developed area" is designed to have the community designate an area that is generally recognized as "urbanized" as opposed to a land use pattern that is undeveloped or is in agriculture. Subsections (a)(2) and (a)(3) address those isolated areas beyond the urban core that are considered urbanized or developed because the land is primarily built-up in commercial, industrial, or residential uses. FEMA recognizes that infrastructure in older, urbanized areas that is in substandard or poor condition may need to be substantially upgraded in areas that are being redeveloped. As long as an area meets one of the three criteria under paragraph (a) it can be included in a "developed area".

Infrastructure would not have to be substantially in place within the site under paragraph (b) of the definition of "developed area" since the land may be undeveloped or in agriculture, but public utilities must be in place near the edge of the site and can be extended into the site. For example, the community should be able to extend sewer lines readily that are near the edge of the site. The infrastructure would have to be substantially in place under paragraph (c) of the definition in order to sustain the structures that are built already or the construction that is underway under the criteria established in this paragraph. FEMA believes that it is unnecessary to alter the regulations to clarify this point.

In addition, a comment recommended that the regulations clarify that all public property and facilities, existing and planned, including publicly-owned open space, are included in "developed areas".

Public facilities are included in the category of infrastructure per paragraph (a) of the definition of "developed area" since public facilities are needed to support and sustain a primarily urbanized, built-up area and provide public services related to the health, safety, and welfare of the population. As stated in the supplementary information to the interim final rule, the term "public facilities" in paragraph (a) encompasses buildings and facilities, such as municipal buildings (e.g., court houses, city halls), schools, hospitals, and publicly-owned open space, such as public parks and recreational facilities, and historic sites. The term "public facilities" also encompasses quasi-public facilities and services, such as museums, churches, and sports facilities. Public facilities can include existing as well as planned facilities as long as the site for the public facility meets one of the criteria established under the definition of "developed area". FEMA believes that it is unnecessary to alter the regulations to clarify this point further.

A comment said that it was unclear why the exception under subsection (b) of the definition of "developed area" pertains to only a single parcel, tract or lot and does not apply to multiple parcels, tracts, or lots of less than 20 acres. FEMA agrees that it is not necessary to require that subsection (b) of the definition of "developed area" be tied to a single parcel, tract or lot. We modified subsection (b) of the definition of "developed area" to apply to multiple parcels, tracts or lots, as long as the combined parcels, tracts, or lots are less than 20 acres and are contiguous on at least three sides to areas meeting the criteria of paragraph (a) of the definition of "developed area" at the time the designation is adopted.

Comments recommended that FEMA revise the regulations to recognize areas as developed when they have final zoning land use approvals from local government agencies; when they are entirely non-residential; when funding for the restoration project is provided (local or shared with the Federal Government); and when construction of the restoration project is underway, and completion is imminent.

FEMA established criteria to address concerns for development that has been planned, permitted, and construction is underway. The definition of "developed area" addresses "vested rights" by establishing criteria for determining a "developed area" that is planned, permitted, and where construction is underway and infrastructure and structures are being built. Paragraph (c) of the definition of "developed area" would recognize areas as "developed" where the investment in the land and infrastructure is substantial and development, residential or non-residential, is underway. FEMA believes it is unnecessary to tie the criteria under subparagraph (c) of the definition for addressing "vested rights" to the status of the restoration of the flood protection system since the community is only required to adopt the definition of "developed area" when it qualifies for the Zone AR designation.

In order for FEMA to designate a flood control restoration zone, Pub.L. 102–550 requires that the flood protection system must be deemed restorable by a Federal agency, a minimum level of protection is provided, and the restoration is scheduled to be completed within a designated time period. FEMA believes that it is unnecessary to alter the regulations to clarify this point further.

Flood Plain Management and Land Use Requirements in a Flood Control Restoration Zone

We received comments concerning the elevation requirements in the interim final rule. Comments supporting the elevation requirements noted that those requirements comply with the statutory provisions and strike a balance between development interests and the public interest in protecting new development that will be exposed to increased flood damage until the restoration is complete. Comments objecting to the elevation requirements expressed concern that the increased costs associated with elevating new construction would adversely affect development in communities. Several of these comments recommended that FEMA amend §60.3(f) to allow for elevations of less than 3 feet in developed areas when circumstances warrant a lower elevation.

Several comments stated that according to the legislative history and the requirements in Pub.L. 102–550, FEMA has the flexibility to allow for less than the 3-foot elevation. The comments also stated the opinion that the interim final rule ignores a Senate Committee report that directed FEMA to establish flexible elevation requirements where it is not practical or feasible to elevate above 2 feet citing several examples when a lower elevation might be appropriate. These examples involved considerations such as lot size, access, incremental cost relative to flood risk exposure, and length of the restoration period. Several comments recommended that the elevation requirement be lowered to 2 feet because seismic design requirements that would apply when elevating to 3 feet would increase costs significantly.

Comments were also made that the interim final rule effectively precludes development in areas outside of the "developed area" due to the practical limitations of elevating or floodproofing when flood depths exceed 5 feet. These

comments recommended that FEMA amend the regulations to reduce the elevation requirement for non-residential structures in areas outside of "developed areas" because these structures are not subject to the same risks as residential structures and can be designed to avoid collapse or movement due to flooding. That recommendation also suggested that a standard notice and waiver agreement could be executed by the owner of a commercial building and flood insurance could be required at appropriately higher rates.

The comments that cited the legislative history for flexible elevation requirements of less than 3 feet refer to the report by the Committee on Banking, Housing, and Urban Affairs United States Senate, Report 102–332, for the National Affordable Housing Act Amendments of 1992, dated July 23, 1992. This report was for an earlier legislative proposal to establish Zone AR. Subsequent to this earlier proposal, the legislation underwent a considerable change to address Congressional concern over increased risk within deep flood plains that are currently less developed or undeveloped. The concern for deep flood plains was expressed in the Congressional Record, dated October 8, 1992 (144 Cong. Rec. S17910), on the final version of Pub.L. 102–550. Furthermore, the October 8, 1992 record indicated that "FEMA shall establish flood plain management requirements for new construction and substantial improvements for less developed areas of Los Angeles and Sacramento and for other communities that may be eligible for the Zone AR". There were no comments in the Congressional Record of the Senate or the House (144 Cong. Rec. H11471, dated October 5, 1992) on the final version of the Pub.L. 102–550 that refer to flexible elevation requirements of less than 3 feet.

In establishing the flood plain management requirements for communities eligible for Zone AR designation, FEMA is consistent with Pub.L. 102–550. Pub.L. 102–550 stipulates that the NFIP minimum elevation requirements for new construction shall not exceed 3 feet in Zone AR for "in-fill sites" and "redevelopment of previously developed areas" no matter what the flood depth. Whether base flood depths behind a decertified flood protection system are 5 feet, 15 feet, or 25 feet in a "developed area" of a community, the final rule only requires that structures be elevated to 3 feet.

If base flood depths are less than 3 feet in either the "developed area" or areas outside the "developed area", the property owner need only elevate the structure to the base flood depth, (i.e., elevate the structure only to 1 or 2 feet).

Congress did not intend the flood plain management requirements in Zone AR to deter property improvements. Consistent with Pub.L. 102–550, there are no elevation requirements for "rehabilitations to existing structures", including substantial improvements.

FEMA believes Pub.L. 102–550 is clear in establishing flood plain management criteria for areas outside of the "developed area". Pub.L. 102–550 establishes that "flood plain management criteria shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the disaccredited flood control system does not exceed 5 feet above existing grade, or the remaining new construction is limited to in-fill sites, rehabilitation of existing structures, or redevelopment of previously developed areas". The final rule is consistent with Pub.L. 102–550.

Pub.L. 102–550 and the final rule do not preclude development in areas outside of the "developed area" as claimed in several comments. Residential and non-residential structures can be built in areas outside of the "developed area" as long as they are built in accordance with the minimum NFIP flood plain management criteria. These criteria address Congressional concern for deep flood plains. While the NFIP flood plain management criteria require the elevation of residential structures, nonresidential structures may be either elevated or floodproofed. The floodproofing criteria in the NFIP Regulations [44 CFR 60.3(c)(3) and (4)] require that walls below the base flood elevation be substantially impermeable to the passage of water and with the structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If floodproofing is used in "developed areas" and in other areas where flood depths are less than 5 feet, non-residential structures need only be floodproofed to 3 feet.

The argument by respondents that non-residential structures in flood plains do not pose the same risks to life-safety and to property as residential structures understates the true impacts of flooding and property loss. The flooding of non-residential structures does pose life-safety risks when flood fighting takes place. When the flooding has receded, damaged commercial or industrial areas have severe economic impacts on the community not only due to damages to insured and uninsured structures and their contents but also due to the temporary or permanent loss of jobs. This economic impact can often go beyond the community with flood losses being passed on to the taxpayer in general through a variety of programs and mechanisms, such as disaster assistance and reduction in Federal, State, and local tax revenues, including casualty loss deductions on income taxes and reductions in real property tax assessments. In addition to these impacts, exposure of the NFIP will also be extensive considering that FEMA provides insurance coverage of $500,000 for non-residential structures and $500,000 for contents for a total coverage of up to $1 million per structure.

Pub.L. 102–550 accommodates the needs of communities within "developed areas" through reduced elevation requirements for new construction while the flood protection system is being restored yet recognizes that properties will be exposed to an increased flood risk during the restoration period. Before this law was passed, all new construction and substantial improvements in areas protected by a flood protection system which no longer provides base flood protection were required to be elevated to the base flood elevation. Therefore, in "developed areas" that have deep flood plains with flood depths of, for example, 10, 15, or 20 feet, 3 feet represents a substantial reduction in elevation over what would otherwise be required.

Given the increased flood risk to which properties will be exposed during the restoration period, the 3-foot elevation requirement in "developed areas" and in other areas where flood depths are less than 5 feet will reduce damages to structures that would otherwise result if there were no protection. If the flood protection system is not restored, the 3-foot elevation offers protection to structures built during the time the Zone AR was in effect. The 3-foot elevation may only provide minimal protection in a total failure of the flood protection system. However, 3 feet of elevation would afford protection from flood events that may exceed the capacity of the decertified flood protection system, which at a minimum must provide protection from a 3-percent annual chance flood event. The 3-percent annual chance flood has a 60 percent probability of occurring during the life of a 30-year mortgage, and 26 percent probability in a 10-year period.

For example, where overtopping of the flood protection system results in sheet flow, surface water runoff, and localized ponding rather than deep flooding, the 3-foot elevation will reduce damages. The elevation protection will also reduce damages from levee seepage and boil problems, and from pump failures and stormwater and sewer backups. If flood depths are higher than 3 feet, the 3-foot elevation requirement will minimize the number of structures that are substantially damaged by lowering the flood depth within the structure.

Furthermore, the impact of the 3-foot elevation on new construction in Zone AR is not significant considering that this requirement may be partially satisfied by building code requirements unrelated to the NFIP that will result in new structures being built at least 6–28 inches above grade.

For crawl space construction, all three national building codes (Uniform Building Code, National Building Code, and Standard Building Code) require a minimum clearance of 18 inches between the ground and untreated wood floor joists. Allowing for a joist height of 8 to 10 inches and an average subflooring/flooring thickness of 5/8 to 1 inch for common crawl space construction, the top of the lowest floor can be as high as 27 to 29 inches above the adjacent exterior grade. Thus, a new residential structure on a crawl space foundation in Zone AR would need to be elevated by an additional 7–9 inches, not a full 36 inches, to meet the 3-foot requirement. Additional building code requirements are not triggered by this increase even in areas subject to seismic hazards.

For slab-on-grade residential and non-residential structures, the national building codes require the top of the slab to be at least 6 inches above adjacent exterior grade to provide protection from decay due to moisture. Standard practice is to construct the slab so that its top is at least 6 inches above the adjacent grade to provide protection from insects. Therefore, a new slab-on-grade residential or nonresidential structure would need to be elevated by a maximum of 28 to 30 inches to meet the 3-foot elevation requirement.

For floodproofing a non-residential structure in accordance with the NFIP criteria (as an alternative to elevating the structure), the increased level of protection needed is again 28–30 inches.

Local code requirements for site work for slab-on-grade construction generally specify that positive drainage must be provided away from residential and non-residential structures. These code requirements, which are also unrelated to the NFIP requirements, can result in the addition of several inches to the finished grade elevation before the slab is constructed. As a result, the amount of additional elevation required to meet the 3-foot requirement may be further reduced.

We also note that where Zone AR flood depths are less than 3 feet, new crawl space and slab-on-grade structures, both residential and non-residential, may require little or no additional elevation.

The over 18,500 participating communities in the NFIP are required under their flood plain management ordinances to regulate all flood plain development. In doing so, these communities require that all new construction of residential structures in flood plains be elevated to or above the base flood elevation and that new non-residential structures in flood plains be elevated or dry floodproofed to or above the base flood elevation. The over 2 million structures built in flood plains since 1975 and the over 800,000 post-FIRM flood insurance policies for structures built following community adoption of NFIP flood plain management requirements are evidence that development does not halt when flood plains are designated and flood plain regulations are adopted and enforced by communities. Much of this development has occurred in flood plains that are subject to elevation requirements higher than the 3-foot requirement in this Final Rule.

Experience under the NFIP indicates that protecting structures to the base flood is achievable by builders, developers, architects, and engineers. Elevation on earth fill or standard foundation systems, such as solid concrete foundation walls, are typical elevation techniques that have been used since the NFIP's inception. Experience also indicates that elevation is cost-effective when the benefits of reduced flood losses are compared to the additional cost of elevating to the base flood elevation. In fact, structures elevated to or above the base flood elevation are 77 percent less likely to suffer damage than those constructed prior to community participation in the NFIP.

Federal Funding Requirement

A great number of those commenting objected to the certification requirement in § 65.14(e)(6) of the interim final rule that the design and construction of the restoration project involve Federal funds in order for the community to be eligible for the Zone AR designation.

Comments offered a number of reasons why the Federal funding requirement should be removed from the regulations and suggested various alternatives to the Federal funding requirement as a means to insure timely completion of the restoration. These include: (1) the statute does not require eligibility to be contingent on Federal funding; (2) there are adequate safeguards in the interim final rule to assure timely completion of restoration projects without the requirement of Federal funding; (3) the Federal funding requirement is unnecessary as long as the restoration project is certified by a Federal agency; (4) regardless of the project's source of funding, FEMA has the authority to replace the Zone AR designation with a Zone AE designation if the community does not meet the restoration schedule; (5) Federal funding should not be required, but design and construction standards by competent (including Federal) authorities need to be followed; (6) FEMA should promote restoration of the system by the local community because communities may be in a position to complete restoration in a timely fashion; (7) FEMA should devise criteria that would satisfy the Agency that the source of local funds was reliable, committed, and secure, such as providing for a performance bond; and (8) Federal funds for restoration projects may not be available to communities.

FEMA has carefully considered the comments on the Federal funding issue and finds merit in removing the requirement that the restoration project involve Federal funding as a prerequisite for designating Zone AR. Therefore, the final rule is revised at § 65.14(b) to extend Zone AR eligibility to communities where the restoration project does not involve Federal funds. We remain concerned that failure to complete the restoration for any reason will permanently expose structures to an increased flood risk if built below the base flood elevation while the Zone AR is in effect. However, we have balanced that concern with an understanding that communities are increasingly committed to use local funds to restore flood protection systems, particularly as Federal funding sources are reduced.

FEMA has devised criteria to ensure that the source of local funding is reliable, committed, and secure. Specifically, § 65.14(e)(2)(vi) provides that if a community does not receive Federal funds for constructing the restoration project, then the community must submit evidence that 100 percent of the total financial project cost of the completed flood protection system has been appropriated from other sources. This measure will give FEMA adequate assurance that financial resources have been committed to assure completion of the restoration project.

Note at § 65.14(h)(3) that in the application requirements for restoration projects not involving Federal funds the community must submit a copy of a study, certified by a registered Professional Engineer, that demonstrates that the restored system will meet all applicable requirements of 44 CFR Part 65.

The final rule further stipulates at § 65.14(b)(2) that a community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration of the system within 5 years from the date the community submits its application for designation of a flood control restoration zone. In FEMA's experience, a 5-year period is adequate time for planning, preliminary and final design, construction, and all review processes of locally initiated projects that do not involve Federal funds. A typical, locally funded project often takes no more than 3 years to complete from project inception through final construction. We further expect that limiting the duration of the Zone AR designation would limit the number of structures that would be built and exposed to permanent increased flood risk if, for any reason, the restoration were not completed.

A community that does not receive Federal funds for restoration of the flood protection system is not eligible for a finding of adequate progress under 44 CFR § 61.12, and is required to complete the restoration project within the 5-year period.

The final regulations provide that the Zone AR designation will apply only to the restoration of existing Federal flood protection systems. A comment was made that the NFIP is a national program and should apply in all of the country, not just in areas that have flood control systems that were built by the Federal government. We determined, however, that this provision is in the best interest of the NFIP, is consistent with the existing regulatory provisions of § 61.12 that pertain to flood protection systems involving Federal funds, and is consistent with the intent of § 928 of Pub. L. 102–550.

Maximum Restoration Period

Several comments expressed concern that the interim final rule extended the maximum restoration period from 5 to 10 years. Other comments objected to FEMA's inclusion of a specific maximum restoration period such as the 10-year maximum restoration period incorporated in the interim final rule. Others stated that a specific maximum restoration period is contrary to the statutory language and the legislative intent and that FEMA should permit the Zone AR designation as long as progress is being made to restore protection.

Since insurance rates are subsidized and structures can be built below the base flood elevation during the restoration period, a longer restoration period further increases the potential flood losses if flooding occurs before the flood protection system is restored. Some comments suggested that FEMA strictly enforce a maximum restoration period and that it aggressively negotiate as short a restoration period as possible with the Federal agency and community project sponsors. A comment noted that while the 10-year restoration period provides a more reasonable time frame for completing a federally funded project, it also increases the time that existing structures and future construction are exposed to potential damage. They suggested that to balance the increase in the maximum restoration period, FEMA should restrict the definition and designation of "developed" areas and require strict adherence to the Zone AR elevation requirements, or impose stricter requirements so as to limit the potential for flood damage during the restoration period.

FEMA is charged by the Congress to administer a sound and effective flood insurance program within the bounds of the authority provided by statute. Public Law 102–550 provides for the Zone AR designation when a flood protection system can be restored in a "designated" period of time. Since the Zone AR was intended as an interim or temporary flood hazard designation, eligibility for the benefits that the designation confers is contingent on completion of the project within a specific time frame. We concluded that the statute authorizes FEMA to designate a maximum restoration period. These regulations designate a 10-year restoration period for federally funded projects and a 5-year restoration period for non-federally funded projects.

Because it is in the Program's best interest to promote timely completion of the restoration, FEMA will negotiate as short a restoration period as possible, recognizing that there may be legitimate needs for adjusting the schedule as the work progresses. Such adjustments may not exceed the maximum applicable restoration period.

"Hold Harmless" Provision for Delays in Complying With Restoration Schedule

Many comments urged FEMA to include a "hold harmless" provision whereby the Zone AR designation would be removed only if the community failed to perform its assigned responsibilities to restore flood protection.

The final rule does not incorporate a "hold harmless" provision for delays that exceed the applicable restoration period. The final rule retains the provision at §64.14(g) for minor adjustments in the restoration schedule. Central to this position is FEMA's belief that the flood control restoration zone was not meant to be a long-term or permanent flood insurance zone designation. A provision to extend the Zone AR designation or the inclusion of a "hold harmless" provision, in our opinion, would be contrary to the statute.

Requirement To Disclose Information About Litigation or Administrative Actions

Several comments concerned the requirement at §65.14(e)(1) that the community's application include a statement whether the flood protection system is the subject of pending litigation or administrative actions. Other comments suggested that if FEMA retained the disclosure requirement then the final rule should include an affirmative statement that such litigation would have no bearing on FEMA's decision to approve a community's application for Zone AR designation. Similar comments expressed the opinion that FEMA cannot anticipate the outcome of litigation or evaluate the validity of legal challenges. Some comments expressed concern that the section is ambiguous with respect to FEMA's obligation when litigation exists and the community would have no knowledge of the plaintiff's litigation plan.

One environmental organization's comment supported FEMA's position on the litigation issue. Another comment noted that the 10-year limit on the Zone AR designation is sufficient to revoke the Zone AR designation without adding the litigation issue as a decision-making clause. The 10-year restoration period limits the duration of the Zone AR designation after it has been granted, whereas the litigation issue relates to FEMA's decision-making prior to granting the designation.

We continue to maintain that FEMA needs to be fully apprised of any and all potential obstacles to the timely restoration of the flood protection system prior to granting the Zone AR designation.

The Zone AR designation permits new construction and substantial improvements to existing structures to be built below the base flood elevation despite knowledge that those structures will be exposed to an increased risk of flood damage. FEMA must insure such structures at a subsidized rate that does not reflect the actual flood risk to which the structure is exposed.

In contrast, new structures and substantial improvements to existing structures in SFHAs that are not designated as Zone AR are required to be elevated to the base flood level. Flood insurance for any structures that might be built below the level of the base flood would be insured at actuarial rates that reflect the actual flood risk.

The Zone AR elevation and insurance provisions are justified only if there is a clear expectation that the increased flood risk is of short duration and that full protection will be restored in a timely fashion. Protracted litigation could significantly impede a community's progress in completing the restoration according to schedule and could even cause the restoration never to be completed. As a result, those structures built below the base flood level while the Zone AR was in effect would be exposed permanently to a greater risk of flooding, with the NFIP assuming a considerable potential liability when insuring those structures.

The Zone AR designation increases the risk that the NFIP assumes by insuring buildings and manufactured housing built or installed below the base flood level. FEMA must carefully assess the projected viability of the restoration project and weigh any obstacles to that completion before granting a flood control restoration zone designation. Notice of the litigation or administrative action would alert FEMA to be cautious in evaluating the community's application.

The community may not be able to predict with full accuracy the litigation or administrative action plan or their outcomes. Given that the Zone AR designation is applicable for a fixed maximum time and can be applied only once for a given restoration, community officials should carefully consider litigation and administrative action times before applying for the Zone AR designation.

The existence of litigation would not necessarily result in the denial of the community's application. However, we are not prepared to include within the regulation an affirmative statement that the existence of litigation will have no bearing on FEMA's decision with regard to a community's application. We do not consider the rule to be ambiguous as to FEMA's obligation when it is determined that the restoration project is the subject of litigation or administrative action because there is no specific action mandated by such a finding. The existence of litigation is one of several elements that FEMA will consider in making the decision whether to grant Zone AR designation. The final rule retains the litigation disclosure provision at §65.14(e)(1)(i) as one of the several application requirements.

Limitations on Zone AR Designation

We received a number of comments that FEMA include regulatory language to specify that communities will be eligible for the Zone AR designation should the restored flood protection system be decertified again. Although we clarified our position in the supplementary information to the interim final rule, the comments expressed concern that we did not change the regulatory text. Those commenting believed that the regulatory text could be interpreted to exclude subsequent Zone AR designations in the event that a fully restored system were to be decertified again and that the clarification contained in the supplementary text would not be binding upon the agency.

We made minor revisions to the rule at §65.14(b) to accommodate the concerns. Communities will be eligible for the Zone AR designation should the restored flood protection system be decertified again.

Issuance of FIRMs Delineating Zone AE Before Community Eligibility for Zone AR Designation

We received comments objecting to FEMA's statement that communities may be mapped as an AE Zone before becoming eligible for Zone AR designation as being contrary to the intent of the legislation. The interim final rule simply provided one scenario for potential Zone AR eligibility. Some communities may require an extended period of time to meet eligibility criteria. We anticipate that such communities will receive maps delineating AE, A1–30, AO, AH and A Zones, which will be revised when the statutory conditions for Zone AR eligibility are met. Other communities, particularly those who are active in obtaining federal financial support or in raising local funds for a restoration project, may make sufficient progress to be designated Zone AR before issuance of revised FIRMs that reflect the increased flood hazard.

One of these comments encouraged FEMA to develop a parallel process in mapping communities where an existing flood protection system has been decertified so that the community is going through the Federal planning process for restoring protection while the revised FIRM is being prepared. In response, we anticipate that most communities will be aware of the potential decertification of an existing flood protection system at some time during the restudy process. In fact, the restudy may have been triggered by a flood event nearly causing a failure or overtopping of the system. Therefore, the community may begin to investigate a restoration project so that they can meet the Zone AR eligibility requirements before or concurrent with the preparation of revised flood hazard maps. In such cases, the revised FIRM would show the increased flood hazard areas as a Zone AR rather than another flood hazard zone.

Another comment proposed that the regulations incorporate a provision that gives communities a reasonable period of time to meet the Zone AR requirements, suggesting that FEMA withhold maps for potentially eligible communities until the community is eligible for a Zone AR designation. FEMA is statutorily required to identify and map flood hazard areas. Therefore, if the community does not meet the eligibility criteria when FEMA has completed the remapping process, including the statutory appeal period and resolution of appeals, FEMA will be required to delineate those areas as AE, A1–30, AO, AH and A Zones on the revised FIRM. FEMA does not have the statutory authority to withhold issuance of maps whether they delineate Zone AR or other flood hazard zones. Furthermore, communities and their residents have the right to be informed of the increased risk and such information should not be withheld. A FEMA policy of withholding the issuance of FIRMs would jeopardize individuals' ability to make informed decisions about the flood hazard to which they are exposed.

Use of Terms

One comment stated that there is no definition of the term "adequate progress" as used in the regulation. The term refers specifically to the provision in §61.12 that permits a federal flood protection system to be certified as complete when it satisfies certain specific "adequate progress" criteria that are set out in that section of the regulations at §61.12(b). There is no need for further definition.

Another comment stated that the regulation should define the terms "satisfactory progress" and "reasonable certainty" at 44 CFR 65.14(i). This section of the interim final rule describes the conditions under which FEMA would take action to remove the

Zone AR designation for noncompliance with the restoration schedule.

FEMA disagrees because the terms or words used in this rule do not have a specific meaning separate from the meaning they would have if used in general discourse. Any attempt to define the terms used in the law and the rule would merely expand the rule unnecessarily, fail to accommodate all conditions that would be encountered, and limit discretion under the NFIP in administering the law and the rule.

Another comment objected to the use of the term "shall" in 44 CFR §64.14(i) when referring to revising maps and removing the Zone AR designation for reasons of noncompliance. In response, FEMA states that the use of the term "shall" directly relates to the agency's mandate to identify and map flood hazards and to employ the statutory appeals process, provided for in §110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104(c); see also 44 CFR Part 67. The term "shall" is accurate.

Insurance Rating Procedures

Some comments expressed concern that flood insurance premiums are too expensive. The NFIP applies actuarial rates to all new construction. These rates are determined by the zone on the FIRM, and by national loss experience and loss probabilities. The rates for existing construction in SFHAs are subsidized. The basis for this subsidy is the fact that the buildings were constructed in these areas without full knowledge of the hazard. In deep flooding areas, the actuarial rate would be greater than the subsidized rate that will be charged under Zone AR. Congress has extended the benefit of this subsidy to risks in Zone AR, even though the full extent of the hazard is known. In the law that established Zone AR, Congress limited the rate that could be charged to the equivalent of the pre-FIRM Zone A rate that is subsidized, and placed limits on elevation requirements. The NFIP pre-FIRM rate is subject to change. Any change will affect the Zone AR rate.

Role of Insurance Companies

Several comments expressed the opinion that the NFIP's mandatory purchase requirements were set up to benefit insurance companies and were not being applied elsewhere in the country. Mandatory purchase requirements were established by the Congress in 1973 in response to escalating Federal costs of flooding disasters and low voluntary participation by property owners in the NFIP. The NFIP mandatory purchase requirements are enforced on a national basis, and apply to all Federal and federally regulated lenders.

The National Flood Insurance Act, as amended, authorizes qualified insurance companies to sell flood insurance under an arrangement with FEMA. The companies are paid a fee to cover their costs for issuing and servicing policies and for adjusting claims. The net premiums collected from the sale of flood insurance are turned over to the Federal government and are placed in the National Flood Insurance Fund in the United States Treasury. This fund is used to pay future flood losses and other NFIP related expenses.

Homeowner Protection

A comment stated that the NFIP mandatory purchase requirements were not intended to protect the homeowner, but rather the mortgagee, and this is why contents coverage is not available. We disagree for at least two reasons. First, contents coverage is available; it can be purchased as separate coverage or together with building coverage, and may be required if the contents are part of the security for the loan. Second, when a mortgaged home is destroyed by an uninsured peril, the obligation to repay the mortgage still exists. Consequently, any insurance that covers this peril benefits the policyholder and the mortgagee.

Relation to Earthquake Insurance

Some comments stated that while mandatory purchase requirements exist for flood insurance, there are none for earthquake insurance. Congress mandated the flood insurance purchase requirements under the provisions of the Flood Disaster Protection Act of 1973. As yet, Congress has not enacted Federal legislation on earthquake insurance. Several bills on the subject were introduced in the 103d Congress, in the 104th Congress, and again in the first session of the 105th Congress, but none have passed.

Community-Wide Flood Insurance Coverage

A comment suggested that we develop a flood insurance policy that would cover an entire community, and be paid for by the community. This suggestion is not workable under the National Flood Insurance Act. The NFIP has a statutory limit on the amount of insurance that can be written on an individual building and its contents. Consequently, the specific risk information required to rate a flood insurance policy is gathered on an individual basis, and separate policies are issued. However, there is nothing to prevent a community from arranging with one or more insurance agents or companies to write the required policies for its citizens, and list the community as the payor.

National Environmental Policy Act

FEMA has determined, based on an Environmental Assessment, that this final rule will not have a significant impact upon the quality of the human environment. An Environmental Impact Statement will not be prepared. A Finding Of No Significant Impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Comments received on the interim final rule urged FEMA to revise the Environmental Assessment to reflect the changes that had been made in the interim final rule and to address the regulatory impact on minority and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Comments also disagreed with FEMA's finding that the regulations would have no significant impact on the environment. These issues are addressed in supplemental information prepared and appended to the Environmental Assessment for this rule. These revisions do not alter FEMA's Finding of No Significant Impact.

Regulatory Flexibility Act

The Director certifies that this final rule is exempt from the requirements of the Regulatory Flexibility Act because the proposed flood control restoration zone is required by statute, 42 U.S.C. 4014(f), and is required to enhance and maintain community eligibility in the NFIP during the period needed to restore flood protection systems to provide a minimum protection from the base flood required for accreditation on FIRMs. A regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This final rule contains collections of information as described the Paperwork Reduction Act that are covered by the following OMB Control Numbers: 3067–0020; 3067–0022; 3067–0127; and 3067–0147.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this rule adheres to the principles of regulation set forth in Executive Order 12866. This rule was reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Parts 59, 60, 64, 65, 70, and 75

Administrative practice and procedure, Flood insurance, Flood plains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 59, 60, 64, 65, 70, and 75 are amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 59.1 is amended as follows: The definitions of *Area of shallow flooding, Area of special flood hazard, Developed area, and Special hazard area are revised to read as follows:*

§ 59.1 Definitions.

* * * * *

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

* * * * *

Area of special flood hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1–30, AE, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1–30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

* * * * *

Developed area means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

* * * * *

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1–30, VE, V, M, or E.

3. Section 59.24(a) is revised to read as follows:

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of §60.3 or paragraph (b) of §60.4 or §60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Administrator shall provide written notice to the community and to the state

and assure publication in the **Federal Register** under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

* * * * *

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

4. The authority citation for Part 60 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

5. Section 60.2(a) is revised to read as follows:

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of §60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in §60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

* * * * *

6. Section 60.3(f) is revised to read as follows:

§ 60.3 Flood plain management criteria for flood-prone areas.

* * * * *

(f) When the Administrator has provided a notice of final base flood elevations within Zones A1–30 or AE on the community's FIRM, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified flood protection restoration areas by designating Zones AR, AR/A1–30, AR/AE, AR/AH, AR/AO, or AR/A, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) and (d)(1) through (4) of this section.

(2) Adopt the official map or legal description of those areas within Zones AR, AR/A1–30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in §59.1 in accordance with the eligibility procedures under §65.14.

(3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:

(i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and

(ii) Using this elevation, require the standards of paragraphs (c)(1) through (14) of this section.

(4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:

(i) Determine the AR base flood elevation; and

(ii) Using that elevation require the standards of paragraphs (c)(1) through (14) of this section.

(5) For all new construction of structures in areas within Zone AR/A1–30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;

(ii) Determine the base flood elevation or flood depth for the underlying A1–30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.

(6) For all substantial improvements to existing construction within Zones AR/A1–30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1–30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1–30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

7. The authority citation for Part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

8. Section 64.3 is amended by revising the "AR" entry in the chart in paragraph (a)(1) and revising paragraph (b) to read as follows:

§ 64.3 Flood insurance maps.

(a) * * *

(1) * * *

Zone symbol	
AR	Area of special flood hazard that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

* * * * *

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1–30, AE, A99, AO, AH, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V1–30, VE, V, VO, M, and E.

* * * * *

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

9. The authority citation for Part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.14 [Redesignated as §65.15]

10. Part 65 is amended by revising §65.14 to read as follows:

§65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.

(a) *General.* (1) This section describes the procedures to follow and the types of information FEMA requires to designate flood control restoration zones. A community may be eligible to apply for this zone designation if the Administrator determines that it is engaged in the process of restoring a flood protection system that was:

(i) Constructed using Federal funds;

(ii) Recognized as providing base flood protection on the community's effective FIRM; and

(iii) Decertified by a Federal agency responsible for flood protection design or construction.

(2) Where the Administrator determines that a community is in the process of restoring its flood protection system to provide base flood protection, a FIRM will be prepared that designates the temporary flood hazard areas as a flood control restoration zone (Zone AR). Existing special flood hazard areas shown on the community's effective FIRM that are further inundated by Zone AR flooding shall be designated as a "dual" flood insurance rate zone, Zone AR/AE or AR/AH with Zone AR base flood elevations, and AE or AH with base flood elevations and Zone AR/AO with Zone AR base flood elevations and Zone AO with flood depths, or Zone AR/A with Zone AR base flood elevations and Zone A without base flood elevations.

(b) *Limitations.* A community may have a flood control restoration zone designation only once while restoring a flood protection system. This limitation does not preclude future flood control restoration zone designations should a fully restored, certified, and accredited system become decertified for a second or subsequent time.

(1) A community that receives Federal funds for the purpose of designing or constructing, or both, the restoration project must complete restoration or meet the requirements of 44 CFR 61.12 within a specified period, not to exceed a maximum of 10 years from the date of submittal of the community's application for designation of a flood control restoration zone.

(2) A community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration within a specified period, not to exceed a maximum of 5 years from the date of submittal of the community's application for designation of a flood control restoration zone. Such a community is not eligible for the provisions of §61.12. The designated restoration period may not be extended beyond the maximum allowable under this limitation.

(c) *Exclusions.* The provisions of these regulations do not apply in a coastal high hazard area as defined in 44 CFR 59.1, including areas that would be subject to coastal high hazards as a result of the decertification of a flood protection system shown on the community's effective FIRM as providing base flood protection.

(d) *Effective date for risk premium rates.* The effective date for any risk premium rates established for Zone AR shall be the effective date of the revised FIRM showing Zone AR designations.

(e) *Application and submittal requirements for designation of a flood control restoration zone.* A community must submit a written request to the Administrator, signed by the community's Chief Executive Officer, for a flood plain designation as a flood control restoration zone. The request must include a legislative action by the community requesting the designation. The Administrator will not initiate any action to designate flood control restoration zones without receipt of the formal request from the community that complies with all requirements of this section. The Administrator reserves the right to request additional information from the community to support or further document the community's formal request for designation of a flood control restoration zone, if deemed necessary.

(1) At a minimum, the request from a community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project must include:

(i) A statement whether, to the best of the knowledge of the community's Chief Executive Officer, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and if so, the purpose of that litigation;

(ii) A statement whether the community has previously requested a determination with respect to the same subject matter from the Administrator, and if so, a statement that details the disposition of such previous request;

(iii) A statement from the community and certification by a Federal agency responsible for flood protection design or construction that the existing flood control system shown on the effective FIRM was originally built using Federal funds, that it no longer provides base flood protection, but that it continues to provide protection from the flood having at least a 3-percent chance of occurrence during any given year;

(iv) An official map of the community or legal description, with supporting documentation, that the community will adopt as part of its flood plain management measures, which designates developed areas as defined in §59.1 and as further defined in §60.3(f).

(v) A restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates;

(C) Identify the date on which "as built" drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system, or;

(D) Identify the date on which the community will submit a request for a finding of adequate progress that meets all requirements of §61.12. This date may not exceed the maximum allowable restoration period for the flood protection system;

(vi) A statement identifying the local project sponsor responsible for restoration of the flood protection system;

(vii) A copy of a study, performed by a Federal agency responsible for flood protection design or construction in consultation with the local project sponsor, which demonstrates a Federal interest in restoration of the system and which deems that the flood protection system is restorable to a level of base flood protection.

(viii) A joint statement from the Federal agency responsible for flood protection design or construction involved in restoration of the flood protection system and the local project sponsor certifying that the design and construction of the flood control system involves Federal funds, and that the restoration of the flood protection

system will provide base flood protection;

(2) At a minimum, the request from a community that receives no Federal funds for the purpose of constructing the restoration project must:

(i) Meet the requirements of §65.14(e)(1)(i) through (iv);

(ii) Include a restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates; and

(C) Identify the date on which "as built" drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system;

(iii) Include a statement identifying the local agency responsible for restoration of the flood protection system;

(iv) Include a copy of a study, certified by registered Professional Engineer, that demonstrates that the flood protection system is restorable to provide protection from the base flood;

(v) Include a statement from the local agency responsible for restoration of the flood protection system certifying that the restored flood protection system will meet the applicable requirements of Part 65; and

(vi) Include a statement from the local agency responsible for restoration of the flood protection system that identifies the source of funds for the purpose of constructing the restoration project and a percentage of the total funds contributed by each source. The statement must demonstrate, at a minimum, that 100 percent of the total financial project cost of the completed flood protection system has been appropriated.

(f) *Review and response by the Administrator.* The review and response by the Administrator shall be in accordance with procedures specified in § 65.9.

(g) *Requirements for maintaining designation of a flood control restoration zone.* During the restoration period, the community and the cost-sharing Federal agency, if any, must certify annually to the FEMA Regional Office having jurisdiction that the restoration will be completed in accordance with the restoration plan within the time period specified by the plan. In addition, the community and the cost-sharing Federal agency, if any, will update the restoration plan and will identify any permitting or construction problems that will delay the project completion from the restoration plan previously submitted to the Administrator. The FEMA Regional Office having jurisdiction will make an annual assessment and recommendation to the Administrator as to the viability of the restoration plan and will conduct periodic on-site inspections of the flood protection system under restoration.

(h) *Procedures for removing flood control restoration zone designation due to adequate progress or complete restoration of the flood protection system.* At any time during the restoration period:

(1) A community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project shall provide written evidence of certification from a Federal agency having flood protection design or construction responsibility that the necessary improvements have been completed and that the system has been restored to provide protection from the base flood, or submit a request for a finding of adequate progress that meets all requirements of §61.12. If the Administrator determines that adequate progress has been made, FEMA will revise the zone designation from a flood control restoration zone designation to Zone A99.

(2) After the improvements have been completed, certified by a Federal agency as providing base flood protection, and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood control system.

(3) A community that receives no Federal funds for the purpose of constructing the restoration project must provide written evidence that the restored flood protection system meets the requirements of Part 65. A community that receives no Federal funds for the purpose of constructing the restoration project is not eligible for a finding of adequate progress under §61.12.

(4) After the improvements have been completed and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood protection system.

(i) *Procedures for removing flood control restoration zone designation due to non-compliance with the restoration schedule or as a result of a finding that satisfactory progress is not being made to complete the restoration.* At any time during the restoration period, should the Administrator determine that the restoration will not be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is not being made to restore the flood protection system to provide complete flood protection in accordance with the restoration plan, the Administrator shall notify the community and the responsible Federal agency, in writing, of the determination, the reasons for that determination, and that the FIRM will be revised to remove the flood control restoration zone designation. Within thirty (30) days of such notice, the community may submit written information that provides assurance that the restoration will be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is being made to restore complete protection in accordance with the restoration plan, or that, with reasonable certainty, the restoration will be completed within the maximum allowable restoration period. On the basis of this information the Administrator may suspend the decision to revise the FIRM to remove the flood control restoration zone designation. If the community does not submit any information, or if, based on a review of the information submitted, there is sufficient cause to find that the restoration will not be completed as provided for in the restoration plan, the Administrator shall revise the FIRM, in accordance with 44 CFR Part 67, and shall remove the flood control restoration zone designations and shall redesignate those areas as Zone A1–30, AE, AH, AO, or A.

PART 70—PROCEDURE FOR MAP CORRECTION

11. The authority citation for Part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

12. Section 70.1 is revised to read as follows:

§70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either an FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

13. Section 70.3(a) is revised to read as follows:

§70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for the Administrator's review.

* * * * *

14. Paragraphs (a) and (b) of §70.4 are revised to read as follows:

§70.4 Review by the Administrator.

* * * * *

(a) The property is within a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone, and shall set forth the basis of such determination; or

(b) The property should not be included within a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone and that the FHBM or FIRM will be modified accordingly; or

* * * * *

15. Paragraph (c) of section 70.5 is revised to read as follows:

§70.5 Letter of map amendment.

* * * * *

(c) The identification of the property to be excluded from a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, or V Zone.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

16. The authority citation for Part 75 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

17. Section 75.1 is revised to read as follows:

§75.1 Purpose of part.

The purpose of this part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

18. Section 75.10 is revised to read as follows:

§75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

19. Paragraphs (a)(4), (a)(5), and (a)(7) of § 75.11 are revised to read as follows:

§75.11 Standards.

(a) * * *

(4) Consist of a self-insurance fund, or a commercial policy of insurance or reinsurance, for which provision is made in statute or regulation and that is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage that would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. The inventory shall:

(i) Include the location of individual structures;

(ii) Include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and

(iii) Include an estimate of the anticipated annual loss due to flood damage.

* * * * *

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

* * * * *

20. Paragraph (c) of § 75.13 is revised to read as follows:

§75.13 Review by the Administrator.

* * * * *

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in §75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the

Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

* * * * *

Dated: October 22, 1997.

James L. Witt,

Director.

[FR Doc. 97–28385 Filed 10–24–97; 8:45 am]

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Monday
October 27, 1997

federal register

Part VI

The President

Proclamation 7044—United Nations Day, 1997

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Monday, October 27, 1997

Presidential Documents

Title 3—

The President

Proclamation 7044 of October 23, 1997

United Nations Day, 1997

By the President of the United States of America

A Proclamation

In April of 1945, representatives of 50 nations gathered in San Francisco for the United Nations Conference on International Organization. The leaders assembled for that historic meeting were not idle dreamers. They were experienced statesmen and hard realists, horrified by the staggering destruction and human misery wrought by two world wars, and convinced that the conduct of international affairs must change. The United Nations Charter that emerged from their deliberations was a document both wise and hopeful—wise in its recognition that lasting peace comes only with respect for the dignity and value of every human being, and hopeful in its determination to protect future generations from the affliction of war.

As with all human enterprises, the United Nations has had its share of failure and success in the 5 decades since its Charter was ratified. But no one can dispute that the U.N. has worked to make the world a better place. Human suffering knows no borders, and men and women of goodwill from nations across the globe have dedicated their skills and energy to U.N. programs committed to relieving such suffering. For half a century, the organizations and programs of the United Nations have fought hunger and disease, defended human rights, provided disaster relief, taught sustainable development, and cared for refugees.

The United Nations has also fulfilled its mission as a force for peace in the world. For 50 years, it has helped to avert another world war and prevent nuclear holocaust. Today, it continues working to keep nations like El Salvador, Haiti, Cyprus, and Bosnia from further bloodshed. It serves as a voice for the international community in defining acceptable behavior and punishing those states that ignore the most basic global norms of conduct. And the United Nations has become a vital international crossroads, where men and women of every race, culture, religion, and ethnic background can come together to share their common hopes and dreams.

The leaders who gathered in San Francisco so many years ago would scarcely recognize our world today. For the first time in history, more than half the world's people freely choose their own governments. Free markets are expanding, bringing with them exciting opportunities for growth and prosperity. The satellite and the microchip have revolutionized human communication, changing forever the way we live and work and interact. In this new global community, the U.N. mission is as important as it was in the waning days of World War II—pursuing peace and security, promoting human rights, and striving to help move people from poverty to prosperity.

We in the United States must continue our efforts to help the United Nations rise to the challenges of our time. Thanks to an ongoing reform process, we have seen substantial improvements in management, administrative accountability, and the setting of priorities by the U.N. This progress has set the stage for broader efforts to ensure that the United Nations is fully prepared to continue to pursue the goals laid down in its Charter.

As we observe United Nations Day this year, let us remember all those whose foresight and determination created this great international institution, and let us thank all those who, with courage and conviction, continue to fulfill its vital missions.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, October 24, 1997, as United Nations Day. I encourage all Americans to acquaint themselves with the activities and accomplishments of the United Nations, and to observe this day with appropriate ceremonies, programs, and activities furthering the goal of international cooperation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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LIST OF PUBLIC LAWS

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●4	(869-032-00003-4)	7.00	Jan. 1, 1997
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●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

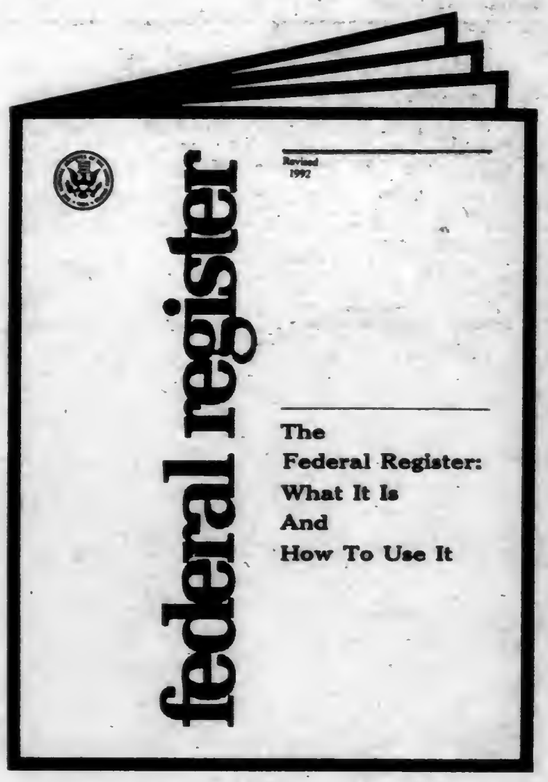
[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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Rules and Regulations

Federal Register
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Tuesday, October 28, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AH91

Fellowship and Similar Appointments in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is consolidating single-agency excepted service authorities for filling positions associated with fellowships, residencies, industry-exchange, student-stipend, and similar programs by establishing two Governmentwide authorities in their place. One authority covers fellowship-type programs, while the other applies to student employees who are paid stipends under special statutory provisions.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on (202) 606–0830, TDD (202) 606–0023; or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: In OPM's continuing efforts to simplify the Federal appointment system, we are reducing the overall number of excepted service authorities. As part of this initiative we are reviewing all appointing authorities that were established to meet specific agency needs, to determine if exception is still appropriate. Where it is, we are identifying the situations where individual agency authorities share enough of a common basis that they can be consolidated into a single Governmentwide appointing authority that would apply to all agencies.

On August 11, 1997 (62 FR 42943), OPM published proposed regulations to establish a new Schedule A authority 213.3102(r) that would consolidate single-agency authorities covering a variety of fellowship, internship, residency, industry-exchange and similar programs. We proposed to establish a separate Schedule A authority 213.3102(s) for positions filled by student-employees assigned to Government hospitals, clinics or medical or dental laboratories to whom agencies pay stipends authorized under 5 U.S.C. 5351–5356. These positions are placed in Schedule A because it is impracticable to examine for them.

Our proposal also included a conforming amendment to the service limits on temporary appointments in 5 CFR 213.104, to include the two new appointing authorities in the list of exceptions cited in 5 CFR 213.104(b)(3)(ii).

We received one comment from an agency in support of the proposed regulations and are adopting them as final regulations with no change.

Documentation on SF–50, Notification of Personnel Action

For appointments made under Schedule A, section 213.3102(r), fellowship and similar programs, agencies should cite Legal Authority Code W9S on the SF 50, Notification of Personnel Action. For appointments made under Schedule A, section 213.3102(s), student-employees paid stipends, agencies should use Legal Authority Code W9T.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures used to appoint certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.
Janice R. Lachance,
Acting Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 *et seq.*

2. In § 213.104 paragraph (b)(3)(ii) is revised to read as follows:

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

* * * * * *

(b) * * *

(3) * * *

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraph (c) of § 213.3202, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

* * * * *

3. In § 213.3102, paragraphs (r) and (s) are added to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointments under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

* * * * *

[FR Doc. 97–28437 Filed 10–27–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–155–AD; Amendment 39–10177; AD 97–22–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires performing a ram air turbine (RAT) extension test; removing and disassembling the RAT uplock mechanism; performing an inspection to detect corrosion of the RAT uplock mechanism, and replacement with a new assembly, if necessary; and cleaning all the parts of the RAT control shaft and its bearing component parts. This amendment is prompted by reports indicating that the RAT did not extend during ground testing, due to corrosion in the uplock pin/shaft and the needle bearing of the RAT. The actions specified by this AD are intended to detect and correct such corrosion of the RAT, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

DATES: Effective December 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Manager, International Office, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on February 19, 1997 (62 FR 7380). That action proposed to require a RAT extension test during ground testing; removal and disassembly of the RAT uplock mechanism; a visual inspection to detect corrosion of the RAT uplock mechanism, and replacement of the assembly with new parts, if necessary; and cleaning of the lever assembly and its associated parts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revision of Descriptive Language

One commenter points out that throughout the proposed AD it references ram air turbine (RAT) uplock assembly and lever assembly as if these assemblies are the same unit. However, Airbus Service Bulletin A310–29–2076, dated April 1, 1996 (which is referenced in the proposal as an appropriate source of service information) refers to these assemblies as separate units. The FAA finds that clarification of this point is necessary.

The FAA finds that "RAT uplock assembly" does not appear in the proposed AD, but "RAT lever assembly" does. The FAA has determined that the phrase "RAT uplock mechanism," which includes both the lever assembly and uplock unit, provides a more complete description, than the phrase, "RAT lever assembly." The FAA has revised the final rule to include reference to "RAT uplock mechanism" and added a new NOTE 2 to provide a definition of that phrase.

Clarification of Requirements

One commenter points out that paragraph (a) of the proposed AD references accomplishment of paragraph (a)(1), (a)(2), (a)(3), and (a)(4) of the AD; however, paragraph (a)(3) and (a)(4) of the proposed AD are missing. The FAA acknowledges that it inadvertently included a reference to paragraphs (a)(3) and (a)(4) in paragraph (a) of the proposed AD. The FAA has revised paragraph (a) of the final rule to delete these references.

Request To Defer Replacement of Corroded Parts

One commenter requests that paragraph (a)(2)(ii) be revised to allow reinstallation of the corroded part and require its replacement within 30 days. The commenter points out that operators would have to stock every part of the subject assembly at the inspection stations (which is not very practical), or its airplanes would have unnecessary time out-of-service while waiting for parts. The FAA has reconsidered replacing corroded parts prior to further flight. The FAA finds that the cleaning and lubrication procedures of the RAT uplock mechanism can be accomplished on a temporary basis, in lieu of replacement of corroded parts. However, unlike the 12-month compliance time recommended in the Airbus service bulletins specified as the appropriate service information for this AD, the FAA has determined that the corroded parts must be replaced within 30 days following accomplishment of the cleaning and lubrication. The FAA finds that this compliance time represents the maximum interval of time allowable wherein the subject replacement could reasonably be accomplished, uncorroded parts could be obtained, and an acceptable level of safety could be maintained. Therefore, the FAA has revised paragraph (a)(2)(ii) of the final rule accordingly.

Revision of Compliance Time in Paragraph (a) of this AD

In addition, the compliance time specified in paragraph (a) of this AD has been revised to state, "30 months since date of manufacture," rather than "30 months total time-in-service," as stated in the proposed rule. This change clarifies that the compliance is to be determined based on calendar time, without regard to the amount of time for which the airplane is operated.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 80 Airbus Model A300, A310, and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $48,000, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–22–06 Airbus Industrie: Amendment 39–10177. Docket 96–NM–155–AD.

Applicability: All Model Airbus Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the ram air turbine (RAT) uplock pin/shaft and needle that could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines, accomplish the following:

(a) Prior to the accumulation of 30 months since the date of manufacture, or within 3 months after the effective date of this AD, whichever occurs later: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus Service Bulletin A300–29–0108, dated April 1, 1996 (for Model A300 series airplanes); A310–29–2076, dated April 1, 1996 (for Model A310 series airplanes); or A300–29–6037, dated April 1, 1996 (for Model A300–600 series airplanes); as applicable. Thereafter, repeat these actions at intervals not to exceed 30 months.

(1) Perform a RAT extension test on the ground, in accordance with the procedures specified in the Maintenance Manual.

(2) Disassemble and remove the uplock mechanism of the RAT and perform a visual inspection of the uplock mechanism to detect corrosion, in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, the RAT uplock mechanism includes both the lever assembly and uplock unit.

(i) If no corrosion is detected: Prior to further flight, clean and lubricate the uplock mechanism and its associated parts, reinstall the assembly, and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin.

(ii) If any corrosion is detected in any part of the uplock mechanism, prior to further flight, accomplish either paragraph (a)(2)(ii)(A) or (a)(2)(ii)(B) of this AD in accordance with the applicable service bulletin.

(A) Replace the uplock mechanism with a new part and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin. Or

(B) Clean and lubricate the uplock mechanism and its associated parts. Within 30 days following accomplishment of this cleaning and lubrication, replace the uplock mechanism with a new part and perform a retraction/extension/retraction of the RAT.

(b) Initial accomplishment of the actions required by paragraph (a) of this AD that have been performed in accordance with Airbus All Operator Telex (AOT) 29–16, Revision 01, dated January 10, 1996, is considered acceptable for compliance with the initial RAT extension test and an initial visual inspection as required by paragraph (a) of this AD. However, the first repetitive inspection, as required by paragraph (a) of this AD, must be performed within 30 months after that RAT extension test and visual inspection were conducted, and repeated thereafter at intervals not to exceed 30 months.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–29–0108, dated April 1, 1996; Airbus Service Bulletin A310–29–2076, dated April 1, 1996; or Airbus Service Bulletin A300–29–6037, dated April 1, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 95–163–182 (B) R2, dated June 5, 1996.

(f) This amendment becomes effective on December 2, 1997.

Issued in Renton, Washington, on October 20, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28320 Filed 10–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–243–AD; Amendment 39–10175; AD 97–22–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Equipped With General Electric (GE) CF6–80C2 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 and 767 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels, and either replacing the existing placard on the door of the fueling control panel with a new placard; or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for a placard and AFM revision. This amendment is prompted by a report of an engine flameout during certification testing due to the use of JP–4 or Jet B fuel. The actions specified in this AD are intended to prevent such engine flameouts and consequent engine shutdown.

DATES: Effective November 12, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1997.

Comments for inclusion in the rules docket must be received on or before December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, during certification testing of a General Electric (GE) CF6–80C2 engine on which dribble flow fuel nozzles (DFFN) were installed, an engine flameout occurred on a McDonnell Douglas Model MD–11 series airplane operating with JP–4 fuel. The engine flameout occurred at 33,000 feet following a throttle movement from "cruise thrust" to "idle." The report indicated that the engine restarted successfully.

Additionally, results of a GE transient engine model revealed that the subject engines, on which a low emissions combustor and DFFN's have been installed, have zero transient margin for flameout when operating with JP–4 fuel.

Boeing Model 747 and 767 series airplanes equipped with GE Model CF6–80C2 engines on which DFFN's have been installed, in combination with the use of wide cut fuels (i.e., JP–4 or Jet B fuel) may result in a single- or multi-engine flameout and consequent engine shutdown.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 747–11A2052 (for Model 747 series airplanes) and 767–11A0031 (for Model 767 series airplanes), both dated September 11, 1997, which describe procedures for removing the existing placard on the door of the fueling control panel and replacing it with a new placard that prohibits the use of JP–4 and Jet B fuels (wide cut fuels).

Additionally, these alert service bulletins describe procedures for removing the DFFN's and replacing them with standard fuel nozzles. Accomplishment of this replacement on the operator's entire fleet eliminates the need for a placard that prohibits the use of wide cut fuels.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on Boeing Model 747 and 767 series airplanes equipped with GE CF6–80C2 engines that incorporate certain DFFN's, this AD is being issued to prevent engine flameout and consequent shutdown of the engine due to the use of JP–4 or Jet B fuel. This AD requires either replacement of the existing placard on the door of the fueling control panel with a new placard that prohibits the use of JP–4 and Jet B fuels, or the removal and replacement of the DFFN's with standard fuel nozzles. Replacement of all DFFN's with standard fuel nozzles on the operator's entire fleet terminates the requirements for a placard that prohibits the use of wide cut fuels and the AFM revision. These actions are required to be accomplished in accordance with the alert service bulletins described previously.

This AD also requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of JP–4 and Jet B fuels.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–243–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–22–04 Boeing: Amendment 39–10175. Docket 97–NM–243–AD.

Applicability: Model 747 series airplanes having line positions 679 through 1117 inclusive, and Model 767 series airplanes having line positions 158 through 661 inclusive; equipped with General Electric (GE) CF6–80C2 engines, on which dribble flow fuel nozzles (DFFN's) having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41, have been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine flameout and consequent shutdown due to the use of JP–4 or Jet B fuel, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise Section 1 of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

(2) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP–4 fuel is prohibited."

(b) Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, in accordance with either Boeing Alert Service Bulletin 747–11A2052 (for Model 747 series airplanes) or 767–11A0031, (for Model 767 series airplanes), both dated September 11, 1997; as applicable.

(1) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(2) Remove the DFFN's, and replace them with standard fuel nozzles, in accordance with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraph (a) of this AD may be removed from the AFM and the placard required by paragraph (b)(1) of this AD may be removed from each airplane.

(c) As of the effective date of this AD, no person shall install any DFFN's having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41, on any airplane, unless the requirements of paragraph (b)(1) of this AD have been accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997, or Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 12, 1997.

Issued in Renton, Washington, on October 17, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28317 Filed 10–27–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–95–AD; Amendment 39–10176; AD 97–22–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) series airplanes, that requires modification of the emergency internal release system of the tailcone and the accessory compartment. This amendment is prompted by a report that, due to failure of the tailcone release system, the tailcone did not deploy on an airplane during an emergency evacuation. The actions specified by this AD are intended to ensure that the emergency internal release system of the tailcone performs its intended function in the event of an emergency evacuation. The actions also are intended to prevent people on board the airplane from striking their heads on exposed metal frames in the tailcone area, which could cause injury and delay or impede their evacuation during an emergency.

DATES: Effective December 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert H. Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) series airplanes was published in the **Federal Register** on September 13, 1996 (61 FR 48433). That action proposed to require modification of the emergency internal release system of the tailcone and the accessory compartment.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

Requests To Revise the Compliance Times of the Proposed Modifications

One commenter requests that the compliance time for accomplishing the proposed modifications be extended from the proposed 36 months to 4 years. The commenter states that such an extension will allow the modifications to be accomplished during a regularly scheduled heavy maintenance check and will allow time for procurement of additional modification kits. The commenter also states that such an extension will allow time for revising the affected manual; training of inspection and maintenance personnel; drafting, checking, and approving engineering documents; and testing and debugging the proposed modifications.

Another commenter requests that the compliance times be shortened to 12 months. This commenter suggests that the proposed compliance times may be too long to fly with the potential of failure of the emergency internal release system of the tailcone.

The FAA does not concur with either of these commenters' request. In developing an appropriate compliance time for these modifications, the FAA considered not only the degree of urgency associated with addressing the unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. Further, the FAA estimates that the affected airplanes will undergo two heavy maintenance checks during the proposed compliance time. In addition, the FAA finds that the 36-month compliance time is sufficient for operators to train their personnel and to incorporate the modifications into various documents. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are presented to justify such an adjustment.

Request To Remove Modification Requirement

Two commenters state that the modification specified in McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996 [which is referenced in paragraph (a) of the proposal as the appropriate source of service information] is difficult to accomplish and only adds more problems to the existing tailcone release system. One of these commenters contends that the tailcone release system described in the referenced service bulletin is unacceptable for an emergency exit system. This commenter also contends that the subject modification cannot be accomplished on airplanes equipped with aft ventral airstairs.

From these comments, the FAA infers that the commenters are requesting that the proposed modification in paragraph (a) of the AD be removed from the final rule. The FAA does not concur. The FAA acknowledges that there were some problems associated with accomplishing the modification in accordance with the original issue of McDonnell Douglas DC–9 Service Bulletin 53–257, dated May 18, 1994. However, the FAA finds that these problems were addressed and corrected in Revision 1 of this service bulletin. The FAA recognizes that Revision 1 of the service bulletin does not address airplanes on which the aft ventral airstair handle has not been deactivated. However, based on a survey conducted by McDonnell Douglas, the FAA finds that affected operators are willing to deactivate the aft ventral airstair handle to accommodate the modification required by this AD. In addition, paragraph (c) of the AD contains a provision for requesting approval of an alternative method of compliance to address these types of unique circumstances.

Request To Add a New Requirement

One commenter requests that paragraph (b) of the proposed AD be revised to include procedures for adding protective padding between the added ceiling panel and beams, and on all other beams in the path of exiting passengers. The commenter contends that installation of ceiling panels [as required by paragraph (b) of the AD] provides a false sense of security and guidance to the flight attendants and evacuees. The commenter states that the ceiling panels could be damaged easily by tall and/or unruly passengers during emergency egress, which could expose the beams and supporting structure. Thus other passengers could strike their heads against the overhead beams. The commenter also states that the ceiling panels could detach from its support structure during an actual emergency, and consequently, also allow exposure of the beams and supporting structure. Further, the commenter states that the ceiling panels could fall in the path of the passengers that are exiting from the airplane. The FAA does not concur. The FAA has determined that installation of ceiling panels on the lower side of three frames and installation of a protective pad on the last frame in the aft accessory compartment provides an acceptable level of safety. In addition, the FAA finds that such an installation is comparable to other panel installations throughout the airplane. However, under provisions of paragraph (c) of the final rule, operators may apply for approval of an alternative methods of compliance if sufficient justification is presented to the FAA.

Request To Address Deficiencies With Existing Tailcone Release System

One commenter states that the existing tailcone release system contains many design and reliability deficiencies. The commenter points out that the proposed AD does not specify any requirements to replace or repair the existing tailcone release system. The commenter also contends that, due to such deficiencies, the new interior release handle [installed in accordance with the requirements of paragraph (b) of the proposed AD] will fail to perform its intended function. From this comment, the FAA infers that the commenter is requesting that the FAA address the problems associated with the existing tailcone release system in the proposed AD. The FAA does not concur. The FAA has previously issued several other AD's that concern the tailcone deployment system on Model DC–9 series airplanes, which was discussed previously in the Other Relevant Rulemaking Section in the preamble to the NPRM. Therefore, the FAA finds no change to the final rule is necessary.

Request To Revise the Proposed Modification of the Emergency Internal Release System

One commenter requests that the existing tailcone release system be replaced with an electro-mechanical system, which can be actuated from inside the airplane. The commenter states that it is more cost effective to install a modern and efficient system (i.e., electro-mechanical system), rather than a system with design technology standards that are 25 to 30 years old. The commenter also states that the existing system does not meet industry expectations. The FAA does not concur. The modification required by paragraph (b) of this AD was developed with operator, manufacturer, and FAA concurrence based on cost and technical feasibility. However, under the provisions of paragraph (c) of this AD, operators may apply for the approval of an alternative method of compliance, if sufficient justification is presented to the FAA.

Request To Revise Various Manufacturer Manuals

One commenter requests that the FAA require the manufacturer, rather than the affected operator(s), to update the affected Illustrated Parts Catalog, Airplane Maintenance Manual, Structural Repair Manual, and Wiring Diagram Manual to ensure continued airworthiness of the tailcone release system. The commenter states that an operator, who does not have "experience" with the modification required by the proposed AD, could enter erroneous information into these manuals. The FAA does not concur. The FAA finds that the subject service documents are not necessary to accomplish the modifications required by this AD. The FAA has been informed that the manufacturer is in the process of revising the DC–9 Airplane Maintenance Manual (AMM) to comply with the continued airworthiness requirements and will make the AMM available to operators.

FAA's Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 878 McDonnell Douglas Model DC–9 series airplanes and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 590 airplanes of U.S. registry will be affected by this AD.

The modification of the emergency internal release system will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,660 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $4,177,200, or $7,080 per airplane.

The modification of the accessory compartment will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. For the 395 airplanes identified as "Group I" in the referenced service bulletin, required parts will cost approximately $1,777 per airplane. For the 195 airplanes identified as "Group 2" in the referenced service bulletin, required parts will cost $5,369 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators of Group 1 airplanes is estimated to be $938,915, or $2,377 per airplane; and on U.S. operators of Group 2 airplanes is estimated to be $1,163,955, or $5,969 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–22–07—McDonnell Douglas: Amendment 39–10176. Docket 96–NM–95–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996, and McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993; operating in a passenger or passenger/cargo configuration; certificated in any category.

Note 1: The requirements of this AD become applicable at the time an airplane operating in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency internal release system of the tailcone performs its intended function in the event of an emergency evacuation, accomplish the following:

(a) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996: Within 36 months after the effective date of this AD, modify the emergency internal release system of the tailcone in accordance with the service bulletin.

(b) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993: Within 36 months after the effective date of this AD, modify the accessory compartment in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996, and McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 600 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 2, 1997.

Issued in Renton, Washington, on October 17, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28319 Filed 10–27–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–229–AD; Amendment 39–10179; AD 97–22–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking detected. This amendment requires that the inspections be accomplished at more frequent intervals. This amendment also adds a requirement for modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of modified areas. This amendment is prompted by reports of numerous fatigue cracks in the lower skin of the fuselage lap joints at the lower row of fasteners. The actions specified in this AD are intended to prevent such fatigue cracking, which could result in sudden decompression of the airplane.

DATES: Effective November 12, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 12, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 737–53A1177, dated November 8, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 27, 1994 (59 FR 63716, December 9, 1994).

Comments for inclusion in the Rules Docket must be received on or before December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider or Nenita K. Odesa, Aerospace Engineers, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On April 28, 1988, a Boeing Model 737 series airplane was involved in an accident in which a 15-foot long section of fuselage structure peeled open during flight. In light of this, the FAA initiated an Aging Fleet Program. The objective of that program is to identify and implement procedures to ensure the continuing structural airworthiness of aging transport category airplanes.

As part of the Aging Fleet Program, the airplane manufacturer conducted cyclic pressure (fatigue) tests to evaluate the performance of the various fuselage skin panel lap joint configurations. The fuselage skin panel joint consists of two adjacent panels that overlap each other longitudinally and are joined together by three rows of fasteners at the overlap (hence, lap joint). Cracks in the upper skin of the lap joint led to the structural failure that occurred in the 1988 accident discussed previously. These "first generation" lap joints, installed on early Model 737 series airplanes having line numbers 1–291, were modified by replacing the countersunk fasteners in the upper fastener row of the lap joint with protruding head fasteners to correct and prevent cracking in the upper skin of the lap joint. No cracking has been detected to date in the lower fastener row of these (modified)"first generation" lap joints.

In 1994, tests were conducted on "second generation" lap joints; test results revealed cracks in the lower skin of this lap joint. The airplane manufacturer determined that these cracks were caused by increased stresses in this area due to the increased bending stresses associated with the installation of a doubler on the upper skin. This doubler was installed on "second generation" lap joints as an improvement to the lap joint to prevent cracks in the upper skin. This lap joint configuration, which incorporates the additional doubler, was installed on Model 737 series airplanes having line numbers 292 through 2565.

In light of results of these tests, the manufacturer inspected the lap joints of five aging airplanes and detected a total of 273 fatigue cracks. The use of eddy current inspection techniques were required as the cracks in the lower skin are not detectable visually due to the positioning of the lower skin between the upper skin and the circumferential tear strap. Many of these cracks were found to have occurred simultaneously at adjacent fastener hole locations in the lower skin of the fuselage lap joint.

This type of cracking of the lap joint is known as multiple site damage (MSD). MSD is characterized by the simultaneous presence of fatigue cracks in the same structural element (such as the lower skin panel of the lap joint). Coalescence of cracks at adjacent fastener holes in the lower skin can lead to sudden fracture and failure of the lap joint, which could result in rapid decompression of the airplane. Due to the reduction in the residual strength of a lap joint in the presence of MSD. This reduction of the structural integrity of the fuselage may occur at loads significantly below those that would be expected for structure having a single large crack. The accident discussed previously has demonstrated dramatically that small cracks acting together can have a significant effect on the residual strength of the aircraft structure.

Issuance of Previous Rule

On December 2, 1994, the FAA issued AD 94–25–05, amendment 39–9089 (59 FR 63716, December 9, 1994), applicable to certain Boeing Model 737 series airplanes, to require repetitive eddy current inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage between body stations 259.50 and 1016, and repair of any cracking detected. That AD was prompted by reports of fatigue cracking occurring simultaneously at adjacent fastener hole locations in the lower skin of the fuselage lap joint. The actions required by AD 94–25–05 are intended to prevent sudden decompression of the airplane due to undetected cracking of the fuselage skin.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–25–05, the FAA has received additional reports of fatigue cracking in the lower skin of the lap joints of the fuselage on airplanes previously inspected in accordance with that AD. The FAA received reports of numerous cracks on a number of airplanes that had accumulated between 52,000 and 78,000 total flight cycles and that had been inspected using low frequency eddy current (LFEC) inspection techniques. The majority of these cracks occurred at left and right stringers 4, 10, and 14.

The FAA also received recent reports indicating that extensive cracking was found on three airplanes on which high frequency eddy current (HFEC) inspections and modification of the lap joints had been accomplished in accordance with Revision 1 of Boeing Alert Service Bulletin 737–53A1177. Approximately eight months had elapsed since the initial LFEC inspections required by AD 94–25–05 had been accomplished. These airplanes had accumulated between 76,000 and 84,400 total flight cycles. The total number of cracks reported was between 246 and 360 on these three airplanes, and the majority of these cracks occurred at left and right stringers 4, 10, and 14. On one of these airplanes, cracking was found along a 111-inch section of stringer 4L at every fastener hole in the lower row of fasteners in the lower skin that had not been repaired during the previous LFEC inspection (82% of the total fastener holes).

In the preamble to AD 94–25–05, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this AD follows from that determination.

Explanation of Relevant Service Information

Since the issuance of AD 94–25–05, the FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; and Revision 3, dated September 18, 1997; which describe procedures for inspections similar to those specified in the original issue of the alert service bulletin. (The original issue of the alert service bulletin was cited in AD 94–25–05 as the appropriate source of service information).

Revision 1 of the alert service bulletin describes procedures for modification of the lap joints at the lower row of fasteners in the lower skin of the fuselage [reference Part III ("Preventive Change") of the Accomplishment Instructions of the alert service bulletin].

The relevant changes in Revision 2 of the alert service bulletin include procedures for more frequent repetitive inspections of the lower skin at the lower row of fasteners in the lap joints of the fuselage.

For certain lap joint locations on Model 737–200 series airplanes only, Revision 2 of the alert service bulletin also describes procedures for an option to the modification ("Preventive Change") described in Revision 1 of the alert service bulletin. This option [reference Part IV ("Lap Joint Repair") of the Accomplishment Instructions of the alert service bulletin] involves installing a lap joint repair on the entire length of the skin panel at certain lap joint locations.

Revision 3 of the alert service bulletin is essentially the same as Revision 2; however, Revision 3 corrects a particular fastener size specified in Part IV of the Accomplishment Instructions of the alert service bulletin.

Accomplishment of the modification eliminates the need for the repetitive inspections only of those areas that have been modified. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

FAA's Determinations

Based on reports of numerous cracks detected on airplanes inspected previously, the FAA finds that, for certain airplanes, the repetitive LFEC inspections required currently by AD 94–25–05 must be accomplished at more frequent intervals to detect cracks that, in the presence of MSD, could propagate to the point of structural failure of the lap joints and result in rapid decompression of the airplane.

Based upon reports of extensive MSD found in the lower skin of the lap joints located at stringers 4, 10, and 14, there may be a significant reduction in the residual strength of these lap joints. Because of this reduction in strength, in combination with the possibility that cracks may go undetected due to human factors, the FAA finds that the reduced inspection interval provided by this AD may not be adequate to detect cracks which could propagate to the point of structural failure. As a result, for airplanes that have accumulated 70,000 or more total flight cycles, the FAA has concluded that modifications of the lap joints at stringers 4, 10, and 14 (as required by this AD) on which the most severe cracking has been detected, must be required on an emergency basis.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–25–05 to continue to require repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking detected. This AD requires that the inspections be accomplished at more frequent intervals.

This AD also requires modification of the fuselage lap joints at certain locations. Accomplishment of the modification constitutes terminating action for the repetitive inspections only of those areas that have been modified in accordance with this AD.

The inspections and modification are required to be accomplished in accordance with the alert service bulletin described previously.

Explanation of Compliance Time for Initial Inspection

Operators should note that, for certain airplanes, the compliance time for accomplishment of the initial inspection required by this AD is approximately 120 days. That number of days is usually sufficient to allow for prior notice to the public and a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected because of:

- The large number of aircraft affected by the AD;
- The large number of work hours required to accomplish the inspection; and
- The availability of an adequate number of maintenance facilities able to accommodate scheduling the fleet for inspection.

A shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending scheduling. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections and modification as soon as possible.

Differences Between the AD and the Relevant Service Bulletins

Operators should note that, for airplanes that have accumulated between 60,000 and 65,000 total flight cycles, the alert service bulletin specifies a repetitive inspection of 3,500 flight cycles until the airplane has accumulated 65,000 total flight cycles. However, for that group of airplanes, this AD requires that repetitive inspections be accomplished at intervals not to exceed 1,200 flight cycles. The FAA has determined that, because of the safety implications and consequences of multiple site damage associated with fatigue cracking of the fuselage skin, it is necessary to require earlier repetitive inspections to ensure the continued operational safety of the fleet.

For Boeing Model 737–200 series airplanes only, Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997, recommends installation of a support cradle at station 540. However, this installation is not intended to support the weight of the airplane. Therefore, this AD does not require installation of this support cradle. In addition, to clarify the reference in the alert service bulletin for supporting the airplane in the jig position, paragraph (g)(2) of this AD explicitly requires that, prior to conducting the repair of the lap joint, the airplane be supported in the jig position, including support (removal) of the engine weight. This action is required to be accomplished in accordance with Boeing Document D6–15565, "737 Structural Repair Manual (SRM)," Chapter 51, Subject 51–50–1, Revision 70, dated July 5, 1997.

Subsequent Rulemaking

The FAA may consider separate rulemaking action for airplanes that have accumulated more than 70,000 total flight cycles to require modification of the lap joints at the remaining locations specified in Part III ("Preventive Change") of the Accomplishment Instructions of the alert service bulletin.

In addition, for airplanes that have accumulated less than 70,000 total flight cycles, the FAA may consider requiring accomplishment of this modification at all locations specified in the alert service bulletin.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–229–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9089 (59 FR 63716, December 9, 1994), and by adding a new airworthiness directive (AD), amendment 39–10179, to read as follows:

97–22–07 Boeing: Amendment 39–10179. Docket 97–NM–229–AD. Supersedes AD 94–25–05, Amendment 39–9089.

Applicability: Model Boeing 737 series airplanes having line numbers 292 through 2565 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sudden decompression of the airplane, accomplish the following:

(a) Perform a low frequency eddy current inspection to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage at the time specified in paragraph (b) or (c) of this AD, as applicable, in accordance with Part I ("Inspection") of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, dated November 8, 1994; Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; or Revision 3, dated September 18, 1997.

(b) For airplanes that have accumulated 70,000 total flight cycles or more as of the effective date of this AD: Perform the inspection required by paragraph (a) of this AD at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 100 flight cycles after the effective date of this AD.

(2) Within 300 flight cycles after the last inspection accomplished in accordance with AD 94–25–05, amendment 39–9089.

(c) For airplanes that have accumulated less than 70,000 total flight cycles as of the effective date of this AD: Perform the inspection required by paragraph (a) of this AD at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 60,000 total flight cycles.

(2) At the earliest of the times specified in paragraph (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this AD.

(i) Within 3,500 flight cycles after the last inspection accomplished in accordance with AD 94–25–05, amendment 39–9089.

(ii) Within 1,200 flight cycles after the effective date of this AD.

(iii) Prior to the accumulation of 70,300 total flight cycles.

(d) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair it in accordance with Part II ("Crack Repair") of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, dated November 8, 1994; Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; or Revision 3, dated September 18, 1997.

(e) Repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable, until the modification required by paragraph (f) or (g) of this AD, as applicable, is accomplished.

(1) If the airplane had accumulated less than 70,000 total flight cycles at the time of the immediately preceding inspection, perform the next inspection within 1,200 flight cycles or prior to the accumulation of 70,300 total flight cycles, whichever occurs first.

(2) If the airplane had accumulated 70,000 or more total flight cycles at the time of the immediately preceding inspection, perform the next inspection within 300 flight cycles.

(f) Except as provided by paragraph (g) of this AD, modify the fuselage lap joints at the lower row of fasteners at stringer locations right/left stringer 4 between body station (BS) 360 and BS 1016; and right/left stringers 10 and 14 between BS 360 and BS 540, and between BS 727 and BS 1016; in accordance with Part III ("Preventive Change") of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; or Revision 3, dated September 18, 1997; at the time specified in paragraph (h) of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspections only for the areas that have been modified in accordance with this AD.

(g) For Boeing Model 737–200 series airplanes only:

(1) Except as provided in paragraphs (g)(2) and (g)(3) of this AD, in lieu of accomplishing the modification ("Preventive Change") specified in paragraph (f) of this AD, installation of the lap joint repair in accordance with Part IV ("Lap Joint Repair") of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997, at the locations specified in Part IV of the alert service bulletin, may be accomplished. Accomplishment of the repair constitutes terminating action for the repetitive inspections only for the areas that have been modified in accordance with this AD.

(2) Prior to conducting the repair, support the airplane in the jig position, including support (removal) of the engine weight, in accordance with Boeing Document D6–15565, "737 Structural Repair Manual (SRM)," Chapter 51, Subject 51–50–1, Revision 70, dated July 5, 1997.

Note 2: Chapter 51, Subject 51–50–1 of the referenced SRM references Subjects 51–50–2, 51–50–3, and 51–60 of the referenced SRM as additional sources of service information.

(3) Notwithstanding the Accomplishment Instructions of Boeing Alert Service Bulletin

737–53A1177, Revision 3, dated September 18, 1997, the repair described in paragraph (g)(1) of this AD may be accomplished without installing a support cradle at station 540.

(h) Accomplish the modification required by paragraph (f) or (g) of this AD, as applicable, at the latest of the times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) Prior to the accumulation of 70,000 total flight cycles.

(2) Within 600 flight cycles after the effective date of this AD.

(3) Within 80 days after the effective date of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1177, dated November 8, 1994; Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Boeing Alert Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997; Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997; and Boeing Document D6–15565, "737 Structural Repair Manual (SRM)," Chapter 51, Subject 51–50–1, Revision 70, dated July 5, 1997, which contains the following list of effective pages (NOTE: The issue date and revision level of the SRM are indicated only on the Title Page; no other page of the document contains this information.):

Page No.	Revision level shown on page	Date shown on page
Title page	70	July 5, 1997.
1	Not shown	Feb. 5, 1989.
2, 3, 11, 12	Not shown	Aug. 5, 1988.
4	Not shown	Feb. 1, 1978.
5, 6, 8–10	Not shown	Aug. 1, 1968.
7	Not shown	Feb. 1, 1975.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Boeing Alert Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997; Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997; and Boeing Document D6–15565, "737 Structural Repair Manual (SRM)," Chapter 51, Subject 51–50–1, Revision 70, dated July 5, 1997; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–53A1177, dated November 8, 1994, was approved previously by the Director of the Federal Register as of December 27, 1994 (59 FR 63716, December 9, 1994).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on November 12, 1997.

Issued in Renton, Washington, on October 21, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28347 Filed 10–27–97; 8:45 am]

BILLING CODE 4910–13–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 97–6A]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; NIE Corrections Procedure

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations to govern the filing of Correction Notices of Intent to Enforce a Restored Copyright under section 104A of the copyright law, as amended by the Uruguay Round Agreements Act. The effect of the interim regulation is to establish procedures for the correction of errors in previously filed Notices of Intent to Enforce a Restored Copyright and to provide a suggested format for submitting such information.

DATES: This interim regulation is effective October 28, 1997. Comments should be in writing and received on or before November 12, 1997.

ADDRESSES: If delivered by hand, an original and ten (10) copies of comments should be delivered to: Library of Congress, Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540. If sent by mail, an original and ten (10) copies of comments should be addressed to: David Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, President Clinton signed the "Uruguay Round Agreements Act" (URAA), Pub. L. 103–465, 108 Stat. 4809. The URAA restored copyright in certain foreign works from any country that, from January 1, 1996, forward, is a member of the Berne Convention for the Protection of Literary and Artistic Works, a member of the World Trade Organization (WTO), or subject to a Presidential Proclamation determining eligibility. 60 FR 7793 (Feb. 9, 1995); Proclamation No. 6780, 60 FR 15845 (Mar. 27, 1995). Nationals of such countries have copyright automatically restored in their works effective on the first date the particular source country becomes a country in any of the above-listed three categories. However, to be restored, works must meet certain other requirements. Such works must:

(1) Not be in the public domain in its source country through expiration of the term of protection;

(2) Be in the public domain in the United States due to noncompliance with formalities imposed at any time by United States copyright law, lack of subject matter protection in the case of sound recordings fixed before February 15, 1972, or lack of national eligibility;

(3) Have at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country;

(4) If published, be first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

Notwithstanding the fact that the work meets the above requirements, any work ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work. 17 U.S.C. 104A(a)(2).

Although copyright restoration is automatic for eligible works, a copyright owner's enforcement of its copyright against a reliance party is subject to notice to the reliance party and a waiting period. Reliance parties, in general, are persons who obtained copies of the works or were already using the works before the URAA was enacted (Dec. 8, 1994). 17 U.S.C. 104A(h)(4). Specifically, a reliance party is any person who:

(A) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

(B) Before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

(C) As the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

Id.

The copyright owner must file with the Copyright Office a Notice of Intent to Enforce (NIE) its restored copyright or must individually serve such notice on a reliance party and must wait a period of twelve months before enforcing a restored copyright against a reliance party. A reliance party may be found liable for infringement beginning twelve months after **Federal Register** publication of the Notice of Intent to Enforce the copyright in the restored work or twelve months after a notice has been individually served on the reliance party, whichever is earlier. 17 U.S.C. 104A(d)(2). Thus, the reliance party receives a 12 month grace period during which it may use the restored work without paying licensing fees or securing permission for such use from the restored copyright owner. Id., The Uruguay Round Trade Agreements, Text of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994).

NIEs filed in the Copyright Office receive the benefit of constructive notice; that is, all persons are deemed to have notice of the NIE upon the Copyright Office's publication in the **Federal Register** of an NIE for a restored work. Cf. 17 U.S.C. 104A(c). Thus, the **Federal Register** publication begins the 12-month grace period concerning a particular restored work for all reliance parties, whereas the individually served NIE begins the 12-month period for only those reliance parties served, and any other reliance party with actual knowledge of such service and the contents of the notice.

Recording NIEs and publishing in the **Federal Register** the NIE titles and owners of restored copyright is part of the Copyright Office responsibilities pursuant to the URAA. 17 U.S.C. 104A(e)(1)(B). Regulations have been issued for such filings as well as special regulations for registration of claims to copyright under the URAA. 60 FR 50414 (Sept. 29, 1995).

As part of the Office's responsibility regarding NIEs, the Office has proposed rules for recording corrections to NIEs, both those NIEs containing major errors and those containing minor errors. The URAA allows a party who has filed an NIE with the Copyright Office to correct minor errors or omissions by further notice at any time after the original NIE is filed. 17 U.S.C. 104A(e)(1)(A)(iii). The procedures and fees for filing a correction to an NIE are essentially the same as those for filing an original NIE, except that the party making the correction should refer, on the corrected NIE, to the previous NIE's volume and document number in the Copyright Office Documents Records, if known. For purposes of determining the appropriate filing period, the Office will regard NIEs correcting major errors as new NIEs. Such NIEs must, therefore, be filed within the initial two year period of eligibility to be accepted as timely.

I. Proposed Rule To Establish Correction Notices of Intent To Enforce

On July 30, 1997, the Office proposed regulations to govern the filing of Correction Notices of Intent to Enforce a Restored Copyright (Correction Notices or Correction NIEs). This rule proposed procedures to correct major and minor errors and provided a format which the Office suggested for submitting Correction Notices. The procedures (1) detailed who may file a Correction Notice, (2) distinguished between major and minor error, (3) explained that multiple NIEs could be submitted for the same work where the work had multiple owners and (4) noted that while NIEs could be withdrawn within a short time after filing, the Office will not cancel a recorded NIE.

II. Comment

The Office received one comment in response to the publication of its proposed rule, from the Motion Picture Association of America (MPAA). This organization pointed out what it considered an inherent ambiguity in the URAA provision for minor errors but not other errors, in that sec. 104A(e)A(ii) of Title 17 permits the correction of minor errors at any time, even after the 24-month filing period, thereby leaving open the consideration of whether and when other errors may be corrected, and what effect such errors may have. One potential effect relates to when infringement remedies may be awarded against reliance parties. Under the URAA, sec. 104A(d)(2), such parties' continued use of a restored copyright after a 12-month period following the publication in the **Federal Register** of the title and owner of a restored work as listed in an NIE is subject to infringement remedies. The MPAA suggested that the Office provide by regulation that infringement remedies are available only after publication of Correction NIEs.

III. Response

The Office addresses this comment regarding the "inherent ambiguity" of the URAA provision for correction of minor errors by looking to what appears to be Congress' underlying intent—to shield the public from prejudicial errors, i.e., those errors which would impede efforts by members of the public to ascertain the possible restored status of a work while assisting the NIE filer in the creation of an improved and corrected public record where a harmless error had been made. See 17 U.S.C. 104A(e)(3). While the Office has no statutory authority to establish the date on which infringement remedies are available, the distinguishing of major and minor errors facilitates the administration of NIEs where errors in an originally filed NIE may be of such a substantial nature that the initial NIE does not adequately and reasonably identify the restored work. Further, an administrative procedure recognizing the distinction between an error which would not impede the public's locating within Copyright Office records information for a given restored work and an error in an NIE which would prevent the public from being informed of the restored status for a particular work allows for a more reliable and useful public record and may possibly facilitate judicial determination of when adequate notice concerning a restored work occurred.

The Office concludes that major errors are those which pertain to the statutorily required information in the Copyright Office NIE filings: name of the copyright owner or rightholder, title of the work (but not the translation, if any) and the written agency relationship. Where the Office determines an error to be major, a Correction NIE must be filed within the two year period of eligibility. NIE filings

with the Office are voluntary. In the absence of a timely filing in the Office, the URAA allows a copyright owner of a restored work to serve an individual notice on a reliance party at any time after the date of restoration of the restored copyright to trigger a reliance party's 12-month period to use the restored work within the terms of the statute. 17 U.S.C. 104A(e)(2).

Based on the foregoing discussion, these interim regulations are essentially unchanged, except for minor technical amendments.

IV. Procedures for Correction Notices of Intent to Enforce

A. Who May File a Correction Notice of Intent To Enforce (Correction NIE)

Correction NIEs may be filed by or on behalf of the same copyright owner or rightholder who filed the original NIE. The "same copyright owner" includes successors in interest.

A certification by a third party is not sufficient to authorize a correction of an earlier NIE recorded in the name of another party/copyright owner, unless that third party is also the authorized agent of the copyright owner in whose name the original NIE was recorded. An authorized agent may file a Correction NIE whether or not that agent filed the original NIE.

B. Definition of Major and Minor Error

The Copyright Office concludes that major errors, not defined or referenced within the statutory provisions, may be corrected only within the two-year period of eligibility for initially filing NIEs. Minor errors may be corrected at any time under the URAA provisions. (17 U.S.C. 104A(e), as amended).

The Office has determined that major errors are errors concerning the following NIE statutory requirements: the name of the copyright owner or rightholder; the title of the work (as opposed to its translation, if any); and a written agency relationship, if applicable. The Office considers these items of information to be basic identifiers crucial to the effectiveness of adequately informing the public of the existence and ownership of a particular work which is subject to a Notice of Intent to Enforce. The title of a work and the identity of the rights owner in the work, including correct information regarding an agent of the rights owner, if an agency relationship existed, must be present in the Copyright Office NIE records in order for the NIE filer to meet the requirements of the statute and to allow the public through a reasonable search to locate the essential information within Office NIE records about a given work restored to copyright under the URAA. Where the original NIE did not adequately identify the owner of the restored work, the title of the restored work or the agency relationship, the Office will refuse to record a Correction NIE that is submitted after the two-year period following a work's restoration to copyright protection.

Adequate identification of a restored work means that accurate and sufficient information concerning the three statutorily required items of owner identity, title, and agency relationship, if any, is present in the original NIE. The necessary accuracy and sufficiency of information for the original NIE includes, but is not limited to, completeness of the information, accurate spelling of names and titles, and correct sequencing of wording within names and titles so that a reasonable search of the NIE records will reveal the work in question. The following are examples where original NIEs contain information which would not result in a reasonable search revealing the actual, correct title or owner identity for the restored work:

Title in original NIE: Robert Meets the Green Rabbit Again
Title in Correction NIE: Here We Go Again—The Green Rabbit and Robert
Title in original NIE: Now Are the Times That Try Men's Souls
Title in Correction NIE: Trying Times for Mankind
Owner in original NIE: Kathy and Lori Film Production, Inc.
Owner in Correction NIE: Kathy Lorenzo and Lori Lorenzo

Where the two-year period has expired and where there is doubt as to whether an error is major or minor, i.e., whether the erroneous NIE is such that it would fail to inform members of the public doing a reasonable search of the Copyright Office records of the existence of a work that is subject to a Notice of Intent to Enforce, the Office will correspond with the filer concerning the doubt and, if appropriate, may resolve the doubt in favor of the filer and record the Correction NIE.

Because the regulations of the Copyright Office allow the recordation of any document pertaining to a copyright, in instances where the Office refuses the recordation of a Correction NIE because the two-year period of eligibility for initial filing of an NIE has passed, a party may record any document, including one concerning rights restored under the URAA for a given work, but may not designate the document on its face to be a Notice of Intent to Enforce or a Correction Notice of Intent to Enforce. *See* 37 CFR 201.4 for Copyright Office regulations on recordation of transfers and other documents. All documents, including NIEs and Correction NIEs, submitted for recordation with the Office are found within the same bibliographic database and a reasonable search by title or owner should reveal *all* recordations filed with the Office concerning the same title or owner identity.

C. Designation for a Correction Notice of Intent to Enforce

A Correction NIE must be clearly indicated as such, i.e., the document filed should bear the title "Correction Notice of Intent To Enforce," or "Correction NIE." It must also specify the volume and document number for the recordation of the original NIE. This will enable the Office to record the correction with the appropriate cross-reference to the volume and document number of the original NIE.

D. Format Information for Correction NIEs

The suggested format for filing Correction NIEs generally follows the outline of the suggested format for the original filing. This is included as Appendix A below.

The format will be made available over the Internet from where it can be downloaded for use. Where a party wishes to correct in the same filing NIEs for many titles, he or she can adapt the suggested format to allow more space for titles. Use of the format enables the filer to furnish information prescribed by the original NIE regulation in orderly form.

When information (either required or optional) has been correctly given on the original NIE, the Correction NIE need not repeat that information. Filers should include information in the Correction NIE, however, that was omitted from the previous NIE which will help identify the restored work(s) involved.

Correction NIEs must be in English, except for the original title, and either typed or printed by hand legibly in dark, preferably black, ink. They should be on 8½" by 11" white paper of good quality, with at least a 1" (or 3 cm) margin.

E. Fees

The fee for a correction is the same as that for an initial NIE: for one work, the fee is thirty U.S. Dollars; for multiple works that meet the conditions for being filed on the same NIE, the fee is thirty U.S. Dollars for the first work, plus one dollar for each additional work. For NIE filings, including corrections, see 37 CFR 201.33(e) for fee information.

The filing fee partially reimburses the Office for its processing costs; the Office, therefore, does not refund fees for errors made by filers in NIEs.

V. Multiple NIEs for the Same Work and Correction Cross-References

When rights in a restored work are owned by several different parties, multiple NIEs for the same work may be submitted. For example, one person may own the exclusive right of reproduction and public distribution and another the exclusive right of public performance. When a work has multiple rights owners, each owner must file a separate NIE subject to the requirements for initial filing within two years of eligibility to receive the benefit of NIE filing. In the instance of multiple owners of rights in a single work, if a party is acting on behalf of an earlier owner of record in an NIE and purporting to correct that earlier NIE, the Office points out that only the NIE record in the name of that particular earlier owner will be cross-referenced. Nevertheless, all NIE records for a given title will be easily retrievable as a group; if the works as recorded bear the same title, the NIE records would appear together in any title search of online records.

VI. Cancellations and Withdrawals

The Office will not cancel a recordation of an NIE unless the recordation fee is uncollectible. While the recordation of NIEs may not, with the exception of an uncollectible fee, be canceled (i.e., expunged from the record), a request to record an NIE may be withdrawn if the request to withdraw is received before the record of the NIE has been made available to the public through the Internet. In order to withdraw an NIE, the filer must contact the Documents Unit of the Copyright Office before the online record (Copyright Office Publication and Interactive Cataloging System (COPICS)) has been made publicly available. If the Office has prepared the record for a work that is later withdrawn, it will not refund the fee.

VII. Publication of Additional NIE List

Under the URAA, the Office must publish the **Federal Register** list of NIEs processed by the Office every four months. 17 U.S.C. 104A(e)(1)(B)(i). Accordingly, lists have been published beginning on May 1, 1996. (61 FR 19372 (May 1, 1996); 61 FR 46134 (Aug. 30, 1996); 61 FR 68454 (Dec. 27, 1996); 62 FR 20211 (April 25, 1997) and 62 FR 44842 (Aug. 22, 1997)). The Office will publish its next list on December 19, 1997. This list will include NIEs received and processed in the Office through December 5, 1997. The final **Federal Register** list for works from countries that became eligible to file on January 1, 1996, is scheduled to be published on January 30, 1998. Cf. 17 U.S.C. 104A(e)(1)(B)(ii). This will include NIEs previously received in the Office but unprocessed by December 5, 1997, and NIEs received between December 5, 1997, and December 31, 1997, inclusive.

Correction NIEs for major errors and new NIEs from source countries that became eligible to file on January 1, 1996, must be postmarked by December 31, 1997, to be accepted for January **Federal Register** publication. Correction NIEs for minor errors are acceptable at any time following eligibility, but the Office will not publish such minor corrections in the **Federal Register**.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Jukeboxes, Literary works, Satellites.

Interim Regulation

In consideration of the foregoing, the Copyright Office amends 37 CFR part 201 in the manner set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.34 is added to read as follows:

§ 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of corrections of Notices of Intent to Enforce a Copyright (NIEs) Restored under the Uruguay Round Agreements Act of December 8, 1994, as required by 17 U.S.C. 104A(e), as amended by Pub. L. 103–465, 108 Stat. 4809, 4976 (1994).

(b) *Definitions.* For purposes of this section, the following definitions apply.

(1) *Major error.* A major error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is an error in the name of the copyright owner or rightholder, or in the title of the work (as opposed to its translation, if any) where such error fails to adequately identify the restored work or its owner through a reasonable search of the Copyright Office NIE records. Omission of, or incorrect information regarding, a written agency relationship also constitutes a major error.

(2) *Minor error.* A minor error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is any error that is not a major error.

(3) *Restored work.* For the definition of works restored under the URAA, *see* 37 CFR 201.33.

(c) *Forms.* The Copyright Office does not provide forms for Correction Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such Correction NIEs follow the format set out in Appendix A of this section and give all information listed in paragraph (d) of this section. Correction NIEs must be in English, and should be typed or legibly printed by hand in dark, preferably black ink, on 8½" by 11" white paper of good quality with at least a 1" (or three cm) margin.

(d) *Requirements for Correction Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.* (1) A correction for a Notice of Intent to Enforce should be clearly designated as a "Correction Notice of Intent to Enforce" or "Correction NIE."

(2) Correction Notices of Intent to Enforce should be sent to the following address: URAA/GATT, NIEs and Registrations, PO Box 70400, Southwest Station, Washington, DC 20024, USA.

(3) A Correction NIE shall contain the following information:

(i) The volume and document number of the previous NIE which is to be corrected;

(ii) The title of the work as it appears on the previous NIE, including alternative titles, if they appear;

(iii) The English translation of the title, if any, as it appears on the previous NIE;

(iv) A statement of the erroneous information as it appears on the previous NIE;

(v) A statement of the correct information as it should have appeared and an optional explanation of its correction; or

(vi) A statement of the information to be added. This includes optional information such as:

(A) Type of work;

(B) Rights owned by the party on whose behalf the Correction Notice is filed;

(C) Name of author;

(D) Source country;

(E) Year of publication;

(F) Alternative titles;

(G) An optional explanation of the added information.

(vii) The name and address:

(A) To which correspondence concerning the document should be sent; and

(B) To which the acknowledgment of the recordation of the Correction NIE should be mailed; and

(viii) A certification. The certification shall consist of:

(A) A statement that, for each of the works named above, the person signing the Correction NIE is the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, and that the information is correct to the best of that person's knowledge;

(B) The typed or printed name of the person whose signature appears;

(C) The signature and date of signature; and

(D) The telephone and telefax number at which the owner, rightholder, or agent thereof can be reached.

(4) A Correction NIE may cover multiple works in multiple NIE documents for one fee provided that: each work is identified by title; all the works are by the same author; all the works are owned by the same copyright owner or owner of an exclusive right. In the case of Correction NIEs, the notice must separately designate each title to be corrected, noting the incorrect information as it appeared on the previously filed NIE, as well as the corrected information. A single notice covering multiple titles need bear only a single certification.

(5) Copies, phonorecords or supporting documents cannot be made part of the record of a Correction NIE and should not be submitted with the document.

(6) Time for Submitting Correction NIEs.

(i) *Major errors.* The Copyright Office will accept a Correction NIE for a major error concerning a restored work during the 24-month period beginning on the date of restoration of the work, as provided for original NIEs in section 104A(d)(2)(A) of title 17.

(ii) *Minor errors.* The Office will accept a Correction NIE for a minor error or omission concerning a restored work at any time after the original NIE has been filed, as provided in section 104A(e)(1)(A)(iii) of title 17.

(e) *Fee.*—(1) *Amount.* The filing fee for recording Correction NIEs is 30 U.S. dollars for each Correction Notice covering one work. For single Correction NIEs covering multiple works, that is, for works by the same author and owned by the same copyright owner or owner of an exclusive right, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work.

(2) *Method of payment.* See 37 CFR 201.33(e)(1),(2).

(f) *Public online access.* Information contained in the Correction Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system, available through the Internet. This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are the World Wide Web (WWW), using the Copyright Office Home Page at: http:/www.loc.gov/copyright; directly to LOCIS through the telnet address at locis.loc.gov; or the Library of Congress through gopher LC MARVEL and WWW which are available 24 hours a day. LOCIS is available 24 hours a day, Monday through Friday. For the purpose of researching the full Office record of Correction NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law." Images of the complete Correction NIEs as filed will be stored on optical disk and will be available from the Copyright Office.

Appendix A to § 201.34—Correction Notice of Intent To Enforce

Correction of Notice of Intent To Enforce

1. Name of Copyright Owner (or owner of exclusive right)-If this correction notice is to cover multiple works, the author and the rights owner must be the same for all works covered by the notice.)

2. Title(s) (or brief description)
(a) Work No. 1—_____
Volume and Document Number: _____
English Translation: _____
(b) Work No. 2 (if applicable)—_____
Volume and Document Number: _____
English Translation: _____
(c) Work No. 3 (if applicable)—_____
Volume and Document Number: _____
English Translation: _____
(d) Work No. 4 (if applicable)—_____
Volume and Document Number: _____
English Translation: _____

3. Statement of incorrect information on earlier NIE:

4. Statement of correct (or previously omitted) information:

Give the following only if incorrect or omitted on earlier NIE:
(a) Type of work _____
(b) Rights owned _____
(c) Name of author (of entire work) _____
(d) Source Country _____
(e) Year of Publication (Approximate if precise year is unknown) _____
(f) Alternative titles _____

5. Explanation of error:

6. Certification and Signature: I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Name and Address (typed or printed):

Telephone/Fax:

As agent for:

Date and Signature:

Dated: October 22, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–28488 Filed 10–27–97; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket No. 97–7]

Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations regarding the Freedom of Information Act to comply with changes mandated by the Electronic Freedom of Information Act Amendments of 1996. The effect of the interim regulations is to permit public access to Office records that were created on or after October 1, 1996, in electronic format. The Office seeks comment on these interim regulations.

EFFECTIVE DATE: This interim regulation is effective November 1, 1997. Written comments should be received on or before November 28, 1997.

ADDRESSES: *By mail:* Ten copies of written comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. *By hand:* Ten copies of written comments should be delivered to the Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 403, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202)707–8380. Fax: (202)707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Office is adopting interim regulations to Part 203 of its regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. No. 104–231, 110 Stat. 3048 (1996), which amends the Administrative Procedure Act (APA), title 5, United States Code. The Office is subject to the Freedom of Information Act (FOIA), which is part of the APA, under 17 U.S.C. 701(d). Section 701(d) provides that "(e)xcept as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended * * *" Copyright Office regulations describe records and documents available for public inspection under the Copyright Act and under the FOIA. *See* 37 CFR 201.2, 203. The Copyright Office is part of the Library of Congress, a legislative agency, and is an office of public record governed in its record-keeping activities by sections of the copyright statute that designate which records are available for public inspection and search. *See* 17 U.S.C. 705, 706. Copyright Office records include deposits, registrations, indexes, recordations, and other actions taken under title 17. 17 U.S.C. 705(a). Public records maintained by the Office are the subject of most requests for information received; thus, the Office receives few actual FOIA requests that must be answered outside the realm of its normal public information services.

The FOIA, which establishes a right of access to certain federal agency records, was enacted 30 years ago, before the extensive use of computers to create and retain records in electronic formats. With the advent and widespread acceptance of new information technologies, questions arose about how electronic records should be handled under the FOIA. The EFOIA, signed into law on October 2, 1996, contains amendments that address methods required to make agency records available to the public by electronic means and in electronic formats. This interim regulation revises several provisions of the Office's FOIA regulations under 37 CFR 203 to comply with provisions of the EFOIA.

II. Interim Amendments

A. Form or Format Requests

A significant change enacted in the EFOIA is the requirement that agencies honor requests to provide records created after October 1, 1996, in specific formats, including electronic formats, so long as the records are "readily reproducible by the agency in that form or format" by use of reasonable efforts. EFOIA sec. 5 (codified as 5 U.S.C. 552(a)(3)(B). The Office will consider the particular set of circumstances involved with each individual FOIA request to determine whether it can reasonably comply with a request to provide a record in a particular format. Prior to this amendment, the FOIA did not place agencies under an obligation to accommodate a FOIA requester's preferences as to format. The Office is amending § 203.4(a) of its regulations to reflect EFOIA requirements by adding language to reflect that the Office will produce agency records in response to a FOIA request in either traditional paper form or, if possible, in electronic form.

B. Fees

Fees currently set forth in 37 CFR 203.6 apply to the costs of duplication, review of documents, and copying of paper pages. Under 37 CFR 203.6(b)(2), the current charge of $0.45 per page for copies of Office records will be assessed for paper pages of computer printouts generated by the Office, matching the current per-page charge for copies beyond the first 15 pages, for which seven dollars is charged. These fees will be modified if the Office adjusts its fees to cover the costs of providing services. The Office will charge a requester the actual cost for provision of computer discs containing requested information. For security reasons, the Office will not use discs or other electronic storage media supplied by requesters for purposes of downloading requested information.

In addition to EFOIA adjustment, the Office is adjusting fees in 37 CFR 203.6(b)(6) regarding fees for services rendered. The time charged for an employee's computer search of records remains the actual cost of the search including the cost of operating equipment for the time directly attributable to searching for records responsive to a request, but modifies the cost of the operator/programmer's time involved in conducting a search from $10.00 per hour or fraction thereof to $20.00 per hour or fraction thereof. The Office's authority to raise discretionary fees is found in 17 U.S.C. 708(a)(10).

C. Time for Processing Initial FOIA Requests

The EFOIA provides that effective October 2, 1997, agencies will have twenty working days, rather than the current ten working days, to respond to initial FOIA requests. EFOIA sec. 8(b)(codified as 5 U.S.C. 552(a)(6)(A)(i)). The Office proposes to amend § 203.4(f) of its FOIA regulations to implement this aspect of the EFOIA.

The EFOIA recognizes that in "unusual circumstances" agencies may need more than twenty working days to process FOIA requests. EFOIA sec. 7(b) (codified as 5 U.S.C. 552(a)(6)(B). If an extension of more than ten working days is sought, the EFOIA amendments require that an agency provide requesters with the opportunity to limit the scope of their requests to enable processing within the ten day statutory time limit for extensions, or to negotiate an alternate time frame for processing requests. *Id.* The Office proposes to amend its FOIA regulations to reflect these changes.

D. Expedited Processing

The EFOIA requires agencies to promulgate through a notice and comment rulemaking regulations to consider requests for "expedited processing" of initial FOIA requests. EFOIA sec. 8(a) (codified as 5 U.S.C. 552(a)(6)(E)). Such requests must be granted whenever a "compelling need" is demonstrated by the requesting party. "Compelling need" is defined in the EFOIA as: (1) involving "an imminent threat to the life or physical safety of an individual," or (2) in the case of a request made by "a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." EFOIA sec. 8(a) (codified as 5 U.S.C. 552(a)(6)(E)(v)). When a request for expedited processing is made, an agency must notify the requester of its decision whether or not to grant the expedited request within ten (10) calendar days. If expedited processing is granted, an agency must process the request as soon as practicable. If the request is denied, an agency must consider an appeal of such a denial. To implement the expedited processing requirements of the EFOIA amendments, the Office proposes to amend section 203.4 of our regulations

by adding that the Office will process requests granted expedited processing status "as soon as is practicable." EFOIA sec. 8(a) (codified as 5 U.S.C. 552(a)(6)(E)(iii)).

E. Electronic Reading Room

The FOIA requires agencies to make available for inspection and copying statements of policy and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect the public. 5 U.S.C. 552(a)(2). The Office maintains these materials in paper form in its Public Information Office. *See* 37 CFR 203.4. The EFOIA requires agencies to make available by "computer telecommunications or * * * by other electronic means" all reading room materials that are created on or after October 1, 1996. EFOIA sec. 4 (codified at 5 U.S.C. 552(a)(2). The statute envisions that agencies will develop both a traditional reading room and an electronic reading room. The Office proposes an interim regulation stating which materials are available on-line or in an accessible electronic format.

List of Subjects in 37 CFR Part 203

Freedom of Information Act, Policies and procedures.

Interim Regulations

In consideration of the foregoing, the Copyright Office is amending part 203 of 37 CFR, chapter II, in the manner set forth below:

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

1. The authority citation for part 203 is amended to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552, as amended.

2. Section 203.3 is amended by revising paragraph (i) to read as follows:

§ 203.3 Organization.

* * * * *

(i) The Copyright Office maintains an "electronic reading room" by making available certain documents and records on its World Wide Web page and by providing access to documents that affect the public in electronic format pursuant to 5 USC 552(a)(2). Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration information and recorded documents, are available on the Internet. Frequently requested Copyright Office circulars, announcements, and recently proposed as well as final regulations are available on-line. The address for the Copyright Office's home page is: http://www.loc.gov/copyright; information may also be accessed by connecting to the Library of Congress' home page on the World Wide Web. The address is: http://www.loc.gov. Other Copyright Office documents may be provided on disk when so requested.

3. Section 203.4 is amended by revising paragraph (f) and adding a new paragraph (i) to read as follows:

§ 203.4 Methods of operation.

* * * * *

(f) The Office will respond to all properly marked mailed requests and all personally delivered written requests for records within twenty (20) working days of receipt by the Supervisory Copyright Information Specialist. Inquiries should be mailed to: Copyright Office, GC/I&R, P.O. Box 70400 Southwest Station, Washington, D.C. 20024. If hand delivered, materials should go to: Copyright Public Information Office, LM 401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, S.E., Washington, D.C. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. If it is determined that an extension of time greater than ten (10) working days is necessary to respond to a request due to unusual circumstances, as defined in paragraph (i) of this section, the Supervisory Copyright Information Specialist shall so notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within twenty (20) working days, or

(2) Arrange with the Office an alternative time frame for processing the request or a modified request. If a request is denied, the written notification will include the basis for the denial, names of all individuals who participated in the determination, and procedures available to appeal the determination.

* * * * *

(i) The Supervisory Copyright Information Specialist will consider requests for expedited processing of requests in cases where the requester demonstrates a compelling need for such processing. The term "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief. The Office will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request. If a request for expedited processing is approved, documents responsive to the request will be processed as soon as is practicable. Denials of requests for expedited processing may be appealed to the Office of the General Counsel, who will expeditiously determine any such appeal.

§ 203.6 [Amended]

5. Section 203.6(b)(6) is amended by revising the parenthetical at the end of the sentence to read "(at no less than $20.00 per hour or fraction thereof)."

Dated: October 21, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–28418 Filed 10–27–97; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 96–3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing the adjustment of the royalty rates for superstation and network signals under the satellite carrier compulsory license, 17 U.S.C. 119.

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, or Tanya M. Sandros, Attorney Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

Recommendation of the Register of Copyrights

I. Background

Congress passed the Satellite Home Viewer Act of 1988 to create a compulsory copyright license, codified at section 119 of the Copyright Act, for the retransmission of over-the-air television broadcast signals. 17 U.S.C. 119. Similar in many ways to the cable compulsory license enacted by Congress in 1976, the satellite carrier compulsory license permits satellite carriers to retransmit TV signals to their subscribers upon semiannual submission of royalty fees and statements of account to the Copyright Office. The royalty fees collected by the Copyright Office are deposited with the United States Treasury for subsequent distribution to copyright owners of programming retransmitted by the satellite carriers.

Section 119 identifies two types of television broadcast signals that are subject to compulsory licensing: superstations and network signals. A superstation is the signal of any commercial independent television station licensed by the Federal Communications Commission. Examples of superstations retransmitted by satellite carriers under section 119 are WTBS, Atlanta and WGN, Chicago. A network station is defined as follows:

(A) A television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) A noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).[1]

17 U.S.C. 119(d)(2). Examples of network signals carried by satellite carriers are ABC, CBS, and NBC. A station of the Public Broadcasting Service (PBS) would also be considered a network signal under the statute.

Under the section 119 license, satellite carriers can retransmit any superstation they choose to any subscriber located anywhere in the United States. However, such is not the case with the retransmission of network signals. Satellite carriers may only make use of the license to retransmit a network signal to a subscriber who resides in an "unserved household." An "unserved household" is defined as a household that:

(A) Cannot receive through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) Has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

17 U.S.C. 119(d)(10). Service of network signals to subscribers who do not reside in unserved households is an act of copyright infringement, subject to the remedies of chapter 5 of the Copyright Act, unless the carrier is able to negotiate a private agreement with copyright owners to license all the copyrighted works on those network signals.

In creating the section 119 license in 1988, Congress established different royalty rates for superstation and network signals, based upon approximations of what cable paid for such signals under the section 111 cable compulsory license. 17 U.S.C. 111. The original rate for a superstation was 12 cents per subscriber per month. The original rate for a network was 3 cents per subscriber per month. Congress, however, authorized a rate adjustment procedure to change these rates in 1992.

II. The 1992 Rate Adjustment

At the time of passage of section 119, the Copyright Royalty Tribunal was still in existence. However, rather than invest the Tribunal with authority to adjust the section 119 rates, as was the case for all other compulsory licenses in the Copyright Act, Congress instead gave the task to an ad hoc arbitration panel assembled solely for that purpose. The Tribunal was given authority to review the decision of the arbitration panel, as is the Librarian in this proceeding, but under a different standard of review.

Congress also established a number of factors for the arbitration panel to consider in reaching its determination. The statute provided:

In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2),[2] and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

(i) To maximize the availability of creative works to the public.

(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 119(c)(3)(B) (1988).

The arbitration panel was given 60 days to reach its determination; it delivered its report to the Copyright Royalty Tribunal on March 2, 1992. The panel recommended that the royalty fee for network signals be raised from 3 cents to 6 cents per subscriber. 57 FR 19061 (May 1, 1992). For superstations, the panel recommended a two-tiered rate structure. The panel was impressed with Congress' consideration of the application of syndicated exclusivity protection on the satellite industry. With respect to cable retransmissions of broadcast signals, broadcasters may purchase exclusive rights to broadcast programming within their local market, and any cable operator importing the same programming into the broadcaster's local market is required to black it out. Congress directed the FCC in 1988 to consider adopting syndicated exclusivity rules for the satellite industry, but the Commission ultimately determined that it was not technically feasible for satellite carriers to black-out programming. See 6 FCC Rcd. 725 (1991). To make up for this technological deficiency, the panel imposed a higher royalty rate to compensate for the loss of exclusivity protection.

For superstations, if they had been retransmitted by a cable system rather than a satellite carrier and would have been subject to the FCC's syndicated exclusivity rules, the panel adopted a rate of 17.5 cents per subscriber per month. 57 FR at 19061 (1992). For

[1] This is the definition of a network signal after the 1994 amendments to section 119. The earlier definition was the same one appearing in section 111 of the Copyright Act.

[2] No such voluntary agreements were reached.

signals that would not have been subject to the syndicated exclusivity rules for cable (known as "syndex proof" signals), the panel adopted a rate of 14 cents per subscriber per month. *id.*

The Copyright Royalty Tribunal, reviewing the panel's decision only under a contrary to law standard, adopted the rates recommended by the arbitration panel. 57 FR 19052 (1992). The Tribunal did, however, substitute a new effective date for the rates, because it determined that the panel misapplied the statute. *Id.* at 19053 (rates effective on date of issuance of Tribunal's order, May 1, 1992, not January 1, 1993 date recommended by panel). No appeal of the Tribunal's order was taken.

III. Satellite Home Viewer Act of 1994

The rates adopted by the Tribunal in 1992 were to last only until the end of 1994, when the section 119 license was slated to expire. However, in 1994, Congress passed the Satellite Home Viewer Act of 1994, which extended the section 119 license another 5 years. In reauthorizing the license, Congress made several changes to its provisions. Another rate adjustment—this proceeding—was scheduled to take place, and the duty of conducting the proceeding was given to a copyright arbitration royalty panel (CARP), with review by the Librarian of Congress.

The most significant change to section 119 made by the 1994 amendments, for purposes of this proceeding, was a change in the factors to be applied by the CARP to determine the new royalty rates. Rather than focus on the price paid by the cable industry for similar retransmissions, Congress required that the royalty fees for superstations and network signals represent the fair market value. 17 U.S.C. 119(c)(3)(D) (1994).

Although Congress intended to replace the statutory criteria for adjusting the royalty rates from the 1988 Act with the new "fair market value" standard, a scrivener's error was made in the 1994 Act. The result was that the original provisions of section 119(c)(3)(B) remained, and the new provisions inadvertently replaced the subparagraph determining those parties subject to pay the section 119 royalty fees. Certain copyright owners to this proceeding requested clarification of the statute, and the Library issued an order prior to commencement of the CARP instructing the CARP to apply only the new fair market value provisions, and to disregard the old criteria of section 119(c)(3)(B). Order in Docket No. 96–3 CARP SRA (January 6, 1997).

The royalty rates adopted in the 1992 rate adjustment were incorporated into the 1994 Act, subject to adjustment in this proceeding. The rates adopted in this Order shall remain effective until December 31, 1999, the current date for the section 119 compulsory license.

IV. This Proceeding

Pursuant to section 119(c)(2), the Librarian of Congress initiated this proceeding with publication of a **Federal Register** notice on June 11, 1996, establishing a voluntary negotiation period and a precontroversy discovery schedule.[3] 61 FR 29573 (June 11, 1996). The schedule was vacated on September 19, 1996, at the request of certain copyright owner parties, Order in Docket No. 96–3 CARP SRA (September 19, 1996), and rescheduled on October 29, 1996. Order in Docket No. 96–3 CARP SRA (October 29, 1996). The CARP was convened on March 3, 1997.

The following parties submitted written direct cases to the CARP: (1) Joint Sports Claimants ("JSC"), representing national sports associations including Major League Baseball, the National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association; (2) the Public Broadcasting Service ("PBS"); (3) the Commercial Network Claimants ("Commercial Networks"), representing the National Broadcasting Co., Inc., Capital Cities/ ABC, Inc. and CBS, Inc.; (4) the Broadcaster Claimants Group ("Broadcaster Claimants Group"), representing certain commercial television stations whose signals are retransmitted by satellite carriers; (5) the Program Supplier Claimants ("Program Suppliers"), representing various copyright owners of motion pictures, television series and specials; (6) the Music Claimants ("Music Claimants"), representing the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.; (7) the Devotional Claimants ("Devotional Claimants"), representing various copyright owners of religious programming; (8) the Satellite Broadcasting & Communications Association ("SBCA"), representing AlphaStar Television, Inc., BosCom, Inc., Consumer Satellite Systems, DirecTV, Inc., EchoStar Communications Corp., Netlink USA, PrimeStar Partners L.P., Prime Time 24 Joint Venture, Southern Satellite Systems, Inc., and Superstar Satellite Entertainment; and (9) American Sky Broadcasting L.L.C. ("ASkyB").

[3] The voluntary negotiation period proved unsuccessful as no agreements were reached.

The CARP held oral hearings on the written cases and evidence, and oral argument on the proposed findings of fact and conclusions of law. The CARP submitted its report to the Librarian on August 29, 1997.

The CARP concluded that rates for both networks signals and superstations should be adjusted upwards to 27 cents per subscriber per month. In addition, the Panel determined that no royalty fee should be paid for the retransmission of superstations within the superstations' local markets, and that it had no authority to set a royalty rate for retransmissions of network signals within their local markets. The Panel recommended July 1, 1997, as the effective date for the new rates.

Section 802(f) of the Copyright Act provides that [w]ithin 60 days after receiving the report of a copyright arbitration royalty panel * * *, the Librarian of Congress, upon the recommendation of the Register of Copyrights shall adopt or reject the determination of the panel." 17 U.S.C. 802(f). Today's order of the Librarian fulfills this statutory obligation.

V. The Librarian's Scope of Review

The Librarian of Congress has, in previous proceedings, discussed his narrow scope of review of CARP determinations. See 52 FR 6558 (February 12, 1997) (DART distribution order); 61 FR 55653 (October 26, 1996) (cable distribution order). The salient points regarding the scope of review, however, merit repeating.

The Copyright Royalty Tribunal Reform Act of 1993 created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review: the Librarian and the Court of Appeals for the District of Columbia Circuit. Section 802(f) directs the Librarian to either accept the decision of the CARP or reject it. If the Librarian rejects it, he must substitute his own determination "after full examination of the record created in the arbitration proceeding." *Id.* If the Librarian accepts it, then the determination of the CARP has become the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP "unless the Librarian finds that the determination is arbitrary or contrary to the provisions of this title." Neither the Reform Act nor its legislative history indicates what is meant specifically by "arbitrary," but there is no reason to conclude that the use of the term is any different than the "arbitrary" standard described in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A).

Review of the caselaw applying the APA "arbitrary" standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency is generally considered to be arbitrary when it:

(1) Relies on factors that Congress did not intend it to consider;

(2) Fails to consider entirely an important aspect of the problem that it was solving;

(3) Offers an explanation for its decision that runs counter to the evidence presented before it;

(4) Issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;

(5) Fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and

(6) When the agency's action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Manufacturers Ass'n v. *State Farm Mutual Insurance Co.*, 463 U.S. 29 (1983); *Celcom Comm. Corp.* v. *FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp* v. *FAA*, 758 F2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a determination is "arbitrary," prior decisions of the courts reviewing the determinations of the former Copyright Royalty Tribunal have been consulted. The decisions of the Tribunal were reviewed under the "arbitrary and capricious" standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: provided that the Tribunal adequately articulated the reasons for its decision, specific determinations were granted a relatively wide "zone of reasonableness." See *National Ass'n of Broadcasters* v. *CRT*, 772 F.2d 922 (D.C. Cir. 1985); *Christian Broadcasting Network* v. *CRT*, 720 F.2d 1295 (D.C. Cir. 1983); *National Cable Television Ass'n* v. *CRT*, 689 F.2d 1077 (D.C. Cir. 1982); *Recording Industry Ass'n of America* v. *CRT*, 662 F.2d 1 (D.C. Cir. 1981). As one panel of the D.C. Circuit succinctly noted:

> To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a "zone of reasonableness."

Recording Industry Ass'n of America v. *CRT*, 662 F.2d 1, 9 (D.C. Cir. 1981). Because the Librarian is reviewing the CARP decision under the same "arbitrary" standard used by the courts to review the Tribunal, he must be presented with a detailed rational analysis of the CARP's decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a "clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress." H.R. Rep. No. 103–286, 103 Cong., 1st Sess. 13 (1993). Thus, to engage in reasoned decisionmaking, the CARP must "weigh all the relevant considerations and * * * set out its conclusions in a form that permits [a determination of] whether it has exercised its responsibilities lawfully." *National Cable Television Ass'n* v. *CRT*, 689 F.2d 1077, 1091 (D.C. Cir. 1982). This goal cannot be reached by "attempt[ing] to distinguished apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record." *Christian Broadcasting Network, Inc.* v. *CRT*, 720 F.2d 1295, 1319 (D.C. Cir. 1983).

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination.

VI. Review of the CARP Report

Section 251.55(a) of the rules provides that "[a]ny party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. 37 CFR 251.55(a). Replies to petitions to modify are due 14 days after the filing of the petitions. 37 CFR 251.55(b).

The following parties filed petitions to modify: SBCA, EchoStar Communications Corp. ("EchoStar"), and commercial Networks. Replies were filed by JSC, Broadcaster Claimants Group, PBS, Program Suppliers, Commercial Networks, Music Claimants and Devotional Claimants (collectively, "Copyright Owners"), PBS, JSC and Broadcaster Claimants Group (collective, "Certain Copyright Owners"), and EchoStar.

Satellite carriers oppose the decision of the CARP, while copyright owners are generally supportive of it. SBCA offers numerous reasons why, in its view, the Panel's decision is arbitrary and contrary to law. EchoStar confines its comments to the Panel's decision not to establish a royalty rate for the local retransmission of network signals by satellite carriers, and Commercial Networks request a "clarification" of the Panel's ruling in order to construe it to mean that the 27 cent fee for network signals applies to any local retransmission of network stations to subscribers in unserved households. Certain Copyright Owners challenge EchoStar's standing to file a § 251.55 petition to modify in this proceeding.

Section 251.55 of the rules assists the Register of Copyrights in making her recommendation to the Librarian, and the Librarian in conducting his review of the CARP's decision by allowing the parties to the proceeding to raise specific objections to a CARP's determination. As required by section 802(f) of the Copyright Act, if the Librarian determines that the Panel in this proceeding has acted arbitrarily or contrary to the provisions of the Copyright Act, he must "after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee * * *." 17 U.S.C. 802(f).

VII. Review and Recommendation of the Register

As discussed above, the parties to this proceeding submitted petitions to the Librarian to modify the Panel's determination based on their assertions that the Panel acted arbitrarily or contrary to the applicable provisions of the Copyright Act. These petitions have assisted the Register in identifying what evidence and issues in this large proceeding, in the eyes of the petitioners, are areas where the Panel may have acted improperly, thereby requiring the Librarian to substitute his own determination. The law gives the Register the responsibility to make recommendations to the Librarian regarding the Panel's determination, 17 U.S.C. 802(f), and in so doing she must conduct a thorough review.

After reviewing the Panel's report and the record in this proceeding, the Register has determined that there are 6 primary aspects of the Panel's decision that warrant detailed discussion and analysis:

(1) Whether the Panel correctly interpreted and applied the statutory standard for determining royalty fees;

(2) Whether the Panel acted arbitrarily in adopting the license fees paid by cable networks as the benchmark for determining section 119 fees;

(3) Whether the Panel should have made certain adjustments in the benchmark rates it adopted;

(4) Whether it was permissible for the Panel to adopt the same rate for superstations and network signals;

(5) Whether the Panel correctly declined to adopt a royalty rate for local retransmission of network signals by satellite carriers; and

(6) Whether the Panel supplied the appropriate effective date for the newly established royalty fees.

SBCA has made additional arguments in its petition to modify as to why the Panel's decision should be set aside. These arguments, which primarily involve evaluation of the evidence and allege deficiencies in the discovery rules for CARP proceedings, are addressed at the end of this section.

A. Determination of Fair Market Value

1. Action of the Panel

A fundamental dispute between satellite carriers and copyright owners in this proceeding is the meaning of the term "fair market value" as used in section 119(c)(3)(D) of the Copyright Act. That section provides: [4]

> In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including—
>
> (i) The competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;
>
> (ii) The economic impact of such fees on copyright owners and satellite carriers; and
>
> (iii) The impact on the continued availability of secondary transmissions to the public.

17 U.S.C. 119(c)(3)(D).

The Panel examined this provision, and the legislative history, and determined that fair market value meant the prize that would be negotiated in a free market setting as compensation for the satellite carriers' right to retransmit network and superstation signals containing the copyright owners' copyrighted programming. The Panel stated that:

> [T]he language, structure, and legislative history of the 1994 amendments to section 119 suggest the Panel is directed to determine actual *fair market value* and "in determining the fair market value * * * base its decision * * *" upon the non-exhaustive list of *considerations*. We interpret the phrase "base its decision" to require the Panel to *consider* each enumerated type of information but, the weight to be accorded each consideration must necessarily depend upon the quality and quantity of the evidence adduced and *its relative significance to a determination of actual fair market value*. All evidence falling within the enumerated types of information must be considered but the evidence which is more probative of *fair market value* must be accorded greater weight than less probative evidence * * *. The Panel agrees that the fair market value rate is that which most closely approximates the rate that would be negotiated in a free market between a willing buyer and a willing seller.

Panel Report at 17 (emphasis in original).

2. Arguments of the Parties

SBCA asserts that the Panel misapprehended the meaning of "fair market value," and that it should have determined the section 119 fees in accordance with what cable operators pay for distant signals under the section 111 cable compulsory license. SBCA Petition to Modify at 12. "Fair market value is a Congressionally defined term, and thus cannot be considered under the 'traditional' sense, as urged by the [Copyright] Owners." *Id.* at 14. SBCA cites certain 1994 floor statements at length as evidence that Congress intended that section 119 royalty rates be set on a parity with cable rates.

> DeConcini: Copyright license parity with cable is the central feature of the fair market standard articulated in this legislation. The inclusion of specific guidance to the arbitration panel to take into consideration the competitive environment in which satellite programming is distributed is essential to ensure that satellite carriers are not required to pay higher royalty fees than cable operators * * * I am confident that the arbitration panel will take steps to ensure that the royalty fee paid by satellite carriers are on par with those paid by cable operators. The guiding criteria for the arbitration panel to establish fair market value in this legislation will accomplish that objective. * * * The fact that the Senate agrees with the House on this compromise language is due to the criteria that defines fair market value in the bill. I have long opposed the imposition of royalty fees based simply on the mechanical application of some conceptual fair market value formula * * * The arbitration panel will take steps to ensure that the royalty fees paid by satellite carriers are on par to those paid by cable operators. The guiding criteria for the arbitration panel to establish fair market value will accomplish this objective.
>
> 140 Cong. Rec. S14105, 14106 (daily ed. Oct. 4, 1994).
>
> Brooks: In the hard-fought compromise reached on this bill, the factors to be considered under the bill's "fair market value" determination have been made more specific. I would note that in determining fair market value, we intend that the copyright arbitration panel consider all the factors raised by the parties, including cable rates.
>
> 140 Cong. Rec. H9270 (daily ed. Sept. 20, 1994).
>
> Hughes: [L]egislation contemplates that the panel will look to the competitive environment in which section 119 retransmissions are distributed as well as the costs of distribution of similar signals in similar private and compulsory license marketplaces, including the cable copyright fees under section 111. This will help ensure that there is vigorous competition and diversity in the video programming distribution industry.
>
> 140 Cong. Rec. H9271 (daily ed. Sept. 20, 1994).
>
> Synar: I am also hopeful that any fee resulting from the fair market value standard does not disadvantage the delivery of satellite transmissions vis-a-vis the delivery of cable retransmission under the section 111 compulsory license * * * It is my hope that the fees set for satellite retransmissions under the fair market value standard will, among other things, reflect the competitive environment in which those retransmissions are distributed. There is little question that Congress would like to ensure that there is vigorous competition and diversity in the distribution of video programming and the determination of fair market value fees should reflect that intent.
>
> 140 Cong. Rec. H9272 (daily ed. Sept. 20, 1994).

According to SBCA, these floor statements provide clear Congressional direction that the royalty fees for section 119 are to be either identical or substantially similar to those paid by cable operators under section111. SBCA provided testimony demonstrating that cable operators pay 9.8 cents per subscriber per month for superstations, and 2.45 cents per subscriber per month for network signals, and submits that the Librarian should adopt these rates. SBCA Petition to Modify at 18.

Copyright Owners contend that the Panel acted correctly in attributing the plain meaning to the term "fair market value," and properly rejected SBCA's position that the rates paid by cable under section 111 is the governing factor in determining fair market value. Copyright Owners Reply at 12. Copyright Owners' note further that even one of SBCA's own expert witnesses, Mr. Harry Shooshan, conceded at the hearing that Congress intended to accord the conventional meaning to "fair market value." *Id.*

[4] As discussed above, section 119(c)(3)(D) is the appropriate statutory provision governing the adjustment of royalty rates. Section 119(c)(3)(B), which also prescribes royalty adjustment factors, was inadvertently left in the statute after the 1994 amendments.

Copyright Owners also submit that portions of floor statements delivered at the time of passage of the 1994 Satellite Home Viewer Act are not proper legislative history and must be given little, if any, weight. *Id.* at 14–15 (citing *Overseas Educ. Ass'n, Inc.* v. *FLRA*, 876 F.2d 960 (D.C. Cir. 1989); *In the Matter of Sinclair*, 870 F.2d 1340 (7th Cir. 1989)). Rather, the text of the statute is the principle source for determining its meaning. *Id.* at 15 (citing *West Virginia Hosp.* v. *Casey*, 499 U.S. 83 (1991).

3. Recommendation of the Register

The Panel determined that the term "fair market value" should be accorded its plain meaning—i.e., the price a willing buyer and a willing seller would negotiate in a free marketplace—and that the economic, competitive, and programming information presented by the parties provided the evidence to determine what fair market value royalty rates would be under the satellite carrier compulsory license. The Register concludes that this decision is not arbitrary, nor is it contrary to law.

Both SBCA and Copyright Owners contend that the meaning of "fair market value" is a matter of statutory interpretation. Moreover, it is a well-established principle that, in interpreting the meaning of a statute, the language of the law is the best evidence of its meaning. Sutherland Stat. Const. § 46.01 (5th Ed.).

The express words of the statute charge the Panel with determining the fair market value of retransmitted broadcast signals by satellite carriers. *Id.* (plain meaning of the statute governs its interpretation). The Panel determined that "fair market value" meant the price that would be negotiated between a willing buyer and a willing seller in a free marketplace. Panel Report at 17. The Register determines that this is not an arbitrary interpretation of the meaning of "fair market value," nor is it contrary to law. See Black's Law Dictionary 537 (5th Ed. 1989) (definition of "fair market value").

In the 1994 amendments Congress stated that "[i]n determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties * * *" 119 U.S.C. 119(c)(3)(d). Congress then included in that amendment a nonexhaustive list of the types of "economic, competitive, and programming information" that the Panel must consider in fashioning royalty rates that represent fair market value. That the list is nonexhaustive is significant, for there may be other types of information presented by the parties that, while not falling within one of the enumerated categories, is nevertheless relevant to the issue of what the fair market value royalty rates should be. The Panel would be responsible for considering this type of information as well, if it were relevant to determining fair market value.

The Register does not interpret the enumerated categories of "economic, competitive, and programming information" (for example, costs in similar private and compulsory license marketplaces) as establishing criteria that define the meaning of "fair market value." To do so would, in the Register's view, run contrary to the plain meaning of the statute. Sutherland Stat. Const. § 47.07 (5th Ed.). Likewise, the Register does not see any support for the argument that one of the enumerated categories of information, such as the compulsory license fee paid by cable under 17 U.S.C. 111, must be accorded more weight than another. The House Committee Report to the 1994 amendments makes it clear that this should not be the case. See H.R. Rep. No. 703, 103d Cong., 2d Sess. 10 (1994) ("In order to aid the panel, the Committee adopted an amendment offered by Mr. Hughes directing the panel to consider economic, competitive, and programming information presented by the parties as well as the competitive environment in which such programming is distributed. This would, of course, include cable rates, but those rates are not to be a benchmark for setting rates under section 119; they are only one potentially [sic] piece of evidence in reaching the objective fair market value."). The Register, therefore, determines that the Panel did not act arbitrarily or contrary to law in determining the meaning of fair market value.

Although the Panel determined that its plain meaning of fair market value controlled their interpretation, the Panel nevertheless consulted the legislative history to the 1994 amendments and concluded that "[w]e find no support for the proposition that Congress did not mean what it said. The legislative history reveals no intent to attach a unique meaning to the commonly understood and well-established 'fair market value' term." Panel Report at 16.

A review of all floor statements offered at the time of passage of the 1994 amendments reveals considerable differences between the views of the two Chairmen and some of the members. These differences are accentuated by a later floor statement offered by Chairman Hughes when he introduced a bill that would make technical corrections to the 1994 Satellite Home Viewer Act. 140 Cong. Rec. E2290 (daily ed. November 29, 1994) (statement of Rep. Hughes).

The statement of Chairman DeConcini offers the greatest support to the argument that the rates established in this proceeding should approximate what cable pays under the cable compulsory license. 140 Cong. Rec. S14105 (daily ed. Oct. 4, 1994) ("I am confident that the arbitration panel will take steps to ensure that the royalty fee paid by satellite carriers are on par with those paid by cable operators"). Representative Synar's comments suggest his desire that a satellite rate adjustment produce rates comparable to the cable compulsory license, but he does not state that application of the fair market value standard should or must produce such comparability. The statements of Representative Brooks and Hughes provide that cable compulsory license rates are one of the factors to be considered by the Panel, but they do not indicate that they are the only or controlling factor.

The Register has consulted the caselaw in determining the weight to be accorded floor statements made by Congressmen during the passage of legislation. The caselaw provides that floor statements of legislators are to be given little weight *Garcia* v. *U.S.*, 469 U.S. 70, 78, (1984); *Zuber* v. *Allen*, 396 U.S. 168, 186 (1969) ("Floor debates reflect at best the understanding of individual Congressmen"). The reasoning behind this principle was aptly described by the Federal Circuit Court for the District of Columbia:

> [I]t is necessary for judges to exercise extreme caution before concluding that statement made in floor debate, or at a hearing, or printed in a committee document may be taken as statutory gospel. Otherwise, they run the risk of reading authentic insight into remarks intended to serve quite different purposes. Furthermore, to the degree that judges are perceived as grasping any fragment of legislative history for insights into congressional intent, to that degree will legislators be encouraged to salt the legislative record with unilateral interpretations of statutory provisions they were unable to persuade their colleagues to except * * *.
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> *Int. Broth. of Elec. Wkrs. Loc. U. 474* v. *NLRB*, 814 F.2d 697 (D.C. Cir. 1987) (Buckley, concurring); see also *Overseas Educ. Ass'n. Inc.* v. *FLRA*, 876 F.2d 960, 975 (D.C. Cir. 1989) ("While a sponsor's statements may reveal *his* understanding and intentions, they hardly provide definitive insights into *Congress'* understanding of the meaning of a particular provision") (emphasis in original).

Of greater importance in discerning the intent of Congress, as opposed to the

statements of individual Members, is the fact that Congress changed the statute in 1994. When Congress decides to change a statute, the decision to do so signifies that it intended to change the meaning. *Brewster* v. *Gage*, 280 U.S. 327, 338 (1932); *United States v. NEC Corp.*, 931 F.2d 1493, 1502 (11th Cir. 1991); *In re Request for Assistance*, 848 F.2d 1151, 1154 (11th Cir. 1988), *cert. denied sub. nom., Azar* v. *Minister of Legal Affairs*, 488 U.S. 1005 (1989). That is what occurred here. If Congress had truly intended cable compulsory license rates to govern the adjustment of fees in this proceeding, then it would not have amended the statute in1994 to provide for a fair market value determination.[5]

In sum, while floor statements by some Members indicate an intent that fair market value be determined in various ways, by looking at the statute, committee reports, floor statements and colloquies the Register does not find any special meaning or limitation attached to the term "fair market value" and, therefore, must rely on the plain language of the statute and the plain meaning of the term. The Panel, in the view of the Register, therefore, did not act arbitrarily, or contrary to law in its interpretation of the meaning of "fair market value."

B. The Cable Network Fee Benchmark

1. Action of the Panel

In order to determine fair market value royalty rates as required by section 119(c)(3)(D), the Panel considered the voluminous testimony and exhibits presented by the parties. Witnesses for PBS, JSC, the Commercial Networks, SBCA, and ASkyB sponsored economic analyses and testified as to their calculation of fair market value. The copyright owners used empirical data of license fees paid to certain cable networks by multichannel video programming distributors (principally cable operators), while satellite carriers focused primarily on the license fees paid by cable operators under section 111.

The Panel specifically endorsed the approach taken by PBS, and its principal witness, Ms. Linda McLaughlin. Using data supplied by an industry survey group,[6] Ms. McLaughlin examined the license fees paid by multichannel video programming distributors ("MVPDs") to license the viewing rights to 12 popular basic cable networks. These networks are A&E, CNN, Headline News, Discovery, ESPN, the Family Channel, Lifetime, MTV, Nickelodeon, TNN, TNT, and USA. Ms. McLaughlin testified that these basic cable networks represented the closest alternative programming to broadcast programming for satellite homes, and that studies indicated that consumers value networks and superstations as least as highly as popular basic cable networks. Direct Testimony of Linda McLaughlin at 2–5. She then calculated a "benchmark" rate for these networks to be used by the Panel as representative of the fair market value of broadcast signals retransmitted by satellite carriers:

> * * * I have calculated a basic cable network benchmark price and used it to estimate a minimum compulsory license fee for satellite-retransmitted broadcast stations. The average license fee of the 12 popular basic cable networks was 18 cents in 1992—when the maximum satellite compulsory rate was 17.5 cents—and has risen to 24 cents in 1995, an annual increase of ten percent per year. The license fees for these 12 basic cable networks are forecast to increase to an average of 26 cents in 1997, 27 cents in 1998 and 28 cents in 1999. This suggests that the compulsory rate for satellite retransmitted stations should increase at least correspondingly with the average prices for basic cable networks, to an average at least 27 cents for the 1997–99 period.

Id. at 7.

The Panel endorsed Ms. McLaughlin's approach because it determined that it represented the closest model, of those presented, to a free market negotiation for satellite carriage of broadcast signals, and because it was the most conservative approach offered by the copyright owners. Panel Report at 29–30. The Panel rejected the analysis of JSC (Testimony of Mr. Larry Gerbrandt) as too narrow;[7] and the analysis of the Commercial Networks (testimony of Mr. Bruce Owen) as too speculative.[8] The Panel also rejected the analyses of SBCA and ASkyB because it determined that their analyses did not comport with the plain statutory meaning of the term "fair market value." *Id.* at 29–30.

2. Arguments of the Parties

SBCA contends that cable network license fees are not an appropriate benchmark because cable networks are fundamentally different from retransmission of broadcast signals. It asserts that "[e]xtracting an accurate, or even representative license fee per subscriber is basically impossible because multiple programming services are included within contracts, there are ceilings on aggregate license fees for MVPDs in some cases, free subscriptions in others, marketing and launch support provided by the cable networks, purchases of advertising time by the cable networks from MVPDs, and equity investments by each in the other." SBCA Petition to Modify at 20–21.

In reply, Copyright Owners assert that the Panel acted properly by utilizing cable networks as the benchmark of fair market value, and accepting the analysis of Ms. McLaughlin. Copyright Owners not that they wished to examine the license fees paid by satellite carriers to cable networks in particular, as opposed to the fee paid by all MVPDs in general, but SBCA refused to disclose through discovery the amounts that satellite carriers paid. Copyright Owners Reply at 17. They further note that while SBCA's witness, Mr. Jerry L. Parker, stated that a meaningful license fee could not be determined from satellite/cable network contracts, SBCA never produced the documents to support that assertion. *Id.* at 18. Copyright Owners assert that Ms. McLaughlin testified that the license fees presented by her analysis demonstrated at least the minimum amount that satellite carriers would pay for cable networks, and that her analysis offered the best evidence that was properly accepted by the Panel. *Id.*

3. Recommendation of the Register

In the Register's view, the Panel's decision to use cable network license fees as a benchmark for establishing the fair market value of section 119 rates was the product of rational decisionmaking, and its decision to use the PBS/McLaughlin approach was not improper.

Having determined that "fair market value" meant the price that would be paid by a willing buyer and seller in a free marketplace, it was not illogical for the Panel to give careful consideration to evidence of markets that most closely resembled the licensing of signals under section 119. In fact, section 119(c)(3)(D)(i) requires that the Panel consider "the cost for similar signals in similar private * * * marketplaces." 17 U.S.C. 119(c)(3)(D).

All three of the evidentiary presentations of the copyright owners—PBS, JSC, and Commercial Networks—focused upon the fees paid to cable networks by MVPDs. SBCA's evidence of fair market value, the cable license fees paid under section 111, was less relevant to the Panel's determination because the Panel had rejected the notion that cable fees equaled fair market value. Panel Report at 29–30. The Panel's adoption of cable network fees as the benchmark was not unqualified, however, because it stated that "we agree with the satellite carriers that the economic model governing cable networks varies markedly from the economic model governing broadcasters." *Id.* at 29. Nevertheless, the Panel "adopt[ed] the copyright owners' *general* approach using the *most similar* free market we can observe." *Id.* at 30. After reviewing the record, the Register has determined that the Panel's conclusion is not "arbitrary" within the meaning of 17 U.S.C. 802(f).

SBCA contends that cable network fees are not a useful benchmark because the economics of cable networks are fundamentally different from those of broadcast networks and superstations. SBCA Petition to Modify at 20 (citing testimony of Mr. Harry Shooshan, Mr. John Haring and Mr. Edwin Desser). The testimony of Mr. Shooshan and Mr. Haring, in particular, suggest that there are some marked differences between the licensing of cable networks and broadcast signals. The Panel, however, took account of that. Panel Report at 29. Nevertheless, there was ample testimony that the two markets were also quite similar. Tr. 1202–04 (Mr. Robert Crandall); Tr. 1609 (Ms. McLaughlin); Tr. 1284 (Mr. Owen). The Panel weighed the evidence and accepted the copyright owners' approach using cable network fees because it was "the *most similar* free market we can observe." Panel Report at 30 (emphasis in original). Because this conclusion is grounded in the record, it is not arbitrary. *National Cable Television Ass'n, Inc.* v. *CRT*, 724 F.2d 176, 189 (D.C. Cir. 1983) (decisions grounded in the record within the zone of reasonableness).

Likewise, the Panel's decision to rely on the PBS/McLaughlin testimony to establish the cable network benchmark was adequately grounded in the record. Panel Report at 18–20. Again, the Panel stated that use of cable networks was by no means flawless and, to account for this, the Panel was adopting the "conservative" approach offered in Ms. McLaughlin's analysis. *Id.* at 31. The Register determines that the Panel's decision to accord the PBS/McLaughlin testimony controlling weight is consistent with its determination to utilize the plain meaning of "fair market value" as the proper standard for setting royalty fees. Further, it is well established that using evidence of analogous markets is the best evidence in determining market price. *See National Cable Television*, 724 F.2d at 187. For these reasons, the Register determines that the Panel did not act arbitrarily or contrary to the Copyright Act.

C. Adjustments to the Cable Network Fee Benchmark

1. Adjustment to the Benchmark for Delivery Costs

a. Action of the Panel. After establishing cable network license fees, as presented by Ms. McLaughlin, as the benchmark for determining the section 119 royalty rates, the Panel examined, *inter alia*, the special features and conditions of the retransmission marketplace to determine if an upward, or downward, adjustment in the benchmark was appropriate. One of the aspects of satellite retransmission of broadcast signals that differ significantly from the transmission of cable networks involved the costs of delivering the signals to the MVPDs. The Panel found this issue, along with that of advertising inserts (discussed *infra*), as being "among the most challenging issues for the Panel to resolve." Panel Report at 43.

The Panel found that the license fees charged for cable networks included the cost of delivering the cable network to the MPVD—i.e., making the signal readily available for reception by the MVPD for subsequent distribution to subscribers. *Id.* at 45. With satellite retransmission of broadcast signals, however, the satellite carriers absorb the costs of getting the broadcast signal from its geographic point of origin, and then delivering it to its subscribers. *Id.* The Panel considered whether the cost of delivering the signals should, therefore, be deducted from the benchmark.

The Panel declined to make such a deduction. The Panel found that there was no evidence presented to suggest that if satellite carriers and copyright owners negotiated in a free marketplace for the retransmission of broadcast signals, the copyright owners would offer satellite carriers a discount on license fees to accommodate delivery costs. The Panel discussed the testimony of Mr. Jerry L. Parker, an SBCA witness who offered testimony as to the history, nature and operation of the satellite industry:

> Mr. Parker was invited to demonstrate whether carrier costs impacted the rates negotiated between satellite carriers and cable networks. He could not. Indeed, Mr. Parker conceded, for example, that despite additional costs incurred by DBS[9] carriers (beyond those of HSD[10] carriers), DBS operators were unable to negotiate lower rates on that basis. Moreover, he declined to urge the Panel to set a discounted rate for DBS carriers to account for their higher costs than HSD carriers. We must similarly decline to discount the cable network benchmark to account for higher delivery costs of broadcast signals.

Panel Report at 45–46 (citations omitted).

b. Arguments of the Parties. SBCA vigorously contests the Panel's resistance to deducting delivery costs from the 27 cent benchmark figure, stating that "it must be recognized that all cable networks that are charging and receiving 27 cents have made the necessary investment and expense in distributing the signal * * *. None of the [c]opyright [o]wners or broadcasters in this proceeding incurred this necessary expense for satellite distribution of superstations or network stations." SBCA Petition to Modify at 22. SBCA cites the testimony of Ms. McLaughlin, who acknowledged that broadcast stations are not responsible, and do not incur the cost of, delivering their signal to satellite carriers for subsequent retransmission. *Id.* at 22–23. SBCA submits that "[t]he error in Ms. McLaughlin's analysis, implicitly accepted by the Panel, is that these expenses were basically the cost of the [s]atellite [c]arriers in distributing their own product." *Id.* at 23. SBCA asserts that the Panel understood that satellite carriers bore the cost of delivery, but then mistakenly categorized it as a "discount" to compensate carriers for their costs, when in fact it is a cost that must be borne by the copyright owners. *Id.* at 25–26.

SBCA submits that it demonstrated that the average delivery cost per signal, per subscriber, per month is 10 cents, and 6.5 cents for volume discounts. SBCA, therefore, contends that the 27 cent benchmark rate must be adjusted downward to between 17 and 21.5 cents. *Id.* at 23, f.n. 53.

In reply, Copyright Owners assert that SBCA mischaracterizes the transmission cost issue by suggesting that the major focus should be the structural nature of such costs, rather than whether they would result in any marketplace price adjustments. Copyright Owners Reply at 22. Copyright Owners cite Mr. Larry Gerbrandt's testimony that transmission

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[5] There is no question that the principal factor for determining rates under the 1988 legislation was the rates paid by cable. 17 U.S.C. 119(c)(3)(B) (1988) (the Panel "shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station * * *.").

[6] The data was supplied by Paul Kagan Associates, a leading information and data company in the video industry.

[7] Mr. Gerbrandt isolated the license fees paid for two basic cable networks: TNT and USA. Tr. 2025–2026.

[8] Mr. Owen used regression analysis in an attempt to demonstrate that MVPDs are willing to pay proportionally higher license fees for network signals which contain more expensive programming. Direct Testimony of Bruce Owen at 7–10.

[9] "DBS" stands for Direct Broadcast Service, and is associated with high powered, high frequency direct broadcast satellite services. An example of a DBS operator is DirecTV.

[10] "HSD" stands for "Home Satellite Dish," and typically refers to satellite providers who operate at lower frequencies than DBS providers.

costs do not yield different cable network license fees in the marketplace, and note that Mr. Jerry Parker was unable to demonstrate otherwise. *Id.* at 22–23.

c. Recommendation of the Register. The Panel discussed the issue of transmission costs quite extensively, finding that the record was devoid of credible evidence demonstrating that transmission costs of satellite carriers affected the rates negotiated between satellite carriers and cable networks. Panel Report at 45–46. The Panel expressly found that SBCA's witness. Mr. Parker, could not offer evidence of such an impact, and conceded that despite additional costs incurred by DBS carriers, DBS operators were unable to negotiate lower rates on that basis. Tr. 2528. The Panel grounded its determination in the record evidence, which is the hallmark of rational decision making. *National Cable Television Ass'n.* v. *CRT*, 724 F.2d 176 (D.C. Cir. 1983).

SBCA's discussion of transmission costs fails to focus on what impact, if any, they would have on negotiated license fees, and instead relates to which party should bear the cost. Costs can be shifted between parties in a business relationship, and SBCA asserts that their costs, when comparing delivery of broadcast signals with delivery of cable networks, must be shifted to copyright owners to prevent a windfall. However, costs can also be absorbed by a party as part and parcel of doing business, and must be when one party cannot shift the costs (or a portion thereof) to the other. Where there is no credible evidence demonstrating a party's ability to shift a cost, no change in the negotiated price should occur. The Panel found that to be the situation with transmission costs, and the Register has no grounds on which to reject that finding.

2. Adjustment to the Benchmark for Advertising Inserts

a. Action of the Panel. In addition to delivery costs, the Panel considered the issue of advertising inserts very significant. Cable networks typically grant MVPD's a certain number of time slots during the programming provided—known as advertising inserts—for the MVPDs to sell to advertisers. The monies raised from these inserts are retained by the MVPD, and can defray the cost of the license fee for the cable network approximately 8 cents per subscriber per month. Panel Report at 43–44. The Panel found, however, that because section 119(a)(4) requires satellite carriers to retransmit the signals of broadcast stations intact, they do not receive any advertising inserts for the retransmission of broadcast signals. *Id.* at 44. The Panel considered whether this should result in a downward adjustment of the benchmark rate.

The Panel declined to make an adjustment:

> [T]he satellite carriers naturally argue that because the benchmark is based upon the rate paid by multichannel distributors to cable networks, we must deduct $0.06 to obtain the 'real cost' of cable networks. The copyright owners counter that most satellite carriers don't insert advertising into cable network signals anyway. Indeed, HSD carriers don't possess the technology to insert advertising. Moreover, multichannel distributors *appear* to pay the same cable network license fee regardless of whether they insert advertising.
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> If this last assertion is accurate, one would expect that in a hypothetical free market negotiation, broadcasters would similarly decline to reduce their license fees to satellite carriers for their lack of advertising availabilities and no benchmark adjustment would be appropriate. Both Ms. McLaughlin and Mr. Gerbrandt opined that, based upon their knowledge and experience, neither the availability of advertising inserts, nor the carriers [sic] ability to insert, affects the prices that cable networks charge. They did not support this opinion with any documentary evidence or empirical data. However, the satellite carriers allowed this testimony to stand essentially unrefuted. Indeed, Dr. Haring was explicitly invited to render an opposing opinion but forthrightly declined. In the final analysis, we accept the copyright owners' expert testimony and decline to deduct $0.06 from the benchmark as advocated by the satellite carriers.

Panel Report at 44–45 (citations omitted).

b. Arguments of the Parties. SBCA alleges that the Panel "completely misconceived the adjustment necessary to reflect the value for insertable advertising." SBCA Petition to Modify at 26. They note that the arbitration panel in the 1992 rate adjustment made a downward adjustment for advertising inserts. 57 FR 19058 (May 1, 1992). SBCA asserts that the "value of insertable advertising is significant," and that its value is "no less than 7.5 cents" per subscriber per month. *Id.* at 27.

As a "variation" on the advertising insert issue, SBCA offers that the increased national exposure of broadcast stations offered by satellite retransmissions increases the amount of revenue that copyright owners receive for the advertising slots that they retain. *Id.* at 28. SBCA submits that the Panel should have further adjusted downward for this value, and argues that it could not quantify the value because the necessary information was in the possession of the copyright owners who were not required to disclose it through the CARP discovery rules.[11]

In reply, Copyright Owners assert that the Panel fully considered the arguments of SBCA, and correctly rejected any downward adjustments for advertising inserts. Copyright Owners Reply at 23–24.

c. Recommendation of the Register. The Panel fully discussed what effect, if any, advertising inserts might have on the negotiated fee for retransmission of broadcast signals. Panel Report at 43–45. The Panel cited the testimony of Ms. McLaughlin and Mr. Gerbrandt that "based upon their knowledge and experience, neither the availability of advertising inserts, nor the carriers ability [sic] to insert, affects the prices that cable networks charge * * *. The satellite carriers allowed this testimony to stand essentially unrefuted. Indeed, Dr. Haring was explicitly invited to render an opposing opinion but forthrightly declined." *Id.* at 44. SBCA did not offer any testimony which incontrovertibly rebuts the testimony of Ms. McLaughlin and Mr. Gerbrandt. Consequently, the Panel's determination that no adjustment should be made is not arbitrary because it is grounded in the record.

D. Equality Between Superstation and Network Signal Rates

1. Action of the Panel

As discussed above, Congress established different royalty rates for superstation and network signals when it created the section 119 license. The initial rate for superstations was 12 cents per subscriber per month, and 3 cents per subscriber per month for network signals. This 4 to 1 ratio reflected the payment of royalties under the section 111 license. Under section 111, only copyright owners of nonnetwork programming are allowed to share in the royalty funds. Cable operators pay full value for retransmitting independent broadcast stations (of which superstations are a subset), and only one-quarter value for retransmission of network signals. 17 U.S.C. 11(f). The one-quarter value reflects Congress' determination in 1976 that approximately 25 percent of the programming on network signals is compensable nonnetwork programming, while the remainder is not. Congress

[11] SBCA alleges throughout its Petition to Modify that the CARP discovery rules, and particularly the Panel's application of the rule, precluded it from obtaining vital information from copyright owners to support its case, which resulted in negative inferences by the Panel as to the sufficiency of its presentation. This argument is addressed, *infra* in subsection G.

carried over this 4 to 1 ratio in the 1988 Satellite Home Viewer Act when it set the 12 cent and 3 cent rates in the statute.

The 1992 arbitration panel that adjusted the section 119 rates took into account the 4 to 1 ratio, but found that the amount of network programming on network stations had declined to approximately 50 percent, down from the 75 percent contemplated by section 111. That panel, however, set the network station rate at 6 cents, which represented roughly a 3 to 1 ratio to the superstation rate it set, because it was concerned with disruption in the satellite industry of carriage of network signals if it established a network signal rate at half (a 2 to 1 ratio) that of the superstation rate. 57 FR 19052, 19060 (May 1, 1992). The Copyright Royalty Tribunal, in reviewing the panel's decision on this matter, stated that:

> The Tribunal believes that the Panel was not bound by either a 4:1 ratio or a 1:1 ratio. When the Tribunal issued its declaratory ruling concerning network copyright owners, we did not intend to prejudge any future ratesetting. We noted that in cable and satellite, the pay-in may not necessarily correlate to the pay-out. Therefore, a 1:1 ratio is not required. However, we do believe the Panel had the authority to take our declaratory ruling into account, so that it was entitled to adjust the 4:1 ratio downward to reflect that network copyright owners are entitled to receive satellite royalties.

Id. at 19052.

The Panel in this proceeding rejected the notion that it was required to set different royalty rates for superstations and network signals, respectively, because it was seeking the fair market value of these signals. The Panel stated:

> We find no credible evidence that retransmitted network stations are worth less than retransmitted superstations. Indeed, even assuming *arguendo*, we were to conclude that network programming is worth less, or even wholly uncompensable, we find no record support for any particular ratio—no evidence was adduced as to the *present day* average proportion of network to non-network programming. And imposition of the original 4 to 1 ratio by rote, merely to replicate section 111 rates, would not be consistent with a fair market value analysis.

Panel Report at 40.

2. Arguments of the Parties

SBCA challenges the Panel's refusal to apply the 4 to 1 ratio, asserting that such ratio is binding precedent upon the Panel. SBCA Petition to Modify at 38. SBCA contends that Congress determined, under section 111, that network programming is not compensable, and carried this rationale into the rate structure of section 119. The fact that networks are allowed to share in the section 119 royalties, but not the section 111 royalties, "does not mean that the network signals are to be paid for any differently under the satellite license than under the cable license * * *" *Id.* at 39. Furthermore, SBCA submits that satellite carriers give added value to network signals by carrying them to unserved households who would not otherwise receive such signals. *Id.* at 41. SBCA contends that, if anything, there should be no fee for network signals. *Id.* at 40.

Finally, SBCA argues that the Panel erred by creating a 27 cent royalty rate applicable to PBS (defined under the statute as a network) because "PBS signals are free on the satellite by law." *Id.* at 41. These signals, SBCA contends, cannot possibly have a market value, and there should be no royalty fee for PBS signals. *Id.*

Copyright Owners contend that the Panel correctly rejected the 4 to 1 ratio because the new law requires a determination of fair market value. Copyright Owners Reply at 32. Copyright Owners note that the binding precedent referred to by SBCA was an interpretation of the 1988 Satellite Home Viewer Act, not the 1994 Act, and that nothing in the 1994 Act requires assignment of different rates for superstation and network signals. *Id.* at 33–34.

With regard to SBCA's contention that retransmission of PBS signals should not be compensated at the 27 cent level, Copyright Owners argue that such a contention "flies in the face of the fair market value evidence," and that the PBS signal available for free on the satellite is not the signal of the member stations that are at issue in this proceeding. *Id.* at 35.

3. Recommendation of the Register

The Panel did not err by rejecting the 4 to 1 ratio and adopting a network signal rate that was equal to the value of the superstation rate. The Panel correctly observed that while the 1992 arbitration panel generally followed the ratio set by Congress in the 1988 Act, the 1994 amendments changed any reliance upon a pre-set ratio by directing the Panel to determine only the fair market value for network and superstation signals. Panel Report at 40. There is not evidence in the 1994 Act, or its legislative history, that Congress intended the Panel to set a rate for network signals that is one-fourth of that for superstations (or any other ratio, for that matter) if that rate did not represent the fair market value of network signals.

SBCA asserts that the 1994 amendments contemplate a CARP establishing two rates—one for network signals, and another for superstations—thereby inferring that Congress contemplated rate differentiation (i.e. that one rate would be less than the other). Such an inference is belied by language in the House Report, however, which states that the rates set by the CARP in this proceeding "should reflect the fair market value of satellite carriers' secondary transmissions of superstations and network stations." H.R. Rep. No. 703, 102d Cong., 2d Sess. 7 (1994). The statute does not require or suggest that the rate for network signals, or superstations, be set at anything less than fair market value.

There is no binding precedent that required the Panel to apply a ratio in value between network signals and superstations, and set network signal rates lower than superstation rates. The 1992 arbitration panel applied a different criterion (rates paid by cable under section 111) to determine section 119 rates, and its decision therefore does not serve as precedent for this proceeding. Furthermore, even if the 1992 arbitration were binding precedent, the final order of the Copyright Royalty Tribunal (which constituted the final agency action in that proceeding) clearly stated that no differentiation between network and superstation rates was required. 57 FR 19052 (May 1, 1992) ("The Tribunal believes the Panel was not bound by either a 4:1 ratio or a 1:1 ratio."). The Panel, therefore, did not act arbitrarily by rejecting application of the 4 to 1 ratio.

The Register has also examined the record to determine whether, under a fair market value analysis and regardless of application of a pre-set ratio, the evidence required a differentiation in network and superstation rates. The Panel determined that there was "no credible evidence that retransmitted network stations are worth less than retransmitted superstations." Panel Report at 40. It was wholly within the Panel's discretion to arrive at such a determination. SBCA presented evidence demonstrating that network viewer ratings have declined, SBCA Proposed Findings of Fact and Conclusion of Law at 39, but it did not offer evidence as to what impact such a decline had relative to superstations, nor did it quantify the difference in value between network signals and superstations under a fair market value analysis, except to insist that all signals should be free. *See* SBCA Reply Findings of Fact and Conclusions of Law at 7. The Panel, consequently, did not act arbitrarily by adopting the same royalty rate for both network signals and superstations.

Finally, SBCA argues that because the Panel failed to take account of the fact that PBS signals are free on the satellite by law, it was error to accord them the same royalty rate as other network signals.[12] Section 605(c) of the Communications Act, 47 U.S.C., prohibits encryption of programs included in the National Program Service of the Public Broadcasting Service, essentially making the National Program Service free to all satellite home dish owners. Member stations of PBS, however, are not subject to 47 U.S.C. 605(c), and satellite carriers may charge their subscribers for retransmission of these stations. Furthermore, the National Program Service is not a network signal as defined under section 119(d)(2). Member stations of PBS are network signals under section 119(d)(2). Presumably, there are PBS programs available on the National Program Service that are the same programs available from PBS stations, although no such evidence was adduced in this proceeding. There are also likely to be different programs, particularly those produced by member stations. SBCA did not quantify by how much, under a fair market value analysis, the same programs on the National Program Service and PBS stations should reduce the royalty fee for PBS stations, beyond a blanket assertion that all PBS stations should be free. SBCA Reply Findings of Fact and Conclusions of Law at 68–69. The Panel concluded that there was "no credible evidence" warranting a conclusion that network signals were worth less, which would include PBS stations. The Register cannot find credible evidence to the contrary, and therefore the Panel's determination must be affirmed.

E. Local Retransmission of Network Signals

1. Action of the Panel

In setting the satellite carrier compulsory license royalty rates for networks and superstations, the Panel was asked to distinguish between satellite retransmission of "distant" broadcast signals, and satellite retransmissions of "local" broadcast signals. The Panel did make this distinction, setting a royalty rate of 27 cents for distant retransmission of superstations, and zero cents for local retransmission of superstations. Panel Report at 54.

While the Panel adopted a 27 cent rate for retransmission of distant network signals, *id.*, it declined to adopt a rate for local retransmission of network signals because it determined that it lacked subject matter jurisdiction to do so. *Id.* at 48. The Panel considered section 119(a)(2)(B), which provides that the satellite compulsory license is "limited to secondary transmissions to persons who reside in unserved households," and examined the section 119(d)(10) definition of an unserved household. The Panel concluded that:

> [N]etwork signals generally may not retransmitted to the local coverage area of local network signals. The separate rate request of ASkyB is explicitly intended to apply to retransmission of network signals to *served* households. Section 119 does not provide a compulsory license for these retransmissions. Hence, we lack subject matter jurisdiction to set a rate for local retransmissions of local *network* signals.

Panel Report at 48 (emphasis in original).

The Panel did acknowledge in a footnote that there may be "rare instances" where a household located within the local market of a network signal was, indeed, an unserved household within the meaning of section 119(d)(10). *Id.* at 48, f.n. 62. The Panel stated that "[t]hese households qualify as unserved but, under section 119, ASkyB would pay the conventional 'rate for non-local signals.'" *Id.*

2. Arguments of the Parties

EchoStar contends that the Panel committed reversible error in determining that it has no jurisdiction to set a royalty rate for local retransmission of network signals, and that the rate should be zero. EchoStar Petition to Modify at 1. According to EchoStar, the language of section 119 regarding the permissibility of local retransmission of network signals is nuclear, and the Panel should therefore have consulted the legislative history, rather than decide the matter on the basis of the statutory language. *Id.* at 7–8. EchoStar submits that the Congressional intent behind the unserved household restriction of section 119(a)(2)(B) was to protect the network-affiliate relationship from importation of distant signals of the same network, citing the recent Copyright Office Report on revision of the cable and satellite carrier compulsory licenses. *Id.* at 4. Because local retransmissions do not harm the network-affiliate relationship, EchoStar asserts that "[i]n light of the intent behind the compulsory license, therefore, the 'unserved household' limitation should be read as not precluding such local-into-local retransmissions—a form of retransmission which required technologies not in existence at the time of the legislation." *Id.* at 5.

In addition, EchoStar submits that the Panel should have interpreted section 119 flexibly enough to allow local retransmission of network signals, citing *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U.S. 417 (1984) and *Twentieth Century Music Corp.* v. *Aiken*, 422 U.S. 151 (1975). *Id.* at 10. Finally, EchoStar argues that, since the section 119 license was modeled after the section 111 license, and local retransmission of network signals is permitted under section 111, the two statutes should be interpreted similarly. *Id.* at 11 (citing *Northcross* v. *Board of Education*, 412 U.S. 427 (1973).

Commercial Networks seek a clarification of the Panel's ruling on local retransmission of network signals, albeit from a completely different perspective. Commercial Networks request the Librarian to make clear that where local retransmission of a network signal does not violate the unserved household restriction (a circumstance acknowledged by the Panel likely to be rare), the rate for such retransmission is 27 cents per subscriber per month. Commercial Networks Petition to Modify at 1.

In reply, EchoStar opposes Commercial Networks position, and argues that the same rationale that the Panel used in adopting the zero rate for superstations applies with equal force to network stations that are locally retransmitted to unserved households. EchoStar Reply at 2.

Certain Copyright Owners object to EchoStar's position, and contend that EchoStar does not have standing under the rules to file a petition to modify the Librarian's decision when it was not an active party in this proceeding. Certain Copyright Owners Reply at 1. Certain Copyright Owners contend that the Panel correctly interpreted section 119 as preventing retransmission of local network signals to served households, and that the legislative history does not warrant a different conclusion. *Id.* at 3–6.

3. Recommendation of the Register

Two separate issues are presented by the local retransmission of network signals. First, there is the retransmission of a network station within that station's local market. The Panel categorized this as local retransmission to served households, and concluded that section 119 did not permit such retransmissions. Second, there is retransmission of a network station within that station's local market to subscribers who satisfy the definition of an "unserved household" in section

[12] PBS signals are defined as network stations under section 119(d)(2).

119(d)(10). The Panel acknowledged that such retransmissions were permissible under section 119, though likely to occur in "rare instances," but was unclear as to what the proper royalty rate should be.

Local retransmission of network signals to served households presents a challenging issue. The Copyright Office declined to issue a declaratory ruling that such retransmissions are permissible, though it did not preclude addressing such a matter through a rulemaking procedure. Letter of the Acting General Counsel to William Reyner, August 15, 1996. Moreover, the Office has, in its recent report to the Senate on revision of the satellite and cable compulsory licenses, expressly endorsed the permissibility of such retransmissions, and requested Congress to "clarify" the statute on the matter. "A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals," Report of the Register of Copyrights at xx (1997) (hereinafter "Register's Report"). As the agency responsible for administering the Copyright Act, the Office believes that it retains the authority to conduct a rulemaking proceeding to determine the permissibility of local retransmission of network signals to served households, regardless of the Panel's determination in this proceeding.

Nevertheless, the Register must determine whether the Panel's decision that such retransmissions are not permitted under section 119 is contrary to the provisions of the Copying Act.[13] The Register reviewed the language of section 119, and its legislative history, both in the context of this proceeding, and in her report to the Senate. Such review confirmed the Register's belief that Congress simply did not consider the issue of local retransmission of network signals to served households at the time of passage of section 119, principally because the technology to make such local retransmission did not commercially exist. It is evident from the history surrounding adoption of the unserved household restriction in 1998 that adoption of the restriction was motivated by concerns expressed by network affiliate stations that importation of distant network stations affiliated with the same network would erode their over-the-air viewership. Register's Report at 103–104. This suggests that if Congress had considered the issue, it might have condoned local retransmissions to served households. On the other hand, the section 119(d)(10)(A) portion of the definition of an "unserved household" does not specify receipt of what network signal over-the-air triggers the prohibition in making retransmissions of network signals. The language of section 119(d)(10)(A) could easily be read to prohibit retransmission by satellite whenever the subscriber receives an over-the-air signal of Grade B intensity from any network affiliate, including the local network affiliate that the satellite carrier intends to retransmit to the subscriber. This is the position that the Panel took.

In sum, the Register determines that the law is silent on this issue. Consequently, the Register cannot unequivocally say that the Panel's decision is arbitrary or contrary to law.

The second issue is the local retransmission of network signals to unserved households. The Panel appears to have presumed that such retransmissions are permissible. Panel Report at 48. The Register determines that they are permissible, as provided by the express terms of section 119. The Panel failed to articulate what royalty rate would be applicable to such local retransmissions. It mentioned, in a footnote, that the number of unserved households within a network station's local market were likely to be few, and cited the testimony of ASkyB's witness, Preston Padden, that ASkyB would, in those instances, "pay the conventional 'rate for non-local signals.'" *Id.* at 48, f.n. 62 (quoting written direct testimony of Mr. Padden). The Panel did not expressly state what the rate should be for all carriers making local retransmissions of network signals to unserved households.

Commerical Networks urge that the rate for such retransmissions should be 27 cents. EchoStar[14] argues that the rate should be zero, consistent with the Panel's adopted rate for local retransmissions of superstations. To the extent that the Panel sought to impose the 27 cent rate on local retransmissions of network signals to unserved households, the Register determines that such action is arbitrary. The Register cannot find testimony in the record that supports the conclusion that local retransimssion of network signals to unserved households has a fair market value rate of 27 cents, particularly where the Panel determined that the fair market value of local retransmissions of superstations was zero. Panel Report at 52. Likewise, the record does not support a conclusion that there is any differentiation between the fair market value of local retransimssions of network signals vis-a-vis superstations. Commercial Networks do not cite any testimony to the contrary in their petition to modify.

To the extent that the Panel failed to adopt a rate for local retransmissions of network signals to unserved households, the Register determines that such action is inconsistent with its task in this proceeding, and recommends that the Librarian substitute his own determination. 17 U.S.C. 802(g). The dearth of testimony on this issue and, for that matter, the Panel's cursory discussion of it, is not surprising because local retransmission of network signals to unserved households, and served households as well, is undoubtedly an unattractive business proposition to satellite carriers. Nevertheless, the issue was before the CARP, and requires a resolution.

The Register recommends that the Librarian adopt a zero rate for local retransmissions of network signals to unserved households because the Register is persuaded that the Panel's conclusions with respect to local retransmissions of superstations are equally applicable to local retransmissions of network signals to unserved households. Panel Report at 52-53. As noted above, there is no conclusive evidence to suggest that locally retransmitted network signals are of greater fair market value than locally retransmitted superstations. Accordingly, the Register recommends adoption of a zero rate for local retransmission of network signals to unserved households.

F. Effective Date of the New Rates

1. Action of the Panel

In announcing the royalty rate of 27 cents for distant retransmission of network and superstation signals, and zero cents for local retransmission of superstations, the Panel stated that the time period for payment of the rates would be from July 1, 1997, through December 31, 1999. Panel Report at 54.

2. Arguments of the Parties

SBCA contends that the Panel acted contrary to law by setting an effective

[13] Because the Panel's decision on this point is a conclusion of law, the arbitrary standard is not applicable.

[14] The Register agrees with Copyright Owners that EchoStar lacks standing to file a petition to modify the Panel's determination, and recommends dismissal of the petition. Section 251.55(a) of the rules, 37 CFR provides that only parties to the proceeding may file petitions to modify, and makes no provision for nonparties. EchoStar, though a member of, and represented by SBCA, was not a party to this proceeding because it did not file a Notice of Intent to Participate as required by the rules. *See* 37 CFR 251.45(a).

Dismissal of EchoStar's petition, however, does not preclude consideration of the issues surrounding local retransmissions of network signals, and the Register has considered these as required by section 802(g).

date of July 1, 1997, for the new rates. SBCA states that the Panel did not have any authority to set an effective date because section 119(c)(3)(C) states that the rates become effective as set forth in the Librarian's order. SBCA Petition to Modify at 46. Further, SBCA argues that the effective date of the new rates must be prospective only. *Id.* at 47. It notes that section 119 contemplates prospective application by discussing the rates "to be paid." *Id.* at 48–49 (citing section 119(c)(3)(A) and the 1988 House Report to the Satellite Home Viewer Act). SBCA argues that the caselaw prevents retroactive application of agency rulemaking unless the enabling statute expressly states otherwise, and submits that the Librarian's order in this proceeding effectively constitutes a rulemaking because the Copyright Office's rules are being amended to reflect the new rates. *Id.* at 50–51.

Additionally, SBCA argues that applying the July 1, 1997, effective date would cause substantial harm to the satellite industry. *Id.* at 55. SBCA submits affidavits of representatives of the satellite industry discussing their inability to adequately inform their subscribers on a timely basis of the rate increase, and the difficulty of adjusting distribution contracts to accommodate fee increases. *Id.* at attachment A.

Finally, SBCA takes the Librarian to task for not complying precisely with the procedural schedule established in the statute for this proceeding. Specifically, SBCA contests the Library's decision to temporarily suspend the schedule to address issues raised by ASkyB, so that the CARP was initiated on March 3, 1997, as opposed to January 1, 1997, as contemplated in section 119(c)(3)(A). SBCA argues that because the Library violated the time requirement of section 119(c)(3)(A), and such delay caused substantial harm to satellite carriers, "the Panel's report should be invalidated on due process grounds, particularly with respect to the prejudicial effective date directly resulting from the Librarian's failure to comply with a critically important statutory requirement." *Id.* at 55 (citing *Baumgardner* v. *Secretary, Dept. of Housing and Urban Development*, 960 F.2d 572 (6th Cir. 1992).

Copyright Owners assert that they have interpreted section 119 from the beginning of this proceeding as requiring an effective date of July 1, 1997, for the new rates, and that SBCA never challenged that position until now, thereby estopping SBCA from raising the issue. Copyright Owners Reply at 42–43. Copyright Owners also argue that the Librarian's good cause delay in commencing this proceeding does not invalidate it, and that the cases cited by SBCA are inapposite. *Id.* at 44–45. Copyright Owners also attach an accompanying motion to strike the affidavits offered by SBCA to corroborate its argument that the July 1 effective date will cause undue hardship on satellite carriers. SBCA opposes this motion.

3. Recommendation of the Register

Section 119(c)(3)(C) provides that:

> The obligation to pay the royalty fee established under a determination which—
>
> (i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), or
>
> (ii) is established by the Librarian of Congress under section 802(f) shall become effective as provided in section 802(g) or July 1, 1997, whichever is later. 17 U.S.C. 119(c)(3)(C). Clause (i) of section 119(c)(3)(C) described the situation where the Librarian adopts the decision of the CARP, while clause (ii) describes the situation where the Librarian has rejected the CARP's decision and substituted his own determination.[15] The effective date of the established rates is either July 1, 1997, or the date set pursuant to section 802(g), whichever date is later.

Section 802(g) governs judicial review of the Librarian's decision in this proceeding. The section gives "any aggrieved party who would be bound by the [Librarian's] determination," 30 days in which to notice an appeal with the United States Court of Appeals for the District of Columbia Circuit. The section then provides that "[i]f no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee * * * *shall take effect as set forth in the decision.*" (emphasis added). Section 802(g) then provides that if an appeal is taken, "[t]he pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under section ( ) * * * 119 * * *" Nothing else is said in section 802(g) with regard to the possible effective date of royalty rates.

SBCA and Copyright Owners strongly disagree over the effective dates of the royalty rates established in this proceeding. SBCA believes that the effective date can be no sooner than 30 days after the Librarian's decision (i.e. November 26, 1997) at which time it will be known whether or not the Librarian's decision is final, while the Copyright Owners maintain that July 1, 1997, is the proper effective date. The Register has examined the governing language of sections 119(c)(3)(C) and 802(f), and notes an incongruity with respect to the July 1, 1997, date.

Section 119(c)(3)(A) provides that this proceeding was supposed to have started on January 1, 1997. Given the 180-day arbitration period, as provided by section 802(e), the latest the Panel could have delivered its report would have been June 29, 1997. The Librarian would then have the 60-day review period in which to either accept or reject the Panel's decision, which would place the date of final agency action at no later than August 28, 1997. This is almost two months after July 1, 1997. While Congress could have contemplated the Librarian completing his review in less than 60 days, it is hard to imagine that Congress could have expected him to complete it in just one day: the time period from delivery of the Panel's report on June 29 to the issuance of the Librarian's decision on July 1, 1997. The more likely explanation is that Congress envisioned the CARP delivering its report well before—at least two months—the 180-day deadline. Only in this manner could the Librarian have issued a decision that was before July 1, 1997, thereby justifying inclusion of the language "July 1, 1997," and "whichever date is later" in section 119(c)(3)(C).

Contrary to the assertions of the Copyright Owners, July 1, 1997, is not the statutorily prescribed effective date for the new royalty rates announced in today's decision. July 1, 1997, is only a contingency date in the event that this proceeding had ended before July 1, 1997, which it clearly did not. Rather, the Register must look to section 802(g), which provides that the effective date of the new rates is "as set forth in the decision." 17 U.S.C. 802(g). The Register interprets "decision" to mean the decision of the Librarian, and not the decision of the CARP, since section 802(g) only refers to the decision of the Librarian. Consequently, the Register concludes that only the Librarian of Congress has the authority to set the effective dates of the royalty rates in this proceeding, and it was contrary to law for the Panel to announce an effective date. *See* Panel Report at 54. The Register recommends that the Librarian reject the Panel's determination of an effective date.

The remaining issue is, if the Panel had no authority to set the effective date, what is the correct effective date for the Librarian to establish? Neither the statute, nor the legislative history, offers any guidance on this point.

[15] Interestingly, the statute does not address the situation, as in this proceeding, where the Panel's decision is accepted in part and rejected in part. Subclause (ii) most likely applies to this proceeding because the Librarian has established one of the royalty rates (the rate for local retransmission of network signals to unserved households).

Copyright Owners urge the July 1, 1997 date, and submit that SBCA is estopped from arguing for a later date since SBCA did not object to Copyright Owners' request to the Panel for a July 1, 1997, effective date. Copyright Owners Reply at 43–44. The Register recommends rejecting Copyright Owners' estoppel argument because the Panel did not have authority to set the effective date, and the matter is now being properly raised before the Librarian for the first time.

Copyright Owners also contend that July 1, 1997, must be the date because the evidence it presented to the Panel, particularly the PBS/McLaughlin testimony, was premised on a July 1, 1997, date. *Id.* at 42. According to Copyright Owners, if the Librarian adopts an effective date of January 1, 1998, he would have to increase the 27 cent fee to reflect the Panel's understanding of a thirty-month effective period for the new rates. *Id.* at 42–43.

The Register recommends rejection of Copyright Owner's contention for two reasons. First, the Panel accepts Ms. McLaughlin's testimony as a general matter to establish a workable benchmark. Panel Report at 31. The Panel did not accept her testimony, and its accompanying premises and assumptions, as *the* precise analysis of what the royalty rates should be. *Id.* Furthermore, although the Panel stated that "Ms. McLaughlin's analysis yielded a rate of $0.27 per subscriber per month averaged over the three year statutory period," Panel Report at 30, a July 1 effective date accounts for only half of the year, and Ms. McLaughlin did not so limit her testimony. PBS Proposed Findings of Fact and Conclusions of Law at 18–19.[16]

In the Register's view, an effective date later than July 1, 1997, does not significantly undermine the Panel's use of the 27 cent benchmark generally, or its later decision to adopt that figure specifically, nor does a later effective date require an upward adjustment.

The second, and most significant, reason for not setting the effective date at July 1, 1997, involves the issue of retroactive rulemaking. Although the Librarian's decision today involves review of the Panel's determination, it is also a final rule with respect to setting the rates. The Copyright Office has previously determined that it lacks the authority to engage in retroactive rulemaking. 54 FR 14217 (1989). The United States Court of Appeals for the District of Columbia Circuit, the only court with jurisdiction to consider an appeal of today's decision, has expressly held that the Copyright Act does not confer retroactive rulemaking authority. *Motion Picture Ass'n of America, Inc.* v. *Oman*, 696 F.2d 1154, 1156 (D.C. Cir. 1992). The Register does not believe that the Librarian has the authority to set an effective date for the new royalty rates which is prior to the issuance of today's decision.

Given this limitation, the issue still remains regarding the proper effective date. Copyright owners obviously desire an effective date as soon as possible, so that they may reap the benefits of the higher rates. There are, however, significant administrative considerations surrounding implementation of the new rates. Satellite royalty rates are calculated on a monthly basis, so that an effective date other than the first day of a month will require application of two sets of royalty rates (the old rates and the new rates) to one monthly calculation. The Register finds this not only burdensome to satellite carriers calculating the rates, but to the Copyright Office as well in administering the section 119 license and examining the statement of account. The Register, therefore, counsels against adopting an effective date that is other than the first day of a month.

Also, there are significant costs to the Copyright Office associated with implementing the new rates. New statement of account forms must be created and sent to satellite carriers, and staff must be trained to examine for application of the new rates. The Register notes that satellite statements of account for the second accounting period of 1997 are due to be filed no later than January 30, 1998. 27 CFR 201.11(c). An effective date in the second accounting period of 1997 would cause significant burden and hardship to the Copyright Office to prepare to collect royalties and issue and process statements of account generated by the new royalty fees by the January 30, 1998, due date. Consequently, the Register recommends that the new royalty rates, adopted in today's decision, not be effective until January 1, 1998.

In recommending a January 1, 1998, effective date, the Register draws support from section 119(c)(3)(C). As discussed above, Congress apparently contemplated the possibility of the issuance of a final decision in this proceeding before (perhaps even well before) July 1, 1997. Congress could have chosen simply to make the decision effective on the date of adoption, but instead chose July 1, 1997, as the later effective date. July 1 is the first day of an accounting period which, has the final decision issued on or before that date, would have allowed the Copyright Office ample time to prepare for implementation of the new rates. Because today's decision is issuing only two months from the end of the 1997/2 accounting period, a January 1, 1998, effective date is consistent with Congressional intent.

The parties have raised two other issues, discussed above, which the Register briefly addresses. First, SBCA alleges that because initiation of the CARP was delayed 2 months to enable the Librarian to rule on the matter of whether local retransmissions should be a part of this proceeding, the entire proceeding is invalid. The Register agrees with Copyright Owners that the cases cited by SBCA for this rather remarkable contention are inapposite. *United States* v. *Amdahl Corp.*, 786 F.2d 387 (Fed. Cir. 1986) involved a contract entered into by the Treasury Department that was statutorily outside the scope of its authority. Contracting outside the scope of authority differs significantly from postponing procedural dates for good cause. *Albenga* v. *Ward*, 635 F. Supp. 660 (S.D.N.Y. 1986) involved an agency that created rules beyond its authority. Again, this is significantly different. Finally, *Baumgardner* v. *Secretary, Dept. of Housing and Urban Development*, 960 F.2d 572 (6th Cir. 1992) involved the failure of an agency to timely deliver an accurate complaint. As SBCA notes, the court in this case did not find the agency action invalidated because the delay was not sufficiently prejudicial. The Register cannot find any convincing evidence of irreparable prejudice incurred by SBCA as a result of the brief delay, particularly where the Register is recommending a January 1, 1998, effective date.

Furthermore, the Register notes that the same claim of invalidity has been raised in a Copyright Royalty Tribunal proceeding, and expressly rejected by the D.C. Circuit. The Court stated: "It would be irrational and wholly unprecedented for a court to direct an agency to scrap a year's hearings and decisionmaking effort and start over because its proceeding did not conclude precisely on time." *National Cable Television Ass'n, Inc.* v. *CRT*, 724 F.2d 176, 189 n. 23 (D.C. Cir. 1983). The Register agrees with this view, and recommends rejection of SBCA's argument.

Second, in support of its position that satellite carriers would be unduly harmed by a July 1, 1997, effective date, SBCA submitted affidavits of satellite

[16] Ms. McLaughlin's testimony was based upon her projection of what the average cable network license fees would be for 1997 (26 cents), 1998 (27 cents) and 1999 (28 cents), not the actual figures. *Id.* at 19.

representatives. Copyright Owners moved to strike these affidavits, and SBCA opposed. The Register's recommendation of a January 1, 1998, effective date has mooted the issue. The Register does recommend, however, that the affidavits be stricken. The record is closed in this proceeding by order of August 14, 1997, section 251.55 does not permit submission of additional evidence. Although the matter of the effective date is for the Librarian, and not the CARP, to decide, such affidavits could only be accepted if the Librarian determined that the record needed to be reopened to take additional testimony. Since the matters discussed in SBCA's affidavits are moot, the Register recommends that they be stricken.

G. Additional Issues Raised by SBCA

SBCA raises several additional issues in its Petition to Modify. Because these issues all relate to evidence not adduced during the course of the proceeding, and the weight to be accorded evidence that was adduced, they are addressed together.

1. The first issue involves the history of retransmission consent negotiations under the communications law. Under retransmission consent, an MVPD must obtain the permission of a broadcaster before the MVPD can retransmit the broadcaster's signal to the MVPD's subscribers. Retransmission consent negotiations took place between the cable industry and broadcasters in 1993 and 1996. SBCA attempted to show that little compensation was obtained by broadcasters for permission to retransmit their signals in an effort to prove that the fees under the section 111 license represent actual fair market value. The Panel stated that "[w]e agree that these retransmission consent negotiations are relevant to a determination of fair market value and represent potentially probative evidence. Unfortunately, the evidence adduced is so vague and replete with qualifiers as to provide little guidance." Panel Report at 34. The Panel noted cross-examination testimony of Ms. McLaughlin and Mr. Gerbrandt indicating that some compensation was paid, but also noted that Mr. Shooshan's and Mr. Haring's testimony discussed retransmission consent negotiations only in the context of local, and not distant, retransmissions. *Id.* at 35. The Panel concluded that the "testimony upon which SBCA relies lacks sufficient scope and specificity to rebut or modify the PBS-McLaughlin analysis." *Id.*

SBCA submits that it could not present further evidence on the compensation received by copyright owners and broadcasters for retransmission consent negotiations because "discovery procedures do not allow the Carriers to determine those amounts." SBCA Petition to Modify at 35. SBCA asserts that the failure to present such information "should not be then turned against the Carriers to say that the retransmission consent negotiations cannot be properly quantified." *Id.*

Copyright Owners contend that the Panel correctly evaluated the evidence of retransmission consent negotiations and found it unavailing in making an adjustment to the benchmark. Copyright Owners Reply at 27–31.

2. The second issue involves the issue of the costs incurred by cable networks in assembling the clearances for their programming. SBCA attempted to show at hearing that copyright owners do not have costs in the broadcast signal retransmission context, and therefore an appropriate downward adjustment of the benchmark must be made. The Panel stated that the clearance costs in the cable network arena are unknown, but did not agree that a downward adjustment of the benchmark was required:

> In a hypothetical free market, it is quite conceivable that the higher the costs broadcasters must pay to clear their signals for DTH[17] distribution, the higher the royalty rates they would charge satellite carriers. Accordingly, the impact of high clearance costs on fair market value (based upon a hypothetical free market analysis) could be positive rather than negative. No adjustment to the cable network benchmark is required.

Panel Report at 41.

SBCA argues that it could not determine the costs to copyright owners for clearances of cable networks since such information was not within the scope of discovery, and therefore one should not assume, as the Panel did, that such costs could automatically be shifted to satellite carriers. SBCA Petition to Modify at 30.

Likewise, SBCA argues that it could not quantify at hearing the added benefit that satellite retransmission gives copyrighted programming (digital picture quality, inclusion in electronic guides) because of "the absence of any ability to take discovery." *Id.* at 31–32. The Panel determined that "no quantifiable benefit was identified and no evidence adduced" to demonstrate added value by satellite retransmission." Panel Report at 40. SBCA asserts that "the Panel held the Carriers to an unworkable standard of proof." SBCA Petition to Modify at 32.

[17] "DTH" stands for "direct to home."

In reply, Copyright Owners contend that the Panel acted correctly. Copyright Owners Reply at 24–27.

3. A third issue involves quantifying the effect on advertising revenues and superstation fees of satellite retransmissions of broadcast signals. SBCA asserts that they quantified "as well as could be in a regime which denies discovery" that advertising revenues are higher because copyright owners known that their programming reaches a wider audience due to satellite retransmission. SBCA Petition to Modify at 36. Likewise, SBCA asserts that "superstation taxes"—the amounts charged to broadcasters by copyright owners—are greater, particularly in the sports context, because copyright owners know that satellite retransmissions result in greater viewership. *Id.* at 37–38. SBCA presented evidence that both the professional baseball and basketball leagues extracted additional compensation from WGN in Chicago and WTBS in Atlanta—both superstations known to be widely distributed on satellite—though the amount was not quantified. SBCA Proposed Findings of Fact and Conclusions of Law at 72–73.

The Panel addressed the potential for increased advertising revenue due to satellite retransmissions, stating:

> The fundamental mission of broadcasters is to expand their audiences to maximize advertising revenues. At their own expense and risk, the satellite carriers developed a DTH market which expands the broadcasters [sic] reach at no cost to the broadcasters. However, we agree that no empirical evidence demonstrating an increase in advertising revenues was adduced. Though the broadcasters (and hence the copyright owners) clearly benefit from expanded reach, these benefits may not be amenable to measurement and quantification. The copyright owners further argue that because most basic cable networks also advertise, to the extent that broadcasters to benefit from expanded reach, the benefit is already reflected in the cable network benchmark. We agree *to a point*. Broadcast stations rely upon advertising revenue to a much greater extent than do cable networks (excepting those cable networks which command very low or even negative royalty fees). It naturally follows that the benefits which accrue to broadcasters have *not* been *fully* reflected in the cable network benchmark price. Though some downward adjustment from the copyright owners *general* approach seems appropriate, we are unable to quantify such an adjustment. However, our decision to adopt the most conservative approach (PBS-McLaughlin) reflects this consideration.

Panel Report at 36–37. The Panel did not use the term "superstation tax" in its discussion.

SBCA complains that the Panel ignored its evidence of increased revenues from satellite retransmissions, and that it is "no excuse that the [o]wners refused to divulge the extent of the compensation." SBCA Petition to Modify at 38. SBCA asserts that not subtracting this added value from the benchmark would result in "vastly overcompensat[ing]" copyright owners. *Id.*

In reply, Copyright Owners assert that the Panel correctly determined that, while such revenues might conceptually result in a downward adjustment, SBCA failed to quantify such an adjustment. Copyright Owners Reply at 31.

4. The fourth issue concerns the impact of increased royalty fees on the satellite industry and the continued availability of retransmitted broadcast signals. The Panel accepted Ms. McLaughlin's testimony that the 27 cent fee would not significantly adversely impact satellite:

> Although Ms McLaughlin did not perform a demand elasticity study, she testified that after the 1992 rate increases, the number of broadcast stations retransmitted and the percentage of satellite subscribers to retransmitted broadcast signals remained constant. She concluded that despite an increase in the compulsory license rate to $0.27 per subscriber per month, the number of subscribers to retransmitted broadcast stations would continue to grow at substantially the same rate as the number of satellite subscribers generally. Ms. McLaughlin also examined the retail prices charged by satellite distributors and concluded that if the rates for retransmitted broadcast signals were increased to $0.27 per subscriber per month and *not* passed on to subscribers, those rates would constitute only 30% of the average retail prices charged to subscribers leaving sufficient profit margin for the satellite carriers to avoid significant adverse impact to them or their subscribers.
>
> Again, we recognize that *any* rate increase, particularly if rates are set above those paid by their entrenched competitor, tends to adversely impact the satellite carriers. However, the satellite carriers did not attempt to quantify the impact of increased rates and adduced no credible evidence that the availability of secondary transmissions would be interrupted. Accordingly, we conclude that a rate increase to $0.27 per subscriber per month would have no significant adverse impact upon the satellite carriers or the availability of secondary transmissions to the public.

Panel Report at 46–47 (citations omitted).

SBCA contends that the Panel had no evidence upon which to base its conclusion that a dramatic rate increase would not adversely affect satellite carriers and their subscribers. SBCA Petition to Modify at 42. Rather, SBCA asserts, the evidence, including that relied upon by Ms. McLaughlin, "shows that satellite carriers have yet to earn a profit, especially in the DBS market, and that the C-Band market is waning." *Id.* SBCA notes that Ms. McLaughlin did not perform a demand elasticity analysis for increased rates, and that her testimony that the 1992 rate increase did not impact subscriptions or the number of signals carried was not based upon anything in the record. *Id.* at 42–43. SBCA also mentions that the 1992 panel reduced its initial rate increase because of a concern for disruptive impact. 57 FR 19061.

SBCA also charges that the Panel ignored its evidence regarding the disruptive impact of a rate increase. It points to the testimony of Mr. Parker who stated that there is a limit on the package rate to be charged consumers, and that satellite carriers have traditionally gone back to cable networks to demand concessions in order to keep prices down. SBCA Petition to Modify at 44. SBCA argues that any increases in the rates should be examined in light of the impact lower fees would have on copyright owners. According to SBCA, there is no evidence that suggests that the current fees of section 119 have any adverse impact on the copyright and broadcast industries. *Id.* at 45.[18]

In reply, Copyright Owners assert that it was completely within the discretion of the Panel to accord weight to Ms. McLaughlin's testimony that satellite carriers would not be adversely impacted by the increased royalty rates. Copyright Owners Reply at 36. Copyright Owners argue that Mr. Parker's testimony is nonspecific, and that the testimony of Mr. Edwin Desser and Mr. James Trautman show that satellite carriers are owned by large corporate enterprises that can well afford the proposed rate increase. *Id.* at 39–40.

Recommendation of the Register

The Register is addressing these four arguments presented by SBCA together because they contain a common thread: the absence of evidence adduced before the Panel and, where evidence was produced, the weight and sufficiency to be accorded it.

Given the limited scope of the Librarian's review in this proceeding, "the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it." 61 FR 55663 (Oct. 28, 1996) (citing *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Auto Insurance Co.*, 463 U.S. 29, 43 (1983). In the case of the impact of a rate increase on the satellite industry, the Panel chose to accord weight to Ms. McLaughlin's testimony that her proposed rate increase would not adversely affect the satellite industry, rather than Mr. Parker's testimony. It was clearly within the Panel's discretion to do so. There is record testimony that supports the Panel's conclusion, and the Librarian's review need go no further. *Recording Industry Ass'n of America, Inc.* v. *CRT*, 662 F.2d 1, 14 (D.C. Cir. 1981) (decision must be upheld where decisionmaker's path may reasonably be discerned).

The remaining issues contested by SBCA—the impact of retransmission consent negotiations, added value from digital picture/electronic guides and avoidance of clearance costs, and increased advertiser revenue and compensation from expanded markets—predominately involve the matter of evidence not presented to the CARP. In essence, SBCA contends that if the discovery rule of 37 CFR 251.45(c)(1) were broader, if could have presented evidence to the Panel on these issues that would have caused the Panel to reduce the 27 cent royalty fee. Instead, according to SBCA, the Panel punished it for failure to present the necessary evidence to quantify the reductions, and the 27 cent rate, consequently, is unfairly high.

Section 251.45(c)(1) of the rules provides that, after the exchange of the written direct cases, a party "may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony." 37 CFR 251.45(c)(1). The Librarian has clarified that discovery is limited in CARP proceedings:

> Discovery in CARP proceedings is intended to produce only the documents that underlie the witness' factual assertions. It is not intended to augment the record with what the witness might have said or put forward, or to range beyond what the witness said. Any augmentation of the record is the prerogative of the arbitrators, not the parties.

Order in Docket No. 94–3 CARP CD 90–92, 1–2 (October 30, 1995). There are several reasons for the limited discovery practice. CARP proceedings are relatively short in duration (180 days) and, like this proceeding, begin and end according to statutorily specified deadlines. There is not sufficient time to conduct wide-ranging discovery,

[18] Regarding the economic impact of royalty fees on copyright owners, the Panel stated that "[t]he parties devoted little hearing time to this issue." Panel Report at 46. The Panel did "accept the obvious, general notion that higher royalty rates provide greater incentive to copyright owners while lower rates would render broadcast stations a '* * * less attractive vehicle at the margin for program supplies.'" *Id.* (citation omitted).

particularly where, as in the case, the litigation is quite complex and involves the technically-oriented testimony of numerous witnesses. There are also cost considerations. Broad discovery rules would considerably increase the cost of CARP proceedings, without necessarily producing a corresponding increase in the quality of the evidentiary presentations. The parties may, therefore, as of right only request documents which underlie a witness's factual assertions.

The rules do not, however, prohibit a party, once the CARP has begun, from petitioning the Panel to take discovery on an issue or issues that it believes are critical to the resolution of the proceeding. As noted above, augmentation of the record is the prerogative of the CARP, and the Panel has the discretion to decide whether or not to allow additional discovery beyond that of section 251.45(c)(1). *See* 37 C.F.R. 251.42 (CARP may waive the rules upon a showing of good cause). SBCA complains that the Panel might have reduced the royalty rates based on the issues it raised had it allowed additional discovery. Yet, SBCA never petitioned the Panel to take such discovery. The Panel cannot be faulted for not reopening the record and allowing additional discovery when it was asked to do so. *See National Ass'n of Broadcasters* v. *CRT*, 772 F.2d 922, 936–937 (D.C. Cir. 1985) (claimant failed to petition Tribunal to allow it to adduce additional evidence regarding opposing party's alleged lack of copyright ownership).

The issue remains as to whether the Panel should have reopened the record, on its own motion, and allowed SBCA to take discovery on the issues it rates: i.e. whether it was arbitrary for the Panel not to do so. In the Register's view, the Panel did not act arbitrarily. Regarding the value of retransmission consent negotiations, the Panel found that Ms. McLaughin, and Messrs. Gerbrandt, Shooshan and Harin offered testimony regarding the probative value of retransmission consent negotiations on the fair market value of retransmitted broadcast signals. Panel Report at 34–35. The Panel found this testimony to be unsupportive of the proposition that retransmission consent negotiations affected the fair market value analysis. *Id.* at 35. Because there is record evidence to support the Panel's determination, the Panel did not act arbitrarily.

With regard to the purported added value to broadcast signals by satellite retransmission in digital format, and attractive electronic guides provided the subscribers, the Panel determined that "no quantifiable benefit was identified and no evidence adduced that this benefit would materially affect fair market value * * *." Panel Report at 40. As the Copyright Owners correctly point out, any added value from digital picture quality and electronic guides would occur for both broadcast and cable network programming. Copyright Owners Reply at 25. SBCA could have presented evidence that demonstrated that satellite carriers pay a lower fee for licensing cable networks as a result of digital picture quality and electronic guides provided by the carriers. Such evidence, if it exists, is in the sole possession of the satellite carriers. SBCA presented no such evidence. The Panel, therefore, cannot be faulted from finding no evidence to support added value from these items.

Regarding clearance costs saved by broadcasters and copyright owners from satellite retransmissions, the Panel stated:

> SBCA further argues that in a free market, it would be virtually impossible for satellite carriers to negotiate directly with every copyright owner of every program contained in each day's signal they retransmit. Accordingly, they reason, broadcasters would invariably by compelled by market forces to clear all rights and negotiate with satellite carriers for retransmission of their entire signals. Those costs which the broadcasters would incur in purchasing the clearances are unknown. Hence, SBCA concludes that the section 119 rates should not be raised without considering the broadcasters' cost savings. We tend to agree with both of SBCA's premises but not its conclusion. In a hypothetical free market, it is quite conceivable that the higher the costs broadcasters must pay to clear their signals for DTH distribution, the higher the royalty rates they would charge satellite carriers. Accordingly, the impact of higher clearance costs on the fair market value (based upon a hypothetical free market analysis) could be positive rather than negative. No adjustment to the cable network benchmark is required.

Panel Report at 41.

SBCA contends that Copyright Owners never put on any evidence demonstrating their cost savings, and it should not therefore be presumed that clearance costs would be passed on to satellite carriers. SBCA Petition to Modify at 30. SBCA's argument, however, is one of emphasis rather than evidence. SBCA asked the Panel to quantify what the average cost *might* be, in a *hypothetical market*, for clearance costs, and how satellite carriers and broadcasters *might* allocate such costs. Not surprisingly, SBCA does not indicate what, if any evidence, would conclusively demonstrate what such costs might be, or who might bear them.[19] It is not reversible error for the Panel to reason that in a marketplace which does not exist, clearance costs might have a positive effect on the cable network benchmark, rather than a negative one.[20]

Finally, with regard to the purported increase in advertising revenues and compensation from expanding coverage of broadcast signals by satellite retransmission, the Panel found that it could not quantify any potential reductions of the cable network benchmark. Panel Report at 37. While allowing SBCA expanded discovery on these points might have assisted the Panel in quantifying a downward adjustment to the cable network benchmark, the Register cannot determine anything in the record that compelled it. Furthermore, the Panel did conclude that its choice of the "conservative" PBS/McLaughlin cable network benchmark reflected its inability to quantify any increased advertising revenues that copyright owners might receive from expanded markets through satellite retransmission. *Id.* In the Register's view, the Panel's action was the product of rational decisionmaking.

H. Conclusion

Having fully analyzed the record in this proceeding and considered the contentions of the parties, the Register recommends that the Librarian of Congress adopt the royalty rate, effective January 1, 1998, of 27 cents per subscriber per month for retransmission of any distant superstation and network signals by satellite carriers to subscribers for private home viewing.

In addition, the Register recommends that the Librarian not adopt any royalty fee for the local retransmission of superstation signals, as defined under 17 U.S.C. 119(d)(11), and for the local retransmission of a network signal, as defined under § 119(d)(11), to any subscriber residing in an unserved household, as defined in § 119(d)(10).

Finally, the Register recommends that the petition to modify the Panel's decision filed by EchoStar be dismissed, and the motion of Copyright Owners to dismiss attachment A of SBCA's petition to modify (and the accompanying argument and discussion) be granted.

[19] SBCA does cite a statement of FCC Commissioner Dennis that broadcasters might have to bear these costs. SBCA Petition to Modify at 30 (citing "In re Compulsory Copyright License for Cable Retransmissions," 4 FCC Rcd. 6711 (1989) (Commissioner Dennis, concurring). However, Commissioner Dennis' statement is speculative, describing what might happen to broadcasters "in some cases," 4 FCC Rcd. at 6711, and is far from conclusive evidence.

[20] In fact, the Panel did not make any change to the benchmark for clearance costs.

Order of the Librarian

Having duly considered the recommendation of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter of the adjustment of the royalty rates for the satellite carrier compulsory license, 17 U.S.C. 119, the Librarian of Congress fully endorses and adopts here recommendation to accept the Panel's decision in part and reject it in part. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order, and amending the rules of the Library and the Copyright Office, announcing the new royalty rates for the section 119 compulsory license.

The Librarian is also dismissing the petition to modify filed by EchoStar, and is dismissing the affidavits contained in attachment A of SBCA's petition to modify, and the accompanying discussion and argument.

List of Subjects in 37 CFR Part 258

Copyright, Satellites, Television.

Final Regulation

In consideration of the foregoing, the Library of Congress amends part 258 of 37 CFR as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 702, 802.

2. Section 258.3 is revised to read as follows:

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

(a) Commencing May 1, 1992, the royalty rate for the secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 17.5 cents per subscriber per month for superstations.

(2) 14 cents per subscriber per month for superstations whose signals are syndex-proof, as defined in § 258.2.

(3) 6 cents per subscriber per month for network stations and noncommercial educational stations.

(b) Commencing January 1, 1998, the royalty fee for secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 27 cents per subscriber per month for distant superstations.

(2) 27 cents per subscriber per month for distant network stations.

(3) No royalty rate (zero) for a superstation secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11).

(4) No royalty rate (zero) for a network station secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11), to subscribers residing in unserved households, as defined in 17 U.S.C. 119(d)(10).

Dated: October 23, 1997.
So Ordered.

James H. Billington,
The Librarian of Congress.

[FR Doc. 97–28543 Filed 10–27–97; 8:45 am]
BILLING CODE 1410–33–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI69

Miscellaneous Educational Revisions

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It removes a number of provisions that no longer apply or otherwise have no substantive effect, and makes other changes for the purpose of clarification.

DATES: This final rule is effective October 28, 1997.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document affects 38 CFR part 21, subparts C, D, G, H, K, and L. It removes provisions that are obsolete, duplicative, or otherwise without substantive effect, and makes changes for the purpose of clarification. This document makes no substantive changes. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Department of Defense (DOD) and VA are jointly issuing this final rule insofar as it relates to the Post-Vietnam Era Educational Assistance Program (VEAP) and the Educational Assistance Test Program (EATP). These programs are funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

The Secretary of Defense, the Commandant of the Coast Guard, and Acting Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule makes no substantive changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this final rule are 64.117, 64.120, and 64.124. This document also affects the Montgomery GI Bill—Selected Reserve program which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 22, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: October 2, 1997.

Allan L. Brendsel,

Colonel USA, Principal Deputy, Deputy Assistant Secretary (Military Personnel Policy).

Approved: October 9, 1997.

G.E. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set forth in the preamble, 38 CFR part 21, subparts C, D, G, H, K, and L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566; unless otherwise noted.

§ 21.3041 [Amended]

2. In § 21.3041, paragraph (e)(3) is amended by removing "§ 21.4135(o)" and adding, in its place, "§ 21.3135(h)"; and paragraph (e)(4) is amended by removing "§ 21.4135(o)" and adding, in its place, "§ 21.3135(i)".

3. In § 21.3045, paragraph (i)(3)(ii) is amended by removing "paragraph (h)(3)(i)" and adding in its place, "paragraph (i)(3)(i)"; and paragraph (f) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(f) *Entitlement charge for pursuit solely by independent study.* For enrollments in terms, quarters, or semesters that begin after June 30, 1993, VA will make charges against the entitlement of an eligible person in the manner prescribed by paragraph (e) of this section, if he or she is pursuing a program of education solely by independent study. For all other enrollments where the eligible person is pursuing a program of education solely by independent study, the computation will be made as though the eligible person's training were one-quarter time.

(Authority: 38 U.S.C. 3482(b), 3532(a))

* * * * *

Subpart D—Administration of Educational Assistance Programs

4. The authority citation for part 21, subpart D, is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4009 [Amended]

5. In § 21.4009, paragraph (b)(1) introductory text, is amended by removing "in potentially" and adding, in its place, "is potentially".

6. In § 21.4200, paragraph (g) is revised to read as follows:

§ 21.4200 Definitions.

* * * * *

(g) *Standard class session.* The term *standard class session* means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. It is not less than 1 hour (or one 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or three 50-minute periods) of workshop training.

(Authority: 38 U.S.C. 3688(c))

* * * * *

§ 21.4201 [Amended]

7. In § 21.4201, paragraph (h) introductory text is amended by removing "Vocational Rehabilitation and" both times it appears; and paragraph (h)(2) is amended by removing "Vocational Rehabilitation and".

§ 21.4233 [Amended]

8. In § 21.4233, paragraph (b)(3) introductory text is amended by removing "(b)(1)" and adding, in its place, "(b)(2)"; paragraph (b)(3)(ii) is amended by removing "(b)(2)(i)" and adding, in its place, "(b)(3)(I)"; paragraph (b)(4) introductory text is amended by removing "(b)(1)" and adding, in its place, "(b)(2)"; and paragraph (b)(4)(ii) is amended by removing "(b)(3)(i)" and adding, in its place, "(b)(4)(i)".

§ 21.4250 [Amended]

9. In § 21.4250, paragraph (a)(1) is amended by removing "Chapter" and adding, in its place, "38 U.S.C. chapter", and by removing "Chapters 34 and" and adding, in its place, "38 U.S.C. chapter"; paragraph (a)(2) is amended by removing "Chapter" each place it appears, and adding, in its place, "38 U.S.C. chapter"; paragraph (c)(1) is amended by removing "Director" and adding, in its place, "Director,", by removing "Education" and adding, in its place, "Counseling", and by removing "Chapter" and adding, in its place, "38 U.S.C. chapter"; paragraph (c)(2) is amended by removing "Vocational Rehabilitation and"; paragraph (c)(2)(ii) is amended by removing "34, 35" and adding, in its place "35,"; paragraph (c)(2)(iii) is amended by removing "38 U.S.C. Chapter 32, 34 or 35" and adding, in its place, "10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35"; and paragraph (c)(2)(iv) is amended by removing "Chapter" and adding, in its place, "chapter".

10. In § 21.4270, the heading for paragraph (c) and paragraph (c), footnote 2 are revised to read as follows:

§ 21.4270 Measurement of courses.

* * * * *

(c) *Undergraduate, graduate, professional, and on-the-job training courses.*[2] * * *

[2] When the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are charged full-time tuition, or considered full time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement. When 12 hours is properly certified as full time, VA will measure 9 through 11 hours as ¾ time, 6 through 8 hours as ½ time, 4 through 5 hours as less than ½ time and more than ¼ time, and 1 through 3 hours as ¼ time or less. VA will measure all other undergraduate courses as indicated in the table for undergraduate or professional courses, as appropriate, but when 13 credit hours or the equivalent is certified as full time, ¾ time will be 10 through 12 hours. When, in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, ¾ time, ½ time, less than ½ time and more than ¼ time, or ¼ time or less, VA will accept the certification for measurement purposes.

To meet criteria for full-time measurement in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(k), VA will convert the noncredit deficiency courses on the basis of the applicable measurement criteria, as follows: 18 or 22 clock hours, 4 "Carnegie Units," or 12, 13, or 14 (as appropriate) semester hours equal full time. The credit-hour equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

* * * * *

Subpart G—Post Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

11. The authority citation for part 21, subpart G, is revised to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

§ 21.5270 [Amended]

12. In § 21.5270, paragraph (a) is amended by removing "of this part" and by removing "chapter" and adding, in its place, "38 U.S.C. chapter"; paragraph (g) is amended by removing "progress and conduct" and adding, in its place, "progress, conduct, and attendance"; and paragraph (i) is amended by removing "correspondence; residence" and adding, in its place "correspondence-residence".

Subpart H—Educational Assistance Test Program

13. The authority citation for subpart H is revised to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

§ 21.5901 [Amended]

14. In § 21.5901, paragraph (a) is amended by removing "Chief Benefits Director of VA" and adding, in its place, "Under Secretary for Benefits", by removing "Vocational Rehabilitation and", and by removing "Chapter" and adding, in its place, "chapter"; and paragraph (b) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits".

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

15. The authority citation for subpart K is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

16. In § 21.7020, the introductory text is amended by removing "of this part"; paragraph (a)(1)(i) is amended by removing "of this part"; paragraph (a)(2)(i) is amended by removing "§ 21.7042 or § 21.7044 of this part" and adding, in its place, "§ 21.7042, § 21.7044, or § 21.7045"; and paragraph (b)(25)(i)(G) is revised to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(25) * * *

(i) * * *

(G) A flight training course beginning on or after September 30, 1990.

* * * * *

§ 21.7044 [Amended]

17. In § 21.7044, paragraph (c) is removed; and paragraphs (d) and (e) are redesignated as paragraphs (c) and (d), respectively.

18. In § 21.7140, paragraph (c)(1)(iii) is removed; paragraph (c)(1)(i) is amended by removing "§ 21.7152;" and adding, in its place, "§ 21.7152; and"; paragraph (c)(1)(ii) is amended by removing "enrollment; and" and adding, in its place, "enrollment."; paragraph (d)(1) is amended by removing "Ch." and adding, in its place, "chapter", and by removing "in the same manner as they are applied in the administration of chapter 34"; paragraph (e)(2) is amended by removing, "in the same manner as they are applied in the administration of chapters 34 and 36"; and the authority citations for paragraphs (c)(1), (d), (e), and (g) are revised to read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(c) * * *

(1) * * *

(Authority: 38 U.S.C. 3680(g))

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3034, 3680)

(e) * * *

(Authority: 38 U.S.C. 3034, 3680)

(g) * * *

(Authority: 38 U.S.C. 5121)

19. Section 21.7144 is revised to read as follows:

§ 21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4008. See § 21.7133.

(Authority: 38 U.S.C. 3034, 3690(b))

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.

(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if VA determines that the overpayment was made as the result of willful or negligent:

(i) False certification by the educational institution; or

(ii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.

(Authority: 38 U.S.C. 3034, 3685)

(c) *Recovery of overpayments.* In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034, 3685)

Cross reference: Entitlement charges. See § 21.7076(c).

21. Section 21.7170 is revised to read as follows:

§ 21.7170 Course measurement.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the following sections:

(a) § 21.4270 (except paragraphs (a)(2) and (a)(3) and those portions of paragraph (c) and footnotes dealing with farm cooperative training)—Measurement of courses;

(b) § 21.4272—Collegiate course measurement;

(c) § 21.4273—Collegiate graduate;

(d) § 21.4274—Law courses; and

(e) § 21.4275—Practical training courses; measurement.

(Authority: 38 U.S.C. 3034, 3688)

21. In § 21.7172, paragraph (a)(3)(ii) is revised to read as follows:

§ 21.7172 Measurement of concurrent enrollments.

* * * * *

(a) * * *

(3) * * *

(ii) VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 3034, 3688)

* * * * *

22. Section 21.7305 is revised to read as follows:

§ 21.7305 Conflicting interests.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4005.

(Authority: 38 U.S.C. 3034, 3036)

23. Section 21.7307 is revised to read as follows:

§ 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4209.

(Authority: 38 U.S.C. 3034, 3690)

24. Section 21.7310 is revised to read as follows:

§ 21.7310 Civil rights.

(a) *Delegation of authority concerning Federal equal opportunity laws.* The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this chapter. These equal opportunity laws are:

(1) Title VI, Civil Rights Act of 1964;

(2) Title IX, Education Amendments of 1972, as amended;

(3) Section 504, Rehabilitation Act of 1973; and

(4) The Age Discrimination Act of 1975.

(b) *Role of State approving agencies.* In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Under Secretary for Benefits may use the State approving agencies as provided in § 21.4258(d).

(Authority: 42 U.S.C. 2000)

Subpart L—Educational Assistance for Members of the Selected Reserve

25. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

26. In § 21.7622, paragraph (c) is revised to read as follows:

§ 21.7622 Courses precluded.

* * * * *

(c) *Erroneous, deceptive, misleading practices.* VA will not pay educational assistance for an enrollment in any courses offered at an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimation. VA will apply the provisions of § 21.4252(h) in making these decisions with regard to enrollments under 10 U.S.C. chapter 1606.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3696)

* * * * *

§ 21.7639 [Amended]

27. In § 21.7639, paragraph (b) introductory text is amended by removing "As is the case with reservists who are not incarcerated,".

28. Section 21.7659 is revised to read as follows:

§ 21.7659 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions for furnishing required reports, VA will apply the provisions of § 21.4206.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

§ 21.7670 [Amended]

29. In § 21.7670, paragraph (d) is amended by removing "§ 21.4272(a), (b), (d), (e) (except paragraph (e)(4)), (f), (g), and (k)" and adding, in its place, "§ 21.4272".

30. In § 21.7720, paragraphs (b)(9), (b)(10), and (b)(11) are redesignated as paragraphs (b)(11), (b)(12), and (b)(13), respectively; paragraph (b)(5) is amended by removing "policy—nonaccredited" and adding, in its place "policy; nonaccredited"; newly redesignated paragraph (b)(11) is amended by removing "(except paragraphs (a), (e), and (g))"; and paragraphs (b)(9) and (b)(10) are added to read as follows:

§ 21.7720 Course approval.

* * * * *

(b) * * *

(9) § 21.4261—Apprentice courses;

(10) § 21.4262—Other training on-the-job courses;

* * * * *

[FR Doc. 97–28402 Filed 10–27–97; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–237; FCC 97–386]

Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On October 22, 1997, the Commission released an Order on Reconsideration addressing carrier identification codes (CICs). The Order on Reconsideration determines that by January 1, 1998 all local exchange carriers (LECs) that provide equal access must have completed switch changes to recognize four-digit CICs. The transition during which three and four-digit CICs co-exist will end on June 30, 1998. The Order on Reconsideration is intended to modify in part the decision in the CICs Second Report and Order (62 FR 19056, published April 18, 1997) regarding the length of the transition. The Commission concurrently released an Order on Application for Review and a second further notice of Proposed Rulemaking in the same docket.

DATES: Effective November 28, 1997.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Order on Reconsideration in the matter of Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket 92–237, adopted October 20, 1997, and released October 22, 1997. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, phone (202) 857–3800.

Analysis of Proceeding

The Order on Reconsideration modifies the Commission's decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and creates a "two-step" end to the transition. By January 1, 1998, the end of the first phase, all LECs that provide equal access must have completed switch changes to recognize four-digit CICs. The second phase, which ends on June 30, 1998, is intended to allow IXCs time to prepare their networks for, and educate their customers about, the replacement of three-digit CICs by four-digit CICs. After that date, only four-digit CICs and seven-digit carrier access codes (CACs) will be recognized. The Commission also affirms its decision in the *CICs Second Report and Order* not to grandfather the use of three-digit CICs and five-digit CACs that are in use during the transition. The Commission rejects arguments that the *CICs Second Report and Order:* (1) Is arbitrary and capricious in violation of the Administrative Procedure Act; (2) violates Fifth Amendment rights; (3) violates First Amendment rights; and (4) violates Section 257 of the Communications Act and the Regulatory Flexibility Act. The Commission's decisions in the Order on Reconsideration are intended to advance the pro-competitive objectives of the Communications Act, as amended.

Ordering Clauses

2. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 201–205, and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 251(e)(1), that the Petition for Reconsideration of VarTec Telecom, Inc., is *denied*.

3. *It is further ordered*, that the Petitions for Reconsideration of the Competitive Telecommunications Association and Telecommunications Group, Inc., *are granted* to the extent stated herein, and, in all other respects, *are denied*.

4. *It is further ordered*, that the Order on Reconsideration and the requirements contained herein *will become effective* November 28, 1997. The collection of information contained within is contingent upon approval by the Office of Management and Budget.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28555 Filed 10–27–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: October 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted October 8, 1997, and released October 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 246A and adding Channel 246C3 at Green Valley.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 221B1 and adding Channel 221B at Clovis.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 245A and adding Channel 245C2 at Steamboat Springs.

5. Section 73.202(b), the Table of FM Allotments under Delaware, is amended by removing Channel 252A and adding Channel 253A at Seaford.

6. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 236A and adding Channel 236C3 at Winona.

7. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 285C3 and adding Channel 285C2 at York.

8. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 256C3 and adding Channel 256A at Gardnerville-Minden.

9. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 292C2 and adding Channel 292C3 at Gonzales.

10. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 230C2 and adding Channel 230C3 at Ephrata.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–28358 Filed 10–27–97; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 62, No. 208
Tuesday, October 28, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 192

RIN 1515–AC19

Exportation of Used Motor Vehicles

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Customs Regulations which relate to the exportation of used self-propelled vehicles. These amendments are being proposed to clarify the intent of the regulations and provide for uniformity and standardized procedures. They are also being proposed to conform the regulations to legislation which was enacted since the regulations were originally written. The overall objective of the proposed amendments is to more efficiently and effectively deter the export of stolen vehicles.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Comments (preferably in triplicate) may be submitted to Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229, and may be inspected at the same location.

FOR FURTHER INFORMATION CONTACT: Hugh Austin, Outbound Process, Office of Field Operations, 202–927–3735.

SUPPLEMENTARY INFORMATION:

Background

Part 192 of the Customs Regulations (19 CFR Part 192) was established by the publication of T.D. 89–46 on April 18, 1989. These regulations implemented a provision of the Trade and Tariff Act of 1984 (19 U.S.C. 1627a) concerning the unlawful exportation of used self-propelled vehicles. Generally, that statute provides for civil penalties for the knowing importation or exportation, or attempted importation or exportation, of stolen self-propelled vehicles or equipment or any similar activity with respect to any self-propelled vehicle or part of such vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with or altered. The statute also directs that regulations be prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles. In implementing the existing regulations, both Customs and the public have encountered several difficulties which this proposed amendment to the regulations is intended to resolve.

Proposed Amendments

The first proposed amendment to the existing regulations is to require the presentation to Customs of the original or certified copy of a title as proof of ownership of the vehicle to be exported. This is intended to eliminate a situation where there is a conflict between differences over a certified and a notarized copy of a title and the validity of each type of document. Certified copies can only be obtained from official issuing authorities. While the current regulations do not specifically address notarized copies, the proposed amendments explicitly disallow the use of notarized copies as proof of ownership. Customs field offices are currently accepting a variety of paperwork to establish ownership of vehicles presented for export. There is no national standard. Because all 50 states now have title laws, requiring the presentation of a title to show ownership will provide the field with a standard. By requiring that the documents be certified by the issuing authority, and not merely notarized, Customs will have a greater assurance of the authenticity of the documentation.

In instances when a vehicle owned by a foreign national and registered in a foreign country is being exported, where no title is available, Customs will require production of satisfactory proof of ownership by the exporter.

Realizing that there are instances where a party purchases a "new" car from a dealer and then immediately exports it without registering it in any state, and thus never receives a title in a state, Customs is making a provision for that situation by adding a document known as a "manufacturer's statement of origin" to the list of items which Customs will accept as proof of ownership. In those instances where a vehicle's purchaser does not intend to operate the vehicle in the U.S., Customs does not want to unnecessarily burden him by requiring that he obtain a state title. The manufacturer's statement of origin can provide a clear chain of possession from the manufacturer through the dealership to the present owner/exporter.

Leased and Liened Vehicles

Today, there are many vehicles being operated legally in the United States by people who do not have title to the vehicle. Since the original regulations in this area were issued, there has been a significant increase in the number of vehicles which are "on the road" by virtue of a lease rather than a sale. In instances where a vehicle has been leased to an operator, the title to the vehicle is never intended to pass to the operator, because the right to use the vehicle will revert to the owner upon termination of the lease. Another instance of legal operation of a vehicle by one not in possession of a title occurs when a vehicle is purchased on time. Most often, in that situation, title is retained by the finance company until the note is paid, at which time the title will be transferred to the owner/operator. In recent years, Customs has seen an increase in the frequency in which either leased or liened vehicles are attempted to be exported without the knowledge or authorization of the actual title holder—the owner or the lien-holder. If the potential exporter keeps either the lease or note payments current until after the vehicle is exported, a check to see whether the vehicle is stolen at the time of export will not reveal anything suspicious. This is because, at the time of exportation, the vehicle is not yet stolen. Once the vehicle has been taken out of the reach of the lienholder or owner, payments are stopped and the theft takes place. In order to prevent this from happening as easily as it does now, Customs is proposing to amend the regulations to require that a party attempting to export a vehicle that is either leased or is subject to a lien present a letter from the lienholder or owner stating that they have knowledge

of and authorize the exportation of the vehicle.

Other Areas of Clarification

There are certain other areas where the current regulations have caused some uncertainty among groups or individuals, which this document proposes to clarify. In § 192.2(b) of the current regulations, the phrase "in other cases" appears at the beginning of the second sentence. Customs proposes to change the phrase to read "in cases other than automobiles, trucks, vans, minivans, motorcycles, and buses". This proposal is being made because some situations have developed where exporters and Customs field locations have interpreted the current phrase "in other cases" to mean situations in which individuals may present other types of documentation to prove ownership.

It is further proposed to amend § 192.2(b) by changing the word "available" to "required" in the phrase "or other document if a certificate of title is not available as a result of a state regulatory requirement". This change is being made to mandate presentation of titles at exportation if titles are required in the state in which the vehicle was purchased. All states require titles. However, some states only require titles for vehicles if they are of a certain age. Older vehicles, depending on the state, may or may not require titles. If the state does not require a title, then acceptable documentation for Customs export purposes would include a bill of sale.

Because of their growing popularity, and to prevent any misunderstanding about the intended coverage of the scope of vehicles intended to be covered by the regulation, the proposed regulation expressly includes vans and minivans as types of vehicles intended to be covered by the regulation.

Time and Place of Presentation

In an attempt to resolve some uncertainty which has arisen in the implementation of § 192.2(c) of the current regulations, which deals with the time when the required documentation must be presented, Customs is proposing the following amendments.

The current regulation states that the documentation must be presented at least 3 days prior to the lading or exportation of the vehicle. Questions have arisen whether that phrase meant calendar or business days. Those questions were made moot, however, by enactment of the Anti Car Theft Act of 1992. That Act amended the Tariff Act of 1930 by adding a new section, 19 U.S.C. 1646c, which requires that all persons or entities exporting used automobiles provide to Customs both the vehicle identification numbers and proof of ownership at least 72 hours before the export. In order to conform the regulatory requirements to the law and still provide port personnel the opportunity to examine vehicles which are being exported, it is proposed that the time for required presentation of documents in § 192.2(c) be changed to at least 72 hours, to include not less than 2 full business days for air or sea exports. The addition of the phrase "at the port of exit" is also being proposed as the place where documentation must be presented. There have been instances where documentation has been presented at a port which is not the exit port. The addition of this phrase is intended to remove any opportunity for confusion as to where the documentation is to be produced.

Because many vehicles are exported through land border ports, Customs is proposing to permit exporters to transmit copies of the required documentation by facsimile to the port of exit. This means that an exporter will not have to wait at the border for 72 hours after presenting the documentation. However, the original documents required will need to be presented, along with the vehicle, on the date of exit.

The proposed amendments change the terminology used in reference to the type of non-original documents which Customs will accept from "facsimile" to "copy." This change is being made to avoid confusion resulting from current usage of the word "facsimile"; the word is used often interchangeably with "FAX." By using the word "copy," Customs wishes to clarify that it intends to accept photocopies as well as "faxes." In order that the regulations will be consistent, it is proposed to amend paragraph (d) by replacing the word "facsimile" with the word "copy".

A new paragraph (e) is being proposed which states that each Port Director has the authority to establish a time and place for presentation of original documentation and inspection of vehicles. Customs believes that in order to implement the law, it is necessary to impose constraints on times when the original documentation and vehicles will be accepted. By giving the Port Director the authority to set times and places for acceptance of original documents, it is intended that processing of exported used vehicles will be more efficient for both Customs and exporters in this time of limited resources.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor Washington, D.C.

Regulatory Flexibility Act

In so far as the proposed amendment is intended to assist Customs exercise its law enforcement responsibilities with a minimum burden on legitimate exporters of used vehicles, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendment does not meet the criteria for a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this rulemaking has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The clarification of the collection of information in these regulations is in § 192.2. All information required by this proposed amendment is contained or identified in the above-cited section. This information is to be maintained and provided in the form of documents which are necessary to ensure that the Customs Service will be able to effectively administer the laws it is charged with enforcing while, at the same time, imposing a minimum burden on the public it is serving. Respondents or recordkeepers are already required by state statute or regulation to maintain or have most of the information covered in

this proposed regulation. The likely respondents or recordkeepers are business organizations and individuals, including exporters.

Estimated total annual reporting and/or recordkeeping burden: 83,330 hours.

Estimated average annual burden per respondent/recordkeeper: 10 minutes.

Estimated number of respondents and/or recordkeepers: 500,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 192

Customs duties and inspection, Exports, Motor vehicles, Penalties.

Proposed Amendments

It is proposed to amend Part 192, Customs Regulations (19 CFR Part 192), as set forth below:

PART 192—EXPORT CONTROL

1. The authority citation for Part 192, Customs Regulations (19 CFR Part 192), is proposed to be revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a, 1646c.

2. It is proposed to amend § 192.2 by revising paragraphs (b), (c) and (d) and adding a new paragraph (e) to read as follows:

§ 192.2 Requirements for exportation.

* * * * *

(b) *Documentation required.* (1) *For certain registered vehicles owned by the exporter.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses owned by the exporter and registered in any state of the United States, the following documentation is required to be presented at the port of exit:

(i) An original or certified copy of the Certificate of Title from a state issuing authority. A notarized copy of the Certificate of Title is not acceptable; and

(ii) Two copies of the original or certified copy of the Certificate of Title.

(2) *For certain vehicles purchased with the intention of exportation.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses purchased from a dealer and not registered in any state of the United States because of plans to immediately export, an original manufacturer's statement of origin and two copies of the manufacturer's statement of origin are required to be presented at the port of exit.

(3) *For certain vehicles where a Certificate of Title is not required as a result of state or foreign country requirements.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses owned by a foreign national and registered in a foreign country or instances in which a state does not require a Certificate of Title, an original document that provides satisfactory proof of ownership by the exporter and two copies of that document are required to be presented at the port of exit.

(4) *For certain leased or liened vehicles.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses that are leased or on which there is a lien, a letter from the lienholder or, if leased, the owner stating that the lienholder or owner agrees that the vehicle may be exported is required to be presented at the port of exit. The letter must include the name, address and telephone number of the lienholder or owner and must include the Vehicle Identification Number of the vehicle.

(5) *For other self-propelled vehicles.* In the case of self-propelled motorized vehicles other than automobiles, trucks, vans, minivans, motorcycles, and buses, an original or certified Certificate of Title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as an original bill of sale or an original sales invoice, as well as 2 copies of the document, shall be presented.

(c) *When presented.* (1) *Exportation by vessel or aircraft.* If the vehicle is to be transported by vessel or aircraft, all documentation and the vehicle must be presented to Customs at the port of exit at least 72 hours, to include not less than 2 full business days, prior to lading in accordance with such directives as may be issued by the Port Director pursuant to paragraph (e) of this part.

(2) *Exportation at land border port.* If the vehicle is to be transported by rail, highway, or under its own power, copies of the required documentation may be sent or transmitted to the port of exit in a manner so that they will arrive at least 72 hours prior to the intended time of exportation. The original documents need to be presented at time of exit along with the vehicle. The vehicle and original documentation shall be presented at the port of exportation in accordance with such directives as may be issued by the Port Director pursuant to paragraph (e) of this part.

(d) *Authentication of documentation.* Customs shall authenticate both copies of the documents submitted, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the copies of the documents with the date and time of presentation of the documents. The authenticated copy of the document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

(e) *Time and place of document presentation.* Each Port Director shall establish and publicize the hours and location at which original documentation required by this section will be received and the hours and place for presentation of the vehicle.

George J. Weise,

Commissioner of Customs.

Approved: September 24, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97-28490 Filed 10-27-97; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 248

RIN 1076-AD86

Use of Columbia River Indian In-Lieu Fishing Sites

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule with request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is writing into plain English the existing regulations governing the use of Columbia River Indian In-Lieu Fishing Sites. We are doing this as part of the President's regulatory reinvention initiative.

DATES: Comments must be submitted on or before December 29, 1997.

ADDRESSES: Submit comments on this rule to: Chuck James, Area Archeologist, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11 Ave., Portland, OR 97232, (503) 231-6229.

FOR FURTHER INFORMATION CONTACT: Chuck James (Area Archeologist), (503) 231-6229.

SUPPLEMENTARY INFORMATION: The purpose of this rulemaking is to revise the regulations governing the use of Columbia River Indian In-Lieu Fishing Sites. We have written these regulations in plain English to make them easier for users to read and understand.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action and does not require Office of Management and Budget review under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This rule does not contain any collection of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Reform Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

Drafting Information

The primary author of this document is Chuck James, Area Archaeologist, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 248

Fisheries, Fishing, Indians, Indians—claims, Indians—law.

For the reasons set out in the preamble, Bureau of Indian Affairs proposes to revise part 248 as follows:

PART 248—USE OF COLUMBIA RIVER INDIAN IN-LIEU FISHING SITES

Sec.

248.1 What definitions apply to this part?
248.2 What lands are subject to these regulations in this part?
248.3 Who is eligible to use Columbia River in-lieu fishing sites?
248.4 How may I use the sites?
248.5 What identification do I need in order to use a site?
248.6 What requirements must I obey in order to be able to use a site?
248.7 How does this part affect tribal treaty rights?
248.8 What will happen if I damage government-owned property?
248.9 Can I build a structure on a site?
248.10 What sanitation requirements must I meet?
248.11 What am I responsible for if I use the facilities?
248.12 What will happen if I abandon property?
248.13 What other restrictions apply to use of the sites?
248.14 Will I have to pay to use a site?
248.15 Can I appeal an administrative action?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9.

§ 248.1 What definitions apply to this part?

Abandoned property means property left at a site while the owner of the property is not actively engaged in fishing or drying or processing fish. Abandoned property may include:

(1) Vehicles;
(2) Mobile trailers;
(3) Campers;
(4) Tents;
(5) Tepees;
(6) Boats; or
(7) Other personal property.

Area Director means the position responsible for administration of the Portland Area of the Bureau of Indian Affairs.

Campfire means fire, not within any building, motor home or trailer, that is used for cooking, personal warmth, lighting, ceremonial or aesthetic purposes.

Damage means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

In-lieu fishing sites means any lands acquired by the Secretary of War and transferred to the Secretary of the Interior pursuant to the Act of March 2, 1945 (59 Stat. 22) as amended to replace Indian fishing grounds submerged or destroyed as a result of the construction of the Bonneville Dam.

Secretary means the Secretary of the Interior or his/her designee.

Site means an in-lieu fishing site as defined in this section.

Vehicle means any device in, upon, or by which any person or property is or may be transported, and including any motor, frame, chassis, or body of any motor vehicle, or camper shell, except devices used exclusively upon stationary rails or tracks.

§ 248.2 What lands are subject to the regulations in this part?

This part applies to in-lieu fishing sites as defined in § 248.1.

§ 248.3 Who is eligible to use Columbia River in-lieu fishing sites?

Members of the general public may not use Columbia River in-lieu fishing sites. You may use a site only if:

(a) You are a member of any of the following tribes:

(1) Yakama;
(2) Umatilla;
(3) Warms Springs; or
(4) Any other tribe that had treaty fishing rights that were inundated or destroyed by the Bonneville Dam; and

(b) You comply with the requirements of this part and of any additional guidance that the Area Director may issue to implement this part.

§ 248.4 How may I use the sites?

If you meet the criteria in § 248.3, you may use a site:

(a) For access to usual and accustomed fishing areas and ancillary facilities; and

(b) For camping with your family (while you are fishing?).

§ 248.5 What identification do I need in order to use a site?

(a) When you use a site you must have with you either:

(1) Your tribal identification card; or

(2) If you belong to a tribe specified in § 248.3(a)(4), a special identification issued by the Area Director.

(b) You must show the identification required in paragraph (a) of this section to any authorized Federal, State, or local official who asks to see it.

§ 248.6 What requirements must I obey in order to be able to use a site?

(a) You may use a site only if you obey:

(1) The requirements of tribal, State, and Federal laws and regulations (unless they conflict with your treaty tribe's rights); and

(2) Any additional requirements that the Area Director may develop to implement this part.

(b) The Area Director may suspend or withdraw your access and use privileges if you do not follow the requirements of this section.

§ 248.7 How does this part affect tribal treaty rights?

(a) This part does not limit or affect the treaty rights of any tribe.

(b) You are not required to obey State fishing laws or regulations if:

(1) You are an Indian properly exercising tribal treaty rights; and

(2) The State laws or regulations are not compatible with your treaty rights.

§ 248.8 What will happen if I damage government-owned property?

If you commit any act of vandalism, depredation, destruction, theft, or misuse of land, buildings, fences, signs, or other structures that are the property of the United States, you can be prosecuted under applicable Federal or State law.

§ 248.9 Can I build a structure on a site?

You may erect, place, or maintain dwellings, camping facilities, and other structures (such as fish drying facilities and fish platforms) if you need them for treaty fishing or related activities.

§ 248.10 What sanitation requirements must I meet?

(a) You must use the sites in conformance with the health, sanitation, and safety requirements of State or local law. If there are no appropriate State or local laws, you must follow the health, sanitation, and safety requirements of the U.S. Public Health Service.

(b) The Area Director may suspend or withdraw your access and use privileges if:

(1) You violate the requirements referred to in paragraph (a) of this section; and

(2) You repeat the violation after having been given a notice to cease and desist.

§ 248.11 What am I responsible for if I use the facilities?

(a) You are responsible for:

(1) Campsites, drying sheds and other facilities during the time you occupy or use them; and

(2) Any personal property that you erect, place, or maintain on the site during the time you occupy the site, including:

(i) Tents;
(ii) Tepees;
(iii) Campers;
(iv) Mobile trailers;
(v) Temporary drying sheds; and
(vi) Fishing platforms.

(b) Neither the United States nor any of its employees is responsible for the safety or condition of any personal property.

§ 248.12 What will happen if I abandon property?

If you abandon property at a site, it may be removed without your consent and disposed of at your expense, if the Area Director approves.

§ 248.13 What other restrictions apply to use of the sites?

The Area Director may prescribe and post at the sites regulations covering:

(a) Camping;
(b) Picnicking;
(c) Use of alcoholic beverages;
(d) Setting or use of fires;
(e) Use of the sites for cleaning fish;
(f) Deposit of garbage, paper, cans, bottles, or rubbish of any kind; or
(g) Use of the sites for any commercial activity (including commercial purchase of fish).

§ 248.14 Will I have to pay to use a site?

No. Neither you nor any member of your family will be charged for using a site in accordance with this part.

§ 248.15 Can I appeal an administrative action?

You may appeal any decision made by the Area Director under this part to the Commissioner of Indian Affairs. You may appeal any decision of the Commissioner of Indian Affairs to the Secretary of the Interior in accordance with part 2 of this chapter.

Dated: October 17, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–28493 Filed 10–27–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105162–97]

RIN–1545–AV18

Treatment of Changes in Elective Entity Classification

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations addressing elective changes in entity classification. The proposed regulations describe how elective changes in classification will be treated for federal tax purposes. The proposed regulations would affect business entities and their members. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by January 26, 1998. Requests to speak (with outlines of oral comments) at the public hearing scheduled for February 24, 1997, must be submitted by January 26, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105162–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105162–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeff Erickson, (202) 622–3070 (not a toll-free number); concerning international issues, Philip Tretiak or Ronald M. Gootzeit, (202) 622–3860 (not a toll free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the current Income Tax Regulations (26 CFR Parts 1 and 301) relating to the classification of entities for federal tax purposes. On December 18, 1996, the IRS and Treasury published final regulations under section 7701 (final regulations), replacing the former classification rules with an elective regime. See TD 8697 (1997–2 I.R.B. 11).

Under the final regulations, a business entity that is not specifically classified as a corporation in the final regulations (an eligible entity) can elect its classification for federal tax purposes under certain circumstances. An eligible entity with at least two members can elect to be classified as a partnership or as an association taxable as a corporation. An eligible entity with a single member can elect to be classified as an association or as an entity that is disregarded as an entity separate from its owner. An eligible entity may also elect to change its classification, except that an election may not be made more than once in any sixty month period. An eligible entity that does not make an election is classified under certain default provisions.

Explanation of Provisions

Characterization of Elective Changes in Classification

The proposed regulations describe how elective changes in an entity's classification will be treated for federal tax purposes. Under the final regulations, there are four possible changes in classification by election: (i) a partnership elects to be an association; (ii) an association elects to be a partnership; (iii) an association elects to be a disregarded entity; and (iv) a disregarded entity elects to be an association. There are two other possible ways in which an entity's classification could change (a partnership converts to a disregarded entity or a disregarded entity converts to a partnership) but these changes occur only as a result of a change in the number of members, not as the result of an elective change.

The proposed regulations do not address the form of these two possible types of changes.

The proposed regulations provide a specific characterization for each of the four possible elective changes. In each case, the characterization provided in the proposed regulations attempts to minimize the tax consequences of the change in classification and achieve administrative simplicity. The proposed regulations provide that if an association elects to be classified as a partnership, the association is deemed to liquidate by distributing its assets and liabilities to its shareholders. Then, the shareholders are deemed to contribute all of the distributed assets and liabilities to the partnership. This characterization of an elective change from an association to a partnership is consistent with Rev. Rul. 63–107 (1963–1 C.B. 71).

If a partnership elects to be classified as an association, the partnership is deemed to contribute all of its assets and liabilities to the association in exchange for stock in the association. Then, the partnership is deemed to liquidate by distributing stock in the association to its partners. The proposed regulations do not affect the holdings in Rev. Rul. 84–111 (1984–2 C.B. 88), in which the IRS ruled that it would respect the particular form undertaken by the taxpayers when a partnership converts to a corporation.

If an association elects to be disregarded as an entity separate from its owner, the association is deemed to liquidate by distributing its assets and liabilities to its sole owner. Conversely, if an eligible entity that is disregarded as an entity separate from its owner elects to be classified as an association, the owner of the eligible entity is deemed to contribute all of the assets and liabilities of that entity to the association in exchange for stock of the association.

The proposed regulations also provide that the tax treatment of an elective change in classification is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine. This provision in the proposed regulations is intended to ensure that the tax consequences of an elective change will be identical to the consequences that would have occurred if the taxpayer had actually taken the steps described in the proposed regulations. The IRS and Treasury request comments on the application of general principles of tax law to the transactions that are deemed to occur on an elective change in classification.

Change in Number of Members of Entity

The proposed regulations address the effect of a change in the number of members on the classification of an entity. Under the proposed regulations, if there is a change in the number of members of an association, the classification of the entity is not affected. If an eligible entity classified as a partnership subsequently has only one member (and is still treated as an entity under local law), the entity will be disregarded as an entity separate from its owner. If a single member entity that is disregarded as an entity separate from its owner subsequently has more than one member, the entity is classified as a partnership as of the date the entity has more than one member. The classifications provided in the proposed regulations can be changed by election, assuming that the entity is not subject to the sixty month limitation on elections.

Timing of Elective Changes in Classification

The proposed regulations provide that an election to change the classification of an entity is treated as occurring at the start of the day for which the election is effective. Any transactions that are deemed to occur as a result of the change in classification are treated as occurring immediately before the close of the day before the effective date of the election. For example, if an election is made to convert from an association to a partnership effective on January 1, the entity is treated as a partnership on January 1, and the deemed transactions specified in the proposed regulations are treated as occurring immediately before the close of December 31. As a result, the last day of the association s taxable year will be December 31 and the first day of the partnership's taxable year will be January 1.

Treatment of Foreign Eligible Entities

Any eligible entity, including a foreign eligible entity whose classification is not relevant for federal tax purposes, may elect to change its classification. The IRS and Treasury request comments on the appropriateness of allowing such a foreign eligible entity to make a classification election, and comments on what the federal tax consequences of such an election should be (e.g., with respect to the basis of property held by the entity).

Foreign Per Se Entities

The final regulations provide a list of the names of certain foreign business entities that are treated as corporations for federal tax purposes. In most cases,

the name by which an entity will be known is provided by the statutory corporate law of the relevant jurisdiction. In certain cases, however, the corporate law does not provide a statutory name. In these jurisdictions, taxpayers and practitioners often fill the statutory void with a name derived from a number of the statutory characteristics of the entity. In an effort to make the list of foreign per se corporations more accessible, the final regulations use the commonly used non-statutory term in certain cases where the statute does not provide a defined name. To minimize any uncertainty, however, the provisions of § 301.7701–2(b)(8) (iii) and (iv) were included in the final regulations to address this issue. In response to comments from taxpayers, these subsections of the final regulations are clarified to provide guidance on the terms used in the final regulations. Furthermore, the regulations clarify that the term Berhad used with regard to Malaysia does not include *a Sendirian Berhad* (the equivalent of a private limited company). The regulations also clarify that, in relation to Mexico, the term Sociedad Anonima includes a Sociedad Anonima that chooses to apply the variable capital provision of Mexican corporate law (Sociedad Anonima de Capital Variable). The fact that capital may be varied does not make this a different type of entity from a Sociedad Anonima that does not choose to apply the variable capital provision. These clarifications are not intended to change the interpretation of the final regulations.

The proposed regulations also clarify the treatment of the Finnish, Maltese, and Norwegian entities specified in the final regulations. Effective January 1, 1996, Maltese and Norwegian corporate law recognized a distinction between public and private companies, and the proposed regulations reflect this change. The proposed regulations also provide that the rules of the final regulations with regard to the Maltese and Norwegian entities may be applied (when these proposed regulations are finalized) as though the entities specified in the proposed regulations had been included in the final regulations issued on December 18, 1996. Thus, a Maltese or Norwegian entity that is no longer treated as a per se corporation under the regulations would be able to make an election within 75 days of the date these proposed regulations are finalized, and such election could be effective as of January 1, 1997. Finnish law, since September 1, 1997, has recognized a similar distinction between public and private companies. It is proposed that a Finnish entity that is no longer treated as a per se corporation under the regulations would be able to make an election within 75 days of the date these proposed regulations are finalized, and such election could be effective as of September 1, 1997.

Special Basis Adjustments Under Section 743

Section 743 provides that the basis of partnership property is not adjusted as the result of a transfer of an interest in the partnership by sale or exchange unless the partnership has made an election under section 754. If a section 754 election is made, the transferee partner is treated as having a special basis adjustment with respect to partnership property. This adjustment constitutes an adjustment to the basis of partnership property with respect to the transferee partner only. Some uncertainty has remained as to the treatment of this special basis adjustment upon the contribution of the partnership property to a corporation in a section 351 exchange, and because the proposed regulations provide for a deemed contribution by the partnership to a corporation in an elective conversion to an association, the proposed regulations address this uncertainty.

The proposed regulations provide that a corporate transferee's basis in property transferred by a partnership in a transfer described in section 351 includes any special basis adjustment under section 743. The special basis adjustment is also taken into account in determining the partner's basis in the stock received in the exchange. For example, assume a partnership owns Property X, which has a common basis of $100 for the partnership and in which Partner A has a $5 special basis adjustment under section 743(b). Subsequently, the partnership validly elects to be classified as an association. The partnership is deemed to contribute all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners. If the transfer of the assets to the association would be a transfer described in section 351, then under the proposed regulations, the association's basis in Property X includes Partner A's $5 special basis adjustment. Thus, the association has a $105 basis in Property X (Partner A's $5 special basis adjustment plus the partnership's $100 common basis). Partner A's basis in the association's stock will reflect the $5 special basis adjustment previously on Property X.

The proposed regulations also provide, however, that the amount of gain, if any, recognized by the partnership on the transfer is determined without reference to any special basis adjustment. The partner with the special basis adjustment can then use the special basis adjustment to reduce its share of any gain recognized by the partnership. This approach of determining gain at the partnership level and allowing the partner to use the special basis adjustment as an offset is similar to the treatment of a sale of property with a special basis adjustment.

Proposed Effective Date

Except as otherwise specified, these regulations are proposed to apply as of the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 24, 1997, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic by (preferably a signed original and eight (8) copies) January 26, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Ann M. Veninga, Office of Chief Counsel (Passthroughs and Special Industries) and Philip Tretiak, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows.

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.743–2 is added under the undesignated centerheading "Transfer of Interests in a Partnership" to read as follows:

§ 1.743–2 Transfer of property to a corporation.

(a) *Basis in transferred property.* A corporations adjusted tax basis in property transferred to the corporation by a partnership in a transfer described in section 351 is determined with reference to any special basis adjustment to the property under section 743(b) (other than any special basis adjustment that reduces a partner's gain under paragraph (b) of this section).

(b) *Partnership gain.* The amount of gain, if any, recognized by a partnership on a transfer of property by the partnership to a corporation in a transfer described in section 351 is determined without reference to any special basis adjustment to the transferred property under section 743(b). The amount of gain, if any, recognized by the partnership on the transfer that is allocated to a partner with a special basis adjustment in the transferred property is adjusted to reflect the partner's special basis adjustment in the transferred property.

(c) *Basis in stock.* The partnership's adjusted tax basis in stock received from a corporation in a transfer described in section 351 is determined without reference to the special basis adjustment in property transferred to the corporation in the section 351 exchange. A partner with a special basis adjustment in property transferred to the corporation, however, has a special basis adjustment in the stock received by the partnership in the section 351 exchange in an amount equal to the partner's special basis adjustment in the transferred property, reduced by any special basis adjustment that reduced the partner's gain under paragraph (b) of this section.

(d) *Effective date.* This section applies to transfers that occur on or after the date final regulations are published in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6109–1 is amended as follows:

1. Paragraph (d)(2)(ii) is removed and reserved.

2. Paragraph (h) is redesignated as paragraph (i) and the first sentence of newly designated paragraph (i)(1) is amended by removing the language "paragraph (h)" and adding "paragraph (i)" in its place.

3. A new paragraph (h) is added.

The addition reads as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(h) *Special rules for certain entities under § 301.7701–3*—(1) *General rule.* Any entity that has an employer identification number (EIN) will retain that EIN if its federal tax classification changes under § 301.7701–3.

(2) *Special rules for entities that are disregarded as entities separate from their owners*—(i) *When an entity becomes disregarded as an entity separate from its owner.* Except as otherwise provided in regulations or other guidance, a single owner entity that is disregarded as an entity separate from its owner under § 301.7701–3, must use its owner's taxpayer identifying number (TIN) for federal tax purposes.

(ii) *When an entity that was disregarded as an entity separate from its owner becomes recognized as a separate entity.* If a single owner entity's classification changes so that it is recognized as a separate entity for federal tax purposes, and that entity had an EIN, then the entity must use that EIN and not the TIN of the single owner. If the entity did not already have its own EIN, then the entity must acquire an EIN and not use the TIN of the single owner.

(3) *Effective date.* This paragraph (h) applies to changes in classification that occur on or after the date on which these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 301.7701–2 is amended as follows:

1. Paragraph (b)(8)(i) is amended by revising the entries for Finland, Malta, and Norway.

2. Paragraph (b)(8)(ii)(A) is redesignated as paragraph (b)(8)(ii)(A)(*1*) and the language "and" at the end of the paragraph is removed.

3. Paragraph (b)(8)(ii)(B) is redesignated as paragraph (b)(8)(ii)(A)(*2*) and the period at the end of the paragraph is removed and the language "; and " is added in its place.

4. Paragraph (b)(8)(ii) heading and introductory text are redesignated as paragraph (b)(8)(ii)(A) heading and introductory text, and a new paragraph heading is added for paragraph (b)(8)(ii).

5. Paragraphs (b)(8)(ii)(A)(*3*) and (b)(8)(ii)(B) are added.

6. Paragraphs (b)(8)(iii), (b)(8)(iv), and (e) are revised.

The revisions and additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Finland, Julkinen Osakeyhtio/Publikt Aktiebolag	
Malta, Public Limited Company	
Norway, Allment Aksjeselskap	

* * * * *

(ii) *Clarification of list of corporations in paragraph (b)(8)(i) of this section—(A) Exceptions in certain cases.* * * *

* * * * *

(*3*) With regard to Malaysia, a Sendirian Berhad.

(B) *Inclusions in certain cases.* With regard to Mexico, the term Sociedad Anonima includes a Sociedad Anonima that chooses to apply the variable capital provision of Mexican corporate law (Sociedad Anonima de Capital Variable).

(iii) *Public companies.* For purposes of paragraph (b)(8)(i) of this section, with regard to Cyprus, Hong Kong, Jamaica, and Trinidad and Tobago, the term Public Limited Company includes any Limited Company that is not defined as a private company under the corporate laws of those jurisdictions. In all other cases, where the term Public Limited Company is not defined, that term shall include any Limited Company defined as a public company under the corporate laws of the relevant jurisdiction.

(iv) *Limited companies.* For purposes of this paragraph (b)(8), any reference to a Limited Company includes, as the case may be, companies limited by shares and companies limited by guarantee.

* * * * *

(e) *Effective date.* Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997. The reference to the Finnish, Maltese, and Norwegian entities in paragraph (b)(8)(i) of this section is applicable on the date the final regulations are published in the Federal Register. Any Maltese or Norwegian entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on the date final regulations are published in the **Federal Register** may elect (within 75 days of the date final regulations are published in the **Federal Register**) to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including January 1, 1997. Any Finnish entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on the date final regulations are published in the **Federal Register** may elect (within 75 days of the date final regulations are published in the **Federal Register**) to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including September 1, 1997.

Par. 6. Section 301.7701–3 is amended as follows:

1. A sentence is added at the end of paragraph (c)(1)(iv).
2. Paragraph (c)(2)(iii) is added.
3. A heading is added to paragraph (d)(1).
4. Paragraph (f) is redesignated as paragraph (h) and newly designated paragraph (h)(1) is revised.
5. Paragraphs (f) and (g) are added.

The revision and additions read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * *

(1) * * *

(iv) *Limitation.* * * * An election by a newly-formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph (c)(1)(iv).

* * * * *

(2) * * *

(iii) *Changes in classification.* For purposes of paragraph (c)(2)(i) of this section, if an election under paragraph (c)(1)(i) of this section is made to change the classification of an entity, each person who was an owner on the date that any transactions under paragraph (g) of this section are deemed to occur, and who is not an owner at the time the election is filed, must also sign the election. This paragraph (c)(2)(iii) applies to elections filed on or after the date final regulations are published in the **Federal Register**.

(d) *Special rules for foreign eligible entities*—(1) *Definition of relevance.* * * *

* * * * *

(f) *Changes in number of members of an entity*—(1) *Associations.* The classification of an eligible entity as an association is not affected by any change in the number of members of the entity.

(2) *Partnerships and single member entities.* An eligible entity classified as a partnership is disregarded as an entity separate from its owner as of the date the entity has only one member. A single member entity disregarded as an entity separate from its owner is classified as a partnership as of the date the entity has more than one member.

(3) *Effect on sixty month limitation.* A change in the number of members of an entity does not result in the creation of a new entity for purposes of the sixty month limitation on elections under paragraph (c)(1)(iv) of this section.

(4) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) On April 1, 1998, A and B, U.S. persons, form X, a foreign eligible entity. X is treated as an association under the default provisions of paragraph (b)(2)(i) of this section, and X does not make an election to be classified as a partnership. A subsequently purchases all of B's interest in X.

(ii) Under paragraph (f)(1) of this section, X continues to be classified as an association. X, however, can subsequently elect to be disregarded as an entity separate from A. The sixty month limitation of paragraph (c)(1)(iv) of this section does not prevent X from making an election because X has not made a prior election under paragraph (c)(1)(i) of this section.

Example 2. (i) On April 1, 1998, A and B, U.S. persons, form X, a foreign eligible entity. X is treated as an association under the default provisions of paragraph (b)(2)(i) of this section, and X does not make an election to be classified as a partnership. On January 1, 1999, X elects to be classified as a partnership effective on that date. Under the sixty month limitation of paragraph (c)(1)(iv) of this section, X cannot elect to be classified as an association until January 1, 2004 (i.e., sixty months after the effective date of the election to be classified as a partnership).

(ii) On June 1, 1999, A purchases all of B's interest in X. After A's purchase of B's interest, X can no longer be classified as a partnership because X has only one member. Under paragraph (f)(2) of this section, X is disregarded as a separate entity as of the date A becomes the only member of X. X, however, is not treated as a new entity for purposes of paragraph (c)(1)(iv) of this section. As a result, the sixty month limitation of paragraph (c)(1)(iv) of this section continues to apply to X and X cannot elect to be classified as an association until January 1, 2004 (i.e., sixty months after January 1, 1999, the effective date of the election by X to be classified as a partnership).

(5) *Effective date.* This paragraph (f) applies as of the date the final regulations are published in the **Federal Register**.

(g) *Elective changes in classification*—(1) *Deemed treatment of elective change*—(i) *Partnership to association.* If an eligible entity classified as a partnership elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.

(ii) *Association to partnership.* If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

(iii) *Association to disregarded entity.* If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association.

(iv) *Disregarded entity to an association.* If an eligible entity that is disregarded as an entity separate from its owner elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The owner of the eligible entity contributes all of the assets and liabilities of the entity to the association in exchange for stock of the association.

(2) *Effect of elective changes.* The tax treatment of a change in the classification of an entity for federal tax purposes by election under paragraph (c)(1)(i) of this section is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

(3) *Timing of election.* An election under paragraph (c)(1)(i) of this section that changes the classification of an eligible entity for federal tax purposes is treated as occurring at the start of the day for which the election is effective. Any transactions that are deemed to occur under this paragraph (g) as a result of a change in classification are treated as occurring immediately before the close of the day before the election is effective. For example, if an election is made to change the classification of an entity from an association to a partnership effective on January 1, the deemed transactions specified in paragraph (g)(1)(ii) of this section (including the liquidation of the association) are treated as occurring immediately before the close of December 31 and must be reported by the owners of the entity on December 31. As a result, the last day of the association's taxable year will be December 31 and the first day of the partnership's taxable year will be January 1.

(4) *Effective date.* This paragraph (g) applies to elections that are filed on or after the date the final regulations are published in the **Federal Register**.

(h) *Effective date*—(1) *In general.* Except as otherwise provided in this section, the rules of this section are applicable as of January 1, 1997.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–28165 Filed 10–27–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AA56

Management of Federal Agency Disbursements: Hearing in Los Angeles, CA

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: This document schedules an additional public hearing on proposed regulations relating to the government's use of electronic funds transfer to make all Federal payments, with the exception of tax refunds, after January 1, 1999.

DATES: There will be a public hearing in Los Angeles on Tuesday, December 9, 1997 beginning at 9:00 a.m. Requests to testify at the hearing and outlines of testimony must be received by December 1.

ADDRESSES: The public hearing in Los Angeles will be held at the Federal Reserve Bank. The Bank is located at 950 S. Grand Avenue, Los Angeles, California, 90015.

Send requests to testify and outlines of testimony to Martha Thomas-Mitchell. See **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Martha Thomas-Mitchell at (202) 874–6757 or at Internet address martha.thomas-mitchell@fms.sprint.com. The following toll free number is also available for registration information and inquiries: 1–800–344–0218 (hours of operation are 7:00 a.m.—5:00 p.m. Pacific Standard Time). For general information on the proposed regulation, contact Robyn Schulhof at (202) 874–6754 or Diana Shevlin at (202) 874–7032.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking appearing in the **Federal Register** on September 16, 1997 (62 FR 48714) announced that three public hearings would be held in Dallas, New York City, and Baltimore. This notice adds an additional hearing in Los Angeles.

Dated: October 23, 1997.

Michael T. Smokovich,

Deputy Commissioner.

[FR Doc. 97–28523 Filed 10–27–97; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–1007–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on the Provider-sponsored Organization Solvency Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and locations for the second through sixth meetings of the Negotiated Rulemaking Committee on the provider-sponsored organization (PSO) solvency standards. The purpose of this committee is to negotiate the development of an interim final rule establishing solvency standards for provider-sponsored organizations under Part C of the Medicare program, as statutorily-mandated by the Balanced Budget Act of 1997. These meetings are open to the public.

DATES: The five scheduled meetings will be held on November 12–14, 1997; December 3–5, 1997; January 6–8, 1998; January 27–29, 1998; and February 18–20, 1998. The hours of the meetings are 9:00 a.m. to 5:00 p.m. on the first two days of each meeting and 8:00 a.m. to 3:00 p.m. on the third day of each meeting.

ADDRESSES:

- November 12, 13, and 14, 1997, at The Phoenix Park Hotel, 520 N. Capitol St., NW, Washington, DC 20001; (202) 638–6900;
- December 3, 4, and 5, 1997, at the Holiday Inn Capitol, 550 C St., SW, Washington, DC 20024; (202) 479–4000;
- January 6, 7, and 8, 1998, at The Phoenix Park Hotel at the above address;
- January 27, 28, and 29, 1998, at The Phoenix Park Hotel; and
- February 18, 19, and 20, 1998, at The Phoenix Park Hotel.

FOR FURTHER INFORMATION: Inquiries regarding these meetings should be addressed to Maureen Miller, Health Care Financing Administration, Center for Health Plans and Providers, Room S3–21–17, 7500 Security Boulevard, Baltimore, Maryland 21244, (410) 786–1097.

SUPPLEMENTARY INFORMATION: The Balanced Budget Act (BBA) of 1997 establishes a new Medicare+Choice program under part C of title XVIII of the Social Security Act (the Act). Under this program, an eligible individual may elect to receive Medicare benefits through enrollment in a Medicare+Choice plan that has a contract with us, which may include a health plan offered by a provider-sponsored organization. The BBA establishes a definition of PSOs that will be further clarified in forthcoming regulations. Section 4001 of the BBA mandates an expedited and modified negotiated rulemaking process for establishing solvency standards for PSOs. The standards must be published as an interim final rule, subject to comment, by April 1, 1998.

Under the BBA, the Negotiated Rulemaking Committee is required to report to the Secretary by January 1, 1998, regarding its progress and whether it is likely to achieve consensus. The Committee is required to report its proposed standards to the Secretary by March 1, 1998. If, however, the Committee reports on January 1st that it has failed to make significant progress or that consensus is unlikely within the assigned time frame, the Committee will be terminated and publication of a rule will proceed using other rulemaking procedures.

The Committee held its first meetings on October 20, 21, and 22, 1997. At these meetings, presentations were made that related to health plan solvency, and the Committee discussed how to address the principal issues and how to proceed in developing solvency standards.

The announced future meetings are open to the public without advance registration. Public attendance at the meetings may be limited to space available. A summary of all proceedings will be available for inspection in room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), or can be accessed through the HCFA Internet site at http://www/hcfa.gov/medicare/mgdcar1.htm. Additional information related to the Committee will be available on the web site.

(Section 1851 of the Social Security Act (42 U.S.C. 1395w–21 and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)): 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 24, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 97–28676 Filed 10–27–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE00

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Rule and Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is being extended on the proposed rule to establish a nonessential experimental population of grizzly bears in the Bitterroot Ecosystem. All interested parties that have not done so are invited to submit comments on this proposal.

DATES: Comments will be accepted until December 1, 1997.

ADDRESSES: Written comments and materials should be addressed to Dr. Christopher Servheen, U.S. Fish and Wildlife Service Project Leader, Bitterroot Grizzly Bear EIS, P.O. Box 5127, Missoula, Montana 59806.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) proposes to reintroduce the grizzly bear (*Ursus arctos horribilis*), a threatened species, into east-central Idaho and a portion of western Montana. On July 2, 1997, the Service published a proposed rule (62 FR 35762) to establish a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Cabinet/Yaak ecosystem in northwestern Montana and north Idaho, the Selkirk ecosystem in north Idaho and northeastern Washington, the North Cascades ecosystem in northwestern Washington, the Northern Continental Divide ecosystem in Montana, and the Yellowstone ecosystem in Montana, Wyoming, and Idaho. The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. Potential effects of this proposed rule are evaluated in a draft Environmental Impact Statement released concurrently with the publication of the proposed rule. This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of wilderness areas or surrounding lands.

Public Comments Solicited

The comment period on this proposal is scheduled to close on November 1, 1997. To accommodate verbal requests and because of the extensive interest in the proposal, the Service extends the comment period. Written comments may now be submitted until December 1, 1997, to the Service office identified in the **ADDRESSES** section above. All comments must be received before the close of the comment period to be considered.

Author

The author of this notice is Olin Bray, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225–0486; telephone (303) 236–7400, extension 249.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 22, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–28481 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970829214–7214–01; I.D. 082097B]

RIN 0648–AJ76

Magnuson-Stevens Act Provisions; Observer Health and Safety

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends for 30 days the comment period for the proposed rule about guidelines to ensure observer health and safety.

DATES: Comments must be received by November 21, 1997.

ADDRESSES: Send comments to Gary Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William J. Bellows, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act, as amended (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), and the Atlantic Tunas Convention Act, as amended (16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce to station observers aboard commercial fishing vessels to collect required scientific data for the purposes of fishery and protected species conservation and management, monitoring incidental mortality and serious injury to marine mammals and to other species listed under the Endangered Species Act, and monitoring compliance with existing Federal regulations. In addition, pursuant to the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), observers may be required in the South Pacific Tuna Fishery.

A proposed rule was published on September 22, 1997 (62 FR 49464), in which guidelines were proposed for the purpose of ensuring observer health and safety while aboard a vessel and at the time of boarding and disembarking. The 30-day comment period ended October 22, 1997. One comment was received; it requested an extension of the comment period.

NMFS is interested in receiving comments and is extending the comment period through November 21, 1997.

This notice's comment-period extension has been determined to be not significant for purposes of E.O. 12866.

Dated: October 21, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28440 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 208
Tuesday, October 28, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resources Plans for the Chippewa and Superior National Forest; Beltrami, Cass, Cook, Itasca, Koochiching, Lake and St. Louis Counties, Minnesota

AGENCY: Forest Service, USDA.

ACTION: Notice; reopening of comment period on Notice of Intent.

SUMMARY: On August 29, 1997, the USDA-Forest Service published a Notice of Intent to prepare an Environmental Impact Statement for revising the Chippewa and Superior Land and Resource Management Plans. The Comment period on that notice closed on October 28, 1997. The Forest Service has reopened the comment period until November 28, 1997 to allow another thirty one days for public comment.

EFFECTIVE DATES: The Comment period will end on November 28, 1997.

FOR FURTHER INFORMATION CONTACT: For further information contact Duane Lula, Forest Planner, (218) 626–4383. TTY (218) 626–4399.

SUPPLEMENTARY INFORMATION: Send written comments on the Notice of Intent to: Forest Plan Revision, Chippewa and Superior National Forests, Route 3, Box 244, Cass Lake, MN 56633–8929. Direct electronic mail to: chippewa@northernnet.com (ATTN: Forest Plan Revision).

Dated: October 21, 1997.

Robert T. Jacobs,

Regional Forester.

[FR Doc. 97–28349 Filed 10–27–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, November 5, 1997.

PLACE: Room 5066, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving the 1996 Telecom Act and universal service; the budget for FY 1998; directors' liability insurance; allowance for loan losses reserve; and administrative issues.

ACTION: Stockholders' Meeting.

TIME AND DATE: 10 a.m., Thursday, November 6, 1997.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders' meeting:

1. Call to order.
2. Establishment of a quorum.
3. Action on the November 16, 1994, Minutes.
4. Secretary's annual report on loans approved in FY 1997.
5. Treasurer's annual report on FY 1997.
6. New Business.
7. Adjournment.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: Immediately following the stockholders' meeting, Thursday, November 6, 1997.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the August 22, 1997, Minutes.
3. Report on loans approved in fourth quarter FY 1997.
4. Summary of financial activity for fourth quarter FY 1997.
5. Consideration of modifications to the calculation for determining the allowance for loan losses reserve.
6. Establish date and location of next regular Board meeting.
7. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Robert Peters, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: October 22, 1997.

Adam Golodner,

Deputy Governor, Rural Telephone Bank.

[FR Doc. 97–28585 Filed 10–24–97; 9:56 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference of the Connecticut Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m. on Wednesday, November 12, 1997, and Thursday, November 13, 1997, at the Taurig Learning Center, Library Resource Room (Room 501), Naugatuck Valley Community-Technical College, 750 Chase Parkway, Waterbury, Connecticut 06708. The purpose of the conference is to bring together subject matter experts, civil rights leaders, and public officials to inform the Committee and the public on major civil rights issues and discuss their possible solutions.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, planning subcommittee Chairperson Patrick J. Johnson, Jr., 860–242–9577, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 16, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28451 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on November 7, 1997, at the Best Western Burley Inn, 800 North Overland Avenue, Burley, Idaho 83318. The purpose of the meeting is to hear presentations on problems which Hispanics are encountering in the Cassia County area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rudolph Wilson, 208–336–4949, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28447 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 8:00 a.m. and adjourn at 12:30 p.m. on Thursday, November 20, 1997, at the State Capitol, 300 S.W. 10th Street, Room 313–S, Topeka, Kansas 66603. The purpose of the meeting is planning and to hold a briefing on equal employment opportunity in State government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28452 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, November 20, 1997, at the Holiday Inn-Vicksburg, 3330 Clay Street, Vicksburg, Mississippi 39180. The Committee will reconvene at 8:30 a.m. and adjourn at 12:00 p.m. on Friday, November 21, 1997. The purpose of the meeting is to discuss a draft report and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28447 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m. on Monday, November 17, 1997, at the Law Offices of Nixon, Raiche, Manning and Branch, 77 Central Street, Manchester, New Hampshire 03101. The purpose of the meeting is to discuss and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Raiche, 603–669–7070, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28450 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, November 6, 1997, at the Hilton Hotel, 150 West 500 South, Salt Lake City, Utah 84101. The purpose of the meeting is to discuss the status of the employment discrimination project, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael N. Martinez, 801–261–8169, or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired

persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28449 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 12:45 p.m. and adjourn at 4:30 p.m. on Wednesday, November 19, 1997, at the Raleigh County Public Library, 221 N. Kanawha Street, Beckley, West Virginia 25801. The purpose of the meeting is to plan its project activity for FY '97–98, and receive information from invited guests on civil rights issues in Beckley, West Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gregory T. Hinton, 304–367–4244, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–28453 Filed 10–27–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 961213356–7236–02]

Census Tract Program for Census 2000—Final Criteria

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of final program.

SUMMARY: Census tracts are relatively permanent small-area geographic divisions of a county or statistically equivalent entity [1] defined for the tabulation of decennial census data and selected other statistical programs. The primary goal of the census tract program is to provide a geographic unit that has stable boundaries between decennial censuses. Other goals include the identification of geographic areas that represent meaningful geographic divisions of a county based on economic or social interaction, significant topographic differences within a county, or a certain degree of demographic homogeneity at the time of original delineation. The Census Bureau uses census tracts to tabulate and disseminate a wide variety of data. For Census 2000, census tracts will be established across the entire area of the United States, Puerto Rico, and the Island Areas (American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States).

Census tracts first appeared in the 1910 census when local officials in eight of the larger cities delineated these areas. In the 1910, 1920, and 1930 censuses, the Census Bureau published census tract data as special tabulations; in 1940, the Census Bureau began including census tract data in its standard publications. The number of data subjects and the amount of data, as well as the number of counties containing census tracts, increased in every census through 1990. For the 1990 census, the Census Bureau inaugurated complete nationwide coverage and statistics for census tracts or statistically equivalent entities known as block numbering areas (BNAs). For Census 2000, the Census Bureau will combine the similar programs into a single census tract program.

To determine the boundaries and identification numbers of census tracts, the Census Bureau offers a program to local participants, such as locally identified agencies and American Indian tribal officials, whereby they can review and update the boundaries of the census tracts and BNAs delineated for the 1990 census and suggest revisions according to the criteria developed and promulgated by the Census Bureau. The Census Bureau will then review the resulting Census 2000 census tract plans for conformance to these criteria. The Census Bureau does not take into account or attempt to anticipate any nonstatistical uses that may be made of census tracts, nor will the Census Bureau modify the definition of census tracts to meet the requirements of any nonstatistical program.

The Census Bureau is now publishing final criteria for the delineation of census tracts for Census 2000. These criteria will apply to the 50 states, the District of Columbia, American Indian and Alaska Native areas, Puerto Rico, and the Island Areas. The Census Bureau may modify and, if necessary, reject proposals for census tracts that do not meet the criteria established following this notice.

In addition to these final criteria, this notice includes a description of the changes from the criteria used for the 1990 census and a list of definitions of key terms used in the criteria.

EFFECTIVE DATE: The census tract criteria for Census 2000 become effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233–7400, telephone (301) 457–1132, or e-mail (joel.morrison@geo.census.gov).

SUPPLEMENTARY INFORMATION: The census tract delineation criteria have evolved over the past nine decades in response to decennial census practices and the preferences of local participants and data users. After each decennial census, the Census Bureau, in consultation with past participants and data users, reviews and revises these criteria. Then, before the next decennial census, the Census Bureau offers state, tribal, and local officials an opportunity to correct, update, and otherwise improve the universe of census tracts.

In July and August 1995, the Census Bureau issued invitations to local groups and agencies to participate in the delineation of statistical geographic areas for Census 2000. These groups and agencies included regional planning agencies, councils of governments, county planning agencies, officials of Federally recognized American Indian tribes, and officials of the 12 nonprofit Alaska Native Regional Corporations.

By early 1998, the Census Bureau will provide maps and detailed guidelines to program participants for the review and delineation of census tracts for Census 2000.

[1] Includes parishes in Louisiana; boroughs and census areas in Alaska; independent cities in Maryland, Missouri, Nevada, and Virginia; that portion of Yellowstone National Park in Montana; districts/islands in American Samoa, the main islands of the Virgin Islands of the United States; municipalities in the Northern Mariana Islands; municipios in Puerto Rico; the entire area constituting the District of Columbia; and the entire area constituting Guam. This notice will refer to all these entities collectively as "counties."

Response to Comments

The Census Bureau issued a Notice of Proposed Program Revisions and Request for Comments in the **Federal Register** (62 FR 4246) on Wednesday, January 29, 1997. That notice solicited comments on the proposed criteria for delineating census tracts for Census 2000. The Census Bureau did not receive any comments in response to that **Federal Register** notice and, therefore, is making no substantive changes to the criteria for this program.

Executive Order 12866

This notice does not meet the criteria for a "significant regulatory action" as specified in Exective Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel, Small Business Administration, that this notice will not have a significant economic impact on a substantial number of small entities. The notice sets forth the criteria for the delineation of census tracts for Census 2000. The criteria will be used to determine boundaries for small-area geographic divisions of a county or other statistically relevant entity defined for the tabulation of census data. The Census Bureau uses census tracts to tabulate and disseminate a wide variety of statistical data from the decennial census. Thus, because the delineation of census tracts is solely for statistical purposes to enable the Census Bureau to tabulate and publish data for Census 2000, it will not have a significant economic impact on a substantial number of small entities.

Final Program Requirements

A. Criteria for Delineating Census Tracts for Census 2000

The Census Bureau announces the following final criteria for use in delineating Census 2000 census tracts.

1. General Characteristics

- A census tract must meet the population and boundary feature criteria and comprise a reasonably compact, continuous land area internally accessible to all points by road; the only exceptions are:

(a) where the tract is defined to include a specific legal or land-use area that itself is discontinuous, in which case discontinuity is allowed at the discretion of the Census Bureau.

(b) where a discontinuous area or inaccessible area would not meet population size requirements for a separate census tract, in which case the discontinuous or inaccessible area must be combined within an adjacent or proximate census tract.

(c) where the topography or geographic patterns of settlement are not compact, but are irregularly shaped, in which case a census tract shape can depart from the compactness requirement.

- A county boundary always must be a census tract boundary. This criterion takes precedence over all other criteria or requirements except for the population threshold criteria for census tracts on American Indian reservations (AIRs) in multiple counties.
- Census tracts must cover the entire land and inland water area of each county. In coastal waters, territorial seas, and the Great Lakes, the Census Bureau recommends creating in each county a single census tract covering such water bodies to provide for complete census tract coverage.

2. Identification

- A census tract has a basic census tract number composed of no more than four digits and may have a two-digit decimal suffix.
- Census tract numbers must be unique within each county.
- The range of acceptable basic census tract numbers for Census 2000 is 1 to 9989; census tracts delineated specifically to complete coverage in territorial seas and the Great Lakes will use the number 0000 in each county.
- Census tracts delineated within or to encompass an AIR that crosses county or state and county boundaries, where the intent is for the census tract to ignore the county or state boundary for tabulation in an American Indian geographic hierarchy, will use numbers 9400 to 9499.
- The range of acceptable census tract suffixes is .01 to .98. The Census Bureau reserves the .99 suffix to identify civilian and military ships as "crews-of-vessels" census tracts.

3. Boundary Features

The Census Bureau recommends that most census tract boundaries follow visible and identifiable features. This makes the location of census tract boundaries less ambiguous. The Census Bureau also permits the use of legal boundaries in some states and situations to allow for census tract-to-governmental unit relationships where the governmental boundaries tend to remain unchanged between censuses. The following features are acceptable as census tract boundaries for Census 2000:

- All state and county boundaries (always required).
- Visible, perennial natural and cultural features, such as roads, rivers, canals, railroads, above-ground high-tension power lines, and so forth.
- All minor civil division (MCD) boundaries (generally towns or townships) in Connecticut, Indiana, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- Those MCD boundaries not coincident with the boundaries of incorporated places that themselves are MCDs (being either coextensive with an MCD or independent of MCDs) in Illinois (townships only, not election precincts), Iowa, Kansas, Michigan, Minnesota, Missouri (governmental townships only), Nebraska (townships only, not election precincts), North Dakota, Ohio, South Dakota, and Wisconsin.
- Barrio, barrio-pueblo, and subbarrio boundaries in Puerto Rico, census subdistrict boundaries in the Virgin Islands of the United States, MCD-county and island boundaries in American Samoa, municipal district boundaries in the Northern Mariana Islands, and election district boundaries in Guam.
- All incorporated place boundaries in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- Conjoint incorporated place boundaries in other states; that is, the boundary separating two different incorporated places.
- American Indian reservation and trust land boundaries.
- Alaska Native village statistical areas and Alaska Native Regional Corporation boundaries, at the discretion of the Census Bureau, insofar as such boundaries are unambiguous for allocating living quarters as part of Census 2000 activities.

When the features listed above are not available for selection, the Census Bureau may, at its discretion, approve other nonstandard visible features, such as ridge lines, pipelines, intermittent streams, fence lines, and so forth. The Census Bureau also may accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially

nonvisible features such as the boundaries of national parks and national forests, cemeteries, or other special land-use properties, the straight-line extensions of visible features, and other lines of sight.

4. Population Thresholds

The Census Bureau proposes the following population criteria for census tracts (see Table 1):

- In the United States, Puerto Rico, and the Virgin Islands of the United States: 1,500 to 8,000 inhabitants, with an optimum of 4,000 inhabitants.
- In American Samoa, Guam, and the Northern Mariana Islands: 1,500 to 8,000 inhabitants, with an optimum of 2,500 inhabitants.
- On American Indian reservations: 1,000 to 8,000 inhabitants, with an optimum of 2,500 inhabitants. (The population criteria for American Indian reservations apply to the entire reservation, including American Indian reservations in multiple counties or states.)
- In all counties, for census tracts delineated to enclose an institution, a military installation, or other "special place" population: at least 1,000 inhabitants, with no optimum average or maximum (no change from 1990). (A special place includes facilities with resident population, such as correctional institutions, military installations, college campuses, workers' dormitories, hospitals, nursing homes, and group homes. A special place includes the entire facility including nonresidential areas and staff housing units, as well as all group quarters population.)

TABLE 1.—POPULATION THRESHOLDS FOR CENSUS 2000 CENSUS TRACTS

Area description	Population thresholds		
	Optimum	Minimum	Maximum
United States, Puerto Rico, Virgin Islands of the U. S.	4,000	1,500	8,000
American Samoa, Guam, Northern Mariana Islands	2,500	1,500	8,000
American Indian reservation	2,500	1,000	8,000
Special place census tract	none	1,000	none

5. Comparability and Implementation

As in previous censuses, the Census Bureau generally will not accept newly proposed census tracts that do not meet the required minimum population. However, with appropriate justification, the Census Bureau may grant exceptions on a case-by-case basis. For example, to facilitate census tract comparability over time, any 1990 census tract or BNA (except a "sliver" census tract/BNA—see 6. Sliver Census Tracts) that is virtually unchanged (that is, having less than five percent of the 1990 population affected by a boundary revision) may be recognized as a Census 2000 census tract even if its population falls below the minimum required population or above the maximum allowable population. The Census Bureau, however, recommends combining low population census tracts and splitting large population census tracts to meet the goal of providing meaningful small-area data.

6. Sliver Census Tracts

The Census Bureau will not retain, or continue to recognize for Census 2000, any 1990 "sliver" census tracts or BNAs. After the Census Bureau inserted the 1990 census tracts into the Topologically Integrated Geographic Encoding and Referencing System (TIGER) database, sliver census tracts resulted from:

- County boundary changes or corrections.
- Special land-use boundary changes or corrections (military reservations, national parks, and so forth).
- Local requests to correct errors in the insertion of 1990 areas into the TIGER database.

Sliver census tracts usually cover a very small area, and in most cases involve little or no population or housing. The Census Bureau has adopted new rules for establishing tabulation geographic areas in Census 2000 by separating the collection areas from the tabulation areas. This change will eliminate the need for such sliver census tracts in Census 2000.

In 1990, the Census Bureau established rules to assign special numerical suffixes to identify sliver census tracts, generally beginning with .98 and continuing in descending order. The Census Bureau applied the suffix to both the original census tract that lost territory and the newly created sliver census tract. For Census 2000, we recommend that local participants dispense with the sliver suffix for legitimate census tracts, but will not require a change if specifically requested by the local participant for comparability purposes.

B. Changes to the Criteria for Census 2000

Most provisions of the census tract criteria remain unchanged from those used in conjunction with the 1990 census, with the few exceptions summarized below:

1. The Census Bureau is combining the census tract and BNA programs to create a single census tract program. The major differences between the 1990 census tracts and BNAs were: (1) representatives of the states or Census Bureau staff were responsible for the delineation of BNAs rather than local census statistical areas committees, and (2) census tracts were delineated mainly according to population criteria, while BNAs were delineated to meet data collection criteria based on the number of housing units rather than population. For Census 2000, the Census Bureau will contact local officials for the delineation of census tracts, and there will not be a housing unit criterion, thus bringing both areas under a single standard.

2. The Census Bureau is increasing the number of governmental units that have boundaries acceptable to use as census tract boundaries. The added areas are: all MCDs in Indiana and selected MCDs in Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin; the MCD-county and island areas of American Samoa; and villages in New York.

3. The Census Bureau now allows officials of Federally recognized American Indian reservations meeting the 1,000 minimum population threshold to delineate census tracts without regard to state or county boundaries. Although the Census Bureau will tabulate data for each state-county-census tract part, it also plans to provide summed data for all components of each census tract bearing the same numeric identifier within a Federally recognized AIR.

4. The Census Bureau will use census tracts only as tabulation areas, thus allowing late corrections to census tract boundaries as a result of legal county boundary changes or to correct errors without having to create unique sliver census tracts for such areas.

Definitions of Key Terms

Alaska Native Regional Corporation (ANRC)—A corporate entity established under the Alaska Native Claims Settlement Act of 1972, Public Law 92–203, as amended by Public Law 92–204, to conduct both the business and nonprofit affairs of Alaska Natives. Twelve ANRCs cover the entire State of Alaska except for the Annette Islands Reserve.

Alaska Native village statistical area (ANVSA)—A statistical entity containing the densely settled extent of an Alaska Native village that constitutes an association, band, clan, community, group, tribe, or village recognized pursuant to the Alaska Native Claims Settlement Act of 1972, Public Law 92–203, as amended by Public Law 92–204.

American Indian reservation (AIR)—A Federally recognized American Indian entity with boundaries established by treaty, statute, and/or executive or court order and over which American Indians have governmental jurisdiction. Along with reservations, designations such as colonies, communities, pueblos, rancherias, and reserves apply to American Indian reservations.

Block numbering area (BNA)—A small-area, statistical geographic division of a county or statistically equivalent area delineated in 1990 instead of and generally geographically equivalent to census tracts. For Census 2000, the Census Bureau is merging the BNA program into the census tract program.

Coastal water—Water bodies between territorial seas and inland water, the encompassing headlands being more than one mile apart and less than 24 miles apart.

Conjoint—A description of a boundary shared by two adjacent geographic entities.

Continuous—A description of areas sharing common boundaries, such that the areas, when combined, form a single piece of territory. Discontinuous areas form disjoint pieces.

Crews-of-vessels census tract—A census tract created at the time of enumeration for allocating the shipboard population of merchant and military ships and identified with a special numeric suffix equal to .99.

Great Lakes' waters—Water area beyond one mile wide headland embayments located in any of the five Great Lakes: Erie, Huron, Michigan, Ontario, or Superior.

Incorporated place—A type of governmental unit, sanctioned by state law as a city, town (except in New England, New York, and Wisconsin), village, or borough (except in Alaska and New York), having legally prescribed limits, powers, and functions.

Inland water—Water bodies entirely surrounded by land or at the point where their opening to coastal waters, territorial seas, or the Great Lakes is less than one mile across.

Minor civil division (MCD)—The primary governmental or administrative division of a county in 28 states, Puerto Rico and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground such as a city or county boundary through space, a property line, a short line-of-sight extension of a road, or a point-to-point line of sight.

Special place—A specific location requiring special enumeration because the location includes people not in households or the area includes special land use. Special places include facilities with resident populations, such as correctional institutions, military installations, college campuses, workers' dormitories, hospitals, nursing homes, group homes, and land-use areas such as national parks. A special place includes the entire facility, including nonresidential areas and staff housing units, as well as all group quarters population.

Territorial seas—Water bodies not included under the rules for inland water, coastal water, or Great Lakes' waters, see above.

Visible feature—A map feature that one can see on the ground such as a road, railroad track, above-ground transmission line, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features pose no problem in their location during field work.

Dated: October 10, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–28430 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/21/97–09/17/97

Firm name	Address	Date petition accepted	Product
Stanwood Mills, Inc	P.O. Box 195, Fairview Avenue, Slatington, PA 18080.	09/30/97	Greige Goods (Unbleached Fabric of Acetate, Rayon and Polyester).
G.L. Industries of Indiana, Inc	2860 North National Road, Columbus, IN 47201.	09/30/97	Injection Molded Plastic Television Cabinets.
Quality Capabilities, Inc	15251 Roosevelt Blvd, Suite 207, Clearwater, FL 34620.	10/03/97	Printed Circuit Assemblies.
Colt Technology Corporation	800 NW Technology Dr., Lees Summit, MO 64086.	10/03/97	Printed Circuit Boards without any Electronic Components Attached.
American Wilcon Plastics, Inc	418 North Front Street, Orrick, MO 64077.	10/03/97	Plastic Injection Molded Kitchen Wares and Other Misc. Plastic Molded Parts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/21/97–09/17/97—Continued

Firm name	Address	Date petition accepted	Product
Bethel Furniture Stock, Inc	515 West Bethel Road, Bethel, ME 04217.	10/03/97	Wood Furniture Panels and Bends.
R.S. Owens & Co., Inc	5535 North Lynch Avenue, Chicago, IL 60630.	10/03/97	Award Items (Trophies, Plaques, Figures/Statuettes, Cups/Bowls, Medals/Pins and Related Components).
Christina J. Manufacturing, Inc	85 Tenth Avenue, New York, NY 10011.	10/10/97	Women's Sportswear Including Dresses, Blouses, Suits and Jackets.
American Louvered Products Co.	4910 W. Knollwood Street, Tampa, FL 33634.	10/10/97	Wooden Louvered Interior Doors.
Missouri Table and Chair Company.	2055 NE Independence, Lee's Sumit, MO 64064.	10/10/97	Wooden Furniture (Kitchen Dining Tables, Chairs, Computer Desks, and End Tables).
Cambord, Inc	38 Jackson Street, Hoboken, NJ 07030.	10/17/97	Wallpaper Silk Screened By Hand.
Joey Oysters, Inc	P.O. Box 904, Amite, LA 70422.	10/17/97	Fresh Shucked Oysters.
Apparel Technologies, Inc	2330 South Eastern Avenue, Commerce, CA 90040.	10/17/97	Women's Apparel (Skirts, Pants, Tops and Jackets), and Store Display Fixtures.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business on the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 21, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–28478 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel Plate From Finland: Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final determination of sales at less than fair value.

EFFECTIVE DATE: October 28, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel Manzoni or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1121 or (202) 482–4136, respectively.

SUMMARY: On May 13, 1997, the Court of International Trade affirmed the Department of Commerce's final remand results in Rautaruukki Oy v. United States, Consol. Court No. 93–09–00560–AD, arising out of the Department's final determination of sales at less than fair value in the antidumping investigation of certain cut-to-length carbon steel plate from Finland. As there is now a final and conclusive court decision in this action, we are amending our final determination of sales at less than fair value and we will instruct the U.S. Customs Service to change the appropriate cash deposit rate.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department of Commerce (the Department) published its final determination in its investigation of sales at less than fair value (LTFV) of certain cut-to-length carbon steel plate from Finland (58 FR 37122). On August 19, 1993, the Department published an amended final determination (58 FR 44165).

Subsequently, respondent Rautauruukki Oy and petitioner Inland Steel Industries, Inc, and a number of other interested parties, filed lawsuits with the Court of International Trade (the Court) challenging the final determination. On March 31, 1995, the Court remanded the case to the Department and ordered the Department to recalculate the value added tax (VAT) according to the Department's new methodology. *See* Rautaruukki Oy v. United States, Slip Op. 95–56, (CIT, March 31, 1995). Specifically, the Court ordered that the Department revise its dumping margin calculation by multiplying the Finnish VAT rate by United States price (USP) and then increasing USP by the resulting amount.

On remand, in accordance with Federal-Mogul Corp. and The Torrington Co. v. United States, Slip Op. 93–194 (CIT, October 7, 1993), the Department recalculated the margins in this case by applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

On May 13, 1997, the Court affirmed the final remand results. *See* Rautaruukki Oy v. United States, Slip Op. 97–56 (CIT, May 13, 1997). As there is now a final and conclusive court decision in this action we are amending our final determination, and we will subsequently instruct the U.S. Customs Service to change the appropriate cash deposit requirements entries subject to this investigation.

Amendment to Final Determination

Pursuant to 516A(e) of the Tariff Act of 1930, as amended, (the Act) we are now amending the final results of this investigation of certain cut-to-length carbon steel plate from Finland.

The recalculated weighted-average margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Rautaruukki Oy	40.36
All Others	40.36

In August 1993, the U.S. International Trade Commission (the Commission) determined that imports of certain cut-to-length carbon steel plate from Finland materially injure a U.S. industry. As a consequence of the Commission's affirmative determination, these products were subject to an antidumping duty order. Since publication of the LTFV final determination and order, the Department has completed, pursuant to Section 751 of the Act, first and second administrative reviews of the antidumping order. As a result, this amended final determination does not necessitate a change in cash deposit rates nor liquidation of the subject merchandise as the order relates to Rautaruukki Oy. However, the Department will instruct the U.S. Customs Service to change the appropriate cash deposit requirements to 40.36 percent of the entered value of the subject merchandise for all other producers/exporters.

Dated: October 22, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28542 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 84–8A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters ("NFE") on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 [15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093); and November 4, 1996 (61 FR 57850, November 8, 1996).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; J.C. Watson Company, Parma, Idaho; Jenks Bros. Cold Storage, Inc., Royal City, Washington; Monson Fruit Co., Selah, Washington; Poirier Packing & Warehouse, Pateros, Washington; and Williamson Orchards, Caldwell, Idaho;

2. Delete the following companies as a "Members" of the Certificate: Dole Northwest, Wenatchee, Washington; and Sands Orchards, Inc., Emmett, Idaho; and

3. Change the listing of the company names for the current Members "Roche Fruit Company, Inc." to the new listing "Roche Fruit, Ltd.; and "Stadelman Fruit, Inc." to "Stadelman Fruit, L.L.C.".

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: October 22, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–28547 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Vessel Monitoring and Communications Requirements

ACTION: Proposed collection; Comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 29, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert B. Gorrell, F/SF3—Rm. 14603, 1315 East-West Highway, Silver Spring, Maryland 20910 (phone: 301–713–2343).

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a generic collection of information that includes regulatory requirements for vessel monitoring and communication under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing vessels and/or at-sea processing vessels in selected fisheries are required to have installed transponders/vessel

tracking systems or Inmarsat Communication Units for onboard communications with the National Marine Fisheries Service. The primary purpose of such equipment is to communicate the vessel's location or, in the case of Inmarsat Communication Units, communicate harvest information collected by observers aboard the vessel. The installation time of the monitoring and/or communication equipment is measured as well as the estimated transmission times for communication.

II. Method of Collection

Real-time vessel location information is collected by querying the transponders and vessel monitoring system units on board the fishing vessels and/or at-sea processing vessels. This method of collection obviates the need for a more costly and problematic requirement that vessel operators report vessel location. Other information on harvest is electronically communicated by NMFS observers on-board fishing vessels. Net-sounder devices are also used to collect data on certain trawl gear.

III. Data

OMB Number: 0648–0307.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Owners and operators of fishing vessels and at-sea processing vessels.
Estimated Number of Respondents: 861 (150 multispecies vessels, 250 scallop vessels, 190 groundfish at-sea processing vessels, 100 groundfish trawlers around Kodiak, 165 pelagics vessels, and 6 crustaceans vessels)
Estimated Time Per Response: This varies with type of equipment and requirement. Upon installation, vessel monitoring or transponder systems automatically transmit date, which takes about 5 seconds. For requirements to transmit data on Inmarsat communications units, transmissions take about 10 minutes.
Estimated Total Annual Burden Hours: 9,642.
Estimated Total Annual Cost to Public: $1,408,696. Costs for these different monitoring and communication systems vary; some impose no direct costs on the vessel owners or operators.

Direct costs (actual or projected) to vessel owners or operators of VTS in the Atlantic Sea Scallop Fishery and in the Northeast Multispecies Fishery are, on average: (1) $7,000 per initial purchase and installation of transceiver/terminal and antenna; (2) $120 for basic monthly communications and messaging costs; and (3) $2,000 per year for repairs and maintenance (assuming antenna or other problems). Out of the 150 multispecies vessels and 250 scallop vessels potentially subject to VTS requirements under existing regulations, an estimated 5 multispecies vessels and 125 scallop vessels already have VTS installed. Therefore, annual installation costs would be $630,000 ($7,000 times 270 vessels annualized over the 3-year period of this information collection), annual communications and messaging costs would be $576,000 ($1,440 times 400 vessels), and annual repair and maintenance costs could be $160,000 ($2,000 times 20 percent of the 400 vessels). These costs total $1,366,000 annually. A requirement for VTS in the scallop and multispecies fisheries has been proposed, but is not mandatory at present.

Direct costs to industry for communication equipment for electronic reporting by observers in the Alaska Groundfish Fisheries are: (1) $30,000 per initial purchase and installation of INMARSAT Standard A units; and (2) $5,000 per initial purchase and installation of INMARSAT Standard C units. All but 12 of the approximately 190 at-sea processing vessels, affected by the requirement for electronic communication equipment to facilitate reporting of fisheries data by observers, are believed to have installed the required equipment. Annual installation costs would be $36,666 ($30,000 times 2 vessels installing Standard A units and $5,000 times 10 vessels installing Standard C units annualized over the 3-year period of this information collection). Costs of net-sounder devices on 100 groundfish trawlers around Kodiak Island are not included here because NMFS does not actually require their use although still in the regulations.

There are no direct costs to owners or operators of the 165 vessels in the Pelagic Fisheries of the Western Pacific because NMFS owns, installs, repairs, and maintains the VMS units. NMFS operation also includes the messaging costs.

Of the 15 permitted vessels in the limited entry Crustacean Fisheries of the Western Pacific Region, 9 also fish in the pelagic fishery and already carry VMS units. The owners or operators of the additional possible 6 lobster vessels would incur a direct cost of about $2,500 each for initial purchase of VMS units. Installation cost for each unit would be about $200. Therefore, annual purchase and installation costs would be $5,400 ($2,700 times 6 vessels annualized over the 3-year period of this information collection). Annual messaging costs would be about $270 for the fleet of 15 vessels (15 vessels times 30 days times 4 messages per day times $0.15 per message—assumes a 30-day season). Annual repair and maintenance costs for the 6 vessels is estimated at $360 ($60 times 6 vessels). These costs total $6,030 annually.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 23, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–28494 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101497E]

Protection of California Salmonids; Public Meeting and Availability of Draft Memorandum Of Understanding (MOU) Between the National Marine Fisheries Service and the State of California for Review and Comment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and request for comments on draft MOU.

SUMMARY: NMFS, Southwest Region, in cooperation with the California Resources Agency, intends to hold a public meeting for the purpose of soliciting public input on development of a MOU between NMFS and the State of California (State). The purpose of the MOU is to seek an agreement with the State on a process that addresses the conservation of California's salmonids. This agreement will define NMFS' relationship to the Governor's Watershed Restoration and Protection Council (WRPC).

DATES: The meeting date is November 12, 1997, 1:00–4:00 p.m. and 6:00–9:00 p.m. Written comments on the draft MOU must be received by November 28, 1997, to be considered during preparation of the final MOU.

ADDRESSES: Both meetings will be held at the State of California Building, Room 410–B, 50 D Street, Santa Rosa, CA. Requests for a copy of the draft MOU should be addressed to Chief, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA, 90802–4213; or Supervisor, Northern California Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA, 95404. Copies of the draft MOU may also be obtained by phone (see **FOR FURTHER INFORMATION CONTACT**). Written comments regarding the draft MOU should be directed to the same addresses.

FOR FURTHER INFORMATION CONTACT: Jim Lecky at (562) 980–4020, or Patrick Rutten at (707) 575–6059.

SUPPLEMENTARY INFORMATION:

Background

The following information is furnished to provide a synopsis of NMFS' salmon and steelhead listing actions and critical habitat designation in California. This information frames the complexity and need for a Federal-State cooperative approach to salmonid management in California.

A. Coho Salmon

1. Central California coho Evolutionarily Significant Unit (ESU) listed as threatened on October 31, 1996 (61 FR 56138).

2. Southern Oregon/Northern California (SONC) coho listed as threatened on May 6, 1997 (62 FR 24588).

3. Endangered Species Act (ESA) 4(d) interim rule that applied the section 9 take prohibitions, with certain exceptions, to the SONC coho ESU was published by NMFS on July 18, 1997 (62 FR 38479), and became effective on August 18, 1997. The 60-day comment period on the interim final rule ended on September 16, 1997. NMFS will review all comments and publish a final rule in the **Federal Register** in the next 90 days.

4. NMFS is developing a proposed rule to designate critical habitat for the Central California and SONC coho salmon ESUs. The proposed rule is expected to publish in the **Federal Register** within the next 30 days.

B. Steelhead

1. On August 18, 1997 (62 FR 4393), NMFS listed the Southern California steelhead ESU as endangered and the Central California and South-Central California steelhead ESUs as threatened.

2. Section 9 take prohibitions were automatically applied to the endangered Southern California ESU at the time of listing.

3. NMFS is developing an ESA 4(d) interim rule that will apply the section 9 take prohibitions, with certain exceptions, to the Central California and South-Central California ESUs. An interim final rule is expected to publish in the **Federal Register** in the next 60 days.

4. At the time of the steelhead listing, NMFS announced that it was delaying its proposal for designating critical habitat. NMFS expects to designate critical habitat for these ESUs within the 1-year period allowed for in the ESA.

5. On August 18, 1997 (62 FR 43974), NMFS delayed its decision to list Central Valley, Northern California, and Klamath Mountains Province steelhead ESUs for 6 months. Accordingly, NMFS expects to publish in the **Federal Register** a final listing decision for these ESUs by February 18, 1998. If any of these steelhead ESUs are listed as threatened, NMFS will promulgate appropriate ESA 4(d) interim rules to apply the section 9 take prohibitions.

C. Chinook Salmon

1. NMFS is continuing work on its status review for West Coast chinook salmon.

2. In early 1997, NMFS provided copies of a draft status review for West Coast chinook to peer reviewers and its co-managers in California (i.e., California Department of Fish and Game, Indian tribes, and U.S. Fish and Wildlife Service) for review and comment. NMFS is reviewing these comments and gathering updated information for the status review.

3. NMFS expects to publish in the **Federal Register** a listing proposed rule for West Coast chinook salmon in early 1998.

Watershed Restoration and Protection Council

The State, by Executive Order W–159–97, has established the WRPC to be responsible and provide oversight of State activities aimed at watershed protection and enhancement, including conservation and restoration of anadromous salmonids in California. The WRPC will be composed of State Secretaries and Chairs of Commissions, or Boards. The WRPC also establishes a Working Group whose members are Directors of State Agencies and Executive Officer's of Regional Water Quality Control Boards. An Executive Director of the WRPC will also be appointed and will be responsible for the coordination of the WRPC and Working Group.

NMFS in cooperation with the California Resources Agency is exploring entering into a MOU that will develop a process and mechanism, through the WRPC, that results in a State plan for the protection of the State's salmonid population. Completion and implementation of this State plan through the WRPC, in consultation with NMFS, will be the basis by which NMFS initiates a rulemaking action (pursuant to its authority under section 4(d) of the ESA) to adopt the State of California's plan or plans as equivalent to habitat conservation plans provided that NMFS determines that the plans are consistent with the requirements of the Federal ESA for issuing incidental take permits to non-Federal parties (section 10 of the ESA).

Public Comments Solicited

The meeting will focus on the latest draft MOU provided to NMFS by the State of California. Participants are reminded that this is only a draft and that NMFS intends that the final MOU will take advantage of the information and recommendations from all interested parties. Therefore, comments and suggestions are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with these draft guidelines.

Dated: October 22, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28441 Filed 10-27-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102097B]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of advisory group meetings scheduled in November, 1997.

SUMMARY: The North Pacific Fishery Management Council's (Council) Vessel Bycatch Accountability (VBA) Committee and Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams will hold meetings in November in Seattle, WA.

DATES: The VBA Committee will meet Friday, November 14, 1997, beginning at 8:00 a.m.

The groundfish plan teams will meet November 17–21, 1997, beginning at 1:00 p.m. on Monday, November 17.

ADDRESSES: VBA Committee: Nordby Conference Center, Suite A, Fishermen's Terminal, 1711 W. Nickerson, Seattle, WA.

Plan teams: Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Room 2079, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Dave Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The VBA Committee will further define options of a vessel bycatch accountability program, with emphasis on initial and annual allocations.

2. The groundfish plan teams will review any new stock assessment information and catch statistics, prepare final stock assessment documents for the 1998 groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands, and prepare recommendations for acceptable biological catches for individual species. The teams will also discuss streamlining the process of setting annual total allowable catches and review research needs and priorities.

Although other issues not contained in this agenda may come before the Committee or Plan Teams for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meetings. Committee or Plan Team action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: October 21, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28443 Filed 10-27-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101597C]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) and its committees will hold public meetings in Honolulu, HI. Prior to the Council meeting, the Council's Scientific and Statistical Committee (SSC) will hold its 67th meeting.

DATES: The meetings will be held on November 10–14, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The SSC meeting will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220. The 94th Council meeting will be held at the Ala Moana Hotel, 410 Atkinson Dr., Garden Lanai and Hibiscus Ballroom, Honolulu, HI; telephone: (808) 955–4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC meeting will be held on November 10–11, 1997, from 8:00 a.m. to 5:00 p.m., each day. The Council's Standing Committees will meet on November 12, 1997, as follows:

7:30 a.m. to 9:00 a.m.—Enforcement
8:00 a.m. to 10:00 a.m.—Crustaceans
9:00 a.m. to 10:30 a.m.—Vessel Monitoring System (VMS)
10:30 a.m. to 12:30 p.m.—Pelagics and Bottomfish
1:30 p.m. to 3:00 p.m.—Indigenous Fishing Rights and Ecosystem & Habitat
3:00 p.m. to 5:00 p.m.—Precious Corals and Executive/Budget & Programing

The full Council will meet on November 13–14, 1997, from 9:00 a.m. to 5:00 p.m., each day.

The SSC and Council will discuss and take final action on an amendment to establish a framework process for future management of precious corals (including public hearings). This will also be the first meeting under the framework procedure for pelagic fishery management changes for the American Samoa longline fishery regarding closed areas and a limited access program.

Other agenda items that the Council will discuss and may take action on include:

1. Pelagic fishery issues, including a) status of longline fisheries in Hawaii and American Samoa, b) international meetings addressing the management arrangements for highly migratory species, and c) protected species interaction/incidental take issues (turtles, sharks, albatross).

2. Bottomfish fishery issues, including a) status of the State's management plan focusing on monitoring and enforcement components, for overfished Main Hawaiian Islands (MHI) onaga and ehu, b) consideration of the Federal management alternatives for the recovery of overfished MHI onaga and ehu including a draft plan amendment, c) draft amendment for the limited access program for the Mau Zone in the Northwestern Hawaiian Islands (NWHI) including a public hearing, and d) update on armorhead fishery in the NWHI;

3. Crustacean fishery issues, including regulatory adjustments for 1998, such as allowing VMS carrying vessels to return directly back to port via the permit subzone, adding the month of May to the closed season of the main Hawaiian Islands lobster fishery within Federal waters, allowing vessels to temporarily leave fishing gear on the banks, opening the season one month earlier on 1 June, creating separate species and fishing bank quotas, providing fishermen with at least 24 hours notice before the close of the fishery, and announcing the harvest guideline 90 days after season closure;

4. Ecosystem and habitat issues, including a) consider the need for a coral reef fishery management plan, b) Essential Fish Habitat amendment and National Environmental Policy Act requirements, and c) Commonwealth of the Northern Mariana Islands Farallon de Mendinilla bombing issue;

5. Precious coral issues, including a) status of the fisheries, and b) consistency between state and Federal regulations;

6. Native rights and indigenous fishing issues, including the status of Demonstration Projects and Community Development Programs;

7. Enforcement and VMS issues, including a) reports from the U.S. Coast Guard and NMFS Enforcement, b) status of violations, and c) possible changes to the Council's VMS policy;

8. Program planning and administrative issues, including a) Council milestones for 2000–2003, b) Standard Operating Practices and Procedure revision, c) election of officers, and d) meetings and workshops; and

9. Other business as required.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to meeting date.

Dated: October 21, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28442 Filed 10-27-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[102197B]

Marine Mammals; Permit No. 837 (P77–1#67)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 837 submitted by The National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

SUPPLEMENTARY INFORMATION: On September 12, 1997, notice was published in the **Federal Register** (62 FR 48062) that an amendment of permit no. 837, issued June 4, 1993 (58 FR 33085), had been requested by the above-named organization. The original permit authorized studies on northern fur seals (*Callorhinus ursinus*) over a five-year period on rookeries in the Bering Sea and eastern North Pacific Ocean. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit was amended to authorize the following increased takings of northern fur seals (*Callorhinus ursinus*): To collect biopsy samples from 30 additional females on St. Paul and 30 additional females on St. George Islands. The total number of females to be biopsy sampled on both St. Paul and St. George will increase to 180 (90 on each island).

Dated: October 20, 1997.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28439 Filed 10-27-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.092697B]

Marine Mammals; Scientific Research Permit No. 1016 (P167H)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Ann E. Bowles, Ph.D., Senior Research Biologist, Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, California 92109, has requested an amendment to Permit No. 1016.

DATES: Written comments must be received on or before November 27, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1016 authorizes the permittee to harass several species of stranded rehabilitated and permanently captive pinnipeds and small cetaceans in order to measure their interaction with fishing gear and to determine the effect of introducing an auditory stimulus (i.e., pinger) on responses. The research is authorized to be conducted over a five year period. The permittee is now requesting to: add 2 pinger trials and 2 net trials with 14 of the 18 California sea lions (*Zalophus californianus*) currently authorized to be involved in motivational state trials; and increase the number of California sea lions to be used in the naive trials from 30 to 40.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 26, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28444 Filed 10-27-97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import limits.

EFFECTIVE DATE: October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64507, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on October 30, 1997, you are directed to adjust the current limits for the following categories, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	727,157 dozen.
338/339	2,208,953 dozen.
638/639	2,535,437 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [2], 360, 362, 363, 369–O [3], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [4], 665, 666, 669–O [5], 670–O [6], 831–846 and 850–859, as a group.	171,119,294 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[4] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[5] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[6] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–28501 Filed 10–27–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0134]

Proposed Collection; Comment Request Entitled Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Environmentally Sound Products. The clearance currently expires on February 28, 1998.

DATES: Comments may be submitted on or before December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0134, Environmentally Sound Products, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are (1) cement and concrete containing fly ash, (2) paper and paper products, (3) lubricating oil containing re-refined oil, (4) retread tires, and (5) building insulation products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. There are presently no known agency designated items.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *64,350*; responses per respondent, *1*; total annual responses, *64,350*; preparation hours per response, *.5*; and total response burden hours, *32,175*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: October 20, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–28479 Filed 10–27–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 10, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 29, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used

in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 22, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education.

Type of Review: Extension.
Title: Performance Report for State-Administered Vocational Technical Education Programs
Abstract: This report will identify students served in the state vocational-technical system with emphasis on special populations, indicate those states in need of technical assistance to improve services to those students, and provide trend data to demonstrate the effectiveness of vocational-technical education in meeting the needs of youth and adults.
Additional Information: This information request represents an extension of a collection previously approved by OMB . It is being submitted at this time because as recently as August of this year we had been anticipating the passage of new legislation for vocational-technical education and had been crafting new directions for States to follow that would be oriented toward the accountability requirements of the new law as well as the requirements of the Results Act. The House Representatives passed its version of new legislation in June and the Senate was anticipating action by early September. It now appears that enactment of a new Federal law for vocational-technical education will not occur until 1998 and will likely have an implementation date of July 1999.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 53.
Burden Hours: 2,756.

[FR Doc. 97–28468 Filed 10–27–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.
ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/EU(CA)–14 for the transfer of 15,000 grams of enriched uranium fuel fabrication scrap, containing 2,962.5 grams of the isotope U^{235} (less than 20 percent enrichment) from AECL in Chalk River, Canada, to UKAEA in Dounreay, United Kingdom, for the purpose of recovering uranium for return to Canada in the form of uranium metal pieces to be used in the fabrication of NRU reactor fuel.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: October 22, 1997.
For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–28509 Filed 10–27–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.
ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/EU(CA)–15 for the transfer of 25,000 grams of enriched uranium fuel fabrication scrap, containing 23,280 grams of the isotope U–235 (93.15 percent enrichment) from AECL in Chalk River, Canada, to UKAEA in Dounreay, United Kingdom, for the purpose of recovering high enriched uranium for return to Canada within a twelve month period for use as target material for the production of Molybdenum 99.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: October 22, 1997.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–28510 Filed 10–27–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

American Statistical Association Committee on Energy Statistics; Notice of Open Meeting

AGENCY: Department of Energy.
SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:
NAME: American Statistical Association Committee on Energy Statistics.
DATES AND TIMES: Thursday, November 13, 9:00 am–5:00 pm. Friday, November 14, 9:00 am–12:00 noon.
ADDRESSES: Holiday Inn-Capitol, 550 C Street, S.W., Washington, DC.
FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–70, Washington, DC 20585, Telephone: (202) 426–1101.
SUPPLEMENTARY INFORMATION:

Purpose of Committee

To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, November 13, 1997

A. Opening Remarks
B. Major Topics
1. Electricity Today: A Briefing
2. Electricity Prices in a Competative Environment
3. Petroleum Marketing Disclosure Avoidance Techniques
4. Electricity Auctions Under the Concept of "Open Transmission Access" *
5. A Prototype Network Model of the New England Power Pool
6. Public Comment

* To be conducted in the Forrestal Building at 1000 Independence Ave., S.W., Washington, D.C., Room GI–034(A).

Friday, November 14, 1997

1. Use of Covariates to Improve Efficiency of Estimation
2. Estimated Supply Functions on International Crude Oil for 41 Countries: A Model
3. Public Comment
4. Closing Comments by the Chairperson

Public Participation

The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes and Transcripts

Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on October 22, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28507 Filed 10–27–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.
DATES: Saturday, November 15, 1997—8:30 a.m.–12 p.m.; (public comment session: 11:45 a.m.–12 p.m.)
ADDRESSES: Alpha Building, 10967 Hamilton-Cleves Highway, Harrison, Ohio.
FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, PO Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.
SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:40—Opening Remarks
8:40–9:00—Committee Reports
9:00–9:15—Review of Site Tour
9:15–10:15—Prioritization and Long-Term Planning
10:15–10:30—Break
10:30–11:45—Overhead Cost Reduction
11:45–12:00—Opportunity for Public Input
12:00 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, November 15, 1997.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, PO Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on October 22, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28505 Filed 10–27–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.
DATES: Thursday, November 20, 1997: 6:00 p.m.–9:00 p.m.
ADDRESSES: Heath High School (cafeteria), 4330 Metropolis Lake Road, West Paducah, Kentucky.
FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.
SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.
Tentative Agenda: The meeting will include updates on the Environmental Management and Enrichment Facilities Project, Waste Management, and Effective & Meaningful Public Input reports; administrative plans; and an Environmental Management Evaluation Ranking Matrix. It will also include a drum update; a review of the SSAB Draft Work Plan; a media contact discussion; and an update on Waste Area Grouping 22.
Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals

who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on October 22, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28506 Filed 10–27–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document FR 97–27285 beginning on page 53606 in the issue of Wednesday, October 15, 1997, make the following correction:

On page 53606 in the third column, the DATE of the meeting was incorrectly listed as October 5, 1997. This should be changed to read November 5, 1997.

Issued at Washington, DC on October 22, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–28508 Filed 10–27–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4410–000]

Detroit Edison Company; Notice of Filing

October 16, 1997.

Take notice that on September 24, 1997, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28538 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–000]

Iroquois Gas Transmission System L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1997.

Take notice that on October 17, 1997, Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, with an effective date of November 16, 1997.

Iroquois states that the primary purpose of filing these sheets is to revise Iroquois' tariff to permit Iroquois and shippers receiving service under its RTS and ITS Rate Schedule to agree to negotiated rates for its transportation services. This program is designed to be consistent with the Commission's Statement of Policy, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶61,076 (1996). In addition, Iroquois states that it has made several other minor tariff changes to correct typos or other errors, to update its Service Request Form, and to add a new Blanket Capacity Release Form and Blanket Capacity Release Fact Sheet.

Iroquois states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28464 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG96–13–005]

K N Interstate Gas Transmission Company; Notice of Filing

October 22, 1997.

Take notice that on October 14, 1997, K N Interstate Gas Transmission Company (KNI) submitted revised standards of conduct in response to the Commission's August 6, 1997, order.[1]

KNI states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[1] 80 FERC ¶ 61,212 (1997).

Lois D. Cashell,

Secretary.

[FR Doc. 97–28460 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG96–14–002]

K N Wattenberg Transmission Limited Liability Company; Notice of Filing

October 22, 1997.

Take notice that on October 14, 1997, K N Wattenberg Limited Liability Company (KNW) submitted revised standards of conduct in response to the Commission's September 15, 1997, order.[1]

KNW states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28461 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 80 FERC ¶ 61,291 (1997).

DEPARTMENT OF ENERGY

[Docket No. ER97–4798–000]

Maine Public Service Company; Notice of Filing

October 22, 1997.

Take notice that on September 30, 1997, Maine Public Service Company filed an executed Service Agreement with PacifiCorp Marketing, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28458 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–3–001]

MidAmericna Energy Company (formerly Midwest Power Systems Inc.; Order Granting Intervention and Denying Rehearing

Issued October 22, 1997.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

On June 13, 1997, Southern Company Services, Inc. (Southern)[1] filed a motion to intervene out of time and a request for rehearing of the Commission's order issued May 15, 1997. *MidAmerican Energy Company (formerly Midwest Power Systems, Inc.)*, 79 FERC ¶ 61,169 (1997) (May 15 order). For the reasons stated below, we will grant the motion to intervene and deny the rehearing request.

Background

In the May 15 order, the Commission: (a) dismissed as moot a request by Midwest Power, a division of Midwest Power Systems Inc. (Midwest Power or Applicant),[2] for a declaratory order authorizing it to reduce its annual composite rate of depreciation for accounting purposes;[3] and (b) clarified its order, issued April 19, 1994, in *Midwest Power Systems Inc.*, 67 FERC ¶ 61,076 (1994) (*Midwest Power*), which noted that section 302(a) of the FPA, 16 U.S.C. § 825a(a) (1994), requires that public utilities and licensees filed for Commission approval of proposed depreciation rate changes for accounting purposes. The Commission noted that, notwithstanding the clear language of section 302(a), there apparently was some confusion in the industry as to what should be done. Accordingly, the Commission did not require public utilities and licensees to file for formal approval of depreciation rate changes for accounting purposes where the depreciation rate changes were based on sound depreciation accounting practices and implemented prior to April 19, 1994. For changes in depreciation rates for accounting purposes implemented on or after April 19, 1994, and prior to the date of publication of the May 15 order in the **Federal Register**,[4] the Commission accorded public utilities and licensees an amnesty period extending to and including December 31, 1997, to make filings to change their depreciation rates for accounting purposes.[5]

Southern's Rehearing Request

Southern has moved to intervene out of time in order to seek rehearing of the

[1] Southern states that it is acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Southern Companies).

[2] By order issued June 22, 1995, the Commission authorized the merger of Midwest Power and Iowa-Illinois Gas and Electric Company. MidAmerican Energy Company is the surviving corporation. *See* Midwest Power Systems, Inc. and Iowa-Illinois Gas and Electric Company, 71 FERC ¶ 61,386 (1995).

[3] Midwest Power did not make this proposal in the context of a ratemaking proceeding under sections 205 or 206 of the Federal Power Act (FPA). 16 U.S.C. §§ 824d, e (1994). Accordingly, this order addresses only changes in depreciation rates for accounting purposes, and not recovery of depreciation-related expenses in, or changes in, electric rates and charges. Likewise, this order does not address requests to change depreciation rates that are made as part of proposals to change electric rates and charges under sections 205 or 206 of the FPA.

[4] The order was published in the Federal Register on May 22, 1997.

[5] The Commission also clarified that requests for depreciation rate changes for accounting purposes may be made under Rule 204 of the commission's Rules of Practice and Procedure, 18 CFR § 385.204 (1996), which does not require payment of a filing fee.

May 15 order. Southern argues that section 302 is an enabling statute and is not self-executing. Thus, Southern maintains, section 302 does not require public utilities and licensees to seek Commission authorization. Rather, while section 302 authorizes the Commission to fix depreciation rates, the Commission may do so only if the Commission first holds a hearing and provides prior notice to the affected state commissions.

Southern argues that there is no evidence in the legislative history that congress intended section 302 to impose an affirmative obligation on public utilities and licensees to obtain formal pre-approval of depreciation rates; rather, the Commission must comply with the preconditions of section 302(b) (*i.e.*, to receive and consider the views of state commissions before prescribing any rules or requirements as to depreciation rates).

Southern next argues that the Commission has never interpreted section 302 to impose an affirmative obligation on public utilities and licensees to secure formal Commission pre-approval for all depreciation rate changes, but has either avoided the issue, citing *Arkansas Power & Light Co.*, 8 FPC 106 (1949) (*AP&L*),[8] or held that section 205 of the FPA could be used as the procedural vehicle to set depreciation rates, citing *Carolina Power & Light Co.*, 55 FPC 817 (1976) (*CP&L*).[7] Southern adds that there is little judicial precedent regarding interpretation of section 302.[8] Southern argues that because the May 15 order departs from past precedent without a reasoned explanation, it is arbitrary and capricious.[9]

Southern claims that the Commission violated the Administrative Procedure Act (APA)[10] by failing to provide for prior notice and comment before issuing the May 15 order, which it characterizes as rulemaking. Further, Southern contends that any "rule" the Commission might promulgate can only be applied prospectively, and argues that the Commission erred in applying the "rule" announced in the May 15 order retroactively to the date of the *Midwest Power* decision.

Southern next argues that while the May 15 order provides for notification to state commissions, this notification does not satisfy the requirements of section 302 because the states and interested parties were not accorded an opportunity to have their views heard *before* Commission announced its policy.[11] Southern maintains that the Commission's decision in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,138, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*), confirms that the Commission should have provided prior notice and allowed for the filing of comments and participation by affected parties.[12] Southern also argues that the May 15 order violates its due process rights because Southern was not allowed to challenge the Commission's requirements set forth in that order.[13] Further, Southern argues that to the extent the May 15 order establishes an amnesty period to submit proposed depreciation rate changes, it again violates the requirements of section 302, the APA, and considerations of due process.[14]

Southern also argues that the May 15 order imposes unnecessary regulations and filing requirements, which are inconsistent with ongoing changes in the electric utility industry. Southern notes the increasing use of market-based rates by public utilities and power marketers. It submits that entities selling at market-based rates do not predicate their charges on their depreciation expenses or any other identified cost components. Southern also notes the availability of section 205 and 206 proceedings to establish and monitor depreciation rates.

Finally, Southern notes that the overwhelming majority of plant and equipment affected by the May 15 order is used to provide retail electric service under state jurisdiction. It argues that if the Commission imposes a preapproval policy, public utilities could be subjected to incompatible regulatory requirements, with the Commission requiring one depreciation rate to be reflected in the utilities' books of account while a state commission could require a different depreciation rate. It maintains that the Commission should only regulate the depreciation accounting practices of jurisdictional public utilities to the extent the underlying capital is dedicated to jurisdictional, cost-based service.

[8] Southern states that in *AP&L*, 8 FPC at 121, the company had argued that this Commission could only require adjustments to the depreciation reserve in a proceeding under section 302(a), and inasmuch as this Commission had issued no rules or regulations under section 302(a), the prior action of the Arkansas Commission (authorizing the contested accounting entry) was controlling. Southern argues that, instead of responding to this argument, this Commission brushed it aside by clarifying that it was acting under section 301(a) of the FPA, 16 U.S.C. § 825(a) (1994), and not section 302.

[7] Southern notes that in *CP&L*, 55 FPC at 819, the Commission stated:

> With respect to the issue of CP&L's increased depreciation rates reflected in its filing both [intervenors] contend that Section 302 of the Federal Power Act requires that an increase in depreciation must be approved *prior to* the time it may be reflected in a company's rate filing and that the rate may only be permitted to be utilized prospectively from the Commission's finding. It is our view that the intervenor's reading of Section 302 of the Federal Power Act is too restrictive. Nothing in that section prevents rates utilizing an increased depreciation rate from being permitted to become effective subject to refund.
>
> (emphasis in original).

[8] *Citing* Jersey Central Power & Light Co. v. FPC, 129 F.2d 183, 189 n.2 (3d Cir. 1942) (finding that the court had jurisdiction to review the Commission's determination that Jersey Central is a public utility within the meaning of the Federal Power Act, and reciting the applicable statutory provisions, including sections 301 and 302); Hartford Electric Light Co. v. FPC, 131 F.2d 953, 963 n.20 (2d Cir. 1942) (in which the court observed that since petitioner is a public utility subject to the Commission's jurisdiction, the Commission would have authority to fix depreciation rates under section 302); Safe Harbor Water Power Corp v. FPC, 179 F.2d 179, 199 (3d Cir. 1949) (in which the court approved the Commission's finding that a straight-line depreciation method is proper under section 302); and Union Electric Co. v. FPC, 326 F.2d 535, 539 n.1 (8th Cir. 1964), *rev'd on other grounds*, 381 U.S. 90 (1965) (stating that the Commission may fix rates of depreciation and may prescribe what charges are to be treated as depreciation charges).

[9] We note that, contrary to Southern's claim, the Commission in its prior orders has never held that under section 302 of the FPA public utilities and licensees were *not* required to file for approval of changes in their depreciation rates for accounting purposes with the Commission. The Commission has also never stated that they could change their depreciation rates for accounting purposes unilaterally *without* a filing with the Commission.

[10] 5 U.S.C. §§ 551 *et seq.* (1994).

[11] While we, in fact, did provide for the May 15 order to be sent to all of the state commissions, and also published in the **Federal Register**, *see* 79 FERC at 61,795; 62 Fed. Reg. 28,105 (1997), not a single state commission has responded or otherwise indicated any objection to or disagreement with the order.

[12] The *Prior Notice* proceeding is distinguishable, as it involved questions of what agreements were jurisdictional in the first instance and therefore needed to be filed. *See Prior Notice*, 64 FERC at 61,973, 61,977–78, 61,984–96. Here, in contrast, as discussed below, the need for public utilities and licensees to file for Commission authorization to change their depreciation rates for accounting purposes is plain on the face of the statute.

[13] In this regard, however, we note that Southern has had an opportunity here, on rehearing, to make its case. *See, e.g.*, Accounting Release AR–14, 58 FERC ¶ 61,166 at 61,501 & n.45 (1992). Moreover, we have not, in this proceeding, acted on any proposed depreciation rate change of Southern; rather, we have instead simply reiterated the need for public utilities and licensees to file with this Commission as required by section 302 of the FPA.

When public utilities and licensee make filings seeking to change their depreciation rates for accounting purposes, our practice is to publish notice of such filings in the **Federal Register**. in fact, notice of Midwest Power's filing in this proceeding (*i.e.*, its petition for a declaratory order) was published in the **Federal Register**. *See* 79 FERC at 61, 794; 59 Fed. Reg. 55,472 (1994).

[14] The amnesty period we provided for in the May 15 order was simply an accommodation to the industry to allow them the opportunity to make filings that would be considered timely. The Commission was not required to provide such an amnesty period, but chose to do so; the Commission's interest is in ensuring that public utilities and licensees comply with the statute's requirements, and the Commission believed that an amnesty period would further that policy.

Discussion

Southern's motion to intervene out of time is unopposed, and Southern's interests may be affected by the outcome of this proceeding and cannot be represented by any other party. Nor would granting intervention result in undue prejudice. In these circumstances, we find good cause to grant Southern's motion to intervene out of time.

We will deny Southern's rehearing request. Contrary to Southern's position, pursuant to the express language of section 302 of the FPA public utilities and licensees must obtain Commission approval for changes in depreciation rates for accounting purposes.

Section 301(a) of the FPA, 16 U.S.C. § 825(a) (1994), in the first instance empowers the Commission to require utilities to keep "accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * *."[15] Section 302(a) of the FPA, 16 U.S.C. § 825a(a) (1994), in turn, states that "[t]he Commission may, after hearing, require licensees and public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the Commission may prescribe * * *."[16] (The Commission has, in fact, after notice and opportunity for hearing, adopted the Uniform System of Accounts,[17] which prescribes depreciation accounting procedures for public utilities and licensees.[18]) Section 302(a) goes on to state that "[t]he licensees and public utilities subject to the jurisdiction of the Commission *shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission.*"[19]

Contrary to Southern's argument, therefore, section 302 is not a mere enabling provision, but, rather, expressly imposes a mandatory obligation on public utilities and licensees not only to comply with the Commission's regulations governing depreciation accounting, but, more importantly for present purposes, to employ as depreciation charges and rates only those charges and rates that have been prescribed by the Commission.[20] Section 302 thus requires that before a public utility or licensee may change its depreciation rates for accounting purposes it must secure Commission authorization to do so.

Nor are we persuaded by Southern's argument that it was denied notice and opportunity to comment as required by the APA and the Due Process Clause of the United States Constitution. We believe that the May 15 order did little more than reiterate the statutory obligation imposed on public utilities and licensees by Congress in 1935—reminding public utilities and licensees of the obligation to file, according them an amnesty period to do so, and suggesting how they might wish to structure their filings. Thus, we believe that the May 15 order properly may be characterized as an "interpretative rule" exempt from the formal notice and comment procedures of the APA.[21] Courts have found that an interpretative rule is merely a statement of what an agency thinks a given statute or regulation means, and thus only reminds affected parties of their duties.[22] In *Fertilizer Institute, et al.* v. *EPA*, 935 F.2d 1303, 1308 (D.C. Cir. 1991), the United States Court of Appeals for the District of Columbia Circuit explained that "as a general rule, an agency can declare its understanding of what a statute requires without providing notice and comment * * *." The court also explained that agency action does not require notice and comment merely because if it "affect[s] how parties act * * *—regardless of the consequences of a rulemaking, a rule will be considered interpretative if it represents an agency's explanation of a statutory provision."

In *American Mining Congress, et al.* v. *Mine Safety & Health Administration, et al.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993),[23] the court determined that, in contrast to an "interpretative rule," an agency's rule is a "legislative rule," and thus subject to the formal notice and comment procedures of the APA, if any of the following questions could be answered in the affirmative:

(1) whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure that the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule.

The May 15 order does not require an affirmative answer to any of these questions. First, as noted, section 302(a) of the FPA expressly requires public utilities and licensees to employ as their depreciation charges and rates only those charges and rates that have been prescribed by the Commission, and thus to secure Commission authorization to change their depreciation rates for accounting purposes. Accordingly, there is no legislative gap that required the May 15 order as a predicate to enforcement action. Nor did the Commission purport to act legislatively either by including the May 15 order in

[15] *Accord*, H.R. Rep. No. 74–1318, at 30 (1935); S. Rep. No. 74–621, at 53 (1935). The Commission's authority to prescribe a uniform system of accounts and to require jurisdictional utilities to keep accounts in the manner prescribed is well-settled. *See* Kansas Gas and Electric Company, 43 FERC ¶ 61,248 at 61, 675 (1988); *accord*, Union Electric Company, 52 FERC ¶ 61,279 at 62,109 (1990) (*Union Electric*).

This commission is not bound by a state commission's determinations regarding either accounting or ratemaking. *See, e.g., Union Electric*, 52 FERC at 62,112 (*citing* Kentucky Utilities Company v. FERC, 760 F.2d 1321, 1327 (D.C. Cir. 1985)).

[16] *Accord*, H.R. Rep. No. 74–1318, at 31 (1935).

[17] *See, e.g.*, Uniform System of Accounts Prescribed for Class A and Class B Public Utilities and Licensees, 23 FPC 772, 773–74 (1960).

[18] *See e.g.*, 18 CFR Part 101, Definition 12 and Account 108 (1996).

[19] *Accord*, H.R. Rep. No. 74–1318, at 31 (1935).

[20] *See Midwest Power*, 67 FERC at 61,209–09. As the Commission stated in *Midwest Power*, 67 FERC at 61,208, the Commission has a "statutory obligation to ensure that proper amounts of depreciation are charged to expense in each financial reporting period."

[21] Under the APA, 5 U.S.C. § 553(b)(A) (1994), the notice requirements otherwise applicable to notices of proposed rulemaking are not required for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, * * *" unless specifically required by statute. Additionally, the FPA itself contains no requirement for formal notice and comment procedures. *See* 16 U.S.C. § 825h (1994); *accord*, 16 U.S.C. §§ 825(a), 825a(a) (1994) (sections 301 and 302 of the FPA nowhere specifically provide for formal notice and comment procedures before the Commission may adopt rules and regulations applicable to accounting or depreciation).

Moreover, consistent with the Commission's practice to publish notice of requests to change depreciation rates for accounting practices, *see supra* note 13, Midwest Power's request for declaratory order in this proceeding was noticed in the **Federal Register**. *See* 79 FERC at 61,794; 59 Fed. Reg. 55, 472 (1994). We note that the Iowa Utilities Board filed a notice of intervention in response to the **Federal Register** notice and thus was a party to the proceeding. *see* 79 FERC at 61,794, but it did not file in response to the May 15 order.

[22] *See, e.g.*, General Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1565 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1074 (1985); *accord*, Orengo Caraballo v. Reich, 11 F.3d 186, 195 (D.C. Cir. 1993); United Technologies Corp. v. EPA, 821 F.2d 714, 718–20 (D.C. Cir. 1987).

[23] *Accord*, National Wildlife Federation v. Babbitt, 835 F. Supp. 654, 666–67 (D.D.C. 1993).

the Code of Federal Regulations or by invoking its general legislative authority under Part II of the FPA. Finally, the May 15 order does not constitute an amendment of a prior legislative rule. We conclude, therefore, that the May 15 order is an interpretative rule.

Moreover, in this regard, the May 15 order did not set a depreciation rate for accounting purposes for Southern (or any public utility or licensee).[24] It merely reminded all public utilities and licensees of the need to obtain Commission authorization for changes in their depreciation rates for accounting purposes.

We also are not persuaded by Southern's arguments that changes in the electric utility industry somehow warrant allowing entities not to comply with the requirement that we approve their depreciation rates for accounting purposes. While Southern suggests that the movement to market-based power sales rates warrants our relieving public utilities and licensees of the requirement that they file, the fact is that there yet remain many cost-based power sales rates, as well as cost-based transmission rates, that reflect the companies' depreciation rates.[25] Nevertheless, we have strived to comply with out statutory responsibilities in the least burdensome, and the most expeditious, manner possible. Our intent is not to unduly burden the industry, but to fulfill our statutory responsibilities. Thus, we have allowed an amnesty period until the end of the year for these filings. Additionally, we allow these filings to be made under Rule 204 of the Commission's Rules of Practice and Procedure, 18 CFR § 285.204 (1996), which does not require payment of a filing fee. We also expect that the vast majority of these filings can be processed expeditiously by the Office of the Chief Accountant.[26]

Finally, we disagree with Southern's contention that this Commission should regulate depreciation accounting practices of jurisdictional public utilities only to the extent that the underlying capital is dedicated to jurisdictional service. The Commission's authority to prescribe a uniform system of accounts and to require a public utility to keep accounts accordingly is not open to doubt.[27] If a state desires a utility to keep a separate set of books for retail ratemaking purposes, however, the state is free to direct the utility to do so.[28]

The Commission orders

(A) Southern's motion to intervene out of time is hereby granted, as discussed in the body of this order.

(B) Southern's request for rehearing is hereby denied, as discussed in the body of this order.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

(D) The Secretary shall promptly serve copies of this order on all State commissions, as defined in section 3(15) of the Federal Power Act.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28540 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

[24] Indeed, even Midwest Power's request for a declaratory order was dismissed, as Midwest Power's depreciation rate change for accounting purposes was effective prior to *Midwest Power* and was based on sound depreciation accounting practices. 70 FERC at 61,793.

[25] *See, e.g.*, American Municipal Power-Ohio, Inc., *et al.*, 57 FERC ¶ 61,358 at 62,161 & n.5 (1991), *reh'g denied*, 58 FERC ¶ 61,182 (1992). For power marketers or other entities that only sell at market-based rates, the Commission does not prescribe depreciation rates for accounting purposes. Indeed, the Commission's accounting requirements under Part 101 of its regulations are typically waived for such entities. *See, e.g.*, PEC Energy Marketing, Inc. 79 FERC ¶ 61,329 at 62,433 (1997). Accordingly, those entities would not need to submit any filings pursuant to section 302 of the FPA.

[26] *See* 79 FERC at 61,794 n.8.

[27] *See supra* note 15 and accompanying text.

[28] Arkansas Power & Light Co. v. FPC, 185 F.2d 751, 752 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 909 91951); *accord*, H.R. Rep. No. 74–1318, at 30–31 (1935); S. Rep. No. 74–621, at 53 (1935).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–29–000, CP98–30–000, CP98–31–000, and CP98–32–000]

North Atlantic Pipeline Partners, L.P.; Notice of Applications for Certificates of Public Convenience and Necessity, and for a Presidential Permit and Section 3 Authorization

October 22, 1997.

Take notice that on October 15, 1997, North Atlantic Pipeline Partners, L.P. (North Atlantic), 7500 Texas Commerce Tower, 600 Travis, Houston, Texas 77002, filed applications pursuant to Sections 3 and 7(c) of the Natural Gas Act (NGA). In Docket No. CP98–29–000, North Atlantic seeks a Presidential Permit and Section 3 authorization pursuant to Part 153 of the Commission's Regulations. In Docket No. CP98–30–000, North Atlantic seeks a Certificate of Public Convenience And Necessity to construct and operate natural gas pipeline facilities under Part 157, Subpart E of the Commission's Regulations.[1] In Docket No. CP98–31–000, North Atlantic seeks a Certificate of Public Convenience And Necessity for the transportation of natural gas under Part 284, Subpart G of the Commission's Reglations. Finally, in Docket No. CP98–32–000, North Atlantic seeks a Certificate of Public Convenience And Necessity for certain blanket construction and operation authorization under Part 157, Subpart F of the Commission's Regulations. North Atlantic's proposal is more fully set forth in the applications which are on file with the Commission and open to public inspection.

North Atlantic is a limited partnership formed under the laws of the State of Delaware. North Atlantic's general partner is North Atlantic Pipeline Company, L.L.C., a Delaware limited liability company, and North Atlantic's limited partner is Tatham Offshore, Inc. North Atlantic anticipates admitting additional limited partners.

In Docket No. CP98–30–000, North Atlantic wants authority to construct, own, operate and maintain about 190 miles of 42-inch diameter pipeline under Section 7(c) of the NGA and the Commission's optional certificate procedure under Part 157, Subpart E of the Commission's Regulations. The pipeline will extend from the United States-Canada International Boundary in the Gulf of Maine to a proposed point of interconnection in East Kingston, New Hampshire with the Joint Pipeline currently authorized to be owned by Maritimes & Northeast Pipeline, L.L.C. and Portland Natural Gas Tranmission System. About 179 miles of the pipeline will be offshore and about 11 miles will be onshore. The total estimated cost of the United States portion of the project is $472 million. (The Canadian portion of the project will initially go from Country Harbor, Nova Scotia to the United States-Canadian Boundary.)

North Atlantic says the initial design capacity of the pipeline is 590,000 Mcf per day or 615,370 dekatherms per day, which is currently limited due to pressure limitations on interconnecting upstream and downstream facilities; but ultimately, as upstream offshore Atlantic Canada gas fields are further developed, North Atlantic's facilities will have the capacity to deliver up to 2,200,000 Mcf of natural gas per day on a firm basis. North Atlantic says that its project will meet a growing demand for natural gas in the northeastern United States and will provide an environmentally-sound means of assessing the significant reserves of natural gas in offshore Atlantic Canada.

North Atlantic seeks approval of its initial rates and *pro forma* tariff provisions. North Atlantic proposes to offer a single rate schedule for firm transportation service, Rate Schedule FT–1, and to have the authority to negotiate, on a non-discriminatory basis, with shippers to charge rates for firm service that deviate from the FT–1 maximum rate of $12.2761, which is a cost-of-service based rate, designed under the straight-fixed variable (SFV) method and based on the design capacity of the pipeline. Rates for authorized overrun and unauthorized overrun service are also stated in North Atlantic's *pro forma* tariff.

North Atlantic has used a capital structure of 50 percent debt, 50 percent equity, an after-tax rate of return on equity of 13.25 percent and cost of debt of 7.5 percent. The initial overall after-tax rate of return under this methodology us 10.38 percent. North Atlantic has also designed its maximum cost-of-service FT–1 rate based on a 25-year plant life using straight-line depreciation.

In additional to the firm rate schedules described above, North Atlantic will offer interruptible service under Rate Schedule IT–1 at a rate of 40.36 cents per dekatherm, which is the 100 percent load factor equivalent of the maximum FT–1 rate. North Atlantic has allocated $1 million to its IT–1 service and, therefore, North Atlantic proposes to retain its Rate Schedule IT–1 revenues.

North Atlantic also proposes to negotiate, on a non-discriminatory basis, rates that differ from North Atlantic's generally applicable rate schedules. North Atlantic's negotiated rates may be less than, equal to, or greater than its cost-based maximum rates and may also be designed on a basis other than SFV. Pursuant to the Commission's Alternative Ratemaking Policy Statement, shippers unable to negotiate a satisfactory agreement are provided an option to elect the recourse rate, the maximum rate described above.

North Atlantic offers to cap the firm service rate for a long-term commitment made through the close of its open season. North Atlantic intends to negotiate with interested shippers on a non-discriminatory basis to develop agreements pursuant to which rates will automatically decrease as throughput increases over time, as an inducement to the efficient development of the vast resources to be accessed by North Atlantic.

North Atlantic's *pro forma* Tariff also includes the General Terms and Conditions (GT&C) for all transportation services, designed to meet the applicable requirements of Order No. 636, as well as standards recommended by the Gas Industry Standards Board and accepted by the Commission. North Atlantic's GT&C also include a lateral construction policy which it says is consistent with the Commission's Pricing Policy For New And Existing Facilities Constructed By Interstate Natural Gas Pipelines.

In addition, in Docket No. CP98–29–000, North Atlantic seeks authority to construct, own, operate and maintain 250 feet of 42-inch diameter pipeline at the United States-Canadian Boundary under Section 3 of the NGA and Executive Order No. 10485. At the Boundary, the pipeline will connect with North Atlantic's upstream Canadian affiliate. North Atlantic also seeks Blanket Certificates under Section 7(c) of the NGA pursuant to Part 284, Supart G and Part 157, Supbart F., in Docket Nos. CP98–31–000 and CP98–32–000, respectively, to transport natural gas for others, and perform certain routine construction functions.

Finally, North Atlantic requests a preliminary determination with respect to non-environmental issue by March 1, 1998, and a final certificate by December 1, 1998. North Atlantic has a November 1, 1999, target date for being in service.

Any person desiring to be heard or making any protest with reference to said application should on or before November 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participating as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

However, a person, company or organization does not have to intervene in order to have comments on any aspect of the proposal considered by the Commission. Instead, such entity may submit two copies of such comments to the Secretary of the Commission. Commenters who are concerned about environmental or pipeline routing issues will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by the parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] These are the Commission's Optional Certificate procedures. In the alternative, North Atlantic seeks the same natural gas facilities construction and operation certificate under Part 157, Subpart A of the Commission's Regulations. North Atlantic filed executed Letters of Interests with 6 shippers for 269,000 MMBtu per day of capacity.

unnecessary for North Atlantic to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28455 Filed 10–27–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–399–000; EL96–35–001]

Northern Indiana Public Service Company and Wabash Valley Power Association, Inc. v. Northern Indiana Public Service Company; Notice of Filing

October 22, 1997.

Please take notice that on August 6, 1997, Northern Indiana Public Service Company (Northern Indiana) filed its refund report in the above captioned case.

Copies of the refund report have been served on all parties and on the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28457 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–7–000]

Phibro Inc.; Notice of Application for Authorization Under Federal Power Act Section 203

October 22, 1997.

Take notice that on October 21, 1997, Phibro Inc. (Phibro), tendered for filing a request that the Commission approve a disposition of facilities and/or grant any other authorization the Commission may deem to be needed under Section 203 of the Federal Power Act as a result of the forthcoming acquisition of Salomon Inc (Salomon), Phibro's parent, by Travelers Group Inc., (Travelers). As explained in the application, the planned acquisition will have no effect on the jurisdictional facilities, rates or services of Phibro and will be consistent with the public interest.

Phibro requests expeditious action on the application in order that there be no delay in the acquisition of Salomon by Travelers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28539 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–39–000]

Tennessee Gas Pipeline Company; Notice of Application

October 22, 1997.

Take notice that on October 20, 1997, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed an application pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and an order granting permission and approval to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Tennessee requests that the Commission issue an order authorizing Tennessee to (1) abandon four 26-inch diameter pipelines which are fastened to the bridge for Highway 82 (Highway 82 Bridge) which crosses the Mississippi River near Greenville, Mississippi; (2) construct, own, and operate one 30-inch diameter pipeline; and (3) reconfigure six existing pipelines near the Mississippi River. Tennessee states that its requests are necessitated by the State of Mississippi Highway Department's (MDOT) plans to build a new bridge and remove the Highway 82 Bridge. Tennessee requests that the Commission grant the requested authorization by March 16, 1998.

Tennessee states that the proposed abandonment and construction are necessary to maintain the integrity of Tennessee's mainline transmission system and to enable Tennessee to continue to provide uninterrupted service for shippers. Tennessee states that the estimated cost for abandoning the segments of pipeline and constructing the proposed segments of pipeline will be approximately $12,337,000.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28456 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. FA96–6–004; and RP92–137–046]

Transcontinental Gas Pipe Line Corporation; Notice of Report of Refunds

Take notice on October 17, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report of refunds pertaining to refunds distributed on September 18, 1997.

Transco states that the purpose of such refund was to comply with the Division of Audits letter order issued January 8, 1997, regarding interruptible transportation revenues related to he Spider Field lateral for the period September 1, 1992 through October 31, 1993.

Transco is servicing copies of the instant filing to customers, State Commission and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28459 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1997.

Take notice that on October 17, 1997, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which are enumerated in Appendix A attached to the filing, with an effective date of October 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to (1) storage service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS–2, (2) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and GSS, (3) transportation service purchased from National Fuel under its Rate Schedule X–54, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, (4) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its rate schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and (5) storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2.

Transco states that this tracking filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule SS–2, Section 4 of Transco's Rate Schedule FT–NT, Section 3 of Transco's Rate Schedule GSS, and Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff. Transco also filed therein Substitute Eighth Revised Sheet No. 28 to incorporate changes originally filed August 26, 1997 in Docket No. TM97–12–29, to be effective August 1, 1997. Such filing inadvertently omitted a change to Transco's Rate Schedule S–2 Demand Charge Adjustment.

Transco states that included in Appendices B through E attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedules LSS, SS–2, FT–NT, S–2 and GSS rates.

Transco states that copies of the filing are being mailed to each of its LSS, SS–2, FT–NT, S–2 and GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28465 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–454–000 and RP97–258–003 (Not consolidated)]

Williams Natural Gas Company; Notice of Technical Conference

October 22, 1997.

In the Commission's order issued on September 19, 1997, in the above-captioned proceedings, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Wednesday, November 5, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28463 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–10–000, *et al.*]

Consolidated Edison Company of New York, Inc. et al.; Electric Rate and Corporate Regulation Filings

October 21, 1997.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. EC97–10–000]

Take notice that on October 10, 1997, Consolidated Edison Company of New York, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER97–4821–000]

Take notice that on September 30, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing; (1) an agreement dated as of September 1, 1997, by and between PG&E and PacifiCorp entitled Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement); and (2) a request for termination of this Service Agreement.

Copies of this filing have been served upon the California Public Utilities Commission and PacifiCorp.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER97–4822–000]

Take notice that on September 30, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Southern Company System) filed a Service Agreement for Network Integration Transmission Service under Part III of the Open Access Transmission Tariff of Southern Companies. In addition, the Southern Company System filed the corresponding Specifications for Network Integration Service, a Network Operating Agreement, and a Letter Agreement concerning certain interim arrangements that would apply until the earlier of November 1, 1997 or the date that the parties complete the installation and testing of equipment necessary to allow for dynamic scheduling.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER97–4823–000]

Take notice that on September 30, 1997, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service to NP Energy, Inc. (NP), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on October 1, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–4824–000]

Take notice that on September 30, 1997, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service to The Energy Authority, Inc. (Energy Authority), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on October 1, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER97–4825–000]

Take notice that on September 30, 1997, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for firm point-to-point transmission service to The Energy Authority, Inc. (Energy Authority), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on October 1, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Company

[Docket No. ER97–4826–000]

Take notice that on September 30, 1997, Tucson Electric Power Company (TEP) tendered for filing one (1) service agreement for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of the earliest date service commenced under this agreement. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated September 11, 1997. Service under this agreement commenced on September 1, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER97–4827–000]

Take notice that on September 30, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Cinergy Corp., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 19, 1997, for the Cinergy Corp., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER97–4828–000]

Take notice that Northeast Utilities Service Company (NUSCO), on September 30, 1997, tendered for filing, a Service Agreement with the Carolina Power and Light Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Carolina Power and Light Company.

NUSCO requests that the Service Agreement become effective September 16, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Zond Minnesota Development Corporation II and Lake Benton Power Partners, LLC

[Docket No. ER97–4831–000]

Take notice that on September 26, 1997, Zond Minnesota Development Corporation II and Lake Benton Power Partners, LLC tendered for filing Notice of Succession in the above-referenced docket.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–1–000]

Take notice that on October 1, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership application of Engelhard Power Marketing, Inc., and QST Energy Trading. PJM requests an effective date of October 3, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Valley Electric Corporation; Indiana-Kentucky Electric Corporation

[Docket No. ER98–2–000]

Take notice that on October 1, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated September 19, 1997 (the Service Agreement) between LG&E Energy Marketing, Inc. (LG&E Marketing), and OVEC. OVEC proposes an effective date of September 19, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to LG&E Marketing.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon LG&E Marketing.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company; Cambridge Electric Light Company

[Docket No. ER98–4–000]

Take notice that on October 1, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers): Engage Energy US, L.P., South Carolina Electric & Gas Company, Williams Energy Services Company, WPS Energy Services, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies and Engage Energy US have also filed Notices of Cancellation for service under the Companies' Power Sales and Exchange Tariffs (FERC Electric Tariff Original Volume Nos. 5 and 3) and Engage Energy US's respective FERC Rate Schedules.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Company

[Docket No. ER98–5–000]

Take notice that on October 1, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Black Hills Power & Light and Idaho Power Company.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER98–7–000]

Take notice that on October 2, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Northern States Power Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy—Kansas.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Indiana Michigan Power Company

[Docket No. ER98–8–000]

Take notice that on October 1, 1997, Indiana Michigan Power Company (I&M), tendered for filing with the Commission Facility Request No. 10 to the existing Agreement, dated December 11, 1989, (1989 Agreement), between I&M and Wabash Valley Power Association, Inc., (WVPA). Facility Request No. 10 was negotiated in response to WVPA's request that I&M provide new facilities at two existing 69 kV tap stations to be owned by WVPA and operated by I&M known as Fruit Belt Electric Cooperative—Schoolcraft and White Pigeon Tap Stations. The Commission has previously designated

the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of December 1, 1997, for Facility Request No. 10. A copy of this filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER98–9–000]

Take notice that on October 2, 1997, Puget Sound Energy, Inc. (Puget), tendered for filing, as a change in rate schedule, an Amendment No. 1 to Power Exchange Agreement (the Amendment) by and between Puget and British Columbia Power Exchange Corporation (Powerex). A copy of the filing was served upon Powerex.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–10–000]

Take notice that on October 2, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Koch Energy Trading Inc., the Transmission Customer. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is July 28, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Long Island Lighting Company

[Docket No. ER98–11–000]

Take notice that on October 1, 1997, Long Island Lighting Company (LILCO), tendered for filing a Power Supply Agreement for the sale of energy and capacity by LILCO (through a generation subsidiary to be formed) to the Long Island Power Authority (LIPA).

LILCO requests an effective date of April 1, 1998 and a waiver of 18 CFR 35.3.

Copies of the filing were served upon LIPA and the New York State Public Service Commission.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Sierra Pacific Power Company

[Docket No. ER98–12–000]

Take notice that on October 2, 1997, Sierra Pacific Power Company (Sierra Pacific), filed revised open-access tariff sheets to provide for Retail Access Transmission Service.

Sierra Pacific proposes that these revised tariff sheets become effective January 1, 1998.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Enron Energy Services Power, Inc.

[Docket No. ER98–13–000]

Take notice that on October 1, 1997, Enron Energy Services Power, Inc. (EES) applied to the Commission for acceptance of EES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

EES intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER98–14–000]

Take notice that on October 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and New Energy Ventures, L.L.C. (Ventures).

Cinergy and Ventures are requesting an effective date of September 30, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER98–15–000]

Take notice that on October 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Duke Energy Trading and Marketing, L.L.C. (Duke).

Cinergy and Duke are requesting an effective date of September 30, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER98–16–000]

Take notice that on October 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and New Energy Ventures, L.L.C. (Ventures).

Cinergy and Ventures are requesting an effective date of September 30, 1997.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Central Illinois Public Service Company

[Docket No. ER98–17–000]

Take notice that on October 2, 1997, Central Illinois Public Service Company (CIPS), submitted an executed non-firm point-to-point service agreement, dated September 22, 1997, establishing Avista Energy, Inc. as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of September 22, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on Avista Energy, Inc. and the Illinois Commerce Commission.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Kansas City Power & Light Company

[Docket No. ER98–18–000]

Take notice that on October 2, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 29, 1997, between KCPL and MidAmerica Energy Company. KCPL proposes an effective date of September 26, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas City Power & Light Company

[Docket No. ER98–19–000]

Take notice that on October 2, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 17, 1997, between KCPL and Aquila Power Corporation. KCPL proposes an effective date of September 17, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Kansas City Power & Light Company

[Docket No. ER98–20–000]

Take notice that on October 2, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 26, 1997, between KCPL and NP Energy, Inc. KCPL proposes an effective date of September 26, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. California Power Exchange

[Docket No. ER98–210–000]

Take notice that on October 17, 1997, the California Power Exchange Corporation (PX) tendered for filing its PX Administration Charge as required under its FERC Tariff. This filing is made pursuant to Commission direction in Pacific Gas & Electric Co. *et al.*, 77 FERC ¶ 61,204, at 51,804 (1996) in which the Commission ordered the PX to file its rate schedules pursuant to Section 205(c) of the Federal Power Act.

Copies of the filing were served upon all parties to Docket Nos. EC96–19–003 and ER96–1663–003, the California Public Utilities Commission, and all other affected entities.

Comment date: November 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. California Independent System Operator Corporation

[Docket No. ER98–211–000]

Take notice that on October 17, 1997, the California Independent System Operator Corporation (ISO) tendered for filing proposed rates under Section 205 of the Federal Power Act for its FERC Electric Service Tariffs.

Pursuant to Section 35.13(a)(1) of the Commission's Regulations, 18 CFR 35.13(a)(1), the California Independent System Operator Corporation (ISO) seeks approval of the Grid Management Charge and rate schedules for approval of certain pass-through charges for Ancillary Services, Congestion Management and Wheeling Access. The ISO requests that these rates be allowed to go into effect on January 1, 1998.

Copies of the filing were served upon the entities contained in the official service list for Pacific Gas & Electric Company, *et al.*, Docket Nos. EC96–19–003 and ER96–1663–003 and the California Public Utilities Commission.

Comment date: November 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28535 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4629–000, et al.]

Golden Spread Electric Cooperative, Inc., et al. Electric Rate and Corporate Regulation Filings

October 22, 1997.

Take notice that the following filings have been made with the Commission:

1. Golden Spread Electric Cooperative, Inc.

[Docket No. ER97–4629–000]

Take notice that on September 16, 1997, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered its Special Facilities Agreement with Tri-County Electric Cooperative, Inc. (Tri-County) pursuant to § 35.13 of the Commission's Regulations. The Special Facilities Agreement between Golden Spread and Tri-County provides for the construction and ownership of a 115/12.47 kV substation to be located outside of Guymon, Oklahoma. The charges associated with the construction and ownership of this facility will be recovered by Golden Spread from Tri-County pursuant to Rider A of Rate Schedule FERC No. 22. The filing will not effect a rate increase or decrease to Golden Spread's Members.

Copies of this filing were served upon Golden Spread's jurisdictional customers, the Public Utility Commission of Texas, and the Oklahoma Corporation Commission.

Comment date: November 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER98–21–000]

Take notice that on October 2, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 26, 1997, between KCPL and ConAgra Energy Services, Inc. KCPL proposes an effective date of September 26, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Company

[Docket No. ER98–22–000]

Take notice that on October 6, 1997, Maine Electric Power Co. (MEPCO), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a Letter Agreement amending the term of two service agreements entered into with Bangor Hydro-Electric Company (BHE), one dated July 9, 1996, and the other dated July 24, 1996 (each as accepted for filing in Docket No. ER96–2634–000), under which MEPCO is providing Firm Point-to-Point Transmission Service in accordance with the MEPCO Open Access Transmission Tariff (the Tariff). The Letter Agreement extends the term of the Service Agreements to October 31, 1998.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER98–23–000]

Take notice that on October 3, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with NP Energy Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective September 15, 1997.

A copy of this filing was caused to be served upon NP Energy Inc., as noted in the filing letter.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Company

[Docket No. ER98–24–000]

Take notice that on October 3, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Federal Energy Sales, Inc., Minnesota Power & Light Company and Wisconsin Electric Power Company. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Union Electric Company

[Docket No. ER98–25–000]

Take notice that on October 3, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Avista Energy, Inc., and The Dayton Power and Light Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER98–26–000]

Take notice that on October 6, 1997, Central Maine Power Company filed an amendment to Central Maine Power's Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 4 (Tariff No. 4). Central Maine Power proposes to add new Section Z under which it will be able to sell, assign or transfer to a Tariff No. 4 customer all or a portion of its rights to transmission service acquired under a transmission provider's open access transmission tariff, provided, that the customer is an eligible customer under the transmission provider's open access transmission tariff.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER98–27–000]

Take notice that on October 3, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Cinergy Operating Companies. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective September 26, 1997.

Copies of the filing were served upon Cinergy Operating Companies and the Kansas Corporation Commission.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER98–29–000]

Take notice that on October 3, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and The Dayton Power and Light Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to The Dayton Power and Light Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of September 8, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas and Electric Corporation

[Docket No. ER98–30–000]

Take notice that on October 3, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Constellation Power Source (CPS). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER98–31–000]

Take notice that on October 3, 1997, Kentucky Utilities Company (KU), tendered for filing a Notice of Cancellation of its Service Agreement under the Power Services Tariff as approved by the Commission in Docket No. ER97–2700–000 with Coastal Electric Services. This Agreement is being canceled because it was inadvertently filed in that Docket. The Commission had previously approved the same Service Agreement in Docket No. ER97–502–000.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER98–32–000]

Take notice that on October 3, 1997, Southern California Edison Company (Edison), tendered for filing the following Termination Agreement (Termination Agreement) and Non-Firm Supplemental Agreement (Non-Firm Supplemental Agreement) to the 1990 Integrated Operations Agreement (1990 IOA) between the City of Anaheim (Anaheim) and Edison, FERC Rate Schedule No. 246:

Termination of Supplemental Agreement For The Integration Of Anaheim's Entitlement In San Juan Unit 4

Supplemental Agreement For The Integration Of Non-Firm Energy From Anaheim's Entitlement In San Juan Unit 4 Between Southern California Edison Company And City Of Anaheim

The Termination Agreement cancels the Supplemental Agreement for the integration of firm capacity and associated energy purchased by Anaheim under the San Juan Unit 4 Agreement.

The Non-Firm Supplemental Agreement sets forth the terms and conditions by which Edison will integrate Anaheim's entitlement to energy from San Juan Unit 4 as a source of Non-Firm Energy in accordance with the terms of the 1990 IOA.

Edison is requesting waiver of the 60-day prior notice requirement, and requests that the Commission assign to the Termination Agreement and Non-Firm Supplemental Agreement effective dates of November 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Company

[Docket No. ER98–34–000]

Take notice that on October 3, 1997, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Kansas City Power and Light Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective September 16, 1997.

A copy of this filing was caused to be served upon Kansas City Power and Light Company as noted in the filing letter.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER98–35–000]

Take notice that on October 3, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and The Energy Authority, Inc., Dayton Power & Light, Proliance Energy, LLC, Western Resources and Public Service Electric and Gas Company under its Transmission Services (TS) Tariff and with The Energy Authority, Inc., under its Power Services (PS) Tariff.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER98–36–000]

Take notice that on October 3, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Delmarva Power & Light Company (Delmarva). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Delmarva's signature page would permit NEPOOL to expand its membership to include Delmarva. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Delmarva a member in NEPOOL. NEPOOL requests an effective date of October 6, 1997, for commencement of participation in NEPOOL by Delmarva.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER98–37–000]

Take notice that on October 6, 1997, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company (APCo), tendered for filing a Delivery Point Specification Sheet dated as of July 29, 1997, reflecting the abandonment of two delivery points to the City of Lanett Electric Department. The abandoned delivery points will no longer be served under the terms and conditions of the Amended and Restated Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated June 16, 1994.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER98–38–000]

Take notice that on October 6, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 30, 1997 with NP Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds NP Energy as a customer under the Tariff. DLC requests an effective date of September 30, 1997, for the Service Agreement.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Atlantic City Electric Company

[Docket No. ER98–39–000]

Take notice that on October 6, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to Valero Power Services Company (Valero) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to become effective on September 15, 1997.

Atlantic Electric states that a copy of the filing has been served on Valero.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Public Service Company

[Docket No. ER98–40–000]

Take notice that on October 6, 1997, Central Illinois Public Service Company (CIPS), tendered for filing Service Schedule K to the Power Supply Agreement between CIPS and the Illinois Municipal Electric Agency (IMEA); revised Schedule 8 to the Transmission Service Agreement between CIPS and IMEA; and a Notice of Cancellation of CIPS' service to the Village of Greenup, Illinois (Greenup). Upon the effectiveness of these agreements, Greenup will shift from CIPS to IMEA as its requirements supplier and CIPS will sell additional power and energy to IMEA for resale to Greenup.

CIPS requests an effective date of August 1, 1997, and accordingly, requests that the Commission waive its notice requirements. Copies of this filing have been served on Greenup, IMEA and the Illinois Commerce Commission.

Comment date: November 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28536 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER97–3830–000, et al.]

Market Responsive Energy, Inc., et al. Electric Rate and Corporate Regulation Filings

October 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Market Responsive Energy, Inc.

[Docket No. ER97–3830–000]

Take notice that on September 15, 1997, Market Responsive Energy, Inc. tendered for filing a Notice of Withdrawal of its July 23, 1997, filing in the above-referenced docket.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4642–000]

Take notice that on September 16, 1997, the PJM Interconnection, L.L.C (PJM) filed on behalf of the Members of the LLC, membership applications of NorAm Energy Services, Inc. and NP Energy Inc. PJM requests an effective date of September 16, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. IES Utilities Inc.

[Docket No. ER97–4792–000]

Take notice that on September 26, 1997, IES Utilities Inc. tendered for filing a Notice of Cancellation that the following service agreements with IES Utilities Inc. (IES) pursuant to its FERC Electric Tariff, Original Volume No. 1, were canceled:

SA55 City of Tipton, Iowa
SA60 Farmers Electric Coop/Kalona and the associated Peaking Power Contract
SA76 West Point Municipal Electric System and the associated Peaking Power Contract

In addition, effective the first day of January, 1997, the following service agreement with IES pursuant to its FERC Electric Tariff, Original Volume No. 6 will be executed: City of Tipton, Iowa.

Notice of the proposed cancellation and addition has been served upon the Iowa Department of Commerce.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER97–4793–000]

Take notice that on September 29, 1997, Illinois Power Company (Illinois Power) tendered for filing firm transmission agreements under which Tenneco Packaging, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 5, 1996.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. The Washington Water Power Company

[Docket No. ER97–4794–000]

Take notice that on September 30, 1997, The Washington Water Power Company ("WWP") tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point to Point Firm Service Agreement under WWP's Open Access Transmission Tariff, Second Revised Volume No. 8. WWP requests an effective date of October 1, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER97–4795–000]

Take notice that on September 30, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Cinergy Services, Inc., for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–4796–000]

Take notice that on September 30, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 24 to add Strategic Energy Ltd., Tennessee Valley Authority and Western Resources to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is September 29, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Long Island Lighting Company

[Docket No. ER97–4797–000]

Take notice that on September 30, 1997, Long Island Lighting Company (LILCO) filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between LILCO and The Energy Exchange Group (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 9, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER97–4798–000]

Take notice that Northeast Utilities Service Company (NUSCO), on September 30, 1997, tendered for filing, a Service Agreement with the Southern Company Services, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Southern Company Services, Inc.

NUSCO requests that the Service Agreement become effective September 16, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–4800–000]

Take notice that Northeast Utilities Service Company (NUSCO), on September 30, 1997, tendered for filing, a Service Agreement with the Carolina Power & Light Company, under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to the Carolina Power & Light Company.

NUSCO requests that the Service Agreement become effective September 17, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company & West Penn Power Company (Allegheny Power)

[Docket No. ER97–4801–000]

Take notice that on September 30, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 32 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of September 29, 1997, to Strategic Energy Ltd. and Tennessee Valley Authority.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Toledo Edison Company

[Docket No. ER97–4802–000]

Take notice that on September 30, 1997, Toledo Edison Company ("Toledo Edison") tendered for filing an electric power service agreement for the sale of electricity under its FERC Electric Tariff, Original Volume No. 3, to LG&E Energy Marketing, Inc. Toledo Edison has requested waiver of the notice provisions of the Commission's regulations and any other applicable requirement in order to permit the service agreement to be made effective as of October 1, 1997.

Comment date: October 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER97–4803–000]

Take notice that on September 30, 1997, Entergy Services, Inc. ("Entergy Services"), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the "Entergy Operating Companies"), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Union Electric Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER97–4804–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and AIG Trading Corporation.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–4805–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Avista Energy, Inc.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER97–4806–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Equitable Power Services Company.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER97–4807–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Duke Energy Trading and Marketing, L.L.C.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER97–4808–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Duke Energy Trading and Marketing, L.L.C.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER97–4809–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy

Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Avista Energy, Inc.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER97–4810–000]

Take notice that on September 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Equitable Power Services Company.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Boston Edison Company

[Docket No. ER97–4811–000]

Take notice that on September 30, 1997, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between itself and Commonwealth Electric Company (Commonwealth). The Standstill Agreement extends through November 30, 1997 the time in which Commonwealth may institute a legal challenge to the 1995 true-up bill under Boston Edison's FERC Rate Schedule No. 68, governing sales to Commonwealth from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective October 1, 1997.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER97–4812–000]

Take notice that on September 30, 1997, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through November 30, 1997, the time in which the Municipals may institute a legal challenge to the 1995 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective October 1, 1997.

The Standstill Agreement relates to the following Boston Edison FERC Rate Schedules:

(1) Supplement to Rate Schedule No. 77—Standstill Agreement with Boylston Municipal Light Department
(2) Supplement to Rate Schedule No. 79—Standstill Agreement with Holyoke Gas and Electric Department
(3) Supplement to Rate Schedule No. 81—Standstill Agreement with Westfield Gas and Electric Light Department
(4) Supplement to Rate Schedule No. 83—Standstill Agreement with Hudson Light and Power Department
(5) Supplement to Rate Schedule No. 85—Standstill Agreement with Littleton Electric Light and Water Department
(6) Supplement to Rate Schedule No. 87—Standstill Agreement with Marblehead Municipal Light Department
(7) Supplement to Rate Schedule No. 89—Standstill Agreement with North Attleborough Electric Department
(8) Supplement to Rate Schedule No. 91—Standstill Agreement with Peabody Municipal Light Plant
(9) Supplement to Rate Schedule No. 93—Standstill Agreement with Shrewsbury's Electric Light Plant
(10) Supplement to Rate Schedule No. 95—Standstill Agreement with Templeton Municipal Light Plant
(11) Supplement to Rate Schedule No. 97—Standstill Agreement with Wakefield Municipal Light Department
(12) Supplement to Rate Schedule No. 99—Standstill Agreement with West Boylston Municipal Lighting Plant
(13) Supplement to Rate Schedule No. 102—Standstill Agreement with Middle-borough Gas and Electric Department

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ER97–4814–000]

Take notice that on September 30, 1997, Western Resources, Inc. tendered for filing five firm transmission agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective September 12, 1997, September 16, 1997, September 18, 1997, September 25, 1997, and September 29, 1997, respectively.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Power and Light Co.

[Docket No. ER97–4815–000]

Take notice that on September 30, 1997, Wisconsin Power and Light Company (WP&L) tendered for filing Form of Service Agreement for Firm Point-to-Point Transmission Service establishing Southern Energy Trading and Marketing, Inc. as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of September 1, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Soyland Power Cooperative, Inc.

[Docket No. ER97–4816–000]

Take notice that Soyland Power Cooperative, Inc. (Soyland), on September 30, 1997, tendered for filing proposed changes in its FERC Electric Service Tariff, Rate Schedule FERC Nos. 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, and 21.

The filing reflects a change in Soyland's Rate Schedule A formulary rate plus elimination of Riders LL and CP and institution of Rider I, to be effective January 1, 1998. No increase in revenues is contemplated. Copies of the filing were served upon Soyland's Members and the Illinois Commerce Commission.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Cinergy Services, Inc., The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER97–4817–000]

Take notice that on September 30, 1997, Cinergy Services, Inc. (Cinergy), on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed a partially executed Master Power Sales Contract between Cinergy and the Electric Utility Department of the City of Austin, Texas.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northern States Power Company (Minnesota Company)

[Docket No. ER97–4818–000]

Take notice that on September 30, 1997, Northern States Power Company (NSP) tendered Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Melrose. NSP requests an effective date of October 1, 1997.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. The Washington Water Power Company

[Docket No. ER97–4819–000]

Take notice that on September 30, 1997, The Washington Water Power Company ("WWP") tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Interconnection and Operating Agreement between WWP and Clearwater Power Company. WWP requests an effective date of October 1, 1997.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Northern States Power Company (Minnesota Company)

[Docket No. ER97–4820–000]

Take notice that on September 30, 1997, Northern States Power Company (NSP) tendered Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Fairfax. NSP requests an effective date of October 1, 1997.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: November 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28537 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

October 22, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and non-project water withdrawal.

b. *Project No.:* 2413–034.

c. *Date Filed:* September 25, 1997.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* Oconee River, Altamaha River Basin, in Putnam, Morgan, Oconee, Oglethorpe, Greene, and Hancock Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C 791(a)–825(r).

h. *Applicant Contact:* Larry J. Wall, Georgia Power Company, 333 Piedmont Avenue N.E., Atlanta, Georgia 30308, (404) 526–2054.

i. *FERC Contact:* B. Peter Yarrington, (202) 219–2939.

j. *Comment Date:* December 11, 1997.

k. *Description of Project:* Licensee proposes to allow the city of Madison, Georgia to locate a water withdrawal facility within the project boundary. The facility will withdraw up to 4 million gallons of water a day from the project reservoir, for domestic consumption.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28462 Filed 10–27–97; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.
TIME AND DATE: 5:00 a.m., October 23, 1997.
PLACE: 800 North Capitol Street, NW., Room 1000, Washington, D.C.
STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 97–28617 Filed 10–24–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 11:00 a.m., Monday, November 3, 1997.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.
STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Status Report of the Committee on the Federal Reserve in the Payments Mechanism (Alternative Roles for the Federal Reserve in the Retail Payments System). (This item was originally announced for a closed meeting on October 20, 1997.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 24, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–28682 Filed 10–24–97; 2:45 pm]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General; Statement of Organization, Functions and Delegations of Authority

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect recent changes in Chapter AF, Office of Inspector General (OIG). Chapter AF was published in its entirety on June 5, 1997 (62 FR 30859).

The statement of organization, functions and delegations of authority reflects the original transfer of the statutory basis for the Office of Inspector General from Pub. L. 94–505 to Pub. L. 95–452 (and made under the Inspector General Act Amendments of 1988, Pub. L. 100–504), and conforms to and carries out the statutory requirements for operating the Office of Inspector General. A number of revisions have been made to reflect the reassignment of functions exercised by the Office of Enforcement and Compliance to two other components. As a result, the Office of Investigations will now be responsible for the development and processing of all program exclusion actions. The Office of Counsel to the Inspector General will now be responsible for final decisions regarding administrative sanctions, including program exclusions and civil money penalties (CMPs), and for developing corporate integrity and model compliance programs, as well as the monitoring of corporate integrity agreements. These organizational changes have been made in an effort to assist the Office of Inspector General in accomplishing its mission with greater efficiency and effectiveness.

As amended, Chapter AF now reads as follows:

Section AF.00, Office of Inspector General (OIG)—Mission.

This organization was established by law as an independent and objective oversight unit of the Department to carry out the mission of promoting economy, efficiency and effectiveness through the elimination of waste, abuse and fraud. In furtherance of this mission, the organization engages in a number of activities:

A. Conducting and supervising audits, investigations, inspections and evaluations relating to HHS programs and operations.

B. Identifying systemic weaknesses giving rise to opportunities for fraud and abuse in HHS programs and operations and making recommendations to prevent their recurrence.

C. Leading and coordinating activities to prevent and detect fraud and abuse in HHS programs and operations.

D. Detecting wrongdoers and abusers of HHS programs and beneficiaries so appropriate remedies may be brought to bear.

E. Keeping the Secretary and the Congress fully and currently informed about problems and deficiencies in the administration of such programs and operations and about the need for and progress of corrective action, including imposing sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts.

In support of its mission, the Office of Inspector General carries out and maintains an internal quality assurance system and a peer review system with other Offices of Inspectors General, that include periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed; are effective; and are functioning as intended in OIG operations.

Section AF.10, Office of Inspector General—Organization

There is at the head of the OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. The Office of Inspector General consists of six organizational units:

A. Immediate Office of the Inspector General (AFA).
B. Office of Management and Policy (AFC).
C. Office of Evaluation and Inspections (AFE).
D. Office of Counsel to the Inspector General (AFG).
E. Office of Audit Services (AFH).
F. Office of Investigations (AFJ).

Section AF.20, Office of Inspector General—Functions

The component sections which follow describe the specific functions of the organization.

Section AFA.00, Immediate Office of the Inspector General (IOIG)—Mission

The Inspector General is directly responsible for meeting the statutory mission of the OIG as a whole and for promoting effective OIG internal quality assurance systems, including quality assessment studies and quality control reviews of OIG processes and products. The Office of Inspector General also plans, conducts and participates in a variety of inter-agency cooperative projects and undertakings relating to fraud and abuse activities with the Department of Justice (DOJ), the Health Care Financing Administration (HCFA) and other governmental agencies.

Section AFA.10, Immediate Office of the Inspector General—Organization

The Immediate Office is comprised of the Inspector General, the Principal Deputy Inspector General, and an immediate staff.

Section AFA.20, Immediate Office of the Inspector General—Functions

As the senior official of the organization, the Inspector General supervises the Chief Counsel to the Inspector General and the Deputy Inspectors General who head the major OIG components. The Inspector General is appointed by the President, with the advice and consent of the Senate, and reports to and is under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but does not report to and is not subject to supervision by any other officer in the Department. In keeping with the independence intended in the statutory basis for the OIG and its mission, the Inspector General assumes and exercises, through line management, all functional authorities related to the administration and management of the OIG and all mission related authorities stated or implied in the law or delegated directly from the Secretary.

The Inspector General provides executive leadership to the organization and exercises general supervision over the personnel and functions of its major components. The Inspector General determines the budget needs of the OIG, sets OIG policies and priorities, oversees OIG operations and provides reports to the Secretary and the Congress. In this capacity the Inspector General is empowered under the law with general personnel authority, e.g., selection, promotion, assignment of employees, including members of the senior executive service. The Inspector General delegates related authorities as appropriate.

The Principal Deputy Inspector General assists the Inspector General in the management of the OIG, and during the absence of the Inspector General, acts as the Inspector General.

Section AFC.00, Office of Management and Policy (OMP)—Mission

This office is responsible for the reporting and legislative and regulatory review functions required in the law; for formulating and executing the OIG budget; for managing external affairs; and for establishing functional policies for the general management of the OIG. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OMP processes and products to ensure that policies and procedures are followed effectively and function as intended.

Section AFC.10, Office of Management and Policy—Organization

This office is directed by the Deputy Inspector General for Management and Policy, and comprises the Deputy Inspector General for OMP and an immediate staff.

Section AFC.20, Office of Management and Policy—Functions

Through the Deputy Inspector General for Management and Policy:

A. The office conducts and coordinates OIG reviews of existing and proposed legislation and regulations related to HHS programs and operations to identify their impact on economy and efficiency and their potential for fraud and abuse. It serves as contact for the press and electronic media and serves as OIG congressional liaison. The office prepares or coordinates congressional testimony and confers with officials in the Office of the Secretary staff divisions on congressional relations, legislation and public affairs. It develops and publishes OIG newsletters, recruitment brochures and other issuances to announce and promote OIG activities and accomplishments.

B. The office coordinates the development of the OIG long-range strategic plan. It compiles the Semiannual and other legislatively-mandated reports to the Congress and operates the Executive Secretariat. It formulates and oversees the execution of the OIG budget and confers with the Office of the Secretary, the Office of Management and Budget and the Congress on budget issues. It issues quarterly grants to States for Medicaid fraud control units. It conducts management studies and analyses and establishes and coordinates general management policies for the OIG and publishes those policies in the OIG Administrative Manual. It serves as OIG liaison to the Office of the Secretary for personnel issues and other administrative policies and practices, and on equal employment opportunity and other civil rights matters. It coordinates internal control reviews for the OIG.

C. The office is responsible for OIG information resources management (IRM), as defined by the Paperwork Reduction Act, OMB Circular A–130, the Federal Information Resources Management regulations, the Computer Security Act of 1987, HHS IRM Circulars, and by related guidance. The office also provides information technology support to the OIG through management of its local area networks nationwide, provision of headquarters computer end-user support, and support of OIG information systems as required. Through this office, the Deputy Inspector General for Management and Policy serves as the OIG Chief Information Officer.

Section AFE.00, Office of Evaluation and Inspections (OEI)—Mission

The Office of Evaluation and Inspections is responsible for conducting inspections of HHS programs, operations and processes to identify vulnerabilities, to prevent and detect fraud, waste and abuse, and to promote economy, efficiency and effectiveness in HHS programs and operations.

Section AFE.10, Office of Evaluation and Inspections—Organization

This office is directed by the Deputy Inspector General for Evaluation and Inspections, and comprises the Immediate Office, including the Deputy Inspector General for OEI and an immediate staff, and eight regional offices.

Section AFE.20, Office of Evaluation and Inspections—Functions

The office is responsible for carrying out inspections supporting the OIG mission. The Deputy Inspector General provides general supervision to the OEI immediate office staff and supervises the Regional Inspectors General for Evaluation and Inspections who carry out OEI's mission and activities in assigned geographic areas. The Immediate Office carries out OEI's mission in headquarters.

A. The immediate office develops OEI's evaluation and inspections policies, procedures and standards. It manages OEI's human and financial resources. It develops and monitors OEI's management information systems. It conducts management reviews within the HHS/OIG and for other OIG's upon request. The office carries out and maintains an internal quality assurance

system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective; are followed; and are functioning as intended.

B. The immediate office manages OEI's work planning process, and develops and reviews legislative, regulatory and program proposals to reduce vulnerabilities to fraud, waste and mismanagement. It develops evaluation techniques and coordinates projects with other OIG and departmental components. It provides programmatic expertise and information on new programs, procedures, regulations and statutes to OEI regional offices. It maintains liaison with other components in the Department, follows up on implementation of corrective action recommendations, evaluates the actions taken to resolve problems and vulnerabilities identified, and provides additional data or corrective action options, where appropriate.

C. The immediate office provides statistical and data base advice and services for inspections conducted by the regional offices. It carries out analyses of large data bases to identify potential areas of fraud and abuse, and provides technical assistance to the regional offices for these purposes. It operates a toll-free hotline for the OIG to permit individuals to call in suspected fraud or waste, refers the calls for appropriate action by HHS agencies or other OIG components, and analyzes the body of calls to identify trends and patterns of fraud and abuse needing attention.

D. The regional offices carry out OEI's mission in the field. The regional offices evaluate HHS programs and produce the results in inspection reports. They conduct data and trend analyses of major HHS initiatives to determine the effects of current policies and practices on program efficiency and effectiveness. They recommend changes in program policies, regulations and laws to improve efficiency and effectiveness, and to prevent fraud, abuse, waste and mismanagement. They analyze existing policies to evaluate options for future policy, regulatory and legislative improvements.

Section AFG.00, Office of Counsel to the Inspector General (OCIG)—Mission

The Office of Counsel to the Inspector General (OCIG) is responsible for providing all legal services and advice to the Inspector General, Principal Deputy Inspector General and all the subordinate components of the Office of Inspector General, in connection with OIG operations and administration, OIG fraud and abuse enforcement activities, and OIG activities designed to promote efficiency and economy in the Department's programs and operations. The OCIG is also responsible for imposing and litigating CMP and program exclusion cases within the jurisdiction of the OIG, for the coordination and disposition of False Claims Act *qui tam* and criminal, civil and administrative matters, and for the resolution of voluntary disclosure and program compliance activities. The OCIG develops models for corporate integrity, compliance and enforcement programs; monitors ongoing compliance; and promotes industry awareness of corporate integrity models.

Section AFG.10, Office of Counsel to the Inspector General—Organization

The office is directed by the Chief Counsel to the Inspector General, and the Assistant Inspector General for Legal Affairs. The office is comprised of the following components:

A. Advice.
B. Civil Recoveries.
C. Administrative Litigation.
D. Industry Guidance.

Section AFG.20, Office of Counsel to the Inspector General—Functions

A. Advice

This office provides legal advice to the various components of the OIG on legal issues that arise in the exercise of the OIG's responsibilities under the Inspector General Act of 1978. Such issues include the scope and exercise of the Inspector General's authorities and responsibilities; investigative techniques and procedures (including criminal procedure); the sufficiency and impact of legislative proposals affecting the OIG; and the conduct and resolution of investigations, audits and inspections. The office evaluates the legal sufficiency of OIG recommendations and develops formal legal opinions to support those recommendations. When appropriate, the office coordinates formal legal opinions with the HHS Office of the General Counsel. The office provides legal advice on OIG internal administration and operations, including appropriations, delegations of authority, ethics, OIG regulations, personnel matters, the disclosure of information under the Freedom of Information Act and the safeguarding of information under the Privacy Act. The office is responsible for conducting and coordinating litigation activities on personnel and Equal Employment Opportunity matters and Federal tort actions involving OIG employees. The office is responsible for the clearance and enforcement of subpoenas issued by the OIG, and defends the OIG in litigation matters as necessary.

B. Civil Recoveries

This office oversees all False Claims Act cases, including *qui tam* cases, and handles final sign-off on False Claims Act settlements for the Department, including the amount of restitution and resolution of the CMP and program exclusion authorities that have been delegated to the OIG. It coordinates DOJ and U.S. Attorney's offices resource requests, participates in settlement negotiations and provides litigation support. Where necessary, the office litigates appeals of program exclusions imposed in such global cases before the Department Appeals Board (DAB) and assists DOJ in handling any subsequent appeals of such cases to the Federal courts. The office coordinates and resolves all voluntary disclosure cases through: (1) Liaison activities with DOJ and the U.S. Attorney's office; (2) the disclosure verification efforts of OAS and OI; and (3) final disposition and sign-off of the matter. The office, in coordination with other OIG components, develops both the standards governing the use of program exclusion authorities, and the criteria for evaluating whether to impose program exclusions against health care providers. The office is responsible for developing and maintaining a comprehensive and coordinated data base on all settled and pending False Claims Act and CMP cases under its authority.

The Civil Recoveries Branch also develops and monitors corporate and provider integrity plans adopted as part of settlement agreements, and develops audit and investigative review standards for monitoring such plans in cooperation and coordination with other OIG components. The office resolves breaches of integrity plans through the development of corrective action plans, on-site reviews, and through the imposition of sanctions. It serves to increase industry awareness of corporate compliance integrity issues by promoting voluntary adoption of corporate compliance plans through speeches, articles, visits and other liaison activities with governmental and private sector groups, as well as developing model or best practice recommendations.

C. Administrative Litigation

This office is responsible for determining whether to impose administrative sanctions, including CMPs within the jurisdiction of the OIG, assessments and program exclusions (with the exception of those handled by the Civil Recoveries Branch). It effectuates all such health care mandatory and permissive exclusions under the Social Security Act, and decides on waiver requests and requests for reinstatement. The office participates in developing standards governing the imposition of these exclusion authorities. The office coordinates with the Public Health Service and DOJ to effectuate repayment agreements with those excluded individuals who have defaulted on HEAL loans. The office litigates appeals of program exclusions before the DAB and assists DOJ in handling any subsequent appeals of such cases to the Federal courts.

The office reviews all cases referred by HCFA under the patient anti-dumping authority of the Social Security Act, and resolves the liability for CMPs and program exclusions for hospitals and physicians. Where appropriate, the office imposes and litigates CMPs and program exclusions with respect to hospitals and physicians for violations of the patient anti-dumping statute.

The office imposes and litigates CMPs and assessments under the CMP law, and ensures that all monetary recoveries are promptly and accurately reported to the appropriate OIG data base. It represents the OIG in coordinating all CMP actions initiated by other Federal health care programs that are authorized to prosecute health care providers. The office provides guidance and monitors all actions in this area until completion of these actions.

The Administrative Litigation Branch also has primary responsibility for developing and promulgating all OIG regulations for codification into the Code of Federal Regulations, all OIG-related **Federal Register** notices, and the review and drafting of legislative proposals relating to fraud and abuse enforcement activities.

D. Industry Guidance

This office is responsible for drafting and issuing advisory opinions to the health care industry and members of the public on whether an activity (or proposed activity) would constitute grounds for the imposition of a sanction under the anti-kickback statute, the CMP law or the program exclusion authorities, and on other issues pertaining to the anti-kickback statute. The office develops and updates procedures for the submission of requests for advisory opinions and for determining the fees that will be imposed. The office solicits and responds to proposals for new regulatory safe harbors to the anti-kickback statute, modifications to existing safe harbors, and new fraud alerts. The office consults with, and obtains the concurrence of, DOJ on all proposed advisory opinions and safe harbors before issuance or publication. The office provides legal advice to the various components of the OIG, other offices of the Department, and DOJ concerning matters involving the interpretation of the anti-kickback statute and other legal authorities, and assists those components or offices in analyzing the applicability of the anti-kickback statute to various practices or activities under review.

Section AFH.00, Office of Audit Services (OAS)—Mission

The Office of Audit Services provides policy direction for and conducts and oversees comprehensive audits of HHS programs, operations, grantees and contractors, following generally accepted Government auditing standards (GAGAS), the Single Audit Act of 1984, applicable Office of Management and Budget (OMB) circulars and other legal, regulatory and administrative requirements. This includes investigative audit work performed in conjunction with other OIG components, directed toward the prosecution of both civil and criminal cases of program abuse. It maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, the Department. In furtherance of this mission, the organization engages in a number of activities:

A. The office coordinates and confers with officials of the central Federal management agencies (OMB, the General Accounting Office (GAO), the Office of Personnel Management (OPM) and the Department of the Treasury) on audit matters involving HHS programs and operations. It provides technical assistance to Federal, State and local investigative offices on matters concerning the operation of the Department's programs. It participates in interagency efforts implementing OMB Circulars A–128 and A–110, which call for use of the single audit concept for most external audits. It performs audits of activities administered by other Federal departments, following the system of audit cognizance administered by OMB. It participates in the President's Council on Integrity and Efficiency (PCIE) initiatives and other Government-wide projects. It works with other OIG components on special assignments and projects. It responds to congressional oversight interests related to audit matters in the Department.

B. The Office of Audit Services helps HHS operating divisions and the Office of the Secretary staff divisions to develop policies to manage grants and procurements and policies to establish indirect cost rates. It performs pre-award audits of grant or contract proposals to determine the financial capability of the grantees or contractors and conducts post-award audits.

C. The office reviews legislative, regulatory and policy proposals for audit implications. It recommends improvements in the accountability and integrity features of legislation, regulations and policy. It prepares reports of audits and special studies for the Secretary, heads of HHS operating divisions, Regional Directors and others. It gathers data on unresolved audit findings for the statutorily required Semiannual Reports to the Congress and for the Deputy Secretary as Chairman of the Audit Resolution Council. It conducts follow-up examinations and special analyses of actions taken on previously reported audit findings and recommendations to ensure completeness and propriety.

D. The office decides when audits can or may be performed by audit organizations outside the Department, including those by other Federal or nonfederal governmental agencies, contractors, or public accounting firms. It assures that any audit performed by non-OIG auditors complies with the Government auditing standards established by the Comptroller General of the United States. It evaluates audits performed for the Department by outside organizations. It coordinates the development of the OIG Annual Work Plan and produces the Red Book—a summary of significant monetary recommendations not yet implemented.

E. The office serves as the focal point for all financial audit activity within the Department and provides the primary liaison conduit between the OIG and departmental management. The office provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits.

Section AFH.10, Office of Audit Services—Organization

The Office of Audit Services comprises the following components:

A. Immediate Office.

B. Audit Operations and Financial Statement Activities.
C. Health Care Financing Audits.
D. Administrations of Children, Family and Aging Audits.
E. Public Health Audits.

Section AFH.20, Office of Audit Services—Functions

A. Immediate Office of the Deputy Inspector General for Audit Services

This office is directed by the Deputy Inspector General for Audit Services who carries out the functions designated in the law for the position, Assistant Inspector General for Auditing. The Deputy Inspector General for Audit Services is responsible to the Inspector General for carrying out OIG's audit mission and supervises the Assistant Inspectors General heading OAS offices described below.

The Immediate Office manages the human and financial resources of the Office of Audit Services including developing staffing allocation plans and issuing policy for, coordinating and monitoring all budget, staffing, recruiting and training activities of the office. Included in this is the responsibility to track court ordered or agreed-to costs of audits recouped from health care providers found to have violated Medicare fraud and abuse program provisions. It maintains a professional development program for Office of Audit Services staff which meets the requirements of Government auditing standards. The office provides liaison with the General Accounting Office. It reviews all replies to GAO reports to ensure they are responsive, properly coordinated and representative of HHS policy and advises the Secretary and other officials about significant findings.

B. Audit Operations and Financial Statement Activities

This office is directed by the Assistant Inspector General for Audit Operations and Financial Statement Activities. In addition to directing this office, the Assistant Inspector General supervises the eight Regional Inspectors General for Audit Services. The office's principal functions include providing direction and oversight to OAS through its work planning and quality assurance activities; the direct-line responsibility for audits of financial statements and financial related audits, including internal audits of functional areas within the Department; and directing field audit operations.

1. The office serves as the focal point for all financial statement and financial related audit activity within the Department and serves as the primary liaison conduit between the OIG and departmental management.

2. The office operates an internal quality assurance system that provides reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, the Department.

3. The office evaluates audit work, including performing quality control reviews of audit reports, and develops and monitors audit work plans. It develops audit policy, procedures, standards, criteria and instructions for all audit activities performed by, on behalf of, or conforming with departmental programs, grants, contracts or operations in accordance with GAGAS and other legal, regulatory and administrative requirements.

4. The office tracks, monitors and reports on audit resolution and follow-up in accordance with OMB Circular A–50.

5. The office provides oversight for audits of governments, universities and nonprofit organizations conducted by nonfederal auditors and those under contract with the OIG (external audit resources).

6. The office coordinates with the other OIG components in developing the semiannual report to Congress.

C. Health Care Financing Audits

This office is directed by the Assistant Inspector General for Health Care Financing Audits. The office conducts programmatic and fraud and abuse oriented audits of HCFA program operations and oversees nationwide the audits of the Medicare and Medicaid programs, their contractors, and providers of services and products. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all HCFA audit activities performed by, or on behalf of, the Department.

D. Administrations of Children, Family and Aging Audits

This office is directed by the Assistant Inspector General for Administrations of Children, Family and Aging Audits. The office conducts and oversees audits of the operations and programs of the Administration for Children and Families and the Administration on Aging, as well as statewide cost allocation plans. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in its audit activities.

E. Public Health Audits

This office is directed by the Assistant Inspector General for Public Health Audits. The office conducts and oversees audits of the programs and activities of the public health related agencies, including the Food and Drug Administration; the National Institutes of Health; the Health Resources and Services Administration; the Substance Abuse and Mental Health Services Administration; the Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Indian Health Service and the Surgeon General, as well as those colleges, universities and nonprofit organizations that receive research grants from the Federal Government. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all public health related audit activities performed by, or on behalf of, the Department.

Section AFJ.00, Office of Investigations (OI)—Mission

The Office of Investigations is responsible for conducting and coordinating investigative activities related to fraud, waste, abuse and mismanagement in HHS programs and operations, including wrongdoing by applicants, grantees, or contractors, or by HHS employees in the performance of their official duties. It serves as OIG liaison to DOJ on all matters relating to investigations of HHS programs and personnel, and reports to the Attorney General when the OIG has reasonable grounds to believe Federal criminal law has been violated. The office serves as a liaison with HCFA, State licensing boards and other outside organizations and entities with regard to exclusion, compliance and enforcement activities. It works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively, and are functioning as intended.

Section AFJ.10, Office of Investigations—Organization

The Office of Investigations comprises the following components:
A. Immediate Office.
B. Criminal Investigations.
C. Investigations Policy and Oversight.

Section AFJ.20, Office of Investigations —Functions

A. Immediate Office of the Deputy Inspector General for Investigations

This office is directed by the Deputy Inspector General for Investigations who is responsible for the functions designated in the law for the position, Assistant Inspector General for Investigations. The Deputy Inspector General for Investigations supervises the Assistant Inspector General and Division Director who head the OI offices described below.

The Deputy Inspector General for Investigations is responsible to the Inspector General for carrying out the investigative mission of the OIG and for leading and providing general supervision to the OIG investigative component. The Immediate Office coordinates quality assurance studies to ensure that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all investigative activities performed by, or on behalf of, the Department.

B. Criminal Investigations

This office is directed by the Assistant Inspector General for Criminal Investigations who supervises a headquarters policy and review staff and the Regional Inspectors General for Investigations who carry out investigative activities in their assigned geographic areas.

1. The headquarters staff assists the Deputy Inspector General for Investigations to establish investigative priorities, to evaluate the progress of investigations, and to report to the Inspector General on the effectiveness of investigative efforts. It develops and implements investigative techniques, programs, guidelines and policies. It provides programmatic expertise and issues information on new programs, procedures, regulations and statutes. It directs and coordinates the investigative field offices.

2. The headquarters staff reviews completed reports of investigations to ensure accuracy and compliance with guidelines. It issues the reports to pertinent agencies, management officials and the Secretary and recommends appropriate debarment actions, administrative sanctions, CMPs and other civil actions, or prosecution under criminal law. It identifies systemic and programmatic vulnerabilities in the Department's operations and makes recommendations for change to the appropriate managers.

3. The staff provides for the personal protection of the Secretary.

4. The field offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct and other investigative matters within the jurisdiction of the OIG. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management improvement reports.

5. The office develops all health care mandatory and permissive program exclusions, and ensures enforcement of exclusions imposed through liaison with HCFA, DOJ and other governmental and private sector entities. It is responsible for developing, improving and maintaining a comprehensive and coordinated OIG data base on all OIG exclusion actions, and promptly and accurately reports all exclusion actions within its authority to the data base. It informs appropriate regulatory agencies, health care providers and the general public of all OIG exclusion actions, and is responsible for improving public access to information on these exclusion actions to ensure that excluded individuals and entities are effectively barred from program participation.

C. Investigations Policy and Oversight

This office is directed by the Division Director for Investigations Policy and Oversight who leads outreach activities to State and local investigative agencies, and the general management functions of the Office of Investigations.

1. The office oversees State Medicaid fraud control units and is responsible for certifying and recertifying these units and for auditing their Federal funding. The office provides pertinent information from HHS records to assist Federal, State and local investigative agencies to detect, investigate and prosecute fraud.

2. The office maintains an automated data and management information system used by all OI managers and investigators. It provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies.

3. The office develops general management policy for the OI. It develops and issues instructional media on detecting wrongdoing and on investigating and processing cases. The office reviews proposed legislation, regulations, policies and procedures to identify vulnerabilities and recommends modification where appropriate. It reviews investigative files in response to Privacy and Freedom of Information Act requests, and serves as OIG liaison to the Office of the Secretary for Freedom of Information and Privacy Act requests. It plans, develops, implements and evaluates all levels of employee training for investigations, management, support skills and other functions. It coordinates general management processes, e.g., compiles reports on the budget, on awards and on other personnel matters for OI as a whole; implements policies and procedures published in the OIG Administrative Manual; and processes procurement requests and other service related actions. It oversees a law enforcement techniques and equipment program.

Dated: October 6, 1997.

June Gibbs Brown,

Inspector General.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Notice of Meeting

The Agency for Toxic Substances and Disease Registry announces the following meeting.

Name: Expert Workshop 13 Regarding Medical Monitoring in Bunker Hill, Idaho.

Times and Dates: 8 a.m.–5 p.m., November 5, 1997; 8 a.m.–5 p.m., November 6, 1997.

Place: Elk's Temple #1841, 202½ McKinley Avenue, Kellogg, Idaho 83837, telephone 208/786–3901.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Agency for Toxic Substances and Disease Registry (ATSDR) is considering the appropriateness of medical monitoring for populations who lived around the Bunker Hill former lead smelting facility (the Bunker Hill Superfund Site) in the Silver Valley of Idaho at a time of excess exposures of public health significance. As part of this consideration process, ATSDR is convening a series of workshops to examine the appropriateness and feasibility of a medical monitoring program.

The purpose of the medical monitoring program is to provide a public health service to communities affected by exposures to hazardous substances by screening target populations at significant risk of a specific

health effect or outcome, identifying individuals in need of further diagnosis or treatment, and arranging for appropriate referrals.

Section 104(i)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9604(i)(9)), provides for the Administrator, ATSDR to initiate a health surveillance program for populations at significantly increased risk of adverse health effects as a result of exposure to hazardous substances released from a facility. A program included under health surveillance is referred to as "medical monitoring or screening" by ATSDR and is defined in the legislation as "the periodic medical testing to screen people at significant increased risk for disease."

ATSDR has established criteria to determine when medical monitoring is an appropriate health activity and the requirements for establishing a medical monitoring program at a site. The legislation also states that a mechanism to refer people for treatment should be included in the program. This statutory provision does not authorize ATSDR to provide medical treatment. Medical monitoring is a community service, not a health study.

ATSDR is convening three expert workshops to assist in the evaluation of a medical monitoring program at the Bunker Hill site. If a program is deemed appropriate, the agency will develop a medical monitoring plan for the target population(s). The first workshop, considering the first four ATSDR medical monitoring criteria, took place on August 19–20, 1997. The second workshop, which took place on September 23–24, 1997, examined more closely the health outcomes recommended by the first workshop and considered screening tests and protocols appropriate to a medical monitoring program. This document gives notice of the third workshop.

Matters to be Considered: The third workshop will reconvene the first workshop's participants and other experts as needed to:

- Consider the application of the final three medical monitoring criteria as developed by ATSDR, and review ATSDR's application of these criteria, to the Bunker Hill site
- Provide individual recommendations and guidance on issues of science and public health practice related to program implementation
- Provide individual expertise and guidance in conducting a medical outcome and decision analysis to evaluate the public health benefits and risks of a medical monitoring program related to the Bunker Hill site.

The experts will use information from the first and second workshops and other relevant data to make individual recommendations and answer questions related to key issues including the logistics, program infrastructure, benefit analysis, and other aspects of the medical monitoring system criteria for each candidate health outcome.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Vivian Rush, M.D., Medical Officer, ATSDR, Division of Health Education and Promotion, 1600 Clifton Road, NE, M/S E–33, Atlanta, Georgia 30333, telephone 404/639–5080, or Gregory Thomas, Senior Regional Representative, ATSDR Region X, telephone 206/553–2113.

Dated: October 22, 1997.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28483 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–128]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of ten updated drafts and three new draft toxicological profiles, comprising the 11th set, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 17, 1998. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–128. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published in final, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory provisions is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on April 29, 1996 (61 FR 18744). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 1997.

Document	Hazardous substance	CAS No.
1.	ALUMINUM	007429–90–5
	ALUMINUM CHLORIDE.	007446–70–0
	ALUMINUM CHLOROHYDRATE.	001327–41–9
		11097–68–0
		4861–68–3
	ALUMINUM LACTATE.	18917–91–4
	ALUMINUM HYDROXIDE.	021645–51–2
	ALUMINUM OXIDE.	001344–28–1
	ALUMINUM NITRATE.	13473–90–0
	ALUMINUM PHOSPHATE.	007784–30–7
	ALUMINUM PHOSPHIDE.	020859–73–8
	ALUMINUM FLUORIDE.	007784–18–1
	ALUMINUM SULFATE.	010043–01–3
2.	CHLOROETHANE	000075–00–3
3.	CHLOROMETHANE.	000074–87–3
4.	1,2-DICHLOROBENZENE.	000095–50–1
	1,3-DICHLOROBENZENE.	000541–73–1
	1,4-DICHLOROBENZENE.	000106–46–7
	CHLOROBENZENE.	000108–90–7
	DICHLOROBENZENE 025321–22–6.	
5.	3,3,-DICHLOROBENZIDINE.	00091–94–1
6.	2,4-DINITROTOLUENE.	000121–14–2
	2,6-DINITROTOLUENE.	000606–20–2
7.	ETHYL BENZENE	000100–41–4
8.	HEXANE	000110–54–3
9.	LEAD	007439–02–1
10.	MERCURY	007439–97–6
	MERCURIC (II) ACETATE.	001600–27–7
	MERCURIC (II) SULFIDE.	001134–48–5
	MERCURIC (I) CHLORIDE.	010112–91–1
	METHYLMERCURIC CHLORIDE.	000115–09–3
	PHENYLMERCURIC ACETATE.	000062–38–4
11.	PHENOL	000108–95–2
12.	SULFURIC ACID	007664–93–9
	SULFUR TRIOXIDE.	007446–11–9
13.	SULFUR DIOXIDE	007446–09–5

In regards to the draft Toxicological Profile for Mercury, it should be noted that the EPA is currently in the process of developing a comprehensive assessment of the potential adverse effects of mercury emissions on human health and wildlife. In addition, ATSDR is also aware of a number of other ongoing studies which are investigating the potential for human health effects from mercury exposure. Because of these special circumstances, ATSDR will monitor these efforts very closely during the public comment period; any meaningful and compelling information from these efforts will be critically evaluated for incorporation into the final Toxicological Profile for Mercury, as appropriate.

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 22, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–28474 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–129]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of two new draft toxicological profiles, comprising the 1st set developed for the Department of Energy, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 17, 1998. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–129. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published in final, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600

Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under Section 104(i) (3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the EPA. The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 1997.

Document	Hazardous substance	CAS No.
1.	URANIUM	Multiple
	URANIUM 235	15117–96–1
	URANIUM HEXAFLUORIDE.	7783–81–5
	URANIUM METAL	7440–61–1
	URANIUM ORE	53125–22–7
	URANIUM OCTAOXIDE.	1344–59–8
	URANIUM PEROXIDE.	19525–15–6
	URANIUM TETRACHLORIDE.	10026–10–5
	URANIUM TETRAFLUORIDE.	10049–14–6
	URANYL ACETATE.	541–09–3
	URANYL NITRATE	10102–06–4
	URANYL NITRATE HEXAHYDRATE.	13520–83–7
	URANYL SULFATE.	1314–64–3
2.	IONIZING RADIATION.	NA

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 22, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–28475 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–127]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of five updated drafts and three new draft toxicological profiles, comprising the 10th set of profiles, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before February 17, 1998. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–127. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published in final, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory provisions is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on April 29, 1996 (61 FR 18744). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486). CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 1997.

Document	Hazardous substance	CAS No.
1.	CADMIUM	007440–43–9
	CADMIUM CARBONATE.	000513–78–0
	CADMIUM CHLORIDE.	010108–64–2
	CADMIUM OXIDE	01306–19–0
	CADMIUM SULFATE.	010124–36–4
	CADMIUM SULFIDE.	01306–23–6
2.	CHLORODIBENZ-O-P-DIOXIN.	039227–53–7
	DICHLORODIBENZO-P-DIOXIN.	050585–39–2
	HEPTACHLORODIBENZO-P-DIOXIN.	037871–00–4
	HEXACHLORODIBENZO-P-DIOXIN.	034465–46–8
	OCTACHLORODIBENZO-P-DIOXIN.	003268–87–9
	PENTACHLORODIBENZO-P-DIOXIN.	036088–22–9
	TRICHLORODIBENZO-P-DIOXIN.	039227–58–2
	TETRACHLORODIBENZO-P-DIOXIN.	041903–57–5
	1,2,3,4,6,7,8-HEPTACHLORODIBENZO-P-DIOXIN.	035822–46–9
3.	CHLOROPHENOLS.	000088–06–2
	2,3,5,6-TETRACHLOROPHENOL.	000935–95–5
	2,4,5-TRICHLOROPHENOL.	000095–95–4
	2,4,6-TRICHLOROPHENOL.	000088–06–2
	2-CHLOROPHENOL.	000120–83–2
	4-Chlorophenol	000095–57–8
	2,3,4,5-TETRACHLOROPHENOL.	004901–51–3
	2,3,4,6-TETRACHLOROPHENOL.	000058–90–2
4.	DORMALDEHYDE	000050–00–0
5.	HEXACHLOROCYCLOHEXANE.	000608–73–1
	HEXACHLOROCYCLOHEXANE, ALPHA-.	000319–84–6
	HEXACHLOROCYCLOHEXANE, BETA-.	000319–85–7
	HEXACHLOROCYCLOHEXANE, DELTA-.	000319–86–8
	HEXACHLOROCYCLOHEXANE, GAMMA-.	000058–89–9
6.	HEXACHLOROCYCLOPENTADIENE.	000077–47–4
7.	MANGANESE	007439–96–5
8.	HYDROGEN SULFIDE.	007783–06–4

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 22, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–28476 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 11 a.m.–5:15 p.m., December 4, 1997; 8:30 a.m.–2:30 p.m., December 5, 1997.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, Page 2 NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. NCID Update
2. Overview of CDC Emerging Infections Plan, 1998–2003
3. Charge to the Workgroups
4. Workgroup Sessions:

CDC Plan:

a. Surveillance and Response
b. Applied Research
c. Prevention and Control
d. Infrastructure Bioterrorism Preparedness

5. Workgroup Reports
6. Facilities Update
7. Scientific Updates (Late breakers)
8. Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board in May 1997; Page 3 and consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0076.

Dated: October 22, 1997.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28480 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 8 a.m.–4:15 p.m., November 13, 1997.

8 a.m.–11:45 a.m., November 14, 1997.

Place: Holiday Inn Midtown, 7100 Abercorn Street, Savannah, Georgia 31406, telephone 912/352–7100.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: October 22, 1997.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28484 Filed 10–27–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P–15A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey (MCBS) Rounds: 20–28; *Form No.:* HCFA–P–15A (OMB# 0938–0568); *Use:* The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged and disabled persons enrolled in Medicare. The survey provides a comprehensive source of information on beneficiary characteristics, needs, utilization, and satisfaction with Medicare-related activities; *Frequency:* Other (3 times a year per respondent); *Affected Public:* Individuals and households; *Number of Respondents:* 16,500; *Total Annual Responses:* 49,500; *Total Annual Hours:* 50,490.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 15, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–28436 Filed 10–27–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–46]

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary, Community Planning and Development (HUD).

ACTION: Notice of Proposed Information Collection for Public Comment.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due date: December 29, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing & Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Department of Housing and Urban Development, Room 7240, 451 Seventh Street, SW, Washington, DC 20410–7000. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708–1201, Extension 4465. This is not a toll-free number. Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

OMB Control Number: 2506–0087.

Description of the need for the information and proposed use: To document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes. Used by recipients of HUD assistance who are required to assume HUD's environmental responsibilities. HUD regulations require recipients to submit requests for release of funds and certify full compliance with NEPA and the related statutes using the procedures identified in 24 CFR Part 58. Recipients must also maintain a public record of each project's compliance.

Agency Form Numbers: Form HUD 7015.15.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of responses	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Office of Community Planning and Development	2,500	1	2,500	0.6	1500	§ 58.1
Office of Public and Indian Housing	2,300	1	2,300	0.6	1380	§ 58.1
Office of Housing	125	1	125	0.6	75	§ 58.1
Total Annual Burden				1.8	2875	

Status of the proposed information collection: The revision is needed in support of proposed rulemaking and request for OMB renewal for three years. The current OMB approval expires on December 31, 1998.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 22, 1997.

Jacquie M. Lawing,

Acting Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–62–M

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Office of Public and Indian Housing
Office of Housing

OMB No. 2506-0087 (exp. 12/31/98)

Public reporting burden for this collection of information is estimated to average 0.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.
Pursuant to Section 104(g) of Title I, Housing and Community Development Act of 1974; Section 17(l) and Section 26 of the U.S. Housing Act of 1937; Title IV of the Stewart B. McKinney Homeless Assistance Act; Section 288 under Title II of the Cranston-Gonzales Nation Affordable Housing Act (NAHA); Section 542(c) and 1011(o) of the Housing and Community Development Act of 1992; Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994; and Section 26 under title I of the United States Housing Act of 1937 for Public and Indian Housing.

1. Program Title(s):	2. HUD/State Identification Number:
OMB Catalog No(s):	3. Name & Address of Responsible Entity:
4. Name & Address of Recipient: (if different from responsible entity)	5. For information about this request, Contact:
	6. Date of Latest Assistance Action: Application Submission: / Preliminary Approval: / Grant Agreement:

DRAFT

Part I. Request for Release of Funds (to be completed by recipient)

7. HUD or State Agency & Office Unit to Receive Request:

The recipient(s) of assistance under the program listed above requests the release of funds and removal of grant conditions governing the use of the assistance for the following:

8. Program Activity/Project Name:	9. Location: (street, address, city, county, & state)

10. Program Activity/Project Description:

The recipient agrees to comply with any special conditions as evidenced in the environmental review performed by the responsible entity for carrying out the project in accord with 24 CFR 58.71(b) and (c).

Signature of the recipient:	Title:	Date:
X		

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity/Project, I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has assumed responsibility for and complied with or will take into account, the National Environmental polic Act of 1969, as amended; the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58. and 24 CFR 58.6; and the applicable State and Local laws.
2. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed projec described in Part 1 of this request, I have found that the proposal ☐did ☐did not require the preparation and dissemination of a environmental impact statement.
3. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 a notice to the public in accordanc with 24 CFR 58.70 and as evidenced by the attached copy (copies).
4. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures an requirements of 24 CFR Part 58.

As the duly designated certifying official of the responsible entity, I also certify that:

5. I am authorized to and do consent to assume the status of federal official under the National Environmental Policy Act of 19659 an each provision of law designated in the 24 CFR Part 58.5 and 24 CFR Part 58.6 list of NEPA-related authorities insofar as the provision of these laws apply to the HUD responsibilities for environmental review, decisionmaking and actions that have been assumed by th responsible entity.

6. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the federal courts for the enforcement of al

7. Signature & Address of Certifying Officer of the Responsible Entity: Signature:	Title:	Date:
X		

DRAFT

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 USC 1001, 1010, 1012; 31 USC 3729, 3802).

[FR Doc. 97-28471 Filed 10-27-97; 8:45 am]
BILLING CODE 4210-62-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Public Scoping Meetings for Proposed Habitat Conservation Plan

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public scoping meetings.

SUMMARY: The Oregon Department of Forestry (Applicant) has begun the development of a Habitat Conservation Plan (Plan) for state forest lands managed by the Applicant. The Applicant intends to submit the Plan to the Fish and Wildlife Service and National Marine Fisheries Service (collectively, "the Services"), along with an application for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act).

This notice advises the public that the Services and Applicant have scheduled a series of public meetings to inform the public of a proposed Plan and the process of application for incidental take permits. The Services are seeking suggestions and information from other agencies and the public on the scope of issues related to the development of a Plan, including the range of alternatives that should be considered in the environmental review documents required under the National Environmental Policy Act. Public input may be written or oral (if provided at any of the public meetings). Information on dates and deadlines is provided below.

DATES: Comments should be received on or before February 3, 1998.

ADDRESSES: Comments regarding the scope of the environmental assessment or environmental impact statement should be labeled as "Attention—ODF HCP" and addressed to Mr. Russell Peterson at: Oregon State Office, Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266; telephone (503) 231–6179. Written comments may also be sent by facsimile to (503) 231–6195.

FOR FURTHER INFORMATION: Contact Mr. Joseph Zisa at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Applicant has initiated the development of a multi-species Habitat Conservation Plan under the provisions of section 10(a)(1)(B) of the Act, in consultation with the Services. The Plan will be submitted to the Services as part of an application for an incidental take permit for approximately 630,000 acres of state forest land. This acreage includes approximately 520,000 acres in the Tillamook and Clatsop State Forests in northwest Oregon and approximately 48,000 acres in the Santiam State Forest. The remaining covered acreage would include all other state forest lands west of the Cascade Mountains crest, with the exception of the Elliott State Forest in Coos and Douglas Counties. The Services issued an incidental take permit for the Elliott State Forest in 1995.

Once completed, the Applicant would submit the Plan as part of the incidental take permit application. The Services would evaluate the incidental take permit application and associated Plan in accordance with section 10(a)(2)(B) of the Act, and its implementing regulations. The environmental review of the Plan would be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations, as well as the implementing regulations of the Endangered Species Act. A No Action/No Project alternative will be considered consistent with the requirements of the National Environmental Policy Act.

The proposed incidental take permit would cover the Applicant's management activities that would result in the incidental take of species currently listed under the Act. Additionally, the applicant would be requesting federal assurances regarding other, presently unlisted species occurring or potentially occurring on the above lands. Presently listed species that the proposed Plan and incidental take permit would potentially cover include the threatened northern spotted owl (*Strix occidentalis courina*), the threatened marbled murrelet (*Brachyramphus marmoratus marmoratus*), the threatened bald eagle (*Haliaeetus leucocephalus*), and the endangered American peregrine falcon (*Falco peregrinus anatum*). The proposed agreement covering conservation of unlisted species would include the proposed threatened coho salmon (*Oncorhynchus kisutch*) and other species.

During this scoping process, the Services seek public and agency input regarding the development of the proposed Plan and potential issuance of incidental take permits.

Should the decision be made that an environmental impact statement is appropriate, a separate Notice of intent will be published in the **Federal Register**. Comments received during the scoping process referenced in this notice and any additional comments received following a future Notice of Intent shall be considered in the preparation of a draft environmental impact statement. At this time, the Services cannot estimate the time following the completion of this scoping process necessary for a decision regarding the selection of National Environmental Policy Act documentation and additional scoping.

Draft Plan and National Environmental Policy Act documents are not expected to be available for public review during this scoping process. The information gathered from scoping will be utilized in the development of such documents prior to a formal public review process later in 1998.

The Applicant is expected to present some of its proposals for the Plan to the public during the upcoming scoping meetings. These proposals do not necessarily represent those that will be included in the Plan as it undergoes further development. Such proposals may not be the product of complete consultation with the Services and have not been subject to formal evaluation for adequacy by the Services.

Meetings

As an opportunity for interested persons to comment on the scope of the environmental assessment or environmental impact statement and issues related to the development of the Plan, public scoping meetings are scheduled as follows:

November 17, 1997, Oregon Department of Forestry District Office, 4907 Third Street, Tillamook, Oregon, 7:00 p.m. to 10:00 p.m.
November 18, 1997, Red Lion Inn, Chinook Room, 400 Industry Street, Astoria, Oregon, 7:00 p.m. to 10:00 p.m.
November 20, 1997, World Forestry Center, Portland, Oregon, 6:30 p.m. to 10:00 p.m., preceded by an informational workshop from 1:00 p.m. to 5:00 p.m.
December 2, 1997, Oregon Department of Forestry Headquarters, Conference Room, 2600 State Street, Salem, Oregon, 7:00 p.m. to 10:00 p.m.
December 3, 1997, Lane Community College, Forum Room 308, Eugene, Oregon, 7:00 p.m. to 10:00 p.m.

(For more detailed information regarding the above locations, please contact the Oregon Department of Forestry's Public Affairs Office at telephone (503) 945–7422 or (800) 482–6866.)

Comments

Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above office. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

Authority: This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Regulations (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives that would be analyzed or considered in preparation of an environmental assessment or environmental impact statement.

Dated: October 22, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon, Fish and Wildlife Service.

[FR Doc. 97-28482 Filed 10-27-97; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for the Cabazon Band of Mission Indians Resource Recovery Park Project, Riverside County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Cabazon Band of Mission Indians, intends to gather information necessary for preparing a Programmatic Environmental Impact Statement (PEIS) for the Cabazon Resource Recovery Park Project proposed for development on Section 6 of the Cabazon Reservation in Riverside County, California. A description of the proposed project, location, and environmental considerations to be addressed in the PEIS are provided below (see supplemental information). In addition to this notice, a public meeting regarding the proposed project and preparation of the PEIS will be held.

This notice is published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1501.7. The purpose of this notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the PEIS. Comments and participation in this scoping process are encouraged.

DATES: Comments must be received on or before November 28, 1997. A public scoping meeting will be held November 13, 1997, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be addressed to Ronald Jaeger, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 4330 Watt Avenue, 4th Floor, North Higlands, California 95660. A public scoping meeting will be held on November 13, 1997, at the Tribal Hall, Cabazon Reservation, 84–245 Indio Springs Drive, Indio, California, from 7 p.m. to 10 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Fryman, Acting Area Natural Resources Officer, Sacramento Area Office, Bureau of Indian Affairs, 4330 Watt Avenue, 4th Floor, North Higlands, California 95660, telephone number (916) 979–2575, extension 255; or Michael Derry, Development Manager, Cabazon Band of Mission Indians, 84–245 Indio Springs Drive, Indio, California 92201, telephone number (760) 342–2593, extension 3015.

SUPPLEMENTARY INFORMATION: The Cabazon Band of Mission Indians plans to develop Section 6 of their Reservation, located between Avenue 62 and Avenue 66 on State Highway 111, south of the City of Coachella in Riverside County, California, into the Cabazon Resource Recovery Park (CRRP). The CRRP will be developed to include numerous industrial facilities in the areas of recycling, reclamation, and reuse of materials that would otherwise be disposed of as waste, and subsequent manufacturing of products from the reclaimed materials. The CRRP will build on the existing waste recycling industries already constructed on Section 6. Future types of industries to be pursued include: a catalytic converter recycling plant in which platinum metal is recovered; a waste tire recycling plant which will produce crumb rubber for numerous industrial and paving uses; a materials recovery facility (MRF) which will separate reusable materials from the municipal solid waste stream; a biomass to ethanol facility; a building block production facility; and a specialty plastic products manufacturer using plastics recovered at the MRF. Numerous other projects similar in nature are planned. An infrastructure will be constructed to support the facilities in the Park, including rail sidings, a road network, a sewage treatment plant, and a cogeneration plant. The project will use the existing Southern Pacific rail line and the improved State Highway 86 for transportation of materials to and from the Park. The PEIS will address existing, developing, planned, and representative projects in the CRRP. Areas of environmental concern include: air quality, traffic and transportation, biological and botanical resources, and cultural resources. The range of issues addressed may be expanded based on comments received during the scoping process.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-28492 Filed 10-27-97; 8:45 am]
BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-310-1310-01-24-1A; OMB Approval Number 1004-0136]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection for information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On April 8, 1996, the BLM published a notice in the **Federal Register** (61 FR 15510) requesting comments on the collection. The comment period ended June 7, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0136), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Office (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land

Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Application for Permit for Drill, Deepen, or Plug Back.

OMB Approval Number: 1004–0136.

Abstract: Data submitted by oil and gas operators is used for agency approval of proposed drilling operations through review of technical and environmental factors.

Bureau Form Number: 3160–3.

Frequency: On occasion.

Description of Respondents: Oil and gas operators.

Estimated Completion Time: 30 minutes.

Annual Responses: 4,000.

Annual Burden Hours: 2,000.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Dated: September 29, 1997.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 97–28445 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ917–AZA29960]

Notice of Proposed Decision of Exchange of Lands in Maricopa and Pima Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 17, 1997 Michael A. Taylor, Phoenix Field Office Manager, approved the proposed land exchange between the Bureau of Land Management, Phoenix Field Office and Tucson Mountain Investors, L.L.C. The proposed decision, the Finding of No Significant Impact (FONSI) and the Environmental Assessment (EA) are available for public review at the State Office, 222 North Central Avenue, Phoenix, Arizona 85004. Copies can also be obtained by calling Alicia A. Leone at (602) 417–9567. The following described federal land has been determined to be suitable for transfer out of federal ownership by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (U.S.C. 1716), as amended:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 W.,
Sec. 1, lots 1–7, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, SW¼SW¼SW¼;
Sec. 4, SW¼SW¼, SW¼SE¼, W½SE¼SW¼SE¼, E½SW¼SE¼SE¼, SE¼SE¼SE¼;
Sec. 5, E½SE¼;
Sec. 7, N½NE¼, N½S½NE¼, NE¼NW¼;
Sec. 8, N½NE¼, E½W½E½SE¼SE¼, E½E½SE¼SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 14, lots 1–10, NW¼NE¼, N½NW¼, NE¼SW¼, S½SW¼;
Sec. 15, lots 1–10, N½NE¼, SW¼NE¼, NW¼, N½SW¼;
Sec. 22, N½N½, SW¼NW¼.

The area described contains 4,322.40 acres.

In exchange the United States will acquire the following described land from Tucson Mountain Investors, L.L.C.:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 12 E.,
Sec. 10, part of;
Sec. 11, part of.

The area described contains 632.78 acres more or less.

Approval of the exchange is to implement the Phoenix Resource Management Plan Decision which identified the selected federal lands for disposal and on development information submitted by Noranda Properties, Inc. Acquisition of the private lands was authorized by Public Law 103–364, signed into law in October 1994, which added 3,460 acres to the park and changed the name from Saguaro National Monument to Saguaro National Park. Resource values of the private lands enhance the resource management within the Saguaro National Park. The offered lands contain representative Sonoran Desert vegetation in excellent condition. The diversity of vegetation, representing the paloverde/saguaro/mixed cactus and ironwood associations, provides important habitat for some of the sensitive wildlife species which occur in the Arizona Upland vegetation type. Also as part of the Saguaro National Park, the area will be accessible to hikers, horseback riders, birdwatchers, botanists and students of natural history. The public interest will be served by making the exchange.

ADDRESSES: Interested parties may submit comments and/or protests concerning the Proposed Decision for the exchange to the Bureau of Land Management, Phoenix Field Office 2015 West Deer Valley Road, Phoenix, Arizona 85027. Comments must be in writing to the Field Office Manager and be postmarked within 45 days from the publication of this notice.

Dated: October 17, 1997.

Michael A. Taylor,

Field Manager.

[FR Doc. 97–28512 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–12] ES–48891, Group 29, Illinois

Notice of Cancellation of Plat of Survey

The plat accepted July 11, 1997 published in the **Federal Register** on July 22, 1997 (62 FR 39249) and stayed August 28, 1997 published August 28, 1997 (62 FR 45680) has been cancelled effective October 17, 1997.

Dated: October 20, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–28446 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan; San Francisco Maritime National Historical Park, California; Record of Decision

Introduction

Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190 (as amended), and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of the Interior, National Park Service, has prepared this Record of Decision (ROD) for the Final Environmental Impact Statement on the General Management Plan for San Francisco Maritime National Historical Park. The ROD is a concise statement of what decisions were made, what alternatives were considered, the environmentally preferred alternative, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Selected Action

The National Park Service (NPS) will implement Alternative A, described as the proposed action in the Draft and Final Environmental Impact Statements (EIS). The NPS will emphasize the preservation and maintenance of the park's collection, including the fleet of historic vessels, small watercraft, historic structures, library, and archival materials. Minimal measures to slow down deterioration of the steam schooner Wapama will be implemented, but the vessel's underlying structural decay will not be addressed. The park will pursue multiple strategies for ship restoration, such as continued use of commercial shipyards and appropriate agreements with San Francisco Bay Area dry dock facilities. Efforts will be made to seek out other agencies or private organizations interested in reconstructing or preserving Wapama as a dryberth exhibit. If such efforts are unsuccessful, the ship will be dismantled when it can no longer be maintained in a safe condition. Wapama will suffer an adverse effect if she is dismantled. Greater use of the park's collection by the public for research and interpretive purposes will be provided through the use of additional facilities, including rehabilitation of the Haslett Warehouse. The intersection of Hyde and Jefferson Streets will be redesigned to enhance pedestrian access and visibility of the pier and historic ships, and to expand interpretive opportunities. Aquatic Park will be enhanced and maintained as a public open space, and recreational activities in the lagoon such as swimming, rowing, and the temporary mooring of sailboats will continue to be provided to all users. Park volunteer programs will be enhanced and visitors will be encouraged to experience other related sites in the San Francisco Bay Area. Historic properties will generally benefit from a consistent maintenance and preservation approach aimed at perpetuating their historic integrity. The library and museum collection will receive the space, equipment, and staffing needed to protect, preserve, and use them appropriately. Local traffic patterns and parking will be affected during peak use times. There will be minor disturbance along the shoreline from construction activities.

Other Alternatives Considered

Two alternatives to the selected plan were detailed and evaluated in the Draft and Final EIS documents. Alternative B emphasized preservation and maintenance of the historic ships, small watercraft, historic structures, library, and archival materials. Space would be upgraded and expanded for the park's collection. The park would pursue multiple strategies for major ship restoration work. The intersection of Hyde and Jefferson Streets would be further developed as an expanded-permanent pedestrian plaza with public seating, unobstructed views of the ships and Bay, and additional space for interpretive demonstrations, displays, and public programs. Impacts from Alternative B would be very similar to the selected action, except: the Eppleton Hall would be deaccessioned; there would be a permanent change in local traffic and parking patterns; the swimming and rowing clubs would be relocated to the west side of the Aquatic Park lagoon; and slightly more disturbance from construction activities along the shoreline would occur.

Alternative C (No Action-Minimum Requirements) would continue current management strategies, with minimum actions implemented to stabilize and preserve the park's collection and historic properties.

Environmentally Preferred Alternative

The NPS has determined Alternative A (the selected action) to be the environmentally preferred alternative. It causes the least damage to the biological environment; it best protects, preserves, and enhances historic, cultural, and natural resources; and it would disturb the least acreage. Both Alternative A and Alternative B would greatly benefit the preservation and maintenance of the park's collection. Both alternatives would improve the visitor experience through creation of a pedestrian plaza, although under Alternative B the plaza would be expanded and permanent. Creation of a pedestrian plaza would result in some adverse effects on traffic and parking, which would primarily be confined to certain times during summer weekends under Alternative A.

Basis for Decision

As presented in the Draft EIS, the National Park Service developed twenty-six (26) management objectives, covering resource management, visitor experience, park development/facility design, and local context. After evaluation of public comments on the alternatives presented in the Draft EIS, it was determined that the selected action best achieves the stated management objectives and achieves the park's purpose which is to preserve and interpret the history and achievements of seafaring Americans and the Nation's maritime heritage, especially on the Pacific Coast.

Measures to Minimize Harm

The NPS consulted with the California State Historic Preservation Officer and Advisory Council on Historic Preservation according to the Council's implementing regulations (36 CFR 800). A Programmatic Agreement completed April 25, 1997 stipulates mitigative measures that will be implemented. Further conservation planning and impact analysis will be conducted for any individual construction projects, and recorded in separate environmental decision documents subject to public review. Appropriate mitigation, such as erosion control measures, would be identified during that time. A traffic and transportation analysis will be completed before implementing any vehicular access/circulation or parking proposals.

Conclusion

The above factors and considerations warrant selection of the alternative identified as the proposed action in the Final EIS.

Dated: October 9, 1997.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–28497 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement/ General Management Plan; Sequoia & Kings Canyon National Parks, California; Notice of Intent

Summary

Pursuant to the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), and in accordance with the President's Council of Enviromental Quality regulations promulgated at 40 CFR 1501.7 and 1508.22, the National Park will prepare an Environmental Impact Statement (EIS) for a General Management Plan (GMP) intended to guide management activities for Sequoia and Kings Canyon National Parks during the next 10–15 years.

Background

The purpose of the GMP is to set forth the basic management philosophy for the parks and provide strategies for addressing issues and achieving identified management objectives. The EIS will identify and evaluate forseeable environmental impacts (and associated mitigation measures) of a range of alternatives formulated to address distinct management issues for the parks and strategies identified for resource protection, visitor uses, facility development, and adjacent federal, state, and lands. As a conceptual

framework for formulating these alternatives, the park's purposes and significance will first be identified. Based upon purpose, significance, and strategies identified, the GMP will identify and analyze programs, actions, and support facilities needed for implementation.

Public Information

Earlier in the scoping process a series of public forums was announced and conducted. Additional public open house/workshops are scheduled for fall 1997, which will be publicized through mailings, press releases, park information media, and public notices (details will be available upon request via the contact listed below). A record of all information obtained through these sessions will be maintained during the entire EIS process. Also, a series of newsletters will be distributed throughout.

Comments

All interested individuals, organizations, agencies, or entities that may be affected by the proposed plan are encouraged to share comments about issues or concerns which should be addressed during the EIS process. Written comments concerning the GMP/EIS should be postmarked no later than sixty (60) days from the publication date of this notice. All comments, or inquiries regarding public forums, should be addressed to: Planning Team Captain, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Denver, Colorado 80225–0287 or via telephone at (303) 969–2280.

Decision

The draft EIS and plan are anticipated to be available for public review during summer, 1998. The final EIS and plan are expected to be completed one year later. A complete Record of Decision is to be executed no sooner than thirty days after the release of the final EIS. The responsible officials are John Reynolds, Regional Director, Pacific West Regional Office, National Park Service; Michael Tollefson, Superintendent, Sequoia and Kings Canyon National Parks.

Dated: October 8, 1997.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–28498 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission; Notice of a Meeting

ACTION: Subsistence Resource Commission (SRC) meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order. (Chairman)
(2) SRC Roll call; confirmation of quorum. (Chairman)
(3) Welcome and introductions (Public, agency staff, others).
(4) Review and adopt agenda. (SRC)
(5) Review and adopt minutes from the February 1997 meeting.
(6) Review commission's role and purpose.
(7) Status of commission membership.
(8) Old business:
  a. Recommendation to designate Ivanof Bay and Perryville as resident zone communities.
  b. Status of Board of Game and Federal Subsistence Board proposals to close Unit 9E to non-subsistence/sport taking of moose and caribou.
  c. NPS Unit 9E moose and caribou population surveys.
  d. Aniakchak National Monument and Preserve visitor use report for 1997.
  e. Status of Aniakchak National Preserve Hunting Guide prospectus.
  f. Status of NPS subsistence program document/SRC chair briefing session.
  g. Review and approve final subsistence hunting program recommendations.
(9) New business:
  a. Federal Subsistence Program update.
  b. Public and agency comments.
(10) SRC work session (draft proposals, letters, hunting program recommendations).
(11) Set time and place of next SRC meeting.
(12) Adjournment.

DATES: The meeting will begin at 1:00 p.m. on Thursday, November 13, 1997 and conclude at approximately 7:00 p.m. The meeting will reconvene at 8:00 a.m. on Friday, November 14, 1997 and adjourn at approximately 1:00 p.m.

LOCATION: The meeting will be held at the Chignik Lake School in Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, or Karen C. Gustin, Unit Manager, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Marcia Blaszak,

Acting Regional Director, Alaska Region.

[FR Doc. 97–28500 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of Federal Interagency Panel on World Heritage

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting of panel.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committees Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I), of a meeting of the Federal Interagency Panel on World Heritage. It is expected that the following agenda items will be discussed:

Results of 21st Meeting of the World Heritage Bureau
Results of the General Assembly of States Parties to the World Heritage Convention
Agenda for and United States Representation at the 21st Meeting of the World Heritage Committee
Report on Legislative Proposals potentially affecting U.S. World Heritage Program
Public Information Activities, including new National Park Service World Heritage Leaflet
U.S. World Heritage Nomination Process for 1998

DATES: The meeting will be held on Monday, November 3, 1997. The meeting will begin at 2:00 pm and end by approximately 5 pm. The meeting is open to the public. It is expected that 10 persons will be able to attend the meeting in addition to the Panel members.

LOCATION: The meeting will be held at the Main Interior Building, 1849 C St., NW, Washington, DC., in Room 3121.

FOR FURTHER INFORMATION CONTACT: Sharon J. Cleary, Chief, Office of International Affairs, or James H. Charleton, International Cooperation Specialist, Office of International Affairs, National Park Service, Washington, DC 20240. Phone (202) 565–1280; fax 202–565–1290; e-mail: james—charleton @ nps.gov.

ADDRESSES: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20240. Attention: World Heritage Convention-0050.

SUPPLEMENTARY INFORMATION: The Convention Concerning Protection of the World Cultural and Natural Heritage, now ratified by the United States and 149 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to humanity may be recognized and protected.

The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating nations voluntarily identify and nominate their most important natural wonders and cultural treasures for inclusion on the World Heritage List, which currently includes 506 cultural, natural, and mixed properties. The World Heritage Committee judges all nominations against established criteria.

Under the Convention, each participating Nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, 2 conservation, and rehabilitation of World Heritage properties situated within its borders. By the terms of the Convention, each nation explicitly retains full sovereignty over and complete ownership, legal authority and management responsibility for its World Heritage Sites. In the United States, for example, only United States law applies to the sites.

The World Heritage Committee, composed of 21 countries elected by the signatories to the Convention, reviews proposals to add new sites to the List once each year. The United States now serves on the Committee and has twice served as its Chair. The Committee administers the World Heritage Fund, which assists countries in participating in World Heritage activities related to the preservation of listed properties, particularly those on a List of World Heritage in Danger maintained by the Committee.

The United States has placed 20 sites on the List. Among them are Monticello and the Taos Pueblo, nominated with their owners' full support. National Parks are included in 17 World Heritage Sites—among which are the Grand Canyon, Independence Hall, Mammoth Cave, and Everglades. Two sites in the United States are on the List of World Heritage in Danger—Everglades and Yellowstone National Parks.

No United States nominations to the World Heritage List are pending. The Panel will review the process for possible U.S. nominations in calendar 1998 that might lead to consideration of sites for inscription in the World Heritage List at the World Heritage Committee meeting scheduled for the end of calendar 1999.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (P.L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which it uses to carry out this legislative mandate (47 FR 23392, 36 CFR 73). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The program regulations; the criteria which cultural, natural, and mixed properties must satisfy for World Heritage status; the properties on the Indicative Inventory of Potential Future U.S. World Heritage nominations; and a list of the 20 U.S. properties inscribed on the World Heritage List as of the date of this notice are available upon request from the National Park Service.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and currently includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the National Oceanic and Atmospheric Administration, Department of Commerce; the U.S. Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

Dated: October 7, 1997.

Sharon J. Cleary,

Chief, Office of International Affairs.

[FR Doc. 97–28499 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 18, 1997. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 12, 1997.

Carol D. Shull,

Keeper of the National Register.

Colorado

Dolores County

Ansel Hall Ruin (Great Pueblo Period of the McElmo Drainage Unit MPS), Address Restricted, Cahone vicinity, 97001418

Mesa County

Phillips, Harry and Lilly, House, 798 N. Mesa St., Fruita, 97001419

Florida

Polk County

Frostproof High School, Old, 111 W. First St., Frostproof, 97001420

Georgia

Cherokee County

Canton Wholesale Company Building, 15 Main St., Canton, 97001421

Indiana

Vigo County

Indiana Theatre (Downtown Terre Haute MRA), 683 Ohio St., Terre Haute, 83004578

Louisiana

East Baton Rouge Parish

Drehr Place Historic District, Roughly bounded by Government, 22nd, Myrtle, and St. Rose Sts., Baton Rouge, 97001422

St. Tammany Parish

Griffin's Bakery, 301 Lafitte St., Mandeville, 97001423

Minnesota

Hennepin County

Prospect Park Water Tower and Toeer Hill Park, 55 Malcolm Ave. SE, Minneapolis, 97001426

Nobles County

Church of St. Kilian (Catholic), Approx. 3 mi. NW of Wilmont, Wilmont Township vicinity, 97001425

Rice County

Church of the Most Holy Trinity (Catholic), 4938 N. Washington St., Wheatland Township vicinity, 97001424

Mississippi

Marshall County

Wall Doxey State Park (State Parks of Mississippi built by the CCC MPS), Between MS 7 and Spring Lake, Holly Springs vicinity, 97001437

Scott County

Roosevelt State Park (State Parks in Mississippi built by the CCC MPS), 2149 MS 13S, Morton vicinity, 97001436

Missouri

Howard County

Campbell Chapel African Methodist Episcopal Church, 602 Commerce St., Glasgow, 97001427

Lafayette County

Buck, Napoleon, House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.40 mi. S of jct. of US 24 and MO 273, Waverly vicinity, 97001431

Catron, Minatree, House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.1 mi W of jct. of US 24 and MO 110, Lexington vicinity, 97001432

Dinwidile, James M., House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.25 mi. E of jct. of US 24 and MO 184, Dover vicinity, 97001430

Gosewisch, Theodore, House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.5 mi. W of jct. of MO 13 and Marshall School Rd., Lexington vicinity, 97001433

Robinson, William, P., House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.2 mi. E and 0.15 mi. S of jct. of MO 107 and MO 112, Lexington vicinity, 97001428

Shelby, Thomas, House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.25 mi. E of US 24 and MO 111, Lexington vicinity, 97001429

Pettis County

Gentry, William H., House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 22970 Cherry Tree Ln., Sedalia vicinity, 97001434

Saline County

Murrell, George A., House (Antebellum Resources of Johnson, Lafayette, Pettis, and Saline Counties MPS), 0.75 mi. E and 0.5 mi. N of MO E and H, Napton vicinity, 97001435

New York

Kings County

Cypress Hills National Cemetery (Civil War Era National Cemeteries MPS), 625 Jamaica Ave., Brooklyn, 97001439

Tennessee

Knox County

Keener, Leroy, House (Knoxville and Knox County MPS), 3506 Woodlawn School Rd., Knoxville vicinity, 97001440

Shelby County

Chickasaw Heritage Park, Jct. of Riverside Blvd. and Ornamental Metal Museum Dr., Memphis, 97001441

Williamson County

Dortch Stove Works, 230 N. Franklin Rd., Franklin, 97001438

Vermont

Franklin County

Kemp—Shepard House, VT 104A, 1 mi. SE of US 7, Georgia, 97001442

Wisconsin

Clark County

Foote, Charles, House, W 5055 US 10, Pine Valley, 97001443

Proposed Move

Alaska

Southeast Fairbanks County

Sullivan Roadhouse, Mi. 266, Richardson Hwy Delta Junction, 79003757.

[FR Doc. 97–28477 Filed 10–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Community Oriented Policies Services, Justice.

ACTION: Notice of Information Collection Under Emergency Review; Regional Community Policing Institute Quarterly Projection Report.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995; 5 Code of Federal Regulation, Part 1320.13.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by October 31, 1997. If granted, the emergency approval is only valid for 180 days. All comments should be directed to OMB, Office of Information and Regulatory Affairs: Attention: Mr. Patrick Boyd, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20503.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until December 29, 1997. Comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments may also be submitted to Charlotte C. Grzebien, Associate General Counsel, Office of Community Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 514–3456.

Overview of this information collection:

(1) *Type of Information collection:* New collection.

(2) *Title of the Form/Collection:* Regional Community Policing Institute Quarterly Projection Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 22/02. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Regional Community Policing Institutes funded through a one-year cooperative agreement from the COPS Office are required to respond.

The Regional Community Policing Institute Quarterly Projection Report will be completed by each Regional Community Policing Institute. The information collected provides a quarterly projection of plans for performing the training and technical assistance functions of this program, as well as information concerning any changes or modifications requested in the project or cooperative agreement budgets.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent of respond:* Estimated number respondents: 35. Estimated time for average respondent to respond: 2 hours quarterly (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 280 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 23, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28514 Filed 10–27–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Community Oriented Policing Services, Justice.

ACTION: Notice of information collection under emergency review; Regional Community Policing Institute monthly progress report.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995; 5 Code of Federal Regulation, Part 1320.13.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by October 31, 1997. If granted, the emergency approval is only valid for 180 days. All comments should be directed to OMB, Office of Information and Regulatory Affairs: Attention: Mr. Patrick Boyd, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20503.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until December 29, 1997. Comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments may also be submitted to Charlotte C. Grzebien, Associate General Counsel, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530, or via facsimile at (202) 514–3456.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Regional Community Policing Institute Monthly Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 22/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Regional Community Policing Institutes funded through a one-year cooperative agreement from the COPS Office are required to respond.

The Regional Community Policing Institute Monthly Progress Report will be completed by each Regional

Community Policing Institute. The information collected provides a monthly update of progress made in performing the training and technical assistance functions of this program, as well as information concerning any changes or modifications requested in the project or cooperative agreement budgets.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated number of respondents: 35. Estimated time for average respondent to respond: 2 hours and 30 minutes monthly (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 1050 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: October 23, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28515 Filed 10–27–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 23, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call ({202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202}395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039 (reinstatement).

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 2.

Estimated Time Per Respondents: 1 hour.

Total Burden Hours: 2

Total Annualized capital/startup costs: 0.

total annual cost (operating/maintaining systems or purchasing services): 0.

Description: Requires operators of metal and nonmetal underground mines, where radioactive ores are mined, to keep records of the results of annual gamma radiation surveys and individual miner's cumulative gamma radiation exposure.

Agency: Employment Standards Administration.

Title: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Agency number: CM–936.

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 3,000.

estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 3,000.

Total Annualized capital/startup costs: 0.

Total annual cost (operating/maintaining systems or purchasing services): 0.

Description: Form CM–936 gives the claimant's consent for the release of medical information covered by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–28504 Filed 10–27–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Extension Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden will be approximately 10 hours per annual response and we anticipate 56 responses with no capital/start-up costs, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the Planning Guidance and Instructions for Submission of Annual State Plans for the Welfare-to-Work Formula Grants.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, ATTENTION: Janice Davis, 200 Constitution Avenue, N.W., Room S–5513, Washington, D.C. 20210, 202–219–0181 extension 155 (this is not a toll free number) and/or via e-mail davisj@doleta.gov; fax number is 202–219–0376.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the U.S. Department of Labor to provide Welfare-to-Work (WtW) Grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. In order to receive formula grant funds, the statute provides that the State must submit a plan for the administration of the WtW grant. This Planning Guidance and Instructions for Submission of Annual State Plans addresses the information required from States which will enable them to qualify for the formula grant funds. Separate guidance will be issued for both the grants to the Indian tribes and the competitive grants.

II. Current Actions

This request has currently been approved under an emergency clearance not to exceed March 31, 1998, this extension is needed in order to complete the collection of this information.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of Annual State Plans for Welfare-to-Work Formula Grants.

OMB Number: 1205–0382.

Affected Public: State and local governments.

Total Respondents: 56.

Frequency: Annually.

Total Responses: 56.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 560.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Date: October 21, 1997.

Peter E. Rell,

Director, Welfare-to-Work Grant Program Implementation Team.

[FR Doc. 97–28503 Filed 10–27–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training,

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice if hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday, December 9, 1997 and December 10, 1997, at the National Veterans' Training Institute (NVTI) in Denver, Colorado from 9:00 a.m. to 4:30 p.m.

Written comments are welcome and may be submitted by addressing them to: Mr. Thomas S. Keefe, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1315, Washington, DC 20210.

The primary items on the agenda are:

- Adoption of minutes of the previous meeting
- Agency Update by Assistant Secretary-designate Espiridion Al Borrego
- Auditing of TAP and Case Management Classes at NVTI
- Discussion of the GAO report on Veterans' Employment and Training—October 1997

The meetings will be open to the public.

Persons with disabilities, needing special accommodations, should contact Mr. Thomas S. Keefe at telephone number 202–219–9105 no later than November 21, 1997.

Signed at Washington, DC this October 22, 1997.

Espiridion A. Borrego,

Acting Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 97–28502 Filed 10–27–97; 8:45 am]

BILLING CODE 4510–79–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on November 14, 1997. The meeting will begin at 10:00 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE.—10th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the committee's meeting of September 19, 1997.
3. Review of Corporation's FY '97 budget and expenses through September 30, 1997.
4. Review breakdown of FY 1999 "budget mark."
5. Review guidelines for adoption, review and modification of the consolidated operating budget.
6. Review budget timetable, September 1997—January 1999.
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: October 23, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–28588 Filed 10–23–97; 5:08 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of directors of the Legal Services Corporation will meet on November 15, 1997. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street N.E.—10th Floor, Washington, DC 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the corporation is or may become a party, and the Board may act on the matters reported. Also, the Board will consider and act on an internal personnel issue relating to the Corporation's employee pension plan. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) & (10)] and the corresponding provision of the Legal Services Corporation's implementing regulation [45 CFR 1622.5 (a) & (h)]. A copy of the General Counsel's Certification that the closing

is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of Sept. 20, 1997.
3. Approval of minutes of the Board's executive session meeting of Sept. 20, 1997.
4. Chairman's and Members' Reports.
5. President's Report.
6. Appointment of an *ad hoc* committee for annual performance evaluations of the President and Inspector General.
7. Consider and act on the report of the Board's Operations and Regulations Committee.
   a. Consideration of public comment and action on final revisions to 45 CFR Part 1630, Costs Standards and Procedures.
   b. Consideration of public comment and action on final rule 45 CFR Part 1643, Restriction on Assisted Suicide, Euthanasia and Mercy killing.
   c. Consider and act on proposed changes to the structure of the Corporation's management.
8. Consider and act on the report of the Board's Finance Committee.
9. Consider and act on the report of the *Ad Hoc* Committee on Performance Reviews of the President and Inspector General.
   a. Consider and act on proposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General.
10. Consider and act on report on development of a strategic planning process.
11. Inspector General's Report.

Closed Session

12. Briefing [1] by the Inspector General on the activities of the OIG.
13. Consider and act on an internal personnel issue relating to the Corporation's employee pension plan.
14. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

15. Consider and act on whether to change the date of the next annual meeting and, if so, to what date.
16. Public comment.
17. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Ms. Jean Edwards, at (202) 336–8811.

Dated: October 23, 1997.

Victor M. Fortuno,

General Counsel & Secretary of the Corporation.

[FR Doc. 97–28589 Filed 10–23–97; 5:08 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 14, 1997. The meeting will begin at 2:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street N.E.—10th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the committee's meeting of July 13, 1997.
3. Consider and act on procedural matters, including personal performance plans for the President and the Inspector General, written submissions prior to interviews, and interview protocols.
4. Consider and act on other business.
5. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: October 23, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–28590 Filed 10–23–97; 5:08 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Operations and Regulations Committee

Time and Date: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on November 14, 1997. The meeting will begin at 10:00 a.m. and continue until the committee concludes its agenda.

Location: Legal Services Corporation, 750 First Street N.E.—10th Floor, Washington, DC 20002.

Status of Meeting: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of Sept. 19, 1997.
3. Consider public comment and act on final revisions to 45 CFR Part 1630, Costs Standards and Procedures.
4. Consider public comment and act on final rule, 45 CFR Part 1643, Restriction on Assisted Suicide, Euthanasia and Mercykilling.
5. Consider and act on memorandum regarding the status of LSC rulemaking and staff recommendations for FY 1998 rulemaking schedule.
6. Consider and act on proposed changes to the structure of the Corporation's management.
7. Consider and act on other business.

Contact Person for Information: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

October 23, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–28591 Filed 10–23–97; 5:08 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–157)]

NASA Advisory Council, Advisory Committee on the International Space Station, Cost Assessment and Validation Task Force on Space Station; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station, Cost Assessment and Validation Task Force on Space Station.

DATES: Thursday, November 6, 1997, from 9:00 a.m. until 2:00 p.m.

ADDRESSES: MIC–6A, 6th Floor, NASA Headquarters, 300 E Street, SE, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Hedin, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1691.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room, from 9:00 a.m. until 2:00 p.m. on Thursday, November 6, 1997. The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—International Space Station Overview and Status
—International Space Station Budget Overview
—Congressional Perspective

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 22, 1997.

Alan Ladwig,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–28532 Filed 10–27–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) to the National Council on the Arts will be held on November 17, 1997. The panel will meet from 10:00 a.m. to 4:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 3:30 p.m. to 4:30 p.m., will be open to the public for a policy discussion.

The remaining portion of this meeting, from 10:00 a.m. to 3:30 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: October 22, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–28469 Filed 10–21–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation, Oconee Nuclear Station Units 1, 2, and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3 located in Oconee County, South Carolina.

If approved, the proposed amendments to the Technical Specifications (TS) would allow use of a rerolling process as an additional repair method for steam generator tube degradation.

Currently, Unit 1 is shut down for its end-of-cycle 17 refueling outage. During a non-destructive examination of the hot leg tubesheet, indications of tube degradation was found in the upper tubesheet region of approximately 900 tubes in the 1B steam generator. The licensee has proposed use of a rerolling process to ensure that the area of degradation will not serve as a pressure boundary once the repair roll is installed, thus, permitting the tube to remain in service. The current TS only allow use of a sleeving process to repair steam generator tubes, otherwise the tubes must be removed from service by plugging. Since the reroll process is not contained in the Oconee TS as an approved repair method, NRC staff approval of the amendments is necessary prior to exceeding 250 °F in the Unit 1 Reactor Coolant System. Unit 1 is presently expected to restart in the third week of November 1997.

Therefore, the amendments must be processed prior to that date. Any delay would delay the startup, which requires that the amendments be processed under exigent circumstances.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means

that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The implementation of the tube reroll does not increase the probability of occurrence of an accident or the consequences of an accident previously evaluated.

Since reroll utilizes the original tube configuration and extends the roll expanded region, all of the design and operating characteristics of the steam generator and connected systems are preserved. The reroll joint length has been analyzed and tested for design, operating, and faulted condition loadings.

At worst case, a tube leak would occur with the result being a primary to secondary system leak. Should a tube leak occur, the impact is bounded by the ruptured tube evaluation which has been analyzed previously. The potential for a tube rupture is not increased by the use of the reroll process.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. Operation of the steam generators with reroll repaired tubes does not create the possibility of a new or different accident from the accidents previously evaluated.

The potential failure of the tube due to the defect which required the tube to initially be repaired is covered during the qualification of the reroll process. Qualification testing indicates that normal and faulted leakage would be well below the Technical Specification limits. Since the normal and faulted leak rates are well within the Technical Specification limit, the analyzed accident scenarios are still bounding.

The new roll transition may eventually develop PWSCC [primary water stress-corrosion cracking] and require additional repair. Since the roll transition is located within the tubesheet, it is not possible for the degradation to result in a tube rupture. Additionally, industry experience with roll transition cracking has shown that PWSCC in roll transitions is normally short axial cracks, with extremely low leak rates. Finally, since the new roll transition is completely within the tubesheet there is no possibility of the repaired tube failing and impacting adjacent tubes.

In the unlikely event the reroll repaired tube failed and severed completely at the transition of the reroll region, the tube would retain engagement in the tubesheet bore, preventing any interaction with neighboring tubes. In this case, leakage is minimized and is well within the assumed leakage of the design basis tube rupture accident. In addition, the possibility of rupturing multiple steam generator tubes is not increased.

3. Involve a significant reduction in a margin of safety?

No. Based on the previous response, the protective boundaries of the steam generator are preserved.

A tube with degradation can be kept in service through the use of the reroll process. The new undegraded roll expanded interface created with the tubesheet satisfies all of the necessary structural, leakage, and heat transfer requirements. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with tube rupture. Therefore, the analyzed accident scenarios remain bounding, and the use of the reroll process does not reduce the margin of safety.

Duke has concluded based on the above information that there are no significant hazards involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 28, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to two weeks prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 20, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28529 Filed 10–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, Entergy Mississippi, Inc.; Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an exemption to Facility Operating License No. NPF–29, which was issued to Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, (GGNS) located in Claiborne County, Mississippi.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the criticality monitoring requirement in 10 CFR 70.24(a), "Criticality Accident Requirements," which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material (SNM) is handled, used, or stored. The proposed action is for monitoring the storage of SNM in the form of (1) not-in-use in-core nuclear instrumentation (e.g., source range monitors), which contain very small quantities of SNM, and (2) unirradiated fuel. For the unirradiated fuel, the exemption is requested for the unirradiated fuel that is packaged in accordance with 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," while the fuel is onsite and taken from the shipping trucks to the spent fuel pool area to be removed from the packaging, and the unirradiated fuel that is stored in the new fuel vault. The unirradiated fuel that would be stored in the spent fuel pool would have the required 70.24(a) criticality accident monitoring system.

The proposed action is in accordance with the licensee's application dated July 15, 1996, as supplemented by the letters dated March 7 and April 29, 1997.

The Need for the Proposed Action

The proposed action would allow the licensee an exemption from the requirement to provide criticality accident monitoring for the above two forms of SNM, listed in its application, while the forms are being stored at the site within the security fence in different plant areas (in-core nuclear

instrumentation), or in the new fuel vault (unirradiated fuel), or while the unirradiated fuel is being transferred from shipping trucks to the spent fuel pool area to be removed from the Part 71 packaging.

The licensee stated that compliance to the criticality accident monitoring system requirements of 10 CFR 70.24(a) would result in a considerable expenditure of resources to install, maintain and operate a criticality monitoring system for the storage of the two forms of SNM, and there should be no concern about criticality ever occurring with the two forms of SNM as they are being stored onsite. There is too small a quantity of SNM, in the form of very thin coatings, present in the nuclear instrumentation for criticality, and unirradiated fuel assemblies would only be removed from the NRC-approved (i.e., Part 71) packaging before being stored in the spent fuel pool where criticality monitors are in use, or in the new fuel vault where there are no criticality monitors.

In the new fuel vault, the unirradiated fuel would be stored in racks which are designed, as Safety Class 2 and Seismic Category I, to withstand all credible loadings to prevent damage and distortion of the racks, and to keep the subcriticality margin of at least 0.95 whether the vault is dry or flooded with water. The new fuel vault is in a concrete, Seismic Category I building that is designed to preclude the deleterious effects on the fuel by natural phenomena such as earthquakes, tornados, hurricanes, tornado missiles and floods.

The Part 71 package design ensures that a geometrically safe configuration for the fuel is maintained during transport, handling, storage and accident conditions, and precludes introduction of any moderating agents due to leak-tight construction, and; therefore, criticality is precluded due to the construction of the package and the storage configuration of the fuel in the package.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impacts if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of unirradiated fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures and the in-core nuclear instrumentation. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

The proposed exemption to 10 CFR 70.24(a) does not affect the design or operation of the plant, does not involve any modifications to the plant or any increase in the licensed power for the plant, and will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of GGNS, NUREG–0777, dated September 1981. The proposed action will not increase the probability or consequences of any accidents. No changes are being made to any structure, system, or component in the plant, to how the plant is operated, in the types or amounts of any effluents that may be released offsite, and in the allowable individual or cumulative occupational radiation exposure for the plant. The amount of radioactive waste would not be changed by the proposed exemption. Accordingly, the Commission concludes that the proposed exemption would not result in any significant radiological impacts.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect the nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Actions

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for the GGNS.

Agencies and Persons Consulted

In accordance with its stated policy, on October 20, 1997, the staff consulted with the Mississippi State official, Robert Goff of the Division of Radiological Health, State Board of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 15, 1996, March 7 and April 29, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Dated at Rockville, Maryland, this 21st day of October, 1997.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28531 Filed 10–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION.

[Docket No. 40–1162]

Western Nuclear, Inc.; Final Finding of No Significant Impact; Notice of Opportunity for Hearing

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–56, issued to Western Nuclear, Inc. (WNI), by removing reference to the Day Loma uranium heap leach site. To document its review of the potential environmental impacts associated with the proposed action, the NRC staff prepared an Environmental Assessment in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Carlson of the Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–8165.

SUPPLEMENTARY INFORMATION:

Background

The Day Loma uranium heap leach site is located approximately 40 kilometers (25 miles) northeast of Jeffrey City, Wyoming, in an area known as the Gas Hills Region. This 14,975-hectare (37,000-acre) region is rich in naturally occurring deposits of uranium ore, and widespread uranium mining activity occurred in the region from the late 1950s until the 1980s.

Source Material License SUA–582, which covered activities at the Day Loma site, was originally issued to WNI in 1962. Operations at the site terminated in 1972, and in 1976, SUA–582 was combined with Source Material License SUA–56 for WNI's Split Rock uranium mill. Currently, the Day Loma site is licensed by the NRC under SUA–56 for possession only of byproduct material in the form of heap leach waste from the processing of uranium ore generated from past mining operations.

The NRC approved WNI's reclamation plan for the Day Loma site in 1981, and WNI completed reclamation activities at the site in 1985. The NRC staff inspected and approved the completion of the reclamation work in August 1986. The reclaimed leached material, consisting of approximately 494,000 tons of low-grade (less than 0.05 percent) uranium-bearing rock, was placed on an impervious liner that was constructed on top of existing uranium spoil materials comprised of overburden and mine waste. Following recontouring, a final disposal cell cover of between 2.4 and 4.0 meters (8 and 13 feet) in thickness was constructed of clay and random fill material. The 6.3 ha (15.6 acre) reclaimed site is surrounded by exposed mine spoils unreclaimed mining lands of the Gas Hills Region.

By letter dated October 19, 1995, WNI requested that all reference to the Day Loma site be removed from SUA–56, thereby ending current monitoring and the need for long-term monitoring of the site. A consequence of granting the proposal will be to not require transfer of the Day Loma site to Federal or State ownership as authorized by Section 83b.(4) of the Atomic Energy Act of 1954, as amended.

The State of Wyoming Department of Environmental Quality (WDEQ) will be performing substantial reclamation operations in the Day Loma site area over the next five years in an effort to return this area to its original pre-mining condition. The WDEQ plans to incorporate the heap leach site into its reclamation efforts by recontouring the site into the surrounding landscape.

Conclusions

The NRC staff has evaluated the environmental impacts associated with the removal of reference to the Day Loma site from Source Material License SUA–56, and has determined that approval of the proposed action (1) will be consistent with requirements of 10 CFR Part 40, (2) will not be deleterious to public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. The Gas Hills Region is sparsely populated and likely to remain so indefinitely, as the climate is harsh, the land is relatively barren, and the groundwater in the region is considered of such poor quality that it is deemed unsuitable for either domestic or agricultural use;

2. Using conservative assumptions in which the Day Loma heap leach material was assumed to have no radon cover, the NRC staff showed that potential doses to members of the public from the heap leach site and associated risk factors for public health and the environment are much less (0.34 mrem/yr) than the 10 CFR Part 20 public dose limit of 100 mrem/yr and those resulting from the naturally occurring uranium ore deposits which surround the site (34 mrem/yr);

3. The WDEQ will incorporate the heap leach site in its efforts to further reclaim existing mine spoils in the Day Loma area over the next five years; and

4. The staff has determined there will be no significant impacts associated with approval of the amendment request, and accordingly no disproportionately high and adverse effects or impacts on minority and low-income populations. Except in special cases, these impacts need not be addressed for Environmental Assessments in which a FONSI is made. Special cases may include regulatory actions that have substantial public interest, decommissioning involving on-site disposal in accordance with 10 CFR 20.2002, decommissioning/decontamination cases which allow residual radioactivity in excess of release criteria, or cases where environmental justice issues have been raised previously. Consequently, further evaluation of 'Environmental Justice' concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Rev.1, is not warranted.

In conducting its evaluation, the NRC staff considered the following: (1) information and analyses provided by WNI as part of its license amendment request; (2) additional analyses conducted by the NRC staff; and (3) information derived from NRC staff communications with the WDEQ.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–56, by removing reference to the Day Loma uranium heap leach site, as requested by WNI. Therefore, the alternatives available to NRC are to:

(1) Approve the license amendment request as submitted by WNI;

(2) Approve the license amendment request with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(3) Deny the license amendment request.

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action; therefore, any alternatives with equal or greater environmental impacts need not be evaluated. Since the environmental impacts of the proposed action and the other two alternatives are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–56. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected

by this proceeding may file a request for a hearing with respect to the technical evaluation and the Environmental Assessment performed by the NRC staff that forms the basis for the decision to amend the license and remove reference to the Day Loma heap leach site from Source Material License SUA–56. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served by delivering it personally or by mail to:

(1) The applicant, Western Nuclear, Inc., 200 Union Blvd., Suite 300, Lakewood, Colorado, 80228;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 97–28530 Filed 10–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 27, November 3, 10, and 17, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 27

Wednesday, October 29

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

2:00 p.m. Briefing on Site Decommissioning Management Plan (SDMP) (PUBLIC MEETING) (Contact: John Hickey—301–415–7234)

Thursday, October 30

10:30 a.m. and 1:30 p.m. All Employees meetings (PUBLIC MEETING) on "The Green" Plaza Area between buildings at White Flint (Contact: Bill Hill—301–415–1661)

Week of November 3

Tuesday, November 4

10:00 a.m. Briefing by the Executive Branch (Closed—Ex. 1)

2:00 p.m. Meeting with Commonwealth Edison (PUBLIC MEETING) (Contact: Bob Capra—301–415–1395)

Wednesday, November 5

9:30 a.m. Briefing on Staff's Plans for 50.59 Regulatory Process Improvements (PUBLIC MEETING) (Contact: Eileen McKenna—301–415–2189)

11:00 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of November 10—Tentative

There are no meetings the week of November 10.

Week of November 17—Tentative

Friday, November 21

11:30 a.m. Affirmation Session (PUBLIC MEETING) (If needed)

Note: The Schedule for commission meetings is subject to change on short notice. To verify the status of meeting call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrcgov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmhnrc.gov or dkwnrc.gov.

Dated: October 24, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 97–28681 Filed 10–24–97; 2:45 pm]

BILLING CODE 2590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–18]

Prairie Island Offsite Independent Spent Fuel Storage Installation; Closing of Temporary Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) will consider the temporary local public document room (LPDR) set up for records pertaining to Northern States Power Company's proposed Prairie Island Offsite Independent Spent Fuel Storage Installation (ISFSI), located at the Red Wing Public Library, Red Wing, Minnesota, officially closed effective October 31, 1997. The NRC's official full service LPDR for the Prairie Island Nuclear Station, located at the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota, will remain operational.

Dated at Rockville, Maryland, this 22 day of October, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local, Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97–28528 Filed 10–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423 and 50–213]

Northeast Utilities, Millstone Nuclear Power Station, Units 1, 2, and 3; Haddam Neck Plant; Correction to Partial Director's Decision Under 10 CFR 2.790

On September 12, 1997, the Commission issued a Partial Director's Decision (DD–97–21) in response to a 10 CFR 2.206 Petition submitted by the Citizens Awareness Network and the Nuclear Information and Resource Service. Due to an administrative error, items (4) and (5) in Section 1., INTRODUCTION, of the Director's Decision were inadvertently interchanged.

Correction is being made to the Thursday, September 18, 1997, **Federal Register** publication as follows: page 49035, first column, first full paragraph, item (4) should be marked as item "(5)" and item (5) should be marked as item "(4)."

Dated at Rockville, Maryland, this 20th day of October 1997.

For the Nuclear Regulatory Commission.

Daniel G. McDonald Jr.,

Senior Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28527 Filed 10–27–97; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection, Comment Request; Standard Form 87 and 87A

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for reclearance of an information collection.

The Standard Form 87 and 87A Fingerprint Charts are completed by applicants for positions throughout the Federal Government. SF 87 is used by OPM, and SF 87A is used by agencies having a special agreement with OPM and the FBI. The information is used to conduct the checks of the FBI fingerprint files that are required by Executive Order 10450, Security Requirements for Government Employment issued April 27, 1953, or required or authorized under other authorities.

"Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology."

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication. Submit comments on this proposal to Richard A. Ferris, Office of Personnel Management, Room 5416, 1900 E. Street NW, Washington, DC 20415.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–28435 Filed 10–27–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Revised Publication 401, Guide to Manifest Mailing System

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: This notice adopts revisions to the Postal Service's Publication 401, Guide to the Manifest Mailing System.

EFFECTIVE DATE: December 1997.

FOR FURTHER INFORMATION CONTACT: Tom Amonette, (202) 268–6258.

SUPPLEMENTARY INFORMATION: On July 8, 1997 the Postal Service published in the **Federal Register** proposed revisions to Publication 401, Guide to the Manifest Mailing System (62 FR 36585). These revisions update and reflect changes that have taken place in the past 4 years since the last revision of Publication 401 that affect the submission and acceptance of manifest mailings.

The deadline for submitting comments on the proposed revisions was August 7, 1997. All comments received or mailed by that date have been considered.

Evaluation of Comments Received

There was only one written response to the proposed revisions. The commenter addressed two of the proposed revisions. First, they welcomed the change for evaluating the accuracy of Standard Mail (A) piece/pound rate manifest mailings. They agreed that the postage-based comparison will be more accurate than the previous weight-based comparison.

The second comment dealt with the revision that eliminates adjusting postage downwards if the accuracy level determined as a result of sampling by the verifying post office is lower than −1.5%. The commenter believes that this would adversely impact mailers of Standard Mail (A) piece/pound rate mailings because scale tolerance limits for these lighter weight pieces may cause a need for frequent adjustments.

Postage sampling results are a measure of the accuracy of a manifest mailing system. Frequent adjustments indicate that a system is not meeting standards, even if those adjustments are caused by scale tolerance limits. Frequent adjustments increase administrative costs for these systems for the mailer and the Postal Service.

Most mailers who have a problem with weight tolerances due to the type of scales they use have chosen to include a weight factor that automatically prevents underpaying postage and prevents the type of frequent postage adjustments being eliminated. Also, the change to postage-based comparison sampling procedures will make postage sampling more accurate. This should eliminate most errors caused by differences in scale tolerances.

Given these two approaches, the Postal Service does not believe this revision will have an adverse impact on manifest mailers. Also, as stated in the previous notice, if a normally accurate system fails, and it can be shown why overpayment occurred, postage refunds will be considered on a case-by-case basis by the administering rates and classification service center.

The Postal Service will adopt the Publication 401 revisions as proposed. These revisions will go into effect with the printing and public release of this document which is scheduled for December 1997.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–28526 Filed 10–27–97; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extension:
Rule 17Ad–16, SEC File No. 270–363, OMB Control No. 3235–0413

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–16 Notice of Assumption or Termination of Transfer Agent Services

Rule 17Ad–16 under the Securities Exchange Act of 1934, requires a registered transfer agent to provide written notice to a qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. These recordkeeping requirements address the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

Approximately 450 transfer agents submit Rule 17Ad–16 notices, the staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–16 is approximately 15 minutes per notice or 3.5 hours per year, totalling 1,575 hours industry-wide. The average cost per hour is approximately $30 per hour, with the industry-wide cost estimated at approximately $47,250. However, the information required by Rule 17Ad–16 generally is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–16 varies according to differences in business activity.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: October 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28438 Filed 10–27–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TA covers the Office of the Deputy Commissioner for Programs and Policy. Notice is hereby given that Subchapter TAH, Office of Hearings and Appeals, is being amended to reflect changes in the organizational designations and functional responsibilities in the Office of Hearings and Appeals, Office of Management. The changes are as follows: Section TAH.10 The Office of Hearings and Appeals—(Organization):

H. The Office of Management (TAHE). Abolish:

5. The Division of Systems Resources (TAHE5) Establish:

5. Office Automation Support Staff (TAHE7) Section TAH.20 The Office of Hearings and Appeals—Functions:

H. The Office of Management (TAHE).

Delete from the first sentence "systems" and replace with "office automation support".

Delete from the second sentence "systems" and replace with "office automation".

Delete in its entirety:

5. The Division of Systems Resources (TAHE5). Establish:

5. The Office Automation Support Staff (TAHE7). Provides office automation support to all Office of Hearings and Appeals (OHA) components. Serves as liaison between the Office of Systems (OS), SSA and the OHA end-user community in identifying operational requirements and implementation of applications developed by OS. Manages OHA Automated Data Processing (ADP) resource allocations and directs the operations of the Model Hearing Office. Provides logistical support to OS during the implementation of new applications and technology. Administers the OHA systems security programs. Maintains the local networks located in OHA Headquarters and provides support to the end-users. Manages the OHA Information Technology Systems (ITS) small purchase budget allocated to OHA by OS and provides input to and cost benefit analysis for the budget submission. Maintains the OHA ITS inventory and provides updates to the SSA inventory maintained by OS. Develops and conducts end-user training and arranges for the delivery of appropriate training. Maintains liaison with OHA regional systems staffs and Headquarters staffs for the purpose of identifying operational problems or needs and makes recommendations to OS to resolve outstanding issues.

Dated: September 22, 1997.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 97–28495 Filed 10–27–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2623]

Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on Wednesday, December 3, 1997, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the twenty-ninth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO from January 12 to 16, 1998. Preparations for the Joint IMO/ILO Working Group on Standard format for work hour records, which will be held at IMO from January 19 to 23, 1998, will also be discussed.

The primary matters to be considered include:

1. Review of IMO guidance on principles of safe manning (i.e., crew size);

2. Work emanating from the 1995 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW), including consideration of training requirements for maritime pilots;

3. Maritime safety training for personnel on Mobile Offshore Units (MOU/MODUs);

4. Bulk carrier safety;

5. Training record books; and

6. Guidance associated with the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F Convention, as adopted by the 1995 conference; not yet ratified or in force).

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MOS–1), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: October 16, 1997.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 97–28511 Filed 10–27–97; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–115]

Initiation of Section 302 Investigation and Request for Public Comment: Korean Barriers to Auto Imports

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of the Republic of Korea that pose barriers to imports of U.S. autos into the Korean market. USTR invites written comments on the matters being investigated.

DATES: This investigation was initiated on October 20, 1997. Written comments from interested persons are due on or before noon on Tuesday, December 2, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sean Murphy, Office of Asia and the Pacific, (202) 395–6813, or Geralyn Ritter, Office of the General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Executive Order No. 12901 of March 3, 1994, as extended by Executive Order No. 12973 of September 27, 1995, regarding the "Super 301" annual review, provides for the USTR to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. Accordingly, on October 1, 1997, the USTR identified as a "priority foreign country practice" the Government of the Republic of Korea's barriers to auto imports. (See 62 FR 52604 of October 8, 1997). Specific Korean practices of concern include an array of cumulative tariff and tax disincentives that disproportionately affect imports, onerous and costly auto standards and certification procedures, auto financing restrictions, and a climate of bias against imported vehicles that Korean officials have not effectively addressed. While some of these barriers were addressed in a 1995 bilateral agreement between the United States and Korea, implementation of that agreement has been disappointing, especially as new practices have been introduced that undermine the 1995 agreement. Furthermore, imported passenger vehicles continue to represent less than one percent of the Korean market. Although some progress was made during recent bilateral negotiations to improve market access in Korea for foreign automobiles, Korea was not prepared to undertake the reforms which are necessary for real opening of its autos market.

Investigation and Consultations

Executive Order No. 12901 requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of any "priority foreign country practices." On October 20, 1997, the USTR initiated an investigation with respect to certain acts, policies and practices of the Government of the Republic of Korea that pose barriers to imports of U.S. autos into the Korean market. Pursuant to section 303(a) of the Trade Act, the USTR will seek consultations with the Government of Korea concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of Korea that are the subject of this investigation, including the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act regarding whether they are actionable under section 301 and, if affirmative, the appropriate action to take in response.

Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) and are due no later than noon on Tuesday, December 2, 1997. Comments must be in English and provided in twenty copies to: Office of the General Counsel, Attn: Korea Auto Investigation, Room 223, USTR, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–115) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 1006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be a accompanied by a nonconfidential summary of the confidential information. The Nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–115) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–28434 Filed 10–27–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s)

may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of The Public Debt (BPD)

OMB Number: 1535–0009.
Form Number: PD F 1851.
Type of Review: Extension.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of Trustee or Personal Trust Estate.
Description: The form is used to request reissue savings bonds/notes in the name(s) of the trustee(s) of a personal trust estate.
Respondents: Individuals or households.
Estimated Number of Respondents: 55,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,750 hours.

OMB Number: 1535–0068.
Form Number: None.
Type of Review: Extension.
Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.
Description: The information is requested to establish an investor's Treasury Account; to dispose of securities upon the owner's request; and, to determine entitlement securities.
Respondents: Individuals or households, Business or other for-profit; Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 75,000.
Estimated Burden Hours Per Response: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,775 hours.

OMB Number: 1535–0087.
Form Number: None.
Type of Review: Extension.
Title: Payment by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).
Description: Qualified financial institutions are authorized to redeem eligible savings bonds and notes, and receive settlement through the Federal Reserve check collection system.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 48,430.
Estimated Burden Hours Per Response: 4 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 83,192 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 97–28516 Filed 10–27–97; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 3, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–022–G.
Type of Review: Revision.
Title: 1997 Telephone Routing Interactive System (TRIS) View Debit Application Customer Satisfaction Survey.
Description: The purpose of the survey is to assess the level of ease and satisfaction with using the View Debit application.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,260.
Estimated Burden Hours Per Response: 1 minute.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 21 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–28517 Filed 10–27–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 3, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–023–G.
Type of Review: Revision.
Title: 1997 Telephone Routing Interactive System (TRIS) Refund Trace Application Customer Satisfaction Survey.
Description: The purpose of the survey is to assess the level of ease and satisfaction with using the Refund Trace application.
Respondents: Individuals or households.
Estimated Number of Respondents: 882.
Estimated Burden Hours Per Response: 1 minute.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 15 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–28518 Filed 10–27–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 3, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–024–G.
Type of Review: Revision.
Title: 1997 Telephone Routing Interactive System (TRIS) View Credit Application Customer Satisfaction Survey.
Description: The purpose of the survey is to assess the level of ease and satisfaction with using the View Credit application.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,260.
Estimated Burden Hours Per Response: 1 minute.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 21 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–28519 Filed 10–27–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 3, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–026–G.
Type of Review: Revision.
Title: 1998 TeleFile Automated Customer Satisfaction Survey.
Description: The purpose of the survey is to assess the level of ease and satisfaction with using the TeleFile program.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,675.
Estimated Burden Hours Per Response: 1 minute.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 21 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–28520 Filed 10–27–97; 8:45 am]
BILLING CODE 4830–01–P

Estimated Burden Hours Per Response: 1 minute.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 156 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–28521 Filed 10–27–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0794.

Regulation Project Number: LR–311–81 Final (TD 7925).

Type of Review: Extension.

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time for Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed. Section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations and the regulations provide the method for applying relief from these penalties.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87 Final.

Type of Review: Extension.

Title: Minimum Tax—Tax Benefit Rule.

Description: Section 56(h) of the 1954 Internal Revenue Code provides that the secretary shall provide for adjusting tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (one-time claim for credit or refund).

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–28522 Filed 10–27–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 111–02]

Temporary Arrangements for Functions Relating to Tax Policy, Authority Delegation

October 22, 1997.

Pursuant to the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and notwithstanding Treasury Order (TO) 101–05, it is ordered that the following arrangements shall be temporarily in effect with respect to tax policy functions.

1. The Senior Advisor for Policy, in the Office of Tax Policy, shall report through the Deputy Secretary to the Secretary, and shall be authorized to use the title of, and sign all correspondence as, Acting Assistant Secretary (Tax Policy).

2. All duties and powers of the Assistant Secretary (Tax Policy), including all powers and duties described in TO 111–01, dated March 16, 1981, shall be carried out by the Acting Assistant Secretary (Tax Policy).

3. The Deputy Assistant Secretary (Tax Policy), the Deputy Assistant Secretary (Tax Analysis), and the Deputy Assistant Secretary (International Tax Affairs) shall report to the Acting Assistant Secretary (Tax Policy).

4. *Redelegation.* The duties and powers assigned by this Order may be redelegated. Any such redelegation shall be in writing.

5. *Effective Date.* The foregoing arrangements shall be effective immediately. To the extent that any action heretofore taken consistent with this Order may require ratification, it is hereby approved and ratified.

6. *Cancellation.* TO 111–02, "Temporary Arrangements for Functions Relating to Tax Policy," dated June 12, 1996, is superseded. This temporary Order shall terminate without any further action when a new Assistant Secretary (Tax Policy) executes the oath of office.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 97–28513 Filed 10–27–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

Fee for Customs Services at User Fee Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fee charged for Customs services that are made available at user fee airports pursuant to 19 U.S.C. 58b. The fee reflects the annual cost of providing one Customs inspector at a user fee airport on a full-time basis. The increase in the annual fee is necessary to cover all costs currently incurred by Customs in providing inspectional services at user fee airports, as mandated by the statute.

EFFECTIVE DATE: The new fee is effective October 1, 1997, and will be reflected in quarterly user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Gerald Ross, Office of Finance (202–927–0123).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2992), as amended (codified at 19 U.S.C. 58b), authorizes the Secretary of the Treasury to make Customs services available and charge a fee for the use of such services at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to criteria set forth in the statute. The statute further provides that the fee charged thereunder shall be in an amount equal to the expenses incurred by the Secretary in providing the Customs services at the airport, seaport, or other facility, including the salary and expenses of individuals employed by the Secretary to provide the Customs services.

The Commissioner of Customs has designated a number of airports within the United States as "user fee airports" pursuant to the authority set forth in 19 U.S.C. 58b which has been delegated by the Secretary of the Treasury to the Commissioner. Section 122.15 of the Customs Regulations (19 CFR 122.15) concerns user fee airports and includes a list of designated user fee airports. Although there are no other provisions within the Customs Regulations that deal specifically with user fee airports, each Memorandum of Agreement between the concerned airport authority and Customs, under which each user fee airport is established, sets forth the responsibilities of both Customs and the airport which include an agreement by airport to pay a flat annual fee (established at $74,905 for Fiscal Year 1997 which ended on September 30, 1997) to cover the salary and benefits costs of one full-time inspector, plus any related costs for travel, transportation, per diem and cost-of-living allowances, and an agreement by Customs to provide 8 hours of service per day, Monday through Friday, for a total of 40 hours. Each Memorandum of Agreement further provides for an increase in the annual fee as may be necessary to reflect any increase in the costs to Customs for providing the services, as required by the statute.

Adjustment of Annual User Fee Airport Fee

Based on a review of the annual fee charged in Fiscal Year 1997 with reference to the actual salaries and expenses for Customs personnel assigned to user fee airports as of April 30, 1997, Customs has determined that the annual fee should be increased to $76,500 in order to reflect the true costs to Customs in providing Customs services at user fee airports. The new annual fee is effective October 1, 1997, and will be reflected in quarterly user fee airport billings issued on or after that date.

Dated: October 22, 1997.

Vincette L. Goerl,

Assistant Commissioner, Office of Finance.

[FR Doc. 97–28489 Filed 10–27–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Live Entry Requirement for Non-Automated Entry; Comment Request

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice of meeting and request for comment.

SUMMARY: In its efforts to redesign the trade compliance process, Customs would like to develop a more efficient way to process non-automated entry and entry summary documents. This notice announces that a public meeting will be in Hearing Room B of the Interstate Commerce Commission Building in Washington, D.C., commencing at 9:30 a.m. on Friday, November 14, 1997. The purpose of this meeting is to (1) discuss a possible change in regulations to require all non-automated entry documents to be filed as entry/entry summaries before the release of merchandise; (2) discuss differing public interpretations of this issue and (3) explore options for clarifying the differing interpretations. Due to limitations on available seating, those planning to attend are requested to notify Customs in advance. Written comments will also be accepted at the hearing and by mail.

DATES: Meeting will take place on November 14, 1997, from 9:30 a.m. to 11:30 p.m. Written comments should be received on or before November 30, 1997, to be assured of consideration in the development of any proposed amendment to the current regulations.

ADDRESSES: Meeting will be held in Hearing Room B of the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW, Washington, D.C. Written comments regarding this notice should be addressed to Ms. Brenda Brockman, U.S. Customs Service, Room B–102, 1301 Constitution Avenue, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

To attend the hearing, please notify Ms. Tonda Moton at (202) 927–1676.

For operational or policy issues: Ms. Kathryn Dapkins at (202) 927–0333.

For regulatory issues: Ms. Gina Grier at (202) 927–2397.

SUPPLEMENTARY INFORMATION: In accordance with the Customs Modernization provisions (the Mod Act) of the North American Free Trade Agreement Implementation Act, which gives Customs the flexibility to tailor its commercial operations to meet its needs and capabilities, Customs has undertaken an effort to redesign the entry process. While the majority of all entry summaries are sent to Customs electronically via the Automated Broker Interface (ABI), the remaining summaries are still submitted as non-automated documents. Customs is currently reconsidering the processing of non-ABI, fully paper entry documents.

Importers currently have the option of filing formal, non-ABI entries by one of the following two methods: (1) The entry (CF 3461) is submitted to Customs to obtain release of the merchandise, and the entry summary (CF 7501) along with payment of duties, fees, and taxes, is submitted within ten business days of the date of the entry (date of release of the merchandise); or (2) the entry/entry summary (generally referred to as a "live" entry), along with payment of duties, fees, and taxes, is submitted to Customs to obtain the combined effect of processing the documents and paying the duties and then obtaining release of the merchandise.

When a non-ABI entry is filed, Customs manually enters data from the entry documents into its automated system. When the entry summary is submitted, Customs again enters data manually, this time from the summary, into its automated system. This process of handling the entry documents twice is inefficient and burdensome. It also hinders Customs ability to perform the enforcement activities which are a part of its mission.

Customs would like to streamline this process by requiring importers who file non-automated entry documents to file them as entry/entry summaries, along with all documentation and estimated duties, fees, and taxes, prior to the release of the merchandise. This type of "live entry" would require only one-time processing by Customs, thereby decreasing the amount of time spent on these non-automated documents and freeing up resources for other work. This one-time processing would allow Customs to more efficiently handle the increase in importations within current resource levels. For importers who file non-automated entry documents, the

two-step process of submitting the CF 3461 to obtain release of goods, and then, within ten business days, submitting the CF 7501 entry summary with payment of duties, fees, and taxes, would be eliminated.

Customs ability to enforce trade laws would also be enhanced if the entry/entry summary were submitted prior to the release of the merchandise. The information on entry summaries tends to be more complete and accurate than that on entries. Having better data up front would make it easier for Customs to pinpoint compliance problems, ensure admissibility, and verify bond sufficiency, as these types of checks are performed manually with non-automated entries.

Customs will hold a public meeting to discuss a possible change in regulations to require all non-automated entry documents to be filed as entry/entry summaries before the release of merchandise. This meeting will begin with a brief description of possible proposals, followed by time for the trade community to ask questions and provide comments. Those wishing to provide verbal comments should so indicate when making seating reservations, and should also submit their comments in writing. Because seating is limited, reservations will be required. Individuals planning to attend are requested to notify Ms. Tonda Moton by fax at (202) 927–1363 or by phone at (202) 927–1676. Written comments will be considered in the development of any proposed amendment to the current regulations, but will not be responded to individually.

Dated: October 21, 1997.

Charles W. Winwood,

Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 97–28491 Filed 10–27–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 5 percent for calendar year 1998.

DATES: The rate will be in effect for the period beginning on January 1, 1998 and ending on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance & Evaluation Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management Systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1998 reflects the average investment rates for the 12-month period ended September 30, 1997.

Dated: October 23, 1997.

Larry D. Stout,

Assistant Commissioner Federal Finance.

[FR Doc. 97–28533 Filed 10–27–97; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 62, No. 208

Tuesday, October 28, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7246–01; I.D. 100897D]

RIN 0648–AK44

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

Correction

In proposed rule document 97–27821, beginning on page 54427, in the issue of Monday, October 20, 1997, make the following corrections:

1. On page 54429, in Table 1., in the third column, "1998 quota (percent)" should read "1998 quota (pounds)".

1. On the same page, in Table 2., in the fourth column, "2Discards[2]" should read "Discards[2]".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–47]

City Drug Company: Revocation of Registration

Correction

In notice document 97–27144, beginning on page 53338, in the issue of Tuesday, October 14, 1997, make the following correction:

On page 53343, in the first column, in the first complete paragraph, in the 18th line from the bottom, "$80,000" should read "80,000".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8734]

RIN 1545–AU43; 1545–AT77

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

Correction

In rule document 97–25998, beginning on page 53387, in the issue of Tuesday, October 14, 1997, make the following correction:

§ 1.165–12 [Corrected]

On page 53416, in the first column, in § 1.165–12, in amendatory instruction 5., in the first and second lines, insert quotation marks around paragraph designations "(c)(1)(ii) and (iv)" and "(c)(1)(ii) and (iii)".

BILLING CODE 1505–01–D

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federal register

Tuesday
October 28, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16 and 900

Quality Mammography Standards; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 95N–0192]
RIN 0910-AA24

Quality Mammography Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. Amendments are being made to the requirements for accreditation bodies; procedures for facility certification; and quality standards for mammography personnel, equipment and practices, including quality assurance. This action is being taken to provide increased assurance of adequate and consistent evaluation of mammography facilities on a nationwide level and compliance of the facilities with quality standards. It also carries out the intent of Congress that FDA replace the existing interim rules with more comprehensive final regulations.

DATES: This regulation is effective April 28, 1999; except §§ 900.12(b)(8), 900.12(e)(4)(iii), 900.12(e)(5)(i), 900.12(e)(5)(iii), and 900.12(e)(5)(x), which become effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (the MQSA) (Pub. L. 102–539) was passed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, shall be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA.

The MQSA was enacted in response to the growing incidence of breast cancer and its associated mortality rate. Breast cancer is now the most common nonskin cancer and is the second leading cause of cancer deaths among women, after lung cancer. Early detection of breast cancer, typically involving breast physical examination and mammography, is the best means of preventing deaths that can result if the diagnosis is delayed until the onset of more advanced symptoms. Mammograms can reveal breast cancer up to 2 years before a woman or her doctor can feel a lump. In addition, over 90 percent of these early stage cancers can be cured (Ref. 1).

However, according to the General Accounting Office (GAO), a mammogram is among the most difficult radiographic images to read. It must be of high quality for the image to be interpreted correctly. If the image quality is poor, the interpreter may miss an incipient cancerous lesion. This false negative diagnosis could delay early treatment and result in an avoidable death or increased morbidity. It is equally true that poor quality images or faulty interpretations can lead to a false positive diagnosis when normal tissue is misread as abnormal. This can lead to needless anxiety for the patient, costly additional testing, and painful biopsies.

The Senate Committee on Labor and Human Resources held hearings on breast cancer in 1992 and found a wide range of problems with mammography practice in the United States including: (1) Poor quality equipment, (2) a lack of quality assurance procedures, (3) poorly trained radiologic technologists and interpreting physicians, and (4) a lack of facility inspections or consistent governmental oversight.

A. Provisions of the MQSA

The MQSA was enacted to address these deficiencies in mammography practice. Under the MQSA, Congress established a comprehensive statutory scheme for the certification and inspection of mammography facilities to ensure that only those facilities that comply with minimum Federal standards for safe, high-quality mammography services would lawfully continue to operate after October 1, 1994. Operation after that date would be contingent on receipt of an FDA certificate attesting that the facility meets the mammography quality standards issued under section 354(f) of the Public Health Services Act (the PHS Act) (42 U.S.C. 263b(f)).

Specifically, the MQSA required the following:

(1) Accreditation of mammography facilities by private, nonprofit organizations or State agencies that have been approved by FDA as meeting the standards established by FDA for accreditation bodies and that continue to pass annual FDA reviews of their activities. The MQSA also requires that, as part of the overall accreditation process, actual clinical mammograms from each facility be evaluated for quality by the accreditation body.

(2) An annual mammography facility physics survey, consultation, and evaluation performed by a qualified medical physicist.

(3) Annual inspection of mammography facilities, to be performed by FDA-certified Federal or State inspectors. If State inspectors are used, the MQSA requires a Federal audit of the State inspection program by direct Federal inspections of a sample of State-inspected facilities.

(4) Establishment of initial and continuing qualification standards for interpreting physicians, radiologic technologists, medical physicists, and mammography facility inspectors.

(5) Specification of boards or organizations eligible to certify the adequacy of training and experience of mammography personnel.

(6) Establishment of quality standards for mammography equipment and practices, including quality assurance and quality control (QC) programs.

(7) Standards governing recordkeeping for patient files and requirements for mammography reporting and patient notification by physicians.

(8) Establishment by the Secretary of a National Mammography Quality Assurance Advisory Committee (NMQAAC). Among other things, NMQAAC is required to advise FDA on appropriate quality standards for mammography facilities and accreditation bodies.

The MQSA replaced a patchwork of Federal, State, and private standards. Its purpose is to guarantee sufficient oversight of mammography facilities to ensure that all women nationwide receive adequate quality mammography services.

B. Interim Regulations

On December 14, 1993, the President signed legislation (H. Rept. 2202) granting authority to the Secretary (and by delegation, to FDA) to issue temporary interim regulations setting forth standards for approving accreditation bodies and establishing quality standards for mammography facilities. This authorization was provided in recognition of the fact that FDA certification of the approximately 10,000 mammography facilities in the United States could not be accomplished by the October 1, 1994, statutory deadline without streamlining the rulemaking process for issuing initial standards. Because of the urgent public health need for national mammography standards, Congress decided to grant this interim rule authority rather than extend the deadline to develop standards.

In the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565), FDA issued interim rules establishing requirements for entities applying to serve as accreditation bodies and for facilities applying to obtain FDA certification in order to continue the legal provision of mammography services after October 1, 1994. These interim rules became effective on February 22, 1994. They were amended by another interim rule published in the **Federal Register** on September 30, 1994 (59 FR 49808).

C. Accreditation and Certification

Operating under the interim regulations, FDA approved the American College of Radiology (the ACR) and the State of Iowa as accreditation bodies and issued certificates to more than 5,000 facilities accredited by these 2 bodies before the October 1, 1994, statutory deadline. Over 4,500 of the remaining facilities were actively involved in becoming accredited on that date. In the fall of 1994, FDA also approved the States of Arkansas and California as accreditation bodies.

In recognition of the fact that a large number of facilities were working to meet accreditation standards at the same time, and cognizant of the extremely heavy demands this placed upon the accreditation bodies, FDA used authority provided by the MQSA to issue 6-month provisional certificates on October 1, 1994, to facilities whose applications for accreditation were sufficiently complete for review and which, on preliminary examination, appeared reasonably likely to receive accreditation. This avoided the major reduction in access to mammography that would have resulted had several thousand facilities been forced to close their doors until the accreditation and certification process could be completed.

By March 31, 1995, the expiration date for the 6-month provisional certificates issued on October 1, 1994, over 8,200 facilities had become fully accredited and certified. Most of the facilities whose accreditation was still in progress satisfied the criteria for the 1-time 90-day extension of the provisional certificate provided by the MQSA and were granted such extensions.

By June 30, 1995, approximately 9,400 facilities had become fully accredited and certified. Several hundred more, primarily facilities that had begun operation after October 1, 1994, or facilities that had previously failed accreditation and were seeking approval after having taken corrective actions, were operating under provisional certificates or 90-day extensions of these certificates. FDA estimates that approximately 800 facilities closed between October 1993 and June 1995. The closings were due to a number of reasons, including failure to apply for certification, voluntary closure, and failure to meet the standards for accreditation, and other reasons unrelated to the MQSA, such as retirement.

D. Onsite Inspection of Facilities

At the same time FDA was working with the four accreditation bodies to accredit and certify facilities, the agency was also meeting the MQSA requirement to establish an annual onsite inspection program to monitor facility compliance with the MQSA standards. The bulk of these inspections are performed by State inspectors operating under the contracts that FDA has with 49 States, Puerto Rico, the District of Columbia, and New York City. Federal inspectors inspect Federal facilities and facilities in the remaining States and do audits of the State inspections. FDA has trained and certified approximately 250 Federal and State inspectors for this program. All facilities that completed the certification process had received their first inspections by September 1996 and approximately 70 percent had received their second inspections by the end of March 1997. FDA was pleased to find widespread compliance with the quality standards during these inspections. Only 2 percent of the facilities had one or more of the most serious findings (referred to by FDA as Level 1 findings) during the first round of inspections and that proportion has dropped to less than 1 percent of the facilities inspected so far in the second round.

E. Development of Proposed Regulations

In granting interim rule authority to FDA, Congress made clear its intention that the agency replace the interim regulations with more comprehensive regulations as soon as possible. These more extensive regulations were to be developed using the normal "notice and comment" rulemaking process and consultation with the NMQAAC.

Apart from the strong congressional encouragement, there were also other reasons why it was important to replace the existing interim regulations for quality mammography with more comprehensive final regulations. The interim regulations were based primarily on the voluntary standards of the ACR's Mammography Accreditation Program (MAP). Utilization of the MAP standards aided greatly in meeting the October 1, 1994, deadline for accreditation and certification of facilities. The application of these standards to all facilities, instead of just those that had sought voluntary accreditation from the ACR, had a significant impact on mammography nationwide. However, the MAP provisions did not cover all areas that required standards under the MQSA, such as mammography of patients with breast implants and experience requirements for some personnel of mammography facilities. Furthermore, in many situations where MAP voluntary standards were relevant, their wording needed to be changed and clarified for use as part of a regulatory program.

One especially significant gap was in the equipment area where the standards under the interim regulations were minimal. To provide greater assurances of quality equipment performance, the ACR, with the Centers for Disease Control and Prevention (CDC), had previously convened expert committees to develop specifications for mammography equipment. The reports of these expert committees were an important basis for the equipment provisions of the proposed regulations.

In addition, the interim standards were required to be issued and implemented prior to FDA developing any significant experience regulating mammography. Because the statute was new and the regulatory scheme it established presented a different and innovative approach, the agency would inevitably develop ideas for improvement in quality and efficiency of implementation as the program developed.

For all of these reasons, it was necessary to replace the interim regulations with more comprehensive final regulations in order to obtain the highest quality mammography that is reasonably achievable. Coincident with the implementation of the interim rules, work was proceeding on the development of final regulations. This effort was aided by the agency's ongoing experience under the interim rules and the advice of members of the NMQAAC. The NMQAAC membership includes health professionals whose work focuses significantly on mammography and representatives of consumer groups. NMQAAC was chartered on July 7,

1993. Nominations for members were accepted until September 7, 1993. The first meeting of the NMQAAC was held February 17 through 18, 1994. At that meeting, and in subsequent meetings in April, July, and September 1994, the NMQAAC reviewed and commented on drafts of portions of the proposed regulations developed by FDA. At its January 1995 meeting, the NMQAAC reviewed the entire body of draft proposed regulations. Many of the requirements in the proposed regulations were based on advice obtained from the members of NMQAAC during these meetings.

Another valuable resource utilized by FDA in the development of the proposed regulations was the guideline entitled, *Quality Determinants of Mammography* (Ref. 2). This guideline was developed by the Quality Determinants of Mammography Panel, with support from the Agency for Health Care Policy and Research (AHCPR), to help eliminate low quality mammography and, thereby, eliminate the adverse consequences it causes. The Panel consisted of a diverse group representing many medical specialties and consumer representatives knowledgeable about mammography.

Proposed regulations were published in the **Federal Register** of April 3, 1996 (61 FR 14856). To facilitate review by the public, they were published in 5 separate documents, as described in the introduction to section III of this document.

F. Development of the Final Regulations

A 90-day public comment period ending July 3, 1996, was provided for the proposed regulations. During that time, extensive efforts were made to encourage public comments. Approximately 17,000 copies of the proposed regulations were mailed to the organizations and individuals on FDA's MQSA mailing list, including 1 to every certified mammography facility. The availability of the proposal was announced in Mammography Matters, the newsletter of FDA's Division of Mammography Quality and Radiation Programs (DMQRP), and in the newsletters of professional groups. Copies were also distributed by FDA personnel at professional meetings. By the end of the comment period, approximately 1,900 responses, containing approximately 8000 individual comments, had been received from organizations and individuals. NMQAAC also provided additional comments on the proposal during an April 1996 meeting.

Analysis of the many comments began after the end of the comment period. At the October 1996 meeting, FDA consulted the NMQAAC for advice with respect to some of the more controversial issues raised by the comments. During the January 1997 meeting, the Committee reviewed the entire set of regulations in light of the comments received. The public comments and the advice received from the NMQAAC were used to develop a draft of final regulations, which the members of the NMQAAC had an opportunity to review individually in March 1997.

The majority of the final regulations will become effective April 28, 1999. The interim rules will continue to apply until that date. Certain equipment-related regulations, in § 900.12(b) and (e), will become effective October 28, 2002. This delay in the effective date for certain equipment requirements is intended to minimize the costs associated with equipment improvements. The cost savings are achieved by permitting facilities to implement the improvements as they follow their normal equipment replacement schedule instead of requiring an immediate purchase of new equipment or equipment upgrades.

II. Highlights of the Final Rule

This section highlights the major features of the final regulations, as compared to the interim and the proposed regulations, and their potential for achieving the MQSA goals of establishing nationwide quality standards for mammography, while maintaining a broad patient access to mammography services. A detailed discussion of the public comments and FDA's response to them is provided under section III of this document.

These final regulations fulfill FDA's responsibility under the MQSA to establish national quality standards for mammography services, with extensive input from NMQAAC. These Federal regulations will be implemented under the MQSA framework whereby mammography facilities are accredited once every 3 years by FDA-approved State or private not-for-profit accreditation bodies, and inspected once every year by FDA-trained and certified State (or in some cases Federal) inspectors. The Federal-State-private sector partnership provides the necessary tools to successfully implement these regulations and realize the MQSA's goal of assuring high quality mammography services for every American woman.

Accordingly, these regulations establish rigorous criteria designed to enhance the quality of mammography services in a manner that is reasonably achievable by mammography facilities. The regulations provide facilities with flexibility in needed areas to meet the important public health goals of these standards. Taken as a whole, the regulations are expected to provide substantial consumer benefits in a reasoned and cost-effective manner.

The final regulations consist of two subparts. Subpart A is composed primarily of the requirements to be met by the accreditation bodies who perform the crucial initial screening of mammography facilities for quality, including clinical image review, subpart B establishes quality standards to be met by the mammography facilities and administrative procedures.

A. Accreditation Body Requirements

The final regulations refine and codify policies FDA had developed under the interim regulations for the initial approval of accreditation bodies by FDA, and for defining the ongoing responsibilities of these bodies and the agency's oversight of them. The primary goal of the accreditation body requirements is to ensure that there is nationwide consistency, both within and between accreditation bodies, in the evaluation of mammography units and procedures to determine if they meet the standards for quality mammography.

The major change made from proposed §§ 900.3 through 900.7 was the removal of several provisions that would have assigned compliance responsibilities to the accreditation bodies. Removal of these provisions ensures that the activities of the accreditation bodies will have their proper focus, which is to identify facilities that are not performing adequate quality mammography and to advise such facilities on the nature of their problems and how to correct them. Compliance activities under the MQSA are reserved for FDA.

B. Facility Quality Standards

1. Personnel Standards

The personnel standards of § 900.12(a) cover interpreting physicians, radiologic technologists, and medical physicists who provide services to mammography facilities. The goals of the standards are to ensure that personnel: (1) Have general qualifications in radiology; (2) possess specific qualifications in mammography; and (3) keep their qualifications up-to-date.

Most of the proposed changes in the personnel area were intended to clarify general statements in the interim regulations that have caused confusion in interpretation. A major step to improve quality of personnel performance, however, was the proposed establishment of initial and continuing experience requirements for radiologic technologists and medical physicists. These requirements are parallel to requirements already in the interim regulations for physicians and, like the physician requirements, are intended to make sure that individuals have supervised clinical experience before they begin to provide mammography services independently, and that they maintain their skills through regular performance of their duties. These new experience requirements have been codified in the final rule after some adjustments in the amount of experience required due to practical considerations, such as the difficulties that medical physicists under contract to one facility would face in attempting to meet the proposed requirement to do surveys in several facilities.

Another significant change from the proposed personnel standards is that the final rule "grand parents" technologists who met the personnel requirements under the interim regulations. Without grand parenting technologists already in the system, there was the possibility that localized shortages of technologists would occur, resulting in a serious, short-term impact on access to mammography. Because the agency believes that most technologists presently providing mammography services either meet, or have qualifications comparable to the final requirements, grand parenting could be permitted to relieve these concerns without any significant impact on quality.

2. Equipment

The equipment standards in § 900.12(b) are intended to ensure that mammography equipment has the capability of producing quality mammograms over the full range of clinical conditions. The equipment area was addressed only briefly in the interim regulations. To better define the equipment capabilities needed for high quality mammography, equipment specification standards were proposed for all equipment components of the mammography system from the X-ray generator to the view box. These proposals relied heavily upon the recommendations of the equipment focus groups convened in the early part of the decade by the ACR, with the support of CDC.

After reviewing the information provided in the public comments and by the NMQAAC, FDA revisited the question of the proper balance between the economic impact of new standards and the associated gains to the public health. This reconsideration led the agency to conclude that the expected benefits from some of the proposed equipment specifications would not compensate for the cost to replace or retrofit mammography systems to meet them. The agency has concluded that, in some cases, the same public health goals could be accomplished through specified quality assurance procedures. Accordingly, specifications related to source-image receptor distance (SID), focal spot location, filtration, and film processors have been eliminated and specifications related to compression and radiation output are being treated as performance standards under the quality assurance section of the regulations. Similarly, performance outcome aspects of the requirements for alignment have been moved to the quality assurance section. Finally, requirements related to system resolution were eliminated as duplicating performance standards already in the quality assurance section, and the requirements related to the examination of disabled patients were eliminated in part because of a lack of consensus about the need for such requirements.

In an effort to reduce costs, FDA is phasing in the equipment requirements, with some becoming effective the same time (18 months) as the rest of the regulations and others within 5 years. However, based on the desire not to impede technological advances, the uncertainty in estimating needs further in the future, and an assessment of the associated costs, the agency has eliminated the proposed 10-year phase-in requirements and some of the 5-year phase-in requirements. The agency intends to reassess the need for the deleted requirements at a future time.

3. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements of § 900.12(c) are intended to: (1) Ensure that all patients and their referring physicians receive timely and adequate notification of the results of examinations, and (2) assist in diagnosis by ensuring that records of past examinations, including the original mammograms, are available when needed for comparison with the images produced during new examinations.

With respect to patient notification of examination results, the final rule codified this essential reporting requirement as a performance outcome standard. The proposed rule would have required the facilities to have a system to ensure that all patients received written notification of their examination results, and further specified what should be included in that notification. The final rule requires that each facility have a system to ensure that the results of each mammographic examination are communicated to the patient in a timely manner, and not on the method or specific conduit of the notification. Under the final rule, the facility has the flexibility to use the method of notification that is most effective in its situation and to convey the information to the patient that it deems to be most important. In the part of the preamble discussing this provision, FDA continues to endorse the use of written notification as the most reliable way to guarantee that each patient is notified of results and that any necessary followup will occur and recommends that facilities follow the AHCPR guidelines on difect written notification to all patients. The agency also describes other methods that may achieve the desired outcome equally well in specific situations.

With respect to providing patients with original mammograms upon request, the final rule was modified to make it clear that the original mammograms must be made available to other medical facilities, at the patient's request, whether the transfer is permanent or temporary. It is expected that this change will end the difficulties in obtaining previous original mammograms for comparison with new mammograms (an essential aid to diagnosis) that many patients have experienced under the interim regulations.

4. Quality Assurance

The goal of the quality assurance requirements of § 900.12(d), (e), and (f) are to ensure that equipment and personnel continue to perform at adequate levels. Section 900(d) defines staff responsibilities and recordkeeping requirements for the quality assurance program, § 900.12(e) establishes equipment QC requirements, and § 900.12(f) outlines the requirements for mammography medical outcome audits.

The proposed equipment QC requirements represented a major transition towards performance outcome standards. The interim regulations had referenced the ACR quality assurance manuals and thus specified not only the performance outcomes to be achieved but the test procedures to be followed. The proposed rule was intended to establish the desired performance outcomes and the required frequency of testing at levels nearly identical to those in the interim regulations, but sought to give the mammography facilities some

flexibility in the testing procedures to be used.

The final rule leaves the testing frequencies and the performance outcomes largely unchanged from the proposal, with the exception that standards have been added for radiation output, alignment, and compression, parameters previously considered under the equipment specifications. The provisions related to retesting after equipment failure and taking equipment out-of-service until problems are solved have also been modified to give the facility more flexibility in determining when performance is compromised sufficiently to warrant such actions.

5. Medical Outcomes Audit

A comprehensive mammography medical outcomes audit program can ensure that a facility is providing its patients with accurate mammography examinations and followup care and has the potential to provide the basis for performance outcome standards. However, the public comments made it clear that more research is needed before the state-of-the-art will be sufficiently advanced to support regulatory performance outcome requirements based on audits. FDA did move a step beyond the interim requirement that each facility have a system for reviewing outcome data by codifying requirements related to the analysis of the data collected.

6. Consumer Complaint Mechanism

Under the interim regulations, accreditation bodies have developed mechanisms for addressing consumer complaints about the quality of mammography services received. Requirements for such mechanisms have been continued in § 900.4(g) of the final regulations. FDA recognized, however, that consumer complaints usually can be addressed most effectively at the facility level. For this reason, FDA proposed to require each facility to develop a system for collecting and resolving consumer complaints, with special emphasis placed on the resolution of serious complaints. This requirement has been codified with little change in § 900.12(h). The accreditation body and FDA retain the responsibility for addressing complaints that cannot be resolved at the facility level.

7. Alternative Requirements

The alternative requirements in § 900.18 provide a mechanism for implementing advances in mammography that meet quality standards more rapidly than would be possible through amending the regulations. This mechanism will be used only when the potential public health benefits justify such actions. This section was incorporated into the proposed rule from the interim regulations with little change. Before codification in the final rule, the section was modified to give the agency the authority to allow an approved alternative to be used by entities other than the entity that applied for approval. This change was made in response to concerns that it would be an unnecessary duplication of effort for the agency and for the applicants if multiple applications were required for the approval of the same advance in mammography.

8. Performance Outcomes

FDA's proposed rule invited comments on the possibility of taking a performance outcomes approach to mammography quality standards. Suggestions and comments on possible performance outcome indicators were also invited. As discussed in more detail elsewhere in this document, the consensus of the public comments was that while the performance outcome concept was attractive in theory, much additional research will be needed before a performance outcome system to ensure mammography quality can be issued. The agency agrees with this consensus but also believes that it is possible to start moving in that direction in certain areas as noted in the previous discussion.

III. Provisions of the Final Rule

The proposed regulations that published in the **Federal Register** of April 3, 1996, consisted of five separate documents. The first, "Quality Mammography Standards; General Preamble and Proposed Alternative Approaches" (61 FR 14856 (Docket No. 95N–0192)): (1) Surveyed the history of efforts to implement the MQSA; (2) summarized FDA's analysis of the environmental, economic, and paperwork impacts of the final regulations; and (3) set out the agency's proposed "scope" and "definitions" sections (§§ 900.1 and 900.2). In that document, the agency also invited public comments on the concept of performance-based outcomes regulations and the feasibility of recasting the proposed design and process requirements into performance-based outcomes requirements.

The second, "Quality Standards and Certification Requirements for Mammography Facilities; General Facility Requirements" (61 FR 14870 (Docket No. 93N–0351)), proposed regulations covering a variety of areas, including: (1) Applicability (§ 900.10); (2) requirements for certification (§ 900.11); (3) procedures for suspension or revocation of accreditation; (4) accreditation body approval; (5) facility certificates (§§ 900.13 and 900.14); (6) the process for appealing agency decisions (§ 900.15); and (7) an alternative requirement process (§ 900.18). Some aspects of the facility standards were also covered. These included medical records and recordkeeping (§ 900.12(c)); general quality assurance requirements (§ 900.12(d)); mammography medical outcome audits (§ 900.12(f)); mammography of examinees with breast implants (§ 900.12(g)); the consumer complaint process (§ 900.12(h)); and additional clinical image review and patient notification (§ 900.12(l)).

The third, "Proposed Requirements for Accreditation Bodies of Mammography Facilities" (61 FR 14884 (Docket No. 95N–0192)), covered the approval, responsibilities, and withdrawal of approval of accreditation bodies (§§ 900.3 to 900.7).

The fourth, "Quality Standards and Certification Requirements for Mammography Facilities; Personnel Requirements" (61 FR 14898 (Docket No. 95N–0215)), proposed standards to be met by interpreting physicians (§ 900.12(a)(1)), radiologic technologists (§ 900.12(a)(2)), and medical physicists (§ 900.12(a)(3)) working in mammography facilities.

The fifth, "Proposed Quality Standards for Mammography Equipment Quality Assurance" (61 FR 14908 (Docket No. 95N–0195)), proposed equipment specifications (§ 900.12(b)) and requirements for the equipment quality assurance program (§ 900.12(e)).

The proposed regulations were published in these five segments to facilitate review and make it easier for members of the public to focus on the sections of most interest to them. Because the final regulations are being issued as a single document, the comments received in response to the proposed regulations are addressed as part of this single preamble rather than in separate documents relating to each of the five proposal documents. General comments are treated first, followed by a discussion of the public response to the concept of performance outcome requirements and their feasibility. Then comments on the individual components of the final regulations are discussed in the order that each component appears in the final regulations.

Finally, the comments on the FDA's analyses of impact are discussed in sections V of this document, and section VI covers the Paperwork Reduction Act of 1995 provisions. Citations for individual provisions of the regulations generally have remained the same; the preamble clearly notes any instance in which a provision has been codified under a new citation.

Each of the five proposed regulations was preceded by a preamble containing a wide range of information intended as background and information for the final regulations. Comments that the agency received relating to preamble discussions have been addressed either with the general comments or with the specific regulation sections to which they are most closely related.

A. General Comments

Many comments received on the proposed regulations raised issues or concerns that were broader in scope than any specific provision. These more general comments are responded to first, before turning to the more specific comments.

1. The Overall Value of the Quality Standards

(Comment 1). A number of the comments stated opposing positions on the overall value of the quality standards established by these regulations. Seventeen comments supported the quality standards with only minor modifications, noting that they would strengthen radiology practices and enhance the quality of mammography. Twenty-six comments, on the other hand, opposed the quality standards in their entirety. Reasons given included concern about costs and the resultant impact on access, opposition to the regulation of medicine, a characterization of the standards as unnecessary micro-management, belief that more stringent standards were unnecessary or ineffective in improving quality, and an opposition to "international" requirements for mammography practice.

The agency recognizes the need to balance the benefits to be achieved from improved quality of mammography with the cost of those improvements and the impact such cost might have on access to mammography. Congress addressed the concern with that balance in drafting the MQSA and has guided the agency in its efforts to implement the statute. An independent evaluation of the program performed by GAO determined that the interim regulations had a positive effect on the quality of mammography without a serious adverse impact on access (Ref. 2). Although, as previously mentioned, a number of facilities did close for various reasons, service from another provider was generally available within 25 miles. Newly established facilities have continued to be certified, further mitigating any impact on access. Based upon its experience with the interim regulations and advice from NMQAAC members, FDA believes that the proposed regulations will achieve further improvements in quality at a cost that will not impact access significantly. The public comments on the proposal led to a further refinement of the regulations, including removal of requirements when the comments persuaded the agency that the requirement was not essential. These changes, and the associated reduction in cost, should provide an even more favorable ratio of benefit to cost.

In answer to concerns about micro-management, many of the specific provisions added in the final regulations reflect practices and policies that were developed under the interim regulations. These policies were developed in response to requests from mammography facilities for information on how to meet the requirements of interim regulations and are already being followed by most facilities. Incorporating these policies into the final regulations gave interested parties the opportunity to comment on them. In response to the comments, requirements have been refined to achieve the most favorable balance between benefit and cost.

Finally, FDA notes that the system for ensuring quality mammography established by the MQSA and these regulations is unique to the United States and is not a duplicate of, or related to any international requirements or systems established in any other country.

(Comment 2). Two comments, while apparently not in total opposition to the regulations, did express their authors' opinions that the personnel and recordkeeping and reporting requirements went "far beyond FDA's medical device mandate."

FDA notes that the authors of these comments have overlooked the fact that these regulations are issued under the MQSA, which amended the Public Health Service Act, not under the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act (the act). The MQSA specifically requires the agency to develop standards for personnel qualifications and for reporting and recordkeeping (42 U.S.C. 263b(f)).

(Comment 3). Several comments, while expressing varying degrees of support or opposition to the requirements, asked why mammography has been singled out for such attention. Some suggested that other diseases were as serious or more serious than breast cancer, while one comment pointed out that the radiation levels in mammography are quite low.

Although a case might be made for developing similar programs for diagnosis of other diseases, Congress decided that mammography should be the subject of this legislation. Congress found the evidence sufficiently convincing that breast cancer was a significant public health risk that could be reduced by improved mammography and, furthermore, that the performance of mammography nationwide was in need of improvement. Congress responded with the MQSA, and FDA is carrying out the mandate of that statute. FDA agrees with the comment that observed that the radiation levels in mammography are much lower than they were 20 years ago (largely as a result of a cooperative government, industry, and facility effort) and lower than those used in many other examinations. However, the primary concerns addressed by the MQSA are not radiation levels but poor image quality and interpretation.

(Comment 4). One comment criticized the proposed regulations for not sufficiently recognizing local facility condition variations, indicating that standards appropriate for some facilities might be unduly burdensome to others. In contrast, another comment strongly supported the application of uniform standards in both rural and nonrural areas. It stated that this would ensure that women in rural areas received optimum care.

FDA believes that all women are entitled to high quality mammography, no matter where they live, and so has not issued lesser standards for rural areas or any other subset of facilities. The agency further notes that the fear that applying uniform minimum standards would cause an undue burden to rural facilities is refuted by the experience of Michigan, where such uniform standards have been applied to all facilities in that State since 1989 (Ref. 3), and by experience under the Federal interim regulations.

(Comment 5). Ten comments stated that "the regulations and the complaint process may confuse the public by bringing up more issues than it is necessary for them to be concerned with and confusing the role of mammography in the overall diagnosis and treatment of breast cancer."

The purpose of the MQSA is to ensure adequate quality mammography for all patients. If this purpose is achieved, members of the public will be able to receive mammography at any facility in the country without having to be concerned about the issues covered by the regulations. Thus, public

"confusion" should decrease rather than increase as a result of these regulations. Without additional details, FDA cannot respond further to the concern expressed by the comments about confusion over the role of mammography. The agency assumes, however, that any such problems could be handled through educational efforts.

2. Division of Responsibility

The MQSA established a system of checks and balances involving the interaction of several groups, including FDA, the States, and the accreditation bodies. A number of comments expressed varied concerns about the division of responsibility established by the proposal.

(Comment 6). One of these comments stated that oversight and review of mammography facilities is the backbone of the MQSA program. Along with a second comment, it noted that FDA, not the accreditation bodies, should be responsible for enforcement actions.

FDA agrees with this comment and believes that the final regulations clearly give the agency the primary responsibility for this function. However, the regulations also establish that the accreditation bodies have responsibility for notifying FDA when they have information that enforcement actions may be needed and for assisting in related investigations.

(Comment 7). Two comments stated that the regulations should allow States to eliminate overlapping functions if they are serving as both accreditation bodies and inspection agencies. A third comment stated that more leeway should be given to State accreditation bodies, which have enforcement capability, than to non-State accreditation bodies. A fourth comment recommended eliminating some unspecified requirements if a State agency holds both accreditation body status and an inspection contract.

FDA agrees that states that are both accreditation bodies and inspection agencies may be able to combine some functions and, in fact, some steps have been taken under the interim regulations. However, it is important that all facilities meet the same accreditation and inspection requirements. The agency believes it is unlikely that any requirements pertaining to accreditation bodies or facility standards can be eliminated entirely in States with dual status. The need for consistency also explains why FDA disagrees with the third comment; State accreditation bodies may have enforcement capability under State law but this capability could vary greatly from State to State. As the author of the fourth comment did not give specific examples of requirements to be eliminated, the agency cannot respond further to that comment.

(Comment 8). Three comments suggested that to reduce costs there should be one comprehensive system to accomplish all the necessary accreditations within any State that already has in place a mechanism for accreditation of facilities and licensure of technologists. The comment observed that the Federal Government would have to subsidize States for this work.

States are permitted under the MQSA to apply to become FDA-approved accreditation bodies (42 U.S.C. 263b(e)(1)(A)) and three States have already done so. FDA disagrees that the agency should merely substitute existing State accreditation and licensing systems for the MQSA standards. States may have widely different accreditation standards under their State laws, while the drafters of the MQSA envisioned a system that would establish uniform, minimum national standards for all mammography facilities. The MQSA, however, expressly permits State laws relating to mammography that are more stringent to be issued or to remain in effect (42 U.S.C. 263b(m)). Furthermore, the drafters of the MQSA did not provide for Federal subsidies for any accreditation body; the statute instead expects those bodies to be supported by their accreditation fees.

(Comment 9). One comment recommended the adoption of only one set of rules, whether it be established by the State, ACR, or FDA, to govern mammography, while a second recommended combining FDA and ACR into one "accreditation body" to reduce the problems of complying with the requirements of both. Another comment objected to FDA permitting States to pass additional laws and regulations governing mammography in addition to the MQSA requirements. It stated that this would prevent the establishment of consistent nationwide standards. Another comment objected to the absence of a preemption clause in the MQSA, fearing that would lead to overlapping State and Federal regulations.

FDA notes that, within the limits of the authority given to it by the MQSA, it has worked towards the goal of one set of rules. The MQSA authorizes FDA to establish one set of uniform baseline standards and to require that all approved accreditation bodies, including ACR, enforce standards substantially the same as these. The agency has taken this step. FDA also notes that the Health Care Financing Administration (HCFA) has agreed to accept the MQSA regulations and inspections in lieu of the regulations and inspection system it had previously established to govern mammography under Medicare, thus reducing duplication. The MQSA also requires State standards to be at least as rigorous as those of FDA. However, as noted by the comment that there is no preemption clause in the statute, the MQSA explicitly gives States authority to develop additional regulations governing mammography, as long as they are more stringent than the MQSA requirements (42 U.S.C. 263b(m)). The intention of the MQSA was to create a uniform nationwide baseline quality level for mammography, while permitting individual States to strive for higher levels. Only Congress can make changes in this approach, not FDA.

(Comment 10). One comment expressed concern that the nature of the State/Federal agency relationship may be an impediment to ensuring quality mammography. The author cited two GAO reports criticizing the oversight of State programs by other Federal agencies. FDA notes that the agency has a long history of Federal-State cooperative programs, especially with respect to educational efforts and inspections in the medical X-ray area, and that, in general, these programs have been very successful. As the agency moves into new areas of cooperation with the States, it is studying the experiences of other Federal agencies in an effort to avoid any difficulties they may have experienced in working with the States.

(Comment 11). One comment recommended that FDA's mammography oversight be limited to equipment standards and requiring that facilities be accredited and that oversight of the accreditation bodies by FDA be reduced. Another comment suggested limiting FDA's oversight only to ensuring that facilities are accredited properly by the accreditation bodies.

FDA notes that the MQSA gives FDA far greater responsibilities than either of these comments would permit and the regulations are intended to help the agency continue to fulfill its obligations under the statute.

(Comment 12). Similarly, two comments made the general recommendation that the accreditation bodies be given expanded responsibilities. Other comments had more specific opinions, for or against, certain expanded responsibilities for the accreditation bodies. Two comments stated that the accreditation body should be the sole evaluator of the annual physicist survey, with the MQSA inspector merely accepting the accreditation body's review. A third comment argued, however, that valuable information would be lost if the inspector accepted the accreditation body's review of the report and a fourth comment agreed that, if duplicate review is not cost effective, it would be more appropriate for the inspector to review the survey than the accreditation bodies. Three comments stated that the accreditation body should be responsible for tracking all personnel requirements for a facility, while a fourth would give the accreditation body responsibility for review of continuing education credentials. Similarly, a fifth comment would limit the inspections to review of the physicist survey and the QC program, plus taking a phantom image, leaving oversight of the other areas to some unspecified group. Another comment on the appropriate division of responsibilities stated that FDA should not have inspectors performing tests that have already been conducted by medical physicists and technologists.

FDA has utilized, and plans to continue utilizing, the expertise of the accreditation bodies to the maximum extent permitted by the statute. The agency also realizes that the checks and balances system required by the MQSA leads to some duplication of effort between the accreditation body and the inspectors or the inspectors and the medical physicists. However, one of the weaknesses of the pre-MQSA oversight system for mammography was the lack of an onsite evaluation of the facility programs by an individual independent of the facility. Experience with the interim regulations has demonstrated the value of such inspections; the great majority of findings were for situations that had not been identified by the accreditation bodies or the medical physicists. On the other hand, there is no doubt that the accreditation bodies and the medical physicists have prompted the correction of many problems before the inspections took place. These activities and results demonstrate the strength of the program. The agency believes that the drafters of the MQSA were correct in concluding that a checks and balances system, involving two or more entities, would be more effective in ensuring the continued maintenance of high quality mammography than the use of only one entity or the other.

(Comment 13). Two comments recommended that the information obtained by either the accreditation bodies or the inspectors should be shared with the other groups to cut down on unnecessary duplication of information collection activities or submission requirements for the facilities.

FDA agrees with this comment and the statute itself supports elimination of collection of duplicative information (42 U.S.C. 263b(d)). Under the interim regulations, the agency has been working with the accreditation bodies on the electronic exchange of information and will continue to do so under the final regulations.

3. Inspections and Inspectors

A number of the more general comments addressed various aspects of the annual and audit inspections.

(Comment 14). Two comments suggested that the FDA facility inspections should be reduced or eliminated in order to reduce the costs to facilities or because annual inspections are not needed. A third comment urged that inspection frequencies not be included in regulations.

Annual onsite inspections are required by the MQSA (42 U.S.C. 263b(g)); that requirement cannot be changed by the agency, even if it is not in regulations. The agency is evaluating alternative ways for conducting inspections in the hopes of reducing costs for facilities.

(Comment 15). One comment stated that it was inconsistent for FDA to inspect every facility every year while the accreditation bodies are required to visit a much smaller number of facilities annually. The comment further maintained that the MQSA inspections duplicated other inspections.

The FDA inspections and the accreditation body visits serve two different purposes. The MQSA inspections, which are required to be annual, are intended to ensure that all facilities continue to meet the MQSA quality standards. The MQSA requirement that accreditation bodies visit a sample of their facilities each year serves an additional purpose, which is to have accreditation bodies evaluate their own performance and the effectiveness of their accreditation procedures (42 U.S.C. 263b(e)(4)(A)). In addition, accreditation bodies, at FDA's request or on their own authority, will visit facilities that have been identified as potential problem facilities for the purpose of identifying the problems and assisting the facility in correcting them.

(Comment 16). Eleven comments suggested that ACR be designated as the inspection organization in New Mexico.

FDA is unable to consider this suggestion because the MQSA specifically limits inspectors to Federal or State personnel (42 U.S.C. 263b(g)).

(Comment 17). Three comments were concerned about the standards for FDA inspectors and two more urged additional training for inspectors. Another comment was very complimentary of inspectors in Iowa. Fifteen other comments expressed various concerns about the inspection fees.

These issues are beyond the scope of these regulations, which cover requirements for accreditation bodies and quality standards for facilities only. FDA has referred these comments directly to the components of FDA that deal with inspector training and inspection fees.

4. Public Participation in the Process

(Comment 18). Three comments expressed concern that not enough public input has been obtained during the regulation development process and suggested that facilities, manufacturers, and personnel should be interviewed.

The NMQAAC is composed of representatives of the mammography community and consumer groups and has been a valuable conduit of public input during the eight meetings at which it discussed the final regulations before and after they were published. Furthermore, each meeting included an open session during which members of the public could make statements and many individuals took advantage of these opportunities. Finally, there were three public comment periods during the development of the regulations. The first of these was for comments on the interim regulations. A great deal of information was gained for use in the development of the final regulations from comments received at this time. The second was after preliminary drafts of the equipment and medical physicist standards were released and again valuable information was obtained from the public. The third opportunity to comment was after the publication of the proposed regulations and, as previously discussed, approximately 1,900 responses covering every area of the regulations were received from a broad spectrum of organizations and individuals. FDA believes that the public has had ample opportunity to participate in the regulation development and reiterates that this public participation had a significant impact on its final form.

(Comment 19). Another comment recommended prohibiting NMQAAC members from also serving on advisory boards or as consultants to accreditation bodies in order to avoid the possibility that a limited number of people will have disproportionate influence on the program.

In forming the NMQAAC and its other advisory panels, FDA has complied with the Federal Advisory Committee

Act (the FACA), the agency's implementing regulations at 21 CFR part 14, and the MQSA. The FACA requires each advisory committee to be fairly balanced in terms of the points of view represented and the MQSA expressly describes the constituent segments of the affected community that are to have representatives on the Committee (42 U.S.C. 263b(n)). Because advisory committees enlist the expertise of outside consultants to advise the government, it is frequently the case that well-qualified members are nationally recognized experts who are also called upon to play leadership and consultant roles for private groups. The agency does not prohibit such individuals from providing government service if the agency determines that such participation is in the best interest of the government because the need for such participation outweighs the potential conflict of interest. The existence of any potential conflicts are stated for the public record at the beginning of each advisory committee meeting and panel members who have conflicts on particular matters may be prohibited from voting on those issues.

5. Double Reading

In the preamble to the proposed rule (61 FR 14870 at 14876, April 13, 1996), FDA noted that one of the comments received on the interim regulations suggested that all mammograms be read a second time by a second qualified physician. The author of the comment stated that this would avoid unnecessary surgery and emotional stress that can arise from a false positive reading and the lack of appropriate followup in the case of a false negative reading. The agency did not include such a requirement in the final regulations but asked for further comments on the issue.

(Comment 20). Twenty four comments argued against a double reading requirement, basing their opposition on such reasons as the cost, the difficulty of achieving double reading, the delays in reporting to the referring physician leading to patient dissatisfaction, and the belief that it would be a meaningless exercise and only a few abnormalities would be picked up. Comments asserted that the burden would be especially great in rural and isolated areas and could reduce access to mammography services. Twelve of these comments also questioned where the notion of double reading would lead; and would there be a press for triple and quadruple reading. One of these comments urged that the focus be on training for the first reader so that double reading is not necessary. On the other hand, three comments offered strong support for the use of double reading and one comment went so far as to say that all films should be double read in order to eliminate the trauma and psychological stress associated with false positives. One comment suggested requiring double reading for all positive mammograms.

FDA has determined not to include a double reading requirement in the final regulations. Double or multi-reading (as it is now called by the agency for reasons discussed with the comments on § 900.2) is referenced in the regulations only as a way for interpreting physicians at low-workload facilities to meet their continuing experience requirements. Although this practice is not being required, the regulations do not preclude double reading. FDA encourages facilities that believe their services will benefit from such procedures to establish the practice as a quality assurance measure.

6. The Organization of the Final Regulation

(Comment 21). A number of comments were extremely critical of the organization of the proposal, finding it difficult to read and to see the relationship between the five separate divisions, each with its own docket number, preamble, and regulatory content. Several of these comments stated that information on the organization of the proposal should have been provided, while others made suggestions for reorganization of the material when it was published as a final regulation.

FDA adopted the method of presentation in the preamble of the proposals in an effort to make it easier for readers to focus on the provisions that were of most concern to them. Readers interested primarily in the personnel requirements, for example, would need consider only the fourth division, while those whose concerns were primarily equipment-related, could focus on the last division. Although the summary section of each of the five divisions identified the material being provided in the other divisions, it is clear from the comments that further explanation would have been helpful.

The final regulations are being published in a single document. This single document follows the usual **Federal Register** format of a preamble and a regulation section. The regulation section combines the regulations from the five divisions of the proposal in numerical order from §§ 900.1 to 900.18, with some sections reserved for later use. For the convenience of the reader, a table of contents is provided.

7. Other Comments

(Comment 22). Additional comments were received on widely varied topics. One comment noted that mammography services are provided for men and women, and suggested that any mention of "women" should be replaced by "women and men."

FDA agrees that men are also consumers of mammography services. However, because breast disease and diagnosis overwhelmingly affects women, that word seems more appropriate. However, the agency notes that in the regulations themselves and at many places in the preamble, the term "patient" is used. FDA believes this terminology addresses the comment's concern.

(Comment 23). Four comments took issue with statements in the preamble to the proposed regulations concerning the expected benefits from improved mammography and the number of expected deaths from breast cancer.

FDA is aware that several aspects of these issues are unsettled and that authorities may draw different conclusions from the same data. However, the authors of the comments did not appear to challenge the statute's underlying assumption that mammography can be valuable in combating a serious public health threat, even though they might disagree on the quantification of that value.

(Comment 24). Three comments urged FDA to delay the final regulations until a study of the impact of the interim regulations could be conducted to determine what changes were needed or even if the MQSA itself were necessary. Congress intended that final regulations be in place before October 1, 1994, so that the benefits of improved mammography could be realized as soon as possible. Recognizing the magnitude of the task, Congress provided FDA with interim rule authority that would require regulations to be issued in two steps. The first step was the interim regulations, which led to significant benefits. Neither Congress nor the agency believes that any further delay in completing the second stage and achieving the increased benefits of the final regulations can be justified. The agency notes, however, that facilities have been operating under the interim rules for over 2½ years and inspections against the interim regulations have been occurring for over 2 years. This experience with the interim regulations and the problem areas that were identified have contributed significantly to the provisions of the final regulations.

(Comment 25). One comment asked the agency to clarify who makes the decisions about the MQSA regulations. FDA assumes that the author is referring to decisions about interpretations of the regulations, including decisions about the adequacy of particular training programs for mammography personnel. These decisions are made primarily in FDA's DMQRP (address above).

(Comment 26). Four comments expressed concern that the more unique mammography regulations become, the greater the likelihood that generalists will be forced out of the field.

Many of the personnel requirements, such as licensing and certification, are general requirements of the medical field. In addition, Congress determined, and FDA agrees, that mammography is a sufficiently unique and difficult examination to require specialized training and experience in the production and interpretation of the images and in the testing and maintenance of the equipment. However, it does not require a full-time mammography practice to meet the experience requirements specific to mammography and the specific training requirements are only a fraction of what is required for other purposes, such as completing a residency program or maintaining certification from the American Registry of Radiologic Technologists (ARRT). Thus, individuals will be able to meet the MQSA requirements without limiting their activities to mammography and so there will still be room for generalists.

(Comment 27). A number of comments expressed a variety of concerns about matters outside the scope of these regulations or beyond FDA's authority. These concerns included: (1) Questions about the appropriate frequency for screening mammography and the levels of Medicare reimbursement; (2) a recommendation that a State advisory board be created to monitor each State's mammography program; and (3) a concern about the perceived domination of medicine by big business. Because these comments are beyond the scope of these regulations, these comments will not be addressed.

B. Alternative Approaches to Quality Mammography

Executive Order 12866 requires Federal agencies to identify and assess alternative forms of regulation and, where feasible, specify performance objectives (performance or outcome-based standards), rather than specifying the behavior and manner of compliance that regulated entities must adopt (design-specification standards). In addition, Executive Order 12866 requires each agency to avoid regulations that duplicate other regulations. In response to this Executive Order, under Docket No. 95N–0192, in the **Federal Register** of April 3, 1996 (61 FR 14856 at 14859) FDA invited comments on the feasibility of developing performance-based regulations. Although the agency did not propose specific regulations in this area, it did suggest several possible performance measures for mammography and requested comments on their value and feasibility. The agency also invited the public to suggest other performance outcomes that might provide a basis for performance-based standards. FDA also invited comments on suggestions for other possible alternative approaches. While the standards that were proposed were not designed to be performance-based standards, there are elements of performance requirements throughout the final regulations. For example, most of the QC standards in the final regulations are performance based. The discussion in the proposal was to consider extending such performance criteria to areas not now covered by that type of requirement and to make the performance standards that had been proposed more general, thereby possibly reducing the burden on facilities.

1. General Comments

(Comment 28). Sixteen comments asserted that the goal of the quality mammography efforts by FDA should be to reduce burdens on the medical community by not requesting comments and review of additional regulations. Some of the comments stated that ACR should be the entity designated to define performance standards and that compliance with such standards should be voluntary. Five additional comments suggested that it was more appropriate for ACR and ARRT to oversee and govern mammography quality.

FDA notes that these comments are in conflict with the statutory provisions of the MQSA (42 U.S.C. 263b)), which mandate that the government have authority and responsibility to establish standards for the performance of quality mammography. However, in carrying out that mandate, FDA has solicited and considered comments from the members of the mammography community, including comments from ACR, ARRT, and members of NMQAAC.

(Comment 29). Several individual comments addressed the general issue of alternative approaches for quality mammography. One comment favored FDA's role in establishing and strengthening standards for quality mammography. Another suggested that FDA work with volunteers who have an interest in alternative compliance options in order to learn what is best.

Although FDA intends to continue to gather ideas and information from experts in the field, the agency believes that the opportunity for public review and comment on proposed regulations that will affect members of the mammography community is the most equitable approach and will minimize potential problems of "standardization without representation."

(Comment 30). Four comments addressed the issue of FDA establishing another set of interim rules, to be in effect while necessary research on performance outcomes-based standards was conducted, or simply going forward with the final regulations as proposed. These comments supported finalizing the proposed regulations and suggested change only if new technologies or alternative compliance options are identified at a later time.

Three comments focused on the cost of changing the regulations and discouraged change to the final regulations if any additional costs were to be borne by the mammography facilities.

FDA is sensitive to the issue of costs associated with the regulations and will keep this issue in mind whenever considering changes to the regulations.

(Comment 31). Two comments expressed concerns that the general aim of alternative approaches to achieve compliance would result in loopholes that would allow facilities *not* performing at acceptable levels to continue to perform substandard mammography.

The agency recognizes the importance of issuing performance standards that do not allow loopholes. As with provisions that specify the manner of compliance facilities must adopt, FDA intends to review performance-based approaches for potential gaps that could defeat efforts to achieve quality mammography.

(Comment 32). One comment stated that the ideas presented in the alternative approaches section are unworkable and were not discussed with the members of NMQAAC.

FDA acknowledges that NMQAAC did not have the opportunity to discuss the alternative approaches material before publication (61 FR 14856). However, NMQAAC members did have the opportunity to review this material and to make comments and recommendations at two meetings after the proposal was published.

Generally, the NMQAAC comments did not support increasing the number of performance-based standards at this time. They pointed out that the

proposed regulations were actually a mix of performance- and specification-based standards. While NMQAAC agreed that increased reliance on performance-based standards might have promise for the future, after further research is done, there are insufficient data at this time to base the entire set of standards on performance criteria.

(Comment 33). One comment stated that the current tests specified in the existing regulations are more thorough and complete than alternative performance approaches that were identified in the preamble to the proposed rules. A similar comment stated that the current tests should be used by all facilities, with the exception of those facilities that might develop improved, innovative strategies or methods. The comment recommended that these facilities apply to FDA for exemptions to use the innovative strategies or alternative methods. FDA notes that a process for accepting and reviewing such applications is provided by § 900.18.

An additional comment expressed support for the intent of Executive Order 12866, but at the same time argued that it is in the best interests of FDA to be more specific in the final rules about those instances where there are multiple methods or procedures to accomplish the same task. The comment further stated that it was unclear how the agency decided whether to use a performance outcome-based or a design-based requirement in a particular situation. A second comment expressed a similar opinion.

FDA notes that the comments on performance outcome-based standards discussed above and in the following pages point out many difficulties at the present time in establishing regulatory requirements to ensure quality mammography that are based totally on performance outcomes. However, the agency believes that in certain areas, for example, quality assurance, performance outcome standards can and should be established. In developing standards in a particular area, the agency first considered whether it was feasible to ensure quality in that area with performance-outcome standards. If it was not possible to issue adequate performance-outcome standards in that area, the agency then turned to design standards. Along those lines, FDA disagrees with the statement in the comment that specific-design standards should always be issued in cases where there are multiple ways of adequately achieving a particular task or goal. On the contrary, the agency believes that performance-outcome standards should be strongly considered in such areas in order to give facilities the flexibility to chose the method of achieving the goal that bests fits its particular circumstances, instead of requiring that all facilities follow the same path.

One other general comment similar to those of NMQAAC, asserted that it was premature to try to identify alternative performance-based approaches due to inadequate research and testing of these alternative methods at this time. Another comment indicated that FDA did not comply with Executive Order 12866 because the agency did not make a real effort to identify alternative approaches. Similarly, one comment argued that the FDA regulations ignored duplication with other regulations, although no examples were given.

FDA notes that it did include a number of possible performance outcomes measures in the proposal. There may be other possibilities of which the agency is unaware, but the fact that no alternatives were suggested by the author of these comments, or in any other comment, suggests that few, if any, other options are currently available. FDA further notes that the attempt to elicit public comment, recommendations, and opinions concerning performance-based standards through the proposal will not end its efforts to identify such alternatives. FDA is unable to respond to the criticism that its efforts duplicate other regulations in the absence of information on where the author of the comment believes this has occurred. However, HCFA has agreed to set aside its regulations in the mammography area and to accept FDA-certified facilities as meeting its requirements for reimbursement under Medicare and Medicaid. This eliminated one possible source of regulation duplication.

FDA strongly supports the use of performance standards, however, it recognizes that additional research is needed in the scientific community before it can support additional regulations based on performance outcomes. FDA encourages continued research in this area, and will actively work to develop performance standards in the future.

2. Performance Standards and Outcomes Measures Suggested in the Proposal

A large number of comments were received on the various performance outcomes measures identified as possible alternatives by FDA. These are reviewed in the following narrative in connection with the identified alternative.

3. Mammography Medical Outcomes Audit

(Comment 34). FDA in the preamble to the proposed rules, FDA suggested that the results of a mammography medical outcomes audit might be used as the basis for a performance-based standard for each mammography facility. A significant number of comments expressed concerns about one particular aspect of the audit, namely, requirements for patient followup that might be necessary to obtain outcomes data. The major issues raised were the cost of such followup and the lack of evidence that feedback about outcomes improves practitioner performance. The authors of the 10 comments believed that individual practitioners would never have sufficient cases to calculate meaningful statistical outcomes.

Concerns were also expressed that there were no protections for the confidentiality of outcomes data and that medical outcomes-based standards could motivate practitioners to avoid challenging or difficult cases. Eleven comments expressed objections to any performance standard that would require mammography facilities and interpreting physicians to collect followup data on films interpreted as negative or to require the calculation of statistics relating to sensitivity, specificity, or minimal cancer detection rates. One comment objected on the basis that requiring the collection of such data would imply that standards were required to force physicians to do the best possible job and that this was necessary because it was the norm for physicians to cheat or be dishonest. One comment expressed the view that use of cancer registries to accumulate data for monitoring outcomes was clumsy and expensive.

A related set of comments directed toward use of the positive predictive value (PPV) statistic as a measure of quality mammography performance was overwhelmingly negative. Nine comments pointed out that there are varying definitions of PPV and that this is not a measure familiar and understandable to the general public. The general consensus was that this statistic was not useful and should not be required to be published outside the physician's practice. Six respondents argued that it was completely unacceptable to use the physician's outcomes data as a measure of performance. Two comments expressed the viewpoint that collection of information about PPV was not appropriate because it was affected by many factors beyond the control of the facility. Three comments vehemently opposed the public disclosure of outcomes data, arguing that there would be a high likelihood of misinterpretation by the public and incentives for facilities to falsify data. Two comments stated that data collection and review alone would not have any significant influence on radiologists' behavior, and consequently, that collection of statistical data was not worth the effort. Finally, one comment agreed that it would be valuable to find valid process and outcomes measures for mammography but concluded that it would be premature to focus on PPV, which is subject to influence by so many factors external to the radiologist.

In contrast to these negative comments on using the results of the mammography medical outcomes audit as the basis for performance standards, one comment strongly supported the idea of the medical audit as the basis for a performance standard and argued for the publication of such findings in order to ensure that the public had access to information that would allow them to select a reputable institution. Another supportive comment asserted that the agency should develop performance standards for medical outcomes audit statistics, which could then be used to evaluate physician performance. A third respondent urged that medical outcomes could and should be used as more comprehensive measures of competence and compliance. Another comment suggested that standardized values for sensitivity and specificity could support a reduction in personnel requirements for facilities that met the performance standards for these two statistics. One final comment applauded the possibility of change from specification of the manner of compliance to specification of performance objectives.

FDA observes that the majority of the comments received oppose the use of the results of the mammography medical outcomes audit as the basis for performance-based standards, at least at this time. The agency recognizes that the issues of the confidentiality of data collected and the limitations of PPV as an indicator of performance, and the other problems identified in the comments, are concerns that would have to be addressed before the audit could become the basis for performance-based standards. The agency has concluded that it is premature to establish performance standards based upon the mammography medical outcomes audit, primarily because the necessary data to establish such standards and to resolve the concerns expressed in the comments are not yet available.

FDA is aware that the National Cancer Institute's Breast Cancer Surveillance Consortium (NCI BCSC) has been actively engaged in research to understand the full effect of breast cancer screening on cancer outcomes through a collaborative effort with academic and community-based mammography facilities. Through linkages of data from mammography facilities with pathology data on cancer outcomes from population-based cancer registries, outcomes data will be correlated to interpretation. One of the goals of this research is to help establish realistic targets for mammography performance. FDA participates with the NCI BCSC and has staff expertise in the medical outcomes audit area to further assist standards development of outcomes measures. FDA will evaluate results from this research project as well as other projects to determine the best approach to promote improved mammography performance through performance-based outcome measures. FDA anticipates issuing regulations in the future that would have appropriate medical outcomes-based measures.

To this end, facilities are actively encouraged to develop their medical audit programs and pursue outcomes-based measures. Information to assist facilities in conducting and interpreting the mammography medical outcomes audit can be found in the medial literature. In addition, in 1994 the Agency for Health Care Policy and Research published, "Quality Mammography: Clinical Practice Guidelines." This primer has a complete discussion of issues surrounding the medical audit and has references to aid facilities. Meanwhile, the suggestions contained in the comments to FDA's proposed rule supporting the use of the audit as a basis for performance standards will be considered by FDA in further efforts to develop performance-based standards. In addition, FDA specifically invites comments on this issue for future consideration. Please submit comments on this issue to the contact person listed above.

4. Performance-based or Proficiency Testing

With respect to personnel, FDA raised the possibility in the proposal that standards based on successfully passing proficiency tests might be the basis for replacement of design specification standards requiring certain levels of training and experience.

(Comment 35). The general consensus of 34 comments on proficiency testing was that such requirements would be excessive, unnecessary, costly, impractical, and duplicative of examinations already in place, such as those administered by the American Board of Medical Physics, the American Board of Radiology (ABR), and the American Board of Health Physics. Twenty comments criticized the use of performance-based standards in this area because they asserted that such standards are not yet developed to a level where they can substitute for current requirements. Two comments stated that it is better if FDA does not become involved in personnel performance-based standards as part of the MQSA. Rather, continuing medical education (CME) requirements as they currently exist should be satisfactory for this part of the education process. Three respondents indicated that the term "performance-based testing" is too vague and could include even such simple things as the radiologist's observation of the technologist performing an examination.

After reviewing these general comments and the specific ones that are discussed later in this document, FDA has concluded that it would be premature to establish general performance standards based on proficiency testing because there is no consensus among experts about what those standards should be or how they should be measured. The topic of proficiency testing for specific professional groups drew a number of responses varying in their level of support for such testing. Specific comments are noted and discussed as follows:

a. *Proficiency testing for radiologists*

(Comment 36). Proficiency testing for radiologists drew divergent responses. Three comments urged that FDA, in collaboration with NMQAAC, develop a proficiency test that physicians must pass prior to initiating the practice of mammography interpretation. Four additional comments favored proficiency testing for radiologists, but only as an initial requirement. Thirteen comments indicated unqualified support for proficiency testing for physicians. In contrast, five comments maintained that board certification could replace proficiency testing with intermittent retesting at 5- to 8-year intervals. Such examinations could be handled by the accreditation bodies. Another comment stated that random clinical image review at the time of the MQSA annual inspection could substitute for proficiency testing. Six comments agreed with the basic premise that performance evaluation is important in order to determine accurate standards but that more time is required to determine appropriate testing devices and standards. One comment stated that training and experience requirements for interpreting physicians should be sufficient and there was no need for periodic testing. Similarly, one comment stated that the

medical audit could function as a proficiency test for radiologists. Two comments expressed a total lack of support for proficiency testing, arguing that such testing is time consuming, costly, unnecessary, redundant, and not done in any other area of medicine. One comment stated that periodic proficiency testing is appropriate for nonradiologists reading mammograms but not for trained radiologists. In lieu of proficiency testing, this comment suggested a special certificate as part of designated continuing education courses as a simpler way to establish a measure of proficiency. One final comment stated that proficiency testing would impose undue hardship on the radiologist whose practice is not exclusively devoted to mammography. A total of 79 respondents argued that the cost of proficiency testing would be too high and that the additional expenses would be passed along to consumers.

FDA observes that support for proficiency testing for interpreting physicians is somewhat stronger than for proficiency testing in general, but that the majority of respondents still opposed the idea. Given the diversity of response to the possible use of proficiency testing for radiologists, and the fact that no existing tests were identified in the comments, FDA has concluded that it is not in the interest of quality mammography to mandate such testing at this time. The agency believes that proficiency testing for physicians, if feasible at all, would have to undergo further development before it could be the basis of a performance standard.

b. *Proficiency testing for technologists* (Comment 37). Three respondents stated that proficiency testing every 3 to 5 years would be beneficial to technologists. One additional comment concurred, but recommended testing every 2 years. Overall, however, there was a general lack of support in the comments for proficiency testing of technologists.

Sixty-one comments stated that such testing for technologists cannot be conducted objectively and also indicated that the final requirements were adequate to ensure the qualifications of technologists. Ten additional comments claimed that proficiency testing for technologists is impractical because of the lack of established criteria and the absence of an appropriate body to administer such tests. Three respondents argued that the medical audit served as a proxy proficiency test for technologists. Twenty comments stated that the proposed continuing education requirements were sufficient and it was not necessary to administer recertification examinations. Thirty-seven comments argued that technologist proficiency testing was redundant with the other initial and continuing education requirements.

One comment stated that at one time, the ARRT had considered adding a practical exam to its evaluation of mammography competency but deferred doing so until credible analyses would establish that such an examination would result in improved quality of performance. Four comments stated that proficiency testing for technologists would drive technologists away from the field of mammography. One comment expressed the view that annual testing was unnecessary because mammography does not change that rapidly. Another comment stated that a requirement for proficiency testing for technologists would have a negative impact on the availability of mammography in rural and mountainous regions. An additional respondent argued that the annual requirements for technologists are already excessive and the addition of competency or proficiency testing would simply raise costs or close mammography facilities. Four other comments expressed similar sentiments, stating that technologists already have to meet sufficient requirements, and the addition of proficiency testing would be excessive. Concerns also were raised about who would administer such testing and the method of payment. One comment urged that, if proficiency testing became a requirement for recertification, it should be offered at no cost to the technologist.

One comment argued that incompetent technologists could pass a proficiency test and further stated that proficiency testing was a measure of test-taking skills, not of mammographic competency. Two comments expressed the point of view that proficiency testing is useless and insulting. Several comments stated that recertification, if required in addition to continuing education, is redundant, time-consuming, and costly. These comments asserted that retesting is valuable only in instances of significant changes in the mammography modality. One comment pointed out that the ARDMS (a sonographer's organization not further identified) had tried to offer a practical examination, but abandoned the project because it proved too costly. The remaining comments were all generally opposed to proficiency testing for technologists. One comment suggested that a better way to evaluate technologists would be to require performance at a seminar that would assess their clinical competence. Another comment concurred with this viewpoint, saying that a written exam cannot measure competence in a hands-on field such as mammography. Finally, one comment argued that further examination is not necessary if the technologist remains active in the field of mammography and maintains proper licensure.

The agency is persuaded that regulations requiring such testing would be premature. FDA believes some of the objections raised, as with the objections to radiologist testing, can be addressed and overcome; e.g., to the extent comments argued that proficiency testing was duplicative of current training, education, and experience requirements, FDA could consider eliminating some of those requirements. However, the agency agrees with the general consensus expressed by the comments and concludes that proficiency testing for technologists currently cannot provide the basis for a performance standard.

c. *Proficiency testing for physicists* (Comment 38). The agency received 17 comments about this topic. Of the 17, 3 were in favor of proficiency testing for physicists, with 1 additional comment asserting that is would be possible to conduct such a test, but only at great cost. Other comments stated that proficiency testing for physicists was simply a bad idea. Two comments argued that the proposed standards of a written examination and a practical survey test were sufficient proficiency measures for physicists. Two comments stated that a doctorate in physical science and board certification in an appropriate medical physics sub-specialty provided a better assurance of professional integrity than written and practical examinations. Another comment suggested that it would be more appropriate for physicists' accreditation bodies to administer such tests because FDA lacked the necessary experience and knowledge in this area. One comment expressed concern about the possibility of computer errors if the examinations relied on computer programs for test administration and scoring. One comment recommended that the idea of a qualifying examination for physicists should be further explored, especially because the proposed regulations do not adequately address the issue of how detailed an annual survey should be.

One comment asked whether a performance-based standard would help physicists working at small institutions to meet the training requirements. Although it is possible that proficiency testing could alleviate difficulties involving access to training for some physicists, FDA notes that it is not possible to determine whether such an approach would permit these physicists to qualify until such a time as the form and nature of a possible proficiency test is better known.

As with proficiency testing for interpreting physicians and radiologic technologists, the comments have persuaded FDA that it would be premature to require such testing for physicists as the basis of a performance standard. The agency, however, will continue to explore the feasibility of such testing for radiologists, technologists, and physicists.

5. Mammography Equipment and QC

The preamble to the proposals (61 FR 14860) suggested possible performance-based substitutes for equipment specification and QC testing in the proposed rule. One general comment recommended that FDA retain the existing QC tests as proposed to ensure adequate mammography equipment and QC. The author was of the opinion that one or two performance-based criteria would not be adequate to serve as QC measures.

a. *Phantom image testing*

FDA suggested that one possibility was that a more sophisticated phantom might be developed for use in a single QC test that would provide the same information on equipment performance as some or all of the separate tests and specifications. A performance-based standard predicated on test results using this phantom and falling within defined limits might provide the same assurance of image quality as a number of the design specifications and, therefore, could replace the design specifications in the regulations.

(Comment 39). One comment stated that it was possible to develop a single system test with an alternative phantom. The comment stated that one distinct advantage of a single system test would be to replace the present daily processor quality control (QC) test with sensitometry based on the actual light emission of the radiographic screen and at the same time check the performance of the rest of the imaging system. The comment stated that the final regulations should allow facilities and accreditation bodies to work together to adopt a suitable phantom to be used as a daily total system test. The majority of the comments received, however, were opposed to using phantom image testing as a comprehensive equipment test, even if such testing would permit alternative tests to be performed less frequently. There was strong support for FDA to implement the mammography performance and design requirements described in the proposed rules. Overall, a total of nine comments opposed use of the phantom as a daily test that would replace other QC tests. It was noted that more frequent use of the phantom would increase costs, would not yield an adequate measure of quality, would be useful only as a supplement to other QC tests, and would yield results that were highly variable. Three comments remarked that phantom testing is a good measure of quality but cannot replace all other QC tests. Finally, it was noted that the STEP test should be added to the phantom image analysis.

FDA observes that the general consensus of these comments is that it is unlikely that testing with a more sophisticated phantom, if one is made available through further research, will be an adequate substitute for other QC tests.

b. *Repeat rate*

Another measure that was suggested as a possible performance standard was the facility's repeat rate. Under the final regulations, a repeat rate is to be analyzed every 3 months, and include up to 250 examinations. In the preamble to the proposal (61 FR 14860), FDA asked for comments on the possibility of using the repeat analysis rate in some modified form, such as conducting the test continuously, as the basis for a performance standard. The agency also noted that such a use would have to take into account the possibility that the repeat rate could be altered through the acceptance by a mammography facility of all images of any quality performed.

(Comment 40). Responses to this possible alternative were generally negative. Three comments contended that the repeat rate could not serve as an alternative to existing equipment and QC tests. Specifically, it was noted that ongoing repeat analyses could not substitute for QC tests. Four comments raised concerns about the possibilities for altering or falsifying findings and lack of consistency within and between mammography facilities in performing repeat analyses. A related comment stated that technologists will not repeat images that should be redone if they think the repeated images will affect their job. This means poorer images may be submitted to radiologists for interpretation.

FDA recognizes the validity of the concerns raised by these comments and has concluded that a performance standard based on repeat rate analyses is not likely to enhance quality mammography nationwide.

c. *Clinical image review*

FDA identified clinical image review as a possible basis for performance-based standards. General comments regarding clinical image review for this purpose were largely unfavorable.

(Comment 41). Nine respondents argued that random selection of images for review is unnecessary because the review is conducted by the accreditation body. It is better therefore, these comments continued, to select previous images of the same patients to document improvements in image quality between examinations rather than random selection of images. Thirteen comments stated that the supervising radiologist ultimately is responsible for assessment of clinical image quality. Four comments questioned who would do the clinical image reviews for all facilities and suggested that this would require a new government agency in a time when government has been directed to downsize. Two comments stated that clinical image review is only useful as a learning tool in difficult cases and is not useful as a general test of proficiency.

Additional comments were received on the possibility of using clinical image review to evaluate the performance of the radiologic technologist. Twelve comments were openly opposed to clinical image review for assessment of technologists, arguing that it would require a large investment of effort and financial resources. One comment said that the radiologist, not the technologist, is responsible for the quality of images and, consequently, it would be inappropriate to use this as a performance assessment for technologists. Another comment expressed the point of view that clinical image review was unnecessary if technologists remain active in performing mammography and also maintain proper licensure.

The question of who would do the image reviews drew a number of comments. One comment said that clinical image review by technologists had been tried previously with poor success, although specifics about the problems were not mentioned. Nine comments asserted that clinical image review to assess technologist performance should be done under physician review, rather than by sending images to an outside bureaucracy, which would be very costly for facilities. Cost was raised as an issue by another respondent who argued that a facility with many mammography technologists would have many images out for review, which would be both costly and a threat to patient confidentiality. One comment suggested that the FDA inspector review

clinical images at the time of the annual MQSA inspection, rather than the facility submitting the images to some central point. Under this approach, technologists and radiologists would complete critique forms of their images to explain any difficulties or problems in taking or reading the films.

On the more positive side, twelve comments stated that clinical image review under the MQSA, combined with additional actions, would ensure proper mammography performance sufficient to assess technologists' clinical skills. The additional action suggested by 10 of these comments was yearly attendance at hands-on workshops, while another comment suggested periodic recertification examinations, and the 12th advocated use of repeat analysis. This last comment also suggested that such an evaluation could even substitute for the practice volume requirement for technologists in the proposal.

FDA observes that opinion is divided more evenly on the feasibility of using clinical image review as a performance standard for technologists than on the feasibility of the other possible bases for performance standards mentioned in the proposal. The major problem seems to be how to establish an effective system at a reasonable cost. Although clinical image review will not substitute for the radiologic technologist requirements being finalized in the regulations, FDA will continue to evaluate this issue in collaboration with the members of NMQAAC and other agencies involved with mammography QC.

6. General Observations

As discussed above, FDA sought public comment on the possibility of taking an alternative approach to assuring the quality of mammography nationwide. The alternative approach would be the greater use of performance-based standards in place of the primarily design specification standards established in the interim regulations and proposed for the final regulations. Several possible measures or mechanisms that could form the basis for performance-based standards were identified and the public was invited to comment on their feasibility and also to suggest other options. The agency also asked for comments on how it should proceed with regulation development if performance-based standards were considered feasible. If such standards could be developed relatively quickly, FDA could consider maintaining the interim standards and delaying the issuance of final regulations until performance-based standards were developed. Conversely, if the expected time for the development of performance-based standards was lengthy, in the interest of achieving additional improvement in mammography more rapidly, the agency might appropriately proceed with finalizing the proposed rules (as modified in response to public comment) and replace them at a later date with performance-based standards after the necessary research for those standards was complete.

(Comment 42). Only four comments addressed these questions directly and, as noted above, they urged FDA to proceed with publication of the final regulations. FDA also notes, as described above, that the comments on the possible mechanisms for performance-based standards identified by the agency were predominantly negative. Furthermore, none of the comments suggested any other possibilities for performance-based standards. This would seem to support the view that performance-based standards, if feasible, will require further research. Based on this, FDA concluded that it should proceed with the publication of these final regulations. If further research and development suggest that performance-based standards can replace these regulations, FDA will propose amendments to the MQSA rules.

C. Scope § 900.1

This section briefly summarized the content of the following regulatory sections. No comments were received and it was codified unchanged.

D. Definitions § 900.2

This section defines terms used in the regulations whose meaning would not be common knowledge or for which there exists more than one definition, making it necessary to specify which is to be used for the purposes of these regulations. Comments received on the definitions in the proposal are discussed first. This is followed by a consideration of comments that recommended adding new definitions or made other more general comments on the proposed definitions. Discussed third are definitions that have been added to, or changed from, those in the proposal due to changes in other parts of the regulations.

1. Comments on the Proposed Definitions

a. *General comments on several related definitions*

The following closely related definitions were included in the proposal in order to identify which consumer complaints must be considered by the facility and the accreditation bodies in the complaint process required by the MQSA:

- Adverse event
- Consumer
- Serious adverse event
- Serious complaint

The purpose of these definitions, as explained in the preamble to the proposal (61 FR 14863), is to ensure that serious complaints about the quality of the MQSA-related mammography services are adequately addressed without placing an undue burden on facilities and accreditation bodies by requiring extensive consideration for relatively minor complaints.

"Adverse event" is defined to mean an undesirable experience associated with mammography activities within the scope of 42 U.S.C. 263b. Examples were included in the definition.

The definition of a "consumer" is intended to make it clear that a patient or a representative of the patient (for example, family members or referring physicians) can file complaints.

"Serious adverse event" is defined to mean an adverse event that could significantly compromise clinical outcomes or for which a facility failed to take appropriate corrective action in a timely manner. Finally, "serious complaint" is defined to mean a report of a serious adverse event. Facilities, under § 900.12(h), and accreditation bodies, under § 900.4(g), are required to carry out specified activities in response to serious complaints.

(Comment 43). A number of general comments were received on these related definitions. One comment stated that using the severity levels outlined in current inspection procedures would be more applicable for complaint activities than the proposed definitions.

FDA disagrees with this comment. The severity levels used for the MQSA inspection program were developed for use by inspectors. They are too technical and not necessarily relevant for consumer complaint purposes.

(Comment 44). One comment recommended removing the terms "adverse event" and "serious adverse event" and the addition of the definition of "complaint" to mean the report of any undesirable experience associated with mammography activities. These experiences may include poor image quality, failure to send mammography reports within 30 days, or the use of personnel who do not meet regulatory requirements. Another comment also suggested adding a definition for complaint without specifying what it should be.

FDA believes that the definition offered by the first comment could result in complaints unrelated to the MQSA (e.g., billing procedures) and complaints that would not ordinarily be considered serious by most patients (e.g., facility temperature) being forwarded to the accreditation bodies and FDA when they have the greatest chance for resolution at the facility. The final regulations require facilities to record all serious complaints. The facility will forward unresolved serious complaints to the accreditation body and/or FDA for further action. In addition, the agency notes that the definitions of "adverse event" and "serious adverse event" give examples of the kind of complaints that are within the parameters of the consumer complaint mechanism. All of the examples noted in the comment would fall within the scope of consumer complaints subject to further accreditation body and FDA review.

b. *Adverse event*

(Comment 45). One comment agreed that the definition of "adverse event" should include failure to send mammography reports in a timely fashion to the referring physician or self-referred patient, but argued that 30 days is an unreasonably long time for communication of adverse events. FDA notes that the 30-day period referenced in the definition is intended as the maximum amount of time that may elapse and that the regulations state that the results should be communicated as soon as possible.

This is discussed further in section III.L.3 of this document, where FDA's responses to comments received on §§ 900.12(c)(2) *Communication of mammography results to the patient*, and 900.12(c)(3) *Communication of mammography results to health care providers*, are given.

(Comment 46). Several comments requested greater clarity or additional explanation for the term "poor image quality" (used in the definition of adverse event), and FDA's criteria to determine when image quality is poor. The comment observed that the definition of poor image quality is likely to be very subjective.

FDA agrees that a single definition for poor image quality would be subjective and, therefore, has not included such a definition in order to give facilities and accreditation bodies the flexibility to evaluate such performance in a particular situation on a case-by-case basis. However, criteria to be considered by accreditation bodies in evaluating acceptable image quality are specified in § 900.4(c)(2). Consumers who decide to complain about poor image quality would generally have assistance from health professionals (for example, referring or consulting physicians, or accreditation body) in making this determination. In situations in which FDA has reason to believe image quality at a particular facility is poor, FDA may consult with accreditation bodies for additional mammography review in order to determine whether corrective or enforcement actions are appropriate.

c. *Serious adverse event*

The regulation defines "serious adverse event" as "an adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner."

(Comment 47). Four comments recommended that the definition of "serious adverse event" should be revised. They stated that failure to take action on a nonserious event should not turn the event into a serious complaint. The comments recommended that "serious complaint" should be written to preclude common and potentially unavoidable complaints about mammography (e.g., compression hurts, room too cold).

FDA disagrees that the definition should be revised. Failure to take action on certain nonserious events may indeed result in a serious adverse event. For example, it is generally accepted that most compression complaints are considered to be minor. However, there may be instances in which compression is unusually severe and, therefore, the complaint would be considered serious. FDA believes the definition should remain flexible to allow for this type of situation.

(Comment 48). One comment suggested changing "may significantly compromise clinical outcomes" to "has significantly compromised clinical outcomes."

FDA disagrees. A primary goal of the consumer complaint mechanism is to improve mammography services by providing facilities with data and information they might not otherwise receive or analyze. It is preferable to correct a potentially serious situation before harm occurs, rather than after the harm has affected the patient.

d. *Serious complaint*

(Comment 49). A "serious complaint" is defined as "a report of a serious adverse event." Two comments suggested that descriptions of the type of serious complaints to be reported to the accreditation body should be specified.

FDA agrees that additional descriptions will be helpful and intends to make such information available through guidance. The agency believes that making this information available in guidance, rather than in regulations, will give facilities, accreditation bodies, and FDA the flexibility to determine on a case-by-case basis whether or not an event should be classified as serious.

e. *Contact hour*

"Contact hour" was defined in the proposal as an hour of training received through direct instruction.

(Comment 50). One comment recommended that it be defined as 50 minutes.

FDA is aware that in academic institutions an hour of didactic training is frequently only 50 minutes long. However, in clinical and continuing education situations, an hour of instruction is usually a full 60 minutes. Reducing the figure from 60 to 50 minutes would reduce the training requirements 16 percent. Because those training requirements were proposed at what are believed to be the minimum adequate levels, the agency did not change the definition.

f. *Direct instruction*

Direct instruction requires instructor-student interaction, either face-to-face or through examination.

(Comment 51). One comment stated that the definition is too vague, especially when compared to mammography equipment evaluation.

FDA disagrees. The agency believes the definition is sufficiently specific to give a clear idea of what is required, while also preserving the flexibility to accept possible new approaches to instruction.

g. *Direct supervision*

The definition of direct supervision was designed to permit "trainees" to lawfully obtain the experience in interpreting or producing mammograms or surveying mammography units that they needed to become qualified or requalified. At the same time, by having the trainee's work checked and, if necessary, corrected before any clinical care might be jeopardized, the patient's right to adequate quality mammography is protected.

(Comment 52). One comment supported this definition. A second comment asked if direct supervision was needed for "nonqualified" people doing the QC tests.

In accordance with 42 U.S.C. 263b(f)(1), personnel qualifications were established only for interpreting physicians, radiologic technologists, and medical physicists. As a result, tests performed by medical physicist "trainees" would have to be done under this definition of direct supervision, although tests performed by QC technologist "trainees" would not. However, the agency notes that § 900.12(d)(1)(iv) makes the QC technologist responsible for ensuring the quality of performance of those

doing QC tests. The definition of QC technologist in § 900.2(pp) requires the QC technologists to meet the requirements for a radiologic technologist, including training in quality assurance/QC. Taken together, these requirements provide for a level of supervision similar to that provided under this definition.

h. *Facility*

The definition of "facility" is provided by the law itself in 42 U.S.C. 263b(a)(3). It includes a variety of types of locations where mammograms are produced, processed, or interpreted.

(Comment 53). Three comments either inquired if processing and interpreting facilities would have to be certified and inspected or asked that these facilities be excluded from the requirements. The law defines locations where mammograms are processed or interpreted, and where mammograms are produced, as facilities (42 U.S.C. 263b(a)(3)). The agency's approach under the interim regulations, which is expected to continue under the final regulations, has been a systems approach. The facility producing the mammograms receives the certificate and is responsible for ensuring that the facilities at which their mammograms are processed and interpreted, if separate, meet the applicable quality standards. This is consistent with the statutory provision that requires the facility performing the mammography to be responsible for meeting quality standards (42 U.S.C. 263b(a)(3)(B)). FDA has not set up a separate certification and inspection system for facilities that process or interpret only. However, because a certification system for "partial" providers may have some advantages for such facilities, the agency may consider such an approach in the future.

(Comment 54). Two comments requested that the definition be expanded to address situations involving multiple locations under the same certificate or temporary locations where a unit (stationary, portable, or mobile) is used more than a minimum number of days.

FDA's experience under the interim regulations shows there is wide variety in the locations at which mammography is performed and in the corporate and business relationships among these locations. Presently, such situations are handled on a case-by-case basis in consultation with the facilities and accreditation bodies involved. The agency believes that it is essential that this flexibility be maintained and that it would be unduly restrictive to prescribe permissible locality arrangements in regulation.

i. *First allowable time*

The proposal defined "first allowable time" as the earliest time a physician is eligible to take the diagnostic radiology boards of an eligible certifying body. Because the "first allowable time" a resident physician becomes eligible to take the boards may vary with the certifying body, the definition cannot be more specific. If a resident physician wishes to use the exemption from the initial experience requirement described in § 900.12(a)(1)(iii)(B), it is the physician's responsibility to ascertain the requirements of the body by which he or she wishes to become certified and to seek that certification as soon as he or she becomes eligible to do so.

(Comment 55). Three comments stated that this definition was unclear and were unsure how or why this related to resident physicians who would be interpreting 240 mammograms during a 6-month period. NMQAAC also stated that the concept of "first allowable time" required further explanation.

This term is used in § 900.12(a)(1)(iii)(B). That provision is an exemption that allows resident physicians to interpret the 240 mammograms required for initial experience in any 6-month period during the last 2 years of their residency program (rather than during the last 6 months immediately prior to the date that the physician qualifies as an interpreting physician as required under § 900.12(a)(1)(D)). This exemption is available as long as these physicians become board certified the first time they are eligible. This provision allows residency programs to be flexible in scheduling training for their resident physicians and eliminates the need to put all senior resident physicians on their mammography rotation during the last 6 months of their program.

(Comment 56). Two comments stated that because the "first allowable time" may vary with the certifying body, a more uniform standard would be preferable.

FDA believes that the term "first allowable time" must be defined as proposed in order to allow flexibility, because certifying bodies differ in the scheduling of their examinations. Anything more proscriptive could penalize future resident physicians if the certifying body wished to change its examination schedule.

j. *Lead interpreting physician*

This term was included in the proposal to identify the interpreting physician who has the general responsibility for ensuring that the facility meets the quality assurance requirements.

(Comment 57). One comment stated that the definition was not needed because this person is easily identified, while a second comment wanted the term changed to supervising interpreting physician.

FDA agrees that in most facilities the person with this responsibility can be easily identified, but also believes there is an advantage in having a term that can be used to designate and reference this individual, both for the benefit of the employee and patients of the facilities and for the accreditation bodies and the government regulators. The possibility of using "supervising" was discussed with NMQAAC but was rejected out of concern about possible confusion between this individual and administrative supervisors who may have different responsibilities.

k. *Mammographic modality*

"Modality," as proposed, means a technology, within the scope of 42 U.S.C. 263b, for radiography of the breast. Screen-film and xeromammography were given as examples of a modality. In fact, at present, they are the only examples in general use.

(Comment 58). Two comments stated that the term modality has other uses in medicine and that the definition could be confusing to facilities. Twelve other comments also found the term unclear.

FDA notes that NMQAAC spent some time discussing other possible terms that could be used before concluding that this was the most appropriate. The agency is aware that the term modality is used in different ways in different areas, which is why a definition of its meaning with respect to the MQSA is needed. In an effort to distinguish it further from the other meanings of modality, FDA has changed the name of the term being defined from "modality" to "mammographic modality." The definition now appears in the final regulations at § 900.2(z).

(Comment 59). Two comments recommended that the term "modality" be replaced with "specialized techniques in mammography."

FDA did not accept this suggestion because both "techniques" and "specialized techniques" already have a variety of meanings in radiology and the agency concluded that the recommended change would increase rather than reduce confusion.

(Comment 60). Nine comments suggested that the definition be broadened to include other technology. Stereotactic, ultrasound, digital, nuclear medicine, Magnetic Resonance Imaging (MRI), and CT were all suggested for addition.

FDA does not believe that the definition should be broadened. The definition is intended to clarify training requirements for personnel providing mammography services. These individuals are required to have training in each mammographic modality with which they work. Because ultrasound, nuclear medicine, and MRI fall outside the statutory definition of mammography as radiography of the breast, the agency cannot include training related to those technologies as part of the regulatory requirements. Digital, CT, and stereotactic do fall under the authority granted by 42 U.S.C. 263b but have been temporarily exempted from the regulatory requirements. When and if training and other requirements related to these technologies are issued, the proposed definition will not delay such requirements from taking effect for those modalities.

(Comment 61). One comment recommended that xeromammography be excluded from the definition because it produced less than optimal mammograms at a higher dose.

FDA agrees that there have been problems with the use of xeromammography and notes that these problems have led to its near disappearance. However, the effect of removing xeromammography from the definition would be to exempt those who use the technology from having to obtain training. FDA expects such a change would increase, not decrease, the problems with the modality.

l. *Mammography*

This definition incorporates the definition of mammography as "radiography of the breast" provided by 42 U.S.C. 263b(a)(6), but temporarily excludes from the quality standards radiography of the breast performed in interventional mammography or with an investigational mammography device during a scientific study conducted in accordance with FDA's investigational device exemption regulations.

(Comment 62). One comment suggested that "for the purposes of these regulations" should be inserted in this definition.

FDA believes that it is well understood that all definitions that appear with any regulation are for the purposes of those regulations.

(Comment 63). Another comment suggested expanding the wording of the definition to specifically mention X-ray radiation and several types of image receptors. FDA notes that the term radiography implies the use of X-rays.

The agency further notes that if the changes were made, and a new, yet unimagined type of image receptor was approved following investigational device studies, the definition would have to be amended before the new device could be put into general use. To avoid such a delay in the use of an advance in image receptor technology, the agency has retained the proposed general definition.

m. *Exclusion of interventional mammography*

In the proposal (61 FR 14862), FDA temporarily excluded interventional mammography (radiography performed during invasive interventions for localizations or biopsy procedures) from the definition of mammography. This had the effect of exempting such mammography from the requirements of the regulations. A similar exemption has been in effect under the September 30, 1994, amendments to the interim regulations (59 FR 49808–49813). The basis for the exclusion, as explained in the preamble to the proposal (61 FR 14862), was the agency's belief that science had not advanced to the point where effective national quality standards could be developed for these devices.

(Comment 64). Over 90 comments supported the exclusion of interventional mammography. Many of these agreed that there currently is no consensus with respect to appropriate standards for stereotactic units, and until regulations based on scientific data can be developed, it is inappropriate to include interventional procedures within the scope of the regulations. In addition, the comments stated that surgeons have extensive experience in dealing with breast disease and breast biopsy and they are best suited to manage the patient. These comments noted that many surgeons have had extensive experience performing stereotactically guided breast biopsies and have achieved good results with this procedure. Others wrote that in this procedure, the surgeon knows that the lesion is present and is merely using stereotactic images to guide the needle to the proper position for biopsy. Other comments stated that while radiologists have only one method to biopsy the breast, surgeons have several options and can offer the patient the best biopsy option for her clinical status. Some comments stated that surgeons have a long history of providing followup care for patients and for many years have used radiographic equipment in the operating room and are familiar with its use. Several comments said that surgeons have used mammography for many years in the diagnosis and treatment planning for breast cancer patients. Still others said that these biopsy procedures will evolve into therapeutic procedures that are best handled by the surgeon and that surgeons are best equipped to handle any followup or complications associated with these biopsy procedures.

NMQAAC and over 100 comments opposed the exclusion of interventional mammography. Many of these asserted that it is counterproductive to set quality standards for mammographic diagnosis while having none for mammographically guided invasive breast procedures and that only interpreting physicians have the expertise and experience necessary to perform this procedure. Authors of other comments wrote that interpreting physicians have experience dealing with the quality assurance and QC issues necessary to maintain stereotactic biopsy equipment and that the failure to regulate this procedure places the public at risk. Some said that the lack of adequate mammographic training could lead to the lesion in question being missed during tissue sampling and that the abilities and training required to localize a small subtle suspicious area are the same as those for interpreting a mammogram. Other comments stated that only interpreting physicians will be able to interpret the original mammograms to determine if a needle biopsy is appropriate.

FDA agrees with the comments stating that interventional mammography can be of great use in the evaluation of breast disease, but only if optimally performed. Until recently, the science had not advanced to the point where effective national quality standards could be developed for these procedures. Since the publication of the proposed regulations on April 3, 1996, significant progress has occurred in the professional community and FDA now believes that there is enough information to begin the development of interventional mammographic regulations. However, that development requires a comprehensive and careful approach that addresses all the factors involved in such procedures. The agency has already begun the development process by bringing this issue before NMQAAC during its October 1996 meeting and is continuing to gather information and data. Although the agency has concluded that the final regulations should exclude coverage of interventional mammography, FDA expects to propose regulations covering all aspects of interventional mammography in the near future.

n. *Exclusion of investigational devices*

In the proposal, FDA also excluded from the definition of mammography,

and thus from the regulatory requirements, investigational mammography devices that were being evaluated in accordance with FDA's investigational device exemption regulations in 21 CFR part 812. This provision extended the exclusion for investigational devices previously established under the September 30, 1994, amendments to the interim regulations. The agency believes that it is obvious that it would be premature to establish standards for devices still in the experimental stage. FDA also believes that the precautions built into the agency's general investigational device exemption regulations provide adequate protection for the public health during the use of these devices. However, the agency made clear in the preamble to the proposal (61 FR 14862) that any conventional mammography device used during the scientific study to provide baseline data for evaluating the safety and efficacy of the investigational device was not within the scope of the exclusion and would have to meet the MQSA requirements.

(Comment 65). Two comments stated that the wording of this section would make MRI for mammography investigations or use of full field digital mammography illegal, unless they are performed by a radiologist specializing in mammography.

MRI is not radiography of the breast and, therefore, does not come under the definition of mammography. Similarly, investigational studies, such as those involving full field digital mammography, are specifically excluded under the definition of mammography in § 900.2(z)(2) of the final regulations. FDA concludes, therefore, that the regulations will not prevent such research from occurring. However, any conventional mammography performed as part of a study is not excluded and does have to meet all the requirements of the final regulations. FDA has modified the definition to clarify this issue.

o. *Mammography medical outcomes audit*

"Mammography medical outcomes audit" means a systematic collection of mammography results and the comparison of those results with outcomes data.

(Comment 66). One comment stated that the term "medical audit" was self-explanatory and did not need a definition.

FDA disagrees. There are many different working definitions of this term being used in the professional community. FDA's definition of what minimally constitutes a mammography medical outcomes audit is for the purposes of the MQSA requirements and may be different from recommended guidelines and definitions of other organizations.

p. *Mammography unit or units*

The definition for "mammography unit or units" is an assemblage of components for the production of X-rays for use during mammography. Several components were listed.

(Comment 67). Two comments suggested that compression device, breast support, and components associated with the image receptor and grid be added to the list.

These suggestions would not fit the general criterion of a component for the production of X-rays and the agency is not adding them to the list.

q. *Mean optical density*

"Mean optical density" was defined as the average of the optical densities measured for phantom thicknesses of 2 to 6 centimeters (cm) using kilovolt peak (kVp) values clinically appropriate for the thicknesses.

(Comment 68). Three comments were received on this definition. One suggested that the thickness range should be changed to 3 to 7 cm. A second also supported a 3 to 7 cm range, but stated it would be prudent to check at 2 and 8 cm as well. The third comment stated that, because the thicknesses chosen could influence the result, the definition should specify the thicknesses to be used. The comment further suggested that 2, 4, and 6 cm should be used.

This definition is used in connection with a QC test of Automatic Exposure Control performance. The test procedures recommended by the ACR manuals and incorporated by reference into the interim regulations requires the use of 2, 4, and 6 cm thicknesses. The agency agrees with the third comment that it would be of value to add the exact thicknesses to the definition and has done so. FDA does not believe there is justification for changing the range of thicknesses used in this standard test, as suggested by the other two comments.

r. *Medical physicist*

"Medical physicist" is defined as a person trained in evaluating the performance of mammography equipment and quality assurance programs and who meets the requirements of § 900.12(a)(3).

(Comment 69). One comment stated that the MQSA does not provide statutory authority to FDA to define the profession of medical physicist.

It is not FDA's intention to define the profession of medical physicist in general and the agency also agrees that it lacks the authority to do so. However, the MQSA requires that the agency establish qualifications for those medical physicists providing mammography services to mammography facilities (42 U.S.C. 263b(f)(1)(E) and (F)). This provides both the authority and responsibility to define "medical physicist" for the purpose of these regulations. Again, this definition applies only to medical physicists who wish to provide services to mammography facilities under the MQSA and not to the profession as a whole.

s. *Multi-reading*

"Double reading," defined as two or more interpreting physicians interpreting the same clinical image, was included in the proposal to describe one of the options that interpreting physicians can use to meet the experience requirements.

(Comment 70). Several comments, including a consensus of NMQAAC, requested further clarification of this term. Confusion apparently has arisen due to the fact that "double reading" commonly is used to describe the situation where a mammogram is read by two interpreting physicians in an attempt to improve the accuracy of the interpretation. Two comments, including a consensus comment from NMQAAC, suggested that another term be used to describe multiple interpretation as it applies to the final regulations.

In response to these comments, FDA has substituted the term "multi-read" to describe interpretation of mammograms by two or more physicians. Multi-reading can be used by physicians to meet continuing experience requirements. Multi-reading can also be used by physicians to meet initial and/or requalification requirements if it is done under direct supervision.

(Comment 71). Some of the comments incorrectly assumed that FDA was forcing facilities to have all their mammograms read by two interpreting physicians.

While facilities are free to perform this type of "multi-reading" as a means to improve accuracy, FDA does not require that any mammogram be read by more than one interpreting physician.

(Comment 72). One comment suggested adding the words "that has not been marked as to possible pathology" at the end of the definition of "double read" (now changed to multi-read).

FDA disagrees and believes that an interpreting physician benefits from reviewing mammograms, even those that have been marked by another physician. Requiring the removal of such marks would be overly burdensome and might even be detrimental to the patient if the original marks were not put back on the images.

(Comment 73). One comment requested clarification as to whether physicians must independently interpret the same clinical image, or is it within the intent of the definition to include two or more physicians in consultation interpreting the image together.

FDA intends the concept of "multi-reading" to include both independent and consultative reading. If the multi-reading is done under direct supervision, there must be a consultative component to the supervision.

t. *Patient*

In the proposal, FDA used "examinee" to refer to any individual undergoing a mammography examination. This was a change from the term "patient," which was used in the interim regulations. As explained in the preamble to the proposal (61 FR 14862), the change was made in recognition of the fact that most individuals who undergo mammography are not ill and do not have a condition requiring medical care.

(Comment 74). Eighteen comments stated that it was not necessary to replace "patient" with "examinee," because patient is a term used universally. One comment objected to the proposed use of "examinee" and preferred "patient" because "patient" conveys the ethical protections of a doctor-patient relationship, confers malpractice protection, and ensures that third party payers recognize the examination as required care. One comment agreed with the definition of examinee and the inclusion of self-referred persons.

NMQAAC discussed these comments and there was general consensus to recommend that FDA use the term "patient," provided the definition would include people who did not have health care providers and people without medical symptoms. Finally it should be noted that the MQSA uses the term patient. In light of these comments, FDA has decided to return to the use of "patient," which is defined in the final regulations as anyone undergoing a mammographic procedure.

u. *Phantom*

"Phantom" is defined as a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast tissue and disease.

(Comment 75). One comment on this definition requested that FDA specify the phantom contents and measurements. A second comment urged FDA not to change the current phantom unless the new phantom decreased the frequency of other testing.

FDA believes that the accreditation bodies should establish the phantom specifications and related performance criteria, rather than the agency establishing them through regulation. However, as part of its responsibilities for accreditation body approval and oversight, FDA will examine each body's phantom specifications and performance requirements to ensure that they are substantially the same among different accreditation bodies.

FDA believes that the second comment was in response to the suggestion that a more sophisticated phantom might facilitate the establishment of performance outcome standards based on the new phantom's use that would take the place of several of the existing tests. This issue was discussed previously with other comments on that subject under section III.B of this document, where the agency concluded that performance standards based on a new phantom were not practical at this time.

v. *Physical science*

"Physical science" means physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(Comment 76). One comment received on this definition stated that the engineering part of this definition should be limited to electrical and nuclear engineering only, while a second comment opposed the inclusion of engineering and chemistry at all.

FDA notes that this term is used to establish the qualifications to be met by medical physicists, which include a degree in the physical sciences on an appropriate level. The purpose of that part of the requirements is to ensure that the individual has a general familiarity with the scientific concepts, calculations, and techniques that provide a basis for understanding and completing more specialized work in medical physics, not that he or she has already achieved the training in medical physics. The agency further notes that this general requirement is reinforced with a more specific requirement for training in physics. Because meeting these two requirements provides an adequate foundation for meeting the more specialized medical physics requirements, the agency does not believe the definition needs to be narrowed by eliminating the fields suggested in the comments.

w. *Positive mammogram*

"Positive mammogram" means a mammogram that has an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

(Comment 77). One comment stated that the term positive mammogram was self-explanatory and did not need a definition. FDA disagrees. There are many different working definitions of this term being used in the professional community. Because the final regulations require all positive mammograms to be entered into the facility's medical audit system, it is necessary to retain a definition of "positive mammogram" in order to clarify the scope of the audit.

x. *QC technologist*

This term was defined to mean the individual who is responsible for the segments of the quality assurance program that are not the responsibility of the lead interpreting physician or the medical physicist. In general, this responsibility consists of the routine QC testing and some data analysis and corrective actions related to the results of that testing.

(Comment 78). One comment stated that it is not necessary to identify or define this position because the person with this responsibility is easily identified.

FDA does not agree with this comment for the same reason it disagreed with the similar comment about the definition of lead interpreting physician. In addition, the title of QC technologist is already widely used in mammography facilities.

This definition was changed, however, as a result of discussions at the January 1997 NMQAAC meeting. It is often possible for a single individual to perform the duties of a QC technologist for an entire radiology facility. That individual ordinarily is a technologist, but may not meet the qualifications to do mammography. At early meetings, NMQAAC had agreed that this person should be a qualified technologist, but did not necessarily have to be qualified to perform mammography. This would avoid the possibility that the mammography department of a radiology facility might have to have its own QC technologist, thus forcing the facility to assign two persons to meet the responsibilities previously handled by one. NMQAAC reconsidered its position at the January 1997 meeting, however, and concluded that the advantages of having the QC technologist in the mammography department be qualified to do mammography outweighed the possible extra costs. FDA accepted NMQAAC's advice on this matter and changed the wording in the definition to require the QC technologist to meet all the qualifications in § 900.12(a)(2) for

radiologic technologists doing mammography.

(Comment 79). Three comments disagreed with the proposed definition because it barred qualified biomedical engineers, manufacturer's representatives, and other individuals the authors believed were qualified from serving as QC technologists. Although NMQAAC has changed its position from time to time on whether the QC technologist must be qualified to do mammography, it has never wavered from its advice that the individual in this position should be a radiologic technologist. FDA concurs with that view. However, as discussed below in connection with the quality assurance requirements under § 900.12(d)(1)(iv), the final regulations permit nontechnologists to perform certain QC tasks as long as the QC technologist ensures that the performance is adequate.

y. *Traceable to a national standard*

Traceability refers to the ability to show that an instrument has been calibrated by a process that eventually led back to a standard established by the National Institute of Standards and Technology (NIST).

(Comment 80). A number of comments requested further clarification of traceability. A few comments requested that the requirement for annual calibration be changed to every 3 years.

In response to these comments and after discussion with calibration experts, FDA has revised the definition of traceability. The term itself has been changed to "traceable to a national standard" to more clearly reflect what is needed. Other changes have clarified that the ultimate source of the calibration may be either NIST or a calibration facility that participates in a proficiency program with NIST at least once every 2 years during which the calibration facility achieves agreement within + 3 percent of the NIST standard at mammography energy levels.

2. New Definitions Suggested by the Comments

a. *Category I*

(Comment 81). Several comments suggested that the meaning of the term "Category I," as used in the regulations, was unclear.

In response, FDA has defined Category I, at § 900.2(g), to mean medical educational activities that have been designated as Category I by the Accreditation Council for Continuing Medical Education, the American Osteopathic Association, a State medical society, or an equivalent organization.

b. *Contact mammography*

(Comment 82). One comment recommended that this term from the final regulations should be defined. However, in the revisions of the regulations following the public comments, this term has been eliminated, so a definition is no longer needed.

c. *Continuing education unit*

(Comment 83). One comment warned that it would be difficult to interpret the personnel training requirements if the term continuing education unit was not defined.

FDA agrees with this comment and has added a new § 900.2(l), which states that continuing education unit or continuing education credit means 1 contact hour.

d. *Diagnostic and screening mammography*

(Comment 84). Over 30 comments stated that diagnostic and screening mammography should be defined and asserted that vacillation over these definitions only confuses the public and those who are to measure outcomes.

As explained in the proposed rule (61 FR 14862), FDA is eliminating these terms from the definitions section because differences of opinion within the professional community regarding the distinction between these two types of mammography procedures remain unresolved. These terms can have different meanings depending upon their context. For example, HCFA has defined screening and diagnostic mammography for claim processing purposes. AHCPR has defined these terms in their guidelines for medical audits. On the other hand, some facilities do not distinguish between screening and diagnostic mammography. Facilities also differ on categorizing certain circumstances as screening or diagnostic, as in the example of a healthy, asymptomatic woman with breast implants who has diagnostic views performed during "routine screening." The terms screening and diagnostic mammography, along with other terms and definitions associated with the medical audit, are in the process of obtaining consensus within the scientific community. At present, FDA recommends that each facility choose and consistently utilize HCFA, AHCPR, or other definitions in the medical literature for medical audit purposes.

e. *Established operating level*

(Comment 85). One comment noted that this term was used in connection with a number of QC tests and suggested that it be defined as "the single point for a particular quality assurance parameter set by the lead interpreting physician."

FDA agrees that a definition of established operating level is needed and has added, at § 900.2(p), that "established operating level means the value of a particular quality assurance parameter that has been established as acceptable by the facility's quality assurance program." This definition indicates that the level should not be merely set but also should be determined to be acceptable. The responsibility for making that determination will belong primarily to the lead interpreting physician, as the comment suggested. However, the definition being issued refers to acceptance as part of the entire quality assurance program because additional facility and FDA personnel also may be consulted when the level is established.

f. *Image receptor*

(Comment 86). Two comments suggested that a definition of image receptor be included in the final regulations. FDA notes that there is a general understanding within the radiology and general medical community of what this means and if a specific definition is needed, one is already available in 21 CFR 1020.30(b). The agency does not believe that it needs to be repeated here.

g. *Image receptor support device*

(Comment 87). One comment suggested that a definition of image receptor support device as that part of the mammography X-ray unit that is designed by the manufacturer to hold the cassette be added to clarify § 900.12(b)(5).

FDA agrees that this is a useful suggestion. However, as a result of other revisions that have been made to the proposal, the term "image receptor support device" is no longer used in the regulations and, therefore, a definition is no longer needed.

h. *Laterality*

(Comment 88). Several comments found the meaning of the term "laterality," as used in the regulations, to be unclear.

In response to these comments, FDA has defined laterality, at § 900.2(w), to mean the designation of either the right or left breast.

i. *Mammography equipment*

(Comment 89). One comment suggested that a definition of "mammography equipment" should be added and further suggested that the definition include all physical components of a mammography facility needed to produce an interpretable film. The author believed that this would more clearly define the components that the physicist would need to include in the required "survey" of "mammography equipment" for which

he or she has been assigned responsibility under § 900.12(d)(1)(iii).

FDA considered the possibility of adding this definition, but notes that § 900.12(e)(9) already establishes the evaluations that, at a minimum, are to be included in the survey. Because of this, the agency decided that an additional definition was not needed.

j. *Mobile unit*

(Comment 90). Three comments suggested that mobile units should be defined in such a way as to clarify when mammography units used under a variety of different circumstances are to be included in this category.

FDA notes that the term mobile unit is relevant to compliance with these regulations only in determining when the additional testing required by § 900.12(e)(7) needs to be performed. Under § 900.12(e)(7), a mobile unit is one that is used to produce mammograms at more than one location. The agency believes § 900.12(e)(7) makes it sufficiently clear when the additional testing is needed.

k. *Quality assurance, quality assurance program, and QC*

(Comment 91). Two comments recommended that these terms be defined. FDA notes that one or more of these terms have been defined in 21 CFR 1000.55, in the ACR Quality Assurance manuals, or by various other authorities. While the wording of these definitions may vary, the basic concepts are the same and are widely understood. The agency does not believe that they need to be defined again.

l. *Technique chart*

(Comment 92). One comment among those that suggested that a technique chart should be part of the quality assurance manual also noted that this would require defining technique chart. The comment also made some suggestions for the definition.

FDA notes that, as will be discussed with other comments related to quality assurance records required under § 900.12(d)(2), a technique chart is not being required to be included in the facility's quality assurance manual. Because the term is not used in the regulations, a definition is not needed.

m. *Other comments on the proposed definitions*

(Comment 93). Thirteen identical comments wanted the quality assurance definitions changed, stating that, "it is objectionable to have the FDA creating definitions of medical terms not agreed on by physicians."

Quality assurance is not defined in the regulations and, as discussed above, the agency does not believe such a definition is needed. From other information in the letters containing the comments, it appears that they are actually referring to specific definitions discussed under the heading of "Quality Assurance" in the preamble to the proposal. There were four such definitions: "lead interpreting physician," "QC technologist," "time cycle," and "traceability."

FDA agrees that, to the extent possible, the agency should adopt definitions for medical terms that have widespread agreement among physicians. In fact, QC technologist, as discussed above, is already a title widely used in facilities and in the ACR manuals. It appears that medical facilities have already reached consensus on its use as an administrative title, although there may be differences on the necessary qualifications of such individuals.

The agency does not agree that the other three terms are medical terms whose definitions require agreement among physicians. "Time cycle" and "traceability" are technical terms related to the film development time and the calibration of radiation measuring instruments. These are not terms that physicians use regularly or about which they are likely to discuss and reach consensus. The remaining term, lead interpreting physician, is an administrative term, not a medical one. As discussed previously, this term has been defined as the designation of an individual physician at each facility who has certain responsibilities under these regulations; that identification will make it easier for facilities, accreditation bodies, and government regulators to ensure and monitor compliance with the MQSA standards.

3. New or Changed Definitions Made Necessary by Changes in the Regulations

a. *Air kerma and kerma*

The Omnibus Trade and Competitiveness Act of 1988 amended the Metric Conversion Act of 1975 to require each Federal agency to use the International Systems of Units (SI) in its activities. The SI is also known as the metric system although it makes use of only some of the metric quantities and units. In accordance with this requirement, a memorandum dated March 19, 1990, from FDA's Associate Commissioners of Regulatory Affairs and Public Affeirs, established the FDA policy for the use of SI metric measurement. Since 1990, FDA has been undergoing a transition to SI quantities and units in its regulatory activities. To this end, air kerma, which is an SI quantity, has been introduced as a replacement for the quantity of exposure previously referenced in § 900.12(e)(5)(v). Definitions of "air kerma" and "kerma" were also added as §§ 900.2(d) and 900.2(v), respectively, in the final regulations.

b. *Calendar quarter*

To give facilities more flexibility in maintaining their records on personnel qualifications, changes were made in several provisions of § 900.12(a). These changes allow the facility to use a variety of methods to calculate the time periods necessary to establish compliance with personnel requirements. In calculating these time periods, the facility may designate any one of the following as the endpoint for the period of time used to determine if their staff met the continuing education and experience requirements: (1) The date of the inspection; (2) the last day of the last calendar quarter before the inspection; or (3) any date in between those two. To avoid any misunderstandings, FDA added a definition of calendar quarter, under § 900.2(f), that establishes the endpoints of the 4 quarters as March 31, June 30, September 30, and December 31.

c. *Interim regulations*

Reference was made to the interim regulations several times in the final regulations. For the benefit of those unfamiliar with those regulations, FDA defined them by citing, under § 900.2(t) of the final regulations, the **Federal Register** publication of December 21, 1993, as amended on September 30, 1994.

d. *Interpreting physician*

This definition was modified from the proposed definition by adding the term "licensed" in order to clarify the intent of the statute that the physician maintain a valid State license to practice medicine.

e. *Qualified instructor*

During the revisions of the training requirements for radiologic technologists, the term "qualified individual" and its definition in § 900.12(a)(2)(ii) were replaced by the term "qualified instructor" in referring to the individuals providing the training and the category of such individuals was expanded. These changes made it necessary to add, as § 900.2(oo), a definition of "qualified instructor" as an individual whose training and experience adequately prepares him or her to carry out specified training assignments. The new definition also includes examples.

f. *Standard breast*

Although the term standard breast was used and defined at several points in the proposed regulations, it had not been included in the definitions section. It has now been added as § 900.2(uu) in the final regulations.

E. The Accreditation Body Application (§ 900.3)

In this section, FDA proposed procedures to be followed by organizations or agencies applying to become FDA-approved accreditation bodies. It also proposed criteria for evaluation and approval of prospective accreditation bodies.

1. General Comments on the Accreditation Process

(Comment 94). Several comments supported portions of the rule, and the initial accreditation process in general, stating that it had elevated the quality of many facilities under the interim regulations. Other comments, including some from members of NMQAAC, expressed a variety of concerns, including possible conflict of interest and lack of uniformity that may result if States become certifying bodies. One general comment recommended that FDA monitor ACR, rather than facilities.

Comments about the States as certifiers go beyond the scope of this document and will be addressed in future proposed regulations covering States as certifying agents. However, the agency notes that the MQSA expressly provides that States may serve as certifying bodies (42 U.S.C. 263b(q)). Preparations are under way to draft proposed regulations that would govern State agencies that wish to become certifying bodies. Just as these final regulations establish standards and procedures for accreditation bodies, including State agencies that serve in that capacity, provisions regulating States as certifying bodies would establish standards and procedures that States must meet to assume that responsibility. Those standards and procedures would address uniformity of standards and include conflict of interest provisions, as do the regulations governing accreditation bodies.

Members of the public will have full opportunity to comment further on States as certifiers when those regulations are proposed. In response to the comment that urged FDA to monitor ACR rather than facilities, the agency notes that the statute requires FDA to monitor both accreditation bodies and facilities in a variety of ways.

(Comment 95). One comment wanted FDA to promote multiple accreditation bodies because of concerns that States approved as accreditation bodies will have overly stringent requirements.

States approved as accreditation bodies are required to accredit facilities under the MQSA in accordance with standards that are substantially the same as those applied by all approved accreditation bodies. However, the MQSA does not prohibit State regulations from being more rigorous than those of FDA. Although more stringent State requirements cannot be used to deny accreditation under the MQSA, facilities may be required by a State to meet such additional requirements in order to practice mammography in that State.

2. The Clinical and Phantom Image Review Process (§ 900.3(b)(3)(iii)(A) and (B))

These provisions require the prospective accreditation body to provide information that describes its clinical and phantom image review process in its application to FDA.

(Comment 96). One comment requested that this information also be provided to all mammography facilities, stating that it would result in improved overall image quality and would assist facilities denied accreditation to prepare for appeals hearings.

FDA understands that facilities may believe they could prepare better for accreditation review if they had details relating to the procedures the accreditation bodies would be applying during clinical and phantom image review. However, FDA also recognizes that disclosure of the details of such procedures may undermine the integrity of the review process under certain circumstances. FDA concludes that this is a matter for accreditation body policy rather than regulations. The actual clinical attributes reviewed during accreditation are described in the final regulations.

3. Policies and Procedures (§ 900.3(b)(3)(iii)(J))

This provision requires prospective accreditation bodies to provide FDA with information describing policies and procedures that will ensure timely processing of facility applications for accreditation.

(Comment 97). One comment on this section requested FDA to require accreditation bodies to respond to requests for information or to written communications expressing concerns from facility personnel or other interested parties about the accreditation process. Another comment suggested including a review of the consistency of the accreditation body's responses to facility and industry inquiries as part of the annual evaluation of the accreditation body by FDA.

FDA agrees that timely processing of facility accreditation applications is important to meet statutory certification deadlines and that good communication between accreditation bodies and facilities can improve such timeliness. However, FDA disagrees that specific prescriptive regulations are needed concerning communications between the accreditation body and facilities.

4. Education and Experience Criteria (§ 900.3(b)(3)(iv))

(Comment 98). One comment stated that this subparagraph, requiring that prospective accreditation bodies provide information describing education and experience criteria for its staff, fails to specify minimum acceptable values for these criteria. It also asked for clarification of "professional staff."

By professional staff, FDA means those persons evaluating and making decisions on accreditation applications. FDA has established minimum requirements for the clinical image reviewers under § 900.4(c)(5) and for phantom image reviewers under § 900.4(d)(5), but has not issued minimum requirements for other accreditation body staff in order to maintain flexibility for accreditation bodies and to be able to consider alternatives on a case by case basis. FDA's experience under the interim regulations is that every professional member of an accreditation body staff is qualified to perform his or her assigned functions.

5. Resources (§ 900.3(b)(3)(vi))

This provision requires prospective accreditation bodies to provide information in their application to aid FDA in determining if the body has adequate resources to carry out its responsibilities.

(Comment 99). One comment asked what constitutes adequate funding, what specific additional resources are required and in what amount, and how FDA expects to evaluate the adequacy of an application if no minimum requirements exist for such resources.

Funding and other resource needs, e.g., personnel and data systems, are a function of the variable conditions under which accreditation bodies may operate and the populations they may serve.

FDA could not establish rigid funding or staffing requirements to apply to every accreditation body applicant. As issued, the regulations provide FDA with authority to obtain information to evaluate the individual circumstances of each applicant.

6. Other Information (§ 900.3(b)(3)(xiii))

This subparagraph requires a prospective accreditation body to provide any information required by FDA beyond that specifically listed in § 900.3(b)(3).

(Comment 100). One comment described this requirement as exceedingly vague and recommended it be deleted.

FDA must reject this suggestion because the requirements that accreditation bodies provide FDA with additional information is in the statute itself (42 U.S.C. 263b(e)(1)(vii)). The drafters of the MQSA recognized that it would be impossible to foresee in advance when circumstances might create the need for additional information.

FDA has added one provision to § 900.3(b)(3) to obtain information from prospective accreditation bodies about procedures and policies they would implement to protect confidential information. This requirement is at § 900.3(b)(3)(ix) and its addition has caused the subsequent sections to be renumbered.

7. Term of Approval (§ 900.3(g))

(Comment 101). A small number of comments, both pro and con, were received concerning the accreditation body's term of approval, proposed by FDA to be 5 years. Some, including members of NMQAAC, stated that this term was too short, particularly in light of FDA's annual accreditation body evaluation. These comments also expressed concern about the amount of paperwork required for renewal.

In response to these concerns, FDA has increased the renewal period in the final regulation to 7 years. Because FDA shares the concern about the amount of paperwork required for renewal of accreditation body approval, the agency plans to limit the data required to be submitted to only that information necessary to justify renewal. FDA will hold discussions with each accreditation body prior to renewal to identify the information that will be required. Such information may include, but is not limited to, information and data pertaining to the accreditation body's program not previously submitted to FDA and all proposed changes to the accreditation body's program or standards.

F. Standards for Accreditation Bodies (§ 900.4)

Accreditation bodies are responsible for the initial screening of mammography facilities. They are to ensure that the facilities they accredit meet the quality standards established by FDA, both initially and on an ongoing basis. They also have unique responsibility for conducting reviews of clinical images from the facilities to determine if the images meet the image quality standards established by the accreditation body with FDA approval. This section of the regulations outlines the requirements that FDA-approved accreditation bodies must meet in carrying out these responsibilities.

1. General Comments on the Standards for Accreditation

(Comment 102). One comment generally supported this section as written, while a second applauded the regulations for not requiring specific measures of interpretive performance. Other comments encouraged FDA to add additional requirements and responsibilities for accreditation bodies, but did not identify what these should be. One comment stated that the proposed rules for accreditation bodies suffered from a lack of either design or performance-based criteria, but failed to suggest any design or performance-based criteria that should be applied.

FDA believes that the final regulations governing accreditation bodies are sufficiently detailed without being overly prescriptive. Although particular performance-based requirements were not identified by these comments, FDA notes that some performance data on accreditation body activities are available and are used by FDA in its annual evaluation of each accreditation body.

(Comment 103). One comment recommended that each accreditation body be required to demonstrate expertise in recordkeeping and epidemiology.

FDA believes that its review of the accreditation body's application will provide sufficient information to establish that the accreditation body has recordkeeping capability. Although accreditation bodies may employ epidemiologists, nothing in the MQSA suggests that FDA should make this a requirement.

(Comment 104). One comment stated that excessive requirements for accreditation bodies will destroy the basic concept behind the idea for accreditation bodies, i.e., significant involvement of the public and professional sector. The comment warned that detailed rules could reduce the opportunity for creative approaches and innovative development of new QC tests and procedures. A second comment stated that FDA should not hinder the accreditation bodies from performing as independent entities.

FDA shares concerns that overly detailed requirements may limit professional involvement and useful innovation. Although it may appear that the final regulations include many new requirements for accreditation bodies, to a large extent the provisions reflect procedures and criteria that the current accreditation bodies already are following under the interim regulations. In fact, many were first devised by the accreditation bodies themselves and are examples of accreditation body innovation, e.g., development, submission, evaluation, and monitoring completion of corrective action plans by facilities found to have problems producing quality mammograms. FDA has taken great care to delete or amend requirements that might limit creative approaches and innovation. Because the comment does not identify specific rules in the proposal that might cause such problems, the agency cannot respond further.

In response to the second comment, the agency notes that the MQSA requires FDA to establish standards for, and to approve accreditation bodies. Entities that apply to become accreditation bodies must comply with those standards. FDA does not believe that compliance with those standards will diminish the ability and obligation of accreditation bodies to make independent professional judgments. Those judgments, however, must be consistent with statutory obligations to ensure that facilities comply with the Federal standards and work with FDA to improve the practice of mammography. Accreditation bodies are free to encourage innovation, conduct research, develop new standards, and apply for appropriate variances when a particular practice or procedure presents an opportunity to enhance mammography quality.

2. Code of Conduct and General Responsibilities (§ 900.4(a))

These provisions were intended to describe the responsibilities of the accreditation body when there is a possibility that mammography practice at an accredited facility poses a risk to human health. As proposed, those sections set forth particular actions an accreditation body would be required to take in those circumstances.

a. *Image quality (§ 900.4(a)(1) and (a)(2))*

(Comment 105). One comment stated that the accreditation body should have the discretion to determine the appropriate review for a given circumstance and the option to initiate other actions FDA had not described in the proposal (e.g., random film checks followed by a site visit, if necessary). Three other comments recommended deletion of these paragraphs and the substitution of guidance documents that would give accreditation bodies more flexibility.

FDA generally agrees with these comments and has eliminated most of the detailed provisions of these paragraphs (including all of proposed paragraph § 900.4(a)(2)). The final provisions establish that the accreditation body has a responsibility to review clinical images or other

aspects of a facility's practice any time it obtains or receives information that suggests a facility is not in compliance with the MQSA standards, or upon request from FDA. The accreditation body also has responsibility to require and monitor corrective actions or to suspend or revoke a facility's accreditation if the accreditation body's, or FDA's, review confirms that a problem exists. These responsibilities are integral to the role accreditation bodies play under the MQSA to assist the government in establishing and monitoring quality standards for mammography. Nothing in the final regulations precludes an accreditation body from initiating investigations on its own.

b. *Equipment or practices that pose a serious risk (§ 900.4(a)(2))*

(Comment 106). Six comments recommended changing the requirement that an accreditation body inform FDA on becoming aware of situations of potentially serious risk to the public health from "within 5 business days" to "the next business day."

FDA agrees with concerns raised by these comments and has changed the requirement to "as soon as possible but in no case later than 2 business days." The standard that triggers such responses has been amended to those that "pose a serious risk to human health" in order to ensure that FDA is informed of all problems that may require immediate followup.

c. *Conflict of interest (§ 900.4(a)(4))*

The goal of this provision was to ensure that actions of the accreditation body's clinical or phantom image reviewers were not affected by any conflict of interest, and to ensure that accreditation bodies avoid the appearance of such conflicts in order to establish and maintain confidence in the accreditation process.

(Comment 107). Four comments recommended expanding clinical image reviewer conflict of interest concerns to include the individual's family, corporations, partnerships, and associations.

FDA disagrees with these comments. The comments provided no arguments to support this recommendation and no evidence to suggest that the present conflict of interest provision is inadequate. In addition, FDA believes limitations suggested by the comment would eliminate some highly qualified clinical image reviewers from eligibility without commensurate benefit to the system. The agency notes that, if similar conflict of interest provisions had been applied to membership on NMQAAC, many of the members that played a major role in developing final regulations would not have been eligible to serve on the committee.

(Comment 108). One comment recommended expanding the conflict of interest provision to specify that clinical and phantom image reviewers must not review images from facilities within the State in which they reside. A second comment also expressed concern about clinical image reviewers evaluating images from their own States or geographically limited areas. The comment proposed that FDA require "blind" readings of all images by reviewers and prohibit review if there is potential conflict of interest.

FDA disagrees with the suggestion that reviewers should be barred from reviewing images from the State in which the reviewer resides. Such a requirement would effectively preclude State accreditation bodies from having independent clinical image review programs. All present State accreditation bodies with independent clinical image review programs require and take measures to ensure blind reading to preclude bias, and FDA expects that any future State or national accreditation bodies will have similar safeguards as part of their QC, clinical image review, and conflict of interest standards.

(Comment 109). One comment recommended that ACR and any other professional organizations acting as accreditation bodies randomly select clinical image reviewers and phantom image reviewers from a pool to reduce the possibility of reviewer bias.

FDA agrees in principle that accreditation body reviews should not be biased, but finds no compelling reason to require use of pools and random selection. Under the MQSA, FDA has issued minimum requirements for all interpreting physicians and these requirements apply to any clinical image reviewer employed by an accreditation body. In addition, with these provisions, FDA is requiring each accreditation body to establish and implement procedures to train and evaluate its reviewers and to avoid conflict of interest. Within this framework, FDA concludes that the assignment of clinical image reviewers for any applicant facility is best left to the accreditation body.

d. *Equipment performance and design characteristics (§ 900.4(a)(5))*

These provisions are intended to prevent conflict of interest situations that could arise if the use of specific products were required by an accreditation body as a condition of accreditation.

(Comment 110). One comment stated that there may be an appearance of a conflict of interest by accreditation bodies in these situations and that special care must be taken with respect to the promotion of any product. The comment expressed the conclusion that the possibility of conflict is so great that it should never be acceptable for an accreditation body to require use of a particular product. A related comment stated that the accreditation bodies should not be able to require use of their own products by facilities they accredit. Over 15 additional comments opposed allowing the accreditation bodies to require the use of their products as a condition of accreditation or otherwise opposed commercial activities that would create a conflict of interest.

FDA understands the concerns expressed in these comments and notes that, in general, the regulation has been written to preclude accreditation bodies from requiring use of any specific brand or product. However, the agency believes exceptional situations may develop that warrant use of a particular product because of the public health benefits the product provides. The final regulation, therefore, gives FDA the flexibility to permit accreditation bodies to require the use of a specific commercial product when the agency has determined that such use is in the best interest of the public health.

(Comment 111). A few stated that conflict of interest requirements should not be an impediment to development of new technologies and services, nor be used by other entities to "harass" ACR and improperly influence FDA.

FDA agrees that conflict of interest provisions should not impede the development of new technologies, but also believes that it would undermine the integrity of the accreditation process if accreditation bodies could require facilities to use products the accreditation body develops as a condition of accreditation. FDA believes that the final regulations strike the proper balance between these competing interests.

(Comment 112). Over 150 comments on identical printed forms stated that FDA should prohibit conflicts of interest by accreditation bodies and should adopt the conflict of interest provision suggested by a trade association and included in the preamble to the final regulations (61 FR 14487).

FDA agrees that conflicts of interest by accreditation bodies stemming from accreditation body requirements to use specific products or services should be prohibited. However, none of these 150 comments offered arguments to support adopting the suggested provision or to explain why the agency's proposal was inadequate. FDA's experience under the interim regulations demonstrates that potential conflicts can be addressed satisfactorily by the provisions of § 900.4(a)(6). The suggested conflict provision would effectively preclude development of products and services by an accreditation body. FDA believes that because accreditation bodies possess particular experience and expertise, such products and services have the potential to enhance practice or otherwise be beneficial to public health. For these reasons, FDA has concluded that it is unnecessary and would be inadvisable to adopt the suggested conflict provision.

(Comment 113). One comment stated that only FDA, as opposed to accreditation bodies or other entities, should be able to require the use of particular mammography related products and, if FDA does so, the use of such products should be required of all facilities.

FDA agrees with this comment as a general rule. However, FDA may approve the imposition of such a requirement by an accreditation body if the agency determines that it is in the best interest of public health to do so. Such an accreditation requirement would only apply to facilities accredited by the accreditation body that requested the approval unless FDA determined that adoption of the same requirement by all accreditation bodies was in the best interest of quality mammography.

(Comment 114). One comment requested clarification on the use of the word "product," apparently asking whether the word was intended to apply to a specific item or a general category of products.

FDA believes that the word "product" is commonly understood. The conflict of interest provisions prohibiting an accreditation body from requiring a product to be used can apply to several product categories or to specific brands or products, depending on the circumstances.

(Comment 115). Finally, one comment made several suggestions related to these provisions. The comment contained the recommendations that FDA should require of accreditation bodies that: (1) Their accreditation and onsite inspections be managed by different departments; (2) their clinical image reviewers not review images from facilities in their home State to avoid a range of potential conflicts of interest; (3) reciprocity agreements between adjacent States be precluded; and (4) they meet at least the minimum standards of operation of the ACR program.

FDA believes that the internal division of responsibilities within accreditation bodies is not appropriate for regulation; many professional and government agencies have dual responsibilities for accreditation and inspection and are able to carry out those responsibilities fairly and effectively without necessarily using different departments. It was noted previously that the second suggestion was not accepted by FDA because it would effectively preclude State accreditation bodies from having independent clinical review programs. Because the third suggestion does not identify or otherwise describe the reciprocity agreements intended to be prohibited, the agency cannot respond. In answer to the last suggestion, FDA notes that all accreditation bodies are required to meet the final regulations governing accreditation bodies in order to become approved and maintain their accreditation authority. FDA will not approve any accreditation body that does not have standards of operation that ensure the accreditation body can meet its obligations under the MQSA. Nothing in the MQSA precludes ACR or any other accreditation body from having additional standards for aspects of mammography that are not within the scope of the MQSA. Nor does the MQSA impinge on a State's ability to enforce its own standards under State authority if those standards are at least as stringent as the MQSA's.

e. *Denial of accreditation to a facility (§ 900.4(a)(7))*

This paragraph was intended to ensure that no State accreditation body could bar facilities in that State from being accredited under the MQSA by any other FDA-approved accreditation body.

(Comment 116). Several comments raised questions that made it evident that this section was unclear as proposed. Comments asked whether a State accreditation body could require or restrict facilities within that State to accreditation by the State accreditation body. Other comments asked whether facilities could have more than one accreditation. This section has been rewritten so that the answers to both questions should be unambiguous.

As revised, the provision clearly states that no accreditation body can require a facility to be accredited by that accreditation body if more than one accreditation body is available. Nor can an accreditation body preclude a facility from being accredited by any other available accreditation body. Consequently, nothing in the final regulations prevents a facility from having more than one accreditation. However, FDA will issue only one certificate, usually based on the initial accreditation.

The geographic scope of authority for an accreditation body will be established through the accreditation body approval process. A State certainly could determine, as all current State accreditation bodies have, to restrict accreditation body activities to facilities within the State. A non-State accreditation body similarly could request to be approved to accredit in a limited geographic area. It would be up to the applicant to initially identify, based on its circumstances and resources, the area it intends to serve. In addition, FDA could restrict the scope of an accreditation body's authority to a geographical area that is smaller than that desired by the accreditation body if, for example, the agency had doubts about the ability of the accreditation body to provide adequate service in the desired area.

(Comment 117). One comment asserted that a State government cannot be restricted at any time from requiring its own accreditation guidelines to be met by facilities in that State.

FDA agrees that States may require facilities to meet standards under State law that are at least as stringent as those under the MQSA. However, such standards may not be required as a condition for accreditation under the MQSA.

One comment expressed the view that this provision was unnecessary because a facility accredited by a State agency would not voluntarily seek accreditation elsewhere. FDA disagrees with this comment. A small number of facilities have sought and received dual accreditation. In addition, the main point of the provision is to ensure that facilities are able to seek initial and exclusive accreditation under the MQSA from another accreditation body, even if the State acts as an accreditation body in their geographic area.

f. *Changes to standards (§ 900.4(a)(8))*

(Comment 118). FDA received two comments on this section, which requires an accreditation body to obtain FDA permission prior to changing any standards previously accepted by the agency. Both comments were generally supportive of the provision. One comment suggested verifying whether current technology is capable of meeting the requirements for any change in standards before the change is made. This will serve to minimize costs for both facilities and industry.

FDA agrees with this comment and routinely considers the adequacy of current technology during development of new standards or evaluation of

standards proposed by the accreditation bodies.

(Comment 119). One comment further stated that any proposed change to any standard by an accreditation body should be supported by scientific data and that FDA should seek industry input before authorizing the change. FDA agrees that changes in standards, and especially technical standards, benefit from the application of scientific data, where possible. The agency further agrees that industry input is often useful. However, FDA believes that, in many circumstances, the information already available to the agency is sufficient for a decision and that additional scientific data and outside comment will not be necessary. Therefore, FDA did not make this a regulatory requirement.

g. *Confidential information (§ 900.4(a)(9))*

This paragraph requires the accreditation bodies to establish procedures to protect confidential information.

(Comment 120). Ten comments asked how FDA will ensure that confidentiality will be maintained.

The intent of this provision is to guarantee that each accreditation body has in place procedures, programs, and systems that train employees to guard against unauthorized disclosure of information. Federal regulations, State laws, and contractual obligations will all play a part in determining an accreditation body's responsibility in any particular situation. In general, however, if FDA shares nonpublic information with an accreditation body about a particular facility, the record containing that information is an agency record under the control of FDA and the accreditation body would not be authorized to disclose that information without the permission of the agency. If an accreditation body, in violation of the final regulations, were to improperly use or disclose information received from a facility for purposes of accreditation, FDA believes the facility would have a private right of action against the accreditation body under the laws of most States. In addition, unauthorized disclosures of information, whether received from FDA or the facility, would be a basis for FDA to withdraw an accreditation body's approval. Nothing in these regulations, however, is intended to preclude or hinder the exchange of information between FDA and accreditation bodies when that information is required to be shared in order for the agency and the accreditation body to carry out functions under the statute.

(Comment 121). Three comments recommended allowing accreditation bodies to use and disclose information gathered during the accreditation process, if the identification of an individual, facility, or group is not compromised. Each comment cited the Freedom of Information Act (FOIA). A similar comment found this regulation to be overly restrictive, and stated that the regulation should allow use of the data for research purposes, "so long as the released data involves only pooled information that does not allow identification of an individual, facility, or group."

FDA generally agrees with these comments. Disclosure of aggregate information that does not reveal, directly or indirectly, the identity of particular facilities or individuals, is consistent with the FDA's regulations implementing the FOIA. However, in the event of ambiguity, accreditation bodies would consult with FDA and obtain clearance before making such disclosures. FDA does not believe data obtained from facilities for accreditation purposes should be used for purposes that have no relationship to accreditation body processes or standards, unless the accreditation body obtains the consent of the facility. This would not impede an accreditation body from using data to review and improve its internal processes, to educate personnel to improve accreditation body efficiency and performance, or to publicly discuss results of the processes using aggregate data.

(Comment 122). One comment noted that all data collected by or emanating from State agencies may be releasable under some State laws, and that nonpublic information is not necessary for accreditation. The comment also sought clarification about what would be deemed nonpublic information. A second comment stated that, in Arkansas, all information received by a publicly funded agency for accreditation review is releasable under that State's Freedom of Information (FOI) laws. A third comment, which also requested clarification on public versus nonpublic information, suggested that public information be limited to name, address, phone, and accreditation status. The comment noted that there have been complaints from radiologists about the use of information, including concerns about selling the MQSA certified facility address list.

FDA recognizes that people have varying ideas about what constitutes nonpublic information. Any information in the possession of FDA that is prohibited from disclosure under various statutes FDA enforces or that is exempt from mandatory disclosure under the FOIA is considered nonpublic information by the agency. Examples of such nonpublic information include data about the volume of business handled by any particular facility, the name or personal identifier of any mammography patient, and internal recommendations for enforcement action. FDA would not make such information public in response to a request for information under the FOIA.

As stated previously, accreditation bodies that obtain nonpublic information from FDA will be required to treat it as an FDA record and protect it accordingly. If an accreditation body obtains similar information from other sources, FDA expects the information will receive similar protection in the vast majority of cases. FDA has had public information regulations in place implementing the FOIA since 1977. During those years, FDA has found that State confidentiality laws are usually consistent with FDA's requirements. Arkansas' FOI law, e.g., which was cited by one comment, has provisions for exceptions to mandatory public disclosure that are similar to the Federal FOIA and FDA's implementing regulations. In situations where the accreditation body believes that State law requires disclosure of information that would be considered confidential if it were part of an FDA record, every effort will be made to consult State authorities and resolve the apparent inconsistencies.

In addition, FDA notes that all the currently approved accreditation bodies have had experience handling sensitive nonpublic information. ACR has done so for many years and, since the beginning of its voluntary MAP in 1987, has handled and processed information very similar to that required under the MQSA. The State accreditation bodies also have broad experience processing and protecting sensitive information because they have had previous responsibility regulating facilities under their own State laws. FDA has no evidence that any accreditation body has improperly disclosed information.

With respect to the comment that complained about the sale of a list of certified facilities, FDA notes that this sale was not by an accreditation body, and that the names and addresses of certified facilities would not, in any case, be nonpublic information. The list is available from NTIS for a nominal charge to cover the cost of reproduction and is also available from the Center for Devices and Radiological Health Internet site.

(Comment 123). Ten comments stated that permission to disclose nonpublic information should rest with the facility, not FDA.

The final regulations are consistent with these comments. An accreditation body may not disclose to the public any nonpublic information it has obtained from a facility without the permission of that facility. If an accreditation body has obtained information about a facility from FDA or its duly designated representatives, including a State agency with responsibility for monitoring mammography facilities, the accreditation body cannot further disclose that information without the written permission of FDA. Because FDA is obligated to protect nonpublic information, it would not authorize release of information about any facility that was entitled to be protected from disclosure under the Federal law. FDA has added references in the final regulations to information obtained from or provided to State agencies because FDA's experience under the interim regulations demonstrates the necessity for sharing information among accreditation bodies, State authorities, and FDA in order to ensure quality mammography.

3. Facility Standards (§ 900.4(b))

This section outlined the responsibilities accreditation bodies must meet to ensure that facilities they accredit meet the FDA quality standards.

a. *General comments on facility standards*

(Comment 124). Seven comments requested that FDA add an additional provision to state, "The accreditation body shall review previous inspection reports prior to issuing full accreditation." Eight additional comments recommended adding that sentence, plus the additional words, "to previously accredited facilities" at the end.

FDA appreciates the concerns of these comments that accreditation bodies have access to complete information about facilities that are applying for accreditation for the first time or to renew their accreditation. FDA disagrees that accreditation bodies should be required to review all prior inspection reports for every application it receives. Such a requirement could raise accreditation costs unnecessarily, and the prior accreditation history that each facility must submit with its accreditation application will provide a summary of significant related information. However, FDA encourages accreditation bodies to request inspection records from FDA whenever the accreditation body believes that such records would aid in review of an accreditation application.

b. *Monitoring facility compliance (§ 900.4(b)(1))*

Under this provision, an accreditation body must require each facility it accredits to meet quality standards that are substantially the same as those required by FDA.

(Comment 125). Six comments recommended using this provision to make the accreditation bodies responsible for reviewing continuing education and other personnel requirements, thereby eliminating verification of these personnel standards from the annual inspections.

FDA notes that the accreditation bodies have the responsibility under the interim regulations to ensure that personnel qualifications are met before they accredit a facility and will continue to have that responsibility under the final regulations. However, the number of personnel noncompliances found during inspections over the last 2 years illustrates the value of an onsite check of these qualifications. As experience with inspection and accreditation activities develop, FDA is working with the accreditation bodies to improve and enhance the role each plays in oversight of facility compliance with quality standards.

(Comment 126). One comment recommended replacing "substantially the same" with "the same" to ensure clarity.

FDA disagrees with this comment. The MQSA does not contemplate that the standards be identical; the statute uses the phrase "equal to" (42 U.S.C. 263b(e)(1)(B)(vi)). Using "the same" would unduly restrict accreditation bodies, and effectively preclude relatively minor differences that are necessary or appropriate because of different or changing circumstances among accreditation bodies.

c. *Facility compliance (§ 900.4(b)(2))*

(Comment 127). One comment stated that accreditation bodies should not be required to ensure that a facility correct noncompliances because accreditation bodies have no authority in these matters. Instead, the comment suggested that accreditation bodies be required to refer enforcement matters to FDA or, in the future, to a State certifying entity.

As discussed previously, FDA agrees that enforcement matters are ultimately the responsibility of the agency. This provision has been modified accordingly. As discussed previously (see section III.F.1 of this document), accreditation bodies have responsibility and authority to monitor compliance with standards and to suspend or revoke accreditation of facilities that do not maintain standards.

4. Clinical Image Review (§ 900.4(c))

FDA believes that effective clinical image review is essential for high quality mammograms. A primary purpose of the MQSA is to ensure that all mammography facilities have the benefit of such review and that accreditation bodies are qualified to perform that function. Accordingly, FDA proposed more specific requirements with respect to clinical image review than were established under the interim regulations. The proposed requirements, which were based on advice from NMQAAC and public comments, have been codified without significant changes in the final rule.

The regulations define three separate but related types of clinical image review. They are accreditation and reaccreditation clinical image review, random clinical image review, and additional mammography review. Each serves a different purpose within the framework of the MQSA and the regulations.

Accreditation and reaccreditation clinical image review is performed for each facility once every 3 years. Its purpose is to ensure that each facility is capable of producing and recognizing high quality images of fatty and dense breasts. Section 900.4(c) has been retitled in the final regulations from the general title that had been proposed, "Clinical image review," to "Clinical image review for accreditation and reaccreditation" to clarify that the provisions of this section refer specifically to clinical image reviews performed for accreditation and reaccreditation.

In addition to clinical image review performed for routine accreditation and reaccreditation, the MQSA also requires the accreditation body to conduct random clinical image review. This type of review is performed on a selected sample of the accreditation body's facilities and serves three major purposes. Random clinical image review is an indicator of the quality of mammography performed at facilities, a measure of the performance of the accreditation body, and a method to assure the public that facilities continue to produce high quality images during the intervals between reaccreditation reviews. Under the provisions of § 900.4(f)(2), FDA is allowing each accreditation body to develop its own FDA-approved random clinical image review process to include at least 3 percent of its accredited facilities each year. This enables each body to individualize the review to best evaluate its facilities and monitor its own performance. While the accreditation bodies will be evaluating the same

attributes used for accreditation and reaccreditation clinical image review, they will have to adjust their scoring and pass-fail criteria to take into account that, due to the selection process, these studies may not be representative of the best images a facility can produce.

The third type of review is additional mammography review. This review is an evaluation of facilities that FDA has reason to believe may present a serious risk to human health due to compromised mammography quality. The term "additional clinical image review," used in the proposal, was changed to "additional mammography review" to indicate that this review of problem facilities is not necessarily limited to an evaluation of clinical images but can involve all aspects of mammography at the facility. The requirements for this type of review are provided in § 900.12(j).

a. *Frequency of clinical image review (§ 900.4(c)(1))*

Section 900.4(c)(1) states that clinical image review for accreditation and reaccreditation shall be performed at least once every 3 years. This is in accordance with the requirements specified by the MQSA.

b. *Attribute requirements (§ 900.4(c)(2))*

Section 900.4(c)(2) lists the eight attributes to be used for evaluating clinical images.

(Comment 128). One comment agreed with the section as proposed, while another comment thought it was too proscriptive and did not allow for changes in technology and assessment. Two other comments stated that the attributes were too vague, while another said that the attributes should be identical to any existing standards and definitions currently in use.

FDA notes that the attributes described in § 900.4(c)(2) were derived from existing standards that have been used successfully for mammographic evaluation for many years. Accreditation bodies are currently using these attributes to evaluate clinical images under the interim regulations. FDA does not believe the use of these attributes will limit the introduction of new technologies because FDA has the flexibility to modify the attributes for new mammographic modalities, if necessary.

(Comment 129). One comment recommended that the contrast, sharpness, and noise attributes should be dropped because all mammograms contain some blurring and noise.

FDA agrees that some degree of blurring and noise occur on all films. However, these attributes should be evaluated to determine if the blurring or noise are of such severity as to obscure anatomical structures.

(Comment 130). Several comments addressed specific attributes. One comment stated that the positioning attribute implies that it is not necessary to get all the breast tissue on the film.

FDA notes that, due to anatomical and mammographic limitations, all breast tissue cannot be imaged on each view. The requirement was specifically written by FDA to take this fact into account.

(Comment 131). Several comments, including one from NMQAAC, urged that the word "tissue" be replaced with "image" when referring to exposure and that "processing" should be added to the list of "artifacts."

FDA agrees that "processing" should be added to the list of "artifacts" and has changed "tissue exposure" to "exposure level" to be more consistent with existing standards and definitions.

(Comment 132). One comment was unclear as to whether "noise" was the same as "quantum mottle." FDA notes that "quantum mottle" is a form of "noise," although it is not the only form of "noise."

(Comment 133). Several comments opposed the examination identification attribute as being too specific and requiring too much information to be placed in the small flasher space. Two comments supported the description of the attribute as written.

FDA has received a great deal of advice from NMQAAC regarding the importance of examination identification as an attribute of quality mammography and believes that the present requirement is in the best interest of the patient. A facility may satisfy the requirements for examination identification through the use of stick-on labels so that all the information does not have to fit within the flasher space. NMQAAC recommended specifically adding the name and an additional identifier to patient identification. FDA agrees with this suggestion and has modified this section accordingly.

(Comment 134). One comment stated that technical factors such as kVp, milliamperes (mA's), and amount of compression should be required on all films because this information would aid in evaluating problems. It noted that ACR recommends recording these technical factors.

FDA believes that facilities should have the option of recording this information if they believe it beneficial for their practice. Because many facilities have indicated that having this information on all images is not useful, the agency does not believe it is cost effective to make this a mandatory requirement for all facilities.

(Comment 135). Two comments, and several members of NMQAAC, stated that FDA must ensure that accreditation bodies prevent reviewers from knowing the identity of the facility under review, especially in the case of local reviewers.

FDA agrees that this is an important issue and has discussed it in response to comments on § 900.4(a)(4), which addresses possible conflicts of interest by image reviewers.

(Comment 136). One comment asked if the technologist identification is meant to be unique for a facility, for a particular health corporation, or nationally recognized. The technologist identification requirement is facility-based and any system that enables the facility to determine which technologist performed the examination should be acceptable.

(Comment 137). One comment agreed that mammography unit identification was important for reproducibility, while another asked whether it would be possible to have the unit identification on the patient's question and answer form rather than on the film.

FDA believes that, in cases where there is more than one unit in the facility, the unit identification should be on the film, so that this information may be obtained without referring to other sources.

c. *Scoring clinical images (§ 900.4(c)(3))*

Section 900.4(c)(3) requires the accreditation body to establish a system for scoring clinical images using the attributes in § 900.4(c)(2) and to develop pass-fail criteria for these attributes. It also requires that images be independently reviewed by two or more clinical image reviewers. This section was modified from the proposal to clarify that each attribute shall be individually evaluated.

(Comment 138). One comment warned that perfectly acceptable images can be rejected by the clinical image review process if a pass-fail system is used. The author believed that there should be some form of grading system for the evaluation of the films.

FDA agrees that a grading system should be employed in evaluating the studies. A requirement for such a system was in the proposed regulations. It has been modified in the final regulations to require that acceptable and unacceptable results be established for each of the eight attributes and an overall pass-fail system. This change ensures that each facility has the benefit of an evaluation of each attribute, providing the facility with the information essential to take appropriate corrective actions when necessary. FDA's experience under the interim regulations indicates that failure by the clinical image review process of what are later judged to be acceptable images is an unusual occurrence. In those rare cases where the facility disputes an accreditation body clinical image review decision, the facility has the option of appealing this adverse decision to the accreditation body and then to FDA.

(Comment 139). One comment said that the specific details of the scoring process should be made public, utilized in an identical manner by all accreditation bodies, be verified, and result in a numerical score for each set of films reviewed. FDA notes that the determinants of high image quality mammography have already been made public by accreditation bodies, professional organizations, and by clinical authors publishing in peer review radiology journals. This information should be incorporated into each facility's quality assurance program and should be used for selecting the studies that are submitted to the accreditation body for clinical image review. FDA believes that the specific details of the accreditation body's scoring procedures should remain confidential to preserve the integrity of the process. However, the details will be reviewed and evaluated by the agency as part of FDA's approval and oversight responsibilities.

d. *Selection of clinical images for review (§ 900.4(c)(4))*

Section 900.4(c)(4) describes the number and types of images that shall be submitted by the facility for accreditation and reaccreditation clinical image review.

(Comment 140). Four comments stated that accreditation and reaccreditation clinical image review should be done on randomly selected images rather than the "best" images a facility can produce, arguing that this would give a better indication of the quality of mammography being performed. One comment agreed with § 900.4(c)(4) as proposed, but suggested adding one randomly selected set of images. One comment mistakenly believed that FDA was allowing accreditation bodies to use either random or nonrandom selection of clinical images for accreditation or reaccreditation clinical image review.

FDA has retained the provision that accreditation and reaccreditation clinical image review is to be performed using the "best" images a facility can produce. Using this criterion for selection allows the accreditation body to apply its highest standards to the scoring of these images. It also serves as a check on facility personnel to see if they understand what makes a high quality image. Random clinical image review, as required in § 900.4(f), serves a different purpose than accreditation and reaccreditation clinical image review. Although the accreditation body evaluates the same attributes, the scoring standards are more flexible to take into account that these may not be the "best" images a facility can produce.

(Comment 141). Two comments stated that clinical image review is extremely valuable, but that more films should be reviewed.

FDA disagrees. Requiring review of additional studies would serve to raise the cost and complexity of the review process without a demonstrable increase in quality. During discussions with NMQAAC, a majority of the committee agreed with FDA's position on this issue.

(Comment 142). Two comments urged FDA to replace the term "view" with "projection."

FDA discussed this with NMQAAC, who agreed with the agency that "view" is the correct term to use in this context.

(Comment 143). Six comments stated that clinical images for accreditation and reaccreditation review should be selected from a specified period of time. Three comments, including a consensus of NMQAAC, stated that both the clinical images and the phantom image should be from the same 30-day period.

FDA did not set timeframes for submission of images in the regulations in order to allow the accreditation bodies to establish these timeframes based on their own circumstances and experience with the review process. The agency has rejected the suggestion that phantom and clinical images be from the same 30-day period because this could create logistical problems if a second set of clinical images had to be submitted.

One comment expressed the author's belief that a national accreditation body should develop materials showing examples of acceptable dense and fat-replaced breast images. FDA encourages accreditation bodies to provide such information and education but does not believe that this is a matter that should be addressed in regulation.

(Comment 144). Several comments, including a consensus of NMQAAC, stated that it is often difficult to find images that are totally normal and suggested that images could be sent from either negative or benign assessment categories.

FDA agrees and has modified § 900.4(c)(4)(iii) accordingly.

(Comment 145). One comment suggested that § 900.4(c)(4)(iv) be revised to allow a facility to submit alternative mammograms only if the facility does not have images interpreted as normal under § 900.4(c)(4)(iii). It stated that no alternatives should be accepted for craniocaudal and mediolateral views required in § 900.4(c)(4)(I) or for dense and fatty breast images required in § 900.4(c)(4)(ii). FDA disagrees and believes that accreditation bodies should be given the flexibility to deal with these situations in an appropriate and individualized manner.

e. *Clinical image reviewers (§ 900.4(c)(5))*

Section 900.4(c)(5) requires the accreditation body to ensure that its clinical image reviewers are interpreting physicians, are trained and evaluated in the clinical image review process, document their findings and the reasons for assigning a particular score to any clinical image, and provide information to the facility for improving image quality.

(Comment 146). Several comments, including some from NMQAAC, stated that criteria for clinical image reviewers should be more detailed and that FDA should specify a minimum training and evaluation curriculum or other performance-based measure. One comment stated that it was essential for all accreditation body clinical image reviewers to meet minimum standards of reliability.

FDA notes that § 900.4(c)(5) establishes the basic requirements for clinical image reviewers and serves as the starting point for the accreditation bodies to develop their own additional requirements. Through its oversight activities, FDA ensures that the different accreditation programs are internally and externally consistent. FDA currently monitors accreditation body policies to achieve consistency in critical areas. The agency has worked and continues to work with the accreditation bodies to enhance existing procedures and establish new programs to monitor inter- and intra-accreditation body consistency for clinical image review.

(Comment 147). Five comments suggested that inspectors be trained to be clinical image reviewers. These comments reasoned that such training would permit a more accurate evaluation of clinical image quality than the current practice of letting facilities pick their best films for accreditation body evaluation. One of the comments contended that image quality would improve overall if a facility knew that

any image could be reviewed during inspections.

The MQSA assigns primary responsibility for clinical image review to accreditation bodies. The agency has established basic standards for clinical image reviewers, including that they be interpreting physicians, and will review and monitor each accreditation body's performance of this critical function. However, FDA believes the actual evaluation of clinical images should remain the role of the accreditation body. At its January 1997 meeting, NMQAAC discussed the issue of using the MQSA inspectors for clinical image review. They concluded, and the agency agrees, that inspectors do not have, nor can reasonably be given, the training and expertise required to perform clinical image review.

f. *Image management (§ 900.4(c)(6))*

Section 900.4(c)(6) requires the accreditation body to establish a tracking system for clinical images to ensure their security and return to the facility within 60 days.

(Comment 148). One comment stated that the requirement to return all clinical images within 60 days was too restrictive, because 60 days would not be adequate if a third review were required. This comment recommended 90 days. Another comment stated that the turnaround time for accreditation body image review was already too long, and that such delays limited a facility's opportunity to submit a second set of improved images within the review time cycle. A third comment stated that films should be returned to facilities in 45 to 60 days.

With respect to this matter, FDA has had to balance the needs of the facility against those of the accreditation body. Using the experience gained under the interim regulations, the agency concludes that the 60-day period is appropriate.

(Comment 149). One comment stated that § 900.4(c)(6)(ii) should clearly state that the accreditation body is obligated to inform only the facility of any abnormalities found on clinical images submitted to the accreditation body which had been interpreted by the facility as negative. The comment explained that this obligation should not extend to informing either patients or referring physicians.

FDA believes it is imperative that patients and referring physicians be notified of any suspicious abnormality detected during the clinical image review process. However, the agency has concluded that only the facility that performed the examination has access to the necessary patient and referring physician information to allow proper notification of the affected individuals. FDA has modified the regulation accordingly.

(Comment 150). One comment stated that proposed § 900.4(c)(6) implied that mammography reports would be sent to the accreditation body with the films. The comment asserted that requiring facilities to submit reports would raise concerns about patient confidentiality and establish an additional and new requirement for facilities.

FDA agrees with this comment and the regulation has been amended to delete the reference to mammography reports.

g. *Unsatisfactory image quality (§ 900.4(c)(7))*

Section 900.4(c)(7) describes the accreditation body's responsibility when it determines that clinical images from a facility that it accredits are unsatisfactory.

(Comment 151). One comment stated that the accreditation body has no direct authority to "take appropriate action" if corrective measures to address poor clinical image quality are not implemented by the facility.

Section 900.4(c)(7) has been modified from the proposal to address this comment. As discussed previously, FDA agrees that responsibility for enforcing compliance with the MQSA requirements rests primarily with FDA. Accreditation bodies, however, can and are expected to take action to revoke or suspend the accreditation of facilities that do not comply with standards established by the accreditation body, which include producing high quality clinical images. This section has been changed to state that the accreditation body is responsible for notifying the facility of the nature of the problem and its possible causes. The requirements that have been deleted, to monitor the progress of the facility and to take appropriate action if corrections are not made, are inherent in the accreditation process and have been stated previously in § 900.4(a)(1)(ii).

5. Phantom Image Review (§ 900.4(d))

The review of phantom images is an important part of the evaluation of a facility for accreditation. The production and evaluation of phantom images is also an important part of the medical physicist survey, of the facility inspection, and of the facility's quality assurance program. However, § 900.4(d) covers only the requirements that the accreditation body must meet to ensure that its phantom image reviews are performed accurately, in a timely fashion, and without bias.

a. *General comments on phantom image review*

(Comment 152). Two comments stated that phantom image review by the accreditation body is unnecessary because it is performed twice a year, once by the medical physicists during annual physics surveys and again by inspectors during yearly inspections.

FDA notes that, as with clinical image review, the phantom image review performed during the accreditation process and the reviews performed at other times have different purposes. The words "for accreditation and reaccreditation" have been added to the title of § 900.4(d) to clarify the purpose of the phantom image review in this section. During the accreditation process, phantom images are reviewed by the accreditation body to determine if the facility is producing adequate quality images to permit its accreditation or reaccreditation. The phantom image reviews conducted during a medical physicist survey, an inspection, or as part of the facility quality assurance program are intended to provide some assurance that the facility continues to produce adequate quality images during the 3-year interval between accreditations. Because of these different objectives, the agency believes that the multiple phantom image evaluations are not redundant.

b. *Phantom image reviewers (§ 900.4(d)(5))*

This paragraph discussed the requirements for and the procedures to be followed by the phantom image reviewers.

(Comment 153). Two comments stated that FDA did not provide any specific qualifications and training requirements for the accreditation body phantom image reviewers in the proposed rule. One comment wanted further clarification of these qualifications and the other expressed concern that accreditation bodies may have widely different criteria for phantom image reviewers. A few comments recommended that only medical physicists be considered qualified for phantom image review, but another comment expressly opposed that limitation. Six comments supported § 900.4(d)(5)(I) as written.

FDA has stated in § 900.4(d)(5)(I) that the accreditation bodies must ensure that their phantom image reviewers meet the requirements specified in § 900.12(a)(3) for medical physicists or alternative requirements established by the accreditation bodies and approved by FDA in accordance with § 900.3(d). The agency believes that this provides sufficient guidance to accreditation bodies with respect to qualifications and training requirements, while permitting flexibility to accommodate different

circumstances among the accreditation bodies.

FDA does not agree with the comments that only medical physicists should be allowed to perform phantom image review, although any medical physicist who met either the requirements in § 900.12(a)(3) or FDA-approved alternative requirements could serve in this capacity. The key criteria are that the individuals doing the phantom image review be adequately trained in the review process and have sufficient educational background to understand the concepts involved. The ability to carry out the full range of the responsibilities of the medical physicists under the MQSA is not required. The agency believes, therefore, with proper training and experience, individuals other than medical physicists can become qualified to evaluate phantom images.

All phantom image reviewers, whether or not they are medical physicists, must comply with the additional requirements, established by FDA in § 900.4(d)(5)(ii) and (iii), to be trained in the review process, to document scoring, and to provide feedback to facilities on improvement measures. If the accreditation bodies develop their own alternative or additional requirements for phantom image reviewers, FDA will ensure consistency among the accreditation bodies through its oversight program.

(Comment 154). Eight comments wanted the agency to require phantom image review by at least two reviewers. One comment stated that all facilities should use the same phantom and the same scoring procedure.

The agency has no evidence to suggest that double reviews are necessary for adequate evaluation and did not make this a regulatory requirement. However, FDA notes that it is currently the common practice of all accreditation bodies to have all failed phantom images evaluated by a second reviewer.

FDA disagrees with the comment regarding the same phantom and scoring procedures for all facilities. The agency wants to refrain from specifying either a phantom type or scoring methodology in order not to inhibit future advancements in phantom evaluation procedures. In addition, experience has shown that phantom type and scoring methodology is generally consistent from facility to facility even without a regulatory requirement. FDA will continue to monitor the situation and will ensure that any different phantoms or scoring methodology that may be in use will not compromise the minimum standards currently approved.

(Comment 155). Two comments on this provision expressed concerns about possible conflicts of interest for reviewers. FDA has addressed this issue in § 900.4(a)(4), which was discussed previously.

c. *Image management (§ 900.4(d)(6))*

As proposed, this paragraph required the return of the phantom image to the facility that produced it.

(Comment 156). Three comments stated that returning phantom images increases costs without benefit. Another stated that retaining the images would allow the accreditation body to compare past and current images to assess possible changes in a facility's QC program.

FDA believes that phantom images that result in a failure of accreditation should be returned to the facility in order to illustrate the accreditation body's assessment of the nature of the problem and its possible causes. Such images can be a valuable learning tool for the facility as it seeks to correct its problems. To minimize costs, however, FDA has revised this paragraph to require the accreditation body to return only those images that cause a failure.

d. *Notification measures for unsatisfactory image quality (§ 900.4(d)(7))*

As proposed, this paragraph described a variety of actions that the accreditation body should take if it finds a facility's phantom image is of insufficient quality to permit accreditation of the facility. The provision has been revised, as has the parallel provision for clinical image review discussed above, to focus on the accreditation body's obligation to notify the facility of the nature of the problem identified and of possible solutions.

(Comment 157). Six comments supported § 900.4(d)(7) as proposed. The comments stated that this requirement provides assistance to the facility and promotes timely correction of problems. Two comments expressed concern that the accreditation bodies could "close" a facility on the basis of inadequate quality of phantom images even if the facility had been producing high quality clinical films. The comments explained that this could happen because of the subjective nature of phantom image review and the fact that problematic phantom images are unavoidable, in spite of adequate care.

Because § 900.4(d)(7) requires the accreditation body to notify the facility of the nature of the problem and its possible causes, FDA does not believe the review process will prevent accreditation of a facility that is able and willing to devote resources to improvements in this area. It is the policy of the approved accreditation bodies to offer facilities at least two chances to improve the quality of failed images to the satisfactory level. If the facility uses the information provided by the accreditation body on the possible causes of the problem to guide corrective actions, the agency believes that a facility producing high quality work, as the comments described, should be able to achieve the minimum phantom image quality required by the accreditation body.

(Comment 158). One comment stated that the accreditation body has no direct authority to "take appropriate action" if corrective measures are not implemented.

As discussed previously in connection with clinical image review, nothing in the proposed provision would require the accreditation body to act beyond its authority, which includes a responsibility to deny, suspend, or revoke accreditation of facilities that do not achieve the accreditation body's standards. However, the agency has reworded the provision to focus on its primary purpose, which is to ensure that facilities who fail the phantom image review are informed of the causes.

6. Reports of Mammography Equipment Evaluations, Surveys, and QC (§ 900.4(e))

This paragraph describes the reports on the evaluations of their equipment that the accreditation body must require from each facility, the reporting schedule, and the responsibility of the accreditation body to review the reports and to use them in accreditation decisions.

(Comment 159). Several comments expressed varying viewpoints on the need for submission of this information and who should evaluate it. One comment stated that it is redundant for facilities to have to submit information about equipment to the accreditation body because each facility is inspected annually, and also may receive an onsite visit from an accreditation body. This would result in three reviews annually, which would be unnecessary and burdensome to both the facility and the accreditation body. Three other comments also stated the position that the accreditation body should be the sole evaluator of the annual physicist survey. One of the three also contended that the inspector, unless a qualified mammography medical physicist, is not qualified to review these reports. This comment suggested that the inspection review be eliminated and that the accreditation body be required to send a statement to FDA confirming that the report was received and reviewed.

On the other hand, one comment urged that both the accreditation body and the inspector continue to review the physicist survey reports. Another comment stated that, if duplicate review is not deemed cost effective, then the inspector should review the survey rather than the accreditation body. These two comments agreed that it is imperative that the facilities both read the report and correct any deficiencies that could lead to noncompliance or degradation of images, but expressed a concern that facilities would not do so unless both the accreditation body and the inspector required such actions. A third comment agreed that the inspector should not just accept the accreditation body's review of the facility survey. Valuable information would be lost if the inspector does not review the survey.

FDA believes that having both the accreditation body and the inspector review the physicist's report is consistent with the MQSA's reliance on review by different entities and is a benefit to the public health, especially during these early years of the MQSA program. The two checks are different in nature. The accreditation bodies make a complete assessment of such surveys as they are reported annually. Inspectors, on the other hand, do not evaluate the surveys the same way. Instead, inspectors check for completeness and to determine if the facility has implemented necessary corrections identified in the survey. Typically, the submission of surveys to the accreditation bodies and the occurrence of inspections are not coincident. Having the inspectors do an independent check may draw attention sooner to an incomplete survey or a problem found by the survey that has not yet been corrected.

(Comment 160). One comment asked how five facilities became accredited without physicist reports.

FDA and the accreditation bodies are unaware of any facilities that have been accredited without physicist reports. Because the facilities for which such accreditation was alleged were not identified in the comment, it is not possible to respond further.

(Comment 161). Nine comments argued, that as proposed, § 900.4(e)(2)(i) would lead to facilities changing from a 12-month cycle to a 14-month cycle for the medical physicist survey.

FDA agrees with these comments and the section has been changed accordingly.

7. Onsite Visits to Facilities and Random Clinical Image Reviews (§ 900.4(f))

The MQSA requires that accreditation bodies make a "sufficient number" of onsite visits to the facilities they accredit "to allow a reasonable estimate of the performance" of the body (42 U.S.C. 263b(e)(4)(A)). The statute also requires the accreditation body to conduct random reviews of clinical images from the facilities it accredits, in addition to the clinical image reviews required for accreditation (42 U.S.C. 263b(e)(1)(B)). Section 900.4(f) implements these requirements.

a. *General comments on onsite visits*

(Comment 162). One comment questioned the cost-effectiveness of requiring accreditation bodies to prepare three copies of a summary report describing all facility assessments conducted during that year. The comment asserted that FDA could review this information during the annual oversight inspection of the accreditation body.

Under the statute, FDA is required to evaluate the performance of each accreditation body. The summary of onsite visits provides valuable information on which to base such evaluations. FDA, therefore, retained the requirement that three copies of the summary be included in the accreditation body's annual report to FDA. Multiple copies will allow simultaneous review by multiple reviewers and, in the event that some of the materials are difficult to reproduce, will help ensure uniformity and readability of the materials.

b. *Onsite visits (§ 900.4(f)(1))*

(Comment 163). Three comments agreed with the need for onsite visits, while two comments stated that the visits were unnecessary. Two comments recommended that the onsite visit be combined with the annual inspection, while two other comments stated that the onsite visit should not be construed as a substitute for, or be conducted during, the annual inspection. One comment stated that the onsite visit process does not serve as a check of the accreditation body's quality assurance process.

FDA reiterates that the requirement for onsite visits by the accreditation bodies is established by the statute (42 U.S.C. 263b(e)(4)). The purpose of such visits is to provide a mechanism by which accreditation bodies can ensure facility compliance with quality standards and monitor their own performance of accreditation functions. The accreditation body will be able to compare the consistency of results from visits to information obtained through other accreditation body functions. These onsite visits by the accreditation bodies are different from and are intended to be complementary to the annual inspection of every certified facility performed by FDA or State inspectors. Combining the two evaluations into one review would likely undermine the effectiveness of both visits and inspections. This issue was discussed with NMQAAC and the agency's position was supported by a consensus of the committee.

(Comment 164). One comment recommended a prior notice of 5 days for onsite visits so as not to disrupt patient care. FDA believes that accreditation bodies will need flexibility in scheduling onsite visits. In some cases, particularly if an accreditation body has serious concerns about a facility's ability to meet quality standards, significant advance notice would not be appropriate. In general, for facilities selected randomly for onsite visits, FDA encourages accreditation bodies to work with facilities to schedule visits that minimize patient inconvenience and disruption to facility operations. This has been the general practice of all accreditation bodies.

c. *Sample size (§ 900.4(f)(1)(I))*

Section 900.4(f)(1)(I) requires accreditation bodies to select some facilities for onsite visits on a random basis and select other facilities based on specific reasons for concern about those facilities, such as a previous history of noncompliance with quality standards. In general, each accreditation body will have to visit annually at least 5 percent of the facilities it accredits, up to a maximum of 50 facilities, but no less than 5. The number could exceed 50 if many facilities need to be visited because of previously identified concerns.

(Comment 165). Two comments agreed with § 900.4(f)(1)(I) as proposed. However, 14 comments recommended that the maximum of 50 facilities be raised to a higher number. Reasons given for the increase included a belief that 50 is not statistically significant for a large accreditation body. Two comments wanted the number raised because they had "seen too many certified facilities with questionable compliance." One comment stated that a national accreditation body should visit at least one facility from each State or region.

The agency disagrees with raising the number of onsite visits. FDA has discussed with NMQAAC and the accreditation bodies the issue of the number of onsite visits that an accreditation body can reasonably perform. There was general agreement among NMQAAC and the accreditation bodies that the regulation should not be changed. The agency has had to balance

the benefits of accreditation body onsite visits against its monetary cost. Requiring more than 5 percent or 50 facilities could significantly increase the cost of accreditation and potentially reduce the number of accredited facilities and access to mammography without commensurate benefit.

d. *Visit plan (§ 900.4(f)(1)(ii))*

Section 900.4(f)(1)(ii) establishes baseline standards for the conduct and content of the onsite visits.

(Comment 166). Four comments, including a consensus of NMQAAC, stated that the composition and qualifications of onsite visit teams should be specified. One of the comments recommended that the team be comprised of a qualified active clinical image reviewer, a phantom image reviewer, and an accreditation body staff member.

The agency believes that the accreditation body is in the best position to define the onsite visit team. This gives the accreditation body the flexibility to tailor the team to the specific needs of the facility, thereby reducing costs while maintaining quality.

(Comment 167). One comment believed that the decision to review clinical images and the selection of images should be made at the discretion of the accreditation body at the time of the visit. It stated that, if the facility has proper quality assurance procedures in place, it may not be necessary to review the clinical images. FDA disagrees. The agency believes that clinical image review is one of the most important aspects of the entire MQSA program and should be a part of every accreditation body onsite visit.

(Comment 168). Two comments, including a consensus of NMQAAC, recommended that § 900.4(f)(1)(ii)(D) be amended to require the accreditation body to "verify the presence" of the facility's medical outcomes audit system during an onsite visit, rather than "review" the system; requiring a review implies that the visit team is evaluating the audit against an agreed upon standard rather than verifying that a system is in place.

FDA agrees and has modified this section accordingly.

e. *Clinical image review for random sample of facilities (§ 900.4(f)(2))*

This paragraph establishes the requirements for the clinical image review for a random sample of facilities.

(Comment 169). Sixteen comments stated that there appears to be a contradiction in the preamble to the proposed regulations because remarks in one section questioned the effectiveness of random clinical image review, but another section stated that random visits for facilities are effective.

FDA believes that the comments are comparing the agency's views of two different processes. The agency believes that random clinical image review is a useful tool in the evaluation of facilities and accreditation bodies. However, the agency stated in the proposal's preamble (61 FR 14890) that random clinical image review would not be an effective use of accreditation body resources if applied to all facilities. Random onsite visits to a limited number of facilities represent a different tool to evaluate facilities and accreditation bodies and, as stated in the preamble to the proposal, are effective in this context.

(Comment 170). One comment stated that the goals of random clinical image review should be clearly determined prior to establishing minimum quality standards.

As previously stated, the purpose of random clinical image review is to serve as an indicator of the quality of mammography performed at facilities, a measure of the performance of the accreditation body, and a method to assure the public that facilities continue to produce high quality images during the intervals between reaccreditation reviews. In this context, FDA believes that it is important that the accreditation bodies be given the flexibility to develop a process for random clinical image review that is best suited to meet their needs and those of their accredited facilities. However, the agency notes that § 900.3(b)(3)(iii) requires a prospective accreditation body, as part of its application, to give FDA a description of its procedures for performing random clinical image review. In addition, the agency will monitor the use of random clinical image review as part of its oversight responsibilities.

Eight comments stated that the sample size for random clinical image review in proposed § 900.4(f)(2)(I) should be increased. Two of the comments recommended that all facilities undergo random clinical image review in each 3-year period. One of these comments stated that this is required by the statute.

FDA addressed this issue in the preamble to the proposed rule and believes its interpretation of the statute is reasonable. FDA's proposal changed the interim rule, which required random clinical image review at every accredited facility, to a requirement that the accreditation body select a sample of facilities for random clinical image review. The change in the sampling requirement was based on FDA's experience under the interim regulations. The agency believes that annual random clinical image review for every facility, in addition to the clinical image reviews required for initial accreditation and reaccreditation, is not an effective use of accreditation body resources. FDA does agree that, after more data are accumulated, the 3 percent sample in the proposal may prove to be too low. The agency, therefore, has revised the provision to state that at least 3 percent of the facilities be sampled annually, to allow the agency more flexibility to modify the sample size if information obtained in the future justifies such a modification.

Section 900.4(f)(2)(ii) has also been revised from the proposal to clarify that reviewers performing random clinical image review shall evaluate the same film attributes used in accreditation and reaccreditation clinical image review.

(Comment 171). One comment stated that randomly selected clinical images should not be evaluated with the same stringent requirements as those used for evaluating the "best" clinical images submitted for initial accreditation or reaccreditation.

As previously stated, FDA will require the accreditation body to evaluate the same attributes in the random clinical image review as are evaluated in the accreditation and reaccreditation clinical image review. As previously explained, the agency believes that accreditation bodies will have to adjust their scoring and pass-fail criteria to take into account that, due to the selection process, these examinations may not be representative of the best images a facility can produce. Such adjustments are appropriate and are permitted under the final regulations.

Section 900.4(f)(2)(iv) has been added to the regulations to clarify that the process for selection of images for random clinical image review may differ from the process for selection of images for accreditation and reaccreditation clinical image review.

(Comment 172). Two comments noted that different accreditation bodies already have instituted different selection criteria for their random clinical image review. One comment suggested that the review should be a combination of random (selected by the inspector) and nonrandom (selected by the facility) studies.

FDA recognizes that, under the interim regulations, each accreditation body has developed its own process for random clinical image review. Each is designed to best serve the needs of the accreditation body and its accredited facilities. The agency believes this

flexibility encourages efficient and effective review and has not changed the requirement. FDA believes that the selection of a combination of random and nonrandom studies would complicate the review process without a corresponding benefit. FDA is working with all of the accreditation bodies to further refine and improve their procedures and programs and will continue to do so. As noted previously, although each accreditation body can devise its own process for random clinical image review, that process must be reviewed and approved by FDA.

8. Consumer compliant mechanism (§ 900.4(g))

This paragraph describes the responsibilities of the accreditation bodies to ensure that serious consumer complaints are adequately addressed.

(Comment 173). The comments received were very similar to those received on § 900.12(h), which outlines the responsibilities of the facilities in this area. The comments on both of these paragraphs are discussed in section III.L.8 of this document in connection with § 900.12(h).

9. Reporting and recordkeeping (§ 900.4(h))

No comments were received on this paragraph, which describes the mechanisms by which the accreditation bodies provide information to FDA.

Consequently, this section was codified with only minor editorial changes.

10. Fees (§ 900.4(l))

This paragraph outlines the requirements that must be met by accreditation bodies to ensure that the accreditation fees are reasonable.

(Comment 174). Eight comments claimed that any fees are unreasonable, particularly for small practices, while another comment requested that multi-unit facilities be charged a higher fee.

The MQSA clearly intended that the accreditation process be supported through facility fees and that the agency be assigned the task of ensuring that such fees are reasonable (42 U.S.C. 263b(e)(1)(B)(iii)). FDA could not prohibit fees even if another source of funding were available. In response to the last comment, the agency notes that accreditation bodies can and do charge higher fees to multi-unit facilities.

G. Evaluation (§ 900.5)

This section states that FDA will evaluate the performance of each accreditation body annually, as required under the MQSA, and briefly outlines information that will be reviewed as part of the evaluation.

(Comment 175). One comment urged FDA to establish standard evaluation criteria and procedures to apply to the review of all accreditation bodies prior to establishing final regulations.

FDA agrees with this comment. Different accreditation bodies have different operational circumstances, e.g., geographic area and facilities served. Consequently, with FDA approval, they may have somewhat different programs. However, despite program differences, all accreditation bodies have to comply with the regulations governing accreditation body activities. Therefore, FDA has developed standard evaluation criteria that are being used to evaluate all accreditation bodies.

H. Withdrawal of Approval (§ 900.6)

This section outlines the enforcement actions available to FDA, including withdrawal of approval, if the agency determines that an approved accreditation body has not remained in substantial compliance with the requirements.

(Comment 176). One comment stated that "major accreditation functions," upon which FDA could base a decision to withdraw an accreditation body approval, should be clearly identified. Another asked how FDA would verify that an accreditation body, whose approval had been withdrawn, had notified all of its facilities. Two other comments protested elimination of the mandatory schedule for accreditation bodies to submit corrective action plans for minor deficiencies.

Based upon its history of regulating accreditation body activities under the interim regulations, FDA believes that withdrawal of approval of an accreditation body would be rare and, in any case, would follow notice of problems and attempts to bring the body into full compliance. Should such a withdrawal occur, however, FDA would closely monitor the entire process of closing down the accreditation body operations, including the required notification of facilities.

FDA finds no basis for imposing mandatory schedules for correction of minor accreditation body deficiencies. Since approval of the first accreditation body in 1994, FDA has maintained a close working relationship with all the MQSA accreditation bodies. Accreditation body operational activities that might have been categorized as "minor deficiencies" have been resolved quickly and satisfactorily through direct communication with the accreditation bodies, rendering specific mandatory time limits for all such corrections unnecessary. The regulation continues to provide FDA with authority to specify a time period for any particular corrective action.

I. Hearings (§ 900.7)

This section describes the rights of accreditation bodies and facilities to hearings challenging adverse actions.

(Comment 177). Only one comment was received and it supported this section as written. Consequently, this section was codified with only minor editorial changes.

J. Applicability (§ 900.10)

This section of the proposal stated that the provisions of subpart B (which includes the facility quality standards) apply to all facilities under the jurisdiction of the United States that provide mammography services, except for those of the Department of Veterans Affairs (VA).

No comments were received directly on this section, although several comments on other sections questioned the exclusion of the facilities of VA. FDA notes that the wording of this section, including the exclusion, is based directly on the statute; the agency is unable to make any modifications (42 U.S.C. 263b(a)(3)(A)). However, VA is presently developing, under a separate legislative mandate, a program to ensure mammography quality equivalent to that required by the MQSA.

K. Requirements for Certification (§ 900.11)

This section establishes the requirement that mammography facilities must have an FDA certificate in order to operate lawfully and provides details on how to make application for a certificate and the time period during which the certificate may be effective. Only some of the provisions of this section drew comments. Discussion of these comments follows.

1. General (§ 900.11(a))

This paragraph requires mammography facilities to have certificates issued by FDA to operate lawfully. To obtain a certificate, facilities are required to meet the quality standards in § 900.12 and to be accredited by an approved accreditation body or other entity designated by FDA.

(Comment 178). One comment noted that FDA proposed to add that a facility may be accredited by an "* * * other entity as designated by the FDA," that FDA claims to be concerned that at some time a facility may not have access to an accreditation body, and therefore an alternative accreditation body may be necessary for facilities to operate lawfully. The comment argued that there is no statutory basis for FDA to appoint another entity and questioned under what circumstances a facility might not have access to an accreditation body. The comment closed by stating that, unless an urgent need for this provision can be clearly defined with limitations in its scope, it should be deleted from § 900.11 and elsewhere in the regulation.

The Secretary has discretion under the statute, both with respect to approving private nonprofit organizations and States as accreditation bodies and with respect to prescribing proof of accreditation. While the probability that facilities may not have access to an accreditation body is at present remote, there are neither guarantees nor requirements that any particular accreditation body will continue to serve in that capacity indefinitely. If one or more of the currently approved accreditation bodies were to become unable or unwilling to serve in that capacity, the agency wants provisions in place that will allow an alternative accreditation authority to be designated in order to ensure continuity and availability of quality mammography. Nothing in the statute precludes FDA from providing for this eventuality in its regulations or from designating other accreditation routes if that should ever become necessary to protect the public health.

(Comment 179). One comment stated that facility certification should allow interpreting physicians to work outside of the certified facility. The comment interpreted the proposal to treat an offsite reading room the same as an offsite mammography clinic and maintained that requiring the offsite reading room to be certified is burdensome and unnecessary.

FDA does not, at this time, intend to require separate certification of partial providers, such as an interpreting physician with an offsite reading room. The definition of a facility in § 900.2(q) includes partial providers, and FDA recognizes that there may be future advantages to separately certifying partial providers of mammography services. For example, it may be advantageous for a radiological practice with one or more interpreting physicians to be certified as a facility. By doing so, the practice's interpreting physicians could interpret mammograms from any other certified facility without those other facilities having to demonstrate the qualifications of the interpreting physician. At the present time, however, policies and procedures have not been established for accreditation and certification of partial providers. Consequently, as is the case under the interim regulations, an interpreting physician interpreting mammograms at a remote site will be included under the certificates of the mammography facility for which he or she interprets mammographic images. The physician will have to provide information to those facilities demonstrating that the requirements regarding his or her qualifications and any other applicable MQSA standards are met.

2. Applications (for Certificates and Provisional Certificates) (§ 900.11(b)(2))

FDA has amended the language in § 900.11(b)(1)(ii), (b)(2)(ii), and (b)(3)(iii) from "will" to "may" in order to parallel the statutory language that gives the agency discretion with respect to the issuance of certificates, provisional certificates, and extensions of provisional certificates to practice mammography. Although the agency has relied on accreditation body determinations in making decisions about whether to issue certificates, and intends to continue to do so, there may be situations in which FDA has additional information not available to the accreditation body or when the agency has reason to disagree with the accreditation body's evaluation of the facility as likely to perform quality mammography. In those circumstances, the agency retains discretion to deny a certificate even if the facility has become accredited. A new provision has been added at § 900.16 to implement the agency's statutory authority to deny certification to an accredited facility and to set forth the appeal procedures available to such facilities. In general, this paragraph requires that new facilities apply for accreditation through an approved accreditation body. Once a facility's application is accepted by the accreditation body, FDA may issue a provisional certificate that will allow the facility to perform mammography for not longer than 6 months in order to obtain the clinical images necessary for accreditation. A provisional certificate may not be renewed, but a facility may apply for a one time 90-day extension of the provisional certificate under certain circumstances.

(Comment 180). One comment suggested extending the 6-month provisional certification period for facilities that failed to be accredited, and a second comment stated that a facility should make substantial changes before being granted a second provisional certificate. A third comment recommended that FDA provide for renewal of provisional certificates at the discretion of FDA because some facilities may not complete accreditation, through no fault of their own, and may not qualify for a 90-day extension. A fourth comment recommended that provisional certification should be limited to one time only and described the 90-day extension as generous, allowing facilities a 9-month period in which to achieve full compliance.

In accordance with the MQSA, provisional certificates may only be extended for facilities that can demonstrate that access to mammography would be significantly reduced in the geographic area served by the facility, and only if the facility reports the steps that will be taken to qualify the facility for certification. In response to the first comment, therefore, FDA notes that there is no statutory provision for either an additional extension or the issuance of a second provisional certificate to the same facility.

The agency recognizes the dilemma noted in the comment concerning facilities that have been unable, perhaps for reasons beyond their control, to complete accreditation within the time period. The final regulations provide for reinstatement of certain facilities that failed accreditation or failed to complete the process during the first 6 months as new facilities. To qualify for reinstatement, the facility must submit and complete a corrective action plan developed to ensure correction of any deficiencies that led to failure. That corrective plan must be approved by the accreditation body and completed by the facility before the facility can be reinstated. On reinstatement, the facility is treated as a new facility, and issued a new provisional certificate that will allow it to produce mammograms for the clinical image review, which must be passed to obtain a 3-year accreditation and certification term.

FDA understands the concern of those comments that suggested facilities should not be given additional time or a second chance to establish that they are capable of doing quality work. The agency has had to weigh those concerns against competing concerns for access and the statutory emphasis on bringing facilities into compliance rather than putting them out of business. FDA believes that its reinstatement policy strikes the proper balance.

(Comment 181). Two comments agreed with § 900.11 as proposed. Another stated that a better definition is required to differentiate between those facilities that fail the second film review and are later reinstated, and those that fail and submit a new application under the pretense of being a new facility.

FDA and the accreditation bodies recognize the risk that might be created if a facility that failed accreditation is

issued a second provisional certificate under such pretense. FDA has instituted a variety of measures under the interim regulations to avoid such occurances, including close communication among accreditation bodies, between accreditation bodies and FDA, and a policy that each facility provide a history of previous accreditation activities with its application. The facility history requirement has been codified in the final regulation to require all applicant facilities to provide a complete history of prior accreditation activities, including a statement that all information and data submitted in the application is truthful and accurate, and that no material fact has been omitted. FDA expects to continue close communication among accreditation bodies and FDA to identify potential problems with this type of misrepresentation by facilities applying for accreditation.

(Comment 182). One comment recommended that § 900.11 be revised to include the MQSA provision that authorizes States to perform certification duties.

The MQSA does provide that States may serve as certifying bodies (42 U.S.C. 263b(q)). However, this subject is beyond the scope of these proposed regulations. Preparations are under way to draft regulations that will govern State agencies that wish to become certifying bodies, and the public will have an opportunity to comment on future proposals.

3. Provisional Certification Extensions (§ 900.11(b)(3)(i))

This paragraph describes the information a facility must submit to apply for a 90-day extension of its provisional certificate.

(Comment 183). One comment noted that the statute requires FDA to evaluate requests for 90-day extensions but that this provision stipulates that a facility shall submit its evidence in support of extensions to its accreditation body. The comment asked if it is FDA's intent to transfer this authority to the accreditation bodies. If it is not FDA's intent to transfer this authority to the accreditation bodies, the comment requested that, "* * * its accreditation body * * *" be changed to "the FDA."

The MQSA gives FDA the authority to evaluate and determine whether or not a facility qualifies for a 90-day extension of its provisional certificate, and FDA does not intend to transfer this authority to the accreditation bodies. However, the agency believes that it is in a better position to render valid decisions on requests for 90-day extensions if the accreditation body first reviews and makes a recommendation on the request in light of the accreditation body's detailed knowledge of the applicant and other facilities in the area. Therefore, the final regulation has been amended to clarify that the accreditation body will forward the facility's request for an extension, along with the accreditation body's recommendation. New § 900.11(b)(3)(ii) requires accreditation bodies to forward both requests and their recommendations to FDA within 2 business days of receipt of the request.

4. Reinstatement Policy (§ 900.11(c))

This paragraph contains the requirements and procedures for reinstatement of certification. Under this provision, FDA may permit a previously certified facility that has allowed its certificate to expire, that has been refused a renewal of its certificate by FDA, or that has had its certificate suspended or revoked by FDA, to apply to have the certificate reinstated.

(Comment 184). Four comments expressed concern that reopening a facility whose accreditation has lapsed may be difficult and that reinstatement is necessary so that such facilities may qualify as new facilities and thereby qualify for issuance of provisional certificates.

Reinstatement is the appropriate procedure for reopening a facility whose certification has lapsed. The MQSA only allows a provisional certificate to be issued to new facilities. As noted in section III.K.2 of this document, any facility that seeks reinstatement under this provision of the regulations will have to provide sufficient information to its accreditation body to establish that any problems in meeting the MQSA standards have been corrected, and that circumstances are such that the facility may qualify as a new facility for purposes of reinstatement. The decision about whether to apply for reinstatement is one that each facility must make based on its own circumstances. If the costs associated with such application are too high for any particular facility, it will forgo providing mammography services. On the other hand, if a facility has determined that it can improve its practice sufficiently to warrant reinstatement, or that it wished to resume a practice it voluntarily closed, reinstatement will permit such facilities to qualify for provisional certification as new facilities, and produce the clinical images that are necessary for 3-year accreditation and certification.

5. Justification for Reinstatement (§ 900.11(c)(1)(iii))

This paragraph requires a facility applying for reinstatement to justify its application.

(Comment 185). A comment asked how this would cover a facility that allowed its certificate to expire for reasons other than failure to comply or qualify.

FDA notes that a justification is required for all applications for reinstatement. A facility whose certificate has expired but that has had no deficiencies should submit a corrective action plan that explains the reasons for expiration and what it has done or will do to ensure that the facility meets the MQSA quality standards at the time of reinstatement.

6. Provisional Certificates to Reinstated Facilities (§ 900.11(c)(2) and (c)(3))

(Comment 186). Four comments raised concerns about the appropriateness of issuing provisional certificates to reinstated facilities, as the agency had proposed.

As a result of these comments, FDA has modified § 900.11(c) to read, "Reinstatement policy. A previously certified facility that has allowed its certificate to expire, that has been refused a renewal of its certificate by FDA, or that has had its certificate suspended or revoked by FDA, may apply to have the certificate reinstated so that the facility may be considered to be a new facility and thereby be eligible for a provisional certificate." This change is intended to make clear the need for a mechanism so that previously certified facilities that have instituted corrective actions or wish to resume services following voluntary cessation of mammography may be considered new facilities for purposes of issuing provision certificates as noted in section III.K.4 of this document. The agency has also changed the language of this provision from "will" to "may" in § 900.11(i)(2) to indicate that the agency retains discretion to accept facilities for reinstatement.

7. The 2-Year Waiting Period (§ 900.11(c)(4))

As proposed, this provision stated that if a facility's certificate is revoked, the facility may not be reinstated for 2 years if owned or operated by any person who owned or operated the facility at the time of revocation. Proposed § 900.11(c)(4) did not accurately reflect the MQSA requirement because it imposed the 2-year waiting period on facilities rather than on persons. The MQSA requires a 2-year waiting period before persons who own or operate a mammography facility at the time an act is committed that results in revocation of the facility's certificate may again own or operate a mammography facility (42 U.S.C. 263b(l)(3)).

Section 900.11(c)(4), therefore, has been changed to read, "If a facility's certificate was revoked on the basis of an act described in 42 U.S.C. 263b(l)(1), no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility within 2 years of the date of revocation."

(Comment 187). More than 40 comments expressed concern about how FDA would apply revocation and about the 2-year waiting period, which many comments suggested was excessive.

These and related comments to § 900.13 suggest an unwarranted expectation that suspension and revocation of certificates will be common practice in the event of noncompliance with the regulations. As noted above, the 2-year waiting period is mandated by the MQSA in the event of revocation of a certificate. That timeframe is not subject to modification by the agency. However, after more than 2 years of enforcement of the MQSA, FDA has not revoked any certificates and has only suspended the certificate of one operating facility. This should alleviate concerns that this enforcement action is one FDA is likely to use frequently or without cause.

The conditions under which FDA may suspend or revoke a certificate are set forth in § 900.14. In most cases, a suspension would precede a revocation action. As explained in the preamble to the proposed rule (61 FR 14878), suspension of a certificate generally would occur only when all other efforts to bring a facility into compliance with the regulations have failed or if continued operation of a facility would present a serious risk to human health. Suspension allows a facility to complete corrective action under accreditation body and FDA monitoring, and subsequently to be reinstated if those corrections are adequate. FDA generally intends to revoke certificates only when corrective and voluntary measures have failed and the agency has clear evidence that a facility cannot or will not practice quality mammography, or in the event the facility made false statements to FDA.

Unless other more serious events, as indicated above, necessitate otherwise, FDA will not revoke or suspend a certificate as a result of a finding that a facility is correcting, is willing to correct, or has corrected identified deficiencies. FDA's goal is to bring noncompliant facilities into compliance with the MQSA standards so that they can produce quality mammograms, rather than to close facilities. This goal reflects the intent of the drafters of the statute; the legislative history discussing the sanctions provisions, e.g., states that "the first priority of the Secretary is to restore a mammography facility to compliance * * *" S. Rept. 102–448, at 2 (1192).

(Comment 188). Ten additional comments stated that this section is frightening to many radiologists and asked who decides when voluntary action or lesser sanctions have proven ineffective, and if any third party reviews agency decisions. FDA will determine when voluntary or lesser sanctions have proven ineffective. The decision to suspend or revoke a certificate, however, is subject to challenge by the facility which is entitled to an informal hearing under 21 CFR part 16, and ultimately subject to judicial review.

L. Quality Standards (§ 900.12)

1. Personnel (§ 900.12(a))

This paragraph of the regulations establishes the training and experience requirements for physicians who interpret mammograms, radiologic technologists who perform mammography examinations, and medical physicists who have responsibility for periodically surveying the mammography equipment and overseeing the facility's equipment quality assurance program. The requirements include initial qualifications that must be met before an individual can begin independently providing mammography services to the facility and continuing qualifications that must be met on an ongoing basis. Facility recordkeeping requirements related to personnel are also discussed.

The final regulations generally retain the same requirements as were outlined in the proposal. In response to comments, however, the amount of training or experience needed to satisfy particular requirements has been adjusted in several places. The final regulations also establish a "grand parenting" provision for radiologic technologists.

a. *General comments on personnel section*

(Comment 189). General comments submitted by the public to FDA on § 900.12(a) offered contrasting views on the value of the personnel standards. One comment applauded the increased specificity of the proposal over the interim rules because the changes clarified what requirements the facility personnel had to meet. A second comment likewise noted that the requirements were "well presented" and clarified a number of issues. In contrast, a third comment stated that the more specific requirements made it harder for facilities to show that the requirements were met. A fourth comment found the requirements too prescriptive (but offered no suggestions on what could be deleted as unnecessary), but a fifth comment asked for even more specificity.

This variety of opinion illustrates the difficulty of striking the proper balance between making regulatory requirements specific enough so that it is clearly understood what is required yet general enough to allow for appropriate flexibility. FDA believes that the variety of comments indicates that significant changes to the general approach taken by the proposal are not warranted. However, the question of the proper balance between specificity and flexibility was reconsidered in response to comments on particular requirements.

(Comment 190). One general comment asked for clarification on who would be qualified to teach physicians, technologists, and physicists to use new technologies as they develop.

FDA believes that the new definition of qualified instructor (§ 900.2(oo)), discussed earlier, provides an adequate means for identifying qualified instructors. Under this definition, representatives of the manufacturers who develop new technology, along with the physicians, technologists, and physicists who worked with the technology while it was in the investigational stage, would generally be accepted as qualified to be the initial instructors in the use of the new technology. This approach is consistent with the general practice in the teaching of medicine.

(Comment 191). Several of the general comments on the personnel requirements were based on a misinterpretation of the proposed regulations or of the MQSA itself. Six identical comments argued for retaining the interim regulations, not because they opposed the proposed new requirements as such, but because they believed that the choice was between either the interim regulations or performance-based outcome measures, such as proficiency testing.

As explained previously, while comments were requested on the concept of performance-based outcome requirements, new performance-based requirements are not being proposed at this time.

(Comment 192). Another comment mistakenly believed the regulations made investigational use of MRI unlawful but, in fact, MRI procedures are not within the scope of the MQSA (42 U.S.C. 263b(a)(6)). Similarly, two general comments recommended removing of this section entirely,

reasoning that because FDA does not impose training or experience requirements on users of other medical devices, there was "no possible justification" for mammography being treated differently.

In fact, however, Congress has directed that mammography be treated differently and required the government to establish personnel standards (42 U.S.C. 263b(f)(1)(C), (D), and (E)). The MQSA embodies Congress's determination that such standards would help ensure that mammography services are provided only by those qualified to do so.

b. *Comments on interpreting physicians (§ 900.12(a)(1))*

The final regulations for interpreting physicians establish initial professional, educational, and training qualifications, as well as requirements for continuing experience and education. Although neither a national standard nor a continuing performance competency test for mammography interpretation currently exists, the requirements of § 900.12(a)(1) for interpreting physicians will provide baseline standards to help ensure the reliability and accuracy of interpretation of mammograms for women throughout the country.

The final regulations are generally the same as those proposed. In response to comments, however, some new provisions have been added and several others were revised as follows: (1) Sixty rather than 40 hours of documented medical education in mammography must be Category I; (2) a new section was added to clarify the use of CME obtained by teaching medical education courses; (3) the mechanism to document continuing experience and education requirements has been revised to reduce the administrative burden on facilities; (4) additional pathways for physicians who need to reestablish their qualifications have been added; and (5) the initial qualifications have also been modified to clarify the conditions for "grand parenting" of interpreting physicians and the initial experience requirement for some residents. These changes from the proposal will be discussed below in connection with the appropriate provisions.

(Comment 193). Over 100 comments stated that only radiologists should be permitted to work as interpreting physicians.

After considering these comments, FDA continues to believe that this additional limit would not be in the interest of public health. Currently, there are some physicians, not formally trained as radiologists, who have met the requirements of the interim regulations and are competently interpreting mammograms. Therefore, FDA believes that it would be unnecessarily restrictive to limit interpreting physicians to radiologists. By requiring all physicians wishing to interpret mammograms to meet the same baseline quality standards of training, experience, and continuing education, the goal of ensuring quality mammography can be achieved without arbitrary restrictions relating to the specialty of the particular physician.

(Comment 194). One comment suggested that interpreting physicians who practice at more than one facility should be required to provide proof of credentials and qualifications only one time, rather than providing this material for each facility with which the physician is affiliated.

FDA disagrees for a number of reasons. First, the MQSA requires mammography facilities to meet certain requirements, including establishing that its personnel are qualified under the statute. Because it is the facility that is responsible and will be inspected, it is necessary for that facility to have documentation for all the interpreting physicians who work there. In addition, while several of the initial personnel requirements do not change over time, some, such as medical licenses, are time limited and need to be updated. Similarly, if the continuing experience and education requirements are not updated by the personnel, the facility can be cited for violations of the MQSA.

(Comment 195). One comment stated that interpreting physicians should be required to pass an annual, documented visual acuity test. In response to this suggestion, FDA notes that while visual acuity is important, there are no standards as to what would constitute acceptable visual acuity. The agency does not believe it is necessary to become involved in those details of physician fitness that are better handled by licensing authorities.

(Comment 196). Two comments stated that training in ultrasound should be required for interpreting physicians as part of the accreditation program.

Under the MQSA, FDA's authority to regulate mammography is limited to radiography of the breast. Therefore, requirements related to ultrasound have not been included in personnel or other facility standards.

(Comment 197). Two comments supported FDA's position that all physicians reading mammograms should be required to meet the same training standards. The comments stated that this is particularly important with regard to locum tenens and that facilities may need to be reminded that their locum tenens should provide all appropriate documentation prior to beginning independent interpretation.

FDA agrees that all personnel are required to meet the same standards regardless of whether they work full or part-time and facilities must make sure that all the personnel at their facility meet the necessary requirements.

The quality standards for interpreting physicians are divided into four sections: Initial qualifications; continuing experience and education; exemptions; and reestablishing qualifications.

Under § 900.12(a)(1)(i), the first qualification for an interpreting physician is a State license to practice medicine.

(Comment 198). Over 50 comments recommended that the proposal be changed to state that all interpreting physicians should be licensed in "the" State in which they practice.

FDA does not believe the proposed regulation should be amended. Although § 900.12(a)(1)(I)(A) requires the interpreting physician to have "a" State license to practice medicine, in the vast majority of cases, State laws require a physician to be licensed in "the" State in which he or she is practicing. If the State in which the mammography facility is located is different from the State that issued the license, a physician may have to meet additional State requirements in order to practice medicine lawfully at that facility. With respect to physicians practicing in Federal facilities, a valid State license from any State is sufficient. However, the Federal employee would be unable to practice outside the Federal facility unless the physician also fulfilled the requirements of that State for the practice of medicine.

Under § 900.12(a)(1)(I)(B), the second initial qualification for interpreting physicians is board certification or 3 months of documented formal training in interpreting mammograms. The training is to include radiation physics (including radiation physics specific to mammography), radiation effects, and radiation protection.

(Comment 199). Over 80 comments stated that all interpreting physicians should be board certified radiologists. The comments stated that being board certified establishes that the person reading the mammogram understands all the basic principles of physics and breast anatomy and that this would ensure the most accurate readings. In contrast, four comments disagreed with the use of specialty board certification as a measure of qualification. These comments generally argued that requiring specialty board certification will adversely affect patient access to

medical services. These comments also stated that many individuals certified by the ABR did not receive formal training in current mammography techniques because their training predated the development of modern mammography standards. One comment stated that individuals certified by ABR before 1989 were not examined in mammography techniques as part of their board certification process and that the oral examination process of ABR certification is highly subjective and influenced by personality and demeanor. The comment also claimed that ABR has awarded board certification through the "Class A" rule, in which favorite candidates were certified without any examination process, and that ABR does not adhere to "due process" by using subjective oral examinations to certify candidates.

In response to criticism of board certification as fulfillment of an initial quality standard, FDA notes that the statute specifically recognizes board certification as one of the mechanisms for meeting a portion of the interpreting physician requirements (42 U.S.C. 263b(f)(1)(D)(I)(I)). In addition, the agency continues to believe that board certification is a valid indication of overall competency. FDA recognizes that some earlier board examinations may not have included testing in mammography. FDA also recognizes that board certification that includes mammography testing cannot ensure the accuracy of outcomes in clinical mammography practices; no training or certification program can guarantee proficiency in all cases. However, board certification is evidence that the physician is knowledgeable in the basics of diagnostic radiology and can serve as a foundation for the additional requirements specific to mammography that interpreting physicians must meet under FDA's regulations. The "Class A" rule referenced in the comments was used in the mid 1930's during the startup phase of the ABR in order to certify those outstanding physicians who were experienced in the field of radiology. This rule has not been used in over 50 years and, since 1940, all candidates have had to take examinations. FDA does not believe that the "Class A" rule has a significant bearing on the radiologists practicing today. While FDA does agree that there is some subjectivity in all tests, the agency is satisfied that the accepted boards represent a valid means of determining general competency. FDA disagrees with the assertion that the boards do not adhere to due process. Formal appeals processes are available to those candidates who wish to dispute a board decision. For all these reasons, FDA believes that board certification must remain an acceptable way to meet a portion of the initial qualifications for mammography personnel.

In response to comments that questioned the validity of permitting physicians who are not board certified to practice mammography, FDA notes that Congress directed FDA to establish an alternative pathway to board certification (42 U.S.C. 263b(f)(1)(D)(I)(III)). FDA believes that the 3 months of documented formal training will ensure that all physicians interpreting mammograms have received an adequate amount of instruction.

(Comment 200). Several comments, including a consensus of NMQAAC, stated that the 3-month training alternative was appropriate, but that the topics, number of hours for each topic, and the qualifications for those teaching these topics should be specified. NMQAAC and others believed that this training should be limited to that obtained in a radiology residency program. Some, including members of NMQAAC, said that the physics training should only be obtained from a medical physicist. One comment suggested that FDA require a minimum of 200 hours of physics training.

After considering all the comments, FDA has concluded that specifying the precise number of hours spent on each topic would be too prescriptive and would curtail the ability of training programs to individualize their curricula. FDA also believes that restricting training to radiology residency programs or, in the case of physics, to training by a medical physicist, would limit adequate training opportunities. FDA's experience under the interim regulations has led the agency to conclude that adequate training opportunities are also available to physicians who are not involved in radiology residency programs.

(Comment 201). Several comments stated that FDA should notify the certifying boards, residency programs, facilities, and personnel of the new requirements so that sufficient training and proper documentation are given to all physicians. One comment suggested phasing in the 3-month training requirement to allow program directors the time needed to adjust their curricula. One comment stated that physicians should be made aware that it is their responsibility to keep track of training and continuing education.

FDA agrees with the general points being made by these comments. The agency has and continues to provide the appropriate boards, programs, facilities, and personnel with the information they need to meet and document the requirements of the MQSA. Programs should have an adequate amount of time to adapt to the new requirements, which will not go into effect until 18 months after publication of this rule.

(Comment 202). Several comments suggested that 2 months of documented formal training in the interpretation of mammography, the current requirement under the interim regulations, is more than sufficient and that the increase to 3 months was excessive. One comment proposed that the 3 months be reduced to 2 months for those who have been reading mammograms consistently for 5 years or more. Another comment suggested that individuals who have qualified under the interim regulations should not be required to reapply or provide further documentation beyond that which was previously submitted to FDA.

FDA has received advice from NMQAAC, AHCPR, and others that 2 months of training for new physicians is insufficient to cover all the required topics. AHCPR has advocated 4 months of training. FDA believes that the increase from 2 to 3 months is appropriate and can be instituted by residency and other training programs without undue burden. As explained below, interpreting physicians who began independent interpretation under the interim regulations are considered to have met the initial qualifications under the final regulations. There will be no need for them to reapply or supply additional documentation to FDA. Also, because the 3-month requirement applies only to new interpreting physicians, anyone with the suggested 5 years of consistent experience should have qualified previously under the interim regulations.

(Comment 203). One comment stated that any physician who is not a radiologist should be required to demonstrate competency in mammography through an examination, in addition to the training requirements.

FDA declines to accept this suggestion. The agency has concluded, as discussed earlier, that adequate training programs can ensure that an interpreting physician has skills to practice mammography, regardless of his or her initial specialty. In addition, FDA agrees with the many public comments the agency received concerning the difficulties associated with physician competency testing as a qualifying method. At the present time, a suitable test to judge the competency of interpreting physicians does not exist. This may become an option in the

future, but until it does, training requirements appear to offer the most satisfactory method of establishing quality standards.

(Comment 204). One comment recommended that all interpreting physicians be urged to meet exactly the same criteria without regard to board status. The comment suggested that the original alternative pathway established by the interim regulations, 2 months of documented training in interpreting mammograms, 40 hours of CME in mammography, and 15 hours of Category I CME per 3-year period, should be required for all interpreting physicians, even those who are board certified.

In response to this comment, FDA notes that the MQSA establishes an alternative rather than a cumulative requirement in this matter. While FDA always encourages individuals to strive for excellence by exceeding the requirements, either of the two pathways (board certification or 3 months training) will be sufficient training to meet this portion of the initial requirement. All interpreting physicians, including those who are board certified, are required to comply with the initial and CME requirements. This has been true under the interim regulations and will continue to apply under the final regulations.

The third initial requirement for interpreting physicians, § 900.12(a)(1)(i)(C), is 80 hours of documented medical education in mammography, including instruction in the interpretation of mammograms and education in basic breast anatomy, pathology, physiology, technical aspects of mammography, and quality assurance and QC. Unlike the proposed rule, the final regulation requires that all 60 of these credits be Category I CME. At least 15 of these 60 Category I CME hours must have been acquired within the 3 years immediately prior to qualifying as an interpreting physician. Hours spent in residency specifically devoted to mammography will be considered as equivalent to Category I CME and will be accepted if documented in writing by an appropriate representative of the training institution. The specific mammographic modality training requirement that was included in the proposed rule (61 FR 14907) has been deleted from this part of the final regulations because it is duplicated in § 900.12(a)(ii)(C).

(Comment 205). Several comments agreed with § 900.12(a)(1)(I)(C) as originally proposed, while others, including NMQAAC, maintained that all 60 hours of credit should be Category I in order to provide consistency in the quality of the training. Several comments recommended that the number of hours spent in each subject be specified. Many comments said that the 40 hours already required by the interim regulations are sufficient and that raising the number to 60 would have a negative impact on cost and the availability of mammography services. Several stated that Category II credit is just as educational as Category I and should be allowed. One comment questioned the value of CME requirements generally, stating that most of what is said at conferences and courses is repetitive.

FDA disagrees with the comment questioning the usefulness of CME. The agency believes that 60 hours of training is in keeping with current trends in training and the emergence of new technologies. Because this expanded requirement will apply only to new interpreting physicians and time spent in residency specifically devoted to mammography will be accepted toward meeting this requirement, FDA does not believe that the number of hours required will have a negative impact on availability of services. FDA has been persuaded by the comments and its experience under the interim regulations that all 60 hours should be Category I. Category I CME credits are generally those that offer more formal training and provide a solid basis for the ongoing maintenance and growth of the interpretive skills of the physician. While Category II hours may be useful, the variability of such education and the difficulty in documenting such training convinced FDA to strengthen the requirement by making all 60 hours Category I. FDA has not specified the number of hours required to be spent in each subject because the agency believes that this would be too restrictive and would limit the ability of physicians and programs to individualize training.

(Comment 206). Three comments recommended that FDA clarify that the persons providing this training be in active practice and individually fulfill these qualifications.

FDA disagrees with these comments. It is not necessary for all of the persons providing the training to meet the qualifications of interpreting physicians. For example, those teaching basic breast anatomy, pathology, or physiology do not have to be interpreting physicians to provide expert instruction in those subjects.

(Comment 207). One comment asserted that 40 or 60 hours of training does not qualify someone to read a mammogram.

In response to this comment and others that questioned the clinical value of any particular requirement, FDA agrees that 60 hours of training alone does not qualify a physician to read a mammogram. However, this is only one of a series of requirements; the combination of requirements relating to training, experience, and continuing education is intended to provide assurance that those interpreting mammograms meet baseline quality standards.

The final initial qualification relates to experience reading mammograms. Section 900.12(a)(1)(I)(D) requires the qualifying physician to interpret or multi-read at least 240 mammographic examinations within the 6 months immediately prior to the date that the physician qualifies as an interpreting physician. This interpretation or multi-reading shall be under the direct supervision of an interpreting physician. The intent of this requirement is to demonstrate recent supervised experience before the physician begins to interpret mammograms independently. Although the language has been clarified, this requirement is essentially unchanged from the proposal.

(Comment 208). Several comments misinterpreted the proposed requirement to mean that interpreting physicians would have to interpret 240 studies under direct supervision any time he or she changed facilities.

That interpretation is incorrect. This is an initial requirement for the individual prior to beginning practice as a new interpreting physician and is independent of the number of facilities at which the physician works.

(Comment 209). Two comments suggested that the requirement to interpret 240 mammograms under direct supervision should be revised to be 240 within the last 2 years of training prior to qualification as an interpreting physician. The comments stated that the requirement of 240 mammograms in the last 6 months of training is virtually impossible for any residency program with more than 6 residents in any postgraduate year.

FDA agrees. Both the proposal and the final rule include a provision that allows residents to meet this requirement in the last 2 years of their radiology residency programs if they become appropriately board certified at the "first allowable time." See discussion of § 900.12(a)(1)(iii)(B) that follows.

(Comment 210). One comment asked for clarification concerning the 240 mammograms that a physician must interpret for initial training. The comment wanted to know if two readings of a mammogram can be counted as two interpretations.

Multi-reading, as defined in § 900.2(ff), allows two or more physicians to read the same mammogram and each may count it as one interpretation. However, one physician may not read the same mammogram twice and count it as two separate interpretations.

(Comment 211). Several comments stated that physicians should be given a document stating the number of mammograms read after completing residency training. This would assist the facility in making sure physician requirements are met.

FDA agrees that this is a good idea and has and will continue to inform residency programs of the benefits of such a policy. However, FDA does not regulate residency programs and cannot require that such programs provide this documentation.

(Comment 212). Several comments recommended that the supervised interpretation required for initial qualification be performed under someone qualified to teach interpretation. NMQAAC recommended that this training be obtained in a radiology residency program.

While the majority of interpreting physicians will receive this training in their residency program, FDA believes that restricting such training to only those in radiology residency programs would unnecessarily limit the availability of adequate training opportunities. As previously discussed, FDA's experience under the interim regulations has led the agency to conclude that adequate training opportunities exist outside of radiology residency programs.

Section 900.12(a)(1)(ii)(A) is the first of the requirements established to ensure that interpreting physicians, who have met initial requirements, maintain their qualifications as they practice mammography. Under this requirement, in order to continue to qualify under the MQSA rules, interpreting physicians are required to have interpreted or multi-read at least 960 mammographic studies in the previous 24 months. Although the wording has changed somewhat from the interim and the proposed final rules, there has not been a substantial change in this requirement. The proposal has been amended so that a total of 960 examinations have to be interpreted in the previous 24 months instead of the previous formulation of an average of 40 examinations per month over 24 months. This requirement continues to provide flexibility to physicians who find they need or want to interrupt their practice for periods of time for personal or professional reasons (e.g., maternity, illness, sabbaticals). The wording has also been revised to clarify that the 24 months can be measured in any of the following ways: From the date of the annual inspection of the facility at which the interpreting physician works; from the last day of the calendar quarter immediately preceding the annual inspection date; or from any date in between the two. These options will ease the paperwork burden on the facility and allow the facility to gather and monitor this information in a more efficient manner. For example, rather than tabulate daily or monthly totals, the facility may wish to tabulate this data only at the end of the quarter prior to the next expected annual inspection. FDA strongly recommends that facilities use the same tabulation method and the same option for determining the 24-month period for all of their personnel for simplicity and to help achieve consistency within the facility. However, this is not required.

(Comment 213). Ten comments stated that diagnostic radiology graduates who pursue a fellowship in a field other than mammography face a difficult situation and will unnecessarily burden supervising physicians when they resume mammographic interpretation at the end of these fellowships. The comments stated that interpreting physicians who meet the requirements for 2 months training during residency and pass the certifying board exams have been adequately educated, and their interpretations do not need to be supervised when they resume reading mammograms.

FDA disagrees and has received advice from many groups, including NMQAAC, that continuing experience is a necessary requirement to help ensure the accuracy of mammographic interpretation. FDA believes that it is in the best interest of the patient for physicians who have not interpreted the required number of studies in the previous 24 months to be supervised prior to independent interpretation. This requirement applies equally to radiology fellows who have been outside the practice of mammography as well as to interpreting physicians who stop practicing for a significant period of time.

(Comment 214). FDA received 17 comments addressing the issue of interpreting an average of 40 mammographic examinations per month. Of these, 7 agreed with the proposal or recommended a higher number of examinations, while 10 asserted that the requirement was unnecessary, or that the number was too high and would adversely effect low volume or rural facilities.

FDA believes that all women, including those in rural areas, are entitled to the same quality of care. The agency cannot support lower standards for particular facilities. The agency also believes that it will not be difficult for most physicians to meet this continuing qualification, even for those in rural areas. The agency also wants to clarify that this is a physician requirement, not a facility requirement. Interpreting physicians who provide services to low volume facilities can interpret films at more than one facility to attain the required number of examinations. Multi-reading of images previously interpreted by another physician is also accepted as a way of meeting this requirement. However, the physician may not count interpretation of the same mammogram more than once. Currently, under the interim regulations, multi-reading is being used successfully by some interpreting physicians to meet this requirement. For all of these reasons, the agency believes this requirement will not cause a mammography access problem.

FDA recognizes that numbers alone cannot guarantee competency, but believes that the experience a radiologist accumulates through interpreting a certain minimum number of studies is a necessary aspect of the qualification process. In § 900.12(f), FDA has issued requirements for the establishment and implementation of a medical outcomes audit for individual physicians. When used properly, this type of monitoring can further improve the reliability, clarity, and accuracy of interpretation of mammograms.

(Comment 215). One comment stated that FDA should not set a maximum number of films that can be read by an interpreting physician.

FDA agrees. There is nothing in the MQSA or the regulations that establishes such a limit.

Section 900.12(a)(1)(ii)(B) requires interpreting physicians to further maintain their skills by teaching or completing at least 15 Category I CME credits in mammography in the previous 36 months. This training must include at least six Category I continuing education credits in each mammographic modality used by the physician. As with the continuing experience requirement, FDA has modified the language of the proposal to allow facilities greater flexibility and efficiency in tabulating this data for interpreting physicians working at the facility.

(Comment 216). Seventeen comments raised questions about CME in

technologies that do not fall within the scope of the MQSA, such as ultrasound or MRI. These comments asked whether 6 hours of CME in each of these breast imaging applications is required and, if not, can such continuing education in these technologies nevertheless be used to satisfy the CME requirements. Two comments suggested further clarification of what activities are acceptable as CME.

Because these technologies are outside the scope of the MQSA, there is no requirement for a physician to have continuing education in them in order to qualify under the MQSA. CME in such technologies may, however, be applied to fulfill a portion of the continuing education requirement if that continuing education is likely to aid the physician in the understanding of mammographic breast cancer detection. CME in ultrasound and MRI of the breast would fall into this category and could be used to fulfill a portion of the continuing education requirement.

(Comment 217). Several comments supported the requirement for interpreting physicians to obtain at least 15 Category I CME every 3 years. Others asserted that there was no clear basis for the requirement. One comment stated that the interim rule requirements regarding completion of CME are unnecessarily bureaucratic because one's knowledge does not suddenly expire with an arbitrary deadline. Two comments maintained that the cost and number of man-hours required by these regulations is a serious burden, particularly considering that there is no scientific evidence that these efforts will result in improved medical care. Another comment indicated that training in each mammographic modality is already part of training programs and, for the vast majority of individuals, training is unnecessary because they have been providing services in these modalities for many years. This comment and others asserted that requirements for additional documentation of continuing education is unnecessarily burdensome for physicians who can demonstrate that they have completed an accredited program and have appropriate certification.

FDA has been advised by NMQAAC and professional organizations, such as ACR, that continuing education is necessary in order to maintain skills in an ever changing field of medicine. The agency agrees and notes that the statute, 42 U.S.C. 263b(f)(1)(D)(ii), establishes a general requirement for continuing education. FDA has required that the credits be Category I CME in order to ensure that continuing education is more formal, can be documented, and contributes to the development of the professional skills of the physician. FDA believes that there are many avenues for obtaining this education and that the cost and man-hours required will not be overly burdensome on physicians. This requirement, as it relates to timeframes for monitoring compliance, has been modified from the proposal in a manner similar to that for continuing experience. This change will clarify that facilities need not update CME for physicians on a daily or monthly basis. FDA has evaluated many different scenarios for use as averaging periods and reviewed this particular issue with NMQAAC.

(Comment 218). Several comments recommended that CME be averaged over a fixed 3-year period rather than on any given day. FDA notes that under a fixed 3-year period, physicians could acquire CME credits at the beginning of one period and at the end of the next, resulting in a span of almost 6 years in which the physician had not received any CME.

FDA has concluded that the present floating 36-month period is more likely to contribute to quality mammography. A floating 36-month period eliminates the possibility that physicians will go for extended periods of time without continuing education. At the same time, it still permits physicians to devote their time to longer courses, when they are available, and to update their CME when the best opportunities for training arise, regardless of when that offering is made within the 36-month period.

(Comment 219). One comment recommended that interpreting physicians be tested every 2 years to keep up to date with all changes in the discipline.

FDA believes that, at the present time, there is no adequate proficiency test to judge the continuing competency of interpreting physicians. For the foreseeable future, continuing experience and education requirements appear to offer the most satisfactory method for establishing compliance with these personnel standards.

(Comment 220). One comment requested stricter control over acceptable ways for an interpreting physician to obtain continuing education units in mammography. The comment claimed that interpreting physicians who do not attend actual view box classes, but get their CME from a syllabus, have higher call back rates on films that they interpret. The comment recommended that all interpreting physicians be required to attend actual hands-on training seminars.

FDA disagrees with this comment. After discussion with NMQAAC, the agency believes that limiting continuing education to hands-on training would greatly restrict the ability of many interpreting physicians to obtain such training, without providing a documented corresponding benefit. FDA believes that syllabi and other types of training can be as beneficial as hands-on training.

(Comment 221). Several comments, including some from NMQAAC, indicated that a better definition of modality was needed. In order to reduce any confusion, the term "modality" has been changed to "mammographic modality" to emphasize that the term does not refer to nonmammographic techniques, such as ultrasound or MRI, that may be used to examine the breast.

Several comments stated that the requirement for six Category I CME credits in each mammographic modality is impractical and recommended that the continuing education qualification be left at 15 Category I credits in breast imaging, as required under the interim regulations. The comments went on to say that radiologists do more than just breast imaging and that, in any case, breast imaging courses do not list their credits by mammographic modality.

FDA believes that the requirement for six Category I CME credits in each mammographic modality used by the interpreting physician is consistent with the goal of maintaining expertise. At the present time, there are only two mammographic modalities available, film screen and xeromammography. More than 99.5 percent of facilities are using only one mammographic modality, namely film screen. Currently, because there is only one mammographic modality generally used, this requirement would not create an additional burden for the vast majority of physicians. When digital mammography becomes available, those physicians using both film screen and digital modalities would have to acquire at least six category I CME credits in each of these mammographic modalities over a 3-year period. If three different mammographic modalities become available and all three were used by an interpreting physician, that physician would have to accumulate at least 18 Category I credits in the previous 36-month period, 6 in each mammographic modality. It is true that designation of CME credits in mammographic modalities other than film screen is not commonplace at the present time. However, as courses become available in digital mammography, the number of hours devoted to the new mammographic modality can be documented by the course sponsors. In the meantime, keeping a copy of the program outline listing the lecture titles will serve as adequate documentation for the MQSA inspectors.

Section 900.12(a)(1)(ii)(C) requires that, before using a new mammographic modality in his or her practice, the interpreting physician must have at least 8 hours of training with that mammographic modality.

(Comment 222). Several comments, including those from NMQAAC, supported this requirement, while many others wanted additional clarification or stated that 8 hours was excessive because similar skills are used in all mammographic modalities. Several comments asked how this training could be obtained and documented in light of the fact that CME courses do not presently provide such training or give certificates in such detail.

FDA believes that 8 hours of training in a new mammographic modality is an appropriate baseline. FDA agrees that there is overlap in the skills necessary to interpret studies done by different mammographic modalities. However, there are enough differences to justify this additional education. Before a physician begins to interpret images produced by a particular mammographic modality, the agency believes that the physician should have specific training in the interpretation of such images. Until new mammographic modalities become widely available, there may be a paucity of formal CME courses giving such instruction. FDA recognizes this and, therefore, has not required that this be Category I CME. This will allow other entities, such as equipment manufacturers, to supply the initial training. In this way, physicians and other personnel will be able to obtain the required 8 hours of training from sources intimately associated with the new equipment they will be using. Formal category I CME courses will also be accepted. As mentioned previously, for those courses that do not list the CME by mammographic modality, the program outline can serve as documentation of how much time was spent in the new mammographic modality.

(Comment 223). Many comments interpreted this requirement to mean that physicians must receive 8 hours of CME credit in xeromammography, which is now used very infrequently. These comments misinterpreted this requirement, which applies only when a physician begins using a mammographic modality in which he or she has not been previously trained.

Because xeromammography is seldom used today, it would be extremely unlikely for an interpreting physician to begin using this mammographic modality for the first time. It would only be in this unlikely circumstance that the interpreting physician would have to obtain 8 hours of xeromammographic training.

(Comment 224). One comment suggested that, in addition to this requirement, the physician should also be required to interpret a specified number of mammograms from the new modality under the supervision of a qualified interpreting physician before independent interpretation.

FDA does not support this additional requirement. While supervised interpretation might benefit interpreting physicians who begin using a new modality, the agency does not believe this qualification needs to be mandated for physicians who are already experienced in interpreting mammograms through another mammographic modality. Such a requirement could hinder the introduction of new mammographic modalities by raising the cost of initial training and significantly reducing access.

With the concurrence of NMQAAC, § 900.12(a)(1)(ii)(D) was added to the final regulations to clarify that CME earned by teaching a particular course could be counted only once towards the 15 credits for an interpreting physician under § 900.12(a)(1)(ii)(B).

Section 900.12(a)(1)(iii) establishes exemptions from certain personnel requirements for interpreting physicians in specific cases. Section 900.12(a)(1)(iii)(A) exempts physicians who qualified under the interim regulations from the new and additional initial requirements in § 900.12(a)(1)(i): The additional month of training for physicians using the alternative pathway; the additional 20 hours of CME; and the requirement that 15 Category I CME credits must have been acquired in the 3 years immediately before qualifying as an interpreting physician.gi11(Comment 225). One comment opposed "grand parenting" of interpreting physicians who qualified under the interim regulations because of the "minimal standards" required under the interim regulations. Another comment agreed with the regulation as written.

In order to ensure continuing and uninterrupted availability of mammographic services and because FDA's inspections over the past 2 years do not demonstrate problems with these physicians, FDA is permitting those interpreting physicians who qualified under the interim regulations to continue to interpret mammograms, provided that they maintain the continuing experience and education requirements in § 900.12(a)(1)(ii). As discussed in connection with other personnel requirements, the agency has determined that qualifying standards should be raised as new personnel qualify in the future because of increasingly complex and changing technologies. The agency has also concluded that the need for continued availability of services, fairness to practicing personnel, and the compliance record of facilities with the MQSA over the past years justify permitting personnel who qualified under the interim regulations to continue to practice. FDA believes the final rule strikes the proper balance among these considerations and is in the best interest of the public health.

Section 900.12(a)(1)(iii)(B) establishes another exemption in response to concerns raised by members of NMQAAC and others that the initial experience requirement in § 900.12(a)(1)(i)(D) may pose a problem for residency programs that schedule mammography rotations earlier than the final 6 months in the residency program. Instead of requiring the initial reading experience to be completed in the last 6 months prior to initial qualification, this provision has been amended to permit some residents to satisfy the requirement by having interpreted at least 240 mammographic examinations under the direct supervision of an interpreting physician in any 6-month period during the last 2 years of the residency. This exemption is available only to those residents who successfully become board certified at the "first allowable time," which means the earliest opportunity provided by an eligible certifying board. The physician who qualifies for this exemption would become responsible for fulfilling the continuing education and experience requirements of § 900.12(a)(1)(ii) beginning on the date of that physician's board certification in diagnostic radiology, provided the other initial requirements are satisfied. If the physician does not become board certified at the first allowable time by the certifying board, the exemption does not apply and the physician must interpret 240 mammographic examinations under the direct supervision of an interpreting physician within a period of 6 months immediately prior to initial qualification as an interpreting physician.

(Comment 226). Several comments said that this exemption was still too restrictive and recommended that the

requirement be expanded to allow reading at any time during the residency, rather than within the final 2 years. Some believed the requirement was too stringent because the exemption was available only to those residents who became board certified at the "first allowable time." One comment asserted that residents who did not pass the boards at the first allowable time were no less qualified to perform mammography than the resident who successfully completed the boards, unless the physician failed the mammography section.

After considering these comments, FDA has concluded that the final regulations provide sufficient flexibility. The exemption permits residents to interpret the required number of mammograms in any 6-month period during the last 2 years of their residency program, as long as they become board certified the first time they are eligible. This allows residency programs flexibility in scheduling their residents and prevents the scenario of having all senior residents doing their mammography rotation during the same 6-month period. FDA believes that mammography interpretations performed more than 2 years before completion of a residency program are not recent enough to qualify as initial experience, even in the situation where residents become board certified at the first allowable time. FDA expects that the 2-year time period will allow participants in virtually all residency programs to comply with the regulation. A baseline standard in general radiology would be ensured by the fact that residents qualifying for this exemption would have passed their certification boards, including the mammography section. Those residents not successfully completing their board certification at the first allowable time would not be eligible for this exemption.

(Comment 227). Several comments stated that this exemption should be revised to allow an individual completing a radiology residency program and progressing on to a 1-year fellowship to qualify under § 900.12(a)(1)(iii)(B).

FDA disagrees and believes that meeting the initial requirements and qualifying for this exemption is independent of any additional training the individual may obtain. As discussed previously in connection with continuing experience requirements, FDA believes it is in the best interest of public health that interpreting physicians, including radiology fellows who have been outside the field of mammography, have relatively recent experience before beginning or resuming independent interpretation.

Section 900.12(a)(1)(iv) provides a method for physicians to reestablish their qualifications as interpreting physicians in the event they do not maintain the continuing experience or education requirements. Section 900.12(a)(1)(iv)(A) requires the physician who has failed to meet the continuing experience requirement to interpret or multi-read either 240 mammographic examinations or enough mammographic examinations to bring the physician's total up to 960 for the prior 24 months, whichever is less. These interpretations shall be under the direct supervision of an interpreting physician and occur within the 6 months immediately prior to resuming independent interpretation. This section was modified from the original proposal to be consistent with policies that have been successfully implemented under the interim regulations to deal with physicians who need to reestablish their qualifications.

Section 900.12(a)(1)(iv)(B) requires physicians who have not maintained the continuing education requirement to obtain a sufficient number of Category I CME credits in mammography to bring their total up to the required 15 credits in the previous 36 months. A physician who fails to maintain continuing experience or education requirements may not serve as an interpreting physician until he or she reestablishes those qualifications.

(Comment 228). Two comments stated that there should be a penalty for physicians who do not meet the requirements in the appropriate timeframe.

FDA believes that temporary disqualification from independent interpretation is the most effective and appropriate penalty in these situations. The purpose of the regulations is to ensure that personnel meet baseline standards. Under the final regulations, physicians who do not maintain the required number of interpretations or earn the necessary CME credits must cease independent interpretation of mammograms until such time as they complete a sufficient number of supervised interpretations or CME to meet the requirements. This is the best way to protect the public health. FDA disagrees with the comment that the physician should be penalized in some additional manner for not having maintained the continuing requirements.

c. *Radiologic technologists § 900.12(a)(2)*

FDA's interim and final regulations for radiologic technologists performing mammography both seek to ensure that technologists: (1) Possess adequate general qualifications for performing radiologic examinations; (2) possess adequate specific qualifications for performing mammography examinations; and (3) maintain these qualifications over time. The changes from the interim regulations to the final regulations were primarily clarifications with some additional requirements to address concerns that became apparent as the interim regulations were implemented. In response to comments on the proposed rule, a number of changes have been made. A "grand parenting" provision has been added to qualify those technologists who met the interim requirements as fulfilling the initial training and experience requirements of the final regulations. The final regulations also relax the requirements that had been proposed for training specific to imaging patients with implants and reduce the number of supervised examinations that have to be performed as part of the initial requirements and to "requalify" in cases where the continuing experience requirement has not been met. The following changes are discussed in connection with the specific provisions.

The general issue that drew the most comments was the question of whether a "grand parenting" clause should be added for presently practicing technologists.

(Comment 229). Over 30 comments urged that technologists who met the qualification requirements of the interim regulations should be deemed to meet those of the final regulations. An additional six comments urged that technologists who have earned the advanced certificate in mammography from the American Registry of Radiologic Technologists (the ARRT(M)) should be accepted as meeting the final regulations.

(Comment 230). Three comments recommended that either 40 hours of training or 20 hours and the ARRT(M) be the basis for grand parenting, while another comment urged that "years of experience" be the basis for grand parenting. Members of NMQAAC also recommended the addition of a limited grand parenting provision. Specifically, NMQAAC recommended limiting grand parenting to technologists who met the initial training requirements of the interim regulations by receiving 40 hours of training or earning the ARRT(M) (two of the several options that FDA had accepted under the interim regulations) and who had also performed at least 100 examinations.

Many comments expressed concern that, without grand parenting of present technologists, there would be no one qualified to practice under the final regulations without more training. The comments asserted that these training demands would be expensive, disrupt facility routine, and overwhelm the training resources available to technologists. Some of the comments further argued that there would be no one qualified to provide this training.

The agency has been persuaded by the comments it received and the advice of NMQAAC that "grand parenting" provisions should be added to the technologist requirements. Under the final regulations technologists who have met the requirements of § 900.12(a)(2) of the interim regulations by the effective date of the final regulations will be considered to have met the initial mammography training and experience requirements in the new regulations. Section 900.12(a)(2)(ii) of the final regulations has been revised to reflect this. This change will achieve consistency with grand parenting provisions already existing for the other personnel groups. Although FDA believes that there are many technologists presently practicing who will meet the requirements of the final rule, this change will ensure that there will be an adequate number of qualified personnel to perform examinations and teach new technologists after the final regulations become effective.

FDA did not extend this grand parenting to the continuing education and experience requirements of § 900.12(a)(2)(iii) and (iv). Because these are ongoing requirements intended to ensure that technologists keep their skills sharp and their knowledge up-to-date, past qualifications can not be used to meet these requirements. Similarly, FDA did not include the general licensing or certification requirement established by § 900.12(a)(2)(i) as a qualification that could be grand parented. Because the license or certificate has to be renewed on a periodic basis, fulfilling this requirement in the past cannot justify exempting technologists from the need for future renewal.

On the other hand, FDA has declined to adopt the limitations on grand parenting proposed by NMQAAC. Under the interim regulations, FDA has accepted a number of ways for technologists to meet the initial mammography qualifications. Successful completion of 40 hours of training or the ARRT(M), the exclusive methods recommended by NMQAAC, are only two of these ways. Other ways technologists have been accepted as meeting the initial training requirement include obtaining a mammography certificate from the States of California, Arizona, and Nevada and successfully passing a comprehensive training course that is less than 40 hours in length but meets other rigorous criteria. Still other technologists have been accepted as qualified after a case-by-case evaluation of their qualifications. FDA estimates that as many as several thousand technologists might be disqualified if the NMQAAC recommendation was accepted, creating a potentially serious impact on access to mammography, and individual hardship. FDA has no evidence to indicate that these technologists as a group are performing inadequately and, therefore, has retained them within the scope of the grand parenting provision.

The requirements of § 900.12(a)(2)(i) are intended to provide some assurance that the radiologic technologist is qualified to perform radiologic examinations.

(Comment 231). Two comments supported this requirement as written; but others suggested various changes.

Over 20 comments stated that technologists should be required to be licensed in "the" State in which they were practicing or, at least, if they met § 900.12(a)(2)(i) through a State license, that it should be a license in "the" State of practice. A related comment suggested that FDA require technologists to meet State requirements that are as stringent as FDA's.

FDA has not accepted the suggestions made by these comments for a number of reasons. First, the statute provides that technologists be given a choice between State licensure or certification by a professional body (42 U.S.C. 263b(f)(1)(C)(i)) and the law also requires that the license be from a State, not "the" State of practice. FDA can not limit the choices established by the statute and notes, in addition, that some States do not have technologist licensure. FDA also believes it to be beyond the authority conferred upon it by the MQSA to stipulate State licensure requirements.

(Comment 232). One comment recommended that there should be national licensing of mammography technologists.

FDA does not believe that the MQSA contemplated the establishment of a national licensing requirement to replace State standards and procedures. The statute's specific reference to State licensing as an alternative requirement supports this conclusion (42 U.S.C. 263b(f)(1)(C)(i)(I)).

(Comment 233). With respect to certification, one comment urged that the general certification be limited by regulation to that of ARRT.

FDA agrees that ARRT general certification meets the requirements of § 900.12(a)(2)(I) and, in fact, this is presently the only certification accepted by the agency for this purpose. However, as discussed in the proposal, FDA does not want to codify a list of eligible certifying bodies because that will restrict its ability to add or delete organizations in a timely manner (See 61 FR 14900).

(Comment 234). Two comments suggested that FDA require certification bodies to establish a special mammography certification program based upon 6 months of training as an alternative to the general certification or licensing requirement.

FDA does not believe that this is necessary. Certification bodies are free to establish alternative programs and expand existing ones and FDA will evaluate such programs on a case by case basis. However, the increased level of training contemplated by this suggestion may not justify the cost. Similarly, although FDA believes that the suggestion in another comment that technologists be required to watch radiologists read films 8 hours every 6 months to improve "rapport" may be useful training, FDA has no evidence that the expected benefit would warrant mandating such a requirement.

The provisions of § 900.12(a)(2)(ii) are intended to provide some assurance that technologists possess adequate qualifications specific to mammography before beginning to perform mammography examinations.

(Comment 235). One issue related to these requirements drew several hundred comments, the largest number received on any part of the proposed regulations. This issue was the value of earning the ARRT(M) in meeting the specific mammography requirements for radiologic technologists. Unfortunately, over 80 percent of these comments, consisting primarily of multiple copies of 8 or 10 similar form letters, were based on a misunderstanding conveyed by an article in a journal that is widely distributed to mammography facilities. Many comments were based on an impression gained from this article that, because the ARRT(M) was not mentioned specifically in the regulations, it would have no weight in meeting the requirements. Some comments even indicated a belief that FDA would somehow "take away" the certification that the authors of the comments had worked so hard to obtain.

The authors of these comments unfortunately did not understand that the ARRT(M) has been given great weight under the interim regulations as

evidence that the technologist is adequately qualified, even though it is not mentioned explicitly in those regulations. In fact, none of the large number of certificates or training programs that FDA has accepted to meet part or all of the personnel training requirements are mentioned in the interim regulations. FDA, moreover, stressed in the proposed regulations that the agency has "recognized the value of training hours required for ARRT special certification" and intends to continue to do so (61 FR 14094). Specific mention of a credential in the regulations is not necessary for acceptance and, as discussed earlier, the agency has concluded that codifying particular organizations or programs will hamper the agency's ability to evaluate training programs on a case-by-case basis and to make timely changes in the acceptance of such training (61 FR 14900, 14904).

FDA regrets the distress this misunderstanding has caused many technologists and has contacted as many of the authors of these comments as possible to ease their concerns over the issue. The agency also has offered to work with the journal and the author of the article to ensure greater accuracy in future articles on the MQSA requirements. The journal has published the FDA correction of the article in an attempt to dispel this misunderstanding.

(Comment 236). Some of the comments received about the ARRT(M) made specific suggestions as to what type of recognition it should receive. Nearly 150 comments expressed the opinion that the ARRT(M) should be required of all technologists doing mammography, while over 40 more stated that it should be required in association with other training.

While FDA recognizes the great value of the ARRT(M) and intends to continue to accept it towards meeting the 40-hour requirement for radiologic technologists, the agency will not designate that particular certificate as a required or exclusive standard. FDA has no basis for establishing the ARRT(M) as the only way of demonstrating training in mammography. Furthermore, before a technologist can earn the ARRT(M), she or he must first earn general certification from the ARRT. The MQSA establishes that technologists have two alternative routes for general radiologic training: Either State licensure or certification by an approved professional group (42 U.S.C. 263b(f)(1)(C)(i)). If FDA were to require the ARRT(M), it would effectively eliminate the State licensure route to general qualification, in contradiction to the statuary provisions.

(Comment 237). Over 50 comments urged that the ARRT(M) be accepted as an alternative to the 40 hours of training required by § 900.12(a)(2)(ii). This also was the recommendation of NMQAAC members at the January 1997 meeting, although at earlier meetings NMQAAC had recommended that the ARRT(M) be accepted as equivalent to only 20 hours of training. One comment questioned the value of the ARRT(M), based on the opinion that the examination that must be passed to receive the ARRT(M) was not sufficiently specific to mammography.

FDA will not accept the ARRT(M) in lieu of the 40 hours of training required by § 900.12(a)(ii). The ARRT itself has recognized earning the ARRT(M) as equivalent to 24 hours of training. FDA does not have a basis for disagreeing with this evaluation by the sponsoring organization and, in most circumstances, intends to evaluate the ARRT(M) as equivalent to 24 training hours. FDA also notes that the performance of clinical examinations is a required component of the 40 hours of training required under § 900.12(a)(2)(ii) of the final rules. FDA has been informed by members of NMQAAC and others that technologists can and do pass the test for receiving the ARRT(M) without having performed any mammography examinations. For these reasons, although FDA did accept the ARRT(M) as meeting the interim regulation requirement to have training "specific to mammography," and will continue to do so until the effective date of the final regulations, the ARRT(M) will not be considered equivalent to the final requirement of 40 hours of training, which must include the performance of examinations.

(Comment 238). Over 100 comments urged that the ARRT(M) be accepted as meeting at least part of the 40-hour training requirement of § 900.12(a)(2)(ii). Another 27 comments made suggestions for the number of hours for which it should be accepted, with the numbers varying from 5 to 30 hours.

FDA agrees that the ARRT(M) is acceptable for meeting part of the training requirement. Also, as already noted, the agency intends to accept the ARRT's estimate of the amount of training represented by its approved programs, unless there is evidence, now or in the future, that such acceptance is not warranted. Thus, the ARRT(M) ordinarily will be accepted as meeting 24 hours of the 40-hour training requirement and the agency reiterates that the fact that the ARRT(M) is not specifically mentioned in the regulations does not preclude this acceptance.

(Comment 239). A number of other comments addressed whether 40 hours of training was an adequate and appropriate amount to provide reasonable assurance of quality mammography. Twenty comments stated that it was a reasonable amount. Three comments asserted that the amount of training was excessive or even that training in mammography was not needed. An additional comment was concerned about the impact of the requirement on small facilities.

In response to these comments, the agency notes that training for radiologic technologists specific to mammography is required by the statute. The agency also notes that nearly all technologists who have met the interim regulations, whether at small or large facilities, have already obtained 40 hours of training or close to it without a noticeable adverse impact on the facilities. Some portion of these comments, and seven others, may have been based on the mistaken belief that the 40 hours was required to be in addition to any previous training in mammography. The grand parenting provision, which provides that meeting the interim regulations will qualify individuals as meeting the initial training requirements under the final regulations, should alleviate some of these concerns.

On the other hand, 14 comments stated that 40 hours of training was inadequate. Several of these made suggestions for higher levels of training, ranging up to 480 hours and including the performance of 200 examinations. The preponderance of the comments, however, seemed to support the figure of 40 hours of training. This amount was originally recommended, and is still supported, by NMQAAC. In the absence of any current evidence that 40 hours of training are insufficient, FDA believes that no change needs to be made in this number of hours.

(Comment 240). A number of comments addressed instructor qualifications. Concerns mentioned earlier, namely, that there would be no qualified instructors, have been addressed in part by the grand parenting provision. Thirteen other comments asked for more clarification as to who would be a qualified instructor or suggested listing specific categories of individuals who would be qualified.

FDA believes that the new definition of qualified instructor in § 900.2(oo) will address these concerns. Because of the wide variety of individuals who have expertise to provide the various segments of the technologist training, the agency wrote this definition with

the goal of describing certain groups that can be identified as qualified at this time, while retaining the flexibility to accept other individuals on a case-by-case basis.

(Comment 241). Three comments urged that the training be required to be Category A, but another comment said that such a requirement would make it difficult for a facility to find courses to qualify new technologists.

NMQAAC also did not reach a consensus on this issue. Although FDA has decided to accept only Category I training as meeting the interpreting physician requirements, the agency does not believe that a similar step is needed in the technologist area. In contrast to the situation with physician Category I and II training, the distinction between Category A and B is based upon whether or not prior approval by a recognized group has been obtained, not on the type of training. Thus, the concerns that led the agency to restrict physician training to Category I do not apply in the technologist situation.

Similarly, FDA does not believe that it is necessary to require the 40 hours of training to be "graduate" training that is taken after the technologist meets the requirements of § 900.12(a)(2)(i), as suggested by one comment. FDA is unaware of any reason to believe that the mammography training received as part of the technologist's basic training curriculum is unacceptable.

(Comment 242). Four comments were critical of the concept of continuing education courses, stating that students "sleep through them" and that they are only "money-makers" for the training providers.

While abuses of these types may exist, FDA believes that the great majority of training providers are sincerely interested in providing training that will improve medical care and that the great majority of students are equally interested in learning as much as possible from their training.

(Comment 243). Another large group of comments addressed the specific requirements included in § 900.12(a)(2)(ii). Nine comments suggested the addition of more subjects to those required to be included in the 40 hours of training. Specific suggestions included technical factors, film evaluation and critique, pathology, mammography of disabled women, and communication with patients. Three other comments supported the proposed inclusion of the topics of positioning and quality assurance.

FDA agrees that the topics suggested, and probably many others, could be valuable components of technologist training. Some, in fact, are subsumed under the topics proposed and finalized under § 900.12(a)(2)(ii)(A). However, the agency's intention was to limit this list in the regulation to only the subject areas most central to the quality performance of mammography examinations in order to maximize flexible and individualized training. FDA has added only imaging of patients with breast implants to the list of required topics, for reasons discussed below. The final regulation includes the words "but not necessarily limited to" to clarify that training in other areas also could be included in the 40 hours as long as the basic areas are covered. The agency intends to make additional information available on training programs and subjects that can satisfy this requirement.

At its January 1997 meeting, NMQAAC reconsidered a recommendation it made earlier and advised that FDA amend the proposed regulations to require the initial experience requirement of § 900.12(a)(2)(ii)(B) to be in addition to the 40 hours of training instead of part of the training, as was proposed. FDA did not receive any other comments making this recommendation. After considering the advice of NMQAAC, the agency has decided to retain the proposed requirement without amendment. FDA's experience in implementing the MQSA over the past years has not provided evidence that the significant increase in the training hours (approximately 50 percent over the proposal) that would result from NMQAAC's recommendation is warranted.

(Comment 244). Several other comments asked for clarification about whether previous training could be counted towards the mammography requirement or expressed concern about current technologists having to repeat their training. As explained previously, under the grand parenting provision that has been added, radiologic technologists who have previously qualified under the interim regulations will be deemed to have met the initial personnel requirements and will not have to repeat training for that purpose.

Section 900.12(a)(2)(ii)(B) requires that performance of clinical examinations under direct supervision of a qualified individual be part of the initial training. This requirement was intended to be parallel to the requirement that existed for interpreting physicians under the interim regulations and was continued for them in the final regulations.

(Comment 245). Eight comments supported this provision, noting that competency comes about by combining didactic training with actual experience and that such a requirement has worked well in the State of Iowa for several years.

A much larger number of comments opposed such a requirement. Eight of those opposing the requirement mistakenly believed that the supervision would have to be done by a radiologist and such supervision was not available in their situation.

Supervision of radiologic technologist examinations by a physician is not required; the new definition of a qualified instructor (§ 900.2(oo)) should help correct this misunderstanding.

(Comment 246). Twenty comments expressed concerns about having qualified supervision, especially in small and rural facilities. The new grand parenting provision that has been added to the final rule for radiologic technologists should solve this problem in areas where a shortage might have occurred.

(Comment 247). Nineteen other comments raised concerns about requiring supervised mammography examinations that related to issues of cost, liability, and patient privacy.

FDA notes that these are all issues that have been faced and successfully resolved by technologist schools nationwide in connection with the clinical training that they provide their students. FDA believes that they are manageable concerns and that any difficulties they raise are outweighed by the benefit of clinical training for radiologic technologists. The agency also notes that the addition of the grand parenting provision will limit this requirement to new technologists wishing to enter the field and that the number of examinations has been decreased, as discussed below.

(Comment 248). Six comments took the position that practical training was not needed. Their authors apparently believed that technologists could learn to adequately perform mammography examinations with only classroom training.

FDA disagrees. In view of the difficulty of performing adequate mammography examination, the agency believes that some clinical experience is vital for initial qualification.

(Comment 249). A number of comments expressed conflicting views on the appropriate number of examinations that should be done as part of the initial training. Twenty-two of these comments expressed the opinion that 50 examinations was too many, due to cost or difficulty of completing that number, or because of a belief that fewer examinations would serve the same purpose. Ten comments,

however, suggested higher numbers, ranging up to 200 examinations.

The question of the number of initial examinations was raised at the January 1997 NMQAAC meeting, but no recommendation was made on the issue. After considering these comments, FDA concluded that reducing the required number to 25 examinations would give the technologist adequate initial experience, while at the same time ease burdens relating to cost and availability of the training.

(Comment 250). A relatively large number of comments were also received on the requirements proposed in § 900.12(a)(2)(ii)(C). These comments focused primarily upon the proposal that all technologists doing mammography should receive at least 5 hours of training in the imaging of patients with breast implants as part of their 40 hours of initial training. Several different issues were brought up with respect to this requirement.

The first issue was whether it was at all necessary to require training in breast implant imaging. Over 30 comments supported this requirement. These comments noted that the training was necessary to perform adequate examinations of women with implants and that having the training would remove the need to have a physician present during the examination. About half of these comments recommended that no specific amount of training be required. Eighteen comments opposed any requirement relating to implant imaging, arguing that technologists were already obtaining such training as part of their initial curriculum, that imaging of women of breast implants did not require special training, and that their facilities conducted so few examinations that such a requirement would be "overkill."

A second issue was whether the training should be required of all technologists, as proposed, or just those who perform examinations of women with implants. One comment supported requiring it of all technologists in order to ensure that no matter what facility a woman with breast implants chose for an examination, she would be examined by a technologist with this training. The NMQAAC took this same position for the same reason. Ten other comments, however, urged that this requirement be limited in some way, with suggestions varying from limiting it to technologists who perform such examinations, to new technologists, or to technologists at facilities that perform a minimum number of examinations of patients with implants per year.

A third issue was whether there was sufficient training available in this area. Approximately 25 comments stated that there would not be sufficient training opportunities available to meet this requirement. A few of these comments supported this position with data from their own experience or surveys of training providers in their area. This position is in contrast with the comments mentioned earlier, which stated that this requirement was not needed because training of patients with breast implants was already routinely being received. The position is also somewhat inconsistent with the 15 comments FDA received from technologists who said that they had received the required training in the past, but might have difficulty providing documentation because their certificates do not specifically state the content of the training.

A fourth issue addressed in the comments was the proper mixture of classroom, video, and practical training. Eight comments stated that video training would have to be permitted because there would not be enough patients available to meet this requirement through clinical training. An additional 5 comments stated that it would probably not be possible to include clinical training. On the other hand, 20 comments emphasized the importance of clinical training and another 12 stated that it should be possible to receive this training in a clinical seminar. However, another comment pointed out that models would be reluctant to undergo the compression required by such training.

The final issue was the amount of training that should be required in imaging patients with implants. Nearly 30 comments expressed the opinion that 5 hours was too much for reasons that included cost and the belief that the necessary knowledge could be conveyed in less than 5 hours. Over 50 additional comments suggested specific and lesser amounts of training. About 80 percent of these comments supported a requirement for 2 hours of training, although some of those supporting 2 hours would also require an additional number of examinations under direct supervision. Several comments also suggested stating the requirement in a different way, for example, as part of a larger number of hours devoted to positioning or in terms of a minimum number of patients.

There were also a number of comments based on misunderstandings of the proposed requirement. Thirteen comments, for example, urged that the 5 hours be part of the general 40-hour training requirement, apparently not realizing that was already proposed. Seven other comments were based on the mistaken belief that implant imaging was a "mammographic modality" and that training in this area would also be required as part of their continuing education.

The training required for imaging patients with implants is part of, and not in addition to, the 40 hours of initial training and that the definition of mammography modality does not include breast implants. The agency expects to issue educational materials to help interpret the final regulations and will further clarify these and similar misunderstandings.

In response to the comments on the five major issues, FDA first notes that the statute requires the agency to establish standards relating to special techniques for mammography of patients with implants (42 U.S.C. 263b(f)(1)(H)). Requiring technologists to be trained in examining such patients is consistent with the statutory requirements. In addition, FDA has received many comments, including advice from NMQAAC, which underscore the necessity for performing such examinations with trained personnel.

The agency also notes that the grand parenting requirement will relieve technologists who met the interim regulations from the need to obtain additional training in the imaging of patients with breast implants. This should alleviate much of the concern that was expressed in comments about availability of training and the overloading of limited training resources. The grand parenting provision also eliminates the possibility that technologists who have been performing such examinations successfully for years but were not formally trained, or who do not have documentation of their training, would have to obtain this training. At the same time, all technologists newly entering the field will have to receive training in imaging of patients with breast implants. FDA believes this requirement strikes the proper balance to ensure that patients are properly examined.

Further, after consultation with NMQAAC, FDA concluded that this training should not be established as a separate requirement, but instead should be included under § 900.12(a)(2)(ii)(A) as one of the topics required to be covered during the 40 hours of training related to mammography. By including imaging of patients with breast implants among these required subjects, FDA ensures that all radiologic technologists being trained for the field of mammography will receive education in this important technique, as required by the MQSA. At the same time, by eliminating any particular hourly requirement, the agency permits maximum flexibility in the amount and type of training received, plus some degree of assurance that the student will be evaluated in this area as part of the formal training process. Radiologic technologists who expect to examine patients with implants on a more frequent basis or facilities that have large numbers of such patients among their clients can increase the training hours in this subject. Conversely, radiologic technologists and facilities with few such examinations can devote training hours to other subjects that seem more beneficial to their practice, as long as the basics of imaging women with implants have been covered adequately. Because the hours devoted to such training are required to be documented contact hours under the supervision of a qualified instructor, a variety of types of training similar to those suggested in the comments could be suitable as long as they meet the criteria of § 900.12(a)(2)(ii)(A).

The second part of proposed § 900.12(a)(2)(ii)(C), which was that at least 8 of the 40 hours must be training with each mammographic modality used by the technologist, received far fewer comments.

(Comment 251). Five comments supported the requirement, although some concern about problems of documentation was expressed. Two comments opposed the requirement, one due to a mistaken impression about the number of modalities for which training would be required, the other because of a desire to leave the facility the flexibility to decide how much training was needed. Fourteen comments wanted the number of hours required per mammographic modality to be reduced.

FDA believes that much of the opposition to this requirement as proposed arises from a misunderstanding of what is meant by mammographic modality. Presently, there are only two mammographic modalities, screen-film and xeromammography, as defined in the regulations. Most technologists use only one or the other and, thus, this requirement has no great impact on them. For those technologists who do, or will, work with more than one mammographic modality, FDA does not believe it is excessive to have at least 20 percent of the total amount of initial training related to each mammographic modality used. Therefore, this part of the proposal has been retained in the final regulations.

The continuing education requirement, § 900.12(a)(2)(iii), was the first of two, along with continuing experience, intended to ensure that the technologists keep their skills and knowledge base up-to-date. The basic requirement proposed was that radiologic technologists have continuing education equivalent to 15 continuing education units in a 3-year period. The amount proposed was unchanged from that established under the interim regulations, but the proposed wording puts the emphasis on the total to be earned in a 3-year period instead of a yearly average.

(Comment 252). Five comments supported the requirement as being flexible and adequate to keep "technologists on top of changes." Three comments opposed it on the grounds that the continuing education requirements of the ARRT were sufficient or that earning the ARRT(M) should excuse technologists from earning continuing education credits.

FDA is aware that the ARRT requires earning 12 credits per year while the proposed regulations require an average of only 15 per 3-year period. However, the 12 per year required by the ARRT continuing education standards can be from any area of radiology and will not necessarily be training in mammography. If the radiologic technologist takes mammography training to fulfill ongoing ARRT requirements, that training can be counted towards satisfaction of the MQSA continuing education standards. Similarly, while earning the ARRT(M) is evidence of a high level of knowledge at the time the test was taken, it does not ensure that the technologist will keep up with changes after that date, which is the primary purpose of continuing education. Thus, FDA cannot excuse technologists from this requirement on the basis that they have met the ARRT continuing education standard or have earned the ARRT(M).

Two additional comments supported the idea of looking back 3 years for the averaging period. Ten identical comments suggested changing the requirement to earning 10 hours every 2 years while two others urged that technologists be required to earn 5 hours of continuing education credit each year.

FDA established the longer time period for averaging continuing education credits to permit and encourage the technologists to take longer and more comprehensive courses as they became available. The agency believes such training may be more valuable than several short uncoordinated courses. Shortening the averaging period to 1 or 2 years would not prevent technologists from taking 15 credit courses, but it might discourage them from doing so due to a reluctance to pay for hours of training that would be beyond those necessary to meet the requirements. Use of a 3-year averaging period also provides greater flexibility in selecting courses that best meet individual needs and minimizes the possibility that a technologist will sign up for a course simply because it was available and the end of the year was approaching.

(Comment 253). Two comments urged that continuing education in implant imaging be specifically required as part of the continuing education for technologists.

In view of the many comments discussed earlier concerning the appropriate amount and type of training needed to successfully image patients with implants and the availability of that training, FDA has concluded that such a specific requirement would be too restrictive.

(Comment 254). A number of comments were received about the number of continuing education units being required. Eight comments asserted that the requirement of an average of 5 units per year would be too great a burden on technologists in rural facilities. On the other hand, one comment suggested increasing the number of credits required to 12 per year and provided further suggestions on the type of training, while another urged the requirement be raised to 10 credits per year.

After considering these comments, FDA has concluded that the 5 unit per year average is reasonable. Twelve units of continuing education per year are required to maintain the ARRT credentials and, at this time, the majority of radiologic technologists practicing mammography have ARRT certification. Because the 5 units required by these regulations can be part of those 12, the final regulation does not establish an excessive requirement. The agency also believes that, in association with the requirement in § 900.12(a)(2)(iii)(D) for extra training if the technologist begins working with a new mammographic modality, an average of 5 credits per year is adequate to ensure that the technologist keeps up-to-date.

(Comment 255). Five comments urged that only Category A training be accepted, while a sixth asked for clarification on that point and a seventh would restrict the training to certain types without reference to category.

For the reasons previously discussed, FDA does not believe that it is necessary

to restrict continuing education credits for radiologic technologists to Category A courses.

(Comment 256). One comment stated that a limit should be placed on the number of times credit could be earned for teaching the same course. NMQAAC, when discussing this issue, recommended that no credit should be given for teaching. FDA recognizes, however, that a great amount of study and learning is required to successfully teach a course, especially the first time it is given. The agency will continue to permit personnel to earn credit towards the continuing education requirement by teaching, but has added a new provision that limits the times a particular course can be counted towards this requirement to once in any 3-year period (see § 900.12(a)(2)(iii)(B)). This is consistent with similar provisions for interpreting physicians and medical physicists.

(Comment 257). A number of comments on this section were based on misunderstandings. One comment expressed the belief that this requirement actually meant that an individual would have to earn 15 units every 2 calendar years in order to meet this requirement. Another comment, incorrectly assuming that implant imaging was a mammographic modality, assumed that 6 hours of implant imaging training would be required every 3 years. Other comments mistakenly concluded that 5 credits on implant imaging would be required every year, that the requirement to average 5 credits a year was being increased to 6, or that 5 credits were being required each and every year.

All of these comments opposed the requirement based on their misunderstandings. As FDA develops educational materials to help personnel understand how they may comply with the new regulations, special attention will be focused on correcting such misunderstandings. Changes in the wording of § 900.12(a)(2)(iii)(A) from the proposal are intended to emphasize that the basic continuing education requirement is to earn 15 credits over 3 years and to clarify options for calculating the time period to be used to demonstrate compliance with that requirement. The agency hopes that these changes will eliminate confusion about whether 5 units must be averaged per year or earned per year (the unit requirement is an average) and provide radiologic technologists and the facilities that employ them with some flexibility in maintaining and documenting compliance with this requirement. Both of the changes parallel similar changes made in the wording to the interpreting physician and medical physicist requirements.

Only two comments were received on proposed § 900.12(a)(2)(iii)(B) (now § 900.12(a)(2)(iii)(C)), which requires a technologist to have some continuing education for all modalities used by that technologist. One comment stated this was a "great revision." The other expressed concerns about the availability of the training.

FDA believes that if a new mammographic modality is introduced, training will be available initially from the originators of the mammographic modality because those originators will have a high interest in ensuring that the mammographic modality is used properly. FDA acknowledges that training with a disappearing mammographic modality, like xeromammography, may be more difficult to obtain. However, FDA has concluded that the possibility of detriment to the public health that could result from personnel not maintaining their skills must override this concern.

(Comment 258). FDA received four comments on proposed § 900.12(a)(2)(iii)(C) (now § 900.12(a)(2)(iii)(D)), which describes requalification procedures for technologists who failed to meet continuing education requirements. One comment agreed with the provision and two comments went further to suggest that there should be some sort of penalty for not meeting the requirement on time. The authors apparently did not realize that the penalty was not being able to perform mammography except under direct supervision until the requalification was completed (see previous discussion related to interpreting physician). The fourth comment supported the requirement, but expressed concern about who would approve the training and keep the records of completion.

FDA has found the mechanisms used under the interim regulations for approving training, which involve the participation of professional groups, are adequate. These same professional groups ordinarily provide documentation of completion. Under the interim regulations, it has been the responsibility of the facility to obtain and maintain such records and this will continue under the final regulations.

(Comment 259). The three comments received on proposed § 900.12(a)(2)(iii)(D) (now § 900.12(a)(2)(iii)(E)) opposed the requirement that a technologist receive training in use of a mammographic modality for which she was not previously trained before using that modality. One comment stated that the requirement would be an undue hardship and two stated that it will be difficult to obtain the training. FDA believes that the value of being trained in the use of a mammographic modality before beginning to use it on patients overrides the hardship concern. As discussed earlier, FDA also believes that availability of training will not be a problem and that the definition of qualified instructor (§ 900.2(oo)) provides for an adequate number of teachers. The proposed requirement has been retained unchanged.

Continuing experience is the second of the general requirements intended to ensure that the technologists maintain their skills. As proposed, § 900.12(a)(2)(iv) required that technologists perform a minimum of 100 examinations during a 12-month period. This requirement was intended to parallel the continuing experience requirement for physicians.

(Comment 260). Eight comments supported a continuing experience requirement for technologists, explaining that a technologist's positioning skills improve with additional mammography examinations. Nine comments opposed the requirement. Several of these suggested alternative measures, such as a "lengthy appraisal (at least 3 days * * *) * * *" by the chief technologist and radiologists or a certification program similar to that used by the American Heart Association for CPR certification.

While these suggestions have merit, they are a form of proficiency testing and, as discussed elsewhere, large numbers of comments provided valid reasons to conclude that it is premature to require such testing.

(Comment 261). Another comment opposed the requirement on the grounds that "if you can do a mammogram, you can do it, period." The author's basic assumption seems to be that you never forget how to perform mammography. FDA notes that the purpose of continuing experience requirements is to ensure that technologist skills are maintained at a level that is likely to produce accurate and reliable mammograms. In view of the complexity of the examination and changes in technology, FDA believes that the optimism expressed by this last comment is unwarranted.

(Comment 262). Proposed § 900.12(a)(2)(iv)(A) set the continuing experience requirement at the performance of at least 100 mammography examinations in a 12-month period. One comment stated that this was a "very acceptable requirement," but two believed that it should be higher. One of these recommended that the number should be the same as the 480 interpretations a year required of radiologists. Four comments supported the level of the requirement, but asked that the averaging period be longer than a year to allow technologists to be absent for longer periods and still be able to meet the requirement. Two of these comments noted that physicians are allowed a 24-month averaging period for their continuing experience. Ten other comments suggested that the number be lowered, with 50 or 75 a year being the most common suggestions.

FDA has concluded that the number of 100 per year, which was first suggested by NMQAAC in February 1994, and supported by them at their January 1997 meeting, is the most reasonable compromise between the need to establish a requirement sufficiently high to maintain skills and the need to avoid disqualifying large numbers of competent technologists. The agency notes that as few as two examinations per week will be sufficient to meet this requirement.

FDA does agree with the suggestion that the averaging period be lengthened to 24 months and the wording of the regulation has been changed to require the performance of 200 examinations in a 24-month period. A clarification of how to determine the 24-month period was also added, which parallels similar provisions for calculating such time periods for interpreting physicians and medical physicists.

(Comment 262a). Seventeen comments identified specific groups that they believed would have difficulty meeting this requirement. These included individuals, such as mammography supervisors, instructors, and technologists in sales, who had made career choices that would make it difficult for them to meet this requirement.

FDA understands the desire of these individuals to keep their options open in case they wish to return to the performance of examinations, but the agency believes that higher priority must be given to maintaining technologist proficiency. FDA also notes, as discussed later, that a requalification procedure has been provided for technologists in this situation.

(Comment 263). A related concern was expressed in the 13 comments that indicated technologists in rural hospitals would have difficulty meeting this experience requirement. As explained previously, FDA recognizes that rural facilities face special challenges but believes that it would be contrary to the MQSA goal of assuring women a uniform minimum level of quality of mammography nationwide to establish lesser standards for technologists practicing in rural areas.

As proposed, § 900.12(a)(2)(iv)(B) stated that technologists who fail to meet the continuing experience requirement can re-establish this qualification through the performance of 50 mammography examinations under direct supervision.

(Comment 264). Ten comments stated that this number of examinations was too many and suggested that it be reduced, with 30, 25, and 20 examinations all being proposed. Another comment urged that there be a penalty for failing to meet this requirement, apparently not realizing that the penalty was not being able to work independently until requalification was completed. One comment urged that proficiency testing be used instead of an experience requirement, while another was concerned about how the performance of these examinations would be documented.

As discussed above, FDA has reduced the number of examinations that have to be performed under direct supervision as part of the initial training from 50 to 25. The agency has no reason to require the requalification figure to be higher than the number of examinations for initial qualification. Accordingly, the agency has similarly reduced the requalification requirement from 50 to 25 examinations.

d. *Medical physicist (§ 900.12(a)(3))*

Section 900.12(a)(3) establishes the requirements that must be met by medical physicists who conduct surveys of mammography facilities and provide oversight of the facility quality assurance program. Initial qualifications, alternative initial qualifications, continuing qualifications, and the reestablishment of qualifications are all covered. No major changes have been made in the final regulations from what was proposed. Some changes have been made in the survey experience requirement and in the averaging time for the continuing qualifications requirement. The comments received on the final regulations in each of these areas are discussed in below in connection with the specific provisions.

(Comment 265). One comment stated that the proposed rule is very positive, ensuring that only properly trained and adequately qualified professionals perform medical physics surveys. Another comment concluded that the medical physicist qualifications were appropriate and reasonable.

The initial qualification requirements for medical physicists include board certifications or State licensure or approval; masters degree or higher in physical science with 20 semester hours in college or graduate level physics; 20 contact hours of training in mammography; and survey experience.

The proposed initial qualifications requirements generated a wide spectrum of comments. Views varied greatly on the value of State approval or licensure in ensuring that physicists were properly qualified to perform mammography services.

(Comment 266). Ten comments expressed doubt that State approval/licensure provided a sound basis for establishing competence. One comment recommended that the State approval option be deleted, while another suggested that State approval be accepted only after FDA investigation. One comment stated that State approval/licensure should be part of alternative criteria with additional appropriate training and experience requirements. Three comments argued that State approval or licensure should be specific to the State where the professional practice will occur, unless a State reciprocity mechanism is in place. One comment stated that the proposal was unclear as to whether State approval was sufficient or additional requirements would need to be met after October 1997. On the other hand, seven comments stated that State approval, like board certification, was adequate by itself and that additional requirements were not needed.

Five comments stated that board certification should be required for all medical physicists. Several other comments urged FDA not to accept board certification without requiring a special certificate for mammography. Two comments recommended deleting the master's degree requirement and argued that course work in college level physics and supervised experience should be adequate. One comment contended that the issues of degree, training, and curricula are unnecessarily complicated in the proposed regulation. Another comment stated that the requirement of board certification or State licensure unfairly excludes physicists who are otherwise well qualified to test mammography equipment on the basis of their actual experience in this field. One comment stated that these requirements are appropriate.

FDA considered all of the comments received concerning initial qualifications requirements for medical physicists. Because the MQSA expressly establishes State approval or licensure

as an alternative pathway (42 U.S.C. 263b(f)(1)(E)(i)), FDA could not eliminate this route for initial qualification, even if the agency believed it was desirable to do so. The agency is aware that not all States have adequate minimum qualifications standards. Concern has also been expressed that some board certified physicists do not have adequate experience with mammography equipment. Therefore, as proposed, FDA added additional educational and experience requirements for all physicists, regardless of which initial route they follow to become qualified under the MQSA. These additional requirements are: (1) For initial qualification, masters degree or higher in physical science, with a minimum 20 semester hours or equivalent in college or graduate level physics, 20 contact hours of training in mammography, and experience of surveying 1 facility and 10 units; and (2) for alternative initial qualification, bachelors degree or higher in physical science, with a minimum 40 semester hours or equivalent in college or graduate level physics, 40 contact hours of training in mammography, and experience of surveying 1 facility and 20 units.

(Comment 267). A number of comments suggested that additional subjects, such as mathematics, biology, nuclear physics, and radiologic technology should be added as acceptable fields in which the degree may be obtained. Some comments wanted the reference to physical science to be changed to medical physics. One comment stated that physicists who are not board certified should be required to demonstrate a stronger educational background than currently required. In response to the agency's discussions in the preamble section of the proposal about the possibility of requiring all 20 semester hours in imaging physics (61 FR 14905), two comments stated that such a requirement would not be appropriate because the mammography equipment evaluation would require more than training in imaging and limiting 20 semester hours to imaging physics would not provide the physicist with the education needed to adapt to constant changes in technology.

The agency has decided to keep the requirement of physical science as the field in which the degree must be obtained and believes that its definition of physical science (§ 900.2(jj)) sufficiently covers the wide range of subfields that can provide adequate initial training to enable an individual with 20 semester hours of physics to understand the basics of mammography physics. The agency believes that this would not be the case if other fields, such as biology, were added to the definition.

(Comment 268). Sixteen comments stated that board-certified physicists should not have to demonstrate compliance with the additional educational requirements of § 900.12(a)(3)(i)(B)(*1*) in the proposed regulations, but should demonstrate experience conducting mammography surveys. Because the MQSA establishes board certification and State licensure/approval as equivalent pathways for qualifying medical physicists, FDA has not issued different additional qualifications for each of these groups. Accordingly, the agency has retained this requirement as proposed. However, if a designated board confirms that its certification in an accepted speciality always requires the minimum of a masters degree in physical science with at least 20 semester hours in physics, the agency may not have to verify the degree and semester hour requirements during annual inspections for those physicists certified by that board.

Another initial requirement is that physicists have 20 contact hours of documented training in mammography. Several comments requested further clarification of contact hours. Some comments urged FDA to accept self attestations of contact hours for experienced physicists who have worked in the field for a long time but do not have any documented contact hours. Ten comments stated that, if the medical physicist is board certified, the contact hours requirement should not apply.

After considering these comments and consulting with NMQAAC, FDA has retained contact hour requirements for all physicists, regardless of which initial route they followed to become qualified. FDA will accept self attestation of any contact hours received before October 1994. The agency has also provided a more detailed description of contact hours in § 900.2(m).

Under the proposal, an additional initial requirement was that medical physicists shall have the experience of surveying at least 5 facilities and 10 units.

(Comment 269). About one hundred comments opposed the requirement for multiple facility surveys for in-house physicists and stated that in-house physicists who are employed by hospitals and medical schools are often contractually prohibited from performing surveys at outside facilities. Several of these comments suggested that FDA should instead base its requirement on number of unit surveys.

In response to these comments, the agency has revised this requirement so that physicists qualified under § 900.12(a)(3)(I) will be required to have initial experience of one facility and ten unit surveys. FDA did not eliminate the facility requirement entirely because the agency strongly believes that having experience with complete surveys of facilities, including oversight of all QC records, is necessary. Evaluations of units only cannot provide a medical physicist with the same experience and knowledge as the survey of a facility. Although the amended regulation does not mandate survey experience with more than one facility, the agency encourages all physicists to perform additional facility surveys when possible to expand their experience. FDA believes that it is also advisable to gain familiarity with a number of different mammography units because much of the educational benefit is lost if the same unit is surveyed repeatedly to meet the experience requirement. In order to address this concern to some degree, the regulation now provides that no more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

The initial experience requirement also stated that, after the effective date of these regulations, the initial survey experience must be acquired under the direct supervision of a qualified medical physicist.

(Comment 270). One comment stated that direct supervision would be very difficult to arrange. Another suggested requiring two surveys under direct supervision and the rest under indirect supervision. The comment stated that indirect supervision with telephone consultation and advice is more valuable than the direct supervision.

FDA has retained this requirement because the agency and NMQAAC consider it important that new physicists entering the field acquire initial experience in conducting mammography surveys under the direct supervision of a qualified medical physicist, who can correct any mistakes made during the learning process before they pose to a threat to patients. Because this provision does not take effect until the effective date of the regulations, the agency believes that it will not disrupt the availability of experienced medical physicists.

Alternative initial qualifications were established in § 900.12(a)(3)(ii) to provide a way to permit medical physicists who have been successfully providing mammography physics services for some time, but who lack a masters degree, to continue to practice without lowering quality standards in any manner that would jeopardize public health. In general, in order to qualify by this alternative qualification route, an individual must have qualified under § 900.12(a)(3) of the interim regulations and maintained his or her licensure, approval, or certification requirement as required under the interim regulations. The physicist using this alternative route is also required to have a bachelors degree or higher in physical science, with at least 10 semester hours or equivalent in college level physics, 40 contact hours of training in mammography, and survey experience of 10 facilities and 20 units.

(Comment 271). Several comments opposed the alternative pathway for initial qualifications and considered the proposed educational requirements for these medical physicists to be inadequate. On the other hand, a larger number of comments shared FDA's concern for existing medical physics service providers and the facilities they serve. These comments supported this alternative qualifications route and recommended that experienced individuals who have previously qualified and who meet continuing education and experience qualifications should be allowed to continue to practice. Five comments stated that the alternative initial qualifications should be a permanent option. One comment claimed that the proposed alternative qualifications criteria were too restrictive to permit many State licensed physicists to qualify.

A number of comments suggested increasing the requirement of semester hours of college level physics for this alternative route from the proposed number of 10. Some comments suggested that the credit hours requirement for this alternative route be increased from 10 to 15 or 20 hours by including subjects such as biology, radiation biology, radiation science, and chemistry. Other comments expressed concern that this college level physics requirement would bar a number of presently qualified physicists from continuing to provide mammography services. Two comments stated that the requirement for semester hours in physics should be removed, and that physicists qualified under the current interim regulations by the State licensure or approval process should not have to meet additional educational requirements. One comment stated that 10 hours of physics is reasonable. Another comment stressed that formal training in physical science is necessary and stated that this standard should not be weakened.

In the preamble to the final regulations, the agency explained its reasons for proposing the alternative initial qualifications route for physicists with bachelors degrees who are currently performing mammography physics services under the interim rule (62 FR 14905). Based upon discussions with NMQAAC and the Conference of Radiation Control Program Director's Task Force on Medical Physics Criteria, the agency proposed the requirements for course work in physics, contact hours, and experience included in this alternative route. The agency believes that the combination of all these requirements provides adequate protection for the public health, while permitting most practicing physicists to continue to provide mammography services under the final rule.

Moreover, the agency considered it to be unfair to individual physicists and potentially detrimental to facilities and the public to exclude many currently practicing physicists by withdrawing the alternative initial qualifications route or by increasing the educational credit hours requirement for these individuals in the absence of evidence that such physicists are providing inadequate services. The agency was concerned that such an exclusion could cause a possible shortage in the availability of physics services for some period of time.

Several comments supported the views expressed in the preamble to the proposed rule. In addition, the agency's experience and data gathered from its inspection data base affirm that many currently practicing medical physicists with bachelors degrees, adequate course work in physics, and substantial experience are performing quality medical physics surveys in mammography facilities with care and competence.

The agency continues to believe that it is very important to have at least 10 semester hours in college or graduate level physics. The other subjects, suggested by some comments, will not necessarily provide an individual with the necessary background and training to understand the basics of mammography physics. However, because at least a bachelors degree in physical science is also part of the educational requirement, the credit hours in other related subjects, suggested by the comments, may be associated with fulfilling the degree requirement. Although the agency believes that a minimum of 10 hours of course work in physics is necessary to gain proper physics background, it also believes that requiring more credit hours in physics, as some comments and some members of NMQAAC suggested, will exclude individuals other than physics minors or majors or those with graduate degrees. For these reasons and those previously stated in the proposed rule (61 FR 14905), the agency has retained, as proposed, the minimum requirement of a bachelors degree with no less than 10 semester hours or equivalent courses in physics in its final rule on alternative initial qualifications.

The agency agrees, however, that enhanced educational qualifications are necessary in order for physicists entering the field in the future to have the required background to understand the technology of the future as it becomes increasingly intricate. As previously proposed, therefore, FDA is limiting the use of this alternative pathway to only those physicists who have met its requirements by the effective date of the final regulations.

(Comment 272). Several comments opposed the contact hours requirement, while some supported it.

The agency has previously stated its justification for retaining this requirement for initial qualification route. For the same reason, the agency will retain the requirement for the alternative route.

(Comment 272a). A large number of comments stated that the proposed initial experience requirement of 10 facilities and 20 unit surveys for the alternative route in § 900.12(a)(3)(ii)(B)(*3*) would be impossible to achieve for many in-house physicists and suggested eliminating the reference to the number of facilities.

In order to be consistent with the initial requirements for physicists under § 900.12(a)(3)(i)(B)(*3*), the agency has revised § 900.12(a)(3)(ii)(B)(*3*) to change the required initial experience from conducting surveys of at least 10 mammography facilities and 20 units to conducting one facility and 20 unit surveys. Again, no more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

(Comment 272b). Two comments stated that the experience component under the alternative initial requirement should have to be fulfilled under the direct supervision of a qualified medical physicist, as required under § 900.12(a)(3)(i)(B)(*3*). Another comment suggested changing the effective date of this regulation to the effective date of this section because there is more than one effective date in these regulations.

The agency points out that § 900.12(a)(3)(i)(B)(*3*), which will take effect 18 months after these regulations

are published, will affect only new medical physicists entering the field. Because § 900.12(a)(3)(ii)(B) establishes that the alternative pathway is only available until the effective date of the final rules, the direct supervision requirement does not apply to the individuals qualified through the alternative pathway, because no one will enter the field through that pathway following the effective date of the rules. In response to the comments about varying effective dates in the proposed rule, FDA points out that, except for some of the equipment standards and equipment QC tests, all sections of the final rule will be effective 18 months after publication. This is clearly stated in the final rule.

The continuing qualifications requirements for medical physicists have two components: § 900.12(a)(3)(iii)(A) continuing education, which requires the physicist to earn 15 units over 3 years; and § 900.12(a)(3)(iii)(B) continuing experience, which requires the physicist to survey 2 facilities and 6 units over 24 months.

(Comment 273). One comment questioned FDA's authority to require continuing education at all.

In response, FDA observes that the MQSA is designed to provide the government with authority to issue and enforce standards to ensure safety and accuracy of mammography in the United States. The section of the statute relating to quality standards lists a variety of requirements for each group of personnel associated with mammography practice. Although only the requirements relating to interpreting physicians expressly includes a reference to continuing education, these requirements are not an exclusive or limited list of standards to be established by the agency. They represent only the minimum requirements that Congress mandated that the Secretary must "include" among those issued to ensure safety and effectiveness of mammography (42 U.S.C. 263b(f)(1)). Just as FDA has determined that continuing education is necessary to maintain the skills and expertise of radiological technologists, the agency has concluded that continuing education requirements are also essential for medical physicists, who play a critical role in guaranteeing the safe operation of equipment and effective quality assurance systems.

(Comment 274). One comment stated that these requirements are appropriate. Two comments asserted that self training by reading and studying should qualify. Other comments asked that continuing education units be better defined. Another comment stated that the language was too prescriptive. One comment stated that most medical physicists would have completed rather than taught continuing education units and another opposed giving repeated credit for a course taught several times. One comment maintained that no CME has been available for those who have tested Xerox systems for the last 5 years, and that such courses are unlikely to be available in the future.

FDA notes that the final rule establishes that the units earned through teaching of a specific course can only be counted once towards the 15 education units requirement. A new definition for continuing education unit or credit has been added in § 900.2(l). The agency will accept only the continuing education credits offered by professional organizations whose training is shown to be relevant and acceptable for medical physicists. Language clarifying the options for calculating the 3-year period has also been added. The agency understands that sufficient training opportunities may not be available in xeroxmammography. However, because only 0.5 percent or less of the facilities use xeromammography, the agency believes that the majority of physicists, if not all, will need only continuing education related to screen-film mammography. When other mammographic modalities, such as digital mammography, become available, medical physicists will need continuing education in those areas. The agency believes that such training will be increasingly more available as the technologies develop. The agency advises the facilities that use xeromammography to contact the manufacturer of this system to provide or arrange for training in xeromammography.

(Comment 275). One comment recommended that the second and subsequent 3-year periods begin to run from the original date that the physicist was required to meet the continuing experience qualification.

FDA decided to use a floating 3-year period for all mammography personnel, instead of a fixed 3-year period as suggested by the comment, for two reasons. First, as explained previously, a fixed period actually allows an individual to go much longer without continuing education than the length of the period itself. With a 3-year fixed period, for example, if an individual received training near the beginning of one period and near the end of the next period, he or she would go nearly 6 years without continuing education, which is entirely too long in a changing field such as mammography. Second, because inspections are annual, if an inspector found that an individual had not met the continuing education requirement during the previous fixed period, that individual might have provided services to the facility for almost a year before the failure was discovered. Depending upon the circumstances, the actions needed to correct the consequences of using the services of a noncompliant individual could require a considerable amount of time and money on the part of the facility.

(Comment 276). Two comments stated that persons providing continuing education should meet the qualifications of a medical physicist as described in the proposed regulations and that the instructors should be in active practice.

FDA disagrees. The agency believes that many scientists, university professors, and equipment manufacturers can provide training in different aspects of mammography physics.

(Comment 277). Another comment claimed that it is excessively bureaucratic to require that a physicist send a copy of his or her CME to include in the operating manuals, as was insisted upon by an inspector at their facility.

FDA believes that the author of the comment misunderstood the reason why the information on CME was required to be sent to the facility. The reason was not for inclusion in the facility's operating manual but to enable the facility to demonstrate that its medical physicist met the continuing education requirement. All interpreting physicians, radiologic technologists, and medical physicists providing services to mammography facilities have to document that they meet the continuing education requirement.

(Comment 278). One comment stated that there should be some penalty for failing to meet the continuing education requirements.

The consequences of failure to maintain these requirements is the inability to work independently as a medical physicist. As stated with respect to other mammography personnel, the agency believes this penalty is the most effective means to guarantee that physicists maintain qualifications and to protect the public health.

Under the proposal, FDA would require medical physicists to maintain their skills through the survey of at least 3 mammography facilities a year.

(Comment 279). More than 50 comments opposed this requirement. As

expressed in related comments, in-house physicists may be contractually prohibited from surveying outside facilities. Many of these comments suggested deleting the reference to the number of facilities.

In response to these comments and in order to establish consistency with revisions to the initial experience requirement discussed above, FDA has revised the proposed continuing experience requirement. The requirement will be for surveys of two facilities and six units in a 24-month period. The same facility can be surveyed twice. However, as with the initial experience requirement, no more than one evaluation of a specific unit within a period of 60 days may be counted towards the requirement. In addition, while the same facility may be surveyed twice within this 24-month period by an individual physicist in order to meet this requirement, the two surveys by this physicist must be at least 10 months apart. This restriction does not prohibit the facility from having surveys more frequently than once every 10 months, if it wishes to do so out of quality concerns or for other reasons. The restriction only limits the number of surveys of that facility that an individual physicist can use to meet his or her continuing experience requirement. The reduction in the number of facilities will address the concerns that were raised about in-house physicists.

In order to be consistent with the equivalent physician and technologist requirements, the continuing experience requirement for physicists is now based upon a 24-month period. This will now make it more feasible for physicists who are out of the field for a time, e.g., on maternity or sabbatical leave, to maintain their qualifications. The requirement has also been amended to explain options for identifying the 24 months that will be used to determine compliance. This change parallels similar changes in the requirements for radiological technologists and interpreting physicians and is intended to provide personnel and facilities with additional flexibility for monitoring compliance with these standards.

Section 900.12(a)(3)(iii)(C) requires physicists to be trained to do surveys of a mammographic modality for which they have not previously received training before independently doing surveys of such units.

(Comment 280). A number of comments correctly pointed out that the reference to mammographic "examinations" should actually be to mammographic "surveys" or "evaluations."

FDA has corrected this error by replacing the word examination with survey.

(Comment 281). Several comments opposed the requirement for 8 hours of training in a new mammographic modality prior to doing a survey of such a modality. One comment expressed concern that this will keep physicists from surveying new modalities. Another comment suggested that length and degree of training be commensurate with the specifics of the new modality. Two comments stated that the requirement overestimated the complexity of new modalities and undervalues the physicist's capability of adapting to new modalities in medical imaging. One comment stated that this rule is unnecessary because a qualified physicist will be able follow guidelines developed by ACR and AAPM when a new modality, such as digital mammography, begins to be used by the facilities. One comment stated that 8 hours of training in a nonscreen-film modality would be difficult to complete, while another comment stated that only expert instrument manufacturers would be qualified to provide such training.

The agency continues to believe that the proposed requirement of 8 hours of training in a new mammographic modality before a medical physicist may begin performing surveys independently in that type of modality is reasonable and necessary. Training prior to practice using a new mammographic modality is required for all critical personnel (interpreting physicians, radiologic technologists, and medical physicists) because FDA has determined that the benefits to patients from such prior training outweighs the cost to individuals and facilities. The agency recognizes that training in a new modality may not be widely available and agrees with comments that have observed that equipment manufacturers would and should be able provide such training. The agency will encourage manufacturers of a new mammographic modality, such as digital mammography, to provide or arrange for such training when the modality is commercially marketed.

Section 900.12(a)(3)(iv) describes measures medical physicists may take to reestablish their qualifications if they have failed to meet their continuing qualifications requirements.

(Comment 282). Two comments stated that the surveys of facilities and units required for reestablishing qualifications should be consistent with the experience requirement for initial qualifications. The authors believed that, if a medical physicist is not actively involved in mammography facility surveys for an extended period of time, performing the proposed three surveys may not be enough to regain the required expertise. They recommended that the requirement for requalifying be increased to five supervised surveys. One comment supported the qualification's supervision requirements. Another comment questioned why physicists are not allowed to perform surveys without the supervision of a qualified physicist, while such supervision is not required for physicians and technologists.

The agency notes that this provision has been amended to be consistent with similar provisions relating to physicians and technologists. In order to reestablish qualifications, physicists must perform facility and unit surveys to bring their total up to the required survey of 2 facilities and 6 units in the previous 2 years. This change also makes the requirements for continuing experience qualification more consistent with the experience requirements for initial qualification, as suggested by some comments. Any survey performed by a physicist to bring his or her total up to the requirement must be under the direct supervision of a qualified medical physicist. Contrary to the assumption in one of the comments, physicians and technologists who fail to meet their continuing experience requirement are also required to reestablish their qualifications under direct supervision and cannot resume working independently until the requalification is complete.

e. *Retention of personnel records (§ 900.12(a)(4))*

The provision on retention of personnel records § 900.12(a)(4) is intended to describe the personnel records that must be kept by the facility to establish that their personnel meet the MQSA requirements and to indicate how long such records should be kept.

(Comment 283). Ten comments disagreed with the proposal by FDA to allow records to be discarded following the next annual inspection and the resolution of any personnel problems discovered during that inspection. These comments urged that records be required to be kept for longer periods, with "as long as the person is employed at the facility" being the maximum suggestion. Four more comments suggested that FDA also establish requirements for how long records of staff members who have left the facility should be kept. One comment noted that the list of the people for whom records were required in the proposal included darkroom personnel and pointed out there were no specified qualifications for such individuals. Two

comments suggested that, if mammography is performed at various sites under the same ownership, the records be kept only at one site and be sent to the separate facilities as needed. Finally, one comment expressed the opinion that keeping personnel records was an unnecessary burden, but made no suggestions as to how personnel qualifications could be verified without documentation.

FDA has made a number of changes in this requirement in response to the comments. First, to address the concern about inclusion of darkroom personnel, the list of activities performed at a facility has been replaced with a reference to those personnel for whom quality standards have been issued. The wording was further changed to clarify that, as long as an individual is employed at a facility in one of these capacities, records must be available to show that the individual meets all qualifications. Records for individuals who have left the facility may be discarded after the next inspection has occurred and FDA has determined if the individual met the requirements. Although nothing in the MQSA or these final regulations precludes the facility from retaining these records for longer periods of time, FDA does not expect to have further need to review such records following the subsequent inspection. In response to comments suggesting that multi-site facilities retain personnel records in a central location, FDA notes that such a practice would be permitted but is not required under the final rule. Because the MQSA inspections are typically announced in advance, a facility could store its records at one site and bring them to the other sites as needed for review during the inspections there.

2. Equipment (§ 900.12(b))

The requirements were intended to establish specifications to ensure that each facility would have equipment that is capable of producing quality mammograms. FDA made a number of significant changes in the equipment requirements that were proposed. These changes include removing several of the requirements proposed for phase-in 5 and 10 years after the publication of the final rule and moving several requirements from § 900.12(b) to the quality assurance paragraph in § 900.12(e). Most of the test procedures that would have been required under the proposal have also been deleted. Each of these changes will be discussed below.

a. *General comments on equipment*

(Comment 284). A number of comments raised issues that did not address specific provisions proposed under § 900.12(b), but were directed generally toward the entire package of regulations governing equipment. These included two comments that expressed a blanket support for the regulations proposed under § 900.12(b).

One comment stated that it would be useful to have a better delineation of responsibility for ensuring that units meet particular standards under the MQSA. The comment recommended that the facility medical physicist be designated as the individual responsible to ensure that a facility's equipment is in compliance.

FDA believes responsibility for compliance with all the MQSA requirements rests ultimately with the facility. Within the scope of each facility's individual operations, responsibility can be apportioned as the facility wishes, so long as this is consistent with the regulations. The suggestion made by the comment is not inconsistent with the regulations. Under § 900.12(d)(1)(iv), the medical physicist is designated as the individual responsible to oversee the QC requirements, though no provisions specifically require routine QC testing to be performed by the medical physicist.

(Comment 285). Three comments suggested that FDA cannot anticipate future changes in mammographic equipment technology sufficiently well to be able to determine all appropriate requirements in this area over this extended timeframe. One of these recommended that FDA review the equipment requirements on a continuing basis to recommend and propose modifications that are recognized to promote quality mammography. One comment suggested that FDA simply require all mammography X-ray units to be replaced every 8 to 10 years in order to keep facilities upgraded with standardized equipment.

FDA agrees that it cannot anticipate all changes in mammography equipment over the next 10 years and has not attempted to do so. In the proposed regulations, FDA simply incorporated specifications of current equipment that experts had deemed desirable for quality mammography systems. The goal of the proposal was to ensure that, 10 years in the future, each facility would be using equipment that was considered state-of-the-art in today's market. FDA approached this goal by phasing-in the requirements over various time periods. Equipment requirements considered most fundamental to the delivery of quality mammography would be required first, followed by those specifications considered useful but which, because of cost impact, could be delayed for a period of 5 years. The third phase under the proposal included "nice to have" features that are not absolutely necessary to the production of quality mammograms and would not be required until the end of a 10-year period. However, based on the uncertainty surrounding the need for the phase three requirements, consultation with NMQAAC and industry representatives, assessment of the costs associated with some of the proposed 5-year phase-in requirements, and consideration of the public comments, FDA has determined that this goal is inconsistent with efforts to keep the costs associated with the delivery of mammography services at a manageable level. The agency has, therefore, decided to eliminate many of the requirements that had been proposed for both 5- and 10-year phase-in. FDA has previously stated that it plans to periodically review the regulations for necessary revisions in response to new technology and remains committed to that effort. The agency intends to and will revisit these areas in the future to reassess the need for additional regulations.

Although the revised equipment standards do not mandate that each facility have all the equipment features the agency originally had proposed, FDA believes the final regulations establish basic requirements that ensure that every facility meets the baseline equipment standards necessary to perform safe and accurate mammography. In response to the comment that recommended requiring new equipment every 8 to 10 years, FDA does not believe that the costs associated with the arbitrary replacement of mammography equipment every 8 years to 10 years is justifiable. In addition, the agency notes, too, that the alternate standards provisions, included in the regulations under § 900.18, provide the flexibility needed to ensure that new and innovative advancements reach the market without unnecessary delay.

(Comment 286). Two comments recommended that all detailed testing procedures be eliminated from § 900.12(b) to allow flexibility for qualified medical physicists to determine the appropriate testing methodology.

FDA has, in large part, adopted this approach in the final regulations. In doing so, the agency has placed responsibility on the medical physicists to be able to justify the procedures that they utilize to perform testing of equipment in any particular facility.

(Comment 287). One comment suggested that the X-ray tube companies are "planning for early tube retirement so they can replace the tubes frequently at high cost to the facilities." The comment asked FDA to address this issue immediately in an effort to keep mammography costs down.

FDA does not control the pricing of equipment in the marketplace. The agency is, however, interested in equipment problems that may indicate a unit does not meet its specifications and/or aspects of compliance that it is certified as meeting. Specific information about manufacturers should be submitted to the Office of Compliance in FDA's Center for Devices and Radiological Health, 2094 Gaither Rd., Rockville, MD 20850.

(Comment 288). One comment suggested that there should be a lock-out and/or alarm mechanism preventing a mammography technologist from exposing the patient to radiation without placing film in the equipment. Another comment suggested a requirement for an interlock to prevent a second exposure until the cassette is changed, and two more comments recommended a requirement for an interlock to ensure the presence of a cassette in the bucky/film holder. These comments noted that such incidents have occurred, needlessly exposing patients to radiation multiple times because the technologist forgot to insert or change the film.

Although FDA is aware that some manufacturers include interlocks that ensure the presence of a cassette or that cassettes are changed after each exposure on their equipment, FDA is not considering such requirements at this time. FDA believes that, unlike equipment performance, this is an aspect of the mammography process that is within the complete control of the technologist and that the technologist must assume responsibility for preparing the system for each exposure. In facilities where more than one technologist uses the equipment, a check list of items should be followed and this should most certainly be one of the items on the list. If the technologists adequately follow standard procedures, incidents such as those described in the comments can be prevented without incurring the considerable expense involved in requiring the suggested interlocks.

(Comment 289). One comment asked the agency to consider requiring special grounding devices to protect operators and patients. The comment also suggested a prohibition against carpeting in the mammography room, and a requirement for the use of static mats around the mammography machine.

Although these items might be desirable they do not impact the quality of the mammography image and are beyond the scope of these regulations.

(Comment 290). One comment suggested that a requirement establishing a maximum distance from the surface of the patient support to the sensitive part of the image receptor should be incorporated in § 900.12(b).

FDA is not aware, and the comment did not offer evidence to show, that this represents a problem for current mammography systems. Accordingly, the agency is not planning to regulate this aspect of equipment performance.

(Comment 291). One comment suggested that the maximum allowable photo-timed exposure for mammography applications should be specified. The comment stated that the backup limit of 2,000 mA's (from 21 CFR 1020.31(a)(3)(iii) in the *Performance Standards for Diagnostic X-ray systems and their major components*) was clearly selected based on prior technology, i.e., much slower screen-film systems or, perhaps, industrial X-ray film where exposures were typically on the order of 5,000 milli Roentgen (mR) for an average breast.

FDA notes that the regulations under 21 CFR 1020.31 presently set a limit of 2,000 mA's for automatic exposure control equipment when operating with a peak tube potential under 51 kVp. This regulation is not specific to mammography, but applies to any diagnostic X-ray equipment operating with a peak tube potential under 51 kVp. In previous draft regulations presented to NMQAAC, a lower value of 600 mA's was proposed for mammography systems. The committee was of the opinion that 600 mA's was too low and FDA planned to increase the value to 800 mA's. In the meantime, FDA received comments from industry pointing out that some systems have variable SID capability. This variability in current equipment undermines an approach that relies on the maximum mA's required at a longer SID may be significantly greater than that required at a shorter SID, although the dose delivered might remain constant. Because FDA was faced with setting dose limits for the termination of the exposure or unnecessarily limiting equipment SID, the agency decided that the maximum allowable photo-timed exposure should not be prescribed in the regulations at this time. This decision was presented to NMQAAC, which had no comment. FDA may revisit this area in future proposals.

(Comment 292). One comment noted that the time between exposure of the film and photographic processing is critical because the latent image on all film decays with time.

FDA had considered this aspect of the imaging process for regulation but, based on comments from the public and NMQAAC, decided not to propose requirements at this time. This area may be revisited in the future when more is understood about the requirements and practices in the mobile mammography community, where film processing often must be delayed for a significant period of time after exposure.

(Comment 293). Several comments recommended that FDA set standards for batch variability of film, stating that this variability is often greater than that proposed for the equipment standards.

FDA recognizes that the variability of film may be a potential problem but believes that facilities can control this, to a significant degree, through their purchasing specifications and selection of suppliers. FDA will monitor this problem closely to determine if future regulation is required.

(Comment 294). Twenty-five comments recommended that FDA include requirements for the viewbox and/or the viewing conditions for the physician and technologist.

FDA agrees such standards would be beneficial, but does not believe that enough is known, at this time, to set appropriate specifications for viewing conditions. The guidelines recommended by ACR are excellent and the agency encourages facilities to follow them. FDA will consider this subject for future regulation and all relevant comments will be reconsidered at that time.

(Comment 295). Thirty-nine comments expressed concern that the cost of some or all of the equipment regulations would cause facilities to close and thereby restrict access for patients. Many of these comments urged that the equipment requirements should be made to apply to manufacturers of equipment for items manufactured after the specified effective date of the regulations. A related comment suggested that the current interim rule, which requires only that equipment be specifically designed for mammography, is working well and that further regulation proposed under § 900.12(b) will serve only to stifle invention, add cost, and "overly rigidify" this important aspect of providing the highest quality mammography services at the lowest cost to the public.

FDA can understand why the last comment believes the interim regulations are far less extensive than what was proposed. The interim regulations address the equipment aspect of mammography quality directly by listing four criteria that all X-ray systems used for mammography must satisfy: (1) The X-ray equipment must be specifically designed for mammography; (2) it must be certified to meet the performance standards in 21 CFR 1020.30; (3) it must have a removable grid; and (4) it must have a compression device. In addition, however, the interim regulations required each facility to undergo an annual survey in accordance with the standards specified in the 1992 or 1994 ACR QC manuals (see § 900.12(d) and (e) of the interim regulations). These manuals outline extensive requirements for the equipment associated with the mammography process. In the final regulations, FDA has not referenced these manuals although NMQAAC strongly advised their continued use and has instead included specific requirements that were part of the ACR standards under final regulations at § 900.12(b) and (e). Although they appear as new regulations, many of these new provisions merely restate requirements that previously had been referenced through the ACR manuals but are now reformatted as regulation.

FDA is also concerned about all costs associated with the regulations under the MQSA, including those incurred by the purchase, upgrade, and repair of equipment. However, FDA's authority under the MQSA relates to the user of the equipment rather than the manufacturer. Under authority granted to FDA by provisions of the act (which incorporates the Radiation Control for Health and Safety Act of 1968), FDA is pursuing a parallel path to generate standards for new equipment under § 1020.30. This process will take some time and regulations on new equipment only gradually affect the installed base. The agency concluded that regulations directed at new equipment only, and not the installed base, would have inappropriately delayed the benefits of the improvements provided by the new equipment for millions of women for a number of years.

For these reasons, FDA determined that equipment standards implementing the MQSA should be directed to the installed base to ensure that all women, not just those that utilize facilities with new equipment, receive an adequate and equal baseline of care. Based on facility inspection experience with the interim regulations, FDA does not expect a large reduction in providers and anticipates no access problems solely as a result of the equipment regulations. In addition, FDA has provided mechanisms for alternate standards in § 900.18 to allow for innovation and flexibility under the final rule. The agency has no reason to believe that the regulations will cause stagnation in the market for new and useful equipment.

(Comment 296). One comment asked if it was necessary to attempt to codify and regulate equipment standards that, in the respondent's opinion, will evolve anyway through competition in the market.

Again, the agency responds that the introduction of new products into the market place can be a slow process and waiting for manufacturers to manufacture and market and for users to purchase would not produce the change in minimum national standards that FDA perceives is needed. Additionally, in FDA's experience, certain segments of any market are often driven by price concerns rather than features or performance. FDA believes that regulations are the only mechanism that will provide the impetus to achieve the desired baseline of care in a reasonable time.

(Comment 297). One comment supported phasing in the equipment standards over the next 1 to 10 years, as discussed in the preamble to the proposal (61 FR 14909). Two comments stated that 5 years is not a sufficient amount of time to require the purchasing of new equipment and maintained that it would be more appropriate to allow a longer phase-in period, for example, 10 years.

Five comments offered a contrary point of view, suggesting that the majority of the mammography equipment presently in use meets most of the proposed standards in § 900.12(b) and that many of the timeframes proposed in § 900.12(b) are excessively long. One of these comments expressed concern that there are some facilities where the machine limits the ability to do adequate imaging and the facility will not get newer equipment if not forced by law to do so.

FDA appreciates these comments and recognizes that some facilities will not upgrade their equipment until the last possible moment, thereby using equipment that has become inadequate by current standards. The agency must balance these concerns with cost concerns that facilities, patients, and FDA all share. The decision to require certain equipment standards to be phased in relatively quickly and postpone others represents the agency's efforts to balance these competing concerns.

(Comment 298). One comment suggested that there should be regulations for needle biopsy systems in § 900.12, including provisions that address misalignment of the biopsy cross-hair. The comment stated that the cross-hair assembly, if not accurately aligned, may lead to inaccurate localization of lesions during needle localization, increasing the possibility of morbidity. FDA recognizes the need for regulation in this area and has raised the issue with NMQAAC in the past. As a result of discussions with NMQAAC and opinions offered by the ACR, the decision was made to delay regulations for this aspect of breast radiography until community consensus can be reached on all aspects of the process. As discussed earlier, FDA is currently working internally on possible regulations for interventional mammography, while awaiting the results of collaborative efforts between the ACR and the American College of Surgeons to reach consensus on recommendations for standards in this area.

(Comment 299). One comment recommended that the equipment specifications proposed under § 900.12(b) should not be included in the final regulations and that the entire section should be issued as guidance rather than a binding regulation.

FDA has considered this approach, but has determined that, because the guidelines would not have the force of law, they would not achieve the widespread results necessary to meet the goals of the MQSA.

(Comment 300). Nine comments expressed concern that the proposed regulations under § 900.12(b) were not specific as to whether all equipment in a facility must comply and one of these comments questioned if existing mammography units must be redesigned and/or upgraded to all the standards by the effective dates.

FDA intends that all facilities performing mammography shall meet each of the final regulations by the effective date of each requirement. In the case of equipment, all equipment used for covered mammography procedures must meet the requirements in effect at any given time. If equipment must be repaired, replaced, or upgraded to achieve this result, then such actions must be completed by the effective date or the facility must discontinue offering mammography services with the nonconforming equipment until compliance is achieved.

(Comment 301). One comment stated that the equipment standards sometimes give very specific descriptions of testing equipment and procedures. For example, in proposed § 900.12(b)(4)(iv), FDA specifically described a 12 cm diameter acrylic disc 1.5 cm thick. The respondent was unsure why 12 cm was specified instead of 10, and why 1.5 cm was specified instead of 1 or 2.

FDA notes that in each case where test procedures and/or test objects are specified in these final regulations, the objects or procedures are usually based on established test protocols. In some cases where the test object itself could be variable, the specifications are identical to an object used in another required test in order to reduce the number of items required for the entire survey or inspection. In cases where the test or the test object is new, the details of its design are beyond the scope of this document. FDA intends, whenever possible, to issue guidance documents that will address the use of such new procedures and equipment. The particular example cited in the comment has been deleted from the final regulations.

(Comment 302). One comment stated that the proposed rules are not entirely consistent with the guidance document developed by ACR and CDC. The comment recommended that every effort should be made to ensure consistency with the ACR guidance document.

FDA is, of course, aware of the ACR/CDC document and, in fact, adopted many of its requirements for these final regulations. However, the ACR/CDC document was written as a guideline for new equipment and not as a regulation for installed equipment. As a guideline, its wording would not readily transfer to regulation and, as a specification for new equipment, its scope was not sufficiently broad to address the range of the installed base or the cost concerns associated with upgrade and replacement of equipment. The agency also notes that the recommendations in the ACR/CDC guidance represent an attempt to describe an optimal system. NMQAAC and members of the public have stated that some of the features, while desirable, would generate costs not justified by the expected benefit, especially when applied to the installed base. In those cases where the agency believes the benefit does not warrant the cost, FDA has not made particular features regulatory requirements. Within these limitations, FDA has generally made efforts to remain consistent with the ACR/CDC guidance where doing so is appropriate.

(Comment 303). One comment suggested that a section in § 900.12(b) or (e) should address the issue of screen placement in the cassette. The comment noted that, because the screen is sometimes not positioned with its edge in contact with the inside wall of the cassette at the chest wall, the film edge is underexposed or unexposed. The comment suggested that "such cassettes should be rejected and the screens remounted."

FDA agrees that such conditions should not exist, but believes the annual survey and normal QC procedures will identify and correct such problems and is not considering regulations to address this concern at this time.

(Comment 304). One comment recommended that the proposed equipment regulations in § 900.12(b) be rewritten to correspond more closely with existing international standards.

In certain aspects of equipment related requirements, FDA has attempted to conform to both national and international precedent. However, in some cases, those guidelines are inappropriate or do not address the specific concern being considered under the MQSA.

(Comment 305). One comment suggested that the proposed requirements of § 900.12(b)(17) through (21), which do not relate to X-ray equipment or film processors, should be included as part of the annual physics survey and need not be specified by regulation. FDA believes that this respondent misunderstood these provisions because the core of the annual physics survey is, in fact, set forth in these regulations. Some of these regulations have been modified and/or transferred to the quality assurance section of the final regulations, while others have been deleted. The remaining requirements may be checked as survey or inspection items, verified by documentation provided by the manufacturers, or established through normal QC procedures performed by the facility. Although the agency has not expressly prescribed how these requirements should be met in all cases, FDA has determined that the facility is responsible for establishing compliance with these standards rather than trusting that they would be included in all medical physicists routine surveys.

b. *Prohibited equipment (§ 900.12(b)(1))*

This paragraph prohibited the use for mammography of general purpose equipment or equipment designed for special nonmammography procedures.

(Comment 306). Seven respondents recommended that the use of xeromammographic equipment should be prohibited or phased out.

FDA considered taking this action but believes that the unique characteristics of the xeroradiographic process may provide a valuable tool in the diagnosis of some cases. Records obtained during the first year of facility inspections under the interim regulations indicate that there are an extremely small number of these units in service and it is believed that the number will continue to decrease as their use falls out of favor with the community. FDA has concluded, therefore, not to ban their use.

c. *General (§ 900.12(b)(2))*

This paragraph, as proposed, required that all equipment be designed for mammography and certified under § 1020.30.

(Comment 307). One respondent suggested that a definition of "specifically designed for mammography" be included because some units may be used for imaging of extremities.

FDA does not believe that this is necessary because the manufacturer's labeling, along with the FDA device approval process, ensures that the design is appropriate for mammography. FDA recognizes the fact that the characteristics of mammography radiographic equipment make it useful for other radiological examinations and does not intend to restrict such applications if the product has also been approved for that use.

d. *Motion of the tube-image receptor assembly (§ 900.12(b)(3))*

This paragraph proposed that the gantry be capable of specific rotation, that the angle of the gantry be indicated, and that the tube-image receptor assembly remain rigidly fixed in any position where it was designed to operate.

(Comment 308). Two comments noted a citation error in the proposed regulations. One comment recommended the deletion of the entire section, with the possible exception of requiring the system to remain fixed when placed in an operating position. Three other comments supported the proposed requirements, although one suggested that only one unit at each facility need meet the requirements. NMQAAC supported the proposed requirements, with the recommendation that they be applicable only to equipment acquired 5 or more years after the publication of the final regulations.

FDA has determined that NMQAAC's recommendation to require compliance only on equipment acquired 5 or more years after publication of the final regulations presents major problems with respect to enforcement. Such an approach would produce a situation where two distinct levels of quality would be in place for different facilities

and often within the same facility, based on when equipment was acquired. After reviewing the public comments and assessing the possible cost impact of the requirements, FDA decided to remove the provisions detailing the range of gantry motion and angle indication. If this area is considered for future regulation, all comments submitted on these sections will be reconsidered in the process. FDA has reworded the provision that requires the tube-image receptor assembly to remain fixed in its designed operating positions and this requirement remains under § 900.12(b)(3) in the final regulations. The citation error has been corrected.

e. *Image receptor sizes (§ 900.12(b)(4))*

This paragraph requires that all mammography systems have, at a minimum, both a 18 X 24 cm and 24 X 30 cm screen-film receptor and matching grids, and that the grids should be removable. This section also proposed that grid motion should not be impeded when a breast is subjected to compression in the system.

(Comment 309). Seven comments supported the proposal regarding the image receptor sizes and matching grid requirements proposed in § 900.12(b)(4)(i). Two comments opposed the specification requiring both a large and a small image receptor system in the regulations. One of these misread the proposal as being applicable to xeromammographic equipment and suggested that the regulation might prohibit the use of such equipment because such systems may not provide multiple image receptor sizes. The other comment supported the concept of requiring a large and small image receptor combination, but opposed a provision specifying the actual dimensions of these receptors. A related comment, while not actually opposing the proposal, expressed concern that requiring multiple image receptor sizes for screen-film systems might establish difficult precedents for future technology.

FDA believes that, for the present and foreseeable future, the dominant film sizes used in screen-film mammography will remain 18 X 24 and 24 X 30 cm and has not been persuaded to revise the provision that requires systems to have both sizes with corresponding grids. The agency believes that the last comment is concerned with digital systems currently under development and the concern that large or multiple sized image receptors would be prohibitively expensive with such systems. FDA has not formulated an opinion in this area and will wait to see what final technology and configurations evolve for digital systems before addressing this issue in regulation.

(Comment 310). One comment, while neither agreeing nor disagreeing with the requirement for multiple size image receptors, stated that the use of smaller image receptors, even on large breasts, results in clearer, sharper images and noted that larger areas compressed all at once do not provide the sharpness and detail needed to pick up very small cancers. The comment stated that, even though more films are taken when a smaller film size is used to image a large breast, the benefits of finding a life-threatening cancer far outweigh the minimal increase in radiation exposure to the patient.

FDA recognizes this practice as essentially the "spot compression" of the entire breast in multiple exposures. Although "spot compression" can yield improved images, it is not a recognized or accepted procedure in screening mammography. Interpreting physicians who deem such studies necessary will order them to be performed, but it is not standard practice for routine screening. The agency also notes that the regulation merely requires that the two-image receptor sizes be available; their use in any particular case is left to the judgment of the mammography personnel involved.

(Comment 311). One comment proposed that the requirement for multiple image receptor sizes be restated to require at least one unit at the facility to provide the multiple sizes, rather than requiring each unit to have both receptors. Experts on NMQAAC recommended that the requirements of § 900.12(b)(4)(i) not be weakened by permitting a facility to satisfy this equipment standard by having only one system with the multiple cassette sizes. The rest of the committee agreed. FDA has accepted this advice and retained this requirement under § 900.12(b)(4)(i).

Section 900.12(b)(4)(ii) requires facilities to have systems with moving grids matched to all image receptor sizes provided.

(Comment 312). One comment commended FDA for requiring both an 18 x 24 and a 24 x 30 bucky for each unit. Another recommended that the regulation read: "Systems using screen-film image receptors shall be equipped with separate moving grids matched to all image receptor sizes provided." FDA does not believe that the suggestion was a significant improvement and did not make the change.

(Comment 313). One comment recommended the inclusion of a requirement in § 900.12(b) that specifies the image receptor support device shall match the cassette size.

The agency does not believe this additional requirement is necessary. By requiring the system to have both a large and small image receptor and corresponding sized grid assemblies, FDA is confident that most technologists will select the appropriate receptor and cassette size for each patient.

Section 900.12(b)(4)(iii) requires the grid to be removable for systems used for magnification.

(Comment 314). Three comments requested clarification regarding applicability and intent of this provision.

FDA notes that the final regulation was drafted to clarify the interim rule. Section 900.12(b)(4)(iii) simply states that the system must be operable with the grid removed from between the source and the image receptor when the technologist is performing magnification procedures. This could be accomplished in various ways, including actually removing the grid mechanism, substituting a nongrid film holder for the grid film holder assembly, or any other mechanism that ensures that the grid does not interfere with the image or the automatic exposure control, if one is used.

Under § 900.12(b)(4)(iv), FDA proposed that the grid motion not be impeded when the breast is compressed and also proposed detailed requirements for verifying compliance.

(Comment 315). Seven comments supported the proposed requirements for assessment of grid related artifacts, while 14 comments supported the concept of evaluating grid related artifacts, but opposed both listing the requirement in regulation and the test procedure outlined in the proposal on the basis that the test method was unproven and objective standards for evaluation of the seriousness of the problem were lacking. In April 1996, and again in January 1997, NMQAAC recommended removing § 900.12(b)(4)(iv) regarding the grid related artifacts.

FDA has accepted NMQAAC's recommendation and removed this paragraph.

(Comment 316). Twelve comments requested justification, clarification, or suggested modifications for the test procedure proposed under § 900.12(b)(iv). If the issue is revisited for future regulation, the comments to this section will be reconsidered at that time.

f. *Beam limitation and light fields (§ 900.12(b)(5))*

This paragraph covers devices for limitation of the X-ray field and specifies light localizer characteristics.

Under § 900.12(b)(5)(i), FDA proposed that all systems ensure that the X-ray field can extend to or beyond the chest wall edge of the image receptor.

(Comment 317). Two comments interpreted this as a requirement that the collimator must provide separate adjustability on the chest wall edge and suggested that such adjustability is unnecessary.

FDA accepted these comments and reworded § 900.12(b)(5)(i) to clarify that the intent is not that the collimator be adjustable, but that the collimator allow complete coverage of the image receptor at the chest wall edge unless it is the intent of the operator to not do so. This requirement has been moved to the quality assurance section and appears in § 900.12(e)(5)(vii).

Section 900.12(b)(5)(ii) proposed that any system with a light field that appears to approximate the X-ray field must approximate the X-ray field to a specified tolerance and that the light must produce a minimum specified brightness. Four comments supported the alignment recommendations with the observation that, in the respondents' opinions, the alignment was more important on the chest wall edge.

(Comment 318). Two comments expressed disagreement with this requirement. In § 900.12(b)(5)(ii), FDA also proposed a definition for the mammographic source to image receptor distance (SID) that was changed slightly from the definition used for more general purpose radiographic systems in order to be more consistent with the actual usage in mammography. Two comments supported this change, two opposed it, and one respondent expressed concern that the definition of SID in this section might be confusing.

After reviewing the comments, FDA has determined that the requirements for the alignment of the light field and X-ray field and the definition of SID are adequately addressed by existing regulations in § 1020.31, and has deleted the proposed requirements from this standard. A QC test to verify alignment now appears in the quality assurance section at § 900.12(e)(5)(vii).

With respect to the proposal that the light provide a minimum illuminance, two comments supported the requirement and four comments opposed it.

FDA notes that this proposed requirement is the same as that currently required for general purpose systems covered by § 1020.31. Thus, it already applies to such collimators using such light localizers on mammography systems. FDA has chosen to restate the specification here to eliminate any confusion and to clarify that the general requirement also applies to mammography equipment. The restatement now appears under § 900.12(b)(5)(ii) in the final regulations.

Under § 900.12(b)(5)(iii), (iv), and (v), FDA proposed a phase-in of additional requirements. The first stage required all mammography systems to incorporate such a light localizer 5 years after publication. The second stage required that 10 years after publication, all mammography systems were to prevent X-ray production unless the correct combinations of field size and image receptor were selected and to prevent any exposure with an X-ray field exceeding the size of the image receptor support device.

(Comment 319). Three comments supported the requirement for the light field as proposed, with one of these urging that it be instituted at the earliest date the regulations become effective. One comment agreed that a light field, as proposed, may be a desirable feature but thought properly trained personnel are able to position the breast correctly without a light and suggested that the requirement should be deleted because, in the respondent's opinion, the cost would be too high to justify. NMQAAC supported the requirement for a light field, as proposed. Four comments supported the proposed requirements in § 900.12(b)(5)(iv) and (v) but one of these suggested that a means to override the interlocks should be provided. One comment opposed both proposals.

FDA has reevaluated these proposals and concluded that they raise safety concerns related to X-ray systems in general rather than image quality concerns. For this reason, and the cost concerns discussed previously, the agency has decided to delete both § 900.12(b)(5)(iv) and (v) from these regulations and to develop such requirements under the authority provided in the act for regulatory products subject to the Radiation Control for Health and Safety Act of 1968. Accordingly, FDA is discussing relevant changes to part 1020 with its Technical Electronic Product Radiation Safety Standards Committee.

After the revisions to the proposal were completed, there remained only two paragraphs in this provision: § 900.12(b)(5)(i), requiring beam limiting devices that allow the useful beam to extend to or beyond the chest wall edge of the image receptor; and § 900.12(b)(5)(ii), which establishes the illuminance requirement.

g. *Source-image receptor distance (SID) (proposed § 900.12(b)(6))*

FDA proposed requirements for a minimum SID for mammography systems and specified that the SID must be displayed. The agency also proposed an accuracy specification for that display. In § 900.12(b)(6)(i), FDA proposed that all mammography systems have a minimum SID of at least 55 cm.

(Comment 320). One comment recommended that FDA include a definition of "contact mammography" as used in § 900.12(b)(6)(i) to eliminate confusion about its meaning. Another comment supported the minimum SID as proposed, and six comments supported the concept but recommended that the minimum SID be reduced to 50 cm; NMQAAC supported the proposal as published.

In considering these comments and other more general comments relating to avoidance of unnecessary specifications that may limit future technology, FDA has decided that other requirements in the final regulations (dose, resolution/focal spot condition, and system output) make issuing this requirement unnecessary. Therefore, the limitation on the SID has been removed from the final regulations. In the future, if the agency determines that regulations covering this area are required, all relevant comments will be reconsidered at that time.

In § 900.12(b)(6)(ii), FDA proposed that each system should provide a visual indication of the SID, accurate to within 2 percent.

(Comment 321). One comment stated that the actual SID needs definition or that there should be specification of an acceptable method of verifying the SID or location of the focal spot. Other comments were concerned with uncertainties in determining the end points of the SID. One comment noted that the indication of the SID proposed in § 900.12(b)(6)(ii) might differ between systems because of differences in interpretation of the location of the image receptor. Conversely, another comment suggested that the concept of an indication of the SID, as proposed in § 900.12(b)(6)(ii), is ambiguous for those systems having multiple focal spots and anode tracks because all focal spots are not at the same location on the anode. The comment further suggested that the "source" be defined as the average location of all focal spots.

Another comment noted that the standards in IEC 601–1–3(point 29.203.2) specify a tolerance of 5 percent for the SID indicator and requested that FDA consider adopting that specification rather than the 2 percent proposed. One comment suggested that FDA might wish to

consider recasting the proposal of § 900.12(b)(6) as an outcomes specification. Another comment recommended that the proposed requirement in § 900.12(b)(6)(ii) for indication of SID be restated to require the indication only for variable SID units. NMQAAC recommended that the section be deleted because they believed that it would add to the equipment costs with little benefit to the quality of mammography.

FDA has accepted the NMQAAC recommendation and deleted § 900.12(b)(6)(ii). If this issue is revisited, all comments will be reconsidered at that time.

h. *Magnification (§ 900.12(b)(6) (proposed § 900.12(b)(7)))*

As proposed, this paragraph required that systems used for procedures beyond basic screening mammography have magnification capability available to the user.

(Comment 322). One comment suggested that the proposal was unclear as to the intent of "available to the user." One comment incorrectly assumed that, because there was no implementation date for the requirement, all diagnostic equipment installed presently have magnification capability and will meet the requirement. One comment expressed concern that this requirement made his facility's equipment obsolete and stated that most diagnostic mammography does not require magnification.

The radiologists on NMQAAC stated that magnification is needed for noninterventional problem solving mammography. The committee debated whether to recommend to delete or change these provisions and decided not to recommend such actions.

FDA has retained the provision, but reworded parts of the proposal to clarify the intent. The changes include replacing the term "diagnostic mammography" with "noninterventional problem solving mammography." This change was necessary because there is no general consensus as to the definition of "diagnostic mammography." "Problem solving mammography" refers to mammography requiring techniques beyond those utilized in standard mammography of asymptomatic patients and "noninterventional" indicates that the procedures are noninvasive in nature. The term "available to the user" simply means that any attachments or accessories necessary to allow the X-ray system to perform magnification procedures must be present with the system and available to the technologist to encourage and facilitate the use of the feature.

(Comment 323). Four comments recommended that the specification be reworded to require the facility to have the capability to provide magnification instead of requiring that each system provide the feature. However, the experts on NMQAAC stressed the importance of requiring the feature in each system used for such procedures and FDA has retained the requirement.

In § 900.12(b)(7)(ii) of the proposal, FDA specified that at least one magnification setting should be in the range of 1.4 to 2.0. One comment suggested that the use of magnification greater than 1.5 is questionable and that limits for the image quality and average glandular dose should be set for these conditions.

FDA agrees, in principle, with this comment. Generally, magnification for these procedures is accepted within the range specified by the requirement and most sources seem to agree that magnification at approximately 1.5 is optimal. FDA believes that by requiring the equipment to provide magnification in the optimum range the facility will then be able to adequately perform the procedure. Some systems currently used for magnification will not meet this standard. This will not, in itself, however, force the replacement of the equipment because the unit may still be used for the general population "screening" of asymptomatic patients so long as it meets the other requirements.

(Comment 324). One comment noted that "magnification setting" as used in the proposal was not defined. Another comment stated that the method of determining the magnification, along with acceptable limits, should be specified or referenced. FDA has removed the word "settings" from the requirement because it might be confusing but has not added a definition of "magnification" to § 900.2; FDA believes that the term is generally understood to be the ratio of the source-to-image receptor distance to the source-to-object distance.

Because the proposed SID requirements were moved, proposed § 900.12(b)(7) *Magnification* has been codified as § 900.12(b)(6).

i. *System resolution (proposed § 900.12(b)(8))*

This paragraph proposed requirements for the system resolution for both contact mode and magnification mode mammography.

(Comment 325). Nine comments requested that a test procedure be specified for the contact mode requirement proposed in § 900.12(b)(8)(i). One comment suggested that a specification of the appropriate resolution target should be included along with a specification of its position in the test plane, and a requirement for an absorber in the beam to lengthen the exposure times, because very short exposures may introduce interference from gridlines.

FDA agrees with these comments and has included a description of the test conditions in the final regulations.

(Comment 326). One comment correctly noted that the requirements in proposed § 900.12(b)(8)(i) and (ii) attribute failure to meet resolution requirement to problems with the focal spot when, in fact, the cause of observed low resolution values may be some other component in the imaging chain.

FDA agrees with this comment and has rephrased the requirement.

Based on recommendations from NMQAAC, FDA has removed this requirement from the equipment standard and established a QC requirement for system resolution that is codified under § 900.12(e)(5)(iii).

In § 900.12(b)(8)(ii), FDA proposed regulating the system resolution in the magnification mode. Based on guidance received from NMQAAC, FDA has moved this requirement to the quality assurance provisions in § 900.12(e)(5)(iii), and has designated it for phase-in after 5 years. If, in that time, other values are determined to be more appropriate, the regulations will be modified accordingly.

Thus, proposed § 900.12(b)(8) *System resolution*, no longer appears among the equipment requirements.

j. *Focal spot selection (§ 900.12(b)(7) (proposed § 900.12(b)(9)))*

As proposed, this provision included several requirements for indication of the focal spot selected for use in examinations, interlocking of the focal spot with selected kVp, and alignment of the focal spot with the image receptor. FDA also proposed that the system indicate which focal spot and, where applicable, which focal spot material is selected prior to exposure. The proposal also recognized that some systems may automatically select the focal spot during the exposure and required a post exposure indication of the focal spot used during such exposures.

(Comment 327). Three comments, including that of NMQAAC, recommended that the requirements proposed in § 900.12(b)(9)(ii) and (iii), concerning indication of the target material, be linked with an "or."

FDA did not accept this recommendation because it would essentially eliminate the requirement for post-exposure indication of the machine selected focal spot. The agency believes that the change would modify the

requirement in a way the agency does not intend or desire because it would permit the equipment to display only the initial preselected focal spot and never indicate the actual focal spot used.

(Comment 328). Two comments supported the proposal in § 900.12(b)(9)(iv) that the system be interlocked to prevent exposure with improper or incompatible combinations of kVp and target material. One comment opposed this requirement, two requested clarification, and one requested a test procedure. NMQAAC recommended that the initial clause in the proposal be deleted.

After further consideration of this requirement, FDA concluded that the requirement was already adequately covered by requirements relating to diagnostic X-ray systems in § 1020.30(m) and has deleted proposed § 900.12(b)(9)(iv).

k. *Focal spot location (proposed § 900.12(b)(10))*

This paragraph proposed a requirement that the focal spot be located in a specific geometric relationship to the image receptor.

(Comment 329). One comment supported the requirement, five (including NMQAAC) opposed it, believing that it was unnecessary, three requested clarification on its testing, and one, recognizing its relationship to the compression paddle alignment, recommended that the provision be moved to the section on compression paddle alignment.

FDA accepted the NMQAAC recommendation and deleted this requirement from the final rule.

l. *Filtration (proposed § 900.12(b)(11))*

This proposed paragraph contained a statement requiring mammography systems to comply with the beam quality standards for half-value-layer (HVL) codified at § 1020.30(m)(1).

NMQAAC recommended that the section specifying the HVL requirements should be moved to the QC section. FDA accepted this recommendation and codified the requirements for filtration under § 900.12(e)(5)(iv).

(Comment 330). One comment suggested that the proposed rule in § 900.12(b)(11)(i) was too vague and subject to arbitrary interpretations. Another comment recommended that more precise rules be used to determine the required HVL and suggested that existing dose tables could be used to determine the desired limits. The respondent based this position on the fact that § 1020.30(m)(1) requires the interpolation or extrapolation of HVL values in the mammographic range. One comment noted that filtration is not the same as HVL; the HVL measure indicates the filtration that is in the X-ray system, but it is not an actual measurement of filtration. Two comments noted that the proposed regulations refer to § 1020.30(m)(1) for the minimum filtration requirement and incorrectly interpreted this as a lack of specification for kVp's not listed. They asked what FDA is planning to do concerning the perceived lack of regulation of filtration for kVp's below 30 kV since the table of HVL specifications does not list any values below 30 kV. One comment stated that some realistic values for expected HVL at ranges of 25 to 30 kVp should be given. One comment stated that § 900.12(b)(11)(i) seems less specific than current requirements for filtration and another comment suggested that the requirement in § 900.12(b)(11)(i) should be referenced to the most recent ACR physics manual instead of § 1020.30(m)(1).

FDA believes that the comments indicate that relationship between filtration and half-value-layer (HVL) in the mammographic energy range and the concept of mathematical extrapolation and interpolation may not be fully understood by some members of the mammography community. It is generally understood that the first HVL is an indirect measurement of the filtration in the X-ray beam. In the kVp range up to 50 kVp, the values specified in § 1020.30(m)(1) represent a beam with an inherent filtration equivalent to 0.5 mm of type 1100 aluminum. FDA notes that, although the standard relates the HVL in terms of type 1100 aluminum, it does not specify that the same alloy be used to measure the HVL. Therefore, the measurement of the first HVL and the comparison of the result to the specification indicate whether the system has sufficient filtration in the beam; if the first HVL is less than the number specified in the table, there is insufficient filtration because the HVL is a function of the filtration and the energy of the X-ray beam (kVp).

In response to the comments, FDA has provided a table of the extrapolated values of HVL in the mammography kVp range under the quality assurance provisions in § 900.12(e)(5)(iv). Values not shown may be derived by interpolation. FDA believes that providing these values, which are derived from the Federal performance standard at 21 CFR 1020.30(m)(1) and are serendipitously identical to the ACR recommended values when the paddle is not in the beam, makes it unnecessary to reference the ACR manuals or any other external source of HVL values.

(Comment 331). Five comments supported a specification of a maximum filtration requirement in § 900.12(b)(11)(i) and another comment recommended that a maximum HVL, specified as a function of kVp, be added for each known combination of anode and filter materials. One comment noted and agreed with the deletion of the upper limits for HVL that had been proposed in previous drafts of the proposed regulations.

FDA deleted those upper limits because it had concluded that other aspects of performance and image acceptability will serve to limit the maximum filtration. Comments to the proposal have not persuaded the agency to reverse that position.

(Comment 332). One comment noted that § 900.12(b)(11)(i) references § 1020.30 and questioned the need to repeat the requirement. The comment also found the proposal "redundant with § 900.12(b)(2)," which requires equipment to be specifically designed for mammography. FDA does not agree that the references are redundant and has concluded that the restatement in this regulation serves to clarify and reinforce the § 1020.30 specification.

One comment suggested that the regulation be recast in terms of desired outcomes and offered this example: "The type and quantity of filtration interposed between the source and the breast entrance surface shall be such as to provide the maximum subject and image contrast consistent with limitations on dose (§ 900.12(c) of the interim regulations) and minimum half-value layer (§ 1020.30(m)(1))."

FDA believes this suggestion would introduce an unacceptable level of subjectivity into the evaluation process without eliminating the need to reference the specification in § 1020.30(m)(1).

FDA also reconsidered the requirements in § 900.12(b)(11)(ii) for variable filtration systems, which proposed interlocking the filtration with the target material. Upon further review, the agency concludes that requiring equipment to meet standards that ensure that the minimum filtration required in § 1020.30(m)(1) is in the beam during each exposure is sufficient to ensure proper filtration and has deleted § 900.12(b)(11)(ii) from the final regulation.

m. *Compression (§ 900.12(b)(8) (proposed § 900.12(b)(12)))*

This paragraph proposed a number of requirements concerning the application of compression. The basic proposal was

that each mammography unit should have a compression device.

(Comment 333). Five comments and several members of NMQAAC supported the proposed requirement. One comment suggested that FDA should go further and require the use of the compression device.

If the compression device is present, most technologists will use it responsibly and also recognizes that the use of an item is difficult to enforce. FDA, therefore, has rejected this suggestion.

Under § 900.12(b)(12)(i) FDA proposed that, 5 years after publication, each system would be required to be equipped with an initial, foot controlled, power driven compression and also be required to allow the user to control additional "fine adjustment" of the compression. The proposal required that both controls be operable from each side of the patient.

(Comment 334). Two comments stated that power-driven compression by foot control is unreasonable or unnecessary. One comment stated that FDA should delete the requirement for fine adjustment controls and the specifications on how the compression controls should operate because they will increase the cost of new equipment while providing little benefit. Another comment stated that no requirement beyond one that the system "be capable of maintaining a force of 25 pounds for 15 seconds and have a maximum force no greater than 40 pounds when used in automatic or power driven mode" is necessary.

In contrast, twenty-eight comments agreed that "automatic" power driven compression should be required of all facilities but stated that it should be put in effect immediately, not 5 years from now, as proposed. Several of these comments expressed the opinion that the technologist needs to have both hands free to optimize the breast position. Five comments stated that manual and power compression controls, as called for, are essential for quality mammography. The comments further noted that manual controls are needed for finer adjustment and that the two controls complement each other, although one comment expressed the respondent's belief that the fine adjustment should be a manual control because that type of control was reassuring to some patients. One comment recommended that the reference to "foot controls" be deleted since the goal of "hands-free" application of compression may be achievable by some mechanism other than a foot operated control.

FDA has accepted the last comment and modified the requirement accordingly. However, FDA believes that this "hands free" application of power compression and the fine adjustment control are basic to the delivery of quality mammography care and is retaining the requirements in the final regulations. FDA appreciates that this will have a cost impact on the installed base; however, the agency believes that the benefit to public health outweighs this cost and also notes that most of the current equipment can be brought into compliance with modifications that are far less costly than total replacement.

(Comment 335). One comment suggested that FDA might wish to recast the proposal in terms of the desired outcomes, for example:

> Means of applying compression to the breast shall be provided that; (i) allow the technologist to use both hands to position the breast while applying compression, (ii) facilitate positioning from both sides of the patient without removing hands from the patient, (and) (iii) allow a slow, final adjustment of compression.

While FDA appreciates this suggestion, the agency believes that such terms as "allow" and "facilitate" require too much subjective evaluation in the interpretation of compliance. Under some design and use conditions, certain technologists may be able to demonstrate that the equipment meets these requirements, while others may not. FDA believes that establishing reasonable standards for the equipment allows the majority of technologist the greatest opportunity to achieve optimal positioning for even the most challenging patients.

(Comment 336). One comment stated that a number of different types of mammography systems in use either do not offer automatic compression or have only automatic compression with no manual compression knob. The comment suggested it would be worthwhile to retain maximum flexibility in the final regulation to allow evaluation of this type of retrofit system, so long as the intent and specifications of the final regulations were met. A second comment stated that the "fine adjustment compression," as proposed, would place a costly burden on some facilities that do not have manual compression. Another comment indicated that when requiring all units to have a power driven compression paddle activated by foot controls, as proposed, it is also necessary to have a manual compression mode as well. One comment suggested that final compression should always be done using a hand control knob, which the technologist can easily control with direct tactile feedback. One comment agreed that it is necessary to have power driven compression, as proposed, but noted that it was not necessary that the fine adjustment control be power driven. One comment noted that the proposed requirements do not preclude the equipment from having a manual compression provision.

Many of these comments resulted from misreading the proposed regulations. The proposal does not require the fine adjustment compression be a manual operation. The fine adjustment is usually a "manual" adjustment in that it is applied by a hand operated ("manually operated") control. This does not imply or require the provision of a direct linked drive dependent only on the input force provided by the operator. Many of the "manual" knobs are actually servo-driven power compression devices that are under a more closely controlled incremental advance than that provided by the foot control and, in these cases, the "tactile" feed-back sensed by the technologist is not necessarily related to the force applied to the patient. As the regulations are written, the design of the equipment can provide a truly "manual" control for the fine adjustment, or can provide a slower power driven application that may be adjusted by a hand control or other suitable means. FDA believes that most equipment with power-driven compression already provides a fine adjustment control and that the cost impact on those facilities not presently meeting this requirement will be outweighed by the advantages to positioning and improved image quality.

(Comment 337). Five comments suggested that a requirement for maintaining compression for a specified period of time should be added and one suggested that this specification should be established for both automatic and fine adjustment compression.

FDA proposed the criteria for application of compression without stating a specified time for maintaining the compression. This means that FDA expects the compression to meet the criteria in the regulations until the compression is terminated, either by an automatic release at the end of the exposure or by operator intervention during or after the exposure. Therefore, it is not necessary to expressly establish a time limit for maintenance of compression.

NMQAAC discussed these provisions at some length and several committee members spoke about the importance of compression to the overall quality of

mammography. The committee recommended that the requirements for power driven and fine adjustment compression become effective immediately but that the requirements for the maximum force in the initial power drive remain a 5-year phase-in requirement. The agency considered the recommendation to move forward the effective date for the power driven and fine adjustment controls, but has determined that the cost considerations associated with accelerating the implementation of these requirements cannot be justified based on the expected improvements. Therefore, FDA has reworded these requirements to address some of the above comments, and has retained the effective date that was proposed.

Section 900.12(b)(12(i)(C) proposed limits on the compression force required for the automatic power compression mode.

(Comment 338). Two comments stated that the proposed requirement for 25 to 40 pounds under power driven compression was excessive and may result in patient injury.

Based on input from NMQAAC, ACR, and the general comments provided by manufacturers, FDA believes that 25 to 45 pounds is an appropriate range and presents little risk of injury to patients when applied by trained technologists.

(Comment 339). One comment observed that the proposal only limits the compression under power driven control and recommended that an upper limit be set for the maximum compression under manual control.

Although FDA had considered such an upper limit, the idea was opposed by NMQAAC because they felt that it was unnecessary. FDA is not proposing such a limit at this time.

(Comment 340). One respondent was concerned that there may be units designed to achieve the proposed compression forces but that have user adjustable controls that allow adjustment to values below the minimum proposed specification.

FDA agrees that such equipment may exist or be introduced into the market place. The agency notes that under the regulations, as codified, the requirement is for values attainable by the user. If the user has direct control over any such system adjustment, then this adjustment must be used in testing the system. If such adjustment is only available through service or installation configuration, then the unit should be tested only to the limits adjustable by the operator. Under these circumstances, the respondent's concerns are adequately addressed because any user adjustable controls must be utilized in determining the compliance of the system with the standards. FDA has moved the requirement for the range of acceptable power driven compression to the quality assurance section under § 900.12(e)(4)(iii).

Under § 900.12(b)(12(ii)(B), FDA proposed that each system have a means for manual compression release in the event of failure of other decompression mechanisms.

(Comment 341). One comment questioned if the wording meant that compression must be maintained in the event of power failure and, if so, must the required display of override status also be maintained after power failure.

FDA intends that the compression be maintained after a power interruption. However, the display of override need not continue in such circumstance because the fact that the patient is still under compression would serve as adequate indication that manual release is required.

(Comment 342). One comment noted that there were many designs currently on the market that allowed for the manual release of the compression without the presence of a specific device as called for in § 900.12(b)(12)(ii)(B). The comment requested that the proposal be reworded to emphasize the desired outcomes rather than a specific means of obtaining those outcomes.

FDA believes that the wording in the proposal does address outcomes and does not intend the provision to require any specific release design. Any mechanism that allows the manual release of compression would meet the requirement. The requirements for the compression forces and decompression have been moved, as recommended by NMQAAC, to the quality assurance section of the regulations and are addressed in § 900.12(e)(4)(iii) and (e)(5)(xi).

In § 900.12(b)(12)(iii)(A), FDA proposed that systems be equipped with different sized compression paddles matching the sizes of all full-sized image receptors provided and that compression paddles for special purposes, including those smaller than the full size of the image receptor (for 'spot compression') could be provided. FDA did not require that these special paddles be provided but included the reference to clarify that these paddles could be included in the system and are exempt from certain parts of the requirements applicable to the full size paddles.

(Comment 343). Three comments supported the requirement in § 900.12(b)(12)(iii)(A) as written. One comment recommended that the proposed requirement be expanded to require that facilities have the "spot compression paddles" available. NMQAAC supported the proposal as published.

FDA has done some minor rewording in this paragraph and renumbered it in the final regulations under § 900.12(b)(8)(ii)(A).

In § 900.12(b)(12)(iii)(B), FDA proposed that the compression paddle be flat and parallel to the patient support and not deflect from parallel by more than 1.0 cm at any point when under compression.

(Comment 344). Nine comments opposed the proposed requirement. Three of these suggested that this is not the best way to compress the breast because it ignores the anterior tissues and the often thicker tail of the breast. One comment stated that nonparallel paddles are useful for compression of very large breasts in the MLO view. Another comment noted that one manufacturer's equipment does not meet the proposed requirement, suggested that the subject does not need regulation, and recommended that the section be deleted. This comment maintained that the exemptions available for alternate devices would be "much too difficult to use to allow possible improvements." One comment responded to FDA's request for comments on the nonparallel "alternate design" compression paddle by supporting the concept of allowing such a configuration under the proposed regulations. The comment further noted that some manufacturers are investigating the use of compression paddles that apply compression in nonparallel geometry and that these paddles would have difficulty complying with the regulation as proposed. One comment suggested that the proposed requirement was too restrictive, stating that several manufacturers have measured the paddle deflection on their units and found that the requirement may be difficult to meet on the 24 x 30 cm paddles. One comment suggested that the proposed specification could be improved if the tolerance were loosened, if the measured compression force were reduced, or if the allowable flex were expressed as a function of the applied force.

Two comments asserted that the proposed regulation in § 900.12(b)(12)(iii)(B) places too great an emphasis on the position of the compression paddle, but does not address the position of the film in the patient support. These comments recommended that the regulations

address the film location with respect to the edge of the patient support and relax the requirements for the compression plate. Three comments suggested that the description of the test method as proposed in § 900.12(b)(12(iii)(B) should be deleted and that testing procedures should be left to the medical physicist to determine, or be included in a companion manual prepared by FDA. Fifteen comments neither supported nor objected to the proposed requirement, but were concerned with the test procedure as proposed and suggested modifications or requested clarification of the procedure.

NMQAAC discussed this section at some length. Some members and consultants were concerned that the specifications in the proposal would limit the introduction of new equipment and, even though the regulations provide procedures for obtaining approval for alternate standards, wanted to modify the requirement. Experts on the committee stressed that the purpose of this regulation was to eliminate those worn and faulty compression devices that were intended to be flat and parallel by design but which, through use, now flex unacceptably. After consideration, the committee recommended that the requirement remain but that a new provision be added that addressed those paddles that by design were not intended to remain straight and parallel under compression. They also recommended that the test procedure described in this section be deleted as a requirement because it could be determined by the physicist during the survey.

In response to the public comments and NMQAAC recommendations, FDA has made changes as outlined below. FDA is deleting the provision that established a test procedure for this section. The requirements have been modified and renumbered as § 900.12(b)(8)(ii)(B) and a new § 900.12(b)(8)(ii)(C) requires that all paddles intended by the manufacturer's design not to be flat and parallel under compression must meet the manufacturer's design specification and maintenance requirements. The agency will revisit and modify its proposal for the test procedure for this section in the future and all comments regarding the procedure will be considered again in that process.

Under § 900.12(b)(12)(iii)(C) and (D), FDA proposed that the chest wall edge of the compression paddle should be straight and parallel to the edge of the image receptor and that the chest wall edge of the compression paddle should not interfere with the chest wall edge of the image.

(Comment 345). Two comments requested clarification on how straight and how parallel the requirement intended the chest wall edge of the paddle to be. One comment agreed with the intent of the proposed regulation, but expressed concern that varying interpretations of the written regulation will lead to confusion in enforcement. This comment recommended that, if such specifications are included in the final regulations, there should be some tolerance specified that is both affordable and effective in the improvement of mammography.

FDA notes that the intent of this section is to eliminate the older style compression paddle that had a curved chest wall edge. The agency believes that the words straight and parallel are well understood but will address concerns raised by the comments through issuance of a guidance on this paragraph that contains a test procedure facilities may utilize. The description of this procedure should also clarify any confusion regarding FDA's interpretation of the regulation.

In § 900.12(b)(12)(iii)(D), FDA had proposed that the chest wall edge of the compression paddle should be bent upward.

(Comment 346). One comment recommended that the proposed regulation include a requirement that the chest wall edge of the paddle be perpendicular to the surface of the compression plate. Another comment stated that the use of "should" in § 900.12(b)(12(iii)(D) has little meaning and is unenforceable.

NMQAAC discussed both paragraphs and did not recommend any changes. FDA notes that this provision was not intended to establish a mandatory requirement but to clarify that such a design, intended to enhance patient comfort, was permissible. This requirement has been codified under § 900.12(b)(8)(ii)(E) in the final regulations. The word "should" has been replaced with "may" in the final rule. FDA does not agree that it is advisable to require the chest wall edge to be perpendicular to the surface of the compression paddle since this could lead to sharp edges that might cause patient discomfort.

Under § 900.12(b)(12)(iv)(A), FDA proposed that, 5 years after the publication date of the final regulations, the edge of the compression paddle shall align with the chest wall edge of the image receptor to within 1 percent. Proposed § 900.12(b)(12)(iv)(B) further restricted the alignment to within 2 millimeters 10 years after publication and § 900.12(b)(12)(iv)(C) proposed a test procedure for the requirement.

NMQAAC recommended that the § 900.12(e)(12)(iv)(A) be moved to the QC section of the final regulations and that the requirements should go into effect at the earliest opportunity. NMQAAC also recommended that the requirement under § 900.12(b)(12)(iv)(B) and (C) be deleted because the committee believed the proposed 2-millimeter requirement was too stringent. The proposed 2-millimeter requirement and the test procedure have been deleted and the final regulation regarding compression paddle-image receptor alignment was moved to the quality assurance section and is codified under § 900.12(e)(5)(vii)(C) where it will become effective at the earliest effective date.

(Comment 347). One comment recommended caution in specifying these alignment requirements because they might limit design in some areas of new technology. The comment recognized that these proposed specifications are only applicable to film-screen systems, but expressed concern that the concepts might carry over into new technology areas.

FDA assumes that this comment was directed toward the issue of image receptor size for digital systems, but does not anticipate any conflict.

(Comment 348). Eleven comments agreed with tightening the tolerance for alignment as proposed in § 900.12(b)(12)(iv) but suggested that only a positive misalignment should be allowed.

FDA agrees and accepts these comments.

(Comment 349). Eight comments noted a typographical error in § 900.12(b)(12)(iv)(A). FDA has corrected this.

(Comment 350). Three comments recommended that the "October 1, 2000" effective date be deleted and that the requirement go into effect in the earliest phase because, in the respondents' opinions, the vast majority of systems already meet this requirement.

FDA agrees with these comments and has accepted this recommendation to move the effective date forward.

(Comment 351). Six comments expressed concern regarding the test for this paragraph.

These comments will be reconsidered when FDA publishes its guidelines for the QC test.

Under § 900.12(b)(12)(iv)(D), FDA proposed that the alignment criteria for the contact mode should also be applicable to the magnification mode 10 years after the publication of the final regulations and proposed a test procedure.

(Comment 352). Five comments suggested that the requirement was unnecessarily restrictive and should be dropped. Four comments supported the proposed requirement, believing it serves to ensure the accuracy of the alignment of the edge of the compression paddle with the edge of the image receptor. One comment recommended a rewording for the requirement. Two respondents expressed concern regarding the test procedure. NMQAAC suggested that the requirement in the magnification mode was unnecessary and should be deleted.

After reviewing the comments, FDA has accepted the NMQAAC recommendation and deleted the requirement for paddle alignment in the magnification mode.

Under § 900.12(b)(12)(v), FDA proposed that, 5 years after publication of the final regulations, all systems should display the compressed breast thickness. The proposal also established a test procedure for the requirement.

(Comment 353). One comment pointed out that current indicators of compressed breast thickness are grossly inaccurate for a number of reasons, including paddle and compression arm flex, lack of uniformity across the breast, and differences in the location at which various manufacturers determine the breast thickness (since there is no agreement where the breast thickness is to be measured). Two comments recommended that the word "correct" be inserted between "the" and "compressed" in § 900.12(b)(12)(v). One manufacturer requested an exception for its product because the measured breast thickness read out could be off by 0.6 to 1.0 cm for their paddle. One comment expressed concern that there was no clear specification to the accuracy of the indicated value proposed in § 900.12(b)(12)(v)(A). NMQAAC discussed this provision at its April 1996 meeting and recommended that the requirement for a display remain but that no accuracy specification be associated with the display. NMQAAC revisited the issue at its January 1997 meeting but did not change its recommendation. Another comment suggested that the proposed requirement should apply only to equipment that uses the compressed breast thickness in an algorithm to determine technique factors. One comment supported the proposed requirement in § 900.12(b)(12)(v)(A) because it is especially important for implant patients, but recommended that it go into effect 5 years after the effective date of the regulations rather than 10 years after, as proposed.

FDA has reviewed the comments and reassessed the need for this requirement. The practical application of the information provided by the display to the mammography process appears to be questionable and the concept of having a display that has no associated accuracy is of debatable value. FDA has decided to remove § 900.12(b)(12)(v) from the final regulations in accordance with the agency's desire to minimize costs, as discussed previously. All comments requesting clarification or suggesting modification to the test procedure will be considered again if FDA revisits this requirement.

The portions of proposed § 900.12(b)(12) that have been retained in the equipment provisions were codified under § 900.12(b)(8).

n. *Technique factor selection and display (§ 900.12(b)(9) (proposed § 900.12(b)(13)))*

In this paragraph, FDA proposed requirements for the selection and display of technique factors.

FDA proposed in § 900.12(b)(13)(i) that every system shall have the capability for manual selection of mA's or, at least, of mA or time. No public comments addressed this issue. NMQAAC discussed the proposal at both the April 1996 and the January 1997 meeting and supported the proposal. FDA reworded the requirement slightly before codification to clarify its intent. Because of the deletion of paragraphs listed earlier in the proposal, paragraph § 900.12(b)(13) has been codified as § 900.12(b)(9), and this paragraph became § 900.12(b)(9)(i) in the final rule.

Under § 900.12(b)(13)(ii), FDA proposed that all technique factors be clearly displayed at the control panel prior to exposure. At § 900.12(b)(13)(iii), the agency proposed that such factors be preindicated in the AEC mode.

(Comment 354). One comment recommended FDA clarify that the specification in § 900.12(b)(13)(ii) applies only to the manual mode of operation. A comment on § 900.12(b)(13)(iii) requested clarification of which technique factors were intended to be covered by this requirement. At its April 1996 meeting, NMQAAC also expressed some confusion regarding the same issue. Another comment recommended that the requirements of § 900.12(b)(13)(iii) and (iv) be combined.

FDA believes that requirements for preindication and postindication of the technique factors should be presented under separate paragraphs and has not accepted this last comment. FDA did clarify § 900.12(b)(13)(ii) and (iii) and combined them into a single provision at § 900.12(b)(9)(ii).

Under § 900.12(b)(13)(iv), FDA proposed that, after AEC exposure, the system should indicate the actual kV and mA's used during the exposure.

(Comment 355). Two comments recommended that this requirement be deleted or its implementation date be delayed because the replacement or retrofit of many older units might be costly. Another comment stated that a mA's readout, as proposed in § 900.12(b)(13)(iv), has not been proven necessary. NMQAAC discussed this issue and the cost concerns related to retrofits to provide the postexposure mA's indication. The committee supported the requirement but requested some wording changes to clarify the meaning of mA's indication.

FDA has retained this provision because it concluded that the costs associated with the possible retrofits are not significant enough to outweigh the benefits and has included it in the final regulations under § 900.12(b)(9)(iii).

Under § 900.12(b)(13)(v), FDA had proposed that each unit provide an indication of kVp that was accurate to within + 5.0 percent of the actual kVp.

(Comment 356). Five comments agreed with the proposed five percent accuracy specification, but another comment suggested that the requirement for kVp accuracy of + 5.0 percent was not justified because there was no definition of what kVp really means and no calibration available for kVp meters. Another comment stated that "5 percent of the actual kVp as proposed in (b)(13)(v), is a very large discrepancy," noting that 5 percent of 30 kVp allows 31.5 kVp, which, in the respondent's opinion, presently is considered to be unacceptable. The comment further suggested that § 900.12(b)(13)(v) be changed to read: "All indications of kVp shall be within 1 kV of the actual kVp."

In § 1020.30 FDA defines kVp to mean the maximum value of the potential difference across the X-ray tube during an exposure. FDA agrees with the comment that the + 5.0 percent accuracy is a large discrepancy and notes that it is the same specification currently established by the most recent revision of the ACR manuals. The agency intends to provide additional information regarding compliance with this requirement.

(Comment 357). Three comments, including one from NMQAAC, noted that there was a conflict between the kVp accuracy specification at § 900.12(b)(13)(v) and at § 900.12(e)(5)(ii)(A). NMQAAC also recommended that the requirement be moved to the quality assurance section

and that the + 5.0 percent accuracy specification be retained. FDA has accepted these recommendation and the requirement now appears in the final regulations under § 900.12(e)(5)(ii) and includes the + 5 percent accuracy specification.

In § 900.12(b)(13)(vi), FDA proposed that, 10 years after the publication of the final regulations, each X-ray unit used for mammography would be required to have a specific range of kVp and mA's selection and that adjacent selections of the kV selection and adjacent selections of the mA's should not vary by more than a prescribed amount. The public comments regarding this section were overwhelmingly against including these proposals in the final regulations. NMQAAC supported the proposals but only marginally so, with many opposing opinions. FDA has reconsidered the advisability of including these specifications in the final regulations, based in part on the public comments and in part on the difficulty in predicting the necessity for these limitations 10 years in the future and has deleted all requirements proposed under § 900.12(b)(13)(vi) from the final regulations.

o. Radiation output (proposed § 900.12(b)(14))

This paragraph proposed setting a minimum value for radiation output per second of mammography X-ray equipment, with an increase in that minimum value to occur 5 years after publication. This section has been codified in the quality assurance section of the final regulations.

(Comment 358). Two comments agreed with the requirement proposed in § 900.12(b)(14)(i), with one urging that the requirement be fully implemented at the earliest possible date rather than being phased-in. One comment suggested that the proposed requirements in § 900.12(b)(14)(i) and (ii) might actually be in conflict with each other. FDA reviewed these provisions and does not see a conflict because clause (i) specified an exposure rate and (ii) specified a time over which that rate must be met. However, in response to other concerns, as outlined in the preamble to the quality assurance section, FDA has modified the requirement to clarify that the specification is to be an average over three seconds and not an instantaneous rate measurement.

(Comment 359). One comment suggested that the proposed requirement in paragraph (b)(14)(i) be replaced by the equivalent air kerma expressed in milligray (mGy). The guidelines followed by FDA in the writing of regulations specify that all numerical limits, where applicable, be expressed in terms of the International System (SI) of Units, the internationally accepted standard, followed by the more common equivalent in parentheses.

In the proposed regulations, FDA had represented radiation limits in terms of exposure expressed in the SI unit of coulomb per kilogram (C/kg). Although C/kg is the correct SI unit for exposure, it is an awkward unit for the actual operating ranges of exposure (10–4 C/kg) of mammography systems. FDA believes now that it would be more advantageous to specify radiation limits in terms of the alternate quantity air kerma expressed in the SI base unit of gray (Gy). Air kerma, which is defined at § 900.2(d), is the sum (per unit mass of air) of the initial kinetic energies of all the charged ionizing particles liberated by the X-rays. At the X-ray energies typically used in diagnostic radiology and mammography, values for air kerma are practically indistinguishable from values of absorbed dose in air. Air kerma is increasingly accepted in the international community as the quantity preferred in the specification of radiation delivered, and it is being proposed to replace exposure in amendments in 21 CFR part 1020. Because amendments to those standards are not final, the units were not used in the proposal. However, FDA is replacing the quantity exposure with the quantity air kerma in these final MQSA regulations because it anticipates that parallel changes will be made in the international standards and part 1020.

(Comment 360). One comment suggested that FDA recast proposed § 900.12(b)(14)(i) as a performance objective, such as: "The radiation output, in terms of exposure rate, at clinically useful kVp's shall be sufficiently high to avoid exposure times of such duration that loss of resolution due to motion or excessive dose due to film reciprocity failure is expected to occur."

FDA appreciates the benefits of adopting performance standards when appropriate but believes that in this case the suggested wording introduces an unacceptable level of subjectivity into determining compliance.

(Comment 361). One comment recommended that the test procedure proposed to measure radiation output in § 900.12(b)(14)(iii) specify the position of the compression paddle during the measurement.

FDA assumes this comment is expressing concern regarding the scatter contribution to the reading and its variability depending on the distance the paddle is located from the detector. FDA recognizes the possible effects of scatter on this measurement but does not believe the contribution is of sufficient concern to warrant the prescription of paddle position relative to the detector. In clinical use, the paddle is obviously in contact with the breast. If a facility wishes to test with the paddle in a similar position, FDA has no objection. Similarly, if the paddle is moved nearer to the focal spot, FDA would find this acceptable. FDA does, however, require the compression paddle to be in the X-ray beam between the source and the detector as was specified in § 900.12(b)(14)(iii).

(Comment 362). One comment suggested that FDA require that compliance with § 900.12(b)(14) be determined "with the phantom in the beam and that the exposure be completed within 2.5 seconds."

FDA believes that placing any phantom in the beam during this test would not improve this test and that the three second exposure proposed is both reasonable and appropriate for this requirement.

(Comment 363). Two comments suggested that compliance with § 900.12(b)(14)(i) should be determined at a routine clinical kVp instead of the proposed 28 kVp. FDA notes that 28 kVp is used clinically for mammography, although not as frequently as other kVp values. It was selected first by the American Association of Physicists in Medicine and then by the ACR/CDC Imaging System Focus Group as the standard kVp to be used in association with their radiation output specifications. These specifications were utilized by FDA in establishing this radiation output requirement. If a different kVp were selected, the radiation output would likely have to be modified; however, professional consensus on what modifications would be appropriate is presently lacking. The agency, therefore, does not accept these comments.

(Comment 364). One comment recommended that the proposed requirements under § 900.12(b)(14) should be made part of § 1020.31 so that uniform requirements would be ensured nationwide. FDA reiterates its previous position that this would not achieve the desired impact on the installed base of mammography equipment. FDA believes that most modern mammography systems can meet this requirement. However, the agency is considering parallel requirements under § 1020.31 to ensure that future production is compliant.

(Comment 365). One comment supported the test procedure specified in § 900.12(b)(14)(iii) as being an improvement over the current specification. Another comment suggested that the requirement in § 900.12(b)(14)(i), as written, should only apply to a molybdenum/molybdenum Mo/Mo anode/filter combination because other target-filter combinations may not need to meet the requirement to deliver adequate imaging.

NMQAAC supported the proposed requirements, but suggested that the specifications should be limited to Mo/Mo target-filter units only. They also recommended that all of § 900.12(b)(14) be moved to the quality assurance section.

FDA has accepted NMQAAC recommendations to limit the requirements to Mo/Mo target-filter units and to codify the requirement with the QC requirements.

(Comment 366). One comment noted that xeromammography equipment might not meet these proposed requirements.

FDA believes that xeromammography units should be able to meet the requirement, as proposed, but with the acceptance of the Mo/Mo limitation discussed above, the requirement would no longer be applicable to xerox systems, which incorporate tungsten targets.

(Comment 367). One comment suggested that the proposed requirements of § 900.12(b)(14)(i) and (iii) need to be linked in order to explain where the output is to be measured.

FDA does not agree with this comment although it has reworded the proposed § 900.12(b)(14) for clarification. The provision has been codified as § 900.12(e)(5)(x).

p. Automatic exposure control (§ 900.12(b)(10) (proposed § 900.12(b)(15)))

As proposed, this paragraph required that each mammography system have an automatic exposure control (AEC) for mA's, established a specification for the AEC reproducibility, and set requirements for the indication of the AEC detector positions and selected location.

(Comment 368). One comment suggested that the requirements proposed in § 900.12(b)(15) should be prefaced with a statement that they are intended to apply only to film-screen modalities. A related comment reported that xeromammography systems do not have AEC controls as required in § 900.12(b)(15) and that this would bar their use.

FDA agrees with these comments and has rewritten this requirement to limit it to screen-film mammography systems.

Under § 900.12(b)(15)(i), the proposal required all AEC devices to be operable in each equipment configuration provided and gave examples of common configurations.

(Comment 369). Several comments sought to limit the applicability of this requirement in different ways. One comment supported the proposed requirements in § 900.12(b)(15)(iv)(A) and (B) as a means to ensure appropriate detector location and thereby avoid repeat exposures and reduce patient dose. One respondent did not believe that the automatic exposure control photo-timing proposed in § 900.12(b)(15)(i) is significant in obtaining satisfactory diagnostic mammograms. Three comments recommended modifying § 900.12(b)(15)(i) by replacing "of equipment configuration provided" with "where applicable." The comments further suggested that the examples of equipment configurations in § 900.12(b)(15)(i) be deleted. One comment agreed with the April 1996 NMQAAC recommendation that the requirements proposed in § 900.12(b)(15)(i) should be limited to clinically used configurations.

FDA remains convinced that the use of AEC devices on mammography equipment is an aid to quality mammography and believes that requiring it for "all combinations of equipment configuration provided" is appropriate and necessary. The agency notes that the requirement applies to the configuration of the individual unit. For example, if the unit is not provided with magnification capability, then it would not be required to have a functioning AEC in a nonexistent magnification mode. The agency also notes that NMQAAC reversed its April 1996 position during its January 1997 meeting and concurred with the requirement as proposed.

Under § 900.12(b)(15)(ii), FDA proposed that the AEC be capable of providing automatic mA's selection.

(Comment 370). One comment recommended deleting this requirement, stating "that it is the purpose of AEC to provide automatic mA's selection" and, therefore, the requirement was redundant. One comment requested clarification of the phrase "automatic mA's selection." Another comment asked whether § 900.12(b)(15)(ii) required automatic termination of exposure or automatic display of mA's and questioned why the AEC should be able to automatically select mA's.

FDA defines an automatic exposure control as a device that automatically controls one or more technique factors in order to obtain a desired quantity of radiation at a preselected location. Such a device would automatically terminate the exposure when the selected quantity of radiation had been delivered. This definition does not restrict the technique factor(s) that may be selected; the control of target material, focal spot, filtration, time, mA, and/or kVp are all viable options for such a device. Because the mA's is the product of time (in seconds) and mA, the control of time and/or mA represents control of the mA's; therefore, AEC's generally function by controlling mA's and/or kVp. FDA was initially concerned that an AEC that controlled kVp alone, without capability to control mA's, could not adequately ensure the small incremental changes in radiation that are often necessary in mammography. FDA has reconsidered this position because it has concluded that any such device that reaches the marketplace would provide the necessary ranges of adjustment in order to have been approved under the FDCA's requirements for safety and efficacy of new devices. Therefore, FDA is removing the requirement proposed in § 900.12(b)(15)(ii) that all AEC devices provide automatic mA's selection.

Under § 900.12(b)(15)(iii), FDA proposed a limit on the reproducibility of the AEC.

(Comment 371). One comment suggested the wording be changed to include "for each target/filter combination."

FDA believes the change is not needed; because no target-filter combinations were specified in the regulation, all combinations are subject to the requirement.

NMQAAC recommended that this requirement be moved to the quality assurance section. FDA has accepted this recommendation and the specification for the evaluation of the AEC reproducibility is codified in § 900.12(e)(5)(i).

Under § 900.12(b)(15)(iv), FDA proposed requirements regarding the positioning flexibility of the AEC detector, visual location of the available detector positions, and indication of which AEC detector location was selected.

(Comment 372). Two comments recommended that the proposal be expanded to require increased flexibility in placement of the AEC detector. One comment commended the proposed requirement for AEC positions to be indicated at the input surface of the breast compression paddle. The comment believed that this requirement would improve the quality of imaging and prevent repeat images. Two

comments suggested that FDA add a requirement specifying the necessary accuracy of the indication of both the size and available position of the AEC detectors. The respondents' suggested the indication might depend on magnification of the indication resulting from various breast thicknesses.

FDA interprets these comments to mean that a projected indication on the input surface of the breast might vary in size and location depending on the magnification induced by the displacement of the input surface caused by various breast thicknesses. FDA agrees that this might occur and notes that such a system would be a design that might not be able to meet the requirements.

FDA intends the indications of the size and location represented on the compression paddle to be representative of the actual size and location of the detectors as they would appear if marked on the breast support device. The agency anticipates no confusion will be caused by varying displacement of the paddle from the patient support since the indication of size and position will remain constant.

(Comment 373). One comment suggested that the indicators should not "give rise to artifacts in the image."

FDA believes that any such artifacts will be detected and corrected during the normal QC process and, therefore, modification of this requirement is unnecessary.

(Comment 374). One comment stated that this requirement leaves too much room for interpretation and would be very difficult to inspect against. The comment suggested one could argue that merely knowing the position via the handle that moves the detector would be adequate for proper detector positioning. The comment further stated that all current units do provide clear indication of detector position, which is visible from both sides of the patient, and that the requirement should be removed.

FDA does not agree that the requirement is subject to conflicting interpretation or would be difficult to inspect, but does agree that the location of the position selector would be an adequate indication of which detector position had been selected (although it would not indicate the detector position itself). FDA also does not agree that the installed base of systems all provide such flexibility or indications and remains persuaded that the requirement will provide useful tools for the technologist.

NMQAAC recommended that FDA delete the proposal that the selected detector position be visible from both sides of the patient because they did not consider it of sufficient importance to require in the regulations. FDA has adopted this recommendation and the requirement has been amended accordingly.

Under § 900.12(b)(15)(v), FDA proposed that the operator be able to vary the optical density from the normal density setting. No specific comments were received on this proposal and FDA codified this requirement without change.

Under § 900.12(b)(15)(vi), FDA proposed that, 10 years after the publication of the final regulations, each unit would be required to provide four steps above and four steps below the normal optical density setting and proposed limits for the acceptable variability between adjacent settings on this control.

(Comment 375). FDA received a large number of comments on this section. The overwhelming majority were opposed to the requirement because of concerns regarding the wording of the provision, the perceived cost to facilities, the range of control to be provided, the incremental difference between adjacent settings, and the necessity for the requirement. In response to these comments and because of agency concerns regarding costs, FDA concluded that the proposal should be deleted from the final regulations and that further study should be undertaken to determine if future requirements in this area are warranted. If regulations or guidelines are proposed later, the individual comments will be reconsidered at that time.

Under § 900.12(b)(15)(vii), FDA proposed requirements for the optical density variation permitted with a screen-film mammography system under AEC.

(Comment 376). Three comments supported the proposed requirement in paragraph (b)(15)(vii) because it evaluates the equipment performance when used on breasts of various size and density. Two comments indicated that § 900.12(b)(15)(vii) was not stringent enough and one of these recommended that an initial value of 0.15 OD should be specified.

FDA disagrees with this comment because it believes that the initial value should remain the same as that used in the interim regulations. NMQAAC recommended that these requirements be moved to the quality assurance section and FDA agreed. The requirements have been codified under § 900.12(e)(5)(i).

In the proposal, FDA had specified that the system meet the requirements for AEC reproducibility at each available detector position.

(Comment 377). Three comments suggested that the test under § 900.12(b)(15)(vii) is necessary for only one detector position because the detector and associated electronics do not change.

FDA disagrees with these comments because some AEC detectors utilize individual detectors that are permanently fixed in position. The switching of position is actually a change in contact points or system logic to read the selected position. In such cases, the testing of one position provides no indication of the function at other locations.

(Comment 378). One comment suggested that the testing of photo-timer tracking with dosimeter positioning is usually not necessary unless multiple detectors are used.

The agency believes that when the process is accomplished by the relocation of the same detector to different positions, the functioning of the detector at each detector location is not guaranteed by testing at only one position. This could be influenced by broken wires, poor connections, or dirty contacts in the system.

(Comment 379). One comment stated that testing of the AEC at all detector positions will be dependent on the dimensions of the phantom. The respondent stated that the commonly used 10 cm x 10 cm phantom may not be large enough for all positions and that this will drastically increase the time required to perform this test.

FDA does not agree with this comment. The phantom could be placed near the focal spot and thereby cover all available detector positions without being repositioned.

(Comment 380). One comment suggested that with multiple detectors it is not necessary to test the tracking over the entire range of phantom thicknesses.

FDA interprets this comment to mean that, once the detector reproducibility at each position has been established, the testing of reproducibility for additional thickness need be performed at only one position. FDA does not agree with this comment; it does agree, however, that when one detector is used and moved from position to position, once it is established that the detector is reproducible over the entire range of thicknesses at one position, it is only necessary to establish the correct functioning for one thickness at each other position. In response to these comments and in recognition of the costs associated with testing reproducibility at multiple positions, FDA has deleted the specification for testing at each detector position. Because the agency remains convinced that the best way to ensure that the detector(s) functions properly at each position is to test it/them at each position. FDA encourages facilities and the medical physicists to include such testing as a routine part of the annual survey. The remaining provisions of proposed § 900.12(b)(15) are codified as § 900.12(b)(10).

q. *Disabled examinees (proposed § 900.12(b)(16))*

In this paragraph, FDA proposed that each facility choosing to schedule disabled patients have equipment and protocols in place to ensure that the facility could adequately accommodate such disabled patients. This proposal did not require each facility to accept disabled patients, but did require those doing so to be capable of performing the service.

(Comment 381–382). Many comments expressed the mistaken belief that FDA was seeking enforcement powers under the American with Disabilities Act (ADA) or to duplicate the ADA.

Other comments on this section ranged from calling the requirement too lenient to calling it unnecessarily intrusive. The majority of the comments, although not opposed to accommodating disabled patients, were concerned that the screening of patients prior to their examination would be difficult or impossible because many appointments are not made by the patient. Comments also expressed concern that accepting disabled patients under this requirement would obligate facilities to be able to accommodate all disabled patients. Some comments also questioned whether there was equipment available that could offer this range of use.

Another area of concern was related to mobile units and facilities which, because of their size and stand-alone nature, would be difficult to adapt to accommodate the range of disabilities the facilities might encounter. NMQAAC consumer representatives supported this section and urged FDA to require facilities to either serve disabled patients or refer them to a facility that can. Other comments questioned the value of referrals, citing lack of knowledge regarding other facilities' equipment, staff, and ability to deliver the services necessary.

Because of the lack of consensus on the need for this requirement and the concerns raised in the comments, FDA has decided to delete the proposed requirement and revisit it at a future date if a problem is perceived. FDA strongly urges facilities to voluntarily institute procedures that will direct patients with disabilities to facilities that are capable of serving this population. The agency believes that local consumer groups and all accreditation bodies can pool information and educate the public and the mammography community about the availability and locations of such services.

r. *X-ray film (§ 900.12(b)(11) (proposed § 900.12(b)(17)))*

In this paragraph, FDA proposed a requirement that X-ray film used for mammography must be designated for such use by the film manufacturer.

(Comment 383). One comment supported the proposed requirement. Three comments suggested that it was too vague, one comment questioned how one would know if a manufacturer's designated mammography film is adequate for doing quality mammography under the requirements, and another suggested the adoption of the storage recommendations from ACR's *Recommended Specifications for New Mammography Equipment*. NMQAAC supported this requirement as proposed.

FDA has not proposed regulations governing film storage because it believes that each facility should follow the manufacturer's instructions for the particular film being used. The goal of this requirement is to ensure that the film used by the facility is considered, at least by the manufacturer, as being suitable for mammographic use. The regulation is not intended to establish standards for film; the only requirement placed on the facility is to check that the film it uses has been designated by the manufacturer for mammography. The requirement is not vague once its limited scope is understood. FDA codified this requirement, without change, in § 900.12(b)(11).

s. *Intensifying screens (§ 900.12(b)(12) (proposed § 900.12(b)(18)))*

FDA proposed in this paragraph that only intensifying screens that have been specified by the manufacturer as appropriate for mammography may be used for mammography.

(Comment 384). One comment supported the proposed requirement. Again, one comment questioned how a facility would know if a manufacturer's designated mammography screens are adequate for doing quality mammography under the proposal. Another comment stated that xeromammography systems do not use intensifying screens and that § 900.12(b)(18) would serve to ban their use.

FDA does not intend a specification about screen requirements to apply to any modality that does not use screens in the production of its images. Therefore, the agency sees no impact of this requirement on xeromammography. Although NMQAAC supported the requirement, one member expressed concern that the wording of the proposal implied that the facility was responsible for matching the spectral sensitivity of the film and the screen. As explained in connection with the mammography film specification above, the intent of the requirement is not to address the quality of the product, but rather to ensure that it is one intended by the manufacturer to apply to mammography. In general, the facility is responsible for matching the spectral sensitivities of the screen with the film. However, the facility is expected to use the information provided by the manufacturers and not to derive the information independentiy. FDA has reworded the requirement to clarify this point and codified it as § 900.12(b)(12).

t. *Film processing solutions (§ 900.12(b)(13) (proposed § 900.12(b)(19)))*

In this paragraph, FDA proposed that facilities use film processing solutions capable of developing films in a manner equivalent to the film manufacturer's minimum specifications.

(Comment 385). Three comments supported this proposed requirement and requested that guidance documents be established for this area. Six comments suggested that the word "minimum" be deleted because, in the respondents' opinions, most facilities generally comply with the regulatory requirement and the regulation should encourage them to meet more than the minimum. FDA appreciates these comments and notes that facilities are free to exceed this minimum; the requirement, however, is intended only to establish that facilities comply with the manufacturers' minimum standards.

(Comment 386). Three comments questioned how a facility could demonstrate equivalence under § 900.12(b)(19) because some manufacturers of film processing chemicals refuse to acknowledge that other vendors' chemicals produce "equivalent" results. The comments requested that the wording be changed to clarify compliance.

FDA believes these comments are similar to the ones regarding quality of the film and screens used in mammography. It is not the intent of the requirement that the facility experimentally determine the compatibility of various solutions with the film, but only that the facility obtain documentation from the suppliers showing that their products are intended to be used for processing the

particular film used by the facility and that they provide results consistent with the film manufacturer's specifications. The facility would only be required to establish the equivalence independently if no documentation, in the form of labeling or specifications, were available from the chemical or film supplier.

(Comment 387). One comment questioned how the requirement can be met when the film manufacturer does not manufacture chemicals for film processing.

FDA notes that, in such cases, it would likely be easier to establish equivalence because the film manufacturer would specify the requirements for the processing as opposed to a manufacturer that supplies both film and chemicals and is likely to specify solutions only by name rather than characteristics.

(Comment 388). One comment recommended that FDA allow accreditation bodies to review and monitor the use of chemicals for film processing and eliminate the requirement from the regulations.

Although the agency is continually working with the accreditation bodies to divide responsibilities when such division is useful and possible, FDA did not adopt the recommendation. The MQSA requirements, even when administered by the accreditation bodies, are implemented through Federal standards. FDA may consider requiring accreditation bodies to collect and monitor information about chemicals used for film processing in the future. NMQAAC agreed with the requirement as proposed. FDA has codified the requirement in the final regulations under § 900.12(b)(13).

u. *Lighting (§ 900.12(b)(14) (proposed § 900.12(b)(20)))*

In this paragraph, FDA proposed a requirement that facilities provide special lights for use during interpretation with variable luminance capable of producing light levels greater than that provided by the viewbox.

(Comment 389). Four comments supported the proposal. One stated that "it might reduce the number of retakes, and provide better detail to the interpreting physician." Two comments noted that the light should be required wherever the interpreting physician is reading films, but that it may not be necessary at all locations where images are taken. One comment noted that the proposed requirement in § 900.12(b)(20) was for a "bright light" or "hot lamp" for viewing dense areas of films. The comment suggested that the purpose of the lamp should be included and that it should only be required for facilities that use the screen-film modality.

FDA agrees that the light is only required where mammograms are interpreted but recommends that it may be useful to the technologist in evaluating the quality of the films. FDA also agrees that facilities not interpreting screen-film mammograms, or not reviewing previous screen-film mammograms for reference, do not need these special lights.

(Comment 390). Two comments stated that a fixed output lamp may give the same information as the variable output "hot lamp" proposed. NMQAAC supported the requirement, but recommended that the word "variable" be removed because it is the increased intensity and masking provided by the light rather than any variability in output that actually enhance the reading of the image.

FDA has accepted these suggestion and has reworded the final requirement accordingly.

(Comment 391). One comment expressed difficulty imagining the benefits of this requirement to the patient.

FDA believes the usefulness of this device is well established, especially in view of the trend toward denser films in mammography; by optimizing interpreting conditions for physicians, the regulation increases the likelihood that the patient's mammogram will be accurately interpreted.

(Comment 392). One comment recommended that FDA allow accreditation bodies to review and govern the proposed requirement in § 900.12(b)(20), and eliminate it from the regulations. As indicated above in response to a similar comment by the same individual.

FDA has not adopted the recommendation, although it may consider requiring such action by the accreditation bodies in the future.

(Comment 393). Four comments suggested that the proposed requirement was too vague. One comment suggested that the requirement be reworded to specify that a "spot lighting" device be provided.

FDA agrees with these comments and amended the final requirement to clarify this point.

(Comment 394). A number of comments chose this section to offer suggestions regarding requirements for the viewbox or the viewing conditions. FDA has discussed those comments in the general equipment section above.

Because of the deletion or movement of other paragraphs in the equipment portion of the proposed regulations, the reworded § 900.12(b)(20) was codified as § 900.12(b)(14).

v. *Film masking devices (§ 900.12(b)(15) (proposed § 900.12(b)(21)))*

In this paragraph, FDA proposed that all facilities ensure the presence of film masking devices that are capable of limiting the illuminated area of the viewbox to the exposed or smaller area of the film, that facilities using nonrectangular collimation ensure suitable masking, and that such devices be available to the interpreting physicians.

(Comment 395). Six comments supported the requirement. Two of these comments further suggested that the requirement be modified to clarify that any effective means of masking, including "black film or manual or automatic masking devices," would be acceptable. One comment questioned how effective the film masking devices must be because the respondent believed that many presently in use do a poor job of blocking the unnecessary light. FDA has not attempted to specify particular mechanisms for masking, only that provisions for masking be available. Any device that blocks viewbox light not required for viewing and interpreting the image would meet the intent of this requirement. The level of "blocking" was not addressed, but with the light levels under consideration, the agency believes that the elimination of any noticeable transmission through the masking is easily achievable. The device need not be an expensive or elaborate system, but it must be capable of eliminating extraneous viewbox light.

(Comment 396). Two comments supported the proposed requirement to provide appropriate masking for nonrectangular images as a means to further promote the correct masking of all shape images, but another comment stated that the nonrectangular collimation referenced should be eliminated because "there is no need for it and it causes significant problems in the masking of the films for proper viewing conditions." NMQAAC suggested that the requirement regarding nonrectangular masking was redundant and recommended that it be removed from the final regulation.

FDA does not intend to express a preference for rectangular or nonrectangular collimation. This section was included in the proposal to reinforce the point that, in all cases, the masking should be appropriate to the image. FDA is accepting the NMQAAC recommendation and deleting the provision relating to nonrectangular collimation from the final regulations; FDA agrees with NMQAAC that the general masking specification covers all sizes and shapes of images.

(Comment 397). One comment questioned how much limitation of the exposed image the proposal intended the masking to provide and one comment proposed that the masking requirement be expanded to require limitation of "the illuminated area to a region or regions substantially smaller than the exposed portion of the film."

FDA has not accepted this recommendation because it may not be desirable, in all cases, to limit the view to an area "substantially smaller than the exposed portion of the film." The intent of the section is that masking be as close to the full darkened film area as possible. The masking can certainly be variable, so that the darkened area can be reduced to a specific area of interest. This is not required, however. Discussions with interpreting physicians have led FDA to conclude that it is often desirable to visualize the entire image to establish a "gestalt" impression before further interpretation of the film. A masking system that prevented such a practice, therefore, may be undesirable and is not being required.

(Comment 398). One comment questioned to what extent the film masking devices were required to be available. The comment asked if all mammograms were required to be read on viewboxes equipped with masking devices or if the facility need only require adequate masking for one viewbox, even if multiple reviewers were reading film at the same time on different viewboxes.

In response to this comment, FDA has modified the final regulation to indicate that such devices should be available in sufficient numbers to allow each physician requiring one to have access to one. NMQAAC recommended that the requirement that the devices be available to physicians should be deleted, stating that any physician who desired to use masking could provide their own at little or no expense and that the facility need not provide such devices for them. FDA partially agrees with this assessment but has not accepted this recommendation because it has concerns about facilities that require significant numbers of films to be read daily and where the interpreting physician simply does not have time to individually mask images. Placing responsibility with the facility will ensure that masking devices are provided in such cases.

(Comment 399). Two comments recommended that the regulation mandate the use of film masking devices by the physician, and one of these suggested that masking should be used by the technologists in their film critique area. While FDA certainly agrees that both interpreting physicians and technologists should utilize masking, the agency believes that, if the devices are available, most individuals will use them and that requiring their use would be difficult to enforce.

(Comment 400). One comment stated that film masking devices may be expensive to obtain and cumbersome to use. This comment maintained that, although film interpretation may be improved by using these devices, requiring that facilities provide such devices appears to be excessive regulation and this requirement should be deleted.

FDA notes that the goal of the MQSA is to provide a consistent baseline of quality mammography services to all patients. If an item that is consistent with that goal is identified as having a positive impact on the diagnostic process, FDA believes it is important to assure women that facilities at least have these devices available for use on their behalf. FDA also notes that masking devices do not ordinarily entail significant expense. FDA has codified the requirement for availability of masking in the final regulations under § 900.12(b)(15).

w. *Film processors (§ 900.12(b)(22) (proposed § 900.12(b)(22)))*

In this paragraph, FDA proposed a number of requirements for the film processors used to develop mammograms. As proposed, § 900.12(b)(22)(i), covering processor setup and maintenance, would go into effect 1 year after final publication; § 900.12(b)(22)(ii) and (iii), requiring display of the time cycle and maintenance of the developer temperature, would be phased-in after 5 years; and § 900.12(b)(22)(iv) and (v), requiring the display of the developer temperature and for variable cycle processors to be interlocked to prevent new film being accepted by the processor until cycle parameters are stabilized, would be phased-in after 10 years.

Section 900.12(b)(22)(i) proposed that all such processors be set up and maintained at the technical development specifications for the film used for mammography at the facility.

(Comment 401). One comment requested a definition of technical development specifications, as used in the proposed regulations. Another comment stated that, if it is going to be mandatory to meet film manufacturers technical requirements, then manufacturers should be required to make written guidelines available as to what factors are needed to achieve the maximum result from the film.

FDA coined the phrase "technical development specifications" to represent a listing of the technical aspects of correct processing as provided by the film manufacturer. This would be expected to include such items as correct solutions, proper temperatures, applicable immersion times, replenishment rates, and any other instructions the manufacturer deemed appropriate and critical to the processing of its film. FDA believes that many manufacturers do provide such information and that the market advantage these manufacturers will enjoy will encourage all manufacturers to do so. The NMQAAC recommended that this section be moved to the quality assurance provisions and FDA has followed that advice.

The agency has reconsidered the proposed requirements in § 900.12(b)(22)(ii), (iii), (iv), and (v). FDA received a number of comments both supporting and opposing these proposals. However, based on the anticipated costs associated with these proposals compared with the marginal benefits they would provide, FDA has decided to delete them from the final regulations. If the agency proposes future regulations for these areas, all related comments will be reconsidered.

3. Medical Records and Mammography Reports (§ 900.12(c))

This section establishes quality standards for medical records and mammography reports as required by the MQSA under 42 U.S.C. 263b(f)(1)(G). The regulation provides, in general, that facilities prepare written reports of mammography examinations, that results be communicated to the patient or provider, and that films be maintained for a reasonable period of time or transferred to the patient.

(Comment 402). Public comments were received on § 900.12(c). The most controversial areas were specific provisions in the proposal for use of standardized assessment categories in the mammography report, written notification of all mammography results, and for original mammograms to be transferred to other facilities or entities upon patient request. Each of these areas will be discussed below in connection with those specific provisions.

a. *General comments*

As an initial matter, FDA disagrees with four comments that asked FDA to delete the entire regulation on medical records and reports because it was an intrusion of FDA into the practice of medicine and abridged the rights of

radiologists. The agency's authority and responsibility to regulate these medical records, mammography reports, and communication of results was established by Congress through specific provisions of the MQSA. The agency could not eliminate the entire regulation, even if it believed such action was appropriate. Discussions with NMQAAC clearly indicated the committee's support for regulations in this area as well.

b. *Contents and terminology (§ 900.12(c)(1))*

The proposal established standardized assessment categories for interpreting physicians to use to evaluate mammograms, ranging from "negative" to "highly suggestive of malignancy." In addition, the regulation requires the interpreting physician to address clinical questions, if possible, and include recommendations, if any, in the report.

(Comment 403). Comments in support of the proposed standardized assessment categories stated that such categories: would ensure that a definitive result for each mammogram is reached; would establish consistency across facilities; are a valuable tool to assist consumers and clinicians in understanding results; should also be used in the written notification to patients; and permit efficient and uniform analysis of outcomes in medical audits. One comment in support of this section suggested that the title be changed to "Contents, terminology and timeframes."

Fourteen comments stated that it is inappropriate for the Federal government to establish medical terms for classification of mammography results through regulation. Other comments opposing the establishment of standard assessment categories stated that: Such categories would prevent any particular facility from continuing to use its customary terminology and, thereby, cause confusion to its referring physicians; the message, rather than the exact words, are important and resources would be wasted in monitoring the correct use of particular phrases; and that establishing standard classifications would reduce flexibility for the reporting physicians.

Some comments objected to the details of a particular classification category, rather than to the idea of standard classifications. One comment stated that a "negative" report may mislead a referring physician about the existence of breast cancer because mammography cannot detect all breast cancers, while another comment concluded that the term "suspicious" inherently suggests that the lesion is malignant, and proposed "indeterminate" as a substitute category.

After considering all these comments, FDA has decided to keep the proposed categories in order to promote consistency and clarity in mammography interpretations. In discussions with NMQAAC, the use of final assessment categories was supported because they promote consistency in communication of results among medical care providers and standard categories are necessary in the medical audit of mammography interpretation. These particular categories are based on similar categories developed by ACR. The ACR Breast Imaging Reporting and Data System categories are: Assessment Is Incomplete-Need Additional Imaging Evaluation; 1-Negative; 2-Benign Finding; 3-Probably Benign Finding—Short Interval FollowUp Suggested; 4-Suspicious Abnormality—Biopsy Should Be Considered; and 5-Highly Suggestive of Malignancy—Appropriate Action Should be Taken.

FDA believes that the medical community is familiar with these categories and the assessment classifications established under the final regulations ("negative," "benign," "probably benign," "suspicious," "highly suggestive of malignancy") are equivalent to the ACR system. The medical community has already affirmed their usefulness and value through widespread use of the ACR system. Accordingly, the agency concludes that requiring these classification terms in mammography reports will not be burdensome, given their current level of use and acceptance.

FDA has made minor changes in particular assessment categories in response to comments. Two comments requested FDA to delete the word "imaging" from the proposed assessment category of "needs additional imaging evaluation" and substitute the ACR category of "needs additional evaluation" because physical examination may be part of further evaluation. In fact, the ACR category is "Need Additional Imaging Evaluation," with "incomplete" as its descriptor. Accordingly, FDA is adding the word "incomplete" to the description of this category, which will now read: "Incomplete: needs additional imaging evaluation." The mammographic result should be categorized into this or one of the other assessment categories. The agency notes that, if the result is "negative" or "probably benign" based on the mammogram, but physical examination is recommended, the recommendation for clinical followup, surgical consultation, biopsy, or other action should be stated in the recommendations section of the report. The agency also is aware that there are screening mammography practices that do not issue a final assessment until followup diagnostic mammography has been scheduled and performed. These facilities, and others, can continue their policy of not issuing an assessment, and can use this category of "Incomplete: needs additional imaging evaluation."

FDA's proposed language for the "negative" category stated that if the interpreting physician is aware of clinical findings or symptoms, these should be explained. One comment asked if this explanation must be written into the report or could be attached as a symptom in-take form. The agency believes that the recommendations section of the report is the most effective way to direct referring health care providers to further work-up based on physical findings or symptoms, despite negative mammographic results.

(Comment 404). One comment stated that it would be hard to determine compliance with the proposed requirement that clinical questions raised by the referring health care provider be addressed in the recommendation section of the report.

FDA responds that it can determine compliance with a regulation in a variety of ways, including review during an inspection of a facility's standard operating procedures. FDA inspectors can be trained to verify that each facility has in place a system that requires its interpreting physicians to address the concerns of referring health care providers in the recommendations section of the mammography report. FDA agrees with comments that suggested that the recommendation section of the report remain separate and unstructured; the agency has not proposed specific categories or language for this portion of the report in order to provide maximum flexibility for clinical management recommendations.

(Comment 405). One comment stated that there should be a unique patient identifier to distinguish between two patients with the same first and last name. NMQAAC also agreed, stating that the medical report and the mammography films should have a patient identifier in addition to the name. FDA agrees that an additional patient identifier in addition to the name will improve the accuracy and clarity of the results and subsequent followup and the proposal has been amended to require reports to have this additional identifier. However, the choice of the additional identifier, such as the date of birth or hospital number, is left up to the facility because each individual practice has a better understanding of its particular needs in this matter.

(Comment 406). Two comments asked if a radiologist who did not read the film or dictate the report can sign a report if the radiologist who did perform the interpretation is unavailable and concurs with this practice. Another comment stated that FDA should allow signatures that are authenticated through computers, which are normally accepted in a court of law. A third comment stated that signatures should be evident on the report filed in the patient's permanent file.

FDA interprets the MQSA's requirement that each mammography report be "signed" by the interpreting physician to mean that each report must identify who interpreted the mammogram and rendered the reading on the written report. The final regulations state that the name of the interpreting physician must be on the mammography medical report. This name may be handwritten, typed, stamped, written electronically, or recorded in any other manner. However, with respect to "signatures" that are used to proof-read reports or to "sign" them out for purposes of authenticating such reports or releasing them to other parties or institutions, FDA believes that each facility is in the best position to devise its own procedures to ensure accuracy of reports and integrity of the system without the MQSA regulations in this area.

(Comment 407). One comment recommended that there be a requirement for facilities to maintain records that include the signature of the qualified radiologic technologist who performed or supervised the examination and the signature of any individual who conducted all or part of the examination under supervision of a qualified radiologic technologist.

FDA disagrees with this comment. The MQSA does not have a signature requirement for the technologist. The final regulations require "technologist identification" on each film image (§ 900.4(c)(viii)(E)) and the agency believes each facility can adopt its own system to identify technologists without having the agency mandate such procedures.

(Comment 408). One comment suggested that the term "health care provider" should be replaced with "referring physician." FDA disagrees because patients are referred for mammograms by nonphysicians, such as physician's assistants, nurse practitioners, and other health care workers.

c. *Communication of mammography results to patients (§ 900.12(c)(2))*

This provision requires that: (1) Each facility establish a system to ensure that results are communicated to patients; (2) patients without health care providers receive medical reports and lay summaries of their mammography results; (3) each facility establish a referral system for patients without health care providers, if necessary; and (4) results that are "suspicious" or "highly suggestive of malignancy" be communicated as soon as possible.

(Comment 409). FDA received hundreds of comments on the proposal that all patients receive written results of their mammography examination. Comments that objected to this proposal generally focused on disruption of doctor-patient relationships, confusion for patients, and additional expense to facilities without commensurate patient benefit. Ninety comments stated that the referring health care provider is responsible for communicating results to patients and is best able to convey such results and answer patient questions. Other comments that raised concerns about disrupting the referring doctor-patient relationship stated that written notification from the facility would allow patients to bypass a referring physician and never get a physical breast examination. Many comments stated that written notification to every patient would cause confusion for the patients. Twenty-three comments said confusion would arise if patients were notified about results before such results were reviewed by their referring physicians; twenty-one comments stated that many patients would misinterpret their reports; ten comments stated that the difference between the information provided in a lay notification and the information contained in a copy of the actual written report would confuse patients who received both.

Seventy-two comments stated that the additional cost associated with written communication to every patient would cause financial hardship for mammography facilities. In general, these comments and others argued that the cost of providing or ensuring written notification in every case outweighs any patient benefit that might result. Ten comments stated that radiologists would have to police referring physicians who agreed to provide patient notifications and followup. Other comments stated that: (1) Small or rural facilities would be burdened by patient notification requirements, especially those without a computerized system; (2) producing patient notification reports is time-consuming and hinders the accomplishment of daily operations, and would not directly improve patient care; (3) developing a notification document that could explain every possible scenario involving diagnostic findings is virtually impossible; and (4) radiologists and providers of mammography would become more frequent targets of litigation because of this reporting requirement. Thirty-seven comments stated that it is unrealistic to expect radiologists, who may never see patients, to determine the literacy level, ethnic, cultural, and social sensibilities of those patients in order to tailor an appropriate written notification. Fifteen comments stated that the requirement would create excessive waste paper for the environment. Some comments found the proposal for written notification unnecessary in light of other reporting and followup requirements, the individual patient's responsibility to communicate with her physician, and the belief that patients are always informed of results by their physicians. Two comments asserted that written notification for all patients was not authorized by the MQSA.

FDA also received 66 comments that supported the proposal for all patients to receive written notification of mammography results including comments offering strong support from national breast cancer patient groups. These comments generally focused on the fact that women otherwise were not assured of timely and accurate information about their mammography examinations and that such written notification could save lives by encouraging initiation of necessary followup.

It was also noted that the experience of facilities that instituted such notification was positive. Comments in support of written patient notification stated that such notification was appropriate because patients are entitled to know the results of their exams, it is the facility's responsibility to inform patients of results, and there is a public health need for written notification because not all referring physicians discuss results with their patients.

(Comment 410). Comments described written notification as an important addition to quality mammography practice, a crucial component to ensuring reliable mammography and consistency across the country, and a major step toward fostering better communication between doctors and their patients. One comment supported the proposed system to ensure that patients and referring physicians receive reports, and that all patients receive a

report in lay terms, but also stated that the referring physician should continue to be responsible for patient followup. Another comment stated that FDA should not allow any party, other than the facility, to distribute these written notifications.

Many comments asserted that written notification for each patient may ultimately reduce health care costs and extend lives because of earlier treatment. Five comments stated that written notification empowers the medical consumer and minimizes the possibility of tragic error when abnormal results slip through the cracks of the referring physician systems. Comments asserted that referring physicians do not always communicate results to patients, even when the results are abnormal. Several breast cancer survivors commented positively on this proposed requirement and one author stated that such written notification saved her life. Seven comments stated written notification has reduced medical liability of facilities, but that costs should be offset with increased reimbursement.

Comments from State health officials and some facilities having experience with written patient notification reported that the experience had been positive. Facilities that have instituted written notification stated that the practice is appreciated by patients and does not cause the facility any particular hardship. Massachusetts has required such written notification since 1994. The comment from a State official stated that, although initially resisted, the procedure is now accepted by physicians throughout the State; facilities in Massachusetts receive positive feedback from patients and no facility has closed in that State because of this additional requirement.

Some comments recommended that the notification include additional information. Twelve comments asked that the written notification also include information about the location of the films, directions about how a woman could obtain them, and the facility contact person for questions concerning the result. Another comment said the notification should include information about the importance of clinical breast examinations by a qualified physician, monthly self-breast examinations, and mammograms at appropriate times, especially for patients without physicians. Some comments wanted facilities to be required to provide written notification to referring physicians and patients.

Many comments suggested alternatives that were variations to the proposed requirement for written patient notification. Ten comments supported the current interim regulations, which require written notification from the facility only to those patients who do not have a health care provider or referring physician. Thirteen comments stated that, for referred patients, the required notification should simply state that the mammogram report has been mailed to the physician and the examinee should contact that physician. Twelve comments stated that only those patients who request a written report should be sent one.

Other comments agreed that patient notification of results by the facility was appropriate, but preferred to leave the method of communication up to the facility, which could tailor notification procedures to its practices and the circumstances of particular patients. Comments observed that in some screening cases, where the radiologist never speaks to the patient, written notification of results makes sense; however, where there is extensive interaction and verbal communication with the examinee onsite, written notification can be redundant, expensive, and wasteful of paper. Five comments stated that patients should be verbally told at the time of the examination to contact her physician's office and not to assume that "no news is good news." Other alternatives suggested by comments included several that were in direct contradiction to each other: (1) Require written notification only to those patients who have not received the final report verbally at the facility or, if findings are negative, by telephone; (2) encourage notification of patients with abnormal studies; (3) require patient notification in lay terms only if the results are negative and notify referring physicians, including followup notes, when there are abnormal results; (4) send referring physicians lists of patients who had mammography at a facility with positive studies highlighted; (5) require notification of patients who request results after a specified time period has passed in order to allow communication between the patient and the referring physician and to prevent duplication and failure to inform; and (6) require that every patient receive a copy of her mammography report, if desired, or by default if her preference is not stated.

After reviewing and considering the hundreds of comments FDA received concerning patient notification, the agency concluded that these many comments all share the common goal of providing an effective mechanism for communicating mammography results to patients, but that the comments clearly advocate different approaches to achieving this goal. FDA agrees with consumer groups that written notification of mammographic results represents "best practices" in ensuring that each and every woman is clearly and effectively notified of the results of her mammogram. These "best practices" are outlined clearly in a series of recommendations published by AHCPR in Chapter 4 of the 1994 guidelines entitled, "Quality Determinants of Mammography" (Ref. 2). In these guidelines AHCPR strongly recommends that mammography facility personnel provide each patient with written notification of the results of her mammography examination either onsite or by mail. Studies cited by AHCPR have shown that direct communication with patients, which is in addition to written communication to health care providers, dramatically increases compliance with followup recommendations. However, FDA also recognizes that many in the health care community have strong reservations, for the many reasons cited above, about making written notification to all patients a Federal requirement. Finally, FDA notes that although the MQSA requires mammography facilities to notify patients' referring physicians, in writing, of the examination results, the statute requires those facilities to notify patients directly in writing, only in those instances where the patient has no referring physician. FDA believes that the best way to reconcile the many different points of view on this subject—and achieve the goal of effective patient notification consistent with the statute—is to issue a general rule requiring patient notification, together with a recommendation that facilities follow the AHCPR guidelines regarding written notifications to patients. The relevant portions of the AHCPR guidelines have been printed as an appendix to the preamble of this document for ease of reference.

Accordingly, the agency has revised the final rule to eliminate the requirement for written notification to every patient and has substituted a performance-based regulation that requires each facility to ensure that the results of each mammographic examination are communicated to the patient. Under the final rule, each facility will be responsible for establishing a system of notification, through its own efforts or in cooperation with third parties, that guarantees that patients are informed of the results of their examinations in a timely manner. The system must also ensure that women who do not have health care providers receive written notification, along with the mammography medical report, no later than 30 days following an examination and that each facility communicate abnormal results as soon as possible.

As noted above, FDA continues to believe that written notification of mammographic results is the most reliable way to guarantee that each patient is notified of results and that any necessary followup will occur. Comments from consumer groups and breast cancer survivors about the importance of early and accurate communication to patients supports the public health need for systems that ensure patient notification. Written notification to a patient of results can permit that patient to make informed medical decisions at critical times. One cancer survivor informed the agency that having the actual results of an abnormal study in hand allowed her to pursue treatment options that saved her life. Furthermore, the agency disagrees with comments that assume all patients are notified of their mammographic results; many referring health care providers do not communicate results of mammograms to patients and the adage "no news is good news" still rings true for many patients. During the MQSA inspections, FDA has uncovered a handful of facilities that do not even issue written mammography reports to referring physicians. Accordingly, the agency is continuing to require each facility to establish systems that will ensure that patients are notified of the results of their mammograms.

FDA believes that high quality mammography extends from the production of high quality mammographic images to the communication of results to the patient. Ensuring that patients get their results is the responsibility of all participants in the mammography imaging chain: The patient, the facility, and the referring health care provider. The final regulations fully charge facilities to meet their responsibility.

At its January 1997 meeting, NMQAAC recommended that all facilities should not be required to provide written notification. While some concern was voiced about difficulties in directly notifying all patients who underwent diagnostic mammography, many members advised FDA to require some type of direct notification of all patients and that this notification be documented. Although the agency continues to support written notification to all patients as the optimum practice under most circumstances, the final regulation does not prescribe any particular form of notification. Comments from facilities and physicians indicate that facilities have devised a variety of systems of communication to notify patients of mammography results. These include verbal conversations at the time of the examination, telephone communication after the examination, cooperative arrangements with referring physicians who convey the results verbally to their own patients, and written communications that are either directly issued from the facility and convey results or instruct the referring physicians to issue these reports. The AHCPR guidelines recommending direct written communication to all patients also provided examples and suggestions about the other types of communication.

Under the final regulation, in the case where a facility decides to rely on a third party to communicate results (either written or verbally), there should be a documented agreement between the facility and the third party that establishes this cooperative responsibility. This documentation may be in the form of attestation by the third party or letters of agreement signed by the third party. In addition, the agency reserves the right during inspections to confirm not only the presence of such documentation, but also to ask for further documentation from the facility to verify that patients were indeed notified. Further documentation can include copies of referring physician medical records documenting that results were discussed or sent to the patient. These descriptions of systems and documentation are intended to be examples; others may also be acceptable. However, if third parties do not provide the mammography facility with further documentation when requested during inspections, the mammography facility is subject to regulatory enforcement action under the MQSA for failing to document that results were provided to patients. Thus, for facilities that choose to rely on third parties for communicating results, whether they be referring physicians or communication consultants or other parties, the facility still has ultimate responsibility to meet the patient notification requirements of the final regulations.

The agency also believes that the approach taken in the final regulation will address the concerns about communication and cost that were raised by so many of the comments. The flexibility that has been built into the final regulation will permit facilities to tailor notification systems to the particular needs of the general patient population and individual patients they serve. At the same time, requiring each facility to establish and document the existence and operation of such systems achieves the primary goal of ensuring that patients receive the results of their mammograms.

In addition, the agency notes that the requirement for reasonable attempts at immediate communication when results of an examination are "suspicious" or "highly suggestive of malignancy" has been retained in the final regulation. Potential delays in diagnosing and treating breast cancer are reduced with this requirement that facilities directly notify patients who have no health care provider of abnormal results as soon as possible. (The same requirement for immediate communication in the case of "suspicious" or "highly suggestive of malignancy" findings applies to the facility's communication with the referring physicians of those women who have identified health care providers). The agency concludes, therefore, that the most significant public health risk that may result from failure to communicate results is addressed in the final regulation.

The final regulation continues to require written notification by facilities to patients who do not have referring physicians, as specified in the MQSA. The statute also sets forth, and the regulation incorporates, the requirement that such self-referred patients receive a copy of the actual mammography report that would be prepared and sent to the referring physician, if there were one. In response to comments that questioned the agency's authority to require patient notification, FDA notes that the language of the MQSA is very explicit with respect to patient notification of test results and the form that notification must take in these particular circumstances (see 42 U.S.C. 263b(f)(1)(G)).

(Comment 411). Many comments urged FDA to require referring physicians to be responsible for the communication and followup of results of mammography examinations. FDA agrees that a physician with knowledge of a particular patient's entire medical history is often the best source of communication and followup of results. However, FDA's primary jurisdiction under the MQSA is related to mammography facilities and not individual practices of referring health care providers.

One comment suggested an arrangement whereby facilities and each provider of care enter into a written agreement that the referring physician assumes responsibility and liability for informing his or her patients of mammography results, and the mammography facility would be

allowed to breach this contract at any time when a patient requests the results in writing. FDA agrees that this arrangement would meet the requirements of the final regulations. However, if referring physicians fail to communicate results to patients despite their agreement to do so, the mammography facility is responsible under the MQSA for failing to ensure communication of results and is subject to regulatory action by FDA.

FDA intends to look for documentation during inspections to establish that patient notification systems are in place and operational. For example, if a verbal communication system is used to tell patients of results, this communication should be documented in the patient's medical record and should be capable of verification by the MQSA inspectors. If a facility sends letters to patients, records of that correspondence, or standard operating procedures describing this correspondence, must be available for inspection. In circumstances where a facility relies on referring physicians or other third parties to communicate results to patients, the facility must provide documentation of these arrangement and their implementation, as described above. In those cases where the mammography facility is the primary breast care provider for the patient, there must be documentation of results being conveyed to the patients. By allowing a variety of notification systems, the agency has attempted to ensure that communication of results will be accomplished effectively, but without undue burden on mammography practices or unnecessary increases in the cost of mammography services. Finally, the agency notes that the regulations being issued to require facilities to establish and maintain systems that ensure patient notification of results does not preclude any patient from requesting additional reports or records from the facility. Nothing in the record and report section of the MQSA should be construed to limit a patient's access to the patient's medical records (42 U.S.C. 263b(f)(1)).

(Comment 412). One comment stated that FDA's intention to inspect and monitor systems established by facilities to verify that patients receive notification of results in lay language is unrealistic and that facilities should not be required to establish such systems.

FDA disagrees. FDA has issued interim regulations, as required by the MQSA, that required notices in lay language to be issued, along with the actual report when patients do not have a referring health care provider (42 U.S.C. 263b(f)(1)(G)(ii)(IV)). This is a current requirement for all facilities and is already subject to inspection and verification.

(Comment 413). One comment stated that complex situations, such as when a mammogram is assessed as negative, but the patient has clinical findings, need careful explanation to patients so that the importance of the situation and recommendation for followup will be understood. This comment recommended that the mammography facility be responsible for patient care if it is accepting women who have no physicians.

FDA believes this practice standard is largely being adopted by the mammography community and supports this. Under the final regulations, each facility is required to maintain a system for referring patients to health care providers when clinical followup is recommended and the patient has no physician.

(Comment 414). One comment stated that followup reminder letters are critical and should be mandated.

FDA disagrees that these should be mandated. Rather, each practice should be allowed to determine if such letters or other forms of reminders are needed.

(Comment 415). One comment reflected confusion about the immediate followup call to patients required under § 900.12(c)(2), which is in addition to the notification requirements. Although notification is required for all patients under the system established by the facility to ensure such communication, FDA believes that special efforts at communication are required when there are abnormal results and the patient does not have a referring physician. In these cases, the facility is expected to contact the patient who has no health care provider as soon as possible and the 30-day timeframe for sending reports and long summaries is superseded. Under the final regulations, this immediate communication is required only in situations where the probability of cancer is high (mammograms assessed as "suspicious" or "highly suggestive of malignancy"). In cases where such immediate notification is required, the facility remains obligated to also provide the necessary written notifications within 30 days as followup.

(Comment 416). One comment supported the requirement that, when an examination shows suspicious findings, a facility should directly communicate with a nonreferred patient. This provides patents the assurance that they will receive the care they need.

FDA agrees and the final regulations contain this requirement.

(Comment 417). One comment stated that, in cases where assessments are "suspicious" or "highly suggestive of malignancy" and results must be "immediately" communicated to the examinee or physician, FDA should define what "immediately" means. Another comment suggested "immediately" be defined as 24 hours.

FDA believes that the variety of circumstances that may arise when followup is required make a rigid definition of "immediate" unreasonable. Because there are circumstances when immediate communication is not possible, FDA has revised the requirement to communicate abnormal results from "immediately" to "as soon as possible." Health care professionals understand the importance of accomplishing such notification when there are suspicious or highly suggestive findings. Although it is impossible to establish a precise timeframe, FDA expects such communication ordinarily can be accomplished within 48 to 72 hours and not later than a week following the examination.

(Comment 418). One comment stated that 30 days is an unreasonably long window in which to notify patients of results. Three other comments agreed with FDA that 30 days was reasonable. Another comment stated that reports and notification should not be sent out for at least 5 days in order to wait for outside comparison films; otherwise, addenda lay notification and reports would confuse patients and physicians. Another comment recommended that notification to patients should wait until all mammography imaging work up has been completed.

FDA believes that issuing medical reports to health care providers (or to patients with no health care providers along with lay summaries) within 30 days is a reasonable standard. This does not mean facilities must wait 30 days, as the first comment suggests, but rather that 30 days is the outside limit. FDA disagrees that notification of results should be delayed until the total imaging work-up is completed because situations arise when imaging work-ups can extend over more than 1 month. Therefore, FDA is requiring a report of the medical finding for each mammogram to be generated within 30 days. Under the final regulations, facilities must also ensure that patients have their results communicated to them within that time. Many facilities may notify patients or have other parties notify patients after written medical reports are provided to physicians; other facilities may choose to communicate

results to patients prior to the issuance of the medical report to the referring provider by means such as providing verbal results at the time of the mammography examination. As discussed above, a variety of systems will be acceptable as long as they ensure that results are communicated to patients and that communication is timely.

(Comment 419). Eight comments stated that patients without health care providers should not get the actual medical report along with the lay notification. These comments claimed that the terminology in the medical reports would confuse patients and either generate more inquiries or keep them from understanding that further studies are needed. They recommended instead, that patients can request the report be sent to a physician if further medical advice is desired. One comment also stated that, while it is critical to include the patient in the information loop for the results of her mammogram, it is poor medicine to send the patient who is self-referred the copy of the mammogram report that is intended for the physician.

FDA disagrees. The MQSA expressly requires facilities to provide patients without referring physicians both the medical report and the lay summary (42 U.S.C. 263b(f)(1)(G)(ii)). This requirement allows the patient to provide her mammography report immediately to a subsequent health care provider, if needed.

(Comment 420). Two comments asked what is meant by "reasonable attempts" to communicate results of suspicious studies to patients without referring physicians as soon as possible. The comments asked whether a certain number of phone calls or a registered letter would be acceptable.

FDA does not intend to mandate procedures for communication with patients in these circumstances because different methods are likely to be more or less effective with different facilities and patient populations. Telephone calls and registered mail are examples of attempts at communication that may work. Verification that contact has been made is the goal. Each facility can consult with its risk management director to establish procedures to convey results and document attempts at communication that are "reasonable." FDA recommends that mammography facilities utilize the AHCPR's guidelines in "Quality Determinants of Mammography" that address the effective communication of mammography results to patients and follow those guidelines with respect to written notification to patients. That document includes excellent sample lay notices that facilities could adopt. As noted previously, information from Chapter 4 of these guidelines has been reprinted as an appendix to the preamble of this document for ease of reference.

d. *Communication of mammography results to health care providers (§ 900.12(c)(3))*

The final regulation requires each facility to provide the mammography report to a referring or named health provider within 30 days of the date of the examination. The regulation also requires a facility to make reasonable attempts to communicate with the health care provider or the provider's designee as soon as possible when an examination reveals suspicious results. These requirements paralleled those for communication of suspicious results to patients without identified health care providers.

(Comment 421). Five comments requested guidance in defining who is a responsible designee of the health care provider.

In response, the agency notes that when referring health care providers are not available, they ordinarily have responsible designees, such as medical coverage services or partners, to assume medical responsibilities for the unavailable provider's patients. These requirements parallel and complement those related to patient notification.

(Comment 422). Twenty-nine comments stated that 30 days is a reasonable time period for getting reports out (unless there are delays in obtaining comparison studies). Three comments asked FDA to define the timeframe required for "immediately" communicating the results of suspicious or highly suggestive mammograms to health care providers. One comment expressed concern that the requirement to attempt to communicate "suspicious" or "highly suspicious of malignancy" findings to health care providers immediately will impose an unmanageable burden on understaffed facilities.

FDA disagrees with this last comment but, as with the provision relating to communication with patients, the agency has changed the language from "immediate" to "as soon as possible" because immediate communication may not be possible given the variety of circumstances that may be associated with communication of suspicious results to a particular provider. FDA believes health professionals understand the urgency of the situation when a patient has a suspicious or highly suggestive mammogram and they are mandated to communicate this result to the referring health care provider in an attempt to expedite diagnosis or treatment. Again, although it is not realistic to mandate a rigid schedule, the agency expects that such communication ordinarily can occur within 48–72 hours, and not later than a week following the evaluation of the examination. NMQAAC discussed this section and supported the regulations as revised.

(Comment 423). One comment questioned the ability of physicians who read only twice a week to comply with the requirement to communicate with health care providers within the mandated timeframes. FDA believes timeframes and procedures are sufficiently flexible to balance the need to protect patient health with the realities of good mammography practices. Reading twice a week does not preclude a physician or the facility that employs that physician from complying with the requirements.

(Comment 424). Another comment recommended that radiological reports transmitted to the referring physician be acknowledged by electronic signature, which should be kept in the electronic file indefinitely. As stated previously, with respect to proof-reading reports and "signing" them out (for authentification or release), FDA assumes that facilities are able to devise their own procedures to ensure accuracy of reports and integrity of the system without the MQSA regulations at this time.

e. *Recordkeeping (§ 900.12(c)(4))*

FDA's final regulation implementing recordkeeping standards for facilities requires each facility to maintain films and reports at least 5 years or until the patient requests them or requests their transfer. If the film and report represent the only mammogram for that patient, the facility must retain them for 10 years or for any longer period of time that is required by State law or until the patient requests them or requests their transfer.

FDA received numerous comments supporting its proposal to require transfer of the original mammogram upon the request of the patient.

(Comment 425). Fourteen comments stated that original films should be transferred because copies are frequently poor quality and jeopardize successful followup. Four comments stated that the request for transfer should be in writing and that the regulation should state "temporary or permanent transfer."

FDA believes each facility should be free to establish its own procedures for transfer of films and may wish to consult its risk management director for

guidance. FDA agrees in part with the last comment and has modified the final regulation to clarify that a patient may request that the transfer of the original films be temporary or permanent. FDA will leave it to the facility to decide whether the request for transfer should be in writing or may take some other form. NMQAAC also supported the addition of this language to the final regulation.

The agency has also amended the language of the provision to clarify that a request for a transfer supersedes a facility's responsibility to maintain the films for a particular length of time and that the request may be made by an individual on behalf of the patient as, for example, might be necessary in cases where the patient is incapacitated or has a legal guardian.

(Comment 426). Two comments agreed that original mammograms should be sent for comparison to other facilities. However, these comments stated that FDA's suggestion in the preamble to the proposal that facilities make a copy is very difficult and expensive. Another comment stated that copying originals to retain in the record when transfer is requested should not be required because this would increase costs, would not be adequate for comparisons, and would delay sending films out in the timely manner.

In response to these comments, the agency notes that there are no requirements for facilities to make copies of films they are requested to transfer. If this suggestion to make and keep a copy of the mammograms is not practical or useful to a facility, it need not be followed.

(Comment 427). Three comments supported the transfer of original films, but would require their return within 30 days in cases of temporary transfer.

FDA does not intend to establish a time limit on transfer of films at the request of patients. Even in cases where the transfer is temporary, the originals may be used during clinical procedures that may not be completed in 30 days. However, FDA does support the return of films in a timely manner and expects facilities that transfer and receive films under such circumstances to cooperate in the interest of the patient's treatment.

(Comment 428). FDA also received many comments expressing concerns about original film transfers. Twenty-six comments stated that transferring original films is problematic because the films may be lost, their transfer may breach confidentiality, the originating institution will not be able to make comparisons, and patient may be denied access to films at a later date. One comment stated that FDA should clarify if the transfer of original films conflicts with State or locals laws and how facilities should proceed if that is the case. Four comments urged FDA to delete the proposal because the films themselves are historically the property of the physician or institution which generated them and their absence would disadvantage those physicians or institutions in defending against claims asserted against them. Fourteen comments asked if FDA will indemnify the radiologist for not having original films in the event of a malpractice action. One comment stated that there is no enforcement provision against those facilities who refuse to release original mammography studies on the grounds of ownership or the potential for legal action.

FDA understands that the transfer of original films has not been a universal practice among facilities and that physicians may have concerns about the consequences of loss or misplacement. Nevertheless, the agency has concluded that the overwhelming benefit to patients from access to original films by other facilities or physicians providing followup for patients justifies the need for this provision in the final rule.

All expert comments FDA received on this matter, including advice from NMQAAC, emphasized the value of having original films for comparison to subsequent studies or followup clinical procedures. There was general agreement that copies of mammograms could not adequately substitute for originals when difficult diagnoses or additional procedures were required, and that clinical decisions, such as whether to do surgery, require review of original films. The agency notes that even those practitioners who criticized the proposal agreed that the transfer of films was likely to enhance patient care. Those who objected did so on grounds that were unrelated to patient care, namely potential for liability and difficulty in defending malpractice actions.

FDA has not been persuaded that these concerns are insurmountable or that they are sufficient to override the public health benefits associated with the provision.

Many facilities do routinely transfer films upon the request of patients and have established procedures and systems to implement that process. Those procedures may include written requests from patients, release forms that establish transfer of responsibility for the films, and agreements with receiving institutions for subsequent return. In some cases, facilities that transfer films do make and retain copies for their own files; other facilities have determined that the expense of copying is not warranted. Loss of films will not be indemnified by FDA.

With respect to facility concerns about defense of malpractice claims, FDA notes that rules of evidence, including civil discovery, establish judicial procedures that are designed to protect each party's ability to develop its case. Judges have authority and discretion to craft remedies in situations where a patient has lost, withheld, or is resisting production or examination of a necessary original record.

FDA is not aware of any State laws that conflict with the requirement that original films be transferred upon the patient's request. State laws governing the management and retention of medical records appear to be silent about the transfer of original films. Rather, they are likely to state that patients are entitled to copies of their records or that doctors are required to maintain records. This was the case with the Florida and New York laws that were brought to the attention of the agency.

Were a State to enact a law that conflicts with this regulation or if, contrary to FDA's understanding, such laws currently do exist, those State laws would be preempted. The agency disagrees with comments that have inferred such laws would be permissible under the provision of the MQSA that allows States to establish more stringent requirements relating to mammography (42 U.S.C. 263b(m)). The public policy considerations underlying any State laws that would restrict a patient's access to original films and the quality data that may only be available from these original studies would not be related to the public health objectives of the MQSA. Accordingly, such State laws could not be characterized as more stringent than the MQSA or this regulation. The agency also notes that the records provision of the MQSA that is being implemented by this regulation explicitly states that nothing in that provision shall be construed to limit a patient's access to that patient's medical records (42 U.S.C. 263b(f)(1)(G)).

(Comment 429). One comment recommended that FDA add that, upon receipt of authorization to release mammography film, the mammography facility must forward the films to the requestor in a reasonable timeframe to minimize reporting delays. Another comment suggested that each facility be required to provide original films and copies of reports within 10 working days of receipt of a written request.

FDA does not believe it is necessary or useful to mandate the details of such transfers. The agency believes that each facility will develop standard operating procedures to implement this standard and that those procedures will reflect the controls required by risk management and acceptable practice standards.

(Comment 430). Six comments suggested that the facility that took the most recent mammogram should maintain ownership of all the originals because this practice would make it easier to keep the films available for future comparisons. FDA's final regulations do not preclude this arrangement if the patient requests transfer of previous films to the current facility.

(Comment 431). Twenty-four comments asked who should bear the cost of copying films when the original is released. One comment stated that facilities should only be able to charge a nominal fee for transfer of films and reports. Another comment believed that the fees must be closely monitored; the comment noted that reports have been received in the past from facilities charging unreasonably high fees for sending reports and copies of mammography films. A third comment stated that FDA should develop fee guidelines for charges for copying film and postage to prevent some institutions from charging high fees.

FDA generally agrees with these comments and its final regulations limit charges to the documented cost of the transfer, so as to not deter patients from requesting transfers when necessary. The agency notes that nothing in the regulations requires facilities to charge fees for transfer of records. If copies are made as part of the facility's standard transfer process, then the cost of copies may be documented and included in the transfer fee charged by the facility.

(Comment 432). One comment asked if the fee can include a storage charge or is it for medical records transfer only.

The regulations clearly state that any fee is for services provided under § 900.12(c)(4)(ii), which is the transfer of films and reports.

(Comment 433). Twelve comments stated that the proposal that fees charged for transfer of films and records not exceed costs appears to be price controls, if not price fixing.

The agency does not agree that it has taken any action to establish prices. FDA is responding to complaints that fees charged for transfers of records have been unreasonable. This practice prevents consumers from making such transfers and obtaining medical care with the best quality medical data. The regulation does intend to control such charges in order to ensure access by patients to their films but the final rule does not require facilities to absorb additional expenses. Instead, each facility that decides to charge consumers for this service must limit its charges to documented costs.

(Comment 434). Nine comments stated that original mammograms should be provided by other facilities for comparison purposes free of charge as a courtesy among institutions.

FDA supports this process; the final regulations do not mandate a charge. However, if any fee is established, FDA's regulation requires that it not exceed costs of transfers of such records.

(Comment 435). Two comments suggested that FDA's regulations should consider future technology, which may include the electronic transfer of films.

FDA regulations are for screen-film and xeromammography. As other technology is approved for medical use, alternative standards under the MQSA will be issued.

(Comment 436). One comment asked if a facility must retain a series of mammography records for 10 years and discard them as each record is 10 years old, or discard them when the oldest record is 10 years old. FDA interprets the provision in the MQSA to mean that, if there is a series of mammograms for a patient, the oldest mammogram of the series can be 5 years old. If there is only one mammogram for a patient, it must be kept 10 years unless a transfer is requested. One comment stated that mammograms should be maintained for longer than 10 years if mandated by State or local law. In fact, the MQSA mandates this and FDA has written its regulations to conform to this provision.

(Comment 437). Two comments recommended that mammograms be kept indefinitely in order to spare a patient an unnecessary biopsy and another comment recommended that FDA establish a standard retention period of 5 to 7 years.

The final regulations do not preclude facilities from keeping mammograms longer than what is required by the statute as a minimum. However, the agency rejects the 5 to 7 year standard because the timeframes set forth in the regulation are prescribed by the statute.

(Comment 438). One comment recommended that FDA reinstate a HCFA requirement that previous mammograms be obtained for comparison with present films.

FDA believes that this is good medical practice, but it is not an appropriate focus for FDA regulations under the MQSA.

f. Mammographic image identification (§ 900.12(c)(5))

This provision describes the elements that must be included on any mammography film to identify the image. They are: patient identifier, date of examination, view, laterality, facility identification, technologist identification, cassette/screen identification, and unit identification, if the facility has more than one unit.

The NMQAAC advised FDA that these elements need to be present on all mammogram films to ensure proper patient care. FDA agrees. These are the same elements as those established by § 900.4(c)(2)(viii) to identify films submitted to accreditation bodies for clinical image review. Comments received from the public relating to these elements for film identification are addressed in that section of the preamble that discusses § 900.4(c)(2)(viii).

4. Quality Assurance—General (§ 900.12(d))

This paragraph was intended to identify the individuals responsible for the actions required by § 900.12(e) and (f), including those intended to ensure that safe radiation dose levels were used. With one or two exceptions, the requirements of this paragraph were included in the ACR quality assurance manuals that were made part of the interim regulations by reference. The ACR manuals are not referenced in the final regulations. However, certain significant aspects of those manuals, such as the requirements in this section, were incorporated into the proposal because there is broad agreement that these principles are basic to a good quality assurance program.

a. General comments on quality assurance

(Comment 439). Two comments stated that all facilities should follow the same set of universal guidelines to maintain the same quality of results.

FDA notes that the MQSA and the implementing regulations are designed to require that facilities meet universal minimum standards. Nothing in the statute or regulations is intended to prevent a facility from applying additional, more stringent standards or procedures that strengthen QC at that facility.

(Comment 440). One comment stated that FDA should eliminate this entire paragraph except for a single provision that would require each facility to have a quality assurance manual and to verify, through the signature of a responsible official, that the manual is followed.

FDA does not believe that the general requirement suggested by the comment would effectively establish minimum levels of quality assurance at all facilities.

b. *Responsible individuals (§ 900.12(d)(1))*

This paragraph identified the responsibilities of the individuals associated with the quality assurance program.

(Comment 441). Two comments recommended that FDA be more specific about what responsibilities should be listed and to whom they should be assigned.

FDA does not believe that additional detail will be useful in these provisions. Greater specificity would limit the facility's flexibility to design a quality assurance program that best meets its individual needs and to quickly change its program in response to changes in circumstances or technology.

(Comment 442). One comment expressed the author's disappointment that this section and the rest of the regulations failed to allot any responsibility to administrators and Chief Executive Officers (CEO's), who have the authority to make the decisions that control quality but seem to be more motivated by financial concerns.

FDA agrees that administrators, CEO's, owners, and operators of facilities share responsibility for the quality of mammography at their facilities. However, individuals working more directly in and with the mammography facility on a daily basis often are better able to determine when quality problems exist and how to correct them. The agency recognizes that it is sometimes difficult for the staff to obtain the administrator's support for necessary actions. Nevertheless, if necessary actions are not taken to correct quality assurance defects, the result could be sanctions against the facility by FDA. Because such sanctions can affect the reputation and profitability of any facility, FDA believes that administrators and CEO's will cooperate to support actions to improve or maintain mammography quality.

c. *Lead interpreting physician (§ 900.12(d)(1)(i))*

This provision requires facilities to identify a lead interpreting physician to have the general responsibility for ensuring that the quality assurance requirements of § 900.12(d) through (f) are met. This is a change from the interim regulations, which assigned this responsibility to a mammography medical physicist. This change drew a number of almost evenly divided comments.

(Comment 443). Eleven comments plus NMQAAC supported the change. Various comments pointed out that the medical physicist often does not have the authority to implement needed actions, especially if he or she is a contract physicist who is rarely at the facility, and the medical physicist usually does not have the expertise to deal with nonequipment issues. One comment noted that Massachusetts' regulations have a similar provision to the proposal and it had been found to improve the quality assurance programs.

Eleven other comments opposed the change. Some of these comments stated the belief that interpreting physicians did not have sufficient knowledge of or interest in quality assurance to properly handle this responsibility. Others said that, in modern medicine, the physicians also lack authority to implement necessary changes and pointed out that interpreting physicians may also be contract employees and not actually at the facility. A related comment warned that, if the interpreting physician is to be given responsibility for oversight, he or she must also have authority to institute necessary changes. One comment stated that while it is important to have an interpreting physician in this role, it is more important to assign this responsibility to someone at the facility, even if it means involving a nonphysician. Another comment questioned the basis for designating a lead interpreting physician if he or she can assign their responsibilities to other people. Two comments suggested that wording be changed to allow each individual facility to decide who would be most appropriate for this responsibility. Finally, one comment stated that the MQSA specifically said that the medical physicist was to have responsibility for the quality assurance program.

After considering all these comments, FDA has decided to leave this responsibility in the hands of an interpreting physician, as proposed. Because the interpreting physician is the final arbiter of the quality of a mammogram, it is logical that the responsibility for the quality assurance program rest with an interpreting physician. The agency recognizes that interpreting physicians in some facilities face the same limitations on their authority as medical physicists. However, FDA believes that an interpreting physician is more likely to have adequate authority, or the ability to influence those that do, than a medical physicist. The agency also recognizes that the interpreting physicians may not be located at the facility itself. Even in those circumstances, interpreting physicians have more regular interaction with the facility through their mammography interpretations than do contract medical physicists conducting annual surveys. Again, the agency realizes that interpreting physicians may not have the knowledge to carry out all aspects of the program themselves, but notes that this is likely to be true of any other individual in this position. For this reason, the final regulations do not require the lead interpreting physician to perform all of the duties personally, but rather to see that they are carried out in such a way as to meet the requirements. The basic responsibility remains with the interpreting physician, even if some or all individual duties are delegated to people with specific training to carry them out. Contrary to the opinion expressed in one comment, identifying a lead interpreting physician is valuable because it assigns this basic responsibility and establishes accountability even when tasks are delegated.

Many important duties will be delegated to the medical physicist. FDA is aware, as one comment noted, of the MQSA provision that requires the medical physicist to "survey mammography equipment and oversee quality assurance practices at each facility" (42 U.S.C. 263b(f)(1)(F)). As noted above, the interim regulations did assign to the medical physicist the overall responsibility for quality assurance. FDA's experience under the interim regulations, however, established that the interpreting physician, who ordinarily has more interaction with the facility and is more likely to be onsite, also has an important role in the oversight of quality assurance. As discussed, members of NMQAAC and public comments pointed out problems with the medical physicist having the primary responsibility for all quality assurance at the facility. After evaluating its experience and the comments, the agency proposed, and now intends, to shift overall responsibility for the quality assurance program to the lead interpreting physician. The medical physicist will continue to do the annual survey and oversee quality assurance practices, especially those related to the equipment, as required by the MQSA and the agency expects that the physicist's expertise will inform all final decisions that are made on quality assurance issues. The final regulation, however, requires additional oversight through the lead interpreting physician. FDA believes this change from the interim regulations is in accordance with its general authority to require the facility to establish an effective quality assurance program (42 U.S.C. 263b(f)(1)(A)).

Section 900.12(d)(1)(i) requires the lead interpreting physician to determine whether individuals assigned to quality assurance responsibilities are qualified to carry them out. FDA agrees with the comment that urged that the lead interpreting physician also be given authority to make needed changes because effective quality assurance will require facilities to respond appropriately to situations that need improvement or correction. Internal administrative and budgetary decisions, however, are beyond FDA's authority and the agency cannot control the business and management relationships that will affect any lead interpreting physician's ability to institute change.

d. *Interpreting physicians (§ 900.12(d)(1)(ii))*

This paragraph was intended to emphasize the role that all interpreting physicians should play in establishing and maintaining quality mammography at a facility. As previously mentioned, the interpreting physicians are the final arbiters of the quality of mammography images. It is important that they communicate their satisfaction or dissatisfaction with the quality of the images they are provided to interpret to the technologists who produced them. Such communication is the crucial first step in the identification of problems and the initiation of corrective actions. FDA is aware that this communication has not always occurred in the past, especially if the interpreting physicians are not located at the facility. Media investigations and many anecdotal accounts have illustrated this failure in communication.

None of the 17 comments on this provision disagreed with the basic premise that interpreting physicians should provide feedback to facility staff producing the mammograms. However, there were some misunderstandings as to just what was required.

(Comment 444). In particular, 13 comments mistakingly assumed that each interpreting physician was required to contact every technologist about the quality of each film taken. These comments requested that the requirement be limited to reporting technically inadequate mammograms to the QC technologist. Another comment pronounced the requirement as excellent, but asked whether a report was required on the technologist's performance for every film or if a summary of each technologist's performance was sufficient. Another comment suggested that feedback be given to the lead interpreting physician or, in his or her absence, to the QC technologist. One comment requested that this provision be more specific, and another recommended that all interpreting physicians be required to have training in the technical aspects of mammography, quality assurance, and QC.

FDA drafted the proposed regulation to be general in order to give each facility the flexibility to design a feedback system that best fits its own situation. The agency believes this flexibility should be retained in the final regulations. In response to the comments, however, FDA has clarified that followup activities by interpreting physicians are required only when the image is of poor quality. FDA recommends, however, that positive feedback also be given when warranted because such feedback is an effective incentive for maintaining quality performance.

e. *Medical physicists (§ 900.12(d)(1)(iii))*

This paragraph summarizes the role of the medical physicist in establishing and maintaining quality mammography.

(Comment 445). Eleven of the comments received on this provision suggested various wording changes. Seven of these supported changes that would state that the physicist is to evaluate the equipment and to survey it. An eighth comment wanted to amend the language to give the medical physicist authority to take necessary steps to ensure quality in his or her area of responsibility. Two comments suggested changes that would limit the physicist's responsibilities to overseeing the equipment-related quality assurance practices. These comments further suggested limiting the physicist's review of the QC technologist's work to verifying that it is performed and not to include providing advice on tests or suggestions for corrective measures. Another comment, however, clearly disagreed with this point of view and stated that the medical physicists should be required to oversee the facility's entire quality assurance program.

FDA agrees that the physicist should be involved in equipment evaluation and the annual survey and notes that changes made elsewhere, in the survey definition and in § 900.12(e), will achieve this goal. FDA cannot require that the medical physicist be given authority to initiate changes at the facility to improve quality for the same reasons that it did not issue regulations giving the lead interpreting physician similar administrative and budgeting authority. The agency does agrees that the physicist's oversight responsibility should be focused primarily on the equipment-related areas. The definition of the position of lead interpreting physician in § 900.12(d)(1)(i), as discussed previously, should clarify that general overall responsibility rests with that physician while responsibility for equipment-related matters resides with the physicist. FDA does not agree with the suggestion that would limit the medical physicist's role in the oversight of the QC program to merely verifying that the technologist's work was done. The agency believes that, as the equipment and imaging physics expert, the physicist's role must be more active and that ensuring an adequate QC program clearly should be part of the medical physicist's duties. The medical physicist should not stop with verifying that the QC tests were performed but should also ensure that they were performed properly, that the results were analyzed, and that any problems detected by the analysis were corrected.

(Comment 446). A final comment on this paragraph suggested that a new intermediate position be created at a level between the QC technologist and the physicist. The comment recommended that the person in this position could do tests that do not require a physicist but are beyond a technologist's training, and noted that such a position has been quite useful in the respondent's facility.

Provisions of § 900.12(e) require that surveys and mammography equipment evaluations be performed by medical physicists. Under the interim or final regulations, a facility is free to create an intermediate position for personnel to perform other testing during the time periods between the surveys and evaluations, including performance of the tests normally done during surveys. However, the agency does not have sufficient evidence to demonstrate that it would be beneficial to make this a general requirement and believes each facility is in the best position to decide whether such a position would be of value in its situation.

f. *QC technologist (§ 900.12(d)(1)(iv))*

This provision describes the QC technologist's responsibility to perform all quality assurance duties not assigned to the lead interpreting physician or the mammography medical physicist. The main issue raised by the comments on this provision was about the qualifications of the individual holding this position.

(Comment 447). Eighteen comments expressed the opinion that the person doing these tests should be a radiologic technologist who meets all of the requirements necessary to perform mammography examinations. Seven additional comments stated that the QC technologist should be a technologist but, to increase flexibility for the

facility, should not necessarily have to be qualified to do mammography examinations. One of these seven recommended that the QC technologist should have some training in mammography. Ten comments argued that the individual performing at least some of the tests did not even have to be a technologist, as long as that person had training in the test performance. Some of these pointed out that requiring a technologist to do the tests would increase facility costs without an equivalent increase in the quality of mammography.

After considering the comments, FDA has revised the proposal to permit nontechnologists to perform tasks for which they were trained, as long as their work is supervised by a QC technologist who meets the requirements to do mammography examinations. FDA believes this change strikes the proper balance between the need for expert oversight and the need to reduce unnecessary costs for facilities.

NMQAAC discussed this issue at several meetings and, at different times, expressed varying points of view. However, after its own review of the public comments, NMQAAC supported the approach FDA has taken in the final rule.

(Comment 448). Twelve comments suggested changes, primarily to allow or prohibit the facility from having more than one QC technologist.

FDA agrees that there are advantages to the consistency that can be achieved if there is only one QC technologist. The agency also recognizes that the facility may find it useful and necessary to have more than one QC technologist, e.g., to ensure coverage when one QC technologist is ill or on leave. The agency notes that facilities also have the option of having the lead interpreting physician or medical physicist fill in for the QC technologist, assuming they have the necessary qualifications, by temporarily "reassigning" the technologist's duties.

(Comment 449). Another comment suggested that the QC technologist should report directly to the lead interpreting physician rather than to the medical physicist.

FDA notes that the regulations permit the facility to decide for itself what lines of communication to the lead interpreting physician should be established. The agency believes that this flexibility should be retained.

(Comment 450). Another comment suggested that all mammographers should be trained in all QC tests and procedures.

From the context of the comment, it was clear that the author was using the term "mammographer" to refer to technologists doing mammography, and not, as is becoming increasingly common, to interpreting physicians interpreting mammography. Section 900.12(a)(2)(ii)(A) does require such training as part of initial training for technologists who will begin performing mammography after the final regulations become effective. Training in these areas could also be used to fulfill initial requirements under the interim regulations, so many technologists presently doing mammography will have had this training. Although FDA encourages all radiologic technologists currently practicing to include such training as part of their continuing education, the agency does not believe that the benefits of retroactively requiring all present technologists to receive this training would outweigh the costs.

(Comment 451). A final comment suggested that adequate time should be allotted for the quality assurance/QC duties.

FDA fully agrees with this comment but does not believe that this kind of commitment can be codified through a regulation. The agency also notes that the amount of time needed will vary significantly, in view of the different situations in different facilities and the differing abilities of the individual QC technologists. As discussed in connection with earlier sections, FDA believes that owners, operators, and managers will have new incentives to ensure that quality assurance programs are properly implemented and that these programs meet the Federal standards with which all facilities must comply.

g. *Quality assurance records (§ 900.12(d)(2))*

The provisions of this paragraph have been significantly changed from the proposal. The proposal required that the facility have a quality assurance manual covering the procedures to be used in meeting the requirements of § 900.12(e) and (f). The manual was to be readily available to all staff members and documentation that it was read and approved by the lead interpreting physician and the medical physicist was required. A list of individuals assigned quality assurance responsibilities and details of their assignments was also to be available to all staff members. Records were to be kept showing that these individuals were qualified for their assigned duties. Records were also to be kept showing the data obtained during monitoring of the facility performance, the analysis of the monitoring data, the problems detected and corrective actions carried out, and the effectiveness of the corrective actions in resolving the problems. The records were to be kept for each test for a minimum of 1 year or until the test had been performed two additional times at the required frequency, whichever was longer.

In response to comments received, as summarized below, and in keeping with the FDA's goal of less prescriptive and more flexible regulations, this paragraph has been greatly simplified. The final regulations do not require any description of the procedures to be followed in performing the QC tests or a list of the individuals with quality assurance responsibilities and their responsibilities. The proposal requiring records documenting the qualifications of these individuals to perform their duties is changed to simply require that records be kept concerning employee qualifications. No review, revision, or sign-off of the manual is required at any frequency but there is a general requirement that the lead interpreting physician, a QC technologist, and a medical physicist are to ensure that records are maintained and updated. The time that the records of testing and followup actions must be kept has been clarified but remains essentially the same.

The proposal divided the provisions of § 900.12(d)(2) into four paragraphs, (i) through (iv). As a result of these changes, paragraphs are no longer needed but the comments received on the proposed four paragraphs will be discussed, following the general comments.

h. *General comments on quality assurance records*

(Comment 452). One comment asserted that keeping quality assurance records was an unnecessary burden but did not suggest an alternative means by which a facility could demonstrate that it had carried out the quality assurance tests and all necessary followup activities. A second comment recommended that mammography facilities be required to retain written specifications in a standardized format from the processor manufacturer.

FDA cannot accept the first of these comments without an adequate alternative to keeping records. FDA agrees there would be value in processor manufacturers providing specifications in a standardized format but believes it would be premature to make this a requirement. The agency's previous attempts to encourage the provision of processor operating characteristics for different types of film showed that there are significant problems to be solved, among them the very large number of possible combinations of film, chemistry, and processors.

i. *Records to be kept (proposed § 900.12(d)(2)(i), (ii), and (iii))*

(Comment 453). A few comments were received on the records to be kept. Three comments opposed the change from requiring the use of the ACR manual to allowing the use of whatever manual best fits the facility's needs.

FDA believes that the increased flexibility provided by allowing the use of manuals other than the ACR manuals is desirable because it permits facilities to more rapidly adjust their programs to incorporate improvements in quality assurance procedures or new techniques for new technology. When a manual is specified in regulations, the regulations may have to be amended to facilitate use of even a new edition of that manual, let alone an improved manual from another source. To increase flexibility even further, in the final rule FDA has dropped the use of the word "manual" altogether because it seemed to imply a certain format. Facilities will now be able to keep the required records in any suitable format.

(Comment 454). A number of comments recommended addition of items to the list of those required to be kept. Six comments suggested adding technique charts to the required records, while a seventh suggested adding documents related to the medical outcomes audit program. Another comment stated that documentation for darkroom cleaning, screens, and view boxes should not be eliminated.

NMQAAC members pointed out that there was already a requirement in the ACR manuals, which were incorporated into the interim regulations by reference, that a technique chart be available. Although there was some difference of opinion, NMQAAC seemed to support retaining a requirement for keeping a technique chart with the equipment but not necessarily in the manual. With respect to the quality assurance manual in general, the view of NMQAAC seemed to be that elements required in the final regulations were "key" or "basic" to the success of a quality assurance program. At least one NMQAAC member expressed reservations about the detail required and would have preferred to limit the regulation to a general requirement that there be a quality assurance manual. However, both this member and a second member recognized that enforcement by inspectors would be difficult without more detailed requirements.

FDA notes that documentation of facility cleanliness activities is required in § 900.12(e)(11). The list of other records that must be kept, although not necessarily in a "manual," has been revised as discussed previously.

(Comment 455). Other issues that drew a number of comments were who should sign off on the manual and how often should review, revision, and sign-off take place. Nine comments supported having the QC technologist sign-off in addition to the lead interpreting physician and mammography medical physicist. A tenth comment would limit the physicist sign-off to only those items related to his or her responsibility. Three comments stated that the review, revision, and sign-off should occur at least annually. NMQAAC supported both adding the QC technologist to the sign-off list and the annual review, revision, and sign-off.

FDA has replaced the requirement for a formal sign-off with a general statement that the lead interpreting physician, QC technologist, and medical physician should ensure that the specified records are kept.

(Comment 456). Another comment stated that qualifications of the individuals assigned responsibilities in the QC program should be kept on record only if those individuals are not listed in the facility's application (presumably for accreditation).

FDA disagrees with this comment. The accreditation bodies do not check the qualifications of personnel to perform quality assurance tasks during the accreditation process.

Proposed § 900.12(d)(2)(ii), which required that a list be kept of the individuals with quality assurance assignments and their assignments, drew only one comment. The comment supported the list but urged that the requirement be clarified so it was not construed to mean that only the listed individuals could carry out the duties. As discussed above, FDA has eliminated this proposed requirement.

The only comment on the proposal for keeping records of qualifications of quality assurance personnel, § 900.12(d)(2)(iii), suggested that those records should be kept indefinitely. As discussed above, FDA has reworded the requirement slightly. Requirements for record retention are discussed below.

j. *Monitoring performance (proposed § 900.12(d)(2)(iv))*

As proposed, this provision would have required facilities to maintain records related to monitoring of their facility's performance for 1 year or until the tests has been performed two additional times at the required frequency, whichever was longer.

(Comment 457). One comment stated that the words "for a minimum of 1 year" should be replaced with "from inspection-to-inspection" because inspections may not occur precisely at annual intervals. FDA has changed the wording to "until the next annual inspection has been completed and FDA has determined the facility is in compliance with the quality assurance requirements." This change addresses concerns raised by this comment and clarifies that an inspection includes the followup and the actual visit to the facility.

5. *Quality Assurance—Equipment (§ 900.12(e))*

The primary purpose of the equipment aspects of the quality assurance program is to prevent problems with equipment or detect and correct problems before they can have a significant effect on clinical image quality. In order to achieve this objective, the performance parameters of the equipment must be tested at appropriate frequencies, the test results must be analyzed promptly to determine if the performance of the equipment is satisfactory, and any identified problem must be corrected as soon as possible. Followup tests must also be conducted to determine whether the corrective actions were effective and adequate. Requirements for the types of equipment tests to be performed and for the necessary followup actions were proposed in § 900.12(e). These requirements have generally been retained in the final rule. However, on the basis of a number of valuable comments the agency received in response to its proposals, some revisions to the proposal have been made. Many of the revisions have been made after discussions with NMQAAC. In addition, tests for radiation output and decompression have been added to the annual QC tests as § 900.12(e)(5)(x) and (xi). The action limits for these tests were proposed as equipment specifications in § 900.12(b).

a. *General comments on equipment quality assurance*

In the preamble to the proposal (61 FR 14912), FDA specifically requested comments on the value of a simple daily total system test based upon the evaluation of the optical density and artifacts on an image of a uniform phantom. The agency believed that the total system test, when performed in conjunction with the processor performance test set forth in § 900.12(e)(1), would ensure the overall quality of X-ray machine and processor performance and of the films produced. This test would only takes a few minutes to perform and records of the test would enable a medical physicist to

quickly detect the source of a problem when it occurs.

(Comment 458). A large number of comments opposed the idea of such a test. Several of these comments, however, confused this test with the alternative phantom testing identified earlier as a possible basis for performance-based standards (See 61 FR 14860). Some members of NMQAAC also opposed this test. The agency also received a number of comments supporting this test. Several comments agreed that more frequent phantom testing in conjunction with daily processor testing is important.

In view of the mixed comments, FDA concluded that it should not require the test until it gathers additional data on its usefulness. However, FDA strongly encourages facilities to test their machines as frequently as possible, either by a phantom evaluation or by the total system test.

A number of comments requested that FDA provide a detailed description of all QC test procedures. Several comments wanted FDA to reference ACR QC manual, while some comments considered the proposed Quality Assurance-Equipment requirements to be appropriate.

FDA notes that § 900.12(e)(1) through (e)(5) lists the minimum performance tests to be conducted on screen-film systems and their required frequency. Action limits for the tests are also specified. The agency has refrained from providing extensive detailed requirements or prescriptive descriptions of test procedures, as some comments recommended, in order to provide facilities with the flexibility to use their own judgment as to what testing methods best enable them to meet the required criteria. FDA has also decided not to base its QC requirements on a single manual and, therefore, no such manual has been referenced. In addition, NMQAAC has advised FDA that the ACR manuals were intended to be used as guidelines, not in a prescriptive manner. A facility may consult any appropriate manual on agency guidance to meet the requirements in § 900.12(e)(1) through (e)(5).

(Comment 459). One comment stated that some of the tests should be more rigorous. The comment further questioned why a monthly visual checklist was not included.

While conducting regular visual checks of the equipment is a desirable practice, it is not an action that can be confirmed from test data. Therefore, the agency has decided to encourage this and similar desirable practices through educational means instead of making them regulatory requirements.

(Comment 460). Another comment stated that FDA should only issue more stringent requirements if their benefits clearly exceed their costs.

FDA agrees with this comment and believes that the tests it has required meet this criterion.

(Comment 461). One comment stated that numerous paragraphs refer to films, optical densities, and processors, without limiting the requirements to any specific modality.

FDA notes that the initial words in each paragraph from § 900.12(e)(1) to (e)(5) are "Facilities with screen-films shall * * *," making it clear what modality is referred to.

(Comment 462). Another comment maintained that FDA should require proper QC tests for stereotactic units. One comment stated that the quality assurance standards should include a requirement to use a digital mammography evaluation phantom developed by the author's company that has been designed specifically for QC of digital machines for stereotactic biopsy.

Interventional mammography is presently exempt from the MQSA requirements for reasons discussed in response to the comments on the definition of mammography in § 900.2(y). The agency is in the process of developing quality standards for interventional mammography and these will include QC tests. QC tests for other mammographic modalities have been addressed in § 900.12(e)(6).

(Comment 463). Another comment stated that FDA should provide its inspectors with more latitude to accept variations from regular inspection procedures, if the physicist can adequately explain the rationale for the deviations and demonstrate how the standard is met. From the context, the agency assumes that the author of the comment is actually referring to survey procedures rather than inspection procedures.

FDA has instructed inspectors to discuss variations with QC personnel or medical physicists available in the facility during inspection. In some cases, the inspectors, after receiving satisfactory explanations for variances in test procedures, have refrained from giving citations or withdrawn citations initially given to the facility during inspection. However, because it is essential that the evaluations of facility conformance with the quality standards be consistent nationwide, the latitude provided to inspectors necessarily has to be limited. Moreover, those wishing to use alternatives to the requirements of the regulations who can demonstrate that their alternative provides assurance of quality mammography equal to the regulatory requirement, may do so in accordance with § 900.18.

(Comment 464). A few comments urged FDA to require testing with all cassettes wherever that is appropriate.

In the proposed regulations, the agency proposed that screen speed uniformity of all cassettes in the facility be tested. In the final regulations, FDA added that artifact evaluations should be performed with all cassettes in the facility. The agency also considered requiring performance of the phantom image quality test with all sizes of image receptors. However, when FDA staff members carried out phantom image evaluations using two different image receptor and cassette sizes with five different mammography machines, no difference was seen in the phantom image scores when results with larger image receptors were compared to those with smaller. NMQAAC strongly advided FDA not to require weekly phantom testing for all image receptor sizes because the members do not believe that phantom image quality is affected by receptor size. NMQAAC pointed out that the ACR manual did not recommend phantom image evaluation with large image receptor sizes. Based on all this information, the agency concluded that facilities should not be required to conduct phantom image quality tests with all available sizes of image receptors.

b. Daily QC tests—screen-film system (§ 900.12(e)(1))

The only daily tests required under the final regulations are those that ensure adequate processor performance by assessing base plus fog density, mid density, and density difference, using mammography films used clinically at the facility.

(Comment 465). Five comments stated that there should be a maximum limit between time of exposure and time of processing. NMQAAC discussed this issue in connection with requirements for mobile units, for which image degradation due to delayed processing is a particular concern. The committee concluded that, in general, this was not a significant enough problem to require a regulatory requirement and FDA accepted this position.

(Comment 466). Ten comments suggested the word "examinations" should be replaced with "films" and the word "performed" with "processed." The agency agrees with these comments and has made such changes in the final regulations.

One comment suggested adding the words "and evaluate" after "shall perform."

FDA notes that § 900.12(e)(8) generally defines tests for which the evaluation of test results (and corrective actions) must be performed before further examinations are conducted. The processor tests are among them.

(Comment 467). Several comments suggested that the last few words in § 900.12(e)(8)(ii), "of no less * * * 1.2 OD, [optical density]" should be deleted. These comments stated that in some cases, the step averages may turn out to be lower, for example 1.05, and that should be acceptable if the next higher step shows a substantially higher OD, such as 1.4. Another comment offered a similar argument, noting that the proposed rules would not allow the use of modern high gradient mammography films where the change in optical density between adjacent steps in this density range can be as high as 0.7.

FDA agrees with these comments and has deleted "of no less * * * 1.2 OD" in § 900.12(e)(8)(ii).

(Comment 468). One comment stated that QC measures should be in place for densitometry and sensitometry equipment.

FDA requires all sensitometers and densitometers its inspectors use to be properly calibrated. If FDA inspectors detect problems in the processor performance, the facility will have to identify the cause. If the cause turns out to be related to inadequate performance of the facility's sensitometry or densitometry equipment, the effort required to determine the nature of the problem will give the facility sufficient incentive to take actions to avoid a recurrence without the need for a regulatory requirement.

(Comment 469). Three comments asserted that the ± 0.15 OD action limits for mid-density and density difference were too restrictive as proposed and requested changing this limit to allow a wider range.

Under the interim regulations, facilities have been required to comply with this limit and the inspection data reveal that most facilities are able to do so. The agency does not find that there is adequate reason for changing this limit in the final regulation.

(Comment 470). One comment stated that a guidance document should be published to provide a clear explanation of the scientific basis for establishing an H&D curve and the importance of parameters taken from this curve to monitor trends in processor QC.

FDA believes that this is a widely accepted practice and the most effective procedure that is currently available. Sufficient materials providing the type of guidance requested already exist.

c. Weekly QC tests—screen-film system (§ 900.12(e)(2))

In the proposal, the image quality test using a phantom approved by FDA, which was required monthly by the interim regulations, was made a weekly test.

(Comment 471). Twenty comments opposed changing the phantom testing from monthly to weekly, arguing that the additional cost of performing phantom image evaluation weekly would be burdensome to many facilities. However, a larger number of comments supported this change, many indicating that their facility already performs phantom tests weekly.

FDA is convinced by the experience of the facilities that have been performing phantom image evaluation at a higher frequency that the test should be performed weekly. The agency believes that the benefit outweighs a slight increase in costs. As noted in the preamble to the proposal, if the daily total system test had been required, returning the required frequency of the image quality test to monthly could have been justified. However, because FDA is not mandating the total system test at this time, it is essential that all facilities perform weekly phantom image evaluation as an overall assessment of all aspects of the imaging chain.

(Comment 472). Some comments suggested changing "image contrast" to "density difference" and "assess density difference" to "assess image contrast" in § 900.12(e)(2)(iv).

The agency agrees with these comments and has revised the wording.

(Comment 473). One comment stated that the density difference between the background and the test object needs to be defined. The comment further stated that there is presently confusion over the ACR recommendation for a density difference of 0.40 at 28 kVp.

FDA notes that, with the changes made as suggested by the previous comments, it is clear that the density difference is measured between the background and a test object added to the phantom to assess the image contrast. The agency has determined that the regulations should not specify a number for the operating level for this density difference, specify the test objects, or prescribe any technique factors to achieve the desired operating level, because all these variables may change with future changes in technology. However, FDA considers it important that facilities make sure that the measured density does not vary by more than ± 0.05 from the established operating level.

(Comment 474). Several comments considered the requirement of a minimum 1.20 optical density (OD) at the center of a phantom image to be high and believed that many facilities will not be able to meet that standard. One comment stated that higher OD is achieved at the expense of patient dose. Some comments considered 1.20 OD too low. One comment recommended that there be an upper limit of OD. Another comment stated that OD within ± 0.20 is reasonable if the film manufacturer's tolerance is better than 0.3 OD from batch to batch.

FDA believes that proper OD is vital to the early detection of micro calcifications and, with the advent of new mammography screen-film systems, an OD of 1.2 with a variation of no more than 15 percent can be achieved if the processors and the units perform properly. NMQAAC also advised FDA to require that the film OD at the center of the phantom image be no less than 1.2 for the purposes of this test. The agency, however, believes that a requirement for an upper limit on OD may hinder any future development of mammography screen-film systems. Therefore, the agency will retain § 900.12(e)(2)(i) and (ii) as proposed.

(Comment 475). One comment stated that the point of the image quality test is to determine constancy; therefore, it was unnecessary to mandate the measuring position of optical density as the center of the image, as long as the same location is measured each time.

The intention of this requirement is that the OD be measured at the same location of the phantom image each time, as the comment suggested. The agency believes that the center of the phantom image is a reasonable and easy place to locate such measurements. Further, it is not advisable to measure OD too far away from the center towards the anode side of the phantom image in order to avoid a decrease in density due to the heel effect. This could lead to a failure to meet the ≥ 1.2 OD requirement when it might have been met if measured at the center of the same phantom image.

(Comment 476). One comment recommended that § 900.12(e)(2)(iv), the phantom image contrast requirement, be deleted because daily film sensitometry already measures this parameter.

FDA disagrees. The daily sensitometry test only uses light that simulates the screen phosphor luminescence. However, emitted light due to X-ray induced fluorescence from the screen phosphors is different both in spectral dependance and in intensity from the light output from the currently available sensitometry equipment. It is

very important that contrast is evaluated when the film is exposed by the emitted light from the actual screen phosphors, induced by the X-ray beam. For this reason, the daily film sensitometry test cannot replace this test of image contrast.

(Comment 477). Several comments noted that the current phantoms are not tissue equivalent and recommended that FDA specify only one type of phantom and minimum acceptable performance criteria. A related comment urged FDA to provide guidance to establish the adequacy of image quality. Another comment requested specification of the test object and measurement conditions for phantom evaluation.

FDA has refrained from specifying phantom or test object type, performance criteria, or scoring methodology in order not to inhibit future advances in phantom technology. The agency continues to believe that accreditation bodies should establish phantom specifications and related performance criteria. However, as part of its responsibilities for accreditation body approval and oversight, FDA will examine each body's phantom specification and performance requirements, which will have to be substantially the same among the different accreditation bodies.

d. *Quarterly QC tests (§ 900.12(e)(3))*

Two QC tests were required to be performed quarterly in the proposal. These were a test of the fixer retention in film and the repeat analysis.

e. *Fixer retention in film (§ 900.12(e)(3)(i))*

This test determines the quantity of residual fixer in processed film, which is an indicator of insufficient washing. Insufficient washing may have a considerable adverse effect on image quality.

(Comment 478). One comment believed that the fixer retention test should be a semiannual test.

FDA notes that quarterly performance was recommended by the ACR manuals and required under the interim regulations. The agency believes that it is generally accepted that facilities should perform this test quarterly and has retained the frequency requirement of this test as proposed.

f. *Repeat analysis (§ 900.12(e)(3)(ii))*

Facilities must perform this test quarterly with repeated and rejected films. If the repeat or reject rate, calculated as a percentage of the total films included in the analysis, changes by more than 2 percentage points from the rate determined the previous quarter, the cause of the change must be identified. (For example, if the repeat rate the previous quarter was 4 percent and this quarter it is 7 percent, the cause of the change must be identified. If the repeat rate this quarter is 6 percent, no further action is needed.)

(Comment 479). A few comments suggested changing "repeat" to "reject." One comment stated that it might be more appropriate to simply refer to repeat rate change, rather than repeat or reject rate change.

FDA believes that while the repeat rate is perhaps the better indicator of unnecessary radiation exposure in the facility, the reject rate gives a better picture of the image quality situation. Both rates give useful information and should be calculated.

(Comment 480). Some comments recommended that FDA define repeat and reject to ensure that all but nonclinical films are analyzed. Several comments requested FDA to clarify that films repeated to correct positioning should be included in the repeat analysis. FDA believes that it is current practice that all repeated films are included in the repeat analysis, regardless of the cause of such repeats, and so a regulation mandating this practice is not needed.

Other comments expressed opinions on the most desirable frequency of the repeat analysis. One comment suggested that all repeats be evaluated and corrective action be taken when possible. Several comments recommended monthly repeat analysis and stated that this test would be less useful if it were done quarterly. Another comment urged monthly repeat analysis with 400 films. Another stated that the current method of repeat analysis every 3 months was sufficient.

FDA believes that low volume facilities would not have sufficient numbers to conduct a meaningful analysis if the required frequency is increased. Similarly, if the minimum number of films is set too high, the time period required to collect them in a low volume facility will be so great that problems could go undetected for a significant period of time. FDA, therefore, has left the required frequency as quarterly and has not specified a minimum number of films to be included in the analysis. The agency notes that nothing in the regulations would preclude a high volume facility from performing the analysis at an increased frequency and with as many films as it wished.

(Comment 481). Several comments urged FDA to include an acceptable limit of repeat rate in the regulations, some suggesting that it be 2 to 5 percent. Two comments wanted FDA to require corrective action to lower the observed repeat rate.

FDA again notes that, while most of these comments referred to "repeat" analysis, an analysis of both the repeated and the rejected films is required. In response to these comments, FDA observes that it has long been recognized that the parameter with the greatest impact on the repeat or reject rate is the subjective opinion of the physicians doing the interpreting as to what is acceptable. As noted in the preamble to the proposal (see 61 FR 14860), the repeat or reject rate could be reduced by a facility through acceptance of lower quality films. Any range or maximum value for repeat or reject rate that was established as acceptable through a regulation thus could quickly be rendered meaningless as an indicator of acceptable facility performance by such action. Consequently, the agency believes that, while it is important to keep the repeat or reject rate low, it is more important and useful to assess the cause of any change (increase or decrease) in the repeat or reject rate from the previously determined value. Therefore, the agency has retained the proposed requirement that the cause of a variance of more than 2 percent from the value previously determined must be properly assessed and recorded.

In looking for the cause of the change, the agency strongly advises facilities to assess all the factors that can affect repeat or reject rate. These can include personnel ability and preferences, changes in personnel, or variance in machines, processors, films, or chemistry performance.

(Comment 482). Some comments asked why a decrease of 2 percent requires action.

FDA notes, that while it may appear that a decrease in repeat or reject rate is a desired goal and should not require further assessments of the results, this is not necessarily so. For example, if a facility added a mobile unit to its operations, the interpreting physician might feel a subtle pressure to interpret films taken with that unit that he or she might normally reject because of the greater difficulty in scheduling repeat examinations at mobile units. This practice could lead to a reduction in the repeat or reject rate that does not necessarily indicate an improvement in quality. Therefore, the agency believes that the cause of either an increase or a decrease of more than 2 percent from the value previously calculated must be determined and any corrective actions should be recorded and assessed.

(Comment 483). A few comments stated that repeat analysis for each technologist should be evaluated and followup studies should be standardized. One comment wanted

such analysis performed for each machine used in the facility.

The agency supports the idea that analysis of the repeat rate for each technologist, radiologist, and/or machine can be valuable. However, many facilities with a sufficient volume for a meaningful analysis of their total operation would not have a sufficient volume for meaningful analysis of each technologist, interpreting physician, or machine. For this reason, FDA does not believe that a separate analysis for each technologist, interpreting physician, and machine should be a regulatory requirement. However, the agency recommends that each facility consider whether such analysis would be useful in its particular situation.

(Comment 484). One comment urged FDA to provide more guidance, either in a guidance document or by reference to the ACR QC Manuals, as to criteria for repeat and reject rate evaluation and corrective action. Another comment stated that this section needs to be elaborated to specify the frequency at which this test needs to be performed both for large and small volume facilities, guidelines about whether the analysis should be site- or technologist-specific, and acceptable repeat or reject rates. FDA notes that it has provided guidance for establishing an effective repeat and reject analysis program in the past and may provide additional information in the future. However, the agency believes that, as repeat or retake analysis has been an established procedure in radiology for 20 years or more, abundant guidance is also available from other sources. As stated previously, the agency in the final regulation will not reference any manual in order to provide the QC technologists and the medical physicists with flexibility to design their own analysis, recording, and corrective action procedures.

g. *Semi-annual QC tests (§ 900.12(e)(4))*

The proposal included requirements for semiannual tests of darkroom fog, screen-film contact, and compression.

The test of darkroom fog in § 900.12(e)(4)(i) is intended to be performed to identify light sources in the darkroom that can cause significant mammographic film fogging.

(Comment 485). One comment supported § 900.12(e)(4)(i) as written. The comment further stated that retaining the paragraph as proposed would eliminate variables for inspectors when performing this test. Several comments urged that certain test conditions be required, such as: "Carry out the test under clinical conditions, with or without the safelight;" "use previously sensitized film;" or "place the test film on the counter top or on the processor feed tray (if not covered), whichever is closer to a safe light that remains on when the film enters the processor." Several other comments recommended adding words such as "emulsion side up" or "where the mammography film is usually handled" at specified points in the requirement.

After discussions with NMQAAC, FDA concluded that the comments did not provide a basis for amending the provision. The agency has retained § 900.12(e)(4)(i) as proposed, except that the words "emulsion side up" have been added for clarification. The agency will provide information on test procedures, as some comments requested, separately. Each facility can design its own procedures to meet the generally accepted features of an adequate darkroom fog test.

(Comment 486). A number of comments suggested requiring the darkroom fog test after any change in the darkroom that could result in an increase in the amount of fog.

FDA agrees that many changes in the darkroom could produce darkroom fog but it also believes that it is difficult to specify which changes will lead to increased film fogging. The agency has left it to the judgment of the facility as to which changes may lead to increased film fogging and thus warrant an additional darkroom fog test.

(Comment 487). One comment recommended that the acceptable value of darkroom fog be raised to 0.10 OD and believed that 60 percent of facilities will not be able to pass the test as written.

FDA does not agree that the majority of facilities will not be able to meet the required acceptable level of dark room fogging within 0.05 OD. This requirement is currently in effect under the interim regulations and the agency's inspection data indicate that most facilities are in compliance with this requirement.

(Comment 488). One comment urged FDA to require a clearly written procedure that ensures that the darkroom tests are performed using mammography films.

The agency considers this a good practice and recommends that facilities adopt such procedures. However, FDA does not believe that this requires a regulation.

The screen-film contact test in § 900.12(e)(4)(ii) is intended to ensure that proper contact is maintained between the screen and film in each cassette used in the facility for mammography.

(Comment 489). Several comments noted that the material of the 40 mesh screen used for the test was not specified and suggested that it be copper or a material with an atomic number similar to copper.

FDA agrees with these comments and has specified the requirement of 40 mesh copper screen in the final regulation. It has also clarified that all cassettes used in the facility for mammography must be tested.

(Comment 490). Two comments asserted that a minimum background density needs to be specified for the screen-film contact test, with one of these stating that it should be 0.60 to 0.85 so that the films are not underexposed leading to false readings. One comment wanted acceptance levels to be prescribed in some detail, while another comment stated that additional information was needed as to what constitutes an adequate screen-film contact test result. Two comments suggested the following criterion: "Areas greater than 1 cm are not acceptable, five or more areas less than 1 cm are acceptable."

FDA considers this test very important. A 40 mesh copper screen provides adequate resolution and contrast with a mammography film when exposed to a proper density. However, evaluations of these test results can be subjective and cannot be verified against a quantified acceptance level. Therefore, the agency cannot prescribe a numerical value of acceptance level in the regulation, as some comments suggested, because it would not be readily enforceable. FDA notes, however, that it does not agree with the comment that stated that five or more areas of poor contact with a size smaller than 1 cm are acceptable. The agency intends to provide further information on this test. The agency also notes that advice is also available in most QC manuals.

Compression testing is required to ensure that a mammographic system provides adequate compression and, at the same time that the equipment does not allow dangerous levels of compression to be applied. In the proposal, FDA required the compression device to meet specifications described in § 900.12(b)(12)(i) and, in accordance with § 900.12(e)(4)(iii), to be tested semi-annually to see if the specifications continue to be met. After further consideration, the agency determined that in the final rule it would be more appropriate to treat the compression forces as performance outcomes rather than equipment specifications. As a result, the standards for the amount of the compression force

have been transferred from § 900.12(b) to § 900.12(e)(4)(iii). The comments received on this aspect of proposed § 900.12(b)(12)(i) are discussed at this point with the related comments received on § 900.12(e)(4)(iii).

(Comment 491). A number of comments stated that some of the characteristics of the compression system described in § 900.12(b)(12)(i) did not need semiannual QC testing.

FDA agrees with these comments and, in the final regulation under § 900.12(e)(4)(iii), has required that only the compression force be tested.

Under § 900.12(b)(12)(i)(c) FDA proposed that, 5 years after publication, the compression device shall provide a maximum compression from the power drive between 111 newtons (25 pounds) and 200 newtons (45 pounds).

(Comment 492). Several comments urged FDA to make the compression force requirement in the power drive mode effective immediately, not 5 years from publication as proposed. On the other hand, one comment disagreed with the April 1996, recommendation of NMQAAC that the proposed requirements be implemented 1 year after the publication of the final rules. One manufacturer stated that this requirement would affect approximately 2,000 of their units in the field and noted that it would be impossible to upgrade many of these units to the full 25 pounds. Additionally, the retrofit kit is likely to be very expensive and not welcomed by users who find a precompression force of 17 pounds adequate when accompanied with appropriate manual compression.

Although NMQAAC did recommend making the requirement effective 1 year after publication at its April 1996 meeting, they reversed that position in January 1997 after considering the possible cost of the action. The agency has thus retained in the final rule at § 900.12(e)(4)(iii), the requirement of compression force in power drive mode 5 years from the date of publication, as proposed in § 900.12(b)(12)(i)(c).

FDA, however, also considers it important that all mammography machines used currently provide adequate compression force. Under the interim regulations, facilities are required to use equipment that provides a minimum compression of 111 newtons. The agency is continuing to require this minimum compression force. In case of machines where such force is not available in power drive mode, the facilities may use the manual compression to attain this minimum compression requirement. However, 5 years after the publication of the final rule, all machines must provide a maximum compression force in power drive mode of between 111 newtons (25 pounds) and 200 newtons (45 pounds).

h. *Annual QC tests (§ 900.12(e)(5))*

Section 900.12(e)(5)(i) through (xi) lists a number of tests a facility must perform annually. Action limits for the test results are specified, except for the system artifacts (§ 900.12(e)(5)(ix)) and decompression (§ 900.12(e)(5)(xi)) tests; the nature of these do not allow the agency to provide any quantified acceptance level. The tests described in § 900.12(e)(5)(i) through (ix) were proposed as QC tests. The tests in § 900.12(e)(5)(i)(x) and (xi) have been moved from § 900.12(b) of the proposal after FDA concluded that they are more performance than specification oriented and, therefore, are more appropriately located in § 900.12(e) in the equipment quality assurance section of the final regulation.

(Comment 493). One comment stated that the regulation should require these tests to be done by a qualified medical physicist. FDA notes that this requirement already appears at § 900.12(e)(9), which requires that these tests be done as part of the facility survey and further requires that the survey be performed by a qualified medical physicist.

Two comments questioned why the proposed requirements under § 900.12(e)(5) established testing limits different from those used by the accreditation body. The comments claimed that these "discrepancies" will hinder compliance. FDA believes that the authors of these comments are mistaken. The agency assumes that by "testing limits," the comments are referring to action limits. FDA notes that the action limits of § 900.12(e)(5) are the same as those in the ACR manuals, and thus, the same as those the facilities and the accreditation bodies are using under the interim regulations.

The automatic exposure control (AEC) test in § 900.12(e)(5)(i) measures several parameters of the AEC system.

The first action limit specified for the AEC is that it shall be capable of maintaining the film optical density within ± 0.30 of the mean optical density as the phantom thickness and kVp are varied in § 900.12(e)(5)(i)(A).

(Comment 494). Some comments wanted a definition of "Mean Optical Density."

FDA notes that such a definition was provided in § 900.2(w) of the proposal, now § 900.2(ee) in the final regulation.

(Comment 495). Other comments asked FDA to specify the type of phantom needed for this test or asked if the same phantom used for the image quality test is required. A related comment stated that the test blocks used by the physicists should be specified to be 15 x 15 mm homogeneous material, in order to ensure an even scatter pattern or distribution that would not be affected by the position of the AEC and inhomogeneous scatter. The comment suggested that phantoms made up of either acrylic or BR12 can be used. Another comment wanted the test details and acceptance levels to be prescribed.

The agency requires the thickness of the phantom to be varied from 2 to 6 cm. These thicknesses are currently required under the interim regulation and the facilities may use any homogeneous material of appropriate thicknesses that will provide a film OD of no less than 1.2 at the center of the image. The agency has previously discussed its rationale for not providing detailed test procedures.

(Comment 496). One comment requested FDA to clarify whether testing is required with all available thicknesses and kVp's. FDA has changed the wording in the final regulation to clarify that AEC tracking is required only for phantom thickness varied over a range of 2 to 6 cm and for kVp's varied appropriately for such thicknesses over the kVp range used clinically.

Proposed § 900.12(e)(5)(i)(C) established an alternative to proposed § 900.12(e)(5)(i)(A) by allowing the development of a technique chart of kVp and density control settings to ensure that the film optical density requirements of § 900.12(e)(5)(i)(A) would be met in cases where it could not be done directly by AEC.

(Comment 497). Two comments stated that a technique chart should be required for all machines under all situations. Two others stated that the proposal created a loophole for the AEC equipment specification requirements proposed in § 900.12(b)(15)(vii)(A). One comment asked if a technique chart would be acceptable in the year 2000 when all machines are expected to meet the ± 0.3 OD variance requirement. One comment suggested eliminating the option of using a technique chart.

The agency has combined the provision permitting the use of a technique chart with § 900.12(e)(5)(i)(A) in the final rule. After consideration of the comments, FDA has decided to permit the use of a technique chart to meet the ± 0.3 OD variance requirement only for 5 years after the publication of the final regulation. After 5 years, the AEC equipment must meet the ± 0.30 OD variance requirement directly.

FDA has moved a provision proposed as an equipment requirement in § 900.12(b)(15)(vii)(B) to the quality assurance paragraph as § 900.12(e)(5)(i)(B). As explained earlier, the move was made because this provision was more appropriately located with the QC performance tests than with the equipment specifications. This provision requires, effective 5 years from the publication of this regulation, that the film optical density be maintained within ± 0.15 of the mean optical density at the appropriate kVp-thickness combination. Use of the technique chart to compensate for inadequacies in the AEC will no longer be permitted after that date.

(Comment 498). In response to the original proposal in § 900.12(b)(15)(vii)(B), one comment requested that FDA clarify whether compensation steps using a technique chart will be allowed. The comment also stated that ± 0.15 OD criteria can not be met if the film manufacturers allow 0.3 OD variation from one film batch no another.

As noted in the previous paragraph, FDA will permit the use of a technique chart to compensate for inadequacies in the AEC for 5 years after the publication of the final rule; after that time the technique chart can no longer be used as an aid in maintaining the film optical density within ± 0.15 of the mean optical density at the appropriate kVp-thickness combination. The agency also advises facilities to use films from the same batch so that film variability, if any, is not introduced while testing AEC performance. Because film variability can be eliminated as a source of bias in the AEC performance test, there is no justification for increasing the AEC actions limit to ± 0.30 OD because that would simply mean that the facility would have to contend with variability of ± 0.30 from the film and another ± 0.30 from the AEC.

(Comment 499). Two comments stated that the proposed requirement was too lenient, while two others believed that it was too restrictive. Three comments supported the proposed requirement.

FDA believes, after discussion with NMQAAC, that it is reasonable to require that the ± 0.15 OD limit be met by all units 5 years after publication of the final rule. The agency believes that the cost to meet this requirement will be minimized by the fact that, by the end of this period, many of the units unable to meet the ± 0.15 OD requirement will have been replaced by facilities on their normal replacement schedules. The agency does not believe it has any basis to require a tighter limit than ± 0.15 OD.

Section 900.12(e)(5)(i)(C) (proposed § 900.12(e)(5)(i)(B)) proposed that the operating OD be no less than 1.20.

(Comment 500). Several comments suggested deleting the word "operating." One comment requested the definition of "Operating OD."

FDA agrees that the word operating should be deleted. This requirement is now moved to § 900.12(e)(5)(i)(C) in the final rule.

One comment urged FDA to require a mean optical density of at least 1.3 OD. FDA notes that the regulation allows facilities to use a higher film OD if they believe that will make the test a better indicator of the ability to detect micro-calcifications and will aid in improving image quality. However, the agency does not consider it necessary at this time to require any higher OD. The agency also notes that NMQAAC advised FDA to retain the 1.2 OD requirement as proposed.

The annual test in § 900.12(e)(5)(ii) tracks the kilovoltage accuracy and reproducibility.

(Comment 501). A large number of comments stated that kVp accuracy should be within 5 percent instead of the proposed ± 10 percent.

The agency is persuaded by these comments and has made the change in the final regulation.

(Comment 502). One comment questioned the justification of a very tight coefficient of variation for the kVp reproducibility.

FDA believes that the coefficient of variation of a given set of kilovoltage measurements should be less than 0.02, as was proposed. This is the standard presently required under the interim regulations and most facilities are currently in compliance with it; there is no justification for relaxing the standard, either from the point of view of public health or a cost consideration.

(Comment 503). Several public comments and a member of NMQAAC expressed concern that one widely used kVp testing instrument does not read below 23 kV, while kilovoltage settings as low as 21 or 22 kVp are sometime used. A few comments suggested requiring kVp testing at two clinical setting values. One comment stated that § 900.12(e)(5)(ii)(B), as written, could be interpreted to mean kVp reproducibility should be measured from 25 to 30 kVp in 0.5 kVp increments. Another comment stated that it should be acceptable to test kVp reproducibility in just one setting within the clinical range.

In response to these comments, FDA has revised the final regulation to require that the lowest kVp at which accuracy be tested is the lowest clinical used kVp that can be measured by a kVp test device. The agency, however, disagrees with the comments that recommend testing kVp at one or two clinical settings only. FDA considers it important to test kVp accuracy at least at the highest and lowest measurable clinically used values, and at the facility's most commonly used clinical kVp. The agency, however, has modified the regulation to require that the coefficient of variation of reproducibility be determined at the most commonly used kVp only.

One comment claimed that the kVp accuracy requirement should be checked with all focal spots. The agency has no reason to believe this is necessary.

The focal spot condition (proposed as system resolution) test in § 900.12(e)(5)(iii) was proposed to evaluate the performance of the mammography unit by assessing the resolution capability of the system.

(Comment 504–505). A few comments stated that some mammography machines could not meet the proposed resolution requirement even though the focal spot size was adequate. One comment maintained that the line pair resolution requirement was too restrictive. A member of NMQAAC stated that, in magnification mammography, the resolution requirement would be difficult to meet. These comments suggested that the focal spot size measurement be added as an alternative requirement, as is the current practice under the interim regulation. Two other comments also urged FDA to continue to permit focal spot dimension measurements as part of acceptance tests for mammography equipment evaluation. One comment supported replacing focal spot measurement with performance related specifications of system resolution.

FDA considered the immediate economic impact on facilities of meeting the resolution requirement as proposed and decided to permit continued use of the focal spot size measurement as an alternative to the measurement of system resolution for a period of 5 years from the publication of the final regulation. During this period, facilities may evaluate the condition of the mammography unit by determining either the system resolution, proposed as § 900.12(e)(5)(iii) (new § 900.12(e)(iii)(5)(A)), or the focal spot dimensions as described in § 900.12(e)(5)(iii)(B). The agency believes that by the end of this period, when the regulation will require the evaluation of system resolution only, many of the units unable to pass the system resolution test will have been replaced by the facility on its normal replacement schedule.

The agency believes the benefits of assessing overall performance of the system through use of the system resolution test justify their transition. NMQAAC also advised FDA to require the system resolution test.

(Comment 506). One comment suggested that FDA should only require that the resolution shall be sufficient so that the system can detect micro-calcifications of 300 μm and greater sizes.

FDA notes that available scientific data indicate that 50 μm resolution is necessary in mammography imaging for early and proper detection of micro-calcifications. This is equivalent to about 10 cycles (lp)/mm resolution when the bar pattern is used. The agency believes that all new equipment meets this requirement as proposed. Under the interim regulation, this criterion is already being met by the facilities which chose to evaluate focal spots by assessing system resolution. Further, NMQAAC advised FDA to adopt such a requirement in the final regulation. For these reasons, the agency did not accept the comment.

(Comment 507). A member of NMQAAC advised FDA that the units should be specified in SI units and suggested using "ycles/mm" in place of "ine pairs/mm." One comment stated that the height of the line-pair test pattern above the image receptor must be specified in association with the resolution limits and suggested that the height should be 4.5 cm. Other comments requested clarification of "parallel" and "perpendicular" to the axis in terms of the bars of a test pattern whose orientation was being described. Three comments urged that test specifications be included in the regulations.

In response to these comments, FDA has added a new § 900.12(e)(5)(iii)(A) to specify that the high contrast resolution bar patterns must be placed 4.5 cm above the breast support surface and be oriented parallel and perpendicular to the anode-cathode axis. FDA has also introduced cycles/mm as the primary unit.

(Comment 508). One comment asked at what magnification the system is required to resolve 11 and 13 lp/mm. Another comment suggested that the tests should be performed at all magnifications used. Two comments urged FDA to require focal spot assessment for all focal spot sizes. One comment suggested that the system resolution should be tested with the grid in use. One comment suggested that the grid should not be in the imaging chain during magnification.

FDA reiterates that 5 years from the date of publication of the final rule, all facilities must perform the system resolution test annually and must meet the requirements specified in § 900.12(e)(5)(iii)(A)(1), both in contact mode and in all magnification mammography modes used in the facility. The agency believes that if a machine can meet the requirements using the large focal spot size used in contact mode, it will meet the requirements using the small focal spot size also. The agency also believes that the resolution test must be conducted under the normal operating condition, that is, for contact mammography the resolution assessment must be performed with the grid in place whereas for magnification mammography, the grids should be removed. The agency intends to provide more discussion about these procedures in educational documents.

(Comment 509). Two comments stated that the line-pair minimum should be increased.

FDA believes that the present values are generally accepted as representing the best cost/benefit compromise.

(Comment 510). One comment recommended requiring a monthly phantom test with indicators of what should be expected in resolution capabilities at a given magnification to ensure adequate performance between physicist surveys. The comment also recommended that the system resolution in magnification mode be monitored to determine whether it diminishes with time.

Although it encourages facilities to carry out this type of performance-based study, FDA does not believe there is adequate evidence to show that these additional tests would produce benefits that outweigh the costs facilities would incur in performing them. Therefore, at this time, the agency is not including them in the regulation.

The beam quality and half-value layer (HVL) paragraph as proposed in § 900.12(e)(5)(iv), required the HVL to meet the specifications provided in § 900.12(b)(11). Two comments stated that the exact specifications should be included under § 900.12(e)(5)(iv), rather than merely by reference. Two comments suggested that the upper HVL limits described in the 1994 ACR QC Manual should also be included and that HVL limits should be specified for other target filter combinations.

In the final rule, FDA has specified HVL requirements only in § 900.12(e)(5)(iv). The specifications for kVp's in the mammographic range are provided in a tabulated form. Values not shown in the table may be determined by linear interpolation or extrapolation. NMQAAC members were unable to reach a consensus on the value of having an upper limit of HVL or on what the upper limit should be. FDA views this as an indication that there is a general lack of consensus on this topic in the mammography community and, therefore, the agency has decided not to include any upper limit in the regulation.

The breast entrance exposure and AEC reproducibility paragraph, as proposed in § 900.12(e)(5)(v), established the action limit for the coefficient of variation of these two variables at 0.05.

(Comment 511). Three comments suggested deleting the breast entrance exposure requirement, while another considered it to be an equipment standard. This last comment further stated that lack of AEC reproducibility will be identified by other QC tests and the phantom image. Another comment inquired whether it was the intent of the provision to require facilities to calculate exposure reproducibility for data points consisting of mR divided by mAs, or to separately measure the reproducibility of exposure and mAs.

FDA believes that this test must be performed at least annually and that the coefficient of variation must be calculated for both exposure and mAs. If a unit does not indicate a post-exposure mAs value, then mAs should be obtained by a secondary method. In accordance with the movement towards the use of SI units discussed in connection with the new definition of air kerma (§ 900.2(d)), the agency has also introduced air kerma as the primary quantity to be measured in this test. Breast entrance exposure remains as an alternative quantity.

The dosimetry test in § 900.12(e)(5)(vi) determines the mean glandular dose delivered during a single cranio-caudal view using an FDA approved phantom simulating a standard breast. When the mean glandular dose exceeds 3.0 mGy, corrective action is required.

(Comment 512). A number of comments were received on the specifications for the phantom to be used in performing this test. Some comments stated that most facilities are using phantoms simulating a 4.5 cm breast and it would not be cost effective to change to phantoms simulating a 4.2 cm breast. One comment suggested that FDA should recognize that most technique charts are set using whole number thicknesses, arguing that 4.0 cm is probably the most reasonable. One comment stated that ACR phantoms are not tissue equivalent phantoms.

Another comment stated that, to date, most dose data had been set using the RMI accreditation phantom. The comment questioned its actual tissue equivalence and further stated that dose standards should be set using a phantom that correlates as closely as possible to actual thickness.

In the preamble to the proposal (61 FR 14912), FDA solicited comments about actual thickness that the existing phantoms simulate. FDA did not receive enough evidence in response to this question to convince the agency that the existing phantoms simulate a 4.0 cm compressed breast more closely than they simulate a 4.2 cm compressed breast, which is the figure currently used. The agency, therefore, continues to require that the dose should be determined under the assumption that the phantom simulates a 4.2 cm compressed breast and that the technique factors should be chosen accordingly. FDA did not propose, nor has it required in the final rules, any change in the phantoms currently being used. As stated earlier, the agency believes that accreditation bodies should establish phantom specifications and related performance criteria. In the future, if better tissue equivalent phantoms are available to simulate a different compressed breast thickness that can change dose calculations significantly, the agency will revise the thickness requirement for average dose calculation. FDA also notes that a change from 4.2 cm to 4.0 in thickness does not result in a significant change in the calculated dose.

(Comment 513). One comment stated that calculation of the entrance dose to the phantom is not necessary if kVp, HVL, and mAs for the exposure are within limits. Another comment stated that, because the existing image quality phantom simulates a 4.2 cm compressed breast, not 4.5 cm, the dose limit could be lowered. One comment stated that the regulations should not allow any dose less than 0.8 mGy, while another comment stated that there is no reason for accepting 300 mrad as a maximum mean glandular dose because, even at 25 kVp, the typical mean glandular dose is 120–150 mrad (1.2–1.5 mGy). This comment recommended setting the dose limit at 250 mrad (2.5 mGy). Another comment recommended that FDA consider lowering the patient dose requirements to that of the State of California requirement.

FDA strongly believes that a proper dose calculation at least once a year for each unit is critical for public health and safety. FDA further believes that the present dose limit of 3.0 mGy provides adequate protection from unnecessary radiation and does not want to change the dose limit to 2.5 mGy or establish a lower limit of 0.8 mGy, in order to avoid the possibility of inhibiting future advances in imaging technology, as discussed in the preamble to the proposal (61 FR 14912).

(Comment 514). One comment suggested that the phantom kVp and mAs must be compared to the average of 20 or more 4.2 cm clinical breast mammograms to ensure that the measured glandular dose is consistent with patient radiation doses.

In response to this comment, the agency notes that the dose must be determined with technique factors and conditions used clinically for a standard breast. The agency understands that, for some facilities, commonly used technique factors may be slightly different from what would be technique factors for a standard size breast and therefore different from what would be used for the available phantom, which simulates a standard breast. However, the agency does not believe that dose will vary so significantly that it will exceed the required limit of 0.3 mGy in cases of patients with non standard breast size, as long as the mammography unit is capable of meeting the dose requirement using a phantom simulating a standard breast.

(Comment 515). Two comments urged FDA to require that the time of exposure be less than or equal to 2.5 seconds. FDA did not accept this comment because the agency believes that it does not have enough evidence to confirm that 2.5 seconds is the absolute maximum exposure time needed to cover all patient sizes. The agency recommends that facilities determine the proper exposure time for their needs through consultation with the medical physicists and the equipment manufacturers.

The requirements for X-ray field/light field/image receptor/compression paddle alignment in § 900.12(e)(5)(vii) are intended to ensure that: (1) All systems have beam limitation devices that prevent the patients from receiving unnecessary radiation dose, permit imaging of the critical breast tissue near the chest wall, and avoid white borders on the film; (2) if a light field is provided, the congruence of the light field with the X-ray field should be such that the sum of misalignments on opposite sides between X-ray field and light field is within 2 percent of the SID; and (3) the alignment of the edge of the compression paddle with the chest wall edge of the image receptor is sufficient to permit pulling the breast tissue away from the chest wall for imaging and to keep the shadow of the vertical edge of the paddle from being visible on the image. The test also ensures that the extension of the edge of the paddle is within 1 percent of the SID so that the patient's chest is not pushed away from the breast support surface.

(Comment 516). One comment stated that § 900.12(e)(5)(vii) should include exact specifications rather than just a reference to those specifications in § 900.12(b)(5). One comment argued that confinement of the X-ray field within the image receptor cuts off useful film area and misses some of the breast tissue. The comment further suggested that this requirement should be changed so that the X-ray field can extend slightly beyond the edges of the image receptor in order to make full use of the film area and not potentially miss any breast tissue that is overlying the image receptor, and to blacken what would be an otherwise clear border.

In the final regulation, FDA has moved the X-ray field/light field/image receptor/compression paddle alignment specifications to § 900.12(e)(5)(vii). FDA notes that § 1020.31(f)(3), which the agency referenced in the proposal, allows extension beyond the chest wall edge of the image receptor by as much as 2 percent of the SID so as to properly image breast tissue on the chest wall side. In the final rule, the agency allows extension of the X-ray field beyond all edges of the image receptor but limits this extension to within 2 percent of the SID.

(Comment 517). Two comments suggested that the term "image receptor" should be defined. In the agency's earlier discussion of the definitions, the agency has referenced § 1020.31 as providing a definition of image receptor.

(Comment 518). One comment stated that the requirement for a light field in this section imposes an unwarranted expense.

FDA notes that a light field is not required but if one is present, it must meet the light field-X-ray field alignment requirement.

(Comment 519). One comment urged FDA to consider relaxing the requirement for the alignment of the compression paddle and the breast support surface. One comment questioned whether limiting the extension of the compression paddle beyond the image receptor to within 1 percent of SID is achievable in all units. Another comment suggested that this requirement be written to more accurately reflect the need to extend past the edge of the image receptor, although by no more than 1 percent of the SID. Three comments stated that it appeared from the proposed regulation

that it was permissible for the compression paddle to be visualized on the mammography film.

FDA believes that the one percent extension limitation can be achieved and notes that the current requirement under the interim regulations is one percent. The agency has also clarified the final rule to emphasize that the shadow of the compression paddle shall not be visible on the image.

(Comment 520). One comment requested clarification on whether the reference was intended to be with respect to a vertical line or with respect to a line connecting the focal spot and edge of the image receptor when the requirement that the chest wall edge of the compression paddle not extend beyond the chest wall edge of the image receptor by more than one percent of SID is being met.

(Comment 521). One comment suggested that FDA specify whether this requirement is with respect to the interior surface of the paddle or the exterior surface. The comment, however, acknowledged that this is not an important issue with a 1 or 2 mm paddle thickness.

FDA disagrees with comments that suggest including all these details in the regulation. However, the agency wishes to clarify that the reference is the vertical line and the requirement refers to the interior surface of the paddle.

One comment stated that this requirement should be met with all image receptors. FDA notes that the regulation as written requires this test to be performed for all full-field aperture sizes used for beam limitation in the facility; this will ensure that all image receptors meet the requirement.

The screen speed uniformity test, as proposed in § 900.12(e)(5)(viii), requires that at least once a year, each facility must ensure the consistency of the screen speed among all cassettes used in the facility for mammography. The same test is required currently at the same frequency under the interim regulation.

(Comment 522). One comment stated that § 900.12(e)(5)(viii) did not allow for slow and fast screen variations due to large and small screens having different relative speeds. Another comment suggested that the maximum optical density difference should be reduced to 0.15.

FDA believes that the difference between the screen speeds of all cassettes, small or large, should be such that the OD variation is within 0.3 OD. The agency, however, does not believe that tightening the restriction on density difference to 0.15 is justified. Members of NMQAAC supported this view.

One comment requested FDA to describe the test procedure to be used. As discussed earlier, FDA made a general decision to refrain from describing specific test procedures for QC tests in the regulations. The agency will include a more detailed description of some tests in its guidance document.

System artifacts in § 900.12(e)(5)(ix) mean artifacts produced by any part of the mammographic system, including the X-ray machine, screen-film system, and/or processors. This subparagraph requires the facility to determine the level and possible adverse effects of artifacts produced by its systems. These artifacts should be distinguished from the patient related artifacts.

(Comment 523). One comment stated that the evaluation should be done for all full-field image receptor sizes.

FDA agrees and has added this requirement to the final regulation.

(Comment 524). One comment recommended elimination of this test because the physicists always watch for artifacts whenever a film is taken.

FDA strongly believes that a separate test solely meant for artifact evaluation is necessary. Further, this test should also evaluate the whole imaging chain for the source of any artifacts detected.

(Comment 525). One comment stated that the test can also be done with a smaller phantom positioned closer to the collimator. As advised by NMQAAC, FDA proposed that artifacts should be evaluated through the use of a test object of high grade defect-free material that is large enough to cover the mammography cassette.

FDA notes the intent in requiring an object of this size is to capture and identify artifacts that are caused anywhere in the cassette and its screen-film combination. In this way, the quality of the entire film can be better assured. FDA understands that there may be other ways of accomplishing this goal, such as the method suggested in the comment, but the agency lacks data to confirm that the suggested procedure will produce equivalent results. The agency notes that the alternative requirement mechanism of § 900.18 provides a way by which alternatives to the requirements can be evaluated, and possibly accepted, by FDA.

(Comment 526). One comment stated that more guidance should be provided on evaluating artifacts. One comment wanted the test details and acceptance levels prescribed.

Again, FDA has decided that test details are subjects more appropriately addressed separately from the regulations. The agency also notes that the acceptance level for artifacts is at present a subjective assessment and not amenable to the establishment of specific numerical standards.

(Comment 527). One respondent believed that testing X-ray systems for artifacts does not require the use of a test object. Another comment stated that use of a thick (4 cm) acrylic test object will harden the beam to the point that it will mask grid and/or carbon fiber cover artifacts and may even mask grid lines.

FDA disagrees. The agency believes that an exposure time sufficient to image appreciable artifacts may not be achieved if a test object is not used, while these artifacts would be visible during a normal patient exposure.

FDA has moved the radiation output requirement from § 900.12(b)(15) to § 900.12(e)(5)(x) because it concluded that it was more appropriate to treat this test as an annual QC test rather than an equipment specification. This test is intended to determine if the mammographic system is capable of producing a minimum required output. Five years from the publication of the final rule, the requirement will change to require a higher output from each system.

(Comment 528). Two members of NMQAAC opposed this requirement as an annual test. One member stated that a 3-second field test of the unit may cause damage to the tube. The same NMQAAC member further stated that averaging the results over a 3-second exposure time would not reveal whether the output rate dropped unacceptably low at any time during the exposure.

FDA does not have evidence indicating that any significant fluctuation in exposure takes place within an exposure time of the order of 3 seconds. However, the agency has revised this requirement in § 900.12(e)(5)(x)(B) from that originally proposed in § 900.12(b)(14) to clarify that no instantaneous radiation output requirement is intended; instead, the requirement is the output averaged over a 3-second period. Also, because the exposure times can be lengthy for some patients, the agency does not consider 3-second exposure time unreasonable. The agency also considers a yearly check of radiation output important and reasonable.

i. *QC tests—other modalities (§ 900.12(e)(6))*

This provision requires facilities using image receptor modalities other than screen-film to establish a quality assurance program that is substantially the same as that recommended by the image receptor manufacturer, except that the maximum allowable dose is not allowed to exceed that established in § 900.12(e)(5)(vi) for screen-film systems.

No public comments were received on this paragraph and it has been codified as proposed.

j. *Mobile units (§ 900.12(e)(7))*

This provision requires mammography units used at more than one location to meet all of the quality assurance requirements established in § 900.12(e)(1) through (e)(5). In addition, at each visit at each examination location, before any additional examinations are conducted, the facility is required to verify the performance of such units using an adequate test method.

(Comment 529). Three comments supported the additional testing of mobile units. One of these noted that the many environments in which the units operate made the testing necessary. Six comments opposed the additional testing. The most common reasons given for the opposition was concern about being able to process the test images before mammography is performed and that the additional testing was unnecessary because moving the unit did not create any problems.

When the need for additional testing of mobile units was discussed at the NMQAAC meeting of September 1994, it was noted that a recent ACR survey of facilities operating mobile units had found that about one in seven facilities reported quality problems with their mobile units at least weekly. Largely based on this information, NMQAAC recommended that postmove, preexamination testing of mobile units be included in the final regulations. NMQAAC continued to support this proposed requirement at its January 1997 meeting.

FDA agrees that no change should be made to the proposal. The agency further notes that several of the opposing comments based their concern upon the difficulty of processing phantom images at the mobile site. However, the final regulation does not require the use of any specific test, only that the test method be able to verify that adequate image quality is being produced by the unit. This gives the facility the option of using other tests that do not require processing of images before examinations are conducted, as long as the test can demonstrate that adequate image quality is likely to be achieved. One such test, based on the consistency of mAs readings, was described by a speaker at the September 1994 NMQAAC meeting.

(Comment 530). Five comments expressed concern about the fact that acceptable testing methods were not specified in the regulations. Three of these comments asked who a facility should consult to determine if its test method would be considered adequate by FDA. Related comments on this issue asked how inspectors would determine adequacy without guidance and noted that the State of Massachusetts left it to the medical physicist to determine what test method should be used. One comment urged that a test based on the mAs reading be considered acceptable, while another stated the performance test required by the State of Illinois should be recognized by FDA.

FDA plans to issue information describing test methods that it is likely to consider acceptable for verification of performance of mobile units after a move and before examinations are conducted. It is expected that at least one of these methods will not require the processing of images before the examinations begin. Because these methods will not be regulatory requirements, FDA may accept other test methods proposed by facilities, medical physicists, or other interested parties. Facilities are always free to discuss any particular method with FDA prior to establishing its use.

(Comment 531). One comment opposed allowing central film processing for mobile services out of concern for degradation of the latent image during the time between exposure and development.

This issue was discussed at some length at two NMQAAC meetings and the conclusion was that this degradation would not be significant during the typical times between exposure and development of mobile facility images. FDA, therefore, has not prohibited central processing.

(Comment 532). One comment stated that if diagnostic imaging is done at a mobile facility, a radiologist should be present. Practice of medicine issues have made it difficult to define the distinction between screening and diagnostic mammography. Because of this difficulty, FDA has issued the final regulations to apply to all mammography, rather than addressing specific requirements to one area or the other.

k. *Use of test results (§ 900.12(e)(8))*

The provisions of this proposed paragraph were intended to ensure that the facility did not stop with the performance of the quality assurance tests but analyzed the results of the tests to determine if problems existed and took necessary actions to correct those problems. Ongoing anecdotal evidence and the MQSA inspection data indicate that, even 20 years after the introduction of the concepts of quality assurance, some facilities are still neglecting to take the important final steps in the process.

Section 900.12(e)(8)(i), as proposed, requires facilities to compare the results of their quality assurance tests with action limits specified in § 900.12(e)(1) through (e)(6) and, if their results fall outside the action limits, to repeat the tests immediately to verify that the testing process was not responsible for the result.

(Comment 533). Thirteen comments opposed, at least in part, the requirement to repeat the tests immediately. Some of these comments urged that it be applied only to the processor QC, screen-film contact, and average glandular dose tests. Two comments supported exempting annual tests. Four of the comments stated that the decision about what tests should be repeated should be left to the medical physicist. NMQAAC recommended complete deletion of the proposed requirement that the tests be repeated immediately. One comment took the opposite view, stating that this requirement helps facilities identify trends.

FDA notes that this requirement was originally added to ensure that the facility confirmed whether the problem was due to the equipment rather than an improperly performed test before it went to the trouble and expense of taking corrective actions. However, the agency has been persuaded that a facility that goes to unnecessary expense to correct an equipment problem that was actually a testing problem is likely to take steps on its own to avoid repetition of such a situation. In view of that conclusion, and the public comments, the requirement to repeat the test has been deleted from the final regulations.

Section 900.12(e)(8)(ii), as proposed, stated that if the repeated tests continue to produce unacceptable results, the problem shall be identified and corrected before any further examinations are performed.

(Comment 534). Seven comments stated that this provision, as proposed, was too broad and that at least in some cases it would not be necessary to shut down the entire facility until the problem was solved. Other comments gave the views of their authors as to which tests, if failed, indicated problems serious enough to require the facility to stop doing mammography until the problem was solved. The most frequently mentioned tests in this category were the processor QC tests of § 900.12(e)(1) and the average glandular dose test of § 900.12(e)(5)(vi), each of which was listed by 13 comments.

(Comment 535). Seven comments included the image quality test of § 900.12(e)(2) and six each, the screen-film contact test of § 900.12(e)(4)(ii), the compression test of § 900.12(e)(4)(iii), the tests for modalities that did not use screen-film of § 900.12(e)(6), and the additional test for mobile units of § 900.12(7) on their lists of tests important enough that their failure required problem detection and correction before mammography continued. The system resolution test of § 900.12(e)(5)(iii) was listed in five comments. One comment each also would include the artifact test of § 900.12(e)(5)(ix) (if there were "serious" artifacts), the kVp test of § 900.12(e)(5)(ii), and tests of output and the phototimer (if the errors were "large") on the list.

NMQAAC as a group supported the requirement that the problem must be corrected before mammography continues only in the cases of the processor QC tests, the average glandular dose test, and the screen-film contact test. However, the medical physicists serving as committee members and consultants for NMQAAC, when discussing specific tests in their individual comments, presented somewhat different and conflicting views. They agreed that the processor QC and the average glandular dose tests were of sufficient importance that, if they were failed, the facility should cease doing mammography until the problem was corrected. They also supported adding the image quality test to that list. Opinions of these physicists were split on whether the screen-film contact test, the automatic exposure control tests of § 900.12(e)(5)(i), the breast entrance exposure and AEC reproducibility test of § 900.12(e)(5)(v), the tests for modalities other than screen-film, and the additional test for mobile units should be considered important enough that their failure would require problem correction before mammography continued.

After consideration of the comments, FDA agrees that not all test failures are serious enough to require the facility to cease doing mammography until the source of the problem is corrected. The agency also agrees with two additional comments that stated that, even if the test failure does indicate a problem that requires immediate correction, it may not be necessary to shut down the entire facility. For example, if the processor QC tests are failed, it may be possible to continue to perform mammography, but to delay processing the films until the processor problem is corrected, as long as the anticipated processing delay is not of such duration that image degradation becomes a concern. Similarly, if the facility has more than one mammography unit, the failure of one unit would not be a reason for stopping the use of another unit that did pass the tests.

In response to these considerations, FDA has revised § 900.12(e)(8)(ii) by dividing the tests into two groups. Those tests listed in § 900.12(e)(8)(ii)(A) are those whose failure requires immediate problem evaluation and correction. However, the wording has been changed to state that the corrective actions must be taken "before any further examinations are performed or any films are processed using the component of the mammography system that failed the test" (emphasis added). If the failure is related to a component for which there is no alternative, for example, a failure of the facility's only mammography unit, then the facility will still have to cease doing mammography until the problem is corrected. However, if there is another unit or processor that has passed the tests, the facility will be able to continue producing and processing mammograms with that equipment while the problem with the first unit is corrected.

Included in § 900.12(e)(8)(ii)(A) are the processor QC tests (§ 900.12(e)(1)) and the average glandular dose test (§ 900.12(e)(5)(vi), both of which everyone who commented on this paragraph agreed were important enough that their failure required evaluation and correction of the problem before the piece of equipment was used for further mammography. FDA has also included the image quality test (§ 900.12(e)(2)) in this group, even though it was mentioned in fewer comments. The importance of this test is underscored by the fact that the primary goal of the MQSA is to ensure adequate quality mammography for all women. The agency has also included the additional test for mobile units (§ 900.12(e)(7)) because it is a test that directly evaluates image quality.

FDA has also included the tests for nonscreen-film modalities (§ 900.12(e)(6)) on this list. This particular provision was intended to facilitate the introduction of new modalities because it ensures that facilities using the new modality will have an adequate quality assurance program, while at the same time not requiring amendment of the requirements of § 900.12(e) before the new modality can be used. Because it is not possible to predict in advance what new modalities may appear and what QC tests may be required for them, FDA believes they must be placed in § 900.12(e)(8)(ii)(A) to adequately protect the public. Should it prove to be the case that some or all of the tests that are applicable to the new modality might more appropriately be placed in § 900.12(e)(8)(ii)(B), regulatory relief can be provided through the alternative requirements mechanism of § 900.18 until § 900.12(e)(8)(ii) can be amended.

FDA has also agreed with comments urging that the screen-film contact test (§ 900.12(e)(4)(ii)) and the compression test (§ 900.12(e)(4)(iii)) be placed on the list of those tests whose failure should require taking a piece of equipment out of service until the problem is detected and corrected. The agency notes that the new wording referred to above means that failure of the first of these tests only requires taking the cassette in question out of service and, as one comment pointed out, the corrective action most likely will simply be replacement of the cassette. The compression test is included out of concerns raised by both anecdotal accounts and reports to FDA's Medical Device Reporting System of injuries resulting from excessive compression and the knowledge that inadequate compression can lead to poor quality images.

Finally, FDA retained the darkroom fog test (§ 900.12(e)(4)(i)) on this list, even though it was not mentioned by any of the comments. FDA has concluded from studies, such as the Nationwide Evaluation of X-ray Trends program of the Conference of Radiation Control Program Directors, that excessive darkroom fog is more pervasive and has a greater impact on image quality than is commonly realized. The agency also notes that the detection and correction of the problems contributing to darkroom fog is a relatively uncomplicated process and can be carried out relatively rapidly. Often the problem is associated with the safelight and simply discontinuing use of the safelight until it can be replaced or repaired may provide a temporary correction that would permit returning the darkroom to service.

FDA has placed all other tests under § 900.12(e)(8)(ii)(B). These are tests whose failure indicates that there are problems that must be corrected, but, for various reasons are not considered to present a health hazard serious enough to require taking a piece of equipment out of use until the problem is corrected. Retake analysis is included in this group (§ 900.12(e)(3)(ii)). In this case, mammography must be allowed to continue to determine if the corrective action has indeed had the desired effect on retake rate. Also in this group are tests such as kVp accuracy (§ 900.12(e)(5)(ii)) and alignment (§ 900.12(e)(5)(vii)), for which, as one of the NMQAAC physicists argued, there are compensation methods that can be used as temporary corrective actions until the problem can be given a more permanent correction. Other tests included in this group, such as the system resolution test (§ 900.12(e)(5)(iii)—called the focal spot condition test in the final regulations) are early warning tests that give an indication of possible approaching problems. In the case of the system resolution test, FDA has accepted the argument of the NMQAAC physicist who believed that, unless the system resolution was so poor as to lead to failure also of the image quality test, some time could be permitted for the correction of the resolution problem. Of course, if the image quality test is failed, the piece of equipment will be taken out of service until the problem is corrected. Finally, this group includes the artifact test (§ 900.12(e)(xi)), for which there are no objective action limits against which to compare the test results.

Although problems revealed by the tests in the second group are not considered serious enough to take a piece of equipment out of service until corrected, FDA believes that they must not be allowed to exist indefinitely. Therefore, § 900.12(e)(8)(ii)(B) requires that when tests in this group are failed, the problems must be evaluated and corrected within 30 days.

l. *Surveys (§ 900.12(e)(9))*

This paragraph required that a facility survey be performed by a medical physicist no less often than once a year. The tests and reviews that, at a minimum, were to be included in the survey were specified along with requirements that the medical physicist provide a survey report to the facility within 30 days of the survey. Identification of those who performed the survey was to be provided in the report.

(Comment 536). Two comments were received on § 900.12(e)(9)(i), which specified that the surveys should be conducted annually. One comment indicated confusion about the requirement by stating that an annual FDA inspection was not needed if a certified physicist conducted biannual surveys. The other comment asked that the requirement be modified to allow the annual surveys to take place in a year plus or minus a reasonable period.

FDA notes that an inspection is not a survey but rather is a check by an independent authority on how well the facility is meeting the requirements. An inspection and a survey serve different functions and are both required under the MQSA. Furthermore, the inspection does not duplicate the physicist's work. The inspection involves conducting only the tests that provide the most general picture of the equipment performance but also includes review of other aspects of the facilities performance such as personnel qualifications and reporting and recordkeeping practices, which are not considered by the physicist during the survey. Recognizing the unique characteristics of both the survey and the inspection, and the benefits of multiple oversight mechanisms, Congress required that each be conducted annually. Performance of more frequent surveys, semi-annually, e.g., does not eliminate the need for inspections. FDA has retained the requirement for an annual survey in accordance with 42 U.S.C. 263b(e)(1)(B)(iv). This requirement does not prohibit the facility from having a survey more frequently if it wishes. In response to the second comment, FDA notes that it has exercised its enforcement discretion under the interim regulations, and intends to continue to do so under the final regulations, to permit short periods of additional time beyond 12 months for the facility to obtain a survey under certain circumstances. The agency has done so in recognition of the difficulty that facilities that rely on contract physicists have in scheduling surveys. However, this exercise of enforcement discretion in a particular year is not intended to set a pattern that will permit facilities to impermissibly lengthen the timeframes between surveys to longer than annually.

(Comment 537). Several comments were received on the survey report required under § 900.12(e)(9)(iii). One comment recommended that a standard physicist report format should be required to facilitate review. Another stated that there should be provision for identification of units if the facility has more than one unit or has installed a new unit in an old room. A third comment stated that the report should include the calibration dates of the exposure measuring instruments.

FDA recognizes the advantages of a standardized report and in the past has encouraged the use of the report format recommended in the ACR quality assurance manuals. This format includes provision for identification of the unit being evaluated; such information has been and will continue to be implicitly required, because without it, the facility is unable to prove that a particular unit was included in the survey. FDA also believes that there has been a move towards standardization under the interim regulations because reports that inadequately provide the information needed during inspections have created extra work for facilities and physicists who must provide the information. This has led to improvements in later reports. However, while there are advantages to a standardized report, FDA also recognizes the need to allow flexibility in this respect to cover special situations and to permit the use of individual initiative in developing improved formats. The agency concludes, therefore, that it is both unnecessary and needlessly restrictive to require a specific report format by regulation.

Because the calibration requirement for exposure measuring instruments (§ 900.12(e)(12)) is a new requirement, this information has not been checked during inspections under the interim regulations. Because it is now a requirement under the final regulations, FDA expects that, in most cases, this information will be included in the survey report and that there is no need for a specific regulation requiring it to be there. However, if the facility wishes to provide the information in some other format, it will have the flexibility to do so.

(Comment 538). Four comments were related to the requirement of § 900.12(e)(9)(iv) that the report be provided to the facility within 30 days of the survey. One comment suggested shortening the interval to 2 weeks. Another stated that Massachusetts had found that a requirement that the facility's lead interpreting physician sign the report within 30 days had been effective in ensuring that the findings of the medical physicist were implemented. A third comment proposed that the deficiencies noted by the medical physicist be corrected within 1 month. The fourth comment urged that if the report is not received within 30 days, the facility be required to take the equipment out of service. This, it was believed, would stimulate the physicist to be timely.

FDA believes that a shorter time period would be unreasonable in situations where contract physicists might do several surveys in a several day trip before returning to his or her office to complete the reports. The agency also believes that it is common practice that before leaving the facility, the physicist gives a preliminary report to the facility staff, which would include identifying conditions that require prompt action. The new provisions of § 900.12(e)(8), which require correction of certain serious test failures before the failed equipment is used for further examinations, will further stimulate the provision of

preliminary reports. The agency continues to believe, therefore, that the 30-day timeframe is reasonable. With respect to the second and third comments, the agency believes that the new § 900.12(e)(8) adequately ensures that the more serious failures are corrected before the equipment is used again and that all identified problems are corrected within 30 days. A separate requirement is not needed here. With respect to the fourth comment, FDA believes that there is already sufficient incentive for the facility to make sure it receives its report within the 30 days without need for the drastic action suggested.

(Comment 539). The last comment on this paragraph endorsed the requirement in § 900.12(e)(v), that not only the physicist, but anyone who is performing part of the survey under the physicist's direct supervision be identified.

FDA retained this requirement when the regulations were codified.

m. *Mammography equipment evaluations (§ 900.12(e)(10))*

FDA proposed this provision to resolve several somewhat conflicting concerns. The basic goal was to ensure that newly installed equipment or equipment that had undergone major changes is tested for adequate performance by a qualified person before the equipment is used for examinations. However, this goal had to be achieved within the statutory limitations that provide for the issuance of provisional certificates prior to the completion of the survey and that require review of QC data as part of the survey. Such data cannot be generated unless the unit is in clinical use (42 U.S.C. 263b(c)(2)). The agency was also concerned about the costs that might be incurred by a facility that required two visits by the physicist, one visit for the original equipment check and the second for the full survey. There was also concern about the possibility of reduced access attributable to delays in putting the equipment into use due to inability to arrange for a visit by a physicist for some period of time.

Proposed § 900.12(e)(10) was an attempt to balance these conflicting concerns by requiring a mammography equipment evaluation of units or processors that were either new or had undergone major changes before those units were put to use in performing examinations. The evaluations were to be done by a qualified person, who could be a physicist or could be another individual, such as an installer or manufacturer's representative, and any problems found were to be corrected before the equipment was used clinically.

(Comment 540). One comment supported this paragraph as written, but 27 comments opposed allowing anyone but a medical physicist who met the requirements of § 900.12(a)(3) to perform the mammography equipment evaluation. NMQAAC also supported requiring that the physicist perform this evaluation.

In view of these comments, FDA has changed the wording to limit the performance of the mammography equipment evaluation to a medical physicist or someone under the direct supervision of a medical physicist. As noted above, this may mean a delay of some weeks in the use of the equipment at some facilities until a medical physicist can be scheduled for the evaluation. However, the agency has been persuaded by the unanimity of the public comments and the advice of NMQAAC that the benefits of having a medical physicist perform the evaluation outweighs the disadvantage of a possible delay. The agency also notes that by planning ahead, the facility may be able to minimize this delay.

(Comment 541). Several comments addressed the issue of the content of the mammography equipment evaluation. Two comments urged that this be a complete survey but a third noted that the equipment would have to be in use for a period of time before the complete evaluation could be done. Four other comments suggested some specific tests to be included in the evaluation, but two more comments recommended leaving the decision about necessary testing to the person doing the testing.

As noted above, the MQSA provisions relating to provisional certificates and the physical impossibility of checking QC data before the equipment is put into use preclude the possibility that the mammography equipment evaluation can be the full survey required by the statute. Although the agency agrees that it may be beneficial to do a variety of tests at the time of the equipment evaluation, it does not intend to designate particular tests in the regulations. The revised provision simply requires that the evaluations determine if the new or changed equipment meets the applicable requirements of § 900.12(b) and (e), thereby focusing on the primary public health concern, which is to establish that units are not put into clinical use without proper testing. This more general wording, the agency believes, also eliminates the need to consider processors and mammography units separately with respect to this evaluation, as suggested by six comments.

Related to the content of the mammography equipment evaluation is FDA's concern, mentioned earlier, about the expense to the facility if two physicist visits are required, one for a mammography equipment evaluation and another, later, for the survey. The agency's original efforts to reduce costs was its proposal to permit the mammography equipment evaluation to be performed by qualified individuals other than physicists. The revised final regulations eliminate this possibility. In a different approach to limiting costs to the facility, FDA plans to permit the initial survey of the new or changed equipment to be done in two stages. The first stage, the mammography equipment evaluation, will obviously require a facility visit by the physicist. If the facility and physicist can cooperate to produce adequate documents, FDA will permit the second stage, the review of the QC data after it is available, to be done by mail. Presumably, this will cost the facility less than two onsite visits to the facility by the physicist. The agency stresses that this two-stage process is intended to help contain costs associated with a facility's initial survey of new or changed equipment and is entirely optional and within the discretion of the facility and its physicist. The agency will require subsequent annual surveys of that equipment to be done at one time through an onsite visit.

The proposal required a mammography equipment evaluation for new equipment and also after major components of the equipment were changed. FDA specifically asked for comments on what should be considered to be "major components" but received relatively few responses.

(Comment 542). One comment suggested processor rollers in the case of the processor. For the X-ray unit, two comments suggested the X-ray tube and one of these went on to add the bucky, the screen-film system, and the photo-timing system. Two comments also suggested changes in the ventilation system because such changes can cause major artifact problems. Another comment simply suggested that repairs by service personnel should require testing.

FDA found these suggestions useful and will take them into account in determining what constitutes a major component. With respect to the regulations themselves, in view of the limited number of comments, the agency decided to continue to keep the wording general.

(Comment 543). One comment opposed the entire idea of a mammography equipment evaluation before the equipment was put into use, stating that it would only increase the cost of installation. Another comment, however, strongly supported the correction of all problems before any equipment was put into use. FDA agrees that there will be some cost associated with mammography equipment evaluations, but believes that the dangers inherit in permitting the use of untested equipment in patient examinations more than justifies this requirement. Therefore, the agency has retained the requirement in the final rules and clarified that the evaluation is also required for new and reassembled equipment, or whenever a major component is changed or repaired.

n. *Facility cleanliness (§ 900.12(e)(11))*

This proposed paragraph required the facility to establish and implement protocols for maintaining darkroom, screen, and view box cleanliness and to document that the protocols were followed.

(Comment 544). Six comments stressed the importance of darkroom, screen, and view box cleanliness, primarily because of the likelihood that dirty conditions will lead to artifacts. Three comments took the opposite position, stating that the section should be deleted due to lack of evidence of a hazard. Seven comments urged FDA to go further and establish protocols for cleaning in the regulations. On the other hand, 13 identical comments questioned whether it would be possible for FDA to establish regulations on cleanliness.

FDA believes that proper standards of cleanliness contribute to quality mammography; e.g., they do reduce undesirable effects associated with artifacts. However, as the agency stated in the preamble to the proposed regulations, there are a variety of cleaning protocols and a variety of circumstances affecting the cleaning needs of a facility. FDA continues to believe that facilities must be given the flexibility to establish cleaning protocols that best fit their needs. The presence and use of such protocols can easily be determined during inspections and their effectiveness, or lack thereof, will be demonstrated by the results of the QC tests, such as the artifact test.

(Comment 545). Six comments stated that FDA was paying attention to disinfecting the equipment but not to screen cleanliness, apparently a reference to § 900.12(e)(13), discussed below.

FDA disagrees with these comments and believes that adequate attention has been paid to both areas. The agency also notes that the infection control requirements will also address the concerns raised by the comment, which stated that cleanliness requirements for bucky and compression paddle and examination room cleanliness should be added.

o. *Calibration of air kerma (exposure) measuring instruments (§ 900.12(e)(12))*

This paragraph, as proposed, required calibration of the instruments used by medical physicists in their annual surveys to measure exposure, at least annually. Ten years after publication of the regulation, additional requirements would have to be met by those doing the calibration.

(Comment 546). Numerous comments urged FDA to change the required frequency of calibration to once every 2 years. A few comments opposed the requirement entirely, while others suggested calibration more frequently than annually. In response to these comments, FDA changed the required frequency to once every 2 years as a normal practice, but also retained the requirement for calibration after a repair of the instrument.

As discussed in connection with the definitions of kerma and air kerma, the agency has also introduced the quantity of air kerma into this rule in accordance with the move towards use of SI units. Also in accordance with the agency cost concerns discussed earlier, the requirements proposed in § 900.12(e)(12)(ii) to be phased-in over 10 years have been eliminated.

p. *Infection control (§ 900.12(e)(13))*

This paragraph was proposed in recognition of the fact that, while transfer of disease caused by blood borne pathogens during mammography has never been reported, it is theoretically possible. Therefore, the agency concluded that appropriate precautions should be taken. Because FDA believes that this concern is not unique to mammography, it did not propose specific requirements for mammography equipment but stated instead that the facility should follow the general requirements for infection control related to medical devices.

(Comment 547). Seven comments opposed this requirement. Reasons given included that it was redundant, unnecessary, and time-consuming; would create needless paperwork; and did not deal with a radiation control problem. Two comments, however, urged additional measures, such as requiring informed consent and the use of protective covers. Another comment warned that any material placed between the breast and the image receptor would cause increased dose and degradation of image quality.

FDA believes that the comments do not provide convincing arguments for a change in the agency's position in either direction. The agency continues to believe that at least a theoretical concern about disease transmission exists and that the best way to deal with this concern is to address it as part of infection control procedures to be followed during the use of medical devices in general.

6. Quality Assurance-Mammography Medical Outcomes Audit (§ 900.12(f))

This paragraph requires that every mammography facility establish and maintain a mammography medical outcomes audit program for followup on mammographic assessments and correlation of pathology results with the interpreting physician's recommendations. This program should be designed to ensure the reliability, validity, and accuracy of interpretation of mammograms.

a. *General comments on medical outcomes audit*

(Comment 548). A single comment was received on the general difficulty in conducting a medical outcomes audit faced by facilities that rely on contract interpreting physicians. Specifically, the comment noted that there would be a higher potential for bias in medical outcomes audits conducted for small facilities that employed a relatively greater number of interpreting physicians.

FDA disagrees that the use of a number of contract interpreting radiologists will necessarily result in biases in medical outcomes data. Data should be calculated both for the aggregate facility data base of patients and again for each interpreting physician. Because the data are to be calculated for individual physicians, any particular set of data that represents unusual or anomalous results will be readily identified and additional calculations can be performed by the facility to project average outcomes without that outlying data. The benefit of tracking these results, therefore, includes the ability to identify problems and find trends. The facility will be required to designate a reviewing interpreting physician to review these data and to notify all interpreting physicians, including contract interpreting radiologists, of both aggregate and individual results. Such analyses may require followup actions, which are to be documented by the reviewing interpreting physician.

b. *Confidentiality*

The issue of maintaining confidentiality of medical outcomes audit information collected by the

facility during its mammography medical outcomes audit was a highly controversial area and generated a diverse number of comments. Five comments stated that FDA should collect audit results and publish the information in aggregate form for the public's information. Two additional comments argued that interpreting physician performance data should be made available to any third party or examinee.

On the other hand, 25 comments urged that FDA ensure confidentiality of medical outcomes audit data either through Federal legislation or under the MQSA. Thirteen comments sought to protect the data by making it available only for internal purposes and restricting its submission to FDA and other agencies. One respondent expressed concerns relating to the use of data by third parties, such as facilities, radiologists, and patients. The comment went on to say that, in the instance of a law suit, all such information would be subpoenaed. Five comments stated that due to lack of common definitions and public understanding of the statistics most likely to be captured in the medical outcomes audit, such data should not be made available to any person not affiliated with the facility. Nine other comments agreed that medical audit data should not be shared with others outside the facility, even though they agreed that valuable use can be made of the medical audit within the facility in assessing the accuracy of interpretations. Two comments argued that, unless false negative cases are required to be included in the medical outcomes audit and also protected from discovery, there will be incentives to conduct poor quality audits. Finally, one comment stated that medical outcomes audit requirements inevitably will increase third-party requests for medical audit data in order to select providers.

FDA recognizes the very sensitive nature of the issue of confidentiality of mammography medical outcomes audit data. Under the final regulations, there are no requirements for dissemination or reporting of the data to public bodies or other agencies, including FDA. There is, however, a requirement that each facility establish and maintain a system to conduct followup and make that system available for review by the inspector. Followup is required for all positive mammograms and for those patients who are known to have developed breast cancer after having had a mammogram at the facility. There is also a requirement for internal facility review of these data. FDA believes these regulations ensure the establishment and use of medical outcomes audit data to help protect the public health without necessarily jeopardizing the confidentiality of such data or the incentives facilities and practitioners have to use these data to improve performance. Future regulations are possible in this area.

(Comment 549). Fifteen comments wondered if radiologists could refuse to allow an inspector to copy audit data in addition to visually reviewing it. As discussed previously, FDA does not intend to have inspectors obtain photocopies of medical outcomes audit information. The agency is requiring inspectors only to verify that systems are in place for the facility's use as part of a quality assurance program (see earlier discussion in the preamble to the proposal at 61 FR 14875).

c. *General requirements (§ 900.12(f)(1))*

This paragraph requires facilities to establish and maintain a system for collection and review of outcome data and correlation of pathology results with initial mammographic results. The active collection and followup of data are to focus on positive mammograms with correlation between pathology results and interpreting physician's initial mammographic interpretation.

(Comment 550). Overall the comments about this paragraph were generally positive. Eight comments stated that the requirement would be beneficial to mammography facilities and staff. A small number of comments advocated that followup data be collected for all abnormal mammograms, including those requiring additional imaging before a final mammographic interpretation can be made.

FDA notes that the current language of the final regulations states that a system is to be in place to collect and review outcome data for all mammograms with required followup for positive mammograms. Although followup is required only for positive mammograms, facilities that wish to follow all their cases are encouraged to do so. Future MQSA regulations may include such a requirement for broader followup, including for those mammograms requiring additional imaging before determination of a final mammographic result.

Followup for patients with abnormal mammographic results has been conducted successfully by several different groups, including the National Cancer Institute Breast Cancer Surveillance Consortium, CDC, individual groups of radiologists, and on a statewide basis in Colorado. Followup for all patients with abnormal mammographic results, or symptomatic for breast cancer, or requiring additional imaging studies was successfully accomplished in Colorado through the Colorado Mammography Advocacy Project (CMAP).

As mentioned previously under the discussion on the use of the mammography medical outcomes audit as an alternative approach to design and process-based regulations, the National Cancer Institute's Breast Cancer Surveillance Consortium has also established a major research project to understand the full effect of breast cancer screening on cancer outcomes. Data on breast cancer screening practices from nine sites across the country are being linked to population-based cancer registries. By 2000, the database will contain information on nearly 3.2 million mammographic examinations and over 24, 000 cases of breast cancer. Standardized procedures and tools were created and are being tested by the surveillance consortium that will assist mammography facilities in data collection and auditing. Results and outcomes of the consortium will help establish performance standards for mammography and FDA will evaluate these for appropriateness for future standards under MQSA.

CMAP is a centralized data management system that conducted followup for all women with abnormal mammograms and women with symptoms of breast changes. CMAP also prompts return for regular rescreening through a series of reminder letters to women and their physicians. This system involves voluntary participation of mammography centers, with most facilities in the greater Denver metropolitan area participating. CMAP services were also offered to some or all patients outside of the metropolitan region. The same tracking and followup and screening reminder methods were used at these facilities as for those in the Denver metropolitan area. Data collection for individual patients, facilities, radiologists, surgeons, and referring physicians is governed by stringent standards for confidentiality. During the 8 years of operation of CMAP, the Program ensured that there were no breaches in confidentiality protocols. Followup includes collection of all information about diagnostic procedures performed to evaluate mammographic abnormalities. Currently, CMAP is tracking more than 200,000 women and more than 300,000 mammograms with approximately 3 percent falling into the "positive" category based on radiologists' mammographic interpretation. The system has documented screening compliance rates in excess of 85 percent and improved outcomes associated with the diagnosis of breast cancer. Specifically, women tracked by CMAP and diagnosed with breast cancer had smaller tumor sizes and earlier stages at detection when compared to a cohort of women with breast cancer who had not received the level of tracking and followup performed by CMAP.

(Comment 551). Twelve respondents supported the FDA requirement for collection of outcomes data, but requested that FDA establish guidelines for the content of the audit and the audit process in order to ensure comparability of medical outcomes data. In contrast, three comments supported the current FDA position to establish only very general requirements for the medical outcomes audit.

In the absence of any consensus standards for either mammography outcomes or data collection methods, FDA has chosen to defer proposing these parameters and methods until more research has been completed and clear guidelines can be formulated for mammography centers.

Despite the general support for the medical outcomes audit, 28 comments expressed concerns that there is no consensus on measures of mammographic efficacy. As discussed above, FDA acknowledges the lack of substantive research on appropriate and accurate measures to assess accuracy of mammographic interpretation and, therefore, has not required specific data to be collected for the medical outcomes audit. Instead, the agency has established a general requirement that mammography facilities have a system in place to collect and review outcome data for all mammograms. Followup is mandatory only for positive mammograms and for patients who were previously screened at a facility and were subsequently found by that facility to be diagnosed with breast cancer.

In addition, the same 28 comments maintained that there was no evidence that performance feedback about mammography outcomes affected the quality of care. In fact, however, the agency notes that there are several articles in peer-reviewed journals indicating that performance feedback is an effective strategy to issue positive behavior change (Ref. 3).

(Comment 552). Many comments expressed concern about the impact on audit results of serving diverse populations of patients. It was recommended that FDA keep such variations in mind when more clearly defined medical outcome standards are established in the future. FDA acknowledges the importance of this point and will take population diversity into account in the future development of more specific audit parameters.

(Comment 553). Three comments stated that the medical outcomes audit requirement emphasized detection of false positives and expressed the opinion that this was a meaningless outcome. Three more stated that the most important measure was the rate of false negatives.

FDA notes that the final regulations do not require reporting of either false negatives or false positives. The emphasis is on collecting followup data for all patients with positive mammographic findings and for patients who received mammography at a facility and were later determined to have breast cancer. Such followup may yield a number of statistics, including false negatives and false positives.

NMQAAC has suggested that FDA provide reference articles to which facilities could refer if they wanted to compare their own statistics with those of other practices. FDA supports this type of educational outreach and intends to list such references in *Mammography Matters* as they become available. NMQAAC also noted that future revisions of the regulations may require specific performance standards to be issued for mammography once scientific evidence supports such performance standards. The agency agrees that such future developments are possible. However, the current regulation requires followup only for patients with positive mammograms as defined by the assessment categories of "suspicious" and "highly suggestive of malignancy" and for patients who received mammography at a facility and were later determined to have breast cancer.

(Comment 554). Twenty-seven comments expressed concerns about burdens imposed by the FDA requirement for medical outcomes audit. The burdens included both financial costs of conducting the audit and concerns about staff time to collect the outcomes data. A subset of these comments specifically cited costs associated with the need for sophisticated computerized systems and an increase in clerical staff in order to accomplish the amount of followup required by the regulation.

FDA notes that the number of patients requiring followup (i.e., those mammograms assessed as "highly suggestive of malignancy" or "suspicious") should be relatively small compared to the general population of women screened at a given mammography facility. In fact, data from CMAP and the other programs cited above suggests that an average of 3.0 percent to 5.0 percent of the total population of patients receiving mammograms at a facility will require active followup. While FDA recognizes that there may be some increase in costs associated with staff time to conduct such followup for all positive mammograms and patients subsequently diagnosed with breast cancer, the benefits of followup are considered to outweigh the costs. In addition, the small number of patients requiring intense followup will not place an undue burden on an individual mammography facility when it is measured against the education and experience acquired by facility personnel. The information gained by staff has been shown to have a positive impact on interpretation skill. Feedback about patients with positive mammograms is extremely important information for both radiologists and technologists. Finally, it was the general consensus of the members of NMQAAC that the benefits of medical outcomes outweighed the costs, especially when one considers the small number of cases the current regulations will affect and data from centralized mammography tracking systems, such as the CMAP, which indicated that costs of followup can be minimized. One Committee member also noted that such followup actions could reduce costs associated with medical liability actions.

(Comment 555). Sixteen comments assumed that the medical outcomes audit would require computerized systems and more clerical help, thereby resulting in increased costs.

FDA notes that a computerized tracking system is not required by the final regulations. In fact, many facilities rely on a manual notecard tickler file to ensure appropriate and timely followup for eligible patients. Some facilities have joined a consortium of mammography centers where followup can be accomplished by a centralized data collection effort. Centralization of followup was designed and implemented very successfully for CMAP, with significant economic benefits and opportunities for data comparisons between one facility and the aggregate of all participating facilities. Utilization of unique identification numbers for patient, facility, referring physician, radiologist, and surgeon preserved confidentiality. Information on the type of data to collect and methods of data collection and interpretation will be forthcoming from FDA.

(Comment 556). Three comments asserted that the responsibility for followup should remain with the surgeon and/or referring physician.

FDA agrees that followup by the referring physician or surgeon may well be the most effective way to communicate with patients and collect outcome data. However, the agency's authority under the MQSA is focused on mammography facilities. FDA cannot establish audit or followup requirements for physicians who do not work as interpreting physicians in mammography facilities.

(Comment 557). One comment suggested that certified facilities be required to share patient outcome data with other certified facilities, especially if that information is necessary in order to complete the medical outcomes audit.

FDA has no evidence at this time that facilities are unwilling to share followup information with other facilities that have treated their patients. Upon implementation of the final regulations, FDA will monitor this cooperation and determine if there is a need for such a requirement in subsequent regulations.

It was requested that FDA define 'correlation' of mammographic results with pathology results. FDA has addressed this in the comments on § 900.2(bb) of the final regulations.

d. *Data collection (§ 900.12(f)(2))*

(Comment 558). This provision requires that data be collected on an ongoing basis for at least all patients with positive mammograms. The majority of the comments related to this paragraph suggested that the regulations require surgeons, referring physicians, and/or pathology laboratories to submit outcomes data to the mammography facility rather than requiring proactive followup by the facility for all positive mammograms.

FDA agrees that such reporting would facilitate the efficient collection of accurate outcomes data. FDA has taken actions to encourage other medical entities to voluntarily provide this data (Journal of the American Medical Association, 1995), but as noted above, FDA's authority under the MQSA focuses on mammography facilities. FDA cannot require other entities or health care practitioners to collect data and forward it to mammography facilities.

(Comment 559). One comment stated that it "was not right to force a physician to file statistics with FDA just for statistics sake."

FDA believes that it is important to point out that the final regulations do not require reporting of any medical outcomes audit statistics to FDA. If such requirements are established in the future, it would only be because it was justified by public health benefits and not "just for statistics sake."

(Comment 560). A number of comments raised concerns about the medical-legal implications of collecting outcomes data and some of these urged FDA to mandate audit protection for every facility in every state. Concerns were raised that the data could be subject to subpoena, used against facilities in malpractice claims, or evaluated by third-party payers to award contracts. Discussion among members of NMQAAC, on the other hand, indicated that collection and review of data does result in improved breast cancer detection outcomes and can also serve to protect a facility in the instance of a legal claim.

Although State laws on protection of medical audit data do vary, FDA believes such information is protected from use against facilities or physicians in the majority of cases. The Committee supported the regulations as they are currently written. As stated previously, the regulations only require that a system be in place to conduct followup and that such followup would be required for all positive mammograms. The regulations do not require disclosure of any outcomes data to FDA or any other entity outside the facility. The agency has concluded that the final regulations strike the proper balance because the benefit of audits in improving accuracy of interpretation outweigh concerns about forced disclosure to third parties.

e. *Frequency of audit analysis (§ 900.12(f)(3))*

This paragraph establishes guidelines for the frequency of the medical outcomes audit.

(Comment 561). The majority of comments relevant to this point supported an annual audit of medical outcomes, but also recommended that the audit period end 6 to 12 months prior to the date of the audit in order to ensure collection of complete patient information. FDA recognizes the need for adequate time to elapse in order to collect all relevant data. In response to the comments, the provision was amended to clarify that the audit analysis may be completed up to 12 months following the close of the audit period. This additional time for completion of followup was supported by NMQAAC. However, because the requirement is to do an annual audit, a subsequent audit period will be in effect during the time the facility completes followup for the previous medical outcomes audit period.

Comments also recommended requiring quarterly review of audit data by interpreting physicians. FDA established the requirement for annual review of these data in order to maximize the number of cases eligible for followup and data analysis. Facilities are free to review their audit data at more frequent intervals if that is useful or desirable for that practice. FDA notes, however, that quarterly audit review may not yield sufficient numbers of cases for performance of valid statistical analyses.

Finally, one comment asked what was meant by individually and collectively' for review of medical outcomes audit data. FDA has revised the provision to clarify that the medical outcomes audit data is to be evaluated by the reviewing interpreting physician for the entire facility and for each individual radiologist reading mammograms for the facility.

f. *Reviewing interpreting physician (§ 900.12(f)(4))*

This paragraph requires that each mammography facility designate at least one interpreting physician to review medical outcomes audit data at least annually. This individual will also be responsible for analyzing results and identifying issues based on these results and recording any followup actions.

(Comment 562). Eight comments expressed concerns about the utility and feasibility of conducting medical outcomes audit reviews for individual physicians. These comments reasoned that the numbers would be so small that findings would not be of practical or statistical significance, and that such analyses would also be resource intensive.

FDA acknowledges these concerns, but expects that, over time, adequate data will be available for individual interpreting physicians that will become meaningful and will allow tests of statistical significance.

(Comment 563). Five comments supported the proposal to include 'taking corrective action and documenting such actions' in the requirement, while two others argued that this would not always be possible.

Review of these comments and discussions with NMQAAC prompted FDA to change the wording to recognize that the reviewing interpreting physician may not always have authority to institute corrective actions. As revised, the proposed regulation requires the reviewing interpreting physician to document what, if any, followup actions were taken following review of the individual and aggregate medical outcomes audit data.

(Comment 564). Nine comments noted that facility performance monitoring and corrective actions were not defined in the regulations and, therefore, this provision is unclear.

FDA agrees and has deleted these terms in revising the language of this provision.

(Comment 565). Finally, one comment recommended that the reviewing interpreting physician should also be the individual responsible for overall facility quality assurance.

FDA does not believe that this dual role is necessary or beneficial for every facility, e.g., a physician who is best suited for responsibility over audits may not be onsite sufficiently often to also be responsible for overall quality assurance. Although the final rule would permit a facility to designate the same person for both responsibilities, it is not required.

7. Mammographic Procedure and Techniques for Mammography of Patients With Breast Implants (§ 900.12(g))

This paragraph implements the MQSA provisions that require FDA to establish "standards related to special techniques for mammography of patients with breast implants" (42 U.S.C. 263b(f)(1)(H)).

a. *Breast implant inquiries (§ 900.12(g)(1))*

As proposed, this paragraph required each facility to have in place a procedure to inquire if an examinee has a breast implant at the time of mammography scheduling.

(Comment 566). More than 110 comments opposed making this inquiry at the time of scheduling. Reasons for the opposition included: privacy concerns of the patient, the fact that the patient may not be the person scheduling the examination, and the belief that the best way to obtain this information is by having the technologist question the patient at the time of the examination. Eleven comments supported this requirement, reasoning that this would aid in efficient scheduling and urged FDA to publicize the need for implant patients to inform the facility of their situation at the time of making an appointment.

After reviewing all comments and discussing this issue with NMQAAC, FDA has revised § 900.12(g)(1) to require all facilities to have a procedure to inquire whether or not the patient has breast implants prior to the actual mammographic examination, but not necessarily at the time of scheduling. Those facilities that believe it is important to identify breast implant patients at the time of scheduling, in order for the facility to allot the correct amount of time for the study, are free to do so. The comments indicate that many facilities will choose to use the patient questionnaire to obtain this information or have the technologist question the patient prior to the examination.

(Comment 567). Several comments stated that facilities should have the option of referring breast implant patients to facilities where such examinations are done regularly.

FDA agrees with these comments and notes that there are no regulations requiring facilities to perform studies on patients with implants. For those facilities electing not to perform mammography on patients with breast implants, FDA strongly recommends that they develop a mechanism to inform referring physicians and patients of this fact. This will decrease the chances of such patients arriving at a facility that does not ordinarily perform breast implant studies.

(Comment 568). Two comments suggested establishing a minimum volume for these types of examinations in order to concentrate them at facilities that are the best for this purpose.

FDA recognizes that increased experience with imaging patients with breast implants is likely to develop expertise. However, the agency believes that it is in the best interest of all concerned to have high quality mammography performed in as many facilities as possible. It is possible that one technologist at a particular facility may have had additional training in techniques for imaging such patients and be able to do excellent examinations despite relatively low numbers of such patients. It is not the intent of the MQSA to arbitrarily restrict access to mammography services.

b. *Maximizing the visualization of breast tissue for patients with implants (§ 900.12(g)(2))*

This paragraph requires that patients with breast implants undergoing mammography have mammographic views to maximize the visualization of breast tissue, except where contraindicated or modified by a physician's directions.

(Comment 569). Nine comments stated that it is important to take additional and specialized views of the implanted breast in order to achieve maximum visualization of tissue. The authors asserted that a minimum standard, such as requiring Eklund views, should be set. One contradictory comment stated that requiring mandatory views would cause unnecessary irradiation because not every implant can be displaced as in the Eklund procedure.

FDA and NMQAAC agree that, currently, the Eklund procedures, including appropriate individualized views, provide the best mammographic means to visualize breast tissue for most women with implants. The agency and the committee also recognize that other methods may exist that would be preferable in particular cases. Because breast implant imaging is evolving, the agency believes that it would be premature to limit, by regulation, this imaging to only one technique. FDA does not believe that this regulation, as written, will result in unnecessary irradiation of patients because it allows facilities to customize the study to the individual patient.

NMQAAC recommended deleting the phrase "and optimize breast cancer detection" as being redundant. FDA agrees and has deleted the phrase from the final provision.

c. *Onsite supervision of mammograms of patients with breast implants (§ 900.12(g)(3))*

FDA received almost 300 comments opposing this proposal, which would have required that mammograms of patients with breast implants be supervised by an onsite interpreting physician. Reasons for the opposition included: Severe scheduling and access problems if an interpreting physician had to be present, no demonstrated medical need for an onsite physician, and the belief that technologists are capable of performing implant examinations without the supervision of an interpreting physician. Four comments supported the section as proposed, stating that it was important to have an interpreting physician onsite to check the quality of the images.

FDA has been persuaded by the comments and subsequent discussions with NMQAAC that requiring an onsite interpreting physician would result in a decrease in access to high quality mammography services for women with breast implants without a significant improvement in the quality of care. Therefore, FDA has deleted this provision.

8. Consumer Complaint Mechanism—Facility Standard (§ 900.12(h)) and Accreditation Body Standard (§ 900.4(g))

These paragraphs, as proposed, establish a process for facilities and accreditation bodies to collect and resolve serious consumer complaints. It provides patients with a mechanism to report what they believe to be seriously deficient mammography services and gives them the opportunity to have their complaints heard, investigated, and resolved.

Section 900.12(h), under facility standards, establishes requirements for facilities with respect to collecting and resolving serious consumer complaints, while § 900.4(g), under accreditation body standards, establishes requirements for actions that accreditation bodies must take to resolve consumer complaints referred to them.

Many of those who commented on the proposed regulations seemed unaware that different aspects of the complaint mechanism were addressed in these two separate paragraphs, and unaware that both sections should be read with reference to the definitions section of the regulations at § 900.2. Because the comments on these separate provisions tended to be similar, and in order to help illustrate the connection between them, FDA concluded that it would be most efficient to address public comments on the complaint mechanism sections of the proposed regulations as a group.

As the consumer representatives on NMQAAC noted, of all of the comments on the complaint mechanism, only two were from consumers. Almost all of the comments were from representatives of mammography facilities.

(Comment 570). Several comments agreed with FDA that facilities should have the flexibility to develop their own complaint mechanism and institute their own procedures for response and resolution. One comment supported the requirement that facilities develop a system for collecting and resolving serious complaints about mammography services and the proposed definition of serious complaints. Two comments, including one from a breast cancer advocacy organization, expressed support for the consumer complaint provision that FDA proposed.

One comment noted concern that there is no rule requiring feedback by facilities to FDA about an accreditation body. The comment suggested that FDA implement a communication mechanism for facilities to register complaints/comments with FDA about the accreditation body. The comment recommended that the mechanism guarantee followup, similar to the provision establishing a consumer complaint mechanism.

FDA believes mechanisms for facility feedback to FDA already exist. Facilities that wish to comment about accreditation bodies may contact FDA's DMQRP (address above) and will receive a response. In addition, the statutory requirement for FDA to audit the performance of accreditation bodies through inspections of selected facilities establishes additional opportunities for review and feedback.

(Comment 571). Two comments discussed the manner in which accreditation bodies might implement the complaint resolution process. One suggested that serious consumer complaints should be handled by an ACR Peer Review process. Another suggested that accreditation bodies could form boards to receive unresolved serious complaints.

FDA notes that the final regulations prescribe no particular method for accreditation bodies to use, believing that flexibility will permit each accreditation body to establish a system that works best for the facilities it accredits and the patients they serve. Establishing specific groups to review unresolved complaints is one acceptable method for fulfilling this requirement.

(Comment 572). One comment recommended that, because accreditation bodies have no enforcement authority other than to revoke or deny accreditation, FDA or the State certifying entity should retain authority to investigate consumer complaints.

In response, FDA notes that nothing in the MQSA or the regulations precludes FDA or a State from investigating complaints. However, the agency believes consumer complaints will be addressed most effectively and efficiently by a three-tiered approach. First, the complaint should be registered at the facility, where there is the greatest chance for resolution. Second, serious complaints that have not been resolved at the facility should be directed to the accreditation body. And, third, the accreditation body can forward serious complaints to FDA. Although consumers may choose to complain to the facility, the accreditation body, or FDA, the intent of these mechanisms is to resolve difficulties quickly at the level closest to the consumer.

(Comment 573). One comment suggested a name change for the consumer complaint mechanism. The author supported the proposed requirement, but preferred the use of either "consumer comment mechanism," or "consumer feedback mechanism" to encourage feedback on positive mammography experience(s).

FDA and members of NMQAAC agree that the term "complaint" has negative connotations and may not encourage well-deserved positive comments. The statute, however, requires FDA and NMQAAC to develop a mechanism for the investigation of "consumer complaints." Consequently, FDA adhered to the terminology in the statute.

(Comment 574). FDA received seven comments requesting additional guidance and detail about consumer complaint procedures. Five comments suggested that guidance documents be made available for facilities to follow in generating their system for collecting and resolving complaints, including directions for consumers who wish to file a complaint with the facility's accreditation body. One comment suggested that FDA develop a standardized plan, with appropriate forms to review and evaluate each facility's consumer complaints. One comment supported the proposed definition of a serious complaint, but noted that most complaints deal with Medicare and insurance reimbursements, or lack thereof.

FDA agrees that additional information will be helpful and members of NMQAAC have also strongly recommended that guidance be developed. The agency plans to develop such documents for facilities and consumers.

In reference to discussions in the proposal about cultural considerations, one comment noted that facilities cannot reasonably be expected to develop complaint procedures for all possible language, ethnic, and literacy backgrounds. FDA agrees that to require facilities to make such provisions would pose an undue burden. However, the agency encourages facilities to design their complaint mechanism procedures to be responsive to the particular needs of consumers they serve.

(Comment 575). Fourteen comments stated that the required consumer complaint mechanism increases costs.

FDA believes that the requirements for the complaint mechanism are minimal. Preliminary estimates indicate that the costs for establishing and implementing a system are not significant and that many facilities already have such systems in place. In addition, costs of establishing and implementing such systems are likely to be outweighed by the benefits to the facility resulting from better patient relations, enhanced reputation, and avoidance of costs related to unresolved complaints that may lead to litigation.

(Comment 576). Several comments expressed concern that some consumer complaints could unfairly jeopardize facilities and particular employees. These comments hypothesized a variety of situations: A facility's certification could be threatened by an examinee bent on vengeance (for example, if a false negative mammogram and an error in interpretation constitute serious complaints); certain employees could be singled out any time a complaint is

referred to a higher authority (the accreditation body); the technologist could be falsely accused of a myriad of issues pertaining to patient care. Another comment interpreted the proposed regulation to mean that patients with complaints must be contacted for their opinion on whether the facility's solutions are acceptable to them.

FDA foresees some situations in which a facility's certification may be threatened as a result of consumer complaints. For example, if serious complaints have been continuously ignored or left unresolved by the accreditation body or the facility, subsequent FDA investigations may demonstrate that the facility is unable or unwilling to comply with the MQSA standards. The agency is confident, however, that most facilities will make a sincere and effective effort to respond to valid complaints and does not expect that it will be necessary to consider suspending or revoking certificates for this reason, except in rare cases. In reference to concerns about personnel being unjustly accused, FDA notes that technologists are not ordinarily designated as the individuals responsible for the facility's management and operation. To the extent consumer complaints lead to improvement in performance of individual personnel, the quality of mammography is improved at that facility. With respect to the need to contact consumers about resolution of complaints, the agency believes such communication is a necessary part of resolving a complaint. If consumers believe the facility's solutions are unacceptable, they may contact the accreditation body or FDA, who will try to resolve the issue on a case-by-case basis.

(Comment 577). Seven comments noted their objection to additional policies and procedures for a consumer complaint mechanism. One comment noted that a mandatory facility complaint mechanism is superfluous because effective resolution of patients' complaints is already a component of proper patient care. Another comment noted that each facility can develop its own consumer complaint plan without any guidelines from the MQSA. Fourteen comments suggested that FDA simply accept the policies and procedures for mammography consumer complaints that are currently in use at each facility. If no policy and procedures are in place, the facility should establish one.

FDA agrees that, for the majority of facilities, effective resolution of patient complaints is already a component of proper patient care. In fact, under the interim rules, facilities are required to post an address where complaints can be filed with accreditation bodies, and maintain records of all complaints registered at the facilities. The requirements in the final regulations, therefore, should present little additional burden. Those facilities that already have procedures in place are unlikely to have to make any significant changes. Only facilities that do not have a system in place will be required to make any significant investment of resources. As discussed above, procedures are likely to benefit both the public health and the individual facility.

(Comment 578). One comment suggested that the facility should have the option to ignore a consumer complaint. This comment stated that facilities should be encouraged to handle complaints, but not required to do so.

Under the final regulations, a facility must establish a written and documented system for collecting and resolving consumer complaints. That system may include varying degrees of responsiveness to different kinds of complaints. A complaint about the temperature of the waiting room may be handled differently than a complaint about failure to receive notification of examination results. There may be certain types of complaints under its system that a facility decides do not merit additional resources beyond a verbal acknowledgment or response. However, the system must include a mechanism to provide consumers with a way to register serious complaints with the accreditation body. The consumer can use that information to take serious complaints to the accreditation body and inform the accreditation body that the facility made no attempt to resolve the complaint.

(Comment 579). One comment applauded the consumer complaint mechanism in theory, but questioned the wisdom of permitting the facility to determine whether the complaint is serious. The comment stated that facilities should be required to record all complaints and provide all consumers with directions for filing complaints with the facility's accrediting and/or licensing body. FDA does not believe that the facility independently determines whether the complaint is serious because the definitions of "serious complaint," "serious adverse event," and "adverse event" (see § 900.2) are the basis for such decisionmaking. Also, if consumers are not satisfied with the complaint resolution, they may complain directly to the accreditation body. A facility's system may require that records be kept for all complaints and that consumers be provided with directions for filing all complaints with the accreditation body if they choose to do so. However, tracking and providing the consumer with instructions about how to file a complaint with the accreditation body are required under the regulations only for serious complaints.

Nine comments recommended that all complaints should be handled on an individual basis at each facility, and that recordkeeping should be based on the protocol for that facility. Two comments noted the additional amount of paperwork the consumer complaint mechanism would generate, and one of these noted the possibility that facilities would be open to liability because of this mechanism.

FDA agrees that all complaints should be handled at the facility if possible, and that recordkeeping procedures can vary with each facility and each complaint, so long as tracking and accreditation body notification are established for serious complaints. If satisfactory resolution of the complaint cannot be achieved at the facility level, however, the consumer must have the option of taking the complaint to another level. In response to the concern about generation of paperwork, FDA notes that the requirement to track complaints has been in effect under the interim regulations since 1993 without any feedback indicating excessive paperwork. As to concerns for additional liability, the agency and members of NMQAAC have both noted that records that are required to be tracked are more likely to help facilities document that they responded to and resolved complaints. In addition, effective consumer complaint mechanisms allow facilities to identify problems and improve the quality of their services.

(Comment 580). One comment advocated that some safeguard addressing confidentially should be implemented before this and similar recordkeeping requirements are retained in the final regulations. FDA notes that consumer complaints are part of patient records and will be handled by facilities with the same care as other records relative to patients. Accreditation bodies are required to protect nonpublic information they receive from facilities and will not further disclose such information. FDA's public information regulations prohibit disclosure of patient records or information that would identify individual patients.

(Comment 581). FDA did not propose a requirement that facilities post a sign that explains how to file consumer complaints, although NMQAAC members supported such a requirement. Nevertheless, the agency received 28 comments, all on a form letter, opposing any requirement for posting of the complaint process, particularly with respect to addressing complaints to the accreditation body. These comments argued that such a notice will confuse patients and send mixed messages (e.g., this is a certified facility, but here's how to complain). One comment noted that the consumer complaint mechanism needs to be more clearly articulated in order to determine a mechanism for posting. The comment expressed concerns about promoting dissatisfaction with the screening experience.

FDA notes that facilities can develop their own posting mechanism if they chose to do so. In these cases, the facility could use messages such as: "We care about our patients. If you have comments and/or concerns, please direct them to (the name of the person in the facility who is responsible for complaints)." FDA notes that the name of the accreditation body is listed on the facility certificate, which the facility is required by statute to post prominently within view of patients.

9. Clinical Image Quality (§ 900.12(i))

This paragraph establishes that clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by the facility's accreditation body.

This requirement did not appear as a separate provision in the proposal but was added to the final regulations to emphasize that adequate clinical image quality is to be maintained by the facility on an ongoing basis and is not something to be achieved only at the time of accreditation. FDA recognizes that this requirement may appear unnecessary or redundant. The stated purpose of the MQSA, to establish national uniform minimum quality standards for mammography facilities, presumes that all facilities will produce adequate mammograms on a regular basis. Specific statutory provisions, such as those requiring random clinical image review by accreditation bodies and the establishment of quality assurance programs at each facility to ensure clarity of images, reflect the drafters' intent to ensure quality mammograms for every patient. In addition, the interim regulations issued by FDA and these final regulations establish and support the need for maintenance of adequate clinical image quality at all times. However, FDA's experience with implementation of the interim regulations, and the impression the agency has received from some of the public comments, suggests that some facilities may view clinical image quality as important only or primarily in connection with the accreditation process. The agency has concluded that this critical standard for quality mammography should be stated explicitly in order to emphasize its critical importance and eliminate any chance of misunderstanding.

10. Additional Mammography Review and Patient Notification (Proposed § 900.12(i) (Final § 900.12(j)))

This paragraph requires a facility to cooperate with FDA in the investigation of concerns about the quality of the mammography performed by that facility and in notification of patients or the public, should the investigation justify such notification. As the result of the addition of the new § 900.12(i), Clinical image quality, this paragraph is now § 900.12(j) in the final regulations. The provision has been modified from the original proposal to clarify that this type of review is different from those performed either for accreditation, reaccreditation, or for random clinical image review. Additional mammography review is to be used in those cases where FDA has reason to believe that mammography quality has been compromised and may present a serious risk to human health. Depending on the individual circumstances, this review may be an onsite evaluation or may be performed through the mail. Procedures for performing additional mammography review will be developed by the accreditation bodies and approved by FDA.

If the agency determines that any activity related to the provision of mammography at a facility presents a serious risk to human health, § 900.12(j)(2) requires a facility to notify patients, their designees; their physicians, or the public of actions that may be necessary to minimize the risk. Such notification may be warranted, e.g., in cases where diagnoses of possible malignancy may have been missed due to grossly inadequate performance on the part of the facility. Patients, their designees, health care professionals, or the public may have to be notified so that they may take appropriate remedial action. For example, affected patients may wish to repeat examinations at another facility or a member of the public may be able to contact an otherwise unreachable patient.

(Comment 582). While seven comments supported these requirements as originally proposed, the authors of 26 other comments were concerned about possible abuse of the provisions. These comments requested more information and clear guidelines on how "serious risk to human health" would be determined and how the regulation would be implemented. One comment stated that the entire section was not needed and should be deleted. The authors of 25 comments stated that this section sounded like a consent decree without an appeals process. The comments also stated that the intent of this section was unclear.

FDA notes that even comments that expressed concern generally supported the need to investigate and to take appropriate action at facilities where there is a serious risk to human health. In response to specific comments, the agency first notes that patient notification will not always be an appropriate corrective action, even in cases where mammography services have been inadequate. In some cases, patient notification could result in unnecessary patient anxiety, without providing the patient with any plan of action that the patient could take to minimize her risk. The agency recognizes the important consequences to the patients, the public, and the facility of pursuing patient notification and would not initiate such action without full consultation with the accreditation body and the facility and only following review of the additional mammography review performed by the accreditation body.

Although NMQAAC agreed that the agency should exercise this authority with respect to facilities that are performing poorly, members of NMQAAC were unable to reach a consensus on guidelines for initiating patient notification. FDA's experience under the interim regulations may reassure facilities and the public that patient notification is not requested unless FDA has evidence, including review of clinical images by the facility's accreditation body, that indicates there is a strong likelihood that a significant number of mammograms taken by the facility were inadequate. In any given situation, notification will only be appropriate where the benefits of providing notice to women, who may wish to repeat the exam, outweigh any resultant risks, such as patient anxiety or the possible disincentive for future mammography screening. Because of the number of variables involved in any particular situation, FDA believes that the decision as to when a facility has sufficiently serious problems to warrant patient notification is best made on a case-by-case basis. In the past 2½ years, two facilities have instituted limited patient notification after an investigation by the accreditation body and FDA.

The intent of this section is to assure the public that in those cases of suspected compromised mammography quality, an investigation is performed, and depending on the results of that investigation, appropriate corrective action is taken. If patient notification is the corrective action recommended by the accreditation body and required by FDA, the facility will have every opportunity to participate in designing and implementing that notification. As with any adverse accreditation body or FDA action, the facility has the right to have a determination about patient notification reviewed and appealed within the agency. If the facility does not voluntarily come into compliance or take steps the agency has determined are necessary to ensure quality mammography at that facility, FDA can initiate suspension or revocation of the facility's certificate. In those circumstances, the facility is entitled to a hearing under part 16 of the agency's regulations (see § 900.14) and hearing decisions are subject to judicial review. Contrary to the opinion of many respondents, therefore, FDA's determination that patient notification is necessary is subject to review and appeal.

(Comment 583). One comment opposed this section, asserting that FDA already performs clinical image reviews by randomly notifying the facility that they have so many days to send in certain mammograms.

FDA notes that the author of this comment mistakenly believed that random clinical image review and additional mammography review were the same. As previously stated, these two reviews are performed differently and address different issues and problems. Random clinical image review is performed as an evaluation tool by accreditation bodies in an effort to audit their own performance, and the performance of facilities they accredit. Additional mammography review is to be performed only in those cases where FDA believes there has been a compromise of quality sufficient to pose a serious risk to human health.

(Comment 584). Two comments stated that FDA should ask the accreditation body to investigate questionable facilities, but that the type of evaluation and the final decision should be left up to the accreditation body.

FDA continues to work closely with the accreditation bodies to coordinate all activities, especially those related to image review and mammography quality. Accreditation bodies are critical in establishing processes and parameters for additional mammography review at any particular facility and may be the first entity to discover information that indicates such a review is necessary. Nevertheless, decisions about whether additional mammography review or patient notification are necessary ultimately must rest with the agency.

(Comment 585). One comment questioned why FDA would not start this process as soon as a facility fails accreditation due to clinical image review.

FDA responds that accreditation clinical image review is an evaluation of the "best" images that a facility can produce and is scored against the accreditation body's highest standard. Failure to achieve the high quality standard does not necessarily mean that the facility's average images are of a quality likely to result in the misdiagnosis of significant abnormalities.

It is FDA's view that failure of accreditation or reaccreditation clinical image review does not automatically indicate that the facility's overall quality level has been compromised to such an extent that there is a serious risk to human health. Unless there is other information indicating such a risk, the agency does not intend to apply § 900.12(j) to this circumstance. The initiation of additional mammography review under this section is primarily intended to protect the public in circumstances where there is reason to believe an accredited facility is practicing in a way that may cause serious harm.

M. Revocation of Accreditation, and Revocation of Accreditation Body Approval (§ 900.13)

This provision describes the procedures that FDA will follow in the event a facility's accreditation is revoked by its accreditation body (§ 900.13(a)). It also outlines the facility's responsibility if FDA withdraws approval of its accreditation body (§ 900.13(b)). No comments were received on § 900.13(b).

(Comment 586). One comment supported § 900.13(a) as written while another comment stated that this section is unclear, and asked whether a facility is allowed to conduct mammography without accreditation. Another comment suggested that no FDA certification should continue in force after an accreditation body has revoked the accreditation of a facility.

FDA issues certificates, and only FDA can determine when a certificate is no longer in effect. Loss of accreditation does not automatically mean the loss of certification. In certain unique circumstances, a facility may remain certified though it lacks accreditation. For example, a facility may be certified through a provisional certificate to perform mammography before it is accredited (42 U.S.C. 263b(c)(2)) or retain its certification for some period of time following FDA withdrawal of its accreditation body's approval (42 U.S.C. 263b(e)(2)). Under the MQSA, if an accreditation body revokes the accreditation of a facility, the certificate remains in effect until such time as may be determined by FDA (42 U.S.C. 263b(e)(5)). FDA interprets the statute to give the agency discretion to find that the certificate should no longer be in effect once accreditation has been lost or to permit the facility to continue to perform mammography for some period of time following loss of accreditation. The language in the final regulation has been amended to reflect this discretion.

After revocation of a facility's accreditation, FDA may conduct an investigation into the reasons for the revocation. Following the investigation, the agency may take whatever action or combination of actions will best protect the public health, including the establishment and implementation of a corrective plan that may permit the certificate to remain in effect while the facility seeks reaccreditation. (In the event that the investigation convinced the agency that revocation of accreditation was not justified, FDA would have discretion to continue the certificate in effect while the original accreditation body reinstated the facility or another entity provided accreditation). Anytime FDA determines that the revocation was justified and the certificate should not continue in effect, the facility that has lost its accreditation may no longer perform mammography. The final regulation has been amended to clarify that a facility whose certificate is no longer in effect must cease to practice mammography.

(Comment 587). Three comments concerning this provision appear to have confused revocation of accreditation with revocation of certification. One suggested making the accreditation bodies responsible for appeals of revoked certificates, and two described facilities that purportedly were unable to operate for 2 years as the result of revocation of their certificate due to a single flawed image or the recommendation of the facility's accreditation body.

FDA does not have enough information about the specific cases referenced in the last comments to respond, except to note that an accreditation body does not have authority to revoke a certificate. In response to the first comment, the agency reiterates that suspension or revocation of accreditation is the responsibility of the accreditation body, and each accreditation body is required to have internal appeals procedures available to all the facilities it serves. Suspension of revocation of an MQSA certificate, however, is the responsibility of FDA. Such suspensions and revocations are governed by 42 U.S.C. 263b(i) and the regulation implementing that section in § 900.14. An accredited facility whose certificate FDA is seeking to suspend or revoke is generally entitled to a hearing before that action is taken in accordance with 42 U.S.C. 263b(i) and § 900.14. The agency wants to take this opportunity to clarify, however, that a facility whose certificate FDA determines to be no longer in effect because its accreditation has been revoked is not governed by 42 U.S.C. 263b(i) or § 900.14. In accordance with 42 U.S.C. 263b(e)(5), the certificate of a facility whose accreditation has been revoked remains in effect only until such time as determined by FDA. Although such a facility will be entitled to an opportunity for a timely hearing following a determination by FDA that the certificate is no longer in effect, it may not continue to practice mammography in the interim.

N. Suspension or Revocation of Certificates (§ 900.14)

This section sets forth the conditions under which FDA may suspend or revoke a facility's certificate.

(Comment 588). One comment supported this section as written, while another recommended that this section be revised to include the MQSA provision which authorizes States to conduct certification duties.

As noted earlier in this preamble, the subject of States as certifying bodies is beyond the scope of these regulations. Preparations are under way to draft regulations that will govern State agencies that wish to become certifying bodies.

(Comment 589). One comment recommended changing the word "determines" to "believes."

Suspension or revocation of a facility's certificate is an action against the facility that should be based on more than "belief." FDA does not intend to take such action without making a determination that it is warranted.

Because there were so few comments on this section, it has been codified basically as proposed. The discussion in the preamble to the proposal at 61 FR 14877 through 14878 describes the provisions of this section in detail. FDA has added failure to provide information, reports, or records "to the accreditation body" as an additional grounds for suspension or revocation in § 900.14(a)(3). The agency has made this change to ensure that accreditation bodies have access to records, including clinical images, that are necessary for review. In many circumstances, the accreditation body's access to records is essential for it to fulfill its obligations under the statute and to advise FDA with respect to potential enforcement actons. A facility that refuses to supply such records makes it difficult, if not impossible, for the accreditation bodies and FDA to efficiently investigate or monitor mammography practices at that facility.

O. Appeals of Adverse Accreditation Decisions that Preclude Certification or Recertification (§ 900.15)

The title of this provision has been changed to better reflect the fact that it describes the procedures for appealing adverse accreditation decisions that preclude a facility from becoming certified or recertified.

(Comment 590). One comment supported this section as written, and another comment questioned whether a facility can submit additional information in its appeal to FDA, noting that ACR does not consider any additional information from a facility and bases its appeal findings on rereview of the films from the facility that were originally evaluated.

When appealing an adverse accreditation decision, FDA will consider and evaluate any information provided by the appealing facility that may bear on the outcome of the appeal, in accordance with the governing regulations identified in the next paragraph.

(Comment 591). One comment suggested adding "or reaccredited" in addition to, "has failed to become accredited."

FDA agrees that the addition of "reaccredited" would add clarity. Another comment recommended that there be a timeframe for appeals. The MQSA establishes that the procedures in 42 CFR part 498 are to be followed by FDA for appeals. These regulations contain the timeframes to be followed for appeals under the MQSA.

P. Appeals of Denials of Certification (§ 900.16)

The comments that requested clarification about the relationship between revoked accreditation and continued certification encouraged the agency to explicity address the issue of facilities that have received accreditation but are denied a certificate. FDA has added a new provision to clarify that the statute provides the agency with discretion to deny certification to a facility that has been accredited. As discussed previously in connection with the section on reviewing applications for certificates, FDA ordinarily will issue a certificate to a facility that has proof of accreditation by an approved accreditation body. This has been the agency's practice in the past and the agency intends to continue its reliance on the professional bodies that are expert in these reviews.

However, there may be situations when the agency has access to information that was not available to the accreditation body or when the agency has other reasons to disagree with that body's determination that the facility applying for a certificate will practice quality mammography. In these unusual circumstances, FDA has authority to deny a certificate. The new provision sets forth the grounds that FDA will use as the bases for such denials: A finding that the facility is not likely to comply with the quality standards; a finding that the facility is not likely to permit inspections or provide access to records and information in a timely fashion; or a finding that the facility was guilty of misrepresentation in obtaining accreditation. These grounds are parallel to those that are the statutory bases for suspension or revocation of a certificate. FDA believes that it is in the interest of public health to ensure that such facilities are not permitted to begin practicing mammography rather than automatically granting a certificate that the agency must later seek to revoke.

The new provision also provides appeal rights for facilities that are denied a certificate. These procedures are the same as those set forth for reconsideration and appeal of an adverse accreditation decision in § 900.15. The procedures are mandated by the statute under 42 U.S.C. 263b(d)(2) and include the right to request a formal hearing from the Departmental Appeals Board of the Department of Health and Human Services.

Q. Alternative Requirements (§ 900.18)

Section 900.18 establishes procedures for approval, extension, and withdrawal of alternatives to the quality standards of § 900.12. Such alternatives can be approved if, among other things, the alternatives provide at least as great an assurance of quality mammography as the original standards. The alternative requirement procedure allows the agency to permit the practice of mammography to benefit rapidly from improvements and advancements without the need to first go through the often lengthy process of amending the regulations. When added to the interim requirements through the amendments of September 30, 1994 (59 FR 49808), no public comments were received. This section was incorporated into the final regulations with only minor changes. A few comments were received.

1. General Comments on Alternative Requirements

(Comment 592). Two comments supported this section, one referring to it as a "most sensible approach," but urged monitoring of the use of the alternatives after approval. A third comment suggested that manufacturers be required to provide documentation of approved alternatives to potential purchasers and that copies be available at the facility for review by the physicist and the inspector. A fourth comment urged removal of this section, stating that no variation in meeting the requirements should be allowed.

FDA believes that this process is needed to avoid the danger of discouraging advances in mammography and freezing technology at the present level. If the standards had to be amended to permit use of an advance in methods, training, or technology, the time required for the amendment might well discourage members of the public from attempting improvements. The agency does not believe that it is necessary to make the third comment a regulatory requirement. Manufacturers will find it difficult, if not impossible, to sell equipment that does not meet the requirements or an approved alternative. Because facilities will demand such documentation and will be required to produce it to pass surveys or inspections, FDA concludes there will be sufficient incentive to provide documentation without issuance of a regulation. The agency also notes that copies of applications, amendments, and extensions of alternative standards will be available to the public in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The Dockets Management Branch is open to the public between 9 a.m. and 4 p.m., Monday through Friday.

2. Approved Requests for Alternative Standard Notification (§ 900.18(d)(2)(ii))

(Comment 593). One comment recommended that the justification level for an alternative requirement in this paragraph should be changed from the benefit being so great that the time required (typically more than 1 year) for an amendment would be "an unjustifiable risk to human health" to a standard that established that the alternative requirement "provides a benefit to human health."

FDA believes that the criterion suggested by the comment could be too low for some "benefits," and has retained the provision as proposed.

3. Summaries (§ 900.18(d)(3))

(Comment 594). One comment stated that the requirement for providing summaries of alternative standards to NMQAAC should be deleted because NMQAAC does not have authority to approve or reject actions of FDA in such matters.

FDA agrees that NMQAAC does not have approval authority in such matters, but it does have the responsibility to advise FDA on matters related to FDA's development and implementation of standards. Because the agency cannot gain the benefit of this advice on alternative requirements without informing NMQAAC about the alternatives, FDA does not accept this comment.

4. Applicability (§ 900.18(f))

This paragraph describes the applicability of an alternative requirement. The proposal limited the use of the alternative to the applicant, with the exception of alternative requirements approved for manufacturers of equipment, which would apply to all users of the equipment. Under the proposal, others desiring to make use of other alternative requirements would have to apply separately.

(Comment 595). Four comments stated that FDA should reserve the authority to extend any approval beyond the applicant. A fifth comment went further and advocated automatic extension of an approved alternative requirement to all interested parties. FDA originally placed the limitation on the approval of alternative requirements in order to assure itself that the conditions that prompted the approval of the original application also applied for other applicants.

In light of these comments and after further consideration, the agency has concluded that the limitation would impose an unnecessary resource burden on applicants and FDA. Such a burden is not warranted by the low probability that an approved alternative requirement should not be extended to other interested and similarly situated parties. However, because the program is relatively new and the circumstances that may trigger requests for alternatives are so varied, FDA has concluded that it should review the appropriateness of each possible extension instead of making it automatically approved as suggested in the fifth comment. Accordingly, § 900.18(f) has been revised to permit expansion of the approval of the alternative requirement to other entities, but only after FDA has determined that this would be an effective means of promoting the acceptance of measures to improve the quality of mammography.

5. Other Changes

FDA has also made a change in the administrative procedures included in § 900.18, realizing that the level of delegation of authority to approve alternative requirements may vary with time or organizational changes. Thus, the specific references to approval by the Director of DMQRP have been replaced by general references to approval by FDA.

R. Conforming Amendments

Conforming amendments were made to 21 CFR 16.1 to add §§ 900.7 and 900.14 to the list of provisions under which regulatory hearings are available.

IV. Environmental Impact

The agency had determined under 21 CFR 25.34(c) that this action as proposed is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in Section 202) that agencies prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

The agency has conducted analyses of the final rule, and has determined that the rule is consistent with the principles set forth in the Executive Order and in these statutes. FDA's analysis, as summarized in the remainder of this section, demonstrates that the final rule constitutes an economically significant rule, as described in Executive Order 12866. The agency has further determined that the final rule may have a significant economic impact on a substantial number of small entities. This discussion, therefore, along with the other relevant sections of this preamble and the agency's final Economic Impact Analysis (available at the agency's Dockets Management Branch), constitute the agency's final regulatory flexibility analysis as required under the Regulatory Flexibility Act. Similarly, because this rule is expected to result in expenditures that exceed $100,000,000 in at least 1 year, these documents also comprise the agency's assessment of anticipated costs and benefits under the Unfunded Mandates Reform Act. The final economic impact analysis also includes all references.

FDA presented a summary of its preliminary economic analysis in the preamble to the proposed rule (61 FR 14856). That summary discussed the potential costs and benefits of the proposed rule and described the findings of a more detailed industry analysis conducted by FDA's contractor, the Eastern Research Group (ERG). In response, the agency received numerous comments that addressed economic issues. FDA has examined and evaluated the reasoning and data presented in these comments and has incorporated many of them into its revised analysis of the final rule. The following discussion provides a summary of these impacts and presents the agency's responses to the relevant public comments.

A. Incremental Costs

For its analysis of the incremental costs of the proposed regulation ("Cost and Benefit Analysis of Regulations Under the Mammography Quality Standards Act of 1992"; preliminary final; March 14, 1996), FDA relied on agency experts and technical consultants to develop a broad profile of mammography facilities and to identify the type and cost of the additional equipment and procedures that would be needed to bring the affected facilities into compliance. That analysis found that the proposed rule would impose annualized industry costs of approximately $61.4 million. Upon review of the resulting public comments, FDA has maintained the basic methodology for these estimates, but updated or otherwise revised a number of the input variables.

The full details of the cost estimates for these final regulations are presented in the agency's final Economic Impact Analysis, which is available for review at the Dockets Management Branch and at FDA's home page on the World Wide Web (www.fda.gov) the analysis addresses only those costs that would not have occurred in the absence of these final regulations. The estimates assume that at a minimum mammography facilities are already complying with the agency's current interim regulations and that a typical facility will comply with each requirement of the final regulation by selecting the least costly method of compliance. Current facility compliance levels for the industry were derived for early provisions of the final regulations from published data services or interviews with experts in mammography. The cost estimates are based on a facility cost model that analyzes the inputs to a mammographic examination (e.g., professional time, amortization of fixed equipment costs, variable costs of supplies) and derives the contribution of each activity to the average cost of conducting a mammographic screen. The required capital costs were developed from an industry wide inventory of existing equipment stock, which allowed FDA to estimate the percentage of equipment that will need to be modified or replaced. The compliance cost attributable to equipment requirements was calculated by including the value that this equipment will lose (based on years of remaining asset life) and the cost of retrofitting, if possible. The aggregate costs were modeled over a 10-year analysis period and allocated among the industry sectors based on facility screening volumes. This method allowed FDA to analyze the effect of compliance costs on small volume and large volume facilities.

The analysis projects that yearly expenditures for compliance by mammography facilities will range from a high of $156.2 million during the second year of implementation to $9.5 million during the tenth year, with the variation reflecting the phased implementation dates for the individual requirements. On an annualized basis (over the 10-year period at a 7 percent discount rate), the yearly costs will equal about $38.2 million. Over the full 10-year period, the combined expenditures and lost resources for the largest cost element (replacement of mammography units with units meeting technical or quality assurance standards) will total more than $241 million and contribute approximately $28.5 million in average annual costs (75 percent of the total average annual costs). The other major annual cost components include medical records and reports, $4.6 million; quality assurance systems, $3.4 million; personnel qualifications, $1.6 million; and consumer complaint mechanisms, $0.1 million.

B. Incremental Benefits

The benefits of the final regulations will result from improvements in mammography quality and include: (1) Additional life-years (or quality adjusted life-years (QALY's)) and reduced costs of cancer treatment gained by earlier stage identification of breast cancers, and (2) less anxiety and stress and reduced cost of followup diagnostic mammographic screens and other diagnostic procedures gained by fewer false abnormal screens. While data limitations preclude FDA from developing a precise estimate of the magnitude of these benefits, the agency has constructed an impact model that projects the expected health and cost outcomes under various scenarios of plausible mammography quality levels. This model, which forecasts breast cancer outcomes based on tumor stages at time of initial identification, is summarized below and fully described in the agency's aforementioned final Economic Impact Analysis.

1. Baseline Estimates

The patient population affected by the regulation includes all 79.3 million women age 30 or older. Applying age-specific cancer incidence rates to the number of women in each 10-year age cohort projects approximately 180,600 new breast cancer cases annually, of which about one-quarter may ultimately prove fatal.

About 90 percent of the 25 million mammography procedures performed each year are for screening procedures in asymptomatic patients. Thus, FDA's impact model assumes a base of 22.5 million annual screens and 2.5 million annual diagnostic (or subsequent) mammograms in symptomatic patients. Of the 22.5 million screens, approximately 5 million (22 percent) are for women over the age of 65 and 2.7 million (12 percent) are for women younger than 40. The remaining 14.8 million annual screens are distributed by size of each 10-year age category. The age-specific cancer incidence rates within each age cohort indicate that about 56,900 of the 22,500,000 annual screens are for women with breast cancer and 22,443,100 are for women without breast cancer.

Although the benefits of the rule derive from increases in the quality of mammography, the quality dimensions are very difficult to measure. Each mammogram is unique because each patient is unique and many factors contribute to quality, including those that are not affected by these regulations. While other measures have been suggested (e.g., cancer yield and PPV), FDA's impact model relies on a combination of sensitivity and specificity levels to represent average mammography quality. The sensitivity of any diagnostic test is the proportion of the tested, diseased population that is correctly identified as diseased. Thus, test sensitivity addresses the problem of false negatives. The specificity of a test measures the proportion of nondiseased patients who are correctly identified as not having the disease. Thus, test specificity addresses the problem of false positives.

If both sensitivity and specificity improve toward 100 percent, the proportion of "incorrect" mammograms decreases. Although improvements in one measure may come at the expense of decreases in the other, as certain technical changes can tradeoff sensitivity for specificity, FDA finds that the input changes required by this regulation will raise the national average of both measures. Thus, the agency's impact model measures quality improvement as the percent decrease (expressed as a percentage over the current level) in the number of incorrect diagnoses, both false positives and false negatives.

Estimates of the current national average levels of mammography sensitivity and specificity are approximate representations, because they reflect literature examinations based on different patient populations, time periods, and definitions. Current sensitivity measures in community settings have ranged from 53 percent to as high as 90 percent and specificity measures have reached as high as 99 percent. However, several studies indicate that mammography facilities in research/academic settings have sensitivity and specificity measures that exceed most "typical, community facilities" by 7 to 13 percent. Based on these studies, FDA's baseline estimates assume that current national levels of sensitivity and specificity average 80 percent and 90 percent, respectively. The calculations use age-specific rates, because breast tissue density varies by age of patient.

The estimated 80 percent sensitivity rate implies that while 45,400 of the estimated 56,900 annually screened women with breast cancer currently receive a true positive result, 11,500 receive a false negative result. Thus, FDA estimates that each year, mammography fails to identify breast cancers in an estimated 11,500 screened women. The agency's impact model, which relies on a distribution of identified cancers by development stage and SEER incidence rates for both screened and nonscreened populations, predicts that about 4,300 of these 11,500 women will die of breast cancer within 20 years. The model implies that perfect mammography would prevent about 1,200 of these fatalities. FDA recognizes that perfect mammographic screening is not yet technologically achievable, but the agency is convinced that mammography sensitivity rates can be significantly improved, thereby avoiding a substantial number of these premature deaths.

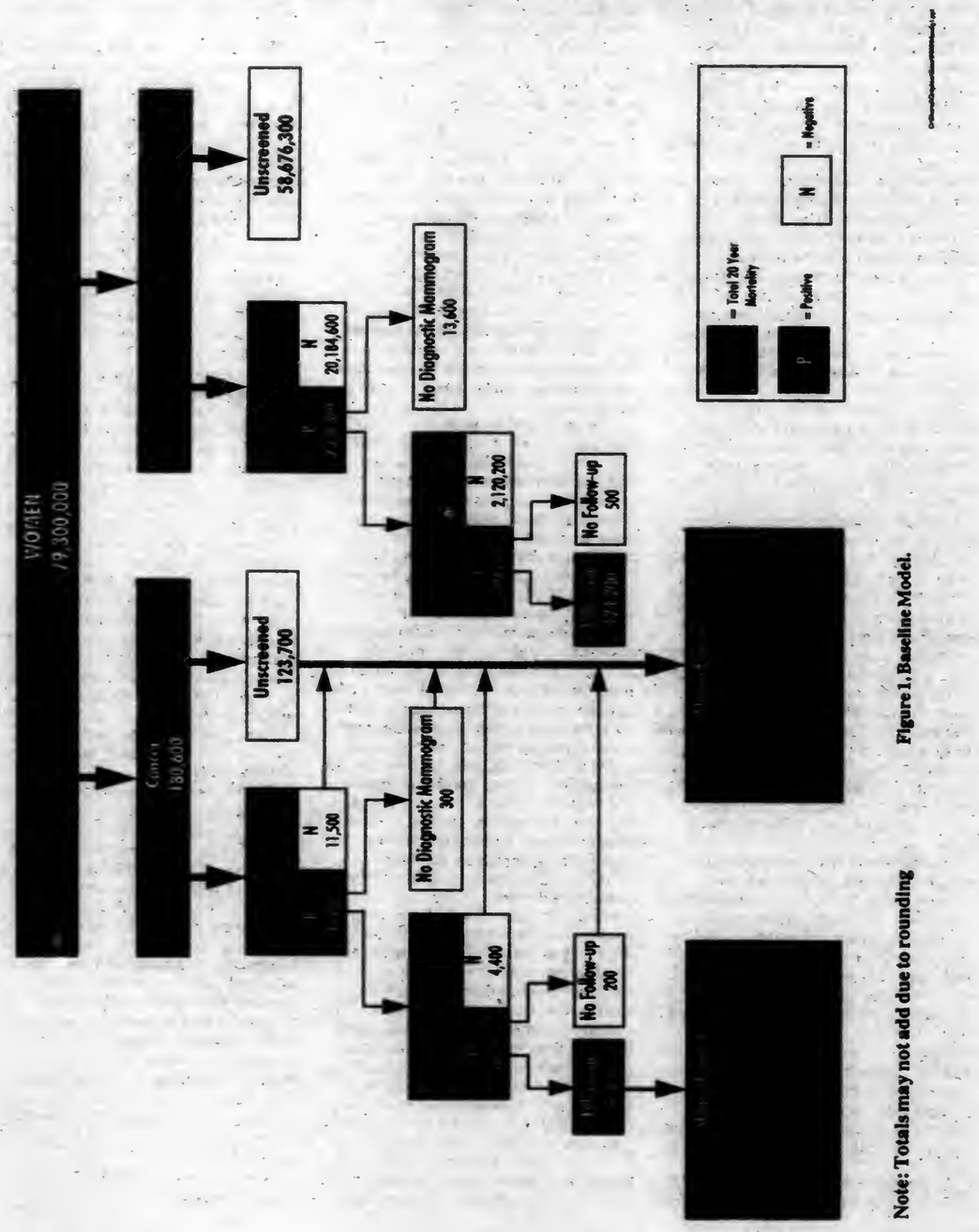
Economic literature includes many attempts to place a dollar value on mortality avoidance for the purpose of conducting cost/benefit analysis. A common methodology estimates society's willingness to pay to avoid the risk of a statistical death as evidenced by wage premiums necessary to attract employees to riskier occupations. These data contain considerable variability, but appear to average about $5 million per death avoided. Thus, for illustrative purposes, FDA's analysis assumes a $5 million value to represent the societal benefit of preventing a premature death. The value of a life-year was estimated at $368,000 and the value of a quality-adjusted life-year at $373,000.

FDA also believes that the improved mammography quality gained by the final regulations will significantly reduce the rate of false positive results. The above methodology indicates that 22,443,100 women without breast cancer are screened annually. Consequently, a baseline specificity measure of 90 percent implies that 20,184,600 will receive true negative results, but 2,258,500 others will receive false positive results. FDA estimated the cost of the anxiety and increased stress associated with these false positive screening results by assessing the contribution of psychological well-being to the overall quality of life.

The time between a patient notification of a positive screen result and the subsequent identification through a followup diagnostic mammogram was assumed to take about 1 month. The cost of enduring this anxiety was assumed to detract from the value of a quality-adjusted month value of $31,100, i.e., $373,000 ÷ 12. Research indicates that mental focus and psychological well-being affected by a major life crisis can contribute approximately 8 percent to the overall quality of life. Worries about health, illness, and well-being may account for approximately one-sixth of the stress that would constitute a major life crisis. To assess the potential effect, FDA's impact model assumes that 25 percent of those patients who receive false positive results would be willing to pay about $415 ($31,100 x .08 x .167) to avoid the stress and anxiety of a false positive mammogram.

FDA also found that cancer treatment costs vary by stage of detection, from annual costs of $18,900 for the earliest stage to $50,000 for the latest stage. Other components of FDA's model address patient noncompliance with screening results due to fear or denial. Diagnostic mammography readings were assumed to follow positive initial screens, and additional followup diagnostic procedures were assumed to follow positive diagnostic results and to identify lesions that were present without screening. Based on limited data, FDA's model assumes that a small number of those patients with positive screens do not seek further treatment. Figure 1 illustrates the model components and baseline estimates.

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Note: Totals may not add due to rounding

Figure 1, Baseline Model.

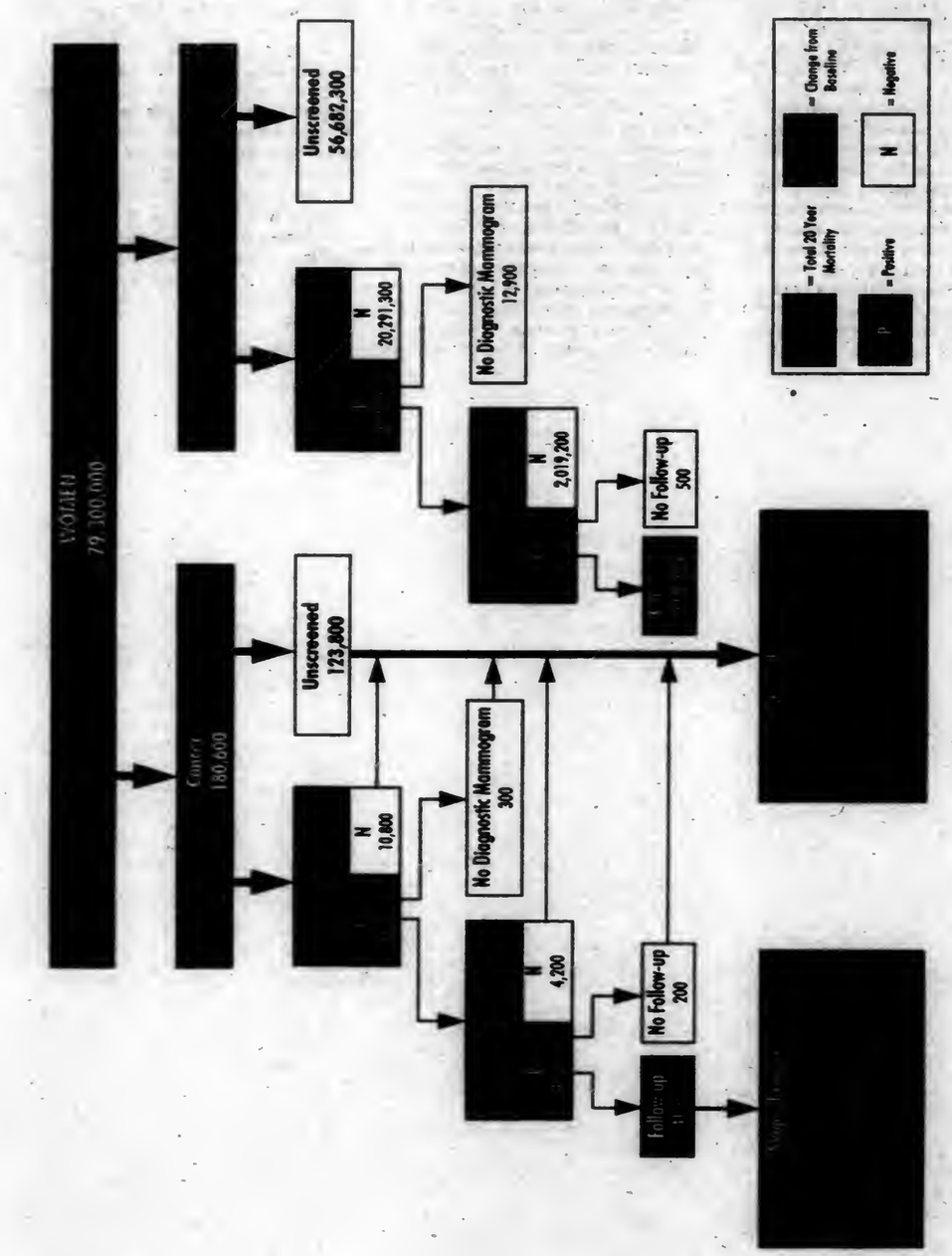
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2. Regulatory Impacts

The agency also finds that the impact of these regulations could affect the demand for mammography. One study found a price elasticity of approximately -0.2 for outpatient well care. As the rules will likely raise mammography prices as well as costs, FDA incorporated this price elasticity into its impact model. On the other hand, improved mammography quality will have a positive effect on mammography demand. Assuming that the demand for mammography for a subset of potential patients exhibits a unitary elasticity with respect to quality, FDA's impact model finds that a 5 percent increase in mammography quality would roughly offset the above price-induced decline in demand, with the net change less than .03 percent.

Because of the difficulty in assessing the impact of the regulations on mammography quality, no public comments attempted to quantify the likely health outcomes. Similarly, FDA cannot predict the precise magnitude of the quality improvement that will be generated by these final regulations. FDA believes, however, that the mammography quality improvements will be substantial and that gains as small as 5 percent (i.e., reducing the proportion of incorrect procedures by 5 percent by increasing average sensitivity levels from 80 percent to 81 percent, and specificity levels from 90 to 90.5 percent) would produce substantial net benefits. The results of this analysis are shown in figure 2. For example, when compared to the baseline data (figure 1), the number of earlier cancers detected due to a 5 percent improvement in mammography sensitivity would prevent about 75 women per year from dying of breast cancer within a 20-year period. At $5 million per life saved, the discounted value of this outcome is about $234 million per year. Alternatively, the model shows that a 5 percent quality improvement would bring an annual increase of about 410 discounted QALY's valued at $153 million. Thus, FDA estimates the benefit of avoiding these premature mortalities as ranging from $153 to $233 million per year.

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Note: Totals may not add due to rounding Figure 2. Model with 5-percent quality improvement, and final rule compliance costs.

A 5 percent quality improvement would also decrease cancer treatment costs by about $1.9 million. In addition, the reduction in false positives would produce less anxiety and stress valued at $12.7 million, and reduced diagnostic costs of $14.5 million. In total, quality improvements of 5 percent would generate annual benefits of from $182 to $263 million, far exceeding the expected annual compliance costs of $38.2 million. From a cost-effectiveness perspective, the cost per QALY would amount to about $20,000. Even if the overall quality improvement were only 2 percent, the estimated annual benefits of the final regulation exceed the estimated annual compliance costs.

C. Small Business Impact

According to the Small Business Administration, any doctor's office, clinic, or hospital with $5 million or less in revenue is considered small. In addition, any not-for-profit enterprise that is independently owned and operated and not dominant in its field is considered small. On this basis, mammography is offered in about 4,800 small doctor's offices or clinics and 5,000 small hospitals, comprising up to 98 percent of all mammography facilities.

FDA recognizes that the nature of these regulations may have a disproportionate effect on very small volume mammography facilities, as fixed costs of compliance for equipment improvements are likely to increase the cost per mammogram for low volume facilities relatively more than for high volume facilities. The cost of a mammogram is expected to increase by 3.4 percent in an average facility and by 4.2 percent in the smallest 10 percent of facilities. However, total revenues are also likely to increase. Overall, the annual net revenues attributable to mammography (gross revenues minus gross costs) are estimated to decline by approximately $1,000 in the smallest 10 percent of facilities, whereas the larger facilities may experience net revenue gains. ERG judged that these smallest facilities would have an increased vulnerability for closure. These results are fully described in the agency's final Economic Impact Analysis.

FDA also examined the effect on small businesses of alternative implementation schedules for this proposal. For example, one alternative would have required an even more elaborate equipment upgrade, effective immediately upon issuance of the regulations. The agency rejected this alternative becauseit would have placed an unnecessary burden on the industry, costing more than $120 million annually. By eliminating some specifications that were marginal to ensuring mammography quality, and phasing in certain requirements to allow for normal replacement of current equipment, the agency substantially reduced the cost of compliance. FDA also considered postponing the implementation of the final equipment requirements by an additional year. This alternative would have reduced the annual compliance costs by $7.1 million, but delay the impact on quality improvements. The final implementation schedule was selected as a reasonable balance between compliance costs and quality improvements. FDA also considered providing an exemption for small facilities in shortage areas, but concluded that the importance of mammography quality made this tradeoff unacceptable, and that a primary objective of MQSA was to ensure quality for all patients. The agency's final Economic Impact Analysis includes a discussion of several additional alternatives.

D. Total Impact of the MQSA

The total compliance costs for all of the regulations implementing the MQSA are the sum of the costs for the interim rules already in place, as well as for the final regulations as estimated above. Thus, to assess the total costs of the MQSA, FDA also estimated the costs of complying with the interim regulations.

Interim regulations implementing the MQSA required facilities to be accredited by an FDA-approved body as a first step towards receiving a certificate. FDA approved the ACR and the States of Iowa, Arkansas, and California to accredit facilities. The standards used by these bodies to accredit facilities were developed by FDA, but are largely based on the standards previously used by the ACR in their voluntary accreditation program. Because the ACR was the only national accreditation body and had already accredited approximately half of the mammography facilities in the country in its voluntary program, the majority of unaccredited facilities applied to the ACR for accreditation in order to continue to provide mammography services. On being notified by the ACR or one of the State bodies that a facility was accredited, FDA issued a certificate to the facility.

Approximately 5,500 facilities had not fully completed the accreditation and certification process by October 1, 1994 and approximately 1,000 accredited facilities were assumed to incur low levels of compliance cost. FDA estimated the costs of compliance with the interim rule by dividing these 6,500 facilities (5,500 unaccredited and 1,000 accredited) into groups with low, moderate, and high levels of noncompliance. Approximately 4,500 of these facilities had completed the accreditation and certification process by the end of the 6-month period of the provisional certificates or required minor improvements to achieve accreditation. These facilities were assumed to have low levels on noncompliance. Approximately 1,500 were able to complete the accreditation and certification process by the end of a 90-day extension of their 6-month provisional certificate. These facilities were assumed to have a moderate level of noncompliance. The remaining approximately 500 facilities were assumed to have a high level of noncompliance.

Discussions with expert consultants and operators of mammography facilities indicated that a low level of noncompliance would typically include minor recordkeeping and personnel training deficiencies. A moderate noncompliance level would typically include (beyond the low level) some quality assurance deficiencies and equipment requiring retrofit. Finally, facilities with high levels of noncompliance would incur costs for replacement of a mammography unit (in addition to "moderate" costs less retrofit). Based on this methodology, FDA estimates the annual costs of the interim rule at about $23.4 million. Adding the additional $38.2 million cost attributable to the final rules indicates that the total annual compliance costs of the MQSA are about $61.6 million.

The benefits of the interim rules result from their impact on mammography quality. A poll of industry experts indicated that the interim rules may have improved mammography quality by between 2 and 10 percent. Other reports have estimated that based on 1992 levels of quality, typical community quality levels may have been as much as 13 percent below the quality levels found in academic or research centers. FDA agrees that post-interim levels of quality may be approximately 10 percent lower than those found in typical academic settings, which implies a relative quality gain of 3 percent due to the interim regulations. FDA also found that, given average annual compliance costs of $23.4 million for the interim regulations, a 3.1 percent quality improvement would account for the current level of mammography use (all else being equal). Thus, FDA estimates that the interim regulations have

resulted in an approximate 3 percent increase in mammography quality. With this assumption, FDA's impact model calculates that the overall annual benefits of the interim rule range from $108 to $155 million, including the annual gain of about 44 lives and 242 discounted QALY's.

E. Conclusions

In summary, the final regulations will generate mammography quality increases above those already achieved by the interim regulations. As shown in the summary table, the annual costs of compliance with these final regulations are estimated at $38.2 million. Expected benefits will accrue as a result of fewer breast cancer fatalities due to the earlier detection of lesions and the avoidance of unnecessary surgery. While the magnitude of the expected quality increases are uncertain, an improvement of 5 percent in mammography sensitivity and specificity would result in annual benefits valued at from $178 to $257 million. With respect to all of the MQSA requirements, the annual compliance costs of the combined interim and final regulations equal about $61.5 million, and the annual benefits (assuming total quality increases of 8 percent) range from $284 to $408 million.

TABLE 1.—SUMMARY OF ECONOMIC IMPACTS (MILLION $)

	Interim Rule[1]	Final Rule[2]	Total[3]
Compliance Costs	23.4	38.2	61.6
Benefits	108.2–153.8	181.7–262.7	289.9–416.5
Diagnostic Cost Decreases	9.0	14.5	23.5
Treatment Cost Decreases	1.1	1.9	3.0
Anxiety Cost Decreases	7.8	12.7	20.5
Value of Lives Extended	90.3–135.9	152.6–233.6	242.9–369.5

[1]Assumes 3 percent increase in mammography quality
[2]Assumes 5 percent increase in mammography quality
[3]Assumes 8 percent increase in mammography quality

F. Responses to Comments on the Impact Analysis of the Proposed Regulation

1. Cost Analysis

FDA published a preliminary impact analysis in association with the final regulations on April 3, 1996. Public comments were invited on the methodology and projections included in that analysis.

One comment disagreed with the cost-benefit analysis and stated that the imposition of additional costs would adversely affect public health because fewer women will be able to receive the benefits of mammography.

FDA agrees that additional costs with no concurrent quality improvement may adversely affect mammography access. FDA also recognizes that access without quality is of no public benefit. FDA believes, however, that the assurance of quality resulting from these regulations will overcome any possible negative impacts. This belief is supported by a CDC study on mammography utilization that showed a continued increase in screening mammography examinations under the MQSA interim rules (Ref. 4).

One comment stated that most CEU classes for technologists cost between $75.00 and $100.00 for 6 to 8 credits, and require additional travel expenses. FDA agrees with the estimate provided by this comment. FDA estimated that the cost per hour of technologist's CEU would cost approximately $16.00 per credit hour and used this estimate in its impact analysis. This estimate was based on input from consultants and is within the range presented by this comment.

Numerous comments stated that the **Federal Register** notice for the proposed rule lacked sufficient methodological detail and should have included the cost of each requirement and the per facility or per procedure cost.

FDA agrees that the summary of impacts included in the **Federal Register** did not include detailed methodologies, discussions of assumptions, and sources of data. Nevertheless, as is required, FDA had provided a clear explanation of the calculations used for the cost/benefit analysis in the Full Regulatory Impact Analysis which was available for review at the Dockets Management Branch. Similarly, the agency's final Economic Impact Analysis, which provides substantial detail on the cost estimates is available at the same location that document can also be retrieved from FDA's home page on the World Wide Web (www.fda.gov).

A number of comments asserted that the equipment requirements would mandate the replacement of most mammography units and would increase the cost of these replacement units and that these costs were underestimated by FDA. One comment calculated the cost of replacing 15,000 mammography units, priced at $70,000, at more than $1 billion. The comment also calculated the cost of replacing 5,000 processors (½ of total), priced at $15,000, at $75 million.

FDA disagrees with the assumption that all mammography units in the country (which actually number about 12,000 instead of 15,000) or even most units will have to be replaced in order to meet the final rules. The Economic Impact Analysis that accompanies this final rule includes a detailed discussion on the estimation of the replacement costs. FDA has estimated the costs of the equipment requirements of the proposed rule by estimating replacement and retrofit costs through contacts with mammography equipment manufacturers. For replacements, the analysis considers the lost useful life of the machine. FDA also solicited input on compliance costs from mammography unit manufacturers and project consultants. These manufacturers indicated that not all mammography units would require replacement or retrofit and that prices for the new units would be identical to current prices. Based upon these sources of information, FDA estimated the total costs related to the equipment requirements of the proposed regulations to be approximately $270 million or $35 million in average annual costs (over the 10-year analysis period at a 7 percent discount rate). The agency notes that, after consideration of the public comments and other information, a number of equipment requirements, including those related to processors, were deleted before these regulations were issued. The impact of those deletions was to reduce the total estimated expenditure of meeting the equipment requirements in lost resources to $241 million and the average annual costs over the 10-year analysis period to $28.5 million.

One comment stated that phasing in equipment requirements 5 and 10 years after the effective date of the regulations would significantly increase costs if facilities are required to replace the unit in 5 years and then again in 10 years.

FDA believes that this comment stems from a misinterpretation of the proposal. FDA did not expect facilities to replace units every 5 years. Input on the equipment requirements from manufacturers indicated units would be available almost immediately after the regulations were published that would be able to meet the 5- and 10-year requirements. Thus, if a unit had to be replaced to meet an immediate requirement, a new unit could be selected that would meet the 5- and 10-year requirements as well. The facility would not need to purchase additional replacement units "every 5 years." FDA's purpose in phasing in some requirements 5 and 10 years in the future was to provide time for facilities whose units met the immediate requirements but not the 5- or 10-year requirements to replace those units on their regular replacement schedule. This would decrease the burden by allowing machines to be replaced as they reach the end of their useful life. However, for reasons discussed in the responses to the comments on the equipment requirements, most of the 5-year requirements and all of the 10-year requirements were removed before these final regulations were issued.

Two comments expressed concern that the cost requirements for training every technologist to perform weekly or daily phantom checks were not considered in the impact analysis of the proposed regulations. Another comment estimated that the cost of performing the daily phantom tests for 240 days per year at $0.80 per sheet of film would be an additional $192.00 per unit. Using the estimated 10,800 certified units this would mean an additional cost of $2,073,600 per year.

FDA notes that the weekly phantom tests are identical to those currently being performed monthly under the interim regulations. No additional training costs will be incurred beyond those already included in the cost estimates of the interim regulations. FDA did not include any cost requirements for training to perform the daily phantom checks or for performance of the test because the agency did not propose such a test but merely requested public comment on its possible value. As previously discussed, FDA concluded from the public comments that further studies would be needed to confirm the value of such a test before it was made a regulatory requirement. Because it was not made a regulatory requirement, no costs either for training in its performance or performing the test needed to be included in these cost estimates.

A number of comments stated that FDA underestimated costs by not considering all of the factors that will contribute to increased provider and consumer cost.

FDA's Economic Impact Analysis has attempted to consider all of the factors that will contribute to increased costs from compliance with the final rule. This analysis is available through the Dockets Management Office, as well as the World Wide Web. As these comments did not identify the factors believed to have been overlooked, the agency is unable to give a more specific response.

Numerous comments asserted that the cost of lay notification would significantly increase the costs of mammography. These comments estimated that the cost ranged from $0.78 to $15.00 per notification.

For the proposed rule, FDA used a methodology to estimate the cost of patient notification that is similar to that described in the comments. The Economic Impact Analysis presented an estimate of $0.94 per written notification including 2.5 minutes of an office staff worker's time and cost of postage. However, this proposed requirement was removed from the final rule before it was codified, so these estimated costs will not occur.

A number of comments stated that the increased costs to comply with the final rule will result in facility closings (especially for small-volume facilities and rural facilities) and loss of access. One comment also stated that FDA has not adequately justified the cost of the regulation in the face of reducing access to low income populations.

FDA agrees that it is possible that increased costs of conducting mammography due to these regulations may cause some facilities to close if those facilities are currently not offering high quality mammography. However, FDA disagrees that such an impact has not been adequately explored. FDA has attempted to identify areas of potential access problems and believes that very few patients would be adversely affected if, as is anticipated, few, if any, facilities close as a result of the burdens of the final regulations. When facilities do close, alternate facilities are usually expected to be available within a reasonable distance. The agency also notes that the GAO study cited earlier found that the interim regulations, which had a similar cost impact, had little impact on access. FDA agrees that access for low income women is a potential problem, but does not believe that these regulations will greatly increase this problem. Nevertheless, FDA will monitor this potential outcome to ensure that any adverse impact on underserved populations is minimized.

One comment stated that costs were underestimated because only the incremental costs of nonvoluntary compliance were identified.

FDA disagrees with this comment. The quality standards contained in these regulations reflect standards of good practice, so it would not be surprising to find that many facilities were already complying with them before the regulations went into effect. Where voluntary compliance with regulatory requirements existed prior to implementation of the rule, costs were not included in the agency's Economic Impact Analysis because they are due to the facility's own desire to achieve quality mammography and not to the regulations. FDA agrees that if compliance costs occur only as a result of or in anticipation of a regulation and would be discontinued in its absence, such costs should be considered. However, FDA believes that most mammography facilities did not anticipate the specific regulatory requirements of this rule, and so any past actions to improve quality at their facilities were independent actions on their part.

Several comments noted that the proposal included only costs associated with the proposed regulations and not the interim rule. They stated that the costs and benefits of the entire MQSA should be estimated.

FDA agrees with these comments and has included estimates of the interim impacts for these final regulations.

One comment noted that costs may be understated because FDA assumed the lowest compliance cost. This comment stated that because some facilities would incur higher costs, the overall costs were underestimated.

FDA disagrees with this comment. The agency assumed that each facility would adopt a least-cost compliance strategy, which is standard economic methodology for analysis of regulations as required by Executive Order 12866. While some facilities would have higher costs, other facilities would have lower (or no) costs. Thus, the least-cost method of compliance for the average facility is a reasonable method of estimating industry wide costs. It is possible that this comment misunderstood the methodology used to estimate costs.

One comment stated that FDA has not adequately accounted for decreases in mammography usage due to expected cost increases.

FDA has attempted to address this issue for the final regulations. FDA agrees that cost increases are likely to decrease mammography use, all else being equal, but that perceived increases in mammography quality are likely to offset any negative impact. This issue is discussed above in B.2 and in the Economic Impact Analysis that accompanies the final rule.

One comment asserted that FDA's costs were "unrealistic," rely only on consultant opinion and are, therefore, unreliable.

FDA disagrees with this comment. Cost estimates were derived from an extensive process of site-visits and expert input and no alternative data were included with this comment. The agency's cost methodology is fully detailed in the Economic Impact Analysis.

Several comments noted that specific activities were underestimated. FDA cannot respond to these comments because no supporting data were supplied.

2. Benefits Analysis

A number of comments maintained that FDA overstated the expected improvement in avoiding cancer deaths from the final regulation and that the benefit estimates should be based on scientific literature.

FDA believes that quality improvements in mammography will result in health gains, of which reductions in breast cancer mortality are a major contributor. FDA has attempted to assess the potential quality gains from the requirement of the final rule by reviewing relevant literature and through contact with experts in mammography quality. The Economic Impact Analysis that accompanied the proposed regulations included a detailed and referenced description of the benefits estimate. Similarly, the analysis of impacts for the final regulations include, a comprehensive description of the methodology.

One comment maintained that the final rule was a waste of money because the ACR program has already accomplished a goal of "reasonably achievable mammographic quality."

FDA disagrees with this comment. While voluntary accreditation by ACR did much to improve quality in participating facilities, the agency notes that, at the time of passage of the MQSA, less than half of the mammography facilities in the country had sought voluntary accreditation. The MQSA and its implementing regulations have led to the establishment of a uniform minimum set of quality standards to be met by all mammography facilities, including standards in areas not previously covered by the ACR program, and have provided increased assurance that these standards continue to be met between the times of accreditation. As shown in the above impact analysis, the agency believes that the benefits achieved more than compensate for the additional costs.

One comment stated that there has been a significant improvement in the quality of mammography performed under the interim regulations and further maintained that this quality improvement will continue under the final regulations.

FDA agrees with this comment. Quality improvements attributable to the interim regulations are estimated in conjunction with those attributable to the final regulations.

Several comments stated that because sensitivity is defined as the number of true positives divided by the number of true positives plus false negatives, a gain in sensitivity rate would have no effect on the false positive rate.

FDA agrees with these comments. FDA believes that both false negatives and false positives would be reduced by the quality improvements expected from these regulations. Thus, FDA believes that expected quality improvements would be likely to improve both sensitivity and specificity of screening mammography examinations. FDA notes that a typographical error in the analysis of impacts accompanying the proposed regulations may have contributed to these comments.

One comment stated that the discussion on sensitivity confuses the notion that there are inherent tradeoffs between sensitivity and specificity with the mathematical reality that this is not necessarily the case. The respondent believed also that this error may be due to confusing sensitivity with PPV.

FDA recognizes that the sensitivity and the PPV of a diagnostic test are not identical. Nonetheless, FDA believes that sensitivity and specificity provide reasonable quality measures for evaluating these final regulations.

Several comments stated that there is an error in the benefits analysis where it states, "a five percent gain in sensitivity measurements of 80 percent would indicate a revised sensitivity level of 81 percent (a reduction of the rate of false positives from 20 to 19 percent)." The comments stated that 5 percent gain to 80 is 84 not 81.

FDA agrees that the description of the impact was not well stated. A 5 percent quality improvement is defined in FDA's analysis as a 5 percent reduction in inaccurate testing results. Thus, if 20 percent of the diseased, screened population are currently not identified, a 5 percent quality improvement would see 19 percent not identified. The 5 percent is actually a 5 percent reduction in the complement of sensitivity.

Numerous comments asserted that the estimated willingness to pay to avoid a statistical loss of life of $5 million was too high and was unsupported.

FDA disagrees with these comments. For illustrative purposes, FDA has quantified the decreased breast cancer mortality potentially resulting from the rule using an average value of $5.0 million per each avoided death. This value is the implied value of society's willingness to pay to avoid the likelihood of an additional death as derived from economic literature, as referenced in the full Economic Impact Analysis. The methodology used to estimate this value is based on wage-premiums necessary to induce workers to accept riskier occupations and is a commonly used approach for estimating the value that society appears to be willing to pay to avoid a statistical death.

Several comments questioned the probability of expected benefits accruing from improvements in specificity. The comments identified this as the area where the greatest cost savings could be realized, and underlined this area as one which should be a target for improvement by the MQSA. Relatively small improvements in specificity could markedly reduce the numbers of false positive results nationwide, resulting in less diagnostic testing.

FDA agrees with these comments. These cost savings were addressed for the proposed regulations and are addressed for these final regulations.

One comment stated that raising the sensitivity of a test results in an increase in the false positives rather than a decrease.

FDA disagrees. The agency finds that quality improvements made to comply with the final rule are likely to improve sensitivity and/or specificity by raising the typical community receiver operating characteristic curve toward the optimum level. That is, quality improvements due to these regulations would change the entire relationship between sensitivity and specificity by improving the production function of mammography. As a result, both measures would be improved by these regulations.

One comment questioned the use of identified cancer stages used in the benefit analysis and noted that there is controversy associated with the impact of ductal carcinoma in situ on health outcomes.

FDA agrees with this comment and adjusted the benefit analysis for the final regulations.

One comment asserted that benefits were overstated because the general trend in mammography was toward higher quality even in the absence of the regulations.

FDA disagrees that the beneficial impact of these regulations has been overstated. Current trends in mammography quality are accounted for in baseline conditions.

Several comments noted areas of potential benefit that were not accounted for in the analysis that accompanied the proposal. These areas include the benefit of increased assurance to patients, the benefits of increased diagnostic quality, and reductions in treatment costs for identified cancers.

FDA agrees with these comments and has included these categories in this final analysis.

One comment stated that references for the benefit analysis were not available. FDA notes that references were included with the Economic Impact Analysis that accompanied the proposed regulations.

One comment noted that the affected population would change over time and that FDA has assumed a static population.

FDA agrees with this comment. FDA notes, however, that forecasting changes in future populations would likely increase the expected benefits because of the age distribution changes expected as the baby boom generation moves into ages of greater risk from breast cancer.

Several comments questioned the assumptions used in FDA's benefit estimation model.

FDA agrees that several of the key assumptions are uncertain. Nevertheless, the agency believes that the absence of scientific certainty does not preclude the development of preamble projections based on reasonably supported amplifying assumptions. The Economic Impact Analysis for these final rules provides sensitivity analyses that demonstrate the effects of modifying a number of these variables.

VI. Paperwork Reduction Act of 1995

A. Information Collection Provisions in the Final Rule

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The following title, description, and respondent description of the information collection provisions are shown with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Reporting and Recordkeeping Requirements for Mammography Facilities.

Description: The final rule collects information from accrediting bodies and mammography facilities. Under the final rule, each accreditation body is required to submit applications and establish a quality assurance program. Each mammography facility is required to establish and maintain a medical reporting and recordkeeping system, a medical outcomes audit program, a consumer complaint mechanism, and records documenting personnel qualifications.

These information collection requirements apply to accreditation bodies and to mammography facilities. In order to be an approved accreditation body, private nonprofit organizations or State agencies must submit an application to FDA and establish procedures and a quality assurance program. Mammography facilities must obtain and prominently display an FDA-issued certificate or provisional certificate; have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism; and maintain records documenting personnel qualifications. These actions are being taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

Respondent Description: Businesses and other for-profit organizations, nonprofit organizations, Federal, State, and local governments.

FDA estimates the burden of this collection of information as follows:

Requirements for Accreditation Bodies of Mammography Facilities and Quality Standards and Certification Requirements for Mammography Facilities; General Facility Requirements

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3	6	1	6	60	360		
900.3(b)(3)	10	1	10	60	600	$50	
900.3(c)	4	0.14	0.56	15	8.4		
900.3(e)	1	0.2	0.2	1	0.2		
900.3(f)(2)	1	0.2	0.2	200	40		
900.4(c) and (d)[1]	834	1	834	1	834		
900.4(e)[2]	10,000	1	10,000	8	80,000		
900.4(f)[3]	1,000	1	1,000	14.5	14,500		
900.4(h)[4]	6	1	750	6	4,500		
900.4(i)(2)	1	1	1	1	1		
900.6(c)(1)	1	1	1	1	1		
900.11(b)(2)	25	1	25	2	50		
900.11(b)(3)	5	1	5	.5	2.5		
900.11(c)	10,000	0.0050	50	20	1,000		$1,000
900.12(c)(2)	100	1	100	5	500		
900.12(j)(1)	10	1	10	1	10		
900.12(j)(2)	1	1	1	50	50		
900.15(d)(3)(ii)	10,000	0.0020	20	2	40		$100
900.18(c)	10,000	0.0005	6	2	12		$60

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.18(e)	10	0.1000	1	1	1		$10
TOTAL					102,510	$50	$1,170

[1]Formerly § 900.4(b) under the interim rule.
[2]Formerly § 900.4(d) under the interim rule.
[3]Formerly § 900.4(e) under the interim rule.
[4]Formerly § 900.4(g) under the interim rule.

Requirements for Accreditation Bodies of Mammography Facilities and Quality Standards and Certification Requirements for Mammography Facility Requirements; General Facility Requirements and Personnel Requirements

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.3(f)(1)	10	130	1,300	200	2,000	
900.4(g)[1]	10,000	1	10,000	1	10,000	
900.11(b)(1)[2]	1,000	1	1,000	1	1,000	
900.12(c)(4)[3]	10,000	1	10,000	1	10,000	
900.12(e)(13)	6,000	52	312,000	0.125	39,000	
900.12(f)	10,000	1	10,000	1	10,000	
900.12(h)	10,000	2	20,000	0.5	10,000	$20,000
TOTAL					82,000	$20,000

[1]Formerly § 900.4(f) under the interim rule.
[2]Formerly § 900.11(c)(1) under the interim rule.
[3]Formerly § 900.12(e)(1) under the interim rule.

Most of this burden is not new, but rather results from requirements continued from the interim rule. FDA estimated the annual burden for reporting and recordkeeping requirements under the interim rule to be 120,944 hours (58 FR 67562 and 67569). The additional requirements contained in these final rules will add 63,566 burden hours to this estimate, resulting in an estimated total annual burden of 184,510 hours.

The burden estimate for this final rule differs from the proposed rule in several respects (see 61 FR 14865 to 14868). First, FDA revised § 900.12(c)(2), which proposed written notification of examination results to all mammography patients. The final rule requires that each facility maintain a system to ensure that the results of each mammographic examination are communicated to the patient in a timely manner. This revision resulted in the removal of proposed § 900.12(c)(2)(i) from the paperwork burden estimates. Second, FDA revised § 900.12(d)(2), which proposed the specific documentation to be maintained by each facility as part of its quality assurance program. This revision included removing §§ 900.12(d)(2)(i), 900.12(d)(2)(ii) and 900.12(d)(2)(iii) from the final rule and combining §§ 900.12(d)(2) and 900.12(d)(2)(iv) from the proposed rule into § 900.12(d)(2) for the final rule. This revision is reflected in these estimates of the recordkeeping burden. Third, FDA added several reporting and recordkeeping burden estimates that are not new to the final rule, but whose impact was overlooked in the burden estimate for the proposed rule. Also, FDA renumbered some of the provisions for the final rule, due to removal or additions of other provisions; these revisions had no effect on the paperwork burden estimates. The following sections concerning paperwork burden were renumbered: § 900.4(a)(7) in the proposed rule is § 900.4(a)(6) in the final rule, and §§ 900.12(f)(2) and 900.12(f)(4) in the proposed rule are §§ 900.12(f)(1) and 900.12(f)(3) in the final rule, respectively.

B. Comments on the Paperwork Reduction Act Statement

As required by section 3506(c)(2)(B) of the Paperwork Reduction Act, FDA provided an opportunity for public comment on the information collection provisions of the proposed rule (April 3, 1996). A small number of comments addressed FDA's Paperwork Reduction Act statement. In general, these comments asserted that FDA had underestimated burden or had not considered all of the reporting and recordkeeping requirements.

One comment stated that FDA's Paperwork Reduction Act statement underestimated the time burden on mammography facilities for recordkeeping and reporting. The comment further stated that FDA's estimate of 23,553 hours, which translated into less than 2.5 hours per facility (based on an estimated 10,000 mammography facilities in the United States), was low. The comment asserted that FDA underestimated or ignored the incremental burden on facilities from the interim rule to the final rule. The comment further stated that at least one person at each mammography facility must understand the final rule. The author of the comment estimated this task at 10 hours per person at each of the estimated 10,000 mammography facilities.

FDA disagrees with this statement in general, but upon review of the burden estimates under the proposed rule FDA has revised some of the time estimates. For example, FDA has added hours to cover § 900.12(e)(3)(13), infection control, because its burden was overlooked under the paperwork burden analysis of the proposed rule.

FDA also agrees that someone in the mammography facility will have to understand the final rule and that it will take some time to develop this understanding. The agency believes, however, that the time estimate suggested by the comment is far too high. This belief is based upon three considerations. First, the basic framework of the requirements has not significantly changed from the interim rule. Many of the additional details in the final rule are taken from policies developed under the interim rule, with which the facilities are already familiar. Because of this overlap, the time required to understand the final rule is less than it would be if they were entirely new. Second, the recordkeeping and reporting burdens are estimated on an annual basis; therefore, each estimate is stated as an average time per year. Whatever burden there would be in understanding the new regulations would be primarily a one-time burden. If an individual spends x hours the first year developing an understanding of the regulations, the time required in the second and subsequent years will be much less than x because the person will already be familiar with them. The average time per year for understanding the regulations thus would be only a small fraction of x. Third, in compliance with the Paperwork Reduction Act, it is the time burden for reporting and recordkeeping that is being estimated. Thus, only the time required to understand the new reporting and recordkeeping requirements, not to understand the total requirements, would properly be included in these estimates. The combined effect of these three factors, the agency believes, reduces the time burden for understanding the requirements that should be included in these estimates significantly. The burden for understanding each requirement has been included in the individual burden estimates for that requirement.

One comment stated that FDA had not estimated any burden for compliance with proposed § 900.12(f), which requires each facility to implement a medical outcomes audit. The author of the comment estimated that the burden of such a requirement would require at least 10 hours of an interpreting physician's time at each of the estimated 10,000 mammography facilities. Several other comments also stated that proposed § 900.12(f) was an undue burden on freestanding facilities. The comments discussed the difficulty in tracking down and obtaining all biopsy and consultation outcomes. One comment noted the lack of evidence that outcome measurement contributes to improved care.

FDA understands the difficulty with tracking outcomes data but such data are critical in assessing the quality of mammography at facilities. FDA also notes that most of the requirements in § 900.12(f) do not require any additional reporting or recordkeeping burden beyond what was required under the interim rule.

One comment also asserted that FDA had failed to include the time burden for proposed § 900.12(g), which adds requirements for mammography of patients with breast implants. The comment stated that FDA should have estimated the time burden related to scheduling patients with implants, documenting patients with implants, and requiring the presence of an appropriately trained interpreting physician onsite during mammography of women with implants. The author of the comment estimated that the above would require an additional 10 to 20 hours of reporting and recordkeeping at each mammography facility.

As discussed previously, FDA has changed the proposed requirement that each facility should inquire whether a patient has an implant at the time of scheduling to a requirement in the final rule that each facility shall inquire as to whether the woman has an implant prior to the examination. The final rule also eliminated the requirement that an interpreting physician be present. Even under the proposal, the additional recordkeeping time would have been minimal and the revision in the final rule gives the facility flexibility in determining when and how the information is collected for the patient's record. All facilities maintain patient records with information such as address, telephone number, insurance information, and medical history. The additional time to ask a yes or no question on implants and record the answer is negligible.

Another comment stated that FDA had failed to estimate the additional requirements and documentation associated with personnel requirements in proposed § 900.12(a). The comment estimated that additional documentation requirements would necessitate at least 5 hours of additional time for approximately 1,000 medical physicists, and approximately ¼ hour for each mammography facility.

FDA acknowledges that § 900.12(a) contains some increases in the required level of personnel training and experience from the interim rule. However, FDA did not include any recordkeeping burden estimates for the personnel requirements under either the interim or final rules because the agency believes that it is usual and customary practice for mammography facilities to keep records of the qualifications of their employees.

Although this position makes moot the question of the amount of time required for recordkeeping related to these requirements, FDA would like to note that there are factors that the author of the comment may not have been aware of that make the estimates in the comment excessive. Most changes in the personnel qualifications are only increases in the amounts of the interim requirements. In such cases there is no additional recordkeeping burden. It requires no more effort, for example, under the final rule, to keep a letter in a doctor's records indicating that he or she had 3 months of training in mammography during residency that it did, under the interim rule, to keep a letter indicating he or she had 2 months of such training.

For most of the new personnel requirements in the final rule, such as the continuing experience requirements for technologists and physicists, the information that bears on whether these requirements are met often already exists in the form of various work records. All that is needed is to place a copy or summary in each person's file.

The remaining new standard establishes an initial requirement of a minimum level of education and training for medical physicists. FDA believes that the majority of physicists providing services to mammography facilities will have exceeded this level in meeting the requirement that the medical physicist be board-certified, State licensed, or State approved, which was retained from the interim rule. In such cases, the agency intends to minimize the burden by accepting the documentation of board approval, State licensure, or State approval (in States whose standards for approval exceed the minimum level) as adequate evidence that the second requirement is also met.

Physicists approved by States that require a level of qualification for approval lower than that in the second

requirement will have to provide additional documentation but the time required is likely to be significantly less than the 5 hours estimated in the comment. More importantly, as this is an initial requirement, it will be a one time burden. To be compared with the other burden estimates, it must be averaged over the physicists's entire career, which could be 30 years or longer.

Again, because keeping records of personnel qualifications is usual and customary practice, FDA has not included this in the burden estimates. The agency notes, however, for the reasons discussed above, that the comment greatly overestimates the time required for the new recordkeeping.

One comment stated that virtually all of the requirements in the proposed rule duplicate requirements of accreditation bodies and noted that FDA inspectors require much of the same personnel documentation required by the ACR.

FDA notes that the author of the comment has misunderstood the nature of the accreditation system required under the MQSA. The requirements of the FDA-approved accreditation bodies are not established by those bodies but rather are FDA-established quality standards that the accreditation bodies, as a condition of their approval, must ensure are met by the facilities they accredit. Thus, there is only one set of requirements, not two or more duplicate sets, and the actions identified in the comment are mandated by the legislation in order to increase the likelihood that quality mammography will be consistently achieved.

Several comments asserted that the proposed rule would create an unnecessary amount of paperwork that would ultimately take away from time with patients. One comment asserted that the reporting requirements would necessitate a computer system and additional clerical support.

FDA has attempted to limit the paperwork burden to only those recordkeeping and reporting requirements necessary to ensure that facilities meet minimum quality standards. As discussed above, FDA has also reduced the paperwork burden of the final rule by removing several reporting and recordkeeping requirements from the final rule. The agency believes that the paperwork impact, as estimated in Tables 1 and 2, is not unreasonable in view of the benefits to be gained from the quality standards that made the recordkeeping and reporting necessary.

A number of comments asserted that proposed § 900.12(c)(2), which would have required written notification of mammographic examination results to all mammography patients, would cost time and postage expenses and would generate much paperwork. Some comments asserted that this practice would be redundant for patients with referring physicians who could explain the results.

FDA has revised § 900.12(c)(2) to require that each facility shall maintain a system to ensure that the results of each mammographic examination are communicated to the patient in a timely manner. FDA has allowed for increased flexibility in the notification of patients by allowing written or other notification by either the mammography facility or the referring physician. FDA believes that some form of patient notification is a standard of good practice that is currently followed voluntarily by virtually all mammography facilities, so the burden of this requirement will fall only on those few facilities who are not currently meeting such a standard. The flexibility of notification method allowed under the revision of § 900.12(c)(2) will make the burden minimal even for these facilities.

Several comments asserted that proposed § 900.12(h), which requires the development of a consumer complaint mechanism, was unnecessary. The comments stated that all complaints should be handled on an individual basis at each facility according to the protocol of that facility. One comment asserted that the proposed rule would be very costly in terms of staff time and materials.

This comment has misinterpreted the requirements of § 900.12(h), which gives facilities the flexibility to develop their own consumer complaint mechanism in the manner they feel most appropriate. The requirement that each facility must maintain records of each serious complaint over the last 3 years should be of minimal burden to facilities and would only necessitate a file including the appropriate correspondence by the complainant, facility, and accrediting body. Many facilities already have some form of consumer complaint mechanism and would not incur significant additional burden by meeting the requirements of the final rule.

One comment agreed with proposed § 900.12(c)(4)(ii), which states that facilities must transfer mammographic films and records to other facilities or the patient at the patient's request, but stated that it was not economical or practical to copy films for the sake of keeping them in the patient's medical record.

FDA notes that § 900.12(c)(4)(ii) does not require that a facility maintain copies of a patient's medical records if the patient has asked to have them transferred elsewhere. The facility is free to determine for itself whether it is desirable to copy films for its own records.

Several comments stated that proposed § 900.4(c), which requires clinical image review as part of the accreditation and reaccreditation process, would be extremely costly and time-consuming. This burden includes the time and expense of choosing the images and having them copied and mailed. Another comment supported clinical image review as the best approach for a performance-based standard, but also stated that it would be costly and time-consuming.

FDA notes that Congress specifically required clinical image review as part of the accreditation and reaccreditation process (42 U.S.C. 263b((e)(1)(B)(i)), because clinical image review is necessary to ensure high quality mammography. While it may appear that the complexity of the process, and thus of the burden, has increased due to the increased detail in the final rule, these details are presently being followed as policy by the accreditation bodies so, in fact, there is no additional burden. The agency further notes that facilities are not required to copy the films before sending them for review. Only original films are reviewed and these are returned to the facility after the review is complete.

Several comments stated that § 900.12(e)(13), requiring facilities to establish an infection control procedure including documentation after each cleaning, would create needless paperwork and would not affect quality assurance.

FDA has included an additional paperwork burden estimate for this requirement in the final rule. Under § 900.12(e)(13), facilities are required to establish and comply with a system for cleaning and disinfecting equipment as needed. Although there is no evidence that blood-borne pathogens have been transmitted from patient to patient during mammography, there is a theoretical possibility of such a transmission. That agency believes the time required is justified to ease concerns about such a possibility, concerns that in some cases may cause patients to refuse to undergo mammography examinations and thus possibly lose the life-saving benefit of early detection of breast cancer.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Appendix

Excerpts from Chapter 4 of AHCPR's "Quality Determinants of Mammography;" Guidelines for Communicating Test Results

As noted previously, FDA recommends that mammography facilities utilize the AHCPR'S guidelines in "Quality Determinants of Mammography" with respect to written notification of results to patients. The pertinent information from Chapter 4 of those guidelines is reprinted here for ease of reference. The symbol [R] indicates that the AHCPR document provides an additional reference or references at that point.

COMMUNICATING RESULTS

RECOMMENDATION: The referring health care provider and the interpreting physician should be sensitive, supportive, and appropriate in communicating results, as well as prompt and accurate. (B)

STRONG RECOMMENDATION: An appropriate professional at the mammography facility, usually an interpreting physician, should send the woman's health care provider a written report documenting the specific findings, follow up recommendations, and the name of the interpreting physician. The facility should directly telephone the referring provider if the result is suspicious for cancer. (B)

STRONG RECOMMENDATION: The mammography facility personnel should give the woman written notification of the results of her mammography and other breast imaging, either on site or by mail. The results should be in simple language, document the name of the interpreting physician, be given in a timely fashion, and include further steps to be taken. (B)

RECOMMENDATION: If a facility accepts women who have no health care provider, facility personnel should give the woman a list of qualified providers who are willing to provide care. The name, address, and phone number of the provider chosen should be recorded, if possible (C).

STRONG RECOMMENDATION: The facility personnel should directly telephone the woman who has no health care provider if the result is suspicious for cancer (B).

Many women believe that mammography results are normal if they are not contacted after their examination. This impression that "no news is good news" can have serious adverse consequences for women with an abnormal examination. The interpreting physician, the referring health care provider, and the woman are all responsible for ensuring that mammography results are communicated in an effective and timely manner and that recommendations are carried out. Timely communication is necessary whether results are normal or abnormal (Table 3).

An increasing number of mammography facilities have begun to report both normal and abnormal results directly to the woman. This can be accomplished without disrupting the woman's relationship with her referring provider. Studies have shown that direct communication of results to the woman by the mammography facility produces a dramatic improvement in compliance with follow recommendations [R]. Traditional communication procedures, where the facility communicates only with the referring provider, result in inadequate compliance with follow up recommendations [R].

Problems in communicating abnormal results have included confusion concerning the appropriate steps to be taken; inappropriate or insensitive communication, resulting in avoidable anxiety and confusion; delay in receipt of results; and failure to communicate results to the woman at all—for example, when reports are misfiled or filed unread. These problems have caused delays in diagnosis and treatment, with consequences that include limited treatment options and death [R]. Providing results directly to the woman is a sound risk-management procedure, reducing the prospect of medicolegal complications for both the interpreting physician and the referring health care provider [R].

TABLE 3.—REPORTING OF RESULTS BY MAMMOGRAPHY FACILITY

Outcome of Mammography Examination and Recommendation for Followup	Communication to Women—Oral (Onsite or by Telephone)	Communication to Women—Write (Onsite or Sent by Mail)	Phone Communication to Health Care Provider in Addition to Standard Report	Always Necessary Written Report to Health Care Provider
Normal	Optional	Strongly Recommended	None	Strongly Recommended
Abnormal: schedule additional imaging and/or ultrasonography				
a) On line[1]	Recommended[2]	Strongly recommended[2]	Recommended[3]	Strongly recommended
b) Off line[1]	Optional[2]	Strongly recommended[2]	Recommended[3]	Strongly recommended
Abnormal: short-interval followup	Optional	Strongly recommended	Optional	Strongly recommended
Abnormal: Biopsy	Optional strongly recommended for self-referred women	Strongly recommended[4]	Strongly recommended	Strongly recommended

[1] For an online study, the interpreting physician is present and reads the mammogram while the patient is there. For an offline study, the mammogram may be read after the woman leaves so the interpreting physician does not have to be present.

[2] For any patient for whom additional views or ultrasonography are recommended, a telephone call or discussion onsite with the patient may precede the written letter when the studies are to be performed immediately or within 2 days at that mammography facility. However, the results of the original and additional studies must be provided to the woman in writing.

[3] A telephone call from the mammography facility to the woman's designated physician or other health care provider is recommended. For self-referred patients, the telephone call should be made to the woman herself.

[4] For any patient without a direct referral, the mammography facility may wish to send the letter via registered or certified mail.

NOTE: Strong recommendations deal with elements of mammography that the panel considers essential to good practice. Recommendations deal with elements of mammography that the panel considers attainable in most but not all cases. Options are statements of a less compelling nature that cannot be justified as recommendations.

Communicating normal results directly to the woman as soon as possible eliminates anxiety, reinforces the woman's role as a responsible participant in the process, reminds the woman of the importance of regular screening, and is a quality assurance safeguard. Effective communication is most crucial when results are abnormal and additional imaging or other follow up is required. If findings are abnormal, the written results should detail steps the woman should take next.

Any written communication must have language that is carefully constructed to impart results without causing undue anxiety, to promote a relationship between the woman and a health care provider, and to encourage the woman to take the next step. [Note—the AHCPR publication provides several examples of letters for communicating results directly to women.]

Mammography facilities may accept self-requesting and self-referred women for mammography. Interpreting physicians have additional responsibilities for ensuring the effective communication of results for these women.

- Self-requesting woman. This woman comes for mammography on her own initiative but is able to name a personal physician or health care provider. Whether the woman is having screening or diagnostic mammography, the interpreting physician should document that the designated provider accepts responsibility for the woman's breast care before sending out the mammography report. In cases where the provider declines to accept the mammography report from the mammography facility, the facility should treat the woman as if she were self-referred.
- Self-referred woman. This is a woman who comes for mammography but has no personal health care provider or for whom the provider declines responsibility. Whether the woman is having screening or diagnostic mammography, the interpreting physician assumes responsibility for the woman's breast care, including education, physical examination, and communication of mammography results directly to the patient in understandable language. Mammography facility personnel should give the woman a list of qualified providers. If the woman chooses a provider from a list provided by the mammography facility, the interpreting physician should ensure that the chosen clinician will assume responsibility for the woman's breast care. Although self-referral has improved access to mammography, it has increased the responsibilities of the interpreting physician and created more possibilities for failure to communicate abnormal results.

STRONG RECOMMENDATION: At the time of the examination, mammography facility personnel should inform all women of the time period in which they will receive their results and of the possibility that prior films may need to be obtained. The woman should also be instructed to call the mammography facility or her health care provider if she does not receive her results within the stated time period. The facility should report results to the woman's provider and to the woman within the shortest practical time period. (B)

RECOMMENDATION: The facility should use its best efforts to send a report to the referring health care provider and to send results to the woman as soon as possible, usually within 10 business days. The reporting period should not exceed 30 days. (B)

STRONG RECOMMENDATION: The interpreting physician or designee should telephone the results of an abnormal examination that requires needle or open biopsy to the referring (or designated) health care provider's office in a timely manner. (B)

RECOMMENDATION: The interpreting physician or designee should telephone the results of an abnormal examination that requires additional views and/or ultrasonography in a timely manner to the referring (or designated) health care provider's office. (B)

OPTIONAL: The interpreting physician or the referring (or designated) health care provider may telephone the woman directly to explain abnormal findings, their significance, and recommended next steps. (B)

Mammography facility personnel should telephone the referring or designated health care provider because the written report may not reach the provider or may not arrive in time for the provider to respond to questions from the patient. A telephone call also enables the provider to ask questions about the report and to discuss follow up options with the interpreting physician [R].

When mammography results are abnormal, a telephone call to the woman's designated health care provider before a report is sent may identify and resolve any vagueness in the provider-patient status. For a self-requesting woman with an abnormal finding, this call will significantly reduce the chance that she will slip through the cracks.

If the woman does not have a provider or if the provider declines to accept the report, the interpreting physician or designee should call the woman directly to explain the result and the recommended next steps. This telephone communication is in addition to the written report and should offer the option to have the results explained in person. Information should not be left on an answering machine or given to another individual without the woman's express prior permission. Particularly for the woman without a referring provider, the mammography facility may choose to send written notification of abnormal results by certified mail or with return receipt requested. Mammography facility personnel should document the communication to the referring provider or the woman in the woman's medical record. Recommended reporting is outlined on Table 3."

Chapter 6 of the AHCPR document also provides more information on the communication responsibilities of the interpreting physician.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ries, L. A. G., B. A. Miller, and B. F. Hankey, et al. (Eds.), "SEER Cancer Statistics Review, 1973–1991," National Cancer Institute, NIH Pub. No. 94–2789, Bethesda, MD, 1994.
2. AHCPR, "Quality Determinants of Mammography," AHCPR Pub. No. 95–0632, October, 1994.
3. U.S. GAO, "Mammography Services Initial Impact of New Federal Law Has Been Positive," GAO/HEHS–96–17, October, 1995.
4. Linver, M. N., J. R. Osuch, R. J. Brenner, and R. A. Smith, "The Mammography Audit: A Primer for the Mammography Quality Standards Act (MQSA)," *American Journal of Radiology*, 1995; 165:19–25.
5. CDC, "Use of Mammography Services by Women Aged ≤ 65 Years Enrolled in Medicare—United States, 1995–1993," 1995; 44:777–781.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 900

Electronic products, Health facilities, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16 and 900 are amended as follows:

PART 16—REGULATORY HEARINGS BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 21 U.S.C. 41–40, 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201–262, 263b, 364; 15 U.S.C. 1451–1461; 28 U.S.C. 2112.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding entries for §§ 900.7 and 900.14 to read as follows:

§ 716.1 Scope.

* * * * *

(b) * * *

(2) Regulatory provisions:

* * * * *

§ 900.7, relating to approval, reapproval, or withdrawal of approval of mammography accreditation bodies or rejection of a proposed fee for accreditation.

§ 900.14, relating to suspension or revocation of a mammography certificate.

* * * * *

3. 21 CFR Part 900 is revised to read as follows:

PART 900—MAMMOGRAPHY

Subpart A—Accreditation

Sec.

900.1 Scope.
900.2 Definitions.
900.3 Application for approval as an accreditation body.
900.4 Standards for accreditation bodies.
900.5 Evaluation.
900.6 Withdrawal of approval.
900.7 Hearings.
900.8–900.9 [Reserved]

Subpart B—Quality Standards and Certification

900.10 Applicability.
900.11 Requirements for certification.
900.12 Quality standards.
900.13 Revocation of accreditation and revocation of accreditation body approval.
900.14 Suspension or revocation of certificates.
900.15 Appeals of adverse accreditation or reaccreditation decisions that preclude certification or recertification.
900.16 Appeals of denials of certification.
900.17 [Reserved]
900.18 Alternative requirements for § 900.12 quality standards.

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

Subpart A—Accreditation

§ 900.1 Scope.

The regulations set forth in this part implement the Mammography Quality Standards Act (MQSA) (42 U.S.C. 263b). Subpart A of this part establishes procedures whereby an entity can apply to become a Food and Drug Administration (FDA)-approved accreditation body to accredit facilities to be eligible to perform screening or diagnostic mammography services. Subpart A further establishes requirements and standards for accreditation bodies to ensure that all mammography facilities under the jurisdiction of the United States are adequately and consistently evaluated for compliance with national quality standards for mammography. Subpart B of this part establishes minimum national quality standards for mammography facilities to ensure safe, reliable, and accurate mammography. The regulations set forth in this part do not apply to facilities of the Department of Veterans Affairs.

§ 900.2 Definitions.

The following definitions apply to subparts A and B of this part:

(a) *Accreditation body* or *body* means an entity that has been approved by FDA under § 900.3(d) to accredit mammography facilities.

(b) *Action limits* or *action levels* means the minimum and maximum values of a quality assurance measurement that can be interpreted as representing acceptable performance with respect to the parameter being tested. Values less than the minimum or greater than the maximum action limit or level indicate that corrective action must be taken by the facility. Action limits or levels are also sometimes called control limits or levels.

(c) *Adverse event* means an undesirable experience associated with mammography activities within the scope of 42 U.S.C. 263b. Adverse events include but are not limited to:

(1) Poor image quality;

(2) Failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(3) Use of personnel that do not meet the applicable requirements of § 900.12(a).

(d) *Air kerma* means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectronvolts (keV), 1 Gy = 100 radian (rad) = 114 roentgens (R) of exposure.

(e) *Breast implant* means a prosthetic device implanted in the breast.

(f) *Calendar quarter* means any one of the following time periods during a given year: January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

(g) *Category I* means medical educational activities that have been designated as Category I by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), a state medical society, or an equivalent organization.

(h) *Certificate* means the certificate described in § 900.11(a).

(i) *Certification* means the process of approval of a facility by FDA to provide mammography services.

(j) *Clinical image* means a mammogram.

(k) *Consumer* means an individual who chooses to comment or complain in reference to a mammography examination, including the patient or representative of the patient (e.g., family member or referring physician).

(l) *Continuing education unit* or *continuing education credit* means one contact hour of training.

(m) *Contact hour* means an hour of training received through direct instruction.

(n) *Direct instruction* means:

(1) Face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

(2) The administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

(o) *Direct supervision* means that:

(1) During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's records; or

(2) During the performance of a mammography examination or survey of the facility's equipment and quality assurance program, the supervisor is present to observe and correct, as needed, the performance of the individual being supervised who is performing the examination or conducting the survey.

(p) *Established operating level* means the value of a particular quality assurance parameter that has been established as an acceptable normal level by the facility's quality assurance program.

(q) *Facility* means a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including the following: Operation of equipment to produce a mammogram, processing of the mammogram, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

(r) *First allowable time* means the earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body. The "first allowable time" may vary with the certifying body.

(s) *FDA* means the Food and Drug Administration.

(t) *Interim regulations* means the regulations entitled "Requirements for Accrediting Bodies of Mammography Facilities" (58 FR 67558–67565) and "Quality Standards and Certification Requirements for Mammography Facilities" (58 FR 67565–67572), published by FDA on December 21, 1993, and amended on September 30, 1994 (59 FR 49868–49813). These regulations established the standards that had to be met by mammography facilities in order to lawfully operate between October 1, 1994, and April 28, 1999.

(u) *Interpreting physician* means a licensed physician who interprets mammograms and who meets the requirements set forth in § 900.12(a)(1).

(v) *Kerma* means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

(w) *Laterality* means the designation of either the right or left breast.

(x) *Lead interpreting physician* means the interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of § 900.12(d) through (f). The administrative title and other supervisory responsibilities of the individual, if any, are left to the discretion of the facility.

(y) *Mammogram* means a radiographic image produced through mammography.

(z) *Mammographic Modality* means a technology, within the scope of 42 U.S.C. 263b, for radiography of the breast. Examples are screen-film mammography and xeromammography.

(aa) *Mammography* means radiography of the breast, but, for the purposes of this part, does not include:

(1) Radiography of the breast performed during invasive interventions for localization or biopsy procedures; or

(2) Radiography of the breast performed with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

(bb) *Mammography equipment evaluation* means an onsite assessment of mammography unit or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable standards in § 900.12(b) and (e).

(cc) *Mammography medical outcomes audit* means a systematic collection of mammography results and the comparison of those results with outcomes data.

(dd) *Mammography unit* or *units* means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum: An X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

(ee) *Mean optical density* means the average of the optical densities measured using phantom thicknesses of 2, 4, and 6 centimeters with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

(ff) *Medical physicist* means a person trained in evaluating the performance of mammography equipment and facility quality assurance programs and who meets the qualifications for a medical physicist set forth in § 900.12(a)(3).

(gg) *MQSA* means the Mammography Quality Standards Act.

(hh) *Multi-reading* means two or more physicians, at least one of whom is an interpreting physician, interpreting the same mammogram.

(ii) *Patient* means any individual who undergoes a mammography evaluation in a facility, regardless of whether the person is referred by a physician or is self-referred.

(jj) *Phantom* means a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(kk) *Phantom image* means a radiographic image of a phantom.

(ll) *Physical science* means physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(mm) *Positive mammogram* means a mammogram that has an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

(nn) *Provisional certificate* means the provisional certificate described in § 900.11(b)(2).

(oo) *Qualified instructor* means an individual whose training and experience adequately prepares him or her to carry out specified training assignments. Interpreting physicians, radiologic technologists, or medical physicists who meet the requirements of § 900.12(a) would be considered qualified instructors in their respective areas of mammography. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the regulations of this part include, but are not limited to, instructors in a post-high school training institution and manufacturer's representatives.

(pp) *Quality control technologist* means an individual meeting the requirements of § 900.12(a)(2) who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

(qq) *Radiographic equipment* means X-ray equipment used for the production of static X-ray images.

(rr) *Radiologic technologist* means an individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations and who meets the requirements set forth in § 900.12(a)(2).

(ss) *Serious adverse event* means an adverse advent that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(tt) *Serious complaint* means a report of a serious adverse event.

(uu) *Standard breast* means a 4.2 centimeter (cm) thick compressed breast consisting of 50 percent glandular and 50 percent adipose tissue.

(vv) *Survey* means an onsite physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(ww) *Time cycle* means the film development time.

(xx) *Traceable to a national standard* means an instrument is calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every 2 years and the results of the proficiency test conducted within 24 months of calibration show agreement within ± 3 percent of the national standard in the mammography energy range.

§ 900.3 Application for approval as an accreditation body.

(a) *Eligibility.* Private nonprofit organizations or State agencies capable of meeting the requirements of this subpart A may apply for approval as accreditation bodies.

(b) *Application for initial approval.* (1) An applicant seeking initial FDA approval as an accreditation body shall inform the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiology Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, marked Attn: Mammography Standards Branch, of its desire to be approved as an accreditation body and of its requested scope of authority.

(2) Following receipt of the request, FDA will provide the applicant with additional information to aid in submission of an application for approval as an accreditation body.

(3) The applicant shall furnish to FDA, at the address in § 900.3(b)(1), three copies of an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant and, if the applicant is not a State agency, evidence of nonprofit status (i.e., of fulfilling Internal Revenue Service requirements as a nonprofit organization);

(ii) Detailed description of the accreditation standards the applicant will require facilities to meet and a discussion substantiating their equivalence to FDA standards required under § 900.12;

(iii) Detailed description of the applicant's accreditation review and decisionmaking process, including:

(A) Procedures for performing accreditation and reaccreditation clinical image review in accordance with § 900.4(c), random clinical image reviews in accordance with § 900.4(f), and additional mammography review in accordance with § 900.12(j);

(B) Procedures for performing phantom image review;

(C) Procedures for assessing mammography equipment evaluations and surveys;

(D) Procedures for initiating and performing onsite visits to facilities;

(E) Procedures for assessing facility personnel qualifications;

(F) Copies of the accreditation application forms, guidelines, instructions, and other materials the applicant will send to facilities during the accreditation process, including an accreditation history form that requires each facility to provide a complete history of prior accreditation activities and a statement that all information and data submitted in the application is true and accurate, and that no material fact has been omitted;

(G) Policies and procedures for notifying facilities of deficiencies;

(H) Procedures for monitoring corrections of deficiencies by facilities;

(I) Policies and procedures for suspending or revoking a facility's accreditation;

(J) Policies and procedures that will ensure processing of accreditation applications and renewals within a timeframe approved by FDA and assurances that the body will adhere to such policies and procedures; and

(K) A description of the applicant's appeals process for facilities contesting adverse accreditation status decisions.

(iv) Education, experience, and training requirements for the applicant's professional staff, including reviewers of clinical or phantom images;

(v) Description of the applicant's electronic data management and analysis system with respect to accreditation review and decision processes and the applicant's ability to provide electronic data in a format compatible with FDA data systems;

(vi) Resource analysis that demonstrates that the applicant's staffing, funding, and other resources are adequate to perform the required accreditation activities;

(vii) Fee schedules with supporting cost data;

(viii) Statement of policies and procedures established to avoid conflicts of interest or the appearance of conflicts of interest by the applicant's board members, commissioners, professional personnel (including reviewers of clinical and phantom images), consultants, administrative personnel, and other representatives of the applicant;

(ix) Statement of policies and procedures established to protect confidential information the applicant will collect or receive in its role as an accreditation body;

(x) Disclosure of any specific brand of imaging system or component, measuring device, software package, or other commercial product used in mammography that the applicant develops, sells, or distributes;

(xi) Description of the applicant's consumer complaint mechanism;

(xii) Satisfactory assurances that the applicant shall comply with the requirements of § 900.4; and

(xiii) Any other information as may be required by FDA.

(c) *Application for renewal of approval.* An approved accreditation body that intends to continue to serve as an accreditation body beyond its current term shall apply to FDA for renewal or notify FDA of its plans not to apply for renewal in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of a body's approval, the body shall inform FDA, at the address given in § 900.3(b)(1), of its intent to seek renewal.

(2) FDA will notify the applicant of the relevant information, materials, and supporting documentation required under § 900.3(b)(3) that the applicant shall submit as part of the renewal procedure.

(3) At least 6 months before the date of expiration of a body's approval, the applicant shall furnish to FDA, at the address in § 900.3(b)(1), three copies of a renewal application containing the information, materials, and supporting documentation requested by FDA in accordance with § 900.3(c)(2).

(4) No later than July 28, 1998 any accreditation body approved under the interim regulations published in the **Federal Register** of December 21, 1993 (58 FR 67558), that desires to continue to serve as an accreditation body under the final regulations shall apply for renewal of approval in accordance with the procedures set forth in paragraphs (c)(1) through (c)(3) of this section.

(5) Any accreditation body that does not plan to renew its approval shall so notify FDA at the address given in paragraph (b)(1) of this section at least 9 months before the expiration of the body's term of approval.

(d) *Rulings on applications for initial and renewed approval.* (1) FDA will conduct a review and evaluation to determine whether the applicant substantially meets the applicable requirements of this subpart and whether the accreditation standards the applicant will require facilities to meet are substantially the same as the quality standards published under subpart B of this part.

(2) FDA will notify the applicant of any deficiencies in the application and request that those deficiencies be rectified within a specified time period. If the deficiencies are not rectified to FDA's satisfaction within the specified time period, the application for approval as an accreditation body may be rejected.

(3) FDA shall notify the applicant whether the application has been approved or denied. That notification shall list any conditions associated with approval or state the bases for any denial.

(4) The review of any application may include a meeting between FDA and representatives of the applicant at a time and location mutually acceptable to FDA and the applicant.

(5) FDA will advise the applicant of the circumstances under which a denied application may be resubmitted.

(6) If FDA does not reach a final decision on a renewal application in accordance with this paragraph before the expiration of an accreditation body's current term of approval, the approval will be deemed extended until the agency reaches a final decision on the application, unless an accreditation body does not rectify deficiencies in the application within the specified time period, as required in paragraph (d)(2) of this section.

(e) *Relinquishment of authority.* An accreditation body that decides to relinquish its accreditation authority before expiration of the body's term of approval shall submit a letter of such intent to FDA, at the address in § 900.3(b)(1), at least 9 months before relinquishing such authority.

(f) *Transfer of records.* An accreditation body that does not apply for renewal of accreditation body approval, is denied such approval by FDA, or relinquishes its accreditation authority and duties before expiration of its term of approval, shall:

(1) Transfer facility records and other related information as required by FDA to a location and according to a schedule approved by FDA.

(2) Notify, in a manner and time period approved by FDA, all facilities accredited or seeking accreditation by the body that the body will no longer have accreditation authority.

(g) *Scope of authority.* An accreditation body's term of approval is for a period not to exceed 7 years. FDA may limit the scope of accreditation authority.

§ 900.4 Standards for accreditation bodies.

(a) *Code of conduct and general responsibilities.* The accreditation body shall accept the following responsibilities in order to ensure safe and accurate mammography at the facilities it accredits and shall perform these responsibilities in a manner that ensures the integrity and impartiality of accreditation body actions.

(1)(i) When an accreditation body receives or discovers information that suggests inadequate image quality, or upon request by FDA, the accreditation body shall review a facility's clinical images or other aspects of a facility's practice to assist FDA in determining whether or not the facility's practice poses a serious risk to human health. Such reviews are in addition to the evaluation an accreditation body performs as part of the initial accreditation or renewal process for facilities.

(ii) If review by the accreditation body demonstrates that a problem does exist with respect to image quality or other aspects of a facility's compliance with quality standards, or upon request by FDA, the accreditation body shall require or monitor corrective actions, or suspend or revoke accreditation of the facility.

(2) The accreditation body shall inform FDA as soon as possible but in no case longer than 2 business days after becoming aware of equipment or practices that pose a serious risk to human health.

(3) The accreditation body shall establish and administer a quality assurance (QA) program that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section. Such quality assurance program shall:

(i) Include requirements for clinical image review and phantom image review;

(ii) Ensure that clinical and phantom images are evaluated consistently and accurately; and

(iii) Specify the methods and frequency of training and evaluation for clinical and phantom image reviewers, and the bases and procedures for removal of such reviewers.

(4) The accreditation body shall establish measures that FDA has approved in accordance with § 900.3(d) or paragraph (a)(6) of this section to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the body's behalf. Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a financial relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

(5) The accreditation body may require specific equipment performance or design characteristics that FDA has approved. However, no accreditation body shall require, either explicitly or implicitly, the use of any specific brand of imaging system or component, measuring device, software package, or other commercial product as a condition for accreditation by the body, unless FDA determines that it is in the best interest of public health to do so.

(i) Any representation, actual or implied, either orally, in sales literature, or in any other form of representation, that the purchase or use of a particular product brand is required in order for any facility to be accredited or certified under § 900.11(b), is prohibited, unless FDA approves such representation.

(ii) Unless FDA has approved the exclusive use and promotion of a particular commercial product in accordance with this section, all products produced, distributed, or sold by an accreditation body or an organization that has a financial or other relationship with the accreditation body that may be a conflict of interest or have the appearance of a conflict of interest with the body's accreditation functions, shall bear a disclaimer stating that the purchase or use of such products is not required for accreditation or certification of any facility under § 900.11(b). Any representations about such products shall include a similar disclaimer.

(6) When an accreditation body denies accreditation to a facility, the accreditation body shall notify the facility in writing and explain the bases for its decision. The notification shall also describe the appeals process available from the accreditation body for the facility to contest the decision.

(7) No accreditation body may establish requirements that preclude facilities from being accredited under § 900.11(b) by any other accreditation body, or require accreditation by itself under MQSA if another accreditation body is available to a facility.

(8) The accreditation body shall obtain FDA authorization for any changes it proposes to make in any standards that FDA has previously accepted under § 900.3(d).

(9) An accreditation body shall establish procedures to protect confidential information it collects or receives in its role as an accreditation body.

(i) Nonpublic information collected from facilities for the purpose of carrying out accreditation body responsibilities shall not be used for any other purpose or disclosed, other than to FDA or its duly designated representatives, including State agencies, without the consent of the facility;

(ii) Nonpublic information that FDA or its duly designated representatives, including State agencies, share with the accreditation body concerning a facility that is accredited or undergoing accreditation by that body shall not be further disclosed except with the written permission of FDA.

(b) *Monitoring facility compliance with quality standards.* (1) The accreditation body shall require that each facility it accredits meet standards for the performance of quality mammography that are substantially the same as those in this subpart and in subpart B of this part.

(2) The accreditation body shall notify a facility regarding equipment, personnel, and other aspects of the facility's practice that do not meet such standards and advise the facility that such equipment, personnel, or other aspects of the practice should not be used by the facility for activities within the scope of part 900.

(3) The accreditation body shall specify the actions that facilities shall take to correct deficiencies in equipment, personnel, and other aspects of the practice to ensure facility compliance with applicable standards.

(4) If deficiencies cannot be corrected to ensure compliance with standards or if a facility is unwilling to take corrective actions, the accreditation body shall immediately so notify FDA, and shall suspend or revoke the facility's accreditation in accordance with the policies and procedures described under § 900.3(b)(3)(iii)(I).

(c) *Clinical image review for accreditation and reaccreditation.* (1) Frequency of review. The accreditation body shall review clinical images from each facility accredited by the body at least once every 3 years.

(2) Requirements for clinical image attributes. The accreditation body shall use the following attributes for all clinical image reviews, unless FDA has approved other attributes:

(i) Positioning. Sufficient breast tissue shall be imaged to ensure that cancers are not likely to be missed because of inadequate positioning.

(ii) Compression. Compression shall be applied in a manner that minimizes the potential obscuring effect of overlying breast tissue and motion artifact.

(iii) Exposure level. Exposure level shall be adequate to visualize breast structures. Images shall be neither underexposed nor overexposed.

(iv) Contrast. Image contrast shall permit differentiation of subtle tissue density differences.

(v) Sharpness. Margins of normal breast structures shall be distinct and not blurred.

(vi) Noise. Noise in the image shall not obscure breast structures or suggest the appearance of structures not actually present.

(vii) Artifacts. Artifacts due to lint, processing, scratches, and other factors external to the breast shall not obscure breast structures or suggest the appearance of structures not actually present.

(viii) Examination identification. Each image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(A) Name of the patient and an additional patient identifier.

(B) Date of examination.

(C) View and laterality. This information shall be placed on the image in a position near the axilla. Standardized codes specified by the accreditation body and approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section shall be used to identify view and laterality.

(D) Facility name and location. At a minimum, the location shall include the city, State, and zip code of the facility.

(E) Technologist identification.

(F) Cassette/screen identification.

(G) Mammography unit identification, if there is more than one unit in the facility.

(3) Scoring of clinical images. Accreditation bodies shall establish and administer a system for scoring clinical images using all attributes specified in paragraphs (c)(2)(i) through (c)(2)(viii) of this section or an alternative system that FDA has approved in accordance with § 900.3(d) or paragraph (a)(8) of this section. The scoring system shall include an evaluation for each attribute.

(i) The accreditation body shall establish and employ criteria for acceptable and nonacceptable results for each of the 8 attributes as well as an overall pass-fail system for clinical image review that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section.

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more clinical image reviewers.

(4) Selection of clinical images for review. Unless otherwise specified by FDA, the accreditation body shall require that for each mammography unit in the facility:

(i) The facility shall submit craniocaudal (CC) and mediolateral oblique (MLO) views from two mammographic examinations that the facility produced during a time period specified by the accreditation body;

(ii) Clinical images submitted from one such mammographic examination for each unit shall be of dense breasts (predominance of glandular tissue) and the other shall be of fat-replaced breasts (predominance of adipose tissue);

(iii) All clinical images submitted shall be images that the facility's interpreting physician(s) interpreted as negative or benign.

(iv) If the facility has no clinical images meeting the requirements in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, it shall so notify the accreditation body, which shall specify alternative clinical image selection methods that do not compromise care of the patient.

(5) Clinical image reviewers. Accreditation bodies shall ensure that all of their clinical image reviewers:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1);

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a clinical image reviewer, by the accreditation body before designation as clinical image reviewers and periodically thereafter; and

(iii) Clearly document their findings and reasons for assigning a particular score to any clinical image and provide information to the facility for use in improving the attributes for which significant deficiencies were identified.

(6) Image management. The accreditation body's QA program shall include a tracking system to ensure the security and return to the facility of all clinical images received and to ensure completion of all clinical image reviews by the body in a timely manner. The accreditation body shall return all clinical images to the facility within 60 days of their receipt by the body, with the following exceptions:

(i) If the clinical images are needed earlier by the facility for clinical purposes, the accreditation body shall cooperate with the facility to accommodate such needs.

(ii) If a clinical image reviewer identifies a suspicious abnormality on an image submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10 business days after identification of the suspected abnormality.

(7) Notification of unsatisfactory image quality. If the accreditation body determines that the clinical images received from a facility are of unsatisfactory quality, the body shall notify the facility of the nature of the problem and its possible causes.

(d) *Phantom image review for accreditation and reaccreditation.* (1) Frequency of review. The accreditation body shall review phantom images from each facility accredited by the body at least once every 3 years.

(2) Requirements for the phantom used. The accreditation body shall require that each facility submit for review phantom images that the facility produced using a phantom and methods of use specified by the body and approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section.

(3) Scoring phantom images. The accreditation body shall use a system for scoring phantom images that has been approved by FDA in accordance with § 900.3(b) and (d) or paragraph (a)(8) of this section.

(4) Phantom images selected for review. For each mammography unit in the facility, the accreditation body shall require the facility to submit phantom images that the facility produced during a time period specified by the body.

(5) Phantom image reviewers. Accreditation bodies shall ensure that all of their phantom image reviewers:

(i) Meet the requirements specified in § 900.12(a)(3) or alternative requirements established by the accreditation body and approved by FDA in accordance with § 900.3 or paragraph (a)(8) of this section;

(ii) Are trained and evaluated in the phantom image review process, for the types of phantom images to be evaluated by a phantom image reviewer, by the accreditation body before designation as phantom image reviewers and periodically thereafter; and

(iii) Clearly document their findings and reasons for assigning a particular score to any phantom image and provide information to the facility for use in improving its phantom image quality with regard to the significant deficiencies identified.

(6) Image management. The accreditation body's QA program shall include a tracking system to ensure the security of all phantom images received and to ensure completion of all phantom image reviews by the body in a timely manner. All phantom images that result in a failure of accreditation shall be returned to the facility.

(7) Notification measures for unsatisfactory image quality. If the accreditation body determines that the phantom images received from a facility are of unsatisfactory quality, the body shall notify the facility of the nature of the problem and its possible causes.

(e) *Reports of mammography equipment evaluation, surveys, and quality control.* The following requirements apply to all facility equipment covered by the provisions of subparts A and B:

(1) The accreditation body shall require every facility applying for accreditation to submit:

(i) With its initial accreditation application, a mammography equipment evaluation that was performed by a medical physicist no earlier than 6 months before the date of application for accreditation by the facility. Such evaluation shall demonstrate compliance of the facility's equipment with the requirements in § 900.12(e).

(ii) Prior to accreditation, a survey that was performed no earlier than 6 months before the date of application for accreditation by the facility. Such survey shall assess the facility's compliance with the facility standards referenced in paragraph (b) of this section.

(2) The accreditation body shall require that all facilities undergo an annual survey to ensure continued compliance with the standards referenced in paragraph (b) of this section and to provide continued oversight of facilities' quality control programs as they relate to such standards. The accreditation body shall require for all facilities that:

(i) Such surveys be conducted annually;

(ii) Facilities take reasonable steps to ensure that they receive reports of such surveys within 30 days of survey completion; and

(iii) Facilities submit the results of such surveys and any other information that the body may require to the body at least annually.

(3) The accreditation body shall review and analyze the information required in this section and use it to identify necessary corrective measures for facilities and to determine whether facilities should remain accredited by the body.

(f) *Accreditation Body Onsite Visits and Random Clinical Image Reviews.* The accreditation body shall conduct onsite visits and random clinical image reviews of a sample of facilities to monitor and assess their compliance with standards established by the body for accreditation. The accreditation body shall submit annually to FDA, at the address given in § 900.3(b)(1), 3 copies of a summary report describing all facility assessments the body conducted under the provisions of this section for the year being reported.

(1) Onsite visits. (i) Sample size. Annually, each accreditation body shall visit at least 5 percent of the facilities it accredits. However, a minimum of 5 facilities shall be visited, and visits to no more than 50 facilities are required, unless problems identified in paragraph (f)(1)(i)(B) of this section indicate a need to visit more than 50 facilities.

(A) At least 50 percent of the facilities visited shall be selected randomly.

(B) Other facilities visited shall be selected based on problems identified through State or FDA inspections, serious complaints received from consumers or others, a previous history of noncompliance, or any other information in the possession of the accreditation body, inspectors, or FDA.

(C) Before, during, or after any facility visit, the accreditation body may require that the facility submit to the body for review clinical images, phantom images, or any other information relevant to applicable standards in this subpart and in subpart B of this part.

(ii) Visit plan. The accreditation body shall conduct facility onsite visits according to a visit plan that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section, unless otherwise directed by FDA in particular circumstances. At a minimum, such a plan shall provide for:

(A) Assessment of overall clinical image QA activities of the facility;

(B) Review of facility documentation to determine if appropriate mammography reports are sent to patients and physicians as required;

(C) Selection of a sample of clinical images for clinical image review by the accreditation body. Clinical images shall be selected in a manner specified by the accreditation body and approved by FDA that does not compromise care of the patient as a result of the absence of the selected images from the facility;

(D) Verification that the facility has a medical audit system in place and is correlating films and pathology reports for positive cases;

(E) Verification that personnel specified by the facility are the ones actually performing designated personnel functions;

(F) Verification that equipment specified by the facility is the equipment that is actually being used to perform designated equipment functions;

(G) Verification that a consumer complaint mechanism is in place and that the facility is following its procedures; and

(H) Review of all factors related to previously identified concerns or concerns identified during that visit.

(2) Clinical image review for random sample of facilities. (i) Sample size. In addition to conducting clinical image reviews for accreditation and reaccreditation for all facilities, the accreditation body shall conduct clinical image reviews annually for a randomly selected sample as specified by FDA, but to include at least 3 percent of the facilities the body accredits. Accreditation bodies may count toward this random sample requirement all facilities selected randomly for the onsite visits described in paragraph (f)(1)(i)(A) of this section. Accreditation bodies shall not count toward the random sample requirement any facilities described in paragraph (f)(1)(i)(B) of this section that were selected for a visit because of previously identified concerns.

(ii) Random clinical image review. In performing clinical image reviews of the random sample of facilities, accreditation bodies shall evaluate the same attributes as those in paragraph (c) of this section for review of clinical images for accreditation and reaccreditation.

(iii) Accreditation bodies should not schedule random clinical image reviews at facilities that have received notification of the need to begin the accreditation renewal process or that have completed the accreditation renewal process within the previous 6 months.

(iv) Selection of the random sample of clinical images for clinical image review by the accreditation body. Clinical images shall be selected in a manner, specified by the accreditation body and approved by FDA under § 900.3(d) or paragraph (a)(8) of this section, that does not compromise care of the patient as a result of the absence of the selected images from the facility.

(g) *Consumer complaint mechanism.* The accreditation body shall develop and administer a written and documented system, including timeframes, for collecting and resolving serious consumer complaints that could not be resolved at a facility. Such system shall have been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section. Accordingly, all accreditation bodies shall:

(1) Provide a mechanism for all facilities it accredits to file serious unresolved complaints with the accreditation body;

(2) Maintain a record of every serious unresolved complaint received by the body on all facilities it accredits for a period of at least 3 years from the date of receipt of each such complaint;

(h) *Reporting and recordkeeping.* All reports to FDA specified in paragraphs (h)(1) through (h)(4) of this section shall be prepared and submitted in a format and medium prescribed by FDA and shall be submitted to a location and according to a schedule specified by FDA. The accreditation body shall:

(1) Collect and submit to FDA the information required by 42 U.S.C. 263b(d) for each facility when the facility is initially accredited and at least annually when updated, in a manner and at a time specified by FDA.

(2) Accept applications containing the information required in 42 U.S.C. 263b(c)(2) for provisional certificates and in § 900.11(b)(3) for extension of provisional certificates, on behalf of FDA, and notify FDA of the receipt of such information;

(3) Submit to FDA the name, identifying information, and other information relevant to 42 U.S.C. 263b and specified by FDA for any facility for which the accreditation body denies, suspends, or revokes accreditation, and the reason(s) for such action;

(4) Submit to FDA an annual report summarizing all serious complaints received during the previous calendar year, their resolution status, and any actions taken in response to them;

(5) Provide to FDA other information relevant to 42 U.S.C. 263b and required by FDA about any facility accredited or undergoing accreditation by the body.

(i) *Fees.* Fees charged to facilities for accreditation shall be reasonable. Costs of accreditation body activities that are not related to accreditation functions under 42 U.S.C. 263b are not recoverable through fees established for accreditation.

(1) The accreditation body shall make public its fee structure, including those factors, if any, contributing to variations in fees for different facilities.

(2) At FDA's request, accreditation bodies shall provide financial records or other material to assist FDA in assessing the reasonableness of accreditation body fees. Such material shall be provided to FDA in a manner and time period specified by the agency.

§ 900.5 Evaluation.

FDA shall evaluate annually the performance of each accreditation body. Such evaluation shall include an assessment of the reports of FDA or State inspections of facilities accredited by the body as well as any additional information deemed relevant by FDA that has been provided by the accreditation body or other sources or has been required by FDA as part of its oversight initiatives. The evaluation shall include a determination of whether there are major deficiencies in the accreditation body's performance that, if not corrected, would warrant withdrawal of the approval of the accreditation body under the provisions of § 900.6.

§ 900.6 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.5, or through other means, that an accreditation body is not in substantial compliance with this subpart, FDA may initiate the following actions:

(a) *Major deficiencies.* If FDA determines that an accreditation body has failed to perform a major accreditation function satisfactorily, has demonstrated willful disregard for public health, has violated the code of conduct, has committed fraud, or has submitted material false statements to the agency, FDA may withdraw its approval of that accreditation body.

(1) FDA shall notify the accreditation body of the agency's action and the grounds on which the approval was withdrawn.

(2) An accreditation body that has lost its approval shall notify facilities accredited or seeking accreditation by it that its approval has been withdrawn. Such notification shall be made within a time period and in a manner approved by FDA.

(b) *Minor deficiencies.* If FDA determines that an accreditation body has demonstrated deficiencies in performing accreditation functions and responsibilities that are less serious or more limited than the deficiencies in paragraph (a) of this section, FDA shall notify the body that it has a specified period of time to take particular corrective measures directed by FDA or to submit to FDA for approval the body's own plan of corrective action addressing the minor deficiencies. FDA may place the body on probationary status for a period of time determined by FDA, or may withdraw approval of the body as an accreditation body if corrective action is not taken.

(1) If FDA places an accreditation body on probationary status, the body shall notify all facilities accredited or seeking accreditation by it of its probationary status within a time period and in a manner approved by FDA.

(2) Probationary status shall remain in effect until such time as the body can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and that the corrective actions have substantially eliminated all identified problems.

(3) If FDA determines that an accreditation body that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, FDA may withdraw approval of the accreditation body. The accreditation body shall notify all facilities accredited or seeking accreditation by it of its loss of FDA approval, within a time period and in a manner approved by FDA.

(c) *Reapplication by accreditation bodies that have had their approval withdrawn.* (1) A former accreditation body that has had its approval withdrawn may submit a new application for approval if the body can provide information to FDA to establish that the problems that were grounds for withdrawal of approval have been resolved.

(2) If FDA determines that the new application demonstrates that the body satisfactorily has addressed the causes of its previous unacceptable performance, FDA may reinstate approval of the accreditation body.

(3) FDA may request additional information or establish additional conditions that must be met by a former accreditation body before FDA approves the reapplication.

(4) FDA may refuse to accept an application from a former accreditation body whose approval was withdrawn because of fraud or willful disregard of public health.

§ 900.7 Hearings.

(a) Opportunities to challenge final adverse actions taken by FDA regarding approval or reapproval of accreditation bodies, withdrawal of approval of accreditation bodies, or rejection of a proposed fee for accreditation shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

(b) A facility that has been denied accreditation is entitled to an appeals process from the accreditation body. The appeals process shall be specified in writing by the accreditation body and shall have been approved by FDA in accordance with § 900.3(d) or § 900.4(a)(8).

(c) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeals process may appeal to FDA for reconsideration in accordance with § 900.15.

§§ 900.8–900.9 [Reserved]

Subpart B—Quality Standards and Certification

§ 900.10 Applicability.

The provisions of subpart B are applicable to all facilities under the regulatory jurisdiction of the United States that provide mammography

services, with the exception of the Department of Veterans Affairs.

§ 900.11 Requirements for certification.

(a) *General.* After October 1, 1994, a certificate issued by FDA is required for lawful operation of all mammography facilities subject to the provisions of this subpart. To obtain a certificate from FDA, facilities are required to meet the quality standards in § 900.12 and to be accredited by an approved accreditation body or other entity as designated by FDA.

(b) *Application.* (1) *Certificates.* (i) In order to qualify for a certificate, a facility must apply to an FDA-approved accreditation body, or to another entity designated by FDA. The facility shall submit to such body or entity the information required in 42 U.S.C. 263b(d)(1).

(ii) Following the agency's receipt of the accreditation body's decision to accredit a facility, or an equivalent decision by another entity designated by FDA, the agency may issue a certificate to the facility, or renew an existing certificate, if the agency determines that the facility has satisfied the requirements for certification or recertification.

(2) *Provisional certificates.* (i) A new facility beginning operation after October 1, 1994, is eligible to apply for a provisional certificate. The provisional certificate will enable the facility to perform mammography and to obtain the clinical images needed to complete the accreditation process. To apply for and receive a provisional certificate, a facility must meet the requirements of 42 U.S.C. 263b(c)(2) and submit the necessary information to an approved accreditation body or other entity designated by FDA.

(ii) Following the agency's receipt of the accreditation body's decision that a facility has submitted the required information, FDA may issue a provisional certificate to a facility upon determination that the facility has satisfied the requirements of § 900.11(b)(2)(i). A provisional certificate shall be effective for up to 6 months from the date of issuance. A provisional certificate cannot be renewed, but a facility may apply for a 90-day extension of the provisional certificate.

(3) *Extension of provisional certificate.* (i) To apply for a 90-day extension to a provisional certificate, a facility shall submit to its accreditation body, or other entity designated by FDA, a statement of what the facility is doing to obtain certification and evidence that there would be a significant adverse impact on access to mammography in the geographic area served if such facility did not obtain an extension.

(ii) The accreditation body shall forward the request, with its recommendation, to FDA within 2 business days after receipt.

(iii) FDA may issue a 90-day extension for a provisional certificate upon determination that the extension meets the criteria set forth in 42 U.S.C. 263b(c)(2).

(iv) There can be no renewal of a provisional certificate beyond the 90-day extension.

(c) *Reinstatement policy.* A previously certified facility that has allowed its certificate to expire, that has been refused a renewal of its certificate by FDA, or that has had its certificate suspended or revoked by FDA, may apply to have the certificate reinstated so that the facility may be considered to be a new facility and thereby be eligible for a provisional certificate.

(1) Unless prohibited from reinstatement under § 900.11(c)(4), a facility applying for reinstatement shall:

(i) Contact an FDA-approved accreditation body or other entity designated by FDA to determine the requirements for reapplication for accreditation;

(ii) Fully document its history as a previously provisionally certified or certified mammography facility, including the following information:

(A) Name and address of the facility under which it was previously provisionally certified or certified;

(B) Name of previous owner/lessor;

(C) FDA facility identification number assigned to the facility under its previous certification; and

(D) Expiration date of the most recent FDA provisional certificate or certificate; and

(iii) Justify application for reinstatement of accreditation by submitting to the accreditation body or other entity designated by FDA, a corrective action plan that details how the facility has corrected deficiencies that contributed to the lapse of, denial of renewal, or revocation of its certificate.

(2) FDA may issue a provisional certificate to the facility if:

(i) The accreditation body or other entity designated by FDA notifies the agency that the facility has adequately corrected, or is in the process of correcting, pertinent deficiencies; and

(ii) FDA determines that the facility has taken sufficient corrective action since the lapse of, denial of renewal, or revocation of its previous certificate.

(3) After receiving the provisional certificate, the facility may lawfully resume performing mammography services while completing the requirements for certification.

(4) If a facility's certificate was revoked on the basis of an act described in 41 U.S.C. 263b(i)(1), no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility within 2 years of the date of revocation.

§ 900.12 Quality standards.

(a) *Personnel.* The following requirements apply to all personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities:

(1) Interpreting physicians. All physicians interpreting mammograms shall meet the following qualifications:

(i) Initial qualifications. Unless the exemption in paragraph (a)(1)(iii)(A) of this section applies, before beginning to interpret mammograms independently, the interpreting physician shall:

(A) Be licensed to practice medicine in a State;

(B)(*1*) Be certified in an appropriate specialty area by a body determined by FDA to have procedures and requirements adequate to ensure that physicians certified by the body are competent to interpret radiological procedures, including mammography; or

(*2*) Have had at least 3 months of documented formal training in the interpretation of mammograms and in topics related to mammography. The training shall include instruction in radiation physics, including radiation physics specific to mammography, radiation effects, and radiation protection. The mammographic interpretation component shall be under the direct supervision of a physician who meets the requirements of paragraph (a)(1) of this section;

(C) Have a minimum of 60 hours of documented medical education in mammography, which shall include: Instruction in the interpretation of mammograms and education in basic breast anatomy, pathology, physiology, technical aspects of mammography, and quality assurance and quality control in mammography. All 60 of these hours shall be category I and at least 15 of the category I hours shall have been acquired within the 3 years immediately prior to the date that the physician qualifies as an interpreting physician. Hours spent in residency specifically devoted to mammography will be considered as equivalent to Category I continuing medical education credits and will be accepted if documented in writing by the appropriate representative of the training institution; and

(D) Unless the exemption in paragraph (a)(1)(iii)(B) of this section applies, have interpreted or multi-read at least 240 mammographic examinations within the 6-month period immediately prior to the date that the physician qualifies as an interpreting physician. This interpretation or multi-reading shall be under the direct supervision of an interpreting physician.

(ii) Continuing experience and education. All interpreting physicians shall maintain their qualifications by meeting the following requirements:

(A) Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(1)(i) of this section were completed, the interpreting physician shall have interpreted or multi-read at least 960 mammographic examinations during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in-between the two. The facility will choose one of these dates to determine the 24-month period.

(B) Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(1)(i) of this section were completed, the interpreting physician shall have taught or completed at least 15 category I continuing medical education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period. This training shall include at least six category I continuing medical education credits in each mammographic modality used by the interpreting physician in his or her practice; and

(C) Before an interpreting physician may begin independently interpreting mammograms produced by a new mammographic modality, that is, a mammographic modality in which the physician has not previously been trained, the interpreting physician shall have at least 8 hours of training in the new mammographic modality.

(D) Units earned through teaching a specific course can be counted only once towards the 15 required by paragraph (a)(1)(ii)(B) of this section, even if the course is taught multiple times during the previous 36 months.

(iii) Exemptions. (A) Those physicians who qualified as interpreting physicians under paragraph (a)(1) of this section of FDA's interim regulations prior to April 28, 1999 are considered to have met the initial requirements of paragraph (a)(1)(i) of this section. They may continue to interpret mammograms provided they continue to meet the licensure requirement of paragraph (a)(1)(i)(A) of this section and the continuing experience and education requirements of paragraph (a)(1)(ii) of this section.

(B) Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any 6-month period during the last 2 years of a diagnostic radiology residency and who become appropriately board certified at the first allowable time, as defined by an eligible certifying body, are otherwise exempt from paragraph (a)(1)(i)(D) of this section.

(iv) Reestablishing qualifications. Interpreting physicians who fail to maintain the required continuing experience or continuing education requirements shall reestablish their qualifications before resuming the independent interpretation of mammograms, as follows:

(A) Interpreting physicians who fail to meet the continuing experience requirements of paragraph (a)(1)(ii)(A) of this section shall:

(*1*) Interpret or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician, or

(*2*) Interpret or multi-read a sufficient number of mammographic examinations, under the direct supervision of an interpreting physician, to bring the physician's total up to 960 examinations for the prior 24 months, whichever is less.

(*3*) The interpretations required under paragraph (a)(1)(iv)(A)(*1*) or (a)(1)(iv)(A)(*2*) of this section shall be done within the 6 months immediately prior to resuming independent interpretation.

(B) Interpreting physicians who fail to meet the continuing education requirements of paragraph (a)(1)(ii)(B) of this section shall obtain a sufficient number of additional category I continuing medical education credits in mammography to bring their total up to the required 15 credits in the previous 36 months before resuming independent interpretation.

(2) Radiologic technologists. All mammographic examinations shall be performed by radiologic technologists who meet the following general requirements, mammography requirements, and continuing education and experience requirements:

(i) General requirements. (A) Be licensed to perform general radiographic procedures in a State; or

(B) Have general certification from one of the bodies determined by FDA to have procedures and requirements adequate to ensure that radiologic technologists certified by the body are competent to perform radiologic examinations; and

(ii) Mammography requirements. Have, prior to April 28, 1999 qualified as a radiologic technologist under paragraph (a)(2) of this section or completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not necessarily be limited to:

(A) Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, imaging of patients with breast implants;

(B) The performance of a minimum of 25 examinations under the direct supervision of an individual qualified under paragraph (a)(2) of this section; and

(C) At least 8 hours of training in each mammography modality to be used by the technologist in performing mammography exams; and

(iii) Continuing education requirements. (A) Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section were completed, the radiologic technologist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period.

(B) Units earned through teaching a specific course can be counted only once towards the 15 required in paragraph (a)(2)(iii)(A) of this section, even if the course is taught multiple times during the previous 36 months.

(C) At least six of the continuing education units required in paragraph (a)(2)(iii)(A) of this section shall be related to each mammographic modality used by the technologist.

(D) Requalification. Radiologic technologists who fail to meet the continuing education requirements of paragraph (a)(2)(iii)(A) of this section shall obtain a sufficient number of

continuing education units in mammography to bring their total up to at least 15 in the previous 3 years, at least 6 of which shall be related to each modality used by the technologist in mammography. The technologist may not resume performing unsupervised mammography examinations until the continuing education requirements are completed.

(E) Before a radiologic technologist may begin independently performing mammographic examinations using a mammographic modality other than one of those for which the technologist received training under paragraph (a)(2)(ii)(C) of this section, the technologist shall have at least 8 hours of continuing education units in the new modality.

(iv) Continuing experience requirements. (A) Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section were completed or of October 28, 1997 whichever is later, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter or any date in between the two. The facility will choose one of these dates to determine the 24-month period.

(B) Requalification. Radiologic technologists who fail to meet the continuing experience requirements of paragraph (a)(2)(iv)(A) of this section shall perform a minimum of 25 mammography examinations under the direct supervision of a qualified radiologic technologist, before resuming the performance of unsupervised mammography examinations.

(3) *Medical physicists.* All medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under paragraph (e) of this section shall meet the following:

(i) Initial qualifications. (A) Be State licensed or approved or have certification in an appropriate specialty area by one of the bodies determined by FDA to have procedures and requirements to ensure that medical physicists certified by the body are competent to perform physics survey; and

(B)(*1*) Have a masters degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or equivalent (e.g., 30 quarter hours) of college undergraduate or graduate level physics;

(*2*) Have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(*3*) Have the experience of conducting surveys of at least 1 mammography facility and a total of at least 10 mammography units. No more than one survey of a specific unit within a period of 80 days can be counted towards the total mammography unit survey requirement. After April 28, 1999 experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets all the requirements of paragraphs (a)(3)(i) and (a)(3)(iii) of this section; or

(ii) Alternative initial qualifications. (A) Have qualified as a medical physicist under paragraph (a)(3) of this section of FDA's interim regulations and retained that qualification by maintenance of the active status of any licensure, approval, or certification required under the interim regulations; and

(B) Prior to the April 28, 1999 have:

(*1*) A bachelor's degree or higher in a physical science from an accredited institution with no less than 10 semester hours or equivalent of college undergraduate or graduate level physics,

(*2*) Forty contact hours of documented specialized training in conducting surveys of mammography facilities and,

(*3*) Have the experience of conducting surveys of at least 1 mammography facility and a total of at least 20 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. The training and experience requirements must be met after fulfilling the degree requirement.

(iii) Continuing qualifications. (A) Continuing education. Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(3)(i) or (a)(3)(ii) of this section were completed, the medical physicist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility shall choose one of these dates to determine the 36-month period. This continuing education shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during his or her surveys or oversight of quality assurance programs. Units earned through teaching a specific course can be counted only once towards the required 15 units in a 36-month period, even if the course is taught multiple times during the 36 months.

(B) Continuing experience. Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(3)(i) or (a)(3)(ii) of this section were completed or of October 28, 1997 whichever is later, the medical physicist shall have surveyed at least two mammography facilities and a total of at least six mammography units during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter or any date in-between the two. The facility shall choose one of these dates to determine the 24-month period. No more than one survey of a specific facility within a 10-month period on a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

(C) Before a medical physicist may begin independently performing mammographic surveys of a new mammographic modality, that is, a mammographic modality other than one for which the physicist received training to qualify under paragraph (a)(3)(i) or (a)(3)(ii) of this section, the physicist must receive at least 8 hours of training in surveying units of the new mammographic modality.

(iv) Reestablishing qualifications. Medical physicists who fail to maintain the required continuing qualifications of paragraph (a)(3)(iii) of this section may not perform the MQSA surveys without the supervision of a qualified medical physicist. Before independently surveying another facility, medical physicists must reestablish their qualifications, as follows:

(A) Medical physicists who fail to meet the continuing educational requirements of paragraph (a)(3)(iii)(A) of this section shall obtain a sufficient number of continuing education units to bring their total units up to the required 15 in the previous 3 years.

(B) Medical physicists who fail to meet the continuing experience requirement of paragraph (a)(3)(iii)(B) of this section shall complete a sufficient number of surveys under the direct supervision of a medical physicist who meets the qualifications of paragraphs (a)(3)(i) and (a)(3)(iii) of this section to bring their total surveys up to the required two facilities and six units in the previous 24 months. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

(4) *Retention of personnel records.* Facilities shall maintain records to document the qualifications of all personnel who worked at the facility as interpreting physicians, radiologic technologists, or medical physicists. These records must be available for review by the MQSA inspectors. Records of personnel no longer employed by the facility should not be discarded until the next annual inspection has been completed and FDA has determined that the facility is in compliance with the MQSA personnel requirements.

(b) *Equipment.* Regulations published under §§ 1020.30, 1020.31, and 900.12(e) of this chapter that are relevant to equipment performance should also be consulted for a more complete understanding of the equipment performance requirements.

(1) *Prohibited equipment.* Radiographic equipment designed for general purpose or special nonmammography procedures shall not be used for mammography. This prohibition includes systems that have been modified or equipped with special attachments for mammography. This requirement supersedes the implied acceptance of such systems in § 1020.31(*f*)(3) of this chapter.

(2) *General.* All radiographic equipment used for mammography shall be specifically designed for mammography and shall be certified pursuant to § 1010.2 of this chapter as meeting the applicable requirements of §§ 1020.30 and 1020.31 of this chapter in effect at the date of manufacture.

(3) *Motion of tube-image receptor assembly.* (i) The assembly shall be capable of being fixed in any position where it is designed to operate. Once fixed in any such position, it shall not undergo unintended motion.

(ii) The mechanism ensuring compliance with paragraph (b)(3)(i) of this section shall not fail in the event of power interruption.

(4) *Image receptor sizes.* (i) Systems using screen-film image receptors shall provide, at a minimum, for operation with image receptors of 18 x 24 centimeters (cm) and 24 x 30 cm.

(ii) Systems using screen-film image receptors shall be equipped with moving grids matched to all image receptor sizes provided.

(iii) Systems used for magnification procedures shall be capable of operation with the grid removed from between the source and image receptor.

(5) *Beam limitation and light fields.* (i) All systems shall have beam-limiting devices that allow the useful beam to extend to or beyond the chest wall edge of the image receptor.

(ii) For any mammography system with a light beam that passes through the X-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

(6) *Magnification.* (i) Systems used to perform noninterventional problem solving procedures shall have radiographic magnification capability available for use by the operator.

(ii) Systems used for magnification procedures shall provide, at a minimum, at least one magnification valve within the range of 1.4 to 2.0.

(7) *Focal spot selection.* (i) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(ii) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(iii) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material and/or focal spot actually used during the exposure.

(8) *Compression.* All mammography systems shall incorporate a compression device.

(i) Application of compression. Effective October 28, 1999 each system shall provide:

(A) An initial power-driven compression activated by hands-free controls operable from both sides of the patient; and

(B) Fine adjustment compression controls operable from both sides of the patient.

(ii) Compression paddle. (A) Systems shall be equipped with different sized compression paddles that match the sizes of all full-field image receptors provided for the system. Compression paddles for special purposes, including those smaller than the full size of the image receptor (for "spot compression") may be provided. Such compression paddles for special purposes are not subject to the requirements of paragraphs (b)(8)(ii)(D) and (b)(8)(ii)(E) of this section.

(B) Except as provided in paragraph (b)(8)(ii)(C) of this section, the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(C) Equipment intended by the manufacturer's design to not be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(D) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor.

(E) The chest wall edge may be bent upward to allow for patient comfort but shall not appear on the image.

(9) *Technique factor selection and display.* (i) Manual selection of milliampere seconds (mAs) or at least one of its component parts (milliapere (mA) and/or time) shall be available.

(ii) The technique factors (peak tube potential in kilovolt (kV) and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs) to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls (AEC) are used, in which case the technique factors that are set prior to the exposure shall be indicated.

(iii) Following AEC mode use, the system shall indicate the actual kilovoltage peak (kVp) and mAs used during the exposure. The mAs may be displayed as mA and time.

(10) *Automatic exposure control.* (i) Each screen-film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, nongrid; magnification, nonmagnification; and various target-filter combinations.

(ii) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.

(A) The size and available positions of the detector shall be clearly indicated at the X-ray input surface of the breast compression paddle.

(B) The selected position of the detector shall be clearly indicated.

(iii) The system shall provide means for the operator to vary the selected optical density from the normal (zero) setting.

(11) *X-ray film.* The facility shall use X-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(12) *Intensifying screens.* The facility shall use intensifying screens for mammography that have been designated by the screen manufacturer as appropriate for mammography and shall use film that is matched to the screen's spectral output as specified by the manufacturer.

(13) *Film processing solutions.* For processing mammography films, the facility shall use chemical solutions that

are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(14) *Lighting.* The facility shall make special lights for film illumination, i.e., hot-lights, capable of producing light levels greater than that provided by the view box, available to the interpreting physicians.

(15) *Film masking devices.* Facilities shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.

(c) *Medical records and mammography reports*—(1) *Contents and terminology.* Each facility shall prepare a written report of the results of each mammography examination performed under its certificate. The mammography report shall include the following information:

(i) The name of the patient and an additional patient identifier;

(ii) Date of examination;

(iii) The name of the interpreting physician who interpreted the mammogram;

(iv) Overall final assessment of findings, classified in one of the following categories:

(A) "Negative:" Nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained);

(B) "Benign:" Also a negative assessment;

(C) "Probably Benign:" Finding(s) has a high probability of being benign;

(D) "Suspicious:" Finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;

(E) "Highly suggestive of malignancy:" Finding(s) has a high probability of being malignant;

(v) In cases where no final assessment category can be assigned due to incomplete work-up, "Incomplete: Need additional imaging evaluation" shall be assigned as an assessment and reasons why no assessment can be made shall be stated by the interpreting physician; and

(vi) Recommendations made to the health care provider about what additional actions, if any, should be taken. All clinical questions raised by the referring health care provider shall be addressed in the report to the extent possible, even if the assessment is negative or benign.

(2) *Communication of mammography results to the patient.* Each facility shall maintain a system to ensure that the results of each mammographic examination are communicated to the patient in a timely manner. If assessments are "Suspicious" or "Highly suggestive of malignancy" and the patient has not named a health care provider, the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) As soon as possible, but no later than 30 days from the date of the mammography examination, patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section, in addition to a written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a primary care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

(3) *Communication of mammography results to health care providers.* When the patient has a referring health care provider or the patient has named a health care provider, the facility shall:

(i) Provide a written report of the mammography examination, including the items listed in paragraph (c)(1) of this section, to that health care provider as soon as possible, but no later than 30 days from the date of the mammography examination; and

(ii) If the assessment is "Suspicious" or "Highly suggestive of malignancy," make reasonable attempts to communicate with the health care provider as soon as possible, or if the health care provider is unavailable, to a responsible designee of the health care provider.

(4) *Recordkeeping.* Each facility that performs mammograms:

(i) Shall (except as provided in paragraph (c)(3)(ii) of this section) maintain mammography films and reports in a permanent medical record of the patient for a period of not less than 5 years, or not less than 10 years if no additional mammograms of the patient are performed at the facility, or a longer period if mandated by State or local law; and

(ii) Shall upon request or on behalf of, by the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, or to a physician or health care provider of the patient, or to the patient directly;

(iii) Any fee charged to the patients for providing the services in paragraph (c)(4)(ii) of this section shall not exceed the documented costs associated with this service.

(5) *Mammographic image identification.* Each mammographic image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(i) Name of patient and an additional patient identifier.

(ii) Date of examination.

(iii) View and laterality. This information shall be placed on the image in a position near the axilla. Standardized codes specified by the accreditation body and approved by FDA in accordance with § 900.3(b) or § 900.4(a)(8) shall be used to identify view and laterality.

(iv) Facility name and location. At a minimum, the location shall include the city, State, and zip code of the facility.

(v) Technologist identification.

(vi) Cassette/screen identification.

(vii) Mammography unit identification, if there is more than one unit in the facility.

(d) *Quality assurance—general.* Each facility shall establish and maintain a quality assurance program to ensure the safety, reliability, clarity, and accuracy of mammography services performed at the facility.

(1) *Responsible individuals.* Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.

(i) Lead interpreting physician. The facility shall identify a lead interpreting physician who shall have the general responsibility of ensuring that the quality assurance program meets all requirements of paragraphs (d) through (f) of this section. No other individual shall be assigned or shall retain responsibility for quality assurance tasks unless the lead interpreting physician has determined that the individual's qualifications for, and performance of, the assignment are adequate.

(ii) Interpreting physicians. All interpreting physicians interpreting mammograms for the facility shall:

(A) Follow the facility procedures for corrective action when the images they are asked to interpret are of poor quality, and

(B) Participate in the facility's medical outcomes audit program.

(iii) Medical physicist. Each facility shall have the services of a medical physicist available to survey mammography equipment and oversee the equipment-related quality assurance practices of the facility. At a minimum, the medical physicist(s) shall be responsible for performing the surveys and mammography equipment evaluations and providing the facility with the reports described in paragraphs (e)(9) and (e)(10) of this section.

(iv) Quality control technologist. Responsibility for all individual tasks within the quality assurance program not assigned to the lead interpreting physician or the medical physicist shall be assigned to a quality control technologist(s). The tasks are to be performed by the quality control technologist or by other personnel qualified to perform the tasks. When other personnel are utilized for these tasks, the quality control technologist shall ensure that the tasks are completed in such a way as to meet the requirements of paragraph (e) of this section.

(2) *Quality assurance records.* The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, quality control (including monitoring data, problems detected by analysis of that data, corrective actions, and the effectiveness of the corrective actions), safety, and protection are properly maintained and updated. These quality control records shall be kept for each test specified in paragraphs (e) and (f) of this section until the next annual inspection has been completed and FDA has determined that the facility is in compliance with the quality assurance requirements or until the test has been performed two additional times at the required frequency, whichever is longer.

(e) *Quality assurance—equipment*—(1) *Daily quality control tests.* Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be performed on each day that examinations are performed before any clinical films are processed that day. The test shall include an assessment of base plus fog density, mid-density, and density difference, using the mammography film used clinically at the facility.

(i) The base plus fog density shall be within + 0.03 of the established operating level.

(ii) The mid-density shall be within + 0.15 of the established operating level.

(iii) The density difference shall be within + 0.15 of the established operating level.

(2) *Weekly quality control tests.* Facilities with screen-film systems shall perform an image quality evaluation test, using an FDA-approved phantom, at least weekly.

(i) The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition.

(ii) The optical density of the film at the center of the phantom image shall not change by more than + 0.20 from the established operating level.

(iii) The phantom image shall achieve at least the minimum score established by the accreditation body and accepted by FDA in accordance with § 900.3(d) or § 900.4(a)(8).

(iv) The density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than ± 0.05 from the established operating level.

(3) *Quarterly quality control tests.* Facilities with screen-film systems shall perform the following quality control tests at least quarterly:

(i) Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square cm.

(ii) Repeat analysis. If the total repeat or reject rate changes from the previously determined rate by more than 2.0 percent of the total films included in the analysis, the reason(s) for the change shall be determined. Any corrective actions shall be recorded and the results of these corrective actions shall be assessed.

(4) *Semiannual quality control tests.* Facilities with screen-film systems shall perform the following quality control tests at least semiannually:

(i) Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for 2 minutes while such film is placed on the counter top emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.

(ii) Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. All cassettes used in the facility for mammography shall be tested.

(iii) Compression device performance. (A) A compression force of at least 111 newtons (25 pounds) shall be provided.

(B) Effective October 28, 1999 the maximum compression force for the initial power drive shall be between 111 newtons (25 pounds) and 209 newtons (47 pounds).

(5) Annual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least annually:

(i) Automatic exposure control performance. (A) The AEC shall be capable of maintaining film optical density within ± 0.30 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility. If this requirement cannot be met, a technique chart shall be developed showing appropriate techniques (kVp and density control settings) for different breast thicknesses and compositions that must be used so that optical densities within ± 0.30 of the average under phototimed conditions can be produced.

(B) After October 28, 1999 the AEC shall be capable of maintaining film optical density (OD) within ± 0.15 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility.

(C) The optical density of the film in the center of the phantom image shall not be less than 1.20.

(ii) Kilovoltage peak (kVp) accuracy and reproducibility. (A) The kVp shall be accurate within + 5 percent of the indicated or selected kVp at:

(*1*) The lowest clinical kVp that can be measured by a kVp test device;

(*2*) The most commonly used clinical kVp;

(*3*) The highest available clinical kVp, and

(B) At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.

(iii) Focal spot condition. Until October 28, 1999 focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. After October 28, 1999 facilities shall evaluate focal spot condition only by determining the system resolution.

(A) System Resolution. (*1*) Each X-ray system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 Cycles/millimeters (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(*2*) The bar pattern shall be placed 4.5 cm above the breast support surface, centered with respect to the chest wall

edge of the image receptor, and with the edge of the pattern within 1 cm of the chest wall edge of the image receptor.

(3) When more than one target material is provided, the measurement in paragraph (e)(5)(iii)(A) of this section shall be made using the appropriate focal spot for each target material.

(4) When more than one SID is provided, the test shall be performed at SID most commonly used clinically.

(5) Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.

(B) Focal spot dimensions. Measured values of the focal spot length (dimension parallel to the anode cathode axis) and width (dimension perpendicular to the anode cathode axis) shall be within the tolerance limits specified in Table 1.

TABLE 1

Focal Spot Tolerance Limit

Nominal Focal Spot Size (mm)	Maximum Measured Dimensions	
	Width(mm)	Length(mm)
0.10	0.15	0.15
0.15	0.23	0.23
0.20	0.30	0.30
0.30	0.45	0.65
0.40	0.60	0.85
0.60	0.90	1.30

(iv) Beam quality and half-value layer (HVL). The HVL shall meet the specifications of § 1020.30(m)(1) of this chapter for the minimum HVL. These values, extrapolated to the mammographic range, are shown in Table 2. Values not shown in Table 2 may be determined by linear interpolation or extrapolation.

TABLE 2

X-ray Tube Voltage (kilovolt peak) and Minimum HVL

Designed Operating Range (kV)	Measured Operating Voltage (kV)	Minimum HVL (millimeters of aluminum)
Below 50	20	0.20
	25	0.25
	30	0.30

(v) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

(vi) Dosimetry. The average glandular dose delivered during a single cranio-caudal view of an FDA-accepted phantom simulating a standard breast shall not exceed 3.0 milligray (mGy) (0.3 rad) per exposure. The dose shall be determined with technique factors and conditions used clinically for a standard breast.

(vii) X-ray field/light field/image receptor/compression paddle alignment. (A) All systems shall have beam-limiting devices that allow the useful X-ray beam to extend to or beyond the edges of the image receptor but by no more than 2 percent of the SID at the chest wall side.

(B) If a light field that passes through the X-ray beam limitation device is provided, it shall be aligned with the X-ray field so that the total of any misalignment of the edges of the light field and the X-ray field along either the length or the width of the visually defined field at the plane of the breast support surface shall not exceed 2 percent of the SID.

(C) The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than one percent of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

(viii) Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.

(ix) System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.

(x) Radiation output. (A) The system shall be capable of producing a minimum output of 4.5 mGy air kerma per second (513 milli Roentgen (mR) per second) when operating at 28 kVp in the standard mammography (moly/moly) mode at any SID where the system is designed to operate and when measured by a detector with its center located 4.5 cm above the breast support surface with the compression paddle in place between the source and the detector. After October 28, 1999 the system, under the same measuring conditions shall be capable of producing a minimum output of 7.0 mGy air kerma per second (800 mR per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate.

(B) The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.

(xi) Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides:

(A) An override capability to allow maintenance of compression;

(B) A continuous display of the override status; and

(C) A manual emergency compression release that can be activated in the event of power or automatic release failure.

(6) *Quality control tests—other modalities.* For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in paragraph (e)(5)(vi) of this section.

(7) *Mobile Units.* The facility shall verify that mammography units used to produce mammograms at more than one location meet the requirements in paragraphs (e)(1) through (e)(6) of this section. In addition, at each examination location, before any examinations are conducted, the facility shall verify satisfactory performance of such units using a test method that establishes the adequacy of the image quality produced by the unit.

(8) *Use of test results.* (i) After completion of the tests specified in paragraphs (e)(1) through (e)(7) of this section, the facility shall compare the test results to the corresponding specified action limits; or, for nonscreen-film modalities, to the manufacturer's recommended action limits; or, for post-move, preexamination testing of mobile units, to the limits established in the test method used by the facility.

(ii) If the test results fall outside of the action limits, the source of the problem shall be identified and corrective actions shall be taken:

(A) Before any further examinations are performed or any films are processed using the component of the mammography system that failed the test, if the failed test was that described in paragraphs (e)(1), (e)(2), (e)(4)(ii), (e)(4)(iii), (e)(5)(i), (e)(5)(iii), (e)(5)(v), (e)(5)(vi), (e)(6), or (e)(7) of this section;

(B) Within 30 days of the test date for all other tests described in paragraph (e) of this section.

(9) *Surveys.* (i) At least once a year, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist. At a minimum, this survey shall include the performance of tests to ensure that the facility meets the quality assurance requirements of the annual tests described in paragraphs (e)(5) and (e)(6) of this section and the weekly phantom image quality test described in paragraph (e)(2) of this section.

(ii) The results of all tests conducted by the facility in accordance with paragraphs (e)(1) through (e)(7) of this section, as well as written documentation of any corrective actions taken and their results, shall be evaluated for adequacy by the medical physicist performing the survey.

(iii) The medical physicist shall prepare a survey report that includes a summary of this review and recommendations for necessary improvements.

(iv) The survey report shall be sent to the facility within 30 days of the date of the survey.

(v) The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey report.

(10) *Mammography equipment evaluations.* Additional evaluations of mammography units or image processors shall be conducted whenever a new unit or processor is installed, a unit or processor is dissembled and reassembled at the same or a new location, or major components of a mammography unit or processor equipment are changed or repaired. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in paragraphs (b) and (e) of this section. All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing. The mammography equipment evaluation shall be performed by a medical physicist or by an individual under the direct supervision of a medical physicist.

(11) *Facility cleanliness.* (i) The facility shall establish and implement adequate protocols for maintaining darkroom, screen, and view box cleanliness.

(ii) The facility shall document that all cleaning procedures are performed at the frequencies specified in the protocols.

(12) *Calibration of air kerma measuring instruments.* Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography unit shall be calibrated at least once every 2 years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of + 6 percent (95 percent confidence level) in the mammography energy range.

(13) *Infection control.* Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

(i) Comply with all applicable Federal, State, and local regulations pertaining to infection control; and

(ii) Comply with the manufacturer's recommended procedures for the cleaning and disinfection of the mammography equipment used in the facility; or

(iii) If adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

(f) *Quality assurance-mammography medical outcomes audit.* Each facility shall establish and maintain a mammography medical outcomes audit program to followup positive mammographic assessments and to correlate pathology results with the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) *General requirements.* Each facility shall establish a system to collect and review outcome data for all mammograms performed, including followup on the disposition of all positive mammograms and correlation of pathology results with the interpreting physician's mammography report. Analysis of these outcome data shall be made individually and collectively for all interpreting physicians at the facility. In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate followup on surgical and/or pathology results and review of the

mammograms taken prior to the diagnosis of a malignancy.

(2) *Frequency of audit analysis.* The facility's first audit analysis shall be initiated no later than 12 months after the date the facility becomes certified, or 12 months after April 28, 1999 whichever date is the latest. This audit analysis shall be completed within an additional 12 months to permit completion of diagnostic procedures and data collection. Subsequent audit analyses will be conducted at least once every 12 months.

(3) *Reviewing interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results, notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the reviewing interpreting physician shall also be responsible for documenting the nature of the followup.

(g) *Mammographic procedure and techniques for mammography of patients with breast implants.* (1) Each facility shall have a procedure to inquire whether or not the patient has breast implants prior to the actual mammographic exam.

(2) Except where contraindicated, or unless modified by a physician's directions, patients with breast implants undergoing mammography shall have mammographic views to maximize the visualization of breast tissue.

(h) *Consumer compliant mechanism.* Each facility shall:

(1) Establish a written and documented system for collecting and resolving consumer complaints;

(2) Maintain a record of each serious complaint received by the facility for at least 3 years from the date the complaint was received;

(3) Provide the consumer with adequate directions for filing serious complaints with the facility's accreditation body if the facility is unable to resolve a serious complaint to the consumer's satisfaction;

(4) Report unresolved serious complaints to the accreditation body in a manner and timeframe specified by the accreditation body.

(i) *Clinical image quality.* Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(j) *Additional mammography review and patient notification.* (1) If FDA believes that mammography quality at a facility has been compromised and may present a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by FDA, for review by the accreditation body or other entity designated by FDA. This additional mammography review will help the agency to determine whether the facility is in compliance with this section and, if not, whether there is a need to notify affected patients, their physicians, or the public that the reliability, clarity, and accuracy of interpretation of mammograms has been compromised.

(2) If FDA determines that any activity related to the provision of mammography at a facility may present a serious risk to human health such that patient notification is necessary, the facility shall notify patients or their designees, their physicians, or the public of action that may be taken to minimize the effects of the risk. Such notification shall occur within a timeframe and in a manner specified by FDA.

§ 900.13 Revocation of accreditation and revocation ofaccreditation body approval.

(a) *FDA action following revocation of accreditation.* If a facility's accreditation is revoked by an accreditation body, the agency may conduct an investigation into the reasons for the revocation. Following such investigation, the agency may determine that the facility's certificate shall no longer be in effect or the agency may take whatever other action or combination of actions will best protect the public health, including the establishment and implementation of a corrective plan of action that will permit the certificate to continue in effect while the facility seeks reaccreditation. A facility whose certificate is no longer in effect because it has lost its accreditation may not practice mammography.

(b) *Withdrawal of FDA approval of an accreditation body.* (1) If FDA withdraws approval of an accreditation body under § 900.6, the certificates of facilities previously accredited by such body shall remain in effect for up to 1 year from the date of the withdrawal of approval, unless FDA determines, in order to protect human health or because the accreditation body fraudulently accredited facilities, that the certificates of some or all of the facilities should be revoked or suspended or that a shorter time period should be established for the certificates to remain in effect.

(2) After 1 year from the date of withdrawal of approval of an accreditation body, or within any shorter period of time established by the agency, the affected facilities must obtain accreditation from another accreditation body, or from another entity designated by FDA.

§ 900.14 Suspension or revocation of certificates.

(a) Except as provided in paragraph (b) of this section, FDA may suspend or revoke a certificate if FDA finds, after providing the owner or operator of the facility with notice and opportunity for an informal hearing in accordance with part 16 of this chapter, that the owner, operator, or any employee of the facility:

(1) Has been guilty of misrepresentation in obtaining the certificate;

(2) Has failed to comply with the standards of § 900.12;

(3) Has failed to comply with reasonable requests of the agency or the accreditation body for records, information, reports, or materials that FDA believes are necessary to determine the continued eligibility of the facility for a certificate or continued compliance with the standards of § 900.12;

(4) Has refused a reasonable request of a duly designated FDA inspector, State inspector, or accreditation body representative for permission to inspect the facility or the operations and pertinent records of the facility;

(5) Has violated or aided and abetted in the violation of any provision of or regulation promulgated pursuant to 42 U.S.C. 263b; or

(6) Has failed to comply with prior sanctions imposed by the agency under 42 U.S.C. 263b(h).

(b) FDA may suspend the certificate of a facility before holding a hearing if FDA makes a finding described in paragraph (a) of this section and also determines that:

(1) The failure to comply with required standards presents a serious risk to human health;

(2) The refusal to permit inspection makes immediate suspension necessary; or

(3) There is reason to believe that the violation or aiding and abetting of the violation was intentional or associated with fraud.

(c) If FDA suspends a certificate in accordance with paragraph (b) of this section:

(1) The agency shall provide the facility with an opportunity for an informal hearing under part 16 of this chapter not later than 60 days from the effective date of this suspension;

(2) The suspension shall remain in effect until the agency determines that:

(i) Allegations of violations or misconduct were not substantiated;

(ii) Violations of required standards have been corrected to the agency's satisfaction; or

(iii) The facility's certificate is revoked in accordance with paragraph (d) of this section;

(d) After providing a hearing in accordance with paragraph (c)(1) of this section, the agency may revoke the facility's certificate if the agency determines that the facility:

(1) Is unwilling or unable to correct violations that were the basis for suspension; or

(2) Has engaged in fraudulent activity to obtain or continue certification.

§ 900.15 Appeals of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(a) The appeals procedures described in this section are available only for adverse accreditation or reaccreditation decisions that preclude certification or recertification by FDA. Agency decisions to suspend or revoke certificates that are already in effect will be handled in accordance with § 900.14.

(b) Upon learning that a facility has failed to become accredited or reaccredited, FDA will notify the facility that the agency is unable to certify that facility without proof of accreditation.

(c) A facility that has been denied accreditation or reaccreditation is entitled to an appeals process from the accreditation body, in accordance with § 900.7. A facility must avail itself of the accreditation body's appeal process before requesting reconsideration from FDA.

(d) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeal process is entitled to further appeal in accordance with procedures set forth in this section and in regulations published in 42 CFR part 498.

(1) References to the Health Care Financing Administration (HCFA) in 42 CFR part 498 should be read as the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiological Health, Food and Drug Administration.

(2) References to the Appeals Council of the Social Security Administration in 42 CFR part 498 should be read as references to the Departmental Appeals Board.

(3) In accordance with the procedures set forth in subpart B of 42 CFR part 498, a facility that has been denied accreditation following appeal to the accreditation body may request reconsideration of that adverse decision from DMQRP.

(i) A facility must request reconsideration by DMQRP within 60 days of the accreditation body's adverse appeals decision, at the following address: Division of Mammography Quality and Radiation Programs (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, Attn: Facility Accreditation Review Committee.

(ii) The request for reconsideration shall include three copies of the following records:

(A) The accreditation body's original denial of accreditation.

(B) All information the facility submitted to the accreditation body as part of the appeals process;

(C) A copy of the accreditation body's adverse appeals decision; and

(D) A statement of the basis for the facility's disagreement with the accreditation body's decision.

(iii) DMQRP will conduct its reconsideration in accordance with the procedures set forth in subpart B of 42 CFR part 498.

(4) A facility that is dissatisfied with DMQRP's decision following reconsideration is entitled to a formal hearing in accordance with procedures set forth in subpart D of 42 CFR part 498.

(5) Either the facility or FDA may request review of the hearing officer's decision. Such review will be conducted by the Departmental Appeals Board in accordance with subpart E of 42 CFR part 498.

(6) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

§ 900.16 Appeals of denials of certification.

(a) The appeals procedures described in this section are available only to facilities that are denied certification by FDA after they have been accredited by an approved accreditation body. Appeals for facilities that have failed to become accredited are governed by the procedures set forth in § 900.15.

(b) FDA may deny the application if the agency has reason to believe that:

(1) The facility will not be operated in accordance with standards established under § 900.12;

(2) The facility will not permit inspections or provide access to records or information in a timely fashion; or

(3) The facility has been guilty of misrepresentation in obtaining the accreditation.

(c)(1) If FDA denies an application for certification by a faciity that has received accreditation from an approved accreditation body, FDA shall provide the facility with a statement of the grounds on which the denial is based.

(2) A facility that has been denied accreditation may request reconsideration and appeal of FDA's determination in accordance with the applicable provisions of § 900.15(d).

§ 900.17 [Reserved]

§ 900.18 Alternative requirements for § 900.12 quality standards.

(a) *Criteria for approval of alternative standards.* Upon application by a qualified party as defined in paragraph (b) of this section, FDA may approve an alternative to a quality standard under § 900.12, when the agency determines that:

(1) The proposed alternative standard will be at least as effective in assuing quality mammography as the standard it proposes to replace, and

(2) The proposed alternative:

(i) Is too limited in its applicability to justify an amendment to the standard; or

(ii) Offers an expected benefit to human health that is so great that the time required for amending the standard would present an unjustifiable risk to the human health; and

(3) The granting of the alternative is in keeping with the purposes of 42 U.S.C. 263b.

(b) *Applicants for alternatives.* (1) Mammography facilities and accreditation bodies may apply for alternatives to the quality standards of § 900.12.

(2) Federal agencies and State governments that are not accreditation bodies may apply for alternatives to the standards of § 900.12(a).

(3) Manufacturers and assemblers of equipment used for mammography may apply for alternatives to the standards of § 900.12(b) and (e).

(c) *Applications for approval of an alternative standard.* An application for approval of an alternative standard or for an amendment or extension of the alternative standard shall be submitted in an original and two copies to the Director, Division of Mammography Quality and Radiation Programs (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. The application for approval of an alternative standard shall include the following information:

(1) Identification of the original standard for which the alternative standard is being proposed and an explanation of why the applicant is proposing the alternative;

(2) A description of the manner in which the alternative is proposed to deviate from the original standard;

(3) A description, supported by data, of the advantages to be derived from such deviation;

(4) An explanation, supported by data, of how such a deviation would ensure equal or greater quality of production, processing, or interpretation of mammograms than the original standard;

(5) The suggested period of time that the proposed alternative standard would be in effect; and

(6) Such other information required by the Director to evaluate and act on the application.

(d) *Ruling on applications.* (1) FDA may approve or deny, in whole or in part, a request for approval of an alternative standard or any amendment or extension thereof, and shall inform the applicant in writing of this action. The written notice shall state the manner in which the requested alternative standard differs from the agency standard and a summary of the reasons for approval or denial of the request. If the request is approved, the written notice shall also include the effective date and the termination date of the approval and a summary of the limitations and conditions attached to the approval and any other information that may be relevant to the approved request. Each approved alternative standard shall be assigned an identifying number.

(2) Notice of an approved request for an alternative standard or any amendment or extension thereof shall be placed in the public docket file in the Dockets Management Branch and may also be in the form of a notice published in the **Federal Register**. The notice shall state the name of the applicant, a description of the published agency standard, and a description of the approved alternative standard, including limitations and conditions attached to the approval of the alternative standard.

(3) Summaries of the approval of alternative standards, including information on their nature and number, shall be provided to the National Mammography Quality Assurance Advisory Committee.

(4) All applications for approval of alternative standards and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications shall be available for public disclosure in the Dockets Management Branch, excluding patient identifiers and confidential commercial information.

(e) *Amendment or extension of an alternative standard.* An application for amending or extending approval of an alternative standard shall include the following information:

(1) The approval number and the expiration date of the alternative standard;

(2) The amendment or extension requested and the basis for the amendment or extension; and

(3) An explanation, supported by data, of how such an amendment or extension would ensure equal or greater quality of production, processing, or interpretation of mammograms than the original standard.

(f) *Applicability of the alternative standards.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, any approval of an alternative standard, amendment, or extension may be implemented only by the entity to which it was granted and under the terms under which it was granted. Other entities interested in similar or identical approvals must file their own application following the procedures of paragraph (c) of this section.

(2) When an alternative standard is approved for a manufacturer of equipment, any facility using that equipment will also be covered by the alternative standard.

(3) The agency may extend the alternative standard to other entities when FDA determines that expansion of the approval of the alternative standard would be an effective means of promoting the acceptance of measures to improve the quality of mammography. All such determinations will be publicized by appropriate means.

(g) *Withdrawal of approval of alternative requirements.* FDA shall amend or withdraw approval of an alternative standard whenever the agency determines that this action is necessary to protect the human health or otherwise is justified by § 900.12. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification of the applicant when FDA determines that such action is necessary to prevent an imminent health hazard.

Dated: September 25, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–26351 Filed 10–27–97; 8:45 am]

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federal register

Tuesday
October 28, 1997

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Chapter III, et al.

Retraction of an Announcement Concerning Nonfood Compounds and Proprietary Substances; Final Rule and Sanitation Requirements for Official Meat and Poultry Establishments; Comment Period Reopening; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Safety and Inspection Service

9 CFR Chapter III

[Docket No. 97-062N]

Retraction of an Announcement Concerning Nonfood Compounds and Proprietary Substances

AGENCY: Food and Safety Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing a retraction of an announcement that was mailed to chemical manufacturers and other businesses and posted on the FSIS Internet site. This announcement incorrectly stated that FSIS is discontinuing its policy of approving all nonfood compounds and proprietary substances prior to their use in official meat and poultry establishments. Although FSIS did recently publish a proposal to revise its sanitation regulations, some of which govern the use of certain nonfood compounds, the Agency has not proposed to revise its policy of approving all nonfood compounds or proprietary substances prior to their use in official establishments.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1997, the FSIS Compound and Packaging Review Branch mailed a notice to chemical manufacturers and other businesses announcing a change of address. Included with that notice was a facsimile of the first page of a proposed rule, incorrectly identified as FSIS Docket No. 96–037P, announcing that the Agency was discontinuing its policy of approving all nonfood compounds and proprietary substances prior to their use in official meat and poultry establishments. Around the same time, this facsimile also was posted on the FSIS Internet site. There is, in fact, no such proposed rule.

On August 25, 1997, FSIS published a proposal to convert to performance standards the sanitation requirements for meat and poultry establishments (FSIS Docket No. 96–037P; "Sanitation Requirements for Official Meat and Poultry Establishments"; 62 FR 45045). In this document, FSIS proposed to eliminate the regulations requiring that certain nonfood compounds, such as sanitizers and pesticides, be approved by the Agency prior to their use in official establishments. FSIS did not propose, however, to discontinue its policy of approving all other nonfood compounds or proprietary substances prior to their use in official establishments.

FSIS is currently considering how to proceed in regard to its policy of preapproving nonfood compounds and proprietary substances. In general, prior approval requirements are inconsistent with the Agency's recently finalized HACCP requirements. FSIS will publish in the **Federal Register** a notice explaining any future revisions to its prior approval policy for nonfood compounds and proprietary substances.

FSIS is in the process of directly notifying each business that may have been mailed the inaccurate notice of proposed rulemaking in order to clarify the Agency's current policy in regard to nonfood compounds and proprietary substances. FSIS is publishing this retraction to clarify its policy for other businesses and individuals. Also, in order to address any confusion regarding the published sanitation proposal, FSIS is reopening the comment period for that proposal elsewhere in this issue of the **Federal Register** (FSIS Docket No. 96–037R, "Sanitation Requirements for Official Meat and Poultry Establishments; Comment Period Reopening").

Done in Washington, DC: October 22, 1997.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 97–28429 Filed 10–22–97; 4:50 pm]

BILLING CODE 3410–DM–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303, 308, 381, and 416

[Docket No. 96–037R]

Sanitation Requirements for Official Meat and Poultry Establishments; Comment Period Reopening

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for its proposal to revise the regulatory requirements concerning sanitation in official meat and poultry establishments (FSIS Docket No. 96–037P; "Sanitation Requirements for Official Meat and Poultry Establishments"). The comment period closing date for that proposal will now be Monday, November 10, 1997.

DATES: Comments must be received on or before November 10, 1997.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #96–037P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th St. SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4;30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) is reopening the comment period for its proposal "Sanitation Requirements for Official Meat and Poultry Establishments" (FSIS Docket No. 96–037P; 62 FR 45045, August 25, 1997). Shortly after the comment period for that proposal opened, FSIS released information that mischaracterized the provisions concerning the use of nonfood compounds. In order to alleviate any confusion regarding the sanitation proposal and to clarify FSIS policy in regard to nonfood compounds, FSIS is publishing, elsewhere in this issue of the **Federal Register**, a retraction of the erroneous information (FSIS Docket No. 97–062N, "Retraction of an Announcement Concerning Nonfood Compounds and Proprietary Substances"). In order to ensure that the public has ample opportunity to submit meaningful comments on the proposal to revise the sanitation regulations, FSIS is reopening the comment period for that proposal.

Done in Washington, DC: October 22, 1997.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 97–28428 Filed 10–22–97; 4:50 pm]

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federal register

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, 97, 98, and 130
Importation of Animals and Animal Products; APHIS Policy Regarding Importation of Animals and Animal Products; Final Rule and Notice

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, 97, 98, and 130

[Docket No. 94–106–9]

RIN 0579–AA71

Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing procedures for recognizing regions, rather than only countries, for the purpose of the importation of animals and animal products into the United States. We are also establishing procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status. These changes to the regulations are in accordance with international trade agreements entered into by the United States. We are also allowing, under certain conditions, the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States. This change is warranted because it removes unnecessary restrictions on the transiting of meat and other animal products through the United States, without increasing the likelihood that the meat or other products will introduce diseases of livestock or poultry. Additionally, we are removing the requirement that cattle from Canada be tested for brucellosis before being imported into the United States. This change is warranted because the risk that cattle imported from Canada will be infected with brucellosis is slight. We are also making other minor changes in our requirements for importing animals and animal products that will relieve some import restrictions while continuing to protect U.S. livestock and poultry from foreign animal diseases.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), has promulgated regulations regarding the importation of animals and animal products in order to guard against the introduction into the United States of animal diseases not currently present or prevalent in this country. These regulations are set forth in the Code of Federal Regulations (CFR), title 9, chapter 1.

On April 18, 1996, we published in the **Federal Register** (61 FR 16978–17105, Docket No. 94–106–1) a proposed rule to revise the regulations in six different parts of 9 CFR, chapter I, to establish importation criteria for ruminants and swine, and their products, based on the level of disease risk in specified geographical regions.

We solicited comments concerning our proposal for 90 days ending July 17, 1996. During the comment period, several commenters requested that we extend the period during which we would accept comments. In response to these requests, on July 11, 1996, we published in the **Federal Register** a notice that we would consider comments on the proposed rule for an additional 60 days ending September 16, 1996 (61 FR 36520, Docket No. 94–106–4). During the comment period, we conducted four public hearings at which we accepted oral and written comments from the public. These public hearings were held in Riverdale, MD; Atlanta, GA; Kansas City, MO; and Denver, CO.

We received 113 comments on the proposed rule on or before September 16, 1996. These comments came from representatives of State and foreign governments, international economic and political organizations, veterinary associations, State departments of agriculture, livestock industry associations and other agricultural organizations, importing and exporting associations, members of academia and the research community, brokerage firms, exhibitors, animal welfare organizations, and other members of the public.

Based on our evaluation of the information submitted by commenters, we are making changes to the proposed rule in this final rule. We discuss below the issues raised by commenters and the changes we are making to the rule as proposed.

What We Proposed

Broadly speaking, in the proposed rule, we set forth the following items regarding the importation of ruminants and swine, and their products:

- A list of restricted disease agents, including restricted disease vectors;
- Criteria for identifying regions;
- Criteria for classifying regions as to level of risk for specific disease agents;
- Procedures for applying for risk classification;
- Risk classifications for individual countries and other regions;
- Import conditions applicable to particular commodities from particular regions, based on the risk posed by specific diseases; and
- Changes in terminology throughout the ruminant and swine and ruminant and swine product import regulations to refer to "regions" rather than to countries.

We proposed to classify all countries of the world into one of six categories for each restricted disease agent. The six risk categories ranged from Risk Class RN (negligible risk), to Risk Class R1 (slight risk), Risk Class R2 (low risk), Risk Class R3 (moderate risk), Risk Class R4 (high risk), and Risk Class RU (unknown risk). We used what we termed "qualitative criteria" to assign risk categories—i.e., we examined certain pre-assigned criteria to determine what level of risk the importation of ruminants, swine, or their products from a particular region would present for a particular disease if no restrictions were placed on the importations. We also proposed, as an alternative to qualitative risk assessment, to allow potential exporting regions to demonstrate by means of a "quantitative" risk assessment that they should be assigned to a particular risk category because of a demonstrated quantitative risk of disease introduction due to unrestricted importation from that region.

Once we proposed to classify all countries of the world for each restricted disease agent (although the proposal allowed for regional status, in all cases but one we classified only countries, pending future requests for specific regions), we set forth the conditions each region assigned to a particular risk category would have to meet in order to import ruminants, swine, or their products into the United States. Under our proposal, all regions assigned to the same risk category for a particular disease and commodity would have been subject to the same import conditions.

Public Involvement in the Rulemaking Process

A number of commenters requested that we extend the comment period during which comments would be accepted on the proposed rule. As noted above, we extended the initial 90-day comment period by 60 days to accommodate commenter requests. In addition, we accepted public comment at four public hearings held in different areas of the United States. Therefore, we believe the public was given adequate time to comment on the proposed rule.

Some commenters recommended that the proposed rule be withdrawn, and a revised proposal be published following review and revision in consultation with groups outside the Animal and Plant Health Inspection Service (APHIS). Other commenters requested that APHIS hold meetings to explain the science that went into the proposal's development. Several commenter's recommended that the regulations provide for an open public hearing process to allow U.S. producers the opportunity to evaluate how APHIS will determine risk levels and the status of foreign animal health programs. One commenter recommended that APHIS take into account evaluations conducted by other countries, the International Office of Epizootics (OIE), and the European Union (EU). We believe that each of these requests for more public involvement in the process of regionalization and risk assessment is addressed by the changes we are making to the final rule, and by the policy we intend to follow regarding requests for regionalization. We discuss these rule changes and policy in this SUPPLEMENTARY INFORMATION below, under the heading "APHIS Response to General Concerns." General Concerns with APHIS' Proposed Approach to Regionalization and Risk Assessment

Although the proposal generated significant support from the public for the concepts of regionalization and levels of risk, a number of commenters expressed concern with the approach we proposed to take to implement those concepts.

The commenters who objected to our proposed approach focused on two broad areas: (1) The criteria, procedures, and risk classifications we proposed in assigning regions to one of the six risk categories; and (2) the conditions regions would have to meet, based on their risk classification, in order to export specific commodities. We discuss below first the broad objections to our proposed method of classifying regions, then the broad objections to the system of conditions that we proposed to apply to importations.

Concerns Regarding Risk Classification Approach

A number of commenters stated that the proposed rule would not be "transparent" to U.S. producers and to our trading partners, and that its complexity would cause it to be ineffective. These commenters expressed concern that the proposed six categories of risk would be too many to administer effectively. Some commenters recommended that APHIS simply amend the current import requirements to allow for recognition of regions, without incorporating provisions for classification by risk level.

A number of commenters stated that the use of scientific criteria is not evident in the proposed risk classifications of various countries/regions. Some commenters stated that the proposed regulations lacked transparency as to how evaluations of regions based on the qualitative risk criteria would be done. Other commenters stated that the risk categories did not take into account factors such as mode of transmission, economic consequences, zoonosis, and clustering of infected populations.

Some commenters questioned the validity of using arbitrarily selected prevalence thresholds for assigning risk categories. Some commenters questioned how what they termed "information uncertainty" would be dealt with.

A number of commenters stated that application for recognition of risk classification would demand an exhaustive process. Other commenters expressed concern that outbreaks of disease in restricted areas may not be readily regionalized.

Concerns Regarding Proposed Import Conditions Based on Risk Classifications

Some commenters objected to the specificity of the proposed import conditions, stating that the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS) states that a country must accept the sanitary measures imposed by other members as equivalent measures, even when they differ from those in the importing country, if the exporting member objectively demonstrates to the importing member that its actions provide the health protection required by the importing country. The commenters stated that the proposed import conditions did not adhere to this requirement.

Some commenters expressed concern that what they viewed as the "rigidity" of the proposed provisions would result in unnecessary difficulties in access to the U.S. market for commodities from acceptable exporting regions.

APHIS Response to General Concerns

When we drafted the proposed rule, our overriding goal was to create a mechanism for regionalized, risk-based import requirements, consistent with the obligations of the WTO-SPS Agreement, that would continue to protect livestock in the United States with the level of security provided by the current regulations. The principles of the WTO-SPS Agreement do require that SPS measures be equitably applied, scientifically sound, guided by international standards, transparent, taken in recognition that equal levels of risk mitigation can be achieved by applying differing sanitary measures, risk-assessment based, and applicable on a regional basis. If the principles of the WTO-SPS Agreement are fulfilled without discrimination and unjustified differences, nations may impose those sanitary requirements necessary to protect their livestock, poultry, wildlife, and human populations from disease.

We developed the proposed rule with the multiple aims of providing for regionalization, recognizing gradations of risk, and making it clear that we would impose identical import restrictions on regions with identical risk situations. In order to give potential importers advance notice of the type of import conditions they would face if they intended to import ruminants or swine, or their products, we included in the proposal a tentative risk classification for each country of the world for each restricted disease agent. Where current regulations existed regarding a particular country, commodity, and disease, our general approach was to apply the same import conditions applicable under the current regulations. Where the current regulations were silent on a restricted disease agent, we either assigned a Risk Class RU (unknown risk) classification to the country, or we tentatively assigned the country a risk classification based on the literature and other information available to us. The public was invited to comment on the proposed risk classifications.

There are many possible ways to categorize the varying levels of risk posed by different areas of the world for different diseases. Levels of risk can be described by a minimal number of categories, as under the current regulations (which recognize, generally, countries as "free," "free with restrictions (modified free)," and "not free"), or by an expansive spectrum of levels that recognizes extremely slight differences in risk among areas.

In developing the proposal, we arrived at the proposed number of risk classifications after a review of the continuum of possible risks, from negligible risk to unknown risk. One of the options we considered was proposing fewer than six risk

classifications. The six classifications we did propose represented a series of increasing risk situations, from what we considered to be a negligible risk, to slight risk, low risk, moderate risk, high risk, and unknown risk. It would have been possible to broadly divide the risk categories into "low risk" (to include the proposed classifications of negligible risk, slight risk, and low risk), "high risk" (to include the proposed classifications of moderate risk and high risk), and "unknown risk." However, we rejected a three-category option, for the following reasons. First, under such an option, the "high risk" classification would not differentiate between a region affected with a high prevalence of a disease and a region that is affected with the disease but that has a strong control program and a low prevalence of infection. Grouping the classifications of moderate and high risk together would not have allowed for importations from regions that are at a low-prevalence level and are likely to remain so.

The three proposed risk classifications that could have been broadly grouped under "low risk" are also distinguishable. Of the countries considered "free" of certain diseases under the current regulations, some are subject to additional restrictions because they either supplement their national meat supply with fresh (chilled or frozen) meat from countries affected diseases of concern, share a common border with such countries, or have trading practices less restrictive than what we consider acceptable to prevent the introduction of such animal diseases.

Under the current regulations, APHIS does not recognize a country as free of certain diseases if that country carries out vaccination for those diseases. However, the OIE International Animal Health Code (Code) recognizes a category of "free with vaccination." To achieve equivalency with the OIE Code, we proposed a "free with vaccination" (low risk) classification.

Therefore, we considered it appropriate to propose classifications of regions "free" of specific diseases that ranged, in ascending order of risk, from (1) those where the disease is deemed never to have existed or is deemed to have been eradicated, to (2) those that have had a sufficient period of absence of the disease, but present some risk due to trade or adjacency with affected regions, to (3) those that are recently free of a disease, with some risk of residual infection.

We considered the number of risk categories we proposed to be small enough to be manageable, but broad enough to recognize differences in risk discernible on a practical level.

We continue to believe that the number of risk categories we proposed represent a functional approach to characterizing risk. However, after evaluating the practical implications of the proposed regulations based on information submitted by commenters, we have reassessed the benefits of applying the exact same pre-assigned import conditions to all regions grouped in the same risk classification. We have determined that what is gained by making it clear to a region from the outset what it must do to export a particular commodity to the United States is outweighed by a loss of flexibility in customizing import conditions to the particular situation of each region. Further, based on commenter responses to our tentative proposed classification of regions, we believe our characterization of the risk level of a region and the assigned import conditions can be most appropriately determined after the region itself has submitted sufficient data to APHIS to allow us to conduct an assessment of the risk presented by potential imports from the region.

Therefore, in this document we are not making final the system we proposed that would have applied the same import restrictions to each region assigned to one of six risk categories. Instead, as proposed and in accordance with the trade agreements entered into by the United States, we are amending the current regulations to provide for recognition of regions, rather than only countries, for the purpose of importation of animals and animal products. In § 92.1 of this rule, we provide that a region may consist of any of the following:

- A national entity (country);
- Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);
- Parts of several national entities combined into an area; or
- A group of national entities (countries) combined into a single area.

In a companion document we are publishing in this issue of the **Federal Register** (APHIS Docket No. 94–106–8, "APHIS Policy Regarding Importation of Animals and Animal Products"), we give notice of the policy we will follow in recognizing regions, assessing the risk presented by potential imports from a region, and determining appropriate import conditions. Our policy will be to determine on a case-by-case basis what import conditions will reduce the risk associated with importations from a particular region to a negligible level. Because levels of risk exist upon a continuum, instead of pre-assigning import conditions based on risk classifications, we will, as a policy, use risk categories as benchmarks to assist regions in evaluating where they can expect to fall on a spectrum of risk levels and what general import conditions may apply.

Reformatting of Current Regulations

In this final rule, we are setting forth the procedures for requesting recognition of a region and for requesting that APHIS assess the risk presented by a particular commodity from a recognized region and establish appropriate import conditions. In order to accommodate these procedures in 9 CFR, chapter I, we are moving the provisions of current part 92, "Importation of Certain Animals, Birds, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers," to part 93, and are setting forth the procedures for requesting regionalization and risk assessment in the vacated part 92. The provisions in current part 93 regarding the importation of elephants, hippopotami, rhinoceroses, and tapirs, are redesignated as §§ 93.800 through 93.807.

Procedures for Requesting Recognition of Regions and Risk Assessment

As set forth in § 92.2 of this final rule, we will, in general, process applications for regionalization and risk assessment according to the following procedures.

The official of the national government of any country who has the authority in that country to request such a change may submit a request to the Administrator that all or part of the country be recognized as a region, be included within an adjacent previously recognized region, or be made part of a region larger than the country.

Each request for approval to export a particular type of animal or animal product commodity to the United States from a foreign region must be made to the Administrator, and must include, in English, the following information about the region:

1. The authority, organization, and infrastructure of the veterinary services organization in the region.

2. Disease status—i.e., is the restricted disease agent known to exist in the region? If "yes," at what prevalence? If "no," when was the most recent diagnosis?

3. The status of adjacent regions with respect to the agent.

4. The extent of an active disease control program, if any, if the agent is known to exist in the region.

5. The vaccination status of the region. When was the last vaccination? What is the extent of vaccination if it is currently used, and what vaccine is being used?

6. The degree to which the region is separated from regions of higher risk through physical or other barriers.

7. The extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements.

8. Livestock demographics and marketing practices in the region.

9. The type and extent of disease surveillance in the region—e.g., is it passive and/or active; what is the quantity and quality of sampling and testing?

10. Diagnostic laboratory capabilities.

11. Policies and infrastructure for animal disease control in the region—i.e., emergency response capacity.

The above information will be made available to the public prior to our initiating any rulemaking action on the request.

Once we have received from a potential exporting region the information necessary to conduct a risk assessment, and have evaluated the risk, we will determine under what conditions an importation can be safely allowed. If we believe the importation can be safely allowed, we will propose in the **Federal Register** to allow such importations, and the conditions under which the importations would be allowed, along with a discussion of the basis for our proposal. We will then provide a period of time during which the public may comment on our proposal. During the comment period, the public will have access, both in hard copy and electronically, to the information upon which we based our risk analysis, as well as to our methodology in conducting the analysis. Once we have reviewed all comments received, we will make a final decision about whether and under what conditions the requested importation may be allowed. If our decision is to allow the importation, we will publish the conditions for importation in a final rule in the **Federal Register**.

Recent rulemakings have provided examples of how the regulations may be amended under the provisions of this final rule. On May 9, 1997, we published in the **Federal Register** a final rule (62 FR 25439–25443, Docket No. 94–106–6) to allow, under certain conditions, the importation of fresh (chilled or frozen) pork from the State of Sonora, Mexico. On June 26, 1997, we published in the **Federal Register** a final rule (62 FR 34385–34394, Docket No. 94–106–5), amended for clarification on August 11, 1997 (62 FR 42899–42900, Docket No. 94–106–7), allowing, under specified conditions, the importation of fresh (chilled or frozen) beef from Argentina, where vaccination for foot-and-mouth disease is still carried out. Although that final rule applied to an entire country, it exemplified the opportunity for a foreign region to request of APHIS an assessment of whether specific import conditions can bring the risk of importation of animals or animal products from that region to a negligible level. As noted above, our policy for assessing risk is outlined in a policy statement we are publishing elsewhere in this issue of the **Federal Register**. Additionally, on June 12, 1997, we published in the **Federal Register** a proposal (62 FR 32051–32053, Docket No. 97–002–1) to regionalize Italy by considering all of Italy except the island of Sardinia free of African swine fever.

As stated above, this final rule allows for the recognition of regions with regard to the importation of animals and animal products. As defined in this final rule, a region need not be an entire, single national entity (country), though it can be. Until we receive requests for regionalization on a case-by-case basis under the provisions of this final rule, we will continue to apply the current regulations to the importation of animals and animal products from foreign countries.

Scope of This Final Rule

In response to our proposed rule, several commenters objected to the fact that the proposed provisions applied only to ruminants and swine, and their products. The commenters recommended that the concept of regionalization also be applied to other animals governed by the regulations, including poultry and equine species.

In the Supplementary Information section of our proposed rule, we stated that it was our intent to extend, in the future, the regionalized, risk class approach to the importation of all animals and animal products that are subject to the import regulations in 9 CFR, chapter I. We limited the scope of the proposal to ruminants and swine in the interests of timeliness—i.e., the fact that our proposed approach involved rewriting large parts of 9 CFR part 92 made it advisable to finalize the regionalization changes in several stages. However, the approach we are taking in this final rule involves significantly less rewriting of the current regulations than did the approach set forth in our proposed rule. Because the principles and procedures regarding regionalization and risk assessment that are applicable to the importation of ruminants and swine, and their products, are equally applicable to the importation of other animal species governed by the regulations, we consider it appropriate to extend the principles of regionalization in this final rule to all animals and animal products subject to the import regulations in 9 CFR, chapter I, including poultry, birds, and equines.

Concerns that Regionalization Will Increase the Risk of Disease Introduction

Some commenters expressed general concern that the provisions we proposed for regionalization and levels of risk would increase the risk of animal diseases being introduced into the United States. Other commenters expressed particular concern about the possibility of the introduction into the United States of emerging diseases, such as bovine spongiform encephalopathy (BSE). We are acutely aware of the concern of the U.S. public that livestock in this country continue to be protected from disease introduction. As noted above, until APHIS receives a request for regionalization, the imports into the United States will continue to be governed by the current regulations. When requests for regionalization are received, APHIS will evaluate them on a case-by-case basis, and determine what, if any, import conditions can bring the disease risk presented by the imports to a negligible level. Throughout the process of analyzing any request for regionalization, APHIS will provide the public the opportunity to evaluate the information the region has submitted to APHIS in requesting regionalization. The public will then be given a formal opportunity to comment on the proposed action. No request for regionalization will be made final until APHIS has taken into consideration all comments submitted by the public during the comment period.

Several commenters stated that attention needs to be paid to identifying diseases that do not exist in the United States, but that may put the livestock population at risk. The commenters stated that as major diseases such as foot-and-mouth disease (FMD) or classical swine fever (hog cholera) are confined to limited areas of countries, or are eradicated, it will no longer be possible to rely on import restrictions due to the presence of these diseases to guard against the importation of other diseases of concern. Consequently, said the commenters, it will become increasingly important for APHIS to have the appropriate resources,

diagnostic capabilities, and expertise to determine what other diseases are potential risks. The commenters cited examples of diseases of potential concern. We agree with the commenters and concur that changing disease and trade conditions require a broad view regarding what diseases require regulation. We address this broadened concern in our notice of policy regarding regionalization and risk assessment, set forth elsewhere in this issue of the **Federal Register**.

Several commenters stated that the list of diseases of concern should include all disease subject to a control or eradication program in the United States. We share the commenters' view that import restrictions should be in place to guard against the movement into this country of diseases that currently exist in the United States but that are subject to a domestic control or eradication program. These diseases of concern are addressed by the current regulations and by the policy statement we are publishing elsewhere in this issue of the **Federal Register**.

Some commenters stated that a comprehensive emergency plan should be in place prior to implementation of the revised regulations. Currently, the Secretary of Agriculture has the authority to implement necessary measures to control and eradicate animal disease in this country. APHIS has had in place for a number of years resources and procedures for responding to disease outbreaks on an emergency basis.

One commenter recommended that the regulations specifically state that APHIS has the option to restrict imports because of new or emerging diseases. We do not consider it necessary to include such a statement in the regulations. For years, APHIS has enforced import restrictions on new or emerging diseases, and we will continue to do so.

Some commenters stated that the regulations should contain provisions for relaxing emergency measures when they are no longer warranted. Just as it does under the current regulations when a disease risk has been eliminated, APHIS will take action through rulemaking, subject to public comment, to relieve restrictions that no longer appear warranted.

A number of commenters expressed concern that implementation of the proposed regulations would represent a huge and costly workload for APHIS, and that administrative problems in implementing the proposal would create barriers to trade. The commenters stated that APHIS lacks the budget and infrastructure to administer the proposal in a timely manner consistent with sound animal health intervention and exclusion strategies. Other commenters stated that the provisions of the proposed rule were ill-equipped to deal with developing situations, that it will be difficult for APHIS to maintain current information on countries' importing practices, and that the information regarding risk classification will always be months or years out of date. As an alternative to the "notice-and-comment" procedures currently followed by APHIS under the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), some commenters suggested that all regional disease classifications and decisions be made available electronically, with the CFR merely establishing authority to classify and methods to classify and make changes. According to the commenters, requests for a change in status could be updated by a press release available electronically and comments could be solicited in like manner. Several commenters recommended that the regulations allow the United States to accept on a provisional basis new risk classifications established by other countries, pending U.S. verification.

We believe that a number of the concerns raised by the commenters are addressed by the changes we are making to the proposal in this final rule. As noted above, we will continue to apply the current regulations until we receive requests for regionalization. We are not making final our proposed system of assigning each foreign region to one of six risk classifications. Under this final rule, we will not attempt to assess the risk of importations from a region until the region itself has provided all of the information necessary for conducting such an assessment, although we will take into account any information available to us from other sources.

Because this final rule provides options not available under the current regulations, APHIS recognizes that, especially initially, it will face an increased workload when this rule is made effective. A major impetus to the publication of this final regulation is the U.S. commitment under the North American Free Trade Agreement and the WTO–SPS Agreement. As a signatory of these agreements, the United States has agreed to accept the principle of regionalization and to allow the importation of animals and animal products from regions of low disease prevalence, subject to whatever mitigating measures are necessary to safeguard livestock in the United States.

We are committed to implementing, where appropriate, regionalization in individual cases as quickly as possible once we have received and reviewed sufficient valid data from and about the requesting region, and have conducted a risk assessment of the importation requested. However, because of the potentially broad interest regarding importations of animals and animal products, we consider it necessary to ensure that all members of the public are made aware of potential changes through rulemaking.

Under the APA, APHIS must, in most cases, provide public notice of proposed changes to the regulations through publication of a proposed rule in the **Federal Register**, and provide interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments. Within these requirements, APHIS is examining ways to streamline the review process, including the development of a data-handling mechanism to receive and store information related to animal health and veterinary infrastructure. Additionally, APHIS plans to increase its resources in the area of risk assessment. With regard to electronic notification of proposed rulemaking, APHIS currently notifies the public electronically of various actions taken by the Agency. However, Administrative Procedure Act requirements for notice and comment rulemaking are not fulfilled until the action is published in the **Federal Register**.

Recognition of Equivalency and Foreign Regionalization

One commenter recommended that the regulations allow the Administrator of APHIS to enter into an agreement with a foreign country to recognize the equivalency of that country's rules. We consider the concept of equivalency to be provided for in this rule. It allows the United States, based on information made available to it by its trading partners and other sources, to identify, along with those trading partners, specified risks from a region on a disease-by-disease and commodity-by-commodity basis, and identify mutually agreeable risk management measures to reduce risk to a negligible level. Equivalency exists when countries agree that each others' risk management measures are appropriate and when they identify commodities for which import measures that may not be identical for the same commodity are needed to address the differences in prevalence of restricted agents, geographic or demographic factors, or animal health infrastructure.

It is the responsibility of the exporting region to demonstrate to the importing country that the region meets standards equivalent to the importing country's standards or other acceptable standards. Certainly, in those cases where the United States and some other country have historically developed animal health standards for common diseases, there is no reason to expect that such interaction will not continue.

Among the comments received was the recommendation that the United States should recognize regions that are created and maintained up-to-date by other bodies, such as the European Community (EC). The comment stated that the EC has been divided into many regions for various diseases and, because the areas are constantly achieving results in disease eradication, the areas recognized by the EC as free are constantly expanding. Because of this, the commenters expressed concern that U.S. regulations would quickly become out of date. The commenters recommended that a region be defined as the area recognized by the EC as being free from a particular disease in accordance with accepted criteria, pending U.S. examination of the matter.

As discussed above, our overriding goals in implementing regionalization are to facilitate trade in accordance with international agreements while maintaining the level of biosecurity afforded by the current regulations. We believe the provisions of this final rule, and our policy toward regionalization and risk assessment published in this issue of the **Federal Register**, meet these dual goals. As discussed above, however, APHIS rulemaking must be carried out in accordance with the APA, with an opportunity provided for public comment on changes to the regulations. At present, APHIS is developing a proposal to recognize regions established by the EC with regard to disease status, based on information submitted in a request by the EC.

Some commenters recommended that, to make the regulations more transparent, procedures should be set forth for situations where there are no specific requirements stated. As noted above, the companion policy statement we are publishing in this issue of the **Federal Register** outlines the procedures we intend to take in evaluating requests for regionalization and importation of animals and animal products. As we discussed, we will conduct such evaluations in a transparent manner open to public review and comment.

Several commenters recommended that APHIS review what the commenters referred to as internationally accepted guidelines for regionalization, risk analysis, and risk assessment. The commenters specifically referred to the following documents: (1) Cane, B.G., "The Concept of Regionalization in Establishing Disease-Free Areas," OIE comprehensive reports on technical items presented to the international committee or to regional commissions, 1994; (2) Kellar, J.A., "The Application of Risk Analysis to International Trade in Animals and Animal Products," OIE comprehensive reports on technical items presented to the international committee or to regional commissions, 1992; (3) Morley, R.S., Acree, J., Williams, S., "Animal Import Risk Analysis (AIRA): Harmonizing our Approach," OIE comprehensive reports on technical items presented to the international committee or to regional commissions, 1990–1991; and (4) "OIE International Health Code," Section 1.4, chapters 1.4.1–1.4.5, 1994 updates. In the process of developing the proposed rule, APHIS reviewed all of the sources cited. Wherever possible, concepts from these references were incorporated into the proposal. We have also incorporated concepts from these references into the policy on regionalization and risk assessment we are giving notice of in this issue of the **Federal Register**.

Comments on Information Considered in Assessing Risk

Among the requirements set forth in the proposal for applying for recognition of risk classification for a region was the requirement that the Chief Veterinary Officer of the region submit to APHIS a completed questionnaire relating to the specific disease in question. Several commenters requested that this questionnaire be published in the regulations. Several commenters asked for clarification of how the United States would expect regions to demonstrate freedom from restricted disease agents. One commenter requested that APHIS publish the procedures it will use to communicate with nations so that countries will have the opportunity to document their animal disease situation in order to gain the appropriate classification. As stated above, we are not making final our proposed system of risk classification, but we are setting forth in § 92.1 of the regulations procedures for applying for regionalization, for assessment of the risk presented by imports from a region, and for determination of appropriate import conditions.

Some commenters stated that the proposed rule placed undue emphasis on the influence that neighboring regions have on each other's disease status. According to the commenters, although border controls are often necessary, they are not as important in cases where the epidemiology of disease agents, combined with differing husbandry factors, effectively prevents establishment of a disease in a neighboring region. Although we consider proximity between regions generally of importance with regard to contagious diseases, we agree that in some cases the proximity of one region to another is irrelevant because of varying climatic or other ecological factors. This is true in the United States with a disease such as bluetongue, which has never become established in the northeastern part of the country due to ecological factors, despite a lack of interstate movement controls. Given equivalent factors, however, vector-borne diseases might readily move across regional boundaries in spite of border controls. For this reason, proximity to affected regions must be considered a factor in determining disease risk, and is included in the information we are requesting under this rule in applications for regionalization. Under the approach we have adopted in this final rule and our policy toward regionalization, proximity will be considered as a factor in assessing the risk of disease introduction, but will not be given a predetermined weight in the assessment process.

In related comments, some commenters stated that, because many diseases listed on the OIE "List B" can easily be contained within a herd or flock, the status of a contiguous region is not relevant for many List B diseases in determining the risk class of the region under consideration, particularly when effective border control barriers are in place. As we stated above with regard to the issue of proximity, the status of a contiguous region will be considered as a factor in assessing the risk of disease introduction, but will not be given a predetermined weight in the assessment process. As implied by the commenters, the concern about contiguous regions is not necessarily about the ability of the disease agent itself to be transmitted across the border, but more so about the possibility of undeclared illegal movements of infected animals or products, or the straying of loose animals or carrier wildlife across the border. While effective border controls are a crucial consideration in assessing the risk posed by importations from a region, we do not consider them alone to be a guarantee that the movement of disease from a contiguous region will be eliminated.

One commenter expressed concern about what the commenter considered a lack of specific criteria for how we

would evaluate the veterinary infrastructure in the exporting region. We believe this issue relates to the information, discussed above, that will be required regarding the authority, organization, and infrastructure of the veterinary services in a region. We consider the evaluation of infrastructure in any region to necessarily be somewhat subjective. Until the OIE or some other organization develops an objective measure of infrastructure, we believe the best way to evaluate infrastructure is on a case-by-case basis, by means that, in some cases, will include on-site visits.

Concerns Regarding the Effect of Regionalization on Wildlife

One commenter expressed concern about the potential effect of the proposed risk classification system on wildlife. The commenter was concerned that some countries might contain or eliminate wild animals in order to ensure that there are no pockets of disease that might prevent the countries from attaining a particular risk classification. We consider the commenter's concerns to be addressed in large measure by our decision not to make final the system of establishing a risk classification system based on pre-defined criteria. However, each country must make its own decisions concerning such matters. APHIS will prepare an environmental assessment specific to the region in question prior to promulgating a final rule to create a region.

Comments Addressing Specific Conditions for the Importation of Animals

Some commenters stated that, under the proposed regulations, cases would arise where animals would be required to undergo quarantine simply to eliminate the presence of a bacterial disease. According to the commenters, in these cases, the full quarantine regimen should not be necessary, and the regulations should allow for equivalent alternative mitigating measures. The commenters suggested as possibilities the conduct of additional tests in the country of origin, followed by isolation and testing in the United States. It is not clear to us from the comments whether the commenters are recommending elimination of certain of the quarantine requirements in place under the current regulations. Historically, we have found the post-importation period of quarantine in the United States necessary as a period for observing the imported animals for disease, and we do not consider it advisable to eliminate these requirements at this time.

Several commenters stated that the proposed 15-day importation quarantine period was insufficient to allow for incubation of diseases of concern. It is not clear to us from the comments exactly which proposed importation requirements the commenters are referring to in each case. Under the current regulations, except for cattle from Central America and the West Indies, which may be quarantined for 7 days under certain conditions, and except for cattle and certain other ruminants from Canada and Mexico, all ruminants imported into the United States must be quarantined for not less than 30 days from the date of arrival at the port of entry. Under the current regulations, swine must be quarantined for not less than 15 days from the date of arrival at the port of entry. Based on our experience enforcing the regulations, we consider these quarantine requirements adequate and are retaining them in this final rule.

Several commenters expressed concern that transhipments of animals and animal products through high risk areas could cause contamination of the products or animals. Some commenters stated that developing countries have insufficient resources to monitor many of the most serious foreign animal diseases of concern. The commenters expressed concern that, in many countries, the illegal movement of livestock from higher-risk to lower-risk regions would be hard to detect, control, and prevent. Each of these concerns focuses on two of the key factors on which we will request information under the procedures for applying for regionalization—border controls and the infrastructure necessary to monitor and enforce the movement of animals and products from, into, or through the region. We will be obliged to characterize a requesting region a high risk or an unknown risk if the country in question lacks the infrastructure, or does not have access to the resources necessary, to enforce sanitary provisions that would support regionalization or to monitor for animal diseases of concern to the United States.

A number of commenters expressed concern that imported animals may serve as a source for emerging diseases or those of long incubation. To facilitate tracking of animals, commenters recommended that a permanent identification be placed on imported animals. We do not consider the risk of disease introduction to be any greater under this final rule than under the existing regulations. Under the current regulations, in most cases we do not require either permanent identification of imported animals or a permanent record of their final destination. The feasibility of heightening identification and tracking of imported animals is under review by APHIS. In the meantime, we support the efforts of the livestock industry to develop a system of identification that meets its needs.

Commenters argued both for and against including destination factors in determining import conditions. Some commenters stated that considering destination risk is required by the WTO–SPS agreement, and that failure to consider destination risk makes it illogical for the United States to impose post-importation conditions on animals and animal products if those conditions do not also apply to native U.S. animals. Commenters cited the need to assess the risk of animal importations in which vector-borne disease agents represent hazards, and, in particular, the duration of viraemia and competence of vectors. The commenters also stated that factors to be considered should include the exposure of domestic animals to infected products, modes of transmission, and the amount of infectious agent present that is sufficient to cause infection. Conversely, some commenters supported the premise that any importation of a restricted agent is undesirable. The general policy we have followed under the current regulations is to require import conditions to reduce any risk of introduction of a disease of concern at importation to a negligible level. We are retaining this policy under this final rule.

Some commenters recommended that diagnostic tests approved by the OIE automatically be approved, under the regulations, for use on animals being imported. The commenters also stated that, to ensure openness and consistency, any other tests that would be accepted be published in the rule. Tests approved by the OIE would generally meet the scientific validity requirements for an equivalent approved test. However, we consider it necessary for the APHIS Administrator to have the flexibility to not use any test if evidence shows that it is not valid, even though it might currently be included in the OIE list of approved tests. Also, the Administrator must have the flexibility to use new tests when deemed appropriate, even if they have not been added to the approved list for OIE. Therefore, we have decided not to publish in the regulations a list of tests approved for use on animals imported or to be imported into the United States.

Several commenters recommended that the maximum time allowed for imported animals to be moved to slaughter be reduced from 2 weeks to as little as 48 hours. The policy of allowing up to 2 weeks for movement to slaughter is not new to the proposed rule. It exists in and has been followed under the existing regulations. Although we are making no changes based on these comments at this time, we will further examine the commenters' recommendation and take whatever action we deem appropriate.

Several commenters questioned the need for import permits as a requirement for importation. The commenters stated that such permits serve no purpose. Some commenters stated that if import permits can be withdrawn without notice or explanation, such practice would be contrary to SPS Article 7. As we explained in the Supplementary Information section of our proposed rule, the primary purpose of import permits is to assure that there is space at a quarantine center for imported animals that must be transported by air or sea to the United States. Such import permits are necessary to avoid problems, both economically and with regard to the humane treatment of animals, in refusing entry to a shipload of animals that have arrived at a port without prior notice and without a reservation for space.

One commenter asked for clarification of the term "restricted use and movement," as used in the Supplementary Information section of the proposed rule when discussing risk mitigation measures. In general, restricted use and movement is used primarily to reduce potential losses should a disease agent be introduced. By restricting the distribution of potentially infected animals, the number and distribution of native animals that could be exposed is limited. An example of how we have used, and continue to use, this mitigation measure is in the importation of animals from a country where a particular disease exists, solely for residence at approved zoos where their movement is restricted.

One commenter stated that opportunities for electronic certification should be considered. We are not certain what the commenter meant by "electronic certification." We assume the commenter was referring to electronic transmission of health certificates. Although to date we have not received a request to accept electronic health certification for imports into the United States, we are receptive to suggestions we might receive from the public regarding the use of such certification.

One commenter stated that the capacity and costs of quarantine centers, particularly the Harry S Truman Animal Import Center (HSTAIC), should not become a trade barrier. Importation though HSTAIC is a method of allowing the importation of animals from certain high-risk situations that would otherwise require total prohibition of the importation. APHIS recommends that importers consider importing breeding material through embryos or semen whenever possible, to avoid the extra costs and potential delays that use of HSTAIC entails.

Some commenters stated that, depending on the commodity under consideration, only the viremic state of a disease might be of concern, with the incubatory and convalescent states representing negligible risk. We agree that the situation described by the commenters is true for some diseases, depending on the mode(s) of transmission. However, we do not agree that an animal in the incubatory stage represents a negligible risk. Because diagnosis at the incubatory stage is often difficult, making a distinction among the stages when determining disease risk will have little practical effect on establishing import conditions.

In our proposed regulations we used the term herd. In the "Definitions" section to the regulations regarding ruminants and swine, we included no period of time that animals would need to remain together to be considered a herd. Some commenters stated that the definition of "herd" should indicate that, to constitute a herd, the animals must have been together for a specified minimum period of time. We do not consider it advisable to make such a change. In certain situations, how long the animals have been together is less important than the origin of the animals in the group. For instance, if all animals in the group have been assembled from herds certified free of a disease under a disease eradication program, the length of time the animals have been together is not significant.

Some commenters addressed the requirement in proposed §§ 93.415(d)(3) and (4) that ruminants from regions proposed to be classified as Risk Class R3 or R4 for FMD undergo pre-embarkation quarantine under APHIS supervision in a facility approved by the Administrator. The commenters stated that this requirement shows an unwarranted disregard for the scientific, ethical, and certifying ability of the veterinary authorities in exporting countries. Although this final rule does not categorize regions as Risk Class R3 or R4, and does not require APHIS supervision of pre-embarkation quarantine, it retains the requirement of the current regulations that ruminants and swine imported from countries not considered free of FMD be quarantined in a pre-embarkation quarantine facility approved by the Administrator. Although we agree that, in many cases, reliance on the veterinary authorities in an exporting country would provide adequate approval and inspection of a facility, we consider it necessary for the Administrator to have authority to ensure that in all cases the facilities in question meet adequate standards.

Several commenters stated that APHIS should consider implementing recommendations from the "Border States Consensus Document." The document referred to represents a consensus by U.S. States that share a border with Mexico regarding recognition of efforts within Mexico to eradicate *Mycobacterium bovis* (tuberculosis). The recommendations of the consensus document, including recognition of certain States in Mexico as being free of tuberculosis, can be accommodated by the procedures for requesting recognition of regions set forth in this rule.

A number of commenters addressed the issue of how camelids should be addressed in the regulations. Some commenters recommended that they be removed from the definition of "ruminants." The commenters stated that camelids are not true ruminants, that marked anatomic and physiologic differences between camelids and ruminants exist in many organ systems, and that llamas and alpacas appear to be resistant to and unlikely to spread several important livestock diseases, including FMD, *M. bovis*, and *Brucella abortus*. Other commenters expressed concern regarding the potential disease risk posed by camelids.

"Webster's New International Dictionary" defines *Ruminantia* as follows: "A division of even-toed hoofed animals including those that chew the cud, as the oxen, sheep, goats, antelopes, deer, chevrotains, and camels. They are divided into three groups; the *Pectora* or true ruminants * * * the *Tylopoda*, or camels and llama * * * and the *Chevrotains*." We have many of the same disease concerns with camelids as with other ruminants. However, we agree with the commenters that there may be some practical disease risk differences between camelids and cattle. Although we are making no changes to this final rule in response to these comments, we are reviewing this issue and are considering addressing it in future rulemaking.

Comments Addressing Regulations Governing the Importation of Meat and Meat Products

A small number of commenters expressed concern that the import conditions for meat products from certain of the proposed risk class regions required that the backbone be removed from the carcass of the animal, even though the meat grading standards of the Department's Agricultural Marketing Service (AMS) require foreign beef to have a country-of-origin mark on the carcass 4 inches from the backbone. Because we are not making final the import conditions based on risk classifications, in a number of cases the provisions the commenters are referring to are not set forth as general requirements. However, we consider the requirement that a carcass be deboned an important one in reducing the risk of FMD-transmission from meat, and expect to apply it to future importations as appropriate. For example, in our June 26, 1997, final rule regarding the importation of fresh, chilled or frozen, beef from Argentina, one of the requirements for importation of the meat was that it be deboned. The AMS standards in 7 CFR 54.4 *et seq.* state that grading is done only on carcasses and is voluntary. We consider concerns regarding disease risk to take precedence over grading standards for meat, which could be done on the carcass before the meat is deboned.

One commenter stated that, in § 94.15 of the proposal, regarding cancellation of compliance agreements, the regulations indicated that certain actions by APHIS will be taken "as promptly as circumstances allow." The commenter requested that the time allowed for action by APHIS be specified. The provisions referred to by the commenter are set forth in the current regulations. Based on our experience enforcing the regulations, we consider the actions taken by APHIS to have been taken in a timely manner and do not consider it necessary to revise the provisions in question at this time.

In §§ 94.1 (e) and (g) of the proposed regulations, we set forth proposed requirements for the importation of fresh (chilled or frozen) meat from ruminants and swine from regions classified as Risk Class R2 or R3 for FMD. Among the proposed import conditions was the requirement that the meat reach a pH of 6.0 or less in the loin muscle. In the Supplementary Information section of our proposed rule, we stated that acidic or alkaline conditions readily kill the FMD virus. One commenter took issue with this statement, stating that research has shown that although a pH below 6.0 or above 11.5 will inactivate the FMD virus, the virus resident in the micro-environment of animal tissue—such as lymphatic tissue, bone marrow, or coagulated blood—is resistant to inactivation over a practical pH range.

The proposed requirements referenced by the commenter are not included in this final rule because they were import conditions particular to two risk categories that we are not including in this rule. However, maturation of meat to an appropriate pH level is a proven method of killing the FMD virus, and is one of the conditions we set forth in our June 26, 1997, final rule for the importation of fresh (chilled or frozen) meat from Argentina. In the Supplementary Information section of that final rule, we stated that although we agreed with the commenter, the regulations as proposed already addressed the concerns raised. We stated that we assumed that by "micro-environment" the commenter was referring to those areas of the meat in the carcass that are in the immediate area of the bones, lymphatic tissue, or coagulated blood, and noted that one of the proposed conditions for importing fresh (chilled or frozen) meat from Argentina was that all bone, blood clots, and lymphoid tissue be removed from the meat. However, in that final rule, based on the comment and the literature available to us, we amended the regulations as proposed to require that a pH level of 5.8 or less be reached before the meat may be imported.

The proposed importation requirements for cured or cooked meat from regions classified as Risk Class R3, R4, or RU for certain diseases included the requirement that the meat be deboned. This requirement for deboning is also included in the current regulations. Some commenters, addressing the proposal, stated that deboning should not be required for cured or cooked meat because such treatment already reduces the disease risk from the meat to an acceptable level. We do not agree with the commenters that removal of bones is not necessary in meat that is otherwise cured or cooked in accordance with the regulations. The presence of the bone in the meat makes it difficult to determine whether the bone has been treated throughout to the extent necessary to destroy the restricted disease agent. For example, in the case of FMD, unless some way is developed to determine the temperature level within the bone, there is no way of determining whether the entire piece of meat, including the bone, has been heated to the temperature necessary to kill the FMD virus.

Comments Regarding Bovine Spongiform Encephalopathy

Some commenters took issue with our statement in the Supplementary Information section of our proposal that bovine spongiform encephalopathy (BSE) "is thought to have been introduced into cattle from scrapie-infected sheep brains that were included in rendered protein meal added to cattle feed." The commenters stated that the original source of BSE is unknown, and that it would be more accurate to say that the BSE epidemic seems to be the result of a single source infection resulting from BSE-infected meat and bone meal. The statement we included in our proposed rule was based on the information available to us at the time the proposal was developed. At this time, we agree with the commenters as to the limits of what can be concluded regarding the origins of BSE.

One commenter questioned the rationale for allowing the importation of embryos from BSE-affected regions, while, according to the commenter, the OIE takes a cautious approach. The commenter apparently misread the proposed regulations. Embryos from countries affected with BSE are currently not permitted importation into the United States, and the proposed regulations did not include provisions allowing the importation of such embryos.

Several commenters stated that because transmissible encephalopathy occurs in cervidae in the United States, a ban on the feeding of ruminant protein should be in force in the United States. Other commenters stated that such a ban would eliminate the possibility that an infected animal, even if imported, could transmit the disease to another. Although APHIS does not have the authority to ban the feeding of ruminant protein, it should be noted that in a final rule published on June 5, 1997 (62 FR 30936–30978, Docket No. 96N–0135), the United States Department of Health and Human Service, Food and Drug Administration, established regulations controlling the use of animal protein derived from mammalian tissue in ruminant feed.

Proposed Provisions Not Being Made Final

A large number of the issues raised by commenters regarding our proposed rule addressed provisions of the proposed rule that are not included in either the current regulations or in this final rule. Therefore, pending future requests for regionalization, many of the concerns raised regarding the proposed rule are no longer relevant. These include concerns raised by commenters regarding the following: Differences between the current regulations and the proposed rule regarding import requirements for animals and animal products, including the concern that the proposed regulations would, in some cases, be more restrictive than the current regulations; the relationship between the "qualitative" and "quantitative" options for assessing risk under the proposed rule; criteria for assigning regions to particular risk classifications; whether the quantitative risk assessment option could be scientifically supported; differences between the proposed import requirements and the standards of the OIE Code; differences between the proposed import requirements and requirements governing U.S. interstate movement; classification as "restricted disease agents" of agents not included on the OIE "A" or "B" list of diseases; concerns that the proposed import requirements would not allow consideration of "equivalency" with an importing region's mitigation measures; that criteria for border controls of regions were too rigid; importation requirements relating to specific disease agents, including ectoparasites; whether the proposed import requirements would preempt State requirements; that certain terms used in the proposed rule were unclear and required definitions; that the proposed restricted disease agents did not seem to be treated differently based on potential impact; and the risk classification of certain countries.

Similarly, commenters made several requests that are no longer relevant. These include: That the regulations clarify which animals would be considered in determining the risk classification of a region; that embryos from "high-risk" areas be considered "low-risk" if treated in accordance with internationally recognized treatment standards; that the practice of vaccination not necessarily affect a region's risk classification; that the United States evaluate its own status and programs with regard to the requirements of the proposal; and that APHIS publish risk analysis documentation to support the prohibition of meat, embryos, and semen from certain risk class categories.

Other Proposed Changes to the Regulations Being Made Final

We proposed to make a number of changes to the regulations that were not directly related to the concepts of regionalization or risk assessment. In all cases but one, we received no comments regarding these proposed changes. We discuss below the amendments we proposed, any comments we received, and actions we are taking on the proposed changes in this final rule.

We proposed to consider the entire country of Canada as presenting a slight risk for the introduction of *Brucella abortus* and as a negligible risk for *B. melitensis*. Under the proposed import conditions for such a risk classification, no testing for these diseases would be required for cattle from Canada from provinces free of brucellosis. We continue to consider it warranted to allow cattle from Canada from brucellosis certified-free provinces or herds to enter the United States without brucellosis testing, and are amending § 92.418 of the current regulations to provide that such testing is not necessary.

We are adding to § 94.0, "Definitions," the definitions we proposed for *Cervid, Contact, Pink juice test, Region, Ruminants,* and *Veterinarian in charge*.

Current § 94.7 includes provisions for the disposal of animals, meats, and other articles ineligible for importation under the regulations regarding rinderpest and FMD in current § 94.1. We proposed to expand the disposal regulations so that they refer to African swine fever, hog cholera, swine vesicular disease, and BSE, as well as to rinderpest and FMD. In this rule, we are making final those expanded provisions.

We are making final at § 94.12(b)(1)(iii)(B) of the regulations the provision we proposed that pork or pork products consigned from the port of arrival to an approved establishment must be moved under Customs or USDA seal, and must be otherwise handled as the Administrator may direct in order to guard against the introduction and dissemination of swine vesicular disease. The required seals may not be broken except by persons authorized by the Administrator to do so.

We proposed under § 94.9 to allow the limited transiting of meat and other animal products not otherwise eligible for entry into the United States, to allow for offloading from one means of conveyance at the port of arrival onto a second means of conveyance scheduled for immediate departure from the United States. One of the conditions for such limited movement was that the meat or other animal product not be stored for more than 24 hours at the maritime or airport port of arrival. Commenters requested that the allowable time for holding or storage be extended to 48 hours, to allow for cargo movement logistical problems. We agree with the commenters that a longer period of time at the port is sometimes necessary to make connections between ships. As long as the meat and other animal products are securely contained aboard the carrier or while being offloaded, and as long as their overland movement in the United States is confined to that port of arrival, we believe it is warranted to allow the meat or other animal products to be held at the port up to 72 hours. We are adding provisions for such limited transit at § 94.15(d) of this final rule.

We are making final the change we proposed to § 94.16(b)(2) of the current regulations to remove the requirement that certain dry milk and dry milk products intended for importation be processed for human food. The provisions that require that dry milk or dry milk products intended for importation from countries in which rinderpest or FMD exists be processed for human food also require that the dry milk or dry milk products be processed in a manner approved by the Administrator as adequate to prevent the introduction or dissemination of livestock diseases into the United States. Dry milk or dry milk products that are processed in a manner adequate to prevent disease can be safely processed for uses other than human food.

We are making final at § 96.10 our proposed removal of references to specific cities in which casings that arrive in the United States without certification may be disinfected, and are providing that such casings may be forwarded to a USDA-approved facility for disinfection. We are making this change because the facilities in the cities specified are no longer in operation. Currently, all casings entering the United States under 9 CFR part 96 are entering in accordance with § 96.4, which allows the casings to be entered if the casings are accompanied by certification that they were derived from healthy animals that were inspected ante- and post-mortem. In the event of an intended importation of casings that would need to be disinfected in the United States, such disinfection could be done at any facility approved by APHIS.

As proposed, we are removing current §§ 96.15 and 96.16, because they specify administrative procedures that have been discontinued for a number of years.

Clarification of Final Rule Regarding the Importation of Pork from Sonora

As noted above, on May 9, 1997, we published in the **Federal Register** a final rule to allow the importation of fresh (chilled or frozen) pork from the State

of Sonora, Mexico. The provisions allowing this importation were added at a new § 94.20. At § 94.20(a), we specified that the pork must be meat from swine that have been raised and slaughtered in Sonora. It was also our intent that the swine from which the meat comes have been born in Sonora. In this final rule, we are amending § 94.20(a) to clarify this intent.

Clarification of Terminology

In current part 94, we refer in a number of cases to meat that is "fresh, chilled, or frozen." The intent of this phrase is to refer to fresh meat that is either chilled or frozen. We are making nonsubstantive punctuation changes in part 94 to clarify this intent by using the wording: "fresh (chilled or frozen)."

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In this rule, we are establishing procedures for recognizing regions, rather than only countries, for the purpose of the importation of animals and animal products into the United States. We are also establishing procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status. These changes to the regulations are in accordance with international trade agreements entered into by the United States. We are also allowing, under certain conditions, the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States. Additionally, we are removing the requirement that cattle from brucellosis certified-free herds, provinces, and territories in Canada be tested for brucellosis before being imported into the United States, and are making several minor changes in our requirements for importing animals and animal products that will relieve or clarify some import restrictions while continuing to protect U.S. livestock and poultry from foreign animal diseases.

Regionalization

The fundamental purpose of the changes we are making to the regulations with respect to regionalization—primarily changing the word "country" to "region" and setting out the procedures that a region must follow to be recognized as a region—is to establish a framework for a regional approach to the importation of animals and animal products and, thereby, fulfill U.S. commitments under international trade agreements. In developing this rule and the policy statement published elsewhere in this same issue of the **Federal Register**, we have explicitly recognized that there are identifiable and measurable gradations of risk presented by animals and animal products and that these gradations are often tied more to factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of disease control programs than to national political boundaries. Accordingly, we have adopted an approach that assesses risk along a continuum and responds to the risks presented from an importation on a case-by-case basis.

Because this framework will not be fully implemented until we receive a new request to allow the importation of animals or animal products into the United States, and because we do not know the number or sources of requests we will receive in the future, we cannot estimate the economic impact of this rule as stipulated in E.O. 12866. We are therefore committed to performing a risk assessment and cost-benefit analysis on a case-by-case basis for each request we receive in the near future.

Removal of Requirement for Brucellosis Testing of Cattle From Canada

We are making final a provision to allow cattle from certified brucellosis-free herds, provinces, or territories in Canada to enter the United States without brucellosis testing.

All domestic herds in Canada are free of brucellosis, and therefore no brucellosis testing would be required for any cattle imported to the United States. Expected cost savings can be estimated using the number of breeding cattle imported from Canada in Fiscal Year 1996: 29,340 head. Assuming a laboratory cost of $3 to $4 per test (based on USDA National Veterinary Services Laboratories user fees), Canadian operations exporting breeding cattle to the United States may save a total of between $88,020 and $117,360. (Other costs associated with assembling of the cattle at the time of testing will remain, since physical inspections will still take place.)

The cost savings are very small compared to the average value of the cattle. In 1996, the average price per animal of cattle imported from Canada that weighed 200–320 kg was $332. (Based on the way the price data is made available, this price includes the value of both slaughter and non-slaughter animals. Under the current regulations, cattle intended for immediate slaughter are not required to be tested.). The average price of nonslaughter cattle (not including purebreds) weighing more than 320 kg was $1,152. Thus, the savings represent no more than 1 cent of every dollar of the smaller animals' average cost, and about 3 cents of every 10 dollars of the larger animals' average cost. The average price of purebred cattle imported from Canada in 1996 was $810, of which the cost savings represents less than 5 cents of every 10 dollars. The fraction of this savings, if any, that may be realized by U.S. livestock buyers, would be smaller still. The economic impact for U.S. entities will be negligible.

Transiting of Certain Animal Products

This rule allows the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States. Under certain conditions, such products may be unloaded from a means of conveyance and be held at a port for up to 72 hours before reshipment from the same port by a second means of conveyance.

U.S. imports would not be affected by this rule change. Consequently, the only U.S. entities for which there could be impacts would be ones taking part in the marine or air transshipments, by providing shipping or temporary storage of the transshipped products.

As an example, under this rule, meat from Europe prohibited by the United States but eligible for entry to particular Caribbean or South American countries, could be transshipped at U.S. ports. This could result in cost savings for shipping companies, depending on shipping logistics, as well as additional business for the ports providing transshipment services.

According to available information, in 1994 there were 129 U.S. firms in the SIC category "Deep Sea Foreign Transportation of Freight." Nearly 90 percent (115 firms) were small entities by the Small Business Administration's definition of fewer than 500 employees. There were also 577 U.S. firms in 1994 in the category, "Marine Cargo Handling." For this industry, designation as a small entity is determined by annual receipts of less than $18.5 million. An estimated 80 to 90 percent of U.S. firms handling marine cargo are small entities.

With respect to firms that could be involved in air transshipments, in 1994 there were 520 U.S. firms classified under "Scheduled Air Transportation" and 1,475 U.S. firms classified under "Nonscheduled Air Transportation". Of these firms, 86 percent and 95 percent, respectively, had less than 500 employees. For both SIC categories, the Small Business Administration's definition of a small entity is one with fewer than 1,500 employees. There were also 2,864 U.S. firms in 1994 comprising the category, "Airports, Flying Fields, and Airport Terminal Services." An estimated 85 percent of these firms are small entities, as determined by annual receipts of less than $5 million.

If U.S. shipping and cargo handling firms were to be affected by this regulation, it is likely that at least some of them would be small entities. However, because the transshipment that would be allowed by this rule change currently does not take place, there is no record upon which to base an estimation of impacts. Commodities and volumes that would be transshipped are not known, let alone the number of U.S. firms (as opposed to foreign firms) that would be affected or the amount by which they might benefit through lower shipping costs or additional temporary storage consignments.

Total estimated receipts of U.S. firms in these industries in 1994 were as follows: "Deep Sea Foreign Transportation of Freight," $8.7 billion; "Marine Cargo Handling," $6.2 billion; "Scheduled and Nonscheduled Air Transportation," $121.5 billion; and "Airports, Flying Fields, and Airport Terminal Services, $7.6 billion." Possible benefits from transshipments at U.S. ports as allowed by this rule change would likely be very slight compared to industry incomes.

Disposal of Animals

We are expanding the regulations regarding the disposal of animals, meats, and other articles ineligible for importation to refer to such products affected by African swine fever, swine vesicular disease, hog cholera, and BSE, as well as those products affected by rinderpest and FMD.

This change is expected to have no economic impact. In practice, disposal provisions for animals and meat having African swine fever, hog cholera, swine vesicular disease, or BSE are already the same as for rinderpest or FMD.

Specification of these diseases will simply clarify existing provisions.

Movement of Pork and Pork Products

We are revising the current import regulations regarding the movement of certain pork and pork products from a port of arrival to an approved U.S. establishment for treatment because of swine vesicular disease, to require that such movement be done under Customs or USDA seal. This change is a clarification to make the regulations in question consistent with similar import requirements with regard to treatment for other diseases. We expect no economic impact from this change, because, currently, there are no such approved establishments in the United States.

Dry Milk Products

We are removing the requirement that certain dry milk products intended for importation be processed for human food. The provisions in current § 94.16(b)(2) that require that dry milk products intended for importation from countries in which rinderpest or FMD exists be processed for human food, also require that the dry milk products be processed in a manner approved by the Administrator as adequate to prevent the introduction or dissemination of livestock diseases into the United States. Dry milk products that are processed in a manner adequate to prevent disease can be safely processed for uses other than human food. We expect no increase or decrease in the amount of imported dry milk or dry milk products due to this change, and expect no change in the manner in which such products are processed.

Casings

We are removing the requirement that casings imported without certification under § 96.4 be moved to specific cities for disinfection. We expect no economic impact from this change. At present, there are no facilities in any U.S. cities where disinfection of casings is performed, and all casings entering the United States under 9 CFR part 96 are entering in accordance with the certification requirements of § 96.4, which allows the casings to be entered if the casings are accompanied by certification that they were derived from healthy animals that were inspected ante-and post-mortem. In the event of an intended importation of casings that would need to be disinfected in the United States, such disinfection could be done at any facility approved by APHIS.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the actions required or authorized by this rule will not present a significant risk of introducing or disseminating animal disease agents into the United States and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

The information collection burden expected to be imposed by 9 CFR parts 92, 93, and 98 of this rule is 1,809 burden hours for animal importations, which is 176,875 burden hours less than the proposed rule. Although this final rule provides a mechanism for regionalization, it does not assign individual regions to specific risk categories, as did the proposed rule. Because the provisions of the current regulations will continue to be followed

until we receive requests for regionalization, the burden expected is much less than what was expected under the proposed rule. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements of this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number for parts 92, 93, and 98, or, if approval is denied, providing notice of what action we plan to take.

In accordance with the Paperwork Reduction Act, the information collection or recordkeeping requirements included in this rule under 9 CFR parts 94, 95, and 96 have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0015.

This rule contains no new information collection or recordkeeping requirements under 9 CFR parts 97 and 130.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rule with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, or $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 98

Animal diseases, Imports.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, under the authority provided in 5 U.S.C. 5542; 7 U.S.C. 147a, 150ee, 161, 162, 450, 1622, 2260; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(d), we are amending 9 CFR, chapter I, subchapter D, as follows:

PART 93—[AMENDED]

§§ 93.1–93.8 [Redesignated as §§ 93.800–93.807]

1. Part 93 is amended by redesignating §§ 93.1 through 93.8 as §§ 93.800 through 93.807, and designating these sections as Subpart H—Elephants, Hippopotami, Rhinoceroses, and Tapirs.

PART 92—[REDESIGNATED AS PART 93]

2. In Part 92, subparts A through G (§§ 92.100 through 92.707) are redesignated as part 93, subparts A through G, and part 92 is vacated.

3. A new part 92 is added to read as follows:

PART 92— IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

Sec.
92.1 Definitions.
92.2 Application for recognition of the animal health status of a region.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.1 Definitions.

Active surveillance. Sample collection using a systematic or statistically designed survey methodology to actively seek out and find cases of animals with a restricted disease agent, or to determine the prevalence of the restricted disease agent in the population.

Adjacent region. Any geographic land area, whether or not identifiable by geological, political or surveyed boundaries, that shares common boundaries with any region.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animals. All species of the animal kingdom, except man, including: Cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, poultry, and birds that are susceptible to communicable diseases of livestock and poultry or capable of being carriers of those diseases or their arthropod vectors.

Communicable disease. Any contagious or infectious disease of animals. It can be transmitted either directly or indirectly to a susceptible animal from an infected animal, vector, inanimate source, or other sources.

Contagious disease. Any communicable disease transmitted from one animal to another by direct contact or by feed, water, aerosol, or contaminated objects.

Disease agent. A virus, bacterium, or other organism that causes disease in animals.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Passive surveillance. A surveillance system that does not depend on active participation by the responsible agency to seek out and monitor a restricted disease agent. The system relies on mandatory reporting, a pool of trained investigators, diagnostic submission procedures and laboratory support, and periodic public information and continuing education programs on diseases.

Prevalence. The number of cases of a disease in existence at a given time in a designated area.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

Restricted disease agent. Any communicable disease agent or its vector not known to exist in the United States or that is subject to a Federal or cooperative Federal/State control or eradication program within the United States.

Surveillance. Systems to find, monitor, and confirm the existence or absence of a restricted disease agent or agents in livestock, poultry and other animals. Surveillance may be passive or active.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Vector-borne disease. A disease transmitted to an animal through an intermediate arthropod vector, including ticks or insects.

§ 92.2 Application for recognition of the animal health status of a region.

(a)(1) The representative of the national government(s) of any country or countries who has the authority to request such a change may request at any time that all or part of the country or countries be recognized as a region, be included within an adjacent previously recognized region, or be made part of a region larger than an individual country. Requests for recognition of a region must be sent to the Administrator, in accordance with paragraph (c) of this section.

(b) Each request for approval to export a particular type of animal or animal product to the United States from a foreign region must be made to the Administrator, in accordance with paragraph (c) of this section, and must include, in English, the following information about the region:

(1) The authority, organization, and infrastructure of the veterinary services organization in the region.

(2) Disease status—i.e., is the restricted disease agent known to exist in the region? If "yes," at what prevalence? If "no," when was the most recent diagnosis?

(3) The status of adjacent regions with respect to the agent.

(4) The extent of an active disease control program, if any, if the agent is known to exist in the region.

(5) The vaccination status of the region. When was the last vaccination? What is the extent of vaccination if it is currently used, and what vaccine is being used?

(6) The degree to which the region is separated from adjacent regions of higher risk through physical or other barriers.

(7) The extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements.

(8) Livestock demographics and marketing practices in the region.

(9) The type and extent of disease surveillance in the region—e.g., is it passive and/or active; what is the quantity and quality of sampling and testing?

(10) Diagnostic laboratory capabilities.

(11) Policies and infrastructure for animal disease control in the region—i.e., emergency response capacity.

(c) Requests for recognition of a region or for approval to export animals or animal products to the United States from a region, including the information required by this section, must be sent to the Administrator, c/o National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231. (Where possible, include a copy of the request and accompanying information on a 3.5-inch floppy disk in ASCII or a word processing format.)

(d) The information submitted in accordance with paragraph (b) of this section will be made available to the public prior to initiation by APHIS of any rulemaking action on the request.

(e) If, after review of the information submitted, APHIS believes the requested importation can be safely allowed, APHIS will publish a proposed rule in the **Federal Register** to allow the importation, and the conditions under which the importation would be allowed, along with a discussion of the basis for the proposal.

(f) APHIS will provide a period of time during which the public may comment on the proposal. During the comment period, the public will have access to the information upon which APHIS based its analysis of the risk of such importation, as well as to its methodology in conducting the analysis. Once APHIS has reviewed all comments received, it will make a final decision on what conditions will be necessary to allow the importation in question, and will publish the conditions for import in the **Federal Register**.

4. The heading of part 93 is revised to read as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

5. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Subpart A—Birds

6. Newly designated § 93.100 is amended by revising the definition of *Licensed veterinarian* and adding a definition of Region, in alphabetical order, to read as follows:

§ 93.100 Definitions.

* * * * *

Licensed veterinarian. Any person licensed by any region or political subdivision thereof to practice veterinary medicine.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.101 [Amended]

7. Newly designated § 93.101 is amended as follows:

a. In paragraph (a), footnote 1 is amended by removing the word "countries" and adding in its place the word "regions".

b. By removing the word "country" each time it appears and adding in its place each time the word "region" in the following places:

i. Paragraph (b)(3)(iii).

ii. Paragraph (b)(3)(v).
iii. Paragraph (b)(3)(vi).
iv. Paragraph (b)(3)(vii).
v. Paragraph (b)(3)(viii).
vi. Paragraph (b)(3)(ix).
vii. Paragraph (b)(3)(x).
viii. Paragraph (b)(3)(xi).
ix. Paragraph (c)(2)(i).
x. Paragraph (c)(2)(ii)(A).
xi. Paragraph (c)(3)(i).
xii. Paragraph (d), introductory text.

c. In paragraph (b)(1), by removing the reference to "§§ 92.205, 92.214, and 92.216" and adding in its place a reference to "§§ 93.205, 93.214, and 93.216".

d. In paragraph (b)(3), introductory text, by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

e. In paragraph (b)(3)(ii), by removing the reference to "§ 92.103(a)(2)(iv)" and adding in its place a reference to "§ 93.103(a)(2)(iv)".

f. In paragraph (b)(3)(ix), by removing the reference to "§ 92.103(a)(2)(iv)" and adding in its place a reference to "§ 93.103(a)(2)(iv)".

g. In paragraph (b)(3)(x), by removing the reference to "§ 92.104(a)" and adding in its place a reference to "§ 93.104(a)".

h. In paragraph (b)(3)(xi), by removing the reference to "§ 92.104(a)" and adding in its place a reference to "§ 93.104(a)".

i. In paragraph (c)(1), by removing the reference to "§§ 92.102 or 92.203" and adding in its place a reference to "§§ 93.103 or 93.203", and by removing the reference to "§ 92.105" and adding in its place a reference to "§ 93.105".

j. In paragraph (c)(2)(i), by removing the reference to "§ 92.101(c)(1)" and adding in its place a reference to "§ 93.101(c)(1)".

k. In paragraph (c)(3), the introductory text, by removing the reference to "§ 92.102(a)" and adding in its place a reference to "§ 93.102(a)".

l. In paragraph (c)(3)(ii), by removing the reference to "§ 92.103(a)(3)" each time it appears and adding in its place each time a reference to "§ 93.103(a)(3)", and by removing the reference to "§ 92.102(a)" each time it appears and adding in its place each time a reference to "93.102(a)".

m. In paragraph (c)(3)(iv), by removing the reference to "§ 92.106(a)" and adding in its place a reference to "§ 93.106(a)".

n. In paragraph (c)(3)(v), by removing the reference to "§ 92.210" and adding in its place a reference to "§ 93.210".

o. In paragraph (d), the introductory text, by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

p. In paragraph (d)(1)(ii), by removing the reference to "§ 92.103(c)" and adding in its place a reference to "§ 93.103(c)".

q. In paragraph (e), by removing the reference to "§§ 92.102(a), 92.103, 92.104, 92.105(a), and 92.106(a)" and adding in its place a reference to "§§ 93.102(a), 93.103, 93.104, 93.105(a), and 93.106(a)".

r. In paragraph (f), by removing the reference to "§ 92.102 or 92.203" and adding in its place a reference to "§ 93.102 or 93.203", and by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

§ 93.102 [Amended]

8. Newly designated § 93.102 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.101(c)" and adding in its place a reference to "§ 93.101(c)", and by removing the reference to "§ 92.101(f)" and adding in its place a reference to "§ 93.101(f)".

b. In paragraph (c), by removing the reference to "§ 92.105" and adding in its place a reference to "§ 93.105".

c. In paragraph (d), by removing the reference to "§ 92.101(c)(1) or (2)" each time it appears and adding in its place a reference to "§ 93.101(c)(1) or (2)", and by removing the reference to "§ 92.101(f)" and adding in its place a reference to "§ 93.101(f)".

§ 93.103 [Amended]

9. Newly designated § 93.103 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:
i. Paragraph (a)(1)(vi).
ii. Paragraph (a)(1)(viii).
iii. Paragraph (a)(2)(ii), introductory text.
iv. Paragraph (a)(2)(ii)(B).
v. Paragraph (a)(2)(v).
vi. Paragraph (b), second sentence.
vii. Paragraph (c)(1)(ii).
viii. Paragraph (c)(1)(iv).
ix. Paragraph (c)(2)(ii):
x. Paragraph (c)(2)(iv).

b. In paragraph (a)(1), by removing the reference to "§§ 92.101 (b) and (c), 92.103(c), and 92.107(b)" and adding in its place a reference to "§§ 93.101(b) and (c), 93.103(c), and 93.107(b)".

c. In paragraph (a)(1)(x), by removing the reference to "§ 92.106(c)(5)" and adding in its place a reference to "§ 93.106(c)(5)".

d. In paragraph (a)(1)(xii), by removing the reference to "§§ 92.100 through 92.107" and adding in its place a reference to "§§ 93.100 through 93.107".

e. In paragraph (a)(1)(xiii), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

f. In paragraph (a)(2)(i), by removing the reference to "§ 92.106(c)" and adding in its place a reference to "§ 93.106(c)".

g. In paragraph (a)(2)(iii), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

h. In paragraph (a)(2)(iv), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

i. In paragraph (a)(2)(v), by removing the reference to "§ 92.101(b)(3)" each time it appears and adding in its place a reference to "§ 93.101(b)(3)".

§ 93.104 [Amended]

10. Newly designated § 93.104 is amended as follows:

a. In paragraph (a), by removing the word "country" each time it appears and adding in its place the word "region".

b. In paragraph (a), by removing the reference to "§ 92.101 (b) and (c)" and adding in its place a reference to "§ 93.101 (b) and (c)".

c. In paragraph (c)(2), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

d. In paragraph (c)(8), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

e. In paragraph (c)(13), by removing the reference to "§ 92.101(b)(3)(ix)" and adding in its place a reference to "§ 93.101(b)(3)(ix)".

f. In paragraph (c)(14), by removing the reference to "§ 92.101(b)(3)" and adding in its place a reference to "§ 93.101(b)(3)".

g. In paragraph (c)(15), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

h. In paragraph (d)(2), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

i. In paragraph (d)(9), by removing the reference to "§ 92.101(b)(3)(ix)" and adding in its place a reference to "§ 93.101(b)(3)(ix)".

j. In paragraph (d)(10), by removing the reference to "§ 92.101(b)(3)" and adding in its place a reference to "§ 93.101(b)(3)".

k. In paragraph (d)(11), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

§ 93.105 [Amended]

11. Newly designated § 93.105 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.107(c)" and adding in its place a reference to "§ 93.107(c)".

b. In paragraph (b), by removing the reference to "§ 92.101(c)(2)" each time it appears and adding in its place a reference to "§ 93.101(c)(2)"; by removing the reference to "§ 92.102(a)" and adding in its place a reference to "§ 93.102(a)"; and by removing the reference to "§ 92.102 and 92.203" and adding in its place a reference to "§§ 93.102 and 93.203".

c. In paragraph (c), by removing the reference to "§ 92.107(b)" and adding in its place a reference to "§ 93.107(b)".

§ 93.106 [Amended]

12. Newly designated § 93.106 is amended as follows:

a. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, the second paragraph, which begins with "Whereas, the Importer", by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, paragraph (B)(5), by removing the word "country" and adding in its place the word "region".

c. In paragraph (a), by removing the reference to "§ 92.101(c)" and adding in its place a reference to "§ 93.101(c)", and by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

d. In paragraph (b)(1), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107", and by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

e. In paragraph (b)(2), by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

f. In paragraph (c)(2)(ii)(L), by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

g. In paragraph (c)(2)(ii)(M), by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103".

h. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, paragraph (A)(4), by removing the reference to "part 92" and adding in its place a reference to "part 93" each time it appears.

i. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, paragraph (A)(5), by removing the reference to "§ 92.106(c)" and adding in its place a reference to "§ 93.106(c)".

j. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, paragraph (A)(13), by removing the reference to "§ 92.106(c)(3)(ii)(C)" and adding in its place a reference to "§ 93.106(c)(3)(ii)(C)".

k. In paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement, paragraph (A)(20), by removing the reference to "§ 92.106(c)" and adding in its place a reference to "§ 93.106(c)".

l. In subpart A, footnote 13, by removing the reference to "§ 92.107" and adding in its place a reference to "§ 93.107".

§ 93.107 [Amended]

13. Newly designated § 93.107 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.103" and adding in its place a reference to "§ 93.103", and by removing the reference to "§ 92.101" and adding in its place a reference to "§ 93.101".

b. In paragraph (b)(3), by removing the reference to "§ 92.203(b)" and adding in its place a reference to "§ 93.203(b)".

c. In paragraph (b)(4), by removing the reference to "§ 92.104(c)(8)" and adding in its place a reference to "§ 93.104(c)(8)".

d. In paragraph (c)(2), by removing the reference to "§ 92.105(a)" and adding in its place a reference to "§ 93.105(a)".

e. In paragraph (c)(3), by removing the reference to "§ 92.203(b)" and adding in its place a reference to "§ 93.203(b)".

Subpart B—Poultry

14. Newly designated § 93.200 is amended by revising the definition of *Operator* and adding a definition of *Region*, in alphabetical order, to read as follows:

§ 93.200 Definitions.

* * * * *

Operator. For the purpose of § 93.209, any person operating an approved quarantine facility.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.201 [Amended]

15. Newly designated § 93.201 is amended as follows:

a. In paragraph (a), footnote 2, by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (b), introductory text, by removing the word "country" and adding in its place the word "region".

c. In paragraph (b), introductory text, by removing the reference to "part 92" and adding in its place a reference to "part 93", and by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204".

d. In paragraph (b)(1)(ii), by removing the reference to "§ 92.204(c)" and adding in its place a reference to "§ 93.204(c)".

e. In paragraph (c), by removing the reference to "§ 92.203" and adding in its place a reference to "§ 93.203", and by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204".

§ 93.202 [Amended]

16. In newly designated § 93.202, paragraph (a) is amended by removing the word "country" and adding in its place the word "region".

§ 93.204 [Amended]

17. Newly designated § 93.204 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§§ 92.204(c), 92.214, 92.217, and 92.218" and adding in its place a reference to "§§ 93.204(c), 93.214, 93.217, and 93.218".

b. In paragraph (a)(2), by removing the word "countries" and adding in its place the word "regions".

c. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:
i. Paragraph (a)(1).
ii. Paragraph (a)(2).
iii. Paragraph (b).
iv. Paragraph (c)(1)(iii).
v. Paragraph (c)(1)(v).
vi. Paragraph (c)(2)(ii.)
vii. Paragraph (c)(2)(iv).

§ 93.205 [Amended]

18. Newly designated § 93.205 is amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 93.207 [Amended]

19. Newly designated § 93.207 is amended by removing the reference to "§§ 92.215 and 92.220" and adding in its place a reference to "§§ 93.215 and 93.220".

§ 93.209 [Amended]

20. Newly designated § 93.209 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.216" and adding in its place a reference to "§ 93.216".

b. In paragraph (b), by removing the word "countries" and adding in its place the word "regions".

21. Preceding newly designated § 93.214, in the undesignated center heading "CANADA [6]", footnote 6 is amended by removing the reference to "§§ 92.214 to 92.216" and adding in its place a reference to "§§ 93.214 to 93.216".

§ 93.214 [Amended]

22. Newly designated § 93.214 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204", and by removing the reference to "§ 92.203(b)" and adding in its place a reference to "§ 93.203(b)".

b. In paragraph (b), by removing the reference to "§ 92.206" and adding in its place a reference to "§ 93.206".

§ 93.215 [Amended]

23. Newly designated § 93.215 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204", and by removing the reference to "§ 92.201" and adding in its place a reference to "§ 93.201".

b. In paragraph (b), by removing the word "country" and adding in its place the word "region".

§ 93.216 [Amended]

24. Newly designated § 93.216 is amended by removing the reference to "§ 92.209" and adding in its place a reference to "§ 93.209".

25. In subpart B, the undesignated heading preceding newly designated § 93.217 is revised to read "CENTRAL AMERICA AND THE WEST INDIES [7]", and footnote 7 is amended by removing the reference to "§ 92.217" and adding in its place a reference to "§ 93.217" and by removing the word "countries" and adding in its place the word "regions".

§ 93.217 [Amended]

26. Newly designated § 93.217 is amended as follows:

a. By removing the word "countries" and adding in its place the word "regions" in the following places:
i. Paragraph (a).
ii. Paragraph (b).
iii. Paragraph (c).

b. In paragraph (a), by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204".

c. In paragraph (b), by removing the reference to "§ 92.206" and adding in its place a reference to "§ 93.206".

d. In paragraph (c), by removing the reference to "§§ 92.205, 92.207, 92.209, and 92.210" and adding in its place a reference to "§ 93.205, 93.207, 93.209, and 93.210".

27. Preceding newly designated § 93.218, in the undesignated center

heading "MEXICO[8]", footnote 8 is amended by removing the reference to "§§ 92.218 to 92.220" and adding in its place a reference to "§§ 93.218 to 93.220".

§ 93.218 [Amended]

28. In newly designated § 93.218, paragraph (a) is amended by removing the reference to "§ 92.204" and adding in its place a reference to "§ 93.204".

§ 93.219 [Amended]

29. Newly designated § 93.219 is amended by removing the reference to "§ 92.206" and adding in its place a reference to "§ 93.206".

§ 93.220 [Amended]

30. In newly designated § 93.220, paragraph (b) is amended by removing the reference to "§ 92.203" and adding in its place a reference to "§ 93.203".

Subpart C—Horses

31. Newly designated § 93.300 is amended as follows:

a. In the definition of *Code of Practice*, by removing the word "country" and adding in its place the word "region."

b. By revising the definition of *Licensed veterinarian* and by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 93.300 Definitions.

* * * * *

Licensed Veterinarian. Any person licensed by any country or political subdivision thereof to practice veterinary medicine.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.301 [Amended]

32. Newly designated § 93.301 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b), introductory text.
ii. Paragraph (c)(1).
iii. Paragraph (c)(2)(viii).
iv. Paragraph (d)(1)(ii)(E).
v. Paragraph (d)(2).
vi. Paragraph (e)(1), introductory text.
vii. Paragraph (e)(1)(iii).
viii. Paragraph (e)(1)(v).
ix. Paragraph (e)(1)(vi).
x. In the heading of paragraph (g), and introductory text.
xi. Paragraph (g)(1), introductory text.
xii. Paragraph (g)(1)(iii).
xiii. Paragraph (g)(1)(iv).
xiv. Paragraph (h), introductory text.

b. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. Paragraph (a), footnote 3.
ii. Paragraph (c)(1).
iii. In the heading of paragraph (e).
iv. Paragraph (h)(5).

c. In paragraph (b), introductory text, by removing the reference to "part 92" and adding in its place a reference to "part 93", and by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

d. In paragraph (c)(2)(iii), by removing the reference to "§ 92.314(a)" and adding in its place a reference to "§ 93.314(a)".

e. In paragraph (c)(2)(iv), by removing the reference to "§ 92.301(a)" and adding in its place would be removed and a reference to "§ 93.301(a)".

f. In paragraph (d)(1)(i), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

g. In paragraph (d)(1)(ii), by removing the reference to "§ 92.314(a)" and adding in its place a reference to "§ 93.314(a)" each time it appears.

h. In paragraph (d)(3), by removing the reference to "§ 92.308" and adding in its place a reference to "§ 93.308" each time it appears.

i. In paragraph (e)(1)(i), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304", and by removing the reference to "§ 92.308" and adding in its place a reference to "§ 93.308".

j. In paragraph (e)(1)(ii), by removing the reference to "§ 92.314(a)" and adding in its place a reference to "§ 93.314(a)".

k. In paragraph (e)(2)(i), by removing the reference to "§ 92.306" and adding in its place a reference to "§ 93.306".

l. In paragraph (f)(1), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

m. In paragraph (f)(4), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

n. In paragraph (f)(6)(i), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

o. In paragraph (g)(1), introductory text, by removing the reference to "§ 92.314(a)" and adding in its place a reference to "§ 93.314(a)".

p. In paragraph (g)(2), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304".

q. In paragraph (g)(5), by removing the reference to "§ 92.308" and adding in its place a reference to "§ 93.308".

§ 93.302 [Amended]

33. In newly designated § 93.302, paragraph (a) is amended by removing the word "country" and adding in its place the word "region".

§ 93.303 [Amended]

34. Newly designated § 93.303 is amended as follows:

a. In paragraph (a), by removing the reference to "§§ 92.308(a), (b), and (c) and 92.317" and adding in its place a reference to "§§ 93.308(a), (b), and (c) and 93.317".

b. In paragraph (e), by removing the reference to "§§ 92.301(c), 92.304(a), 92.306, 92.308(a), (b), and (c), and 92.314" and adding in its place a reference to "§§ 93.301(c), 93.304(a), 93.306, 93.308(a), (b), and (c), and 93.314".

c. In paragraph (e), by removing the word "country" and adding in its place the word "region", and in footnote 12, by removing the word "countries" and adding in its place the word "regions".

§ 93.304 [Amended]

35. Newly designated § 93.304 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The section heading.
ii. Paragraph (a)(1)(i).
iii. Paragraph (a)(2).

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a)(1)(i).
ii. Paragraph (a)(2).
iii. Paragraph (b)(1).

c. In paragraph (a)(1)(i), by removing the reference to "§ 92.301(c)(1)" and adding in its place a reference to "§ 93.301(c)(1)", and by removing the reference to "§§ 92.315, 92.319, and 92.321" and adding in its place a reference to "§§ 93.315, 93.319, and 93.321".

d. In paragraph (a)(1)(ii), introductory text, by removing the reference to "§ 92.301(f)" each time it appears and adding in its place a reference to "§ 93.301(f)".

e. In paragraph (a)(1)(iii), by removing the reference to "§ 92.301(f)" and adding in its place a reference to "§ 93.301(f)".

f. In paragraph (a)(2), by removing the reference to "§ 92.301(c)(1)" and adding in its place a reference to "§ 93.301(c)(1)".

§ 93.306 [Amended]

36. In newly designated § 93.306, paragraph (a) is amended by removing the reference to "§§ 92.318 and 92.323" and adding in its place a reference to "§§ 93.318 and 93.323".

§ 93.308 [Amended]

37. Newly designated § 93.308 is amended as follows:

a. In paragraph (a), introductory text, by removing the reference to "§ 92.324" and adding in its place a reference to "§ 93.324", and by removing the reference to "§ 92.303" and adding in its place a reference to "§ 93.303".

b. In paragraph (a)(1), by removing the reference to "§ 92.317" and adding in its place a reference to "§ 93.317", and by removing the reference to "§ 92.303" and adding in its place a reference to "§ 93.303".

c. In paragraph (a)(2), by removing the word "countries" each time it appears and adding in its place the word "regions", and by removing the word "country and adding in its place the word "region.".

d. In paragraph (b), by removing the reference to "§ 92.303(e)" and adding in its place a reference to "§ 93.303(e)".

e. In paragraph (c)(4)(ii), by removing the reference to "§ 92.308(a)" and adding in its place a reference to "§ 93.308(a)".

§ 93.314 [Amended]

38. Newly designated § 92.314 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. In paragraph (a), introductory text.
ii. In paragraph (a)(1).
iii. In paragraph (a)(5)(i).
iv. In paragraph (a)(5)(ii).
v. In paragraph (b).

b. In paragraph (a)(5)(iv), by removing the word "countries" and adding in its place the word "regions".

c. In paragraph (a)(5), introductory text, by removing the reference to "§ 92.301(g)" and adding in its place a reference to "§ 93.301(g)".

d. In paragraph (a)(5)(i), by removing the reference to "§ 92.301(c)(1)" and adding in its place a reference to "§ 93.301(c)(1)".

e. In paragraph (c), by removing the reference to reference to "§ 92.306" and adding in its place a reference to "§ 93.306".

39. Preceding newly designated § 93.315, in the undesignated center heading "CANADA[16]", footnote 16 is amended by removing the reference to "§§ 92.315, 92.316, 92.317 and 92.318" and adding in its place a reference to "§§ 93.315, 93.316, 93.317 and 93.318".

§ 93.315 [Amended]

40. Newly designated § 93.315 is amended by removing the reference to "§ 92.305" and adding in its place a reference to "§ 93.305".

§ 93.316 [Amended]

41. Newly designated § 93.316 is amended by removing the reference to "§ 92.306" and adding in its place a reference to "§ 93.306".

§ 93.317 [Amended]

42. In newly designated § 93.317, paragraph (a) is amended by removing the reference to "§ 92.306" and adding in its place a reference to "§ 93.306", and by removing the reference to "§ 92.314" each time it appears and adding in its place a reference to "§ 93.314".

§ 93.318 [Amended]

43. Newly designated § 93.318 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 92.304" and adding in its place a reference to "§ 93.304", and by removing the reference to "§ 92.301" and adding in its place a reference to "§ 93.301".

b. In paragraph (b), by removing the reference to "§ 92.317(b)" and adding in its place a reference to "§ 93.317(b)".

c. In paragraph (b), by removing the word "country" and adding in its place the word "region".

44. The undesignated center heading immediately preceding § 93.319 is revised to read "CENTRAL AMERICA AND THE WEST INDIES[17]", and footnote 17 is amended by removing word "countries" and adding in its place the word "regions", and by removing the reference to "§§ 92.319 and 92.320" and adding in its place a reference to "§§ 93.319 and 93.320".

§ 93.319 [Amended]

45. Newly designated § 93.319 is amended by removing the word "countries" and adding in its place the word "regions", and by removing the reference to "§ 92.305" and adding in its place a reference to "§ 93.305".

§ 93.320 [Amended]

46. Newly designated § 93.320 is amended by removing the reference to "§ 92.306" and adding in its place a reference to "§ 93.306", by removing the reference to "§ 92.314" and adding in its place a reference to "§ 93.314", and by removing the reference to "§ 92.308 (a), (b) and (c)" and adding in its place a reference to "§ 93.308 (a), (b), and (c)".

47. Preceding newly designated § 93.321, in the undesignated center heading "MEXICO[18]", footnote 18 is amended by removing the reference to "§§ 92.321 to 92.326" and adding in its place a reference to "§§ 93.321 to 93.326".

§ 93.322 [Amended]

48. Newly designated § 93.322 is amended by removing the reference to "§ 92.305" and adding in its place a reference to "§ 93.305".

§ 93.323 [Amended]

49. In newly designated § 93.323, paragraphs (a) and (b) are amended by removing the references to "§ 92.324" and adding in their place a reference to "§ 93.324".

§ 93.324 [Amended]

50. Newly designated § 93.324 is amended by removing the reference to "§ 92.303(a)" and adding in its place a reference to "§ 93.303(a)".

§ 93.325 [Amended]

51. Newly designated § 93.325 is amended by removing the reference to "§§ 92.306 and 92.323" and adding in its place a reference to "§§ 93.306 and 93.323", by removing the reference to "§ 92.314" and adding in its place a reference to "93.314", and by removing the reference to "§ 92.324" and adding in its place a reference to "§ 93.324".

§ 93.326 [Amended]

52. Newly designated § 93.326 is amended by removing the reference to "§§ 92.321, 92.322, 92.323, and 92.324" and adding in its place a reference to "§§ 93.321, 93.322, 93.323, and 93.324", and by removing the words "in § 92.324" and adding in their place the words "in § 93.324".

Subpart D—Ruminants

53. In newly designated § 93.400, the definition of *Brucellosis certified free province and territories of Canada* is revised, and a new definition of *Region* is added, in alphabetical order, to read as follows:

§ 93.400 Definitions.

* * * * *

Brucellosis certified-free province or territory of Canada. A province or territory of Canada in which all herds of cattle are brucellosis certified free. The brucellosis certified free provinces and territories of Canada are Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland (including Labrador), Northwest Territories, Nova Scotia, Ontario, Quebec, Prince Edward Island, Saskatchewan, and Yukon Territory.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.401 [Amended]

54. Newly designated § 93.401 is amended as follows:

a. In paragraph (a), footnote 3, by removing the word "countries" and adding the word "regions" in its place;

b. In paragraph (b), introductory text, by removing the word "country" and adding the word "region" in its place, and by removing the reference to "§ 92.404" and adding in its place a reference to "§ 93.404".

§ 93.402 [Amended]

55. In newly designated § 93.402, paragraph (a) is amended by removing the word "country" and adding the word "region" in its place.

§ 93.403 [Amended]

56. In newly designated § 93.403, paragraph (g), the references to

"§§ 92.401, 92.404(a), 92.407, 92.408, 92.433, and 92.434" are removed, and references to "§§ 93.401, 93.404(a), 93.407, 93.408, 93.433, and 93.434" are added in their place.

§ 93.404 [Amended]

57. Newly designated § 93.404 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§§ 92.417, 92.422, and 92.424" and adding in its place a reference to "§§ 93.417, 93.422, and 93.424".

b. In paragraph (a)(2), by removing the reference to "§ 92.430" and adding in its place a reference to "§ 93.430".

c. In paragraph (c)(4), "Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine", paragraph 2, the first sentence, by removing the words "this country" and adding in their place the words "the United States".

d. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a)(1).
ii. Paragraph (a)(2).
iii. Paragraph (a)(3).
iv. Paragraph (b).
v. Paragraph (c)(4), in the "Agreement for the Importation, Quarantine and Exhibition of Certain Ruminants and Swine", in the introductory text and in paragraph (1) and paragraph (2).

e. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. Paragraph (a)(3).
ii. Paragraph (c), the heading and the introductory text.

f. In paragraph (c)(4), the "Agreement for the Importation, Quarantine and Exhibition of Certain Ruminants and Swine", introductory text, by removing the reference to "part 92" and adding in its place a reference to "part 93".

§ 93.405 [Amended]

58. Newly designated § 93.405 is amended as follows:

a. In paragraph (a), by removing the reference to "§§ 92.418(a), 92.419(a), 92.423(c), and 92.428(d)" and adding in its place a reference to "§§ 93.418(a), 93.419(a), 93.423(c), and 93.428(d)".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a), introductory text.
ii. Paragraph (a)(1).
iii. Paragraph (a)(2).
iv. Paragraph (c)(3).

c. In paragraph (b)(2)(ii), by removing the reference to "§ 92.435(a)" and adding in its place a reference to "§ 93.435(a)".

d. In paragraph (c)(3), by removing the reference to "§ 92.435(a)" and adding in its place a reference to "§ 93.435(a)".

§ 93.406 [Amended]

59. Newly designated § 93.406 is amended as follows:

a. In paragraph (a), by removing the reference to "§§ 92.418, 92.427(c) and (d), and 92.432" and adding in its place a reference to "§§ 93.418, 93.427(c) and (d), and 93.432", and by removing the word "country" and adding the word "region" in its place.

b. In paragraph (b), by removing the reference to "§§ 92.419 and 92.428(b)" and adding in its place a reference to "§§ 93.419 and 93.428(b)," and by removing the word "country" and adding in its place the word "region'.

c. In paragraph (c), by removing the reference to "§ 92.411" and adding in its place a reference to "§ 93.411".

§ 93.408 [Amended]

60. Newly designated § 93.408 is amended by removing the reference to "§§ 92.421 and 92.426" and adding in its place a reference to "§§ 93.421 and 93.426", and by removing the reference to "§§ 92.423(c) and 92.427(a)" and adding in its place a reference to "§§ 93.423(c) and 93.427(a)".

61. Preceding newly designated § 93.417, in the undesignated center heading "CANADA 7", footnote 7 is amended by removing the reference to "§§ 92.417 to 92.421" and adding in its place a reference to "§§ 93.417 to 93.421".

§ 93.417 [Amended]

62. Newly designated § 93.417 is amended as follows:

a. In paragraph (a), introductory text, by removing the reference to "§ 92.404" and adding in its place a reference to "§ 93.404", and by removing the reference to "§ 92.403(b)" and adding in its place a reference to "§ 93.403(b)".

b. In paragraph (a)(3)(i) and paragraph (a)(3)(ii), by removing the word "country" and adding in its place the word "region'.

c. In paragraph (b), by removing the reference to "§ 92.407" and adding in its place a reference to "§ 93.407".

63. Newly designated § 93.418 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.420" and adding in its place a reference to "§ 93.420", and by removing the reference to "§ 92.405(a)" and adding in its place a reference to "§ 93.405(a)'.

b. In paragraph (b)(2)(i), by removing the reference to "§ 92.420" and adding in its place a reference to "§ 93.420".

c. By revising paragraph (c) to read as set forth below.

d. In paragraph (d)(4), by removing the reference to "paragraph (c)(5)" and adding in its place a reference to "paragraph (c)(2)(ii)(C)".

§ 93.418 Cattle from Canada.

* * * * *

(c) *Brucellosis test or vaccination certificates.* (1) Cattle from Canada from a herd in which any cattle have been determined to have brucellosis may not be imported into the United States;

(2) Except for cattle prohibited from importation into the United States under paragraph (c)(1) of this section, cattle 6 months of age or older from Canada may be imported into the United States if the following conditions are met:

(i) The cattle are imported for slaughter in accordance with § 92.420;

(ii) The cattle are steers; or

(iii) The cattle are accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian government showing:

(A) That the cattle are from a brucellosis certified-free herd, province, or territory; or

(B) The date and place the cattle were last tested for brucellosis; that the cattle were found negative for brucellosis on such test; and that such test was performed within 30 days preceding the arrival of the cattle at the port of entry; or

(C) That the female cattle under 18 months of age were vaccinated against brucellosis in accordance with Canadian regulations.

* * * * *

§ 93.419 [Amended]

64. In newly designated § 93.419, paragraph (a) is amended by removing the reference to "§ 92.420" and adding in its place a reference to § 93.420"; and by removing the reference to "§ 92.405" and adding in its place a reference to "§ 93.405".

§ 93.420 [Amended]

65. Newly designated § 92.420 is amended by removing the reference to "§ 92.408" and adding in its place a reference to "§ 93.408".

§ 93.421 [Amended]

66. Newly designated § 93.421 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 92.404" and adding in its place a reference to "§ 93.404", and by removing the reference to "§ 92.401" and adding in its place a reference to "§ 93.401".

b. In paragraph (b), by removing the word "country" and adding in its place the word "region".

67. Preceding newly designated § 93.422, the undesignated center heading "COUNTRIES OF CENTRAL AMERICA AND WEST INDIES[8]" is revised to read "CENTRAL AMERICA AND WEST INDIES[8]", and footnote 8 is amended by removing the word "countries" and adding in its place the word "regions", and by removing the reference to "§§ 92.422 and 92.423" and adding in its place a reference to "§§ 93.422 and 93.423".

§ 93.422 [Amended]

68. Newly designated § 93.422 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.404" and adding in its place a reference to "§ 93.404", and by removing the reference to "§ 92.423" and adding in its place a reference to "§ 93.423".

b. In paragraph (b), by removing the reference to "§ 92.407" and adding in its place a reference to "§ 93.407".

69. In newly designated § 93.422, paragraphs (a) and (b) are amended by removing the word "countries" and adding in its place the word "regions".

§ 93.423 [Amended]

70. Newly designated § 93.423 is amended as follows:

a. In paragraph (a), by removing the word "country" each time it appears and adding in its place the word "region"; by removing the reference to "§ 92.405(a)" and adding in its place a reference to "§ 93.405(a)"; and by removing the reference to "§ 92.420" and adding in its place a reference to "§ 93.420".

b. In paragraph (b), by removing the reference to "§ 92.405" and adding in its place a reference to "§ 93.405".

c. In paragraph (c), by removing the reference to "§ 92.403(d)" and adding in its place a reference to "§ 93.403(d)".

71. Preceding newly designated § 93.424, in the undesignated center heading "MEXICO[9]", footnote 9 is amended by removing the reference to "§§ 92.424 to 92.429," and adding in its place a reference to "§§ 93.424 to 93.429".

§ 93.424 [Amended]

72. Newly designated "§ 93.424" is amended as follows:

a. In paragraph (a), introductory text, by removing the reference to "§ 92.404" and adding in its place a reference to "§ 93.404"; and by removing the reference to "§ 92.403(c)" and adding in its place a reference to "§ 93.403(c)".

b. In paragraph (a)(3)(i) and paragraph (a)(3)(ii), by removing the word "country" each time it appears and adding in its place the word "region".

c. In paragraph (a)(3)(iii), by removing the word "countries" and adding in its place the word "regions".

d. In paragraph (b), by removing the reference to "§ 92.427(d)" each time it appears and adding in its place a reference to "§ 93.427(d)".

§ 93.425 [Amended]

73. Newly designated § 93.425 is amended by removing the reference to "§ 92.407" and adding in its place a reference to "§ 93.407".

§ 93.426 [Amended]

74. Newly designated § 93.426 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.427" and adding in its place a reference to "§ 93.427".

b. In paragraph (b), by removing the reference to "§ 92.403" and adding in its place a reference to "§ 93.403".

§ 93.427 [Amended]

75. Newly designated § 93.427 is amended as follows:

a. By removing the reference to "§ 92.405(a)" and adding in its place a reference to § 93.405(a) in the following places:

i. Paragraph (b)(1).
ii. Paragraph (b)(2)(i).
iii. Paragraph (b)(2)(ii).
iv. Paragraph (c)(1).
v. Paragraph (d)(1), introductory text.

b. In paragraph (b)(2), introductory text, by removing the reference to "§ 92.403(c)" and adding in its place a reference to "§ 93.403(c)".

c. In paragraph (c)(1), by removing the word "country's" and adding in its place the word "region's".

d. In paragraph (c)(1) and paragraph (c)(2), by removing the reference to "§ 92.429" each time it appears and adding in its place a reference to "§ 93.429".

e. In paragraph (c)(2), by removing the reference to "§ 92.427(e)" and adding in its place a reference to "§ 93.427(e)".

§ 93.428 [Amended]

76. Newly designated § 93.428 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.405" and adding in its place a reference to "§ 93.405", and by removing the reference to "§ 92.427(a)" and adding in its place a reference to "§ 93.427(a)".

b. In paragraph (b), by removing the reference to "§ 92.427" and adding in its place a reference to "§ 93.427".

c. In paragraph (d), by removing the reference to "§ 92.426" and adding in its place a reference to "§ 93.426".

§ 93.429 [Amended]

77. Newly designated § 93.429 is amended by removing the reference to "§§ 92.424, 92.425, 92.426, and 92.427(b)(2)" and adding in its place a reference to "§§ 93.424, 93.425, 93.426, and 93.427(b)(2)", and by removing the reference to "§ 92.405(a)" and adding in its place a reference to "§ 93.405(a)".

§ 93.430 [Amended]

78. Newly designated § 92.430 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (c)(1).
ii. Paragraph (d), "Cooperative Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "The importer agrees:", paragraph 4.
iii. Paragraph (d), "Cooperative Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "Both parties agree:", paragraph 4.
b. In paragraph (d), "Cooperative Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "The importer agrees:", paragraph 7, by removing the reference to "9 CFR 92.431" and adding in its place a reference to "9 CFR 93.431".

§ 93.431 [Amended]

79. Newly designated § 93.431 is amended as follows:

a. In paragraph (a)(4), by removing the reference to "§ 92.430(d)" both times it appears and adding in its place a reference to "§ 93.430(d)".

b. In paragraph (b)(2)(iv) and paragraph (b)(4), by removing the word "country" and adding in its place the word "region".

§ 93.432 [Amended]

80. Newly designated § 93.432 is amended as follows:

a. In paragraph (a), by removing the reference to "§ 92.432(c)" and adding in its place a reference to "§ 93.432(c)".

b. In paragraph (b)(2), introductory text, by removing the reference to "§ 92.432(c)(1)" and adding in its place a reference to "§ 93.432(c)(1)".

§ 93.434 [Amended]

81. Newly designated § 93.434 is amended as follows:

a. In paragraph (a) and the introductory text of paragraph (b), by removing the reference to "§ 92.412" each time it appears and adding in its place a reference to "§ 93.412".

b. In paragraph (b)(2)(i)(A), by removing the reference to "§ 92.403(g)" and adding in its place a reference to "§ 93.403(g)".

§ 93.435 [Amended]

82. Newly designated § 93.435 is amended as follows:

a. In paragraph (b)(2), by removing the reference to "§ 92.405(b)(2)(ii)" and adding in its place a reference to "§ 93.405(b)(2)(ii)".

b. By removing the word "country" and adding in its place the word "region" in the following places:

i Paragraphs (b)(2) and (b)(3).
ii. Paragraph (d).
iii. Paragraph (e).
iv. Paragraph (g)(2)(i) and (g)(2)(ii).

c. In paragraph (b)(3), by removing the reference to "§ 92.405(c)(3)" and adding in its place a reference to "§ 93.405(c)(3)".

d. In paragraph (b)(6), by removing the reference to "§ 92.404(c)" and adding in its place a reference to "§ 93.404(c)".

Subpart E—Swine

83. Newly designated 93.500 is amended by adding a definition of

Region, in alphabetical order, to read as follows:

§ 93.500 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.501 [Amended]

84. In newly designated § 93.501, paragraph (b), the introductory text is amended by removing the reference to "part 92" and adding in its place a reference to "part 93"; by removing the word "country" and adding in its place the word "region"; and by removing the reference to "§ 92.504" and adding in its place a reference to "§ 93.504".

§ 93.502 [Amended]

85. In newly designated § 93.502, paragraph (a) is amended by removing the word "country" and adding in its place the word "region".

§ 93.504 [Amended]

86. Newly designated § 93.504 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a)(1).

ii. Paragraph (a)(2).

iii. Paragraph (a)(3).

iv. Paragraph (b).

v. Paragraph (c)(4), "Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine", in the introductory text, paragraph (1), and paragraph (2).

b. In paragraph (a)(1), by removing the reference to "§§ 92.516 and 92.520" and adding in its place a reference to "§§ 93.516 and 93.520".

c. In paragraph (a)(2), by removing the reference to "§ 92.522" and adding in its place a reference to "§ 93.522".

d. By removing the word "countries" and replacing it with the word "regions" in the following places:

i. Paragraph (a)(3).

ii. Paragraph (c) in the heading and in the introductory text.

e. In paragraph (c)(4), "Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine, introductory text, by removing the reference to "part 92" and adding in its place a reference to "part 93".

§ 93.505 [Amended]

87. In newly designated § 93.505, paragraph (a) is amended by removing the reference to § 92.517" and adding in its place a reference to "§ 93.517", and by removing the word "country" each time it appears and adding in its place the word "region'.

§ 93.507 [Amended]

88. Newly designated § 93.507 is amended by removing the reference to "§ 92.519" and adding in its place a reference to "§ 93.519".

89. Preceding newly designated § 93.516, in the undesignated center heading "CANADA[7]", footnote 7 is amended by removing the reference to "§§ 92.516 to 92.519" and adding in its place a reference to "§§ 93.516 to 93.519".

§ 93.516 [Amended]

90. Newly designated § 93.516 is amended as follows:

a. In paragraph (a), introductory text, by removing the reference to "§ 92.504" and adding in its place a reference to "§ 93.504", and by removing the reference to "§ 92.503(b)" and adding in its place a reference to "§ 93.503(b)".

b. In paragraph (a)(1) and paragraph (a)(2), by removing the word "country" each time it appears and adding in its place the word "region".

c. In paragraph (b), by removing the reference to "§ 92.506" and adding in its place a reference to "§ 93.506".

§ 93.517 [Amended]

91. In newly designated § 93.517, paragraph (b) is amended by removing the reference to § 92.507, 92.516, and 92.518" and adding in its place a reference to "§§ 93.507, 93.516, and 93.518".

§ 93.519 [Amended]

92. Newly designated § 93.519 is amended as follows:

a. In paragraph (a)(1), by removing the reference to "§ 92.504" and adding in its place a reference to "§ 93.504", and by removing the reference to "§ 92.501" and adding in its place a reference to "§ 93.501".

b. In paragraph (b), by removing the word "country" and adding in its place the word "region".

93. Preceding newly designated § 93.520, the undesignated center heading "COUNTRIES OF CENTRAL AMERICA AND WEST INDIES[8]" is revised to read "CENTRAL AMERICA AND WEST INDIES[8]", and footnote 8 is amended by removing the word "countries" and adding in its place the word "regions", and by removing the reference to "§§ 92.520 to 92.522" and adding in its place a reference to "§§ 93.520 to 93.522."

§ 93.520 [Amended]

94. Newly designated § 93.520 is amended by removing the reference to "§ 92.506" and adding in its place a reference to "§ 93.506".

95. Preceding newly designated § 93.521, in the undesignated center heading "MEXICO[9]", footnote 9 is amended by removing the reference to "§ 92.521" and adding in its place a reference to "§ 93.521".

§ 93.521 [Amended]

96. Newly designated § 93.521 is amended by removing the reference to "§ 92.506" and adding in its place a reference to "§ 93.506".

§ 93.522 [Amended]

97. Newly designated § 93.522 is amended as follows:

a. In paragraph (c)(1), by removing the words "country or area" and adding in their place the word "region".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (c)(3).

ii. Paragraph (d), "Cooperative-Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "The importer agrees:", paragraph 4.

iii. Paragraph (d), "Cooperative-Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "Both parties agree:", paragraph 4.

c. In paragraph (d), "Cooperative-Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service", under "The importer agrees:", paragraph 7, by removing the reference to "§ 92.523" and adding in its place a reference to "§ 93.523".

§ 93.523 [Amended]

98. Newly designated § 93.523 is amended as follows:

a. In paragraph (a)(4), by removing the reference to "§ 92.522(d)" both times it appears and adding in its place a reference to "§ 93.522(d)".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b)(2)(iv).

ii. Paragraph (b)(2)(viii).

iii. Paragraph (b)(4)

Subpart F—Dogs

§ 93.600 [Amended]

99. Newly designated § 93.600 is amended by removing the word "countries" and adding in its place the word "regions".

Subpart G—Miscellaneous Animals

100. In newly designated § 93.700, a definition of *Region* is added, in alphabetical order, to read as follows:

§ 93.700 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.701 [Amended]

101. Newly designated § 93.701 is amended by removing the word "country" both times it appears and adding in its place the word "region'.

§ 93.702 [Amended]

102. Newly designated § 93.702 is amended by removing the reference to "§ 92.701" and adding in its place a reference to "§ 93.701".

§ 93.704 [Amended]

103. Newly designated § 93.704 is amended by removing the word "country" each time it appears and adding in its place the word "region" in the paragraph (c)(1) and paragraph (c)(4).

§ 93.705 [Amended]

104. Newly designated § 93.705 is amended by removing the word "country" each time it appears and adding in its place the word "region" in the following places:

a. Paragraph (a), introductory text.

b. Paragraph (a)(1).

c. Paragraph (a)(2).

d. Paragraph (a)(3).

Subpart H—Elephants, Hippopotami, Rhinoceroses, and Tapirs

105. Newly designated § 93.800 is amended by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 93.800 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 93.803 [Amended]

106. In newly designated § 93.803, paragraph (a), the introductory text is amended by removing the word "country" each time it appears and adding in its place the word "region'.

§ 93.804 [Amended]

107. In newly designated § 93.804, paragraph (g) is amended by removing the word "country" and adding in its place the word "region".

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

108. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

109. In § 94.0, the definition of *Country of origin* is removed and definitions of *Cervid, Contact, Pink juice test, Region, Region of origin, Ruminants, and Veterinarian in charge* are added, in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

Cervid. All species of deer, elk, and moose.

* * * * *

Contact. Known or potential commingling of products during processing or storage, or while being transported from any point to any other point. Contact includes the simultaneous processing in the same room, locker, or container, but not necessarily the same storage facility or conveyance, as long as adequate security measures are taken to prevent commingling, as determined by an authorized APHIS representative.

* * * * *

Pink juice test. Determination of whether meat has been thoroughly cooked by observation of whether the flesh and juices have lost all red and pink color.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

Region of origin. For meat and meat products, the region in which the animal from which the meat or meat products were derived was born, raised and slaughtered; and for eggs, the region in which the eggs were laid.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

* * * * *

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State or area concerned.

* * * * *

§ 94.1 [Amended]

110. Section 94.1 is amended as follows:

a. By removing the word "Countries" in the heading to the section and adding in its place the word "Regions".

b. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. Paragraph (a)(1);

ii. Paragraph (a)(2);

iii. Paragraph (b).

c. By removing the words "fresh, chilled, or frozen" each time they appear and adding in their place the words "fresh (chilled or frozen)" in paragraph (b) and paragraph (c).

d. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b).

ii. Paragraph (c), introductory text.

iii. Paragraph (c)(2).

iv. Paragraph (c)(3).

v. Paragraph (c)(5).

§ 94.1a [Amended]

111. Section 94.1a is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a), introductory text.

ii. Paragraph (a)(2).

iii. Paragraph (a)(7).

iv. Paragraph (a)(8), introductory text.

b. In paragraph (a)(7) and in paragraph (a)(8), introductory text, by removing the word "countries" each time it appears and adding in its place the word "regions".

§ 94.2 [Amended]

112. Section 94.2 is amended as follows:

a. In the heading to the section, by removing the words "Fresh, chilled, or frozen" and adding in their place the words "Fresh (chilled or frozen)";

b. In paragraph (a), by removing the words "fresh, chilled, or frozen" and adding in their place the words "fresh (chilled or frozen)".

c. In paragraphs (a) and (b), by removing the word "country" each time it appears and adding in its place the word "region".

§ 94.3 [Amended]

113. Section 94.3 is amended by removing the words "fresh, chilled, or frozen" and adding in their place the words "fresh (chilled or frozen)" and by removing the word "country" and adding in its place the word "region".

§ 94.4 [Amended]

114. Section 94.4 is amended as follows:

a. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a), introductory text.
ii. Paragraph (a)(1).
iii. Paragraph (a)(4).
iv. Paragraph (b), introductory text.
v. Paragraph (b)(7).
vi. Paragraph (c)(1)(iii).
vii. Paragraph (c)(2)(iv).

§ 94.5 [Amended]

115. In § 94.5, paragraph (b)(1)(i)(A) is amended by removing the word "country" and adding the word "region" in its place, and by removing the word "countries" and adding the word "regions" in its place.

§ 94.6 [Amended]

116. Section 94.6 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The heading to the section.
ii. Paragraphs (a)(1) and (a)(2).
iii. Paragraph (b)(1).
iv. Paragraph (b)(2).
v. The heading to paragraph (c).
vi. The heading to paragraph (d).

b. In the heading to paragraph (a) and in the heading to paragraph (b), by removing the word "Countries" each time it appears and adding in its place the word "Regions".

c. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (c), introductory text.
ii. Paragraph (d), introductory text.
iii. Paragraph (d)(1), introductory text.
iv. Paragraph (d)(1)(i).
v. Paragraph (d)(1)(iii).
vi. Paragraph (d)(1)(v).
vii. Paragraph (d)(1)(viii).
viii. Paragraph (d)(1)(ix), introductory text.
ix. Paragraph (d)(1)(ix)(C)(*1*).
x. Paragraph (d)(1)(ix)(C)(*2*).
xi. Paragraph (d)(1)(x), introductory text.
xii. Paragraph (d)(1)(x)(C)(*1*).
xiii. Paragraph (d)(1)(x)(C)(*2*).
xiv. Paragraph (d)(1)(x)(C)(*3*).

§ 94.7 [Amended]

117. Section 94.7 is amended as follows:

a. By removing the words "fresh, chilled, or frozen" wherever they appear and adding in their place the words "fresh (chilled or frozen)" in the following places:

i. Paragraph (a);
ii. Paragraph (b);
iii. Paragraph (c);
iv. Paragraph (d).

b. By removing the reference to "§ 94.1," each time it appears and adding in its place a reference to "§§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18," in the following places:

i. Paragraph (a).
ii. Paragraph (b).
iii. Paragraph (c).
iv. Paragraph (d).

§ 94.8 [Amended]

118. Section 94.8 is amended as follows:

a. In paragraph (a)(3)(iv)(A), by removing the words "countries or parts of countries" and adding in their place the word "regions".

b. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

c. In footnote 7, before paragraph (1), by removing the words "country or a part of a country" and adding in their place the word "region", and, in paragraph (4), by removing the words "this country" and adding in their place the words "the United States".

d. By removing the words "country or part of a country" and adding in their place the word "region" in the following places:

i. Paragraph (a), introductory text.
ii. Paragraph (a)(3)(i)(A).
iii. Paragraph (a)(3)(i)(B).
iv. Paragraph (a)(3)(v).
v. Paragraph (c).

e. By removing the word "country" each time it appears and adding in its place the word "region" in the following places.

i. Footnote 7 to the introductory text of the section.
ii. Paragraph (a)(3)(i)(B).
iii. Paragraph (a)(3)(i)(C).
iv. Paragraph (a)(3)(i)(D).
v. Paragraph (a)(3)(vi).

f. In footnote 7 to the introductory text of the section, by removing the word "country's" and adding in its place the word "region's".

§ 94.9 [Amended]

119. Section 94.9 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The heading to the section.
ii. Paragraph (a), introductory text.
iii. Paragraph (b)(1)(iii)(C)(*2*).
iv. Paragraph (c).

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b), introductory text.
ii. Paragraph (b)(1)(ii)(A).
iii. Paragraph (b)(1)(iii)(A).
iv. Paragraph (b)(1)(iii)(C), introductory text.
v. Paragraph (b)(1)(iii)(C)(*1*).
vi. Paragraph (b)(1)(iii)(C)(*2*).
vii. Paragraph (b)(3).

§ 94.10 [Amended]

120. Section 94.10 is amended as follows:

a. In the heading to the section and in paragraph (a), by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (a), by removing the word "country" and adding in its place the word "region".

c. In paragraph (b), by removing the reference to "§ 92.504(c) or § 92.501" and adding in its place a reference to "§ 93.504(c) or § 93.501".

§ 94.11 [Amended]

121. Section 94.11 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The heading to the section.
ii. Paragraph (a).
iii. Paragraph (b).
iv. Paragraph (c), introductory text.

b. In paragraph (a), by removing the words "fresh, chilled, or frozen" both times they appear and adding in their place the words "fresh (chilled or frozen)".

c. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a).
ii. Paragraph (c), introductory text.
iii. Paragraph (c)(1).
iv. Paragraph (c)(2).
v. Paragraph (c)(3).

122. Section 94.12 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The heading to the section.
ii. Paragraph (a).
iii. Paragraph (b)(1)(iv)(B)(*2*)(*ii*).

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b), introductory text.
ii. Paragraph (b)(1)(ii)(A).
iii. Paragraph (b)(1)(iii)(A).
iv. Paragraph (b)(1)(iv), introductory text.
v. Paragraph (b)(1)(iv)(A).
vi. Paragraph (b)(1)(iv)(B)(*1*).
vii. Paragraph (b)(1)(iv)(B)(*2*)(*i*).
viii. Paragraph (b)(3).

c. By revising paragraph (b)(1)(iii)(B) to read as follows:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

* * * * *

(b) * * *
(1) * * *
(iii) * * *

(B) Such pork or pork products shall be consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection and approved by the Administrator,[11] for heating to an internal temperature of 166 °F. During movement from the port of entry to the meat processing establishment, the pork or pork products must be moved under Department seals or seals of the the U.S. Customs Service, and shall be otherwise handled as the Administrator may direct in order to guard against the introduction and dissemination of swine vesicular disease. Seals applied under this section may not be broken except by persons authorized by the Administrator to do so; or

* * * * *

§ 94.13 [Amended]

123. Section 94.13 is amended as follows:

a. In the heading to the section and in the introductory text to the section, by removing the word "countries" each time it appears and adding in its place the word "regions".

b. In the introductory text to the section, by removing the words "fresh, chilled, or frozen" both times they appear and adding in their place the words "fresh (chilled or frozen)".

c. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. The introductory text to the section.
ii. Paragraph (b), introductory text.
iii. Paragraph (b)(1).
iv. Paragraph (b)(2).

§ 94.14 [Amended]

124. Section 94.14 is amended as follows:

a. In the heading to the section and in paragraph (a), by removing the word "countries" and adding in its place the word "regions'.

b. In paragraph (a), by removing the word "country" and adding in its place the word "region'.

c. In paragraph (b), by removing the reference to "§ 92.501 or § 92.504(c)" and adding in its place a reference to "§ 93.501 or § 93.504(c)'.

125. In § 94.15, paragraph (c) is amended by removing the word "countries" both times it appears and adding in its place the word "regions", and a new paragraph (d) is added to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(d) Any meat or other animal products not otherwise eligible for entry into the United States, as provided in this part and part 95 of this chapter, may transit the United States for immediate export if the following conditions are met:

(1) Notification of the transiting of such meat or other animal product is made by the importer to the Plant Protection and Quarantine officer at the United States port of arrival prior to such transiting;

(2) The meat or other animal product is contained in a sealed, leakproof carrier or container, which remains sealed while aboard the transporting carrier or other means of conveyance, or, if the container or carrier in which the meat or other animal product is transported is offloaded in the United States for reshipment, it remains sealed at all times;

(3) Such transit is limited to the maritime or airport port of arrival only, with no overland movement outside the airport terminal area or dock area of the maritime port; and

(4) The meat or other animal product is not held or stored for more than 72 hours at the maritime or airport port of arrival.

§ 94.16 [Amended]

126. Section 94.16 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b), introductory text.
ii. Paragraph (c), introductory text.
iii. Paragraph (c)(1).
iv. Paragraph (c)(3).
v. Paragraph (d).

b. In paragraph (b)(2), first sentence, by removing the words "for human food'.

c. In paragraph (c), introductory text, by removing the word "countries" and adding in its place the word "regions'.

§ 94.17 [Amended]

127. Section 94.17 is amended as follows:

a. By removing the word "countries" each time it appears and adding in its place the word "regions" in the following places:

i. The heading to the section.
ii. Paragraph (o)(2)(ii)(A).
iii. Paragraph (o)(2)(ii)(B).
iv. Paragraph (o)(2)(iii)(A).
v. Paragraph (o)(2)(iii)(B).

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a).
ii. Paragraph (b).
iii. Paragraph (d).
iv. Paragraph (i)(2)(vi).
v. Paragraph (i)(3)(vii).
vi. Paragraph (j)(1).
vii. Paragraph (j)(2).
viii. Paragraph (j)(3).
ix. Paragraph (k).
x. Paragraph (m)(1).
xi. Paragraph (o), introductory text.
xii. Paragraph (o)(2)(ii)(A).
xiii. Paragraph (o)(2)(ii)(B).
xiv. Paragraph (o)(2)(iii)(A).
xv. Paragraph (o)(2)(iii)(B).

§ 94.18 [Amended]

128. Section 94.18 is amended as follows:

a. In the heading to the section and in paragraph (a), by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (b), introductory text, and paragraph (b)(1), by removing the words "fresh, frozen, and chilled" and adding in their place the words "fresh (chilled or frozen)".

c. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (b), introductory text.
ii. Paragraph (b)(2)(ii).
iii. Paragraph (b)(2)(iii).
iv. Paragraph (c), introductory text.

d. In paragraph (d), introductory text, by removing the words "Fresh, chilled, or frozen" and adding in their place the words "Fresh (chilled or frozen)".

§ 94.19 [Amended]

129. Section 94.19 is amended by removing the word "country" each time it appears and adding in its place the word "region" in both the heading and the text to the section.

§ 94.20 [Amended]

130. Section 94.20 is amended as follows:

a. In introductory text to the section, by removing the words "fresh, chilled or frozen" and adding in their place the words "fresh (chilled or frozen)".

b. In paragraph (a), by adding the word "born," immediately before the word "raised".

c. In paragraph (b), by removing the word "countries" both times it appears and adding in its place the word "regions".

§ 94.21 [Amended]

131. Section 94.21 is amended as follows:

---

[11] The names and addresses of approved establishments may be obtained from, and request for approval of any establishment may be made to, the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231. Establishments will be approved only if the Administrator determines that the imported articles will be so handled at the establishment as to prevent the introduction and dissemination of livestock or poultry diseases into the United States. Approval of any establishment may be refused or withdrawn only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his views thereon.

a. In the introductory text to the section, by removing the words "fresh, chilled or frozen" and adding in their place the words "fresh (chilled or frozen)".

b. In paragraph (c), by removing the word "countries" and adding in its place the word "regions".

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

132. The authority citation for part 95 continues to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

133. Section 95.1 is amended by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 95.1 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 95.2 [Amended]

134. Section 95.2 is amended as follows:

a. In the heading to the section, by removing the word "Country" and adding in its place the word "Region".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. The introductory text to the section.

ii. Paragraph (a).

ii. Paragraph (b).

§ 95.4 [Amended]

135. Section 95.4 is amended as follows:

a. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a).

ii. Paragraph (b).

iii. Paragraph (c), introductory text.

§ 95.5 [Amended]

136. Section 95.5 is amended as follows:

a. In paragraph (a) and paragraph (c), by removing the word "country" each time it appears and adding in its place the word "region".

b. In paragraph (c), footnote 1, by removing the word "countries" and adding in its place the word "regions".

§ 95.7 [Amended]

137. In § 95.7, paragraph (a) and paragraph (c) are amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 95.9 [Amended]

138. In § 95.9, paragraph (a) and paragraph (c) are amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 95.11 [Amended]

139. In § 95.11, the introductory text of paragraph (b) and paragraph (b)(2) are amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 95.14 [Amended]

140. In § 95.14, paragraph (a) is amended by removing the word "country" and adding in its place the word "region';.

§ 95.15 [Amended]

141. Section 95.15 is amended by removing the word "country" and adding in its place the word "region".

§ 95.17 [Amended]

142. Section 95.17 is amended by removing the word "country" and adding in its place the word "region".

§ 95.21 [Amended]

143. Section 95.21 is amended by removing the word "country" and adding in its place the word "region".

§ 95.23 [Amended]

144. In § 95.23, the introductory text is amended by removing the word "country" both times it appears and adding in its place the word "region".

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

145. The authority citation for part 96 continues to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.22, 2.80, and 371.2(d).

146. Section 96.1 is amended by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 96.1 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 96.2 [Amended]

147. Section 96.2 is amended as follows:

a. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (a), by removing the words "country or part of a country" and adding in their place the word "region" each time they appear.

c. In paragraph (b), by removing the word "country" and adding in its place the word "region".

§ 96.3 [Amended]

148. Section 96.3 is amended as follows: a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a).

ii. Paragraph (c), introductory text.

iii. Paragraph (c), "FOREIGN OFFICIAL CERTIFICATE FOR ANIMAL CASINGS".

b. In paragraph (c), "FOREIGN OFFICIAL CERTIFICATE FOR ANIMAL CASINGS", by removing the word "Country" and adding in its place the word "Region".

149. Section 96.10 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 96.10 Uncertified casings; transportation for disinfection; original shipping containers; disposition of salt.

(a) Foreign animal casings imported into the United States without certification may be forwarded in customs custody to a USDA-approved facility for disinfection under APHIS supervision and release by the United States Customs authorities, provided that, before being transported over land in the United States, each and every container of such casings shall be disinfected by the application of a solution of sodium hydroxide prepared as follows:

* * * * *

150. Sections 96.15 and 96.16 are removed.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

151. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(d).

§ 97.1 [Amended]

152. In § 97.1, footnote 1 is amended by removing the reference to "§§ 92.1 through 92.3" and adding in its place a reference to "§§ 93.102, 93.203, 93.303, 93.403, 93.503, 93.703, and 93.805".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

153. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d)

154. In part 98, the heading for subpart A is revised to read:

Subpart A—Ruminant and Swine Embryos from Regions Free of Rinderpest and Foot-and-Mouth Disease; and Embryos of Horses and Asses

155. Section 98.2 is amended by revising the definitions of *Approved artificial insemination center* and *Approved embryo transfer unit*, and by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 98.2 Definitions.

* * * * *

Approved artificial insemination center. A facility approved or licensed by the national government of the region in which the facility is located to collect and process semen under the general supervision of such government.

Approved embryo transfer unit. A facility approved or licensed by the national government of the region in which the facility is located for the artificial insemination of donor dams or for conception as a result of artificial breeding by a donor sire and for collecting and processing embryos for export under the general supervision of such government.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 98.3 [Amended]

156. Section 98.3 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. The introductory text to the section.

ii. Paragraph (a).

iii. Paragraph (i).

b. In paragraph (d), by removing the reference to "part 92" and adding in its place a reference to "part 93".

c. In paragraph (f), by removing the reference to "§ 92.304(a)(2)" and adding in its place a reference to "§ 93.304(a)(2)", by removing the reference to "§ 92.404(a)(2)" and adding in its place a reference to "§ 93.404(a)(2)", and by removing the reference to "§ 92.504(a)(2)" and adding in its place a reference to "§ 93.504(a)(2).

§ 98.4 [Amended]

157. In § 98.4, paragraph (c)(1) and paragraph (c)(5) are amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.5 [Amended]

158. In § 98.5, paragraph (a), the introductory text is amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.6 [Amended]

159. Section 98.6 is amended by removing the reference to "§ 92.303" and adding in its place a reference to "§ 93.303", by removing the reference to "§ 92.403" and adding in its place a reference to "§ 93.403", and by removing the reference to "§ 92.503" and adding in its place a reference to "§ 93.503".

§ 98.7 [Amended]

160. In § 98.7, paragraph (g) is amended by removing the word "country" and adding in its place the word "region".

§ 98.10a [Amended]

161. Section 98.10a is amended as follows:

a. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (c).

ii. Paragraph (d).

iii. Paragraph (f), introductory text.

iv. Paragraph (f)(1).

v. Paragraph (f)(2)(i).

vi. Paragraph (f)(2)(ii).

162. The heading for subpart B is revised to read:

Subpart B—Ruminant and Swine Embryos From Regions Where Rinderpest or Foot-and-Mouth Disease Exists

163. Section 98.11 is amended by removing the definition of *Country of origin* and by adding definitions of *Region* and *Region of origin*, in alphabetical order, to read as follows:

§ 98.11 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

Region of origin. The region in which the embryo is conceived and collected and from which the embryo is imported into the United States.

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§ 98.12 [Amended]

164. Section 98.12 is amended as follows:

a. In paragraph (a), by removing the word "countries" and adding in its place the word "regions".

b. In paragraph (b), by removing the word "country" both time it appears and adding in its place the word "region".

§ 98.13 [Amended]

165. In § 98.13, paragraph (a) is amended by removing the word "countries" and adding in its place the word "regions".

§ 98.14 [Amended]

166. In § 98.14, paragraph (a) is amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.15 [Amended]

167. Section § 98.15 is amended by removing the word "country" each time it appears and adding in its place the word "region" in the following places:

a. The introductory text to the section.

b. Paragraph (a)(5)(ii), introductory text.

c. Paragraph (a)(5)(iii).

d. Paragraph (a)(6).

e. Paragraph (b)(1).

f. Paragraph (b)(2).

g. Paragraph (b)(5).

§ 98.16 [Amended]

168. In § 98.16, the introductory text to the section is amended by removing the word "country" and adding in its place the word "region".

§ 98.17 [Amended]

169. Section 98.17 is amended by removing the word "country" each time it appears and adding in its place the word "region" in the following places:

a. Paragraph (f)(6)(i).
b. Paragraph (f)(6)(ii).
c. Paragraph (h)(2).

§ 98.18 [Amended]

170. In § 98.18, paragraph (c) is amended by removing the reference to "§ 92.203(a)" and adding in its place a reference to "§ 93.203(a).

§ 98.21 [Amended]

171. In § 98.21, the heading is amended by removing the word "countries" and adding in its place the word "regions".

Subpart C—Certain Animal Semen

172. Section 98.30 is amended by adding a definition of *Region*, in alphabetical order, to read as follows:

§ 98. 30 Definitions.

* * * * *

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.)

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

* * * * *

§ 98.31 [Amended]

173. In § 98.31, paragraph (b) is amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.32 [Amended]

174. In § 98.32, paragraph (a) is amended by removing the word "country" and adding in its place the word "region".

§ 98.34 [Amended]

175. Section 98.34 is amended as follows:

a. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i. Paragraph (a)(1).
ii. Paragraph (a)(2).
iii. Paragraph (a)(3).
iv. Paragraph (b).
v. Paragraph (c), introductory text.
vi. Paragraph (c)(1)(i).
vii. Paragraph (c)(1)(ii).
viii. Paragraph (c)(3).
ix. Paragraph (c)(4).
x. Paragraph (c)(5).

b. In paragraph (a)(3) and in the heading to paragraph (c), by removing the word "countries" each time it appears and adding in its place the word "regions".

§ 98. 35 [Amended]

176. In § 98.35, paragraph (c) is amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.36 [Amended]

177. In § 98.36, paragraph (a)(1) and paragraph (a)(2) are amended by removing the word "country" each time it appears and adding in its place the word "region".

§ 98.37 [Amended]

178. Section 98.37 is amended as follows:

a. In the heading to the section, by removing the word "countries" and adding in its place the word "regions".

b. By removing the word "country" each time it appears and adding in its place the word "region" in the following places:

i Paragraph (c).
ii. Paragraph (d).
iii. Paragraph (f), introductory text.
iv. Paragraph (f)(1).
v. Paragraph (f)(2)(i).
vi. Paragraph (f)(2)(ii).

PART 130—USER FEES

179. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.1 [Amended]

180. Section 130.1 is amended by removing the reference to "part 92" and adding in its place a reference to "part 93" in the following places:

a. The definition of *Feeder animal.*
b. The definition of *Privately operated permanent import-quarantine facility.*
c. The definition of *Zoo animal*, footnote 2.

§ 130.2 [Amended]

181. Section 130.2 is amended by removing the references to "part 92" and adding in their place references to "part 93" in the following places:

a. Paragraph (a), footnote 5.
b. Paragraph (a), in the table, under the heading "Animal or bird", in the first entry under "Birds".
c. Paragraph (e).

§ 130.3 [Amended]

182. In § 130.3, paragraph (a)(3) is amended by removing the references to "92.103, 92.204, 92.304, 92.404, or 92.504" and adding in their place references to "93.103, 93.204, 93.304, 93.404, or 93.504".

§ 130.10 [Amended]

183. In § 130.10, paragraph (a), footnote 7 is amended by removing the reference "part 92" and adding in its place a reference to "part 93".

Done in Washington, DC, this 22nd day of October, 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–28473 Filed 10–23–97; 12:52 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–106–8]

RIN 0579–AA71

APHIS Policy Regarding Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service is adopting a policy that recognizes regions, and levels of risk among those regions, with regard to the importation of animals and animal products. We are applying this policy to all species of animals regulated under the Code of Federal Regulations, title 9, chapter I, subchapter D, including, but not limited to, ruminants, swine, birds, poultry, and horses. We consider this policy to be consistent with and to meet the requirements of international trade agreements entered into by the United States.

ADDRESSES: You may submit comments on this statement of policy by sending an original and three copies of your comments to Docket No. 94–106–8, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–106–8. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20237–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Purpose

In this document, the Animal and Plant Health Inspection Service (APHIS) sets forth our policy regarding the manner in which we will apply the concepts of regionalization and risk analysis to regulating the importation of animals and animal products into the United States. We are applying this policy to all species of animals regulated under the Code of Federal Regulations, title 9 (9 CFR), chapter I, subchapter D, including, but not limited to, ruminants, swine, birds, poultry, and equines.

We have traditionally viewed animal disease distribution on a country-by-country basis, with the presence or absence of a particular disease anywhere within a country's borders serving to establish, for regulatory purposes, the status of the entire country with regard to that disease. That approach has had the effect of establishing an all-or-nothing standard of risk avoidance that precludes our consideration of factors such as disease-free zones or low disease prevalence within a country when establishing restrictions on the importation into the United States of animals and animal products. Consistent with our obligations under international trade agreements, APHIS is altering its traditional country-based import restrictions by recognizing that there are identifiable and measurable gradations in the degree of disease risk presented by imported animals and animal products, and that these gradations are often tied more to climatological, geographical, and biological factors than to national political boundaries.

To help ensure that our standards for regulating imports on a regional basis and for assessing disease risk within defined regions are transparent and applied on a consistent basis, we have decided to issue this policy statement setting forth the factors we will take into account when considering future requests to export animals or animal products to the United States from distinct or definable regions that may not be national entities.

The Concept of Regionalization

Regionalization (division of areas into regions) is rooted in the concept that restrictions on the movement of animals and animal products for the purpose of disease control are biologically and ecologically most logical when applied to areas that are geographically homogenous with respect to disease distribution and livestock health infrastructures. Under this concept of regionalization, regions may be countries, parts of countries, or groups of countries.

Regionalization is used for:

- Localization and containment of existing, exotic, or newly emerging diseases.
- Recognition of distinct, definable areas of reduced risk within areas of greater risk.
- Providing a geographic basis for sanitary (animal) measures to reduce the risk of disease introduction through the movement of animals and animal products.

Contemporary international regionalization expectations are outlined in the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement that was authorized by the General Agreement on Tariffs and Trade (GATT). The WTO-SPS Agreement obliges member countries to develop transparent SPS measures based on sound scientific principles, risk assessment, and relevant international standards, and to apply them without discrimination, using the principles of equivalence and regionalization.

The United States has applied these concepts for decades in domestic programs for controlling brucellosis, tuberculosis, and pseudorabies, and for containing and eradicating outbreaks of exotic diseases such as highly pathogenic avian influenza. These concepts have also been used to facilitate exports by regionalizing the United States for bluetongue and other agents.

Recent APHIS Rulemaking

We have already applied the concept of regionalization of a region of low risk to the importation of beef from Argentina. On June 26, 1997, we published a final rule in the **Federal Register** (62 FR 34385–34394, Docket No. 94–106–5) allowing the importation of fresh, chilled or frozen beef from Argentina under certain import conditions, based on our determination that the unrestricted importation of such beef would present a low risk of introducing FMD into the United States. We have also applied the concept of regionalization in several other recent rulemaking actions. For example, on May 9, 1997, we published in the **Federal Register** a final rule (62 FR 25439–25443, Docket No. 94–106–6) to allow, under certain conditions, the importation of fresh, chilled or frozen pork from the State of Sonora, Mexico. On June 12, 1997, we published in the **Federal Register** a proposal (62 FR 32051–32053, Docket No. 97–002–1) to recognize all of Italy, except Sardinia, as an area in which African swine fever does not exist. Each of these actions was taken after we thoroughly investigated, through site visits and other data collection, the disease history, surveillance systems, animal health policies, and infrastructure of the areas in question. This document gives notice of our intent to apply such approaches to regionalization and risk analysis in future rulemaking actions.

Regionalization and Risk Assessment

The principles of the WTO–SPS Agreement are consistent with the

regulatory strategies adopted by many national veterinary services, as they have adapted to advances in animal health technology, progress in the control and eradication of major animal plagues, worldwide privatization of regulatory responsibilities, changing national boundaries, formation of trading blocks, and movement toward more transparent governmental decisionmaking.

In response to these changes, APHIS is adopting a policy of evaluating hazards presented by proposed animal and animal product importations based on the disease risk associated with the region from which they are exported, rather than on "disease-free" or "not-disease-free" statuses determined on a country-by-country basis. APHIS will analyze the disease risk involved and fashion appropriate import requirements over a wide range of variables. Thus, this policy approach will encompass the concepts of regionalization and risk assessment.

Risk assessment consists of identifying risk factors and evaluating their seriousness. The concept of assessing risk has underpinned regulatory decision-making in numerous sectors for some time. There are many risk assessment techniques. Some are very simple and others are extremely complex. APHIS has developed guidelines it has used and will use in the future in assessing the risk of disease introduction from the unrestricted importation of animals and animal products from specified regions, and in determining which conditions of importation will reduce any disease risk to a negligible level. These guidelines are discussed below.

Definition of "Region"

With only minor exceptions, the regulations in 9 CFR, chapter I, subchapter D, are currently based on the disease status of entire countries. This document gives notice of APHIS's policy to consider, for purposes of the importation of animals and animal products, the disease status of regions. APHIS considers a region to be any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

- A national entity (country);
- Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);
- Parts of several national entities combined into an area; or
- A group of national entities (countries) combined into a single area.

It is important to note that a region can be a national entity. Consistent with this concept, we are continuing to apply on a country-by-country basis the importation requirements currently set forth in 9 CFR, chapter I, subchapter D, for countries listed as being affected or not affected with specific diseases. We will continue to apply the current importation requirements to these countries until we receive a request to "regionalize" a country into regions, or to "regionalize" a group of countries into a region, or both. Once a request is made, we will evaluate the request and its supporting documentation to determine if the requested action is scientifically supportable, and solicit public comment on the request and its supporting data.

New Paradigms to Describe Risk

In reality, "free" is not the same as "risk-free," and a "not-free" designation does not ensure that all regions so considered pose an identical risk. Under the current regulations in 9 CFR, chapter I, subchapter D, unrestricted imports (i.e., importations subject to no import conditions) from countries classified as "free" of a certain disease can present different levels of risk. Current §§ 94.11 and 94.13 address this risk by imposing restrictions on the importation of meat from countries that are "free" of certain diseases, but that present a higher disease risk due to importation practices of these countries or the geographical proximity to countries with a higher disease risk. We consider the countries listed in §§ 94.11 and 94.13 to be "modified-free" countries.

Levels of risk exist upon a continuum. The extremes of this continuum can be exemplified by the risk statuses of countries set forth in the current regulations. For instance, § 94.1 of the current regulations lists countries considered to be free of rinderpest and foot-and-mouth disease (FMD). The two diseases are considered to exist in all countries not included on the "free" list. Under APHIS policy, conditions for "freedom" from disease under the current regulations include the requirement that vaccination for the disease not be carried out in the country in question. Thus, certain countries might not be included on the "free" list, even though they have reported no case of the disease for several years, because they continue to vaccinate for the disease. At the other end of the spectrum are countries where rinderpest or FMD is known to exist. Under the current regulations, all countries listed as those in which the diseases are considered to exist are treated as if the diseases exist throughout those countries at a uniformly high prevalence.

The import conditions applied under the current regulations for animals and their products reflect the extremes of "free" as currently understood and "not free." On the one hand, countries considered free of FMD and rinderpest may in most cases export animals to the United States with only a certificate of the animal's origin and health (subject to general inspection and quarantine at the U.S. port of arrival). At the other extreme, animals from countries where the diseases are considered to exist may not be imported into the United States, unless they have undergone pre-embarkation quarantine and testing in the country of origin and are imported through the high-security Harry S Truman Animal Import Center.

As noted above, until otherwise requested by foreign regions and approved by APHIS, we will continue to operate under the system of "free," "not-free," and "modified-free" on a country-by-country basis for those countries currently so listed in 9 CFR, chapter I, subchapter D. However, we will, in the future, evaluate the risk of importations and seek to determine the degree of risk involved to ascertain where the proposed importation would fall on the risk continuum. This will allow APHIS to address the degree of risk involved in a particular type of importation, rather than trying to fit it into one of the three categories contained in the current regulations.

Factors Considered in Assessing Risk

Factors affecting the risk levels of "free" regions are many and can include geographical proximity to areas where the disease exists, and importation practices that increase the risk that the disease might be introduced into the "free" region. Similarly, significant differences in risk can exist among regions in which a particular disease is known to exist, depending on the prevalence of the disease (the number of cases at a given time) or the infrastructure in place for identifying, containing or eradicating the disease.

In this policy statement, we are setting forth the factors we will consider in determining the risk of unrestricted importations from a region. Broadly, these factors are the following:

- The authority, organization, and infrastructure of the veterinary services organization in the region.
- The type and extent of disease surveillance in the region—e.g., is it passive and/or active; what is the quantity and quality of sampling and testing?
- Diagnostic laboratory capabilities.
- Disease status—is the disease agent known to exist in the region? If "yes," at what prevalence? If "no," when was the most recent diagnosis?
- The extent of an active disease control program, if any, if the agent is known to exist in the region.
- The vaccination status of the region. When was the last vaccination? What is the extent of vaccination if it is currently used, and what vaccine is being used?
- Disease status of adjacent regions.
- The degree to which the region is separated from regions of higher risk through physical or other barriers.
- The extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements.
- Livestock demographics and marketing practices in the region.
- Policies and infrastructure for animal disease control in the region—i.e., emergency response capacity.

Characterization of Levels of Risk

In practice, regions could have numerous possible combinations of the above factors. For instance, one region might have a low prevalence of a disease (the number of cases at a given time), but have loosely restricted borders with adjacent regions where the disease is present. Another region might have tighter border controls but a higher incidence of the disease (the number of new cases over a given period of time). Two regions with identical histories of disease incidence and disease prevalence might differ in that vaccination continues in one region, but not in the other. Two regions might theoretically share all risk characteristics, including adjacency to a region where a disease of concern is known to exist. However, in one case, the disease in the affected neighboring region might exist close to the border. In the other, it might exist two time zones away, if the neighbor is a large country that has not yet requested to be subdivided into regions. This one variable could affect the actual risk level between the two regions, and could potentially support two different sets of conditions necessary to reduce the risk of the importation of animals and animal products to a negligible level. Therefore, although each of the factors we will consider are accepted on an international level as potentially affecting the disease risk in a region, the weight each of the factors will be given will depend on the individual circumstances of the region.

Because of the number of potential variables and the vast number of possible combinations of those variables in assessing the risk of unrestricted importation of animals and animal products from a region, the precise combination of measures necessary to reduce the risk of disease introduction to a negligible level may vary from region to region depending on the commodities to be imported and the diseases of concern.

Recognizing these potential variables, we nonetheless consider it useful to provide benchmarks or "targets" of general risk characterization, by dividing the continuum of risk into five general categories, based on the risk factors described above. These benchmark risk categories are:

- Negligible risk;
- Slight risk;
- Low risk;
- Moderate risk;
- High risk.

In order to determine the risk category of a region, we must have or be supplied with sufficient information to evaluate the region's level of risk. Any region for which sufficient data is not available to make such an evaluation would be considered to be high risk until information became available to support an alternative determination.

As noted above, there are factors that we always look at in determining the level of risk that unrestricted importations from a region would present (veterinary infrastructure, disease status, disease status of adjacent regions, vaccination status, etc.). We have weighed these factors in our determination of a country's disease status under the current regulations, and will continue to do so in the future. The difference between the current regulations and the policy we are adopting is that, in the future, our consideration of these factors will not always result in one of the three current classifications of "free" "not free," or "modified free." In theory, and likely in practice, regions where an animal disease is not known to exist may present different levels of risk, and regions where an animal disease is known to exist may likewise present different levels of risk. We will establish import conditions appropriate to each of the regions in a transparent, scientific manner, subject to public review and comment, as discussed below. A region will be able, however, to determine how we will generally view its animal disease risk, according to the following factors and scenarios.

1. *Negligible Risk.* A region in which all of the following factors are present would generally be considered a region of *negligible risk* for a restricted disease agent:

- The restricted agent has not been diagnosed within the region for a period of time appropriate for that agent. This period of time will depend on the disease in question, but can range from 1 year for a disease such as FMD, to a longer period of time for diseases with long incubation times, such as spongiform encephalopathies and mycobacterial diseases.
- The restricted agent is not known to exist within any adjecent defined region.
- Vaccination for the restricted agent has been prohibited within the region for a period of time appropriate to the disease in question (exceptions may be made for certain diseases such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, and such vaccination would not increase the risk of importing the restricted agent into the United States).
- Any adjecent regions of slight risk or low risk for the restricted agent are separated by natural or man-made physical barriers or protected borders, or other movement controls and other measures and restrictions that are equivalent to those imposed in the United States for similar diseases subject to domestic control programs.
- All border access points from adjecent regions of slight risk or low risk for the restricted agent are controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that achieve the same level of biosecurity as required for importations from such regions of greater risk into the United States.
- Movement of animals and animal products into the region from regions of greater than negligible risk for the restricted agent is done only under conditions that achieve the same level of biosecurity as required for importations from such regions of greater risk into the United States.
- The region maintains an adequate passive surveillance system with the demonstrated capability of detecting restricted agents in a timely fashion.
- The region maintains policies and infrastructure to respond to any occurrences of a restricted agent.

2. *Slight Risk.* In general, a particular disease agent would not be known to exist in a region of slight risk, but adjacency to or extensive trade with regions of higher risk levels would create a greater risk of disease exposure than exists in a region of negligible risk. A region in which all of the following factors are present would be considered a region of *slight risk* for a restricted disease agent:

• The restricted agent has not been known to exist in the region for a period of time appropriate for that agent.
• Vaccination for the restricted agent is prohibited within the region (exceptions may be made for certain restricted agents such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, and such vaccination would not increase the risk of importing restricted agents into the United States).
• Any animals previously vaccinated against the disease have been slaughtered or moved out of the region, or are under provisional quarantine (exceptions may be made for certain restricted agents such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, and such vaccination would not increase the risk of importing restricted agents into the United States).
• Any adjacent regions of greater than slight risk for the restricted agent are separated by natural or man-made physical barriers or protected borders, or other movement controls and other measures that are equivalent to those employed in the United States for similar diseases subject to domestic control programs.
• All border access points from regions of greater than slight risk for the restricted agent are strictly controlled to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that achieve the same level of biosecurity as required for importations from such regions of greater risk into the United States.
• Movement of animals and animal products into the region from regions of greater than slight risk for the restricted agent is done only under conditions that achieve the same level of biosecurity as required for importation from such regions of greater risk into the United States.
• The region maintains adequate passive and/or active surveillance systems with the demonstrated capability of detecting restricted agents in a timely fashion.
• The region maintains policies and infrastructure to respond to any occurrences of a restricted agent.

3. *Low Risk*. A particular disease agent would not be known to exist in a region of low risk, but continued vaccination would create concerns about residual infection and/or masking of the agent. A region in which all of the following factors are present would be considered a region of *low risk* for a restricted disease agent.

• The restricted agent has not been diagnosed within the region during the past year, except for diseases with long incubation periods such as spongiform encephalopathies and mycobacterial diseases, and the prevalence of the restricted agent has been low over a period of time appropriate to the disease in question.
• Vaccination for the restricted agent is prohibited within the region or is limited to those herds that are at greatest risk of exposure from animals from regions of higher risk levels (exceptions may be made for certain diseases such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, and such vaccination would not increase the risk of importing restricted agents into the United States).
• Any adjacent regions of greater risk for the restricted agent are separated by natural or man-made physical barriers, or protected borders, or other movement controls and other measures that are equivalent to those employed in the United States for similar diseases subject to domestic control programs.
• All border access points from adjacent regions of greater risk for the restricted agent are controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that achieve the same level of biosecurity as required for importations from such regions of greater risk into the United States.
• Movement of animals and animal products into the region from regions of greater risk for the restricted agent is done only under conditions that achieve the same level of biosecurity as required for importation from regions of greater risk into the United States.
• The region maintains adequate passive and active surveillance systems with the demonstrated capability of detecting restricted agents in a timely fashion.
• The region maintains policies and infrastructure to respond to any occurrences of the restricted agent.

4. *Moderate Risk*. A particular disease agent would be known to exist in a region of moderate risk, but at a low level. A region in which all of the following factors are present would be considered a region of *moderate risk* for a restricted disease agent.

• The restricted agent has been diagnosed within the region during the past year, or within a longer period of time for diseases with long incubation periods such as spongiform encephalopathies and mycobacterial disease, but the prevalence of the restricted agent has been low for a period of time appropriate for the disease agent.
• An active control program with a goal of eradication for the restricted agent is in operation in the region.
• Vaccination for the restricted agent is currently limited to those herds at greatest risk of infection (exceptions may be made for certain diseases, such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, and such vaccination would not increase the risk of importing restricted agents into the United States).
• Any adjacent regions of greater risk are separated by natural or man-made physical barriers or protected borders, or other movement controls and measures equivalent to those employed in the United States for similar diseases subject to domestic control programs.
• All border access points from adjacent regions of greater risk for the restricted agent are strictly controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that achieve the same level of biosecurity as required for importation from such regions of greater risk into the United States.
• Movement of animals and animal products into the region from regions of greater risk is done only under conditions that achieve the same level of biosecurity as required for importation from regions of greater risk into the United States.
• The region maintains adequate passive and active surveillance systems with the demonstrated capability of detecting restricted agents in a timely fashion.
• The region maintains policies and infrastructure to eliminate any outbreaks of the restricted agent that may occur.

5. *High Risk*. A disease agent would be known to exist in a region of high risk, possibly at a high level. A region in which the following factors are present would be considered a region of *high risk* for a restricted disease agent.

• The restricted agent has been diagnosed within the region within the past year, or within a longer period of time for diseases with long incubation periods such as spongiform encephalopathies and mycobacterial disease, and the prevalence of the disease agent in the time period appropriate to the disease agent exceeds that of a moderate-risk region.
• A control program for restricted agents may be in operation in the region but does not meet the minimum standards for a region of moderate risk.
• Vaccination for the restricted agent may vary from herd to herd.
• Movement of animals and animal products into the region may not be adequately controlled from regions of moderate risk or high risk for the restricted agent.
• The region does not maintain a passive and active surveillance system for the restricted agent at a level that meets standards for a region of moderate risk.
• The region may or may not maintain policies and infrastructure to effectively control and restrict spread of any outbreaks of the restricted agent that may occur.

It should be noted that of the five general categories of risk set forth above, the categories referred to as "negligible risk," "slight risk," and "high risk" correspond to risk classifications as set forth in the current regulations. "Negligible risk" is comparable to our current free-without-restrictions status. "Slight risk" is comparable to our current modified-free status, applied to those countries where a disease is not known to exist but which, because of their proximity to countries where the disease exists or because of their importation practices, are considered to present more than a negligible risk of unrestricted importation of meat products. "High risk" is comparable to those countries where a disease is known to exist. To these three current classifications, the factors described above add the categories of "low risk" (to address regions that have reported no cases of disease over a specified period of time but that still vaccinate for the disease) and "moderate risk" (to address those regions where a disease may exist on a limited basis, but where it is adequately controlled and contained). Examples of regions that would fall under one of these two additional characterizations, along with an example of a high risk region, are as follows.

Example 1: A Region Considered To Present a Low Risk of FMD Introduction Through Unrestricted Importation

The example of a region characterized as presenting a low risk for FMD is one that we recently applied with regard to the importation of beef from Argentina. Because the last outbreak of FMD occurred in Argentina in 1994, we considered the disease risk in Argentina to be low, although higher than in other countries in which the disease has not occurred, due to the following factors:

(1) Vaccinations for FMD still continue in Argentina;

(2) Argentina supplements its national meat supply by importing fresh, chilled and frozen meat of ruminants and swine from countries where some prevalence of FMD occurs; and

(3) Argentina shares land borders with Brazil and Bolivia, for which we do not have enough information to establish a disease risk characterization for FMD.

For these reasons, we established import conditions on the importation of beef from Argentina that do not apply to other countries in which FMD is not known to occur. These conditions are discussed below under the heading "Examples of Import Conditions."

Example 2: A Region Considered to Present a Moderate Risk of FMD Introduction Through Unrestricted Importation

In this example, Region X has had an outbreak of FMD in the past year, but the prevalence of the disease in recent years has been low. Region X borders a region where FMD is known to exist. However, Region X has in place adequate passive and active surveillance systems for detection and reporting of the disease. Further, Region X has in place an active control program with the goal of eradication of FMD. Vaccination for FMD is currently limited to those herds at greatest risk of infection. Region X maintains policies and infrastructure to *eliminate* any outbreaks of the restricted agent that may occur.

Compare Region X to Region Y, which is:

Example 3: A Region Considered To Present a High Risk of FMD Introduction Through Unrestricted Importation

Region Y is identical to Region X in every way except two. First, it does not have an active control program with the goal of eradication of FMD. Second, it has in place policies only to *restrict*, rather than *eliminate*, outbreaks of FMD.

We would consider Region X to present a moderate risk of the introduction of FMD through unrestricted importation. We would consider Region Y to present a high risk.

Import Conditions Based on Risk

The risk characterizations described above are guidelines for the use of regions seeking to export animals or their products to the United States, and to provide guidance as to the factors we consider in deciding where a particular region falls on the disease risk continuum. The risk characterizations themselves do not determine whether an animal or its products may be safely imported into the United States, nor do they dictate the precise import conditions that would be appropriate to the importation of a particular commodity. But they do provide an indication as to the severity of the disease risk and the necessary restrictions that we would apply to importations to reduce the disease risk to a negligible level.

The actual decision whether to allow importations, and under what conditions, would be based on the outcome of a risk analysis conducted on a particular commodity from a particular region. In accordance with the WTO–SPS Agreement, we recognize that different import conditions might achieve equivalent results in reducing disease risk. However, the final determination of which import conditions to impose, and whether different sets of conditions are equivalent, will rest with APHIS. The WTO–SPS Agreement principles require that SPS measures be equitably applied, scientifically sound, guided by international standards, and "transparent." Signatory countries must also recognize that equal levels of risk mitigation can be achieved by applying differing sanitary measures (equivalence), based on risk-assessments applied on a regional basis.

In accordance with the WTO–SPS Agreement principles, it will be our policy to establish appropriate conditions for the importation of animals and animal products based either on international standards or as the result of an individual assessment of risk of the importation of a particular type of commodity from a particular region. A document describing the Agency's internal guidelines for risk assessment is currently under development. It will be made available electronically upon completion. In general, we will process applications for regionalization according to the following procedure:

The potential exporting region must submit a request to the APHIS Administrator for approval to export a particular type of animal or animal product to the United States. Along with the request, the region must provide information addressing the areas described above in this notice, under the heading "Factors Considered in Assessing Risk." This information will be made available to the public prior to our initiating any rulemaking action on the request. Additional information may be requested from the exporting region depending upon the specific commodity and the risk being evaluated.

Once we have received from a potential exporting region the information necessary to conduct a risk assessment, and have evaluated the risk, we will make a determination whether an import can be safely allowed and

under what conditions. If we believe the importation can be safely allowed, we will propose in the **Federal Register** to allow such importations, and under what conditions, along with a discussion of how we reached that decision. We will then provide a period of time during which the public may comment on our proposal. We will find most useful those comments that support their position with verifiable data or scientific information. During the comment period, the public will have access, both in hard copy and electronically, to the information upon which we based our risk analysis, as well as to our methodology in conducting the analysis. Once we have reviewed all comments received, we will make a final decision on what conditions will be necessary to allow the importation in question, and will publish that decision in the **Federal Register**.

Although the import conditions applied in each situation may vary according to the region, the disease, and the commodity involved, we anticipate, based on our experience enforcing the current regulations, that similar levels of risk will require similar conditions of importation. We have adopted, and have been applying for decades, a body of risk mitigation measures that will likely be used in some combination for each importation. These can include measures ranging from something as simple as a certificate of origin, to the requirement that animals intended for importation from regions of high risk be quarantined at APHIS's high-security Harry S Truman Animal Import Center, to outright prohibition of an importation.

The broad risk management options available for application, either individually or in combination, to animals or their products are:

- Certificate of origin of animals and animal products.
- Tests and inspection of imported animals or products.
- Tests and inspections of herds or premises of origin.
- Treatment of animals or products.
- Quarantine of imported animals.
- Restricted use or movement of imported animals or products.

Not all of the options are appropriate for every disease agent, so different strategies will be necessary for different agents. Some of the variabilities of the disease agents include:

- The incubation period.
- The duration of carrier status in animals.
- The number of potential host species that may be affected.
- The survivability of the disease agent outside the host animal.
- The effectiveness of available test procedures to detect the disease agent.
- The effectiveness of available treatment procedures to eliminate the disease agent or its vector.
- The availability of technology to eradicate the disease agent if it were introduced.
- If the disease agent were introduced, the potential costs (both economic and environmental) to eradicate it, or potential costs into perpetuity if the agent cannot be eradicated.

Application of Import Conditions

The three examples we presented earlier in this document of regions characterized as either "low risk," "moderate risk," or "high risk" for FMD can also be used to illustrate the types of mitigation measures we would consider appropriate for a disease such as FMD, which is a serious disease with significant potential costs in the event of introduction and establishment. Examples of the types of import conditions that would be appropriate are set out as follows. Please note, however, that the precise import conditions in any specific case will depend on all of the factors affecting a particular region.

Example 1: Importation of Beef From a Region Characterized as Low-Risk for FMD

As noted above, we recently made final a rule allowing the importation of beef from Argentina, which we determined to be a country that would present a low risk of FMD introduction if unrestricted imports were allowed into the United States. Because of the potentially severe consequences of FMD introduction, we considered it necessary to apply the following import conditions to any fresh, chilled or frozen beef imported from Argentina, and to cured or cooked beef from Argentina that does not meet the requirements of 9 CFR 94.4. An authorized official of Argentina must certify on a meat inspection certificate that each of the following conditions was met.

(1) The meat is beef that originated in Argentina;

(2) The beef came from bovines that were moved directly from the premises of origin to the slaughterhouse without any contact with other animals;

(3) The beef has not been in contact with beef from regions in which FMD is considered to exist;

(4) The beef came from bovines that originated from premises where FMD and rinderpest have not been present during the lifetime of any of the bovines slaughtered for export of beef;

(5) The beef is from bovines that originated from premises on which ruminants or swine have not been vaccinated with modified or attenuated live viruses for FMD at any time during the lifetime of any of the bovines slaughtered for export of beef;

(6) The beef originated from premises where no bovines have been vaccinated for rinderpest at any time during the lifetime of any of the bovines slaughtered for export of beef;

(7) All bone, blood clots, and lymphoid tissue have been removed from the beef; and

(8) The beef comes from carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter, and have reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still does not reach a pH of 5.8 or less after 60 hours, the beef from the carcass may not be imported into the United States.

Example 2. Importation of Beef From a Region Characterized as Moderate Risk for FMD

In the examples or risk characterization we provided earlier in this document, we considered Region X to be a region of moderate risk for FMD. Although the actual conditions for the importation of beef from Region X might be established by means of a risk analysis, based on our experience enforcing the regulations, it is likely that the conditions would be similar to those for a low risk region, with the following differences due to the existence of FMD in the region and the resulting higher risk:

1. The beef would have to come from bovines that originated from premises where FMD or rinderpest has not been diagnosed within 15 statute miles (25 kilometers) within the previous 12 months; and

2. The beef would have to be held at no more than 40 °F (4 °C) for a minimum of 14 days before export, during which time the premises of origin of all animals from which the beef in the shipment came would have to remain free of FMD and rinderpest.

Example 3: Importation of Beef From a Region Characterized as High Risk for FMD.

The importation of fresh, chilled or frozen beef would be prohibited from a region characterized as presenting a high risk for FMD.

Diseases of Concern

The current regulations specifically address a number of diseases subject to import regulations, either because they are not known to exist in the United States or because they are subject to Federal or cooperative Federal/State control or eradication programs in the United States. We will continue to regulate the importation of animals and their products with regard to these diseases. Additionally, it will be our policy to consider the risk presented by certain diseases not currently specifically listed in 9 CFR when determining whether to allow an importation and under what conditions.

With regard to ruminants and swine, the diseases we are specifically naming here have, in many cases, been of concern even under the current regulations, but have not posed a significant practical risk because the countries in which they exist have also been countries in which rinderpest or FMD exists. Accordingly, such importations were prohibited. The current regulations ban the importation into the United States of most animals and animal products from countries in which rinderpest or FMD exists. In those cases where animals or animal products are allowed to be imported from these countries, they must meet stringent quarantine or processing requirements. These prohibitions and safeguards effectively ban many animals and products affected with other diseases.

However, several factors now make it necessary to consider specific regulatory restrictions for certain diseases not currently addressed in the regulations. The first factor is the policy we are adopting of providing for regionalization and for various levels of characterization of disease risk. For example, unlike under the current regulations, the fact that FMD exists in one region of a country may not significantly restrict the importation of animals and animal products from another region of the same country, if the two regions are so separated and monitored that the risk of the disease being transferred from one region to the other is negligible. This is a departure from the current regulations, in which FMD in any part of a country determines the FMD status of the entire country.

The second factor is the progress many countries have made in eradicating, or moving toward eradication of, rinderpest and FMD in specific regions. In countries where FMD exists, an increasing number of regions have eradicated or come close to eradicating the disease. Therefore, under our policy of regionalization, import restrictions due to FMD in one part of a country can no longer be relied upon to guard against the importation of other animal diseases of concern.

In addition to FMD and rinderpest, other disease agents that are specifically addressed in current 9 CFR parts 92 and 94 are: In part 94, African swine fever virus, hog cholera (also known as classical swine fever virus), swine vesicular disease virus, exotic Newcastle disease (END) virus (also known as velogenic Newcastle disease or VVND virus), fowl pest (also known as fowl plague or highly pathogenic avian influenza), bovine spongiform encephalopathy, and salmonella enteritidis phage type 4; in part 92, contagious pleuropneumonia, scrapie, surra caused by *Trypanosoma evansi*, fever ticks and other ticks, vesicular stomatitis, dourine caused by *Trypanosoma equigenitalium*, glanders caused by *Pseudomonas mallei*, equine piroplasmosis caused by *Babesia equi* or *B. caballi*, equine infectious anemia, contagious equine metritis caused by *Taylorella equigenitalis*, African horse sickness virus, Venezuelan equine encephalitis virus, epizootic lymphangitis caused by *Histoplasma farciminosum*, and *Taenia multiceps* (also known as *Taenia coenurus*).

In addition to the diseases listed above, we will consider the following diseases when determining conditions for the importation of animals and animal products: Akabane virus, bluetongue virus, epizootic hemorrhagic disease virus, malignant catarrhal fever virus (African or wildebeest form), blue eye disease of swine (paramyxovirus), *Brucella abortus*, *Brucella melitensis*, *Brucella suis*, *Trypanosoma vivax*, contagious agalactiae of sheep and goats due to *Mycoplasma agalactiae*, *Mycobacterium bovis*, pseudorabies, sheep pox and goat pox, heartwater due to *Cowdria ruminantium*, Japanese encephalitis virus, lumpy skin disease (Neethling virus), Nairobi sheep disease (Ganjam, Dugbe) virus, peste des petits ruminants, Rift Valley fever, and theileriosis (east coast fever, corridor disease, Mediterranean fever), turkey rhinotracheitis (swollen head), goose parvovirus (Derzsy's disease), adenovirus 127 (egg drop syndrome), *salmonella pullorum*, and *salmonella gallinarium*.

In determining conditions for the importation of animals, we will also consider the presence in the region of ectoparasites of animals if the ectoparasites are not known to exist in the United States or are subject to cooperative Federal/State control programs in the United States. These ectoparasites include the following:

Ticks: Amblyomma astrion, A. cohaerens, A. gemma, A. hebraeum, A. javenese, A. lepidum, A. marmoreum, A. pomposum, A. sparsum, A. testudinarium, A. tholloni, A. variegatum, Boophilus annulatus, B. decoloratus, B. florae, B. geigyi, B. kohisi, B. microplus, Dermocentor daghestanicus, D. marginatus, D. nuttalli, D. pictus, D. reticulatus, D. silvarium, Haemaphysalis bispanosa, H. leachii, H. longicornis, H. otophila, H. punctata, H. sulcata, Hyalomma anatolicum anatolicum, H. anatolicum excavatum, H. detritum, H. dromedarii, H. marginatum marginatum, H. marginatum rufipes, H. marginatum turanicum, H. scupense, H. truncatum, Ixodes persulcatus, I. pilosus, I. ricinus, Ornithodoros erraticus, O. moubata, O. moubata porcinus, Rhipicephalus appendiculatus, R. bursa, R. capensis, R. compositus, R. evertsi evertsi, R. evertsi, mimeticus, R. glabroscutatum, R. kochi, R. lunulatus, R. pulchellus, R. sinus, R. turanicus, and R. zambeziensis.

Mites: Chorioptes bovis, various subspecies of which cause mange in horses, cattle, and sheep; *Psorergates ovis*, the causative agent of sheep scabies; *Psoroptes cuniculi*, the causative agent of ear mange in goats and rabbits; and *P. ovis*, various subspecies of which cause scabies and mange in horses, cattle, sheep, and swine.

Insects: Chrysomyia bezziana (Old World screwworm), *Cochliomyia hominivorax* (*Callitrogra americana*) (New World screwworm), and *Hippobosca* spp. and *Lipoptena* spp. (louse flies).

Done in Washington, DC, this 22nd day of October 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–28472 Filed 10–23–97; 12:52 pm]

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October 28, 1997

Part V

Department of Agriculture

Agriculture Marketing Service

7 CFR Parts 91, 93 and 96
Revision of Laboratory Service Fees; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91, 93, and 96

[Docket Number S&TD–97–001]

Revision of Laboratory Service Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend current fees and to add new fees for laboratory testing services for agricultural commodities. This proposed rule includes additional tests for various commodity products. This document reflects increased program costs including the cost-of-living adjustments since the last fee changes.

DATES: Comments must be received on or before November 28, 1997.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to James V. Falk, Docket Manager, USDA, AMS, Science and Technology, P.O. Box 96456, Room 3517-South, Washington, DC 20090–6456 and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection in Room 3507, South Agriculture Building, 1400 Independence Avenue, SW, between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Alan R. Post, (202) 720–3322.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are more than 300 users of the Science and Technology Division's (S&TD) laboratory testing services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small businesses because only minimal increases to user fees for laboratory tests for commodities are recommended. Laboratory tests and services of S&TD are provided to these businesses on a voluntary basis and any decision on their part to discontinue the use of the services and obtain new contracts with other governmental agency or private laboratories would not hinder the food processors from marketing their products. In fiscal year 1996, the S&TD Laboratory Program revenues exceeded obligatory costs by only $101,000. The decline in revenue from the fiscal year 1995 level of $907,000 was due to a decrease in the requested dairy product testing at the S&TD Midwestern Laboratory in Chicago, Illinois. For fiscal year 1997 the Science and Technology Division expects to report a $332,000 deficit at the current fee level because there were additional revenue declines with the analyzing of all other commodities at our laboratories. In 1997 the S&TD expects to incur revenue losses from 1996 levels of $216,000 and $449,000 respectively from poultry and tobacco product testing. In addition, the aflatoxin testing program net governmental receipts available to cover administrative costs and authorized appropriation outlays are projected to decline from $79,000 in 1996 to $14,000 in 1997. This is a consequence of the increased number of Peanut Administrative Committee (PAC) approved private laboratories that handle required aflatoxin analyses of peanuts. In recent years S&TD has voluntarily closed aflatoxin testing facilities at Camilla and Ashburn, Georgia. This was a streamlining measure to reduce Federal program costs and to restructure the Division to improve efficiency of operations and responsiveness of services. We expect the Laboratory Program to end fiscal year 1997 with an operating reserve of $3,261,000 which will provide a reserve balance below the 6 month reserve appropriate under normal operating conditions. The AMS estimates that overall this rule would yield additional laboratory testing program revenues of $694,000 during fiscal year (FY) 1998. Without the fee increase, anticipated revenue would not cover program costs. Projected FY 1998 laboratory revenues are $5,616,000 with obligatory costs projected at $6,276,000. Trust fund balances would be below the required 4 month reserve levels. With a fee increase, projected FY 1998 revenues would be $6,310,000 with obligatory costs projected at $6,276,000. The laboratory fees in the general schedules would increase by approximately 6 percent. These fees are competitive to the fees found in price lists distributed by private laboratories. Furthermore, users of S&TD testing services are under no obligation to use them. This proposed action updates lists of laboratory tests and services contained in certain sections of the regulations. In addition, the fees for the specialized and required aflatoxin testing of nuts and their products would have increases ranging from 6 to 21 percent.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980, as amended on May 22, 1995 (44 U.S.C. Chapter 35; Pub. L. 104–13 § 2), the information collection requirements contained in the provisions to be updated have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408—42448) to combine all AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity divisions (Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed) to its S&TD, formerly the Science Division. The rule included fees charged for testing and related services under the diversified S&TD programs and set the hourly analytical testing rate at $34.20 per hour. On May 10, 1994, an interim final rule was published in the **Federal Register** (59 FR 24318—24325) which was finalized on September 30, 1994 (59 FR 50120—50122) and which reduced S&TD laboratory testing fees for certain dairy products and established additional tests with fees for dairy products for incorporation into existing schedules.

The S&TD laboratory testing programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. However under certain

programs such as those involving peanuts, aflatoxin testing is required. The Act authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for agricultural commodities. The Act also requires that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs.

There is a need to revise the list of testing services available due to changes in analytical methodologies and customer service needs. Under this proposed rule, new laboratory tests are added to the tables in Part 91 as follows: (1) Heavy metal screen, (2) niacin, (3) odor, (4) vitamin B–1 (thiamin), (5) vitamin B–2 (riboflavin), (6) capsaicin (hot sauce), (7) color (apparent-visual), (8) extractable color in spices, (9) hydroxymethylfurfural (honey), (10) linolenic acid, (11) overrun for whipping topping, (12) pH—quinhydrone (cheese), (13) serum drainage for whipped topping, (14) rate of wetting (nondairy creamer), (15) reducing sugars, (16) *Bacillus cereus*, (17) *Lactobacillus* count, (18) *Salmonella* enumeration (complete test), (19) *Salmonella typhi* (meat products), and (20) parasite identification. The direct microscopic clump count (DMCC) test is removed from Table 5 in Part 91 because it is analogous to the bacterial direct microscopic count test. Certain other laboratory tests are removed from the tables in Part 91 because there have been few, if any, requests for these tests in recent years. These outmoded laboratory tests are fat (cheese and related products), fat by specific gravity, moisture by Karl Fischer, and proteolytic count (dairy products). Four existing laboratory test fees in the tables of Part 91 are reduced corresponding to reduced analysis time and lowered equipment cost associated with utilizing revised methodology. The cholesterol test fee is lowered from $171.00 to $90.65. The available carbon dioxide test fee is reduced from $136.80 to $54.39. The jelly strength (bloom) test fee is reduced from $85.50 to $54.39. The water activity test is changed from $136.80 to $27.20.

In its analysis of projected costs for fiscal years 1997 and 1998, AMS has identified increases in the costs of providing laboratory testing services despite declining revenues. The total Laboratory Program obligations in FY 1996 were $5,963,000 while the program operating costs are projected to be $6,032,000 in FY 1997 with current fees. These cost increases are attributable mainly (65 percent of total operating budget or $3,684,000 in 1997) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, a general and locality salary increase for Federal employees, ranging from 2.39 to 2.89 percent depending on locality, effective January 1996, and an additional salary increase, ranging from 3.30 to 6.26 percent depending on localities, effective January 1997, has materially affected the costs of laboratory programs. Current and estimated demand for the laboratory services are also factored in the fee revisions. Since S&TD's last fee increase in August 1993 (58 FR 42408) total annual revenue of the S&TD's laboratories has decreased from $6.2 million to $5.6 million. Major factors affecting these revenue losses include industry's implementation of plant and in-house testing, cutbacks in dairy support and procurement programs, and reduction in USDA food assistance programs due to re-engineering involving State and local governments. It is anticipated that in FY 1998, at the current fee levels, the S&TD will not have sufficient revenue to sustain present staffing levels, to cover equipment and material cost increases, and to still maintain an adequate reserve balance of $2.7 million or a minimum 4 months reserve called for by Agency policy and prudent financial management.

The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act requires that reasonable fees be collected from the users of these services to cover, as nearly as practicable, the costs of maintaining the programs. A recent review of the current fee schedules, effective since September 30, 1994 (59 FR 50120—50122), revealed that anticipated revenue would not adequately cover increasing program costs. Without a fee increase, projected FY 1998 revenues for laboratory services are $5,616,000 with obligatory costs projected at $6,276,000. Accordingly, S&TD is proposing to increase by 6 percent the currently listed laboratory fees in Tables 1 through 5 and in Tables 7 through 8 in Part 91. The standard hourly rate would be increased from $34.20 to $36.26 (6 percent). In addition, the laboratory rate for appeals, holiday and overtime service would be raised from $51.30 to $54.39 per analysis hour.

The fees and charges in Part 96 involved with the official grading of any lot of cottonseed would also increase by 6 percent. These fee increases are needed because of a statistical based cottonseed lot size study by S&TD in 1992 and the consequential revision of rule 135, section 5 of the Trading Rules of the National Cottonseed Products Association. The trade association's rule allows licensed cottonseed samplers under AMS's supervision to increase the maximum cottonseed lot size from 150 to 300 tons to obtain a representative official cottonseed sample when prevailing environmental conditions during a period of 3 consecutive days do not compromise the quality of graded cottonseed. This resulted in a corresponding yearly reduction of the total number of official cottonseed samples subject to analytical chemical methods to derive a composite official grade designation. Even though the cottonseed chemist licensing program costs have been lowered in recent years, the loss of revenue resulting from the decreased issuance of the official cottonseed grading certificates has been substantial. Therefore, the Agency proposes to revise the certificate fee charged for official analysis and cottonseed grade determination from $3.00 per certificate, issued by the chemist, to $3.18. The application fee for a chemist's license would be raised from $1,100.00 to $1,166.00 for the examination, while the fee for renewal of the license would be increased from $275.00 to $292.00.

The laboratory fees for aflatoxin analyses in Table 6 in Part 91 would be increased or decreased depending on the commodity type or analytical method utilized. The cost of analyzing shelled peanuts by high performance liquid chromatography (HPLC) would be decreased from $50.00 to $31.00 per single analysis because automated HPLC equipment is being used now in the laboratory. Other aflatoxin test fees would increase by 6 to 21 percent because there are corresponding increased costs of the expendable supplies and materials to perform these analyses.

The rule would remove the time allotments for single tests in Tables 1 through 7 in Part 91. The time allotments stated in the prior rules and regulations of the S&TD (58 FR 42415, August 9, 1993 and 59 FR 50121, September 30, 1994) are no longer applicable because of the recent approval of automated equipment and rapid procedures for many of the listed tests. This new technology comes with

increased expenses in specialized supplies and materials required to perform the requested analyses.

This proposal provides for a 30-day comment period. This period is deemed appropriate in view of the need to make revisions to the current fee schedules without delay if approved.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Science and Technology Division Laboratories, Fees and charges

7 CFR Part 93

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables

7 CFR Part 96

Cottonseeds, Chemist's licensure, Cottonseed quality analysis, Official grade.

For the reasons set forth in the preamble, Title 7, chapter I is proposed to be amended as follows:

PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

Subpart I—Fees and Charges

2. In § 91.37, Tables 1 through 8 and paragraph (b) are revised and a new paragraph (d) is added to read as follows:

§ 91.37 Fees for laboratory testing, analysis, and other services.

* * * * *

TABLE 1.—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	List fee
Ammonia, Ion Selective Electrode	$81.59
Ash, Total	36.26
Ash, Acid Insoluble	54.39
Chloride, Salt Titration (Dairy)	18.13
Fat, Acid Hydrolysis	36.26
Fat (Dairy Products)	18.13
Fat, Ether Extraction	36.26
Fat, Microwave—Solvent Extraction	36.26
Fiber, Crude	72.52
Moisture, Distillation	36.26
Moisture, Oven	18.13
Protein, Kjeldahl	72.52
Salt, Back Titration	27.20
Salt, Potentiometric	18.13

TABLE 2.—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	List fee
Acid Degree Value (Dairy)	$36.26
Acidity, Titratable	9.07
Carotene, Spectrophotometric	90.65
Catalase Test	18.13
Cholesterol [1]	90.65
Color (Honey)	18.13
Color, NEPA (Eggs)	36.26
Consistency, Bostwick (Cooked)	18.13
Consistency, Bostwick (Uncooked)	18.13
Density (Specific Gravity)	9.07
Dispersibility (Moates-Dabbah Method)	18.13
Fat Stability,[2] AOM	36.26
Fatty Acid Profile (AOAC–GC method)	145.04
Flash Point Test only	72.52
Free Fatty Acids	18.13
Meltability (Process Cheese)	18.13
Peroxidase Test	18.13
Peroxide Value	27.20
Smoke Point Test only	72.52
Smoke Point and Flash Point	126.91
Solids, Total (Oven Drying)	18.13
Soluble Solids, Refractometer	18.13

[1] Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.
[2] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES
(DIRECT AND INDIRECT)

Type of analysis	List fee
Aflatoxin, (Dairy, Eggs)	$126.91
Alar or Daminozide Residue	217.56
Amitraz Residue, GLC	217.56

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES—Continued
(DIRECT AND INDIRECT)

Type of analysis	List fee
Alcohol (Qualitative)	72.52
Alkalinity of Ash	54.39
Antibiotic, Qualitative (Dairy)	18.13
Antibiotic, Quantitative [3]	398.86
Ascorbates (Qualitative—Meats)	18.13
Ascorbic Acid, Titration	36.26
Ascorbic Acid, Spectrophotometric	36.26
Benzene, Residual	72.52
Brix, Direct Percent Sucrose	18.13
Brix, Dilution	18.13
Butylated Hydroxyanisole (BHA)	54.39
Butylated Hydroxytoluene (BHT)	54.39
Caffeine, Micro Bailey-Andrew	54.39
Caffeine, Spectrophotometric	36.26
Calcium	54.39
Citric Acid, GLC or HPLC	54.39
Chlorinated Hydrocarbons:	
Pesticides and Industrial Chemicals:	
Initial Screen	145.04
Second Column Confirmation of Analyte	36.26
3Confirmation on Mass Spectrometer	72.52
Dextrin (Qualitative)	18.13
Dextrin (Quantitative)	108.78
Filth, Heavy (Dairy)	90.65
Filth, Heavy (Eggs)	145.04
Filth, Light (Eggs)	90.65
Filth, Light & Heavy (Eggs Extraneous)	217.56
Flavor (Dairy)	9.07
Flavor (Products except Dairy)	27.20
Fumigants:	
Initial Screen:	
Dibromochloropropane (DBCP)	36.26
Ethylene Dibromide	36.26
Methyl Bromide	36.26
Confirmation on Mass Spectrometer:	
Each individual fumigant residue	72.52
Glucose (Qualitative)	27.20
Glucose (Quantitative)	63.46
Glycerol (Quantitative)	108.78
Gums	108.78
Heavy Metal Screen [2]	317.28
High Sucrose Content or Avasucrol:	
Percent Sucrose (Holland Eggs)	145.04
Hydrogen Ion Activity, pH	18.13
Mercury, Cold Vapor AA	90.65
Metals—Other Than Heavy, Each Metal	72.52
Monosodium Dihydrogen Phosphate	145.04
Monosodium Glutamate	145.04
Niacin	72.52
Nitrites (Qualitative)	18.13
Nitrites (Quantitative)	108.78
Oxygen	18.13
Odor	9.07
Palatability and Odor:	
First Sample	27.20
Each Additional Sample	18.13
Phosphatase, Residual	36.26
Phosphorus	72.52
Propylene Glycol, Codistillation:	
(Qualitative)	72.52
Pyrethrin Residue (Dairy)	145.04
Scorched Particles	9.07
Sodium, Potentiometric	36.26
Sodium Benzoate, HPLC	54.39
Sodium Lauryl Sulfate (SLS)	290.08
Sodium Silicoaluminate (Zeolex)	72.52
Solubility Index	18.13
Starch, Direct Acid Hydrolysis	108.78
Sugar, Polarimetric Methods	36.26
Sugar Profile, HPLC: [3]	
One type sugar from HPLC profile	108.78

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES—Continued
(DIRECT AND INDIRECT)

Type of analysis	List fee
Each additional type sugar	18.13
Sugars, Non-Reducing	108.78
Sugars, Total as Invert	72.52
Sulfites (Qualitative)	27.20
Sulfur Dioxide, Direct Titration	36.26
Sulfur Dioxide, Monier-Williams	54.39
Toluene, Residual	72.52
Triethyl Citrate, GC (Quantitative)	36.26
Vitamin A	90.65
Vitamin A, Carr-Price (Dry Milk)	45.33
Vitamin B–1 (Thiamin)	72.52
Vitamin B–2 (Riboflavin)	72.52
Vitamin D, HPLC (Vitamins D_2 and D_3)	308.21
Whey Protein Nitrogen	27.20
Xanthydrol Test For Urea	54.39
This is an optional test to the extraneous materials isolation test.	

[1] Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.
[2] Heavy metal screen includes tests for cadmium, lead, and mercury.
[3] This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	List fee
Available Carbon Dioxide (Baking Powders)	$54.39
Capsaicin (Hot Sauce)	72.52
Color, Apparent-Visual	9.07
Complete Kohman Analysis (Dairy)	36.26
Extractable Color in Spices	18.13
Grape Juice Absorbency Ratio	18.13
Hydroxymethylfurfural (Honey)	36.26
Jelly Strength (Bloom)	54.39
Linolenic Acid	72.52
Methyl Anthranilate	36.26
Net Weight (Per Can)	9.07
Non-Volatile Methylene Chloride Extract	90.65
Overrun for Whipped Topping	27.20
Particle Size (Ether Wash)	18.13
pH—Quinhydrone (Cheese)	18.13
Potassium Iodide (Table Salt)	54.39
Quinic Acid (Cranberry Juice)	63.46
Serum Drainage for Whipped Topping	18.13
Sieve or Particle Size	18.13
Rate of Wetting (Nondairy Creamer)	18.13
Reducing Sugars	72.52
Water Activity	27.20
Water Insoluble Inorganic: Residues (WIIR)	72.52
Yellow Onion Test	27.20

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count	$18.13
Anaerobic Bacterial Plate Count	27.20
Bacillus cereus	72.52
Bacterial Direct Microscopic Count	36.26
Campylobacter jejuni	145.04
Coliform Plate Count (Dairy Products)	18.13
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count)	27.20
Coliforms, Most Probable Number (MPN): [1]	
Step 1	27.20
Step 2	27.20
E coli, Presumptive MPN (Additional) [2]	54.39
Enterococci Count	108.78
Lactobacillus Count [3]	45.33
Listeria monocytogenes Confirmation Analysis: [4]	
Step 1	54.39
Step 2	54.39

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	List fee
Step 3 (Confirmation)	90.65
Parasite Identification	145.04
Psychrotrophic Bacterial Plate Count	27.20
Salmonella (USDA Culture Method): [5]	
Step 1 (Dairy Products)	36.26
Step 1	54.39
Step 2	27.20
Step 3 (Confirmation)	54.39
Serological Typing (Optional)	90.65
Salmonella Enumeration (Complete Test)	108.78
Salmonella (Rapid Methods): [6]	
Step 1	72.52
Step 2	27.20
Step 3 (Confirmation)	54.39
Salmonella typhi (Meat Products) [7]	36.26
Staphylococcus aureus, MPN:	
With Coagulase Positive Confirmation	63.46
Thermoduric Bacterial Plate Count	27.20
Yeast and Mold Count	18.13
Yeast and Mold Differential Plate Count	27.20

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.
[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E. coli* from inoculated and incubated EC broth (*Escherichia coli* broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.
[3] Determination of bacterial plate count of different species of *Lactobacillus*.
[4] *Listeria monocytogenes* test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusive (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test. *Listeria monocytogenes* test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates. Both methods for *Listeria determination have the equivalent time needed for each step.*
[5] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step—3 confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.
[6] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and ELISA test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.
[7] *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6.—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Fee per single analysis	Fee per pair analyses [1]
Peanut Butter (TLC—CB—Affinity Column)	$36.26	NA [2]
Corn (TLC—CB—Affinity Column)	36.26	NA
Roasted Peanuts (TLC—BF)	36.26	NA
Brazil Nuts (TLC—BF)	72.52	NA
Pistachio Nuts (TLC—BF)	72.52	NA
Shelled Peanuts (TLC—Affinity Column)	17	34
Shelled Peanuts (HPLC)	31	62
Tree Nuts (TLC)	36.26	NA
Oilseed Meals (TLC)	36.26	NA
Edible Seeds (TLC)	36.26	NA
Dried Fruit (TLC)	36.26	NA
Small Grains (TLC)	36.26	NA
In-Shell Peanuts (TLC)	17	34
Silage; Other Grains (TLC)	36.26	NA
Submitted Samples (TLC—Affinity Column)	36.26	NA

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is $34.00 per pair of analyses using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column chromatography method. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is $31.00 and $62.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology Division's current hourly rate of $36.26.
[2] NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE AND TECHNOLOGY DIVISION'S LABORATORY ANALYSIS FEES

Laboratory service description	List fee
Sample Grinding Raw Peanuts by Vertical Cutter Mixer (VCM)	$18.13
Sample Grinding Canned Boned Poultry (VCM)	36.26
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
per pouch or raw sample	9.07
per tray pack	18.13
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample	9.07

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
Established Courier Expense at Albany, Georgia S&TD Laboratory	$2.15
Courier Expense at Other AMS Laboratories:	
Mileage Charge Set at $0.31 Per Mile Roundtrip from Laboratory to Delivery Site	Varies
Facsimile Charge (Per Analysis Report)	$3.20 minimum up to first 3 pages, then $1.10 per page
Additional Analysis Report or Extra Certificate (½ hour charge)	$18.13 per report or certificate reissued

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The standard hourly rate shall be $36.26.

* * * * *

(d) When Science and Technology Division provides applied and developmental research and training activities for microbiological and chemical analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost basis.

3. Section 91.38 is revised to read as follows:

§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in § 91.37(a) if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $54.39 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an inadvertent error was made in the original analysis.

4. In § 91.39, paragraph (a) is revised to read as follows:

§ 91.39 Special request fees for overtime and legal holiday service.

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in § 91.37(a). The premium laboratory rate for holiday and overtime service will be $54.39 per analysis hour.

* * * * *

5. In § 91.40, paragraph (a) is revised to read as follows:

§ 91.40 Fees for courier service and facsimile of the analysis report.

(a) The AMS peanut aflatoxin laboratory at Albany, Georgia, has a set courier charge of $2.15 per trip to retrieve the sample package. The mileage charge specified in Table 8 of this part for courier service at other AMS laboratories is based on the shortest roundtrip route from laboratory to sample retrieval site.

* * * * *

PART 93—PROCESSED FRUITS AND VEGETABLES

1. The authority citation part 93 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds

2. In § 93.11, the definition for "aflatoxin" is revised to read as follows:

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus flavus, Aspergillus parasiticus,* and *Aspergillus nomius.* The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B_1 and derivatives with a blue fluorescence, aflatoxin B_2 with a blue-violet fluorescence, aflatoxin G_1 with a green fluorescence, aflatoxin G_2 with a green-blue fluorescence, aflatoxin M_1 with a blue-violet fluorescence, and aflatoxin M_2 with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B_1, B_2, G_1, G_2, M_1, M_2, GM_1, B_{2a}, G_{2a}, R_0, B_3, 1–OCH_3B_2, and 1–CH_3G_2.

3. In § 93.12, paragraph (b)(1) is revised to read as follows:

§ 93.12 Analyses available and locations of laboratories.

* * * * *

(b) * * * (1) The Science and Technology Division Aflatoxin Laboratories at Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

* * * * *

PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)

1. The authority citation part 96 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Section 96.20 is revised to read as follows:

§ 96.20 Fee for chemist's license.

(a) The fee for the examination of an applicant for a license as a chemist to analyze and certify the grade of cottonseed shall be $1,166.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the evident of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant's beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist's license, the fee shall be $292.00.

3. In § 96.21, paragraph (a) is revised to read as follows:

§ 96.21 Fee for certificates to be paid by licensee to Service.

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service $3.18 for each certificate of the grade of cottonseed issued by the licensee.

* * * * *

Dated: October 17, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–28454 Filed 10–27–97; 8:45 am]

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federal register

Tuesday
October 28, 1997

Part VI

The President

Proclamation 7045—National Consumers Week, 1997

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Tuesday, October 28, 1997

Presidential Documents

Title 3—

The President

Proclamation 7045 of October 24, 1997

National Consumers Week, 1997

By the President of the United States of America

A Proclamation

Americans have always had a passion for fairness. It imbues the great charters on which our Nation is founded, and it is the cornerstone of our legal system. Fairness must also form the foundation of the American economy, an economy in which consumers rightly expect a "fair shake": honest transactions and safe, dependable goods and services.

Our economy has changed enormously during the past 200 years, developing from the agrarian system of the 18th century through the Industrial Revolution of the 19th century to the information revolution of our own era. Today, technological innovation is rapidly transforming our relationships with the marketplace and the goods and services we buy. However, despite these dramatic changes, basic consumer values remain the same. Consumers still expect quality and service for their money; they still place great importance on the safety and reliability of the products they buy; and they still want to know that businesses will meet these expectations.

In the days of Adam Smith, when products were less complicated and their quality more easily discerned, *caveat emptor* was the ruling principle of the marketplace. In today's economy, where the microchip has dramatically altered what we buy and how and where we buy it, products and services are much more complex, and consumers need better information and greater protection to ensure that the marketplace continues to treat them fairly.

The Consumer Bill of Rights, first articulated in President Kennedy's 1962 Special Message to Congress on Protecting the Consumer Interest, has evolved with our economy to meet the changing needs of the American people. Consumers today have the right to safety, the right to information, the right to choice, the right to be heard, the right to consumer education, and the right to service. They also deserve security for any personal information provided during the conduct of a transaction, whether in person or on the Internet. As we observe National Consumer Week, I urge the American people to learn more about their rights as responsible consumers and to reward those businesses that continue to give them a fair shake.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 25 through October 31, 1997, as National Consumers Week. I call upon government officials, industry leaders, and the American people to recognize the vital relationship between our economy and our citizenry, and to join me in reaffirming our commitment to fairness in the marketplace.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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LIST OF PUBLIC LAWS

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H.J. Res. 97/P.L. 105–64

Making further continuing appropriations for the fiscal year 1998, and for other purposes. (Oct. 23, 1997; 111 Stat. 1343)

Last List October 24, 1997

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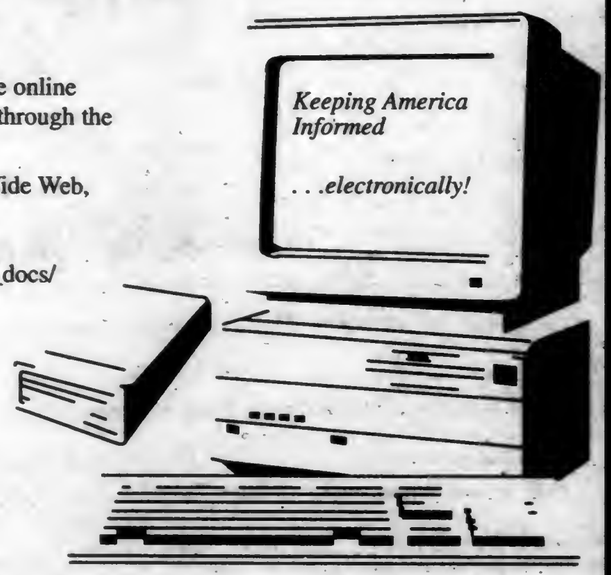
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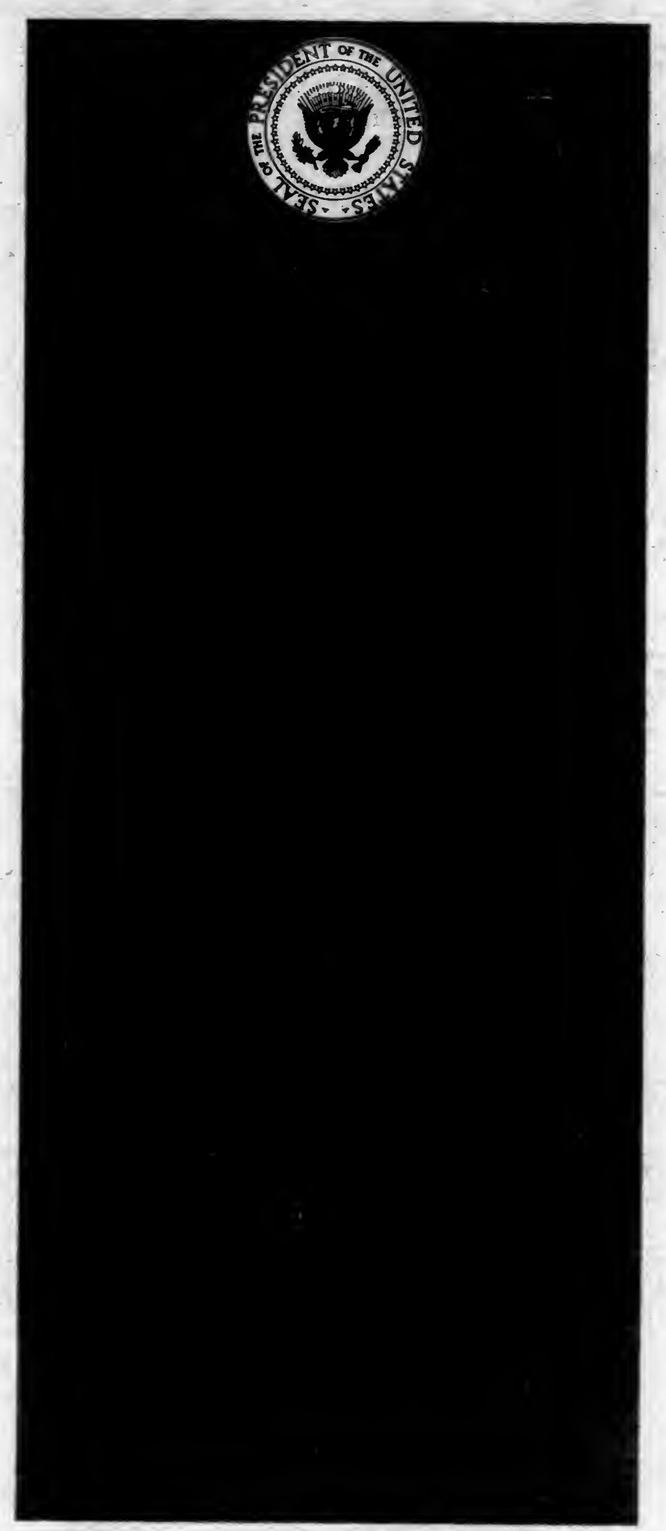
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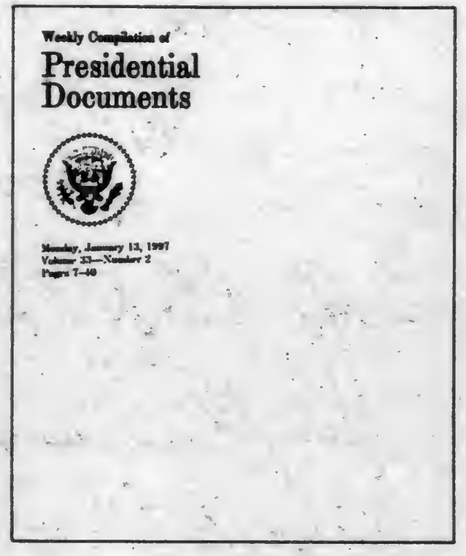
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